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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CRIMINAL DIVISION

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UNITED STATES OF AMERICA,

Plaintiff

vs.

Criminal Action Nos.

MICHELLE MACCHIO,	2017 CF2 1183
JENNIFER ARMENTO,	2017 CF2 1193
CHRISTINA SIMMONS,	2017 CF2 1210
ALEXEI WOOD,	2017 CF2 1221
OLIVER HARRIS and	2017 CF2 1254
BRITTNE LAWSON,	2017 CF2 1256

Defendants.

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Washington, D.C.
December 12, 2017

The above-entitled matter came on for jury trial before the HONORABLE LYNN LEIBOVITZ, Associate Judge, in Courtroom 203, commencing at approximately 9:50 a.m.

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

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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 CF1 221; and United States versus Christina
7 Simmons, 2017 CF2 1210.

8 THE COURT: Good morning, everybody.

9 MS. KERKHOFF: Good morning, your Honor.

10 MS. HEINE: Good morning.

11 THE COURT: Here's this thing, if anybody needs it.

12 Thank you.

13 Ms. Macchio is here with four lawyers today, I
14 believe.

15 I think we're missing Mr. Healy at the moment. But
16 everybody else is here for Ms. Armento.

17 Ms. Jacques and Ms. Simmons are here.

18 Mr. Wood and Mr. Cohen are here.

19 Ms. Lawson and Ms. Kropf are here and Mr. Portnov.

20 And Mr. Harris is here with Mr. McCool.

21 So we've got the full crowd except Mr. Healy.

22 The stuff that Mr. Lazerow filed was filed on the
23 late side last night. I'm seeing it for the first time now.

24 So I've got a packet of materials that you'll have
25 to just walk me through, Mr. Lazerow, in terms of what is --

1 what it is that's at issue.

2 MR. LAZEROW: Of course, your Honor.

3 THE COURT: I don't know if you and the Government
4 had a chance to speak overnight to narrow any of the issues.

5 No?

6 MR. LAZEROW: No, your Honor.

7 THE COURT: So with respect to what you propose to
8 cross-examine Detective Pemberton about -- the first thing
9 I'm looking at is Macchio 10.

10 What is the content in here that you are -- that
11 you're proposing to use?

12 MR. LAZEROW: Right.

13 If you -- your Honor, for this one, I think it would
14 be good if you could look at 10, 10-A and 10-B, which should
15 be, hopefully, next to each other.

16 THE COURT: Yes. And what are the questions you
17 plan to ask?

18 MR. LAZEROW: Right.

19 So let me just tell you what's here and then I'll
20 tell you where we're going to go, if the Court will allow it.

21 Macchio 10 is an article that was published by a
22 right-wing news outlet called GotNews. If you look on the
23 first page, it says that the GotNews source has obtained a
24 full list of 231 people arrested at the Washington, DC, riots
25 on President Donald J. Trump's inauguration from the DC

1 Metropolitan Police Department.

2 And you'll see below there's a screen shot of up
3 to -- it looks like to 25 lines of an Excel spreadsheet.

4 10-A is that full spreadsheet. And 10-B is a screen
5 shot of the properties from that -- from that Excel
6 spreadsheet.

7 I believe we've put a red box around what we wanted
8 to direct the Court's attention to. I hope it's on there.

9 It may not be. It was on the set last night.

10 If you look on the right side, you'll see that
11 there's an --

12 THE COURT: Of which one? Which one?

13 MR. LAZEROW: 10-B. I apologize.

14 THE COURT: The right side?

15 MR. LAZEROW: Macchio 10-B. On the right side,
16 you'll see it says "Related People."

17 THE COURT: Yes.

18 MR. LAZEROW: Then it says "Author."

19 THE COURT: Yes.

20 MR. LAZEROW: And then it says Rachel -- let's call
21 it Schaerr -- I think that's the name, but I'm not positive
22 how to pronounce it -- (MPD).

23 THE COURT: Yes.

24 MR. LAZEROW: And so what we have here in total is
25 the MPD releasing four days after this event the names and

1 hometowns of all the people who were arrested to a right-wing
2 news organization, who then publishes it.

3 And then the comments in here that are displayed are
4 nasty comments, as you can imagine, including referring to my
5 client as Thug No. 151 and identifying where her parents
6 live, what their addresses are -- what their addresses are
7 and what their professions are.

8 This witness, Detective Pemberton, yesterday talked
9 about concealing the identity of the Project Veritas person
10 who filmed the church meeting.

11 THE COURT: So can I just ask: Is Detective
12 Pemberton anywhere in this disclosure? Did he do it? Is he
13 responsible for it? Is he being investigated for it? Is he
14 personally somehow involved in the dissemination of these
15 names?

16 MR. LAZEROW: I don't know the answer to that.

17 THE COURT: And so, to the extent that they are all
18 publicly indicted, their names are in the caption of an
19 indictment that is filed. In fact, the police paperwork
20 identifying arrestees are public documents.

21 What is it about Rachel Schaerr's disclosure of
22 these names, if she is the one who did it, that should be the
23 subject of cross-examination of Detective Pemberton?

24 MR. LAZEROW: I plan to ask Detective Pemberton if
25 he authorized the disclosure of this information to this

1 outlet.

2 THE COURT: Do you have a good-faith basis to
3 believe that he did?

4 MR. LAZEROW: We have a good-faith basis to believe
5 it was leaked.

6 THE COURT: But by him?

7 MR. LAZEROW: I don't know what role, if any, he
8 had.

9 THE COURT: I'm not going to allow you to use this.
10 There is no connection to Detective Pemberton. It is not
11 probative of bias. It is not even probative of wrongdoing.
12 If he were being investigated, then there would be a
13 discussion about bias about -- on his behalf.

14 But this is not a proper subject of
15 cross-examination.

16 MR. LAZEROW: May I make a proffer for the record,
17 your Honor?

18 THE COURT: Yes.

19 MR. LAZEROW: My proffer would be that it shows the
20 bias of the Metropolitan Police Department in that they were
21 willing to go to the lengths they went to to shield from
22 public disclosure the identity of the very person who filmed
23 a meeting.

24 The only conspiracy evidence we've seen of
25 pre-January 20th conduct that this Government put into this

1 trial and they shielded that from us until your Honor forced
2 the Government to tell us who it was. We thought we knew.
3 And they told us.

4 And so it is -- absolutely, we believe, it goes to
5 the bias in that they were willing to provide this
6 information to the -- to a right-wing news outlet in a -- I
7 agree with your Honor, obviously, that that information is
8 public that my client was arrested.

9 When it's compiled into a spreadsheet and given in a
10 nice, tight package to an organization like this that then
11 publishes things about killing antifa and "We're going to
12 show up at black" --

13 THE COURT: So I'll allow you to file your
14 additional material in writing. Can we get to the next
15 subject matter?

16 I'm not going to allow you to use this. It's too
17 attenuated from Detective Pemberton, and I do conclude it's
18 not probative of bias on his part.

19 MR. LAZEROW: Okay. What's the next one that you
20 have, your Honor?

21 THE COURT: You tell me. There were some Twitter
22 quotes, Twitter --

23 MR. LAZEROW: We can just go through what you have
24 there.

25 THE COURT: I have Macchio 18, Emily Miller.

1 MR. LAZEROW: Oh, okay. Great.

2 So this is -- you'll see on Macchio 18 -- I believe
3 that's a screen shot of -- it says "Emily Miller." And she
4 tweets, "Will Fraternal Order of Police endorse Trump or
5 Clinton for President?"

6 And you'll see just below that line, your Honor,
7 there's a Macchio 18 at GPem gives insight. And it says, "My
8 report at OANN."

9 OANN in One American News Network. It has been
10 reported in the *Washington Post* and elsewhere to be very
11 pro-Trump and to be basically -- will exclude anything that's
12 negative about Trump and is favoring Trump.

13 In this particular thing, which we're happy to show
14 you the clips that Detective Pemberton gave, he talks about
15 the reason that the police --

16 THE COURT: So do you have the text of what it is
17 that Detective Pemberton says that I can look at?

18 MR. LAZEROW: I don't. We can just play it.

19 THE COURT: And so can you tell me what it is?

20 MR. LAZEROW: Yeah. There are two separate quotes.

21 One is he's asked whether the police union is
22 considering endorsing Donald Trump.

23 And he says one of the reasons they appealed to --
24 that Donald Trump appeals to the police is that he has a
25 message of law and order.

1 He goes on to say that -- he implies he is speaking
2 for 900,000 police officers in this particular piece.

3 THE COURT: Does he say those words: I'm speaking
4 for 900,000 people?

5 MR. LAZEROW: No.

6 THE COURT: So I'm asking you for his words.

7 MR. LAZEROW: Okay. And then he in a later quote
8 says, "We," as in the police, "are looking for someone to
9 come in and destroy the false narrative that police officers
10 are inherently criminal racists that are committing crimes
11 against citizens."

12 THE COURT: So can you tell me the -- is the date of
13 this August 24th, 2016?

14 MR. LAZEROW: That's our understanding.

15 THE COURT: And so what you would propose to
16 cross-examine him about is the discussion he had -- and I
17 assume this is a virtual discussion, not an actual
18 interview --

19 MR. LAZEROW: No. It's an actual interview.

20 THE COURT: -- an interview with him in which he's
21 saying Donald Trump appeals to police because he's a law and
22 order guy and -- what was this? We're looking for someone to
23 come in and destroy the false narrative?

24 MR. LAZEROW: Correct.

25 THE COURT: About police?

1 MR. LAZEROW: About the police being -- his quote --
2 "inherently criminal racists."

3 THE COURT: Okay. Next?

4 MR. LAZEROW: Well, before you move on, let me just
5 say one other thing in case -- just out of -- to paint the
6 complete picture.

7 The National Fraternal Order of Police went on to
8 endorse Donald Trump.

9 THE COURT: Can I just ask: This was not the local
10 FOP he was speaking for? He was speaking for --

11 MR. LAZEROW: I'm going there.

12 THE COURT: -- the National FOP at the time?

13 MR. LAZEROW: It's not clear, but I believe he was
14 speaking for DC.

15 THE COURT: Ms. Kerkhoff, can I just ask you to hang
16 in there with me? Just settle down. I will talk to you
17 next. Okay?

18 MS. KERKHOFF: Yes, your Honor.

19 THE COURT: So --

20 MR. LAZEROW: I believe -- I'm sorry.

21 THE COURT: Yes. Can we move to the next one,
22 please.

23 MR. LAZEROW: Okay.

24 THE COURT: Macchio 22-A.

25 And, really, what I'm asking is: What are the words

1 that Detective Pemberton said that you are seeking to
 2 cross-examine him with? So at 22-A, "GPem loaded some
 3 tweets." And so where I see RT at Baltimore police, that's
 4 not him? His words would only be GPem?
 5 MR. LAZEROW: Right.
 6 THE COURT: Or which ones would be him?
 7 MR. LAZEROW: These are -- we downloaded all of his
 8 tweets. And if you look on Page --
 9 THE COURT: Are they the highlighted ones?
 10 MR. LAZEROW: I'm getting there. Yeah. On Page 15.
 11 THE COURT: So I'm looking at your exhibit and there
 12 are one, two, three -- four highlighted lines.
 13 Are those the ones we're talking about?
 14 MR. LAZEROW: Yes.
 15 THE COURT: So let me just see them.
 16 So you say this is Detective Pemberton talking: "Do
 17 facts matter to Black Lives Matter? My San Antonio" --
 18 whoever that is.
 19 So you're saying that's Detective Pemberton talking?
 20 MR. LAZEROW: That's Detective Pemberton putting on
 21 his Twitter a link to this article that talks about how Black
 22 Lives Matter are simply rioters who riot first and ask
 23 questions later.
 24 THE COURT: And so next it would be, "BWCs have
 25 destroyed false narrative of BLM."

1 What is BWCs?
 2 MR. LAZEROW: Body-worn cameras.
 3 THE COURT: "Have destroyed false narratives of
 4 BLM."
 5 And the next one is, "I am honored, yet humbled, to
 6 receive this designation from my brother and sister officers
 7 at the" -- something or other.
 8 MR. LAZEROW: Right. And just so your Honor sees
 9 the "RT" at the very beginning.
 10 THE COURT: Yes.
 11 MR. LAZEROW: It's our understanding that that means
 12 "retweet," meaning Detective Pemberton retweeted someone
 13 else's tweet about this Sheriff David Clarke receiving -- if
 14 you look at the next page, Page 19, you'll see he retweeted
 15 the next item we highlight.
 16 THE COURT: Okay. So right here what designation
 17 are we talking about? Sheriff Clarke is humbled to receive a
 18 designation from his brother and sister officers?
 19 MR. LAZEROW: Yes. He was the Police Benevolent
 20 Association Man of the Year.
 21 THE COURT: So why do we care that Detective
 22 Pemberton is retweeting this?
 23 MR. LAZEROW: Because we're going to get, as we move
 24 along here, to a lot of retweets and likes of David Clarke's
 25 Twitter content by Detective Pemberton.

1 And --
 2 THE COURT: And so the next one is a retweet of
 3 Jessie Jane Duff, more about Sheriff Clarke, "is Police
 4 Benevolent Association's Man of the Year."
 5 In this one document, I understand what you were
 6 telling me yesterday about do facts matter to Black Lives
 7 Matter.
 8 If that's Detective Pemberton's tweet, your point is
 9 that he's expressing a bias against a group with -- I guess
 10 you're saying Left-leaning inclinations.
 11 MR. LAZEROW: That this group supports.
 12 THE COURT: Even though this group and Black Lives
 13 Matter don't have that much in common?
 14 MR. LAZEROW: Well, we're going to hopefully prove
 15 that, that they do.
 16 THE COURT: Okay. And then -- so just -- okay.
 17 Body-worn cameras have destroyed false narrative. I get that
 18 as well.
 19 And so can you explain to me just on the last two
 20 what it is that exposes bias of Detective Pemberton that he's
 21 retweeting that Sheriff Clarke, whoever on earth that is, is
 22 Benevolent Association's, or FOP's, Man of the Year.
 23 MR. LAZEROW: Do you want me to tell you who Clarke
 24 is or do you --
 25 THE COURT: Tell me.

1 MR. LAZEROW: David Clarke was a former Milwaukee,
 2 Wisconsin, sheriff who has been very outspoken against Black
 3 Lives Matter.
 4 He refers to them as "Black Lies Matter." As we
 5 move along, we'll see that tweet.
 6 These are in here in case Detective Pemberton -- in
 7 case I need to remind Detective Pemberton who he is and that
 8 he is police's policeman, if you will.
 9 THE COURT: Are there more tweets about Clarke
 10 coming down the road?
 11 MR. LAZEROW: Yes.
 12 THE COURT: Are these my copies I get to keep?
 13 MR. LAZEROW: Yes.
 14 THE COURT: Next is Macchio 26, more about Clarke.
 15 "I'm calling on this nation to rise up and speak with one
 16 voice condemning vile, vitriolic, hateful movement called
 17 Black Lives Matter." This is what David Clarke is saying.
 18 And is that something that relates to Pemberton in
 19 some way?
 20 MR. LAZEROW: Yes. It's our understanding that
 21 Detective Pemberton liked this tweet on Twitter.
 22 THE COURT: Next is 27, more on David Clarke, more
 23 about Black Lives Matter.
 24 And you're saying he liked this tweet?
 25 MR. LAZEROW: That's our understanding, your Honor.

1 THE COURT: And this is a tweet in which Clarke --
 2 what is MSM?
 3 MR. LAZEROW: Mainstream media.
 4 THE COURT: Okay. "I refuse to let Black Lives
 5 Matter and liberal mainstream media get away with propagating
 6 a lie about police and the people they serve."
 7 And do we know what lie they're talking about?
 8 MR. LAZEROW: I believe it -- you'll see more
 9 throughout. But I think it has to do with the false
 10 narrative that police are inherently criminal racists, the
 11 idea that police just simply kill people, that idea.
 12 THE COURT: Okay. Next is Macchio 28.
 13 So somebody's replying to him. And this is
 14 January 20th.
 15 So what had he said to inspire this tweet? In other
 16 words, it says, "Hypocrisy. First words. Why are the police
 17 allowing them to destroy Starbucks?"
 18 MR. LAZEROW: I'll tell you what my understanding
 19 is. This is based off what I know happened on January 20,
 20 2017, with this witness on Twitter.
 21 I believe -- we don't know -- that he -- that Donnie
 22 Brascoe responded to the tweets I referenced yesterday. I
 23 don't know that.
 24 I intended to ask Detective Pemberton whether this
 25 was --

1 THE COURT: What tweets did you reference yesterday?
 2 MR. LAZEROW: The ones about -- on January 20th,
 3 Detective Pemberton tweeted that he was incredibly inspired
 4 by the police conduct and he was -- found a high level of
 5 professionalism.
 6 THE COURT: Am I supposed to know who Donnie Brascoe
 7 is?
 8 MR. LAZEROW: It's not relevant. Because, at the
 9 bottom, do you see a little picture on the right that's blue?
 10 That is, we believe, Detective Pemberton's Twitter picture.
 11 And he liked this reply to G. Pem.
 12 THE COURT: So he liked this statement, "Why are the
 13 police allowing them to destroy Starbucks?" and you want to
 14 impeach him with that?
 15 MR. LAZEROW: Yes.
 16 THE COURT: Okay. And can you just articulate -- I
 17 mean, that's probably a sentiment that the Government isn't
 18 unsympathetic to. So what is that -- that shows bias in the
 19 sense that it's pro-police and it's anti --
 20 MS. KERKHOFF: We're going to take his answer, if
 21 you allow me to ask the question -- I'm going to ask him,
 22 "What it does it mean to you?"
 23 What I think it means is that it's hypocrisy -- the
 24 first word is "hypocrisy" -- for people who always claim that
 25 police are too violent, are violent people, to then sit back

1 and allow others to break Starbucks windows.
 2 I think that's what it means.
 3 THE COURT: Okay. And so next is David A. Clarke,
 4 the sheriff, saying, "America is upside down. Cops are under
 5 attack."
 6 MR. LAZEROW: What number is that? I'm sorry.
 7 THE COURT: This is 29.
 8 Leftist goons, push back before it's too late. And
 9 what? Did he like this? Is that the reason? Macchio 29.
 10 MR. LAZEROW: Hold on.
 11 Yes. It's our understanding he liked this tweet by
 12 David Clarke.
 13 THE COURT: Okay. Macchio 30. Throwing -- okay.
 14 It's Michael Gendron tweeting, "Throwing concrete at police
 15 officers and just destroying Starbucks' windows is an
 16 exercise in your First Amendment rights."
 17 And you're saying Pemberton liked that?
 18 MR. LAZEROW: Yes.
 19 THE COURT: Okay. Next is with -- what is this,
 20 this Macchio 34? Can you tell me what this is.
 21 MR. LAZEROW: This is the -- I'm sorry. This is the
 22 article that he tweeted about "Do black lives matter" -- "Do
 23 facts matter to Black Lives Matter?" in the *San Antonio*
 24 *Express-News*.
 25 THE COURT: So this is an argument by Rich Lowry. I

1 don't know who Rich Lowry is. It's published on
 2 October 21st, 2016.
 3 MR. LAZEROW: Yes. If you go to 22-A that we talked
 4 about earlier, which is a list of Detective Pemberton's
 5 tweets, on Page 15, he tweeted this article out to his
 6 Twitter sphere.
 7 THE COURT: I don't know if I have a Page 15.
 8 You're saying in 22-A -- someplace in here he tweeted --
 9 MR. LAZEROW: It's highlighted. It's the first one.
 10 THE COURT: "Do facts matter to Black Lives Matter?"
 11 So he's tweeting out this thing, which is 34?
 12 MR. LAZEROW: Correct.
 13 THE COURT: And this article is an October 2016
 14 article?
 15 MR. LAZEROW: Yes.
 16 THE COURT: Macchio 40, Gregg Pemberton, FOP 3.
 17 So is that DC FOP or National FOP?
 18 MR. LAZEROW: I believe it's DC, your Honor.
 19 THE COURT: "Body-worn cameras have been the bane of
 20 disingenuous activists who peddle lies and falsehoods. TBs
 21 of footage of cops doing the right thing."
 22 And Pemberton what? Retweets that or that's him
 23 talking?
 24 MR. LAZEROW: This is -- our understanding is this
 25 is his tweet replying to FOP 3.

1 THE COURT: Okay.

2 MR. LAZEROW: Your Honor, for the record, Jamie's

3 correcting me very heavily that FOP 3 apparently is

4 Baltimore.

5 THE COURT: So this is Pemberton's words? He's

6 replying or what?

7 MR. LAZEROW: These are his words, absolutely his

8 words. I just wanted to be clear. I had said it was the DC

9 police union, FOP 3. Our understanding is it's the Baltimore

10 police union.

11 THE COURT: Okay. Macchio 41, "Incredibly inspiring

12 about of restraints being employed by officers today. Ironic

13 it's the same officers that are accused of being violent."

14 I get the point of that.

15 "Receiving reports of injured officers. I'm humbled

16 at the level of professionalism I've seen today and am proud

17 of our members."

18 I understand that.

19 43: "You know what I haven't heard in a while?

20 Police shootings of unarmed black youth. Did they run out of

21 funding for their false narrative?"

22 And 44 is a picture that is probably not -- what are

23 we doing with 44?

24 MR. LAZEROW: Is that a picture of a -- a screen

25 shot?

1 THE COURT: It's a screen shot of somebody who has

2 not been identified as Ms. Lawson.

3 MR. LAZEROW: Right. It's a screen shot. And if

4 you look on the bottom right, I think you'll see it says

5 "Black Lives Matter."

6 THE COURT: Okay.

7 MR. LAZEROW: And we -- I'm sorry.

8 THE COURT: I understand.

9 MR. LAZEROW: Your Honor, may we play -- we

10 submitted to the Court last night through a link the video

11 of -- from Logan Circle. It's about 15 seconds, no more. I

12 understand from your clerk --

13 THE COURT: Your proffer is that at Logan Circle

14 they were saying what?

15 MR. LAZEROW: Chant -- that these protesters were

16 chanting, "Black Lives Matter, Black Lives Matter, Black

17 Lives Matter."

18 THE COURT: All right. Thank you.

19 So, Ms. Kerkhoff, before I get to sort of the other

20 topics, he's inspired and humbled by how the police handled

21 themselves that day.

22 I assume no objection to that.

23 MS. KERKHOFF: No objection.

24 THE COURT: He feels that body-worn cameras are the

25 bane of the existence of people who want to say bad things

1 about the police.

2 I assume you have no objection to that.

3 MS. KERKHOFF: No objection to that.

4 THE COURT: And so where we really need to get down

5 to is, over time, he's expressing, retweeting, endorsing, a

6 series of critical statements about Black Lives Matter in the

7 context of what it suggests about the police, in other words,

8 that police are accused of shooting unarmed persons, of other

9 misconduct, and that Black Lives Matter is sort of a focus of

10 that concern.

11 The proffer, if one could boil it down to a few

12 words instead of many, is that, because Detective Pemberton

13 has expressed these views far and wide and because he is a

14 vocal member of the FOP board and, apparently, adopts sort of

15 police-oriented issues nationwide in his conversations, that

16 he is expressing a strong bias in favor of protecting the

17 police from any group that is critical of them, to include

18 Black Lives Matter, which he's obviously been focused on in

19 these tweets.

20 He's not really saying much about anti-capitalists

21 in any of these tweets. While I recognize, as I said, that

22 Black Lives Matter and this group have some dissimilarities,

23 nevertheless, why isn't this probative of a bias that is so

24 strongly pro-police whenever accused of wrongdoing that it

25 exposes a bias that should come out here?

1 MS. KERKHOFF: I would disagree that it is -- one, I

2 disagree with some of the characterizations, in part, because

3 of the context.

4 So all of the Black Lives Matter tweets that

5 counsel's referring to -- or the vast majority are happening

6 in 2016 and the Black Lives Matter movement itself was

7 actually morphing and changing during that time period.

8 As the Court may recall from Officer Adelmeyer's

9 testimony or at least from the radio run, Black Lives Matter

10 did have functions happening in DC on the morning of the

11 inauguration. They had a blockade here at the courthouse.

12 It's where Officer Adelmeyer was.

13 So there was a specific Black Lives Matter-sponsored

14 event. It was not the anti-capitalist bloc. And so I would

15 note just a couple of facts.

16 The first is Detective Pemberton is actually an

17 elected official with the union. So I just want to be clear

18 about that. He manages the account on behalf of the union.

19 So it's not that he's just invested in the Fraternal

20 Order of Police. It's actually a union position.

21 The second is the Government submits that, under a

22 403 analysis, the attempt to inject racial issues, which I

23 think is precisely what they're doing, they're going so far

24 as to look at a button on a single person's backpack to say,

25 "See, this was also a Black Lives Matter."

1 That's not what the evidence is about the riot
2 itself or the investigation of the riot. Nobody is chanting,
3 "Black Lives Matter" when the Starbucks is being broken.

4 It is so attenuated to inject and prey on what I
5 think are the emotions of a jury that haven't made a
6 connection here to -- you can say that he's pro-police. You
7 can say that he disagrees about a false lie narrative.

8 But to put up chants about Black Lives Matter, "You
9 don't like Black Lives Matter," it's about the narrative that
10 was coming out, that there was a strong disagreement when the
11 narrative that was being pushed is all police officers are
12 inherently racist, biased criminals.

13 His position was, "No, they're not." I think that's
14 a false narrative.

15 We're going down a rabbit hole under a 403 analysis
16 that I think is attempting to prey on emotions when the best
17 Mr. Lazerow can do is say, "Well, before this all started,
18 there was a chant."

19 It's not the Black Lives Matter event. That's a
20 civil blockade. We hear about it on the radio. We know
21 about that. It's something different.

22 During the riot itself, during the riot itself,
23 they're not chanting when they break things, "Black Lives
24 Matter." It's, "Fuck it up and fuck capitalism."

25 To sit here and say that now we get to put that in

1 because this is a -- the Defendants are organized with a
2 Left-leaning group and he's not Left-leaning.

3 The Government also would note that, to say that
4 somebody retweets something is a specific nonendorsement of
5 something -- they're trying to put in other people's words.
6 How is that impeachment in any way of Detective Pemberton?
7 Retweeting itself, it says on Twitter, this is not viewed as
8 an endorsement.

9 So I think it's so attenuated at this point as to
10 what we're actually talking about and what his biases are and
11 the presentation of it is designed solely to try to prey on
12 emotions and not discuss any actual facts of this case.

13 THE COURT: So I appreciate your argument that this
14 is not a Black Lives Matter protest and that there's some
15 attenuation between the group in this case and the group
16 represented by that movement.

17 However, the point of these tweets is Detective
18 Pemberton's strong feelings about the police and strong
19 feelings against groups that criticize the police and, in
20 addition, a political bent that is probative of a bias
21 against, generally speaking, Left-leaning protestors.

22 And so I do believe that, in general, the
23 cross-examination that's proposed is probative of bias and
24 admissible cross.

25 However, this is not a deposition, Mr. Lazerow. And

1 I have to say we are not going to make a mini-trial out of
2 who is David Clarke and all of the ways in which we could
3 talk about David Clarke in some other state west of the
4 Mississippi. I believe it's west of the Mississippi. I
5 forget where you said.

6 So what I'm saying is that I'll just go through
7 these exhibits.

8 I'm going to allow cross-examination regarding
9 Detective Pemberton's feelings about Black Lives Matter as
10 that relates to accusations against the police.

11 But I am not going to allow far and wide who is
12 Clarke, what does he mean, you know, nationwide issues about
13 Clarke's beliefs.

14 I'm going to require you to focus it in, as in ask a
15 direct question --

16 MR. LAZEROW: I have two questions.

17 THE COURT: -- as in: Didn't you issue a tweet that
18 said X? In such and such a time and such and such a date,
19 didn't you say X?

20 This is probative of his bias in favor of police and
21 against Left-leaning groups.

22 We are not going to have a mini-history here of who
23 is David Clarke.

24 And so, for instance, in Exhibit 18, "Donald Trump
25 appeals to the police. We're looking for someone to come in

1 and destroy false narratives" I will allow. That's August of
2 2016.

3 It's about the false narratives that relate to
4 police. I will allow it because it's probative of the bias
5 that he has expressed strongly.

6 I will say, you know, it seems that he got off
7 Twitter pretty quickly, unless there's more that I'm not
8 aware of, after he took on the role in this case.

9 But to the extent that he is a ranking member of the
10 FOP, is focused on police issues and has chosen to make
11 statements publicly about them, that's a choice he's made to
12 declare himself.

13 It's not like he's talking, you know, in the back
14 booth of a bar about these things. This is who he's declared
15 himself to be. And so it's all public. And so it's all the
16 more fair, I think, to question him about these things.

17 But, like I said, I want one question: Didn't you
18 say in an interview at such and such a time and such and such
19 a place the following two things?

20 In 22-A, the rest of this discussion, to me,
21 including the text of the October 2016 article, are, under
22 403, not probative.

23 What is probative is that he is retweeting an
24 article that was sympathetic, I guess, to Black Lives Matter
25 and uttering, "Do facts matter to Black Lives Matter?",

1 that's the point of this. Okay?

2 "Body-worn cameras have destroyed the false

3 narrative." Straightforward. He's concerned about a false

4 narrative about police.

5 The next one: The retweeting. Okay. I'm not going

6 to allow this retweeting of Sheriff Clarke.

7 MR. LAZEROW: That was fine.

8 THE COURT: And so it's the -- "I am honored, yet

9 humbled, of Sheriff Clarke" and the Jessie Jane Duff, Donald

10 Trump supporter, Police Benevolent Association's Man of the

11 Year. That, under 403, is not what this case is about.

12 For Macchio 26, the fact that he liked a tweet by

13 David Clarke, one question about isn't David Clarke, whoever

14 he is, condemning this vile, vitriolic, hateful movement I

15 will allow.

16 And so I'm not allowing lengthy questions --

17 questions at all about Sheriff Clarke's opinions about

18 anything. It's that Pemberton is retweeting this, which is,

19 as Ms. Kerkhoff knows, an adoptive admission.

20 And so --

21 MR. LAZEROW: Can I tell you the question I would

22 ask, your Honor?

23 THE COURT: Yes.

24 MR. LAZEROW: The one question I would ask is:

25 You're aware that Sheriff David Clarke holds strong views

1 about issues important to police?

2 THE COURT: That's fine with me.

3 MR. LAZEROW: Well, I'm trying to stay within the

4 bounds.

5 THE COURT: Holds strong views about --

6 MR. LAZEROW: Holds strong views about policing.

7 THE COURT: Right.

8 But not holds strong views about left-wing people.

9 You know, whatever other vitriolic, horrible things the guy

10 has to say you're not going to be quoting. It's that

11 Pemberton has retweeted this is the point.

12 Exhibit 27, same thing: Allowed.

13 Exhibit 28: Allowed.

14 Exhibit 29: Allowed.

15 30: Allowed.

16 40: I'm going to allow it, assuming Pemberton said

17 it.

18 41: I'll allow it if that's what you want to do.

19 42: I'll allow.

20 43: I'll allow.

21 MR. LAZEROW: Those are his words.

22 THE COURT: And 44 I'll allow. That's the picture

23 of the button.

24 And so, Ms. Kerkhoff, have you thought at all about

25 the redirect that you will be doing about Pemberton's

1 opinions?

2 MS. KERKHOFF: Yes.

3 THE COURT: I just want to know now.

4 MS. KERKHOFF: Yes.

5 THE COURT: What will you be doing?

6 MS. KERKHOFF: Well, your Honor, I believe that

7 Detective Pemberton will be -- should be permitted to provide

8 context for his statements regarding what the discussion was

9 at a policy level as well as the discussion as an official

10 they were having with respect to the union. They were having

11 discussions about this issue because it was impacting police.

12 The Government also believes that other tweets that

13 Detective Pemberton has put out, since counsel has selected

14 only a few --

15 THE COURT: Give me an idea.

16 MS. KERKHOFF: Yes. Well, Detective Pemberton has

17 issued a number of tweets where he has alerted or retweeted,

18 for example, the bomb attack yesterday, the DC nurses who are

19 fighting for fair pay and union.

20 He's retweeted and sent tweets about commemorative

21 dates when individuals are shot or killed; the NFL.

22 He's tweeted about traffic hot spots in the nation.

23 He has retweeted with respect to how -- the lower

24 standard when police standards are lowered. That raises

25 concerns among -- that the standards for police officers

1 should be higher.

2 He's retweeted about the importance of body cameras

3 and his support of that.

4 He's challenged the WTOP when they've got false

5 statements that they've corrected.

6 He is standing with DC teachers on their union

7 talks.

8 He is critical of the chief of police.

9 THE COURT: Are you planning on doing all of these?

10 MS. KERKHOFF: It depends on how far we go, your

11 Honor.

12 THE COURT: Well, I mean, you've just heard how far

13 we're going to go.

14 MS. KERKHOFF: Then, I do plan on providing context

15 for what he's tweeting about.

16 Santa Claus. He tweeted about that.

17 The Chicago Cubs.

18 He has retweeted --

19 THE COURT: So I just want to say, you know, to the

20 extent that your point is he tweets about a lot of things, I

21 don't think 100 is useful. Under 403, I would suggest you

22 pare it down.

23 I would also say that I would be careful to, you

24 know, trivialize the concerns that are raised by all this.

25 And it's not about Santa Claus. It's really about

1 his thought process about police in particular and his
2 feelings about people whose views threaten the image of
3 police. And that's really -- that's why I'm allowing the
4 cross.

5 If you have stuff that rebuts that, go ahead and do
6 it. I get your point about pay and body-worn cameras and the
7 things that sort of protect images of police.

8 But I'm not going to tell you you can't use other
9 tweets that trivialize the point that's being made here, but
10 I think you ought to think about it.

11 MS. KERKHOFF: It's not about trivializing, your
12 Honor. Part of this is they're taking out of context that
13 what he's retweeting are issues of importance to the union
14 itself.

15 When you're talking about the teachers union, the
16 nurses union, critical of DC, they have made an accusation
17 very publicly, in fact, recently, that he's a racist Nazi.
18 Those words have come out of many individuals' mouths about
19 him.

20 And the Court's allowing some context. He's allowed
21 to respond to it. And I understand the Court's statements --

22 THE COURT: I'm going to allow you to do that.

23 Is there any objection to anything you've heard
24 Ms. Kerkhoff say she wants to use?

25 MR. LAZEROW: No. And I intend to bring out the

1 point he tweets about a lot of things.

2 THE COURT: So all I will say is, Ms. Kerkhoff, I
3 want you to not make it go on forever.

4 MS. KERKHOFF: I understand.

5 THE COURT: I will stop you if it becomes, you know,
6 long.

7 MS. KERKHOFF: I don't think I've ever done a long
8 redirect.

9 THE COURT: I know that. That's why I'm going to
10 let you decide what to do. Long is not your usual approach,
11 which I appreciate.

12 MR. LAZEROW: I have three things.

13 THE COURT: Yes.

14 MR. LAZEROW: They all relate to this.

15 First of all, you said No. 18, which is the screen
16 shot of the network interview that he did with OAN. I assume
17 that also includes No. 19, which is the actual video showing
18 his words -- showing him saying those words.

19 THE COURT: Well, as I ruled, I will permit you to
20 use his words.

21 MR. LAZEROW: Put those out. Right.

22 THE COURT: This is a screen shot from that
23 interview?

24 MR. LAZEROW: It's a screen shot that we then go to
25 the interview itself.

1 THE COURT: And can you just make clear, when you're
2 talking about the Fraternal Order of Police, when you're
3 talking about national versus local?

4 MR. LAZEROW: Yes.

5 THE COURT: Because you're saying this is national.
6 Right?

7 MR. LAZEROW: No. It's not. I don't think he's
8 identified exactly. He just identifies a police
9 representative.

10 THE COURT: Do you know, Ms. Kerkhoff, in Exhibit 18
11 with whoever this -- OAN with an eagle pole and it says,
12 "Will Fraternal Order of Police endorse Donald Trump," do
13 they mean local or national?

14 MS. KROPF: The news organizations spoke about the
15 National Fraternal Order of Police. Detective Pemberton was
16 not speaking about the National Fraternal Order of Police.

17 He was asked to write comments about what kinds of
18 discussions law enforcement was having within the union. He
19 specifically advised them that there was no endorsement and,
20 in fact, his union did not endorse Donald Trump.

21 THE COURT: Can we just keep this focused on
22 Pemberton, not everybody else --

23 MR. LAZEROW: Yes.

24 THE COURT: -- else's views?

25 MR. LAZEROW: That is exactly the point, your Honor.

1 He knew at the time he gave this interview --

2 THE COURT: I'm allowing you to use it. Yes.

3 MR. LAZEROW: Great. Thank you.

4 So --

5 THE COURT: Can we bring the jury in and let you do
6 your cross or is there something we haven't had a chance to
7 talk about?

8 MR. LAZEROW: There are two things we have not
9 talked about.

10 One is he retweeted a tweet from James O'Keefe, the
11 founder of Project Veritas, talking about -- this particular
12 tweet was, "Why the hell aren't you covering our videos?"
13 This was in October 2016.

14 We -- I just want to ask him a question: You
15 have -- I think this one actually --

16 THE COURT: He retweeted --

17 MR. LAZEROW: He liked James O'Keefe in 2016.

18 THE COURT: And so he retweeted a tweet that the
19 content of which we don't care that much about.

20 He just retweeted a tweet of the guy who founded
21 Project Veritas and that's why you want to do that?

22 MR. LAZEROW: He liked it. I have to be careful.

23 He liked it, not retweeted it. Correct.

24 THE COURT: So it's not the content of it that
25 matters. It's just that he liked the tweet?

1 MR. LAZEROW: Right.
 2 We've had -- obviously --
 3 THE COURT: I will allow that.
 4 MR. LAZEROW: Okay. The last thing is I would like
 5 to elicit, given this witness, that on Twitter he follows
 6 Donald Trump, Mike Pence, Donald Trump, Jr., Breitbart News,
 7 Poll News Network, which is a very Alt-right organization
 8 that talks about gassing Jews, and I just want to ask him:
 9 Isn't it true that you follow those organizations on -- and
 10 individuals on Twitter?
 11 THE COURT: Gosh. This seems to be encroaching on
 12 some First Amendment issues here.
 13 So you just want to ask him what he follows? That's
 14 like saying I subscribe to *The New York Times*; therefore,
 15 you'd ask me that about --
 16 MR. LAZEROW: These organizations and individuals we
 17 believe are --
 18 THE COURT: Well, I mean, *The New York Times* is
 19 liberal as hell. So they could ask him about that if -- you
 20 could ask him about that if, you know, that was his leaning.
 21 MR. LAZEROW: He follows 868 people and
 22 organizations.
 23 I intend to ask him: You follow a lot of people,
 24 including those people.
 25 THE COURT: And so give me the list again.

1 MR. LAZEROW: Sure.
 2 President Donald Trump, Mike Pence, Kellyanne
 3 Conway, Donald Trump, Jr., Fox News.
 4 THE COURT: So just, as an officer of the Court,
 5 does he follow, you know, equally liberal people?
 6 MR. LAZEROW: No. He follows non -- he follows
 7 mainstream media, I would say.
 8 THE COURT: Such as?
 9 MR. LAZEROW: I believe he likes a lot of the local
 10 TV stations and, additionally, Fox.
 11 THE COURT: Ms. Kerkhoff, who else does he follow?
 12 MS. KERKHOFF: I believe *Washington Post*. At one
 13 time he was following the city paper. He follows a number of
 14 news organizations, including, as Mr. Lazerow said, it's
 15 mainstream media. Some people would say, for example, DC is
 16 *Washington City Paper*.
 17 He has a number of followers and retweets for those
 18 same entities, these news organizations and a number of
 19 individuals.
 20 So he's got about 900 or so -- almost 900 things
 21 that he follows -- following.
 22 THE COURT: How about politicians? Does he follow
 23 Hillary Clinton?
 24 MR. LAZEROW: No.
 25 MS. KERKHOFF: I'm not sure she's currently a

1 politician.
 2 THE COURT: I know.
 3 So follows Trump, follows Pence. I just --
 4 MS. KERKHOFF: I believe he follows Muriel Bowser.
 5 I believe he follows the DC police department. I mean --
 6 THE COURT: Okay.
 7 MR. LAZEROW: He doesn't follow Obama.
 8 THE COURT: So pick your top seven. Ask him about
 9 those.
 10 MR. LAZEROW: Okay.
 11 THE COURT: And Ms. Kerkhoff can pick her top seven
 12 and ask him about those, too.
 13 Anything else we need to do before we get started
 14 with the detective?
 15 MS. JACQUES: If we could take a two-minute break?
 16 THE COURT: Really? I asked the jury to be here at
 17 10:00. Then I gave them until 10:30. I would like to be
 18 able to start this with them. We'll take a break soon enough
 19 because the court reporter is going to need it.
 20 Thank you.
 21 Let's bring the jury in, please.
 22 So can I raise one thing? I just want to tell you
 23 this. I haven't had a chance to process it well yet. But
 24 remember I asked the jury to mention if they had any
 25 scheduling concerns?

1 They're obviously wonderful people because none of
 2 them said anything except for three jurors. Those are 1, 6
 3 and 8. 1, 6 and 8. 1 and 8 only want to be off on the 26th
 4 and 27th, which seems reasonable to me.
 5 No. 6, however, wants to be off from December 26th
 6 to January 2nd. And that -- I don't know how quickly these
 7 deliberations are going to run.
 8 If that's the only juror expressing a need to be
 9 gone for that full week, we might have a discussion if that
 10 person -- I don't remember if that person is an alternate or
 11 not -- replacing that person. I'm not saying right now. I'm
 12 just flagging it for you.
 13 6 is the one with the need to be gone from the 26th
 14 to the 2nd. It's a trip to California. I'm just letting you
 15 all know that.
 16 (Thereupon, the witness entered
 17 the courtroom and the following
 18 proceedings were had:)
 19 (Whereupon, the jury entered the courtroom at
 20 10:38 a.m. and the following proceedings were had:)
 21 THE COURT: Good morning, ladies and gentlemen.
 22 THE JURY: Good morning.
 23 THE COURT: I hope you all got the message one way
 24 or another that I pushed our start time until 10:30.
 25 Thanks for your patience. Thanks for being here.

1 I hope Juror No. 16's chair is properly affixed to
 2 the ground.
 3 And we're going to pick back up with Detective
 4 Pemberton's cross-examination.
 5 Sir, you are under oath.
 6 Mr. Lazerow, you may go ahead.
 7 MR. LAZEROW: Good morning.
 8 THE JURY: Good morning.
 9 CONTINUED CROSS-EXAMINATION
 10 BY MR. LAZEROW:
 11 Q. Good morning, Detective Pemberton.
 12 A. Good morning, Mr. Lazerow.
 13 Q. Now, when we left off yesterday, we were talking
 14 about two tweets that you put on Twitter on January 20th
 15 about this protest. I want to show those to you. This is
 16 Macchio Exhibit 41 for identification purposes.
 17 MR. LAZEROW: I'd like to publish it to the jury,
 18 your Honor.
 19 THE COURT: For the record, Mr. Healy is now here.
 20 Are we ready to publish?
 21 MR. LAZEROW: We're having technical difficulties.
 22 THE COURT: How about moving on to ones you may not
 23 need the screen for.
 24 MR. LAZEROW: We can do some thing from things
 25 before we get there.

1 BY MR. LAZEROW:
 2 Q. Let's talk briefly about Twitter. We'll put it up
 3 at some point.
 4 Your handle is @g_pem. Correct?
 5 A. Yes, sir.
 6 Q. And on Twitter are you -- on your -- your activity
 7 on Twitter, is that you yourself or as a member -- a
 8 representative of the DC police union?
 9 A. It's solely as a member of the executive board of
 10 the DC police union.
 11 Q. So you are the treasurer of the board. Is that
 12 correct?
 13 A. Yes, sir. I'm the at-large representative of all
 14 members.
 15 Q. And how many members do you have?
 16 A. 3574.
 17 Q. And how many years have you been on the board?
 18 A. Since -- I've been in the union since, I think,
 19 2012. But I've been an at-large member of the board since
 20 2014.
 21 Q. And am I right that, in your capacity as a member of
 22 the board of the DC police union, you frequently tweet about
 23 issues important to police officers?
 24 A. Yes.
 25 Q. And you often not only write things yourself --

1 which is what I call tweet. Right?
 2 A. Yes.
 3 Q. You also retweet what other people have put on
 4 Twitter?
 5 A. Sometimes.
 6 Q. And sometimes you like -- and I put that in air
 7 quotes -- like things that other people have put on Twitter?
 8 A. Yes.
 9 Q. Correct.
 10 Now --
 11 MR. LAZEROW: How are we doing?
 12 MS. HEINE: It's not recognizing it. We'll use the
 13 ELMO.
 14 BY MR. LAZEROW:
 15 Q. Now, I believe you joined Twitter in November of
 16 2010. Correct?
 17 A. That sounds right.
 18 Q. And am I right that, up until last week, your
 19 Twitter account was open to the public?
 20 A. Yes, sir.
 21 Q. And what that means is that, if I -- as someone who
 22 does not follow you on Twitter, I could go on and see
 23 everything that you've done on Twitter. Is that right?
 24 A. Prior to last week?
 25 Q. Prior to Friday.

1 A. Yes.
 2 Q. So on Friday you made the account private?
 3 A. I did. Yes.
 4 Q. And so I think we're now, hopefully, ready to roll.
 5 MS. KERKHOFF: Yes.
 6 BY MR. LAZEROW:
 7 Q. Hopefully, you can see on the screen. I know this
 8 is Macchio 41. Sorry about that.
 9 So have you had a chance to look at Macchio 41?
 10 A. Yes, sir.
 11 Q. And is that a true and accurate copy of a tweet that
 12 you put on Twitter on January 20th, 2017?
 13 A. Yes.
 14 Q. Do you recall what time you put this on?
 15 A. I do not. But I know that it was well into the
 16 afternoon.
 17 Q. And just tell me if I read this correctly:
 18 "Incredibly inspiring about of restraint being employed" -- I
 19 assume that means "amount"? --
 20 A. Probably a typo. Yes, sir.
 21 Q. -- "Incredibly inspiring amount of restraint being
 22 employed by officers today. Ironic it's the same officers
 23 that get accused of being violent."
 24 And you put that on Twitter on that day. Right?
 25 A. Yes, sir.

1 MS. KERKHOFF: Can we now publish Macchio
 2 Exhibit 42. Thank you, Jamie.
 3 BY MR. LAZEROW:
 4 Q. And is this a true and accurate copy of a tweet you
 5 put on Twitter on January 20th, 2017?
 6 A. Yes. Again, much later in the day. But yes.
 7 Q. You hadn't looked at any video at that point when
 8 you -- of this event at the point in time you put this on?
 9 A. So just to be clear, I had seen news reports of what
 10 was going on later in the day, nothing that had happened
 11 prior to 11:00 a.m.
 12 Q. Were those -- when you say "news reports," you mean
 13 local news or national news?
 14 A. Live news. I believe it's local. It's whatever was
 15 playing in the Seventh District detectives' office. It's
 16 usually a local news channel.
 17 Q. Is that usually Fox News?
 18 A. Sometimes it's USA 9; sometimes it's Fox 5.
 19 Q. And just tell me if I read this correctly to the
 20 jury: "Receiving reports of injured officers. I'm humbled
 21 at the level of professionalism I've seen today and am proud
 22 of our members."
 23 Do you see that?
 24 A. I do see that.
 25 Q. It says #inauguration. Correct?

1 A. That's right.
 2 Q. And the heart that's at the bottom, does that mean
 3 that 13 people liked it?
 4 A. Yes. I believe so.
 5 Q. And so, on Twitter, when you see a heart, that means
 6 like?
 7 A. Yes.
 8 Q. And I think you testified yesterday -- but please
 9 correct me if I'm wrong -- that, after witnessing all the
 10 hours of video that you've watched to prepare for your
 11 testimony in this case, you still hold the opinions that you
 12 expressed, the conclusions you expressed, about the police
 13 conduct on that day?
 14 A. Well, again, just to be clear, I'm referring to the
 15 entire day -- right? -- all the way up until midnight of all
 16 the activity that happened well after 11:00 a.m., because
 17 that's what I was talking about at this time.
 18 I did not know what had happened with any level of
 19 detail prior to 11:00 a.m. when I made these comments.
 20 Q. And I appreciate that.
 21 So you're saying that -- you're talking about
 22 everything that was going on in Washington, DC, not just the
 23 10:00 to 11:00 a.m. hour that we've been focusing on in this
 24 trial from Logan Circle to 12th and L?
 25 A. That as well, though. But referring to injured

1 officers. There were a number of injured officers, I believe
 2 five or maybe six additional injured officers that occurred
 3 later in the day. I was referring to that.
 4 Q. In other events?
 5 A. Yes.
 6 Q. Now, let me -- I appreciate that clarification. Let
 7 me make sure my question is very specific.
 8 Now, do you hold those conclusions that you wrote on
 9 January 20th -- the afternoon of January 20, 2017, about the
 10 professionalism of the police and the inspiring conduct the
 11 police had that day about the events of what you've witnessed
 12 as part of your investigation, this 10:00 to 11:00 a.m.
 13 protest?
 14 A. I think, in the general sense of the term, yes. I
 15 think that the Metropolitan Police Department handled the
 16 situation the best they could under the tumultuous
 17 circumstances that they were facing.
 18 And what I would point to is that, after 33 minutes
 19 of this incredible violence, one person out of this -- what
 20 was probably 500, initially stated that they had an injury.
 21 That injury was a sprained ankle.
 22 So after everything that we've seen and all the
 23 video and all of the violence that we've seen, granted, at
 24 times, it probably -- probably better decisions could have
 25 been made in specific circumstances.

1 But in the chaos of that moment, I still hold this
 2 belief that they did a great job. Yes.
 3 Q. So you -- just so I understand, you've seen some
 4 clips of police conduct that you may question personally
 5 about the -- what was going on?
 6 A. I mean, I'm not going to armchair-quarterback a
 7 five-second clip of what an officer did. I don't operate
 8 that way.
 9 Q. Now, in your role as treasurer of the police union,
 10 do you have any oversight or responsibility for complaints
 11 that are made against members of the police force?
 12 A. Not directly. No. We have a liaison that handles
 13 the Office of Police Complaints matters. That's a separate
 14 individual. I don't have any oversight over that person.
 15 Q. And you haven't had oversight since January 20,
 16 2017. Is that correct?
 17 A. No. That person reports directly to the chairman.
 18 I don't have any interaction with them.
 19 Q. So you wouldn't be involved personally in terms of
 20 whether there's going to be any discipline for any officers
 21 relating to this event?
 22 A. No. I mean, as a union rep, I could. But I
 23 would -- given the fact that I'm the lead detective on this
 24 case, I would probably recuse myself if an officer asked me
 25 to represent him at the Office of Police Complaints. I would

1 probably refer him to another rep. But no one has asked me
2 as of yet.

3 Q. Now, between the time that you started testifying
4 last Thursday and today, you deleted the two tweets we just
5 saw on your Twitter feed. Correct?

6 A. That's right.

7 Q. And did you delete those tweets because you no
8 longer believe that the police conduct was incredibly
9 inspiring?

10 A. No. I deleted those tweets and locked my account
11 because of the targeted harassment that I had suffered over
12 the weekend, the relentless and really incessant nagging and
13 harassment and really borderline threats that I experienced.

14 So I decided to lock my account and remove those items.

15 Q. Have you ever experienced those kinds of threats
16 before?

17 A. Not -- not on social media. No.

18 Q. And are you -- you're aware that that happens on
19 social media? Obviously, it happened to you.

20 A. Absolutely. And the natural reaction is to shut
21 your account down.

22 Q. And there were some pretty -- I saw some of them.
23 There were pretty nasty comments. Correct?

24 A. Yeah. I mean, I have thick skin, but I certainly
25 don't need to see it every five seconds. So I shut it down.

1 Q. That's because people know that you're involved in
2 this case. Correct?

3 A. It appears so. Yes.

4 Q. And was that type of -- are you -- from your
5 personal experience, have you known that that type of
6 vitriolic rhetoric has been going on against individuals on
7 the Internet for a long time?

8 MS. KERKHOFF: Objection. Relevance.

9 THE COURT: Would counsel please approach.

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

12 THE COURT: So I think that's argumentative. This
13 is not an armchair debate. And, like I said, this is not a
14 deposition.

15 MR. LAZEROW: And --

16 THE COURT: I would like you to stick to your
17 points.

18 MR. LAZEROW: Yes.

19 THE COURT: Sitting there and debating with him
20 over whether he should feel aggrieved because he got
21 100,000 unkind tweets over the weekend is not what this case
22 is about.

23 So I am asking you to move on under Rule 403 and, if
24 I have to keep doing that, I'm going to have to curtail the
25 cross.

1 MR. LAZEROW: Can I give you the proffer?

2 THE COURT: I don't want a proffer. I just to
3 tighten it up.

4 MR. LAZEROW: And --

5 THE COURT: This is -- not make it about his
6 feelings about what he thinks about what people get tweeted
7 about.

8 MR. LAZEROW: But this is exactly the concern that
9 people --

10 THE COURT: Could you just go to your cross, please.
11 (Whereupon, the following proceedings were had in
12 open court:)

13 THE COURT: Please come on back.

14 I'm sustaining the objection.

15 BY MR. LAZEROW:

16 Q. I want to show you another tweet that -- this is a
17 tweet, I believe, that you liked. This is Macchio
18 Exhibit 28.

19 This is -- am I right that in the bottom right
20 corner you see your picture of yourself with that little
21 round blue circle?

22 A. Yes.

23 Q. And does that -- that means that you liked this
24 particular tweet?

25 A. Yes.

1 Q. And so the tweet -- just tell me if I read this
2 correctly -- that you liked: "Hypocrisy. First words. Why
3 are the police allowing them to destroy Starbucks?"

4 Is that fair?

5 A. Yes.

6 Q. And, by that, you took this to mean that people who
7 think the police are violent were now saying the police
8 weren't doing enough.

9 Is that a fair characterization of what you thought
10 this meant?

11 A. I don't recall. I mean, sometimes you like a tweet
12 just to bookmark it so you can come back to it. I don't
13 recall exactly what -- how I felt about this.

14 Q. Is it fair to say that one of your goals in spending
15 every working hour on this case since January 20th is to make
16 sure the public knows that what happened on January 20th is
17 not the police's fault?

18 A. I'm sorry. Say that again.

19 Q. Sure. I know it's a long one. Let me see if I can
20 do it again.

21 Is it fair to say that one of your goals in working
22 on this case is to make sure the public knows that what
23 happened on January 20th is not the police's fault?

24 A. No. No. I don't think it's fair to say that.

25 Q. Okay. Do you believe that people who criticize the

1 police response to this protest are disingenuous activists?
 2 A. No. I deal with people that criticize the police
 3 all the time. I mean, I'm a union executive.
 4 Q. That's one -- I'm sorry. Are you done?
 5 A. I mean, I sit on a board of a police union. I'm
 6 used to police criticism. That's what we do.
 7 Q. And it's fair to say on Twitter you push back hard
 8 about people who criticize the police?
 9 A. Well, sometimes you need to be bombastic in order to
 10 get attention. And that's part PR. I mean, my statements as
 11 a public relations person for the organization of the DC
 12 police union doesn't necessarily mean that the gusto with
 13 which I make a statement represents my personal opinion.
 14 It may be an effort to garner attention from the
 15 media or from others who are engaged in a conversation
 16 because sometimes the loudest person in the room gets the
 17 attention.
 18 And then, once you get that attention, you can turn
 19 and present a fulsome, thoughtful, commonsense argument about
 20 what your position is. But if that's all you do all day
 21 long, no one will ever pay attention to you.
 22 I mean, this is what Twitter is about, saying sort
 23 of edgy, oftentimes obnoxious things. But public relations
 24 and my personal opinion about things are two totally
 25 different things.

1 Q. Is it fair to say that you're very happy that
 2 body-worn cameras are now being used by many officers in the
 3 District of Columbia?
 4 A. Yes. I actually advocated for body-worn cameras
 5 when they were being legislated.
 6 Q. I want to show you another tweet that you had. This
 7 is Macchio Exhibit 40.
 8 Just tell me if I have this right. I think this is
 9 something you're tweeting and replying to the FOP 3. Is that
 10 correct?
 11 A. Yes. I think that's the Baltimore police union.
 12 Q. And you wrote to -- at FOP 3, "BWCs have been the
 13 bane of disingenuous activists who peddle lies and
 14 falsehoods. TBs of footage of cops doing the right thing."
 15 Did I read that correctly?
 16 A. Yes.
 17 Q. Am I right that BWCs refers to body-worn cameras?
 18 A. Yes.
 19 Q. And my guess is TBs is terabytes. But I'll ask you.
 20 A. That's a good guess, Mr. Lazerow.
 21 Q. That's the end of my technological knowledge.
 22 When you wrote this on November 30th, 2016, were you
 23 talking -- when you said "disingenuous activists" -- do you
 24 see you put that in sort of mini quotes?
 25 A. Yes, sir.

1 Q. When you wrote that, were you referring to Black
 2 Lives Matter?
 3 A. No, sir.
 4 Q. Who were you referring to?
 5 A. There -- because of police reform over the past
 6 three or four years or longer, there have been genuine
 7 activists who have come out and are -- have demanded police
 8 reform.
 9 And let me tell you I'm the first person that wants
 10 to go to the table to talk about police reform. That's all
 11 I've done, is criticize the department and mismanagement,
 12 talk about hiring better cops and better training, putting
 13 better people on the street. I'm absolutely the first one
 14 that wants to come to the table.
 15 But I think that that sort of process has created a
 16 cottage industry of people who just want to make money and
 17 cherry-pick data and malign the police over and over again,
 18 and they use false rhetoric about what's going on in order to
 19 interject themselves into the conversation to sort of make
 20 themselves the talking head.
 21 I think that those people take away from the actual
 22 productive conversation that can be had between people like a
 23 police union and Black Lives Matter. And if we're going to
 24 sit down and have a conversation about what we need to do to
 25 police the community better, then I don't think those people

1 should be involved because they gum up the works.
 2 Q. Now, have you -- did you conclude in your
 3 investigation that none of the Defendants in this trial were
 4 exercising their First Amendment rights?
 5 MS. KERKHOFF: Objection, your Honor.
 6 THE COURT: Well, I guess I should ask: Any
 7 objections from over here?
 8 No objections?
 9 I'll overrule.
 10 You can answer.
 11 THE WITNESS: I'm sorry. Repeat it one more time.
 12 BY MR. LAZEROW:
 13 Q. Yeah.
 14 In the course of your investigation, did you
 15 conclude that none of the -- none of the Defendants in this
 16 trial were exercising their First Amendment rights?
 17 A. Well, over the course of the 33 minutes --
 18 THE COURT: "In this trial" meaning the six people
 19 here or everybody charged?
 20 MR. LAZEROW: I'm sorry. I meant in this case, the
 21 case writ large.
 22 BY MR. LAZEROW:
 23 Q. Let me just state -- take one step back. I
 24 appreciate that.
 25 You've been involved in investigating all the people

1 who currently still have charges against them. Correct?

2 A. That's correct.

3 Q. And how many people is that?

4 A. I think it's 195 or -96.

5 Q. Okay. So let's focus on those people who still have

6 charges against them.

7 Is it correct that you've concluded that none of

8 those Defendants were exercising their First Amendment rights

9 between 10:00 a.m. and 11:00 a.m. on January 20th?

10 A. No. I'd like to explain.

11 I think, over the course of the 33 minutes that this

12 incident took place, there are probably times where you can

13 look at a section of that and say that this individual or

14 that individual is exercising their First Amendment rights.

15 But I think the totality of the circumstances of

16 watching individuals for the entire length of the incident

17 and determining what their behavior was at portions

18 throughout, sometimes violent, sometimes not violent,

19 sometimes participating, sometimes not -- I think that that

20 totality brings me to the conclusion that there was a crime

21 that was committed.

22 I don't think that that is -- I think that it's

23 mutually exclusive to say that they were never exercising

24 those rights at any point in time. I've never come to that

25 conclusion.

1 MR. LAZEROW: Can we put up Macchio Exhibit 30,

2 which I believe is a tweet.

3 BY MR. LAZEROW:

4 Q. This is a tweet that you liked, I believe. So we're

5 clear, I think it's the second one.

6 Do you see those little blue boxes? That's your

7 Twitter picture?

8 A. Yes. That's me.

9 Q. And that little picture was from an interview you

10 gave on Fox News. Right?

11 A. Yes. Yeah. It is.

12 Q. And if I have it right, you liked it. I don't think

13 you retweeted it, but I think you liked it. Correct?

14 A. That's probably right.

15 Q. And so the -- tell me if I read this correctly:

16 "Throwing concrete at police officers and destroying

17 Starbucks windows isn't exercising your First Amendment

18 rights."

19 Did I read that correctly?

20 A. That's what it says. Yes.

21 Q. And so what I'm getting at is: The people who

22 were -- you would agree that people who were -- what was this

23 one? -- throwing concrete at officers, in your view, they

24 were not exercising their First Amendment rights when they

25 picked up that concrete and threw it. Correct?

1 A. I think that seems like pretty common sense. Yeah.

2 Q. And in your investigation, as you were compiling

3 this information, you were treating the people who threw the

4 concrete the same as the people who were walking by.

5 Correct?

6 A. No.

7 Q. You compiled the same amount of information about

8 them. Correct?

9 A. I'm not sure what you mean, "compiled the same

10 amount of information."

11 Q. Well, I'm trying to stick within your words.

12 I think that early on in your testimony, when you

13 first began direct, you said one of your jobs was to compile

14 information as part of all the cases to present in court or

15 for the Government's use. Correct?

16 A. Yes.

17 Q. So that's what I'm focusing on. I'm happy to use

18 other words, but I'm trying to stick with what you told us.

19 A. I guess I didn't understand the question.

20 You're saying did I compile the same amount of

21 information for people that threw concrete as people that did

22 not?

23 Q. Yeah. Yes.

24 A. Well, again, going back to my last statement, it's

25 the totality of what everyone's behavior was that day. It's

1 not -- I'm not just taking one second where a person threw a

2 concrete at a police officer and then, you know, looking at

3 that same segment of time for other people around that

4 person.

5 I'm looking at what happens throughout from Logan

6 Circle to 12th and L, what their involvement is, what their

7 engagement was, what their participation was, whether they

8 rejoined, whether they left, whether they came back again,

9 when they -- I mean, how close they were in proximity to the

10 damage.

11 Yeah. I looked at the totality for everyone.

12 Q. Now, I think you said that you've been working on no

13 other case since January 20th, 2017. Right?

14 A. Yeah. That's correct.

15 Q. And I think you said -- correct me if my memory is

16 wrong -- you worked about 40 to 60 hours a week on this case

17 since Donald Trump became President. Correct?

18 A. Since January 21st. Yes.

19 Q. And if I counted my math right, I think that's

20 46 weeks as of last Friday.

21 A. I'll trust your math, Mr. Lazerow.

22 Q. I actually looked on my phone to make sure I was

23 right about that.

24 And so, if my math is right, that is -- means you've

25 worked between 1,840 and 2,760 hours.

- 1 A. Okay.
- 2 Q. Have you looked at your time sheets for the last
- 3 46 weeks?
- 4 A. Not with that perspective on it. No.
- 5 Q. Those would be good billable hours.
- 6 How many overtime hours do you have on this case?
- 7 A. I have no idea. I don't have a way to look that up.
- 8 Q. Can you give me a ballpark percentage?
- 9 A. I really can't. I'm sorry. Without looking at
- 10 some -- going into my time and attendance software, I
- 11 really -- I never looked at it that way. So I can't testify
- 12 to it.
- 13 Q. Now, in your nine years as a detective in the
- 14 Metropolitan Police Department, have you ever had a ten-month
- 15 period of time where you worked only on one case?
- 16 A. Never.
- 17 Q. Have you ever spent more hours on one case in a
- 18 ten-month time period than did you on this case?
- 19 A. No, sir.
- 20 Q. How many cases do you investigate in a typical year?
- 21 THE COURT: I'm going to under Rule 403 ask you to
- 22 return to the subject matter of your cross-examination that
- 23 is relevant to this case.
- 24 MR. LAZEROW: May I approach, your Honor?
- 25 THE COURT: I'd like you simply to return to the

- 1 line of questioning that is relevant to this case.
- 2 BY MR. LAZEROW:
- 3 Q. Now, soon after you started your investigation, am I
- 4 right that you learned that the protest at issue in this case
- 5 was advertised as anti-fascist and anti-capitalist?
- 6 A. Yes.
- 7 Q. And so, when you started looking at videos, I assume
- 8 you saw videos of protesters chanting things about Donald
- 9 Trump and about fascism. Is that correct?
- 10 A. Those things were included. Yes.
- 11 Q. You may have heard chants like, "Love, not hate,
- 12 makes America great." Do you remember hearing that?
- 13 A. No. I never remembered hearing that.
- 14 Q. Now, in the course of your investigation, you came
- 15 to believe that about 500 people stepped off Logan Circle
- 16 to -- at the start of this protest?
- 17 A. Yes, sir.
- 18 Q. And that, ultimately, am I right that the police
- 19 arrested about 230 people at 12th and L?
- 20 A. That's correct.
- 21 Q. And in the course of your investigation, you became
- 22 aware that some people personally broke property. Correct?
- 23 A. Yes.
- 24 Q. And some people did not?
- 25 A. Yes.

- 1 Q. Am I right that you have not drawn a line in your
- 2 investigation between those who broke something and those who
- 3 did not?
- 4 A. No. That's not correct.
- 5 Q. You've been investigating all of them. Correct?
- 6 A. Yes. That's right.
- 7 Q. So you've been investigating the person who dragged
- 8 that newspaper stand into the middle of the street the same
- 9 way you're investigating someone 50 feet away from that
- 10 newspaper stand?
- 11 A. Well, I investigated everyone the same that was
- 12 included within the group that's under investigation. Yes.
- 13 I treated them all the same in terms of the amount of time
- 14 that I spent investigating their behaviors, yes, if that's
- 15 what you're asking.
- 16 I'm sorry if I misunderstood.
- 17 Q. Yeah. That's right.
- 18 Again, we're talking about the 100 and I think you
- 19 said 196?
- 20 A. Yes. Yes, sir.
- 21 Q. That's what I was talking about.
- 22 A. That might be off by one or two.
- 23 MR. LAZEROW: Can we publish to the jury Macchio
- 24 Exhibit 29.
- 25

- 1 BY MR. LAZEROW:
- 2 Q. I believe this is a tweet that you liked.
- 3 Do I have this right? This is a tweet that you
- 4 liked on -- the tweet was on September 24th, 2016. But you
- 5 liked it at some point after that.
- 6 A. Yeah. It appears so.
- 7 Q. Okay. And the person who tweeted this was David A.
- 8 Clarke, Jr.
- 9 Do you see that?
- 10 A. Yes.
- 11 Q. You're familiar with who that is?
- 12 A. I am.
- 13 Q. He's a person who expresses some strong views about
- 14 policing in America?
- 15 A. Yes, he does.
- 16 Q. And the tweet that you like says, "America is upside
- 17 down. Cops under attack threatens the rule of law. That is
- 18 the aim of the leftist goons. Push back before it is too
- 19 late."
- 20 Do you see that?
- 21 A. Yes.
- 22 Q. Now, is it the reason that you do not draw a line
- 23 between those who broke stuff and those who didn't because
- 24 you view all the people at this table as leftist goons?
- 25 A. No, sir.

- 1 Q. Am I right that you have liked tweets by Donald
2 Trump?
- 3 A. Yes. Probably.
- 4 Q. You follow Donald Trump on Twitter. Correct?
- 5 A. Yes.
- 6 Q. Along with 46 million other people?
- 7 A. Yes. I think I follow, like, 900 people.
- 8 Q. I thought it was -- yeah. Right around there.
- 9 Correct.
- 10 You believe that he has a message of law and order
11 that appeals to police. Correct?
- 12 A. I think that his stance on policing is probably more
13 favorable than it's been in the past. That doesn't
14 necessarily mean it's a resounding endorsement.
- 15 Q. And on Twitter you also follow Donald Trump, Jr.?
- 16 A. Yes.
- 17 Q. Kellyanne Conway?
- 18 A. Along with 800 other people. Yes.
- 19 Q. And you follow a lot of people. Right?
- 20 A. Yes.
- 21 Q. You follow Breitbart News?
- 22 A. I follow lots of news sources, Mr. Lazerow.
- 23 Q. Do you follow -- you follow One America News?
- 24 A. I don't recall. Maybe.
- 25 Q. So you don't know what that is -- that organization

- 1 is?
- 2 A. No. I do. I just don't know if I follow them.
- 3 Q. What is that organization?
- 4 A. One America News Network I think is what it's
5 referred to as.
- 6 Q. Correct.
- 7 A. Okay.
- 8 Q. I thought you said you knew what it was. I'm sorry.
- 9 A. It's a media outlet. Right?
- 10 Q. Do you know if it's a very pro-Trump media outlet?
- 11 A. I mean, I don't know that. No.
- 12 Q. You also follow a network called Poll News Network.
13 Correct?
- 14 A. Probably at one point in time I did.
- 15 Q. You no longer follow that?
- 16 A. That's correct.
- 17 Q. Because they have very strong views about the --
18 they are a very, very Alt-right organization. Right?
- 19 A. Well, that's not why I no longer follow them.
- 20 Q. Why don't you follow them?
- 21 A. Well, because -- I'd have to describe the reason I
22 was following them in the first place.
- 23 Q. Was that for your work as a police officer?
- 24 A. Yes.
- 25 Q. Okay.

- 1 MR. LAZEROW: Jamie, if you could, let's publish
2 Macchio Exhibit 18. Hopefully, that's a screen shot of
3 something on Twitter.
- 4 Could you make it slightly smaller.
- 5 BY MR. LAZEROW:
- 6 Q. Emily -- do you know who Emily Miller is?
- 7 A. Yes.
- 8 Q. Who is Emily Miller?
- 9 A. She's -- used to be a local reporter, but now she
10 works with this OAN outfit.
- 11 Q. And it says, "Will Fraternal Order of Police endorse
12 Trump or Clinton for President?" And then underneath that it
13 says "@g_pem gives insight."
- 14 Do you see that?
- 15 A. I do see that.
- 16 Q. Do you remember being interviewed by them?
- 17 A. Yes.
- 18 Q. And let's go to -- the next interview I have is
19 Macchio Exhibit 19. Let's show the first part of it.
- 20 Have you seen the clip of the interview, I mean, the
21 whole segment?
- 22 A. Yes.
- 23 Q. I'm not playing the whole segment.
- 24 A. That's fine.
- 25 Q. Just the first things so you can see it.

- 1 (Whereupon, segments of Defendant Macchio's Exhibit
2 No. 19 were published in open court.)
- 3 BY MR. LAZEROW:
- 4 Q. That's the first part of it?
- 5 A. Yes.
- 6 MR. LAZEROW: Let's play 38 seconds to 1 minute.
7 (Whereupon, segments of Defendant Macchio's Exhibit
8 No. 19 were published in open court.)
- 9 BY MR. LAZEROW:
- 10 Q. Now, when you were speaking there, you were speaking
11 as a member of the DC police union. Correct?
- 12 A. That's right. Yes.
- 13 Q. And the DC police union does not endorse political
14 candidates. Correct?
- 15 A. We have in the past, but we elected not to endorse
16 anyone in this political cycle.
- 17 Q. I'll just ask you directly.
- 18 This union didn't endorse any candidate for the
19 presidential election of 2016?
- 20 A. That's correct. So the labor committee did not
21 endorse anyone. Neither did the lodge, which is the
22 organization that issues our labor committee charter.
- 23 Q. Now, as part of your investigation, is it fair to
24 say the Government searched a lot of the Defendants' cell
25 phones?

- 1 A. Yes.
- 2 Q. And some of the Defendants had videos of this
- 3 protest on their phones that the Government was able to
- 4 download. Correct?
- 5 A. That's correct.
- 6 Q. And was one of the people named Payton McDonald?
- 7 A. Yes.
- 8 Q. And do you recall -- I'll show you if you don't --
- 9 that he filmed inside Logan Circle at the start of the
- 10 protest?
- 11 A. Yes. I recall that.
- 12 Q. So I'm now going to play Government's Exhibit 192.
- 13 (Whereupon, Government's Exhibit No. 192 was
- 14 published in open court.)
- 15 BY MR. LAZEROW:
- 16 Q. And you've seen that video before today. Correct?
- 17 A. Yes.
- 18 Q. And so you understood in the course of your
- 19 investigation this these protesters support Black Lives
- 20 Matter?
- 21 A. I mean, from that clip, it appears so. Yes.
- 22 Q. Did you gather any information in the course of your
- 23 investigation that they did not support Black Lives Matter?
- 24 A. No.
- 25 Q. And am I right that you believe that Black Lives

- 1 Matter is an anti-police entity?
- 2 A. Not so much anymore. I think, over the past year
- 3 and a half, the sort of rhetoric and the policy decisions
- 4 coming out of there have been a little more levelheaded and
- 5 seem to be more focused on making positive change, whereas a
- 6 year and a half ago there were police officers being murdered
- 7 all over the country and I thought that some of the rhetoric
- 8 that was coming out at that point in time was distasteful.
- 9 Q. And when does that shift happen exactly, in your
- 10 mind?
- 11 A. I mean, I don't know. Over the course of the past
- 12 year and a half, I would say. I mean, back in 2016, there
- 13 was a chunk of time where there was probably a few dozen
- 14 officers that were basically assassinated, and some of the
- 15 rhetoric that was coming out of that side at that point in
- 16 time I didn't agree with.
- 17 I don't see those kind of things happening anymore.
- 18 So -- and I've actually seen a lot more positive commentary
- 19 and suggestions coming from that side.
- 20 Q. And am I right you have -- back in that time period
- 21 in the summer of 2016, you liked tweets by people who said
- 22 that it should be called Black Lies Matter?
- 23 A. I may have.
- 24 Q. So let me ask you: At that time back then, you
- 25 believed that Black Lives Matter was pushing a false

- 1 narrative. Correct?
- 2 A. Yes. I don't think the data supported what it was
- 3 that they were suggesting was going on.
- 4 Q. And that -- the false narrative was that they were
- 5 pushing the false narrative that police were inherently
- 6 criminal racists. Right?
- 7 A. Yes.
- 8 MR. LAZEROW: Can we play Exhibit 19. This is a
- 9 part of that interview from OAN.
- 10 (Whereupon, segments of Defendant Macchio's Exhibit
- 11 No. 19 were published in open court.)
- 12 MR. LAZEROW: Let me make sure I've got it right. I
- 13 just want to play a clip. Starting at 1:44.
- 14 (Whereupon, segments of Defendant Macchio's Exhibit
- 15 No. 19 were published in open court.)
- 16 BY MR. LAZEROW:
- 17 Q. That's the interview you gave to OAN?
- 18 A. Yes, sir.
- 19 Q. And when you said that, were you thinking of Black
- 20 Lives Matter?
- 21 A. No. Not necessarily. I don't think that that's --
- 22 I think that there's more sort of rhetoric that comes from
- 23 other places rather than specific groups.
- 24 Q. Now, I believe that you testified -- yes -- on
- 25 direct that a moment -- I want to direct your attention to

- 1 the video of the church meeting on January 8th.
- 2 Do you remember that --
- 3 A. Yes.
- 4 Q. -- the one that was filmed by Project Veritas?
- 5 Who was the person you talked to for the raw
- 6 unedited footage?
- 7 A. I don't remember the person's name.
- 8 Q. Was it the founder, James O'Keefe? Do you know?
- 9 A. No. I've never spoken to Mr. O'Keefe.
- 10 Q. You've liked tweets by Mr. O'Keefe, though.
- 11 Correct?
- 12 A. I don't recall.
- 13 MR. LAZEROW: Jamie --
- 14 BY MR. LAZEROW:
- 15 Q. Well, I'm going to show you a screen shot of a
- 16 tweet.
- 17 Would that refresh your recollection?
- 18 A. Sure.
- 19 Q. (Tenders document to the witness.)
- 20 Does that refresh your recollection --
- 21 A. Yes.
- 22 Q. -- that you liked a tweet?
- 23 What day is that?
- 24 A. October 19th of 2016.
- 25 Q. And that's a tweet by James O'Keefe?

- 1 A. Yes.
- 2 Q. Now, I believe it was you who edited out the person
- 3 who had the button cam from the videos that were shown to
- 4 this jury. Right?
- 5 A. Yes.
- 6 Q. And you did that because you didn't want to disclose
- 7 the identity of the person?
- 8 A. That's correct.
- 9 Q. You were concerned that the person may be harassed
- 10 by people opposed to Project Veritas, for example?
- 11 A. No. It's just standard practice that we wouldn't
- 12 elicit an exhibit with a witness.
- 13 Q. Did you edit out any of the people -- other people
- 14 that were at the meeting or didn't know about the taping that
- 15 was going on?
- 16 A. Only Officer Adelmeyer.
- 17 Q. And -- but besides Officer Adelmeyer, anyone else?
- 18 A. No.
- 19 Q. Detective Pemberton, is it true that, in 2008,
- 20 Internal Affairs found that you gave untruthful statements
- 21 during an investigation into your suspected off-duty driving
- 22 under the influence in your personal vehicle?
- 23 A. Yes.
- 24 Q. And, specifically, you told Internal Affairs that
- 25 you had had at most one beer before the accident, but

- 1 Internal Affairs found it, quote, clear, end quote, that you
- 2 had more to drink than that. Is that correct?
- 3 A. I believe those were their findings.
- 4 Q. You were also found guilty of conduct unbecoming an
- 5 officer. Correct?
- 6 A. Yes.
- 7 Q. That was because you knowingly received overtime
- 8 compensation for a personal appearance in court related to
- 9 the accident we just discussed?
- 10 A. That's correct.
- 11 Q. And back to this case, I'm right -- now that you've
- 12 had more time to think about it, you don't know how much
- 13 overtime compensation you've received on this case?
- 14 A. No, sir. I don't.
- 15 Q. Now, are you able to put a time on it when the Black
- 16 Lives Matter group shifted to -- I don't want to
- 17 recharacterize your words -- but shifted its focus that you
- 18 were thinking of?
- 19 A. No. I am not.
- 20 Q. Was it in -- was it -- what -- was it by April 2017?
- 21 Do you know?
- 22 A. I have no idea.
- 23 MR. LAZEROW: Jamie, let's put up Macchio
- 24 Exhibit 43.
- 25

- 1 BY MR. LAZEROW:
- 2 Q. And is this a tweet of yours in April of 2017?
- 3 A. Yes, it is.
- 4 Q. And just tell me if I read this correctly: "You
- 5 know what I haven't heard in a while? Police shootings of
- 6 unarmed black youth. Did they run out of funding for their
- 7 false narrative?"
- 8 Did I read that correctly?
- 9 A. Yes, sir.
- 10 Q. And you're not able to say, by April 2016, it's your
- 11 view that Black Lives Matter had moderated its view about
- 12 police?
- 13 A. That would suggest that my opinion of it had
- 14 changed. Again, this goes back to the fact that sometimes
- 15 you have to say something bombastic to be -- remain engaged
- 16 in conversation.
- 17 MR. LAZEROW: Could I have a brief indulgence, your
- 18 Honor, to consult?
- 19 THE COURT: Yes.
- 20 BY MR. LAZEROW:
- 21 Q. I'm going to show you one more. That's Exhibit 22.
- 22 Actually, I'll just ask. I'll just ask the question.
- 23 Do you recall that you tweeted on August 29th, 2017,
- 24 that, "Body-worn cameras have destroyed the false narrative
- 25 of BLM"?

- 1 A. I don't recall that. But I may have said that.
- 2 Yeah.
- 3 Q. Is that -- I mean, is it your belief that body-worn
- 4 cameras have helped the police push back on the idea that
- 5 they simply kill people? Is that fair to say?
- 6 A. I've been advocating for body-worn cameras for years
- 7 now. I was part -- involved in the legislation of that and
- 8 the drafting of the general orders.
- 9 As a union, we were very progressive with that idea
- 10 and the reason behind it was because we felt like a lot of
- 11 accusations that were being blanketly made could be proven to
- 12 false.
- 13 I think that's coming to fruition through that. So
- 14 I think that -- yeah.
- 15 Q. Thank you for your time.
- 16 A. Thank you, Mr. Lazerow.
- 17 THE COURT: Redirect?
- 18 REDIRECT EXAMINATION
- 19 BY MS. KERKHOFF:
- 20 Q. Detective Pemberton, Mr. Lazerow just asked you a
- 21 question about IAD making a finding against you in 2008,
- 22 almost a decade ago. Correct?
- 23 A. Yes, ma'am. That's right.
- 24 Q. And that had nothing to do with this case. Correct?
- 25 A. That's right.

- 1 Q. Now, let me ask this: Did you appeal that finding
2 by IAD to the disciplinary review board?
3 A. Yes. Two captains and a commander reviewed that.
4 Q. Was there a hearing?
5 A. Yes.
6 Q. Was evidence taken?
7 A. Yes.
8 Q. At the conclusion of that hearing, did the
9 disciplinary review board agree that you had made false
10 statements?
11 A. No. They disagreed.
12 Q. Mr. Lazerow also asked you and said that you had
13 conduct unbecoming of an officer for overtime.
14 Do you recall that?
15 A. Yes.
16 Q. That was for conduct in 2009. Correct?
17 A. Yes.
18 Q. So nine years ago, almost. Correct?
19 A. Yes.
20 Q. And with respect to that overtime, that was about an
21 overtime slip for one day. Correct?
22 A. It was a couple hours.
23 Q. A couple hours?
24 A. Yes.
25 Q. And a couple hours in which you were required to be

- 1 both in court for your personal obligation as well as in
2 court for a work obligation?
3 A. Yeah. One of my warrants came in. I had to paper
4 the case. I was trying to do both. The trial board
5 determined that it was conduct unbecoming because I should
6 have notified a sergeant about the dual roles I was playing.
7 I agreed with that finding and they gave me one-day
8 suspension, eight hours of suspension.
9 Q. And you were asked a lot of questions about your
10 Twitter feed.
11 You said you had a lot of followers, a lot of news
12 organizations.
13 Like what kind of news organizations?
14 A. I mean, it runs the gamut. I follow people from all
15 over the spectrum. I'm trying to obtain information about
16 what's going on in policy related to policing for the most
17 part.
18 I retweet things that I think my members who follow
19 me would be interested in. Sometimes it's pro-police.
20 Sometimes it's anti-police.
21 I try to gather as much information as I can so that
22 I can present, as I said before, a public relations
23 standpoint for our organization. That's been sort of my
24 de facto job with the union for some time.
25 So some of those things are -- I'm representing

- 1 3600 cops of the District of Columbia, and I'm trying to do
2 the best job I can in doing that.
3 Q. So you represent 3600 officers?
4 A. Officers, detectives and sergeants. Yeah.
5 Q. Those are all over the Metropolitan Police
6 Department?
7 A. Yes.
8 Q. And what is the breakdown in terms of the
9 demographics of your 3600 -- you're an elected official?
10 A. Yes.
11 Q. What's the breakdown?
12 A. I think about 66 percent of the department is
13 African-American. Another 8 to 10 percent is Hispanic. The
14 remainder is Caucasian. And there's -- about 24 percent of
15 our department is female, which is about twice the national
16 average.
17 Q. And so, for example, Mr. Lazerow put up a tweet
18 about body-worn cameras.
19 Do you also agree that, on September 30th of 2016,
20 you tweeted an article and made a point that police body
21 cameras have cut complaints by a significant percentage?
22 A. Yes.
23 Q. Have you tweeted out support for other unions of DC
24 police or teachers unions?
25 A. Yes. I support the teachers union and the nurses

- 1 union.
2 Q. And how about tweets critical of MPD?
3 A. Well, I mean, I have a history of being critical of
4 MPD. I don't think there's anyone that's been more critical
5 of MPD over the past five years than myself.
6 Q. You just don't rubber-stamp what MPD does?
7 A. No. I've consistently criticized the Metropolitan
8 Police Department for their mismanagement and lack of
9 training and lack of ability to retain and hire police
10 officers. That is usually the main focus of my position as a
11 union official.
12 Q. Now, I'd like to actually focus on the facts of this
13 case here.
14 You said a short time ago that you were called --
15 you received a phone call while you were in the detective's
16 office at the Seventh District asking you to investigate.
17 Correct?
18 A. Yes.
19 Q. Did you volunteer for that?
20 A. I mean, I agreed. My lieutenant didn't give me a
21 lot of choice. But I was willing to go and help. Yeah.
22 Q. And since that time -- Mr. Lazerow, I think, did a
23 number of hours.
24 Prior to January 20th, you were stationed at the
25 Seventh District. Correct?

- 1 A. Yes.
- 2 Q. Did you work with a partner?
- 3 A. Sometimes.
- 4 Q. Did you have other detectives around you?
- 5 A. Yes.
- 6 Q. It could be social. Correct?
- 7 A. Yes.
- 8 Q. And since January 20th, have you been stationed at
- 9 the Seventh District?
- 10 A. No.
- 11 Q. Where have you been?
- 12 A. At a desk at the US Attorney's Office.
- 13 Q. Outside my office?
- 14 A. Unfortunately.
- 15 Q. I think defense counsel would agree with you.
- 16 So all of those hours spent outside my office?
- 17 A. Yes, ma'am.
- 18 Q. No other detectives hanging out every day --
- 19 A. No.
- 20 Q. -- socializing?
- 21 A. None.
- 22 Q. Seems like a real bargain.
- 23 Now, I want to go back to the day of January 20th.
- 24 You testified that, with respect to the tweet that
- 25 Mr. Lazerow kept putting up about the police force, you were

- 1 talking about events from later in the day.
- 2 A. Yes.
- 3 Q. What were you talking about?
- 4 A. So after this group was detained at 12th and L from
- 5 the videos of that that you've seen and the scene was
- 6 secured, police sort of made a rudimentary police line around
- 7 that area.
- 8 Groups of individuals dressed in all black, masks
- 9 again, appeared to return to the area, came to the area and
- 10 began sort of chanting and engaging the police who were
- 11 detaining these individuals.
- 12 The situation escalated. They began throwing bricks
- 13 and bottles and rocks and other objects at the police. And
- 14 those rocks and objects were also falling into the area where
- 15 the group was detained, the arrestees were detained.
- 16 So some action had to be taken to move them away in
- 17 order to securely process the individuals that were still
- 18 there.
- 19 So in the process of moving those individuals away,
- 20 the situation became very tumultuous again and the rock
- 21 throwing increased and it then became another full-fledged
- 22 riot all along K Street, from 12th all the way back to 14th.
- 23 And that -- that went on all the way until almost
- 24 midnight, where vehicles were lit on fire, tires were lit on
- 25 fire, trash cans were lit on fire.

- 1 Five officers suffered concussions. Another officer
- 2 suffered a serious knee injury.
- 3 And that was the video that I was watching when I
- 4 made those tweets. I was watching live coverage of what was
- 5 happening on K Street, which is after this group was
- 6 detained, when I sent out those other tweets that Mr. Lazerow
- 7 pointed out.
- 8 Q. Now, you were asked questions -- a number of
- 9 questions regarding the location of certain individuals on
- 10 various compilations that you prepared.
- 11 Do you recall some of those questions?
- 12 A. Yes.
- 13 Q. And Ms. Kropf actually pulled up a couple portions
- 14 of Exhibit 153 and talked about the person with the white
- 15 helmet.
- 16 Do you recall that?
- 17 A. Yes.
- 18 Q. I'm going to pull up Government's Exhibit No. 153.
- 19 Now, Ms. Kropf pulled up portions at eight minutes
- 20 and portions at 12 minutes and asked you about the location
- 21 of the individual with the white helmet as it related to
- 22 police and stated that this was an individual who was close
- 23 to the police, meaning towards the end. Correct?
- 24 A. I remember that question. Yes.
- 25 Q. Well, let's just go ahead and put up at 9:39. This

- 1 was a portion Ms. Kropf didn't play.
- 2 (Whereupon, segments of Government's Exhibit No. 153
- 3 were published in open court.)
- 4 BY MS. KERKHOFF:
- 5 Q. This is after the Crowne Plaza, correct, the
- 6 location?
- 7 A. This is right at the intersection of 14th and L.
- 8 The camera right now is facing --
- 9 (Whereupon, segments of Government's Exhibit No. 153
- 10 were published in open court.)
- 11 BY MS. KERKHOFF:
- 12 Q. You can actually hear law enforcement. Correct?
- 13 A. Yes.
- 14 (Whereupon, segments of Government's Exhibit No. 153
- 15 were published in open court.)
- 16 MS. KERKHOFF: Pause it there.
- 17 BY MS. KERKHOFF:
- 18 Q. So the individual with the white helmet was where in
- 19 proximity to the bus shelter when it got smashed?
- 20 A. Directly in front of the bus shelter.
- 21 Q. And the police are close enough that you can hear
- 22 them on the video?
- 23 A. Yes.
- 24 Q. And did that stop the violence that we just observed
- 25 or destruction there?

1 A. No.

2 Q. And the individual with the white helmet continues

3 moving where? With the group?

4 A. Yes.

5 Q. Or stopping?

6 A. With the group.

7 Q. Now, to get to this spot at 12th -- between

8 13th Street and 12th Street, Ms. Kropf showed you that the

9 person in the white helmet, the individual with the riot

10 baton, moved them forward.

11 Do you recall that?

12 A. Yes.

13 Q. To get to that spot at 13th and L -- between

14 13th and L and 12th and L, how far would a person in a white

15 helmet have had to travel?

16 MS. KROPF: Objection, your Honor.

17 May we approach?

18 THE COURT: Yes.

19 (Whereupon, the following proceedings were had at

20 side-bar outside the presence of the jury:)

21 THE COURT: What's the objection?

22 MS. KROPF: The objection is, as far as I can tell

23 from the evidence they proffered, they can only place her

24 from Franklin Square to the spot. If that's what the

25 officer's going to say, that's fine.

1 But they have not offered any evidence that she was

2 at Logan Circle.

3 THE COURT: So your objection is to the foundation

4 of the distance?

5 MS. KROPF: Yes.

6 THE COURT: I don't think he started it with Logan

7 Circle. You just asked, to get there, how long does the

8 person have to travel.

9 Are you -- so where are you -- what's your starting

10 location?

11 MS. KERKHOFF: I'll just pull up the first part of

12 the PowerPoint and show that to run the map -- of her

13 PowerPoint. The starting location is --

14 THE COURT: He's smart enough to where he can

15 understand distances. You can't just ask him how far would a

16 person travel from Point A to Point B?

17 MS. KERKHOFF: Yes. I can ask that question.

18 THE COURT: Okay.

19 (Whereupon, the following proceedings were had in

20 open court:)

21 THE COURT: Can you come back, please.

22 BY MS. KERKHOFF:

23 Q. Detective, you testified previously that

24 Government's Exhibit 153-A, that PowerPoint, reflects each

25 location where you observed a person with a white helmet

1 during the course of 10:19 a.m. and 11:32 a.m. Correct?

2 A. Yes.

3 Q. I'm just pulling up the portion of the map.

4 I believe this is the one that starts at Location 2,

5 not Location 1. Correct?

6 A. Yes.

7 Q. So the distance beginning at what's marked No. 2

8 until you get to No. 6: What is the distance? How many city

9 blocks?

10 A. At least nine, maybe ten, blocks.

11 Q. And from Logan Circle, the route that was taken

12 that's on Government's Exhibit 301, 302, 310, have you

13 actually traveled that distance yourself?

14 A. Yes.

15 Q. How long did it take you to get from those points,

16 walking at a normal pace?

17 A. Well, unfortunately, I wasn't able to stop traffic.

18 But it takes about an hour and 15 to an hour and 20 minutes

19 to walk that distance.

20 Q. To move the exact route?

21 A. Yes.

22 Q. With traffic?

23 A. Yes. With traffic.

24 Q. Now, you were asked questions by Ms. Weletz

25 regarding a number of items that were observed on the scene,

1 she said. She asked questions: Did you observe anything

2 being taken off of or dropped and left on the scene by

3 individuals arrested, such as shin guards?

4 You said you did not recall video showing people

5 removing shin guards at 12th and L. Is that correct?

6 A. I mean, I think there is video of people removing

7 shin guards. If that was my testimony, then that's wrong.

8 Q. Let me ask this: Were shin guards and other forms

9 of body armor recovered as evidence from individuals arrested

10 at 12th and L?

11 A. Yes.

12 Q. So when you were saying it wasn't -- you don't

13 recall it being there, are you talking about what was left on

14 the scene or was recovered from persons?

15 A. What was left on the scene.

16 Q. And you were asked questions by Ms. Weletz about the

17 video -- the 40 subparts from what she called the MRC video,

18 the one where you went and picked video up and talked to

19 someone about it.

20 A. Yes.

21 Q. And you said, "That's not the only thing I did to

22 verify the accuracy of the video."

23 Do you recall that language?

24 A. Yes.

25 Q. What did you mean by that?

1 A. So any one of those 40 videos is captured at a time
2 where there's other video that we already have and had
3 already been corroborated in a number of ways.

4 So I could look at that video and determine that it
5 was accurate -- a fair and accurate representation of what
6 happened by the fact that I had already looked at a ton of
7 video that had been captured at that same location.

8 I wasn't able to get that MRC video until much later
9 in the investigation. I think it was probably spring or
10 summertime. And so I had already done a considerable amount
11 of examination and analysis of the video that I already
12 obtained.

13 So when I was able to get the video from MRC, by
14 looking at that video, I could see that, on its face value,
15 it was an accurate representation of what happened.

16 Q. Just a couple more questions.

17 You were asked by Mr. McCool about -- that you did
18 not seize the backpack you observed Defendant Oliver Harris
19 in possession of here in the courthouse within the past
20 month. Correct?

21 A. That's right.

22 Q. Did you inform me about it so we could inform
23 defense counsel?

24 MR. McCOOL: Objection.

25 THE COURT: Sustained.

1 BY MS. KERKHOFF:

2 Q. Did you make a record of it orally or in writing
3 when you observed it at that point?

4 MR. McCOOL: Objection.

5 THE COURT: Overruled.

6 THE WITNESS: Yes.

7 BY MS. KERKHOFF:

8 Q. What did you do?

9 A. I informed you.

10 MR. McCOOL: Your Honor, may we approach? I don't
11 have the writing.

12 THE COURT: Not at this time, Mr. McCool.

13 BY MS. KERKHOFF:

14 Q. Now, you were asked by Mr. McCool about the
15 combination of clothing. I think that was the kind of shirt
16 and hat and scarf.

17 And Mr. McCool asked you is that something you
18 observed on any of the videos prior to that moment at
19 12th and L.

20 Correct?

21 A. Yes.

22 Q. Let me ask this -- I want to focus your attention
23 specifically.

24 The group that is being surrounded by law
25 enforcement in the area of 12th and L Streets, how many hours

1 of video of that have you watched?

2 A. I don't even think I could put a number on it. Way
3 too many.

4 Q. Body-worn camera?

5 A. Yes.

6 Q. People filming?

7 A. Yes.

8 Q. Prior to the still images that you placed on the
9 board, did you see that combination of clothing --

10 THE COURT: Can I just ask you, Ms. Kerkhoff, to
11 relate it to exhibits in this case.

12 MS. KERKHOFF: Refer to the exhibits?

13 THE COURT: Confine your questions to the exhibits
14 admitted in this case.

15 MS. KERKHOFF: Yes. The exhibit admitted in this
16 case.

17 THE COURT: Yes.

18 BY MS. KERKHOFF:

19 Q. The board in this case, Government's Exhibit
20 No. 315, those images of that clothing that's --

21 THE COURT: Can I just ask you to approach.

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

24 THE COURT: My original ruling was that you couldn't
25 ask him whether he had ever seen these things in all the

1 videos he'd ever watched, that it could only be testimony
2 about the videos in this case that the jurors in this case
3 would be able to look at themselves.

4 That's what I mean about confine your questions to
5 the videos in this case, not the backpack in this case, but
6 in his review of the exhibits, the admitted exhibits in this
7 case.

8 MS. KERKHOFF: Sorry.

9 THE COURT: And to the extent that you're making a
10 *Jencks* request, you can talk to Ms. Kerkhoff about that
11 later.

12 MR. McCOOL: Okay.

13 (Whereupon, the following proceedings were had in
14 open court:)

15 BY MS. KERKHOFF:

16 Q. So on directing your attention to all of these
17 exhibits admitted in this case, all of the video that's
18 admitted, not that we necessarily played it all, but all the
19 admitted exhibits before the jury, having reviewed that, can
20 you see --

21 A. Yes.

22 Q. -- when the group of over 200 people are beginning
23 to be surrounded by law enforcement?

24 A. Yes.

25 Q. At that time, before the charge of the police line,

1 do you see anywhere on any of those videos that are admitted
 2 that combination of hat, scarf, shirt and face?
 3 A. No.
 4 Q. It appears after the group is stopped?
 5 A. Yes, it does.
 6 Q. Now --
 7 MS. KERKHOFF: If you could pull up 151, please.
 8 BY MS. KERKHOFF:
 9 Q. Mr. McCool played a lot of video of Government's
 10 Exhibit No. 100, the Starbucks, in slow motion.
 11 A. Yes.
 12 Q. With an individual in black with a black backpack
 13 and water bottle.
 14 A. Yes.
 15 Q. Okay. I'm just going to pull up the map --
 16 MS. KERKHOFF: I'm sorry. 151-A, Mr. Qureshi.
 17 MR. QURESHI: Okay.
 18 BY MS. KERKHOFF:
 19 Q. -- of the PowerPoint that the jury will have in the
 20 back.
 21 I want to direct your attention. If you could use
 22 the screen behind you and reference where in time and
 23 location the individual in black with the black backpack and
 24 water bottle moves in connection with the video that
 25 Mr. McCool showed, the Starbucks video.

1 A. Yes, ma'am.
 2 This intersection here with the icon that says No. 3
 3 is at the intersection of 13th and I Street.
 4 The Starbucks with the logo here is directly to the
 5 right of that.
 6 And the camera from inside the Starbucks is actually
 7 facing south onto I Street. So the video that was captured
 8 there would have captured an area right here next to the
 9 letter "I" on this map that sets I Street.
 10 Q. And when in time, if you could stay there, what is
 11 depicted as No. 4 by the McDonald's, is an individual with a
 12 black backpack and water bottle -- when in time is that to
 13 what we observed on the Starbucks video?
 14 A. So No. 4 here, that is after -- chronologically in
 15 time, a few minutes after the video that we saw of the
 16 Starbucks.
 17 Q. And the video that is clipped and attached to No. 4:
 18 Is an individual with a black backpack and a water bottle
 19 behind the police or at that point in front of the police?
 20 A. In front of the police.
 21 Q. And while you've got that up, on Clip No. 4, that
 22 shows an individual in a black backpack with a water bottle
 23 going down an alley. Correct?
 24 A. Yes.
 25 Q. Do you see that alley depicted on the map?

1 A. I do.
 2 Q. And have you been to that location? And can you
 3 tell us where that alley goes.
 4 A. Yes. So it's a little bit shielded by this
 5 McDonald's logo and this image of this camera. But this
 6 alley is actually an L-shaped alley that goes from --
 7 MR. MCCOOL: Your Honor, I'm going to object as
 8 beyond the scope. If I could have recross, I won't object.
 9 THE COURT: I'll sustain the objection.
 10 BY MS. KERKHOFF:
 11 Q. Let me just ask, in terms of timing, with respect to
 12 No. 5, when does that occur in location and timing to what
 13 Mr. McCool played from Government's Exhibit 100?
 14 A. That would be a few minutes after 4:00, which is a
 15 few minutes after the video in Exhibit 100.
 16 Q. And just to be clear, the map that's displayed in
 17 the PowerPoint, does it fairly and accurately depict the
 18 locations and layout of the area?
 19 A. Yes, it does.
 20 Q. Thank you. You can go ahead and have a seat.
 21 A. (Witness complies.)
 22 Q. Finally, just a couple of questions for you about
 23 Defendant Alexei Wood.
 24 You were asked a number of questions by Mr. Cohen
 25 about Mr. Wood's property. Correct?

1 A. Yes.
 2 Q. He was making distinctions about what was admitted
 3 as evidence and what was seized. Correct?
 4 A. That's correct.
 5 Q. And just to be clear, how much evidence was seized
 6 in this case?
 7 A. I mean, it was evidence from -- I think over
 8 100 Defendants had evidence seized from them it. I mean,
 9 Mr. Wood's evidence was not -- he had slightly more than
 10 other people.
 11 You saw it was six pages' worth of evidence. I
 12 think that that's consistent with the other Defendants who
 13 had evidence seized from them.
 14 THE COURT: Ms. Kerkhoff, I need to ask you how much
 15 more you have because I need to let the court reporter take a
 16 break now.
 17 MS. KERKHOFF: Just three or four more.
 18 BY MS. KERKHOFF:
 19 Q. During your course of the review of evidence, did
 20 you just rely on the PD-81s that were prepared by other
 21 officers or did you take steps to personally view and have
 22 the items documented with photographs?
 23 A. The latter. I actually arranged for all the
 24 evidence that was seized in this case to be brought to the
 25 Fifth District community room.

1 We laid out every single piece of evidence that was
2 seized in this case and photographed it.

3 Q. Showing you Government's Exhibit Nos. 805 and 806
4 that have previously been admitted, do you recognize these
5 two photographs?

6 A. Yes. Those are photographs that we took that day at
7 5-D of Alexei Wood's property.

8 Q. And the property and items seized equally available.
9 Mr. Cohen has access to it. Correct?

10 A. Yes.

11 Q. Okay. So did you bring every piece of evidence that
12 was seized to court for admission?

13 A. No, I did not.

14 Q. But we have photographs. Correct?

15 A. That's correct.

16 Q. All right. Now, since Defendant Alexei Wood's
17 arrest in this case, have you become aware of a number of
18 interviews that he's given?

19 A. Yes.

20 Q. Some --

21 MR. COHEN: Your Honor, I would object.

22 May I approach?

23 THE COURT: We're going to break now for 15 minutes.

24 I'll see you back at ten after, ladies and

25 gentlemen.

1 (Whereupon, the jury exited the courtroom at
2 11:47 a.m. and the following proceedings were had:)

3 THE COURT: I'll see you back at ten after. Don't
4 discuss your testimony.

5 THE WITNESS: Yes, ma'am.

6 THE COURT: We'll just break and let the court
7 reporter have her break. Why don't you all come back in
8 15 minutes, which is a couple minutes after noon. Thank you.

9 (Thereupon a recess was taken, after which the
10 following proceedings were had:)

11 THE COURT: Good afternoon.

12 THE DEPUTY CLERK: Now re-calling United States
13 versus Jennifer Armento, 2017 CF2 1193, et al.

14 THE COURT: Good afternoon.

15 MS. KERKHOFF: Good afternoon, your Honor.

16 THE COURT: Both Government counsel are here.

17 And Mr. Cohen, any idea where your client is?

18 MR. COHEN: If I may have a minute, your Honor.

19 MR. QURESHI: Your Honor, may I retrieve the witness
20 as well?

21 THE COURT: Not yet.

22 (Thereupon, the witness entered
23 the courtroom and the following
24 proceedings were had:)

25 THE COURT: Detective, can I ask you to step out

1 just a second.

2 THE WITNESS: Yes.

3 THE COURT: And, Mr. Cohen, don't go away.

4 MR. COHEN: I'm not going away.

5 THE COURT: All counsel are here.

6 All Defendants are here except Mr. Wood, who is now
7 coming in.

8 (Thereupon, Defendant Wood
9 entered the courtroom and the
10 following proceedings were had:)

11 THE COURT: So, Mr. Cohen, you had an objection to
12 something that Ms. Kerkhoff was about to ask.

13 MR. COHEN: I believe Ms. Kerkhoff's question was to
14 the effect of -- about interviews that Mr. Wood had
15 subsequent to his arrest.

16 THE COURT: And what specifically were you going to
17 elicit, Ms. Kerkhoff?

18 MS. KERKHOFF: I was going to elicit that the
19 Defendant has both in print and on video media made a number
20 of statements regarding the fact that he's a journalist, made
21 a number of statements here, and that anytime he has been
22 asked about the press badge, his comment, despite speaking
23 about everything else, is, "No comment."

24 THE COURT: And so what's that rebuttal of?

25 MS. KERKHOFF: I believe it goes directly to

1 rebuttal of the state of mind. His intent was there to be a
2 journalist.

3 A state-of-mind exception under Rule 807, I believe
4 I'm allowed to impeach it by noting that this is an
5 individual who repeatedly makes those statements, who
6 affirmatively, not required to, but chooses to go and speak
7 about this and has not, while not required to, provided zero
8 discussion about the press badge, even when specifically
9 asked at a time when he's speaking otherwise that, "I am a
10 journalist and I was there that day as a journalist."

11 THE COURT: So the cross was meant to show that he
12 was -- intended to -- his state of mind was he was coming to
13 Washington to be a journalist and to carry out journalistic
14 efforts.

15 And you're saying a refusal to talk about a press
16 badge that is at least facially not true or has false name is
17 consciousness of guilt that -- what? That's where I'm
18 getting lost.

19 MS. KERKHOFF: I think it is some consciousness of
20 guilt regarding his intent that day. But it also goes to the
21 fact that this is an individual who's speaking about, "I am a
22 journalist. That was my intent that day. This is what I am
23 doing."

24 And when asked about, "What about the journal badge
25 you had?", his response is, "I'm not talking about that. No

1 comment about that."

2 THE COURT: So people are actually asking him post
3 this event about whether his press credentials were fake?

4 MS. KERKHOFF: Yes.

5 THE COURT: And so can you give me better context?
6 What's the question?

7 MS. KERKHOFF: Sure.

8 On November 20th, 2016, the *American Statesman*,
9 which is a print media, reported that it had a conversation
10 with Alexei Wood in the hallway of this courthouse during his
11 trial where he'd been talking about being a journalist and
12 that he is consistent with his other statements, you know,
13 "My livestream is there for all to see."

14 But said, "Well, what about the fake press badge you
15 had?

16 "No comment."

17 On December 6th, 2017 --

18 THE COURT: So he says, "My life is there for all to
19 see"?

20 MS. KERKHOFF: "My livestream."

21 THE COURT: "Is there for all to see"?

22 MS. KERKHOFF: Yeah. He's repeatedly said that in
23 multiple interviews, including video interviews done during
24 the trial even.

25 Also, the *Huffington Post* reported that he refused

1 to comment on the press badge as well, despite having
2 repeatedly interviewed him and having talked to him about his
3 purpose in being here that day and he was a journalist. And
4 he speaks very openly about all of that, but has refused to
5 provide comment on that.

6 THE COURT: And so, Mr. Cohen, what specifically is
7 your objection? To the extent that the purpose of your cross
8 was to put before the jury statements regarding his state of
9 mind, in other words, his intentions in being here and his
10 sort of legitimate press purpose for being here, to the
11 extent that he has fake press credentials, that undermines
12 that.

13 To the extent that he, though giving interviews and
14 stating that he was a journalist when he came here, won't
15 answer questions about the press pass, isn't that effectively
16 a consciousness of guilt statement?

17 In other words, "I'll tell you, I was here as a
18 journalist, but don't ask me about my fake press
19 credentials."

20 MR. COHEN: Well, a couple of things, your Honor.

21 The first is that -- I don't know. I have three
22 things going through my mind. One that pops into my head is
23 the Government has failed to establish a link between
24 journalism and press badges in this case.

25 So Mr. Wood has a press badge, but it doesn't --

1 there is no evidence to indicate that, in order to be a
2 journalist, you need a press badge.

3 And, in fact, there was testimony by Commander
4 DeVille saying that they don't even give media passes out.

5 So --

6 THE COURT: The next argument?

7 MR. COHEN: The next argument is that those two
8 interviews that Ms. Kerkhoff stated is during their --
9 they're interviews during the trial.

10 And Mr. Wood has a right not to speak about -- he
11 can say why he was here, but he has a right not to talk
12 about -- I know these are private entities, newspapers. But
13 he has a right to remain silent about his self-incrimination.

14 THE COURT: I think you sat next to him at one of
15 those interviews and appeared on screen, if I'm correct,
16 Mr. Cohen.

17 So that was something he fully understood he was
18 doing with counsel sitting next to him. Right?

19 MR. COHEN: Yes. On MSNBC.

20 THE COURT: All right. So your point is that he has
21 a right to remain silent and the fact that he didn't is a
22 reason to exclude his statements?

23 MR. COHEN: Well, there's also the fact that -- that
24 was another thing -- is that --

25 THE COURT: I need to ask you, Ms. Kerkhoff, to the

1 extent that the press badge itself is evidence of a state of
2 mind that contradicts his intention to come here to be a
3 press person, his refusal to talk about it later, I'm still
4 not -- it goes to his consciousness of guilt, is I guess what
5 I'm thinking.

6 There was no objection -- I think what I'd like to
7 do is simply ask you not to do that for *Akins* reasons. There
8 was no objection to the eliciting by defense counsel of his
9 own client's state of mind.

10 You already have the fact of the altered press
11 badge. Despite what Mr. Cohen is saying, the decision to
12 bring a fake press badge certainly says a little bit about
13 what Mr. Wood thinks is necessary to be a member of the
14 press.

15 But his refusal to talk about it later I don't think
16 is -- it is somewhat probative of consciousness of guilt.

17 But to the extent that I'd kind of like to stay out of *Akins*
18 territory, I think I'm just going to ask you not to do it.

19 MS. KERKHOFF: Yes, your Honor.

20 Your Honor, would the Court have the same ruling --
21 I think this is different -- with respect to whether or not
22 the Defendant, who has viewed all of these articles and
23 media -- that the Defendant at no time has ever alleged or
24 stated that he has the name John Osburn or an alias? I think
25 that's far less *Akins* territory, that that --

1 THE COURT: So in all of his public introductions of
 2 himself, he's always been introduced as Alexei Wood, never as
 3 John Osburn?
 4 MS. KERKHOFF: Including the inception of the case
 5 where he has talked about this cases. Never John Osburn.
 6 THE COURT: And so I don't hear any objection to
 7 that. Is that correct?
 8 MR. LAZEROW: Cumulative.
 9 MR. COHEN: What the Government would be saying is
 10 he has never admitted or taken on the persona --
 11 THE COURT: He's never said he was John Osburn?
 12 MS. KERKHOFF: I would have no objection to that.
 13 THE COURT: So let's bring the witness back in and
 14 continue.
 15 Did you say you would have an objection?
 16 MS. KERKHOFF: I said I wouldn't.
 17 THE COURT: How much more do you think you have?
 18 MS. KERKHOFF: This -- that line of questioning
 19 about John Osburn and then a very short discussion about --
 20 with respect to another video by a noncredentialed journalist
 21 that is admitted as evidence.
 22 THE COURT: And then he gets to go away and then you
 23 do stipulations and then you rest?
 24 MS. KERKHOFF: Officer Ranck.
 25 THE COURT: Okay.

1 MS. KERKHOFF: I believe we'll be resting at
 2 lunchtime.
 3 THE COURT: Well, unfortunately, lunchtime may start
 4 early today. But we'll see.
 5 (Thereupon, the witness entered
 6 the courtroom and the following
 7 proceedings were had:)
 8 THE COURT: Let's bring the jurors back in.
 9 (Whereupon, the jury entered the courtroom at
 10 12:19 p.m. and the following proceedings were had:)
 11 THE COURT: Good afternoon again, ladies and
 12 gentlemen.
 13 We're picking back up with Detective Pemberton on
 14 redirect.
 15 BY MS. KERKHOFF:
 16 Q. Detective Pemberton, when we left off, you stated
 17 that you are aware of a number of interviews both in print as
 18 well as video that Defendant Alexei Wood has given since his
 19 arrest in this case. Correct?
 20 A. Yes.
 21 Q. And he's talked specifically about this case.
 22 Correct?
 23 A. Yes, he did.
 24 Q. And at any time in any of those interviews, has
 25 Defendant Alexei Wood ever referenced to himself or

1 recognized himself as John Osburn?
 2 A. No.
 3 Q. And what name was on the press badge he had?
 4 A. John Osburn.
 5 Q. And whose photograph?
 6 A. Mr. Wood's photograph.
 7 Q. And, finally, on the last line of questions,
 8 Mr. Cohen talked to you about whether you were aware of media
 9 personnel, what their requirements are or aren't.
 10 Do you recall that?
 11 A. Yes.
 12 Q. I believe he said you can't hinder law enforcement.
 13 Correct?
 14 A. Yes.
 15 Q. And what was the other thing?
 16 A. I don't recall.
 17 Q. Was it you can't in any way insert yourself into an
 18 event?
 19 A. Something like that. Yes.
 20 MR. COHEN: Objection.
 21 MR. LAZEROW: Objection.
 22 MS. KERKHOFF: Mr. Cohen can --
 23 MR. COHEN: Mischaracterization.
 24 THE COURT: Can we just move on, please.
 25 MS. KERKHOFF: Thank you.

1 BY MS. KERKHOFF:
 2 Q. Now, Detective, when you were reviewing all of the
 3 video, you testified with Mr. Lazerow that you looked at the
 4 conduct -- the totality of the conduct. Correct?
 5 A. Yes. Yes, I did.
 6 Q. So when you looked at the totality of the conduct as
 7 to Defendant Alexei Wood, what, if any, import did it have
 8 whether or not Mr. Wood was a credentialed journalist or not?
 9 THE COURT: And so are you asking for his opinion?
 10 I'm going to not allow you to do that.
 11 BY MS. KERKHOFF:
 12 Q. With respect to Mr. Lazerow's line of questioning
 13 about your review of the conduct for each of the Defendants
 14 and what it was you were looking at, did you look at the
 15 totality from video?
 16 MR. COHEN: I would object. That's....
 17 THE COURT: And so I'm not going to allow you to
 18 elicit opinions specific to these people.
 19 MS. KERKHOFF: I understand.
 20 BY MS. KERKHOFF:
 21 Q. When you reviewed the video, what did you see and
 22 hear on the video of Government's Exhibit No. 111?
 23 A. Exhibit 111 is the livestream of Mr. Wood, which is
 24 a continuous running stream of video from the beginning to
 25 the end of this event.

1 Throughout that video, you could see Mr. Wood
 2 participating in the way that he is cheering and urging
 3 others to participate in violence.
 4 MR. COHEN: Objection.
 5 BY MS. KERKHOFF:
 6 Q. Now --
 7 THE COURT: I'm going to sustain the objection.
 8 BY MS. KERKHOFF:
 9 Q. Detective Pemberton, are you aware --
 10 THE COURT: I'm actually going to strike the last
 11 sentence.
 12 Ladies and gentlemen, the reason for that is that
 13 you are going to be the deciders of the charges in this case.
 14 And the witness's opinions are not binding on you and should
 15 have no bearing on your decisions about whether the
 16 Government has proved guilt beyond a reasonable doubt.
 17 BY MS. KERKHOFF:
 18 Q. Detective Pemberton, who is Michael Cali?
 19 A. Another independent amateur journalist who filmed
 20 portions of the event.
 21 Q. Are you aware of what Government's Exhibit 112 is?
 22 A. Yes. That is a similar footage, livestream, if you
 23 will, or capture -- a video that was captured by Mr. Cali
 24 during the events.
 25 Q. Where did you locate that video?

1 A. On a small college's newspaper that he posted it to.
 2 I don't recall the name of it.
 3 Q. And I'm going to pull up Government's Exhibit
 4 No. 112.
 5 MS. KERKHOFF: If we could play that starting at
 6 32 seconds in.
 7 (Whereupon, segments of Government's Exhibit No. 112
 8 were published in open court.)
 9 MS. KERKHOFF: I'm pausing at 2:50.
 10 BY MS. KERKHOFF:
 11 Q. Detective Pemberton, have you watched Government's
 12 Exhibit No. 112, the livestream of the amateur journalist
 13 Michael Cali?
 14 A. Yes.
 15 Q. How many times?
 16 A. Maybe dozens of times.
 17 Q. How many times throughout the course of the entire
 18 video does Michael Cali appear to be cheering?
 19 MR. COHEN: Objection.
 20 THE COURT: Overruled.
 21 THE WITNESS: None.
 22 BY MS. KERKHOFF:
 23 Q. What, if any, words can you hear come out of what
 24 appears to be Michael Cali during his livestream?
 25 A. The only thing I can hear is he's apologizing to

1 people that he bumps into. "Excuse me," "I'm sorry," "My
 2 bad." Those are the only things I hear him say.
 3 Q. Thank you.
 4 MS. KERKHOFF: No further questions.
 5 THE COURT: Sir, you may be excused. Do not discuss
 6 your testimony with any other witness.
 7 THE WITNESS: Thank you, your Honor.
 8 (Witness excused.)
 9 THE COURT: Please call your next witness.
 10 MR. QURESHI: Your Honor, the United States calls
 11 Robert Ranck to the stand.
 12 ROBERT RANCK, GOVERNMENT WITNESS, SWORN
 13 THE COURT: Good afternoon.
 14 THE WITNESS: Good afternoon, your Honor.
 15 DIRECT EXAMINATION
 16 BY MR. QURESHI:
 17 Q. Good afternoon, sir.
 18 A. Good afternoon.
 19 Q. Can you please introduce yourself to the ladies and
 20 gentlemen of the jury by stating and spelling your first and
 21 last name, please.
 22 A. Robert Ranck. R-o-b-e-r-t, R-a-n-c-k.
 23 Q. Mr. Ranck, how are you employed?
 24 A. The Metropolitan Police Department.
 25 Q. And what are your duties and responsibilities there?

1 A. I'm currently assigned to the Sixth District
 2 detectives' office.
 3 Q. Are you a detective?
 4 A. An investigator.
 5 Q. Is there a difference?
 6 A. It's to your -- after a year, you become a
 7 detective.
 8 Q. How long have you been an investigator with the
 9 Sixth District?
 10 A. On and off, since March of this year.
 11 Q. Prior to your current assignment as an investigator
 12 with the Sixth District, where were you assigned?
 13 A. I was briefly an investigator with the intelligence
 14 unit, and I was also an officer with the intelligence unit
 15 for approximately two and a half years before making
 16 investigator.
 17 Q. What is the intelligence unit?
 18 A. They do a variety of things. They handle threat
 19 cases against officers, First Amendment assemblies, and
 20 assist detectives in some of their investigations.
 21 Q. And on January 20th of 2017, what capacity were you
 22 working in at that point?
 23 A. I was an officer with the intelligence unit.
 24 Q. Were you working in your capacity as an officer with
 25 the intelligence unit on Inauguration Day, January 20th,

1 2017?
 2 A. Yes.
 3 Q. I want to direct your attention to approximately
 4 9:30 in the morning at Logan Circle, Northwest Washington, on
 5 January 20th, 2017.
 6 Do you recognize that date, time and location?
 7 A. Yes.
 8 Q. What were you doing at that date, time and location?
 9 A. That was Inauguration Day, on the 20th. Probably a
 10 little before 9:30 -- not exactly sure what time -- I arrived
 11 at Logan Circle. I was advised there was a group assembling
 12 there.
 13 Q. And were you uniformed?
 14 A. No.
 15 Q. How were you dressed?
 16 A. I was dressed in plainclothes, casual clothes,
 17 whatever was suitable to wear.
 18 Q. Do you remember what color your clothes were?
 19 A. I was wearing a multicolored beanie and a kind of
 20 green thermal sweatshirt with a zipper in the front.
 21 Q. So just in police speak, is that undercover or is
 22 that plainclothes? What is that it?
 23 A. That's just plainclothes. I still had
 24 less-than-lethal handcuffs, radio, gun. I had my police ID
 25 and credentials.

1 Q. But with your clothing, were you outwardly
 2 identifying yourself as a police officer at 9:30 or somewhere
 3 about that time at Logan Circle?
 4 A. No.
 5 Q. What was the objective of why you were there?
 6 A. Usually, when we -- depending on the groups that are
 7 there, we serve different purposes when we go out there. We
 8 help basically be the eyes for our special operations
 9 division who usually handle routes that the groups will march
 10 or proceed down.
 11 Sometimes we'll talk to the organizers. Sometimes
 12 we'll just monitor them from a distance. We're there mainly
 13 to make sure everything's going orderly, that the individuals
 14 exercising their First Amendment rights are safe and that the
 15 community that they're in is safe as well.
 16 Q. So at 9:30 or 10:00 -- and I know you don't know the
 17 precise time when you arrived at Logan Circle -- what did you
 18 observe?
 19 A. When I arrived at Logan Circle, there's -- I had --
 20 I'd say there's approximately 40 or so individuals gathered
 21 towards the center of the circle, dressed in predominantly
 22 all-black clothing.
 23 Q. In addition to black clothing, what about their face
 24 or their head? Can you specify anything else they may be
 25 wearing?

1 A. I'm sorry. Can you repeat that?
 2 Q. Any --
 3 THE COURT: He was clanging on something. It was
 4 distracting me. So then I distracted him.
 5 MR. QURESHI: Sorry, your Honor.
 6 THE COURT: Sorry.
 7 BY MR. QURESHI:
 8 Q. So aside from the black clothing you've described of
 9 these approximately 40 people -- and was it all of them or
 10 most of them? How would you describe it?
 11 A. The majority of them.
 12 Q. And were they wearing any face or head covering?
 13 A. Some were wearing head coverings. Some were wearing
 14 masks. Some were wearing bandanas. There was a variety of
 15 different coverings, I guess, throughout the crowd.
 16 Q. What were they doing?
 17 A. At that point, they were -- when there's just
 18 initially a small amount, the energy of the crowd was low.
 19 They were pretty much gathered up.
 20 There may have been a couple of signs. But the
 21 group was small and just fairly orderly at that point.
 22 Q. So you said at that point there were 40 people.
 23 Did the size grow at some point?
 24 A. Yes.
 25 Q. How big did the group go to?

1 A. I would guess around 400 or so. I'd say 400 or so
 2 is about approximate.
 3 Q. So when you were there at Logan Circle and now it's
 4 become a group of 400 people, is it still predominantly
 5 people wearing all black?
 6 A. Yes.
 7 Q. Was it still a majority of them wearing either some
 8 kind of a face mask or a head covering?
 9 A. Or hat or something along those lines. Yes.
 10 Q. And what was the energy of the group now that it's
 11 increased to about 400 people?
 12 A. It was more excited. There's some chanting.
 13 There's a little more signs going on. I believe there is a
 14 couple people banging on five-gallon buckets as their
 15 noisemakers. I believe they lit off a couple fireworks in
 16 the park. It was getting more intense.
 17 Q. So at some point, did you leave Logan Circle?
 18 A. Yes.
 19 Q. And approximately what time was that?
 20 A. Maybe 10:30.
 21 Q. Would you -- when you say -- I'm asking for an
 22 approximate time.
 23 Are you sure it was 10:30?
 24 A. No. No. I was there with the group for a while as
 25 the group grew, but I'd say it was sometime between 10:00 and

1 10:30.
 2 Q. And when you left, did you leave alone or with the
 3 group?
 4 A. I followed the group.
 5 Q. And where was your positioning in the group as it
 6 was moving?
 7 A. It varied as the group moved.
 8 Q. Let's focus on when you're leaving Logan Circle.
 9 A. When we're leaving Logan Circle, I guess it would be
 10 the northwest side of Logan Circle I was positioned on. The
 11 group moved down on 13th Street, and I continued to follow
 12 them towards the center of the city.
 13 Q. Did you observe any law enforcement at Logan Circle
 14 that morning?
 15 A. Yes.
 16 Q. When you moved with the group down 13th Street, were
 17 you -- did you observe law enforcement follow the group?
 18 A. Yes. Yes. They followed the group after we --
 19 right when the group departed, there was -- one or two vans,
 20 if I recall correctly, pulled into Logan Circle and as --
 21 pretty much as soon as the vans pulled in, the groups moved
 22 out.
 23 Q. And are you ahead of law enforcement, at the back of
 24 the group or behind law enforcement? Where are you at this
 25 point at Logan Circle?

1 A. It varied during times. Sometimes I'd fall back a
 2 little bit behind law enforcement. Sometimes I'd be up ahead
 3 of them.
 4 But when I was going down 13th Street, most of the
 5 time it was -- I was probably towards the tail end of the
 6 group.
 7 Q. But in front of law enforcement?
 8 A. Most of it. For most -- for part of the time. I
 9 wouldn't say all the time.
 10 Q. As you're heading down 13th Street with -- at the
 11 back of the group, what are you observing the group doing?
 12 A. You can see trash cans and newspaper boxes pulled
 13 out into the street or thrown out into the street. There was
 14 graffiti on multiple buildings and doors. There was windows
 15 smashed out on, I believe, a police -- excuse me -- a fire
 16 department SUV and graffiti on a Metro bus.
 17 Q. As you're seeing all this stuff in your plainclothes
 18 capacity, what are you doing?
 19 A. I was trying to voice at least some of it over the
 20 radio.
 21 Q. Now, active destruction of property, is that an
 22 arrestable offense in the District of Columbia?
 23 A. Yes.
 24 Q. So why didn't you step in at this point and arrest
 25 some of these people?

1 A. As the crowd was beginning to vandalize or destroy
 2 property, the atmosphere was more of an excited state that
 3 would raise a safety concern for myself, as a plainclothes
 4 officer, going in there by myself to arrest one subject.
 5 And I'm not easily identified when I enter that
 6 group as being a police officer. So, initially, especially,
 7 the loud noise communication may be hard and somebody could
 8 mistake me for somebody just assaulting them.
 9 Q. Were you able to identify individuals that were
 10 pulling trash cans into 13th Street, destroying windows,
 11 putting up graffiti along 13th Street?
 12 A. No. I didn't try and stop and identify anybody.
 13 Q. Were you able to identify them visibly?
 14 A. You would see one or two members coming from a
 15 certain area. Then, as I got closer, I could see there was
 16 spray paint, graffiti or damage done to that location. But I
 17 couldn't specifically say what individual it was, as most of
 18 them were dressed wearing similar clothing.
 19 Q. So you've described you heading down 13th Street.
 20 MR. QURESHI: I'm going to approach the witness,
 21 your Honor.
 22 BY MR. QURESHI:
 23 Q. I'll show you what's already in evidence as
 24 Government's Exhibit 310. I'll display it for the jury.
 25 Can you see that okay, Investigator Ranck?

1 A. Yes.
 2 Q. What is Exhibit 310?
 3 A. That's -- I'd say that's approximately the route
 4 they took on Inauguration Day.
 5 Q. And you've thus far described in Government's
 6 Exhibit 310 at the very top Logan Circle is where you started
 7 and you had just started describing as you were approaching a
 8 firehouse on K Street. Right?
 9 A. Firehouse on 13th Street, I believe.
 10 Q. I'm sorry. Those are my words, not yours.
 11 But you described a firehouse?
 12 A. Yes.
 13 Q. What about the firehouse sticks out in your mind?
 14 A. I remember that there was -- one of their SUVs
 15 there, I think, usually the battalion chief or supervisor's
 16 vehicle, had a window smashed on it.
 17 Q. And as the group approached K Street, were you still
 18 with the group?
 19 A. Yes.
 20 Q. Aside from what you've described as the graffiti,
 21 destruction to windows of businesses, the battalion chief's
 22 vehicle, at that point, what other destruction of property or
 23 vandalism did you observe?
 24 A. I recall that there was a storefront, a window broke
 25 out. There was trash cans laying out there. At some point

1 during the day, there was a trash can that was on fire in the
2 street along K Street.

3 Q. So as you've described Government's Exhibit 310 as
4 being the movement of the group, what did you do once you got
5 close to K Street?

6 A. Once I got close to K Street, the group went towards
7 Franklin Square. I kind of stayed on the east side of
8 Franklin Square towards 13th Street and just kept a distance
9 from the crowd, as, obviously, they were destroying property
10 as they were proceeding through the streets.

11 I wasn't going to put myself in a position where I
12 was going to be in danger or get caught between them if a
13 large group of police officers had to rush in and engage the
14 group.

15 Q. So as you're at the east side of Franklin Square
16 Park, are you observing the group move through Franklin
17 Square Park towards I Street?

18 A. Yes.

19 Q. Were you at a vantage point where you could see
20 their movement through the park?

21 A. Yes.

22 Q. As the group made its way to I Street, what did you
23 do?

24 A. I kind of cut behind the group. As I stated before,
25 with the attitude of the group and the excited state, I

1 didn't want to get into a position where I could be in harm's
2 way. So I stayed back towards the back end of the group and
3 cut over towards I Street, I believe.

4 Q. Okay. And once you approached the intersection of
5 13th Street and I Street, did you observe any additional
6 destruction of property or vandalism?

7 A. I observed an -- I don't know whose vehicle it is.
8 It was a white SUV that was owned by some sort of government
9 agency that was spray-painted with black spray paint on it.

10 Q. And you've already described that the group -- this
11 being the movement of the group, the group headed, as you can
12 see on Government's Exhibit 310, east on I Street.

13 Did you also at some point head east on I Street?

14 A. Yes.

15 Q. And what, if any, destruction of property did you
16 observe on I Street?

17 A. I observed the windows of the Bank of America and
18 Starbucks being broken out. I don't recall if it was
19 trash -- I think it was a trash can, not like a newspaper
20 box, but I think a trash can laying in the street there.
21 That was about the extent I recall seeing there.

22 Q. Now, just to be clear, were you actively observing
23 the destruction at Starbucks and Bank of America when it was
24 happening?

25 A. No.

1 Q. So you were behind the group?

2 A. I was behind the group.

3 Q. In terms of the SUV that you identified that was
4 vandalized and destroyed at 13th and I Street, were you able
5 to observe that destruction?

6 A. No. I couldn't observe the exact individuals who
7 had done it.

8 Q. But were you closer in time to when that vandalism
9 occurred? Were you able to observe individuals leaving
10 that --

11 A. Yes. I saw a group leaving or individuals leaving
12 from that direct area.

13 Q. So as the group headed towards 12th Street on
14 I Street, once you've observed what happened at Starbucks and
15 the Bank of America, where are you now in proximity to the
16 group?

17 A. When you said towards 12th and I Street, I was still
18 a little ways behind them. I was probably a half a block or
19 maybe more behind them at this point.

20 Q. But they were within eyesight?

21 A. Yes.

22 Q. And as you approached 12th and I, what happened
23 then -- or what did you do?

24 A. I went down 12th Street and got behind the group on
25 New York Ave.

1 Q. Okay.

2 A. At that point, the group began moving much quicker.

3 Q. What do you mean by "much quicker"?

4 A. They were in a different -- when they went through
5 Franklin Square Park, as I recall, it was more of a walk. At
6 different points on 13th Street, the pace was exaggerated
7 through the group. It wasn't just a normal protest march.
8 It was --

9 THE COURT: We're going to break for lunch now. I'm
10 sorry to interrupt.

11 It's a quarter to 1:00. I'll see you all back at
12 2:00 p.m.

13 Thank you, ladies and gentlemen.

14 (Whereupon, the jury exited the courtroom at
15 12:44 p.m. and the following proceedings were had:)

16 THE COURT: Sir, I'll excuse you. Don't discuss
17 your testimony with anyone. I'll see you at 2:00.

18 THE WITNESS: Thank you, your Honor.

19 (Witness excused.)

20 THE COURT: Were you guys hoping for time to discuss
21 MJOA this afternoon so we can start the defense case tomorrow
22 or are you --

23 MS. KERKHOFF: I think the Government's
24 preference --

25 THE COURT: -- planning to let this go a lot longer,

1 Mr. Qureshi? Or are you planning to let this go a lot
 2 longer? Because I thought he's just here to authenticate the
 3 little teeny-tiny portions of 113.
 4 MS. KERKHOFF: Correct. But we were told we had to
 5 make a foundation, based on the objections stated, to
 6 establish what he can observe, where and when, because --
 7 THE COURT: Not for 33 minutes. There's just two
 8 portions they're objecting to.
 9 MS. KERKHOFF: No, your Honor. They're objecting to
 10 more than two portions. They are objecting, at least as we
 11 understood it, to other videos, to include 119. There were
 12 other objections made. We have to establish --
 13 THE COURT: I thought he was here because there's an
 14 objection to 113, two under-two-minute portions.
 15 MS. KERKHOFF: In part, your Honor. The defense --
 16 THE COURT: Okay. It looks like we're going to be
 17 going through today.
 18 I assume you all have nice lengthy
 19 cross-examinations for there gentleman.
 20 MS. KROPF: Sara Kropf, your Honor. I do not.
 21 However, I do have a witness who has flown overnight
 22 from California to be here today and has a flight this
 23 afternoon. So I do need to get her on the stand today.
 24 THE COURT: Just talk to Ms. Kerkhoff. I am fine
 25 with that. And if everybody else is fine with me not

1 addressing MJOAs until we've gotten her on and off the stand,
 2 let's do that.
 3 MS. KROPF: I'll discuss it.
 4 THE COURT: Talk to them about how much this guy has
 5 to talk about that day.
 6 MS. KERKHOFF: We already did, your Honor.
 7 THE COURT: I feel like we've heard all this before.
 8 MS. KERKHOFF: I understand.
 9 We did, your Honor. And my point is they have an
 10 objection to his ability to authenticate the videos, which is
 11 why we're doing this. We have talked to them.
 12 THE COURT: Thank you. I'll see you at 2:00.
 13 (Thereupon, a luncheon recess was taken, after which
 14 the following proceedings were had:)
 15 THE DEPUTY CLERK: Now re-calling United States
 16 versus Jennifer Armento, 2017 CF2 1193, et al.
 17 THE COURT: Good afternoon.
 18 MS. KERKHOFF: Good afternoon, your Honor.
 19 THE COURT: All counsel are here. All Defendants
 20 are here.
 21 We're only missing Mr. Healy.
 22 What are we doing about Ms. Kropf's witness?
 23 MS. KERKHOFF: Your Honor, the Government believes
 24 it has about ten more minutes of direct for this witness,
 25 which we believe will lay the foundation for objections that

1 have been made by more than Ms. Macchio. There is a -- those
 2 were written objections.
 3 The Government intends to introduce exhibits and
 4 simply read a stipulation, rest our case.
 5 The Government has proposed -- I've spoken with some
 6 defense counsel -- that we -- counsel go ahead and make their
 7 motion for judgment of acquittal, but the Court can table it
 8 with no prejudice to the Defendants.
 9 We can present the witnesses we have -- I think the
 10 number is lower than five to six at this point for the total
 11 of the defense case -- and try to get jury home and
 12 accomplish arguments --
 13 THE COURT: So you're saying do all that today?
 14 MS. KERKHOFF: That is the Government's proposal.
 15 Again, no prejudice to the Defendants. He'll be
 16 able to argue MJOA it as stands in the Government's case.
 17 But we have witnesses here. We have a jury here. It seems
 18 to me that's efficient.
 19 THE COURT: Is everybody fine with that?
 20 MS. JACQUES: Yes.
 21 THE COURT: I'm just going to say now that I assume
 22 that you are all moving for judgment of acquittal on all
 23 counts.
 24 If you're agreeing that I don't need to rule on
 25 those motions until after you've presented your evidence, I

1 just need to be sure that it's not, I guess, prejudicing
 2 anybody's case and that you're satisfied with that way of
 3 proceeding, because I'm fine with it if you are.
 4 Everybody's shaking their head. Can everybody -- on
 5 behalf of your client, can you each tell me whether you have
 6 any objection to proceeding in that way.
 7 On behalf of Ms. Macchio?
 8 MS. HEINE: No objection.
 9 THE COURT: On behalf of Ms. Armento, any objection
 10 to proceeding that way?
 11 MS. WELETZ: No objection, your Honor.
 12 THE COURT: On behalf of Ms. Simmons?
 13 MS. JACQUES: No objection.
 14 THE COURT: On behalf of Mr. Wood?
 15 MR. COHEN: No objection.
 16 THE COURT: So you've said, "No objection."
 17 Can I keep going, Mr. Cohen?
 18 MR. COHEN: Yes, your Honor.
 19 THE COURT: On behalf of Mr. Harris?
 20 MR. McCOOL: No objection, your Honor.
 21 THE COURT: And on behalf of Ms. Lawson?
 22 MS. KROPF: No objection.
 23 THE COURT: That's how we'll do it. No waiver of
 24 any rights on MJOA.
 25 I had a question. Since we have to talk about MJOA,

1 we're going to have to talk about instructions. I don't know
 2 how long that's going to take. That's one of my concerns
 3 about just telling the jury, "Go home and come back when we
 4 tell you to."
 5 MS. KERKHOFF: Your Honor, I don't know how long it
 6 will take. But given my experience with the Court and what I
 7 believe to be the issues, at least from what I've seen on the
 8 instructions, what the Government would propose is that we
 9 can complete the evidentiary portion today, do as much work
 10 as we can before the end of the day.
 11 Then if the jury came back after lunch tomorrow we
 12 could at least begin. We would have all morning to deal with
 13 whatever the issues are. I think that would get us through
 14 jury instructions.
 15 To the extent we have other questions about
 16 exhibits, we can -- that doesn't have to be resolved
 17 tomorrow. I think we're getting there. We could at least
 18 start.
 19 THE COURT: So I know that the Government filed
 20 proposed jury instructions. I've gotten a number of proposed
 21 theories of the case.
 22 Have I gotten any other new substantive
 23 instructions? I had that submission from all of you a little
 24 while ago.
 25 No. I do have more. Okay. All right. Let me

1 think and --
 2 MR. McCOOL: I have Mr. Harris's theory of the case.
 3 THE COURT: Have you filed it yet?
 4 MR. McCOOL: No.
 5 THE COURT: Why don't you just file it. I'll look
 6 at it when you file it.
 7 MS. WELETZ: Your Honor, on behalf of Ms. Armento, I
 8 also have one. It's on my computer.
 9 THE COURT: Feel free to file it. You're not
 10 waiving anything.
 11 MS. WELETZ: Thank you.
 12 THE COURT: I was just sorting through whether I had
 13 thick things that were not just the theories. It looks like
 14 I have a lot of stuff here.
 15 So we'll see. I'll think through when I tell the
 16 jury to come back. It might be it doesn't make sense to have
 17 them come back tomorrow.
 18 So can we bring the jury in and your witness.
 19 MR. QURESHI: I'll get him, your Honor. Sorry.
 20 THE COURT: Ms. Kerkhoff, to the extent this witness
 21 is authenticating exhibits, can you tell me the exhibit
 22 numbers this witness purports to authenticate.
 23 MS. KERKHOFF: In advance? We'll go through it with
 24 him. It is 106 to 114; 118 to 120; 126 to 127; 129 to 130;
 25 133 to 134; 136 to 138; 143 to 146; 148.12 to 148.44; 175 to

1 182; 185 to 188; and 190 to 219.
 2 THE COURT: Are all those videos?
 3 MS. KERKHOFF: Yes, your Honor.
 4 THE COURT: And have all of those things already
 5 been shown in the courtroom?
 6 MS. KERKHOFF: Shown or admitted. Many of them have
 7 already been admitted. I believe there's a handful that have
 8 not in any way been admitted or authenticated.
 9 THE COURT: At this point you don't know what that
 10 list is?
 11 MS. KERKHOFF: I do know that list, your Honor.
 12 THE COURT: Never mind. The jury's coming in. Tell
 13 me later.
 14 MS. KERKHOFF: Yes.
 15 (Thereupon, the witness entered
 16 the courtroom and the following
 17 proceedings were had:)
 18 (Whereupon, the jury entered the courtroom at
 19 2:12 p.m. and the following proceedings were had:)
 20 THE COURT: Good afternoon, ladies and gentlemen.
 21 THE JURY: Good afternoon.
 22 THE COURT: I hope you had a good lunch break.
 23 We're going to pick back up with Investigator
 24 Ranck's testimony.
 25 I remind you you're still under oath.

1 Please go ahead, Mr. Qureshi.
 2 MR. QURESHI: Thank you, your Honor.
 3 BY MR. QURESHI:
 4 Q. Investigator Ranck, as you may recall, we were going
 5 over Government's Exhibit 310 before we left.
 6 Remember that?
 7 A. Yes.
 8 Q. So at this point, Investigator Ranck, just before
 9 lunch, you had described that you had gone by the Starbucks
 10 and Bank of America and behind the group and you were
 11 approaching 12th and New York Avenue.
 12 Do you remember that?
 13 A. Yes.
 14 Q. And you indicated -- where was the group coming from
 15 once you arrived at 12th and New York Avenue?
 16 A. Once I got back behind the group, they were going on
 17 New York Avenue towards H Street, towards the McDonald's.
 18 Q. And then, when you were behind the group on New York
 19 Avenue, as it was traveling as -- according to this board, in
 20 a southwest direction, how fast was the group moving?
 21 A. The group was moving pretty fast. When I got down
 22 towards the area of McDonald's, I saw, I recall, about --
 23 somewhere around that area, seeing the tail end of people of
 24 the group starting to run.
 25 Q. What did you do in response?

1 A. What I did in response, I think probably, once I got
2 around the corner and got on 13th Street and saw how far
3 ahead they were of me, I started to jog to catch up.

4 Q. Okay. And what, if anything, did you observe at the
5 McDonald's?

6 A. I remember the broken glass and I remember the dirt
7 from -- I'm assuming from a flowerpot of some sort that was
8 on the ground.

9 Q. Now, as you've come around the corner on New York
10 Avenue and 13th Street, you've indicated in Government's
11 Exhibit 310 that this is the path of the group.

12 As you came around the corner and -- heading north
13 on 13th, where was the group and where were you?

14 A. Most of the group was in front of me. They were
15 running when I observed them, when I was on 13th Street.

16 Q. And as the group approaches the southeast corner of
17 Franklin Square Park at 13th Street and I Street Northwest,
18 as it made its way into Franklin Square Park, where did you
19 go?

20 A. I believe I continued. I may have cut part of the
21 park, but I went towards the park at 13th Street.

22 Q. And then as you're in through part of the park at
23 13th Street, what you've just described, are you at a vantage
24 point where you're again observing the group move?

25 A. Yes.

1 Q. Unobstructed?

2 A. For the most part, yes.

3 Q. As the group made its way over to 14th Street and
4 headed north that way, did you follow them up 14th Street or
5 did you take a different route?

6 A. I don't believe I followed them up 14th Street. I
7 believe I continued up 13th Street.

8 Q. Did you reconnect with the group at some point?

9 A. Yes.

10 Q. Where approximately did you reconnect with the
11 group?

12 A. If I'm recalling correctly, I see them at
13 13th Street. And in the alley over in this area, I believe I
14 came up through this way.

15 Q. For the record, you've pointed to an alley that goes
16 north and south between 13th Street and 14th Street between
17 K and L. Is that correct?

18 A. Yes.

19 Q. Okay. And once you met up with the group on
20 L Street, which direction did it travel?

21 A. The group was pretty much already at L Street. It
22 seemed like the group had slowed down or almost came to a
23 complete stop at that location.

24 Q. And how far did you follow the group down L Street?

25 A. Maybe half a block.

1 Q. And at some point, did you stop?

2 A. Yes. There was -- the officers were engaging them
3 with pepper spray at different points that I had seen. I
4 think they -- when I started down towards the McDonald's, if
5 I recall correctly, I believe there was some pepper spray
6 down there.

7 And, obviously, I didn't want to get caught up in
8 any of that. So I was trying to keep somewhat of a distance
9 from it.

10 Q. Were you wearing a gas mask or anything to protect
11 you from the pepper spray?

12 A. No.

13 Q. So approximately where -- this is going to be my
14 last line of questioning with regards to Government's
15 Exhibit 310.

16 Approximately where -- I didn't hear you correctly
17 about where you stopped on L Street.

18 A. I may have proceeded a little bit past 13th Street.

19 Q. Now, did you observe the group after you stopped at
20 13th and L or somewhere thereabouts?

21 A. A little later on, yes.

22 Q. And what was your vantage point at that point?

23 A. The group was at about 12th and L and I was on the
24 eastern side of the group.

25 Q. So now you've sort of gone on the opposite side of

1 the group?

2 A. Yes.

3 Q. Okay. Now, prior to your testimony today, did you
4 have an opportunity to observe a number of Government
5 exhibits?

6 A. Yes.

7 Q. Were they all videos?

8 A. Yes.

9 Q. And did those exhibits, as you observed them, fairly
10 and accurately depict what you observed as you were with the
11 group, sometimes behind the group, on January 20th, 2017?

12 A. Yes.

13 Q. Did you observe the group throughout this route with
14 the exception of the portion where you talked about you
15 weren't with them on 14th Street?

16 A. Primarily, yes.

17 Q. Did you have freedom of movement the entire route
18 that you took from Logan Circle all the way to 12th and L?

19 A. Yes.

20 Q. At any point did you identify yourself as a police
21 officer during this route that you took with the group?

22 A. Yes.

23 Q. At what point was that?

24 A. I believe it was near 13th and L. I was kind of

25 separating myself from the group at that point. And I don't

1 recall the reason.

2 It may have been because of pepper spray or it may
3 have been because I saw police officers started to engage
4 them. But I separated myself back from the group at that
5 point.

6 Q. How did you identify yourself?

7 A. I stated, "Blue, blue, blue." And I may have had my
8 hands down and I believe I had my hands crossed.

9 MR. QURESHI: Your Honor, for the record, I'm going
10 to just reference the Government exhibits on the record in
11 bulk.

12 Some of them have been admitted. But subject to
13 them not being admitted, the Government would move them. I'm
14 just going to raise them for the record.

15 BY MR. QURESHI:

16 Q. Government's Exhibits 106 to 114?

17 A. Yes.

18 Q. Government's Exhibits 118 to 120?

19 A. Yes.

20 Q. Government's Exhibits 126 and 127?

21 A. Yes.

22 Q. Government's Exhibits 129 and 130?

23 A. Yes.

24 Q. Government's Exhibits --

25 THE COURT: I don't think he's asking you questions

1 movement of the group and the various focal points we've

2 talked about of destruction of property and vandalism?

3 A. Yes.

4 MR. QURESHI: At this point, your Honor, to the
5 extent they haven't been moved in, the Government moves all
6 these exhibits into evidence.

7 THE COURT: Is there any objection?

8 MR. LAZEROW: No objection.

9 THE COURT: They are all admitted.

10 (Whereupon, Government's Exhibit Nos. 106 to 114;
11 118 to 120; 126 to 127; 129 to 130; 133 to 134; 136 to 138;
12 143 to 146; 148.12 to 148.44; 175 to 182; 185 to 188; and 190
13 to 219 were entered into evidence.)

14 MR. QURESHI: Thank you, your Honor. I have nothing
15 further.

16 THE COURT: Cross-examination for Ms. Macchio.

17 CROSS-EXAMINATION

18 BY MR. LAZEROW:

19 Q. Good afternoon, Investigator.

20 A. Good afternoon, sir.

21 Q. My name is Andrew Lazerow. I represent Ms. Macchio
22 in this case. I just have a few questions.

23 When you were in Logan Circle, you did not see any
24 property destruction by any individuals within Logan Circle.

25 Correct?

1 right now.

2 Right? You're just naming them or are you asking
3 whether he's seen them?

4 MR. QURESHI: I am naming them and then I'm asking
5 if he's seen them.

6 BY MR. QURESHI:

7 Q. Government's Exhibit 133 and 134?

8 A. Yes.

9 Q. Government's Exhibits 136 through 138?

10 A. Yes.

11 Q. Government's Exhibits 143 to 146?

12 A. Yes.

13 Q. Government's Exhibit 148.12 to 148.44?

14 A. Yes.

15 Q. Government's Exhibits 175 through 182?

16 A. Yes.

17 Q. Government's Exhibits 185 through 188?

18 A. Yes.

19 Q. And, finally, Government's Exhibits 190 through 219?

20 A. Yes.

21 Q. These are all the Government's exhibits that you
22 reviewed prior to your testimony?

23 A. Yes.

24 Q. And as you were moving with the group on

25 January 20th, 2017, did they fairly and accurately depict the

1 A. I didn't see it occur. Once the group departed from
2 the statue area where many of them were gathered and kind of
3 standing at the base statue, I observed black spray paint. I
4 believe it was a black circle with an "A" inside of it.

5 Q. And when you were there walking behind this group
6 and wherever you were, were you on the phone -- on the radio
7 talking to Commander DeVille?

8 A. I wasn't necessarily talking directly to him. But I
9 was trying to voice some of the destruction and property
10 damage and vandalism that I observed.

11 Q. And when you reported that, would that just go out
12 over the radio? Is that fair?

13 A. Yeah. Yeah.

14 Q. Now, when you were -- before the group stepped off
15 Logan Circle, did Commander DeVille or anyone else direct you
16 to make contact with this group?

17 A. No.

18 Q. So no one asked you to go find out where these --
19 where is this group going, what are they planning? No one
20 asked you to do that?

21 A. No.

22 Q. And you did not do that. Correct?

23 A. No.

24 Q. Now, I want to be very clear about one thing.

25 I heard the word "group" mentioned many, many times

1 on that 25- to 30-minute direct with Mr. Qureshi.
 2 But you saw particular individuals committing these
 3 acts of destruction. Correct?
 4 A. I didn't observe most of the destruction occur
 5 myself.
 6 Q. So you didn't see the whole group committing
 7 destruction. Correct?
 8 A. I can't say I saw every individual in the group
 9 committing destruction. No.
 10 Q. Thank you very much.
 11 A. You're welcome.
 12 THE COURT: For Ms. Armento?
 13 MS. WELETZ: Briefly, your Honor.
 14 CROSS-EXAMINATION
 15 BY MS. WELETZ:
 16 Q. Investigator, you said that you were assigned as an
 17 intel investigator to deal with this First Amendment
 18 assembly. Correct?
 19 A. I was just an officer at that point.
 20 Q. You were an officer at that time.
 21 How many other First Amendment assemblies have you
 22 ever been at?
 23 A. Dozens. There was multiple ones we did that day.
 24 Q. Okay. And you said that, in your capacity, you -- I
 25 think you said you usually act as the eyes. Right?

1 A. Yeah. We try to assist SOD -- because they do most
 2 of the traffic control -- to keep the vehicular interference
 3 and keep everybody safe. So we try to as eyes sometimes for
 4 them.
 5 Q. So you help facilitate rolling roadblocks?
 6 A. I don't necessarily facilitate them in that aspect,
 7 saying, "Hey, we need a car going up here," "We need a car
 8 going up there."
 9 If I speak to the group and they give me a path that
 10 they're planning on traveling -- sometimes they already know
 11 the path they think this group is traveling and we're just
 12 there to monitor the group to make sure there's no
 13 destruction going on, nobody -- a counter protester or
 14 anybody else trying to engage them as well.
 15 Q. And on that day, on January 20th, 2017, when you
 16 spoke to the organizers in the group like you said you
 17 usually do, what path did you find out this march was going
 18 to be taking?
 19 A. As I stated before, I did not speak to the group.
 20 Q. Okay. And, to your knowledge, were there other
 21 officers there from the intel unit?
 22 A. Yes.
 23 Q. Do you know how many?
 24 A. At different times -- because I didn't walk with
 25 them throughout the whole path or see them throughout the

1 whole day. At Logan Circle, I believe we had -- maybe two
 2 other people were there at that time.
 3 Q. And those were plainclothes officers?
 4 A. Yes.
 5 Q. But it's your understanding that none of those
 6 plainclothes officers reached out to the organizers that
 7 morning?
 8 A. To my knowledge, no.
 9 Q. You indicated that, originally, there were about
 10 40 or so people located at Logan Circle. Correct?
 11 A. When I arrived, approximately about 40.
 12 Q. And then it grew to about 400 people?
 13 A. An estimate. Yes.
 14 Q. And you indicated that it became quite loud when
 15 there were 400 people in Logan Circle. Correct?
 16 A. Yes.
 17 Q. And you heard chanting?
 18 A. Yeah.
 19 Q. Did you hear a call-and-response chant at all during
 20 this march as you followed the march, part of the group
 21 yelling out, the other part responding?
 22 A. I don't recall the chants. Not all of them. No.
 23 Q. Do you recall the group cheering frequently?
 24 A. I do remember hearing chanting and maybe -- maybe,
 25 at times, cheering. Sometimes it's hard to differentiate

1 what that sound actually is.
 2 Q. But you heard that from Logan Circle all the way
 3 through 12th and L. Correct?
 4 A. When I was with the group?
 5 Q. Correct. When you were with the group, following
 6 them.
 7 A. At times, yeah.
 8 Q. And not just chanting. You heard people going,
 9 "Woo-hoo," correct, or something like that?
 10 A. I wouldn't say it was like -- I don't recall
 11 hearing, like, exclamations of joy.
 12 Q. You don't hear -- you don't remember any type of
 13 joyous shouting out?
 14 A. Not in a celebration manner. No.
 15 MS. WELETZ: No further questions.
 16 THE COURT: For Ms. Simmons?
 17 MS. JACQUES: Yes. Thank you.
 18 CROSS-EXAMINATION
 19 BY MS. JACQUES:
 20 Q. Good afternoon.
 21 A. Good afternoon.
 22 Q. My name is Tammy Jacques. I represent Ms. Simmons.
 23 I just have two questions.
 24 Was it your testimony that you didn't actually see
 25 windows being broken because you were at the end of the

1 group?
 2 A. Towards the end of the group. Yes.
 3 Q. So -- and you testified that around the McDonald's
 4 is when people started moving faster?
 5 A. There was different points throughout there.
 6 Q. And you indicated that at the McDonald's is where
 7 the pepper spray was being sprayed and you didn't want to get
 8 caught up in that. Correct?
 9 A. If I recall right, there was some pepper spray
 10 there.
 11 Q. And there was also grenades?
 12 A. I think you're probably referring to, like, the
 13 sting-balls, not like fragment grenade.
 14 Q. Okay. The sting-balls.
 15 They were being thrown by the McDonald's as well.
 16 Correct?
 17 A. I wasn't using any of them. I don't recall the
 18 exact locations of all that.
 19 Q. Okay.
 20 MS. JACQUES: I don't have anything else.
 21 THE COURT: Mr. Cohen?
 22 MR. COHEN: Thank you.

CROSS-EXAMINATION

1 BY MR. COHEN:
 2 Q. I'm Brett Cohen on behalf of Mr. Wood.
 3 Good afternoon.
 4 A. Good afternoon.
 5 Q. I just have a few questions.
 6 When you were with the group or at any point near
 7 the group, did you have the opportunity to observe those who
 8 were trying to capture, in other words, through pictures or
 9 video, the events that were going on in the demonstration?
 10 A. Yes.
 11 Q. And there were a large group of those people,
 12 correct, not as large as the protesters, but, I mean, there
 13 were at least a couple dozen?
 14 A. That was inside the group? Because I know there's
 15 also reporters that were staying away from the group as well.
 16 Q. My question is: During -- so they were inside the
 17 group and away from the group. Is that your testimony?
 18 A. Yeah. I saw -- I remember seeing some that were
 19 away from the group, and there were some that were inside the
 20 group.
 21 Q. And those people that were documenting, they would
 22 frequently go to where something was happening with the
 23 group, such as property destruction?
 24 A. I believe there were some cameras in those areas. I
 25 can't say that they went to all the locations -- or a large

1 group of journalists went to certain locations. But I do
 2 remember seeing people filming around those locations.
 3 Q. Did you notice anybody who was filming, like,
 4 putting in, putting away or taking out camera equipment?
 5 A. Not that I recall. It wasn't my focus at that
 6 point.
 7 Q. Did you observe anybody with camera equipment
 8 changing -- trying to change their appearance in any way?
 9 A. Anybody with camera equipment trying to change their
 10 appearance, like their clothing or anything?
 11 Q. Yes.
 12 A. Not that I was focusing on. No.
 13 Q. It's fairly safe to say that, based on your
 14 observations, when you were with the group -- at times, when
 15 you were with the group, you didn't see -- there was nothing
 16 that caught your attention with respect to those people's
 17 actions. Correct?
 18 A. Not necessarily. No. Not that -- actions that they
 19 were taking. No.
 20 MR. COHEN: No further questions.
 21 THE COURT: For Ms. Harris?
 22 MR. McCOOL: No. Thank you, your Honor.
 23 THE COURT: Ms. Kropf?
 24 MS. KROPF: No questions, your Honor.
 25 THE COURT: Redirect?

1 MR. QURESHI: Nothing further for this witness, your
 2 Honor. Thank you.
 3 THE COURT: Sir, you may be excused. Thank you.
 4 Don't discuss your testimony with any other witness.
 5 THE WITNESS: Thank you, your Honor.
 6 (Witness excused.)
 7 THE COURT: Does the Government have any additional
 8 witnesses?
 9 MR. QURESHI: No, your Honor.
 10 The Government would just move a couple of exhibits
 11 into evidence and a stipulation and then the Government would
 12 rest.
 13 THE COURT: And so I think we need to have exhibit
 14 discussions separately. I'd be happy to just wait until
 15 later to do that.
 16 You do have a stipulation, however?
 17 MR. QURESHI: Yes, your Honor.
 18 THE COURT: Thank you.
 19 MR. QURESHI: May I go ahead?
 20 THE COURT: Yes.
 21 MR. QURESHI: The parties in this case, the United
 22 States and the Defendants, hereby stipulate as follows:
 23 Government's Exhibits 282 and 283 fairly and
 24 accurately reflect the value of property damage on
 25 January 20th, 2017.

1 These exhibits reflect the total property damage at
2 1225 I Street Northwest and 1201 I Street Northwest, which
3 includes the Starbucks, Bank of America and Atrium Cafe.

4 Exhibit 283 also includes the damage to the Atrium
5 Cafe as reflected in a previously admitted Government
6 exhibit, 237, and should not be interpreted as additional
7 damage to the Atrium Cafe.

8 The jury will in the back -- you will have both of
9 these exhibits. 282 reflects \$4,108 in damage at the
10 Starbucks. And 283 reflects a total of \$83,215.77.

11 Thank you, your Honor.

12 With that, the Government rests.

13 THE COURT: And so, through that stipulation, you're
14 offering 282 and 283?

15 MR. QURESHI: Yes, your Honor.

16 THE COURT: Sorry. I didn't understand that.

17 Any objection to the stipulation or those two
18 exhibits?

19 MS. WELETZ: No objection, your Honor.

20 (Whereupon, Government's Exhibit Nos. 282 and 283
21 were entered into evidence.)

22 THE COURT: Counsel, please approach.

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

25 THE COURT: Ms. Kropf, just making sure you're ready

1 to go. Your witness is first?

2 MS. KROPF: We're ready. Yes.

3 THE COURT: And should I be telling the jury, just
4 for scheduling reasons, different Defendants will be
5 presenting different witnesses at different times?

6 MS. KROPF: I think that's fair.

7 MR. LAZEROW: Your Honor -- I'm sorry.

8 THE COURT: Yes.

9 And is there anyone who's not presenting any
10 evidence at all?

11 MR. LAZEROW: I expect not to.

12 THE COURT: So what do you want me to say? I mean,
13 just sort of say, for scheduling reasons, you may hear
14 different witnesses presented at different times?

15 MR. LAZEROW: Yes. Correct.

16 THE COURT: By different --

17 MR. LAZEROW: Right.

18 THE COURT: -- Defendants, even though you're not
19 presenting any?

20 MR. LAZEROW: Yeah.

21 THE COURT: I'm just making sure you're all right
22 with that.

23 MR. LAZEROW: We may defer to the witnesses who are
24 here and flying.

25 For the record, we move for a judgment of acquittal.

1 THE COURT: Well, I understand.

2 For the record, I assume everybody has.

3 MR. LAZEROW: I just wanted it on the transcript.

4 That's all.

5 THE COURT: Okay.

6 MR. LAZEROW: Thank you, your Honor.

7 MR. McCOOL: We're not putting on a case, your
8 Honor. I thought you had asked.

9 THE COURT: So you don't object to me saying
10 different Defendants will be presenting different
11 witnesses --

12 MR. McCOOL: No.

13 THE COURT: -- in whatever order?

14 MR. McCOOL: No objection. Thank you.

15 THE COURT: Okay.

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

18 THE COURT: Ladies and gentlemen, we are now going
19 to begin presentations by certain Defendants. You're going
20 to hear people out of order just for scheduling reasons, not
21 for any other reason.

22 So we're going to start on behalf of Ms. Lawson with
23 a witness.

24 Ms. Kropf.

25 MS. KROPF: Yes, your Honor.

Hess - DIRECT - By Ms. Kropf

1 THE WITNESS: We call Valerie Hemp.

2 (Thereupon, the witness entered
3 the courtroom and the following
4 proceedings were had:)

5 VALERIE HESS, DEFENSE WITNESS, SWORN

6 THE COURT: Good afternoon.

7 THE WITNESS: Hi.

8 DIRECT EXAMINATION

9 BY MS. KROPF:

10 Q. Good afternoon.

11 A. Hi.

12 Q. Could you please introduce yourself to the jury and
13 spell your name for the court reporter.

14 A. Sure. My name is Valerie Hess. V-a-l-e-r-i-e,
15 H-e-s-s.

16 Q. Ms. Hess, where do you live?

17 A. In Pittsburgh, Pennsylvania.

18 Q. And are you originally from Pittsburgh?

19 A. No. I grew up most of my youth in Lancaster,
20 Pennsylvania.

21 Q. And I know that you flew from California.

22 A. I did.

23 Q. Why did you come from California?

24 A. I was on vacation. So I just left -- I took a
25 redeye last night and I'll head back this evening.

1 Q. Thank you.
 2 Ms. Hess, what do you do for a living?
 3 A. I'm an oncology nurse. I'm the unit director or
 4 unit manager for an oncology unit at the University of
 5 Pittsburgh Medical Center in Pittsburgh, Pennsylvania.
 6 Q. And how long have you been a nurse?
 7 A. Since 2004. So my math is bad at this moment.
 8 14 years.
 9 Q. And have you worked at University of Pittsburgh
 10 Medical Center for your whole nursing career?
 11 A. I have off and on. I started there in surgical
 12 oncology for about five years and I went to a kind of casual
 13 status in that position and also worked part-time with Health
 14 Care for the Homeless, which is a community health
 15 organization.
 16 Then I left Pittsburgh for about eight months, lived
 17 in Brazil. And when I came back to Pittsburgh, I started
 18 working at UPMC again in medical oncology, which is the unit
 19 I now supervise.
 20 Q. What were you doing when you were in Brazil?
 21 A. In Brazil, I was volunteering for a Pittsburgh-based
 22 nonprofit called Amizade that does global service learning
 23 programming.
 24 Q. Could you spell Amizade for the court reporter.
 25 A. I can. A-m-i-z-a-d-e.

1 Q. And do you know Brittne Lawson?
 2 A. I do.
 3 Q. And do you call her Britt?
 4 A. Yes.
 5 Q. You said you are a unit director?
 6 A. Uh-huh.
 7 Q. How do you know Ms. Lawson? From work?
 8 A. I hired Britt. I met her in April of 2015. I
 9 interviewed her and then she started the following month and
 10 worked on 5 Main, which is the unit we worked on, until
 11 October of 2017.
 12 Q. Why did you hire Ms. Lawson to work with you?
 13 A. So I -- my focus, I guess, when I'm interviewing
 14 staff or candidates is to look for people who will contribute
 15 to the type of unit that we're trying to foster.
 16 So, for me, that is someone who's going to be a team
 17 player, someone who sees patients as the center of what we
 18 do.
 19 And I think -- so I have kind of a long history in
 20 oncology. And I think oncology patients are super special.
 21 They --
 22 MS. KERKHOFF: Objection.
 23 THE COURT: Sustained. Relevance.
 24 MS. KROPF: That's fine, your Honor. I can move on.
 25 THE COURT: Thank you.

1 BY MS. KROPF:
 2 Q. Now, Britt's work on the unit: Has she been a good
 3 nurse on the unit?
 4 MS. KERKHOFF: Objection. Relevance.
 5 THE WITNESS: Yes. Yeah.
 6 THE COURT: I'm going to ask you to approach,
 7 please.
 8 (Whereupon, the following proceedings were had at
 9 side-bar outside the presence of the jury:)
 10 THE COURT: Is she a character witness?
 11 MS. KROPF: Yes, your Honor.
 12 THE COURT: For what character trait?
 13 MS. KROPF: For the fact that she's a hard worker,
 14 that she is not violent. The Government has painted a
 15 picture --
 16 THE COURT: I'm just asking what traits. In other
 17 words, for peace and good order or nonviolence?
 18 MS. KROPF: Yes.
 19 THE COURT: Hard worker, not relevant.
 20 MS. KROPF: Okay.
 21 THE COURT: What other relevant character traits?
 22 MS. KROPF: That's the main one, your Honor.
 23 THE COURT: Peace and good order and nonviolence?
 24 MS. KROPF: Yes. And how she interacts with --
 25 THE COURT: And so her opinion or her reputation or

1 both?
 2 MS. KROPF: What do you mean? In the witness's
 3 opinion?
 4 THE COURT: Yes. Because there's opinion testimony
 5 as to character traits and there's reputation testimony as to
 6 character traits.
 7 MS. KROPF: She's going to talk about her opinion of
 8 Ms. Lawson, having known her for over a year and seen her in
 9 many stressful and difficult situations.
 10 THE COURT: But not her reputation?
 11 MS. KROPF: She can talk about her reputation at
 12 work.
 13 THE COURT: No. I'm asking you, because character
 14 testimony may come in this two forms with regards to the
 15 specific character trait at issue.
 16 MS. KROPF: Sure.
 17 One is reputation evidence, reputation in the
 18 community. One is opinion testimony with an appropriate
 19 foundation.
 20 So you've told me, yes, opinion. But is it also,
 21 yes, reputation or, no, for the character trait, not just her
 22 reputation?
 23 MS. KROPF: Her opinion of her.
 24 THE COURT: Opinion only.
 25 MS. KROPF: Because I don't think she can -- she can

1 only testify to her at work. So it would be the idea that
2 she can testify to her in the community -- I don't think she
3 can.

4 THE COURT: I'm not saying she can't. Because if
5 she can lay a foundation for the reputation she has in the
6 community she's aware of -- I'm not saying you can't offer
7 that. I'm just asking what your intention is.

8 MS. KROPF: If I can do both -- I will definitely do
9 both, and I will try to lay a foundation for it.

10 THE COURT: But that doesn't mean you get to have
11 her testify about other great things about her, as in she's
12 so wonderful with very sick patients. It's not relevant
13 character testimony.

14 MS. KROPF: I think the jury would love to hear it,
15 your Honor.

16 THE COURT: It must be specific acts. And so --

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

18 THE COURT: I can give you the red book if you want
19 me to give you the red book.

20 MS. KROPF: I've read most of it. I can move her
21 along.

22 THE COURT: There was an objection. I'm sustaining
23 the objection. I'm happy to have you pursue the reputation
24 and opinion paths properly.

25 MS. KROPF: Absolutely. Thank you, your Honor.

1 (Whereupon, the following proceedings were had in
2 open court:)

3 THE COURT: Please come on back.

4 BY MS. KROPF:

5 Q. Ms. Hess, are you aware of how the other nurses on
6 your unit view Ms. Lawson?

7 A. Yes. They --

8 THE COURT: That was a yes-or-no question, I think.
9 You are -- yes?

10 THE WITNESS: Yes, I am.

11 THE COURT: Next question.

12 BY MS. KROPF:

13 Q. Could you describe her reputation among the nurses
14 in your community?

15 A. Yes, I can.

16 THE COURT: Well, reputation for what? I think you
17 told me certain specific character traits.

18 MS. KROPF: Sure.

19 THE COURT: That would be the relevant reputation.

20 MS. KROPF: Absolutely, your Honor.

21 BY MS. KROPF:

22 Q. Ms. Hess, are you aware of Ms. Lawson's reputation
23 for not being violent among the nurses on your unit?

24 A. Yes.

25 Q. And could you describe that.

1 A. Sure.

2 We frequently have patients with brain tumors, brain
3 metastases, and a lot of times these patients can be very
4 confused and aggressive at times.

5 MS. KERKHOFF: Objection as to reputation.

6 THE COURT: I'm sustaining.

7 Do we need to discuss it further?

8 MS. KROPF: No. Let me try to reask the question in
9 a way that might help.

10 BY MS. KROPF:

11 Q. Could you describe her reputation generally without
12 getting into specific instances?

13 THE COURT: As to?

14 BY MS. KROPF:

15 Q. Her reputation for nonviolence.

16 THE COURT: In other words, what is the reputation
17 for nonviolence that you're aware of from having spoken to
18 the people that you and she know?

19 THE WITNESS: That she can respond to aggressive
20 patients calmly.

21 BY MS. KROPF:

22 Q. Now, do you socialize with Ms. Lawson outside of
23 work?

24 A. Not outside of work. We have social events with
25 work, dinner clubs, holiday parties. But I don't -- I don't

1 generally hang out with my employees.

2 Q. And were you aware that Ms. Lawson was coming to
3 Washington, DC, for the inauguration?

4 A. Yes.

5 Q. Did you have any sense of what -- of her reason for
6 coming here?

7 A. I did.

8 MS. KERKHOFF: Objection.

9 THE COURT: Sustained.

10 BY MS. KROPF:

11 Q. Is Ms. Lawson working for you now?

12 A. She is not.

13 Q. Why is that?

14 MS. KERKHOFF: Objection. Relevance.

15 THE COURT: Sustained.

16 MS. KROPF: Your Honor, may we approach?

17 THE COURT: You may approach.

18 MS. KROPF: Thank you, your Honor.

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

21 THE COURT: Yes.

22 MS. KROPF: Your Honor, I do think it's relevant to
23 explain why she's no longer working there. I don't know
24 what --

25 THE COURT: Why do you have to raise it with her? I

1 mean, the only thing that she's here to testify about is a
 2 character trait and how she knows about it. So the question
 3 is: Why isn't she working with you anymore?
 4 MS. KROPF: Yes.
 5 THE COURT: And what's the answer going to be?
 6 MS. KROPF: Because of this case.
 7 THE COURT: I'm sustaining the objection.
 8 MS. KROPF: Thank you, your Honor.
 9 (Whereupon, the following proceedings were had in
 10 open court:)
 11 THE COURT: Please come on back.
 12 BY MS. KROPF:
 13 Q. Just to -- just one last question, Ms. Hess.
 14 What is your opinion as to Ms. Lawson and whether or
 15 not she's violent?
 16 A. I have not experienced her to be violent in any
 17 capacity.
 18 Q. Thank you.
 19 MS. KROPF: Nothing further.
 20 THE COURT: Cross-examination from any Defendant?
 21 MR. LAZEROW: No. Thank you, your Honor.
 22 MR. McCOOL: No, thank you.
 23 MS. JACQUES: No, your Honor.
 24 MR. COHEN: No, your Honor.
 25 THE COURT: From the Government?

1 of January 20th?
 2 A. No.
 3 Q. You said you've never experienced Ms. Lawson be
 4 violent and that your opinion is that she is not violent.
 5 That's your opinion. Correct?
 6 A. Correct.
 7 Q. Based on your observations at work?
 8 A. Correct.
 9 Q. Do you know what a street medic is?
 10 A. My understanding of a street medic is that they are
 11 available at places where there are large amounts of people
 12 gathered and, in the event that there's anyone with an
 13 injury, that they can be cared for.
 14 Q. Are you aware of why someone would soak a bandana in
 15 vinegar?
 16 A. No.
 17 Q. You're a nurse. Correct?
 18 A. I am.
 19 Q. But that is not a treatment you have in your
 20 hospital. Correct?
 21 A. We don't really use vinegar.
 22 Q. Now -- never?
 23 A. I'm sorry?
 24 Q. Never?
 25 A. Not in my experience.

1 MS. KERKHOFF: Thank you.
 2 CROSS-EXAMINATION
 3 BY MS. KERKHOFF:
 4 Q. Hi, Ms. Hess. How are you?
 5 A. I'm well. Thank you.
 6 Q. My name is Jennifer Kerkhoff. I represent the
 7 United States in this case.
 8 We've never met. Is that correct?
 9 A. Correct.
 10 Q. We've never spoken. Correct?
 11 A. Correct.
 12 Q. Now, I just have a few questions for you.
 13 You testified that your Ms. Lawson's -- you were
 14 Ms. Lawson's supervisor?
 15 A. Correct.
 16 Q. And you were her supervisor in January 2017?
 17 A. Yes.
 18 Q. You said you were aware that she was coming down to
 19 DC. Correct?
 20 A. Correct.
 21 Q. Did Ms. Lawson discuss with you in advance what
 22 would happen if she was arrested?
 23 A. No.
 24 Q. Were you aware that she made arrangements to have
 25 someone contact you in the event she was arrested in advance

1 Q. Now, have you observed any video of what occurred in
 2 Washington, DC, on January 20th, 2017?
 3 A. I've seen the -- like, the news clips that probably
 4 everyone has seen of, I think, the limousine on fire.
 5 Q. Have you seen images of the Starbucks window
 6 breaking?
 7 A. I have not.
 8 Q. Have you seen images of the Bank of America window
 9 breaking?
 10 A. No.
 11 Q. Have you seen images of people cowering inside the
 12 Starbucks?
 13 A. No.
 14 Q. And if Ms. Lawson were part of a group that
 15 committed that, would that change your opinion about whether
 16 she was violent?
 17 A. (No response.)
 18 Q. That's a yes or no.
 19 A. I don't know if it is a yes-or-no question.
 20 I think we are responsible for our personal actions.
 21 So, to me, the question is whether or not she had personal
 22 responsibility.
 23 Q. So that's what would change your opinion? Yes or
 24 no?
 25 MS. KROPF: Objection, your Honor. Argumentative.

1 THE COURT: Overruled. It's cross-examination.
 2 You can answer.
 3 THE WITNESS: I think now this is getting into my
 4 own, like, kind of personal philosophy. But I am, I think,
 5 someone who is maybe not quick to judge someone, I guess.
 6 I think, if there were a behavior that was
 7 concerning to me, I'd want to have a conversation with
 8 someone to understand more about it.
 9 Yeah.
 10 BY MS. KERKHOFF:
 11 Q. Thank you.
 12 A. You're welcome.
 13 MS. KERKHOFF: No further questions.
 14 THE COURT: Redirect?
 15 MS. KROPF: No, your Honor.
 16 THE COURT: Ma'am, you may be excused. Do not
 17 discuss your testimony with any other witness.
 18 THE WITNESS: Okay.
 19 THE COURT: Thank you.
 20 THE WITNESS: Thank you.
 21 (Witness excused.)
 22 THE COURT: Next witness, please.
 23 MS. JACQUES: Yes. Your Honor, on behalf of
 24 Ms. Simmons, we'll call Judith Kaplan.
 25 May I just step out briefly?

1 THE COURT: Yes.
 2 (Thereupon, the witness entered
 3 the courtroom and the following
 4 proceedings were had:)
 5 THE COURT: Please come up here.
 6 JUDITH KAPLAN, DEFENSE WITNESS, SWORN
 7 THE COURT: Good afternoon.
 8 THE WITNESS: Hi.
 9 DIRECT EXAMINATION
 10 BY MS. JACQUES:
 11 Q. Good afternoon, Ms. Kaplan.
 12 Could you state and spell your name, please.
 13 A. My name is Judith Kaplan. J-u-d-i-t-h, K-a-p-l-a-n.
 14 Q. Without telling us your exact address, where do you
 15 live?
 16 A. I live northwest of Baltimore, Maryland.
 17 Q. How long have you lived in that area?
 18 A. Since 1977.
 19 Q. Are you employed?
 20 A. Yes, I am.
 21 Q. How are you employed?
 22 A. I work for the Baltimore County Public Library and
 23 I'm manager at the Pikesville branch.
 24 Q. How long have you worked there?
 25 A. I have worked for more than 30 years for BPCL.

1 Q. And do you know a young lady by the name of
 2 Christina Simmons?
 3 A. Yes, I do.
 4 Q. How do you know Ms. Simmons?
 5 A. She is the daughter of my boyfriend, Gary Simmons.
 6 Q. How long have you known her?
 7 A. I've known her fairly well for six years, but I met
 8 her before that.
 9 Q. And you indicated you know her fairly well.
 10 How --
 11 A. Now I know her quite well. She moved to the area
 12 six years ago to go to high school right near my house. And
 13 she's now a student at Towson University.
 14 So I've had an opportunity to see her often. She's
 15 been on vacation with me.
 16 Q. How --
 17 A. She has meals at my house, you know.
 18 Q. How often do you see Ms. Simmons?
 19 A. I would say probably twice a month.
 20 Q. Twice a month?
 21 A. Uh-huh.
 22 Q. You indicated she's a student at Towson?
 23 A. Uh-huh.
 24 Q. Do you know what she studies?
 25 A. She is studying family and human services and

1 communication.
 2 MS. KERKHOFF: Objection. Relevance.
 3 THE COURT: Sustained.
 4 BY MS. JACQUES:
 5 Q. Do you know any other people who know Ms. Simmons?
 6 A. Only her family. I've met others, but I don't know
 7 them.
 8 Q. Based on your knowledge of Ms. Simmons, do you have
 9 an opinion on whether she's a truthful and honest person?
 10 A. I fully believe she's both a truthful and honest
 11 person. Yes.
 12 Q. Based on your knowledge of Ms. Simmons, do you
 13 believe that she is a nonviolent person?
 14 A. Absolutely I believe she's a nonviolent person.
 15 Q. Do you know what her reputation is among the others
 16 who know her regarding truthfulness, honesty and
 17 peacefulness?
 18 MS. KERKHOFF: Objection as to truthfulness,
 19 relevancy.
 20 THE COURT: Counsel, please approach.
 21 (Whereupon, the following proceedings were had at
 22 side-bar outside the presence of the jury:)
 23 THE COURT: I assume you wouldn't be objecting if
 24 she was going to testify.
 25 MS. KERKHOFF: Correct. I just don't think it's a

1 relevant character trait at this point.
 2 THE COURT: Is she going to be testifying?
 3 MS. JACQUES: No.
 4 THE COURT: So truthfulness and honesty is not a
 5 relevant trait of what she's testifying.
 6 MS. JACQUES: Okay.
 7 THE COURT: And --
 8 MS. JACQUES: I'll stick to peacefulness.
 9 THE COURT: Okay. Let's go to order, nonviolence.
 10 Are you going to be objecting to reputation at this
 11 point foundation-wise?
 12 MS. KERKHOFF: I'm not sure she's laid a foundation.
 13 THE COURT: That's why I was asking.
 14 MS. KERKHOFF: I don't think she's laid a
 15 foundation.
 16 THE COURT: In terms of where gets the reputation
 17 from and how she got it.
 18 MS. JACQUES: All right.
 19 THE COURT: In other words, not specific acts, but
 20 the circle of people from whom and how she knows. I assume
 21 they sit on the front porch and talk about it.
 22 MS. JACQUES: Sure.
 23 THE COURT: Thank you.
 24 (Whereupon, the following proceedings were had in
 25 open court:)

1 THE COURT: Please come on back. Thank you so much.
 2 BY MS. JACQUES:
 3 Q. Ms. Kaplan, you indicated that Ms. Simmons eats
 4 dinner at your home. Right?
 5 A. Right. Most recently, Thanksgiving.
 6 Q. During her visits to your home, are there others at
 7 your home while Ms. Simmons is there?
 8 A. Oh, yeah. My mother has been there. My sons have
 9 been there. My granddaughter has been there. Gary's been
 10 there.
 11 Q. And during these contacts with Ms. Simmons at your
 12 home, without giving us an example, but just in general, has
 13 there been conversation about how others feel about
 14 Ms. Simmons?
 15 A. No.
 16 Q. Do you know -- you do know that she's been charged
 17 here in the District of Columbia with rioting. Correct?
 18 A. I know those are the charges. Yes.
 19 Q. You know she's been charged with inciting a riot.
 20 Correct?
 21 A. I know that's one of the charges. Yes.
 22 Q. And you know that she's been charged with conspiracy
 23 to incite a riot. Correct?
 24 A. That's what my understanding is.
 25 Q. And you know she's been charged with destruction of

1 property. Correct?
 2 A. I'm aware that's one of the charges.
 3 Q. Does that change your opinion as to how you feel
 4 about Ms. Simmons?
 5 A. No, because they're charges.
 6 Q. You indicated that you have known Ms. Simmons for
 7 about six years.
 8 Did you know she was coming to DC on January 20th?
 9 A. That I did not know.
 10 Q. To your knowledge -- to your knowledge, does
 11 Ms. Simmons come to DC often?
 12 MS. KERKHOFF: Objection. Relevance.
 13 THE COURT: Sustained -- well, counsel, please
 14 approach.
 15 (Whereupon, the following proceedings were had at
 16 side-bar outside the presence of the jury:)
 17 THE COURT: It's not irrelevant if she's eliciting
 18 other testimony that's factually a part of this case.
 19 MS. KERKHOFF: Agreed. I just thought we were on
 20 reputation.
 21 THE COURT: So actually --
 22 MS. JACQUES: That was a -- one question.
 23 THE COURT: And the question was does she come to DC
 24 often?
 25 MS. WELETZ: Do you know if she comes to DC often?

1 THE COURT: I'm going to overrule the objection.
 2 MS. KERKHOFF: That's fine.
 3 THE COURT: You can elicit other factual stuff.
 4 She's just going to cross on other factual stuff.
 5 MS. JACQUES: That was it.
 6 THE COURT: Okay.
 7 (Whereupon, the following proceedings were had in
 8 open court:)
 9 THE COURT: You can come back.
 10 I am not overruling the objection to that
 11 question -- I mean, I am overruling the objection to that
 12 question.
 13 You can ask it. She can answer it.
 14 BY MS. JACQUES:
 15 Q. Do you know how often Ms. Simmons comes to the
 16 District of Columbia?
 17 A. No. I'm not aware.
 18 Q. Okay.
 19 MS. JACQUES: I have no further questions.
 20 THE COURT: Cross-examination from anybody at the
 21 defense table?
 22 MR. LAZEROW: No. Thank you.
 23 MR. McCOOL: No. Thank you.
 24 MR. COHEN: No, your Honor.
 25 THE COURT: Government?

CROSS-EXAMINATION

- 1
2 BY MS. KERKHOFF:
3 Q. Good afternoon, Ms. Kaplan. How are you?
4 A. Hi.
5 Q. My name is Jennifer Kerkhoff. I represent the
6 United States.
7 A. (Nods in the affirmative.)
8 Q. Is that a yes?
9 A. Yes. I'm just greeting you.
10 Q. We've never met before, have we?
11 A. We've never met.
12 Q. We've never spoken before. Correct?
13 A. Never.
14 Q. You care about Ms. Simmons. Correct?
15 A. Yes, I do.
16 Q. You've stated that it's your opinion that
17 Ms. Simmons is not a violent person. She's a peaceful
18 person. Is that correct?
19 A. It's not just my opinion. It's my knowledge of her.
20 It's how I feel about her. Yeah.
21 Q. Have you watched any of the video of what happened
22 on January 20th, 2017?
23 A. You mean video that you've been showing here or
24 video that was on the news at the time -- news reports?
25 Q. Have you seen any video in the courtroom?

- 1 A. Never. No.
2 Q. How about on the news reports?
3 A. Well, back in January I saw video, not of this
4 specifically.
5 Q. And Ms. Simmons didn't tell you she was coming down
6 to DC, correct, on January 20th, 2017?
7 A. No. I did not know she was coming on January 20th.
8 Q. Ms. Simmons didn't tell you how she was preparing to
9 come to DC, did she?
10 A. No. I had no idea that she was coming for -- on the
11 Inauguration Day. I did not.
12 Q. Ms. Simmons didn't tell you what she was planning on
13 doing that day. Correct?
14 A. I had no knowledge at all that she was coming down
15 on the day of the inauguration.
16 Q. Okay. Thank you.
17 MS. KERKHOFF: No further questions.
18 THE WITNESS: Yeah.
19 THE COURT: Redirect?
20 MS. JACQUES: No. Thank you.
21 THE COURT: Thank you, ma'am. You may be excused.
22 THE WITNESS: Thank you.
23 THE COURT: And please don't discuss your testimony
24 with any other witness.
25 THE WITNESS: I will not.

- 1 THE COURT: Thank you very much.
2 (Witness excused.)
3 THE COURT: Next up?
4 MR. COHEN: It's me, your Honor. I'll see if he's
5 out there. Hold on.
6 (Thereupon, the witness entered
7 the courtroom and the following
8 proceedings were had:)
9 THE COURT: Sir, please come up to the witness stand
10 right here. Thank you. You can bring your stuff in and just
11 put it on the chair here. Thanks.
12 Please come up to the witness stand. Thank you.
13 MICHAEL NYE, DEFENSE WITNESS, SWORN
14 THE COURT: Good afternoon.
15 THE WITNESS: Good afternoon.
16 DIRECT EXAMINATION
17 BY MR. COHEN:
18 Q. Good afternoon.
19 Could you please state and spell your first and last
20 name.
21 A. My name is Michael. Last name is Nye, N-y-e.
22 Q. Mr. Nye, what city and state do you live in?
23 A. My wife and I live in San Antonio, Texas. I just
24 flew in this morning. We have lived in the same house since
25 1980. So we live in San Antonio, Texas.

- 1 Q. What do you do for a -- well, what's your
2 educational background?
3 A. I've had two careers. My first career was a
4 practicing attorney. I went to law school in Houston and
5 worked for the --
6 THE COURT: I think he asked what's your educational
7 background.
8 So can you just ask more specifically what you want
9 him to say. Because it's --
10 MR. COHEN: Yes.
11 THE COURT: Résumés can be long.
12 MR. COHEN: Background.
13 THE COURT: So you're just asking him what degrees
14 he has and what kind of practice he's had?
15 MR. COHEN: Yes.
16 BY MR. COHEN:
17 Q. What -- so you said you have a law degree.
18 What other degree do you have?
19 A. I went to Texas Tech University, undergraduate, and
20 had a BA in physical education and history --
21 Q. Okay.
22 A. -- before that.
23 Q. You said you were an attorney.
24 When did you stop being an attorney?
25 A. I practiced full-time for about ten years and then

1 as a consultant for another three or four years during my
 2 transition from being an attorney to being a photographer.
 3 Q. And being a photographer, is that what you do now?
 4 A. I'm an artist, photographer and a photography and
 5 audio documentarian. That may sound confusing.
 6 Q. That's okay.
 7 And do you work on projects?
 8 A. I do.
 9 Q. What -- what is your current project?
 10 A. My current project is a project on blindness and
 11 perception, and I've been working on it for five years, just
 12 finishing now. So it'll open at the Witte Museum a year from
 13 now.
 14 Q. Do you know a person by the name of Alexei Wood?
 15 A. I do.
 16 Q. How do you know him?
 17 A. He interviewed for a job in the summer of 2014. He
 18 was just coming back from Africa. And so he -- I met him
 19 when he interviewed to work for me.
 20 Q. Does Mr. Wood still work for you?
 21 A. He does.
 22 Q. What does he do for you?
 23 A. Again, to answer that, I need to say a few other
 24 words about what I do.
 25 THE COURT: I think you need to answer his

1 questions.
 2 THE WITNESS: All right.
 3 THE COURT: Thank you.
 4 BY MR. COHEN:
 5 Q. Just describe what he does.
 6 A. He does two things in two different capacities. One
 7 is on the photography side, and the other is audio.
 8 And so, on the photography side, he works -- I have
 9 a wet darkroom, silver prints. He works in the darkroom,
 10 develops 8 by 10 negatives.
 11 He also is in charge of the photography. We have a
 12 portable studio that we travel around. He's in charge of the
 13 cameras, lights, strobes, so forth.
 14 He also scans. He also researches.
 15 On the audio side -- he's the audio engineer for
 16 sound. He participates in interviews, some editing. Mostly
 17 I do the editing, but he does a lot, also. He helps me with
 18 my traveling exhibitions.
 19 Q. How often -- for purposes of when you work with him,
 20 how often do you see him?
 21 A. He works on the average of about two days a week,
 22 sometimes one day a week, sometimes three. It's different.
 23 He also has another part-time job. So approximately a couple
 24 days a week.
 25 Q. Do you also know people that either know Mr. Wood or

1 work with Mr. Wood?
 2 A. I do. Yes.
 3 Q. And do you talk about Mr. Wood with those people?
 4 A. I have. Yes.
 5 Q. Based on your knowledge of Mr. Wood, what is your --
 6 do you have an opinion about him as a -- as a lawful --
 7 sorry. Let's get -- this is -- I want to make sure it's
 8 right. Sorry.
 9 What is your opinion about him with respect to
 10 peacefulness and noncombativeness?
 11 A. He is incredibly peaceful. I've never seen ever in
 12 the three and a half years that he's worked for me any
 13 aggression, any kind of combative behavior.
 14 Q. And from the people that know Mr. Wood, do you know
 15 what his reputation is with respect to peacefulness and
 16 noncombativeness?
 17 MS. KERKHOFF: Objection as to foundation.
 18 THE COURT: So just lay a foundation for that
 19 testimony, in other words, how he knows what his reputation
 20 is.
 21 MR. COHEN: Yes.
 22 BY MR. COHEN:
 23 Q. Have you spoken with others about Mr. Wood's
 24 peacefulness and noncombativeness?
 25 A. I have over the last three and a half years.

1 Q. And based on those conversations, what is Mr. Wood's
 2 reputation with respect to peacefulness and noncombativeness?
 3 A. Superb. No one has ever said anything about him in
 4 a negative way or an aggressive way.
 5 Q. And then what is -- do you have an opinion about
 6 Mr. Wood with respect to peace and good order?
 7 A. I do.
 8 Q. And what is that opinion?
 9 A. You know, I could say a lot about his character.
 10 He --
 11 THE COURT: But you really only are being asked
 12 about that one thing.
 13 Right? Right, Mr. Cohen?
 14 BY MR. COHEN:
 15 Q. If you can answer the question.
 16 THE COURT: Why don't ask you it again.
 17 BY MR. COHEN:
 18 Q. What is your opinion about his peace and good order?
 19 THE COURT: His character for peace and good order.
 20 BY MR. COHEN:
 21 Q. His character -- let me start over.
 22 Do you have an opinion about Mr. Wood's character of
 23 peace and good order?
 24 A. I see him as a very gentle, peaceful person. I've
 25 never seen him in any other capacity other than that.

1 Q. Have you spoken with others that know Mr. Wood about
2 Mr. Wood's character of peace and good order?

3 A. I have.

4 Q. And based on those conversations, what is the
5 reputation for Mr. Wood with respect to peace and good order?

6 A. It'd be the same as mine. I mean, I've never heard
7 a complaint. I've never heard of him being aggressive. I've
8 never heard of him being nonpeaceful. Exemplary.

9 MR. COHEN: That's all. I have no further
10 questions.

11 THE COURT: Any cross-examination from the defense?

12 MR. LAZEROW: No, thank you.

13 MS. JACQUES: No, your Honor.

14 THE COURT: From the Government?

15 MS. KERKHOFF: No questions.

16 THE COURT: Sir, you may be excused.

17 THE WITNESS: Thank you.

18 (Witness excused.)

19 THE COURT: Next? Well, let me -- can I ask counsel
20 to approach.

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

23 THE COURT: So I'm happy to go in whatever order you
24 want.

25 Is there anyone else or are we done?

1 MS. WELETZ: Your Honor, Carrie Weletz on behalf of
2 Ms. Armento.

3 The only other person we were trying to figure out
4 was Dr. Sataloff, who is Ms. Armento's employer, as a
5 character witness.

6 However, due to his schedule -- we've done the
7 run-through technologically. So we have the linkup.

8 However, he has surgeries scheduled all day tomorrow.

9 The only other time he could testify would be
10 Thursday morning between 10:00 to 11:00. I understand we
11 might be out of the defense case. I don't know --

12 THE COURT: We may be out of the defense case. I
13 mean, now would be fine if you want to try and work it out
14 now. I mean, we've still got time in the afternoon and
15 tomorrow.

16 MS. WELETZ: I'm going to try to work it out tonight
17 if we can eke out ten minutes from him. But, again, I mean,
18 if he's in surgery, I can't ask him -- these people schedule
19 years ahead of time for their throat surgery.

20 THE COURT: Had you subpoenaed him?

21 MS. WELETZ: Had I officially subpoenaed him? No.
22 He is not under subpoena. But I didn't do that because I
23 know he had a full surgery schedule and we were trying to
24 work it out where he could actually testify. But if he can't
25 testify, he can't testify. We understand that.

1 THE COURT: I guess I need to know -- if your client
2 wants him to testify -- have I signed an out-of-bounds
3 subpoena for you --

4 MS. WELETZ: No.

5 THE COURT: -- for him?

6 MS. WELETZ: No.

7 THE COURT: So has your client chosen not to
8 subpoena him for reasons --

9 MS. WELETZ: We've chosen to not subpoena him
10 because we knew he has surgeries scheduled with people that
11 need the surgeries, and I couldn't ask him to come on a day
12 and cancel a surgery for someone that had scheduled it years
13 in advance.

14 THE COURT: Well, you could.

15 MS. WELETZ: I could.

16 THE COURT: A subpoena would obligate him to do it.

17 MS. WELETZ: My client would not do that. I mean,
18 it's her current employer. She's not going to do that. But
19 I am going to --

20 THE COURT: Okay. We'll talk about this outside the
21 presence of the jury --

22 MS. WELETZ: Right.

23 THE COURT: -- at some point.

24 But you don't have anybody for today?

25 MS. WELETZ: No.

1 THE COURT: And that's your only witness?

2 MS. WELETZ: Correct. And I believe that there are
3 no other defense witnesses.

4 THE COURT: Mr. Lazerow, for instance, does
5 Ms. Macchio expect to call any witnesses?

6 MR. LAZEROW: No, your Honor.

7 THE COURT: And, Mr. Cohen, does Mr. Wood expect to
8 call any additional witnesses?

9 MR. COHEN: No, your Honor.

10 And I would just ask permission if my character
11 witness can be in the courtroom now.

12 THE COURT: Well, we'll talk about that in just a
13 minute.

14 And, Ms. Kropf, do you expect to call any additional
15 witnesses?

16 MS. KROPF: No, your Honor.

17 THE COURT: And, Mr. McCool, you've already said you
18 do not expect to call witnesses.

19 MR. MCCOOL: That's right.

20 THE COURT: So have I gotten everybody?

21 Ms. Jacques, can I ask you to come up, please.

22 MS. JACQUES: (Complies.)

23 THE COURT: Do you expect to call any additional --
24 do you intend to, wish to, call any additional witnesses?

25 MS. JACQUES: No, your Honor.

1 THE COURT: And so at this point what I'm hearing is
 2 that no Defendant will testify. Is that correct? Is that
 3 correct?
 4 MS. JACQUES: Yes.
 5 THE COURT: Everybody is saying yes to that. So I
 6 would do inquiries of them after we excuse the jury.
 7 And I do want to follow up with you, Ms. Weletz,
 8 about the witness out in California.
 9 MS. WELETZ: He's Philadelphia.
 10 THE COURT: Philadelphia. I'm getting confused.
 11 Philly. Okay. So he could get on a train.
 12 MS. WELETZ: He's not far away. That's not the
 13 issue. The issue is --
 14 THE COURT: So does the Government expect to put on
 15 any rebuttal evidence?
 16 MS. KERKHOFF: No. We may seek to admit an exhibit
 17 that is an exhibit from Ms. Lawson's phone where she's
 18 discussing how to reach her employer should she get arrested.
 19 But that can be addressed later. I don't think we
 20 need to call a witness for that.
 21 THE COURT: And so should I have you all rest in
 22 front of the jury now and -- or everybody but Ms. Weletz
 23 while she thinks about what to do and, you know --
 24 MS. WELETZ: I anticipate -- we still have MJOA
 25 arguments. So I do have --

1 THE COURT: No. I'm absolutely not keeping you from
 2 doing it. It would have to be tomorrow morning, though.
 3 MS. WELETZ: I get it.
 4 MS. KERKHOFF: The Government's concern -- and I
 5 would just note that we're bringing the jury in for that
 6 small portion. But I get it.
 7 THE COURT: I do what I have to do.
 8 I guess --
 9 MS. KERKHOFF: This has been in the works for over a
 10 week now.
 11 THE COURT: I'm going to excuse them and think this
 12 through.
 13 MS. JACQUES: I was going to ask the same question.
 14 Could my witness come in now that she has testified?
 15 THE COURT: I'm going to excuse the jury now and
 16 we'll talk after that.
 17 MS. JACQUES: Okay.
 18 (Whereupon, the following proceedings were had in
 19 open court:)
 20 THE COURT: Ladies and gentlemen, we're going to
 21 take a break now just while I sort things out with the
 22 lawyers. And so I'm going to ask you to come back in
 23 20 minutes. I will see you then.
 24 Thank you.
 25 (Whereupon, the jury exited the courtroom at

1 3:12 p.m. and the following proceedings were had:)
 2 THE COURT: You can have a seat.
 3 Ms. Weletz, did Ms. Armento hear our discussion at
 4 the bench?
 5 MS. WELETZ: Yes.
 6 THE COURT: So if you have a genuine interest in
 7 calling the witness you've discussed on behalf of
 8 Ms. Armento, I need to know that it, and let's make it
 9 happen.
 10 If what you're saying is you and she are making the
 11 decision for whatever reason not to call that witness and
 12 it's Ms. Armento's choice not to, I guess I'd like to be able
 13 to inquire about that.
 14 MS. WELETZ: May I have a moment?
 15 THE COURT: But what you've told me is you'd like at
 16 least overnight to see if you can make it happen.
 17 MS. WELETZ: I would. I would.
 18 THE COURT: Is there any chance of just -- I don't
 19 know -- I think, if we got my friend Norma Thompson and
 20 Ms. Laborge and all them in here, we could probably make that
 21 happen pretty quickly right now.
 22 Is there some way we could accomplish that this
 23 afternoon if we take a break and you make a phone call?
 24 MS. WELETZ: I can call his administrative
 25 assistant.

1 THE COURT: Because we're going to be talking
 2 anyway. If he could just give us the 10, 15 minutes sometime
 3 between now and 4:45, we might be able to make it happen.
 4 MS. WELETZ: I can inquire.
 5 THE COURT: Okay. So maybe what I should do is take
 6 a break now and think through what it is I should be asking
 7 this jury to do.
 8 Because if you're going to call a witness tomorrow,
 9 I guess I would have that witness testify right before we go
 10 into closings. So that would be the answer, that I would
 11 have the jury come back.
 12 But we'd have to know if that's really going to
 13 happen. And I guess who cares? 15 minutes is 15 minutes.
 14 MS. WELETZ: Yes, your Honor.
 15 THE COURT: Why don't we just break for ten minutes
 16 while I give this some thought and you go see if you can drum
 17 the guy up.
 18 MS. WELETZ: Yes.
 19 THE COURT: Thank you.
 20 (Thereupon a recess was taken, after which the
 21 following proceedings were had:)
 22 THE COURT: We're going to pick back up. I don't
 23 think we need to re-call the case.
 24 Counsel for the Government are here.
 25 We've got people scurrying out. Everybody for

1 Ms. Macchio is here but Ms. Macchio, I guess, is going to be
 2 brought back in.
 3 Ms. Simmons is here with counsel.
 4 Mr. Wood is here with counsel.
 5 Mr. Harris is here with counsel.
 6 Ms. Lawson is here with counsel.
 7 We're waiting for Ms. Armento and counsel to come on
 8 back in.
 9 (Thereupon, Ms. Armento and
 10 Ms. Weletz entered the courtroom
 11 and the following proceedings
 12 were had:)
 13 THE COURT: Here's Ms. Armento.
 14 This is what I want to do: I want to ask
 15 Mr. Lazerow to come up to the bench and -- it's about the
 16 scheduling concerns he raised earlier.
 17 (Whereupon, the following proceedings were had at
 18 side-bar:)
 19 THE COURT: When do you have to be out of here
 20 Friday to make it to a family member's rehearsal? You can't
 21 miss that.
 22 MR. LAZEROW: If I'm in there at 4:00, I'll be okay.
 23 THE COURT: That's a two- or three-hour process.
 24 MR. LAZEROW: I'm currently on a 12:00 Acela. My
 25 plan was to change it to the 4:00. You said you had a

1 holiday party --
 2 THE COURT: Let's say --
 3 MR. LAZEROW: -- sometime around 3:00? I thought I
 4 might have heard you say that.
 5 THE COURT: I was going to say, what time is the
 6 party starting?
 7 MR. LAZEROW: 5:30.
 8 THE COURT: That's not so good.
 9 MR. LAZEROW: It's going to go for a while.
 10 THE COURT: What family member is it?
 11 MR. LAZEROW: My youngest brother.
 12 THE COURT: So I really can't --
 13 MR. LAZEROW: I don't want to hold these people up.
 14 I can be three or four hours late. It's not a big deal, I
 15 promise you.
 16 THE COURT: If I could -- should we try to get you
 17 out of here so you can catch the 3:00 at least?
 18 MR. LAZEROW: It doesn't matter, really. An hour is
 19 not going to matter.
 20 THE COURT: It does, kind of.
 21 MR. LAZEROW: Huh?
 22 THE COURT: It does matter. I don't want to make
 23 you late.
 24 You know what I could do? So you were trying to
 25 leave on a 12:00 train to get you in at 3:00. Is there an

1 Acela after that? You could always fly, I guess.
 2 MS. KROPF: We're right here. There's a 2:00 and a
 3 3:00. I think there's a 3:00 and a 4:00. Honestly, I plan
 4 to walk over to Union Station from here, leaving at 3:00,
 5 catch the 4:00. In puts me in at 6:46. I'll be at the party
 6 at 7:30. I'm good with that.
 7 THE COURT: Can you just ask Sidney to come out.
 8 THE DEPUTY CLERK: Yes.
 9 THE COURT: If I rearrange all my morning matters,
 10 including the other riot status hearing, to 2:00, I think
 11 that's my answer. I'll just put everything to 2:00. We'll
 12 start at 9:30 and we'll quit at 1:00 and you'll get out of --
 13 whenever you get there.
 14 MR. LAZEROW: I would very much appreciate that.
 15 And I'm okay if that's not the way it works.
 16 (Whereupon, the following proceedings were had in
 17 open court:)
 18 THE COURT: Now everybody's here.
 19 I was discussing with Mr. Lazerow his personal
 20 scheduling issue Friday.
 21 Here's how I want to work it out: Like I said, if
 22 we aren't going to get anything done Friday, I was going to
 23 make you come back here. But it kind of looks like we're
 24 getting to closing arguments on Thursday and we could really
 25 use this time on Friday. So what I'm proposing is I have a

1 bunch of stuff scheduled Friday morning, including the status
 2 hearing with the next trial group.
 3 What I think I'm going to do is just move everything
 4 that I have set on Friday in the morning to 2:00 p.m. and
 5 we'll just start at 9:30, get as far as we get by 1:00 and
 6 then we'll break. What that means is we'll probably be
 7 picking up on Monday anyway. And the case -- if we had to
 8 pick up on Monday, the case would get to the jury on Monday.
 9 I'm not so certain we're getting through everything
 10 on Friday anyway. I'd like to be able to accommodate
 11 important personal matters if that can happen.
 12 So everybody's given up a lot to be here over the
 13 last couple of weeks. Is that okay with everybody?
 14 MR. McCOOL: What are we doing on Friday? What are
 15 we working on? I'm confused.
 16 THE COURT: It was my -- I was thinking out loud the
 17 other day and Mr. Lazerow got concerned. I was saying though
 18 generally we would not be in trial on Fridays, I'm keeping
 19 flexible this Friday because to the extent that we're in
 20 closings or in some part of the case where we could really
 21 make progress, I would like to.
 22 MR. McCOOL: Okay.
 23 THE COURT: So my proposal is -- originally I was
 24 thinking we could take a chunk of time after I call whatever
 25 cases I have on Friday morning. But I have learned that that

1 would mess Mr. Lazerow up in a big way.

2 MR. McCOOL: A real big way.

3 THE COURT: So what I am proposing is that if it
4 makes sense, if something happens so that Friday does not --
5 not being here at all on Friday doesn't make sense,
6 obviously, we can revisit it. But it's looking to me like
7 using Friday morning, 9:30 to 1:00, would be a very useful,
8 productive chunk of time.

9 MR. LAZEROW: Can I ask one question?

10 THE COURT: Yes.

11 MR. LAZEROW: If we were to end the case, everyone's
12 closed, rebuttal, the whole thing is done at 1:00, would your
13 plan be to get the case to the jury after 1:00? If that's
14 the case, I definitely won't want to cut that out. I'm sure
15 this jury wants to get the case.

16 THE COURT: I'm not sure what you're saying.

17 MR. LAZEROW: What I'm saying is --

18 THE COURT: If we're really done by 1:00 as in I've
19 already instructed them, the whole thing is tied up in a bow,
20 yes. I would have them deliberate.

21 MR. LAZEROW: Then I'm going to stay.

22 THE COURT: It's not like -- honestly, you're not
23 going to be missing much.

24 MS. KROPF: If they have a verdict before 4:45, I'd
25 like to be here. It's that simple. I mean, I don't want to

1 say. You can't --

2 THE COURT: That's just not going to happen.

3 MR. LAZEROW: If you order me.

4 THE COURT: But that said, there's just no way we're
5 finishing by 1:00. Plus, we're going to have to talk about
6 exhibits --

7 MR. LAZEROW: Okay.

8 THE COURT: -- and all that. And so I doubt
9 seriously this case is getting to the jury by 1:00 Friday.
10 It would be great if it did. If it did and you wanted to
11 stay here, that would be up to you. But what I'm saying is,
12 I will reschedule my morning stuff on Friday to 2:00 p.m. so
13 that I can --

14 MR. LAZEROW: Thank you, your Honor.

15 THE COURT: -- get through at least what we can get
16 through.

17 So that's why I asked about having everything,
18 including our friends from the next trial, the status
19 hearing -- everything is being moved to 2:00.

20 And maybe show me the calendar so I can organize it
21 a little.

22 THE LAW CLERK: Okay.

23 THE COURT: Where are we, Ms. Weletz, on your
24 witness?

25 MS. WELETZ: He is in touch with technology right

1 now, is my understanding.

2 THE COURT: And so I spoke to Ms. Rice, who at this
3 point I'm going to have to give up my firstborn, which she
4 wouldn't want.

5 So do you think that your witness is going to have
6 some flexibility between now and 4:45 just so she can make it
7 work?

8 MS. WELETZ: Yes.

9 THE COURT: So she's going to call Ms. Hodge and
10 tell us whether it's going to happen or not.

11 MS. WELETZ: That would be great.

12 THE COURT: Now I've got the jury sitting back
13 there. And I just need to ask them to go get coffee
14 interminably for the next --

15 MS. WELETZ: And to enjoy the coffee.

16 Obviously, for the record, your Honor, I have a full
17 schedule on Friday. If this takes precedence, I will be
18 here; but I may be giving your Honor a list of judges I will
19 not be appearing before Friday morning.

20 MS. JACQUES: The same thing with me.

21 THE COURT: I know. It's a bad thing to do. But
22 it's important. Personal stuff like Mr. Lazerow has -- he's
23 got to go. He's going to be in so much trouble if he doesn't
24 go. I know what it's like to be in trial.

25 In terms of other judges, I'll do what you need me

1 to do. I will tell them it's all my fault.

2 So I'm going to ask Ms. Hodge to tell the jurors to
3 remain on standby --

4 THE DEPUTY CLERK: Okay.

5 THE COURT: -- meaning if they want to get coffee,
6 fine, of course, but they have to come back to the jury room.
7 And is it okay if I say --

8 THE DEPUTY CLERK: The coffee shop is closed.

9 THE COURT: Whatever you suggest.

10 And that we respect their time, but there's one
11 possible witness we'll hear from. We won't specify whose
12 witness.

13 The only way it's going to happen is this afternoon,
14 as I understand it, Ms. Weletz. Is that the only option you
15 have?

16 MS. WELETZ: No. That's not the only option.

17 I believe that he said that he'd do as much as he
18 could to work something out early tomorrow morning. But I
19 don't --

20 THE COURT: How about tomorrow afternoon? Because
21 the jury wouldn't be back tomorrow morning.

22 MS. WELETZ: Tomorrow afternoon is going to be less
23 of a likelihood. So that's why I focused him on right now,
24 on this afternoon.

25 THE COURT: I need to know from you, like he's up in

1 Philly. He could be served. I mean, the police departments
2 are up there. Marshals are up there. You tell me. If
3 you're electing not to serve him with a subpoena, that's
4 because you've chosen not to. Is that correct?

5 MS. WELETZ: Correct. My client and I have chosen
6 not to serve him with a subpoena.

7 THE COURT: Ms. Armento, you're shaking your head
8 yes.

9 DEFENDANT ARMENTO: Yes, I am. Correct.

10 THE COURT: So you're telling me, Ms. Weletz, that
11 if you can work it out, that would be good. But if not --

12 MS. WELETZ: Then we can't.

13 THE COURT: -- Ms. Armento is satisfied?

14 MS. WELETZ: Yes.

15 THE COURT: Do you mind if I ask her that?

16 MS. WELETZ: No problem.

17 THE COURT: Ms. Armento, can you stand, please. I'm
18 just going to place you under oath. Could you raise your
19 right hand, please.

20 (Whereupon, Defendant Armento was duly sworn.)

21 THE COURT: Ms. Weletz has told me there's some
22 sensitivity to calling this witness because I guess he's your
23 boss. And nevertheless, you have a right to call witnesses.
24 It's a Sixth Amendment right. I will sign a subpoena. I
25 will enforce the subpoena if you want to serve him with a

1 subpoena.

2 I understand you haven't up until now because of
3 your concern he's your boss. But you do have a right to have
4 him here or to get his testimony one way or another if that's
5 what you want to do.

6 Are you saying to me that you're satisfied if we can
7 get him according to his terms; and if we don't -- if we
8 can't meet his terms, that you'll be satisfied without him?

9 DEFENDANT ARMENTO: Yes. I understand, your Honor.
10 And I am comfortable with that. And I appreciate your
11 patience in our trying to get ahold of him today.

12 THE COURT: And so I guess do you understand that
13 you -- if you are to be found guilty in this case and you
14 hadn't called that witness, that you can't later say, "I
15 didn't get a fair trial" or "I didn't have an effective
16 lawyer because that witness didn't come"?

17 DEFENDANT ARMENTO: I do understand.

18 THE COURT: You're willing to forego that witness,
19 assuming we can't work it out with him according to his
20 surgery schedule in the next --

21 DEFENDANT ARMENTO: Yes. I understand.

22 THE COURT: -- day?

23 DEFENDANT ARMENTO: I am comfortable with the way
24 that Ms. Weletz has explained this whole situation. We are
25 in agreement.

1 Again, I appreciate your patience with us trying to
2 work with the technology.

3 THE COURT: I don't want you to talk too much
4 because you don't have to talk. You have a right to remain
5 silent.

6 Thank you so much. You can have a seat.

7 So what are you producing to me, Ms. Weletz? Do you
8 think we're working it out now?

9 MS. WELETZ: I do.

10 THE COURT: If I have this jury stick around for
11 nothing and then I make them come tomorrow morning and then
12 stick around while we talk about jury instructions, that's
13 not that nice to the jury.

14 MS. WELETZ: I agree. I mean, I would give it ten
15 more minutes.

16 THE COURT: We've got until 4:45.

17 MS. WELETZ: Right.

18 THE COURT: We're using up our productive time on
19 this.

20 MS. WELETZ: We can do other things.

21 THE COURT: We can. So we can use our time now.
22 We've got the rest of the afternoon. But my preference would
23 be if it's going to be tomorrow that it be right before we
24 have the jury come back.

25 MS. WELETZ: Your Honor, what time do you think

1 that -- right now, what time do you think that would be?
2 Afternoon, 2:00?

3 THE COURT: Probably. I would have them come back
4 at 2:00 for that. So let's wait and see what Ms. Rice tells
5 us.

6 MS. WELETZ: Thank you.

7 THE COURT: We'll see where we are.

8 I think Ms. Hodge is going to ask them to remain on
9 standby.

10 Here's how I want to -- first of all, motions for
11 judgment of acquittal and putting aside my jury instructions
12 for now.

13 Why don't we just go in order.

14 On Ms. Macchio's behalf, is Ms. Macchio moving for
15 judgments of acquittal as to all counts?

16 MS. HEINE: Yes, your Honor.

17 And I'm giving the Government and the Court a copy
18 of Ms. Macchio and Mr. Harris's motion for judgments of
19 acquittal. We'll file it.

20 THE COURT: Is that something you wanted me to
21 actually read before we have our discussion? Because it's
22 not so easy to have a discussion about a document that is,
23 whatever, 16 pages long that I've never read.

24 MS. HEINE: We're fine now and ready to go forward
25 whenever the Court would like.

1 THE COURT: So should we wait until tomorrow to
 2 discuss your motion? Because I can't intelligently discuss a
 3 pleading that I've never read. So I can just hear your
 4 argument and not --
 5 MS. HEINE: We're happy to argue it.
 6 THE COURT: Why do you make them write all this
 7 stuff? Can't we just have a conversation?
 8 MR. LAZEROW: If we didn't have a record, we would
 9 have a problem.
 10 THE COURT: I can't rule on something that I haven't
 11 read. And so had I gotten it, say, last night --
 12 MS. HEINE: That's fine, your Honor.
 13 THE COURT: -- or 48 hours ago --
 14 MR. LAZEROW: We thought as a formal matter the
 15 Government hadn't rested yet, your Honor.
 16 THE COURT: I know.
 17 MR. LAZEROW: So that's our issue. We're filing it
 18 right this second, I believe.
 19 THE COURT: I'm not saying -- I just can't respond
 20 to it.
 21 MR. LAZEROW: We understand.
 22 THE COURT: Nor can the Government.
 23 Moving to Ms. Armento, that's next. Right?
 24 MS. WELETZ: Yes, your Honor.
 25 THE COURT: Ms. Weletz, is Ms. Armento moving for

1 judgments of acquittal on all counts?
 2 MS. WELETZ: Yes, your Honor. And I have oral --
 3 THE COURT: How about just talk to me about -- say
 4 that again.
 5 MS. WELETZ: I have oral representations. I don't
 6 have something in writing to give to your Honor.
 7 THE COURT: I'm not asking for anything in writing.
 8 I'm happy to hear you orally.
 9 And so we're going to reserve the inciting
 10 discussion for after the other counts.
 11 So just talk to me about Ms. Armento and the
 12 participating, engaging count and the conspiracy count --
 13 MS. WELETZ: Yes, your Honor.
 14 THE COURT: -- and the destruction of property
 15 count.
 16 MS. WELETZ: Of course, most of my argument was on
 17 inciting; but I will flip to engaging.
 18 Regarding Count 2, engaging in riot, obviously, your
 19 Honor, for them to prove this misdemeanor offense, I do
 20 believe that obviously there was an assemblage of five or
 21 more people, including the Defendant at some points.
 22 But, of course, I believe that they haven't proven
 23 the third prong of engaging in a riot, which requires that
 24 that person willfully engaged in the riot.
 25 I don't think that there's any evidence right now,

1 taking all of the evidence in the light most favorable to the
 2 Government, that there was any willful engagement on the part
 3 of Ms. Armento.
 4 We obviously have no evidence given right now that
 5 shows that Ms. Armento was definitively in Logan Circle,
 6 despite the fact that the Government has gone to a lot of
 7 expense to create these foam boards.
 8 There is no real identification in this case other
 9 than I believe, your Honor, in the Crowne Plaza video.
 10 The testimony --
 11 THE COURT: Hold on one second.
 12 Can I ask you to pull the white boards, the ones
 13 that purport to show Ms. Armento.
 14 MS. KERKHOFF: Can we put it with the other boards,
 15 subject to the admission of exhibits we weren't permitted to
 16 do --
 17 THE COURT: Yes.
 18 MS. KERKHOFF: -- the processing boards? Thank you.
 19 Just Ms. Armento?
 20 THE COURT: Yes.
 21 MS. KERKHOFF: I'll put it up.
 22 THE COURT: And this is Exhibit 314. And so Exhibit
 23 314 is the board that purports to show Ms. Armento.
 24 And I know that the Government's position is that,
 25 taken together, all of the evidence shows that she was

1 present, I guess, shortly after Logan Circle. No one has put
 2 her I think in Logan Circle, but where she is put is right on
 3 13th Street before the gas station.
 4 The next location is at 13th and M.
 5 The next location is at 12th and I Street, I guess.
 6 And then the next location is at the Crowne Plaza.
 7 And the next is at the location of the kettle.
 8 MS. WELETZ: So believing, obviously, that each of
 9 those individuals is Ms. Armento, which your Honor has to
 10 assume for motions of judgments of acquittal, I don't
 11 actually believe that evidence is in the trial right now. I
 12 don't think that Detective Pemberton actually -- his
 13 testimony actually establishes that there is someone wearing
 14 a backpack on 13th Street Northwest before the BP gas
 15 station. If you watch the actual video associated with
 16 Exhibit 129, this person is on the far right side of the
 17 street, farthest away from the BP gas station, walking down.
 18 The only thing that we see is this part of the
 19 person in a partial side view. They then give you this No. 2
 20 area around 13th and M Street. Again, we only see the back
 21 of the individual.
 22 Detective Pemberton's testimony was that he saw
 23 other purple backpacks, but that looking at the whole
 24 description of the person, including the shoes and the
 25 hoodie, that this is the combination that he saw.

1 But again, I don't think that's enough to make that
2 Ms. Armento.

3 I think that obviously the Crowne Plaza video is the
4 best representation of someone that is Ms. Armento.

5 During my questioning of Detective Pemberton, it is
6 very clear from that video that Ms. Armento is not amongst
7 the group in the street. She is on the sidewalk. She is
8 moving quite quickly away from the group at that point in
9 time.

10 She passes the Crowne Plaza before any type of
11 projectile is launched, before the Starbucks window is
12 broken. Therefore, she was already past that point before
13 she saw any type of destruction.

14 The Government's entire case is that this person
15 allegedly showed up and she opted not to disengage.

16 Of course, I don't believe that that's necessary
17 under the jury instructions.

18 You obviously can't -- her being there, her mere
19 presence, is not enough. There has to be some sort of
20 willful engagement. Presence is not willful engagement.

21 You can't even argue that she saw any of the things
22 that the Government says occurred based on these photos where
23 they allegedly place her specifically. I would refer you to
24 the Crowne Plaza video and my cross of Detective Pemberton.

25 THE COURT: I just have a question for you.

1 Can you address the footage that has her at 12th and
2 L and effectively, assuming I reject your ID argument,
3 actively in the group charging? In other words, moving
4 forward with the group that's charged after the countdown,
5 not being pushed, progressing forward with group, charging?

6 MS. WELETZ: A couple things.

7 That's obviously the -- the identification is in 5,
8 which I believe is a very poor-quality photo.

9 Obviously, at some point, she's photographed at
10 12th and L. Right?

11 But this photo of her does not look at all like any
12 of the other photos. The shirt is completely different.

13 And that's the only photo that she is allegedly in
14 this group. There's no indication that she's on the
15 left-hand side of the street as opposed to the right-hand
16 side of the street. We saw in multiple videos, there are
17 individuals on the left-hand side of the street that have
18 nothing to do with this charge.

19 The other thing that I would point your Honor to
20 is -- I'm going to call him the man in the blue plaid shirt.
21 There was obviously pushing going on.

22 If your Honor believes that that person near the
23 line of police is Ms. Armento -- again, I don't believe the
24 evidence shows that -- there are a lot of people that are
25 caught up in this pushing. There were a lot of bodies.

1 There were a lot of police officers pushing people. We saw
2 from Ms. Lawson's exhibit there were -- the police were
3 actually behind the kettle with batons telling people to move
4 forward towards the police line.

5 So I think that that's actually evidence that those
6 people were being pushed, not only by other bodies, but also
7 by the police. They were being forced towards the police
8 line.

9 And the man in the blue and the white plaid shirt
10 that we saw several times during this trial, he was let go
11 because they decided that he wasn't part of the charge
12 although he was in front of the charge when he fell. He was
13 in one of the first two lines.

14 So there were people that were caught up in it.

15 And I don't think that there is enough evidence,
16 assuming everything in the light most favorable to the
17 Government, that there is any willful engagement.

18 She ended up at 12th and L somehow. She was herded
19 there by police. She was forced into an area. If she did
20 get near the police line, it is because she was shoved. And
21 she was herded by the police and other bodies because there
22 were a lot of people in that area.

23 And again, it can't -- she can't participate
24 inadvertently or accidentally. I think that at most, the
25 testimony shows that that's how she came to be where she was

1 and get that photo, Exhibit 507, the arrest photo, taken.

2 THE COURT: Would you please address the destruction
3 of the property and the conspiracy counts.

4 MS. WELETZ: Well, I don't think the Government has
5 proved that she intentionally joined in any type of
6 agreement.

7 Obviously, there was no information taken off of her
8 phone because she had an iPhone that was locked. There's no
9 evidence that she took part in any type of planning meeting.
10 There's no evidence that she talked to anybody, any groups,
11 any organizers, anybody that day.

12 The Government doesn't put her at Logan Circle, so
13 there's no evidence that she knew to be at Logan Circle
14 specifically at a certain time.

15 So with a lack of communication, again, she just --
16 it's her mere presence. You have her mere presence. You
17 have her arrest photograph being taken at 12th and L. And
18 that mere presence is not enough. There's nothing to show
19 that she joined in any type of agreement, that she knew that
20 there would be any type of violence. There's no specific
21 evidence that she saw any of the violence and said: Okay.
22 I'm not going to leave.

23 By her mere presence, she -- first of all, I don't
24 believe under the law she has to leave when she sees a window
25 being broken. I don't believe that if you see someone being

1 robbed you have to run the other way. Right? I believe that
2 mere presence to something criminal does not make you a
3 criminal.

4 But there absolutely is no evidence in the trial
5 right now that she somehow intentionally joined an agreement,
6 that she knew there was going to be a riot, a destruction of
7 property or anything like that.

8 In fact, her clothing itself shows that there's --
9 there was no preplanning for this appearance. She's wearing
10 things -- she's not dressed entirely in black. She's wearing
11 things that actually show she probably -- if that is her, she
12 probably didn't plan well. She's wearing distinctive purple
13 backpack. She's wearing hikers that are very light in color.
14 It's not like she's wearing head-to-toe black with, you know,
15 a gas mask and a black bandanna over her face.

16 She is wearing identifiable objects, which I think
17 goes to the fact that there wasn't any type of preplanning or
18 knowledge.

19 Maybe she came to march. Maybe she came to protest.
20 But there's no conspiracy regarding Ms. Armento that has been
21 proved.

22 And I believe the Government has conceded that she
23 wasn't involved in any type of destruction of property.

24 There is no evidence that she ever had a weapon on her that
25 day, that she ever even saw any specific destruction of

1 property or that she in any way participated in it.

2 They have her near the Crowne Plaza and they have
3 her near the BP in these videos. Again, the BP video has her
4 on the far right-hand side of the street, if you believe that
5 that's her, away from the BP station. So there are literally
6 10 to 12 people in between her. There's a mass of
7 humanity -- she's on the right. And there's a mass of
8 humanity that's closer to the BP and the Crowne Plaza she
9 passes before anything occurs.

10 Yes. I think that is all, other than obviously my
11 argument on inciting.

12 THE COURT: And the destruction of property counts
13 are Bank of America --

14 MS. KERKHOFF: The --

15 THE COURT: -- and, yes, the Starbucks?

16 MS. KERKHOFF: Yes. The Starbucks, the Bank of
17 America, the Atrium Cafe, the McDonald's and the second
18 Starbucks located at the Crowne Plaza.

19 THE COURT: Okay. Those are in order of --

20 MS. KERKHOFF: Count 4 is the Starbucks.

21 THE COURT: So the Starbucks is first.

22 MS. KERKHOFF: The Starbucks on I Street. Yes.

23 THE COURT: And then the Bank of America and then
24 Atrium Cafe is next?

25 MS. KERKHOFF: Yes.

1 THE COURT: McDonald's.

2 Crowne Plaza happens chronologically after?

3 MS. KERKHOFF: Yes.

4 THE COURT: Okay. Thank you.

5 I think it would help me to hear Ms. Kerkhoff's
6 arguments. Let's just focus on Ms. Armento --

7 MS. KERKHOFF: Yes.

8 THE COURT: -- not to make her feel bad.

9 So assume that her face is uncovered at a certain
10 point. A juror can look at her and look at the board and
11 look at the videos and see that she was present. The
12 uncovered face is at the Crowne Plaza.

13 And let's just say for purposes of argument that
14 identity is not the issue I'm asking about.

15 Assume we put her on the street at -- on 13th Street
16 before the BP. Let's just say -- what do I know about that?
17 I know what she's wearing. She's wearing mostly black, face
18 covered, most of the time or some of the time, purple
19 backpack.

20 And to the extent she's out there on 13th Street
21 passing the BP, I think the footage that you showed has her
22 marching. This is before the crowd has gotten really loud.
23 And you can't see in the video that she's aware of or seeing
24 what's happening in the BP.

25 So at least at that point, she's pure of mind.

1 Right? Let's say she's out there in her black clothing, but,
2 you know, nothing's gotten violent yet.

3 The next one has her at 13th and M, just when the
4 yellow newspaper receptacles are being put in the street
5 right in front of her. There's cheering. So she's in a
6 position, I guess, to see yellow things getting pulled out
7 into the street.

8 MS. KERKHOFF: Correct.

9 THE COURT: Let's just say right there. This is
10 before a riot is declared, I believe, by the commander.

11 MS. KERKHOFF: Correct.

12 THE COURT: Is it your position that things are at a
13 riot yet in that moment?

14 MS. KERKHOFF: In that moment?

15 THE COURT: Yes.

16 MS. KERKHOFF: I do believe at that moment we are in
17 a land of riot. I don't think that's controlling for
18 purposes of this discussion.

19 What I would say is that Ms. Armento at 13th and M,
20 we also have -- that we've got a trash can on fire. And I
21 think the Court has video that begins to show how loud things
22 are.

23 The side of the street Ms. Armento is on as it came
24 down is the same side of the street as the Au Bon Pain. The
25 number of incidents, as demonstrated in Government's Exhibit

1 310, begin to escalate in terms of --
 2 THE COURT: Excuse me for one second.
 3 Let's just stop this discussion.
 4 Ms. Armento's witness is connected up by the
 5 miraculous Ms. Rice here. I think what I'd like to do is
 6 test the line.
 7 We'll just take a five-minute break. Please don't
 8 go far away. We're going to tell the jury five minutes.
 9 I would suggest, Ms. Weletz, that you can give him a
 10 call and make sure he knows he's about to testify and not to
 11 go anywhere.
 12 MS. WELETZ: Yes.
 13 THE COURT: I'm taking a break. Thank you.
 14 (Thereupon a recess was taken, after which the
 15 following proceedings were had:)
 16 THE COURT: Good afternoon.
 17 THE COURTROOM DEPUTY: Re-calling United States
 18 versus Jennifer Armento, 2017 CF2 1193, et al.
 19 THE COURT: Good afternoon.
 20 All counsel are here.
 21 All Defendants are here.
 22 Is our witness available to us?
 23 Ms. Weletz, are you ready to go?
 24 MS. WELETZ: Yes, your Honor.
 25 I wanted to know whether I can inquire why we're

1 doing the phone call this way as opposed to giving an
 2 instruction to the jury.
 3 THE COURT: Does anybody have an objection to that?
 4 He's going to talk about his --
 5 MS. KERKHOFF: I'd prefer not a lengthy discussion
 6 about a schedule other than he was unable to be here this
 7 afternoon for --
 8 THE COURT: Here's the only thing I don't want,
 9 Ms. Weletz. People want to talk at length about themselves.
 10 So could you just lead him on that.
 11 MS. WELETZ: I will try. I will do my best. I will
 12 cut him off.
 13 THE COURT: Ask him if the reason we're doing this
 14 by phone is because he has a very busy surgery schedule and
 15 it's better for his patients to appear --
 16 MS. WELETZ: Yes.
 17 THE COURT: -- telephonically.
 18 MS. WELETZ: No problem.
 19 THE COURT: And so can we bring in the jury.
 20 Yes. He can now listen. And let's just get him
 21 visible and audible.
 22 (Witness appearing on courtroom screen.)
 23 THE COURT: Good afternoon, sir. Can you hear me?
 24 Sir, can you hear?
 25 THE WITNESS: Yes.

1 THE COURT: Hi. I'm Judge Leibovitz. Give us one
 2 second. We're bringing the jury in.
 3 (Whereupon, the jury entered the courtroom at 4:17
 4 p.m. and the following proceedings were had:)
 5 THE COURT: Good afternoon, ladies and gentlemen.
 6 I appreciate your patience. We're going to have a
 7 witness testify remotely from another location. We can
 8 consider this a Superior Court miracle. It took us a few
 9 minutes to work out the details, so I appreciate your waiting
 10 and being patient.
 11 Ms. Weletz, this is a witness you're calling on
 12 behalf of Ms. Armento?
 13 MS. WELETZ: Yes, your Honor.
 14 THE COURT: And who is your witness?
 15 MS. WELETZ: This is Dr. Robert Sataloff.
 16 THE COURT: Sir, you'll need to be sworn. And can
 17 you raise your right hand, please.
 18 ROBERT SATALOFF, M.D., DEFENSE WITNESS, SWORN
 19 THE COURT: And you may proceed, Ms. Weletz.
 20 I guess, sir, if you're not hearing, you've got to
 21 let us know. Okay? Thank you very much.
 22 MS. WELETZ: Thank you.
 23 THE WITNESS: Thank you, your Honor.
 24 DIRECT EXAMINATION
 25

1 BY MS. WELETZ:
 2 Q. Good afternoon, Dr. Sataloff. Can you please say
 3 and spell your name for the court reporter.
 4 A. Robert, R-o-b-e-r-t, Sataloff, S-a-t-a-l-o-f-f.
 5 Q. Thank you, Dr. Sataloff.
 6 Just so the jury isn't confused, the reason we're
 7 doing this via a conference call, videoconference call, is
 8 because of your very busy surgery and work schedule.
 9 Correct?
 10 A. Correct.
 11 Q. Thank you for being here.
 12 Dr. Sataloff, without stating your actual address,
 13 where do you live?
 14 A. Outside Philadelphia. I work in Philadelphia.
 15 Q. And for work, what do you do, Dr. Sataloff?
 16 A. I am a professor and chairman of the otolaryngology
 17 department and senior associate dean at Drexel University
 18 College of Medicine and also adjunct professor at Jefferson
 19 and Temple Schools of Medicine.
 20 I also chair two nonprofits and have numerous other
 21 activities. I conduct a university choir and orchestra and I
 22 do hold elective office. I have been a Republican committee
 23 man since 2001.
 24 Q. Thank you, Dr. Sataloff.
 25 And how do you know -- well, first of all, do you

1 know Ms. Jennifer Armento?
 2 A. Yes.
 3 Q. And how do you know Jennifer Armento?
 4 A. Jennifer has been a full-time employee of mine for
 5 about nine years.
 6 Q. And as a full-time employee, what does she do for
 7 you, Dr. Sataloff?
 8 A. She is an out-of-office administrator,
 9 administrative assistant. She manages our home. She
 10 subcontracts employees. She runs errands. She selects
 11 people to do work for us and supervises the work.
 12 For a while, she took care of my children, who are
 13 now 25. She also took care of our animals when we were out
 14 of town. She works for us five days a week and occasionally
 15 on evenings and weekends. So we have extensive contact with
 16 her.
 17 Q. And is she still employed by you?
 18 A. Yes, she is.
 19 Q. And, Dr. Sataloff, where does she physically work?
 20 A. Primarily in our home, which is in Palakinwick in an
 21 area called the Main Line outside Philadelphia.
 22 Q. Thank you.
 23 And, Dr. Sataloff, I don't want to keep you, so I'm
 24 going to keep my questions short.
 25 What I want to know from you is, what is your

1 opinion of her regarding her personal traits of peacefulness
 2 and nonviolence?
 3 A. She is exceptionally peaceful and nonviolent. As an
 4 example, early on, during her employ --
 5 MR. QURESHI: Objection, your Honor.
 6 THE COURT: Sir, sir.
 7 THE WITNESS: -- we ended up having to go out and
 8 buy --
 9 BY MS. WELETZ:
 10 Q. Hold on, Dr. Sataloff.
 11 THE COURT: There's been an objection to the rest of
 12 your answer. I'm sustaining that.
 13 So Ms. Weletz has another question for you.
 14 BY MS. WELETZ:
 15 Q. And now -- you said that you've known her for nine
 16 years and she works in your home.
 17 Are you aware of her reputation in the community for
 18 peacefulness and nonviolence?
 19 MR. QURESHI: Objection, your Honor.
 20 THE WITNESS: Within the community with which she
 21 interacts on our behalf --
 22 THE COURT: Sir, sir --
 23 BY MS. WELETZ:
 24 Q. Hold on one second, Dr. Sataloff.
 25 THE COURT: I'm overruling the objection to that

1 last question.
 2 But you do need to lay a foundation. So you have
 3 done that halfway.
 4 BY MS. WELETZ:
 5 Q. When you say "the community in which she works," can
 6 you describe the community for which she works in her
 7 capacity as an administrative assistant for you?
 8 A. She interacts with almost everybody with whom I do
 9 business, ranging from my office staff to contractors to dry
 10 cleaners to tailors to caterers through construction workers.
 11 Many of those have been the same people throughout her entire
 12 tenure. They know her well. And she represents me and she
 13 represents my wife, who is also a surgery department chair
 14 and a surgery professor at the University of Pennsylvania.
 15 So she has keys to our home and represents us among
 16 our friends and among the various people who do work for us.
 17 Q. And speaking of those people that you've cited, your
 18 friends and all of those people that you do work with and
 19 your connections that Ms. Armento deals with a number of
 20 times throughout her tenure with you, what is her reputation
 21 in that group, that community, for peacefulness and
 22 nonviolence?
 23 A. She is known to be peaceful, nonviolent, pleasant
 24 and cooperative.
 25 MS. WELETZ: Thank you, Dr. Sataloff. I have no

1 further questions. But I will turn you over to the
 2 Government if they have any questions for you.
 3 THE COURT: Does the defense have any questions?
 4 MR. LAZEROW: No questions.
 5 MR. COHEN: No, your Honor.
 6 MS. JACQUES: No, your Honor.
 7 THE COURT: Mr. Qureshi, you may cross-examine.
 8 MR. QURESHI: Thank you, your Honor.
 9 CROSS-EXAMINATION
 10 BY MR. QURESHI:
 11 Q. Good afternoon, Dr. Sataloff.
 12 A. Good afternoon, Mr. Qureshi.
 13 Q. Even though I'm from Philadelphia, we've never met
 14 before. Correct?
 15 A. As far as I know.
 16 Q. Dr. Sataloff, you said you've known Ms. Armento for
 17 nine years. Is that correct?
 18 A. Approximately.
 19 Q. And it's mostly household administrative activities
 20 that she does for you and your wife. Is that right?
 21 A. Correct.
 22 Q. And you talked a moment ago about how she has a
 23 reputation within the community of being nonviolent. Is that
 24 right?
 25 A. That is correct.

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1 Q. And one example that you used was -- you talked
 2 about your dry cleaner. Is that right?
 3 A. Well, that's one of many dozens of people with whom
 4 she interacts. Yes.
 5 Q. So do you talk to your dry cleaner about how -- her
 6 being nonviolent?
 7 A. I have gotten feedback from a great many of the
 8 people with whom she interacts, including the dry cleaner,
 9 who appreciated the gentleness and tact with which she
 10 interacted with him when he had done some things that made
 11 her employers unhappy. And he noted her demeanor, her
 12 collegiality, her nonviolence and politely the fact that he
 13 was much happier dealing with her than he was dealing with
 14 us.
 15 Q. Understood.
 16 MR. QURESHI: I have nothing further. Go Eagles.
 17 Thank you.
 18 THE WITNESS: Go Eagles.
 19 THE COURT: Any redirect, Ms. Weletz?
 20 MS. WELETZ: None, your Honor.
 21 THE COURT: Thank you, Dr. Sataloff, very much for
 22 your presence.
 23 And we're now going to turn you off, so to speak.
 24 Thank you.
 25 THE WITNESS: Thank you, your Honor.

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1 THE COURT: You may be excused.
 2 (Witness excused.)
 3 THE COURT: Thank you very much.
 4 At this point, let me ask, on behalf of Ms. Macchio,
 5 does Ms. Macchio have any additional witnesses?
 6 MS. HEINE: No, your Honor. Other than moving into
 7 evidence some exhibits, Ms. Macchio rests her case.
 8 THE COURT: Thank you.
 9 Ms. Weletz, does Ms. Armento have any additional
 10 witnesses?
 11 MS. WELETZ: No, your Honor. Again, other than the
 12 few exhibits, we would rest our case.
 13 THE COURT: Ms. Jacques, does Ms. Simmons have any
 14 additional witnesses?
 15 MS. JACQUES: No, your Honor. No additional
 16 witnesses. We would rest our case.
 17 THE COURT: Mr. Cohen, does Mr. Wood have any
 18 additional witnesses?
 19 MR. COHEN: No additional witnesses besides the
 20 submission of evidence. Mr. Wood rests.
 21 THE COURT: Thank you.
 22 Mr. McCool, does Mr. Harris have any additional
 23 witnesses?
 24 MR. MCCOOL: No, your Honor. Subject to admission
 25 of certain exhibits, we rest.

1 Thank you.
 2 THE COURT: Ms. Kropf, does Ms. Lawson have any
 3 additional witnesses?
 4 MS. KROPF: No, your Honor. We seek to move a few
 5 exhibits in. But otherwise, we rest.
 6 THE COURT: Ms. Kerkhoff, will the Government be
 7 presenting a rebuttal case?
 8 MS. KERKHOFF: No witnesses, your Honor. The
 9 Government is still waiting to move in some exhibits from its
 10 direct case and we would be seeking the admission of one
 11 additional exhibit in rebuttal.
 12 THE COURT: All right. And is that something we
 13 should talk about and deal with --
 14 MS. KERKHOFF: We could just do it with the
 15 exhibits.
 16 THE COURT: Ladies and gentlemen, you've heard all
 17 the evidence that you're going to hear in the case.
 18 We now have a good deal of talking to do before we
 19 can get to closing arguments. So here's what I'm going to
 20 ask you to do: I'm going to excuse you for tomorrow morning.
 21 But what I'm going to ask you to do is call in to Ms. Hodge
 22 at 11:00 a.m. tomorrow and she will let you know whether
 23 we're going to have you come in tomorrow at all.
 24 I don't want to bring you in just to make you sit
 25 around. I don't want to bring you in to send you home. And

225

1 so if we're not ready to start closing arguments, I won't
 2 have you come. But if we are ready, I may ask you to come at
 3 2:00. I may ask you to come at 3:00. I just want to be sure
 4 I don't waste your time and that I don't rush decisions that
 5 I need to make before we get going.
 6 So I'm going to excuse you now for the night.
 7 Please don't make any decisions about this case. Please
 8 don't talk to anybody about it, including each other. Please
 9 don't read or look at or see anything about this case at all.
 10 And please call in tomorrow at 11:00, according to
 11 Ms. Hodge's instructions, and we will let you know whether
 12 you're coming in tomorrow afternoon or on Thursday morning.
 13 Thank you so much. Have a very good evening.
 14 (Whereupon, the jury exited the courtroom at 4:29
 15 p.m. and the following proceedings were had:)
 16 THE COURT: So if you'll all have a seat.
 17 I need to ask just one question. I want to orient
 18 you to the instructions and make a report of what I've
 19 proposed because we're getting into the thick of it.
 20 Ms. Kerkhoff, for purposes of instructions, there's
 21 a number of overt acts listed. One of the things I want to
 22 know is whether you're going forward on all of them. At
 23 least some of them relate to events that have been resolved
 24 in this case by plea or dismissal. So I just want to get, I
 25 guess, a redone list of overt acts from you at some point.

1 I just want to remember to ask you to think about
 2 that.
 3 MS. KERKHOFF: Yes, your Honor.
 4 THE COURT: The other thing I wanted to do before I
 5 forget to do it is Detective Pemberton's testimony was the
 6 subject of a good deal of discussion regarding the extent to
 7 which he could talk about things in videotapes, the extent to
 8 which he could testify about identifications, which I
 9 ultimately did not allow him to do.

10 But I did want to make sure to articulate my
 11 conclusion after hearing his testimony about his testimony
 12 with respect to the videotapes, and that is the description
 13 of observed items and other observations on the videotapes
 14 was something that was necessary as an aid to the jury.

15 In other words, there are many, many, many, many
 16 videotapes in evidence. And because everybody in them is
 17 dressed very, very similarly, it is impossible to track the
 18 actions of any one person without studying them at great
 19 length.

20 And in all of the Government's exhibits which were
 21 the slow-motion and highlighted exhibits showing each
 22 Defendant, before the highlights came up, it was almost
 23 impossible to find the person. I mean, it was sort of a
 24 "Where is Waldo?" exercise in terms of just identifying.

25 And the physical characteristics that were

1 consistent from video to video to video, items like backpacks
 2 and shoelaces and shoes and even hair, even seen -- the
 3 Defendants or the persons that the Government says are the
 4 Defendants at times when they were quite distinctive on
 5 videotape when caught sort of relatively, you know,
 6 identifiable, Detective Pemberton's testimony was essential
 7 to any juror's ability to see those people, focus on them and
 8 follow them.

9 And so while I did not allow him to do
 10 identifications and think he got through his testimony
 11 without that, I do conclude that it was essential that he
 12 track these items on tape as an aid to the jury, because they
 13 would never be able in deliberations to do so themselves.

14 So I just wanted to make sure that was done.

15 I do need to address Ms. Macchio's motion to sever,
 16 which was made after the playing, I believe, of the Wood --
 17 of 111, the Wood livestream. And so I need to do that. I
 18 need to address the motions for judgment of acquittal.

19 The reason I told the jury that I wasn't sure if
 20 they'd be back at all tomorrow is that I obviously need to
 21 decide for each Defendant when it became, if it ever became,
 22 foreseeable that certain things would happen, when it is that
 23 a conspiracy started such that as to each person when they
 24 joined it, if they did, and when they would have been
 25 sufficiently aware of what's going on around them to have

1 been able to aid and abet or be liable under a *Pinkerton*
 2 theory.

3 So I think it's going to take a little bit of talk.
 4 I will read -- I will now have time to read
 5 Ms. Macchio's written motion for judgment of acquittal.
 6 Anybody else?

7 MR. LAZEROW: And Mr. Harris.

8 THE COURT: Sorry.

9 MR. McCOOL: He's named in that as well. I signed
 10 it.

11 THE COURT: Good. I get two from one.
 12 Is anybody else planning to file something in
 13 writing? I'm not asking you to; I'm just asking if you are.

14 MS. KROPF: Sara Kropf.

15 We do have a short submission -- I think it's less
 16 than eight pages -- that we will be submitting hopefully
 17 right after we leave court.

18 THE COURT: So no later than 5:30 so I know it's
 19 been submitted and I can see it.

20 MS. KROPF: Yes, your Honor.

21 THE COURT: Great.

22 In terms of jury instructions, I just want to be 100
 23 percent certain of what I've been given and what else you
 24 plan to give me.

25 I submitted draft instructions to you all that for

1 the record -- I'm just going to go through what I've proposed
 2 in my most recent draft to you.

3 And I proposed to give: function of the Court;
 4 function of the jury; jury's recollection; considering the
 5 evidence; statements of counsel; multiple Defendants,
 6 multiple counts; redacted documents and tapes; inadmissible
 7 and stricken evidence; the indictment not evidence.

8 I know that somebody's asked me for a number of
 9 witnesses and so I will give that.

10 Burden of proof; reasonable doubt; credibility of
 11 witnesses; police officers' testimony; right of Defendant not
 12 to testify.

13 I still need to do *Boyd* queries. That reminds me.

14 I would take out "Defendant as witness" and keep in
 15 right of Defendant not to testify, take out expert testimony.

16 I will add in character evidence.

17 And the substantive counts I have proposed are
 18 inciting, engaging in a riot, conspiracy to engage in a riot,
 19 destruction of property, co-conspirator liability.

20 For the destruction of property, you all have
 21 corrected me by giving me the 2017 update to the destruction
 22 of property instruction. And I will -- I have not gotten
 23 those yet from the library. I will change the language to
 24 conform to the current instruction.

25 Then there's co-conspirator liability, aiding and

1 abetting.

2 I just want to note that in the Harris-Macchio
3 proposed instructions, though you corrected me on the
4 malicious destruction of property, you then included the
5 *mens rea* from an old version in the aiding and abetting. And
6 I think it just needs to conform. So that would be my plan.

7 Then proof of state of mind; identification;
8 Defendant's theories; possible punishment; selection of
9 foreperson; communications between the Court and jury during
10 the jury's deliberations; the cautionary instruction on
11 publicity; exhibits; furnishing the jury with a copy of the
12 instructions; delivering the verdict; and excusing the
13 alternates.

14 So that's what I've proposed, just so I have said it
15 out loud.

16 What I've received are proposed instructions from
17 the Government.

18 I've received proposed instructions from all
19 Defendants that I got a while ago that I actually
20 incorporated into my most recent draft in part. And then
21 I've got a proposed jury instruction with, I think,
22 strikeouts from my most recent draft. I didn't realize I had
23 that. I was reviewing I guess Attachment A.

24 But what I'm going to rely on, so you know, is your
25 knockout version. If that's not what you want me to rely

1 on -- I'm hoping it is, because that's what I'm going to rely
2 on, because I can't compare texts at this point without going
3 crazy.

4 MS. HEINE: Yes. Please use the red line. That's
5 why we gave it to you.

6 THE COURT: In terms of defense theory instructions,
7 I've got one from Ms. Lawson, Ms. Macchio and Mr. Wood.

8 I don't think I have any defense theory instructions
9 from anybody else yet. Is that correct?

10 MS. JACQUES: That's right.

11 MR. McCOOL: I can hand a copy up to the Court if
12 you want.

13 THE COURT: I'll take a courtesy copy as long as you
14 file it.

15 And for Ms. Armento and Ms. Simmons, you're going to
16 get those to me?

17 MS. WELETZ: I will file it this evening, your
18 Honor.

19 MS. JACQUES: I will as well.

20 THE COURT: Just early enough so I can actually see
21 it.

22 MS. JACQUES: Yes.

23 THE COURT: So we'll talk about those tomorrow.

24 Has anybody else filed anything at this point
25 regarding other jury instructions?

1 No. So I have that worked out.

2 And I know that a First Amendment instruction has
3 been proposed. I'm actually tinkering with one of my own.
4 Maybe I'll email it to you tonight; maybe I won't. I just
5 need to get to a place where I think I'm right about it.

6 And what I'd like to do -- what I'll do in the
7 morning is first *Boyd* inquiries of each of your clients. So
8 please just prepare them for that. And second, I'll do the
9 motion to sever, just to get that out of the way. And,
10 third, the MJOAs.

11 In doing the MJOAs, I'm asking the Government's
12 permission to let me take to chambers the boards that are the
13 same boards as the ones that I was looking at for
14 Ms. Armento.

15 MS. KERKHOFF: Yes.

16 THE COURT: I've got the flash drive of the
17 PowerPoints, which if I can figure out how to load it onto my
18 computer, I'll look at it. If not, I'll ask you to do it in
19 the morning. If I need to see other things in the morning, I
20 will do that.

21 MS. KERKHOFF: Your Honor, we have the completed
22 board before we cut it. Would you like those rather than
23 taking the two separate components or do you want the
24 separate components?

25 THE COURT: I don't care.

1 Does anybody care? No?

2 I'll take the completed boards so I'm not carrying
3 as much poster board on the way.

4 MS. KERKHOFF: Of course.

5 THE COURT: Back in the day, you could only offer as
6 many exhibits as you could carry. Trials were not quite so
7 cluttered with exhibits as they are now.

8 Yes. So I'll take those boards and think about them
9 and my notes.

10 So the morning -- I only have two matters. We will
11 be able to go at 9:30. And we'll talk about your
12 instructions after I get through the MJOAs with you all.

13 Are you going to be submitting anything to me on
14 inciting?

15 MS. KERKHOFF: I have argument. I thought we were
16 doing it today. So I've consulted with appellate and I do
17 have argument.

18 THE COURT: Are there any cases that I should read?

19 MS. KERKHOFF: Your Honor, we were just citing
20 *Blockburger* and *Byrd*. *Byrd* is the DC case that happened, I
21 guess, about 25 years ago relying on the principles of
22 *Blockburger* and *Byrd*. I can provide the Court the cite.

23 THE COURT: Why don't you give me the cite.

24 MS. KERKHOFF: I can -- can I email it to all
25 counsel and the Court?

1 THE COURT: Yes.
2 MS. KERKHOFF: The only other thing the Government
3 would request is I haven't been provided the defense theory
4 of the case. Now that the cases have rested, if I could get
5 those.

6 THE COURT: I actually am asking everybody who has
7 filed anything *ex parte* regarding instructions to please
8 provide that to the Government by 6:00 p.m.

9 I'm actually ordering it. So thank you.

10 MS. WELETZ: I will do my best, your Honor. I am
11 headed to the jail right now.

12 THE COURT: Please -- they need to see it. So give
13 them a hard copy. Just do it one way or another.

14 MS. WELETZ: Yes, your Honor.

15 THE COURT: Okay? Thank you.

16 MS. WELETZ: Yes.

17 THE COURT: Thanks, everybody. And I'll see you
18 tomorrow at 9:30. We'll see how fast we can get going. If I
19 can call them at 11:00 and tell them to come at 3:00, that
20 would be great.

21 MR. McCOOL: Your Honor, can I take mine back? I'll
22 revise it.

23 THE COURT: The theory?

24 MR. McCOOL: Yes. I'll just send it to chambers.


25 THE COURT: Here you go.

CERTIFICATE

1 I, Lisa Edwards, RDR, CRR, an Official Court
2 Reporter for the Superior Court of the District of
3 Columbia, do hereby certify that I reported by machine
4 shorthand, in my official capacity, the proceedings had and
5 testimony adduced, upon the Trial in the case of the United
6 States of America v. Michelle Macchio, Criminal Action No.
7 2017 CF2 1183, in said Court on the 12th day of December,
8 2017.

9 I further certify that the foregoing 235 pages
10 constitute the official transcript of said proceedings, as
11 taken from said shorthand notes, my computer realtime
12 display, together with the audio sync and digital recording
13 of said proceedings.

14 In witness whereof, I have hereto subscribed my
15 name, this 12th day of December, 2017.

16
17
18
19  Lisa Edwards, RDR, CRR
20 Official Court Reporter
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24
25

1 MR. McCOOL: Thank you.
2 (Proceedings concluded.)
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