

1 SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
2 CRIMINAL DIVISION
3 - - - - - x
4 UNITED STATES OF AMERICA, :
5 Plaintiff :
6 vs. : Criminal Action Nos.
7 MICHELLE MACCHIO, 2017 CF2 1183
8 JENNIFER ARMENTO, 2017 CF2 1193
9 CHRISTINA SIMMONS, 2017 CF2 1210
10 ALEXEI WOOD, 2017 CF2 1221
11 OLIVER HARRIS and 2017 CF2 1254
12 BRITTNE LAWSON, 2017 CF2 1256

13 Defendants.
14 - - - - - x

15 Washington, D.C.
16 November 20, 2017

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

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

25 APPEARANCES:

26 On behalf of the Government:
27 Jennifer Kerkhoff, Esquire
28 Rizwan Qureshi, Esquire
29 Assistant United States Attorneys

30 On behalf of Defendant Lawson:

31 Sara Kropf, Esquire
32 Daniel Portnov, Esquire
33 Washington, D.C.

<p>1 <u>APPEARANCES, CONT'D:</u></p> <p>2 On behalf of Defendant Armento:</p> <p>3 Thomas Healy, Esquire</p> <p>4 Carrie Weletz, Esquire</p> <p>5 Washington, DC</p> <p>6 On behalf of Defendant Macchio:</p> <p>7 Jamie Heine, Esquire</p> <p>8 Andrew Lazerow, Esquire</p> <p>9 Elena Whitt, Esquire</p> <p>10 Christina Copsey, Esquire</p> <p>11 Washington, DC</p> <p>12 On behalf of Defendant Harris:</p> <p>13 Steven McCool, Esquire</p> <p>14 Julie Coleman, Esquire</p> <p>15 Washington, DC</p> <p>16 On behalf of Defendant Wood:</p> <p>17 Brett Cohen, Esquire</p> <p>18 Washington DC</p> <p>19 On behalf of Defendant Simmons:</p> <p>20 Tammy Jacques, Esquire</p> <p>21 Washington, DC</p> <p>22 Reported by:</p> <p>23 Lisa Edwards, RDR, CRR</p> <p>24 Official Court Reporter</p> <p>25 Telephone (202) 879-1079</p>	<p>4</p> <p>1 THE DEPUTY CLERK: Your Honor, from the trial</p> <p>2 calendar, United States versus Brittne Lawson, 2017 CF2 1256;</p> <p>3 United States versus Jennifer Armento, 2017 CF2 1193; United</p> <p>4 States versus Michelle Macchio, 2017 CF2 1138; United States</p> <p>5 versus Oliver Harris, 2017 CF2 15 -- 1254; United States</p> <p>6 versus Alexei Wood, 2017 CF2 1221; and United States versus</p> <p>7 Christina Simmons, 2017 CF2 1210.</p> <p>8 THE COURT: Good morning, everyone.</p> <p>9 MS. KERKHOFF: Good morning, your Honor.</p> <p>10 MS. HEINE: Good morning, your Honor.</p> <p>11 MR. HEALY: Good morning, your Honor.</p> <p>12 THE COURT: In whatever order, please identify</p> <p>13 yourselves.</p> <p>14 MS. KERKHOFF: Jennifer Kerkhoff and Rizwan Qureshi</p> <p>15 for the United States.</p> <p>16 THE COURT: Good morning.</p> <p>17 Ms. Macchio -- on behalf of Ms. Macchio?</p> <p>18 MS. HEINE: Jamie Heine and Andrew Lazerow,</p> <p>19 Christina Copsey and Elena Whitt, for Ms. Macchio, present by</p> <p>20 me.</p> <p>21 THE COURT: Good morning.</p> <p>22 For Jennifer Armento?</p> <p>23 MS. WELETZ: Attorney Carrie Weletz on behalf of</p> <p>24 Jennifer Armento.</p> <p>25 I will also be joined by Tom Healy shortly.</p>
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<p style="text-align: right;">6</p> <p>1 You can all have a seat.</p> <p>2 I just want to confirm we have an overflow</p> <p>3 courtroom, Courtroom 320.</p> <p>4 Am I right about that?</p> <p>5 THE DEPUTY CLERK: Yes.</p> <p>6 THE COURT: Great.</p> <p>7 And so the juror who -- the six-and-a-half-months</p> <p>8 pregnant one and who wanted to be able to refrigerate her</p> <p>9 food or heat her food immediately started calling after we</p> <p>10 saw her Friday and informed Ms. Lis that she thought she</p> <p>11 might have a high-risk pregnancy, that she had a doctor's</p> <p>12 appointment the next day, and then called back and kind of</p> <p>13 wanted to be excused.</p> <p>14 And I said she had to come in today through Ms. Lis.</p> <p>15 And faxed a note that says, from her doctor, "This</p> <p>16 patient is pregnant and due date of February 11th, 2018. She</p> <p>17 suffers from preterm labor contractions and is N-O-T -- in</p> <p>18 capitals -- a good jury candidate.</p> <p>19 I directed her to come in because I don't believe on</p> <p>20 this record I could just excuse her without hearing from you</p> <p>21 all.</p> <p>22 I'll just ask what you want me to do with her. Does</p> <p>23 the Government have a view? Let me just say this note does</p> <p>24 not say she can't serve. This note does not say she's on</p> <p>25 bedrest. We all know doctors know how to put you put on</p>	<p style="text-align: right;">8</p> <p>1 her pregnancy. And it would be a bad thing if she felt that</p> <p>2 her jury service was causing that. So I just am concerned</p> <p>3 about it. But I'll let you all take -- yes, Ms. Coleman.</p> <p>4 MS. COLEMAN: Your Honor, Julia Coleman for Oliver</p> <p>5 Harris.</p> <p>6 We have no objection to letting her go.</p> <p>7 THE COURT: Does anybody have an objection?</p> <p>8 No. Okay.</p> <p>9 So I'm just going to ask Ms. Lis to excuse her when</p> <p>10 she gets here and just separate her from the rest of the</p> <p>11 jurors so that we don't have to upset her any further. And I</p> <p>12 will excuse her.</p> <p>13 She was -- just for the record, what juror number</p> <p>14 was she? She was 676 in Seat 10. If she goes, that means</p> <p>15 that our first alternate replaces her. That's the juror in</p> <p>16 Seat 7. So we're going to have an empty seat in Seat 10 and</p> <p>17 the juror in Seat 7 will be a regular juror.</p> <p>18 Everybody got that?</p> <p>19 So now the Alexei Wood tape, I had a flash drive</p> <p>20 that had a number of items on it that was submitted to me by,</p> <p>21 I believe, counsel for Mr. Harris. And so I think I watched</p> <p>22 the right thing.</p> <p>23 I'm just going to characterize it so we all agree</p> <p>24 it's the right thing. It's the last item down, I believe, on</p> <p>25 the menu of things on that flash drive. And it's essentially</p>
<p style="text-align: right;">7</p> <p>1 bedrest.</p> <p>2 But this is not a juror who seems to want to do</p> <p>3 this. She told us the first day that she had no medical</p> <p>4 condition that she was aware of in the pregnancy that would</p> <p>5 interfere with her service.</p> <p>6 And she remembered about the hot and cold food.</p> <p>7 After we told her we could accommodate that, then she had</p> <p>8 these concerns and has now got a doctor's note saying what I</p> <p>9 just read to you.</p> <p>10 So whether or not I would conclude from this that</p> <p>11 she's medically unable to be able to a juror, she is clearly</p> <p>12 stressed by this and doesn't want to do it. So that's I</p> <p>13 think where we are.</p> <p>14 MS. KERKHOFF: The Government's position is the same</p> <p>15 that we took with respect to -- I think it was initial Juror</p> <p>16 No. 7, which was -- given the emotions and stuff, I'm not</p> <p>17 sure this benefits anybody.</p> <p>18 We're looking for a fair and impartial juror who is</p> <p>19 not looking for ways to either not pay attention or not be</p> <p>20 here. And my concerns are the same that we had with the one</p> <p>21 juror.</p> <p>22 THE COURT: And do you all want to just talk about</p> <p>23 it -- let put the husher on and let you talk?</p> <p>24 I do have those concerns. And, really, I can't sit</p> <p>25 here and promise her she's not going to have complications in</p>	<p style="text-align: right;">9</p> <p>1 films from -- very much embedded within the group that is</p> <p>2 traveling along -- I believe it started at -- well, I don't</p> <p>3 know where it starts close to. I can't tell.</p> <p>4 But very shortly into it, there's a comment about,</p> <p>5 "This is a black bloc." Then there's a comment about the</p> <p>6 speaker being hit by pepper spray.</p> <p>7 There's a lot of holy cows sort of punctuating the</p> <p>8 narration. There is a holy cow, a flash bang, in the</p> <p>9 District of Columbia. So I think I've characterized it.</p> <p>10 Is that the one I'm supposed to be reviewing?</p> <p>11 MS. KERKHOFF: Your Honor, the Defendant Alexei Wood</p> <p>12 turns the camera on himself.</p> <p>13 THE COURT: Yes.</p> <p>14 MS. KERKHOFF: Okay.</p> <p>15 THE COURT: And, "I've been pepper-sprayed and it's</p> <p>16 all over me." And there's a bunch of -- I mean, it was</p> <p>17 notable for a lot of holy cows.</p> <p>18 Is that the one we're talking about, Mr. Cohen?</p> <p>19 MR. COHEN: Yes, your Honor.</p> <p>20 THE COURT: So I've been asked to rule on its</p> <p>21 admissibility and on the basis for its admissibility.</p> <p>22 And though I've ruled that it was -- before having</p> <p>23 seen it, tentatively ruled that it was a co-conspirator</p> <p>24 statement, Ms. Kerkhoff asked me to address whether it was a</p> <p>25 present-sense impression and -- because he uttered</p>

<p style="text-align: right;">10</p> <p>1 essentially to himself or to the public at large, not</p> <p>2 testimonial.</p> <p>3 And I was not understanding her position at the</p> <p>4 time. It wasn't until I viewed the thing that I realized</p> <p>5 that really is the rationale for its admissibility.</p> <p>6 And so I think I was not focused at the moment on</p> <p>7 the -- either the Government's position or the point</p> <p>8 Ms. Kerkhoff was making.</p> <p>9 So it does appear to me to clearly be</p> <p>10 nontestimonial. In other words, the statements are made not</p> <p>11 at any moment to police. They are to either himself or to</p> <p>12 the viewing public.</p> <p>13 And they are present-sense impressions in the sense</p> <p>14 that they are relating exactly what he's saying at the moment</p> <p>15 and narrating and relating his own impressions of what he</p> <p>16 sees and experiences.</p> <p>17 And so I don't think I need to address whether he's</p> <p>18 a co-conspirator at that moment or at the beginning or all,</p> <p>19 frankly, in order to address that theory of admissibility.</p> <p>20 I know Mr. McCool argued that he was talking to</p> <p>21 police or was in custody. I didn't really see that part.</p> <p>22 But are there any arguments relating to the</p> <p>23 Government's proffer of it as a present-sense impression and</p> <p>24 nontestimonial for the reasons I've stated?</p> <p>25 MR. LAZEROW: Your Honor, Andrew Lazerow on behalf</p>	<p style="text-align: right;">12</p> <p>1 MR. LAZEROW: Not right at the moment. I'm also</p> <p>2 concerned, your Honor, that you may not have watched the</p> <p>3 right video.</p> <p>4 I say that because I believe it was us who submitted</p> <p>5 a -- you only had one flash drive. Is that correct?</p> <p>6 THE COURT: Yes. In a yellow envelope.</p> <p>7 MR. LAZEROW: We had submitted that to your Honor.</p> <p>8 But it was our understanding that, one, it was not Alexei</p> <p>9 Wood's video.</p> <p>10 THE COURT: No. You submitted it with a cover sheet</p> <p>11 that said quite precisely that it was.</p> <p>12 MR. LAZEROW: Okay. I was told we didn't have it on</p> <p>13 there. But I will find out for sure.</p> <p>14 We communicated with Ms. Kerkhoff about it over the</p> <p>15 weekend. She said she had submitted a link to YouTube to</p> <p>16 make sure you had it.</p> <p>17 THE COURT: So to the extent that you're seeking to</p> <p>18 exclude something, I think you need to identify what it is.</p> <p>19 The things I watched, Mr. Cohen has agreed is the live stream</p> <p>20 created by Mr. Wood.</p> <p>21 And so I have watched it. I don't have a transcript</p> <p>22 of it. But Mr. Cohen agrees that the thing I'm talking</p> <p>23 about -- it does include a statement very early on that there</p> <p>24 is a black bloc, and it's narrated by a person who turns the</p> <p>25 camera on himself who has another person, I think, assisting</p>
<p style="text-align: right;">11</p> <p>1 of Ms. Macchio.</p> <p>2 I'm just trying to understand because there's a lot</p> <p>3 of statements in the course of this.</p> <p>4 THE COURT: Yes.</p> <p>5 MR. LAZEROW: And is it -- is the Government's</p> <p>6 position or are you agreeing that all the statements on there</p> <p>7 are all present-sense impressions?</p> <p>8 THE COURT: Well, you tell me what ones aren't.</p> <p>9 MR. LAZEROW: I think when he says, "There's a black</p> <p>10 bloc over there," that's not a present-sense impression.</p> <p>11 He's reporting -- seeing what he's seeing. That's not an</p> <p>12 excited utterance of any sort.</p> <p>13 THE COURT: Well, present-sense impression I think</p> <p>14 is what we were discussing, not excited utterance.</p> <p>15 So did you want to address whether it's a</p> <p>16 present-sense impression at that moment?</p> <p>17 MR. LAZEROW: I mean, no. I'm okay with that.</p> <p>18 I'm just concerned that there are a lot of</p> <p>19 statements on there that --</p> <p>20 THE COURT: There are.</p> <p>21 MR. LAZEROW: -- I would have to go through.</p> <p>22 THE COURT: Well, I have. I've watched them all.</p> <p>23 They strike me as all present-sense impressions. But I'm</p> <p>24 happy to have you identify something I should focus on more</p> <p>25 carefully.</p>	<p style="text-align: right;">13</p> <p>1 him. He's wired up to another person, also, and is narrating</p> <p>2 from -- embedded, really, within the group that is traveling</p> <p>3 along.</p> <p>4 MS. KERKHOFF: The Defendant did not have anyone</p> <p>5 wired up with him, your Honor.</p> <p>6 THE COURT: No?</p> <p>7 MS. KERKHOFF: No. If I may ask, was there moments</p> <p>8 where the speaker, the Defendant, discusses a guardsman</p> <p>9 getting hit in the balls?</p> <p>10 THE COURT: I'm not sure I remember hearing that.</p> <p>11 MS. KERKHOFF: I think you would because it's</p> <p>12 discussed pretty --</p> <p>13 THE COURT: Okay. So I have to go back and look at</p> <p>14 the link.</p> <p>15 MS. KERKHOFF: I think so.</p> <p>16 THE COURT: Okay. Then, I'm going to have to do</p> <p>17 that at lunchtime.</p> <p>18 MR. MCCOOL: Your Honor, Steven McCool for Oliver</p> <p>19 Harris.</p> <p>20 Your Honor, it's our position that the one statement</p> <p>21 that Mr. Lazerow referenced where he says, "This is a black</p> <p>22 bloc," he's not describing or explaining what that group is</p> <p>23 doing. He's offering a 701 opinion. And it's not a</p> <p>24 present-sense impression.</p> <p>25 That's our position with respect to that statement.</p>

<p style="text-align: right;">14</p> <p>1 Thank you.</p> <p>2 THE COURT: Does the Government have a response to</p> <p>3 that particular argument?</p> <p>4 MS. KERKHOFF: I don't think that's accurate. I</p> <p>5 think the person is saying what they're seeing. They could</p> <p>6 say, for example, "I see an angry group of people." That's</p> <p>7 what they see.</p> <p>8 THE COURT: So do you have a transcript of it?</p> <p>9 MS. KERKHOFF: I don't have a transcript of it, your</p> <p>10 Honor.</p> <p>11 THE COURT: Because here's what I'm going to do:</p> <p>12 I'm going to watch it. I'm not going to do this salami</p> <p>13 negotiating.</p> <p>14 If you have an objection to a particular line in it,</p> <p>15 you tell me what it is. I've now heard two things, black</p> <p>16 bloc -- well, that's the only thing I've heard objected to.</p> <p>17 If I hear another one, I will listen for it.</p> <p>18 But I'm not going to do this 20 times. So by</p> <p>19 lunchtime I want to know from you what it is you're objecting</p> <p>20 to in particular because, to the extent that it is a</p> <p>21 narration of events that I'm seeing right now for your</p> <p>22 benefit, that's present-sense impressions.</p> <p>23 And if there's a 701 opinion -- what I saw was not</p> <p>24 just that, "That's a black bloc," but there was some sort of</p> <p>25 definition of it.</p>	<p style="text-align: right;">16</p> <p>1 THE COURT: Not just that, but cheering and</p> <p>2 excitement are not words and so wouldn't be affected by my</p> <p>3 ruling anyway.</p> <p>4 MS. KERKHOFF: Correct.</p> <p>5 THE COURT: So we'll go ahead.</p> <p>6 I got an email from Ms. Heine purporting to</p> <p>7 represent everybody else's, I guess, positions on the motion</p> <p>8 to suppress.</p> <p>9 The request was that I spend time now resolving</p> <p>10 motions to suppress that were not filed until over the</p> <p>11 weekend, and I am not going to be doing that. What I will do</p> <p>12 is resolve them on Wednesday.</p> <p>13 I just want to understand expressly what everybody</p> <p>14 is moving to suppress and, from the Government, what your</p> <p>15 concerns are about why you think I need to resolve this now.</p> <p>16 In other words, what specifically are you planning</p> <p>17 to use in your case in chief that they say they're moving to</p> <p>18 suppress now such that going ahead is going to be an issue?</p> <p>19 MS. KERKHOFF: Well, in my initial discussions with</p> <p>20 counsel, they were saying that I could not even discuss</p> <p>21 anything that was learned or observed about the Defendants</p> <p>22 after they were detained at 12th and L, which gets us to how</p> <p>23 I can even identify, for example, Ms. Macchio.</p> <p>24 THE COURT: Well, even Ms. Heine graciously --</p> <p>25 MS. KERKHOFF: Yes.</p>
<p style="text-align: right;">15</p> <p>1 MS. KERKHOFF: That's not what Mr. -- then, I don't</p> <p>2 believe that's what Mr. Wood says early on in his is, "Oh,</p> <p>3 yeah. We got a black bloc," words to that effect, and then</p> <p>4 runs towards them, then discusses, "That man just pushed a</p> <p>5 black bloc member." Then there's some cursing.</p> <p>6 Then he keeps going, "We've got graffiti." Then he</p> <p>7 keeps moving through the park, discussing what people are</p> <p>8 doing, talking about police, trying to look cool.</p> <p>9 THE COURT: So I'll tell you what. It may or may</p> <p>10 not be the same one that I watched because I just watched</p> <p>11 what looked to me like it might be the same one people were</p> <p>12 telling me about.</p> <p>13 So I'll be sure to watch the thing that Ms. Kerkhoff</p> <p>14 sent me a link to at lunchtime.</p> <p>15 Ms. Kerkhoff, do you plan to, I guess, recite from</p> <p>16 it in your opening?</p> <p>17 MS. KERKHOFF: I don't plan to specifically recite</p> <p>18 from it.</p> <p>19 I do plan to state that he is cheering, that he is</p> <p>20 excited, that he, you know, seems to be celebrating. I think</p> <p>21 that's all there.</p> <p>22 If the Court's analysis for the video that it I</p> <p>23 think watched was present-sense impression, the Government is</p> <p>24 very confident the Court will find this is a present-sense</p> <p>25 impression or words --</p>	<p style="text-align: right;">17</p> <p>1 THE COURT: -- you know, not everybody on the</p> <p>2 defense side would have done that -- asserted your argument,</p> <p>3 which is that the Supreme Court has held in a very settled</p> <p>4 way that identity and physical appearance are not subject to</p> <p>5 suppression even if I were to find that there had been no</p> <p>6 probable cause.</p> <p>7 MS. KERKHOFF: My understanding is the defense is</p> <p>8 not agreeing with the part about physical appearance and the</p> <p>9 observations.</p> <p>10 What I do think is important is how the Defendants</p> <p>11 appeared, how, for example, Ms. Macchio appeared in the --</p> <p>12 during the riot, what the jury can assess, and then when</p> <p>13 she's detained, her clothing, her attempts to mark her</p> <p>14 property, the person she was with.</p> <p>15 THE COURT: So what is your legal position on that</p> <p>16 argument?</p> <p>17 MS. KERKHOFF: My legal position is that they</p> <p>18 haven't articulated -- they haven't set forth any case</p> <p>19 authority that says this -- "We're entitled to an evidentiary</p> <p>20 hearing on this point."</p> <p>21 I believe I am allowed to say what an officer</p> <p>22 observed with their eyes at the time of the stop. That's</p> <p>23 identity -- goes to identity. And the Supreme Court has said</p> <p>24 that the body of a defendant and the identity is not</p> <p>25 suppressible under the Fourth Amendment.</p>

<p style="text-align: right;">18</p> <p>1 My concern is that the defense was objecting to me</p> <p>2 even calling Ms. Macchio a medic of any sort because of her</p> <p>3 property, because of how she appeared.</p> <p>4 THE COURT: And do you believe there's any authority</p> <p>5 on the planet for that proposition?</p> <p>6 MS. KERKHOFF: I don't, and I said that to them.</p> <p>7 THE COURT: Okay. I mean, they related that to me.</p> <p>8 And I'm not aware of any. So I'm about to ask them if they</p> <p>9 have any that they want me to read.</p> <p>10 But let me just ask what everybody's moving to</p> <p>11 suppress. Can I just ask: Other than Ms. Lawson and</p> <p>12 Ms. Macchio, are you going to be using cell phone data of any</p> <p>13 other Defendant in this trial -- the charged -- the people</p> <p>14 going to trial here?</p> <p>15 MS. KERKHOFF: None of the other charged Defendants,</p> <p>16 other than maybe to say that a phone was seized and we were</p> <p>17 unable to retrieve data from it. I mean, to that extent.</p> <p>18 But none of the other charged Defendants.</p> <p>19 I understood from conversations with counsel on</p> <p>20 Saturday they were expanding their suppression argument to</p> <p>21 all physical evidence, plus body-worn camera, photos, even</p> <p>22 field arrest photos. I'm not even sure I can open if I can't</p> <p>23 talk about what happened at 12th and L.</p> <p>24 THE COURT: So answer my next question: Are you</p> <p>25 planning to refer -- well, are you planning to use in your</p>	<p style="text-align: right;">20</p> <p>1 distinctive hat.</p> <p>2 So, yes, we are using physical items or their</p> <p>3 presence at the time of detention for each Defendant.</p> <p>4 THE COURT: And so I'm just going to go down the</p> <p>5 list here for those who have not filed a motion to suppress</p> <p>6 up till now.</p> <p>7 Ms. Weletz, on behalf of Ms. Armento, tell me</p> <p>8 whether -- what your thinking was in waiting until the</p> <p>9 weekend after jury selection after we had sat here and</p> <p>10 discussed motions for many days, including a motions hearing</p> <p>11 on motions to suppress by two Co-Defendants, how it is that</p> <p>12 we came to the weekend before you decided to file a motion.</p> <p>13 MS. WELETZ: Your Honor --</p> <p>14 THE COURT: In fact, have you filed a motion? You</p> <p>15 actually have filed one, I think.</p> <p>16 MS. WELETZ: There had been a motion filed over the</p> <p>17 weekend. Correct.</p> <p>18 THE COURT: Yes.</p> <p>19 MS. WELETZ: Your Honor, it came to light after the</p> <p>20 discussions with your Honor at the end of the week,</p> <p>21 specifically on Friday, when the Government was discussing</p> <p>22 all of the different things that are -- allegedly have been</p> <p>23 followed throughout the demonstration. So they were talking</p> <p>24 specifically about a backpack, I believe, that had a water</p> <p>25 bottle coming out of it.</p>
<p style="text-align: right;">19</p> <p>1 case in chief any seized items from any of these Defendants</p> <p>2 such as backpacks, water bottles, et cetera?</p> <p>3 MS. KERKHOFF: Yes.</p> <p>4 THE COURT: Tell me what.</p> <p>5 MS. KERKHOFF: With respect to Ms. Lawson, she had</p> <p>6 all of the items that can be seen on her person, her helmet,</p> <p>7 her medic bags, water bottles, all sorts of things like that.</p> <p>8 Ms. Macchio, too, had bags.</p> <p>9 Oliver Harris did not have a seized-as-evidence bag,</p> <p>10 but it's visible that it was seized as prisoner's property.</p> <p>11 And my understanding is they're objecting to even mentioning</p> <p>12 that.</p> <p>13 Alexei Wood had --</p> <p>14 THE COURT: What bag are we talking about?</p> <p>15 MS. KERKHOFF: Oliver Harris had a backpack -- black</p> <p>16 backpack.</p> <p>17 And Alexei Wood had his equipment, an ASP, a fake</p> <p>18 press badge, clothing, goggles. Ms. Macchio had goggles as</p> <p>19 well.</p> <p>20 THE COURT: Are you planning to use those physical</p> <p>21 items?</p> <p>22 MS. KERKHOFF: Yes.</p> <p>23 Ms. Armento had goggles as well and other clothing</p> <p>24 items.</p> <p>25 Ms. Simmons also had a distinctive bag and a</p>	<p style="text-align: right;">21</p> <p>1 And your Honor ruled -- or was forming a ruling on</p> <p>2 Friday as to whether the Government could make a board that</p> <p>3 they have now posted --</p> <p>4 THE COURT: I didn't rule on anything. The</p> <p>5 Government said that's what it planned to do. Of course, you</p> <p>6 already knew that the Government planned to prove its case by</p> <p>7 the physical appearance of your client and the things that</p> <p>8 your client had with her that would show her to be a person</p> <p>9 on videotapes.</p> <p>10 So the revelation on Friday was that --</p> <p>11 MS. WELETZ: Which exhibit --</p> <p>12 THE COURT: -- you heard that they were going to</p> <p>13 make an exhibit out of it?</p> <p>14 MS. WELETZ: Well, the exhibit and the conversation,</p> <p>15 your Honor, on Friday brought to light the fact that these</p> <p>16 things are suppressible.</p> <p>17 THE COURT: So what's your position as to what you</p> <p>18 ought to be able to do now, since you haven't been, I don't</p> <p>19 think, at the hearing that I was holding on the motion?</p> <p>20 MS. WELETZ: I think that we would be able to -- I</p> <p>21 should be able to make some sort of record on</p> <p>22 cross-examination about the specific things that are</p> <p>23 identified in the board that --</p> <p>24 THE COURT: So you're not going to make me redo the</p> <p>25 officer's testimony, for instance? You can rely on his</p>

<p style="text-align: right;">22</p> <p>1 transcript at this point?</p> <p>2 MS. WELETZ: Yes, your Honor.</p> <p>3 THE COURT: So you would, though, want to</p> <p>4 cross-examine him?</p> <p>5 MS. WELETZ: I would briefly like to cross-examine</p> <p>6 based specifically on the exhibits that the Government only</p> <p>7 produced to us over the weekend.</p> <p>8 THE COURT: So exactly -- I mean, let's say we were</p> <p>9 all to agree on certain facts. I don't think the</p> <p>10 Government's quarreling with the fact that police arrested</p> <p>11 her and took those things from her or at least photographed</p> <p>12 and observed them.</p> <p>13 What points would you be making on</p> <p>14 cross-examination?</p> <p>15 MS. WELETZ: That it was an illegal and unwarranted</p> <p>16 stop.</p> <p>17 THE COURT: Well, that would be argument.</p> <p>18 What points would you be making on cross? What</p> <p>19 record would you be making?</p> <p>20 MS. WELETZ: Just that the record -- that these</p> <p>21 things were -- these specific items were followed throughout</p> <p>22 the demonstration and that they're not identifiable as being</p> <p>23 Ms. Armento, honestly.</p> <p>24 THE COURT: But I think the Government's record</p> <p>25 would be they didn't follow those things throughout the</p>	<p style="text-align: right;">24</p> <p>1 MS. JACQUES: Yes, your Honor.</p> <p>2 I would not ask the detective to re-testify. I</p> <p>3 actually have been present at the hearings and have heard his</p> <p>4 testimony.</p> <p>5 I would only ask briefly to cross-examine on behalf</p> <p>6 of Ms. Simmons.</p> <p>7 THE COURT: Okay. And can you just tell me what</p> <p>8 specific additional record, other than what I've heard, you'd</p> <p>9 be making factually. I'm not asking what your arguments</p> <p>10 would be.</p> <p>11 MS. JACQUES: Factually, I would just be</p> <p>12 cross-examining the officer about the items that were posted</p> <p>13 on the Government's board that --</p> <p>14 THE COURT: In other words, to what -- to make the</p> <p>15 point -- I mean, to what -- what factual point would you be</p> <p>16 making about that? Because the Government would stipulate</p> <p>17 that those things were either recovered or observed.</p> <p>18 But I need to get a record from the Government as to</p> <p>19 what items were recovered or observed. The fact of the</p> <p>20 seizure is -- or what was seized I don't think is in dispute.</p> <p>21 MS. JACQUES: I think the questions on</p> <p>22 cross-examination would be to the context of where</p> <p>23 Ms. Simmons was during certain events, what -- did he notice</p> <p>24 or recognize the mask or the backpack that the Government is</p> <p>25 alluding to, was she part of the activities as they -- and I</p>
<p style="text-align: right;">23</p> <p>1 demonstration such that police could say at the time of her</p> <p>2 arrest that she had those things or that she was a person who</p> <p>3 had been tracked through the demonstration with those things.</p> <p>4 What they're saying is, like in <i>Carr</i>, basically,</p> <p>5 they followed -- the police followed the demonstration and</p> <p>6 that an inference by the standard applicable in a suppression</p> <p>7 hearing is that they reasonably believed that whoever was</p> <p>8 kettled at the end and arrested had been a part of the march</p> <p>9 in such a way that they either were principals or aiders and</p> <p>10 abettors at the riot.</p> <p>11 MS. WELETZ: And I think that we can cross-examine</p> <p>12 whether there was a reasonable belief that that those</p> <p>13 200-plus individuals at 12th and L were part of the</p> <p>14 demonstration.</p> <p>15 THE COURT: So that's what you would want to be able</p> <p>16 to do.</p> <p>17 MS. WELETZ: Correct.</p> <p>18 THE COURT: So can I ask: Putting aside your</p> <p>19 specific arguments, everybody else, about whether or not</p> <p>20 there was probable cause for everyone other than Ms. Macchio</p> <p>21 and Ms. Lawson, who, of course, have attended their own</p> <p>22 suppression hearing, are you going to be asking me to redo</p> <p>23 the testimony of the officer or simply to cross-examine on</p> <p>24 certain issues when we complete the hearing?</p> <p>25 So I guess I'll just start with Ms. Jacques.</p>	<p style="text-align: right;">25</p> <p>1 could go to specific activities when I question him -- but</p> <p>2 what part did she specifically play, if any, in the</p> <p>3 destruction and the riotous acts --</p> <p>4 THE COURT: And --</p> <p>5 MS. JACQUES: Using the Government's words.</p> <p>6 THE COURT: Mr. Cohen, any different request?</p> <p>7 MR. COHEN: No, your Honor.</p> <p>8 THE COURT: So you aren't asking for a new direct</p> <p>9 exam. You just want to be able to cross and you would be</p> <p>10 establishing factually simply your position that there was</p> <p>11 insufficient observation of your client to give rise to</p> <p>12 probable cause?</p> <p>13 MR. COHEN: At the time of arrest, yes.</p> <p>14 THE COURT: And anything specific that you would be</p> <p>15 making a record of?</p> <p>16 MR. COHEN: No. Just asking the general question</p> <p>17 if, at the time of the arrest, did you know.</p> <p>18 THE COURT: Okay. And, Ms. Coleman, same question.</p> <p>19 MS. COLEMAN: Same question, your Honor, and, also,</p> <p>20 same position. No need to have the detective re-testify as</p> <p>21 to all the matters.</p> <p>22 THE COURT: And you'd be relying on a transcript or</p> <p>23 have you been present?</p> <p>24 MS. COLEMAN: Yes, your Honor. On the transcript.</p> <p>25 THE COURT: Okay. And in terms of cross, factually</p>

<p style="text-align: right;">26</p> <p>1 speaking, would you be making a record of anything in</p> <p>2 particular that I should be aware of?</p> <p>3 MS. COLEMAN: We would be, your Honor.</p> <p>4 Specifically, you know, how the officer came to</p> <p>5 associate this backpack and water bottle with Mr. Harris,</p> <p>6 Mr. Harris's presence and role throughout the day, those</p> <p>7 types of questions.</p> <p>8 THE COURT: And I just think you all are actually --</p> <p>9 I don't think you're understanding the Government's position</p> <p>10 at the motion to suppress.</p> <p>11 The Government's position is -- and it's an</p> <p>12 interesting one -- they're kind of conceding that body cam</p> <p>13 stuff, which may have been filmed at the time that officers</p> <p>14 were out there, is not evidence they're relying on for</p> <p>15 purposes of probable cause.</p> <p>16 In other words, we could all debate whether the tree</p> <p>17 fell in the forest and someone was there to see it. If it's</p> <p>18 on your body cam, but you don't see it with your own two</p> <p>19 eyes, does that mean you know it as of the time of arrest?</p> <p>20 The Government's not taking the position that they</p> <p>21 did. So they're not going to be relying on the tracking of a</p> <p>22 backpack to establish probable cause to arrest.</p> <p>23 They're relying on essentially the <i>Carr</i> case-type</p> <p>24 rationale, which is the officer -- and if you've heard the</p> <p>25 testimony or read the transcript, the detective is not</p>	<p style="text-align: right;">28</p> <p>1 MS. KERKHOFF: <i>Carr</i> --</p> <p>2 THE COURT: Nobody in this particular group is going</p> <p>3 to show up in the detective's testimony until the time of</p> <p>4 arrest in a particularized individual way.</p> <p>5 MS. KERKHOFF: Not in a particularized,</p> <p>6 individualized way that an officer would have been able to</p> <p>7 say, "That person right there" -- "This person right there."</p> <p>8 It truly follows the analysis in <i>Carr</i>, C-a-r-r.</p> <p>9 THE COURT: So just so you know, they're conceding</p> <p>10 that. There is no record of the tracking of any Defendant</p> <p>11 here before arrest.</p> <p>12 It's that the testimony about the demonstration is</p> <p>13 what it is and, from that, the Government is asking me to</p> <p>14 find probable cause, based on all the facts and circumstances</p> <p>15 that Ms. Kerkhoff is arguing now, in the same manner as that</p> <p>16 determined in <i>Carr</i>.</p> <p>17 MS. COLEMAN: Your Honor, even though -- nothing</p> <p>18 further, your Honor.</p> <p>19 THE COURT: So given that --</p> <p>20 MR. COHEN: Your Honor --</p> <p>21 THE COURT: I don't know what the point of the cross</p> <p>22 is because they're already conceding your point.</p> <p>23 But here's what we're going to do: I am going to</p> <p>24 let the Government open. And should there be a need to</p> <p>25 strike portions of the opening after we complete the hearing</p>
<p style="text-align: right;">27</p> <p>1 testifying that he could see a backpack or that officers</p> <p>2 could see a backpack or that officers could see red</p> <p>3 shoelaces.</p> <p>4 What officers could see was a mass of people</p> <p>5 traveling in cohesive fashion and the kettling at the end and</p> <p>6 all the events that people observed about the riot without</p> <p>7 any particularized testimony about any person at this table</p> <p>8 until the time of arrest.</p> <p>9 In other words, that as of the time of arrest, by</p> <p>10 inference, your client is a person who was kettled at the</p> <p>11 end, placed under arrest and photographed in whatever</p> <p>12 clothing was worn and that that is the information known to</p> <p>13 police at the time of the arrest.</p> <p>14 They're not relying on having tracked individualized</p> <p>15 information, though we all know it's on the videotapes.</p> <p>16 Am I right about that?</p> <p>17 MS. KERKHOFF: That is correct, your Honor.</p> <p>18 And just to be clear, what we are tracking is</p> <p>19 that -- and what the evidence we believe was elicited -- is</p> <p>20 the group was moving in a cohesive fashion. Weapons</p> <p>21 generally could be observed within the group.</p> <p>22 THE COURT: I'm not asking for your entire argument</p> <p>23 on the motion.</p> <p>24 MS. KERKHOFF: Sure.</p> <p>25 THE COURT: Nobody --</p>	<p style="text-align: right;">29</p> <p>1 on Wednesday, I will do that. Opening statements are not</p> <p>2 evidence.</p> <p>3 And I will permit the Government to identify your</p> <p>4 clients, to describe the items taken from them and to proceed</p> <p>5 as if I have denied the motions to suppress.</p> <p>6 These are eleventh-hour motions. The only motion</p> <p>7 that was being litigated before me was a cell phone data</p> <p>8 motion.</p> <p>9 And to the extent that there was a footnote that</p> <p>10 said something else, that was not really being addressed at</p> <p>11 the time. I'm not saying you've waived it.</p> <p>12 But what I am saying is we're going to open and</p> <p>13 we're going to proceed and we are not going to make this jury</p> <p>14 wait for eight people to argue something that I think the</p> <p>15 Government's conceding.</p> <p>16 And to the extent that I do have to strike things,</p> <p>17 we'll get there. And in the end, you can take it upstairs if</p> <p>18 you feel like it.</p> <p>19 MS. KROPF: Your Honor, Sara Kropf.</p> <p>20 Just to be clear, the reason we are not holding the</p> <p>21 hearings before opening is this: We understand the</p> <p>22 Government's position about when they used the backpack or</p> <p>23 the water bottle or the helmet.</p> <p>24 The issue is: We understand they plan to open on --</p> <p>25 THE COURT: They do.</p>

<p style="text-align: right;">30</p> <p>1 MS. KROPF: -- we can identify these people based on</p> <p>2 using those items, which we have an argument were illegally</p> <p>3 seized.</p> <p>4 THE COURT: I understand.</p> <p>5 MS. KROPF: And so --</p> <p>6 THE COURT: So you're going to proceed as if I'm</p> <p>7 denying that motion. If I do grant it, we'll figure out what</p> <p>8 we're going to do.</p> <p>9 But we're going to proceed as if I'm denying it. I</p> <p>10 will allow the Government to proceed. Opening statements are</p> <p>11 not evidence.</p> <p>12 Shall we take a ten-minute break?</p> <p>13 If there's any issue -- do I need to hear any issues</p> <p>14 about openings? Objections? We don't like the Government's</p> <p>15 demonstratives, whatever?</p> <p>16 MR. LAZEROW: I would ask do we need to make -- I'm</p> <p>17 sorry. Andrew Lazerow for Ms. Macchio.</p> <p>18 When Ms. Kerkhoff identifies Ms. Macchio as a medic,</p> <p>19 do I need to make an objection in opening to preserve it?</p> <p>20 THE COURT: No. No.</p> <p>21 MR. LAZEROW: Because our position, just so --</p> <p>22 THE COURT: No. You don't need to. We know you're</p> <p>23 presenting it. They will let you preserve it all day long.</p> <p>24 You preserve it. You've moved under the Fourth Amendment to</p> <p>25 suppress everything that officers saw, observed, heard,</p>	<p style="text-align: right;">32</p> <p>1 MR. COHEN: I'm just saying on his live stream.</p> <p>2 THE COURT: That's a separate matter because those,</p> <p>3 of course, are not statements that would be subject to a</p> <p>4 motion to suppress. That's an evidentiary matter.</p> <p>5 MR. COHEN: Right. I understand.</p> <p>6 The way the Government said that, it just seemed</p> <p>7 like it included the live stream.</p> <p>8 THE COURT: Anything before we do opening</p> <p>9 statements?</p> <p>10 How long is yours going to be, Ms. Kerkhoff?</p> <p>11 MS. KERKHOFF: I think 35 to 40 minutes. And I have</p> <p>12 two boards and a display that I've shown counsel. But I</p> <p>13 would like to at least put the boards here. I believe this</p> <p>14 is the only place to use them.</p> <p>15 THE COURT: Is anybody's opening on the defense side</p> <p>16 going to be longer than 30 minutes?</p> <p>17 Everybody's shaking their heads no.</p> <p>18 Excellent. Thank you.</p> <p>19 And anything else we should address before we take a</p> <p>20 break until the jurors are here?</p> <p>21 All right. Thank you.</p> <p>22 MS. KROPF: Sorry, your Honor.</p> <p>23 Sara Kropf.</p> <p>24 We have agreed amongst ourselves on the order of our</p> <p>25 openings. It is a little out of the order of call.</p>
<p style="text-align: right;">31</p> <p>1 et cetera --</p> <p>2 MR. LAZEROW: Seized.</p> <p>3 THE COURT: -- seized.</p> <p>4 And in terms of statements -- I saw the word</p> <p>5 "statements" in these motions for the first time, thank you</p> <p>6 very much -- is there some statement of the Defendants that</p> <p>7 we need to be litigating?</p> <p>8 MS. KERKHOFF: My understanding is it was them</p> <p>9 identifying themselves, booking questions, which are not --</p> <p>10 THE COURT: So there's no actual statement of any</p> <p>11 Defendant that you're going to be offering in your case in</p> <p>12 chief that I need to address as a motion to suppress?</p> <p>13 MS. KERKHOFF: No. No Fifth Amendment Miranda-type</p> <p>14 statement. The Defendants are being processed and they are</p> <p>15 communicating about, "This is my coat here. Can you take off</p> <p>16 my coat? I'm hot," things like that.</p> <p>17 THE COURT: Okay. So I know you're moving to</p> <p>18 suppress everything. You filed something. Whatever you</p> <p>19 filed, it counts, and you don't have to object in front of</p> <p>20 the jury.</p> <p>21 MR. COHEN: Brett Cohen for Mr. Wood.</p> <p>22 I'm pretty sure that the Government is going to be</p> <p>23 using a whole bunch of statements for Mr. Wood, the way the</p> <p>24 Government announced it.</p> <p>25 THE COURT: Other than his live stream?</p>	<p style="text-align: right;">33</p> <p>1 THE COURT: And tell me.</p> <p>2 MS. KROPF: I believe it's going Mr. Harris first,</p> <p>3 Ms. Armento second, Ms. Simmons third, Mr. Wood fourth,</p> <p>4 Ms. Lawson fifth, and Ms. Macchio sixth.</p> <p>5 THE COURT: And so, in terms of cross-examinations,</p> <p>6 are you also -- is somebody taking the lead or have you</p> <p>7 arranged an order for each one?</p> <p>8 MS. KROPF: We're doing --</p> <p>9 THE COURT: For me, the default would be the order</p> <p>10 in which everybody is in the indictment. And unless somebody</p> <p>11 objects to whatever order you all come up with for any</p> <p>12 particular examination, I'm not going to fuss at you.</p> <p>13 But if there's any one Defendant who does object, I</p> <p>14 need to know about it for any cross-examination or any part</p> <p>15 of the process, because I would default back to the order of</p> <p>16 the indictment if any one Defendant objects.</p> <p>17 MS. KROPF: We understand. We've tried to</p> <p>18 coordinate amongst ourselves for cross-examination who will</p> <p>19 be taking the lead.</p> <p>20 THE COURT: Great. Thank you.</p> <p>21 So I just need to know from you if anybody in</p> <p>22 particular objects at any point to the order in which you've</p> <p>23 all decided to go.</p> <p>24 Any one of you can trump everybody else, so to</p> <p>25 speak, because I would go back to the order of the indictment</p>

<p style="text-align: right;">34</p> <p>1 if there's an objection.</p> <p>2 Okay. I'll see you in ten minutes.</p> <p>3 (Thereupon a recess was taken, after which the</p> <p>4 following proceedings were had:)</p> <p>5 THE COURT: Good morning again. You can have a</p> <p>6 seat.</p> <p>7 THE DEPUTY CLERK: Re-calling from your Honor's</p> <p>8 trial calendar --</p> <p>9 THE COURT: I don't think we have to. No need to</p> <p>10 re-call the whole thing.</p> <p>11 THE DEPUTY CLERK: Okay.</p> <p>12 THE COURT: So are any lawyers missing from before?</p> <p>13 I think we lost a couple who were the motions people.</p> <p>14 No?</p> <p>15 Yes. Everybody's here.</p> <p>16 So we're going to pick up -- the jurors are all</p> <p>17 here?</p> <p>18 THE COURTROOM DEPUTY: Yes, your Honor.</p> <p>19 THE COURT: Is there anything before we bring the</p> <p>20 jury in and swear them?</p> <p>21 MS. KERKHOFF: What about Juror No. 10?</p> <p>22 THE COURT: 10. She's gone.</p> <p>23 MS. KERKHOFF: Okay. That was already done.</p> <p>24 THE COURT: Gone. We thanked her for her service.</p> <p>25 And she said she really did want to serve.</p>	<p style="text-align: right;">Preliminary Instructions to the Jury</p> <p style="text-align: right;">36</p> <p>1 a jury.</p> <p>2 (Whereupon, the jury was duly sworn and impaneled.)</p> <p>3 THE COURT: Ladies and gentlemen, before we begin</p> <p>4 the trial, I have some preliminary instructions for you now</p> <p>5 that you've been sworn.</p> <p>6 These instructions will not be a substitute for the</p> <p>7 instructions that you're going to get at the end of the trial</p> <p>8 just before you retire to consider your verdicts. These are</p> <p>9 simply to give you a feel for what's going to go on during</p> <p>10 the trial and for what your jobs will be.</p> <p>11 I'm just making sure that Seats 1 and 2 are more</p> <p>12 comfortable than the chairs we had the other day for you.</p> <p>13 JUROR 2: Yes.</p> <p>14 JUROR 1: Thank you.</p> <p>15 THE COURT: I'm glad they are.</p> <p>16 Now, let me know -- as you just took your seats, you</p> <p>17 found a notebook waiting forgot you. That's because I permit</p> <p>18 jurors in this courtroom to take notes during the trial and</p> <p>19 to have their notes with them during deliberations.</p> <p>20 I want to emphasize that you don't have to take</p> <p>21 notes if you don't want to. It is entirely up to you.</p> <p>22 Indeed, if you think that note-taking would distract</p> <p>23 your attention from the testimony or the demeanor of the</p> <p>24 witnesses, feel free not to take notes. If you think that</p> <p>25 note-taking may help you to better remember what's been said,</p>
<p style="text-align: right;">35</p> <p>1 So we're going to bring the jury in, swear them.</p> <p>2 I'll instruct them first. Then we'll do openings.</p> <p>3 I'm thanking the court reporter for this. I needed</p> <p>4 to ask them about the names you all gave them that we didn't</p> <p>5 run by them before. So that's the first thing I'll do.</p> <p>6 Can I ask for the groups, who is opening? For</p> <p>7 instance, Ms. Heine, you get to open?</p> <p>8 MS. HEINE: Yes, your Honor.</p> <p>9 THE COURT: Ms. Coleman?</p> <p>10 MR. MCCOOL: Mr. McCool.</p> <p>11 THE COURT: And for -- that's the whole team.</p> <p>12 And for Ms. Armento, who is opening?</p> <p>13 MS. WELETZ: Ms. Carrie Weletz. I will be. Thank</p> <p>14 you, your Honor.</p> <p>15 THE COURT: Great. Thank you.</p> <p>16 And everybody else is solo.</p> <p>17 (Whereupon, the jury entered the courtroom at</p> <p>18 10:47 a.m. and the following proceedings were had:)</p> <p>19 THE COURT: Good morning, ladies and gentlemen.</p> <p>20 THE JURY: Good morning.</p> <p>21 THE COURT: Hope you all had a great weekend.</p> <p>22 Thanks to you all for being here.</p> <p>23 Ladies and gentlemen, you can all have a seat.</p> <p>24 But you all should remain standing, ladies and</p> <p>25 gentlemen of the jury. Ms. Lis is now going to swear you as</p>	<p style="text-align: right;">Preliminary Instructions to the Jury</p> <p style="text-align: right;">37</p> <p>1 then feel free to take notes. I leave it up to each of you.</p> <p>2 If you do take notes, please remember that your</p> <p>3 notes are only intended to be a help to your memory. They</p> <p>4 are not evidence in the case, and they should not take</p> <p>5 precedence over your own independent memory of the evidence.</p> <p>6 Whenever there's a recess in the trial, I'll ask you</p> <p>7 to please leave your notebooks on your chairs. Those will be</p> <p>8 kept there during short recesses. During longer recesses,</p> <p>9 they'll be collected and kept under lock and key. At no time</p> <p>10 either during or after this trial will anyone ever look at</p> <p>11 any of the notes you've taken.</p> <p>12 At the end of the trial, after you have returned</p> <p>13 your verdicts, your notebooks will be collected. The notes</p> <p>14 will be torn out of them and destroyed. And, once again, no</p> <p>15 one will ever look at any of the notes that you have taken.</p> <p>16 The notes that you take are only to help your</p> <p>17 memory. During deliberations, each of you should rely on</p> <p>18 your own memory of the evidence and you shouldn't be</p> <p>19 influenced by the fact that another juror has taken notes.</p> <p>20 Now I'm going to talk briefly about this case, about</p> <p>21 some of the procedures that we're going to use, and about</p> <p>22 some of the rules of law that will be important.</p> <p>23 This is a criminal case, which has been begun by the</p> <p>24 United States. The name of the case, as I've told you, but</p> <p>25 I'm going to repeat it for you now, is United States against</p>

<p style="text-align: center;">Preliminary Instructions to the Jury</p> <p style="text-align: right;">38</p> <p>1 Michelle Macchio, Jennifer Armento, Christina Simmons, Alexei 2 Wood, Oliver Harris, and Brittne Lawson. 3 Each of these individuals is charged in a document 4 called an indictment. Each of them is charged with the 5 offenses of engaging in a riot, inciting a riot, conspiracy 6 to riot, and destruction of property. 7 You should understand that an indictment is not 8 evidence. It's just a formal way of charging a person with a 9 crime in order to bring him or her to trial. 10 You must not think of the indictment as any evidence 11 of the Defendants' guilt, and you may not draw any 12 information of guilt because he or she has been formally 13 charged. 14 Each count charges a separate offense. Moreover, 15 each Defendant is entitled to have the issue of his or her 16 guilt as to each of the crimes for which he or she is on 17 trial determined from his or her own conduct and from the 18 evidence that applies to him or her as if the Defendant were 19 being tried alone. 20 You should therefore consider separately each 21 offense and the evidence that applies to it, and you should 22 return separate verdicts as to each count as well as to each 23 Defendant unless I specifically instruct you to do otherwise. 24 I will later instruct you that the fact that you -- 25 may find may any one Defendant guilty or not guilty on any</p>	<p style="text-align: center;">Preliminary Instructions to the Jury</p> <p style="text-align: right;">40</p> <p>1 For Ms. Simmons, who is down there on the end, her 2 lawyer is Ms. Jacques. 3 For Mr. Wood, who is over there in the back, his 4 lawyer is Mr. Cohen. 5 For Mr. Harris, who is sitting here at the end 6 towards me, his lawyers are Ms. Coleman and Mr. McCool. 7 And for Ms. Lawson, her lawyers are Ms. Kropf -- and 8 I'm sorry, sir -- 9 MR. PORTNOV: Portnov. Mr. Portnov. 10 THE COURT: -- Mr. Portnov. 11 And in a few minutes I'm going to be reading some 12 other names to you just to make sure you don't know any of 13 these people. 14 So the point is you may hear me refer to the 15 Defendant or the Defendants and, when I say that word, I mean 16 either of them or their lawyers. 17 Very often I'll say the Defendant in the singular 18 and what I mean is, for each Defendant, you take an 19 individual consideration. 20 As the first step in the trial of the case, the 21 Government and the Defendant will have a chance to make 22 opening statements. The Government must make an opening 23 statement at the beginning of its case. 24 The Defendant may make an opening statement right 25 after the Government's opening statement, may decide to give</p>
<p style="text-align: center;">Preliminary Instructions to the Jury</p> <p style="text-align: right;">39</p> <p>1 one count should not influence your verdict with respect to 2 any other count for that particular Defendant or with respect 3 to any other Defendant as to that count or any other count. 4 I also will instruct you later that at any time 5 during your deliberations you may return your verdict of 6 guilty or not guilty with respect to any Defendant on any 7 count. 8 And so the point of this instruction is that each 9 person charged is entitled to have her or his guilt 10 determined separately and individually. 11 In telling you how the trial will proceed, I will be 12 referring to the Government and to the Defendant. When I 13 refer to the Government, I'm speaking of the Assistant United 14 States Attorneys in the case, Ms. Kerkhoff and Mr. Qureshi. 15 When I speak of the Defendants, I'm speaking either 16 of the individual Defendants themselves or of their lawyers. 17 And so now I'm going to just do a matchup here. 18 Well, for Ms. Macchio, who is sitting at the end 19 there, her lawyers are Ms. Heine, Mr. Lazerow, Ms. Whitt 20 and -- I'm sorry? -- 21 MS. WELETZ: Ms. Copsey. 22 THE COURT: -- Ms. Copsey. 23 For Ms. Armento, who is now standing, her lawyer is 24 Ms. Weletz and Mr. Healy. 25 Thank you.</p>	<p style="text-align: center;">Preliminary Instructions to the Jury</p> <p style="text-align: right;">41</p> <p>1 an opening statement later or may choose not to give any 2 opening statement at all. No Defendant is required to make 3 an opening statement. 4 The opening statements of the lawyers are not 5 evidence. They are just to help you understand the evidence 6 that the lawyers expect will be introduced. 7 After the opening statements, the Government will 8 introduce evidence in support of the charges. After the 9 Government presents its evidence, each Defendant may present 10 evidence, but he or she is not required to do so because the 11 law does not require a defendant to prove his or her 12 innocence or to produce any evidence. 13 During the testimony of witnesses, ladies and 14 gentlemen, you sometimes may hear a lawyer ask a question 15 that contains an assertion of fact. 16 I instruct that you, no matter how convinced a 17 lawyer sounds about the facts that he or she puts into a 18 question, that the question itself is not the evidence in the 19 case. It's the witness's answer to the question that is the 20 evidence, not the lawyer's question. 21 At the end of all the evidence, each party will have 22 a chance to make oral arguments to support its case. The 23 statements of the lawyers in their closing arguments, just as 24 in their opening statements, are not evidence in this case. 25 They only are intended to help you understand the evidence</p>

<p style="text-align: center;">Preliminary Instructions to the Jury</p> <p style="text-align: right;">42</p> <p>1 and what each party claims the evidence shows.</p> <p>2 Finally, at the end of all of the evidence and the</p> <p>3 arguments for both sides, I will instruct you on the rules of</p> <p>4 law that you are to apply in your deliberations when you</p> <p>5 retire to consider your verdicts. Your verdicts must each be</p> <p>6 unanimous.</p> <p>7 Now I'm going to speak with you briefly about my job</p> <p>8 and your job. That is the function of the Court and the</p> <p>9 function of the jury.</p> <p>10 My job is to conduct the trial of this case in an</p> <p>11 orderly, fair and efficient manner, to rule on questions of</p> <p>12 law that come up during the trial, and to instruct you on the</p> <p>13 law that applies to this case.</p> <p>14 It is your duty to accept the law as I state it to</p> <p>15 you.</p> <p>16 Your job, ladies and gentlemen, is to determine the</p> <p>17 facts. You and only you are the judges of the facts. You</p> <p>18 alone determine the weight, the effect, and the value of the</p> <p>19 evidence as well as the believability or what we call the</p> <p>20 credibility of the witnesses.</p> <p>21 You must consider and weigh the testimony of all the</p> <p>22 witnesses who appear before you in this case, and you alone</p> <p>23 are to decide whether to believe any witness and the extent</p> <p>24 to which any witness should be believed.</p> <p>25 If there is any reference by me or by the lawyers in</p>	<p style="text-align: center;">Preliminary Instructions to the Jury</p> <p style="text-align: right;">44</p> <p>1 lawyer to a question asked by another lawyer, you are to</p> <p>2 disregard the question and you must not speculate or guess as</p> <p>3 to what the answer would have been. So the word "sustained"</p> <p>4 means ignore it.</p> <p>5 Every Defendant in a criminal case is presumed to be</p> <p>6 innocent, and this presumption of innocence remains with the</p> <p>7 Defendant throughout the trial unless and until he or she is</p> <p>8 proven guilty beyond a reasonable doubt.</p> <p>9 The burden is on the Government to prove the</p> <p>10 Defendant guilty beyond a reasonable doubt, and that burden</p> <p>11 of proof never shifts throughout the trial.</p> <p>12 If you find that the Government has proved beyond a</p> <p>13 reasonable doubt every element of an offense with which a</p> <p>14 defendant is charged, then it is your duty to find him or her</p> <p>15 guilty of that offense.</p> <p>16 On the other hand, if you find that the Government</p> <p>17 has failed to prove beyond a reasonable doubt any element of</p> <p>18 an offense with which a defendant is charged, then you must</p> <p>19 find the Defendant not guilty of that offense.</p> <p>20 Until this case is submitted to you at the end of my</p> <p>21 final instructions, ladies and gentlemen, you must not</p> <p>22 discuss it with anyone, not with parties or witnesses or</p> <p>23 anyone else connected with the case or even with your fellow</p> <p>24 jurors, friends or members of your family.</p> <p>25 And I remind you of my instruction before that you</p>
<p style="text-align: center;">Preliminary Instructions to the Jury</p> <p style="text-align: right;">43</p> <p>1 the case to the evidence and that reference does not coincide</p> <p>2 with your own memory of it, it is your memory that should</p> <p>3 control during your deliberations.</p> <p>4 Additionally, because you are required to judge this</p> <p>5 case based only on the evidence presented in the courtroom,</p> <p>6 at no time should any juror ever attempt to visit any of the</p> <p>7 locations described in the testimony or in any other way try</p> <p>8 to investigate this matter.</p> <p>9 What I'm really saying is that you have to stay off</p> <p>10 the web entirely about this case. You can't Google names.</p> <p>11 You can't look up the time of sunset or sunrise or the</p> <p>12 temperature. You can't look up the definition of words.</p> <p>13 You must not do any online research into anything</p> <p>14 about this case at all. You also must not go to any of the</p> <p>15 locations and look around for yourself. You must rely only</p> <p>16 on what you hear in this courtroom in deciding this case.</p> <p>17 During the trial, a lawyer on one side may object</p> <p>18 when another lawyer offers argument or testimony or other</p> <p>19 evidence that the objecting lawyer believes is not</p> <p>20 admissible.</p> <p>21 Please understand that it is the responsibility of</p> <p>22 the lawyer to make objections to argument or evidence that he</p> <p>23 or she believes is improper or not admissible, and you must</p> <p>24 not be prejudiced against a lawyer who makes such objections.</p> <p>25 If during the trial I sustain an objection by one</p>	<p style="text-align: center;">Preliminary Instructions to the Jury</p> <p style="text-align: right;">45</p> <p>1 must not communicate online with anyone about this case, no</p> <p>2 blogging, Facebook posting, texting, Tweeting or any</p> <p>3 emailing, any other online communication about the case.</p> <p>4 If at any time during the trial anyone should</p> <p>5 attempt to discuss the case with you, you should refuse to do</p> <p>6 so and you should advise me immediately through the marshal</p> <p>7 or the courtroom clerk.</p> <p>8 You should not tell your fellow jurors or anyone,</p> <p>9 other than me, the marshal or the clerk, if an attempt is</p> <p>10 made to talk with you about the case. We'll follow up with</p> <p>11 you as we think is appropriate.</p> <p>12 You may see the lawyers, the parties or the</p> <p>13 witnesses in the courthouse corridors or near the courthouse</p> <p>14 during recesses in the trial. This is a public courthouse.</p> <p>15 Everybody gets to be here. And you just may run into people</p> <p>16 or pass by people.</p> <p>17 In order to avoid even the appearance that they're</p> <p>18 trying to talk to you about the case, they may not even say</p> <p>19 hello or acknowledge you in any way. I assure you that this</p> <p>20 is not because they're discourteous or unfriendly people.</p> <p>21 They do this because they take very seriously the requirement</p> <p>22 that they not have any contact with you or even appear to be</p> <p>23 having any contact with you.</p> <p>24 I'm encouraging you to keep your juror badges on and</p> <p>25 visible when you're out and about in the courthouse or even</p>

<p style="text-align: center;">Preliminary Instructions to the Jury</p> <p style="text-align: right;">46</p> <p>1 outside. It's important that you ignore other people if they</p> <p>2 seem to be talking about the case unwittingly. And, of</p> <p>3 course, do report it to us if you hear anything or feel that</p> <p>4 you have been approached in any way.</p> <p>5 You may have noticed that there are 14 -- well,</p> <p>6 no -- there are 15 of you in the jury box, and many of you</p> <p>7 may know that only 12 of you will retire to deliberate in</p> <p>8 this case at the end of the trial.</p> <p>9 The reason that we have 15 of you is that 12 of you</p> <p>10 are regular jurors who will deliberate at the end of the</p> <p>11 case. Three of you are alternate jurors who would deliberate</p> <p>12 in the place of a regular juror if for some reason a regular</p> <p>13 juror became unavailable to serve.</p> <p>14 In many courtrooms, the alternates jurors are always</p> <p>15 the last few jurors in the box. In this case, however, we</p> <p>16 have randomly seated the alternates in the jury box. What</p> <p>17 that means is that any three of you could be the alternates</p> <p>18 jurors and that all 15 of you should assume that you are</p> <p>19 regular jurors who will deliberate at the end of the case.</p> <p>20 Each of you therefore should give the case your</p> <p>21 fullest and most careful attention.</p> <p>22 Ladies and gentlemen, it's important that you keep</p> <p>23 an open mind and that you not decide any issue in this case</p> <p>24 until the entire case has been submitted to you with my final</p> <p>25 instructions.</p>	<p style="text-align: center;">Opening Statement by Ms. Kerkhoff</p> <p style="text-align: right;">48</p> <p>1 We are now going to proceed with the Government's</p> <p>2 opening statements.</p> <p>3 Ms. Kerkhoff.</p> <p>4 MS. KERKHOFF: Thank you.</p> <p>5 Good morning.</p> <p>6 THE JURY: Good morning.</p> <p>7 MS. KERKHOFF: Mi Kim. Mi Kim owns the Atrium Café.</p> <p>8 It's one of those small sandwich shops and kind of opens</p> <p>9 about 7:00 in the morning, just early enough for you to get a</p> <p>10 breakfast sandwich on your way to work or after you get</p> <p>11 there. It kind of closes around 3:00 or 4:00. So if go</p> <p>12 there for a late lunch, you might miss out.</p> <p>13 But Mi Kim works very hard. She owns this business</p> <p>14 by herself. She works hard. When she arrived at her shop,</p> <p>15 she found it shattered, windows broken.</p> <p>16 She bore the stress of that. She had to pay for</p> <p>17 that. She was responsible for the damage that was done to</p> <p>18 her shop during the riot.</p> <p>19 Luis Villareal, who drives a limo, has driven for a</p> <p>20 long time. He's proud of his job. He works hard at it. He</p> <p>21 will tell you he works hard to provide for his family.</p> <p>22 As he sat in his limo, having dropped off his</p> <p>23 customers, waiting for them to return, he hears, feels,</p> <p>24 banging.</p> <p>25 He looks out and sees a sea of black masks, a</p>
<p style="text-align: center;">Preliminary Instructions to the Jury</p> <p style="text-align: right;">47</p> <p>1 As you can see, there's a court reporter sitting</p> <p>2 here taking down everything that's being said during the</p> <p>3 trial. She will not, however, be producing a transcript that</p> <p>4 you'll have available to you during deliberations.</p> <p>5 You will have to rely on your own memories of what</p> <p>6 each of the witnesses has said. And, therefore, it is</p> <p>7 particularly important that you pay full attention at all</p> <p>8 times.</p> <p>9 I thank you for your attention and your patience.</p> <p>10 I need to ask you about some names before I let</p> <p>11 anybody do opening statements. And so I'm going to do that.</p> <p>12 There are some additional lawyers whom you may hear</p> <p>13 from in this case, and I just want to give you the names in</p> <p>14 case you know any of them. And some of them you've just</p> <p>15 heard.</p> <p>16 Christina Copsey, Elena Whitt, Michael Kennedy,</p> <p>17 Daniel Portnov, Jonathan Lenzner. All of those are lawyers.</p> <p>18 And then there are two additional police officers</p> <p>19 whom you may hear from or about: Daniel Thau -- T-h-a-u --</p> <p>20 and Michael Whiteside.</p> <p>21 If any of you thinks you know any of these people,</p> <p>22 could you please raise your hand.</p> <p>23 I see no hands.</p> <p>24 Thank you very much. I take that to be that you</p> <p>25 don't know them.</p>	<p style="text-align: center;">Opening Statement by Ms. Kerkhoff</p> <p style="text-align: right;">49</p> <p>1 massive group of people. He sees them destroying a bus stop</p> <p>2 near his limo. He gets out. He runs to the passenger's side</p> <p>3 and then he watches as multi-people take crowbars, hammers,</p> <p>4 rocks to his limo.</p> <p>5 And he stands there and then one of them throws</p> <p>6 something at him, a bag with a half-eaten sandwich. After</p> <p>7 that, he sees a lit object tossed into his limo. He gets it</p> <p>8 out, and he notices he's been cut.</p> <p>9 Aurelia Taylor: She works hard, too. She works at</p> <p>10 a Starbucks. And she and a dozen other customers had to dive</p> <p>11 for cover as the massive two-story plate glass windows that</p> <p>12 surrounded her Starbucks where she works were destroyed with</p> <p>13 crowbars, with hammers, with bricks, with entire trash cans</p> <p>14 tossed through the window as they hid under the tables trying</p> <p>15 to protect themselves from the falling glass.</p> <p>16 Andrew Lapp, Rance Knapp, Fitsum Menna, Lee Meadows:</p> <p>17 These are all people who went to work on January 20th, 2017,</p> <p>18 here in DC, who worked here in this city, all people who were</p> <p>19 impacted by the riot, the riot that each of these</p> <p>20 Defendants -- each of these six Defendants participated in.</p> <p>21 And that's why we're here today. We're here today</p> <p>22 because each of the Defendants -- Michelle Macchio, Christina</p> <p>23 Simmons, Brittne Lawson, Oliver Harris, Jennifer Armento and</p> <p>24 Alexei Wood -- made a choice on January 20th, 2017.</p> <p>25 They made a choice to participate in a riot, to</p>

<p>Opening Statement by Ms. Kerkhoff</p> <p>50</p> <p>1 participate and be a part of violence and destruction. Each</p> <p>2 of them made that choice, and each of them played a role.</p> <p>3 They played a role with others, many others, hundreds.</p> <p>4 But today, this day, we talk about them. We talk</p> <p>5 about their role.</p> <p>6 So to understand -- to understand the role that each</p> <p>7 of the Defendants played, to understand how this violence and</p> <p>8 destruction happened and the choice they made to be a part of</p> <p>9 it, you have to understand a bit about where it traveled, the</p> <p>10 riot, how long it went, the duration, the location.</p> <p>11 And to do that, we're going to take you to downtown</p> <p>12 DC, and you start at Logan Circle in Northwest DC.</p> <p>13 Starting at Logan Circle, on the morning of</p> <p>14 January 20th, starting shortly after 10:00 a.m., a massive</p> <p>15 group, hundreds of people, formed a black bloc, a group</p> <p>16 dressed all alike, many with masks covering their faces, many</p> <p>17 with weapons.</p> <p>18 This group moved together through the city. And you</p> <p>19 will see individuals come from within the group, come out,</p> <p>20 break property, run back in, get reabsorbed by the group as</p> <p>21 it continues to move.</p> <p>22 This massive group, a sea of black masks, 16 city</p> <p>23 blocks that moved for 33 minutes, breaking, destroying,</p> <p>24 frightening along the whole way.</p> <p>25 So you start at Logan Circle.</p>	<p>Opening Statement by Ms. Kerkhoff</p> <p>52</p> <p>1 each Defendant knew. So we just watched the visual of that.</p> <p>2 This, Government's Exhibit 301, shows that same map.</p> <p>3 The group starts at Logan Circle. And let me be</p> <p>4 clear what the evidence will be in this case. This was not</p> <p>5 some sort of spontaneous gathering. This was planned. This</p> <p>6 was advertised. There were planning meetings. "Come to</p> <p>7 Logan Circle, 10:00 a.m., anti-fascist, anti-capitalist bloc,</p> <p>8 wear all black."</p> <p>9 And at Logan Circle, before the group even begins to</p> <p>10 move south, witnesses see the sea of black masks in black</p> <p>11 clothing. Witnesses see weapons, flares, fireworks,</p> <p>12 crowbars, hammers.</p> <p>13 And at 10:19 a.m., this massive group of hundreds of</p> <p>14 people sets off south down 13th Street. Before it even gets</p> <p>15 to past this block, the spray paint starts. Tags a police</p> <p>16 car sitting right here south of Logan Circle. Officers</p> <p>17 standing there.</p> <p>18 The group continues moving. Police do not do</p> <p>19 anything. They follow. They just follow.</p> <p>20 The group comes down 13th Street. People within the</p> <p>21 black bloc break off. They run at the BP gas station, throw</p> <p>22 bricks, break items.</p> <p>23 And inside of that gas station is a woman by the</p> <p>24 name of Fitsum Menna. She works there. She's frightened.</p> <p>25 She's scared. She even puts a case of drinks up against the</p>
<p>Opening Statement by Ms. Kerkhoff</p> <p>51</p> <p>1 (Displaying video on the video screen.)</p> <p>2 The group traveled south heading towards the mall on</p> <p>3 13th Street. You can see we've identified the BP gas</p> <p>4 station, coming down as it passes over from N to M, then past</p> <p>5 Massachusetts, block after block after block. You'll see an</p> <p>6 Au Bon Pain. The group continued moving down to K Street,</p> <p>7 where it turned right.</p> <p>8 The limousine located at 13th and K. The group then</p> <p>9 moved through the park, Franklin Square, came out on other</p> <p>10 side on I Street, traveled down I Street.</p> <p>11 You see the Starbucks, the Bank of America, the Cafe</p> <p>12 Atrium located there, too. It moves down, circles around</p> <p>13 past New York Avenue, comes to the McDonald's at 13th and</p> <p>14 New York, heads back up 13th Street, enters Franklin Square</p> <p>15 park again, regroups, re-forms again, this massive park,</p> <p>16 comes out, hits 14th Street, travels past the Crowne Plaza --</p> <p>17 there's a Hamilton's Restaurant; there's a Starbucks there --</p> <p>18 turns right onto L Street and then travels from 14th, across</p> <p>19 L Street, past 13th and, ultimately, finally, 16 blocks,</p> <p>20 33 minutes in, the police are able to form a line and the</p> <p>21 police are able to stop the group.</p> <p>22 That's how long the group traveled: 16 blocks,</p> <p>23 33 minutes.</p> <p>24 Now, the route itself becomes important, and the</p> <p>25 distance traveled becomes important as it relates to what</p>	<p>Opening Statement by Ms. Kerkhoff</p> <p>53</p> <p>1 door to try to prevent people from coming in to attack.</p> <p>2 She can't tell you who broke what. And she'll tell</p> <p>3 you why. They were all dressed the same. They looked the</p> <p>4 same. They ran in and they went back into the group.</p> <p>5 Individuals come from within the group. They start</p> <p>6 tearing the trash cans off the streets, the newspaper stands,</p> <p>7 lighting on fire, and still traveled south, continuing,</p> <p>8 moving as a group.</p> <p>9 You can hear cheers when the BP is attacked. You</p> <p>10 can hear directions, instructions, being given from within</p> <p>11 the group.</p> <p>12 Newspaper stands, trash cans. They litter the whole</p> <p>13 street. The officers who are following can't even drive down</p> <p>14 the street. Cars can't move.</p> <p>15 They have to get out of their vehicle and physically</p> <p>16 move all of the trash cans, the newspaper stands, just to get</p> <p>17 down the street to try to follow this group. And still the</p> <p>18 police just follow.</p> <p>19 The ABP, Andrew Lapp, who's working. Andrew Lapp</p> <p>20 will tell you he drove to work that day. He passed Logan</p> <p>21 Circle, and he saw the group. Andrew Lapp's worked at ABP.</p> <p>22 He's been in DC for years. He says, "I've seen</p> <p>23 demonstrations. I've seen protests. I immediately parked my</p> <p>24 car in a garage because I believed it would be damaged. I</p> <p>25 usually park on the street." He paid to put his car in a</p>

<p>Opening Statement by Ms. Kerkhoff</p> <p>54</p> <p>1 garage before anything had happened because of what he could 2 see. 3 He gets to that ABP. He's doing his job. And he 4 hears screaming from one of his employees. The ABP is being 5 attacked. 6 (Whereupon, a certain video was published in open 7 court.) 8 MS. KERKHOFF: Andrew Lapp runs out. He tries to 9 see the people who are damaging his job, his place of 10 employment. 11 And he will tell you they just got reabsorbed in the 12 group. They kept coming out, going back in, breaking and 13 pulling, moving together. 14 Past 13th Street. Past the ABP. They take a right 15 on K Street. They take a right on K Street. Mr. Villareal's 16 limo is on the right side. There's a bus shelter across the 17 street at the north side of the park. 18 (Whereupon, a certain video was published in open 19 court.) 20 MS. KERKHOFF: Mr. Villareal will tell you -- 21 watched the -- 22 THE COURT: Can you turn that off. 23 THE COURT REPORTER: I'm sorry. I missed something. 24 THE COURT: Mr. Villareal will tell you what? 25 MS. KERKHOFF: He watched that bus shelter be</p>	<p>Opening Statement by Ms. Kerkhoff</p> <p>56</p> <p>1 the windows, about 10 officers standing there. 2 One of those officers is Officer Ashley Anderson. 3 She doesn't normally work downtown. She works in the Seventh 4 District. And she's standing there because that was her 5 assignment that day. 6 And she moves her bike and she's watching hundreds 7 of people pouring out of the park. She can see weapons. She 8 can see and hear instructions, fireworks, flares, telling 9 people what to do, "Move together. Stay tight. Work as a 10 group." 11 She's watching and she almost didn't see it, the 12 brick that is thrown at her, the brick that is tossed at her 13 and hits her bike. She has no face shield. She has no riot 14 gear. 15 The group -- the individuals within the group are 16 throwing bricks and rocks at officers and people. And still 17 what did that line of 10 officers do? They put their bikes 18 there and they stood. 19 And then -- then it explodes. Then the destruction 20 and violence escalates. 21 (Whereupon, a certain video was shown in open 22 court.) 23 MS. KERKHOFF: Starbucks, the Bank of America, and 24 just past that, that's the Atrium Cafe, the Cafe Atrium 25 Ms. Kim owns. It was closed that day, but it did not stop.</p>
<p>Opening Statement by Ms. Kerkhoff</p> <p>55</p> <p>1 shattered. 2 On the screen right now, you can see Mr. Villareal. 3 He's standing by his limo as the hammers, the crowbars -- 4 he's standing as it's being attacked. 5 (Whereupon, a certain video was published in open 6 court.) 7 MS. KERKHOFF: After the limousine is attacked, 8 trash cans are pulled in the street. The group comes down to 9 Franklin Square Park. 10 I'm going to switch to Government's Exhibit 302. 11 Franklin Square Park. The group moves through this 12 park. It's an incredibly large park. You will see video of 13 it. You will see photographs of it. Very large park. 14 At this point, the police continue to just follow. 15 The group has destroyed windows. They've got the 16 BP, the ABP, the limo, countless newspapers, trash cans. 17 They're lighting flares and fireworks in the park. 18 And a thin line of mountain bike officers, no riot 19 gear, just their bikes and bike helmets, form on I Street 20 just south of the park. Their job on the inauguration was to 21 be mobile. 22 This was the inauguration. Roads were shut down. 23 So they were on mountain bikes. They stand and watch the sea 24 of black masks coming towards them. And all they have is 25 their bike. They literally just move their bikes in front of</p>	<p>Opening Statement by Ms. Kerkhoff</p> <p>57</p> <p>1 You'll hear and see video from inside that 2 Starbucks. The dozen customers crouched under tables as 3 those plate glass windows rained down on them. And still the 4 group moved. 5 You'll see the video that shows people coming from 6 within the group, the black bloc, running out, breaking, 7 coming back in, running out, tearing newspapers, coming back 8 in. And still the group moved together. 9 Officer Anderson will tell you, "I couldn't stop it. 10 You couldn't tell who was doing what because they all dressed 11 the same because they seemed to be working together, moving 12 together, reabsorbing. And I couldn't go in there. They had 13 weapons. What did I have? There were hundreds of them." 14 And she'll tell you she felt helpless. 15 And as that black bloc moves down I Street, crowbars 16 begin to pry up those big cement pavers, breaking, more 17 bricks, more rocks, more weapons. And the police move 18 behind. 19 Now, at this point, this destruction has gone on for 20 block after block after block, minute after minute. So the 21 police try to form a line -- form a line as the group moves 22 south here on I Street, moves past the Bobby Van's. And 23 sirens are going. The police are trying to move. 24 And what does the group do? Individuals within the 25 group break at the Bobby Van's. They break at the ATM on</p>

<p style="text-align: center;">Opening Statement by Ms. Kerkhoff</p> <p style="text-align: right;">58</p> <p>1 I Street. They move towards New York Avenue, coming around</p> <p>2 here. The police form a line. They try to disperse them.</p> <p>3 They try to try spray.</p> <p>4 And the group turns around. It re-forms again in</p> <p>5 that park. It comes back together, runs down New York Avenue</p> <p>6 towards 13th Street, moves together again to the McDonald's.</p> <p>7 It moves together and continues destroying.</p> <p>8 (Whereupon, a certain video was shown in open</p> <p>9 court.)</p> <p>10 MS. KERKHOFF: At this point, the police try to</p> <p>11 disperse the group again. They try. They try at 13th and</p> <p>12 New York.</p> <p>13 The group turns back up and enters the park.</p> <p>14 Now, there are no officers in front. The park is</p> <p>15 not surrounded. Officer Anderson will tell you she and there</p> <p>16 was about nine other officers on their mountain bikes and</p> <p>17 some officers on scooters -- they're behind them.</p> <p>18 The problem is the police are behind. They cannot</p> <p>19 get in front of them because the group is moving together.</p> <p>20 It's moving quickly. And it comes across the park.</p> <p>21 At this point, the sirens are going. The police</p> <p>22 have used pepper spray. The police are trying to stop this.</p> <p>23 Many people are walking away. But hundreds remain.</p> <p>24 They come out of this park and re-form again, move</p> <p>25 back up 14th Street, north. This is where the Crowne Plaza</p>	<p style="text-align: center;">Opening Statement by Ms. Kerkhoff</p> <p style="text-align: right;">60</p> <p>1 Officer Anderson, the one that has no face shield, no riot</p> <p>2 gear, rides his bike and tries to stop the person that's</p> <p>3 tossing the patio chairs into the street, tossing them at</p> <p>4 officers.</p> <p>5 And he collides. His name is Officer Harrison</p> <p>6 Grubbs. He breaks his wrist. And the sea of black masks</p> <p>7 move past him.</p> <p>8 Finally, at 12th and L, what's left of Officer</p> <p>9 Grubbs's mountain bike unit and a handful of officers on</p> <p>10 scooters, with the motorcycles -- they call them the scoot</p> <p>11 squad -- they form a line end to end here, less than two</p> <p>12 dozen officers facing several hundred, a sea, of black masks</p> <p>13 with weapons.</p> <p>14 As the officers moved -- you'll hear from many of</p> <p>15 them -- they are officers on foot coming from behind.</p> <p>16 Officer Anderson and her mountain bike squad and a couple of</p> <p>17 scooters get in front.</p> <p>18 So you have officers moving from behind, officers in</p> <p>19 front, trying to stop this group, this group that is moving</p> <p>20 together, working together.</p> <p>21 As they form a line, you can see -- you'll see it in</p> <p>22 the video -- individuals within that black bloc turn around.</p> <p>23 They got officers coming from behind. They've got about</p> <p>24 20 stretched across the whole street in front.</p> <p>25 They form in the middle of the street. They move to</p>
<p style="text-align: center;">Opening Statement by Ms. Kerkhoff</p> <p style="text-align: right;">59</p> <p>1 is. There's a Hamilton's at the corner. There's are cameras</p> <p>2 located all along the Crowne Plaza. Windows are smashed at</p> <p>3 the Hamilton's.</p> <p>4 At the front entrance, Rance Knapp, a man who's</p> <p>5 worked for many years at the Crowne Plaza, hears and sees --</p> <p>6 is it possible not to hear and see? -- customers and even</p> <p>7 just people on the street are frightened.</p> <p>8 They're running inside. Glass bottles are being</p> <p>9 thrown at people simply standing. He pulls everyone inside</p> <p>10 and he locks the door to the hotel. He locks it for safety.</p> <p>11 And the group continues on 14th Street, continues</p> <p>12 moving down past that locked door towards the Starbucks</p> <p>13 that's located at the Crowne Plaza.</p> <p>14 As the group moves, again, an individual comes from</p> <p>15 within the group.</p> <p>16 (Whereupon, a certain video is displayed in open</p> <p>17 court.)</p> <p>18 MS. KERKHOFF: The group is turned onto L Street.</p> <p>19 It travels another two blocks.</p> <p>20 Glass continues to break and shatter, commercial</p> <p>21 establishments, newspaper stands, trash cans. Officers have</p> <p>22 those parking stamp placards tossed at them. Patio chairs</p> <p>23 from the Maddy's is being thrown at officers, knocks someone</p> <p>24 off a scooter.</p> <p>25 One of those mountain bike officers that works with</p>	<p style="text-align: center;">Opening Statement by Ms. Kerkhoff</p> <p style="text-align: right;">61</p> <p>1 one side. And you can hear the voice say, "We're gonna do a</p> <p>2 countdown. Ten, nine, eight, seven...."</p> <p>3 And as the group counts down, Officer Anderson and a</p> <p>4 handful of other officers stand there, waiting. And they</p> <p>5 know -- you can hear it -- they're gonna charge. They're</p> <p>6 doing a countdown. And they stand there.</p> <p>7 And several hundred charge at the part of the line</p> <p>8 on the side of the corner. 60 to 70 break through. They</p> <p>9 just run over the officers. Those officers stand up. They</p> <p>10 use those batons. They push them back. They use their</p> <p>11 spray. "Get back."</p> <p>12 Finally, they stop the group. Finally, 16 blocks,</p> <p>13 33 minutes, the group is stopped. Each of the Defendants</p> <p>14 were in that group.</p> <p>15 Now, this trial, you will not hear the Government</p> <p>16 present evidence about political opinions or disagreements or</p> <p>17 dissent. That's not what this trial is about.</p> <p>18 This is DC. We know protests. We know dissent.</p> <p>19 They can be powerful. They can be beautiful. They can</p> <p>20 effect change.</p> <p>21 But this is about violence and destruction. The</p> <p>22 video evidence, the witnesses, the photographs, what you will</p> <p>23 see and hear in this case, this isn't a protest.</p> <p>24 The Government's also not going to present evidence</p> <p>25 to you about the Defendants' opinions or emotions.</p>

<p>Opening Statement by Ms. Kerkhoff</p> <p>62</p> <p>1 January 20th, 2017, Inauguration Day, people are</p> <p>2 allowed to have emotions. They're allowed to feel what they</p> <p>3 want, frustration, disappointment, happiness, hope, despair,</p> <p>4 even anger.</p> <p>5 This is not about the Defendants' emotions or</p> <p>6 feelings. It's about their choice to express themselves by</p> <p>7 acting with violence, with destruction. That is why we're</p> <p>8 here. Violence and destruction was a choice, and they made</p> <p>9 choices that day to participate in it.</p> <p>10 It is the choice, it is the conduct, that is the</p> <p>11 crime.</p> <p>12 So we have each Defendant here today. And today is</p> <p>13 their day. I told you at the beginning you're going to hear</p> <p>14 evidence that there were a lot of people arrested, a lot of</p> <p>15 people who participated. This is about these Defendants this</p> <p>16 day.</p> <p>17 Now, in this trial, you will see, hear, countless</p> <p>18 videos, countless photographs, evidence in this case to show</p> <p>19 you what happened during the riot.</p> <p>20 This is an era of cell phones. It's an era where</p> <p>21 everyone can be a photographer, if they want, and post it.</p> <p>22 There's a lot of video. Officers were wearing body-worn</p> <p>23 camera. There's a lot of video in this case.</p> <p>24 And you're going to get to see the video, the video</p> <p>25 that helps show you what each Defendant did in this riot,</p>	<p>Opening Statement by Ms. Kerkhoff</p> <p>64</p> <p>1 you will get to see.</p> <p>2 Jennifer Armento: You will see the video of</p> <p>3 Jennifer Armento as well. She, too, decided to hide her face</p> <p>4 that day. She brought with her goggles and other items.</p> <p>5 She, too, tried to start changing as the police were</p> <p>6 moving in, taking off her goggles, changing out of some of</p> <p>7 her clothes.</p> <p>8 But you will see that video evidence and you will</p> <p>9 see Jennifer Armento again and again with this black bloc,</p> <p>10 moving with them, re-forming with them, staying with them,</p> <p>11 traveling with them.</p> <p>12 Christina Simmons: Christina Simmons, very short</p> <p>13 stature. You'll see this for yourself as well. She had a</p> <p>14 unique backpack, one that was seized as evidence. Stripes.</p> <p>15 You can see it on videos.</p> <p>16 She also had a hat that had a skull on it that can</p> <p>17 cover the face. So despite her short stature, you can see</p> <p>18 the peeks and the glimpses of the hat and the bag. You can</p> <p>19 see, too, that she tries to change after the police stop.</p> <p>20 Brittne Lawson: Now, Brittne Lawson was present as</p> <p>21 a medic that day. You see, when I told you this was</p> <p>22 planned -- and you will have evidence of these planning</p> <p>23 meetings talking about the anti-capitalist, anti-fascist</p> <p>24 bloc -- this was planned.</p> <p>25 It was planned that they would bring their own</p>
<p>Opening Statement by Ms. Kerkhoff</p> <p>63</p> <p>1 what their specific role was, how they chose to participate</p> <p>2 in the riot.</p> <p>3 You will get to be the detectives, to look at the</p> <p>4 videos, to compare it, to say for yourself, "Yes. That is</p> <p>5 them" or, "No, it's not."</p> <p>6 Defendant Oliver Harris: Now, Mr. Harris on January</p> <p>7 20th, 2017, hid his face with a mask. That mask comes off</p> <p>8 today.</p> <p>9 But you will see the video evidence, the Defendant</p> <p>10 Harris, how he dressed, his all-black clothing, with his</p> <p>11 black mask, with a backpack that had a water bottle in it,</p> <p>12 white strings on his hoodie, one longer than the other on the</p> <p>13 same side, zipped up the middle, had a little bit of a white</p> <p>14 remnant.</p> <p>15 Oliver Harris was in Logan Circle. Oliver Harris</p> <p>16 was present throughout the whole length of the 16 city</p> <p>17 blocks, of the 33 minutes. Oliver Harris can even be seen on</p> <p>18 video watching that Starbucks get destroyed.</p> <p>19 And Oliver Harris rejoined that group, rejoined that</p> <p>20 black bloc, again and again and again, chose to participate,</p> <p>21 to move with it, to be a part of it.</p> <p>22 And as the police were trying to stop that line,</p> <p>23 Oliver Harris started to change his clothes, pulled down his</p> <p>24 mask so you could see his face, began to take off those black</p> <p>25 clothes to other clothes he had on underneath, all of which</p>	<p>Opening Statement by Ms. Kerkhoff</p> <p>65</p> <p>1 street medics, people to render aid to the participants in</p> <p>2 the black bloc, people to bring things like spray for when</p> <p>3 the police use pepper spray to wash out the eyes.</p> <p>4 This isn't the first day at a charity walk. Medics</p> <p>5 with tourniquet kits and gauze, medics ready for the fight.</p> <p>6 And Ms. Lawson was one of those.</p> <p>7 And Ms. Lawson moved with the group, traveled with</p> <p>8 the group, stayed with the group, worked with the group,</p> <p>9 because her role was to aid them if they got hurt.</p> <p>10 And that was part of the planning. Part of the</p> <p>11 planning was, you'll hear, "We need scouts to tell us where</p> <p>12 the police are. We'll have medics." There were even</p> <p>13 discussions about what to do if arrested, jail solidarity,</p> <p>14 "How arrestable is this? When we meet up later, no window</p> <p>15 breaking later. Wear all black. Have your change of clothes</p> <p>16 so you can change out of it when we're done."</p> <p>17 These are part of the meetings to put this together.</p> <p>18 This was not spontaneous. This was not a random, unplanned</p> <p>19 act.</p> <p>20 Now, Michelle Macchio also moved with the group,</p> <p>21 also said she was a medic. But, unlike Ms. Lawson, she</p> <p>22 didn't put red tape on herself or designate herself as she</p> <p>23 moved with her goggles and other things.</p> <p>24 She was fully masked, fully protected, fully</p> <p>25 covered, fully ready to participate with this black bloc,</p>

<p>Opening Statement by Ms. Kerkhoff</p> <p>66</p> <p>1 fully ready to move with the group, and she did again and</p> <p>2 again. She re-formed with them. She went back out for more</p> <p>3 destruction.</p> <p>4 And, finally, Alexei Wood. Now, Alexei Wood did not</p> <p>5 hide his face. Alexei Wood, in fact, showed it because he</p> <p>6 live-streamed the whole event, PR, live-streamed it on his</p> <p>7 phone to anyone that wanted to watch.</p> <p>8 And because of that live stream, you can hear him</p> <p>9 cheering when the destruction happens. You can hear him</p> <p>10 celebrating when a guardsman is struck in the groin with a</p> <p>11 rock. You can hear him cheering this violence.</p> <p>12 Each of these Defendants played a role.</p> <p>13 Now, I want to be very clear: The evidence in this</p> <p>14 case is not that, because you wear black, you must have</p> <p>15 participated. That is not the evidence. Black can be a</p> <p>16 wonderful color, quite slimming, in fact.</p> <p>17 The evidence is not that, just because a group of</p> <p>18 people get together and wear a single color and come together</p> <p>19 in a central location, whether that color is black, whether</p> <p>20 it's orange, whether it's pink -- come together to protest,</p> <p>21 that that is a crime. That's not why the Defendants are</p> <p>22 charged.</p> <p>23 The Defendants are charged because, when you look at</p> <p>24 everything they did, all of it, how they chose to participate</p> <p>25 in the black bloc, to move with it, to stay with it, to</p>	<p>Opening Statement by Ms. Kerkhoff</p> <p>68</p> <p>1 people, including people who are dressed in all black with</p> <p>2 masks, who stand to the side and say, "No. I'm out," because</p> <p>3 they had block after block after block after block</p> <p>4 re-forming, each part, to walk away.</p> <p>5 But when they chose not to walk away, you will see</p> <p>6 that evidence as their conscious choice to continue to</p> <p>7 participate.</p> <p>8 You will see that the police tried to disperse them,</p> <p>9 use pepper spray, use later on what they call sting-balls</p> <p>10 that have smoke, kind of a disorientation.</p> <p>11 The police first use that after the BP, after the</p> <p>12 trash cans, after the ABP, after the bus shelter, after</p> <p>13 Mr. Villareal's limo, after Franklin Square, after the</p> <p>14 officers are being chucked with bricks, after the Starbucks,</p> <p>15 after the Bank of America, after the Bobby Van's. First use</p> <p>16 of pepper spray at all.</p> <p>17 And guess what. You'll see it didn't work. They</p> <p>18 re-formed and went back out. The police tried again at</p> <p>19 13th and New York. It didn't work. They went back out.</p> <p>20 They re-formed. The police tried again. They continued to</p> <p>21 break again and again.</p> <p>22 Now, you'll have the evidence that one of the</p> <p>23 reasons it didn't work is that people came prepared for it.</p> <p>24 They expected it. They brought goggles. They brought gas</p> <p>25 masks. They brought things to wash away pepper spray, you</p>
<p>Opening Statement by Ms. Kerkhoff</p> <p>67</p> <p>1 re-form with it, to do it when they have chosen to dress in a</p> <p>2 way that aids the group, that helps the group, to move with</p> <p>3 the group, to allow people to be reabsorbed, to go back out,</p> <p>4 as this group is moving and cheering and breaking, those are</p> <p>5 the choices they made.</p> <p>6 And so, when you look at this evidence, the</p> <p>7 Government's asking you to look at everything the Defendants</p> <p>8 did. What could they see? What do they hear?</p> <p>9 And you will have the videos. You can see and hear</p> <p>10 everything. You can see and hear the destruction. You can</p> <p>11 see and hear the police finally try to stop it.</p> <p>12 And, yet, each of these Defendants said: "I'm in.</p> <p>13 I've traveled."</p> <p>14 Now, block after block after block: I've watched</p> <p>15 this. I am moving. I can see. It's apparent to anyone</p> <p>16 watching that you can see how the group moves together at</p> <p>17 some point. Maybe not at the BP. Maybe not at the ABP.</p> <p>18 How about at the limo? How about at the bus</p> <p>19 shelters? You re-form with this group. How about at the</p> <p>20 Starbucks? And you say, "This is what I'm choosing to do."</p> <p>21 That's the choice.</p> <p>22 Now, you'll also see that there are plenty of people</p> <p>23 on these videos that could see and hear and they stopped and</p> <p>24 they walked away.</p> <p>25 You'll see. You'll be able to watch the number of</p>	<p>Opening Statement by Ms. Kerkhoff</p> <p>69</p> <p>1 know, the normal kinds of things for a protest, because this</p> <p>2 was planned.</p> <p>3 You'll see at 12th and L when that group of hundreds</p> <p>4 charged at the police line, the police have tried to stop</p> <p>5 them repeatedly, tried to hit pepper spray, tried to come</p> <p>6 from behind.</p> <p>7 They formed a line. They're standing there with</p> <p>8 their ASPs, standing there. And there's a countdown: Ten,</p> <p>9 nine, eight, seven, six, five, four, three, two, one. And</p> <p>10 they charge.</p> <p>11 Not a single officer, ever, goes for his gun. Not</p> <p>12 pulls it out. Not unholsters it. They stand. And this is</p> <p>13 what they use for the charge of 100.</p> <p>14 So you're right. You're going to be seeing the</p> <p>15 police try to disperse them and try to stop them. They were</p> <p>16 not very successful until the end.</p> <p>17 And through all of that, seeing and hearing the</p> <p>18 glass, the newspaper stands, the trash cans, the screaming,</p> <p>19 the cheering, the police sirens, the pepper spray -- seeing</p> <p>20 all of that, hearing all of that, each of these Defendants</p> <p>21 still said, "I'm in. Lets keep going. I'm in."</p> <p>22 That's why they're charged. They're charged with</p> <p>23 rioting, engaging in a riot, rioting to urge and incite,</p> <p>24 conspiracy to riot, an agreement to do this. And then</p> <p>25 they're charged with destruction of property.</p>

<p>Opening Statement by Ms. Kerkhoff</p> <p>70</p> <p>1 I'll be very clear: We don't believe the evidence 2 is going to show that any of these six individuals personally 3 took that crowbar or that hammer and hit the limo or 4 personally bashed those windows of that Starbucks in. That 5 was not their role.</p> <p>6 And the law the Judge will instruct you is they 7 didn't have to do that. You don't personally have to be the 8 one that breaks the window to be guilty of rioting, to be 9 guilty of agreeing to riot, because, as you'll see from this 10 case, you'll see from the evidence, this group is a riot.</p> <p>11 When Officer Anderson is looking at hundreds of 12 people chucking bricks at them, breaking property, right in 13 front of them, and she says, "We were helpless," she says 14 that. And she'll tell you, "The group was so large, we 15 couldn't do anything. What could we do?"</p> <p>16 Now, each Defendant had countless opportunities to 17 walk away, to say, "This is too much. This isn't what I 18 signed on for. This isn't what I'm going to do. This is not 19 how I'm going to express my opinion."</p> <p>20 And over and over again, Franklin Square Park twice, 21 and a park near New York Avenue. Again and again, they made 22 a choice to stay, to be a part of this, to move with the 23 group.</p> <p>24 And when they did that, they participated. They 25 actively helped those with the hammers and the crowbars were</p>	<p>Opening Statement by Mr. McCool</p> <p>72</p> <p>1 here in Washington, DC, to exercise their freedom and to 2 speak out against the election of Donald Trump.</p> <p>3 Several individuals, several individuals, chose to 4 spray-paint graffiti, set fire to trash cans, smash windows 5 and destroy property.</p> <p>6 Oliver Harris did none of this. He never said, "I'm 7 in." At no point in this trial will you hear anyone say that 8 Oliver Harris said, "I'm in."</p> <p>9 He did not destroy a limousine, he did not smash 10 windows and frighten those people inside, he did not engage 11 in a riot, and he did not urge others to do so.</p> <p>12 The evidence is going to show, ladies and gentlemen, 13 that, on January 20th, the police treated those who exercised 14 their First Amendment rights just like those who broke the 15 law. That will be the evidence in this case.</p> <p>16 They did not distinguish between lawbreakers and 17 protesters.</p> <p>18 Oliver Harris was unjustly treated as a criminal. 19 He and many others were encircled. They were encircled, 20 doused with pepper spray, subjected to sting grenades and 21 pushed violently with wooden sticks by a small number of 22 officers, a small number of officers.</p> <p>23 Why are we here, then? Why are we sitting here in 24 this courtroom nearly a year after Trump's election? 25 We are here because the evidence will show that it's</p>
<p>Opening Statement by Mr. McCool</p> <p>71</p> <p>1 breaking, reabsorbing and moving, reabsorbing and moving. 2 They helped this path of destruction through the city.</p> <p>3 And it's for those choices that they made that they 4 need to be held accountable. At the conclusion of this 5 trial, we are going to ask you to hold them accountable, to 6 find them guilty for what they did and for the choice they 7 made that day, the choice they made to express themselves 8 through violence and destruction.</p> <p>9 Thank you.</p> <p>10 THE COURT: Ms. McCool?</p> <p>11 MR. McCool: Thank you, your Honor.</p> <p>12 If I could just get set up here.</p> <p>13 Excuse me. Ladies and gentlemen. Sorry to turn my 14 back on you.</p> <p>15 May it please the Court, counsel.</p> <p>16 Ladies and gentlemen of the jury, it's still good 17 morning. So good morning.</p> <p>18 THE JURY: Good morning.</p> <p>19 MR. McCool: This -- this case -- this case is about 20 our freedom to associate with one another and to express our 21 political views freely.</p> <p>22 Our city has traditionally served as the national 23 gathering place for people to exercise their First Amendment 24 rights and protest against our Government.</p> <p>25 On January 20th, 2017, hundreds of people gathered</p>	<p>Opening Statement by Mr. McCool</p> <p>73</p> <p>1 easier for the police to treat everyone the same, to call a 2 protest a riot, lock everyone up, rather than comply with the 3 First Amendment.</p> <p>4 Now, shortly after 10:00 on January 20th, a group of 5 protesters gathered at Logan Circle. You can see on the 6 monitor. That's the aerial photograph of protesters 7 gathering that day.</p> <p>8 (Whereupon, certain images were published in open 9 court.)</p> <p>10 MR. McCool: In this photo, you can see it's about 11 10:07. You see that up there on the left-hand side of the 12 screen? You can see the time. That'll be important because 13 we're going to use some of these photographs as I go along. 14 I'll be about 15 minutes, 20 minutes maybe, depending how 15 fast I talk.</p> <p>16 Many of the protesters that you see in this 17 photograph carried banners. They carried signs. They 18 carried flags. And it's true. Most of them were dressed in 19 black.</p> <p>20 Many of them dressed the same, but they did not all 21 behave in the same way. That is important to keep in mind, I 22 submit, as you review the evidence over the next days and 23 weeks ahead.</p> <p>24 Certain people, among the hundreds of protesters, 25 would engage in criminal conduct. As you can see, as the</p>

<p style="text-align: center;">Opening Statement by Mr. McCool</p> <p style="text-align: right;">74</p> <p>1 protesters gathered, many officers and supervisors were</p> <p>2 nearby.</p> <p>3 I don't know if you noticed in the first frame --</p> <p>4 and we don't need to go back there -- but there was about</p> <p>5 three vans in the first one.</p> <p>6 You see those white vans on the left side of the</p> <p>7 screen there? Those are police vans. There's about nine of</p> <p>8 them. There's about five cruisers in that photograph.</p> <p>9 Each of those vans hold about six to eight police</p> <p>10 officers.</p> <p>11 But if you could take a look at the next screen</p> <p>12 shot, you'll see many of these officers wore helmets and</p> <p>13 shields and they all carried weapons.</p> <p>14 Now, the evidence is going to show and the First</p> <p>15 Amendment procedures require that officers and supervisors</p> <p>16 seek to identify the organizers of protesters, to determine</p> <p>17 if there's going to be civil disobedience, to see if anyone</p> <p>18 is engaged in or bent on criminal conduct. This was not</p> <p>19 done.</p> <p>20 At around 10:19 on that morning, you will see</p> <p>21 protesters walk out of Logan Circle and proceed south on</p> <p>22 13th Street.</p> <p>23 Can we play this video, please.</p> <p>24 (Whereupon, a certain video was published in open</p> <p>25 court.)</p>	<p style="text-align: center;">Opening Statement by Mr. McCool</p> <p style="text-align: right;">76</p> <p>1 opening statement.</p> <p>2 You see a couple of people run towards the BP</p> <p>3 station right there, folks? Okay? Maybe those are the ones</p> <p>4 that broke glass or scared that poor woman there.</p> <p>5 But the Government's calling this a riot, folks.</p> <p>6 Right there. They would have you believe that this evidence</p> <p>7 shows right there that a riot is occurring.</p> <p>8 What this video shows and what the evidence will</p> <p>9 show, ladies and gentlemen, is that these folks were engaged</p> <p>10 in protected speech. Others within the sea of these people</p> <p>11 vandalized property. They vandalized it on their own.</p> <p>12 Ms. Kerkhoff talks about how the evidence will show</p> <p>13 that people had an opportunity to leave.</p> <p>14 Well, folks, this is America. We have an</p> <p>15 opportunity to stand and speak, speak our mind, share our</p> <p>16 beliefs with one another. It's guaranteed by the First</p> <p>17 Amendment.</p> <p>18 But that's not what happened in this case. There</p> <p>19 was no chance to leave. Rather than identify lawbreakers,</p> <p>20 arrest them and allow folks who were engaged in peaceful</p> <p>21 speech to continue, as you will hear on the following radio</p> <p>22 communication, the evidence will show that the police</p> <p>23 violated their own procedures and sought to encircle the</p> <p>24 entire protest.</p> <p>25 (Whereupon, a certain recording was published in</p>
<p style="text-align: center;">Opening Statement by Mr. McCool</p> <p style="text-align: right;">75</p> <p>1 MR. McCOOL: So the vans had moved to the -- to that</p> <p>2 part of the circle and now you see the protesters walking in</p> <p>3 between the vans, in between these police cruisers, and south</p> <p>4 on 13th Street.</p> <p>5 And we're going to watch this video. It takes</p> <p>6 about a couple of minutes to run. Because this case isn't</p> <p>7 about snapshots and video clips, ladies and gentlemen.</p> <p>8 (Whereupon, a certain video was published in open</p> <p>9 court.)</p> <p>10 MR. McCOOL: And you can see as those folks --</p> <p>11 watch -- and watch closely -- you may see people in this</p> <p>12 group pull trash cans out in the street. You may see someone</p> <p>13 paint some graffiti somewhere.</p> <p>14 But let's watch it all the way to the end. Let's</p> <p>15 watch it as these folks get down to that BP station.</p> <p>16 (Whereupon, a certain video was published in open</p> <p>17 court.)</p> <p>18 MR. McCOOL: If you look at the top of the screen,</p> <p>19 folks, you'll see that the BP station is coming into view in</p> <p>20 this aerial footage when the camera moves.</p> <p>21 (Whereupon, a certain video was published in open</p> <p>22 court.)</p> <p>23 MR. McCOOL: I want you to watch closely as the</p> <p>24 front of this group gets up towards this BP station. This is</p> <p>25 the gas station that Ms. Kerkhoff was speaking about in her</p>	<p style="text-align: center;">Opening Statement by Mr. McCool</p> <p style="text-align: right;">77</p> <p>1 open court.)</p> <p>2 MR. McCOOL: This radio communication by the</p> <p>3 commander shows that the decision to get up in front of these</p> <p>4 protesters and block them in was made while they were walking</p> <p>5 down 13th Street towards and past the BP station.</p> <p>6 Let me be clear: The evidence in this case will</p> <p>7 show that the protesters exercising their First Amendment</p> <p>8 rights in this video, unbeknownst to them, were going to be</p> <p>9 encircled and they were going to be arrested.</p> <p>10 The police are not permitted to encircle First</p> <p>11 Amendment activity unless it's necessary for their protection</p> <p>12 or a decision has been made to arrest those participants that</p> <p>13 are being isolated.</p> <p>14 Let me say that again: The rules require them to</p> <p>15 isolate lawbreakers.</p> <p>16 You saw these protesters leave the circle. No one</p> <p>17 attacked the police as they walked through those -- by those</p> <p>18 police cars, except for a small number.</p> <p>19 And when you're talking about, what, hundreds</p> <p>20 and hundreds of people, I don't know what that is.</p> <p>21 15, 20 people. The rest were there to protest against Donald</p> <p>22 Trump, not to destroy property.</p> <p>23 Again, no one among the protesters was isolated by</p> <p>24 MPD. The evidence will show that the police violated their</p> <p>25 First Amendment procedures and treated protesters like</p>

<p style="text-align: center;">Opening Statement by Mr. McCool</p> <p style="text-align: right;">78</p> <p>1 criminals.</p> <p>2 In short, the evidence will show the MPD took away</p> <p>3 their right to protest.</p> <p>4 That's correct. Instead of arresting lawbreakers,</p> <p>5 the police silenced the speech of law-abiding citizens.</p> <p>6 Now, if we could show the next photograph.</p> <p>7 You see this, folks? That's the encirclement. You</p> <p>8 see those vans -- all those police vans carrying all those</p> <p>9 police officers dressed with those helmets and those shields?</p> <p>10 They're all inside those vans and they're heading</p> <p>11 down 13th Street because the decision has already been made:</p> <p>12 Encircle and arrest.</p> <p>13 Now, this group of vans right there, that's the same</p> <p>14 armada that the commander was describing in that radio</p> <p>15 communication.</p> <p>16 Now, I want to get to another thing the prosecutor</p> <p>17 said that the evidence will show and it's not going to show.</p> <p>18 It's simply not going to show it.</p> <p>19 No one in that armada, no official, no police</p> <p>20 officer, no one, ordered that crowd to disperse. No one.</p> <p>21 So when the prosecutor tells you they chose to leave</p> <p>22 or said, "I'm in," first of all, no one said it. Oliver</p> <p>23 Harris didn't say it. But he wasn't told to disperse.</p> <p>24 And what's -- just -- their procedures require this,</p> <p>25 folks. I'm not just saying it's a good idea. I'm telling</p>	<p style="text-align: center;">Opening Statement by Mr. McCool</p> <p style="text-align: right;">80</p> <p>1 the protesters you saw on that video simply because they're</p> <p>2 wearing black.</p> <p>3 I submit to you the Government will say, "Well, the</p> <p>4 evidence shows you could" --</p> <p>5 THE COURT: Mr. McCool, Mr. McCool, this is opening</p> <p>6 statement.</p> <p>7 MR. McCool: All right.</p> <p>8 THE COURT: Thank you.</p> <p>9 MR. McCool: This decision was made long before</p> <p>10 these folks' arrest on I Street. All right? And the</p> <p>11 procedures of the MPD prohibit this. The evidence will show</p> <p>12 that they are to seek out, isolate and arrest those who are</p> <p>13 breaking the law.</p> <p>14 Did you see the bricks shown on that video? Some of</p> <p>15 you may have. I believe that's the brick the Government was</p> <p>16 talking about.</p> <p>17 The evidence will show that's probable cause? Go</p> <p>18 ahead and arrest that person. But you didn't see people</p> <p>19 running around and hiding amongst those protesters.</p> <p>20 The evidence will show that the MPD does not have</p> <p>21 the authority to arrest everyone in hopes that they catch the</p> <p>22 person with the brick.</p> <p>23 But that's exactly what happened on January 20,</p> <p>24 2017. They can't avoid the First Amendment by labeling this</p> <p>25 a riot.</p>
<p style="text-align: center;">Opening Statement by Mr. McCool</p> <p style="text-align: right;">79</p> <p>1 you the evidence requires that they give the dispersal order.</p> <p>2 In fact, they're very specific. Not only are they</p> <p>3 to give a dispersal order. They're to give multiple</p> <p>4 dispersal orders.</p> <p>5 They're to give amplified dispersal orders so that</p> <p>6 the entire crowd can hear them. And they are also required</p> <p>7 to give reasonable time to allow for the crowd to disperse.</p> <p>8 Ms. Kerkhoff told you that the MPD tried to disperse</p> <p>9 this protest. They tried to trap them. Rather than do these</p> <p>10 simple things, the evidence will show that the police trapped</p> <p>11 and arrested everyone they could, regardless of whether they</p> <p>12 were protesting or destroying property.</p> <p>13 You saw clip after clip of people breaking windows,</p> <p>14 and that's awful.</p> <p>15 And you're going to hear from people who are going</p> <p>16 to tell stories of fear and anguish and despair, and my heart</p> <p>17 will break for them just like yours will.</p> <p>18 MS. KERKHOFF: Objection.</p> <p>19 MR. McCool: But let's take a look at another clip</p> <p>20 that you didn't see. Let's take a look at folks walking down</p> <p>21 I Street. Right? Well, I --</p> <p>22 (Whereupon, a certain video was published in open</p> <p>23 court.)</p> <p>24 MR. McCool: You heard it right there. That's the</p> <p>25 same commander. He's already decided to encircle and arrest</p>	<p style="text-align: center;">Opening Statement by Mr. McCool</p> <p style="text-align: right;">81</p> <p>1 Now, I want to be clear about something. And I want</p> <p>2 to be crystal clear about this: The evidence is not going to</p> <p>3 show and no one can say that police officers have an easy</p> <p>4 job, especially in a situation like this, where you could see</p> <p>5 the evidence that there's a lawbreaker mixed in among</p> <p>6 law-abiding citizens and others are smashing windows while</p> <p>7 others are protesting.</p> <p>8 But the evidence is going to show, folks, that, you</p> <p>9 know, the First Amendment's not convenient. The First</p> <p>10 Amendment is hard. The First Amendment requires restraint.</p> <p>11 And the commander, the evidence will show, who</p> <p>12 ordered the arrests of these protesters, will testify -- will</p> <p>13 come in here and testify that his officers showed enormous</p> <p>14 restraint that day, and the evidence is going to contradict</p> <p>15 that testimony.</p> <p>16 For example, before -- you will see before an</p> <p>17 officer can use pepper spray, they must issue a warning.</p> <p>18 They must also permit a reasonable period of time to allow</p> <p>19 compliance with that warning.</p> <p>20 In any event, a police officer, as the evidence will</p> <p>21 show you, can only use pepper spray when someone is actively</p> <p>22 resisting them. Again, no pepper spray unless there's active</p> <p>23 resistance.</p> <p>24 I'll ask you to take a look at this video. And the</p> <p>25 evidence will show again, unfortunately, that a small number</p>

<p>Opening Statement by Mr. McCool</p> <p>82</p> <p>1 of police officers abused the use of pepper spray.</p> <p>2 (Whereupon, a certain video was published in open</p> <p>3 court.)</p> <p>4 MR. McCOOL: The prosecutor also talked about the</p> <p>5 evidence showing how the officers used wooden batons to push</p> <p>6 them. They can do that.</p> <p>7 They can use that wooden baton, but they should only</p> <p>8 use wooden batons as a defensive weapon to overcome</p> <p>9 resistance from someone who is violating the law.</p> <p>10 If we can take a look at the next photo.</p> <p>11 I'll ask you to keep an eye on this woman in the</p> <p>12 bright green hat. She may testify in this case.</p> <p>13 (Whereupon, certain images were published in open</p> <p>14 court.)</p> <p>15 MR. McCOOL: Now, I ask you to take a look at this</p> <p>16 next video and ask yourself whether this woman is resisting</p> <p>17 an officer.</p> <p>18 (Whereupon, certain images were published in open</p> <p>19 court.)</p> <p>20 MR. McCOOL: Folks, we all know and I think we can</p> <p>21 all reasonably agree that police officers have a difficult</p> <p>22 job. The vast majority of them, they comport themselves in</p> <p>23 an appropriate manner, and I'm not going to argue that and</p> <p>24 I'm not going to suggest the evidence is going to say</p> <p>25 otherwise.</p>	<p>Opening Statement by Mr. McCool</p> <p>84</p> <p>1 If we could start it again, if you can.</p> <p>2 (Whereupon, a certain video was published in open</p> <p>3 court.)</p> <p>4 MR. McCOOL: The evidence will show that these</p> <p>5 grenades contained pepper spray and rubber pellets. They</p> <p>6 have a blast radius of 50 feet.</p> <p>7 As you look at the evidence in this case, ask</p> <p>8 yourself why the Government would prosecute someone like</p> <p>9 Mr. Harris, who they say broke no windows, destroyed no</p> <p>10 property.</p> <p>11 The evidence will show that supervisors and officers</p> <p>12 have a motive to mischaracterize the evidence in a way that,</p> <p>13 we submit, would lead to an unfounded conviction.</p> <p>14 Why? Because when MPD arrests protesters along with</p> <p>15 lawbreakers, the ACLU sues them, they lose --</p> <p>16 MS. KERKHOFF: Objection.</p> <p>17 THE COURT: I'm sustaining the objection,</p> <p>18 Mr. McCool. Would you like to approach the bench?</p> <p>19 MR. McCOOL: I'll continue. Thank you.</p> <p>20 They want to convict everyone they trapped.</p> <p>21 I submit to you, ladies and gentlemen, that a</p> <p>22 conviction -- well, let me just -- I'll move on.</p> <p>23 The Government somehow claims that Mr. Harris is</p> <p>24 guilty because they've alleged he changed his clothes after</p> <p>25 he was doused with pepper spray.</p>
<p>Opening Statement by Mr. McCool</p> <p>83</p> <p>1 But the fact of the matter is the evidence is going</p> <p>2 to show that some officers behaved improperly. And just as</p> <p>3 we will not condemn an entire police department based on the</p> <p>4 actions of a few officers, you cannot convict Oliver Harris</p> <p>5 based on the misconduct of others.</p> <p>6 The evidence will show that, after the protesters</p> <p>7 and others were encircled by MPD, as Ms. Kerkhoff talked</p> <p>8 about, they did. They broke free. No doubt about it.</p> <p>9 I'm not condoning it. I'm not suggesting it was</p> <p>10 appropriate. In fact, I agree: That's what the evidence is</p> <p>11 going to show.</p> <p>12 What Ms. Kerkhoff didn't tell you and the evidence</p> <p>13 will show, Mr. Harris didn't try to flee. Of those who</p> <p>14 remained behind, the officers didn't even at that point seek</p> <p>15 to separate the criminals from the protesters.</p> <p>16 Instead, they subjected them to pepper spray and, as</p> <p>17 you'll see, sting grenades, because this is the part -- this</p> <p>18 is what the evidence will show, and this is what the</p> <p>19 Government didn't discuss.</p> <p>20 If we may.</p> <p>21 (Whereupon, a certain video was published in open</p> <p>22 court.)</p> <p>23 MR. McCOOL: Can you pause for a second.</p> <p>24 Keep your eye on the upper right-hand corner of this</p> <p>25 video monitor as we go.</p>	<p>Opening Statement by Mr. McCool</p> <p>85</p> <p>1 First, let's not lose sight of the fact he did not</p> <p>2 engage in a riot. The evidence is going to show he didn't</p> <p>3 destroy anyone's property or urge anyone else to do so.</p> <p>4 But, second, the evidence is going to show there are</p> <p>5 many reasons why a person may want to change their appearance</p> <p>6 or change their clothes.</p> <p>7 Unfortunately, you've seen one of them. Right?</p> <p>8 It's all too common that police use pepper spray in</p> <p>9 a way that you would want to bring a change of clothes to a</p> <p>10 protest.</p> <p>11 But, unfortunately, in our society, the evidence is</p> <p>12 going to show today, ladies and gentlemen, that the Alt-right</p> <p>13 and other fascists --</p> <p>14 MS. KERKHOFF: Objection.</p> <p>15 MR. McCOOL: -- who seek -- this is what the</p> <p>16 evidence is going to show.</p> <p>17 THE COURT: Counsel, I actually would like some of</p> <p>18 the defense counsel at the bench. And can we just have</p> <p>19 headphones, please?</p> <p>20 (Whereupon, the following proceedings were had at</p> <p>21 side-bar outside the presence of the jury:)</p> <p>22 THE COURT: What is it you're about to say about</p> <p>23 Alt-right and fascists? I think the other Defendants have a</p> <p>24 right to know what you're saying about that.</p> <p>25 MR. McCOOL: The evidence is going to show and we</p>

<p style="text-align: center;">Opening Statement by Mr. McCool</p> <p style="text-align: right;">86</p> <p>1 have evidence that the people who were arrested here either</p> <p>2 with MPD's knowledge or not, their names and addresses were</p> <p>3 published and trolls on the Internet identified them,</p> <p>4 published their --</p> <p>5 THE COURT: I'm asking: What is it you're about to</p> <p>6 say out of your mouth about Alt-right and fascists?</p> <p>7 MR. McCOOL: Alt-right extremists seek --</p> <p>8 THE COURT: The objection is to the use of those</p> <p>9 words on your side of the podium. I want to make sure you're</p> <p>10 not saying something objectionable to your fellow Defendants.</p> <p>11 So what is it you're about to say?</p> <p>12 MR. McCOOL: Well, that they seek to identify,</p> <p>13 threaten and silence them.</p> <p>14 THE COURT: Alt-right --</p> <p>15 MR. McCOOL: I'm going to say that Alt-right</p> <p>16 extremists seek to identify, threaten and silence people who</p> <p>17 engage in political speech that they don't agree with.</p> <p>18 THE COURT: That Alt-right and fascists do?</p> <p>19 MR. McCOOL: Uh-huh. They do.</p> <p>20 THE COURT: Who are you saying is the Alt-right and</p> <p>21 fascists?</p> <p>22 MR. McCOOL: People on the Internet that have</p> <p>23 identified particular Defendants in this case and threatened</p> <p>24 them.</p> <p>25 THE COURT: So what does that have to do with this</p>	<p style="text-align: right;">88</p> <p>1 THE COURT: Ladies and gentlemen, we're going to</p> <p>2 take -- we're going to take a 15-minute break just so</p> <p>3 everybody can get a breather. We'll come back at 20 of.</p> <p>4 Please don't discuss the case. Please don't make</p> <p>5 any decisions about it. Please leave your notebooks on your</p> <p>6 chairs. Thank you.</p> <p>7 (Whereupon, the jury exited the courtroom at</p> <p>8 12:23 p.m. and the following proceedings were had:)</p> <p>9 THE COURT: Ladies and gentlemen, court is in</p> <p>10 session. You must be silent when you're in the courtroom.</p> <p>11 Jurors cannot hear you or see you or be aware of your</p> <p>12 presence. You must be silent when you're in the courtroom</p> <p>13 and court is in session.</p> <p>14 Thank you.</p> <p>15 Like I said, court is still in session. Please be</p> <p>16 silent in the courtroom.</p> <p>17 Counsel, you can have a seat.</p> <p>18 Is there anything we need to discuss before we</p> <p>19 break?</p> <p>20 MR. LAZEROW: No, your Honor.</p> <p>21 Just I want to remind --</p> <p>22 THE COURT: Who are you?</p> <p>23 MR. LAZEROW: Andrew Lazerow for Ms. Macchio.</p> <p>24 We are going through the Alexei Wood tape to provide</p> <p>25 you before lunch any of the statements that you have. I just</p>
<p style="text-align: center;">Opening Statement by Mr. McCool</p> <p style="text-align: right;">87</p> <p>1 trial?</p> <p>2 MR. McCOOL: It goes directly against why someone</p> <p>3 would want to change their clothes or dress all in black or</p> <p>4 wear a mask.</p> <p>5 THE COURT: We're not going to talk about Alt-right</p> <p>6 and fascists, people coming after your clients right now.</p> <p>7 Maybe there will be some relevance or foundation for that</p> <p>8 later, but we're not going to talk about that right now.</p> <p>9 MR. McCOOL: Very well.</p> <p>10 (Whereupon, the following proceedings were had in</p> <p>11 open court:)</p> <p>12 THE COURT: Sustained.</p> <p>13 MR. McCOOL: May I continue?</p> <p>14 THE COURT: Yes. How much more do you have?</p> <p>15 MR. McCOOL: A couple minutes, your Honor.</p> <p>16 THE COURT: How much more do you have?</p> <p>17 MR. McCOOL: I said a couple minutes, your Honor.</p> <p>18 Ladies and gentlemen, let me wrap this up. I think</p> <p>19 we've had a long morning.</p> <p>20 A conviction in this case would amount to guilt by</p> <p>21 association. It would weaken all of our rights to assembly</p> <p>22 freely and speak honestly with one another.</p> <p>23 Now, on behalf Ms. Coleman and our client, Oliver</p> <p>24 Harris, we extend our appreciation for your service. I thank</p> <p>25 you for your consideration this morning.</p>	<p style="text-align: right;">89</p> <p>1 wanted to remind you so you don't break and run off without</p> <p>2 that. That's all.</p> <p>3 THE COURT: Give it to me before I do that, please.</p> <p>4 MR. LAZEROW: Yes.</p> <p>5 THE COURT: Thank you. I'll see you in 15 minutes.</p> <p>6 (Thereupon a recess was taken, after which the</p> <p>7 following proceedings were had:)</p> <p>8 THE COURT: I just want to remind spectators,</p> <p>9 please, that when court is in session, meaning when I'm in</p> <p>10 here, you must not hold conversations, and when the jury is</p> <p>11 in here, you must not do anything to catch their attention,</p> <p>12 absolutely nothing, including have a conversation of any</p> <p>13 kind.</p> <p>14 Thank you.</p> <p>15 We're picking back up. Both Government counsel are</p> <p>16 here.</p> <p>17 Ms. Macchio is here. Ms. Simmons is here.</p> <p>18 Ms. Lawson. Ms. Armento. Mr. Wood.</p> <p>19 Mr. Wood needs to be in here.</p> <p>20 Mr. Harris is here.</p> <p>21 Counsel, I'm not going to excuse clients from the</p> <p>22 courtroom on breaks unless they're back here on time.</p> <p>23 Mr. Wood, please come on in.</p> <p>24 I'm just advising you all you should not be waiting</p> <p>25 until someone comes to get you. You have to be in the</p>

<p style="text-align: right;">90</p> <p>1 courtroom at the time that I say the break is going to be 2 over. And I did say 20 of. You have to be in here. If you 3 are not here, I'm going to have to do what I have to do. 4 So we're going to bring the jury in. 5 Before we do that, I just want to ask one thing: Is 6 anybody else planning to talk about contact with Defendants 7 or communications to or about Defendants after the date of 8 January 20th? 9 No other counsel are planning to do that? All 10 right. 11 I'm just going to say a person hearing about 12 Alt-right could think that that's who you meant the 13 protesters were. 14 And that was my concern, Mr. McCool. 15 And I would add that I'm not going to allow you, on 16 behalf of Mr. Harris, to cross-examine about or otherwise 17 talk about contact with, communications by, communications 18 perceived by, the clients after the date on which these 19 events took place unless some relevance is established. 20 So you do have to get my permission before you do 21 that in any way, shape or form. 22 MR. COLEMAN: Okay. Thank you. 23 THE COURT: Let's bring the jury back in. 24 Next on our list is Ms. Weletz. 25 Ms. Weletz, do you need to set anything up?</p>	<p style="text-align: right;">Opening Statement by Ms. Weletz</p> <p style="text-align: right;">92</p> <p>1 We'll now hear from Ms. Weletz. 2 MS. WELETZ: Good morning, everybody. 3 THE JURY: Good morning. 4 MS. WELETZ: Again, my name is Attorney Carrie 5 Weletz. I, along with my co-counsel, Thomas Healy, 6 represents Jennifer Armento in this case. 7 I want to thank you for your critical attention. I 8 want to thank you for being here in this role as a juror. 9 You're going to be here for a number of weeks. 10 You're going to hear, as the Government said, countless 11 witnesses, see videos. You've seen multiple videos played 12 already today. You've see multiple exhibits. 13 At the end of all of this evidence, you will find 14 that Jennifer Armento is innocent of all the charges. This 15 case is fundamentally about a person's right to associate and 16 a person's right to speak their mind. 17 During these multiple videos and all of these boards 18 that you're going to see, you're going to see a group of 19 people that came to Washington, DC, to protest the Trump 20 administration. You will see it in the signs that they 21 carried, the banners that they had, the flags that they had. 22 These are people coming to voice their opposition to 23 the administration. These are people coming to do what every 24 American has the right to do: To demonstrate and to protest. 25 You are going to hear evidence that, in fact, the</p>
<p style="text-align: right;">91</p> <p>1 MS. WELETZ: No. 2 THE COURT: There's only one thing that I meant to 3 take out and I'm telling you now that I meant to take out in 4 the inciting or urging to riot the line near, "Encouragement 5 of..." That should be out. 6 "Mere presence at the scene; but mere encouragement 7 of does not amount to inciting or urging a riot" I'm taking 8 out. 9 Encouragement was there because it was in the 10 <i>Matthews</i> instruction. I took it out of the engaging 11 instruction because I think it was pre-<i>Wilson-Bey</i>. 12 Encouragement without the proper mens rea should not 13 be anywhere in here. So I took it out of the engaging 14 instruction. I don't think it would amount to engaging 15 anymore. So I meant to take it out of the inciting 16 instruction. 17 I was trying to create a distinction. So I just 18 want you to know that was not meant to be in there at the 19 moment. Again, it's a draft. It's not a ruling. It's just 20 my first stab at it. 21 (Whereupon, the jury entered the courtroom at 22 12:45 p.m. and the following proceedings were had:) 23 THE COURT: Good afternoon again, ladies and 24 gentlemen. 25 We're going to pick back up with opening statements.</p>	<p style="text-align: right;">Opening Statement by Ms. Weletz</p> <p style="text-align: right;">93</p> <p>1 MPD officers and the Metropolitan Police Department in 2 general has an entire handbook for officers to use and 3 officers to be trained by to handle First Amendment 4 demonstrations. 5 The evidence is going to show that that handbook was 6 not followed that day. The instructions and the things that 7 the Metropolitan Police Department were supposed to do were 8 not done. 9 Now, you've already seen video clips of individuals 10 starting a march from the park, from Logan Circle, that 11 circle located in downtown DC. 12 You see many people, some dressed in dark colors, 13 some with other colors on them, marching up the street. 14 They're marching. 15 As Mr. McCool already pointed out, you see a couple 16 of people, a couple individuals, go off towards the BP gas 17 station while the rest of the individuals continued to march 18 with their signs, with their banners, with their flags. 19 These people had a right to be there. These people 20 came to the District of Columbia to let their voice be heard. 21 Now, you're not going to hear the defense say that 22 Aurelia Taylor or Ms. Kim or Mr. Villareal should have had to 23 have experienced what they did that day. You're not going to 24 hear us say that. 25 Tell will take the stand. They will testify to what</p>

<p>Opening Statement by Ms. Weletz</p> <p>94</p> <p>1 they saw. They will testify to what they experienced. And</p> <p>2 that can't be discounted.</p> <p>3 However, I want you to pay attention to what the</p> <p>4 evidence is not going to show, much of which the Government</p> <p>5 has already told you about.</p> <p>6 There will be no evidence that Ms. Armento intended</p> <p>7 to come to the District of Columbia to break stuff. There's</p> <p>8 going to be no evidence that she conspired to come and be</p> <p>9 part of destruction or damage.</p> <p>10 There will be absolutely no evidence that she ever</p> <p>11 had a weapon on her or participated or helped to participate</p> <p>12 in any type of destruction. The evidence is simply not going</p> <p>13 to show that.</p> <p>14 The evidence is not going to show -- the Government</p> <p>15 mentioned that this was a plan, that there were some</p> <p>16 meetings -- that people went to some meetings and this was a</p> <p>17 plan.</p> <p>18 There will be no evidence that Ms. Armento knew of</p> <p>19 those meetings or knew of a plan or the intent or any intent</p> <p>20 to come and destroy anything in the District of Columbia.</p> <p>21 The Government would have you believe that, because</p> <p>22 Ms. Armento was photographed at 12th and L after these</p> <p>23 officers encircled a large group of people, because she was</p> <p>24 wearing primarily dark colors, well, she must have. She must</p> <p>25 have had this plan. She must have had this intent.</p>	<p>Opening Statement by Ms. Weletz</p> <p>96</p> <p>1 were a lot of police officers that day.</p> <p>2 The Government has already told you what some of the</p> <p>3 testimony will be. The testimony will be that the officers</p> <p>4 followed.</p> <p>5 You saw them parked at Logan Circle. They followed.</p> <p>6 They followed in vans. They followed in cruisers. They</p> <p>7 followed on foot. They followed by bike.</p> <p>8 As specific individuals took rocks and bricks, none</p> <p>9 of them were Ms. Armento. As individuals took bricks to the</p> <p>10 parking kiosks, which I myself have wanted to do, they didn't</p> <p>11 stop them.</p> <p>12 The Government indicated that they followed. They</p> <p>13 just followed until they got to 12th and L, where there was</p> <p>14 an order to encircle this mass group of people.</p> <p>15 Now, you will see the video footage. You will see</p> <p>16 the photographs. There are -- you'll hear testimony from</p> <p>17 Metropolitan Police Department detectives and police officers</p> <p>18 that there were hundreds of people there that day. You will</p> <p>19 see it with your own eyes. 3- to 400 people.</p> <p>20 You will see how they encircle a group upwards of</p> <p>21 200 people on every side. You will see the sting bombs and</p> <p>22 hear the sting bombs. You will see the officers using their</p> <p>23 batons and their OC spray on individuals.</p> <p>24 You will not see Ms. Armento doing anything other</p> <p>25 than submitting to this encirclement.</p>
<p>Opening Statement by Ms. Weletz</p> <p>95</p> <p>1 The Government would have you believe that, because</p> <p>2 she participated in some parts of a march, in some parts of a</p> <p>3 protest, that she's guilty by association, that because these</p> <p>4 individuals broke Ms. Kim's windows and broke those windows</p> <p>5 on that limo, which you saw the individuals with your own</p> <p>6 eyes who did that, that she is guilty somehow by association</p> <p>7 for being there, for not leaving, apparently, when she</p> <p>8 allegedly saw these things happening.</p> <p>9 However, there's going to be no evidence that</p> <p>10 Ms. Armento saw any of this with her own eyes, that she saw</p> <p>11 those windows on the limo being broken, that she even heard</p> <p>12 any of this going on.</p> <p>13 You will hear with your own ears what was going on</p> <p>14 that day. You will hear the crowd of people. You will hear</p> <p>15 the police. You will hear the sirens. You will hear those</p> <p>16 sting bombs blasting.</p> <p>17 You're going to hear a lot of things. There will be</p> <p>18 no evidence specifically as to what Ms. Armento heard or</p> <p>19 knew.</p> <p>20 There's going to be no evidence that Ms. Armento</p> <p>21 participated at all other than showing up on January 20th to</p> <p>22 voice her opinion, that she had any connection with any</p> <p>23 social media.</p> <p>24 Now, I mentioned before that there's going to be</p> <p>25 testimony of a lot of police officers. You saw them. There</p>	<p>Opening Statement by Ms. Weletz</p> <p>97</p> <p>1 Now, Ms. Armento was there when she was encircled.</p> <p>2 She was at 12th and L. You're going to see a photograph, a</p> <p>3 booking photo, of her. She was there.</p> <p>4 But there will be very little evidence prior to that</p> <p>5 of where Ms. Armento was. She was at 12th and L as these</p> <p>6 people were swept up and encircled by the police, as they had</p> <p>7 been followed for 16 city blocks and 33 minutes by vans and</p> <p>8 cruisers and foot patrol and bicycles.</p> <p>9 You will see video of these people and these</p> <p>10 individuals, these protesters, these demonstrators, what they</p> <p>11 were wearing, what they looked like.</p> <p>12 You will see them standing there from approximately</p> <p>13 11:00 until the sun sets in these videos, being processed one</p> <p>14 by one.</p> <p>15 I ask you to look at what you don't see, what the</p> <p>16 Government is not presenting to you, that evidence that</p> <p>17 Ms. Armento in any way had a plan or intent other than to</p> <p>18 come and protest and let her voice be heard.</p> <p>19 At the end of the evidence, you will have doubts.</p> <p>20 You will have many, many doubts, and I submit that you will</p> <p>21 find Ms. Armento innocent of all the charges.</p> <p>22 Thank you.</p> <p>23 THE COURT: Ladies and gentlemen, we're going to</p> <p>24 take a lunch break now.</p> <p>25 I'll have you back at 2:00. It's more or less one</p>

<p style="text-align: center;">Opening Statement by Ms. Weletz</p> <p style="text-align: right;">98</p> <p>1 hour. So have a good lunch, but do be back on time. Please</p> <p>2 don't discuss the case or make any decisions about it.</p> <p>3 Thank you.</p> <p>4 (Whereupon, the jury exited the courtroom at</p> <p>5 12:57 p.m. and the following proceedings were had:)</p> <p>6 THE COURT: Is there anything before we break?</p> <p>7 MR. LAZEROW: We're having --</p> <p>8 THE COURT: And you are?</p> <p>9 MR. LAZEROW: Andrew Lazero, for Ms. Macchio.</p> <p>10 We're having printing problems. So we're emailing</p> <p>11 it to chambers, the specific statements and the timestamps,</p> <p>12 and we'll obviously copy the Government. So you'll have it.</p> <p>13 THE COURT: Thank you.</p> <p>14 You may be excused.</p> <p>15 There really has to be silence in the courtroom.</p> <p>16 That's all I'm going to say. Please listen to what I say so</p> <p>17 you can remain.</p> <p>18 (Thereupon, a luncheon recess was taken, after which</p> <p>19 the following proceedings were had:)</p> <p>20 THE COURT: Good afternoon.</p> <p>21 We're just re -- picking back up in United States</p> <p>22 against Michelle Macchio, et al.</p> <p>23 I'm not going to re-call it all.</p> <p>24 And you'll all tell me if everybody's not here. But</p> <p>25 it appears that all counsel and all Defendants are here.</p>	<p style="text-align: center;">Opening Statement by Ms. Jacques</p> <p style="text-align: right;">100</p> <p>1 You'll hear that it was her first inauguration because it's</p> <p>2 the first election in which she's been old enough to vote.</p> <p>3 What happened on January 20th, 2017, is her worst</p> <p>4 nightmare. Ms. Simmons was arrested for something she did</p> <p>5 not do.</p> <p>6 The Government has presented evidence through</p> <p>7 videos, and they've indicated they will through more videos</p> <p>8 of destruction of property.</p> <p>9 You will see endless videos and pictures and hear</p> <p>10 testimony about how things were destroyed in the District of</p> <p>11 Columbia.</p> <p>12 Not one of the videos will show Ms. Simmons</p> <p>13 participating in the any of the destruction.</p> <p>14 There will be no evidence that Ms. Simmons planned</p> <p>15 or attended the planning meetings to come to the District to</p> <p>16 destroy property.</p> <p>17 Ms. Simmons was arrested. She was in the District</p> <p>18 of Columbia doing what she has a right to do, a right to</p> <p>19 protest.</p> <p>20 There will be Government witnesses come in. There</p> <p>21 will be defense witnesses come in. What I would ask you to</p> <p>22 do is listen to each witness, watch each video and hear.</p> <p>23 What did it say about Ms. Simmons? What does it say</p> <p>24 she did? Nothing.</p> <p>25 I'm only focusing on Ms. Simmons, even though</p>
<p style="text-align: center;">Opening Statement by Ms. Jacques</p> <p style="text-align: right;">99</p> <p>1 Great.</p> <p>2 I'd like to bring the jury in and pick back up with</p> <p>3 openings.</p> <p>4 While we do that, I did watch the live stream over</p> <p>5 lunch. It's not the thing I had watched before, definitely.</p> <p>6 And I have the submission as to the statements that</p> <p>7 Ms. Macchio's asking to be excluded from it. We can talk</p> <p>8 about that later.</p> <p>9 So next up -- I think I'm right -- is Ms. Jacques.</p> <p>10 Do you need to set anything up?</p> <p>11 MS. JACQUES: No.</p> <p>12 THE COURT: Does anybody need to set anything up</p> <p>13 electronic-wise?</p> <p>14 Great.</p> <p>15 (Whereupon, the jury entered the courtroom at</p> <p>16 2:05 p.m. and the following proceedings were had:)</p> <p>17 THE COURT: Good afternoon again, ladies and</p> <p>18 gentlemen. I hope you had a good lunch break. We'll pick</p> <p>19 back up with opening statements.</p> <p>20 Ms. Jacques will now give us an opening statement.</p> <p>21 MS. JACQUES: Good afternoon, ladies and gentlemen.</p> <p>22 My name is Tammy Jacques. I represent Christina</p> <p>23 Simmons, sitting over here.</p> <p>24 You will hear, on January 20th, 2017, Ms. Simmons</p> <p>25 came to the District of Columbia for her first inauguration.</p>	<p style="text-align: center;">Opening Statement by Mr. Cohen</p> <p style="text-align: right;">101</p> <p>1 there's six of us here -- six Defendants here, because I'm</p> <p>2 her attorney. That doesn't make her more important or less</p> <p>3 important than any of others, but my job is just to focus on</p> <p>4 her.</p> <p>5 So I'm asking you, each individual witness, to</p> <p>6 listen for the name Christina Simmons. Planning a meeting,</p> <p>7 you won't hear her name. Destruction of property, you won't</p> <p>8 hear her name. The only time you're going to hear her name</p> <p>9 is that she was arrested.</p> <p>10 So at the end of all the evidence, I'll stand right</p> <p>11 back up here and I will ask you to find her not guilty of</p> <p>12 conspiracy to riot, engaging in a riot, enticing or</p> <p>13 encouraging a riot, or destruction of property, because there</p> <p>14 is no evidence that would support that.</p> <p>15 And I will ask you to find her not guilty on all the</p> <p>16 counts.</p> <p>17 Thank you.</p> <p>18 THE COURT: Thank you.</p> <p>19 Next up is Mr. Cohen for Mr. Wood.</p> <p>20 MR. COHEN: Thank you. Thank you, your Honor.</p> <p>21 Good afternoon, ladies and gentlemen.</p> <p>22 I'm Brett Cohen. I represent Mr. Alexei Wood.</p> <p>23 Mr. Alexei Wood is presented before you today</p> <p>24 falsely accused, falsely charged, of rioting and related</p> <p>25 charges.</p>

<p style="text-align: center;">Opening Statement by Mr. Cohen</p> <p style="text-align: right;">102</p> <p>1 And what I say by "falsely," what I mean by that, is</p> <p>2 that he did nothing illegal.</p> <p>3 So, first, I'm going to say that Mr. Wood's case is</p> <p>4 a little bit different. You heard Mr. McCool talk about the</p> <p>5 First Amendment and the right to assemble and the right of</p> <p>6 free speech. Mr. Wood's case involves the right to a free</p> <p>7 press.</p> <p>8 Mr. Wood, from beginning to end, live-streamed</p> <p>9 his -- I'm not going to say "involvement" -- but what he did</p> <p>10 and didn't do and what other people did and didn't do during</p> <p>11 this event.</p> <p>12 Let me tell you a little bit about Mr. Wood.</p> <p>13 Mr. Wood is a Texan, a native of Austin, now living in</p> <p>14 San Antonio.</p> <p>15 By trade, he is a professional photographer. Mostly</p> <p>16 he does wedding photography, but he also contracts for</p> <p>17 commercial photography for certain projects.</p> <p>18 Starting a few years ago, you will learn that</p> <p>19 Mr. Wood developed an interest in photo journalism and, since</p> <p>20 that time, over the course of the last few years, he has</p> <p>21 attended a number of events -- marches, demonstrations,</p> <p>22 parades -- and documents them. That's what he does. He's</p> <p>23 independent, he's up and coming, and he's building a résumé.</p> <p>24 What better opportunity for a photo journalist than</p> <p>25 the inauguration this year? Mr. Wood came up from Texas with</p>	<p style="text-align: center;">Opening Statement by Mr. Cohen</p> <p style="text-align: right;">104</p> <p>1 Mr. Wood went out that day. And, in addition, he</p> <p>2 had his phone. And on his phone he decided to live-stream</p> <p>3 this event.</p> <p>4 And so you'll see the evidence will show this live</p> <p>5 stream from beginning all the way to the end. At the</p> <p>6 beginning, as discussed, it's people leaving Logan Circle and</p> <p>7 then going and doing what they did.</p> <p>8 Don't get me wrong: There were victims. There were</p> <p>9 people who were hurt as a result of the property destruction</p> <p>10 you heard about and the violence against other persons.</p> <p>11 You'll hear about that. There's no minimizing that, and</p> <p>12 certainly we don't intend to do that.</p> <p>13 Bu the problem is that Mr. Wood was not involved</p> <p>14 with that. You will know it from the video, from the live</p> <p>15 stream.</p> <p>16 I want to talk a split second about the live stream.</p> <p>17 For anybody familiar with Facebook, which is where</p> <p>18 Mr. Wood was live-streaming to, people tend to inflate their</p> <p>19 own lives. "Hey, look at the bacon and eggs I'm having this</p> <p>20 morning. Isn't that wonderful?"</p> <p>21 People tend to want to put out what's going on deep</p> <p>22 down inside them and put that out to the world. Mr. Wood in</p> <p>23 this very tense situation wanted to bring that to people that</p> <p>24 followed him.</p> <p>25 Now, you'll hear on this live stream things that I</p>
<p style="text-align: center;">Opening Statement by Mr. Cohen</p> <p style="text-align: right;">103</p> <p>1 the intent -- and the evidence will show this -- with the</p> <p>2 intent to document the events of the inauguration, but not</p> <p>3 just the inauguration, not just this protest in question.</p> <p>4 You'll hear evidence that two days before the</p> <p>5 inauguration, Mr. Wood documented the Queer Dance Party.</p> <p>6 That was an event held by the LGBT community where they</p> <p>7 marched to then-vice-president-elect Mike Pence's house.</p> <p>8 Mr. Wood took video and Mr. Wood took pictures.</p> <p>9 The day before the inauguration, on January 19th, he</p> <p>10 documented the DeploraBall, an event that was offered by an</p> <p>11 inauguration supporters at the National Press Club. Mr. Wood</p> <p>12 was outside with the protesters, documenting what was going</p> <p>13 on.</p> <p>14 Then came January 20th. Mr. Wood knew that there</p> <p>15 would be certain events that he wanted to cover. So that</p> <p>16 morning, not knowing what was coming ahead -- he did know</p> <p>17 that there was going to be a protest. He did know that there</p> <p>18 would be counterprotesters. He did know that it was a</p> <p>19 protest that there would probably be police officers.</p> <p>20 But not knowing exactly what's going to happen that</p> <p>21 day, Mr. Wood came prepared. Mr. Wood brought memory cards</p> <p>22 for his camera. He brought batteries. He brought a camera.</p> <p>23 He brought a monopod.</p> <p>24 A monopod is a tripod. It's like a selfie stick for</p> <p>25 professional photographers like Mr. Wood.</p>	<p style="text-align: center;">Opening Statement by Mr. Cohen</p> <p style="text-align: right;">105</p> <p>1 believe the Government does object to, things that the</p> <p>2 Government believes are disagreeable.</p> <p>3 Let me say this is the point of the trial.</p> <p>4 Disagreeable is not illegal.</p> <p>5 You will not hear -- let alone, you won't</p> <p>6 see Mr. Wood destroy anything. You won't see Mr. Wood</p> <p>7 directing people. You won't see Mr. Wood conspiring. You</p> <p>8 won't even see Mr. Wood, like, communicating with anybody.</p> <p>9 He's there to document because, as the Government</p> <p>10 testified, you know, there are people out there who are</p> <p>11 amateur journalists. They're out there making videos. And</p> <p>12 there's apparently a demand for that.</p> <p>13 Otherwise, you wouldn't have journalists going out</p> <p>14 and doing their constitutionally protected activity in the</p> <p>15 field. Disagreeable is not illegal.</p> <p>16 Mr. Wood -- you will not hear words like, "I love</p> <p>17 the fact that that was destroyed," "Can you destroy that,"</p> <p>18 "Can you go hurt that person?" You're not going to hear</p> <p>19 that.</p> <p>20 You're going to hear things that he's saying to his</p> <p>21 audience, not to the people out on the street, to the people</p> <p>22 he's -- that's watching his live stream.</p> <p>23 More importantly, the Government has to prove that</p> <p>24 the statements or the reactions of Mr. Wood were done with</p> <p>25 the intent to further the violence, to further the</p>

<p style="text-align: center;">Opening Statement by Mr. Cohen</p> <p style="text-align: right;">106</p> <p>1 destruction of property, to further what they intend -- what</p> <p>2 they call a riot.</p> <p>3 And there's nothing that the Government has. Even</p> <p>4 though the Government has Mr. Wood's cell phone, everything</p> <p>5 on it, they still got nothing.</p> <p>6 Ladies and gentlemen, I'll talk to you more at</p> <p>7 length at the end of the trial.</p> <p>8 Mr. Wood started this event, went all the way till</p> <p>9 the time the police surrounded him, sprayed him with pepper</p> <p>10 spray.</p> <p>11 And you're going to watch him go to the ground,</p> <p>12 feeling the effects of that pepper spray. And that's where</p> <p>13 the live stream finally stops.</p> <p>14 Then he gets arrested, and now he's charged with</p> <p>15 these offenses.</p> <p>16 For someone who came to the District with the sole</p> <p>17 purpose of conducting himself under constitutionally</p> <p>18 protected activity, finding himself arrested was not how he</p> <p>19 intended things to come out.</p> <p>20 At the conclusion of the trial, I'm going to ask</p> <p>21 you, ladies and gentlemen of the jury, to find my client not</p> <p>22 guilty because that is the only just finding for Mr. Woods.</p> <p>23 Thank you.</p> <p>24 THE COURT: Thank you, Mr. Cohen.</p> <p>25 Ms. Kropf.</p>	<p style="text-align: center;">Opening Statement by Ms. Kropf</p> <p style="text-align: right;">108</p> <p>1 Now, you need medics at a big protest like this for</p> <p>2 a lot of reasons. There's a lot of people showing up. Some</p> <p>3 of them have healthcare problems. They have asthma. They</p> <p>4 might have an attack.</p> <p>5 People get small injuries. They trip. They fall</p> <p>6 down. You might have dehydration; on a hot day, heat</p> <p>7 exhaustion; on a cold day, exposure to the elements.</p> <p>8 So you need folks there to help take care of them.</p> <p>9 There's nothing wrong with that.</p> <p>10 Now, you also needed medics there today for exactly</p> <p>11 the reason on some of the clips we saw earlier this morning,</p> <p>12 and that was because of the police.</p> <p>13 The police repeatedly fired tear gas, concussion</p> <p>14 grenades, used their batons. So a lot of people needed help</p> <p>15 that day, and medics could be there to provide it.</p> <p>16 Now, here's what you won't hear during the trial:</p> <p>17 You won't hear the Government say that Ms. Lawson broke any</p> <p>18 windows, threw a brick, charged the police line, hurt anyone,</p> <p>19 hurt any bystanders, hurt a police officer or committed any</p> <p>20 property damage at all.</p> <p>21 But she's still here today.</p> <p>22 Now, during the Government's opening statement, I</p> <p>23 started counting the number of times the Government said "the</p> <p>24 group." I'll be honest with you. I lost count.</p> <p>25 Because that's their theory of the case and that's</p>
<p style="text-align: center;">Opening Statement by Ms. Kropf</p> <p style="text-align: right;">107</p> <p>1 MS. KROPF: Brittne Lawson was arrested on</p> <p>2 January 20th, 2017, with 200 other people, even though she</p> <p>3 didn't do anything wrong.</p> <p>4 Now, the Government told you in their opening that</p> <p>5 they don't plan to ask about politics or points of view. But</p> <p>6 then it's hard to understand what Brittne Lawson is doing</p> <p>7 here today because they don't have any evidence that she did</p> <p>8 anything wrong.</p> <p>9 I want to introduce you to Ms. Lawson.</p> <p>10 This is Brittne Lawson. She's 27 years old, and she</p> <p>11 lives in Pittsburgh, Pennsylvania. Ms. Lawson is a</p> <p>12 registered nurse, and every day she works with cancer</p> <p>13 patients at the University of Pittsburgh Medical Center.</p> <p>14 Every day she helps those cancer patients. She</p> <p>15 cares for them, she comforts them, and she works with their</p> <p>16 families through some of the most difficult times any of them</p> <p>17 will go through.</p> <p>18 And in Pittsburgh she is also involved with a</p> <p>19 Community Health Collective that helps bring healthcare</p> <p>20 information to the city. That's who Ms. Lawson is.</p> <p>21 Now, the Government during their opening statement</p> <p>22 referred to medics. And they referred to medics as though it</p> <p>23 was bad, as though it was something wrong to have medics at</p> <p>24 the protest, there was something nefarious about it.</p> <p>25 Well, medics are there to help, just like nurses.</p>	<p style="text-align: center;">Opening Statement by Ms. Heine</p> <p style="text-align: right;">109</p> <p>1 what you'll hear them talk about. The Government is going to</p> <p>2 spend this trial showing you pictures of the group.</p> <p>3 And they're going to talk to you about a few people</p> <p>4 in that group who may have done things that were wrong.</p> <p>5 We've seen the footage. We're not apologizing for that.</p> <p>6 But you heard Judge Leibovitz tell you at the</p> <p>7 beginning that your job is to judge each Defendant's conduct,</p> <p>8 his or her own conduct.</p> <p>9 So the Government's going to spend its time talking</p> <p>10 to you about the group or referring to what a few people did</p> <p>11 on January 20th.</p> <p>12 But at the end of this trial, your job won't be to</p> <p>13 judge the group and your job won't be to judge those few</p> <p>14 people who broke windows and threw bricks.</p> <p>15 Your job will be to judge Ms. Lawson. At the end of</p> <p>16 the trial, I'll ask you to find her not guilty.</p> <p>17 Thank you.</p> <p>18 THE COURT: Thank you, Ms. Kropf.</p> <p>19 Ms. Heine for Ms. Macchio.</p> <p>20 Thank you.</p> <p>21 MS. HEINE: This case is about drawing a line, a</p> <p>22 line between conduct that is criminal and conduct that is</p> <p>23 protected by the very First Amendment of our Constitution.</p> <p>24 Now, you already know that you are going to see</p> <p>25 video after video in this case. And in all of the video, you</p>

<p style="text-align: center;">Opening Statement by Ms. Heine</p> <p style="text-align: right;">110</p> <p>1 will see conduct that falls on both sides of that line.</p> <p>2 You will see video of people breaking windows, of</p> <p>3 people hurting other people, of people destroying property,</p> <p>4 of people carrying weapons.</p> <p>5 That video is disturbing. But all of that conduct,</p> <p>6 it's on this side of the line.</p> <p>7 And you will see evidence in this case that, among</p> <p>8 hundreds of people who were gathered that day, only a small</p> <p>9 handful engaged in property destruction or engaged in</p> <p>10 violence.</p> <p>11 You will also see evidence that hundreds of people</p> <p>12 gathered on that gloomy January morning when Donald Trump</p> <p>13 took the oath of office to protest, to protest against Donald</p> <p>14 Trump, to protest against fascism and to protest against</p> <p>15 unbridled capitalism.</p> <p>16 You will see evidence of protesters chanting</p> <p>17 political messages, of protesters carrying signs and banners</p> <p>18 and flags with political symbols on them.</p> <p>19 And you will see evidence that many people were</p> <p>20 dressed in all black and that many people covered or</p> <p>21 protected their faces.</p> <p>22 Now, Ms. Kerkhoff tried to tell you that that's not</p> <p>23 what this case is about. It's not about what color people</p> <p>24 were wearing. Really?</p> <p>25 Then, why did she tell you three or four times about</p>	<p style="text-align: center;">Opening Statement by Ms. Heine</p> <p style="text-align: right;">112</p> <p>1 It is my honor to represent her in this court and to</p> <p>2 speak to you on her behalf. And I am proud to tell you that,</p> <p>3 once you have an opportunity to hear all of the evidence and</p> <p>4 see all of the evidence in this case, you will find that</p> <p>5 Ms. Macchio belongs on this side of the line.</p> <p>6 So let me tell you why.</p> <p>7 Thank you.</p> <p>8 The Government made you a promise today that they're</p> <p>9 not going to be able to keep. You will see no evidence in</p> <p>10 this case that Ms. Macchio ever said, "I'm in."</p> <p>11 In all of the video that will be played for you over</p> <p>12 this next several weeks, what you will not see is Michelle</p> <p>13 Macchio breaking any window, destroying any property, hurting</p> <p>14 any person.</p> <p>15 You will see no video of Michelle Macchio urging</p> <p>16 other people to break property or to hurt others.</p> <p>17 You will see no video of Michelle Macchio</p> <p>18 celebrating or cheering on any violence or destruction.</p> <p>19 And no witness will testify that she did any of</p> <p>20 those things.</p> <p>21 Instead, the evidence will show that Michelle</p> <p>22 Macchio was arrested merely because of her association with</p> <p>23 that small handful of people who engaged in violence or</p> <p>24 destruction.</p> <p>25 You will hear evidence that the police blurred the</p>
<p style="text-align: center;">Opening Statement by Ms. Heine</p> <p style="text-align: right;">111</p> <p>1 the sea of black? That's exactly what this case is about.</p> <p>2 And, ladies and gentlemen, marching down a street,</p> <p>3 wearing the color black, chanting a political message,</p> <p>4 carrying a protest sign, protecting one's face, all of that</p> <p>5 amounts to nothing more than exercising one's right to free</p> <p>6 speech.</p> <p>7 And associating with other people who are also</p> <p>8 opposed to the President, who are also opposed to fascism,</p> <p>9 well, that's a right protected by the First Amendment, too.</p> <p>10 So all of that conduct, that's on this side of the</p> <p>11 line.</p> <p>12 The Government told you this morning that Michelle</p> <p>13 Macchio was a street medic, and the Government's going to try</p> <p>14 to convince you that there is something sinister about that.</p> <p>15 Now, I would not be surprised if before today many</p> <p>16 of you had never heard the term "street medic" before. But</p> <p>17 you will hear evidence in this case that a street medic does</p> <p>18 exactly what the term itself implies: Street medics help</p> <p>19 people.</p> <p>20 And you'll see evidence in this case of street</p> <p>21 medics helping people in this protest. So helping people?</p> <p>22 That's on this side of the line, too.</p> <p>23 I would like to introduce you to my client.</p> <p>24 Michelle.</p> <p>25 This is Michelle Macchio.</p>	<p style="text-align: center;">Opening Statement by Ms. Heine</p> <p style="text-align: right;">113</p> <p>1 line that day, that they treated Ms. Macchio no differently</p> <p>2 than that small handful.</p> <p>3 When I come back to you at the end of this case, I'm</p> <p>4 going to ask you not to follow the police's example. And I'm</p> <p>5 confident that, once you have had an opportunity to hear and</p> <p>6 see all of the evidence for yourself, you'll see the line</p> <p>7 more clearly than the police did that day.</p> <p>8 And I'm confident that you will return a verdict of</p> <p>9 not guilty.</p> <p>10 Thank you.</p> <p>11 THE COURT: We're going to begin the Government's</p> <p>12 case.</p> <p>13 I'll ask the Government to please call its first</p> <p>14 witness.</p> <p>15 MR. QURESHI: Thank you, your Honor.</p> <p>16 Your Honor, the Government calls Andrew Lapp to the</p> <p>17 stand.</p> <p>18 (Thereupon, the witness entered</p> <p>19 the courtroom and the following</p> <p>20 proceedings were had:)</p> <p>21 THE COURT: Sir, please come up here.</p> <p>22 Please remain standing and raise your right hand.</p> <p>23 THE WITNESS: Sure.</p> <p>24 ANDREW LAPP, GOVERNMENT WITNESS, SWORN</p> <p>25 THE COURT: Good afternoon.</p>

<p style="text-align: center;">Lapp - DIRECT - By Mr. Qureshi</p> <p style="text-align: right;">114</p> <p>1 THE WITNESS: Good afternoon, your Honor.</p> <p>2 DIRECT EXAMINATION</p> <p>3 BY MR. QURESHI:</p> <p>4 Q. Good afternoon, sir.</p> <p>5 A. Good afternoon.</p> <p>6 Q. Can you please introduce yourself to the ladies and</p> <p>7 gentlemen of the jury by stating and spelling your first and</p> <p>8 last name, please.</p> <p>9 A. My name is Andrew Lapp, A-n-d-r-e-w, L-a-p-p.</p> <p>10 Q. Mr. Lapp, how old are you?</p> <p>11 A. 47.</p> <p>12 Q. Are you married?</p> <p>13 A. I am.</p> <p>14 Q. Do you have any children?</p> <p>15 A. Four.</p> <p>16 Q. Without telling us the exact street address, what</p> <p>17 city and state do you live in?</p> <p>18 A. Do I live in?</p> <p>19 Q. Yes.</p> <p>20 A. Silver Spring, Maryland.</p> <p>21 Q. Mr. Lapp, what do you do for a living?</p> <p>22 A. I'm restaurant manager.</p> <p>23 Q. Any particular restaurant?</p> <p>24 A. Au Bon Pain.</p> <p>25 Q. Are you at any particular location of Au Bon Pain?</p>	<p style="text-align: center;">Lapp - DIRECT - By Mr. Qureshi</p> <p style="text-align: right;">116</p> <p>1 Q. On that particular day, January 20th of 2017, what</p> <p>2 was your scheduled shift?</p> <p>3 A. 11:00 to close. 11 a.m. to close.</p> <p>4 Q. So you come in from Silver Spring, Maryland.</p> <p>5 Correct?</p> <p>6 A. Yes, sir.</p> <p>7 Q. How do you come in to your Au Bon Pain location? Do</p> <p>8 you take the Metro? Drive?</p> <p>9 A. I drive.</p> <p>10 Q. On that particular day, did you drive in?</p> <p>11 A. I did.</p> <p>12 Q. What's your normal route that you do?</p> <p>13 A. Straight down Georgia Avenue to 16th, usually cut</p> <p>14 across P to the circle and down 13th to look for parking.</p> <p>15 Q. On that particular day, did you go by the circle?</p> <p>16 A. I did.</p> <p>17 Q. What is Logan Circle? If you can orient the jury,</p> <p>18 what are the cross streets that sort of feed it?</p> <p>19 A. Logan Circle is your typical DC circle. It's one of</p> <p>20 the larger ones. It's got the statue in the middle with the</p> <p>21 park. It's at the intersection of Rhode Island, P and 13th.</p> <p>22 Q. On that particular day, when you arrived at Logan</p> <p>23 Circle, do you remember approximately what time it was?</p> <p>24 A. Yeah. It was -- I came in a little early that day.</p> <p>25 It was around 10:00.</p>
<p style="text-align: center;">Lapp - DIRECT - By Mr. Qureshi</p> <p style="text-align: right;">115</p> <p>1 A. I am. I'm the general manager of the 13th Street</p> <p>2 location.</p> <p>3 Q. Now, Mr. Lapp, how long have you been with ABP?</p> <p>4 A. Four years.</p> <p>5 Q. Do you mind if I call it ABP?</p> <p>6 A. No. We all do.</p> <p>7 Q. Four years, you said?</p> <p>8 A. Yes, sir.</p> <p>9 Q. And in your capacity as a retail manager, what are</p> <p>10 your duties and responsibilities?</p> <p>11 A. I oversee all operations in the cafe. I'm</p> <p>12 responsible for everything.</p> <p>13 Q. On a given shift, how many individuals are you</p> <p>14 supervising?</p> <p>15 A. About 20.</p> <p>16 Q. I want to direct your attention specifically to</p> <p>17 January 20th of 2017.</p> <p>18 Were you working at APB on that day?</p> <p>19 A. Yes. I was scheduled for a later shift that day.</p> <p>20 Q. What is your normal shift?</p> <p>21 A. I typically work 5:00 to 3:00. But occasionally I</p> <p>22 have to close to show my other managers I still know how to</p> <p>23 do it.</p> <p>24 Q. So 5:00 a.m. to 3:00 p.m.?</p> <p>25 A. Yes.</p>	<p style="text-align: center;">Lapp - DIRECT - By Mr. Qureshi</p> <p style="text-align: right;">117</p> <p>1 Q. And when you reached Logan Circle, did you observe</p> <p>2 anything out of the ordinary?</p> <p>3 A. I did.</p> <p>4 Q. What was that?</p> <p>5 A. There was a big crowd of people in the circle, a</p> <p>6 bunch of people crossing the streets to get to the circle. A</p> <p>7 lot of people -- it struck me that people were on the statue,</p> <p>8 which you don't usually see. So it kind of stuck in my</p> <p>9 memory.</p> <p>10 And the folks that were hanging out there were</p> <p>11 mostly wearing dark clothing. A few of them had like the</p> <p>12 bandannas covering their face with the different graphics on</p> <p>13 them (indicating).</p> <p>14 Q. And, for the record, when you said bandanna covering</p> <p>15 their face, you used your left thumb, your right thumb, your</p> <p>16 left -- and your right index finger and left index finger to</p> <p>17 sort of create a cover over your face just below the eye. Is</p> <p>18 that fair to say?</p> <p>19 A. Yeah. Like, you know, outlaw style.</p> <p>20 Q. What was that? Outlaw style?</p> <p>21 A. Yeah. Like a western.</p> <p>22 MS. WELETZ: Your Honor, I would object.</p> <p>23 THE COURT: Overruled.</p> <p>24 BY MR. QURESHI:</p> <p>25 Q. What was the demeanor of the folks who were gathered</p>

<p style="text-align: center;">Lapp - DIRECT - By Mr. Qureshi</p> <p style="text-align: right;">118</p> <p>1 in the park -- or in the circle that morning?</p> <p>2 A. You know, other than -- I mean, they were -- it</p> <p>3 struck me as unusual. I mean, it was Inauguration Day. I</p> <p>4 expected to see crowds. I expected to see people.</p> <p>5 But they were on the statue. So it just didn't</p> <p>6 feel -- it felt unusual to me, I guess. As far as their</p> <p>7 demeanor, no. I couldn't really say.</p> <p>8 Q. And you described it as unusual. Did you do</p> <p>9 anything in response to observing what you've described as</p> <p>10 unusual.</p> <p>11 A. Yeah. It was unusual enough, I took some video for</p> <p>12 the record.</p> <p>13 Q. And that's from your vehicle?</p> <p>14 A. From my vehicle, from my phone, out the driver</p> <p>15 window.</p> <p>16 Q. Mr. Lapp, I'm going to show you on the screen what</p> <p>17 is marked as Government's Exhibit 226.</p> <p>18 Do you recognize --</p> <p>19 THE COURT: Before you do that, do we have an</p> <p>20 exhibit list? Do you have a couple copies for us?</p> <p>21 MR. QURESHI: Yes, your Honor.</p> <p>22 MS. KERKHOFF: (Tenders documents to the Court.)</p> <p>23 MR. QURESHI: The Court's brief indulgence.</p> <p>24 THE COURT: And this is 227, you said?</p> <p>25 MR. QURESHI: 226, your Honor.</p>	<p style="text-align: center;">Lapp - DIRECT - By Mr. Qureshi</p> <p style="text-align: right;">120</p> <p>1 BY MR. QURESHI:</p> <p>2 Q. Mr. Lapp, we've stopped Exhibit 226. It's paused</p> <p>3 currently.</p> <p>4 Do you recognize what you see on the screen in front</p> <p>5 of you?</p> <p>6 A. I do.</p> <p>7 Q. What do you recognize it to be?</p> <p>8 A. I recognize it to be what I saw that morning. And,</p> <p>9 so far, it looks like the video I took.</p> <p>10 Q. And does this video, at least the first screen shot</p> <p>11 of the video, fairly and accurately depict what you observed</p> <p>12 from your vehicle just after 10 a.m. on January 20th, 2017?</p> <p>13 A. It does.</p> <p>14 MR. QURESHI: At this point, your Honor, the</p> <p>15 Government would move 226 in evidence and ask to publish it.</p> <p>16 THE COURT: It's been admitted, subject to a motion</p> <p>17 to strike. You are publishing it and you may.</p> <p>18 MR. QURESHI: Thank you, your Honor.</p> <p>19 (Whereupon, segments of Government's Exhibit No. 226</p> <p>20 were published in open court.)</p> <p>21 BY MR. QURESHI:</p> <p>22 Q. Can you describe what you see here, Mr. Lapp.</p> <p>23 A. Yes. I'm turning right onto the circle, heading</p> <p>24 towards P. There's a crowd of people heading towards the</p> <p>25 circle. There's some folks on and around the statue, all</p>
<p style="text-align: center;">Lapp - DIRECT - By Mr. Qureshi</p> <p style="text-align: right;">119</p> <p>1 THE COURT: If you could hand those out quickly.</p> <p>2 And we're going to keep going.</p> <p>3 MR. QURESHI: Thank you, your Honor.</p> <p>4 For the record, your Honor, I've consulted with a</p> <p>5 least a few defense counsel. And there's no objection to</p> <p>6 publishing this exhibit.</p> <p>7 THE COURT: First of all, will you be offering this?</p> <p>8 MR. QURESHI: Yes, your Honor.</p> <p>9 THE COURT: So may I admit it, subject to a motion</p> <p>10 to strike if things turn out not to be what you expected?</p> <p>11 MS. COLEMAN: Yes, your Honor.</p> <p>12 THE COURT: I'm seeing all these yes's. This is</p> <p>13 what I'm going to do from now on unless I hear an objection</p> <p>14 from somebody.</p> <p>15 MR. QURESHI: For the record, your Honor, it was</p> <p>16 previously produced to counsel as well.</p> <p>17 THE COURT: I understand.</p> <p>18 So this is 226 and it's admitted.</p> <p>19 (Whereupon, Government's Exhibit No. 226 was entered</p> <p>20 into evidence.)</p> <p>21 BY MR. QURESHI:</p> <p>22 Q. Mr. Lapp, we're going to go ahead and play --</p> <p>23 THE COURT: But you do need to lay your foundation</p> <p>24 anyway.</p> <p>25</p>	<p style="text-align: center;">Lapp - DIRECT - By Mr. Qureshi</p> <p style="text-align: right;">121</p> <p>1 dressed in dark clothing. I guess that was that.</p> <p>2 Q. How many times have you gone by that circle -- how</p> <p>3 many years have you been at that ABP on 13th Street?</p> <p>4 A. Four years.</p> <p>5 Q. And I might not have asked you this.</p> <p>6 What's the exact address of the ABP that you work</p> <p>7 at?</p> <p>8 A. 1100 13th Street, between Massachusetts and L.</p> <p>9 Q. Where is that in proximity to the circle that we're</p> <p>10 looking at in Government's Exhibit 226?</p> <p>11 A. I'd call it three or four blocks south.</p> <p>12 Q. And I'd like to talk about circles like I talk about</p> <p>13 clocks.</p> <p>14 So where are you -- I presume you're --</p> <p>15 A. I'm on the west side of the circle coming from P --</p> <p>16 eastbound P, taking a right into the circle heading towards</p> <p>17 13th Street.</p> <p>18 Q. Is it fair to say, since you're south of the circle,</p> <p>19 you're at 6:00 heading down to go to your store?</p> <p>20 A. 9:00. Well, the store is 6:00.</p> <p>21 Q. That's right.</p> <p>22 A. I was --</p> <p>23 THE COURT: So can I just say it kind of depends</p> <p>24 where you are as to what time you're giving it?</p> <p>25 MR. QURESHI: That's right.</p>

<p style="text-align: center;">Lapp - DIRECT - By Mr. Qureshi</p> <p style="text-align: right;">122</p> <p>1 BY MR. QURESHI:</p> <p>2 Q. If we're looking at --</p> <p>3 MR. QURESHI: I'll rephrase the question, your</p> <p>4 Honor.</p> <p>5 BY MR. QURESHI:</p> <p>6 Q. Mr. Lapp, if we're looking at the circle from an</p> <p>7 aerial view, your particular store, ABP, is at what point of</p> <p>8 the circle and what direction?</p> <p>9 A. It is 6:00 -- 6:00 due south (indicating).</p> <p>10 Q. You just gestured with your hand up and down.</p> <p>11 A. Yeah.</p> <p>12 Q. So after you observed this in the circle, what did</p> <p>13 you do next?</p> <p>14 A. I proceeded to the cafe normally -- to look for a</p> <p>15 parking spot on the street, especially since it was kind of a</p> <p>16 holiday and I figured I'd get a lucky spot.</p> <p>17 It's a residential area. So they do have some --</p> <p>18 some fee-free parking spots, I guess you'd call it. We all</p> <p>19 fight for them on a daily basis.</p> <p>20 But --</p> <p>21 Q. On that particular day, did you find a lucky spot?</p> <p>22 A. After I saw that crowd, I kind of -- I decided to</p> <p>23 park straight into the garage. And I did pass a couple empty</p> <p>24 spots on the way down.</p> <p>25 Q. And how long did you say you were at that ABP</p>	<p style="text-align: center;">Lapp - DIRECT - By Mr. Qureshi</p> <p style="text-align: right;">124</p> <p>1 to object. Everyone else is shaking their head no. So I</p> <p>2 don't see anyone wishing for this testimony.</p> <p>3 And I'm going to ask you to rephrase your question.</p> <p>4 MR. QURESHI: Yes, your Honor.</p> <p>5 (Whereupon, the following proceedings were had in</p> <p>6 open court:)</p> <p>7 BY MR. QURESHI:</p> <p>8 Q. So you were describing in the last four years you've</p> <p>9 seen a number of demonstrations. Is that correct?</p> <p>10 A. Yes.</p> <p>11 Q. What, if anything, was different about this one?</p> <p>12 A. A few of them had their faces covered. The dark</p> <p>13 clothing. They were a younger crowd, I guess you could say.</p> <p>14 It just had a different feel to it.</p> <p>15 Q. So how long from this location in Government's</p> <p>16 Exhibit 226 did it take you to get to your store on</p> <p>17 13th Street?</p> <p>18 A. With parking, probably four to five minutes.</p> <p>19 Q. After you parked your vehicle, I assume you</p> <p>20 responded to your work location. Correct?</p> <p>21 A. Yes.</p> <p>22 Q. How many individuals were working on that particular</p> <p>23 day?</p> <p>24 A. That day was a little less than the 20. We expected</p> <p>25 a lighter day based on the history. 12.</p>
<p style="text-align: center;">Lapp - DIRECT - By Mr. Qureshi</p> <p style="text-align: right;">123</p> <p>1 location?</p> <p>2 A. Four years.</p> <p>3 Q. So that's right in downtown DC. Correct?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Have you seen demonstrations in the past?</p> <p>6 A. Oh, yeah. Many.</p> <p>7 Q. Have you passed demonstrations on your way to work</p> <p>8 in the last four years?</p> <p>9 A. We've passed them and gone out to look at them and</p> <p>10 take video of them. It's a very popular intersection for, I</p> <p>11 think, those kind of events.</p> <p>12 Q. And why on that day did you decide not to park on</p> <p>13 the street?</p> <p>14 THE COURT: Can I ask counsel to approach, please.</p> <p>15 (Whereupon, the following proceedings were had at</p> <p>16 side-bar outside the presence of the jury:)</p> <p>17 THE COURT: I'm asking whether -- I don't think it's</p> <p>18 relevant why he chose to park downstairs. I don't think his</p> <p>19 state of mind at the time right before the whole thing began</p> <p>20 or before the riot is not relevant. It may be relevant that</p> <p>21 he can physically compare demonstrations that he's seen to</p> <p>22 what he saw there. But I don't think his premonitions are</p> <p>23 relevant unless somebody on the other side of the podium asks</p> <p>24 to.</p> <p>25 THE COURT: So, Mr. Lazerow said he's getting ready</p>	<p style="text-align: center;">Lapp - DIRECT - By Mr. Qureshi</p> <p style="text-align: right;">125</p> <p>1 Q. And just so we can orient the ladies and gentlemen</p> <p>2 of the jury, can you just generally describe what the store</p> <p>3 looks like when you enter the premises.</p> <p>4 A. Sure.</p> <p>5 When you go in, you've got our self-serve area to</p> <p>6 the right where you can grab your bottled drinks. Your</p> <p>7 coffee station's there, the pastry and the grab-and-go, like</p> <p>8 the prepared food you don't have to wait in line for,</p> <p>9 cabinets to the right.</p> <p>10 Straight ahead is the counter where we prepare the</p> <p>11 salads and the sandwiches that are made to order. You go up</p> <p>12 there and order them.</p> <p>13 And over to the left is the self-serve soup station,</p> <p>14 the cookie rack, more of the center of the store.</p> <p>15 Further to the left is the cashiers and the</p> <p>16 dining -- sit-down area.</p> <p>17 Q. Thank you, Mr. Lapp.</p> <p>18 Now, Mr. Lapp, I'm going to ask Ms. Kerkhoff to</p> <p>19 assist me in displaying for you what we've marked as</p> <p>20 Government's Exhibit 230.</p> <p>21 THE COURT: Any objection?</p> <p>22 Hearing no objection, it'll be admitted, subject to</p> <p>23 a motion to strike.</p> <p>24 (Whereupon, Government's Exhibit No. 230 was entered</p> <p>25 into evidence.)</p>

<p style="text-align: center;">Lapp - DIRECT - By Mr. Qureshi</p> <p style="text-align: right;">126</p> <p>1 MR. QURESHI: We need to rotate that.</p> <p>2 There we go.</p> <p>3 BY MR. QURESHI:</p> <p>4 Q. So, Mr. Lapp, I'm displaying for you what we've</p> <p>5 marked as Government's Exhibit 230.</p> <p>6 Do you recognize that?</p> <p>7 A. Yes, sir.</p> <p>8 Q. What do you recognize it to be?</p> <p>9 A. That is my cafe.</p> <p>10 Q. And that's, fair to say, a Google sort of street</p> <p>11 view version of your cafe or -- is that correct?</p> <p>12 A. Yes.</p> <p>13 Q. And does it fairly and accurately depict what your</p> <p>14 cafe looks like in its normal business condition?</p> <p>15 A. It does.</p> <p>16 Q. Now, in the center of Government's Exhibit 230 is a</p> <p>17 doorway.</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. Is that the only door entrance in and out of your</p> <p>21 cafe?</p> <p>22 A. No. We have a service entrance, the back door that</p> <p>23 goes to the loading dock, where our delivery vans are because</p> <p>24 we're a catering store.</p> <p>25 There's also an interior side door that goes into</p>	<p style="text-align: center;">Lapp - DIRECT - By Mr. Qureshi</p> <p style="text-align: right;">128</p> <p>1 THE COURT: Subject to a motion to strike.</p> <p>2 MR. QURESHI: Thank you your Honor.</p> <p>3 BY MR. QURESHI:</p> <p>4 Q. I'm showing you on the monitor what's been marked as</p> <p>5 Government's Exhibit 231.</p> <p>6 Do you recognize that?</p> <p>7 A. I do.</p> <p>8 Q. What's that a picture of?</p> <p>9 A. That is the picture of the inside of my cafe from</p> <p>10 the back right-hand corner of the dining room.</p> <p>11 Q. And you described earlier like a hot bar area at the</p> <p>12 entrance.</p> <p>13 Where is the entrance in this photo?</p> <p>14 A. The entrance is a little bit to the left of center</p> <p>15 and straight back where those -- where the light coming in</p> <p>16 is.</p> <p>17 Q. Okay. In the center of Government's Exhibit 231 we</p> <p>18 see what looks like a support beam.</p> <p>19 Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. Is the doorway to the right of that, to the left of</p> <p>22 that or behind it?</p> <p>23 A. The second support beam is to the right of it.</p> <p>24 Q. I'm not following you.</p> <p>25 THE COURT: Do you want to just get up? There's a</p>
<p style="text-align: center;">Lapp - DIRECT - By Mr. Qureshi</p> <p style="text-align: right;">127</p> <p>1 the building that the folks that work in the building do come</p> <p>2 in and out of without going outside.</p> <p>3 Q. But for individuals of the public who want to come</p> <p>4 off the street --</p> <p>5 A. That's the one.</p> <p>6 Q. This is the normal one?</p> <p>7 And how many windows do you have facing 13th Street</p> <p>8 Northwest at the front of your business there?</p> <p>9 A. I think there's four. I think there's one more that</p> <p>10 we don't see in the picture.</p> <p>11 Q. Okay. Is it to the left of this image or to the</p> <p>12 right?</p> <p>13 A. If there is one, it's to the left.</p> <p>14 Q. Okay.</p> <p>15 A. I think there's one more.</p> <p>16 Q. And I'm going to ask to move on to Government's</p> <p>17 Exhibit 231.</p> <p>18 MR. QURESHI: Your Honor, again, we'd move to admit</p> <p>19 this, subject to foundation.</p> <p>20 THE COURT: Any objection?</p> <p>21 You don't need to say it if you don't have one.</p> <p>22 So there's silence.</p> <p>23 I'll admit 231.</p> <p>24 (Whereupon, Government's Exhibit No. 231 was entered</p> <p>25 into evidence.)</p>	<p style="text-align: center;">Lapp - DIRECT - By Mr. Qureshi</p> <p style="text-align: right;">129</p> <p>1 picture right behind you and you can point to it.</p> <p>2 THE WITNESS: Great.</p> <p>3 (Witness complies.)</p> <p>4 The front doors.</p> <p>5 BY MR. QURESHI:</p> <p>6 Q. So for the record, you've pointed -- I've identified</p> <p>7 a support beam in the center of Government's Exhibit 231.</p> <p>8 You've pointed to the left of that, correct, where the</p> <p>9 windows are located -- or where the light is coming in?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. Thank you.</p> <p>12 THE COURT: Thank you.</p> <p>13 THE WITNESS: Yeah.</p> <p>14 BY MR. QURESHI:</p> <p>15 Q. So you've entered the store. I'd like to go back to</p> <p>16 January 20th of 2017.</p> <p>17 What's the first thing you did when you arrived that</p> <p>18 day?</p> <p>19 A. Typically -- well, that day, probably what I always</p> <p>20 do, but I couldn't say for sure. Go into the office,</p> <p>21 wintertime, take my jacket off, take my Redskins hat off,</p> <p>22 check email, come out front and get started.</p> <p>23 Q. Did you come out front and get started that morning?</p> <p>24 A. I did.</p> <p>25 Q. And what do you remember happening next?</p>

<p style="text-align: center;">Lapp - DIRECT - By Mr. Qureshi</p> <p style="text-align: right;">130</p> <p>1 A. Nothing out of the ordinary for a few minutes.</p> <p>2 Then I was kind of in a prep area, not facing the</p> <p>3 front, just kind of getting -- doing some -- some of the</p> <p>4 checklists that -- one of the many checklists we have to do</p> <p>5 on a daily basis, when I heard a really loud bang, I guess,</p> <p>6 boom.</p> <p>7 Q. Did you learn what that sound was?</p> <p>8 A. Not right away. Then I heard a lot of commotion</p> <p>9 from the dining room with one of my cashiers. As I was</p> <p>10 turning, I heard another one and -- in that second window,</p> <p>11 which -- we saw a rock.</p> <p>12 We saw a rock kind of bouncing off it because I was</p> <p>13 already looking that way after the first one and then right</p> <p>14 after that another one that broke the glass and then after</p> <p>15 that -- it happened pretty quick -- another one on the next</p> <p>16 window down.</p> <p>17 Q. And did you look outside?</p> <p>18 A. Yes. After the -- I turned after the first one to</p> <p>19 look outside.</p> <p>20 Q. Before we turn to outside, how many customers would</p> <p>21 you say you had in there at that point?</p> <p>22 A. That would be probably about 14 or so.</p> <p>23 Q. And you described the staff members already.</p> <p>24 What was the reaction in there? How would you</p> <p>25 describe it?</p>	<p style="text-align: center;">Lapp - DIRECT - By Mr. Qureshi</p> <p style="text-align: right;">132</p> <p>1 A. The safety of my team members and the guests and</p> <p>2 property.</p> <p>3 Q. So what did you do?</p> <p>4 A. I kind of looked over at the cashier that looked</p> <p>5 scared. I said, "Just stay calm." I kind of made eye</p> <p>6 contact with some of the customers that were looking at me,</p> <p>7 which looked like for guidance, I guess.</p> <p>8 And I headed to the front door and went out front to</p> <p>9 just kind of keep anybody from coming in if they wanted to</p> <p>10 and trying to find the people that threw the rock.</p> <p>11 Q. Were you able to find the people that threw the</p> <p>12 rock?</p> <p>13 A. They -- I saw the person who threw the last rock --</p> <p>14 or the last two rocks. They threw real quick, turned around</p> <p>15 and into the crowd.</p> <p>16 Q. Where did they go?</p> <p>17 A. I couldn't see. They just blended in.</p> <p>18 Q. And you described rocks.</p> <p>19 Did you see what else they were breaking things with</p> <p>20 or was it just rocks?</p> <p>21 A. I -- I observed one male bashing that -- it was in</p> <p>22 the picture -- bashing that pay-to-park station with a rock.</p> <p>23 MR. QURESHI: Your Honor, I'd like to ask</p> <p>24 Ms. Kerkhoff here --</p> <p>25 MR. HEALY: Your Honor, objection. Could we</p>
<p style="text-align: center;">Lapp - DIRECT - By Mr. Qureshi</p> <p style="text-align: right;">131</p> <p>1 A. I heard some exclamations of -- I guess the best I</p> <p>2 could describe it would be shock, surprise, you know. After</p> <p>3 the first one, I heard -- I knew it was one of the -- my</p> <p>4 cashier. She let out kind of a little scream.</p> <p>5 Then after the second one was definitely a scream.</p> <p>6 Then she started calling my name because she didn't know I</p> <p>7 was right there. So she started calling me. And then just a</p> <p>8 lot of, I guess, excited chatter from the customers.</p> <p>9 Q. And what did you observe outside?</p> <p>10 A. A couple hundred people out on the street walking</p> <p>11 south on 13th. I recognized them to be the folks I saw at</p> <p>12 the circle.</p> <p>13 Q. And you're not obviously -- correct me if I'm wrong.</p> <p>14 Are you 100 percent sure it was the same people up</p> <p>15 at the circle?</p> <p>16 A. Yes. Yeah.</p> <p>17 Q. And what about them looked familiar to you?</p> <p>18 A. The covered faces, the dark clothing, the young</p> <p>19 crowd. They were coming from that way.</p> <p>20 Q. Okay.</p> <p>21 A. You know, it was looking organized, like it wasn't</p> <p>22 just people heading to go somewhere. It was a definite</p> <p>23 march.</p> <p>24 Q. And what was your priority at that point after you</p> <p>25 realized what was going on?</p>	<p style="text-align: center;">Lapp - DIRECT - By Mr. Qureshi</p> <p style="text-align: right;">133</p> <p>1 approach?</p> <p>2 THE COURT: Yes.</p> <p>3 (Whereupon, the following proceedings were had at</p> <p>4 side-bar outside the presence of the jury:)</p> <p>5 THE COURT: Mr. Qureshi?</p> <p>6 MR. QURESHI: Yes.</p> <p>7 THE COURT: What is it you're about to show?</p> <p>8 MR. QURESHI: It's Government's Exhibit 148, a</p> <p>9 particular clip --</p> <p>10 THE COURT: Say that again.</p> <p>11 MR. QURESHI: A particular clip, your Honor, a file</p> <p>12 within that. 148 is a number of videos.</p> <p>13 THE COURT: I know. But I want to know what it's</p> <p>14 going to be.</p> <p>15 MR. QURESHI: It's a video of an individual slamming</p> <p>16 with a rock the parking meter that the witness just testified</p> <p>17 to.</p> <p>18 THE COURT: And is this witness going to be able to</p> <p>19 authenticate it?</p> <p>20 MR. QURESHI: Yes, your Honor.</p> <p>21 THE COURT: And so, Mr. Lazerow, you're objecting to</p> <p>22 it?</p> <p>23 MR. HEALY: Mr. Healy.</p> <p>24 THE COURT: Mr. Healy. Sorry.</p> <p>25 MR. HEALY: He referenced that he had already seen</p>

<p style="text-align: center;">Lapp - DIRECT - By Mr. Qureshi</p> <p style="text-align: right;">134</p> <p>1 the video. I was concerned that he had watched the</p> <p>2 statement. So --</p> <p>3 THE COURT: Why would he have been here?</p> <p>4 MR. HEALY: I'm not saying it was in here. There</p> <p>5 was another room where he could have been. But he said</p> <p>6 the -- you know, smashing the parking station, you know, that</p> <p>7 he saw in the video.</p> <p>8 So if he was referencing back to a prior --</p> <p>9 THE COURT: So the Government, generally speaking,</p> <p>10 shows its videos to the witness ahead of time so that the</p> <p>11 witness can later say, "I've seen it and can authenticate</p> <p>12 it."</p> <p>13 MR. HEALY: I just wanted to make absolutely</p> <p>14 certain --</p> <p>15 THE COURT: So the speculation that the Government</p> <p>16 showed the video -- that he watched a video in the other</p> <p>17 courtroom, is there a basis for your --</p> <p>18 MR. HEALY: That was the concern.</p> <p>19 THE COURT: None of the visuals are projected into</p> <p>20 the other courtroom. You should know that.</p> <p>21 MR. HEALY: And just for the record --</p> <p>22 MR. QURESHI: For the record --</p> <p>23 THE COURT: Let's do this now. Okay.</p> <p>24 Overruled. Thank you.</p> <p>25 (Whereupon, the following proceedings were had in</p>	<p style="text-align: center;">Lapp - DIRECT - By Mr. Qureshi</p> <p style="text-align: right;">136</p> <p>1 BY MR. QURESHI:</p> <p>2 Q. Mr. Lapp, do you recognize the still frame in</p> <p>3 Government's Exhibit 148?</p> <p>4 A. I do.</p> <p>5 Q. What do you recognize it to be?</p> <p>6 A. I recognize that to be a still of my cafe and the</p> <p>7 cleaners next door from, I'd say, about 50 yards north.</p> <p>8 Q. Does it fairly and accurately depict what your store</p> <p>9 looks like on any given day?</p> <p>10 A. It does.</p> <p>11 MR. QURESHI: Your Honor, the Government moves</p> <p>12 148 in this particular file, 2901, into evidence, subject to</p> <p>13 further foundation, as discussed.</p> <p>14 THE COURT: Any objection?</p> <p>15 MS. COLEMAN: No, your Honor.</p> <p>16 THE COURT: I don't need everybody to say no. If</p> <p>17 there's a yes, I'll bring you back up.</p> <p>18 Not getting any yes's, thank you for that.</p> <p>19 And it's admitted.</p> <p>20 (Whereupon, Government's Exhibit No. 148 was entered</p> <p>21 into evidence.)</p> <p>22 MR. QURESHI: Thank you, your Honor.</p> <p>23 THE COURT: That's 148. That's a subfile.</p> <p>24 There are going to be more 148s?</p> <p>25 MR. QURESHI: Yes, your Honor.</p>
<p style="text-align: center;">Lapp - DIRECT - By Mr. Qureshi</p> <p style="text-align: right;">135</p> <p>1 open court:)</p> <p>2 THE COURT: Overruled.</p> <p>3 This is Exhibit 148? Yes? It's 148?</p> <p>4 MS. KERKHOFF: Yes, your Honor.</p> <p>5 BY MR. QURESHI:</p> <p>6 Q. So, Mr. Lapp, you said that you observed an</p> <p>7 individual hitting the parking meter with a rock?</p> <p>8 A. Yes.</p> <p>9 Q. What was your vantage point? Were you inside the</p> <p>10 doors or were you --</p> <p>11 A. I was standing outside, right outside the front</p> <p>12 doors, about 10 feet away from that -- that meter.</p> <p>13 MR. QURESHI: And, for the record, your Honor, I'm</p> <p>14 going to stop at Government's Exhibit 148. This is</p> <p>15 File 2901, which has been disclosed to counsel already. It's</p> <p>16 part of 148?</p> <p>17 THE COURT: Is there a timestamp that you're</p> <p>18 stopping at?</p> <p>19 MR. QURESHI: I'm going to play the entire video,</p> <p>20 your Honor. It's a 40 second video. I'm going to stop it</p> <p>21 here to just have the witness testify to it.</p> <p>22 THE COURT: So what timestamp is it now?</p> <p>23 MR. QURESHI: Zero.</p> <p>24 THE COURT: Okay.</p> <p>25</p>	<p style="text-align: center;">Lapp - DIRECT - By Mr. Qureshi</p> <p style="text-align: right;">137</p> <p>1 (Whereupon, segments of Government's Exhibit No. 148</p> <p>2 were published in open court.)</p> <p>3 BY MR. QURESHI:</p> <p>4 Q. Mr. Lapp, do you recognize that?</p> <p>5 A. I sure do.</p> <p>6 Q. I know there was no audio there in that instance.</p> <p>7 But did you see the individual that you described</p> <p>8 earlier?</p> <p>9 A. Yes.</p> <p>10 Q. And where exactly were you positioned, you said?</p> <p>11 A. I was right behind the individual that was hitting</p> <p>12 the parking meter.</p> <p>13 Q. What did that individual do after he hit the meter</p> <p>14 with the rock?</p> <p>15 A. Ran back into the crowd.</p> <p>16 Q. What did you do at that point once they moved on?</p> <p>17 A. I started taking pictures of the damage.</p> <p>18 Q. Why did you take pictures?</p> <p>19 A. I took pictures of the window, obviously, for</p> <p>20 insurance purposes. Also, recorded the moment.</p> <p>21 Q. Okay.</p> <p>22 A. And for posterity, I guess. It was kind of an</p> <p>23 unusual day.</p> <p>24 Q. So, Mr. Lapp, I'm going to show you what is marked</p> <p>25 as Government's Exhibits 227, 228 and 229. I'm going to go</p>

<p style="text-align: center;">Lapp - DIRECT - By Mr. Qureshi</p> <p style="text-align: right;">138</p> <p>1 one at a time.</p> <p>2 First, Government's Exhibit 227.</p> <p>3 MR. QURESHI: Your Honor, I'm moving to admit each</p> <p>4 of these exhibits which have been previously provided to</p> <p>5 counsel, which are all images. I'll lay a foundation for the</p> <p>6 question once the images appear.</p> <p>7 THE COURT: And I just need to know -- they need to</p> <p>8 let you see it first so you know what you're responding to,</p> <p>9 counsel for the defense.</p> <p>10 MR. LAZEROW: May I ask one question of him?</p> <p>11 THE COURT: No. But can you just tell me --</p> <p>12 MR. LAZEROW: I wasn't going to do it in open court.</p> <p>13 THE COURT: And so that's Mr. Lazerow talking?</p> <p>14 MR. LAZEROW: Yes.</p> <p>15 THE COURT: Please remember to identify yourself.</p> <p>16 Are you going to be aware of what he's saying by</p> <p>17 exhibit number or are you going to have to see it first</p> <p>18 before I ask if there's an objection?</p> <p>19 MR. LAZEROW: I don't think so. I'm trying to match</p> <p>20 up what he told us it was last time. That's all.</p> <p>21 THE COURT: So now it's on the screen. Any</p> <p>22 objection?</p> <p>23 This is which one? 227?</p> <p>24 MR. QURESHI: 227, your Honor.</p> <p>25 THE COURT: All right. No objection to 227. So</p>	<p style="text-align: center;">Lapp - DIRECT - By Mr. Qureshi</p> <p style="text-align: right;">140</p> <p>1 (Whereupon, Government's Exhibit No. 229 was entered</p> <p>2 into evidence.)</p> <p>3 BY MR. QURESHI:</p> <p>4 Q. Do you recognize that, Mr. Lapp?</p> <p>5 A. I do. That's my window.</p> <p>6 Q. Who took that picture?</p> <p>7 A. I did.</p> <p>8 Q. And does that fairly and accurately depict what it</p> <p>9 looked like after the crowd passed on January 20th of 2017?</p> <p>10 A. Yes, it does.</p> <p>11 Q. Finally, Mr. Lapp, I'm going to show you what's</p> <p>12 previously been marked as Government's Exhibit 228.</p> <p>13 THE COURT: Any objection?</p> <p>14 I'll admit it.</p> <p>15 (Whereupon, Government's Exhibit No. 228 was entered</p> <p>16 into evidence.)</p> <p>17 BY MR. QURESHI:</p> <p>18 Q. Mr. Lapp, do you recognize that?</p> <p>19 A. Yes. I recognize that rock.</p> <p>20 Q. What do you recognize it to be? Where did you take</p> <p>21 this picture?</p> <p>22 A. That was right on the ground under the broken window</p> <p>23 in front of my café.</p> <p>24 Q. You said --</p> <p>25 A. I recognize that to be the rock that broke the</p>
<p style="text-align: center;">Lapp - DIRECT - By Mr. Qureshi</p> <p style="text-align: right;">139</p> <p>1 I'll admit it subject to a motion to strike.</p> <p>2 (Whereupon, Government's Exhibit No. 227 was entered</p> <p>3 into evidence.)</p> <p>4 BY MR. QURESHI:</p> <p>5 Q. Mr. Lapp, do you recognize Exhibit 227?</p> <p>6 A. Yes, I do.</p> <p>7 Q. Who took that picture?</p> <p>8 A. I did.</p> <p>9 Q. Was that graffiti -- what does that say?</p> <p>10 A. It says "We all wear slavery."</p> <p>11 Q. Is that graffiti underneath what looks like -- and</p> <p>12 you described it earlier -- there's a dry cleaning place next</p> <p>13 door to you?</p> <p>14 A. Yeah. That's my neighbor.</p> <p>15 Q. Was "We all wear slavery" on that window that</p> <p>16 morning before you got there?</p> <p>17 A. No, it wasn't.</p> <p>18 Q. I'll now turn to Government's Exhibit 229. I'm</p> <p>19 going to go a little bit out of order.</p> <p>20 Do you --</p> <p>21 THE COURT: Any objection?</p> <p>22 Hold on.</p> <p>23 Any objection?</p> <p>24 Hearing nothing, I'll admit it subject to a motion</p> <p>25 to strike.</p>	<p style="text-align: center;">Lapp - DIRECT - By Mr. Qureshi</p> <p style="text-align: right;">141</p> <p>1 window. I guess --</p> <p>2 Q. Excuse me?</p> <p>3 A. I recognize that to be the rock that broke the</p> <p>4 window.</p> <p>5 Q. And you said you've been at that location on 13th</p> <p>6 Street for four years?</p> <p>7 A. Yes, sir.</p> <p>8 Q. And you described it as a residential area?</p> <p>9 A. It is right bordering on residential. Across the</p> <p>10 street is condos. Up the street is condos.</p> <p>11 Q. Now, is there any structure, any landscaping near</p> <p>12 you where there's rocks that big?</p> <p>13 A. No, there's not. That's one of the reasons I took</p> <p>14 the picture.</p> <p>15 Q. Why did you take the picture?</p> <p>16 A. I took the picture because --</p> <p>17 THE COURT: I'm going to ask you to just move on for</p> <p>18 the same reasons I said at the bench. Relevance.</p> <p>19 MR. QURESHI: Thank you, your Honor.</p> <p>20 BY MR. QURESHI:</p> <p>21 Q. Now, Mr. Lapp, finally, I want to show you what I've</p> <p>22 marked as Government's Exhibit 232.</p> <p>23 THE COURT: Any objection?</p> <p>24 Hearing nothing, I'll admit it.</p> <p>25 (Whereupon, Government's Exhibit No. 232 was entered</p>

<p style="text-align: center;">Lapp - CROSS - By Mr. Lazerow</p> <p style="text-align: right;">142</p> <p>1 into evidence.)</p> <p>2 BY MR. QURESHI:</p> <p>3 Q. Mr. Lapp, do you recognize Government's Exhibit 232?</p> <p>4 A. Yes, I do.</p> <p>5 Q. What is it?</p> <p>6 A. That's the invoice we received from the glass</p> <p>7 company to repair that broken window you just saw.</p> <p>8 Q. Has that broken window been repaired?</p> <p>9 A. Yes.</p> <p>10 Q. Does this invoice fairly and accurately illustrate</p> <p>11 the damage amount for the destruction that happened on</p> <p>12 January 20th of 2017?</p> <p>13 A. Yes.</p> <p>14 Q. What was that total amount?</p> <p>15 A. \$5,790.40.</p> <p>16 MR. QURESHI: I have nothing further, your Honor.</p> <p>17 THE COURT: Can you tell me who's going first?</p> <p>18 Cross-examination, please. Now would be the time.</p> <p>19 Mr. Lazerow.</p> <p>20 MR. LAZEROW: I will introduce myself.</p> <p>21 CROSS-EXAMINATION</p> <p>22 BY MR. LAZEROW:</p> <p>23 Q. Good afternoon, sir. My name is Andrew Lazerow. I</p> <p>24 represent Ms. Macchio in this case.</p> <p>25 A. Good afternoon.</p>	<p style="text-align: center;">Lapp - CROSS - By Ms. Coleman</p> <p style="text-align: right;">144</p> <p>1 BY MS. COLEMAN:</p> <p>2 Q. Now, Mr. Lapp, is it safe to say there are</p> <p>3 individuals wearing other colors such as khaki, blue, and I</p> <p>4 think I saw a white shirt in the last screen, green?</p> <p>5 A. Yeah. I see some colors in there.</p> <p>6 Q. And when you see these couple of people that are</p> <p>7 engaged in destruction of property, the mass of people in the</p> <p>8 street, is it safe to say they're just walking by?</p> <p>9 A. Yes.</p> <p>10 MS. COLEMAN: Thank you. Nothing further.</p> <p>11 THE COURT: For the record, what timestamp are we on</p> <p>12 now?</p> <p>13 MS. KERKHOFF: 12 seconds.</p> <p>14 THE COURT: And this is the parking post or meter or</p> <p>15 pay station that you were referring to before?</p> <p>16 THE WITNESS: Yes, your Honor.</p> <p>17 THE COURT: Thank you.</p> <p>18 Who's next? Ms. Weletz.</p> <p>19 You can cross from the table if you want.</p> <p>20 MS. WELETZ: I want to see Mr. Lapp. Unfortunately,</p> <p>21 your computer is blocking him.</p> <p>22 THE WITNESS: I'll sit up straighter.</p> <p>23 THE COURT: I've been asking, like, 100 times to</p> <p>24 have that computer changed.</p> <p>25 Thank you. I'll quote you to them.</p>
<p style="text-align: center;">Lapp - CROSS - By Ms. Coleman</p> <p style="text-align: right;">143</p> <p>1 Q. I only have a couple questions.</p> <p>2 As you drove by Logan Circle, you did not see any</p> <p>3 weapons visible in the crowd. Correct?</p> <p>4 A. None that I recall.</p> <p>5 Q. And as you drove by Logan Circle, you did not see</p> <p>6 any vandalism in the circle. Is that correct?</p> <p>7 A. That is correct.</p> <p>8 MR. LAZEROW: Thank you very much.</p> <p>9 THE COURT: Ms. Coleman.</p> <p>10 CROSS-EXAMINATION</p> <p>11 BY MS. COLEMAN:</p> <p>12 Q. Good afternoon, Mr. Lapp.</p> <p>13 A. Good afternoon.</p> <p>14 MS. COLEMAN: If I could ask the Government to put</p> <p>15 back up Government's Exhibit 148.</p> <p>16 MR. QURESHI: (Complies.)</p> <p>17 THE COURT: Could you assist, because it's out of</p> <p>18 focus.</p> <p>19 MS. KERKHOFF: It's because it's paused.</p> <p>20 MS. COLEMAN: If we could play that exhibit.</p> <p>21 (Whereupon, segments of Government's Exhibit No. 148</p> <p>22 were published in open court.)</p> <p>23 MS. COLEMAN: I'm sorry. If we could actually</p> <p>24 pause.</p> <p>25</p>	<p style="text-align: center;">Lapp - CROSS - By Ms. Weletz</p> <p style="text-align: right;">145</p> <p>1 CROSS-EXAMINATION</p> <p>2 BY MS. WELETZ:</p> <p>3 Q. Good afternoon, Mr. Lapp.</p> <p>4 A. Good afternoon.</p> <p>5 Q. Now, as you were driving around Logan Circle, you</p> <p>6 were driving your vehicle. Correct?</p> <p>7 A. Yes.</p> <p>8 Q. You were not a passenger?</p> <p>9 A. Yes.</p> <p>10 Q. So you were operating your vehicle with your cell</p> <p>11 phone, videotaping. Correct?</p> <p>12 A. I was.</p> <p>13 Q. Now, you indicated that, as you were doing that, you</p> <p>14 saw people in dark clothing congregating around the statue.</p> <p>15 Correct?</p> <p>16 A. Yes.</p> <p>17 Q. Now, you indicated that you saw people with</p> <p>18 bandannas. Are you saying from your car you could see these</p> <p>19 people with their faces covered from where you were?</p> <p>20 A. Yes.</p> <p>21 Q. Now, you said that you were expecting crowds.</p> <p>22 Correct?</p> <p>23 A. Yes.</p> <p>24 Q. It was Inauguration Day, and you've been through</p> <p>25 that before. Correct?</p>

<p style="text-align: center;">Lapp - CROSS - By Ms. Weletz</p> <p style="text-align: right;">146</p> <p>1 A. Yes, ma'am.</p> <p>2 Q. But you also testified that you've seen other</p> <p>3 demonstrations and protests?</p> <p>4 A. Many. Yes.</p> <p>5 Q. But is it your testimony that you've never seen</p> <p>6 individuals protesting wearing black?</p> <p>7 A. That's not my testimony. No.</p> <p>8 Q. But you've seen protesters before who wore black.</p> <p>9 Correct?</p> <p>10 A. I can't say for sure that I have. No. I would</p> <p>11 imagine that I have.</p> <p>12 Q. Now, your testimony was that you saw hundreds of</p> <p>13 people marching by. Correct? And I think that's shown now</p> <p>14 with Government's Exhibit 148.</p> <p>15 A. Yes, ma'am.</p> <p>16 Q. I believe it is. Correct?</p> <p>17 A. Uh-huh.</p> <p>18 Q. Now, this individual you saw -- well, first of all,</p> <p>19 you saw an individual spray-painting --</p> <p>20 A. I didn't see the spray-painting.</p> <p>21 Q. Okay. But you saw that in the Government's exhibit.</p> <p>22 Correct?</p> <p>23 A. I did. Yeah.</p> <p>24 Q. And do you see this individual here? You actually</p> <p>25 saw this destruction?</p>	<p style="text-align: center;">Lapp - CROSS - By Mr. Cohen</p> <p style="text-align: right;">148</p> <p>1 Q. And they're carrying flags and banners?</p> <p>2 A. Yes.</p> <p>3 Q. And this took some time for these hundreds of people</p> <p>4 to go in front of your store. Correct?</p> <p>5 A. It took some time. That's fair.</p> <p>6 Q. Several minutes?</p> <p>7 A. Maybe a couple.</p> <p>8 MS. WELETZ: No further questions.</p> <p>9 MR. COHEN: On behalf of Mr. Wood, Brett Cohen.</p> <p>10 If the Government could just leave that still up</p> <p>11 there.</p> <p style="text-align: center;">CROSS-EXAMINATION</p> <p>12 BY MR. COHEN:</p> <p>13 Q. How many times have you watched this video?</p> <p>14 A. One and a little bit.</p> <p>15 Q. The person that's to the left, do you see what that</p> <p>16 person is holding?</p> <p>17 A. A camera. It looks like a camera.</p> <p>18 Q. Okay. Is he also holding a cell phone? Can you</p> <p>19 see?</p> <p>20 A. Yes.</p> <p>21 Q. Does that person look like my client?</p> <p>22 MR. QURESHI: Objection.</p> <p>23 THE COURT: Sustained.</p> <p>24 MR. COHEN: I have no further questions. Thank you.</p> <p>25</p>
<p style="text-align: center;">Lapp - CROSS - By Ms. Weletz</p> <p style="text-align: right;">147</p> <p>1 A. Yes.</p> <p>2 Q. You indicate in fact that you were behind this</p> <p>3 person?</p> <p>4 A. I was. Yeah.</p> <p>5 Q. And this person appeared to be male to you?</p> <p>6 A. Yes.</p> <p>7 Q. And fairly tall. Correct?</p> <p>8 A. Seen now, yeah.</p> <p>9 Q. And wearing a black backpack.</p> <p>10 A. (Nods head in the affirmative.)</p> <p>11 Q. Is that a yes?</p> <p>12 A. That's a yes.</p> <p>13 Q. They have a white water bottle with a red top on it.</p> <p>14 Correct?</p> <p>15 A. Yes.</p> <p>16 Q. Now, did you see anybody arrest this person?</p> <p>17 A. No.</p> <p>18 Q. And as you watched this person do this, these</p> <p>19 individuals are marching -- these hundreds of individuals are</p> <p>20 marching up the street. Correct?</p> <p>21 A. Yes.</p> <p>22 Q. They're walking. Correct?</p> <p>23 A. They're walking.</p> <p>24 Q. They're not running?</p> <p>25 A. Right.</p>	<p style="text-align: right;">149</p> <p>1 THE COURT: I just need you to approach before you</p> <p>2 do that.</p> <p>3 Sir, if you could step back by the flag, please, for</p> <p>4 a moment.</p> <p>5 (Whereupon, the following proceedings were had at</p> <p>6 side-bar outside the presence of the jury:)</p> <p>7 THE COURT: Mr. Cohen, so you were all objecting to</p> <p>8 having a Government witness who's had far more contact with</p> <p>9 your clients identifying them from the witness stand. And</p> <p>10 yet you're asking this gentleman to do that.</p> <p>11 Is that something you still want?</p> <p>12 MR. COHEN: I guess it'll be up to the jury to --</p> <p>13 THE COURT: I'm asking you, because I need to ask</p> <p>14 them whether they object, because theoretically the</p> <p>15 Government could then show him all sorts of videos and ask</p> <p>16 him to say where your client is. I mean, is that something</p> <p>17 you're asking for?</p> <p>18 MR. COHEN: If I could have the Court's brief</p> <p>19 indulgence. I'm just trying to think of the context in which</p> <p>20 I objected to that.</p> <p>21 THE COURT: In other words, the Government wanted to</p> <p>22 put on a witness who had viewed these videotapes countless</p> <p>23 times, hundreds, I believe --</p> <p>24 MR. COHEN: Right.</p> <p>25 THE COURT: -- and to have him compare your client's</p>

<p style="text-align: right;">150</p> <p>1 appearance to what that witness sees in videotapes and the</p> <p>2 arrest photos.</p> <p>3 MR. COHEN: I --</p> <p>4 THE COURT: And you gave an answer about whether he</p> <p>5 sees your client in there. And that's something I believe</p> <p>6 you joined in the objection to. Am I right?</p> <p>7 MR. COHEN: I probably joined in it.</p> <p>8 THE COURT: So I mean, I need to know whether you're</p> <p>9 seriously asking that witnesses who have just seen him</p> <p>10 sitting over there with you should be allowed to ID him in</p> <p>11 photographs.</p> <p>12 MR. COHEN: I'll withdraw the question.</p> <p>13 THE COURT: Because if that's what you want, I need</p> <p>14 to think about whether you should get that. In the end, what</p> <p>15 you're going to get is the Government asking for it, too.</p> <p>16 MR. COHEN: Right.</p> <p>17 THE COURT: So I just need to know if that's what</p> <p>18 you really want.</p> <p>19 You said you're withdrawing that?</p> <p>20 MR. COHEN: I'll withdraw the question.</p> <p>21 THE COURT: Okay.</p> <p>22 MR. COHEN: Yeah.</p> <p>23 (Whereupon, the following proceedings were had in</p> <p>24 open court:)</p> <p>25 THE COURT: Sir, please come back to the witness</p>	<p style="text-align: right;">152</p> <p>1 BY MR. QURESHI:</p> <p>2 Q. Mr. Lapp, you were asked by one of the counsel on</p> <p>3 cross-examination whether you observed any weapons at the</p> <p>4 circle.</p> <p>5 Is that correct?</p> <p>6 A. That's correct.</p> <p>7 Q. And I believe your response was no?</p> <p>8 A. Yes.</p> <p>9 Q. Did you observe any weapons as the group moved past</p> <p>10 your store?</p> <p>11 A. I did see a couple holding hammers, which made me</p> <p>12 think what I thought when I took the picture of the rock.</p> <p>13 MR. QURESHI: I have nothing further, your Honor.</p> <p>14 THE COURT: Sir, you may be excused. Do not discuss</p> <p>15 your testimony with any other witness.</p> <p>16 THE WITNESS: Okay.</p> <p>17 THE COURT: Thank you.</p> <p>18 (Witness excused.)</p> <p>19 THE COURT: Please call your next witness. Who's</p> <p>20 your next witness?</p> <p>21 MS. KERKHOFF: Officer Ashley Anderson. A longer</p> <p>22 witness.</p> <p>23 THE COURT: So it's kind of early, but I think what</p> <p>24 we'll do is take our break now. It's ten after 3:00. So</p> <p>25 I'll have you come back at 3:25.</p>
<p style="text-align: right;">151</p> <p>Lapp - REDIRECT - By Mr. Qureshi</p> <p>1 stand.</p> <p>2 Mr. Cohen, you were finished?</p> <p>3 MR. COHEN: I have no further questions. Thank you.</p> <p>4 THE COURT: Anyone else?</p> <p>5 MS. JACQUES: Your Honor, if I may. Tammy Jacques.</p> <p>6 CROSS-EXAMINATION</p> <p>7 BY MS. JACQUES:</p> <p>8 Q. Good afternoon, Mr. Lapp.</p> <p>9 A. Good afternoon.</p> <p>10 Q. Mr. Lapp, you indicated that you recognized the</p> <p>11 people outside your store as the exact people at Logan</p> <p>12 Circle?</p> <p>13 A. Yes.</p> <p>14 Q. How many people were at Logan Circle?</p> <p>15 A. I would put it at 150, 200 or so.</p> <p>16 Q. And how many people did you see outside your store?</p> <p>17 A. More than that. Probably 200 to 300, would be my</p> <p>18 estimate.</p> <p>19 MS. JACQUES: Thank you.</p> <p>20 Nothing further.</p> <p>21 THE COURT: I think that's everybody.</p> <p>22 Mr. Qureshi, redirect?</p> <p>23 MR. QURESHI: Yes, your Honor. Very briefly.</p> <p>24 REDIRECT EXAMINATION</p> <p>25</p>	<p style="text-align: right;">153</p> <p>1 Please don't discuss the case, ladies and gentlemen.</p> <p>2 (Whereupon, the jury exited the courtroom at</p> <p>3 3:12 p.m. and the following proceedings were had:)</p> <p>4 THE COURT: During opening statements, I sustained</p> <p>5 an objection to stuff about a lawsuit by the ACLU, which I</p> <p>6 didn't understand the context of at that time.</p> <p>7 And I just need to ask, because I'm not sure: Is</p> <p>8 there a pending lawsuit by the ACLU, Mr. McCool?</p> <p>9 MR. MCCOOL: Yes, your Honor.</p> <p>10 THE COURT: And so who is -- who has been sued? The</p> <p>11 police department?</p> <p>12 MR. MCCOOL: The police department, 20 John Doe</p> <p>13 supervisors and then 150 John Doe officers.</p> <p>14 THE COURT: And I guess "John Doe officers"</p> <p>15 meaning --</p> <p>16 MR. MCCOOL: They haven't been identified yet. That</p> <p>17 part of discovery is continuing it, as I understand.</p> <p>18 THE COURT: And so do any particular police officers</p> <p>19 know that they individually have been sued at this point?</p> <p>20 Probably not, because they're not named?</p> <p>21 MR. MCCOOL: Not sure.</p> <p>22 THE COURT: And so -- but there's a lawsuit against</p> <p>23 the Department.</p> <p>24 And so, Ms. Kerkhoff, to the extent there is a</p> <p>25 lawsuit against the Department, what's your view about biased</p>

1 cross about a lawsuit?

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

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

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

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

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

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

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

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

1 testify.

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

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

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

17 THE COURT: Give me an example.

18 MS. KERKHOFF: Yes.

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

22 And I think that kind of allegation --

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

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

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

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

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

7 MR. MCCOOL: No.

8 And I can tell you --

9 THE COURT: So can I just ask --

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

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

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

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

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

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

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

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

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

12 Who's about to testify?

13 MS. KERKHOFF: Ashley Anderson.

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

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

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

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

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

<p style="text-align: right;">158</p> <p>1 MS. KERKHOFF: But that leaves an impression that</p> <p>2 this was an unlawful arrest.</p> <p>3 And the allegations contained in the lawsuit are not</p> <p>4 about the arrest, have nothing to do with the arrest, but are</p> <p>5 about the -- how long it took to process, when bathroom</p> <p>6 breaks during the arrest processing occurred, whether the zip</p> <p>7 ties were tight. It is all post-arrest conduct.</p> <p>8 And so I think that it is a little bit different for</p> <p>9 the manner in which they may seek to use it other than there</p> <p>10 is a pending lawsuit.</p> <p>11 But when you say the ACLU has filed in this case, it</p> <p>12 suggests it's about -- given -- and I know the Court doesn't</p> <p>13 want to say openings -- given that each person, not about the</p> <p>14 ACLU, each defense attorney said this was an unlawful arrest</p> <p>15 where police didn't follow procedures.</p> <p>16 That's not what the lawsuit is. It's all</p> <p>17 post-conduct.</p> <p>18 THE COURT: I understand your point, Ms. Kerkhoff.</p> <p>19 I still think that a cross-examination about the</p> <p>20 existence of a lawsuit arising from events that day or</p> <p>21 challenging events from that day is appropriate, going to</p> <p>22 bias and motive to curry favor.</p> <p>23 I think that they're entitled to argue that as a</p> <p>24 general matter, if the ACLU has filed a lawsuit, that</p> <p>25 witnesses may be motivated to vindicate the police</p>	<p style="text-align: right;">160</p> <p>1 plan.</p> <p>2 And then we're -- going to other officers, was the</p> <p>3 plan to claim, at least about the ACLU suit, anything more</p> <p>4 specific than what I've said?</p> <p>5 And I'm still getting silence.</p> <p>6 So I take it from your silence that we're all on the</p> <p>7 same page that the cross would go generally only, if you</p> <p>8 choose to do it -- I'm not saying you should -- no further</p> <p>9 than the existence of a lawsuit challenging conduct on that</p> <p>10 day.</p> <p>11 The Government -- can I just ask, does anybody</p> <p>12 disagree with the complaint only addressing conduct</p> <p>13 subsequent to the arrest?</p> <p>14 MR. McCOOL: I believe I do. I haven't read it in a</p> <p>15 while.</p> <p>16 THE COURT: This is Mr. McCool.</p> <p>17 MR. McCOOL: Sorry. Steven McCool.</p> <p>18 I believe I do. And I just need to -- I don't want</p> <p>19 to speak to something I'm not sure of. I'll file it with the</p> <p>20 Court along with a short brief on it.</p> <p>21 THE COURT: I don't need a brief, honest to</p> <p>22 goodness.</p> <p>23 MS. KERKHOFF: I want to be clear: There was an</p> <p>24 initial lawsuit that was filed that was withdrawn. This is</p> <p>25 the subsequent lawsuit filed in the summer naming four</p>
<p style="text-align: right;">159</p> <p>1 department's behavior that day.</p> <p>2 But now that you're telling me it relates to</p> <p>3 specific allegations subsequent to arrest, do you at least</p> <p>4 agree with that characterization, Mr. McCool? Or do I have</p> <p>5 to read the complaint to find out from --</p> <p>6 MR. McCOOL: Probably so, your Honor. But I think</p> <p>7 that Ms. Coleman did not intend -- or expect to cross-examine</p> <p>8 the next officer on bias. We're not going to cross every</p> <p>9 officer on bias.</p> <p>10 And I don't think any defense --</p> <p>11 THE COURT: Let me just ask --</p> <p>12 If you'll have a seat, Mr. McCool.</p> <p>13 MR. McCOOL: Yes.</p> <p>14 THE COURT: I need to ask as a general matter, first</p> <p>15 of all, does anybody plan to cross-examine regarding bias or</p> <p>16 motive to curry favor this particular officer in any way</p> <p>17 other than the general way in which I've described?</p> <p>18 In other words, if you choose to -- I'm not saying</p> <p>19 you should choose to -- does anyone intend to go any farther</p> <p>20 than the existence of a lawsuit challenging the Department's</p> <p>21 behavior and unnamed individuals' behavior could create a</p> <p>22 motive to testify in a manner exhibiting bias or motive to</p> <p>23 curry favor?</p> <p>24 Everybody's shaking their heads no.</p> <p>25 I take it from your silence that that is not the</p>	<p style="text-align: right;">161</p> <p>1 specific plaintiffs. And it's very specific to the</p> <p>2 allegations.</p> <p>3 THE COURT: And the plaintiffs are not sitting in</p> <p>4 the courtroom today?</p> <p>5 MS. KERKHOFF: No. In the courtroom or --</p> <p>6 THE COURT: Well, not at the table?</p> <p>7 MS. KERKHOFF: At the table.</p> <p>8 THE COURT: I'd just like to see. You're saying the</p> <p>9 originally filed one is not pending now?</p> <p>10 MS. KERKHOFF: Correct. It was withdrawn.</p> <p>11 THE COURT: And was it --</p> <p>12 MS. KERKHOFF: It was about an unlawful arrest. So</p> <p>13 that was the --</p> <p>14 THE COURT: Hold on. Okay?</p> <p>15 MS. KERKHOFF: I'm sorry.</p> <p>16 THE COURT: If an officer testifies who -- I think</p> <p>17 the only officer that testified to the grand jury is --</p> <p>18 MS. KERKHOFF: Pemberton.</p> <p>19 THE COURT: -- Pemberton. So when he testified in</p> <p>20 the grand jury, was the original suit pending?</p> <p>21 MS. KERKHOFF: I'll have to check the timing. There</p> <p>22 was a suit filed while the named plaintiff was sitting in the</p> <p>23 kettle. It was preprepared and filed that afternoon before</p> <p>24 most of the Defendants were even processed for arrest.</p> <p>25 It was withdrawn. I'll check the withdrawal date.</p>

<p style="text-align: right;">162</p> <p>1 Then the ACLU filed the subsequent complaint which</p> <p>2 did not, in my review, challenge unlawful arrest, but</p> <p>3 challenged the bathroom breaks, food, water --</p> <p>4 THE COURT: So just give me whatever was filed.</p> <p>5 But I'll have to look at what Pemberton gets to be</p> <p>6 crossed with since he testified in the grand jury. If things</p> <p>7 were pending at the time of his testimony, I'll discuss with</p> <p>8 everybody what the scope of that cross is.</p> <p>9 But if what Mr. Kerkhoff says is correct, the</p> <p>10 currently pending lawsuit goes only to events subsequent to</p> <p>11 arrest; and so I would limit cross-examination to that</p> <p>12 general cross. I do think that cross on bias and motive to</p> <p>13 curry favor is appropriate as a general matter, but not going</p> <p>14 to specific allegations and not personalizing it to the</p> <p>15 officer, unless we discuss it further and you get my</p> <p>16 permission.</p> <p>17 So with that, it's 25 after. Let's take a 15-minute</p> <p>18 break till 20 of. We can tell the jurors they have until 20</p> <p>19 of.</p> <p>20 (Thereupon a recess was taken, after which the</p> <p>21 following proceedings were had:)</p> <p>22 THE COURT: Good afternoon again.</p> <p>23 We'll get the jury back.</p> <p>24 If you can have your next witness seated in one of</p> <p>25 those chairs, please.</p>	<p style="text-align: right;">Anderson - DIRECT - By Ms. Kerkhoff</p> <p style="text-align: right;">164</p> <p>1 The United States calls Ashley Anderson.</p> <p>2 THE COURT: Ma'am, please come on up here.</p> <p>3 ASHLEY ANDERSON, GOVERNMENT WITNESS, SWORN</p> <p>4 THE COURT: Good afternoon.</p> <p>5 THE WITNESS: Good afternoon.</p> <p>6 DIRECT EXAMINATION</p> <p>7 BY MS. KERKHOFF:</p> <p>8 Q. Good afternoon.</p> <p>9 Can you please introduce yourself to the ladies and</p> <p>10 gentlemen of the jury.</p> <p>11 A. Good afternoon. My name is Officer Ashley Anderson</p> <p>12 from the Seventh District.</p> <p>13 Q. For the benefit of our court reporter, can you spell</p> <p>14 your first and last name.</p> <p>15 A. Yes. A-S-H-L-E-Y, last name Anderson,</p> <p>16 A-N-D-E-R-S-O-N.</p> <p>17 Q. And you said you're an officer.</p> <p>18 Where are you employed?</p> <p>19 A. Metropolitan Police Department, Seventh District.</p> <p>20 Q. In the Seventh District?</p> <p>21 A. Uh-huh.</p> <p>22 Q. What area of the city is encompassed in the Seventh</p> <p>23 District?</p> <p>24 A. The Southeast and Southwest quadrants of the city.</p> <p>25 Q. And how long have you been with the Metropolitan</p>
<p style="text-align: right;">163</p> <p>1 MS. KERKHOFF: Yes.</p> <p>2 THE COURT: I want to thank spectators for doing</p> <p>3 what I asked and just remaining quiet while court's in</p> <p>4 session -- I really appreciate it -- and while the jury's</p> <p>5 filing out. It's extremely helpful.</p> <p>6 (Thereupon, the witness entered</p> <p>7 the courtroom and the following</p> <p>8 proceedings were had:)</p> <p>9 THE COURT: Ma'am, if you'll just have a seat.</p> <p>10 We're going to wait for the jury to come in.</p> <p>11 For the record, we have all Defendants. And all</p> <p>12 counsel are present.</p> <p>13 (Whereupon, the jury entered the courtroom at 3:48</p> <p>14 p.m. and the following proceedings were had:)</p> <p>15 THE COURT: Good afternoon again, ladies and</p> <p>16 gentlemen.</p> <p>17 Sorry about that delay. We were discussing some</p> <p>18 legal matters and then I need to make sure that everybody got</p> <p>19 their break, so sometimes that will happen. To me, it's</p> <p>20 better not to have you sitting in the jury box while we all</p> <p>21 talk up here at the bench.</p> <p>22 So I try to use the breaks for that.</p> <p>23 We're now going to hear from the Government's next</p> <p>24 witness.</p> <p>25 MS. KERKHOFF: Thank you, your Honor.</p>	<p style="text-align: right;">Anderson - DIRECT - By Ms. Kerkhoff</p> <p style="text-align: right;">165</p> <p>1 Police Department?</p> <p>2 A. A little under four years.</p> <p>3 Q. And how long have you been assigned to the Seventh</p> <p>4 District?</p> <p>5 A. Since September of 2014.</p> <p>6 Q. And what are your current responsibilities as an</p> <p>7 officer assigned to the Seventh District?</p> <p>8 A. I'm a patrol officer in the full stride unit. It is</p> <p>9 a unit that consists of bicycle patrol as well as motorcycle</p> <p>10 patrol. And we handle business beats in the District.</p> <p>11 Q. Now, do you know what a CDU squad is?</p> <p>12 A. Yes.</p> <p>13 Q. It's CDU, three letters.</p> <p>14 What is that?</p> <p>15 A. Civil disturbance unit.</p> <p>16 Q. And is that what you're assigned to in the Seventh</p> <p>17 District?</p> <p>18 A. No.</p> <p>19 Q. What is that?</p> <p>20 A. The -- what I do in the Seventh District is strictly</p> <p>21 handling business beats. We have areas of concern that we</p> <p>22 monitor to prevent robberies. We handle the 7-Elevens and</p> <p>23 different businesses and talking with the managers, you know.</p> <p>24 They give us information about what they like us to do. So</p> <p>25 we kind of ride around and patrol.</p>

<p style="text-align: center;">Anderson - DIRECT - By Ms. Kerkhoff</p> <p style="text-align: right;">166</p> <p>1 The civil disturbance unit is a deployable unit.</p> <p>2 Anytime there's anything in the city, we are asked to work.</p> <p>3 And then we're deployed to certain areas in the city that we</p> <p>4 don't normally patrol to handle different operations that are</p> <p>5 going on.</p> <p>6 Q. So for, like, big events in the city?</p> <p>7 A. Yes.</p> <p>8 Q. And does the inauguration that occurred on January</p> <p>9 20th, 2017, count as one of those events?</p> <p>10 A. It does.</p> <p>11 Q. Okay. So on January 20th, 2017 -- let me ask this:</p> <p>12 You said you were working.</p> <p>13 What was your assignment during the day before, the</p> <p>14 day after and the day of the inauguration?</p> <p>15 A. The day before inauguration, we just had fixed</p> <p>16 posts, fixed areas, just to monitor crowd controls. The day</p> <p>17 of, yeah. To handle the crowds.</p> <p>18 The day of inauguration, we were assigned to a fixed</p> <p>19 post. And we are on bicycles, so we are a mobile squad. We</p> <p>20 are asked to respond upon being needed elsewhere.</p> <p>21 So basically, just the day of, we were in one spot</p> <p>22 until called upon.</p> <p>23 And then the day after, we pretty much did the same</p> <p>24 thing. We had fixed posts and we monitored the crowd, kind</p> <p>25 of kept order and things of that nature.</p>	<p style="text-align: center;">Anderson - DIRECT - By Ms. Kerkhoff</p> <p style="text-align: right;">168</p> <p>1 Q. What else do you have? Is that a --</p> <p>2 THE COURT: Can I just ask, body-worn camera is</p> <p>3 which one?</p> <p>4 THE WITNESS: It's here (indicating).</p> <p>5 THE COURT: That's on your right sort of ribcage?</p> <p>6 THE WITNESS: Yes. Right below my nametag.</p> <p>7 BY MS. KERKHOFF:</p> <p>8 Q. And what do you have on your left shoulder?</p> <p>9 A. This is the microphone that's attached to my radio.</p> <p>10 Q. And what do you have on your belt?</p> <p>11 A. I have my service weapon, my extra magazines,</p> <p>12 handcuffs, my OC spray and ASP baton and an extra pair of</p> <p>13 handcuffs.</p> <p>14 Q. And is that the gear that you had with you on</p> <p>15 January 20th, 2017?</p> <p>16 A. It is.</p> <p>17 Q. And what about any specific riot gear?</p> <p>18 A. No.</p> <p>19 Q. Did you have any face shields?</p> <p>20 A. No.</p> <p>21 Q. Did you have any riot batons?</p> <p>22 A. No.</p> <p>23 Q. Now, you stated that you were on the mountain bike</p> <p>24 squad. And what -- at around 10:00 to 10:30, where were you</p> <p>25 in the city?</p>
<p style="text-align: center;">Anderson - DIRECT - By Ms. Kerkhoff</p> <p style="text-align: right;">167</p> <p>1 Q. So your position on the CDU squad, that's not what</p> <p>2 I'm going to call your day job as an officer?</p> <p>3 A. Correct.</p> <p>4 Q. There's for extra events or special events?</p> <p>5 A. Exactly.</p> <p>6 Q. Now, when you were part of the CDU squad, you said</p> <p>7 you were mobile. You were on your mountain bike?</p> <p>8 A. Correct.</p> <p>9 Q. How many people were in your squad?</p> <p>10 A. Seven and a sergeant.</p> <p>11 Q. So eight total?</p> <p>12 A. Correct.</p> <p>13 Q. And how were you dressed?</p> <p>14 A. Exactly what I have on today, plus a bicycle helmet.</p> <p>15 Q. So on January 20th, 2017, you were wearing what</p> <p>16 you're wearing today?</p> <p>17 A. Correct.</p> <p>18 Q. For the record, that's a blue police uniform with</p> <p>19 dark blue pants, and it looks like you have your badge.</p> <p>20 What's that large black box under your nametag?</p> <p>21 A. That's my body-worn camera.</p> <p>22 Q. Is that issued to you?</p> <p>23 A. Yes.</p> <p>24 Q. Was that issued to you on January 20th, 2017?</p> <p>25 A. Yes.</p>	<p style="text-align: center;">Anderson - DIRECT - By Ms. Kerkhoff</p> <p style="text-align: right;">169</p> <p>1 A. I can't remember the exact location. We were close</p> <p>2 to I Street, I believe. We were handling another part of the</p> <p>3 city at the time. And then we were told to get in the area</p> <p>4 of I Street, 14th, 13th, I Street.</p> <p>5 Q. On your mountain bike, on Inauguration Day, what was</p> <p>6 going on with many of the streets in downtown DC?</p> <p>7 A. Most of them were blocked off either with buses,</p> <p>8 barricades or police vehicles, because we can't have traffic</p> <p>9 coming through the city when we have big events like that.</p> <p>10 It's for safety reasons.</p> <p>11 Q. And so who were the officers that could move around</p> <p>12 in the city if they had to get from one place to the other?</p> <p>13 A. Our mobile bike squad.</p> <p>14 Q. And what about something known as the scooter squad?</p> <p>15 A. They can -- yeah. They can move around as well, but</p> <p>16 not quite as easily as we can, because our bikes are</p> <p>17 obviously a lot smaller than theirs.</p> <p>18 Q. What's a scooter?</p> <p>19 A. A scooter is similar to a motorcycle, but it's not</p> <p>20 exactly as -- it has as much power. So....</p> <p>21 Q. It's not an American-made motorcycle?</p> <p>22 A. No.</p> <p>23 Q. So they call them the scooter squad?</p> <p>24 A. Yes.</p> <p>25 Q. But there's a motorcycle squad?</p>

<p style="text-align: center;">Anderson - DIRECT - By Ms. Kerkhoff</p> <p style="text-align: right;">170</p> <p>1 A. There is. Well, the scooter unit, the bike unit is</p> <p>2 composed of scooters and motorcycles, within the same unit.</p> <p>3 Q. Now, you said you were called to respond to the area</p> <p>4 of, you think, 14th and I. Would that be in Northwest DC or</p> <p>5 downtown DC or in a different part of DC?</p> <p>6 A. Northwest.</p> <p>7 Q. And you said previously you're assigned to the</p> <p>8 Seventh District. That doesn't encompass downtown DC,</p> <p>9 Northwest DC, does it?</p> <p>10 A. It doesn't.</p> <p>11 Q. And so how familiar are you with all of the streets</p> <p>12 that are in that area?</p> <p>13 A. Not very familiar.</p> <p>14 Q. Well, I want to take you back to January 20th, 2017.</p> <p>15 Were you with your CDU mountain bike squad?</p> <p>16 A. Yes.</p> <p>17 Q. And were you in the area of 14th and I Street?</p> <p>18 A. Yes.</p> <p>19 Q. While you were there, what did you see?</p> <p>20 A. I saw a big group of individuals all dressed the</p> <p>21 same, wearing masks. They had weapons. They were throwing</p> <p>22 things. It was violent. There were setting off explosives</p> <p>23 or fireworks.</p> <p>24 Q. Where was that happening in relation to where you</p> <p>25 were on -- at 14th and I?</p>	<p style="text-align: center;">Anderson - DIRECT - By Ms. Kerkhoff</p> <p style="text-align: right;">172</p> <p>1 was so many of them. So we were just told to kind of stand</p> <p>2 put.</p> <p>3 Q. You said it wasn't many of you.</p> <p>4 Do you mean many officers?</p> <p>5 A. Many officers. Correct.</p> <p>6 Q. Well, how many officers were standing there with</p> <p>7 you?</p> <p>8 A. I can probably remember specifically my squad, which</p> <p>9 was the eight of us.</p> <p>10 Q. And so did you have your bikes with you?</p> <p>11 A. Yes. That's all we had.</p> <p>12 Q. And so what did you do?</p> <p>13 A. We were given a directive by our official. We were</p> <p>14 told to form a line with our bicycles and monitor the crowd.</p> <p>15 And then we were told to follow them.</p> <p>16 Q. And did you do that?</p> <p>17 A. We did.</p> <p>18 Q. What did you do with your bikes?</p> <p>19 A. We rode them.</p> <p>20 Q. Now, before you rode your bikes, when you formed</p> <p>21 this line, did you hear or see anything coming at you?</p> <p>22 A. I heard -- well, I didn't see it coming. But I</p> <p>23 heard, and at the last second saw a brick hit my bicycle,</p> <p>24 which was in front of me. Had my bicycle not been there, it</p> <p>25 would have struck me.</p>
<p style="text-align: center;">Anderson - DIRECT - By Ms. Kerkhoff</p> <p style="text-align: right;">171</p> <p>1 A. I believe we were on the south side of I Street, so</p> <p>2 it was in the park directly in front of us.</p> <p>3 Q. So in that --</p> <p>4 A. Between 14th, K and I Street in the middle.</p> <p>5 Q. So when you looked in that park, is that when you</p> <p>6 could see the masks?</p> <p>7 A. Yes.</p> <p>8 Q. Could you see the weapons?</p> <p>9 A. Once they got closer.</p> <p>10 Q. And who is "they," they that got closer?</p> <p>11 A. The big group, the group of people.</p> <p>12 Q. How big a group?</p> <p>13 A. It had to have been a couple hundred.</p> <p>14 Q. And what kind of weapons were you seeing as the</p> <p>15 group moved closer?</p> <p>16 A. Hammers, bricks, explosives, items that seemed like</p> <p>17 fireworks that were being set off.</p> <p>18 Q. And how was everyone in the group dressed?</p> <p>19 A. They were all dressed alike, in black.</p> <p>20 Q. What were they doing as that group? Were they</p> <p>21 moving towards you? Away from you? To the side?</p> <p>22 A. They were moving towards us and kind of away at the</p> <p>23 same time. We were all lined up on the street. And they</p> <p>24 were approaching us, yelling things, throwing things. And</p> <p>25 then they kind of kept moving. But it wasn't many of us. It</p>	<p style="text-align: center;">Anderson - DIRECT - By Ms. Kerkhoff</p> <p style="text-align: right;">173</p> <p>1 Q. And did you have any protective gear for your face</p> <p>2 or your head?</p> <p>3 A. No. Just my bicycle helmet that I kept on at all</p> <p>4 times because that's pretty much all we had to protect us at</p> <p>5 the time.</p> <p>6 Q. And what could you hear from this group? Could you</p> <p>7 hear people saying anything?</p> <p>8 A. I don't remember exact words. They were yelling.</p> <p>9 Specifically, I remember them calling us pigs and cursing a</p> <p>10 lot us and just yelling profanity as they were walking by,</p> <p>11 throwing things.</p> <p>12 Q. Okay. So you observed the last part of someone</p> <p>13 throw something at you. Correct?</p> <p>14 A. Yes. I had no idea where it came from. It came</p> <p>15 from the middle of the group. I just saw at the last second</p> <p>16 it was coming towards my tire. I hit it -- I heard it. I'm</p> <p>17 sorry. And then it hit my bike.</p> <p>18 Q. And did you go in and identify that person so you</p> <p>19 could stop them?</p> <p>20 A. No. There was no way for me to identify them.</p> <p>21 Q. Why not?</p> <p>22 A. Because they were all dressed the same. People were</p> <p>23 going in and out of the group. They would leave to destroy</p> <p>24 something or throw something and then they would disappear</p> <p>25 back into the group. It was almost impossible to identify</p>

1 where anything was coming from or who was doing what.

2 Q. And you said people were going from in the group to
3 the outside, destroying something and coming back in.

4 A. Correct.

5 Q. Where did you see that happening?

6 A. I remember that -- well, throughout the whole I
7 Street down, I remember a Starbucks being destroyed, a Bank
8 of America being destroyed. Several bus stops, the glass was
9 shattered. Trash cans were thrown in the middle of the
10 street, newsstands, tables. Pretty much anything loose that
11 was able to be taken off the street and thrown in the street
12 to either block us from or slow us down from moving through
13 the street or just to throw at us. It was just coming from
14 every direction.

15 And --

16 Q. And so with the other seven officers that you have,
17 did you take steps to try to ride after and find those people
18 you saw breaking the Starbucks?

19 A. No.

20 Q. Why not?

21 A. There was not enough manpower to safely approach
22 anyone in that crowd of people. There was --

23 Q. Why not?

24 A. -- too many people. And it would risk one of us
25 getting hurt if we were to stop to try to detain someone with

1 a whole crowd moving, and the rest of our squad moving with
2 the group. So if you take one person out of that group,
3 you're one person down. And then they're left with seven.
4 And so on and so on.

5 And then you have no one to even try to control the
6 crowd, if at all, which we couldn't.

7 Q. And why couldn't you control the crowd?

8 A. It was more of them than there was of us. And they
9 were violent. And we didn't have the necessary tools that
10 we, you know, needed to safely stop anyone.

11 Q. Well, Officer Anderson, you have a firearm, do you
12 not?

13 A. I do.

14 Q. Did you ever pull it out?

15 A. I did not.

16 Q. Did you ever see any officer pull out their firearm?

17 A. I did not.

18 Q. So when you just said there was nothing you could do
19 safely, what did you mean?

20 A. Safely with -- not -- I feel like my service weapon
21 was not appropriate for that situation. I'm not going to use
22 my service weapon in a large crowd of people. We don't fire
23 into crowds of people. It was not appropriate to do.

24 And I feel like that the way we were dressed, like I
25 am now, with just a bicycle helmet and with things being

1 chucked at us and you can't look in every direction, that it
2 was just an unsafe environment for us to try and go into a
3 group of people with only seven or eight of us.

4 Q. So the other seven individuals in your CDU mountain
5 bike squad, were they dressed the same way you are with
6 police uniforms and badges?

7 A. They were.

8 Q. Okay. And the body-worn camera, the radios?

9 A. Correct.

10 Q. And how close were you to the people in this group
11 when they would throw bricks?

12 A. We were pretty close. I can't give an approximate
13 distance. But some people were almost within arm's reach of
14 us.

15 Q. And you said that individuals within the group were
16 throwing trash cans. Was that at officers? At you?

17 A. Not at me personally. But I did see an officer on
18 his scooter get a trash can thrown at him.

19 Q. Was that officer on his scooter dressed in a police
20 uniform?

21 A. He was.

22 Q. Were the individuals in the group creating the
23 violence at times looking at officers during this time
24 period?

25 A. Yes.

1 Q. Did that stop any of the violence?

2 A. No.

3 Q. Now, you said you saw the Starbucks and the Bank of
4 America. You saw windows get broken?

5 A. I did.

6 Q. And so when that happened, what did you and your
7 squad do?

8 A. We continued to follow our directive and follow --
9 move with the group.

10 Q. And what were you going to do when you -- what were
11 you going to do if you caught them?

12 A. At that point, I honestly didn't know. That day I
13 had no idea. It was just so many people. And like I -- I
14 can't stress enough, it was so little of us officers that I
15 really had no idea what we were going to do when we got
16 there.

17 I mean, there was really no catching them in my mind
18 at that point. There was no stopping what was going on.

19 Q. And as you watched the Starbucks and the Bank of
20 America windows get destroyed, what were you feeling about
21 your ability to control the situation?

22 A. That day, I honestly felt helpless in a situation.
23 You know, we're trained for things that we handle in the
24 District. And you don't see things like this on a daily
25 basis. So seeing something like that, it was like something

<p style="text-align: center;">Anderson - DIRECT - By Ms. Kerkhoff</p> <p style="text-align: right;">178</p> <p>1 I had never seen before, ever. And so I personally did not</p> <p>2 feel prepared for the situation that was in front of us.</p> <p>3 Q. Now, you said that you followed the group with your</p> <p>4 mountain bike squad, followed them. Is that on I Street</p> <p>5 where windows were being broken?</p> <p>6 A. Yes.</p> <p>7 Q. And what did you do after you got past I Street?</p> <p>8 Did you observe officers using chemical spray at that point?</p> <p>9 A. Yes.</p> <p>10 Q. And tell me how that stopped the group.</p> <p>11 A. It didn't. They just kept going and doing --</p> <p>12 breaking things, still continued being violent. It didn't</p> <p>13 stop them at all.</p> <p>14 Q. Did you ever pull out your spray and use it?</p> <p>15 A. I did not use it. No.</p> <p>16 Q. So what did you do to try to stop the group?</p> <p>17 A. When we were ordered to stand in line with our</p> <p>18 bicycles, that's what I did. I held the line.</p> <p>19 Q. And is that on I Street or is that later?</p> <p>20 A. That was on I Street in the beginning and then that</p> <p>21 was also later.</p> <p>22 Q. Between that time period on I Street, did the group</p> <p>23 continue to move?</p> <p>24 A. They did.</p> <p>25 Q. And were they walking? Were they running? Can you</p>	<p style="text-align: center;">Anderson - DIRECT - By Ms. Kerkhoff</p> <p style="text-align: right;">180</p> <p>1 A. Yes.</p> <p>2 Q. What?</p> <p>3 A. More tossing of trash cans, breaking of items,</p> <p>4 windows, anything.</p> <p>5 Q. At some point, did you catch up to the group?</p> <p>6 A. We did.</p> <p>7 Q. Do you know about how many blocks you rode?</p> <p>8 A. It was a couple. I don't -- honestly, it was just</p> <p>9 so much that day. I couldn't tell you.</p> <p>10 Q. Do you know what streets you were on?</p> <p>11 A. I know the main streets. But I don't remember every</p> <p>12 street that we rode on.</p> <p>13 Q. So when you did catch up with the group, can you</p> <p>14 describe what you did?</p> <p>15 A. When we did catch up to the group, we were able to</p> <p>16 kind of get in front of most of them. I believe that was at</p> <p>17 12th and L Street. We were told by our official to form a</p> <p>18 line with our bicycles. The bicycles and the scooters and</p> <p>19 the motorcycles pretty much all lined up at the intersection</p> <p>20 of the street.</p> <p>21 We were told to stand there and wait for further</p> <p>22 instructions.</p> <p>23 And the group was kind of coming together, talking,</p> <p>24 seeming like they were trying to form some sort of plan. But</p> <p>25 at that point --</p>
<p style="text-align: center;">Anderson - DIRECT - By Ms. Kerkhoff</p> <p style="text-align: right;">179</p> <p>1 describe how they were moving?</p> <p>2 A. They were walking at a pretty fast pace. Some of</p> <p>3 them were running. Some of them were walking. It was just a</p> <p>4 mix. But they were moving at a pretty decent speed.</p> <p>5 Q. And where were you on your bicycle in relation to</p> <p>6 the group?</p> <p>7 A. We were on the outside perimeter of the group.</p> <p>8 However, they were starting to kind of not be as tight at</p> <p>9 times. So at times, they would be all around us and we were</p> <p>10 kind of, you know, just there moving with them. There would</p> <p>11 be people on the outside. There would be -- the majority of</p> <p>12 the group was on the inner side of us. I can't remember if</p> <p>13 it was my left or my right. We had changed sides so many</p> <p>14 times.</p> <p>15 Q. And as you're riding your bicycle, do you see people</p> <p>16 from the group just stop and walk away?</p> <p>17 A. Some.</p> <p>18 Q. Did you try to stop those people?</p> <p>19 A. No.</p> <p>20 Q. What did you do?</p> <p>21 A. We continued to ride with the group, follow the</p> <p>22 group.</p> <p>23 Q. And as you continued to ride with the group and</p> <p>24 follow the group, did you observe any additional destruction</p> <p>25 or damage?</p>	<p style="text-align: center;">Anderson - DIRECT - By Ms. Kerkhoff</p> <p style="text-align: right;">181</p> <p>1 MS. WELETZ: Objection, your Honor.</p> <p>2 THE COURT: Overruled.</p> <p>3 BY MS. KERKHOFF:</p> <p>4 Q. At that point...?</p> <p>5 A. At that point, we, like I said, continued to stay in</p> <p>6 the line until we heard them counting down. And then they</p> <p>7 just rushed our -- our line.</p> <p>8 Q. Okay. So before you stood at 12th and L -- and when</p> <p>9 you say "we," are you talking about the members of your</p> <p>10 bicycle -- mountain bike squad?</p> <p>11 A. Correct. Yes.</p> <p>12 Q. And at this point, were all eight of you on that</p> <p>13 line?</p> <p>14 A. Yes. I believe so.</p> <p>15 Q. What about Officer Grubbs?</p> <p>16 A. Grubbs was not.</p> <p>17 Q. And is Officer Grubbs somebody who's a member of</p> <p>18 your mountain bike squad?</p> <p>19 A. He is.</p> <p>20 THE COURT: Can you spell that, please.</p> <p>21 MS. KERKHOFF: G-R-U-B-B-S.</p> <p>22 BY MS. KERKHOFF:</p> <p>23 Q. And Officer Grubbs -- was Officer Grubbs with you at</p> <p>24 14th and I the first time you tried to form a line with your</p> <p>25 bicycles?</p>

<p style="text-align: center;">Anderson - DIRECT - By Ms. Kerkhoff</p> <p style="text-align: right;">182</p> <p>1 A. Yes.</p> <p>2 Q. And then at 12th and L, Officer Grubbs was not with</p> <p>3 you. Is that correct?</p> <p>4 A. Correct.</p> <p>5 Q. Do you know what happened to Officer Grubbs?</p> <p>6 A. I do.</p> <p>7 Q. What happened?</p> <p>8 A. He --</p> <p>9 THE COURT: Can I just ask, can you rephrase that?</p> <p>10 MS. KERKHOFF: Yeah.</p> <p>11 THE COURT: A personal observation.</p> <p>12 BY MS. KERKHOFF:</p> <p>13 Q. Did you see Officer Grubbs that day?</p> <p>14 A. Yes.</p> <p>15 Q. Did you see Officer Grubbs with an injury?</p> <p>16 A. No.</p> <p>17 Q. Did you see Officer Grubbs after that day?</p> <p>18 A. Yes.</p> <p>19 Q. Did you see Officer Grubbs with an injury?</p> <p>20 A. I did.</p> <p>21 Q. What was the injury you observed?</p> <p>22 A. He broke his wrist.</p> <p>23 Q. So at 12th and L, now the second time you formed a</p> <p>24 line, do I understand there were the seven of you which you</p> <p>25 think were from your mountain bike squad? Is that correct?</p>	<p style="text-align: center;">Anderson - DIRECT - By Ms. Kerkhoff</p> <p style="text-align: right;">184</p> <p>1 A. I personally could not see from my vantage point.</p> <p>2 Q. So when you're at 12th and L, what do you see in</p> <p>3 front of you?</p> <p>4 A. All I see is the group of individuals dressed in</p> <p>5 black. That's all I could see.</p> <p>6 Q. And how about their faces? What do you see then?</p> <p>7 A. Nothing but masks. They had masks. You could see</p> <p>8 their eyes. Some of them, you could see their eyes. Some of</p> <p>9 them, their whole face was covered.</p> <p>10 Q. And as you look at this group, did you see any</p> <p>11 weapons?</p> <p>12 A. I did.</p> <p>13 Q. What did you see?</p> <p>14 A. At that time, I specifically remember a hammer being</p> <p>15 thrown from the crowd at our line.</p> <p>16 Q. Thrown at whom?</p> <p>17 A. At the officers that were in line.</p> <p>18 Q. Where did it come from?</p> <p>19 A. The group of individuals dressed in all black.</p> <p>20 Q. Did you go into that group and get that person who</p> <p>21 threw the hammer?</p> <p>22 A. No.</p> <p>23 Q. Why not?</p> <p>24 A. We were told to stay in our line.</p> <p>25 Q. Could you have found that person --</p>
<p style="text-align: center;">Anderson - DIRECT - By Ms. Kerkhoff</p> <p style="text-align: right;">183</p> <p>1 A. You said at 14th?</p> <p>2 Q. At 12th and L.</p> <p>3 A. Oh, 12th and L. Yes.</p> <p>4 Q. And then individuals from the motorcycle or scooter</p> <p>5 squad?</p> <p>6 A. Correct.</p> <p>7 Q. And how did you -- how did your squad get to 12th</p> <p>8 and L? Were you able to get in front of the group as it</p> <p>9 moved? Did the group stop moving? Can you describe that?</p> <p>10 A. I think at some points we were able to get in front</p> <p>11 of the group. If I can remember correctly, we were riding</p> <p>12 down L Street. We had to pick up our pace to go around down</p> <p>13 to 12th. And we were able to get in front of them that way,</p> <p>14 just by moving a little bit faster than the group, than</p> <p>15 staying with the group.</p> <p>16 Q. And as you're doing that, does the group continue to</p> <p>17 move down L Street?</p> <p>18 A. Yes.</p> <p>19 Q. And are there officers that you could see coming</p> <p>20 from behind?</p> <p>21 A. I didn't see.</p> <p>22 Q. Did you see any officers as you stood on that line</p> <p>23 on the other side at 12th and L?</p> <p>24 A. On the other side of the group?</p> <p>25 Q. Yes.</p>	<p style="text-align: center;">Anderson - DIRECT - By Ms. Kerkhoff</p> <p style="text-align: right;">185</p> <p>1 A. No.</p> <p>2 Q. -- as you stood there?</p> <p>3 A. No.</p> <p>4 Q. Why not?</p> <p>5 A. Because they were all dressed the same. There was</p> <p>6 no way to identify anyone.</p> <p>7 Q. Now, you said a moment ago that there was a</p> <p>8 countdown.</p> <p>9 What do you mean by that?</p> <p>10 A. Right before they started running at our line, I</p> <p>11 heard them counting down. I don't know where they started.</p> <p>12 But I -- you know, they were counting, five, four, three,</p> <p>13 two, one, before everyone just started yelling and screaming</p> <p>14 and running towards us.</p> <p>15 Q. And can you estimate how many people you saw running</p> <p>16 at that police line?</p> <p>17 A. Probably I would say about 300 or so.</p> <p>18 Q. Did any individuals break that line, go over the</p> <p>19 officers?</p> <p>20 A. They did.</p> <p>21 Q. And did everyone get over that line past the</p> <p>22 officers?</p> <p>23 A. No.</p> <p>24 Q. So what happened?</p> <p>25 A. At that point, the officers -- we moved in and we</p>

<p style="text-align: center;">Anderson - DIRECT - By Ms. Kerkhoff</p> <p style="text-align: right;">186</p> <p>1 were able to get them stopped at the corner of 12th and L.</p> <p>2 Q. And what did you have in your hand as you stood</p> <p>3 there with your mountain bike holding that police line?</p> <p>4 A. What did I have in my hand?</p> <p>5 Q. Yes.</p> <p>6 A. I believe I had my bicycle and then I had my ASP</p> <p>7 baton out.</p> <p>8 Q. How were you holding it?</p> <p>9 A. I just had it in my hand.</p> <p>10 Q. And did you have it down? Did you have it up?</p> <p>11 A. I can't remember. I'm sorry.</p> <p>12 Q. Did you ever pull out your firearm?</p> <p>13 A. No.</p> <p>14 Q. Even when you heard the countdown?</p> <p>15 A. No.</p> <p>16 Q. Did you see any officer who stood in that line pull</p> <p>17 out their firearm at any point?</p> <p>18 A. No, I did not.</p> <p>19 Q. Now, Officer Anderson, after what was left of the</p> <p>20 group was stopped at 12th and L, did you stay at 12th and L?</p> <p>21 A. Yes.</p> <p>22 Q. And were the individuals within the group then</p> <p>23 processed for arrest?</p> <p>24 A. Yes.</p> <p>25 Q. And how long were you out there that day from start</p>	<p style="text-align: center;">Anderson - DIRECT - By Ms. Kerkhoff</p> <p style="text-align: right;">188</p> <p>1 I'll admit them.</p> <p>2 (Whereupon, Government's Exhibit Nos. 123-Q and</p> <p>3 123-Y were entered into evidence.)</p> <p>4 MS. KERKHOFF: Thank you.</p> <p>5 BY MS. KERKHOFF:</p> <p>6 Q. Officer Anderson, you also had an opportunity to</p> <p>7 watch a number of compilation videos or videos that captured</p> <p>8 portions of the event on January 20th, 2017?</p> <p>9 A. Yes, I have.</p> <p>10 Q. And we'll go through each those. But do each of the</p> <p>11 following exhibits fairly and accurately depict the portions</p> <p>12 you observed --</p> <p>13 A. Yes.</p> <p>14 Q. -- that day?</p> <p>15 MS. KERKHOFF: And subject to further foundation and</p> <p>16 any discussion with counsel on redactions, the Government</p> <p>17 hereby moves to admit Government's Exhibit 106, 109, 110,</p> <p>18 111, 112, 113, 118, 119, 120, 133, 143, 144 and 225.</p> <p>19 THE COURT: Are you going to be publishing portions</p> <p>20 of those now?</p> <p>21 MS. KERKHOFF: Publishing portions of some of them</p> <p>22 now. We were seeking to admit these, as the witness can</p> <p>23 authenticate them.</p> <p>24 THE COURT: So shall I admit those, subject to a</p> <p>25 motion to strike?</p>
<p style="text-align: center;">Anderson - DIRECT - By Ms. Kerkhoff</p> <p style="text-align: right;">187</p> <p>1 to finish?</p> <p>2 A. Oh, gosh. I believe we started -- I honestly can't</p> <p>3 remember the start time. It was early morning. Maybe around</p> <p>4 6:00. And then I think -- I don't want to say -- I know we</p> <p>5 were out there for probably a good 17 to 19 hours that day.</p> <p>6 Q. The next day, did you have to work again?</p> <p>7 A. I did.</p> <p>8 Q. Now, Officer Anderson, you have had an opportunity</p> <p>9 to watch a number of videos. Is that correct?</p> <p>10 A. Correct.</p> <p>11 Q. One of those is the body-worn camera you had that</p> <p>12 day. Is that correct?</p> <p>13 A. Correct.</p> <p>14 Q. And have you also watched the Officer Whitehead who</p> <p>15 is in your mountain bike squad?</p> <p>16 A. Yes.</p> <p>17 MS. KERKHOFF: At this time, the Government offers</p> <p>18 into evidence Government's Exhibit No. 123-Q and 123-Y.</p> <p>19 THE COURT: And does everyone know what we're</p> <p>20 talking about? In other words, can I ask whether there's any</p> <p>21 objection or do we need to further identify it?</p> <p>22 Just somebody tell me. Do you think you know what</p> <p>23 they're talking about?</p> <p>24 MS. COLEMAN: Yes, your Honor.</p> <p>25 THE COURT: Hearing no objection to 123-Q and -Y,</p>	<p style="text-align: center;">Anderson - DIRECT - By Ms. Kerkhoff</p> <p style="text-align: right;">189</p> <p>1 MS. COLEMAN: Your Honor, we'd have an objection, if</p> <p>2 we could approach.</p> <p>3 THE COURT: Yes.</p> <p>4 Ma'am, can I ask you to step down by that flag there</p> <p>5 for a second, please.</p> <p>6 Thank you.</p> <p>7 (Whereupon, the following proceedings were had at</p> <p>8 side-bar outside the presence of the jury:)</p> <p>9 MS. COLEMAN: A number of these are compilation</p> <p>10 videos. We have no objection to body-worn camera that the</p> <p>11 officer took or other members of her squad, which I believe</p> <p>12 Officer Whitehead was from her observations that day.</p> <p>13 But a number of these videos show the same acts of</p> <p>14 destruction over and over and over again, and going from one</p> <p>15 act of destruction to another very quickly and repeatedly.</p> <p>16 So we would argue that under 403, it's unduly</p> <p>17 prejudicial and should be excluded.</p> <p>18 THE COURT: Because it's -- they're cumulative or</p> <p>19 because the witnesses can't authenticate them or what?</p> <p>20 MS. COLEMAN: Because they're cumulative and unduly</p> <p>21 prejudicial, given the nature of just showing destruction</p> <p>22 over and over and over and going in very fast fashion.</p> <p>23 THE COURT: So can you tell me -- so when you say</p> <p>24 compilation, is each one of these things, 106, 109, et</p> <p>25 cetera, a compilation or these are all --</p>

<p style="text-align: center;">Anderson - DIRECT - By Ms. Kerkhoff</p> <p style="text-align: right;">190</p> <p>1 MS. KERKHOFF: 106 --</p> <p>2 THE COURT: -- together as a single item?</p> <p>3 MS. KERKHOFF: 106, 109, 110, 133, 143, 144 and 225</p> <p>4 are some compilations.</p> <p>5 They are different vantage points of various things.</p> <p>6 And the Government -- we do believe the witness can</p> <p>7 authenticate it because she was present and can say that</p> <p>8 fairly and accurately depicts the --</p> <p>9 THE COURT: So not authentication? Am I correct</p> <p>10 that nobody's objecting to authentication?</p> <p>11 MS. COLEMAN: Not if she was there and witnessed the</p> <p>12 events in question.</p> <p>13 THE COURT: Everybody is shaking their heads that</p> <p>14 they seem to agree with you. So I'm not hearing any</p> <p>15 opposition.</p> <p>16 And so the only objection is cumulative or to the</p> <p>17 point of prejudice.</p> <p>18 And so why should you get -- are each one of these</p> <p>19 things different vantage points of the same time frame?</p> <p>20 MS. KERKHOFF: Some of them encompass the same time</p> <p>21 frame; that is, each of these videos encompasses portions</p> <p>22 from I Street where the officer was present through to</p> <p>23 portions of the end. They have been edited down to only</p> <p>24 include the portions of the riot itself, but not other things</p> <p>25 happening.</p>	<p style="text-align: center;">Anderson - DIRECT - By Ms. Kerkhoff</p> <p style="text-align: right;">192</p> <p>1 And counsel was objecting to having Detective Pemberton speak</p> <p>2 about identity except for --</p> <p>3 THE COURT: So can I just say, I'm going to permit</p> <p>4 the use of what could in a different scenario be cumulative.</p> <p>5 In other words, I'm going to permit the Government to present</p> <p>6 multiple different perspectives on the same events.</p> <p>7 I conclude that it's not -- that its prejudicial</p> <p>8 effect is not substantially outweighed by the probative value</p> <p>9 for a couple of reasons, the first of which is that the</p> <p>10 videotape that includes different people in them obviously</p> <p>11 are being admitted going to identity for the purpose of</p> <p>12 Ms. Kerkhoff.</p> <p>13 In other words, to the extent that Detective</p> <p>14 Pemberton can only testify about admitted exhibits, she has</p> <p>15 to get in all the exhibits in which each client appears.</p> <p>16 In addition, the different perspectives on the same</p> <p>17 events illustrate perspectives of viewers from different</p> <p>18 angles.</p> <p>19 And to the extent that the argument that's being</p> <p>20 made here is "Just because my client's walking down 13th</p> <p>21 Street or walking on I Street doesn't mean she sees violence</p> <p>22 happening at the Starbucks when it happens and doesn't mean</p> <p>23 she has knowledge and awareness of those things," and every</p> <p>24 videotape that shows this from a different perspective shows</p> <p>25 the knowledge and awareness of persons from that perspective.</p>
<p style="text-align: center;">Anderson - DIRECT - By Ms. Kerkhoff</p> <p style="text-align: right;">191</p> <p>1 But they are different vantage points. Some are of</p> <p>2 the same thing. However, they capture different individuals.</p> <p>3 And identity is an issue here.</p> <p>4 THE COURT: Can I just ask, the ones you've just</p> <p>5 named for me, are those the ones you're planing to show now?</p> <p>6 MS. KERKHOFF: I don't plan to show all of them. I</p> <p>7 plan to show --</p> <p>8 THE COURT: You said 106, 109, 110, 133, 143, 144</p> <p>9 and 225. Are you planning to show those now?</p> <p>10 MS. KERKHOFF: I'm only planning to show 123-Y,</p> <p>11 body-worn camera, and 123-Q, 133, 113, 110 and 225.</p> <p>12 THE COURT: And are they all basically the same</p> <p>13 events, but from different angles?</p> <p>14 MS. KERKHOFF: They -- no. They capture portions of</p> <p>15 events or they run at different time periods.</p> <p>16 The Government --</p> <p>17 THE COURT: Ask you just saying at different time</p> <p>18 periods during the 33 minutes?</p> <p>19 MS. KERKHOFF: Some capture -- are running for 33</p> <p>20 minutes of the whole event. Some are shorter. Some are</p> <p>21 compilations.</p> <p>22 They are -- we are seeking to admit them because we</p> <p>23 have to present to the jury identity issues.</p> <p>24 This witness can authenticate that that is a video</p> <p>25 that fairly and accurately depicts the events of that day.</p>	<p style="text-align: center;">Anderson - DIRECT - By Ms. Kerkhoff</p> <p style="text-align: right;">193</p> <p>1 In other words, if I'm buried in the middle of the</p> <p>2 crowd, focused on one angle, and I see the Starbucks window</p> <p>3 get broken, that is evidence that is probative of a greater</p> <p>4 degree of knowledge, a great degree of perspective on behalf</p> <p>5 of the people participating in the protest.</p> <p>6 So I do conclude that, although some may be multiple</p> <p>7 perspectives of the same event and could become cumulative,</p> <p>8 here, at least prior to seeing all of it, I'm concluding that</p> <p>9 it's not.</p> <p>10 Obviously, I can look at it as we're going along and</p> <p>11 keep track. But I conclude that multiple views from</p> <p>12 different perspectives is not inappropriately prejudicial</p> <p>13 under 403.</p> <p>14 So I overrule the objection.</p> <p>15 MS. KROPF: The way clips are edited is to edit out</p> <p>16 the First Amendment conduct.</p> <p>17 THE COURT: That may be. If there is some portion</p> <p>18 you want to play, you go ahead and do it.</p> <p>19 The Government has a burden of proof here, and part</p> <p>20 of it includes knowledge. There's a lot of discussion about</p> <p>21 wilfulness, knowledge and awareness of the clients, about</p> <p>22 these things. There's an element of the First Amendment.</p> <p>23 You can yammer all day long as long as you're not</p> <p>24 breaking any stuff. And obviously, I'm going to have to</p> <p>25 instruct the jury about it.</p>

<p style="text-align: center;">Anderson - DIRECT - By Ms. Kerkhoff</p> <p style="text-align: right;">194</p> <p>1 But --</p> <p>2 MS. KROPF: I don't call it yammering, though.</p> <p>3 THE COURT: Whatever you want to call it.</p> <p>4 MS. KROPF: First Amendment.</p> <p>5 THE COURT: It's different from breaking. Talk is</p> <p>6 different from participating in, breaking with knowledge and</p> <p>7 intention to bring about the crime. And the Government does</p> <p>8 have to prove that.</p> <p>9 So if you want to play other parts, go ahead and</p> <p>10 play other parts. But I am overruling the objection.</p> <p>11 MS. KROPF: So --</p> <p>12 THE COURT: And we're going to go ahead now.</p> <p>13 (Whereupon, the following proceedings were had in</p> <p>14 open court:)</p> <p>15 THE COURT: Overruled.</p> <p>16 So in terms of what I'm admitting now, subject to a</p> <p>17 motion to strike, again, I'm admitting 106, 109, 110, 111,</p> <p>18 112, 113, 118, 119, 133, 143, 144, 225 and 123-Q and -Y.</p> <p>19 (Whereupon, Government's Exhibit Nos. 106, 109, 110,</p> <p>20 111, 112, 113, 118, 119, 133, 143, 144, 225, 123-Q and 123-Y</p> <p>21 were entered into evidence.)</p> <p>22 BY MS. KERKHOFF:</p> <p>23 Q. Now, Officer Anderson, I'd like to show you a couple</p> <p>24 portions of just a couple of these videos. I'm not playing</p> <p>25 all of them right now.</p>	<p style="text-align: center;">Anderson - DIRECT - By Ms. Kerkhoff</p> <p style="text-align: right;">196</p> <p>1 record, to the portion we just played. Did you hear words</p> <p>2 "Stay together" or "Stay tight"? Did you hear those words?</p> <p>3 A. Yes.</p> <p>4 MS. COLEMAN: Objection. Leading.</p> <p>5 THE COURT: Overruled.</p> <p>6 BY MS. KERKHOFF:</p> <p>7 Q. And as you followed this group, was that the only</p> <p>8 time you heard words like that or were you hearing commands</p> <p>9 or instructions being given?</p> <p>10 A. No. I was hearing it throughout the whole time we</p> <p>11 were following them.</p> <p>12 Q. Do you remember what kinds of things you were</p> <p>13 hearing?</p> <p>14 A. Just pretty much "Stay together, stay tight, come</p> <p>15 back." Then of course them yelling profanity at us, at the</p> <p>16 officers.</p> <p>17 Q. Now, because my pen isn't pointing --</p> <p>18 MS. KERKHOFF: If I may approach the TV screen.</p> <p>19 Thank you.</p> <p>20 BY MS. KERKHOFF:</p> <p>21 Q. Officer Anderson, I'm going to direct your attention</p> <p>22 and the jury's attention to this area on the screen, which is</p> <p>23 on the left portion. I want to focus on this individual here</p> <p>24 in all black that appears to be wearing -- having something</p> <p>25 in his hand. Okay?</p>
<p style="text-align: center;">Anderson - DIRECT - By Ms. Kerkhoff</p> <p style="text-align: right;">195</p> <p>1 A. Okay.</p> <p>2 Q. I'm going to show you what's been admitted as</p> <p>3 Exhibit 123-Y, the body-worn camera of Officer Whitehead.</p> <p>4 Officer Whitehead is a member of your mountain bike squad?</p> <p>5 A. Correct.</p> <p>6 Q. And I'm going to start it at -- I believe that's 35</p> <p>7 seconds.</p> <p>8 (Whereupon, segments of Government's Exhibit No.</p> <p>9 123-Y were published in open court.)</p> <p>10 BY MS. KERKHOFF:</p> <p>11 Q. Now, Officer Anderson, I've stopped it at about one</p> <p>12 minute and 40 seconds in.</p> <p>13 And can you just orient us to what it is we're</p> <p>14 looking at.</p> <p>15 A. Over on the right-hand side is myself and my squad.</p> <p>16 And then if you can see, it's the group that -- of</p> <p>17 individuals I was describing earlier wearing the same</p> <p>18 clothing.</p> <p>19 Q. And if I look to the top left corner of this video,</p> <p>20 am I looking at a park?</p> <p>21 A. Yes.</p> <p>22 Q. And is that the park that you talked about</p> <p>23 previously they came out of when you were on I Street?</p> <p>24 A. Yes. Correct.</p> <p>25 Q. Now, I want to direct your attention also, for the</p>	<p style="text-align: center;">Anderson - DIRECT - By Ms. Kerkhoff</p> <p style="text-align: right;">197</p> <p>1 MS. KERKHOFF: Mr. Qureshi, if you can play that.</p> <p>2 (Whereupon, segments of Government's Exhibit</p> <p>3 No. 123-Y were published in open court.)</p> <p>4 MS. KERKHOFF: Pause it.</p> <p>5 BY MS. KERKHOFF:</p> <p>6 Q. And do you remember that?</p> <p>7 A. I do.</p> <p>8 Q. What did we just see?</p> <p>9 A. One of the individuals from the group had thrown a</p> <p>10 brick at my bicycle.</p> <p>11 MS. KERKHOFF: Now if we can continue playing until</p> <p>12 about two minutes.</p> <p>13 (Whereupon, segments of Government's Exhibit</p> <p>14 No. 123-Y were published in open court.)</p> <p>15 BY MS. KERKHOFF:</p> <p>16 Q. Now, you previously testified that you were just</p> <p>17 following the directions --</p> <p>18 A. Correct.</p> <p>19 Q. -- to form that line?</p> <p>20 A. Yes.</p> <p>21 Q. Was that the line with the bicycles you talked about</p> <p>22 that you formed at 14th and I Street?</p> <p>23 A. Yes.</p> <p>24 Q. And so after that, where did the group go next?</p> <p>25 A. They continued up I Street, I believe.</p>

<p style="text-align: center;">Anderson - DIRECT - By Ms. Kerkhoff</p> <p style="text-align: right;">198</p> <p>1 Q. Now, I'm going to turn your attention to another</p> <p>2 exhibit, Exhibit 113, starting at 6:22 -- 6:21.</p> <p>3 THE COURT: 113 at 6:21 timestamp?</p> <p>4 MS. KERKHOFF: At 6:21. Correct.</p> <p>5 (Whereupon, segments of Government's Exhibit No. 113</p> <p>6 were published in open court.)</p> <p>7 MS. COLEMAN: Objection, your Honor.</p> <p>8 THE COURT: Stop it.</p> <p>9 MS. KERKHOFF: Pause.</p> <p>10 THE COURT: Was there an objection?</p> <p>11 MS. COLEMAN: Foundation, your Honor.</p> <p>12 MS. KERKHOFF: The witness has already stated that</p> <p>13 the witness --</p> <p>14 THE COURT: They're all admitted. She already did</p> <p>15 say that all of things were fair and accurate.</p> <p>16 MS. COLEMAN: Yes, your Honor.</p> <p>17 (Whereupon, segments of Government's Exhibit No. 113</p> <p>18 were published in open court.)</p> <p>19 MR. LAZEROW: Objection, your Honor.</p> <p>20 MS. KERKHOFF: Pause it.</p> <p>21 THE COURT: Counsel, please approach. What time are</p> <p>22 we at now? 8:43.</p> <p>23 (Whereupon, the following proceedings were had at</p> <p>24 side-bar outside the presence of the jury:)</p> <p>25 MR. LAZEROW: This is Mr. Lazerow.</p>	<p style="text-align: center;">Anderson - DIRECT - By Ms. Kerkhoff</p> <p style="text-align: right;">200</p> <p>1 BY MS. KERKHOFF:</p> <p>2 Q. So where were you in relation to this group of</p> <p>3 individuals?</p> <p>4 A. We were still at that point on I Street, where we</p> <p>5 initially were seen in the video. So we were behind them as</p> <p>6 they were moving forward.</p> <p>7 Q. And as you stood on I Street, could you see the</p> <p>8 group moving past --</p> <p>9 MS. COLEMAN: Objection. Leading.</p> <p>10 THE COURT: It's not leading.</p> <p>11 BY MS. KERKHOFF:</p> <p>12 Q. Could you see the group moving down I Street?</p> <p>13 A. Yes.</p> <p>14 THE COURT: Overruled.</p> <p>15 BY MS. KERKHOFF:</p> <p>16 Q. And what windows could you see being broken?</p> <p>17 A. The Starbucks and the Bank of America.</p> <p>18 Q. And the video we're looking at here at 8:43, does</p> <p>19 that look like the windows being broken that you observed on</p> <p>20 January 20th, 2017?</p> <p>21 A. Yeah.</p> <p>22 THE COURT: So I think we should actually stop for</p> <p>23 the day. It's 25 of 5:00.</p> <p>24 So, ladies and gentlemen, I'm going to excuse you</p> <p>25 until tomorrow morning at 10:30. Please don't discuss the</p>
<p style="text-align: center;">Anderson - DIRECT - By Ms. Kerkhoff</p> <p style="text-align: right;">199</p> <p>1 I don't see how this witness could possibly have</p> <p>2 seen all of that.</p> <p>3 THE COURT: I was just going to ask you to ask the</p> <p>4 witness at what point she was able to personally perceive the</p> <p>5 things she's seeing, because now we're down the street and I</p> <p>6 don't know if she can or cannot see.</p> <p>7 MS. KERKHOFF: Your Honor, the witness is from a</p> <p>8 vantage point that she can watch Starbucks being broken.</p> <p>9 THE COURT: Just ask her. That's the point.</p> <p>10 MS. KERKHOFF: Yeah. Sure.</p> <p>11 MR. LAZEROW: Thank you.</p> <p>12 THE COURT: Thank you.</p> <p>13 (Whereupon, the following proceedings were had in</p> <p>14 open court:)</p> <p>15 BY MS. KERKHOFF:</p> <p>16 Q. Officer Anderson, we stopped at 8:43, watching this</p> <p>17 video.</p> <p>18 And were you behind this group of individuals?</p> <p>19 MS. COLEMAN: Objection. Leading.</p> <p>20 THE COURT: I'll sustain.</p> <p>21 BY MS. KERKHOFF:</p> <p>22 Q. Where are you in relation to this group of</p> <p>23 individuals?</p> <p>24 THE COURT: I did sustain the objection, because it</p> <p>25 was a leading question.</p>	<p style="text-align: center;">Anderson - DIRECT - By Ms. Kerkhoff</p> <p style="text-align: right;">201</p> <p>1 case. Please don't read any news stories or other online</p> <p>2 content about this case. And please don't discuss the case</p> <p>3 with anyone.</p> <p>4 Thank you. I'll see you tomorrow morning at 10:30.</p> <p>5 Leave your notebooks in your chairs.</p> <p>6 UNIDENTIFIED JUROR: 10:30? Earlier in the week,</p> <p>7 you told us 10:30 the first day and 9:30 the other days.</p> <p>8 THE COURT: No. 9:30 is when you deliberate. I'll</p> <p>9 give you a different time every day.</p> <p>10 10:30 tomorrow. Please put your notebooks on your</p> <p>11 chairs.</p> <p>12 And Ms. Lis is great at answering questions.</p> <p>13 (Whereupon, the jury exited the courtroom at 4:37</p> <p>14 p.m. and the following proceedings were had:)</p> <p>15 THE COURT: I will excuse you until 10:30 tomorrow,</p> <p>16 ma'am. Don't discuss your testimony with anyone.</p> <p>17 THE WITNESS: Thank you.</p> <p>18 MS. KERKHOFF: Your Honor, if I may raise -- I</p> <p>19 raised this with counsel -- about the witness's availability,</p> <p>20 that she has a medical appointment. Counsel agreed that we</p> <p>21 could proceed with other witnesses and take her out of turn</p> <p>22 tomorrow.</p> <p>23 THE COURT: Okay. So come back when Ms. Kerkhoff</p> <p>24 tells you to, please.</p> <p>25 MS. KERKHOFF: As soon as she gets here.</p>

<p style="text-align: center;">Anderson - DIRECT - By Ms. Kerkhoff</p> <p style="text-align: right;">202</p> <p>1 THE COURT: But don't discuss your testimony.</p> <p>2 THE WITNESS: Okay.</p> <p>3 (Witness excused.)</p> <p>4 THE COURT: What are we going to do in the morning,</p> <p>5 then?</p> <p>6 MS. KERKHOFF: Oh, we will just pick up with</p> <p>7 additional witnesses. And then when Officer Anderson gets</p> <p>8 here, we will resume her testimony.</p> <p>9 THE COURT: Okay. You can have a seat.</p> <p>10 I just want to take care of a little bit of</p> <p>11 business.</p> <p>12 I wanted to -- I know that there were discussions</p> <p>13 about stipulations to define certain terms. And I don't know</p> <p>14 when -- you did opening statements, obviously, without the</p> <p>15 benefit of those. And I don't know if there's going to come</p> <p>16 a point where you all are ready for me to read something to</p> <p>17 the jury.</p> <p>18 But I'm just telling you I'm ready to do it if you</p> <p>19 can give me what I'm supposed to say.</p> <p>20 And some of those terms were antifa, anarchist and</p> <p>21 black bloc. I don't think anybody wanted that definition.</p> <p>22 And then the other thing that you wanted me to do,</p> <p>23 and I was going to do, was to explain to the jury that --</p> <p>24 something about the fact that there were later news accounts</p> <p>25 showing the limousine crazy on fire -- that that was not the</p>	<p style="text-align: center;">Anderson - DIRECT - By Ms. Kerkhoff</p> <p style="text-align: right;">204</p> <p>1 I think our clock finally reflects realtime -- Mr. Lazerow,</p> <p>2 are you taking the lead on the discussion about your</p> <p>3 submission of statements to exclude from the Alexei Wood live</p> <p>4 stream?</p> <p>5 MR. LAZEROW: Yes, your Honor.</p> <p>6 THE COURT: And this has been filed. Right?</p> <p>7 MR. LAZEROW: I don't know the answer to that. I</p> <p>8 know it was --</p> <p>9 THE COURT: It should be filed if you want a record.</p> <p>10 And here's what I'll say: Email is not in the docket of this</p> <p>11 case. Right? Things you give me: Not in the docket of this</p> <p>12 case.</p> <p>13 And so if you want a record made of what you ask me</p> <p>14 to consider, you should make sure to e-file it so it's in the</p> <p>15 record. I'll keep reminding you of that. It's my goal to</p> <p>16 have everything you give me made part of the record. But you</p> <p>17 just -- this thing has not been filed. You should file it</p> <p>18 tonight.</p> <p>19 So other than the black bloc thing at 4:45, what --</p> <p>20 I guess I can tell you, I can't see how it's not a present</p> <p>21 sense impression. The entire thing is him relating what he</p> <p>22 sees and reacting to what he sees and expressing, "woo woo's"</p> <p>23 and his own reactions to things.</p> <p>24 And I have more detailed notes of it.</p> <p>25 But are you arguing that generally it's not a</p>
<p style="text-align: center;">Anderson - DIRECT - By Ms. Kerkhoff</p> <p style="text-align: right;">203</p> <p>1 damage to the limo that was caused by the group in this case.</p> <p>2 And so I don't know whether there's something that I'm</p> <p>3 supposed to be telling them. If so, again, I'm ready to do</p> <p>4 it if you can give me what I'm supposed to say.</p> <p>5 I did get through the video, as I said. And I've</p> <p>6 got the defense objections.</p> <p>7 I want to ask the Government: Is the term "black</p> <p>8 bloc" introduced at all in the planning meeting? I'm going</p> <p>9 to ask you to look for that.</p> <p>10 MS. KERKHOFF: I --</p> <p>11 THE COURT: In other words, where are we hearing it</p> <p>12 from a conspirator in the case other than the utterance in</p> <p>13 Mr. Wood's video?</p> <p>14 MS. KERKHOFF: It is in the podcast, your Honor.</p> <p>15 I'll have to go back and check and see if it's within the</p> <p>16 designated portions.</p> <p>17 Mr. Petrohilos in the podcast discussed black bloc,</p> <p>18 because he decided his mom wants to be part of it. And I</p> <p>19 want to go back and just check the transcripts of the</p> <p>20 planning meeting as to whether the term "black bloc" is</p> <p>21 discussed.</p> <p>22 THE COURT: I want to know that.</p> <p>23 MS. KERKHOFF: Yeah. I'll send an email to the</p> <p>24 parties.</p> <p>25 THE COURT: Since we have about five minutes -- and</p>	<p style="text-align: center;">Anderson - DIRECT - By Ms. Kerkhoff</p> <p style="text-align: right;">205</p> <p>1 present sense impression or are you just arguing that these</p> <p>2 particular items you've listed are somehow not admissible?</p> <p>3 And if so, why?</p> <p>4 MR. LAZEROW: Correct, your Honor.</p> <p>5 We've already covered black bloc. That's the first</p> <p>6 one.</p> <p>7 The second one, it's -- "It's happening time,</p> <p>8 y'all." I mean, that's not describing anything, your Honor.</p> <p>9 That cannot be present sense impression. It's not</p> <p>10 describing.</p> <p>11 THE COURT: So if it's not articulating, it can't be</p> <p>12 a present sense impression?</p> <p>13 MR. LAZEROW: It's not to describe an event as it's</p> <p>14 happening.</p> <p>15 THE COURT: So if it's not, it's not even a</p> <p>16 statement, then?</p> <p>17 MR. LAZEROW: Well, it's --</p> <p>18 THE COURT: It's either an assertion or it's not.</p> <p>19 Right?</p> <p>20 MR. LAZEROW: I haven't heard that she's not</p> <p>21 offering that for the truth.</p> <p>22 So --</p> <p>23 THE COURT: Either it's an assertion or it's not.</p> <p>24 It may not be something that you would say as, you know,</p> <p>25 perfectly articulated. But it's either an assertion or it's</p>

<p style="text-align: center;">Anderson - DIRECT - By Ms. Kerkhoff</p> <p style="text-align: right;">206</p> <p>1 not. If it's not an assertion, it's not a reaction. It's</p> <p>2 the equivalent of a grunt or a yell. Then it would come in</p> <p>3 anyway, because it's not hearsay. Wouldn't it?</p> <p>4 MR. LAZEROW: I think if it -- if it's not offered</p> <p>5 for the truth, then it's not an assertion.</p> <p>6 THE COURT: Okay. And so "It's happening time,</p> <p>7 y'all": Is that something you're offering for the truth or</p> <p>8 just as a reaction that expresses some emotion?</p> <p>9 MS. KERKHOFF: Well, I think it's both. But I think</p> <p>10 it is relevant. "It's happening, y'all" refers to the group</p> <p>11 departing. It coincides with when the group is leaving Logan</p> <p>12 Circle.</p> <p>13 So I think --</p> <p>14 THE COURT: This is 846. It's 20 seconds after</p> <p>15 filming the broken parking meter.</p> <p>16 MS. KERKHOFF: I'm sorry. I was thinking about when</p> <p>17 he first left it. Then he's saying to me, you know, "It's</p> <p>18 happening. Ready. This is going."</p> <p>19 I think I'm allowed to argue that he's referencing</p> <p>20 it's happening. What was planned is happening. The riot's</p> <p>21 going on.</p> <p>22 THE COURT: And so I believe that at this moment,</p> <p>23 it's as events really are ramping up in drama and extremity</p> <p>24 and level of violence. And "It's happening time, y'all," in</p> <p>25 my view, it is an assertion. If it's not an assertion and if</p>	<p style="text-align: center;">Anderson - DIRECT - By Ms. Kerkhoff</p> <p style="text-align: right;">208</p> <p>1 THE COURT: So let me just hear from the Government</p> <p>2 on whether black bloc is mentioned elsewhere before this film</p> <p>3 or anytime else in the case.</p> <p>4 So I'm reserving on 445 and 908. And there's 951.</p> <p>5 Someone spray-paints "Revolution or death" on a garage door</p> <p>6 and he says, "We've got some graffiti."</p> <p>7 What's the objection?</p> <p>8 MR. LAZEROW: This, you know, is not only -- I'm not</p> <p>9 sure exactly what he is saying here. It must be commenting</p> <p>10 on the writing, I think. Under 403, his statements should</p> <p>11 not come in. He seemed to be, you know, if you will, mocking</p> <p>12 this political message that these people put down. Under</p> <p>13 403, even if you find it present-sense impression, describing</p> <p>14 an event, under 403, this shouldn't come in.</p> <p>15 THE COURT: Because why? Because he's mocking the</p> <p>16 message?</p> <p>17 MR. LAZEROW: Because he seems to be mocking</p> <p>18 something that is a very strong statement, frankly, your</p> <p>19 Honor.</p> <p>20 THE COURT: I don't consider that a basis to exclude</p> <p>21 it. I don't agree with the characterization. I don't think</p> <p>22 that there's anything about it such that any prejudicial</p> <p>23 effect substantially outweighs the probative value. He's</p> <p>24 saying in realtime, "We have some graffiti." And that's</p> <p>25 what's actually happening. There's a present sense</p>
<p style="text-align: center;">Anderson - DIRECT - By Ms. Kerkhoff</p> <p style="text-align: right;">207</p> <p>1 it's just sort of an -- the equivalent of a grunt or a cheer,</p> <p>2 then I don't have to rule.</p> <p>3 But to the extent that it -- the Government is</p> <p>4 offering it as a characterization of events, I think that is</p> <p>5 actually a fair read of what happens in context, which is</p> <p>6 that the declarant is saying, "This is really beginning now."</p> <p>7 And so to that extent, it is a present sense</p> <p>8 impression.</p> <p>9 Okay. Next? "This guy just pushed a black bloc</p> <p>10 there." And it's in reference to a person who is dressed --</p> <p>11 Was that person an undercover or just a person on</p> <p>12 the street?</p> <p>13 MS. KERKHOFF: The person who was wearing the tan?</p> <p>14 THE COURT: The person who they were accusing of</p> <p>15 having pushed someone.</p> <p>16 MS. KERKHOFF: He was an individual on the street.</p> <p>17 He -- his video --</p> <p>18 THE COURT: So not police?</p> <p>19 MS. KERKHOFF: He's not police, your Honor. No.</p> <p>20 THE COURT: Okay. And so what's happening at that</p> <p>21 moment is that a person is being accused of having pushed a</p> <p>22 person in the group.</p> <p>23 You're just objecting to the characterization of</p> <p>24 black bloc?</p> <p>25 MR. LAZEROW: Right. That -- correct, your Honor.</p>	<p style="text-align: center;">Anderson - DIRECT - By Ms. Kerkhoff</p> <p style="text-align: right;">209</p> <p>1 impression. I'm admit it.</p> <p>2 I've got to stop. It's 4:45.</p> <p>3 We'll pick back up tomorrow. What I'd like to do is</p> <p>4 have you here at 10:00 and have a couple of matters I have to</p> <p>5 handle. But if we can pick up at 10:00, I'll try and get</p> <p>6 through the rest of this if we can.</p> <p>7 Thank you, everyone.</p> <p>8 Ladies and gentlemen, I have to give each of you</p> <p>9 notice to return. Each of you must return to this courtroom,</p> <p>10 203, at 10:00 a.m. If you fail to do that, you can be</p> <p>11 charged for failing to appear, which has a five-year jail</p> <p>12 term and a \$37,500 fine -- a \$12,500 fine for failure to</p> <p>13 appear.</p> <p>14 Thank you very much. And we are going to ask that</p> <p>15 you sign the notice.</p> <p>16 Thank you.</p> <p>17 (Proceedings concluded.)</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

CERTIFICATE

I, Lisa Edwards, RDR, CRR, an Official Court Reporter for the Superior Court of the District of Columbia, do hereby certify that I reported by machine shorthand, in my official capacity, the proceedings had and testimony adduced, upon the Trial in the case of the United States of America v. Michelle Macchio, et al., Criminal Action No. 2017 CF2 1183, in said Court on the 20th day of November, 2017.

I further certify that the foregoing 210 pages constitute the official transcript of said proceedings, as taken from said shorthand notes, my computer realtime display, together with the audio sync and digital recording of said proceedings.

In witness whereof, I have hereto subscribed my name, this 20th day of November, 2017.



Lisa Edwards, RDR, CRR
Official Court Reporter