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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,	)	Case No. 2:16-cr-046-GMN-PAL
)	
vs.	)	Las Vegas, Nevada
	)	Monday, July 10, 2017
ERIC PARKER, O. SCOTT	)	8:56 a.m., Courtroom 7C
DREXLER, RICKY LOVELIEN, and)	
STEVEN STEWART,	)	JURY TRIAL DAY ONE
)	
Defendants.)	
	)	<u>O R I G I N A L</u>

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BEFORE: THE HONORABLE GLORIA M. NAVARRO,
UNITED STATES DISTRICT JUDGE, CHIEF

APPEARANCES:

See next page

COURT REPORTER:

Heather K. Newman, RPR, CRR, CCR #774
United States District Court
333 Las Vegas Boulevard South, Room 1334
Las Vegas, Nevada 89101
(702) 471-0002

Proceedings reported by machine shorthand, transcript produced
by computer-aided transcription.

1 APPEARANCES:

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23 Also present:

24 Sharon Gavin, Special Agent, FBI
25 Joel Willis, Special Agent, FBI
Chris Allen, Bureau of Land Management
Mike Abercrombie, FBI

1 Also present:

- 2 Mamie Ott
- 3 Nona Dodson
- 4 Tori Bakken
- 5 Brian Glinn

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1 LAS VEGAS, NEVADA; MONDAY, JULY 10, 2017; 8:56 A.M.

2 --oOo--

3 P R O C E E D I N G S

4 (Outside the presence of the venire panel at 8:56 a.m.:)

5 COURTROOM ADMINISTRATOR: All rise.

6 THE COURT: Thank you. You may be seated.

7 COURTROOM ADMINISTRATOR: This is the time set for
8 Jury Trial Day One, in Case Number 2:16-cr-046-GMN-PAL,
9 United States of America vs. Eric Parker, O. Scott Drexler,
10 Ricky Lovelien, and Steven Stewart.

11 Counsel, please make your appearances for the record.

12 MR. MHYRE: Good morning, Your Honor.

13 Steve Mhyre, Erin Creegan, and Nadia Ahmed on behalf
14 of the United States.

15 THE COURT: Good morning, Ms. Ahmed, Ms. Creegan,
16 Mr. Myhre.

17 MR. TANASI: Good morning, Your Honor.

18 Rich Tanasi for Steven Stewart who is present. Also
19 with us at counsel table is Tori Bakken, Nona Dodson --

20 THE COURT: Good morning.

21 MR. TANASI: -- and Brian Glinn.

22 THE COURT: Good morning.

23 MR. TANASI: Thank you.

24 MR. MARCHESE: Good morning, Your Honor.

25 Jess Marchese on behalf of Eric Parker.

1 THE COURT: Good morning, Mr. Marchese.

2 MR. LEVENTHAL: Good morning, Your Honor.

3 Todd Leventhal on behalf of Mr. Drexler.

4 THE COURT: Good morning, Mr. Leventhal.

5 MR. PEREZ: Good morning, Your Honor.

6 Shawn Perez on behalf of Ricky Lovelien.

7 THE COURT: And good morning, Mr. Perez.

8 All right. Well, before we bring in the jury, I just
9 want to make some preliminary remarks so that everyone has
10 expectations about how court will be conducted today. Please
11 remember that this is a courtroom, it is not a sporting event
12 so it is never appropriate for anyone to make any expression of
13 their opinions, either verbally or through conduct or body
14 language, no matter how much you might disagree or agree with
15 something that's being said. So the marshals and the Court
16 Security Officers have been authorized to remove anyone from
17 the courtroom who does not comport with these expectations.

18 Also, the attorneys all have microphones. They may
19 use those at the desk if they are more comfortable or they may
20 come up to the podium which has been redirected to point
21 towards the jurors. So you're welcome to use either one.

22 The same holds true for the defendants, as does for
23 the public. Please do not make any statements or inappropriate
24 body language. Do not try to speak out of turn. Your
25 attorneys are here for you to speak for you, and please also

1 make sure, if you're in the public and you have an electronic
2 device, you need to take it outside. There's no electronic
3 devices that are permitted in the courtroom. Even if they're
4 turned off or in vibrate mode, they're never permitted. There
5 is no recording, no audio or video recording that is permitted
6 in federal court.

7 All right. So we're going to go ahead and bring in
8 the jury. The attorneys --

9 MR. TANASI: Your Honor.

10 THE COURT: Yes.

11 MR. TANASI: I'm sorry. I didn't mean to interrupt
12 you.

13 THE COURT: Go ahead.

14 MR. TANASI: Given the fact that there were a few
15 orders that were filed this morning and were -- at least I saw
16 them this morning, we're all kind of processing them and I
17 think they, at least at some level, kind of even impact how our
18 jury selection will go this morning. And so, given that, I
19 think the parties, at least on the defense side, would request
20 at least another half hour or so just to kind of process the
21 orders and still talk amongst ourselves and then make sure
22 we're kind of all on the same page before we get started with
23 jury selection.

24 THE COURT: All right. Aaron, I thought I saw the
25 jury through the window, through the door there. Are they

1 already in the hallway, or not yet?

2 COURTROOM ADMINISTRATOR: I don't think they've been
3 brought up.

4 THE COURT: Oh, good. Okay. Then yes. Let's go
5 ahead and take a half hour. It's 9:00 now, so we'll start at
6 9:30, which means we may not take a bathroom break before noon,
7 but we'll play it by ear and see how that goes. Obviously if a
8 juror needs to use the rest room, then we definitely will.
9 Otherwise, use the bathroom before we come back at 9:30.

10 MR. TANASI: Understood. Thank you.

11 MS. CREEGAN: And, Your Honor, before the jury comes
12 in, the Government would also like to discuss whether there are
13 some jurors that we can eliminate for cause based on their
14 questionnaires so that we can conserve time questioning jurors.

15 THE COURT: All right. Why don't you go ahead and
16 make a list and confer with defense counsel and if they agree,
17 I'll be happy to excuse anyone that everyone agrees need to be
18 excused anyway. There are quite a few that say they know
19 people and have already decided and they're not going to change
20 their mind no matter what, so obviously those are clear, but
21 there's quite a few that are not clear. There's one person who
22 said he's not over the age of 18, but yet he's got a
23 46-year-old wife and has been working for 20 years as a phone
24 operator, but he says he doesn't speak English. So there's --
25 there's a few questions we just are going to have to spend some

1 time exploring, unless all of you just decide that you don't
2 even want to bother with exploring and you think if a person
3 can't follow directions on a questionnaire, maybe this isn't
4 the right trial for them. If you agree that person should be
5 excused, I'm willing to consider that as well.

6 MS. CREEGAN: Thank you.

7 MR. TANASI: So, Your Honor, given that, maybe then
8 an hour? Would that make more sense, I think?

9 THE COURT: Is that all right with the Government?

10 MR. MYHRE: Yes, Your Honor.

11 MS. CREEGAN: Yes.

12 THE COURT: All right. So it's 9:00 now, we'll come
13 back at 10:00.

14 MR. TANASI: Thank you, Judge.

15 COURTROOM ADMINISTRATOR: All rise.

16 (Recess was taken at 9:01 a.m.)

17 (Outside presence of the venire panel at 10:13 a.m.:)

18 COURTROOM ADMINISTRATOR: All rise.

19 THE COURT: Thank you. You may be seated.

20 Did you want to call the case, Aaron, or can we just
21 get started?

22 COURTROOM ADMINISTRATOR: I think we can just get
23 started. We can call it later, Your Honor.

24 THE COURT: All right. So we're back on the record
25 and the parties did request a little extra time. Everyone have

1 sufficient time? Are we ready to begin? Anyone have a reason
2 why we should not begin?

3 MR. TANASI: Court's indulgence, Your Honor. I
4 apologize.

5 THE COURT: Okay.

6 (Counsel conferring.)

7 MR. TANASI: I think we're ready, Your Honor.

8 MR. MARCHESE: Your Honor, just for Mr. Parker at
9 least, I wanted to make a record in reference to obviously the
10 Court's ruled and I'm not here to sway anyone's opinions or
11 beliefs on the Court's rulings, however, I just wanted to make
12 one point in reference to the state of mind stuff. Obviously,
13 Mr. Parker testified at the last trial. He's been disallowed
14 from testifying as to certain topics at this trial,
15 specifically references to Ammon Bundy getting Tased,
16 references to First Amendment zones, references to
17 Margaret Houston getting thrown on the ground, reference to a
18 statement that he saw from Governor Sandoval, amongst other
19 things. So that was successfully argued by the Government that
20 we are unable to bring that up, but I just wanted to point out
21 that we are now in a very tenuous situation given the fact that
22 we are unable to argue state of mind in reference to key
23 elements of the charges, specifically the conspiracy,
24 specifically the obstruction, specifically traveling in
25 interstate commerce, and specifically I'm looking at the jury

1 instructions which says that the defendants must travel with
2 the intent to commit a crime of violence in furtherance of an
3 unlawful activity, mainly extortion. So, it's our position
4 that we have been cut off from arguing that specific element
5 and we cannot mount a defense because we are unable to say why
6 our clients traveled in interstate commerce and we're stuck
7 with basically the negative inference that they want there for
8 extortion. We wasn't -- they went there to get the cattle.
9 So, based upon that, I wanted to build a record about that.

10 In addition, in looking at some of the Court's other
11 orders, there was a reference to Trial 1 in reference to our
12 inability to get self-defense instructions. It is our position
13 that we should still be allowed to present that evidence. We
14 will bring more witnesses. We will bring more evidence at this
15 particular trial and we should have the ability to mount that
16 evidence before the Court. Now, if, at the end, if we have not
17 met our burden, then we will not get that instruction. But, we
18 should not be precluded from being able to argue it because we
19 will now bring more evidence and more witnesses forward.

20 So, based upon that, I just wanted to bring up those
21 two particular issues, and that's pretty much it. I don't know
22 if anyone else wanted to elaborate as well.

23 MR. TANASI: Stewart joins, Your Honor.

24 THE COURT: The Government wish to respond?

25 I mean, clearly, the parties can't argue or present

1 evidence that is not relevant. If the defense or the charge is
2 not legally recognizable, then the evidence that's only
3 relevant to that defense is not relevant. If it's relevant to
4 something else, then you make a proffer of why it is relevant
5 and therefore it probably is admissible. But I -- the way that
6 the motion was styled was whether or not the evidence could be
7 admitted when the jury instruction was not legally cognizable.
8 Therefore, if that's the only reason why that evidence is
9 offered, then it couldn't be relevant --

10 MR. MARCHESE: Sure.

11 THE COURT: -- if that jury instruction is not
12 readily available.

13 MR. MARCHESE: No. I understand. I'm not here to
14 relitigate what happened in the last trial.

15 THE COURT: Okay.

16 MR. MARCHESE: That's ancient history, so to speak.

17 THE COURT: Okay. I just wanted to make sure that
18 you understood it since it was . . .

19 MR. MARCHESE: Yeah. Okay. No. I understand.

20 THE COURT: Anything else you wanted to add?

21 MR. MYHRE: Your Honor, our position is on the record
22 that with respect to the motion we made and the Court has
23 articulated the basis. The defendants, as the Court has ruled,
24 may proffer whatever evidence they deem -- they believe is
25 relevant and we can address it at that point, but within the

1 strictures of the Court's order, we believe that it's properly
2 precluded at this point.

3 THE COURT: All right. All right. So let's go ahead
4 and we're going to bring the jury in. We do always stand when
5 the jury comes into the courtroom or exits the courtroom
6 because they will potentially be the judge of the facts.

7 So, are we ready to bring them in, Aaron?

8 COURTROOM ADMINISTRATOR: Yes, Your Honor. It will
9 take a minute to get them up.

10 THE COURT: All right.

11 MS. CREEGAN: Your Honor, we did have a few, not too
12 many, but we did we have a few that we could agree to remove.

13 THE COURT: Okay.

14 MS. CREEGAN: Those are Jurors 38 and 213.

15 THE COURT: 38 and 213.

16 MS. CREEGAN: And the Government would like to move
17 to remove some additional jurors based on their questionnaires
18 as well that were not agreed.

19 THE COURT: All right. Go ahead.

20 MS. CREEGAN: Your Honor, we would move to remove
21 Jurors 17, 41, 120.

22 THE COURT: Wait. Wait. Wait. This pen's not
23 working.

24 (Brief pause in proceedings.)

25 Okay. Start again. Number?

1 MS. CREEGAN: 17.

2 THE COURT: Um-hmm.

3 MS. CREEGAN: 41, 120, 124, 227, 301, 336, and 398.

4 THE COURT: Okay. Up to 301.

5 MS. CREEGAN: 336, and 398.

6 THE COURT: I don't have a 336.

7 MS. CREEGAN: I'm sorry, 366. Thank you.

8 THE COURT: 366. Okay. So after 301 was 366, and
9 then?

10 MS. CREEGAN: 398.

11 THE COURT: And 398.

12 All right. Does the defense have any additional that
13 you want me to consider excusing?

14 MR. TANASI: Nothing additional at this time,
15 Your Honor.

16 THE COURT: Okay. All right. Well, Number 17 says
17 that they are familiar with the Bundys personally and are not
18 sure they can be unbiased and are not willing to serve.

19 Is there any other reason I didn't mention?

20 MS. CREEGAN: No, Your Honor. Those are the grounds.

21 THE COURT: And then Number 41 says that they cannot
22 or should not serve because there was no deaths, so leave it
23 alone.

24 MS. CREEGAN: That's correct.

25 THE COURT: Number 120 says they'll vote

1 automatically for not guilty so matter what.

2 Number 124 thinks they're already guilty and hard
3 time paying attention, among some other things.

4 Did you say 121?

5 MS. CREEGAN: 301. I have 17, 41, 120, 124, 227,
6 301, 366, 398.

7 THE COURT: Okay. So 227 has strong opinions and
8 says that the federal government should govern federal land.

9 301, not willing to serve because it's a waste of
10 taxpayer money.

11 366 thinks Bundys are entitled Americans . . . defied
12 authority.

13 Oh, yes, and 398 is a . . . paralegal from the
14 Federal Public Defender's Office who says it would be difficult
15 to be fair and impartial. They actually have worked with the
16 attorneys handling this case. So, that's fair enough.

17 Any objection to dismissing Juror No. 398, the
18 Federal Public Defender paralegal that worked on this case?

19 MR. TANASI: Court's indulgence, Your Honor.

20 (Brief pause in proceedings.)

21 MR. TANASI: Your Honor, I think with respect to
22 Number 398, my understanding is the individuals that they
23 reference that they're aware of or that they know are not
24 defense lawyers that are necessarily at this counsel table and
25 my recollection of my discussion with the Government up to this

1 point was that that was one of the concerns as well and, I
2 mean, again, it's not as though one of those individuals is
3 seated here at counsel table. So, I don't think that without
4 further questioning we'd have a basis to let them go at this
5 point.

6 MS. CREEGAN: Juror 398 has indicated that they work
7 with all of the lawyers on the Bundy case as colleagues, that
8 they know a great deal about the case from that work.

9 MR. TANASI: And, Your Honor, if we're going to
10 exclude people who know a great deal about the case, we're
11 probably going to end up with a lot of excusals.

12 MS. CREEGAN: Respectfully, that's not true. Many,
13 many jurors answered that they did not know very much about the
14 case or didn't remember what the news was about the case.

15 THE COURT: All right. Well, this person admits that
16 they are a paralegal with the Federal Public Defender's Office.
17 The Federal Public Defender's Office does represent a defendant
18 in this case and they also state that it would be difficult for
19 them to be fair and impartial. So I'm going to excuse
20 Juror No. 398.

21 Likewise, the two jurors that the parties agreed to
22 excuse, Number 38 and Number 213 will also be excused.

23 COURTROOM ADMINISTRATOR: Your Honor, was that 215 or
24 213?

25 THE COURT: What was the question?

1 COURTROOM ADMINISTRATOR: Was that Juror 215 or 213
2 that was excused?

3 THE COURT: 213. We don't have a 215.

4 COURTROOM ADMINISTRATOR: Okay. Thank you.

5 THE COURT: All right. So apparently, there's a
6 couple of jurors that did not appear today and that was -- we
7 sort of knew that was likely to happen because we changed the
8 date on their summons. They were originally going to be here
9 in June and then it got changed. So Jurors No. 147, 53, 181,
10 201, 347, 381, and 387 are not here.

11 (Brief pause in proceedings.)

12 THE COURT: I didn't get chance to look through all
13 of them, but, for example, like, 201 was the one that said they
14 were living in Tonopah, but they also said they were willing to
15 serve, but . . . apparently they couldn't make it. So, if --
16 if it turns out that they come in, maybe we can see them
17 tomorrow if they are available and just weren't --
18 misunderstood what date they were supposed to be here. If
19 there's some other reason, then we'll deal with that later,
20 but, just so you know, if you've got them in order, those folks
21 did, though, show up today.

22 At the end we will need 44 jurors.

23 So, Mike, do you have them ready?

24 JURY COMMISSIONER: We have them ready, Your Honor.

25 THE COURT: All right. Let's go ahead and bring them

1 in. We'll all stand.

2 MR. LEVENTHAL: Wait. Your Honor --

3 MS. CREEGAN: Your Honor, have you reserved judgment
4 on the remaining jurors?

5 THE COURT: Yes.

6 MR. LEVENTHAL: Could we just, real quick, read those
7 numbers off, 17 -- I got the number -- people that are not
8 here. I just need to -- we went quick for --

9 THE COURT: 38 was excused, 213 was excused, and 398
10 was excused.

11 MR. LEVENTHAL: 38, 213, 398?

12 THE COURT: Yes.

13 MR. LEVENTHAL: Those three.

14 Thank you.

15 (Venire panel entered courtroom at 10:28 a.m.)

16 (Brief pause in proceedings.)

17 THE COURT: The jury can go ahead and be seated. Go
18 ahead and sit down.

19 All right. Everyone go ahead and be seated.

20 Thank you, ladies and gentlemen of the prospective
21 jury for being here this morning. I know that it's been
22 continued a few times and you weren't sure exactly when you
23 were supposed to be here. So, I appreciate your patience and
24 flexibility with us. It's not the first time that we've asked
25 you to be flexible and patient and unfortunately, it won't be

1 the last.

2 This is a criminal Jury Trial and I'm going to go
3 ahead and get started and explain a few things to you here.

4 First of all, you've been summoned to Court as a
5 panel of prospective jurors to serve in the criminal case. And
6 so I know most of you have family and jobs to care for and tend
7 to and taking time out of your busy day is never convenient.
8 However, this is recognized as the highest duty of citizenship,
9 a duty that you can provide outside of military service. In
10 addition to being important, it's also, I assure you, going to
11 be an interesting experience.

12 Most folks who tell me that they've received a jury
13 summons weren't sure whether they were trying to get out of it.
14 That's a common, I think, reaction when people receive a jury
15 summons, but after they serve as a juror, they always say how
16 interesting they found it, how important that they felt that
17 the responsibility was, and very few people have a lot of
18 complaints about serving on the jury that would cause them not
19 to want to do it again. Some people complain about how long it
20 takes, and that's a reasonable complaint, but otherwise, it
21 usually is an interesting one. You don't find anyone who says
22 it doesn't -- it wasn't interesting.

23 Our system of justice does depend upon good citizens
24 such as yourselves to serve as jurors in our federal courtrooms
25 throughout the nation every day. And I know that if any of you

1 were a party to case, in this or any other court, you would
2 want the case decided by a jury comprised of citizens much like
3 yourselves.

4 So I'm going to have Aaron administer the oath to
5 you. If you'll please stand.

6 COURTROOM ADMINISTRATOR: All those jurors, please
7 rise and raise your right hand.

8 "You, and each of you, do solemnly swear or affirm
9 that true answers you will make to such questions as are
10 propounded to you touching upon your qualifications to act as
11 jurors in the cause now pending before this Court, so help you
12 God?"

13 Please say "I do."

14 VENIRE PANEL: I do.

15 COURTROOM ADMINISTRATOR: Thank you. You may be
16 seated.

17 THE COURT: All right. Now, before I tell you a
18 little bit about the case, I just want to make sure you
19 understand why a jury is being called and why it's important.
20 It's not a Bench Trial, which means that even though I am the
21 judge, I'm not going to be the person who is deliberating the
22 verdict in the case. Parties have a right to a Jury Trial,
23 which means to have a jury decide the case and this goes back
24 traditionally to the Constitution where we acknowledge that a
25 party has a right to a jury of community peers. So not

1 professionals, not folks who have nothing better to do, not
2 people from a certain part of town and not from a different
3 part of town, not people who are of a particular age and not of
4 a different age, but a cross-section of the community, so, a
5 diverse set of folks who can equally be fair and unbiased and
6 determine the outcome of a case.

7 So, this case, which will be tried, will require me
8 to ask you certain questions and the purpose of these questions
9 is to examine your qualifications to serve as jurors in this
10 case. Just like you would for any other job that you might
11 apply for, there are qualifications that need to be met for you
12 to be able to serve on the case as a juror.

13 When I say jurors who can accord a fair and impartial
14 trial, I mean jurors who can judge this case solely on the
15 basis of the factual evidence which will be presented in court
16 during the course of trial and who can follow the instructions
17 of law which must govern your conduct in deliberations as I
18 give them to you.

19 So the questions that you will be asked today are not
20 designed to embarrass any of you and I will now ask -- just
21 introduce to you a little bit about the case. It's not a
22 substitute for evidence that will be presented later or for the
23 detailed instructions which I will provide to you as well later
24 at the close of the case. This is just to give you a flavor of
25 the case so that you can answer these questions more

1 intelligently.

2 So, this is a criminal case. It was filed by the
3 United States. I may sometimes refer to them as the
4 prosecution or as the Government.

5 The United States has filed this criminal case
6 against four individuals that are here today, Eric Parker,
7 O. Scott Drexler, Ricky Lovelien, and Steven Stewart.
8 Sometimes you will hear me refer to them by name and other
9 times you will hear me refer to them as the defendants.

10 The defendants are charged in a document called an
11 Indictment as follows:

12 The defendants are charged with multiple violations
13 of federal law arising from events occurring at or near the
14 town of Bunkerville in Clark County, Nevada, between March of
15 2014 and April of 2014. Federal law enforcement officers were
16 enforcing court orders to impound cattle belonging to
17 Cliven Bundy which were grazing unlawfully on federal public
18 lands. The Indictment charges the defendants conspired with
19 and/or aided and abetted Bundy and others to threaten and use
20 force and violence to interfere with the officers while they
21 executed their duties to enforce the court orders.

22 Now, you should clearly understand that this is just
23 a summary of the Indictment; it is not in any sense evidence.
24 The defendants have entered pleas of not guilty to these
25 charges and they are presumed by law to be innocent of the

1 charges. The defendants, even though they are accused, they
2 start the trial with a clean slate. There is no evidence that
3 has been presented or offered to you against them and the law
4 permits nothing but legal evidence to be presented in this
5 court to be considered by the jury against the accused.

6 So, I must remind you that the law permits you to
7 consider only the factual evidence presented and legally
8 admitted in court before you arrive at a verdict in the case
9 and that means that you are never to conduct any independent
10 investigation on your own at any time.

11 Now, a criminal charge consists of factual elements.
12 The Government has the burden of proving each of the elements
13 of the charges beyond a reasonable doubt. Remember, a
14 defendant in a criminal case does not have to introduce any
15 evidence or -- and they also do not have to prove their
16 innocence.

17 The defendants are presumed to be innocent, now and
18 throughout the trial, unless and until the jury is persuaded
19 that the Government has introduced evidence to establish that
20 the defendants are guilty beyond a reasonable doubt.

21 The purpose of this trial is for you to determine
22 whether the Government can meet that burden. A defendant must
23 be acquitted if the Government fails to prove the guilt beyond
24 a reasonable doubt.

25 Now, in a case, the judge and the jury have divided

1 responsibilities. It is my duty to preside over the trial and
2 decide questions of law during trial, and to instruct the jury
3 as to the law applicable to the case.

4 On the other hand, the most important duty in a
5 criminal trial is reserved for the jury. And it will be your
6 duty to judge the facts and to pass judgment upon the
7 defendants.

8 So that's something that's a little different than
9 everyone sort of forgets, I think, is that sometimes we have a
10 Bench Trial where I'm the judge of everything, but when we have
11 a Jury Trial then we split up the duties. I'm always the judge
12 of the law, but the jury now becomes the judge of the facts and
13 they are the individuals collectively who pass judgment.

14 Now, each of you is going to be asked a question, a
15 series of questions really and if the answer to any of
16 questions is yes, please go ahead and raise your hand and then
17 we'll have the microphone brought over to you so that you can
18 answer the question.

19 I am asking these questions to enable myself, the
20 Court, to determine a couple of things:

21 First, whether anyone should be excused for cause.
22 As I mentioned earlier, there are qualifications that are
23 required by statute before a person may be able to serve on a
24 jury. Justice Kennedy, on the Supreme Court, likes to refer to
25 this as the job requirements for serving on a government board.

1 There are certain requirements; you have to be over the age of
2 18 and things like that. So we'll go through those one by one
3 to make sure that everyone here is qualified.

4 Then there are other questions that are going to be
5 asked which are going to enable the attorneys for both parties
6 to determine how best to exercise their individual judgment
7 with respect to their peremptory challenges. Peremptory
8 challenges are different than the for cause challenges.
9 Peremptory just means that they can excuse a jury without
10 stating a particular reason for why they want to excuse
11 someone.

12 The parties do have a small number of peremptory
13 challenges so they may choose to ask you follow-up questions
14 when I'm done. So they won't be asking you new questions, but
15 they'll be asking you follow-up questions if there's some gray
16 areas or some things that need to be clarified.

17 So I'll ask court reporter that unless one or more of
18 the jurors raises his or her hand, the record will reflect a
19 negative response to the question.

20 So, let's go ahead and make sure that everybody is
21 seated in the right place first of all.

22 Will Juror No. 17 please raise your hand.

23 PROSPECTIVE JUROR: (Indicating).

24 THE COURT: Thank you.

25 Juror No. 84.

1 PROSPECTIVE JUROR: (Indicating).

2 THE COURT: And 103?

3 PROSPECTIVE JUROR: (Indicating).

4 THE COURT: Perfect so far.

5 Juror No. 139.

6 PROSPECTIVE JUROR: (Indicating).

7 THE COURT: Thank you.

8 Juror No. 121.

9 PROSPECTIVE JUROR: (Indicating).

10 THE COURT: Thank you.

11 Juror No. 120.

12 PROSPECTIVE JUROR: (Indicating).

13 THE COURT: Okay. And now over here. Let's see,
14 Juror No. 148.

15 PROSPECTIVE JUROR: (Indicating).

16 THE COURT: Thank you.

17 Juror No. 186.

18 PROSPECTIVE JUROR: (Indicating).

19 THE COURT: Juror No. 207.

20 PROSPECTIVE JUROR: (Indicating).

21 THE COURT: Thank you.

22 Juror No. 291.

23 PROSPECTIVE JUROR: (Indicating).

24 THE COURT: Okay. And Juror No. 227.

25 PROSPECTIVE JUROR: (Indicating).

1 THE COURT: Thank you.

2 Juror No. 296.

3 PROSPECTIVE JUROR: (Indicating).

4 THE COURT: Thank you.

5 Number 351.

6 PROSPECTIVE JUROR: (Indicating).

7 THE COURT: Yes.

8 Juror No. 480.

9 PROSPECTIVE JUROR: (Indicating).

10 THE COURT: Thank you.

11 And Juror No. 366.

12 PROSPECTIVE JUROR: (Indicating).

13 THE COURT: Okay. Great. So everyone seems to be
14 seated in the right place.

15 All right. So, first of all, if you want to -- you
16 can either just listen to me if you're -- if you're better as a
17 listener, but if you want to see, there is the screen here
18 (indicating) that also is available for you.

19 So, there are a number of different qualifications,
20 as I explained earlier, in order to be qualified to serve on a
21 jury.

22 The first one is you must be a citizen of the United
23 States.

24 Second. You must be at least 18 years of age.

25 Third. You must be able to read, write, and speak

1 and understand the English language, all of them. Read them --
2 read the English language, write, speak, and understand.

3 And Number 4. You must have resided in the state of
4 Nevada for at least one year.

5 So please raise your hand if you think that you do
6 not meet all of these four qualifications.

7 (No hands raised.)

8 All right. So that's a negative.

9 Now, there are three more qualifications.

10 Number 5 is you must not have any federal criminal
11 charges pending against you.

12 Number 6 is you must not have any prior felony
13 convictions or your rights -- your civil rights have not been
14 restored. So if you do have a prior felony conviction but your
15 civil right was stored, you're enabled to serve, but if they
16 were not restored, then you are not qualified to serve.

17 And in case you're wondering what is a felony, a
18 felony is a criminal charge punishable by more than one year in
19 prison. So, a traffic ticket generally is not. A traffic
20 ticket is generally a misdemeanor. Some kinds of traffic
21 tickets can be a felony, like your third offense at a DUI.

22 Now Number 7, the last qualification, is that you must
23 not have any mental or physical infirmities which could prevent
24 you from rendering satisfactory jury service.

25 So, it's okay if you have a bad knee or if your

1 shoulder hurts once in awhile. That's not going to prevent you
2 from rendering service. But, if you have any kind of condition
3 where maybe you have to take pain medication all the time and
4 you're going to be sleeping on and off, then you're not
5 qualified to serve.

6 So, does anyone have any questions about whether or
7 not they qualify regarding these last three qualifications?
8 Please raise your hands if you think that you do not qualify
9 based on these three.

10 All right. No one in the box, but we do have, I think
11 it's number -- Juror No. 229. Is that your number?

12 PROSPECTIVE JUROR: Yeah.

13 THE COURT: All right. So we'll bring a microphone
14 over to you.

15 PROSPECTIVE JUROR: Yes. I --

16 THE COURT: Okay.

17 PROSPECTIVE JUROR: I suffer from chronic migraines.
18 I would love to serve, but I don't know when they come up and
19 at that time -- at those times I do have to take time off even
20 from work and take my medication, get shots, and I take -- I --
21 the lighting disturbs me and noise. So, I don't know if that's
22 going to be the case because I don't know when my migraines
23 come.

24 THE COURT: Okay.

25 PROSPECTIVE JUROR: I think -- I think she had a

1 question as well.

2 THE COURT: So, light and --

3 PROSPECTIVE JUROR: The lighting and noise.

4 THE COURT: Okay. And that affects your migraines
5 and when you --

6 PROSPECTIVE JUROR: Yeah, when I get them.

7 THE COURT: And when you do get them, you have to
8 leave even if you're at work?

9 PROSPECTIVE JUROR: I even -- yeah. I even leave
10 work and they can --

11 THE COURT: One person at a time. She can't -- she
12 can't write down both of us talking --

13 PROSPECTIVE JUROR: Okay.

14 THE COURT: -- at the same time.

15 Anything else?

16 PROSPECTIVE JUROR: No.

17 THE COURT: Okay. And was there someone else who had
18 their hand up?

19 All right. Let's go ahead and pass the microphone
20 over. And what is your jury number?

21 PROSPECTIVE JUROR: 305.

22 THE COURT: 305. Thank you. Okay.

23 So which one of these qualifications do you think you
24 don't meet?

25 PROSPECTIVE JUROR: In regards to medical, I have a

1 history of shingles. I can't deal with stress, and I have all
2 my records from UMC. So I don't know if that would disqualify
3 because I get stressful easy when it come to, like, criminal
4 involvement.

5 THE COURT: All right. So, so I'm assuming -- you're
6 saying that you're -- do the shingles flare up when you are in
7 a stressful situation --

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: -- is that what you're saying?

10 PROSPECTIVE JUROR: Yes, ma'am.

11 THE COURT: Okay. And when was the last time that
12 you had a flare?

13 PROSPECTIVE JUROR: Um, well, I haven't been under
14 stress. I try to avoid stress, so, it's been about two years.

15 THE COURT: Okay. Thank you.

16 Anyone else?

17 What is your jury number?

18 PROSPECTIVE JUROR: 480.

19 THE COURT: Yes.

20 PROSPECTIVE JUROR: I do have irritable bowel as well
21 as migraines. I already have had shingles and the stress
22 activates all of those. I am on medication for all three.

23 THE COURT: Okay. Thank you.

24 Anyone else?

25 (No hands raised.)

1 All right. Let's move on.

2 Now, there are -- besides the qualifications, there
3 are other things which are referred to as excusals and these
4 are reasons why you may be excused and choose to exercise your
5 right to be excused and are not required to serve, but you're
6 still permitted to serve. So they're not like
7 qualifications -- you are permitted to serve -- but you do have
8 the option to not serve.

9 So, for example, Number 1, if you are more than 70
10 years of age, you're welcome to serve, but you're not required
11 to serve.

12 Number 2. If you have active care and custody of a
13 child or children under the age of 10 whose health or safety
14 would be jeopardized by your absence.

15 Number 3. If you provide essential care and custody
16 for an aged or infirmed person.

17 Or Number 4. If your service is so essential to the
18 operation of a business, a commercial or agricultural
19 enterprise that that enterprise would close if you were
20 required to perform jury duty.

21 So please raise your hand if you think any of these
22 excusals apply to you, and you would like to exercise them.

23 So, for example, if you are 70 years of age, but you
24 do want to serve on the jury, you don't have to raise your
25 hand. It's only if you -- if you do not want to serve on the

1 jury for one of these four reasons.

2 All right. So no one up here.

3 Your jury number please.

4 PROSPECTIVE JUROR: 175.

5 THE COURT: Yes.

6 PROSPECTIVE JUROR: I have two children and it's
7 summer break right now and my husband works full time.

8 THE COURT: Okay. And how old are the children?

9 PROSPECTIVE JUROR: 13 and 8.

10 THE COURT: And who is home with them now?

11 PROSPECTIVE JUROR: My husband. It's his day off
12 today.

13 THE COURT: Okay. All right. Thank you. And so --
14 and you are -- you would rather be at home with the kids than
15 to --

16 PROSPECTIVE JUROR: Well, yeah. Yeah.

17 THE COURT: Okay. That's fine. Thank you.

18 PROSPECTIVE JUROR: Okay.

19 THE COURT: Anyone else?

20 PROSPECTIVE JUROR: I'm 0158.

21 I have chronic muscle spasms. It's really bad. I've
22 been having them since I was 8. My leg go numb and they goes
23 all over my bodies. It comes and it go. So I don't know if
24 that will stop me from doing jury duty, but it is a very bad
25 medical problem that I do have and I've been on muscle spasm

1 pills for maybe over six years, but it's so bad that it don't
2 help me.

3 THE COURT: Does it -- do you have a diagnosis?

4 PROSPECTIVE JUROR: Yes, I do. They call it chronic
5 muscle spasms. It goes all over and my leg go numb and it's
6 really bad. It comes and it goes.

7 THE COURT: And you said you're currently taking
8 medication for this chronic muscle spasm?

9 PROSPECTIVE JUROR: I am, but I kind of like stopped
10 because it don't help me. It wakes me out my sleep. Actually,
11 I don't really sleep at all.

12 THE COURT: All right. Thank you.

13 All right. And if you'd pass the microphone behind
14 you.

15 Oh, is there someone else -- I'm sorry. I saw her
16 hand first.

17 What's your number, please?

18 PROSPECTIVE JUROR: 240.

19 THE COURT: Yes.

20 PROSPECTIVE JUROR: I have a six-year-old and a
21 one-year-old and I don't have, like, a daycare or set
22 babysitter. Right now they're with my friend.

23 THE COURT: Okay. So, would you say that the health
24 and safety of those children would be jeopardized if you needed
25 to serve?

1 PROSPECTIVE JUROR: They don't have a health
2 condition, but it's really hard to find somebody to watch them.

3 THE COURT: Okay. Thank you.

4 Was there someone else in the front row? No?

5 Okay. So moving on to the next page. There are four
6 more excusals.

7 Number 5. If you are a physician, a dentist, a
8 registered nurse, a registered pharmacist, an attorney-at-law,
9 a member of the clergy, a member of a religious order, school
10 administrator, a school teacher, or a volunteer safety
11 personnel, then you're not required to serve. You may choose
12 to serve, but you're not required.

13 Number 6. If you live more than 80 miles away one
14 way from the courthouse.

15 Number 7. If you previously served as a juror in
16 this federal court in the last two years.

17 And Number 8. If serving on this jury will cause you
18 an undue hardship or extreme inconvenience.

19 So please raise your hand if you would like to be
20 excused for any of these four reasons.

21 PROSPECTIVE JUROR: Juror No. 199.

22 THE COURT: 199. Thank you. Yes.

23 PROSPECTIVE JUROR: I'm the head of my household.

24 THE COURT: Say again.

25 PROSPECTIVE JUROR: I'm the head of household, so I

1 make all of the money in household.

2 THE COURT: And how many people are in your
3 household?

4 PROSPECTIVE JUROR: It's myself and my husband.

5 THE COURT: And so he's not working?

6 PROSPECTIVE JUROR: He's working, but not as much I
7 am. So, part time.

8 THE COURT: You're the primary earner for the family?

9 PROSPECTIVE JUROR: Correct.

10 THE COURT: So would it be a financial hardship that
11 would -- and you would like to be excused?

12 PROSPECTIVE JUROR: Correct.

13 THE COURT: All right. Anyone else?

14 Yes.

15 PROSPECTIVE JUROR: 186.

16 THE COURT: Yes, sir.

17 PROSPECTIVE JUROR: It would be a financial hardship.
18 I'm the -- my wife works, too, but I'm the main -- the
19 breadwinner and the amount that the court pays is nowhere close
20 to what I make and I just got a new house and so . . .

21 THE COURT: Okay. So you would like to be excused as
22 well?

23 PROSPECTIVE JUROR: Um-hmm.

24 THE COURT: Anyone else?

25 Teresa, up here in the front.

1 PROSPECTIVE JUROR: Juror No. 121.

2 THE COURT: 121. Yes, sir.

3 PROSPECTIVE JUROR: I meet -- I meet Number 8.

4 THE COURT: Okay. Undue hardship or extreme
5 inconvenience?

6 PROSPECTIVE JUROR: Exactly.

7 THE COURT: Okay. And what is that?

8 PROSPECTIVE JUROR: So, basically what it is, I, too,
9 am the main breadwinner in the house and basically me, I don't
10 mind serving on a jury except the fact that me serving on that
11 jury would bring hardship, financial hardship into the house as
12 far as paying the bills and stuff like that. I wouldn't be
13 making enough money to pay the bills as I would on my job.

14 THE COURT: Okay. And how many people are in your
15 household?

16 PROSPECTIVE JUROR: Two. One works part time. I
17 mean, it's one adult other than myself and two children, the
18 other one being, you know, 15 and 3 years old.

19 THE COURT: Okay. So, there's four people in your
20 household and one works part time and then you are the primary
21 earner?

22 PROSPECTIVE JUROR: Right.

23 THE COURT: Okay. Thank you.

24 PROSPECTIVE JUROR: Thank you.

25 THE COURT: Anyone else?

1 In the back. You're going to get your exercise
2 today.

3 PROSPECTIVE JUROR: Good morning. I'm Juror 366.

4 THE COURT: Yes.

5 PROSPECTIVE JUROR: And I don't know if this
6 qualifies under -- under 8, hardship.

7 THE COURT: Um-hmm.

8 PROSPECTIVE JUROR: I have a paid vacation
9 non-refundable and I leave on Saturday -- well, I'm supposed to
10 leave on Saturday.

11 THE COURT: For how long?

12 PROSPECTIVE JUROR: From the 15th to the 24th.

13 THE COURT: Okay. So one week?

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: And is this vacation non-refundable,
16 prepaid, would be --

17 PROSPECTIVE JUROR: Non-refundable. Completely paid.
18 Um-hmm.

19 THE COURT: Okay. Thank you.

20 PROSPECTIVE JUROR: Thank you.

21 THE COURT: Anyone else?

22 (No hands raised.)

23 Okay. Let's move on.

24 There are also exemptions. We talked about the
25 qualifications. We talked about the excusals. Now we're going

1 to talk about the exemptions. You are barred from jury duty --
2 which means even if you want to serve you're not allowed to
3 serve -- if you are an active member of the armed forces of the
4 United States, Number 1.

5 Number 2. If you're a member of the fire or police
6 department of any state, district, territory, possession or
7 subdivision thereof.

8 Number 3. If you are a public official of the
9 United States or of any state or local government who is
10 elected to public office, or

11 Number 4. If you are a public official of the
12 United States or a state or local government who is directly
13 appointed by a person elected to office.

14 So, please raise your hand if you believe that any of
15 those -- these four exemptions applies to you.

16 (No hands raised.)

17 All right. So that's a negative.

18 Now I'm going to introduce to you the individuals
19 that are seated at counsel table and if you'll please stand up
20 when I call your name and remember to turn around so that the
21 jurors behind you can see you as well.

22 So, first of all, the acting U.S. Attorney for Nevada
23 is Steven Myhre. In this case the Government is represented by
24 the A -- two AUSAs, which is short for Assistant U.S. Attorney.
25 Sometimes you'll just hear me call them AUSAs. Erin Creegan

1 and Nadia Ahmed.

2 Do any of the prospective jurors know the acting
3 U.S. Attorney, Mr. Myhre, or any of the other attorneys,
4 Ms. Creegan or Ms. Ahmed? Please raise your hand if you know
5 them.

6 (No hands raised.)

7 All right. How about Mr. Myhre or Ms. Creegan, if
8 you'll introduce the other folks that will be part of your
9 team.

10 MR. MYHRE: Thank you, Your Honor.

11 We have seated here FBI Special Agent Sharon Gavin
12 (indicating). Next to her is Special Agent, FBI, Joel Willis
13 (indicating), and next to him is Bureau of Land Management
14 Special Agent Chris Allen (indicating).

15 And next to him is a legal assistant with our office,
16 Mamie Ott (indicating), and at the end is Special Agent, FBI,
17 Michael Abercrombie.

18 THE COURT: Thank you. You may be seated.

19 So, does -- do any of the members of the prospective
20 jury believe that they might recognize or know any of those
21 individuals?

22 (No hands raised.)

23 All right. So the next question is, even if they're
24 not here in court for this particular case, do any of you
25 believe you might know a different employee that works for the

1 same agency for the U.S. Attorney's Office?

2 Yes. We've got one over here in the front row.

3 Number, is it 139?

4 PROSPECTIVE JUROR: My husband works as a federal --
5 as a federal security guard in this building. I don't know if
6 that means anything, but I just wanted to let you know.

7 THE COURT: Okay. Is he a CSO?

8 PROSPECTIVE JUROR: He's a security guard, yes.

9 THE COURT: Okay. Or is he with FPS.

10 PROSPECTIVE JUROR: Excuse me?

11 THE COURT: Do you know, is he with FPS or is he a
12 CSO?

13 PROSPECTIVE JUROR: He's with Northwest Security.

14 THE COURT: Say that again. I'm sorry.

15 PROSPECTIVE JUROR: Northwest Security.

16 THE COURT: Northwest Security. FPS. Okay.

17 And does he work at this particular building or --

18 PROSPECTIVE JUROR: Well, right now he's kind of
19 going to different buildings, but he has worked in this
20 building for the last two years.

21 THE COURT: Okay. Thank you.

22 Okay. Anyone else?

23 One hand in the back.

24 PROSPECTIVE JUROR: 0329.

25 My friend works in this building. Summer Rivera.

1 THE COURT: Okay. So who works in this building?

2 PROSPECTIVE JUROR: Summer Rivera.

3 THE COURT: Oh, yes. Okay. So she's related to you?

4 PROSPECTIVE JUROR: She's been my friend for over 18
5 years.

6 THE COURT: Okay. Thank you.

7 Anyone else?

8 (No hands raised.)

9 Okay. And just to clarify. So, the FPS, that's the
10 Federal Protective Service, they work for the executive branch
11 of government, but they don't work for the U.S. Attorney's
12 Office. They're in charge of protecting -- providing security
13 for the -- all federal buildings, so, to make sure no one, you
14 know, breaks a window or graffiti or anything like that, but
15 they don't have anything do with the prosecution of cases.

16 And as far as Summer Rivera, she's the jury
17 administrator for the Court. So again, she doesn't work for
18 the U.S. Attorney's Office. Her job is to contact you all and
19 let you know when it's your turn, send you the summons and then
20 find out if you're available and reschedule you as needed and
21 answer your questions and so forth and -- to assist you to make
22 sure that we have enough people here when we need them for
23 jury. So they -- so she doesn't work for the U.S. Attorney's
24 Office either.

25 All right. So, anyone else?

1 (No hands raised.)

2 Now, the defendants in this case, I said were four.
3 We'll have you stand up as I say your name. The first
4 defendant over here in the front row is Mr. Eric Parker and his
5 attorney is Jess Marchese.

6 If you'll please stand.

7 And then we also have -- actually I'm going to skip
8 over to Mr. Steve Stewart who is Number 4 on the list, and his
9 attorney, Richard Tanasi.

10 So please raise your hand if you think you are
11 familiar with either one of those two individuals.

12 (No hands raised.)

13 THE COURT: All right. You may go ahead and be
14 seated. Thank you very much.

15 MR. TANASI: Thank you.

16 MR. MARCHESE: Thank you, Your Honor.

17 THE COURT: All right. Then in the second row we
18 have Mr. -- let's see, O. Scott Drexler and his attorney,
19 Mr. Todd Leventhal, and then we also have Ms. Nona Dodson and,
20 I'm sorry, I forgot your name.

21 MR. LEVENTHAL: Tori Bakken.

22 THE COURT: Say that again.

23 MS. BAKKEN: Tori Bakken.

24 THE COURT: Tori Bakken.

25 So please raise your hand if you think that you are

1 familiar with any of these four individuals.

2 (No hands raised.)

3 That's a uniform no. Thank you.

4 And then in the last row we have Mr. Ricky Lovelien
5 and his attorney Shawn Perez.

6 So please let me know if you think that either one of
7 these two individuals is familiar to you. Someone you see at
8 the gym. Someone you see at the grocery store. Lives next
9 door. Picks up kids at the same school as yours, anything like
10 that. Any familiarity at all?

11 (No hands raised.)

12 No? Okay. Uniform no. Thank you very much.

13 So, all right. Now let's talk about the calendar in
14 this case.

15 Now, as I indicated, jury service is never
16 convenient. No one has a couple of weeks with nothing to do,
17 right? Everybody has something that they had scheduled or
18 planned to do today, tomorrow, the next day and so forth. So
19 my question is notwithstanding that fact, what I need to know
20 is whether this time frame would significantly interfere with
21 your ability.

22 The parties have estimated that this trial will take
23 approximately 8 to 12 weeks to complete. I'm going to outline
24 for you what that time frame looks like.

25 This week we will spend probably the next three days

1 or so selecting a jury. And then we will have a one-hour lunch
2 each day which will begin as soon as trial is -- the jury is
3 selected. So next week, for example, we would start at
4 9:00 a.m. with a one-hour lunch at noon and then we would
5 resume testimony until 5:00 p.m.

6 We also always take a morning bathroom break and an
7 afternoon bathroom break and that's usually -- the morning
8 break is usually around 10:00 a.m. and the afternoon break is
9 usually around 2:45, 3 o'clock, but any time that a juror needs
10 to take a break, all they have do is raise their hand and we go
11 take a break. So you're not forced to stay here if you don't
12 want to, but you do have the option to stand up and exercise
13 and get a drink or use the bathroom at least three times a day.

14 Fridays we are dark. I have over 600 other cases.
15 It's not my only case, so I have a very busy trial and we don't
16 have trial on Friday. So you will always be off on Fridays.

17 Sometimes you'll also be off on some of the other
18 days. As things come up sometimes, we have to cancel trial for
19 the morning or the afternoon or for the entire day. So I'll
20 never ask you to serve more time than what is on this calendar,
21 but sometimes you may serve less time than what's on this
22 calendar. So this calendar includes all the time that you'll
23 be required to be available, not necessarily all the time you
24 actually have to be here.

25 All right. So, here we go. First of all, hopefully

1 you can see this. I'll see if I can make it as big as I can
2 there.

3 So this is July. As you can see, today is the 10th.
4 We plan to be done today by 4:00. Likewise, tomorrow we plan
5 to be done by 4:00, and then the last day we probably will do a
6 full day till 5:00.

7 This week there will be no court on Thursday and
8 Friday.

9 Next week we'll have court Monday, Tuesday, Thursday
10 and Friday [sic] from 9:00 a.m. to 5:00 p.m. with those three
11 breaks that I told you about, morning break at 10:00, lunch
12 break at noon, afternoon break around 2:45, 3:00.

13 The following week we do start late on Wednesday and
14 Thursday, which is July 26th and 27th. We won't be starting
15 until 10:30 on those days. And again, always off on Friday.

16 And then the last day of July will be a regular 9:00
17 to 5:00 Monday.

18 Then in August, we have 9:00 to 5:00 every day except
19 Fridays. The only day that's different here is on Tuesday,
20 August 15th, we'll be starting later at 10:00 a.m., but
21 otherwise, all the rest of the days are the same.

22 All right. So I'll go back and forth on this so you
23 can take a good look at it.

24 Please raise your hand if serving on this jury is not
25 possible for you because there is something that significantly

1 would interfere with your ability to be available all those
2 dates.

3 And let's start off with the box first. Anyone in
4 the box who thinks that this timeline, these expectations of
5 the Court for your availability are something that you cannot
6 meet that is just . . .

7 PROSPECTIVE JUROR: Jury 121.

8 THE COURT: Yes.

9 PROSPECTIVE JUROR: So, at work, my -- my schedule is
10 from 12:30 to 9 o'clock. So, I'm not sure if that means
11 anything, if that means that it would make -- you know, as far
12 as the scheduling of the trial goes, but that's basically what
13 my work schedule is and because I pretty much had just started
14 this job not long ago, yeah, I have to be there.

15 THE COURT: Okay. So when you say 9 --

16 PROSPECTIVE JUROR: No. 12:30 to 9:00.

17 THE COURT: 12:00 to 9:00, is that midnight to
18 9:00 a.m. or noon to 9:00 p.m.

19 PROSPECTIVE JUROR: 12:30 p.m. to 9:00 p.m. So,
20 afternoon to evening.

21 THE COURT: Okay. Thank you.

22 PROSPECTIVE JUROR: Juror 124.

23 THE COURT: Yes.

24 PROSPECTIVE JUROR: I also am the main source of
25 income for me and my girlfriend. We both just got our own

1 apartment, but she's basically part time.

2 THE COURT: Okay.

3 Anyone else in that front row?

4 All right. Let's go to the back row.

5 PROSPECTIVE JUROR: 84.

6 THE COURT: Go ahead.

7 PROSPECTIVE JUROR: Will we receive this via e-mail
8 or receive a printout of the schedule?

9 THE COURT: Yes. You will receive a printout.

10 PROSPECTIVE JUROR: That was my question.

11 THE COURT: Yes. So you'll receive a printout that
12 you can provide to your --

13 PROSPECTIVE JUROR: I am leaving Friday, August 11th,
14 to escort my nephews back home to South Dakota. They're
15 minors, so --

16 THE COURT: What is your jury number?

17 PROSPECTIVE JUROR: Sorry. 103.

18 THE COURT: 103. Okay.

19 PROSPECTIVE JUROR: They are minors, so I'm escorting
20 them back to South Dakota. I'm supposed to be back that
21 Monday, which I think is the 14th. Yeah, the 14th, but I don't
22 have a time yet.

23 THE COURT: Okay. And when are you leaving?

24 PROSPECTIVE JUROR: August 11th, Friday.

25 THE COURT: And you said you're taking them

1 back . . .

2 PROSPECTIVE JUROR: Home to South Dakota.

3 THE COURT: Okay. And then you think you'll be back
4 on the 14th but you're not sure?

5 PROSPECTIVE JUROR: I'm supposed to be back on the
6 14th; I just don't have the time yet.

7 THE COURT: Okay. All right. Thank you.
8 Anyone in that front row?

9 PROSPECTIVE JUROR: Juror No. 230.

10 THE COURT: 230. Yes, sir.

11 PROSPECTIVE JUROR: I currently work night shift for
12 Thursday, Friday, Saturday and I also just got hired at another
13 job and I start orientation on the 17th for a day shift and the
14 orientation lasts a week, and I work a 7:00 at night to 7:00 in
15 the morning shift for the first one.

16 THE COURT: Okay.

17 PROSPECTIVE JUROR: And the second one is a day
18 shift.

19 THE COURT: And the day shift, what days would that
20 be?

21 PROSPECTIVE JUROR: My manager has not told me what
22 days those are yet.

23 THE COURT: Okay. All right. Thank you.
24 Anyone else in that row?

25 PROSPECTIVE JUROR: 240.

1 THE COURT: 240. Yes, ma'am.

2 PROSPECTIVE JUROR: I just have a thing, I don't have
3 any issue with the schedule, but I am due on September 22nd.
4 I'm 29 and a half weeks pregnant. So if it lasts more than 10
5 weeks, the trial . . .

6 (Laughter).

7 PROSPECTIVE JUROR: I don't know what's going to
8 happen.

9 THE COURT: Okay.

10 PROSPECTIVE JUROR: I don't know about you guys,
11 but . . .

12 THE COURT: And this is not -- this won't be your
13 first baby?

14 PROSPECTIVE JUROR: It's my third baby.

15 THE COURT: Third baby.

16 PROSPECTIVE JUROR: It's supposed to be a programmed
17 C-section, so probably by the beginning of September I have a
18 date set of when I'm going to have the C-section, but, yeah.

19 THE COURT: Okay. Thank you.

20 PROSPECTIVE JUROR: You're welcome.

21 THE COURT: Anyone else? Yes, sir.

22 PROSPECTIVE JUROR: Juror No. 254.

23 THE COURT: Yes.

24 PROSPECTIVE JUROR: I balance school. I go Monday,
25 Wednesday, and Thursday. I also work overnight starting from

1 10:00 p.m. till 7:00 in the morning, sometimes till 9:00 in the
2 morning and the --

3 THE COURT: I'm sorry. You work from 10:00 p.m. to
4 7:00 a.m., which days?

5 PROSPECTIVE JUROR: It's always selectively random --
6 or it's randomly selected. So it's always -- it's always . . .
7 I got say Tuesday, Wednesday, Thursday. Sometimes Monday.

8 THE COURT: Okay. And where do you go to school?

9 PROSPECTIVE JUROR: I go to CSN.

10 THE COURT: And are you in the summer program?

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: Are you supposed to be in class today at
13 what time?

14 PROSPECTIVE JUROR: I'm supposed to be there . . . at
15 least at 6:00 p.m. today.

16 THE COURT: So your class is at night. Any -- are
17 all your classes at night or just today's class?

18 PROSPECTIVE JUROR: Just today's.

19 THE COURT: Okay.

20 PROSPECTIVE JUROR: Um-hmm.

21 THE COURT: Thank you.

22 Anyone else in that row?

23 PROSPECTIVE JUROR: 284.

24 Point of clarification, Your Honor.

25 Fridays are guaranteed to be dark?

1 THE COURT: Yes.

2 PROSPECTIVE JUROR: And you made a comment about
3 Thursday of this week.

4 THE COURT: Yes.

5 PROSPECTIVE JUROR: And I wasn't able to hear exactly
6 what you said.

7 THE COURT: Oh, Thursday of this week, which is
8 July 13th, we will be dark. There will be no court on
9 Thursday, July 13th.

10 PROSPECTIVE JUROR: Thank you, Your Honor.

11 THE COURT: You're welcome.

12 PROSPECTIVE JUROR: 318.

13 THE COURT: 318. Yes.

14 PROSPECTIVE JUROR: I have travel plans starting
15 September 29th for 10 days. I don't know if that would
16 interfere or not.

17 THE COURT: Okay. Well, I certainly hope to be done
18 by then. We'll keep you in mind just in case. Thank you.

19 PROSPECTIVE JUROR: Juror No. 325.

20 THE COURT: 225.

21 PROSPECTIVE JUROR: 325.

22 THE COURT: Oh, 325. Yes.

23 PROSPECTIVE JUROR: Yes.

24 Mondays and Tuesdays are usually my days off. So, I
25 don't know yet if I'll be chosen, do I still have to work

1 Saturdays and Sundays for my employer. I don't know if . . .

2 THE COURT: So, are you saying you do want to work
3 Saturday and Sunday or you don't want to work Saturday and
4 Sundays?

5 PROSPECTIVE JUROR: My regular workdays are from
6 Wednesday through Sunday. My regular days off are Mondays and
7 Tuesdays. So, I'd be working, like, seven days a week if -- in
8 case.

9 THE COURT: And have you talked to your employer
10 about that, about if you were chosen for this trial, would he
11 or she still require you to come in?

12 PROSPECTIVE JUROR: She's still trying to communicate
13 with HR.

14 THE COURT: Okay.

15 PROSPECTIVE JUROR: She hasn't done that yet.

16 THE COURT: Okay. Thank you.

17 PROSPECTIVE JUROR: 351.

18 I have the same situation. I work graveyard, 4:00
19 to noon, but I'm off Monday, Tuesday. But Saturday Sunday,
20 those -- I work for tokes, so I don't know how it's going to
21 affect my tokes, or maybe if I have to work on the weekends and
22 then come for a trial, so I don't know the situation how it's
23 going to go.

24 THE COURT: Okay. And same thing. Have you spoken
25 with your employer about what would happen if you are chosen to

1 serve on the jury?

2 PROSPECTIVE JUROR: Because I -- all I heard is they
3 only pay me for -- to come for the jury duty, but not on -- not
4 if I'm not coming for the jury, yes.

5 THE COURT: Okay. So they will pay you if you're
6 selected to be on the jury?

7 PROSPECTIVE JUROR: Yes.

8 THE COURT: Okay.

9 PROSPECTIVE JUROR: But other than that, I have to
10 work according to the weekends, but I can always ask what my
11 option is on how they go about my tokes, but I don't think they
12 will pay me because on the weekends and then I'm off Monday,
13 Tuesday, I have no problem coming to court.

14 THE COURT: Okay.

15 PROSPECTIVE JUROR: Thank you.

16 THE COURT: Thank you. Anyone else?

17 PROSPECTIVE JUROR: Juror 405.

18 THE COURT: Yes.

19 PROSPECTIVE JUROR: I have a concern with the start
20 of school is August 14th and I have a son with autism. I'm his
21 primary caregiver/advocate/supporter and that's usually a
22 pretty busy time for us where I need the flexibility to attend
23 meetings.

24 THE COURT: Okay. So school starts August 14th for
25 your son?

1 PROSPECTIVE JUROR: Yes.

2 THE COURT: And you accompany him to school? And are
3 you there with him at school?

4 PROSPECTIVE JUROR: No, but I -- for IEP meetings,
5 start of school, orientations, the flexibility to be able to
6 go.

7 THE COURT: Are those generally before school starts
8 or like a week after school starts? Do you know yet?

9 PROSPECTIVE JUROR: Last year it was during the day,
10 during the week, and it's usually the week and the following
11 week.

12 THE COURT: Okay. All right. And they'll give you a
13 set time for when to be there?

14 PROSPECTIVE JUROR: Um, I don't usually know until
15 school starts.

16 THE COURT: Yeah. Okay. Thank you.

17 PROSPECTIVE JUROR: Number 445.

18 THE COURT: Yes.

19 PROSPECTIVE JUROR: My real only issue is with
20 tomorrow. I have two interviews tomorrow, one of them's for my
21 state licensure in the afternoon and then another one just for
22 a job that I've been kind of waiting a long time for.

23 THE COURT: Okay. That's fine. I think we'd -- I
24 think you were originally scheduled to be here tomorrow.

25 PROSPECTIVE JUROR: Well, originally today, then

1 tomorrow --

2 THE COURT: Right.

3 PROSPECTIVE JUROR: -- and then I asked to come back
4 today.

5 THE COURT: Right. We rescheduled you back --

6 PROSPECTIVE JUROR: Yeah.

7 THE COURT: -- to today because of those interviews
8 tomorrow.

9 PROSPECTIVE JUROR: Yeah.

10 THE COURT: Okay. So you won't -- generally,
11 everyone's who's here today will not need to come back
12 tomorrow, but you might need to come back on Wednesday.

13 PROSPECTIVE JUROR: Okay.

14 THE COURT: So we have a different group coming in
15 tomorrow.

16 PROSPECTIVE JUROR: Okay.

17 THE COURT: All right. Anyone else?

18 Okay. And just so you know. With a trial this long,
19 it's not unusual to have jurors that need to take an hour or
20 two off here and there for special reasons, appointments that
21 need to be kept and so, we pretty much always have at least at
22 some point, you know, Wednesday where we leave early or a
23 Tuesday where we start late so that someone can make it to
24 their doctor's appointment or their appointment with the
25 teacher or so forth. So it's not unusual to have to take off

1 an hour or two here or there to accommodate a juror and we're
2 lucky to have you, so we do try to make it convenient for you.

3 All right. So let's go on now to the case-specific
4 questions.

5 Now, you all have received the general description
6 that I read to you and you are aware that the nature of the
7 offense is it's a criminal offense and what the defendants are
8 charged with, but that's just to identify the parties and the
9 type of case that it is. Now I'm going to ask you a few other
10 additional questions.

11 These are questions that you already have answered in
12 your questionnaire, but we have additional names, so that's why
13 you'll see some of these are highlighted. So most of these
14 names you already looked at in the written jury questionnaire,
15 but there were names that were added afterwards and that's why
16 they're in yellow, but I'm going to still read all of them into
17 the record and then ask you to raise your hand if you are
18 familiar with any of these people.

19 So, Number 1 is Christine Abbott. Number 2,
20 Glen Allen; Number 3, Gary Allen; Number 4, Scott Allen;
21 Number 5, Arthur Alphin, A-l-p-h-i-n; Number 6, Patrick Apley;
22 Number 7, Michelle Arnett; Number 8, S.R. Babbitt; Number 9,
23 Andrew Badortha; Number 10, Leann Baidy; Number 11, Rick
24 Barclay; Number 12, Michael Boxx; Number 13, Eric Boik;
25 Number 14, Logan Briscoe; 15, Mike Bronson; Number 16,

1 Mark Brunk; Number 17, James Buchanen; 18, Ammon Bundy; 19,
2 Briana Bundy; 20, Cliven Bundy; 21, David Bundy; 22 Marylynn
3 Bundy; 23, Melvin Bundy; 24, Ryan Bunda; 25, Alexandra Burke;
4 26, Darrin Bushman; 27 Shannon Bushman; 28, J.S. Butler; 29,
5 Michael Caputo; Number 30, Dusty Carpenter; 31,
6 Michael Carpenter; 32, Brian Cavalier; 33 Todd Chambers; 34,
7 John Clark; Number 35, Dick Clayson; and Number 36, Tom
8 Collins.

9 Please raise your hands if you think that you know
10 any of these individuals.

11 (No hands raised.)

12 All right that's a unanimous negative.

13 Next group here on the next page.

14 Number 37, Blaine Cooper; 38, Clancy Cox; 39,
15 Sean Cox; 40, Shawna or Shaunna Cox, spelled two different ways;
16 41, Joel Crandall; 42, April Crooks; 43, Michael Dalton; 44,
17 Francesca Defazio; 45, Gerald Delemus; 46, Timothy Deppner; 47,
18 Sarah Draper; 48, Chase Duke; 49, D. Dunbar; 50, James Edge; 51,
19 Alex Ellis; 52, Brent or Brett Empey; 53, Cody Faught; 54,
20 Michele Fiore; 55, Michael Flynn; 56, Bill Freer; 57,
21 Garic Frehner; 58, Anthony Jess Garcia; 59, Jessie Garcia; 60,
22 Gill Gilbertson; 61, Clayton Gleave; 62, Dwyatt Gleave; 63,
23 Gary Gleave; 64, Stanton Gleave; 65, Waylon Gleave; 66,
24 Hugh Gourgeon; 67, Timothy Willis Guiney; 68, Israel Guzman; 69,
25 David Hahn; 70, David Hale; 71, Kris Ann Hall; 72,

1 Morgan Hamilton; 73, Susan Hardy; 74, Shane Harger; 75,
2 Ellis Hawks; 76, Douglas Heaton; 77, Klynt Heaton; 78,
3 Corey Houston; 79, Margaret Houston; 80, Tiffany Houston; 81,
4 Neil Hughes; 82, Ramona Hughes; 83, Kerbie Jackson; 84,
5 Thomas Jackson; 85, Thomas Jenkins; and 86, Bruce Jenkins --
6 Jensen. I'm sorry. Bruce Jensen.

7 Please raise your hand if you think that you know any
8 of these individuals.

9 All right. We got one in the back row. What's your
10 number?

11 PROSPECTIVE JUROR: 207.

12 THE COURT: 207.

13 PROSPECTIVE JUROR: And I don't know how detailed
14 know is know, but Michele Fiore.

15 THE COURT: So, do you know who she is or do you --

16 PROSPECTIVE JUROR: During the election she was at
17 our house several times.

18 THE COURT: All right. And have you had any
19 conversations with her not related to the election?

20 PROSPECTIVE JUROR: No. Nothing -- nothing related
21 that would interfere or have any reflection on this case.

22 THE COURT: Okay. Thank you.

23 Anyone else?

24 PROSPECTIVE JUROR: Juror 314.

25 I may know Thomas Jenkins, if he's a member of Metro.

1 THE COURT: If he's a member of what?

2 PROSPECTIVE JUROR: If he is a member of the Metro
3 police.

4 THE COURT: Is he?

5 MR. MYHRE: Yes, Your Honor.

6 THE COURT: Okay. So I'm told yes, he is. So how do
7 you know -- how do you know Mr. Jenkins.

8 PROSPECTIVE JUROR: He's a frequent customer at my
9 business.

10 THE COURT: And how frequent is frequent? Like, once
11 a year he comes to get his teeth cleaned or is it --

12 PROSPECTIVE JUROR: I own a restaurant and actually
13 he and his team come by maybe once a month or two to have a
14 meal.

15 THE COURT: And do you have conversation with him as
16 well, that's how you know his name or how do you know his name?

17 PROSPECTIVE JUROR: Well, I --

18 THE COURT: Is he wearing his --

19 PROSPECTIVE JUROR: I know him from his TV show and
20 actually he's been a frequent customer, so I've known him for a
21 number of years and . . . but we've had no conversation about
22 this case or anything like that.

23 THE COURT: Okay. Thank you.

24 Anyone else?

25 (No hands raised.)

1 Okay. Then we'll move on to the next page here.
2 Number 87 is Ken Jensen; 88, Wes Jensen; 89,
3 Charles Johnson; Number 90 is Charles also known as
4 Dick Johnson; 91, David Johnson; 92, Gayle Johnson; 93,
5 Gregory Johnson; 94, Michael Johnson; 95, Ray Johnson; 96,
6 Shanan Kelly; 97, Tyler Kelly; 98, David Keltner; 99,
7 Patricia Kent; 100, Robyn Kirkham; 101, Neil Komz; 102,
8 Robert Lawson; 103, Charlie Lee; 104, Dawn Lee; 105,
9 Patricia Lewis; 106, Dennis Michael Lynch; 107, Bailey Logue;
10 108, Joseph Lombardo; 109, Daniel Love; 110, Phil Lyman; 111,
11 James Clayton Madsen; 112, Maurice Martinez; 113, Steve Mayers;
12 114, Tara McBride; 115, Earl McEwen; 116, Mark McEwen; 117,
13 Chris McIntyre; 118, Micah McGuire; 119, Cameron Mickelson;
14 120, David Miller; 121, McKay Morgan; 122, Adam Nixon; 123,
15 Brandon Novotny; 124, Jacob Olson; 125, Alex Oneil; 126,
16 Joseph O'Shaughnessy; 127, Josh Oudman; 128, Bridgett Pappas;
17 129, Bryce Paulson; 130, Ryan Payne; 131, Terrie Petrie, 132,
18 Mark Preusch; 133, Brandon Rappala; 134, Albert Reeder; 135,
19 Kenneth Rhoades; and 136, Stewart Rhodes.

20 So please raise your hand if you think you are
21 familiar or know any of these individuals.

22 PROSPECTIVE JUROR: I don't know, but I'm familiar
23 with Stewart Rhodes.

24 THE COURT: Okay. Are you Number 175?

25 PROSPECTIVE JUROR: Oh, yeah. Sorry. 175.

1 THE COURT: So, Stewart Rhodes, you think you might
2 know?

3 PROSPECTIVE JUROR: I don't know him, but I just know
4 of him because --

5 THE COURT: Okay.

6 PROSPECTIVE JUROR: Yeah. He founded the Oath
7 Keepers.

8 THE COURT: Okay. Thank you.

9 Anyone else?

10 (No hands raised.)

11 All right. 137 is Joseph Rice; 138, Eric Richardson;
12 139, John Richter; 140, Thomas Roberts; 141, Tom Robertson;
13 142, Shelle Rubel; 143, David Russell; 144, Clawson Ruth; 145,
14 Greg Ruth; 146, Peter Santilli, Jr.; 147, Joe Santurem; 148,
15 Taylor Shields; 149, Robert Shilakis; 150, Frank Trey Schillie;
16 151, Yolanda Scronce; 152, Ruben Senatore; 153, Shannon Serena;
17 154, Frank Serena; 155, Scott Sessions; 156, Mark Seyler; 157,
18 Mary Elizabeth Siemers; 158, Chad Simpkins; 159, J.S. Skinner;
19 160, Dale Smith; 161, Erich Smith; 162, M.J. Smith; 163,
20 Brad Sones; 164, B.J. Sooper; 165, Mark Sorenson; 166,
21 Daryl Spencer; 167, Lily Spencer; 168, Rulon Spencer; 169,
22 Wendy Spencer; 170, Travis Stone; 171, Brad Stones; 172,
23 Rand Stover; 173, William Sudweeks; 174, Adam Sully; 175,
24 Toni Suminski; 176, Scott Swanson; 177, Cheryl Teerlink; 178,
25 Travis Thiede; 179, Krissy Woods Thorton; 180, Toby Tobiasson;

1 181, Kenneth Tu; 182, Danny Vanvershelden; 183, T.L. Wagner;
2 184, Ella Mae Walther; 185, Gus Warr; and 186, Scott Werber.

3 Please raise your hand if you think you're familiar
4 with any of those individuals.

5 (No hands raised.)

6 And last, we've got 187, Edwin Whitteaker; 188,
7 Louie Whitworth; 189, Joel Willis; 190, Jerry Winget; 191,
8 Yonna Winget; 192, Jason Woods; 193, Joseph Woolstenhulme; 194,
9 Luca Zanna; and 195, Orpha Zerkle.

10 Please raise your hand if you're familiar with any of
11 these individuals.

12 (No hands raised.)

13 All right. And just so you know, so these are all
14 potential witnesses. We don't intend to call -- they don't
15 all -- they're probably not all going to be called, not even,
16 you know, half of them probably, but any of one of them could be
17 called or their name could be on some document that is shown for
18 a different purpose or someone might refer to that person as
19 being with them or in the photograph or something like that. So
20 that's why we include all these names in here, but I see some of
21 you getting a little worried, so they don't -- the parties do
22 not intend to call every single one of these.

23 All right. So next I want to determine whether any of
24 you has any prior knowledge about the facts of this case or
25 believe that you have read, listened to, or viewed any news

1 discussions of this case or heard anyone else discussing the
2 case. So, if your answer is yes, I'm going to ask you to raise
3 your hand and then ask you how do you have this personal
4 knowledge. So, for example, was it from the news? Was it from
5 a friend? When did you receive this knowledge? Was it two days
6 ago? A year ago? And as a result of your knowledge, have you
7 formed an opinion as to the guilt or innocence of these
8 defendants? And then the next question is, do you have any
9 doubt as to the accuracy of the knowledge that you have
10 received? So that the -- the -- the individual that told you is
11 someone that you trust or if it's something -- a source that
12 maybe is not -- you're not sure about, and then lastly, could
13 you set aside your opinion and determine the guilt or innocence
14 of the defendant based only on the evidence.

15 So notice, I didn't ask you what you know; I'm just
16 asking you how do you know, when did you know, have you formed
17 an opinion, how accurate do you think the information was that
18 you received, and could you set aside your opinion and decide
19 the case based only on the evidence.

20 Okay. So I'm not asking you what you heard, just
21 those questions.

22 So please raise your hand if you think that you have
23 heard anything about the case.

24 Let's start with the top row here.

25 PROSPECTIVE JUROR: Yes. I remember seeing this on

1 the news a few years ago and no, I didn't form an opinion and
2 it was on the news and, yeah, I could -- I don't know much
3 about it; I just knew that all they said they were -- the cows
4 went on federal property.

5 THE COURT: I don't need to know what you know, I
6 just need to know whether you formed an opinion. So that's
7 fine.

8 PROSPECTIVE JUROR: Okay. I just heard it on the
9 news.

10 THE COURT: Okay. Thank you.

11 PROSPECTIVE JUROR: Juror 41.

12 I heard it on the news, too, when it first came out.
13 I didn't take that much interest, too much at the time, you
14 know. I was working then, now I'm not, but I have not formed
15 an opinion.

16 THE COURT: Thank you.

17 PROSPECTIVE JUROR: Juror 80.

18 THE COURT: Yes.

19 PROSPECTIVE JUROR: Saw it on the news, a blurp. I
20 haven't -- I haven't formed any opinion.

21 THE COURT: How long ago did you --

22 PROSPECTIVE JUROR: Probably when it first, like --
23 in 2014, '15. I don't even remember. It was just a blurp on
24 the news. Didn't pay any attention to it.

25 THE COURT: Okay. Thank you.

1 Anyone else in that top row?

2 PROSPECTIVE JUROR: Juror 95.

3 I recall in 2014 I -- from the news. I have not
4 formed any opinion.

5 THE COURT: Okay. Thank you.

6 Anyone in the bottom row?

7 PROSPECTIVE JUROR: Juror 120.

8 I followed it on the news as it happened and yes, I
9 have an opinion on it and yes, it would bias my deliberation.

10 THE COURT: Okay. Thank you for your honesty.

11 Anyone else?

12 PROSPECTIVE JUROR: Juror 121.

13 THE COURT: Yes.

14 PROSPECTIVE JUROR: I did see it on the news. Didn't
15 pay it too much attention when I seen it. That was back in
16 2015, a little blurp. Didn't pay no attention to it until I
17 saw it again on Facebook and -- go figure. And since then,
18 I -- I -- at first I did not form an opinion about it, like,
19 whatever, but then after I thought about it on Facebook and
20 I've seen it, then I'm like, okay, this must be something
21 serious, so . . .

22 THE COURT: And when did you see it on Facebook?

23 PROSPECTIVE JUROR: I actually saw it on Facebook
24 about six months ago.

25 THE COURT: Okay.

1 PROSPECTIVE JUROR: And --

2 THE COURT: And have you --

3 PROSPECTIVE JUROR: And then I formed an opinion
4 about it.

5 THE COURT: Formed an opinion. Okay. And is that an
6 opinion that you can set aside and base -- base your decision
7 only on the evidence?

8 PROSPECTIVE JUROR: Um . . . honestly? Yeah, I could
9 set it aside.

10 THE COURT: Okay. Thank you.

11 PROSPECTIVE JUROR: Um-hmm.

12 THE COURT: Anyone else in that front row?

13 PROSPECTIVE JUROR: Number 157.

14 I saw it on the news as well and I remember it very
15 well and yes, I did form an opinion and I still feel that same
16 way. I don't know if you want me to elaborate on that.

17 THE COURT: No.

18 Okay. So you have an opinion. Is it an opinion --
19 the knowledge that you received, do you have any doubts as to
20 the accuracy of that source?

21 PROSPECTIVE JUROR: No, because I saw the video, you
22 know. I just can't unsee it.

23 THE COURT: Okay. And could you set aside your
24 opinion and determine the guilt or innocence based only -- no?

25 PROSPECTIVE JUROR: I don't think I can. I doubt it.

1 THE COURT: Okay. Thank you.

2 PROSPECTIVE JUROR: I saw it on the news.

3 THE COURT: All right. Are you 148?

4 PROSPECTIVE JUROR: I'm sorry. Yes 148.

5 THE COURT: Thank you.

6 PROSPECTIVE JUROR: I saw it on the news in 2014 and
7 then I saw it again in 2015 and I don't watch the news a lot.
8 I said, "Is that still going on?" I did not form an opinion,
9 however.

10 THE COURT: Okay. Thank you.

11 PROSPECTIVE JUROR: 175.

12 THE COURT: Yes.

13 PROSPECTIVE JUROR: My husband actually drove us out
14 to Bunkerville to see what was happening firsthand, but I'm
15 still unclear honestly what was happening.

16 THE COURT: When you say that your husband drove you
17 there, on the day or later?

18 PROSPECTIVE JUROR: I don't even know. I still don't
19 even know what day. It was during that time.

20 THE COURT: Okay.

21 PROSPECTIVE JUROR: I thought it was like an ongoing
22 thing. I don't know. He's clear on what happened.

23 THE COURT: Okay. Thank you.

24 So do you have an opinion, have you and your husband
25 discussed this?

1 PROSPECTIVE JUROR: I don't really have an opinion.
2 I don't even really understand what happened.

3 PROSPECTIVE JUROR: 186.

4 THE COURT: Yes.

5 PROSPECTIVE JUROR: I saw it on the news. I followed
6 it on the news. I do have an opinion because my family has
7 ranches and livestock in both Utah and Nevada.

8 THE COURT: And can you set aside your opinion to
9 decide this case only on the facts presented during trial?

10 PROSPECTIVE JUROR: Um . . . no. I'm pretty -- just
11 because of the background.

12 THE COURT: Okay. Thank you.

13 Anyone else in that front row?

14 PROSPECTIVE JUROR: Number 207.

15 THE COURT: Yes.

16 PROSPECTIVE JUROR: I saw it in both national and
17 local news. Don't always believe what I see and hear on the
18 news, so I have no opinion at this point.

19 THE COURT: Thank you.

20 How about in that second row?

21 PROSPECTIVE JUROR: Number 262, and I saw it on the
22 news. My husband loves to watch the news from beginning to
23 end, 24/7, but I -- he explained to me a lot of the things that
24 was going on, but I didn't understood much about it and I
25 really don't have -- I gave him my opinion, but I don't know

1 much about it.

2 THE COURT: Okay. So you do have an opinion, but
3 it's -- can you set aside your opinion and determine this case
4 based solely on the information provided to you during trial or
5 is your opinion pretty set with your husband?

6 PROSPECTIVE JUROR: I am not sure. Like I say, I
7 didn't understand much at the time. He keep following the news
8 and he keep explaining to me, but I don't know. I just . . . I
9 don't know. I just gave him -- you know, I told him what I
10 thought, you know, but I don't know if I'm right or wrong.

11 THE COURT: Okay. So then is it fair to say that you
12 could set aside your opinion and determine the case based only
13 on the facts that we present to you at trial? Because you
14 don't know if your opinion is right or wrong, so you'll wait to
15 see what the evidence is at trial?

16 PROSPECTIVE JUROR: Possible, but I can't tell for
17 sure.

18 THE COURT: Thank you.

19 Anyone else in that row?

20 PROSPECTIVE JUROR: Number 227.

21 I have seen it on the news. I have followed the
22 case. I have worked with public lands in two different states
23 and I definitely have an opinion.

24 THE COURT: And is this an opinion you can set aside
25 and decide --

1 PROSPECTIVE JUROR: I think it might be difficult.

2 THE COURT: Thank you.

3 PROSPECTIVE JUROR: Juror No. 230.

4 THE COURT: Yes.

5 PROSPECTIVE JUROR: I actually did an assignment on
6 this in college. Our teacher did show us a bit of the video.

7 THE COURT: What class was that for?

8 PROSPECTIVE JUROR: This was actually psychology.

9 THE COURT: Oh. All right. And then did you form an
10 opinion?

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: Don't tell us what the opinion is, but
13 did you form one? Did you form an opinion?

14 PROSPECTIVE JUROR: Yes, I did.

15 THE COURT: Okay. Did you form an opinion on just
16 the psychological aspect or did you form an opinion as to
17 whether or not these defendants are guilty?

18 PROSPECTIVE JUROR: Both.

19 THE COURT: Both. Okay. And can you set aside that
20 opinion and just decide this case based on the evidence that
21 you'll see during trial?

22 PROSPECTIVE JUROR: No.

23 THE COURT: Okay. Thank you.

24 PROSPECTIVE JUROR: Juror 291.

25 THE COURT: Yes.

1 PROSPECTIVE JUROR: I have seen the video on several
2 of the news stations, local news stations, I have formed an
3 opinion and I would like to say I could set aside that, but
4 don't know for sure.

5 THE COURT: Thank you.

6 PROSPECTIVE JUROR: Juror 318.

7 I saw it on the news, just like once or twice. I
8 don't even know what it's about. Just totally being honest.

9 PROSPECTIVE JUROR: Jury [sic] Number 398.

10 THE COURT: Yes.

11 PROSPECTIVE JUROR: I did follow it on the news and I
12 suppose I have an opinion, but I could set aside that opinion,
13 depending on the evidence.

14 PROSPECTIVE JUROR: 397.

15 THE COURT: Oh, I'm sorry. I didn't get your number.

16 PROSPECTIVE JUROR: 397.

17 THE COURT: 397. Thank you.

18 PROSPECTIVE JUROR: I watch the news pretty regularly
19 and I saw the video as it was played. I don't know that I have
20 an opinion.

21 THE COURT: You do or do not have an opinion?

22 PROSPECTIVE JUROR: I don't think I do.

23 THE COURT: Thank you.

24 PROSPECTIVE JUROR: Number 388.

25 I have a vague remembrance of when this happened.

1 Don't really recall the names involved or what the issues were
2 back then. I do, however -- I mean, you have refreshed my
3 memory because of what was presented to us as prospective
4 jurors, but other than that, I have no opinion hardly. I know
5 none of the facts in the case. So, just being honest here.

6 THE COURT: Okay. Thank you.

7 PROSPECTIVE JUROR: Juror 376.

8 THE COURT: I'm sorry. 376?

9 PROSPECTIVE JUROR: Yeah.

10 Okay. My stepdad briefly explained it to me. I have
11 no opinion on it. I just needed some -- I was confused. So,
12 he explained it to me a little bit, but yeah.

13 THE COURT: Anyone else?

14 PROSPECTIVE JUROR: 480.

15 I followed the case from the beginning. Discussed it
16 with people and I have formed a very strong opinion and no, I
17 could not set that aside.

18 THE COURT: Okay. All right. Thank you.

19 Anyone else?

20 (No hands raised.)

21 All right. So, it's 11:51, but I'm told that there's
22 a couple of folks already who are asking for a break. So we're
23 going to go ahead and take an early lunch break. It's 11:50,
24 so we'll plan to be back here at 12:50, around that --
25 actually, why don't we just give them 1 o'clock because . . .

1 yeah, there's a lot of people. So we'll go ahead and take a
2 break until 1 o'clock.

3 I do remind you during this break, please do not talk
4 to anyone about the case, not even the fellow jurors that are
5 here who have already said that they saw something on the news.
6 If you're one of those folks who didn't see it on the news,
7 don't ask one of the other people, "So, what did you see on the
8 news?" So don't talk about this case at all to each other and
9 please do not talk about the attorneys or the process or
10 anything related to this case. So you can talk about other
11 things, the weather, the fires, did -- you know, so what
12 classes are you taking at CSN, you know, anything else like
13 that, but don't talk about this case at all, please, during the
14 break.

15 We'll have you back here at 1 o'clock. We're going
16 to stand for you because you are the judge of the . . . okay.

17 Aaron's telling me 1:15 because there's so many of
18 you and the coffee shop downstairs is small and you might need
19 to go somewhere else. So we'll plan to be back here at 1:15 so
20 everyone has a chance to get some lunch, if you didn't bring
21 your own lunch, and use the restroom.

22 When you come back in, take a good look at where
23 you're sitting and who's to the left and who's to the right of
24 you because that's where you'll be sitting when you come back.
25 And I'll also ask you, when you come back, to raise your hand

1 and tell me if the person next to you is missing, the person
2 who was there before. So also take a good look at them so you
3 can tell me later if we're missing someone.

4 All right. So, thank you again for your time. We'll
5 have you come back here at 1:15.

6 Mike will help you out.

7 (Venire panel excused from courtroom at 11:53 a.m.)

8 THE COURT: All right. You may be seated.

9 We're still on the record. The jury has left. I
10 just want to remind you the only three people that we've
11 excused so far are Number 38, Number 213, and Number 398. So
12 during the lunch break, if you want to get together and see if
13 there's anyone else that you agree should be excused, that
14 means we don't need to spend anymore time on them, I'll excuse
15 them when we come back from lunch and that way the attorney
16 questions can focus on the people who actually are potentially
17 going to be jurors in the case.

18 Okay? We'll see you back here at 1:15.

19 COURTROOM ADMINISTRATOR: All rise.

20 Off record.

21 (Recess was taken at 11:55 a.m.)

22 (Outside the presence of the venire panel at 1:27 p.m.):

23 COURTROOM ADMINISTRATOR: All rise.

24 THE COURT: Thank you. You may be seated.

25 All right. So we're back from lunch. Everyone's

1 back.

2 When we left, I reminded you that we'd only excused
3 three people so far so you'd have a chance to compare your
4 notes. Now that we've heard from everyone, I'm going to turn
5 it over to the attorneys next. So, is there anyone else that
6 the parties have agreed should be excused?

7 MS. CREEGAN: Your Honor, all parties have agreed to
8 excuse nine jurors and there's agreement between the Government
9 and counsel for Lovelien to excuse another 16.

10 THE COURT: All right. So, let's just start from the
11 top.

12 MS. CREEGAN: And all parties agree to eliminate 121,
13 157, 227, 230, 262, 291, 351, 366, and 480.

14 THE COURT: Okay. And what was the second half of --

15 MS. CREEGAN: We have 16 that the Government and
16 defendant Lovelien have agreed to eliminate.

17 THE COURT: I'm sorry. So, why are there two
18 different sets of numbers? I'm not following you.

19 MS. CREEGAN: There's one set that's agreed between
20 all parties, counsel for all four defendants and one that's
21 only agreed between the Government and defendant Lovelien.

22 THE COURT: Oh, I see. Okay. So just by -- between
23 one. All right. So the other three defendants do not agree.

24 Okay. So what's the first one?

25 MS. CREEGAN: 17.

1 THE COURT: All right. And what is the objection by
2 the other defendants to Number 17?

3 MR. TANASI: Your Honor, with respect to 17, is that
4 who we're -- I apologize.

5 I think there -- again, I guess I would just want to
6 know the Government's position in trying to strike the juror
7 first, but from my understanding in reading the questionnaires,
8 you know, I think they reference they know the Bundys, but I
9 don't know if there's anything more than that so I think we
10 need more questioning.

11 THE COURT: Well, the response to the questionnaire
12 was the person requests to be excused. Knows the Bundys
13 personally. Not sure she could be unbiased, and is not willing
14 to serve.

15 MS. CREEGAN: And I'll also add, Your Honor, that
16 person didn't admit in the courtroom that they knew Cliven and
17 the Hughes and they also then mingled with supporters of the
18 defendants out in the hallway.

19 THE COURT: They did what in the hallway?

20 MS. CREEGAN: They mingled with supporters for the
21 defendants out in the hallway.

22 MR. TANASI: Your Honor, I'm not necessarily calling
23 Ms. Creegan a liar, but I don't know that we can just take her
24 word for who she's seen mingling or maybe just waiting in line
25 to get into a busy courtroom.

1 MS. CREEGAN: This was on the way out that they
2 stopped to talk to them.

3 THE COURT: All right. And so which one is the next
4 juror that the Government and Mr. Lovelien agree?

5 MS. CREEGAN: 41.

6 THE COURT: All right. That's the one that said, in
7 response to the question of whether there's any reason that
8 they can think of that they cannot or should not serve, the
9 response given in the questionnaire was that there was no
10 deaths; leave it alone.

11 MS. CREEGAN: That's correct.

12 THE COURT: All right. And what's the objection to
13 Number 41?

14 MR. TANASI: Again, Your Honor, their response is,
15 you know, there's no deaths, leave it alone, but ultimately can
16 they be fair and impartial in this case. I think we just would
17 need more questions to get to that answer.

18 THE COURT: All right. Next one.

19 MS. CREEGAN: 120. This is the juror that indicated
20 that they could not be fair and said in their questionnaire
21 that they would vote not guilty no matter what.

22 THE COURT: All right. And here in court said that
23 they did follow and they've formed an opinion and couldn't set
24 it aside and was definitely biased.

25 What is your objection to 120?

1 MR. LEVENTHAL: Your Honor, just -- 120 never was
2 asked by the Court whether or not this person could set their
3 opinion aside. I think the second person was asked that, but
4 not -- not 120.

5 MS. CREEGAN: I show that 120 did answer that
6 question and said they could not set it aside.

7 THE COURT: Yeah. I wrote it down.

8 MR. TANASI: Your Honor, we'd -- we also had the same
9 note, that that second part of the question wasn't asked of
10 that juror.

11 THE COURT: All right. And what's the next one?

12 MS. CREEGAN: 124.

13 THE COURT: All right. So, 124 is the one who thinks
14 they're already guilty based on the summary, a hard time paying
15 attention, is moving into a new building -- I'm sorry, new -- I
16 can't read my own handwriting.

17 MR. TANASI: Your Honor, we'd agree to strike that,
18 Number 124. I think there was a financial hardship as well.

19 THE COURT: Yeah. He said -- is it he or she?
20 Primary -- primary earner, girlfriend does work but only part
21 time, and they have a new apartment. That's what it is,
22 apartment. I was thinking home but I couldn't figure out how
23 that . . . a-p-t, apartment.

24 So you agree to strike Number 124?

25 MR. TANASI: Yes, Your Honor.

1 MR. LEVENTHAL: Yes, Your Honor.

2 THE COURT: And Mr. Marchese, any objection to 124?

3 MR. MARCHESE: No. I'd join, Your Honor.

4 THE COURT: All right. So 124 will also be excused.
5 What's the next one?

6 MS. CREEGAN: Your Honor, I see that I skipped
7 over -- Lovelien and the Government also agreed to 103.

8 THE COURT: Um-hmm.

9 All right. So she was the one who said she was
10 taking two minors back home to South Dakota on the 11th and
11 plans to be back on the 14th but wasn't sure what time.

12 MS. CREEGAN: That's correct.

13 THE COURT: Well, the 11th is a Friday, so we're dark
14 that day anyway, and the 14th is a Monday. So depending on
15 when she comes back, if she is ultimately on the jury, the most
16 we would be missing is one day with maybe half a day. Is there
17 any other reason?

18 MS. CREEGAN: I also have that she appears to say
19 that she has a personal friendship with Mace Yampolsky who
20 represents another defendant in this case.

21 THE COURT: Just that she recognizes Mace -- oh, is
22 this the one who said that Mace did some work?

23 MS. CREEGAN: He represented her son and she says
24 he's a friend.

25 THE COURT: Right. Okay.

1 Any objection?

2 MR. TANASI: Your Honor, yes. I think there's -- you
3 know, again, just -- Mr. Yampolsky is not in the courtroom.
4 His client's not in the courtroom. Just having a personal
5 friendship with another lawyer who's in the case but not in
6 this courtroom, I think, would at least warrant some more
7 questioning.

8 She's -- I think she studied criminal justice as
9 well, you know, so I think she probably understands the
10 importance of being a juror and the importance of setting aside
11 her beliefs and being fair and impartial and following the law.
12 So I think maybe at least further questioning could reveal
13 that.

14 MR. LEVENTHAL: And I would agree -- I'm sorry.

15 MR. TANASI: No.

16 MR. LEVENTHAL: I would agree. He may have done
17 really bad work for her. We don't know. And so, I mean it may
18 go -- it may cut both ways. I don't know if she has an opinion
19 or whether she can set that aside. So, maybe just some
20 follow-up questions with her before we just remove her.

21 THE COURT: Well, she said he was a personal friend.
22 So I don't think that they would have any -- she would have any
23 animosity, but we could follow-up on that.

24 Next one?

25 MS. CREEGAN: 175.

1 THE COURT: All right. What's the objection to 175
2 being excused?

3 She has two kids, one's under the age of 10. So that
4 qualifies for an exemption.

5 Is there an objection to 175?

6 MR. TANASI: Yes, Your Honor.

7 Again, I'm not sure what the Government's position in
8 seeking her removal is, but I -- we would object. I mean,
9 she's -- I'm guessing because there was reference to
10 Stewart Rhodes, but I think she was -- at least the note I have
11 is that she doesn't have an opinion, she doesn't really
12 understand. So, just because, you know, she may know
13 Stewart Rhodes, who's not a defendant in this case, I don't
14 think that that would warrant a cause for -- strike for cause.

15 THE COURT: All right. Well, she said she's got a
16 child who's under 10, which is the 8-year-old and then she also
17 has a second child, the 13-year-old. So I'll excuse
18 Number 175. This is a long trial over summer vacation for
19 someone to not be at home with a child under 10.

20 Next one?

21 MS. CREEGAN: Juror 186.

22 THE COURT: All right. Any objection to excusing
23 186?

24 MR. TANASI: Your Honor, we'll submit it.

25 THE COURT: All right. So, I'll excuse Number 186.

1 Next one?

2 MS. CREEGAN: Juror 229.

3 THE COURT: That's the one with the migraines. Any
4 objection to excusing 229?

5 MR. MARCHESE: What were the grounds?

6 THE COURT: She has the migraines. She asked to be
7 excused.

8 MR. TANASI: Your Honor, I -- no, you know,
9 disrespect to her medical condition, but whether she can be
10 fair and impartial, I think, is still a question yet to be
11 determined and also, whether she can sit through the trial or
12 not in some capacity given those migraines may be something to
13 still delve into.

14 THE COURT: Well, she's stated she had the migraines
15 when she gets stressed out and she asked to be excused. So
16 that goes to qualification. If she has a physical infirmity,
17 that's when I asked the question and that's when she offered
18 that answer. So, I'll go ahead and excuse 229.

19 Next one?

20 MS. CREEGAN: 240.

21 THE COURT: Another one who has -- this one actually
22 has both a one-year-old and a six-year-old at home with no
23 daycare, and her due date is September 22nd.

24 Any objection to excusing Number 240?

25 MR. TANASI: No objection, Your Honor.

1 MR. LEVENTHAL: No objection.

2 THE COURT: So 240 is excused.

3 Next?

4 MS. CREEGAN: 254.

5 THE COURT: 254 is the one who has school on Monday,
6 Wednesday, and Thursday at CSN at night and then works,
7 10:00 p.m. to 7:00 a.m., Tuesday through Thursday.

8 Any objection to excusing 254?

9 MR. TANASI: Court's indulgence.

10 (Counsel conferring.)

11 MR. TANASI: No objection from Mr. Stewart,
12 Your Honor.

13 MR. LEVENTHAL: No objection.

14 THE COURT: Mr. Marchese, any objection?

15 MR. MARCHESE: No, Your Honor.

16 THE COURT: He's also the one that said on his
17 questionnaire that he applied with the Las Vegas Metropolitan
18 Police Department and that if accepted, the trial would
19 interfere with his training.

20 All right. So 254 will be excused.

21 Next?

22 MS. CREEGAN: 301.

23 THE COURT: Any objection to 301?

24 MR. TANASI: Just would like to know the grounds,
25 Your Honor.

1 THE COURT: Questionnaire response was that she has
2 physical impairment regarding qualifications to serve, two neck
3 surgeries, neck stiffens if sitting for too long. Not willing
4 to serve as a juror because waste of taxpayer money.

5 Any objection to 301?

6 MR. TANASI: I think we -- I think we just need more
7 questioning.

8 THE COURT: All right. I'm going to excuse 301.

9 Next one?

10 MS. CREEGAN: 305.

11 THE COURT: 305 has the shingles. Do you want to
12 excuse her?

13 MS. CREEGAN: Yes, Your Honor.

14 THE COURT: All right. Any objection to 305?

15 MR. LEVENTHAL: No objection.

16 MR. TANASI: No objection, Your Honor.

17 MR. MARCHESE: Parker submits.

18 THE COURT: Next one?

19 MS. CREEGAN: 325.

20 THE COURT: All right. So, 325 said he had a
21 hardship because he works Saturday and Sunday and so if he is
22 chosen to sit on the trial, he would have to be here Monday
23 through Thursday and then work Friday, Saturday and Sunday.
24 He's not the one who said he would get paid, though. That's a
25 different person.

1 I'm sort of on the fence on that one. Does the --
2 what's your position for 325? Do you want to ask more
3 questions or just let him go?

4 MR. TANASI: Again, I don't -- did he indicate that
5 it would -- there's an interference with his work? That was
6 the issue?

7 THE COURT: Yes. Because he would be -- well, the
8 interference wasn't with his work, the interference is with his
9 sleep and ability to get some rest because the days we're not
10 in court he said he would have to be working because those are
11 regular workdays for him. So, I think his inconvenience was
12 that the days he would get -- we would be here were his regular
13 days off.

14 MR. TANASI: Right.

15 THE COURT: So he would be working, he says, all
16 seven days, counting the jury service as a workday.

17 MR. TANASI: I would -- I guess I would say that we
18 would just want to ask some more questions into whether he can
19 somehow juggle all that. If he can't, then I guess revisit at
20 that point but . . .

21 THE COURT: Yeah. Okay. So we'll hold off on 325.

22 MS. CREEGAN: 339.

23 THE COURT: Any objection to 339 being excused?

24 MR. TANASI: Again, Your Honor, I just ask for the
25 grounds.

1 THE COURT: The questionnaire responses?

2 MS. CREEGAN: That's correct, Your Honor. On the
3 questionnaire the person indicates that they believe that local
4 law should supersede federal law, that -- and they referred to
5 Ruby Ridge and Waco guiding some of their decision-making about
6 how to view the government.

7 MR. TANASI: Again, Your Honor, I think further
8 questioning could delve into whether or not if he's told by
9 Your Honor that he needs in this case to follow federal law,
10 can he do so.

11 THE COURT: What's the next one?

12 MS. CREEGAN: I think the final one is 318.

13 THE COURT: 318?

14 MS. CREEGAN: That's correct.

15 THE COURT: All right. That was the woman who had a
16 trip planned for 10 days starting in September, September 29th
17 I think I wrote down.

18 MS. CREEGAN: That's correct.

19 THE COURT: My handwriting gets worse as the -- when
20 they talk fast.

21 Okay. What's the defense position on Number 318?

22 MR. TANASI: Your Honor, she's indicated she believes
23 in -- and I might have it paraphrased but -- enforcing laws,
24 immigration laws, she does touch on immigration laws. She's
25 seen the case on the news, but she doesn't know what it's

1 about. So, I think at the very least, more questioning into
2 whether she can be fair and impartial is warranted.

3 THE COURT: Okay. So, I'm -- so when they come back,
4 they'll sit down, we'll make sure everybody's here and then I
5 will excuse Number 38, 121, 124, 157, 175, 186, 213, 227, 229,
6 230, 240, 254, 262, 291, 301, 305, 351, 366, and 398, and 480.

7 MR. TANASI: Your Honor, can we be heard just on one
8 defense Motion to Strike?

9 THE COURT: Yes. Which one is that?

10 MR. LEVENTHAL: Actually two.

11 MR. TANASI: Or, I'm sorry, two. I'll handle the
12 first one. It's . . .

13 MR. LEVENTHAL: 158.

14 MR. TANASI: I don't have that one. I've got the --

15 MR. LEVENTHAL: 158, Your Honor.

16 MR. TANASI: Okay.

17 THE COURT: 158, yes.

18 MR. LEVENTHAL: She indicated that she has muscle
19 spasm quite a bit. Her legs give out, comes and goes. She's
20 on quite a bit of medicine.

21 THE COURT: Well, she said she was prescribed
22 medicine, but she doesn't take it anymore because it doesn't
23 help and it just keeps her up at night.

24 MR. LEVENTHAL: Right.

25 THE COURT: I mean, medication. She did say she had

1 chronic -- she said she had muscle spasm and I asked her what
2 the diagnosis was and she said chronic muscle spasm.

3 What's the Government's position on 158?

4 MS. CREEGAN: I think we'd like to question her about
5 whether that would distract from her focus or requires breaks.
6 I'm not sure if -- I apologize. She did answer that, but I did
7 not catch whether she said it would distract her or cause her
8 to take frequent breaks.

9 THE COURT: Okay. We can follow-up with her.

10 MR. LEVENTHAL: Also, Your Honor, 214.

11 MR. TANASI: 314.

12 MR. LEVENTHAL: He indicated that he owns a
13 restaurant and that he knows personally Jenkins -- or 314. I
14 apologize.

15 THE COURT: 314.

16 MR. LEVENTHAL: 314.

17 He knows Jenkins. As a matter of fact, he spoke --
18 I'm sorry. He spoke to Jenkins during the first trial about
19 this. They would come in -- Sergeant Jenkins would come to his
20 restaurant, I believe he said once a week or once a month,
21 twice a week, but he has spoken to him about it and I don't
22 believe he indicated that that would -- he could set side
23 anything he has -- Jenkins does go to his restaurant. So with
24 that, I would ask that he be stricken for cause.

25 THE COURT: It wasn't twice per week; I wrote down

1 once per month approximately, but for years. And that he was a
2 customer -- that Mr. Jenkins was a customer of the juror who
3 owns a restaurant or works at a restaurant, has some
4 relationship to a restaurant where Mr. Jenkins dines.

5 MS. CREEGAN: And, Your Honor, the Government can
6 represent that we don't intend to call Sergeant Jenkins so we
7 don't think that that will be a conflict.

8 THE COURT: Okay. So we can follow-up with
9 Number 314.

10 MS. CREEGAN: And may I ask, did Your Honor rule on
11 17, 41, and 120?

12 THE COURT: Number 17 in the questionnaire did ask to
13 be excused and said -- is it a he or a she?

14 MS. CREEGAN: It's a she.

15 THE COURT: She was not willing to serve and knew the
16 Bundys personally and was not sure if she could be unbiased.
17 I'll go ahead and excuse Number 17.

18 What was the other one you asked me about?

19 MS. CREEGAN: 41 and 120.

20 THE COURT: All right. So 41 said she heard about
21 this years ago, but did not form an opinion or have any
22 interest in it. And then the questionnaire said -- as to -- in
23 response to the question about whether there's any reason that
24 she cannot or should not serve as a juror in this case, the
25 response was, "There was no deaths; leave it alone."

1 MS. CREEGAN: That's correct.

2 THE COURT: So, I'm going allow follow-up on that
3 because I'm not really sure what she means by that, if she just
4 is so uninterested in the past and now that she's not going to
5 pay attention to the trial then that would be a problem, but,
6 that's not clear. So that was Number . . .

7 MS. CREEGAN: 120.

8 THE COURT: 41?

9 MR. LEVENTHAL: 41.

10 THE COURT: So what's the next one? 120?

11 MS. CREEGAN: 120, yes. I'm sorry.

12 THE COURT: So that was the one that said he did have
13 an opinion that -- and he was biased and the defense argument
14 is that they want to ask him whether or not he can set aside
15 that opinion.

16 MS. CREEGAN: And he said in his questionnaire he
17 would vote not guilty no matter what.

18 THE COURT: Right, and the questionnaire says
19 extremely biased or will not -- will vote automatically for not
20 guilty no matter what.

21 All right. So I'll excuse Number 120.

22 All right. Let's go ahead and stand for the jury and
23 bring them back in. I think we're losing about half of them.

24 (Venire panel returned to courtroom at 1:53 p.m.)

25 THE COURT: All right. Everyone may be seated.

1 We're joined by the jury now and I'll ask everyone to
2 please look to the left, look to the right and please raise your
3 hand if there's someone missing now that was sitting there
4 before we broke for lunch.

5 (No hands raised.)

6 Okay. So it looks like no -- no hands are raised.
7 Everybody came back and I'm looking around the room and I think
8 I see everyone has returned as well.

9 All right. So, before I hand it over to the
10 attorneys to ask their follow-up questions, I'm going to excuse
11 quite a few people. So when I say your number, I do thank and
12 excuse you for your time. I thank you for your time and I
13 excuse you from service. This does satisfy your jury service.
14 You shouldn't be called again for two years, but if you are,
15 you need to let them know that you already -- you know, if you
16 don't want to serve again, you'll need to let them know that
17 you were already excused once and that you were in court and
18 that you were excused so that they know that you don't need to
19 come back if you don't want to.

20 All right. So the -- and please look around and make
21 sure you've got your water bottles and sweaters and bags or
22 anything else that you brought in with you.

23 So we're thanking and excusing Juror No. 17;
24 Juror No. 38; Juror No. 120; Juror 121; and 124. Thank you all
25 very much.

1 PROSPECTIVE JUROR: Thank you.

2 (Prospective jurors excused.)

3 THE COURT: Next I'm going to excuse Juror No. 157;
4 175; 186; 213; 227; 229; Number 230; 240; 254; and 262. Thank
5 you all very much as well.

6 (Prospective jurors excused.)

7 All right. And then I'm also excusing Juror No. 291;
8 301; 305; 351; 366; 398; and Juror No. 480. Thank you all very
9 much as well.

10 (Prospective jurors excused.)

11 All right. Now we're going to begin with the
12 Government and some follow-up questions for the panel.

13 MS. CREEGAN: And, Your Honor, I'd like to ask if I
14 can reserve all but 10 minutes of my time.

15 THE COURT: Yes, you may.

16 MS. CREEGAN: Thank you.

17 Good afternoon, ladies and gentlemen. Thank you very
18 much for coming in for jury duty, coming in and answering these
19 questions.

20 Since every two years I am where you are --

21 THE COURT: Can you speak up? I'm not sure -- can
22 everyone hear her?

23 VENIRE PANEL: No.

24 MS. CREEGAN: I always feel like I'm yelling so I'm
25 sorry if I'm yelling at you or if I'm not loud enough, but

1 thank you very much, thank you very much for coming in for jury
2 duty.

3 I have some follow-up questions for you and because
4 there's so many of you, what I will ask you to do is the same
5 as with the judge's questions, to please raise your hand if you
6 have a response. I know that that's not easy and some of us
7 are a little less eager to talk in public than others, but I'd
8 really appreciate it and I thank you very much.

9 The first questions that I want to ask you relate to
10 some of the instructions that you may be getting in this case
11 and I want to ask you if you think you can follow them and if
12 you think you understand them. If you don't, please raise your
13 hand and we'll talk about it.

14 So the first question I want to ask you is actually
15 similar to a question that you saw on your questionnaire, and I
16 think I may have worded that question a little confusingly so I
17 wasn't able to tell what your response meant. So one of the
18 questions that you may remember was if you find a defendant
19 guilty of one of the crimes of violence, you'll be asked to
20 find if they're also guilty of using a firearm in the
21 commission of that crime.

22 MR. MARCHESE: Objection. Calls for a legal
23 conclusion.

24 MR. TANASI: Stewart joins.

25 MR. LEVENTHAL: Drexler joins.

1 MR. PEREZ: Lovelien joins.

2 MS. CREEGAN: These are from the stipulated jury
3 instructions.

4 THE COURT: All right. You want -- so if you want to
5 just stick to the question that you asked in the questionnaire
6 and rephrase it, then that's fine.

7 MS. CREEGAN: So, if you are ultimately instructed
8 that you are to find there's a separate crime, do you have any
9 objection to finding a defendant -- if the evidence supports
10 it -- guilty of a separate crime?

11 THE COURT: Wait. Okay. Let's go back.

12 So, the question in the jury questionnaire that
13 you're referring to . . . do you remember what number that was?
14 It's towards the end, right?

15 Okay. It's Question No. 31 in the questionnaire.
16 "Do you believe that the federal government should not have the
17 authority to prohibit a person from using and carrying a
18 firearm in relation to a crime of violence?" So I think the
19 problem was it sort of has a double negative or something in
20 there where it's not quite clear what the question is. So if
21 you want to rephrase that question and ask it again, then that
22 would be appropriate. Otherwise, we're not going to get into
23 didactic questions. We're just doing probative questions,
24 so . . . you can go ahead and fix that to make it clear for the
25 jurors that may not have understood that the first time.

1 MS. CREEGAN: Okay. And I think that's exactly it.
2 There is a double negative in there that might make it a little
3 bit confusing. So, does anybody have any objection, if they're
4 instructed to do so, with finding a defendant guilty of a
5 separate crime if the evidence proves that they used a firearm
6 in the commission of a crime? And you can also raise your hand
7 if you don't understand my question.

8 PROSPECTIVE JUROR: We can't hear you.

9 MS. CREEGAN: Is that better?

10 VENIRE PANEL: Yes.

11 MS. CREEGAN: Okay. Thank you very much.

12 So, my question was, and this is a question you've
13 seen in your jury questionnaire but it might have been a double
14 negative in it, is, do you have any objection with finding a
15 defendant, if the evidence supports it, guilty of a separate
16 crime of using a firearm in the commission of an offense, in
17 addition to the actual offense? Does anybody think that they
18 would object to that?

19 PROSPECTIVE JUROR: Not that I'm going to object, but
20 I'm still confused.

21 THE COURT: Okay. I think the question was about the
22 regulatory authority. Does anyone believe the federal
23 government should not have the ability to prohibit firearms
24 when they're used in the commission of a crime?

25 (No hands raised.)

1 MS. CREEGAN: Is that -- nobody does have an issue
2 with that?

3 PROSPECTIVE JUROR: I'm not sure what the judge just
4 said.

5 THE COURT: Okay.

6 PROSPECTIVE JUROR: It's very difficult to hear back
7 here.

8 MS. CREEGAN: So, what the judge was just saying --
9 and can you hear me, sir?

10 PROSPECTIVE JUROR: That's much better.

11 MS. CREEGAN: Okay. Thank you.

12 Is do you object to the Government being able to make
13 that a crime and have that be a separate offense that you would
14 find the defendant guilty of?

15 Can everyone hear me okay?

16 If you do have a comment, could you please raise your
17 hand and we'll bring you the microphone.

18 PROSPECTIVE JUROR: I'm just sure I'm
19 misunderstanding. Is it okay if the federal government
20 prohibits the use of a firearm?

21 MS. CREEGAN: I think that's exactly it, ma'am.

22 PROSPECTIVE JUROR: If it was used, not of the crime
23 that they were in trouble for? Or for what purpose?

24 MS. CREEGAN: If -- there's going to be two counts;
25 one is going to be the crime itself --

1 PROSPECTIVE JUROR: Okay.

2 MS. CREEGAN: -- and one's going to be using the
3 firearm in the commission of a crime. And would you have any
4 objection to making that separate decision about whether to
5 convict on that separate crime, that that shouldn't be a crime
6 in and of itself?

7 PROSPECTIVE JUROR: I would have a problem with
8 separating that.

9 MS. CREEGAN: Okay. I'm sorry. What's your juror
10 number, ma'am?

11 PROSPECTIVE JUROR: Oh, I'm sorry. 148.

12 MS. CREEGAN: 148. Thank you, ma'am.

13 Can everyone hear me better? Okay. Thank you.

14 And in a similar vein, does anybody have an objection
15 to making it a crime to brandish a firearm in the commission of
16 an offense, which is to show it?

17 MR. MARCHESE: Objection. Calling for legal
18 conclusion.

19 THE COURT: Sustained.

20 MS. CREEGAN: Would anyone here judge a crime
21 differently if they knew that the victim of the crime was a
22 police officer? Would that change your standard for how you
23 evaluate whether the crime occurred?

24 PROSPECTIVE JUROR: 405.

25 Um . . . I have a long line of family that have been

1 policemen, corrections officers. I think I have certain bias
2 in that regard.

3 MS. CREEGAN: And, I'm sorry, ma'am. Now I feel
4 badly because I can't hear you too well. Is your bias for or
5 against law enforcement officers?

6 PROSPECTIVE JUROR: For.

7 MS. CREEGAN: Okay. Thank you very much.

8 I do want to ask you one general question. Since
9 every two years I am exactly where you are, one of the
10 questions that the lawyer asks is, do you feel you can be
11 impartial. That's a question that the judge has asked you
12 today and I know that you've all answered that honestly and I
13 think that that's wonderful how honest people have been. But I
14 want to ask you a slightly different question from that, which
15 is not whether you can be impartial or not, because we've
16 already talked about that. I want to talk about whether you
17 think there is anything in your experience, in your life
18 experience, in your beliefs that you think could affect your
19 service as a juror. I want to ask that question, I think it's
20 a very difficult question to answer because we all view the
21 world in a certain way and we can't really separate the things
22 that we see from the way that we view the world, but I ask you
23 all to sort of try to make that assessment, not that it would
24 make you impartial, but just that it's maybe something that the
25 parties should know about you, that there's a little bit of

1 life experience, a little chalk on the blackboard for you that
2 affects how you would potentially view this case, or maybe even
3 any criminal case.

4 I know it's -- again, it's not great to have to
5 answer some of these questions in front of a lot of people.
6 Not everyone likes to speak publicly, but could I ask you to --
7 if you do have something, and it may not be an issue, but just
8 to err on the side of letting us know. Is there anybody that
9 has anything they can think of?

10 PROSPECTIVE JUROR: Juror 324.

11 15 years ago I was both an executive secretary to a
12 chief of police and a court clerk in Oro Valley, Arizona, but I
13 do not feel it would affect me one way or the other.

14 MS. CREEGAN: Thank you, ma'am, and thank you for
15 being first.

16 And just say as an example for myself. I would say
17 that I could be impartial, but I would definitely talk by my
18 experience --

19 MR. MARCHESE: Objection.

20 MS. CREEGAN: -- working criminal justice.

21 MR. MARCHESE: -- Your Honor. Counsel is giving her
22 opinion.

23 MS. CREEGAN: I'm giving myself an example.

24 THE COURT: Sustained.

25 What was the number of that last juror?

1 PROSPECTIVE JUROR: 324.

2 THE COURT: Thank you.

3 MS. CREEGAN: I think I see a hand over here.

4 PROSPECTIVE JUROR: I was the victim of a violent
5 crime in 1992, but I have no problem being impartial.

6 MS. CREEGAN: Thank you, ma'am, and could you please
7 tell us your juror number?

8 PROSPECTIVE JUROR: I'm sorry?

9 MS. CREEGAN: What's your juror number?

10 PROSPECTIVE JUROR: 103.

11 MS. CREEGAN: Thank you.

12 MR. LEVENTHAL: I didn't hear her.

13 MS. CREEGAN: Is there anybody else?

14 (No hands raised.)

15 Okay. Well, thank you very much. I'd also like to
16 ask, is there ever -- anybody that feels that they can't
17 promise that they will evaluate the case 100 percent on the
18 evidence under the law as the judge gives it to you, for any
19 reason? And I don't ask that question to make you feel badly;
20 the only thing that really matters is whether you share it with
21 us. Is there any reason you think you can't decide the case
22 solely based on the evidence under the law as the judge gives
23 it to you?

24 (No hands raised.)

25 And can everybody then promise that that is what they

1 will do in this case? Is there anyone that feels that they
2 cannot promise that?

3 (No hands raised.)

4 Thank you very much, ladies and gentlemen, I'll be
5 back up after the defendants ask some questions. Thank you
6 very much for your attention.

7 THE COURT: All right. Who would like to go first?

8 MR. TANASI: I will, Your Honor. Thank you.

9 THE COURT: All right.

10 MR. TANASI: Good afternoon, folks.

11 More questions from a lawyer. I'm guessing that's
12 not anything anybody's looking forward to so I'll try to make
13 it as painless as possible, but it's an important functioning
14 that you all have and myself, Rich Tanasi, I represent
15 Steven Stewart and Steven and I, we both, we appreciate all
16 your time and we appreciate your effort here.

17 So I have a question just to kind of focus on the
18 first group here in front of me in the box. By a show of
19 hands, can you kind of raise your hand if you would never,
20 ever, consider protesting.

21 (No hands raised.)

22 All right. Thank you.

23 Now I'm going to look to the folks over here
24 (indicating) and just kind of focus on the first three rows.
25 Okay? By a show of hands, let know if would you never, ever,

1 under any circumstance consider protesting.

2 (No hands raised.)

3 Okay. Thank you.

4 Come back to the first group here. Building on that
5 same question just a little bit further. By a show of hands, is
6 there any of you all who would never, ever, under any
7 circumstance consider protesting the United States government?

8 (No hands raised.)

9 Okay. Thank you.

10 Okay, folks, kind of the first three rows again. Same
11 question. Is there anybody here who just would never, ever
12 under any circumstance consider protesting the United States
13 government?

14 (No hands raised.)

15 Okay. Thank you.

16 Does anybody in this first group here (indicating) --
17 kind of by a show of hands -- does anybody here know somebody or
18 know of somebody who's protested before?

19 Okay. Thank you.

20 If we could keep those hands up for a second and, if
21 we could just first identify the numbers for who has their hand
22 up, if that's okay, and then I'll go to the first person with
23 their hand up, if you don't mind.

24 PROSPECTIVE JUROR: 95.

25 MR. TANASI: 95. Okay. All right. And then you had

1 your hand up?

2 PROSPECTIVE JUROR: 80.

3 THE COURT: 80. Okay. And then, ma'am, you had your
4 hand up. 138.

5 MR. TANASI: Would you mind passing the microphone to
6 them just so they can identify their numbers and then we'll
7 come back to the first person.

8 THE COURT: We have Number 95, Number 80, Number 31.
9 Anyone else?

10 PROSPECTIVE JUROR: 138.

11 MR. TANASI: If you could speak into the mic. Thank
12 you.

13 PROSPECTIVE JUROR: 138.

14 MR. TANASI: All right. Since you have the mic,
15 we'll just -- we'll stick with you. Put you on the spot. I'm
16 sorry.

17 So, you answered that you know somebody that was, you
18 know, in some way affected or harmed by protesting; right?

19 So --

20 PROSPECTIVE JUROR: I misunderstood the question. I
21 didn't hear the word "harm."

22 MR. TANASI: Why don't -- why don't we keep it
23 simple. Go ahead and elaborate. You raised your hand. If you
24 could just tell me a little about your experience.

25 PROSPECTIVE JUROR: Oh, just my sister had protested

1 on the Women's March against Trump. That's all.

2 MR. TANASI: Okay. Your sister did?

3 PROSPECTIVE JUROR: Um-hmm.

4 MR. TANASI: Okay. Did you talk to her about that?

5 PROSPECTIVE JUROR: A little bit.

6 MR. TANASI: A little bit? What did you guys talk
7 about?

8 PROSPECTIVE JUROR: She was just talking about the
9 turnout and she was glad she did it.

10 MR. TANASI: Sure. How come you didn't go?

11 PROSPECTIVE JUROR: Oh, she lives in Arizona.

12 MR. TANASI: Okay. Got you. All right. Thank you.
13 If we could just pass the mic.

14 All right. So, sir, you raised your hand. If you
15 could just kind of elaborate a little bit.

16 PROSPECTIVE JUROR: On what the protest was about or
17 when or what?

18 MR. TANASI: Right. What the protest was about.

19 PROSPECTIVE JUROR: Back in 1995 I was living with a
20 -- with my girlfriend and her and her co-workers protested
21 something that was unfair at their place of work.

22 MR. TANASI: Okay. What was your position on that?

23 PROSPECTIVE JUROR: Simply her significant other and
24 just showed up and just hung out, I guess, but I didn't
25 actually hold a sign up. I just hung out and, I guess,

1 provided refreshments.

2 MR. TANASI: Okay. Did anything happen to any of the
3 protesters?

4 PROSPECTIVE JUROR: You mean anything, like, arrests
5 or anything like that or . . .

6 MR. TANASI: Yeah.

7 PROSPECTIVE JUROR: No.

8 MR. TANASI: Nothing like that?

9 PROSPECTIVE JUROR: No. It was in downtown
10 Los Angeles.

11 MR. TANASI: Okay. How long was the protest?

12 PROSPECTIVE JUROR: I believe it lasted about three
13 days.

14 MR. TANASI: Thank you, sir. Just pass the mic.
15 Who -- over here. Number 80, I think it was.

16 PROSPECTIVE JUROR: Yes.

17 MR. TANASI: Thank you. I'm sorry to just call you
18 by numbers, but that's what I'm working with.

19 PROSPECTIVE JUROR: That's okay.

20 It was back in the '80s when I was in college. There
21 was some campus issues that were protested. I don't recall a
22 lot of the details.

23 MR. TANASI: Sure. What was your role, if any, in
24 those protests?

25 PROSPECTIVE JUROR: Just supporting fellow students

1 against whatever they were protesting. I was just support
2 basically.

3 MR. TANASI: Sure. And did any of the campus police
4 or any -- anybody, you know, arrest any of those protestors?

5 PROSPECTIVE JUROR: No. Not that I recall.

6 MR. TANASI: Did any harm in any way come to any of
7 those protesters?

8 PROSPECTIVE JUROR: No.

9 MR. TANASI: Okay. All right. Thank you. Pass the
10 mic back.

11 So, the same -- similar question to the folks here
12 kind in the third three rows back.

13 You know, have you ever been to a protest, and let's
14 just start there. Raise your hand if you've ever been to a
15 protest.

16 All right. We've got a gal in the back. Thank you.

17 PROSPECTIVE JUROR: 405.

18 MR. TANASI: Thank you.

19 PROSPECTIVE JUROR: It was actually a union strike,
20 if you consider that along the lines of a protest, around 2000,
21 for telecommunications.

22 MR. TANASI: Okay. And what was your -- or what did
23 you do at the protest?

24 PROSPECTIVE JUROR: I was an operator so I was on
25 strike picketed.

1 MR. TANASI: Okay. Similar question to the one I've
2 asked in that, did any harm in any way come to any of the
3 protestors that you were -- that you were with?

4 PROSPECTIVE JUROR: No.

5 MR. TANASI: No? Was anybody arrested?

6 PROSPECTIVE JUROR: No.

7 MR. TANASI: No? Okay.

8 And then I'm not sure if there was any other hands.
9 Again, just kind of opening it up to the group over here
10 (indicating). Has anybody been to a protest?

11 (No hands raised.)

12 Okay. Thank you.

13 All right. If we could come back here to the folks
14 here in front of me.

15 By a show of hands, who here is kind of the mindset
16 that if somebody goes to a protest and they get arrested,
17 that's on them? It's their fault? Shouldn't have gone in the
18 first place?

19 Okay. Thank you, sir.

20 If we could just kind of talk to you a little bit
21 more, please.

22 PROSPECTIVE JUROR: Your question was if I believe
23 that if someone attends a protest, whether it's on them?

24 MR. TANASI: If they end up getting arrested or if
25 some harm comes to them. Is that kind of, like, their fault on

1 them because they're there in the first place?

2 PROSPECTIVE JUROR: I don't know if I'd just the word
3 "fault," but I would say that whoever chooses to participate in
4 demonstrating something that can lead to an arrest will and
5 should understand what he or she is getting themselves into.
6 So, I believe I would concur with that, yeah.

7 MR. TANASI: Okay.

8 PROSPECTIVE JUROR: In other words, if they're going
9 do it they should understand that that they're -- you know, it
10 could have a negative impact.

11 THE COURT: The risk.

12 MR. TANASI: Thank you for sharing.

13 I'm sorry, Your Honor?

14 Okay. And we'll turn the same question kind of to
15 the folks here. Just kind of stay focused on the first three
16 rows. Same question. You know, if -- is anybody, by show of
17 hands, kind of of the opinion that it's kind of your fault,
18 it's on you if you're going to protest and you ultimately get
19 arrested? Shouldn't have been there. Shouldn't have been at
20 that protest in the first place. Is there anybody, in kind of
21 the first three rows, that's of that opinion?

22 Thank you.

23 PROSPECTIVE JUROR: Juror 288.

24 MR. TANASI: Thank you.

25 PROSPECTIVE JUROR: I feel if you made the choice to

1 participate, then you've made the choice to suffer any
2 consequences if they come across.

3 MR. TANASI: Sure.

4 By a show of hands kind of in this group, is there
5 anyone else who feels that same way?

6 Got two more hands, three more hands. So if we --
7 maybe start in the front.

8 PROSPECTIVE JUROR: I don't know if I would use the
9 word "fault" or not; I just think we're all responsible for our
10 own actions. So if you're -- you feel that strongly about
11 something, you care to show that, then you, as an adult or as a
12 person, know what may or may not happen.

13 MR. TANASI: Thank you for sharing.

14 PROSPECTIVE JUROR: Juror 199.

15 Similar -- similar stance.

16 MR. TANASI: Okay. Is there anything else you'd like
17 to share? I know it's not comfortable to hold the microphone
18 and do that?

19 PROSPECTIVE JUROR: There's not a whole lot more to
20 add than what's already been discussed.

21 MR. TANASI: Understood. Thank you.

22 If you could pass it down to the end. Thank you.

23 PROSPECTIVE JUROR: Juror 148.

24 I'm hoping I'm understanding the questions. I don't
25 think there's anything wrong with protesting, but if you get

1 arrested at a protest, from what I have seen on TV because I've
2 never been involved, some protestors start getting angry and if
3 you don't have the same opinion they do, you should back off
4 and you won't get arrested.

5 MR. TANASI: Sure. So, it's kind of the actions of
6 the protestors that's what's important to you?

7 PROSPECTIVE JUROR: Right. And if you're going, no,
8 they're going way too far with this, then I would back off
9 because I don't want to get arrested, I don't want to get hit.

10 MR. TANASI: So let's talk about that for a second.
11 What would be "going way too far"?

12 PROSPECTIVE JUROR: Getting violent, number one. Out
13 of control, just . . . becoming a mob. A mob mentality. You
14 know what I'm saying? Somebody says something that may not be
15 true to upset the others or exaggerated maybe, I don't know
16 what causes that, but I know it can definitely get out of hand.
17 Why it does, I don't know. But if you don't want to -- if you
18 don't understand what's causing that, I don't understand what's
19 causing that, I'm going to go, hey, I don't know what's going
20 on here --

21 MR. TANASI: Sure.

22 PROSPECTIVE JUROR: -- and I'll back off.

23 MR. TANASI: Thank you for sharing.

24 I know -- I think there were a few other hands that
25 were up. Thank you.

1 PROSPECTIVE JUROR: Juror 324.

2 I believe you have the right to protest, but in the
3 same token you have to be accountable for the consequences.

4 MR. TANASI: Thank you.

5 I think that's everyone.

6 Folks here in front of me in the box, who would agree
7 with this statement: If I'm at a protest and there's a dispute
8 between law enforcement officer and the protestors over what's
9 lawful, I'm going to side with law enforcement because that's
10 just the right thing to do? Who would be in that group?

11 Thank you.

12 If we could -- we've got lots of hand on that one.
13 All right. If we could start maybe right here with this
14 gentleman (indicating). Thank you.

15 PROSPECTIVE JUROR: Juror 111.

16 I think there's a careful balance in the Bill of
17 Rights. We have the right for peaceful assembly, but we don't
18 have the right to, for example, destroy property, be aggressive
19 or harm other individuals or their property. So, just as a
20 general matter, I don't think that your average police officer
21 goes to a protest saying, "I want to arrest somebody." I think
22 they go in their -- in their normal course of duty as just
23 keeping -- keeping the peace, enforcing the law. Therefore, I
24 am prejudiced to believe that if someone is arrested, that that
25 person, at least in the minds of the police officer, has

1 violated in some way the law.

2 MR. TANASI: Okay. So, a couple things there I just
3 want to kind of unpack. The -- the comment you made, if
4 they're doing something that's wrong or dangerous, if I have it
5 right, what would you mean by that? What's --

6 PROSPECTIVE JUROR: Destruction of property.

7 MR. TANASI: Okay.

8 PROSPECTIVE JUROR: Creating harm against other
9 people, injuring or threatening injury to other people. And it
10 could be trespassing, I would imagine might also be a crime for
11 which a person might be arrested.

12 MR. TANASI: And so if the officer makes the judgment
13 call to arrest that person, you believe that they've committed
14 a crime? Is that right, or no?

15 PROSPECTIVE JUROR: I think it's probably more likely
16 than not that they have.

17 MR. TANASI: Okay. So let's build on that --

18 PROSPECTIVE JUROR: I'm slightly prejudiced towards
19 the police officer, that's what I'm saying.

20 MR. TANASI: I appreciate your honesty.

21 So, fair to say, you know, if someone's arrested,
22 it's kind of almost like it's the defense's burden to prove to
23 you that the person is innocent?

24 PROSPECTIVE JUROR: Not under the law, no.

25 MR. TANASI: Not under the law, I understand, but

1 kind of in your mind?

2 PROSPECTIVE JUROR: A tad. A tad.

3 MR. TANASI: I appreciate your honesty.

4 We had a couple other hand-raisers here.

5 Thank you, sir.

6 PROSPECTIVE JUROR: Juror 126.

7 Kind of along the same lines. I believe that you
8 have the right to protest, but then if you do something, I
9 believe the officers are there to ensure everybody --
10 everybody's safety and the safety of others and they have a job
11 to do. So, it's best to just listen to what they say and not
12 get rowdy.

13 MR. TANASI: Sure.

14 And kind of building on what this gentleman was
15 talking about in terms of making the arrest or not making the
16 arrest, do you tend to just believe law enforcement when
17 they've made the arrest, that there's a crime that's been
18 committed?

19 PROSPECTIVE JUROR: I believe that they have the --
20 usually you do something in order to get arrested. They're not
21 just going to arrest you for standing there.

22 MR. TANASI: Sure.

23 So, again, you kind of believe it's the defense's
24 burden to prove that if someone's been arrested, that they --

25 MS. CREEGAN: Your Honor --

1 MR. TANASI: -- didn't commit a crime?

2 MS. CREEGAN: -- just object to legal questions. The
3 jury is going to be instructed on the law.

4 THE COURT: Sustained.

5 MR. TANASI: If someone's arrested --

6 PROSPECTIVE JUROR: Um-hmm.

7 MR. TANASI: -- is it fair to say you believe they've
8 committed a crime?

9 PROSPECTIVE JUROR: More than likely.

10 MR. TANASI: More likely than not?

11 PROSPECTIVE JUROR: Um-hmm.

12 MR. TANASI: Okay. Thank you for sharing.

13 PROSPECTIVE JUROR: Um-hmm.

14 MR. TANASI: If you could pass it down. I think,
15 yes.

16 PROSPECTIVE JUROR: 138.

17 If someone is arrested or -- I'm sorry -- if someone
18 is protesting -- can you repeat the question?

19 MR. TANASI: Yeah. It's been awhile and I've done a
20 bunch of different variations of it as well.

21 So, the idea is if some folks are protesting and law
22 enforcement, you know, makes an arrest of some of those folks
23 protesting, are you going to -- do you tend to believe that law
24 enforcement made an appropriate arrest in that situation just
25 because it's law enforcement who made that arrest?

1 PROSPECTIVE JUROR: That it's always correct just
2 because they're law enforcement? No.

3 MR. TANASI: Okay.

4 PROSPECTIVE JUROR: I think it has to probably go to
5 court to determine whether or not they broke the law.

6 MR. TANASI: Okay. Thank you for sharing.

7 I think behind you. Yes.

8 Thank you, sir.

9 PROSPECTIVE JUROR: Juror No. 85.

10 I was taught to believe in respect, that if a law
11 enforcement officer has more training and education than me, I
12 have to respect his decision and what he believe is right.

13 MR. TANASI: Fair enough.

14 Can I stick with you for a second? Thanks.

15 So, same idea. If somebody -- kind of where there's
16 smoke there's fire is where I'm going with this. If somebody's
17 been arrested, do you believe that they, in fact, have kind of
18 committed a crime, otherwise they just wouldn't have been
19 arrested?

20 PROSPECTIVE JUROR: If they've been arrested and the
21 evidence has proven to their guilt, yes, they should be
22 arrested.

23 MR. TANASI: Okay. And would you require that second
24 step, that evidence to be proven to the guilt, to you?

25 PROSPECTIVE JUROR: Yes, sir.

1 MR. TANASI: All right. Okay. Thank you.

2 We had another -- thank you, ma'am.

3 THE COURT: Mr. Tanasi, you have one minute.

4 MR. TANASI: Thank you.

5 PROSPECTIVE JUROR: Mine was along the same lines as
6 138. If -- if somebody's arrested, more likely than not they
7 were doing something they weren't supposed to be. That's what
8 the court process is for, to weed out whether they were guilty
9 or not.

10 MR. TANASI: Okay. So you would draw that
11 distinction?

12 PROSPECTIVE JUROR: Correct.

13 MR. TANASI: Okay.

14 All right. If we can kind of just focus on the first
15 two, I know I have maybe one more minute, so maybe just the
16 first group. Was there anybody in here in that last question,
17 the variations of that last question, is there anybody who
18 would like to say anything on it or anybody who would agrees
19 with some of what they've heard so far?

20 Okay. We have a gentleman in the back and,
21 Your Honor, I'll end there, if that's okay.

22 PROSPECTIVE JUROR: Juror 314.

23 I think originally you had said -- you had asked
24 whether, in a situation where there was dispute over the
25 lawfulness of actions, either the protestors' actions or the

1 officers' actions, does law enforcement have a -- could you
2 clarify what -- what you're seeking --

3 MR. TANASI: Sure.

4 PROSPECTIVE JUROR: -- in a situation where there is
5 two sides of a dispute --

6 MR. TANASI: Sure.

7 PROSPECTIVE JUROR: -- over lawfulness?

8 MR. TANASI: Absolutely.

9 If you have a situation where there's protestors
10 protesting something they believe in but you have law
11 enforcement there as well and law enforcement makes the
12 decision to, you know, arrest them for it or to stop the
13 protest because the law enforcement believes that that's the
14 right thing to do, would you just give the law enforcement
15 officer the benefit of the doubt for making that decision?

16 MS. CREEGAN: Well, Your Honor, I think that's kind
17 of a compound confusing question. I'm not sure I can tell what
18 the answer would mean.

19 THE COURT: I didn't follow -- yeah. I didn't it
20 either. You want to restate it?

21 MR. TANASI: Well, I mean -- I understand,
22 Your Honor, but I think he was ready to give an answer and
23 Ms. Creegan was the one who I don't think understood it, but I
24 could be wrong.

25 PROSPECTIVE JUROR: Well, I think in a situation

1 where there is a vigorous dispute over lawfulness at the moment
2 of reality that -- that two parties, there needs to be a
3 process to de-escalate and I believe that that's the role of a
4 peace officer as an agency. However, I also believe that there
5 can be unlawful arrests and inappropriate behavior on an
6 individual or group basis that is an individual's right, as a
7 protestor to question, but not at the moment of a dispute. So,
8 I kind of default to the agency mission of enforcing the peace,
9 but equally I believe in the rights of an individual to
10 protest, to believe they were unlawfully arrested, and that
11 unlawful actions were taken in that activity, but I support law
12 enforcement officer to de-escalate the situation.

13 MR. TANASI: Understood. Thank you, sir.

14 I think that's my time, so, thank you, folks.

15 THE COURT: Thank you, Mr. Tanasi.

16 MR. TANASI: Thank you, Your Honor.

17 THE COURT: Mr. Perez.

18 MR. PEREZ: Thank you, Your Honor.

19 Good afternoon, ladies and gentlemen. My name is
20 Shawn Perez and I represent Ricky Lovelien, the gentleman in
21 the back there (indicating). And I want to ask you some
22 questions about how you get your information, like news, social
23 media, and things of that nature.

24 So, let me just pose this to the entire venire panel
25 here.

1 How many of you get your news primarily from local
2 news?

3 I mean -- Number 148.

4 PROSPECTIVE JUROR: Can you clarify that question?
5 Do you mean Channel 13 or do you mean ABC or CBS?

6 MR. PEREZ: Well, no. I mean, like, local news,
7 Channel 8, Channel 3, Channel 13, Fox News?

8 Okay. 148, what news channel do you watch?

9 PROSPECTIVE JUROR: (Inaudible. No microphone used.)

10 MR. PEREZ: 13?

11 PROSPECTIVE JUROR: (Inaudible. No microphone used.)

12 COURT REPORTER: Mr. Perez, none of this is getting
13 on the record.

14 MR. PEREZ: Okay. Well, I'm trying to --

15 PROSPECTIVE JUROR: 296.

16 13, 5, 3, the local channels.

17 MR. PEREZ: So, do you -- let me stick with you for a
18 second. Do you watch national news as well?

19 PROSPECTIVE JUROR: Sometimes, but not -- I watch
20 more local news than I do national news.

21 MR. PEREZ: Okay. And who else had their hand up?
22 Behind you.

23 PROSPECTIVE JUROR: Juror 376.

24 I watch mostly 5 and 8, but I honestly don't watch a
25 lot of news, period, because it's depressing.

1 MR. PEREZ: Right.

2 PROSPECTIVE JUROR: And then a lot of my other news
3 comes from, like, social media, like, Facebook and stuff when I
4 see posts from family members, but I don't really read into it
5 a lot.

6 MR. PEREZ: Okay. Let me just ask you a couple
7 questions about Facebook.

8 Now, you said you get news from Facebook?

9 PROSPECTIVE JUROR: Yes.

10 MR. PEREZ: So, and is that from a -- a network
11 Facebook page or is that from a friend?

12 PROSPECTIVE JUROR: It's usually from my stepmom
13 reposting the network Facebook page posts.

14 MR. PEREZ: And when this person posts to their
15 Facebook page, do you pass that news along?

16 PROSPECTIVE JUROR: Not really. I look at it briefly
17 if it's something that catches my interest and most of the time
18 it's stuff to do with the school district, so . . .

19 MR. PEREZ: Do you like, you know, click the thumbs
20 up or the thumbs down?

21 PROSPECTIVE JUROR: No.

22 MR. PEREZ: So just generally, no comment?

23 PROSPECTIVE JUROR: Yeah.

24 MR. PEREZ: Okay. Who else back on that side? On
25 the end.

1 PROSPECTIVE JUROR: 445.

2 MR. PEREZ: Okay.

3 PROSPECTIVE JUROR: Um, I don't know if you were
4 going to ask this as a follow-up, but I don't watch the news, I
5 don't have cable, but I follow, I think, Channel 5 and
6 Channel 13 on my social media, so, if I'm interested in an
7 article, I might click on it and read it.

8 MR. PEREZ: So, would that be, like, Facebook or
9 would that be, like, an app?

10 PROSPECTIVE JUROR: It's their app on Facebook.
11 Their page, I guess.

12 MR. PEREZ: Right. Okay. Do you ever comment on the
13 news that you read?

14 PROSPECTIVE JUROR: No.

15 MR. PEREZ: No? Okay. How about back over here
16 (indicating).

17 Social media. How many of you have Facebook pages?

18 How about over here (indicating)?

19 That looks like most of the room.

20 Can we get that microphone over here (indicating)?

21 Let's start on the end in the back.

22 You have a Facebook page?

23 PROSPECTIVE JUROR: 103.

24 Yes, I do.

25 MR. PEREZ: Okay. And you've used your Facebook page

1 to communicate with friends?

2 PROSPECTIVE JUROR: Yes.

3 MR. PEREZ: Do you get your news from Facebook at
4 all?

5 PROSPECTIVE JUROR: Yes.

6 MR. PEREZ: And do you pass things along that are of
7 interest?

8 PROSPECTIVE JUROR: Very rarely. If it has something
9 do with somebody I know or something in my profession or just
10 anything that I might like, but very rarely.

11 MR. PEREZ: Okay. Do you ever get postings on
12 Facebook that you don't agree with; they just show up on your
13 wall or your Facebook page?

14 PROSPECTIVE JUROR: Yes. Yes.

15 MR. PEREZ: You do? Does that happen fairly
16 regularly?

17 PROSPECTIVE JUROR: Once in awhile.

18 MR. PEREZ: Okay. The gentleman to your left.

19 PROSPECTIVE JUROR: Juror No. 95.

20 As to the answer to Facebook, yes, I have a Facebook
21 page.

22 MR. PEREZ: Okay. And how do you use Facebook?

23 PROSPECTIVE JUROR: To look at family photos.

24 MR. PEREZ: Family photos.

25 Do you get other news on Facebook as well?

1 PROSPECTIVE JUROR: It might come out on a page
2 because someone posts it, but I -- I -- that's not my source of
3 news. I don't watch the news.

4 MR. PEREZ: Okay. How about the gentleman to your --
5 next to you?

6 PROSPECTIVE JUROR: Juror No. 85.

7 I do have a Facebook page.

8 MR. PEREZ: And do you post to your Facebook page?

9 PROSPECTIVE JUROR: If it's something worthwhile.

10 MR. PEREZ: Okay. And if it's something worthwhile,
11 are you originating the post or are you reposting?

12 PROSPECTIVE JUROR: Reposting.

13 MR. PEREZ: Reposting. And when you repost
14 something, do you -- do you read the entire article that you're
15 reposting before you repost it or you just repost it because it
16 looks like it's interesting and you send it on?

17 PROSPECTIVE JUROR: Just repost it.

18 MR. PEREZ: Okay. So you don't really get into the
19 content so much.

20 Okay. Next to you.

21 PROSPECTIVE JUROR: Juror 84.

22 I have a Facebook page, but I've only created it to
23 be normal amongst my peers. I'm generally not into social
24 media at all.

25 MR. PEREZ: Okay. Well, let me ask you then. As far

1 as news, do you favor local news or national news?

2 PROSPECTIVE JUROR: I will catch it on if it's in the
3 background, but generally, I -- MSN home page, if it flashes
4 up, then I might click on an article and read it. Otherwise, I
5 prefer books.

6 MR. PEREZ: There you go. All right. But if you had
7 a choice between MSN and Fox News, MSN?

8 PROSPECTIVE JUROR: Oh, I really just don't care
9 either way. I choose MSN --

10 MR. PEREZ: Okay. Fair to say.

11 PROSPECTIVE JUROR: -- because at least they scroll
12 for you.

13 MR. PEREZ: Fair enough.

14 Next.

15 PROSPECTIVE JUROR: 80, and yes, I have a Facebook
16 page. I use it to keep in contact with friends and family, but
17 not for any source of news.

18 MR. PEREZ: Okay. Do you repost things that family
19 members sent you or friends send you?

20 PROSPECTIVE JUROR: Yeah, just usually pictures of
21 family to let other family see it --

22 MR. PEREZ: Okay.

23 PROSPECTIVE JUROR: -- or my friends that are out
24 here.

25 MR. PEREZ: And how about news? CNN, MSNBC, or Fox

1 News?

2 PROSPECTIVE JUROR: I usually only catch the news as
3 I'm flipping past the channel.

4 MR. PEREZ: Right.

5 PROSPECTIVE JUROR: I don't --

6 MR. PEREZ: Okay. Do you have a preference?

7 PROSPECTIVE JUROR: No. Not really.

8 MR. PEREZ: No. Okay.

9 PROSPECTIVE JUROR: I'm 41, Juror 41.

10 I have a Facebook -- I am on Facebook, but just with
11 the line dancers. I belong to a line dancing group and we
12 communicate that way.

13 And as far as news go, I -- I have listened to CNN,
14 NBC, Fox News, all local news, you know, and -- and that's --
15 I'm not into getting really in-depth with it; I just like to
16 hear what's up-to-date at the time.

17 MR. PEREZ: Right. Do you have a favorite
18 newscaster?

19 PROSPECTIVE JUROR: Well, on Fox 5 that -- that --
20 oh, what's his name? He's really a -- he's really cute to
21 watch. Oh, Jason Feinberg.

22 MR. PEREZ: Okay. All right. Thank you.

23 PROSPECTIVE JUROR: But that's it.

24 MR. PEREZ: Pass that to the gentleman on the end.

25 How about you, sir?

1 PROSPECTIVE JUROR: I'm 111.

2 I get my news not from the lame stream news networks.

3 MR. PEREZ: Okay.

4 PROSPECTIVE JUROR: I get it from Fox and various
5 conservative news outlets. So when I say Fox, I don't mean
6 Channel 5, I mean Fox News.

7 MR. PEREZ: Right, on -- okay. Cable Fox News.

8 PROSPECTIVE JUROR: Right.

9 MR. PEREZ: Okay.

10 PROSPECTIVE JUROR: I do have a Facebook and I do
11 opine from time to time. I also subscribe to various
12 conservative news outlets, some of which I will post and I will
13 also read other people's posts and if appropriate, I'll repost
14 them.

15 MR. PEREZ: Okay. What are those other conservative
16 networks?

17 PROSPECTIVE JUROR: Things like -- well, they're
18 really . . . like *The Blaze*.

19 MR. PEREZ: Okay.

20 PROSPECTIVE JUROR: *Conservative Tribune*.

21 MR. PEREZ: Sure.

22 PROSPECTIVE JUROR: Things like that.

23 MR. PEREZ: Okay. All right. How about -- how about
24 newscasters? When you watch the news, do you have a favorite
25 on Fox News?

1 PROSPECTIVE JUROR: I have -- I like them -- I like
2 most of them, actually.

3 MR. PEREZ: Okay.

4 PROSPECTIVE JUROR: Watters. Watter's World. He's
5 good. Tucker Carlson, he's great. The rest of the lineup,
6 Neil Cavuto, et cetera, they're really good.

7 MR. PEREZ: Right.

8 Do you have a Twitter account by any chance?

9 PROSPECTIVE JUROR: No.

10 MR. PEREZ: No? So you're strictly Facebook and news
11 and --

12 PROSPECTIVE JUROR: Yeah.

13 MR. PEREZ: Okay. Thank you.

14 PROSPECTIVE JUROR: Juror 126.

15 I do have a Facebook page. I rarely post anything.
16 My main source of where I get my news from is on my news feed
17 from my iPhone.

18 MR. PEREZ: From -- from where?

19 PROSPECTIVE JUROR: From your iPhone. They have a
20 news feed.

21 MR. PEREZ: Okay. On that news feed, do you get,
22 like, it would be like a blast from CNN or Fox?

23 PROSPECTIVE JUROR: It's usually either CNN or Fox.

24 MR. PEREZ: Okay. Now, as far as Facebook, do you
25 have a tendency to like an article or down -- you know, thumb

1 up, thumbs down?

2 PROSPECTIVE JUROR: Not really, no.

3 MR. PEREZ: No?

4 PROSPECTIVE JUROR: Hum-um.

5 MR. PEREZ: Do you repost at all?

6 PROSPECTIVE JUROR: No.

7 MR. PEREZ: No? Why not?

8 PROSPECTIVE JUROR: If I see something that's
9 interesting, I usually just read it and then move on.

10 MR. PEREZ: Okay. Well, let me ask you, things that
11 show up on your Facebook page or on the wall --

12 PROSPECTIVE JUROR: Um-hmm.

13 MR. PEREZ: -- I don't have Facebook, but I know sort
14 of how it works, if something were to show up on the wall or
15 your Facebook page that you didn't like, I mean, is there
16 anything you can do to get rid of it or is it just there?

17 PROSPECTIVE JUROR: Um . . . I think you can block it
18 if you want to.

19 MR. PEREZ: Okay.

20 PROSPECTIVE JUROR: I've never done it.

21 MR. PEREZ: Okay. But you'd receive it before you
22 block it?

23 PROSPECTIVE JUROR: I would move past it if it --

24 MR. PEREZ: Okay.

25 PROSPECTIVE JUROR: If I didn't agree with it, I

1 would just move on.

2 MR. PEREZ: Right. Okay. Thank you.

3 Next. Ma'am --

4 THE COURT: Mr. Perez, one minute. Actually, you're
5 at -- I've let you go over 10 minutes, but I'll give you one
6 minute since you didn't realize.

7 MR. PEREZ: Okay. Thank you, Your Honor.

8 PROSPECTIVE JUROR: Number 138.

9 Yes, I have a Facebook page. I very rarely post on
10 it, mostly to keep up with friends and family.

11 MR. PEREZ: Okay. Real quickly then. Next line --
12 next lady.

13 PROSPECTIVE JUROR: I have a Facebook page, but
14 basically I just take -- get pictures of my grandchildren --

15 MR. PEREZ: Okay.

16 PROSPECTIVE JUROR: -- and caption them and that's
17 about it. I don't read articles or anything like that on it.

18 PROSPECTIVE JUROR: Jury 142.

19 I do use Facebook just to share a picture with family
20 and friend. I don't read any article.

21 MR. PEREZ: And do you ever repost anything?

22 PROSPECTIVE JUROR: No, I don't repost anything.

23 MR. PEREZ: Do you ever like anything?

24 PROSPECTIVE JUROR: I don't -- I don't play too much
25 on Facebook.

1 MR. PEREZ: Okay.

2 PROSPECTIVE JUROR: I'm not a -- really -- I don't
3 have time to do Facebook much.

4 MR. PEREZ: Right.

5 PROSPECTIVE JUROR: Just look at the family picture
6 and friend and chitchat, like that.

7 MR. PEREZ: Great.

8 PROSPECTIVE JUROR: I don't do anything else.

9 MR. PEREZ: All right. Thank you.
10 Thank you, Your Honor.

11 THE COURT: Thank you.

12 Mr. Marchese.

13 MR. MARCHESE: Thank you, Your Honor.

14 Everybody hear me okay?

15 All right. Good.

16 My first question is just a general question. If we
17 can just get a show of hands and I'm going to give it to the
18 people in the jury box currently.

19 Let's say you're at your residence and your neighbors
20 are being loud and they're arguing. How many people, under no
21 circumstances, would get involved; they'd just leave it alone?

22 (No hands raised.)

23 How about if you believed it was maybe going to get
24 violent, would anyone still not get involved under any
25 circumstances?

1 (No hands raised.)

2 Okay. I'm going to give the same question. First
3 scenario, you're at your home. You hear your neighbors.
4 They're being very loud. How many people, under no
5 circumstances, would just leave it alone; they're just not
6 going to intervene, they're not going to say anything, they're
7 not going to do anything?

8 Okay. Give it to this gal in the front row there.

9 PROSPECTIVE JUROR: Juror 199.

10 Do you mean, like, for example --

11 MR. MARCHESE: And, I'm sorry. What's your juror --
12 your badge number?

13 PROSPECTIVE JUROR: 199.

14 MR. MARCHESE: 199. Okay.

15 PROSPECTIVE JUROR: So, like, for example if my
16 neighbors are arguing at, like, 2:00 in the morning, you're
17 saying that I wouldn't get involved or I would?

18 MR. MARCHESE: You would not get involved under any
19 circumstances. You're just going to leave it alone, you're
20 going to mind your business so to speak.

21 PROSPECTIVE JUROR: Oh. I guess it really depends on
22 what time of the day it is. If it's 2:00 in the morning, then
23 yes, I would ask them to please be quiet because people are
24 sleeping, but otherwise, no.

25 MR. MARCHESE: Okay. How about 2:00 in the

1 afternoon?

2 PROSPECTIVE JUROR: No.

3 MR. MARCHESE: Okay. You would just leave it alone?

4 PROSPECTIVE JUROR: Yeah.

5 MR. MARCHESE: All right. Pass it to the gentleman
6 in the tie next to you.

7 And what's your badge number, sir?

8 PROSPECTIVE JUROR: 188.

9 MR. MARCHESE: 188.

10 And do you have any feelings on that question at all?

11 PROSPECTIVE JUROR: If it seemed like it was going to
12 get violent, I'd probably call somebody.

13 MR. MARCHESE: Okay. How about if it's just yelling?

14 PROSPECTIVE JUROR: Not really.

15 MR. MARCHESE: Okay. Not something you want to get
16 involved with?

17 PROSPECTIVE JUROR: No.

18 MR. MARCHESE: Okay. Just not in your personality so
19 to speak?

20 PROSPECTIVE JUROR: Yeah. Pretty much.

21 MR. MARCHESE: Okay. And if you could -- the
22 gentleman in the -- three rows back raised his hand.

23 PROSPECTIVE JUROR: Juror 339.

24 MR. MARCHESE: Okay.

25 PROSPECTIVE JUROR: Are you under the assumption that

1 you know these people?

2 MR. MARCHESE: Sure.

3 PROSPECTIVE JUROR: I would say, yeah, if I knew
4 them, I would go see if I could help or, you know, if they're
5 having trouble with somebody in particular or if it's amongst
6 them, maybe help try and resolve it.

7 MR. MARCHESE: What if you didn't know them? What if
8 they were just total strangers?

9 PROSPECTIVE JUROR: I think it would be depend. If
10 it appeared that it was going to get violent, I might try and
11 step in, but if it -- if it's arguing or, like, a family
12 dispute or somebody's yelling at the neighbor or something, I
13 probably would not get involved.

14 MR. MARCHESE: Okay. Can you pass it to the lady
15 right directly to your left.

16 And your badge number, please.

17 PROSPECTIVE JUROR: 329.

18 MR. MARCHESE: Okay. Do you have any opinion on
19 that?

20 PROSPECTIVE JUROR: I wouldn't get involved if it has
21 nothing to do with me. If it's going to get violent or if you
22 see that it's getting violent, then just call somebody to come
23 and take care of it.

24 MR. MARCHESE: Okay.

25 PROSPECTIVE JUROR: But . . . I wouldn't go.

1 MR. MARCHESE: So when you say "call somebody," who
2 would you call?

3 PROSPECTIVE JUROR: I would call the police. You can
4 always call them just to keep the peace --

5 MR. MARCHESE: Okay.

6 PROSPECTIVE JUROR: -- and then let them deal with it
7 and see what's going on.

8 MR. MARCHESE: All right. Would you take any steps
9 after that?

10 PROSPECTIVE JUROR: No.

11 MR. MARCHESE: No?

12 Okay. Was there anyone else in this area
13 (indicating) that had raised their hands?

14 Can you pass it, I think, three down.

15 PROSPECTIVE JUROR: If it had anything to do with
16 children, then I would.

17 MR. MARCHESE: Okay. How about nothing to do with
18 children?

19 PROSPECTIVE JUROR: I don't know. If it was, like, a
20 lady, like, a girl or something that was going to get hurt or,
21 you know, just getting vulgar or, you know, I could see that
22 she was getting, you know.

23 MR. MARCHESE: Okay. How about if it was just two
24 guys arguing?

25 PROSPECTIVE JUROR: No. Sometimes they just got to

1 be guys.

2 MR. MARCHESE: Boys will be boys?

3 PROSPECTIVE JUROR: Yep.

4 MR. MARCHESE: All right. Fair enough.

5 Anyone else in the back?

6 All right. If you could just pass the microphone
7 down and we'll bring it back to the jury box.

8 Thank you.

9 How many people, as we sit here today, don't like the
10 direction our country is going in?

11 (No hands raised.)

12 And let the record reflect there's a negative
13 response to the box.

14 And I'm going to give that same question to the
15 people not in the box, in the gallery. Same question. How
16 many people here do not like the direction that our country is
17 going in today?

18 And your badge number, please.

19 PROSPECTIVE JUROR: 148.

20 MR. MARCHESE: And what is it that you don't like,
21 ma'am? When is it that you don't like?

22 PROSPECTIVE JUROR: New laws. I -- I don't really
23 want to get Christian on you but I'm Christian, so there's a
24 lot of new things going on that I don't really agree with, but
25 I thought I'd go with the flow because it's the government and

1 you go with what the government says so I won't fight over it.
2 You know what I'm saying?

3 MR. MARCHESE: Okay. So you believe that laws should
4 be followed?

5 PROSPECTIVE JUROR: Legalized marijuana in Nevada for
6 recreational use, I'm upset about that.

7 MR. MARCHESE: Okay.

8 PROSPECTIVE JUROR: You know, that type of thing.
9 So, no, I don't really like it. I don't care it's normal. I
10 don't think it's right.

11 MR. MARCHESE: All right. Do you feel strongly
12 enough to protest about it?

13 PROSPECTIVE JUROR: I'm not the protesting type.

14 MR. MARCHESE: Okay.

15 PROSPECTIVE JUROR: I did vote against it though.

16 MR. MARCHESE: What steps, if any, would you take
17 against that?

18 PROSPECTIVE JUROR: I voted against it.

19 MR. MARCHESE: Okay. You would just exercise your
20 electoral rights and that's it?

21 PROSPECTIVE JUROR: Exactly.

22 MR. MARCHESE: Okay. Fair enough.

23 Who else raised their hands? I thought I saw some.
24 Get the -- I think it's three rows back, midway in.

25 PROSPECTIVE JUROR: Juror 324.

1 For the most part, it's just political. I do not
2 agree with the current administration that we have and the
3 direction that the government is going right at the moment.

4 MR. MARCHESE: Sure.

5 Now, I also had an indication that you were from --
6 had some ties to Arizona?

7 PROSPECTIVE JUROR: Yes.

8 MR. MARCHESE: AND whereabouts is that?

9 PROSPECTIVE JUROR: I was involved with a community
10 law enforcement in Oro Valley, Arizona which is a bedroom
11 community of Tucson.

12 MR. MARCHESE: Okay. And how long were you --

13 PROSPECTIVE JUROR: It was a small department when I
14 started there. That's why I was hired as secretary to the
15 chief of police/court clerk --

16 MR. MARCHESE: Okay.

17 PROSPECTIVE JUROR: -- which I thought was kind of a
18 . . . conflict of interest, but . . . it was a small
19 department.

20 MR. MARCHESE: Sure.

21 How small.

22 PROSPECTIVE JUROR: When I started, there was a chief
23 of police, five officers, and myself.

24 PROSPECTIVE JUROR: Okay. And how long did you work
25 there?

1 PROSPECTIVE JUROR: About eight years.

2 MR. MARCHESE: And after your eight --

3 PROSPECTIVE JUROR: But the apartment -- the
4 department did grow.

5 MR. MARCHESE: Okay. And how big did it get after
6 your eight years?

7 PROSPECTIVE JUROR: Finally, they separated the
8 judicial from the law enforcement and I chose to stay with the
9 police department.

10 MR. MARCHESE: Okay. And what brought you to Las
11 Vegas?

12 PROSPECTIVE JUROR: My granddaughter, when she was
13 born. I said I couldn't be eight hours away from her.

14 MR. MARCHESE: Okay. And how old is your
15 granddaughter?

16 PROSPECTIVE JUROR: So we've been here almost 23
17 years.

18 MR. MARCHESE: Oh, okay. So your granddaughter is an
19 adult now?

20 PROSPECTIVE JUROR: Yes. Both my grandchildren are
21 adults now.

22 MR. MARCHESE: Both your grandchildren here or where
23 are they?

24 PROSPECTIVE JUROR: Yes. They're both here.

25 MR. MARCHESE: Okay.

1 PROSPECTIVE JUROR: I knew the only grandchildren I
2 would have would be here, so I was going to be where they were.

3 MR. MARCHESE: Okay.

4 PROSPECTIVE JUROR: And I'm very proud that I was.

5 MR. MARCHESE: Good for you.

6 Anybody else raise their hands?

7 PROSPECTIVE JUROR: Yes. I'm very frustrated with
8 the direction of this country over the last maybe 20 years, the
9 decline of the educational system, the lack of civility between
10 people and I guess maybe because of those two things the -- the
11 clear polarization and disintegration of what I think is the
12 fabric of our society. So, yeah, I think --

13 MR. MARCHESE: What do you think's --

14 PROSPECTIVE JUROR: -- I'm not happy with the
15 direction of the country.

16 MR. MARCHESE: What do you think the solution to the
17 polarization is?

18 PROSPECTIVE JUROR: Well, I think civil discourse is
19 a good way to address the issues, maybe not resolve them, but
20 with understanding comes tolerance and a recognition that we
21 can agree to disagree, but let's do it in a civil manner and
22 respect individual rights.

23 MR. MARCHESE: Okay. And I believe you said "civil
24 discourse." That was the term you used.

25 PROSPECTIVE JUROR: Yes.

1 MR. MARCHESE: And what would your definition of
2 "civil discourse" be?

3 PROSPECTIVE JUROR: Well, it could be protest. It
4 could be debate. It could be finding common ground through --
5 through intermediaries or social organizations, that kind of
6 thing. But I think withdrawing from society and withdrawing
7 from the other side, if you will, is not -- is not the answer.

8 MR. MARCHESE: You mentioned social organizations.
9 What do you -- what did you mean by that?

10 PROSPECTIVE JUROR: I just think when people
11 affiliate, even with common interests, you develop more
12 tolerance and understanding of people that might be a little
13 bit more different than you but common enough that you expand
14 your perspective and that allows the development of social
15 skills to be able to build bridges to people who you disagree --
16 disagree with on a fundamental basis and rather than resorting
17 to uncivil means, you have more tools socially to be able to,
18 you know, progress your thoughts or change somebody else's
19 opinion.

20 MR. MARCHESE: Okay. Thank you.
21 Anyone else?

22 PROSPECTIVE JUROR: 455.

23 Well, I think that's a really loaded question, but as
24 far as my stance, I work in the social service field and I
25 think currently where things are heading it's taking a lot away

1 from people that are not in positions to fully take care of
2 themselves. A lot of resources and benefits and things that
3 people that I directly work with are being affected and, I
4 think things like equality are a really big issue. When you're
5 exposed to indigent populations and just people that need more
6 help than the average citizen, you tend to be more aware of the
7 . . . inequality that is out there and I feel like the current
8 administration, that is reducing funds in certain areas that
9 are meant for this population, it's -- I don't like where it's
10 heading.

11 MR. MARCHESE: Sure.

12 Now, you mentioned demographic. What demographic do
13 you specifically work with?

14 PROSPECTIVE JUROR: I work with the chronically
15 homeless.

16 MR. MARCHESE: Okay. How long have you been doing
17 that for?

18 PROSPECTIVE JUROR: Six years.

19 MR. MARCHESE: Okay. And that's -- I believe you
20 said you had to get some sort of licensure or something
21 tomorrow?

22 PROSPECTIVE JUROR: Yeah. Well, I go for my
23 interview.

24 MR. MARCHESE: Okay. Well, good luck.

25 PROSPECTIVE JUROR: Thank you.

1 MR. MARCHESE: All right. And where are you from?

2 PROSPECTIVE JUROR: Born and raised in Las Vegas.

3 MR. MARCHESE: Okay. You're a dying breed.

4 I guess we'll -- is there anyone else in the back?

5 Okay. I guess we'll go -- take it back to the jury
6 box.

7 And I'm going to ask you to pass it to Number 41, up
8 at the top.

9 Okay. I liked what the gentleman in the back was
10 saying so I'm going to take one of his answers and ask you a
11 question about it. He had mentioned "civil discourse." What
12 does that mean to you?

13 PROSPECTIVE JUROR: Civil discourse?

14 MR. MARCHESE: Yes.

15 PROSPECTIVE JUROR: Oh . . .

16 MR. MARCHESE: If anything.

17 PROSPECTIVE JUROR: Well, disconnection within the
18 civil rights I do believe. I'm not really understanding quite
19 totally, but that's what I'm thinking. It's a disconnection of
20 a civil course.

21 MR. MARCHESE: Okay. Well, generally speaking, him
22 and I were discussing when you don't agree with something and
23 he mentioned civil discourse. If you didn't agree with
24 something, what actions would you take or steps, if any?

25 PROSPECTIVE JUROR: If I didn't agree with something,

1 of course I want to hear -- you know, there's always two sides
2 to see what their opinions are on and I base it on that. I
3 just go with what I feel is right on either side. It's -- not
4 necessarily has to be the -- just because you're an officer,
5 doesn't necessarily have to be that. Doesn't necessarily have
6 to be a protestor. It's what I feel that was right at the time
7 when it was -- whatever thing was happening.

8 MR. MARCHESE: Okay. You mentioned what you feel is
9 right. If you feel that something is right, do you feel that
10 you can be -- your opinion can easily be swayed?

11 PROSPECTIVE JUROR: My opinion? Well, it will be
12 mentioned, yes, it will be mentioned. I mean, I will stand
13 ground on it, yeah.

14 MR. MARCHESE: Okay. And I'm going to ask you to
15 pass the microphone to the front row to the lady at the end. I
16 believe it's -- I think you're 142 in the front?

17 PROSPECTIVE JUROR: Um-hmm.

18 MR. MARCHESE: Okay. First question. Did you hear
19 the question that I asked the lady in the back?

20 PROSPECTIVE JUROR: Yeah. Can you repeat it again?

21 MR. MARCHESE: Sure.

22 Gentleman in the back and I were talking about when
23 you don't agree with something and he mentioned the term "civil
24 discourse." Do you remember that line of questioning?

25 PROSPECTIVE JUROR: Yes.

1 MR. MARCHESE: Okay. What does that mean to you?

2 PROSPECTIVE JUROR: Well, if you don't agree with
3 something, you have to speak out and talk to somebody or tell
4 somebody --

5 MR. MARCHESE: Okay.

6 PROSPECTIVE JUROR: -- it's just not right.

7 MR. MARCHESE: All right. And what steps would you
8 take, if any, if you didn't agree with something?

9 PROSPECTIVE JUROR: I don't know how to explain
10 because I'm not in that position --

11 MR. MARCHESE: Sure.

12 PROSPECTIVE JUROR: -- you know. It's hard to give
13 some kind of expression that I'm not in -- in their shoes.

14 MR. MARCHESE: Okay. Well, let's just -- let's take
15 a hypothetical. Let's say you didn't agree with something.
16 Would you express your opinion to a friend?

17 PROSPECTIVE JUROR: Right. I will. I will express
18 my opinion and say, hey, that's not right.

19 MR. MARCHESE: How about to a stranger?

20 PROSPECTIVE JUROR: To a stranger, it's -- it's the
21 same, too. It's they -- if you try to harm somebody -- I mean,
22 we all have -- we just human, okay. Every human have the same
23 human right. So, we don't want to harm anybody.

24 MR. MARCHESE: Would you put a --

25 PROSPECTIVE JUROR: It's just, like --

1 MR. MARCHESE: I'm sorry. Would you put a bumper
2 sticker on your vehicle?

3 PROSPECTIVE JUROR: I probably would not.

4 MR. MARCHESE: Okay. How about a sign in front of
5 your home or residence?

6 PROSPECTIVE JUROR: No.

7 MR. MARCHESE: Okay.

8 THE COURT: Last question, Mr. Marchese.

9 MR. MARCHESE: Okay. I'm sorry. I didn't mean to
10 cut you off.

11 PROSPECTIVE JUROR: It's hard to answer this kind of
12 question because I -- I never had that experiencing [sic] and I
13 don't know how to express it.

14 MR. MARCHESE: Okay. Well, there's no right or wrong
15 answer. It's your opinion.

16 PROSPECTIVE JUROR: Right.

17 MR. MARCHESE: Yeah. Okay.

18 And am I done, Your Honor? I'm sorry?

19 THE COURT: You can have one more.

20 MR. MARCHESE: Okay.

21 And since you're right there, ma'am, can you just
22 pass it to your left, my right.

23 PROSPECTIVE JUROR: Juror 139.

24 MR. MARCHESE: Okay. Same line of questioning. I'll
25 be quick. If you felt strongly about something and you had an

1 opinion one way or another, would you tell a friend?

2 PROSPECTIVE JUROR: Yes.

3 MR. MARCHESE: Would you argue with a friend?

4 PROSPECTIVE JUROR: I would stand up for my right
5 to -- to think the way that I -- for the stand that I've taken.

6 MR. MARCHESE: How about a bumper sticker? Would you
7 put a bumper stick own your vehicle?

8 PROSPECTIVE JUROR: Kind of depends on what it would
9 be worth. I mean, if it's something that I felt that somebody
10 else could benefit from, yes, but if it's something that's a
11 personal thing, then I probably wouldn't.

12 MR. MARCHESE: Okay. Would you get in your car and
13 travel to a protest?

14 PROSPECTIVE JUROR: Excuse me?

15 MR. MARCHESE: Would you get in your vehicle and
16 travel to a protest?

17 PROSPECTIVE JUROR: No.

18 MR. MARCHESE: Okay. Thank you.

19 THE COURT: Thank you, Mr. Marchese.

20 Mr. Leventhal?

21 MR. LEVENTHAL: Thank you, Judge.

22 Thank you, Judge.

23 Good afternoon. My name is Todd Leventhal. I
24 represent Mr. Drexler. Just a few questions. I let my
25 colleagues go first so they took a lot of the questions, but

1 who here knows what the acronym CCW means? Raise your hands.

2 And of the hands that are raised, how many have their
3 actual CCW?

4 Just the three of you? Okay. Thank you.

5 All right. Number 296, can you raise your hand.

6 Where's 296 -- 376? Back there.

7 Can you get the microphone back there. Thank you.

8 Hi. We haven't really heard from you very much. I
9 wanted to ask you, what kind of TV -- what do you watch when
10 you watch TV?

11 PROSPECTIVE JUROR: *Criminal Minds* and *Law and Order*
12 *SVU*.

13 MR. LEVENTHAL: Okay. What is it about those shows
14 that you like?

15 PROSPECTIVE JUROR: Well, as far as *Criminal Minds*
16 go, Matthew Gray Gubler and Shemar Moore and then just
17 basically the actors and -- that they kind of, sort of portray
18 things, but I know most of it's exaggerated so . . .

19 MR. LEVENTHAL: Okay. So are you -- you're sort
20 of -- those -- you just talked about two sort of criminal
21 shows, right? Or is that something that you're interested?

22 PROSPECTIVE JUROR: Yeah.

23 MR. LEVENTHAL: Yeah. Okay. All right. And other
24 than the actors, what interests you? Just --

25 PROSPECTIVE JUROR: Some of the stuff that they do,

1 like -- like, in *Criminal Minds*, like, Penelope Garcia, she
2 hacks a lot and it's kind of an interesting thing to see how,
3 like -- and she got into the FBI for hacking. So, it's just a
4 lot of the stuff that they do, so, like, and how they save
5 people and stuff, so . . .

6 MR. LEVENTHAL: Okay. So you like the investigation
7 of it?

8 PROSPECTIVE JUROR: Yes.

9 MR. LEVENTHAL: Okay. Very cool.

10 All right. Thank you.

11 If we could go to 188. 188? Where's 188? Right
12 here (indicating).

13 How do you feel about -- how do you feel about being
14 on a jury? How would you feel about it? Your feelings?

15 PROSPECTIVE JUROR: I feel good about it.

16 MR. LEVENTHAL: Yeah. Is it something you've always
17 wanted to do?

18 PROSPECTIVE JUROR: I've been on juries before.

19 MR. LEVENTHAL: Okay.

20 PROSPECTIVE JUROR: I feel like I'd be a good juror.
21 If I was on trial, I'd like people like me to be a juror.

22 MR. LEVENTHAL: Okay. Great answer. All right.

23 Do you have any opinions about firearms?

24 PROSPECTIVE JUROR: Of course.

25 MR. LEVENTHAL: Okay. What are those opinions?

1 About firearms?

2 PROSPECTIVE JUROR: I have some.

3 MR. LEVENTHAL: That's all I need to know.

4 PROSPECTIVE JUROR: And --

5 MR. LEVENTHAL: All right. You hunt with them?

6 PROSPECTIVE JUROR: Pardon me?

7 MR. LEVENTHAL: Do you hunt with them?

8 PROSPECTIVE JUROR: No.

9 MR. LEVENTHAL: No. Okay. All right.

10 If we can go to 111. I think 111's over
11 here (indicating) -- thank you, sir.

12 Hi. Good afternoon.

13 PROSPECTIVE JUROR: Good afternoon.

14 MR. LEVENTHAL: You indicated on a previous question
15 that you think you need, like, I think you indicated careful
16 balance and a peaceful assembly. Do you remember those
17 questions? Those answers?

18 PROSPECTIVE JUROR: Yes, I do.

19 MR. LEVENTHAL: Okay. Let me ask you some -- a
20 different question.

21 How are you -- do you work in groups?

22 PROSPECTIVE JUROR: I'm retired.

23 MR. LEVENTHAL: You're retired. When you worked, did
24 you work in groups?

25 PROSPECTIVE JUROR: Sometimes.

1 MR. LEVENTHAL: Sometimes. Okay. And when you
2 worked in these groups, did you find you were a leader in the
3 group or were you able to follow others?

4 PROSPECTIVE JUROR: Some of each.

5 MR. LEVENTHAL: Some of each. Okay. Were you -- did
6 you sort of manager people or . . .

7 PROSPECTIVE JUROR: I had -- some of the time I was a
8 manager. Some of the time I was a follower.

9 MR. LEVENTHAL: A follower. Okay. And it just
10 depended on what it was that you were doing in your task?

11 PROSPECTIVE JUROR: Different points in my career.

12 MR. LEVENTHAL: Different what?

13 PROSPECTIVE JUROR: Different point in my career.

14 MR. LEVENTHAL: I see. Okay. You -- you talked a
15 little bit about Fox News. That's where you get your news
16 from?

17 PROSPECTIVE JUROR: Yes.

18 MR. LEVENTHAL: Okay. And is there anybody in
19 particular in Fox News as an anchor that you like specifically?

20 PROSPECTIVE JUROR: I think most of them I like.

21 MR. LEVENTHAL: Most of them, but nobody comes to
22 mind?

23 PROSPECTIVE JUROR: Well, I'll mention three or four.

24 MR. LEVENTHAL: Okay.

25 THE COURT: Watters, Tucker, Cavuto.

1 MR. LEVENTHAL: I'm sorry?

2 THE COURT: He mentioned Watters, Tucker, Cavuto.

3 PROSPECTIVE JUROR: Good memory.

4 MR. LEVENTHAL: She's -- yeah. And how do you feel
5 about sitting on a jury?

6 PROSPECTIVE JUROR: Uh . . . it's kind of an honor
7 and a burden.

8 MR. LEVENTHAL: Interesting.

9 PROSPECTIVE JUROR: But it's a solemn thing. It's
10 nothing to be taken lightly.

11 MR. LEVENTHAL: Okay. Very good. Thank you.

12 If we could go to -- I appreciate your answers.

13 If we could go to 158. 158? Am I just way off?

14 Can we -- 158. Thank you.

15 Hi, ma'am. How are you?

16 PROSPECTIVE JUROR: I'm fine.

17 MR. LEVENTHAL: Very good. Okay. You indicated
18 earlier that -- and I don't want to put you on the spot -- you
19 have chronic pain?

20 PROSPECTIVE JUROR: I am. I thought she was excusing
21 me, but she was a number away from me.

22 MR. LEVENTHAL: I'm sorry?

23 PROSPECTIVE JUROR: I thought the judge was excusing
24 me, but she excused the number under me.

25 I'm in -- I'm suffering very bad.

1 MR. LEVENTHAL: Okay.

2 PROSPECTIVE JUROR: So that's why I haven't spoke on
3 anything because I'm in tears, I'm in pain.

4 MR. LEVENTHAL: I understand. Have you been
5 following along the discussion?

6 PROSPECTIVE JUROR: Yeah. I'm listening.

7 MR. LEVENTHAL: Okay. And are you on medication now?
8 I think we asked you that. It wasn't --

9 PROSPECTIVE JUROR: Yeah, but it don't work and I'm
10 the type, if it's not working for me, then I don't want to keep
11 taking it and my doctor won't give me nothing stronger, so. . .

12 MR. LEVENTHAL: All right. I understand. Thank you
13 very much.

14 PROSPECTIVE JUROR: You welcome.

15 MR. LEVENTHAL: If we could go to 314 really quick,
16 back here (indicating).

17 314. There you are. How are you?

18 PROSPECTIVE JUROR: Hi. Good.

19 MR. LEVENTHAL: Couple questions ago you were asked
20 regarding protests. You think there should be a fair balance,
21 everyone should be able to debate. Is that what you indicated?

22 PROSPECTIVE JUROR: I'm not sure I said that. What
23 I -- what I meant to say was I believe strongly in the right to
24 protest.

25 MR. LEVENTHAL: Okay. And do you own a restaurant?

1 PROSPECTIVE JUROR: Yes. Supper club.

2 MR. LEVENTHAL: Oh, supper club. Okay. And you
3 indicated you knew Detective Jenkins?

4 PROSPECTIVE JUROR: Yeah. I know him as TJ. That's
5 why I wasn't sure if that was the individual on the -- on the
6 list.

7 MR. LEVENTHAL: Okay. He comes to your club?

8 PROSPECTIVE JUROR: Yes.

9 MR. LEVENTHAL: How often does he come to your club?

10 PROSPECTIVE JUROR: Well, you know, we've been open
11 for 14 years, so, probably more than 10 years.

12 MR. LEVENTHAL: Okay. Does he come with his squad?

13 PROSPECTIVE JUROR: Yes.

14 MR. LEVENTHAL: Okay. So --

15 PROSPECTIVE JUROR: And by himself also.

16 MR. LEVENTHAL: I'm sorry?

17 PROSPECTIVE JUROR: With his squad, in uniform,
18 sometimes.

19 MR. LEVENTHAL: Okay.

20 PROSPECTIVE JUROR: And sometimes it's --
21 just regular customer.

22 MR. LEVENTHAL: And I don't remember if you were
23 asked. Were you asked whether or not you've spoken about this
24 case with him?

25 PROSPECTIVE JUROR: Yeah. I've not spoken to him

1 about this.

2 MR. LEVENTHAL: I'm sorry?

3 PROSPECTIVE JUROR: I had pro-offered [sic] in the
4 earlier question that I've not had any conversations with him
5 about this.

6 MR. LEVENTHAL: Okay. All right. Thank you very
7 much.

8 PROSPECTIVE JUROR: Sure.

9 MR. LEVENTHAL: Who hasn't spoken? Raise your hand.
10 Okay. Go ahead. What number are you? Sir, in the
11 green.

12 PROSPECTIVE JUROR: 275.

13 MR. LEVENTHAL: 275. We'll get back to you in a
14 minute.

15 How do you feel about sitting on a jury?

16 PROSPECTIVE JUROR: It's my right as a American
17 citizen.

18 MR. LEVENTHAL: Okay. I think someone said it would
19 be an honor. Is it an honor as well?

20 PROSPECTIVE JUROR: It is an honor.

21 MR. LEVENTHAL: Okay. Very good. And did you ---
22 were you one that had your hand up with a CCW?

23 PROSPECTIVE JUROR: No.

24 MR. LEVENTHAL: You don't have a CCW?

25 PROSPECTIVE JUROR: I don't have one.

1 MR. LEVENTHAL: Okay. If you could pass it to your
2 right, please.

3 And go ahead. Same question. How do you feel about
4 sitting on the jury?

5 PROSPECTIVE JUROR: It's part of my responsibility as
6 a citizen.

7 MR. LEVENTHAL: Okay. And did you have your hand up
8 when you -- when you were asked about a CCW?

9 PROSPECTIVE JUROR: Yes, I did.

10 MR. LEVENTHAL: And you do have it?

11 PROSPECTIVE JUROR: I do not. I know what it is, but
12 I do not own one -- have one.

13 MR. LEVENTHAL: Okay. Very good. All right.

14 Who else hasn't spoken?

15 Thank you. Back there (indicating).

16 Go ahead and give us your name -- or your number.

17 PROSPECTIVE JUROR: 392.

18 MR. LEVENTHAL: 392?

19 PROSPECTIVE JUROR: Yes.

20 MR. LEVENTHAL: Okay. How do you feel about -- how
21 would you feel about sitting on this jury?

22 PROSPECTIVE JUROR: It's very intimidating and I feel
23 like I can see myself doing this in the future, but --

24 MR. LEVENTHAL: What's this? Being a juror?

25 PROSPECTIVE JUROR: Yes.

1 MR. LEVENTHAL: Okay. What do you mean you could see
2 yourself?

3 PROSPECTIVE JUROR: Well, I just feel like I'm just
4 too young. I still don't know anything about the system, laws,
5 and all that stuff and being up there kind of does scare me a
6 little bit.

7 MR. LEVENTHAL: Okay. So it would be more an of
8 education for you?

9 PROSPECTIVE JUROR: Yeah.

10 MR. LEVENTHAL: Okay. So you'd go in with open
11 feelings and openness to the whole process?

12 PROSPECTIVE JUROR: Yes.

13 MR. LEVENTHAL: Okay. Very good. Thank you very
14 much.

15 138. I think you're down here (indicating), real
16 quick. One more question.

17 How am I doing on time?

18 Hi.

19 PROSPECTIVE JUROR: Hi.

20 MR. LEVENTHAL: You were asked about a -- I think it
21 was your -- was it your sister that went to the Women's March?

22 PROSPECTIVE JUROR: Yes.

23 MR. LEVENTHAL: And you indicated that she went on
24 that. Were you aware of the -- what Madonna said about blowing
25 up The White House.

1 PROSPECTIVE JUROR: No.

2 MR. LEVENTHAL: No?

3 PROSPECTIVE JUROR: I don't watch the news.

4 MR. LEVENTHAL: You don't watch the news? Okay.

5 During the Women's March was anybody aware of
6 Madonna's statement that she wanted to blow up The White House
7 or something to that effect?

8 Could we give the microphone back to her.

9 How did you feel about that?

10 PROSPECTIVE JUROR: Terrible. I -- she should be
11 prosecuted for that.

12 MR. LEVENTHAL: Okay.

13 PROSPECTIVE JUROR: What she said, and this is our
14 president. You don't say things like that. You have to
15 respect him, you know, and the way she put it, and she has all
16 these followers, it really -- you know, it's starting to be a
17 Hollywood thing where they follow each other and I -- you know,
18 it's -- I don't like that at all. Too many followers there.
19 Not any good leaders.

20 MR. LEVENTHAL: Okay. Very good. Thank you.

21 Did you have your hand up?

22 PROSPECTIVE JUROR: Oh, I just was agreeing with her
23 thoughts.

24 MR. LEVENTHAL: You're agreeing with her thoughts?

25 PROSPECTIVE JUROR: Yeah. I heard Madonna saying

1 that. There was a clip.

2 MR. LEVENTHAL: Okay.

3 PROSPECTIVE JUROR: And I think she should have been
4 arrested. I wonder why the Secret Service didn't visit her
5 immediately.

6 MR. LEVENTHAL: Okay. Interesting.

7 Anybody else heard the statement?

8 Back here (indicating)?

9 PROSPECTIVE JUROR: Number 207.

10 I heard what she said and I agree with the others,
11 that she should have been arrested. Whether you like him or
12 you don't like him, there's an amount of respect, he is the
13 president and if you don't like it, go away. But again,
14 it's -- they seem to be -- seems to be something that's
15 flowing, is that we have that right. Yes, we have rights, but
16 it gets down to respect and there just isn't any.

17 MR. LEVENTHAL: Okay. So rights to respect.

18 PROSPECTIVE JUROR: We have rights to speak our
19 minds, yes. But disrespectfully, no, and he is the president.
20 Sorry. That's who he is.

21 MR. LEVENTHAL: Okay. What if she said it about
22 anything other than The White House?

23 PROSPECTIVE JUROR: Huh?

24 MR. LEVENTHAL: Is it because he's the president?

25 PROSPECTIVE JUROR: She said it about The White

1 House.

2 MR. LEVENTHAL: Correct. But what if it was about,
3 something else, a different house, any -- a blue house.

4 PROSPECTIVE JUROR: No. I -- I -- when it comes to
5 bodily harm, someone is going to be damaged because of what
6 they believe, I don't buy that. I mean, we all have a right,
7 yes, but I don't think we have a right to hurt each other
8 because we don't agree.

9 MR. LEVENTHAL: Interesting.

10 PROSPECTIVE JUROR: Speak your mind, but that's about
11 it.

12 MR. LEVENTHAL: Very good. Thank you.

13 Is there anybody else who hasn't spoken? No?

14 Thank you very much for your time. I appreciate it.

15 Oh. Someone? Oh, there you are. I didn't see you
16 because of the . . .

17 What's your juror number?

18 PROSPECTIVE JUROR: 205.

19 MR. LEVENTHAL: 205.

20 I have a question for you. Do you believe that
21 people who are arrested at a protest are probably guilty of a
22 crime?

23 PROSPECTIVE JUROR: No.

24 MR. LEVENTHAL: No? You believe that just because an
25 arrest is made, that there's still another process after that?

1 PROSPECTIVE JUROR: Yes.

2 MR. LEVENTHAL: Okay. And that would be the court
3 process?

4 PROSPECTIVE JUROR: Yes.

5 MR. LEVENTHAL: Okay. How do you feel about sitting
6 on the jury?

7 PROSPECTIVE JUROR: Um, I think it's a duty and I
8 think it's a privilege.

9 MR. LEVENTHAL: Excellent. Okay.

10 Is there anybody else? No?

11 Thank you very much.

12 THE COURT: All right. Thank you, Mr. Leventhal.

13 We're going to go ahead and take our restroom break.
14 20 minutes, Mike, you think is enough? There's not that --
15 there's only about half of them left. So we'll -- it's 3:15.
16 Aaron, 3:45?

17 COURTROOM ADMINISTRATOR: Yes, Your Honor.

18 THE COURT: Okay. Let's plan to be back here at
19 3:45. We're going to go ahead and --

20 COURTROOM ADMINISTRATOR: Your Honor, 3:25.

21 THE COURT: 3:25? Okay. 3:30. That's awesome.

22 All right. So 3:30. Let's go ahead and stand for
23 the jury and remember when you come back, please sit in the
24 same seat.

25 (Venire panel excused from courtroom at 3:18 p.m.)

1 (Outside the presence of the venire panel at 3:39 p.m.):

2 COURTROOM ADMINISTRATOR: All rise.

3 THE COURT: We're back on the record, outside the
4 presence of the -- all of the jurors except for Number 339.

5 You can go ahead and take a seat if you feel more
6 comfortable. Either way.

7 Juror 339 had indicated to the marshal -- oh, 199.
8 I'm sorry. 199.

9 Is she 199?

10 PROSPECTIVE JUROR: I am 199.

11 THE COURT: Okay. Great.

12 -- that she wanted to speak to us outside the
13 presence of the other jurors.

14 PROSPECTIVE JUROR: Yeah. I just wanted to discuss,
15 like, the financials of being that part of a jury.

16 If this was a two-week trial, I would be totally on
17 board for it because my employer would pay for up to 10 days,
18 but after that, I would be sustaining a \$1200 a paycheck loss
19 by being on the jury.

20 THE COURT: Okay. So you're saying your employer
21 pays up to 10 days of jury duty --

22 PROSPECTIVE JUROR: Correct.

23 THE COURT: -- but not more than that.

24 PROSPECTIVE JUROR: Correct.

25 THE COURT: And so, you've crunched the numbers and

1 you would be losing \$1200 --

2 PROSPECTIVE JUROR: A paycheck.

3 THE COURT: -- each paycheck and you're paid every?

4 PROSPECTIVE JUROR: Every two weeks.

5 THE COURT: Two weeks. Okay. So for every two weeks
6 after the first 10, you would be losing 1200, and is that
7 taking into consideration the jury services?

8 PROSPECTIVE JUROR: Correct.

9 THE COURT: I know it's not very much pay.

10 PROSPECTIVE JUROR: Yeah. That's already taking into
11 consideration what I would be paid as a juror.

12 THE COURT: Okay. So, what is the result of that?
13 Because you did tell us that you were head of household and
14 that your husband does work but only part time and so that
15 would be a hardship. And so are you telling me that it's even
16 more of a hardship than you originally thought before you --

17 PROSPECTIVE JUROR: Correct. I wanted to also
18 further, I guess, explain my case with that because knowing,
19 like, I'm a younger person with just one other person to take
20 care of, like, I still have to pay for rent and car note and
21 things like that. That mostly depends upon the combination of
22 our pay and not just one person's pay, if that makes sense.

23 THE COURT: Okay. Thank you.

24 PROSPECTIVE JUROR: All right.

25 THE COURT: Appreciate that.

1 PROSPECTIVE JUROR: Thank you.

2 (Prospective Juror 199 excused from courtroom.)

3 THE COURT: Okay. And can we next have number . . .
4 41 come in.

5 COURTROOM ADMINISTRATOR: Your Honor, we have
6 Juror 41.

7 THE COURT: Hi. I just had a question for you that I
8 need some clarification on. So in the -- in the jury
9 questionnaire there was a question that said, "Do you know of
10 any other reason why you cannot or should not serve?" and then
11 earlier today when I had the little slide show, this didn't
12 come up. So, you didn't raise your hand in response to any of
13 the other questions so I just wanted to clarify. The response
14 that you gave in the jury questionnaire is, "There was no
15 deaths; leave it alone." So how -- what does that mean in
16 response to why you cannot or should not serve on the jury?

17 PROSPECTIVE JUROR: Well, that was just a easy way
18 out, but, you know, I didn't really mean it. I just figured,
19 well, if they -- just -- there wasn't any deaths, which I
20 didn't really get into the whole story. Goes to show you I
21 never did get really into it. I heard about it, but didn't
22 really get into all the details. So, that's why I left it the
23 way it is, you know. I didn't know if anybody got shot or hurt
24 or any of that. So, that's why I said it that way.

25 THE COURT: All right. And so how is that a reason

1 why you cannot or should not serve?

2 PROSPECTIVE JUROR: Oh, I -- I could serve, yes. I
3 have no problem. Is that what you're -- I didn't quite -- I
4 can't hear you.

5 THE COURT: All right. So the question was, "Is
6 there any reason why you cannot or should not serve?" and then
7 you provided a response.

8 PROSPECTIVE JUROR: Okay. No. I could serve. I --
9 I -- there's no issue. I'm sorry.

10 THE COURT: Okay. Thank you.

11 PROSPECTIVE JUROR: I'm sorry about that.

12 (Prospective Juror 41 excused from courtroom.)

13 THE COURT: Okay. If we can bring everybody in and
14 then the Government has reserved 10 minutes I think it was?

15 MS. CREEGAN: I think I reserved all but 10. I went
16 pretty brief in my first few questions.

17 THE COURT: Okay.

18 (Venire panel returned to courtroom at 3:46 p.m.)

19 THE COURT: All right. Everybody is back, I believe.

20 Go ahead and sit down. Anybody think that there's
21 someone missing next to them that was there before we broke for
22 lunch? I know I've already excused quite a few of you, but
23 raise your hand if you think there's someone who is still in
24 the restroom or maybe went down to get a drink at the coffee
25 shop.

1 (No hands raised.)

2 All right. It looks like we're all here.

3 All right. One of the questions I usually ask that I
4 haven't asked yet is about whether any of the jurors here
5 recognizes someone else in the group. We've actually had
6 fathers and sons before. We had two people who worked with
7 each other; one was the supervisor of another. And so now that
8 you've had chance to see and hear everybody, raise your hand if
9 you think you recognize someone else who's a potential juror.

10 (No hands raised.)

11 Nope? Okay.

12 Go ahead. Government may go ahead and finish up your
13 questions.

14 MS. CREEGAN: Thank you.

15 All right. I'd like to ask a couple specific
16 questions to some folks, just questions that I had, maybe I
17 misunderstood something in your questionnaire, and then I'm
18 going to have a few more general questions.

19 So if you could please pass that Juror 80, please.
20 Right there (indicating).

21 Good afternoon, ma'am.

22 PROSPECTIVE JUROR: Good afternoon.

23 MS. CREEGAN: So, ma'am, I do not need to pry, but I
24 do see that your spouse was a Park Service employee and we will
25 have some witnesses that work for the Park Service. Do you

1 have any strong feelings about the Park Service from that
2 experience that could impact you?

3 PROSPECTIVE JUROR: No, I don't.

4 MS. CREEGAN: Okay. Thank you. I appreciate that.
5 And Juror 103, please.

6 And, ma'am, I see that you know Mace Yampolsky.

7 PROSPECTIVE JUROR: Yes.

8 MS. CREEGAN: And is he a personal friend or an
9 acquaintance?

10 PROSPECTIVE JUROR: An acquaintance. He actually
11 represented my son in a criminal case.

12 MS. CREEGAN: And have you ever spoken about this
13 case with him?

14 PROSPECTIVE JUROR: Never.

15 MS. CREEGAN: Okay. And would your friendship with
16 him in any way impact your service as a juror in this case?

17 PROSPECTIVE JUROR: No.

18 MS. CREEGAN: Okay. Thank you.

19 And as a more general question, I know that some of
20 you folks talked a little bit about respect that you might have
21 for law enforcement officers. Is there anyone that feels that
22 they could not, because of that respect, follow the
23 instructions about the reasonable doubt standard as the Court
24 gives them to you?

25 (No hands raised.)

1 Okay. Seeing no response . . .

2 I'm going to ask the opposite question. Is there
3 anyone that has kind of a bad feeling about law enforcement
4 officers and -- that have negative views of them?

5 (No hands raised.)

6 Seeing none . . . Even broader. Anybody have sort of
7 negative views about the federal government that could impact
8 them?

9 (No hands raised.)

10 Okay. Here's another general question. Has anybody
11 tried to speak with you, here at the courthouse? Maybe somebody
12 you don't know tried to contact you, tried to speak with you
13 about this particular case, or hand you information or anything
14 of that kind?

15 (No hands raised.)

16 Okay. And I have one question that I'd like to ask
17 everybody because I'd like to get a chance to talk a little bit
18 with everyone. I know all my questions are not ones that really
19 give you much of a chance to speak, so I'd like to ask everybody
20 if we could please pass the mic just to say in a sentence or so
21 what you think you bring to working in a team, because being in
22 a jury you will have to work with 11 other folks.

23 PROSPECTIVE JUROR: Juror 142.

24 I'm so grateful to be here because I've been to a
25 jury before, but I never get to pick and sit in the panel like

1 this. I'm excited.

2 PROSPECTIVE JUROR: Juror 139.

3 This is my very first time of being a juror and a
4 personally, I think that it's an honor to be here and to be
5 able to serve my country.

6 MS. CREEGAN: Okay.

7 PROSPECTIVE JUROR: And my county. So . . .

8 MS. CREEGAN: And what do you feel, like, when you
9 work in a bigger group, like 12 or so people, what do you feel
10 you can maybe bring kind of maybe to a team.

11 PROSPECTIVE JUROR: What do I feel? I feel like,
12 hopefully, I can bring objectivity to it. Be able to reason.

13 MS. CREEGAN: Thank you.

14 PROSPECTIVE JUROR: Number 138.

15 I work well in a group as helping organize other
16 people.

17 PROSPECTIVE JUROR: I would say I work well with
18 others. Be able to discuss and bring up, like, each other's
19 opinions and kind of go from there.

20 PROSPECTIVE JUROR: Hi. I have no problem working
21 with others.

22 MS. CREEGAN: Do you?

23 PROSPECTIVE JUROR: I have no.

24 MS. CREEGAN: No problem. Oh, good. I didn't hear
25 the "no."

1 PROSPECTIVE JUROR: Well, I realize I do have
2 something to say and I do want to, you know, make it out there
3 that I respect the law and I am honored to be on a cast of
4 whoever I'm with to discuss this. It is -- it is a privilege.

5 MS. CREEGAN: Okay. And when you work in a group --
6 maybe you do it at work or maybe you do it in your personal
7 life -- what type of role do you normally take when you work in
8 a group?

9 PROSPECTIVE JUROR: I've been a supervisor.

10 MS. CREEGAN: Okay.

11 PROSPECTIVE JUROR: 80.

12 I enjoy working and daily work in teams in my place
13 of employment. I've taken both roles as a leader and as a
14 follower in different groups. I feel I bring objectivity and
15 respect to the evidence brought forward.

16 PROSPECTIVE JUROR: Hi. I'm Juror 84.

17 I feel like I would contribute an open mind and
18 pretty much clean slate because I'm not really -- I don't
19 follow news as heavily as others would, so I don't have any
20 pre-opinions.

21 MS. CREEGAN: How do you feel about being a juror on
22 this case?

23 PROSPECTIVE JUROR: I'm excited and a little bit
24 nervous. Never been in this situation and this one seems kind
25 of like a big deal.

1 MS. CREEGAN: Thank you.

2 PROSPECTIVE JUROR: Juror No. 85.

3 I think it's an honor and a privilege to be here
4 today and to serve as my -- as an American citizen and I can
5 work with large people [sic] because I work with a group --
6 large group of people at work.

7 PROSPECTIVE JUROR: Juror No. 95.

8 I think what I can bring to the jury is the ability
9 to listen to all aspects of any kind of situation or issue and
10 put my personal feelings aside and participate by elaborating,
11 collaborating, and brainstorming other topics, but for the most
12 part, I believe what I can bring to the jury is my support as
13 far as rendering sound mind judgment and I feel that it is my
14 civil duty to serve in a jury and, that's about all I have to
15 say.

16 MS. CREEGAN: Thank you.

17 PROSPECTIVE JUROR: Juror 103.

18 I, too, am honored and privileged to be here today.
19 I'm super excited about it. I feel like I can bring leadership
20 to the table. I can bring a sense of reasoning and objectivity
21 and just some equality in the room.

22 PROSPECTIVE JUROR: Hi. I'm Juror No. 207.

23 This is the first time I've ever been solicited to be
24 on a jury, which I find very exciting, lack of a better word.
25 I am an open-minded person. I'm very analytical. I deal with

1 facts and facts only. Until moving here, I have always been in
2 a large organization so I've worked solo, I've worked with
3 teams and have to get consensus.

4 PROSPECTIVE JUROR: Jury 205.

5 Um, I, too, have worked for a big corporation and
6 I've been a leader and a follower. I believe that I am a
7 peacemaker and I believe that I can bring people back on point.

8 MS. CREEGAN: How do you feel about being a juror in
9 this case?

10 PROSPECTIVE JUROR: I'm very pleased to have been
11 chosen.

12 PROSPECTIVE JUROR: Juror 199.

13 I'm a little nervous being here. It's my first time
14 being a juror.

15 I -- I've worked in big groups, small groups, so
16 familiar with the idea. Usually I play a devil's advocate, so
17 play with the ideas as they come out, that sort of thing.

18 PROSPECTIVE JUROR: 188.

19 I'm looking forward to hearing both sides of the
20 story and then trying to figure out who -- who has the best
21 story.

22 PROSPECTIVE JUROR: It's a privilege and an honor to
23 be chosen to serve on any jury and I prefer working in teams
24 because I really don't know a whole lot about nothing.

25 PROSPECTIVE JUROR: 275.

1 It's an honor and a privilege to serve and it is also
2 our right as American citizens.

3 Thank you.

4 MS. CREEGAN: And may I ask you, sir, do you have
5 opportunities to work in a team and what role you might
6 normally play when you work on a team?

7 PROSPECTIVE JUROR: I was a lone store major so I led
8 the team as well, I listened and followed as well.

9 MS. CREEGAN: Thank you.

10 PROSPECTIVE JUROR: 284.

11 I think this is a fascinating opportunity to explore
12 the events that have been occurring. I'm a scientist by
13 training and trade, so I tend to be very analytical and as a
14 scientist, we work collaboratively to come to a common
15 conclusion.

16 MS. CREEGAN: Thank you.

17 PROSPECTIVE JUROR: Juror 288.

18 Typically in a team setting, I lean towards the
19 leader via structure and organization.

20 MS. CREEGAN: Thank you.

21 PROSPECTIVE JUROR: Juror 339.

22 I work for a small corporation, so, we all have to
23 work as both leaders and followers depending on what we're
24 working on. I'm a logical person and very objective. So, I
25 feel like I could bring a sense of objection [sic] to the -- to

1 this -- to this trial.

2 MS. CREEGAN: And how do you feel about being a juror
3 in this particular case?

4 PROSPECTIVE JUROR: I -- I think it's an honor and
5 part of our -- part of our duty as citizens, so . . .

6 MS. CREEGAN: Thank you.

7 PROSPECTIVE JUROR: Yep.

8 PROSPECTIVE JUROR: Juror 329.

9 I think it's an honor to be chosen up to this point
10 and I have no problems working in a large group with people.

11 MS. CREEGAN: What -- what type of role would you say
12 you would normally play when you work in a group?

13 PROSPECTIVE JUROR: I like to follow, but at the same
14 time, depending on where it takes you, if you need to lead, you
15 always have to take an initiative.

16 MS. CREEGAN: Thank you.

17 PROSPECTIVE JUROR: Juror 325.

18 It's a both privilege and a little bit -- because
19 this is the second jury duty that I have. The first one was
20 with the city court and I did work with a group before,
21 so . . .

22 MS. CREEGAN: And could I ask you, sir, when you are
23 working on a team, what type of role do you normally play?

24 PROSPECTIVE JUROR: Yes, at the same time, both a
25 leader and a follower.

1 PROSPECTIVE JUROR: Juror 324.

2 With my previous career, one of my myriad careers of
3 being in law enforcement and the court system, I also feel that
4 I can be objective and follow the letter of the law if that is
5 what is required of us. I've also been a leader and a
6 follower. So, I've been a business owner where I've had to
7 take a lot of responsibility and I've worked in organizations
8 where I just am part of the team and make it work.

9 MS. CREEGAN: Thank you.

10 PROSPECTIVE JUROR: I feel like I'm more -- an aspect
11 of my husband and I, we lead a biblical foundation group so on
12 a moral standpoint, more in that direction I think I could lead
13 in that direction. Otherwise, certainly open for all, you
14 know, what -- what they have to say.

15 PROSPECTIVE JUROR: Juror 314.

16 I think I'm a very good listener, an active listener
17 and I have an eye for detail and I believe that's actually very
18 important in -- in any process. I'm not really a natural
19 leader. However, I will be -- I -- unhesitating to step up if
20 there's a gap in what I see as a process issue or team
21 dynamics. But generally, I like to kind of stay in the -- in
22 the back here.

23 MS. CREEGAN: Thank you.

24 PROSPECTIVE JUROR: Thank you.

25 PROSPECTIVE JUROR: Juror 296.

1 Work-wise, I've worked with groups, large groups,
2 small groupings, similarly. I've acted as a lead and I've also
3 acted as a drone, so I can feel comfortable doing both.

4 MS. CREEGAN: May I ask you, sir, how do you feel
5 about being a juror in this case?

6 PROSPECTIVE JUROR: Oh, it's an honor and a privilege
7 to be here.

8 MS. CREEGAN: Thank you.

9 PROSPECTIVE JUROR: Juror 376.

10 I've never been on a jury before so I'm excited to
11 kind of get the new experience since I've only ever seen the
12 other half of this kind of -- of -- words -- of the justice
13 system, you know, from the TV shows and stuff that I watch.
14 And as far as working in groups, I usually try to kind of stay
15 in the background like him, but I will -- I do bring forward my
16 own ideas if I have them, so . . .

17 MS. CREEGAN: Thank you.

18 PROSPECTIVE JUROR: Juror 388.

19 I -- I also bring an open mind. I have no
20 conclusions about this case. Generally, throughout my life,
21 I've been known as someone to facilitate smooth transitions and
22 get to the bottom line of things. And as far as this case is
23 concerned, I'm really intrigued.

24 PROSPECTIVE JUROR: 397.

25 This is my first time in federal court and I think

1 the jury process is really important and it's a privilege as an
2 American. My small group experience tends to be as a problem
3 solver, detail oriented.

4 PROSPECTIVE JUROR: Juror 405.

5 I'm . . . proud to be American and this is our duty
6 and I believe in our justice system. I'm fair and patient and
7 a good listener. I don't like speaking in public, so I tend to
8 be more of a follower.

9 MS. CREEGAN: Thank you for speaking in public just
10 now. I'm sorry. I know it's not enjoyable for everyone to
11 talk to a whole room full of people.

12 PROSPECTIVE JUROR: Juror 445.

13 In a group setting, I typically like to kind of
14 assess the people I'm with first. So, depending on the
15 dynamics of the group, I may take the leader role, but I like
16 to take the supporting role more. Very solution focused and
17 critical thinker, so I kind of like to take in my surroundings
18 before I give my opinion or feedback on what's going on.

19 MS. CREEGAN: And you'll all remember that earlier
20 today I asked if there was anything that you can think of that
21 we should know. Maybe in hearing some more questions or having
22 some more time to think of it, you may have thought that there
23 is actually something that you'd like to say. Is there anybody
24 that feels like they have something that they would like to
25 make sure that we know?

1 (No hands raised.)

2 Okay. Thank you very much.

3 THE COURT: All right. At this time the Court is
4 going to thank and excuse Juror No. 199 for a financial
5 hardship.

6 (Prospective juror excused.)

7 All right. The rest of you we're going to invite to
8 return on Wednesday at 12 o'clock. We'll probably start court
9 at about 1 o'clock with you. We still have another group that
10 we're going to be questioning as well and then we'll put the
11 two groups together, but you do need to be at the jury room at
12 12 o'clock so that the folks down there, the staff can take
13 attendance and validate parking and do the paperwork that they
14 have to do for you.

15 So, at this time we'll go ahead and thank you for
16 coming in today. I know it's been a long day for you. I was
17 hoping to get you out of here by 4:30 so I'm really glad that
18 we did so I know you had to be here early today. So, please be
19 back here by 12 o'clock on Wednesday. Today's the 10th. So
20 Wednesday will be the 12th. Be here by 12 o'clock. Okay?

21 Thank you very much and we'll finish up, hopefully,
22 jury selection Wednesday afternoon.

23 Have a good day.

24 (Venire panel excused from courtroom at 4:06 p.m.)

25 THE COURT: All right. We're outside the presence of

1 the jury. We're still on the record. You may sit down.

2 We've got a few more minutes before we need to break.
3 So, are there any other for cause challenges or issues that you
4 want me to consider or that the parties have agreed upon that
5 we want to put on the record so that it will be easier on
6 Wednesday?

7 MR. LEVENTHAL: Yes.

8 THE COURT: If you've already had some time to
9 discuss it today.

10 MR. LEVENTHAL: Yes.

11 I would like to renew 158. She's the individual that
12 had the chronic back or chronic pain. She seemed like she
13 wasn't really awake when I asked her a question over there.
14 She kind of, oh, I'm 158. She wasn't really paying attention.
15 I would renew my -- my motion to have her for cause.

16 MS. CREEGAN: We'll agree to that, Your Honor. We
17 see that she is in some pain. She is struggling.

18 THE COURT: All right. So we'll excuse Juror No.
19 158.

20 MR. LEVENTHAL: I'd also -- 142.

21 Now, in speaking to her, it really wasn't clear, but
22 she indicated, one, that she did not want to serve on the jury,
23 and two, on her questionnaire, that she has a language barrier.
24 So, I think based upon those two things -- now, you know, I
25 don't know how much we needed to get into with it to her, but

1 if she's indicating she has a language barrier and we're just
2 talking to her simply, how far she can go with -- you know,
3 with a long trial, I would ask that she be removed for cause as
4 well.

5 THE COURT: All right. I never heard her say she
6 didn't want to be here. In fact, she said she would be willing
7 to serve and in response to Ms. Creegan's answers, she was
8 excited to be here. Did you hear something different? Am I
9 mixing up a different juror with this one?

10 MS. CREEGAN: No. I think she -- in her --

11 THE COURT: It's the person at the bottom at the end,
12 right?

13 MS. CREEGAN: Correct.

14 She said something in her questionnaire that she was
15 concerned about there being a language barrier, but in speaking
16 to her, she seems to very clearly understand and speak to me.
17 I can see that she has an accent, maybe she's self-conscious,
18 but I don't see that she's struggling to understand.

19 MR. LEVENTHAL: Well, on answer Number 9 she says,
20 "No. I would like the judge to please excuse me from jury
21 service," and then she goes on to say that she should not be on
22 the jury because of language barrier.

23 Now, maybe if we ask her some more questions when she
24 comes back, that's fine, but if she's indicated that she thinks
25 she has a problem, I would ask that she be removed for cause.

1 (Brief pause in proceedings.)

2 THE COURT: All right. I'm looking at her
3 questionnaire. She has a degree in accounting, employed full
4 time as an accountant.

5 All right. So, Question No. 42, "Is there any reason
6 not yet covered why you think you cannot or should not serve on
7 the jury?" And she responded "yes." And the next question is,
8 "If yes, please explain," and then she writes, "language
9 barrier." And then the next question, Number 43 says, "Are you
10 willing to serve as a juror in the trial of this case?" and her
11 response is "yes." And then as to question Number 4 -- 44,
12 which is, "Did anyone help you complete this jury
13 questionnaire?" she responded "no."

14 So we can follow up with her on Wednesday, but it --
15 I -- I understood here fine, but . . . she didn't seem to not
16 want to be on the jury. I don't know if she misunderstood the
17 question or just wanted to mention that she did have an accent
18 or a possible language barrier, but we can explore that on
19 Wednesday if we need to.

20 MR. LEVENTHAL: Okay. And one last one. 405,
21 Your Honor. She indicated that she comes from a long line of
22 law enforcement and she has a problem with cops being victim or
23 victimized. I think that goes to a strong bias. So I'd ask
24 that she be removed for cause as well, or he. Yeah, she . . .

25 THE COURT: This is the one that said she was a

1 follower.

2 Ms. Creegan, do you have an objection to 405?

3 MS. CREEGAN: I do, Your Honor. I think a lot of
4 people respect law enforcement, but the question is whether
5 they can follow the Court's instructions on reasonable doubt
6 and nobody indicated that they couldn't follow those.

7 If we removed everybody that respected law
8 enforcement, we would have a very, very biased jury.

9 MR. LEVENTHAL: I think she just went one step
10 further. I understand the respect for law enforcement, but
11 when you say that she has a problem, i.e., a bias, that when a
12 cop is a victim, obviously that's sort of -- you know, not the
13 heart of any defense or anything, but, you know, if somebody's
14 telling the Court that, that goes to bias when we're bringing
15 in law enforcement officers talking about, you know, on a scale
16 of 1 to 10 how -- how -- how did you feel threatened, what was
17 the threat level, things of that, the assessment. When
18 somebody first comes out with that, that goes to bias and I
19 think that's a strong motive to remove her at this point.
20 We've got plenty of jurors that have actually stayed and we've
21 got more coming in.

22 MR. TANASI: Stewart would join, Your Honor.

23 MR. MARCHESE: Parker joins.

24 THE COURT: This is one that was scheduled to come in
25 tomorrow and then couldn't be here, so she came in today

1 instead.

2 Let me make sure we're talking about the right one.

3 So, 405.

4 She's the one that indicated she had a felony
5 conviction.

6 MS. CREEGAN: Your Honor, are you referring to
7 Juror 445 or 405?

8 THE COURT: I don't know. Which one is it,
9 Mr. Leventhal?

10 MS. CREEGAN: Because I think 445 would have been
11 scheduled to come in tomorrow. She's not in the first 60, but
12 I think 405 would have been the very last person in the first
13 60.

14 MR. LEVENTHAL: I have it as 405. It would be the
15 third to last female on the back row.

16 THE COURT: Okay.

17 MR. LEVENTHAL: She did also indicate that she was
18 part of a union protest, if that helps.

19 THE COURT: So she's the one that said she had a
20 prior felony conviction and her rights restored, right?

21 MS. CREEGAN: That's correct, Your Honor. For, I
22 think it was, dealing marijuana before it was legal and now
23 that would make her an entrepreneur.

24 THE COURT: All right. Well, I didn't hear her say
25 that she was biased. I did hear her say that she had a long

1 history of law enforcement in the family.

2 I'm going to deny that motion without prejudice. We
3 can look into it more on Wednesday if we need to. I don't see
4 the -- I don't see the bias.

5 MS. CREEGAN: Your Honor, the Government would ask to
6 excuse Juror 392. She was the young lady that said she was
7 very intimidated by this experience. After she gave that
8 answer, she did begin to cry. I think she may struggle to
9 handle the experience of being a juror.

10 THE COURT: Any objection from the defense to the
11 excusal of 392?

12 MR. TANASI: I'm sorry, Your Honor. What was the
13 number again?

14 THE COURT: She said she was -- 392.

15 MR. TANASI: Thank you.

16 THE COURT: In her questionnaire she said she was not
17 willing to serve but then she didn't really give an explanation
18 for that, but I think today she did explain that it was
19 intimidating.

20 Was she the one who said she could picture herself
21 doing this years from now but not right now because she felt
22 too young and inexperienced to be able to --

23 MS. CREEGAN: That's correct, Your Honor.

24 THE COURT: -- know what to do?

25 MR. MARCHESE: Parker has no objection.

1 MR. TANASI: Stewart also has no objection,
2 Your Honor.

3 MR. PEREZ: Lovelien, no objection.

4 MR. LEVENTHAL: No objection.

5 THE COURT: All right. So we'll excuse 392.

6 MS. CREEGAN: Your Honor, we'd also like to ask to
7 excuse Juror No. 148. She's the woman who indicated that she
8 did have a problem with the separate 924(c) count.

9 THE COURT: Yeah. She was also the one who said, in
10 the questionnaire, that she was not a citizen.

11 MR. LEVENTHAL: And she's not 18.

12 THE COURT: She's not 18 years old. That she
13 wouldn't be able to understand English, and she spoke English
14 fine today. She also said she had prior jury service and was
15 willing to serve.

16 MS. CREEGAN: I suspect she may have gone through the
17 form just checking "no" for everything.

18 THE COURT: Yeah. That's really -- yeah. She said
19 her -- one of her kids is aged 46 years old, so obviously she's
20 over 18 years old. Yeah. That was kind of odd, but we never
21 really went into it.

22 What's the defense position?

23 MR. LEVENTHAL: No -- no objection on behalf of
24 Mr. Drexler.

25 MR. TANASI: None from Parker.

1 MR. MARCHESE: None from Stewart, Your Honor.

2 MR. PEREZ: None from Lovelien.

3 THE COURT: All right. So 148 will be excused.

4 MS. CREEGAN: Your Honor, we finally would like to
5 renew our objection to Juror 41. Her explanation for why she
6 gave that answer is she was sort of deliberately trying to get
7 out of jury service by being flip about saying no one was hurt
8 so leave it alone. I think that's -- doesn't indicate a great
9 deal of respect for being a juror, regardless of what she says
10 now.

11 THE COURT: Yeah. I still didn't really understand
12 her answer and she was . . . I think bizarre is probably an
13 understatement for the way that she acted and the responses she
14 gave.

15 MR. TANASI: Your Honor, she indicated that, you
16 know, she always would see two sides and at the end she said
17 she's honored. She'd be honored if she could serve. I
18 mean . . .

19 MS. CREEGAN: I think she was very embarrassed to be
20 called on it, but originally her response was to try to get out
21 of jury duty by giving a flip and dismissive response and, of
22 course, this is very serious and even though she says today she
23 can take it seriously, she said something else in the past.

24 MR. MARCHESE: I mean, we've all seen this during
25 voir dire.

1 THE COURT: Well, I think she's going to be a
2 questionable juror and I don't know if you would want to keep
3 her at the end when it comes down to comparing her to others,
4 but I don't think that it rises to a level of a for cause
5 challenge. It probably wouldn't be the best person to choose
6 to be on the jury, but that's what the peremptories are for. I
7 don't see that she's disqualified from serving, but . . . she's
8 certainly an odd duck is the nicest thing I think I could say
9 about that, but it's not -- that is not enough to disqualify
10 her.

11 MS. CREEGAN: Thank you, Your Honor.

12 THE COURT: Any others?

13 MS. CREEGAN: Not from the Government.

14 THE COURT: All right. So we start again at 8:30
15 tomorrow morning. Same thing, different group.

16 MR. TANASI: I'm sorry. Court's indulgence. We had
17 just one other that we were talking about. I just want to see
18 where we are kind of on that one.

19 THE COURT: Sure.

20 (Counsel conferring.)

21 MR. TANASI: Your Honor, there's no further motions
22 from the defense. Thank you.

23 THE COURT: All right. So we'll see you back here
24 tomorrow morning.

25 Thank you, counsel.

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MR. LEVENTHAL: Thank you.

MR. TANASI: Thank you.

MR. MARCHESE: Thank you.

COURTROOM ADMINISTRATOR: All rise. Off record.

(Proceedings adjourned at 4:23 p.m.)

--oOo--

COURT REPORTER'S CERTIFICATE

I, Heather K. Newman, Official Court Reporter, United States District Court, District of Nevada, Las Vegas, Nevada, do hereby certify that pursuant to Section 753, Title 28, United States Code, the foregoing is a true, complete, and correct transcript of the proceedings had in connection with the above-entitled matter.

DATED: 7-15-2017

/s/ Heather K. Newman
Heather K. Newman, CCR #774
OFFICIAL FEDERAL REPORTER

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,)	CASE NO. 2:16-CR-46-GMN-PAL
)	
Plaintiff,	)	LAS VEGAS, NEVADA
	)	JULY 11, 2017
vs.	)	8:55 A.M.
	)	COURTROOM 7C
ERIC J. PARKER (11),)	
O. SCOTT DREXLER (12),	)	JURY TRIAL, DAY 2
RICHARD R. LOVELIEN (13),)	
STEVEN A. STEWART (14),)	
)	
DEFENDANTS.)	
)	
)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE GLORIA M. NAVARRO,
UNITED STATES DISTRICT CHIEF JUDGE

APPEARANCES:
FOR THE PLAINTIFF:

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(continued next page)

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Proceedings reported by machine shorthand. Transcript produced
by computer-aided transcription.

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Also Present:

Sharon Gavin, Special Agent, FBI
Joel Willis, Special Agent, FBI
Mike Abercrombie, FBI
Mamie Ott, Legal Assistant

1 LAS VEGAS, NEVADA; TUESDAY; JULY 17, 2017; 8:55 A.M.

2 --oOo--

3 P R O C E E D I N G S

4 THE COURT: Thank you. You may be seated.

5 COURTROOM ADMINISTRATOR: This is the time set for jury
6 trial, day 2, in Case No. 2:16-cr-46-GMN-PAL, United States of
7 America versus Eric Parker, O. Scott Drexler, Steven Stewart,
8 and Ricky Lovelein.

9 Counsel, please note your appearance for the record.

10 MR. MYHRE: Good morning, Your Honor. Steve Myhre,
11 Erin Creegan, and Nadia Ahmed on behalf of the United States.

12 THE COURT: Good morning.

13 MR. MARCHESE: Good morning, Your Honor. Jess Marchese
14 on behalf of Mr. Parker.

15 MR. TANASI: Good morning, Your Honor. Rich Tanasi for
16 Steven Stewart.

17 MR. LEVENTHAL: Good morning, Your Honor. Todd
18 Leventhal on behalf of Mr. Drexler. And we've got Nona Dodson
19 as well as Tori Bakken.

20 MR. PEREZ: Good morning, Your Honor. Shawn Perez on
21 behalf of Ricky Lovelein.

22 THE COURT: Good morning. Well, I don't know who
23 complained yesterday about it being too warm, but be careful
24 what you complain about. I brought in my sweater to use today
25 because I was told that it was a freezer in here. It probably

1 will get warmer as more people start to come in, but we'll have
2 to start off cold a little bit.

3 Do you have something to put on the record,
4 Mr. Marchese?

5 MR. MARCHESE: I do, Your Honor.

6 THE COURT: Go ahead.

7 MR. MARCHESE: In getting the list of potential jurors
8 for today, Juror No. 539, Ms. Poleski, I just wanted to make a
9 record. I used to work for her husband. I've been to her home.
10 I don't believe she would probably remember me. I've also had
11 her son help me move. I -- like I said, I don't believe that
12 she would remember me. Her husband definitely knows me and her
13 son as well.

14 MS. CREEGAN: Juror 539 does mention that she knows
15 Mr. Marchese on her questionnaire.

16 THE COURT: Yes, she says her husband knows through
17 work Mr. Marchese.

18 MR. MARCHESE: Yeah.

19 THE COURT: Thank you.

20 Was there anyone else that the parties had looked at
21 and wanted to go ahead and agree to excuse now so we don't waste
22 time or ...

23 MS. CREEGAN: Your Honor, we did observe that Juror 479
24 is a courtroom administrator for Judge Koppe and used to work at
25 the U.S. Attorneys Office.

1 THE COURT: Yes, I'm -- who is that? 479. Right. And
2 so 479 also says: Previously worked at the U.S. Attorneys
3 Office. Knows most of -- all of the attorneys, especially the
4 AUSAs, friends with Ahmed and Dickinson, and knows a great deal
5 about this case having worked for Judge Koppe, who is not the
6 magistrate judge assigned to this case, but I think did a couple
7 of the initial appearances. On her duty days they came in. So
8 she already has information about the case that may or may not
9 be admissible.

10 So I think that it would make sense to excuse her,
11 unless you want to ask her more questions. Any objection to
12 excusing No. 479?

13 MR. TANASI: No, Your Honor.

14 MR. MARCHESE: No, Your Honor.

15 MR. LEVENTHAL: No, Your Honor.

16 THE COURT: 479 will be excused.

17 MR. LEVENTHAL: Your Honor, 436 has already pretty much
18 made up his or her mind. I believe the Bundys family broke the
19 law and deserve to be punished, is what she wrote. So I don't
20 believe there's any doubt on that.

21 THE COURT: Ms. Creegan, any objection to excusing 436?
22 I didn't look at that one to see if she said she was willing to
23 serve.

24 MS. CREEGAN: We don't have an objection to 436. But
25 we do have some other jurors that have indicated bias that, if

1 you would like to do that now as opposing to questioning people
2 more, the government would also like to move to exclude.

3 THE COURT: All right. So 436 will be excused.

4 MS. CREEGAN: Juror 442 has indicated that they would
5 nullify if they do not agree with the law.

6 THE COURT: Yeah, very clearly say: I refuse to follow
7 the Court's instruction of the law.

8 All right. Any objection to excusing No. 442?

9 MR. LEVENTHAL: No, Your Honor.

10 MR. TANASI: No, Your Honor.

11 THE COURT: All right. So 442 will be excused.

12 MS. CREEGAN: Juror 666 says: I don't agree with
13 either side in this case and don't think I can be impartial.

14 THE COURT: I'm sorry. 666?

15 MS. CREEGAN: 666.

16 MR. TANASI: Your Honor, I think she's indicated she
17 doesn't I think think -- she doesn't agree with how things went
18 down on both sides of the stand-off. That's kind of the
19 definition of impartial.

20 MR. LEVENTHAL: Well ...

21 (Defense counsel conferring.)

22 MS. CREEGAN: It indicates that the juror's made up
23 their mind about the case. It just doesn't appear to be for or
24 against one particular party.

25 THE COURT: She says she doesn't believe in the system.

1 Doesn't like what's on TV. Doesn't understand it.

2 MR. LEVENTHAL: We have no objection to 666.

3 THE COURT: All right. So 666 can be excused.

4 MS. CREEGAN: And Juror 590 has indicated that they
5 would find serving on the jury a waste of time. I also note
6 they fall asleep when sitting too long.

7 I'm sorry. I see that 590 has actually not shown up
8 today, which I guess would make sense.

9 THE COURT: So, Aaron, 590 is not here today?

10 COURTROOM ADMINISTRATOR: That's correct, Your Honor.

11 MS. CREEGAN: That's correct, Your Honor.

12 THE COURT: Go through the list. Do you have the list
13 of who has not appeared today so we can --

14 COURTROOM ADMINISTRATOR: I do not, and Summer is
15 currently delivering a jury to Judge McKibben.

16 THE COURT: Oh. Okay. So Judge McKibben is getting
17 his jury right now. So we don't ...

18 MS. CREEGAN: I'm sorry if I missed it, Your Honor.
19 Was Juror 539 excused? The juror that knows Mr. Marchese.

20 THE COURT: No, I don't think that he moved for
21 excusal. He was just ...

22 MR. MARCHESE: Yeah, I did not. I was just letting the
23 Court know that I have had prior contact with her. I doubt
24 she'd remember me. Maybe if she saw me, she would remember me,
25 but I don't think that the, quote, unquote, relationship is such

1 that there's a bias.

2 THE COURT: So, Ms. Creegan, are you moving to excuse
3 539 or do you want to question her further?

4 MS. CREEGAN: I would move to excuse her at this time,
5 but we can certainly question her further as well. She does
6 indicate that she knows both Mr. Marchese and Mr. Leventhal in
7 her questionnaire.

8 THE COURT: What's the Defense position? You want to
9 ask her questions or do you --

10 MR. MARCHESE: Yes, we would, Your Honor. I believe
11 that -- I don't think she personally knows Mr. Leventhal. I
12 believe her husband, Mr. Poleski, knows Mr. Leventhal.

13 MR. LEVENTHAL: He's a City attorney. I know him. I
14 don't know -- I don't know her. I don't have any relationship.
15 As a matter of fact, she wrote North Las Vegas down on her
16 questionnaire, and he's actually a City attorney over at County
17 here -- or the City.

18 MR. MARCHESE: And I should also probably put my
19 earlier comments into a timeline. We're talking 15 years
20 ago-ish was when I was in her home.

21 THE COURT: Okay. Let's see.

22 So in her questionnaire she says her husband is an
23 Assistant City Attorney for the City of Las Vegas Criminal
24 Division. And you're saying it's North Las Vegas,
25 Mr. Leventhal?

1 MR. LEVENTHAL: No, Your Honor. I must have read that
2 wrong. I see it. I just didn't know who it was. I wasn't
3 putting together who it was last night. That's all.

4 THE COURT: Oh. Okay. Says the husband used to work
5 with Jess Marchese. Husband knows through work Leventhal and
6 Marchese, as well as other defense attorneys in this case.
7 They're mentioned as ...

8 Husband knows Captain Tom Jackson through work. Is
9 that a police officer?

10 MS. CREEGAN: He testified in the first trial.

11 THE COURT: Mentions her father-in-law is a retired FBI
12 agent, who taught her how to shoot.

13 This was interesting. When asked about if she was
14 familiar with Bunkerville, she said she saw a few news casts of
15 the origami event? Is that origami like paper-folding or was
16 that just ... I didn't know if that was a typo.

17 Okay. She says she's willing to serve. And in
18 response to the question: Any reason yet covered why you cannot
19 or should not serve, she says no.

20 Okay. So we'll leave her on for now and see if it
21 becomes more clear whether or not she should be excused.

22 MS. CREEGAN: Thank you.

23 THE COURT: Any other jurors you want me to consider
24 excusing?

25 MS. CREEGAN: Not from the United States.

1 THE COURT: Okay. So, so far we've got 436, 442, 479.
2 I better keep track of this other one, too, because ...

3 Is it just those three, Aaron?

4 COURTROOM ADMINISTRATOR: I show 666 as well, Your
5 Honor.

6 THE COURT: That's right.

7 All right. So let's go ahead and see -- do you think
8 they're ready now?

9 COURTROOM ADMINISTRATOR: She's not back yet. Should
10 just be another couple minutes. I can call down there and see
11 if someone else is available.

12 (Court conferring with courtroom administrator.)

13 MR. TANASI: Your Honor, if we could maybe address 470?

14 THE COURT: Sure.

15 MR. TANASI: She's indicated she feels that the Bundys
16 were wrong allowing their cattle to graze on federal land and
17 that they were wrong in threatening violence against federal
18 officers. She's also indicated she doesn't want to serve.
19 She's a paralegal at a civil firm in town, Olson, Cannon,
20 Gormley, Angulo & Stoberski, I think.

21 THE COURT: Moving to excuse?

22 MR. TANASI: Yes, ma'am.

23 MS. CREEGAN: No objection, Your Honor.

24 THE COURT: All right. How about any other defendants
25 object to excusing 470?

1 MR. LEVENTHAL: No, Your Honor.

2 THE COURT: All right. So 470 will be excused.

3 MR. TANASI: Thank you.

4 THE COURT: All right. So I'm going to excuse them
5 after they come in and sit down. Otherwise, I think that the
6 seating chart will be wrong, and everyone will be confused. So
7 go ahead and mark on your seating chart so that after they
8 leave -- it will be easy with the box because there will be
9 empty chairs, but with the rows -- No. 666 is almost right in
10 the middle of that third row. So as you're counting -- if
11 you're counting heads, remember to skip one.

12 MR. TANASI: Okay. Thank you.

13 Your Honor, I apologize. I'm looking at this again.
14 480, if we could strike.

15 MR. MARCHESE: I don't think 480 is here.

16 MR. TANASI: Disregard.

17 THE COURT: What was that number?

18 MR. TANASI: 480, Your Honor.

19 THE COURT: 480?

20 MR. TANASI: Yes, ma'am, but I was mistaken.

21 THE COURT: Yeah. It looks like they didn't show up.

22 Mr. Tanasi, I think 480 was here yesterday.

23 COURTROOM ADMINISTRATOR: All rise.

24 MR. TANASI: Yes. That was withdrawn, ma'am.

25 THE COURT: Okay.

1 (Whereupon jury panel enters courtroom at 9:21 a.m.)

2 THE COURT: All right. Everyone may be seated.

3 We're still on the record. We're joined by the jury.

4 Good morning and welcome, ladies and gentlemen. We lost a
5 little bit of time this morning because we had a couple of
6 different juries for different courtrooms and trying to make
7 sure we keep everyone straight here, but we do have all of the
8 jurors for this trial that filled out a questionnaire.

9 So please raise your hand if you did not fill out a
10 written questionnaire.

11 (No response.)

12 THE COURT: Okay. So I think we've got all of you.
13 I'm going to go ahead and call a couple of juror numbers, and I
14 want you to just raise your hand so that I can make sure you're
15 sitting where we think you're supposed to be sitting because we
16 have a seating chart. All right.

17 So, first of all, Juror No. 426? Thank you. Juror
18 No. 465? Thank you. Juror No. 485? Thank you, sir. 517? All
19 right. And Juror No. 523? Thank you, ma'am. Juror No. 571?
20 Thank you, sir. 648? Okay.

21 And let's see. 609? Thank you. 587? 653? Thank
22 you, sir. 666? Thank you. 700? Thank you. 767? Thank you.
23 And 725? And 704? All right. Great. So you all are seated
24 where you're supposed to be seated so we can go ahead and get
25 started.

1 All right. Well, you have been summoned to court in
2 this case as a panel of prospective jurors to serve in a
3 criminal case. And most of you I know have families to care for
4 or jobs that require your attention, and you have busy
5 schedules. It's never convenient to serve on a jury. However,
6 it is the highest duty of citizenship. We had jurors just like
7 yourselves yesterday. Quite a few of them mentioned what an
8 honor it was to have the opportunity to serve the community on a
9 jury. And I think that you'll find that that's true as well.

10 Even the individuals who try to get out of serving on a
11 jury, when they do end up on a jury, often tell us that they
12 found it to be very interesting, and it is an interesting
13 experience.

14 So our system of justice does depend upon good citizens
15 such as you to serve on juries in our Federal Court throughout
16 the nation every day. And if you were a party in a case in
17 court, I know that you would want to have that case decided by a
18 jury composed of individuals just as yourselves.

19 First, we're going to go ahead and have Aaron
20 administer the oath, and then I'll ask you some questions.

21 COURTROOM ADMINISTRATOR: Will the prospective jury
22 please stand and raise your right hand?

23 (Whereupon the jury panel was duly sworn.)

24 COURTROOM ADMINISTRATOR: Thank you. You may be
25 seated.

1 THE COURT: All right. Now, I'm going to be asking you
2 questions, and the questions that I'm asking you are in order to
3 determine your qualifications, just like when you're going to a
4 job interview and there are certain qualifications that need to
5 be met. Justice Kennedy on the Supreme Court likes to say that
6 serving on a jury is like serving on a government board. You
7 have to have certain qualifications. And so we're going to be
8 asking you questions about those qualifications.

9 One of those qualifications is to be fair and
10 impartial. So when I say can you be fair and impartial, I mean
11 can you judge this case solely on the facts of -- presented to
12 you in court, the testimony, the documents, things that are
13 presented to you in court, and can you follow the instructions
14 of law, which I will give you at the end of the case, and those
15 must govern your deliberations. That's what I'm asking when I
16 say can you be fair and impartial. Can you put aside any
17 opinion that you may have already reached because of something
18 you read or something you heard or something someone told you.

19 So the questions I'm going to ask you are not designed
20 to embarrass any of you. First of all, I am going to introduce
21 to you a summary of what the case is about. It's not evidence,
22 so don't consider it as evidence. It's simply to assist you to
23 understand what this case is about.

24 So this is a criminal case, as I said. The United
25 States is the prosecuting agency. I may refer to them sometimes

1 as the prosecution or just simply as the Government. They have
2 filed a criminal case against four individuals: Eric Parker, O.
3 Scott Drexler, Ricky Lovelein, and Steven Stewart. And
4 sometimes you'll hear me call them by name, and sometimes you'll
5 hear me collectively refer to them as the defendants.

6 Now, the defendants are charged in a document called an
7 indictment, and they were charged as follows. The defendants
8 are charged with multiple violations of federal law arising from
9 events occurring at or near the Town of Bunkerville in Clark
10 County, Nevada, between approximately March 2014 and April 2014.

11 Federal law enforcement officers were enforcing court
12 orders to impound cattle belonging to Cliven Bundy which were
13 grazing unlawfully -- I'm sorry -- belonging to Cliven Bundy
14 which were grazing unlawfully on federal public lands. The
15 indictment charges that the defendants conspired with, and/or
16 aided and abetted Bundy, and others, to threaten and use force
17 and violence to interfere with the officers while they executed
18 their duties to enforce the court orders.

19 Now, again, this is just a summary. It is not
20 evidence. All of the defendants have entered pleas of not
21 guilty to these charges; therefore, they are presumed to be
22 innocent. The law does require you to presume that they are
23 innocent of these charges, and although they've been accused,
24 they start this trial with a clean slate. There's no evidence
25 that has been presented in trial against them or offered against

1 them. The law permits nothing, but legal evidence to be
2 presented in this court to be considered by the jury against the
3 accused.

4 Now, the law permits you to consider only the factual
5 evidence presented and legally admitted in court before you
6 arrive at a verdict in this case. And that means that you are
7 never to conduct an independent investigation yourself at any
8 time.

9 A criminal charge consists of factual elements. The
10 government has the burden of proving each of those elements
11 beyond a reasonable doubt. Remember that a defendant in a
12 criminal case does not have to introduce any evidence to prove
13 his innocence.

14 The defendants are presumed to be innocent now and
15 throughout the trial, unless and until the jury is persuaded
16 that the government has introduced evidence establishing the
17 defendants' guilt beyond a reasonable doubt. The purpose of
18 this trial is for you to determine whether the Government can
19 meet its burden. A defendant must be acquitted if the
20 Government fails to prove his guilt beyond a reasonable doubt.

21 In a criminal case the judge and the jury have divided
22 responsibilities, and it is my duty to preside over the trial to
23 decide the questions of law during trial and to instruct the
24 jury as to the law that is applicable to this case.

25 On the other hand, the most important duty in a

1 criminal trial is reserved for the jury. And it will be your
2 duty to judge the facts and to pass judgment upon the
3 defendants.

4 When I ask you questions, if the answer is yes, please
5 raise your hand. We're going to be using these questions to
6 determine, first of all, whether someone should be excused for
7 cause, which is another way of saying lack of qualifications.
8 And the second reason is so that the parties can best determine
9 how best to exercise their peremptory challenges, which are
10 challenges they may use to excuse a juror without giving any
11 particular reason. So the parties do have a small number of
12 these challenges. And so, therefore, they may choose to ask you
13 follow-up questions after I ask you the general questions.

14 And I'll ask our court reporter -- recorder that unless
15 one or more of the jurors raises his hand or her hand, the
16 record should show that there was a negative response to my
17 question.

18 So, first of all, we have jury qualifications. To be
19 qualified for jury service, the law requires that the individual
20 be a citizen of the United States. That's number one. Number
21 two is that you must be at least 17 years of age. Number three
22 is that you must be able to read, write, speak, and understand
23 the English language, so all four of those. And, number four,
24 you must have resided in the State of Nevada for at least one
25 year.

1 So, please, raise your hand if you think that you are
2 not qualified because you do not meet one of these four
3 qualifications.

4 A PROSPECTIVE JUROR: I'm not a good speller.

5 THE COURT: Just a minute. All right. We've got a
6 microphone coming your way.

7 What is your jury number?

8 What is your jury number?

9 A PROSPECTIVE JUROR: 5 or 451.

10 THE COURT: 451. Okay. So go ahead.

11 A PROSPECTIVE JUROR: I'm just not a good speller.

12 THE COURT: Okay. Not a good speller, but you can
13 read, write, and speak, and understand the English language?

14 A PROSPECTIVE JUROR: Yes.

15 THE COURT: Thank you.

16 Okay. Well, luckily, there will be no spelling
17 involved. At the end there is a verdict form, but most of it I
18 think is just checking boxes. I don't recall if there's
19 anything in particular to write in. You'll all be together.

20 Anyone else?

21 All right. We've got ...

22 Your jury number, please?

23 A PROSPECTIVE JUROR: My number is 523.

24 THE COURT: 523. Yes, ma'am.

25 A PROSPECTIVE JUROR: I don't write perfect English. I

1 understand it. I read 90 percent.

2 THE COURT: Okay. So you don't -- say that again. You
3 don't write the English language well?

4 A PROSPECTIVE JUROR: Uh-hmm.

5 THE COURT: All right. But can you read it?

6 A PROSPECTIVE JUROR: Yeah, I can read it.

7 THE COURT: And can you -- do you feel that you
8 understand it?

9 A PROSPECTIVE JUROR: Yes, I understand.

10 THE COURT: So it's just the writing part that's a
11 problem?

12 A PROSPECTIVE JUROR: Yes.

13 THE COURT: Thank you.

14 Anyone else? What's your juror number, please?

15 A PROSPECTIVE JUROR: 550.

16 THE COURT: 550. Thank you.

17 A PROSPECTIVE JUROR: I can speak, and writing and
18 reading, a little bit, not really good.

19 THE COURT: So you can read and write -- you can read
20 it and you can write it, but your speaking --

21 A PROSPECTIVE JUROR: Everything is a little; not very
22 well.

23 THE COURT: Okay. A little and not very well. So what
24 language do you speak best?

25 A PROSPECTIVE JUROR: Spanish.

1 THE COURT: And how long have you been in this country?

2 A PROSPECTIVE JUROR: 10 -- no. 12.

3 THE COURT: 12 years?

4 A PROSPECTIVE JUROR: Uh-hmm.

5 THE COURT: All right. And what do you do for a
6 living?

7 A PROSPECTIVE JUROR: Sorry?

8 THE COURT: What do you do for a living?

9 A PROSPECTIVE JUROR: I work.

10 THE COURT: Yeah. Where do you work?

11 A PROSPECTIVE JUROR: Palace Station.

12 THE COURT: And what do you do there?

13 A PROSPECTIVE JUROR: Food runner.

14 THE COURT: Okay. So what does a food runner do? Do
15 you have to talk to customers and take orders like a waitress?

16 A PROSPECTIVE JUROR: Yeah, it's the basic -- you know,
17 I running up with the food, but not no -- like, my speak is not
18 like fluency, you know. Like, I understand and I speak, but not
19 like ...

20 THE COURT: Okay. So not fluently?

21 A PROSPECTIVE JUROR: Uh-hmm.

22 THE COURT: Okay. Thank you.

23 Anyone else in that front row?

24 (No response.)

25 THE COURT: All right. How about the second row?

1 (No response.)

2 THE COURT: Is that the third row?

3 What's your juror number, sir?

4 A PROSPECTIVE JUROR: 666.

5 THE COURT: Yes, sir.

6 A PROSPECTIVE JUROR: I have a problem. I don't
7 understand 90 percent. When jury person was talking, sometimes
8 I can't understand so I have to try to read it. I can read and
9 I can speak a little bit better, but not reading or no --
10 sometimes I miss the -- what you are talking about.

11 THE COURT: Okay. Thank you, sir.

12 Anyone else there? Anyone else in the benches? Okay.
13 We'll go back to the box then.

14 A PROSPECTIVE JUROR: Hello. My name is --

15 THE COURT: What number are you, sir?

16 A PROSPECTIVE JUROR: 464.

17 THE COURT: Okay. And you wrote on the questionnaire
18 that your English is about 60 to 70 percent, and your wife
19 helped you fill out the questionnaire. You're full-time --

20 A PROSPECTIVE JUROR: That's right.

21 THE COURT: -- at a casino.

22 A PROSPECTIVE JUROR: Yeah.

23 THE COURT: Anyone else you want to add to that?

24 A PROSPECTIVE JUROR: No. That's fine. That's the
25 one.

1 THE COURT: Okay. Thank you.

2 So jury number, sir?

3 A PROSPECTIVE JUROR: 476.

4 THE COURT: All right.

5 A PROSPECTIVE JUROR: I can read maybe like 80 percent.

6 I can write maybe like 70 percent.

7 THE COURT: So you read 80 percent and what --

8 A PROSPECTIVE JUROR: 80 percent, and write like 70
9 percent.

10 THE COURT: Okay. And write 70 percent.

11 A PROSPECTIVE JUROR: Yeah.

12 THE COURT: When you read, do you feel that you are
13 understanding what you are reading?

14 A PROSPECTIVE JUROR: Exactly, yeah.

15 THE COURT: Okay. And you're also a cook?

16 A PROSPECTIVE JUROR: Yeah.

17 THE COURT: Okay. Thank you.

18 What's your number, sir?

19 A PROSPECTIVE JUROR: 485.

20 THE COURT: 485. Yes, sir.

21 A PROSPECTIVE JUROR: I was a correction officer before
22 when I was in the Navy, United States Navy. And I was told what
23 -- and heard it might be -- have a conflict of interest.

24 THE COURT: Okay. We're not at that question yet. I'm
25 just asking questions right now about reading, writing, and

1 understanding, and speaking the English language, but we'll get
2 to that question. Thank you, sir.

3 A PROSPECTIVE JUROR: You're welcome.

4 THE COURT: Anyone else have anything that you wanted
5 to let us know about whether you are qualified?

6 (No response.)

7 THE COURT: All right. So there's actually three more
8 qualifications. Number five is that you must not have any
9 federal criminal charges pending against you. Number six is you
10 must not have any prior felony convictions where your -- unless
11 your civil rights have been restored. If your civil rights have
12 been restored, then you're qualified, but if you have a prior
13 felony conviction and your civil rights have not been restored,
14 then we need to know about that.

15 A felony is a crime that is punishable by more than one
16 year in prison. So traffic tickets and things like that
17 generally are not felonies. They're usually misdemeanors.

18 And then number seven is you must not have any mental
19 or physical infirmity which would prevent you from rendering
20 satisfactory jury service.

21 So please raise your hands if you think that you may
22 not be qualified because of any of these three reasons.

23 All right. What's your jury number?

24 A PROSPECTIVE JUROR: My jury number is 574.

25 THE COURT: Thank you.

1 A PROSPECTIVE JUROR: And this would be pertaining to
2 the felony --

3 THE COURT: All right.

4 A PROSPECTIVE JUROR: -- convictions. I am an
5 ex-felon, many, many years, but I do believe my rights have been
6 restored because I voted for over the last 10 years.

7 THE COURT: Okay. Thank you.

8 Anyone else in that row?

9 A PROSPECTIVE JUROR: My number is 659, and I have a
10 recently diagnosed medical condition with a doctor's note.

11 THE COURT: Okay. And is that for a mental or physical
12 infirmity?

13 A PROSPECTIVE JUROR: I believe I'm covered under HIPPA
14 for that.

15 THE COURT: All right. So did you bring the note?

16 A PROSPECTIVE JUROR: Yes, I did.

17 THE COURT: Did you want me to take a look at the note?
18 All right. You can go ahead and pass it to my staff person
19 there, and she can bring it up so you don't have to get up since
20 you're in the middle of the row.

21 And that note was from yesterday, right? The date on
22 there is 7/10?

23 A PROSPECTIVE JUROR: I just learned I was reporting
24 last night.

25 THE COURT: Okay. Thank you.

1 Anyone else have a concern about whether you meet these
2 qualifications? Please go ahead and raise your hand if you do.

3 That's a uniform negative.

4 Now, besides qualifications, there are other things
5 called excusals and you may choose to excuse -- exercise your
6 right to serve on a jury, but you also may not be required to
7 serve on a jury if you meet any of these four qualifications.
8 So, for example, number one is if you are more than 70 years of
9 age. So that means if you are more than 70 years of age, you
10 are not required to serve on a jury, but if you want to, you
11 still are qualified to serve on a jury. But we would not
12 require you to serve on a jury if you are over the age of 70.

13 The second excusal listed is if you have active care
14 and custody of a child or children under the age of 10 whose
15 health and/or safety would be jeopardized by your absence for
16 jury service. Number three is if you provide essential care and
17 custody for an aged or infirm person. And, number four, if your
18 services are so essential to the operation of a business,
19 commercial, or agricultural enterprise that such enterprise must
20 close if you were required to perform jury duty.

21 So please raise your hand if you think any of these
22 excusals apply to you and you wish to be excused. So if the
23 excusal applies to you, but you're willing to serve, you don't
24 have to raise your hand. You only need to raise your hand if
25 you wish to be excused for any of these four reasons.

1 Your jury number, sir?

2 A PROSPECTIVE JUROR: 486.

3 THE COURT: Yes.

4 A PROSPECTIVE JUROR: So I believe I would be under
5 question 4. I work at True Light Glass and Aluminum. I'm an
6 optimizer, and I'm currently plant manager. And the guy that
7 covers me is currently out of -- out of the state. So as long
8 as I'm not there, the company can't run, and there's over 60
9 employees that are waiting basically for me to optimize and get
10 production on the floor.

11 THE COURT: Okay. So what are they doing today?

12 A PROSPECTIVE JUROR: Today?

13 THE COURT: Yes.

14 A PROSPECTIVE JUROR: Well, 12 o'clock roughly I
15 release the first batch, and after that I got a department of
16 six guys that comes in. If I haven't done my part, they can't
17 do nothing. After this, these six guys come in. They produce
18 the material that goes onto the next department, which is
19 another group of five guys. And it just rolls on. 50 guys
20 total, different departments.

21 THE COURT: Okay. Thank you.

22 Anyone else? Jury number, please.

23 A PROSPECTIVE JUROR: 653.

24 THE COURT: Yes.

25 Okay.

1 A PROSPECTIVE JUROR: So I work at Heritage Springs.
2 It's a retirement home. I'm the building service assistant, and
3 our director just quit. So they just have me in charge for the
4 time being, and we haven't found anybody to work -- to take over
5 that position.

6 THE COURT: Okay. So who's in charge today?

7 A PROSPECTIVE JUROR: They have the bus driver right
8 now. He helps out usually a bit, but he has to do other stuff,
9 too.

10 THE COURT: Thank you.

11 Anyone else in the benches?

12 (No response.)

13 THE COURT: Anyone else in the box?

14 (No response.)

15 THE COURT: All right. So moving on, there are four
16 other exceptions -- oh, was there one more?

17 A PROSPECTIVE JUROR: I'm Juror No. 501.

18 THE COURT: 501. Thank you.

19 A PROSPECTIVE JUROR: And I was looking at number
20 three. My mother basically had a stroke and was hospitalized
21 for two months. And my sisters and I have been taking turns
22 every day going to her. She's been released from the hospital
23 and the rehab, but she's living currently with one of my
24 sisters. And two of us are taking turns every day going to help
25 her transition, just walking, eating, all kinds of things like

1 that. We've been doing that for about a month.

2 And I also work for the School District, and I am an
3 assistant resource -- assistant in the resource room which I
4 feel is, you know, is another thing that I would like to be
5 there the day of -- we get training about a month from now. And
6 we have -- work with special needs kids.

7 MR. TANASI: Your Honor, if we could just have her
8 juror number again, please.

9 THE COURT: The jury number?

10 A PROSPECTIVE JUROR: Oh. Jury number is 501.

11 THE COURT: I think it's 771, isn't it? We don't have
12 a 501.

13 A PROSPECTIVE JUROR: Oh. I'm sorry. I don't have my
14 glasses. I apologize. 0771. I apologize.

15 MR. TANASI: Thank you.

16 THE COURT: Thank you. Anyone else?

17 (No response.)

18 THE COURT: All right. So there are four more
19 excusals. Number five, if you are a physician, a dentist, a
20 registered nurse, a registered pharmacist, an attorney-at-law, a
21 member of the clergy, a member of religious orders, a school
22 administrator, a schoolteacher, or a volunteer safety personnel.
23 Number six, if you live more than 80 miles away one way from the
24 courthouse. Number seven, if you previously served as a juror
25 in this Federal Court in the last two years. And, number eight,

1 if serving on this jury would cause you an undue hardship or
2 extreme inconvenience.

3 If any of these four apply to you and you wish to be
4 excused, please raise your hand.

5 A PROSPECTIVE JUROR: I have an emergency --

6 THE COURT: What is your jury number, please?

7 A PROSPECTIVE JUROR: 0426.

8 THE COURT: Yes.

9 A PROSPECTIVE JUROR: That I can't -- I have to go back
10 and forth to California, and the witnesses I guess that you
11 listed, it would be a conflict of interest.

12 THE COURT: Which witnesses?

13 A PROSPECTIVE JUROR: It would probably be Senator Dean
14 Heller. It has something to do with desecration and a theft of
15 my burial plot. He's from that area, from California. And so
16 I'm having a hard time here in Nevada.

17 THE COURT: Okay. And I see you brought your luggage
18 with you today.

19 A PROSPECTIVE JUROR: No.

20 THE COURT: Are you supposed to be leaving today for
21 California?

22 A PROSPECTIVE JUROR: No. I'm in a slum lord
23 situation. They want to steal the evidence that I have against
24 them. The burial plot is grand larceny first degree is what
25 they'll be charged with.

1 THE COURT: Okay.

2 A PROSPECTIVE JUROR: It's all in there. It's just a
3 laptop, copies of police statements, letters, and stuff.

4 THE COURT: Okay. And the evidence that's in your
5 luggage, that's information that you're going to be using to
6 prosecute?

7 A PROSPECTIVE JUROR: Well, now they're looking for my
8 brother and his wife and sister-in-law, father. They're dead.
9 I realized that when I went to the burial plot. They're dead.

10 THE COURT: Okay.

11 A PROSPECTIVE JUROR: Their identity has been stolen.
12 It's just a big coverup.

13 THE COURT: All right. So this coverup with the
14 identities that have been stolen of your relatives that are
15 deceased --

16 A PROSPECTIVE JUROR: But they were murdered, and
17 everybody's -- you know, it's just a big coverup. I mean, I
18 have evidence against that so -- you know.

19 THE COURT: Okay. And that evidence is what you have
20 in the luggage there today?

21 A PROSPECTIVE JUROR: Well, I didn't really realize it
22 until --

23 THE COURT: If you could --

24 A PROSPECTIVE JUROR: I really didn't realize it until,
25 you know, I been on Twitter trying to get it through because

1 I've never really been on social media trying to do that. And
2 it's not going to work, so ... After I read the list of the
3 witnesses, it's not going to work. It will be a conflict of
4 interest.

5 THE COURT: Okay. So the social media is not helping?

6 A PROSPECTIVE JUROR: Right. No. Because where Dean
7 Heller is from and where the property is in Contra Costa County
8 there would be a big conflict of interest.

9 THE COURT: Okay. And this property in California
10 that's the conflict of interest, is this your property?

11 A PROSPECTIVE JUROR: Yes, it would be my inheritance.

12 THE COURT: But you feel that one of the witnesses,
13 Heller, is trying to --

14 A PROSPECTIVE JUROR: No, it's just that he's from the
15 same area. He was born in Contra Costa County, California. And
16 the property is in Contra Costa County.

17 THE COURT: Okay. So how would it be a conflict of
18 interest?

19 A PROSPECTIVE JUROR: And I live in Nevada, so it's not
20 going to work.

21 THE COURT: Why would it be a conflict if he's just
22 from there, but he doesn't have anything to do with the --

23 A PROSPECTIVE JUROR: Because the property is in
24 Blackhawk, California, and the murder -- my murdered sibling is
25 an original Blackhawk, California, which helped -- we helped

1 fund it. He helped build it. He helped build the golf course.
2 So me living in Nevada and what happened to the cemetery plot
3 and them being murdered, it would just be a big conflict of
4 interest. I don't want -- I don't want to be involved in
5 anything political, and the witnesses are -- they're very
6 political.

7 THE COURT: Okay.

8 A PROSPECTIVE JUROR: And an area like that is real
9 political.

10 THE COURT: Thank you.

11 A PROSPECTIVE JUROR: Thank you.

12 THE COURT: Anyone else? Jury number, please.

13 A PROSPECTIVE JUROR: 486.

14 THE COURT: Thank you.

15 A PROSPECTIVE JUROR: So I'd be under number eight.

16 I'm the main income provider at home. And, you know, if I
17 participate any longer than probably one day, I probably
18 wouldn't be able to cover the bills, monthly bills, or any bills
19 that are coming up on -- soon.

20 THE COURT: And how many people in your household?

21 A PROSPECTIVE JUROR: Right now, four: mom, dad, older
22 brother, and myself. But my brother just went under surgery so
23 currently he's not working.

24 THE COURT: So are you the only one of those four
25 people who are working? Your mom, your dad, and your older

1 brother don't work?

2 A PROSPECTIVE JUROR: Actually, we're all working, but
3 I just have the biggest income out of all of us. And my parents
4 work minimum-paying jobs. And we got in debt a few years back
5 and we're still working on, you know, paying all that off.

6 THE COURT: Thank you.

7 Anyone else in that row? Your jury number, please.

8 A PROSPECTIVE JUROR: Yes, ma'am. I am a member of
9 clergy --

10 THE COURT: What's your jury number, please?

11 A PROSPECTIVE JUROR: I'm sorry. 512.

12 THE COURT: Yes.

13 A PROSPECTIVE JUROR: I'm not sure I'm a good candidate
14 for this type of thing. I find --

15 THE COURT: You said you're a member of the clergy?

16 A PROSPECTIVE JUROR: Yes.

17 THE COURT: How is that?

18 A PROSPECTIVE JUROR: Excuse me?

19 THE COURT: How are you a member of the clergy?

20 A PROSPECTIVE JUROR: I am a minister with the
21 Christian Church. I'm also a practitioner with the Church of
22 Religious Science.

23 THE COURT: I can barely hear you. I'm sorry. Can you
24 hold the microphone a little closer?

25 A PROSPECTIVE JUROR: Oh. Closer?

1 THE COURT: Yes.

2 A PROSPECTIVE JUROR: I am a member -- I am a member of
3 the Church of Christ. I'm also a minister with the Church of
4 Religious Science.

5 THE COURT: So you can ordain at weddings?

6 A PROSPECTIVE JUROR: I can. I haven't been active for
7 the last two years because of health issues.

8 THE COURT: Okay. And you said you wish to be excused?

9 A PROSPECTIVE JUROR: Yes.

10 THE COURT: And I think you were going to add something
11 else, and I might have cut you off because I couldn't hear you.

12 A PROSPECTIVE JUROR: Oh, that's all right. I've found
13 in the past, a few years back when I did some jury selection
14 duties, that I seemed to be in conflict with some of the things
15 that were going on with the death penalty issues and that sort
16 of thing.

17 THE COURT: Okay. Okay. Well, this isn't that kind of
18 case.

19 A PROSPECTIVE JUROR: That's good.

20 THE COURT: So you won't have to worry about that. If
21 it were, we'd have a lot of questions about it for you, as you
22 probably already know from the last time, but this is not that
23 kind of case and we won't have that issue.

24 But you are -- so you said you're not an active
25 minister, but you are an ordained minister?

1 A PROSPECTIVE JUROR: I am.

2 THE COURT: And that's for the Church of Religious
3 Science?

4 A PROSPECTIVE JUROR: Yes.

5 THE COURT: Thank you.

6 Your jury number, please.

7 A PROSPECTIVE JUROR: 517.

8 THE COURT: Thank you.

9 A PROSPECTIVE JUROR: I would go under number eight,
10 extreme inconvenience. My husband and I are business owners.
11 We own a fast-food restaurant. Unfortunately we have
12 circumstances that have required my husband to work a lot of
13 shifts. There's another employee that has volunteered to work
14 my shift because I work Monday, Tuesdays, and Wednesdays. So
15 he's been working double shifts as well.

16 And with me being here and if it takes longer, my
17 husband and that other employee are going to be working a lot of
18 shifts in order for me to be here.

19 THE COURT: Okay. So for a day or two they can cover a
20 double shift, but more than that --

21 A PROSPECTIVE JUROR: Right. But if it's going to take
22 longer, my husband is going to probably get really sick trying
23 to cover because one of the other employees is ill as well.

24 THE COURT: Well, we don't want that ill employee
25 coming into a fast-food restaurant, right?

1 A PROSPECTIVE JUROR: Right.

2 THE COURT: Okay. Thank you.

3 I think I saw another hand up, too. Yes.

4 Your jury number, please.

5 A PROSPECTIVE JUROR: I'm jury 484.

6 THE COURT: Thank you.

7 A PROSPECTIVE JUROR: I work for Southwest Gas. I'm in
8 my last 10 years with the company, and the way our pension works
9 is they take the best out of your five -- five in a row out of
10 your last 10. And overtime is included. If this is a three- to
11 four-month trial, I've been averaging 15 to 25 hours a week of
12 overtime and I have a three-year run going right now. If this
13 turns out to be a three- or four-month trial, it's definitely
14 going to affect that. And I might have to start this -- I might
15 have to start this five-year run all over again to get my final
16 average pay where I want it for my pension.

17 THE COURT: All right. So you're asking to be excused?

18 A PROSPECTIVE JUROR: Yes.

19 THE COURT: Thank you.

20 A PROSPECTIVE JUROR: No. 551. I work for Station
21 Properties. I brought a copy of their policy that states that
22 they only cover two weeks of pay for jury summons. And if this
23 trial goes three to four months, I would fall under hardship
24 financially.

25 THE COURT: All right. And how many people in your

1 household?

2 A PROSPECTIVE JUROR: I have me, my wife. My
3 15-year-old son is week to week. He's one with week with his
4 mother and one week with me. And then my niece moved in last
5 July pending my mother's funeral. So four total.

6 THE COURT: And how old is your niece?

7 A PROSPECTIVE JUROR: 20.

8 THE COURT: And does she or your wife work?

9 A PROSPECTIVE JUROR: They both work.

10 THE COURT: Okay. Thank you.

11 A PROSPECTIVE JUROR: 574.

12 THE COURT: Yes.

13 A PROSPECTIVE JUROR: Number eight, hardship. Me and
14 my significant other are cab drivers here in the City of Las
15 Vegas. And basically three to four months, me, her, and my
16 daughter would be sleeping out front of the Federal Courthouse.

17 THE COURT: Thank you.

18 Your number, please?

19 A PROSPECTIVE JUROR: 708.

20 THE COURT: 708?

21 A PROSPECTIVE JUROR: Yes.

22 THE COURT: Yes.

23 A PROSPECTIVE JUROR: And I am the head of household,
24 the sole provider for my household, and --

25 THE COURT: Can you speak into the microphone a little

1 bit more?

2 A PROSPECTIVE JUROR: I am the sole provider for my
3 household. I'm the head of household, and it's just me and my
4 daughter.

5 THE COURT: How old is your daughter?

6 A PROSPECTIVE JUROR: She'll be 18.

7 THE COURT: And so you'd like to be excused?

8 A PROSPECTIVE JUROR: Yes.

9 THE COURT: And have you checked with your employer to
10 see what they would pay you if you were chosen for the jury?

11 A PROSPECTIVE JUROR: I did, but I did not get what
12 they would pay.

13 THE COURT: You would not get what they would pay? Is
14 that what you said?

15 A PROSPECTIVE JUROR: Well, they said that they would
16 pay, but I don't know what that would be.

17 THE COURT: Who's your employer?

18 A PROSPECTIVE JUROR: MGM Resorts.

19 THE COURT: And are you employed in a position where
20 tips are earned?

21 A PROSPECTIVE JUROR: No.

22 THE COURT: No?

23 A PROSPECTIVE JUROR: No.

24 THE COURT: I think they cover jury service, but not
25 tips, but you'll have to find out more about that. So why do

1 you think that you would not receive the pay that they offer?

2 Are you not full-time or is there --

3 A PROSPECTIVE JUROR: No, I am full-time. I just don't
4 know how the process works. I don't know what it is. When I
5 received the information, it just said what to do when I come
6 and submit it, but it doesn't give any additional information on
7 what you receive or how it works. So, I don't know.

8 THE COURT: All right. So some employers will pay you
9 your full pay, but not tips. Some employers will pay for a
10 certain amount of time. Some employers will pay you, but only
11 if you give them the check that you receive from us for your
12 jury service, although, you know, they will deduct that. But,
13 you know, it just all depends. And some employers don't pay at
14 all. So I can't tell you --

15 A PROSPECTIVE JUROR: Okay.

16 THE COURT: -- for sure, but we have had other jurors
17 from MGM before and I think they're one of the few that do help
18 employees when they are called for jury service. But maybe at
19 one of the breaks you can check into that and get a little more
20 detail to be sure.

21 A PROSPECTIVE JUROR: Okay. And I also had one other
22 thing. We may not be there yet.

23 THE COURT: I can't hear you.

24 A PROSPECTIVE JUROR: I also had one other thing. We
25 may not be there yet, but I had a -- I have a trip planned.

1 THE COURT: Uh-huh.

2 A PROSPECTIVE JUROR: So -- and because this was
3 supposed to start in May and we kept getting rescheduled, we
4 didn't cancel. And it's actually supposed to start on the 14th
5 of this month.

6 THE COURT: Okay. And so it starts July 14th for how
7 long?

8 A PROSPECTIVE JUROR: And it goes until next Tuesday.

9 THE COURT: The 18th?

10 A PROSPECTIVE JUROR: Yes.

11 THE COURT: Okay. Thank you. We'll talk about the
12 calendar later on. Thank you.

13 A PROSPECTIVE JUROR: Okay. And then there's also one
14 other date on August the 21st. And my daughter has a court
15 appearance on that day.

16 THE COURT: All right. Thank you.

17 Anyone else have -- want to be excused for any of the
18 four reasons that are listed on the screen? Yes, sir. What's
19 your number?

20 A PROSPECTIVE JUROR: I'm Juror No. 725.

21 THE COURT: Yes.

22 A PROSPECTIVE JUROR: My employer pays for only 10 days
23 of jury service, and if I were to miss the full length of the
24 trial, I wouldn't receive -- receive pay for any of it except
25 for the first 10 days.

1 THE COURT: Was that 10 days?

2 A PROSPECTIVE JUROR: Yes.

3 THE COURT: All right. And how would that be of
4 hardship for you?

5 A PROSPECTIVE JUROR: I live alone. There's no one
6 else in my household who works. And I don't believe I can
7 afford to miss out on two months' pay.

8 THE COURT: Okay. Thank you.

9 I think I see another hand up there.

10 A PROSPECTIVE JUROR: 653.

11 THE COURT: Yes.

12 A PROSPECTIVE JUROR: My job doesn't pay for jury duty.
13 I would have to use my own PTO hours. And that seems extremely
14 inconvenient because I have my own bills to pay. I have my car
15 payment, insurance, cell phones, all that, and to use the PTO
16 that I worked hard for ...

17 THE COURT: Okay. Thank you.

18 Anyone else?

19 (No response.)

20 THE COURT: All right. So next we've got some
21 exemptions. You are barred from jury service if you are an
22 active duty member of the Armed Forces of the United States.
23 That's number one. Number two, if you are a member of the fire
24 or police department or -- of any state, district, any
25 territory, any possession, or subdivision. Number three, if you

1 are a public official of the United States or of the State of
2 Nevada or local government who is elected to public office.
3 And, number four, if you are a public official of the United
4 States or of the state or local government and you are directly
5 appointed by a person elected to office.

6 So please raise your hand if you think any of these
7 four exemptions applies to you.

8 A PROSPECTIVE JUROR: 650.

9 THE COURT: Yes.

10 A PROSPECTIVE JUROR: I work part-time at the
11 Metropolitan Police Department as an interpreter. So I am not
12 full-time, but I do work for the police department.

13 THE COURT: Thank you.

14 A PROSPECTIVE JUROR: 0707. It's not a problem for me,
15 but I -- my ex-husband was a Metro police officer. My youngest
16 son is a police officer, and my daughter's a supervisor at Metro
17 in records. So I don't know if that will bother anybody else.

18 THE COURT: Okay. But you're not exempt; you're not
19 claiming an exemption?

20 (Court reporter interruption.)

21 THE COURT: She's not claiming an exemption. Thank
22 you.

23 Anyone else claiming an exemption?

24 A PROSPECTIVE JUROR: Juror 607.

25 THE COURT: Yes.

1 A PROSPECTIVE JUROR: I'm actually an appointed IT
2 executive for the City of Las Vegas.

3 THE COURT: Okay. And so who appointed you?

4 A PROSPECTIVE JUROR: I was appointed by the CIO.

5 THE COURT: Okay. Is the CIO elected?

6 A PROSPECTIVE JUROR: No, he's not.

7 THE COURT: Thank you.

8 Anyone else?

9 (No response.)

10 THE COURT: All right. Moving on. Now I'm going to
11 introduce the individuals that are seated at the tables. When I
12 call your name, please go ahead and stand.

13 First of all, we have the acting U.S. Attorney for
14 Nevada, which is Steven Myhre. In this case the Government is
15 represented by Mr. Myhre as well as two Assistant U.S.
16 Attorneys, Ms. Erin Creegan and Ms. Nadia Ahmed. So please
17 raise your hand if you think that you recognize them.

18 All right. I know why you recognize them so that's
19 fine because I read your questionnaire.

20 Anyone else?

21 A PROSPECTIVE JUROR: Erin looks familiar. Maybe from
22 a past DUI case.

23 THE COURT: What's your jury number, please?

24 A PROSPECTIVE JUROR: I'm sorry. 571.

25 THE COURT: 571. All right. So is your pending charge

1 here in Federal Court?

2 A PROSPECTIVE JUROR: No. No, this was a past -- the
3 case was closed. It was over 10 years ago, but I think she
4 worked in District Court at that -- or the State Court at that
5 time.

6 THE COURT: Did you work at State Court? No, I didn't
7 think so. Oh, I'm sorry. It was Ms. Creegan. Is that who you
8 said looked familiar? Not Ms. Ahmed.

9 A PROSPECTIVE JUROR: Yes, she looks familiar. I don't
10 know if it was her or not. I don't remember her name.

11 MS. CREEGAN: I was not prosecuting DUIs in State Court
12 10 years ago. I was prosecuting DUIs, but not in State Court.

13 THE COURT: Yeah. No. So she hasn't worked in State
14 Court.

15 A PROSPECTIVE JUROR: Or whatever court it was. I -- I
16 don't know -- I don't know if it's her or not, but she looks
17 familiar.

18 MS. CREEGAN: Could I ask what district it was?

19 THE COURT: Yes. Was it Nevada or somewhere else?

20 A PROSPECTIVE JUROR: It was Nevada.

21 MS. CREEGAN: I was not in Nevada at that time.

22 A PROSPECTIVE JUROR: My attorney was Charles Rogers,
23 no?

24 THE COURT: No, she wasn't in Nevada.

25 A PROSPECTIVE JUROR: Oh, okay. She looks really

1 familiar to me.

2 THE COURT: Anyone else?

3 (No response.)

4 THE COURT: All right. Thank you. You may be seated.

5 All right. Now we're going to introduce the defendants
6 in this case which are -- oh, I'm sorry. Mr. Myhre, I didn't
7 give you an opportunity to introduce the rest of the individuals
8 who might be here from time to time. Go ahead.

9 MR. MYHRE: Thank you, Your Honor. Working with us
10 during the course of the trial will be FBI Special Agent Sharon
11 Gavin, FBI Special Agent Joel Willis, Bureau of Land Management
12 Special Agent Chris Allen, our legal assistant, Mamie Ott, and
13 FBI Special Agent Mike Abercrombie.

14 THE COURT: So please raise your hand if you think you
15 might recognize any of those five individuals.

16 (No response.)

17 THE COURT: No. Okay. Thank you.

18 All right. So now moving onto the defendants. We
19 have, first of all, Mr. Eric Parker and his attorney, Jess
20 Marchese. Defendant O. Scott Drexler and his attorney, Todd
21 Leventhal. And, Mr. Leventhal, if you can also introduce --

22 MR. LEVENTHAL: Yes, Your Honor. To my left is Nona
23 Dodson and Tori Bakken is our legal assistant.

24 THE COURT: Any members of the jury think you might
25 recognize any of those folks?

1 I know why you recognize them. All right.

2 A PROSPECTIVE JUROR: Juror 539.

3 THE COURT: 539, yes.

4 A PROSPECTIVE JUROR: I believe my husband may have
5 worked and know Jess Marchese.

6 THE COURT: Okay. Do you recognize him yourself?

7 A PROSPECTIVE JUROR: He looks a little familiar. I
8 may have met him at some point just in passing.

9 THE COURT: Okay. Thank you.

10 Anyone else?

11 (No response.)

12 THE COURT: No? All right.

13 Now we also have Mr. Ricky Lovelein and his attorney,
14 Shawn Perez. If you could please stand. Anyone think you might
15 recognize either of these two individuals?

16 (No response.)

17 THE COURT: No? All right. Thank you. You can be
18 seated.

19 And then we have Mr. Steven Stewart and his attorney,
20 Mr. Richard Tanasi.

21 MR. TANASI: Good morning.

22 THE COURT: Anyone think you might recognize these two
23 individuals, please raise your hand.

24 (No response.)

25 THE COURT: No. Okay. Thank you, gentlemen.

1 MR. TANASI: Thank you.

2 THE COURT: All right. Now let's talk about the
3 calendar. I'm going to ask you if this particular calendar
4 would significantly interfere with your ability to serve as a
5 juror. So I know all of you have jobs, all of you have
6 families, all of you have better things to do or other things to
7 do, things you could be doing. No one has a blank calendar for
8 the next two months. Everyone has something planned. But what
9 I'm asking you is whether this particular time frame would
10 significantly interfere with your ability to serve as a juror.

11 So, first of all, the parties estimate that this trial
12 will take about eight to 12 weeks. So I know your jury summons
13 said three to four months, but that was actually for a different
14 trial. This trial is shorter, possibly half as long, but it's
15 still at least eight weeks -- eight to 12 weeks. The time frame
16 would be like today -- actually, not like today because today
17 you had to come in very early. So the time frame would be
18 Monday, Tuesday, Wednesday, and Thursday, four days a week in
19 court. Friday you'll always be off. And while we're here in
20 court Monday, Tuesday, Wednesday, and Thursday, we would begin
21 at 9, take a bathroom break mid-morning, take a one-hour lunch
22 break from 12 to 1, and then take a midday bathroom break around
23 3. And usually you would be done by 5 o'clock.

24 So here's what the calendar looks like. I'll try and
25 make it a little bit bigger so it's easier to see. So you need

1 to be here today and then potentially return tomorrow, but we'll
2 be dark this week Thursday and Friday.

3 Oh, Aaron, it looks like we've got a screen that's not
4 working. Is it on now? Great.

5 So this week we're actually dark Thursday and Friday,
6 but all of the other weeks we're here Monday, Tuesday,
7 Wednesday, and Thursday and we'll be dark on Friday. You'll
8 note that some days we start a little later. So, for example,
9 Wednesday, July 26th, and Thursday, July 27th, we'll be starting
10 later, at 10:30 instead of 9.

11 And some days you'll be scheduled to be here, but we'll
12 call you off or we'll have a shorter day. So I'll never ask you
13 to be here for longer than what is on the calendar, and it's
14 likely that you will be here less than what is on the calendar.
15 Sometimes there's just scheduling issues, and we don't have
16 trial. We do something else instead.

17 So here's the calendar for August, same thing. We're
18 in court Monday, Tuesday, Wednesday, and Thursday. You'll
19 always be off on Friday. I do have over 600 other cases so I
20 have to work them in somewhere. So you'll be off on Friday. I
21 won't be, but you'll be off on Friday. And then you'll be here
22 9 to 5 except certain days. For example, on August 15th,
23 Tuesday, you'll see that we start at 10 a.m. instead of 9 a.m.

24 And, like I said, from time to time I'll have things I
25 have to take care of and I just can't fit them in on a Friday.

1 So I might do them early in the morning. I usually will be
2 doing things 8 o'clock every morning. Sometimes they will take
3 longer. So I might tell you not to come in until 10 or 11 that
4 day because the 8 o'clock calendar is too long and I know I'm
5 not going to get done by 9. And I don't want you to waste your
6 time here. Other times I'll be able to do it at the end of the
7 day and just send you home early.

8 So, like I said, you won't be required to be here on a
9 day that's not on this calendar. And some of these days that
10 are on the calendar you might end up being able to go home.

11 All right. So taking a look at this calendar, please
12 raise your hand if you think that this particular schedule would
13 significantly interfere with your ability to serve on the jury.

14 And if I've already heard about it, you don't need to
15 raise your hand again. So something we haven't heard already.

16 Go ahead and raise it high so she can bring you the
17 microphone.

18 A PROSPECTIVE JUROR: 464.

19 THE COURT: Thank you.

20 A PROSPECTIVE JUROR: By the time they gonna start
21 school sometimes I have to go pick him up -- my son at school at
22 2 o'clock, 2:20.

23 THE COURT: Okay. So are you starting school or your
24 kids are starting school?

25 A PROSPECTIVE JUROR: No, by the time my kid's starting

1 school.

2 THE COURT: So your kids are starting school. And so
3 how would that be a hardship?

4 A PROSPECTIVE JUROR: Because I can't get off at 2.

5 THE COURT: And how old are they?

6 A PROSPECTIVE JUROR: 11 years old.

7 THE COURT: All right. And is there anyone that's --
8 so are you usually at home with them when they -- is it one
9 child or more than one?

10 A PROSPECTIVE JUROR: Two of them. It's -- my daughter
11 is 16 years old. Plus, sometimes when my wife -- she can't pick
12 them up, I'll go pick them up.

13 THE COURT: Okay. And does your wife work?

14 A PROSPECTIVE JUROR: Yes.

15 THE COURT: And so are you saying you're the person who
16 usually picks them up after school?

17 A PROSPECTIVE JUROR: Yes.

18 THE COURT: Or is home with them? Do they walk or do
19 you pick them up?

20 A PROSPECTIVE JUROR: We pick them up.

21 THE COURT: So you pick them up or she picks them up?

22 A PROSPECTIVE JUROR: Sometimes she goes. Sometimes I
23 go, yeah.

24 THE COURT: Okay. And if you're not there to pick them
25 up, can she pick them up?

1 A PROSPECTIVE JUROR: Nobody else can pick them up.
2 Just me and my wife.

3 THE COURT: Right. You and your wife can pick them up,
4 but on the days that you cannot pick them up -- so if you're in
5 this trial and you're not available until 5 o'clock, you can't
6 pick up your kids at 2, can your wife pick them up every day?

7 A PROSPECTIVE JUROR: Depends what is the schedule she
8 got.

9 THE COURT: All right. So does she have a set schedule
10 or a flexible --

11 A PROSPECTIVE JUROR: Yeah, they have like sometimes
12 she get off at 4 or sometimes at 8 at night, sometimes at 3.

13 THE COURT: Okay. And does your 16-year-old drive?

14 A PROSPECTIVE JUROR: No, she took the bus.

15 THE COURT: And does the 11-year-old take the bus?

16 A PROSPECTIVE JUROR: Ah, no.

17 THE COURT: Okay. Thank you.

18 Jury number, please?

19 A PROSPECTIVE JUROR: 476.

20 THE COURT: Yes. Thank you.

21 A PROSPECTIVE JUROR: I working 6 to 2 every day, 6 in
22 the morning to 2 p.m. So I wonder if can show my boss the
23 schedule we're supposed to have here because I got mail last
24 Friday from here, and I show -- I mean, last Tuesday. I show my
25 boss that e-mail from you guys. And said, Why you don't -- why

1 you don't tell me that like two weeks ago? I can find somebody
2 to replace you.

3 Now, I see the schedule tomorrow, Wednesday, I can go
4 to my boss and say, I have to be there in the court tomorrow.
5 So what I have to do? Because they need to find somebody to
6 replace me, not right away, see.

7 THE COURT: Yes. Right. And so we can give you copies
8 of these schedules.

9 A PROSPECTIVE JUROR: And I can go there and tell them
10 I have to be there tomorrow. I mean, maybe then -- because it
11 can be hard for me, too, this kind of stuff.

12 THE COURT: Okay. Yes, we'll have these schedules for
13 you if you need to provide them to your employer.

14 A PROSPECTIVE JUROR: So when I get off from here, I go
15 to my job and tell them I have to be here tomorrow because they
16 need to -- to -- somebody to replace me to working for me for
17 tomorrow.

18 THE COURT: Tomorrow, if we need you back, it would be
19 at 12 o'clock noon.

20 A PROSPECTIVE JUROR: 12 o'clock. But still because I
21 working 6 to 2 and I only in charge of one station, so ...

22 THE COURT: Right. So you would still have time to let
23 your employer know. You could work from 6 to 12 tomorrow and
24 give them the calendar and be here at noon if you need to.
25 We'll let you know by the end of the day if you need to be here

1 tomorrow at 12 or not.

2 A PROSPECTIVE JUROR: Okay. Because I need to tell at
3 least one day in advance. Because that last time -- what
4 happened last Tuesday he -- she -- he got mad because I told I
5 get mail from the court yesterday.

6 THE COURT: Okay. You can call at the break if you
7 want. We'll be taking a lunch break.

8 A PROSPECTIVE JUROR: Okay. But I need to show the
9 schedule.

10 THE COURT: Yes.

11 A PROSPECTIVE JUROR: Okay.

12 A PROSPECTIVE JUROR: My number is 523. It's going to
13 be hard for me because I don't work, but my daughter does. She
14 doesn't know how to drive. I take her back and forth from work.
15 And also I been baby-sitting my grandbaby since she four --
16 since she born. Excuse me. And, uhm, my son and his
17 girlfriend, they work banquets. They don't have like a set
18 schedule.

19 THE COURT: And do you drive them?

20 A PROSPECTIVE JUROR: No, no, no. I drive my daughter.

21 THE COURT: All right. So you drive your daughter, and
22 who do you baby-sit for?

23 A PROSPECTIVE JUROR: For my son.

24 THE COURT: For your son. Okay. And your son and his
25 wife have a variable schedule?

1 A PROSPECTIVE JUROR: Yeah, they don't have set
2 schedules.

3 THE COURT: Do you mean they don't have the same
4 schedule as each other or they don't have the same schedule --

5 A PROSPECTIVE JUROR: They don't have set schedule.
6 Like, they work, like, breakfast, lunches, dinners, or sometimes
7 all day. Sometimes the baby stays at my house, like, the whole
8 week.

9 THE COURT: Okay. So that would be a hardship, and
10 you're requesting to be excused because of scheduling?

11 A PROSPECTIVE JUROR: Yeah, because ...

12 THE COURT: Okay. Thank you.

13 A PROSPECTIVE JUROR: Hi. 521?

14 THE COURT: Yes.

15 A PROSPECTIVE JUROR: And I didn't realize it was going
16 to be that long. I am an insurance agent, but I only work by
17 commissions. And I do have a baby, a 10-month-old baby. So I
18 usually am with her in the mornings. And my husband works and I
19 work at night. The schedule changes and varies every day, but
20 he works most of the time in the mornings. So I wouldn't have
21 someone baby-sitting her all the time.

22 THE COURT: Okay. Thank you. And that was a
23 10-month-old?

24 A PROSPECTIVE JUROR: 550. For this month I have
25 vacation the end of the month. Like, it start the 24th. And I

1 had two year planning to take my kid to Disney Land, so before I
2 start this court, so ...

3 THE COURT: So do you already have the trip to Disney
4 Land planned or you said just before school starts?

5 A PROSPECTIVE JUROR: I have already that -- I have
6 plan it already.

7 THE COURT: And when do you plan to go?

8 A PROSPECTIVE JUROR: I plan to -- the 22.

9 THE COURT: Of July?

10 A PROSPECTIVE JUROR: Yes.

11 THE COURT: And when do you return?

12 A PROSPECTIVE JUROR: I return like the 24.

13 THE COURT: Okay. Thank you.

14 A PROSPECTIVE JUROR: 666.

15 THE COURT: Yes.

16 A PROSPECTIVE JUROR: The jury number. I work in the
17 Bellagio. I'm cook. They don't got to pay me any single day
18 because I was on a schedule, that was they told me when I show
19 the paper for the jury duty.

20 THE COURT: Okay. Thank you.

21 A PROSPECTIVE JUROR: My number is 767.

22 THE COURT: Yes.

23 A PROSPECTIVE JUROR: I'm a part-time employee at the
24 College of Southern Nevada, and I work 9 to 3. And I'm also
25 taking a summer class at UNLV that's going until mid-August, and

1 it meets Monday through Thursday starting at 5 p.m. So if I
2 were to be selected, I'd be missing both school and work.

3 THE COURT: And where did you say you worked?

4 A PROSPECTIVE JUROR: The College of Southern Nevada.

5 THE COURT: And when is your summer class? I know you
6 said it was Monday through Thursday at 5.

7 A PROSPECTIVE JUROR: It meets at 5 p.m. and goes until
8 6:55 p.m.

9 THE COURT: Are you currently in class?

10 A PROSPECTIVE JUROR: Yes.

11 THE COURT: And when will the class end?

12 A PROSPECTIVE JUROR: August 15th, I believe.

13 THE COURT: What is the name of the class?

14 A PROSPECTIVE JUROR: Asian literature.

15 THE COURT: Okay. Thank you.

16 A PROSPECTIVE JUROR: My juror number is 0771. And
17 when I looked at that calendar, my son is in a lacrosse
18 tournament tomorrow for the next three days in Salt Lake City.
19 I brought that up to the girl a few -- several days ago when I
20 found out that this was a confirmed date for the -- and she said
21 bring it up before you, that he's a goalie for a lacrosse
22 tournament, and I would like to be there to support him in Salt
23 Lake City for the next three days.

24 THE COURT: Okay. Thank you.

25 Anyone else?

1 A PROSPECTIVE JUROR: I'm No. 735. I didn't know it
2 was going to be till August, but I had already vacation planned
3 from August 6th through the 10th.

4 And, also, I work as on call also on my job. So any
5 time that I would miss, like, I would not get paid for.

6 THE COURT: I'm sorry. Where did you say you work?

7 A PROSPECTIVE JUROR: I work at Sunrise Hospital.

8 THE COURT: And is your vacation on August 6th through
9 10th, is that a prepaid vacation?

10 A PROSPECTIVE JUROR: It's -- we were, like, driving
11 there, so yeah. So it's already -- like, everything's already
12 been planned.

13 THE COURT: Okay. So you're driving, you don't have
14 any airline flights?

15 A PROSPECTIVE JUROR: Well, I'm not the one that
16 personally booked, but we made these plans, like, months ago.
17 But I didn't think -- I thought it would be done by now. I
18 mean, not by now, but before that time period.

19 THE COURT: So have you paid any money for this
20 vacation yet?

21 A PROSPECTIVE JUROR: I paid my friend. I gave her a
22 down payment for a hotel room.

23 THE COURT: Thank you.

24 A PROSPECTIVE JUROR: Juror 704.

25 THE COURT: Yes.

1 A PROSPECTIVE JUROR: My husband and I have a family
2 trip planned to pick his nieces up in San Antonio and take them
3 to see their grandmother in New Jersey. They lost their father
4 several years ago. So the grandmother is older and unable to
5 travel. So we're picking them up, and we have it planned from
6 July 24th to July 31st.

7 THE COURT: All right. So you're asking to be excused?

8 A PROSPECTIVE JUROR: Yes. And I have another trip
9 August 15th to the 21st.

10 THE COURT: Okay. Thank you.

11 A PROSPECTIVE JUROR: Thank you.

12 THE COURT: Anyone else?

13 (No response.)

14 THE COURT: All right. Now, I did give you a general
15 description of the case and the nature of the criminal offense
16 charged, but based on what I've told you and the identities of
17 the parties, I'm going to ask you a few additional questions.

18 First of all, I'm going to read off the names of the
19 witnesses. You've already seen these in your written
20 questionnaire, but there were some names that were added later.
21 Not everyone on this list is going to testify, but some of these
22 names you might hear during trial. They might be identified as
23 someone in a photo or they just might be on a document. So take
24 a good look and tell me if you recognize any of these names.

25 No. 1, Christine Abbott; No. 2, Glen Allen; 3, Gary

1 Allen; 4, Scott Allen; 5, Arthur Alphin; 6, Patrick Apley; 7,
2 Michelle Arnett; 8, S.R. Babbitt; 9, Andrew Badortha; 10, Leann
3 Baidy; 11, Rick Barclay; 12, Michael Boxx; 13, Erik Boik; 14,
4 Logan Briscoe; 15, Mike Bronson; 16, Mark Brunk; 17, James
5 Buchanen; 18, Ammon Bundy; 19, Briana Bundy; 20, Cliven Bundy;
6 21, David Bundy; 22, Marylynn Bundy; 23, Melvin Bundy; 24, Ryan
7 Bundy; 25, Alexandra Burke; 26, Darrin Bushman; 27, Shannon
8 Bushman; 28, J.S. Butler; 29, Michael Caputo; 30, Dusty
9 Carpenter; 31, Michael Carpenter; 32, Brian Cavalier; 33, Todd
10 Chambers; 34, John Clark; 35, Dick Clayson; and No. 36, Tom
11 Collins.

12 So the names highlighted in yellow were the ones that
13 were added to the list after we mailed you the written
14 questionnaire or after you received the question questionnaire
15 online. So please raise your hand if you think you recognize
16 any of these names.

17 (No response.)

18 THE COURT: All right. Next we have: 37, Blaine
19 Cooper; 38, Clancy Cox; 39, Sean Cox; 40, Shawna Cox, or spelled
20 a different way, Shaunna Cox; 41, Joel Crandall; 42, April
21 Crooks; 43, Michael Dalton; 44, Francesca Defazio; 45, Gerald
22 Delemus; 46, Timothy Deppner; 47, Sarah Draper; 48, Chase Duke;
23 49, D. Dunbar; 50, James Edge; 51, Alex Ellis; 52, Brent or
24 Brett Empey; 53, Cody Faught; 54, Michelle Fiore; 55, Michael
25 Flynn; 56, Bill Freer; 57, Garic Frehner; 58, Anthony Jess

1 Garcia; 59, Jesse Garcia; 60, Gill Gilbertson; 61, Clayton
2 Gleave; 62, Dwyatt Gleave; 63, Garrett Gleave; 64, Stanton
3 Gleave; 65, Waylon Gleave; 66, Hugh Gourgeon; 67, Timothy Willis
4 Guiney; 68, Israel Guzman; 69, David Hahn; 70, David Hale; 71,
5 Kris Ann Hall; 72, Morgan Hamilton; 73, Susan Hardy; 74, Shane
6 Harger; 75, Ellis Hawks; 76, Douglas Heaton; 77, Klynt Heaton;
7 78, Corey Houston; 79, Margaret Houston; 80, Tiffany Houston;
8 81, Neil Hughes; 82, Ramona Hughes; 83, Kerbie Jackson; 84,
9 Thomas Jackson; 85, Thomas "Jackson;" or 86, Bruce Jensen.

10 So please raise your hand if you think you recognize or
11 know any of these individuals.

12 Start in the back. You're 666.

13 A PROSPECTIVE JUROR: What do you mean when you say
14 "recognize"? Because everyone know, like, Bundy from the news,
15 no? And what happened.

16 THE COURT: Okay. So, right, of course --

17 A PROSPECTIVE JUROR: I recognize -- I recognize that.

18 THE COURT: Okay. Other than that, though, is there
19 anyone here -- any of those witnesses that you know?

20 I hear that you recognize the name, Cliven Bundy, but
21 other than that name, do you know him or have you talked to him?

22 A PROSPECTIVE JUROR: No.

23 THE COURT: Okay. Anyone else on the witness list that
24 you know or recognize? Someone you work with or a neighbor?
25 Related to somebody? No? Okay.

1 I think there was a hand up front here, maybe. Okay.

2 A PROSPECTIVE JUROR: I'm sorry, but going back to

3 No. 36, Tom Collins, if that's the --

4 THE COURT: Are you 498?

5 A PROSPECTIVE JUROR: What was that? On the

6 previous --

7 THE COURT: Are you Juror No. 498?

8 A PROSPECTIVE JUROR: I'm Juror No. 498. Correct. I'm
9 sorry.

10 If it's the former Assemblyman, former County
11 Commissioner, I had some interactions with him when I worked at
12 the Public Utilities Commission. Not -- just casual. Not a
13 lot. But he was a lineman for Nevada Power and occasionally
14 would call me on issues that he was -- of interest. And I
15 think -- I think maybe a couple times when he was County
16 Commissioner, but other than that, not much. But more casual
17 business dealings or interactions.

18 THE COURT: All right. So work related?

19 A PROSPECTIVE JUROR: What was that again?

20 THE COURT: Work related? So your conversations
21 with --

22 A PROSPECTIVE JUROR: They were work related. They
23 were about Nevada Power requesting an increase, and usually he
24 was opposed to what they were requesting. And so more -- more
25 of Nevada Power rate cases that would be before the Public

1 Utilities Commission.

2 THE COURT: So they were in the course of your
3 employment for Nevada Power?

4 A PROSPECTIVE JUROR: With the -- at the time I was
5 with the Public Utilities Commission.

6 THE COURT: Or the Public Utilities Commission.

7 A PROSPECTIVE JUROR: Correct.

8 THE COURT: Did you ever speak to him outside of your
9 work position, go out to dinner or --

10 A PROSPECTIVE JUROR: I did not.

11 THE COURT: Okay. Thank you.

12 Anyone else?

13 (No response.)

14 THE COURT: All right. So we also have: 87, Ken
15 Jensen; 88, Wes Jensen; 89, Charles Johnson; 90, Charles "Dick"
16 Johnson; 91, David Johnson; 92, Gayle Johnson; 93, Gregory
17 Johnson; 94, Michael Johnson; 95, Ray Johnson; 96, Shanan Kelly;
18 97, Tyler Kelly; 98, David Keltner; 99, Patricia Kent; 100,
19 Robyn Kirkham; 101, Neil Kornz; 102, Robert Lawson; 103, Charlie
20 Lee; 104, Dawn Lee; 105, Patricia Lewis; 106, Dennis Michael
21 Lynch; 107, Bailey Logue; 108, Joseph Lombardo; 109, Daniel
22 Love; 110, Phil Lyman; 111, James Clayton Madsen; 112, Maurice
23 Martinez; 113, Steve Mayers; 114, Tara McBride; 115, Earl
24 McEwen; 116, Mark McEwen; 117, Chris McIntyre; 118, Micah
25 McGuire; 119, Cameron Mickelson; 120, David Miller; 121, McKay

1 Morgan; 122, Adam Nixon; 123, Brandon Novotny; 124, Jacob Olson;
2 125, Alex O'Neil; 126, Joseph O'Shaughnessy; 127, Josh Oudman;
3 128, Bridgett Pappas; 129, Bryce Paulson; 130, Ryan Payne; 131,
4 Terrie Petrie; 132, Mark Preusch; 133, Brandon Rappala; 134,
5 Albert Reeder; 135, Kenneth Rhoades; and 136, Stewart Rhodes.

6 Please raise your hand if you think you are familiar
7 with any of these individuals.

8 (No response.)

9 THE COURT: All right. So 137, Joseph Rice; 138, Eric
10 Richardson; 139, John Richter; 140, Thomas Roberts; 141, Tom
11 Robertson; 142, Shelle Rubel; 143, David Russell; 144, Clawson
12 Ruth; 145, Greg Ruth; 146, Peter Santilli, Jr.; 147, Joe
13 Santurem; 148, Taylor Schields; 149, Robert Shilakis; 150, Frank
14 Trey Schillie; 151, Yolanda Scronce; 152, Ruben Senatore; 153,
15 Shannon Serena; 154, Frank Serena; 155, Scott Sessions; 156,
16 Mark Seyler; 157, Mary Elizabeth Siemers; 158, Chad Simkins;
17 159, J.S. Skinner; 160, Dale Smith; 161, Erich Smith; 162, M.J.
18 Smith; 163, Brad Sones; 164, BJ Sooper; 165, Mark Sorenson; 166,
19 Daryl Spencer; 167, Lily Spencer; 168, Rulon Spencer; 169, Wendy
20 Spencer; 170, Travis Stone; 171, Brad Stones; 172, Rand Stover;
21 173, William Sudweeks; 174, Adam Sully; 175, Toni Suminski; 176,
22 Scott Swanson; 177, Cheryl Teerlink; 178, Travis Thiede; 179,
23 Krissy Woods Thorton; 180, Toby Tobiasson; 181, Kenneth Tu; 182,
24 Danny Vanvershelden; 183, T.L. Wagner; 184, Ella Mae Walther;
25 185, Gus Warr; and 186, Scott Werber.

1 Please raise your hand if you think you are familiar
2 with any of these folks.

3 (No response.)

4 THE COURT: All right. And last we have: 187, Edwin
5 Whitteaker; 188, Louie Whitworth; 189, Joel Willis; 190, Jerry
6 Winget; 191, Yonna Winget; 192, Jason Woods; 193, Joseph
7 Woolstenhulme; 194, Luca Zanna; and 195, Orpha Zerkle.

8 Please raise your hand if you think you are familiar
9 with any of those individuals.

10 (No response.)

11 THE COURT: All right. What time do we have? We're
12 good on time.

13 All right. So next I'm going to ask you whether you
14 have any prior knowledge about the facts in this case, whether
15 you've read about the case before or listened to or viewed any
16 news accounts about this case, heard anyone discussing this
17 case. I'm going to ask you to raise your hand and then tell me
18 how you have personal knowledge, so not what you know, but just
19 how. Was it because your sister talked about it or because you
20 saw it on TV news or newspaper news? So how do you have
21 personal knowledge?

22 When did you receive this knowledge? Is this something
23 you just read yesterday or something you think you heard about
24 four years ago? And, then, have you formed an opinion? So
25 don't tell me what your opinion is, but have you formed an

1 opinion? Do you have any doubts as to the accuracy of your
2 opinion? And can you set aside that opinion and determine the
3 guilt or innocence of the defendants in this case based only on
4 the evidence presented in trial?

5 So raise your hand if you have prior knowledge about
6 the case and then tell me how, when, whether you formed an
7 opinion, how accurate you think the information is you received,
8 and can you set aside that opinion.

9 A PROSPECTIVE JUROR: I'm Juror 442. And I may have
10 heard about it several years ago in passing, something to do
11 with cattle and federal, but that might have been disconnected.
12 I'm not totally sure. So that's about it.

13 THE COURT: So you did hear something about it years
14 ago, but you're not sure about the accuracy of what you heard?

15 A PROSPECTIVE JUROR: Or if I connected them as
16 unrelated events or just a later memory.

17 THE COURT: Okay. Thank you.

18 A PROSPECTIVE JUROR: Juror 451. I heard about it on
19 the news, but I didn't pay any attention. Mostly recognized the
20 name, Bundy. But nobody else.

21 THE COURT: All right. Have you formed an opinion?

22 A PROSPECTIVE JUROR: I didn't pay attention to what it
23 was all about, so no.

24 THE COURT: Okay.

25 Anyone else in that top row?

1 A PROSPECTIVE JUROR: Juror 465.

2 THE COURT: Yes.

3 A PROSPECTIVE JUROR: Just whatever blurb they put on
4 the news while I was fixing dinner.

5 THE COURT: Okay.

6 A PROSPECTIVE JUROR: Didn't really listen much to it.
7 Just the story, however brief it was.

8 THE COURT: All right. And was this recently or a
9 while ago?

10 A PROSPECTIVE JUROR: Oh, this was a while ago. I
11 think when it first -- when things were first happening. I
12 don't even remember how long ago that was.

13 THE COURT: And did you form an opinion?

14 A PROSPECTIVE JUROR: No.

15 THE COURT: Thank you.

16 A PROSPECTIVE JUROR: Juror No. 470. I have prior
17 knowledge from local and national news.

18 THE COURT: And is that recent or a while back?

19 A PROSPECTIVE JUROR: No, this is when it all happened.

20 THE COURT: Did you form an opinion?

21 A PROSPECTIVE JUROR: Yes.

22 THE COURT: And can you set aside that opinion?

23 A PROSPECTIVE JUROR: No.

24 THE COURT: Okay. Thank you.

25 Okay. So I'm told that we need to take a bathroom

1 break. So we're going to go ahead and take -- how long have we
2 allot them? 20?

3 COURTROOM ADMINISTRATOR: I think 15 minutes we can
4 take.

5 THE COURT: Okay. So I'm going to split you up on two
6 different floors so that there's more bathrooms available for
7 you. It's 10:55 now. So we will be back here at 11:10?

8 COURTROOM ADMINISTRATOR: That sounds good.

9 THE COURT: So we'll try and get back here at 11:10.
10 We'll go ahead and stand for the jury. Please do not talk about
11 this case with each other or with anyone else during the break.

12 Remember where you're sitting because we're going to
13 ask you to take the same seat when you come back.

14 (Whereupon jury panel leaves the room and recess taken
15 at 10:56 a.m.)

16 (Resumed at 11:29 a.m.)

17 THE COURT: Thank you. You may be seated.

18 All right. We're back on the record outside the
19 presence of the jury. I'm told the parties asked for a little
20 bit more time so that they could possibly stipulate to a few
21 folks being excused for hardships and other reasons. And so I
22 took the time to go through and look at the list as well.

23 So starting with No. 426, any objection to excusing
24 426?

25 MS. CREEGAN: Not from the United States.

1 THE COURT: Defense have any objection?

2 MR. TANASI: Court's indulgence, Your Honor.

3 THE COURT: The lady with the luggage?

4 MR. TANASI: 26, Your Honor, or 436?

5 THE COURT: 426, the lady on the top row with the
6 luggage.

7 MR. TANASI: Yeah, the Defense does have an objection
8 to excusing her. I don't think that -- from a lot of the
9 information, we did get a lot from her, that we heard that she
10 said she couldn't be fair and impartial in the case; at least I
11 didn't have that noted.

12 THE COURT: She said she had a conflict with the
13 witness, and that she needed to go back and forth to California,
14 and she had evidence in her luggage to prosecute individuals.
15 In her questionnaire she talked about recently discovering that
16 her only sibling, his wife, and his sister-in-law and his
17 father-in-law were murdered and their complete identities stolen
18 by a worldwide criminal gang. This gang is bikers, casino, and
19 so forth. So I'm going to excuse her. I don't think that she's
20 mentally qualified to serve on a jury.

21 Next one I highlighted was No. 484, is the gentleman
22 that says -- well, he's the one with the pension issue. He
23 didn't say that he wouldn't be able to pay his bills, but that
24 he would have to start over again on his pension. Was that on
25 your stipulation list?

1 MS. CREEGAN: Not on the stipulation list, but the
2 Government supports that.

3 THE COURT: All right. So 486 is the person who works
4 at True Life in management. There's no replacement for him. He
5 has about 16 employees. The company can't run without him
6 there. He's also the main earner, can't pay his bills. He
7 lives with his mom and his dad and his older brother, but he
8 makes more money than they do.

9 MR. LEVENTHAL: We stipulated to 486, Your Honor.

10 THE COURT: Any objection to 486?

11 MS. CREEGAN: No.

12 MR. TANASI: No, Your Honor.

13 MS. CREEGAN: All parties agreed.

14 THE COURT: 512 is the woman who said she's not an
15 active minister, but that she is a minister of the Church of
16 Religious Science. Any objection to excusing her?

17 MS. CREEGAN: Not from the United States.

18 MR. TANASI: Your Honor, the Defense objects in that
19 she's not currently an active minister in the church. She has
20 religious beliefs, and she talked specifically about those
21 beliefs in conjunction with the death penalty, but as Your Honor
22 pointed out, that's not this case. So I think we would need
23 more questions on that.

24 MS. CREEGAN: I think she's indicated she has
25 difficulty passing judgment and really doesn't want to

1 participate.

2 THE COURT: Well, she said she was a minister so she
3 qualifies for that group of individuals that are not required to
4 serve if they don't want to, and she did not want to serve.

5 MR. TANASI: Your Honor, is she a current minister? Is
6 that what the Court had noted?

7 THE COURT: Right, she said that she did have the
8 authority to perform a marriage ceremony. So 5 -- I'm excusing
9 512.

10 517 says she owns a fast-food restaurant with her
11 husband, and that to cover for her two different people would
12 have to work overtime shifts for a long period of time, which
13 would be a hardship.

14 MS. CREEGAN: Government agrees, but there was no
15 stipulation.

16 THE COURT: Any objection to excusing 517?

17 MR. TANASI: Your Honor, the Defense objects, but we'll
18 submit it.

19 THE COURT: And she did say in the questionnaire that
20 it would interfere with her business and her employees'
21 schedules. She wanted to be excused. So I'll excuse 517 for
22 hardship.

23 No. 523 drives daughter to work and baby-sits her
24 four-year-old son -- I'm sorry. Baby-sits a four-year-old son
25 for her son. Any objection to excusing 523?

1 MR. LEVENTHAL: No objection.

2 MS. CREEGAN: Parties stipulated to 523.

3 THE COURT: 531 is the insurance agent that has a
4 10-month-old baby, and the husband works mornings so would not
5 be able to care for the baby. Any objection to excusing 531?

6 MS. CREEGAN: Is that 531 or 551? I'm sorry. I wasn't
7 sure what the number was for that first one.

8 MR. MARCHESE: I have it as 521.

9 MS. CREEGAN: 521?

10 MR. TANASI: 521 is the insurance agent? Yeah. I have
11 that as well.

12 MS. CREEGAN: And the parties have stipulated to remove
13 521.

14 THE COURT: So was she 521 or 531?

15 MR. MARCHESE: I have 531 as a male.

16 MS. CREEGAN: I believe it's 521, Your Honor.

17 THE COURT: Okay. So it's 521.

18 All right. So Juror No. 521 is the one who's the
19 insurance agent.

20 MR. LEVENTHAL: Parties have stipulated to 521.

21 THE COURT: Okay. I wrote it down wrong. So it is 521
22 that we're excusing; not 531.

23 Okay. So we've excused 512, 517, 521, 523.

24 MS. CREEGAN: Did Your Honor also excuse 426, 484, and
25 486?

1 THE COURT: 426, 436, 442, 470, 479, 486. Juror 550
2 says speaks a little -- only a little English or understands
3 only a little English, is a food runner, and has a trip to
4 Disney land.

5 MR. LEVENTHAL: Parties stipulate.

6 MR. TANASI: That's correct, Your Honor.

7 THE COURT: So 550 will be excused.

8 What about 551?

9 MR. LEVENTHAL: Parties stipulated.

10 THE COURT: So 551 will be excused.

11 574 said he would be homeless if he can't drive his cab
12 for three months.

13 MR. LEVENTHAL: Parties stipulate.

14 THE COURT: And then 653 said he works in the
15 retirement home, and he is now the person in charge because the
16 other person who was in charge left. And they're still looking
17 for someone. So in the meantime if he's not there, then the bus
18 driver is in charge of the retirement home. Also, he won't be
19 paid if he has to serve and would have to use his paid time off
20 instead.

21 MR. TANASI: Your Honor, the Defense is going to move
22 for his exclusion. I don't know if there's a stipulation on
23 that, though. That was 653, correct?

24 THE COURT: Yes, 653.

25 Any objection?

1 MS. CREEGAN: He seems comparable to 484 in terms of
2 trying to build up retirement time. It seems like they should
3 both be excused.

4 THE COURT: All right. But we are talking about 653
5 right here.

6 MS. CREEGAN: Correct.

7 THE COURT: So do you have any objection to excusing
8 653?

9 MS. CREEGAN: No, Your Honor.

10 THE COURT: And you wanted to go back to which one?
11 The pension man?

12 MS. CREEGAN: 484, correct.

13 THE COURT: Okay. So he's the one who works for
14 Southwest Gas. He's getting ready to finish up his hours for
15 his pension. He said he works 15 to 20 hours overtime, and
16 he'll lose that added to his pension if he -- I think he said he
17 would have to start all over again?

18 MS. CREEGAN: Yes, he would have to start his five-year
19 period over again.

20 THE COURT: All right. Any objection to excusing 484?

21 MR. TANASI: No objection, Your Honor, from the
22 Defense.

23 THE COURT: So 484 will be excused.

24 THE COURT: Oh. So here's one. Juror No. 659 was the
25 woman who said that she wanted to be excused for a medical

1 reason and wouldn't say if it was a physical or mental illness
2 or diagnosis. And she provided me a piece of paper which was
3 from UMC. It had the stamp on it from Dr. Nick Karajohn,
4 K-A-R-A-J-O-H-N. It was dated 7/10/17, which was yesterday, at
5 5:06 p.m., and all it said on there was: Patient cannot attend
6 jury duty secondary to medical reason. So it did not reveal any
7 information for me to determine whether, in fact, it was truly a
8 medical illness or diagnosis that would disqualify her from jury
9 duty.

10 704 is the person who has a trip from San Antonio to
11 New Jersey on July 24th through 31st to pick up some family
12 members. I think she said their parents passed away.

13 MS. CREEGAN: Correct. And the parties have stipulated
14 to that.

15 THE COURT: Okay.

16 MR. TANASI: That's correct, Your Honor.

17 THE COURT: Okay. So 704.

18 The next one is 708, head of household. Wants to be
19 excused. Doesn't know how much MGM would pay. Has a trip July
20 14th through the 18th, which I think is a weekend, and then
21 August 21st the daughter has a court appearance.

22 MS. CREEGAN: Parties did not stipulate, but the
23 Government would like to recommend --

24 THE COURT: Did or did not?

25 MS. CREEGAN: Did not.

1 THE COURT: 725 says only paid for the first 10 days
2 and lives alone so doesn't have any other way to pay for
3 essentials.

4 MS. CREEGAN: 725 or 735?

5 THE COURT: I could be wrong. I thought it was 725.
6 It was in the back row. Is that the same person who has a
7 vacation driving?

8 MR. MARCHESE: 725 is the gentleman in the back. He
9 lives alone, financial hardship.

10 MS. CREEGAN: 735 is the person that has an economic
11 reason and also a trip.

12 MR. TANASI: 725, correct?

13 THE COURT: Yes, 725 is the one who lives alone and
14 only gets paid for the first 10 days.

15 MR. MARCHESE: Correct.

16 MR. TANASI: Defense would move to excuse him.

17 MS. CREEGAN: Government stipulates.

18 THE COURT: Okay. So 725 will be excused.

19 And then 735 is the one who has a vacation driving.
20 She paid her friend some money for the hotel, and she works at
21 Sunrise Hospital and is not paid to be gone -- will not be paid
22 for jury duty. Any objection to excusing 735?

23 MR. TANASI: Court's indulgence.

24 MS. CREEGAN: Not from the United States.

25 (Defense conferring.)

1 MR. TANASI: Your Honor, I think the Defense just needs
2 some more with respect to her. And I know that she's got the
3 vacation and the work issues, but I don't know if we know how
4 bad the interference is.

5 MS. CREEGAN: I think it's very likely the trial could
6 continue into her vacation.

7 THE COURT: Yeah, her vacation is August 6th through
8 10, and she said she's not paid at work. We'll excuse 735.

9 767 said she works part-time at CSN from 9 a.m. to 3
10 p.m., but she has taken a summer class at night beginning at 5
11 p.m. Monday through Thursday until August 15th, Asian literature
12 class. And if she was in trial, she wouldn't be able to attend
13 that class.

14 Any objection to excusing 767?

15 MS. CREEGAN: Not from the United States.

16 MR. MARCHESE: No objection from the Defense, Your
17 Honor.

18 THE COURT: All right. So 767 is excused.

19 And then 771 is the woman who says her mom just had a
20 stroke so she and her sibling are taking turns helping her mom.
21 She also has her son in a lacrosse tournament in Salt Lake City
22 today and for the next three days, and she'd like to be there.

23 MR. LEVENTHAL: Parties stipulate.

24 THE COURT: Okay.

25 MR. LEVENTHAL: Sorry, I didn't mean to cut you off. I

1 just ...

2 THE COURT: That's fine. Yeah, the resource room
3 person.

4 All right. So let's bring them in. I'll excuse those
5 members. It's 11:46 --

6 MS. CREEGAN: Your Honor, we have two more that the
7 parties have stipulated.

8 THE COURT: Oh, okay.

9 MS. CREEGAN: And that's 464 and 476 that also
10 indicated they had both financial issues as well as language
11 issues.

12 THE COURT: Okay. So 464 is the person, oh, who needs
13 to pick up the kids at school, the 11-year-old-and the
14 16-year-old who doesn't drive and takes the bus. All right. So
15 464 will be excused as well.

16 Who was the other person?

17 MS. CREEGAN: 476.

18 THE COURT: 476 reads only 80 percent and works 6 to 2
19 and needs to tell his employer. All right. So 476 will be
20 excused.

21 485 was the gentleman that responded to a question that
22 wasn't -- gave a response to a question that was different than
23 the question that was asked; but I think he wanted to let us
24 know for some reason that he wasn't available, but we never
25 actually got that information from him yet. So that will have

1 to be a follow-up.

2 MS. CREEGAN: Your Honor, the Government also had Juror
3 630 had a financial hardship.

4 THE COURT: 630? I wrote down unemployed, laid off,
5 but I didn't have ...

6 MR. TANASI: Your Honor, we did talk about this one
7 outside of the presence before Your Honor took the bench. And I
8 think collectively the Defense didn't have anything noted with
9 respect to the hardship that the Government's raising. Not to
10 say we didn't miss it, but ...

11 THE COURT: I'm sorry. So you do or you don't agree to
12 excuse?

13 MR. TANASI: We do not agree.

14 THE COURT: Do not. Okay. Yes, I didn't think there's
15 a sufficient reason yet that's been proffered.

16 MS. CREEGAN: And, Your Honor, could I ask -- I hope
17 this is not repetitive, but could I ask for a full list of
18 everyone who has been excluded? Just to make sure --

19 THE COURT: Yes. So I'm excusing 426, 436, 442, 464,
20 470, 476, 479, 484, 486, 512, 517, 521, 523, 550, 551, 574, 590,
21 653, 666, 704, 725, 735, 767, and 771.

22 COURTROOM ADMINISTRATOR: And, Your Honor, to be clear,
23 Juror 590 did not show this morning.

24 THE COURT: Oh. So Juror 590 did not show this
25 morning?

1 COURTROOM ADMINISTRATOR: That's correct.

2 THE COURT: That was one that we had yesterday?

3 COURTROOM ADMINISTRATOR: Correct.

4 THE COURT: Okay.

5 MR. MARCHESE: And the juror with the doctor's note,
6 that's 659, correct?

7 THE COURT: Say again.

8 MR. MARCHESE: Is 659 still on the panel currently?

9 THE COURT: Yes.

10 (Whereupon jury panel enters courtroom at 11:50 a.m.)

11 THE COURT: All right. Everyone may be seated. We're
12 back on the record in the presence of the jury. I'll ask the
13 members of the prospective jury to please look to your left and
14 right. Raise your hand if you're missing a neighbor. If
15 there's someone who was sitting next to you before the break
16 that has not returned yet that might still be in the restroom or
17 the elevator? Raise your hand if anyone is missing.

18 (No response.)

19 THE COURT: All right. So it looks like everyone's
20 back.

21 We're sorry to keep you a little longer than planned,
22 but we did make good use of the time and were able to agree on a
23 number of individuals who can be excused. So when I say your
24 name, you are excused. So that means that you don't need to go
25 back to the jury room. You can go back to home or back to work,

1 whatever you need to do. Please make sure to look around you
2 and take with you any sweaters, magazines, books, water bottles,
3 whatever you brought with you.

4 We do thank you very much for your service, and it is a
5 service. It does count as a service. So you should not be
6 called again for two years. If you are, make sure that you let
7 them know that you've already done your one day of service.

8 And will it be mailed? Well, okay. And so we'd like
9 to thank and excuse -- we didn't get through everyone. So don't
10 worry if your name didn't get called because you still might be
11 considered for cause later, but we did go through some. So we
12 thank and excuse No. 426, 436, 442, 464, and 470. Thank you
13 very much for your service.

14 Also excused is 476, 479, 484, 486, 512, and 517.
15 Thank you all very much as well.

16 We're also excusing No. 521, 523, 550, 551, 574. 590
17 was the no-show, right?

18 COURTROOM ADMINISTRATOR: Correct, Your Honor.

19 THE COURT: 653, thank you very much. You are excused.
20 666, 704, 725, thank you very much. 735, 767, and 771.

21 All right. So now we'll go back. Oh, I'm sorry.
22 No. 771 is excused as well. I don't think she knows she's 771.
23 Do I have the wrong number? The woman whose son is in the
24 lacrosse tournament. Yes, you're 771.

25 A PROSPECTIVE JUROR: Thank you, Your Honor.

1 THE COURT: You scared me. I thought maybe I called
2 out the wrong number.

3 All right. So now we're just going to take a few more
4 minutes to answer some more of these questions, and then we'll
5 take our lunch break. So the question was: Raise your hand if
6 you do have any prior knowledge about the case. Tell me how you
7 have prior knowledge, when did you receive this knowledge, have
8 you formed an opinion. So don't tell me your opinion, just have
9 you formed one. How accurate do you think the knowledge is that
10 you received and can you set aside the opinion and determine
11 this case based only on the evidence presented at trial.

12 A PROSPECTIVE JUROR: Juror No. 498.

13 THE COURT: 498. Thank you.

14 A PROSPECTIVE JUROR: Just what was on the national and
15 local news. Maybe watch about an hour of news a night. And I
16 did not form an opinion.

17 THE COURT: Did or did not?

18 A PROSPECTIVE JUROR: I did not.

19 THE COURT: Did not.

20 A PROSPECTIVE JUROR: I think I actually channel surfed
21 to a different channel when the news came on.

22 THE COURT: Thank you.

23 Next? Raise your hand in the front row if you have ...

24 A PROSPECTIVE JUROR: 531. Just what I seen on news
25 and TV.

1 THE COURT: All right. And is that local news or
2 national --

3 A PROSPECTIVE JUROR: Local and national, both.

4 THE COURT: Local and national. And TV and other
5 sources or just TV news?

6 A PROSPECTIVE JUROR: Just TV mainly.

7 THE COURT: So not computers or newspaper news?

8 A PROSPECTIVE JUROR: No.

9 THE COURT: And did you form an opinion?

10 A PROSPECTIVE JUROR: Not really.

11 THE COURT: And how accurate do you feel that the
12 knowledge you received could be?

13 A PROSPECTIVE JUROR: Well, it's news, so ...

14 THE COURT: All right. Should I take that to mean that
15 you take it with a grain of salt?

16 A PROSPECTIVE JUROR: Yeah, grain of salt.

17 THE COURT: All right. Thank you, sir.

18 Anyone else?

19 A PROSPECTIVE JUROR: I saw one or two --

20 THE COURT: I'm sorry. First of all --

21 A PROSPECTIVE JUROR: Oh. Juror 539.

22 THE COURT: 539. It's going to be harder for me to
23 keep track of who you are because we have people missing.

24 A PROSPECTIVE JUROR: Sorry, Your Honor.

25 THE COURT: Okay. So 539.

1 A PROSPECTIVE JUROR: I saw one or two local news
2 reports when this first occurred several years ago. Didn't
3 follow the story. Didn't form an opinion.

4 THE COURT: Thank you.

5 A PROSPECTIVE JUROR: 548. I saw the news article --
6 news -- local news when it first came out, and I have not formed
7 an opinion.

8 THE COURT: Thank you.

9 A PROSPECTIVE JUROR: 571. I had discussion with
10 various family members as the events were unfolding, and I also
11 seen some social media, local, and national news. And, yes, I
12 had an opinion at the time, but I -- although I have an opinion,
13 I do think I could remain impartial to it and go based on the
14 facts of the case.

15 THE COURT: Okay. And was this old news or recent news
16 or a combination?

17 A PROSPECTIVE JUROR: Combination, definitely.

18 THE COURT: And you said -- how accurate do you think
19 the information is that you received?

20 A PROSPECTIVE JUROR: I really don't know.

21 THE COURT: Okay. And you did -- did you say that you
22 formed an opinion back when this first happened and you've
23 discussed it with your family?

24 A PROSPECTIVE JUROR: Yeah, back when it first
25 happened, the first trial.

1 THE COURT: Do you still hold that opinion?

2 A PROSPECTIVE JUROR: No.

3 THE COURT: Okay. Without telling me why, is there
4 something that you read or someone that you've talked to that
5 caused you to not have an opinion anymore?

6 A PROSPECTIVE JUROR: No. I guess it was more back
7 then I was more influenced by some of my family members of what
8 they -- what their opinions were.

9 THE COURT: Okay. Okay. Thank you.

10 A PROSPECTIVE JUROR: 606.

11 THE COURT: Yes.

12 A PROSPECTIVE JUROR: I've been following this thing
13 from the beginning and just -- including the last trial here.

14 THE COURT: And how did you receive the information?

15 A PROSPECTIVE JUROR: Just from the newspaper, the
16 news, the media, Internet.

17 THE COURT: Okay. So TV, newspaper, and Internet?

18 A PROSPECTIVE JUROR: Right.

19 THE COURT: Did you discuss it with anyone?

20 A PROSPECTIVE JUROR: Yeah, my friends and family and
21 work, coworkers.

22 THE COURT: And have you formed an opinion?

23 A PROSPECTIVE JUROR: Yeah, I have.

24 THE COURT: And could you set aside that opinion and
25 determine the innocence or guilt of the defendants based only on

1 the information provided in trial or would that be asking too
2 much?

3 A PROSPECTIVE JUROR: I don't think I could do that.

4 THE COURT: You could or could not?

5 A PROSPECTIVE JUROR: Could not.

6 THE COURT: Could not. Thank you.

7 A PROSPECTIVE JUROR: 607. Local, national, and cable
8 news networks are the sources.

9 THE COURT: And how long ago was that? Recently or a
10 while back?

11 A PROSPECTIVE JUROR: A while back, during the time.

12 THE COURT: And did you form an opinion?

13 A PROSPECTIVE JUROR: Yes, I did.

14 THE COURT: And is that an opinion that you can set
15 aside and determine the case based only on the evidence provided
16 in court?

17 A PROSPECTIVE JUROR: No, I cannot.

18 THE COURT: Thank you.

19 A PROSPECTIVE JUROR: Juror 612.

20 THE COURT: Yes.

21 A PROSPECTIVE JUROR: I think I heard a news sound
22 bite, long time ago. I didn't form an opinion because it was of
23 no interest to me.

24 THE COURT: Okay. Thank you.

25 PROSPECTIVE JUROR: Juror No. 615. I heard about the

1 story when it happened, and I also read it on the Internet. I
2 didn't form an opinion because most of the time the news stories
3 aren't accurate.

4 THE COURT: Thank you.

5 A PROSPECTIVE JUROR: Juror 630. Did hear and read
6 about this incident, especially through various Internet
7 websites. You know, I like to surf the web a lot. I do watch
8 various talk shows, cable, Fox, Infowars, etc.

9 THE COURT: And was that recently or a while back?

10 A PROSPECTIVE JUROR: Over the last year or so, yes,
11 off and on.

12 THE COURT: And did you form an opinion?

13 A PROSPECTIVE JUROR: Pretty much, yes.

14 THE COURT: And is that an opinion you can set aside
15 and consider only the evidence and testimony presented in court
16 here?

17 A PROSPECTIVE JUROR: Probably not, no.

18 THE COURT: Thank you.

19 A PROSPECTIVE JUROR: Thank you.

20 A PROSPECTIVE JUROR: Juror 648.

21 THE COURT: Yes.

22 A PROSPECTIVE JUROR: I heard it online, local/national
23 news. When it happened. What other question. I have formed an
24 opinion. Unsure if I can set it aside.

25 THE COURT: You can or cannot?

1 A PROSPECTIVE JUROR: Truthfully, I'm unsure.

2 THE COURT: Unsure. Did you share your opinion with
3 anyone?

4 A PROSPECTIVE JUROR: My family.

5 THE COURT: So you've discussed it with your family.
6 And without telling me the opinion, do they agree or disagree
7 with your opinion?

8 A PROSPECTIVE JUROR: Agree.

9 THE COURT: So they didn't try to dissuade you?

10 A PROSPECTIVE JUROR: No.

11 THE COURT: Okay. If they did try and dissuade you and
12 you weren't dissuaded, then I would have a better idea of
13 whether or not you think you could set aside your opinion, but
14 it sounds like it hasn't been tested yet. But you're not sure
15 if you can actually set it aside. Okay. Thank you.

16 A PROSPECTIVE JUROR: 650.

17 THE COURT: Yes.

18 A PROSPECTIVE JUROR: And I did hear about it back when
19 it was happening, social media, news. I had discussions with it
20 with my siblings, and I did form an opinion. I don't think I
21 would -- I can set aside my opinion.

22 THE COURT: Okay. Thank you.

23 A PROSPECTIVE JUROR: 659. I saw the story when it
24 first came out. I've seen more recent news on it as well. I
25 have formed an opinion, and I cannot make -- put aside my

1 opinion to make a decision.

2 THE COURT: Thank you.

3 A PROSPECTIVE JUROR: 0707. I heard about it. I don't
4 think I've heard anything in the last year. Have no opinion.
5 Don't know anything really about it except I did hear the names
6 on the news.

7 THE COURT: Okay. Thank you.

8 A PROSPECTIVE JUROR: 708. And I did hear about it
9 when it first occurred a few years ago. I had not formed an
10 opinion, and I have not discussed it with anyone.

11 A PROSPECTIVE JUROR: 757. Saw media accounts at the
12 time it happened, but I haven't formed an opinion.

13 THE COURT: Okay. Thank you.

14 Anyone else?

15 (No response.)

16 THE COURT: I think we got everyone. All right. So
17 it's 12:09 -- 12:10, really. Let's go ahead and take our
18 one-hour lunch break. We'll be back here at 1:10. And then the
19 attorneys will probably have some follow-up questions for you.
20 So we'll go ahead and stand for the jury. And Mike can show
21 them where to go.

22 (Whereupon jury panel leaves courtroom at 12:09 p.m.)

23 THE COURT: Off record.

24 (Recess taken at 12:10 p.m.)

25 (Resumed at 1:24 p.m.)

1 THE COURT: Thank you. You may be seated.

2 All right. So I was told the parties were going to
3 look at some more of the jurors' responses and possibly
4 stipulate?

5 MS. CREEGAN: Your Honor, we do have some stipulations.
6 And I think the Government and the Defense each have one other
7 that they'd like to bring up.

8 THE COURT: Okay.

9 MS. CREEGAN: So our stipulated jurors are Jurors 606.

10 THE COURT: Okay. 606.

11 MS. CREEGAN: 607.

12 THE COURT: Okay.

13 MS. CREEGAN: 630.

14 THE COURT: Okay.

15 MS. CREEGAN: 648, 650.

16 THE COURT: Okay.

17 MS. CREEGAN: And 659.

18 MS. CREEGAN: And the Government would also like to
19 make a motion to remove Juror 571. This is the juror who seems
20 to adamantly believe that I've prosecuted him despite contrary
21 evidence. I don't know if it's a good thing or a bad thing that
22 he feels really strongly that he knows me or that I prosecuted
23 him in the past, but I think that could impact his view of the
24 case that he feels he has some personal connection with me and
25 seems to be a negative one which is that I've prosecuted him.

1 THE COURT: In the questionnaire he said he had a
2 pending DUI charge that could conflict with his court
3 attendance.

4 MS. CREEGAN: He did.

5 MR. TANASI: Your Honor --

6 THE COURT: Said he had an opinion that he had received
7 old information and new information about the case on social
8 media, both local and national news, discussed it with family,
9 but could set aside the opinion.

10 MR. TANASI: I think, Your Honor, the Defense would
11 object to that request. And I think, as Ms. Creegan pointed
12 out, she doesn't necessarily even know if that helps or hurts
13 his position. So I think at this point we would at least need
14 more questions to try to figure out whether he has a bias in any
15 way towards the prosecution in the case. I don't think that's
16 clear at this point just by indicating that he might recognize
17 the prosecutor.

18 THE COURT: Well, he was -- even when I tried to
19 explain to him that it wasn't -- you know, that state and
20 federal was different and that he had to admit that it wasn't
21 her because she was saying she didn't work in the state, he
22 still said, Well, then it was from somewhere else. But he was
23 not sure how he knew her, but he really thought that he had seen
24 her around.

25 And he's not familiar to you at all, Ms. Creegan?

1 MS. CREEGAN: He's not.

2 THE COURT: I mean, do you go to the same gym or go
3 shopping at the same store, grocery store, or something?

4 MS. CREEGAN: I'm very well hidden from public view.
5 So I don't know how he would see me.

6 THE COURT: Okay.

7 MS. CREEGAN: But the way that he seemed so adamant
8 that I must have prosecuted him for something, I don't know if
9 that's a bias that would carry over.

10 THE COURT: All right. Well, I'm going to deny the
11 motion without prejudice. We can ask some follow-up questions
12 and see if we can make it more clear what his position is with
13 his recollection or his belief that he knows you, if that's
14 going to distract him or cause him some kind of discomfort.

15 And then you said the Defense also had someone else you
16 wanted me to consider?

17 MR. TANASI: Yes, Your Honor. There was just one,
18 Juror No. 654. He's indicated on his questionnaire, question
19 No. 43, he indicates he doesn't want to serve. Are you willing
20 to serve as a juror in the trial in this case? His answer is
21 no. Then he goes onto say: I do not want to do it.

22 THE COURT: No. 654?

23 MR. TANASI: Yes, ma'am.

24 THE COURT: The former Marine/security supervisor for
25 Trump Hotel? We're looking at the same one?

1 MR. TANASI: Yes, ma'am. Same one.

2 THE COURT: Oh, okay. And when did he say that he
3 didn't want to serve? In his questionnaire?

4 MR. TANASI: In his questionnaire. It's page 26,
5 question 43. Are you willing to serve as a juror in the trial
6 in this case? No. If no, please explain. I do not want to do
7 it.

8 THE COURT: What page was that? I'm sorry.

9 MR. TANASI: On my PDF as 26 of 27. And on the
10 document it's the same, 26 of 27. The bottom right-hand corner.

11 THE COURT: All right. It says: Is there any reason
12 not yet covered why you think you cannot or should not serve on
13 the jury? He says: No. But then it says: Are you willing to
14 serve as a juror on the trial of this case? And he says: I do
15 not want to do it.

16 So it's ... I don't think he's claimed to have a
17 hardship. Not clear to me why he doesn't want to do it. So
18 let's follow-up with him and find out if it's a financial
19 conflict or a calendar conflict or some other reason, because I
20 have very little information on this one.

21 Okay. All right. So, Aaron, we'll excuse 606, 607,
22 630, 648, 650, and 659.

23 COURTROOM ADMINISTRATOR: Are we ready to bring them
24 in, Your Honor?

25 THE COURT: Yes, let's go ahead and bring them in.

1 (Whereupon jury panel enters courtroom at 1:33 p.m.)

2 THE COURT: All right. Everyone's here. So let's go
3 ahead and be seated.

4 We're back on the record. The jury has joined us.
5 And, again, if everyone would please look to your left and your
6 right and make sure that the person who is sitting nearest to
7 you before we took the lunch break has returned. Please raise
8 your hand if you think we're missing someone that might still be
9 out at lunch.

10 (No response.)

11 THE COURT: Okay. So that's negative.

12 We did have a little bit of time to review some more of
13 the qualifications for the jurors. And so at this time I'm
14 going to thank and excuse I think six more jurors. So please
15 look around and make sure that you take everything with you,
16 books, water bottles, bags, things like that. Juror No. 606,
17 607, 630, 648, 650, and 659. You are all excused. Thank you
18 very much for coming in today.

19 All right. So I think that we finished with this last
20 question which was about having any prior knowledge about this
21 case before coming in today. Is there anyone else who has --
22 who believes they might have heard about this case that we
23 didn't already hear from?

24 All right. We've got one more back there. Your juror
25 number, please?

1 A PROSPECTIVE JUROR: My brother-in-law works for
2 Homeland Security --

3 THE COURT: What is your juror number, please?

4 A PROSPECTIVE JUROR: Oh. Juror No. 594.

5 THE COURT: All right. Yes, sir.

6 A PROSPECTIVE JUROR: My brother works for Homeland
7 Security. He's voiced his opinion many times about this case,
8 but he didn't give me any details. So that's as much as I got
9 on that.

10 THE COURT: Was he your brother or brother-in-law?

11 A PROSPECTIVE JUROR: Brother-in-law.

12 THE COURT: And is he here in Nevada or somewhere --

13 A PROSPECTIVE JUROR: Yes, Las Vegas.

14 THE COURT: All right. So he's reached an opinion that
15 he's shared with you, but do you have an opinion?

16 A PROSPECTIVE JUROR: Just kind of what he said, but I
17 don't really know the details. So it's hard to make an opinion
18 on that.

19 THE COURT: Okay. And so then -- so you heard what he
20 said, but did you form your own opinion?

21 A PROSPECTIVE JUROR: Again, it's hard to say. I mean,
22 I'm still kind of open.

23 THE COURT: Okay. Thank you.

24 Anyone else?

25 (No response.)

1 THE COURT: All right. So now that everybody has had
2 an opportunity to hear from each other and take a look at each
3 other as you're walking back and forth, is there anyone here who
4 thinks that they may recognize a fellow juror? Anyone that you
5 think you recognize that you know? We've had people before that
6 worked together and family members.

7 Yes, sir. We've got one back there. We'll bring that
8 microphone over to you -- oh. We've got one first here, too.
9 Okay. What's your jury number?

10 A PROSPECTIVE JUROR: 457.

11 THE COURT: 457. Yes, sir.

12 A PROSPECTIVE JUROR: And Dave, we worked at the Palms
13 together.

14 THE COURT: Okay. Currently or in the past?

15 A PROSPECTIVE JUROR: In the past.

16 THE COURT: And did you work together on the same level
17 as or was one the supervisor of the other?

18 A PROSPECTIVE JUROR: He's a table game supervisor, one
19 of them. I think he was a supervisor. I was security.

20 THE COURT: So two totally different things. So you
21 were security and he was a table game supervisor?

22 A PROSPECTIVE JUROR: Yep.

23 THE COURT: Which sort of also does security, too,
24 right. You're not supervising the money, but in a different
25 way. All right. And that was which juror?

1 A PROSPECTIVE JUROR: 700.

2 THE COURT: 700. And so you recognize him as well.
3 No. 700 recognizes you. Is there any concern that you have if
4 by chance you both end up serving on the jury together? Is
5 there anything we should know? I mean, did you -- did you ever
6 have lunch together? Did you have any encounters? Any negative
7 encounters with each other?

8 A PROSPECTIVE JUROR: No, other than lunch occasionally
9 together in the same dining room area. That's all. Just ...

10 THE COURT: And let's go ahead and have some input from
11 No. 700 as well.

12 And so, Juror No. 700, you recall working with Juror
13 No. 457 before?

14 A PROSPECTIVE JUROR: Yes, Your Honor.

15 THE COURT: And how long ago was that?

16 A PROSPECTIVE JUROR: I left the Palms in 2002. We
17 opened in 2001. Mike was in security. I was a table game shift
18 manager. And so I would encounter him when they would do fills
19 or credits or just typical casino shift business.

20 THE COURT: Okay. And do you have any concerns if both
21 of you end up serving on the same jury? Is there any prior
22 negative experience that you've had?

23 A PROSPECTIVE JUROR: No, Your Honor.

24 THE COURT: And is there -- did you all -- I know you
25 ate in the same lunch hall area, but is that like one big giant

1 ballroom?

2 A PROSPECTIVE JUROR: It is a communal dining room and
3 employee dining room where everybody eats from all departments.
4 I don't recall any specific sitting together and having a
5 specific meal. I just recall he was on property while I was on
6 property.

7 THE COURT: Okay. So you didn't hang out together and
8 talk about different things together --

9 A PROSPECTIVE JUROR: Not that I recall, ma'am, no.

10 THE COURT: -- outside of work? Okay. Well, thank
11 you.

12 Anyone else think they might recognize someone else
13 here? No?

14 (No response.)

15 THE COURT: All right. So now we're going to move onto
16 the attorney follow-up questions. We'll have the Government go
17 first. These are not necessarily brand new questions, but
18 rather follow-up questions to further clarify any information
19 that you've already provided either in the questionnaire or
20 today.

21 MS. CREEGAN: Your Honor, I'd like to use about five,
22 10 minutes and then reserve the rest of my time.

23 THE COURT: All right.

24 MS. CREEGAN: Good afternoon, ladies and gentlemen.
25 Can you all hear me okay back there? Great. Thank you.

1 Thank you very much for coming in for jury duty. It's
2 very, very much appreciated. Just as the Judge was asking you
3 some questions where she asked you to raise your hand, I'm going
4 to ask some questions like that. I know that for a lot of
5 people it is not an enjoyable experience to speak in public or
6 to raise your hand, but the system really relies on that. I
7 know you'll all be honest and truthful; but I ask you to go that
8 extra step, even if you're not sure that your answer is needed
9 or it seems like maybe this isn't important enough for me to
10 raise my hand, to please just go ahead and err on the side of
11 doing that even if you're not somebody that likes to speak
12 publicly.

13 So the first question that I'd like to ask you guys is
14 a question that I think I even phrased it on your questionnaire,
15 but I phrased it with a double negative so I didn't understand
16 your answers. So you took the time to answer it, and I
17 apologize that I'm asking you the question again. And what's
18 even worse is it's a confusing question almost any way that I
19 word it. So I'm going to do my best to phrase it, and if you
20 don't understand it, please just go ahead and raise your hand
21 and I'll give it another try. So this is the question.

22 In this case the Government has separately charged
23 certain counts which are crimes of violence: assault,
24 extortion, and threats. And then we've separately charged using
25 a firearm in the commission of those offenses. Does anybody

1 here have an objection to finding a person guilty if the
2 evidence supports it of both the crime of violence and a
3 separate firearms offense?

4 MR. MARCHESE: Objection, calling for legal conclusion.

5 MR. LEVENTHAL: Join.

6 MR. TANASI: Stewart joins.

7 MR. PEREZ: Lovelein joins.

8 THE COURT: It's a clarification of a question that was
9 on the questionnaire, so I'll allow it.

10 MS. CREEGAN: And could you please raise your hand if
11 you do have an objection?

12 (No response.)

13 MS. CREEGAN: Thank you very much. The second question
14 I'd like to ask you is, this case does involve some law
15 enforcement witnesses. Does anyone feel that they would have a
16 higher or lower standard or something that they think that they
17 should share about a crime which could involve a police officer
18 as a witness or as a victim?

19 I know it's very hard to raise your hand. Does anybody
20 have anything that they would want to say about that?

21 (No response.)

22 MS. CREEGAN: Thank you. I'm going to ask an even
23 broader question than that, which is, you've been asked some
24 questions about whether you can be impartial and I want to ask
25 you at a higher level. I know that you can make that

1 commitment, but we're here getting to know you very, very
2 briefly and we don't know if you have some relevant life
3 experiences or beliefs or thoughts that could pertain to this
4 case; not necessarily things that would make you impartial or --
5 partial or impartial, but just things that are a part of the
6 lens of how you view the world because all of us view the world
7 through our own experiences.

8 And I know that it's not enjoyable to raise your hand
9 and talk about that, but is there anything that somebody can
10 think of about beliefs or life experiences that they've had that
11 they think could affect how they would view this case, even in a
12 very, very roundabout way?

13 (No response.)

14 MS. CREEGAN: Okay. I'm going to ask you that question
15 again later when I come back up. So if you do think of
16 something or something in the Defense attorneys' questions jogs
17 your mind, I'll ask it again and give you another chance if you
18 have something you would like to say.

19 And having had nobody say that they think that there is
20 an issue that could impact their thinking, can you all promise
21 that you would decide this case solely based on the evidence
22 under the law as the judge instructs it to you? Is there
23 anybody that thinks they cannot promise that? Could you raise
24 your hand?

25 (No response.)

1 MS. CREEGAN: Okay. Thank you very much. I'll be back
2 up later.

3 THE COURT: Mr. Tanasi.

4 MR. TANASI: Yes, Your Honor.

5 Good afternoon, folks. My name's Rich Tanasi. I
6 represent Steven Stewart. Steven and I both thank you for your
7 time and your patience and all of your effort here today so far.

8 What I want to start with is kind of an unconventional
9 way of going about this, but if for anything more than just
10 stretching, can everyone raise their hand?

11 Okay. All right. Thank you. My first question is
12 just to the folks here in front of me. Could you raise your
13 hand, please, if you fall into this category. Are you the type
14 of person that would just never ever under any circumstance
15 consider protesting?

16 Okay. It's no hands raised -- oop. We might have a
17 hand.

18 A PROSPECTIVE JUROR: Repeat the question.

19 MR. TANASI: Sure. Are you the type of person, sir,
20 who would under no circumstance ever consider protesting
21 anything?

22 A PROSPECTIVE JUROR: No.

23 MR. TANASI: If we could pass the mic over. Thank you.

24 A PROSPECTIVE JUROR: No, I would not protest.

25 THE COURT: You would not protest?

1 A PROSPECTIVE JUROR: Not at all.

2 THE COURT: Okay. And if you could just give us your
3 number. I think we ...

4 A PROSPECTIVE JUROR: 457.

5 THE COURT: Thank you. And it kind of goes for
6 everyone, if you do raise your hand, if we could just have your
7 number so we can just keep track. Thank you.

8 So if I have it down correctly, you would just not
9 consider protesting. You wouldn't -- something you wouldn't do,
10 correct?

11 A PROSPECTIVE JUROR: That is correct.

12 THE COURT: Why is that?

13 A PROSPECTIVE JUROR: I wasn't raised that way. In 20
14 years in military service you don't do that. It's in the
15 background. You don't do that.

16 MR. TANASI: Okay. Thank you, sir. Thank you for
17 sharing.

18 Kind of turning to the group over here. We'll go
19 maybe, just to start, the first two rows. Anybody that has kind
20 of similar feeling as this gentleman -- thank you for sharing --
21 that they just wouldn't protest? There's nothing that would
22 compel them to protest for any reason?

23 Gentleman in the back. Thank you.

24 A PROSPECTIVE JUROR: 594. I don't know if protesting
25 does any good. Seems like it gets out of hand, the stuff I've

1 seen on TV, anyway. So I don't think -- I wouldn't join a
2 protest, no.

3 MR. TANASI: Okay. Thank you for your honesty.

4 Is there anyone else kind of -- we'll just kind of open
5 it up to the two rows in the back. Same question. Is there
6 anybody who just thinks protesting, like this gentleman had
7 indicated, just doesn't do any good, just wouldn't do it?

8 (No response.)

9 MR. TANASI: Going back to the folks in front of me.
10 Is there anybody here who just would never consider protesting
11 the United States Government?

12 Sure. I think 457. Thank you.

13 A PROSPECTIVE JUROR: 457. The best government we have
14 on this planet right now, and it definitely beats Russia and
15 China.

16 MR. TANASI: Understood. Understood. Thank you, sir,
17 for sharing.

18 Same idea for the first kind of two rows over here.
19 You know, is there anybody who just wouldn't dare protest the
20 United States Government?

21 A PROSPECTIVE JUROR: 594. I would never protest the
22 U.S. Government. I don't know -- I just love the law of the
23 land, like everybody else, like most people do.

24 MR. TANASI: Thank you for sharing.

25 Anybody else share that same opinion, they would just

1 not protest the United States Government?

2 Okay.

3 A PROSPECTIVE JUROR: Juror 729. I wouldn't protest
4 the United States Government because I'm trying to join the
5 military.

6 MR. TANASI: Fair enough. Thank you.

7 All right. So for the folks here seated in the box in
8 front of me, the next question. If you could just raise your
9 hand if you would consider yourself kind of one of these -- one
10 of these folks. Let's assume that a person is arrested while
11 they're protesting. Are you kind of of the opinion that, Well,
12 that's on them, that's their fault, they shouldn't have been
13 protesting in the first place?

14 I think we've got two hands. Thank you.

15 A PROSPECTIVE JUROR: I agree with what you said. I
16 agree. That's on them. It's something they should have thought
17 about before they did it.

18 MR. TANASI: Understood. Thank you, sir. Pass the
19 mic. Thank you.

20 A PROSPECTIVE JUROR: Were they -- oh, I'm sorry. 451.

21 MR. TANASI: Thank you.

22 A PROSPECTIVE JUROR: Were they doing something that
23 they shouldn't have while they were protesting? They didn't --
24 did they get arrested for just protesting?

25 MR. TANASI: Fair to say these are questions that you

1 would want answers to before you would --

2 A PROSPECTIVE JUROR: Yeah, I mean, I can't imagine
3 somebody getting arrested for just protesting. There has to be
4 more to the issue.

5 MR. TANASI: Okay.

6 A PROSPECTIVE JUROR: Does that make sense?

7 MR. TANASI: It does. Thank you. Thank you.

8 And so same kind of question for the first two -- first
9 two rows here. Again, let's assume someone is arrested.
10 They're at a protest. Is it just kind of on them, their fault,
11 shouldn't have been there in the first place?

12 A PROSPECTIVE JUROR: Juror 539. And I agree with the
13 previous juror in her statement that she said it depends on
14 exactly what happened, whether or not they're just protesting or
15 if it escalated to something else.

16 MR. TANASI: Okay. What would be an escalation in your
17 opinion?

18 A PROSPECTIVE JUROR: Any form of violence.

19 MR. TANASI: And what would be violent?

20 A PROSPECTIVE JUROR: Striking out. An attack on a
21 person.

22 MR. TANASI: Okay.

23 A PROSPECTIVE JUROR: You know, you stay within your
24 own space.

25 MR. TANASI: Thank you.

1 Is there anyone else in this first two rows that have a
2 similar opinion or would like to say something along those
3 lines? Thank you.

4 A PROSPECTIVE JUROR: Yeah, this is the United States.
5 We're allowed to protest. There's no -- it's not illegal to
6 protest, but there is limits to it. You can't be violent. You
7 can't destroy other people's property, anything like that.
8 That's just not right.

9 MR. TANASI: Understood. Thank you.

10 All right. And so maybe just for the row right behind
11 you, same question. You know, let's assume someone's at a
12 protest and they get arrested. Is that kind of on them because
13 they were at that protest, shouldn't have been there in the
14 first place? Is there anybody who has that opinion?

15 (No response.)

16 MR. TANASI: Thank you, folks.

17 All right. Is there anybody in this group here in
18 front of me that is kind of the opinion that, you know,
19 protesters protesting, they're just kind of whiny? You know,
20 it's not something they should be doing, they're just kind of
21 whining, complaining?

22 Other than 457 because I think I might know your answer
23 to that one, but anyone else in the group?

24 A PROSPECTIVE JUROR: I don't disagree with whining.
25 The whining part is fine.

1 MR. TANASI: Sure. Thank you.

2 A PROSPECTIVE JUROR: The whining part is fine. Don't
3 misunderstand me. I would not go out and protest, and I don't
4 advocate for people to do that because I don't agree with it. I
5 wasn't brought up that way. However, like a lot of other people
6 said, there's no law and you do have the freedom of speech. How
7 far you take that freedom of speech is the limit as to what
8 you're going to incur because of your actions. Your actions
9 dictate the reaction that will happen to you.

10 MR. TANASI: Fair enough.

11 A PROSPECTIVE JUROR: Whining? Everyone whines.
12 Nothing wrong with standing out there and a little bit of
13 whining. Nothing wrong with that.

14 MR. TANASI: Fair enough. Thank you.

15 Let's talk about firearms, and again we'll keep it just
16 the folks here in front of me. Show of hands, anyone who is
17 just plain afraid of guns?

18 Okay. If we could pass the mic, thank you.

19 A PROSPECTIVE JUROR: 451. Yeah, I'm afraid of guns.

20 MR. TANASI: Okay. Are you afraid of any types of guns
21 in particular or are they all --

22 A PROSPECTIVE JUROR: No, I -- and I don't want -- I
23 don't want them in my house. I have lots of friends that do
24 have them and have them -- licensed to carry concealed, blah,
25 blah, blah. And that's fine, but they also treat them with

1 respect. When I get afraid is when people aren't treating them
2 with respect, and that's when people get hurt.

3 MR. TANASI: Fair enough. Thank you.

4 Anyone else in the box that has a fear of guns or we
5 can open it up even more to say maybe guns just make you uneasy,
6 uncomfortable?

7 A PROSPECTIVE JUROR: You want me to hang onto this for
8 your next question?

9 MR. TANASI: Well, if you've got something to say on
10 this one, that's okay, too. No? All right.

11 All right. So if we could turn maybe to the first two
12 over here, first two rows. Same idea, show of hands, anybody
13 who is just plain afraid of guns?

14 A PROSPECTIVE JUROR: Juror No. 587. I just know
15 nothing about guns and so they scare me because I don't know how
16 to handle them or -- my husband has guns because he's been
17 through classes and knows how to handle them. And I personally
18 just don't know anything about, I guess, how to handle them.

19 MR. TANASI: Thank you.

20 Anyone else in the first two rows that's either, A, you
21 know, afraid of guns or, B, they just kind of make -- guns just
22 kind of make them uneasy? All right. Thank you.

23 A PROSPECTIVE JUROR: Yeah, I prefer a society without
24 guns myself. However, my husband and his whole family were
25 raised with guns. We have plenty of friends and family that own

1 guns. I have friends that are hunters, but I personally do not
2 care for guns at all.

3 MR. TANASI: Thank you. Thanks for sharing.

4 Anyone else in that first two --

5 THE COURT: What number was that juror? Was that 539?

6 A PROSPECTIVE JUROR: 539. Sorry.

7 THE COURT: Thank you.

8 MR. TANASI: Thank you, Your Honor.

9 I think there was one more hand. Thank you. Pass the
10 mic.

11 A PROSPECTIVE JUROR: Juror 609. I would say that it's
12 not the physical aspect of the gun that makes me uneasy, but
13 more the idea of mismanagement or misuse with the person who has
14 the gun.

15 MR. TANASI: Okay. Thank you.

16 THE COURT: What was your number?

17 A PROSPECTIVE JUROR: 609.

18 MR. TANASI: All right. Turning kind of to the folks
19 here in the box in front of me. A show of hands, who's kind of
20 of the opinion that, you know, where there's smoke there's fire?
21 So, in other words, Mr. Stewart, Steven, he wouldn't be sitting
22 here if he didn't do something wrong. Anybody sitting in this
23 box who kind of has that opinion right now as they sit here?

24 (No response.)

25 MR. TANASI: No. Thank you.

1 All right. Same question for the -- we'll say the
2 first two. Is there anybody who just kind of has that idea,
3 where there's smoke there's fire? You know, Steven, he wouldn't
4 be sitting here right now if he didn't -- he didn't do
5 something. Anybody who feels that way?

6 (No response.)

7 MR. TANASI: Anybody just kind of -- show of hands
8 here. Anyone who just plain doesn't like lawyers, doesn't like
9 defense lawyers either? And you can be honest. I have family
10 members who don't like lawyers, which means they probably don't
11 like me, but ...

12 Is there anybody?

13 (No response.)

14 MR. TANASI: No. Okay. Same idea, we'll open it up to
15 everybody. Anybody, now's your chance, who doesn't like
16 lawyers?

17 (No response.)

18 MR. TANASI: No one. Okay. Appreciate your honesty.

19 Group in front of me, raise your hand if you agree ever
20 so slightly in any way with the following statement: In a
21 situation in which law enforcement is in conflict with citizens
22 over whether the citizen's conduct is lawful or unlawful, I
23 would tend to side with law enforcement's position simply
24 because that's the right thing to do. Anyone agree with that
25 statement?

1 (No response.)

2 MR. TANASI: Thank you. Turn it over here to the first
3 two. Anyone agree with the statement that I just read?

4 Thank you. One hand.

5 A PROSPECTIVE JUROR: Juror 609. Just to -- can you
6 repeat the statement again.

7 MR. TANASI: Sure. In a situation in which law
8 enforcement is in conflict with citizens over whether a
9 citizen's conduct is lawful or unlawful, I would tend to side
10 with law enforcement's position simply because that's the right
11 thing to do.

12 A PROSPECTIVE JUROR: I disagree with that statement.

13 MR. TANASI: You disagree with that?

14 A PROSPECTIVE JUROR: Yes. I believe that public
15 discourse or commentary are more efficient to persuade a person
16 into believing what has actually happened.

17 MR. TANASI: Okay. Thank you.

18 THE COURT: What was your number?

19 A PROSPECTIVE JUROR: 609.

20 THE COURT: 609. Thank you.

21 MR. TANASI: And then kind of going back to the two
22 rows behind you, same question. You know, again, raise your
23 hand if you agree with that statement I just read. In a
24 situation in which law enforcement is in conflict with citizens
25 over whether the citizen's conduct is lawful or unlawful, I

1 would tend to side with law enforcement's position simply
2 because that's the right thing to do. I would just side with
3 law enforcement. Is there anyone who believes that?

4 (No response.)

5 MR. TANASI: Thank you.

6 In the first group kind of in front of me, do we have
7 any retired or current law enforcement or military? Sir.
8 First, thank you for your service.

9 A PROSPECTIVE JUROR: You're welcome.

10 MR. TANASI: Have you ever been -- if we could pass the
11 mic, I've got just one question for you.

12 A PROSPECTIVE JUROR: Only one?

13 MR. TANASI: Just one, maybe two, maybe three.

14 A PROSPECTIVE JUROR: Four or five.

15 MR. TANASI: Right. What branch military?

16 A PROSPECTIVE JUROR: Air Force.

17 MR. TANASI: Air Force. Have you ever been in a
18 situation or an experience where a bystander came to kind of try
19 to help you out during your service?

20 A PROSPECTIVE JUROR: Yes.

21 MR. TANASI: You have?

22 A PROSPECTIVE JUROR: Yes.

23 MR. TANASI: Okay. Can you describe that? What
24 happened?

25 A PROSPECTIVE JUROR: They died. It was in Vietnam.

1 They died.

2 MR. TANASI: Wow. Thank you for sharing.

3 THE COURT: Last question, Mr. Tanasi. You're over
4 your time.

5 MR. TANASI: Thank you, Your Honor. Can I follow-up or
6 that was my last one?

7 THE COURT: No, no. You can ask one more.

8 MR. TANASI: Okay. Thank you.

9 If you're comfortable enough to share anything related
10 to that situation, how did you feel about the bystander helping
11 you out?

12 A PROSPECTIVE JUROR: He was the bystander. He would
13 come out. However, we were in a foxhole. We weren't even
14 supposed to be there in the first place. So you won't find a
15 record of us being there, typical government, whatever.

16 MR. TANASI: Okay.

17 A PROSPECTIVE JUROR: We landed there, and we were only
18 supposed to be there for three days because they were pulling
19 out. And after we got there, we got one heck of a mortar
20 attack.

21 MR. TANASI: Wow.

22 A PROSPECTIVE JUROR: He come over to help me, and I
23 don't even know who he was and where he came from. He was a
24 civilian. Well, he helped me and I helped him. Then I turned
25 around and he's running. Unfortunately, he ran the wrong

1 direction and stepped on an antitank mine.

2 MR. TANASI: Wow. Well, thank you for sharing. As you
3 heard, my time's up. So I apologize for cutting you off, but
4 thank you for sharing.

5 Thank you, folks.

6 THE COURT: Thank you.

7 Mr. Marchese, are you up next or Mr. Perez? Okay.

8 MR. PEREZ: Thank you, Your Honor. Good afternoon,
9 ladies and gentlemen. My name is Shawn Perez, and I represent
10 Ricky Lovelein. And I want to focus on how you get your
11 information, whether it be social media, the news, and what
12 networks. And we'll start with our most vocal juror, No. 457.

13 A PROSPECTIVE JUROR: Well, I'm sorry I'm focal. You
14 asked.

15 MR. PEREZ: Right. Well, that's good. That's what we
16 want. We want some dialogue. We need to know about you.

17 A PROSPECTIVE JUROR: Mostly CNN -- or not. I'm sorry.
18 Fox News Channel. Mostly everything is local on the news, 13,
19 5, 3.

20 MR. PEREZ: Okay. Do you have a Facebook page, by any
21 chance?

22 A PROSPECTIVE JUROR: No.

23 MR. PEREZ: No. You don't follow social media?

24 A PROSPECTIVE JUROR: No. No texts. No Facebook. No
25 nothing.

1 MR. PEREZ: Okay. Anyone else in this box here have
2 Facebook?

3 Can you pass that? Your number, please.

4 A PROSPECTIVE JUROR: Oh, I'm sorry. I don't know. I
5 have to look. 465.

6 MR. PEREZ: And you have a Facebook page?

7 A PROSPECTIVE JUROR: I do.

8 MR. PEREZ: And do you use Facebook primarily for just
9 keeping in touch with friends?

10 A PROSPECTIVE JUROR: That's exactly it.

11 MR. PEREZ: Okay. Do you follow any groups?

12 A PROSPECTIVE JUROR: Maybe by accident, like, there
13 might be something that comes on my Facebook and I may say
14 something back. Like following them as part of the group, no.

15 MR. PEREZ: Okay. So something just shows up and you
16 might pay attention to it. Do you -- there's a button on there
17 that says like or, you know, it's thumbs up or thumbs down. Do
18 you ever comment back in that respect?

19 A PROSPECTIVE JUROR: Woof. I don't even remember. I
20 haven't been on Facebook in probably six months. I check it
21 occasionally to see if anybody says anything, one of my friends
22 or family that don't live near me that want to contact me that
23 way, but other than that, I rarely get on anymore.

24 MR. PEREZ: Okay. Thank you.

25 How about back here? Anyone in the first two rows have

1 Facebook? Okay. We'll just go down the row.

2 A PROSPECTIVE JUROR: Yeah, I have Facebook.

3 MR. PEREZ: Oh. Your juror number, please.

4 A PROSPECTIVE JUROR: 531.

5 MR. PEREZ: Okay. And do you use Facebook just for a
6 communication tool or do you use it for information?

7 A PROSPECTIVE JUROR: Mainly communication. My
8 daughter and all of my grandkids are back in New York, and it's
9 an easy way to communicate with them.

10 MR. PEREZ: Sure. Do things just show up on your
11 Facebook that you don't necessarily subscribe to?

12 A PROSPECTIVE JUROR: Yeah. Sometimes, yeah.

13 MR. PEREZ: Okay. And what do you do? Do you --

14 A PROSPECTIVE JUROR: I usually just pass on by that,
15 if it's not somebody I know or something.

16 MR. PEREZ: Okay. How about the woman next to you?

17 A PROSPECTIVE JUROR: Juror 539. And I just use
18 Facebook for friends and family. That's it.

19 MR. PEREZ: Okay. And let me ask you. What news
20 channel do you follow?

21 A PROSPECTIVE JUROR: Local and CNN.

22 MR. PEREZ: As far as local news, any particular
23 channel?

24 A PROSPECTIVE JUROR: Probably Channel 8.

25 MR. PEREZ: Channel 8. Okay. And the woman next to

1 you?

2 A PROSPECTIVE JUROR: Juror 540. Yes, I have Facebook.

3 MR. PEREZ: Okay. And --

4 A PROSPECTIVE JUROR: And I use it a lot for recipes,
5 family. Mostly family; not friends. I do click on things
6 sometimes that I like.

7 MR. PEREZ: Okay. Would that -- like a link that shows
8 up on there or a story, is that what you're talking about, like
9 click on that?

10 A PROSPECTIVE JUROR: Sometimes cat videos, things like
11 that.

12 MR. PEREZ: Okay. Right.

13 A PROSPECTIVE JUROR: If you look at my Facebook, this
14 is what you're going to see, and food. There are times when
15 things do show up, yeah. There -- because the way of the
16 Facebook works, they will send you things that they think you
17 might be interested in.

18 MR. PEREZ: Okay. So you don't necessarily subscribe
19 to everything that shows up on your Facebook page?

20 A PROSPECTIVE JUROR: No. No.

21 MR. PEREZ: Okay. And the gentleman next to you?

22 A PROSPECTIVE JUROR: Juror 548. I do not have
23 Facebook page. I primarily watch Fox News. Very, very rarely
24 do I watch the local news. Mainly just for the weather.

25 MR. PEREZ: Okay. So it's mostly the Fox national, the

1 cable channel?

2 A PROSPECTIVE JUROR: Yes, sir.

3 MR. PEREZ: Okay. The gentleman ...

4 A PROSPECTIVE JUROR: Juror 571. I just use Facebook
5 to keep in touch with family. That's pretty much it.

6 MR. PEREZ: Okay. How about news? What news network
7 do you watch?

8 A PROSPECTIVE JUROR: Fox usually. Channel 13.

9 MR. PEREZ: Any particular newscaster that you follow?

10 A PROSPECTIVE JUROR: Not really, no.

11 MR. PEREZ: Okay. Now this question would be for
12 everyone in here. How many of you right now, knowing what you
13 know about this case, thinks that any of the defendants are in
14 fact guilty at this time?

15 (No response.)

16 MR. PEREZ: Okay. No one. So as they sit here today,
17 they're all not guilty, correct?

18 (No response.)

19 MR. PEREZ: Any reservations about that? No?

20 (No response.)

21 MR. PEREZ: Okay. Now -- over here. And your number?

22 A PROSPECTIVE JUROR: 498.

23 MR. PEREZ: 498. Now, let me ask you about news. What
24 news network do you watch?

25 A PROSPECTIVE JUROR: I usually watch CNN, some of the

1 local news in the morning, usually not in the afternoon, but
2 like 5, 6 in the morning.

3 MR. PEREZ: Okay. Do you ever watch shows like Rachel
4 Maddow, let's say?

5 A PROSPECTIVE JUROR: I've watched on MSNBC Rachel
6 Maddow, Brian Williams. I think are two I've watched.

7 MR. PEREZ: How about, do you watch Fox News at all?

8 A PROSPECTIVE JUROR: I do not.

9 MR. PEREZ: You don't. Okay. Thank you.
10 How about you, sir?

11 A PROSPECTIVE JUROR: I'm just listening, so ...

12 MR. PEREZ: That's all right. What news -- what news
13 channel do you watch?

14 A PROSPECTIVE JUROR: TMC.

15 MR. PEREZ: Oh. TMZ?

16 A PROSPECTIVE JUROR: Yes, The Movie Channel.

17 MR. PEREZ: Okay. I don't know. I didn't get that.
18 That's all right.

19 Who's familiar with Alex Jones? Do you have something
20 you wanted to say?

21 A PROSPECTIVE JUROR: I wanted to say TMC, what he just
22 said.

23 MR. PEREZ: Who's familiar with Alex Jones? No one?

24 A PROSPECTIVE JUROR: I know him, but never watch him.

25 A PROSPECTIVE JUROR: Juror 540. I wouldn't say I was

1 familiar with him, but I'm surprised other people don't know the
2 name.

3 MR. PEREZ: And why is that?

4 A PROSPECTIVE JUROR: Well, he's very controversial.
5 His Infowars I think is one of the things that he's known for.
6 Just his personality.

7 MR. PEREZ: Right. Okay. Question for the panel
8 again. How about Hannity? The gentleman next to you.

9 A PROSPECTIVE JUROR: Juror 548. I start watching on
10 Fox News when it was Hannity and Colmes. Didn't much care for
11 them. I can't even remember the last time I've watched them.

12 MR. PEREZ: Okay. And then behind you.

13 A PROSPECTIVE JUROR: 615, juror number. Yeah, I've
14 been listening to John Hannity since 2001. And I do catch his
15 show on TV sometimes, but Fox News is the channel I listen to.

16 MR. PEREZ: Okay. Do you ever watch MSNBC or CNN, any
17 of the other news outlets?

18 A PROSPECTIVE JUROR: No.

19 MR. PEREZ: And now I believe it was the gentleman at
20 the end of the first row. I'm not picking on you, I promise,
21 but you said something that piqued my curiosity early on. And
22 you were talking about, Well, you know, basically it's coming
23 from the news, so what can you believe. So we all have heard
24 the term fake news. And I suppose you're familiar with fake
25 news. And, I mean, your reaction earlier, why was that?

1 A PROSPECTIVE JUROR: Because -- because you can't
2 believe everything you see on the news because they're just
3 trying to make news. They're trying to make a story out of
4 something. A lot of times they'll blow things out of proportion
5 that doesn't -- that's not really the truth of the matter. It
6 just makes a good news story so people will watch it.

7 MR. PEREZ: Okay. Do you think that any particular
8 news network might be more likely to produce fake news than
9 another?

10 A PROSPECTIVE JUROR: No, not really. They all -- they
11 all relish on certain things just to make news to get people to
12 watch them.

13 MR. PEREZ: Okay. I don't recall. Do you have -- you
14 have Facebook?

15 A PROSPECTIVE JUROR: Yes.

16 MR. PEREZ: Do you follow the links on Facebook when --
17 not at all?

18 A PROSPECTIVE JUROR: No.

19 MR. PEREZ: Okay. I have nothing further, Your Honor.

20 THE COURT: Thank you.

21 MR. PEREZ: Thank you, ladies and gentlemen.

22 THE COURT: Mr. Marchese?

23 MR. MARCHESE: Thank you, Your Honor.

24 All right. Everybody hear me okay? All right. Thank
25 you.

1 We'll start with the -- in the box here and go to
2 specifically to Juror 485. Should be in the front, I believe.

3 A PROSPECTIVE JUROR: 485?

4 MR. MARCHESE: Yes. I have something in my notes
5 indicating that you had said that you might have a conflict
6 earlier?

7 A PROSPECTIVE JUROR: What I was told before from a
8 friend, I used to work as a correction officer when I was in the
9 Navy. And they said, what I heard, you're not -- something
10 about conflict of interest. That's what they said. So I don't
11 know.

12 MR. MARCHESE: Do you mean to serve on a jury?

13 A PROSPECTIVE JUROR: To be on jury.

14 MR. MARCHESE: Okay. Is there anything now that makes
15 you believe that you would be unable to serve on this jury?

16 A PROSPECTIVE JUROR: So far right now I got -- see,
17 right now I work at the Nellis Food Court. And so far we got
18 only three cooks and one only work three days in a week and one
19 five days in a week. And now I work five days in a week, too.

20 MR. MARCHESE: So now when you're working at the base,
21 is that in a private capacity or are you still enlisted?

22 A PROSPECTIVE JUROR: I'm sorry. Say again, sir.

23 MR. MARCHESE: Are you working there in a private
24 capacity?

25 A PROSPECTIVE JUROR: It's like a regular part-time,

1 sir.

2 MR. MARCHESE: Okay. All right. What do you think
3 about protests, sir?

4 A PROSPECTIVE JUROR: Well, it depends. If the guys
5 are protesting something, it's their right to try to voice his
6 side. That's about it. Sir.

7 MR. MARCHESE: Do you think you'd ever protest
8 something?

9 A PROSPECTIVE JUROR: No.

10 MR. MARCHESE: Why not?

11 A PROSPECTIVE JUROR: Say again, please.

12 MR. MARCHESE: Why not?

13 A PROSPECTIVE JUROR: Am I protesting something you
14 said?

15 MR. MARCHESE: Would you protest something?

16 A PROSPECTIVE JUROR: No, no.

17 MR. MARCHESE: And why would that be?

18 A PROSPECTIVE JUROR: There's nothing wrong. It
19 depends upon the situation I'm saying.

20 MR. MARCHESE: Okay. Let's say that there's something
21 that you feel passionate about that you feel is incorrect, would
22 you protest?

23 A PROSPECTIVE JUROR: I might.

24 MR. MARCHESE: Okay. Have you ever protested?

25 A PROSPECTIVE JUROR: No.

1 MR. MARCHESE: What if there was a situation where
2 maybe your neighbors were being loud and you thought that things
3 were getting a little bit loud and it was bothering you, would
4 you do something? Would you intervene in any way?

5 A PROSPECTIVE JUROR: Yeah, I have to talk to him and
6 convince him turn it down a little bit.

7 MR. MARCHESE: What if they were complete strangers,
8 you didn't know their names, would you do something at that
9 point?

10 A PROSPECTIVE JUROR: See, the best thing I talk to my
11 neighbor and then he cannot -- he abuse it, then at the time I
12 call the police. And it's the job of the police to calm him
13 down.

14 MR. MARCHESE: Okay. And thank you, sir. I'm going to
15 ask you to pass the microphone to No. 498.

16 Same question to you about intervening with your
17 neighbors. Would you intervene?

18 A PROSPECTIVE JUROR: The neighbor right now, I would
19 go over and ask the neighbor to quiet down. If it's a situation
20 of where I don't know the person, I think I'd take the safer
21 route and call I think -- I believe it's 311, the nonemergency
22 number.

23 MR. MARCHESE: Okay. How about protesting? Would you
24 ever protest if you felt passionate?

25 A PROSPECTIVE JUROR: I think it depends on the

1 situation. I mean, our country was founded on protest,
2 protested the British monarchy. And so if the founding fathers
3 hadn't protested, we might have a bunch of different court
4 system today.

5 MR. MARCHESE: Okay. What about, would you travel to a
6 protest?

7 A PROSPECTIVE JUROR: It would depend on the situation,
8 how strongly I felt about something, so ... and how far the
9 travel.

10 MR. MARCHESE: 300 miles.

11 A PROSPECTIVE JUROR: If I felt strongly about
12 something, yes.

13 MR. MARCHESE: Okay. What about if someone was to
14 protest with a gun? Let's say just a gun on his or her hip.
15 What do you think about that?

16 A PROSPECTIVE JUROR: Depends on the law. Are they --
17 are they complying with the -- with the law of the land, whether
18 it be federal or state, local, and in their protest?

19 MR. MARCHESE: Okay. So if they were carrying a gun
20 and it was lawful, you wouldn't necessarily have a problem with
21 it?

22 A PROSPECTIVE JUROR: I would not have a problem. You
23 know, it depends on the -- like I said, it depends on the --
24 what the law is as to -- I believe here in Nevada we have the
25 right to carry a concealed weapon. And so as long as they're

1 abiding by the law, they're somebody that has a concealed
2 weapons permit or whatever the circumstances are, if they're
3 following the law in their protest, I don't have a problem.

4 MR. MARCHESE: Okay. How about a rifle? What if they
5 were protest with a rifle?

6 A PROSPECTIVE JUROR: As long as they're protesting
7 within the law, I don't have a problem.

8 MR. MARCHESE: Okay. Thank you. I'm going to ask you
9 to pass it right behind you.

10 And your juror number, please.

11 A PROSPECTIVE JUROR: 465.

12 MR. MARCHESE: Okay. Same question about protest.
13 Would you protest?

14 A PROSPECTIVE JUROR: Well, I have picketed. I don't
15 know if that's the same.

16 MR. MARCHESE: What was the purpose of the picket?

17 A PROSPECTIVE JUROR: Well, it was job related.

18 MR. MARCHESE: Okay. So you just were picketing for
19 better wages or hours or something along those lines?

20 A PROSPECTIVE JUROR: Along those lines.

21 MR. MARCHESE: Okay. How about something political?

22 A PROSPECTIVE JUROR: I haven't.

23 MR. MARCHESE: Okay. Would you if you felt strongly?

24 A PROSPECTIVE JUROR: Maybe. It would depend.

25 MR. MARCHESE: Okay.

1 A PROSPECTIVE JUROR: Really, I honestly couldn't say,
2 yes, I wouldn't or wouldn't.

3 MR. MARCHESE: Case-to-case basis, right?

4 A PROSPECTIVE JUROR: Yes.

5 MR. MARCHESE: All right. Have you ever in your
6 lifetime had a bumper sticker about an issue that you've felt
7 strongly about?

8 A PROSPECTIVE JUROR: No, I don't put bumper stickers
9 on my car.

10 MR. MARCHESE: Okay. How about maybe a sign in front
11 of your house or something like that?

12 A PROSPECTIVE JUROR: I haven't. I haven't had any
13 signs in front of my house.

14 MR. MARCHESE: All right. What if you were to see
15 something maybe on the news or Internet or something like that
16 and you saw a protest and you saw people carrying guns at that
17 protest, what would you think?

18 A PROSPECTIVE JUROR: Well, I wouldn't have problems --
19 I don't have a problem with the guns, per se, unless someone is
20 using a gun in a -- in an inappropriate, threatening way. You
21 know, I mean, people do have a right to protect themselves, but
22 they also don't have the right to threaten others.

23 MR. MARCHESE: Do you think you'd ever be in that
24 situation?

25 A PROSPECTIVE JUROR: No. No.

1 MR. MARCHESE: Okay. All right. Thank you. I'm going
2 to ask you to pass it to my right and your left.

3 Sir, we've picked on you enough.

4 A PROSPECTIVE JUROR: I'm fine. I'll answer whatever
5 question you had. I'll answer.

6 MR. MARCHESE: No, it's fine. We'll go to the next
7 lady.

8 And your juror number, please.

9 A PROSPECTIVE JUROR: 451.

10 MR. MARCHESE: Okay. Same line of question about the
11 protests. Have you ever protest before?

12 A PROSPECTIVE JUROR: No.

13 MR. MARCHESE: Do you think you would?

14 A PROSPECTIVE JUROR: Probably not.

15 MR. MARCHESE: Probably not. Why?

16 A PROSPECTIVE JUROR: You're entitled to your opinion.
17 I'm entitled to mine. I may discuss it with you, but I'm going
18 to keep my opinion. And no offense. You're entitled to yours,
19 and that's it. I don't -- I wouldn't do it.

20 MR. MARCHESE: You don't try to impress your beliefs
21 upon other people?

22 A PROSPECTIVE JUROR: No.

23 MR. MARCHESE: Okay. Do you think that once you have
24 an opinion do you think you're easily swayed?

25 A PROSPECTIVE JUROR: I have been swayed, but you

1 have -- if I really think I'm correct, you have to show me that
2 I'm wrong. And then I'll change my mind and say, I'm sorry.
3 You're right. But you have to show me. You're not going to
4 just talk me into changing my mind.

5 MR. MARCHESE: Okay. What about my question about
6 protesters? So you're watching the news on the Internet,
7 whatever, and you see a protest. And some of these protesters
8 have guns. What do you think about that?

9 A PROSPECTIVE JUROR: I believe they're entitled to do
10 that, but they need to follow the laws in a nonthreatening
11 manner. If they pull a gun and point it at somebody, they're
12 threatening them and then you're going against the law. You're
13 threatening to hurt somebody. You need to follow the letter of
14 the law.

15 MR. MARCHESE: But you -- I believe one of your answers
16 earlier was that you're afraid of guns, correct, just not for
17 you?

18 A PROSPECTIVE JUROR: They're not for me, no.

19 MR. MARCHESE: Okay. So let's say these protesters --
20 let's say they have these guns. And, like you said, they're
21 following the letter of the law, but how does that make you feel
22 seeing them holding those guns? Does it bother you?

23 A PROSPECTIVE JUROR: No.

24 MR. MARCHESE: Okay.

25 A PROSPECTIVE JUROR: They're entitled to that.

1 MR. MARCHESE: All right. Thank you. And I'm going to
2 have you grab the microphone and take it to Juror 539, please.

3 Hello.

4 A PROSPECTIVE JUROR: Hello.

5 MR. MARCHESE: I have in my notes that you said that
6 you prefer a society without guns, and that's a very vague
7 statement. So I wanted an opportunity to maybe follow-up with
8 you on that. What did you mean by that statement?

9 A PROSPECTIVE JUROR: Well, for the most part I think
10 guns are more of a problem than a solution, and that's just my
11 own beliefs. I understand it's the law and the rights. And
12 sometimes they're warranted. So it depends on the situation,
13 but ideally I'd rather have no guns. That's just me.

14 MR. MARCHESE: Okay. How about protests? Have you
15 ever personally witnessed a protest? Maybe been to one or seen
16 something on television, right?

17 A PROSPECTIVE JUROR: I actually have been in a
18 protest.

19 MR. MARCHESE: Okay.

20 A PROSPECTIVE JUROR: It was sort of by accident. We
21 were -- we were on vacation on the California coastline, and it
22 was after the Valdez Oil Spill. And there was a human oil boom
23 protest that we joined in.

24 MR. MARCHESE: Okay. So was it just people who were
25 marching or standing or what was going on?

1 A PROSPECTIVE JUROR: Yeah. All holding hands across
2 the whole shoreline creating a human oil boom.

3 MR. MARCHESE: Okay. What about my question earlier --
4 well, did anyone have a gun at that protest?

5 A PROSPECTIVE JUROR: No, not at the beach.

6 MR. MARCHESE: What if someone did?

7 A PROSPECTIVE JUROR: I would be uncomfortable with
8 that.

9 MR. MARCHESE: Okay. Would you look at them as being
10 wrong?

11 A PROSPECTIVE JUROR: Again, it would depend on who had
12 the gun and what the purpose of the gun was for. I wouldn't
13 just automatically assume it was either good or bad. I would
14 have to look at and weigh who's carrying it, what's the purpose,
15 is it for safety, is it for a threatening purpose.

16 MR. MARCHESE: Okay. What if it was a rifle? Any
17 difference?

18 A PROSPECTIVE JUROR: Same thing.

19 MR. MARCHESE: Just kind of a totality of the
20 circumstances, I guess, if you will.

21 A PROSPECTIVE JUROR: Right. Yes. Is it to be used
22 for threatening purposes, for violence, or if it's used for
23 protection and security. There's two different ways to look at
24 it as there is on just about anything.

25 MR. MARCHESE: Okay. All right. Thank you. And I'm

1 going to ask for the microphone to go to Juror 594.

2 You had mentioned -- one of the notes I had for you was
3 talking about protesting getting out of hand. Do you remember
4 that?

5 A PROSPECTIVE JUROR: Yes.

6 MR. MARCHESE: What do you mean by getting out of hand?

7 A PROSPECTIVE JUROR: Well, the ones I've seen on TV,
8 they're just like a lot of violence. I mean, I don't see too
9 many, but it just doesn't seem like it's worthwhile.

10 MR. MARCHESE: All right. So you mean throwing rocks,
11 that's out of hand?

12 A PROSPECTIVE JUROR: That's out of hand, yeah.

13 MR. MARCHESE: What else?

14 A PROSPECTIVE JUROR: To me, a protest is just a waste
15 of my time. I would never -- that's why I would never do it,
16 but if it does get out of hand, it just doesn't solve any
17 problems. It just makes more.

18 MR. MARCHESE: So we've established it's not for you.
19 What about for other people? Do you have a problem with that
20 for other people?

21 A PROSPECTIVE JUROR: No. That's their choice.

22 MR. MARCHESE: Their time?

23 A PROSPECTIVE JUROR: Their time, yeah.

24 MR. MARCHESE: Okay. What if they had a firearm on
25 their person, what would you think then?

1 A PROSPECTIVE JUROR: They have the right to bear
2 firearms.

3 MR. MARCHESE: Would it make you uneasy?

4 A PROSPECTIVE JUROR: No.

5 MR. MARCHESE: Would you think that in any way they're
6 wrong in what they're doing?

7 A PROSPECTIVE JUROR: If they're legally carrying the
8 firearm, no. It's -- you know, it's not my decision.

9 MR. MARCHESE: Okay. And I wanted to go to No. 609,
10 please. Thank you. It would be to your right, sir, my left.
11 Hello.

12 A PROSPECTIVE JUROR: Hi.

13 MR. MARCHESE: You had mentioned something about public
14 discourse --

15 THE COURT: I'm sorry. I'm getting lost. Which number
16 is that?

17 A PROSPECTIVE JUROR: 609.

18 THE COURT: 609. Thank you.

19 MR. MARCHESE: You mentioned something about public
20 discourse. Do you remember that?

21 A PROSPECTIVE JUROR: Yes, I do.

22 MR. MARCHESE: What did you mean by that?

23 A PROSPECTIVE JUROR: I think the best way I can
24 clarify that would be going back to the Facebook question about
25 how we receive our news. I use Facebook quite frequently, and

1 I've just -- having grown up with that, I think that I've
2 learned to appreciate more discussions with people versus just
3 having something said at me. And also reading articles that are
4 not necessarily mainstream news, but maybe going out on my own
5 and researching things and discussing those with people that I
6 may or may not come across at work or, you know, situations that
7 you would find, like, people not necessarily just listening to
8 the news and just gathering what they say.

9 MR. MARCHESE: So you like to get out of your comfort
10 zone, I guess?

11 A PROSPECTIVE JUROR: I do. I do like to -- when I
12 hear something, I do -- if I'm really interested, I will go out
13 of my way to find other media outlets that are talking about the
14 same thing or online news or whatever, pod casts, you know,
15 different ways.

16 MR. MARCHESE: Do you ever get opinionated on Facebook?

17 A PROSPECTIVE JUROR: Do I ever get opinionated?

18 MR. MARCHESE: Yes.

19 A PROSPECTIVE JUROR: No, I personally don't like to
20 reply to things on Facebook. I have unfriended people when I
21 don't like what they post, whether -- it's mostly news related,
22 to be honest with you, but I don't personally like to involve
23 myself in public discourse in that manner.

24 MR. MARCHESE: Okay. You're going to use other forums
25 for that?

1 A PROSPECTIVE JUROR: I like person-to-person
2 conversation more than just posting.

3 MR. MARCHESE: Why?

4 A PROSPECTIVE JUROR: I think a lot of times people
5 just like to hear themselves talk and, like, when you go on
6 outlets like Facebook, it's a rant. It's not in my opinion --
7 well, and I'm not talking about all of the time, but the ones
8 that I see that get me riled up that would make me want to form
9 an opinion, I know that most of the time it's a closed-book
10 situation where they're not probably looking for someone to have
11 a conversation, but they just want people to hear what they have
12 to say.

13 MR. MARCHESE: So it's one sided?

14 A PROSPECTIVE JUROR: Yes.

15 MR. MARCHESE: And you don't prefer that?

16 A PROSPECTIVE JUROR: I don't, no.

17 MR. MARCHESE: Do you like to have discussions?

18 A PROSPECTIVE JUROR: I do, yes.

19 MR. MARCHESE: But not one-sided ones?

20 A PROSPECTIVE JUROR: No, I don't like to read
21 something and make -- make them know my opinion. Like, if
22 they're looking for someone to discuss it with, that's a
23 different base than just posting something and waiting for
24 someone to come at you with a response.

25 MR. MARCHESE: Okay. Have you ever protested?

1 A PROSPECTIVE JUROR: I have, yes.

2 MR. MARCHESE: Okay. How long ago was that?

3 A PROSPECTIVE JUROR: Probably two, three years ago.

4 MR. MARCHESE: And what was that, if you don't mind me
5 asking?

6 A PROSPECTIVE JUROR: Yeah, it was for lower tuition
7 rates at my college.

8 MR. MARCHESE: Where is that?

9 A PROSPECTIVE JUROR: University of Oregon.

10 MR. MARCHESE: So I assume you're not there anymore.

11 A PROSPECTIVE JUROR: I'm not, no.

12 MR. MARCHESE: Did you graduate?

13 A PROSPECTIVE JUROR: Yes.

14 MR. MARCHESE: What's your degree in?

15 A PROSPECTIVE JUROR: International business.

16 MR. MARCHESE: What brought you to Las Vegas?

17 A PROSPECTIVE JUROR: I'm from here. I just wanted to
18 go out of state.

19 MR. MARCHESE: And what do you do now?

20 A PROSPECTIVE JUROR: What do I do?

21 MR. MARCHESE: Yeah.

22 A PROSPECTIVE JUROR: I'm a legal secretary.

23 MR. MARCHESE: All right. Thank you. And just one
24 person over, No. 612 I believe, correct?

25 A PROSPECTIVE JUROR: Yes.

1 MR. MARCHESE: I don't have a lot on you. What do you
2 think about protests?

3 A PROSPECTIVE JUROR: I think people have a right to
4 protest.

5 MR. MARCHESE: Okay. How about you, have you ever
6 protest?

7 A PROSPECTIVE JUROR: Mentally, yes.

8 MR. MARCHESE: But not physically?

9 A PROSPECTIVE JUROR: No, I haven't had the leisure of
10 going out physically protesting, but I think if I believe in
11 something strong enough and it were convenient for me, I would
12 protest. But I don't physically go.

13 MR. MARCHESE: So I have down that you lived in Hawaii.
14 Is that correct, at one point?

15 A PROSPECTIVE JUROR: I have lived in Hawaii. I've
16 lived in Europe, yes. I've lived quite a few places, yes.

17 MR. MARCHESE: So what brought you here? What brought
18 you to Las Vegas?

19 A PROSPECTIVE JUROR: When I retired in Hawaii, I was
20 bored. And I woke up one day and I asked my husband, Why are we
21 still here? And we traveled a couple of places and finally
22 settled in Las Vegas because the weather was good the day we
23 arrived.

24 MR. MARCHESE: Okay. So I see that you have a little
25 bit of a background with firearms. What about protesters and

1 firearms? Do you have a problem with that?

2 A PROSPECTIVE JUROR: I don't have a problem on the
3 surface. It just -- I think for me it would be what would be
4 their intent. If it's lawful for them to carry it, it's fine.

5 MR. MARCHESE: Okay. Do you think that if they are
6 carrying guns to a protest that the intent is wrong
7 automatically?

8 A PROSPECTIVE JUROR: No.

9 MR. MARCHESE: Would you look at just the circumstances
10 I guess of the whole situation?

11 A PROSPECTIVE JUROR: I -- in my mind it would be -- I
12 don't have in mind what they're thinking.

13 MR. MARCHESE: Sure. Do you find -- do you think
14 you're an opinionated person?

15 A PROSPECTIVE JUROR: No.

16 MR. MARCHESE: Do you think that your opinion can be
17 swayed easily?

18 A PROSPECTIVE JUROR: Not easily. I for many decades
19 carried a security clearance, so I'm more prone to want to know
20 the intent or what is the intent. I don't believe what I hear
21 on the surface. I'm more or less, Okay. What is the intent?

22 MR. MARCHESE: Okay. All right. Thank you. I'm going
23 to ask you to go behind you to No. 654, which I believe is over
24 your right shoulder, just like that.

25 A PROSPECTIVE JUROR: 654.

1 MR. MARCHESE: Oh. Sorry. How are you doing, sir?

2 A PROSPECTIVE JUROR: How you doing?

3 MR. MARCHESE: I'm doing well. I have a note on here
4 that you didn't want -- you don't want to serve on the jury?

5 A PROSPECTIVE JUROR: I don't know where that came
6 from.

7 MR. MARCHESE: Okay. I might have wrote it down
8 incorrectly on the questionnaire. You have no problem serving
9 on the jury?

10 A PROSPECTIVE JUROR: None whatsoever.

11 MR. MARCHESE: Okay. No work conflict or anything like
12 that?

13 A PROSPECTIVE JUROR: Not at all.

14 THE COURT: Okay. I noticed -- let me ask you this.

15 A PROSPECTIVE JUROR: Go ahead.

16 MR. MARCHESE: Same question about protests. Have you
17 ever protest before?

18 A PROSPECTIVE JUROR: I never protest before.

19 MR. MARCHESE: Okay. Would you if you felt strongly
20 about something?

21 A PROSPECTIVE JUROR: As it stands right now about
22 protesting, I was under martial law in my mother's house so I
23 didn't have the right to do that. Then I joined the Marine
24 Corps for 30 years so I didn't have a chance to do any protests.
25 So I never thought about protests, but there's an amendment that

1 peaceful assembly you can do. So I don't have a problem with
2 that.

3 Also, I work for President Trump, and they protest at
4 his hotel all the time. So I'm on both sides of the fence for
5 the protesting. I don't have a problem with that because it's
6 their right. And also I've seen people arrested while they was
7 at the protest for not following the instructions from the
8 police.

9 MR. MARCHESE: Okay. Would you have a -- it's not for
10 you, right?

11 A PROSPECTIVE JUROR: Okay.

12 MR. MARCHESE: Is that fair to say or am I putting
13 words in your mouth?

14 A PROSPECTIVE JUROR: No, I didn't say that. I said I
15 don't have a problem with that because there's a right for
16 people to protest. There's an amendment for peaceful assembly.

17 MR. MARCHESE: Sure. What if those individuals might
18 be carrying a firearm, what would you think about that?

19 A PROSPECTIVE JUROR: There's a second amendment for a
20 firearm. They can carry a firearm.

21 MR. MARCHESE: What about traveling to a protest? Do
22 you think you would do that if you felt strongly about
23 something?

24 A PROSPECTIVE JUROR: I haven't had the opportunity to
25 think about that even though because I've been too busy.

1 MR. MARCHESE: Okay. What keeps you busy?

2 A PROSPECTIVE JUROR: The President of the United
3 States. I don't listen to social -- I don't listen to social
4 media since he became president because it's always negative.
5 And since he became president, because I work for Trump Towers,
6 every minute of my day, besides God, I'm worrying about the
7 president.

8 MR. MARCHESE: Okay. How much you work a week? How
9 many hours?

10 A PROSPECTIVE JUROR: I do 40 hours a week.

11 MR. MARCHESE: Okay. Other than your 40 hours, what do
12 you like to do?

13 A PROSPECTIVE JUROR: Stay home, watch movies,
14 cartoons, and sports, and drink hard liquor.

15 THE COURT: Mr. Marchese?

16 MR. MARCHESE: On that, I'm done.

17 THE COURT: You're 10 minutes over.

18 MR. MARCHESE: I can't top that.

19 THE COURT: That's what I thought.

20 MR. MARCHESE: Thank you.

21 THE COURT: Mr. Leventhal, can you top that?

22 MR. LEVENTHAL: No. Thank you, Judge.

23 Good afternoon. My name is Todd Leventhal. I
24 represent Mr. Drexler, seated over here. I've just got a couple
25 of questions for you just sort of along the same lines. If we

1 can go to 599.

2 I found this fascinating. You're a history
3 intelligence analyzer, or prior.

4 A PROSPECTIVE JUROR: Yes.

5 MR. LEVENTHAL: And what is that? What do you do for a
6 living? What was that? What did you analyze?

7 A PROSPECTIVE JUROR: I was an intelligence analyst in
8 the Navy, and I specialized in counterterrorism,
9 counter-proliferation, counter-narcotics.

10 MR. LEVENTHAL: What part of that experience -- first
11 of all, how long did you do that?

12 A PROSPECTIVE JUROR: Roughly 20 years.

13 MR. LEVENTHAL: And you're retired now, sir?

14 A PROSPECTIVE JUROR: Yes.

15 MR. LEVENTHAL: And what did your experience -- how
16 would you bring that to a jury? How would you -- what part of
17 your experience do you think would be -- would fit with a jury
18 type of atmosphere?

19 A PROSPECTIVE JUROR: Well, both my past fits together,
20 being a history major, being a historian intelligence analyst.
21 We're professionally trained and taught to only draw conclusions
22 based on the evidence.

23 MR. LEVENTHAL: Okay. Do you work -- would you work
24 well in groups? Did you typically work in groups?

25 A PROSPECTIVE JUROR: Both singly and with groups.

1 MR. LEVENTHAL: Did you lead groups or were you more of
2 a follower in groups?

3 A PROSPECTIVE JUROR: Almost always led.

4 MR. LEVENTHAL: Led. Okay. And you've indicated that
5 your previous spouse had some ranching?

6 A PROSPECTIVE JUROR: That's correct.

7 MR. LEVENTHAL: And where was that?

8 A PROSPECTIVE JUROR: In Northern California.

9 MR. LEVENTHAL: Okay. And what type of ranching was
10 that? Do you know?

11 A PROSPECTIVE JUROR: Cattle. Cattle ranching. I
12 think they owned some orchards as well.

13 MR. LEVENTHAL: Very good. Have you ever been to a
14 protest? I don't know if anyone's asked you that.

15 A PROSPECTIVE JUROR: I've never been to a protest.

16 MR. LEVENTHAL: Would you be opposed to going to a
17 protest?

18 A PROSPECTIVE JUROR: I wouldn't be opposed, but I
19 personally just have better things to do. I do a lot of mental
20 protesting, though.

21 MR. LEVENTHAL: Mental protesting?

22 A PROSPECTIVE JUROR: I guess we all do, but it would
23 take a lot for me to actually physically travel to a protest.

24 MR. LEVENTHAL: Okay. Very good. Thank you very much.
25 If we could go to No. 612, please. 612. Hi.

1 A PROSPECTIVE JUROR: Hello.

2 MR. LEVENTHAL: You were asked some questions. You
3 were actually in the military?

4 A PROSPECTIVE JUROR: No, I worked for Joint Services
5 for 36 years.

6 MR. LEVENTHAL: Ah. Okay. And you've indicated you
7 have traveled quite a bit and lived in multiple places?

8 A PROSPECTIVE JUROR: That's correct.

9 MR. LEVENTHAL: What about your history and your
10 profession, how would that lend to a juror -- as a juror? What
11 would you bring to the table?

12 A PROSPECTIVE JUROR: I think my ability to -- I prefer
13 to deal in facts. Facts -- I dealt a lot with -- having a
14 security clearance, you try to deal only in what is true. You
15 try not to interject your opinion or your thought or your point
16 of reference into whatever's presented to you.

17 MR. LEVENTHAL: So you can remain open at least until
18 you hear all of the facts and then you can make that
19 determination on whether or not someone did something that the
20 Government alleges or not. Is that what you're saying?

21 A PROSPECTIVE JUROR: That's correct.

22 MR. LEVENTHAL: Okay. And if we could go to 615.

23 Sir, hi. How are you? Have you spoken yet?

24 A PROSPECTIVE JUROR: No.

25 MR. LEVENTHAL: No. Okay. I didn't think so. I

1 heard -- and I don't want to put you on the spot. How's your
2 hearing? Can you hear me okay?

3 A PROSPECTIVE JUROR: Sometimes I don't get it all, but
4 so far so good.

5 MR. LEVENTHAL: Okay. And so when you say you don't
6 get it all, is there like certain times of the day? What do you
7 mean by that?

8 A PROSPECTIVE JUROR: Sometimes I get deaf tone.
9 Certain tones, I catch part of it, but not all of it.

10 MR. LEVENTHAL: Okay. Is there anything about that
11 that would prevent you from sitting and listening for the number
12 of hours that we would be requiring of you?

13 A PROSPECTIVE JUROR: No, as long as you don't mind
14 repeating it.

15 MR. LEVENTHAL: Repeating it?

16 A PROSPECTIVE JUROR: If you repeat the question.

17 MR. LEVENTHAL: Repeating it. Okay. Gotcha.

18 Have you ever been to a protest, sir?

19 A PROSPECTIVE JUROR: Yes, I have.

20 MR. LEVENTHAL: And how long ago was that?

21 A PROSPECTIVE JUROR: 2012.

22 MR. LEVENTHAL: 2012. Okay. So did you travel for
23 that protest?

24 A PROSPECTIVE JUROR: 30 miles. Searchlight, Nevada.

25 MR. LEVENTHAL: Who haven't I spoken -- I think there

1 was some people right behind you that haven't spoken.

2 What number are you back there? Go ahead.

3 A PROSPECTIVE JUROR: Yes. 675.

4 MR. LEVENTHAL: 6 what?

5 A PROSPECTIVE JUROR: 75.

6 MR. LEVENTHAL: 675. Very good. What makes you a
7 candidate for -- to be on the jury? Why do you want to be on
8 the jury?

9 A PROSPECTIVE JUROR: Just very open minded about
10 things whether it's bad, good, or neutral. I see things. I
11 observe things.

12 MR. LEVENTHAL: Okay. I read in your questionnaire
13 that you care for a child under 10 years old. Is that true?

14 A PROSPECTIVE JUROR: Yes, that's true.

15 MR. LEVENTHAL: And you indicated that you did not want
16 to be part of this jury. Is that true?

17 A PROSPECTIVE JUROR: No, that's not true.

18 MR. LEVENTHAL: Okay. So your answer hasn't changed.
19 Maybe you just -- I got wrong information.

20 A PROSPECTIVE JUROR: Yeah, it was mostly for their
21 care. I can fill in a baby-sitter and something like that.

22 MR. LEVENTHAL: Okay. Very good. So everything's good
23 now?

24 A PROSPECTIVE JUROR: Yes.

25 MR. LEVENTHAL: Okay. Excellent. Do you have a CC --

1 do you know what the acronym CCW is?

2 A PROSPECTIVE JUROR: Yes, I do.

3 MR. LEVENTHAL: You do know what it is?

4 A PROSPECTIVE JUROR: Yes.

5 MR. LEVENTHAL: And you do have one?

6 A PROSPECTIVE JUROR: I do not.

7 MR. LEVENTHAL: You do not have one?

8 A PROSPECTIVE JUROR: No.

9 MR. LEVENTHAL: Do you make the difference between a
10 pistol and a rifle?

11 A PROSPECTIVE JUROR: Yes.

12 MR. LEVENTHAL: You do. And how so?

13 A PROSPECTIVE JUROR: What was the question again?

14 MR. LEVENTHAL: Do you make the difference between a
15 pistol versus what's called a long gun or a rifle?

16 A PROSPECTIVE JUROR: Yes, I can tell the difference.

17 MR. LEVENTHAL: You can tell the difference. Is there
18 any difference to you in your mind in terms of a threat or
19 anything like that?

20 A PROSPECTIVE JUROR: I --

21 MS. CREEGAN: I'm going to object to this question. I
22 think it's kind of a legal question about what constitutes a
23 threat or not.

24 THE COURT: Sustained.

25 MR. LEVENTHAL: Do you make the difference between the

1 two?

2 THE COURT: Does he make the difference?

3 MR. LEVENTHAL: Well, I'm just asking if whether or not
4 there's a difference in his opinion whether a gun is a gun, but
5 it's not a legal question. It's really is a gun a gun. He
6 doesn't have a CCW. Okay. I'll move on. It's okay.

7 If you could pass it right to your right. Thank you.

8 Hi, sir. What number are you?

9 A PROSPECTIVE JUROR: 690.

10 MR. LEVENTHAL: And no one's spoken to you yet,
11 correct?

12 A PROSPECTIVE JUROR: No.

13 MR. LEVENTHAL: Why do you want to be on the jury?

14 A PROSPECTIVE JUROR: Just to do what's right.

15 MR. LEVENTHAL: I'm sorry?

16 A PROSPECTIVE JUROR: To do what's right.

17 MR. LEVENTHAL: To do what's right?

18 A PROSPECTIVE JUROR: Yes.

19 MR. LEVENTHAL: Okay. Have you ever been to a protest?

20 A PROSPECTIVE JUROR: No.

21 MR. LEVENTHAL: Do you consider yourself someone who
22 helps other people?

23 A PROSPECTIVE JUROR: Yes.

24 MR. LEVENTHAL: You do. Okay. Even if somebody who
25 you don't know, you would help them?

1 A PROSPECTIVE JUROR: Yes.

2 MR. LEVENTHAL: Okay. How far would you go to help
3 somebody you didn't know? Would you give your life for somebody
4 you didn't know?

5 A PROSPECTIVE JUROR: Would I give my life?

6 MR. LEVENTHAL: Yes.

7 A PROSPECTIVE JUROR: No.

8 MR. LEVENTHAL: You wouldn't?

9 A PROSPECTIVE JUROR: No.

10 MR. LEVENTHAL: Okay. If you could just pass to your
11 right. Thank you.

12 No one's spoken to you yet?

13 A PROSPECTIVE JUROR: No, sir.

14 MR. LEVENTHAL: Other than you knowing this gentlemen,
15 correct?

16 A PROSPECTIVE JUROR: Correct.

17 MR. LEVENTHAL: Have you ever been to a protest, sir?

18 A PROSPECTIVE JUROR: Yes, I have.

19 MR. LEVENTHAL: You have. How long ago was that?

20 A PROSPECTIVE JUROR: This would have been in the
21 mid-'80s?

22 MR. LEVENTHAL: Okay. And do you have -- do you know
23 what a CCW is?

24 A PROSPECTIVE JUROR: I do.

25 MR. LEVENTHAL: Do you have one?

1 A PROSPECTIVE JUROR: I do not.

2 MR. LEVENTHAL: Okay. How do you feel about
3 sticking -- how do you feel about people sticking their nose in
4 your -- in your business or getting involved in something you're
5 involved with? Do you take that very personal or do you mind?
6 Do you understand the question?

7 A PROSPECTIVE JUROR: I'll repeat it to you and tell me
8 if I have the question correctly.

9 MR. LEVENTHAL: Okay.

10 A PROSPECTIVE JUROR: So are you saying that someone
11 involves themselves in something that has to do with me or mine?

12 MR. LEVENTHAL: Yes.

13 A PROSPECTIVE JUROR: It would depend on the intrusion.
14 If they're acting out of care or they're trying to bring
15 something to my attention, I would be open to hearing it. If
16 they're being busy body or trying to impose their will on me,
17 I'd be opposed to it.

18 MR. LEVENTHAL: Okay. And you've been to a protest,
19 and there was some questions earlier about protesting against
20 the government. How do you feel about that? Is that something
21 different?

22 A PROSPECTIVE JUROR: The protest I went to was
23 basically against the government.

24 MR. LEVENTHAL: Government?

25 A PROSPECTIVE JUROR: It was, and I'll be specific.

1 There was underground testing at the time, and there was an
2 accident with Mighty Oak which exposed nuclear radiation to the
3 Valley. And they were talking about bringing Yucca Mountain in
4 and that there was a question with the safety of the casks. And
5 so we wanted to delay that until we could verify the safety of
6 the casks, and that was the nature of the protest.

7 MR. LEVENTHAL: I see. And do you remember how that
8 was organized?

9 A PROSPECTIVE JUROR: There was the Nevada Desert
10 Experience and the Nevada Lenting Experience and the Nevada
11 Peace Test. And the Nevada Lenting Experience was through what
12 they call Liberation Theology, and I was very active in the
13 church at the time. And that's how I got involved.

14 MR. LEVENTHAL: Okay. Very good.

15 I have a general question for everybody. Who heard,
16 with a show of hands, about the Women's March during Trump's
17 inauguration? Raise them up.

18 And of the hands that are raised, how many heard
19 Madonna say something to the fact that the White House should be
20 burned down?

21 A PROSPECTIVE JUROR: Blown up, she said.

22 MR. LEVENTHAL: Blown up.

23 Who hasn't spoken yet? What's your number?

24 A PROSPECTIVE JUROR: 657.

25 MR. LEVENTHAL: 657?

1 A PROSPECTIVE JUROR: Yes, sir.

2 MR. LEVENTHAL: How did you feel about that?

3 A PROSPECTIVE JUROR: I was upset.

4 MR. LEVENTHAL: At the comment?

5 A PROSPECTIVE JUROR: Yes, sir.

6 MR. LEVENTHAL: Can you elaborate on that? What do you
7 mean?

8 A PROSPECTIVE JUROR: I felt it was disrespected.

9 MR. LEVENTHAL: Do you think that type of behavior is
10 never -- should never be allowed?

11 A PROSPECTIVE JUROR: I just felt that it was out of
12 character because she's a public eye.

13 MR. LEVENTHAL: Sorry. Go ahead.

14 A PROSPECTIVE JUROR: I'm sorry. Because she's a role
15 model to people, and she shouldn't have said that because
16 she's -- she's a public eye speaker and little girls look up to
17 her.

18 MR. LEVENTHAL: Did it matter that it was towards the
19 White House or could it have been --

20 A PROSPECTIVE JUROR: Absolutely, absolutely.

21 MR. LEVENTHAL: All right. Thank you.

22 Is there anybody else in the back that has any opinion?
23 Back there? Who raised their hand back there?

24 A PROSPECTIVE JUROR: No.

25 MR. LEVENTHAL: What's your juror number?

1 A PROSPECTIVE JUROR: 0707.

2 MR. LEVENTHAL: Yes.

3 A PROSPECTIVE JUROR: You know, people, can say what
4 they want. Basically we have freedom of speech, but I think
5 sometimes against the White House it's getting a bit much.
6 That's -- but, you know, they still have a right to say it. I
7 mean, this is America. They can say it, so -- but I think it's
8 wrong when they take the format that they did; not if they
9 protest. That's fine.

10 MR. LEVENTHAL: Okay. Have you ever been to a protest,
11 ma'am?

12 A PROSPECTIVE JUROR: Sure.

13 MR. LEVENTHAL: How long ago?

14 A PROSPECTIVE JUROR: You'll know how old I am.

15 MR. LEVENTHAL: Oh, okay. Then I won't ask.

16 A PROSPECTIVE JUROR: It was very long ago. But, yes,
17 a few.

18 MR. LEVENTHAL: Okay. Very good. And 655?

19 A PROSPECTIVE JUROR: 54.

20 MR. LEVENTHAL: 55.

21 A PROSPECTIVE JUROR: Sorry.

22 MR. LEVENTHAL: Hi. You haven't spoken yet.

23 A PROSPECTIVE JUROR: 655.

24 MR. LEVENTHAL: Hi. Good afternoon. Have you ever
25 been to a protest, ma'am?

1 A PROSPECTIVE JUROR: Say that again.

2 MR. LEVENTHAL: Have you ever been to a protest?

3 A PROSPECTIVE JUROR: No.

4 MR. LEVENTHAL: No?

5 A PROSPECTIVE JUROR: No.

6 MR. LEVENTHAL: Do you oppose the protest or the right?

7 A PROSPECTIVE JUROR: No, I don't, but I never
8 participated.

9 MR. LEVENTHAL: Okay. Why do you want to be on the
10 jury?

11 A PROSPECTIVE JUROR: I would like to have the
12 experience, and it's my duty to serve. And I think I'm a very
13 fair person.

14 MR. LEVENTHAL: Okay. What do you do for a living?

15 A PROSPECTIVE JUROR: I'm retired.

16 MR. LEVENTHAL: What did you do for a living?

17 A PROSPECTIVE JUROR: Property management.

18 MR. LEVENTHAL: And what part of your prior employment
19 or your work experience -- what would you bring to the jury with
20 that?

21 A PROSPECTIVE JUROR: I have to be very fair. My -- in
22 my work I had to be fair to the homeowner and the tenants. And
23 I am a very fair person because I was treated very unfairly
24 growing up. So I have the sense of -- just a sense of fairness.

25 MR. LEVENTHAL: Where did you grow up?

1 A PROSPECTIVE JUROR: Macau in Hong Kong.

2 MR. LEVENTHAL: Hong Kong. Okay. Great. And so have
3 you ever been in a process like this? Have you ever -- you've
4 never served on a jury, right?

5 A PROSPECTIVE JUROR: No.

6 MR. LEVENTHAL: Have you at least gotten this far?

7 A PROSPECTIVE JUROR: Gotten this far?

8 MR. LEVENTHAL: Yeah, where you're a prospective juror.

9 A PROSPECTIVE JUROR: No.

10 MR. LEVENTHAL: Okay. It's fascinating. Well,
11 welcome.

12 Is there anybody else who hasn't spoken?

13 A PROSPECTIVE JUROR: 736.

14 MR. LEVENTHAL: 736. Good afternoon, sir.

15 A PROSPECTIVE JUROR: Hi.

16 MR. LEVENTHAL: What do you do for a living?

17 A PROSPECTIVE JUROR: Crap dealer.

18 MR. LEVENTHAL: Crap dealer. And how long have you
19 been a crap dealer? How long?

20 A PROSPECTIVE JUROR: Off and on, 22 years.

21 MR. LEVENTHAL: And why do you want to be on this jury?

22 A PROSPECTIVE JUROR: I've never been a jurist before.

23 MR. LEVENTHAL: What's your favorite TV show? What do
24 you like to watch?

25 A PROSPECTIVE JUROR: I watch a lot of Law and Order.

1 MR. LEVENTHAL: Okay. So is there something about that
2 that you want to be here?

3 A PROSPECTIVE JUROR: Is there something what?

4 MR. LEVENTHAL: About Law and Order, the show, that
5 makes you kind of intrigued by this process?

6 A PROSPECTIVE JUROR: I -- well, the process as a
7 whole, yeah.

8 MR. LEVENTHAL: I'm sorry?

9 A PROSPECTIVE JUROR: The whole process. I've been
10 called half a dozen times, and it's always been cancelled the
11 night before. So this is my first time.

12 MR. LEVENTHAL: Okay. All right. Do you have a CCW?

13 A PROSPECTIVE JUROR: I don't.

14 MR. LEVENTHAL: Okay. Have you ever been to a protest?

15 A PROSPECTIVE JUROR: No.

16 MR. LEVENTHAL: No. Are you opposed to protest?

17 A PROSPECTIVE JUROR: No.

18 MR. LEVENTHAL: No. Okay.

19 THE COURT: What was your jury number?

20 A PROSPECTIVE JUROR: 736.

21 MR. LEVENTHAL: Are you -- sir, are you the type of
22 person that would see yourself to help other people?

23 A PROSPECTIVE JUROR: Sure.

24 MR. LEVENTHAL: Yeah? Even people you don't know?

25 A PROSPECTIVE JUROR: I -- I think in some instances,

1 sure.

2 MR. LEVENTHAL: Okay. In some instances. It depends
3 on what it is?

4 A PROSPECTIVE JUROR: Well, sure. That's a very broad
5 question, yeah.

6 MR. LEVENTHAL: It is and it's -- okay. It's trying to
7 get to an answer.

8 But even if you don't know somebody, how far -- and,
9 again, a broad question. How far would you go? Can you put
10 that into some kind of sentence, I would go this far, but I
11 think the gentleman before you said he'd probably not risk his
12 life. That's too far. How far would you go?

13 A PROSPECTIVE JUROR: For a complete stranger?

14 MR. LEVENTHAL: Yes.

15 A PROSPECTIVE JUROR: Can you give me something more?
16 Can you --

17 MR. LEVENTHAL: Bus goes off a bridge. Are you going
18 to jump in?

19 A PROSPECTIVE JUROR: Am I going to jump off the
20 bridge?

21 MR. LEVENTHAL: Yes.

22 A PROSPECTIVE JUROR: Well, I'm probably going to go
23 down the bank and see if I can help.

24 MR. LEVENTHAL: And how high the bridge is, right.
25 Very logical.

1 THE COURT: Mr. Leventhal, you're over your time. I'll
2 let you ask one more question.

3 MR. LEVENTHAL: Okay. 575 -- 757. You haven't spoken
4 yet. Hello. Why do you want to be on the jury, real quick?

5 A PROSPECTIVE JUROR: The whole process.

6 MR. LEVENTHAL: The whole process?

7 A PROSPECTIVE JUROR: The whole legal process.

8 MR. LEVENTHAL: And one more question. What of your
9 experience, your past experience, would you bring to the jury?

10 A PROSPECTIVE JUROR: I have a very broad background in
11 dealing with conflict and dealing with situations in law.

12 MR. LEVENTHAL: Okay. Very good. I'm out of time.
13 Thank you very much.

14 THE COURT: Thank you.

15 Ms. Creegan?

16 MS. CREEGAN: Your Honor, I do have a fair bit of time
17 left. It is 3 o'clock. Would you like me to proceed or take a
18 break at this time?

19 THE COURT: Let's go ahead and get done.

20 MS. CREEGAN: Good afternoon again, ladies and
21 gentlemen. I have a couple of questions for -- I'm just going
22 to ask for a show of hands, and the first question that I have
23 is, does anybody here think that because they've just asked a
24 lot of questions about protests this case must have something to
25 do with a protest? Raise your hand if you think that.

1 Is there anybody who has their hand up now -- keep your
2 hand up if you degree with this that can't -- can you keep an
3 open mind that this case might not involve an protest?

4 Okay. Now, can you put your hands down. Thank you.
5 Now, raise your hands if you disagree with this statement. Do
6 people sometimes get-together with guns not to protest? Raise
7 your hand if you disagree. I know it's a double negative again.
8 But do people sometimes get-together with guns for purposes
9 other than protesting? Raise your hand if you agree with that.
10 Agree. I'm sorry. I'm just going to make it a single negative.

11 People sometimes get-together with guns and they don't
12 have a protest in mind.

13 Okay. Now can you put those down. Does anybody take
14 the opposite side, you disagree? Okay. Thank you.

15 Is there anybody who agrees with this statement?
16 Please put your hands up if you agree. I'll try to be less back
17 and forth. If you agree. That violence that does occur at a
18 protest shouldn't be punished? So if people break in windows,
19 do something at protests, if it's violent, it shouldn't be
20 punished. Raise your hand if you agree with that.

21 (No response.)

22 MS. CREEGAN: Okay. Now, I'm going to ask you to raise
23 your hand if you agree that this describes you. Does anybody
24 think that they do a bad job telling whether someone's telling
25 the truth or not? They just noticed in their life that they're

1 not very good at judging whether people are telling the truth.
2 Can you raise your hand if you say, I'm just not good at that?

3 (No response.)

4 MS. CREEGAN: I think in our life experience we get a
5 lot of experience with whether people are telling the truth or
6 not. So I'm not surprised that nobody raised their hand.

7 Does everybody here then think they do a good job
8 telling if people are telling the truth or not?

9 Raise your hand if you agree that you think you are
10 good at telling whether people are telling the truth or not.

11 Okay. Thank you.

12 Now, I've got a couple -- I've got a couple more hands
13 question. One is, does anybody here feel like they have some
14 negative feelings about police officers? Any types of negative
15 feelings about police officers?

16 (No response.)

17 MS. CREEGAN: Even broader question than that. Does
18 anybody feel like they have some negative feelings, bad
19 feelings, about the Federal Government?

20 That's 609.

21 A PROSPECTIVE JUROR: Juror 609. To clarify, I guess I
22 wouldn't say I'm 100 percent complacent with everything that the
23 Federal Government or the police do. And that's both on an
24 individual basis and like a -- as a collaborative.

25 MS. CREEGAN: Thank you very much for raising your hand

1 and asking for that clarification. Do you feel like you have
2 any general bad feelings that you would take with you into this
3 case?

4 A PROSPECTIVE JUROR: No.

5 MS. CREEGAN: Here's another question I'm going to ask
6 you to raise your hands to. Did anybody try to hand you any
7 material, show you any signs, or talk to you about this case
8 either today or before you came in for jury service? I'm not
9 talking about your spouse or your best friend, but maybe
10 somebody you didn't know tried to contact you to talk about this
11 case. Can anybody raise their hand if that happened with them?

12 (No response.)

13 MS. CREEGAN: So I'm going to ask a general question to
14 everybody. Something I'd like to use my time to do. So I'm
15 going to ask the mic to start over here and get passed to
16 everyone. And we only have so much time to get to know you and
17 we have learned a lot about you, but I guess I'm going to ask
18 you in your own words about yourself, which is if you had to
19 explain yourself very quickly, if you were in an elevator and
20 you were introducing yourself, if you had to give someone a
21 personal motto, if you had to have a bumper sticker that
22 described your philosophy just in a sentence or so, what's the
23 best thing that we can know about you to kind of get to know
24 you? Even though we don't have a lot of time, what's a good way
25 to encapsulate what we should know about you?

1 A PROSPECTIVE JUROR: I served in the Navy for 20
2 years, and right now my work is a cook in food court.

3 MS. CREEGAN: Thank you. And could you just say your
4 juror number for the --

5 A PROSPECTIVE JUROR: 498.

6 MS. CREEGAN: Thank you.

7 A PROSPECTIVE JUROR: I worked in public utility
8 regulation for 20 years. First 15 and a half years with Public
9 Utilities Commission. Last -- last eight years with the
10 Attorney General's Bureau of Consumer Protection. And so I
11 appear in administrative proceedings and as an expert witness on
12 utility regulation. And the most frustrating thing I ever
13 encounter is when you provide testimony and you think the weight
14 of evidence is on your side and the Commission rules the other
15 way.

16 So I think the one attorney was asking the question why
17 do you want to be here. I don't really want to be here and I
18 know my wife doesn't want me to be here, but I think -- I
19 believe in the process and I believe that you, the U.S.
20 Attorneys Office, the defense attorneys, the Honorable Judge,
21 deserve people who are willing to serve who believe in a
22 fundamental fairness. And so that's why I'm here; not because I
23 want to be.

24 MS. CREEGAN: Are you willing to serve as a juror in
25 the case?

1 A PROSPECTIVE JUROR: I am willing to serve as a juror,
2 although I will get in trouble with my wife.

3 A PROSPECTIVE JUROR: 465.

4 MS. CREEGAN: And I hope that if -- folks, if you want
5 to describe your job, please do if they feel like that's
6 essential to understanding you, but if you want to talk about
7 something else -- keep in mind that we have a little bit of that
8 info from your questionnaires. So what's something that we
9 maybe wouldn't know from your questionnaire?

10 A PROSPECTIVE JUROR: Well, the first half of my career
11 life I was a legal secretary and office manager at a law firm.
12 Stayed at home after that to raise children, and during that
13 process volunteered a lot at the schools. So ultimately became
14 an employee of the school district. I'm pretty bluntly honest
15 and fair. And according to some people that know me real well,
16 I can either be your best friend or your worst enemy. That's
17 about it.

18 MS. CREEGAN: Or both to different people.

19 A PROSPECTIVE JUROR: Okay.

20 A PROSPECTIVE JUROR: Well, that's quite a question.
21 Actually, I'm retired military of course. 457. And I was like
22 about 35 years already total and I got tired of it. I was
23 military police in the military, casino security, whatnot. But
24 as far as your question, somebody in an elevator? Just try to
25 be friendly, open minded. You know, little humor goes a long

1 way sometimes, which I think the world is lacking a lot of.

2 MS. CREEGAN: Thank you, sir.

3 A PROSPECTIVE JUROR: Jury 451. I worked at Bally's
4 for 32 years. Worked half of it in finance and half of it in
5 human resources. So you learn to be very open minded. You
6 learn to care about people, which I helped save somebody's life
7 once.

8 MS. CREEGAN: Wow.

9 A PROSPECTIVE JUROR: In H.R. You just have to be open
10 minded, and you have to care about people to get along in the
11 world, period.

12 MS. CREEGAN: How do you feel about being a juror in
13 this case?

14 A PROSPECTIVE JUROR: I enjoy being juried. I've done
15 it several times. And I think it's -- it's fascinating. It's
16 interesting.

17 MS. CREEGAN: Thank you, ma'am.

18 A PROSPECTIVE JUROR: Juror 531. Been working in the
19 same job for 39 years. Getting ready to retire. That's about
20 it.

21 MS. CREEGAN: That's your elevator introduction?

22 A PROSPECTIVE JUROR: That's it.

23 MS. CREEGAN: How about a personal motto? What would
24 your motto be?

25 A PROSPECTIVE JUROR: Just get through it.

1 MS. CREEGAN: Thank you.

2 A PROSPECTIVE JUROR: Juror 539. And I think fairness.

3 MS. CREEGAN: How do you feel about being a juror in
4 this case?

5 A PROSPECTIVE JUROR: I think it's my responsibility.
6 I think I have an open mind. I am very logical and can listen
7 to the facts and weigh it out and discuss to reach a conclusion.

8 MS. CREEGAN: Thank you, ma'am.

9 A PROSPECTIVE JUROR: Juror 540. My strongest
10 personality quality is curiosity, and I need a lot of coffee in
11 the morning.

12 MS. CREEGAN: Good to know. Thank you, ma'am.

13 A PROSPECTIVE JUROR: Juror 548. 22 years Air Force.
14 Retired. Last 11 and a half years have been IT work, computers.
15 And my motto would probably be professional.

16 MS. CREEGAN: Thank you, sir. How do you feel about
17 being on the jury in this case?

18 A PROSPECTIVE JUROR: It conflicts with my desire to do
19 my job, but I do understand it's something I have to do, so ...

20 MS. CREEGAN: Thank you, sir.

21 A PROSPECTIVE JUROR: I'm prepared.

22 A PROSPECTIVE JUROR: Juror 571. Open minded, easy
23 going. I believe in the maximization of freedom.

24 MS. CREEGAN: And how do you feel about mistaking you
25 for somebody that once prosecuted you?

1 A PROSPECTIVE JUROR: You look a lot like her. That's
2 all I have to say.

3 MS. CREEGAN: Do you think you can set that side or are
4 you going to be thinking of me like this person throughout the
5 case?

6 A PROSPECTIVE JUROR: Now that I know it's not you,
7 we're cool. That's fine.

8 MS. CREEGAN: Thank you, sir.

9 A PROSPECTIVE JUROR: No. 615. 25 years retired from
10 national homebuilder here in town. And I always strive to be
11 honest. And I've dealt a lot with the public. And there's
12 always two sides to the story and somewhere in the middle is the
13 truth. And you can't jump to conclusions. You have to weigh
14 the evidence on both sides, and you then you come out with the
15 right story.

16 MS. CREEGAN: Thank you, sir.

17 A PROSPECTIVE JUROR: Juror 1 -- 612. I like to think
18 that I'm open minded and fair. I'm very pragmatic. And I like
19 to hear facts and try to draw conclusions from them, what I'm
20 hearing, the intent.

21 MS. CREEGAN: Thank you.

22 A PROSPECTIVE JUROR: Juror 4 -- sorry. 609. I would
23 like to think that I'm a critical thinker thanks to my privilege
24 of being able to attend university and the current job I have
25 now. So I think that's an important quality to have when

1 listening to facts that you have. I personally have absolutely
2 no previous knowledge about this case so I would like to think
3 that my clean slate of implicit or explicit biases can only
4 assist here.

5 MS. CREEGAN: Thank you.

6 A PROSPECTIVE JUROR: 599. Is this a regular elevator
7 ride or are we stuck in the elevator?

8 MS. CREEGAN: It's like a 28 story -- the elevator will
9 open, but only after some time.

10 A PROSPECTIVE JUROR: I normally don't tell people or
11 discuss what I have done in the past as far as my career goes,
12 but I do generally tell people and my children, you know, just
13 don't listen to hearsay very often. Won't get you very far.

14 MS. CREEGAN: And how do you feel about being a juror
15 in this case? Sorry.

16 A PROSPECTIVE JUROR: I'm sensing we're stuck in the
17 elevator.

18 MS. CREEGAN: 28 floors.

19 A PROSPECTIVE JUROR: I have no feelings about it
20 whatsoever either way. If it's the case where I'm selected,
21 then I'll do what I'm told to do and listen to both sides.

22 MS. CREEGAN: Thank you, sir.

23 A PROSPECTIVE JUROR: Hi. I'm 594. And I have five
24 kids and 14 grandkids, and I'm thinking about retiring next
25 year, but I'm really worried now because I run a depot -- three

1 depots. And I run 50 to 60 miles a week, and I'm just wondering
2 if I'm going to be able to stay awake in the jury box because
3 it's a change in my life-style here. I'm struggling right now.
4 So, anyway, usually I go home at 3 o'clock and take a nap every
5 day. That's just what I do. But, anyway, that's my concern
6 right now.

7 MS. CREEGAN: Would you like to serve as a juror or you
8 think that that would be a problem?

9 A PROSPECTIVE JUROR: Well, I'd love to serve, but I
10 wish you guys would go, like, from 5 in the morning to 2 in the
11 afternoon. I get up at 4. I was over at work this morning. So
12 that's about my concerns right now. I got to pinch myself to
13 stay awake a little bit.

14 MS. CREEGAN: And if you do get selected for the jury,
15 what do you think your role would be working in a team with 11
16 other people? Kind of -- you're all going to have to deliberate
17 at the end. What do you think you could bring to that?

18 A PROSPECTIVE JUROR: I work alone a lot. So that
19 would be a change for me, too.

20 MS. CREEGAN: Thank you.

21 A PROSPECTIVE JUROR: No. 587. I'm a people person. I
22 love to listen to people's life stories and what got them to
23 where they are today. It fascinates me to hear people's stories
24 and ...

25 MS. CREEGAN: Are you interested in being a juror on

1 this case? Is there any particular reason that you think you
2 could bring something to the jury?

3 A PROSPECTIVE JUROR: I'm just at a good point in my
4 life right now to sit in on a jury. I don't have anything that
5 would take me away from it as far as kids or job or anything.
6 I've got the time. And so it just is a good time for me.

7 MS. CREEGAN: Thank you.

8 A PROSPECTIVE JUROR: 654. If selected, I will serve
9 to the best of my ability, so help me God.

10 MS. CREEGAN: I think I know enough about you from our
11 previous elevator ride.

12 A PROSPECTIVE JUROR: 655. I'm a young-at-heart
13 retiree. I believe I will live until 100, but I might get hit
14 by a car when I get out of here. So I welcome the chance to
15 learn new things and I welcome the chance to be a juror. I'm
16 fair. I'm very fair and I am open minded. And I think it's
17 necessary to be fair all the time, open minded.

18 MS. CREEGAN: Thank you, ma'am.

19 A PROSPECTIVE JUROR: Juror 657. I'm a yogi at heart,
20 so I'm very peaceful. I'm open minded. I've lived here for 29
21 years, and I know nothing about this case. So I'm open to
22 serve.

23 A PROSPECTIVE JUROR: 675. I'm a cancer survivor for
24 six years now. And I just want to do things that I haven't done
25 before, and this is one of them.

1 MS. CREEGAN: Congratulations.

2 A PROSPECTIVE JUROR: 690. Just a nice going person.
3 Listen to everybody's stories. You know, but do the right thing
4 when I've been told to do something. So that's about it.

5 MS. CREEGAN: Thank you.

6 A PROSPECTIVE JUROR: No. 700. I would say that I'm a
7 person who values experiences more than possessions, and in
8 business places a higher value on outcome over income. I like
9 balance in life. I don't own a television. I read voraciously.
10 And I love to travel extensively.

11 MS. CREEGAN: Thank you.

12 A PROSPECTIVE JUROR: Juror 757. For the elevator
13 conversation, how's your day going and be genuinely concerned.
14 The current role I'm in, I'm a customer service representative
15 for an insurance company. Biggest part of my day is listening
16 objectively to information that's being given to me. And I'm
17 still shocked that people don't realize it's a recorded line.
18 I'm taking accident information and you're telling me you were
19 drunk at the time. I still have to note everything I'm putting
20 into the claim, so ...

21 MS. CREEGAN: Thank you.

22 A PROSPECTIVE JUROR: 736. I take my daughter to
23 school every morning, and I tell her these three things: Be
24 good, be fair, and use your powers for good.

25 MS. CREEGAN: Thank you.

1 A PROSPECTIVE JUROR: 729. I am a retail manager, a
2 huge nerd, a bit antisocial. And I really hate public speaking.

3 MS. CREEGAN: Thank you for doing it, ma'am.

4 A PROSPECTIVE JUROR: 708. I'm pretty open -- open
5 minded. I will use any excuse to get outside. I love the
6 outdoors. And I, honestly, I just have no patience for adult
7 crap.

8 A PROSPECTIVE JUROR: 0707. I'm 42 years in Las Vegas.
9 I'm a very fair person. Raised four great kids by myself. And
10 I want to say, you guys are much more respectful in this court
11 than in Justice Court, and this has been a humbling experience.

12 MS. CREEGAN: Thank you, ma'am.

13 And I did tell everyone the last time that we spoke
14 that I'd give you another chance if there was anything that
15 we've discussed over the time that you've been hearing from all
16 of the different attorneys or just even having the time to think
17 about it, if there's anything else that you just think, You
18 should know this about me, not that it would make me partial,
19 but just that you should know this about me. Is there anybody
20 that can think of anything they just want to make sure that we
21 know about them?

22 Okay. I see someone back there.

23 A PROSPECTIVE JUROR: 757. I have protested. I spent
24 20 years with the Culinary Union and went through every strike
25 picketing. I have had a concealed weapons permit in California.

1 I no longer have it here in Nevada. And basically that's two
2 things that might hinge on an opinion of me.

3 MS. CREEGAN: Thank you, sir. And at the very end here
4 comes the not-very-graceful check of my notes to see if there's
5 anything else that I should ask you.

6 Okay. Thank you very much for giving me that time.
7 Thank you for your service, ladies and gentlemen.

8 THE COURT: Okay. I have one question for Juror
9 No. 729, and I realize that you don't like public speaking, but
10 I need to ask you. How do you feel about speaking in a room
11 with 11 other people?

12 A PROSPECTIVE JUROR: I think a number that small I can
13 manage.

14 THE COURT: Okay. Because one of your duties if you
15 are on the jury is that you will have the duty to deliberate.
16 So you can't sit and just vote. You have to discuss and explain
17 and try to understand what the other person's explanation is and
18 try to clarify if there's any misremembering or -- you need to
19 talk. You need to be able to be talkative and be comfortable
20 speaking to other people even if they disagree with you.

21 A PROSPECTIVE JUROR: I understand.

22 THE COURT: Do you think that would be too stressful
23 for you or do you think that you would be able to comply with
24 that jury duty?

25 A PROSPECTIVE JUROR: It might be a little stressful,

1 but I think I can comply.

2 THE COURT: All right. Let's go ahead and take about a
3 15-minute bathroom break. And then when you come back, we'll
4 let you know who is excused and who will be returning tomorrow
5 at 12 o'clock. So go ahead and stand for the jury.

6 (Whereupon jury panel leaves courtroom at 3:20 p.m.)

7 (Recess taken at 3:20 p.m.)

8 (Resumed at 3:42 p.m.)

9 THE COURT: Thank you. You may be seated.

10 So before we bring the jury back in and tell them to
11 come back at 12 noon, is there anyone else that you want me to
12 consider excusing for cause or that stipulated to excuse?

13 MS. CREEGAN: Your Honor, the United States would like
14 to move again for Juror 571 to be removed. His answers to the
15 question about bias, didn't think they were convincing. I think
16 there's still some issue with having some sort of feeling of
17 personal connection or something toward me, the person who
18 thinks I look like I prosecuted him or that he surely knows me
19 from somewhere.

20 THE COURT: I thought he said he -- since you said that
21 you weren't the person that he thought he remembered that he
22 would deal with it or is over it, something like that?

23 MS. CREEGAN: I think he said he's cool with it.

24 THE COURT: Cool with it, yeah, something like that.

25 MR. TANASI: I think he said, We're cool.

1 MR. LEVENTHAL: I don't think there was ever a problem.

2 THE COURT: I thought someone was going to ask him
3 about his pending DUI charge and whether that's a felony or not;
4 if he's got a prior from 10 years ago, maybe. But I don't see
5 any reason to excuse him for cause.

6 Any others?

7 MS. CREEGAN: Not from the United States.

8 THE COURT: All right. Defense?

9 MR. TANASI: We do. We have one, Your Honor, 485.

10 First just from a language barrier, I don't know if he
11 has necessarily said that he has one or if that's something he
12 stated, but I know that sitting over here it's been very
13 difficult for us collectively to understand much of what he's
14 had to say. I know that Mr. Marchese kind of had an exchange
15 with him with respect to his conflict. And I still -- maybe the
16 Court has it down better than I do. I still don't know what
17 that conflict was. So I think just from a language barrier
18 perspective I think that would be the first ground to request
19 his excusal.

20 MS. CREEGAN: And the United States would oppose that.
21 He was in the military for a long period of time. He was a
22 correctional officer in the military. He does have an accent,
23 but he understood the question. I think his response was, I was
24 a corrections officer and I don't know if that's going to be a
25 conflict.

1 THE COURT: Well, I understood him to say that he --
2 when he was a corrections officer, he was told that that would
3 be a conflict, that he could not serve on a jury, but that now
4 he's a cook at the Nellis Air Force Base. So I think he's
5 qualified.

6 He did say that there was only three cooks. He didn't
7 say anything more about that. So there doesn't seem to be that
8 much of a concern for him to be excused. So I don't see any
9 lack of qualification or reason to excuse 485 for cause. Not
10 sufficient.

11 Any others?

12 MR. TANASI: That's all from Defense, Your Honor.

13 THE COURT: All right.

14 MR. TANASI: Thank you.

15 THE COURT: So let's go ahead and invite them back.
16 We'll let them know -- they will be instructed to come back at
17 noon, but we are not really starting until 1. It's because they
18 have to be processed and get their parking taken care of.

19 COURTROOM ADMINISTRATOR: Your Honor, before we bring
20 them in, let me find out where we should cut them off so we know
21 who to excuse.

22 THE COURT: Oh. Do we have too many?

23 COURTROOM ADMINISTRATOR: We do.

24 All right, Your Honor. I think we can keep every juror
25 up to No. 657 and excuse everyone after Juror 657. That will

1 give us four extras just in case of no-shows tomorrow.

2 THE COURT: So keep or don't keep 657?

3 COURTROOM ADMINISTRATOR: Keep 657, Your Honor. She
4 would be the last.

5 THE COURT: Okay. And that would give us three extras
6 just in case there's a no-show.

7 COURTROOM ADMINISTRATOR: Four extras.

8 THE COURT: Okay. Let's go ahead and bring them in.

9 COURTROOM ADMINISTRATOR: All rise.

10 (Whereupon jury panel enters courtroom at 3:47 p.m.)

11 THE COURT: All right. Everyone can be seated.

12 All right. So we've got more jurors than we need. So
13 I'm going to go ahead and excuse a few of you. And I thank you
14 very much for your patience with us here today. So we thank and
15 excuse Juror No. 675, 690, 700, 707, 708, 729, 736, 757, and
16 771. Thank you very much for coming in.

17 And just to make sure that my list is complete, I'm
18 going to call out your number and raise your hand so that I'm
19 sure that I've marked this up correctly. So Juror 451? Thank
20 you. 457? Thank you, sir. 465? All right. Thank you. 485?
21 Yes, sir. And 498? Thank you. 531? Thank you. 539? Thank
22 you. 540? Thank you. 548? Thank you. And 571? Thank you.
23 All right. 587? Thank you. 594? Thank you. 599? Thank you.
24 609? Thank you. 612? Thank you. 615? Thank you. 654?
25 Thank you. 655? Thank you. 657? Thank you. 675? No? Oh, I

1 excused 675. So is there someone's number who I didn't call?
2 What was your number?

3 A PROSPECTIVE JUROR: 0707.

4 THE COURT: Right, 707. You're excused. Thank you.
5 Does that match with your list?

6 COURTROOM ADMINISTRATOR: It does, Your Honor.

7 THE COURT: All right. I think we got it right. Well,
8 thank you very much everyone. We're going to ask you to come
9 back at 12 noon tomorrow so that you can be processed, and then
10 after that we'll be having the attorneys exercise their
11 peremptory challenges, which I explained to you before it's sort
12 of a two-part qualification test. The first one is the
13 for-cause excuses, which I have exercised today as well as
14 yesterday with a different group. Tomorrow we're going to have
15 the group that was here yesterday and you, all of you, join us
16 in the afternoon, and that's when the attorneys exercise their
17 peremptory challenge where they will remove jurors for whatever
18 reason they want to. They don't even have to say anything on
19 the record. They just make a little checkmark on a piece of
20 paper.

21 All right. And then the folks who are left will be the
22 jurors. So thank you very much for coming in today. We'll
23 welcome you back tomorrow at 12 noon. I can't say how cold or
24 how hot it's going to be. It was really hot in here yesterday,
25 and we complained. And then it was really cold in here this

1 morning. So go ahead and layer if you need to.

2 Yes, sir.

3 COURTROOM ADMINISTRATOR: Just a moment, sir.

4 THE COURT: Hold on. We'll get you the microphone
5 there. So No. 457. Yes, sir.

6 A PROSPECTIVE JUROR: Yeah, I could have yelled louder.

7 THE COURT: But she can't hear you. We have to record
8 everything for the record.

9 A PROSPECTIVE JUROR: Good answer. 457. Well, basic
10 question. Come in tomorrow at 12 o'clock. Where do we go? We
11 just go back to the same beginning area where we first came in
12 initially?

13 THE COURT: Yes. Exactly. Just the same as today, and
14 then they'll process you and give you your parking validation
15 and whatever else they need to give you. Okay. Thank you.

16 All right. Well, have a good evening. We'll see you
17 back here tomorrow.

18 COURTROOM ADMINISTRATOR: The jury is excused. You can
19 all leave.

20 (Whereupon jury panel is excused at 3:52 p.m.)

21 THE COURT: Thank you. We're off record.

22 (Whereupon the proceedings concluded at 3:53 p.m.)

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COURT REPORTER'S CERTIFICATE

I, PATRICIA L. GANCI, Official Court Reporter, United States District Court, District of Nevada, Las Vegas, Nevada, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Date: July 17, 2017.

/s/ Patricia L. Ganci
Patricia L. Ganci, RMR, CRR
CCR #937

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,)	CASE NO. 2:16-CR-46-GMN-PAL
)	
Plaintiff,	)	LAS VEGAS, NEVADA
	)	WEDNESDAY, JULY 13, 2017
vs.	)	1:09 P.M.
	)	COURTROOM 7C
ERIC J. PARKER (11),)	
O. SCOTT DREXLER (12),	)	JURY TRIAL, DAY 3
RICHARD R. LOVELIEN (13),)	
STEVEN A. STEWART (14),)	
)	
DEFENDANTS.	)	ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE GLORIA M. NAVARRO, CHIEF JUDGE,
UNITED STATES DISTRICT COURT

APPEARANCES:

FOR THE PLAINTIFF:

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(continued next page)

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Proceedings reported by machine shorthand. Transcript produced
by computer-aided transcription.

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Sharon Gavin, Special Agent, FBI
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Mike Abercrombie, FBI
Mamie Ott, Legal Assistant
Nona Dodson, Jury Consultant
Tori Bakken, Paralegal
Brian Glynn, I.T.

2:16-cr-46-GMN-PAL - July 12, 2017

1 LAS VEGAS, NEVADA; WEDNESDAY, JULY 13, 2017; 1:09 P.M.

2 --oOo--

3 P R O C E E D I N G S

4 COURTROOM ADMINISTRATOR: All rise.

5 THE COURT: Thank you. You may be seated.

6 COURTROOM ADMINISTRATOR: This is the time set for Jury
7 Trial, Day 3, in Case No. 2:16-cr-46-GMN-PAL, United States of
8 America versus Eric Parker, O. Scott Drexler, Ricky Lovelien,
9 and Steven Stewart.

10 Counsel, please note your appearances for the record.

11 MR. MYHRE: Good afternoon, Your Honor. Steve Myhre,
12 Erin Creegan, and Nadia Ahmed on behalf of the United States.

13 THE COURT: Good morning [sic], Mr. Myhre, Ms. Ahmed,
14 Ms. Creegan.

15 MR. TANASI: Good afternoon, Your Honor. Rich Tanasi
16 for Steven Stewart. Also with us at counsel table is Nona
17 Dodson and Brian Glynn. Thank you.

18 THE COURT: Good morning, Mr. Tanasi and --

19 MR. MARCHESE: Good --

20 THE COURT: -- Ms. Dodson, Mr. Glynn.

21 Go ahead.

22 MR. MARCHESE: I'm sorry, Your Honor.

23 THE COURT: Go ahead.

24 MR. MARCHESE: Afternoon. Jess Marchese on behalf of
25 Eric Parker.

1 THE COURT: Good morning, Mr. Marchese, Mr. Parker.
2 I didn't say hello to Mr. Stewart.
3 Go ahead.

4 MR. LEVENTHAL: Good afternoon, Your Honor. Todd
5 Leventhal on behalf of Mr. Drexler.

6 THE COURT: Good afternoon, Mr. Leventhal and
7 Mr. Drexler.

8 MR. PEREZ: Good afternoon, Your Honor. Shawn Perez on
9 behalf of Ricky Lovelien.

10 THE COURT: And good afternoon, Mr. Perez and
11 Mr. Lovelien.

12 All right. And, just so that everyone remembers,
13 before we bring in the jury, we do have some expectations about
14 how Court will be conducted today. So remember: This is a
15 courtroom; it's not a sporting event. And so it's never
16 appropriate to make any expression of your opinion, whether
17 verbally or through body language, no matter how much you agree
18 or disagree with something that is being said or done.

19 People should not speak out of turn. Everyone has a
20 microphone. We also have an attorney here for everyone. And I
21 do remind the defendants that the Marshals do have speaker
22 systems set up in the holding cells so that if anyone does
23 exhibit any kind of verbal or body-language conduct that is not
24 appropriate they are authorized to remove that person and place
25 them in the holding cell where they can still hear the rest of

1 the trial but they will not be present.

2 Likewise, if everyone in the public will please double
3 check and make sure you do not have an electronic device with
4 you. They are not permitted in the courtroom. Even if they
5 are turned off or in vibrate mood, you're not allowed to have
6 any kind of electronic devices. The attorneys have electronic
7 devices so that they can conduct and do the things they need to
8 do for a trial. But the public is not permitted to have any
9 electronic devices. There's no recording devices, audio or
10 video, that are allowed in federal court. And, likewise, the
11 Marshals are authorized to remove anyone who is not acting in
12 accordance with these expectations.

13 We did experiment a little bit yesterday after you all
14 left to see if we could improve the audio. So hopefully
15 everyone can hear me now. We -- and everyone else. The
16 problem is when we turn up the speakers too high we get
17 feedback because of the crowd and then if we don't have it loud
18 enough then we can't all hear each other. So just bear with us
19 and feel free on the breaks to give me feedback and to give
20 Aaron some feedback as to whether you can or cannot hear us
21 better or not. So I have two microphones. And I'm told the
22 problem is I can't put them too close together because then
23 you'll get one of those ear-piercing, loud kinda things goin'
24 on.

25 So the problem with this microphone is that when I turn

1 my head then this microphone doesn't pick me up. So hopefully
2 the other one will.

3 And then so, likewise for your podium, you now have two
4 microphones at the podium. So hopefully, regardless of which
5 way you're looking, one of the two microphones will pick you
6 up.

7 So remember we're recording. So, even though in the
8 courtroom we can all hear each other, if it's not recorded, it
9 doesn't get transcribed and it's not part of the record. So
10 the important thing is that the recorder can hear you. So
11 don't get angry if she tells you that she can't hear you.
12 She's doing you a favor by telling you that.

13 All right. We're gonna go ahead and bring in the jury.
14 Then you all can exercise your peremptory challenges. And
15 then, when we're done, I'm going to have Aaron swear them in
16 and then I'm just only gonna give them the recess admonish.
17 I'm not gonna give them the long instruction. I'll do that on
18 Monday morning whenever we start at 9:00 and then we can have
19 opening statements and I'm assuming we'll have time for maybe
20 one witness. I don't think for two. But, I mean, if you want
21 to have a second witness ready just in case. But I think we'll
22 probably only get to one witness. We may not even finish the
23 witness depending on how quick or short that witness is.

24 Mr. Tanasi.

25 MR. TANASI: Thank you, Your Honor.

1 If you'd allow, the defense does have one additional
2 motion for cause.

3 THE COURT: Okay.

4 MR. TANASI: Juror --

5 THE COURT: From --

6 MR. TANASI: -- No --

7 THE COURT: -- Day 1 or Day 2? Because I have them
8 separated here.

9 MR. TANASI: Juror No. 111 who --

10 THE COURT: Day 1.

11 MR. TANASI: -- I think based on the numbering would be
12 Day 1.

13 THE COURT: Yes.

14 MR. TANASI: This particular juror, Your Honor, I think
15 can't be fair and impartial in this case. Based on the notes
16 that I've got, she's indicated that the average police officer
17 doesn't go to -- an average police officer wouldn't go to a
18 protest and say I want to arrest somebody. Therefore, I'm
19 prejudiced to believe that if --

20 THE COURT: Wait.

21 MR. TANASI: -- someone --

22 THE COURT: 111, I think, is a man, not a woman.

23 MR. TANASI: He, yes.

24 THE COURT: Oh, okay.

25 MR. TANASI: I apologize.

1 THE COURT: I thought maybe I was looking at the wrong
2 one. All right. So he. Go ahead.

3 MR. TANASI: That's correct. I apologize.

4 Therefore, I'm prejudice to believe that if someone's
5 arrested at a protest then they have violated the law. And
6 then I'm slightly prejudiced towards the police officer in
7 their benefit, a tad skewed, that a person should have to
8 kinda -- to show their innocence.

9 So I think that there's kind of a burden-shifting issue
10 there based on, you know, my notation of her [sic] responses.

11 THE COURT: His.

12 MR. TANASI: His. I don't know why I'm hung up on
13 that, Your Honor. His.

14 And so, given that, I would say I don't think he can be
15 fair and impartial in this case.

16 MS. CREEGAN: The Government will stipulate.

17 THE COURT: All right. So we will excuse Juror
18 No. 111.

19 MS. CREEGAN: Your Honor, should we treat Juror 540 as
20 moved up or maintain them in the alternate pool?

21 (Pause in the proceedings.)

22 MS. CREEGAN: I think we would have move them up due to
23 the --

24 THE COURT: Aaron --

25 MS. CREEGAN: -- peremptories.

1 THE COURT: -- should we just leave them in -- because
2 we already have printed out the seating chart for everyone.

3 COURTROOM ADMINISTRATOR: We can leave them in order
4 for the seating chart, Your Honor. Um . . .

5 THE COURT: Yeah.

6 Should we --

7 COURTROOM ADMINISTRATOR: And --

8 THE COURT: -- and do you want to leave an empty chair
9 or just leave him here and just between all of us we know that
10 he's excused?

11 MR. TANASI: I'm fine with that, Your Honor.

12 THE COURT: He doesn't really need to know.

13 MS. CREEGAN: That's fine with the Government as well.

14 THE COURT: Okay.

15 So, for example, on mine, I put a big red "X" on it.
16 So, if you do the same, then we shouldn't have a problem. So
17 you still can count heads if you're trying to figure out who's
18 who.

19 MS. CREEGAN: So should the parties then assume that
20 Juror No. 540 is now part of the main pool and that Juror 615
21 is now moved into the alternate pool?

22 COURTROOM ADMINISTRATOR: I will provide a new
23 peremptory sheet for the parties to review. Everyone's going
24 to move up one. So one of the four parties that's not on that
25 list I have a separate list for you. One of the four extras we

1 brought will be bumped up into the alternate pool and the first
2 alternate will be bumped into the main juror pool.

3 THE COURT: Okay.

4 So can you tell us before we start? Because they are
5 gonna want to know who their alternates are before they
6 exercise their relevant peremptories.

7 COURTROOM ADMINISTRATOR: Definitely. Yes. Juror 540
8 will be Juror No. 36 and Juror No. 615 will be in alternate
9 spot 44.

10 (Counsel conferring.)

11 THE COURT: Okay. So then the alternate grouping is
12 548 through 615, those eight? One, two, three --

13 COURTROOM ADMINISTRATOR: That's correct --

14 THE COURT: -- four five --

15 COURTROOM ADMINISTRATOR: --

16 THE COURT: -- six, seven, eight.

17 So those eight are the individuals in the alternate
18 group. We'll keep four and you each have two peremptories.
19 So, if you exercise them all, we'll end up with the four
20 alternates. If you don't exercise them, we just take the first
21 four. Does that make sense?

22 MS. CREEGAN: Yes.

23 (Counsel conferring.)

24 MS. CREEGAN: And, Your Honor, I think I also spoke
25 with defense. We were going to ask for it to be noted when

1 something was a joint challenge or a challenge by a particular
2 party, and I believe that they indicated they are all joint.
3 But I'll let them make their presentation.

4 THE COURT: Well, I did give them four extra for them
5 to exercise individually in case someone wanted to veto someone
6 else's vote for anything, however it is that you're deciding
7 for the joint ones. If there's something that the others want
8 to keep but you really don't want on the jury, I wanted
9 everyone to be able to have one that you could use to take
10 anyone off that you personally did not want to have on there
11 even if you were overruled.

12 MR. TANASI: Sure.

13 And I think, Your Honor, in getting together prior to
14 court, I think we all kind of have come to a very similar
15 feeling on who we would be collectively exercising our strikes
16 on. So I don't know if we need to necessarily mark that each
17 time. Is that what Your Honor would like? Or just make the
18 record now that we are kind of all in agreement on who we'll be
19 striking throughout the process?

20 THE COURT: If you want to just have the presumption be
21 that all of the challenges are joint unless noted otherwise,
22 then it'll be incumbent on the person who wants to override the
23 rule -- you know, the decision of the majority --

24 MR. TANASI: Sure.

25 THE COURT: -- and exercise their own vote to go ahead

1 and indicate that it's one of their four individual votes.

2 MR. TANASI: I think that's the way to go, Your Honor.
3 I think we'll . . .

4 THE COURT: Otherwise I don't know how else we would
5 know if -- you know, if Mr. Leventhal tries to use two instead
6 of one.

7 MR. TANASI: Right.

8 MR. LEVENTHAL: Why you pickin' on me?

9 MR. TANASI: You got to watch him. That's true.

10 THE COURT: So that way --

11 MR. PEREZ: I think he --

12 THE COURT: -- that way it --

13 MR. PEREZ: -- has six.

14 THE COURT: -- we hopefully would be able to avoid any
15 problems that way too.

16 I think that last time it was Mr. Jackson, Mr. Perez
17 who at sidebar said that they didn't always agree with
18 everything that the rest of the defense were doing as far as
19 the striking. So that's why I wanted to make sure that there
20 was an opportunity, if someone wanted to exercise it, that they
21 would have that option. You don't have to obviously, but I
22 just wanted to make sure everyone had the option.

23 MR. TANASI: I think the defense is collectively okay
24 with that presumption.

25 THE COURT: Mr. Perez?

1 MR. PEREZ: Oh, we're fine.

2 THE COURT: Okay.

3 MR. TANASI: All right. Thank you.

4 MS. CREEGAN: Thank you, Your Honor.

5 THE COURT: Are you ready, Aaron?

6 COURTROOM ADMINISTRATOR: Just about, Your Honor.

7 THE COURT: Okay.

8 (Pause. Courtroom Administrator and the Court conferring.)

9 COURTROOM ADMINISTRATOR: Nicole's on her way up,
10 Judge.

11 THE COURT: Okay.

12 (Pause in the proceedings.)

13 COURTROOM ADMINISTRATOR: Here's a corrected.

14 MR. TANASI: Okay.

15 COURTROOM ADMINISTRATOR: I'll keep the original. So
16 that's just for your reference.

17 MR. TANASI: Okay. Thanks.

18 (Pause. Courtroom Administrator and the Court conferring.)

19 MR. MARCHESE: And, Your Honor, just a point of
20 clarification. As to the alternate, we understand we have the
21 ten collective peremps and one individual one. Does that go
22 towards the alternate?

23 THE COURT: No.

24 MR. MARCHESE: Okay. And then --

25 THE COURT: Then we have two for the alternates.

1 MR. MARCHESE: Two for the alternates.

2 THE COURT: Um-hum.

3 MR. MARCHESE: Okay. Thank you.

4 THE COURT: So it's ten plus four plus two.

5 MR. MARCHESE: Got it.

6 COURTROOM ADMINISTRATOR: And, Counsel, just so you
7 know how that breaks down, it's going to be two for the
8 Government for five turns; three for defense for four turns;
9 two for you for the last turn.

10 MR. MARCHESE: Got it.

11 COURTROOM ADMINISTRATOR: I'll let you know as we go --

12 MR. MARCHESE: Okay.

13 COURTROOM ADMINISTRATOR: -- back and forth.

14 MR. TANASI: Okay.

15 (Pause in the proceedings.)

16 COURTROOM ADMINISTRATOR: All rise.

17 (Prospective jurors enter the courtroom, 1:28 p.m.)

18 THE COURT: All right. Thank you. You may be seated.

19 We are on the record and we have been joined by the
20 jury -- or the prospective jury. So good afternoon and welcome
21 back, everybody. We have combined the groups from Monday and
22 Tuesday. And now we are going to have the attorneys practice
23 what we call the peremptory challenges. So yesterday and the
24 day before I exercised the for-cause excuses and so all we have
25 left now are the individuals who are qualified to sit on the

1 jury and then the parties are going to be taking turns looking
2 at the list, looking at their notes from the last two days, and
3 deciding if there are any further strikes that they want to
4 utilize.

5 So, while we do that, there's really nothing for you
6 all to do except just, you know, sit and look pretty as every
7 once in a while they'll be taking a look at you or counting
8 heads as they try to make sure that they have who they think
9 they have. Every once in a while they'll -- you know, there'll
10 be a number that someone is thinking about -- as you have, you
11 have jury numbers; like maybe, you know, Juror No. 1 -- and
12 then, you know, they'll look at their notes and say, oh, but
13 that was a man and I'm looking at a women so . . . So they'll
14 be looking at you a lot, but don't feel self-conscious too
15 much. They are just trying to make sure that they are counting
16 correctly as people get removed and they have to recount.

17 I don't know, Aaron. Did you plan to have some music
18 on during this or . . .

19 COURTROOM ADMINISTRATOR: We do, Your Honor.

20 THE COURT: All right. Well, Aaron's got some music to
21 entertain you so that you're not too bored during this time.
22 If you really need to stand up and stretch, you're welcome to.
23 But, like I said, the parties are going to want to be looking
24 at your faces and counting. And we did give them a seating
25 chart. But, just the same, it'd be easier if you don't stand

1 up for too long. So you can get up and stretch if you need to.
2 But please go ahead and sit back down so we can see behind ya.
3 All right.

4 (Peremptory challenges, 1:35 p.m. Resumed, 2:40 p.m.)

5 THE COURT: All right. Looks like the parties have
6 finished exercising their peremptory challenges. And I just
7 reviewed the results.

8 Did the parties also have an opportunity to review the
9 final document to make sure that it's accurate and consistent
10 with what you thought you were doing? We've had a couple times
11 when people miscounted. So I just wanted to make sure before I
12 announce it out loud that you've had a chance to review it.

13 MS. CREEGAN: We have had an opportunity to review it,
14 Your Honor. And we do have a legal issue that we'd like to
15 bring to sidebar.

16 THE COURT: All right. So let's go ahead and meet at
17 sidebar.

18 (Begin sidebar conference.)

19 (Discussion between the Court and the court reporter.)

20 THE COURT: Okay. So let's do this one at a time. So
21 this is the Judge speaking. And we have everyone at sidebar, I
22 think. Okay. I believe that I can see everyone.

23 All right. So everyone's here. Please say your name
24 before you speak so that she can make sure that she remembers
25 who everyone is. We do have a different person each day. All

1 right.

2 So, Ms. Creegan, you had an objection or some issue you
3 wanted to raise?

4 MS. CREEGAN: Yes, Your Honor. Erin Creegan for the
5 United States.

6 Your Honor, we'd like to make two *Batson* challenges,
7 one on the grounds of gender, 8 out of 14 of the men in this
8 panel of 36 were eliminated by the defendants; and also on the
9 grounds of discriminating against nonwhite jurors, 6 out of the
10 11 of the nonwhite jurors were eliminated in this panel.

11 THE COURT: Do you have names so that the . . .

12 MS. CREEGAN: I do have numbers.

13 So the males they are -- in order of strike -- 296;
14 314; 498; 95; 294; 85; 457; and, by not striking, leaving only
15 485 excluded.

16 THE COURT: 485. You said by not striking 485?

17 MS. CREEGAN: By not exercising a final peremptory, 485
18 was excluded. However, there was a mark from having originally
19 reviewed him in some manner.

20 THE COURT: Okay. So the . . .

21 (Pause in the proceedings.)

22 THE COURT: They waived -- so the defense waived their
23 last peremptory challenge.

24 MS. CREEGAN: Correct, Your Honor. However, there are
25 cases where refusing to exercise a peremptory in order to

1 ensure that a person is not selected has been held to be a
2 conscious action to discriminate. In this case, we believe it
3 was done on purpose to exclude a nonwhite male.

4 (Pause in the proceedings.)

5 THE COURT: So 485 is a male or female?

6 MS. CREEGAN: Male.

7 THE COURT: Male.

8 And he -- so you're claiming that he was not excu- --
9 or he was not stricken by the defense because if he had been --

10 MS. CREEGAN: It would have made it more conspicuous
11 that it was a racial- and gender-based challenge. He's the
12 only juror that -- he's the extra 13th juror that would not be
13 seated. However, even without that juror, that would still be
14 7 out of 14 males, half of the defendants' peremptories even
15 though males constitute only one third of the entire panel.
16 The result is that the final jury would be nine women.

17 THE COURT: All right. Well . . .

18 (Pause in the proceedings.)

19 THE COURT: You'll have to help me because some of
20 these I don't remember for sure if they are male or female. I
21 hadn't written it down. So it look like -- I'm gonna go in
22 order on the list instead of in the order that they were
23 challenged.

24 MS. CREEGAN: Certainly.

25 85, 95 -- and I hope that my order is correct as

1 well -- 294, 296, 457, then 485.

2 THE COURT: Wait, wait, wait. 457.

3 MS. CREEGAN: Um-hum.

4 THE COURT: Yes.

5 MS. CREEGAN: Then 485, then 498.

6 COURTROOM ADMINISTRATOR: Your Honor?

7 THE COURT: Yes.

8 (Courtroom Administrator and the Court conferring.)

9 THE COURT: Oh, yeah. I think they can take a
10 10-minute bathroom break. Thank you.

11 (Prospective jury panel leaving the courtroom.)

12 THE COURT: All right. Well, these are joint. The
13 defendants did indicate on the form that they were joint.
14 There's none of them that were individual. So let's hear the
15 gender-neutral reason for --

16 MR. MARCHESE: And, Your Honor --

17 THE COURT: -- Juror No. --

18 COURTROOM ADMINISTRATOR: I'm sorry. I can't quite
19 hear.

20 THE COURT: Yeah. Let's wait for them to leave.

21 MR. MARCHESE: Well, I was going to say can we just go
22 out to the tables and not have a sidebar then?

23 THE COURT: Sure.

24 MR. MARCHESE: Makes it easier; right?

25 (Pause in the proceedings.)

1 THE COURT: Okay. While we're waiting for them to file
2 out, who are the racial peremptories?

3 MS. CREEGAN: They are -- and I'll try to do this also
4 in numerical order and there's some overlap -- there's -- 80
5 percent of all nonwhite males were struck -- 95, 296, 329, 445.

6 THE COURT: Wait, wait. 296.

7 MS. CREEGAN: Yes.

8 THE COURT: Okay. Keep going.

9 MS. CREEGAN: 445 -- 329 and 445 -- I'm sorry. I'm not
10 sure where you stopped -- and 485 and 498.

11 THE COURT: 445. After that?

12 MS. CREEGAN: 485 and 498.

13 COURTROOM ADMINISTRATOR: The jurors have exited, Your
14 Honor.

15 THE COURT: Okay.

16 MS. CREEGAN: That leaves a panel of nine women, even
17 of which are white, for a total of nine white jurors.

18 THE COURT: All right.

19 Aaron, did you say they are gone?

20 COURTROOM ADMINISTRATOR: Yes, Your Honor.

21 THE COURT: All right. Let's go ahead. It'll make it
22 easier for everyone so we're not squished in this corner.

23 (End sidebar conference.)

24 THE COURT: All right. So it looks like the defendants
25 also needed to use the restroom. So does counsel waive their

1 presence so they can use the bathroom? Or do you want to wait
2 for them to come back?

3 (Pause in the proceedings.)

4 MR. MARCHESE: Parker, we would waive his presence.

5 MR. LEVENTHAL: You do?

6 (Counsel conferring.)

7 MR. TANASI: Your Honor, I think, given the
8 circumstances, we can waive Stewart's presence as well.

9 MR. LEVENTHAL: Yeah. Given that we were at sidebar,
10 we'd be at sidebar anyway. Drexler waives.

11 MR. PEREZ: Lovelien waives as well, Your Honor.

12 THE COURT: All right. Thank you.

13 (Pause in the proceedings.)

14 THE COURT: All right. I wanted to double check to
15 make sure that a -- that racial challenge didn't have different
16 factors to consider with a gender/Equal Protection Clause
17 challenge. I'm not finding that there's much of a discrepancy.
18 It seems to be the same factors --

19 MS. CREEGAN: That is --

20 THE COURT: -- either way.

21 MS. CREEGAN: -- our understanding as well, Your Honor.

22 THE COURT: Okay.

23 (Pause in the proceedings.)

24 THE COURT: All right. So who wants to address the
25 apparent striking issue here? And the Court does find that the

1 Government has at least made a *prima facie* case, not unexpected
2 as to the racial challenge. But I have looked at the
3 individuals who were struck on alleged gender bias and I did
4 confirm that they are males and quite a few of them, half of
5 them, which results in many more white female on the jury than
6 you would think just on a purely statistical basis. So I think
7 they've raised enough of a question to ask the defense to
8 explain and give a neutral reason for their strikes for -- on
9 Equal Protection grounds. It looks like the factors are the
10 same. So you could probably just address them all at the same
11 time rather than dividing them up, but . . . So the issues are
12 striking males and striking nonwhites.

13 MR. LEVENTHAL: Well, I can -- Todd Leventhal -- I can
14 address the cross-off first of all 'cuz there was a marking.

15 There's some indication from the Government that we
16 crossed it off thereby concealing or trying to conceal. I just
17 screwed up on the numbering actually. And, when I brought it
18 back to Aaron, he indicated that I had screwed up on the
19 numbering so I had to cross one off and I initialed it. So
20 there was no concealing and there was no deception. There was
21 just a problem with the number.

22 And the reason we didn't need to do the last one was
23 because he was last on the list and he was number 13 anyway.
24 So there wasn't any type of concealment. We waived the last
25 one for no other reason other than that.

1 Your Honor, I have lists and lists of reasons for
2 everybody. They are completely gender neutral. We spoke at
3 length to individual people during voir dire and we gathered
4 that information and we took things that they said, not
5 necessarily who they were gender or race. And I've got them
6 all listed here per person on why it is that we chose -- excuse
7 me -- why it is we chose that juror over another juror. And
8 there was never a question, at least with us here as a group,
9 on we're gonna choose this person over this person because it's
10 a female versus a male. It just came out that way.

11 Some of the males that we wanted they had crossed out
12 already. I mean, that's what we were left with. But this is
13 in no way a gender-based decision on how we picked this jury.
14 And, if the Court wants me to go through each individual one on
15 why, I've got notes here and I can do that.

16 THE COURT: Okay.

17 MR. LEVENTHAL: Who would you like me to start with?

18 THE COURT: Yeah. I only see the Government struck two
19 men.

20 MR. LEVENTHAL: How many women did they strike?

21 THE COURT: So let's see. The first one is Juror
22 No. 85 on the first day.

23 (Defense counsel conferring.)

24 MR. MARCHESE: Well, Your Honor, as to number 85, our
25 issue with him was some of his answers is in respect to law

1 enforcement, that you should always respect law enforcement.
2 That was one of our main issues with him. Had nothing to do
3 with his gender; it was more his answers to the voir dire from
4 yesterday.

5 MS. CREEGAN: And, Your Honor, one of the things for
6 the Court to consider when that's offered as a explanation is
7 to compare them to similarly situated jurors from other groups.

8 Juror 205 indicated a great deal of respect for law
9 enforcement, that she would always take the advice of a law
10 enforcement officer. Yet, as a white woman, she was seated on
11 the jury.

12 MR. LEVENTHAL: She also indicated that people arrested
13 at a protest doesn't mean they're guilty; they got to go
14 through the process, the court process which is different than
15 other people that we heard say, well, if they were at a protest
16 and they were arrested, then they must have done something
17 wrong. And I think we've kicked those people off. So,
18 actually, 205 did say that. She said sitting on a jury's a
19 privilege; she's been a leader and a follower and she considers
20 herself to be a peacemaker. So we --

21 MS. CREEGAN: Juror --

22 MR. LEVENTHAL: -- chose her.

23 MS. CREEGAN: -- 95's responses were very similar. Did
24 not indicate that they would not go through a legal process. I
25 don't believe they were even asked that by defense counsel.

1 MR. MARCHESE: My notes do --

2 MS. CREEGAN: Juror 85 --

3 MR. MARCHESE: -- not indicate --

4 MS. CREEGAN: Excuse --

5 MR. MARCHESE: -- that.

6 MS. CREEGAN: -- me.

7 (Defense counsel conferring.)

8 THE COURT: What did you say, Mr. Marchese? That
9 your --

10 MR. MARCHESE: My notes --

11 THE COURT: -- notes indicate that --

12 MR. MARCHESE: -- my notes indicate something different
13 on those two particular jurors. Maybe I wrote them down wrong.
14 But what I have and what the Government has are two different
15 things apparently.

16 THE COURT: Right. So what do you have?

17 MR. MARCHESE: Well, I gave the -- my initial answer
18 and then, um -- I'm sorry. It was 205. Let me --

19 THE COURT: 85 and.

20 MR. MARCHESE: -- find her.

21 THE COURT: -- 205, yes.

22 MR. MARCHESE: That she believes -- similar to what
23 Mr. Leventhal had said -- that she believes in the court
24 process and that sitting on a jury is a duty and a privilege.
25 I have that she would listen to the facts.

1 MS. CREEGAN: I have Juror 205 saying that, if you're
2 arrested, you're probably guilty. And Juror 85 saying I was
3 taught to respect law enforcement officers and I would require
4 evidence to prove guilt. I also have Juror 85 saying that it
5 was an honor to be on a jury.

6 MR. TANASI: Your Honor, Juror 85 indicates he --
7 again, law enforcement officers have more training than me and
8 respects their decisions.

9 MR. PEREZ: Your Honor, if I might chime in.

10 I believe Juror 85 was my decision this morning at
11 around 9:00 o'clock to kick. And primarily it was his Facebook
12 posts. He bleeds red, white, and blue. I mean, you know. And
13 that to me wasn't gonna work. All his photos were the American
14 eagle and, you know, everything was red, white, and blue.

15 MS. CREEGAN: Your Honor, the --

16 MR. PEREZ: It had -- I didn't even know it was a male.
17 And yet one of the things that gets me is Mr. Tanasi. We
18 started off today he kept saying "she" or "he." He didn't even
19 know. Because when we were going through these jurors this
20 morning, we were lookin' at the numbers and the notes that we
21 had for every juror. I mean, the notes are extensive. You
22 know, it wasn't a matter of male/female. I mean, there's two
23 African-American jurors I'd love to have but we can't get them
24 up there. They are too far in the back. Nobody said anything
25 about striking them. It's just -- I mean, this is what we had

1 to deal with.

2 THE COURT: Well, the issue before us is Juror No. 85.
3 And, regarding his Facebook posts, what I had written down is
4 he said that he posts to Facebook before reading the entire
5 article. I'm not sure I understand your explanation that his
6 Facebook page being red, white, and blue --

7 MR. PEREZ: It's --

8 THE COURT: -- was a reason for striking that is race
9 neutral -- or that is neutral to his gender.

10 MR. PEREZ: It had nothing to do with his gender. I
11 mean, everything was -- you know, I looked at it. It was like
12 American eagle this and American eagle that and then combine
13 that with the law enforcement. It was like -- wasn't because
14 he was a man.

15 MS. CREEGAN: Your Honor, the law requires that the
16 reason be convincing. Of course, counsel can articulate a
17 reason and there always will be something to say especially
18 when we've spoken to jurors so much. But the Court has to do
19 an independent evaluation of whether that reasoning is
20 sufficiently convincing to have actually eliminated a juror on
21 that basis. And, since one of the things that the defendants
22 intend to do in their case is appeal to patriotism, I don't see
23 how it makes sense to eliminate the juror because their
24 Facebook is red, white, and blue.

25 THE COURT: That's why I'm confused too --

1 MR. PEREZ: Be --

2 THE COURT: -- why the red, white, and blue --

3 MR. PEREZ: Your Honor --

4 THE COURT: Would be --

5 MR. PEREZ: -- this case --

6 THE COURT: -- negative --

7 COURT REPORTER: I'm sorry.

8 THE COURT: One at a time, please.

9 So why would the -- and I'm sorry if I'm being dense.
10 But I just don't understand why the red, white, and blue would
11 be --

12 MR. PEREZ: Your --

13 THE COURT: -- negative --

14 MR. PEREZ: -- Honor --

15 THE COURT: -- for the --

16 MR. PEREZ: -- this --

17 THE COURT: -- defense.

18 MR. PEREZ: -- case against Mr. Lovelien is all
19 Facebook. Completely, a hundred percent Facebook. That's why
20 my questions to the jury were about media, were about Facebook.
21 There are no photos of Mr. Lovelien doing much of anything. If
22 anything, it's Facebook posts.

23 So the way a person uses their Facebook and what they
24 post and how they, you know, present their beliefs is important
25 to me as far as for Mr. Lovelien. Now, I'm sure that, you

1 know, other defense counsel here has other reasons; but that
2 was my primary reason. And that was the juror that I wanted to
3 kick this morning.

4 THE COURT: All right. So the way that he uses his
5 Facebook is important to you. But why is the way that he's
6 using his Facebook a reason to strike him? That's what I'm
7 not --

8 MR. PEREZ: I didn't --

9 THE COURT: -- understanding --

10 MR. PEREZ: -- think --

11 THE COURT: -- because he specifically says he posts
12 stuff to Facebook --

13 MR. PEREZ: Right.

14 THE COURT: -- he hasn't even read. It seemed like it
15 was actually consistent with the defense theory, not --

16 MR. PEREZ: I didn't think he could be fair to --

17 THE COURT: -- contrary.

18 MR. PEREZ: -- Mr. Lovelien.

19 THE COURT: Okay. Why do you think he cannot be fair
20 to Mr. Lovelien?

21 MR. PEREZ: I mean, call it gut feeling. I mean, I've
22 been through this. We just did this trial once before. I
23 spoke to the jurors after the -- after trial was over. I kinda
24 have an idea of what they were thinking and how they were
25 thinking.

1 MS. CREEGAN: Your Honor, res- --

2 MR. PEREZ: I just don't --

3 THE COURT: But the gut feeling is not articulable. So
4 you need to articulate why it is the red, white, and blue theme
5 on his Facebook page or the eagles -- why would that be a
6 reason to strike him?

7 MR. PEREZ: Well, I don't think it's a matter of why I
8 strike him. It's did I strike --

9 THE COURT: Well --

10 MR. PEREZ: -- him --

11 THE COURT: -- it is.

12 MR. PEREZ: -- because --

13 THE COURT: That's --

14 MR. PEREZ: He was a male.

15 THE COURT: -- that's the problem. The test is that if
16 there is a enough of a *prima facie* case, which the Government
17 has made, to show that there is a pattern of a particular race,
18 or in this case a gender, being excluded then the burden shifts
19 to the party excluding them to state a neutral reason for the
20 striking as opposed to one that is motivated by gender or race.
21 So that's why you need to give me something and then the
22 Government has to make an argument as to why that would be a
23 pretextual excuse which they can use by comparing it to other
24 folks that said the same or similar things. But I don't think
25 that I have a articulated reason yet that is neutral.

1 MR. TANASI: Your Honor, if I may just be heard. And
2 then --

3 THE COURT: Yes.

4 MR. TANASI: -- I know you've made the determination
5 that there's the *prima facie* showing in this case. But we did
6 exclude, I think it was, six females. So it's not as though,
7 you know, we didn't exclude any females in this case. So kind
8 of going back to it, I would, I guess, respectfully contest the
9 fact that the *prima facie* showing even exists. But I
10 understand that Your Honor's made that decision.

11 So, again, coming back to 85, the law enforcement
12 impartiality/the law enforcement siding with that was, you
13 know, my biggest concern with number 85.

14 MS. CREEGAN: And, Your Honor, I'd just like to put two
15 things on the record. One is the defendants eliminated
16 80 percent of all nonwhite males. They eliminated 25 percent
17 of all white females. To say that we struck some is not
18 sufficient to show that there is not a pattern.

19 And in response to Mr. Perez's argument that --

20 THE COURT: What Mr. Tanasi was saying was that they
21 struck six females. But you're saying that of those six
22 females . . .

23 MS. CREEGAN: Of those six females, four are white
24 females; two are nonwhite females. By far the lowest
25 proportion of people that were struck is 25 percent white

1 females; the highest, 80 percent nonwhite males.

2 And, in response to Mr. Perez's argument that he talked
3 to the previous jury, one thing that I noticed that is
4 extremely striking is that the demographics of this new jury,
5 if they are seated as is, are exactly the same as the previous
6 jury as originally seated. Seven white women, one Asian woman,
7 one African-American women, two white males, and one Asian
8 male -- that is demographically the identical makeup of our
9 previous jury.

10 MR. MARCHESE: She's giving us way too much credit.

11 MR. TANASI: Right.

12 Not only that, Your Honor, there's an African-American
13 female on the jury. If that was the motive and the plan, she
14 would have been stricken too.

15 MS. CREEGAN: Sparing one is not sufficient to not
16 demonstrate a pattern. And, although it may be the case that
17 they did not set out with that goal, to say things like "gut
18 feeling" and "talking to the last jury," that's not sufficient
19 to show that it is not racially or gender motivated.

20 MR. TANASI: I'm sorry, Your Honor. My job and my goal
21 here is to prevail in this case. I'm not going to spare
22 somebody and undercut that job at the same time just to survive
23 a *Batson* challenge. There's a white -- there's a
24 African-American female on the jury.

25 MR. LEVENTHAL: And, Your Honor, you --

1 THE COURT: It's --

2 MR. LEVENTHAL: Sorry.

3 THE COURT: Okay. So let's --

4 MR. LEVENTHAL: There --

5 THE COURT: -- move on from 85 then. The next
6 gentleman after 85 is number 95.

7 MR. TANASI: Your Honor, I can speak to number 95.

8 My issue is that his response to one of my questions
9 was if someone attends a protest and gets arrested or harm
10 comes to them it's their own fault; it's on them. It's no
11 mystery that our defense theory in the case is that our clients
12 were attending a protest. If he's of the mind-set that just by
13 being there and he ultimately -- or my client subsequently gets
14 arrested -- he shouldn'ta kinda been there in the first place
15 or it's just kind of on him for being there -- he's clearly
16 somebody that doesn't seem to -- that wouldn't be consistent,
17 essentially, with the defense theory in the case which wouldn't
18 be fair.

19 THE COURT: All right. Well, he -- number 95 is
20 Hispanic and he also said that he attended a protest when his
21 girlfriend protested at work for three days and he brought her
22 stuff. I don't remember if it was food or drink. Sodas or
23 something I think he said. But he . . .

24 Any other reason?

25 MR. TANASI: Court's indulgence.

1 THE COURT: Yes.

2 (Pause in the proceedings.)

3 MR. TANASI: Again, Your Honor, the protest responses
4 was the fundamental reason.

5 (Pause in the proceedings.)

6 MS. CREEGAN: I think Jurors 207 and 205 gave similar
7 responses. Juror 207 was eliminated by the Government in a
8 final elimination. Juror 205 is seated on the jury. They are
9 both white women.

10 MR. TANASI: Actually, Your Honor, 205, the response I
11 have noted is people who are arrested in a protest doesn't mean
12 they are guilty of a crime; they need to see the court process.

13 (Pause in the proceedings.)

14 MS. CREEGAN: I have for Juror 205 saying they are
15 probably guilty if they are arrested.

16 MR. LEVENTHAL: Is what?

17 MS. CREEGAN: And Juror 207 saying we're all
18 responsible for our own --

19 MR. TANASI: I have --

20 MS. CREEGAN: -- actions.

21 MR. TANASI: -- the exact opposite.

22 THE COURT: Number 205 said that arrested people are
23 not guilty until --

24 MR. MARCHESE: Yeah, that's our --

25 THE COURT: -- until they --

1 MR. MARCHESE: -- indication --

2 THE COURT: -- go to court.

3 MR. MARCHESE: -- as well.

4 MS. CREEGAN: We have her saying she's prob- -- they
5 say it has to go through the court process. But they probably
6 are guilty; they wouldn't have been arrested if they had not
7 done something wrong.

8 MR. TANASI: And, again, I have the exact opposite,
9 Your Honor.

10 THE COURT: Well, it's not the exact opposite. They --
11 she said both things, that they are probably guilty but just
12 because they are arrested doesn't mean that they are guilty.
13 She was distinguishing between --

14 MR. TANASI: Fair enough.

15 THE COURT: -- that they --

16 MR. TANASI: And I guess --

17 THE COURT: -- probably --

18 MR. TANASI: -- maybe in --

19 THE COURT: -- guilty but --

20 MR. TANASI: -- my mind --

21 THE COURT: -- that they --

22 MR. TANASI: -- it's the --

23 THE COURT: -- wouldn't --

24 MR. TANASI: -- exact opposite.

25 THE COURT: -- actually be guilty until they went to

1 court -- until they were found guilty by court. To me it just
2 indicates --

3 MR. TANASI: I guess --

4 THE COURT: -- she understood the -- and had knowledge
5 of the procedural process and the system.

6 MR. TANASI: The process was, I guess, the impartiality
7 and respecting that process anyways.

8 MS. CREEGAN: I asked all the jurors if they could
9 follow the proper process and respect the reasonable doubt
10 standard and they all said yes. And I don't show a follow-up
11 question to Juror 95 by the defense to try to determine whether
12 95 was somehow unfair or not partial -- not impartial.

13 MR. TANASI: I guess I would submit that actually
14 verbalizing it and not raising your hand are two different
15 things.

16 (Pause in the proceedings.)

17 THE COURT: All right. The next male is number 284.

18 (Pause in the proceedings.)

19 MR. MARCHESE: Being that this case is so much about
20 emotion, we found him to be very analytical. Either his
21 questionnaire or his responses indicated that he's a scientist.
22 So that was my issue with him. And it also -- I don't want to
23 skip ahead -- but the next individual as well works in the I.T.
24 department. And I didn't have a lot on either of them. So
25 rather than put someone on a jury that I don't know very much

1 about -- just for whatever reason, didn't answer "yes" or raise
2 their hand -- I felt it was my duty to Mr. Parker to maybe get
3 somebody that I knew a little bit more about and get them onto
4 the jury.

5 MS. CREEGAN: Your Honor, there is some case law that
6 discusses that, for example, removing female jurors because
7 they might get attracted to a male defendant is a pretext for
8 removing a female juror. Mr. Marchese's saying we want people
9 who are more emotional. I think that's just a stereotype about
10 women. There are women on your jury who are accounting and
11 financial professionals; they were not eliminated for being
12 analytical.

13 (Pause in the proceedings.)

14 THE COURT: All right. I think the next one is 296.

15 MR. TANASI: Your Honor, that one -- with respect to
16 296, I can tell you I just have very little notes on him; so
17 kind of also an indication as to what Mr. Marchese was
18 discussing, you know, not knowing enough so not taking a risk
19 (A). And (B) what we do show is he, you know, seems to at
20 least get some of his news from two channels; looks like 13 and
21 5. And, again, you know, only having kind of that limited
22 information and not really knowing enough and just -- maybe
23 just looking at news and trying to try to speculate and guess,
24 in our opinion, it was best to not take that guess.

25 MS. CREEGAN: Which, I believe, Juror 376 is a

1 comparable white female juror who watches television; watches
2 local channels. I think the only question she answered is that
3 she watches *Criminal Minds* and *SVU* yet she is seated on the
4 jury.

5 MR. TANASI: Your Honor, we have some more information
6 with respect to her. She indicates that -- you know, true she
7 watches different channels, but she doesn't watch a lot of news
8 because it's generally depressing. She gets her news from
9 Facebook, likes investigations, someone that potentially has an
10 open mind.

11 MS. CREEGAN: I would submit that no -- there is no
12 distinguishable difference between them in terms of
13 open-mindedness. In fact, I think that Juror 296 even
14 described himself as being open-minded.

15 THE COURT: I didn't hear that last part. That
16 296 . . .

17 MS. CREEGAN: Even stated that he was open-minded.
18 These are both two younger people who we spoke to very, very
19 little; both single; both live with parents; both watch local
20 news. 296 is off the jury; 376 is on.

21 MR. TANASI: Again, Your Honor, we have more
22 information with respect to 376 than we did --

23 THE COURT: Okay.

24 MR. TANASI: -- with respect to 296, at least what I
25 have noted.

1 THE COURT: Go ahead.

2 (Pause in the proceedings.)

3 MR. TANASI: I also have noted 376 went to CSN and
4 works at K-Mart and she plays crime scene games online, again,
5 lending itself to the investigations and having an open mind.

6 MS. CREEGAN: Those are facts, but I don't know how
7 they demonstrate a distinguishable difference between them or
8 how 376 has more of an open minds. In talking to these jurors,
9 we're gonna have some facts. But the meaningful difference
10 between them is not apparent.

11 THE COURT: 376 was the one who said that her
12 stepfather knew about the case and had indicated an opinion.
13 We don't know what that opinion is; it wasn't inquired into
14 which is also a risky choice.

15 (Pause in the proceedings.)

16 THE COURT: All right. I think the next one is
17 number -- is it 314?

18 MR. LEVENTHAL: Oh, 314?

19 THE COURT: Yes.

20 MR. LEVENTHAL: That was clear. It was -- he indicated
21 that he owns a restaurant and he knows Sergeant Jenkins who
22 was -- as the Court knows, was a witness here. He indicated
23 that Jenkins comes into his restaurant at least, I believe he
24 said, once a month. And, to be quite honest -- and I -- you
25 know, whatever they are saying about gut feeling -- and I'm

1 trying to articulate this -- that is one of the facts. But my
2 gut feeling that he went on to say -- that he watches FOX and
3 he believes in protests -- I just didn't believe it; I just
4 didn't buy it. I thought he was trying too hard to get onto
5 the jury and I honestly just -- he was one of my first ones
6 that I just felt like that he was trying to snow me when I was
7 asking questions of him. I think that the Jenkins thing's -- I
8 think he wasn't completely honest and forthcoming with his
9 relationship with Jenkins. And he called him TJ and he watches
10 his show and yet he still tried to appease us by saying -- and
11 this was my feeling -- that he likes -- he likes to -- he
12 thinks that it's okay for people to go protest. He's
13 frustrated with the country. I just didn't -- I just didn't
14 believe him. That's why.

15 MS. CREEGAN: Your Honor, I don't believe that Juror
16 314, there's any evidence for dishonesty. But I'll stipulate
17 that close familiarity with a Metro officer is a sufficiently
18 gender-neutral reason.

19 THE COURT: All right. The next one is 457.

20 (Pause in the proceedings.)

21 MR. LEVENTHAL: 457 indicated that he would never
22 consider protesting anything; he was not raised that way. As a
23 matter of fact, he indicated when asked about would he attend a
24 protest against the government that that was unheard of; it was
25 a sin almost. He had very, very, very strong feelings about

1 going to a protest or protesting or standing up to any kind of
2 authority in that way and he indicated that that's the way he
3 was raised.

4 There was other things I had to look at when we
5 analyzed him on whether -- you know, he was in the military;
6 he's a casino security officer; but he was very vocal and very
7 dug in about the fact that he would not attend a rally or a
8 protest or anything of that nature.

9 (Pause in the proceedings.)

10 MS. CREEGAN: I believe that some portion of 451's
11 answer was based on the fact that as a military member he was
12 not able to protest; that was not something that he could do in
13 that capacity.

14 MR. LEVENTHAL: 451 or 457?

15 MS. CREEGAN: Sorry. 457. Thank you.

16 MR. TANASI: Your Honor, I don't think it's a
17 disability. I remember I had quite a bit of questioning with
18 him. I kinda kept coming back to him, I think even not on
19 purpose. And I do remember -- I don't believe it was a
20 disability. I think it was he said he was in the military and
21 that's just how he was raised, not to protest. I didn't hear
22 anything that said he couldn't.

23 THE COURT: I agree that number 314 and 457 are
24 individuals who gave sufficient information to provide a reason
25 for the defense to want to strike them. So I don't really

1 question those two --

2 498.

3 MR. MARCHESE: This goes to -- once again, very highly
4 educated man; he had a very technical background. I don't even
5 necessarily understand quite what he did. He's an --
6 apparently he's an expert witness on utilities. Once again, I
7 just found that he'd probably be a very technical; very matter-
8 of-fact-type individual. Just as 325 has a background in
9 accounting, 296 in I.T., and 284 who is a scientist.

10 MS. CREEGAN: And Juror 138 has a CPA and was seated
11 and she's a white female. I'm not sure . . .

12 MR. TANASI: Your Honor, he's -- I think he works at
13 the Nevada Attorney General's Office or was an expert for them.
14 He also was -- you know, I think he did mention something to
15 the effect of this country was founded on protests; and so I
16 think he was trying to maybe clean it up a little bit. But he
17 also said he would, you know, intervene if his -- with his
18 neighbors if he knew them. But, if he didn't know them, he
19 would only call 3-1-1. And, again, you know, our defense
20 theory is no mystery at this point. You know, our guys don't
21 know the people that they came in protest for; it was the
22 cause.

23 MS. CREEGAN: Juror 495 works or the Public Utilities
24 Commission; Juror 138 works for the Department of Treasury of
25 the United States Government. They are more than similarly

1 situated, yet the white female is on the jury and 498 is kicked
2 off. And to say when he gives neutral answers -- such as
3 respect for protests or respect for the law -- he must not be
4 telling the truth, I would submit is not a convincing reason.

5 MR. TANASI: And, again, Your Honor, I'm not --

6 THE COURT: I was --

7 MR. TANASI: -- I'm not --

8 THE COURT: -- surprised that you struck number 498
9 'cuz I thought that he would actually be someone that you would
10 like. Maybe you don't.

11 MR. TANASI: And, again --

12 MR. LEVENTHAL: I don't --

13 MR. TANASI: -- not --

14 MR. LEVENTHAL: -- didn't.

15 MR. TANASI: -- not to be here and call him a liar.
16 It's the feeling, the sense.

17 MR. LEVENTHAL: It's that gut feeling that I felt he
18 was trying too hard. But he would say things and then back up
19 and try to get . . . And that's how I felt about him.

20 But when you look at -- if we're gonna compare 138, 138
21 indicates officers are not always correct in an arrest. Okay.
22 That's pretty important to us. He didn't say that. He said
23 that the country was founded on -- you know, on protests. But
24 I'm not sure I believe that. He -- you know, he was asked
25 about *CNN*. And I just didn't -- I didn't get that feeling.

1 The same way that, you know, Ms. Creegan didn't get the feeling
2 on number 571, which was the first juror she dismissed on the
3 alternate, because obviously he was googling [sic] at her and
4 he had -- she had just indicated that we're just getting rid of
5 women when she got rid of a guy because of a gut feeling. So,
6 I mean, none of this stuff was done based on gender. But we
7 can keep going through it. I'm . . .

8 MS. CREEGAN: For Mr. Leventhal to, I guess, misdirect
9 to the Government when there's currently no *Batson* challenge on
10 the Government, I'm not sure what the purpose of that is. But
11 Juror 571 indicated that he believed that I prosecuted him
12 although he tried to say that he'd be neutral. He also watches
13 *InfoWars*; looks at Alex Jones; says that he believes in
14 maximizing freedom; and, I believe, he also said his family had
15 very strong feelings about this but did not share what they
16 were. So there are more than substantial grounds to eliminate
17 571.

18 THE COURT: His brother was a District Court judge from
19 1994 to 1998.

20 MR. MARCHESE: That was a little -- what got me with
21 that was he went out of his way to say it in his questionnaire.
22 I didn't see why that was overly relevant. I've never
23 practiced in front of him. I've seen him in the courthouse. I
24 don't personally know him. There's no bias there. I just -- I
25 thought it was odd in his questionnaire that he would bring

1 that up because it's completely irrelevant.

2 MS. CREEGAN: I don't think that somebody erring on the
3 side of overdisclosure would be --

4 THE COURT: Well, he said he brought that up because he
5 believed that his brother would know the attorneys in the case
6 and . . .

7 MR. TANASI: And I guess, Your Honor, also kinda going
8 back to the news channel analysis --

9 THE COURT: If I remember correctly, his brother was
10 the first Hispanic District Court judge in the state and he
11 also left the bench to run for the Senate on behalf of the
12 Republican party if you'll remember. It's been a long time,
13 but . . .

14 My understanding of his explanation was that he had
15 worked at the Public Utility Commission and then, when he left,
16 he became a expert because of his prior experience and had
17 testified and been called to testify by the Attorney General,
18 not that he worked for the Attorney General. But that was my
19 recollection. I don't . . .

20 MS. CREEGAN: Correct. That is consistent with the
21 notes that the Government has.

22 MR. TANASI: He had said that he knows Tom Collins, had
23 dealt with Tom Collins. And I thought that it was in that
24 capacity with the Attorney General with his employment or
25 contract employment or whatever the case may be. And then also

1 just --

2 THE COURT: No. He worked at the Public Utility
3 Commission that Tom Collins was the County Commissioner who was
4 assigned to that particular agency so the questions that he had
5 were directed . . .

6 MR. LEVENTHAL: Your Honor, I'm looking at his Facebook
7 page and it says "Intro: Works at Nevada Attorney General's
8 Office" right here. He lives in Las Vegas; from Fair Oaks,
9 California.

10 MS. CREEGAN: But, be that as it may, he works for the
11 State of Nevada which is not prosecuting [sic] him; Juror 138
12 works for the United States Government which is prosecuting
13 [sic] him. It doesn't make sense to say that that is a
14 discrim- -- a factor that meaningfully affects who was chosen
15 for the jury and who was not.

16 MR. TANASI: And I don't --

17 THE COURT: Yeah. On the one hand, the person's got
18 red, white, and blue and eagles and has too much, you know,
19 federal, I guess, American, um, uh --

20 MR. LEVENTHAL: Well, that I don't --

21 THE COURT: -- things on --

22 MR. LEVENTHAL: -- know about.

23 THE COURT: -- their Facebook; on the other hand,
24 somebody who has too much state relationship on the Facebook.
25 So I'm . . .

1 MR. TANASI: It's the prosecution I think that -- and I
2 can only speak to the latter -- again, he's working for the
3 Attorney General's Office; he's working for a prosecuting
4 entity.

5 MS. CREEGAN: The Attorney General's Office does more
6 than prosecute.

7 THE COURT: Yeah. It's for the Consumer Affairs
8 Division. It's a reg- --

9 MR. TANASI: I just --

10 THE COURT: -- -ulatory agency.

11 MR. TANASI: -- I know that if -- I had a few cases in
12 state court against the Attorney General's Office. I . . .

13 And I do understand the difference between the AG's
14 Office and the DA's Office. And I don't know. It's, again,
15 just -- seemed risky for us based on that, Your Honor.

16 MS. CREEGAN: Your Honor, the Government submits that I
17 think there's only one or two of these eight that they've shown
18 a gender-neutral reason for. We would ask that they be
19 reinstated and the peremptories lost.

20 (Pause in the proceedings.)

21 THE COURT: So 284, are you saying because he has a
22 science background and said that he's analytical you find that
23 opposite to emotional?

24 MR. MARCHESE: I mean --

25 THE COURT: And you feel --

1 MR. MARCHESE: -- I . . .

2 THE COURT: -- this is a more emotional case.

3 MR. MARCHESE: As Your Honor can see and there was --
4 you know, I think I had four people down with a technical
5 background -- that was just one of my issues. Because this
6 case is so much about emotion, I just think that people
7 generally who go into the science background -- like there was
8 one -- I don't have her number and I don't want to say her
9 name -- but one of the ladies who's on there -- I believe she
10 works for the School District -- I think those are people who
11 tend to be, generally speaking -- obviously not everyone's the
12 same -- but I think people who choose that particular
13 profession tend to be a little bit more emotional and think
14 touchy-feely, kind of emotional people as opposed to, you know,
15 just black or white which is -- tend to be people who go into
16 the math or sciences.

17 MS. CREEGAN: And, again, we would submit that that's a
18 pretext using the word "emotional" as a stereotypical word for
19 women.

20 MR. MARCHESE: But it's -- maybe it's pretext, but it's
21 not -- it's race neutral or --

22 MS. CREEGAN: A pretext --

23 MR. MARCHESE: -- gender --

24 MS. CREEGAN: -- has.

25 MR. MARCHESE: -- neutral --

1 Excuse me. I'm speaking.

2 MS. CREEGAN: I apologize, Jess.

3 THE COURT: Just a minute.

4 You stated the reason why. And so now the Government
5 has an opportunity to argue why it's pretextual.

6 MS. CREEGAN: Your Honor, as I was discussing earlier,
7 there's case law that says when you have a pretext which
8 clearly will link something to being a women -- for example,
9 saying, well, because she's a women, she could be attracted to
10 a male defendant and, therefore, I will remove her -- that
11 that's really just a proxy for eliminating women.

12 And, in this case, there are many female finance
13 professionals that made the cut but not male scientists. To
14 say it's a problem with choosing emotional or analytical people
15 is a pretext because the analytical women were not eliminated.
16 And even just to say we want emotional people seems like a
17 stereotypical response to say we just want to pack the jury
18 with women.

19 THE COURT: And so who are the analytical women that
20 were not eliminated?

21 MS. CREEGAN: So we have -- 138 is a CPA.

22 (Pause in the proceedings.)

23 MS. CREEGAN: Sorry.

24 MR. TANASI: Your Honor, can we address those in kind?
25 Or did you want to hear the numbers as they come out?

1 THE COURT: I want to hear the numbers first and then
2 I'll have you address them.

3 MR. TANASI: All right.

4 (Pause in the proceedings.)

5 THE COURT: And I realize 138 said her sister protested
6 at the Women's March and that she also said that -- 138 said
7 that she believes that it's not enough to be arrested.

8 MS. CREEGAN: And 142 is a finance professional. She
9 is --

10 COURT REPORTER: I'm sorry. "She is" . . .

11 MS. CREEGAN: An Asian female.

12 (Pause in the proceedings.)

13 MS. CREEGAN: 593 which -- 5 -- excuse me -- 539, which
14 the Government eliminated, was also a finance professional.

15 (Pause in the proceedings.)

16 MS. CREEGAN: And, in terms of looking for people who
17 are emotional, I think the defendants eliminated a black
18 female, 445, who has a masters in mental health counseling and
19 works with an indigent population.

20 (Pause in the proceedings.)

21 THE COURT: 435?

22 MS. CREEGAN: 445.

23 THE COURT: Oh, 445.

24 (Pause in the proceedings.)

25 MS. CREEGAN: Then I also show that 339 is an engineer,

1 that is one of the ones that Mr. Leventhal is referring to,
2 males the Government struck that they would have wanted. He is
3 a white male.

4 THE COURT: Which one is that?

5 MS. CREEGAN: 339.

6 (Pause in the proceedings.)

7 MS. CREEGAN: And 397 was also cut in the last round;
8 he had a master's degree.

9 MR. MARCHESE: I'm sorry?

10 THE COURT: What number is that?

11 MS. CREEGAN: 397.

12 (Pause in the proceedings.)

13 THE COURT: Okay. And let's go back to 95. So your
14 recollection on 95 is that he had said if a person is arrested
15 at a protest . . .

16 MR. TANASI: If someone attends a protest and gets
17 arrested and harm comes to them -- or harm comes to them, it's
18 their own fault; it's on them.

19 THE COURT: That they've assumed the risk of attending
20 a protest that they might get arrested.

21 MR. TANASI: Correct. And . . .

22 (Defense counsel conferring.)

23 MS. CREEGAN: Juror 95, unlike many others, actually
24 had a intimate relationship with someone who actually attended
25 a protest, his girlfriend who attended a work protest. And the

1 recollection of his answer was in the context if you do
2 something illegal, you get arrested, that's your fault. Not
3 that you could simply be arrested for protesting.

4 MR. TANASI: Which number was that? Are we still on
5 95?

6 THE COURT: Yeah, 95.

7 MR. TANASI: Thank you, Your Honor.

8 MS. CREEGAN: Juror 95 also said there are sometimes
9 things on my Facebook that I don't agree with.

10 (Pause in the proceedings.)

11 MS. CREEGAN: That it would be an honor to be on the
12 jury, that he would listen to all aspects that would be helpful
13 in brainstorming.

14 (Pause in the proceedings.)

15 THE COURT: So what is the Government's argument as to
16 number 85, why the reason given by the defense is pretextual?

17 MS. CREEGAN: Your Honor, the argument that was given
18 that his Facebook is red, white, and blue. My understanding
19 of -- this is 85 Your Honor is inquiring about --

20 THE COURT: Yes, 85.

21 MS. CREEGAN: -- or 95?

22 -- is that that is a pretextual response that given the
23 jurors' [sic] intended defense of saying that they are patriots
24 it doesn't seem to make sense to say that someone who expresses
25 patriotic feelings would be eliminated although he indicated he

1 respects law enforcement. So did 205; so did 207. Many of the
2 jurors respected law enforcement and they were not eliminated
3 by the defendants.

4 MR. LEVENTHAL: 207?

5 MS. CREEGAN: 207 was eliminated by the Government in
6 our --

7 MR. LEVENTHAL: Right.

8 MS. CREEGAN: -- final round -- in our final rounds.

9 MR. LEVENTHAL: I eliminated someone that they say
10 respects law enforcement. I think 85 went further. 85 went --
11 he respects -- you know, they have more training and I respect
12 their decisions. It goes just beyond I respect law
13 enforcement. If their decisions are to arrest because of their
14 training, then it must be valid.

15 MS. CREEGAN: Juror 205 said I do assume you're guilty
16 if you're arrested.

17 MR. LEVENTHAL: Juror 205? Juror 205 says people who
18 get arrested in a protest doesn't mean they are guilty. That's
19 the complete opposite.

20 MS. CREEGAN: Well, we were just discussing this
21 earlier, Your Honor, that she said you have to go through the
22 court process, but I --

23 THE COURT: Yeah --

24 MS. CREEGAN: -- assume --

25 THE COURT: -- arrested people are not guilty until

1 they go to court.

2 MR. LEVENTHAL: Right.

3 Whereas what 85 indicated was they have more training.
4 So, if they say it's so, I'm gonna respect their -- what they
5 did.

6 THE COURT: 85 said that he was taught to trust and
7 respect law enforcement.

8 MR. LEVENTHAL: Clearly, when we're gonna have, you
9 know, 15 law enforcement officers up here going -- you know,
10 giving numbers on their level of fear, that's gonna go to him
11 much differently than to somebody who says I've got to go to
12 court to see what happens; I've got to give him a fair shot.
13 That's all we're asking for.

14 MS. CREEGAN: I respectfully say that there is no
15 difference between 205 and 85 in the tenor of their answers in
16 support for law enforcement, only in their gender.

17 MR. LEVENTHAL: I see that their answers are completely
18 opposite, on the opposite spectrum actually. One says I'd give
19 'em a chance and the other one said whatever their decision is
20 they have more training and I'll go with it.

21 (Government counsel conferring.)

22 MS. CREEGAN: Juror 85 said the evidence must prove
23 their guilt. Juror 205 said they have to go through the
24 process. Both said they would defer in the initial arrest to
25 law enforcement.

1 (Pause in the proceedings.)

2 THE COURT: All right. So 139 is a female that was not
3 struck by the defendants. She said that she would not protest
4 and her husband works as a federal security guard for the
5 Federal Protective Service at a federal courthouse.

6 (Pause in the proceedings.)

7 MS. CREEGAN: By contrast, Juror 95 does have a close
8 relation who did protest.

9 THE COURT: Say that again?

10 MS. CREEGAN: By contrast, Juror 95 has a close
11 relative, his girlfriend, who did protest and he -- I believe
12 he even stated that he went with her.

13 (Defense counsel conferring.)

14 MR. TANASI: Your Honor, 139 was a firearm owner based
15 on the questionnaires. The note I have on it anyways.

16 MS. CREEGAN: I believe Juror 95 is also a firearm
17 owner.

18 (Pause in the proceedings.)

19 MS. CREEGAN: On his --

20 MR. TANASI: Again --

21 MS. CREEGAN: -- questionnaire --

22 MR. TANASI: -- Juror No. 95 goes further with
23 attacking, at least in our opinion, the actual attendance at a
24 protest. If you go there and something happens or you get
25 arrested, that's on you; that's your own fault. I don't have

1 Juror 139 going that far. And it's -- I would -- what I have
2 is, you know, that she wouldn't travel to a protest.

3 MS. CREEGAN: And Juror 95 --

4 MR. TANASI: Not --

5 MS. CREEGAN: -- did --

6 MR. TANASI: -- necessarily that she would never or not
7 attend it. So when you couple that with the firearm
8 ownership . . .

9 MS. CREEGAN: And then Juror 95 also indicated he owns
10 a firearm for home defense in his questionnaire.

11 MR. TANASI: Juror 95.

12 (Defense counsel conferring. Pause in the proceedings.)

13 MS. CREEGAN: In fact, I think he also said that he has
14 a CCW.

15 MR. LEVENTHAL: Well . . .

16 (Defense counsel conferring.)

17 THE COURT: You say "he" referring to number 95?

18 MS. CREEGAN: That's correct, Your Honor.

19 In response to a question by Mr. Leventhal, I have
20 Juror 95 identifying himself by raising his hand as having a
21 CCW.

22 (Pause in the proceedings.)

23 THE COURT: I want to make sure that I'm clear here on
24 the defense reason for striking number 95.

25 MR. TANASI: Your Honor, the fundamental reason on

1 number 95 is his answer -- or his statement, rather, if
2 someone -- or his question to the question, if someone attends
3 a protest and gets arrested or harm comes to them, it's on
4 them; it's their own fault.

5 (Government counsel conferring.)

6 MR. TANASI: My concern is that he's going to sit here
7 and hear about a protest from the defense theory and any harm
8 that comes to him by just being in this courtroom and being on
9 trial is on him because he shouldn't have gone there; he
10 shouldn't have been there in the first place; it's not
11 something he should have done. If any harm comes to him, don't
12 put yourself in that situation. That kind of person. And I
13 think that was different than just saying I'm not somebody who
14 would protest. That was the reason I asked -- maybe not the
15 most artful question -- but why I asked it that way.

16 (Pause in the proceedings.)

17 THE COURT: All right. And 126 is a female who said
18 that if a person is arrested she believed that the law
19 enforcement must have had a reason for arresting them, that
20 their behavior -- the person must have exhibited behavior to
21 give law enforcement a reason. And that person was struck by
22 the defense consistently with the reason given for number 95.

23 MS. CREEGAN: Jurors 205 and 207, which are white
24 women, were left by the defense -- Juror 207 being struck by
25 the Government in its final strike -- that gave very, very

1 similar responses to 95.

2 MR. LEVENTHAL: How is --

3 MR. TANASI: Your Honor, again --

4 MR. LEVENTHAL: -- how is the --

5 MR. TANASI: -- can --

6 MR. LEVENTHAL: I'm sorry.

7 MR. TANASI: -- can I -- I'm sorry -- can I speak to
8 that one on 205?

9 205 is completely different, people who are arrested in
10 a protest doesn't mean they are guilty of a crime; still need
11 the court process. That's completely different than the point
12 I was trying to just make which is if you go to a protest and
13 get arrested that's on you. In my mind, those are two
14 completely different things.

15 MR. LEVENTHAL: And I don't know how the Government
16 keeps using 207 as something that we did. They struck 207. I
17 don't know why she keeps bringing up 207 as something we did by
18 leaving 207 in. They struck 207; we didn't.

19 MS. CREEGAN: That's correct. The Government struck
20 207, not the defense. Juror 95 was in their first few strikes.

21 MR. LEVENTHAL: But they are using -- she's using that
22 to indicate that we wouldn't have? I mean, I -- they did it.
23 I don't know. But she's indicating that they had some similar
24 responses. We might have; we might not have. They did it. So
25 the -- that question never came to us.

1 (Defense counsel conferring. Pause in the proceedings.)

2 THE COURT: All right. Well, the Court finds that
3 Jurors No. 498, 457, and 314, as to those three jurors, the
4 defendant has provided a clear and reasonably specific neutral
5 explanation for their strike. Um . . .

6 (Pause in the proceedings.)

7 THE COURT: Let's look at the . . .

8 (Pause in the proceedings.)

9 THE COURT: All right. So what are the Government's
10 reasons -- I'm sorry -- the defendants' reasons for striking --
11 well, all right. So Juror No. 95 I suppose is on both lists;
12 he's on the racial list as well. I've already heard those
13 reasons.

14 MS. CREEGAN: Your Honor, I'm sorry. We're having a
15 little trouble hearing you.

16 THE COURT: Oh.

17 So Juror No. 95 is -- oh, did I go off? That's why.
18 There you go -- Juror 95 would also be on the list for the
19 race-neutral question. As far as that's concerned, I think
20 we've heard all the information there.

21 MR. TANASI: Your Honor, yeah, again, it's the person
22 goin' to a protest; it being on them, it being their own fault.
23 That's the bottom line.

24 THE COURT: Well, he didn't say if a person goes to a
25 protest they are automatically guilty. He said they assume the

1 risk if they go to a protest. If they get arrested, that's --

2 MR. TANASI: Right.

3 THE COURT: -- you got to expect that if you go there.

4 That's --

5 MR. TANASI: Right.

6 THE COURT: -- can't whine about it.

7 All right. Let's see. Oh.

8 (Pause in the proceedings.)

9 THE COURT: Okay. So the next . . . Let's see who
10 that person is.

11 (Pause in the proceedings.)

12 THE COURT: Well, number 126. Is she included in your
13 race challenge?

14 MS. CREEGAN: 126 is not.

15 THE COURT: Okay.

16 284, he's not. Is he?

17 MS. CREEGAN: And may I ask, Your Honor: Are you
18 asking for gender challenge or racial challenge?

19 THE COURT: Racial. Moving on to racial.

20 MS. CREEGAN: Okay. So we've already done 95. I think
21 the next is 296. I believe 284 is a white male.

22 THE COURT: What about 288?

23 MR. MYHRE: 288 is a white female.

24 THE COURT: All right. So 296. Didn't we
25 already . . .

1 MS. CREEGAN: He is a male so we have discussed him.

2 THE COURT: Okay.

3 And the reason for that was because the parties didn't
4 know enough about him, that it was seen as a risky move to let
5 him stay on the jury. All they know is that he watches local
6 news, Channels 5 and 13; young and single.

7 (Pause in the proceedings.)

8 THE COURT: You know, I have to be honest. It's
9 difficult to accept the fact -- it's difficult to accept the
10 reason being given as we don't know enough about that juror
11 when we had questionnaires, we had my questions with the
12 slideshow, and all of the attorneys had an opportunity to
13 question everyone. So, if you don't take that opportunity to
14 ask questions and get information, I don't think you can use
15 that as an excuse. That being said, that's not the only reason
16 that was given. The other reason was because he only watches
17 local news.

18 MR. LEVENTHAL: Your Honor, can we bring our clients
19 out since this is --

20 THE COURT: Sure.

21 MR. LEVENTHAL: -- taking a little bit longer?

22 THE COURT: Yeah. Come on -- yeah.

23 MR. LEVENTHAL: Thank you.

24 (Pause. Defendants return to the courtroom, 3:55 p.m.
25 Attorney-client discussions.)

1 THE COURT: All right. So, as to 295, is there any
2 other . . .

3 MS. CREEGAN: It's 296, Your Honor.

4 THE COURT: I'm sorry. You're right. 296. I even
5 wrote down 296.

6 296, any other clear and reasonably specific reason
7 that the defense wants to proffer?

8 MR. MARCHESE: Other than what I brought up in
9 reference to his employment.

10 Also, if the Court noticed, I changed my strategy a
11 little bit from --

12 THE COURT: I'm sorry. What about his employment?

13 MR. MARCHESE: He has a technical background; he's in
14 I.T. So he fell into the category of the other three
15 individuals.

16 But I changed my strategy in reference to, you know, I
17 didn't get very much off of his questionnaire. And, if you
18 noticed from day one to day two, I specifically started
19 targeting people who I had very little on. And I understand
20 that, you know, a lot of other departments wouldn't even give
21 us the opportunity to do individual voir dire. But, if he was
22 in yesterday's jury pool, I most likely would have picked him
23 and specifically asked him some questions just to get him
24 talking so I could have something other than, you know, he's in
25 I.T.

1 MS. CREEGAN: I don't have Juror 296 being asked more
2 questions than 376. And I have to say, from my own
3 observation, I did not see a difference in the amount of
4 speaking to individuals between the two days.

5 MR. MARCHESE: Well, must have been in a different
6 courtroom then.

7 MR. TANASI: And, again, Your Honor, I've laid out for
8 the record before, the difference with respect to 376. Again,
9 crime scene games online; doesn't watch the news 'cuz it's
10 depressing; watches *Criminal Minds* and *Law and Order*; likes
11 investigations; somebody that sounded more like a person who
12 would be willing to hear the whole process out.

13 MS. CREEGAN: And the Government has illustrated that's
14 a -- it's a reason but it's not really one that should be
15 accepted as something other than pretextual, that both were
16 asked very few questions, they both indicated they watched the
17 news, they are both single, live with their family, they are
18 both young. Um . . . One likes science; one likes crime
19 shows. But I'm not sure that that's sufficient to say that
20 there's a difference as opposed to a distinction.

21 MR. TANASI: Again, Your Honor, I just would point out
22 that when it's all said and done and we're going through and
23 looking at our lists after we've gone through two days of it,
24 whether we didn't ask him enough questions or we did or we
25 should have or whatever the question may be, we're left with

1 the list that we have. And so we have to make a strategic
2 decision. And that's what we did.

3 MR. LEVENTHAL: I also --

4 THE COURT: I don't -- I'm looking at this and I'm -- I
5 think you're assuming that I'm thinking what you're thinking
6 instead of telling me.

7 MR. TANASI: Oh.

8 THE COURT: So I need you to actually say --

9 MR. TANASI: Okay.

10 THE COURT: -- and not just . . .

11 So I know that 376 said that she watches crime TV shows
12 and plays crime video games, but . . . So what is the
13 connection there? So do you --

14 MR. TANASI: To --

15 THE COURT: -- do you believe that makes her more
16 likely to sympathize with not law enforcement as opposed to
17 with law enforcement because she likes crime TV shows and plays
18 video games that are based on --

19 MR. LEVENTHAL: No.

20 THE COURT: -- criminal law?

21 MR. LEVENTHAL: I --

22 THE COURT: I guess that's the part that I'm missing.

23 MR. LEVENTHAL: And so --

24 THE COURT: Because I agree with you that that was her
25 representation. I just don't understand why that makes her

1 more sympathetic or favorable to the defense than --

2 MR. LEVENTHAL: It might be odd to you. But, whenever
3 I'm picking a jury, I like people that watches *CSI* because I
4 think that those shows, within one hour, make people believe
5 that the -- law enforcement can do things that they just can't
6 do. And so I like people like that. Not that they hold 'em to
7 a higher standard, but they like to get intrigued by it.
8 Whether or not this is the case for that --

9 THE COURT: So we have --

10 MR. LEVENTHAL: -- I just --

11 THE COURT: -- an unrealistic --

12 MR. LEVENTHAL: -- generally --

13 THE COURT: -- expectation of what the Government is
14 able to prove?

15 MR. LEVENTHAL: Absolutely. They think that they
16 should take eye analysis of everybody in the wash or something
17 and they've got drones. I -- I don't know. But I always like
18 those types of people who watch crime shows because they put
19 more on the Government or the state to prove their case. A
20 little, generally. That's my thing. I do that all the time
21 with all the jurors that I've ever picked. And it might be
22 something stupid; but I've always been somewhat successful with
23 people who like crime shows when I'm a defense -- on the
24 defense side.

25 THE COURT: Okay.

1 MR. LEVENTHAL: That's how I can articulate it, as dumb
2 as it sounds.

3 MS. CREEGAN: Juror --

4 THE COURT: Okay. That --

5 MS. CREEGAN: -- three seventy . . .

6 THE COURT: -- is a clear and reasonably specific
7 reason for keeping number 376. Now, let's do the reverse.
8 Give me a clear and reasonably specific reason for not keeping
9 296.

10 MR. LEVENTHAL: I don't have one. It was something --
11 again, all I have is that he gets his local news -- exactly
12 what the Court went through.

13 But, Your Honor, it wasn't like we were going through
14 this going, well, we've got this one or that one which is the
15 process that we're going through now. We weren't -- like, this
16 is not how we went through it.

17 We all sat around. We got a general feeling.
18 Everything was written down. And not one word . . . And I
19 can't give you why other than what's in here and our
20 perceptions and exactly, specifically why that person was
21 kicked out. But it was not -- I guess Mr. Marchese indicated
22 that he's a very technical person. And I probably just went
23 with it. I didn't have a view one way. As a matter of fact, I
24 have on my thing it's a -- it's a zero which to me meant not an
25 "X" and not a highlight, which was a "yes." So it -- it could

1 have gone either way on that person. It just --

2 THE COURT: Yeah. But 296 was the very first
3 peremptory challenge that the defense exercised.

4 MR. LEVENTHAL: 296 was a mistake, Your Honor. It was
5 not; I'm telling you. The one above that -- I wrote that
6 wrong. And, when I told the guys, they said, well, don't worry
7 because if we get down to the end, 296 is gonna be gone. But
8 really our first peremptory challenge was supposed to be one --
9 the person above 296, which was --

10 MR. PEREZ: 288.

11 MR. TANASI: 288.

12 MR. LEVENTHAL: -- 288. That was our first. But I
13 messed it up and I wrote it at the wrong box. And they said
14 don't worry; we'll get to that and -- you know, we'll get back
15 to that. That's what happened.

16 But I -- he would have eventually, maybe -- I don't
17 know how it came down -- towards the end been stricken. But it
18 was a mistake on mine that I wrote it. And we all sat around
19 and I said I could cross it off and they said, no, we'll get
20 her, 288, on the next go-round. 288 was actually our first
21 pick; a female was our first pick to get rid of. And 288 --

22 THE COURT: Well, if 288 was supposed to be the first
23 one, you didn't get to her until number 7.

24 MR. LEVENTHAL: May I? Your Honor --

25 THE COURT: Um-hum.

1 MR. LEVENTHAL: -- can I show you my paper where I
2 wrote "1"?

3 THE COURT: No. I'm just looking at what you actually
4 did.

5 MR. LEVENTHAL: I --

6 THE COURT: The --

7 MR. LEVENTHAL: -- under- --

8 THE COURT: -- first --

9 MR. LEVENTHAL: -- -stand.

10 THE COURT: -- peremptory challenge was against 296 and
11 the second -- I'm not going to go into all the other ones. But
12 the seventh one was 288.

13 MR. LEVENTHAL: Yeah. I have written down Carl -- Kari
14 Suzanne, number 1. I wrote down -- wrote it down on our --
15 sort of our list of people that we were gonna get rid of. And
16 I made that mistake. So . . .

17 MR. TANASI: I have the --

18 THE COURT: Okay.

19 MR. TANASI: -- same thing.

20 THE COURT: Maybe someone who wrote down somewhere that
21 they wanted to strike 296 then can give me what they wrote down
22 why 296 was stricken.

23 MR. TANASI: Your Honor, again, it's the absence of
24 information. It's the absence of information. It's not
25 knowing enough and so not taking the risk. And, again, knowing

1 only, at least that I've got noted -- and I know there's more
2 on the questionnaires -- but, you know, where he gets his news
3 from -- more local news than national news -- it just --
4 there's just not enough -- there was not enough for us.

5 MS. CREEGAN: In a case where there's a 27-page
6 questionnaire and an hour and a half of combined defense time
7 to question a juror, I don't think that that is a sufficient
8 reason that is not a pretext.

9 (Pause in the proceedings.)

10 THE COURT: Okay. 296 did say that he worked in I.T.
11 in his written questionnaire.

12 (Defense counsel conferring.)

13 MR. TANASI: And, Your Honor, I mean, further with
14 respect to Mr. Leventhal's representation, I also have number
15 one circled right next to 288 as who our first strike was
16 supposed to be. And I'm happy to provide that to the Court if
17 it's at all relevant to your decision.

18 MR. LEVENTHAL: I'll provide my copy as well and -- to
19 let you know that 288 indicated that if you participate in a
20 protest, then you made the chance -- choice to get the
21 consequences. So that was a pretty harsh statement, like some
22 of the other males that said the same thing, and it was based
23 upon that idea that you suffer the consequences whereas other
24 people were a little bit I want to wait and see what happens; I
25 want to -- you know, I -- cops or not all police officers, law

1 enforcement is not always correct in their arrests and that's
2 why we've got this process. So she was number one on my list,
3 a female.

4 MS. CREEGAN: Juror 296 did not make any similar
5 statement.

6 MR. LEVENTHAL: I'm sorry?

7 MS. CREEGAN: Juror 296 did not make any similar
8 statement.

9 MR. LEVENTHAL: 296?

10 (Pause in the proceedings.)

11 THE COURT: He was explaining why 288 was his number 1
12 choice, but 288 was not stricken by the defense until their
13 seventh strike. So not their second, third, fourth, fifth, or
14 sixth.

15 MR. TANASI: And, Your Honor, what's --

16 THE COURT: So ultimately, even if at some point the
17 theory was to strike 288 number 1, that's not what actually
18 happened. At some point that changed and number 296 was the
19 first person struck and 288 fell all the way down to number 7.

20 Let's move on to -- we did 296 -- we did 95 and 296.
21 This is moving on to the racial challenge. Who is after 296?

22 MS. CREEGAN: The number in which they appear in the
23 panel, it is 329.

24 THE COURT: All right. So why was 329 struck?

25 (Pause in the proceedings.)

1 MR. TANASI: Your Honor, 329, a female, would not --

2 THE COURT: Hispanic. I think that's the reason for
3 the challenge.

4 MR. TANASI: Under- --

5 MS. CREEGAN: That's --

6 MR. TANASI: -- -stood.

7 MS. CREEGAN: -- correct.

8 MR. LEVENTHAL: Oh, Hispanic?

9 THE COURT: Yeah. We moved on from gender to --

10 MR. TANASI: Understood.

11 THE COURT: -- to race.

12 MR. TANASI: -- to race.

13 Would not get involved in a neighbor's dispute; mainly
14 only would call to help. Again --

15 (Defense counsel conferring.)

16 MR. TANASI: The defense theory being our clients are
17 people who help others; our clients are people who have --
18 protesting what they believe is wrong. This is somebody who
19 wouldn't get involved in a neighbor's dispute; maybe only would
20 call for help. She is not necessarily someone that we believe
21 would have anywhere near the mindset of our clients in this
22 case.

23 (Pause in the proceedings.)

24 THE COURT: All right. Well, Ms. Creegan, I do
25 remember there were quite a few other individuals who said that

1 they would not get involved if there was -- if they heard
2 hollerin' --

3 MS. CREEGAN: You're --

4 THE COURT: -- from a --

5 MS. CREEGAN: -- correct --

6 THE COURT: -- neighbor.

7 MS. CREEGAN: -- Your Honor. So many of them said it
8 that I actually didn't write them all down; it was such a
9 common response. I only wrote down that two or three people
10 said that they would get involved.

11 (Pause in the proceedings.)

12 MR. TANASI: And, Your Honor, I guess I'd also point
13 out the other two notes that we have with respect to 329 is
14 she's more of a follower in a group -- and defense tend to try
15 to find leaders -- and I have a note that she has a friend who
16 works in the courthouse. I don't have more information on
17 that. But not knowing who that is, the nature of the
18 relationship, where the bias may or may not lie --

19 MS. CREEGAN: Well, I believe she said --

20 MR. TANASI: -- why take --

21 MS. CREEGAN: -- she was --

22 MR. TANASI: -- the risk.

23 MS. CREEGAN: -- I apologize. Go ahead.

24 MR. TANASI: Go ahead.

25 MS. CREEGAN: I believe she said she was friends with

1 Summer Rivera, the Jury Coordinator? Is that the right person
2 that I'm thinking of?

3 THE COURT: Yes.

4 (Defense counsel conferring.)

5 MS. CREEGAN: Who is a neutral courthouse personnel.

6 MR. TANASI: Again, not knowing -- not disparaging
7 Sumner in any way and not disparaging what her mind-set may be
8 with respect to the case; not knowing what that is, it's a
9 safe, nonrisky bet to eliminate that risk.

10 MS. CREEGAN: If I remember, earlier the defendants
11 were arguing that we should keep the paralegal from the Public
12 Defender's Office who had extensive knowledge about the case.

13 MR. TANASI: Until we had a chance to further question
14 her or the Government had a chance to further question her. In
15 the very early stages, not where we're at now.

16 (Pause in the proceedings.)

17 THE COURT: All right. So, as to Juror No. 95, the
18 question being whether the defense reason given for striking
19 him, that his response was that if someone attends a protest
20 they are assuming the risk of being arrested and whether or not
21 that is pretextual, the Court does find that Juror No. 324 said
22 that it's the right of a person to protest but they are
23 accountable for their consequences and Juror No. 288, likewise,
24 said that a protester needs to accept the risk. Those are both
25 females -- to my recollection, Caucasian females -- and both of

1 them were struck by the defense as well.

2 MR. LEVENTHAL: We didn't --

3 THE COURT: So I think that's consistent with their
4 explanation that -- of why they struck number 95. So the Court
5 is satisfied as to Juror No. 95 that there's a race-neutral and
6 gender-neutral reason given for the striking of number 95.

7 329's a lot harder. So 329, I realize you say that 329
8 indicated they would not get involved in a neighbor's dispute.
9 And I do recall that and that is a clear and reasonably
10 specific neutral reason. The Government is stating that it's
11 pretextual because there were a number of other people who
12 likewise didn't want to get involved and said that they would
13 not necessarily get involved. I think -- at best, I think some
14 of the answers were calling 3-1-1 or calling police or
15 something like that. But nobody -- I don't remember anyone
16 saying that they would actually get involved. I think there
17 was one person who said -- and it was a man -- if he knew the
18 neighbor he would go talk to 'em. If he didn't know the
19 neighbor, then he wouldn't get involved. I don't remember who
20 said that though. And I was looking through my notes to see if
21 I actually wrote it down, but I didn't see where I actually
22 wrote that down.

23 MS. CREEGAN: I believe that's Juror 339, Your Honor.
24 It was a white male.

25 (Pause in the proceedings.)

1 THE COURT: All right. So, after 329, who is the next?

2 MS. CREEGAN: Juror 445, African-American female.

3 THE COURT: 445?

4 MS. CREEGAN: That's correct, Your Honor.

5 (Counsel conferring. Pause in the proceedings.)

6 THE COURT: All right. So she was the African-American
7 woman who has no cable TV and watches local Channel 3 and 5;
8 looks at website news; was unhappy that the current
9 Administration is talking about reducing the money -- the
10 funding for social services; was concerned for the chronically
11 homeless. I don't have a whole lot else. I guess I could look
12 over here.

13 So what was the neutral reason for striking 445?

14 (Pause in the proceedings.)

15 MR. TANASI: Your Honor, the first note that I've got
16 kinda off to the right was Trump. And my sense and kinda
17 thoughts on her was that she would be anti-Trump. And, you
18 know, trying to read the political tea leaves of everybody and
19 trying to figure out which tea leaves align potentially with
20 doing what's best for my client in the case, I think her
21 anti-Trump sentiment would be -- translate to an anti-defendant
22 sentiment in this case. So that's the first kind of note that
23 I had on it.

24 And then I also had the kinda analytical, critical
25 thinker component as well that Mr. Marchese had referenced

1 earlier.

2 MS. CREEGAN: What I have Juror 445 saying is the
3 current Administration is cutting back some of her funding. I
4 don't know why that would be imputed to the defendants as
5 opposed to the party, the federal government, which appears in
6 this courtroom on the opposing side of the case. Also, it
7 seems as a mental health counselor who works with extremely
8 disturbed people, she would have the emotional component that
9 the defendants indicated that they were looking for.

10 (Pause in the proceedings. Defense counsel conferring.)

11 THE COURT: I keep getting confused with her because
12 numerically she would have been in Day 2, but we have her come
13 in on Day 1. So she's on a different list every time I go look
14 for her there. Okay.

15 (Pause in the proceedings.)

16 THE COURT: All right. Who is next after 445? Is that
17 the last one?

18 MS. CREEGAN: The last one is 485 which is the person
19 who was left unstruck and, therefore, eliminated from the jury.
20 He is an Asian male.

21 MR. LEVENTHAL: 485?

22 MS. CREEGAN: 485.

23 MR. LEVENTHAL: Your Honor, we did a -- we asked the
24 Court to, if you remember, dismiss this juror for cause because
25 we didn't believe that he could even understand. He -- when he

1 was -- when I believe Mr. Marchese was talking to him, he
2 didn't understand what he was saying. And so there was some
3 indication, at least to us, that he wasn't gonna understand
4 what was going on so . . . And we did ask for the Court to
5 kick him out for cause. That did happen. So we didn't use
6 our -- again, if the Court wants me to go into it, we didn't
7 use our last peremptory challenge because it wasn't necessary
8 at that point. He was number 13.

9 MR. TANASI: And, just building on that, Your Honor,
10 again, on our side of the fence anyways, we weren't exactly
11 crystal clear what the conflict was that she -- he had
12 referenced. He had a conflict of some kind. And Mr. Marchese
13 had asked him questions back and forth. And that was -- again,
14 I'm basically rearguing the same motion for cause that we
15 argued with respect to 485.

16 MS. CREEGAN: Well, even the motion for cause can be
17 pretextual. Though he had a very strong accent, he understood
18 English; he worked in the military for a long period of time.
19 He did not indicate that he had a language barrier or could not
20 understand. And what he stated was his conflict is that he was
21 informed, as a former corrections officer, it was possible that
22 he had a conflict. He did not volunteer himself to be removed
23 from jury service.

24 MR. MARCHESE: My recollection was that he was told at
25 some point in his former career was that he was unable to serve

1 in a jury because of a conflict. Now he works in a food court;
2 he's obviously not in that same career. So I thought that that
3 there was an odd answer and not to mention, I mean, personally
4 I had a very difficult time understanding his accent. But,
5 even more importantly, I thought that it took a while to get to
6 where I needed to on the questions. I thought that there was a
7 comprehension issue which is why we raised the challenge for
8 cause yesterday.

9 MR. LEVENTHAL: And just one further comment. When
10 Mr. Tanasi asked everyone just to raise their hand and to
11 stretch, he was the only one I think that didn't. I don't know
12 if he didn't want to or didn't understand to. There was
13 some -- we just -- there was a disconnect there. That's --

14 THE COURT: I do recall he didn't raise his hand. I do
15 recall he said he would not protest and that he would talk to
16 neighbor or call police if neighbor too loud. There was only
17 three cooks. He was the first person to speak up when we
18 started asking questions to let us know that he might have a
19 conflict, but it wasn't clear why he would have a conflict.
20 And it wasn't responsive to the question that was asked. And
21 later I think he explained that it was that he -- back when he
22 was on duty with the Navy as a correctional officer in the brig
23 that he had been told it would be a conflict to serve on a
24 jury. And I don't know if that was on a military tribunal as a
25 correctional officer. But that's right. He was also the one

1 that brought up *TMZ*. He did seem to have a bit of a language
2 barrier, and I agree wasn't always clear whether he was failing
3 to understand the question or refusing -- I do remember when he
4 didn't raise his hand and -- because I did make a note to
5 myself if he's on the jury I got to watch and make sure he
6 actually raises his hand when we swear them in. So I don't
7 have a belief that the exercise of a challenge as to 485 was
8 for an inappropriate reason.

9 MS. CREEGAN: Your Honor, that concludes the
10 Government's challenges both for gender and for cause.

11 Let me ask the Court, if I have it correctly, that the
12 Court has not yet ruled on 85, 284, 296, 329, and 445; is that
13 correct?

14 THE COURT: Correct.

15 (Pause in the proceedings.)

16 MR. TANASI: Ms. Creegan, would you mind reading those
17 one more time?

18 MS. CREEGAN: 85, 284, 296, 329, 445.

19 MR. TANASI: Thank you.

20 MR. LEVENTHAL: 85, 2 what?

21 (Defense counsel conferring. Pause in the proceedings.)

22 THE COURT: 296 and 284 are in the same camp in that
23 they are both science fields.

24 (Pause in the proceedings.)

25 THE COURT: As I said before, I don't accept the excuse

1 that we didn't know enough about them as reasons for excusing
2 296. I'm not considering that. But 296 is young. He's
3 single; never served on a jury before; only watches local news,
4 not national news; appears from his written questionnaire
5 responses that he lives with his parents.

6 MS. CREEGAN: And, even being young and single and
7 living with his parents, he is comparable to Juror 376.

8 THE COURT: Oh, I'm not saying he isn't qualified, yes.
9 (Pause in the proceedings.)

10 THE COURT: He's technically qualified. I'm looking at
11 him in relation to 376, which was the woman who is in a similar
12 situation. I don't know that she lives with her parents. She
13 had a stepmom and a stepdad. So I'm not saying that it's
14 exactly the same situation. But she was quite young. Um . . .

15 (Pause in the proceedings.)

16 THE COURT: What did 376 do for a living?

17 MR. LEVENTHAL: I had K-Mart.

18 THE COURT: Did it say what her position was? Was she
19 I.T.?

20 MR. LEVENTHAL: No. I don't -- I don't believe so.

21 THE COURT: Let's see.

22 MR. LEVENTHAL: Went to CSN; works at K-Mart. That's
23 what I have. But she's the one that I indicated why, the
24 investigations.

25 THE COURT: Oh, she was taking the Asian -- is it Asian

1 studies, Asian literature class?

2 MS. CREEGAN: I believe that's somebody else.

3 THE COURT: That's somebody else. Okay.

4 (Pause in the proceedings.)

5 THE COURT: Oh, 376 is a creative writing major.

6 (Pause in the proceedings.)

7 THE COURT: All right. Well, it's 4:30. And I wanted
8 to let the jury know, obviously, before the end of the day. So
9 let me take about a 10-minute break and see if I can't look at
10 this more easily on my computer on my desk because I've got way
11 too many documents here.

12 COURTROOM ADMINISTRATOR: All rise.

13 Off record.

14 (Recess, 4:31 p.m. Resumed, 5:18 p.m.)

15 LAW CLERK: All rise.

16 THE COURT: All right. You may be seated.

17 (Pause in the proceedings.)

18 THE COURT: All right. So the Government's first
19 challenge was based on gender, violating the Equal Protection
20 Clause, claiming that the defense had struck -- one, two,
21 three, four, five, six -- seven of the fourteen males,
22 50 percent of the males, resulting in an unusually high number
23 of females on the jury, white males; but that goes into the
24 next argument about the gender.

25 So the Court did look at the seven individual jurors,

1 the reasons given by the defense after the Government raised
2 its *prima facie* statements that the Court accepted and then the
3 Government argued that the reasons given by the defense were
4 either not clear and reasonably specific or were pretextual.
5 And, honestly, we went back and forth quite a few times and I
6 gave everyone a lot of opportunity to tell me more and explain
7 more.

8 So I did find that Jurors No. 498, 457, 314 were all
9 excluded for nongender reasons and they were legitimate.

10 Also, looking at number 95 and the fact that he said
11 that a person assumes the risk of being arrested if they
12 protest was belied by the fact that 139 also said that she
13 would not protest and then 451 said that they can't imagine a
14 person being arrested only for protesting. 451 also -- also
15 said she was afraid of firearms, but she remained on the jury.
16 So 451 was not struck, 139 was not struck, nor was number 205
17 which was also a female that was similarly situated to Juror
18 No. 95.

19 Likewise, Juror No. 85, who was the individual that the
20 defense said they struck because there was red, white, and blue
21 all over his Facebook page and eagles, that reason is belied by
22 the fact that the defendants refer to themselves as patriots
23 and have been explaining that the state rule of law should
24 supersede the federal rule of law because -- that's because of
25 the Constitution and the historical background.

1 What it came down to is -- for number 85, the defense
2 said that a cause for concern for them and the reason why they
3 struck 85 was because of the fact he said that he was raised to
4 trust and respect law enforcement. And, as the Government
5 pointed out, a lot of the jurors said that they respected law
6 enforcement. And that really isn't a legitimate reason for
7 excluding someone. In this case, as the defense pointed out,
8 there are expected to be, again, a large number of law
9 enforcement professionals who will be testifying. And so the
10 credibility of those individuals will be key.

11 However, I said before, Juror No. 455 -- 51, four five
12 one, also stated that she couldn't imagine a person being
13 arrested only for protesting. And so it doesn't appear that
14 number 85 was struck for any other reason other than the fact
15 that he was -- is a male as opposed to a female.

16 Likewise with number 284, the reason given was that he
17 had a science background and therefore would not be emotional
18 and that this case is an emotional case so they were seeking
19 jurors who were emotional. Government argued that it's a
20 stereotypical thing to say that females are more emotional than
21 men and that case law provides for that as stereotypical
22 reasons are not clear and reasonably specific reasons that
23 would justify a strike.

24 Here it's not just an emotional assumption based on
25 nothing other than gender. There is information that's

1 tangible, which is that their background is in science. So I
2 don't think that it's necessarily a stereotypical assumption on
3 the part of the defense; I think it is on information provided
4 by the juror which is that the juror has a scientific
5 background.

6 However, Juror No. 138, who was not struck by the
7 defense, is a certified public accountant. Juror No. 142 is a
8 finance professional. Both of them are females; both of them
9 are analytically based, science-based professions with higher
10 degrees; not just a job that deals in numbers but is actually a
11 scientific degree, college degree. So I don't think that a
12 sufficient reason has been given by the defense for the
13 striking of Juror No. 284 that is other than because 284 was a
14 male.

15 Likewise, with Juror No. 296, the I.T. professional,
16 they also -- defense also stated that they didn't know enough
17 about this particular juror and therefore it was risky to put
18 this juror on the panel. Like I said before, the attorneys
19 have all been given more information than I think you probably
20 would in any other federal case. With the written
21 questionnaire, with the questions that I incorporated that were
22 proposed by counsel, and with each counsel having an
23 opportunity to further ask questions, the lack of information
24 is not a sufficient reason to strike someone in this particular
25 case with all the opportunities that were given.

1 The other information provided by the defense as to why
2 Juror No. 296 was stricken was because he only watched local
3 news, Channels 5 and 13; and young and single; things like
4 that. The Government raised that Juror No. 376 was not struck
5 and she was a woman with the same -- in the same situation:
6 had little information about her; she watches crime TV and
7 crime -- plays crime games, video games; and she's a --
8 creative writing I think was her -- either her major or her --
9 I think it was her major, her college major -- I don't think
10 she's done yet -- but she's a creative writing major. So that
11 does differentiate her from the I.T. professional for number
12 296.

13 However, again, I go back to 138 who is a female CPA
14 and 142 who is a finance officer as well as number 451 is
15 also -- I think she's retired -- but she worked in HR and
16 finance, both of which are analytical; "the rules are the rules
17 and you can't bend" 'em types as opposed to someone in creative
18 writing or social work and things like that.

19 So the Court finds that the reasons given to exclude
20 and strike 296 do not justify striking them for any reason
21 other than because they were males as opposed to the females.

22 Then, as to the gender-based pattern provided, the
23 Government raised the issue that -- one, two, three, four --
24 five individuals that were on the jury venire were struck who
25 are not Caucasian. I accept the reason given for striking

1 Juror 485, with the language barrier and his apparent
2 confusion.

3 Number 329 not because she said she would not get
4 involved in a neighbor's dispute, because there were quite a
5 few people who said that. The reason that I'm accepting as
6 justifiable is because she was a friend of a court employee.
7 And in this case -- this is not the first trial for this case;
8 this case was tried before. And the person that she's friends
9 with is the jury coordinator who also was the coordinator for
10 the last trial as well as this trial. So she wasn't asked and
11 maybe should have been asked if she knew anything about this
12 case from her friend or things like that, but I think that
13 would be cause enough to strike her.

14 And then, as to Juror No. 95, as I said before, I don't
15 think there was a sufficient reason to strike him just because
16 he said that a person assumes the risk of being arrested if
17 they protest when Juror No. 455 said the same thing, that she
18 couldn't imagine a person being arrested only for protesting.
19 And other -- and another juror, number 139, who said that she
20 would not protest, but she was kept on and so did -- and Juror
21 No. 205 was also similarly situated.

22 So then we have Juror No. 445 and -- who was not
23 scientific and analytical but struck because she was emotional
24 and sympathetic -- or not sympathetic but certainly not
25 analytical. But the reason being that she had responded to the

1 question about was there anyone who was unhappy with the
2 direction that the country is moving and she said she was
3 unhappy with the decreased funding to social services and that
4 that was her field with helping the homeless. And the defense
5 explained that that was a cause of concern for them because if
6 someone is blaming Trump for something they were afraid that
7 that would have a bad connotation and would spill over on the
8 defendants and that the juror would find a reason to dislike
9 the defendants somehow because of a connection with Trump.
10 I -- to me that was not a clear and reasonably specific
11 explanation.

12 So Jurors No. 85, 95, 284, 296, and 445 I found were
13 not stricken for just cause.

14 Now, the effect of that, um . . .

15 (Pause in the proceedings.)

16 MR. TANASI: Your Honor, I apologize. Could you read
17 those numbers one more time?

18 THE COURT: Yes. 85 . . .

19 (Pause in the proceedings.)

20 THE COURT: Yeah. 85, 95, 284, 296, and 445.

21 I see, because one of them is on both lists. So 2 --
22 so 95 and 296 are actually on both lists, both on the gender
23 challenge and on the race challenge.

24 (Pause in the proceedings.)

25 MR. MARCHESE: Your Honor, the defense has a motion.

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1 THE COURT: I understand. But let me --

2 MR. MARCHESE: Okay.

3 THE COURT: -- let me finish this up.

4 MR. MARCHESE: All right. Sorry.

5 THE COURT: So the effect of this would be whether or
6 not the defense then would lose their peremptory challenges or
7 would have the opportunity to use them on different
8 individuals. The -- if they lose the right to use all of their
9 peremptory challenges that were misused, then the effect would
10 be -- and I wrote this down -- we would lose Juror No. 376, who
11 I had written down I thought she was mixed race; we would also
12 lose 388, who I had written down looked like she was African
13 American. So it's almost like a -- there's no gain, I guess;
14 there's -- you're just canceling out one for another. And then
15 451 would also be lost. 444 would be lost because she would be
16 too -- or 445 -- is that the one? 4 -- yeah, 445, it really
17 doesn't matter because she's too far down. She wouldn't -- I
18 don't think she would be on there anyway.

19 So I'm not sure if that affects the resolution that's
20 requested by the Government.

21 MS. CREEGAN: That's what we're requesting, Your Honor.
22 We're requesting for those peremptories to be lost.

23 THE COURT: I also had -- where's that white piece of
24 paper? -- I also actually -- since I had a little time while we
25 were waiting for Mr. Leventhal to come back, I went through the

1 other jurors that were not struck that are -- that would be on
2 the jury.

3 Juror No. 80 is the HR/Payroll Director, a financial
4 responsibility. Number 84 has a degree in business finance.
5 As I said, 138 CPA. 142, accounting. 325, accounting. So
6 this is what -- the reason why I just didn't think that the
7 science-based analytical background was reason sufficient when
8 all these other individuals who have a similar background were
9 not struck.

10 (Pause in the proceedings.)

11 THE COURT: All right. So let's hear the defense
12 challenge.

13 MR. MARCHESE: Yes, Your Honor.

14 And some of the -- in one of the Government's pretrial
15 motions, they alluded to the fact that it was their belief that
16 our strategy for the trial would be to seat as many women in
17 the jury as possible. If you look at the Government's
18 challenges, there's an inordinate percentage of women that were
19 struck by them. As a matter of fact, it's a larger amount than
20 the approximate 50 to 55 percent that we struck on the two
21 particular *Batson* challenges that the Government made. So,
22 based upon that, we would make a *Batson* challenge to the
23 Government that they struck more jurors based upon the fact
24 that they were female rather than male.

25 THE COURT: All right, Ms. Creegan. We've got Juror

1 No. 3 -- was it -- no, no. No, the third one is -- Juror
2 No. 41.

3 MS. CREEGAN: Correct, Your Honor. We struck, I
4 believe it was, 8 out of 22, which is not 50 percent; it is
5 closer to a third of the female jurors. I'm happy to go
6 through each one, but I'm not sure if a *prima facie* case has
7 been made at this point.

8 MR. MARCHESE: Your Honor, I was speaking that they had
9 10 peremptories and they struck 8. I'm unsure where they're
10 getting 22 peremptories from.

11 MS. CREEGAN: 22 women were in the 36 panel. So we
12 struck one third of the women in the panel.

13 MR. MARCHESE: Well, I was alluding to the fact that
14 they used 8 of their peremptories of the 10 that they had on
15 females. So, to me, that's 80 percent.

16 MS. CREEGAN: My point in response to Mr. Marchese is
17 that since only a third of the people in the panel were male,
18 we -- to be striking at a normal rate, only a third of the
19 people we strike would be female. We were one off that. By --

20 THE COURT: All right.

21 MS. CREEGAN: -- contrast --

22 THE COURT: But the defense struck seven females.

23 MS. CREEGAN: I understand, Your Honor. And let me try
24 to articulate this a little better.

25 Although there were 14 males in a panel of 36, which

1 makes them numerically a very small -- a minority, yet the
2 defendants struck seven of them. In the panel, there were 22
3 females, which is about two thirds of the panel. Therefore, if
4 we were making completely blind strikes statistically with a
5 computer, we would expect our peremptories to be at two thirds
6 women. That is very close to what they are. We have two that
7 were male and eight that were women. For it to be a third, it
8 would be three male, seven women.

9 THE COURT: All right. Well, how would that not apply
10 to your argument that the defense struck seven women?

11 MS. CREEGAN: Seven males?

12 THE COURT: I'm sorry. Seven males.

13 MS. CREEGAN: Because males were only a third of the
14 panel, they were going out of their way striking what is a
15 small group within the panel whereas our numbers reflect the
16 composition of the panel.

17 THE COURT: I see.

18 (Defense counsel conferring. Pause in the proceedings.)

19 THE COURT: So how many men were on the panel?

20 MS. CREEGAN: 14 out of 36.

21 (Counsel conferring. Pause in the proceedings.)

22 THE COURT: All right. Well, I agree with the defense
23 that it looks like striking 8 out of 22 -- or 8 females at
24 first blush looks like quite a bit out of 10 peremptory
25 challenges, so 8 out of 10 would be 80 percent of your

1 challenges are on females. But, as the Government points out,
2 there were overwhelming number of females so striking 8 out of
3 the group is not a suspect number.

4 (Pause in the proceedings.)

5 THE COURT: All right. So the Government is moving to
6 have the defense lose those five peremptories?

7 MS. CREEGAN: That is correct, Your Honor.

8 THE COURT: And what's the basis for that as opposed to
9 allowing them to use them more artfully?

10 MS. CREEGAN: I believe that's appropriate under the
11 circumstances. Five being reinstated shows a persuasive
12 pattern of gender and racial discrimination. I don't believe
13 that those -- under circumstances where the defense is that
14 egregious that they should be allowed to re-choose.

15 MR. LEVENTHAL: That egregious?

16 THE COURT: Mr. Leventhal, you wish to be heard on
17 that?

18 MR. LEVENTHAL: Your Honor, I understand that the Court
19 has indicated that we've used our peremptories in the wrong
20 way, I guess. But we have given the Court, at least for each
21 one of these, reasons and they were valid reasons. And they
22 weren't egregious reasons. We didn't sit around and say we
23 want this versus that. We based it upon a finding of what
24 people said and what our notes are.

25 So, if the Court's gonna -- already -- and has already

1 ruled that these five were done, then I would at least ask that
2 we be allowed to have our peremptories. I believe that's
3 what -- we didn't do it egregiously; we didn't do it with an
4 intent. But I understand the Court has -- says at least for
5 one or two of them there's no other reason. But, if the
6 Court's looking at, like, you know, comparing one person's
7 scientific background versus another person's scientific
8 background, there's -- there's -- it's not just that. I'll
9 give an example.

10 The Court is comparing the accountant. And I looked.
11 And, even though there was a female accountant that we kept,
12 that female accountant -- and I'm -- it's gonna be one -- which
13 one was the female accountant? -- that female accountant
14 indicated that they would be fair; they would be impartial.
15 And, just because of the technical background, if you will,
16 that wasn't the only deciding factor in how we came to these
17 decisions. And also we didn't know what they were gonna do.

18 And so, you know, I just -- when you pick a jury, we
19 don't sit here and we say, well, we've got 50 women and 20
20 males and therefore we have to have so many. You can't pick a
21 jury that way. If we have so many peremptories -- and we had
22 14 -- and we used 50 percent of them to remove males and
23 females and the Government had 10 and used 8 of them, which is
24 80 percent, to remove females, their percentages are much
25 higher and -- if that's what they are basing it on.

1 We don't sit here and say, okay, we've got one Hispanic
2 guy. I -- that would be insane to put that burden on everybody
3 to put -- mark down exactly "male," "female," "Hispanic,"
4 "African American," "Vietnamese." We were even asking what
5 that gentleman was, Island Pacific? We didn't -- we weren't
6 sure what he was. But it gets to be an exercise in craziness.

7 And I understand what the Court's saying. But I would
8 appreciate -- or I would think that the Court should give us at
9 least those five peremptories. We did not do anything
10 egregious or with any intent or malice or -- this was not done
11 with any of that. So that I would ask that we get our
12 peremptories back and use 'em on a different -- I guess a
13 different way if that's what the Court is requiring or
14 requesting us to do.

15 THE COURT: Ms. Creegan, do you want to respond to the
16 argument about the statistical percentage?

17 MS. CREEGAN: I'm sorry, Your Honor. Which argument is
18 that?

19 THE COURT: His argument that it was statistically
20 reasonable, the challenges made by the defense.

21 MS. CREEGAN: I think it is not statistically
22 reasonable. It reeks of a plan to reconstitute the jury from
23 the previous case. Usually when there's a *Batson* challenge,
24 there's a single juror or two removed. But this is a
25 persuasive plan to remove people who are not white or who are

1 male. It's totally impermissible. We have to preserve equal
2 access to the courts. I don't think it's appropriate to allow
3 them to reselect and then potentially have to relitigate this
4 motion again.

5 THE COURT: And I think earlier you made a comparison
6 to the composition of the jury in the first trial?

7 MS. CREEGAN: That's correct, Your Honor. The -- if
8 the jury had sat as the peremptories went forward, it would be
9 statistically and demographically exactly the same as the first
10 trial. When the first juror who -- before she was excused for
11 sleeping, sat, nine women; nine white people; an overlap of
12 seven white women. And that jury is reconstituted here exactly
13 including the single Asian female, the single African-American
14 female, two white males, and one Asian male.

15 MR. MARCHESE: I mean, Your Honor, for that to occur,
16 we would have to somehow break into the court's jury selection
17 process and somehow get these jurors -- I mean, it would be
18 like hitting five royal flushes a row. There is no -- they are
19 giving us way too much credit. There is no possible way that
20 we could have got the exact demographics. And, if they want to
21 search all our computers, I guarantee they won't see anything
22 of that breakdown. I didn't even know that that was the
23 breakdown statistically of male versus female and Asian versus
24 Hispanic versus African American.

25 MR. LEVENTHAL: And I would add, Your Honor, we had two

1 extra peremptories at the last because we're missing two. They
2 only had six at the last one. The Court gave them four more
3 just based upon the fact that this was their reasoning or their
4 logic. So they've had ten. So to say that now we've come up
5 with or devised this scheme to have the same makeup would be
6 crazy. We have two less; they have four more. So how are we
7 able to mold a jury exactly or come to that -- some kind of,
8 you know . . . I -- I -- I'm gonna go play the lottery.
9 That's incredible. We did not do that either.

10 THE COURT: All right. Well, the reason why they were
11 given peremptory challenges -- and the parties agreed to
12 this -- was because there was a retrial and there was the
13 realistic threat that there would be more individuals who had
14 heard about the case since it was so recent and was accepted
15 that we would have more peremptory challenges. So they were
16 given -- everybody was given more peremptory challenges.

17 The law says that, to accept the stated nonracial
18 explanation given, the court need not agree with it and the
19 question is not whether the stated reason represents a sound
20 strategic judgment but whether the race-neutral explanation
21 given for the peremptory challenge should be believed. And the
22 nonmoving party must give a -- rather -- which would be the
23 defense in this case -- must give a clear and reasonably
24 specific explanation of a legitimate reason for exercising the
25 challenge. And then the comparison is made for other

1 individuals.

2 So, for example, circumstances that raise the inference
3 are the number of people in the racial group that are in the
4 venire; the nature of the crime; the race of the defendant and
5 the victim; the pattern of strikes against members of a racial
6 group; the prosecution's questions and statements during the
7 voir dire as well as the defense questions and statements.

8 So, as I said, we're gonna go ahead and, I guess, void
9 or invalidate the strikes as to Jurors No. 85, 95, 284, 296,
10 and 445. The result of that would be that Juror No. 451, 388,
11 376, 425, and 275 -- or maybe not because the last one, I
12 think, doesn't get on there either way. I think that was . . .

13 Is that right, Aaron? Does 275 stay on because 445 is
14 so far down that she wouldn't have got on there anyway?

15 COURTROOM ADMINISTRATOR: That's correct, Your Honor.

16 THE COURT: Okay. So 275 stays on.

17 So we lose 325, 376, 388, and 451. The Court does find
18 that there is a pattern, both from the last trial and with this
19 trial taken together; that it is more than one person. If I
20 had found that it was only one, maybe even only two people who
21 were struck without just cause, then it would be easier to say
22 that the defense could keep its challenge and reuse it
23 appropriately. But, when there's five different people who are
24 struck and the reasons given are not sufficient and not
25 believable in view of the other information that we have about

1 the other jurors, it's difficult to say that it was not
2 intentional or part of a plan to exclude the males and
3 nonwhites from the jury.

4 There were other males and nonwhites that were excused
5 from the jury for legitimate reasons, race-neutral reasons,
6 that could be believed. But the reasons provided for these
7 five just do not meet the standard for explanations that could
8 be believed. And I know some of the explanations given were
9 "gut feeling." I'm not saying I don't believe that you have a
10 gut feeling, but it has to be an articulated clear and
11 reasonably specific reason. So I don't find that that -- that
12 the gut feeling is sufficient.

13 All right. So, Aaron, are you -- are you -- is your
14 chart a mess? Are you able to print it out so everybody has a
15 copy?

16 COURTROOM ADMINISTRATOR: It's a mess, but it will be
17 not a mess in just a moment.

18 THE COURT: Okay. So let's bring everybody back in
19 while he finishes up the chart. And I'll double-check it to
20 make sure it's correct before I read it into the record.

21 COURT SECURITY OFFICER: Your Honor, do they have to be
22 lined up? Or can it be random?

23 THE COURT: You know, I think you can just bring
24 them -- they don't need to be in order. That's gonna take too
25 much time and I'm gonna call them. No. I won't worry about

1 seating.

2 COURT SECURITY OFFICER: Okay.

3 THE COURT: In fact, if you just want to bring 'em all
4 into the benches, I'll just fill up the box.

5 COURT SECURITY OFFICER: Yes, ma'am.

6 THE COURT: That would probably be easier for them too.

7 COURTROOM ADMINISTRATOR: All rise.

8 (Prospective jury panel enters the courtroom, 5:53 p.m.)

9 COURT REPORTER: Your Honor, do you want them taking
10 the jury box?

11 THE COURT: Oh, you don't need to sit in the jury box.
12 You can go back to the benches. Thank you.

13 PROSPECTIVE JUROR: Even though we're already here?

14 THE COURT: Yeah. You can go back to the benches.
15 I'll call you into the box and tell you who is gonna be in the
16 box. Sorry about that. A reasonable belief on your part
17 definitely.

18 (Pause in the proceedings.)

19 THE COURT: Okay. Everyone may be seated.

20 I'm sorry. I'm just trying to make sure that I have
21 the list in the proper order.

22 (Pause in the proceedings.)

23 THE COURT: All right. So, when I call your name, you
24 can come on up and sit in the chair in the jury box. The first
25 juror is Juror No. 80.

1 COURT SECURITY OFFICER: Your Honor, (pointing)?

2 THE COURT: The second one is Juror No. 84 and Juror
3 No. 85, Juror No. 95.

4 (Pause in the proceedings.)

5 THE COURT: This doesn't match. What about this
6 person?

7 (The Courtroom Administrator and the Court conferring.)

8 THE COURT: Number 138.

9 (The Courtroom Administrator and the Court conferring.)

10 THE COURT: 139. 142. 188. 205. 275.

11 (Pause in the proceedings.)

12 THE COURT: 284. 325. No?

13 (The Courtroom Administrator and the Court conferring.)

14 THE COURT: I'm sorry. 296. I missed it. Yes. So
15 after 284 is 296.

16 (The Courtroom Administrator and the Court conferring.)

17 THE COURT: Okay. So not 325.

18 COURTROOM ADMINISTRATOR: Correct.

19 THE COURT: All right. Sorry. Not 325.

20 COURT SECURITY OFFICER: 325?

21 THE COURT: So we need 296.

22 (Pause in the proceedings.)

23 THE COURT: Okay. So next is 548. 609. 612. And
24 615.

25 You may be seated.

1 So the rest of the jurors who came -- and we really
2 appreciate your patience, your time, filling out the jury
3 questionnaire, receiving all those continuance notices when the
4 dates kept getting changed, and having you come in -- I know
5 it's never convenient to park downtown. I wish we had more
6 parking for you that was closer and we wish the weather was
7 better. There's so many things that we are grateful for and
8 one of them is for having individuals such as yourselves that
9 are honorable individuals who respected the process and
10 generally tried to provide the answers that were requested of
11 you as difficult as sometimes they were.

12 So we appreciate you very much. You are excused. This
13 means you should not be called again for 2 years. Please make
14 sure that you take water bottles, purses, bags, sweaters, any
15 reading material that you might have brought with you. We do
16 very much appreciate your time. And you may go ahead and hit
17 that traffic now. I'm sorry to let you go so late in the day.

18 (Prospective juror pool leaves the courtroom, 6:03 p.m.)

19 THE COURT: All right. So, as to the rest of you,
20 we're going to swear you in.

21 Aaron, if you'll please administer the oath.

22 COURTROOM ADMINISTRATOR: Yes, Your Honor.

23 Will the jurors please stand and raise your right hand.

24 You and each of you do solemnly swear or affirm that
25 you will well and truly try the matter at issue in this cause

1 now pending before this court and a true verdict render
2 according to the law and the evidence, so help you God?

3 JURORS: (In unison) "I do."

4 COURTROOM ADMINISTRATOR: Thank you. You may be
5 seated.

6 THE COURT: All right. And, when we come back on
7 Monday, we'll come back at 9:00 a.m. and I'll give you some
8 more instructions. But it's late in the day today and I'm not
9 gonna keep you any longer.

10 I am going to give you a short admonition which is that
11 during this recess until Monday, and actually throughout the
12 trial, you are not to discuss this case with anyone or permit
13 anyone to discuss it with you. You can talk to your fellow
14 jurors about other things but not about this case. You can
15 tell your family and your employers and coworkers that, yes,
16 you were chosen to be on the jury; yes, you're going to be
17 hearing the case; and, yes, it's gonna take a while.

18 Aaron either has printed out or is going to print
19 out -- because he already -- he did it. He's really good -- he
20 already printed out the calendars for you all. And so, when
21 I'm done with my admonition, you'll follow our Security Officer
22 and he'll take you back to the room, which we call the jury
23 room, which is where you'll meet every day. And there you'll
24 see you have the schedules and some other information about
25 numbers to call if there's emergencies and things like that.

1 So please do not discuss the case itself with anyone.
2 You can tell them that it's a criminal case. You can tell them
3 the name of the case, which might be helpful so that they don't
4 talk about the case to you. Otherwise, if they do attempt to
5 talk to you about the case, let them know the judge said that
6 could be a crime; so don't talk to me about the case. Write it
7 down and show it to me later if it's that important, but don't
8 tell me about it now.

9 All right. So, until the case is completely submitted
10 to you -- which means after you hear all the testimony, receive
11 all the evidence, after you're given the jury instructions --
12 that's when you'll begin deliberation process; that's when you
13 could start talking about the case. But that's not gonna
14 happen for a while.

15 Also you are not to read or listen to or view anything
16 that touches upon this case in any way. Like I said, if anyone
17 should attempt to talk to you about the case or, if you
18 inadvertently hear something about the case, you need to bring
19 it to the Court's attention right away so that we could look at
20 into it and find out if it was deliberate; accidental; whether
21 it was harmful or not or harmless.

22 Also, you are not to research or make any independent
23 investigation concerning the case. As you'll find out more on
24 Monday, I do permit the jurors to ask questions. We have
25 forms -- you don't write down your name or your jury number;

1 you don't sign it or anything like that. It's a completely
2 anonymous form with just whatever questions you have. The
3 reason I do that -- it does take time, a little more time. But
4 it also gives you an outlet for when you have a question so
5 that you can resist the temptation to go and figure it out
6 yourself or ask somebody or get on the Internet and look it up
7 yourself. We want you to ask us the question so that the
8 parties equally have an opportunity to give you the
9 information.

10 There have been cases in the past where people look it
11 up on the Internet and they look up the Google Map and they
12 don't realize that -- and maybe some of you do if you've lived
13 in Las Vegas long enough -- the satellite maps change. 10
14 years can go by and you'll have an intersection that looks
15 completely different than it did even 5 years ago, let alone
16 10 years ago. And so you're looking at it to see whether this
17 car could have seen the other car coming or whether the sign
18 was in the way or not and you're looking at the wrong
19 information. And that's not fair to the parties. So, if you
20 have a question, we want to know so we can provide you that
21 information.

22 Sometimes people use terminology that's legal
23 terminology that you might not be sure. You think you know
24 what it means, but you want to be sure you know what it means.
25 Ask the question. Or someone might call something, you know,

1 "ABC" and you don't know what "ABC" stands for; you don't know
2 what they are talking about. Ask us and the parties will be
3 happy to let you know and give you information so that you
4 understand the case better.

5 So, finally, you are not to form an opinion regarding
6 the issues in this case until all the evidence has been
7 presented to you. There will be witnesses that are called.
8 It's gonna take some time. Don't make a decision just because
9 of the evidence that you heard on day one or day two, on day
10 three. You know, withhold that opinion and wait until you've
11 heard all the evidence so that you can have a more meaningful
12 discussion between yourselves during the deliberation process.

13 You will have buttons that are going to be given to you
14 that are in the jury room. Please wear those all the time.
15 Sometimes it's cold in here and you might have a sweater on.
16 So, if you're in and out anywhere in the building or even in
17 the parking lot or the grounds, make sure you have the button
18 on. So, if you put on the sweater, take the button off and put
19 it on the outside of the sweater so we can see it and vice
20 versa. If you have a sweater on and you take off the sweater
21 'cuz you're hot, make sure that you put the button back on.
22 This way it'll be easier for people in the elevator or the
23 smoking area or the coffee shop or wherever it is that you
24 might encounter someone to know that you're a juror and not to
25 accidentally talk to you about the case. Remember, we'll have

1 witnesses standing outside waiting to be called and things like
2 that. And so we don't want you inadvertently striking up a
3 conversation with them.

4 All the attorneys have been admonished they are not to
5 speak to you about anything at all. So they are not to talk to
6 you about the case, but I admonish them not to talk to you
7 about anything: the weather, your hair looks nice today or
8 anything, did you see that ball game last night? They are not
9 to talk to you about anything so as to not inadvertently get
10 into a conversation with you about anything. So don't be
11 offended if you see the attorneys and they see you and run the
12 other way. They just don't want to get in trouble with the
13 judge by accidentally talking to you about something. So they
14 don't mean to be rude; they are just trying to be respectful of
15 the process.

16 I think that covers all the major warnings that I want
17 to give you before Monday. And you'll have more information
18 that I'll provide you on Monday.

19 So we'll go ahead and stand for the jury. And just go
20 ahead and file out and follow Mike and he'll give you all the
21 information you need.

22 Feel free to bring water bottles Monday. We will have
23 some for you in the jury room as well though. And it's helpful
24 to bring sweaters and things. Sometimes it gets really hot and
25 then gets cold and then it gets hot.

1 (Jury out, 6:10 p.m.)

2 THE COURT: All right. We're outside the presence of
3 the jury.

4 So we'll go off record till Monday. We'll begin at
5 9:00.

6 Yes.

7 MR. MYHRE: Your Honor, we have just one brief
8 housekeeping matter we could bring up. I know it's been a long
9 day, but --

10 THE COURT: Okay.

11 MR. MYHRE: -- in anticipation of Monday.

12 Actually two things. One is if we can get some idea of
13 whether defense will be opening as well on Monday because our
14 first witness we anticipate will be a Sheriff Lombardo and we
15 kinda want to give him a time to be here that would be
16 reasonable so he's not just hanging around.

17 So, if we anticipate openings would be over by
18 11:00 o'clock, we can have him here at 11:00 so we can go right
19 into witnesses. Or, if we think it's going to be all morning
20 for opening, then we could put him in the afternoon. So I --

21 THE COURT: I think --

22 MR. MYHRE: -- anticipate --

23 THE COURT: -- last time didn't we have at least one of
24 the defense attorneys --

25 MR. LEVENTHAL: Two.

1 THE COURT: -- reserve?
2 MR. MARCHESE: I --
3 THE COURT: Two --
4 MR. MARCHESE: -- reserved.
5 THE COURT: -- reserved --
6 MR. LEVENTHAL: Two, Your Honor.
7 THE COURT: -- until later?
8 MR. LEVENTHAL: Yes.
9 MR. MARCHESE: I reserved mine and gave it at the
10 opening of our case in chief.
11 THE COURT: All right.
12 MR. LEVENTHAL: So did Mr. --
13 THE COURT: So do you --
14 MR. LEVENTHAL: -- Perez.
15 THE COURT: -- have a plan?
16 MR. LEVENTHAL: Mr. Perez is --
17 THE COURT: So Mr. Perez is gonna give an opening --
18 MR. LEVENTHAL: No. I --
19 THE COURT: -- on Monday?
20 MR. LEVENTHAL: -- I said Mr. Perez --
21 MR. PEREZ: I --
22 MR. LEVENTHAL: -- waived --
23 MR. PEREZ: -- I haven't --
24 MR. LEVENTHAL: -- his opening.
25 MR. PEREZ: -- made up my mind yet, Your Honor. More

1 than likely, but I'm not sure.

2 MR. LEVENTHAL: We haven't really decided that, if
3 we're gonna waive any. When we know, we'll inform the
4 Government.

5 THE COURT: All right.

6 So, Mr. Perez, you waived your opening?

7 MR. PEREZ: No, no.

8 THE COURT: No, no. You didn't. You just reserve it.

9 MR. PEREZ: Right.

10 THE COURT: Okay.

11 So Mr. Marchese and Mr. Perez reserved last time.

12 MR. PEREZ: Correct.

13 MR. LEVENTHAL: Correct.

14 THE COURT: Is that right? All right.

15 And then Mr. Tanasi and Mr. Leventhal gave their
16 opening statements.

17 So do you -- I would anticipate that we probably will
18 have at least one motion, if not more, to discuss before we
19 begin. And then I have to give my -- the admonition of
20 preliminary instructions to the jury. So that'll take a good
21 15, 20 minutes. And then we can probably go into opening
22 statement unless we need a bathroom break and then have opening
23 and then have lunch. So it certainly wouldn't be before lunch.

24 MR. MYHRE: Thank you, Your Honor. That's very
25 helpful. Thank you.

1 THE COURT: Don't you think?

2 And then -- so then, when we come back from lunch,
3 probably there will be one or more openings. So I don't --

4 MR. TANASI: I think it's --

5 THE COURT: -- I would --

6 MR. TANASI: -- fair to say --

7 THE COURT: -- estimate 2:00 o'clock would be maybe a
8 good -- what do you think, Mr. Tanasi?

9 MR. TANASI: I think it's fair to say that at least
10 some of the defense would give an opening so --

11 THE COURT: Someone's gonna given an opening; right?
12 So at least one.

13 MR. TANASI: Right. I'd say fair to say at least one.
14 I don't know how much that helps but . . .

15 MR. MYHRE: Okay.

16 THE COURT: So I think we can plan to have him start no
17 sooner than 2:00 p.m.

18 MR. MYHRE: That's very helpful. Thank you, Your
19 Honor.

20 THE COURT: Okay.

21 MR. MYHRE: And then the second one is we moved to
22 have -- we'd ask the Court if it'd be possible for the defense
23 counsel -- since we now have two fewer defendants -- that
24 defense counsel tables be turned and to face forward as opposed
25 to the defendants facing directly in front of the jury. And

1 one of our concerns is the -- for example, Mr. Parker and
2 others have worn their pocket Constitutions and so forth. I
3 think whatever their belief system with respect to that, you
4 know, if that's going to occur, we don't want them
5 communicating through what they are wearing; what they are
6 reading; what they are showing to the jury.

7 MR. MARCHESE: Wait.

8 MR. MYHRE: And so --

9 MR. MARCHESE: Your Honor, Mr. Myhre brought this to my
10 attention yesterday. I asked Mr. Parker to take his out while
11 the jury is present. He abided by that request. And, I mean,
12 quite frankly, it's pretty far. I don't necessarily think that
13 the jury would even be able to see it. But, regardless, it's a
14 moot point because he's just not gonna wear it.

15 MR. LEVENTHAL: And, Your Honor, generally we have --
16 if we had a table -- I have a tough enough time seeing. I
17 never saw Juror No. 1 before. I know -- I heard she's swiveled
18 quite a bit. I never even know -- because I'm over here, I
19 can't see. I can barely see the witnesses half the time.

20 And so, when we're generally here, we're either here so
21 we could see everything or the long table comes down this way
22 anyway; right?

23 THE COURT: Um-hum.

24 MR. LEVENTHAL: Right.

25 So it becomes very difficult if I'm stacking up going

1 towards Your Honor, towards the bench, it becomes even harder
2 for me to is see the witness and the jury. It's gonna be even
3 more difficult than it is now being here so . . .

4 THE COURT: All right. Well, we'll --

5 MR. PEREZ: Not to mention --

6 THE COURT: -- have less people than last time, right,
7 because we -- I think we had -- Mr. Burleson also had an
8 assistant besides his attorney and so we won't have them --

9 MR. TANASI: And it's only one less --

10 THE COURT: -- Mr. Engel and his attorney so . . .

11 MR. TANASI: Sorry, Your Honor.

12 THE COURT: Right.

13 And then Ms. Dodson won't be here.

14 MR. PEREZ: Your Honor, if we turn the tables, the
15 jury's gonna see the shackles. I mean -- and if they are
16 required to wear them . . .

17 THE COURT: Well, if they don't -- the jury doesn't
18 come in through that back door anymore. Now that we've chosen
19 them and seated them, they'll be coming in through the door
20 that's close to the bench over here so we don't have the same
21 danger that we do during the voir dire where they are coming in
22 through the exit door where the public comes in. That's the
23 concern with having the old-fashioned seating where everyone's
24 facing the judge. But now that they are all coming and going
25 through the witness -- through the door that's nearest to the

1 witness, then we really don't have a problem with the shackles.

2 MR. LEVENTHAL: But we agree --

3 MR. PEREZ: Well --

4 THE COURT: One, two, three, four.

5 MR. LEVENTHAL: Hold on. Hold on.

6 We agree to abide by -- you know, and not having --
7 they all know. They wouldn't put anything in their pockets.
8 So, if that's the concern and the only concern, I think the
9 prejudice that's gonna be placed upon me and not seeing
10 witnesses and not seeing the reaction of the jurors is much
11 greater. They've already taken out and they've abided by that
12 and they'll continue on abiding by that. If Mr. Myhre or
13 anybody from the Government says anything otherwise, then just
14 bring it to our attention. But, until that happens, Judge, I
15 don't want to be stuck up here in the corner somewhere where I
16 can't see a witness. That's -- that wouldn't be good.

17 THE COURT: All right. Well, let me think on that
18 because I think if there's eight people -- one, two, three,
19 four, five, six, seven eight -- then does that leave enough
20 room for -- what is his name, Brian? Is it --

21 COURTROOM ADMINISTRATOR: He has his own table, Your
22 Honor. But it's my understanding that with the depth of the
23 tables the shackles would be visible from the jury box -- from
24 the end of the jury box.

25 THE COURT: Okay. So that's the concern.

1 MR. MYHRE: Well, we normally would put up some sort of
2 shroud around the other tables, correct, to cover the -- so
3 potential for seeing the shackles would be eliminated?

4 THE COURT: Well, that covers the front. That's why
5 the tables now have the wooden fronts. That's the, um --

6 MR. MYHRE: But it would go around --

7 THE COURT: -- I know what you're talkin' about, the
8 black tablecloth --

9 MR. MYHRE: Skirt --

10 THE COURT: -- skirt, yes.

11 MR. MYHRE: Right.

12 THE COURT: Yeah. We had to use those before because
13 it was open. Um . . .

14 MR. MYHRE: But these appear to be closed on the sides
15 as well so --

16 THE COURT: Right. These are closed.

17 MR. TANASI: But I would think that that would require
18 almost an entire row then to close off so that the shackles
19 aren't seen. Because even though the side's closed, if
20 they're -- if he moves backwards -- if Mr. Stewart moves
21 backwards or turns for any reason, his shackles would be
22 exposed outside of that little divider that Mr. Myhre just
23 referenced. I mean, there'd have to be, I think, more
24 elaborate curtaining system of some kind which may draw more
25 attention to it in and of itself.

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1 THE COURT: All right. Well, let me take that under
2 submission.

3 Anything else?

4 MR. MYHRE: That's all we had, Your Honor. Thank you.

5 THE COURT: All right.

6 Sorry I can't answer right away on that. I realize I
7 need to probably test it out myself and have input from other
8 individuals as well to see if it's even feasible before I make
9 that decision.

10 I don't think we need this anymore.

11 (The Courtroom Administrator and the Court conferring.)

12 THE COURT: So those are the officials.

13 COURTROOM ADMINISTRATOR: Okay.

14 (The Courtroom Administrator and the Court conferring.)

15 COURTROOM ADMINISTRATOR: Off record.

16 THE COURT: Off record.

17 (Proceedings adjourned at 6:19 p.m. Trial to resume on
18 Monday, July 17, 2017, at 9:00 a.m.)

19 --oOo--

20 COURT REPORTER'S CERTIFICATE

21 I, FELICIA RENE ZABIN, Official Court Reporter, United
22 States District Court, District of Nevada, Las Vegas, Nevada,
23 do hereby certify that pursuant to 28 U.S.C. § 753 the
foregoing is a true, complete, and correct transcript of the
proceedings had in connection with the above-entitled matter.

24 DATED: July 18, 2017

25 /s/ Felicia Rene Zabin
FELICIA RENE ZABIN, RPR, CCR NO. 478

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,	)	Case No. 2:16-cr-046-GMN-PAL
)	
vs.	)	Las Vegas, Nevada
	)	Monday, July 17, 2017
ERIC PARKER, O. SCOTT	)	Courtroom 7C, 9:20 a.m.
DREXLER, RICKY LOVELIEN, and)	
STEVEN STEWART,	)	JURY TRIAL DAY FOUR
)	
Defendants.)	
	)	<u>O R I G I N A L</u>

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BEFORE: THE HONORABLE GLORIA M. NAVARRO,
UNITED STATES DISTRICT JUDGE, CHIEF

APPEARANCES:

See next page

COURT REPORTER:

Heather K. Newman, RPR, CRR, CCR #774
United States District Court
333 Las Vegas Boulevard South, Room 1334
Las Vegas, Nevada 89101
(702) 471-0002

Proceedings reported by machine shorthand, transcript produced
by computer-aided transcription.

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23 Also present:

24 Sharon Gavin, Special Agent, FBI
25 Joel Willis, Special Agent, FBI
Chris Allen, Bureau of Land Management
Mike Abercrombie, FBI

1 Also present:

2 Mamie Ott, Legal Assistant
3 Tori Bakken, Paralegal
4 Brian Glynn, IT
5 Nicole Reitz, IT

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I N D E X

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IN
EVIDENCE

21	112
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1 LAS VEGAS, NEVADA; MONDAY, JULY 17, 2017; 9:20 A.M.

2 --oOo--

3 P R O C E E D I N G S

4 (Outside the presence of the jury at 9:20 a.m.):

5 COURTROOM ADMINISTRATOR: All rise.

6 THE COURT: Thank you. You may be seated.

7 COURTROOM ADMINISTRATOR: This is the time set for
8 Jury Trial Day Four in Case Number 2:16-cr-046-GMN-PAL,
9 United States of America vs. Eric Parker, O. Scott Drexler,
10 Ricky Lovelien, and Steven Stewart.

11 Counsel, please make your appearances for the record.

12 MR. MYHRE: Good morning, Your Honor.

13 Steve Myhre, Erin Creegan, and Nadia Ahmed on behalf
14 of the United States.

15 THE COURT: Good morning.

16 MR. TANASI: Good morning, Your Honor.

17 Rich Tanasi for Steven Stewart who is present. Also
18 with us at counsel table is Tori Bakken and Brian Glynn.

19 Thank you.

20 THE COURT: Good morning.

21 MR. MARCHESE: Good morning, Your Honor.

22 Jess Marchese on behalf of Eric Parker.

23 THE COURT: Good morning.

24 MR. LEVENTHAL: Good morning, Your Honor.

25 Todd Leventhal on behalf of Mr. Drexler.

1 THE COURT: Good morning.

2 MR. PEREZ: Good morning, Your Honor.

3 Shawn Perez on behalf of Ricky Lovelien.

4 THE COURT: Good morning.

5 All right. Before we bring in the jurors, let me
6 just remind everyone about how we expect to conduct trial.

7 This is a courtroom; it's not a sporting event. So,
8 it is never appropriate to make any expression of your opinion,
9 whether it's verbally or through conduct or body language, no
10 matter how much you may agree or disagree with what is being
11 said.

12 People may not speak out of turn. All the attorneys
13 have microphones at their desks, so they're welcome to use
14 those microphones if they want to. We also have the podium
15 that's been turned in the direction of the jurors so that
16 during opening statements they may use the podium instead.

17 We do have the speaker system connected to the
18 holding cell. So, if any of the defendants speak out of turn
19 or make any expression of their opinion through body language
20 or verbally, they will be removed to the holding cell to listen
21 to the rest of the trial this -- today.

22 Let's see. We do have a prohibition on electronic
23 devices. So, please make sure that you do not have any
24 electronic devices with you here in court. The attorneys are
25 permitted to use electronic devices so that they may conduct

1 trial, but otherwise, no one else is supposed to have an
2 electronic device. Even if it's turned off or in vibrate mode,
3 it's not allowed in the courtroom. There is no recording
4 permitted in federal court, no audio recording and no video
5 recording.

6 All right. So can we bring it to the jury, Aaron?

7 MR. MARCHESE: Your Honor, we just had a brief issue
8 on behalf of the defense.

9 I know we stayed here late Wednesday in reference to
10 the jury. I just wanted to make it clear for the record that
11 we object to the makeup of the jury, both on behalf of the
12 Government's *Batson* challenge and then our *Batson* challenge
13 against the Government. I know the Court has ruled on it. I
14 just want to make it clear in reference to that.

15 I know the Government is standing. If they want to
16 make something in reference . . .

17 THE COURT: All right. Well, you did -- well, the
18 motion was made and you did oppose it, so the record is clear
19 that you object to it.

20 MR. MARCHESE: Right. I just -- I've been on appeals
21 before and I've looked at my record and I've looked at it and
22 thought I made a good record and then, in hindsight, I didn't.
23 So, I just wanted to put that on record here this morning.

24 And in reference to the Government's opening
25 statement, Your Honor, collectively, on behalf of the

1 defendants, we've all huddled, so to speak, and this morning we
2 received, I don't know, 30 or 40 slides in reference to that.
3 It's our position that trial has not started. There has not
4 been any evidence introduced. So, we'd be objecting to the
5 uses of all these slides given the fact that no evidence has
6 been introduced and to me, this is, you know, putting the cart
7 before the horse. We're arguing a bunch of evidence that
8 hasn't been brought into evidence just yet.

9 MR. MYHRE: Well, Your Honor, there -- it's evidence
10 that we intend to offer during the course of trial and these
11 are exhibits these defendants are very well aware of, having
12 been through the first trial, but in opening statement it's
13 admissible to use exhibits that the Government in good faith
14 intends to offer during the course of the trial.

15 THE COURT: So, are there any specific exhibits that
16 defense objects to that thinks -- that you think will not be
17 admitted during trial?

18 MR. MARCHESE: Well, I -- in no way, shape, or form
19 am I saying --

20 THE COURT: Are you objecting to the use of exhibits,
21 because attorneys always use exhibits during opening statement,
22 or is there a specific one that you think will not be admitted
23 so it would be prejudicial to show it to the jury?

24 MR. MARCHESE: Well, my experience and, of course,
25 every trial in every court is different, but not necessarily.

1 I mean, typically we have some sort of an agreement and say,
2 hey, you're going to use this exhibit, you're going to use that
3 exhibit. Like last time, they objected to some of the uses of
4 our exhibits, but in this particular case it's our position --
5 and in no way, shape, or form am I saying that Mr. Myhre is
6 acting in bad faith -- but we just don't know what the evidence
7 will show. Maybe a witness becomes unavailable. Maybe they're
8 unable to lay the foundation. Whatever it is, we just don't
9 know. So, I can't predict what comes in or what doesn't come
10 in.

11 Mr. Myhre is a thousand percent correct. We are
12 aware of the majority these exhibits, if not all of them.
13 There is some with some sort of writing, but, I mean, that's
14 the charges. We're obviously aware of that, but we lodge an
15 objection because, like I said, we don't know what the evidence
16 will show. We don't know whether this will, in fact, come into
17 evidence.

18 THE COURT: All right. So you're not objecting to a
19 specific exhibit, just, in general, to the use of the exhibits?

20 MR. MARCHESE: Yes, all -- I -- it looks like about
21 36, 37 slides. Correct. 36 slides.

22 THE COURT: All right. Well, if there's no objection
23 to any particular slide and your objection is just to the use
24 of slides during opening statement, then that motion is denied.

25 Anything else?

1 MR. MYHRE: Yes, Your Honor.

2 We do -- since Mr. Marchese has raised the issue of
3 slides during opening, Mr. Tanasi was kind enough to share his
4 slides with us this morning and the last one is a -- appears to
5 be a photograph or an image captured of various law enforcement
6 officers in the wash on the 12th in the stacked position. I'm
7 sure the Court is very familiar with that from the previous
8 trial.

9 THE COURT: Yes.

10 MR. MYHRE: And in light of the Court's ruling, in
11 limine, at least, we would ask for some sort of proffer because
12 we find this objectionable in that it's depicting the law
13 enforcement officers and how they are stacked in the wash. No
14 apparent relevance that we can see to anything coming in during
15 the course of trial.

16 THE COURT: Mr. Tanasi, I see you standing. Do you
17 want to respond?

18 MR. TANASI: Yes, Your Honor. Thank you.

19 First, I would just point out I think seven or eight
20 slides in to the Government's PowerPoint they have essentially
21 a similar slide. You have BLM agents that are in a formation
22 of some kind that are in the wash. My slide is simply another
23 picture of that. It's a slide that came in the last trial. I
24 am very aware of the Court's ruling with respect to the Motions
25 in Limine and I don't intend to violate them in any way.

1 Again, it's a picture. It's a picture of what was seen in the
2 wash. It's not a picture of what depicts all the circumstances
3 in the wash. So, again, if the Court's inclined to allow this
4 particular slide with the Government, I think it's only fair
5 play to be able to show kind of the complete story of what was
6 going on in the wash.

7 THE COURT: So what is the intent in using that
8 slide?

9 MR. TANASI: The intent in using that slide,
10 Your Honor, is to show exactly what my client saw when he came
11 to the bridge, the northbound bridge. What he perceived, what
12 he saw. Goes to his state of mind.

13 THE COURT: So your client's going to testify?

14 MR. TANASI: Your Honor, at this juncture, I don't
15 know that I'm in a position to say that. I have a good faith
16 belief that it's very possible, though. And again, if he does
17 not testify and I've shown that slide in my opening, I live
18 with the consequences of him not testifying. And, again, the
19 slide itself doesn't necessarily need my client to testify to.
20 In other words, you have a variety of pictures of what occurs
21 in the wash.

22 THE COURT: Right. So assuming your client testifies
23 and says that he saw that, what's the relevance to the charges?

24 MR. TANASI: The relevance to the charges is what he
25 perceived when he saw -- when -- what he saw on the northbound

1 bridge. In other words, we all know the defense theory is that
2 when they left the speech --

3 THE COURT: All right. But what is the relevance of
4 what he saw? He could have seen a bird, a cloud, a drone.
5 Like, what is the relevance to that particular photograph?

6 MR. TANASI: It furthers his protest. It furthers
7 what he was standing up for and what he was standing up
8 against.

9 Again, it's not a self-defense argument. I
10 understand the Court's ruling on that. It's an argument of
11 what he saw and it's also an argument of what paints the
12 complete picture of the case. You know, we're dealing with
13 these images that the Government wants to select and only show
14 portions of but not show the entire version or the entire
15 story. These are not pictures of individuals who were not in
16 the wash. These are pictures of individuals who were in the
17 wash, just like the Government's slide, Slide 7.

18 THE COURT: All right. Mr. Myhre, your response for
19 the Government?

20 MR. MYHRE: Yes, Your Honor.

21 We're -- we're reaching the sort of slippery slope
22 where we're going into the evidence of BLM conduct, BLM officer
23 conduct on the 12th which is not relevant to this trial. It
24 doesn't go to any cognizable defense. Nor does it go to state
25 of mind. If the defendant wants to testify that he was

1 protesting BLM's presence there, that -- that's not a problem,
2 but that doesn't mean then everything comes in as to what BLM
3 was doing that informed that state of mind. That goes to the
4 jury nullification. We getting into a very prejudicial area,
5 more prejudicial than probative because they're raising the
6 issue of BLM conduct, which is not relevant to any cognizable
7 defense.

8 MR. MARCHESE: Your Honor, and in reference to
9 Mr. Parker, he's going to testify and I think it is relevant to
10 him. Because as you're obviously aware, this is a new trial,
11 this is a new case. Last time the Court --

12 THE COURT: How is it relevant to the defense? How
13 it is a legally cognizable defense?

14 MR. MARCHESE: I'm getting to that. Because we -- as
15 Your Honor is aware, we put a self-defense instruction in. So,
16 my belief and -- is that we are going to proffer more evidence
17 this time in order for a self-defense instruction. Obviously,
18 we didn't prevail on that the last time, but we have a new
19 trial, just as if the law of the case is not going to be a hung
20 jury, it's -- you know, the Government is going to try to prove
21 their case beyond a reasonable doubt. We are going to try to
22 proffer more evidence towards a self-defense instruction and
23 if, at the end of the case, the Court finds that we didn't
24 proffer enough evidence to get the instruction, then that's --
25 it is what it is. But, it's our position that we have the

1 ability to put that defense forward now because it's a new
2 case.

3 MR. TANASI: And, Your Honor, if I may, just,
4 again --

5 THE COURT: Again, the common law defense of
6 self-defense is not available against law enforcement unless
7 you didn't know that it was law enforcement or unless they used
8 excessive force. There's no evidence of any force being used
9 here, let alone excessive force and there's no objective basis
10 to believe that people were unaware that these were law
11 enforcement.

12 MR. MARCHESE: Well, but we haven't had a trial yet.

13 THE COURT: So that's why the -- the -- it's -- it's
14 just not available.

15 MR. MARCHESE: Well, *Feola* and *Span*, I would say, say
16 otherwise, Your Honor. There's -- I mean, we -- I don't want
17 to argue the jury instructions, but I believe that we have the
18 ability to argue it. We're going to put on more evidence this
19 time, different witnesses, additional witnesses, more towards
20 the -- you know, the standard of proof to get that instruction.
21 I mean, I would disagree that it doesn't apply. Now, maybe we
22 don't show enough evidence, as we didn't last time --

23 THE COURT: Right, and that was what the Court --

24 MR. MARCHESE: -- but we're going to have more
25 witnesses.

1 THE COURT: -- said, that if you have more evidence
2 than you had last time, then you're welcome to present that as
3 a proffer outside the presence of the jury, but not during
4 opening statements.

5 MR. MARCHESE: Well . . . so how -- are we going to
6 have witnesses come in and testify outside the presence to see
7 if -- I'm -- I'm --

8 THE COURT: That's what a proffer is. That's how
9 proffer works.

10 MR. MARCHESE: Well, and not to mention though, I
11 mean, I don't see how it's not relevant. I mean, that this is
12 what went on in the wash. Whether it's that's -- they were
13 there. I mean, we can't just pick and choose what works for
14 the Government. I mean, it's not as if we're making these up,
15 we're Photoshopping these pictures.

16 THE COURT: If it's not a legally cognizable defense,
17 then what you're arguing is jury nullification.

18 MR. MARCHESE: Well, *Feola* and *Span* say it's a
19 legally cognizable defense. I mean, so, I think that it is
20 relevant, and what my client saw. He'll testify that he saw
21 them. We all know that. He testified last time to that fact.

22 MR. TANASI: Your Honor, may I go back, just -- I
23 don't want to muddy the water. I know we've kind of shifted
24 gears on the self-defense component, so if Your Honor wants to
25 make a decision on that before I make my next point, I'm fine

1 with that, but . . . If I may, Your Honor, with respect just
2 to my client's state of mind and what my client was doing when
3 he's up on the bridge, you know, the Government is using his
4 actions to demonstrate, in part, what his intent was, his
5 standing there as being a lookout. Him there in some of the
6 pictures, him not there in some of the pictures. Those folks
7 who are pointing weapons at him, that's part of his state of
8 mind. When he's walking around, running around, not knowing
9 what is going on, confused, because when he leaves the speech,
10 he thinks that the operation's over and he's coming to watch
11 the cows come home, right? He gets there and then he finds the
12 BLM pointing weapons at him. He's confused. His actions in
13 walking around, being on the bridge, not being on the bridge,
14 all of that is what's relevant to this case, what's relevant to
15 his state of mind, and that picture is what shows what some of
16 the confusion is. He leaves the speech thinking the operation
17 is over, cows are coming home. He gets there --

18 THE COURT: I know the facts of the case, counsel. I
19 was here for trial last time. The problem is it's not a
20 legally cognizable defense. I am protesting banks. They're
21 foreclosing on all my friends. I go into the bank with my gun
22 because I want to protest. The security guard points a gun at
23 me, so I point a gun back at him in self-defense. I lose.
24 There's no legally cognizable defense for that. That's the
25 problem. If you want to legally explain how we can provide

1 this, I'm more than happy and willing to, but we're not going
2 to argue the facts and argue the facts and argue the facts
3 because it doesn't change the status of the law and I can't --
4 I can't overrule that. That's -- that's a very clear,
5 acceptable interpretation of the law. So I can't give you a
6 defense that the law does not recognize.

7 So, we're done with this. You can't use that
8 photograph. We're going to bring in the jury.

9 MR. TANASI: Thank you, Your Honor.

10 (Brief pause in proceedings.)

11 COURTROOM ADMINISTRATOR: All rise.

12 (Jury returned to courtroom at 9:38 a.m.)

13 THE COURT: Jury may go ahead and be seated. We're
14 standing for you.

15 Everyone else may be seated as well.

16 So, good morning and welcome back, everyone.

17 We're going to start with opening statements today
18 but before we do that, I do have some preliminary instructions
19 for you.

20 Now that you have been sworn as the jury to try this
21 case, I will briefly tell you something about your duties as
22 jurors and give you some preliminary instructions regarding
23 your conduct in this case. At the end of the trial, I will
24 give you more detailed written instructions which will govern
25 your deliberations.

1 So, as jurors, it will be your duty to decide, from
2 the evidence, what the facts are. So you, and you alone, are
3 the judges of the facts. The evidence presented to you during
4 the trial will primarily consist of the testimony of witnesses
5 and tangible items and papers or documents which are sometimes
6 referred to as exhibits, as well as any fact on which the
7 lawyers agree or which I may instruct you to accept. Sometimes
8 those are called stipulations, or if the Court takes judicial
9 notice of something.

10 Now, as you know already, this is a criminal case and
11 there are three basic rules about a criminal case that you must
12 keep in mind. The first is that the defendants are presumed
13 innocent until proven guilty. The Indictment brought by the
14 Government against a defendant is only an accusation; nothing
15 more. It is not proof of guilt or anything else. The
16 defendants therefore start out with a clean slate.

17 Second. The burden of proof is on the Government
18 until the very end of the case. The defendants have no burden
19 to prove their innocence nor to present any evidence nor to
20 testify. Since the defendants have the right to remain silent,
21 the law prohibits you from arriving at your verdict by
22 considering that the defendants may not have testified.

23 The third thing to remember is that the Government
24 must prove the defendant's guilt beyond a reasonable doubt. I
25 will give you further instruction on that point later, but bear

1 in mind that in this respect a criminal case is different from
2 the standard of proof in a civil case.

3 After hearing all the evidence, you will apply the
4 facts as you find them to the law and I will give you detailed
5 written instructions of the law at the end of the trial. You
6 must follow the law whether you agree with it or not. In this
7 way, you will reach a fair verdict which is based upon evidence
8 in the case and a verdict which is consistent with the
9 instructions of law which you are obligated to follow.

10 You should not take anything I say or do during the
11 trial as indicating what I think of the evidence or what your
12 verdict should be. The verdict is entirely up to you as jurors
13 to decide.

14 The evidence which will be presented to you during
15 the trial will consist of testimony from witnesses, documents,
16 and other things received as an exhibit including any fact that
17 the lawyers agree is not in dispute. The evidence presented
18 may either be direct or circumstantial. Direct evidence is
19 direct proof of a fact, such as testimony by a witness about
20 what the witness personally saw or personally heard or
21 personally did. Circumstantial evidence is proof of one or
22 more facts from which you could find another fact exists.

23 The common example of this is if you see someone
24 walking in the courtroom and they're all wet and they're
25 wearing a rain coat and they have an umbrella and they close

1 the umbrella, you could deduce from that that that's
2 circumstantial evidence that it's raining outside. It may also
3 be that there's a sprinkler broken, but it could also be that
4 it's raining outside and more likely that it's raining outside
5 and so that's circumstantial evidence. You don't actually see
6 the rain, but you can deduce that fact from others.

7 You should consider both kinds of evidence. The law
8 makes no distinction between direct evidence and circumstantial
9 evidence or the weight to be given to them. It is up for
10 you -- up to you to decide how much weight to give to any
11 evidence.

12 Certain things are not evidence and you should never
13 consider them as evidence in deciding the facts of this case.
14 For example, statements -- opening statements -- arguments --
15 closing arguments -- or any arguments made during trial by the
16 attorneys are not evidence. Neither are the questions nor the
17 objections by the attorneys ever to be considered as evidence
18 in the case.

19 There are rules of evidence which control what can be
20 received into evidence and if an objection is sustained, that
21 means you must ignore the question and not guess what the
22 answer would have been. If the objection is overruled, you may
23 treat the answer like any other.

24 Some evidence may be admitted during the trial for a
25 limited purpose only. If I instruct you that an item of

1 evidence has been admitted only for a limited purpose, then you
2 must consider it only for that particular limited purpose and
3 for no other.

4 Sometimes I may order that evidence be stricken from
5 the record and that you disregard or ignore the evidence. That
6 means that when you are deciding the case, you must not
7 consider that evidence which I told you to disregard.
8 Testimony that the court has excluded or instructed you to
9 disregard is never evidence.

10 Additionally, anything that you see or hear outside
11 of the courtroom or when the court is not formally in session
12 is not evidence and must be disregarded. It must not be
13 considered by you in deciding what the facts are in this case.

14 In deciding the facts of this case you may have to
15 decide the credibility of what a witness says. You alone will
16 determine which testimony to believe and which testimony not to
17 believe. You may believe everything a witness says, or part of
18 it, or none of it. It's up to you.

19 In considering the testimony of any witness you may
20 take into account several factors.

21 Number 1. Opportunity and ability of the witness to
22 see, or hear, or know the things testified to;

23 Number 2. The witness' memory;

24 Number 3. The witness' manner while testifying;

25 Number 4. The witness' interest in the outcome of

1 the case, or any bias or prejudice;

2 Number 5. Whether other evidence contradicted the
3 witness' testimony;

4 Number 6. The reasonableness of the witness'
5 testimony in light of all the evidence;

6 And Number 7. Any other factors that bear on
7 believability.

8 The weight of the evidence as to a fact does not
9 necessarily depend on the number of witnesses who testify. You
10 should pay close attention to the testimony and all evidence as
11 it is presented because it will be necessary for you to rely
12 upon your collective memories concerning what the testimony was
13 when you retire to deliberate on a verdict.

14 Although you can see that there is a court recorder
15 here, she is taking down everything that is said during trial,
16 but typewritten transcripts cannot be prepared for your use
17 during deliberations and you should not expect to receive them.

18 On the other hand, all exhibits admitted into
19 evidence during the trial will be available for you and your
20 detailed study during deliberations. So if an exhibit is
21 received into evidence but is not fully read or fully shown to
22 you at the time, do not be concerned because you will get to
23 see the exhibit later during your jury deliberations.

24 If you wish, you may take notes to help you remember
25 what witnesses said or the number of an exhibit that you wish

1 to inspect or review later during deliberations. If you do
2 take notes, please keep them to yourself until you and your
3 fellow jurors go to the jury room to decide the case at the end
4 of the case. Do not let note-taking distract you so that you
5 do not actually hear the answers of the witnesses. When you
6 leave, your notes should be left in the courtroom on the seats
7 of your chair.

8 Whether or not you take notes you should rely on your
9 own memory of what was said. Notes are only to assist you and
10 your memory and you should not be overly influenced by your
11 notes or the notes of others.

12 Because of your obligations as jurors to keep an open
13 mind throughout the trial, coupled with your obligation to
14 decide this case based only on the evidence presented and in
15 accordance with the instructions of law as I give them to you,
16 I must instruct you that during the trial you are not to
17 discuss the case among yourselves or with anyone else. There's
18 no texting, no Tweeting, no blogging, or any other
19 communication of any kind about this case or your experience as
20 a juror. Those are not permitted. Nor should you permit
21 anyone else to discuss this case with you or in your presence.

22 I must also instruct you that you are to avoid
23 reading, listening to, or viewing any news accounts concerning
24 this case.

25 I also instruct you that you are not to conduct any

1 independent research or investigation regarding this case.

2 If, during the course of the trial, you find it
3 necessary to communicate with me regarding anything pertaining
4 to this case, I simply ask that you provide a signed note to my
5 courtroom staff who will provide it to me.

6 And finally, I must instruct you that you are to
7 reserve your judgment concerning a verdict in this case until
8 after you have heard all the evidence, the instructions of law,
9 and the arguments of the attorneys and have retired to the jury
10 room to deliberate on your verdict with your fellow jurors.

11 The trial will now begin and as I briefly summarized
12 for you the respective positions of the Government and of the
13 defendants, I remind you that what we talked about last week,
14 it was just a summary and none of it is evidence. The only
15 purpose of that summary was for jury selection and the only
16 evidence that you may consider now in arriving at a verdict in
17 this case is the evidence that will be admitted for your
18 consideration during trial.

19 The trial will begin now with opening statements of
20 the attorneys. First the Government will make opening
21 statements, which is simply a descriptive -- a descriptive
22 outline of what the parties expect the evidence at trial will
23 show and next the defendants may make an opening statement
24 then, if they choose. They can reserve their opening statement
25 until a later time in the trial, and an opening statement is

1 neither evidence nor argument and is never required.

2 As the Government has the burden of proof, they will
3 present their evidence first and counsel for the defendants may
4 cross-examine the Government's witnesses. Then following the
5 Government's case, the defendant may, if they choose, present
6 evidence [sic] as well whom the Government may cross-examine.
7 After all the evidence has been presented, I will provide you
8 with detailed jury instructions on the law that applies in this
9 case and then the attorneys will make their closing arguments
10 to you and then you will retire to deliberate on your verdict.

11 Now, one thing that you need to remember is that we
12 do have forms -- I don't know if you've received them yet --
13 but we do have jury question forms. So at any time if you have
14 a question, you may write it down on those question forms.
15 Don't sign it, don't give me your jury number, your initials,
16 anything like that. We don't need to know who it is that has
17 the question; we just need to know what your question is.
18 Whether it's about something said during statements or during
19 evidence if -- sometimes we just inadvertently will fall into
20 the ABC, you know, we just call things by their nicknames and
21 you may not know those nicknames and we forget to explain them
22 to you, or sometimes you have other deeper questions. Whatever
23 it is, please write it down on the form, fold the piece of
24 paper in half, and we'll make sure to ask counsel to clarify
25 anything that needs to be clarified.

1 So we'll go ahead and begin now with the Government.

2 Mr. Myhre.

3 MR. MYHRE: Thank you, Your Honor.

4 THE COURT: Thank you.

5 MR. MYHRE: Thank you, Your Honor.

6 May it please the Court, counsel, ladies and
7 gentlemen of the jury, good morning.

8 On April the 12th, 2014, these four defendants before
9 you, defendants Parker, Stewart, Drexler, and Lovelien, got on
10 a bridge, armed with semiautomatic rifles, and threatened to
11 shoot law enforcement officer standing below them in a wash.
12 The officers were there executing, enforcing federal court
13 orders. The defendants showed them that they were willing to
14 shoot them to get them to stop.

15 No shots were fired that day. The officers could not
16 defend against the threat without risk to innocent lives. The
17 officers backed away as a result. These defendants rejoiced.
18 They said this needs to happen again.

19 These defendants took the law into their own hands
20 that day. They became the law by using the working end of a
21 rifle. They bent the will of the officers to their own and
22 made them back down.

23 Ladies and gentlemen, it's against the law, it's a
24 crime to use a rifle or any firearm to threaten the life of a
25 law enforcement officer while performing -- while that officer

1 is performing his or her duties. That's to use a firearm in
2 any way, whether it's to show it (indicating), display it
3 (indicating), carry it (indicating), point it (indicating), aim
4 it (indicating) --

5 MR. MARCHESE: Objection.

6 MR. MYHRE: -- any way --

7 MR. MARCHESE: Making legal conclusions.

8 MR. MYHRE: Your Honor, I'm simply stating the
9 Government's theory of the case.

10 THE COURT: All right. You may continue.

11 Overruled.

12 MR. MYHRE: -- when the purpose behind the use of
13 that weapon is to intimidate, interfere, impede an officer
14 while they're -- while he or she is performing their duties.

15 We will prove to you during the course of this trial
16 and through the evidence that's presented, that on April the
17 12th, 2014, these defendants got on a bridge on Interstate 15,
18 about 90 miles northeast of here, south of -- just south of
19 Mesquite, near a little town called Bunkerville. The bridge on
20 Interstate 15, the bridge that crossed this large, big dried up
21 ditch that the locals called the Toquop Wash, which we will
22 refer to throughout this trial as "the wash," we will show you
23 that when those -- when these defendants got on that bridge,
24 they towered above the officers below them, the bridge
25 extending some 40 feet from the bottom of that wash, upwards.

1 We will prove to you that the defendants carried,
2 brandished, and pointed rifles from that bridge. They did so
3 for the purpose of communicating to those officers below that
4 they were ready, willing, and able to shoot them.

5 You've heard the cardinal rule, never point a weapon
6 at anything you don't intend to shoot. Well, that rule applies
7 here. You will hear from the officers in the wash that day,
8 that they saw defendants pointing weapons at them. You will --
9 they could see guns being brandished at them from the bridge.
10 They could see the guns and rifles being carried and used in a
11 menacing fashion from the bridge. You will hear testimony that
12 the officers thought that they were going to die that day. You
13 will see -- excuse me. You will hear testimony that the
14 officers saw these defendants on the bridge working together,
15 moving, getting into position. You will hear the officers
16 describe how they were on the low ground, exposed, no natural
17 cover and concealment. You will hear how they saw the
18 defendants bobbing up and down on the bridge behind a concrete
19 barrier that lined the bridge of the Interstate 15. You will
20 hear how these defendants made them fear that they would be
21 shot.

22 So in this case, you will see . . .

23 (Brief pause in proceedings.)

24 That won't be the first technical difficulty you see
25 throughout the course of this trial.

1 So, in this case we'll be showing you pointing
2 (indicating), we'll show you brandishing (indicating), and
3 we'll show you carrying (indicating).

4 But this case isn't about just the position of the
5 gun, ladies and gentlemen; it's the mindset behind the user of
6 that gun, and that is what we intend to show throughout the
7 trial. Not only, obviously, the position of the gun, but the
8 mindset behind it.

9 The charges in this case are as follows, what these
10 defendants are charged with with respect to April the 12th:

11 Assault on a Federal Officer with a Dangerous Weapon;
12 Threatening a Federal Law Enforcement Officer; Extortion; Use
13 and Carry of a Firearm in Relation to a Crime of Violence, the
14 crime of violence being the assault on the federal officer,
15 threatening a federal officer, and Extortion; Obstruction of
16 the Due Administration of Justice; Interstate Travel in Aid of
17 Extortion; conspiracy to commit all of those above offenses;
18 Conspiracy to Impede or Injure a Federal Officer; Aiding and
19 Abetting the substantive offenses.

20 We will prove to you that these defendants assaulted
21 federal officers by intending to create fear and apprehension
22 in the officers by threatening to shoot them.

23 We will show you that they threatened a federal law
24 enforcement officer by -- through their conduct, intending to
25 communicate a threat of force and violence toward them.

1 We will show that they extorted the federal officers
2 by intending to obtain property from them through the use of
3 force and violence.

4 We will show that they obstructed justice by using
5 force and violence to stop the officers that day from enforcing
6 federal court orders.

7 We will show that they used and carried a firearm in
8 relation to all -- all of those offenses. The prime means of
9 exerting force, the prime means of showing force and violence
10 was the use of the firearm.

11 We'll show that they traveled from Idaho and Montana
12 to come to Nevada in order to show force and violence against
13 those BLM officers. We will show that they also used the
14 Internet, or what's otherwise known as a facility in interstate
15 commerce in order to use -- to commit these offenses.

16 And we will show that they worked together that day.
17 And by showing how they worked together and what their purpose
18 was in coming here, we will demonstrate that they conspired to
19 commit all these offenses. They conspired with others, they
20 conspired with themselves to commit these offenses and they
21 conspired and worked together to communicate -- or to impede
22 the federal officers and stop them from doing their jobs
23 through exerting force and violence against them.

24 As the Court has told you, the prosecution in this
25 case bears the burden of proof. So it is my job and

1 Ms. Creegan and Ms. Ahmed's job to bring forth the evidence
2 before you that proves these charges beyond a reasonable doubt.
3 It is a burden that is fair. It is a burden that is just. It
4 is a burden that we welcome, and it is a burden that we will
5 meet.

6 My purpose in standing before you now, as the Court
7 has previously indicated, is to provide for you, or outline for
8 you, what we anticipate -- we, the Government -- anticipate
9 will be the evidence throughout the course of the trial that
10 you will see and hear and observe through that witness box
11 right over there (indicating) and what -- how that evidence
12 comes in and how we anticipate that evidence will go to prove
13 the charges that we just have gone over.

14 So I'd like do that in three parts for you. The
15 first part I'd like to cover, what we anticipate the evidence
16 will show in terms of sort of the chronology of events leading
17 up to April the 12th, 2014; where these defendants came from,
18 how they got here, why they got here, what was going on to
19 bring them to Nevada.

20 As with all things in life, in all of our common
21 everyday experience, everything has a backstory and so does
22 April the 12th, and so we will be presenting a lot of evidence
23 during the course of the trial about the -- about the
24 backstory, the events leading up to April the 12th. And it is
25 important and it is important in order to provide context and

1 put in perspective for you what the events of April 12th, how
2 it -- what they mean and how -- how these events evolved, but
3 please, make no mistake, that the Government's case in this --
4 in this trial, the central focus, the central thrust of this
5 trial is what those defendants (indicating), did on that
6 bridge, 90 miles from here, on April the 12th, during a period
7 of about -- as you'll see as we go through opening, about 40
8 minutes, from the time they got on that bridge till the time
9 the BLM walked away. That's really the central focus of these
10 charges, the central focus of our case. So, after I cover the
11 prologue, then I would like to actually go into walking through
12 April the 12th, what we anticipate the evidence will show in
13 terms of the chronology of how that event unfolded and what the
14 individuals -- what these defendants were doing on the bridge.
15 And then the last part of my presentation this morning I'd like
16 to kind of circle back to these charges and then describe for
17 you the evidence that we anticipate -- how the evidence fits
18 into these various charges and how it's relevant to these
19 various charges.

20 As in any trial, ladies and gentlemen, when the
21 evidence comes in, it doesn't come in chronologically. There's
22 just too long a span of events we have here and we have a
23 number of witnesses, so, things may come in piecemeal and it
24 will be a little bit like putting together a jigsaw puzzle for
25 you. So, we would like to give you the big picture of what

1 that puzzle should look like at the end and we will be back
2 here at the close of the evidence to walk through the evidence
3 again and explain how the evidence fits into these charges.

4 So, that said, let's start with the backstory.

5 You'll hear evidence about how the officers in the
6 wash that day were duly sworn law enforcement officers from the
7 Bureau of Land Management and the National Park Service. They
8 were in the Bunkerville, Nevada, area conducting a gather of
9 cattle, of trespassed cattle. It's a -- an operation the BLM
10 refers to as an "impoundment." They were there carrying out
11 the Court orders to impound the cattle.

12 You'll see evidence of how a local rancher by the
13 name of Cliven Bundy had trespassed his cattle on public lands
14 for years. He had a long-standing dispute, a dispute that
15 lasted for more than 20 years with -- with the BLM over the use
16 of public lands for grazing purposes.

17 This trial is not really about those court orders or
18 the focus on the dispute between Bundy and the BLM, but suffice
19 to say that the dispute got to the point, Bundy didn't -- had
20 not paid fee -- grazing fees, had not obtained permits to run
21 cattle on the public lands. He had a small enclave of private
22 property, about 160 acres near Bunkerville surrounded by
23 hundreds of thousands of the acres of public lands. Those
24 public lands were managed by the Bureau of Land Management.
25 So, when Bundy and -- the dispute got to the point that BLM

1 sued Bundy in federal court. Bundy had his day in court, over
2 the course of a number of years, long, protracted litigation,
3 and he lost, and in 1998, the district court ordered them to
4 remove his cattle from the land. He refused to do so. A
5 number of events led -- culminated ultimately into 2013 where
6 the BLM went back to court again and the district court,
7 federal district court here in Nevada, issued two court orders
8 telling Bundy, again, to remove his cattle and if he failed to
9 do so, the BLM was authorized to remove the cattle for him.
10 The court orders issued, Bundy refused, BLM then went to
11 execute those orders, went out to Bunkerville to gather the
12 cattle.

13 The plan -- the cattle -- the number of cattle is
14 approximately somewhere around 1,000 head of cattle, estimated.
15 The BLM's plan was to conduct this operation in April of 2014
16 anticipating it would last somewhere, you know, three weeks to
17 a month beyond. Because of the expansive amount of property
18 we're talking about, it would take awhile to gather the cattle.

19 So, the BLM set up a makeshift police station near
20 Bunkerville in the Toquop Wash and you see a diagram or a map
21 of the Toquop Wash before you. It was just a big dried up
22 ditch and it was -- it's principally characterized by the fact
23 that it's near the Interstate 15 and provided a natural egress
24 and ingress for BLM to collect the cattle.

25 So the plan was to collect the cattle on public

1 lands, put them in trucks, truck them to this area (indicating)
2 and corral them and store them. This -- this makeshift police
3 station that I mentioned was called the ICP or the Incident
4 Command Post. You'll hear that term a lot during the course of
5 the trial.

6 And here's an aerial shot of the ICP (indicating).
7 So the . . . So on this map, the ICP was here (indicating).
8 The entrance to the ICP was off this southbound lane
9 (indicating). So, the top lane here is southbound toward
10 Las Vegas (indicating); this lower lane here (indicating) is
11 the northbound to Salt Lake City. The lanes actually run east
12 and west at this point here. So, off the southbound, the
13 entrance to the ICP was there (indicating). This is a wash
14 area (indicating). This is a -- the big ditch runs underneath
15 these bridges like that (indicating) and runs all the way
16 through up -- up and beyond through there. So, this part here
17 (indicating), the ditch, was not a natural way to enter into
18 it. It's -- it's very sandy, very rocky there. This was --
19 this area here (indicating), was the area where they could
20 enter with easy -- with ease, rather. So, and that's just a
21 picture of the ICP, where it was located.

22 So the BLM employed cowboys to gather the cattle.
23 They, again, gathered them from public lands, not from Bundy's
24 property. And once they got out to -- once BLM got out to this
25 area and they set up operations, Bundy became determined to

1 stop them.

2 The evidence will show that Bundy despised the BLM
3 and he wanted them gone. So when they came out there and began
4 the cattle gather operation, Bundy took to the Internet, he
5 took to social media, and he began asking help -- asking for
6 help, asking for people to come to Bunkerville to help him get
7 rid of the BLM.

8 So all of this is taking place in early April 2014.
9 And the evidence will show that as Bundy made his call for help
10 out through the social media, it drew the attention of an
11 individual by the name of Ryan Payne. And we will show that
12 Ryan Payne and Cliven Bundy entered into a conspiracy. A
13 conspiracy is just a fancy term for an agreement to do
14 something unlawful. And here, the agreement was that they
15 would use force and violence to back the BLM down in order to
16 get Bundy's cattle back.

17 Now, Payne, the evidence will show, is not a rancher
18 or a cowboy. There's no evidence to show that he had any
19 interest in cows or land whatsoever. What Payne was interested
20 in, the evidence will show, was a violent confrontation with
21 the government. He was on a mission to find an opportunity --
22 opportunity to use and threaten force and violence against
23 government officials. And the evidence will show that Bundy
24 gave him that opportunity.

25 Payne was the self-appointed head of an organization

1 that he named OMA, or Operation Mutual Aid. He pitched it as a
2 network of self-described militia units or like-minded
3 individuals who could mobilize at a moment's notice to confront
4 government officials who, according to Payne, were acting
5 unconstitutionally or tyrannically. Payne preached that OMA
6 members would and could use force and violence to resist the
7 enforcement of laws that were, according to him,
8 unconstitutional and excessive. During this trial you will
9 hear Payne's references to such terms as "tyrannical
10 government," "standing between tyrants and the oppressed,"
11 "tyrants trampling on the rights of people."

12 This case is not about Payne's ideology or his
13 beliefs. The same is true about the beliefs of these
14 defendants. You're free to believe anything you like in this
15 country and this case is not about beliefs; it is about
16 conduct. Having beliefs is one thing; acting on them is an
17 entirely different matter.

18 The evidence will show that Payne saw Bundy Ranch as
19 his opportunity to see OMA, what he conceived of as OMA, become
20 a reality, to use it to actually confront the federal
21 government and federal government officials.

22 Recall that I mentioned that Payne felt that --
23 excuse me -- that OMA would be used to mobilize militia units.
24 You will see evidence and hear evidence about Payne's
25 mobilization efforts, principally using the Internet, social

1 media, e-mails, and so forth. He claimed that he could
2 activate the militia units to form what he described as QRF, or
3 a quick reaction force, that would deploy and mobilize in a
4 moment's notice to reach some hot spot where officials were
5 acting unconstitutionally.

6 To Payne, militia units were groups of private
7 citizens who organized themselves and trained in military
8 tactics, military-style weapons, but were not affiliated with
9 any government sponsored or government sanctioned military
10 force or organization. These groups determined among
11 themselves what they would do, how they would train, if at all,
12 and what their mission would be.

13 So, around April the 7th Bundy talked with Payne, and
14 he agreed -- he, being Bundy -- agreed to invite OMA and its
15 militia units to Bundy Ranch to help him to use the threatened
16 force against the BLM in order to rid himself of the BLM and
17 get the cattle back. You will see evidence during the course
18 of this trial that Bundy designated Payne as his so-called
19 "militia coordinator" for the Bundy family. You will hear and
20 see evidence that after Bundy joined forces with Payne, Payne
21 put out a call to arms or what he described as a "militia
22 alert" mobilizing the militia units that affiliated with OMA
23 and asking them to come to Bundy Ranch.

24 You will hear evidence that defendant Ricky Lovelien
25 responded to that call. Lovelien was a member of a militia

1 unit calling itself the Montana State Defense Force. He
2 referred to himself as Captain Lovelien. You will see evidence
3 that shortly after Payne first contacted Bundy, he was in
4 contact with Lovelien. We will show you that from April 7th
5 on, Lovelien assisted Payne in sharing information about Bundy
6 Ranch, recruiting militia members to come to Bundy Ranch,
7 encouraging them to come to Bundy Ranch as part of OMA and
8 their efforts to mobilize.

9 By April the 10th, both Lovelien and Payne were on
10 the ground at Bunkerville, having both traveled from Montana --
11 both Payne and defendant Lovelien lived in Montana -- and they
12 came looking for the confrontation that they had dreamed about.

13 Shortly after arriving in Bunkerville, OMA, through
14 Payne, sent out an e-mail to members of OMA's -- OMA and the
15 OMA organization setting forth what the objectives were of why
16 they were there. And you'll see evidence of those objectives.
17 Among those objectives were to free the public lands for
18 Bundy's use and to return his property to him, that is, his
19 cattle to him. That meant getting the BLM out. Because by
20 this time, BLM had gathered a number of his cattle -- they had
21 gathered close to 400 head of his cattle -- and they were still
22 in the process of gathering cattle off the public lands.

23 After arriving Bunkerville -- in Bunkerville he sent
24 out an alert, not only setting out these objectives, but
25 calling for more forces, more militia units to come to Nevada.

1 The evidence will show that after Payne and Lovelien
2 arrived in Bunkerville, armed people calling themselves militia
3 began flooding to Bundy Ranch by the hundreds, answering the
4 call to arms that had been put out earlier by Lovelien and by
5 Payne.

6 Now, defendants Parker, Stewart, and Drexler lived in
7 Idaho. They were not, at the time, a member of a militia unit,
8 but they were interested in it and had trained with it -- had
9 trained for it, and they were like-minded, the evidence will
10 show, to Payne. The evidence will show that they, too,
11 answered the call to arms and they came to Bunkerville looking
12 for a fight.

13 The evidence will show that they drove some 12 or 14
14 hours overnight to get from Idaho to Bundy Ranch, a place they
15 had never been before, to support a person they never heard of
16 before. They brought with them their rifles, their ammunition,
17 and they brought body armor. Like Payne, there is no evidence
18 that any of them cared about cows or ranchers; they were
19 looking for a reason to fight and like Payne, Bundy Ranch gave
20 them that reason. They were looking for a confrontation with
21 the government and here was the opportunity.

22 The evidence will show that by April the 12th
23 hundreds upon hundreds of people had flocked to Bundy Ranch,
24 many of them with guns, many of them being militia and/or
25 militia like-minded people. Others were there as well to show

1 their support, people who didn't necessarily affiliate with any
2 militia, but were there to protest, to make their views known,
3 to hold signs, to yell, to scream, to shout. The media was
4 there also. By this time, by the -- April 11th, April 12th,
5 the media had heard of Bundy, had heard about his calls to rid
6 himself of the BLM and they, too, began flocking to Bundy
7 Ranch, media of all sorts, national media, local network,
8 alternative media, bloggers.

9 So, by April the 12th, Bundy had erected a rally site
10 near his ranch off of State Route 170 just south of the
11 Interstate 15, about five miles distance from the ICP. Now,
12 this rally site consisted of a makeshift stage and two large
13 flag poles and it was from here that Bundy and his supporters
14 gathered, and they rallied. And they would hear speeches, sing
15 songs, you know, talk about the events going on. And you will
16 hear this referred to -- this area referred to throughout the
17 trial as either the rally site or the staging area. You will
18 hear how Lovelien became in charge of the security for this
19 area.

20 By April the 12th Bundy had also established a
21 militia camp near that rally site. This was -- this was an
22 area designated for those who identified with militia, who had
23 guns. This is where those people stayed.

24 There was also another campsite for people who did
25 not affiliate with militia, people who were there to protest,

1 to show their support for Bundy.

2 So that's the backstory leading up to April the 12th.
3 Now what I would like to do is shift gears a little bit on you
4 and then cover the events of April the 12th up to and through
5 the confrontation in the wash.

6 So by the morning of April the 12th, there were so
7 many guns in the area of the Bundy Ranch area where this
8 impoundment was being conducted and the hatred and the rhetoric
9 against the BLM had grown so toxic that the BLM decided to call
10 off the impoundment. They announced that they would be
11 removing -- that they would cease their operations and would be
12 removing their assets from Bunkerville. The BLM's plan was to
13 stop their operation and then find an area -- find a place
14 where they could take the cattle that they've corralled -- as I
15 mentioned, about 400 head at this point in time -- and the plan
16 was to ship them to California, to sell them at an auction
17 house there.

18 The sheriff of Clark County, too, became concerned
19 about the potential for violence and the level of tensions that
20 were -- that were being -- that were growing each day out
21 there, so he decided that he would travel to Bundy Ranch as
22 well to meet privately with Cliven Bundy, to tell him that the
23 BLM was ceasing their operation in the hope that it would
24 ratchet down the tension. Remember, I described for you the
25 rallies that had been going on and with the -- with those

1 rallies came a great deal of emotion and emotion mixed with
2 guns, as you will hear, is never a good mixture.

3 So the sheriff went to Bundy Ranch to meet with
4 Mr. Bundy to, hopefully, dial back some of that emotion. By
5 now, however, Bundy had become essentially a rock star. He was
6 surrounded by media everywhere he went. He had militia as body
7 guards. He was chauffeured in a Humvee. He was the center of
8 attention. So when the sheriff showed up, Bundy refused to
9 meet with him privately, insisted instead that he meet on a
10 stage at the staging area on that makeshift stage that I
11 described for you. So it was in front of this -- it was on
12 this stage, in front of hundreds and hundreds of Bundy
13 supporters, that the sheriff met with Cliven Bundy and in the
14 audience that day were the defendants as well, defendants
15 Stewart, Parker, and Drexler, and Lovelien.

16 So the sheriff took the stage before this throng of
17 supporters and this is what they heard him say. He told the
18 crowd and Mr. Bundy that he was there to make a very emotional
19 issue safe. He told them the BLM would be leaving, that they
20 would be removing their assets from Clark County; that the
21 public lands were now going to be opened. And this was
22 received very cheerfully by the whole crowd. There was a great
23 deal of applause and cheering and yelling and screaming and
24 clapping and so forth. Someone from the crowd asked, "Well,
25 what about the cattle? What about the cows?" And the sheriff

1 said, "Well, the cows are where they've always been. You and
2 I" -- meaning Cliven -- "we need to sit down and talk about
3 that."

4 At that point Cliven Bundy took the microphone and he
5 began speaking, and Bundy was unmoved. He amped up the crowd
6 and began making impossible demands of the sheriff. The
7 evidence will show that he told the sheriff that he was not
8 there to negotiate, that he was there to put legs under him.
9 He told the sheriff, disarm the Park Service, meaning the BLM.
10 He also told him to knock down the toll booths that are at the
11 entrances to our national parks, to get county bulldozers and
12 knock those down. He told him that -- when he disarmed the
13 BLM, he wanted the arms brought back to the stage and stacked
14 at the stage for them. And he told the sheriff he wanted him
15 back here in one hour.

16 The crowd began cheering. And the sheriff, realizing
17 he could not mollify Mr. Bundy at that point, left the stage.
18 And as he was leaving the stage, almost as if on queue, 40-plus
19 horses, people on horses show up and line the hills above the
20 stage area carrying flags and yelling and screaming, and the
21 sheriff leaves. And as the sheriff was leaving, the crowd
22 began catcalling saying, "Sheriff, do your job. Do your job."
23 "Get rid of those illegal guns." "The BLM has no right to
24 carry guns." "Do your job or get the hell out of here," were
25 their words.

1 So the sheriff left the rally site and went to the
2 ICP to report what happened. He left the -- his assistant
3 sheriff, then assistant sheriff, now current sheriff,
4 Joseph Lombardo, in charge of security at the ICP in the event
5 it became necessary. Metro had earlier that morning staged a
6 number of officers just south -- well, actually, just west, but
7 south, on the southbound lane up from the ICP, staged a number
8 of officers to be able to respond quickly if something -- some
9 event occurred where they -- it became necessary to add
10 security.

11 So, after the -- Mr. Bundy's appointed hour came and
12 went and the sheriff did not return to the stage, Bundy took to
13 the stage again in front of his supporters. And this time he
14 acknowledged that the sheriff hadn't come back and he now told
15 the crowd, he said we're going to turn -- he was going to
16 return his cattle back out into the open range where they
17 belong. He told the crowd, we're going to get the cattle out
18 of the compound by the freeway and we're going to open up the
19 gate and we're going to let them out. Told the crowd, we're
20 going to go up the freeway and block the freeway. When you get
21 to the Toquop Wash, he told them, get out of your cars and then
22 we're going to open the cattle pens. The horses are going to
23 go up the Powerline Road and meet us underneath the Toquop
24 bridge. "Get her going, cowboys. Let's go git 'er done." At
25 this point, hundreds of Bundy supporters now became his

1 followers and they jumped in their vehicles and they took off
2 to the Toquop Wash.

3 The evidence will show that these defendants heard
4 that speech, they heard those instructions; that they left the
5 rally site where they were unarmed and they got their weapons,
6 they got their rifles, their clips of ammunition, and they got
7 in Rick Lovelien's truck and together they drove to the ICP,
8 some five miles distance. The evidence will show that they
9 went to where the BLM was.

10 So I'd like to just walk through for you now how
11 things unfolded on the bridge that day and how the events
12 culminated ultimately to the BLM backing down.

13 So, after Cliven Bundy gave the command to get the
14 cattle, the staging area is roughly down in this area here
15 (indicating). They left by car, hundreds of his followers,
16 went up State Route 270, got on the interstate, and then went
17 northbound on the interstate -- excuse me -- to the ICP.

18 The horses took off from the staging area and
19 followed a route somewhere -- something similar to this
20 (indicating) and then they also headed towards the ICP.

21 Now, we're talking hundreds of people here. So, as
22 around 11:20 -- remember, I told you, this was the entrance to
23 the ICP here (indicating). Around 11:20, the first of the
24 followers showed up in their vehicles and they began
25 congregating here (indicating), across from the entrance which

1 we will call, and which BLM called, Post 1. That's why I put a
2 little 1 there (indicating). This is actually south of this
3 northbound lane. There's a little area that -- a little
4 turnoff there, and everybody began congregating into this area
5 (indicating), turning off, but because of the traffic, the
6 amount of traffic and because people were slowing down so much
7 and jamming the roads, traffic was backed up for -- for a long
8 distance. So everybody started piling in this assembly area.

9 The evidence will show that Metro, hearing that
10 Cliven Bundy had given the command to get his cattle, also
11 responded, and remember, I told you they had a little staging
12 area along the southbound lane. They -- they responded. They
13 came up as well as people were beginning to flood into this.
14 So it was right around 11 o'clock that Cliven Bundy told his
15 crowd to go get the cattle, but it was about 11:20 when the
16 first of the cars started showing up and that's -- and it was
17 shortly thereafter that Metro shows up.

18 So Metro pulls into the ICP area here (indicating) at
19 Post 1 and they take over security from the BLM. The BLM had
20 been -- had their law enforcement officers in their various --
21 in position here at Post 1. So, as -- as Metro comes in, BLM
22 pulls back, they take over essentially the Post 1 area and over
23 time, they form what's called a "skirmish line" here in the
24 median of officers to block anyone coming from here
25 (indicating) to come through this entrance into the ICP.

1 Now, remember, I told you this was the natural means
2 of egress and ingress. It was -- was an improved road. People
3 could get through easily. Down in the wash, not so much, it
4 was very bad terrain and so forth, but it was passable. So
5 what BLM had done, even before the events of April 12th, had
6 erected a makeshift fence underneath this southbound lane here
7 (indicating), and they it called this post here, this point
8 (indicating), Post 2. That's a horrible 2, but that's the best
9 I can do. So that's -- that was Post 2. And you'll be hearing
10 throughout the course of this trial references to Post 1 and
11 Post 2.

12 And the purpose for -- so, as people began showing up
13 here, BLM had a small group of officers that were standing
14 security down here at Post 2 and as people began flooding into
15 here (indicating) and as Metro pulled into Post 1, more BLM
16 officers came down, drove down the wash to hold Post 2.
17 Ultimately, somewhere during the course of these events,
18 between 25 to 30 law enforcement officers at Post 2.

19 Now, as the people gather, there's a group of people
20 led by Ammon Bundy that go down this area here (indicating) and
21 into the wash and begin to form underneath the bridge of the
22 northbound 15. And recall that Cliven Bundy had said we'll
23 meet at the Toquop Wash. Well, that is where the Toquop Wash
24 was. So people began to gather under the northbound bridge and
25 wait there.

1 Right around close to noon, the horses coming from
2 the Powerline Road I described, start coming up this way
3 (indicating) and they make their way down that road and they,
4 too, come through the wash -- come to the wash. And right
5 around noon, the horses have gathered with the people and as
6 they get here they push out, they push out from underneath that
7 bridge under the northbound into the middle of the area between
8 the two bridges and they form a line here (indicating),
9 opposite the post where -- at Post 2 where the law enforcement
10 officers from BLM are hold -- are conducting security.

11 The evidence will show that as these horses pushed
12 through on this -- underneath that bridge, the defendant --
13 defendants Parker, Stewart, and Drexler get on the bridge.
14 They are -- they are clearly visible from -- by the law
15 enforcement officers. They're up on this bridge. Other people
16 are gathering on the bridge. They are one of the few with guns
17 up on that bridge. And their weapons are visible. They're
18 standing. There's evidence that they're pointing. There will
19 be evidence that they were, you know, carrying their weapons in
20 a menacing fashion.

21 The people in this wash now that have gathered there,
22 they're about 270-plus in number and they're people of all
23 types. There are militia in that -- in the wash. There are
24 people with guns. There are protestors in the wash, people
25 with signs, people yelling and screaming, and there are about

1 40 horses in that wash as well. As I said, there are about 270
2 in the wash, probably around 400 total if you count the
3 bridges, both northbound, southbound, because people start
4 gathering on this southbound bridge (indicating) as well, and
5 the northbound (indicating), overlooking BLM's position and
6 then what ensues is just people demanding that -- the people in
7 the wash were demanding the BLM to release the cattle. Said,
8 "Give us the cattle." "Give us the cattle." The people on the
9 bridge were screaming at the law enforcement officers there,
10 saying all manner of things toward them.

11 And this went on from about -- till about 12:00 --
12 from about 12:00 to about 12:14, 12:15, 12:16, somewhere in
13 there. And it was at that point that this line that formed in
14 the center (indicating) moved forward to where the BLM officers
15 were, just began pressing forward.

16 (Photo displayed.)

17 So here you see -- this is an aerial shot of the line
18 that had formed across the wash. The BLM position -- the
19 makeshift barrier is here (indicating) and the BLM officers are
20 behind that barrier here (indicating) and then they extend up
21 the wash further. You'll see other aerial shots where they
22 essentially have sort of an in-depth position.

23 By 12:18 that line had pushed up, up against that
24 gate and it was at that point that the officers were really
25 struggling because they were vastly outnumbered. They only

1 had, like I said, between 25, 30 officers. There were guns in
2 this crowd. There were horses in the crowd. There were all
3 manner of -- there were women and children in this crowd. The
4 BLM officers didn't know whether they were going to breach that
5 and if they did, how they would deal with the horses, but you
6 will hear testimony throughout -- in the course of the trial
7 that for the officers in the wash, the game changer for them
8 were the guns on the bridge. There was little they could do
9 about that and I'll go into that in a little bit.

10 So as this presses forward, the evidence will show
11 that by this time defendant Lovelien is on the west side
12 portion of that bridge area. Defendants Parker, Stewart, and
13 Drexler go down and take a prone position -- or Parker --
14 excuse me -- Drexler and Parker go down and take a prone
15 position behind the concrete barriers with their weapons aimed
16 at the BLM officers as that line is moving forward.

17 Now, while all this was going down in the wash,
18 Sheriff Lombardo, then Assistant Sheriff Lombardo, was up at
19 Post 1 and he was seeing events unfold at Post 1 and he made
20 the decision that the cattle should be released. You'll hear
21 evidence about how he found Dave Bundy and you will hear
22 references to Bundy's sons, Dave, Ammon, and Ryan, who were
23 also on the ground out here (indicating) at the Toquop Wash;
24 Cliven Bundy remained back at the rally site, and it was
25 Ammon Bundy leading this group down here in the wash

1 (indicating), Ryan Bundy and Dave Bundy up near Post 1 and the
2 sheriff found Dave Bundy and attempted to negotiate with him
3 and it became very clear to the sheriff that what everybody
4 wanted was the cattle and the sheriff assessed the situation,
5 saw the number of guns, saw the number of people, saw what
6 resources they had, saw that they were outmanned, saw that they
7 were outgunned and he decided that the cattle should be
8 released. So once the decision was made to release the cattle,
9 the BLM officers down in the wash backed away from the gate.

10 So, from about -- at around 12:40 the BLM begins to
11 push back. By 2 o'clock the BLM left the ICP altogether.
12 They -- all of their personnel packed up what they could grab,
13 loaded them in their vehicles, and left because of the demands
14 of the Bundy -- of the Bundys that they leave the area.

15 By 3 o'clock the pens were opened and the cattle were
16 released. And everybody rejoiced and said that the west had
17 now been won (indicating).

18 After -- after this event, after the BLM had backed
19 away from the gate, defendant Parker was interviewed by a
20 reporter. He said this needs to happen again. Get on a
21 bridge, show force.

22 So that, in a nutshell, is what we anticipate the
23 evidence will show in terms of sort of the chronology of events
24 that occurred on April the 12th, how these things unfolded.

25 Now, I would like, the third part of this, to shift

1 gears again on you and go back to the charges in this case and
2 then summarize for you the evidence that we anticipate
3 presenting in support of those charges.

4 Now, as I said, you know, a lot of the lead-up and
5 the build-up and all that is helpful to provide context, but
6 the focus of this case really is between 12:00 and 12:40,
7 approximately, while the BLM is in their position at Post 2 and
8 these defendants are on the bridge and the people in the wash
9 are making their move forward -- line up and then make their
10 move forward.

11 First, as the judge explained, the charges are
12 contained in something called an Indictment which is really
13 just a fancy word for the charging document in this case. And
14 as I've already listed them for you, but I want to talk a
15 little bit about each one of these and walk you through some of
16 the evidence that we anticipate that will be presented.

17 First of all, assault with a federal officer, we will
18 prove to you that the officers in the wash that day were duly
19 sworn law enforcement officers, serving with the BLM and the
20 National Park Service. We will show that they were there
21 executing federal court orders to remove the trespassed cattle
22 belonging to Cliven Bundy from the public lands.

23 We will show that these defendants, by their conduct
24 on that bridge, instilled fear of bodily injury or death on
25 these officers. The officers that were at Post 2, the officers

1 that were there performing their duties of guarding Post 2 to
2 protect against any intruders into that area. After all,
3 they're there protecting not only the cattle, which are -- you
4 know, can be dangerous if let loose in any event, but also
5 there's a lot of equipment and civilian personnel that are
6 there as well. So the cops are doing their jobs what they do;
7 they guard and protect people and property. That's what they
8 were doing at Post 2.

9 You'll hear testimony from the officers that as that
10 crowd in the wash formed, they observed people with long guns
11 on the bridges. They will describe what these defendants were
12 wearing, their positions on the bridge, how they moved, how
13 they appeared to be working together, and that they brandished
14 their weapons and pointed their weapons at them.

15 They could see the individuals who are now identified
16 as Lovelien, Parker, Drexler, and Steward with their weapons
17 visible, menacing and threatening.

18 You will hear the officers say that the weapons on
19 the bridge were the game changer for them. They did not know
20 how to deal with the hundreds of people advancing on them in
21 the wash when there were guns on the bridge as well as there're
22 guns in the wash as well.

23 You'll hear officers testify that they thought they
24 would die that day because of the -- their position. They were
25 on low ground, as you can see. They were exposed. They were

1 unable to defend themselves for fear that a shot would spark a
2 firefight and they'd -- ignite a fire fight I should say, and
3 that unarmed men, women, and children might be killed or
4 injured as a result.

5 We will show that these defendants intended to use
6 their weapons to instill fear into the officers and we will
7 present for you a detailed timeline showing images captured
8 from a number of different sources.

9 Now, in the modern era we live in we think of things
10 being caught on video. Almost every moment of our lives,
11 there's a surveillance camera somewhere capturing some images
12 or sounds involving our day-to-day activities, but there were
13 no surveillance cameras out there in the traditional sense.
14 But there was an FBI surveillance plane that had been
15 dispatched to the area once it was -- once the -- it was
16 determined that Mr. Bundy had sent these people off to gather
17 his cattle. And so you'll be seeing a great -- some
18 surveillance video, but those were from several thousand feet
19 in the air and the images are good, but they're not necessarily
20 all that detailed, although we will present images for you that
21 have an incredible amount of detail. So, we have the aerial
22 surveillance that provides us a basis for the timeline, but we
23 also have a great deal of photographs and video that were
24 captured by conventional media, alternative media, people that
25 were there as bystanders or were involved in the events that

1 were capturing images and sounds with their -- with their
2 smartphones or with other devices.

3 You'll also see a great deal of images captured and
4 downloaded from social media from various individual's Facebook
5 pages and so forth.

6 So, by marrying up the images we've been able to
7 capture, we'll be able to set forth for you a very detailed
8 timeline as to when the defendants were on the bridge, what
9 they were doing at certain times in relationship to what was
10 going on in the wash.

11 So one of the key aspects of an assault on a federal
12 officer is proving intent, so we anticipate that we will prove
13 the intent by the actions of these individuals on the -- on the
14 bridge. The timeline will show you their positions; they will
15 show -- they will show you that Lovelien and another individual
16 by the name of Todd Engel occupied the west portion of the --
17 of that bridge, not on the bridge, but off the bridge; that he
18 occupied -- there was a state trooper there on that end of the
19 bridge who had arrived on the scene trying to sort things out
20 and figure out what was going on -- what was going on.

21 Lovelien and Engel occupied that officer's time, Lovelien,
22 carrying his rifle and patrolling that end of the bridge.

23 We will show you as the horses pushed through into
24 the wash that Parker, Stewart, and Drexler were on the bridge
25 and that they had a clear line of sight toward the officers

1 guarding the gate, that they made their presence known to the
2 officers and their weapons visible. We will show that as the
3 crowd in the wash pushed forward, Parker went into a prone
4 position; that he had a Saiga semiautomatic rifle; that that
5 rifle had the clip in it; that he was aiming at officers
6 through a gap in the barrier on the northbound 15, his finger
7 near the trigger, his eyes peering through the sights, his
8 magazine in, his bolt forward. He was in the firing position.

9 We'll show that as that line pushed forward to the --
10 to the gate, Drexler changed his position from crouched behind
11 the barrier, moving from behind the barrier to Parker's left to
12 a gap in the barrier to Parker's right (indicating), where he,
13 too, took a firing prone position with his rifle, his weapon
14 pointed at the officers, his hand on the pistol grip, head and
15 eyes in the position to sight the weapon showing that he, too,
16 was prepared to fire the weapon.

17 We will show defendant Stewart taking different
18 positions on the bridge, brandishing his weapon, making it
19 visible to the officers in the wash (indicating). We will show
20 that once on the bridge, the defendants stayed there the entire
21 time until well after the BLM officers withdrew from that --
22 from their position.

23 But we intend not only to present evidence of the
24 intent by the actions of the defendants on the bridge, but we
25 also will show you that at least six months before Bundy Ranch

1 that some of these defendants had already formulated in their
2 mind that they wanted to have a confrontation with the federal
3 government. So we'll say -- so we intend to show you not only
4 their intent by what they said and did on that bridge, but what
5 they said and did before they ever got to Bunkerville and
6 before they ever went on that bridge.

7 So we will show you that at least six months before
8 Bundy Ranch Parker claimed that he had had enough; that he
9 began training with weapons and preparing for "a failure of the
10 government"; that he saw his opportunity to put his training to
11 use and that Bundy Ranch represented the time to take a stand.

12 We will show you that he learned that militia were
13 being called to Bundy Ranch and that he answered that call. We
14 will show you a Facebook communication that show that Parker
15 anticipated there would be shooting before he even went to
16 Bundy Ranch.

17 The evidence will show that he gathered his friends,
18 Stewart and Drexler, and together they drove to Bundy Ranch
19 with their rifles and ammunitions and body armor.

20 The evidence will show that when we got to Bundy
21 Ranch -- Parker, Drexler, Stewart -- that they identified with
22 the militia, that they went to the militia camp and they began
23 standing security details. We will show that there they met
24 with defendant Rick Lovelien who was the head of security.

25 We will prove that all the defendants were present

1 and heard the sheriff and Cliven's speeches -- Cliven Bundy's
2 speeches. We will show that they were present when the sheriff
3 did not return and they were present when they heard Bundy tell
4 the crowd go get his cattle. We will show that after Bundy
5 spoke, defendant Parker posted almost contemporaneously on his
6 Facebook page that the sheriff did not come back and that they
7 were going to free the cattle by any means, that they would not
8 be lied to.

9 We'll show that they left that rally site and got
10 their rifles and their ammunition and they drove to that
11 bridge, and that they drove with Lovelien, they drove together,
12 and they drove there armed.

13 After the BLM backed away, we will show you that
14 these defendants rejoiced, they glorified in it. They said
15 that it needs to happen again.

16 Now let me talk a little bit about the charges of the
17 threats, obstruction of justice, extortion, use and carry of a
18 firearm. These are all very closely related to the charge of
19 assault with a federal officer.

20 Unlike an assault on a federal officer where the
21 Government must show that the officers actually apprehended
22 fear, or that a reasonable officer in those circumstances would
23 apprehend fear, here we must show that the defendant intended
24 to communicate a threat, and the threat -- a threat can be by
25 words or conduct. In this case, we will demonstrate the

1 conduct of those defendants on that bridge was intended to
2 communicate a threat.

3 We will show that any reasonable person looking at
4 the images that you will see and the -- hearing the testimony
5 that you will hear would interpret, or would foresee, that this
6 type of conduct would be interpreted by the BLM as a threat.

7 Extortion requires that force and violence be used in
8 an attempt to obtain property from another. We anticipate the
9 evidence will show that the cattle were in the possession of
10 the BLM; that these defendants were part of a show of force, a
11 show of force in the wash, a show of force up at Post 1, a show
12 of force from that bridge, they were all part of the -- all
13 part of this massive, massive assault, massive show of force;
14 that that show of force and violence was for the purpose of
15 releasing the cattle. And while the cattle may not have meant
16 too much to these defendants individually, it was symbolic of
17 what they came for in the first place, to back down the
18 government. So, the BLM, the cattle released because of the
19 amount of force and therefore, that fulfills the extortion
20 element of this case.

21 Interstate Travel in Aid of Extortion. This count
22 alleges that the defendants traveled in interstate commerce or
23 used to facilitate in interstate commerce in the aid of
24 extortion and we will show the travel of these defendants from
25 Montana in the case of defendant Lovelien and Idaho in the case

1 of Parker, Drexler, and Stewart.

2 The Obstruction of Justice, you will see the evidence
3 of the court orders. That is the basis, the gravamen of the
4 Obstruction of Justice charge. The evidence will show that
5 through the use of force and violence the BLM could not
6 execute, complete -- completely execute those orders. Those
7 orders, as you will see and you will have evidence of them,
8 said to remove the cattle from the public lands. The public --
9 the cattle were released, they were put back on the public
10 lands. The gather had been stopped. So they were -- the
11 execution of those orders had been impeded, thwarted, and
12 obstructed by the force and violence displayed by the
13 defendants.

14 Now, aiding and abetting, aiding and abetting is
15 simply to help, to incite, to encourage another to commit a
16 crime. We anticipate there will be evidence of aiding and
17 abetting in this case as well. We will show that Lovelien
18 aided and abetted Parker and Stewart and Drexler by driving
19 them to the I -- ICP from the rally site. We will prove that
20 Stewart helped Parker by acting as his spotter and getting him
21 a backpack to help brace his arm and improve his firing
22 position from behind that barrier.

23 Then we will present other evidence of how they
24 assisted and encouraged one another just by their presence.
25 They reinforced each other. Lovelien occupying the time of the

1 state trooper on the west end of the bridge. Parker and
2 Drexler moving together. All that works together to help to
3 encourage each other and -- and incite each other.

4 Conspiracy. As I said before, a conspiracy is simply
5 a fancy term for an agreement to do something unlawful. And we
6 anticipate that the Court, at the close of this evidence, will
7 instruct you don't necessarily need a written agreement to form
8 a conspiracy; it can be simply an understanding, a wink and a
9 nod.

10 MR. MARCHESE: Your Honor, objection. Arguing the
11 law.

12 THE COURT: It's a correct statement of the law.
13 You may proceed. Overruled.

14 MR. MYHRE: But in this case, we actually have a
15 writing. We have the objectives that were put out by OMA that
16 you will see. And so the basic agreement here, the conspiracy
17 began with Payne and Cliven Bundy agreeing that they would
18 bring force and violence to Bundy Ranch; that they would bring
19 militia; and that their intent was to use the militia to
20 display force to get the BLM to back down. Now, once -- once a
21 conspiracy is formed, others can join the conspiracy
22 downstream. It's not necessary that every person in the
23 conspiracy be there for the very inception of it, the very
24 beginning of it, sitting in the back room with somebody and
25 talk about it. They can join by simply knowing what the

1 objectives of that conspiracy are and acting in a way to intend
2 to advance those objectives.

3 So we have the basic e-mail; we have the objectives.
4 And we will show that through the Facebook postings and through
5 other evidence that Lovelien became linked to Payne almost from
6 the very moment he met Cliven Bundy. And when he became linked
7 to Payne, he advanced -- he knew of the objectives because he
8 received the objectives from Payne, and he helped advance those
9 objectives by recruiting militia, by helping to coordinate
10 militia, by helping to recruit others to come to Bundy Ranch,
11 and by participating in the very events of April the 12th
12 themselves. That, we anticipate, will be the evidence to prove
13 how Lovelien not only joined the conspiracy, but advanced the
14 objectives of the conspiracy.

15 Similarly, we will show that Parker, Drexler, and
16 Stewart, likewise, answered the call to arms that were part of
17 the conspiracy; that is, to bring people to Bundy Ranch; that
18 before they left for Bundy Ranch, they knew that the militia
19 were called and that they knew there may be shooting. Now,
20 they may not have known --

21 MR. MARCHESE: Objection. Misstates the evidence.

22 THE COURT: There's no evidence yet; it's what the
23 Government hopes to prove. Opening statement.

24 Overruled.

25 MR. MYHRE: So the evidence, we anticipate, will show

1 that while there will be no evidence to say that Parker,
2 Drexler, and Stewart knew precisely what they would be doing
3 when they got to Bundy Ranch, they knew broadly that there was
4 a confrontation brewing with the BLM between Bundy and the BLM,
5 and once they got to Bundy Ranch, once they heard the speech by
6 the sheriff, once they heard Cliven Bundy's response to the
7 sheriff, once they heard Cliven Bundy say go get the cattle,
8 then they knew, at that point, the evidence will show, what the
9 objective of the conspiracy was, to get the cattle, to back
10 down the BLM.

11 So we anticipate the evidence will show that Drexler,
12 Parker, and Stewart joined the conspiracy -- the conspiracy,
13 the broader conspiracy being Bundy, Payne, militia -- they join
14 as part of that when they get to Bundy Ranch. They join and
15 advance the objectives of that conspiracy when they decide --
16 when they make the decision they're going from that stage up to
17 the ICP with their guns.

18 Now, all of that is -- you'll -- you'll be instructed
19 at the end -- close of evidence about conspirator liability and
20 the significance of the conspiracy is that each member of a
21 conspiracy is responsible for the -- those events or that
22 part -- excuse me -- for conduct that occurs as part of that
23 unlawful agreement that is reasonably foreseeable in the
24 natural probable consequence of the conspiracy. So the
25 evidence will show that, as a probable consequence of this

1 agreement, was the assault on the federal officer, was the
2 extortion of the cattle, was the obstruction of justice, was
3 the travel in interstate commerce, was the use of the Internet
4 to help achieve the extortion.

5 And we believe the evidence will show that once it --
6 those events were part of the conspiracy, that Lovelien, now as
7 a member of that conspiracy, was responsible for Parker's
8 actions; Parker's responsible for Lovelien; Stewart's
9 responsible for Drexler; Drexler's responsible for everyone.
10 Everybody in the conspiracy is responsible for everybody else's
11 actions, and that's the significance of a conspiracy, that's
12 the significance of conspiracy liability or co-conspirator
13 liability, if you will.

14 But there's another conspiracy alleged as well, and
15 that's the conspiracy to impede or injure a federal officer.
16 And here we will show -- we anticipate the evidence will show
17 that by their actions, these defendants formed an understanding
18 as to why they were on that bridge, that they were there to
19 impede, to thwart, and stop those federal officers from
20 engaging in that conduct -- excuse me -- in engaging in
21 enforcing the court orders. We will show that, as with the
22 evidence that we intend to introduce with respect to the other
23 conspiracy, that these thoughts were formed well before they
24 got to Bundy Ranch, that these thoughts were formed that there
25 was going to be a confrontation with BLM, that they were there

1 to back them down.

2 So the evidence for the conspiracy to impede or
3 interfere, which is we'll sometimes refer to as a 372
4 conspiracy under 18 -- Title 18, United States Code, 372, is
5 identical to the other conspiracy, which is a conspiracy to
6 commit a federal offense, which is incidentally, a 371
7 conspiracy, Title 18, United States Code, Section 371. Those
8 two conspiracies are very closely related. The difference
9 being, in the case here, is that the conspiracy to impede or
10 injure a federal officer is an agreement simply to prevent by
11 force, intimidation, or threats, any federal officer from
12 discharging their duties or by force, intimidation or threats,
13 induce them to leave the place of their duties. So it's --
14 it's a little separate, very closely related, but a little bit
15 different because in a 372 conspiracy, we're focused more on
16 intimidation, threats, and force to stop specifically an
17 officer from discharging their duties.

18 The evidence will show that after Bundy Ranch, after
19 the events on that bridge on April 12th -- we've already talked
20 about the evidence showing what Parker said, but it goes beyond
21 that. The evidence will show that the defendants continued to
22 threaten, even after Bunkerville. You'll see that they
23 glorified it. For Stewart, Parker, and Drexler, this event
24 became a blueprint or a model for future confrontations. The
25 evidence will show how Parker, Stewart, and Drexler joined a

1 militia group after Bundy Ranch and how defendant Lovelien
2 asked how he could become more involved in OMA. You'll hear
3 how Parker and Drexler used their status at Bundy Ranch to
4 participate in other confrontations and to threaten force.

5 Now, I've covered a lot of ground in a very short
6 time with you and I know it, at times, may seem like trying to
7 take a drink from a fire hydrant and that's just natural
8 because you haven't heard any of the evidence yet, but my
9 purpose in going through this with you now was so that as the
10 evidence comes in through that witness stand, hopefully you'll
11 have, at least, some broad outline of the Government's case
12 that you can begin to hang these pieces of evidence in the
13 various categories of where they go.

14 As I said at the outset, we'll be back up here at the
15 close of the evidence and we will cover each of the elements of
16 the offenses again with you and again, we will go over the
17 evidence that the Court will have admitted during the course of
18 the trial during these days and weeks ahead of us, but
19 ultimately, ladies and gentlemen, this is really very -- a very
20 simple case. There are a lot of different things going on,
21 there are a lot of different -- you'll hear, you know, a lot of
22 different witnesses, you'll see a lot of video, you'll see a
23 lot of Facebook postings, but, at base, this really is about
24 these defendants during about that 40-minute window that I
25 talked about.

1 The evidence will show that these men did not end up
2 on that bridge by accident; they were there for a purpose.
3 They were there to back down the BLM. They were there for no
4 other purpose. We ask that as you hear and see the evidence
5 come in during the trial, that you use your common sense and
6 everyday experience and ask yourself whether any of this
7 conduct is consistent with anything other than the threatened
8 use of force and violence to get one's way.

9 Ultimately, this case is about the rule of law. This
10 is a case about people taking the law into their own hands.
11 This is a case about people becoming the law, using the working
12 end of a rifle barrel. It is about what those men did on that
13 bridge on April the 12th, it is about whether the evidence
14 shows beyond a reasonable doubt and that whether the Government
15 has proven, under the law, as the Court gives you the law, that
16 these defendants assaulted, threatened, extorted, obstructed
17 justice, conspired and agreed do all of those things. It is
18 about the intent of these defendants on that bridge.

19 At the close of the evidence we will return and we
20 will ask that you return a verdict of guilty on all counts
21 against all the defendants.

22 Thank you.

23 Thank you, Your Honor.

24 THE COURT: Thank you, Mr. Myhre.

25 It's 11:05, so let's take about a 15-minute break and

1 be back here at 11:20 so we can give the defense an opportunity
2 to set up and we'll all take a stretch/bathroom break.

3 First we stand for the jury so they can leave first.

4 (Jury excused from courtroom.)

5 THE COURT: All right. We're in recess.

6 COURTROOM ADMINISTRATOR: Off record.

7 (Recess was taken at 11:06 a.m.)

8 COURTROOM ADMINISTRATOR: All rise.

9 THE COURT: You may be seated.

10 We'll bring in the jury.

11 (Brief pause in proceedings.)

12 COURTROOM ADMINISTRATOR: All rise.

13 (Jury returned to courtroom at 11:35 a.m.)

14 THE COURT: Jury may go ahead and be seated.

15 Everyone else may be seated as well.

16 We're back on the record.

17 Does the defense wish to make an openings statement?

18 Mr. Perez, go ahead wherever you're ready, sir.

19 MR. PEREZ: Good morning, ladies and gentlemen,

20 Your Honor, counsel.

21 My name is Shawn Perez and I represent

22 Ricky Lovelien. He's the gentleman seated in the last row back
23 there (indicating) in the black shirt.

24 Now, what I say right now and what Mr. Myhre said
25 earlier and, as well as my colleagues behind me, none of this

1 is evidence. This is our way of giving you a road map of what
2 you're about to see. So, with that being said . . . we are
3 getting feedback.

4 The evidence will show that on April 12th, 2014, 400,
5 give or take, people showed up in Bunkerville, many of them had
6 guns, many of them did not. Now, the evidence will show that
7 not a shot was fired, not a rock was thrown, not a bottle was
8 thrown. No one was hurt. No one was arrested that day, and
9 everybody went home.

10 Now, the evidence will also show you that on
11 April 11th, the night before, that the BLM had already made a
12 decision to leave. So -- and I believe the evidence will show
13 you that it was early in the evening. So, it was not on the
14 12th when they made this decision, it was the night before.

15 Now, among the evidence that you will see and hear,
16 you will see Facebook posts. You'll see some that were posted
17 by Mr. Lovelien. You'll see some that were reposted. You'll
18 see some "likes" and some "dislikes" and some that he didn't
19 respond to at all.

20 Now, it's no secret Mr. Lovelien is a member of the
21 Montana State Defense Force. It's a militia group. Evidence
22 will show that he was a member back in 2013, 2014, and that the
23 Montana State Defense Force is essentially a citizen group.
24 They're a state guard. They perform all sorts of functions,
25 not necessarily combat functioning. They do search and rescue

1 and other civic duties like that. You'll see a post by Mr.
2 Lovelien giving the mission statement, if you will, of the
3 Montana State Defense Force and you'll see a post just before
4 the Bunkerville incident in which Mr. Lovelien says the
5 militia -- the purpose of the militia in going to Bunkerville
6 is not to create violence, but it's to prevent it.

7 So, I mean, there's -- now, Mr. Lovelien did not know
8 Mr. Parker, Mr. Stewart, or Mr. Drexler. They actually met
9 when the other three gentlemen jumped in the back of his truck
10 and they drove to the bridge area or the parking area. At that
11 time they didn't even know his name, you'll find that out.

12 Now, the bridge area where they arrived is southwest
13 of the wash and where everything took place, you'll see, it's
14 generally over the wash.

15 Now, one of the things that's really important is
16 that the evidence will show you that Mr. Lovelien never went
17 into the wash. He never was on the bridge; he was well to the
18 south. You'll see a video, and I believe there was a still in
19 Mr. Myhre's opening statement, of Mr. Lovelien sauntering over
20 to what's called a Jersey barrier, it's the concrete barriers
21 that abut the interstate. Now, this is approximately 12:30 in
22 the afternoon. Mr. Lovelien goes to the Jersey barrier, he
23 sits down, takes a bottle of water out of his pants, drinks the
24 water and makes a phone call.

25 The evidence will show that that phone call lasted

1 four minutes and that phone call was to his sister. That's
2 about as close as you're going to see him get to that Toquop
3 Wash. No closer.

4 Now, the evidence will show that Mr. Lovelien had a
5 gun, a long gun on his shoulder. It's a distinctive gun. It's
6 got a skull. It's readily identifiable. I don't think there
7 will be any question in your mind that he had that gun, but
8 you'll never see a picture of Mr. Lovelien with that gun
9 anywhere other than on his shoulder, barrel down. He never
10 takes that gun off his shoulder and moves it into a ready
11 position. It's . . . He doesn't aim it at anybody. There's
12 no video, no photos, nothing to suggest that he ever pointed a
13 weapon at anyone.

14 Now, and this -- you'll learn -- there's going to be
15 a half -- well, approximately a half a million documents,
16 photos and of that, there's perhaps eight photographs of
17 Mr. Lovelien and I believe you saw them all in Mr. Myhre's
18 opening statement.

19 Mr. Lovelien did travel from Montana. I don't think
20 that the evidence will show you that he traveled from Montana
21 to Nevada to engage with Mr. Bundy, or Mr. Ryan [sic], because
22 you're not going see any evidence of Mr. Lovelien ever meeting
23 Mr. Bundy. There's no conversations with Mr. Bundy. There's a
24 brief Facebook post with Payne. You know, where do I go. And
25 that's about all you're going to see.

1 Now, at the end -- we'll be able to come back at the
2 end of this case and we'll discuss the evidence and we'll be
3 able to argue those facts. Now, all I can do is tell you this
4 is what you'll see or what you won't see, but I think that
5 after you've viewed all the evidence in this case, you'll leave
6 with a firm conviction that you have to return a verdict of not
7 guilty as to Mr. Lovelien.

8 Thank you.

9 THE COURT: Thank you, Mr. Perez.

10 Mr. Tanasi.

11 MR. TANASI: Thank you, Your Honor.

12 The Court's indulgence while I set up here for a
13 moment.

14 THE COURT: Of course.

15 MR. TANASI: Thank you.

16 (Brief pause in proceedings.)

17 MR. TANASI: May it please the Court, counsel for the
18 Government, fellow defense counsel, good morning, ladies and
19 gentlemen. I'm Rich Tanasi. I represent Steven Stewart
20 (indicating).

21 This case, folks, this case is about standing up for
22 what you believe in. Nothing more and nothing less.

23 The evidence in this case, folks, is going to show
24 that's exactly what happened in Bunkerville on April 12th,
25 2014. A group of individuals protesting. Protesting the

1 United States government.

2 Now, what you've heard so far from the Government,
3 good lawyers from the Government, is an opening statement. An
4 opening statement, as Mr. Perez mentioned, it isn't evidence.
5 Okay? Evidence, folks, is what comes in this courtroom through
6 witnesses who sit on that witness stand (indicating), the
7 documents, it's the videos, it's the pictures, it's what you
8 see throughout the course of the case. It's not what you've
9 seen so far.

10 So far what you've been seeing and what you've been
11 told are promises. Promises as to what the evidence will show.
12 Folks, your job is to determine that.

13 In this case, ladies and gentlemen, what you'll see
14 is that Steven Stewart, a hard-working family man from Idaho, a
15 meat cutter, he traveled 12 hours with his friends, Eric Parker
16 and Scott Drexler, to stand up for what they believed in.

17 Now, they didn't drive with Ricky Lovelien. It's
18 because they didn't know him. They didn't know him.

19 Now, we've heard a lot about conspiracies and plans,
20 and folks, yes, there was a plan in this case. To protest. To
21 stand up to the United States government. That, ladies and
22 gentlemen, is what the evidence will show occurred in this
23 case.

24 And, folks, they were armed. They had weapons. And
25 as you've heard the charges in this case, they're not charged

1 with simply having weapons. So what that means, ladies and
2 gentlemen, is that the evidence will show that they're not on
3 trial for simply having weapons. Having weapons were nothing
4 -- was not wrong in this case. That's what the evidence will
5 show.

6 Now, two key dates that have kind of already been
7 mentioned, April 11th and April 12th. The evidence is going to
8 flesh out why those are important and I'll tell you folks again
9 a little bit based on what you've heard already.

10 The key component or the key part about what the
11 evidence will show with respect to April 11th, 2014, is that
12 the BLM's operation was over. They were ceasing operations on
13 the 11th, before Steven Stewart, Eric Parker, Scott Drexler
14 even arrived in Bunkerville. That's what the evidence will
15 show.

16 On the 12th, after the operation was ceased, you'll
17 learn that Steven Stewart, Eric Parker, and Scott Drexler, they
18 attended a speech, a rally, a protest, and they heard from
19 Cliven Bundy and they heard from Sheriff Gillespie, and you're
20 going to hear it, too. What the evidence will show is that
21 Sheriff Gillespie, he said the BLM was ceasing operations,
22 again, at this rally site before these folks were even on that
23 bridge. That's what the evidence will show.

24 You're going to learn that Steven Stewart believed
25 that the operation was over and that he left this rally to go

1 watch the cows come home, to watch the cows run free through
2 that wash from the bridge. That's what the evidence is going
3 to show, folks.

4 Except when he got there, confusion set in. Here he
5 is, or gets to this bridge, you'll learn, and this is what he
6 sees (indicating). The BLM, law enforcement dressed up like
7 Army men.

8 MR. MYHRE: Objection, Your Honor.

9 THE COURT: Sustained.

10 MR. TANASI: Confusion, ladies and gentlemen. That's
11 what he saw. That's what was going on when he got to the
12 bridge and that's what the evidence is going to show.

13 Ladies and gentlemen, Steven Stewart simply stood up
14 to a bully in this case. He protested. That's what the
15 evidence is going to show. This is not a new concept either;
16 it's how America was founded. Benjamin Franklin once said, "We
17 must all hang together or assuredly we'll hang separately."
18 And in this case Steven Stewart, the evidence will show, hung
19 together with his fellow Americans to protest the United States
20 government. And at the end of this case, I will ask all of
21 this to hang together unanimously and return the only verdict
22 in this case, which is not guilty on all counts.

23 Thank you.

24 THE COURT: Thank you, Mr. Tanasi.

25 MR. TANASI: Thank you, Your Honor.

1 Mr. Marchese?

2 MR. MARCHESE: Yes. Thank you, Your Honor.

3 Mr. Parker will be reserving his opening statement
4 for the opening of the defense's case.

5 THE COURT: All right. Thank you, sir.

6 Mr. Leventhal?

7 MR. LEVENTHAL: Mr. Drexler will also reserve
8 opening.

9 THE COURT: All right. Thank you.

10 All right. So, does the Government wish to call its
11 first witness or do you want to go ahead and take a lunch
12 break?

13 MR. MYHRE: A lunch break would be preferable,
14 Your Honor.

15 THE COURT: All right. So we'll go ahead and take a
16 lunch break till 12 o'clock -- well, it is 12 o'clock -- until
17 1:00 p.m. -- or 1:30? When will your -- 1:30?

18 MR. MYHRE: Perhaps 1:30, Your Honor.

19 THE COURT: All right. So let's say 1:30. So we'll
20 plan to start back at 1:30 and then take a rest room break at
21 around 3:00, 3:30.

22 Please remember, you can raise your hands at any time
23 that you need a stretch break or a bathroom break and I'll take
24 one, but we'll try to plan it at around 3:00 or 3:30.

25 So during this lunch break the jury is admonished

1 that they are not to discuss this case with each other nor
2 permit anyone to discuss it with you. You can speak to your
3 fellow jurors during lunch about other things, just not about
4 this case.

5 You are not to read or listen to or view anything
6 touching about this case in any way nor attempt to perform any
7 research or any independent investigation.

8 Please feel free to bring those question forms back
9 with you into court when you come back at 1:30 so that you have
10 the forms with you and you can write down any questions that
11 you have.

12 And please do not form any opinion until after you
13 have heard all of the evidence.

14 So we'll go ahead and stand up for the jury and
15 welcome them back at 1:30.

16 (Jury excused from courtroom.)

17 THE COURT: Off record.

18 COURTROOM ADMINISTRATOR: Off record.

19 (Recess was taken at 11:51 a.m.)

20 (Outside the presence of the jury at 1:41 p.m.:)

21 COURTROOM ADMINISTRATOR: All rise.

22 THE COURT: Thank you. You may be seated.

23 All right. I think everyone's back. Let's go ahead
24 and bring in the jury.

25 MR. LEVENTHAL: Your Honor, before we bring in the

1 jury, I -- there was some confusion between us. I know that
2 last time we had kept two -- two -- we reserved two openings
3 and now that we have less I think one opening would suffice.
4 Would it be okay with the Court if I did a 15-minute opening
5 or -- or -- because I reserved it, does the Court want me to
6 wait until the end?

7 I'm asking to do an opening.

8 THE COURT: You want to both give an opening now and
9 reserve it for later?

10 MR. LEVENTHAL: No, Your Honor.

11 THE COURT: You have to choose one or the other.

12 MR. LEVENTHAL: Yes. No. I apologize.

13 Mr. Marchese is going to reserve his; I would like to
14 do mine now, though. I know I said I would, but I think it
15 would be -- we had -- we reserved two last time and sort of --
16 I think it's overkill on this one. So I would like to do my
17 opening now, take about 15 minutes, if that's okay with the
18 Court.

19 THE COURT: All right. Any objection to that?

20 MR. MYHRE: No objection, Your Honor.

21 THE COURT: All right. We'll go ahead and bring in
22 the jury and we'll -- I'll explain to them you're going to go
23 ahead and exercise your right.

24 (Brief pause in proceedings.)

25 COURTROOM ADMINISTRATOR: All rise.

1 (Jury returned to courtroom at 1:45 p.m..)

2 THE COURT: Jury may go ahead and be seated and
3 everyone else may be seated.

4 All right. So we're back on the record and we're
5 going to call our first witness. However, Mr. Leventhal, who
6 represents Mr. Drexler, informed me that rather than waiving --
7 or not waiving, but reserving his opening statement until
8 later, they'd like to go ahead and give it now.

9 So you may go ahead and do so.

10 MR. LEVENTHAL: Thank you, Your Honor.

11 Thank you, Judge.

12 May it please the Court, counsel, ladies and
13 gentlemen, my name is Todd Leventhal and I represent
14 Scott Drexler back here (indicating). And if you take a look
15 real quick at the four defendants, you're going to see
16 Mr. Parker (indicating), Mr. Stewart (indicating), Mr. Lovelien
17 (indicating) and Mr. Drexler (indicating). And what you don't
18 see in this case is a Bundy. There are no Bundys sitting
19 behind me. This is not a Bundy trial.

20 What I'd like you to do, the way I look at this case,
21 if you compartmentalize this into three groups; Bundys, the
22 so-called militia, and then you've got these gentlemen
23 (indicating).

24 Now, the Bundys, as you heard from the Government,
25 had some 20-year history with the federal government on grazing

1 rights. They didn't pay their fees, and you'll hear all that.
2 But realistically, not one of these gentlemen knew anything
3 about that. You will not hear any evidence that will show that
4 they knew anything about this long 20-year battle that Cliven
5 or his family had with the federal government.

6 The Bundys' goal in all this was to get their cows.
7 I think each one of these groups had a goal.

8 The second group I see is the militia. And as
9 Mr. Myhre indicated, Mr. Drexler was not in any group on
10 April 12th, 2014. He was not involved in any militia. You
11 will see nothing about that.

12 That's important because on April 12th, 2014, the
13 militia also went out there and you saw -- Mr. Myhre showed you
14 a -- an e-mail from an Operation Mutual Aid.

15 (Photo displayed.)

16 Mr. Myhre showed you this e-mail and told you that
17 this came from Operation Mutual Aid, which was the militia --
18 or the Bundys calling the militia, calling everybody in. And
19 what I want you to pay close attention to when you look at all
20 of these e-mails, you will never, not once, see that
21 Mr. Drexler received it. He didn't get the memo. He was not
22 involved. He didn't know about it. You will not see once. I
23 want you to take a look. You're going to see a lot of e-mails,
24 a lot of Facebooks. Take a look to see whether or not he was
25 ever on anybody's list. You won't find it.

1 Then you've got Mr. Drexler, a protestor. A
2 protestor who went down to protest. Protest certain things
3 that were happening. What he was viewing prior to the 12th --
4 Mr. Myhre talked about the backstory. There is a backstory.
5 There's another backstory. Mr. Drexler saw images and videos
6 that shocked his conscience that was his reason for coming from
7 Idaho all the way down to a little town called Bunkerville. He
8 had never been there, didn't know anybody else other than the
9 people he was traveling with, but he went. It was what he saw
10 that made him go down there. But there was no plan, there was
11 no organization, there was nothing to suggest that he was
12 acting in conformity with a conspiracy at all. And I can tell
13 you he didn't -- definitely didn't come down here for cows. He
14 didn't care about cows. It's not what he cared about. It was
15 something much deeper, much more, that brought many people into
16 a small town called Bunkerville

17 Fast-forward to April 12th, 2014. Scott Drexler got
18 here in Bunkerville that morning. He had not even been here
19 for a day. So he's -- he's here. He then hears a speech. And
20 you're going to hear the speech and Mr. Myhre already spoke to
21 you a little bit about the speech. In that speech the sheriff,
22 then acting Sheriff Gillespie, got on stage and made some
23 remarks. And what he said specifically was this: He said, BLM
24 is ceasing operations. He says, the Gold Butte, which is that
25 area out there, is now open. He also says that BLM is removing

1 their assets from Clark County

2 Well, the net effect of that is most people, many
3 people, I think pretty much everybody, Mr. Drexler included and
4 the evidence will show, thought that that's -- those words
5 meant exactly what they meant and said, that it's over. It's
6 done.

7 But, apparently it wasn't done, but that wasn't told
8 to everybody out there. So, when you listen to the speech, ask
9 yourself, is this clear? What would the -- what would my
10 intent, or if I hear -- what would I listen -- what would I
11 hear? When I hear this speech, what would I think is
12 happening? What was meant by it?

13 You're going to hear that after that, Cliven Bundy
14 got up and he also made a speech. It's crazy. It's a crazy
15 speech. We all agree with "it's crazy." But to put
16 Mr. Cliven's [sic] words into the mouth of my client without
17 more does not get him involved in any conspiracy. My client
18 believed and heard that this thing was over with on April 12th
19 at that meeting

20 Now, after that speech, everybody drove to the rally,
21 and you heard, to see the cows sort of be released. Because,
22 something to do, I guess, in Bunkerville. And Cliven said,
23 listen, we're got to close down the bridge, because we need
24 safety. You're going to hear him say it, we need safety. Why
25 does he say safety? Because you got a lot of cars going over

1 this freeway, you got a lot of cows coming through, and a lot
2 of people out there. So what they had planned on doing for
3 safety reasons, safety reasons only was to close down the
4 bridge so when the cows came through under that underpass that
5 you saw, it would be safe for everybody. The protestors,
6 however, got there first and you're going to see, it's a group
7 of protestors that actually end up underneath the north bridge.
8 They sort of walked and they crawled around and got there. We
9 call this sort of the prayer group because they knelt down and
10 they prayed, and I show you a picture of the prayer group that
11 you'll see in evidence.

12 (Photo displayed.)

13 The evidence will show that this group was actually
14 the first to arrive, these people right here (indicating)

15 You've got right above them is the northbound bridge.
16 Off to the side, way back here (indicating), that's where BLM
17 sits.

18 So, they're there. They're praying. And what I want
19 you to really look at when there's testimony is you'll notice
20 that there's nobody on top of this bridge (indicating), on the
21 sides of this bridge (indicating). There's nobody there.
22 Nobody. There's nobody with a gun up there. There's nobody
23 with signs up there. There's no plan. There's no
24 organization. Complete chaos. These people showed up to
25 get -- thinking that the cows were being returned and nobody's

1 around.

2 But, they see this back here (indicating). Those are
3 BLM agents. And you'll see that they were armed.

4 Now, you're going to hear from a witness named
5 David Michael Lynch. He's a reporter. And David Michael Lynch
6 went out and he had his camera. He might even be here. I
7 believe that's Mr. Lynch there in the blue shirt, filming
8 (indicating). He filmed quite a bit out there and a lot of
9 that filming you'll be able to see, but David Michael Lynch
10 went out there into the middle of what you have the protestors
11 and you've got the BLM and he stood right in the middle --

12 MR. MYHRE: Objection, Your Honor. We're getting
13 into that area.

14 MR. LEVENTHAL: This is opening. We plan on calling
15 David Michael Lynch, Your Honor.

16 THE COURT: How is this what you believe the evidence
17 will show?

18 MR. LEVENTHAL: Yes. We plan on calling David
19 Michael Lynch. He's on our subpoena list. He will be here and
20 we will play these videos.

21 THE COURT: And you expect that he will say?

22 MR. LEVENTHAL: Exactly that. That he went out there
23 and -- I don't know how much you want me to get into. I was
24 about to say what he's going to say. So, that he went out
25 there, he filmed this whole thing, and he went into the middle

1 of the wash and he did what he did and he filmed it and it
2 shows that there's no plan, no organization, no conspiracy.

3 THE COURT: Okay. Well, the first part that you're
4 going to call someone and you expect what they're going to
5 say --

6 MR. LEVENTHAL: Yes.

7 THE COURT: -- is proper opening statement, but the
8 interpretation of what you think that it means sounds more like
9 argument.

10 MR. LEVENTHAL: Yes, Your Honor. I don't plan on --
11 I don't plan on giving the jury what I think it means. I'm
12 going to just repeat what he says in the middle while he's in
13 the wash.

14 THE COURT: All right.

15 So, objection's overruled.

16 MR. LEVENTHAL: Thank you, Your Honor.

17 Mr. Lynch, this reporter, is going to come in here
18 and testify to you that he walked into the middle of the wash,
19 right here (indicating), and in between the BLM and in between
20 the protestors he asked the BLM agents, "Are you really going
21 to shoot these people?"

22 MR. MYHRE: Objection, Your Honor.

23 It's a third party interpretation of what was being
24 observed in the wash. It's covered by the -- we could discuss
25 at sidebar, Your Honor, if you'd like but --

1 THE COURT: All right. Let's go to sidebar then.

2 (Proceedings at sidebar out of the hearing of the jury:)

3 MR. MYHRE: Thank you, Your Honor. Steve Myhre
4 speaking.

5 Our objection is, is this falls within the purview of
6 the categories in the Motion in Limine because Mr. Leventhal's
7 getting into what a third party observed BLM's conduct to be in
8 the wash. That is, that he -- "Are you really going to shoot
9 me?" As you recall, Dennis Michael Lynch's testimony from the
10 earlier trial was that he had -- he went out there and said,
11 "Are you going to shoot me?" and he lifted up his shirt and all
12 that. He testified to what he saw in terms of the posture of
13 the BLM with the guns and so forth. So that, we believe,
14 again, it does not go to any cognizable defense. It's on -- it
15 goes to jury nullification because you're talking about BLM
16 conduct.

17 THE COURT: Okay. So how is that not jury
18 nullification?

19 MR. LEVENTHAL: So, I read, when I read the -- your
20 order, it says "third party interpretation of how they felt."
21 This is just what he actually said in the middle of the wash,
22 "Are you really going to shoot these people?" It's not a third
23 party -- it doesn't go -- it goes to what he's going to say,
24 that he went out there and he was scared, just like -- just
25 like everybody else and then he also said, "Are you going to

1 shoot these people?" but then he got word back, if you
2 remember, to the protestors and then word got out that they
3 were going to --

4 THE COURT: I remember the facts, but how is it not
5 jury nullification?

6 MR. LEVENTHAL: Well, it -- it -- Your Honor, at
7 our -- when we're putting on our case, Your Honor has left the
8 door open for us to at least put some weight or forward in
9 terms of defense or self-defense and obviously if they're not
10 going to call him, we are because we've got to get over that
11 hurdle of scintilla or slighter marginal evidence to raise in
12 order for Your Honor to give us the jury instruction. So,
13 while it will be in our -- ours, you've left the door open for
14 that. I'm not trying to nullify the jury.

15 THE COURT: To provide a proffer outside the presence
16 of the jury to determine whether or not the defense is actually
17 something that can be given because at this point it doesn't
18 look like it can be.

19 MR. TANASI: Your Honor, if I can just add to it a
20 little. This is, in terms of the chaos, right, that -- and
21 this is separate and aside from I think the self-defense
22 component, the state of mind for our clients. Again, they
23 leave the speech and when they arrive in the wash, there's
24 chaos. There's BLM. Dennis Michael Lynch is an example of
25 that chaos. He walks up thinking, are you going to shoot these

1 people? Is that what's going to happen? Understanding that
2 when he left the speech and the rally, that the cows were going
3 to be running through that wash, not BLM there -- being there.

4 And so, I think it also lends itself to that and -- and --

5 THE COURT: See, here's the problem. So say the
6 testimony is he thought that the BLM were wearing the blue
7 shirt; he didn't realize with the shading and the light that it
8 was actually purple and not blue.

9 MR. TANASI: Right.

10 THE COURT: It doesn't matter because it's not legal
11 to shoot someone just because they're wearing blue or if they
12 were wearing purple, it wouldn't, you know -- so, this is what
13 I'm talking about.

14 MR. TANASI: And I don't mean to interrupt you but --

15 THE COURT: I understand what the testimony was last
16 time, so how is it different now? That would be a proffer
17 you'd have to make outside the presence of the jury before I
18 can let you go down that road again.

19 MR. TANASI: I just -- and I think that there's two
20 issues there; there's the self-defense issue and whether or not
21 anybody recognized them as being BLM agents or not and then the
22 other issue is the actual chaos that was going on in the wash
23 and this chaos that was in our clients' mind, which is the
24 state of mind --

25 THE COURT: Chaos is not the element; it's excessive

1 force.

2 MR. TANASI: Understand. And I think that's --
3 that's the point. Excessive force is the issue for
4 self-defense and then that's not what I'm arguing when I say
5 chaos. When I say chaos, I mean my guy's mind is racing and
6 not understanding what's going on when he thinks the cows are
7 coming home and then the BLM is in the wash and they're dressed
8 out. And so, Dennis Michael Lynch is a witness who shares that
9 exact same state of mind and who outlines exactly what
10 happened. So that's -- I think there's two issues that are
11 kind of interwoven together and that's why I keep bringing it
12 up is I think that they're actually -- there's two issues
13 there; one, state of mind, the other, self-defense.

14 THE COURT: It almost sounded like you were going
15 into some kind of mistake of fact defense, but I think
16 that's -- I don't want to put words into your mouth. It
17 doesn't -- it's not a self-defense element and it's not
18 relevant to his state of mind if it's a third party's
19 perception.

20 MR. TANASI: So, again, a lot of it is also
21 objectiveness because you have the reasonable -- you get into
22 the assault on a federal officer, whether their fear was
23 reasonable and then you have the ability to open that up to
24 objectiveness and to what other people were feeling as well.
25 And so I think it's still -- it's more an objective standard.

1 So it's not just another --

2 THE COURT: The objectiveness is whether or not other
3 people believed they were not law enforcement.

4 MR. TANASI: In terms of the self-defense.

5 THE COURT: Right.

6 MR. TANASI: But not -- at least our position is not
7 on -- in terms of the state of mind of our clients when we're
8 defending one of the elements of each of the offenses, their
9 intent.

10 MR. LEVENTHAL: You know, Your Honor, and also,
11 Mr. Myhre has already given the jury his sort of spin on why
12 they went up to the bridge. He said they went up there just
13 to, you know, get the cows back. We have to be able to defend
14 that. That alone shows that they went up for some alternative
15 or ulterior motive.

16 THE COURT: That's what he said. He said it had
17 nothing do with the cows.

18 MR. LEVENTHAL: No. He -- he -- he -- he did. He
19 said that was sort of -- it wasn't -- it wasn't why they were
20 there, but ultimately that's what they got out of it. But,
21 there's another reason for them to go up on that bridge other
22 than what Mr. Myhre's suggestion in his opening, which was
23 either to get the cows or to --

24 THE COURT: He specifically expressed that it was the
25 opportunity to confront the government with force. That was --

1 MR. LEVENTHAL: Either way, I have to be able to
2 explain that there's an alternative view on that and it -- it's
3 something other than just to confront because you've got them
4 at the -- at that parade or that stage thing, they're not
5 armed, they're not -- and then they go over and hear these
6 words and they go up there. There has to be -- the jury can't
7 just be left with that view. They -- I've got to be able to
8 suggest another view if it's plausible and reasonable. That's
9 what it is. It's not nullifying them.

10 THE COURT: You can't present a third party's --

11 MR. MYHRE: Right. That's the issue. It seems
12 you're presenting a -- the defense here is trying to present
13 what Dennis Michael Lynch's impressions were, what his
14 perceptions were and you cannot -- the Government's position is
15 you cannot use a third party to go to the state of mind of your
16 client and that would be irrelevant under any circumstances.

17 THE COURT: Any more than you now would want to have
18 the Government as a third party say what they thought your
19 client's state of mind is. It wouldn't be admissible.

20 MR. MARCHESE: I agree with Mr. Myhre to a certain
21 extent. I do believe, obviously, what I believe can't be
22 transposed into Mr. Myhre's mind, but, I do believe that it
23 goes to credibility. It was obviously some issues last time,
24 we heard him testify, as to what he thought, what he heard.
25 You know, obviously, we know and we've heard -- I believe it

1 was Ranger Johnson and his announcements -- was not that the
2 BLM was going to use lethal force, but there certainly were
3 several individuals who heard otherwise. So, that's why it's
4 relevant because it helps to buttress our clients' state of
5 mind to say, hey, there were other people that heard this, so
6 it's not that they're just the only ones and they're making up
7 this, you know, theory of the case.

8 MR. TANASI: The last thing I would add to it is I
9 think Dennis Michael Lynch is essentially circumstantial
10 evidence of the chaos that was going on in the wash. He's a
11 piece of that puzzle, that story, that defense theory that
12 we're trying to advance.

13 MR. MYHRE: It -- first of all, there's a 403
14 analysis here and that if you -- once we go down this -- this
15 path of what the BLM was doing, then it opens up a mini trial
16 as to their conduct. And so, that's number one. Number two,
17 though, is that this chaos defense does not go to any
18 cognizable defense. It doesn't really go to state of mind,
19 unless you're trying to raise some sort of mistake of fact
20 defense, which doesn't apply.

21 I don't -- the fact that the defendants saw or the
22 defendant believes there's chaos is not a justification for
23 raising a firearm or taking a firearm on a bridge, unless you
24 think -- unless he thinks that somehow he's going to be shot,
25 which goes to self-defense.

1 MR. TANASI: Again, I mean, with respect to
2 Mr. Stewart, there's no pictures of him pointing a firearm.
3 There's the allegation from the Government's side is that he's
4 all over the place while he's up there and that's demonstrable
5 in the fact that it's chaotic. He leaves believing that the
6 operation was over. He gets there and he sees another thing.
7 You know, again, that chaos, I think, is -- goes absolutely at
8 one of the elements of the offense, that he's -- his intent,
9 his state of mind. Does he leave that speech thinking I'm
10 going to go there and I'm going to strong arm the federal
11 government or does he leave that speech thinking this whole
12 thing's over, I'm going to watch it? And, you know, when he
13 gets there, he's got his firearm and he's running around like a
14 madman. That's the defense.

15 THE COURT: All right. But, Mr. Lynch can't provide
16 testimony as to that defense because he's not inside the
17 defendant's head and, so, no, the objection is sustained.

18 MR. TANASI: Can we be just heard on one other thing,
19 Your Honor, since we're here?

20 THE COURT: Yes.

21 MR. TANASI: Waiving sidebar, waiving presence for
22 our clients at sidebar, they don't want us to do that. So, I
23 don't -- I'm just putting that objection, I guess, on the
24 record and I don't know if we want to address it now or how we
25 want to handle it, but they're not waiving their presence for

1 being here. So, we're going to go back and we're probably
2 going to get an earful from them about coming up here without
3 them, so . . .

4 THE COURT: Okay.

5 MR. TANASI: I'm putting that on the record.

6 THE COURT: Well, if you want to find something for
7 me that says it's a critical stage, then I'll consider it, but
8 I think the critical stage is the jury voir dire, if there's
9 any questions asked, who a juror -- and responded to outside
10 the presence of the defendant, that waiver I think was the one
11 that is the only critical stage that I can think of off the top
12 of my head.

13 Last time the problem was, was too many of you and we
14 had a pro per, which meant we would have to also have more
15 marshals in here and that just -- there just isn't enough room
16 and the wall isn't high enough because on your side, as you can
17 see, the jury can see you. You know, on this side, the jury
18 can't see me, but on your side, if we had more people in here,
19 then you would end up going too far to the left.

20 MR. TANASI: Understood.

21 THE COURT: And so that's why we couldn't do it last
22 time.

23 MR. TANASI: Okay.

24 THE COURT: But I don't think it's a problem that
25 you -- but if you find some case law or some other

1 information otherwise --

2 MR. TANASI: We'll brief it.

3 THE COURT: -- then I definitely don't want to start
4 off with error right off the bat.

5 MR. LEVENTHAL: Okay. So, and my question, I guess,
6 Mr. Tanasi made a statement in his opening and I'm just trying
7 to get clarity here, because he said that the BLM looked like
8 they were military and then there was an objection and it was
9 sustained. How does that fall into sort of the -- what you're
10 precluding -- I'm trying to stay as straight as possible, trust
11 me, with your orders, but I'm having some trouble following
12 along. I've read them, but I don't know how just by him
13 mentioning them -- that they looked like military, which
14 they're going see pictures of, how does that -- how does that
15 fall outside of your orders that --

16 THE COURT: Because it would only be relevant to
17 self-defense or mistake of -- you know, self-defense because
18 they were using excessive force or self-defense because there
19 was a mistake as to whether they were military versus
20 government, which isn't actually a defense either, but, I don't
21 see how it's relevant.

22 MR. LEVENTHAL: So it's more of a relevancy -- well,
23 and it was his opening. I'm just trying to -- relevancy.
24 Okay.

25 MR. MARCHESE: And then lastly, so we don't keep

1 doing this. How did Your Honor want to proceed with the record
2 outside the presence of the jury in reference to self-defense,
3 because obviously --

4 THE COURT: You can make a proffer like any other
5 proffer.

6 MR. MARCHESE: Okay.

7 THE COURT: You can either proffer what you think
8 someone is going to say or here's what you plan to do with it
9 or actually call the person to see if they really are going to
10 say that.

11 MR. MARCHESE: Well, that's -- and, yeah, I just
12 wanted a little bit of guidance on it --

13 THE COURT: Yeah.

14 MR. MARCHESE: -- because it's not just one witness.
15 I mean, there was also things that we had planned on eliciting
16 through the Government's witnesses. So, I mean, did you want
17 us to subpoena witnesses? I mean, just -- how did we want
18 to -- I don't think it's going to come up with Sheriff Lombardo
19 and it's definitely not going to come up with the agents.

20 THE COURT: Well, why don't you get together and
21 figure out when you want to do this. If you want, we can -- I
22 told the jury they didn't have to be here every single day
23 that's on the calendar, that there would be days when we would
24 either send them home early or come in late or have them not
25 come at all. So we could take a trial day to explore that,

1 those defenses, if you want to do that and just have the jury
2 not come in that day, or that morning, or that afternoon,
3 depending on how long you think how long it's going to take and
4 when your witnesses can be here or how you want to proceed.

5 Obviously, if you're going to call a witness who is
6 going to say A, B, and C and the Government already knows that
7 because that person's been interviewed, then maybe they don't
8 have a problem with you just proffering that without actually
9 calling the person in. If it's someone that the Government has
10 never heard of that you say is going to say A, B, and C, then
11 they're probably going to want to actually see if the person
12 exists and is actually going to say that.

13 MR. MARCHESE: Well, they've already noticed --

14 THE COURT: And myself included.

15 MR. MARCHESE: Yeah. They've already noticed at this
16 point, but not all of them testified at the last trial. I
17 think we only had four witnesses.

18 MR. LEVENTHAL: Four.

19 MR. MARCHESE: Okay. I appreciate that.

20 MR. MYHRE: And, Your Honor --

21 THE COURT: Yeah.

22 MR. MYHRE: Oh, I'm sorry. I didn't mean to talk
23 over you. Just lastly, we would move to strike that last
24 comment by Mr. Leventhal as to --

25 THE COURT: All right. I'll grant it on the record.

1 MR. MYHRE: Thank you.

2 (Proceedings within hearing of the jury:)

3 MR. MYHRE: Thank you, Your Honor.

4 The Government would move to strike the last comment
5 with respect to Dennis Mike Lynch.

6 THE COURT: Yes. The objection was sustained, so the
7 jury will disregard that last statement. Motion to Strike is
8 granted.

9 MR. LEVENTHAL: So, ladies and gentlemen, getting
10 back, this big plan, this big organized conspiracy, it's
11 everything but, and you're going to sit here for the next month
12 or two and you're going to watch how this was mainly just a big
13 complete disorganizational mess. There was no plan, no
14 organization, no conspiracy.

15 You're going to hear from some BLM officers. You're
16 going to hear from some Metro officers and some highway patrol
17 and they're going to get up here on the stand and they're going
18 to tell you how scared they were. I want you to -- while
19 you're listening to them tell you how scared they are, I want
20 you to look at the pictures that you're being shown, look at
21 the videos that you're going to be watching, and ask yourself
22 if you would be that scared, because there aren't as many guns
23 as they say are going to be out there.

24 And I also challenge you to find one that's ever
25 actually pointed at them. With the thousands and thousands of

1 video, find one that's pointed at them.

2 I'd also ask, lastly, that you write down the witness
3 that identifies Mr. Drexler. Write that name down. I will
4 guarantee you that it's not anybody that was out there in the
5 wash on April 2nd -- April 12th, 2014. I will guarantee you
6 that.

7 The Government is going to try to put a protest on
8 trial today. That's what they're going to do, they're going to
9 put a protest on trial. They're going to go very long and very
10 deep and very wide, but I don't represent a crowd and I don't
11 represent a protest; I represent one man, and that's
12 Scott Drexler (indicating). That's it. That's who's here on
13 trial now. Not a crowd. Not a protest.

14 Mr. Drexler, he's 46 years old. He's got a beautiful
15 daughter and a grandson. His father was a sheriff in Idaho and
16 his sister also works at the sheriff's department. He has no
17 criminal history. He believes in the law and he believes no
18 man is above the law, badge or not.

19 So at the end of this, I'm going to be asking that
20 you find Mr. Drexler not guilty of these charges.

21 Thank you.

22 THE COURT: All right. So, now that you've heard
23 opening statement, which are just -- which are not evidence,
24 only what the attorneys think the testimony will be so that you
25 can better follow the presentation of the evidence, now we're

1 going to begin with the first witness and the Government may
2 call its first witness.

3 MR. MYHRE: Thank you, Your Honor.

4 The Government calls Sheriff Lombardo.

5

6

JOSEPH LOMBARDO,

7 called as a witness on behalf of the Government, having been
8 first duly sworn, was examined and testified as follows:

9

10 THE COURT: Good afternoon, Sheriff Lombardo. Come
11 on up. You're going to be seated over here to my right
12 (indicating). Please be careful with the steps and the
13 microphone wires.

14 COURTROOM ADMINISTRATOR: Please stand and raise your
15 right hand.

16 You do solemnly swear that the testimony you shall
17 give in the cause now before this Court shall be the truth, the
18 whole truth, and nothing but the truth, so help you God?

19 THE WITNESS: Yes.

20 COURTROOM ADMINISTRATOR: Thank you, sir. You may be
21 seated.

22 Please state your full name for the record and spell
23 your last name.

24 THE WITNESS: It's Joseph Lombardo, L-o-m-b-a-r-d-o.

25 MR. MYHRE: Thank you, Your Honor.

1

2

DIRECT EXAMINATION OF JOSEPH LOMBARDO

3

BY MR. MYHRE:

4

Q. Good afternoon, Sheriff.

5

A. Good afternoon.

6

Q. You're currently the sheriff of Clark County; is that correct?

8

A. That's correct.

9

Q. And how long have you been serving in that capacity?

10

A. Two and a half years.

11

Q. And as the sheriff of Clark County, do you also -- are you also the head of the Las Vegas Metropolitan Police Department?

13

A. That's correct.

14

Q. And how -- approximately, how large is the -- is Metro?

15

A. 5,500-plus employees. Area responsibility 7,500 square miles.

17

Q. It encompasses all of Clark County?

18

A. Correct.

19

Q. Does that include the area of Bunkerville, Nevada?

20

A. Yes, it does.

21

Q. How long have you been -- before becoming sheriff, were you employed by the Clark County Sheriff's Department?

23

A. Yes, I was. Yes, I am.

24

Q. And how long have you served total?

25

A. 29 years.

1 Q. If you could, can you just -- how did you begin your
2 career with -- with Metro?

3 A. Well, as any other police officer, I was hired in 1988.
4 You start as a police officer and you work in a black and white
5 as a patrol officer and then subsequently, I moved through --
6 my career through promotions.

7 Q. And through those 29 years, has that been entirely with
8 Metro?

9 A. Correct, it has been.

10 Q. In March of -- excuse me -- April of 2014, in what
11 capacity were you serving with Metro?

12 A. I was assistant sheriff.

13 Q. And were you over any particular functions or operations
14 as the assistant sheriff?

15 A. Well, if you bifurcate the department, there was two
16 assistant sheriffs, myself and Assistant Sheriff Kevin McMahill
17 and I was responsible for the law enforcement support group and
18 that would encompass all functions in support of the police
19 department as a whole, absent uniform services.

20 Q. Who was the sheriff at the time that you were the
21 assistant sheriff?

22 A. That was Doug Gillespie.

23 Q. And within the chain of command, where did you report with
24 respect to him?

25 A. Well, it's the sheriff, obviously, then it's the

1 undersheriff, which is Jim Dixon, and then assistant sheriff.

2 Q. Now, in April of 2014, did you have occasion to accompany
3 Sheriff Gillespie to Bunkerville, Nevada?

4 A. Yes, I did.

5 Q. And were you going there to meet anybody?

6 A. No. In my understanding was just to provide protection
7 for Sheriff Gillespie at that point.

8 Q. Was Sheriff Gillespie there to meet anybody?

9 A. He had conveyed to me that he was intending to meet with
10 Cliven Bundy.

11 Q. Now, were you aware, generally, of an impoundment
12 operation being conducted in the Bunkerville area by the Bureau
13 of Land Management?

14 A. Yes, I was.

15 Q. And when you went to -- with Sheriff Gillespie on
16 April 12th to meet with Cliven Bundy, did it have anything to
17 do with the impoundment that was going on with BLM?

18 A. Yes, it did.

19 Q. What did you understand the purpose of the meeting would
20 be?

21 A. I wasn't privy to the conversation that Sheriff Gillespie
22 had with some other individuals, but he had conveyed to me that
23 he had --

24 Q. Well, without -- I don't want you to go into what he had
25 specifically discussed with others. Just, from your

1 understanding, was -- was there a topic that Sheriff Gillespie
2 was going to cover with Cliven Bundy at this meeting?

3 A. Yeah. That was the impoundment of the cattle.

4 He wanted to convey to Cliven Bundy that the
5 operations were going to stop, in other words, the impoundment
6 was to cease and desist.

7 Q. Now, did you eventually get to the Bunkerville area on
8 April the 12th?

9 A. Yes, we did.

10 Q. Where did you intend to meet with Mr. Bundy?

11 A. At his ranch. At his residence.

12 Q. And did that happen?

13 A. No, it did not.

14 Q. What -- what occurred that that did not happen?

15 A. Well, prior to completely attempting to go to the ranch we
16 had exited I-15 in order to make contact with Deputy Chief Tom
17 Roberts who was already there with several LVMPD officers and
18 we were going to provide him what our intent was and for him to
19 provide us security, if needed, or if requested. We had pulled
20 off the side of the road right at the exit -- the exit being
21 where you attempt to go to Cliven's ranch and then
22 subsequently, after briefing Deputy Chief Tom Roberts, myself,
23 Sheriff Gillespie, Undersheriff Jim Dixon, and Assistant
24 Sheriff Kevin McMahill drove -- attempted to drive to the
25 ranch.

1 Q. And did you -- you did not meet with Mr. Bundy, though, at
2 the ranch, is that is that correct?

3 A. No, we did not.

4 Q. Where did you meet with him?

5 A. We met with him an in assembly area. I would call it the
6 stage area, that was at the side of the roadway approximately
7 halfway to the Bundy Ranch from the exit.

8 Q. And is that along State Route 170?

9 A. Correct.

10 Q. And you mentioned a stage. Can you describe for us what
11 this area looked like, generally?

12 A. It was a general -- similar to, like, a rest stop you
13 would see off a highway. It was a general flat top area that
14 had an 18-wheeler flatbed trailer set up. Adjacent to it was
15 an RV, a recreational vehicle, and then several individuals
16 were located in and about that area.

17 Q. Now, when you arrived there, did you see if there were
18 people around the area or not?

19 A. Yes. I would describe between 2 and 3 hundred
20 individuals.

21 Q. What did these 2 to 3 hundred individuals appear to be
22 doing, in your -- upon your --

23 A. Uh, they were just -- they were gathered. Mr. Ammon Bundy
24 was stationed on top of the platform and he had a microphone
25 and he was addressing the crowd in a general conversation. I

1 can't testify to what he was talking about.

2 Q. So, when you get there with Sheriff Gillespie and the
3 other officers who are with you, does somebody meet you there?

4 A. Yeah. We were contacted by David Bundy prior to -- as
5 we -- we parked along the roadway. We walked to the assembly
6 stage area and we were eventually contacted by David Bundy.

7 Q. And did Dave Bundy then direct you to -- as to where to
8 go?

9 A. Yeah. He asked us to go to the RV that was located there
10 adjacent to the stage and Sheriff Gillespie and
11 Undersheriff Dixon entered the RV and my understanding is they
12 were going to attempt to contact Cliven.

13 Q. And was Cliven Bundy there at that time?

14 A. No, he was not.

15 Q. Did you observe him arrive?

16 A. Yes, I did.

17 Q. And how long after the sheriff went into the little RV
18 vehicle did it take before Mr. Bundy arrived?

19 A. I would be comfortable with saying between 20 and 30
20 minutes.

21 Q. And you observed him arrive?

22 A. Yes, I did.

23 Q. And how did he -- how did he get there?

24 A. He was in a Humvee-type vehicle. There was a pickup truck
25 to the front of the Humvee and one to the rear. There were

1 several individuals in the beds of the pickup truck and then
2 several individuals inside the Humvee. He was in the front
3 passenger seat, I believe.

4 Q. And was he with other people?

5 A. Yes.

6 Q. Did you notice whether any of these individuals he was
7 with were armed?

8 A. Yes. I -- best of my recollection, every one of them.

9 Q. Now, do you see -- within the crowd where you were, do you
10 see other individuals armed as well?

11 A. Yes, I did.

12 Q. Now, as -- once Mr. Bundy arrives, what does he do?

13 A. He immediately exits the vehicle and he starts to walk
14 towards the stage.

15 Q. Does he meet with the sheriff at that point?

16 A. No, he did not.

17 Q. So where did he go?

18 A. Well, I can't recall, but I believe it was either Ammon or
19 David attempted to contact Cliven by yelling out to him and
20 said, hey, Cliven, the sheriff's here and he wants to talk to
21 you. I overhead Cliven say that the sheriff --

22 MR. LEVENTHAL: Objection.

23 THE WITNESS: -- can talk to me on the stage.

24 MR. LEVENTHAL: Hearsay.

25 MR. TANASI: Stewart joins.

1 MR. MARCHESE: Parker joins.

2 MR. PEREZ: Lovelien joins.

3 THE COURT: Mr. Myhre?

4 MR. MYHRE: I'm -- I'm sorry, Your Honor. I couldn't
5 hear the last part of his answer, so I missed part of it.

6 THE COURT: I think it was -- what was the objection,
7 hearsay?

8 MR. LEVENTHAL: Hearsay.

9 BY MR. MYHRE:

10 Q. Did --

11 THE COURT: The witness was testifying about what
12 somebody else said?

13 MR. MYHRE: Right. No. I understand that,
14 Your Honor. I couldn't hear what the witness said. I was -- I
15 could not -- there was some gap in the speaker or whatever, so
16 I didn't hear what the witness had responded to the question
17 from. So I'll -- I will just re- -- I'll just strike that
18 question, Your Honor, and the answer and I'll just move on from
19 there.

20 THE COURT: All right. Thank you.

21 BY MR. MYHRE:

22 Q. So, just to -- just to go back again, Sheriff.

23 So, you saw Cliven arrive. And where -- where did he
24 go from -- once he arrived there? Did he go to the stage area?

25 A. He walked directly to the stage and went on top of the

1 stage.

2 Q. Now, at some point did the sheriff join him on the stage?

3 A. Yes, he did.

4 Q. Now, did this fit or not fit with what you had believed
5 was the plan before going down there?

6 A. It did not fit.

7 Q. Did you -- when the sheriff was on the stage, could you
8 assess the mood of the crowd that was in front of the stage?

9 A. When we originally arrived, I would have described the
10 crowd as calm. Some -- some individuals even welcomed us, but
11 then the mood started to change once Cliven ascended the stage
12 and then as -- as the rhetoric progressed, the mood definitely
13 changed.

14 Q. So, did the sheriff speak then once he was on the stage?

15 A. Yes, he did.

16 Q. And you were -- where were you in relationship to where he
17 was located?

18 A. Well, if you were in the audience, per se, and you were
19 watching the people on the stage, I would be to the -- right to
20 the front of the stage to the left.

21 Q. Now, outside the presence of the jury you've had a chance
22 to look at Exhibit 21.

23 And, Your Honor, for the witness only and not for the
24 jury, may I play a portion of Exhibit 21 for the witness?

25 THE COURT: Yes, you may.

1 (Exhibit 21 published to witness.)

2 MR. MYHRE: And you can stop it there.

3 BY MR. MYHRE:

4 Q. Now, Sheriff, this portion of the video you just
5 witnessed, is that a -- have you seen this video before?

6 A. Yes, I have.

7 Q. And does this video depict the sheriff's speech on the
8 stage on April 12th, 2014, with Cliven Bundy?

9 A. It depicts prior to the speech the sheriff made, but it --
10 that is the sheriff, Doug Gillespie, standing on the stage.

11 Q. All right. And this whole video covers the speech of the
12 sheriff as well as Mr. Bundy; is that correct?

13 A. Yes.

14 Q. Okay. And is this a fair and accurate depiction of those
15 events as you witnessed them on April 12th, 2014?

16 A. Yes, it is.

17 MR. MYHRE: Your Honor, we offer Exhibit 21.

18 (Exhibit 21 offered.)

19 THE COURT: Any objection to Exhibit 21?

20 MR. TANASI: None from Stewart, Your Honor.

21 MR. MARCHESE: Parker objects as to foundation. I
22 believe the testimony was that he doesn't recollect what
23 Ammon Bundy said.

24 BY MR. MYHRE:

25 Q. Well, whatever Ammon Bundy said was recorded onto this

1 video; is that correct?

2 A. I believe so.

3 THE COURT: All right. Any other objection?

4 MR. LEVENTHAL: No -- no, Your Honor.

5 THE COURT: All right. So, objection to Exhibit 21
6 is overruled and Exhibit 21 is received.

7 (Exhibit 21 received.)

8 MR. MYHRE: And may we publish, Your Honor?

9 THE COURT: Yes, you may.

10 (Exhibit 21 published.)

11 MR. MYHRE: Stop there, please.

12 BY MR. MYHRE:

13 Q. So, the individual in this exhibit, Sheriff, who just
14 spoke, is who?

15 A. Ammon Bundy.

16 Q. And the individual with the microphone in his hand now is
17 who?

18 A. Sheriff Doug Gillespie.

19 MR. MYHRE: And the record should reflect that we
20 stopped Exhibit 21 at 36 seconds in.

21 And please continue.

22 (Exhibit 21 published.)

23 MR. MYHRE: Stop there, please.

24 And the record should reflect at 3:11.

25 BY MR. MYHRE:

1 Q. Sheriff, in that last image we saw the sheriff hand the
2 microphone to someone. Did you recognize who he was handing
3 that to?

4 A. Yes. That would be Cliven Bundy.

5 MR. MYHRE: And Nicole, could we just go back to 2:17
6 and just stop at that point.

7 That's good.

8 BY MR. MYHRE:

9 Q. And, Sheriff, there's -- you can see in the foreground
10 here of this image, at 2:16, two individuals appear to be
11 wearing sunglasses. Did you notice -- first of all, did you
12 happen to notice what these individuals were wearing?

13 A. As far as weaponry or clothing?

14 Q. Just clothing.

15 A. Yeah. I would describe it as camouflage,
16 quasi-military-type clothing.

17 Q. Now, were they -- were individuals dressed like this, did
18 they accompany Mr. Bundy to the stage?

19 A. Yes. Those were the --

20 MR. TANASI: Objection. Leading.

21 BY MR. MYHRE:

22 Q. The individuals dressed like this, did you see them before
23 Mr. Bundy got to the stage?

24 A. No, I did not.

25 Q. Okay. When he got to the stage, did you see them?

1 A. Yes, I did.

2 Q. Did you see where they came from?

3 A. They came from the vehicles that arrived with Mr. Bundy,
4 Cliven Bundy.

5 Q. And what position did they take up?

6 A. To the front of the stage.

7 Q. Did they appear to you to be doing anything in particular?

8 A. From their stance and demeanor, through my experience and
9 training, they were providing security for Mr. Bundy.

10 MR. MYHRE: Nicole, if you could go back forward to
11 3:11 and start there.

12 (Exhibit 21 published.)

13 MR. MYHRE: Could you just go back just to 6:23,
14 please.

15 BY MR. MYHRE:

16 Q. Now, Sheriff, we stopped that clip at 10:09. I've asked
17 to just go back to 6:23. That's fine, 6:21. And just -- and I
18 take it that's you in this image here; is that correct?

19 A. That is correct.

20 Q. And that accurately depicts your position relative to the
21 stage; correct?

22 A. That is correct.

23 Q. Now, the individuals that are in the foreground here, are
24 these the individuals you mentioned as well that had come with
25 Cliven Bundy?

1 A. Correct.

2 Q. You heard Mr. Bundy's speech and you heard the requests
3 that he made of the sheriff. As you were listening to that,
4 were those requests that, from your training and experience,
5 that Metro would be involved in carrying out or doing?

6 MR. MARCHESE: Objection. Relevance.

7 MR. MYHRE: Just to -- Your Honor, it's relevant to
8 show what the sheriff's impression and law enforcement's
9 impression was of his speech and informs their actions
10 thereafter.

11 THE COURT: All right. Overruled.

12 You may answer the question.

13 THE WITNESS: No. That is not anything that we would
14 do as a matter of practice, nor would we, even we did have the
15 ability to do it, within an hour.

16 BY MR. MYHRE:

17 Q. So, with respect to the time frame, was that realistic or
18 unrealistic?

19 A. Unrealistic.

20 Q. And in terms of the demand itself, were they unrealistic
21 or realistic?

22 A. Unrealistic.

23 Q. Now, after Mr. Bundy finished his speech we saw the
24 sheriff in this video leave the stage; is that correct?

25 A. Correct.

1 Q. Did you go with the sheriff?

2 A. Yes, I did.

3 Q. And did you -- did you leave the area, generally, of the
4 staging area?

5 A. Yes, we did. Our car was parked on the side of the
6 roadway a short distance away.

7 Q. Did you observe, in this last video, some horses going up
8 onto the hill?

9 A. Yes, I did.

10 Q. Did you see, were you able to observe at all -- well,
11 first of all, did you observe those horses at the time that you
12 were there?

13 A. Yes, I did.

14 Q. Did you happen to observe where they came from?

15 A. No. It was in a defoliate area out in the desert. I
16 guess it would have been to the south. The only time I could
17 see them was when they made it to the ridge area.

18 Q. And you heard the -- on the video, were you able to hear
19 the reaction of the crowd to both Mr. Bundy's speech and to the
20 horses being there?

21 A. Yes, I did.

22 Q. And after -- and was that accurate and fair as to what you
23 recall observing what you were there?

24 A. Yes, it is.

25 Q. And how would you compare the mood of the crowd after the

1 speeches compared to your assessment of the crowd before the
2 speeches?

3 MR. TANASI: Objection. Speculation and the video
4 itself is the best evidence and speaks for itself.

5 MR. MYHRE: Your Honor, it's his assessment as a law
6 enforcement officer, training, his experience.

7 THE COURT: Overruled. He can give his assessment.
8 He was personally there. He can say what he saw, what he did,
9 what he heard.

10 Go ahead.

11 THE WITNESS: As I testified earlier, the mood of the
12 crowd was calm and welcoming when we first arrived at the
13 assembly area. Subsequent Sheriff Gillespie speaking and
14 Mr. Cliven Bundy and even during Mr. Cliven Bundy's speech, you
15 could sense the attitude of the crowd to change. The catcalls
16 that began, similar to "Sheriff, do your job," "You're a
17 constitutional sheriff," "What about the cattle?" you know,
18 "Remove the firearms of the federal government or BLM," and,
19 so, you could tell that the crowd was changing. They were
20 becoming emboldened and as we exited the area, people that were
21 welcoming when we first arrived were no longer welcoming.
22 They -- we continued to receive catcalls until we got to our
23 vehicles.

24 BY MR. MYHRE:

25 Q. When you say the crowd was "becoming emboldened," what do

1 you mean by that?

2 A. Well, they got louder. They felt comfortable shouting
3 derogatory remarks towards us and my opinion, they -- they felt
4 no fear of law enforcement.

5 Q. What was your -- did you form an assessment in terms of
6 officer safety for the sheriff and for your fellow officers and
7 yourself?

8 MR. LEVENTHAL: Objection. Relevance.

9 MR. TANASI: Stewart joins.

10 MR. MYHRE: Again, Your Honor, it shows the
11 progression of the emotion of the crowd and the sheriff's
12 assessment of his own safety and the safety of his officers
13 informs his conduct further on in the sequence of events.

14 THE COURT: Objection overruled. He may answer the
15 question.

16 THE WITNESS: Can you repeat the question, please?

17 BY MR. MYHRE:

18 Q. Sure.

19 Did -- at the time that you were leaving the staging
20 area, did you -- in your training and experience, did you form
21 an assessment as to officer safety, both for yourself and for
22 Sheriff Gillespie and your fellow officers?

23 A. Yes, I did. As I testified earlier, there was numerous
24 weapons present. When the cowboys -- I would describe them as
25 cowboys, the individuals on the horses -- when they arrived,

1 you can visibly see they were in possession of rifles and we
2 were completely outnumbered. As I testified earlier, there was
3 four of us and the crowd was 2 to 3 hundred, so we didn't have
4 the weapons or the ability to protect ourselves.

5 Q. Now, based on that, what was -- what were your next
6 actions following this encounter with Mr. Bundy?

7 A. As I testified, we went to our vehicle and then we -- we
8 left -- exited the area. We went up on the I-15. We went
9 north on I-15 in order to respond to the Incident Command Post
10 of BLM.

11 Q. Now, at the time you went to the Incident Command Post or
12 the ICP, had you formed an assessment as to whether the
13 individuals back at the staging area presented any threat to
14 the BLM at the ICP at that point?

15 A. No, I had not.

16 Q. You had not formed an assessment or you did not believe
17 there was a threat at that point?

18 A. Both. I -- my opinion was this was just rhetoric that
19 Cliven Bundy was spewing and that the individuals wouldn't act
20 on that request of Cliven Bundy and I had not made it to the
21 Incident Command Post yet to make an assessment of what the
22 situation was there nor did I know whether or not there was any
23 demonstrators up in that area.

24 Q. Now, had you -- you or any person of authority, Metro, had
25 they dispatched any Metro officers to be in close proximity to

1 the ICP to respond in the event there was any issues with
2 threats?

3 A. Yes. Under Deputy Chief Tom Roberts direction, we had
4 police officers staged in close vicinity to exit 170, or
5 Highway 170 as a contingency.

6 Q. And do you recall how many officers that was,
7 approximately?

8 A. I would -- the best of my recollection, I would say 15
9 SWAT officers and 35 police officers.

10 Q. 15 SWAT, you said?

11 A. Yes.

12 Q. And 35 police officers?

13 A. Correct.

14 Q. They were staged -- were they staged east or west of the
15 ICP, do you recall? Were they staged --

16 A. They would be east of the ICP and also south of the ICP.

17 Q. Were they more toward Las Vegas or more --

18 A. More towards Las Vegas.

19 Q. Now, you get to the ICP. Do you meet with the principals
20 at the ICP?

21 A. Yes, I do.

22 Q. And does Sheriff Gillespie meet with them as well?

23 A. Yes. Myself, Sheriff Gillespie, Undersheriff Dixon, and
24 Assistant Sheriff McMahill, all four of us went to the ICP.

25 Q. And was there -- were people briefed as to what had just

1 occurred back at the staging area?

2 A. Yes, they were.

3 Q. Now, without going into the details of what was said at
4 the briefing, when you left the briefing, did you have an
5 understanding -- well, first of all, did the sheriff leave the
6 ICP after the -- after this briefing?

7 A. Yes, he did.

8 Q. And did he return to Las Vegas?

9 A. Yes, he did.

10 Q. Did you go with him?

11 A. No, I did not.

12 Q. And why was that?

13 A. The sheriff and the undersheriff, Jim Dixon, went back to
14 Las Vegas and myself and Assistant Sheriff McMahill remained
15 behind to continue making assessment of the situation that was
16 presented earlier at the stage area and also to provide safety
17 for BLM agents.

18 Q. When you say provide safety for BLM agents, what -- what
19 did -- what does that translate to in terms of what your duties
20 would have been?

21 A. My understanding of area responsibility was BLM was in the
22 throes or the midst of a cattle roundup and they were advised
23 to cease and desist so there was a decision to be made in
24 reference to cattle and provide ample protection for themselves
25 and then my understanding of my role was to provide protection

1 for the BLM officers.

2 Q. Now, did you meet with the officers that were staged
3 near -- or toward Las Vegas down from the ICP?

4 A. Yes, I did.

5 Q. And that was after your meeting at the ICP?

6 A. Correct.

7 Q. Now, once you got to -- to where the officers were staged,
8 did you then receive more information in terms of what was
9 going on back at the staging area?

10 A. Yes. We received information that Cliven Bundy had said
11 that his demands had not been met and he advised --

12 MR. MARCHESE: Objection. Hearsay.

13 MR. TANASI: Stewart joins, Your Honor.

14 MR. LEVENTHAL: And foundation.

15 MR. PEREZ: Lovelien joins.

16 BY MR. MYHRE:

17 Q. Without going into precise -- I'm sorry, Your Honor, did
18 you -- without going precisely into what was told to you, what
19 were your next actions after being told -- first of all, did
20 you receive information from the staging area?

21 A. Yes, I did.

22 Q. Okay. And from whom did you receive that?

23 A. Shannon Kelly.

24 Q. And Shannon Kelly is who?

25 A. A police officer that operates out in the resident

1 Bunkerville area.

2 Q. So he was back at the staging area?

3 A. Yes, he was.

4 Q. And he reported back information to you; is that correct?

5 A. Not to me, to Assistant Sheriff McMahill.

6 Q. Now, as a result of receiving that information, did you
7 dispatch your police officers from that area?

8 A. Yeah. I advised all police officers that were in my
9 presence that we believed that the people from the stage area
10 were going to head to the ICP area and I had all the officers
11 in the assembly area proceed to the ICP area.

12 Q. So you've already -- you've already touched on it, but my
13 next question was, what was your understanding of what the
14 threat was that you were responding to?

15 MR. MARCHESE: Objection. He's asking him to testify
16 as to hearsay.

17 MR. MYHRE: No, Your Honor. He's --

18 THE COURT: No. He's asking his own perception. He
19 can answer the question.

20 Overruled.

21 THE WITNESS: My perception was the people that were
22 at the stage area were advised to go to the ICP area to
23 retrieve the cattle.

24 BY MR. MYHRE:

25 Q. And what did you -- did you just begin to formulate plans

1 in your own mind then as to how to respond to that threat?

2 A. Yes, I did.

3 Q. And what were those plans?

4 A. I directed the uniform officers to perform a skirmish line
5 in the median area of the highway of the I-15 and I directed
6 the SWAT officers to go onto the west side of the highway,
7 closer to the ICP, in the defoliate area, to provide further
8 perimeter security.

9 MR. MYHRE: And, Your Honor, may, for the witness
10 only, may we draw up Exhibit 191?

11 THE COURT: Yes, you may.

12 (Exhibit 191 published to witness.)

13 BY MR. MYHRE:

14 Q. And, Sheriff, if you would look at your monitor to your
15 right.

16 And you see Exhibit 191 there?

17 A. Is there a -- is everybody seeing what I'm seeing?

18 THE COURT: Just you.

19 BY MR. MYHRE:

20 Q. Just you.

21 A. Okay.

22 Yeah. I see it.

23 Q. And is that a fair and accurate depiction of the area of
24 the ICP as it existed on April 12th, 2014?

25 A. Yes, it is.

1 MR. MYHRE: Your Honor, we offer Exhibit 191.

2 (Exhibit 191 offered.)

3 THE COURT: Any objection to Exhibit 191?

4 MR. TANASI: None from Stewart, Your Honor.

5 MR. MARCHESE: None from Parker.

6 MR. LEVENTHAL: None from Drexler.

7 MR. PEREZ: None from Lovelien.

8 THE COURT: All right. Exhibit 191 will be admitted.

9 (Exhibit 191 received.)

10 MR. MYHRE: Thank you, Your Honor.

11 And may we publish?

12 THE COURT: Yes, you may.

13 (Exhibit 191 published.)

14 BY MR. MYHRE:

15 Q. So, Sheriff, now that the jury now sees 191 as well and,
16 so, after you received this information and you dispatched your
17 officers, did you accompany them up to the -- up to this area?

18 A. Yes, I did.

19 Q. Now, you talked -- first of all, as we look at this
20 exhibit, we see what appears to be two interstate lanes there;
21 is that correct?

22 A. That is correct.

23 Q. Is that the 15?

24 A. Yeah. Both north and south.

25 Q. Okay. Now, you talked about dispatching the officers to

1 form a skirmish line. And you can draw on this screen if you
2 just touch the top and hit the little pencil mark and you can
3 use your finger to draw on the page or -- excuse me -- on the
4 screen. Just --

5 There you go.

6 A. (Indicating).

7 MR. MYHRE: And the record should reflect that the
8 witness has drawn a line across the median area between the
9 15's northbound and southbound.

10 BY MR. MYHRE:

11 Q. And is that the area where you dispatched your officers to
12 form a skirmish line?

13 A. The uniform officers, yes.

14 Q. Uniform officers.

15 And would -- was -- did SWAT also respond?

16 A. Yes, they did.

17 Q. And did you have -- did you dispatch SWAT at all?

18 A. Yes, I did.

19 Q. And where did you dispatch them to?

20 A. (Indicating).

21 MR. MYHRE: And the record should reflect that the
22 witness has drawn a circle around the area just north of the
23 southbound lane of the 15.

24 BY MR. MYHRE:

25 Q. Now, you described -- well, first of all, where was the

1 entrance to the ICP?

2 A. I don't know if you can see that, by right here
3 (indicating).

4 Q. Okay. And do you recall what that was referred to as?

5 A. Post 1.

6 Q. Where was -- did you take up a position then once you
7 arrived?

8 A. Yes. Right there at the entrance of Post 1.

9 Q. At Post 1?

10 Now, were you familiar with an area called Post 2?

11 A. Yes, I was.

12 Q. And where was that?

13 A. (Indicating).

14 MR. MYHRE: And the record should reflect the witness
15 has drawn a circle in the wash area just north of the
16 southbound 15 for Post 2.

17 BY MR. MYHRE:

18 Q. Were any -- when you first dispatched your officers, were
19 any officers dispatched to Post 2?

20 A. No, there wasn't.

21 Q. Were there any officers that were -- first of all, could
22 you see Post 2 from where you were at Post 1?

23 A. Yes, I could.

24 Q. Could you see the entire area or parts of it or just . . .

25 A. I couldn't see under the bridge.

1 Q. Now, did you have an understanding of who, if anybody, was
2 responding to Post 2?

3 A. That would be BLM agents.

4 Q. Now, as you were at Post 1, did you observe the crowd --
5 crowd coming to the ICP area?

6 A. Yes, I did.

7 Q. Okay. Now, was that -- how was that -- when did the crowd
8 begin to arrive in relationship to when you first arrived
9 there?

10 A. In close proximity. As a matter of fact, I was
11 intermingled amongst their vehicles.

12 Q. So you may have arrived at least with some of them as they
13 were coming as well?

14 A. Simultaneous.

15 Q. Did you notice, from where you were -- observe rather --
16 where the people who were supporting Bundy, where they were
17 going to?

18 A. Yes, I did.

19 Q. Okay. And where was that?

20 A. They exited the roadway here (indicating) and they
21 assembled in this area.

22 MR. MYHRE: And the record should reflect the witness
23 has drawn a circle south of the northbound lane.

24 BY MR. MYHRE:

25 Q. And could you observe, from where you were, at Post 1,

1 could you observe that area fairly well?

2 A. Yeah. Fairly easy, except for the passing traffic.

3 Q. Now, did this crowd -- excuse me -- did the people that
4 were coming there, did they appear to be -- you mentioned sort
5 of assembling there. Did this assembly appear to grow or did
6 it stay the same or how would you describe the flow of traffic
7 or people into this area?

8 A. From the point of my arrival to well into the incident it
9 continued to grow.

10 Q. Would you say -- how -- how would you describe the rate of
11 growth?

12 A. Similar to the size of the crowd that was at the stage
13 area.

14 Q. The crowd that we saw in that previous exhibit,
15 Exhibit 21?

16 A. Correct.

17 Q. Did you recognize anybody in this assembly that -- from
18 where you were?

19 A. No, I didn't, from where I was posted.

20 Q. As you were observing this, were you forming an assessment
21 in your mind in terms of the security of the ICP?

22 A. Yeah. I -- I believed we were understaffed with the
23 reference to the number of individuals that were responding to
24 this assembly area here and I didn't believe we could stop them
25 if they, en masse, attempted to come across the highway.

1 Q. And what informed your belief that you couldn't stop them?

2 A. It was just the numbers. We were far outnumbered as
3 compared to how many police officers I had present.

4 Q. Did you observe any firearms in this group that was
5 assembling?

6 A. Absolutely.

7 Q. And what types of firearms did you observe?

8 A. Well, if you can imagine it, I'm sure it was probably
9 there, but I -- I saw long rifles and I saw handguns. The
10 different calibers I couldn't testify to.

11 Q. Did the presence of those firearms cause you concern?

12 A. Absolutely.

13 Q. And why was that?

14 A. Well, my police officers, the ones in uniform in this area
15 (indicating) that formed the initial skirmish line, they did
16 not have the equipment or the numbers to protect themselves
17 from the type of weapons that I saw present.

18 Q. Were you able to form an assessment as to what the intent
19 and purpose of this group was?

20 A. Not at that point, no.

21 MR. TANASI: Objection. Speculation.

22 MR. MARCHESI: Objection.

23 MR. MYHRE: Your Honor, again, it's his assessment as
24 the -- essentially in charge of the security of the ICP as to
25 what he believed this crowd was doing and it would inform all

1 of his actions subsequent to that.

2 THE COURT: Overruled. He may answer the question.

3 THE WITNESS: I had no assessment of their intent at
4 that point other than what I had received earlier, that they
5 were going to retrieve the cattle.

6 MR. MARCHESE: Objection. Hearsay.

7 MR. MYHRE: Your Honor --

8 MR. TANASI: And non-responsive, Your Honor.

9 MR. MYHRE: Your Honor, he had previously testified
10 that it was his assessment and understanding based on what he
11 heard back at the area where the Saturation Team was staged,
12 that they were coming to get the cattle.

13 THE COURT: Overruled.

14 BY MR. MYHRE:

15 Q. Now, Sheriff, at some point did you attempt to engage with
16 anybody in that group that was across the highway there?

17 A. Yes, I did.

18 Q. And what was your purpose in trying to engage with
19 anybody?

20 A. I was trying to locate who would assume command of that
21 crowd, who would be the informal leader in order to determine
22 what their intent was.

23 Q. And did you -- how is it -- and how did you go about doing
24 that?

25 A. I crossed the roadway and entered the crowd.

1 Q. And were you with anybody?

2 A. I was with, I believe it was four -- I was with the
3 undersheriff or -- he's undersheriff now, but then he was
4 assistant sheriff, McMahill, and four additional SAT Team
5 officers.

6 Q. And as you entered the crowd or began to approach the
7 crowd, did you see any reaction from them?

8 A. Yeah. The rhetoric continued or the posture continued or
9 the emotion continued similar to what I experienced at the
10 staging area.

11 Q. So did you -- when you crossed over then, the 15, did you
12 find someone to speak with?

13 A. Yes. I immediately made -- I visually saw David Bundy.

14 Q. And did you recognize Dave Bundy from a previous
15 encounter?

16 A. Yes.

17 Q. Did you then enter into a discussion with him?

18 A. Yes, I did.

19 Q. And what was that discussion about?

20 A. I asked him what his intent was.

21 Q. And how did he respond?

22 A. His intent was to get the cattle.

23 Q. Did he say how that was going to be accomplished or what
24 was going to happen?

25 A. No, he didn't inform me to -- how that would be

1 accomplished and I informed him that I was disappointed, that I
2 needed -- we had come a long way with the -- what
3 Sheriff Gillespie had presented and that if his intent was to
4 get the cattle, I needed time to continue to negotiate.

5 Q. When you indicated to him that you needed time to
6 negotiate, did he respond to that?

7 A. Yes, he did. He informed me that he didn't feel that he
8 could control the crowd.

9 Q. I'm sorry. That he could . . .

10 A. He could not control the crowd.

11 Q. Did you come away -- well, how long did this discussion
12 last?

13 A. Less than five minutes.

14 Q. And it occurred on the south portion of that . . .

15 A. Correct. South portion of the . . .

16 Q. South portion of the highway?

17 A. Correct.

18 Q. How did -- how did the discussion end?

19 A. He informed me that I had an hour to release the cattle
20 and he didn't know what the crowd would do if I failed to meet
21 that timeline and I informed Mr. Bundy that I needed way more
22 than an hour; I needed approximately eight hours or even a
23 couple of days to determine how we were going to do that.

24 Q. So, what -- did you then leave Mr. Bundy?

25 A. Prior to leaving Mr. Bundy he said he would do as best he

1 could to keep the crowd calm, but he didn't have control of
2 them and he was in fear that he would lose control of them and
3 subsequently, I asked him to work with me and I believe we can
4 find a common solution.

5 Q. Where did you return to after that discussion then?

6 A. Post 1.

7 Q. Did you continue to form an assessment as to whether you
8 could -- given now the crowd and what your discussion with
9 Mr. Bundy, did you form an assessment as to whether you could
10 continue to provide security adequately for that area?

11 A. Yeah. My assessment was the situation is getting -- was
12 becoming more dire and that was because I could see several
13 individuals who were proceeding to this wash area here
14 (indicating) and subsequently crossing under the bridge area
15 there and proceeding to Post 2, to include the cowboys that I
16 saw earlier on the horses and I had a conversation with
17 Deputy Chief Tom Roberts, who was down at Post 2, and said that
18 there were several people posted there with weapons and there
19 was some barricades there and BLM officers.

20 Q. Now, you said you saw people muster or -- excuse me --
21 gather under this southbound bridge. You drew a line on this
22 diagram under the southbound bridge, and you said you saw
23 horses. Did you see where they came from?

24 A. No. I made the assumption they were the horses that we
25 saw in the stage area.

1 MR. LEVENTHAL: Objection. Calls for speculation.
2 Move to trike.

3 MR. TANASI: Stewart joins.

4 MR. MARCHESE: Parker joins.

5 MR. PEREZ: Lovelien joins.

6 THE COURT: Sustained.

7 BY MR. MYHRE:

8 Q. Now, did you see -- you said you saw the horses and did
9 you see them go down into that wash area?

10 A. I saw them come from this direction here (indicating) and
11 proceed that way into the wash area.

12 Q. So from -- as you're observing this now and you're at
13 Post 1, do you make a decision with respect to the cattle?

14 A. I was in continual conversation with Sheriff Gillespie and
15 I made a personal assessment that the situation was beginning
16 to get out of control and I did not want a single human blood
17 [sic] shed over cattle and at that point I started to make the
18 decision on how we could release the cattle and how fast we
19 could do it.

20 Q. What was your assessment in terms of how releasing the
21 cattle would affect the situation at all?

22 A. I believe if we released the cattle, it would achieve the
23 intent of the crowd and it would -- it would assist in the
24 safety of all the agents and officers present and the crowd
25 would eventually lose their momentum and would dissipate.

1 Q. Now, you mentioned that you -- part of your assessment was
2 you did not want a single drop of blood shed over some cattle.
3 What was your concern with respect to that?

4 A. Well, as I testified earlier, several individuals were
5 present with weapons. I don't know their training. I don't
6 know their ability to handle weapons nor did I have the ability
7 to protect my police officers with the size of the crowd and
8 the number of people that were in possession of weapons and a
9 simple accidental discharge could have caused carnage.

10 Q. How many officers -- did you ever form -- did you form an
11 assessment as to how many more officers you would need to
12 adequately secure that area?

13 A. You know, through my training and experience dealing with
14 mass crowds and dealing with civil unrest, I had made an
15 assessment out there that it would take approximately 500
16 police officers to feel comfortable.

17 Q. Did you have the capacity to get that number of officers
18 to that scene?

19 A. I had the capacity; I didn't have the ability. When I say
20 ability, to get them there in a timely manner.

21 Q. And what -- how is time a factor at this point?

22 A. Well, Bunkerville and that Post 1 was approximately, I
23 would safely say, an hour to an hour and a half from the
24 central Las Vegas area, plus it would require me to muster the
25 police officers to assemble them, equip them, then have them

1 respond and my testimony from earlier provided that the traffic
2 was continuing to ingress and egress along I-15, so it would be
3 cumbersome to circumvent that traffic to get there in a timely
4 manner.

5 Q. You didn't think you could get them there in time?

6 A. No, because of the -- the hour timeline given, the
7 discussion I had with David Bundy with the timeline he had
8 given, I believed that we would lose total control within that
9 timeline.

10 Q. So, at some point do you decide to -- that -- to order the
11 BLM to release the cattle?

12 A. Yes, I did.

13 Q. And did you inform anybody of that decision?

14 A. Dan Love, Agent Dan Love.

15 Q. And he -- what was his role?

16 A. He was the --

17 Q. Did you understand what he -- his position was?

18 I'm sorry. I didn't mean to talk over you. I
19 apologize.

20 A. My understanding, he was the Special Agent in Charge of
21 the BLM operation.

22 Q. Now, once the decision -- once you informed SAC Love or
23 SAC Love of the decision to release the cattle, does -- do
24 events then take a turn in terms of the level of tension that
25 you're feeling there at Post 1?

1 A. I would say no. It even became more evident that the
2 crowd was pressing us for action and I continually was asking
3 time because of -- I believed there was a need to have all the
4 BLM agents removed from the area in order to safely conduct
5 the -- this operation and that would require some time.

6 Q. And your assessment for the BLM to be -- to leave the area
7 was based on what?

8 A. Well, I -- I personally did not believe, in the early
9 throes of this operation, that the threats were fully intended
10 against my police officers, it was against the BLM officers,
11 but as we progressed through this incident, the threat was
12 given to all public safety and I think the need for BLM to
13 retreat as a group was a need because I was not comfortable
14 with their training and experience in tactics and dealing with
15 crowds. That is not their normal course of operation, that I
16 wanted to ensure their safety before we did anything.

17 MR. MYHRE: Your Honor, may I show for the witness
18 Exhibit 160, please?

19 THE COURT: Yes, you may.

20 (Exhibit 160 published to witness.)

21 BY MR. MYHRE:

22 Q. Sheriff, I meant to cover this a little earlier in your
23 testimony, but do you see Exhibit 160 in front of you?

24 A. Yes, I do.

25 Q. And is that -- does this depict an image of you speaking

1 with David Bundy?

2 A. Yeah, with a little less gray hair.

3 Q. And was this the discussion or the -- at the time, around
4 the time that you had the discussion with him alongside the
5 freeway on the south side of the Interstate 15?

6 A. Yes, it does.

7 Q. And does it fairly and accurately depict the events of
8 April 12, 2014, as you recall them?

9 A. Yes, it does.

10 MR. MYHRE: Your Honor, we offer Exhibit 160.

11 (Exhibit 160 offered.)

12 MR. MARCHESE: No objection, Parker.

13 MR. TANASI: None from Stewart, Your Honor.

14 MR. LEVENTHAL: No objection.

15 MR. PEREZ: None from Lovelien.

16 THE COURT: All right. Exhibit 160 will be admitted.
17 You may go ahead and publish it.

18 (Exhibit 160 received.)

19 MR. MYHRE: Thank you, Your Honor.

20 (Exhibit 160 published.)

21 BY MR. MYHRE:

22 Q. And as I said, Sheriff, I wanted -- I neglected to cover
23 this with you when you were talking about Dave Bundy, but if
24 you could just point to his image and just make a mark of --
25 image of where he is in this photograph.

1 A. (Indicating).

2 Q. Okay. And you obviously are in the foreground; is that
3 correct?

4 A. (Indicating). That is correct.

5 Q. Thank you.

6 Now, did there come a time when you -- after you made
7 the decision or informed SAC Love to release the cattle, did
8 there come a time then when you met with SAC Love, Dave Bundy,
9 yourself, and Ryan Bundy at or near Post 1?

10 A. Yes, there was.

11 Q. And was the purpose of that meeting to discuss how to go
12 about releasing the cattle?

13 A. Yes, it was.

14 MR. MYHRE: And if I could, for the witness, please,
15 draw up Exhibit 23.

16 THE COURT: Yes, you may.

17 (Exhibit 23 published to witness.)

18 BY MR. MYHRE:

19 Q. And was that meeting, to your knowledge, recorded?

20 A. Yes, it was.

21 Q. And outside the courtroom today have you had a chance to
22 review Exhibit 23?

23 A. Yes, I did.

24 Q. And is this Exhibit 23 a fair and accurate depiction of
25 that conversation that occurred at Post 1 after the decision

1 was made to release the cattle between yourself, SAC Love, and
2 Dave and Ryan Bundy?

3 A. I can't say yes because I don't see the other actors. I
4 don't -- is this a photograph or a video?

5 Q. No. If you could -- I'm sorry.

6 Nicole, if you could advance that, please, a little
7 bit.

8 (Exhibit 23 published to witness.)

9 THE WITNESS: Yes. It appears so.

10 MR. MYHRE: Thank you. And --

11 Thank you, Nicole.

12 Your Honor, we offer Exhibit 23.

13 (Exhibit 23 offered.)

14 THE COURT: Did you say this was a conversation with
15 David Bundy or Ryan Bundy? I think I missed which one.

16 MR. MYHRE: Yes, Your Honor. With -- at this --
17 present, Sheriff, at this conversation was yourself, Dan --
18 SAC Love; correct? And was David Bundy present?

19 THE WITNESS: Yes, he was.

20 BY MR. MYHRE:

21 Q. And was Ryan Bundy present?

22 A. Yes, he was.

23 Q. And were -- and was Ryan Bundy doing the speaking for most
24 of the time?

25 A. He was.

1 THE COURT: All right. Thank you for that
2 clarification.

3 Any objection to Exhibit 23?

4 MR. TANASI: None from Stewart, Your Honor.

5 MR. MARCHESE: None from Parker.

6 MR. LEVENTHAL: No, Your Honor.

7 MR. PEREZ: None from Lovelien.

8 THE COURT: All right. Exhibit 23 will be admitted.

9 You may go ahead and publish it.

10 (Exhibit 23 received.)

11 MR. MYHRE: Thank you, Your Honor.

12 (Exhibit 23 published.)

13 MR. MYHRE: If you'd stop there, please.

14 BY MR. MYHRE:

15 Q. And, Sheriff, the individual with the vest that says
16 "police," who is that individual?

17 A. That is SAC Dan Love.

18 MR. MYHRE: And Nicole, if you could back it up, just
19 two seconds.

20 Two more.

21 BY MR. MYHRE:

22 Q. And it's backed up at 7 seconds and the individual to the
23 right with the hat, who is that individual?

24 A. That is Ryan Bundy.

25 Q. And Ryan Bundy is what relation to Cliven Bundy?

1 A. He's a son.

2 Q. Okay.

3 MR. MYHRE: Please continue on.

4 (Exhibit 23 published.)

5 BY MR. MYHRE:

6 Q. So, Sheriff, after observing this video, does that refresh
7 your memory in terms of what the gist of this conversation was
8 about?

9 A. Yes, it does.

10 Q. And what -- just generally, what was the purpose of this
11 conversation at Post 1?

12 A. To ensure that Ryan and David Bundy had an understanding
13 that it was against federal law to release the cattle and --
14 but that we had given the ability to do that without
15 repercussion at that time.

16 Q. When you say "at that time," what -- what does that
17 referring to?

18 A. In other words, they would be -- have the ability to
19 release the cattle and they weren't going to be placed under
20 arrest at that time.

21 Q. When you say "they weren't going to be placed under arrest
22 at that time," did that mean forever?

23 A. No. Absolutely not.

24 Q. So what was the purpose of saying not at that time?

25 A. In order to calm, de-escalate the crowd and the situation,

1 to prevent bloodshed --

2 Q. Do you feel -- with respect not just to the arrest of
3 either of the Bundys, but with respect to the arrest of anybody
4 in that area, do you feel that would have affected the level of
5 tensions?

6 A. Yes. I believe -- wholeheartedly believe it would have
7 escalated the situation.

8 Q. And would -- did you have the resources, the ability to
9 effectuate a number of arrests?

10 A. No. Absolutely not.

11 Q. Now, but for the crowd that you faced and the threat that
12 you faced and assessed while you were at Post 1, would you have
13 directed the BLM to release the cattle?

14 A. I'm sorry. Can you rephrase it --

15 Q. Sure.

16 A. -- or repeat the question?

17 Q. You were -- when you made the decision to release the --
18 to direct the BLM to release the cattle, was that based solely
19 on what you were facing in terms of the threat before you
20 that -- what you were assessing at the ICP?

21 A. Yes.

22 MR. MYHRE: Your Honor, may I have just one moment,
23 please?

24 THE COURT: Yes.

25 (Counsel conferring.)

1 MR. MYHRE: And, Your Honor, could we bring up
2 Exhibit 23 again?

3 THE COURT: Yes.

4 MR. MYHRE: And Nicole, if you could go to about
5 2:49.

6 BY MR. MYHRE:

7 Q. And the individual that we see here, Sheriff, who is
8 that -- do you know who that individual is?

9 A. Which one?

10 Q. I'm sorry. The one -- the -- I'll circle the gentleman
11 here with the helmet (indicating).

12 A. Yeah. That's one of my SWAT officers.

13 Q. And this is -- would this have been a member of the SWAT
14 Team that had been dispatched to the ICP?

15 A. Yes.

16 Q. Now, the way this officer is equipped and uniformed, is
17 that how SWAT officers are equipped and uniformed?

18 A. Yes, it is.

19 Q. Is that standard for Metro or is that standard for most
20 police departments, do you know?

21 A. I can't testify to that, but it's standard for Metro.

22 Q. Standard for Metro.

23 MR. MYHRE: And then if we could just go to 1:23,
24 please, Nicole.

25 I'm sorry. Let's try at 1:05. I apologize.

1 Now, I think you had -- I'm sorry. Was that -- was
2 that 1:23 earlier?

3 Okay. There we go. Thank you very much.

4 BY MR. MYHRE:

5 Q. So, we've stopped the video at 1:23 and just, again, for
6 purposes, the individual in the foreground here to the left
7 (indicating), who is that individual?

8 A. This individual (indicating)?

9 Q. Yes.

10 A. That is David Bundy.

11 Q. And he's a son of Cliven Bundy as well?

12 A. Correct.

13 Q. You discussed Ammon Bundy earlier. Do you know him to be
14 a son of Cliven Bundy as well?

15 A. Yes, I do.

16 Q. Now, after you had this discussion, and this discussion
17 occurred at Post 1 or near Post 1; is that correct?

18 A. Correct.

19 Q. After this discussion, did BLM eventually leave that --
20 the area?

21 A. Yes, they did.

22 Q. Okay. And did you observe them leaving?

23 A. Yes, I did.

24 Q. And were the cattle eventually released?

25 A. Yes, they were.

1 Q. Was that before or after BLM left the area?

2 A. After.

3 Q. And did you -- were you concerned for safety during the
4 release of the cattle as well?

5 A. Yeah. I was -- I was concerned for safety until the
6 complete -- until I actually left the area eventually, so . . .

7 Q. How long were you in the area, total?

8 A. I don't know, sir. I mean, it was well over five hours.

9 Q. So, you would have left after the cattle left as well; is
10 that correct?

11 A. Correct.

12 MR. MYHRE: Your Honor, I have no further questions.

13 THE COURT: Thank you.

14 Cross?

15 MR. TANASI: Your Honor, I'd ask, if possible, if we
16 may take our break.

17 THE COURT: Sure.

18 MR. TANASI: Thank you.

19 THE COURT: Okay. We'll go ahead and take our
20 15-minute break. During this time I need to remind the jury
21 you are not to discuss this case with anyone nor permit anyone
22 to discuss it with you. You can speak to your fellow jurors
23 about other things, but not about this case.

24 Please do not read or listen to or view anything that
25 touches upon this case in any way.

1 Do not attempt to perform any independent research or
2 investigation.

3 If you have a question, write it down on the form
4 provided, and please do not form any opinion.

5 Let's go ahead and take about a 15-minute break.

6 We'll stand for the jury and then everyone else may
7 recess afterwards.

8 (Jury excused from courtroom.)

9 THE COURT: Sheriff, you may stretch or use the
10 restroom as well. We just need you back here in 15.

11 Off record.

12 (Recess was taken at 3:22 p.m.)

13 COURTROOM ADMINISTRATOR: All rise.

14 THE COURT: You may be seated. We're going to go
15 ahead and call in the jury.

16 (Brief pause in proceedings.)

17 COURTROOM ADMINISTRATOR: All rise.

18 (Jury returned to courtroom at 3:43 p.m.)

19 THE COURT: Thank you. Everyone may be seated.

20 Mr. Tanasi, you want to go first?

21 MR. TANASI: Yes. Thank you, Your Honor.

22

23 CROSS-EXAMINATION OF JOSEPH LOMBARDO

24 BY MR. TANASI:

25 Q. Good afternoon, Sheriff.

1 A. Afternoon.

2 Q. Rich Tanasi. I represent Steve Stewart (indicating). Got
3 a few questions for you on cross. Okay, sir?

4 All right. You are the current sheriff --

5 A. Correct.

6 Q. -- in Las Vegas; correct?

7 A. Correct.

8 Q. And that is essentially the head of the Las Vegas
9 Metropolitan Police Department; right?

10 A. That is correct.

11 Q. And that is an elected office; correct?

12 A. Yes, it is.

13 Q. Makes you an elected official; right?

14 A. That's correct.

15 Q. Okay. Fair to say then you rely on votes in order to hold
16 that position? You need to be voted into that office; correct?

17 A. That is correct.

18 Q. All right. Have to have a good public perception in order
19 for people to vote for you; right?

20 A. I would hope so.

21 Q. Okay. And -- and you get your support from different
22 entities; correct?

23 A. Yes.

24 Q. Okay. I've got it down that you get different support
25 from different casinos in town; correct?

1 MR. MYHRE: Objection, Your Honor. Relevance.

2 THE COURT: What's the relevance of this?

3 MR. TANASI: Your Honor, it goes to bias. I'm
4 setting up exactly how it gets there with my next line of
5 questioning. Essentially the support that he relies on in
6 order to hold the elected office.

7 THE COURT: The financial support?

8 MR. TANASI: Correct, Your Honor.

9 THE COURT: All right.

10 Overruled.

11 MR. MYHRE: Your Honor, with respect to that, there's
12 no developed relationship between financial support and the
13 events of April the 12th and to the extent he's inquiring into
14 this, it bears no relevance at all to what the sheriff was
15 doing out on April -- April the 12. I'm not seeing the
16 so-called bias here at all.

17 THE COURT: Well, it's an attempt to show bias. It
18 doesn't necessarily mean that he will or will not be
19 successful, but he has an opportunity to attempt to show bias.

20 MR. TANASI: Thank you, Your Honor.

21 BY MR. TANASI:

22 Q. Sheriff, so, essentially, again, you -- you rely on the
23 support, at least of others, politically, in order to hold the
24 job that you hold. Is that fair to say?

25 A. Yes.

1 Q. All right. And isn't it true that your office, it
2 receives 9 million dollars, roughly, a year in federal funding
3 in order to survive? Isn't that correct?

4 A. I wouldn't use the word "survive." We receive 9 million
5 dollars, approximately, in federal funding.

6 Q. Okay. Could you survive without that 9 million dollars?

7 A. Absolutely.

8 Q. You could?

9 A. Yes.

10 Q. Okay. So the 9 million dollars is essentially what then?

11 A. It's -- helps. It supports, but we are not relied upon it
12 in order to function.

13 Q. Okay. Let's fast-forward to Bunkerville, sir.

14 On the 12th, you arrive roughly 10:00 a.m. Does that
15 sound about right?

16 A. I would say a little bit sooner probably. I'm not sure.
17 I'm not sure. I was there on the 12th.

18 Q. Understood. But what time roughly do you think you got
19 there?

20 A. It was in the morning hours.

21 Q. In the morning hours. Okay.

22 And when you got there, you ultimately reached the
23 assessment that I had written down that ultimately to kind of
24 control the situation, you'd need about 500 officers; right?

25 A. Yes.

1 Q. Okay. But when you arrived, how many officers did you
2 have with you?

3 A. There was approximately 50 officers present. When I went
4 to the stage area, there was four of us.

5 Q. Okay. So, again --

6 A. Actually, strike that. There was five of us.

7 Q. Okay. So for the ideal situation, in order to handle the
8 situation ideally, you'd have 500, kind of in hindsight, but
9 when you got there, right, you only had about 50? Is that
10 fair?

11 A. That's fair.

12 Q. Okay. And that was because that that's based on the
13 information you had; right? When you're heading down to
14 Bunkerville, you make that decision to come up with that
15 number; right?

16 A. That's correct.

17 Q. Okay. And you make that decision based, in part, on
18 learning kind of what's going on in Bunkerville; right?

19 A. Correct.

20 Q. Okay. And one of the things that you -- you learned was
21 that the BLM's operation was over; right? While you were
22 driving there on the 12th; correct?

23 A. I wouldn't describe it that way. It was -- we had been
24 advised that they were told to cease and desist. I had no idea
25 whether it was over or not.

1 Q. Okay. Advised to cease and desist; correct?

2 A. Yes.

3 Q. Okay. Not advised to start up the operation; right?

4 A. Correct.

5 Q. Not advised to continue the operation; correct?

6 A. Correct.

7 Q. Advised to cease and desist; right?

8 MR. MYHRE: Objection. Asked and answered.

9 THE COURT: Sustained.

10 MR. TANASI: Brian, if you could please call up
11 Government's Exhibit 21.

12 MR. TANASI: Thank you.

13 If you could stop it right there, Brian.

14 BY MR. TANASI:

15 Q. Okay. Again, we're kind back now to Bunkerville and we're
16 at the speech on the 12th; correct?

17 A. Correct.

18 Q. And this is at the rally site; right?

19 A. Correct.

20 Q. Okay. This isn't on the northbound or southbound bridge;
21 right?

22 A. Correct.

23 Q. Okay. How far is this rally site, roughly, from the
24 northbound bridge, you'd say?

25 A. I don't know. I don't know.

1 Q. Don't know?

2 A. No.

3 Q. How long did it take you? You went from one to the other.
4 How long did it take you?

5 A. Oh, it's more -- it's more than three miles, so . . .

6 Q. More than five?

7 A. I would guess that.

8 Q. Okay. All right.

9 MR. TANASI: Brian, if you could fast-forward,
10 please, to 1 minute and 7 seconds.

11 And go ahead and stop.

12 BY MR. TANASI:

13 Q. And so, now, what we see here is Sheriff Gillespie;
14 correct?

15 A. That is correct.

16 Q. All right. He -- he was the sheriff at the time in
17 Bunkerville; right?

18 A. That's correct.

19 Q. Basically held the job you hold now; right?

20 A. Correct.

21 Q. Okay. So he gives this speech; right?

22 A. He gives what speech?

23 Q. The speech we're looking at here?

24 A. Just being rhetorical, but that doesn't look like a speech
25 to me.

1 Q. So, understood. We'll play it.

2 MR. TANASI: Go ahead, Brian.

3 (Exhibit 21 published.)

4 MR. TANASI: Brian, can you stop it, please.

5 Thank you, sir.

6 BY MR. TANASI:

7 Q. All right. So we just heard from Sheriff Gillespie;
8 right?

9 A. Correct.

10 Q. And he's addressing the crowd and he's saying that the BLM
11 is going to cease this operation; right?

12 A. Correct.

13 Q. All right. And again, this is at least five miles away
14 from where the wash and the cattle are located; correct?

15 A. Yeah, and I'm relying on you on the distance.

16 Q. Well, don't rely on me, sir. I asked you the question.

17 A. I don't know what the distance is.

18 Q. Okay. But, fair to say it's about five miles?

19 A. That's fair.

20 Q. Okay. All right. The sheriff goes on to say -- tells the
21 crowd that the Gold Butte allotment will be reopened to the
22 public; correct?

23 A. That is correct.

24 MR. TANASI: All right. Brian, if you could play
25 that, just to be clear -- just to be clear. It's 1 minute and

1 35 seconds.

2 (Exhibit 21 published.)

3 MR. TANASI: Okay. Stop, Brian, please.

4 BY MR. TANASI:

5 Q. All right. So, again, he's informing the crowd that that
6 Gold Butte allotment, that wash area, it's going to be reopened
7 to the public so they're free to go; right?

8 A. Correct.

9 Q. Okay.

10 MR. TANASI: Brian, if you could fast-forward to
11 6:24, please.

12 Okay. Go ahead and stop it.

13 BY MR. TANASI:

14 Q. All right. So, in this picture we see you; correct?

15 A. Yes.

16 Q. All right. And then this gentleman here that I'm circling
17 (indicating), he's got a radio on him; correct?

18 A. That appears to be a radio.

19 Q. Okay. Now, fair to say that the makeup of the crowd was
20 different; right?

21 MR. MYHRE: Objection, Your Honor. Vague. Different
22 from what?

23 THE WITNESS: That's not fair to say.

24 BY MR. TANASI:

25 Q. All right. Fair to say, not everybody in the crowd was

1 wearing a radio like that; correct?

2 A. Correct.

3 Q. All right. So some people had radios; right?

4 A. I assume so.

5 Q. Okay. And some people didn't; right?

6 A. Correct.

7 Q. So the makeup of the crowd was different; correct?

8 A. In that aspect.

9 MR. TANASI: Brian, if you could go to 7 -- I'm
10 sorry. Yeah, 7 minutes and 20 seconds, please.

11 All right. Actually, Brian, if you could back up
12 just a little bit more to 7:15. Go ahead and play.

13 (Exhibit 21 published.)

14 MR. TANASI: And stop it there.

15 BY MR. TANASI:

16 Q. All right. So, in the background, Sheriff, we've got
17 Sheriff Gillespie (indicating); correct?

18 A. That's correct.

19 Q. All right. And then next to him, who is this
20 (indicating), sir?

21 A. That's Undersheriff Dixon.

22 Q. Undersheriff Dixon. Okay. Who is he talking to there?

23 A. Ammon.

24 Q. Okay. Appears to have a smile on his face; right?

25 A. I'm sorry?

1 Q. Sheriff -- Undersheriff Dixon, he appears to have a smile
2 on his face there?

3 A. I can't tell.

4 Q. Can't tell. All right.

5 MR. TANASI: Brian, if we can go back to 4:05,
6 please.

7 (Exhibit 21 published.)

8 BY MR. TANASI:

9 Q. All right. This is kind of back -- I know we jumped
10 backwards, but this is when Cliven was addressing the crowd;
11 correct?

12 A. Yes, sir.

13 Q. Okay. And in this speech he says something to the effect
14 of that when he went to bed on the 11th, he didn't know what he
15 was going do. Does that sound about right to you?

16 A. That's my recollection.

17 Q. Okay. So, goes to bed on the 11th, doesn't know what he's
18 going do. Standing here, though, in front of the crowd giving
19 his speech he seems to have more of an idea of what his plan
20 is; correct?

21 MR. MYHRE: Objection. Speculation, Your Honor, as
22 to what Mr. Bundy was thinking.

23 THE COURT: Sustained.

24 BY MR. TANASI:

25 Q. All right. So just so we're clear though, you agree with

1 me, he does address the crowd and he says that on the 11th,
2 when he goes to bed, he doesn't know what he's going to do on
3 the 12th; correct?

4 MR. MYHRE: Well, objection, Your Honor, as to -- I
5 don't recall the precise words.

6 MR. TANASI: All right. Brian, if we could just go
7 ahead and replay it.

8 (Exhibit 21 published.)

9 I apologize. Brian, if you stop for a second. Let's
10 back up just a little bit further. Back up to 4:03, say.

11 (Exhibit 21 published.)

12 MR. TANASI: Okay. Stop. Thank you.

13 BY MR. TANASI:

14 Q. Okay. Went to bed, didn't know what he was going do, how
15 he was going to handle this. Here, he's telling the crowd he's
16 got an idea of what he's going to do. Fair?

17 MR. MYHRE: Objection. Your Honor, assumes facts not
18 in evidence that he went to bed assuming not knowing what he
19 was going to do.

20 MR. TANASI: I'll let the video speak for itself and
21 move on, Your Honor. Thank you.

22 All right. If we could -- Brian, if you could call
23 up Government's Exhibit 23, please.

24 (Exhibit 23 published.)

25 BY MR. TANASI:

1 Q. Okay. That gentleman there, that's Special Agent in
2 Charge Dan Love; correct?

3 A. Correct.

4 Q. Okay. He's in charge of the entire operation. Is that
5 fair?

6 A. It's fair to say.

7 Q. In charge of the BLM. Fair?

8 A. Fair to say.

9 Q. Played a pretty important role on that day, on the 12th?

10 A. Yes.

11 Q. All right. And who is the gentleman -- who is this
12 gentleman, sir (indicating)?

13 A. I do not know.

14 Q. Okay. But you're here at this time?

15 A. Yes, I am.

16 Q. Okay.

17 MR. TANASI: Go ahead, Brian, play it, please.

18 (Exhibit 23 published.)

19 MR. TANASI: All right. Go ahead and stop.

20 BY MR. TANASI:

21 Q. All right. I know we've only watched a little bit of it,
22 but you've seen this entire video before testifying here today;
23 correct?

24 A. Yes, I have.

25 Q. All right. In reviewing that video, you never saw

1 Steven Stewart there; right?

2 A. I don't recall.

3 Q. Okay. Did -- didn't see Mr. Parker there; correct?

4 A. I don't recall.

5 Q. Okay. Didn't see Mr. Drexler there; correct?

6 A. I don't recall.

7 Q. Didn't see Mr. Lovelien there; correct?

8 A. I don't recall.

9 Q. All right.

10 MR. TANASI: Go ahead and play a little more, Brian.

11 (Exhibit 23 published.)

12 MR. TANASI: All right. Stop.

13 BY MR. TANASI:

14 Q. All right, sir. Who is this gentleman back here
15 (indicating)?

16 A. It looks like, back then, Assistant Sheriff McMahill.

17 Q. Okay. What was his role?

18 A. In support of me.

19 Q. Okay. Thank you.

20 And then this gentleman here (indicating)? I'm
21 guessing he's not with Metro?

22 A. No, he's not.

23 Q. Okay. Do you know who he is and what he's doing there?

24 A. No. I -- back -- to be frank with you, back then, I
25 thought he was a videographer for the BLM.

1 Q. Okay. And again, this gentleman in the glasses
2 (indicating), again, might have asked you about him already,
3 but do you know who that is?

4 A. No, but he's wearing a government insignia.

5 Q. Okay. Fair to say his role there then is with the
6 government?

7 A. Yes.

8 MR. TANASI: All right. Go ahead and keep playing
9 it, Brian.

10 (Exhibit 23 published.)

11 MR. TANASI: All right. Brian, you can stop. Thank
12 you.

13 Why don't we go ahead to 2:48.

14 Okay. Stop.

15 BY MR. TANASI:

16 Q. Okay. This gentleman here (indicating), that I'm
17 circling, who is that?

18 A. It's one of my SWAT officers.

19 Q. Okay. What's he wearing?

20 A. His tactical gear.

21 Q. Okay. All right. You had an opportunity -- actually,
22 Brian, if you could call up Exhibit 160.

23 (Exhibit 160 published.)

24 BY MR. TANASI:

25 Q. All right, sir. So, again, this is -- this is you

1 depicted in the picture; correct?

2 A. Correct.

3 Q. All right. And this gentleman here (indicating), who's
4 that?

5 A. Looks like David Bundy.

6 Q. Okay. Now, you had a conversation with Dave Bundy; right?

7 A. Yes, I did.

8 Q. Talking to him right there; right?

9 A. Yes, I did.

10 Q. Okay. And prior to this, you were kind of walking across
11 the highway in what you called maybe the skirmish line or had
12 the officers that were going to be part of that skirmish line
13 with you. Is that fair?

14 A. Yes.

15 Q. Okay. So again, just moments before this picture you're
16 kind of on one side of the road walking across the road with
17 your officers, come over to this picture that we're looking at
18 now and start to have a conversation with Dave Bundy; correct?

19 A. Correct.

20 Q. All right. So I'm going to show you now what's been
21 premarked for identification purposes only as Defense Exhibit
22 5029. Also on the Government's list as Exhibit 41.

23 (Exhibit 5029 published to witness.)

24 BY MR. TANASI:

25 Q. All right. I'm going to show you this video kind of

1 intermittently and ask you if you recognize it and if you know
2 who's in it and if, in fact, it's you. Fair?

3 A. I'm sorry.

4 Q. Okay. Why don't you watch this video a little bit, just
5 for a second. Go ahead.

6 (Exhibit 5029 published to witness.)

7 MR. TANASI: All right. Stopping at the 10 second
8 mark, 14 second mark now.

9 BY MR. TANASI:

10 Q. Is that you, sir?

11 A. Yes, it is.

12 Q. All right. Who else is in the picture with you?

13 A. Undersheriff McMahill and three SAT Team officers.

14 Q. All right. And where are you?

15 A. I'm sorry?

16 Q. Where are you in the picture?

17 A. (Indicating).

18 Q. Appreciate that.

19 Where is the actual location that you're standing on?

20 A. Where is the actual location?

21 Q. Yes, sir.

22 A. That's the -- the median area with the transition between
23 the two freeways -- north and southbound I-15.

24 MR. TANASI: Okay. Go ahead and keep playing it,
25 Brian.

1 (Exhibit 5029 published to witness.)

2 MR. TANASI: All right. If you can stop it there at
3 the 23 second mark.

4 BY MR. TANASI:

5 Q. Okay. What's out in front of you?

6 A. Out here (indicating)?

7 Q. Anywhere out in front of you.

8 MR. MYHRE: Your Honor, we're going to object to the
9 -- I'm sorry. We object to the continuing description of
10 what -- since it's not an admitted exhibit, I'm not sure why
11 we're walking through each frame of this exhibit describing
12 things in it when the jury -- it's not before the jury.

13 MR. TANASI: Fair enough, Your Honor. I can back up.

14 BY MR. TANASI:

15 Q. Do you recognize what you see here, sir?

16 A. Yes, I do.

17 Q. All right.

18 MR. TANASI: Can you go ahead and keep playing it,
19 Brian.

20 (Exhibit 5029 published to witness.)

21 MR. TANASI: And stop it, Brian.

22 So we're at the 50 second mark.

23 BY MR. TANASI:

24 Q. Do you recognize what you've seen so far, sir?

25 A. Yes, I do.

1 MR. TANASI: Okay. Go ahead and keep playing.

2 (Exhibit 5029 published to witness.)

3 MR. TANASI: Now, Brian, we can stop it at the 1:25
4 mark.

5 BY MR. TANASI:

6 Q. Do you still recognize this video, sir?

7 A. Yes, I do.

8 Q. How do you recognize the video, sir?

9 A. That's me.

10 Q. You doing what, sir?

11 A. I'm talking to David Bundy.

12 MR. TANASI: Okay. Go ahead and keep playing it.

13 (Exhibit 5029 published to witness.)

14 MR. TANASI: All right. Brian, if you could
15 fast-forward to the end.

16 Okay. Go ahead and stop.

17 BY MR. TANASI:

18 Q. All right, sir. Having viewed that video, does it fairly
19 and accurately depict the events that you participated in on
20 the 12th?

21 A. Yes, it does.

22 MR. TANASI: Okay. Your Honor, I'd move to admit
23 Defense Exhibit 5029.

24 THE COURT: Any objection?

25 MR. MYHRE: We object, Your Honor.

1 The -- and this would go to a matter that was earlier
2 ruled upon by the Court.

3 THE COURT: All right. Let's go to sidebar.

4 (Proceedings at sidebar out of the hearing of the jury:)

5 THE COURT: All right. Go ahead, Mr. Myhre.

6 MR. MYHRE: Thank you, Your Honor.

7 The Government objects to a portion of the video
8 5029, is that it?

9 MR. TANASI: 5029.

10 MR. MYHRE: 5029, where the sheriff, in his
11 discussion with Dave Bundy that's being recorded, talks about
12 the sheriff talking with the governor and meeting with the
13 governor and that they are working essentially with the
14 governor to get -- you know, work through the cattle issue. He
15 also talks about how the . . . Metro has made progress in
16 getting the BLM to cease and desist or to stop the impoundment.
17 All of that -- first of all, with respect to the governor, that
18 is all what the Court has already ruled upon. We open up the
19 door to, you know, whatever the governor said and what the
20 discussions of the governor were and so forth and secondly,
21 with respect to BLM being told by Metro to cease and desist,
22 those -- you know, that, again, is not factually true and I'm
23 not sure -- I think the witness would say he was just talking
24 in order to mollify the crowd. So, I am concerned that we're
25 getting into 403 area on that -- on that regard because of you

1 have to explain all the process of what led up to the BLM
2 deciding to cease and desist and that's not the focus of this
3 case.

4 MR. TANASI: Okay. So, first, Your Honor, it was
5 originally on the Government's exhibit list as Exhibit 41. At
6 some point they intended to offer it themselves. I understand
7 they've chosen not to, but the reason we would offer it is for
8 essentially the two comments that, you know, Sheriff Lombardo
9 would ultimately make; one being that yes, the governor was
10 involved. He doesn't say what the governor says. He doesn't
11 go as far as saying that the governor called the BLM improper.
12 I'm not trying to admit the governor's statement. I
13 understand, of course, what the Court's ruling is on this, but
14 he's --

15 THE COURT: It doesn't sound like you do. What's the
16 purpose of introducing the fact that the governor was or was
17 not involved?

18 MR. TANASI: Because we had testimony from
19 Agent Stover in the last trial that political pressure, in
20 part, led to the BLM deciding to cease their operations. I'm
21 not getting into the exact words that were used by the
22 governor, but the fact that there was political pressure at
23 some level that played into their decision to cease the
24 operations goes directory to the defense of the case, which is
25 that our guys didn't extort or stop the BLM, they were going to

1 do so anyways. They were doing it before Steven Stewart even
2 arrived in Bunkerville. So, political pressure at least, in
3 part, played a role in the extortion, in defending the
4 extortion element of the case.

5 Additionally, he goes on to say that --

6 THE COURT: Political pressure caused by something
7 separate than the Bundy --

8 MR. TANASI: Correct, which --

9 THE COURT: What would be that other political
10 pressure?

11 MR. TANASI: I -- I'm not going that far with it,
12 Your Honor. I'm just saying that's what he mentions.

13 THE COURT: Well, then it --

14 MR. TANASI: He said it was political pressure, but
15 the government is saying that Steven Stewart is who extorted
16 the BLM and what I'm saying or what we're defending is that at
17 least, in part, of the governor had a role in the political
18 pressure that led to the stop.

19 THE COURT: The fact that the governor had a role is
20 insufficient. That doesn't make any difference one way or the
21 other. It's not relevant. It's more prejudicial than
22 probative.

23 MR. TANASI: Okay.

24 THE COURT: You're not giving me anything probative
25 there --

1 MR. TANASI: Understood.

2 THE COURT: -- to balance.

3 MR. MARCHESE: But the thing of it is, though, and I
4 think we're making more of it than it really is, it's so
5 minimal what he says about the governor. It's a very minimal
6 amount. He just says that he was in contact with the governor.
7 It doesn't say anything about the governor's opinion, which was
8 what the Court's order went directly to. It's just --

9 THE COURT: And how would it be relevant if it
10 doesn't say anything?

11 MR. MARCHESE: Well, it's -- it's relevant to the
12 fact for them to hear it, but more importantly they opened the
13 door by eliciting this testimony. We are just simply
14 introducing what --

15 THE COURT: Eliciting what testimony?

16 MR. PEREZ: The cease and desist.

17 MR. MARCHESE: He talked about the meeting that he
18 had with Dave Bundy. That's what this is. We are just simply
19 showing what actually happened.

20 MR. TANASI: Timeline is key. As I established with
21 him in the beginning, is he was coming -- he was heading to
22 Bunkerville, thinking it was over. That's the point. And part
23 of the reason he thought it was over, it was because of the
24 conversations he's had with the governor. Again, not going
25 into exactly what the nature of those conversations were, but

1 the existence of those conversations. Point being, governor
2 has some role in the operation ceasing, not Steven Stewart.

3 THE COURT: I'm not seeing the probative value.

4 MR. TANASI: Okay. There's -- there's another --

5 MR. MARCHESE: Can we redact "governor"?

6 MR. TANASI: There's another portion of the video,
7 Your Honor, if I may, that -- where he says, "We've made huge
8 progress already. We got the BLM to stop operations."
9 Mr. Myhre's argument in opposing that coming in is that he
10 maybe just would have said that just for purposes of . . .
11 whatever. I don't know. Some other purpose other than it
12 being true. That goes right to credibility. I mean, is
13 that -- it's okay for --

14 THE COURT: I don't even understand what you just
15 said. His purpose of saying what?

16 MR. TANASI: He says, "We have made huge progress
17 already. We got the BLM to stop operations." That's one of
18 the statements that Mr. Lombardo -- Sheriff Lombardo tells
19 David Bundy.

20 THE COURT: Oh, okay. I thought you were talking
21 about the governor again.

22 MR. TANASI: No. Moved away from the governor.

23 THE COURT: All right.

24 MR. TANASI: Mr. Myhre, if I understood it correctly,
25 in his objection, says that he'll probably say that he said

1 that because he was trying to convey some other message. So,
2 again, conveying some other message other than the truth goes
3 directly to credibility. So . . .

4 MR. MYHRE: Our position is, is that none of this is
5 relevant.

6 I'm sorry. I've got to learn how to keep my voice
7 down.

8 Our position is none of this is relevant and whether
9 the sheriff thinks that they helped cease and desist or who
10 helped cease and desist is not relevant to anything and all
11 we're doing now is getting into that Metro had some role in
12 BLM, you know, stopping their operation. And that's -- (a),
13 it's not true, but (b), if we go down that path, Your Honor,
14 it's more prejudicial than probative. We're going to open up
15 another little mini trial as to how did this operation stop
16 when the stopping of the operation is not relevant. Our
17 extortion theory is they got the cattle. The cattle were held
18 by the government. They extorted the cattle. Nothing -- when
19 the operation stopped, started is really not relevant to
20 anything going on.

21 MR. MARCHESE: The problem is, is they've opened the
22 door by asking him about these questions. We -- we already had
23 testimony elicited by the Government as to when he made the
24 decision to cease the operation. That's -- I didn't make that.
25 That was testified to.

1 THE COURT: I don't see how that opens the door.

2 MR. MARCHESE: And -- and --

3 THE COURT: The objection is sustained. No. It's
4 not admissible.

5 MR. LEVENTHAL: Your Honor, on the extortion . . .
6 (Proceedings within hearing of the jury:)

7 THE COURT: All right. The objection is sustained.
8 Go ahead and move on, please, Mr. Tanasi.

9 MR. TANASI: Will do. Thank you, Your Honor.

10 THE COURT: So, Exhibit 5029 is not admitted.

11 MR. TANASI: Understood. Just -- the Court's
12 indulgence for just one moment.

13 (Brief pause in proceedings.)

14 BY MR. TANASI:

15 Q. Okay, sir. At some point on the 12th isn't it true that
16 you -- you made the decision to release the cattle?

17 A. That's correct.

18 Q. Okay. And you made that decision -- or strike that.

19 Wouldn't you also agree that releasing cattle and
20 gathering cattle are two different things?

21 A. Yes.

22 Q. All right. And you communicated that decision to
23 Dan Love; correct?

24 A. Yes, I did.

25 Q. And again, you communicated that decision to Dan Love

1 prior to him going down into the wash and kind of setting up
2 there at the gate. Fair?

3 MR. MYHRE: Objection, Your Honor. No foundation for
4 that.

5 BY MR. TANASI:

6 Q. When did you communicate that to Dan Love?

7 A. Up at Post 1.

8 Q. Okay.

9 A. I don't know the approximate time.

10 Q. Sure.

11 And was that maybe around the time in the video that
12 we had just watched with you and Special Agent Love?

13 A. Prior to that.

14 Q. Prior to that? Okay.

15 At some point after having that discussion with him,
16 though, Dan Love still goes down into the wash with the BLM
17 agents that are down there; correct?

18 A. Correct.

19 Q. All right. SWAT was there; right?

20 A. Yes, they were.

21 MR. MYHRE: Objection. Your Honor, as to foundation
22 as to where?

23 BY MR. TANASI:

24 Q. SWAT was in Bunkerville; correct?

25 A. Yes, they were.

1 Q. Okay.

2 A. No, not Bunkerville, but in -- on the -- close proximity
3 to the highway.

4 Q. Okay. And again, maybe this is why -- Post 1?

5 A. Post 1.

6 Q. Okay. And at some point you make the decision to have
7 SWAT regress; correct?

8 A. Say that again.

9 Q. At some point you decide to have SWAT regress; correct?

10 A. Regress?

11 Q. Correct.

12 A. I don't understand the question.

13 Q. Okay. At some point did you change your decision on what
14 you wanted SWAT to do and how they were to conduct themselves?

15 A. No, I did not.

16 Q. What was the SWAT's original mission in the case?

17 A. The inner perimeter.

18 Q. Okay. And at some point did you have them enter that
19 perimeter?

20 A. Yes, when they first arrived.

21 Q. Okay. Did they hold that perimeter the entire time; sir?

22 A. Yes, they did.

23 Q. Okay. And again, you're -- the SWAT folks, they're
24 outfitted differently than regular Metro officers; correct?

25 A. That is correct.

1 Q. Okay. They have helmets; right?

2 MR. MYHRE: Objection. Relevance, Your Honor.

3 MR. TANASI: Your Honor, it's relevant to the
4 operational structure of the day.

5 MR. MYHRE: I'm not clear what the relevance of that
6 is.

7 THE COURT: Yeah.

8 MR. TANASI: Understanding his operational structure
9 of the day I think is exceedingly relevant to the case,
10 Your Honor.

11 THE COURT: I don't understand the question. You
12 want to just restate it? Maybe if it's clear, it won't be
13 objectionable.

14 BY MR. TANASI:

15 Q. What was SWAT's function on the 12th, sir?

16 A. The inner perimeter.

17 Q. Okay. And in order to enter that perimeter, did you have
18 to outfit them or have them outfitted differently than any
19 other police officers or regular police officers?

20 MR. MYHRE: Again, objection. Relevance, Your Honor.

21 MR. TANASI: Again, Your Honor, it goes directly to
22 the operational structure of the day.

23 THE COURT: I think he already testified it was
24 standard uniform for -- so you asked him if he had them outfit?

25 MR. TANASI: If he had them outfitted and how. They

1 looked different than other officers. How so?

2 THE COURT: All right. Well, I'll allow the
3 question, but I think it's still very confusing.

4 Witness may answer the question as best as he can.

5 MR. TANASI: Thank you.

6 BY MR. TANASI:

7 Q. All right. So, did SWAT have high-powered weapons?

8 MR. MYHRE: Well, objection, Your Honor. We didn't
9 get an answer to the question.

10 THE COURT: Yeah.

11 BY MR. TANASI:

12 Q. Was SWAT -- was SWAT outfitted differently than other
13 police officers, sir?

14 A. Yes.

15 Q. How so?

16 A. They have different levels of tactic gear that is higher
17 than a regular police officer.

18 Q. Can you describe that in more detail, please.

19 A. Their vests can prevent the penetration of a higher
20 caliber weapon. Their helmets are higher rated in prevention
21 of penetration, and they possess a higher caliber weapons than
22 a regular police officer.

23 Q. And, again, you have your Metro folks that you're with
24 that are forming the skirmish line; correct? Is that a yes?

25 A. Yes.

1 Q. Thank you.

2 A. Sorry.

3 Q. And then -- no. No problem.

4 And then you have SWAT who is doing something
5 different; correct?

6 A. That's correct.

7 Q. All right. Originally, is it fair to say SWAT and all the
8 Metro folks that you're with are kind of in the same area in
9 the ICP? Fair?

10 A. Originally?

11 Q. When you -- when you leave the staging area and you arrive
12 at the ICP, at that point you kind of have all the Metro
13 officers in one area. Isn't that fair to say?

14 A. No. I wouldn't describe that -- I mean, when you say one
15 area, they were separated upon arrival.

16 Q. All right. So you advised -- upon arrival, you advised
17 the SAT Team; right?

18 A. Correct.

19 Q. You advised them to form a skirmish line; correct?

20 A. Correct.

21 Q. You advised them to be over out there, on the freeway;
22 correct?

23 A. That is correct.

24 Q. And then you advised SWAT Team to regress; correct?

25 A. I don't use the word "regress."

1 Q. Is it your testimony you don't use the word regress?

2 A. I don't recall regress. I thought I said defoliate
3 position.

4 Q. Would seeing a copy of your prior testimony refresh --

5 A. Sure.

6 Q. -- your recollection?

7 A. Sure.

8 Q. All right.

9 MR. MYHRE: Well . . .

10 (Photo displayed.)

11 BY MR. TANASI:

12 Q. Take a look, if you see it. Read it through and let me
13 know if it refreshes your recollection.

14 A. What am I looking at?

15 Q. You're looking at a transcript from prior testimony.

16 A. "I advised the SWAT Team to regress, form a perimeter in a
17 defoliate position."

18 Q. Thank you, sir.

19 Again, isn't it true that you advised the SWAT Team
20 to regress?

21 A. Yes.

22 Q. That's the word you used, is "regress"; correct?

23 All right.

24 MR. MYHRE: Well, objection, Your Honor.

25 THE WITNESS: Yes.

1 MR. MYHRE: The witness did not answer and so we'd
2 ask for an answer if that's the term he remembers or if that's
3 the term that's written on that document that was shown to him.

4 MR. TANASI: I can show it to him again, Your Honor.

5 THE COURT: All right.

6 MR. MYHRE: I think -- I'm --

7 BY MR. TANASI:

8 Q. Would seeing a copy of transcribed testimony from prior
9 testimony refresh your recollection?

10 A. Yes.

11 MR. MYHRE: I believe --

12 BY MR. TANASI:

13 Q. Would you go ahead and take a look at that and let me know
14 when you're refreshed -- when your recollection is refreshed.

15 A. Can you slide it up, please.

16 Q. (Counsel complies).

17 A. It's refreshed.

18 Q. Okay. Isn't it true you advised the SWAT Team to regress?

19 A. In prior testimony. Not today, I don't believe.

20 Q. All right. You don't disagree with testifying in the
21 past, though, that you advised the SWAT Team to regress. Fair?

22 MR. MYHRE: Objection, Your Honor. Relevance on this
23 point.

24 MR. TANASI: Your Honor, now it goes right to bias
25 and credibility. He's changed his testimony.

1 MR. MYHRE: Well, that's not the testimony. He
2 hasn't said he's changed his testimony. He said he doesn't
3 recall using that term.

4 THE COURT: So, is there an objection?

5 MR. MYHRE: Yes, Your Honor. We object to the
6 relevance and we're objecting to the foundation -- the lack of
7 foundation for this term "regress" because I'm not sure what
8 that term even means, or anybody understands what it means.

9 THE COURT: All right. Why don't you have the
10 witness clarify.

11 If you're going to try to impeach him by saying he
12 used a different term today than he used in the past, we need
13 to clarify what is the difference between the two terms.

14 MR. TANASI: Absolutely.

15 BY MR. TANASI:

16 Q. Okay, sir. Showing you your prior testimony, let me know
17 when you see it.

18 A. I see it.

19 Q. And you see it's highlighted there, "I advised the SWAT
20 Team to regress"?

21 A. Correct.

22 Q. All right. What did you mean by that?

23 A. I meant for them not to be in close proximity to the
24 skirmish line.

25 Q. All right. Thank you, sir.

1 And at this time Sheriff Gillespie, he was en route
2 back to Las Vegas; right?

3 A. That is correct.

4 Q. Okay. And Undersheriff Dixon, he was en route back to
5 Las Vegas; correct?

6 A. That is correct.

7 Q. All right. You testified on direct exam that you were
8 concerned with an accidental discharge; correct?

9 A. Today?

10 Q. Yes, sir. Today.

11 A. I don't recall that.

12 Q. All right. You testified today, and you testified in the
13 past, that you were concerned with an accidental discharge. Is
14 that fair?

15 MR. MYHRE: Objection, Your Honor. Hearsay.

16 THE COURT: Well, he can answer the question.

17 BY MR. TANASI:

18 Q. You testified in the past that you were concerned with an
19 accidental discharge?

20 A. Correct.

21 Q. Is that correct?

22 A. That's correct.

23 Q. All right. Thank you, sir.

24 You would agree with me that accidental discharge is
25 different than an intentional discharge of a firearm. Fair?

1 A. That's fair.

2 Q. All right. Now, on the 12th, no arrests were made;
3 correct?

4 A. Correct.

5 Q. All right. Didn't arrest Steven Stewart; right?

6 A. No, I did not.

7 Q. Okay. Didn't arrest Mr. Parker; correct?

8 A. Correct.

9 Q. Didn't arrest Mr. Drexler; correct?

10 A. Correct.

11 Q. Didn't arrest Mr. Lovelien; correct?

12 A. Correct.

13 Q. Okay. And you testified that those arrests were made
14 given the fear of the safety for other officers -- no arrests
15 were made, rather, because of the fear for safety of other
16 officers?

17 A. That is correct.

18 Q. All right. Again, no arrests were made despite seeing
19 individuals with firearms; right?

20 A. That is correct.

21 Q. Okay. No arrests were made despite seeing what you called
22 the cowboys; correct?

23 A. Correct.

24 Q. But, again, your words, you testified earlier that the
25 situation was out of control at the ICP skirmish line; correct?

1 A. That is correct.

2 Q. And you made no arrests, despite it being out of control;
3 correct?

4 A. Correct.

5 Q. Didn't have the SWAT Team make an arrest even though they
6 were outfitted to do so, had you ordered them; correct?

7 A. Correct.

8 Q. All right. I wrote this down and correct me if I'm wrong,
9 but people didn't fear law enforcement, I think you had
10 testified to that earlier with Mr. Myhre. Do you recall saying
11 that?

12 A. That was my belief.

13 Q. Okay. Are people supposed to fear law enforcement, sir?

14 MR. MYHRE: Objection. Argumentative.

15 MR. TANASI: Your Honor, in his experience and
16 training as a police officer is it a good police method to fear
17 or install fear?

18 MR. MYHRE: Objection, Your Honor, to the -- the
19 issue is whether it's relevant. It's argumentative.

20 THE COURT: You want to rephrase -- it is
21 argumentative, but do you want to rephrase it and ask what he
22 meant by fear.

23 MR. TANASI: I'll move on, Your Honor.

24 BY MR. TANASI:

25 Q. Prior to today's testimony, sir, who have you discussed

1 testifying with? That was a bad question.

2 A. Point of clarification.

3 Q. It was a bad question.

4 Prior to testifying today, did you discuss your
5 testimony with anybody else?

6 A. Yes, I did.

7 Q. Okay. Who?

8 A. Mr. Myhre.

9 Q. Okay. How many times did you meet with Mr. Myhre prior to
10 today's testimony?

11 A. Since the last trial?

12 Q. Sure.

13 A. Once.

14 Q. And prior to the one meeting, how many times did you meet
15 with Mr. Myhre or any member of the United States Attorney's
16 Office?

17 A. I can't recall. Mr. Myhre is -- participates in different
18 committee meetings that I participate in and we did not discuss
19 the trial.

20 Q. Okay. So, how many times did you meet with anybody from
21 the United States Attorney's Office prior to today's testimony
22 to discuss your testimony in this trial?

23 A. Once.

24 Q. How many times did you meet with any member of the United
25 States Attorney's Office to discuss testifying at any time?

1 A. At any time, reference this trial?

2 Q. Or any other time, sir.

3 A. One time prior and in the previous trial and one time
4 prior to this trial.

5 Q. Okay. Two times in total to meet with the U.S. Attorney's
6 Office prior to your testimony here today?

7 A. Correct.

8 Q. Fair to say.

9 Did you meet with the FBI?

10 A. Yes.

11 Q. How many times?

12 A. I believe once in close proximity of the -- post-event
13 when we were discussing prosecution.

14 Q. Okay.

15 A. And then I met with them once to provide verbal testimony.

16 Q. All right. So, it's two times prior to today's testimony
17 that you met with the FBI; correct?

18 A. The FBI was present when I met with Mr. Myhre.

19 Q. All right. And then at least two times individually with
20 Mr. Myhre as well; correct?

21 A. Yes.

22 Q. All right.

23 A. That's correct.

24 MR. TANASI: Thank you, sir.

25 Nothing further, Your Honor.

1 THE COURT: Mr. Marchese, on behalf of Mr. Parker.

2

3 CROSS-EXAMINATION OF JOSEPH LOMBARDO

4 BY MR. MARCHESE:

5 Q. Good afternoon, sir. I just got a few questions for you.

6 A. Okay.

7 Q. My name is Jess Marchese. I represent Mr. Eric Parker.

8 He's the gentleman in the blue shirt there (indicating).

9 So, turning your attention to the day of April 12th,
10 back in 2014, I just want to focus on when you're in the ICP
11 Post 1 area.

12 Are you familiar with that area?

13 A. Yes, I am.

14 Q. Okay. So at some point in time on direct examination you
15 testified that you made the decision to walk across the street;
16 correct?

17 A. That is correct.

18 Q. All right. And the main reason for that is communication;
19 correct?

20 A. Correct.

21 Q. You've been in law enforcement for a significant amount of
22 time. How long was it again?

23 A. 29 years.

24 Q. And in your 29 years, one thing that you've probably
25 learned is that communication is key to de-escalating

1 situations; correct?

2 A. Absolutely.

3 Q. All right. So in this situation, you wanted to
4 de-escalate the situation by going across the street and
5 possibly finding, I think the term you used on
6 direct-examination is, a leader. Does that sound correct?

7 A. Correct.

8 Q. All right. And it -- when you went across the street or
9 were about to go across the street, did you know who you were
10 looking for?

11 A. I was attempting to locate one of the Bundys.

12 Q. Okay. And the Bundys, for lack of a better term, would be
13 one of the leaders. Is that fair to say?

14 A. That's fair to say.

15 Q. Okay. So, was that before or after you had set up that
16 skirmish line, I think, you had described it as?

17 A. After.

18 Q. Okay. So it was after.

19 So you set up the skirmish line with the Metro
20 officers; is that right?

21 A. That's correct.

22 Q. All right. And you take, I think it was five officers or
23 so with you to go across the street; correct?

24 A. Correct.

25 Q. All right. And at some point in time you came into

1 contact with David Bundy; correct?

2 A. Correct.

3 Q. Had you had contact with Mr. Bundy before then?

4 A. Yes.

5 Q. Okay. And what was the nature of that contact? Was that
6 back at the stage?

7 A. Yes.

8 Q. Okay. Is that the first time you had met Mr. Bundy?

9 A. No.

10 Q. Okay. And how many other times had you met Mr. Bundy,
11 Dave Bundy?

12 MR. MYHRE: Objection, relevance. Your Honor.

13 MR. MARCHESE: I'm just laying foundation for him
14 knowing him. That's all. I'm not going to get into any
15 conversations they had.

16 THE COURT: All right. So the question was, how many
17 times have you met him?

18 MR. MARCHESE: Yeah. Just how many times, other than
19 the day at the stage, had you met Mr. David Bundy.

20 THE COURT: All right. Overruled. He may answer
21 that question, how many times.

22 THE WITNESS: Once prior to that day.

23 BY MR. MARCHESE:

24 Q. Okay. So you met him twice, in total?

25 A. Correct.

1 Q. So you recognized him; correct?

2 A. Correct.

3 Q. And when you went up to him, did he recognize you?

4 A. I can't testify to that.

5 Q. All right. He didn't say, hey -- well, I'm sorry, what
6 was your title at the time?

7 A. Assistant sheriff.

8 Q. Okay. He didn't say, hey, Assistant Sheriff Lombardo --

9 A. No.

10 Q. -- he just said hello?

11 A. My initial contact -- or our initial contact was him, he
12 directly contacted Sheriff Gillespie.

13 Q. Okay. Now, on the date we're referring to, April 12th,
14 2014, you're dressed similar to the way you're dressed today;
15 correct?

16 A. That is correct.

17 Q. So you were in an official uniform; right? Is that a yes?

18 A. Yes. I'm sorry.

19 Q. Okay. So, when you got there, you had this conversation
20 about letting the cows go; correct?

21 A. Correct.

22 Q. And on direct examination you basically said, hey, I need
23 more time; correct?

24 A. That is correct.

25 Q. This is not something I can get done in 10 minutes or

1 anything like that; right?

2 A. I believe I said eight -- either eight hours or two days.

3 Q. Okay.

4 A. So . . .

5 Q. And then based on that conversation, was that when you
6 made the determination that you should give the order to
7 release the cattle?

8 A. No.

9 Q. Okay. When was it that you made that decision, in
10 reference to that conversation; before or after?

11 A. After.

12 Q. Okay. How much after?

13 A. I believe it was probably hour, hour and a half --

14 Q. Okay.

15 A. -- after.

16 Q. When was that conversation that you had with Mr. Love that
17 we saw the video of? It was Mr. Love, there was yourself, and
18 then Ryan and David Bundy.

19 A. That was about an hour and a half after I had my initial
20 contact with Mr. David Bundy.

21 Q. Would it be fair to say that you made the decision in your
22 mind that the cattle should be released before that
23 conversation?

24 A. No.

25 Q. Okay. So you made that decision --

1 A. Which conversation?

2 Q. The decision -- the conversation we're referring to that
3 there was the body cam, the last exhibit that we saw with
4 SAC Love, yourself, and the two Bundys --

5 A. Yeah. The decision --

6 Q. -- Ryan and Dave.

7 A. The decision was made prior to that.

8 Q. Okay. And how soon before that?

9 A. Maybe 15 minutes.

10 Q. So, shortly before?

11 A. Correct.

12 MR. MARCHESE: No further questions.

13 THE COURT: Mr. Leventhal?

14 MR. LEVENTHAL: Yes. Thank you.

15

16 CROSS-EXAMINATION OF JOSEPH LOMBARDO

17 BY MR. LEVENTHAL:

18 Q. Good afternoon, Sheriff.

19 A. Good afternoon.

20 Q. My name is Todd Leventhal. I represent Mr. Drexler.

21 Now, Bunkerville is in Clark County; correct?

22 A. Correct.

23 Q. Okay. And it's still part of Metro's sort of area of --
24 under its control; correct? In terms of --

25 A. Correct.

1 Q. Okay. Now, you were asked on direct a number of threat
2 assessments and -- do you remember those questions?

3 A. No.

4 Q. At any point did you have a -- what was your threat
5 assessment or at this point you had increased threat
6 assessments.

7 You don't remember those questions?

8 A. No. I don't recall threat assessment being utilized.

9 Q. Okay. Now, you drove out to the stage area on the 12th in
10 the early morning; correct?

11 A. That is correct.

12 Q. And I think you went with Sheriff Gillespie?

13 A. Correct.

14 Q. Okay. And when you got out to the stage area, you
15 indicated that Mr. Bundy was not there; correct?

16 A. That's correct -- which Bundy?

17 Q. Cliven.

18 A. Correct.

19 Q. He actually -- you indicated he came in on a Humvee;
20 right?

21 A. That's correct.

22 Q. Okay. And we saw some video.

23 MR. LEVENTHAL: If you could pull up 21, Government's
24 21, Brian.

25 (Exhibit 21 published.)

1 MR. LEVENTHAL: Okay. Stop right there.

2 BY MR. LEVENTHAL:

3 Q. So, now that -- you were there during that speech;
4 correct?

5 A. Yes, I was.

6 Q. And that, I believe, was Ammon?

7 A. You have to let me answer, sir.

8 Q. Oh, I'm sorry. Go ahead.

9 A. Yes, I was.

10 Q. I thought -- I apologize. I thought you did.

11 And that was Ammon?

12 A. Yes, that was Ammon.

13 Q. Speaking right there?

14 A. Yes, it was.

15 Q. Okay. And Ammon indicated to the crowd that they need to
16 be respectful?

17 A. Correct.

18 Q. Okay. And you indicated that when you -- after that, you
19 walked across the street, you were looking for one of the
20 Bundys. Not here, but when you were at Post 1.

21 A. Correct.

22 Q. Okay. Because one of the Bundys were sort of the leaders.
23 That's what you indicated; right? Right?

24 A. Correct.

25 Q. Okay. So that's a leader there telling everyone we need

1 to be respectful; correct?

2 A. That is correct.

3 Q. And respectful to the sheriff because he's an elected
4 official; correct?

5 A. Correct.

6 MR. LEVENTHAL: Okay. If you can go on.

7 (Exhibit 21 published.)

8 THE COURT: Mr. Leventhal, do you have a question or
9 are we going to hear it --

10 MR. LEVENTHAL: I will.

11 THE COURT: -- the video over again?

12 MR. LEVENTHAL: I'm sorry.

13 THE COURT: How about you ask a question first. If
14 he doesn't remember, then you can refresh his recollection with
15 the video. We've already seen this video.

16 MR. LEVENTHAL: Yes. I'm going to, but not through
17 me. I just usually just play it, but if that's a new way of
18 doing it, I'm not -- I -- he doesn't -- I'm not refreshing his
19 recollection; I'm going to ask him questions based upon the
20 video.

21 THE COURT: Okay. Ask him a question.

22 MR. LEVENTHAL: I need to get there. Can we -- I
23 play it a little bit more?

24 THE COURT: He's already seen the video. We've all
25 already seen the video.

1 MR. LEVENTHAL: Okay.

2 BY MR. LEVENTHAL:

3 Q. Sheriff, in this video, the sheriff indicates that BLM --
4 BLM's -- it was ceasing operations; correct?

5 A. Correct.

6 Q. Okay. And he also said that the Gold Butte allotment was
7 reopened to the public; correct?

8 A. Correct.

9 Q. Okay. And he said that the BLM was removing their assets
10 in Clark County; correct?

11 A. Correct.

12 Q. Okay. So, that's what he told the crowd on that stage;
13 correct? Those three things. Right? And you had indicated
14 that the decision was made prior, on the 11th, were you aware
15 that that decision was made on the 11th that they were ceasing
16 operations?

17 A. No.

18 MR. MYHRE: Objection, Your Honor. First, relevance
19 and hearsay.

20 THE COURT: Sustained.

21 BY MR. LEVENTHAL:

22 Q. You went out there with Sheriff Gillespie to make that
23 statement; right?

24 A. I didn't know what statement Sheriff Gillespie was going
25 to make.

1 Q. Okay. So your understanding of why you went out there was
2 so that he could speak to Cliven Bundy?

3 A. Correct.

4 Q. Okay. But you didn't know he was going to get up on the
5 stand?

6 A. Absolutely did not know.

7 Q. Okay. And you didn't -- you weren't -- you weren't aware
8 of any press release that he was speaking of there?

9 A. No. I was not aware of it.

10 Q. Now, you were asked a number of questions -- there's
11 people in the front there that have camouflage on. You were
12 asked those questions.

13 Do you remember that?

14 A. Yes, sir.

15 Q. And they have ways of speaking to one of them, radio, sort
16 of radios on them as well?

17 A. I believe they were radios.

18 Q. Okay. Now, you indicated that those people arrived with
19 Mr. Bundy; correct?

20 A. That is correct.

21 Q. Okay. So, is it fair to say that what you came upon
22 was -- was in the crowd, just the people in the crowd without
23 the people in the front and without the Bundys; right?

24 A. Without Cliven.

25 Q. Correct. As well as without the people -- the camouflage

1 people in the front that we saw?

2 A. Best of my recollection, that's correct.

3 Q. Okay. Because they showed up with him; correct?

4 A. Correct.

5 Q. Okay. So when you first arrived there, what we would see
6 in this video is what you saw, people in the crowd with phones
7 and cameras; correct?

8 A. Correct.

9 Q. Okay. Now, one of the things that Mr. -- or that sheriff
10 was there to do was I think you indicated was de-escalate the
11 situation; correct?

12 A. I don't believe I said what the sheriff was intending to
13 do.

14 Q. Okay. Was it -- at that point were you there, was one of
15 your motives was to de-escalate the situation?

16 A. Well, that -- I believe that's the intent of the sheriff,
17 yes.

18 Q. Okay. And what I'm talking about the stage area; right?

19 A. Correct.

20 Q. Okay. So, when you were asked about the mood, you
21 indicated that it was calm.

22 A. Correct.

23 Q. And then -- then the sheriff gave his speech and then you
24 said it became -- I believe you said that it became louder and
25 emboldened. Is that true?

1 A. When the sheriff gave his speech it became louder in
2 celebration of what he was saying. When Mr. Cliven Bundy gave
3 his speech, it became louder and derogatory.

4 Q. Okay. And that's when you left?

5 A. That's when we left.

6 Q. Okay. And that's when you went to the ICP command post;
7 correct?

8 A. Correct.

9 Q. And I believe you indicated that's when Sheriff Gillespie,
10 he left as well?

11 A. Subsequent a meeting we had with BLM.

12 Q. Okay. And did -- is that when he put you in command?

13 A. Yes.

14 Q. Okay. So it was at that point at the ICP that you became
15 in charge of the operation?

16 A. Correct.

17 Q. Okay. Were you in charge of the operation over -- is
18 it -- was it your understanding over what the BLM was doing?

19 A. No.

20 Q. No. So the BLM was in charge, or do you have separate --
21 who's in charge of the whole thing?

22 A. Special Agent Love.

23 Q. Love. Okay.

24 But at some point you indicated that you told Love
25 that he was going to return the cattle?

1 A. Correct. At that point I took over the operation.

2 Q. Okay. And so that was after you arrived at the ICP?

3 A. After, yes.

4 Q. Okay. And when you arrived -- and when you told Love,
5 what was his reaction?

6 MR. MYHRE: Objection. Relevance, Your Honor. And
7 hearsay.

8 THE COURT: Sustained.

9 MR. LEVENTHAL: If we could pull up 191.

10 (Exhibit 191 published.)

11 BY MR. LEVENTHAL:

12 Q. Is that on your screen, sir?

13 A. Yeah. I have that.

14 Q. Okay. So, again, just for -- just to get you -- you
15 understand, this is north and south I-15; right?

16 A. Correct.

17 Q. And the wash is here (indicating) and the ICP is here
18 (indicating) and Post 1 is going to be right there
19 (indicating); correct?

20 A. Post 1's a little bit over.

21 Q. A little bit over. Okay. All right.

22 A. There you go.

23 Q. So, when you arrived at the ICP, how many people did you
24 see when you said they parked here (indicating)?

25 A. When I arrived, I was arriving simultaneous to the

1 demonstrators that I had seen at the stage. I assume they were
2 the same folks, because they were going up Highway 170. As I
3 progressed down I-15 and had a visual acquisition of the
4 individuals progressing up 170, I assumed it was the same
5 individuals that were at the stage area and we were arriving
6 simultaneously.

7 Q. Okay. Now, when you parked at -- right here in the medium
8 [sic] (indicating) --

9 A. Right.

10 Q. -- did you have a good view of the north and the
11 southbound lanes of I-15?

12 A. Yes.

13 Q. Okay. Could you tell us how many people, when you
14 arrived, were on the north and southbound lanes of I-15, just
15 above the wash?

16 A. When you say "people," who are you referring to?

17 Q. Anybody. A person rather than a vehicle driving.

18 Did you see anybody on that freeway over there?

19 A. No, not yet.

20 Q. Okay. Had you seen anybody congregate -- you indicated
21 that there were some people that went down underneath the
22 northbound wash. Had you seen them?

23 A. I couldn't -- if they were underneath, I wouldn't be able
24 to see them from where I was.

25 Q. Okay.

1 A. But if they were -- you know, progressing towards that
2 direction, I could see them.

3 Q. Okay. I'm just going to clear this real quick.

4 And over here (indicating), just underneath the
5 southbound bridge, did you see any BLM car -- vehicles or BLM
6 agents over there?

7 A. Yes.

8 Q. Okay. So, there were -- there were -- they were lined up
9 over here (indicating) and you didn't see at this point anybody
10 on the north and southbound. Do I have that correct?

11 A. At that point where I could observe the BLM vehicles down
12 there, I saw pedestrians walking up and down both directions.

13 Q. Okay. Is this when you first arrived to the ICP?

14 A. Not when we first arrived, no.

15 Q. Okay. I apologize. I'm asking when you first arrived to
16 the ICP.

17 A. No.

18 Q. When you left the -- the stage and you got to the ICP,
19 just -- right when Sheriff Lombardo left. My question is when
20 you got there, did you see anybody on the north and southbound
21 bridge?

22 A. I don't recall anybody.

23 Q. No. Okay.

24 And, again, I'm just making sure that we're within
25 the time frame now that when you first arrived, did you see

1 anybody parked -- I know you said you got there simultaneously
2 when what you thought were protestors got there and they parked
3 in here (indicating); correct?

4 A. Correct.

5 Q. Okay. Now, you indicated that you walked across the
6 street to locate a person in charge, i.e., a Bundy; correct?
7 When you were going across from the medium [sic] over to the
8 area where they were parking?

9 A. That is correct.

10 Q. Okay. And you found Dave Bundy?

11 A. I found Dave Bundy.

12 Q. Okay. Who's Tom Roberts?

13 A. He was a deputy chief.

14 Q. Okay. And was he there?

15 A. Yes, he was.

16 Q. Okay.

17 A. Not -- not over when I met with David Bundy; he was -- he
18 was both -- between Post 1 and Post 2.

19 Q. He was between Post 1 and Post 2. So that's . . . sort of
20 Post 1 is here (indicating) -- Post 1 is here (indicating);
21 Post 2 is here (indicating).

22 A. Correct. He was going --

23 Q. So he would be in between there?

24 A. No. He wasn't standing there; he was going back and forth
25 between those two locations.

1 Q. I see. So he was more on the sort of the BLM side, if you
2 will?

3 A. Yes.

4 Q. Okay. And so, when you went over to talk to Dave Bundy,
5 you indicated one of your reasons was to try to get him to
6 de-escalate or help you de-escalate the situation; correct?

7 A. That was part of it.

8 Q. Okay. Were you -- did you give orders to Roberts to
9 de-escalate the BLM?

10 MR. MYHRE: Objection. Relevance.

11 THE COURT: Relevance?

12 BY MR. LEVENTHAL:

13 Q. Was there anybody de-escalating the BLM?

14 MR. MYHRE: Objection, Your Honor. Assumes there's
15 something to escalate. Assumes facts not in evidence.

16 THE COURT: Sustained.

17 MR. LEVENTHAL: I'm going to just call him back.

18 BY MR. LEVENTHAL:

19 Q. You indicated that it was your decision to release the
20 cows; correct?

21 A. Correct.

22 Q. And you were asked -- and you indicated that to Agent Dan
23 Love; right?

24 A. Correct.

25 Q. Okay. What was his reaction?

1 A. The --

2 MR. MYHRE: Objection, Your Honor. Same objection.
3 Hearsay and relevance.

4 MR. LEVENTHAL: I'm asking for a reaction; I'm not
5 asking for what he said. And again, it will go to his
6 threat -- his assessment of the threat. If -- if -- I guess if
7 Dan Love doesn't release the cows, then his assessment would go
8 up. So, you know, this all goes to his assessment as well, and
9 every time --

10 THE COURT: I don't know which "his" you're referring
11 to.

12 MR. LEVENTHAL: I'm sorry?

13 THE COURT: I don't know which "his" you're referring
14 to. His, Loves's assessment --

15 MR. LEVENTHAL: The sheriff's.

16 THE COURT: -- or the sheriff's assessment?

17 MR. LEVENTHAL: The sheriff's.

18 THE COURT: The sheriff's assessment --

19 MR. LEVENTHAL: -- assessment of the threat. If
20 Dan Love doesn't do it, what he says, then we've got a no -- a
21 whole other situation; right?

22 THE COURT: I don't see the relevance.

23 MR. LEVENTHAL: Okay.

24 BY MR. LEVENTHAL:

25 Q. How -- how much involvement did Metro have prior to the

1 12th in that cattle roundup?

2 A. What do you mean involvement?

3 MR. MYHRE: Objection. Relevance, Your Honor.

4 MR. LEVENTHAL: Again, it goes to a threat
5 assessment, Your Honor. He's indicated -- you don't just have
6 a threat assessment in a vacuum. When you go out there, if
7 you've got 500 people out there, they've been out there for
8 three weeks and nothing --

9 MR. MYHRE: Objection, Your Honor, to the speaking --

10 MR. LEVENTHAL: Well, then, we can have a sidebar.

11 MR. MYHRE: -- response.

12 THE COURT: Just rephrase your question.

13 BY MR. LEVENTHAL:

14 Q. Were you -- was Metro intricately or did Metro have any
15 involvement in the cattle roundup, that you know of?

16 MR. MYHRE: Objection. Objection, Your Honor.
17 Relevance and foundation.

18 THE COURT: What's the relevance?

19 MR. LEVENTHAL: Again, it goes to threat assessment.
20 If he had been out there for two weeks or three weeks or they
21 were involved in it, Metro, then I'm -- I'm testing whether or
22 not that threat assessment existed, because if you've got -- if
23 I'm allowed to speak or if we can go to sidebar.

24 THE COURT: I don't see the relevance --

25 MR. LEVENTHAL: Okay.

1 THE COURT: -- of whether this existed in the past or
2 not, if we're talking about the day in question, April 12th,
3 2014.

4 So, sustained.

5 BY MR. LEVENTHAL:

6 Q. You were -- you were asked a question by Mr. Myhre and you
7 indicated that you were not comfortable with the training and
8 experience of BLM's with groups of crowds. Why did you give
9 that answer?

10 MR. MYHRE: Objection, Your Honor. Relevance and
11 mischaracterizes the testimony.

12 MR. LEVENTHAL: Those were his words, but . . .

13 THE COURT: He can answer that question.

14 THE WITNESS: Can you repeat it, sir?

15 BY MR. LEVENTHAL:

16 Q. Yes, sir.

17 You were asked on direct exam by Mr. Myhre why you
18 had BLM exit in total and you indicated that you were not
19 comfortable with the training and experience of BLM with groups
20 and crowds.

21 A. That is correct.

22 Q. Okay. Why did you say that, sir?

23 A. Because in my experience in law enforcement, that is not a
24 traditional role for BLM.

25 Q. Okay. What do you mean by that, "not a traditional role"?

1 A. BLM is -- is charged with enforcing regulations associated
2 with the environment and traditionally, they are not engaged in
3 crowd control or interaction with crowds.

4 Q. Did BLM ever request from Metropolitan Police Department
5 any type of help to do this, to crowd --

6 MR. MYHRE: Objection.

7 BY MR. LEVENTHAL:

8 Q. -- control crowds?

9 MR. MYHRE: Objection, Your Honor. Relevance.

10 THE COURT: Sustained.

11 MR. LEVENTHAL: Thank you. I have nothing further.

12 Thank you.

13 THE COURT: Mr. Perez?

14 On behalf of Mr. Lovelien.

15

16 CROSS-EXAMINATION OF JOSEPH LOMBARDO

17 BY MR. PEREZ:

18 Q. Good afternoon, Sheriff. My name is Shawn Perez. I
19 represent Ricky Lovelien. I have just one brief question.

20 Did you ever meet Mr. Lovelien at the rally site on
21 the 12th?

22 A. Who?

23 Q. Mr. Lovelien. Ricky Lovelien.

24 A. Ricky Lovely [sic]? I don't recall.

25 Q. Okay.

1 MR. PEREZ: Thank you. I have nothing further.

2 THE COURT: Redirect, Mr. Myhre?

3 MR. MYHRE: May I have just a moment, Your Honor?

4 THE COURT: Yes.

5 (Counsel conferring.)

6 MR. MYHRE: May I, Your Honor?

7 THE COURT: Yes, you may.

8 MR. MYHRE: Thank you.

9

10 REDIRECT EXAMINATION OF JOSEPH LOMBARDO

11 BY MR. MYHRE:

12 Q. Sheriff, I believe you were asked by Mr. Tanasi on
13 cross-examination about whether you were concerned about
14 accidental discharge in connection with the firearms out there
15 that day. Is that -- do you recall that?

16 A. Yes.

17 Q. Were you concerned about anything other than an accidental
18 discharge with respect to those firearms?

19 MR. TANASI: Objection. Leading.

20 MR. MYHRE: I just asked if he was concerned about
21 anything else.

22 THE COURT: Yeah. That's not leading. He may answer
23 the question.

24 MR. TANASI: It's a yes or no answer, Your Honor.

25 THE WITNESS: Yes.

1 BY MR. MYHRE:

2 Q. What other factors were you concerned about?

3 A. Well, our -- my individual officers' safety, along with
4 the state patrol officers' safety and the BLM agents' safety
5 because we didn't have the proper tactical equipment to deal
6 with what was presented in case there was a firefight
7 associated with the event.

8 MR. MYHRE: May I have just one moment, Your Honor?

9 (Counsel conferring.)

10 MR. MYHRE: I have no further questions, Your Honor.
11 Thank you, Sheriff.

12 THE COURT: I think the question was, by Mr. Tanasi,
13 whether you were concerned with accidental discharge versus
14 intentional discharge. Were you ever concerned with an
15 intentional discharge?

16 THE WITNESS: Absolutely.

17 THE COURT: All right. Mr. Tanasi, any redirect?

18 MR. TANASI: No, ma'am. Thank you.

19 THE COURT: Marchese?

20 MR. MARCHESE: No, Your Honor.

21 THE COURT: Leventhal?

22 MR. LEVENTHAL: No, Your Honor.

23 THE COURT: Perez?

24 MR. PEREZ: No, Your Honor.

25 THE COURT: All right. So at this time if any

1 members of the jury have a question for Sheriff Lombardo,
2 please go ahead and write them down on the forms provided.
3 Remember, I don't need to know your name, don't give me your
4 jury number or your initials, just write down your question and
5 then fold the piece of paper in half and pass it in the
6 direction of Aaron or Mike and then we'll mix them up and ask
7 the questions.

8 (Brief pause in proceedings.)

9 THE COURT: Counsel, please meet me at sidebar.

10 (Proceedings at sidebar out of the hearing of the jury:)

11 THE COURT: Jury Question No. 1 is, "Reference was
12 made to a previous trial. What were the charges and how does
13 it relate to current trial?"

14 So . . .

15 MR. PEREZ: Oh, boy.

16 THE COURT: I'm assuming we have a uniform objection
17 to that one.

18 MR. MYHRE: Yes, Your Honor.

19 THE COURT: All right.

20 MR. LEVENTHAL: How do you want us to deal with
21 prior -- just say prior --

22 MR. TANASI: I was trying to tiptoe.

23 THE COURT: Prior testimony. Not prior trial, prior
24 testimony, but I think the witness was the one who said trial,
25 not you all if I remember correctly. Yeah.

1 All right. So Jury Question No. 2 is a four part
2 question. So the first part is, "What was meant by the
3 impoundment was to stop?" And then looks like they're giving
4 us two options: "BLM to stop collecting cattle?"

5 "BLM to release cattle already rounded up?"

6 MR. TANASI: I think it's fine.

7 MR. MYHRE: Well, we would object, Your Honor. This
8 witness does not have the basis for answering that question.

9 MR. TANASI: Your Honor, he made his -- all right.
10 Go ahead.

11 MR. MYHRE: No, he -- it's in reference to the
12 decision-making to cease the impoundment and he was not
13 involved in that decision nor was he involved in the
14 impoundment operation itself. So he would not know what the --
15 what that meant in terms of whether it's to stop gathering
16 cattle or stop --

17 THE COURT: All right. So the objection is that it
18 would be speculative on behalf of this witness to answer that
19 question.

20 MR. MYHRE: Correct.

21 THE COURT: But perhaps you have another witness that
22 might be able to provide that information for the jury.

23 MR. MYHRE: Yes, Your Honor.

24 THE COURT: All right. Question No. 2 is, "Before
25 the deputy sheriff decided to release the cattle, was there a

1 plan to release the cattle or ship the cattle out?"

2 MR. MYHRE: Again, same --

3 THE COURT: Same objection?

4 MR. MYHRE: Same objection.

5 THE COURT: All right. Question No. 3 is, "What does
6 cease and desist mean as to Sheriff Lombardo's understanding?"

7 Any objection to that?

8 MR. LEVENTHAL: No. I don't --

9 MR. MARCHESE: It's his understanding.

10 MR. LEVENTHAL: They're his words.

11 MR. MYHRE: If -- is it phrased, Your Honor, as what
12 he meant by those words and as what -- that has some special
13 meaning?

14 THE COURT: Well, cease and desist is in quotation
15 marks, so who said that?

16 MR. TANASI: He did.

17 MR. MYHRE: The witness said I believe that to cease
18 and desist.

19 THE COURT: Oh, okay. So that's all the question is
20 asking is what is -- is to clarify that term, the terminology
21 that he used.

22 So no objection to Number 3, right?

23 MR. MYHRE: No.

24 MR. LEVENTHAL: No.

25 MR. MARCHESE: No.

1 MR. PEREZ: No.

2 MR. TANASI: No objection, Your Honor.

3 THE COURT: And then Number 4 is, "What area is the
4 Gold Butte area?"

5 MR. LEVENTHAL: Good question. Foundation.

6 MR. MYHRE: I'm not sure this witness knows,
7 Your Honor, but we'll have another witness that can speak to
8 that.

9 THE COURT: Okay.

10 MR. TANASI: Your Honor --

11 THE COURT: Jury question -- Jury Note No. 3. "Is
12 there a command relationship on incident command structure
13 present on the day 4-12-14?"

14 Let me see if I can -- is there a command
15 relationship -- maybe it's on incident command -- let me know
16 if you think I'm misreading that. It's cursive.

17 (Counsel conferring.)

18 MR. TANASI: I think it's "on." On incident command.

19 MR. PEREZ: So maybe they're looking for the
20 relationship between the BLM and . . .

21 MR. MYHRE: Command relationship on.

22 MR. TANASI: On incident command structure present on
23 the time for 12-14.

24 I think it's fine.

25 MR. MYHRE: I don't know what it means.

1 MR. LEVENTHAL: Maybe it's asking who was in charge.

2 MR. PEREZ: Basically.

3 MR. LEVENTHAL: Because it got muddled up.

4 MR. MYHRE: I don't think we have any problem with --
5 to the extent he knows.

6 THE COURT: Yeah. Yeah. He can explain what he
7 understood of the command relationships between the agencies.

8 All right. Jury Question Note No. 4, "Do you know if
9 their firearm was loaded?"

10 MR. LEVENTHAL: Whose?

11 THE COURT: I guess any of them.

12 MR. LEVENTHAL: It's vague. Sheriff? His people --
13 his -- Metro? BLM? I -- they haven't even --

14 MS. CREEGAN: Strikes me as unlikely that they're
15 asking about BLM.

16 MR. LEVENTHAL: Well, who?

17 He wouldn't know that.

18 THE COURT: I think he can answer the question, at
19 least.

20 MR. LEVENTHAL: Well, he wouldn't know it. How
21 would -- he would be speculating. He didn't even ID our guys.
22 How would he know if they had guns -- even if they had guns --
23 he said he couldn't identify anybody.

24 THE COURT: Well, I think we'll get better answers if
25 I ask the question and he says I don't know and then that will

1 be a little more specific with the question.

2 MR. MYHRE: Right. Whatever he observed.

3 THE COURT: So, I think it will be fine.

4 And then Jury Note No. 5. "What is the organization
5 authority or relationship between the BLM and LVMPD? Is/was
6 there a critical incident command structure or coordination of
7 field activity and if so, who was the command authority?"

8 MR. MYHRE: That sounds like a more expanded version
9 of the other question.

10 THE COURT: Yeah.

11 Frankly, that was the question I had the first trial,
12 too, was the relationship between all these different agencies.
13 So, I can't fault them for being curious.

14 (Counsel conferring.)

15 MR. MYHRE: I don't -- we don't have any objection,
16 Your Honor. I think that to the extent, again, that he knows,
17 I don't -- I just don't know if this witness . . .

18 THE COURT: All right. We'll find out.

19 All right. And you'll all get copies of these and
20 then you'll have the opportunity to ask follow-up questions if
21 you'd like to.

22 MR. TANASI: Which ones did we rule out? Was it just
23 one, the first trial?

24 THE COURT: So, they're all coming in except for a
25 number -- Jury Note No. 2 was a four-part question and we're

1 only asking Number 3. We're not asking the others.

2 MR. TANASI: What about the trial?

3 THE COURT: But I -- what I do is I'll read the
4 question out loud and then I tell them why I'm not asking the
5 question. It's my call on not asking the questions because --
6 so that also helps them to phrase their questions a little bit
7 better.

8 MR. TANASI: All right. Thank you.

9 (Proceedings within hearing of the jury:)

10 THE COURT: Sheriff, I've got a couple questions here
11 from the jury. I'm going to read the questions to you, but
12 when you respond, you can go ahead and turn and look at the
13 jury because these are their questions; I'm just reading it --
14 reading them for them for anonymity sake. Okay?

15 THE WITNESS: Yes, ma'am.

16 THE COURT: So, Jury Note No. 1 is, "Reference was
17 made to a prior trial." And so, I'm just going to explain so
18 you don't have to, that there are different hearings that
19 happen in a process in a criminal case and so sometimes people
20 have to testify more than once and . . . we'll just leave it at
21 that, that there's just different hearings in a case and
22 sometimes witnesses have to testify many times.

23 All right. Let's see, Jury Question Note No. 2 is a
24 four part question: The first one is, "What was meant by the
25 impoundment was to stop? Was it BLM to stop collecting cattle?"

1 Or BLM to release cattle already rounded up?"

2 So, I'm -- my ruling is I'm not asking you this
3 question because this particular witness already testified that
4 he didn't know when he got there what Sheriff Gillespie was
5 going to say or what Sheriff Gillespie knew about what had
6 happened or hadn't happened yet. So in other words, this
7 witness doesn't have that information, but the Government tells
8 me there will be other witnesses later who do have that
9 information and so, we're grateful that -- to know what
10 questions you have so that we can ask the right people those
11 questions.

12 Number -- the Subquestion No. 2 of Jury Note 2 is,
13 "Before deputy sheriff decided to release the cattle, was there
14 a plan to release the cattle or ship the cattle out?"

15 So again, this witness doesn't have that information,
16 but there will be other witnesses who do have that information
17 so we're glad to know that that's a question that we need to
18 remember to ask the next couple of witnesses.

19 Number 3 is a question that this witness can answer.
20 The question he is, "What does cease and desist mean as to
21 Sheriff Lombardo's understanding?" That was a term that you
22 used and so the question is, clarify that term, please.

23 THE WITNESS: The meaning of that was to no longer
24 gather the cattle.

25 THE COURT: All right. And then Jury Question Note

1 No. 2 has a last question, Number 4 on that is, "What area is
2 the Gold Butte area?" And so, again, we will have another
3 witness that is going to testify better, more precisely about
4 what that Gold Butte area is. So I'm not asking this witness
5 that question.

6 Jury Note No. 3, "Is there a command relationship in
7 incident command structure . . . present at the time,
8 April 12th of 2014?" And I apologize if that's not the exact
9 words that you meant me to read, but it's a little bit
10 difficult for me. I think that's what it says because it's in
11 cursive. "Is there a command relationship in incident command
12 structure present at the time of April 12th, 2014?"

13 THE WITNESS: Well, I'm -- I'm not sure exactly the
14 intent of the question, but there was a command structure
15 associated with BLM separate of LVMPD. Subsequent me declaring
16 that I was in charge, there was a command structure also within
17 my organization.

18 THE COURT: All right. And then Jury Note No. 4, the
19 question is, "Do you know if their firearms were loaded?" And
20 I apologize, I don't know who "their" is referring to, but the
21 question is, "Do you know if their firearms were loaded."

22 THE WITNESS: Well, I would assume you were referring
23 to the demonstrators and the answer is no, I do not know.

24 THE COURT: All right. And Jury Note No. 5, "What is
25 the organizational authority or relationship between the BLM

1 and the Las Vegas Metropolitan Police Department? Is or was
2 there a critical incident command structure for coordination of
3 field activity and if so, who was the command authority?"

4 THE WITNESS: Could you repeat the question, ma'am?

5 THE COURT: Yes.

6 "What is" -- maybe it was a two part question and I
7 read it all at once. "What is the organization authority or
8 relationship between the BLM and the Las Vegas Metropolitan
9 Police Department? Is/was there a critical incident command
10 structure for coordination of field activity and if so, who was
11 the command authority?" So it's actually a three-part question
12 now that I'm reading it more carefully. So the first part is,
13 what the organizational authority or relationship between the
14 BLM and Metro police?

15 THE WITNESS: The BLM had operational authority on
16 the day of April 12th. Prior to April 12th, they also had
17 operational authority. I -- they subsequently relinquished
18 authority once I declared that I was taking charge of the
19 incident.

20 THE COURT: Okay. And so the second part of that
21 question was, "Is or was there a critical incident command
22 structure for coordination of field activities?"

23 THE WITNESS: Yes, there was. BLM had their own
24 ICS -- incident command structure -- established prior to the
25 initiation of the roundup. I participated in a meeting to

1 discuss that prior to the day of April 12th and subsequently,
2 on the day of April 12th, I had an ICS process associated with
3 my personnel.

4 THE COURT: What's ICS?

5 THE WITNESS: Incident command structure.

6 THE COURT: Oh, okay.

7 And then the last part of that question is, "If so,
8 who was the command authority?"

9 THE WITNESS: In the original planning stage and
10 initial roundup stage, it was Director Sal Lauro who is
11 Agent Dan Love's boss, but the day of -- in question,
12 April 12th, Dan Love was the incident commander.

13 THE COURT: All right. So, Mr. Myhre, any follow-up
14 questions?

15 MR. MYHRE: None, Your Honor.

16 THE COURT: All right. Any follow-up questions from
17 the defense?

18 MR. TANASI: No, Your Honor. Thank you.

19 THE COURT: All right. Thank you very much, Sheriff,
20 for coming in today.

21 THE WITNESS: Thank you.

22 THE COURT: Please be careful on the way down with
23 the steps and those microphone cords if they're still there.

24 (Witness excused.)

25 THE COURT: All right. So, ladies and gentlemen,

1 that concludes trial for today. We will have you back here
2 again tomorrow at 9:00 a.m.

3 Let me just double-check my schedule. I want to make
4 sure that's still right.

5 Yes, 9:00 a.m. tomorrow morning.

6 So we'll go ahead and stand for the jury.

7 Again, remember the -- not to speak about this case
8 with anyone. Don't form an opinion. Don't try to investigate
9 anything. Write down those questions, all the questions you
10 have. It's -- we'll get them asked and we'll get somebody to
11 answer them for you. So please, don't do any outside reading
12 or homework.

13 Thank you. Have a good night.

14 (Jury excused from courtroom.)

15 THE COURT: All right. Off record.

16 (Proceedings adjourned at 5:07 p.m.)

17 --oOo--

18 COURT REPORTER'S CERTIFICATE

19 I, Heather K. Newman, Official Court Reporter, United
20 States District Court, District of Nevada, Las Vegas, Nevada,
21 do hereby certify that pursuant to Section 753, Title 28,
22 United States Code, the foregoing is a true, complete, and
23 correct transcript of the proceedings had in connection with
24 the above-entitled matter.

25 DATED: 7-19-2017

/s/ Heather K. Newman
Heather K. Newman, CCR #774
OFFICIAL FEDERAL REPORTER

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,)	
	)	Case No. 2:16-cr-00046-GMN-PAL
Plaintiff,)	
	)	Las Vegas, Nevada
vs.	)	July 18, 2017
	)	9:21 a.m.
ERIC J. PARKER (11), O.)	
SCOTT DREXLER(12), RICHARD)	
LOVELIEN (13), and STEVEN A.))	
STEWART (14),)	
)	
Defendants.	)	Day 5

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE GLORIA M. NAVARRO
UNITED STATES DISTRICT COURT CHIEF JUDGE, AND A JURY

APPEARANCES:

For the Government:

STEVEN W. MYHRE, AUSA
ERIN M. CREEGAN, SAUSA
NADIA JANJUA AHMED, AUSA
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Appearances continued on next page.

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Proceedings reported by machine shorthand, transcript produced
by computer-aided transcription.

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APPEARANCES CONTINUED:

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For the Defendant Steven A. Stewart (14):

RICHARD E. TANASI, ESQ.
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Also present:

Sharon Gavin, Special Agent FBI
Joel Willis, Special Agent FBI
Chris Allen, Bureau of Land Management
Mike Abercrombi, FBI
Mamie Ott
Nona Dodson
Tori Bakken
Brian Glynn

1 (Tuesday, July 18, 2017, 9:21 a.m.)

2 --oOo--

3 P R O C E E D I N G S

4 (Jury out.)

5 COURTROOM ADMINISTRATOR: All rise.

6 THE COURT: Thank you. You may be seated.

7 COURTROOM ADMINISTRATOR: This is the time set for
8 Jury Trial, Day 5, in Case No. 2:16-cr-046-GMN-PAL, United
9 States of America versus Eric Parker, O. Scott Drexler, Ricky
10 Lovelien and Steven Stewart.

11 Counsel, please make your appearances for the record.

12 MR. MYHRE: Good morning, Your Honor. Steven Myhre,
13 Erin Creegan, and Nadia Ahmed on behalf the United States.

14 THE COURT: Good morning.

15 MR. TANASI: Good morning, Your Honor. Rich Tanasi
16 for Steven Stewart who is present. Also with us at counsel
17 table is Tori Bakken and Brian Glynn.

18 THE COURT: Good morning.

19 MR. MARCHESE: Good morning, Your Honor. Jess
20 Marchese on behalf of the Eric Parker.

21 THE COURT: Good morning.

22 MR. LEVENTHAL: Good morning, Your Honor. Todd
23 Leventhal on behalf of Mr. Drexler.

24 THE COURT: Good morning.

25 MR. PEREZ: Good morning, Your Honor. Shawn Perez on

1 behalf of Mr. Ricky Lovelien.

2 THE COURT: Good morning.

3 All right. Before we begin, we are going to bring in
4 a juror and talk to him about an email that the -- his wife
5 sent. And before we do that, let's just make sure that -- I
6 think it's the same faces, but sometimes there will be someone
7 new.

8 So, I just want to make sure everyone is aware of
9 what the expectations are for court and for this trial. This
10 is not a sporting event. It is a courtroom, so it is never
11 appropriate to display any body language or verbal agreement or
12 disagreement, no opinions, no expressions no matter how much
13 you might agree or disagree with something that is being said.

14 Likewise, people may not speak out of turn. The
15 defendants do all have attorneys. The attorneys all have
16 microphones there at the table. Likewise, we have the podium
17 set up in the direction of the witness. So, the parties are
18 welcome to stay at their tables where they are spread out or
19 they may use the podium as they like.

20 We are not allowing any cell phones in the courtroom,
21 so please make sure, double-check, that you don't have any
22 other kind of electronic device, iPad, laptop, anything like
23 that.

24 The attorneys are allowed to have them so they can
25 use them for court, but there is no recording allowed. So, no

1 audio recording and no video recording. And the marshals and
2 the court security officers are authorized to remove you if
3 they do see an electronic device, whether it's in use or not.
4 So, it doesn't matter if it's in private mode or vibrate mode,
5 you just simply can't have the device at all.

6 Let's go ahead and have the juror come in. The email
7 that we received from the wife was that her brother passed away
8 suddenly, unexpectedly in Kansas or something. So, not here in
9 Nevada. But it's her brother, and that she would like to have
10 her husband excused so that he can be home because she needs
11 him.

12 He is here this morning, and he did indicate that he
13 wants to serve. So, we'll bring him in to question him on the
14 record to make sure that we are clear whether he does or
15 doesn't want to serve.

16 We assumed he was going to say "I really don't want
17 to," but he actually wants to stay. So, we just need to put
18 all this on the record and actually have him say whatever it is
19 he's going to say.

20 MR. TANASI: Brave man.

21 THE COURT: It's Juror No. 16. So, bottom row,
22 nearest the benches.

23 (Juror No. 16 entered the courtroom.)

24 THE COURT: Come on in, sir. Go ahead and have a
25 seat anywhere. Everyone may be seated.

1 This is Juror No. 16, previously known as Juror
2 No. 615. You can go ahead and be seated, sir. So, he was No.
3 615 during the venire. Now he is Juror No. 16 on our panel.

4 I just wanted to inquire, and I don't want to
5 embarrass you or anything, but we did receive an email from
6 your wife about the loss of her brother. And I'm very sorry
7 about that.

8 We just wanted to inquire whether or not you wish to
9 stay on the jury, or did you wish to go ahead and be excused so
10 that you can spend time with her and with your family. My
11 understanding was she said it was unexpected.

12 JUROR NO. 16: Yes, Your Honor. It happened last
13 Sunday about 2:00. And I would like to be excused.

14 THE COURT: All right. And I don't -- I don't think
15 anyone has any objection to that. Do you?

16 MR. MYHRE: None from the government, Your Honor.

17 MR. MARCHESE: No, Your Honor.

18 MR. TANASI: No, Your Honor.

19 THE COURT: All right. Well, thank you very much for
20 your service. Again, we are very sorry for your loss and your
21 wife's loss.

22 JUROR NO. 16: Thank you very much.

23 THE COURT: Thank you.

24 (Juror No. 16 left the courtroom.)

25 (Pause in the proceedings. Jury in.)

1 COURTROOM ADMINISTRATOR: All rise.

2 THE COURT: The jury may go ahead and be seated.
3 Everyone else may be seated as well. We are back on the record
4 with the jury present.

5 We did finish with our first witness yesterday, so
6 the government may call its next witness.

7 MS. CREEGAN: Thank you, Your Honor. The United
8 States calls Special Agent Mark Seyler.

9 THE COURT: Good morning, Special Agent Seyler. Come
10 on up. You are going to be seated over here to my right.
11 Please be careful with the steps and the microphone wires on
12 your way up.

13 MARK D. SEYLER,
14 having been duly sworn, was examined and testified as follows:

15 COURTROOM ADMINISTRATOR: State your full name and
16 spell it for the record.

17 THE WITNESS: Mark D. Seyler, S-E-Y-L-E-R.

18 THE COURT: All right. So, it's Seyler like a sailor
19 on a ship, but it's spelled with Es. So, S-E-Y-L-E-R.

20 THE WITNESS: Correct.

21 THE COURT: Okay. Thank you.

22 DIRECT EXAMINATION

23 BY MS. CREEGAN:

24 Q. Good morning, Special Agent Seyler.

25 A. Good morning.

Mark D. Seyler - Direct

1 Q. Can you please describe for the jury your current
2 position?

3 A. I am a special agent with the Federal Bureau of
4 Investigation.

5 Q. How long have you been a special agent with the FBI?

6 A. For 21 years.

7 Q. And do you have a current place that you are posted?

8 A. Yes, I am part of the Salt Lake City Division of the FBI,
9 and I am assigned to the Helena, Montana, resident agency.

10 Q. What's a resident agency?

11 A. That's a smaller office in the FBI within a larger field
12 division.

13 Q. How long have you been in Helena, Montana?

14 A. 16 years.

15 Q. Are you from Montana originally?

16 A. Yes, I am.

17 Q. How long have you been an FBI agent? I am sorry if you
18 already told me.

19 A. For 21 years.

20 Q. And when you entered the FBI, was there any particular
21 training that you were required to complete?

22 A. Yes. FBI agents go through four or five months of
23 training in Quantico, Virginia, where they teach you basic law
24 enforcement skills, firearms, interviewing techniques, report
25 writing, things like that.

Mark D. Seyler - Direct

1 Q. And from the time that you first entered the FBI to now,
2 have you had any other training requirements that you've had to
3 complete?

4 A. Yes, we have regular training that we have to complete
5 regarding legal matters, firearms, obviously, and other
6 techniques; things like the Internet and things that -- social
7 media that weren't necessarily around when I went through the
8 original FBI academy. You have to have training on that as
9 well.

10 Q. Are you familiar with an incident that occurred in
11 Bunkerville, Nevada, on April 12, 2014?

12 A. Yes.

13 Q. Are you one of the case agents in the FBI investigating
14 that event?

15 A. Yes, I am.

16 Q. Do you have particular responsibility for subjects
17 originating from Montana?

18 A. Yes.

19 Q. Does that include Ryan Payne?

20 A. Yes.

21 Q. Does that include Ricky Ray Lovelien?

22 A. Yes.

23 Q. And can you briefly describe for the jury who is Ryan
24 Payne?

25 A. Ryan Payne, in 2014, was approximately 30 years old. He

Mark D. Seyler - Direct

1 was an Army veteran. He lived in far southwestern Montana in a
2 small community called Anaconda. He was the leader of a group
3 called the Westmont Rangers, which was a small militia unit.

4 Q. And can you briefly describe who is Ricky Ray Lovelien?

5 A. Ricky Ray Lovelien at the time was approximately 50 years
6 old. Lived in far western Montana in a town called Libby. He
7 also was the leader of a militia group there called the Montana
8 State Defense Force.

9 Q. Do you see Mr. Lovelien in the Court today?

10 A. Yes, I do.

11 Q. And could please describe him by where he is sitting and
12 the clothing he is wearing.

13 A. He's wearing a white shirt, has sunglasses on his head,
14 and is sitting in the back of the courtroom.

15 MS. CREEGAN: And let the record reflect that he has
16 identified Defendant Lovelien.

17 THE COURT: The record will so reflect.

18 Can you repeat? You said he was a member of the
19 Montana State Defense, and I didn't catch the last word.

20 THE WITNESS: Yes, it's Montana State Defense Force.

21 THE COURT: Force. Thank you.

22 BY MS. CREEGAN:

23 Q. Agent Seyler, in your investigation of Ryan Payne, did you
24 learn of an organization call Operation Mutual Aid?

25 A. Yes, I did.

Mark D. Seyler - Direct

1 Q. Does it have an affiliation with Ryan Payne?

2 A. Yes, Ryan Payne was the founder and co-leader of Operation
3 Mutual Aid.

4 Q. What is Operation Mutual Aid?

5 A. This was not a militia group. It was founded by Ryan
6 Payne and Jerry Bruckhart, a man from Pennsylvania, who had the
7 idea that there should be a coalition of militia members and
8 like-minded individuals across the United States to coordinate
9 off of the Internet.

10 They have a website, Facebook page, and they
11 correspond via email. The basic premise is all the members
12 agreed that the time for peaceful protest was over, and they
13 were going to collaborate together to have an operation, an
14 offensive operation. They even discussed a rescue of
15 government officials and politicians, and they were going to
16 seek out an opportunity --

17 MR. MARCHESE: Objection. Foundation.

18 BY MS. CREEGAN:

19 Q. In the course of your investigation --

20 MR. TANASI: Stewart joins.

21 BY MS. CREEGAN:

22 Q. -- of Operation Mutual Aid, have you reviewed publicly
23 available materials that they have disseminated?

24 A. Yes.

25 Q. Does that include their official website?

Mark D. Seyler - Direct

1 A. Yes.

2 Q. Does that include their commentary on militia websites?

3 A. Yes.

4 Q. And as result of that, have you been able to determine
5 what their position is?

6 A. Yes.

7 Q. This is their currently stated position?

8 A. Yes.

9 MS. CREEGAN: Your Honor, I think there's sufficient
10 foundation for him to testify.

11 Q. Agent Seyler, could you just continue? I'm sorry. I
12 don't know where you --

13 THE COURT: Objection overruled. Yes, you may
14 continue.

15 MS. CREEGAN: I apologize, Your Honor.

16 THE COURT: I am trying not to cough into the
17 microphone.

18 MS. CREEGAN: I'm sorry, Your Honor. I know I've
19 just made that a little difficult for you. I'll try not to
20 talk over.

21 Q. Agent Seyler, I apologize. I'm not exactly sure where you
22 left off. Could you just describe what Operation Mutual Aid
23 is?

24 I'm sorry if it repeats a little, but maybe just give
25 us the whole answer from the beginning.

Mark D. Seyler - Direct

1 A. Yes. The premise is that they could collaborate and
2 coordinate together across the United States to seek out and
3 respond to an incident of their choosing where they would
4 offensively, with firearms, address the government and/or law
5 enforcement who they believed were violating the Constitution.

6 Q. Did Operation Mutual Aid have on its website a list of
7 people who were receiving their updates or who were subscribed
8 to their mailing list?

9 A. Yes. They had a list of individuals that had signed up
10 for their -- their website, yes.

11 Q. And before April of 2014, was Cheyenne Miller a member of
12 that publicly viewable list?

13 A. Yes.

14 Q. Who is Cheyenne Miller?

15 A. Cheyenne Miller is the sister of Ricky Ray Lovelien.

16 Q. Now, you also mentioned Ryan Payne. Does Ryan Payne have
17 an email account?

18 A. Yes.

19 Q. And what's that email account?

20 A. It's rypayne1@gmail.com.

21 Q. Does Operation Mutual Aid have an email account?

22 A. Yes, it does as well.

23 Q. And what's the Operation Mutual Aid email account?

24 A. Operationmutualaid1@gmail.com.

25 Q. Did you execute search warrants on each of these email

Mark D. Seyler - Direct

1 accounts?

2 A. Yes, I did.

3 Q. And could you briefly describe for the jury the process of
4 obtaining a search warrant on an email service provider?

5 A. So, first we have to go to a judge and explain why we
6 believe a crime has been committed and why we believe a
7 particular email account contains evidence of that crime.

8 If we are successful, the judge grants us a warrant.
9 We take that search warrant, and we serve it on the Internet
10 service provider, email provider. And then usually within a
11 matter of weeks, they provide us with a digital file.

12 Each company is a little different in what they give
13 us. It can be quite voluminous, and we have to go through all
14 that material and keep only what's relevant to our
15 investigation that's pertinent to our warrant.

16 Q. And did you receive relevant materials in the search
17 warrants that were executed on Ryan Payne and the Operation
18 Mutual Aid email accounts?

19 A. Yes.

20 Q. Did you also receive a certificate of authenticity from
21 the service provider that these were their business records?

22 A. Yes, we did.

23 Q. I'm going to ask to pull up for the witness only
24 Exhibit 173.

25 Agent Seyler, is this the certificate of authenticity

Mark D. Seyler - Direct

1 that you received from Google for the rypayne1 and
2 operationmutualaid1 email accounts?

3 A. Yes, it is.

4 MS. CREEGAN: Your Honor, the government would move
5 to admit Exhibit 173.

6 THE COURT: Any objection to 173?

7 MR. TANASI: None from Stewart, Your Honor.

8 MR. MARCHESE: None from Parker.

9 MR. LEVENTHAL: None on behalf of Mr. Drexler.

10 MR. PEREZ: None from Lovelien.

11 THE COURT: All right. So, Exhibit No. 173 will be
12 admitted. Did you wish to publish it for the jury?

13 MS. CREEGAN: I think not, Your Honor. We'll put
14 these in the record, and they can review them if they would
15 like, but we will focus on content from the return.

16 THE COURT: All right.

17 (Exhibit 173 admitted.)

18 BY MS. CREEGAN:

19 Q. Can we pull up, for the witness only, Exhibit 174.

20 And Agent Seyler, is this one of the items that was
21 returned in the search warrant, rypayne1 Gmail account?

22 A. Yes, it is.

23 Q. And I know you can't quite see it here, but what's the
24 date of this email?

25 A. April 7th of 2014.

Mark D. Seyler - Direct

1 MS. CREEGAN: Your Honor, the government would move
2 to admit Exhibit 174.

3 THE COURT: Any objection to 174?

4 MR. TANASI: None from Stewart, Your Honor.

5 MR. MARCHESE: None from Parker.

6 MR. LEVENTHAL: None on behalf Mr. Drexler.

7 MR. PEREZ: None from Lovelien.

8 THE COURT: All right. So, Exhibit 174 will be
9 admitted.

10 MS. CREEGAN: Permission to publish?

11 THE COURT: Yes, you may.

12 (Exhibit 174 admitted.)

13 BY MS. CREEGAN:

14 Q. And Agent Seyler, now that the jury can see it, I'm just
15 going to ask you again. Who is this an email from and to?

16 A. This is an email from Ryan Payne to Gary Hunt.

17 Q. And what date was it sent?

18 A. April 7th of 2014.

19 Q. And this would be, I know this is rhetorical, but this
20 would be five days before April 12th, 2014.

21 A. Correct.

22 Q. And what's in the body of this email?

23 A. There are a list of phone numbers and who they belong to.

24 Q. And does it give a cell phone number for Cliven Bundy?

25 A. Yes, it does.

Mark D. Seyler - Direct

1 Q. And does it have a home number for the Bundys?

2 A. Yes.

3 Q. And did you -- and I will ask you more questions about
4 this later, but did you subsequently request toll records for
5 these two numbers?

6 A. Yes, the FBI did.

7 Q. Okay. Thank you, Nicole. Can you take that down? And
8 for the witness only, can you bring up Exhibit 175?

9 And Agent Seyler, is this an email from the Operation
10 Mutual Aid Gmail account?

11 A. Yes, it is.

12 Q. And is it dated April 8th, 2014?

13 A. Yes.

14 MS. CREEGAN: Your Honor, the government would move
15 to admit Exhibit 175. 175, yes. Thank you.

16 THE COURT: Any objection to Exhibit 175?

17 MR. MARCHESE: None from Parker.

18 MR. TANASI: None from Stewart, Your Honor.

19 MR. LEVENTHAL: Not on behalf of Mr. Drexler.

20 MR. PEREZ: None from Lovelien.

21 THE COURT: All right. Exhibit 175 will be admitted.
22 You may go ahead and publish.

23 MS. CREEGAN: Thank you.

24 (Exhibit 175 admitted.)

25

Mark D. Seyler - Direct

1 BY MS. CREEGAN:

2 Q. And Agent Seyler, again, who is this a message from and
3 to?

4 A. This is from Operation Mutual Aid, and it is to a number
5 of individuals that they knew were interested in receiving
6 their message.

7 Q. And drawing your attention to the bottom left corner,
8 what's the email that's listed there?

9 A. It's listed as Chy Miller, chyryna@gmail.com.

10 Q. Whose email address is that?

11 A. Cheyenne Miller's.

12 Q. And what relation is she, if any, to Ricky Lovelien?

13 A. That's Ricky Lovelien's sister.

14 Q. And you have previously testified that she was a member of
15 Operation Mutual Aid before April 12, 2014?

16 A. On their website, yes.

17 THE COURT: Where is this information on the exhibit?

18 MS. CREEGAN: It is in the bottom left corner of the
19 recipients.

20 Q. And Agent Seyler, what date was this email sent?

21 A. This was April the 8th.

22 Q. And can I just ask you to read the body of this email,
23 please?

24 A. "We had made the decision to mobilize to Nevada. Units
25 are underway as I type this. The feds arrested some protesters

Mark D. Seyler - Direct

1 today and the words 'we need you now' were uttered. I ask
2 everyone to keep my number very near. (717)682-8073. If you
3 are pulled over by law enforcement, call me before pulling
4 over, if at all possible, so we can keep track of such things
5 and do what I am able from here to correct the situation."

6 "At this time, we have approximately 150 responding,
7 but that number is owing [sic] by the hour. Here are
8 directions and coordinates for the ranch. I-15, Exit 112. Go
9 3 miles. As you cross [sic] the Virgin River, turn right. Go
10 2 miles. Turn right at Bundy Melons sign, 2 miles to ranch."

11 It gives coordinates, 36 degrees 42-59.43 north.
12 114 degrees 14-17.68 west.

13 "May God grant each and every one of you safety,
14 wisdom, and foresight and courage to accomplish the mission we
15 have strived toward for so long to bring to fruition. All men
16 are mortal. Most pass simply because it is their time. A few,
17 however, are blessed with the opportunity to choose their time
18 in performance to duty -- of duty. Sua sponte."

19 Q. And I see, in this third paragraph, there's a number
20 listed there. Are you familiar with that phone number?

21 A. Yes, I am.

22 Q. And whose phone number is that?

23 A. That belongs to Jerry Bruckhart.

24 Q. Is he one of the co-founders of Operation Mutual Aid?

25 A. Yes.

Mark D. Seyler - Direct

1 Q. And did you subsequently -- and I will ask you more
2 questions about it later. But did you subsequently request
3 toll records for this number?

4 A. Yes.

5 Q. And bringing your attention down to the coordinates that
6 are given, do you know what those coordinates correspond to?

7 A. Yes, the Bundy Ranch.

8 Q. And taking your attention to the phrase in Latin that
9 appears at the bottom, are you familiar with the meaning of
10 that phrase?

11 A. Yes. It's a motto for the US Army Rangers, and it means
12 of our own accord.

13 Q. Thank, Nicole. You can take that down.

14 Special Agent Seyler, as part of your investigation,
15 did you also obtain a search warrant on a Facebook account
16 associated with Ryan Payne?

17 A. Yes, we did.

18 Q. And when you view the publicly visible Facebook account of
19 Ryan Payne, what do you see there?

20 A. You can see that name is Ryan Payne, that he's from
21 Anaconda, Montana, and you can see photographs of Ryan Payne
22 and his family.

23 Q. And I know it will be pretty similar, but could you
24 briefly describe for the jury the process of obtaining a search
25 warrant on a social media site?

Mark D. Seyler - Direct

1 A. Very similar. Once we obtain a warrant from a judge, we
2 would serve it on a social media site like Facebook. And then
3 within a couple weeks, they would provide us records.

4 In the case of Facebook specifically, they provide us
5 pages -- PDF pages, which are basically the digital equivalent
6 of 8 1/2 by 11 sheets of paper, with information about activity
7 that's taken place in that account.

8 It doesn't look like what you would normally see on a
9 computer screen if you are looking at someone's Facebook
10 account. It can be tens of thousands, sometimes even hundreds
11 of thousands of pages that we then have to sift through to find
12 the material that's actually relevant to the investigation.

13 Q. And when you executed your search warrant, did you also
14 receive back from Facebook a certificate of authenticity that
15 these were their actual business records?

16 A. Yes.

17 Q. I'm going to ask you to look at page 6 of Exhibit 49. It
18 should also be on the screen there.

19 A. Sorry. Thank you. Yes.

20 Q. And what generally is depicted in this -- on page 6 of
21 Exhibit 49?

22 A. This is a certificate of authenticity from Facebook.

23 Q. And does the account number that corresponds to Ryan
24 Payne's Facebook account appear within the certificate?

25 A. Yes, it does.

Mark D. Seyler - Direct

1 MS. CREEGAN: Your Honor, the government would move
2 to admit page 6 of Exhibit 49.

3 THE COURT: Any objection to Exhibit 49?

4 MR. TANASI: None from Stewart, Your Honor.

5 MR. MARCHESE: None from Parker.

6 MR. LEVENTHAL: None on behalf of the Mr. Drexler.

7 MR. PEREZ: None from Lovelien.

8 THE COURT: Exhibit 49 will be admitted.

9 (Exhibit 49, page 6 admitted.)

10 MS. CREEGAN: Can we bring up, for the witness only,
11 Exhibit 55.

12 Q. And Agent Seyler, is this one of the documents that you
13 received back from Facebook in response to search warrant?

14 A. Yes, it is.

15 Q. This is on Ryan Payne's Facebook account?

16 A. Yes.

17 Q. And just generally, what's the date range of these
18 conversations?

19 A. This is April 8th of 2014.

20 MS. CREEGAN: Your Honor, the government would move
21 to admit Exhibit 55.

22 THE COURT: Any objection to Exhibit 55?

23 MR. MARCHESE: None for Parker.

24 MR. TANASI: Your Honor, Stewart objects on hearsay
25 grounds.

Mark D. Seyler - Direct

1 MR. LEVENTHAL: Drexler joins on hearsay grounds.

2 MR. PEREZ: Lovelien joins as well.

3 MR. MARCHESE: Parker will withdraw the stipulation
4 and join.

5 MS. CREEGAN: The government offers these statements
6 as coconspirator statements in furtherance of the conspiracy.
7 They are statements between the coleaders of OMA, and
8 government will be able to establish a connection between them
9 and Defendant Lovelien.

10 THE COURT: All right. The objection is overruled.
11 Exhibit 55 will be admitted.

12 MR. TANASI: Your Honor, will it only be admitted as
13 to Mr. Lovelien?

14 MS. CREEGAN: Your Honor, as these are coconspirators
15 statements --

16 THE COURT: No, it's as to everyone.

17 MR. TANASI: My understanding, though, the response
18 from the government was that she would be introducing them as
19 they would tie Mr. Lovelien to the conspiracy. I didn't hear
20 anything with respect to Mr. Stewart.

21 MS. CREEGAN: The government will connect these
22 people to Mr. Lovelien and will connect Mr. Lovelien to every
23 other defendant.

24 But even if that weren't the case, these would still
25 be able to show by conservative action and other evidence that

Mark D. Seyler - Direct

1 they were working together in the same conspiracy.

2 THE COURT: All right. That's sufficient.

3 Exhibit 55 is admitted.

4 MS. CREEGAN: Permission to publish?

5 THE COURT: Yes.

6 (Exhibit 55 admitted.)

7 BY MS. CREEGAN:

8 Q. And Agent Seyler, again, this is how the Facebook business
9 record appears when it comes back from Facebook?

10 A. Yes, this is one of the pages, yes.

11 Q. And are you able to tell from how the page is laid out
12 what type of record this is?

13 A. Yes, this is a private message between two individuals.

14 Q. And is a private message publicly viewable?

15 A. No, it's not.

16 Q. And in this case, who is the private message occurring
17 between?

18 A. Between the founders of Operation Mutual Aid, Ryan Payne
19 and Jerry Bruckhart.

20 Q. And I know you can only see the first page, but what date
21 is this conversation occurring?

22 A. This actually starts on April 7th and goes through
23 April 8th.

24 Q. And now when you say that it's April 7th, I want to take
25 your attention to the very first conversation that occurs in

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1 the page which has recipients, author, sent, deleted, body, and
2 just bring your attention specifically there.

3 Now, I want to go through these components with you
4 just so -- I know this is not how Facebook normally looks, so
5 that we can understand what this all means.

6 So, first there's an area that says recipients. What
7 is that?

8 A. That would include the individuals involved in the
9 conversation. You can have just two people or there can be
10 multiple individuals involved in a private chat.

11 Q. And I see that one person is listed in recipient who is
12 also the author. Why is that?

13 A. Facebook just lists it that way. They include all the
14 people involved even though only one of them is actually
15 sending the message at the time.

16 Q. And then the next section says sent. What's listed after
17 sent?

18 A. That would be the date and time that it's sent.

19 Q. And what is this abbreviation that appears at the end of
20 that, the UTC abbreviation?

21 A. That's universal time.

22 Q. Can you explain for the jury what universal time is?

23 A. So, it's basically Greenwich Mean Time. And so all of the
24 Facebook records are given a time based on Greenwich Mean Time,
25 universal time.

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1 Q. And this is the time that it is in Greenwich, England?

2 A. Correct.

3 Q. And how do we obtain what the time is in Nevada from
4 universal time code?

5 A. On that date, you would have to subtract seven hours from
6 the UTC time to get Pacific time, Nevada time.

7 Q. So, this first conversation that we see here on this page,
8 when is this message actually sent?

9 A. In Nevada time, that would actually be 10:47 p.m. on
10 April 7th.

11 Q. Can you come out of that close-up view, please?

12 And Agent Seyler, directing your attention to the
13 long paragraph that appears in the middle of this first page of
14 Exhibit 55, who is this a message from?

15 A. This is a message from Jerry Bruckhart.

16 Q. And who is it to?

17 A. To Ryan Payne.

18 Q. And about what time is this sent in local Nevada time?

19 A. Approximately 2:00 in the morning. 2:18 in the morning.

20 Q. Could you please read the body of the message?

21 A. "If there are any Oath Keepers in Nevada are willing to
22 help out, go to 3%ers Nevada page and join up. They will take
23 your name and abilities down and how you can help out. There
24 are several militia and patriot groups heading to Nevada right
25 now to help out -- to help Bundy Ranch family with the military

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1 standoff going on now. Thank you. Unity 3%."

2 Q. Agent Seyler, I see there's a 3 after Jerry Bruckhart's
3 name. He refers to 3%. He says "Unity 3%." Are you familiar
4 with that reference?

5 A. Yes, I am.

6 Q. What does 3 or 3% mean?

7 A. Essentially a movement or an idea that the original
8 revolution was only supported by three percent of the
9 population. People that describe themselves and 3%ers or
10 members of the 3% believe that they are the modern incarnation
11 of the three percent that supported the original revolution.

12 Q. Thank you. Can you come out of that close-up view?

13 And taking your attention to the communication that
14 occurs at the very end of page 1 of Exhibit 55, who is that a
15 message from?

16 A. This is a message from Ryan Payne to Jerry Bruckhart.

17 Q. And about what time is this sent in local Nevada time?

18 A. Approximately 8:16 a.m.

19 Q. Could you please read us the body of the message?

20 A. "Sent him a message. Have you talked with the Bundys this
21 morning?"

22 Q. Thank you. Can you come out of that close-up view and go
23 to the second page.

24 And Agent Seyler, is there a response to that
25 question in the next message?

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1 A. Yes. Bruckhart responds "Not yet. Tried, but busy."

2 Q. And does Bruckhart then receive a response from Ryan
3 Payne?

4 A. Yes. He says "K. Keep trying. Seems everyone is willing
5 to safeguard liberty at a distance. What do you say? Let me
6 know when you talk to Bundy. It's time to invite everyone to
7 the First Annual Patriot Picnic at the Bundy Ranch."

8 Q. Can you scroll down? And in this last message that
9 appears in the close-up, the one that's sent at 15:22:12 UTC
10 time, who is this a message from and to?

11 A. From Ryan Payne to Jerry Bruckhart.

12 Q. And what's in the body of that message?

13 A. "(801)368-0010, Cliven's cell."

14 Q. Is this also the same number that Ryan Payne emailed Gary
15 Hunt?

16 A. Yes, it is.

17 Q. Can you come out of this, please?

18 And taking your attention to the last full
19 communication on this page, who is this a message from?

20 A. This is from Jerry Bruckhart to Ryan Payne.

21 Q. And about what time is it sent in local Nevada time?

22 A. Approximately 8:47 a.m.

23 Q. And could you please read the body of the message?

24 A. "Just talked to him. They still want help."

25 Q. Thank you. You can take that down. Can we bring up, for

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1 the witness only, Exhibit 58.

2 And Agent Seyler, is this also a Facebook business
3 record?

4 A. Yes, it is.

5 Q. And what type of Facebook record is this?

6 A. This is a private message as well.

7 Q. And is one of the communicants in this Ryan Payne?

8 A. Yes.

9 Q. And what date is this communication?

10 A. This is April 8th, approximately 11:00 or 11:20 a.m.
11 Nevada time.

12 MS. CREEGAN: The government would move to admit
13 Exhibit 58.

14 THE COURT: Any objection to Exhibit 58?

15 MR. TANASI: Continuing objection. Hearsay, Your
16 Honor.

17 MR. MARCHESE: Parker joins.

18 MR. LEVENTHAL: Also that it's under the rule of
19 completeness, it's not the full. Most of this is blocked out.

20 MR. TANASI: Stewart joins that as well, Your Honor.

21 MR. PEREZ: Lovelien joins.

22 THE COURT: All right. It's just a close-up of
23 Exhibit 58 that's on the screen. So, you are asking all of
24 Exhibit 58 to be admitted, but you are just showing the portion
25 of it.

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1 MS. CREEGAN: Your Honor, there are other
2 communications that are blocked out, but I don't believe they
3 come in under the rule of completeness. The rule of
4 completeness doesn't require that every single part of a
5 conversation come in.

6 If there's something that causes it to be misleading,
7 there is nothing in Exhibit 58's redacted portion that causes
8 it to be misleading.

9 THE COURT: All right. So, Exhibit 58 is admitted,
10 coconspirators statement, and the redaction does not appear to
11 violate any other rule.

12 Did you want to publish Exhibit 58?

13 MS. CREEGAN: Yes, Your Honor.

14 (Exhibit 58 admitted.)

15 BY MS. CREEGAN:

16 Q. And Agent Seyler, who is this a communication from and to?

17 A. This is from Ryan Payne to an individual with the moniker
18 Texasmilitia Northtexas.

19 Q. And I know you've said; but, again, what's the time in
20 local Nevada time?

21 A. This would have been approximately 11:20 a.m.

22 Q. Could you please read the body?

23 A. "I just got off the phone with Cliven. He knows we are
24 coming and has opened up his lands -- has opened his land up to
25 everyone willing. OMA is moving. Not going public with it

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1 until more are en route."

2 Q. Thank you. You can take that down.

3 And Agent Seyler, as a part of the investigation, was
4 a Facebook search warrant also obtained on the account of Carol
5 Bundy?

6 A. Yes.

7 Q. Did you look at the publicly visible account of Carol
8 Bundy?

9 A. Yes, I did.

10 Q. And who is Carol Bundy?

11 A. Carol Bundy is the wife of Cliven Bundy.

12 Q. What were you able to see on her publicly viewable
13 Facebook page?

14 A. There were pictures of Carol Bundy and her family. There
15 were people wishing her happy birthday on April 7th, which I
16 know to be Carol Bundy's birthday.

17 Q. When you received search warrant returns from Facebook,
18 did you also receive a certificate of authenticity that these
19 were Facebook business records?

20 A. Yes.

21 Q. And taking your attention to Exhibit 49 page 8, what's
22 depicted in Exhibit 49 page 8?

23 A. This is a certificate of authenticity from Facebook for
24 Carol Bundy's Facebook account.

25 MS. CREEGAN: The government would move to admit

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1 page 8 of Exhibit 49.

2 THE COURT: Any objection to Exhibit -- what's the
3 number? 59?

4 MS. CREEGAN: 49, page 8.

5 THE COURT: 49. Page 8 to Exhibit 49.

6 MR. MARCHESE: Parker objects. Appears that the
7 notary stamp is from an individual in Texas in the lower right
8 corner. It appears that Facebook is a California corporation.

9 MR. TANASI: Stewart joins.

10 MR. LEVENTHAL: Drexler joins.

11 MR. PEREZ: Lovelien joins.

12 MS. CREEGAN: The government doesn't understand the
13 state of business and the state of signature to be a
14 requirement under the federal rules for a certificate of
15 authenticity.

16 MR. MARCHESE: A Texas notary can only notarize in
17 Texas.

18 MS. CREEGAN: That may the case, but the federal law
19 only requires a signature.

20 THE COURT: Agreed. The objection is overruled.
21 Exhibit 49 is admitted.

22 (Exhibit 49, page 8 admitted.)

23 BY MS. CREEGAN:

24 Q. Can you take that down and bring up Exhibit 52 for the
25 witness only?

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1 And Agent Seyler, is this a Facebook record return
2 for Carol Bundy's Facebook account?

3 A. Yes, it is.

4 Q. And is she conversing with somebody in this record?

5 A. Yes, she's conversing with Jerry Bruckhart in a private
6 message.

7 Q. And what is the date of these communications?

8 A. This is actually April 7th. Nevada time approximately
9 10:01 p.m.

10 MS. CREEGAN: Government moves to admit Exhibit 52.

11 MR. TANASI: Stewart objects on hearsay and relevance
12 grounds, Your Honor.

13 MR. MARCHESE: Parker joins.

14 MR. LEVENTHAL: Drexler joins on the rule of
15 completeness as much of this is redacted.

16 MR. PEREZ: Lovelien joins as well.

17 MR. TANASI: Stewart joins on the completeness
18 grounds as well.

19 MR. MARCHESE: Parker joins.

20 THE COURT: Exhibit 52 is admitted. The hearsay
21 objection is overruled. It's a coconspirator statement. The
22 redaction objection is overruled.

23 (Exhibit 52 admitted.)

24 MS. CREEGAN: Permission to publish, Your Honor?

25 THE COURT: Yes, you may.

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1 BY MS. CREEGAN:

2 Q. And Agent Seyler, what type of Facebook record is this?

3 A. This is a private message.

4 Q. And sorry to ask you to repeat yourself, but who is the
5 conversation between?

6 A. Between Jerry Bruckhart and Carol Bundy.

7 Q. And bringing your attention to this first communication,
8 about what time and date is this sent in local Nevada time?

9 A. Approximately 10:01 p.m. on April the 7th.

10 Q. Who is the author of this message?

11 A. Jerry Bruckhart.

12 Q. Could you please read the body?

13 A. "Just wanted to let you know we have significant units
14 committing at this time."

15 Q. And does he make another message in that same chain?

16 A. Yes. He says "Looks very much like we will be coming."

17 Q. Does Carol Bundy respond?

18 A. Yes.

19 Q. What's her -- I'm sorry. What's her response?

20 A. "I think my husband is on the phone with your Nevada
21 representative right now."

22 Q. Thank you. You can take that down. Can you bring up for
23 the witness only Exhibit 53? And could you just show him the
24 second page as well?

25 And Agent Seyler, is this a Facebook record on Carol

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1 Bundy's Facebook account?

2 A. Yes.

3 Q. What type of record is this?

4 A. This would be a status update.

5 Q. And what's the date range of these status updates? You
6 can flip back to the first page, too.

7 A. April 9th approximately 12:34 p.m. Nevada time.

8 MS. CREEGAN: The government moves to admit
9 Exhibit 53.

10 MR. TANASI: Stewart objects. Hearsay, Your Honor.

11 MR. MARCHESE: Parker joins.

12 MR. LEVENTHAL: Drexler joins.

13 MR. PEREZ: Lovelien joins.

14 THE COURT: Same ruling. Exhibit 53 is admitted.

15 MS. CREEGAN: Permission to publish?

16 THE COURT: Yes, you may.

17 (Exhibit 53 admitted.)

18 BY MS. CREEGAN:

19 Q. And just showing you briefly the first page of this
20 exhibit, you see down at the bottom there, there appears to be
21 a date and time. What date and time would that be in local
22 Nevada time?

23 A. April 9th about 12:34 p.m.

24 Q. And taking your attention to the second page, I know
25 you've already said, but what kind of Facebook record is this?

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1 A. This is a status update.

2 Q. What's a status update?

3 A. It's similar to a tweet on Twitter, if you are familiar
4 with Twitter. It's a short statement that you can put out
5 about what you're doing and what you're feeling right at that
6 time. It goes out to your friends on Facebook, and if you have
7 the settings set correctly also shows up on your actual
8 Facebook page.

9 Q. And private messages, I think you previously said, are
10 only seen by the two communicants. Are status updates seen by
11 only the person authoring them? Who can see these?

12 A. You can set your settings to decide who can see whether
13 everybody publicly can see them or just a few people. In this
14 case, I have checked and Carol Bundy's status updates were
15 shared with everyone publicly.

16 Q. Does this mean that anybody that looked at her Facebook
17 account could see that the status update was up there?

18 A. Yes.

19 Q. And does this go from -- well, these are both on
20 April 9th; correct?

21 A. Correct.

22 Q. Approximately around noon?

23 A. Yes.

24 Q. Could you read the first entry?

25 A. "The Operation Mutual Aid coordinator is here with us

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1 now."

2 Q. And could you please read the second entry?

3 A. "Attention all people, friends, and family and Facebook
4 world. The Bundy family has requested help from militia groups
5 including Operation Mutual Aid, 3%ers Club, Freedom Fighters,
6 and other like operations to come and stand with us and regain
7 our rights and freedoms."

8 "The Bundy family is grateful and overwhelmed with
9 the support of the millions of people from around the country.
10 Thank you. We would like to remind all of you that we want our
11 stand for liberty and freedom to remain peaceful. We requested
12 and asked for people to come and stand by us. Let America know
13 that we the people are standing up for their rights."

14 Q. Thank you. Can you take that down?

15 And Agent Seyler, are you familiar with the Bundy
16 Ranch Facebook page?

17 A. Yes.

18 Q. Is this a Facebook page that posts updates from the Bundy
19 family in Bunkerville, Nevada?

20 A. Yes.

21 Q. And between April 9th and 10th, was there a posting on
22 that Facebook page regarding Ryan Payne?

23 A. Yes.

24 Q. What was the subject of that status update or time line
25 entry?

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1 A. It essentially said that Ryan Payne was the coordinator of
2 the militia operation for the Bundy Ranch.

3 Q. And has that posting subsequently been either deleted or
4 otherwise made not viewable to the public?

5 A. Right. I can't find it on the page anymore.

6 Q. But shortly after that appeared on Bundy Ranch, did it
7 appear on a large number of other Facebook pages?

8 MR. LEVENTHAL: Your Honor, I'm going to object to
9 hearsay. Move to strike since this is not a public page that
10 the witness can testify to.

11 MR. TANASI: Stewart joins.

12 MR. MARCHESE: Parker joins. It's also leading.

13 MR. PEREZ: Lovelien joins.

14 THE COURT: What is the legal objection to it's not a
15 public page?

16 MR. LEVENTHAL: Hearsay.

17 THE COURT: The certificate of authenticity.

18 MR. LEVENTHAL: No, he's testifying to a page that he
19 no longer can see.

20 MS. CREEGAN: He's testifying to what he saw that was
21 posted on the Bundy Ranch page which has now been deleted or --

22 THE COURT: He's testifying to his personal
23 knowledge.

24 MS. CREEGAN: Correct.

25 THE COURT: So it's not hearsay. Objection

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1 overruled.

2 BY MS. CREEGAN:

3 Q. And Agent Seyler, I believe I was asking you, was this
4 posting that you observed on Bundy Ranch reposted to a large
5 number of other Facebook users?

6 A. Yes.

7 Q. Did you observe that?

8 A. Yes, I did.

9 Q. Can we bring up page -- excuse me -- Exhibit 54 for the
10 witness only.

11 Agent Seyler, is this an example of one of the
12 Facebook pages that reposted what was from the Bundy Ranch
13 site?

14 A. Yes, it is.

15 Q. Was this publicly visible?

16 A. Publicly visible, yes.

17 MS. CREEGAN: The government moves to admit
18 Exhibit 54.

19 MR. TANASI: Stewart objects. Hearsay, Your Honor.

20 MR. MARCHESE: Same objection, Parker.

21 MR. LEVENTHAL: Drexler joins.

22 MR. PEREZ: Lovelien joins.

23 THE COURT: Same ruling. Exhibit 54 will be
24 admitted.

25 Did you wish to publish?

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1 MS. CREEGAN: Yes, Your Honor.

2 (Exhibit 54 admitted.)

3 BY MS. CREEGAN:

4 Q. And Agent Seyler, what Facebook account is this posted to?

5 A. This account was associated with Operation Patriot Rally
6 Point.

7 Q. Could you just -- could you read the entry here?

8 A. "April 11th, 2014. This info is from the official site.
9 Attention all militia groups. The Bundy family has a militia
10 coordinator. His name is Ryan Payne. He has been with us all
11 week. If you have any questions offer [sic] concerns, please
12 ask him."

13 Q. Thank you. You can take that down. Can you bring up
14 Exhibit 56, please?

15 And Agent Seyler, we previously discussed that a
16 search warrant was done on Ryan Payne's Facebook account;
17 correct?

18 A. Yes.

19 Q. And we've previously discussed the certificate of
20 authenticity?

21 A. Yes.

22 Q. And this is just another entry from that Facebook record
23 that you received back in response to that search warrant?

24 A. Yes.

25 Q. And could you -- is Ryan Payne one of the communicants in

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1 this message?

2 A. Yes, he is.

3 Q. And about what date does this communication take place?

4 A. This would have been on April the 8th, approximately
5 5:47 p.m. Nevada time.

6 MS. CREEGAN: Government moves to admit Exhibit 56.

7 MR. TANASI: Stewart objects on hearsay grounds
8 again, Your Honor, and especially with respect to Chief Kessler
9 and his involvement in this string.

10 MR. MARCHESE: Parker joins.

11 MR. LEVENTHAL: Drexler joins.

12 MR. PEREZ: Lovelien joins.

13 MS. CREEGAN: Your Honor, the government will be
14 showing that Ryan Payne was operating in a recruiting fashion,
15 coordinated with Lovelien. This is an example of another
16 person he coordinated with.

17 The important part in this communication is the
18 statement of Ryan Payne. The other statements are not offered
19 for the truth, but so that his statements can be understood.

20 THE COURT: All right. The objection is overruled.
21 It's a coconspirator statement.

22 MS. CREEGAN: Permission to publish?

23 THE COURT: Yes, you may. Exhibit 56 an admitted.

24 MS. CREEGAN: Nicole, can you come out of that close
25 view, please?

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1 (Exhibit 56 admitted.)

2 BY MS. CREEGAN:

3 Q. And taking your attention to the fourth full communication
4 on the page through the sixth, who is this a communication
5 between?

6 A. Between Ryan Payne and Mark Kessler.

7 Q. Is this a private message as well?

8 A. Yes.

9 Q. Who would this be visible to?

10 A. Only the participants.

11 Q. And this first message here, which is at 1:22:35, about
12 what time in local Nevada time was that sent?

13 A. That would be approximately 6:22 p.m. on April 8th.

14 Q. And who is this a message from and to? I'm sorry if I
15 already asked you.

16 A. From Ryan Payne to Mark Kessler.

17 Q. Could you read the body, please?

18 A. "We are in communication with Cliven Bundy. He says help.
19 Could always use more, Chief."

20 Q. And does Mark Kessler respond?

21 A. Yes. He says "10 4. I'll chat with Supreme Commander
22 Hill of the CSF and BOG. He calls all the shots, and he's a
23 great leader. I am an adviser. I started the movement, and I
24 found a great leader to oversee all of CSF and BOG. I know
25 more are on the move as we speak."

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1 Q. Could you go down? Can you go to the second page, please.

2 And taking your attention to the second full
3 communication on this page, who is this a message from and to?

4 A. This is from Ryan Payne to Mark Kessler.

5 Q. Sorry. I am taking your attention to the second one on
6 the page. The second full communication.

7 A. Yes, that one is from Mark Kessler to Ryan Payne.

8 Q. And what's -- what's Mark Kessler's communication to Ryan
9 Payne?

10 A. "How many you got going? How you get there? How many you
11 need? Armed?"

12 Q. And taking your attention to the communication that's at
13 7:27:12 in universal time code, who is that a message from and
14 to?

15 A. From Ryan Payne to Mark Kessler.

16 Q. About what time is that sent in local Nevada time?

17 A. Approximately 10:27 a.m.

18 Q. Could you please read the body of the message?

19 A. "Bring them all, Chief. Armed. Ready to play. I'm here
20 set up and ready to receive them. We have 300 coming as of
21 now. Numbers increasing."

22 Q. Now, in the communication after that, does Ryan Payne also
23 add his phone number?

24 A. Yes, he does.

25 Q. I'll ask you more questions about this later, but did you

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1 receive toll records relating to this phone number?

2 A. Yes.

3 Q. Thank you. Can you come out of the close-up. Go to the
4 third page, please.

5 And taking your attention to the first two
6 communications on this page, this first communication, who is
7 this from and to?

8 A. This is from Mark Kessler to Ryan Payne.

9 Q. And what does Mark Kessler say?

10 A. "Can go with two mag of 30 rounds."

11 Q. What's Ryan Payne's response?

12 A. "Bring what's needed to play. Possibility of extended
13 operations depending on aggression of the other side."

14 Q. Thank you. Can you come out of that close-up, please?
15 And going to the fourth page.

16 Just bringing your attention to the first full
17 communication on the page, who is this a message from and to?

18 A. From Ryan Payne to Mark Kessler.

19 Q. And what does Ryan Payne say?

20 A. "Jerry is not ground operational. His use is not here."

21 Q. And is Jerry referring to Jerry Bruckhart?

22 A. Yes.

23 MR. LEVENTHAL: Objection. Calls for speculation.

24 MR. TANASI: Stewart joins.

25 MR. MARCHESE: Parker joins.

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1 MR. PEREZ: Lovelien joins.

2 MR. LEVENTHAL: Move to strike.

3 BY MS. CREEGAN:

4 Q. Earlier in this conversation, do they refer to a person
5 being located in Pennsylvania?

6 A. Yes.

7 Q. Is Jerry Bruckhart located in Pennsylvania?

8 A. Yes.

9 THE COURT: Objection overruled.

10 BY MS. CREEGAN:

11 Q. Thank you. You can take that down. Can you bring up for
12 the witness only Exhibit 57.

13 And Agent Seyler, is this also a Facebook record from
14 Ryan Payne's Facebook account?

15 A. Yes, it is.

16 Q. And is this a private message conversation?

17 A. Yes.

18 Q. About what date does this occur?

19 A. This would have been April 9th, 2014.

20 MS. CREEGAN: Government moves to admit Exhibit 57.

21 MR. TANASI: Stewart objects on hearsay with respect
22 also to Michael Reighley's involvement and completeness.

23 MS. CREEGAN: Again, the government's proof will be
24 that Ryan Payne was a recruiter and coordinator. Michael
25 Reighley's statements are solely needed to understand the

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1 statements of Ryan Payne.

2 MR. MARCHESE: Your Honor, Parker joins. More
3 prejudicial than probative as to Mr. Reighley's statements.

4 MR. LEVENTHAL: Drexler joins.

5 MR. PEREZ: Lovelien joins.

6 MS. CREEGAN: The rule is unfairly prejudicial. I
7 don't believe this is unfairly prejudicial in any way.

8 THE COURT: I agree. Objection is overruled.
9 Exhibit 57 will be admitted.

10 MS. CREEGAN: Permission to publish?

11 THE COURT: Yes.

12 (Exhibit 57 admitted.)

13 BY MS. CREEGAN:

14 Q. And Agent Seyler, bringing your attention to the first
15 message in this chain, who is this a message from and to?

16 A. From Michael Reighley to Ryan Payne.

17 Q. About what date and time does it occur?

18 A. April 9th, approximately 3:25 in the morning.

19 Q. Could you please read the body of that message?

20 A. "What the updated with the ranch?"

21 Q. And does Ryan Payne respond to that question?

22 A. Yes.

23 Q. What's his response?

24 A. "Needed every man willing at the request of Cliven Bundy.

25 I am on the ground. Have --"

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1 Q. Go to the next page, please.

2 A. "Have family secured. Campsites secured on private
3 property. I-15, Exit 112, go south 2 miles to patriots
4 checkpoint to receive direction."

5 Q. Now, at the bottom of this close-up at 18:37:24 universal
6 time code, Michael Reighley asks a question; is that correct?

7 A. Yes.

8 Q. What's that question?

9 A. "How many on site?"

10 Q. And does Ryan Payne respond to that question?

11 A. Yes, he does.

12 Q. Can you please read that response?

13 A. "No million yet. Protesters and close friends of the
14 family. Many are in the process of mobilizing. Lots of false
15 info out there, so be careful. I am on the ground with
16 Mr. Bundy."

17 Q. Okay. Can you come out of that close-up, please?

18 And bringing your attention to the last three
19 communications on this second page of Exhibit 57, this first
20 message, which occurs at 18:58:28 in universal time code, who
21 is that a message from and to?

22 A. From Ryan Payne to Michael Reighley.

23 Q. And what time is that sent in local Nevada time?

24 A. Approximately 11:58 a.m.

25 Q. Can you read the body, please?

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1 A. "He's good. Getting tired. Dismayed at the response so
2 far. I'm telling him more are on the way, but he isn't seeing
3 it yet."

4 Q. And does Michael Reighley respond with a question?

5 A. Yes. He asks "Can you ask him if he wants -- if he want
6 support from the militia?"

7 Q. What is Ryan Payne's response?

8 A. "I have put out numerous times that he has requested
9 support. I am militia. He knows OMA's mission statement and
10 agrees. Objectives will be released soon in cohesion with
11 Mr. Bundy."

12 Q. And what's Michael Reighley's response to that?

13 A. "Okay. Then the inform [sic] I heard from another post is
14 disinformation. They reported that Mr. Bundy does not want
15 militia to assist him."

16 Q. And what's Ryan Payne's response to Michael Reighley?

17 A. "Right. There is a lot of it going around. I am with him
18 physically. Help fend off the disinformation if you can. Come
19 if you are willing and bring help."

20 Q. Does Michael Reighley respond to that?

21 A. Yes. He says "I will try my best. Many of the militia
22 had been told to stand down and only monitor it."

23 Q. And what's Ryan Payne's response to that?

24 A. "I know. It's coming from infiltrators. Help spread the
25 truth, my friend."

Mark D. Seyler - Direct

1 Q. Thank you. You can take that down.

2 Agent Seyler, in this past communication we see that
3 Ryan Payne represented that he was present in Nevada?

4 A. Yes.

5 Q. And in the course of your investigation, did you become
6 aware of a video from this same date featuring Ryan Payne?

7 A. Yes.

8 Q. How did you become aware of that video?

9 A. I found it online myself the afternoon of April 9th.

10 Q. And where did you find it?

11 A. It was on the website associated with the Las Vegas Review
12 Journal.

13 Q. Did you download that video?

14 A. Yes.

15 Q. Does it feature a person that you know to be Ryan Payne?

16 A. Yes.

17 Q. Taking your attention to Exhibit 37 in the Government's
18 Exhibit binder, should be a disc there. I won't have you do
19 too much looking, but have you previously reviewed the disc for
20 Exhibit 37 which is this video --

21 A. Yes.

22 Q. -- that you downloaded?

23 A. I have previously reviewed it. There is not a disc in
24 here.

25 Q. I'm sure that's my fault in some way, so I'm sorry about

Mark D. Seyler - Direct

1 that. But you've previously reviewed Exhibit 37 which is a
2 disc of this video?

3 A. Yes, I have.

4 Q. And in it Ryan Payne appears?

5 A. Yes.

6 Q. And does he represent that he's in Nevada at that time?

7 A. Yes, he does.

8 MS. CREEGAN: Your Honor, the government would move
9 to admit Exhibit 37.

10 MR. TANASI: Stewart objects on hearsay grounds, Your
11 Honor.

12 MR. MARCHESE: Parker joints.

13 MR. LEVENTHAL: Drexler joins.

14 THE COURT: And this is Payne speaking in the video?

15 MS. CREEGAN: Correct, Your Honor.

16 THE COURT: So, objection is overruled. This is a
17 coconspirator statement. You may play Exhibit 37.

18 MS. CREEGAN: Thank you, Your Honor.

19 (Exhibit 37 admitted.)

20 THE COURT: Oh, restroom break? Sure. All right.
21 So, we'll play that video when we come back from the bathroom
22 break. Let's go ahead and let them take a break.

23 During this break, I do remind the jury you are not
24 to discuss the case with anyone or permit anyone to discuss it
25 with you. Please do not listen to or review anything that

Mark D. Seyler - Direct

1 touches on this case in any way, and do not attempt to perform
2 any research or independent investigation and please do not
3 form any opinion.

4 It's 10:23, so we'll take about a 15-minute break and
5 then be back here at 10:40.

6 (Jury out.)

7 THE COURT: Off record.

8 (Recess, 10:24 a.m. Resumed 10:42 a.m. Jury out.)

9 THE COURT: You may be seated. Let's go ahead and
10 bring them in.

11 COURTROOM ADMINISTRATOR: Yes, Your Honor.

12 (Jury in.)

13 THE COURT: The jury may go ahead and be seated.
14 Everyone else may be seated as well.

15 We are back on the record.

16 All right. Ms. Creegan, did you want to go ahead and
17 play Exhibit No. 37?

18 MS. CREEGAN: Yes, Your Honor.

19 COURTROOM ADMINISTRATOR: Has it been admitted yet?

20 MS. CREEGAN: Exhibit 37.

21 COURTROOM ADMINISTRATOR: Yes.

22 MS. CREEGAN: Your Honor, we would move to admit
23 Exhibit 37.

24 THE COURT: Exhibit 37 was admitted.

25 COURTROOM ADMINISTRATOR: It was, Your Honor.

Mark D. Seyler - Direct

1 THE COURT: Yes.

2 COURTROOM ADMINISTRATOR: Thank you.

3 (Exhibit 37 being played.)

4 BY MS. CREEGAN:

5 Q. And we stopped at four seconds.

6 This person who has just identified himself as the
7 coordinator of Operation Mutual Aid, who is that person?

8 A. That's Ryan Payne.

9 Q. You've seen Ryan Payne before?

10 A. Yes, I have.

11 Q. And you are the case agent assigned to Ryan Payne?

12 A. Yes.

13 Q. Can you play it, please?

14 (Exhibit 37 being played.)

15 Q. And again, you said this was posted on April 9th?

16 A. Yes.

17 Q. And it discussed a mobilization?

18 A. Yes.

19 Q. And can you bring up for the witness Exhibit 59?

20 And Agent Seyler, is this another Facebook record in
21 response to the search warrant for Ryan Payne's Facebook
22 account?

23 A. Yes, it is.

24 Q. And does this communication occur around April 10th of
25 2014?

Mark D. Seyler - Direct

1 A. Yes.

2 MS. CREEGAN: Government moves to admit Exhibit 59.

3 MR. TANASI: Stewart objects. Hearsay, Your Honor.

4 MR. LEVENTHAL: Same objection as to hearsay. We
5 don't know at this point who even Texasmilitia Northtexas is,
6 if it's a person or community.

7 THE COURT: This is a page received from the search
8 warrant sent to Facebook in request of documents related to
9 Ryan Payne.

10 MS. CREEGAN: Ryan Payne.

11 THE COURT: Any other objection?

12 MR. MARCHESE: Parker joins.

13 MR. PEREZ: Lovelien joins.

14 THE COURT: Objection overruled. Exhibit 59 will be
15 admitted.

16 MS. CREEGAN: Permission to publish?

17 THE COURT: Yes, you may.

18 (Exhibit 59 admitted.)

19 BY MS. CREEGAN:

20 Q. Agent Seyler, I bring your attention to the top-most
21 communications page. Again, what type of record is this from
22 Facebook?

23 A. This is a private message.

24 Q. So this would not be publicly visible?

25 A. Correct.

Mark D. Seyler - Direct

1 Q. And who is this a communicate between?

2 A. Between Ryan Payne and Texasmilitia Northtexas.

3 Q. And in this first message that we see here, about what
4 time and date is that sent?

5 A. April the 10th, approximately 9:42 a.m. Nevada time.

6 Q. And could you please read the body of that email?

7 A. "I sent you a bunch of messages the other day with no
8 response. Call me (406)560-2504."

9 Q. And this is Ryan Payne giving his number?

10 A. Yes.

11 Q. And I believe I've already asked you, but did you
12 receive -- and I will ask you more about it later. But did you
13 receive toll records associated with this number?

14 A. Yes.

15 Q. And going down to the third communication here on the
16 page, who is this a communication from? The one that's at
17 17:14:46 universal time code.

18 A. Yes, that is also from Ryan Payne.

19 Q. And what does Ryan Payne say in that communication?

20 A. "I am with Cliven Bundy as we speak. I am acting liaison
21 for Cliven Bundy and militia responding."

22 Q. Could you go to that close view, please?

23 And bringing your attention to the last three
24 communications on the first page of Exhibit 59, do we have some
25 questions here from Texasmilitia Northtexas?

Mark D. Seyler - Direct

1 A. Yes.

2 Q. What's the question?

3 A. "Did Ammon or Cliven say no uniforms or long arms?"

4 Q. And does Ryan Payne respond to that?

5 A. Yes, he did.

6 Q. What's Ryan Payne's response?

7 A. "No. But we are maintaining a low-key posture until more
8 start arriving. Sidearms only and minimal camo. When we have
9 more support, we will suit up."

10 Q. And again that's on April 10th of 2014?

11 A. Yes.

12 Q. And taking your attention to the next two communications
13 here on the second page of Exhibit 59, is there another
14 question from Texasmilitia Northtexas?

15 A. Yes. He asks "Can we get a head count?"

16 Q. And what's Ryan Payne's response?

17 A. "No LEOs yet. I've heard they're en route. Massive
18 response from militia en route. AH64 on the ground at BLM
19 command post."

20 Q. Agent Seyler, in your training and experience, does the
21 term LEO have a specific meaning?

22 A. Yes, it's a law enforcement officer.

23 Q. Can you come out of this close view, please?

24 And taking your attention to the last four
25 communications that appear here on this page, do we have

Mark D. Seyler - Direct

1 another question from Texas militia North Texas?

2 A. Yes.

3 Q. And what's that question?

4 A. "Have more feds arrived? Any signs of military?"

5 Q. Does he have another question after that?

6 A. "Local militia units or out of state?"

7 Q. And the bottom communication here that occurs at
8 19:24:36 universal time code, does Ryan Payne respond?

9 A. Yes, he does.

10 Q. Can you please read that response?

11 A. "Local rep is here. They are late as" expletive.

12 "Montana has most guys. Utah, Nevada unorganized. Idaho.

13 Many more en route. I am designated liaison for militia via
14 Cliven Bundy. In constant communication and all information
15 disseminated is vetted by him."

16 Q. Thank you. You can do that down.

17 Agent Seyler, as a part of the investigation was
18 there also a Facebook search warrant conducted on the Facebook
19 account of Ricky Ray Lovelien?

20 A. Yes.

21 Q. And was that served in the same manner that you described
22 earlier in regard to Cliven Bundy and Carol Bundy's Facebook
23 accounts?

24 A. Yes, it was.

25 Q. Does Ricky Ray Lovelien have a publicly viewable Facebook

Mark D. Seyler - Direct

1 account?

2 A. Yes, portions of it are available to view publicly, yes.

3 Q. What were you able to observe on the public version of
4 that Facebook account?

5 A. Photographs of Ricky Ray Lovelien. The fact that he lived
6 in Libby, Montana.

7 Q. And when you served this search warrant on Facebook, did
8 you also receive a certificate of authenticity for the records
9 you received?

10 A. Yes.

11 Q. And did that identify the specific account number of Ricky
12 Ray Lovelien's Facebook account?

13 A. Yes.

14 Q. And bringing up for the witness what's been previously
15 admitted as page 6 of Exhibit 49.

16 Is this the certificate of authenticity not only for
17 Payne's Facebook page but also for Lovelien's Facebook page?

18 A. Yes, it is.

19 Q. Thank you. You can take that down. Bringing up for the
20 witness only Exhibit 60. 60.

21 Agent Seyler, is this one of the records that you
22 received from Facebook in response that search warrant?

23 A. Yes, it is.

24 MS. CREEGAN: The government moves to admit
25 Exhibit 60.

Mark D. Seyler - Direct

1 MR. TANASI: Stewart objects on hearsay grounds, Your
2 Honor.

3 MR. MARCHESE: Parker joins.

4 MR. LEVENTHAL: Drexler joins.

5 MR. PEREZ: Lovelien joins.

6 THE COURT: Same ruling. Exhibit 60 is admitted.
7 Coconspirator statement.

8 Did you want to publish that?

9 MS. CREEGAN: Yes, Your Honor.

10 (Exhibit 60 admitted.)

11 THE COURT: Did you say the certificate of
12 authenticity for the Lovelien Facebook return is the same --

13 MS. CREEGAN: As the Payne.

14 THE COURT: As for Payne.

15 MS. CREEGAN: So that is page 6.

16 THE COURT: Of Exhibit 49?

17 MS. CREEGAN: Of Exhibit 49. Correct.

18 THE COURT: Thank you.

19 BY MS. CREEGAN:

20 Q. And Agent Seyler, bringing your attention to Exhibit 60,
21 what type of Facebook record is this?

22 A. This would be basic subscriber information for the
23 account.

24 Q. And does it give, for example, a name?

25 A. Yes.

Mark D. Seyler - Direct

1 Q. What's the name given here?

2 A. Rick Lovelien MTRDF III.

3 Q. And are you familiar, in the course of your investigation,
4 of what the acronym MTRDF stands for?

5 A. Yes, that's the acronym they use for Montana State Defense
6 Force.

7 Q. And you've already testified to it, but are you familiar
8 with the 3% or III acronym?

9 A. Yes.

10 Q. And what does that refer to again?

11 A. Again, it's a reference to the American Revolution and the
12 alleged 3% that supported the revolution.

13 Q. Is there a second page to this? Sorry. I can't see it
14 here. Thank you.

15 And taking your attention to the very top of the
16 second page, does it list a current city?

17 A. Yes, Libby, Montana.

18 Q. Did you know that to be where Ricky Lovelien resided?

19 A. Yes.

20 Q. And there's also a number listed here next to phone
21 number; is that correct?

22 A. Yes.

23 Q. What's that phone number?

24 A. 1(918)575-1041.

25 Q. Do you know that to be a number associated with Ricky Ray

Mark D. Seyler - Direct

1 Lovelien?

2 A. Yes.

3 Q. And I will ask you more questions about it later, but did
4 you also obtain toll records for this number?

5 A. Yes, we did.

6 Q. Thank you. You can take that down and bring up for the
7 witness only Exhibit 61.

8 And Agent Seyler, is this also a record returned by
9 Facebook in response to your search warrant request for Ricky
10 Ray Lovelien?

11 A. Yes, it is.

12 MS. CREEGAN: The government moves to admit
13 Exhibit 61.

14 MR. TANASI: Hearsay objection, Stewart, Your Honor.

15 MR. MARCHESE: Parker joins.

16 MR. LEVENTHAL: Drexler joins.

17 MR. PEREZ: Lovelien joins.

18 THE COURT: And Ms. Creegan, same response?

19 MS. CREEGAN: Correct, Your Honor.

20 THE COURT: Coconspirator statement?

21 All right. Exhibit 61 will be admitted. You may go
22 ahead and publish that.

23 (Exhibit 61 admitted.)

24 BY MS. CREEGAN:

25 Q. And Agent Seyler, what kind of Facebook record is this?

Mark D. Seyler - Direct

1 A. This lists the groups on Facebook that Rick Lovelien is
2 associated with.

3 Q. And turning your attention to about halfway down, is the
4 Montana State Defense Force listed there?

5 A. Yes, MTFD.

6 Q. Thank you. You can take that down. Bringing up
7 Exhibit 62 for the witness only.

8 Is this also a Facebook record for Ricky Ray
9 Lovelien's account that you received in response to your search
10 warrant?

11 A. Yes.

12 MS. CREEGAN: The government moves to admit
13 Exhibit 62.

14 MR. TANASI: Stewart objects. Hearsay, Your Honor.

15 MR. MARCHESE: Parker joins.

16 MR. LEVENTHAL: Drexler joins.

17 MR. PEREZ: Lovelien joins.

18 THE COURT: Same ruling. Exhibit 26 will be
19 admitted.

20 MS. CREEGAN: Permission to publish.

21 THE COURT: Yes, you may.

22 (Exhibit 62 admitted.)

23 BY MS. CREEGAN:

24 Q. Agent Seyler, looking at the first page of Exhibit 62,
25 what type of Facebook record is this?

Mark D. Seyler - Direct

1 A. This is a listing of the friends on Facebook that Lovelien
2 has.

3 Q. And taking your attention to the second page, toward the
4 top of the second page, is Jerry Bruckhart OMA3 listed there?

5 A. Yes.

6 Q. And this is the same account and account number that we've
7 seen conversing with Ryan Payne?

8 A. Correct.

9 Q. And going to the third page, is there an individual James
10 Lardy listed here?

11 A. Yes.

12 Q. Could you just -- sorry. Thank you. Who is James Lardy?

13 A. James Lardy was also a member of the Montana State Defense
14 Force and also the West Mountain Rangers. He lived in a town
15 called Philipsburg, which is near Anaconda where Ryan Payne
16 lived.

17 Q. And taking your attention to the fifth page, toward the
18 bottom, is Ryan Payne OMD listed as a friend?

19 A. Yes.

20 Q. And this is the same account number associated with Ryan
21 Payne?

22 A. Yes.

23 Q. Thank you. You can take that down. Bring up for the
24 witness only Exhibit 63.

25 Is this also a Facebook record received in response

Mark D. Seyler - Direct

1 to the search warrant that you executed on Ricky Ray Lovelien's
2 Facebook account?

3 A. Yes.

4 MS. CREEGAN: Government moves to admit Exhibit 63.

5 MR. TANASI: Stewart objects. Hearsay, Your Honor.

6 MR. MARCHESE: Parker joins.

7 MR. PEREZ: Lovelien joins.

8 THE COURT: Excuse me. And this is -- we're still on
9 Mr. Lovelien's Facebook?

10 MS. CREEGAN: Correct, Your Honor.

11 THE COURT: All right. Objection is overruled.
12 Exhibit 63 will be admitted.

13 MS. CREEGAN: Permission to publish?

14 THE COURT: Yes, you may.

15 MS. CREEGAN: Thank you.

16 (Exhibit 63 admitted.)

17 BY MS. CREEGAN:

18 Q. Agent Seyler, what kind of Facebook record is this?

19 A. This is the "about me" section on Facebook. You are
20 allowed to put a statement in about -- about yourself, if you
21 like, on Facebook for people to see, and that's what this is.

22 Q. And what has Ricky Ray Lovelien put in his "about me"
23 section?

24 A. "Regional director for the Montana State Defense Force."

25 Q. Thank you. Could we bring up, for the witness only,

Mark D. Seyler - Direct

1 Exhibit 64.

2 Agent Seyler, is this also a record that you received
3 in response to your search warrants on Ricky Ray Lovelien's
4 Facebook account?

5 A. Yes.

6 MS. CREEGAN: Government moves to admit Exhibit 64.

7 MR. TANASI: Stewart objects. Hearsay, Your Honor.

8 MR. MARCHESE: Continuing objection, Parker.

9 MR. LEVENTHAL: Continuing objection.

10 MR. PEREZ: Lovelien as well.

11 THE COURT: Same ruling. Exhibit 64 is admitted.

12 MS. CREEGAN: Permission to publish?

13 THE COURT: Yes, you may.

14 (Exhibit 64 admitted.)

15 BY MS. CREEGAN:

16 Q. Agent Seyler, what kind of Facebook business record is
17 Exhibit 64?

18 A. It's a part of the activities section of a Facebook return
19 we get.

20 Q. And can I show the second page to the witness?

21 Does the activity section go from most recent to
22 least recent in the Facebook business records?

23 A. Yes.

24 Q. So, this second page actually occurs earlier in time?

25 A. Yes.

Mark D. Seyler - Direct

1 Q. And what appears on the second page? What time and date
2 was this posted in local Nevada time?

3 A. Yes. So this would have been approximately 4:25 p.m. on
4 April 7th.

5 Q. And what is the event that occurs that's recorded in the
6 Facebook record?

7 A. "Rick Lovelien MTFD III and Ryan Payne OMD are now
8 friends."

9 Q. And this is five days before the event that occurs in
10 Bunkerville?

11 A. Yes.

12 Q. Taking your attention to the first page of this record,
13 when does this occur in local Nevada time?

14 A. Approximately 11:08 a.m. on April 9th.

15 Q. And what occurs in this record?

16 A. "Rick Lovelien MTFD III likes Operation Mutual Aid."

17 Q. Did Operation Mutual Aid, in April of 2014, have a
18 Facebook page?

19 A. Yes.

20 Q. And did you capture that Facebook page as it appeared?

21 A. Yes.

22 Q. Okay. Bring up for the witness only Exhibit 65.

23 Agent Seyler, is this how the Operation Mutual Aid
24 Facebook page appeared in April of 2014?

25 A. Yes.

Mark D. Seyler - Direct

1 MS. CREEGAN: Government moves to admit Exhibit 65.

2 MR. TANASI: Stewart objects. Hearsay.

3 MR. MARCHESE: Parker joins.

4 MR. LEVENTHAL: Drexler joins.

5 MR. PEREZ: Lovelien joins.

6 THE COURT: Same ruling. Exhibit 65 will be
7 admitted.

8 MS. CREEGAN: Permission to publish?

9 THE COURT: And may be published, yes.

10 MS. CREEGAN: Thank you.

11 (Exhibit 65 admitted.)

12 BY MS. CREEGAN:

13 Q. All right. Agent Seyler, again, this is how the Operation
14 Mutual Aid Facebook page appeared in April of 2014?

15 A. Yes. Correct.

16 Q. And I'm just going to note that -- is it correct that it
17 says "Operation Mutual Aid" in the top left corner?

18 A. Yes.

19 Q. And does it show a picture of what appear to be 18th
20 Century persons firing muskets?

21 A. Yes.

22 Q. Can you go to the second page, please?

23 Is one of the most recent updates on Operation Mutual
24 Aid an update from April 5th, 2014?

25 A. Yes.

Mark D. Seyler - Direct

1 Q. Would this have been visible to anyone who looked at the
2 OMA page after April 5th, 2014?

3 A. Yes.

4 Q. Could you please read that?

5 A. "OMA has a verbal request for assistance in arresting the
6 guilty parties responsible for the violations of the
7 Constitution of the state of Montana. Before OMA can act on
8 the request, we need to know if we have enough men willing and
9 able to assist."

10 "Please contact me personally with how you think OMA
11 should act on said request for assistance. I encourage sharing
12 of this post, but please copy and paste this header along with
13 the post so others will understand context."

14 Q. This was a planned operation in the state of Montana about
15 a week before what occurred in Bunkerville?

16 A. Yes.

17 Q. And taking your attention to the next page, page 3, is
18 this another post?

19 THE COURT: I'm sorry. Can we go back to the first
20 page of Exhibit 65?

21 MS. CREEGAN: Certainly.

22 THE COURT: All right. That's fine. I was just
23 trying to make sure -- I thought it said "nongovernmental
24 organization."

25

Mark D. Seyler - Direct

1 BY MS. CREEGAN:

2 Q. And Agent Seyler, can you explain that? What is the
3 nongovernmental organization appellation that occurs here on
4 this page mean?

5 A. You can indicate what type of organization you are, a
6 charitable organization or the like. In this case, they chose
7 to identify themselves as a nongovernmental organization.

8 Q. Do you have to choose one of the descriptors?

9 A. I don't think it's essential that you choose one. It
10 gives you an option to choose, and that's what they did.

11 Q. If I could take you to page 3. Is this an entry on the
12 Operation Mutual Aid Facebook page from June of 2014?

13 A. Yes.

14 Q. Would this have been visible to anyone that looked at the
15 Operation Mutual Aid Facebook page in April of 2014?

16 A. Yes.

17 Q. Could you please read this entry?

18 A. "Fellow patriots. Our time has arrived. I, for many
19 years, have been a militia of one, and I often wondered how
20 many others are the same? If I, as a militia of one, act on a
21 violation of the Constitution or Bill of Rights, I will be
22 labeled a domestic terrorist and the general public will
23 believe it."

24 "On the other hand, if a group acted in response to a
25 blatant violation of those documents, it would be more

Mark D. Seyler - Direct

1 difficult for the lame stream media to convince the general
2 population of the same."

3 "The public is waking up, a bit too slowly, in my
4 mind, and if the AO is selected wisely and proper groundwork is
5 laid prior, it is going to be very hard for the powers to
6 convince a large portion of society that we fall within their
7 broad definition of terrorist."

8 "I got to thinking that I would be more than willing
9 to travel to render aid if requested and if I was able to do
10 so. I wondered how many others might feel the same way. So, I
11 decided to write this up in hopes of finding fellow patriots in
12 a similar situation as myself."

13 "Please note. I have no military training, so please
14 try to see the intent rather than the letter of what's to
15 follow. This section -- this selection process is in no way
16 written in stone. All volunteers would come under the command
17 of the AO commander that we are providing assistance to."

18 "Note. We may be able to muster more volunteers, if
19 we can be given a specific assignment and be allowed to elect
20 our own leadership which would come under the ultimate control
21 of AO command. This would ultimately be up to any AO to decide
22 how they wanted to handle that. Hopefully we would be able to
23 supply some either way."

24 "In the event command is willing and able to enable
25 the election of team leaders, the selection process will be as

Mark D. Seyler - Direct

1 follows."

2 Q. Agent Seyler, I won't ask you to read from there on, but
3 just so we know, in your training and experience, are you
4 familiar with the acronym AO?

5 A. Yes, it should be area of operation.

6 MR. MARCHESE: Parker is going to add a relevance
7 argument. These statements are from 2013.

8 MR. TANASI: Stewart joins.

9 MR. LEVENTHAL: Drexler joins.

10 MR. PEREZ: Lovelien joins.

11 THE COURT: He's testified it was still visible on
12 April of 2014, even though it was posted earlier. It was still
13 visible on the Facebook page publicly for anyone to see. So,
14 on that basis, the objection is overruled.

15 BY MS. CREEGAN:

16 Q. Can you take that exhibit down, please? And for the
17 witness only, can you bring up Exhibit 68?

18 And Agent Seyler, is this also a document that you
19 received in response to your Facebook search warrant on Rick
20 Ray Lovelien's Facebook account?

21 A. Yes.

22 Q. And is it a conversation that occurs in April of 2014?

23 A. Yes.

24 MS. CREEGAN: The government would move to admit
25 Exhibit 68.

Mark D. Seyler - Direct

1 MR. TANASI: Stewart objects. Hearsay, Your Honor.

2 THE COURT: Continuing objection, Mr. Marchese?

3 MR. MARCHESE: Yes, Your Honor.

4 THE COURT: Mr. Leventhal?

5 MR. LEVENTHAL: Yes, Your Honor. Thank you.

6 MR. PEREZ: Yes, Your Honor.

7 THE COURT: All right. Same ruling. Exhibit 68 will
8 be admitted.

9 MS. CREEGAN: Permission to publish?

10 THE COURT: Yes, you may.

11 (Exhibit 68 admitted.)

12 BY MS. CREEGAN:

13 Q. And Agent Seyler, again, this is from Ricky Ray Lovelien's
14 Facebook account; correct?

15 A. Yes.

16 Q. What type of Facebook record is this?

17 A. This is a private message.

18 Q. Who is the private message between?

19 A. Between Ryan Payne and Rick Lovelien.

20 Q. And taking your attention to the first message that occurs
21 here, what's the time and date in local Nevada time?

22 A. This would have been approximately 12:15 p.m. on April the
23 7th.

24 Q. April 7th is five days before the confrontation that
25 occurs in Bunkerville?

Mark D. Seyler - Direct

1 A. Yes.

2 Q. And what's the message that Ryan Payne sends Rick
3 Lovelien?

4 A. "Rick. Please call me as soon as possible. 560-2504."

5 Q. And what's Ricky Lovelien's response?

6 A. "Sent your number to my contacts."

7 Q. Does Ryan Payne respond to that?

8 A. Yes. "Thanks. Sua sponte."

9 Q. And again, what's the meaning of the term sua sponte?

10 MR. MARCHESE: Objection. Asked and answered.

11 THE COURT: Overruled. You may answer the question.

12 THE WITNESS: Of our own accord.

13 MS. CREEGAN: Can you scroll down, please?

14 THE COURT: Of our own accord?

15 THE WITNESS: Yes.

16 THE COURT: Thank you.

17 BY MS. CREEGAN:

18 Q. And the next entry in this communication is kind of cut
19 between two pages, but if we can just go back to the bottom of
20 page 1. Sorry.

21 Who is the speaker of the next communication?

22 A. Rick Lovelien.

23 Q. Rick Lovelien is sending a message to Ryan Payne?

24 A. Yes.

25 Q. If we could go to page 2, please.

Mark D. Seyler - Direct

1 What's the message that Rick Lovelien sends to Ryan
2 Payne?

3 A. "Please keep me updated."

4 Q. And does Rick Lovelien also ask Ryan Payne a question?

5 A. Yes. Later he asks "Do we have an exact location?"

6 Q. Does Ryan Payne respond to that request for information?

7 A. Yes, he provides him coordinates.

8 Q. And again, what are these the coordinates for?

9 A. The Bundy Ranch.

10 Q. Can you scroll down, please?

11 Just taking your attention to the last communication
12 here, what time and date is that sent?

13 A. This would have been April 9th at 11:59 a.m.

14 Q. And who's sending the message?

15 A. This would have been Ryan Payne sending a message to Rick
16 Lovelien.

17 Q. What's the message that Ryan Payne sends?

18 A. "Give me a ring ASAP."

19 Q. And I will have some questions for you later about phone
20 records.

21 THE COURT: So we are two days later?

22 BY MS. CREEGAN:

23 Q. Is that correct, Agent Seyler? In the course of this
24 communication, does this cover more than one date?

25 A. Correct. April 7th through April 9th.

Mark D. Seyler - Direct

1 THE COURT: Okay. Thank you. Just wasn't sure if I
2 wrote down -- my 7 and my 9 look very similar.

3 BY MS. CREEGAN:

4 Q. And can we take this down, please, and bring up Exhibit 69
5 for the witness only?

6 Agent Seyler, is this also a communication to which
7 Rick Lovelien is a party?

8 A. Yes.

9 Q. And this is from the Facebook search warrant returns on
10 his Facebook account?

11 A. Yes.

12 Q. And this communication occurs on April 7th of 2014?

13 A. Yes.

14 MS. CREEGAN: Government moves to admit Exhibit 69.

15 MR. TANASI: Stewart objects. Hearsay, Your Honor.

16 And with respect to this, there's a laundry list of names that
17 appear on the exhibit. I don't think there's any foundation as
18 to any of their involvement in this case.

19 MR. MARCHESE: Parker joins.

20 MR. LEVENTHAL: Drexler joins.

21 MR. PEREZ: Lovelien joins.

22 MS. CREEGAN: Your Honor, I show on the top of this
23 page the person speaking is Rick Lovelien. The private
24 communication will always have the same recipients, so the
25 purpose of this page is to show all the recipients.

Mark D. Seyler - Direct

1 THE COURT: Right. So this -- the list of people
2 that are on page -- on Exhibit 69, those are individuals that
3 received the email authored by the person that's indicated as
4 the author.

5 MS. CREEGAN: Correct.

6 THE COURT: Or at least that's who -- who the intent
7 is to, to send it to those --

8 MS. CREEGAN: And let me ask Agent Seyler.

9 Q. Agent Seyler, when there's a private communication, does
10 it list the total number of recipients in the communication?

11 A. In a private message, yes. It will list everyone that's
12 part of that conversation.

13 Q. And when Facebook collects records, they keep the entire
14 communication as a single record that has all those same
15 recipients?

16 A. Yes.

17 Q. And if a new conversation is started, that appears as a
18 separate record, which is blocked off by a lot of white space;
19 is that correct?

20 A. Yes.

21 Q. And this page we see here, these two communications
22 occurred directly after, with no large blocking of white space?

23 A. Yes.

24 Q. So, the communication that's authored by Ricky Lovelien at
25 the top has all the same recipients?

Mark D. Seyler - Direct

1 MR. LEVENTHAL: Your Honor, I'm going to object as to
2 leading.

3 MS. CREEGAN: This is foundational.

4 MR. TANASI: Stewart joins.

5 MR. MARCHESE: Parker joins.

6 THE COURT: It's in response to your objection, so
7 she can continue.

8 BY MS. CREEGAN:

9 Q. So is it the case that all the recipients that are listed
10 in Rick Lovelien's communication are all the people that
11 received the message that he authored at the top of page 69?

12 A. Yes.

13 MS. CREEGAN: The government would move to admit
14 Exhibit 69.

15 THE COURT: Exhibit 69 will be admitted.

16 MS. CREEGAN: Permission to publish?

17 THE COURT: Yes, you may.

18 (Exhibit 69 admitted.)

19 BY MS. CREEGAN:

20 Q. And Agent Seyler, now that the jury can see it, again,
21 what type of Facebook record is this?

22 A. This is a private message.

23 Q. And at the very top, who is the author of the message that
24 appears at the top of the page?

25 A. Rick Lovelien.

Mark D. Seyler - Direct

1 Q. And when is this message sent?

2 A. April 7th, approximately 12:30 p.m. Nevada time.

3 Q. Can you read the body of that message?

4 A. "Contact info to coordinate groups. Ryan Payne OMA
5 (406)560-2540. They have made live contact and are setting up
6 security ops."

7 Q. And this is the same number we've seen Ryan Payne
8 disseminate?

9 A. It's close. He's actually missed it by one number.

10 Q. And has it been the case that he's inverted two of the
11 numbers?

12 A. Yes, the last two.

13 Q. And can we come out of the close-up, please?

14 Agent Seyler, when Facebook keeps a record of a
15 private conversation, does it keep a record of all the
16 recipients of that conversation?

17 A. Yes.

18 Q. And as long as that conversation is going on, it's a
19 continuous record of every communication that those recipients
20 received?

21 A. Yes.

22 Q. And then when a new conversation starts in a Facebook
23 record, there's a large amount of white space that would block
24 it off from subsequent communication?

25 A. Yes.

Mark D. Seyler - Direct

1 Q. So, looking at this Exhibit 69, is it the case that all
2 the persons here that are listed as recipients, were they
3 recipients of Rick Lovelien's message as well?

4 A. Yes, they would have been listed on the previous page,
5 yes.

6 Q. And is there anything that you notice in particular about
7 the recipients of this message?

8 A. These are all or most of them have individuals that are
9 associated with militias or militia groups.

10 Q. Some of them have the name militia in the title; correct?

11 A. A number of them do, yes.

12 Q. Thank you. You can take that down. Can we bring up, for
13 the witness only, Exhibit 70.

14 Agent Seyler, is this another record you received in
15 response to your search warrant for Rick Lovelien's Facebook
16 account?

17 A. Yes.

18 Q. Is it a communication between Rick Lovelien and another
19 person?

20 A. Yes.

21 Q. And is this in April of 2014?

22 A. Yes.

23 MS. CREEGAN: Government would move to admit
24 Exhibit 70.

25 MR. TANASI: Stewart objects. Hearsay, Your Honor,

Mark D. Seyler - Direct

1 with respect to James Lardy and his involvement.

2 MR. MARCHESE: Parker joins.

3 MR. LEVENTHAL: Drexler joins. And this is not
4 putting anything into context. This looks to be only one
5 person talking.

6 MS. CREEGAN: I believe that you can see that Rick
7 Lovelien responds at the bottom of this excerpt.

8 THE COURT: Mr. Perez, do you have any objection?

9 MR. PEREZ: Actually, no, Your Honor. I don't.

10 THE COURT: All right. Exhibit 70 will be admitted.
11 You may publish.

12 MS. CREEGAN: Thank you, Your Honor.

13 (Exhibit 70 admitted.)

14 BY MS. CREEGAN:

15 Q. And Agent Seyler, drawing your attention to the first
16 communication, is this also a private message?

17 A. Yes.

18 Q. Who is this a private message between?

19 A. Between James Lardy and Rick Lovelien.

20 Q. And I believed you testified earlier, but who is James
21 Lardy?

22 A. James Lardy was another member of the Montana State
23 Defense Force who had also recently joined Ryan Payne's West
24 Mountain Rangers.

25 Q. And what date is this -- what date and time in local

Mark D. Seyler - Direct

1 Nevada time does this communication take place?

2 A. This would have been Tuesday, April 8th, at approximately
3 10:12 a.m.

4 Q. Could you please read the body of James Lardy's message to
5 Rick Lovelien?

6 A. "Rick. I regretfully need to resign my position with
7 MTDF. I will be transferring to the West Mountain Rangers.
8 I've been training with them. They are out of Anaconda and a
9 well-established group. This is strictly a tactical decision,
10 these are my immediate neighbors. I train with them. I am
11 going to fight with them."

12 "We leave for Nevada tonight. I thank you for all
13 you have done. Please know that I have no problem at all with
14 the MTDF. I just feel this is the right decision based on
15 tactical considerations. Please relay this message to Randy as
16 I'm in a hurry to pack. Stay in contact. Have a good day.
17 I'm off to war."

18 Q. This person mentions the West Mountain Rangers, who I
19 believe you may have mentioned before, but who are the West
20 Mountain Rangers?

21 A. That's Ryan Payne's group out of the Anaconda/Philipsburg
22 area.

23 Q. That's a militia group as well?

24 A. Yes.

25 Q. And MTDF, who does that refer to?

Mark D. Seyler - Direct

1 A. The Montana State Defense Force.

2 Q. Is Rick Lovelien a leader of MTDF?

3 A. Yes.

4 Q. Does he have a co-leader?

5 A. Yes, at that time, it would have been Randy Eaton.

6 Q. And is there a reference here to please relay the message
7 to Randy?

8 A. Yes, that would have been Randy Eaton.

9 Q. Can we go to the second page of this exhibit, please?

10 In looking at the first full communication on this
11 page, who is this from and to?

12 A. This is from Rick Lovelien to James Lardy.

13 Q. Is this also an April 8th of 2014?

14 A. Yes.

15 Q. What's Rick Lovelien's statement?

16 A. "You guys heading out?"

17 Q. Does James Lardy respond to that?

18 A. Yes.

19 Q. What's James Lardy's response?

20 A. "Going to the ranch. In contact with family. They
21 putting us up."

22 Q. Does Rick Lovelien respond to James Lardy?

23 A. Yes.

24 Q. What's his response?

25 A. "10 4. We are coordinating our efforts to get all units

Mark D. Seyler - Direct

1 together when they get there."

2 Q. Does James Lardy respond to Rick Lovelien?

3 A. Yes. He says, "Maybe see you there? Gotta go. Packing."

4 Q. What's Rick Lovelien's response to that?

5 A. "Ryan Payne. His number is (406)560-2504."

6 Q. Is that the number that Ryan Payne disseminated earlier?

7 A. That's Ryan Payne's number, yes.

8 Q. And this -- and here it's given correctly?

9 A. Yes.

10 Q. Can you take that down, please, and bring up Exhibit 71
11 for the witness only.

12 Agent Seyler, is this another record that you
13 received from Facebook in response to your search warrant
14 request for Rick Lovelien's Facebook account?

15 A. Yes.

16 Q. Is this a communication between Rick Lovelien and another
17 person also beginning on April 7th of 2014?

18 A. Yes.

19 MS. CREEGAN: The government moves to admit
20 Exhibit 71.

21 MR. TANASI: Stewart objects. Hearsay, Your Honor.

22 THE COURT: Continuing objection from everyone?

23 MR. LEVENTHAL: Yes, Your Honor.

24 MR. MARCHESE: Correct, Your Honor.

25 MR. PEREZ: Yes.

Mark D. Seyler - Direct

1 THE COURT: All right. Same ruling. Exhibit 71 will
2 be admitted. You may publish.

3 (Exhibit 71 admitted.)

4 BY MS. CREEGAN:

5 Q. Agent Seyler, what kind of Facebook record is this?

6 A. This is a private message.

7 Q. And again, are private messages publicly viewable?

8 A. Yes -- I'm sorry. No, they are not.

9 Q. Are they -- who are they viewable to?

10 A. Only to the recipients.

11 Q. And this message begins with one from Rick Lovelien to
12 Randy Eaton?

13 A. Yes.

14 Q. And again, who is Randy Eaton?

15 A. Randy Eaton is the co-leader of the Montana State Defense
16 Force.

17 Q. And what's the date of this first communication?

18 A. April the 7th.

19 Q. And what's the time about in local Nevada time?

20 A. Approximately 4:31 p.m.

21 Q. And what does Rick Lovelien say in this message?

22 A. "Not going to Idaho rally on the 19th."

23 Q. Does Randy Eaton respond to that statement?

24 A. He asks "Any reason in particular?"

25 Q. Does -- what's Rick Lovelien's reply?

Mark D. Seyler - Direct

1 A. "I may be heading south."

2 Q. Can you scroll down a little, please?

3 And what's Randy Eaton's reply to Rick Lovelien?

4 A. He asks "Permanent or the whole Nevada thing?"

5 Q. Does Rick Lovelien reply?

6 A. Yes. He says "Nevada."

7 Q. All right. Does he give the initials "NV"?

8 A. Yes.

9 Q. And going on to the next page, who is this a message from?

10 A. This is from Randy Eaton.

11 Q. What does Randy Eaton say?

12 A. "Well, I'll be headed back to Vegas for another job, but
13 not in time for that. If absolutely needed, then I'll do what
14 I have to do."

15 Q. What's Rick Lovelien's response?

16 A. "10 4."

17 Q. Does Rick Lovelien add something else?

18 A. Yes.

19 Q. What does he add?

20 A. "A plea for help went out yesterday. Other militia units
21 are mobilizing. I am in contact with one of the coordinators.
22 Waiting for more intel at this time."

23 Q. Thank you. You can take that down. Can you bring up
24 Exhibit 72 for the witness only?

25 Agent Seyler, is this also a record that was received

Mark D. Seyler - Direct

1 in response to your search warrant for Rick Lovelien's Facebook
2 account?

3 A. Yes.

4 Q. And is Rick Lovelien a communicant in the message?

5 A. Yes.

6 Q. Is it a private message?

7 A. Yes.

8 Q. Does it occur on or around April 8th of 2014?

9 A. April 7th and 8th, yes.

10 MS. CREEGAN: Thank you. Government would move to
11 admit Exhibit 72.

12 THE COURT: Continuing objection?

13 MR. TANASI: Yes, Your Honor. And again, there's
14 additional names on the list as well like Whiting.

15 MR. MARCHESE: Parker joins. It's going for the
16 truth of the matter asserted.

17 MR. LEVENTHAL: Drexler joins.

18 MR. PEREZ: Lovelien joins.

19 THE COURT: Exhibit 72 is admitted over the
20 objection. It is not hearsay. It is an exception to the
21 hearsay rule as a proffered coconspirator statement.

22 And the fact that there's other peoples' names on
23 here is not an objection as long as this -- the document is
24 admissible as a Facebook private message from Mr. Lovelien's
25 Facebook page received by this witness through a search warrant

Mark D. Seyler - Direct

1 return with a certified business record custodian letter.

2 You may go ahead and publish 72.

3 MS. CREEGAN: Thank you, Your Honor.

4 (Exhibit 72 admitted.)

5 BY MS. CREEGAN:

6 Q. Agent Seyler, I bring your attention to the third
7 communication that occurs here. Again, what type of Facebook
8 record is this?

9 A. This is a private message.

10 Q. And who are the communicants in this private message
11 chain?

12 A. Rick Lovelien and Nic Whiting.

13 Q. And what date about does this -- this first communication
14 that we are looking at, when does that start?

15 A. April the 8th.

16 Q. And who is the author of this -- this message that we are
17 looking at a 23:02:16 UTC time?

18 A. Rick Lovelien.

19 Q. What does Rick Lovelien say?

20 A. "The Mountain Rangers are in your area. They are good
21 people with level heads, they are headed to NV right now.
22 Don't know when they will be back."

23 Q. Does Nic Whiting respond to that?

24 A. Yes, he does.

25 Q. What is his statement?

Mark D. Seyler - Direct

1 A. "Sounds like a group I would fit in with. I appreciate."

2 Q. Does Rick Lovelien reply to Nic Whiting?

3 A. Yes, he does.

4 Q. What's Rick Lovelien's reply?

5 A. "Contact Ryan Payne OMA from our page. He should be able
6 to help."

7 Q. Do you know what that refers to "from our page"?

8 A. Yes, from the Montana State Defense Force Facebook group.

9 Q. Was Ryan Payne a member of the Montana State Defense Force
10 Facebook group in April of 2014?

11 A. Yes.

12 Q. Can you come out of that close-up, please? Can you go to
13 the -- I think there's a second page here. Yes. Thank you.

14 Taking your attention to that second full
15 communication that occurs at 19:30 -- 19:32:22 UTC time, is
16 that a question from Nic Whiting to Rick Lovelien?

17 A. Yes.

18 Q. And that's on April 9th of 2014?

19 A. Yes.

20 Q. What does -- what's Nic Whiting's question?

21 A. "Would you like some company?"

22 Q. And is he asking that because Rick Lovelien had stated he
23 was heading to Nevada before?

24 A. Yes.

25 Q. And what's Rick Lovelien's response to that question?

Mark D. Seyler - Direct

1 A. He says "Sure. My cell number is (918)575-1041."

2 Q. This the same number that's given in his information
3 background of his Facebook page?

4 A. Correct.

5 Q. And can you come out of that close-up, please?

6 And taking your attention to the last two full
7 communications on the page, who is the author of the
8 communication on April 9th that begins at 20:49:05 UTC time?

9 A. That would be Rick Lovelien.

10 Q. And what's his statement?

11 A. "I will call when I get close to your locale for a
12 meet-up. Should be around 9:00 or 10:00."

13 Q. Does Nic Whiting respond to that?

14 A. Yes, he says "Sounds like a plan."

15 Q. Thank you. You can take that down. Can you bring up
16 Exhibit 73 for the witness only, please.

17 Is this also a record that you received from Facebook
18 in response to the search warrant that you executed on Ricky
19 Ray Lovelien's Facebook account?

20 A. Yes.

21 Q. And does it include communications between Rick Lovelien
22 and another person?

23 A. Yes.

24 Q. On about April 9th of 2014?

25 A. Yes.

Mark D. Seyler - Direct

1 MS. CREEGAN: Government moves to admit Exhibit 73.

2 MR. TANASI: Stewart objects, Your Honor. Hearsay.
3 Declarant in this string appears to be J.D. Parks and Marc A.
4 And we don't know whether, A, they are involved in the
5 conspiracy or if their statements are made in furtherance of
6 the alleged conspiracy. And if neither of those prongs are
7 made under the *Bourjaly* case, then the statements don't get in.

8 MR. MARCHESE: Parker joins.

9 MR. LEVENTHAL: Drexler joins.

10 MR. PEREZ: Lovelien joins.

11 MS. CREEGAN: Rick Lovelien is a communicant on this
12 page. He's a communicant at 18:57 UTC time. Another one at
13 18:57 UTC time.

14 THE COURT: And on Exhibit 73, Defendant Lovelien is
15 the author and/or recipient of these conversations. I don't
16 see anywhere he's not included. So, objection is overruled.
17 Exhibit 73 will be admitted.

18 MS. CREEGAN: Permission to publish?

19 THE COURT: Yes, you may.

20 (Exhibit 73 admitted.)

21 BY MS. CREEGAN:

22 Q. Taking your attention to the conversation between a person
23 known as Marc A. and Rick Lovelien, about what date do these
24 communications take place?

25 A. It would have been April 9th.

Mark D. Seyler - Direct

1 Q. That's three days -- excuse me -- three days before the
2 event that occurs in Bunkerville, Nevada?

3 A. Yes.

4 Q. And what's the question that Marc A. asks to Rick
5 Lovelien?

6 A. "Some of us in WAST could rapidly deploy. What's the
7 mission?"

8 Q. Does Rick Lovelien respond that?

9 A. Yes.

10 Q. What's his response?

11 A. "I am in contact with Operation Mutual Aid. They are
12 organizing this op. I can put others in contact so people will
13 know where to go."

14 Q. Does Marc A. respond to that?

15 A. Yes. He says, "Yeah, that will help."

16 Q. And what's Rick Lovelien's response to Marc A.?

17 A. "They can tell you more the specs."

18 Q. What's Marc A.'s response to that?

19 A. "Those of us who are able to rapidly deploy are all former
20 SF."

21 Q. We don't have it, but we can see that there's a response
22 from Rick Lovelien after that.

23 A. Yes.

24 Q. Thank you. You can take that down. Can you bring up
25 Exhibit 74 for the witness only? Thank you.

Mark D. Seyler - Direct

1 Now, Agent Seyler, I think you mentioned earlier was
2 Ryan Payne a member of the MTDf Facebook group account?

3 A. Yes, he was.

4 Q. As a member of that account, would he be able to see all
5 of the contents of that group page?

6 A. Yes.

7 Q. In your Facebook settings, are you able to set your
8 notifications in different ways so that you receive information
9 about what's been posted to group pages that you are a member
10 of?

11 A. Yes.

12 Q. And this could be a little confusing, so I want to really
13 understand it from you. But what were Ryan Payne's settings?
14 And can you explain how he would get information from the
15 Montana State Defense Force Group page?

16 A. At that time, Ryan Payne had his settings that he would
17 receive all of the messages to the Montana State Defense Force
18 Group, not only on Facebook, but they would be forwarded to his
19 email account as well.

20 Q. And this is the rypayne1@gmail email account that we were
21 discussing earlier?

22 A. Yes.

23 Q. So, every time somebody posted something to the Montana
24 State Defense Force page, that statement of that person would
25 appear in an email in his email account?

Mark D. Seyler - Direct

1 A. Yes.

2 Q. And drawing your attention to Exhibit 74, is this a
3 posting to the Montana State Defense Force Facebook group page?

4 A. Yes.

5 Q. And it was received by Ryan Payne in his email?

6 A. Yes, the email information is there, yes.

7 Q. And this was a message that was authored by Rick Lovelien?

8 MR. MARCHESE: Objection. Leading.

9 MS. CREEGAN: Laying foundation.

10 THE COURT: The witness can answer the question.

11 THE WITNESS: Yes.

12 BY MS. CREEGAN:

13 Q. And it's a little bit over to the side, but about what
14 date was this posted?

15 A. April 9th.

16 MS. CREEGAN: Government moves to admit Exhibit 74.

17 MR. TANASI: Stewart objects. Hearsay, Your Honor.

18 MR. MARCHESE: Parker joins.

19 MR. LEVENTHAL: Drexler joins.

20 MR. PEREZ: Lovelien joins.

21 THE COURT: Exhibit 74 is admitted over objection.

22 MS. CREEGAN: Permission to publish?

23 THE COURT: Yes, you may.

24 (Exhibit 74 admitted.)

25 THE COURT: Same ruling, coconspirator statements.

Mark D. Seyler - Direct

1 BY MS. CREEGAN:

2 Q. And Agent Seyler, this is the first time we are seeing
3 this, so I just want to walk you through it a little bit. So,
4 at the top here it says "from." What does that tell us?

5 A. That that is an email on -- the top information is email
6 information to Ryan Payne's account.

7 Q. So, when Facebook sends you this notification that
8 someone's posted to the group, will it tell you who the author
9 is?

10 A. Yes.

11 Q. In this case, who is the author?

12 A. Rick Lovelien, MTFD III.

13 Q. And there's also a "to" line here. What does that tell
14 us?

15 A. That this was posted to the MTFD Facebook group.

16 Q. And in the body of the email, does Facebook also indicate
17 who's writing and where they are posting?

18 A. Yes.

19 Q. Could you just read that for us?

20 A. "Rick Lovelien MTFD III posted in MTFD Montana State
21 Defense Force."

22 Q. And if you could scroll just a little bit over to the
23 right. Is there a date on this email? Sorry. Up a little bit
24 from there.

25 A. Yes, the email was received on April the 9th.

Mark D. Seyler - Direct

1 Q. And this time, since Google is headquartered in
2 California, are their records typically in Pacific time?

3 A. Yes.

4 Q. Thank you. You can come out of there.

5 And bringing your attention back to the body of the
6 posting by Rick Lovelien, would you please read that for the
7 jury?

8 A. "Pass this along if you will. Alert. This is not a
9 drill. All Oath Keepers and militia in proximity need to move
10 into DEFCON 1 mode. Nevada militia has officially broadcasted
11 a mutual aid request for Oath Keepers and militia."

12 "Contact militiaCOL@gmail.com. This is not a drill.
13 Repeat. This is not a drill. There are rumors that Mr. Bundy
14 is not asking for help. That is a lie. He is asking for any
15 and all help with this situation immediately. Please share or
16 pass the word to 3%ers who are capable of rapid deployment to
17 Nevada outside Las Vegas."

18 Q. Thank you. Take that down. Can we bring up for the
19 witness only Exhibit 75?

20 Agent Seyler, is this another notification from the
21 MTFDF Facebook group to Ryan Payne's email?

22 A. Yes.

23 Q. Is the author of this also Rick Lovelien?

24 A. Yes.

25 Q. And this is a few days before April 12th?

Mark D. Seyler - Direct

1 A. Yes, on April the 9th.

2 MS. CREEGAN: The government moves to admit 75.

3 THE COURT: Same objection?

4 MR. TANASI: Yes, Your Honor.

5 MR. MARCHESE: Yes, Your Honor.

6 MR. LEVENTHAL: Yes, Your Honor.

7 MR. PEREZ: Yes, Your Honor.

8 THE COURT: Same ruling. Exhibit 75 will be
9 admitted.

10 MS. CREEGAN: Permission to publish?

11 THE COURT: Yes, you may.

12 (Exhibit 75 admitted.)

13 BY MS. CREEGAN:

14 Q. And Agent Seyler, again, who -- what does it mean when it
15 says "Rick Lovelien MTFD III" in the "from" line of this email?

16 A. It means he's the one that sent this post to the MTFD
17 Facebook group.

18 Q. And the first line of this email, what's that read?

19 A. Do you mean the text of the --

20 Q. Before the text.

21 A. Rick Lovelien MTFD III posted in the Montana State Defense
22 Force Facebook group.

23 Q. Could you read that posting, please?

24 A. "Attention all personnel. We are now in direct contact
25 with personnel at the Bundy Ranch. I will be heading out

Mark D. Seyler - Direct

1 shortly, too, myself to help with this situation. There is
2 plenty of camping room and provisions at the ranch."

3 "There was a direct request made by Mr. Bundy for
4 help. Anyone wishing to join me is welcome to do so. Please
5 contact me ASAP. That is all."

6 Q. And just scrolling over to the date that appears in this
7 email, what date and time is that in local Nevada time?

8 A. April 9th, 12:18 p.m.

9 Q. Can we bring up, for the witness only, Exhibit 176.

10 Agent Seyler, is this one of the records that you
11 received in response to the search warrant on the Operation
12 Mutual Aid Gmail account?

13 A. Yes, it is.

14 Q. Is there a recipient that's listed as Captain Rick
15 Lovelien MTDF, mtdf@mail.com?

16 A. Yes.

17 Q. That's listed in the third line of the recipients?

18 A. Yes.

19 Q. And this is sent on April 10th, 2014?

20 A. Yes.

21 MS. CREEGAN: The government moves to admit
22 Exhibit 176.

23 THE COURT: Same objection?

24 MR. TANASI: Yes, Your Honor.

25 THE COURT: Same ruling. Exhibit 176 will be

Mark D. Seyler - Direct

1 admitted.

2 MS. CREEGAN: Permission to publish?

3 THE COURT: Yes, you may.

4 (Exhibit 176 admitted.)

5 BY MS. CREEGAN:

6 Q. And Agent Seyler, again, this is an email from
7 operationmutualaid1@gmail.com; correct?

8 A. Correct.

9 Q. And who is it to?

10 A. This is to a list of individuals, over 200 individuals
11 that were interested in receiving updates.

12 Q. And when was this email sent?

13 A. April the 10th.

14 Q. And drawing your attention to the second name in the third
15 line, could you read that, please?

16 A. "Captain Rick Lovelien MTFD."

17 Q. And could you please read the body of the email?

18 A. "Nevada alert. We are requesting help to distribute the
19 following to any and all media, blog, patriot groups, et
20 cetera."

21 "One, secure the Bundy family from government
22 incursion, which includes protection of all personnel
23 responding to support of the Bundys, i.e., protesters, extended
24 family and friends."

25 "Two, to return the confiscated Clark County Nevada

Mark D. Seyler - Direct

1 property currently blocked by federal personnel so its rightful
2 stewards -- to its rightful stewards, the people of Clark
3 County Nevada."

4 "Three, to secure and return to Mr. Bundy's ranch the
5 mounting number of cattle which have been confiscated by BLM
6 agents and private contractors."

7 "These objectives are in cohesion with Cliven Bundy
8 and the Bundy Ranch. Provisions can be secured in nearby
9 Mesquite. Minimal provisions, food, water, et cetera, are
10 available at the ranch with more en route. Multiple campsites
11 are secured and easily accessible. There is something for
12 everyone to do."

13 "Directions. Exit 112 off of I-15. Proceed 2 miles
14 to patriot checkpoint. Receive instructions there from OMA
15 personnel. We are the guardians of liberty. We are the great
16 barrier between tyrants and the oppressed. We do not forgive
17 acts of tranny against a disillusioned populace. We do not
18 forget the sacrifice of millions before us to secure freedom.
19 Our discerning eye is now a swift sword. Expect us."

20 Q. Thank you. You can take that down. Can you bring up, for
21 the witness only, Exhibit 76?

22 Agent Seyler, is this another record that you
23 received in response to your search warrant for the
24 rypayne1@gmail email address?

25 A. Yes, it is.

Mark D. Seyler - Direct

1 Q. And is this another posting to the Montana State Defense
2 Force Group page?

3 A. Yes.

4 Q. Who is this posting by?

5 A. It's from Cheyenne Miller.

6 Q. And again, what relationship, if any, is Cheyenne Miller
7 to Mr. Lovelien?

8 A. It's Mr. Lovelien's sister.

9 Q. And what date about is this update posted to the Montana
10 State -- Montana State Defense Force Facebook group?

11 A. April 10th.

12 MS. CREEGAN: Government moves to admit Exhibit 76.

13 THE COURT: Same objection.

14 MR. TANASI: Objection. Hearsay, Your Honor. I
15 would just add the declarant is the issue. We don't know the
16 declarant's role in the alleged conspiracy.

17 MR. MARCHESE: Parker joins.

18 MR. LEVENTHAL: Drexler joins.

19 MR. PEREZ: Lovelien joins.

20 MS. CREEGAN: Your Honor, we have established this
21 person is a coconspirator. They've joined OMA. They are
22 receiving the same update, and they are disseminating the
23 updates, which are the objectives of this conspirator the
24 Montana State Defense Group.

25 MR. LEVENTHAL: Your Honor, I am going to object.

Mark D. Seyler - Direct

1 There has been no conspiracy. So, there has not -- that's not
2 up to Ms. Creegan to establish whether there's been an
3 established conspiracy yet.

4 MS. CREEGAN: That may be Mr. Leventhal's argument,
5 but the law allows us to put in the evidence and have the jury
6 decide if they find that a conspiracy is established.

7 MR. TANASI: There's still a standard though. It has
8 to be beyond the preponderance of the evidence standard, Your
9 Honor.

10 THE COURT: The Court's satisfied. Exhibit 76 will
11 be admitted.

12 MS. CREEGAN: Permission to publish?

13 THE COURT: Yes, you may. It's proffered
14 coconspirator statement. There's sufficient evidence.

15 (Exhibit 76 admitted.)

16 BY MS. CREEGAN:

17 Q. And again, Agent Seyler, is this a posting to the Montana
18 State Defense Force Facebook group?

19 A. Yes.

20 Q. By whom?

21 A. By Cheyenne Miller.

22 Q. And was this received by Ryan Payne in his email?

23 A. Yes.

24 Q. And what is it that Cheyenne Miller posts in this posting
25 to the Montana State Defense Force Group?

Mark D. Seyler - Direct

1 A. "These are the same Bundy objectives which Operation
2 Mutual Aid had sent out a little bit earlier in their email."

3 Q. Thank you. You can take that down. Can we bring up
4 Exhibit 77 for the witness only?

5 And is this also a posting to the Montana State
6 Defense Force Facebook group?

7 A. Yes.

8 Q. Is this also a posting by Cheyenne Miller?

9 A. Yes.

10 Q. Is it a posting on April 10th?

11 A. Yes.

12 MS. CREEGAN: Government moves to admit Exhibit 77.

13 THE COURT: Same objection?

14 MR. TANASI: Yes, Your Honor.

15 MR. MARCHESE: Yes, Your Honor.

16 MR. LEVENTHAL: Yes, Your Honor.

17 THE COURT: Same ruling. Exhibit 77 will be
18 admitted.

19 MS. CREEGAN: Permission to publish?

20 THE COURT: You may publish.

21 MS. CREEGAN: Thank you.

22 (Exhibit 77 admitted.)

23 BY MS. CREEGAN:

24 Q. And Agent Seyler, this is a posting by Cheyenne Miller to
25 the Montana State Defense Force Group; correct?

Mark D. Seyler - Direct

1 A. Correct.

2 Q. Received in Ryan Payne's email?

3 A. Yes.

4 Q. And what date is it sent?

5 A. April the 10th.

6 Q. And could you please read the body of that posting?

7 A. "Rick Lovelien, MTDf III, is on-site at the Bundy Ranch.
8 Arrived without incident."

9 Q. Thank you. You can take that down. Can you bring up, for
10 the witness only, Exhibit 78?

11 And is this another email that was received by Ryan
12 Payne as an update to the Montana State Defense Force Group?

13 A. Yes.

14 Q. Is this a posting by Randy Eaton?

15 A. Yes.

16 Q. And again, who is Randy Eaton?

17 A. Randy Eaton was the co-leader of the Montana State Defense
18 Force.

19 Q. And this was posted on April 11th?

20 A. Yes.

21 MS. CREEGAN: Government moves to admit Exhibit 78.

22 THE COURT: Same objection?

23 MR. TANASI: Yes, Your Honor. Thank you.

24 THE COURT: All right. Exhibit 78 will be admitted.

25 This is posted onto which website now? This is --

Mark D. Seyler - Direct

1 (Exhibit 78 admitted.)

2 BY MS. CREEGAN:

3 Q. Agent Seyler, which web -- where is this posted?

4 A. This was posted to the Montana State Defense Force
5 Facebook group and then forwarded to Ryan Payne's email
6 account.

7 Q. Is that because of his notification settings within
8 Facebook?

9 A. Yes.

10 THE COURT: I thought Ryan Payne's notifications were
11 from OMD's Facebook page. Was it also?

12 MS. CREEGAN: These are solely from Montana State
13 Defense Force.

14 THE COURT: All right. So, can we just clarify that
15 though? So, Ryan Payne has his own email address. He receives
16 email sent to that address, but he also receives emails that
17 are forwarded from which other Facebook pages?

18 THE WITNESS: The Montana State Defense Force
19 Facebook group.

20 THE COURT: All right. So not OMD?

21 THE WITNESS: Correct.

22 THE COURT: Thank you. Exhibit 78 will be admitted.
23 You may publish.

24 BY MS. CREEGAN:

25 Q. Thank you. And Agent Seyler, again, this is a posting by

Mark D. Seyler - Direct

1 Randy Eaton to the Montana State Defense Force Facebook page?

2 A. Yes.

3 Q. And on what date does it occur?

4 A. April 11th.

5 Q. And that's one day before the confrontation which occurs
6 in Bunkerville?

7 MR. MARCHESE: Objection as to "confrontation."

8 MR. TANASI: Stewart joins.

9 MR. LEVENTHAL: Drexler joins.

10 MR. PEREZ: Lovelien joins.

11 THE COURT: Ms. Creegan.

12 MS. CREEGAN: I would argue that confrontation is a
13 very neutral word for what occurred.

14 THE COURT: Court agrees.

15 MR. MARCHESE: Yeah, I --

16 THE COURT: Objection overruled. You might have to
17 restate the question though.

18 BY MS. CREEGAN:

19 Q. Is April the 11th the day before the confrontation that
20 occurred in Bunkerville, Nevada?

21 A. Yes.

22 Q. And could you please read the body of that message posted
23 by Randy Eaton to the Montana State Defense Force Group?

24 A. "Due to rising tensions in Nevada, all MTFD Facebook
25 members wishing to become full members may contact me directly.

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1 Today only, and only until 4:00 p.m., you may call my house.
2 This only applies to those within the state of Montana.
3 407-65-0389. This post will be removed tomorrow. May God
4 bless us all and the restoration of our beloved country."

5 Q. And Agent Seyler, this occurs on April 11th. Did you
6 also, in your investigation, find another video of Ryan Payne
7 speaking on April 11th?

8 A. Yes.

9 Q. Where did you find that video?

10 A. That was on the YouTube website on a page associated with
11 the Southern Nevada Watchdogs group.

12 Q. Did you see when it was posted?

13 A. April the 11th.

14 Q. And does Ryan Payne represent that he's in Nevada at that
15 time?

16 A. Yes.

17 Q. And bringing your attention to Exhibit 38, is that the
18 video that you're referring to that you downloaded from the
19 Southern Nevada Watchdog's YouTube group?

20 A. Yes.

21 Q. And you can see that Ryan Payne is depicted in it?

22 A. Yes.

23 MS. CREEGAN: The government moves to admit
24 Exhibit 38.

25 THE COURT: 38?

Mark D. Seyler - Direct

1 MS. CREEGAN: 38.

2 THE COURT: Same objection?

3 MR. TANASI: Same objections, Your Honor.

4 MR. MARCHESE: Parker joins.

5 MR. LEVENTHAL: Drexler joins.

6 THE COURT: All right. Exhibit 38. It's admitted.

7 Same ruling. You may publish.

8 (Exhibit 38 admitted.)

9 (Exhibit 38 being played.)

10 BY MS. CREEGAN:

11 Q. Agent Seyler, did you recognize the person in the black
12 shirt and green or tan hat in that video?

13 A. Yes, that was Ryan Payne.

14 Q. And in that video, he states "In order for everyone to go
15 home safely, the property needs to be returned"?

16 A. Yes.

17 Q. Was this available one day before -- publicly available
18 one day before April 12th, 2014?

19 A. Yes. Yes.

20 Q. Can I bring up, for the witness only, Exhibit 79?

21 Agent Seyler, is this another posting to the Montana
22 State Defense Force Facebook group that Ryan Payne receives
23 through his personal email?

24 A. Yes.

25 Q. And who is the poster for this?

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1 A. Cheyenne Miller.

2 Q. And is this also on April 11th of 2014?

3 A. Yes.

4 MS. CREEGAN: The government moves to admit
5 Exhibit 79.

6 THE COURT: Same objection?

7 MR. TANASI: Yes, Your Honor.

8 MR. MARCHESE: Yes, Your Honor.

9 MR. LEVENTHAL: Yes, Your Honor.

10 MR. PEREZ: Yes, Your Honor.

11 THE COURT: All right. Exhibit 179 will be admitted.
12 Same ruling.

13 COURTROOM ADMINISTRATOR: Counsel, is this Exhibit 79
14 or 179?

15 MS. CREEGAN: 79.

16 THE COURT: Thank you, Aaron. Exhibit 79 will be
17 admitted.

18 (Exhibit 79 admitted.)

19 BY MS. CREEGAN:

20 Q. And Agent Seyler, again, who is posting this message?

21 A. Cheyenne Miller.

22 Q. And where is it being posted?

23 A. In the MTFD Facebook group.

24 Q. And about what time of the day on April 11th?

25 A. Approximately 11:22 a.m.

Mark D. Seyler - Direct

1 Q. And what's -- what is it that Cheyenne Miller posts?

2 A. "This just in. Rick Lovelien MTF III will be running the
3 security detail at the protest site on the Bundy Ranch in
4 Nevada. All support and prayers welcome."

5 Q. Agent Seyler, I notice that Rick Lovelien MTF III appears
6 to be blue. Do you know what that means?

7 A. Yes, that's a link in Facebook. You could actually click
8 on that and actually go to his Facebook site.

9 Q. Thank you. You can take that down. Can you bring up, for
10 the witness only, Exhibit 66.

11 Agent Seyler, is this another record that you
12 received from Rick Lovelien's Facebook account in response to
13 your search warrant?

14 A. Yes.

15 Q. What type of record is this?

16 A. This is a photograph that was in his account.

17 MS. CREEGAN: The government moves to admit
18 Exhibit 66.

19 THE COURT: Same objection?

20 MR. TANASI: Yes, Your Honor.

21 MR. MARCHESE: Yes, Your Honor.

22 MR. LEVENTHAL: Yes, Your Honor.

23 MR. PEREZ: Yes, Your Honor.

24 THE COURT: Same ruling. Exhibit 66 will be
25 admitted.

Mark D. Seyler - Direct

1 MS. CREEGAN: Permission to publish?

2 THE COURT: Yes, you may.

3 (Exhibit 66 admitted.)

4 BY MS. CREEGAN:

5 Q. And Agent Seyler, I believe you said this was a picture
6 posted to his account?

7 A. Yes.

8 Q. Can you see from the data that's listed below the picture
9 when it was posted?

10 A. Yes, this would have been on April 26 of 2014.

11 Q. And do you recognize Rick Lovelien as being within that
12 picture?

13 A. Yes.

14 Q. Could you please -- I think you'll have a little toolbar
15 to the side. Could you please circle where you see Rick
16 Lovelien?

17 And let the record reflect that the witness has
18 indicated the person in the camo in the background of the
19 picture.

20 And do you also recognize the individual in the
21 foreground of the picture?

22 A. Yes, I do.

23 Q. Who is that individual?

24 A. His name is Todd Engel.

25 Q. And again, this is a picture that was posted to Rick

Mark D. Seyler - Direct

1 Lovelien's Facebook page?

2 A. Yes.

3 Q. By himself?

4 A. Yes.

5 Q. Can you -- and could you -- I'm sorry. I will clear that
6 marking for you.

7 Drawing your attention, I am drawing a marking around
8 an object that appears to be in Rick Lovelien's hand. Do you
9 see that object?

10 A. Yes.

11 Q. And what does that appear to be?

12 A. The butt of a rifle.

13 Q. Thank you. You can take that down. Can we bring up
14 Exhibit 67 for the witness only?

15 Are these also records that you received in response
16 to your Facebook search warrant for the account of Ricky Ray
17 Lovelien?

18 A. Yes.

19 Q. And are these pictures that were posted to the user's
20 account?

21 A. Yes.

22 MS. CREEGAN: The government moves to admit
23 Exhibit 67.

24 THE COURT: Same objections?

25 MR. MARCHESE: Relevance, Your Honor.

Mark D. Seyler - Direct

1 MR. TANASI: Stewart joins.

2 MR. MARCHESE: 2013. It's already been identified.

3 MS. CREEGAN: These are pictures that help identify
4 the object in Rick Lovelien's hand by other postings to his
5 account.

6 THE COURT: Objection overruled. Exhibit 67 will be
7 admitted. You may publish.

8 (Exhibit 67 admitted.)

9 BY MS. CREEGAN:

10 Q. Again, Agent Seyler, are these Facebook business records
11 that you received in response to your search warrant?

12 A. Yes.

13 Q. And these are pictures uploaded to Rick Lovelien's
14 account?

15 A. Yes.

16 Q. And just drawing your attention to this first picture,
17 what appears to be in person's hands there?

18 A. A rifle.

19 Q. And is there anything distinctive that you can tell about
20 that rifle from this picture?

21 A. It's more difficult from this picture. It appears to have
22 a slightly different color than a usual rifle would. Usually
23 they are black.

24 Q. Draw your attention to the second page of this exhibit, is
25 this another photograph from Rick Lovelien's Facebook account?

Mark D. Seyler - Direct

1 A. Yes.

2 Q. And what's depicted here?

3 A. This would be the butt of a rifle that is covered with
4 something they usually call a skin which is kind of a custom
5 paint job.

6 Q. In your experience as an FBI agent, do you frequently
7 encounter firearms?

8 A. Yes.

9 Q. Do they frequently have skins?

10 A. No, that's somewhat unusual.

11 Q. And this skin is sort of a black and white pattern; is
12 that accurate?

13 A. Yes, with skulls on it, yes.

14 Q. And taking your attention to the third page of this
15 exhibit, does this appear to be another picture of the same
16 rifle?

17 A. Yes.

18 Q. If I could just bring back up Exhibit 66 and close-up on
19 the object in Rick Lovelien's hand.

20 What can you tell about this object in Rick
21 Lovelien's hand from the pictures you have seen?

22 A. It appears to be the butt of a rifle also with an unusual
23 coloration, very similar to the ones in the other picture.

24 Q. Thank you. You can take that down. Bring up Exhibit 80
25 for the witness only, please.

Mark D. Seyler - Direct

1 And Agent Seyler, is this another posting to the
2 Montana State Defense Force Facebook group received by Ryan
3 Payne in his email?

4 A. Yes.

5 Q. And who's the author of this posting?

6 A. Rick Lovelien.

7 Q. When was this posting made?

8 A. April 14th.

9 Q. And this is two days after the confrontation at
10 Bunkerville, Nevada?

11 A. Yes.

12 MS. CREEGAN: Government moves to admit Exhibit 80.

13 MR. TANASI: Same objection, Stewart, Your Honor.

14 MR. MARCHESE: Same objection Parker.

15 MR. LEVENTHAL: Same objection.

16 THE COURT: All right. Exhibit 80 will be admitted.
17 Same ruling.

18 (Exhibit 80 admitted.)

19 THE COURT: But before we publish it, we are going to
20 go ahead and take our lunch break, because the jury's lunch has
21 arrived. It's 12:02. So, we will be back here at, say, 1:10.

22 And during this break, I do remind the jury that you
23 are not to discuss this case with anyone, not even your fellow
24 jurors. You may speak to them about other things but not about
25 this case.

Mark D. Seyler - Direct

1 Please do not listen to, read, or view anything that
2 touches upon this case in any way. Do not attempt to perform
3 any research or independent investigation. If you have
4 questions, go ahead and write them down. And please do not
5 form an opinion until after you have heard all of the
6 testimony, received all of the evidence, I will give you the
7 written jury instructions of law, and then you will begin your
8 deliberation process, and that's when you can begin discussing
9 your opinions, but not until then.

10 So, we'll go ahead and stand for the jury and welcome
11 them back at 1:10.

12 Special Agent Seyler, you can take your lunch break,
13 too. We just need you back here by 1:10.

14 (Jury out.)

15 THE COURT: Off record.

16 (Recess, 12:03 p.m. Resumed 1:20 p.m. Jury out.)

17 COURTROOM ADMINISTRATOR: All rise.

18 THE COURT: All right. Everyone may be seated. So,
19 are you ready to bring in the jury?

20 All right. Let's do that, Aaron.

21 COURTROOM ADMINISTRATOR: All rise.

22 (Jury in.)

23 THE COURT: The jury may go ahead and be seated.
24 Everyone else may be seated as well.

25 All right. We are back from our lunch break. We

Mark D. Seyler - Direct

1 have FBI Special Agent Seyler back on the witness chair.

2 Thank you very much, sir. I do remind you, you are
3 still under oath.

4 And Ms. Creegan, we did admit Exhibit 80, which was a
5 video, but I asked you if we could take a lunch break first
6 before we watched the video. So, now, would you like to play
7 the video?

8 MS. CREEGAN: So, Your Honor, 80 is actually a
9 document, but we'd like to publish it, please.

10 THE COURT: All right. Exhibit No. 80 may be
11 published.

12 BY MS. CREEGAN:

13 Q. And Agent Seyler, again, what type of record are we
14 looking at here?

15 A. This is an email that Ryan Payne received that contained a
16 Facebook post to the Montana State Defense Force.

17 Q. Who was the post by?

18 A. Rick Lovelien.

19 Q. And on what date was this posted?

20 A. April 14th.

21 Q. Is that of 2014?

22 A. Yes.

23 Q. Could you please read the body of that message?

24 A. "Just a heads up. I have just returned home for the time
25 being from the Bundy Ranch. I will update what I can as I can.

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1 The operation is still ongoing in Southeast Nevada. And
2 although the federal agents have surrendered their position and
3 withdrew, the area is still active, and we still have boots on
4 the ground. Security is our top priority as always."

5 Q. Thank you. You can take that down. Can you bring up
6 Exhibit 81 for the witness only, please?

7 And Agent Seyler, is this another posting by Rick
8 Lovelien to the Montana State Defense Force Facebook group?

9 A. Yes.

10 Q. Is it also on April 14th of 2014?

11 A. Yes.

12 MS. CREEGAN: The government would move to admit
13 Exhibit 81.

14 THE COURT: Any objection to 81? Same objection?

15 MR. TANASI: Yes, Your Honor.

16 MR. MARCHESE: Yes, Your Honor.

17 MR. LEVENTHAL: Judge, yes. The same objection as
18 for hearsay. This is a declaration as opposed to anything
19 else. And the Court led me to the case of *Williams* before.
20 And the mere conversations and declarations are not sufficient
21 to invoke this exclusion, so I would object on those grounds.

22 THE COURT: Declarations and conversations are not
23 sufficient? Is that what you just said?

24 MR. LEVENTHAL: That's correct under *Williams*, and
25 *Williams* is at 989 F.2d 1061.

Mark D. Seyler - Direct

1 THE COURT: Ms. Creegan?

2 MS. CREEGAN: I am not sure that I understand the
3 objection. If it's a bootstrapping objection or an objection
4 related to the fact that these are all statements, there's been
5 other evidence of the conspiracy entered so far, including the
6 fact that 400 people showed up to a single location and worked
7 together in order to get cattle from the officers.

8 So, it's not a case where it solely relies on
9 documents in order to prove a conspiracy, if that's the
10 objection.

11 MR. TANASI: Your Honor, I'm going to object as to
12 misstating the evidence. I don't think there's evidence that
13 400 people arrived in the fashion that Ms. Creegan just
14 described it.

15 THE COURT: I agree. I think the last email said
16 that 300 people, and that more were needed, but I don't think
17 we've heard yet how much -- how many more arrived. Let me take
18 a moment here.

19 It says, "Although mere conversations and narrative
20 declarations between coconspirators are not in themselves
21 sufficient, statements made to keep coconspirators abreast of
22 an ongoing conspiracy's activities do satisfy the
23 in-furtherance requirement."

24 So, the objection is overruled, and Exhibit 81 is
25 admitted. Do you wish to publish it?

Mark D. Seyler - Direct

1 MS. CREEGAN: Yes, Your Honor.

2 THE COURT: Okay. You may do so.

3 (Exhibit 81 admitted.)

4 BY MS. CREEGAN:

5 Q. And Agent Seyler, is this a posting to the Montana State
6 Defense Force Facebook group?

7 A. Yes, it is.

8 Q. Is it received in Ryan Payne's email?

9 A. Yes.

10 Q. Who is it authored by?

11 A. Rick Lovelien.

12 Q. Could you read the body of that statement?

13 A. "Please note. Personnel are still needed at the Bundy
14 Ranch for ongoing security operations. Contact me or Ryan
15 Payne OMA for more info."

16 Q. And this is posted on April 14th, 2014?

17 A. Yes.

18 Q. And I notice that the Ryan Payne OMA name appears to be in
19 blue. What does that mean?

20 A. Again, a link that you can click on, and it would take you
21 to his Facebook page.

22 Q. Thank you. You can take that down. Can you bring up
23 Exhibit 82 for the witness only, please?

24 Agent Seyler, is this a record that you received from
25 Facebook in response to your search warrant for the Facebook

Mark D. Seyler - Direct

1 account of Ricky Lovelien?

2 A. Yes.

3 Q. And does this have some activity in April of 2014 by the
4 user Ricky Lovelien?

5 A. Yes.

6 MS. CREEGAN: The government moves to admit
7 Exhibit 82.

8 MR. TANASI: Same hearsay objection, Your Honor.
9 Stewart.

10 MR. MARCHESE: Parker joins.

11 MR. LEVENTHAL: Drexler joins.

12 MR. PEREZ: Lovelien joins.

13 THE COURT: Same ruling. Exhibit 82 is admitted.
14 You may publish.

15 MS. CREEGAN: Thank you.

16 (Exhibit 82 admitted.)

17 BY MS. CREEGAN:

18 Q. Agent Seyler, what kind of Facebook record are we looking
19 at now?

20 A. This appears to be a mini feed or activities page.

21 Q. And what's a mini feed page?

22 A. The return that we get back from Facebook has a mini feed
23 page which includes a lot of activity that the user is engaged
24 in.

25 Q. And for a mini feed, does it go from most recent to least

Mark D. Seyler - Direct

1 recent from the top to the bottom of the page?

2 A. Yes.

3 Q. So, can we go to the second page? So, these entries are
4 actually a little earlier in time than those on the first page?

5 A. Yes.

6 Q. So, beginning at the bottom of page 2 of Exhibit 82, is
7 there an update in the mini feed which was entered at
8 20:36:59 UTC time?

9 A. Yes.

10 Q. What's that entry?

11 A. "Rick Lovelien, MTF3, and Nic Whiting are now friends."

12 Q. And this was the person Rick Lovelien was discussing
13 coming to Nevada?

14 A. Yes.

15 Q. And the one up ahead of that, which is at 23:36:33 UTC
16 time, on April 14th?

17 A. Yes.

18 Q. What's posted there?

19 A. There would have been a link to a web page,
20 <http://mtdf.webs.com/donations/campaigns>.

21 Q. And what's the story that's one later than that?

22 A. "Rick Lovelien MTFDF III and Jerry Bruckhart OMA III are
23 now friends."

24 Q. And that's on April 15th?

25 A. Yes.

Mark D. Seyler - Direct

1 Q. And what's the story that's one more recent than that?

2 A. "Rick Lovelien MTFD III shared a group. Bundy Ranch
3 Resistance Transportation."

4 Q. And taking you to the first page of this exhibit, is there
5 an update to the mini feed on April 17th at 16:20:02 UTC time?

6 A. Yes.

7 Q. And what is that?

8 A. "Please note this money is going directly to the militia
9 at the ranch and not to the Bundy family."

10 Q. And what's this last mini feed update here on April 19th?

11 A. "Rick Lovelien MTFD III likes Bundy Ranch."

12 Q. Thank you. You can take that down. Can I bring up
13 Exhibit 83 for the witness only, please?

14 Agent Seyler, is this also a record that you received
15 in response to your search warrant for Rick Lovelien's Facebook
16 page?

17 A. Yes.

18 Q. And is this a private message?

19 A. Yes.

20 Q. And occurs in April of 2014?

21 A. Yes.

22 MS. CREEGAN: The government moves to admit
23 Exhibit 83.

24 THE COURT: Same objection, 83?

25 MR. TANASI: Yes, Your Honor.

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1 MR. MARCHESE: Yes, Your Honor.

2 MR. LEVENTHAL: Yes, Your Honor.

3 MR. PEREZ: Yes, Your Honor.

4 THE COURT: Exhibit 83 is admitted. Same ruling.

5 You may publish.

6 (Exhibit 83 admitted.)

7 BY MS. CREEGAN:

8 Q. Agent Seyler, what kind of Facebook record is this?

9 A. This is a private message.

10 Q. And who is the message occurring between?

11 A. Between Ryan Payne and Rick Lovelien.

12 Q. And what's the date of the first message here?

13 A. April 14th, 2014.

14 Q. And this is the same general time frame of some of the
15 messages we've just seen in the mini feed?

16 A. Yes.

17 Q. Could you please read the body of that first message?

18 A. "Update. Have a donation campaign set up as we
19 discussed."

20 Q. Does Ryan Payne respond to that message?

21 A. Yes.

22 Q. What does Ryan Payne say?

23 A. "Thanks, buddy. You're a true patriot."

24 Q. Can we come out of that close-up, please? Is there a
25 second page? Thank you.

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1 And does Rick Lovelien respond to Ryan Payne's
2 statement?

3 A. Yes. He says "NP."

4 Q. What does "NP" mean?

5 A. No problem.

6 Q. Rick Lovelien add anything else?

7 A. Yes, "Not at this time on the other."

8 Q. Does Rick Lovelien make any other statements to Ryan
9 Payne?

10 A. Yes. It says "Give a call when you can for an update
11 there."

12 Q. And is there another statement here from Rick Lovelien at
13 3:44:49 UTC time on April 17th?

14 A. Yes. He says "Need you to call me."

15 Q. Thank you. You can come out of that. Can we bring up
16 Exhibit 84 for the witness only, please?

17 Agent Seyler, is this a record that you received in
18 response to your search warrant for Rick Lovelien's Facebook
19 account?

20 A. Yes.

21 Q. Is this a private message?

22 A. Yes.

23 Q. Does it occur in April of 2014?

24 A. Yes.

25 MS. CREEGAN: Government moves to admit Exhibit 84.

Mark D. Seyler - Direct

1 THE COURT: Continuing objection to 84?

2 MR. TANASI: Yes, Your Honor.

3 THE COURT: Same ruling. Exhibit 84 will be
4 admitted. You may publish.

5 (Exhibit 84 admitted.)

6 BY MS. CREEGAN:

7 Q. Agent Seyler, what kind of Facebook record is this?

8 A. This is a private message.

9 Q. Who is the message occurring between?

10 A. Between Jerry Bruckhart and Rick Lovelien.

11 Q. And in this second full message here, is there a question
12 posed by Jerry Bruckhart to Rick Lovelien?

13 A. Yes.

14 Q. And what is his question?

15 A. "Did you get a chance to meet Ryan?"

16 Q. Does he ask a second question to Rick Lovelien?

17 A. Yes. "See him in action, so to speak?"

18 Q. What's Rick Lovelien's response?

19 A. "Yes. Was working with him there."

20 Q. And does Jerry Bruckhart ask Rick Lovelien a question at
21 13:18 UTC time on April 17th?

22 A. Yes, he asks "Okay. I need you to be honest."

23 Q. What's the question he asks after that?

24 A. "What was your impression of his performance?"

25 Q. And does Rick Lovelien respond?

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1 A. Yes. He says "Trying to find the right answer."

2 Q. And taking your attention to 1:38:43 UTC time on
3 April 17th, what does Lovelien respond to Jerry Bruckhart?

4 A. "He's a great guy. He means well."

5 Q. Can you go to the second page, please?

6 And taking your attention to this second full
7 message, what is Rick Lovelien's response to Jerry Bruckhart?

8 A. "I think he should have taken a more in-charge position.
9 Would have made things smoother. I told him that when I was
10 there. Everything working out in the end. It just made it a
11 bit confusing at first."

12 Q. Can you come out of that close-up, please?

13 Just taking your attention -- sorry -- to the bottom
14 of the page to the statement by Rick Lovelien at 1:45:36 UTC
15 time.

16 A. Yes.

17 Q. What does Rick Lovelien state at that time?

18 A. "Yes, and he didn't want to seem like he was in command of
19 the other groups."

20 Q. And going to the third page, please.

21 And we have another comment from Rick Lovelien at
22 1:47:09. What's that comment?

23 A. "As I said, it worked out fine. Just a little unorganized
24 at first."

25 Q. What's Jerry Bruckhart's response?

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1 A. "Okay. Thank you very much, brother. Please keep the
2 thoughts coming. I will read them later. I need to go do
3 something."

4 Q. Do you have another private message from Rick Lovelien?

5 A. Yes.

6 Q. And what's his message?

7 A. "I think he did a great job at getting it done."

8 Q. And taking your attention to a message at 2:09:47 UTC
9 time. There's a message from Jerry Bruckhart to Rick Lovelien
10 at 2:09:47?

11 A. Yes.

12 Q. Could you read that message?

13 A. "I have a few accusing him of putting lives at risk
14 unnecessarily."

15 Q. And can you scroll down a little bit to Rick Lovelien's
16 response at 2:10:32 UTC time?

17 A. "Well, there are always a few bitchy people."

18 Q. Can you come out of that close-up, please? And going to
19 the fourth page?

20 And can I just take your attention to that last
21 message on page 4, please. Is there a message from Rick
22 Lovelien to Jerry Bruckhart?

23 A. Yes.

24 Q. Could you please read the message?

25 A. "Hi, Jerry. I would like to talk to you about taking a

Mark D. Seyler - Direct

1 more active role in the OMA. (918)575-1041."

2 Q. And this is a number that's listed as Rick Lovelien's
3 number on his Facebook account?

4 A. Yes.

5 Q. Thank you. You can take that down. Can you bring up
6 Exhibit 85 for the witness only, please?

7 Agent Seyler, is this another record that you
8 received back from Facebook in response to your search warrant
9 for Rick Lovelien's account?

10 A. Yes.

11 Q. Is this a private message?

12 A. Yes.

13 Q. Does it occur in April of 2014?

14 A. Yes.

15 MS. CREEGAN: The government moves to admit
16 Exhibit 85.

17 MR. TANASI: Same objection, Your Honor, but I would
18 add the declarant issue with respect to James Craig and his
19 involvement in the alleged conspiracy. It hasn't been shown
20 yet.

21 MR. MARCHESE: Parker joins.

22 THE COURT: There doesn't need to be two
23 coconspirators speaking to each other so long as it's a
24 statement of a coconspirator.

25 MR. TANASI: The author --

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1 THE COURT: In this case, Mr. Lovelien is involved in
2 the communication.

3 MR. TANASI: I guess, just for purposes of the
4 record, Your Honor, my point, I guess, is that the author is
5 James Craig. He's the declarant. That's the basis of the
6 objection.

7 MS. CREEGAN: This record shows a two-sided
8 conversation. You have to have James Craig's statements to
9 understands Rick Lovelien's.

10 THE COURT: All right. Exhibit 85 is admitted.

11 MS. CREEGAN: Permission to publish?

12 THE COURT: Yes, you may.

13 (Exhibit 85 admitted.)

14 BY MS. CREEGAN:

15 Q. Agent Seyler, taking your attention to the first message
16 here, is this also a private message?

17 A. Yes, it is.

18 Q. And who is the conversation between?

19 A. Between James Craig and Rick Lovelien.

20 Q. And is there a question posed by James Craig to Rick
21 Lovelien?

22 A. Yes.

23 Q. And what's the question?

24 A. "Sup," as in "What's up?"

25 Q. Sorry. Just take your attention to the bottom of the

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1 page.

2 A. Okay. "Nothing much. What you been doing?"

3 Q. And what's Rick Lovelien's response to that?

4 A. "Chasing off federal agents in Nevada."

5 Q. And this is posted on April 23rd of 2014?

6 A. Yes, Nevada time it would have actually been April 22nd.

7 Q. Thank you. Go to the second page, please.

8 And taking your attention -- sorry -- about halfway
9 down the page, does Rick Lovelien post a picture in this
10 conversation?

11 A. Yes.

12 Q. And what's that a picture of?

13 A. A BLM ranger.

14 Q. Thank you. You can take that down. Can we bring up
15 Exhibit 87 for the witness only, please?

16 Agent Seyler, is this a public Facebook post that you
17 witnessed on the We Support Cliven Bundy Facebook page?

18 A. Yes.

19 Q. It was posted on April 11 of 2014?

20 A. Yes.

21 MS. CREEGAN: Government moves to admit Exhibit 87.

22 THE COURT: Same objection?

23 MR. TANASI: Same objection, Your Honor. We Support
24 Cliven Bundy, is that a person? Is that an entity? And is
25 that person a declarant for purposes of the analysis of

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1 furthering a statement of an alleged conspiracy?

2 THE COURT: Ms. Creegan.

3 MS. CREEGAN: Your Honor, this is a web page that
4 purports to be in support of Cliven Bundy that disseminates
5 information to coconspirators, and we will be able to connect
6 the information on this page on one of the defendants making a
7 call to the number which is depicted here.

8 THE COURT: All right. Exhibit 87 is admitted, and
9 you may publish.

10 (Exhibit 87 admitted.)

11 BY MS. CREEGAN:

12 Q. Agent Seyler, is this a public -- capture of a Facebook
13 page that was publicly viewable?

14 A. Yes.

15 Q. And it's from the account that's titled We Support Cliven
16 Bundy?

17 A. Yes.

18 Q. And when is this posted?

19 A. April 11th of 2014.

20 Q. This is one day before the confrontation?

21 A. Yes.

22 Q. Can you please read the body of that message?

23 A. "Attention. I just got some information in. The cattle
24 are going to be transported to the Euclid Stockyard in
25 California. Scheduled for Monday. Could be sooner than that.

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1 They are going to be auctioned Wednesday."

2 "Folks, I ask that you spread this to the four
3 corners of the Internet. If you are in California, you will be
4 of great asset on this one. Euclid Stockyard information is as
5 follows. Euclid Stockyards, Inc., 14185 Euclid Avenue,
6 Ontario, California, 91762, (909)597-4818."

7 Q. Thank you. You can take that down.

8 Now, Agent Seyler, I've asked you a few questions
9 about whether in the course of your investigation you obtained
10 some toll records in some of the numbers that we have
11 discussed.

12 Did you obtain some toll records on some of those
13 numbers?

14 A. Yes.

15 Q. And did you issue the request to various cell phone
16 companies for toll records -- cell phone companies or phone
17 companies for records of the calls that had been made, and did
18 you receive a response to that request?

19 A. Yes, the FBI did, yes.

20 Q. And with the response to those requests, were there also
21 certificates of authenticity that these were the business
22 records of those phone companies?

23 A. Yes.

24 Q. Can I bring up Exhibit 183, page 23.

25 And Agent Seyler, is this a certificate of

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1 authenticity for cell phone records for a number (208)481-0067
2 [sic]?

3 MR. LEVENTHAL: I am going to object as to leading.

4 MR. TANASI: Stewart joins.

5 MR. PEREZ: Lovelien joins.

6 MS. CREEGAN: I think it's foundational, but I'm
7 happy to rephrase.

8 THE COURT: Yes, please rephrase it.

9 BY MS. CREEGAN:

10 Q. Agent Seyler, were you present in April of this year when
11 defendant Eric Parker testified in a proceeding?

12 A. Yes.

13 MR. MARCHESE: Objection. Hearsay.

14 THE COURT: Well, the question is not -- the question
15 is not hearsay, and the answer is not hearsay. So, objection
16 overruled.

17 BY MS. CREEGAN:

18 Q. Were you present?

19 A. Yes, I was.

20 Q. And in that time, did Eric Parker testify to what his
21 phone number was?

22 A. Yes.

23 MR. MARCHESE: Same objection, Your Honor.

24 THE COURT: It's not hearsay if it's an admission.
25 Overruled.

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1 BY MS. CREEGAN:

2 Q. And is that phone number (208)481-0026?

3 A. 0076, I think.

4 Q. 0076. Thank you. Did you -- did the FBI obtain toll
5 records for that number?

6 A. Yes.

7 Q. And is Exhibit 183, page 23, the certificate of
8 authenticity for those toll records?

9 A. Yes.

10 MS. CREEGAN: Your Honor, the government would move
11 to admit Exhibit 183, 23.

12 MR. TANASI: Objection. There is no phone number
13 listed on here to relate to that, Judge.

14 MS. CREEGAN: I'm sorry. I didn't catch that
15 objection.

16 MR. LEVENTHAL: I said there's nothing on this bill
17 or what I'm looking at to suggest that that's the number that
18 they -- they got from it.

19 MS. CREEGAN: Nicole, would you go to page 24?

20 Q. Agent Seyler, does page 24 include the attached records
21 that came with the certificate that's on page 23?

22 A. Yes.

23 Q. And that includes (208)481-0076 in the second value?

24 A. Yes.

25 Q. And toll records came in addition with this chart to that

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1 certification on page 23?

2 A. Yes.

3 MS. CREEGAN: Your Honor, the government moves for
4 the admission of 183 page 23.

5 MR. LEVENTHAL: I still object. That's not valid
6 authenticity.

7 THE COURT: Do you have the original packet? I'm not
8 seeing page -- what did you refer to, page 20 something? 23?
9 Page 23 is the certificate.

10 MS. CREEGAN: Correct, Your Honor. Page 23 is the
11 certificate.

12 THE COURT: All right. So the attachment to that
13 certificate.

14 MS. CREEGAN: Follows on to page 24, which lists the
15 accounts that were included in the certificate.

16 THE COURT: That's what was attached or that's
17 something that's created afterwards? That's what was attached.

18 MS. CREEGAN: This was attached along with the toll
19 records for all these accounts.

20 THE COURT: All right. So, it's a spreadsheet that's
21 attached. All right. That's sufficient. Exhibit 183 will be
22 admitted. You may go ahead and publish it to the jury.

23 MS. CREEGAN: Your Honor, I'm going to put the
24 certificates of authenticity into evidence, but I won't publish
25 them. They jury can review them if they would like to.

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1 MR. MARCHESE: And Parker had joined that objection.

2 THE COURT: Okay.

3 (Exhibit 183, page 23 admitted.)

4 BY MS. CREEGAN:

5 Q. Can I bring for the witness Exhibit 184?

6 And Agent Seyler, are those some of the toll
7 records -- are those the toll records for March and April of
8 2014 that were received from the phone company for the number
9 (208)481-0076?

10 A. Yes.

11 MS. CREEGAN: Your Honor, the government moves to
12 admit Exhibit 184 into evidence.

13 THE COURT: Any objection to 184?

14 MR. LEVENTHAL: Same objection.

15 MR. TANASI: Same objection, Stewart, Your Honor.

16 MR. MARCHESE: Parker joins.

17 MR. PEREZ: Lovelien joins.

18 THE COURT: I don't know what the objection was.
19 It's not -- this is not a Facebook page. This is the toll
20 records from the phone, the cell phone.

21 MR. LEVENTHAL: It's an authentication objection,
22 based upon the fact that that -- the first page did not
23 indicate that that's -- these are the records that go with
24 whatever was requested by the -- by this agent.

25 THE COURT: All right. Well, the pages all reference

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1 the phone number. The objection is overruled. Exhibit 184 is
2 admitted. You may publish.

3 MS. CREEGAN: Thank you, Your Honor.

4 (Exhibit 184 admitted.)

5 BY MS. CREEGAN:

6 Q. And Agent Seyler, what are we looking at in Exhibit 184?

7 A. This is a spreadsheet that was returned to us from Verizon
8 in response to a subpoena. It contains the toll records as
9 they exist in Verizon's system for that phone.

10 Q. And can we go to page 13, please.

11 And Agent Seyler, in box 425 on page 13, is there a
12 call that's placed from number (208)481-0072 to another number?

13 A. Yes, there is.

14 Q. And what's the number that's called?

15 A. (909)597-4818.

16 Q. Is this the number for the Euclid Stockyard?

17 A. Yes, it is.

18 Q. And what's the time and date where that number -- that
19 number is called?

20 A. April 11th, 19:36, so approximately 7:36 p.m.

21 Q. Thank you. You can take that down.

22 Agent Seyler, in response to your request for phone
23 companies for toll records, did you also receive toll records
24 for numbers other than the number we were just discussing, the
25 208 number?

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1 A. Yes.

2 Q. Did that include the number that -- the numbers that Ryan
3 Payne listed as Cliven Bundy's home and cell phone numbers in
4 his email to Gary Hunt?

5 A. Yes.

6 Q. Taking his home number first and directing your attention
7 to Exhibit 183 at page 5.

8 A. Yes.

9 Q. Is this the certificate of authenticity for the toll
10 records received for the number that Ryan Payne represented to
11 be Cliven's home number?

12 A. Yes.

13 MS. CREEGAN: The government moves to admit
14 Exhibit 5 -- Exhibit 183, page 5.

15 THE COURT: Any objection to 183?

16 MR. TANASI: None from Stewart, Your Honor.

17 MR. LEVENTHAL: No, Your Honor.

18 MR. PEREZ: No, Your Honor.

19 MR. MARCHESE: None from Parker.

20 THE COURT: Exhibit 183 will be admitted.

21 (Exhibit 183, page 5 admitted.)

22 BY MS. CREEGAN:

23 Q. And turning to page 14 of the same Exhibit 183, in
24 Exhibit 175, did we receive a phone number for Jerry Bruckhart?

25 A. Yes.

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1 Q. Was that (717) 682-8073?

2 A. Yes.

3 Q. Is this a certificate of authenticity for the toll records
4 of Jerry Bruckhart?

5 A. Yes.

6 Q. Can you turn to page 21, please?

7 And Agent Seyler, are you familiar with the phone
8 number for an individual named James Lardy?

9 A. Yes.

10 Q. How are you familiar with that phone number?

11 A. Reviewed toll records associated with that number. I also
12 have actually contacted Mr. Lardy on that number.

13 Q. And what's the phone number for Jim Lardy?

14 Would it help to see the next page of this?

15 A. Yes.

16 Q. Page 22.

17 A. If you could make it just a little larger, please. I
18 believe the number is on this page. I'm just not seeing it.
19 No, I'm still not seeing it on this page yet.

20 Q. Toward the top there. So, you also have a physical copy
21 if you'd like to look in the book.

22 A. What is the exhibit number again, please?

23 Q. 183.

24 A. What is the page number again, please?

25 Q. 22.

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1 A. This appears to be for the account, but it doesn't mention
2 the actual phone number that I'm seeing here. It would have
3 been the records were received, it just doesn't list the phone
4 number.

5 Q. Just an account number instead?

6 A. Yes.

7 Q. Well, let's come back to that one. Let me ask you about
8 page 23, which we've already looked at, which is a
9 certification for Eric Parker's phone number, but it also
10 attaches a number of other accounts; correct?

11 A. Yes.

12 Q. And turning to page 24, does that also include a phone
13 number for Todd Engel?

14 A. Yes, it does.

15 Q. Does that also include a phone number for Ryan Payne?

16 A. Yes.

17 Q. And this is the phone number that we've seen Ryan Payne
18 distribute?

19 A. Yes.

20 Q. And does it include tolls for the (918)575-1041 number
21 that Rick Lovelien distributed?

22 A. Yes.

23 Q. So, it contains the toll records for -- excuse me.

24 Does it also have to toll records for Cliven
25 Bundy's -- the cell number that Ryan Payne used?

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1 A. Yes.

2 Q. So, this certification --

3 MR. LEVENTHAL: Judge, I'm going to object as to
4 leading.

5 MS. CREEGAN: This is foundational for a certificate
6 of authenticity.

7 THE COURT: Agreed.

8 BY MS. CREEGAN:

9 Q. So, page 33 is the certifying document for the toll
10 records for Eric Parker, Todd Engel, Ryan Payne, the number
11 used by Lovelien, and Cliven Bundy's cell; correct?

12 A. Yes.

13 Q. Agent Seyler, is it fair to say the toll records that you
14 received back, similar to the ones that we just looked at for
15 Eric Parker, are fairly voluminous?

16 A. Yes.

17 Q. And they just include numbers going back and forth between
18 one another?

19 MR. LEVENTHAL: Objection. Leading.

20 MS. CREEGAN: Laying the foundation for a summary
21 exhibit.

22 THE COURT: Sustained. You can rephrase the
23 question.

24 BY MS. CREEGAN:

25 Q. Agent Seyler, how do you receive toll records back from

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1 phone companies?

2 A. It depends. Some of them provide us an actual hard copy
3 of the records, and other companies provide us a digital
4 spreadsheet with the records.

5 Q. Do the toll records just give numbers, or do they give the
6 names of who it is that you are calling?

7 A. Just the numbers usually.

8 Q. And when you asked for the toll records for a few months,
9 about how many calls do you receive back?

10 A. It just depends on the caller. It can be a number.

11 Q. And when you subpoenaed the toll records for Cliven Bundy,
12 Ricky Lovelien, Ryan Payne, Todd Engel how voluminous were
13 these records?

14 A. Quite voluminous for this time period.

15 Q. Do you recall how many pages they were?

16 A. I don't. It would have been tens if not hundreds of
17 pages.

18 Q. Did you prepare a summary exhibit outlining the contacts
19 between Cliven Bundy, Ryan Payne, and Jerry Bruckhart?

20 A. Yes.

21 Q. And this is based completely on the tolls that were
22 received in response to the FBI's request, which are covered by
23 these certificates of authenticity that we were just reviewing?

24 A. Yes.

25 Q. And is that summary exhibit contained in the Government's

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1 proposed Exhibit 185?

2 A. I believe so, yes.

3 MS. CREEGAN: The government moves to admit
4 Exhibit 185.

5 THE COURT: Any objection?

6 MR. TANASI: Stewart objects on relevance grounds,
7 specifically with respect to Mr. Bruckhart.

8 MR. MARCHESE: Parker joins.

9 MR. LEVENTHAL: Drexler joins.

10 MR. PEREZ: Lovelien joins.

11 MS. CREEGAN: Your Honor, we have established that
12 Jerry Bruckhart is the co-founder of Operation Mutual Aid, and
13 we've established a connection between Ricky Lovelien and
14 Operation Mutual Aid. This is coordination between two members
15 of Operation Mutual Aid and Cliven Bundy.

16 THE COURT: An unindicted coconspirator?

17 MS. CREEGAN: Correct. And Cliven Bundy and Ryan
18 Payne are coconspirators as well.

19 THE COURT: Objection overruled. Exhibit 185 will be
20 admitted.

21 MS. CREEGAN: Permission to publish?

22 THE COURT: Yes, you may.

23 (Exhibit 185 admitted.)

24 BY MS. CREEGAN:

25 Q. So, Agent Seyler, if you would walk us through this chart,

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1 and the first question I'm going to ask is what's the date
2 range that you've selected here?

3 A. April the 7th of 2014 through April 12th of 2014.

4 Q. Is April 27th [sic] the first time you saw contact, or was
5 there contact earlier than that?

6 A. No, April 7th would have been the first time I saw contact
7 between these individuals.

8 Q. And where you have the to name, you have, for example,
9 Cliven Bundy home or Cliven Bundy cell. Where do you derive
10 those numbers from?

11 A. From the subscriber information that was provided to us by
12 the telephone companies.

13 Q. What was in the subscriber information for Cliven Bundy
14 home?

15 A. It was subscribed to Cliven Bundy and Carol Bundy for
16 (702)346-5564.

17 Q. And what was in Cliven Bundy's cell?

18 A. The user was listed as Cliven Bundy at (801)368-0010.

19 Q. So, I see that you have -- in the very first column, you
20 have a date and you have a time. What time zone are these
21 times in?

22 A. Nevada time.

23 Q. And what's the duration column? What does that signify?

24 A. That would be the length of the call.

25 Q. You also have a from number column. Is that the person

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1 placing the call?

2 A. Yes.

3 Q. And the first -- the from number, what does that mean?

4 A. That's the person that's actually placing the call.

5 Q. And then the from name, is that just the name of the
6 person using that phone number?

7 A. Yes, that's the subscriber of that phone, the user.

8 Q. For April 7th, 2014, how many contacts were there between
9 Jerry Bruckhart or Ryan Payne and Cliven Bundy?

10 A. Six different contacts.

11 Q. For April 8th?

12 A. Four contacts.

13 Q. April 9th?

14 A. Two contacts.

15 Q. April 10th?

16 A. Four contacts.

17 Q. And April 11th and 12th?

18 A. One on the 11th and two on the 12th.

19 Q. Thank you. You can take that down, and can you bring up
20 for the witness Exhibit 186.

21 Agent Seyler, did you receive toll records for --
22 we've discussed it already, but toll records for Todd Engel and
23 Jerry Bruckhart?

24 A. Yes.

25 Q. And those were covered by the certificate of authenticity

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1 on page 23 of Exhibit 183?

2 A. Yes.

3 Q. And are those records voluminous? Only a few pages?

4 A. They were quite voluminous.

5 Q. Did you prepare a chart to show communication between Todd
6 Engel and Jerry Bruckhart?

7 A. Yes.

8 Q. Is that what's depicted in Exhibit 186?

9 A. Yes.

10 MS. CREEGAN: Government moves to admit Exhibit 186.

11 MR. LEVENTHAL: No, objection.

12 MR. TANASI: None from Stewart, Your Honor.

13 MR. MARCHESE: None from Parker.

14 MR. PEREZ: None from Lovelien.

15 THE COURT: All right. Exhibit 186 will be admitted.

16 MS. CREEGAN: Permission to publish?

17 THE COURT: Yes, you may.

18 (Exhibit 186 admitted.)

19 BY MS. CREEGAN:

20 Q. Agent Seyler, can you remind us? Who is Todd Engel? How
21 have we seen him so far?

22 A. Todd Engel was the individual depicted in front of Rick
23 Lovelien in the photograph on his knee with the rifle.

24 Q. And who is Jerry Bruckhart?

25 A. He's the co-leader of Operation Mutual Aid in

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1 Pennsylvania.

2 Q. And what's the date range that this communication takes
3 place?

4 A. April 9th through April 12th, 2014.

5 Q. Is this all the communication that occurred between them
6 or only some of it?

7 A. I believe this is all the communication.

8 Q. And I see that there we have the date and the time again,
9 but we have a column called cell switch for Engel's phone.
10 What does that refer to?

11 A. Yes, that was provided to us by the telephone company when
12 they provided us the records. That indicates which cellular
13 telephone switch his phone is using at the time.

14 So, for instance, he's from Idaho. And at the
15 beginning, he was using a cell phone switch in Spokane,
16 Washington, which is near where he lived.

17 Q. And this depicts a total of six calls that occurred
18 between April 9th and April 12th between Todd Engel and Jerry
19 Bruckhart?

20 A. Yes.

21 Q. Thank you. You can take that down. Can you bring up
22 Exhibit 187 for the witness only?

23 Agent Seyler, did you receive toll records for the
24 918 number that Rick Lovelien lists as his phone number on his
25 Facebook page?

Mark D. Seyler - Direct

1 A. Yes.

2 Q. And are those records voluminous? Only a few pages?

3 A. For this time frame, it was not as voluminous as others.

4 Q. But there were several pages of calls?

5 A. It would have been several pages though.

6 Q. And it doesn't list who was being called. It just lists a
7 phone number; correct, in the toll records?

8 A. Correct.

9 Q. Did you prepare a summary exhibit that would show the
10 calls of Rick Lovelien between April 7th and April 12th of
11 2014?

12 A. Yes.

13 Q. And the persons that he was calling or receiving calls
14 from?

15 A. Yes.

16 Q. And is that what's depicted in Exhibit 187?

17 A. Yes.

18 MS. CREEGAN: The government moves to admit
19 Exhibit 187.

20 MR. TANASI: No, objection, Parker.

21 MR. MARCHESE: None for Stewart, Your Honor.

22 MR. LEVENTHAL: No objection.

23 MR. PEREZ: No objection.

24 THE COURT: 187 is admitted. You may publish.

25 (Exhibit 187 admitted.)

Mark D. Seyler - Direct

1 BY MS. CREEGAN:

2 Q. Agent Seyler, again going kind of by column, what's the
3 date range for these calls?

4 A. April 7th through April 12th, 2014.

5 Q. Is this some of the calls placed or received by Rick
6 Lovelien or all of them in that time frame?

7 A. I believe this is all the calls during that time frame.

8 Q. So we have a time column which is next. Is that time in
9 Pacific time?

10 A. Yes.

11 Q. And we also have a column called cell tower. What does
12 that column mean?

13 A. So this is different than the cell switch. This would
14 have been where the cell tower -- what state the cell tower was
15 located in at the time the calls were being made.

16 Q. Does this show that the phone would have been pinging off
17 a cell tower in Montana on April 7th?

18 A. Yes.

19 Q. And that by April 10th, it appears to be Nevada?

20 A. Yes.

21 Q. And we have a next telephone number column. What does
22 that mean?

23 A. That would have been the telephone number that he was
24 exchanging a call with or that telephone was exchanging a call
25 with.

Mark D. Seyler - Direct

1 Q. And the column that says call direction, would that tell
2 us who was calling whom?

3 A. Yes, whether it was an outgoing call or an incoming call
4 to the 918 number.

5 Q. And there was a few that don't list in the notes who it's
6 going to or from. Are those persons that, so far as you know,
7 are unconnected with the conspiracy or with the alleged
8 conspiracy?

9 A. Yes.

10 Q. Okay. So, taking your attention to a call at 12:16 p.m.
11 on April 7, 2014, is that a call received or placed by Rick
12 Lovelien?

13 A. That's an outgoing call placed by Rick Lovelien.

14 Q. And who is it to?

15 A. To Ryan Payne.

16 Q. Thank you. Come out of that.

17 And taking your attention to a call at 7:40 p.m. on
18 April 9, 2014, who is that a call from and to?

19 A. That's an outgoing call from Rick Lovelien to Nic Whiting.

20 Q. And taking your attention to the latter calls on
21 April 10th, 2014, are those calls placed by Rick Lovelien or by
22 another person?

23 A. Those would have been by Rick Lovelien.

24 Q. And who are they to?

25 A. To Ryan Payne.

Mark D. Seyler - Direct

1 Q. And these are short calls. They are listed in duration as
2 only a minute. What does that signify?

3 A. It would have been a very short call. Could have been
4 less than a minute.

5 Q. Does the company round to the nearest whole minute?

6 A. Yes.

7 Q. Come out of that close-up, please.

8 And on April 11th, taking your attention to some
9 calls after 2:00 p.m., those first three calls, 2:10, 2:24,
10 2:33, who are those from and to?

11 A. Those are incoming calls from Randy Eaton.

12 Q. And the call that occurs at 3:14 p.m. -- 3:16 p.m. on
13 April 11, 2014, who is that a call from and to?

14 A. That would have been an outgoing call to James Lardy's
15 telephone number.

16 Q. Thank you. You can come out of that close-up.

17 And coming in on -- close on April 12, 2014, at
18 12:32 p.m., who is that a call from and to?

19 A. That's an outgoing call to Cheyenne Miller.

20 Q. Thank you. Thank you. You can take that down. Can we
21 bring up Exhibit 188 for the witness only, please?

22 Agent Seyler, did you prepare a demonstrative exhibit
23 that would integrate the timing of the Facebook posts which
24 have been admitted into evidence and the tolls which have been
25 admitted into evidence?

Mark D. Seyler - Direct

1 A. Yes.

2 Q. And is that what's depicted in Exhibit 188?

3 A. Yes.

4 MS. CREEGAN: Your Honor, the government moves to
5 admit Exhibit 188.

6 THE COURT: Any objection?

7 MR. TANASI: None from Stewart, Your Honor.

8 MR. LEVENTHAL: No, objection.

9 MR. PEREZ: No, objection, Your Honor.

10 THE COURT: All right. 188 will be admitted. You
11 may publish.

12 (Exhibit 188 admitted.)

13 BY MS. CREEGAN:

14 Q. Agent Seyler, in your exhibit, do you have a page for each
15 day from April 7th to April 12th, 2014?

16 A. Yes.

17 Q. Is this first day April 7, 2014, some of the significant
18 communications that have been admitted into evidence that
19 occurred on that day?

20 A. Some of them, yes.

21 Q. It's not all of them?

22 A. Correct.

23 Q. Could you please read through the timing and the event
24 that's listed on April 7, 2014, page one of Exhibit 188?

25 A. "At 9:17 a.m., Ryan Payne calls Cliven Bundy's home phone.

Mark D. Seyler - Direct

1 At 9:30 a.m., Ryan Payne calls Cliven Bundy's cell phone. At
2 12:11 p.m., Ryan Payne calls Cliven Bundy's cell phone. At
3 12:15 p.m., on Facebook, Payne messages Rick Lovelien to call
4 him. At 12:16 p.m., Rick Lovelien calls Ryan Payne."

5 "At 12:30 p.m., on Facebook, Rick Lovelien tells
6 militia leaders 'Contact info to coordinate groups. Ryan Payne
7 OMA (406)560-2540. They have made live contact and are setting
8 up security ops.' 8:50 p.m., Payne calls Cliven Bundy's cell
9 phone. 9:57 p.m., on Facebook, Jerry Bruckhart messages Carol
10 Bundy. 'Significant units will be -- will likely be coming.'"

11 Q. Thank you. If we could turn to page 2, please.

12 And is this your summary for April 8th of 2014?

13 A. Yes.

14 Q. Could you please read through the events of April 8th?

15 A. "At 10:12 a.m., on Facebook, James Lardy messages Rick
16 Lovelien. 'He is going to Nevada with Payne's West Mountain
17 Rangers. Says he is going to fight with them and is off to
18 war.'"

19 "At 10:28 a.m., Rick Lovelien calls Ryan Payne. At
20 10:40 a.m., on Facebook, Lovelien messages Ryan Payne. 'Do we
21 have an exact location?' At 10:43 a.m., Ryan Payne calls
22 Cliven Bundy's cell phone. At 10:53 a.m., on Facebook,
23 Lovelien messages James Lardy. 'We are coordinating our
24 efforts to get all units together when they get there.'"

25 "At 11:22 a.m., on Facebook, Ryan Payne messages

Mark D. Seyler - Direct

1 Lovelien the coordinates for the Bundy Ranch. At 2:01 p.m.,
2 Ryan Payne calls Cliven Bundy's home phone. At 2:26 p.m., Ryan
3 Payne calls Cliven Bundy's home phone. At 8:37 p.m., OMA
4 emails mobilization alert to over 200 supporters providing
5 directions to the Bundy Ranch."

6 Q. Thank you. Can you go to page 3, please.

7 And this is the events that you have pulled out for
8 April 9, 2014, from admitted exhibits?

9 A. Yes.

10 Q. Can you please read these events?

11 A. "At 6:17 a.m., Ryan Payne calls Cliven Bundy's home phone.
12 At 11:08 a.m., on Facebook, Rick Lovelien searches for and
13 likes Operation Mutual Aid's Facebook page. At 11:59 a.m., on
14 Facebook, Payne messages Lovelien 'To give me a ring ASAP.'"

15 "At 11:59 a.m., Rick Lovelien calls Ryan Payne. At
16 12:18 a.m., on Facebook, Rick Lovelien posts to MTFD group.
17 'We are now in direct contact with personnel at the Bundy
18 Ranch. I will be heading out shortly. There was a direct
19 request made by Mr. Bundy.'"

20 "At 12:33 p.m., on Facebook, Carol Bundy issues
21 public status update. 'The Bundy family has requested help
22 from militia groups, including Operation Mutual Aid, 3%ers
23 Club, Freedom Fighters.'"

24 "12:34 p.m., on Facebook, Carol Bundy issues a public
25 status update. 'The Operation Mutual Aid coordinator is here

Mark D. Seyler - Direct

1 with us now.' At 12:36 p.m., on Facebook, Lovelien messages
2 Nic Whiting to coordinate travel. And approximately the late
3 afternoon, Las Vegas Review Journal releases article and video
4 of Ryan Payne 'Militias Mobilizing to Support Embattled Clark
5 County Rancher in Clash with Federal Rangers.' And at
6 7:40 p.m., Lovelien calls Nic Whiting from a Missoula cell
7 tower.

8 Q. Turning your attention to page 4, which is April 10, 2014,
9 can you please read the events that you have listed for that
10 day?

11 A. "1:55 a.m., OMA issues objectives via email and Facebook
12 status update in cohesion with Cliven Bundy. Objectives
13 include 'Return to Mr. Bundy's ranch the mounting number of
14 cattle which have been confiscated by BLM agents.'"

15 "At 2:02 a.m., on Facebook, Rick Lovelien's sister
16 Cheyenne Miller posts OMA's objectives to MTFDF group, which is
17 received in Payne's email. At 9:48 a.m., now in Nevada, Rick
18 Lovelien calls Ryan Payne. At 11:00 a.m., on Facebook,
19 Cheyenne Miller posts to the MTFDF group 'Rick Lovelien is
20 on-site at the Bundy Ranch.'"

21 "At 12:24 p.m., on Facebook, Ryan Payne message Texas
22 militia leader, 'Montana has most guys. Utah, Nevada
23 unorganized. Idaho, many more en route. I am designated
24 liaison for militia via Cliven Bundy. All information
25 disseminated is vetted by him.'"

Mark D. Seyler - Direct

1 "At approximately 3:30 p.m., Bundy Ranch Facebook
2 posts 'Attention all militia groups. The Bundy family has a
3 militia coordinator. His name is Ryan Payne.'"

4 Q. Continuing your attention to page 5, can you read the
5 events that you have listed for April 11, 2014.

6 A. At 10:22 a.m., on Facebook, Cheyenne Miller tells MTFDF
7 group 'Rick Lovelien is running the security detail at the
8 protest site on the Bundy Ranch.' At approximately 7:30 p.m.,
9 on Facebook, the We Support Bundy Ranch page posts 'Bundy's
10 cattle will be taken to Euclid Stockyards' and gives contact
11 phone number."

12 Q. This is the number that's later called by Eric Parker's
13 phone number?

14 A. Yes.

15 Q. On that same day?

16 MR. MARCHESE: Objection. Leading.

17 BY MS. CREEGAN:

18 Q. When was the call by Eric Parker to this number?

19 A. On April 11th.

20 Q. Do you remember what time?

21 A. 7:36 p.m., I believe.

22 Q. That would be a few minutes after this posting?

23 A. Yes.

24 Q. Taking your attention to the sixth page of Exhibit 188,
25 can you please read the events for April 12th, 2014.

Mark D. Seyler - Direct

1 A. "7:32 a.m., Ryan Payne calls Cliven Bundy's home
2 telephone. 9:40 a.m., approximately, Cliven Bundy meets
3 Sheriff Gillespie on stage and tells him to 'Disarm federal
4 agents in one hour.'"

5 "11:00 a.m., approximately, Cliven Bundy speaks to
6 the crowd about shutting down the freeway and going to get the
7 cattle."

8 Q. Thank you. You can take that down. Can you bring up
9 Exhibit 89 for the witness only, please?

10 And Agent Seyler, I am not going to admit this with
11 you, but I just want to ask you a question to connect to it
12 later testimony.

13 Do you recognize the language giving at the bottom of
14 the page 89?

15 A. Yes.

16 Q. Did you, yourself, click on that link relatively close to
17 these events?

18 A. It would have been several months afterwards. Yes, I
19 clicked on --

20 Q. Is it --

21 A. -- it, yes.

22 Q. I apologize. I didn't mean to speak over you.

23 It was later in 2014?

24 A. No, it would have actually been 2015 when I clicked on it.

25 Q. 2015. Okay. And when you clicked on that link in 2015,

Mark D. Seyler - Direct

1 what did it link to?

2 A. It linked to an article about Ryan Payne, which included
3 a -- the video that we watched earlier today about him standing
4 by the roadside.

5 Q. And that is the April 9th video?

6 A. Yes.

7 Q. Okay. Thank you. You can take that down.

8 Agent Seyler, in the course of your investigation,
9 did you supervise the search of a Dropbox account?

10 A. Yes.

11 Q. Can you describe that process to the jury?

12 A. There was a Dropbox account on the Internet, which is
13 essentially a mechanism where people can store photos and you
14 can share it with just a few friends or share it with everybody
15 on the Internet.

16 We identified a public Dropbox that had some
17 photographs in it. And I asked one of our FBI employees in our
18 Las Vegas office to capture the photographs that were in that
19 public Dropbox.

20 Q. On a separate tangent, can I bring up Exhibit 132 for the
21 witness only, please.

22 And can you go through -- I think through pages 1, 2,
23 3 and 4. Agent Seyler, do you recognize these to be pictures
24 of an individual?

25 A. Yes, I do.

Mark D. Seyler - Direct

1 Q. Who is that individual?

2 A. That's Ricky Ray Lovelien.

3 MS. CREEGAN: Your Honor, the government would move
4 to admit pages 1 and 4 of Exhibit 132.

5 THE COURT: Show me 4 again, page 4?

6 Meet with counsel at sidebar.

7 (Sidebar.)

8 THE COURT: Okay. So, I called the sidebar, because
9 Mr. Perez, I wanted to know if you were willing to stipulate
10 that photo number four is his arm, then we don't have to show
11 photo number one, which is a picture of his face wearing the
12 orange jumpsuit. I didn't know what your position was.

13 MR. PEREZ: I mean, I don't really care about the
14 tattoo. But I know we have a motion pending that I've joined
15 in, on behalf of all the defendants, dealing with the booking
16 photos and tattoos and things of that nature. We don't have a
17 ruling.

18 THE COURT: And I share your concern.

19 MR. PEREZ: Yeah.

20 THE COURT: That's why I wanted to know what your
21 position was if you are willing to stipulate that's his arm.
22 And I don't need to. That would be my ruling, that just page 4
23 comes in not page 1.

24 MR. PEREZ: What about the other defendants? I mean,
25 they've got a pending motion.

Mark D. Seyler - Direct

1 MR. MARCHESE: Don't worry about us.

2 MR. PEREZ: I will let the arm come in.

3 THE COURT: I think everyone is in a different
4 position, so --

5 MR. MARCHESE: I guess while we are here --

6 THE COURT: We should do it one by one.

7 MR. MARCHESE: Are you bringing in other booking
8 photos right now?

9 MS. CREEGAN: I am not bringing in any other booking
10 photos with this witness.

11 MR. MARCHESE: That solves that problem.

12 MR. LEVENTHAL: Your Honor, we are going to have an
13 objection to the next summary. So, if you want us to wait till
14 then, I am going to ask for another sidebar. But the next
15 summary, I am going to have another sidebar. I don't know if
16 you want to deal it with it now or when we get to it?

17 THE COURT: Is that going up now or after the
18 bathroom break?

19 MS. CREEGAN: I don't think so. Which summary are
20 you --

21 MR. LEVENTHAL: 189.

22 MS. CREEGAN: It's not for this witness. And I do
23 want to just make counsel aware while we are here that I do
24 intend to, in accord with the government's trial brief, elicit
25 some of the testimony by Eric Parker in April with this

Mark D. Seyler - Direct

1 witness. So, if there are arguments that people want to make,
2 maybe they will make them now.

3 MR. LEVENTHAL: What do you mean? Like the video
4 where he was on the bridge?

5 MS. CREEGAN: His actual statements from his
6 testimony to add it in through Agent Seyler.

7 MR. LEVENTHAL: From the last trial?

8 MS. CREEGAN: Correct.

9 MR. MARCHESE: Those weren't the snippets that you
10 sent me?

11 MS. CREEGAN: They are the snippets that I sent you.

12 MR. MARCHESE: I thought those were of his custodial
13 arrest. He arrested him, right?

14 MS. CREEGAN: Correct. But I don't intend to
15 introduce his custodial through this witness.

16 MR. MARCHESE: Okay. She had sent me Saturday,
17 Sunday, 25 snippets or so of what I felt was going to be his
18 custodial arrest.

19 MS. CREEGAN: I did send an email. I am happy to
20 show it. It's from Friday. And I believe it identifies that
21 it's his trial testimony within the email.

22 MR. PEREZ: Actually, I got it Monday. I got it from
23 him, because I didn't get it.

24 MR. TANASI: I don't remember the contents of it.
25 I'd have to look at it. It's not relative to my client.

Mark D. Seyler - Direct

1 THE COURT: This is the trial transcript, from the
2 trial transcript?

3 MS. CREEGAN: Correct, Your Honor. I intend to read
4 portions of it into the record.

5 MR. MARCHESE: Okay. Well --

6 MS. CREEGAN: Would you like to take a break to look
7 at it or --

8 MR. MARCHESE: Well, how far -- how long before we
9 get there?

10 MR. LEVENTHAL: I haven't seen it. You sent it to
11 all of us?

12 MS. CREEGAN: Yes.

13 THE COURT: Would it be after the bathroom break or
14 before?

15 MS. CREEGAN: I don't have very much more to do with
16 him. In fact, I don't think I have anything else besides that
17 that I can do with him. So, if they want to have a moment to
18 look at it now, maybe it's time to a break.

19 MR. TANASI: And I guess, Your Honor, to go back on
20 the booking photo, I would lodge an objection for Mr. Stewart,
21 even as it pertains to Mr. Lovelien, as being more prejudicial
22 than probative, a picture of a tattooed arm.

23 Again, the prejudice rule, as we'd outlined in our
24 brief, I think, applies to all defendants as it applies to any
25 tattooed defendant in the case has an effect on all the

Mark D. Seyler - Direct

1 defendants that are sitting here.

2 THE COURT: I don't remember that that particular
3 tattoo has any significance, prejudicial, I don't think. It's
4 not sexual or offensive in any way; is it?

5 MR. PEREZ: No, just to identify him. I mean, you
6 know.

7 MR. LEVENTHAL: They have already identified him
8 though. He's already identified him.

9 MR. PEREZ: If anything, it's cumulative evidence of
10 was he there.

11 THE COURT: It's not like a crude word or a --

12 MR. TANASI: Understood.

13 THE COURT: You know what I'm talking about when they
14 say things on their knuckles that spell out a dirty word. It's
15 not like that kind of a tattoo; right?

16 MR. PEREZ: No.

17 MR. TANASI: I mean, I think tattoos can be
18 inherently --

19 THE COURT: Remind me. I just kind of looked at it.

20 MR. TANASI: No, I don't think it has any -- anything
21 over the top, but I think tattoos in and of themselves have
22 inherit prejudice.

23 THE COURT: Well, maybe 20 years ago, but I don't
24 think that's true today.

25 MR. TANASI: Okay.

Mark D. Seyler - Direct

1 MS. CREEGAN: The purpose was --

2 THE COURT: Maybe some of the jurors might agree with
3 anyone not having a tattoo. Maybe that could have come up
4 during voir dire, but I don't think that in and of itself would
5 be sufficient prejudice to overcome the probative value.

6 MS. CREEGAN: And it's --

7 THE COURT: Like I said, it's not sexual. It's not a
8 naked person or people doing sexual things or obscene words on
9 it.

10 MS. CREEGAN: Correct. And this just helps to
11 identify him in photographs from other events that he has this
12 same tattoo.

13 THE COURT: All right.

14 (Counsel conferring among themselves.)

15 THE REPORTER: I'm sorry?

16 MR. TANASI: I'm sorry.

17 THE COURT: Okay.

18 MR. TANASI: All right.

19 THE COURT: So, we will take a break now, and then --

20 MS. CREEGAN: Should I admit page 4 then take a
21 break?

22 THE COURT: Yes.

23 MR. TANASI: Thank you, Judge.

24 (Ends of sidebar.)

25 MS. CREEGAN: Your Honor, the government would move

Mark D. Seyler - Direct

1 to admit page 4 of Exhibit 132 only.

2 THE COURT: All right. So, page 4 of Exhibit 132
3 will be admitted.

4 MS. CREEGAN: Permission to publish.

5 THE COURT: Yes, you may.

6 (Exhibit 132, page 4 admitted.)

7 BY MS. CREEGAN:

8 Q. Agent Seyler, what's depicted in page 4 of Exhibit 132?

9 A. That's a tattoo on the forearm of Rick Lovelien.

10 Q. And was this photo taken incident to his arrest in this
11 case?

12 A. Yes.

13 MS. CREEGAN: Thank you. And, Your Honor, I'd ask
14 for a short break at this time.

15 THE COURT: All right. We'll go ahead and take our
16 afternoon break.

17 At this time, I do remind the jury that you are not
18 to discuss this case with anyone. Do not read, or listen to,
19 or view anything that touches upon this case, nor perform any
20 research or any independent investigation, and please do not
21 form any opinion.

22 It's 2:30, so we'll take about a 15-minute break and
23 be back here at 2:45. Please stand for the jury.

24 (Jury out.)

25 THE COURT: Off record until 2:45.

Mark D. Seyler - Direct

1 (Recess, 2:32 p.m. Resumed 3:01 p.m. Jury out.)

2 THE COURT: Bring in the jury, Aaron. You may be
3 seated.

4 (Jury in.)

5 THE COURT: Jury may go ahead and be seated.
6 Everyone else may be seated as well. We are back on the
7 record.

8 We have Special Agent Seyler back on the witness
9 stand. We did -- let's see. Where did we leave off?

10 All right. So, I admitted Exhibit No. 132, page 4
11 only, on the stipulation from counsel that that is a photo of
12 Defendant Lovelien's tattoo.

13 And then I think that's when we took the bathroom
14 break.

15 MS. CREEGAN: Thank you, Your Honor.

16 Q. Agent Seyler, were you present in April of 2017 for a
17 prior proceeding in which Defendant Eric Parker testified?

18 A. Yes, I was.

19 Q. That was over two different days?

20 A. Yes.

21 Q. Were you present for both days?

22 A. Yes.

23 Q. And did you receive a certified copy of the transcript of
24 those proceedings?

25 A. Yes.

Mark D. Seyler - Direct

1 Q. Did you review that certified copy?

2 A. Yes.

3 Q. Is it in accord with your memory of what Eric Parker's
4 testimony was?

5 A. Yes, it is.

6 Q. And do I have your certified copy here with me?

7 A. Yes.

8 MS. CREEGAN: Your Honor, with permission, I'd like
9 to bring this up to the witness.

10 THE COURT: Yes, you may.

11 BY MS. CREEGAN:

12 Q. Agent Seyler, I'm going to ask you if you can read into
13 the record with me some of the questions and answers that were
14 posed to Defendant Eric Parker.

15 I am going to ask the question. Can you give the
16 response?

17 A. Yes.

18 Q. So, beginning on page 43, at line 5.

19 MR. MARCHESE: Parker objects to completeness, Your
20 Honor.

21 MR. TANASI: Stewart joins.

22 MR. LEVENTHAL: Drexler joins.

23 MR. PEREZ: Lovelien joins.

24 THE COURT: What is your objection? You want all of
25 his testimony to be admitted?

Mark D. Seyler - Direct

1 MR. MARCHESE: That's correct, Your Honor. It's our
2 position that taking the snippets is not a fair reflection of
3 what was actually said and takes it out of context.

4 MS. CREEGAN: Well, the rule of completeness doesn't
5 require that an entire statement be admitted. It requires that
6 any part of a statement that is admitted not be misleading.

7 I passed these cuts to counsel, so that they can tell
8 me if they have specific objections that something should be a
9 few more questions or some part should be included, but I don't
10 think it's inappropriate to admit only those portions which the
11 government believes are relevant.

12 THE COURT: Court agrees. It's not necessary to hear
13 the entire two days of testimony.

14 The question is whether there's any statements that
15 are being taken, out of context, where they are being asked --
16 the cut-off is too soon or doesn't go back far enough to
17 capture the entirety of the answer.

18 So, the objection is overruled. You can go ahead and
19 proceed.

20 MS. CREEGAN: Okay. So, asking the question from the
21 questioner to Eric Parker.

22 "Q. Now, we've established that and your friends are going to
23 Bunkerville?

24 "A. Uh-huh.

25 "Q. How did you get to Bunkerville?

Mark D. Seyler - Direct

1 "A. Drove.

2 "Q. Okay. What did you drive?

3 "A. My truck.

4 "Q. Now, is it just the three of you?

5 "A. Yes.

6 "Q. Okay. Now, when it was the three of you, what did you
7 bring, if anything?

8 "A. I -- not much. Just camping supplies. Most of the stuff
9 I normally have in my truck. I did bring my -- my rifle and
10 my -- basically, I have a bag with, you know, my rifle and my
11 stuff in it. Two -- a couple of extra magazines, my body
12 armor. And other than that, it was a Hibachi grill, some
13 sleeping bags, tents.

14 "Q. And you're with Steve and Scott the whole time when you
15 are driving?

16 "A. Yes.

17 "Q. To your knowledge, what did they bring?

18 "A. Similar. Camping -- camping supplies and their -- their
19 firearms. I -- we --"

20 BY MS. CREEGAN:

21 Q. I am stopping you there and taking you to page 128, line
22 3.

23 A. What is the page number again?

24 Q. 128 of Day 1. And starting at line 3.

25 "Q. And in doing your research and looking on the Internet,

Mark D. Seyler - Direct

1 you saw there were calls from Cliven Bundy and others for
2 militia and people with guns to come to Bunkerville; correct?

3 "A. Militia, yes. I'm not sure that I saw any, like -- and --
4 specifically bring your guns. But, yes, I saw them calling for
5 militia, sir.

6 "Q. And calls to match force with force; correct?

7 "A. Yeah, I -- yes, sir.

8 "Q. And that's an idea you agreed with; correct?

9 "A. Yeah. I used the term myself. Yes, sir.

10 "Q. And in this context, "force, is that the BLM was armed.
11 They were armed federal agents; correct? They carry guns, and
12 to match force with them, you needed to bring a gun; correct?

13 "A. Yes, sir. I believe that if you are armed --

14 "Q. I'm not asking why you believe. I am asking did you --

15 "A. I thought you were asking me why. Yeah. Okay.

16 "Q. Did you bring a gun to match force with the BLM?

17 "A. Oh, I absolutely brought a gun. I don't know if it was
18 specifically to match force with the BLM. But, yeah, I guess
19 it would be match force with anybody that --"

20 Q. Taking your attention to page 130, at line 12.

21 "Q. Now, doing your research, you learned that there were
22 Court orders; correct?

23 A. Yes.

24 "Q. Did you read the Court orders?

25 "A. No, sir.

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1 "Q. You didn't go and read the Court orders?

2 "A. No. No, sir.

3 "Q. Did you learn that there was a closure order for the parts
4 of the public land in and around Bunkerville?

5 "A. I -- I -- I heard that there were some closings. They
6 were -- I heard that they were closing some areas off. Yes,
7 sir.

8 "Q. Did you read the closure order? Did you find that in your
9 research?

10 "A. No, sir."

11 Q. Turning to page 138 of Day 1, line 15.

12 "Q. So, this at point [sic], on April 10th, you are well aware
13 of the militia and the call for militia to come to Bunkerville;
14 correct?

15 "A. I was aware there was call on militia to go to Bunkerville
16 the whole time, sir."

17 Q. Taking your attention to page 146, line 12.

18 "Q. I'm going to ask -- yes. I'm done with this exhibit.

19 "You brought -- you brought a handgun to Nevada;
20 correct?

21 "A. Yes, sir.

22 "Q. And you brought a rifle; correct?

23 "A. Yes, sir.

24 "Q. What kind of rifle was it?

25 "A. It's a Saiga 223.

Mark D. Seyler - Direct

1 "Q. And it's an AK platform; correct?

2 "A. Yeah. It's a Kalashnikov platform, sir. AK is a 762.

3 "Q. And you brought the Kalashnikov platform for -- you
4 specifically chose to bring that rifle instead of another rifle
5 you had; correct?

6 "A. Yes.

7 "Q. And why is that?

8 "A. They are better in the -- in the dirt. Yeah. They --
9 yeah.

10 "Q. And you were coming to the desert; correct?

11 "A. Coming to the desert. Yes, sir.

12 "Q. So, if you had to use your firearm, less likely to have
13 any sort of problems, because it's good in the dirt -- with the
14 dirt; correct?

15 "A. Yeah. But I think you are implying, like, in a bad way or
16 anything. We were planning on going shooting while we were
17 here.

18 "Q. All I'm asking is you chose to bring the Saiga over
19 another long gun that you had?

20 "A. In case we were shooting in the desert.

21 "Q. It's a yes or no question.

22 "A. Yes, sir. Yes, sir.

23 "Q. And you brought -- how many magazines did you bring?

24 "A. Two, I believe."

25 Q. And turning to page 148 of Day 1, line 2.

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1 "Q. I'm talking about the Saiga. How many magazines did you
2 have for the Saiga?

3 "A. Two, sir.

4 "Q. And were --

5 "A. I believe.

6 "Q. Were they 30-round magazines?

7 "A. Yes, sir.

8 "Q. And you had those on you the whole time through this
9 event?

10 "A. Not the whole time. No, sir.

11 "Q. Did you have it on the bridge on the 12th?

12 "A. Yes, sir.

13 "Q. Okay.

14 "A. For -- yes, sir. Yes.

15 "Q. And we've already discussed you brought your plates;
16 correct?

17 "A. Yes.

18 "Q. And those fit in the black vest; correct? Just for
19 anybody that doesn't know about that.

20 "A. Oh, yeah. They are ballistic plates. They fit in the
21 vest. Yes, sir.

22 "Q. And you had some Walmart walkie-talkies; correct?

23 "A. Yes."

24 Q. Turning to page 149 of Day 1, line 10.

25 "Q. You brought your gas mask; correct?

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- 1 "A. Yes. Yes. That was in the bag, sir. Yes.
- 2 "Q. And you brought binoculars?
- 3 "A. I believe there -- yes.
- 4 "Q. And you also brought, as you discussed, tents and camping
5 stuff, et cetera; correct?
- 6 "A. Yes, sir."
- 7 Q. Turn to page 163, Day 1, line one.
- 8 "Q. Now, when you get to Nevada, it's about what? 2:00 in the
9 morning and you --
- 10 "A. Yes.
- 11 "Q. Correct?
- 12 "A. Yes.
- 13 "Q. And you pull in and there's --
- 14 "A. About.
- 15 "Q. -- and there's cars pulling in at that time?
- 16 "A. Yes, sir."
- 17 Q. And turning back to page 45 of Day 1, line 1.
- 18 "Q. Now, did you get to Bunkerville?
- 19 "A. Yes.
- 20 "Q. About how long did it take you?
- 21 "A. 12 or 13 hours.
- 22 "Q. Have you ever been to Bunkerville before?
- 23 "A. No.
- 24 "Q. So approximately when do you get to Bunkerville?
- 25 "A. It was late. It was probably around -- between 12:30 and

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1 1:00 a.m.

2 "Q. All right. And it's still the three of you?

3 "A. Yes."

4 Q. Turning to page 166 of Day 1, line 6.

5 "Q. So, you pull guard duty; you go to sleep; you get up in
6 the morning. Correct?

7 "You did guard duty for two hours with Mr. Drexler
8 and Mr. Stewart; correct?

9 "A. Yeah, we watched the front entrance.

10 "Q. Nothing happened; correct?

11 "A. No, nothing did happen. Nobody ever came.

12 "Q. And you go get a couple of hours sleep; correct?

13 "A. Yes, sir.

14 "Q. You get up in the morning, sort of get your stuff
15 together; right? And then each group had to send somebody to,
16 like, a command tent; correct?

17 "A. Yeah, up to the -- up to the tent.

18 "Q. And you were that person; correct? For your little group,
19 you, Mr. Stewart, and Mr. Drexler; correct?

20 "A. Yeah."

21 Q. Turning to page 167, Day 1, line 18.

22 "Q. You were camping next to Mr. Lovelien. That's where you
23 met him, in the militia camp?

24 "A. At the time, I didn't really know that, no. But he is who
25 was my -- I didn't know that was Mr. Lovelien, and he was --

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1 and I don't know that it was necessarily right next door. He
2 was in the same row.

3 "Q. You met him in the militia camp and then ended up coming
4 down in his truck in the morning to the area where the stage
5 was, the rally?

6 "Q. Yes, sir."

7 Q. Turning to page 172 of Day 1, line four.

8 "Q. Each group had to send a guy to the command tent in the
9 morning; correct?

10 "A. To the -- to the barn.

11 "Q. To the barn. And then --

12 "A. We were in front of the barn, I guess.

13 "Q. And then there were groups, like the Arizona State
14 Militia, that appeared to be very organized; correct?

15 "A. The guys that showed up from the other camp?

16 "Q. From Arizona.

17 "A. Yeah, the Arizona State Militia guys that showed up from
18 the other camp.

19 "Q. And you believed, at the militia camp, they asked for your
20 name, because they were somehow running names?

21 "A. I figured, yeah. I assumed."

22 MR. MARCHESE: Your Honor, that's a portion I am
23 going to specifically object to. I think if you read the next
24 three lines in context with what was offered, I think it is a
25 much more telling and much more complete statement than what

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1 was offered.

2 MS. CREEGAN: Which three lines?

3 MR. MARCHESE: 19 through 21.

4 MS. CREEGAN: I don't see how 19 through 21 --

5 THE COURT: All right. Let's go to sidebar.

6 (Sidebar.)

7 THE COURT: Let me look.

8 MS. CREEGAN: We just finished reading at line 18.

9 "I figured they were running names." And then at 19 it begins
10 "Discuss the plan."

11 THE COURT: It's a separate group.

12 All right. So, the last line that was read, the
13 question was "You believed at the militia camp that they asked
14 for your name because they were somehow running names?"

15 And the answer was, "I figured, yeah. I assumed."

16 So, then the next line is the question that the
17 defense wants to ask, which is "And in the morning, is it fair
18 to say there wasn't some set plan, but the plan was fluid;
19 correct?"

20 So they are talking about a different subject matter,
21 a different time of day, and it has nothing to do with the
22 running of names, which is where we left off. So, I don't see
23 that the rule of completeness would justify reading the next
24 three lines.

25 MR. MARCHESE: But just for my purposes to make a

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1 record, the first question is reference to going to the command
2 tent in the morning, to the barn. Then they talk about the
3 organization, the Arizona State Militia --

4 THE REPORTER: I'm sorry?

5 MR. MARCHESE: I'm sorry. I'm trying to make Aaron
6 happy over here. I don't want to get yelled at.

7 The Arizona State Militia. They talk about that.
8 They talk about running names. So, obviously, the reason that
9 the government is proffering this evidence is to try to show
10 that there was a plan, there was some sort of conspiracy, and
11 to show that Mr. Parker, Mr. Drexler, and Mr. Stewart were
12 somehow a part it.

13 So, that's why I would like the question to be asked,
14 from the prior testimony, "And in the morning, is it fair to
15 say that there wasn't some set plan, but the plan was fluid;
16 correct?"

17 "No, there was no set plan."

18 THE COURT: Do you want to respond? I have ruled on
19 the objection, but if you want to respond for record, you may.

20 MS. CREEGAN: Our position is that the rule of
21 completeness is nowhere near that expansive. We haven't
22 chopped up his answer about the Arizona State Militia or about
23 the running of names. That's all that the rule of completeness
24 requires.

25 THE COURT: Okay. All right. Thank you.

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1 (End of sidebar.)

2 THE COURT: We are back on the record. So, the Court
3 has heard arguments and finds that three additional lines are
4 regarding a different event on a different date. And,
5 therefore, the rule of completeness would not require that they
6 be included with this proffer. So, the motion or the objection
7 is overruled.

8 And Ms. Creegan, did you have another section that
9 you wanted to read?

10 MS. CREEGAN: Yes, Your Honor.

11 THE COURT: All right.

12 BY MS. CREEGAN:

13 Q. Agent Seyler, taking your attention back to page 163, line
14 10, this is after a portion you've already read about arriving.
15 Question, line 10.

16 "Q. And you sooner or later come into contact with one of the
17 Bundy sons?

18 "A. I -- I -- I found out later that it was -- yeah. I --
19 I -- I'm not sure if I knew exactly at the time that it was.

20 "Q. It wasn't Ryan or Ammon; correct?

21 "A. I think -- it's so hard. It was three. I had to go back
22 to what I know now and what I don't -- didn't know then and --

23 "Q. That's fine. You don't -- but you understood that it was
24 one of the -- it was a Bundy brother at the time?

25 "A. Yeah. Yes.

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1 "Q. And they were nice to you; correct?

2 "A. They were.

3 "Q. And said, you know, we have a place for you to camp;
4 correct?

5 "A. Yeah. He said there's -- there was different places for
6 me to camp. Yes, sir.

7 "Q. And one was a regular camp and one was a militia camp;
8 correct?

9 "A. Yeah. He said the militia camps are over -- over there.
10 He asked if I was militia.

11 "Q. And you said no?

12 "A. I told him no.

13 "Q. Correct?

14 "A. Yeah.

15 "Q. You weren't in the militia?

16 "A. Correct.

17 "Q. And you stated that you wanted to camp with the militia?

18 "A. Yes.

19 "Q. And that's where you, and Mr. Drexler, and Mr. Stewart
20 went and camped; correct?

21 "A. There were numerous reasons for that, but, yes. Yes, sir.

22 "Q. And --

23 "A. I wanted to know what was true and what wasn't. I figured
24 that's where my best chance of getting information from was.
25 Yes.

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1 "Q. And did you have to check in with anyone that night other
2 than when you spoke with one of the Bundy brothers?

3 "A. Check in? There was a guy at the gate. He asked who we
4 were, if we were militia or not, where we were from, why we
5 came. So, that was -- yeah. That was kind of checking in.

6 "Q. And then you did go to sleep. But before you went to
7 sleep, you pulled guard duty; correct?

8 "A. At the -- at the gate. Yes, sir.

9 "Q. Correct?

10 "A. Yeah."

11 Q. Turning your attention to page 47, line 22.

12 A. Do you mean the second day or the first day?

13 Q. The first day. And I'll back it up to 15. It's a
14 reference to a photo, but we don't need to show the photo.

15 "Q. Correct. Okay. And just what generally is depicted in
16 this photo?

17 "A. I was standing at the back of the crowd, watching the
18 crowd. We were -- we were asked to watch the crowd."

19 MR. MARCHESE: Your Honor, I'm going to object. We
20 are asking what a photo is, and we are not showing the photo.

21 THE COURT: That's your objection, that they need to
22 show the photo because --

23 MR. MARCHESE: Well, the question is "And what is
24 generally depicted in the photo?" And then we don't have the
25 photo.

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1 THE COURT: All right. But he's describing the
2 photo, so the objection is overruled. You can go on.

3 MS. CREEGAN: Sorry. I will ask the question again.

4 "Q. And what is just generally depicted in this photo?

5 "A. I am standing in the back of the crowd, watching the
6 crowd. We were -- we were asked to watch the crowd. Do what
7 was, you know, basically crowd control.

8 "We were told that they asked that Metro had been
9 asked to come do crowd control, because there was a lot of
10 people expected, and they denied that request. So, at that
11 camp that morning, we were asked to -- if we would help by
12 watching the crowd, and show people where to park, and keep
13 them out of the road, and watch for anything suspicious.

14 "We were asked -- the -- nobody ever really
15 elaborated on anything suspicious. I just -- you know, they
16 said if we saw anything strange to find somebody with an
17 earpiece or any -- anybody. Find somebody that -- you know,
18 was -- the only thing -- I guess what I'm trying to say is
19 don't interact by yourself. They told us, don't go do anything
20 by yourself; and find somebody, and then just ask them to come
21 out of the crowd."

22 Q. And turning to page 50 of Day 1 at line 22 in reference to
23 Cliven's speech.

24 "Q. What was your mindset after you heard that speech?

25 "A. Well, after the sheriff spoke, it was -- I thought we

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1 drove a long way for nothing. I thought that they were
2 leaving. That was -- I thought that they were ceasing their
3 operation."

4 "Everything he said on the -- on the stage, I thought
5 that the BLM had put out a press release, and that they were
6 ceasing their operation, opening Gold Butte back up to the
7 public, and removing their -- themselves, their assets from
8 Clark County, I think, is exactly how he put it."

9 Q. And on page 55, turning a bit forward in time, line 2 --
10 page 55 of Day 1. Excuse me.

11 "Q. Whose truck did you get in, if you know?

12 "A. At the time, I did not know. He was our neighbor at the
13 campsite. He gave us a ride over to the stage area that
14 morning. We were getting ready in our truck, and he said
15 there's probably going to be very little parking over there and
16 asked if we wanted a ride, and we said yes."

17 "And so, when we left the stage area, we asked him if
18 he was going with the crowd to watch the cows, and he said
19 yes."

20 Q. Turning to page 123 of Day 1, line 18.

21 "Q. So, after Cliven gives the order, you get back into
22 Mr. Lovelien's truck; correct?

23 "A. Yeah. I didn't know it to be Mr. Lovelien at the time.

24 "Q. But you now you know it's Mr. Lovelien?

25 "A. Yes.

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1 "Q. And he -- and he was dressed in full camouflage; correct?
2 Or had he put on his camouflage jacket by then?

3 "A. I don't recall. I don't think so.

4 "Q. Okay. Because you recall he was standing out in the -- in
5 the rally area, he didn't have the camouflage top on; correct?

6 "A. From the pictures now, yes. At the time, it's not
7 something I would recall.

8 "Q. But from the evidence, he wasn't; correct?

9 "A. Correct.

10 "Q. And you get in his car, and you and Mr. Drexler and
11 Mr. Stewart, they -- they get in the car with you as well?

12 "A. Correct.

13 "Q. And you start heading towards the compound?

14 "A. I thought we were going to -- wherever the cows were --
15 were at, yeah.

16 "Q. To free them by any means; correct?

17 "A. Yes, sir."

18 Q. And turning to page 34 of Day 2, April 10, 2017, line 17.

19 "Q. And you heard the BLM make announcements to disburse?

20 "A. Yeah, that's fair enough. Yes.

21 "Q. And you heard BLM make some announcements referencing
22 court orders; correct?

23 "A. Yeah. Yes, sir."

24 Q. And turning to page 58 of Day 2, line 14.

25 "Q. Were you standing next to someone that asked Siri 'When's

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1 the last time the federal government backed down?'"

2 MR. MARCHESE: Objection. Hearsay. It's double
3 hearsay. It's what someone was telling him what Siri said.
4 Siri is the declarant here.

5 THE COURT: The Siri question?

6 MR. MARCHESE: I'm sorry? Siri, as in you are
7 talking to your iPhone. That's who the declarant is here, and
8 it's what someone is -- the testimony they are about to elicit
9 is what someone said Siri told them. Double hearsay.

10 THE COURT: Ms. Creegan, is it offered for the truth
11 of the matter asserted or for the effect that it had on the
12 listener?

13 MS. CREEGAN: For the effect on the listener.

14 MR. MARCHESE: I would like to know what the effect
15 is.

16 THE COURT: Objection overruled.

17 MR. TANASI: Your Honor, if I could just kind of
18 insert a late objection, too, with respect to the -- the "by
19 any means statement" that he was read in on page 56. There's a
20 page or so after that that describes what "by any means" means.

21 THE COURT: Let's go to sidebar.

22 (Sidebar.)

23 THE COURT: What page, Mr. Tanasi?

24 MR. TANASI: 56, Your Honor, I believe -- 55 is where
25 it was. So, Mr. Marchese asks, "And I used the term 'by any

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1 means.'" And there was an objection, objection.

2 THE COURT: What line on page 56, line 1.

3 MS. CREEGAN: Is this Day 1 or Day 2?

4 MR. TANASI: It's dated as -- let's see. The 6th,
5 Day 1.

6 MS. CREEGAN: It should be Day 1.

7 MR. TANASI: Day 1.

8 MR. MARCHESE: That's in Day 1?

9 MR. TANASI: Yeah. So, Mr. Dickinson -- I'm sorry,
10 Your Honor. I will stop reading it. You are reading the same
11 thing. I know you've -- I guess, for record purposes, there's
12 a description as to what "by any means" means.

13 "The Witness, by any means. So, by any means. They
14 were talking about how it was safely going to be addressed, the
15 cattle. I meant a couple different things."

16 "I figured the sheriff -- so, first of all, by any
17 means. I figured the sheriff was over. He was left. That's
18 where I thought he went, to wherever the cows and the BLM were.
19 So, he never came back, so I didn't understand why he didn't
20 come back to talk to Mr. Bundy."

21 "By any means, I -- we -- there was talk in the crowd
22 of going and staying there until the cows were released. Going
23 to wherever this is. Like I said, I didn't know where it was.
24 Going there and staying there until the cows were released.
25 Setting up a camp on the side of the highway. Being there

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1 until they released the cattle."

2 "Losing my job for staying on the side of the road
3 for that long. Possibly being arrested for trespassing.
4 Closed area maybe. I don't know. There was lot."

5 It goes on and on. And I think the point, Your
6 Honor, is that the government's just kind of leaving that
7 statement out there, hanging out there, because "by any means"
8 has a very negative inference, it has a violent inference.
9 And, of course, that supports their theory. But this is the
10 complete story as to what "by any means" meant as it pertained
11 to Mr. Parker.

12 MS. CREEGAN: What's the page that you want us to be
13 complete to?

14 MR. TANASI: The last page that you had referenced.

15 MR. MARCHESE: Yeah. I mean, it would be our
16 position, and to be fair to all sides, you should take it to
17 page 57. This is Day 26, or Day 1, however you are looking at
18 it, line 10, ending with "to do."

19 MS. CREEGAN: Sorry. My question is what do you want
20 it to be complete to?

21 MR. TANASI: What was just last read into the record.

22 THE COURT: Page 57, "you had to do," line 10; right?

23 MR. TANASI: I think that essentially where it
24 starts. I think it -- yeah. Yes, Your Honor. The end of 57.
25 The end of 57.

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1 THE COURT: What's your response? Do you want to
2 read all of it there? So, you leave off here, right on
3 page 56, line 3?

4 MS. CREEGAN: So I think I actually was quoting from
5 a different section. So, where's the page that I was quoting
6 from originally? Some things are discussed a few different
7 times.

8 MR. MARCHESE: I have your list. I have it. I am
9 closer. Do you want me to just grab it?

10 MS. CREEGAN: I am going to grab my one that is out
11 here.

12 (Off-the-record discussion held between counsel.)

13 MR. MYHRE: Here it is, 124 on Day 1 for them, "By
14 any means." Correct?

15 MS. CREEGAN: So, Your Honor, that quotation that we
16 were doing was from page 124.

17 MR. MYHRE: Day 1.

18 THE COURT: Did you read line 14 through on page 124?

19 MS. CREEGAN: Yes, Your Honor.

20 MR. MYHRE: 15, 1 through 15.

21 THE COURT: All right. So, it's the defense position
22 that on page 124, line 14, where the question is "To free them
23 by any means; correct?" And the answer is "Yes, sir." That's
24 a reference to an earlier --

25 MR. TANASI: It's a reference to Mr. Marchese's

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1 question when he came in --

2 THE REPORTER: I can't hear you.

3 MR. TANASI: I'm sorry. It was in reference to the
4 question that earlier Mr. Marchese had elicited that
5 essentially described what "by any means" meant.

6 THE COURT: On page 56?

7 MR. TANASI: Correct. 56 through 57.

8 THE COURT: What is your response?

9 MS. CREEGAN: The response is this is a direct
10 quotation from a Facebook post that Eric Parker said "by any
11 means" in which he did not qualify that statement. We don't
12 think it's necessary to complete his self-aggrandizing
13 statement. That is his statement which he did in a Facebook
14 post which will be admitted into evidence.

15 THE COURT: All right. Well, I will sustain the
16 objection, because --

17 THE REPORTER: I can't hear you.

18 THE COURT: I am going to sustained the objection,
19 because the last sentence on page 124, line 14, where it says
20 'To free them by any means; correct?'

21 "Yes, sir."

22 Is clearly a reference to an earlier statement. And
23 I realize the defense position is that the earlier statement is
24 the direct examination explanation, but the government's
25 position is that "by any means" is referencing the text or post

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1 that the defendant placed on his Facebook page.

2 MS. CREEGAN: Right. Contemporaneous with the speech
3 ultimatum.

4 THE COURT: Nevertheless, I think it would be
5 misleading in this particular context to allow that to just be
6 hanging when there is an explanation given by the defendant to
7 the government on page 56.

8 All right. So, I'm going to ask you to start at
9 page 56, line 13, through page 57, line 10.

10 MS. CREEGAN: 13 through 10.

11 MR. TANASI: Thank you, Your Honor.

12 (End of sidebar.)

13 THE COURT: All right. So, there were two
14 objections. The first objection was as to the response given
15 by Siri, the computer on the iPhone, when the question was
16 posed. And so I did rule that that's not hearsay, because it
17 wasn't offered for the truth of the matter asserted, so the
18 objection was overruled and the question can be posed.

19 The second objection made was as to the completeness
20 of the statement referring to "by any means necessary." And so
21 that objection is sustained, and the government will read that
22 portion of the transcript as well, even though it's -- I think
23 it's a different day or a different portion, but it is a
24 clarification of that term.

25 This witness was here at the time when the statement

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1 was given, so the government is free to ask for some context
2 from the witness if necessary, because it's not as if the
3 statements were made back to back, but -- so, I will give you
4 some leniency there, so you can set the stage as far as what it
5 is that they are discussing in that question, what it's
6 referencing.

7 BY MS. CREEGAN:

8 Q. Agent Seyler, you had previously testified about some
9 testimony about getting the cattle "by any means." Do you
10 recall that?

11 A. Yes.

12 Q. And I'm going to direct your attention to page 56, at line
13 13, that begins with a statement of the witness. Would you
14 please read that?

15 "A. Somewhere back there, yes.

16 Q. I'm sorry. 56 of Day 1.

17 "A. By any means. So, by any means. They were talking about
18 how it was safely going to be addressed, the cattle. I meant a
19 couple different things. I figured the sheriff -- so, first of
20 all, by any means. I figured that the sheriff was over there.
21 When he left, that's where I thought he went, to wherever the
22 cows and the BLM were. But he never came back."

23 "So, I didn't understand why he didn't come back to
24 talk to Mr. Bundy. By any means, I -- we -- there was talk in
25 the crowd of going and staying there until the cows were

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1 released. Going to wherever this was. Like I said, I didn't
2 know where it was. Going there and staying there until the
3 cows were released. Setting up a camp on the side of the
4 highway. Being there until they released the cattle. Losing
5 my job for staying on the side of the road for however long.
6 Possibly being arrested for trespassing. Closed area, maybe.
7 I don't know. There was a lot."

8 "I never -- like I said before, I never in a million
9 years thought it was going to be such a volatile situation over
10 there. So, this is prior to going over there. I said by any
11 means. I meant that, you know, we would stay there and hold
12 our signs and whatever you had to do."

13 Q. And I'm going to take your attention back to page 58 of
14 Day 2, line 14.

15 "Q. Were you standing next to someone that asked Siri, 'When's
16 the last time the federal government backed down?'

17 "A. Yes, at the camp.

18 "Q. And what came up on Siri?

19 "A. A picture of me."

20 MS. CREEGAN: Court's indulgence for a moment, Your
21 Honor.

22 THE COURT: Yes.

23 (Pause in the proceedings.)

24 MS. CREEGAN: Thank you, Your Honor. Pass the
25 witness.

Mark D. Seyler - Cross

1 THE COURT: Okay. Cross-examination. Mr. Perez on
2 behalf of the Mr. Lovelien.

CROSS-EXAMINATION

BY MR. PEREZ:

5 Q. Good afternoon, Special Agent. My name is Shawn Perez. I
6 represent Ricky Lovelien.

7 A. Good afternoon.

8 Q. I will try to be brief. Earlier this morning, we were
9 talking about the OMA website, Operation Mutual Aid. And you
10 had mentioned something about receiving updates from that
11 website; is that correct?

12 A. Yes.

13 Q. Okay. And then you said that Cheyenne Miller,
14 Mr. Lovelien's sister, was receiving updates?

15 A. Yes, via email, yes.

16 Q. Okay. Email. So, is that -- is that an email to or from
17 website to email address?

18 A. No, the website was used to collect emails of people that
19 were interested in updates, and so the updates that she was
20 receiving were from the Operation Mutual Aid email account.

21 Q. So, it was something that happens automatic?

22 A. No, Mr. Bruckhart and Mr. Payne sent those emails out to a
23 list of people.

24 Q. But the list -- is this list populated automatically, or
25 do they have to select certain people? Do you know?

Mark D. Seyler - Cross

1 A. That list they would have to put somebody on the email
2 list, yes. They would have to go in and add that person's
3 email address to that list that the Gmail account was sending
4 out, yes.

5 Q. Okay. And so every time they do one of these updates, do
6 they actually have to input each of the email addresses, or is
7 it just -- can they put a button and populate that list?

8 A. Yes, it would be saved as a group, and then they could add
9 individuals to the group as they go on.

10 Q. Okay. Now on -- prior to April 12th, Mr. Lovelien was not
11 receiving any updates from OMA; correct?

12 A. He did receive one to the Captain Rick Lovelien email
13 address. That was, I believe, on April 10th.

14 Q. An April 10th?

15 A. It was one of the exhibits that we introduced, yes.

16 Q. Okay. Now, you also mentioned something to the effect
17 that a person could be a member of the website but not
18 necessarily a member of OMA; correct?

19 A. Yes. They would join the website. In order to be a
20 full-fledged member of OMA, they required that you contact Ryan
21 Payne or Jerry Bruckhart.

22 Q. Okay. Was Cheyenne Miller a full OMA member or was she
23 just a member of the website?

24 A. I don't know if she ever contacted them or not. I know
25 she was member of the website. That's all that I know.

Mark D. Seyler - Cross

1 Q. Okay. Now, Ricky Lovelien was not a member of OMA on
2 April 12; correct?

3 A. I don't know if he approached Ryan Payne and asked to be.
4 I don't know.

5 Q. Okay. So, prior to somebody, I guess, requesting to be a
6 member of the OMA website, if a notification was sent from the
7 OMA website, they wouldn't receive it. So -- maybe I'm not
8 very clear on that.

9 But, for example, if OMA -- they sent out this --
10 this notification, and it went to Cheyenne Miller. And if --
11 if Mr. Lovelien wasn't a member, at that time, he would get no
12 notice of what was in that?

13 A. They could send the notice out to whomever they wanted,
14 whether they were members of OMA or not. And so there were a
15 number of the recipients on that email list that went out that
16 I don't know had any association with OMA.

17 So, joining the website and getting an email from
18 their email account are two different things.

19 Q. Okay. How so?

20 A. The website, you could join on the website. And one of
21 the things you did when you joined was give your email address.
22 And then Mr. Bruckhart could take all those email addresses,
23 along with anybody else that he thought might have an interest
24 in his operation, and include it on a group email that he then
25 sent out from the OMA Gmail account.

Mark D. Seyler - Cross

1 Q. Okay. Brian, can we bring up 175, please.

2 THE COURT: Has 175 been admitted or is it just for
3 the witness?

4 COURTROOM ADMINISTRATOR: It's been admitted, Your
5 Honor.

6 MR. PEREZ: Brian, 175.

7 Q. So now this -- this is a -- like a blanket email then;
8 correct? To all those -- all the, I guess, email members of
9 OMA?

10 A. Well, these are people that they emailed this to, yeah.
11 It's a group of email recipients.

12 Q. And now you also said, just a moment ago, that somebody
13 could give them their email address and request information;
14 correct?

15 A. Yes.

16 Q. And then you also said that OMA could just send this off
17 to somebody without a request if they thought that they might
18 be interested; correct?

19 A. Yes.

20 Q. So, these individuals that are listed in this email then,
21 there's no way of really knowing whether or not they requested
22 the information or whether it was just Mr. Bruckhart? Is that
23 his name?

24 A. Yes.

25 Q. Whether it was his decision to put that name in there?

Mark D. Seyler - Cross

1 A. Yes. Some of the individuals I'm -- I know were
2 interested, and they actually joined to website indicating that
3 they were interested in these updates. So, some of them were.
4 It's possible that he may have found email addresses and sent
5 them to others, but I don't know.

6 Q. Okay. Now, on the -- the search warrant for Facebook --

7 A. Yes.

8 Q. -- and the documents that you actually received from
9 Facebook, in what form do you receive that -- that data? Is it
10 just like a digital file?

11 A. Yes. It's a very large what they call a PDF file. So, a
12 series of pages that come and -- for instance, I believe
13 Mr. Lovelien's file had approximately 41,000 pages in it.

14 Q. Right. Okay. And, well, okay. 41,000 total pages?

15 A. Yes. Somewhere in that neighborhood, yes.

16 Q. And we've seen maybe a handful?

17 MS. CREEGAN: Objection. Relevance.

18 THE COURT: Sustained.

19 BY MR. PEREZ:

20 Q. Well, and now I noticed earlier on, you also said that you
21 receive these thousands of pages, and you sift through them to
22 look for relevant information; correct?

23 A. Yes.

24 Q. Okay. And how do you do that?

25 A. Page by page.

Mark D. Seyler - Cross

1 Q. Manually or a digital search?

2 A. No, unless it's an extremely large file, I've always done
3 it manually. We actually go through page by page.

4 Q. Okay. And of those 41,000 pages of Facebook posts or
5 Facebook pages, I guess they are, how many did you go through
6 personally?

7 A. I would have gone through all of them. And I say 41,000.
8 I believe that's what Mr. Lovelien had. It could have been
9 thousands more or thousands less, but that's just my
10 recollection.

11 Q. Okay. Now, when you look at a Facebook post, and I know
12 we talked about, like, the continuity of a conversation, and
13 there would be a space in between the conversation; correct?

14 A. Yes.

15 Q. And that would separate a conversation. How would you
16 know if part of that conversation didn't show up, like, 20,000
17 pages later or 10,000 pages later?

18 A. They are sequential. So, you can go through an entire
19 conversation. At the end of that conversation, there's not
20 only a space but a series of characters that indicate that
21 conversation is over. And then it jumps to another
22 conversation between two different individuals or multiple
23 different individuals.

24 So, one conversation is finished, and it can go --
25 the conversation can go for months, from the time they begin

Mark D. Seyler - Cross

1 talking until the time they are done talking. And then they
2 are done, and then another conversation will begin.

3 Q. Right. And so somebody -- let's say there was a
4 conversation that took place in March. The conversation may
5 not be concluded until mid-April?

6 A. Yes.

7 Q. And how did you make sure that you had the entire
8 conversation in that -- in that, I guess, collection of data?

9 A. We received a complete record from Facebook. That's what
10 we asked for. And so any communications that occurred during
11 the time frame that we asked for were contained.

12 So, we would have gotten nothing after our request to
13 Facebook, but everything up until that time would have been
14 complete.

15 Q. Maybe I'm not being clear enough. Let's say you had a
16 conversation that started on page -- just for -- we will pick
17 967. And there was a continuation of that conversation on,
18 like, 1886.

19 A. Yes.

20 Q. I mean, how -- you know, how do you put that all together
21 to follow that conversation and really figure out what
22 somebody's talking about?

23 A. In that case, the conversation would start on 967, and it
24 would go 968, 969, all the way to the end of the conversation.
25 So you can just scroll down chronologically and read one

Mark D. Seyler - Cross

1 person's response, the other person's response, the other
2 person's response.

3 Q. Oh, so what you are saying then is the Facebook -- the
4 return to the warrant, the Facebook pages -- and I believe
5 we've seen the Facebook page post, they have a number up on the
6 top right-hand side?

7 A. Yes.

8 Q. Okay. And that's -- well, what does that number
9 correspond to?

10 A. That's just the page number. That's the number of pages
11 that were in there. So, I'll have number -- page number 1,
12 page number 100, and all the way down.

13 Q. Well, how do you know though that the conversation on
14 page 967 is -- in that -- that numerical sequence, it's not
15 going to show up somewhere else, you know, 200 pages down the
16 line?

17 I mean, you don't -- it doesn't renumber the pages
18 and move the conversation up; correct?

19 A. I don't think I understand what you're asking.

20 Q. Well, I mean, if we are looking at it linearly. You have
21 this conversation that starts on said date. It runs a little
22 bit. And then, you know, the way Facebook works, there's some
23 more pages.

24 Well, and I looked through the exhibits, and they are
25 numbered on the top. This is Facebook page 967, you know, and

Mark D. Seyler - Cross

1 on, and on, and on. But those don't necessarily follow just
2 conversation to conversation. There could be continuation of
3 that -- that discussion on page 967 on page 1000.

4 A. No, that's incorrect.

5 Q. Okay. And why is that?

6 A. Because they are listed sequentially and chronologically.
7 And so that conversation will not be -- another conversation
8 will not jump in between there. There will be no more Facebook
9 pages in between the beginning of that conversation and the end
10 of that conversation. It will be complete.

11 Q. Okay. Now, that's assuming that the conversation is only
12 on one -- one concept or one -- one --

13 A. No, that would be their entire conversation. So, they
14 could begin talking about baseball and finish talking about
15 Bunkerville. And as long as it's the same two individuals
16 discussing something, and nobody else, then those conversations
17 will all continue in the same conversation.

18 Q. So, a Facebook post with -- we'll use 967 again --
19 discussing militia or MT -- what is it? MT -- Montana State
20 Defense Force.

21 A. Yes.

22 Q. If there was conversation about Montana State Defense
23 force, you know, a thousand pages later, I mean, would it move
24 up in your grouping of Facebook posts?

25 So, like, for example, when we saw these Facebook

Mark D. Seyler - Cross

1 posts, we saw, you know, this particular time UTC, and then the
2 next conversation and the next conversation.

3 On Facebook itself, is that the way we would see it
4 or would we see conversations between you and I, and then, you
5 know, maybe a conversation between Mr. Marchese and I, and then
6 back to you and I. Or, you know, because what you're saying is
7 the conversation's going to show up all in order?

8 A. Yes. And on Facebook, when you view it, there would be
9 individual conversations that you are having that you are able
10 to view on the screen as they go on.

11 So, it -- the return that we get is a compilation of
12 the entire context of the conversation that they had over
13 whatever period of time it was; a day, two years, whatever it
14 is.

15 We get all of that. And, so, when it's the screen,
16 it may look different, but when we view it, we are able to see
17 the entire conversation.

18 Q. Well, if I was looking at this Facebook page and I saw
19 something, you know, scrolling down or scrolling up -- whatever
20 which way that works. I don't have Facebook, so I don't know.

21 If I spotted something on there that looked
22 interesting, and I wanted to comment on it, it might be, like,
23 six months old. In the data you get, will that -- where with
24 will that go?

25 A. That comment will go at the very end. So, if you want to

Mark D. Seyler - Cross

1 comment about something that happened six months ago, in that
2 same conversation, your comment will go on the day that you
3 make that comment maybe six months later. You can't jump back
4 up and insert a comment up above.

5 Q. But it will still show up in that linear fashion?

6 A. Correct.

7 Q. Okay. Now, the status updates on Facebook, I know we saw
8 one exhibit that had several status updates.

9 A. Yes.

10 Q. And just correct me if I'm wrong. The status tells you
11 the day that you become friends, Facebook friends. That's one
12 of the functions that status update will do?

13 A. No, a status update would be different than friending
14 someone on Facebook.

15 Q. So, what -- okay. Well, let's assume I want to know what
16 date I became friends with somebody. Would I look under a
17 status update, or how would I -- how would I determine that?

18 A. No, there would probably be a time line that you could
19 look at on Facebook on the page and see when you actually
20 friended someone. It may require you actually to go into
21 something other than your first page in Facebook to look.

22 When we get it in a search warrant return, we are
23 able to see what the friends are, and then what their activity
24 was during that time frame that we've subpoenaed to do the
25 search warrant -- got a search warrant for the records for. So

Mark D. Seyler - Cross

1 we can see what day they friended someone.

2 Q. Okay. And when -- when did -- well, one step further.

3 Can you tell who is the person that did the friend request?

4 A. Yes. Usually, you can tell whether it's the user that's
5 made a friend request to someone, and they've accepted, or the
6 other way around.

7 Q. Okay. And do you know when Mr. Lovelien and Mr. Bruckhart
8 became friends?

9 A. Not exactly sure of the date. It would have been in
10 April.

11 Q. After -- after the 12th though; correct?

12 A. I'm not sure of the exact date. Certainly possible.

13 Q. Now, Brian, Exhibit 62. Brian, can you scroll down just a
14 bit? Keep going. Okay. Take it back to page 1.

15 Now, this is a list of friends?

16 A. Yes.

17 Q. Okay. Now, all it has is a name, and then I'm assuming
18 that the number there is just the Facebook account number?

19 A. Yes.

20 Q. Okay. Now, for example, on this -- on 62, page 1, Steve
21 Ozburn. How would I find out when that person became a friend?
22 How would you do that?

23 A. Maybe it's possible he became a friend during the time
24 frame of the records that we requested. Up above, in this
25 Facebook return, it would have listed what day he became

Mark D. Seyler - Cross

1 friends with -- with Mr. Ozburn.

2 Q. What do you mean up above?

3 A. It would have been in one of the earlier pages of the
4 Facebook return.

5 Q. Brian, go -- let me see the top of this page.

6 So, where it says, page 76, so it might have been
7 maybe page 75?

8 A. Yes, it could have been. And there's a series of pages at
9 the beginning of the Facebook return that contain more
10 administrative information rather than messages. So, it would
11 have been in those, in that.

12 And I admit. I could be wrong. It could be shortly
13 after this page or shortly before it. But it would have been
14 in those first set of pages that Facebook provided us the
15 return with more administrative information rather than
16 messages.

17 Q. All right. So now on this list of friends that's in -- in
18 this exhibit -- I mean, some of these people could have been
19 friends, you know, for years. Well, however long Facebook's
20 been around. And some of them might be newly added?

21 A. Yes.

22 Q. Is that correct?

23 A. Yes.

24 Q. Okay. Now, Brian, Exhibit 54.

25 Okay. Now, refresh my memory. Is this a Facebook

Mark D. Seyler - Cross

1 post?

2 A. Yes, it is.

3 Q. Now, is it from Operation Patriot Rally Point?

4 A. Yes. It's made by the user of Operation Patriot Rally
5 Point on their Facebook page.

6 Q. Okay. Now, if I have a Facebook page, or whatever you
7 call it, Facebook account, how would this show up on my
8 Facebook account?

9 A. It would show up in your time line of where you posted
10 things on your wall of your Facebook page.

11 Q. Well, this was posted by Operation Patriot Rally Point;
12 correct? It wasn't posted by -- for example, it wasn't posted
13 by Mr. Lovelien; was it?

14 A. Correct. This is by the user Operation Patriot Rally
15 Point.

16 Q. Okay. And so in order for it to show up on my Facebook
17 page, what would I have to do to have this show up?

18 A. You could share that on your Facebook page. You see the
19 option that you have to share or to comment or like, one of the
20 things you could do is share it on your own Facebook page.

21 Q. Okay. Now, when you share something on Facebook, my
22 understanding is that anyone that has access to your wall will
23 also see it on their Facebook page; correct? Depending on the
24 settings.

25 A. Depending on the settings. It can show up in someone's

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1 Facebook page of things they may want to read of their friends,
2 yes.

3 Q. So, if it's wide open, I mean, even I don't agree with
4 Operation Patriot Rally Point, it might show up with my
5 Facebook page?

6 A. If you're friends with Operation Patriot Rally Point, it
7 may show up as something you may want to view, but it's not
8 going to show up as something that you posted.

9 Q. But if I'm friends with someone who might be a member of
10 Operation Patriot Rally Point, and they share it, would it show
11 up on my web -- on my Facebook page?

12 A. If you are friends with someone that posted this, you may
13 get an option to click on it and look at it, yes.

14 Q. Okay. Well, now you're talking about an option. So,
15 you're talking about, like, a hyperlink?

16 A. Yeah. Yes.

17 Q. Okay. Well, on the Facebook page, does it give me any
18 information other than, you know, there's a posting by
19 Operation Patriot Rally Point?

20 A. It may show you the title, the subject of what it's about.

21 Q. Okay. Now, sometimes these postings are a little
22 misleading; correct? You've seen them on Facebook I'm sure.

23 A. Some of the postings on Facebook are misleading, yes.

24 Q. And so the idea is to get you to click on the hyperlink?

25 A. Some people do that on Facebook, I think, yes.

Mark D. Seyler - Cross

1 Q. Okay. All right. Now, Brian, Exhibit 56.

2 Now, this is a private message; correct?

3 A. Correct.

4 Q. Okay. And this is between Mr. Payne and Mr. Kessler?

5 A. Yes.

6 Q. Now, and no one else can see this; correct?

7 A. Yes.

8 Q. Okay. Now, is there -- and there's no way, really, to
9 verify if -- if, you know, like, for example -- Brian, can you
10 move this up just a little bit so I can see the last line?

11 There you go. That's good.

12 Okay. So, for example, on -- looks like 4/9/2014, at
13 1:22:35 UTC, it says "We're in communication with Cliven Bundy.
14 He says help. Could use more."

15 There's no way to really guarantee or corroborate
16 that this individual was in contact with Mr. Bundy; is there?

17 A. I know that individual's in contact with Mr. Bundy,
18 because I have seen his telephone records.

19 Q. Okay. Let's just take, you know, something somebody posts
20 on Facebook. And, I mean, we've all seen this every day with
21 fake news. I mean, someone can post something on Facebook
22 that's not necessarily true; correct?

23 MS. CREEGAN: Objection. Relevance.

24 THE COURT: I don't see the relevance, Mr. Perez.

25 MR. PEREZ: Well, Your Honor, there's a lot of

Mark D. Seyler - Cross

1 Facebook posts on here. There's quite a few things. I am
2 asking him -- well, we'll start over again.

3 Q. So, "We're in communication with Cliven Bundy." That's
4 what it says. And you -- when you gathered this Facebook post,
5 what did you do to corroborate that Mr. Payne was, in fact, in
6 communication with Cliven Bundy?

7 MS. CREEGAN: Object. This is the government's case,
8 not particularly one witness's case. It's not their obligation
9 to corroborate all the information.

10 THE COURT: Sustained.

11 BY MR. PEREZ:

12 Q. Do you know if anyone corroborated what -- the
13 information -- strike that.

14 Obviously, somebody gathered this information and
15 somebody reviewed it; correct?

16 A. Yes. I did.

17 Q. You did. Okay. So, now, did you -- when you were looking
18 at these 41,000 pages of Facebook posts, I mean, did you
19 corroborate any of the information with another source?

20 A. Frequently, yes.

21 Q. Okay. And what did you use to --

22 THE COURT: Do we need to take a break?

23 MARSHAL: Yes, Your Honor.

24 THE COURT: We are going to go head and take --
25 should we take our 10-minute break?

Mark D. Seyler - Cross

1 Let's go ahead and take a 10-minute break. The jury
2 is reminded not to discuss this case with anyone, nor to read,
3 or listen to, or view anything regarding this case, nor perform
4 any independent research or investigation. If you have a
5 question, please write it down. We'll collect those when we
6 are done with the witness before the witness leaves. And do
7 not form any opinion.

8 So, we'll have you back here in about 10 minutes or
9 so, so you can stretch and walk around.

10 (Jury out.)

11 THE COURT: All right. You can go ahead and be
12 seated. We are still on the record. Go ahead and sit down.

13 It was brought to my attention, and it's something
14 that you all need to remember that you need to push the
15 microphone button to off if you are going to be having
16 discussions. Which you are entitled to have discussions,
17 obviously, with your clients and co -- other counsel and so
18 forth, but you need to push the off button.

19 When we went to sidebar, I think it was the last
20 sidebar, to discuss whether or not there should be additional
21 information from the transcript added to the testimony that was
22 being elicited from this particular witness, Mr. Stewart said
23 very loudly "Show the jury everything." And it was heard clear
24 across the room where the jurors are.

25 So, number one, you know, I give this admonition that

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1 you can't make any statements in agreement or disagreement with
2 anything that's going on in the courtroom, and especially not
3 within earshot of the jurors that loudly.

4 So, I'm going to let it go this time, because I don't
5 know if it was the microphone or if your voice was that loud
6 that it carried over, but I really thought about putting you
7 back in the cell. So, please, you have to contain yourself and
8 your emotions, and don't make any statements in front of the
9 jury, especially if we are all at sidebar. That's an
10 opportunity that you should not be tempted to take advantage
11 of, because you will end up sitting in the holding cell for the
12 remainder of the day.

13 The second issue is, there's a concern about whether
14 Juror No. 4 is being attentive. Does anyone else notice
15 anything that you want to place to record?

16 MR. LEVENTHAL: Yes, Your Honor.

17 THE COURT: Go ahead, Mr. Leventhal.

18 MR. LEVENTHAL: I noticed Juror No. 4 was nodding his
19 head, sort of bobbing his head back and forth. He was out for
20 a good portion of Mr. Perez's cross-examination.

21 I also had the marshal take a look, and he agreed
22 that he saw him out as well. His head was bobbing, actually
23 bobbing. And then he -- I think when there was an objection,
24 he woke up, and he rubbed his eyes and he yawned a little bit,
25 so he was out sleeping.

Mark D. Seyler - Cross

1 MR. TANASI: I saw it as well, Your Honor.

2 THE COURT: All right. So, would you like me to
3 bring him in so we can question him about it?

4 MR. TANASI: Please, Your Honor.

5 MR. LEVENTHAL: Please.

6 THE COURT: All right. So let's go ahead and call in
7 Juror No. 4.

8 Let's go and let the witness take a stretch. Why
9 don't you go and take a stretch, so you are not sitting here
10 when we are talking to the juror.

11 COURTROOM ADMINISTRATOR: And counsel, just to be
12 clear, we are talking about --

13 MR. MYHRE: For the record, Your Honor, just for the
14 record --

15 THE REPORTER: Please use the microphone.

16 THE COURT: Yes, use your microphone, please.

17 MR. MYHRE: For the record, Your Honor, we observed
18 No. 4 as well, or my co-counsel have. And he -- they did not
19 notice that he was nodding off at all. He was blinking, but he
20 was not nodding off. Have I got that correct?

21 MR. TANASI: Your Honor, if I can speak to it. And I
22 noticed it, and then I started actually recording the times
23 that it occurred. 4:02 to 4:05. 4:10 to 4:14. 4:14 until
24 we've just taken our break.

25 MR. LEVENTHAL: And again, the marshal saw it. He's

Mark D. Seyler - Cross

1 here.

2 MARSHAL: Yes.

3 THE COURT: All right. Well, we will ask him. We
4 will ask the witness or the juror.

5 (Juror No. 4 entered the courtroom.)

6 THE COURT: Anywhere is fine. So, this is Juror
7 No. 4. Thank you for coming in. Go ahead and sit down. I
8 just need to ask you a couple of questions. It's not meant to
9 embarrass you or anything.

10 But I've been told -- I didn't see it myself but I
11 have been told that you might be having trouble staying awake,
12 and that you might be nodding off during the afternoon. Is
13 that right?

14 JUROR NO. 4: Yes.

15 THE COURT: All right. So, do you feel that you've
16 missed some information? How much information do you think?
17 How long were you out for?

18 JUROR NO. 4: Probably like 30 seconds. Spurts.

19 THE COURT: All right. So, are you suffering from
20 any illness, or are you working nights, or are you taking
21 medication?

22 JUROR NO. 4: None of the above. No. Just trying to
23 find a rhythm to stay awake. That's all.

24 THE COURT: All right. Do you generally -- I am
25 trying to remember. Are you the juror that works nights and

Mark D. Seyler - Cross

1 sleeps days generally?

2 JUROR NO. 4: No, I usually work the 4:00 a.m. shift,
3 so I did change from waking up at 2:00 in the morning to about
4 6:00. So, usually I get off of work at 12:30.

5 THE COURT: Do you usually get off at work at
6 12:30 in the afternoon?

7 JUROR NO. 4: Correct.

8 THE COURT: And then do you usually go to sleep?

9 JUROR NO. 4: Well, no. I go to sleep about
10 8:00 usually on -- to wake up at 2:00 a.m.

11 THE COURT: Okay. All right. Well, obviously, my
12 concern is you missing information and falling asleep again.

13 JUROR NO. 4: Okay. If I feel that I am --

14 THE COURT: Do you have a plan for that? Do you have
15 a plan to stop that from happening again?

16 JUROR NO. 4: Yes, I will implement a plan. If
17 I'm -- feel that I am going to fall asleep, I will just raise
18 my hands and ask for a break if necessary. I doubt that it
19 will continue. This is just day two, so I'm pretty sure I'm
20 just acclimating to the new schedule.

21 THE COURT: All right. All right. Well, thank you.

22 JUROR NO. 4: Thank you.

23 THE COURT: Thank you.

24 (Juror No. 4 left the courtroom.)

25 THE COURT: All right. Well, the Court is satisfied

Mark D. Seyler - Cross

1 that juror did fall asleep. He says that he does think that he
2 was out for 30 seconds, and that he is adjusting to a new sleep
3 schedule, because his work hours are different than our
4 courtroom hours.

5 I don't think that it's a basis to excuse him yet,
6 but he's certainly number one on my list if there's another
7 problem. And he did indicate that he does have a plan to be
8 able to comply with this and that he will raise his hand next
9 time he feels sleepy, so that we can take a break.

10 Of course, if anyone sees him sleeping again, please
11 go ahead and raise your hand and tell me right away, so that we
12 can all sort of catch him and confirm.

13 And thank you to the marshal for pointing it out
14 while it was still happening, so we could catch it before it
15 was too late.

16 Does anybody else want to place anything on the
17 record?

18 MR. LEVENTHAL: Your Honor, just briefly. It was
19 more like 10 minutes. So I would -- I would tell you that I
20 watched him, we watched him for about 10 minutes. So, him
21 sleeping for about 30 seconds, that's not true. He missed
22 about 10 minutes of Mr. Perez's cross.

23 THE COURT: Mr. Myhre.

24 MR. MYHRE: I have -- we differ with Mr. Leventhal's
25 timing of this. We observed them, watching them, and it was

Mark D. Seyler - Cross

1 watching the jurors, watching the defense counsel, looking at
2 the juror. And we did not detect that he was asleep. We saw
3 that he was blinking his eyes with his head nodding. But in
4 terms of a 10-minute period, that's a long time. I think we
5 would have noticed if it was 10 minutes.

6 THE COURT: Yeah.

7 MR. TANASI: Your Honor, again, I specifically took
8 the notes down just for this purpose. 4:02 to 4:05. 4:10 to
9 4:14. 4:14 to whichever it was that Your Honor took the break.

10 Mr. Myhre's recitation of him noticing us noticing
11 them also could demonstrate that there's some time there that
12 he missed us noticing them, noticing them, losing all the
13 noticing. But, I specifically categorized this -- cataloged
14 this rather for this purpose.

15 THE COURT: Well, the Court did notice that he was
16 specifically fidgety, and I wasn't sure if he needed to use the
17 bathroom or what. But he was fidgety earlier, so maybe he was
18 trying to keep himself awake by moving around some more.

19 But the juror thinks he was only out for 30 seconds,
20 and this is the first time it's been brought to my attention.
21 So, if it happens again, you need to bring to it my attention
22 so we can do something about it right away.

23 MR. MYHRE: Your Honor, just one -- I'm sorry.

24 THE COURT: Sure.

25 MR. MYHRE: Are we done with the juror?

Mark D. Seyler - Cross

1 THE COURT: Yes.

2 MR. MYHRE: Okay. I just wanted to add to -- with
3 respect to Mr. Stewart. Yesterday, at sidebar, the agents who
4 are seated behind me noticed Mr. Stewart mouthed the words
5 "Because it's true." And I don't recall the exact context
6 of -- it was some dispute that we had that led us all to
7 sidebar.

8 So, these gestures that are continuing in the
9 mouthing, and also there was another very animated conversation
10 between Mr. Parker and Mr. Stewart while we were at sidebar?

11 (Conferring with others.)

12 MR. MYHRE: About the -- yes, it was at sidebar today
13 as well between Mr. Parker and Mr. Stewart. At the point
14 when -- also, when Mr. -- excuse me -- Agent Seyler identified
15 Defendant Lovelien, he identified. He said he was wearing
16 glasses -- sunglasses on top of his head.

17 At that point, Lovelien -- Defendant Lovelien pulled
18 his glasses off and was looking at them to show they weren't
19 sunglasses. He was waving them like this.

20 Again, it's communication with the jury. We had made
21 our objection earlier, Your Honor, with respect to them facing
22 the jury. And we are concerned. We have Mr. Parker here who
23 periodically is reading what appears to be his Bible in front
24 of the jurors.

25 I don't know if that's meant to convey some sort

Mark D. Seyler - Cross

1 of -- that he has some religious affiliation. But these are
2 all communications that the government believes are
3 inappropriate, especially in their proximity to the jury and
4 the fact that they are facing the jury as well.

5 THE COURT: Well, I am not going to order Mr. Parker
6 that he can't read his Bible if he wants to, but he certainly
7 can't display it to the jury in any kind of an attempt to
8 influence the jury or to communicate to the jury any
9 information.

10 Likewise, with Mr. Stewart and Mr. Lovelien, you are
11 not to communicate with the jury or with anyone else or to make
12 any kind of expression.

13 All right. So, let's go ahead and get the jury back
14 in, so we can get a little bit more done with cross, and we
15 will invite Agent Seyler to come back in as well.

16 (Pause in the proceedings.)

17 COURTROOM ADMINISTRATOR: All rise.

18 (Jury in.)

19 THE COURT: The jury may go ahead and be seated.
20 Everyone else may be seated as well.

21 All right. Mr. Perez, on behalf of Mr. Lovelien, you
22 can continue with your cross-examination of FBI Special Agent
23 Seyler.

24 MR. PEREZ: Thank you, Your Honor.

25 Q. Special Agent, I believe before our break, we were

Mark D. Seyler - Cross

1 discussing corroboration.

2 A. Yes, sir.

3 Q. And in the course of your investigation, when you found a
4 relevant Facebook post, what did you do to try and corroborate
5 what was being said?

6 A. It would depend to the Facebook post. So, if I already
7 knew something about the individual, that they were somewhere,
8 and they were merely posting that they were in that location, I
9 already had corroboration.

10 But some of the things I could do would be to match
11 it up with telephone toll records, to look for other places on
12 Facebook or around the Internet where there was similar
13 activity, to look at photographs to see if the person was there
14 as well, interview witnesses. A number of different things you
15 can do.

16 Q. Right. Okay. Well, okay. Well, let's change from
17 Facebook just for a minute.

18 The phone records -- I believe it's Exhibit 187.
19 Okay. That's correct. Okay. Now, this is -- these are
20 telephone calls that were both made by Mr. Lovelien and
21 received by Mr. Lovelien; correct?

22 A. Yes.

23 Q. Let me ask you, from memory, do you recall the time of --
24 where all the protesters were gathered in the wash, and SAC
25 Love was at the gate. I think that's called -- what? Post 2?

Mark D. Seyler - Cross

1 Is that Post 2? Post one? I don't know. It's the gate right
2 there.

3 Do you recall what time of the day that was?

4 A. No, I don't.

5 Q. Okay. Did you ever establish any time lines at all in the
6 things that you were doing as far as where different
7 individuals were at different times of the day, or is that
8 beyond what you were doing?

9 A. Only as it relates to their telephone and Facebook
10 conversations and some limited Internet activity, but not where
11 they were with photographs. Some other agents have done that.

12 Q. Okay. So, if I could just draw your attention to
13 April 12th at -- well, let's start at 12:19, 12:19 p.m.

14 Now, I'm assuming that's Nevada time; correct?

15 A. Yes.

16 Q. And who did Mr. Lovelien call?

17 A. Made a call to his voice mail.

18 Q. Okay. And how long was he on that call?

19 A. Approximately two minutes.

20 Q. Okay. So, I mean, the assumption would be that he was
21 probably retrieving messages; correct?

22 A. Yes.

23 Q. Okay. Now, at 12:32, Mr. Lovelien placed a four-minute
24 call; correct?

25 A. Yes.

Mark D. Seyler - Cross

1 Q. And who was that call to?

2 A. To Cheyenne Miller.

3 Q. And it does say it was four minutes; correct?

4 A. Yes. It would have been approximately four minutes. The
5 telephone company rounds to the nearest minute, yes.

6 Q. Okay. Now, speaking of rounding calls, now, there is a --
7 Brian, if you could, is that the top of the page? I can't tell
8 from here.

9 Okay. There we go. Now, on 4/7 at 12:26 p.m.,
10 Mr. Lovelien calls Mr. Payne; correct?

11 A. Yes.

12 Q. And he's on the phone for approximately nine minutes?

13 A. Yes.

14 Q. Right. Do you know the substance of that phone
15 conversation from your investigation?

16 A. I can make several assumptions based on Mr. Payne's other
17 conversations at that time.

18 Q. Okay. But only assumptions; correct?

19 A. Correct.

20 Q. Now, at 9 -- let's see -- 9:48 on the 10th -- well,
21 actually, let's -- let's go up again for a second. Back to the
22 7th.

23 Now, I notice there's two calls up here, the 406.
24 There's nothing in the notes. Do you know whose numbers those
25 are?

Mark D. Seyler - Cross

1 A. Yes, I -- I do know who one of those numbers belonged to.

2 Q. Who is that, and which number?

3 A. The 293 number. (406)293-2741, I believe that belongs to
4 a chiropractor in Libby, Montana.

5 Q. Okay. Now, that's a pretty short conversation, one
6 minute. So, it could be -- it could be a -- well, let me ask
7 you.

8 Would -- based on what you know, if Mr. Lovelien was
9 to call someone and hang up, would it still show as one minute,
10 or does it require the phone to actually connect on the other
11 side?

12 A. It could show up as one minute if he hung up.

13 Q. It could?

14 A. Yeah.

15 Q. So misdial? I do it all the time. I sit on my phone. So
16 that would show up?

17 A. Could be. I think the phone call may actually have to go
18 through, so they could answer and then he could hang up.

19 Q. Okay.

20 A. Or you could get someone's voice mail and hang up.

21 Q. Okay. All right. So then, for example, on -- well, let's
22 see. On 4/10, there's five phone calls made starting at 10:18
23 in the morning to 2:30 in the afternoon to Mr. Payne.

24 A. Yes.

25 Q. And those are all one minute?

Mark D. Seyler - Cross

1 A. Yes.

2 Q. So, we have really no way of knowing whether or not
3 Mr. Lovelien actually spoke to Mr. Payne?

4 A. Correct.

5 Q. Okay. Brian, scroll up a little bit.

6 And the same thing with -- on -- on 4/12, at 10:02,
7 there is a one minute or less call to Randy Eaton; correct?

8 A. Yes.

9 Q. Now, where was Randy Eaton on 4/12?

10 A. Kalispell, Montana.

11 Q. He was in Montana?

12 A. Yes.

13 Q. So, he was not at Bunkerville?

14 A. Correct.

15 Q. Okay. You can take that down, Brian. Thank you. Brian,
16 bring up 188, please.

17 Now, 188, if I'm not mistaken, I think it's -- what?
18 Like, four pages? It's got the 7th, the 8th, the 9th, the
19 10th, 11th, 12th?

20 A. Yes, all those dates.

21 Q. Six pages. Okay. And this is a summary of what you
22 observed on Facebook and what you observed on phone records;
23 correct?

24 A. Some of what I observed, yes.

25 Q. Okay. And why do you say "some of"?

Mark D. Seyler - Cross

1 A. It would have been too voluminous to put everything on
2 there, and so I just put some of the information on there.

3 Q. Okay. So, for example, let's go to the 12th. So, it
4 was -- it was -- it was too voluminous to put on there that at
5 12:32, Mr. Lovelien called his sister and spoke for four
6 minutes?

7 A. At the time we prepared this chart, yes. It was not
8 something we chose to put on the chart.

9 Q. Okay. All right. Back to the 7th. Now, at 12:30 on the
10 7th, there's a Facebook post. Now, telling, you know, other
11 militia leaders or whatever to contact Ryan Payne at OMA;
12 correct?

13 A. Yes.

14 Q. So, Ryan Payne would be considered to be in charge?

15 A. He indicates that he's setting up security ops, yes.

16 Q. Well, more than just security ops though. Wasn't Ryan
17 Payne more than just security?

18 A. Oh, yes. He was the coordinator of the militia effort,
19 yes.

20 Q. Okay. Now, did -- in your observing these Facebook posts,
21 did you come across any Facebook posts where Mr. Lovelien
22 actually says, you know, "Contact me"? Or does he always refer
23 people to Mr. Payne?

24 A. I believe some of his Facebook posts to the MTDF group, he
25 indicated "Contact me or Ryan Payne."

Mark D. Seyler - Cross

1 Q. Okay. Now, that was just to his specific militia group in
2 Montana; correct?

3 A. Yes, anybody in his Facebook, yes.

4 Q. Okay. And do you know how many members the MTDf had?

5 A. I don't. Their Facebook group had maybe approximately 60.
6 I don't know for sure.

7 Q. Maybe 60 Facebook friends?

8 A. Correct.

9 Q. But not necessarily members?

10 A. Yes. I don't know how they maintained their membership
11 rolls.

12 Q. Okay. You can take that down Brian. Exhibit 37.

13 (Exhibit 37 being played.)

14 MR. PEREZ: No, don't play it. Actually, take that
15 down. I don't need it on there.

16 Q. The -- now, the Bundys had a Facebook page as well;
17 correct?

18 A. Yes.

19 Q. And do you recall how many Facebook friends they had?

20 A. No.

21 Q. We didn't see an exhibit of the Bundy Facebook page; did
22 we?

23 MS. CREEGAN: Objection. Relevance.

24 MR. PEREZ: Well, we are talking about the Bundy
25 Ranch. All this is Facebook.

Mark D. Seyler - Cross

1 THE COURT: You said "We did not see." That's
2 misleading.

3 BY MR. PEREZ:

4 Q. Well, okay. You've seen the Bundy Facebook page?

5 A. There were several pages associated with the Bundy family.
6 There was one that was called the Bundy Ranch Facebook page,
7 yes.

8 Q. Who set those up?

9 A. A number of people may have set those up.

10 Q. So, it wasn't necessarily the Bundys?

11 A. Some of them could have been set up by other individuals.
12 Some of them were clearly set up by the Bundys.

13 Q. Okay. Well, that leads me to something else. So, if --
14 let's talk specifically about Cheyenne Miller.

15 Cheyenne Miller could post to the Montana Defense --
16 the MTDF website or Facebook?

17 A. Facebook group, yes.

18 Q. And if she was to post something from there, is it
19 possible that that post would reflect that it was posted by
20 Mr. Lovelien?

21 A. No.

22 Q. And why is that?

23 A. Because it would have been posted from her Facebook
24 account.

25 Q. And if she had access to his Facebook page?

Mark D. Seyler - Cross

1 A. You mean if he had given her his password, and he was
2 actually --

3 Q. Right.

4 A. Yes, anybody could do that if you give their them your
5 password.

6 Q. All right. Now, during the time of the events on the
7 12th, did Mr. Lovelien post anything that you are aware of on
8 Facebook?

9 A. Not to 12th, no.

10 Q. Okay. How about on the 11th?

11 A. Not to my knowledge.

12 Q. When was the last Facebook post that you saw by
13 Mr. Lovelien?

14 A. I believe it would have been approximately the 10th.

15 Q. Okay. Now, do you know when Mr. Lovelien actually arrived
16 in Bunkerville?

17 A. I do.

18 Q. If you know?

19 A. I do. I have to refer to the chart.

20 Q. That's fine. If you could tell, that would be great.
21 What day? What time?

22 A. I believe it was approximately 12:30 when his sister
23 posted that he had arrived on the 10th.

24 Q. So, that would be 12:30 Nevada time?

25 A. Correct. That's when I think her post went up.

Mark D. Seyler - Cross

1 Q. Okay. Now, as far as, like, the time signatures, I have
2 seen this UTC and different times signatures. And how do we
3 know what time it was actually posted?

4 I mean, there's a big time difference between,
5 obviously, like, for example, here and Pennsylvania. I think
6 it might be three hours. If I posted something here and
7 somebody saw it in Pennsylvania, what time signature would be
8 on that post?

9 A. If someone was viewing it in Pennsylvania, it would show
10 up as the time that they're viewing it there on their own
11 Facebook page. So, for instance, if somebody posted something
12 at, I guess, maybe noon on -- in Las Vegas, and somebody was
13 viewing it in Pennsylvania, they may be looking at it, and it
14 may say it's, you know, 2:00 or 3:00 o'clock.

15 Q. So that UTC time signature in there doesn't really -- it's
16 not like a standard -- like Greenwich Mean Time, you know, we
17 have a 24-hour clock or whatever.

18 We can say, yeah, it was posted at 8:00 a.m. in
19 London, and, you know, might be, you know, 7:00 in the morning,
20 or whatever the time difference is. You know, it wouldn't have
21 just one particular time signature?

22 A. No, that's the purpose of Facebook providing us their
23 records with the UTC time as the only time. Therefore, we are
24 able to convert what time it would have been whenever somebody
25 viewed it or made the post.

Mark D. Seyler - Cross

1 So, that's why Facebook provides us just the UTC
2 time. That is exactly when it occurred.

3 Q. So, that's -- that's the time it was posted, not the time
4 it was viewed?

5 A. Correct.

6 Q. So, for example, if OMA posted something that showed up on
7 Mr. Lovelien's wall, the time that you received from the
8 Facebook records is not necessarily the time that Mr. Lovelien
9 saw it? I mean, there's no way to know; right?

10 A. No way to know when someone viewed something, no.

11 Q. Yeah, when they view it. I mean, is there a way to say,
12 well, you know, he either saw it or didn't see it?

13 A. Sure. If they share it or like it at a certain time, it
14 will time stamp when they did that.

15 Q. Okay. Let me ask you about likes. That came up on one of
16 the posts. Mr. Lovelien liked a particular message or posting.

17 Physically, how do you do that with Facebook?

18 A. All you have to do is click on "like."

19 Q. Can you unlike it if you clicked on it?

20 A. I believe so, yes.

21 Q. And when you like something on your Facebook page, does it
22 send, like, a notification to the originator of that Facebook
23 post?

24 A. I'm not sure that it sends a message to them, but it is
25 possible to look about how many likes you have on your page,

Mark D. Seyler - Cross

1 and you are able to see how many people have liked a certain
2 post. And to some degree, depending on the settings, you can
3 see the identities of those people that, in fact, liked your
4 post.

5 Q. Okay. So, on my Facebook page, then it would say liked
6 by, and then it would have everybody listed?

7 A. You may have to actually search for that on there, but it
8 is one of the possibilities. And it depends on their settings
9 as well, yes.

10 Q. Did you happen to notice anything like that on the MTDF
11 Facebook page?

12 A. We didn't have access to the MTDF Facebook group.

13 Q. And why was that?

14 A. It was a private group, so we didn't have access to it.

15 Q. You didn't obtain access to that through a search warrant?

16 A. We attempted to. Facebook could not provide us records
17 for that for whatever reason.

18 Q. Okay. So, you never saw the MTDF website?

19 A. The Facebook group? No.

20 Q. Well, Facebook group. Did they have another website?

21 A. MTDF? Yes, they did at one time, yes.

22 Q. And did you obtain those records as well?

23 A. We didn't obtain those records. That website was closed
24 by the time these events occurred.

25 Q. Well, I mean, couldn't you have obtained those with a

Mark D. Seyler - Cross

1 warrant?

2 A. Not unless the judge wanted to believe that those were
3 somehow relevant to this investigation. We could only obtain
4 what was relevant to this investigation. So, something that
5 occurred several months earlier, that was not relevant, we
6 wouldn't have asked for a warrant on that.

7 Q. So, well, I mean, the Montana Defense Force website would
8 certainly be relevant, if the Montana Defense Force was
9 involved in this Bunkerville experience; wouldn't it?

10 A. I had no information that any of the other members, in the
11 time frame long before this event happened, were ever
12 discussing this or doing anything about with it. So, no. We
13 had no probable cause to go to the judge and ask for those
14 records.

15 Q. Okay. And speaking of members, I mean, how many MTF
16 members actually came to Bunkerville?

17 A. Rick Lovelien, Ryan Payne, James Lardy, Nic Whiting, and a
18 man from Idaho. And I'm not sure of the others, but that would
19 be --

20 Q. Ryan Payne wasn't a member of the Montana Defense Force;
21 was he?

22 A. He was member of their group, yes. The Facebook group.

23 Q. Facebook group. Now, I'm not talking about Facebook
24 groups, because you have already told me that I could be a
25 member of OMA Facebook, but it doesn't necessarily mean that

Mark D. Seyler - Cross

1 I'm OMA; correct?

2 A. Correct.

3 Q. And it's the same thing with Montana Defense Force?

4 A. Again, I don't know how they maintained their membership
5 rolls, whether they were considered a member, not a member.
6 That's not important to us.

7 Q. If you don't know how they maintained their rolls and who
8 was in there, how do you know that Ryan Payne was a member?

9 A. I knew that he was member of the Facebook group. I
10 thought that's what you were asking.

11 Q. But not in the militia itself?

12 A. Again, I don't know if he was or wasn't.

13 Q. Okay. Now, on -- we saw a Facebook from Mr. Lardy.

14 A. Yes.

15 Q. And Mr. Lardy, in essence, resigned from the Montana
16 Defense Force; correct?

17 A. That was his statement, yes.

18 Q. Okay. And he went to the West Mountain Rangers; correct?

19 A. Yes.

20 Q. Now, the West Mountain Rangers was Ryan Payne?

21 A. His group, yes.

22 Q. His group. Not a Facebook page. His actual group?

23 A. Correct.

24 Q. Okay. And if I'm not mistaken, I believe that Mr. Lardy
25 resigned from the Montana State Defense Force for tactical

Mark D. Seyler - Cross

1 reasons?

2 A. That was his statement, yes.

3 Q. Okay. Do you know what he meant by that?

4 A. I would only be guessing what he meant by that.

5 Q. Well, don't guess if you don't know.

6 A. I'm not sure exactly why he did.

7 Q. Okay. So, I want to ask you a bit about notifications
8 from -- well, we will use OMA.

9 If someone receives a notification or a notification
10 is sent out, and we saw that list of, you know, God knows how
11 many people in there. Those people received a notification
12 that something was posted; correct?

13 A. Are you referring to the Operation Mutual Aid emails that
14 were sent out?

15 Q. Well, yeah. Now, those are generated from their website
16 or from their Facebook page?

17 A. From their email account.

18 Q. From their email account. Not from the website?

19 A. Not from the website. From the email account.

20 Q. Well, now, correct me if I'm wrong, but I think you said
21 that those mailings that come from OMA, those lists, they
22 are -- these individuals either request information or
23 Mr. Bruckhart or Ryan Payne would just decide you might want to
24 see this, and they'd send it out; right?

25 A. They could go to the OMA website, join the website, put

Mark D. Seyler - Cross

1 down their email address, and if Jerry Bruckhart and Ryan Payne
2 decided they wanted to send emails to that person, they could
3 send emails and did.

4 Q. And so those would be just, like, have nothing to do with
5 the website at all? Just with independent email?

6 A. Yes. They could send an email out to whomever they wanted
7 to, yes, from the operationmutualaid1 Gmail account.

8 Q. Okay. And you got those records; correct?

9 A. Yes.

10 Q. Okay. Now, let's go back to notification for a second.
11 So, this notification goes out, and it tells the person that,
12 hey, there's something you might want to see. Is that how it
13 works?

14 A. You mean when someone receives an email? You just --

15 Q. Well, yeah. The notification, like -- well, you said -- I
16 don't remember what this was in response to, but something
17 about a notification would be sent out.

18 Like, Cheyenne Miller, for example, would receive a
19 notification that there was maybe a posting or something on OMA
20 that she might be interested in.

21 A. Specifically with OMA?

22 Q. Well, yeah. Let's use OMA. We're talking about
23 generalities, but OMA is a good generality.

24 A. It's possible they had something set up on their website
25 to alert their members, but I am not aware of it.

Mark D. Seyler - Cross

1 Q. Okay. So, but just because somebody's email address --
2 Mr. Lovelien or whomever -- doesn't necessarily mean that --
3 that they looked at whatever this notification was about?

4 A. It's --

5 Q. Correct?

6 A. -- just an email, so he received an email. And like
7 anyone else, you can look at an email or delete an email.

8 Q. And there's no way to know when he would look at it?

9 A. Correct.

10 Q. Do you know if Mr. Lovelien had a smart phone with him at
11 Bunkerville?

12 A. I don't.

13 Q. Okay. But you said he had no posts from the time that he
14 was in Bunkerville?

15 A. To my knowledge, that's true. Yes.

16 Q. And he didn't have any posts until he returned home, and
17 we saw the one post where he said, "Hey, I'm home safe"?

18 A. Correct.

19 Q. Okay. Now, Brian, let me see 176.

20 Okay. Now, this was the objectives of the Operation
21 Mutual Aid. And this was written by either Mr. Bruckhart or
22 Mr. Payne; correct?

23 A. Yes.

24 Q. It was not written by Mr. Lovelien?

25 A. Correct.

Mark D. Seyler - Cross

1 Q. Okay. Now, he may have reposted it. Did you see a repost
2 of this on his Facebook at all?

3 A. It was reposted by his sister on the MTDf --

4 Q. But not by Mr. Lovelien?

5 A. Correct.

6 Q. Exhibit 65. Scroll down. Scroll back up again. Just --
7 right there.

8 Okay. Now, this Operation Mutual Aid, this is a post
9 on their Facebook page; correct?

10 A. Correct.

11 Q. Okay. Now, I know that Mr. Payne was in Montana.

12 A. Yes.

13 Q. And I believe Mr. Bruckhart was in Pennsylvania.

14 A. Correct.

15 Q. And this post came from Hamlin, West Virginia?

16 A. That's what's listed on there, yes.

17 Q. Right. So, who wrote that?

18 A. It very well could have been Mr. Bruckhart. Pennsylvania
19 and West Virginia are fairly choice to each other, and there
20 was an operation that OMA was discussing about engaging in in
21 West Virginia at that time, so --

22 Q. But you don't know for sure. That would be a guess?

23 A. It would be whoever was operating that website or that
24 Facebook group, yes. Facebook page rather.

25 Q. So, not necessarily Mr. Payne and not necessarily

Mark D. Seyler - Cross

1 Mr. Bruckhart?

2 A. That would be Mr. Bruckhart. The language I recognize
3 from other posts that he has.

4 Q. Only by the language, not by anything else?

5 A. Correct.

6 Q. Just your familiarity?

7 A. Correct.

8 Q. Okay. You can take that down, Brian. 79.

9 MR. PEREZ: Your Honor, I have got a bit more to go.
10 I don't know if we are close to 5:00.

11 THE COURT: It's 4:59. We can go ahead and take our
12 break now.

13 MR. PEREZ: Thank you, Your Honor.

14 THE COURT: All right. So, meet back here at 9:00.
15 Right, Aaron?

16 COURTROOM ADMINISTRATOR: Yes, Your Honor.

17 THE COURT: All right. So, we will go ahead and take
18 our overnight break.

19 I do remind the jury that during this overnight
20 break, remember, please, you are not to discuss this case with
21 anyone nor permit anyone to discuss it with you. You can speak
22 to your fellow jurors about other things but not about this
23 case.

24 Same goes with spouses, employers, anyone else who is
25 asking you, are you still in that trial? Is it still going on?

Mark D. Seyler - Cross

1 Things like that. You can say, yes, you are still in trial, so
2 your employer knows that you are not going to be at work, but
3 please do not speak about anything else.

4 Also, if anyone does attempt to speak to you about
5 the case, you need to bring it to the Court's attention right
6 away, so we can make sure that it's inadvertent and not
7 intentional, and also to find out what information was provided
8 to see if it's harmless or important. So, please bring to it
9 the Court's attention right away.

10 Likewise, if you inadvertently hear something in an
11 elevator, in the bathroom, in the smoking area, anything like
12 that, please let us know right away.

13 Remember you are not to read, or listen to, or view
14 anything that touches upon this case in any way. Do not
15 attempt to perform any research or any independent
16 investigation.

17 Go ahead and keep writing down those questions. And
18 please do not form any opinion about the case until after you
19 have heard all the testimony, received all the evidence, then I
20 will provide to you written jury instructions, you will hear
21 closing arguments, and then you can begin deliberating,
22 discussing your opinions with each other, but not until then.

23 So, we'll stand for the jury and welcome you back at
24 9:00 a.m. tomorrow morning.

25 (Jury out.)

Mark D. Seyler - Cross

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THE COURT: All right. We are off record.
(Recess, 5:02 p.m.)

Mark D. Seyler - Cross

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Mark D. Seyler - Cross

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COURT REPORTER'S CERTIFICATE

I, KATHERINE EISMANN, Official Court Reporter, United States District Court, District of Nevada, Las Vegas, Nevada, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Date: July 24, 2017.

/s/ Katherine Eismann

Katherine Eismann, CSR CRR RDR

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,)	
	)	Case No. 2:16-cr-00046-GMN-PAL
Plaintiff,)	
	)	Las Vegas, Nevada
vs.	)	July 19, 2017
	)	9:20 a.m.
ERIC J. PARKER (11), O.)	
SCOTT DREXLER(12), RICHARD)	
LOVELIEN (13), and STEVEN A.))	
STEWART (14),)	
)	
Defendants.	)	Day 6, Morning Session
)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE GLORIA M. NAVARRO
UNITED STATES DISTRICT COURT CHIEF JUDGE, AND A JURY

APPEARANCES:

For the Government:

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Appearances continued on next page.

Court Reporter: Katherine Eismann, CSR, CRR, RDR
(702)431-1919 ke@nvd.uscourts.gov

Proceedings reported by machine shorthand, transcript produced
by computer-aided transcription.

1 APPEARANCES CONTINUED:

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14 For the Defendant Steven A. Stewart (14):

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17 Also present:

18 Sharon Gavin, Special Agent FBI
19 Joel Willis, Special Agent FBI
Chris Allen, Bureau of Land Management
20 Mike Abercrombi, FBI
Mamie Ott
21 Nona Dodson
Tori Bakken
22 Brian Glynn

23

24

25

1 (Wednesday, July 19, 2017, 9:20 a.m.)

2 --oOo--

3 P R O C E E D I N G S

4 (Jury out.)

5 COURTROOM ADMINISTRATOR: All rise.

6 THE COURT: All right. Everyone may be seated.

7 COURTROOM ADMINISTRATOR: This is the time set for
8 Jury Trial, Day 6, in Case No. 2:16-cr-046-GMN-PAL, United
9 States of America versus Eric Parker, O. Scott Drexler, Ricky
10 Lovelien and Steven Stewart.

11 Counsel, please enter your appearances for the
12 record.

13 THE COURT: All right. So, actually, we are going to
14 skip the appearances until after the jury gets here.

15 But before we bring them in, I just want to make it
16 clear the expectations that we have for how everyone will
17 conduct themselves during the trial.

18 It's not a sporting event. This is a courtroom. So,
19 there are no expressions, whether verbally or through body
20 language, that are permissible. That means no matter how much
21 you agree or disagree with what is being said, there should be
22 no display or communication to anyone about what is your
23 opinion or any information or hand movements.

24 In addition, people who are permitted to speak in
25 court, the attorneys have microphones. All the other

1 microphones have been removed. During sidebars, the
2 microphones will be muted.

3 The marshals have the authority to follow through
4 with the Court's expectations, which are that the defendants
5 are not to speak while the attorneys and the judge is at
6 sidebar.

7 That means they are not to speak with each other nor
8 to speak out to the jury. Likewise, defendants are not to
9 write anything on the back of legal pads and hold it up for the
10 jury while we are at sidebar.

11 We have the holding cell. It has the communication
12 speaker set up. If we need to put someone in there today, if
13 you can't follow directions, which I think are very fair and
14 reasonable directions, it's going to be a little embarrassing.
15 But if that's what needs to happen, then that's what will
16 happen.

17 We'll take a break. The jury will leave. I will
18 have the marshals escort the defendant, whoever it is, is the
19 offending person, into the holding cell, and we will continue.
20 The jury will come back in, and we will continue.

21 All right. Now, remember, please, also, that there
22 are no electronic devices allowed in the courtroom. So, please
23 double check to make sure you don't have one. Even if it's in
24 private mode, or vibrate mode, or even completely turned off,
25 it's not permitted in the courtroom. So please take it

1 outside, otherwise the marshals or CSOs will take it.

2 There's no recording in federal court. So, only the
3 attorneys are permitted to have electronic devices and only for
4 the purpose of presenting evidence, reviewing evidence, things
5 of that nature. There's no audio recording or video recording
6 permitted in federal court.

7 All right. So, we're going to go ahead and bring in
8 the jury.

9 And I think, Mr. Perez, you weren't done with
10 cross-examination. Right?

11 MR. PEREZ: Correct, Your Honor.

12 THE COURT: So, when the jury comes in, we'll have
13 everybody sit down, and then we will have the attorneys make
14 their appearances on the record, and then we'll have Mr. Perez
15 come on up to the podium and continue with cross-examination.

16 MR. MYHRE: Your Honor.

17 THE COURT: Yes.

18 MR. MYHRE: May we inquire as to what the message was
19 that was on the back of a pad as to whether we need some sort
20 of instruction to the jury? We didn't observe that. I don't
21 know.

22 THE COURT: I'll leave it to you to talk to counsel
23 about that first.

24 MR. MYHRE: All right.

25 THE COURT: And then if you need to raise an

1 objection, you can. But --

2 MR. MYHRE: Thank you, Your Honor.

3 (Jury in.)

4 THE COURT: The jury may go ahead and be seated.

5 Will the parties please make their appearances.

6 MR. MYHRE: Good morning, Your Honor, ladies and
7 gentlemen of the jury. Steve Myhre, Erin Creegan, and Nadia
8 Ahmed on behalf of the United States.

9 THE COURT: Good morning.

10 MR. TANASI: Good morning, Your Honor. Thank you.
11 Good morning, folks. Rich Tanasi for Steven Stewart. Also
12 with us at counsel table helping us out is Tori Bakken and
13 Brian Glynn. Thank you.

14 THE COURT: Good morning.

15 MR. MARCHESE: Good morning, Your Honor. Good
16 morning, everyone. Jess Marchese on behalf of Eric Parker.

17 MR. LEVENTHAL: Good morning, Your Honor. Good
18 morning, everyone. Todd Leventhal on behalf of Scott Drexler.

19 THE COURT: Good morning.

20 MR. PEREZ: Good morning, Your Honor. Shawn Perez on
21 behalf of Ricky Lovelien.

22 THE COURT: Good morning. And we also have FBI
23 Special Agent Seyler back on the witness stand. Thank you,
24 sir, for coming back on time.

25 So, we're going to continue now with

Mark D. Seyler - Cross

1 cross-examination by counsel for Mr. Lovelien.

2 CONTINUED CROSS-EXAMINATION

3 BY MR. MYHRE:

4 Q. Good morning, Agent Seyler.

5 A. Good morning.

6 Q. How are you this morning?

7 A. I'm sorry?

8 Q. I said how are you this morning?

9 A. Fine. Thank you.

10 Q. I'm trying to be brief. Not as long as yesterday.

11 Yesterday, we sort of left off talking about email
12 and -- and the differences on how websites might send out
13 notifications and things of that nature.

14 Now, Brian, if I could bring up Exhibit 60. Brian,
15 can you scroll down to where it's got the -- right there.
16 That's fine.

17 The registered email address is on there,
18 ricky.lovelien@facebook and astromanic911@yahoo.

19 Now, in those MTDf, I guess, notifications, we didn't
20 see either of those email addresses; did we?

21 A. Correct. We did not.

22 Q. Okay. And then on the OMA notification, where it said
23 Captain Ricky Lovelien, it wasn't either one of those email
24 addresses either; was it?

25 A. Correct. It was not.

Mark D. Seyler - Cross

1 Q. Okay. Now, did you obtain any emails from either of those
2 two email addresses?

3 A. No, we did not.

4 Q. Is there any particular reason why?

5 A. We had no information that Ricky Lovelien was using either
6 of those emails to conduct activity that would have been
7 relevant to this investigation. We can't obtain legal process
8 to get access to an email account unless we have probable
9 cause.

10 Q. Right.

11 A. We have some reason to believe that that would --

12 Q. So, you never saw any emails going back and forth. Is
13 that what you are saying essentially?

14 A. Correct. I never saw emails from these two accounts, no,
15 sir.

16 Q. Okay. Brian, bring up 74, would you, please?

17 So, the -- this is a Facebook post -- or exactly what
18 is -- what is this from MTFD?

19 A. So, from MTFD, this is showing a post that Rick Lovelien
20 made to the MTFD Facebook group. It was then forwarded to Ryan
21 Payne's email because of the settings that Ryan Payne had in
22 his Facebook account.

23 Q. Okay. Well, what is this email address that's on the top?
24 This ZR. I mean, it's almost unrecognizable, but that's
25 obviously not one of those two registered email addresses?

Mark D. Seyler - Cross

1 A. Correct. That's an address that Facebook used to forward
2 that message to Ryan Payne's email account.

3 Q. Okay. So, that's not an email that Mr. Lovelien sets up
4 then?

5 A. Correct.

6 Q. That's done internally by Facebook?

7 A. Correct.

8 Q. Okay. Now, this -- this posting here, do you actually
9 know if it's something that he put on his wall or was this -- I
10 mean, did he write this information here? Do you know?

11 A. This particular information, I know from other posts in
12 that account that he received this text from someone else, and
13 he very likely copied this text into the message himself which
14 he then sent out.

15 Q. Okay. So, he did not draft this?

16 A. As far as I know, he copied this text, yes --

17 Q. Okay.

18 A. -- into -- into a message of his own. So, I guess he
19 drafted that second message.

20 Q. So, basically, like a repost?

21 A. Correct.

22 Q. Okay. Now, Brian, Exhibit 61, please.

23 Okay. Now, this is --

24 THE COURT: Can we just clarify something? Are you
25 saying a repost or a cut and paste?

Mark D. Seyler - Cross

1 THE WITNESS: A cut and paste and then posted
2 himself.

3 THE COURT: All right.

4 BY MR. PEREZ:

5 Q. I believe this is Facebook page 66 up at the top; correct?
6 Is that what that is?

7 A. Yes, I believe so.

8 Q. Okay. Now, this -- explain to me exactly what this is
9 where it says "groups"?

10 A. This is a list of the groups that Ricky Lovelien, at the
11 time of the warrant, was a member of on Facebook.

12 Q. Okay. And when -- do you recall approximately the date of
13 the warrant?

14 A. Approximately June of 2014.

15 Q. June -- okay. So, following the Bundy incident?

16 A. Correct.

17 Q. Okay. Now, nowhere on those groups is there an indication
18 of OMA; is there?

19 A. OMA did not have a Facebook group to my knowledge.

20 Q. Okay. But they had Facebook postings though; correct?

21 A. They had a Facebook page which is different. So, you
22 didn't join OMA on Facebook. They had a page that you could go
23 to and view and post to their -- to their page, but that's
24 different than having a group.

25 Q. Okay. Now, Brian, Exhibit 62, please.

Mark D. Seyler - Cross

1 Now, this Exhibit 62 is a list of Mr. Lovelien's
2 friends for the most part; correct?

3 A. Facebook friends.

4 Q. Right, Facebook friends. And that would have been the
5 same time in that June of 2014?

6 A. Correct.

7 Q. Now, there's no alphabetical order or -- or I guess
8 chronological order to the friends?

9 A. Not to my knowledge.

10 Q. Okay. So, for example, Michael Cohn at the top wasn't
11 necessarily Mr. Lovelien's first Facebook friend?

12 A. Not to my knowledge.

13 Q. Okay. And, so, I mean, it looks almost like they might be
14 numerical by account number? Is that possible?

15 A. It's possible.

16 Q. Okay. Brian, Exhibit 73, please. Can you scroll down
17 just -- that's good.

18 Now, is this a private message, or is it amongst more
19 than two people, or is this one message, or -- explain to me
20 this particular sequence on here.

21 A. Are you talking about which post, sir?

22 Q. Well, I mean, you've got the one on top. Okay. I'm
23 assuming maybe that that space in between the first post, which
24 would have been 4/10/2014 at 2:23 UTC, and then the next one,
25 which looks like 4/9/18:52, that's a separate post. It's

Mark D. Seyler - Cross

1 not -- it's not the same conversation?

2 A. Correct. These are two different conversations.

3 Q. Okay. Now, the -- did you know if Mr. Lovelien ever
4 responded to Mr. Parks?

5 A. Unless it would have come after the time of this search
6 warrant, no. This would indicate this was the only post in
7 that particular communication with Mr. Parks.

8 Q. Okay. And, Brian, scroll up a little bit.

9 And so what was before that? Do we know?

10 A. That would have been another conversation. This is
11 nothing between Mr. Parks.

12 Q. So that's -- that's the only part of the conversation
13 right there?

14 A. Correct.

15 Q. Well, it seems to me that -- that Mr. Parks is responding
16 to somebody in a conversation.

17 A. Yes.

18 MS. CREEGAN: Objection. Is there a question there?

19 BY MR. PEREZ:

20 Q. Well, I mean, it looks to me like this post is not
21 complete; correct? So, I am missing -- so perhaps we need
22 page 1785?

23 A. No. This was the only individual conversation that
24 Mr. Parks engaged in with Mr. Lovelien. Mr. Lovelien earlier
25 in time, in the previous two days, was engaging in very large

Mark D. Seyler - Cross

1 conversations with militia leaders across the country.

2 Mr. Parks may have been involved in one of those conversations,
3 and that's where -- and Mr. Lovelien was posting information
4 about Operation Mutual Aid, and who was going to Bunkerville,
5 and how. And it's from one of those conversations very likely
6 that Mr. Parks obtained Mr. Lovelien's contact information.

7 Q. Okay. Let me stop you right there, because yesterday when
8 I asked you about the conversations and how they stayed on the
9 page, you said if there was anything related to that
10 conversation, it would follow sequentially in the Facebook
11 record. And that's not true; is it?

12 A. No, you misunderstood me. Everything in the conversation
13 between the participants is always done chronologically. It
14 doesn't have anything to do with context of the conversation or
15 whatever theme they are discussing.

16 If you have a conversation between five individuals,
17 that's going to all be listed chronologically until those five
18 individuals are done discussing whatever they are discussing.
19 And then there will be a new conversation started.

20 Q. So -- so, where is the rest of this conversation?

21 A. By -- you mean the earlier conversation with --

22 Q. Well, I mean, this J.D. Parks, I mean, he wrote this and
23 sent it to Ricky Lovelien. Where is the rest of the
24 conversation? In the return to the warrant, when you got the
25 documents back from Facebook, where -- yesterday you said,

Mark D. Seyler - Cross

1 "Yeah, we can follow the whole conversation." Where is the
2 rest of the conversation?

3 A. By conversation, you mean an individual conversation
4 between Mr. Lovelien and Mr. Parks?

5 Q. Well, that -- that would be considered a conversation,
6 right here; correct? Between Mr. Parks and Mr. Lovelien?

7 A. So, yes. This would.

8 Q. Okay.

9 A. Now, Mr. Parks and Mr. Lovelien could have been involved
10 in a much larger conversation with other individuals, which
11 would have showed up elsewhere in the search warrant return.

12 As I said, Mr. Lovelien was involved in several of
13 those conversations. I could go back through and check and see
14 if Mr. Parks was participating in those conversations as well,
15 which would be consistent with the post that you see here.

16 Q. So, essentially, if I have another Facebook page like,
17 let's say, 976 or 967, it's possible that it could be part of
18 this same conversation? I mean, we don't know?

19 A. By conversation, if you mean just between Mr. Parks and
20 Mr. Lovelien, no, that's not the case. Both of them may have
21 participated in another conversation, with other individuals,
22 which would have been contained elsewhere in the search warrant
23 return.

24 Q. Okay. Brian, scroll down.

25 Okay. Now, in this -- this second conversation with

Mark D. Seyler - Cross

1 Marc A., it appears that Marc A. is -- is looking for
2 information about what's happening at the Bundy Ranch; correct?

3 A. Correct.

4 Q. And Mr. Lovelien, in fact, doesn't tell him anything. He
5 just says "Contact this person"; correct?

6 A. I'd have to review the whole conversation, but that sounds
7 consistent, yes.

8 Q. Okay. Brian, Exhibit 79, please.

9 Now, this is another email notification from the
10 Montana Defense Force?

11 A. This is a post that Cheyenne Miller made to the Montana
12 State Defense Force Facebook group, which was forwarded to Ryan
13 Payne's email.

14 Q. Okay. And this Facebook -- this particular post was not
15 made by Mr. Lovelien; correct?

16 A. Correct.

17 Q. Okay. Brian, you can take that down. Exhibit 66, please.

18 And, okay. And Brian, can you zoom in on the -- on
19 the gun butt?

20 Okay. Now, Agent Seyler, yesterday you said, yes, it
21 appeared that Mr. Lovelien's hand was on the gun; correct?

22 A. I don't recall saying that.

23 Q. You don't recall what you testified to? Okay. Well,
24 let's go through it right now.

25 Now, the gun itself -- and it's unique. It's got

Mark D. Seyler - Cross

1 skulls on it. We all know that. We saw other pictures of that
2 from Mr. Lovelien's Facebook.

3 Now, the way that gun is positioned on Mr. Lovelien's
4 body is barrel down; correct?

5 A. Correct.

6 Q. Okay. Now, can you tell from that photograph whether
7 the -- let's call it the magazine -- would be towards the
8 Jersey barrier or away from the Jersey barrier?

9 A. I can't tell from that photograph.

10 Q. Okay. So, you really don't know if the gun -- if
11 Mr. Lovelien's hand is anywhere near the trigger or if it's on
12 the other side of the gun?

13 A. Correct. It's near the gun.

14 Q. All right. It's near the gun, but it's not on the
15 trigger; right?

16 A. I can't tell whether it is or not.

17 Q. Exactly.

18 A. That would certainly --

19 Q. Thank you.

20 MR. PEREZ: Brian, you can take that down.

21 Actually, Your Honor, I think that's it.

22 THE COURT: Thank you.

23 MR. PEREZ: Thank you, Agent.

24 THE COURT: Counsel for Mr. Parker.

25 MR. MARCHESE: Thank you, Your Honor.

Mark D. Seyler - Cross

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CROSS-EXAMINATION

BY MR. MARCHESE:

Q. Good morning, Agent.

A. Good morning.

Q. Now, turning your attention back to April of 2014, you were working in Salt Lake City at the time; correct?

A. Montana, actually.

Q. Okay. And now you work in Salt Lake City?

A. No, I am part of the Salt Lake City Field Division for the FBI, which Montana is part of. So, I work out of the Helena, Montana, office and was at the time.

Q. So, kind of a smaller subsidiary; fair to say? Something along those lines?

A. Correct.

Q. All right. So, you are working in Montana. And, generally, what are your duties at that time?

A. I was an investigator, a case agent on domestic terrorism and militia cases primarily.

Q. Okay. And when you are looking at domestic terrorism cases, at that time, you are mainly looking in the Montana area?

A. Correct, in Montana and then if individuals in Montana are extending beyond our borders and committing crimes elsewhere, we, of course, work with agents in other divisions to address that.

Mark D. Seyler - Cross

1 Q. Okay. Because I would imagine, given the nature of what
2 you do, that is going to happening on a regular basis. You are
3 going to have interstate investigations. Fair to say?

4 A. Sometimes, yes.

5 Q. Okay. So, one of the things that you did, you were
6 investigating Mr. Lovelien; correct?

7 A. We were not investigating Mr. Lovelien until this
8 incident, yes.

9 Q. Okay. When did that start, approximately? When did the
10 Bundy Ranch incident, for lack of a better term, come to your
11 attention and you started investigating?

12 MS. CREEGAN: Objection. Relevance.

13 MR. MARCHESE: Just back story.

14 THE COURT: Back story, is that relevant?

15 MR. MARCHESE: Well, it's not -- I asked him when.
16 When he started investigating the case. I find that's very
17 relevant. I am not asking him what he found out, I am just
18 asking him when he started.

19 THE COURT: What he found out is more relevant than
20 when he started.

21 BY MR. MARCHESE:

22 Q. Okay. When did you find out?

23 MS. CREEGAN: Objection. Vague. Found out what?

24 MR. MARCHESE: I can't ask a question if -- I'm
25 trying to -- can I ask him when he started investigating --

Mark D. Seyler - Cross

1 when this came to his attention and he started investigating?

2 THE COURT: When was he assigned to this case?

3 MR. MARCHESE: No, when the Bundy Ranch, when he
4 started -- he clearly investigated it. We've had a day and
5 half of the testimony on it. I just want to find out when he
6 started.

7 THE COURT: When he started. When he was assigned to
8 this case?

9 MR. MARCHESE: Yes, when he started investigating.

10 THE COURT: All right.

11 BY MR. MARCHESE:

12 Q. When did you start investigating this incident at the
13 Bundy Ranch, approximately, if you remember?

14 A. So, if I can clarify, just the Bundy Ranch, I was
15 investigating Ryan Payne prior to that, but you want just the
16 Bundy Ranch?

17 Q. Correct.

18 A. It would have been April the 7th.

19 Q. Okay. So, Brian, if we can pull up Exhibit 65, and go to
20 page 2. Right there.

21 So, yesterday, you were asked about this particular
22 Facebook post; correct?

23 A. Yes.

24 Q. And you remember that?

25 A. Yes.

Mark D. Seyler - Cross

1 Q. And just to be clear, this Facebook post is -- has to do
2 with the state of Montana; correct?

3 A. Correct.

4 Q. All right. So, at this time, you were not investigating
5 the Bundy Ranch incident; correct?

6 A. Correct.

7 Q. So, it would be fair to say that based on your
8 investigation, that this particular post was unrelated to the
9 Bundy Ranch?

10 A. At the time it was made, it was unrelated to the Bundy
11 Ranch. In hindsight now, you can see the mindset of the
12 individuals involved. So I would say it's relevant at this
13 point.

14 Q. Well, generally speaking, so that you're saying that the
15 mindset is related; correct?

16 A. Correct.

17 Q. But this particular post specifically is not about that;
18 correct?

19 A. Correct.

20 Q. All right. And if we can go to Exhibit 55, please, Brian.
21 And go right to the middle of the page. Right there.

22 Now, this particular post right here, we went over
23 this yesterday. And this had to do with your investigation
24 consisting of Mr. Payne; correct?

25 A. Correct.

Mark D. Seyler - Cross

1 Q. And Mr. Bruckhart, he's not from your geographic location
2 that you investigate; correct?

3 A. Correct.

4 Q. But based on the nature of what you do, you started
5 looking into him due to these communications; correct?

6 A. We started looking -- the FBI started looking at
7 Mr. Bruckhart at the same time as we began looking at Mr. Payne
8 back in 2013.

9 Q. Okay. So, based on your investigation, you did start
10 looking at some of the things, activities that Mr. Bruckhart
11 was into; correct?

12 A. Right.

13 Q. All right. So, based upon this post that was introduced
14 into evidence yesterday, they mention that there was a -- that
15 they needed help, the Bundy Ranch family with the military
16 standoff going on right now; is that a correct statement of the
17 post?

18 A. Yes, that's what's -- the text in that post.

19 Q. Okay. And that post was made on April the 8th of 2014; is
20 that correct?

21 A. April the 7th, actually. I'm sorry. You are correct.
22 April the 8th.

23 Q. Okay. And Brian, if we can bring up Exhibit 175, please.
24 And this is an email that I believe you got pursuant to a
25 search warrant?

Mark D. Seyler - Cross

1 A. Correct.

2 Q. Okay. And I believe the date on this -- it's a little
3 hard to read, but I have it down as April 8th of 2014. Does
4 that sound correct?

5 A. That sounds correct. It would be on the far upper
6 right-hand corner. I don't think we can see it on the screen.

7 Q. Okay. He's trying, but he can't --

8 A. April the 8th. I do see it there.

9 Q. There we go. So that would be the same date as the -- the
10 last Facebook post that we spoke about; correct?

11 A. Correct.

12 Q. And Brian, if we can get it back to the text, please.

13 And on the second line that I'm circling --

14 MS. CREEGAN: Objection. Relevance.

15 MR. MARCHESE: Judge, this is an exhibit that they
16 entered into evidence.

17 THE COURT: Yeah, overruled.

18 BY MR. MARCHESE:

19 Q. It says that the feds arrested some protesters and the
20 words "We need you now" were uttered. That's a correct
21 statement?

22 A. Correct.

23 Q. All right. And Brian, if we can get up Exhibit 53.

24 Now, this particular post, this was not made by Ryan
25 Payne; correct?

Mark D. Seyler - Cross

1 A. Correct.

2 Q. And I believe the last one was from Operation Mutual Aid,
3 if I remember correctly. You know better than me.

4 A. The last email that we looked at?

5 Q. Yes.

6 A. Yes, that was from Operation Mutual Aid.

7 Q. And this was from Carol Bundy; correct?

8 A. Correct.

9 Q. All right. So, in this particular source, this was
10 April 9th of 2014. That's the date on that; right?

11 A. Correct.

12 Q. Now, in this particular post, you testified earlier on
13 direct examination that Miss Bundy is the wife of Cliven Bundy;
14 correct?

15 A. Correct.

16 Q. And in this particular post, Miss Bundy says that she
17 would like to remind everyone or all of you -- excuse me --
18 that we want to stand for liberty and freedom; is that correct?

19 A. Correct.

20 Q. And she wants everyone to remain peaceful; correct?

21 A. That's what she typed, yes.

22 Q. Okay. And that she wants to let America know that we the
23 people are standing up for their rights; is that correct?

24 A. That's what was in her post, yes.

25 Q. Thank you. And Brian, if we can bring up Exhibit 59,

Mark D. Seyler - Cross

1 page 2. If you go down a little bit more, please.

2 Now, who is this particular correspondence from?

3 A. From Ryan Payne and an individual with the moniker
4 Texasmilitia Northtexas.

5 Q. Okay. And this is on April 10th, I believe; correct?

6 A. Correct.

7 Q. Can you go up a little bit, Brian? I think I might have
8 pulled up the wrong exhibit.

9 Do you remember a post in which they said -- I
10 believe it was Mr. Payne -- that they said there was no militia
11 here yet?

12 A. I did recall the post. I don't remember exactly who he
13 was talking to at that time.

14 Q. Okay. Do you remember the date of that particular post?

15 A. No, I don't.

16 Q. Okay. Fair enough. Move on. Thank you.

17 Now, on direct examination, there were two videos
18 that were entered, both with Mr. Ryan Payne. Do you remember
19 that?

20 A. Yes.

21 Q. What I have down is we have Exhibits 37 and 78. You
22 probably don't remember the -- the exact numbers, but one of
23 them was a Ryan Payne video from April 9th. Do you remember
24 that?

25 A. Yes.

Mark D. Seyler - Cross

1 Q. Okay. And that was the one that you stated that you had
2 downloaded from the Review Journal's website?

3 A. Yes.

4 Q. Okay. Did you look at the text of the Review Journal?
5 Without getting into it. Don't tell me what it said. But did
6 you read the text of the Review Journal article?

7 A. Yes, I believe there were a couple articles or updates to
8 the articles, but I did read the text, yes.

9 Q. Okay. What do you mean by updates?

10 A. Sometimes the Review Journal or any newspaper will print
11 an article, and then have a few hours later have updated
12 information than will come in later, so --

13 Q. Okay. And what was the date in which you downloaded the
14 article?

15 A. The article itself?

16 Q. Or the video. I'm sorry. Well, I think you did both on
17 the same day. Would it have been July 15th of 2015?

18 A. I went back and recaptured it later, yes.

19 Q. Okay. So, there could have been updates between the time
20 that you saw it and the time that you burned it?

21 A. The article that I copied, at that time, probably would
22 have listed on there when the last update was. So, they'll
23 have a byline on there and a date that says "last updated on
24 this date."

25 Q. Okay. And if we can get Exhibit 70 up, please, Brian.

Mark D. Seyler - Cross

1 And what is the -- what's the date on these
2 communications, sir?

3 A. This would have been April the 8th of 2014.

4 Q. Okay. If we can go down, Brian. And a little bit more
5 down. And all the way to the bottom, please. Okay. Thank
6 you. No, I said -- that's why I don't have it. It's 78,
7 please. Okay, now we got it.

8 And what is the date on this one?

9 A. April 11th.

10 Q. Okay. So, chronologically, this is later than everything
11 that we've seen thus far on cross-examination; correct?

12 A. I believe so.

13 Q. And then who is this from?

14 A. This would have been a post from Randy Eaton.

15 Q. Okay. So, thus far on cross-examination, I don't believe
16 we've seen anything from Mr. Eaton thus far; correct?

17 A. Correct.

18 Q. And in this particular post, he says that due to rising
19 tensions in Nevada; is that correct?

20 A. Yes, he said that.

21 Q. So, at this point, we have multiple sources -- without
22 getting specifically into what they are talking about, we are
23 talking about rising tensions. We are talking about military
24 standoffs, arrest of protesters, and things of that nature. Is
25 that fair to say?

Mark D. Seyler - Cross

1 A. I think you can say that.

2 MS. CREEGAN: Objection. Argumentative.

3 MR. MARCHESE: Did you want me to respond? I'm
4 sorry. I don't mean to cut you off.

5 THE COURT: I am not sure. Do you have a follow-up
6 question? I mean, are you just restating his responses?

7 MR. MARCHESE: I'm just putting it all together. We
8 are taking him through chronologically through everything and
9 what he's seen through the course of his investigation.

10 THE COURT: All right. Overruled. He can answer the
11 question. You might need to restate it.

12 BY MR. MARCHESE:

13 Q. So, through the course of your investigations, you took
14 multiple sources, and you looked at them; correct?

15 A. Correct.

16 Q. And chronologically, and whenever you started your
17 investigation up till now, April 11th of 2014, you've seen
18 several media sources, whether it be email, whether it be
19 Facebook, or whether it be just general Internet. You've seen
20 several sources talking about rising tensions, arresting the
21 protesters and military standoffs. Is that -- is that a
22 correct statement?

23 MS. CREEGAN: That's -- objection. That's still
24 argumentative, Your Honor.

25 THE COURT: Overruled. He can answer it.

Mark D. Seyler - Cross

1 THE WITNESS: Some individuals did mention those
2 things in some of the posts that they were making. That would
3 be consistent with Operation Mutual Aid and their intent to
4 make this go as viral as possible.

5 BY MR. MARCHESE:

6 Q. Okay. But would it be consistent with your testimony?

7 A. I believe we've talked about statements that I said were
8 accurate on the --

9 Q. Okay. So that's a yes?

10 A. Yes.

11 MS. CREEGAN: Object to cutting the witness off when
12 he's trying to answer.

13 THE COURT: Overruled.

14 BY MR. MARCHESE:

15 Q. Well, he's answered. I will move on.

16 Now, turning your attention to Exhibit 38, that's the
17 video of Mr. Payne next to the barn. Do you remember that one?

18 A. Yes.

19 Q. Where he's -- he yells out "quit hammering" or something
20 along those lines?

21 A. Right.

22 Q. We don't need to play it, Brian. I think it's about
23 three, four minutes long, so I'm just going to go through it.
24 And if we disagree on something, we can maybe move on.

25 But in that particular interview, Mr. Payne is

Mark D. Seyler - Cross

1 interviewed by that lady, I believe it is; correct?

2 A. Yes.

3 Q. And there's also a videographer there. I think at one
4 point he might have even interjected and asked a few questions;
5 right? Do you remember that?

6 A. Correct.

7 Q. Okay. So, one of the first things that he says is that he
8 is here to pledge to stand against the tyrants and the
9 oppressed. Something along those lines. Do you remember that
10 statement?

11 A. I remember the words tyrants and the oppressed, yes.

12 Q. Okay. And he also talks about these people's safety
13 having been violated. Do you remember that statement?

14 A. Yes.

15 Q. Okay. And is it fair to say that based on you seeing the
16 video and the context of it, that when he's talking about these
17 people's safety, he's referring to the Bundy family?

18 A. Certainly, he could have been, yes.

19 Q. And he talks about how the Bundy family's lives have been
20 greatly affected by this. Do you remember that?

21 A. Yes. I remember Ryan Payne saying that, yes.

22 Q. Yes. And then that Ryan Payne also talks about that they
23 have incurred physical injury because of this. Do you remember
24 that?

25 MS. CREEGAN: Objection. Relevance. Is this for the

Mark D. Seyler - Cross

1 test of the witness's memory? The exhibit's admitted.

2 MR. MARCHESE: I mean, we can play it. I am just
3 trying to go through it. It's, like, four minutes long. I am
4 almost down. I have two more questions.

5 THE COURT: We are not replaying it just for the sake
6 of replaying it. You may ask the witness a question, and if he
7 doesn't remember it and you need to replay it to refresh his
8 memory, we can do that.

9 MR. MARCHESE: And that's what I'm attempting to do,
10 but they are objecting.

11 THE COURT: Ask him a question.

12 BY MR. MARCHESE:

13 Q. I'm sorry, sir. I don't even remember. Were you able to
14 answer or did we get the objection?

15 A. I believe Ryan Payne said that on the video.

16 Q. Okay. Thank you. I will move on. I think I have two or
17 three more in reference to that area.

18 Mr. Payne also talked about the public's access to
19 public lands having been infringed upon. Is that a correct
20 statement?

21 A. Ryan Payne said that, yes.

22 Q. All right. Thank you. Now, if we can turn to Exhibit 89.

23 COURTROOM ADMINISTRATOR: That one was not admitted,
24 counsel.

25

Mark D. Seyler - Cross

1 BY MR. MARCHESE:

2 Q. Okay. Just for Mr. Seyler.

3 Sir, do you recognize this post?

4 A. Yes, I do.

5 Q. Okay. And how do you recognize it?

6 A. This was a post from Eric Parker's Facebook account and an
7 article that he shared on Facebook, I believe.

8 Q. Okay. And I think we established yesterday you were
9 actually present at the hearing where Mr. Parker testified?

10 A. Yes, I was.

11 Q. Okay. Do you remember him testifying about this
12 particular Facebook post and admitting that it was his?

13 A. Yes.

14 Q. Okay.

15 MR. MARCHESE: Your Honor, at this time, defense
16 would move for Government's Exhibit 89 into evidence.

17 THE COURT: Any objection to the admission of No. 89?

18 MS. CREEGAN: No, Your Honor.

19 THE COURT: All right. Exhibit 89 will be admitted.

20 Do you want to go ahead and publish it?

21 MR. MARCHESE: Yes, please, Your Honor.

22 (Exhibit 89 admitted.)

23 BY MR. MARCHESE:

24 Q. Now, you kind of went over a little bit of this already,
25 but the jury needs to see it. So, what are we seeing here,

Mark D. Seyler - Cross

1 sir?

2 A. This is a -- in Eric Parker's Facebook return that came
3 from Facebook. This is an article which I believe he shared.
4 Yes, he provided a link to. This was an article that contained
5 the Ryan Payne video from April 9th we discussed earlier.

6 Q. Okay. So, it's your contention that the Ryan Payne video,
7 the first one, not the second one with the hammering, the first
8 one was linked to this particular article; is that correct?

9 A. Correct.

10 Q. So, based on that, you would -- a logical conclusion would
11 be that Mr. Parker saw the April 9th, 2014, Ryan Payne video
12 since it was linked to this particular article?

13 A. He would have gotten the article itself, which contained
14 some quotes from Mr. Payne as well, and would have had an
15 opportunity to watch the video as well.

16 Q. Okay. So, he would have had the article whether he
17 clicked on it or not. You would obviously have no independent
18 knowledge of that; correct?

19 A. No. Other than he shared the article, which indicated he
20 had some interest in it.

21 Q. Sure. Were there any other video links on that particular
22 article?

23 A. I'm not sure if there were.

24 Q. Do you have your -- if seeing a copy of your 302, would --
25 would that -- actually, I don't believe that's in there.

Mark D. Seyler - Cross

1 If seeing a copy of the article, would that refresh
2 your recollection, sir?

3 A. If it's the article I downloaded, yes.

4 MR. MARCHESE: Okay. Court's indulgence.

5 (Pause in the proceedings.)

6 BY MR. MARCHESE:

7 Q. Sir, we are going to get back to that. I need to print it
8 off first. But I do have some other stuff to talk about till
9 then.

10 Sir, you were the -- or one of the agents that took
11 Mr. Parker into custody on this case; correct?

12 A. I was there shortly after he was taken into custody, yes.

13 Q. Okay. And you transported him -- I believe it was
14 Ketchum, Idaho, to --

15 MS. CREEGAN: Objection. Beyond the scope of cross.
16 Not relevant.

17 MR. MARCHESE: I think it's very relevant, Your
18 Honor. It goes into his investigation. I am not going to get
19 into anything that was said during that particular ride, I
20 guess, for lack of a better term, but I just want to talk
21 about -- a little bit about the general nature of the arrest.

22 MS. CREEGAN: I don't think the investigation is
23 relevant or the arrest.

24 THE COURT: The investigation is relevant. The
25 witness has testified about the investigation, but the arrest

Mark D. Seyler - Cross

1 was not part of the direct examination, so --

2 MR. MARCHESE: Okay.

3 THE COURT: -- it would be beyond the scope.

4 MR. MARCHESE: We will be asking then that Agent
5 Seyler be made available for the defense case in chief. So, we
6 are going to reserve the opportunity to recall him to revisit
7 this issue.

8 Court's indulgence, Your Honor. Taking a minute to
9 print, so we will just go to plan C, and just the witness,
10 please.

11 Q. Do you see that one on your screen, sir?

12 A. Yes.

13 Q. Just take -- don't read anything aloud, please. We just
14 want to see if this refreshes your recollection. This should
15 be a copy of what you downloaded.

16 And, sir, does that refresh your recollection --
17 excuse me -- your recollection in reference to the article that
18 you downloaded, in the course and scope of your duties, whether
19 or not there was reference to another video on that particular
20 article?

21 A. That looks like the article that we were discussing, yes.

22 Q. Okay. And does it refresh your recollection in reference
23 to that?

24 A. As far as whether there was another video?

25 Q. Yes.

Mark D. Seyler - Cross

1 A. What you just scrolled through, I didn't see any videos,
2 so --

3 Q. And if you look at the top, what I'm talking to is the top
4 portion. Is that -- that's what I'm referring to, the
5 paragraph starting with A.

6 MS. CREEGAN: Your Honor, I am going to object and
7 ask for a sidebar.

8 MR. MARCHESE: I was getting there, but --

9 THE COURT: Sidebar.

10 (Sidebar).

11 THE COURT: This is Ms. Creegan speaking.

12 MS. CREEGAN: Your Honor, we objected to bringing up
13 this article and what is supposedly a video of tasing. It has
14 nothing to do with the testimony.

15 And the emphasis that Mr. Marchese has been placing
16 on trying to pick out anything that's clearly a reference back
17 to his illegal self-defense defense to try to emphasize
18 protesters being arrested, et cetera -- I mean, the implication
19 is that by putting on evidence into the case, we're opening the
20 door.

21 But there is no way to open the door to an illegal
22 defense. There is no way to put on the tasing now simply
23 because that might also be an article that Eric Parker saw.
24 Because the defense doesn't exist, there is no way to open a
25 door to it.

Mark D. Seyler - Cross

1 And it appears that even the smallest door, if it can
2 even be called that, would be enough for Mr. Marchese to try to
3 bring in the tasing video.

4 MR. MARCHESE: Here's the issue. If you pull up that
5 article today, the Ryan Payne video is not on there. The
6 article -- the video that shows up on there, we can go right
7 over to the Review Journal website right now and look at it --
8 is the Ammon Bundy tasing, which is reference to the same thing
9 that he downloaded.

10 I am simply just going through what they have entered
11 into evidence. I mean, they can choose to --

12 THE COURT: But it's not what they entered into
13 evidence. That video is not referenced in the Facebook post
14 which is what he's discussing.

15 He explained that there's updates that RJ makes to
16 articles sometimes. You are looking at a different article
17 that's not the --

18 MR. MARCHESE: No, it's the same one.

19 THE COURT: -- updated article that was available at
20 the time the post was made. There's an article that's on the
21 RJ that has a link to a video. The Facebook return, search
22 warrant return lists the link that he posted to the article.

23 MR. MARCHESE: Correct.

24 THE COURT: And the link to the video.

25 MR. MARCHESE: Correct.

Mark D. Seyler - Cross

1 THE COURT: That's embedded in the article or is part
2 of the article and nothing else. The video you are referring
3 to is not in the Facebook return.

4 MR. MARCHESE: But it's in the link.

5 THE COURT: So, I mean, I understand the government's
6 objection. I thought we were coming over here for a different
7 objection, because I don't see that it's relevant, because it
8 wasn't part of the Facebook return.

9 So, it doesn't look like it was part of the posting
10 that he made. It might have been -- the article might have
11 been updated later to include a different video, but there's no
12 evidence of that --

13 MR. MARCHESE: Oh, yes, there is.

14 THE COURT: -- through this Facebook search
15 warrant --

16 MR. MARCHESE: Okay. Well --

17 THE COURT: -- return.

18 MR. MARCHESE: First of all, he did -- he didn't
19 download this until much later. I know that Eric Parker saw
20 that video, and I know that there's a link to it. And I know
21 that the article on Eric Parker's Facebook clearly, clearly
22 references the Ammon Bundy tasing.

23 So, what is the issue here, is they are bringing up
24 this post, which is misleading the jury, in my opinion, that
25 Parker saw the Payne video. When you go on there, and it

Mark D. Seyler - Cross

1 doesn't show the Payne video. It has a different video on it.

2 THE COURT: All right. I don't see it as misleading,
3 because the Facebook search warrant return provides a report of
4 what your client posted.

5 MR. MARCHESE: Correct.

6 THE COURT: And what he posted was the article, and
7 the search warrant return said that there was a link to a
8 video.

9 MR. MARCHESE: I agree with everything Your Honor is
10 saying.

11 THE COURT: So, this is sort of extraneous to what's
12 in that --

13 MR. MARCHESE: But --

14 THE COURT: -- Facebook. I mean, if you want to
15 attack the credibility of the Facebook report, that the report
16 is inaccurate or has the wrong link to the wrong video, I -- I
17 mean, this witness wouldn't be able to testify to that.

18 MR. MARCHESE: Your Honor, I have more but --

19 MR. TANASI: I was just going to ask, it's your
20 objection. Can I just chat with him for a second?

21 THE COURT: Sure.

22 MR. MARCHESE: Okay.

23 (Off-the-record discussion held.)

24 THE COURT: Maybe that's not an objection that the
25 government wants to make, but that was the one that came to my

Mark D. Seyler - Cross

1 mind was, well, that things get updated, and they change them
2 just to keep people interested or whatever.

3 MS. CREEGAN: Right. He said he had looked at it
4 close --

5 THE COURT: The only other evidence we have is that
6 the post that Parker made is the one that's in the Facebook
7 return of that article with that video.

8 MR. MARCHESE: But the problem --

9 THE COURT: That's not the one you are referring to,
10 because it's not in the return.

11 MR. MARCHESE: Well, it's the link. And it's
12 completely relevant to our defense, because they are alleging
13 that our clients traveled in interstate commerce with the
14 intent to commit extortion, when these issues go directly to
15 our defense in reference to that and in reference to a
16 conspiracy and in reference to obstruction.

17 So, it's our position is that it's relevant to defend
18 the case in reference to those elements.

19 MS. CREEGAN: And I don't know what that means. If
20 the defense is not legal, then there's no right to put on the
21 evidence.

22 MR. MARCHESE: Well, it means that it's an element of
23 the defense.

24 MS. CREEGAN: But even if your defense is that, if it
25 is not legal to put on that defense, you cannot do it.

Mark D. Seyler - Cross

1 MR. MARCHESE: It's not legal to defend the case?

2 MS. CREEGAN: It's not legal to advance a
3 self-defense argument which is not supported by the law.

4 THE COURT: All right. The Court's ruling is that
5 the objection is sustained. Move on.

6 (End of sidebar.)

7 THE COURT: The objection is sustained.

8 MR. MARCHESE: Sir, other than that video, I have
9 nothing else. Have a good day.

10 THE WITNESS: Okay. You, too.

11 THE COURT: Counsel for Stewart.

12 MR. TANASI: Yes, ma'am. Thank you.

13 THE COURT: Any cross?

14 CROSS-EXAMINATION

15 BY MR. TANASI:

16 Q. Good morning, Agent Seyler. How are you?

17 A. Good morning.

18 Q. Rich Tanasi. I represent Steven Stewart. I have got a
19 few questions for you on cross. Okay?

20 A. Yes.

21 Q. All right. In your testimony yesterday, I have it down as
22 I understand you went through about 41,000 pages, Facebook
23 pages, emails related to Ricky Lovelien and/or Ryan Payne in
24 response to search warrants related to those either Facebook or
25 email addresses; is that accurate?

Mark D. Seyler - Cross

1 A. It would have been thousands of pages, yes. I was
2 estimating that that was about it, yes.

3 Q. 41,000.

4 A. Yes.

5 Q. Was the number I wrote down.

6 A. Yes.

7 Q. Do you disagree with me or not?

8 A. No, that's what I said. I was just estimating. It could
9 be off by a thousand.

10 Q. Sure. Understood.

11 Brian, if you could please bring up Government's
12 Exhibit 174.

13 Okay, sir. All right. Do you see that?

14 A. Yes.

15 Q. All right. This is an email from Ryan Payne; correct?

16 A. Correct.

17 Q. All right. And that is to Gary Hunt; correct?

18 A. Correct.

19 Q. All right. This email doesn't involve Steven Stewart in
20 any way; right? It's not to him; not from him; correct?

21 A. Correct.

22 Q. All right. Brian, if could you bring up 175.

23 All right. Brian, can you kind of just zoom in on
24 the "to" portion. Nope. There you go. Thanks.

25 Okay. So, in the "to" section, that's everybody that

Mark D. Seyler - Cross

1 the email was going to; correct?

2 A. There were actually number of other individuals listed
3 down farther in the chain, yes.

4 Q. Sure. What we see here doesn't involve Steven Stewart's
5 email; correct?

6 A. Correct.

7 Q. And, in fact, you've reviewed the entire chain; right?

8 A. Yes.

9 Q. And you didn't see an email -- this email go to Steven
10 Stewart; correct?

11 A. Correct.

12 Q. All right. And, in fact, the entire kind of universe of
13 information that you've testified to here today and yesterday,
14 you saw numerous emails from Operation Mutual Aid; right?

15 A. Emails, yes.

16 Q. Okay. And none of those emails from Operation Mutual Aid
17 went to Steven Stewart; correct?

18 A. Correct.

19 Q. All right. You also saw numerous emails involving
20 Mr. Lovelien; right?

21 A. Yes.

22 Q. That he authored; right?

23 A. Posts that he authored, yes.

24 Q. Okay. None of those emails went to Steven Stewart;
25 correct?

Mark D. Seyler - Cross

1 A. Correct.

2 Q. All right. We also saw Facebook kind of posts and
3 messaging; right?

4 A. Yes.

5 Q. Okay. None of those Facebook posts, from Operation Mutual
6 Aid, went to Steven Stewart; correct?

7 A. The posts that Operation Mutual Aid made publicly, I don't
8 know what he may have viewed.

9 Q. Sure. You would be guessing as to what he may or may not
10 have viewed; right?

11 A. Correct.

12 Q. In terms of the private posts though, none of those posts
13 went directly to Steven Stewart?

14 A. Correct.

15 Q. Also, Ricky Lovelien's posts. None of those privately
16 went directly to Steven Stewart; correct?

17 A. Correct.

18 Q. Brian, if you could bring up 69, please. Yes, sir. I
19 show this as admitted yesterday; was it not?

20 COURTROOM ADMINISTRATOR: Yes.

21 BY MR. TANASI:

22 Q. Thank you. Okay. I count on this -- first of all, what
23 is this? What are we looking at?

24 A. This is a private message between several individuals on
25 Ricky Lovelien's Facebook account.

Mark D. Seyler - Cross

1 Q. Okay. The recipients listed, I think there's -- I counted
2 47. Would you agree with that number?

3 A. There's certainly a number. I haven't counted them. I
4 think that's accurate.

5 Q. Okay. None of those 47 are Steven Stewart; correct?

6 A. Correct.

7 Q. Brian, if you would please bring up 188.

8 All right. This was a summary that you testified to
9 yesterday; correct?

10 A. Yes.

11 Q. All right. There it is. Let's go back to the first page.

12 All right. This is dated April 7th; correct?

13 A. Yes.

14 Q. It's got a picture of Montana; right?

15 A. Yes.

16 Q. And a picture of Nevada; correct?

17 A. Yes.

18 Q. All right. Ricky Lovelien and Ryan Payne are in the
19 Nevada box or the Montana box; correct?

20 A. Yes.

21 Q. All right. And Cliven Bundy is in the Nevada box; right?

22 A. Yes.

23 Q. Okay. On the right, there's calls in between these three
24 individuals; correct, or two?

25 A. Correct.

Mark D. Seyler - Cross

1 Q. All right. Steven Stewart --

2 THE COURT: Is this exhibit -- I'm sorry. I thought
3 I heard you say that's Exhibit 88, but I have it written down
4 as 188. Can you just scroll it up a little bit so we can see
5 what the exhibit number is?

6 MR. TANASI: It's 188, Your Honor. I thought I might
7 have misspoke.

8 THE COURT: Thank you.

9 BY THE COURT:

10 Q. All right. Steven Stewart is not on this; right? No
11 calls between any of these three folks listed on the document;
12 correct?

13 A. Not -- no. No, there's not.

14 Q. Okay. And if we scroll down to the second page, Brian,
15 please. April 8th, there's arrow around Ryan Payne's name, and
16 then there's different times indicating different Facebook
17 messages and phone messages. None of those involve Steven
18 Stewart; correct?

19 A. Correct.

20 Q. All right. Go down to the next one, please.

21 Again, no Steven Stewart; correct?

22 A. Correct.

23 Q. Next page, Brian.

24 April 10th, again, no Steven Stewart; correct?

25 A. On this page, no.

Mark D. Seyler - Cross

1 Q. Brian, if we go down again.

2 Okay. April 11th, 2014, again, no Steven Stewart;
3 correct?

4 A. Correct. Not at this time.

5 Q. Okay. Go down one more, please.

6 All right. Again, April 12th, no Steven Stewart;
7 right?

8 A. Correct.

9 Q. Brian, if you would bring up 66, please.

10 All right. In this particular picture, this
11 gentleman I'm circling right here appears to be holding a
12 phone; right?

13 A. Yes.

14 Q. Okay. Not wearing camouflage; right?

15 A. Yes.

16 Q. Kind of standing there and observing what's going on in
17 the wash; right?

18 A. I don't know what he's looking at, but, yes.

19 Q. And he's looking in front of him; right?

20 A. Yes.

21 Q. Okay. And you know and through the course of your
22 investigation in front of him is the wash area between the
23 northbound and southbound bridge; fair?

24 A. Yes.

25 MR. TANASI: All right. Thank you. Pass the

Mark D. Seyler - Cross

1 witness.

2 THE COURT: Counsel for Drexler?

3 CROSS-EXAMINATION

4 BY MR. LEVENTHAL:

5 Q. Good morning, sir.

6 A. Good morning.

7 Q. My name is Todd Leventhal. I represent Scott Drexler.

8 You were asked a number of questions regarding sort
9 of your investigation, and you indicated that you had to make
10 some synopses out of the voluminous documents that you
11 received; correct?

12 A. Yes. You referring to the charts that we just looked at?

13 Q. Yes.

14 A. Yes.

15 Q. Okay. And that's because there was a lot of pages;
16 correct?

17 A. Correct.

18 Q. And I know you were asked -- you indicated approximately
19 41,000. Was that the total realm of the documents that you
20 reviewed in this case?

21 A. No. It would have been far more than that, yes.

22 Q. For more than that? Could you guesstimate how many more
23 than that?

24 MS. CREEGAN: Objection. Relevance.

25 THE COURT: Speculative. Sustained.

Mark D. Seyler - Cross

1 BY MR. LEVENTHAL:

2 Q. Okay. Did you also review videos?

3 A. Yes.

4 Q. Okay. And were those videos tied to Facebooks as well as
5 YouTubes?

6 A. Some of them would be, yes.

7 Q. Okay. If we can go to 175, Brian.

8 Okay. Thank you. I know you have seen this. My
9 cocounsel also showed you this. I just need to make sure. You
10 have got the "to" this Operation Mutual Aid; correct?

11 A. Yes.

12 Q. And you have got the "to" and there's a number of listed
13 recipients; correct?

14 A. Yes.

15 Q. Okay. And I think we saw before that there were over 300.
16 Would that sound about right or would you know?

17 A. I believe it was over 200 at least, yes.

18 Q. 200? Okay. Mr. Drexler was not anywhere listed on here;
19 correct?

20 A. Correct.

21 Q. Okay. So, he was not a recipient of this Operation Mutual
22 Aid?

23 A. Not that particular email, no.

24 Q. Okay. If we could go to page 55. Government's 55,
25 please, and scroll down just a bit. Right there. Stop.

Mark D. Seyler - Cross

1 So, do you see this paragraph right there?

2 A. Do you want made to read that paragraph?

3 Q. You don't need to read it, but I want you to look at that
4 paragraph. That's not -- was that actually written by Jerry?
5 Do you know? Bruckhart?

6 A. It would appear to have been copied by Jerry Bruckhart
7 from something else he was reading.

8 Q. Okay. So that would have been a repost. If you would go
9 down a little bit, Brian. Actually, right there. Stop.

10 It says "That was posted by this guy"?

11 A. Correct.

12 Q. Okay. So, we don't know if -- if that -- if that wasn't
13 there, that -- that sentence there that says "this was
14 posted -- that was posted by this guy," we wouldn't have known
15 that that was actually a repost or maybe a repost of a repost;
16 right?

17 A. Only by looking at it in context. It's clearly not
18 something that he was writing in the context of their
19 conversation. So, that's how that we would know that it wasn't
20 something he was just typing.

21 Q. Okay. Fair enough.

22 THE COURT: Okay. Again, we need to be careful here
23 with the terminology. Are you referring to posting or cutting
24 and pasting?

25

Mark D. Seyler - Cross

1 BY MR. LEVENTHAL:

2 Q. Well, it's good question. I guess what I'm doing is I'm
3 trying to -- what I'm asking the witness is whether or not --
4 first of all, this just goes to the weight and the credibility
5 of these documents.

6 So, it would be reposting; how credible is it; as
7 well as cutting and pasting how credible. So, it's going to
8 the credibility of the documents. It's sort of a
9 generalization of whether or not all of these documents that
10 are before this jury are credible.

11 THE COURT: Well, you are not challenging the
12 credibility of the report. You are challenging the weight to
13 be given --

14 MR. LEVENTHAL: Correct.

15 THE COURT: -- and the interpretation of what is
16 represented on the report.

17 So, I guess the question for the witness is, with
18 this report, this business report from Facebook, would it
19 distinguish between something that is reposted versus something
20 that is typed in by the author?

21 BY MR. LEVENTHAL:

22 Q. Correct. And we wouldn't have known -- I don't believe we
23 would have known -- that without that sentence, "that was
24 posted by this guy" --

25 THE COURT: Yeah, I'm not asking the attorney to

Mark D. Seyler - Cross

1 answer.

2 MR. LEVENTHAL: No.

3 THE COURT: I'm asking the witness. So, is there a
4 distinction, when you are looking at the business record, for
5 something that is reposted versus something that is cut and
6 pasted or, you know, typed in?

7 THE WITNESS: Yes, Your Honor. If Jerry Bruckhart,
8 in this case, wished to have shared or reposted this article,
9 he could have clicked "share" on his own Facebook page if he
10 had done -- wanted to.

11 Instead, what he did was copy the text from this
12 individual's post and put it into this conversation for Ryan
13 Payne to see, because he thought it was interesting.

14 THE COURT: Okay. So, two different actions.

15 THE WITNESS: Correct.

16 THE COURT: And those are represented in the report.
17 Could you -- you could tell the difference? I mean, does it
18 distinguish it somewhere?

19 THE WITNESS: The only reason I would know, Your
20 Honor, that this was probably repost is because of the language
21 that's used. It's not language that I am familiar with Jerry
22 Bruckhart using.

23 And that's the only way I would know, other than the
24 post down below that says "This was posted by another person."

25 THE COURT: All right. So, like, if we saw before if

Mark D. Seyler - Cross

1 someone liked something or if someone shared something or
2 someone posted something, that's represented in the report?

3 THE WITNESS: Correct. If they shared it, it would
4 have been in a different section of the report. It wouldn't
5 have been in the message portion like this.

6 THE COURT: But this was in a message portion?

7 THE WITNESS: Correct.

8 THE COURT: So it's something that was cut and pasted
9 or written letter, by letter, by letter, but you're saying it
10 probably wasn't written letter by letter?

11 THE WITNESS: Correct.

12 THE COURT: Okay. You can continue, counsel.

13 MR. LEVENTHAL: Thank you.

14 Q. If we go to 62, please?

15 This is a -- you recognize this as Mr. Lovelien's
16 Facebook page?

17 A. Yes.

18 Q. Okay. And there's a number of friends; correct?

19 A. Yes.

20 Q. And actually, how many -- about three pages of friends,
21 four pages of friends?

22 A. About that, yes.

23 Q. Okay. How -- how do you know -- because Mr. Lovelien was
24 communicating with some of these people. How do you know these
25 people are real? I mean, that they are real people? Do you

Mark D. Seyler - Cross

1 know?

2 A. They have Facebook accounts. What do you mean by real
3 people?

4 Q. Okay. Well, let's say Bamson Coltrane. How do you know
5 if Bamson Coltrane is really Bamson Coltrane and not an alias?

6 A. I have no expectation that these are their actual names.

7 Q. Are you familiar with a person named Robin Kirkham?

8 A. Yes.

9 MS. CREEGAN: Objection. Relevance.

10 MR. LEVENTHAL: Again, it goes to the weight of the
11 evidence, Judge.

12 MS. CREEGAN: Beyond the scope.

13 MR. LEVENTHAL: The evidence is in, and it goes to
14 the weight. If we need a sidebar for a proffer --

15 THE COURT: All right. Let's go to sidebar.

16 (Sidebar.)

17 THE COURT: What was the name? Edward Rose?

18 MR. LEVENTHAL: No, Robin Kirkham.

19 THE COURT: That's on the list of a friend; is that
20 what it is?

21 MR. LEVENTHAL: No, it's not.

22 THE COURT: Recipients?

23 MR. LEVENTHAL: No, it's not. No, it's not. Here is
24 the relevance of it. So, I just asked him about cutting and
25 pasting and reposting. And we went to the weight and the

Mark D. Seyler - Cross

1 credibility.

2 Robin Kirkham was a BLM agent who ran a campaign on
3 Facebook using different monikers, different aliases,
4 infiltrating these -- sort of these groups. So, again, it goes
5 to the weight on whether or not these are credible, whether
6 Robin Kirkham was the one authoring these things.

7 I don't know, because he -- he doesn't remember Robin
8 Kirkham. He's admitted that Robin Kirkham was in an undercover
9 capacity with BLM prior to the 12th, days leading up, doing a
10 campaign undercover.

11 So, we have all these recipients. We have all
12 these -- we have all these messages, we have all these
13 conversations, and it goes to the weight on whether or not
14 these people are who they say they are, or whether or not it's
15 Robin Kirkham in an undercover capacity, or whether or not it's
16 a confidential informant or anybody else. It goes to the
17 weight and credibility of the --

18 THE COURT: Do you have a good faith basis to believe
19 it's Robin?

20 MR. LEVENTHAL: I have a very good. He's already
21 admitted that Robin Kirkham in the last trial --

22 THE COURT: Do you know what name he was using?

23 MR. LEVENTHAL: No, he -- he -- I asked him --

24 THE COURT: So, you don't know these are Robin with a
25 false name?

Mark D. Seyler - Cross

1 MR. LEVENTHAL: No. Actually, at the last trial, I
2 asked him if he knew. He said he -- I believe he said he knew,
3 but he couldn't remember at the time. But if I showed him, he
4 could remember. That's what he told me at the last trial.

5 MS. CREEGAN: And Mr. Leventhal asked him all these
6 names, and he said all of these people were not that person.
7 So, I don't know why we would repeat that just for the sole
8 purpose of taking up the jury's time and making them aware of
9 the fact that there was undercover.

10 I don't know what difference that makes. He asked
11 him about Mark Kessin. He asked him about Michael Reighley.
12 He asked him all these names. And the only statements we
13 introduced for the truth were the actual coconspirators, James
14 Lardy, Rick Lovelien, Ryan Payne.

15 We didn't introduce any other statements for their
16 truth. So, I am not sure what relevance that would have
17 either. If someone did copy and paste the statement by someone
18 else, they have adopted that statement. So, I am not sure why
19 it would even matter what their original source was.

20 If they are disseminating this information, they
21 presumably agree with it, so I don't see how that would
22 undermine the evidence.

23 MR. LEVENTHAL: But we all have non-names. I don't
24 know who Robin Kirkham went under. We have got Operation
25 Mutual Aid. We've got a bunch of different sort of group names

Mark D. Seyler - Cross

1 that also these things have come in for the truth. They have
2 been admitted, and they are statements about what's going on or on
3 what's happening.

4 And I don't know -- I think the jury should be
5 allowed to hear that there was undercovers infiltrating, and
6 the evidence may not be so pristine, because it's not. That's
7 all. It goes to the weight. That's all I'm using it for.

8 THE COURT: But the line of questioning that you are
9 using now is attempting to imply that Robin is one of these
10 people who posted things that are reposted by the defendants,
11 and you don't have a good faith basis to believe that. In
12 fact, just the opposite. You know, that it's -- that Robin is
13 not any of these people that are --

14 MR. LEVENTHAL: No, I don't. I don't, Your Honor,
15 because he won't give me the moniker last time. He said, "If I
16 see it, I could tell you, but I don't remember." That's what
17 his words were at the last trial.

18 THE COURT: I have no reference then.

19 MR. LEVENTHAL: No, well, because he doesn't know.

20 THE COURT: And if you did, I don't see how it's
21 relevant. The objection is sustained.

22 (End of sidebar.)

23 THE COURT: All right. The objection is sustained.

24 MR. LEVENTHAL: Brian, if we could go to 185, please.

25 Q. Special Agent Seyler, during the course of your

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1 investigation, you indicated you also looked at phone calls
2 between people; correct?

3 A. Correct.

4 Q. And these calls between Cliven Bundy, Ryan Payne, and
5 Jerry Bruckhart, this was one of your synopses between those
6 three calls; correct?

7 A. Yes.

8 Q. Callers. And you indicated there are hundreds of pages
9 there for these three; correct? On this -- this particular
10 with those three people, there were hundreds?

11 A. I believe I said tens or hundreds, yes.

12 Q. Okay. And again, no Scott Drexler was anywhere to be
13 found during that investigation of these phone calls; correct?

14 A. Correct.

15 Q. Okay. If we could go to 188.

16 Now, I know that my cocounsel showed you this
17 earlier. This is your synopsis, and I just want to make sure,
18 if we can go to the bottom.

19 Okay. This would be April 12th, and you've got
20 Montana up here on the -- correct?

21 A. Yes.

22 Q. And you've got Nevada; correct?

23 A. Yes.

24 Q. Okay. So, if you were to put Idaho over here somewhere,
25 would it be fair to say that there was no communication between

Mark D. Seyler - Cross

1 these two; the people from Montana and the people from Idaho
2 prior to the 12th?

3 MS. CREEGAN: I am just going to ask for a point of
4 clarity. Does he mean on the exhibit or at all?

5 THE COURT: Do you want to clarify?

6 BY MR. LEVENTHAL:

7 Q. Sure. Did you find any evidence that Mr. Drexler,
8 Mr. Parker, or Mr. Stewart, from Idaho, spoke to anybody from
9 Montana prior to the 12th, 2014?

10 A. Spoke, no.

11 Q. Communicated?

12 A. They didn't communicate back, no.

13 Q. Okay. Now, you wrote down here, I see on your synopsis,
14 at 9:40. Do you see that?

15 A. Yes.

16 Q. And you indicated that that's Cliven Bundy meets Sheriff
17 Gillespie on stage and tells him to disarm federal agents in
18 one hour; correct?

19 A. Correct.

20 Q. Okay. But you didn't write down there that also Sheriff
21 Gillespie told the crowd that BLM was removing their assets,
22 that the Gold Butte was opened, or that they had been ceasing
23 operations. You didn't put that there; did you?

24 A. No.

25 Q. Okay. So, that would have gone there at the same time,

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1 around 9:40; correct?

2 A. I listened to the speech. It would have been
3 approximately about that time, yes.

4 Q. And the sheriff's speech actually came before that;
5 correct? Cliven speaking?

6 A. Yes.

7 Q. Okay. Now, in all of the emails and all the Facebooks and
8 all of the posts that you saw, did anybody anywhere communicate
9 that they were going to take over the ICP?

10 A. Yes. There were individuals that talked about that.
11 Talked about storming the BLM.

12 Q. I specifically -- ICP.

13 A. They didn't use the term ICP.

14 Q. Okay. So -- and I just want to make sure. There was no
15 communication between Payne, Mutual Aid, and Mr. Drexler,
16 correct? That you saw?

17 A. Other than their comments to the media which they intended
18 to be received by people like Mr. Drexler.

19 MR. LEVENTHAL: Very good. Thank you.

20 THE COURT: All right. Let's go ahead and take a
21 break. It's 10:42. We'll be back at 11:00.

22 I do remind the jury during the break that you are
23 not to discuss this case with anyone nor permit anyone to
24 discuss it with you. Do not read, or view, or listen to
25 anything that touches upon this case in any way. And please do

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1 not attempt to perform any research or any investigation, and
2 do not form any opinion.

3 Go ahead and write down your questions. And remember
4 if you inadvertently hear anything about the case or see
5 anything about the case or anyone tries to speak to you about
6 the case, you are required to alert the Court right away.

7 So, we'll go ahead and stand for the jury. And then
8 after they exit, Special Agent Seyler, you can stretch as well,
9 take a restroom break, and we will have everyone back here at
10 11:00 a.m.

11 (Jury out.)

12 THE COURT: All right. Off record.

13 (Recess, 10:43 a.m. Resumed 11:16 a.m. Jury out.)

14 COURTROOM ADMINISTRATOR: All rise.

15 THE COURT: Thank you. You may be seated.

16 Let's go ahead and bring in the jury.

17 (Jury in.)

18 COURTROOM ADMINISTRATOR: All rise.

19 THE COURT: All right. The jury may be seated.

20 Everyone else may be seated as well. We are back on the
21 record.

22 And we have FBI Special Agent Seyler on the witness
23 stand. Does the government have any redirect?

24 MS. CREEGAN: No redirect, Your Honor.

25 THE COURT: All right. Now, if any of the members of

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1 the jury have a question for our witness, Mr. Seyler, go ahead,
2 please, and write them down on the piece of paper if you
3 haven't already. Remember to use the forms provided.

4 Do not write down your name. You don't need to sign
5 it. Don't give me a jury number or initials. We just need the
6 questions. Take your time writing neatly, so we can read your
7 question. And then when you are done, fold the piece of paper
8 in half, pass them to Aaron, we'll shuffle them up and see what
9 we can do to ask them.

10 As before, even if you don't know if this witness can
11 answer the question, if it's a question you have, we still want
12 to know what it is so that the parties can work it in through a
13 different witness if necessary.

14 (Clerk handing notes to the Court.)

15 THE COURT: Counsel, could you please join me at
16 sidebar?

17 (Sidebar.)

18 THE COURT: All right. So, we have Jury Note No. 6.
19 I number them sequentially. So we did 1 through 5 with the
20 last witness. So, this is Jury Note No. 6.

21 It has 4 on there. I don't know why. There is a 4
22 and a slash. Maybe they were going to put the date on or
23 something.

24 Anyway, it says, "Clarification, name of witness.
25 Whose testimony was read by Special Agent Seyler?" I don't

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1 think there's any objection to that.

2 MR. MARCHESE: Nope.

3 THE COURT: Good clarification. All right. Jury
4 Note No. 7, "What is OMA?" I think that's a fair question. No
5 objection.

6 MS. CREEGAN: (Shakes head.)

7 MR. TANASI: No.

8 THE COURT: And the second part of Jury Note No. 7,
9 to clarify, there was two questions asked in Jury Note No. 7.
10 The second one "What is their mission?" I think if you want me
11 to rephrase it to what was their stated mission?

12 MS. CREEGAN: Uh-huh.

13 THE COURT: Maybe we can go back to that exhibit
14 number, but I don't know that you want this witness to
15 speculate or restate the mission rather can we go back and look
16 at that exhibit. Right? You on don't want me to ask the
17 witness.

18 MR. LEVENTHAL: I don't think so, because I think
19 everybody had different -- one guy had one mission. I think
20 Payne had a mission, or that's -- I don't even know how you
21 would --

22 THE COURT: You get to ask your follow-up questions,
23 so you can clarify that there's not just one mission. That's a
24 good clarification, too.

25 Jury Note No. 8 looks like it has a different

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1 question. The first one is "There are comments about cell
2 phone calls be attributed to individuals. Is there any way to
3 prove that the registered owner of the phone made the call?"

4 I think that's a good question. Right? Second part
5 is "How can you assure that a cut and paste post has not been
6 edited?" Any objection to that?

7 MS. CREEGAN: (Shakes head.)

8 THE COURT: And then the last part is "When reviewing
9 the address list for Facebook, how do you or can you reconcile
10 aliases, for example, William Bonney equals Bonney the Kid or
11 the rid?"

12 MR. LEVENTHAL: Billy the Kid.

13 THE COURT: Looks like an "R" but I think they mean
14 Billy the Kid.

15 MR. TANASI: Probably. Right.

16 THE COURT: It says "rid" but I think they mean kid.
17 Either way, any objection to that?

18 MR. TANASI: I don't have one.

19 MS. CREEGAN: (Shakes head.)

20 THE COURT: Number 9 has one question. "Why would
21 you come armed when you were just crowd control or guarding
22 cattle if you didn't intend to use them?"

23 MR. MYHRE: Didn't intend to use?

24 THE COURT: Good question, but I don't know about use
25 them. Use the arms? Use the firearms? Why would you come

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1 armed? I will restate it.

2 Jury Note No. 9. "Why would you come armed, when you
3 were just crowd control or guarding cattle, if you didn't
4 intend to use them?" So, I don't think there's an objection to
5 the question other than that we don't know that this witness
6 would be able to answer that.

7 MR. MARCHESE: Yeah, that's our position, at least
8 Parker's.

9 MR. LEVENTHAL: Plus, I think would it go into a lot
10 of other reasons, whether it's legal, legal to carry in Nevada.
11 Are we a legal carry state? Or, you can do it. Openly carry.

12 THE COURT: Well, the question is, "If you don't
13 intend to use, it why bring it?"

14 MR. LEVENTHAL: Because it's your right, I guess. I
15 mean, how deeply do we want to go with that?

16 MR. TANASI: Judge, is that a question for the
17 witness as it pertains to the statement from Eric Parker that
18 he read in? Is that essentially a question for Eric Parker?

19 THE COURT: It doesn't --

20 MR. LEVENTHAL: She wouldn't know.

21 THE COURT: It doesn't clarify. It just has the one
22 question.

23 MS. CREEGAN: I think the question is --

24 THE REPORTER: Speak up, please.

25 MS. CREEGAN: I'm sorry. I don't think Agent Seyler

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1 can answer that. It's a question of their intention, because
2 the Judge also instructed them to get what their questions are.
3 So, this tells the attorneys what they are interested in, not
4 necessarily a question for the witness.

5 THE COURT: The question is "Why would you come?" So
6 they are asking the reasons to come armed.

7 MR. PEREZ: That's --

8 THE COURT: You are out at night when you are
9 camping. I don't know what they are looking for, but the
10 question isn't -- the question is not what is the intent of the
11 defendant. The question is "Why would you come armed when you
12 were just crowd control or guarding cattle, if you didn't
13 intend to use them?"

14 MS. CREEGAN: Nothing for this witness.

15 THE COURT: I am trying not to mix up the two trials,
16 but I think there was testimony by this witness that Parker
17 stated that he brought the weapons because he planned to go
18 shooting.

19 MR. TANASI: In the desert.

20 THE COURT: In the desert. Right. That part came
21 in.

22 MS. CREEGAN: It did come in.

23 THE COURT: There were other uses for the gun.
24 Anyway, so I will just ask it, and say I don't know that this
25 witness can answer that question.

Mark D. Seyler - Cross

1 COURTROOM ADMINISTRATOR: Your Honor, we do have
2 another jury note.

3 THE COURT: That would be No. 10. "Besides Lovelien,
4 were any other defendants communicated with directly by Payne?"
5 Any objection to that question?

6 MR. LEVENTHAL: No.

7 MR. MYHRE: No.

8 MS. CREEGAN: No.

9 THE COURT: All right.

10 MR. TANASI: Thank you, Judge.

11 (End of sidebar.)

12 THE COURT: All right. So, I'm going to ask you a
13 couple questions. I will read the questions, but when you
14 answer the questions, Special Agent Seyler, you can go ahead
15 and face the jury. Because these are really jury questions,
16 not my questions. I am just reading them in. But you can
17 respond to the question facing the jury.

18 So, Jury Question Note No. 6 is, "Clarification.
19 Whose testimony was read by Special Agent Seyler?"

20 THE WITNESS: That would have been the testimony of
21 Eric Parker.

22 THE COURT: He's a defendant in this trial.

23 THE WITNESS: Yes.

24 THE COURT: Okay. Then Jury Note No. 7, "What is" --
25 and let me clarify this. Two different questions to Jury Note

Mark D. Seyler - Cross

1 No. 7. The first one is "What is OMA?"

2 THE WITNESS: That is Operation Mutual Aid, the group
3 that Ryan Payne and Jerry Bruckhart founded and led.

4 THE COURT: All right. Then the second part of Jury
5 Note No. 7 is, "What is their mission?" And rather than having
6 you speculate, I think there was evidence -- an exhibit that
7 was presented.

8 So, if we can just have someone recall that back up
9 on the screen for the witness to point out where it is. So, in
10 other words, instead of answering the question "What is their
11 mission? What do you interpret their mission to be?" I am
12 rephrasing the question to be "What is their stated mission?"

13 THE WITNESS: Yes, Your Honor.

14 THE COURT: Okay.

15 MS. CREEGAN: And we are bringing up Exhibit 65.

16 THE COURT: Thank you. Exhibit 65.

17 THE WITNESS: Would you like me to read this, Your
18 Honor?

19 THE COURT: Yes, go ahead and read.

20 THE WITNESS: "Mission Statement. Militia men,
21 freedom fighters, soldiers, patriots all."

22 "Who? A coalition of states' militias, patriotic
23 civilians, individual freedom fighters, and media relations
24 personnel from patriotic political activism groups in
25 conjunction with local law enforcement if and where

Mark D. Seyler - Cross

1 applicable."

2 "What? Defense of public and private property, lives
3 and liberty to exercise God-given rights, seen plainly in the
4 laws of nature and codified in the Declaration of Independence
5 and Bill of Rights at the request of such parties in need of
6 such defense, and the documentation and archiving of all
7 defensive actions taken by the coalition for accurate and
8 prompt reporting to all concerned public venues and media."

9 "Where? Defensive posture shall be taken up in the
10 optimal tactical position in relation to people or property in
11 need of such defense. All local laws, not in violation of the
12 US and subject states constitutions shall be observed. All
13 laws in violation of the United States and subject sates
14 constitutions are hereby considered null and void, the
15 enforcement of which most likely represents the need for such
16 defense as herein outlined."

17 "When? As the nature of a quick reaction force is
18 understood, a defensive posture will be taken up in the
19 shortest amount of time possible for the allocation of the
20 necessary defensive resources to the location determined.
21 Minimum force size will be determined by the leadership of the
22 coalition."

23 THE COURT: Thank you. Jury Question Note No. 8 is a
24 three part. The first part is "There are comments about cell
25 phone calls being attributed to individuals. Is there any way

Mark D. Seyler - Cross

1 to prove that the registered owner of the phone made the call?"

2 THE WITNESS: In some instances, there are. We can
3 actually see photographs of people taking -- taken while they
4 are on their phone. We also know how that phone traveled,
5 because of some of the information.

6 So, we are able to tell, for instance, if some of the
7 subjects started in Montana. We are able to see from the phone
8 data that that phone traveled to Nevada, and we have a
9 photograph of that person in Nevada. So, that's one of the
10 ways that we are able to tell that the person that was
11 registered to that phone was, in fact, using that phone.

12 THE COURT: When you say you can tell that the phone
13 traveled, how can you tell the phone traveled?

14 THE WITNESS: The phone company provides us with data
15 regarding either what cell tower the phone was using or what
16 cell switch it was using. Those are kinds of two different
17 things, but related in that they tell you what area the phone
18 is in.

19 THE COURT: So, if I'm here in Nevada, there's a cell
20 phone tower near me that shows that I'm using my cell phone
21 when I am using it, and if I'm in Arizona, there's a different
22 cell phone tower?

23 THE WITNESS: Correct.

24 MS. CREEGAN: I'm sorry. May I bring it to your
25 attention that also that mission statement continued on to

Mark D. Seyler - Cross

1 page 6. I am sorry.

2 THE COURT: Oh, I didn't let you finish that. I
3 thought it was just one page. Let's go back to Exhibit 65.

4 THE WITNESS: "Why? As has been the case throughout
5 recorded history and reasonably assumed throughout unrecorded
6 history, governments instituted amongst men for the protection
7 of private lives and property have always assumed and usurped
8 duties and responsibilities contrary to the purpose of their
9 institution. And specific to these United States, such
10 governments have done so in complete and utter violation of the
11 documents which establish them by the free will of the people
12 and the union of them via the Constitution and Bill of Rights."

13 "Once those governments have ceded their intended
14 purpose to some other end or intent, it can be reasonably and
15 logically ascertained that such entity would become aggressive
16 to its former purpose and the people who established it in
17 pursuit of its own goals."

18 "At such point, as the government intends to use the
19 physical power granted it by those who implemented it against
20 them, it then becomes the responsibility of the people
21 themselves to defend their country from its government and to
22 generally revert to the process outlined by the Declaration of
23 Independence to absolve such government of its power or
24 separate from it to be freed from its oppression."

25 "As this coalition is intended for the defense of the

Mark D. Seyler - Cross

1 populace from enemies foreign and domestic, the latter path
2 shall be left to the determination of that populace. And we
3 shall guarantee them the freedom to make that choice in
4 accordance with man's God-given liberty, the ideas espoused in
5 the Declaration of the Independence and the Constitutions of
6 the several states, the Constitution of their union and the
7 Bill of Rights so help us God."

8 THE COURT: Thank you. So, we are turning now back
9 to Jury Note No. 8. And I asked the first question. The
10 second part of that question is, "How can you assure that a cut
11 and paste post has not been edited?"

12 THE WITNESS: We would have no way of knowing unless
13 there was an actual photograph of that cut and paste. So, if
14 someone wanted to capture text and put it in a message, and
15 then go back and change it, unless we were able to see the
16 original post and compare them, we wouldn't know.

17 So, in some instances, we are able to see the
18 original post, and then the cut and paste, which in some of
19 these examples where we talked about cut and paste, I was able
20 to do that.

21 THE COURT: All right. But what is -- the text that
22 is represented in the report, the business report that you
23 received from Facebook, that is what was actually posted? That
24 hasn't been edited?

25 THE WITNESS: Correct.

Mark D. Seyler - Cross

1 THE COURT: All right. So, just a matter of where
2 did they get it from, and did they edit it in the process of
3 cutting and pasting it?

4 THE WITNESS: That's correct.

5 THE COURT: Okay. All right. The third part of Jury
6 Note No. 8 is "When reviewing the address list for Facebook,
7 how do you or can you reconcile aliases? For example, William
8 Bonney equals Billy the Kid?"

9 THE WITNESS: So, there are a few different ways.
10 One of the ways that when we get a Facebook return via search
11 warrant, it provides some information about that person.

12 So, when you sign up for Facebook, you actually have
13 to provide a real email address. They ask for a telephone
14 number, and so we can verify that information. There are also
15 often photographs on the account where we can see that it's
16 actually a picture of someone else. You can sometimes compare
17 it to a driver's license photo.

18 So, those are some of the ways that we are able to
19 corroborate that the person really is who they say they are.
20 In some cases, it is not the right name, and we have to
21 actually show who it really is.

22 THE COURT: All right. So, Jury Note No. 9 says,
23 "Why would you come armed when you were just crowd control or
24 guarding cattle if you didn't intend to use them?"

25 And I think "them" is referring to the arms. So,

Mark D. Seyler - Cross

1 "Why would you come armed when you were just crowd control or
2 guarding cattle if you didn't intend to use them?"

3 And I think that we agreed that this witness can't
4 answer that question, but it is a good question. The attorneys
5 have now received it as well, and they will be receiving a copy
6 of this, so that they will be able to provide answers to that
7 if they can.

8 Jury Note No. 10 is "Besides Lovelien, were any other
9 defendants communicated with directly by Payne?"

10 THE WITNESS: It depends what you mean directly.
11 Mr. Payne gave several statements to media -- to the media.
12 Those articles did make it -- and those statements did make it
13 to Mr. Parker and also to Mr. Stewart as well via Facebook.

14 So, the comments made by Mr. Payne were in articles
15 that they read.

16 THE COURT: And was -- did you determine that Payne
17 was the person who was posting to the OMA website?

18 THE WITNESS: I believe that was Jerry Bruckhart --

19 THE COURT: Bruckhart was.

20 THE WITNESS: -- who was posting to the OMA website.
21 The website actually had posts from several different people.
22 To the Facebook account that we looked at in -- earlier in the
23 trial, that was most likely Mr. Bruckhart.

24 THE COURT: Okay. So, any follow-up questions from
25 the government?

Mark D. Seyler - Redirect

1 MS. CREEGAN: One moment, Your Honor.

2 (Pause in the proceedings.)

3 MS. CREEGAN: Thank you, Your Honor.

4 REDIRECT-EXAMINATION

5 BY MS. CREEGAN:

6 Q. Just a few questions, Agent Seyler. In terms of cutting
7 and pasting and putting something in a message or in a post, is
8 that an action that's undertaken by the user of the Facebook
9 account?

10 A. Yes.

11 Q. Does it happen automatically?

12 A. No.

13 Q. How is that done?

14 A. If you are talking about cutting and pasting, one could
15 view an article or anything on the computer. And you take your
16 mouse, and you can literally click the beginning of what you
17 want to paste, and scroll down to where what you want is over,
18 and you can right click on your mouse, and it will give you an
19 option to copy.

20 And then you can go into your Facebook message, if
21 you wanted to copy it into a message, and then you right click
22 again and paste. And it would put that text into that message
23 then.

24 Q. So this is still a person choosing to post that message?

25 A. Correct.

Mark D. Seyler - Redirect

1 Q. And I want to ask you specifically about some of the
2 Facebook pages that we looked at. Did you look at, for
3 example, Ricky Lovelien's Facebook page?

4 A. No.

5 Q. That had his name on it?

6 A. Outside of the warrant?

7 Q. Correct.

8 A. Yes.

9 Q. And what did you observe on his publicly viewable page?

10 A. It indicated he was from Libby, Montana. Most of his
11 photographs were freely available where I would review them.
12 They were photographs of him conducting militia activity and
13 training with his -- his group in Montana, which I recognized
14 him from his driver's license photos. And then various posts
15 that he had made along with articles that he wished to share.

16 Q. And for Ryan Payne's Facebook page, what could you see on
17 the publicly viewable Facebook page?

18 A. Also photographs of Ryan Payne, Ryan Payne's family, and a
19 number of statements regarding Operation Mutual Aid and related
20 matters.

21 Q. And how about Carol Bundy's Facebook page? What could you
22 see publicly on her Facebook page?

23 A. Again, photographs of Carol Bundy and her family, as well
24 as people wishing her happy birthday on April 7th, which I knew
25 to be her birthday.

Mark D. Seyler - Redirect

1 Q. And you were also asked a question about cell phone data.
2 One of the questions I want to ask you is about how can you
3 tell where a cell phone is physically located at any time?

4 A. Real time, it would be different, but do you mean
5 historically looking at the records that we received?

6 Q. Yes.

7 A. So, historically looking at the records we received,
8 depending on the phone company and depending on how they
9 provide the data, but with cell phones, it will say this call
10 was made on this time and date, and it was using either this
11 cell tower or this cell switch. And it will give a location.

12 So, a switch is a much larger area, so it will just
13 say Las Vegas. Whereas a cell tower may say specifically
14 Bunkerville.

15 Q. So, in some of those summary exhibits, you've listed the
16 cell phone towers that those phones are pinging off of at the
17 time the calls are made?

18 A. Cell phone towers or cell phone switches, yes.

19 Q. And you were asked a question about knowing who uses a
20 phone. Did you receive subscriber information back on the
21 phones that you requested toll records for?

22 A. Yes.

23 Q. And what type of information was included in the
24 subscriber information?

25 A. Usually it will indicate who is paying the bills; how they

Mark D. Seyler - Redirect

1 are paying the bills; what their addresses were; what their
2 other phone numbers are or were.

3 Q. Were you able to investigate some of that information and
4 see if it matched the names of the persons that you have
5 ascribed them to on the summary exhibits?

6 A. Yes.

7 Q. How did you do that?

8 A. With public source information, we are able to tell what
9 somebody's other phone numbers are at times. We may be aware
10 of that through other types of investigation. Someone may have
11 told us that this is so and so's phone number.

12 We are physically able to tell what their address is
13 often by driving by the property. For instance, Ryan Payne's
14 phone or Ryan Payne's address, I was able to drive by and
15 verify that that's where his vehicles were parked.

16 Q. And can I bring up Exhibit 65, page 5. Thank you.

17 And Agent Seyler, where is this from? Just remind us
18 where this is from.

19 A. It comes from the Facebook page that Operation Mutual Aid
20 had.

21 Q. And did there come a time when Ricky Lovelien somehow
22 commented on or liked this page?

23 A. He liked this page, yes.

24 Q. Do you remember when about that was?

25 A. It would have been April 9th or 10th I believe.

Mark D. Seyler - Redirect

1 Q. And that would have been a few days before April 12th,
2 2014?

3 A. Correct.

4 Q. And this -- was this publicly visible at that time?

5 A. Yes, it was.

6 Q. And taking your attention to within the "where" statement,
7 the sentence that begins with "All laws in violation." This
8 would have been publicly viewable in April of 2014; correct?

9 A. Yes.

10 Q. And it states "All laws in violation of the US and subject
11 state constitutions are hereby considered null and void."

12 A. Yes.

13 Q. And it states "The enforcement of which" -- referring to
14 those laws -- "likely represents the need for such defense as
15 herein outlined"?

16 A. Yes.

17 Q. And taking your attention to the sixth page, please.
18 Taking your attention to that second paragraph.

19 "At such a point as the government intends to use the
20 physical power granted by those who implemented it against
21 them, it then becomes the responsibility of the people
22 themselves to defend their country from its government." Is
23 that correct?

24 A. Yes.

25 Q. And this would have been publicly viewable at the time

Mark D. Seyler - Redirect

1 that Ricky Lovelien liked the page?

2 A. Yes.

3 Q. Agent Seyler, in the course of your investigation of Ryan
4 Payne, have you seen other statements by Ryan Payne or Jerry
5 Bruckhart discussing OMA's purposes?

6 A. Yes.

7 Q. About how many statements of its purpose would you say
8 that you've seen?

9 A. It would be at least tens if not 50 or 60 at least.

10 Q. And generally, what -- are those consistent with the
11 mission statement that's given here?

12 A. Yes, except more aggressive, several of them, yes.

13 Q. When you say more aggressive, what do you mean?

14 A. This is clearly some flowery language made to resemble
15 that of the original founders. Some of their language where
16 they actually discuss their purpose is much more discussing how
17 they are going to arrest officials. How they intend to use
18 aggressive force.

19 Q. And if we could go up to -- I think it's the second page
20 here of Exhibit 65. And this post that appears on April 5th,
21 2014, would this have been publicly viewable around April 7th,
22 8th, 9th, 10th of 2014?

23 A. Yes. It would have been the first post that you saw as
24 you scrolled vertically down the page.

25 Q. And this is discussing what in this post?

Mark D. Seyler - Redirect

1 A. Specifically whether they have support to arrest officials
2 in Montana.

3 Q. This would be members of OMA arresting officials, state or
4 federal, in Montana?

5 A. Yes. I know the specific instance they are referring to;
6 but, yes, it was specifically officials.

7 Q. And Agent Seyler, in your review of the statements that
8 have been made by Bruckhart and Payne of OMA's purpose, did
9 they ever indicate how you determine when laws are
10 unconstitutional and this defense needs to be mounted?

11 MR. LEVENTHAL: Objection. Relevance.

12 MR. TANASI: Steward joins.

13 MR. MARCHESE: Parker joins.

14 THE COURT: Do you want a sidebar? Let's go to
15 sidebar.

16 (Sidebar.)

17 THE COURT: All right. So, the objection -- I think
18 it was by the government? No?

19 MR. LEVENTHAL: No, relevance. We are going way
20 beyond the scope of the question and what the mission statement
21 is of the OMA. It's just getting way beyond, and I just wonder
22 what the relevance is.

23 MS. CREEGAN: Well, they mention in their mission
24 statements that when laws are unconstitutional, we are going to
25 use defensive action.

Mark D. Seyler - Redirect

1 So, it seems to be relevant with -- when it would be
2 that they would determine that that threshold was met, because
3 Lovelien is affiliating himself with this group. He's in
4 direct contact with them. He deploys to a place where they are
5 acting. How have they -- what's the criteria for determining
6 whether they are going to use this force?

7 THE COURT: I agree with the defense. I think
8 it's -- it's wandering past the follow-up.

9 MR. PEREZ: Yeah, because that will take an hour.

10 THE COURT: It's just to clarify the answer not to
11 introduce more questions. So --

12 MR. PEREZ: And I think we all missed the point on
13 the cell phone. The cell phone question wasn't where it was,
14 it was like --

15 MR. LEVENTHAL: I know, but we can clear that up.

16 MR. PEREZ: Yeah, we will do that right now. We are
17 going sideways.

18 (End of sidebar.)

19 THE COURT: Back on the record from sidebar. The
20 objection was sustained. The government may continue with its
21 questioning.

22 MS. CREEGAN: No, further questions. Thank you, Your
23 Honor.

24 THE COURT: All right.

25 MR. TANASI: Yes, Your Honor.

Mark D. Seyler - RX

1 THE COURT: Yes, counsel for Stewart. Go ahead and
2 follow up.

3 RE CROSS-EXAMINATION

4 BY MR. TANASI:

5 Q. Brian, if we could bring back up Exhibit 65, please.

6 All right. Scroll down to page 5, please. Okay.
7 Stop there.

8 Agent Seyler, you see page 5 of Exhibit 65?

9 A. Yes.

10 Q. Okay, sir. See under the "who" statement?

11 A. Yes.

12 Q. Okay. Steven Stewart's name's not there; correct?

13 A. His name is not there, no.

14 Q. Okay. Steven Stewart is not at all in any way associated
15 with Operation Mutual Aid; correct?

16 A. He certainly showed up and checked up at their checkpoint
17 in Bunkerville, yes.

18 Q. Based on the information that you've seen, based on these
19 documents, based on the 41,000 pages of documents that you've
20 gone through, did you see anything --

21 MS. CREEGAN: Objection. Vague --

22 BY MR. TANASI:

23 Q. -- that shows that Mr. Stewart --

24 MS. CREEGAN: -- and argumentative.

25

Mark D. Seyler - RX

1 BY MR. TANASI:

2 Q. -- is, in fact, a member of Operation Mutual Aid? Yes or
3 no?

4 THE COURT: Mr. Tanasi, when there is an objection,
5 you need to stop and wait for the Court to rule on it.

6 What was the objection?

7 MS. CREEGAN: Vague and argumentative.

8 THE COURT: I don't think it's vague and
9 argumentative. You can answer the question.

10 Go ahead, Mr. Tanasi.

11 MR. TANASI: Apologize, Your Honor. Thank you.

12 THE WITNESS: I am sorry. What was the question?

13 BY MR. TANASI:

14 Q. The 41,000 pages that you reviewed, most of those pages or
15 a lot of those pages with respect to Operation Mutual Aid, did
16 you see anything relating to anything that shows that
17 Mr. Stewart was a member of Operation Mutual Aid? Yes or no?

18 A. Not a member, no.

19 Q. Thank you, sir. In fact, you saw no private messages;
20 right? Between Mr. Payne and Mr. Stewart; right?

21 A. Correct.

22 Q. Okay. You also saw no private messages between
23 Mr. Lovelien and Mr. Stewart; correct?

24 A. Correct.

25 Q. And there's a reference to different items that were

Mark D. Seyler - RX

1 either public or private; correct?

2 A. Yes.

3 Q. Okay. Public means anybody can see them; anybody in the
4 world could see them if they are public; correct?

5 A. Yes.

6 Q. Okay. And if they see them, it doesn't mean that they
7 necessarily subscribe to them; correct?

8 A. Not if they merely see them, no.

9 MR. TANASI: Okay. Thank you, sir. Nothing further.

10 THE COURT: Counsel for Parker, any follow-up
11 questions?

12 MR. MARCHESE: Briefly, Your Honor. Thank you.

13 RE-CROSS-EXAMINATION

14 BY MR. MARCHESE:

15 Q. Just a few questions. Going back to the time line on the
16 video that we were speaking about, the one that you downloaded
17 from the Review Journal website; do you remember that one?

18 A. Yes.

19 Q. Okay. So, would it be fair to say that you originally
20 viewed the online article with the accompanying video on
21 April 10th of 2014?

22 MS. CREEGAN: Your Honor, I'm going to object. This
23 is beyond the scope of jury question.

24 MR. MARCHESE: She alluded to it on her redirect, I
25 guess, examination.

Mark D. Seyler - RX

1 MS. CREEGAN: I --

2 MR. MARCHESE: About what Mr. Petrie and Mr. Stewart
3 saw. There were some questions about that.

4 MS. CREEGAN: I did not ask a question to that
5 effect.

6 THE COURT: There was no redirect.

7 MR. MARCHESE: Well, whatever. I don't know what we
8 call this. The questions in reference to the jury questions.

9 THE COURT: The follow-up question?

10 MR. MARCHESE: Correct.

11 THE COURT: She didn't ask any follow-up questions
12 about that.

13 MR. MARCHESE: But he answered it in reference to
14 things that -- specifically things that Mr. Parker and
15 Mr. Stewart saw.

16 THE COURT: I don't recall that. I'm sorry.
17 Overruled. I'm sorry. I mean sustained. Ask a different
18 question.

19 BY MR. MARCHESE:

20 Q. Okay. And then in reference to -- there was the question,
21 Your Honor, and counsel, in reference to bringing guns or
22 bringing a gun. It's our request that day 26 of Mr. Parker's
23 testimony, page 143 -- I know it might take a second for
24 everyone to get that out.

25 We would like a portion read into the record. I'll

Mark D. Seyler - RX

1 just give the beginning and the end when everyone is ready.
2 You got it up? 146, line six, Day 26, not 27.

3 MS. CREEGAN: Your Honor, I don't believe that
4 Mr. Marchese can introduce something that wasn't introduced
5 before. It would be hearsay as to him, because he's not
6 unavailable to himself under 804.

7 MR. MARCHESE: Well, I think first --

8 THE COURT: Didn't we already do this on direct?
9 Wasn't that a portion that was read into the --

10 MR. MARCHESE: Not this portion. This was in -- I
11 found this in reference to the juror question.

12 THE COURT: Right, a juror question that we didn't
13 ask. I understand that. But I don't have the transcript in
14 front of me, so the portion that you're referring to, I think I
15 remember what is said in that transcript.

16 My question is, was that a portion of the transcript
17 that was read earlier into the record by the government and
18 this witness?

19 MR. MARCHESE: No, it was not, but I believe it
20 answers it.

21 THE COURT: All right. So, it hasn't been admitted.

22 MR. MARCHESE: Correct.

23 THE COURT: And so I think the objection is that it's
24 not admissible.

25 MR. MARCHESE: Well, the juror asked the question. I

Witness Name - RX

1 believe that based on the transcript and what's gone on in the
2 last day or two, that this witness has the ability to answer
3 it, because he was present for Mr. Parker's testimony. And we
4 have brought in some of Mr. Parker's testimony previously.

5 I believe that this particular portion of the
6 transcript answers the juror's question.

7 THE COURT: All right. That's your belief, but
8 inadmissible evidence does not become admissible just because a
9 jury asks a question about it. So, the objection is sustained.

10 Counsel for Lovelien.

11 MR. PEREZ: Thank you, Your Honor.

12 RE-CROSS-EXAMINATION

13 BY MR. PEREZ:

14 Q. Special Agent Seyler, the question was asked about the
15 cell phone, whether or not you could tell if someone else was
16 using a cell phone.

17 Your response was more where the cell phone was, and
18 I get that. But if -- if my cell phone is in my car right now
19 and it's used, can you tell me who is using it?

20 I mean, I think that's more the question. Am I
21 missing something? Is there a way to tell who is using the
22 phone?

23 A. At times you can actually observe the individual using the
24 phone.

25 Q. Okay. So, you are saying you have to see them using it?

Witness Name - RX

1 A. If you are talking about eliminating any doubt whatsoever
2 of who is talking on a phone, I can't view the phone in the
3 room right next to me unless I'm up on a wiretap and listening
4 to who is on the phone.

5 Q. And you weren't doing that; were you?

6 A. No.

7 Q. So, there's really no way of knowing who was using a cell
8 phone?

9 MS. CREEGAN: Objection. Argumentative.

10 THE WITNESS: Yes.

11 MR. PEREZ: He answered.

12 THE WITNESS: Yes, there's every way to know who is
13 using the cell phone by, like I said, talking about where they
14 were at any given time. So, we can show who is actually
15 traveling, who is using the phone. Pictures of them actually
16 there. You can see them using it.

17 BY MR. PEREZ:

18 Q. Only at that particular moment. So, if you don't have a
19 picture of somebody using the phone -- well, let's -- we'll use
20 a good example here.

21 We know that Mr. Lovelien used his phone at 12:32 on
22 April 12th, and he was on the phone for four minutes. And we
23 know that he called his sister. That's been put into evidence
24 by you.

25 Okay. Now, and we know that the events that were

Witness Name - RX

1 taking place also took place, like, right around noon. I
2 believe you have a picture -- a Facebook post that's got the
3 time of the -- of the photo, I believe.

4 A. I'm not familiar with the time.

5 Q. So, that would establish that Mr. Lovelien did, in fact,
6 use that phone on that bridge at that time; correct?

7 A. If what you're talking about is establishing beyond any
8 unreasonable doubt whatsoever --

9 MR. LEVENTHAL: Objection as to the legal analysis.

10 THE COURT: Well, I think that the way that the
11 question is posed is begging for that clarification, so I'll
12 allow the counsel to restate the question --

13 MR. PEREZ: Okay.

14 THE COURT: -- maybe in a way that the witness can
15 actually answer it.

16 BY MR. PEREZ:

17 Q. Sir, essentially, the only way to really show that you
18 know who is on the phone is to actually have a picture of them
19 on the phone at the time and correspond that particular photo
20 with the phone records; correct?

21 A. No, I'm very --

22 MS. CREEGAN: Argumentative.

23 THE WITNESS: -- confident in establishing that those
24 individuals were on the phone at that time. It would strain
25 credibility to assume that another individual is using it when

Witness Name - RX

1 they are the ones that are talking. They are talking about,
2 "Yeah, I just got off the phone," or "Please call me," and then
3 that person then calls on the phone. So --

4 BY MR. PEREZ:

5 Q. Now you are confusing two forms of communication. You say
6 "I saw. Please call me." You weren't pulling text messages.
7 You were pulling Facebook posts.

8 A. If what you are saying is I cannot have any idea who is on
9 a phone, then that doesn't make any sense to me.

10 Q. No, I'm not saying that you don't have any idea, but there
11 is really no way to know. Unless you have a photograph or
12 something else, there is no way to know who is using that
13 phone.

14 A. Yes, I often do know who is using the phone.

15 Q. Okay. Someone used my phone last night. I will tell you
16 the time.

17 THE COURT: Let's do this. Okay. There was an
18 instruction -- a preliminary instruction given to the jury that
19 there's two different forms of evidence. There's direct
20 evidence.

21 MR. PEREZ: Right.

22 THE COURT: Someone walks in. You saw it raining
23 this morning on the way to the courthouse. Or there's
24 circumstantial evidence. Somebody walks in with a wet rain
25 coat, umbrella that's wet. They are kind of moving it around,

Witness Name - RX

1 closing it. I think I used some kind of an example like that.

2 One is direct evidence that it's raining. The other
3 is circumstantial evidence that it's raining. And I instructed
4 the jury that the law does not make any distinction between the
5 weight that is given. Both are acceptable forms of proving a
6 fact, and it's up to the jury to decide how much weight to give
7 to it; whether or not it's credible to them.

8 But the fact that one is direct and one is
9 circumstantial, that in and of itself does not diminish the
10 value. They are both equally acceptable.

11 So, I think that's what you are arguing about, and I
12 think you are making it --

13 BY MR. PEREZ:

14 Q. So then --

15 THE COURT: -- harder when the purpose of the jury
16 questions and follow-up are to clarify things for the jury, not
17 to confuse them more.

18 BY MR. PEREZ:

19 Q. So then if we have a photograph of Mr. Lovelien on the
20 phone at 12:32, there is no question that he was on that phone;
21 he was the one using that phone at that time; correct?

22 A. Yes.

23 MR. PEREZ: Okay. Thank you nothing further.

24 THE COURT: Counsel for Drexler?

25 MR. LEVENTHAL: Thank you.

Mark D. Seyler - RX

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RE CROSS-EXAMINATION

BY MR. LEVENTHAL:

Q. Can we get 65 up, please?

The Operation Mutual Aid, it was dated what date, sir?

A. June 18th of 2013.

Q. And where is it out of?

A. Hamlin, West Virginia.

Q. Okay. Now, the incident we are here for today was April 12th, 2014; correct?

A. Correct.

Q. Okay. And there's no indication that Mr. Drexler was a member of Operation Mutual Aid; correct?

A. Correct.

Q. You were asked about reconciling the aliases on Facebook, i.e., Billy the Kid, if you will?

A. Yes.

Q. And you indicated that you could corroborate that?

A. At times we can, yes.

Q. Okay. But there were thousands of different people on the Facebook aliases and different people on there; correct? On different people's postings?

A. In the materials that we reviewed in this case, yeah. There were thousands, probably, yes.

Q. Okay. So, there's no 100 percent or -- way to actually

Mark D. Seyler - RX

1 reconcile an alias or who that is; correct?

2 MS. CREEGAN: Objection. Argumentative.

3 THE COURT: You are asking a 100 percent way. I
4 think that's getting back to the direct and circumstantial. If
5 you want to ask did he look at each and every single person and
6 verify if they were who they were, I think maybe that would be
7 an easier question he could answer and still provide you the
8 answer you are looking for.

9 MR. LEVENTHAL: Thank you.

10 Q. Did you look at each and every person that was on there,
11 whether it was an alias or real person or a group of people?
12 Because we saw Operation Mutual Aid had a Facebook account,
13 too; right?

14 A. Yes.

15 Q. Okay. So, that would be a group of people; correct?

16 A. No, it would just be an individual page. It wasn't a
17 group. Those are two different things.

18 Q. Okay. Are you able to corroborate or verify each and
19 every person that you came across that was on Facebook?

20 A. No, we would have only tried to do that on individuals
21 that we had a particular interest in.

22 Q. So if you saw Billy the Kid?

23 A. Yes.

24 Q. You would be able to corroborate that; who that is?

25 A. If it was important enough for us to pin down exactly who

Mark D. Seyler - RX

1 that individual was, there are a number of techniques that we
2 could use. The Facebook records provide us, for instance, an
3 Internet protocol, IP address, that that person was using at
4 the time.

5 We could actually physically go to that location.
6 Try to find out which individual was using it. So, it's a
7 degree of investigation. If it's important enough for us to
8 try to figure out who is using that, we will employ other
9 investigative techniques to try to do that.

10 Q. Okay. But we agree, as in this case, Mr. Lovelien had his
11 sister posting on his accounts; correct?

12 A. No, she he was posting from her own accounts.

13 Q. Okay. But there's other people that could be posting for
14 others. Unless you are standing over their shoulder; correct?
15 Then you can't. You wouldn't ever be able to tell; right?

16 A. Are you saying I didn't personally witness everybody
17 posting? No, I didn't.

18 Q. You were asked or the jury asked whether or not Mr. -- any
19 of the defendants directly communicated with Payne.

20 A. Correct.

21 Q. Other than Lovelien?

22 A. Correct.

23 Q. And your answer was, "Yeah, well, Payne gave statements,
24 articles, and they were out there."

25 A. I didn't say that the other defendants had communicated

Mark D. Seyler - Further Direct

1 with Payne. I said statements that Payne had made directed
2 towards individuals just like those defendants, they had
3 received, yes.

4 Q. Okay. But you don't know if they were read?

5 A. They were shared.

6 Q. You don't know if they were read? That's my question.

7 A. All I know is that they are shared. I don't know if they
8 were read.

9 Q. So, the answer is "No, you don't know if they were read"?

10 A. Correct.

11 Q. Okay. And so you don't -- and there's no private
12 messaging between Mr. Drexler and Mr. Payne?

13 A. Correct.

14 Q. Directly?

15 A. Correct.

16 Q. And there is no directly messaging or any of that
17 communication between Mr. Drexler and Mr. Lovelien; correct?

18 A. Correct.

19 MR. LEVENTHAL: Thank you.

20 THE COURT: Anyone else? Ms. Creegan, anything else
21 you want to follow up?

22 MS. CREEGAN: Just one question.

23 FURTHER REDIRECT EXAMINATION

24 BY MS. CREEGAN:

25 Q. Mr. Leventhal was just asking you about corroborating.

Mark D. Seyler - Further Direct

1 How do you corroborate Lovelien's and Payne's accounts?

2 A. Well, as I stated, the accounts did contain photographs of
3 both individuals, which I recognized as Mr. Payne and
4 Mr. Lovelien.

5 The Lovelien account specifically had the phone
6 number that we were familiar with. The Payne account had the
7 email account that we already knew to belong to Ryan Payne.
8 So, those were some of the ways that we were able to
9 corroborate that those accounts did belong to those
10 individuals.

11 In addition, the posts that they made were consistent
12 with what we observed ourselves, through photographs, and
13 through witnesses, and through other methods of investigation.
14 For instance, when Mr. Payne requested that Mr. Lovelien call
15 him, we saw the phone records show that Mr. Lovelien did, in
16 fact, call Mr. Payne.

17 MS. CREEGAN: Thank you. Nothing further.

18 THE COURT: All right. Anything else from the
19 defense?

20 MR. TANASI: None from Stewart, Your Honor. Thank
21 you.

22 MR. MARCHESE: None from Parker.

23 MR. LEVENTHAL: No, Your Honor. Thank you.

24 THE COURT: Anything else?

25 MR. PEREZ: No, Your Honor.

1 THE COURT: All right. So, thank you very much
2 Special Agent Seyler. I think there was some communication
3 between counsel as to whether or not you might be recalled by
4 the defense, so you can check with them.

5 You don't need to come back after lunch. You can go
6 and have a longer lunch. The rest of us will have a shorter
7 lunch. It's 12:10. Plan to be back here at 1:10.

8 During this lunch break, I do remind the jury, please
9 do not discuss this case with anyone, not even your fellow
10 jurors. Speak about other things, please. Do not listen to,
11 or review, or read anything that touches upon this case in any
12 way.

13 Do not research or make any independent
14 investigation. Feel free to keep writing down those questions.
15 Like I said, even if we can't ask it of the particular witness
16 who is here today, we are going to be here for a while, for a
17 couple weeks, and this way the attorneys know better who they
18 need to call to answer your questions.

19 This might be a good idea, too. So, when I was
20 reviewing the questions with counsel, there was a pause,
21 because we weren't sure who you were referring to when you say
22 "they," or when you say "he," things like that. So, try not to
23 use pronouns when you can, if you actually know who you are
24 referring to. So, if you are referring to a specific
25 defendant, if you can say the name of the defendant or the

1 first letter, if you don't know how to spell it, or a defendant
2 if you mean defendant, versus government, versus BLM, just to
3 make it easier for us to understand what your question is.

4 And lastly, do not form any opinion until after you
5 have heard all the testimony, received all the evidence. I
6 will give you the written jury instructions of law to help
7 guide you with how to value or compare the evidence, and then
8 you'll hear closing arguments. After that, you will begin the
9 deliberation process, and then you can begin sharing your views
10 and ideas with each other and reach your opinions.

11 All right. So, we will stand for the jury. And we
12 will welcome them back at -- I spoke for so long, let's say
13 1:15. We'll start back at 1:15.

14 Special Agent Seyler, as soon as they exit, then you
15 may exit as well. Be careful with the steps.

16 (Jury out.)

17 THE COURT: All right. Thank you. Off record.

18 (Recess, 12:12 p.m.)
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COURT REPORTER'S CERTIFICATE

I, KATHERINE EISMANN, Official Court Reporter, United States District Court, District of Nevada, Las Vegas, Nevada, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Date: July 24, 2017.

/s/ Katherine Eismann

Katherine Eismann, CSR CRR RDR

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,)	Case No. 2:16-cr-46-GMN-PAL
)	
Plaintiff,	)	Las Vegas, Nevada
	)	Thursday, July 20, 2017
vs.	)	9:25 a.m.
	)	Courtroom 7C
ERIC J. PARKER (11),)	
O. SCOTT DREXLER (12),	)	JURY TRIAL, DAY 7
RICHARD R. LOVELIEN (13),)	
STEVEN A. STEWART (14),)	
)	
Defendants.	)	ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE GLORIA M. NAVARRO, CHIEF JUDGE,
UNITED STATES DISTRICT COURT

APPEARANCES:

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(continued next page)

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Proceedings reported by machine shorthand. Transcript produced
by computer-aided transcription.

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Mike Abercrombie, FBI
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Tori Bakken, Paralegal
Brian Glynn, I.T.

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1 LAS VEGAS, NEVADA; THURSDAY, JULY 20, 2017; 9:25 A.M.

2 --oOo--

3 P R O C E E D I N G S

4 (Jury not present.)

5 COURTROOM ADMINISTRATOR: All rise.

6 THE COURT: All right. Thank you. You may be seated.

7 COURTROOM ADMINISTRATOR: This is time set for Jury
8 Trail, Day 7, in Case No. 2:16-cr-46-GMN-PAL, United States of
9 America versus Eric Parker, O. Scott Drexler, Ricky Lovelein,
10 and Steven Stewart.

11 THE COURT: All right. Before we bring in the jury,
12 just want to remind everyone that there are expectations about
13 how folks should behave in the courtroom. This is a courtroom;
14 it is not a sporting event. And what that means is that no
15 expressions, whether verbal or through body language, are
16 acceptable. So no matter how much you agree or disagree with
17 something that is being said, your opinion should not be made
18 verbally or through body language.

19 People may not speak out of turn. We do have
20 microphones for the attorneys; they are turned off during
21 sidebar. And the attorneys also have electronic devices to aid
22 them in their presentation and review and preparation. The
23 defendants do not have microphones anymore and they are not to
24 speak to each other during sidebar nor make any kind of efforts
25 to communicate with the jury or anyone else in the courtroom.

1 There is no other folks who are permitted to have
2 electronic devices. So please check and make sure that you
3 don't have inadvertently a -- brought in a phone or iPad or
4 laptop or something like that. Even if it's in private mode or
5 vibrate mode, that's not good enough. It's not permitted. You
6 can't have the device at all. There's no audio recording or
7 video recording permitted in federal court.

8 The podium has -- it's moved in the direction for the
9 witness, so that we can do that.

10 The Marshals and the CSOs are authorized by the
11 Court -- if I am at sidebar and you see the defendants either
12 trying to communicate with each other, with the public, or with
13 the jury, speaking up, doing something distracting, writing
14 notes to show them to the jury to call it to my attention.
15 I'll call a break, we'll take the jury out, and then have that
16 defendant removed.

17 We do have a speaker set up in the holding cell. And
18 so, if a defendant cannot comply with these, I think, very
19 easy-to-follow requests, then they will end up in the Marshal's
20 holding cell for the remainder of the day listening to the
21 trial. It won't stop the trial. They won't be here
22 personally, but they'll be able to continue to hear it. While
23 defendants do have a right to be present during trial, they can
24 waive their presence if they are not following court orders.

25 You've heard all these rules before. You were able to

1 comply with them the first time. I don't know why we're having
2 problems now. I don't want to have to put you in the holding
3 cell, but I will if that's what you're forcing me to do. So
4 you're on notice.

5 I think that's everything. Mr. Myhre, I saw you stand
6 up. So was there an issue that you wanted to raise before we
7 bring in the jury?

8 MR. MYHRE: Yes, Your Honor. Thank you.

9 Yesterday, when we concluded, Alex Ellis was on the
10 stand. I just finished direct and subject to
11 cross-examination. I was informed this morning that Mr. Ellis
12 was in urgent care this morning.

13 THE COURT: Oh, no.

14 MR. MYHRE: And we don't know if -- we have an agent
15 checking in on him. Don't think he'll be available this
16 morning; may not be available this afternoon. We'll try. May
17 not be till Monday.

18 THE COURT: Okay.

19 MR. MYHRE: But, in any event, we have witnesses ready
20 to go in his stead. So we would propose that we proceed
21 forward with Mr. Petrie next. And then, if we could just let
22 the jury know that he's un -- you know, Mr. Ellis will be back;
23 he's unavailable or something along that lines so they are --

24 THE COURT: Okay.

25 MR. MYHRE: -- not left guessing what's going on.

1 THE COURT: And Mr. Petrie is here and available and
2 ready to go?

3 MR. MYHRE: Yes, Your Honor.

4 THE COURT: Okay. Then okay. So we'll do that. Thank
5 you.

6 Go ahead bring in the jury, Aaron.

7 COURTROOM ADMINISTRATOR: Yes, Your Honor.

8 (Pause in the proceedings.)

9 COURTROOM ADMINISTRATOR: All rise.

10 (Jury in, 9:32 a.m.)

11 THE COURT: Thank you. The jury may be seated.

12 Everyone else also please go ahead and take your seats.

13 And if the -- counsel, if you'll please make your
14 appearances for the record.

15 MR. MYHRE: Thank you, Your Honor.

16 Good morning, Your Honor; ladies and gentlemen. Steven
17 Myhre, Erin Creegan, Nadia Ahmed on behalf of the United
18 States.

19 THE COURT: Good morning.

20 MR. TANASI: Thank you, Your Honor.

21 Good morning, folks. Rich Tanasi for Steven Stewart.
22 Also with us at counsel table, Tori Bakken and Brian Glynn.
23 Thank you.

24 MR. MARCHESE: Thank you and good morning, Your Honor;
25 everyone. Jess Marchese on behalf of Eric Parker.

1 MR. LEVENTHAL: Good morning, everyone. Todd Leventhal
2 on behalf of Mr. Drexler.

3 MR. PEREZ: Good morning. Shawn Perez on behalf of
4 Ricky Lovelien.

5 THE COURT: All right. And good morning.

6 So yesterday we completed direct examination by the
7 Government of the witness Mr. Alex Ellis. He is not gonna be
8 able to return this morning. We probably will see him Monday.
9 What we're going to do is shift gears a little bit and
10 Government's gonna call its next witness. And then we'll
11 welcome back Mr. Ellis as soon as we're able to catch up in the
12 calendar.

13 MS. CREEGAN: Thank you, Your Honor. The United States
14 calls Terry Petrie.

15 THE COURT: Petrie.

16 (Pause in the proceedings.)

17 THE COURT: Good morning, Mr. Petrie.

18 THE WITNESS: Good morning, Your Honor.

19 THE COURT: Come on up. You're gonna be seated over to
20 my right. Careful with those steps.

21 (Terry Petrie takes the witness stand.)

22 COURTROOM ADMINISTRATOR: Good morning, sir.

23 THE WITNESS: Good morning.

24 COURTROOM ADMINISTRATOR: Please remain standing and
25 raise your right hand.

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1 Do you solemnly swear that the testimony you shall give
2 in the cause now before this court shall be the truth, the
3 whole truth, and nothing but the truth, so help you God?

4 THE WITNESS: I do.

5 COURTROOM ADMINISTRATOR: Thank you, sir. You may be
6 seated.

7 THE WITNESS: Thank you.

8 TERRY PETRIE,
9 called as a witness on behalf of the Government, having been
10 first duly sworn, was examined and testified as follows:

11 COURTROOM ADMINISTRATOR: Please state your full name
12 for the record and spell your last name.

13 THE WITNESS: My --

14 THE COURT: Bless you.

15 THE WITNESS: -- my name is Terry Petrie. And I spell
16 that last name P-e-t-r-i-e.

17 THE COURT: Whenever you're ready.

18 DIRECT EXAMINATION

19 BY MS. CREEGAN:

20 Q. Good morning, Mr. Petrie.

21 A. Good morning.

22 Q. Can you please tell the jury what your current job or
23 position is?

24 A. I'm a trial attorney with the United States Department of
25 Justice in their Environment and Natural Resources Division.

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1 Q. How long have you been a trial attorney with the Environment
2 and Natural Resources Division?

3 A. Since 2000. And 2 years before that with the Department's
4 Civil Division.

5 Q. As an attorney with the Environment and Natural Resources
6 Division, do you have particular duties?

7 A. I do.

8 Q. What are they?

9 A. Generally speaking, it is to handle environmentally related
10 litigation. The Environmental Division handles a broad array
11 of different types of environmental litigation. So some of
12 that litigation involves the enforcement of pollution laws,
13 Clean Water Act, clean air, hazardous materials, things of that
14 sort.

15 A second category of work that the Division handles
16 involves when United States gets sued because of some of the
17 activities or programs of a federal agency, arguably, have
18 violated environmental laws and sometimes Uncle Sam then finds
19 itself being sued.

20 A third category of cases that we handle involve
21 where -- it's involving the stewardship, overseeing the
22 stewardship of the lands and the public lands and the natural
23 resources that the United States have.

24 A fourth category involves eminent domain. A
25 government entity is going to take somebody's property and then

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1 in turn have to pay for it for some kind of a public purpose.
2 That same category has a flip side which we call "takings"
3 where the government decides that it's going to do something
4 and it has the effect of taking somebody's private property
5 rights. And so, under the Fifth Amendment, that party is
6 entitled to just compensation, money for the property value
7 that they had taken from them.

8 A fifth category of cases that the Division handles
9 involves the protection of wildlife species.

10 A sixth category, the last one that I can think of,
11 involves the cases that the United States environmental
12 Division handles regarding American Native Indian Tribes.
13 Sometimes we are suing on their behalf and then sometimes they
14 sue us.

15 And so that's a fairly broad range of cases that we
16 handle.

17 Q. Thank you, sir.

18 Are you familiar, in your capacity as an attorney with
19 the Environment and Natural Resources Division, with civil
20 litigation that occurred between the United States and Cliven
21 Bundy?

22  I am.

23 Q. And, in that case, did the Department of Interior sue Cliven
24 Bundy?

25 **A.** Yes.

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1 Q. And how are you familiar with that case?

2 A. The case that I'm familiar with, I believe you're referring
3 to, is some litigation brought in 1998?

4 Q. Are you familiar with the case that occurred in the District
5 of Nevada between --

6 A. Yes.

7 Q. -- 1998 and 2013?

8 A. Yes.

9 In 2012 and then again in 2013, the United States
10 brought some litigation through the Department of Interior and
11 the underpinnings factually of those cases relate to some
12 litigation involving Mr. Bundy back in 1998. I was not
13 personally present in the 1998 litigation, but I handled the
14 litigation in 2012 and 2013 and the backdrop for those two
15 cases involved --

16 MR. MARCHESE: Objection, narrative.

17 THE WITNESS: -- what was handled in the 1998
18 litigation.

19 THE COURT: Overruled. He's done.

20 BY MS. CREEGAN:

21 Q. And sorry if this is repetitive. But, as the attorney on
22 the case from 2012 forward, you were familiar with the
23 litigation and the case going back to 1998?

24 A. Yes, ma'am.

25 MS. CREEGAN: Can I bring up, for the witness only,

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1 Exhibit 1?

2 THE COURT: Yes you may.

3 (Document displayed to the witness.)

4 BY MS. CREEGAN:

5 Q. Mr. Petrie, do you recognize what's depicted in Exhibit 1?

6 And it's also on the screen to your right if you are looking
7 for it.

8 **A.** Thank you.

9 (Pause in the proceedings.)

10 THE WITNESS: Yes, I do recognize this document.

11 BY MS. CREEGAN:

12 Q. Is this one of the orders that was entered in the course of
13 the litigation that you were just discussing?

14 **A.** Yes. It's an order that was issued in November of 1998.

15 MS. CREEGAN: Your Honor, the Government moves to admit
16 Exhibit 1.

17 (Government's Exhibit No. 1, offered.)

18 THE COURT: Any objection on Exhibit 1?

19 MR. TANASI: Stewart objects as relevance, Your Honor.

20 MR. MARCHESE: Parker joins.

21 MR. LEVENTHAL: Drexler joins.

22 MR. PEREZ: Lovelien joins.

23 THE COURT: This is the Order -- this is the original
24 Order from 1998?

25 MS. CREEGAN: This Order is one of four that the

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1 government will be entering that underpin the obstruction of
2 justice charge and the conspiracy to obstruct justice charge.
3 The Government's charge is that the defendants conspired, aided
4 and abetted, and worked directly with Mr. Bundy in order to
5 evade these Orders and disobey these Orders.

6 THE COURT: All right. The Court is satisfied that it
7 is relevant. Exhibit 1 will be admitted.

8 (Government's Exhibit No. 1, received.)

9 THE COURT: Did you wish to publish it?

10 MS. CREEGAN: Yes, Your Honor.

11 (Exhibit displayed in open court.)

12 BY MS. CREEGAN:

13 Q. And, Mr. Petrie, about how long is this order from the civil
14 litigation that occurred between the United States and
15 Mr. Bundy?

16 THE COURT: Oh, just a minute. I think the screens are
17 not all on.

18 (Brief pause.)

19 THE COURT: They are all on now?

20 JURORS: (Head nods.)

21 THE COURT: Okay.

22 THE WITNESS: May I ask if you could repeat --

23 THE COURT: Yeah, could you repeat that? I forgot too
24 what the question was.

25 ///

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1 BY MS. CREEGAN:

2 Q. About how long is the Order that was issued in the civil
3 litigation between Mr. Bundy and the United States?

4 **A.** In the 1998 litigation, this exhibit?

5 Q. This exhibit, yes, sir.

6 **A.** It is 11 pages long.

7 Q. Okay. And does this Order contain a background of the case
8 up until the Order was entered?

9 **A.** It does.

10 Q. Okay.

11 COURT REPORTER: Pull that microphone just a little bit
12 closer to you. Either one.

13 THE WITNESS: (Complies.)

14 COURT REPORTER: Thank you.

15 BY MS. CREEGAN:

16 Q. Can I ask you to read some of the that background starting
17 at page 2 at line 7 and going through page 3 at line 21?

18 **A.** Starting at page 2, line 7?

19 Q. Yes, sir.

20 **A.** "The last grazing fees paid by Bundy to the BLM was for the
21 period of December 1, 1992 to February 28, 1993. See Exhibit 7
22 to #11, Mot [for] Summ. Jud. The last grazing application was
23 for the same period. See Exhibit 8 to #11. The government
24 contends Bundy did not have authorization to graze livestock on
25 the Allotment after February 28, 1993.

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1 "On February 26, 1993, Bundy sent an Administrative
2 Notice of Intent to the BLM, which stated his intent to graze
3 cattle 'pursuant to my vested grazing rights.' See Exhibit 10
4 to #11. Bundy sent several more Administrative Notice[s] of
5 Intent in the months that followed. On June 16[th], 1993, the
6 BLM sent Bundy a letter informing him that his application had
7 not been received to graze livestock for the June 15[th], 1993
8 to August 31, 1993 period. The BLM included another
9 application for Bundy to fill out and return. See Exhibit 12
10 to #11. Bundy responded to the BLM letter with another
11 Administrative Notice and Intent, stating, among other things,
12 that the BLM has produced no documents showing it had
13 jurisdiction over the public lands. See Exhibit 13 to #11.
14 The BLM began trespass detection efforts at the end of
15 June 1993.

16 "On July 13[th], 1993, the BLM sent Bundy a Trespass
17 Notice and Order to Remove and gave him ten days to respond.
18 As requested by Bundy, the BLM informed Bundy in a July 27[th],
19 1993 letter that it would extend the response time to 30 days.
20 On August 19[th], 1993, Bundy sent another Administrative
21 Notice and Intent, stating the BLM lacked proof that it had
22 jurisdiction. See Exhibit 16 to #11.

23 "On January 24, 1994, the BLM delivered a Proposed
24 Decision Order to Remove and Demand for Payment to Bundy by
25 placing it on the dashboard of Bundy's vehicle while he was in

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1 the vehicle. BLM officials allege that Bundy became agitated,
2 walked out of his truck and accused the BLM of harassing him.
3 He then returned to his truck, threw the decision out of the
4 window and drove away. One of Bundy's sons then picked up the
5 decision, tore it into pieces and threw it on the ground.

6 "On February 17[th], 1994, the BLM issued a final
7 decision canceling Bundy's ephemeral range grazing permit. On
8 March 3, 1994, Bundy sent a check for \$1,961.47 to Clark County
9 for grazing fees. The BLM calculated that this amount is equal
10 to the amount Bundy would pay to graze 85 cattle on the
11 Allotment for a 12-month period if the fees were paid to the
12 BLM in advance. Clark County returned the check to Bundy since
13 it did not have jurisdiction over the Allotment.

14 "In March and April of 1994, the BLM sent letters to
15 Bundy requesting that he pay past due pills for grazing fees.
16 Bundy responded by sending more administrative notices. In
17 December 1994, Bundy or his agents served a Constructive Notice
18 on a contractor hired by the BLM to gather wild horses and
19 burros. In August 1995, the BLM sent Bundy another Trespass
20 Notice and Order to Remove. Bundy responded by sending a
21 Constructive Notice and Order to Stop, in which he again
22 questioned the United States' authority to manage the
23 Allotment. See Exhibit 28 to #11.

24 "In September 1997, the BLM tried to set up a meeting
25 with Bundy to resolve the trespasses, but Bundy declined to

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1 meet with the BLM.

2 "The government contends it could have impounded
3 Bundy's livestock, but it took no action because any action
4 could have resulted in physical confrontation. Since the
5 trespass detection efforts began in late June of 1993, the BLM
6 has kept a record of observed livestock grazing on the
7 Allotment."

8 Q. Thank you very much, Mr. Petrie.

9 And this Order, was it in response to motions that were
10 filed by the parties?

11 A. Yes, it was.

12 Q. What were the motions that were filed by the United States
13 and by Mr. Bundy?

14 MR. LEVENTHAL: Objection, foundation.

15 MR. TANASI: Stewart joins.

16 MR. MARCHESE: Parker joins.

17 MR. PEREZ: Lovelien joins.

18 MR. LEVENTHAL: Especially given that this witness
19 already testified he wasn't part of this lawsuit.

20 MS. CREEGAN: The motion --

21 THE COURT: Do you want to ask if he -- set the
22 foundation.

23 BY MS. CREEGAN:

24 Q. Mr. Petrie, as a person who had worked on this case in 2012
25 and beyond that, did you review the court record of the case?

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1 **A.** Yes, I did.

2 **Q.** These are public records and judicial documents?

3 **A.** They are.

4 **Q.** And so are you familiar with the motions that were filed in
5 the case?

6 **A.** I am.

7 **Q.** And are some of the motions that were filed recounted in the
8 Order itself which motions that it is responding to?

9 **A.** They are.

10 MS. CREEGAN: Your Honor, I would submit there is
11 submission -- a sufficient foundation to ask the question.

12 THE COURT: Objection overruled. He may answer the
13 question.

14 BY MS. CREEGAN:

15 **Q.** And, Mr. Petrie, just to repeat it for you. The question
16 is, does this Order resolve some motions that were filed by the
17 parties?

18 **A.** Yes. The --

19 **Q.** And what were the motions that were filed?

20 **A.** The United States in this 1998 motion had -- or litigation
21 had filed a Motion for Summary Judgment and the defendant,
22 Mr. Bundy, he had filed a Motion to Dismiss as well as opposing
23 the Motion for Summary Judgment.

24 **Q.** So the United States filed a Motion for Summary Judgment.
25 What does that mean?

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1 **A.** Motion for summary judgment is just a technical way of
2 saying one party says to the judge, in other words, there's
3 really no dispute about the material facts, the facts are the
4 facts, and the law that you would apply to those facts favor my
5 side. So give me a decision that let's me win. Motion for
6 summary judgment.

7 **Q.** And what is a motion to dismiss?

8 **A.** Motion to dismiss is basically the same goal. You're trying
9 to get rid of something. So, in this case, Mr. Bundy in 1998
10 had filed a Motion to Dismiss seeking to dismiss the
11 government's case against him. And there his contentions were
12 that arguments that went to whether or not the court had
13 jurisdiction, did it have the authority to entertain this kind
14 of an action brought against him by the United States and as
15 well as whether or not the United States had jurisdiction to
16 handle the properties, the federal lands.

17 **Q.** Did the court resolve both the United States's Motion for
18 Summary Judgment and Mr. Bundy's Motion to Dismiss?

19 **A.** They did.

20 **Q.** And is this --

21 **A.** The court did.

22 **Q.** I apologize.

23 Is this at the end of this Order on page 11?

24 **A.** Yes.

25 **Q.** Could you please read the Order of the court on page 11?

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1 **A.** The portion that begins with "CONCLUSION"?

2 **Q.** Yes, please.

3 **A.** Starting on line 6 under line 5, "CONCLUSION"

4 "This Court has subject matter jurisdiction under
5 28 U.S.C. §§ 1331 and 1345. The United States owns the
6 Allotment where Bundy is grazing livestock without authority.
7 Since Bundy is in trespass on public lands,

8 "IT IS ORDERED that Defendant's Motion to Dismiss is
9 DENIED.

10 "IT IS FURTHER ORDERED that Plaintiff's Motion for
11 Summary Judgment (#11) is GRANTED as to the permanent
12 injunction.

13 "IT IS FURTHER ORDERED that Bundy is permanently
14 enjoined from grazing his livestock within the Bunkerville
15 Allotment and shall remove his livestock from this allotment on
16 or before November 30, 1998.

17 "IT IS FURTHER ORDERED that Plaintiff United States
18 shall be entitled to trespass damages from Bundy in the amount
19 of \$200.00 per day per head for any livestock belonging" --
20 "belonging to Bundy remaining on the Bunkerville Allotment
21 after November 30[th], 1998.

22 "IT IS FURTHER ORDERED that Defendant's Motion to
23 Strike Motion for Summary Judgment is DENIED.

24 The Clerk shall enter judgment accordingly.

25 DATED this 3rd day of November, 1998."

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1 And it's signed by Judge Rawlinson.

2 Q. And, just to make sure that we understand what these
3 different parts of the Order mean, taking your attention to
4 the -- line 10 where it says "IT IS FURTHER ORDERED that the
5 Plaintiff's Motion for Summary Judgment . . . is GRANTED," what
6 does that mean?

7 **A.** "Plaintiff's Motion for Summary Judgment . . . is GRANTED."
8 That's -- the government had filed a Motion for Summary
9 Judgment saying basically, Judge, there was no dispute about
10 the facts here; the cattle is improper -- is in trespass; it's
11 on public lands; the United States owns it. And the law says
12 when you've got that then you should enforce an injunction --
13 issue an injunction to have him remove his cattle. And so that
14 portion of the Order is basically saying, yes, the government's
15 correct; they win.

16 Q. And may I ask you what is an injunction?

17 **A.** An injunction is an order from the court that tells somebody
18 they've got to do something or, depending upon the situation,
19 stop doing something.

20 Q. And, in this case, what was the injunction to do?

21 **A.** The injunction was for Mr. Bundy to stop trespassing, having
22 his cattle being trespassed, and to remove the cattle from the
23 property.

24 Q. And this might be an obvious question. But what does it
25 mean to say that he is "permanently enjoined from grazing his

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1 livestock within the Bunkerville Allotment"?

2 **A.** I'm sorry. Where is that at?

3 **Q.** That would be on line 12 and 13.

4 **A.** Okay. (Reviewing exhibit.)

5 So you're asking what does it mean "permanently
6 enjoined"?

7 **Q.** What does it mean for somebody to be permanently enjoined
8 from doing something?

9 **A.** It means that, never more; you can't do it again.
10 Permanent.

11 **Q.** Mr. Petrie, did Mr. Bundy appeal this Order of the court?

12 **A.** Yes, he did.

13 **Q.** And what was the process for appealing this Order?

14 **A.** Somebody in Mr. Bundy's position, that's been on the losing
15 end of a decision from a district court in the federal court
16 systems, they have an opportunity to appeal it. And here in
17 the United States with our district courts, we've got, like, 94
18 different district courts across the United States in the
19 federal court system. And then those federal district courts
20 are divided up into different circuits and -- that serve as the
21 first level of an appeal.

22 And this court here in Nevada is part of the Ninth
23 Circuit Court of Appeals. And then -- so Mr. Bundy had an
24 opportunity and, in this instance, did appeal to that Ninth
25 Circuit Court of Appeals. People who are unhappy with an

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1 outcome there can, if they want, attempt to appeal to the
2 Supreme Court, United States Supreme Court. In this case,
3 Mr. Bundy appealed to the Ninth Circuit.

4 Q. What was the ruling of the Ninth Circuit?

5 A. They disagreed with Mr. Bundy and they upheld the district
6 court decision that we are looking at.

7 Q. So, as of April of 2014, was this Order that we've just been
8 looking at, Exhibit 1, still in effect?

9 A. It was.

10 Q. Thank you.

11 MS. CREEGAN: You can take that down.

12 If we can bring up for the witness only Exhibit 2.

13 (Document displayed to the witness.)

14 BY MS. CREEGAN:

15 Q. Mr. Petrie, what's depicted in Exhibit 2?

16 A. Exhibit 2 is another Order that comes from the 1998
17 litigation.

18 MS. CREEGAN: Your Honor, the Government moves to admit
19 Exhibit 2.

20 (Government's Exhibit No. 2, offered.)

21 THE COURT: Any objection to Exhibit 2?

22 MR. TANASI: Objection, relevance, Your Honor.

23 MR. MARCHESE: Parker joins.

24 MR. LEVENTHAL: Drexler joins on relevance.

25 MR. PEREZ: Lovelien joins.

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1 THE COURT: Relevance.

2 MS. CREEGAN: This is one of the four Orders which the
3 defendants are accused of obstructing justice and conspiring to
4 obstruct justice by violating.

5 THE COURT: This is the 1999 Order?

6 MS. CREEGAN: Correct, Your Honor.

7 THE COURT: All right. Court does find it is relevant
8 to the case. Exhibit 2 will be admitted.

9 (Government's Exhibit No. 2, received.)

10 THE COURT: Did you want to go ahead and publish it?

11 MS. CREEGAN: Thank you, Your Honor.

12 (Exhibit displayed in open court.)

13 BY MS. CREEGAN:

14 Q. Agent -- I'm sorry -- Mr. Petrie, is this another Order in
15 the case -- the civil case that was filed against Mr. Bundy by
16 the United States?

17 A. Yes, it was.

18 Q. And what is the date of this Order?

19 A. The date of this Order is September 17th, 1999.

20 Q. And, is there also a background section for this Order
21 explaining some of the litigation up to this point?

22 A. Yes, ma'am.

23 Q. And I won't ask you to read background that's the same as
24 the background that you've already read. But I can ask you to
25 read on page 2, starting at line 10, that full paragraph.

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1 **A.** Page 2, line 10:

2 "On January 27[th], 1999, the United States filed this
3 motion to enforce injunction alleging that Bundy continues to
4 trespass on public lands despite this Court's order. United
5 States provides evidence from Robert Stager, Lead Rangeland
6 Management Specialist of the Department of the Interior, that
7 he detected Bundy's livestock on the Allotment on
8 December 15[th], 1998."

9 **Q.** Mr. Petrie, what was the reason for requesting a new order
10 in this case?

11 **A.** My understanding is, is that in the first Order --

12 MR. LEVENTHAL: I'm going to object to speculation.

13 BY MS. CREEGAN:

14 **Q.** Have you reviewed the Court records in this case?

15 **A.** I did.

16 **Q.** And does that include an explanation of the facts leading up
17 to and the motions that were filed leading up to this Order
18 being entered?

19 **A.** Yes, I believe it does.

20 **Q.** What is your understanding of why a new order was sought in
21 the case?

22 **A.** Mr. Bundy had failed to comply with the earlier Order that
23 we were discussing a few minuting ago, the November 4, 1998,
24 the Exhibit 1, and his cattle continued to remain in trespass
25 and the United States observed that and so they brought this

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1 Motion to Enforce the Injunction saying, in essence, to the
2 judge: He's not complying with the order. Please issue an
3 order again. And this Order that we're looking at here is that
4 order.

5 Q. And did the court actually enter an order on the second to
6 last and last page of the Order?

7 A. Yes, it did.

8 Q. Could you please read that order under the heading
9 "DISCUSSION"?

10 A. Yes. It comes from page 2 and it starts at line 16:

11 "Bundy has not shown why he should not or could not
12 comply with the Court's Order . . . entered on November 4,
13 1998. The United States has submitted evidence that Bundy's
14 cattle were detected by Robert Stager, a specialist with the
15 DOI, on December 15th, 1998. Accordingly,

16 "IT IS ORDERED that the United States' Motion to
17 Enforce Injunction . . . is GRANTED with modifications.

18 "IT IS FURTHER ORDERED in a Bundy shall remove his
19 livestock from this allotment as previously ordered by the
20 Court in the Order entered on November 4, 1998.

21 "IT IS FURTHER ORDERED that Bundy shall pay to the
22 United States \$1,377.00 as willful repeated trespass damages
23 for 51 cattle from December 1, 1998, through December 31, 1998.

24 "IT IS FURTHER ORDERED that Bundy shall pay to the
25 United States \$45.90 per day for each day Bundy's livestock

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1 remains on the allotment, commencing January 1, 1999.

2 "IT IS FURTHER ORDERED that Bundy shall pay to the
3 United States \$4,123.06 for the expense incurred by the BLM for
4 the December 15[th], 1998, trespass detection flight.

5 "The Clerk shall enter judgment accordingly.

6 "DATED this 17th day of September, 1999."

7 Signed by United States District Judge Rawlinson.

8 Q. Thank you.

9 MS. CREEGAN: You can take that down.

10 BY MS. CREEGAN:

11 Q. Now, Mr. Petrie, you mentioned that you came on to the case
12 in 2012?

13 A. Yes.

14 Q. What was the reason that you came onto the case at that
15 time?

16 A. The case was filed in May of 2012. I came into the case in
17 the first week of June 2012. The colleague of mine who had
18 brought the case initially, another matter had arose that
19 management being what it is decided we need him to go handle
20 that case. Petrie, you take over the case that was just filed
21 a couple weeks before. So that's when I came into the case.

22 Q. What was happening in the case at the time that you began
23 working on it?

24 A. I'm sorry. Can you say that again?

25 Q. What was happening in the case at the time that you came in

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1 and started working on it?

2 **A.** At the time of the case in June of 2012, basically the
3 United States had filed its Complaint in the case and we were
4 awaiting Mr. Bundy's response. He has an opportunity, the
5 defendant has an opportunity, to respond to the allegations
6 that have been brought against them.

7 **Q.** What was this new case that you were working on?

8 **A.** The new case involved trespass of cattle and it differed
9 slightly only in the respect that the area that the trespass
10 was happening was a little bit different. The 1998 case, that
11 we've been discussing here, that involved land with the
12 Bunkerville Allotment out there in the Gold Butte area. The
13 land that was bein' addressed in this lawsuit brought in May of
14 2012 was a little bit beyond it. And we call it the "New
15 Trespass Lands."

16 So, from the government's perspective, when we brought
17 that lawsuit, Mr. Bundy's cattle had continued to be in
18 trespass out there on the Bunkerville Allotment. But over time
19 they had roamed onto additional federal lands that were
20 adjacent to the Bunkerville Allotment. So this May 2012 action
21 was brought specifically to address that trespass in the new
22 areas.

23 **MS. CREEGAN:** Could we bring up Exhibit 3 for the
24 witness only, please.

25 (Document displayed to the witness.)

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1 BY MS. CREEGAN:

2 Q. Mr. Petrie, do you recognize what's depicted in Exhibit 3?

3 A. I do.

4 Q. Is this an Order entered in the case regarding the New
5 Trespass Lands?

6 A. Yes. This is an Order issued by the court in response to
7 the action that the United States brought in May of 2012.

8 MS. CREEGAN: Government moves to admit Exhibit 3.

9 (Government's Exhibit No. 3, offered.)

10 THE COURT: Any objection to Exhibit 3?

11 MR. TANASI: Stewart objects, relevance, Your Honor.

12 MR. MARCHESE: Parker joins.

13 MR. LEVENTHAL: Same objection to relevance.

14 MR. PEREZ: Lovelien joins.

15 THE COURT: Ms. Creegan.

16 MS. CREEGAN: This is one of the four Orders which the
17 Government is alleging that the defendants conspired with
18 Mr. Bundy, aided and abetted him, and worked with him directly
19 in order to violate and in order to obstruct justice.

20 THE COURT: All right. Court finds that Exhibit 3 is
21 relevant and Exhibit 3 will be admitted.

22 (Government's Exhibit No. 3, received.)

23 THE COURT: You may go ahead and publish it.

24 MS. CREEGAN: Thank you, Your Honor.

25 (Exhibit displayed in open court.)

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1 BY MS. CREEGAN:

2 Q. Mr. Petrie, was this Order issued in response to any motion
3 filed by the United States?

4 **A.** Yes, it was.

5 Q. What was the motion filed by the United States?

6 **A.** We had filed a Motion for Summary Judgment.

7 Q. Again, just remind us what summary judgment is.

8 **A.** Again, it -- it -- from our perspective, the United States,
9 the facts were straightforward and really not in dispute which
10 was that Bundy's prop- -- cattle belonging to him were found on
11 federal lands for which he did not have authorization to be
12 grazing. And so it was just from our perspective, again,
13 straightforward. And therefore, with the facts really not in
14 dispute and the law being clear, we believed, about what that
15 meant, we brought that Motion for Summary Judgment asking that
16 the judge grant our motion and enter an order that would
17 require Mr. Bundy to remove his cattle.

18 Q. Is this Order also in response to a motion filed by
19 Mr. Bundy?

20 **A.** Yes. In response to the lawsuit that we brought against him
21 in May 2012, one of his reactions was to file a Motion to
22 Dismiss.

23 Q. Does this Order also have a background section explaining
24 some of the litigation up until the order?

25 **A.** Yes, ma'am.

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1 Q. And I won't ask you to read things that are similar to what
2 you read before. But, if you could go to page 2 at line 3,
3 could you read that paragraph?

4 **A.** Yes.

5 "In its complaint, the United States alleges that, not
6 only has Bundy failed to comply with the court's orders that he
7 remove his cattle from the Bunkerville Allotment and pay the
8 financial penalties, but that Bundy's cattle have moved beyond
9 the boundaries of the Bunkerville Allotment and are now
10 trespassing on a broad swath of additional federal land (the
11 'New Trespass Lands'), including public lands within the Gold
12 Butte area that are administered by the BLM, and National Park
13 System land within the Overton Arm and Gold Butte areas of the
14 Lake Mead National Recreation Area. The United States seeks an
15 order enjoining Bundy's unauthorized grazing on the New
16 Trespass Lands."

17 Q. And does the court in this Order evaluate whether injunctive
18 relief should be granted?

19 **A.** It does.

20 Q. And taking your attention to page 4, line -- sort of the
21 line between 14 and 15, the sentence that begins "The public
22 interest," could you read the rest of that paragraph starting
23 at "The public interest"?

24 **A.** There to line 15 where it states "The public interest is"?

25 Q. Yes, sir.

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1 **A.** Okay.

2 "The public interest is best served by having the
3 federal lands managed without the presence of trespassing
4 cattle on lands that are closed to grazing. The public
5 interest is also best served by removal of trespassing cattle
6 that cause harm to natural and cultural resources or pose a
7 threat to the health and safety of members of the public who
8 use the federal lands for recreation. The court finds that the
9 public interest is negatively affected by Bundy's continuing
10 trespass."

11 **Q.** Now, Mr. Petrie, could you also read the court's order that
12 it ultimately entered on page 5 of this Order?

13 **A.** Yes. On page 5, it states, "CONCLUSION"

14 "IT IS HEREBY ORDERED that the United States' Motion
15 for Summary Judgment . . . is GRANTED.

16 "IT IS FURTHER ORDERED that defendant Cliven Bundy's
17 Motion to Dismiss . . . is DENIED as moot.

18 "IT IS FURTHER ORDERED that Bundy is permanently
19 enjoined from trespassing on the New Trespass Lands.

20 "IT IS FURTHER ORDERED that the United States is
21 entitled to protect the New Trespass Lands against this
22 trespass, and all future trespasses by Bundy.

23 "IT IS FURTHER ORDERED that Bundy shall remove his
24 livestock from the New Trespass Lands within 45 days of the
25 date hereof, and that the United States is entitled to seize

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1 and remove to impound any of Bundy's cattle that remain in
2 trespass after 45 days of the date hereof.

3 "IT IS FURTHER ORDERED that the United States is
4 entitled to seize and remove to impound any of Bundy's cattle
5 for any future trespasses, provided the United States has
6 provided notice to Bundy under the governing regulations of the
7 United States Department of the Interior."

8 Q. And what judge is that signed by? Or which judge, I should
9 say.

10 **A.** That's signed by United States District Judge Lloyd D.
11 George, 9th day of July, 2013.

12 Q. Thank you, sir.

13 MS. CREEGAN: You can take that down.

14 BY MS. CREEGAN:

15 Q. Now, Mr. Petrie, was a motion also filed in the original
16 case originating from 1998 regarding the Bunkerville Allotment?

17 **A.** Yes.

18 Q. And did you -- was an Order received in that case in 2013?

19 **A.** Yes, we did.

20 MS. CREEGAN: Can you bring up Exhibit 4 for the
21 witness only, please.

22 (Document displayed to the witness.)

23 BY MS. CREEGAN:

24 Q. Mr. Petrie, do you recognize what's depicted in Exhibit 4?

25 **A.** I do.

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1 Q. What is it?

2 **A.** Exhibit 4 is an Order that the Court entered in response to
3 the United States filing another lawsuit against Mr. Bundy in
4 April of 2013. And that lawsuit that we filed in April of 2013
5 was to seek further enforcement of Mr. Bundy's continuing
6 trespass with his cattle in the Bunkerville Allotment dating
7 back to that 1998 litigation.

8 MS. CREEGAN: Your Honor, the Government moves to admit
9 Exhibit 4.

10 (Government's Exhibit No. 4, offered.)

11 THE COURT: Any objection?

12 MR. TANASI: Stewart objects, relevance.

13 MR. MARCHESE: Same objection, Parker.

14 MR. LEVENTHAL: Same objection to relevance grounds.

15 MR. PEREZ: Lovelien joins.

16 THE COURT: Ms. Creegan.

17 MS. CREEGAN: Again, this is one of the four Orders
18 that the defendants are charged with conspiring, aiding and
19 abetting, and actually violating working with Mr. Bundy.

20 THE COURT: All right. Court finds that Exhibit 4 is
21 relevant and Exhibit 4 is admitted.

22 (Government's Exhibit No. 4, received.)

23 THE COURT: You may publish it.

24 MS. CREEGAN: Thank you.

25 (Exhibit displayed in open court.)

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1 BY MS. CREEGAN:

2 Q. Now, Mr. Petrie, is this another Order entered in the
3 original 1998 case regarding the trespass in the Bunkerville
4 Allotment?

5 A. Yes.

6 Q. And does this also have a background section describing the
7 activity on the case up until the Order?

8 A. It does.

9 Q. Again, I won't ask you to read anything that's repetitive;
10 something you read before. But, if you could turn to page 2,
11 line 7, the sentence that starts with "Notwithstanding."

12 A. Okay.

13 "Notwithstanding the Court's Orders, Bundy continues to
14 graze his cattle on the Allotment. Thus, the United States
15 seeks a third Order as follows: (1) declaring that Bundy has
16 placed or allowed his livestock to graze on the Allotment in
17 violation of the Court's Orders; (2) directing Bundy to remove
18 his livestock from the Allotment within 45 days of the Court's
19 Order; (3) explicitly authorizing the United States to seize
20 and impound Bundy's livestock if they have not been removed as
21 directed; (4) instructing Bundy that he may not physically
22 interfere with an impoundment operation authorized by the
23 Court's Order; and (5) authorizing the United States to seize
24 and impound Bundy's livestock should he continue to violate the
25 Court's Permanent Injunction in the future."

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1 Q. And, taking your attention to page 3, the first full
2 paragraph, did the Court evaluate the request of the United
3 States for the third Order?

4 **A.** It did.

5 Q. Could you read that first full paragraph.

6 **A.** Yes. It's under the heading of "Discussion" by the Court.

7 "Here, uncontested evidence demonstrates that Bundy
8 continues to violate the Court's 1998 Permanent Injunction.
9 Bundy himself admits to grazing his cattle on lands both inside
10 and outside the Allotment in contravention of the Court's
11 Orders. Doc. #50, Ex. 4, October 23, 2011 Bundy Deposition.
12 In addition to his own admissions, the United States has
13 presented an abundance of evidence documenting Bundy's
14 continued grazing on the Allotment. Doc. #50, Ex. 2, Ex. 5,
15 Ex. 6, Ex. 7, Ex. 8, Ex. 9, Ex. 13. In light of such flagrant
16 and continuing violations, the Court finds that it has the
17 authority to undertake whatever measures it deems necessary to
18 ensure Bundy's future compliance with the 1998 Permanent
19 Injunction. Specifically, if Bundy fails to comply with the
20 Court's Orders, the Court has the explicit authority to direct
21 that compliance be achieved—at Bundy's expense—by the BLM
22 and/or NPS. See Fed. R. Civ. P. 70(a) ('[i]f a judgment
23 requires a party to . . . perform [a] specific act and the
24 party fails to comply within the time specified, the court may
25 order the act to be done—at the disobedient party's expense—by

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1 another person appointed by the court')."

2 Q. And, Mr. Petrie, we see two acronyms there, BLM and NPS.

3 When do those both stand for?

4 **A.** "BLM" is the *Bureau of Land Management* and "NPS" is *National*
5 *Park Service*.

6 Q. And did the Court actually enter an order at the end of this
7 document?

8 **A.** It did.

9 Q. Would you please read beginning on page 5.

10 **A.** Starting at line 7?

11 Q. Yes, sir.

12 **A.** "IT IS THEREFORE ORDERED that the United States' Motion to
13 Enforce Injunction . . . is hereby GRANTED.

14 "IT IS FURTHER ORDERED that Bundy is permanently
15 enjoined from trespassing on the former Bunkerville Allotment.

16 "IT IS FURTHER ORDERED that the United States is
17 entitled to protect the former Bunkerville Allotment against
18 this trespass, and all future trespasses by Bundy.

19 "IT IS FURTHER ORDERED that Bundy shall remove his
20 livestock from the former Bunkerville Allotment within 45 days
21 of the date hereof, and that the United States is entitled to
22 seize and remove to impound any of Bundy's cattle that remain
23 in trespass after 45 days of the date hereof.

24 "IT IS FURTHER ORDERED that the United States is
25 entitled to seize and remove to impound any of Bundy's cattle

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1 for future trespasses, provided the United States has complied
2 with the notice provisions under the governing regulations of
3 the United States Department of the Interior."

4 And then carrying over to page 6:

5 "IT IS FURTHER ORDERED that Bundy shall not physically
6 interfere with any seizure or impoundment operation authorized
7 by this Court's Order.

8 "IT IS SO ORDERED.

9 "DATED this 8th day of October, 2013."

10 Signed by United States District Judge Larry R. Hicks.

11 Q. Thank you.

12 And, Mr. Petrie, taking you back to page 5 where it
13 says, on line 14, that "the United States is entitled to seize
14 and remove to impound any of Bundy's cattle," what does that
15 mean?

16 **A.** It means that if the cattle have not been removed by
17 Mr. Bundy or they didn't wander off the land by themselves,
18 then the United States would be authorized to have its agents
19 go to that federal land owned by the United States and take the
20 necessary steps to round up the cattle and transport 'em away.

21 Q. Did Mr. Bundy try to appeal either of the Orders that were
22 entered in 2013?

23 **A.** This last Order here that we're talking about that traces
24 its origins back to the 1998 Order, he did not appeal that. In
25 that first action, the one that was filed in May of 2013

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1 related to the New Trespass Lands, after he got an adverse
2 decision from the court on that, he took the first step to
3 appeal that. The Order came down in July of 2013. And, in
4 August of 2013, Mr. Bundy took the first step that you do if
5 you're going to file an appeal, which is basically to serve
6 paperwork to the Court of Appeals, the Ninth Circuit Court of
7 Appeals. So he filed a Notice of Appeal. That's a required
8 step. And they did not pursue it after that point so the
9 appeal did not go anywhere.

10 Q. Mr. Petrie, as of April 2014, were all four of these Orders
11 we've just reviewed still in effect?

12 A. They were.

13 Q. Are these Orders public records of the courts?

14 A. Yes.

15 Q. Were any of these Orders sealed or secret in some way?

16 A. Certainly not to my knowledge.

17 MS. CREEGAN: One moment.

18 (Government counsel conferring.)

19 MS. CREEGAN: Pass the witness. Thank you, Your Honor.

20 THE COURT: Cross on behalf of Stewart?

21 MR. TANASI: Yes. Thank you, Your Honor.

22 THE COURT: Go ahead.

23 CROSS-EXAMINATION

24 BY MR. TANASI:

25 Q. Good morning, sir.

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1 **A.** Good morning, sir.

2 **Q.** I'm Rich Tanasi. I represent Steven Stewart. Got a few
3 questions for ya on cross. Okay?

4 **A.** Certainly.

5 **Q.** All right. Let's go back to Exhibit 1.

6 MR. TANASI: Brian, if you could bring that up, please.

7 (Exhibit displayed in open court.)

8 BY MR. TANASI:

9 **Q.** Okay. Now, you indicated that the litigation started
10 involving Mr. Bundy sometime in 1998. Fair?

11 **A.** That's what the Order reflects, yes.

12 **Q.** Okay. Order was filed November 4th, 1998?

13 **A.** Yes.

14 **Q.** Okay. This Order, on top left corner here, it's (drawing)
15 "UNITED STATES"; correct?

16 **A.** I'm sorry. Where are you pointing to?

17 **Q.** I just circled right there --

18 **A.** I'm sorry.

19 **Q.** -- on the top. I don't know if you can see it in front of
20 you maybe.

21 **A.** Yes, sir, I see that.

22 **Q.** Perfect.

23 **A.** Thank you.

24 Yes, that's --

25 **Q.** All right.

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1 **A.** -- correct.

2 **Q.** And the other party is (drawing) Cliven Bundy; correct?

3 **A.** Yes, sir.

4 **Q.** Okay. Not Steven Stewart; right?

5 **A.** That's correct.

6 **Q.** All right.

7 MR. TANASI: And if we go to page 2 of the Order,
8 please.

9 (Exhibit displayed in open court.)

10 BY MR. TANASI:

11 **Q.** And if I could call your attention to line 11.

12 **A.** Yes.

13 **Q.** See it there, sir?

14 **A.** Yes, sir.

15 **Q.** Okay. It reads, "On February 26, 1993, Bundy sent an
16 Administrative Notice of Intent to the BLM." Correct?

17 **A.** It does say that.

18 **Q.** Okay. Not Steven Stewart. Fair?

19 **A.** That's correct.

20 **Q.** All right. If I could draw your attention to line 20.

21 We're now still in 1993; correct?

22 **A.** Yes, sir.

23 **Q.** All right. "July 13[th], 1993, the BLM sent Bundy a
24 Trespass Notice and Order to Remove and gave him ten days to
25 respond." Do you see that there?

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1 **A.** I do.

2 **Q.** Not Steven Stewart; correct?

3 **A.** That's correct.

4 **Q.** All right. Call your attention to line 25.

5 "On January 24[th], 1994, the BLM delivered a Proposed
6 Decision and Order to Remove and Demand for re-" -- "for
7 Payment to Bundy by placing it on the dashboard of Bundy's
8 vehicle." Do you see that there?

9 **A.** I do, sir.

10 **Q.** Okay. Not to Steven Stewart's vehicle; correct?

11 **A.** That is correct.

12 **Q.** All right. If we could go to page 3.

13 (Exhibit displayed in open court.)

14 BY MR. TANASI:

15 **Q.** All right. And call your attention to line 3.

16 Sentence starts, "One of Bundy's sons then picked up
17 the decision, tore it into pieces and threw it on the ground."
18 Do you see that there?

19 **A.** I do.

20 **Q.** Okay. That's not Steven Stewart; correct?

21 **A.** That is correct.

22 **Q.** All right.

23 MR. TANASI: All right. If we could take a look,
24 please, now to Exhibit 4.

25 (Exhibit displayed in open court.)

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1 THE WITNESS: I'm there, sir.

2 BY MR. TANASI:

3 Q. Okay. Call your attention, sir, to line 24.

4 A. On first page?

5 Q. Yes, sir.

6 A. Yes, sir.

7 Q. And it does spill over onto the second page. But it starts,
8 "On November 3[rd], 1998, the Court issued an Order permanently
9 enjoining Bundy" -- goes onto the second page to say -- "from
10 grazing his livestock on the former Bunkerville Allotment ('the
11 Allotment'), and ordering him to remove his livestock."

12 Do you see that there?

13 A. I do.

14 Q. Okay. That's not an order directed at Steven Stewart for
15 grazing his livestock; correct?

16 A. His name does not appear.

17 Q. Okay. And if we could scroll down to line 7.

18 A. Okay.

19 Q. "Notwithstanding the Court's Order, Bundy continues to graze
20 his cattle on the Allotment." Again, Bundy; not Steven
21 Stewart. Fair?

22 A. Correct.

23 Q. All right. Would you agree with me that, in the total time
24 frame of the dispute with Cliven Bundy, Steven Stewart's not
25 mentioned in any of the court filings or court documents (A)

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1 that we've looked at here or (B) that you've seen before you've
2 come into court today?

3 **A.** I mean, if I may, I want to make sure that I answer this
4 precisely as I can. You're speaking to the Orders that I have
5 covered in my testimony?

6 *Q.* Correct.

7 **A.** Okay. That I have not seen Mr. Stewart's name.

8 *Q.* Sure.

9 **A.** And then you had another part to your question, please.

10 *Q.* Absolutely.

11 MR. TANASI: The litigation, there's a case number.
12 Why don't we go to the top of page 4, Brian.

13 THE WITNESS: I'm sorry? Page of . . .

14 BY MR. TANASI:

15 *Q.* I'm sorry. Exhibit 4, sir.

16 **A.** Okay. I'm there.

17 *Q.* All right.

18 MR. TANASI: Brian, if we go to page 1, please.

19 (Exhibit displayed in open court.)

20 BY MR. TANASI:

21 *Q.* All right. The case number across the top there --

22 **A.** Yes.

23 *Q.* -- do you see that --

24 **A.** Yeah, I do.

25 *Q.* -- 2:98-cv-00531-LRH-VCF? You see --

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1 **A.** Yes, sir.

2 **Q.** -- that?

3 **A.** Yes, sir.

4 **Q.** That's a litigation -- that's a case number; right?

5 **A.** Yes, sir.

6 **Q.** And just so the jury understands that that's a case. And so
7 when things get filed in that particular case, documents get
8 filed, they have that case number to keep them all as part of
9 the *United States v. Cliven Bundy*; correct?

10 **A.** I gotcha. I think I follow you now.

11 **Q.** All right. So, during the course of your litigation of this
12 case, the *United States v. Cliven Bundy*, didn't see anything
13 ever mentioning Steven Stewart. Fair?

14 **A.** That's correct as it relates to these case.

15 **Q.** All right, sir. If we could now go to page 5 of 6 on this
16 exhibit.

17 (Exhibit displayed in open court.)

18 BY MR. TANASI:

19 **Q.** I call your attention to line 2.

20 **A.** Yes.

21 **Q.** Okay. "The Court has stated unequivocally on numerous
22 occasions that it has jurisdiction to hear this case, and that
23 the Allotment is owned by the United States and managed by the
24 DOI through the BLM and the NPS."

25 Again, we kinda touched on this a little with

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1 Ms. Creegan. But I just want to make sure we're clear. "DOI"
2 is *Department of Interior*; right?

3 **A.** Yes, sir.

4 **Q.** "BLM" is *Bureau of Land Management*; right?

5 **A.** Yes.

6 **Q.** Okay. National -- or "NPS" is *National Park Service*;
7 correct?

8 **A.** Yes, sir.

9 **Q.** Okay. And so this Order essentially says that the allotment
10 is owned and managed by those individuals: Department of
11 Interior, BLM, and NPS. Correct?

12 **A.** Yes, and ownership by the United States.

13 **Q.** Okay. All right. Now, if we can kinda jump down to the
14 Order, let's look at 13, line 13, please. Do you see it?

15 **A.** I do.

16 **Q.** All right. "[IT'S] FURTHER ORDERED the Bundy shall remove
17 his livestock from the former Bunkerville Allotment within 45
18 days" -- again, not Steve Stewart; right?

19 **A.** That's correct.

20 **Q.** Okay.

21 -- "of the date hereof, and that the United States is
22 entitled to seize and remove to impound any of Bundy's cattle
23 that remain in trespass after 45 days of the date hereof."

24 Do you see that there?

25 **A.** I do.

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1 Q. Okay. Again, not Steven Stewart; right?

2 A. Does not mention his name.

3 Q. Okay. Now, the -- and we'll head down to the second part of
4 the Order. "IT IS FURTHER ORDERED that the United States is
5 entitled to seize and remove to impound any of Bundy's
6 cattle" -- again, not Steven Stewart; correct?

7 A. That's right.

8 Q. -- "for any future trespass[], provided the United States
9 has complied with the notice provisions and under the governing
10 regulations of the United States Department of . . . Interior."

11 Do you see that there?

12 A. I do, sir.

13 Q. Okay. Would you agree with me that this Order and the two
14 sections that we've just gone over kind of collectively lay out
15 what the BLM and the National Park Service's job was on April
16 12th, 2014? This Order gives them the right to be there. Is
17 that essentially accurate?

18 A. I'm -- it certainly gives them the authority to be there.
19 I'm just hung up a little bit on your questions when you're
20 suggesting that these two passages circumscribe or detail the
21 scope of what their authority was. I'm not personally familiar
22 with the government's employees who arrived there in April of
23 2014 and what their marching orders were.

24 Q. Okay. If this order wasn't in place, they wouldn't be
25 there. Would you agree with me there?

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1 **A.** Yes.

2 **Q.** Okay. So this Order, in part, played into what the
3 authority, the BLM and the National Park Service, purported to
4 have, right, when they were in Bunkerville on April 12th, 2014?
5 You agree with me there; right?

6 **A.** Yes.

7 **Q.** Okay. So this is essentially the BLM -- this Order outlines
8 the BLM's jobs on April 12th, 2014; correct?

9 **A.** At least in part certainly.

10 **Q.** Okay. And it also outlines what their duties are on
11 April 12th, 2014; correct?

12 **A.** I'm not so sure it speaks to their duties.

13 **Q.** What's the difference between "jobs" and "duties," sir?

14 **A.** Well, it -- it depends upon what it takes to actually carry
15 out the roundup and the impoundment action that -- this is
16 describing they've got the ability to do that. But what they
17 actually do to carry that out, I'm not conversant with.

18 **Q.** But this Order, in part, describes what they have for
19 authority to carry out their jobs and duties on April 12th,
20 2014. Fair?

21 **A.** Certainly. Yes.

22 **Q.** Okay. All right. And you'd agreed with me -- I mean, this
23 is an Order signed by the Honorable Judge Larry Hicks; correct?

24 **A.** Yes, sir.

25 **Q.** Okay. And, in signing this Order, this Order became law;

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1 right?

2 **A.** Yes.

3 **Q.** Okay. This Order is just; right? This Order, at least in
4 the opinion of the Honorable Judge Larry Hicks, is justice.
5 Fair?

6 **A.** Well, you -- you're -- we always presume that an order
7 issued by a judge is the judge's sense of justice. Um --

8 **Q.** Fair enough, sir. Thank you.

9 MR. TANASI: Nothing further.

10 (Pause in the proceedings.)

11 THE COURT: Counsel for Parker.

12 MR. MARCHESE: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. MARCHESE:

15 **Q.** Good morning, sir. I'm Jess Marchese. I represent Mr. Eric
16 Parker, the gentleman in the plaid shirt there.

17 **A.** I'm sorry. I'm just slightly hard of hearing.

18 **Q.** I'll --

19 **A.** I can't --

20 **Q.** -- speak up, sir.

21 **A.** I didn't hear your name.

22 **Q.** Yeah. My name's Jess Marchese. I represent the --

23 **A.** Okay.

24 **Q.** -- individual in the plaid shirt here, Mr. Eric Parker. I
25 just have --

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1 **A.** Good to meet you, sir.

2 **Q.** Good to meet you too.

3 So, obviously, you've testified today in reference to
4 these Court Orders and the course and scope of your duties;
5 correct?

6 **A.** Yes.

7 **Q.** All right. And, in part, the reason that you're here is in
8 reference to these Orders with Mr. Cliven Bundy; correct?

9 **A.** Yes.

10 **Q.** You didn't initially have the case. But you took the case
11 to the end, I believe was -- the last Court Order was 2012, I
12 believe?

13 **A.** No. The last Court Order --

14 **Q.** Oh.

15 **A.** -- of these four is dated July of 2013.

16 **Q.** Okay. So, in 2013, you were the attorney assigned to the
17 case; correct?

18 **A.** Yes.

19 **Q.** And, as the attorney assigned to the case, you had the
20 ability to look over all the legal documents filed before 2013;
21 correct?

22 **A.** As they relate to this matter, yes.

23 **Q.** Right.

24 And you didn't personally draft those documents. But
25 you're personally aware of those documents; correct?

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1 **A.** And -- and by "those documents," you're referring
2 specifically to those that were filed in the 1998 litigation
3 before the May 2012 action?

4 **Q.** Correct, sir.

5 **A.** Yes.

6 **Q.** Before you were on the case.

7 **A.** Yes, sir.

8 **Q.** Okay. Mr. Eric Parker was not a party in any of those -- in
9 any of those legal proceedings; correct?

10 **A.** That is correct.

11 **Q.** Okay. You don't recognize Mr. Parker in reference to your
12 litigation; correct?

13 **A.** I do not, sir.

14 **Q.** Okay.

15 MR. MARCHESE: No further questions.

16 THE COURT: Counsel for Drexler.

17 MR. LEVENTHAL: Thank you.

18 CROSS-EXAMINATION

19 BY MR. LEVENTHAL:

20 **Q.** Good morning, sir.

21 **A.** Good morning, sir.

22 **Q.** My name is Todd Leventhal. I represent Mr. Drexler.

23 **A.** Okay. Thank you.

24 **Q.** Now, since -- you've been on this case in two thousand --
25 the Bundy case since 2012; is that correct?

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1 **A.** Yes, sir.

2 **Q.** Okay. And you're obviously familiar with all of the
3 filings. You just discussed a lot of the filings in this
4 matter all the way back from 1998; correct?

5 **A.** Yes.

6 **Q.** Okay. Nowhere in there did you see Mr. Scott Drexler's name
7 either in a heading or in factual or in an order; is that
8 correct?

9 **A.** I did not, sir.

10 **Q.** Okay.

11 MR. LEVENTHAL: If we could just real quickly just pull
12 up number 1, Brian.

13 (Exhibit displayed in open court.)

14 MR. LEVENTHAL: Go to page 3.

15 BY MR. LEVENTHAL:

16 **Q.** It says, "On March 3[rd], . . . Bundy sent a check for
17 []1,961.47 to Clark County for grazing fees."

18 Do you see that, sir?

19 **A.** I do, sir.

20 **Q.** Okay. And that I -- I guess that's what -- the BLM had
21 calculated that this amount to be equal . . . that he would pay
22 to graze 85 cattle on the Allotment for 12 months; is that
23 correct?

24 **A.** Yes, sir.

25 **Q.** Okay. And I guess Clark County returned it because they

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1 indicated they had no jurisdiction; right?

2 **A.** That's right. He sent it to the wrong people.

3 **Q.** Okay. So he sent it to the state.

4 **A.** At least to --

5 **Q.** Or the County.

6 **A.** -- Clark County as a part of the state government system,
7 yes.

8 **Q.** Okay. Very good. Thank you, sir.

9 MR. PEREZ: Nothing from Lovelien, Your Honor.

10 THE COURT: Redirect.

11 REDIRECT EXAMINATION

12 BY MS. CREEGAN:

13 **Q.** Just briefly.

14 Mr. Petrie, I think you may have said what the last
15 date of one of the Orders we looked at was. I'm sorry if I
16 misheard you. But was that July or October of 2013 was the
17 last Order?

18 **A.** You're right. I believe the actual last date was October of
19 2013. I misspoke.

20 **Q.** Okay. And second question with regard to sending a check to
21 Clark County. You send a check to someone; they send them
22 back. Are you out any money?

23 **A.** I'm sorry? The last --

24 **Q.** If you send a check to somebody and they send you that check
25 back and don't cash it, are you out any money?

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1 MR. MARCHESE: Objection, leading; relevance.

2 THE COURT: Overruled. He can answer the --

3 THE WITNESS: No --

4 THE COURT: -- question.

5 THE WITNESS: -- you're not.

6 MS. CREEGAN: Thank you.

7 THE COURT: Any other recross?

8 MR. TANASI: Not from Stewart, Your Honor. Thank you.

9 MR. MARCHESE: None from Parker.

10 MR. LEVENTHAL: None from Mr. Drexler.

11 MR. PEREZ: None from Lovelien.

12 THE COURT: All right. So, at this time, if any
13 members of the jury have a question for Mr. Petrie, please
14 write 'em down on the form provided. Take your time. Write
15 neatly. We don't need to know your names. Please don't sign
16 it or give us your initials. Don't write down your jury
17 number. Just the question.

18 (Pause in the proceedings.)

19 THE MARSHAL: Your Honor?

20 THE COURT: Yes.

21 THE MARSHAL: Can we take a break?

22 THE COURT: Yes. Let's go ahead and take a bathroom
23 break.

24 During this break, we'll remind the jury: Please do
25 not discuss this case with anyone nor permit anyone to discuss

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1 it with you. Do not read or listen to or view anything that
2 touches upon this case in any way. Do not perform any research
3 or any independent investigation. Do not form an opinion.

4 It's 10:36. So we'll take a 15-minute break and plan
5 to be back here by 10:50.

6 Let's go ahead and stand for the jury so they can exit.

7 COURT SECURITY OFFICER: Leave your things here. Just
8 turn them upside down.

9 THE COURT: Yeah. If you want to leave it there and
10 finish it or -- I'm fine either way. I think we just need to
11 take a break.

12 COURT SECURITY OFFICER: Come on. Yeah, you can bring
13 them.

14 (Jury out, 10:37 a.m.)

15 THE COURT: All right. Mr. Petrie, you can go ahead
16 and take a break as well.

17 THE WITNESS: Thank you, Your Honor.

18 THE COURT: We're off record.

19 (Recess, 10:37 a.m. Resumed, 11:03 a.m. Jury not present.)

20 COURTROOM ADMINISTRATOR: All rise.

21 THE COURT: Go ahead and bring in the jury.

22 COURTROOM ADMINISTRATOR: Yes, Your Honor.

23 (Pause in the proceedings.)

24 COURTROOM ADMINISTRATOR: All rise.

25 (Jury in, 11:06 a.m.)

1 THE COURT: Thank you. Jury may be seated.

2 And everyone else may be seated as well.

3 All right. So, if you didn't already finish writing
4 your questions down, please go ahead and do so on the forms
5 provided. When you're done, fold the question form in half and
6 pass it in the direction of Aaron.

7 (Pause in the proceedings.)

8 (The Courtroom Administrator and the Court conferring.)

9 THE COURT: Okay. Counsel, please join me at sidebar.

10 (Begin sidebar conference.)

11 THE COURT: All right. So Jury Note No. 17 is a
12 three-part question. The first part is "Why was there such a
13 large gap in time between court appearances to enforce the 1998
14 and 1999 Orders?"

15 Any objection?

16 MR. LEVENTHAL: No.

17 MR. TANASI: Fair.

18 MS. CREEGAN: No.

19 THE COURT: Number 2, "Did Bundy continue to violate
20 those Orders from 1999 until 2012?"

21 Any objection?

22 MS. CREEGAN: No.

23 MR. TANASI: No.

24 THE COURT: And the third part of Jury Note No. 17 is
25 "Were there any legal proceedings in this U.S. v. Cliven Bundy

1 case during the period 1999 to 2013?" And, actually, then
2 there's an arrow down below, "brought by either party." Okay.
3 Let me reread that.

4 So "Were there any legal proceedings brought by either
5 party in this U.S. v. Cliven Bundy case during the period 1999
6 to 2013?"

7 Any objection?

8 MS. CREEGAN: No.

9 MR. TANASI: No.

10 THE COURT: Okay.

11 Juror Question No. 18, "Does the U.S. Government ever
12 allow grazing rights on any National Park Service" . . .

13 COURT REPORTER: NPS.

14 THE COURT: . . . "(NPS) lands?"

15 Any objection to that question?

16 MR. LEVENTHAL: What? National Park Service --

17 THE COURT: Yes.

18 MR. LEVENTHAL: -- NPS?

19 THE COURT: You do have an objection?

20 MR. LEVENTHAL: No, no.

21 THE COURT: Okay.

22 MR. LEVENTHAL: I was just . . .

23 THE COURT: Okay.

24 MR. LEVENTHAL: Do they ever allow it?

25 THE COURT: Yes.

1 MR. LEVENTHAL: Well, he's an attorney.

2 THE COURT: I can read it. So "Does the U.S.
3 Government ever allow grazing rights on any National Park
4 Service (NPS) land?"

5 MR. LEVENTHAL: Okay.

6 MR. TANASI: No objection.

7 MR. LEVENTHAL: No objection.

8 THE COURT: And then the second question that is on
9 Jury Note 18 is "If yes, does the NPS land Cliven Bundy was
10 grazing his cattle on permit grazing?"

11 Any objection?

12 MS. CREEGAN: He may not know the answer. The
13 Government has no objection.

14 THE COURT: Okay. And Jury Note 19 is a two-part
15 question. "The check was sent to the wrong department. Could
16 it have been redirected to the right one?"

17 Any objection to that question?

18 MR. TANASI: No objection.

19 MR. LEVENTHAL: No objection.

20 MS. CREEGAN: No.

21 THE COURT: And second part of -- second question of
22 Jury Note 19 is "If it was sent to the right department, would
23 it of satisfied the fee coverage of the payment?"

24 MR. LEVENTHAL: I believe.

25 THE COURT: Okay. We answered that. But we could ask

1 it again; right? There's no objection to that?

2 MR. LEVENTHAL: Yeah, that's been answered. But yeah.

3 MR. TANASI: No objection.

4 MR. LEVENTHAL: No objection.

5 THE COURT: Okay.

6 Jury Note No. 20 has -- looks like four questions.

7 First question, "Does order to Bundy apply to just Cliven Bundy
8 or to his sons as well?"

9 Any objection?

10 MS. CREEGAN: No.

11 MR. TANASI: No objection.

12 THE COURT: Number two, "How does BLM know all the
13 cattle belonged to Mr. Bundy?"

14 Any objection?

15 MR. TANASI: No objection.

16 MR. LEVENTHAL: No objection.

17 MS. CREEGAN: No.

18 THE COURT: Number 3, "Are the allotments defined by
19 fences or are they open range?"

20 MR. LEVENTHAL: No objection.

21 MR. TANASI: No objection.

22 THE COURT: Number 4, "What transpired between 1998 and
23 2013 to reactivate the government interest?"

24 MR. LEVENTHAL: Sort of --

25 THE COURT: Any objection?

1 MR. LEVENTHAL: -- that was like the last question. No
2 objection.

3 MR. TANASI: No objection.

4 MR. MARCHESE: No objection.

5 THE COURT: Jury Note No. 21, "Why would the defendants
6 want to be involved in protecting people who are not following
7 the law or protect cattle that are not lawfully supposed to be
8 there?"

9 I don't know if that's really a question for the
10 witness.

11 MR. TANASI: It's kind of the question of the case
12 which is an ultimate determination that they would probably end
13 up making. So I don't think that would --

14 THE COURT: Well, not --

15 MR. TANASI: -- be an appropriate --

16 THE COURT: -- necessarily. It's asking for motive and
17 motive isn't in the elements.

18 MR. MARCHESE: I don't have a problem with it.

19 MR. TANASI: Well, I don't know how you would be able
20 to speak to the defendant's mind-set. But . . .

21 THE COURT: Government is not required to show motive
22 or demonstrate motive as an element.

23 MS. CREEGAN: I also very much doubt this witness can
24 answer. He's familiar with the civil litigation. I don't
25 think he's very familiar with the criminal case at all.

1 THE COURT: So what's your suggestion for how I deal
2 with this question?

3 MR. TANASI: I think it's a question that we can't
4 answer and I think it's one of the ultimate questions in the
5 case. It's -- that's a question of whether --

6 THE COURT: I'm not gonna says it's one of the ultimate
7 questions 'cuz it's not a question at all in the case.

8 MR. MYHRE: Just say this witness can't answer --

9 MS. CREEGAN: That's it. Yeah, say this witness can't
10 answer that question.

11 THE COURT: All right.

12 And then Jury Note No. 22. It says "Clarification" and
13 then a colon and underneath it says, "What is Mr. Stewart's
14 attorney's question to Mr. Petrie regarding Mr. Stewart's name
15 not appearing on the court's orders? An implication that
16 Mr. Stewart was not therefore subject to the conditions of the
17 order? I.e., the order did not apply to his client . . ."

18 MR. TANASI: I think -- again, I don't know if it's
19 something he can answer. It would almost be a question for me.

20 (Defense counsel conferring.)

21 THE COURT: Does anyone have an objection or a
22 suggested restatement or --

23 MR. LEVENTHAL: I think he can answer that.

24 THE COURT: -- or something --

25 MS. AHMED: It's kinda like the question as to whether

1 the Order applied to the sons. You could ask that more
2 expansively, did it apply to anybody else.

3 MR. TANASI: Could I hear that one more time, Your
4 Honor?

5 THE COURT: Yes.

6 MR. TANASI: I'm sorry.

7 THE COURT: "What is Mr. Stewart's attorney's question
8 to Mr. Petrie regarding Mr. Stewart's name not appearing on the
9 court's order? An implication that Mr. Stewart was not
10 therefore subject to the conditions of the order? i.e., the
11 order did not apply to his client . . ."

12 MR. TANASI: The "i.e." part, whether or not applying
13 to my client, I don't know.

14 MR. PEREZ: What his implication was --

15 MR. TANASI: Right, because my client wasn't involved
16 in the lawsuit, I guess, is the spirit of the questions. But,
17 again, I don't know how he can answer that.

18 MS. CREEGAN: Do you think that it would be helpful to
19 let them know that they'll be receiving instructions about
20 conspiracy and aiding and abetting at the end of the case and
21 that that may resolve that question for them or not?

22 THE COURT: I think that's a better way to handle it,
23 yes.

24 (Government counsel conferring.)

25 THE COURT: Jury Note No. 23, "If Bundy would have paid

1 grazing fees continuously, would there have been no trespass
2 charges?"

3 MS. CREEGAN: No objection.

4 MR. TANASI: I have no objection.

5 THE COURT: And that was the last one.

6 MR. TANASI: Your Honor, if we can just go back to the
7 one that we were trying to figure out whether -- I think you
8 said the way I had proffered it it might have been a little
9 misleading -- but the one that was related to essentially our
10 guys' kinda state of mind. I think the answer to that
11 Ms. Creegan just articulated in response to that last jury
12 question would same response, which is they'll be instructed at
13 the end of the case on theories of -- or the law as it pertains
14 to conspiracy and aiding and abetting and it's not a question
15 to answer for now.

16 (Pause in the proceedings.)

17 MS. CREEGAN: I think that's motive. I think that
18 actually probably won't get an instruction --

19 THE COURT: Yeah.

20 MS. CREEGAN: -- on that.

21 THE COURT: There won't be a motive instruction. But I
22 was trying to think back on my instructions myself. And I
23 don't think there is a motive instruction.

24 MR. TANASI: I guess I don't think that goes to motive;
25 it goes to intent.

1 MS. CREEGAN: We want to differentiate motive and
2 intent. And the court discourages giving a motive instruction.

3 MR. TANASI: I guess I'm just saying that I don't think
4 that instruction goes to motive; I think it goes to intent. I
5 understand the difference between motive and intent.

6 MS. CREEGAN: I certainly didn't mean to suggest that
7 you don't. But they are asking why they would want to do
8 something. And to my mind that reads as a motive question.

9 MR. TANASI: Understood.

10 (Pause in the proceedings.)

11 THE COURT: So what were you suggesting that I say?

12 MR. TANASI: The same response related to they'll be
13 instructed at the end of the case as to conspiracy and as to
14 aiding and abetting and as to the law of the case. And that
15 question, I think, applies to the instructions they'll receive
16 later.

17 THE COURT: Okay. Make sure we got through it all.

18 MR. TANASI: Sorry. Thank you.

19 THE COURT: Thank you.

20 (End sidebar conference.)

21 THE COURT: You ready?

22 COURT REPORTER: Yes.

23 THE COURT: All right.

24 All right. So, Mr. Petrie, I've got a couple questions
25 here from the jury. I'm gonna go ahead and read them into the

1 record. But, when you respond, you may go ahead and turn to
2 the jury and respond to them because these are really jury
3 questions, not my questions.

4 THE WITNESS: I understand, Your Honor.

5 THE COURT: Okay? Thanks.

6 So Jury Note No. 17 has three questions. The first one
7 is, "Why was there such a large gap in time between court
8 appearances to enforce the 1998 and 1999 orders?"

9 THE WITNESS: Shall I go ahead and respond?

10 THE COURT: Yes, please.

11 THE WITNESS: I don't know the complete answer. I
12 walked into the case, as you know, in late May/early June 2012.
13 And I had not heard about Mr. Bundy or the matters that this
14 litigation involves until that point in time. That question
15 certainly crosses one's mind. And, in the course of reviewing
16 files, I gained some glimpses. But I'm not sure even now that
17 I really have a full picture. Okay? So take with that grain
18 of salt what I offer. Okay?

19 It's not like I have read something from the
20 government's files that addresses that specific question, for
21 example, nor is it, for instance, where in the course of
22 speaking with Mr. Bundy did he provide some kind of commentary
23 about -- from his side. Okay?

24 What I saw were glimpses of some concern by Government
25 that there might be some kind of issues or problems in being

1 able to actually remove the cattle successfully. But, again,
2 please understand that that's just glimpses. So I -- I -- with
3 that -- and bear in mind too that my perspective when I entered
4 the case in June of 2012 was one that, yes, that's an
5 interesting question. But, for what was directly in front of
6 me, it really didn't matter in the sense that Mr. Bundy's
7 cattle, as evidenced by the subsequent court rulings, were
8 clearly where they shouldn't have been and he clearly didn't
9 have authority. And so it was just a simple matter at that
10 point of going into the court, makin' the argument that this is
11 federal land, these cattle are here, they are his, he doesn't
12 have authorization, therefore he needs to remove 'em. And, for
13 being able to address that, I did not need, at least in my
14 judgment, to get into why that gap; why that hiatus in time
15 over the periods of years.

16 I know from looking through some of the files that they
17 annotated a couple of instances where Mr. Bundy -- in the
18 course of taking care of his cattle out there on the federal
19 lands in trespass -- that on occasion there were some instances
20 where he would come across people that he didn't recognize and
21 they would have some kind of conversation and which Mr. Bundy
22 alluded to the idea that they should leave; that this was their
23 place to be. I -- I can't retrieve, as I sit here right now,
24 my recollection of how that was characterized in the couple of
25 the documents that I saw in that intervening span.

1 I know that whatever the reasoning was behind it that
2 the Government's interest was sufficiently triggered to begin
3 to take more action on this somewhere in the 2011 time frame
4 because it's that, then, that the files show that the
5 Government began to record again actively how many of his
6 cattle were observed -- they conducted some surveillance
7 operations to get cattle counts of cattle that were out there
8 on the federal lands -- and that the government was moving in
9 the direction of conducting a roundup or a gather before the
10 May 2012 suit was filed -- that was happening in the 2011 time
11 frame -- and that that effort to conduct a roundup was aborted
12 because of some concerns. Mr. Bundy was not in favor of that
13 and had issued letters of some sort or another expressing his
14 opposition.

15 I wish I had a better recall of that to try to capture
16 that for you better. But, as I sit here right now without
17 refreshing my memory, I hesitate to go beyond that and
18 characterize the contents of that. Okay?

19 If I can follow up, if you got a follow-up question to
20 draw me out better, I'd be glad to address it subject to the
21 judge's approval.

22 THE COURT: All right. So the second question in Jury
23 Note No. 17 is, "Did Bundy continue to violate those court
24 orders from 1999 to 2012?"

25 THE WITNESS: Yes. The way -- when I deposed Mr. Bundy

1 in October of 2012, I asked him very directly if his cattle had
2 remained in trespass. Now, I didn't capture it from the year
3 1999 going forward, just to be clear because the question was
4 framed from 1999. But, in the 2012 lawsuit, we just -- the
5 date of 2000 was struck, okay, from 2000 coming forward was the
6 allegation in the lawsuit that was filed in May 2012. So, in
7 the deposition, my focus on time with Mr. Bundy was from 2000
8 forward. And he acknowledged that his cattle had been out
9 there continuously from 2000 right up through the date that we
10 were sittin' there in the deposition.

11 THE COURT: All right.

12 The third question, Jury Note No. 17, is, "Were there
13 any legal proceedings brought by either party in this U.S. v.
14 Cliven Bundy case during the period 1993 to 2012?"

15 THE WITNESS: Let me see if I can capture this right.
16 The conversations between BLM and Mr. Bundy, I think in some of
17 what was read to ya from exhibits this morning, described some
18 conversations dating back to 1993. And some of those dealings
19 with Mr. Bundy over the years were taken pursuant to
20 regulations that the Department of Interior, Bureau of Land
21 Management, National Park Service have when they encounter a
22 situation of trespass; to give notice and that sort of thing.

23 But a formal lawsuit, we did not see that happen until
24 1998 when the U.S. Attorney's Office here in Las Vegas filed an
25 action to have Mr. Bundy remove his cattle. That was the first

1 lawsuit. And then the second and the third lawsuits were the
2 ones that I have addressed here this morning in May of 2012 and
3 then in April of 2013. To my knowledge, those are the only
4 lawsuits from that window of time.

5 THE COURT: All right.

6 Jury Note No. 18 has two questions. The first one is,
7 "Does the United States Government ever allow grazing rights on
8 any National Park Service (NPS) land?"

9 THE WITNESS: Yes.

10 THE COURT: Okay. And the second question in Jury Note
11 18 is "If yes, does the NPS (National Park Service) land that
12 Cliven Bundy was grazing his cattle on permit grazing?"

13 THE WITNESS: I'm pausing because I want to be as
14 accurate as I can. Mr. Bundy's authorization to graze on the
15 federal properties -- understand that it's all federal property
16 and that the federal government internally has made decisions
17 over which agency will actually administer the permit process
18 for those lands that a decision has been made that grazing can
19 occur upon. Okay? And so Mr. Bundy's last authorized period
20 of time that he had to allow him to lawfully graze his cattle
21 on those federal lands finished in, like, February of 1993.
22 And he has been grazing his cattle out there ever since without
23 authorization from whichever appropriate federal agency -- BLM
24 or NPS, National Park Service -- administers the specific land
25 in question.

1 THE COURT: I'm not sure you're responsive to the
2 question. The --

3 THE WITNESS: That may be.

4 THE COURT: -- question is, "Does the NPS land that
5 Cliven Bundy was grazing his cattle on permit grazing?" So the
6 way I understood the question is --

7 THE WITNESS: Yes.

8 THE COURT: -- is there no grazing ever allowed in that
9 area ever, ever, ever? Or is it just you need to have a permit
10 to be able to graze on that land?

11 THE WITNESS: You're right, Your Honor. My -- my
12 response was not directly responsive. And my answer now is
13 qualified.

14 Land that was part of the Bunkerville Allotment that
15 land has been removed from being used for grazing. Okay?
16 Where I'm hesitating is where some of that land was outside the
17 Bunkerville Allotment, what we've dubbed the New Trespass
18 Lands. I can't tell ya -- without looking at anything to tell
19 ya if some of that NPS land has also been removed for grazing
20 purposes. If it has not been removed for grazing purposes,
21 then presumably a rancher could make application to the NPS and
22 receive a permit to graze their cattle on that land.

23 THE COURT: All right. Jury Note No. 19 has two
24 questions. The first one is, "The check was sent to the wrong
25 department. Could it have been redirected to the right one?"

1 THE WITNESS: In a world of possibilities, yes. I'm
2 not privy to what the -- the thoughts were of the people that
3 were handling that check at that time. The upshot of it is, is
4 that somebody in Clark County elected to send it back to
5 Mr. Bundy as opposed to forwarding it on to BLM.

6 Similarly, assuming Mr. Bundy got the check back, he
7 had an opportunity to perhaps -- you know, I don't know what
8 Mr. Bundy thought. He could have said, well, enough or he
9 could have said, well, who do I send it to or whatever. But,
10 as far as I know, the trail ends right there; BLM never got a
11 check.

12 THE COURT: "Can the BLM check" -- "cash a check made
13 out to Clark County?"

14 THE WITNESS: I would think not.

15 THE COURT: Okay. Second part of -- the second
16 question in Jury Note No. 19 is, "If it was sent to the right
17 department, would it have satisfied the fee coverage of the
18 payment?" I think they are asking if the amount, the number,
19 is correct or not.

20 THE WITNESS: That's an excellent question, and it's
21 one I don't know the answer directly. I think one of the
22 Orders that I read to ya had a passage that described how that
23 amount had been calculated to equal "X" number of cattle
24 for "X" number of months. So, in somebody's mind, they had
25 taken the time to convert those dollars to some calculation of

1 arriving at how many cattle could graze out there on -- on the
2 allotment. But, whether or not that matches up with what
3 Mr. Bundy had been operating under before his permit expired, I
4 don't know.

5 THE COURT: Okay. Jury Note No. 20 has four questions.
6 The first one is, "Does an order to Bundy apply to just Cliven
7 Bundy or to his sons as well?"

8 THE WITNESS: That's an interesting question. I'm
9 hunting here to see if I can come up with an answer here that
10 makes sense and -- and one that I know. I'm not gonna guess.

11 (Reviewing exhibits.)

12 THE WITNESS: I'm not sure I'm gonna nail this.

13 Certainly the Order applies to Mr. Bundy. I -- I think
14 when ya get beyond Mr. Bundy then ya enter into all sorts of
15 additional issues to include whether or not the scope of the
16 Order itself is just meant specifically for Cliven Bundy or
17 does it cover somebody who's gonna act on his behalf. There's
18 all sorts of different permutations that factually the law
19 would have to grapple with at least in my estimation.

20 THE COURT: Second question in Jury Note No. 20 is,
21 "How does BLM know all the cattle belonged to Mr. Bundy?"

22 THE WITNESS: Part of that question, Your Honor, I did
23 hear. Could you repeat?

24 THE COURT: Yes.

25 "How does BLM know all the cattle belonged to

1 Mr. Bundy?" And they are talking --

2 THE WITNESS: Yes, Your Honor.

3 THE COURT: -- referring to the cattle that was
4 trespassing.

5 THE WITNESS: Yes, Your Honor.

6 Mr. Bundy has a brand he uses for his cattle. And part
7 of what was discussed with Mr. Bundy in the deposition I took
8 with him was the fact of what was that brand and did the cattle
9 that were out there were they his cattle. And he, my
10 recollection is, acknowledged that there may be some cattle out
11 there that are strays, completely strays, and arguably might
12 not be his. But he wasn't sittin' there sayin' that ain't my
13 cattle; it was clearly this is my cattle that are out there.
14 He -- he wasn't disputing ownership.

15 THE COURT: When you say "he told you," is this at the
16 deposition --

17 THE WITNESS: Yes --

18 THE COURT: -- he --

19 THE WITNESS: -- Your Honor.

20 THE COURT: -- told you?

21 So this is under oath.

22 THE WITNESS: Yes, he was under oath.

23 THE COURT: Number 3, "Are the allotments defined by
24 fences or are they open range?"

25 THE WITNESS: Open range for the most part.

1 THE COURT: Number 4, "What transpired between 1998 and
2 2013 to reactivate the government's interest?"

3 THE WITNESS: I don't know the answer. I can read
4 between the lines. And about the best I can surmise without
5 engaging in raw speculation, which I don't want to go to, is
6 that some turn of events had happened that elevated the Bundys'
7 use of that land enough that people who were authorized to take
8 action on it thought that they needed to take action.

9 And I apologize. That's sort of a generic answer.
10 But -- but that's the best I can tell is that something
11 happened that triggered enough interest that said we need to
12 act on this.

13 THE COURT: Okay. Jury Note No. 21 has one question.
14 The question is, "Why would the defendants want to be involved
15 in protecting people who are not following the law or protect
16 cattle that are not lawfully theirs or supposed to be there?"

17 So --

18 THE WITNESS: Why would --

19 THE COURT: -- the question -- I'm not gonna ask the
20 witness to answer the question because I will provide you the
21 legal instructions that will assist you in determining what
22 issues you need to resolve and which ones you don't need to
23 resolve in order to decide whether the defendants are guilty or
24 not. So there will be a format with questions and definitions
25 for you to look at that will help guide you a little bit better

1 as to the elements of conspiracy or the elements to aiding and
2 abetting and so forth.

3 Jury Note No. 22 is a request for clarification. "Was
4 Mr. Stewart's attorney's question to Mr. Petrie regarding
5 Mr. Stewart's name not appearing on the court's order an
6 implication that Mr. Stewart was not therefore subject to the
7 conditions of the order? i.e., the order did not apply to his
8 client . . ."

9 And I think, again, you've already answered the
10 question that Mr. Stewart's name is not on the order.

11 THE WITNESS: (Nods head.)

12 THE COURT: And so the question regarding the
13 conspiracy and aiding and abetting charges in this case those
14 legal instructions will be provided to you later and that will
15 help you to determine the effect of the facts in this case.

16 Jury Note No. 23, "If Bundy would have paid grazing
17 fees continuously, would there have been no trespassing
18 charges?"

19 THE WITNESS: I hesitate only because I realize I'm
20 kinda speculating. But there's a form of logic that says that
21 if he's paid the fees that's required to hold the permit and
22 he's in compliance with the terms of the permit then there
23 would not have been trespass charges. The trespass charges
24 were only brought because he didn't have a permit, he didn't
25 have authorization, and he refused to take the cattle away.

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1 THE COURT: All right. So that was our last question.
2 Does the Government have any follow-up questions?

3 MS. CREEGAN: No, Your Honor.

4 THE COURT: Defense have any follow-up questions?

5 MR. TANASI: Just one quick one, Your Honor. Thank
6 you.

7 RECROSS-EXAMINATION

8 BY MR. TANASI:

9 Q. Good morning again, sir.

10 A. Yes, sir.

11 Q. All right. So, just going back to kind of the gap in
12 enforcement that you just testified about, you'd mentioned --
13 and I wrote this stuff down -- you mentioned 2011 there was a
14 government interest that was triggered potentially. You use
15 the word "triggered." Do you remember that?

16 A. Yes.

17 Q. Okay. You also said there was some concerns?

18 A. Yes.

19 Q. Do you remember that? Okay.

20 None of those concerns were Steven Stewart; right?

21 A. To the best of my knowledge --

22 Q. Okay.

23 A. -- no.

24 Q. And that triggering event that you kind of touched on that
25 was not Steven Stewart; correct?

1 **A.** That is correct.

2 **Q.** All right. Thank you, sir.

3 MR. TANASI: Nothing further.

4 THE WITNESS: Certainly.

5 THE COURT: Anyone else?

6 MR. MARCHESE: None for Parker.

7 MR. LEVENTHAL: None on behalf of Mr. Drexler. Thank
8 you.

9 MR. PEREZ: None from Lovelien.

10 THE COURT: All right.

11 So, at this time, we'll go ahead and take our lunch
12 break and thank Mr. Petrie for coming in today. We'll excuse
13 him so he can go to lunch as well. It's 11:40 so we'll go
14 ahead and just take a bit of an earlier lunch until 12:40,
15 12:45 if the food is here?

16 COURT SECURITY OFFICER: (Gesture.)

17 THE COURT: Okay. Maybe not.

18 (Pause in the proceedings.)

19 THE COURT: Okay. So I'm told it would be better if we
20 go till 1:00. So you get a little bit of a longer lunch break
21 today and we'll be back here at 1:00 o'clock.

22 So let's go ahead and stand for the jury. And, after
23 they exit, then, Mr. Petrie, you may step down as well.

24 (Jury out, 11:42 p.m.)

25 THE COURT: You may go ahead, sir.

1 We're off record.

2 (Recess, 11:43 a.m. Resumed, 1:22 p.m. Jury not present.)

3 COURTROOM ADMINISTRATOR: All rise.

4 THE COURT: Thank you. You may be seated.

5 Let's -- thank you.

6 All right. So there's one more question that we
7 received from the jurors. Luckily, it's more of a legal
8 question, not a factual question so we don't need to call the
9 witness back or have any problem with the fact that the witness
10 isn't here any longer.

11 What number would this be, Aaron?

12 COURTROOM ADMINISTRATOR: I'm sorry, Your Honor?

13 THE COURT: What jury note number would this be?

14 COURTROOM ADMINISTRATOR: That would be 24, I believe.

15 THE COURT: Did you put them back? I thought you had
16 them.

17 COURTROOM ADMINISTRATOR: 24.

18 THE COURT: 24. Okay. So this one will be 25.

19 COURTROOM ADMINISTRATOR: No. That will be 24.

20 THE COURT: Oh, this one will be 24.

21 COURTROOM ADMINISTRATOR: Yes.

22 THE COURT: I'm sorry.

23 All right. So Jury Note No. 24, "Are court orders in
24 effect during an appeal by a defendant? In other words, is the
25 defendant required to perform or follow court instructions

1 while waiting for a court decision on the defendant's appeal?"

2 So I can answer that question and let them know that,
3 yes, the court order is effective and valid pending appeal
4 unless a stay is ordered, either by the court issuing the
5 original order or by the appellate court; a stay is like
6 pushing the pause button. Unless you have something that you
7 want me to say instead.

8 MS. CREEGAN: That's fine with the Government, Your
9 Honor.

10 THE COURT: I think the --

11 MR. TANASI: I think that covers it.

12 THE COURT: -- follow-up to that would be they'd
13 probably want to know was there a stay issued in any of these.
14 I could take judicial notice if you want me to. But I don't
15 know how much more -- if you have other witnesses that are
16 gonna be coming in to talk about those orders or was that just
17 Mr. Petrie?

18 MS. CREEGAN: We don't, Your Honor. But he did testify
19 that they were all in effect in April of 2014.

20 THE COURT: All right.

21 MR. TANASI: I don't have any --

22 THE COURT: Anything else --

23 MR. TANASI: -- objection, Stewart, Your Honor. And I
24 agree with the Court; I think it's -- there probably will still
25 be some follow-ups to it. But I guess we can address those if

1 they come up.

2 THE COURT: Okay.

3 Anyone else want to make a record before we bring in
4 the jury?

5 MR. MARCHESE: No objection, Parker.

6 MR. LEVENTHAL: No objection on behalf of Mr. Drexler.

7 MR. PEREZ: No objection, Lovelien.

8 THE COURT: All right.

9 So we'll go ahead and bring in the jury. I'll read the
10 note, provide the answer, then Government may call its next
11 witness.

12 Any update on Mr. Ellis yet?

13 MR. MYHRE: It's not --

14 THE COURT: No?

15 MR. MYHRE: -- gonna be today, Your Honor, so --

16 THE COURT: Okay.

17 MR. MYHRE: -- we hope --

18 THE COURT: That's fine.

19 MR. MYHRE: -- for Monday.

20 THE COURT: Okay.

21 MR. MYHRE: So we may run -- we had scheduled for
22 Mr. Ellis to go about an hour or two on cross. So we may --

23 THE COURT: Run out.

24 MR. MYHRE: -- come up short at the end of the day. So
25 I'm . . .

1 THE COURT: Okay.

2 MR. MYHRE: We'll see how it goes.

3 MR. MARCHESE: No objection, Parker.

4 THE COURT: Okay.

5 (Pause in the proceedings.)

6 COURTROOM ADMINISTRATOR: All rise.

7 (Jury in, 1:29 p.m.)

8 THE COURT: All right. Jury may be seated.

9 Everyone else may be seated as well.

10 We're back on the record; back from the lunch break.

11 We did have a jury note that I want to read into the
12 record before we call the next witness. This is Jury Note
13 No. 24.

14 The question is, "Are court orders in effect during an
15 appeal by a defendant? In other words, is the defendant
16 required to perform or follow court instructions while waiting
17 for a court decision on the defendant's appeal?"

18 So this is a legal question, not a factual question,
19 and the parties have agreed that I can answer this question for
20 you. The court order is effective and valid and enforceable
21 during the appellate process. Even when the case is on appeal,
22 it remains in effect. The only time it doesn't stay in effect
23 is if a court issues what we call a stay, s-t-a-y. It can be
24 issued by the original court that signed the order or by the
25 appellate court that's going to be hearing the appeal. No

1 evidence of any stay in this case. So that's -- that's the
2 procedure for a stay. The stay is like a pause button is what
3 I wanted to tell you. It just kind of stops everything as if
4 the order hadn't -- isn't in effect yet.

5 All right. Does the Government have another witness to
6 call?

7 MS. AHMED: Yes, Your Honor. The Government calls Gus
8 Warr.

9 THE COURT: Good afternoon, Mr. Warr. Come on up.
10 You're going to be seated over here to my right.

11 THE WITNESS: Thank you.

12 THE COURT: Please be careful with the steps on your
13 way up.

14 (Victor August Warr takes the witness stand.)

15 COURTROOM ADMINISTRATOR: Please remain standing and
16 raise your right hand.

17 Do you solemnly swear that the testimony you shall give
18 in the cause now before this court shall be the truth, the
19 whole truth, and nothing but the truth, so help you God?

20 THE WITNESS: Yes.

21 COURTROOM ADMINISTRATOR: Thank you, sir. You may be
22 seated.

23 VICTOR AUGUST WARR,
24 called as a witness on behalf of the Government, having been
25 first duly sworn, was examined and testified as follows:

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1 COURTROOM ADMINISTRATOR: Please state your full name
2 for the record and spell you last name.

3 THE WITNESS: My name is Gus Warr. It's actually
4 Victor August Warr; I go by Gus. Spell my last name? W-a-r-r.

5 THE COURT: One "R" or two?

6 THE WITNESS: Two R's, please.

7 THE COURT: Two R's.

8 THE WITNESS: Yes.

9 THE COURT: Thank you.

10 MS. AHMED: Thank you, Your Honor.

11 DIRECT EXAMINATION

12 BY MS. AHMED:

13 Q. Good afternoon, Mr. Warr.

14 A. Good afternoon.

15 Q. Are you currently employed by the Bureau of Land Management?

16 A. Yes, I am.

17 Q. How long have you been employed by the Bureau of Land
18 Management?

19 A. A little over 26 years.

20 Q. And is that also known as the "BLM"?

21 A. Yes, uh-huh.

22 Q. And can you just explain to the jury, generally speaking,
23 what is the general mission of the BLM?

24 A. So the -- the Bureau of Land Management is a federal agency
25 charged with management oversight of public lands which belong

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1 to the -- to the general public.

2 Q. And, in managing the public lands, are there different uses
3 that the BLM also has to manage for the lands?

4 A. Yeah -- yes, yes. The -- the uses are a wide variety;
5 everything from -- from livestock grazing, wild horse and burro
6 management, recreation activities, cultural wilderness. A
7 whole -- a whole host of different activities, uses, and values
8 so . . .

9 Q. And what kind of people work for the BLM, so to speak?

10 A. All kinds of people. You know, a variety of people.
11 Primarily just citizens that really love, love the outdoors;
12 love -- love uses of public lands. A variety people work for
13 the Bureau of Land Management.

14 Q. Are there --

15 A. Um --

16 Q. -- both civilians and law enforcement that work for the BLM?

17 A. Yes. A large -- major of 'em, I would say, are all
18 civilians looking at a specific task, whether it be recreation
19 or wildlife management. But we do have a law enforcement
20 component, yes.

21 Q. And, generally speaking, what do the law enforcement
22 officers do?

23 A. Primarily, you know, I -- I'd say law enforcement primarily
24 is a education tool. But they are there to enforce specific
25 regulations and laws and law and order. We -- we utilize 'em

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1 on our wild horse gathers just to -- as a presence to help, you
2 know, make sure -- in case something goes wrong we can have --
3 have the ability to enforce these -- these laws if we need to
4 so . . .

5 Q. What is your position with the BLM?

6 A. Okay. So I am a wild horse and burro specialist. My --
7 my -- my -- my title is a -- the Wild Horse and Burro Program
8 Manager for the State of Utah. So anything having to do with
9 wild horses and burros is -- is my title and my job.

10 Q. How long have you held that position?

11 A. I've been in the state office now 15 years so . . .
12 15 years in that particular position.

13 Q. Now, in April of 2014, did you come to be involved in a
14 cattle impoundment taking place in Nevada?

15 A. Yes, I -- yes, correct.

16 Q. What was your role in that?

17 A. I would -- the best -- best way to frame it up is I was the
18 operations lead. I was the person that was over the -- the
19 contracted wranglers who was to -- they come in and impound
20 the -- the livestock. And so I work with the -- the gather
21 crew, the -- the brand inspectors, the veterinarians, the sale
22 barns, the operations of on-the-ground stuff there.

23 Q. Generally, where was this impoundment taking place in
24 Nevada?

25 A. It was near Mesquite near an area they called "Gold Butte,"

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1 which is a -- quite a large area. But just outside of
2 Mesquite; south and west of Mesquite, Nevada.

3 MS. AHMED: Your Honor, may we publish what's been
4 previously admitted as Government's Exhibit 192?

5 THE COURT: Yes, you may.

6 MS. AHMED: 192. Thank you.

7 (Exhibit displayed in open court.)

8 BY MS. AHMED:

9 Q. Mr. Warr, directing your attention to the screen that's to
10 your right, do you see that exhibit?

11 **A.** Yes, um-hum.

12 Q. And, using this exhibit, are able to show the jury generally
13 where the Gold Butte area is?

14 **A.** So this is a small portion of that. But, yes, this -- all
15 of -- can I draw on this screen?

16 Q. Yes.

17 **A.** Okay.

18 So, I mean, the incident command area was up in here
19 (drawing) and -- and this entire region is all considered part
20 of the Gold Butte, but it goes further down. It's quite a
21 large, extensive area.

22 Q. Now, does the Gold Butte area include both public and
23 private land? Or just one or the other?

24 **A.** Majority of it -- I don't know exact figures. But I would
25 say 95, 98 percent of it is public land.

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1 Q. And, in terms of the operation that you're participating in,
2 were you impounding cattle off of both public and private land
3 in the Gold Butte area or just --

4 A. Our --

5 Q. -- one --

6 A. -- our --

7 Q. -- of the --

8 A. -- objective was to impound livestock that was on public
9 land. So primarily animals on Bureau of Land Management and
10 Park Service land so . . .

11 MS. AHMED: Now, Your Honor, may I publish to the --
12 may we publish to the witness and to counsel what's been marked
13 for identification as Government Exhibit 193?

14 THE COURT: Yes. But I need to clarify his answer.
15 I'm not sure it was responsive to your question. He said he
16 was impounding livestock primarily on public land. Does it
17 mean he was also impounding livestock on private land?

18 THE WITNESS: No. I was referring to public land with
19 BLM and then U.S. Park Service which, I guess, is technically
20 also public land. But it's -- so BLM and Park Service land is
21 where we'd identified the cattle. And that was the objective.

22 THE COURT: Okay. So two different public land
23 designated areas.

24 THE WITNESS: Yes. And this doesn't have any Park
25 Service on it. But down around Lake Mead is -- is where you

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1 get into the Park Service land.

2 BY MS. AHMED:

3 Q. Now --

4 THE COURT: And primarily you were referring to it
5 being BLM --

6 THE WITNESS: Yes.

7 THE COURT: -- primarily --

8 THE WITNESS: Right.

9 THE COURT: -- but --

10 THE WITNESS: Um-hum.

11 THE COURT: -- and also National Park.

12 THE WITNESS: Yes. But not -- not private.

13 THE COURT: Okay. That was --

14 THE WITNESS: Not private.

15 THE COURT: -- my -- thank you.

16 THE WITNESS: Sorry.

17 BY MS. AHMED:

18 Q. To be clear, was the impoundment of the cattle to take place
19 on private land?

20 **A.** No.

21 Q. Okay.

22 MS. AHMED: Now, Your Honor, may we show the witness
23 and counsel what's been marked for identification as 193?

24 THE COURT: Yes.

25 (Exhibit displayed to the witness.)

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1 BY MS. AHMED:

2 Q. Mr. Warr, do you see Exhibit 193 on the screen?

3 A. Yes, I do.

4 Q. And do you recognize generally what that is?

5 A. Oh, yes. That's -- that's a little bigger picture. You can
6 kinda see the operation area.

7 Q. Does it fairly and accurately depict the operation area for
8 that April 2014 impoundment?

9 A. Yes, it does. Um . . . Do you want me to draw on this as
10 well? I mean, I -- I mean, it's -- it's -- it's quite a large
11 area. I mean --

12 Q. If you give me one second, let me --

13 A. Okay.

14 MS. AHMED: Your Honor, may we -- the Government offers
15 for admission Government's Exhibit 193.

16 (Government's Exhibit No. 193, offered.)

17 THE COURT: Any objection to 193?

18 MR. TANASI: None from Stewart, Your Honor.

19 MR. MARCHESI: None from Parker.

20 MR. LEVENTHAL: None.

21 MR. PEREZ: None from Lovelien.

22 THE COURT: All right.

23 Yes, 193 will be admitted.

24 (Government's Exhibit No. 193, received.)

25 THE COURT: You may go ahead and publish it and he can

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1 go ahead and mark on it.

2 BY MS. AHMED:

3 Q. So, as you were saying, Mr. Warr, if you will just indicate
4 on that map the area of the -- where you intended to --

5 A. Okay. So the --

6 Q. -- do the --

7 A. -- it's --

8 Q. -- impoundment.

9 A. -- so it's a -- it's quite a large area (drawing). It's --
10 it's -- in reality, it's -- it is an area about that size,
11 which is -- it's about 50 miles long and about 15 miles wide.
12 So we're talking about quite a large, extensive area.

13 That's -- that's the general area. And, in general terms, we
14 consider that Gold Butte. Gold Butte is on the north end.
15 But, yeah, that's the area.

16 MS. AHMED: And for the record, the witness has drawn a
17 large circle-type shape in the middle of the map.

18 BY MS. AHMED:

19 Q. Now, you indicated that it was -- Gold Butte is in --

20 THE COURT: I wouldn't say a circle. It's more like --

21 MS. AHMED: Like a peanut shape.

22 THE COURT: Like a peanut. Yeah, like an oval peanut,
23 yes. The record will so reflect.

24 BY MS. AHMED:

25 Q. Mr. Warr, you indicated that Gold Butte was within the area

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1 that you've circled but that it also extended further beyond
2 the Gold Butte area; is that correct?

3 **A.** Yes, correct. The Gold Butte area is technically just on up
4 on the northern -- northern end between, say, I-15 and the
5 Virgin River Mountains up here. And so the Gold Butte Area is
6 kind of a subset of that larger area.

7 **Q.** Now, the larger area that you've indicated on this map,
8 that's the area that you intended -- the operation intended to
9 gather cattle from --

10 **A.** Yeah.

11 **Q.** -- is that correct?

12 **A.** Yes, correct.

13 **Q.** And that included the Lake Mead National Recreation Area?

14 **A.** Yes, it did. Um-hum.

15 **Q.** And who administers that --

16 **A.** That's the --

17 **Q.** -- land?

18 **A.** -- National Park Service, so a different agency. But cattle
19 had moved into that area and they -- they needed also to be
20 removed.

21 MS. AHMED: You can take that exhibit down. Thank you.

22 BY MS. AHMED:

23 **Q.** Now, before we go any further, Mr. Warr, could you just
24 explain to the jury what an impoundment is.

25 **A.** Okay.

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1 An impoundment is simply -- our objective was to go out
2 and -- and gather livestock that were on public lands,
3 remove 'em from public lands, and then we were to take
4 possession of them, and then they were gonna be sold at
5 auction. So it's a simple removal from public lands, held, and
6 then sold.

7 Q. Now, what was your understanding of why you were gathering
8 cattle for this impoundment operation?

9 A. Because of several court orders.

10 Q. And did you know who the cattle belonged to that you were
11 gathering?

12 A. Ye- -- yes, I did.

13 Q. And who did the cattle belong to?

14 A. They were Cliven Bundy and family.

15 Q. Now, you indicated earlier what your role was.

16 A. Um-hum.

17 Q. So were you actually present in the area for the
18 impoundment?

19 A. Yes, I was. For the entire impoundment, I was on site as
20 the operations lead as well as having several other individuals
21 that worked under me as what we call "project inspectors." But
22 yes.

23 Q. So did you go -- well, let me step back.

24 So, between April 5th and April 11th, 2014, were cattle
25 gathered off of public lands under the impoundment operation?

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1 **A.** Yes, they were.

2 **Q.** And approximately how many cattle were impounded during that
3 period?

4 **A.** I would say around 400; but I believe the exact number was
5 around 375, 378 roughly. I don't have the exact number. But
6 about three seventy, 370-something.

7 **Q.** Generally, once the cattle were gathered off the public
8 lands, what was done with them during the impoundment?

9 **A.** So the -- as soon as they were gathered, they were shipped
10 from the -- where they were gathered from to the Incident
11 Command Post and the Incident Command Post was a series of
12 corrals with a -- with a chute that we actually would put 'em
13 in.

14 We would have livestock inspectors from the State of
15 Nevada. They would inspect the animals for the ownership and
16 then they would -- a tag would be attached to the animal
17 identifying them as an individual animal and then a brand
18 inspection would be given to the federal government
19 transferring ownership to the federal government and then they
20 would be separated in individual pens. Like, we'd put the
21 bulls in one pen; the cows and the calves in another pen; and
22 then they were cared for.

23 **Q.** Were the pens also marked in any way?

24 **A.** Yes, yes. The individual pens said "Property of the U.S.
25 Government" or the Federal Government because after the brand

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1 inspection occurred, at the end of the day, those animals
2 technically belonged to the federal government after they'd
3 been inspected.

4 Q. During the impoundment, once the ownership was transferred
5 to the U.S. Government --

6 A. Um-hum.

7 Q. -- were steps taken to give Mr. Bundy an opportunity to
8 reclaim those cattle?

9 A. Yes. Part of the procedures that the -- the federal
10 government and state through the brand inspection laws is to
11 give the potential owner an opportunity to come claim those
12 animals as long as they paid any fines or fees associated with
13 them. And that was done on a -- on a daily or every-other-day
14 occurrence where notices were sent out so that the individual
15 could have an opportunity to come claim the animals.

16 Q. Did he ever do so?

17 A. No. No, he didn't. That I'm aware of.

18 Q. Did he ever, to your knowledge, pay any of those fines or
19 fees?

20 A. Not that I'm aware of.

21 Q. Now, were you also responsible for where the cattle would go
22 after they were taken to the ICP?

23 A. Yes, that was actually . . .

24 COURT SECURITY OFFICER: (Gesturing.)

25 (Pause in the proceedings.)

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1 THE COURT: I think we can continue. Go ahead.

2 BY MS. AHMED:

3 Q. Do you recall the question, Mr. Warr?

4 **A.** Yes. Give -- you better give it to me one more time. I
5 don't know if he was telling me to stop or no.

6 Q. No, no?

7 COURT SECURITY OFFICER: I'm sorry. I was just . . .

8 BY MS. AHMED:

9 Q. Were you responsible for where the cattle were to go after
10 they were taken to the ICP?

11 **A.** Yes. So the overall, you know, care and upkeep of the
12 animals was my responsibility and so I had to work and -- and
13 find a sale barn that was willing and able to take the animals
14 so we could complete the process of gathering, holding, and
15 then ultimately selling the animal. And so, yes, that was a --
16 that was a part of my -- my responsibilities.

17 MS. AHMED: Now, before we go further down that path,
18 Your Honor, may we show the witness what's been marked for
19 identification as Government's Exhibits 134 and 135?

20 THE COURT: Yes, you may.

21 (Exhibit displayed to the witness.)

22 BY MS. AHMED:

23 Q. Mr. Warr, do you see what's on your screen as 134?

24 **A.** Yes, I do.

25 Q. And do you recognize what is depicted in that?

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1 **A.** Yes, definitely. This is -- this is a pen of -- of cows
2 and -- and calves that have not been weaned that we've kept --
3 that we've impounded. And then the tags that you see on there,
4 the little white circles, those are a brand inspection tag --
5 they call 'em a "back tag" -- that the State of Nevada brand
6 inspector has placed on them which is the key of transfer of
7 ownership.

8 **Q.** Now, is this -- does 134 fairly and accurately depict what
9 was out there at the ICP during the impoundment?

10 **A.** It's a screenshot of a large subset. But, yeah, that's --
11 that's -- that's our holding facility and that's one of the
12 pens of animals.

13 **Q.** And can I turn your attention to Exhibit 134 -- 135. Excuse
14 me.

15 (Exhibit displayed to the witness.)

16 BY MS. AHMED:

17 **Q.** And do you see what's on your screen as 135?

18 **A.** Yes. That's the sign I was referring to where it says
19 "Property of the U.S. Government." Those signs were also
20 placed on the out -- outer perimeter of the -- of the pens to
21 depict that these are federal property.

22 **Q.** And does this photograph also fairly and accurately depict
23 how the pens appeared during the impoundment?

24 **A.** Yes. Them cows love to see that hay there; they love to
25 have that green feed in front of 'em.

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1 MR. LEVENTHAL: I'm gonna --

2 THE WITNESS: So yes.

3 MR. LEVENTHAL: -- object to the additional comment.

4 THE COURT: Overruled.

5 MS. AHMED: Your Honor, the Government moves to admit
6 Exhibits 134 and 135.

7 (Government's Exhibit No. 134 and 135, offered.)

8 THE COURT: Any objection to photos, Exhibit 134 or
9 135?

10 MR. TANASI: Not from Stewart, Your Honor.

11 MR. MARCHESE: None from Parker.

12 MR. LEVENTHAL: Not on behalf of Mr. Drexler.

13 MR. PEREZ: None from Lovelien.

14 THE COURT: All right. So Exhibit 134 and Exhibit 135
15 will be admitted.

16 (Government's Exhibit No. 134 and 135, received.)

17 THE COURT: You may --

18 MS. AHMED: May we publish them, Your Honor?

19 THE COURT: Yes, you may publish it to the jury now.

20 MS. AHMED: Turning back to 134, please.

21 (Exhibit displayed in open court.)

22 BY MS. AHMED:

23 Q. And, again, Mr. Warr, would you just explain to the jury,
24 now that they can see the photograph, what you were explaining
25 about those tags?

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1 **A.** Oh, I'm sorry. I didn't realize they couldn't see 'em.

2 **Q.** That's okay.

3 **A.** I'm sorry. I don't see what you're seeing.

4 So the -- the round white -- those are actually tags
5 with glue on the back of 'em and they have a four-digit number.
6 And that four-digit number will correspond to the individual
7 brand inspection that is given by a State of Nevada brand
8 inspector which transfers ownership to the Bureau of Land
9 Management or the federal government. And each one of those
10 animals that was impounded with -- had one of those back tags
11 on 'em.

12 **Q.** And is this photograph taken at the ICP?

13 **A.** Yes, it is.

14 **Q.** And this was taken between April 5th and April 11th, 2014?

15 **A.** Definitely. And, based on the number of animals, it would
16 have had to have been around the -- you know, the 10th or 11th;
17 sometime in that window.

18 **Q.** And then turning your attention to Exhibit 135.

19 (Exhibit displayed in open court.)

20 BY MS. AHMED:

21 **Q.** And can you explain to the jury again what's depicted in
22 this paragraph?

23 **A.** Yes. Okay. Again, I'm sorry. But the -- this -- the white
24 sign with the black letters says "Property of the U.S.
25 Government." Again, those were placed on the outer perimeter

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1 of the -- the corrals where we were holding the -- the cattle
2 just to depict that they did belong to the federal government
3 because at this point they had already been -- the ownership
4 had been transferred over and the federal government was the --
5 was the owner at that point.

6 Q. Now, you had indicated that part of your responsibility was
7 finding a place to take the cattle from the ICP; correct?

8 A. Yes. Part of my duties was to work with the individual sale
9 barns to find a -- find a home for the animals after they'd
10 been impounded. Yes.

11 Q. Now, on April 11th, did you have a plan as to where you were
12 going to be taking those cattle?

13 A. Yes, I did. Worked tirelessly trying to find a home, a
14 facility that would be willing to take 'em. And I actually had
15 secured a location in California that was -- a sale barn --
16 that was willing to accept the animals and allow the federal
17 government to run them through and -- and sell them at auction.

18 Q. And where was that sale barn located?

19 A. It was in -- it was -- it's called the Euclid -- Eu- -- I
20 have a hard time saying the word.

21 THE COURT: You can spell it if it's --

22 THE WITNESS: E-u-c-l-i-d. Euclid Stockyards. Euclid,
23 Euclid [pronunciation]. I'm sorry. But it's in, like,
24 Ontario, California. A fairly large sale facility that
25 receives a lot of livestock at it.

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1 BY MS. AHMED:

2 Q. So, on April 11th, 2014, your plan was to transport the
3 cattle that were at the ICP to the Euclid Stockyard --

4 A. Yes.

5 Q. -- in California?

6 A. Yes, correct. Yeah. Those arrangements had all been made
7 and in place. And let's see. They -- they -- the animals were
8 scheduled to be loaded the morning of the 14th and be shipped
9 to Euclid.

10 Q. Now, on April 14 -- excuse me -- on April 11th, that same
11 day that we were just discussing, did the plan for the
12 impoundment operation generally change to your knowledge?

13 A. Yes, it did. Early on in the day, we had received notice
14 from upper management that some potential threats were coming
15 in. And so we were gonna shut down gather operations, meaning
16 that we were not gonna continue to gather cattle off of public
17 lands at that point. But --

18 Q. And what was your understanding about the cattle that had
19 already been impounded and were at the ICP?

20 A. Well, those were still under our preview [sic] because they
21 belonged to the federal government. So our job was still to
22 care for those animals at that facility; we were just simply
23 not gonna continue gathering new animals. But, yeah, the care
24 of those animals were definitely still in our charge.

25 Q. And, as of the night of April 11th, did you take any steps

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1 to continue to provide for the cattle that were at the ICP?

2 **A.** Yes. Because of the threat, I actually excused all of the
3 contractors and all of the other people that were working with
4 me operationally and I stayed on site. I actually -- before
5 the contractors left, I -- I asked them if they would order up
6 two large semi loads of hay, which they did. And those two
7 large semi loads of hay arrived late Friday evening that I was
8 able to get unloaded and placed on site so that I would have
9 plenty forage for at least 2 to 5 days or longer to -- to keep
10 caring for those cattle.

11 **Q.** And, when you say "Friday night," you mean Friday,
12 April 11th --

13 **A.** Friday --

14 **Q.** -- correct?

15 **A.** -- April 11th, correct. Yeah.

16 **Q.** Now --

17 **A.** Um-hum.

18 **Q.** -- as of the morning of April 12th, 2014, were you still at
19 the ICP?

20 **A.** Yes, I was. Um-hum.

21 **Q.** Now, was your plan to have the cattle transported to Euclid
22 Stockyard still in effect?

23 **A.** Yes. At that point, I was assuming that we were gonna have
24 some communication and we were gonna be shipping the cattle out
25 Monday morning and I was gonna stay on site and care for the

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1 animals through the weekend.

2 Q. Did it come a point where events began to take place at the
3 ICP that changed that?

4 A. Yes, um . . .

5 Q. What were those events?

6 A. We -- we started hearing radio traffic. And I actually took
7 binoculars out because I was out checking the cattle and I
8 could see groups of individuals that were starting to
9 materialize and -- and -- and form along the highway, along the
10 ridgelines and different locations and we were -- at that
11 point, there was only about a dozen civilians still on site.
12 We were ordered to go into a communications trailer for our own
13 safety. But, based on things that were happening, it was like,
14 okay, something's going down here.

15 Q. Did you go into that trailer and stay there?

16 A. Yes, yes. We -- we were there for several hours that
17 morning just waiting for further direction. Pretty -- pretty
18 unnerving.

19 Q. Did you -- were you informed -- without going into what you
20 were told, were -- did you learn what was taking place outside
21 of the trailer?

22 A. Yeah, because we had -- we had radio communication. We were
23 actually in the lead communication trailer so we could hear
24 communication traffic about these discussions were taking place
25 at the main gate, these discussions -- these build-up of

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1 individuals we could see were taking place underneath the
2 overpass. And so we -- we kinda knew what was goin' on; we
3 just didn't know what was gonna happen.

4 Q. Did you have some concern for your safety at that time?

5 A. Yes. I think that's probably puttin' it mildly. You know,
6 we were civilians kinda huddled up in a -- in a trailer. And,
7 you know, we -- we -- obviously, when I was out, I could see
8 that some of these individuals were armed with rifles and I
9 knew that that little trailer we were in was not gonna be
10 something that was gonna be protected. If -- if all of a
11 sudden bullets -- bullets started flying, that trailer was not
12 gonna protect me from the ultimate harm. So I was very
13 concerned with what was going down.

14 Q. Were you concerned for anyone else that was also at the ICP?

15 A. Yes. I mean, we were literally down in a -- my concern was
16 we were literally down in a hole. We could have been -- I
17 mean, if -- if we had heard a backfire of a vehicle, I just was
18 afraid of the worst that could have happened. I was really
19 concerned about what was gonna go down there.

20 Q. Did you have concern particularly for the law enforcement
21 officers that were there?

22 A. Probably more for them than me.

23 MR. MARCHESE: Objection, relevance.

24 MS. AHMED: Your Honor, it goes to the element of --
25 its giving the jury a way to measure the reasonableness of the

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1 fear that the officers felt for their safety. And Mr. Warr is
2 also a federal officer; he would fit into that as well. It's
3 the way to measure whether a reasonable person in their shoes
4 would feel fear. I don't know how else to help the jury
5 understand that without allowing them to know what the people
6 who were there felt.

7 THE COURT: But he's in the trailer.

8 MS. AHMED: He's hearing --

9 THE COURT: He --

10 MS. AHMED: -- what's --

11 THE COURT: -- he --

12 MS. AHMED: -- going on.

13 THE COURT: -- he's hearing the radio traffic.

14 MS. AHMED: And he knows where the officers are.

15 THE COURT: And he knows where -- and he saw through
16 the binoculars people starting to line up on the ridgeline.

17 MS. AHMED: With weapons.

18 THE COURT: Okay.

19 Overruled. I'll allow it.

20 THE WITNESS: So I would probably say I was more
21 concerned about the officers that I just spent the last two
22 weeks with, got to know, got to really admire for what they
23 were doing --

24 MR. MARCHESE: Objection, nonresponsive.

25 MR. TANASI: Stewart joins.

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1 MR. PEREZ: Lovelien joins.

2 MR. LEVENTHAL: Drexler joins.

3 MS. AHMED: And, Your Honor, I believe he's just
4 responding to the question. I --

5 BY MS. AHMED:

6 Q. You can explain to the jury why you were afraid for them if
7 that's a part of the answer because you had --

8 **A.** Okay.

9 Q. -- developed a relationship with them.

10 THE WITNESS: Am I good to go, Your Honor?

11 THE COURT: Yeah. You --

12 THE WITNESS: Okay.

13 THE COURT: -- can --

14 THE WITNESS: Okay.

15 THE COURT: -- finish your response.

16 THE WITNESS: I -- I guess I was more concerned about
17 their safety because they were on the frontline; I was gonna be
18 a secondary effect. I -- if bullets were gonna be flown, it
19 was gonna be at them first I was assuming, not the trailer that
20 was quite some distance away. So definitely I was more
21 concerned about them than me. I knew I had a way out, which
22 was out the back door. I didn't know where I was gonna go.
23 But yeah.

24 BY MS. AHMED:

25 Q. Now, at some point, did you leave the trailer where you

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1 were --

2 **A.** Yes.

3 **Q.** -- put?

4 **A.** And so, as -- as things started getting heated, we were
5 ordered to evacuate which we just knew that there was a back
6 entrance. And so there was -- I believe there was six vehicles
7 that exited. They were all civilians; we were all civilians.
8 And we proceeded northward from the Incident Command Post.
9 Honestly, we didn't have a map of where we were goin'. We just
10 knew that we were going away from the threat. And so we exited
11 out an entrance that we -- I'd never been on. It was just a --
12 it was a dirt road up a wash and so . . .

13 MS. AHMED: Your Honor, may I publish what's been
14 previously admitted as Government's Exhibit 191?

15 THE COURT: Yes you may.

16 (Exhibit displayed in open court.)

17 BY MS. AHMED:

18 **Q.** Now, Mr. Warr, do you recognize what's in 191?

19 **A.** (Reviewing exhibit.) Yes. I'm trying to get my bearings.
20 But yes.

21 **Q.** And is that the ICP?

22 **A.** Yes, correct.

23 **Q.** And can you indicate what -- what were the actual entrances
24 and exits that you used during the impoundment?

25 **A.** So I can draw --

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1 Q. Before April 12th.

2 A. I can draw on this?

3 Q. Yes. You can just --

4 A. Okay.

5 Q. -- mark it with an "X."

6 A. Okay. So the main -- the main entrance was right here
7 (drawing). There was a secondary entrance where you
8 actually -- there's a -- there's a road that comes underneath
9 the interstate right there. But this where I circled was the
10 main primary entrance that we come in and out. That was --
11 that was -- every day that was in and out that same entrance
12 where the circle is.

13 Q. And why did you not use that circled area on April 12th to
14 leave the ICP?

15 A. This -- the circled area was where the first communication
16 was had with the group of individuals that showed up. And then
17 here where the line goes under the interstate was -- was -- had
18 a line of people. There was individuals over on this (drawing)
19 ridge and back over here (drawing).

20 And so there was -- there was no way we were gonna go
21 out that direction. There was -- there was too much activity
22 and things going on.

23 MS. AHMED: So -- and, for the record, the witness drew
24 a circle in the median area of the interstate and a line in the
25 wash portion of the interstate on 191.

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1 BY MS. AHMED:

2 Q. Now, clearing those marks, can you indicate to the jury
3 where it was you exited the ICP on from April 12th?

4 A. Okay. It's just on the edge of the map. But the ICP was
5 here (drawing) and we exited out that way (drawing).

6 Q. And, again, had you ever used that route before April 12th?

7 A. No, I had never been out that route. It was right -- at the
8 bottom of this is an area where we would meet regularly with
9 the contractors. But I'd never been out that route other than
10 I knew that there was a road there so I'd never been out that
11 route before.

12 MS. AHMED: And the witness has drawn an arrow pointing
13 upward in the center top portion of the map.

14 You can take that down. Thank you.

15 BY MS. AHMED:

16 Q. When you left the ICP, Mr. Warr, did you take the cattle
17 with you?

18 A. No, no unfortunately. We were just happy to get out of
19 there without any harm. And no, no; we had no cattle. We
20 just -- we were in -- we were in vehicles so . . .

21 Q. Now, did you ever after that take the cattle that had been
22 impounded to the Euclid Stockyard as you had planned?

23 A. No, 'cuz the last time I seen the cattle was when we left.
24 And then I later found out that they had been released. And so
25 they were never taken to the stockyard as we had planned on

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1 that Monday. They were supposed to go on Monday, the -- the
2 14th to the stockyard. But we had no cattle at that point
3 so -- in our possession.

4 Q. And, to your knowledge, has the BLM ever returned to the
5 area to impound the cattle?

6 A. No. BLM has never been back to impound any cattle. No.

7 MS. AHMED: Your Honor, may I have the Court's
8 indulgence?

9 THE COURT: Yes.

10 MS. AHMED: Thank you, Mr. Warr.

11 Nothing further, Your Honor. I'll pass the witness.

12 (Pause in the proceedings.)

13 THE COURT: Can I just have him clarify what he means
14 by the word "impound" just to make sure it's the same as the
15 thought that I have in my mind.

16 THE WITNESS: So impound. I guess I could use
17 "impound" and "gather" as the same thing. You're gonna --
18 you're gonna gather animals off of public land and remove them
19 from the land and sell them to a -- to a stock yard. So
20 it's -- it's -- the impound means capture and then removal from
21 lands.

22 Does that make sense.

23 THE COURT: So the impound is a combination of the
24 gather and removal?

25 THE WITNESS: And the sale. Yes, the impound

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1 includes --

2 THE COURT: Yeah.

3 THE WITNESS: -- all three factions.

4 THE COURT: I'll say in my mind "impound" was to put
5 them in the pen.

6 THE WITNESS: Yep.

7 THE COURT: So that's --

8 THE WITNESS: Okay.

9 THE COURT: I'm glad you clarified that then --

10 THE WITNESS: Yeah.

11 THE COURT: -- what the terminology means.

12 THE WITNESS: All right.

13 THE COURT: Thank you.

14 THE WITNESS: You're welcome.

15 THE COURT: I was using it as a verb.

16 THE WITNESS: Okay. My wife tells me I'm horrible at
17 grammar so . . .

18 THE COURT: Okay. Thank you.

19 Cross?

20 MR. TANASI: Yes. Thank you, Your Honor.

21 THE COURT: For Mr. Stewart.

22 CROSS-EXAMINATION

23 BY MR. TANASI:

24 Q. Good afternoon, Mr. Warr.

25 A. Good afternoon.

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1 Q. I'm Rich Tanasi. I represent Steven Stewart. I have a few
2 questions for ya on cross. Okay?

3 **A.** Okay.

4 Q. All right. Now I'm just kinda picking up where Your Honor
5 left off; the impounding, as you understand it, is gathering,
6 removing, and selling; correct?

7 **A.** Yes, correct. Um-hum.

8 Q. And you were the operations lead for this impound operation
9 in 2014; correct?

10 **A.** Correct.

11 Q. All right. You learned or do you recall learning that the
12 BLM was going to cease the impound operations due to safety
13 concerns on April 11th? Do you recall that?

14 **A.** Yes, I do. Um-hum.

15 Q. Okay.

16 **A.** Yeah.

17 Q. And, in fact, as early as 10:30 a.m. that morning on the
18 11th, do you recall that you had ordered the helicopters to be
19 shut down?

20 MS. AHMED: Objection, relevance.

21 MR. TANASI: Your Honor, it's one of the actions taken
22 in shutting down the operations as he's testified is occurring
23 on the 11th, shutting down the helicopter.

24 THE COURT: So are you asking him if he was aware of
25 the helicopters?

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1 MR. TANASI: He ordered the -- Your Honor, what I'm
2 getting to is one of the steps he took in response to ceasing
3 the operations; one of those steps involves the helicopter.

4 THE COURT: All right. Overruled. You can ask him
5 that.

6 MR. TANASI: Thank you, Your Honor.

7 BY MR. TANASI:

8 Q. Okay, sir. Again, do you recall that as early as 10:30 a.m.
9 on the morning of the 11th you had ordered helicopters to shut
10 down?

11 A. Yes.

12 Q. Okay. And, again, that was in an effort to cease the
13 impound operations?

14 A. Correct.

15 Q. So that was occurring -- the ceasing of the impound
16 operations was occurring as early as 10:30 a.m. on April 11th.

17 A. Yes, correct.

18 Q. Fair?

19 A. Um-hum.

20 Q. Okay.

21 MR. TANASI: Thank you, Your Honor. Nothing further.

22 THE COURT: Okay.

23 Cross on behalf of Parker.

24 MR. MARCHESE: Yes, thank you, Your Honor.

25 ///

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1 CROSS-EXAMINATION

2 BY MR. MARCHESE:

3 Q. Good afternoon, sir.

4 A. Good afternoon.

5 MR. MARCHESE: Brian, if we could start with
6 Exhibit 192 which has been admitted.

7 THE COURT: Is that 292?

8 MR. MARCHESE: 192 --

9 THE COURT: Oh, 192.

10 MR. MARCHESE: -- I believe.

11 THE COURT: Oh.

12 MR. MARCHESE: It's been --

13 THE COURT: Thank you.

14 MR. MARCHESE: -- admitted; correct, Aaron?

15 COURTROOM ADMINISTRATOR: Yes.

16 MR. MARCHESE: Okay.

17 (Exhibit displayed in open court.)

18 BY MR. MARCHESE:

19 Q. And, sir, you testified about this particular exhibit on
20 direct examination. Do you remember that?

21 A. Yes, correct.

22 Q. Okay.

23 A. Um-hum.

24 Q. And this was an overview of the area that you were working
25 in for the cattle impoundment in the Gold Butte area?

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1 **A.** This is a small subset of a larger area, yes.

2 **Q.** Okay. Did you prefer the other one, the colored map? Is
3 that easier for you to refer to the -- I believe it's
4 Exhibit 193?

5 **A.** Well, this is just a small subset. So I don't know what the
6 question is. But I'm -- I'm fine with this. I don't know --

7 **Q.** Okay.

8 **A.** -- what the question is.

9 MR. MARCHESE: Actually, let's try 193, Brian. I think
10 that's a little bit more descript.

11 (Exhibit displayed in open court.)

12 BY MR. MARCHESE:

13 **Q.** Okay. And you see that particular area, sir?

14 **A.** Yes --

15 **Q.** Okay.

16 **A.** -- I do. Um-hum.

17 **Q.** And is this a fair and accurate depiction of the public
18 lands that you were working on for this impoundment?

19 **A.** All -- the entire gather area is within that map --

20 **Q.** Okay.

21 **A.** -- yes. Um-hum.

22 **Q.** And you had mentioned National Park Service as well as
23 Bureau of Land Management areas; correct?

24 **A.** Correct. Um-hum.

25 **Q.** And are those two particular areas depicted on this map?

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1 **A.** Yes. The -- now, I'm color blind. But I can tell you
2 whatever the pink/blue shade is around the water that's Park
3 Service land and the yellow is -- is Bureau of Land Management
4 land so . . .

5 **Q.** Okay. And I didn't quite hear you on direct examination.
6 The general geography of this I'm guessing you said 50 by 50 or
7 was it 15 by --

8 **A.** No. Roughly about 50 miles long --

9 **Q.** Yes.

10 **A.** -- was the distribution of the cattle that we had
11 inventoried. So about 50 miles long by about 15 miles wide.
12 So quite a large area which -- yeah.

13 **Q.** Okay. So you're working within this area --

14 **A.** Um-hum.

15 **Q.** -- correct?

16 **A.** Um-hum.

17 **Q.** And, in order to impound the cattle, this particular
18 location was shut down to the public; correct?

19 **A.** The only -- that I'm aware of, the only area that was shut
20 down to the public was wherever we were trapping. We had kind
21 of a roaming shut down. So, if we were trapping in a specific
22 region, we would shut down a specific area; but the rest of the
23 public land was open.

24 **Q.** Okay. So depending on where you're doing the trapping --

25 **A.** Um-hum.

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1 Q. -- that particular area is closed and then you would reopen
2 it after?

3 A. Yes. Right.

4 Q. Okay.

5 A. So we may be trapping in one area and then that same area is
6 opened the next day as long as our -- all of our equipment was
7 moved. So it was kind of a roving location of -- of shutting
8 down public lands for safety purposes for trapping operations.

9 Q. Sure. 'Cuz you're talking about large animals; correct?

10 A. Yes. We do the same thing with our wild horse gathers where
11 we will limit access for the safety of not only the
12 contractors, the animals, the personnel on site. Definitely.

13 Q. Okay. Now, turning your attention to April 11th --

14 A. Um-hum.

15 Q. -- you were asked a series of questions --

16 A. Okay.

17 Q. -- where there was a plan to sell the cattle in Euclid or
18 Euclid [pronunciation] --

19 A. Um-hum.

20 Q. -- California; correct?

21 A. Yeah, that was the name of the sale barn. Um-hum.

22 Q. Okay. And, at some point in time, you testified that that
23 plan changed; correct?

24 MS. AHMED: Objection --

25 THE WITNESS: No.

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1 MS. AHMED: -- misstates the testimony.

2 MR. MARCHESE: Okay. Then he can say no.

3 BY MR. MARCHESE:

4 Q. Is that an incorrect statement, sir?

5 A. Repeat the question.

6 Q. At some point in time, the plan had changed to sell the
7 cattle -- take them to Euclid and sell them.

8 A. No, that -- that never changed.

9 Q. Okay. There -- at some point in time, the plan had changed
10 to continue to gather cattle though; correct?

11 A. On April 11th, the morning of April 11th, it was determined
12 to not gather any further -- any more cattle.

13 Q. Okay. So --

14 A. Correct.

15 Q. -- yes, you stopped gathering cattle.

16 A. Um-hum. Yes.

17 Q. Okay. And your testimony was something to the effect of
18 there was some sort of a -- you had received some information
19 about a possible threat; is that right?

20 A. Correct. Um-hum.

21 Q. Okay.

22 MR. MARCHESE: So, Brian, can you bring up Exhibit 191.
23 (Exhibit displayed in open court.)

24 BY MR. MARCHESE:

25 Q. Now, earlier on direct examination you had testified that

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1 you were on site for the cattle gather, the cattle impoundment;
2 correct?

3 **A.** Yes, correct.

4 **Q.** And on April 11th --

5 **A.** Yeah.

6 **Q.** -- you were also on site?

7 **A.** Yes, correct.

8 **Q.** Okay. When did you initially receive this information about
9 the alleged threat?

10 MS. AHMED: Objection, relevance.

11 MR. MARCHESE: Goes directly --

12 THE COURT: When --

13 MR. MARCHESE: When.

14 THE COURT: -- what time approximately --

15 MR. MARCHESE: Yeah.

16 THE COURT: -- did he receive -- overruled. He can
17 answer the question.

18 THE WITNESS: So I guess I don't understand the
19 question, Your Honor. Are you talking about the threat to shut
20 down gather operations or over the week?

21 BY MR. MARCHESE:

22 **Q.** Okay. On April 11th --

23 THE COURT: Just the threat I thought was the question.

24 MR. MARCHESE: Correct.

25 ///

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1 BY MR. MARCHESE:

2 Q. On April 11th, you had received some information about a
3 possible threat. Do you remember that?

4 A. Yes, um-hum.

5 Q. Okay. So you understand where I am goin' with it.

6 A. Yep.

7 Q. Okay.

8 A. Um-hum.

9 Q. Approximately, if you know, when was that?

10 A. It was -- it was the morning of April 11th, the threat level
11 was elevated to the point that operations -- they felt the
12 operations should shut down. And that was 10:00/11:00 o'clock
13 in the morning.

14 Q. Okay. And, at that point in time, you were in that trailer
15 I believe you had described it as?

16 A. No. That was the next day.

17 Q. Okay. On the 12th?

18 A. Yeah, yeah. The 11th was a Friday.

19 Q. Okay.

20 A. The 11th was when we were gathering cows. And so at 11 --
21 on the 11th is when I sent all of the crew home and I continued
22 to take care of the cows, brought the hay in. And it was the
23 12th, mid-morning of the 12th, is when I went into the trailer.
24 That's --

25 Q. Okay.

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- 1 **A.** So you were a whole day off there.
- 2 **Q.** Okay. But, on the 11th, you were on site; correct?
- 3 **A.** Yeah, um-hum.
- 4 **Q.** Did you ever leave between the 11th and the 12th?
- 5 **A.** I stayed overnight on site there --
- 6 **Q.** Okay.
- 7 **A.** -- to make sure that the cows were all taken care of.
- 8 **Q.** So, on the 11th, you received this threat.
- 9 **A.** Um-hum.
- 10 **Q.** Did anything occur on the 11th in reference to this threat?
- 11 **A.** "Occur" like . . . I don't understand the question.
- 12 **Q.** You said there was a threat on the 11th; correct?
- 13 **A.** Right. You mean -- you mean like a threat on the 11th?
- 14 **Q.** Did anything out of the ordinary in reference to a threat
- 15 occur on the 11th?
- 16 **A.** Not as far as a threat, no.
- 17 **Q.** Okay.
- 18 **A.** Hum-um.
- 19 **Q.** It was pretty much business as usual for the most part.
- 20 **A.** No, it wasn't business as usual. Business as usual would
- 21 have been gatherin' cows. We were -- we were safeguarding; we
- 22 were not leaving. I was bringing hay in. So that wasn't
- 23 business as usual in my mind, but it was -- it was business.
- 24 **Q.** Okay. And you were there; correct?
- 25 **A.** Yeah, I was --

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1 Q. You fed the --

2 A. -- on site --

3 Q. -- cattle.

4 A. Yep, I was on site.

5 Q. Okay. Nobody that wasn't a government employee showed up
6 that day.

7 A. Nobody that was a government employee . . .

8 Q. That was not a government employee showed up at the
9 impoundment that day.

10 A. Not that I'm aware of.

11 Q. Okay.

12 A. Not that I'm aware of.

13 Q. So now let's turn to the morning of the 12th. You --

14 THE COURT: Mr. Marchese, "that day" is referring to
15 which day?

16 MR. MARCHESE: The 11th, Your --

17 THE COURT: 11th.

18 MR. MARCHESE: -- Honor.

19 THE COURT: Thank you. Okay.

20 BY MR. MARCHESE:

21 Q. And that's --

22 A. Thank you.

23 Q. -- let's turn to the morning of the 12th.

24 A. Okay. Perfect.

25 Q. Okay. Now, at some point in time, you testified that you

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1 saw people gathering --

2 **A.** Yep.

3 **Q.** -- is that correct?

4 **A.** Um-hum.

5 **Q.** Is that a "yes"?

6 **A.** Yes.

7 **Q.** Okay. Now, did you see this physically or did you hear it
8 on the radio first?

9 **A.** I saw it physically because I was out -- I was -- again, I
10 was the only civilian there with the operations so I was out
11 feeding cows, taking care of cows. So I was out walking around
12 the corrals and I could visually see what was going on with the
13 binoculars I had around my neck.

14 **Q.** Okay. And if you could, once again, indicate on this
15 particular screen, on Exhibit 191, where you would be gathering
16 cows -- or not gathering -- feeding and caring for the cows?

17 **A.** Can I -- will this open up? No. Uh-oh. Better erase that.
18 Sorry.

19 **Q.** Hold on. There we go.

20 **A.** Okay.

21 **Q.** Let's start fresh.

22 **A.** So the corrals were (drawing) roughly right there.

23 **Q.** Okay. And how about the trailer? Is the trailer next to
24 the corrals?

25 **A.** The trailers were -- the trailers -- whoops -- the trailers

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1 were like right there (drawing). Whoops.

2 Q. Okay. So the trailers are, I guess, somewhat in front of
3 the corrals; is that --

4 A. They were, yeah, kitty-corner. We're talking hundred yards
5 away, 75 yards away.

6 Q. Okay. So there are -- you made two -- well, one's almost a
7 circle and another one's, I guess, an oval. The lower one
8 is -- are the trailers.

9 A. Yep. The trailers are this one (indicating).

10 Q. Okay. And then the one above it is the corrals.

11 A. Correct. Yeah. Um-hum.

12 Q. Okay. And you stated it's approximately a hundred yards
13 away from each other?

14 A. Yep. Um-hum.

15 Q. Okay. Now, let's talk about the trailer. Approximately how
16 far is the trailer -- I'm gonna put -- to the I-15 where I just
17 put a little dot there?

18 A. How far --

19 Q. How far is that?

20 A. -- is that?

21 Q. Yeah.

22 A. Um, wow. I don't know. Quarter of a mile. I'd have to go
23 out and look at it again. It's been 3 years since I've been
24 there.

25 Q. Sure. So --

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1 **A.** But it's -- but it's easily visible with a pair of
2 binoculars to see exactly what's goin' on.

3 **Q.** Okay. Now this area that you're at is it elevated in
4 reference to --

5 **A.** I've got --

6 **Q.** -- the dot I made?

7 **A.** I've got clear sight from the corrals to the highway because
8 the highway's elevated. The highway's elevated; the
9 ridgeline's elevated. So I can see up and I can see everything
10 that's goin' on there.

11 **Q.** Okay. So, when you say that, are you at the same height --

12 **A.** No.

13 **Q.** -- as that highway from back where you're at?

14 **A.** Oh, we're -- we're lower.

15 **Q.** You're lower.

16 **A.** So I can look up and see it.

17 **Q.** Okay.

18 **A.** (Gesturing.)

19 **Q.** Are you -- if you're at the dot that I placed on the screen,
20 are you the same level? below it? above it? What?

21 **A.** The dot on the screen is close to the same level of where
22 the corrals are because if you follow this wash -- I'm gonna
23 put a line on here (drawing). This is a wash -- that's all
24 pretty much the same elevation. And the corrals and the
25 trailers are actually above that.

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1 Q. Okay. And, when you say "above it," do you mean --

2 A. In elevation.

3 Q. -- above . . .

4 A. In elevation.

5 Q. Okay.

6 A. They're just a little bit above in elevation.

7 Q. All right. And, when you say "a little bit," what would you
8 mean by "a little bit"?

9 A. 12/15 feet.

10 Q. Okay. So generally the same height. Just a little bit
11 higher.

12 A. 12 to 15 feet.

13 Q. Okay. At what point did you go into the trailer?

14 A. When I was directed by my line of command officer to get in
15 the trailer.

16 Q. Okay. Do you remember when that was?

17 A. I don't for sure. I really --

18 Q. Okay.

19 A. -- don't know the exact time. It was in the morning
20 sometime.

21 Q. All right.

22 A. That was a really big blur about that time so . . .

23 Q. Were there people in the wash?

24 A. Where are you talking about?

25 Q. In the -- were there non-BLM/Park Service employees in the

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1 wash at that time?

2 **A.** Where at in the wash?

3 **Q.** In between the north- and southbound bridges of the I-15.

4 **A.** I -- I couldn't tell ya.

5 **Q.** Okay. Why couldn't ya? Why? Were you -- did you not see?

6 Or you just don't remember?

7 **A.** I was paying attention to the people on the ridges here and

8 over here (drawing) and on the highway. And I wasn't too -- I

9 wasn't focused -- I don't remember how many people were there

10 when I went in the trailers.

11 **Q.** Okay.

12 **A.** So . . .

13 **Q.** So, if you're looking at the screen, you've indicated that

14 there are people on two ridges.

15 **A.** Yep.

16 **Q.** Let's talk about the one on the right.

17 **A.** Okay.

18 **Q.** The one to the right, is that kind of a mountainous area?

19 Is it fair to say?

20 **A.** Yeah, that's -- we'd actually had individuals show up on

21 this ridge on several occasions previous days looking down onto

22 the operation so . . .

23 **Q.** Okay. Was there ever a point in time where there were BLM

24 or Park Service employees on that ridge to your knowledge?

25 **A.** Not that I'm aware of.

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1 Q. Okay. And the individuals on the other side, this other
2 left -- the other line on a diagonal to the left of the
3 screen --

4 **A.** Um-hum.

5 Q. -- what did you see over there?

6 **A.** I just remember people. But, honestly, I don't even
7 remember. At one time I was thinking that was horsemen over
8 there. But I don't think it was. I think it was just
9 individuals that must have walked off from the highway, walked
10 down off -- off of the highway there or something.

11 Q. Okay. Approximately how many individuals if you remember?

12 **A.** I'd say eight to ten.

13 Q. Okay.

14 MR. MARCHESE: Court's indulgence.

15 (Defense counsel conferring.)

16 MR. MARCHESE: Thank you, sir.

17 THE WITNESS: Yep. You're welcome.

18 THE COURT: Cross for Drexler?

19 MR. LEVENTHAL: No, Your Honor.

20 THE COURT: Cross for Lovelien?

21 MR. PEREZ: No, Your Honor.

22 THE COURT: Any redirect?

23 (Government counsel conferring.)

24 MS. AHMED: None, Your Honor. Thank you.

25 THE COURT: I just have to ask you your accent.

1 THE WITNESS: My accent?

2 THE COURT: Yes.

3 THE WITNESS: It's called Erda, Utah. Sorry. It's --

4 THE COURT: No.

5 (Laughter.)

6 THE WITNESS: I'm sorry. I don't -- I didn't know I
7 had an accent. But . . .

8 THE COURT: Corrals for corrals -- corrals
9 [pronunciation].

10 THE WITNESS: Corral, corrals [pronunciation].

11 THE COURT: Corrals? No?

12 Okay. I was thinking Scottish, Irish.

13 THE WITNESS: No, I --

14 THE COURT: I was trying to figure out what it was.
15 No?

16 THE WITNESS: I think it's a rural Utah accent.

17 THE COURT: Rural Utah.

18 THE WITNESS: Yes.

19 THE COURT: Okay.

20 THE WITNESS: There you go.

21 THE COURT: Thank you.

22 (Laughter.)

23 THE COURT: Well, thank you for coming in today.

24 Please be careful on the --

25 THE WITNESS: Okay.

1 THE COURT: -- way down.

2 THE WITNESS: Thank you.

3 THE COURT: You are excused.

4 THE WITNESS: Appreciate it.

5 MS. AHMED: Your Honor.

6 THE COURT: Oh, I'm sorry. Oh, you're right. The
7 jury -- I'm sorry, sir. We have questions for you.

8 THE WITNESS: We have a coup over here going on
9 so . . .

10 THE COURT: Yes, I do allow the jurors to ask
11 questions.

12 THE WITNESS: Okay.

13 (Pause in the proceedings.)

14 THE COURT: All right. Counsel please meet me at
15 sidebar.

16 (Begin sidebar conference.)

17 THE COURT: *Hallelujah*. Got that.

18 All right. So Jury Note No. 25 has three questions.
19 First one is, "What happened to the non-Bundy branded cattle?"

20 Any objection?

21 MR. TANASI: No objection.

22 MS. CREEGAN: (Shakes head.)

23 MR. TANASI: Not from Stewart.

24 MR. PEREZ: Not from Lovelien.

25 THE COURT: Next question is, "What was your chain of

1 command? Where was the individual who ordered shelter in
2 place?"

3 Any objection?

4 MR. LEVENTHAL: What? I'm sorry?

5 THE COURT: "Shelter in place."

6 MR. LEVENTHAL: "Shelter in place."

7 MR. TANASI: Who ordered that.

8 MR. LEVENTHAL: Yeah.

9 THE COURT: Look at it. If you think it says something
10 else.

11 MR. TANASI: Thank you. I don't have --

12 MR. LEVENTHAL: Which one am I looking at? First one?
13 Second one?

14 THE COURT: Yeah, "shelter."

15 MR. LEVENTHAL: "Shelter in place."

16 THE COURT: Any objection?

17 MS. AHMED: No.

18 MS. CREEGAN: (Shakes head.)

19 MR. TANASI: No.

20 THE COURT: And then the third question from Jury Note
21 25 is, "Was that the basis of your concern on the 12th, history
22 experience? Don't most cowboys in the west wear a weapon?"

23 Maybe is it "military experience"? "History
24 experience." It looks like "history experience."

25 MR. TANASI: Give it to Steve.

1 MR. MYHRE: "History experience," yes. (Government
2 reading.)

3 MS. AHMED: (Nods head.)

4 MR. TANASI: No objection from Stewart.

5 THE COURT: What do you think it says?

6 MS. BAKKEN: Looks like "history" to me.

7 MR. TANASI: "History" is --

8 THE COURT: It looks --

9 MR. TANASI: -- what I see.

10 THE COURT: -- "history" to me, but it doesn't make
11 much sense if it is.

12 MS. AHMED: It might be history question, experience.

13 THE COURT: So that's the question. "What was the
14 basis of your concern on the 12th history experience? Don't
15 most cowboys in the west wear a weapon?"

16 Any objection to the --

17 MR. LEVENTHAL: No.

18 THE COURT: -- question?

19 MR. TANASI: Not from Stewart.

20 THE COURT: Jury Note No. 26, "Would Bundy have
21 received any funds from the sale of the cattle at auction as
22 indicated in the Fifth Amendment?" And there's an arrow that
23 says "prior mentioned."

24 MR. PEREZ: What are they talking about?

25 MR. TANASI: I think they're talking about the takings.

1 MR. MYHRE: Takings.

2 MR. PEREZ: Yeah.

3 MR. MARCHESE: I like that.

4 MS. AHMED: We would object. That's --

5 (Counsel overtalking.)

6 MS. AHMED: -- a legal question.

7 MR. TANASI: Petrie --

8 THE COURT: He --

9 COURT REPORTER: I'm sorry?

10 MR. TANASI: I don't have a problem with it. I think
11 it might be more of a Petrie question, but . . .

12 THE COURT: Any objection?

13 MR. TANASI: For the rest.

14 MR. MYHRE: He would not know.

15 MS. AHMED: (Shrug.) I guess we could see what he's
16 gonna say. I don't know that he has the . . .

17 THE COURT: I can end the question with "if you
18 know" --

19 MS. AHMED: Yeah.

20 THE COURT: -- "if you don't know it's perfectly
21 acceptable to say 'I don't know.'"

22 MR. MYHRE: Well . . .

23 THE COURT: It's up to him if he --

24 MS. AHMED: I mean, the reference is Fifth Amendment.
25 Makes me feel like they are looking for a legal -- some kind of

1 legal -- I mean, I don't know that -- I feel like a legal
2 instruction that might be needed.

3 MR. LEVENTHAL: Didn't he say that up on the stand?

4 MR. TANASI: Part of his job --

5 MS. AHMED: No.

6 MR. TANASI: -- though was overseeing the sale as well.

7 THE COURT: Yeah. I think --

8 MS. AHMED: The last part --

9 MR. TANASI: He might know.

10 THE COURT: Yeah, he might know what happens to the
11 money. I guess that is a follow-up unless you guys want to ask
12 him a follow-up.

13 MS. AHMED: I guess my only concern is that there's an
14 expectation -- the Fifth Amendment reference -- that there's
15 some expectation that there's a right to have the money
16 returned or . . . I think it's problematic.

17 THE COURT: Well, I can just ask the first part of the
18 question and not ask the "as indicated in the Fifth Amendment."
19 I could just ask the question, "Would Bundy have received any
20 funds from the sale of the cattle at auction?" Period.

21 MS. AHMED: (Nods head.)

22 MS. CREEGAN: (Nods head.)

23 THE COURT: And that way --

24 MR. TANASI: That's . . .

25 THE COURT: -- we're not opening another area

1 that . . .

2 All right. Jury Note 27 has three questions but the
3 third one is blank. Either they ran out of time or they
4 decided not to ask it.

5 So the first question is, "Did you receive any verbal
6 or written threats? Or just from observations?"

7 Any objection?

8 MR. LEVENTHAL: No.

9 MR. TANASI: No objection.

10 THE COURT: Second question, "How are the boundaries
11 determined between public (BLM and NPS) and private lands?"

12 MR. LEVENTHAL: No objection.

13 MR. TANASI: No objection.

14 MR. MARCHESE: (Shakes head.)

15 MR. TANASI: Goes to the --

16 THE COURT: Like I said, number 3 doesn't have anything
17 on there; just . . .

18 (Government counsel conferring.)

19 MR. TANASI: I think that might be fair, because it's
20 blank --

21 THE COURT: Um-hum.

22 MR. TANASI: -- to ask if they wanted more time to come
23 up with the three or . . .

24 THE COURT: All right.

25 So Jury Note No. 28, "For Witness Warr" -- this one

1 always writes down the names of the witness -- number 1, "You
2 stated several times you were concerned for your safety and the
3 safety of others. Would you say you were scared or feared for
4 your life?"

5 Do you have any objection to that question?

6 MR. TANASI: No.

7 MS. CREEGAN: (Shakes head.)

8 MS. AHMED: No.

9 THE COURT: Okay. Question No. 2 is, "Since the cattle
10 were released from the pens and not sold at the Euclid
11 Stockyards, does the government" -- and then parentheses --
12 "(BLM) consider the cattle stolen?" In quotation marks.

13 MS. CREEGAN: That's a legal --

14 MR. TANASI: What we're --

15 MS. AHMED: Yeah, that might be something that would
16 be -- something the Court would be instructing them on in
17 relation to extortion. They're basically asking something that
18 you're gonna instruct them on --

19 MR. MYHRE: Yeah.

20 MS. AHMED: -- at the end so . . .

21 MR. MYHRE: Yeah, what the BLM considered is not really
22 relevant --

23 MS. AHMED: It's what the --

24 MR. MYHRE: -- legally.

25 MS. AHMED: Yeah.

1 MR. TANASI: Can I hear it one more time, Judge? I'm
2 sorry. Or I can read it.

3 THE COURT: "Since the cattle were released from the
4 pens and not sold at the Euclid Stockyards, does the government
5 (BLM) consider the cattle stolen?"

6 MS. AHMED: It's unclear if they are asking -- I mean,
7 they say both "government" and "BLM." So I don't know if
8 it's . . . And it doesn't really matter what the BLM
9 designates it in the end in terms of the law.

10 (Defense counsel conferring.)

11 MS. AHMED: That's what we would propose, Your Honor,
12 that you just advise them that they'll get the law and the
13 extortion later, instruction.

14 THE COURT: All right.

15 Jury Note No. 29, "When transport cattle to different
16 location, the cattle must have number on it?" That's a
17 question mark. Do -- do . . . "Must the cattle have a number
18 on it when it's transferred" -- "transported to different
19 location."

20 MS. AHMED: (Shrug.)

21 THE COURT: I'm assuming they are referring to the
22 four-digit number on the white tag, but we can have him clarify
23 that too.

24 Any objection?

25 MR. TANASI: No, no objection.

1 THE COURT: That's it. That's the last one.

2 MR. TANASI: Okay. Thank you.

3 (End sidebar conference.)

4 THE COURT: Okay. I have a couple questions here from
5 the jury, Mr. Warr. I'm gonna go ahead and read the questions
6 onto the record.

7 THE WITNESS: Okay.

8 THE COURT: But, when you respond, you may go ahead and
9 turn to the jury and respond to them because it's really a
10 jury- -- these are jury questions, not my questions.

11 THE WITNESS: Thank you.

12 THE COURT: So the Jury Note No. 25 has three
13 questions. The first question is, "What happened to the
14 non-Bundy brand cattle?"

15 THE WITNESS: What happened to the non-Bundy brand
16 cattle. They were still in the same location. All of --
17 the -- there was only a handful of cattle that left the site
18 because they were claimed by other owners. But all of the
19 nonbranded Bundy cattle were still on the site. They were
20 still given a -- a tag, a back tag, the little round circle,
21 and so they were on site with the rest of the cattle. And they
22 were deemed property of the federal government by the state
23 brand inspector so they were right -- they were kept in a
24 separate pen as what we call "slicks." But they were still on
25 site in the same location. So they didn't go anywhere.

1 THE COURT: What did you say? Slits?

2 THE WITNESS: Slick. I'm sorry. I'm getting too far
3 in the weeds. A slick is an unbranded or unmarked cow or
4 animal. It can still be claimed by an individual, but it has
5 no marking on it.

6 THE COURT: Okay.

7 And so, in response to the question what happened to
8 them, were they kept with -- intermixed with all the other
9 cattle or --

10 THE WITNESS: They --

11 THE COURT: -- separated?

12 THE WITNESS: -- weren't intermixed; they were in their
13 own pen. But they were still at the Incident Command Post in a
14 corral by themselves. They were separated in groups.

15 THE COURT: Okay. So in their own pen but separated
16 from the branded.

17 THE WITNESS: Yes, correct.

18 THE COURT: Thank you for your patience. All right.

19 THE WITNESS: You're -- you're answering it better than
20 I am. You're doing great.

21 THE COURT: So Jury Note 25, second question, "What was
22 your chain of command and where was the individual who ordered
23 shelter in place?"

24 THE WITNESS: Okay, the chain of command. I had an
25 individual who was over all of the operations who I -- who --

1 he was a law enforcement individual who I reported to. And
2 honestly, when he called me to shelter in place, I don't know
3 where he was at. It come over the radio for all the civilians
4 to go to the trailer on the -- the morning of the 12th. And so
5 it was a radio call. I don't know where that individual was at
6 that time. He was somewhere with some of the other law
7 enforcement.

8 I hope that answers it. I don't -- I'm pretty vague,
9 but I don't know where he was at when he made that call.

10 THE COURT: So what was your chain of command? Who
11 was . . .

12 THE WITNESS: So I reported to an individual within the
13 law enforcement branch who was over operations. And so I was
14 over all the operations as a civilian BLM employee, but I
15 reported to a law enforcement individual within the chain of
16 command who was over all of the operations if that makes sense.

17 Um, I don't have a chain of command tree I could
18 show 'em.

19 THE COURT: All right. The third question in Jury Note
20 No. 25 is, "What was the basis of your concern on the 12th,
21 history, experience? Don't most cowboys in the west wear a
22 weapon?"

23 THE WITNESS: Can you read that one more time, please?

24 THE COURT: Of course.

25 "What was the basis of your concern on the 12th,

1 history, experience? Don't most cowboys in the west wear a
2 weapon?"

3 THE WITNESS: Okay. That's a very good question.
4 Because out of the 12 -- out of the 12 individuals that were
5 sheltered in place, I was the one that had firearms because I
6 had 'em for euthanasia purposes only. And, of course, those
7 other 12 individuals gravitated towards me because there was no
8 other law enforcement there with us.

9 But the wild west is long gone. And I was there to
10 gather cows; I wasn't there to get in a gunfight. And so I was
11 very concerned for my safety and wanted to get back to my
12 family. And my concern was I didn't want to see bullets
13 flying. And, you know, that's not what I signed up for; I
14 signed up to gather cows. So that's where my concern came
15 from.

16 THE COURT: Okay.

17 Jury Question No. 26, "Would Bundy have received any
18 funds from the sale of the cattle at auction?"

19 THE WITNESS: I don't know a hundred percent that
20 answer. But I do not believe so because those cattle would
21 have been already signed over as property of the United States
22 Government and I don't believe that they would have received
23 any funding from that. That would have went back to the
24 federal government is my understanding. I could be wrong, but
25 that's what I understand of it.

1 THE COURT: So is it fair to say that once the cattle
2 got to Euclid you -- would you still be involved in the auction
3 or does somebody else take over?

4 THE WITNESS: Um, I -- I was required to get 'em to the
5 auction and sold. And then a finance person would intervene to
6 get the money and all that. But -- but no. I -- I was
7 literally lining up the trucks and cleared to Euclids [sic]
8 to -- to get it taken care of. That was the -- the end point
9 in my responsibility.

10 THE COURT: Okay.

11 Jury Note No. 27 has three questions -- has a number 1,
12 a 2, and a 3; but 3 is blank.

13 Number 1 is, "Did you receive any verbal or written
14 threats or just from observations?"

15 THE WITNESS: Myself I did not receive any verbal or
16 written threats. I had several individuals that was under my
17 supervision that encountered threats --

18 MR. MARCHESE: Objection, hearsay; nonresponsive.

19 MR. PEREZ: Lovelien joins.

20 MR. TANASI: Stewart joins.

21 MS. AHMED: And, Your Honor, I don't know that he
22 didn't -- he goes into hearsay. He was still -- I don't know
23 that there's any indication it was gonna be hearsay. He was
24 responding to the question. I think you need to go a little
25 further before we can even see if there's any validity to that

1 objection.

2 THE COURT: All right.

3 So the question was, "Did you receive any verbal or
4 written threats or just from observations?"

5 THE WITNESS: No, I did not myself personally.

6 THE COURT: Okay.

7 Question No. 2 is, "How are the boundaries determined
8 between public (BLM and National Park Service) and private
9 lands?"

10 THE WITNESS: Very good question. But I don't think
11 there's anybody in this courtroom that's that old that can go
12 back that far because the actual ownership boundaries are
13 usually tied to a piece of legislation. And so laws are passed
14 where -- that designates a piece of land National Park Service.
15 The Bureau of Land Management designation, we're talking clear
16 back 1930's and beyond. And same with the -- the -- the
17 ownership of public land; we're talking -- what they call the
18 Homestead Act which was, you know, clear back in the '20s and
19 '30s where people could actually homestead a piece of land and
20 then they could get ownership for it. But years and decades
21 and decades ago was when ownership was actually verified for
22 this land. But some public land, BLM land, can actually get
23 redesignated as Park Service through current legislation if it
24 goes through Congress. But it's a -- it's an ongoing process
25 of land ownership designation.

1 I hope that helps. Probably got you more confused.

2 THE COURT: All right. Another interpretation of this
3 question might be -- and I'm not saying that your
4 interpretation is wrong, but sometimes it's hard to tell. So I
5 just want to make sure that whoever the jury's -- juror's
6 question is that we try to answer it.

7 So when you're out there -- in the desert, in the
8 mountains, in the wash, wherever it is out there -- how do you
9 know if you are on BLM or National Park Service or private
10 land?

11 THE WITNESS: Very good question. One of the things
12 that we were utilizing, which was new to me but it was very
13 useful, was we were utilizing not only GPS units but maps
14 called Avenza Maps, which is a map you can actually have right
15 on your phone and it can tell you exactly where you're at in
16 relation to a base layer map that has ownership. And so all of
17 the traps that we set up, that when we were impounding the
18 cattle, we had -- we made sure that they were all on public
19 land or Park Service land and they were not infringing on
20 somebody's private property rights. So we had -- we had the
21 technology to tell us exactly where we were at.

22 THE COURT: Okay.

23 Jury Note No. 28 has two questions. The first one is,
24 "You stated several times you were concerned for your safety
25 and the safety of others. Would you say you were scared or

1 feared for your life?"

2 THE WITNESS: A cowboy never says they're scared or
3 feared for their life. But that was one of the situations
4 where I was scared that something could happen, based on the
5 circumstances, where I may not see my family again. So you
6 could -- I -- in my opinion, you could put both of them at
7 different levels. When we evacuated out to the north end, I
8 can honestly say I was fearing for my life because when we were
9 going outwards I did not -- have no idea whether there was
10 other individuals to the north that could have been sitting on
11 the ridge that could be picking us off as we left the compound.
12 I mean, all these TV shows go through your mind of the worst
13 case scenario.

14 So I would say a little bit of both. Scared was
15 probably one of the biggest thing of, you know, wow, what --
16 the what-if's really start comin' into your mind of don't do
17 something stupid somebody. You know, make -- keep -- keep cool
18 heads. Let's -- let's -- let's solve this so . . .

19 THE COURT: All right.

20 And then the second question in Jury Note No. 28 is,
21 "Since the cattle were released from the pens and not sold at
22 the Euclid Stockyards, does the government" -- and then in
23 parentheses -- "(BLM) consider the cattle stolen?"

24 So that's really a legal question, not a factual
25 question. And the parties agree that I can answer the question

1 by letting you know that I will be providing you legal jury
2 instructions about the charge of extortion. So that will be
3 provided.

4 All right. Jury Note No. 29, "When transport cattle to
5 different location, the cattle must have number on it?" So,
6 when you're transporting the cattle to a different location, is
7 it required that they have a number?

8 And I think what we agreed at sidebar is that that
9 might be referring to the round, white tag with the four-digit
10 number on it.

11 THE WITNESS: Yeah, that's -- that's -- so any time you
12 cross a state boundary -- it's called an interstate travel --
13 you have to have a interstate travel permit along with, in the
14 Western United States, you have to have a brand inspection.
15 And so all of the cattle that were transported would have had
16 to have had one of those back tags, four-digit back tags,
17 attached referencing a -- a -- a brand inspection in order to
18 go to a sale barn. And so the long answer is, yes, they had to
19 have one of those tags to go to a sale barn or they -- or they
20 would not have been able to be sold.

21 THE COURT: Okay. That's the last one.

22 Any follow-up, Ms. Ahmed?

23 MS. AHMED: No, Your Honor. Thank you.

24 THE COURT: Any follow-up by defense?

25 MR. TANASI: Yes, briefly, Your Honor. Thank you.

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1 THE COURT: All right. On behalf of Mr. Stewart.

2 FURTHER CROSS-EXAMINATION

3 BY MR. TANASI:

4 Q. Good afternoon again, Mr. Warr.

5 A. Yes.

6 Q. All right. So couple of the latter questions there you'd
7 indicated, you know, on the 12th -- focusing on the 12th --
8 that you had concern for your safety. All right?

9 A. Sure.

10 Q. I think you went as far as to say that, you know, you didn't
11 want to get into a gunfight; right?

12 A. Definitely.

13 Q. Correct.

14 And you went as far as to say you had fear; right?

15 A. Sure.

16 Q. Yes.

17 You went as far as to say that you were, you know,
18 scared and didn't know if you were gonna get to see your family
19 again; right?

20 A. I believe I said somethin' to that effect. You bet.

21 Q. Okay. And isn't it true that on May 21st, 2014, you were
22 interviewed by BLM Assistant Special Agent in Charge Kent
23 Kleman? Do you recall that interview?

24 A. Yes, um-hum.

25 Q. All right. In that interview, was it important to go over

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1 all of the day's events on the 12th; important to kinda discuss
2 that with Mr. Kleman?

3 MS. AHMED: Objection, Your Honor. This witness
4 wouldn't control what the questioner would have been asking
5 him. It's not a report he authored.

6 MR. TANASI: Your Honor, I can back up and ask it a
7 different way. It's fine.

8 THE COURT: Okay.

9 BY MR. TANASI:

10 Q. You're in law enforcement. Fair?

11 MS. AHMED: Objection.

12 THE WITNESS: Excuse me?

13 BY MR. TANASI:

14 Q. Are you in law enforcement, sir?

15 **A.** Was there a . . .

16 MS. AHMED: I'll --

17 THE COURT: The question --

18 MS. AHMED: -- withdraw --

19 THE COURT: -- was is he in law enforcement. So that's
20 an acceptable question.

21 You may answer the --

22 THE WITNESS: No --

23 THE COURT: -- question.

24 THE WITNESS: -- I'm not in law enforcement.

25 ///

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1 BY MR. TANASI:

2 Q. You're not. Okay.

3 A. No.

4 Q. Are you at all -- in your line of work, do you prepare
5 reports in any way?

6 A. I prepare reports --

7 Q. Yes.

8 A. -- yes. Um-hum.

9 Q. Okay. All right. So would you agree with me that report
10 preparing is an important function in your line of work?

11 MS. AHMED: Same objection, Your Honor. This witness
12 did not author the report that Mr. Tanasi is referencing. He
13 was interviewed.

14 MR. TANASI: Again, Your Honor --

15 THE COURT: It sounds like your lead up is to something
16 that's either not in the report or is different in the report.
17 But it's not his report --

18 MR. TANASI: I can --

19 THE COURT: -- so . . .

20 MR. TANASI: -- I can ask it a different way, Your
21 Honor. That's fine.

22 THE COURT: All right.

23 BY MR. TANASI:

24 Q. All right. Do you, again, recall interviewing with BLM
25 Agent Kent Kleman?

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1 **A.** Yes.

2 **Q.** Okay. And do you recall whether in that interview with BLM
3 Agent Kent Kleman do you recall whether or not you told
4 Ms. Kleman -- or Mr. Kleman, rather, that you were fearful? Do
5 you recall whether you did that?

6 **MS. AHMED:** Same objection, Your Honor. This witness
7 can't control what he was asked.

8 **MR. TANASI:** Your Honor, I'm asking whether he can
9 recall it or not and I'm asking him whether he recalls whether
10 he gave that information to the report -- to the interviewer,
11 rather.

12 **THE COURT:** All right. That question is -- that's
13 fine.

14 **THE WITNESS:** That was a interview that was 3 years
15 ago. And I couldn't -- there was a number of questions asked,
16 and I don't recall exactly the questions that were asked.

17 **MR. TANASI:** Okay.

18 **THE WITNESS:** I answered the questions that were asked
19 of me at that time.

20 **BY MR. TANASI:**

21 **Q.** Okay. Again, and you'd agree with me that that interview
22 that took place a number of years ago -- it was May 21st, 2014,
23 were the events that took place on April 12th, 2014 -- were
24 fresher in your mind then than they are as you sit here today;
25 correct?

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1 **A.** Sure. I mean --

2 **Q.** All right.

3 **A.** -- 3 years ago I -- that's -- that's a big time span.

4 **Q.** Sure. Okay.

5 And, again, do you recall whether or not you told the
6 BLM investigator that we just discussed whether or not you told
7 her [sic] about your fear or being scared that you weren't
8 gonna see your family on the 12th or any of that specific
9 information? Do you recall whether you told her that?

10 **A.** It wasn't a her; it was a him. But I told a lot of people
11 that I was scared that day.

12 **Q.** Sure.

13 **A.** I don't know whether it was that person. But, I mean, that
14 was -- that was a thing that still lives with me today.

15 **Q.** Sure.

16 Would seeing a copy of that report help to refresh your
17 recollection as to whether or not you told the investigator --

18 **A.** I think the --

19 **Q.** -- that information?

20 **A.** -- only thing that would tell me is what questions I
21 answered that he asked me so . . .

22 **Q.** Okay. Again, would it refresh your recollection as to
23 whether or not you gave those answers regarding your level of
24 fear --

25 **A.** Probably not.

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1 Q. -- and concern for your family?

2 Wouldn't refresh your recollection?

3 **A.** Probably not.

4 Q. No. Okay. So why don't we do it this way then.

5 Isn't it true you didn't tell --

6 MS. AHMED: Objection, Your Honor.

7 BY MR. TANASI:

8 Q. -- Mr. Kleman --

9 MS. AHMED: He just said he wouldn't remember. He can
10 be refreshed; I don't think he can be impeached with someone
11 else's report.

12 THE COURT: He can answer the question.

13 BY MR. TANASI:

14 Q. Isn't it true --

15 THE COURT: It's overruled.

16 BY MR. TANASI:

17 Q. -- that you didn't tell Kent Kleman that you were scared,
18 worried about your family? The level of fear that you've
19 discussed here today, you didn't tell Kent Kleman that on
20 May 21st, 2014?

21 **A.** I couldn't say that.

22 Q. Again, would seeing a copy of that report refresh your
23 recollection?

24 **A.** I don't think it would.

25 Q. It wouldn't? Okay. All right.

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1 Sir, prior to today's testimony, have you had an
2 opportunity to meet with the FBI?

3 **A.** I think -- um, since the initial interview, I think I've met
4 with them -- counting this morning -- I think I've had three
5 visits with an FBI person in -- in -- that were present
6 so . . .

7 **Q.** Okay. What did you guys discuss?

8 **A.** What's gonna happen today, where is the jury gonna sit.
9 That kinda -- I mean, just general questions.

10 **Q.** Sure.

11 And did you discuss your testimony today?

12 **A.** Not in detail. I mean -- so . . . They -- they asked me
13 questions and I answered 'em just like I'm doin' today so . . .

14 **Q.** Sure.

15 Did you also have an opportunity to meet with the U.S.
16 Attorney's Office prior to today's testimony?

17 **A.** Yes, um-hum.

18 **Q.** Okay. How many times?

19 **A.** They -- they were the same. So today would have been the
20 third time that I met with them since the incident in 2014.

21 **Q.** Sure.

22 And what did you discuss with the U.S. Attorney's
23 Office?

24 **A.** Same thing: procedures, what was gonna happen today,
25 what -- what's gonna occur. Just general questions.

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1 Q. Okay. Thank you, sir.

2 **A.** Thank you.

3 MR. TANASI: Pass the witness.

4 THE WITNESS: Um-hum.

5 MR. MARCHESE: Nothing additional from Parker.

6 MR. LEVENTHAL: One question?

7 THE COURT: Sure. On behalf of Drexler.

8 FURTHER CROSS-EXAMINATION

9 BY MR. LEVENTHAL:

10 Q. Good afternoon, sir.

11 **A.** Good afternoon.

12 Q. My name's Todd Leventhal and I represent Mr. Drexler.

13 Just real quickly. You were asked about sort of the
14 trappings -- the traps that you put up out there.

15 **A.** Okay. I don't think we talked about that, did we?

16 Q. It was on the question. That's why I'm coming back.

17 **A.** Oh, okay.

18 Q. You discussed you had traps out there and GPS --

19 **A.** Um-hum.

20 Q. -- sort of the . . . What helped you in gathering the cows.
21 Okay?

22 Are horses -- were you using horses at the time
23 gathering cows as well?

24 MS. AHMED: Objection, relevance; beyond the scope of
25 the jury questions.

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1 MR. LEVENTHAL: All right. It goes into whether or
2 not -- how he got the horses into the traps. He talked about
3 traps --

4 MS. AHMED: That was --

5 MR. LEVENTHAL: -- GPS, where they were.

6 MS. AHMED: That was not the question that was posed;
7 it's not the nature of the question. He might have referenced
8 "traps" in his answer, but it was --

9 THE COURT: It was the location of the traps, making
10 sure that the traps are on public land versus private land.

11 MR. LEVENTHAL: Right. And then he said he put -- he
12 got the traps out there and he got the GPS and I just want to
13 know if the horses were -- it's okay. I . . .

14 THE COURT: Sustained.

15 MR. LEVENTHAL: Okay. Thank you.

16 MR. PEREZ: Nothing from Lovelien.

17 THE COURT: All right.

18 Anything else, Ms. Ahmed?

19 (Government counsel conferring.)

20 MS. AHMED: Court's indulgence, Your Honor.

21 (Government counsel conferring.)

22 MS. AHMED: Just one question, Your Honor. One or two
23 questions, Your Honor.

24 THE COURT: Go ahead.

25 ///

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1 REDIRECT EXAMINATION

2 BY MS. AHMED:

3 Q. Mr. Warr, Mr. Tanasi asked you about meeting with the FBI or
4 the U.S. Attorney's Office prior to testifying today before the
5 jury. Do you recall those questions?

6 A. Yes, um-hum.

7 Q. And, in meeting with U.S. Attorney's Office or the FBI, were
8 you ever directed or asked to do anything other than --

9 MR. LEVENTHAL: Objection --

10 BY MS. AHMED:

11 Q. -- tell the --

12 MR. LEVENTHAL: -- leading.

13 BY MS. AHMED:

14 Q. -- truth?

15 MR. LEVENTHAL: Objection, leading.

16 MR. TANASI: Stewart joins.

17 MR. MARCHESE: Parker joins.

18 MR. PARKER: Lovelien joins.

19 THE COURT: Overruled. He can answer the question.

20 BY MS. AHMED:

21 Q. And I'm just gonna repeat it since it was talked over.

22 In meeting with the U.S. Attorney's Office or the FBI
23 before you testified today, were you ever asked by either of
24 the U.S. Attorney's Office or the FBI to do anything other than
25 tell the jury the truth?

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1 **A.** I was specifically asked to answer the questions as they
2 were asked. And there was no coercion, no setting up -- in
3 fact, most of the time I was sitting in a room by myself. But
4 it was -- it was -- it was pretty -- pretty general, general
5 questions.

6 **Q.** And were you asked to do anything other than be honest?

7 **A.** No, no. I mean, hopefully I've done that. I've tried to
8 just convey and answer questions.

9 MR. LEVENTHAL: Objection, nonresponsive.

10 MS. AHMED: And, Your Honor, he was answering the
11 question.

12 THE COURT: Yeah. He can finish the answer.

13 THE WITNESS: I don't know what the question was.
14 Sorry.

15 BY MS. AHMED:

16 **Q.** Were you told do anything other than be honest?

17 **A.** No, no. Just answer the questions and be honest and --
18 which hopefully I did today.

19 MS. AHMED: Nothing further, Your Honor. Thank you.
20 Thank you, Mr. Warr.

21 THE WITNESS: You're welcome.

22 THE COURT: Okay.

23 Any other follow-up by the defense?

24 MR. TANASI: One follow-up, Your Honor --

25 THE COURT: Go ahead.

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1 MR. TANASI: -- briefly.

2 RECROSS-EXAMINATION

3 BY MR. TANASI:

4 Q. Mr. Warr, when you met with Kent Kleman on May 21st, 2014 --

5 A. Um-hum, sure.

6 Q. -- did Kent Kleman also ask you to be truthful?

7 MS. AHMED: Objection, Your Honor, beyond the scope of
8 the follow-up question.

9 THE COURT: It is beyond the scope, but he can answer
10 the question so we can just clarify this.

11 Go ahead.

12 THE WITNESS: I would assume he probably did. But that
13 was so far ago I don't know; like I say, 3 years ago. I don't
14 recall all of the questions he asked and so . . .

15 BY MR. TANASI:

16 Q. Fair enough.

17 He would have wanted you to be truthful as well then;
18 right?

19 A. I hope everybody's truthful.

20 Q. As do I. Thank you, sir.

21 A. You bet.

22 THE COURT: Anything else, Ms. Ahmed?

23 MS. AHMED: No, Your Honor. Thank you.

24 THE COURT: All right.

25 So thank you very much, Mr. Warr. You are excused this

1 time. Please be careful --

2 THE WITNESS: Appreciate it.

3 THE COURT: -- on the way down with those steps.

4 Is this a good time to take our afternoon break?

5 MS. AHMED: Yes, Your Honor.

6 THE COURT: Do we have another witness?

7 MS. AHMED: Yes, Your Honor.

8 THE COURT: All right. So we'll go ahead and take our
9 15-minute bathroom break.

10 And, during this time, I remind the jury that you are
11 not to discuss this case with anyone else nor permit them to
12 discuss it with you. You could discuss other things but not
13 this case.

14 Please do not read or listen to or view anything that
15 touches upon this case in any way nor attempt to perform any
16 research or any independent investigation.

17 And please do not form any opinion.

18 I did want to note that because one of the juror
19 questions was numbered 1, 2, and 3 but only actually had two
20 questions, if you're running out of time, please feel free to
21 keep writing. We want to know what these questions are. So I
22 apologize if we cut you short and didn't permit you to finish
23 writing your third question. If it's -- I should have asked
24 you before he left -- but if it's a question that we don't need
25 the witness for, if it's just a question about something else

1 in general -- maps or anything like that -- please go ahead,
2 write down the questions, and let us know so we can get that
3 information to you. We want to discourage you and limit the
4 temptation of going out and trying to figure this out yourself.
5 So please share your questions with us and take your time.

6 All right. So we'll be back here -- it's 2:52 -- be
7 back here about 3:10.

8 (Jury out, 2:52 p.m.)

9 THE COURT: All right. Off record.

10 (Recess, 2:53 p.m. Resumed, 3:13 p.m. Jury not present.)

11 COURTROOM ADMINISTRATOR: All rise.

12 THE COURT: All right. Thank you. You may be seated.

13 We'll go ahead and bring in the jury and bring in the
14 next witness.

15 (Pause in the proceedings.)

16 COURTROOM ADMINISTRATOR: All rise.

17 (Jury in, 3:17 p.m.)

18 THE COURT: Jury may go ahead and be seated.

19 Everyone else can be seated as well.

20 And the Government may call its next witness.

21 MS. AHMED: Thank you, Your Honor. The United States
22 calls Special Agent Earl McEwen.

23 (Pause in the proceedings.)

24 THE COURT: Good afternoon, Special Agent McEwen.

25 Please be careful with the steps on your way up and go ahead

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1 and remain standing.

2 (Earl James McEwen III takes the witness stand.)

3 COURTROOM ADMINISTRATOR: Please raise your right hand.

4 Do you solemnly swear that the testimony you shall give
5 in the cause now before this court shall be the truth, the
6 whole truth, and nothing but the truth, so help you God?

7 THE WITNESS: I do.

8 COURTROOM ADMINISTRATOR: Thank you, sir. You may be
9 seated.

10 EARL JAMES McEWEN III,

11 called as a witness on behalf of the Government, having been
12 first duly sworn, was examined and testified as follows:

13 COURTROOM ADMINISTRATOR: Please state and spell
14 your -- please state your entire name for the record and spell
15 your last name.

16 THE WITNESS: Earl James McEwen III, M-c-E-w-e-n.

17 DIRECT EXAMINATION

18 BY MS. AHMED:

19 Q. Good afternoon, again.

20 A. Good afternoon.

21 Q. Are you currently employed with the Federal Bureau of
22 Investigations?

23 A. Yes.

24 Q. That's the FBI?

25 A. Yes.

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1 Q. And how long have you been employed by the FBI?

2 A. For approximately 8 years.

3 Q. And where are you -- where are you currently located with
4 the FBI?

5 A. In Las Vegas.

6 Q. Are you on a particular team or do you hold a particular
7 position?

8 A. I'm currently working with our sur- -- our Special
9 Operations Group which primarily handles surveillance.

10 Q. And, again, you are a special agent with the FBI; correct?

11 A. Yes.

12 Q. And what is your training, briefly, to become a special
13 agent with the FBI?

14 A. To become a special agent, you go to Quantico for about 20
15 weeks to do a lot of legal training; firearms training; and
16 interviewing training. And then, if received, additional
17 training based on the needs of the Bureau and my work
18 assignment, such as: surveillance, photography, flight
19 training as a pilot.

20 Q. And I'm sorry. How long have you held that position as
21 special agent with the FBI?

22 A. Since 2009.

23 Q. Now, you indicated that you're on the Special Operations
24 Team in the FBI; is that correct?

25 A. It's Squad 10. But it's a surveillance op- -- or our

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1 Special Operations Group, SOG.

2 Q. And what generally does that group do?

3 A. Surveillance.

4 Q. Now, with respect to the surveillance, do you also do aerial
5 surveillance?

6 A. Yes.

7 Q. And can you explain to the jury what that involves?

8 A. Yeah. We -- we survey targets from the air.

9 Q. Are you also a pilot with the FBI?

10 A. Yes.

11 Q. Now, on April 12th, 2014, within your team were you tasked
12 with doing aerial surveillance of events taking place in the
13 Bunkerville area?

14 A. Yes.

15 Q. Now, what was your understanding as to what was taking place
16 in that area at that time?

17 A. My understanding was there was gonna be a gathering of
18 individuals and I was asked to provide aerial surveillance
19 during that time period of that day.

20 Q. And did you do that?

21 A. Yes.

22 Q. When you conducted aerial surveillance, did you in fact go
23 out to the Bunkerville area?

24 A. In the air, yes.

25 Q. And were you operating the plane that you were in?

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1 **A.** That day I was operating our camera systems and another
2 special agent was flying the aircraft.

3 **Q.** So was there a camera in the plane itself?

4 **A.** There's a camera outside the aircraft.

5 **Q.** Is it mounted on the plane?

6 **A.** Yes.

7 **Q.** And, when you say you were operating the camera, that's
8 something that you have training and experience in doing?

9 **A.** Yes.

10 **Q.** On April 12th, 2014, approximately what time did you go out
11 to that area to begin your surveillance?

12 **A.** It was approximately 11:00 in the morning.

13 **Q.** When you were conducting aerial surveillance, were you also
14 yourself observing what you were looking at through the camera?

15 **A.** Yes.

16 **Q.** And was that for the duration that you were doing aerial
17 surveillance you were looking at what you were capturing on the
18 camera?

19 **A.** Yes.

20 **Q.** And did you also record -- utilizing the camera, did you
21 also record what was being observed --

22 **A.** Yes.

23 **Q.** -- via camera?

24 Now, after you were done that day doing aerial
25 surveillance, what, if anything, did you do with the recording

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1 that was made?

2 **A.** The video is recorded onto an SD card and I turned that SD
3 card into our evidence -- or evidence office in our office here
4 in Las Vegas.

5 **Q.** Now, prior to today, have you had an opportunity to go back
6 and look at the footage that you recorded from April 12th,
7 2014?

8 **A.** Yes.

9 **Q.** And, prior to taking the stand today, this afternoon, did
10 you specifically look at Government's Exhibits 17 and 18
11 containing those recordings that you made?

12 **A.** Yes.

13 **Q.** And does Exhibits 17 and 18 contain all of the footage that
14 you captured on April 12th, 2014?

15 **A.** Okay.

16 **Q.** Does it -- to your knowledge, does it contain all of what
17 you captured that day?

18 **A.** Yes.

19 **Q.** Okay. And having reviewed -- bless you -- having reviewed
20 Exhibits 17 and 18, do those exhibits fairly and accurately
21 depict what you yourself observed on April 12th, 2014?

22 **A.** Yes.

23 MS. AHMED: Your Honor, the Government moves to admit
24 Exhibits 17 and 18.

25 ///

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1 (Government's Exhibit Nos. 17 and 18, offered.)

2 THE COURT: Any objection to Exhibits 17 and 18?

3 MR. TANASI: None from Stewart, Your Honor.

4 MR. MARCHESE: None from Parker.

5 MR. LEVENTHAL: No, Your Honor.

6 MR. PEREZ: None from Lovelien.

7 THE COURT: All right. Exhibits 17 and 18 will be
8 admitted.

9 (Government's Exhibit Nos. 17 and 18, received.)

10 THE COURT: And you may go ahead and publish it to the
11 jury.

12 BY MS. AHMED:

13 Q. Now, as you just indicated, Agent McEwen, you -- well, how
14 long were you out there doing aerial surveillance on
15 April 12th, 2014?

16 A. In total, probably four to five hours. I -- I don't
17 remember the exact time.

18 Q. Now, Exhibits 17 and 18, again, they contained what you
19 captured throughout your surveillance that day; correct?

20 A. Yes.

21 Q. So that will be available to the jury. But what I would
22 like to do with you now is go through and just -- go through
23 certain portions of your day looking at different periods on
24 that exhibit -- on those two exhibits.

25 A. Okay.

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1 Q. So I'd like to turn your attention first to Exhibit 17
2 beginning at the beginning.

3 MS. AHMED: And, Your Honor, may we publish that to the
4 jury?

5 THE COURT: Yes, you may.

6 (Video played.)

7 MS. AHMED: And you can just stop there for a moment.
8 Now, pausing this as 18:10:03.

9 BY MS. AHMED:

10 Q. Agent McEwen, I'm drawing a box in the upper left-hand
11 corner of the screen around some information that's indicated
12 there. Do you see that?

13 **A.** Yes.

14 Q. Can you explain to the jury what is contained in that box?

15 **A.** So the top line is the date, 12 April 2014, and the time is
16 18:10:03 UTC, which is Coordinated Universal Time.

17 Q. And what is Coordinated Universal Time?

18 **A.** So my understanding that's the time zone that all other time
19 zones are based upon. It's also known as Zulu time or
20 Greenwich time. And, on this particular day, I believe Nevada
21 was about 7 hours after -- the Nevada time zone was 7 hours
22 after that time depicted.

23 Q. So in order to -- was it 7 hours before or after?

24 **A.** It -- well, it's 7 hours -- you subtract 7 hours from that
25 time. So Nevada time would be 11:00 in the morning, 11:10:03.

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1 Q. So what's reflected on the -- and, again, this view that the
2 jury's looking at, this is what the view from your camera was
3 on April 12th; correct?

4 **A.** Yes.

5 Q. And so the time that's recorded on the screen is in UTC.
6 And you've indicated that to get back to Nevada time, local
7 time, you would subtract 7 from that --

8 **A.** Right.

9 Q. -- 7 hours?

10 **A.** Yeah. So UTC has 6:00 p.m. So, yeah, in a sense we're --
11 we haven't reached -- we're 7 hours behind, I guess, or we
12 haven't reached 6:00 o'clock. So it's 11:00 a.m. in Nevada at
13 that time.

14 Q. So -- and I'm sorry. I'm being real repetitive. But, just
15 to be clear, so then where it says 18:10:03 --

16 **A.** Um-hum.

17 Q. -- you would subtract 7 hours --

18 **A.** Yes.

19 Q. -- to get 11:10:03 --

20 **A.** Yes.

21 Q. -- meaning 11:10 in the morning.

22 **A.** Yes.

23 Q. Thank you.

24 And I've sort of cut it off in that box. But, at the
25 very bottom of the box, do see where there's an arrow and an

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1 "N"?

2 **A.** Yes.

3 **Q.** And can you explain to the jury what that is?

4 **A.** That's the compass. So it's pointing to north.

5 **Q.** And it's just orienting the viewer where -- which direction
6 north is in?

7 **A.** Correct.

8 **Q.** Now, I'm going to clear that.

9 Can you explain to the jury what area is depicted on
10 the screen from Exhibit 17 that we're looking at right now?

11 **A.** That appears to be the area of Cliven Bundy's ranch down in
12 the lower right-hand corner.

13 **Q.** Now, um --

14 **MS. AHMED:** Your Honor, may we come out of Exhibit 17
15 and go to Exhibit 192 --

16 **THE COURT:** Yes.

17 **MS. AHMED:** -- which has been previously admitted.

18 (Exhibit displayed in open court.)

19 **BY MS. AHMED:**

20 **Q.** Agent McEwen, this is also located to -- on the screen to
21 your right. So, looking at the screen to your right, can you
22 indicate where that image was that we just looked at in
23 Exhibit 17 if you can tell.

24 **A.** Yeah, the -- the purple squared area.

25 **Q.** So there's a purple square at the bottom of Exhibit 192.

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1 And I'm now drawing a red square around that. Do you see that?

2 **A.** Yes.

3 **Q.** And is that where the camera was looking at?

4 **A.** Yes.

5 **Q.** I'm gonna clear that.

6 MS. AHMED: And may we return, Your Honor, to
7 Exhibit 17?

8 THE COURT: Yes.

9 (Exhibit displayed in open court.)

10 MS. AHMED: Can we advance Exhibit 17 to around 18:18
11 according to the marker on the screen.

12 (Pause in the proceedings.)

13 MS. AHMED: Play it from 18:17:52. Thank you.

14 (Video played.)

15 MS. AHMED: And can we stop it there.

16 (Pause in the proceedings.)

17 MS. AHMED: I'm pausing it as 18:18:14 for the record.

18 BY MS. AHMED:

19 **Q.** Agent McEwen, can you explain to the jury what the -- is
20 depicted on Exhibit 17 now?

21 **A.** Yes. There are two large poles with a banner spanning the
22 poles and a number of vehicles and individuals gathered at that
23 location.

24 **Q.** And did you turn the camera to this area that captured this
25 scene?

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1 **A.** Yes.

2 **Q.** And what drew your attention to this area?

3 **A.** The large number of people and vehicles that were gathered
4 at that location.

5 **Q.** And can you explain to the jury exactly where this is
6 located to the extent that you know?

7 **A.** It's along, I believe, Riverside Road just northeast of
8 Bundy's ranch at the intersection near Gold -- Gold Butte Road
9 and Riverside.

10 MS. AHMED: And, Your Honor, may we again turn back to
11 Exhibit 192?

12 THE COURT: Yes.

13 (Exhibits displayed in open court.)

14 MS. AHMED: And even better. Your Honor, we're
15 displaying both Exhibit 17 and Exhibit 192.

16 THE COURT: Okay.

17 BY MS. AHMED:

18 **Q.** And, turning your attention, Agent McEwen, to Exhibit 192,
19 can you just indicate on the map in 192 what's depicted in
20 Exhibit 17 currently on the screen? So where is that area with
21 the poles?

22 **A.** It's -- it's approximately above that -- the bridge spanning
23 the Virgin River (pointing). So kinda of middle left of that
24 picture above the white line.

25 **Q.** And, touching the screen, can you mark an "X" on that

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1 exhibit.

2 **A.** (Complies.)

3 **Q.** And the witness has drawn an "X" essentially where he
4 described, above the bridge that's going over the river on the
5 map.

6 And that is -- and then can you indicate again, to the
7 extent you can see it, where the Bundy residence was that you
8 had just shown the jury.

9 **A.** (Drawing.)

10 **Q.** So you've circled the Bundy residence and then I'm now
11 drawing an "X" where I believe you had just indicated was the
12 stage area; is that correct?

13 **A.** Yes.

14 **Q.** Now, returning to Exhibit 17.

15 Can we now move to just a couple of minutes further to
16 18:20. And you can leave Exhibit 192 up as well. Thank you.

17 (Video played.)

18 **MS. AHMED:** And can we actually go back -- pausing it
19 at 18:20:39, can we go back to just a little bit before 18:20,
20 maybe 18:19:50-something.

21 (Video played.)

22 **MS. AHMED:** Can you pause it there. Paused at
23 18:20:03.

24 **BY MS. AHMED:**

25 **Q.** Now, Agent McEwen, we just went -- from 18:19:50 to 18:20:03

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1 we saw the camera pan. Can you explain to the jury what was
2 happening during that time?

3 **A.** Yeah. With the -- with the camera system, I can set markers
4 at certain locations and so all I was doing was selecting a
5 marker that I had previously marked and it was panning to that
6 location.

7 **Q.** And, looking at Exhibit 17, which is on the viewer's left
8 side of the screen, what is currently depicted in Exhibit 17?

9 **A.** This is some corrals with a bunch of cattle. And my
10 understanding is this is the BLM's impoundment site.

11 **Q.** Now, can you indicate on Exhibit 192, which is on the
12 viewer's right side of the screen, where this location is on
13 that map?

14 **A.** (Drawing.)

15 **Q.** And the witness has drawn a circle in the upper right-hand
16 portion of the map.

17 Now, I'm drawing an "X." Is where I've drawn the "X"
18 is that where you indicated the stage area was?

19 **A.** Where those poles and that banner, yes.

20 **Q.** And I'm now drawing a red box around the purple box that's
21 at the bottom of the 192 map. Is that where the Bundy
22 residence is?

23 **A.** Yes.

24 **Q.** So, on April 12th, 2014, are those the general areas that
25 you were doing surveillance of that are depicted on this map?

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1 **A.** Yes.

2 **Q.** Now, just below the circle that you drew at the top of the
3 screen, do you see those two what appear to be lanes?

4 **A.** Yes.

5 **Q.** Can you explain to the jury what those are?

6 **A.** The top -- the top line is the southbound lane of I-15 and
7 the bottom line is the northbound lane of I-15.

8 **Q.** Now, turning your attention back to the left side of the
9 screen, which is Exhibit 17 --

10 MS. AHMED: And you can go ahead and take 192 down.

11 (Exhibit displayed in open court.)

12 MS. AHMED: And going back to 18:20.

13 (Video played.)

14 MS. AHMED: Right there. Paused at 18:20:07.

15 BY MS. AHMED:

16 **Q.** Now, Agent McEwen, you indicated that this was the BLM
17 impoundment site; is that correct?

18 **A.** Yes.

19 **Q.** Also known as the "ICP"?

20 **A.** Yes.

21 **Q.** Now, what structures did you observe at the impoundment
22 site, or the ICP, on April 12th, 2014, if any?

23 **A.** I mean, just the structures that you see here. You can see
24 what looks to be some corrals with cattle as well as maybe some
25 trailers and a number of vehicles.

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1 Q. So, on April 12th when you were doing the surveillance, you
2 observed some infrastructure that the BLM had put out there; is
3 that correct?

4 **A.** Yes.

5 MS. AHMED: Now, continuing to play from 18:20:07,
6 please.

7 (Video played.)

8 MS. AHMED: And can you pause at 18:20:22.

9 BY MR. MYHRE:

10 Q. Now, Agent McEwen, can you explain to the jury what the
11 movement of the camera was just showing that we just saw?

12 **A.** Yeah. I was just basically following the dirt road from the
13 ICP towards I-15, the lanes of I-15.

14 Q. And I'm circling an area in the middle of the screen. What
15 was that area that I've just circled?

16 **A.** It's a median separating or connecting the southbound and
17 northbound lanes of I-15.

18 Q. And I'm clearing the circle that I drew. I'm now circling
19 another area just slightly to the right of that. Can you
20 explain to the jury what area I've just circled there?

21 **A.** It's an area that I believed to be a staging or a gathering
22 of some law enforcement vehicles protecting or separating the
23 lanes of I-15 from the ICP.

24 Q. I'm clearing that circle.

25 Did you make note of anything taking place in the area

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1 that I've circled further to the left of the median?

2 **A.** Yeah. You'll see -- or, as you see here, a number of
3 vehicles parked off of the right side of the northbound lanes
4 of I-15. And, during the time that we were in the air, cars
5 were coming from the south along I-15 and gathering in that
6 location.

7 **Q.** And were you able to observe where those cars were generally
8 coming from? Where they appeared to be coming from?

9 **A.** Yeah, from the area that -- that staging area towards
10 Bundy's ranch.

11 **Q.** Back on Riverside Road?

12 **A.** Yes.

13 **Q.** Okay.

14 MS. AHMED: Can we advance to approximately 18:24,
15 please.

16 (Video played.)

17 MS. AHMED: And playing it from there. Thank you.

18 (Video played.)

19 MS. AHMED: And can you pause it there.

20 BY MS. AHMED:

21 **Q.** Now, Agent McEwen, can you explain to the jury what this
22 area that I've circled in the bottom center of the screen what
23 that is?

24 **A.** I believe this is the on-ramp -- so the road going to the
25 top of the screen is Riverside Road and the vehicle -- you see

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1 vehicles coming from Riverside Road from the vicinity of that
2 staging area and Bundy's ranch coming towards the on-ramp to
3 I-15 going northbound.

4 MS. AHMED: Can you continue to play.

5 (Video played.)

6 MS. AHMED: Can you pause it there. Now, paused at
7 18:24:40.

8 BY MS. AHMED:

9 Q. Agent McEwen, was the path that the camera just took the
10 path that you were describing from State Route 170 up to
11 northbound 15 to the ICP?

12 **A.** Yes.

13 Q. Now, what, if anything, did you just -- did you observe
14 about the traffic conditions on the northbound lane at this
15 time on April 12th, 2014?

16 **A.** It got congested.

17 Q. And where exactly was it congested?

18 **A.** From where the cars were pulling off near that median,
19 traffic started slowing down and getting backed up towards
20 Las Vegas.

21 Q. Okay.

22 MS. AHMED: Can we continue to play from 18:24:40.

23 (Video played.)

24 MS. AHMED: Can we pause it now. Paused at 18:25:22.

25 ///

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1 BY MS. AHMED:

2 Q. Agent McEwen, did you observe vehicles at this time turning
3 from the northbound lane into that median on April 12th?

4 A. Yes.

5 Q. And were you able to discern what kind of vehicles those
6 were or who they were affiliated with?

7 A. Yeah. I believe these vehicles that are starting to make
8 the turn now is Metro vehicles, Las Vegas Metro law enforcement
9 vehicles.

10 Q. And can you just draw a line where you see those vehicles?

11 A. (Drawing.)

12 Q. And the witness has drawn an upside down L-shape going from
13 the median down the northbound lane.

14 And you believe those to be Metro vehicles; is that
15 correct?

16 A. No one told me that. I assumed that they were Metro law
17 enforcement vehicles.

18 Q. And, based on your training and experience, what told you
19 that those were -- or what indicators did you see that led you
20 to believe that?

21 A. The -- the markings. They look -- they look like white
22 police cruisers and then they were going towards the general
23 area where law enforcement had staged.

24 MS. AHMED: Can we continue to play from there.

25 (Video played.)

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1 MS. AHMED: And can we pause at 18:26. Paused at
2 18:26:15.

3 BY MS. AHMED:

4 Q. Just again, since the location -- the airplane's coming at
5 the location from different angles; correct?

6 A. Correct.

7 Q. And so, just again to make sure the jury is oriented as to
8 what they are looking at, can you indicate where the corrals
9 and the base of the ICP was by drawing an arrow or circle?

10 A. (Drawing.) Yeah, it's up there.

11 Q. And the witness has drawn an arrow in the upper left-hand
12 side of the screen.

13 And can you indicate where that makeshift parking lot
14 you described off of the northbound lane was?

15 A. (Drawing.)

16 Q. And, again, these were the individuals [sic] that you
17 observed coming from the staging area; is that correct?

18 A. Correct.

19 Q. Or the vehicles. Excuse me.

20 And then can you indicate with an "X" where you
21 observed the staging area for the law enforcement that you've
22 described.

23 A. (Drawing.)

24 Q. And so that's just across the median from the makeshift
25 parking lot; is that correct?

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1 **A.** Correct.

2 **Q.** And the witness has drawn an "X" in the middle, slightly
3 upper portion of the screen.

4 MS. AHMED: Clearing those markings, can we continue to
5 play it.

6 (Video played.)

7 MS. AHMED: And can we actually advance to 18:31:40.

8 (Video played.)

9 MS. AHMED: And you can play it from there. Playing
10 from 18:31:40.

11 (Video played.)

12 MS. AHMED: Can we pause it there. Paused as 18:31:59.

13 BY MS. AHMED:

14 **Q.** Agent McEwen, can you explain the area that is depicted
15 in -- on Exhibit 17 on the screen right now?

16 **A.** Yeah. It's just -- it's at the northbound lanes of I-15
17 near the median and there's some trucks blocking traffic.

18 **Q.** And did you observe on April 12th that there were trucks
19 blocking traffic in the northbound lane in that location?

20 **A.** Yes.

21 **Q.** Did you cause the camera to zoom in on that location to see
22 what was going on?

23 **A.** Yes.

24 **Q.** And what, if any, effect did you observe these trucks to
25 have on the traffic behind them?

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1 **A.** Well, I saw the traffic backing up along I-15 and so I
2 zoomed in to see why. And this is what I saw, these trucks
3 blocking the northbound traffic.

4 **Q.** And did they appear to be parked there?

5 **A.** They were obviously stopped there in the road, yes.

6 **Q.** And where is that makeshift parking lot that you described
7 in relation to where these trucks are?

8 **A.** It's just on the right-hand side of the northbound lanes.

9 Um . . . (Drawing.)

10 **Q.** And you've circled the upper portion of the screen
11 indicating that's where the cars were parking?

12 **A.** Yes.

13 MS. AHMED: Clearing that. Can we continue to play.

14 (Video played.)

15 MS. AHMED: And can you pause it at 18:32:14.

16 BY MS. AHMED:

17 **Q.** Agent McEwen, over the course of the time that you were
18 conducting aerial surveillance of this area, did you observe
19 whether the vehicles that were in that parking area that I've
20 drawn a square around did they increase in number or decrease
21 in number or stay the same over the time that you were there?

22 **A.** Increased in number.

23 **Q.** Continuously?

24 **A.** Yes.

25 **Q.** And, in fact, has the number of vehicles increased from when

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1 you first panned to that area at the beginning of this video?

2 **A.** Yes.

3 MS. AHMED: Now, can we advance to approximately
4 18:40:15.

5 (Video played.)

6 MS. AHMED: And can we just pause it there for a
7 moment.

8 BY MS. AHMED:

9 Q. Now, at some point, Agent McEwen, was your attention drawn
10 to another portion of the ICP or an area near the ICP?

11 **A.** Yes.

12 Q. What area was that?

13 **A.** The area just -- well, so, if we look at the compass there,
14 north, I believe it's pointing towards the ICP area. So just
15 south of the ICP area there's a wash or a dry creek bed that go
16 under the lanes of I-15.

17 Q. So does I-15 become a bridge in that area and then there's a
18 wash that runs underneath it?

19 **A.** Yes.

20 Q. And that leads into the ICP; is that correct?

21 **A.** Yes.

22 Q. Now, what drew your attention to this area on April 12th?

23 **A.** Well, eventually we see -- I see people going towards that
24 area.

25 Q. Okay.

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1 MS. AHMED: And can we play Exhibit 17 from 18:40:15,
2 please.

3 (Video played.)

4 MS. AHMED: And can we pause it there. Now, paused at
5 18:40:45.

6 BY MS. AHMED:

7 Q. Agent McEwen, can you explain to the jury where you saw the
8 people initially, under what lane they are in this screen?

9 A. Just south of the northbound lanes of I-15 was a large
10 gathering of individuals.

11 Q. And where, if at all, were the BLM officers in relation to
12 these people in this area?

13 A. North of the southbound lanes of I-15.

14 Q. So in this general area where I'm drawing an "X"?

15 A. Yes.

16 Q. And I've drawn an "X" on the far right side middle portion
17 of the screen.

18 Now, it appeared that you zoomed in on the crowd of
19 people that were walking toward that bridge; is that correct?

20 A. Yes.

21 Q. Were -- did you -- why did you do that?

22 A. To see what I could see. I know that there was some
23 interests or concern that there might be armed individuals, but
24 I could not tell from our vantage point whether there were
25 rifles or guns out.

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1 Q. So you attempted -- you zoomed in so that you could see if
2 you could see whether people had firearms; is that correct?

3 **A.** Correct.

4 Q. But you could not tell that once you zoomed in.

5 **A.** Correct.

6 Q. Now, at some point, did you observe anything in this area
7 (drawing) of the wash on April 12th?

8 **A.** Eventually the gathering of individuals on the southbound
9 side of the northbound lanes of I-15 they crossed under those
10 lanes and gathered in between the north- and southbound lanes
11 of I-15.

12 MS. AHMED: And can we advance to 18:54:51. You can
13 play it from there.

14 (Video played.)

15 MS. AHMED: And stopping it at 18:56:02.

16 BY MS. AHMED:

17 Q. Agent McEwen, can you explain to the jury what we just
18 observed in that clip?

19 **A.** Yeah, a number of individuals on horseback on a dirt road
20 just south of the makeshift parking lot where a lot of the
21 Bundy supporters were parking their vehicles.

22 MS. AHMED: And, Your Honor, may we publish what's
23 previously been admitted as Government's Exhibit 191?

24 THE COURT: Yes you may.

25 (Exhibit displayed in open court.)

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1 BY MS. AHMED:

2 Q. Now, Agent McEwen, can you -- do you see Exhibit 191 on that
3 screen?

4 A. Yes.

5 Q. And do you recognize what's depicted here?

6 A. Yes.

7 Q. Can you indicate for the jury the path that you observed the
8 horses taking that we just saw on the video?

9 A. (Drawing.)

10 Q. And can you mark where that assembly area -- or that
11 makeshift parking lot assembly area where that was?

12 A. (Drawing.)

13 Q. Now, did you observe after this clip where those people on
14 horseback ended up going?

15 A. Yes.

16 Q. And where did they go?

17 A. They eventually ended up (drawing) along this wash in
18 between the two lanes of I-15, the northbound/southbound lanes
19 of I-15.

20 Q. And you indicated earlier that the people on foot that you'd
21 observed also ended up in that wash --

22 A. Yes.

23 Q. -- as well; is that correct?

24 A. Yes.

25 MS. AHMED: And can we return to Exhibit 17 at

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1 18:59:20, please.

2 (Pause in the proceedings.)

3 MS. AHMED: Right there. And go ahead and play.

4 (Video played.)

5 MS. AHMED: Agent McEwen [sic], can you stop it
6 there -- oh, I'm sorry. Can we stop it there at 18:59:43.

7 BY MS. AHMED:

8 Q. And, Agent McEwen, looking at the screen (A) can you explain
9 to the jury why it suddenly looks like black and white?

10 **A.** So I switched our camera to an infrared view. Because of
11 the shaded area under the overpass, I couldn't see the group of
12 people as clearly so I turned it to infrared. And what's that
13 depicting is any heat source under that bridge.

14 Q. Now -- and, again, what lane of travel is depicted on the
15 screen right now?

16 **A.** Those are the northbound lanes of I-15.

17 Q. And I'm circling an area that is on I-15 where the bridge --
18 where it's just becoming the bridge. Do you see that?

19 **A.** Yes.

20 Q. And can you explain to the jury what is -- what's in that
21 circle that I've drawn?

22 **A.** A large number of people standing, facing the BLM area.

23 Q. And this is on the northbound I-15; correct?

24 **A.** Yes.

25 Q. And then, clearing that circle, I'm now drawing a circle in

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1 the upper left side of the screen. Do you see that?

2 **A.** Yes.

3 **Q.** And what's in that circle?

4 **A.** Individuals on horseback coming towards the overpass.

5 MS. AHMED: And can we advance to 19:01:15 or right
6 there. Oh. And go ahead and play it.

7 (Video played.)

8 MS. AHMED: Can we stop it there. A little bit back.

9 (Pause in the proceedings.)

10 MS. AHMED: One second. Perfect.

11 BY MS. AHMED:

12 **Q.** Now, Agent McEwen, can you explain to the jury -- again,
13 orient to them on this screen and then explain what's depicted
14 in it.

15 **A.** Okay. The top part of the screen are the northbound lanes
16 of I-15 and you see a large number of people on that freeway on
17 the north side, facing north. And then, as you come down the
18 picture, you have approximately 100 or more individuals on
19 horseback and on foot lined up facing north and then you have
20 the southbound lanes of I-15 and then just north of the
21 southbound lanes of I-15 you have three vehicles with a number
22 of individuals behind those vehicles. And then down at the
23 bottom of the screen another collection of 10 to 15 vehicles.

24 **Q.** Now, I'm drawing a box around the bottom center of the
25 screen, around those vehicles you were just describing. And

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1 who did you understand these vehicles to belong to?

2 **A.** My understanding was those were BLM employees.

3 **Q.** I'm clearing that and circling an area between the
4 northbound and southbound 15 lanes in the upper center of the
5 screen. Do you see that?

6 **A.** Yes.

7 **Q.** Now, is this the collection of the people on horseback and
8 people on foot that you described earlier?

9 **A.** Yes.

10 **Q.** And you observed them coming into the wash?

11 **A.** Yes.

12 **Q.** And, based on your training and experience, what, if
13 anything, did they do once they got into the wash?

14 **A.** They lined up and sort of created a standoff line with the
15 BLM individuals.

16 **Q.** And are they -- are the people in that line, that standoff
17 line, are they facing the BLM officers --

18 **A.** Yes.

19 **Q.** -- at this time?

20 **A.** Yes.

21 MS. AHMED: And can we advance to 19:04.

22 (Video played.)

23 MS. AHMED: And just pause there briefly, right at the
24 beginning of 19:04 and pausing there. Right there. You can
25 stop. Thank you.

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1 BY MS. AHMED:

2 Q. Now, Agent McEwen, when you observed that standoff line, did
3 you as a law enforcement officer have any concern for the
4 officers that were in the BLM impoundment area?

5 **A.** As a law enforcement officer, did I have a concern for them?

6 Q. Yes.

7 **A.** Yes.

8 Q. Why is that?

9 **A.** Well, several reasons. One, the sheer number of individuals
10 that were approaching on horseback and foot; knowing that there
11 was a high probability that some or many of them were armed;
12 and that there were so few BLM employees there; and that also
13 in the vicinity -- vicinity possibly women and children as --
14 as well in the area.

15 Q. Now, it appears from us advancing to 19:04 that you panned
16 away from that bridge area that we were just looking at; is
17 that correct?

18 **A.** Yes.

19 Q. And why was that?

20 **A.** Well, throughout the whole flight, I'm taking views of
21 different areas. And I think what we're seeing here are some
22 vehicles departing the BLM site towards the north along a dirt
23 road.

24 Q. Now. I'm circling an area in the bottom right. Can you --
25 are those the cattle corrals that you'd shown the jury earlier

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1 that were at the ICP?

2 **A.** Yes.

3 **Q.** And can you draw a line where you saw the vehicles leaving
4 the back of the ICP, so to speak?

5 **A.** (Drawing.)

6 **Q.** And the witness has drawn a line from the corrals moving
7 northward.

8 And what kind of road did that appear to be to you?

9 **A.** Just an unimproved dirt road.

10 MS. AHMED: I'm clearing that mark. Can we continue to
11 play.

12 (Video played.)

13 MS. AHMED: And can you stop it there. And can we
14 advance to 19:05:45. And you can just . . .

15 (Video played.)

16 MS. AHMED: You can stop there for a moment.

17 BY MS. AHMED:

18 **Q.** Now, Agent McEwen, did you again return the camera to that
19 standoff line that you observed that was formed in the middle
20 of the wash?

21 **A.** Yes.

22 MS. AHMED: Can we continue to play from 19:05:27.

23 (Video played.)

24 MS. AHMED: Can you pause it there.

25 ///

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1 BY MS. AHMED:

2 Q. Now, Agent McEwen, can you -- is this the northbound traffic
3 lane of I-15 --

4 **A.** Yes.

5 Q. -- that I've marked with a red line?

6 **A.** Yes.

7 Q. Okay. Now, I'm circling the standoff line. What direction
8 are they facing?

9 **A.** North.

10 Q. And so they are facing toward that direction in the wash
11 (drawing)?

12 **A.** Yes.

13 Q. And I've drawn a line pointing north on the wash.

14 Clearing those markings, I want to draw your attention
15 to this area (drawing) on the north 15. Do you see this?

16 **A.** Yes.

17 Q. Are the people that are on that northbound 15 are they --
18 where are they in relation to the people in that skirmish or
19 standoff line?

20 **A.** They are behind them or to the south of them.

21 Q. And so are the people in the skirmish line between the
22 people in that northbound lane and the BLM?

23 **A.** Sorry. The -- the . . .

24 Q. Are these people essentially between --

25 **A.** Yes.

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1 Q. -- the people on the northbound bridge and the BLM?

2 A. Yes.

3 Q. Now, drawing your attention to (drawing) this area of the
4 people standing -- or the people on the northbound 15 -- do you
5 see that?

6 A. Yes.

7 Q. -- what do you see depicted in that area in relation to the
8 people? What do they appear to be doing?

9 A. Some are standing and some appear to be crouching.

10 Q. And can you just mark where it appears that people are
11 crouching? Can you draw a circle around it?

12 A. (Complies.)

13 Q. And what time -- converting UTC to Nevada time, what time is
14 this screen taking place, what we see in this scene taking
15 place?

16 A. It's about five or six minutes after 2:00 o'clock in the
17 afternoon.

18 Q. At 12:00 o'clock in the afternoon?

19 A. 12:00 o'clock. Sorry. 12:00 o'clock in the afternoon.

20 Q. So it's 12:05 --

21 A. Yes.

22 Q. -- p.m.?

23 A. Yes.

24 Q. Okay. Clearing the circle.

25 MS. AHMED: Can we continue to play.

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1 (Video played.)

2 MS. AHMED: And can we pause it. Go back just a
3 second, if that's possible.

4 BY MS. AHMED:

5 Q. Now, Agent McEwen, I want to draw your attention to this
6 area that I've circled on the right side of the screen on the
7 northbound bridge. Do you see that?

8 **A.** Yes.

9 MS. AHMED: And can we continue to play the video.

10 (Video played.)

11 MS. AHMED: Can we pause it.

12 BY MS. AHMED:

13 Q. Agent McEwen, (drawing) what did you observe, if anything,
14 that individual that I've drawn an arrow to do during that time
15 period?

16 **A.** He went from a -- well, he or she went from a crouching
17 position to a standing position.

18 MS. AHMED: And can we continue to play from there.

19 (Video played.)

20 THE COURT: We're gonna take a short 10-minute break
21 here.

22 I do reminded the jury during this time: Please do not
23 discuss this case with anyone.

24 Do not read or listen to or view anything that touches
25 upon this case in any way.

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1 Do not perform any research or any independent
2 investigation.

3 And please do not form any opinion.

4 It's 4:05. We'll be back here at 4:15.

5 Let's please stand for the jury.

6 And, Special Agent McEwen, after the jury exits, you
7 may also step down if you'd like to stretch or use the
8 bathroom. We just need you back in about 10 minutes.

9 (Jury out, 4:06 p.m.)

10 THE COURT: All right. Off record.

11 (Pause, 4:06 p.m. Resumed, 4:22 p.m.)

12 COURTROOM ADMINISTRATOR: Are we ready, Counsel?

13 MS. AHMED: Yes.

14 MR. TANASI: Yes.

15 THE COURT: All right. Ready to go back on the record?

16 All right. Let's go back on the record.

17 So the reason that I took that break is because I
18 received notification that Juror No. 5 was falling asleep and
19 so the suggestion that was made to me that I think I'm okay
20 with, but I want to share it with you so that you can inform me
21 whether there are some unforeseen problems with this.

22 Obviously, I need to bring her in and question her on
23 the record and make sure that we saw what we think we saw. But
24 the second question is what can we do to prevent it? I
25 jokingly said no more carbs at lunchtime. But obviously

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1 that's -- you know, can't really do that.

2 Would it -- so one suggestion is to authorize and give
3 permission to the jurors to stand up whenever they need to to
4 stretch, get the crick out, wake themselves up without needing
5 to actually take a full 10-minute break. They all have screens
6 in front of them so they should still be able to see regardless
7 whether they're in the back row and front row. So long as it's
8 just a quick little standup stretch, it shouldn't interfere
9 with their ability to see the witness during the testimony
10 unless you think that's too distracting.

11 So I'm open to suggestions. We're already taking a
12 break every morning and a break every afternoon. I'm . . .

13 MR. MYHRE: Well, Your Honor, my suggestion would be is
14 to -- what I've seen other -- in other courtrooms just have
15 them raise their hand --

16 THE COURT: Um-hum.

17 MR. MYHRE: -- and just cause like a short, in-place
18 recess for people to just stand up and stretch for a minute or
19 two and then set back down. It may be -- that way you don't
20 have one person standing and everybody else sitting and
21 everybody lookin' at them wondering what they are doing.

22 THE COURT: Right.

23 MR. MYHRE: So that could be --

24 THE COURT: I think that's fine too.

25 Any objections or any concerns by the defense?

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1 MR. MARCHESE: None from Parker, Your Honor. I mean,
2 I'll leave it up to the Court. If you want to have them stand,
3 I won't be distracted I don't believe. And, you know, I think
4 at this point in the week I'm willing to give her a little bit
5 of a mulligan on it. It's been a long week and, you know,
6 they've been through a lot. I don't even know. Maybe she's
7 working too as well. So there's a lot --

8 THE COURT: Yeah. We'll --

9 MR. MARCHESE: -- goin' on.

10 THE COURT: -- bring her in and find out if there's any
11 other details that we need to be concerned about.

12 I did tell the other juror who was falling asleep that
13 he could raise his hand and let us know if he needed a break.
14 But I don't recall that I actually told all of the jurors that.
15 So I'm not -- I'm just not remembering if they all are aware
16 that any time if they need a break, because they might be
17 falling asleep or just get a crick in their neck or whatnot,
18 I'm comfortable that they can raise their hand. So that'll be
19 the plan.

20 We'll call in Juror No. 5, Aaron.

21 COURTROOM ADMINISTRATOR: Yes, Your Honor.

22 THE COURT: And talk to her for a minute or two and
23 then we'll have the rest of the jury come in and I'll remind
24 them or tell them for the first time, whichever it is.

25 (Pause in the proceedings.)

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1 THE COURT: They are going through that candy like
2 crazy that we -- we put out a bowl of candy there so that if
3 they did feel like they are falling asleep they could eat some
4 candy. But now I'm thinkin' they are gonna go into a diabetic
5 coma because they take it -- they take the candy when they come
6 in but they also take the candy when they leave. And they
7 don't need to take the candy when they leave. We just want it
8 there for when they come in so . . .

9 MR. MYHRE: Did seem to get warmer this afternoon in
10 the courtroom. But maybe it was just me. Just seemed to get
11 sort of warm now. It's cooled down again.

12 THE COURT: That could be. That could be.

13 And I did -- and so I was telling Aaron maybe we can't
14 dim the lights, but I did ask them to dim the lights when the
15 videos are on because otherwise you can't really see it on the
16 big screen; you can't see it as well as when it is dimmed. I
17 don't want to not be able to dim the lights so that we can see
18 the screens. But, yeah, it could be that it gets warmer in
19 here.

20 GSA says they set it to a particular number that we've
21 agreed to but that the air doesn't turn back on again until it
22 gets, like, one or two degrees below the set number. So it
23 actually has to get warm before it can get cool unless you set
24 it at a cooler number. And I think that's what we've done.

25 COURTROOM ADMINISTRATOR: All rise.

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1 (Juror No. 5 enters, 4:27 p.m.)

2 THE COURT: All right. So everyone can be seated.

3 We're joined by Juror No. 5.

4 Hello. Just wanted you to come in not to embarrass you
5 or anything. But we just needed to ask some questions because
6 we did notice that you were nodding off or what appeared to be
7 nodding off, getting sleepy. I know it's after lunch. So I
8 wanted to make sure whether or not we saw what we think we saw.

9 Do you think that you were falling asleep a little?

10 JUROR NO. 5: I don't think I was asleep. I did close
11 my eyes a little, like just closed. But I was still listening.

12 THE COURT: Okay.

13 JUROR NO. 5: Like, once or twice my eyes closed kinda
14 more involuntarily than anything.

15 THE COURT: All right.

16 Because what we saw is you -- that you were fighting it
17 and your head was kind of bobbing like when you're startin' to
18 fall asleep and you're tryin' to catch your head from falling
19 over. But you don't remember that?

20 JUROR NO. 5: No.

21 THE COURT: Okay.

22 Are you working nights or anything?

23 JUROR NO. 5: No --

24 THE COURT: Staying up --

25 JUROR NO. 5: -- I'm not.

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1 THE COURT: -- late at night for some reason?

2 JUROR NO. 5: No. The last couple nights were just
3 late nights for me. That's all.

4 THE COURT: Okay. So you did have late nights.

5 JUROR NO. 5: Yes.

6 THE COURT: Okay.

7 And is this something that you foresee is gonna keep
8 happening for a while?

9 JUROR NO. 5: No. My mom had surgery on Tuesday so
10 I've been at the hospital after jury duty.

11 THE COURT: Okay.

12 And are you taking any medication that might make you
13 sleepy?

14 JUROR NO. 5: No.

15 THE COURT: Are you not taking medication that maybe
16 you need to take that would otherwise -- I mean, like, I have
17 allergy medication that sometimes I can't take because it wakes
18 me up too much to be able to sit here all day long. I don't
19 take the allergy medication. But do you have any medication
20 like that that --

21 JUROR NO. 5: No.

22 THE COURT: All right.

23 And do you think it would be helpful if you were to
24 able to stand up more often? Take more breaks? Is there
25 anything that you can think of that we could do to make it

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1 easier for you, you and your colleagues?

2 JUROR NO. 5: Probably more breaks might just be
3 better.

4 THE COURT: Okay.

5 And are you aware that you can bring in water --

6 JUROR NO. 5: Yes.

7 THE COURT: -- water bottles in here.

8 JUROR NO. 5: I have water with me.

9 THE COURT: Okay. And you do have water in here.

10 All right. Then let's -- thank you. I appreciate
11 that.

12 And anybody else have any questions?

13 MR. MYHRE: No, Your Honor.

14 MR. TANASI: No, Your Honor.

15 THE COURT: All right.

16 Well, let's go ahead and bring everybody else in and
17 then we'll go ahead and resume. Thank you.

18 (Juror No. 5 exits, 4:29 p.m. Pause in the proceedings.)

19 COURTROOM ADMINISTRATOR: All rise.

20 (Jury in, 4:34 p.m.)

21 THE COURT: All right. Jury may go ahead and sit down.

22 We're back on the record. And just took a little break.

23 So I wanted to take a moment to remind everyone that if
24 you do feel like you need a break for any reason -- you get a
25 crick in your neck, you feel uncomfortable, you just need to

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1 stand up, you're fallin' asleep, you need to use the bathroom,
2 anything -- please feel free. Raise your hand and we will take
3 a break. No questions asked; we'll just take a break.

4 Likewise, if you need to just stand up for a couple of
5 seconds, also feel free to do that. Everybody has screens at
6 their knees so you won't be blocking anybody's view unless you
7 stand up for a very long time. But, if you just need to stand
8 up and stretch, get your breath, please feel free to do that.
9 You are welcome to bring in the water bottle. And, if you feel
10 warm or just thirsty, go ahead and drink up.

11 And, likewise, we put the bowl of candy out there for
12 you so that you can feel free to pick up some candy on the way
13 in. Don't have to eat it right away if you don't want to. But
14 at least you have some candy with you if you need to have that
15 while you're sitting there and watching the presentation.
16 Maybe not necessary to take it on the way out so that you don't
17 diminish the effect of the candy. And maybe then we can also
18 train you to look forward into coming into court knowing that
19 you'll get some candy when you get here.

20 But please feel free, don't feel uncomfortable letting
21 us know if you just need a break 'cuz I know it's sitting for a
22 long time which you probably are not used to doing. Even if
23 you sit working, you usually get to talk. And so you don't get
24 to talk when you're sitting here and that can be difficult.
25 But please let us know. It's very important that you stay

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1 awake and that you're able to pay attention.

2 We do have alternates so it's not the end of the world.
3 We can replace someone with an alternate if need be. But it's
4 gonna be a long trial so we don't necessarily want to start
5 doin' that already. If there is an issue or a problem please
6 let us know; raise your hand and let us know.

7 All right. So, Ms. Ahmed, let's go ahead and continue,
8 please, with direct examination of FBI Special Agent McEwen.

9 MS. AHMED: Thank you, Your Honor.

10 BY MS. AHMED.

11 Q. And, returning to Exhibit 17, Agent McEwen, I want to turn
12 your attention back to the screen and let's play it a little
13 bit more and then I'll ask you a question.

14 (Video played.)

15 MS. AHMED: And can we pause it.

16 BY MS. AHMED:

17 Q. And, at some point, Agent McEwen, what did we just see in
18 this last 15-second segment that we just viewed?

19 **A.** A hundred to two hundred people lined up facing north. Some
20 on horseback; some on foot.

21 Q. At some point, did you see that line of people move forward
22 in the wash or change their position in any way?

23 **A.** No.

24 MS. AHMED: Can I advance to 19:16.

25 (Pause in the proceedings.)

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1 MS. AHMED: And right there.

2 (Video played.)

3 MS. AHMED: And can we pause it there. Paused at
4 19:16:24.

5 BY MS. AHMED:

6 Q. So, at some point, Agent McEwen, did you see that line that
7 you had observed in the middle of the wash, did you see the
8 people in that line push forward toward the BLM position?

9 **A.** Yes.

10 Q. And is that what we just saw in this segment that we just
11 watched?

12 **A.** Yes.

13 MS. AHMED: And advancing to 19:18, please.

14 (Video played.)

15 MS. AHMED: And can we pause it there. Paused at
16 19:18:33.

17 BY MS. AHMED:

18 Q. And, Agent McEwen, can you just tell the jury what we just
19 saw in that last segment?

20 **A.** The people on foot and horseback continued to gather
21 underneath the overpass of the southbound lanes of I-15 closer
22 towards three trucks that appear to have about five or so
23 individuals per truck hiding behind -- or behind the vehicles
24 from the mass of people that have gathered.

25 Q. And the area that I'm circling on the center of the screen,

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1 is that -- those are the three trucks that you're talking
2 about; correct?

3 **A.** Yes.

4 **Q.** And that's the trucks that you understood were the BLM
5 trucks; correct?

6 **A.** Correct.

7 **Q.** Did you ever in the time that you were out there doing
8 sur- -- aerial surveillance -- excuse me -- did you ever see
9 the BLM position move forward from where they are in this
10 scene?

11 **A.** Not that I remember. Not that I recall.

12 **Q.** Did you see them change their position in any way?

13 **A.** Not --

14 **Q.** Forward or backward.

15 **A.** Not that I recall.

16 MS. AHMED: And can we . . .

17 BY MS. AHMED:

18 **Q.** And at the time that the people in this clip -- the people
19 have now pushed forward toward the BLM position under the
20 southbound bridge; is that correct?

21 **A.** Correct.

22 **Q.** What time is it local time?

23 **A.** It is 12:18 p.m.

24 MS. AHMED: Can we advance to 19:22:45.

25 (Video played.)

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1 MS. AHMED: Could we pause it there.

2 BY MR. MYHRE:

3 Q. Now, again, Agent McEwen, where are the mass of people that
4 were between the two bridges in this scene?

5 **A.** Generally gathered under or around the southbound lanes of
6 I-15.

7 MS. AHMED: And can we go back just a few seconds.

8 BY MS. AHMED:

9 Q. And can I draw your attention (drawing) to this bottom
10 left-hand corner of the screen, the northbound bridge,
11 Agent McEwen. Do you see that area?

12 **A.** Yes.

13 Q. Okay.

14 MS. AHMED: Can we play.

15 (Video played.)

16 MS. AHMED: Could we stop.

17 BY MS. AHMED:

18 Q. Agent McEwen, do you see an individual that I've circled in
19 red in the bottom left-hand corner of the screen?

20 **A.** Yes.

21 Q. What does that individual appear to be doing on the
22 northbound bridge?

23 **A.** Laying in a prone position --

24 Q. And what does --

25 **A.** -- facing north.

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1 Q. Laying down in a prone position facing north?

2 A. Yes.

3 Q. Okay. And at what time is this scene taking place?

4 A. 12:22 and 54 seconds.

5 Q. And do you see anybody else on the northbound bridge at this
6 time appear to be in a similar position, laying down on the
7 freeway?

8 A. Not that I can tell, no.

9 MS. AHMED: Can we con- -- can we continue to play.

10 (Video played.)

11 MS. AHMED: Can we stop there.

12 BY MS. AHMED:

13 Q. Based on that brief segment that we just saw, what does it
14 appear -- what position does it appear that most of the people
15 in the northbound bridge are in?

16 A. Standing.

17 MS. AHMED: And, Your Honor, for the record, all the
18 clips that we just watched were from Exhibit 17 which is in two
19 clips. So there's a Clip 1 and Clip 2 in Exhibit 17. So
20 everything that we just reviewed with the witness was from
21 Exhibit 17, Clip 1. And we're now moving to Exhibit 17,
22 Clip 2.

23 THE COURT: Okay. Thank you.

24 MS. AHMED: I just wanted to be clear for the record.
25 So can we pull up 19:30, please.

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1 (Video played.)

2 MS. AHMED: You can play it from here. That's fine.

3 THE COURT: Is there a time stamp that differentiates
4 between Clip 1 and 2?

5 MS. AHMED: They are continuous. I think, just by
6 virtue of the size of the files, they had to be broken.

7 THE COURT: But you know what time Clip 1 ends and what
8 time Clip 2 begins so if we're looking --

9 MS. AHMED: Yes.

10 THE COURT: -- for somethin' later we know which clip
11 to find it in?

12 MS. AHMED: Yes, I do. If you --

13 THE COURT: You don't have to give that to me now.
14 We'll just -- that's fine.

15 MS. AHMED: It is on the exhibit list. We'll have it
16 on the exhibit list.

17 THE COURT: Thank you.

18 MS. AHMED: Thank you, Your Honor.

19 And can we continue to play from 19:29:59.

20 (Video played.)

21 MS. AHMED: And can we stop there. Stopped at 19:31.

22 BY MR. MYHRE:

23 Q. Agent McEwen, I'm drawing your attention to an area I've
24 circled in red on the far right bottom third of the screen. Do
25 you see that?

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1 **A.** Yes.

2 **Q.** Okay. Now, I'm gonna clear that circle and I'm going to
3 draw a smaller circle.

4 What, if you can tell, does that individual in that
5 smaller circle I've drawn appear to be doing? What was their
6 position in this -- at this time?

7 **A.** It appears to be an individual laying down on the roadway.

8 **Q.** And what is the time in local time at this point?

9 **A.** Uh, 2:31 -- uh, 12:31.

10 **Q.** 12:31 p.m.?

11 **A.** Yes.

12 **Q.** Okay.

13 **MS. AHMED:** And can we advance to 19:38, please.

14 (Video played.)

15 **MS. AHMED:** And can we pause there. Paused at
16 19:37:51.

17 **BY MS. AHMED:**

18 **Q.** Can you explain what the vantage point is to the jury from
19 this -- what's depicted in this screen?

20 **A.** Well, the vantage point -- I'm in the aircraft looking at
21 it; I'm looking towards the south. But what we're looking at
22 here are the southbound lanes of I-15 with several what I
23 believe to be BLM vehicles on the north side of that freeway
24 and a large group of people underneath and immediately to the
25 south of that freeway.

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1 MS. AHMED: Can we continues to play, please.

2 (Video played.)

3 MS. AHMED: Can we stop there.

4 BY MS. AHMED:

5 Q. Now, in that last portion that we just reviewed,

6 Agent McEwen, what did we see in relation to the BLM vehicles?

7 **A.** The three vehicles closest to the southbound lanes of I-15
8 were driving backwards or backing away towards the north, away
9 from the mass of people underneath the overpass.

10 Q. And, having seen that video clip, do you recall that --
11 observing that on April 12th?

12 **A.** Yes.

13 Q. And at what time did the BLM move backward from the position
14 that they had held?

15 **A.** Approximately 12:39 in the afternoon.

16 MS. AHMED: And can we advance to about 19:43, please.

17 (Pause in the proceedings.)

18 MS. AHMED: And can we play it from here.

19 (Video played.)

20 MS. AHMED: Bless you.

21 THE COURT: Thank you.

22 MS. AHMED: Can we pause it here. Paused at 19:43:22.

23 BY MS. AHMED:

24 Q. And is that 12:43 p.m.?

25 **A.** Yes.

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1 Q. Is that after the BLM has already moved back?

2 A. Yes.

3 Q. And I want to draw your attention to three individuals in a
4 box that I've drawn on the bottom right-hand side of the screen
5 that appear to be on the northbound bridge. Do you see that?

6 A. Yes.

7 Q. And, going from left to right, can you describe to the jury
8 the position of those three individuals at this time?

9 A. The one on the left appears to be laying down in a prone
10 position, the one in the middle appears to be standing, and the
11 one on the right appears to be in some type of crouched
12 position.

13 Q. Now, at some point in the afternoon during your aerial
14 surveillance, did you leave the area?

15 A. Yes.

16 Q. And did you leave and go fuel up your aircraft?

17 A. We did. We refueled the aircraft and returned --

18 Q. And then --

19 A. -- to the area.

20 Q. -- you returned to the area; is that --

21 A. Yes.

22 Q. -- correct?

23 And then did you continue to conduct aerial
24 surveillance when you returned?

25 A. Yes.

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1 MS. AHMED: Your Honor, may we publish to the jury
2 what's been previously admitted as Government's Exhibit 18.

3 THE COURT: Yes, you may.

4 (Video played.)

5 MS. AHMED: And can we advance to 21:46, please.

6 (Video played.)

7 MS. AHMED: And can we just stop there momentarily.

8 BY MS. AHMED:

9 Q. So, when you returned to the area, Agent McEwen, what time
10 was it?

11 **A.** It was approximately 2:46 in the afternoon.

12 Q. And what area are we seeing at this time on this screen?

13 **A.** That is the makeshift parking lot area near the median
14 between I-15 northbound and southbound lanes.

15 Q. So we're still in the general area of the ICP, is that
16 correct, during --

17 **A.** Yes.

18 Q. -- in this screen?

19 **A.** Yes.

20 MS. AHMED: Can we continue to play.

21 (Video played.)

22 MS. AHMED: And can we pause it there.

23 BY MS. AHMED:

24 Q. Now, when you returned to the area, and as we see in this
25 video scene, were you able to discern whether or not the BLM

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1 was still present at the ICP?

2 **A.** I mean, I could see some vehicles there. I -- I couldn't
3 tell you who was on the premises other than that there were
4 some -- you can see some -- I could see some trailers, some
5 vehicles, and then some cattle and men on horseback.

6 **Q.** And, at this time, what is taking place in this area that
7 you've drawn the camera toward?

8 **A.** Cattle are being released from the corrals and heading
9 south.

10 MS. AHMED: And can we continue to play.

11 (Video played.)

12 MS. AHMED: And can I pause it there.

13 BY MS. AHMED:

14 **Q.** And I'm drawing a line over what appears to be some moving
15 black dots. Are those the cattle?

16 **A.** Yes.

17 **Q.** And clearing that, drawing your attention to this (drawing),
18 when the video was moving, were you able to see what that was?
19 Or do you want to see it -- the video moving again?

20 **A.** Yeah, I'd have to see it moving.

21 **Q.** Or excuse me. That (drawing). I'm sorry. Right there.

22 **A.** Yeah. That's an individual on horseback.

23 **Q.** Did you observe individuals on horseback appear to be doing
24 anything with the cattle as they were being released?

25 **A.** Yeah, guiding the cattle to the south.

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1 MS. AHMED: And can we advance to 22:54 in Exhibit 18,
2 please.

3 (Pause in the proceedings. Video played.)

4 MS. AHMED: Can we stop there actually. Sorry. 20 --
5 going back.

6 (Video played.)

7 MS. AHMED: Can we pause it there. Paused at 21:53:34.

8 BY MS. AHMED:

9 Q. Agent McEwen, were you able to discern whether the cows that
10 had been held in those corrals, that are depicted in this
11 scene, whether they had all been driven out of the pens at this
12 point?

13 **A.** I don't know if they were all driven out, but the majority
14 of the cattle that were there earlier are no longer there.

15 MS. AHMED: And now can we advance to 22:54, please.

16 (Video played.)

17 MS. AHMED: Can we advance to 22:54.

18 (Video played.)

19 MS. AHMED: And can you pause it there.

20 (Video played.)

21 MS. AHMED: Can you pause it. Paused at 22:54:12.

22 BY MS. AHMED:

23 Q. So, Agent McEwen, I believe you indicated that you'd
24 returned to the area of the ICP around 2:45 and 2:46 and you
25 saw the cattle being released; is that correct?

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1 **A.** Correct.

2 **Q.** And then does it appear that you're still in the general
3 area of Bunkerville an hour later?

4 **A.** Correct.

5 **Q.** And where is the camera -- what is -- what area is the
6 camera now looking at at 22:54?

7 **A.** Can you -- can you play it a little bit?

8 **Q.** Yes.

9 (Video played.)

10 THE WITNESS: So this is, I believe, Riverside Road
11 heading back towards the initial staging area where those large
12 poles and banner were located.

13 (Video played.)

14 MS. AHMED: And can we pause here. So paused at
15 22:54:45.

16 BY MS. AHMED:

17 **Q.** Agent McEwen, sorry to keep making you do math late in the
18 day. But what time is it now?

19 **A.** Let's see. 12, 10, 7. What is that? Uh . . . Um . . .
20 Bear with me. (Pause.) Uh, 3:54, I believe -- or two -- two
21 fifty -- oh, hold on. I got to subtract 7 from 22. So 7 from
22 22 is what? 15? So 3:54.

23 **Q.** So at almost 4:00 p.m.; is that correct?

24 **A.** Correct.

25 **Q.** And this is now, you indicated, back at the -- at Riverside

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1 Road, that staging area; is that correct?

2 **A.** Yes.

3 **Q.** And what drew your attention back to this area at this time?

4 **A.** All the -- a large number of vehicles were leaving that
5 makeshift parking area near the median back towards this
6 location. And then I believe I recall I -- I saw the cattle
7 being directed kinda towards the vicinity of this area.

8 **Q.** Now, shortly after this, did you complete your assignment of
9 conducting aerial surveillance in this area on April 12th?

10 **A.** Yeah. At some point over this general area, we -- we
11 finished up our surveillance, yes.

12 MS. AHMED: Your Honor, may I have the Court's
13 indulgence?

14 THE COURT: Yes.

15 (Government counsel conferring.)

16 MS. AHMED: Thank you, Agent McEwen.

17 I have no further questions, Your Honor. I'll pass the
18 witness.

19 THE COURT: All right. Well, let's go ahead and take
20 our overnight break. We will not be coming back here tomorrow.
21 I will be, but you won't be. So you all will be returning on
22 Monday at 9:00 a.m.

23 During this three-day weekend, please remember that you
24 are not to discuss this case with anyone. If you need to check
25 back in with your employer to let them know, yes, I'm still at

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1 work; or with family and friends, yes, we're still working on
2 the case; I'm still on the jury; trial's not over yet, that's
3 fine. But please do not discuss any details or anything else
4 with them.

5 Do not permit anyone to speak to you. Or, if you
6 inadvertently hear something, please let us know right away.

7 Do not read or listen to or view anything that touches
8 upon this case in any way.

9 Do not attempt to perform any investigation or
10 independent research over the weekend. You have some
11 questions, write them down. Bring 'em in on Monday.

12 And please do to the form an opinion. Resist the
13 temptation to form an opinion until you have heard all the
14 testimony, received all the evidence. I will give you the
15 written jury instructions that guide you and then you'll hear
16 the closing arguments. After that you can start to form your
17 opinions and talk to each other about your opinions and share
18 the reasons for your opinions during the deliberation period
19 but not before then.

20 So we'll go ahead and stand for the jury. Thank them
21 again for their time and attention and welcome them back Monday
22 at 9:00 a.m.

23 And, Special Agent McEwen, same thing. We -- after
24 they exit, you may also be excused for the weekend. We'll need
25 you back here at, I think, 9:00 a.m. on Monday.

1 MR. MYHRE: Yes, Your Honor.

2 THE COURT: I believe that's the plan. So we'll have
3 you check in and make sure that's still the plan on Monday.

4 (Jury out, 5:01 p.m.)

5 THE COURT: All right. Off record.

6 (Proceedings adjourned at 5:02 p.m. Trial to resume on
7 Monday, July 24, 2017, at 9:00 a.m.)

8

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10

COURT REPORTER'S CERTIFICATE

11

12 I, FELICIA RENE ZABIN, Official Court Reporter, United
13 States District Court, District of Nevada, Las Vegas, Nevada,
14 do hereby certify that pursuant to 28 U.S.C. § 753 the
15 foregoing is a true, complete, and correct transcript of the
16 proceedings had in connection with the above-entitled matter.

17

18 DATED: July 26, 2017

19

20 /s/ Felicia Rene Zabin
FELICIA RENE ZABIN, RPR, CCR NO. 478

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,	)	Case No. 2:16-cr-046-GMN-PAL
)	
vs.	)	Las Vegas, Nevada
	)	Monday, July 24, 2017
ERIC PARKER, O. SCOTT	)	Courtroom 7C, 9:11 a.m.
DREXLER, RICKY LOVELIEN, and)	
STEVEN STEWART,	)	JURY TRIAL DAY EIGHT
)	
Defendants.)	
	)	<u>O R I G I N A L</u>

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BEFORE: THE HONORABLE GLORIA M. NAVARRO,
UNITED STATES DISTRICT JUDGE, CHIEF

APPEARANCES:

See next page

COURT REPORTER:

Heather K. Newman, RPR, CRR, CCR #774
United States District Court
333 Las Vegas Boulevard South, Room 1334
Las Vegas, Nevada 89101
(702) 471-0002

Proceedings reported by machine shorthand, transcript produced
by computer-aided transcription.

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23 Also present:

24 Sharon Gavin, Special Agent, FBI
25 Joel Willis, Special Agent, FBI
Chris Allen, Bureau of Land Management
Mike Abercrombie, FBI

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Also present:

Mamie Ott, Legal Assistant
Tori Bakken, Paralegal
Brian Glynn, IT
Nicole Reitz, IT

I N D E X

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EXHIBIT NO:

RECEIVED
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1 LAS VEGAS, NEVADA; MONDAY, JULY 24, 2017; 9:11 A.M.

2 --oOo--

3 P R O C E E D I N G S

4 (Outside the presence of the jury at 9:11 a.m.):

5 COURTROOM ADMINISTRATOR: All rise.

6 THE COURT: All right. Thank you. You may be
7 seated.

8 We were swearing in some new employees this morning
9 and then taking pictures and I moved the chair out of the way
10 so we could take pictures with their family.

11 COURTROOM ADMINISTRATOR: This is the time set for
12 Jury Trial Day Eight in Case Number 2:16-cr-046-GMN-PAL,
13 United States of America vs. Eric Parker, O. Scott Drexler,
14 Ricky Lovelien, and Steven Stewart.

15 Counsel, please make your appearances.

16 MR. MYHRE: Good morning, Your Honor.

17 Steven Myhre, Erin Creegan, and Nadia Ahmed on behalf
18 of the United States.

19 THE COURT: Good morning.

20 MR. TANASI: Good morning, Your Honor.

21 Rich Tanasi for Steven Stewart who is present. Also
22 with us at counsel table is Tori Bakken and Brian Glynn.

23 Thank you.

24 THE COURT: Good morning.

25 MR. MARCHESE: Good morning, Your Honor.

1 Jess Marchese on behalf of Eric Parker.

2 THE COURT: Good morning.

3 MR. LEVENTHAL: Good morning, Your Honor.

4 Todd Leventhal on behalf of Mr. Drexler.

5 THE COURT: Good morning.

6 MR. PEREZ: Good morning, Your Honor.

7 Shawn Perez on behalf of Ricky Lovelien.

8 THE COURT: Good morning.

9 All right. Well, before we bring in the jury, just
10 some preliminary remarks that I need to make to remind
11 everyone, or to advise anyone who's here for the first time,
12 that this is a courtroom, not a sporting event, so it is never
13 appropriate to express your opinion, verbally or through body
14 language or partial expressions, no matter how much you might
15 agree or disagree with what -- with what is being said. It's
16 never appropriate to make any kind of a display.

17 Additionally, we do not allow cell phones or any kind
18 of electronics in the courtroom. If you have a laptop or a
19 pad-type of a device, cell phone, please make sure that you
20 leave it outside. Even if it's in off mode or vibrate mode or
21 silent mode, it's not permitted in federal court. There is no
22 recording permitted in federal court, whether it be video
23 recording or oral audio recording.

24 The attorneys, of course, do have computers and they
25 are permitted to use those for presentation of evidence in

1 presentation of evidence and so forth, but, no one else is
2 permitted to have that.

3 Let's see. We do have microphones for everyone. We
4 have removed some microphones in front of the defendants
5 because really it's not necessary and if there was anything
6 they needed to say, they could just use the attorney's
7 microphone. And we do have the podium set up for the witness
8 stand. So, the attorneys are to take turns. No one should
9 speak out of turn and not speak unless called on. We do not
10 expect to . . .

11 All right. So the very last thing that I need to
12 remind the defendants is that we do have the microphones -- I
13 mean, the speakers working now in the cell, again, so, I think
14 this morning there was, like, a reboot that they had to do and
15 everything is working again this morning. So, like I told you
16 before, please do not write anything to show to the jury or to
17 anyone in the audience. Please do not audibly make any kind of
18 statements. When we're at sidebar, do not talk to each other;
19 just stay in your seats. I have authorized the Court Security
20 Officers and the marshals to remove any of the defendants if we
21 need to and they will be listening to the rest of the trial
22 today in the holding room if they cannot comply with these very
23 reasonable requirements to be able to stay in the court.

24 Likewise, if anyone has a cell phone or otherwise
25 makes some kind of an expression or overly distracting

1 movements or anything that's going to be distracting to the
2 jury, the Court Security Officers and the marshals have the
3 authority to go over to those individuals and if they can stop
4 doing what they're doing or if not, if they need to be removed,
5 they do have the authority do that.

6 All right. Aaron, so you want to go and fetch the
7 jurors, please.

8 COURTROOM ADMINISTRATOR: Yes, Your Honor.

9 (Off-record discussion with staff.)

10 THE COURT: Yeah. The marshals and Court Security
11 Officers are able to use their cell phones so that they can
12 communicate as needed.

13 All right. So, we're going to be starting with
14 Special Agent McEwen, right? And then are we going to have
15 Mr. Ellis back today?

16 MR. MYHRE: Yes, Your Honor.

17 THE COURT: I think he was sick. But he's available
18 now?

19 MR. MYHRE: He will follow him.

20 THE COURT: Okay.

21 (Brief pause in proceedings.)

22 COURTROOM ADMINISTRATOR: All rise.

23 (Jury returned to courtroom at 9:19 a.m.)

24 THE COURT: Jury may go ahead and be seated. Good
25 morning.

1 Everyone else may be seated as well.

2 All right. We're back on the record and we do have
3 Special Agent -- FBI Special Agent McEwen back on the witness
4 stand. So, good morning.

5 THE WITNESS: Good morning.

6 THE COURT: And we'll go ahead now and continue,
7 Ms. Ahmed, with your direct examination.

8 MS. AHMED: Your Honor, I had concluded on Friday.
9 Thank you -- or on Thursday, rather. So, I pass the witness.

10 THE COURT: All right. So the witness is passed.

11 Mr. -- who's going to go first?

12 MR. TANASI: Thank you, Your Honor.

13 THE COURT: All right.

14 For Mr. Stewart, go ahead. Cross-examination.

15

16 EARL MCEWEN,

17 called as a witness on behalf of the Government, having been
18 first duly sworn, was examined and testified as follows:

19

20 CROSS-EXAMINATION OF EARL MCEWEN

21 BY MR. TANASI:

22 Q. Good morning, Agent McEwen.

23 A. Good morning.

24 Q. I'm Rick Tanasi and I represent Steven Stewart. I have a
25 few questions for you on cross. Okay, sir?

1 A. Sure.

2 Q. All right. So on the 12th, April 12th, 2014, you were
3 operating a camera surveillance essentially over Gold Butte.
4 Is that fair?

5 A. Yes.

6 Q. Okay. And in doing so, again, you're just -- you're doing
7 aerial surveillance; right?

8 A. Correct.

9 Q. All right. And you're recording your observations; right?

10 A. Yes.

11 Q. Okay. And you're there for, I had it down, four to five
12 hours, roughly?

13 A. Yeah. Give or take.

14 Q. Give or take. All right.

15 MR. TANASI: Brian, if you could please cue up
16 Exhibit 17 and take us to 18:23:08.

17 All right. Stop right there, please.

18 (Screenshot published.)

19 BY MR. TANASI:

20 Q. Okay, sir. Now, we're looking at a freeze frame of
21 18:23:10; correct?

22 A. Yes.

23 Q. UTC time; right?

24 A. Yes.

25 Q. Okay. So, doing the math, trying to keep up with you from

1 last week, that's 11:23:10? Fair.

2 A. In the morning, yes.

3 Q. In the morning. A.m.; right?

4 A. Um-hmm.

5 Q. Okay. So, this picture here, demonstrates the northbound
6 bridge (indicating); right?

7 A. Yes.

8 Q. Okay. And the southbound bridge (indicating) --

9 A. Yes.

10 Q. -- right?

11 Okay. And then this area right here (indicating),
12 that area is just behind the southbound bridge; correct?

13 A. Just north of the southbound bridge.

14 Q. Just north of the southbound bridge; right?

15 A. Yes.

16 Q. Okay. And so, where I'm circling right here (indicating),
17 kind of a not so great circle, but do you see that area right
18 there under the southbound bridge?

19 A. Yes.

20 Q. Okay. Where I've circled, there's no individuals there;
21 correct?

22 A. Doesn't appear to be any individuals there.

23 Q. Okay. There's no vehicles there; correct?

24 A. No.

25 Q. All right. In fact, this wash or this wash area right

1 here (indicating), appears to be no -- no individuals; correct?

2 A. Not on that line where you drew it doesn't appear to be
3 any vehicles.

4 Q. Okay.

5 MR. TANASI: All right, sir. Nothing further. Thank
6 you.

7 THE COURT: And what time was that again? Can you do
8 the math for us?

9 MR. TANASI: Sure.

10 BY MR. TANASI:

11 Q. 18:23:10, which is 11:23:10 a.m.; is that correct?

12 A. Yes.

13 THE COURT: Thank you.

14 MR. TANASI: Thank you, Your Honor.

15 MR. MARCHESE: No questions from Parker, Your Honor.

16 THE COURT: On behalf of Mr. Lovelien, any cross?

17 MR. PEREZ: Thank you, Your Honor.

18

19 CROSS-EXAMINATION OF EARL McEWEN

20 BY MR. PEREZ:

21 Q. Good morning, Agent.

22 A. Good morning.

23 Q. From your vantage point in the aircraft, can you measure
24 distances? Do you have a way of doing that?

25 A. Visually, not accurately, no.

1 Q. Okay. Well, for example, the distance between the north
2 and south bridge, can you give me a guesstimate of the -- that
3 distance?

4 A. Probably about a hundred yards.

5 Q. Hundred yards.

6 MR. PEREZ: Okay. Brian, could you bring up 17 and
7 go to 19:30:30. That's 17b, excuse me.

8 19:30:30, and let it play just for a few seconds.

9 (Exhibit 17 published.)

10 MR. PEREZ: Okay. You can stop it right there. Stop
11 it, Brian.

12 Go back.

13 We're having technical difficulties this morning.
14 Sorry about that. It is Monday.

15 A little -- little further.

16 Okay. This will do.

17 BY MR. PEREZ:

18 Q. Okay. I'd like to draw your attention to the left side of
19 the screen. There's a . . . looks like either a black pickup
20 truck or a black SUV over this area here (indicating).

21 Can you see that?

22 A. Yes.

23 Q. Can you tell me what that is?

24 A. Where the red line is pointing to?

25 Q. Right.

1 A. A black -- like you said, a black SUV or a black pickup
2 truck.

3 Q. Do you know whether or not or from here, can you tell if
4 that's an NHP vehicle?

5 A. No.

6 Q. Okay. And then -- now, just in front of that vehicle
7 there's a group of people in here (indicating).

8 A. Yes.

9 Q. Okay. Now, can you tell me approximately how -- well,
10 first of all, that group of people is not on the bridge that
11 goes across the wash; correct?

12 MS. AHMED: Objection. It's confusing and
13 misleading, both --

14 MR. PEREZ: Okay. We'll start -- we'll start over.

15 THE COURT: Just rephrase it. Go ahead.

16 BY MR. PEREZ:

17 Q. Can -- on the screen, can you indicate where the actual
18 bridge over the wash begins?

19 A. Yes.

20 Q. Okay. Can you do that? Mark it on your screen?

21 A. (Witness complies).

22 Q. Okay. Now, can you give me an approximation of the
23 distance between this group of people over here (indicating)
24 and the beginning -- the start of the bridge?

25 A. 50 to 75 yards.

1 Q. Okay. And what time -- what time of day was this, in
2 local time?

3 A. This is at 2:31 p.m. and 1 second.

4 Q. Wouldn't that be 12 --

5 A. Or, Excuse me. Sorry. Sorry. 12:31 --

6 Q. 12:00?

7 A. -- and 1 second. Yeah.

8 Q. Okay. And in this circle over here on the left, the
9 individual farthest to the left, can you tell what they're
10 doing?

11 A. It appears that there's an individual standing.

12 Q. Okay. And at the same time, do you recall what was
13 happening at Post 2 under the bridge?

14 A. Sorry. Can you repeat that question?

15 Q. At the same time, at this 12:31, do you recall what was
16 happening underneath -- underneath the other bridge at Post --
17 I believe that's Post 2?

18 A. Underneath the northbound bridge?

19 Q. Well, right in here (indicating).

20 THE COURT: South.

21 THE WITNESS: There's a large gathering of people.

22 BY MR. PEREZ:

23 Q. Okay. Do you know -- at that point in time do you know if
24 Mr. Bundy and the Special Agent in Charge were at that gate?

25 A. No.

1 Q. No?

2 MR. PEREZ: Okay. Thank you. I have nothing
3 further.

4 THE COURT: For Mr. Drexler?

5 MR. LEVENTHAL: Thank you.

6

7 CROSS-EXAMINATION OF EARL MCEWEN

8 BY MR. LEVENTHAL:

9 Q. Good morning, sir.

10 A. Good morning.

11 Q. How are you? My name is Todd Leventhal. I represent
12 Mr. Drexler.

13 How are you today?

14 A. Good.

15 MR. LEVENTHAL: Brian, if we can get 17 up again.
16 First part. And go to 25:52.

17 Just for the Court's sake, I've indicated to Brian
18 that it's easy for him to go on the bottom, so I'll be
19 announcing what time it is in terms of the video.

20 Very good. Stop there.

21 (Screenshot published.)

22 BY MR. LEVENTHAL:

23 Q. Okay. Sir, this is at 18:35:56; correct?

24 A. Correct.

25 Q. Okay. And at 18:35:56, that's going to be 11:35:56;

1 correct?

2 A. Yes.

3 Q. A.m., correct?

4 A. Yes.

5 Q. And this is on the 12th; correct?

6 A. Yes.

7 Q. Okay. Do you recognize these individual vehicles, these
8 black individual lined up there?

9 A. No.

10 Q. Okay.

11 MR. LEVENTHAL: Can you keep playing it, Brian.

12 (Exhibit 17 published.)

13 And you can stop right there.

14 BY MR. LEVENTHAL:

15 Q. This vehicle, these vehicles right here (indicating), you
16 still don't recognize what those are? Could they be NHP
17 vehicles?

18 A. They could.

19 Q. Okay. And these individuals here (indicating) wearing
20 sort of this fluorescent green, do you recognize who they would
21 be?

22 A. No. I don't know who they are.

23 Q. Okay. And these vehicles, these four black vehicles
24 there, they're sort of blocking the freeway; correct?

25 A. It appears that they are stopped in the -- on the right

1 side of that freeway.

2 Q. Okay. So, in order to go around or continue on north on
3 that freeway, you'd have to go around them because that lane is
4 blocked; correct?

5 A. It appears so, yes.

6 MR. LEVENTHAL: If you can go to -- keep going to
7 26:41. Just play it, Brian.

8 (Exhibit 17 published.)

9 And you can stop it.

10 BY MR. LEVENTHAL:

11 Q. And we see these individuals that I sort of marked before
12 in the fluorescent green (indicating), they're sort of
13 congregating here; correct? On the I-15 northbound bridge?

14 A. Yes.

15 Q. But they're not on the bridge yet; correct?

16 A. No.

17 MR. LEVENTHAL: Okay. Go ahead.

18 (Exhibit 17 published.)

19 Okay. You can stop it right there.

20 BY MR. LEVENTHAL:

21 Q. Okay. So, again, these four individuals seem to be
22 congregating, they're in fluorescent green; correct?

23 A. Yes.

24 Q. And still, you don't know whether they're NHP, Metro, or
25 who they're with?

1 A. I don't know who they are.

2 MR. LEVENTHAL: Okay. Go ahead.

3 (Exhibit 17 published.)

4 And you can stop it there.

5 BY MR. LEVENTHAL:

6 Q. And they're directly across the street from the
7 so-called -- these protestors, where they congregated; correct?

8 MS. AHMED: Objection, relevance. Witness doesn't
9 know whether they're protestors or not.

10 MR. LEVENTHAL: Whether they're who.

11 MS. AHMED: Assumes facts not in evidence.

12 THE COURT: Lack of foundation for calling them
13 protestors, I think, is her objection --

14 MR. LEVENTHAL: Oh, I see.

15 THE COURT: -- if the witness doesn't know who those
16 people are on the ground.

17 MR. LEVENTHAL: Okay. That's fine. That's fine.
18 I'll withdraw that question.

19 BY MR. LEVENTHAL:

20 Q. Those people in the green, they're directly across the
21 street from -- on the northbound bridge from these individuals
22 here (indicating); correct?

23 A. Yes.

24 Q. Okay. And these individuals here (indicating) are in sort
25 of the parking lot? We see cars there; correct?

1 A. Yes.

2 Q. Okay.

3 MR. LEVENTHAL: If you could go to 25 -- and just
4 keep going to 25:56.

5 (Exhibit 17 published.)

6 Stop it there.

7 BY MR. LEVENTHAL:

8 Q. This vehicle here (indicating), were you able to discern
9 whether that was a news van of some sort?

10 A. No.

11 Q. You don't know whether it is or not?

12 A. I don't know what vehicle that is.

13 Q. Okay.

14 MR. LEVENTHAL: And if we can go to -- and you can go
15 fast-forward to 27:18, please.

16 (Exhibit 17 published.)

17 Okay. Stop.

18 BY MR. LEVENTHAL:

19 Q. All right. This is at 18:37:23, which would have been
20 11:37:23; correct?

21 A. Yes.

22 Q. Okay. And these individuals here (indicating), where
23 they're sort of congregating on the northbound bridge, do you
24 see anybody in camo there?

25 A. Sorry. I didn't hear that.

1 Q. Camo. Do you know what camo is?

2 A. I can't determine anyone wearing camo in that image.

3 Q. Okay. And do you see a number of flags out here
4 (indicating)?

5 A. Yes.

6 Q. Okay.

7 MR. LEVENTHAL: If we can go to 28:16, please.

8 (Exhibit 17 published.)

9 And then stop. Okay.

10 BY MR. LEVENTHAL:

11 Q. Now, this is the southbound bridge here (indicating);
12 correct?

13 A. Yes.

14 Q. Okay. And we've got a number of vehicles, light vehicles,
15 I see one dark colored vehicle. Were you able to discern
16 whether these were BLM vehicles or not?

17 A. On the day in question, I did not know who those vehicles
18 belonged to. Since then, I've come to believe that they were
19 some BLM vehicles.

20 Q. Okay. And we have one individual BLM vehicle there
21 (indicating); correct? Sort of in a forward position?

22 A. Yes.

23 Q. Okay. And you were able to see these people around the
24 vehicles (indicating); correct?

25 A. Yes.

1 Q. Okay. So, there's people -- there's people, you don't
2 know -- you didn't know at the time whether they were BLM, but
3 they were around the vehicles?

4 A. Yes.

5 Q. And there's something like 15 or 16 vehicles here;
6 correct?

7 A. Do you want me to count them?

8 Q. Please.

9 A. (Witness complies). It looks like there's 15 vehicles.

10 Q. 15. Thank you.

11 And these are in direct line to, I guess, this --
12 that's the under -- underpass; correct? Right there
13 (indicating)? Where I've just drawn the line?

14 A. Yes.

15 Q. Okay. Because this is -- you can't see through that
16 obviously, what I've just marked; correct?

17 A. I believe so.

18 Q. Okay.

19 MR. LEVENTHAL: If you could go to 28:27, please,
20 Brian. And just one more split second.

21 There, stop. Okay. All right.

22 (Screenshot published.)

23 BY MR. LEVENTHAL:

24 Q. So, we've got the northbound bridge (indicating) as I've
25 drawn an arrow; correct?

1 A. Correct.

2 Q. Southbound bridge (indicating), I've drawn an arrow;
3 correct? Yes?

4 A. I mean, you've got the arrows going different directions
5 on the traffic, but --

6 Q. I apologize. You are correct.

7 A. But you are correct. That -- the right road is the
8 northbound. The left side is the southbound.

9 Q. Okay. Sorry to talk over you. Yes. So the northbound
10 bridge is -- the arrow's correct now?

11 A. Yes.

12 Q. Okay. And I apologize. Southbound bridge (indicating);
13 correct?

14 A. Yes.

15 Q. And Las Vegas would be where I drew the circle towards
16 that --

17 A. Correct.

18 Q. All right. Now, we've got these vehicles here
19 (indicating); correct?

20 A. Yes.

21 Q. Okay. And were -- you were able to discern what that was
22 (indicating), or no? At the time, that little -- what I've
23 circled?

24 A. I mean, it just looks like desert.

25 MR. LEVENTHAL: Okay. If you can go forward, Brian.

1 Stop right there.

2 (Screenshot published.)

3 BY MR. LEVENTHAL:

4 Q. Okay. And right now, are you able to now discern what
5 that is?

6 A. Yes. It's a group of people.

7 Q. Okay. And what -- what do they look like they're doing
8 here?

9 A. Some are sitting and some are standing.

10 Q. Okay.

11 MR. LEVENTHAL: And can you go to 28:12, please.
12 Just back out just . . .

13 (Screenshot published.)

14 BY MR. LEVENTHAL:

15 Q. Okay. So this is sort of a bigger picture of it. We've
16 got -- those people would have been right here (indicating)
17 where I've drawn a circle; correct?

18 A. Correct.

19 Q. And the -- the vehicles were right here (indicating);
20 correct?

21 A. Correct.

22 Q. Okay. Very good.

23 MR. LEVENTHAL: Okay. If you could go to 30:23,
24 please.

25 (Screenshot published.)

1 BY MR. LEVENTHAL:

2 Q. Now, these vehicles, at some point, they moved -- if you
3 could just play it -- moved towards the bridge; correct?

4 MR. LEVENTHAL: Stop right there.

5 (Screenshot published.)

6 BY MR. LEVENTHAL:

7 Q. These people are moving; correct?

8 A. The people are, yes.

9 Q. Okay. And they're moving what direction, would be,
10 underneath the northbound bridge?

11 A. They are walking north underneath the northbound bridge.

12 Q. Okay. Now, this was in April of 2014; correct?

13 A. Correct.

14 Q. Okay. What was the weather like? Was it hot? Cold out
15 there? Do you remember?

16 A. I don't know what the temperature was on the ground.

17 Q. You don't?

18 A. I was -- I was up in the air. It was a clear day.

19 Q. It was a clear day. Okay. All right.

20 MR. LEVENTHAL: If you could keep playing that.

21 (Exhibit 17 published.)

22 Okay. Stop right there

23 BY MR. LEVENTHAL:

24 Q. There seems to be some shade underneath this bridge;
25 correct?

1 A. Correct.

2 MR. LEVENTHAL: Okay. Keep going.

3 (Exhibit 17 published.)

4 Okay. Stop right there.

5 BY MR. LEVENTHAL:

6 Q. Okay. We have one individual that's coming out in the --
7 into the middle -- I -- sort of the middle of the wash;
8 correct?

9 A. Correct.

10 Q. Okay. Everybody else, do you remember, stayed back in
11 under the shade?

12 A. At this particular time, there's only one individual
13 outside of the shade.

14 Q. Okay. And this individual, were you able to discern
15 whether he was holding a camera or a gun of some sort?

16 A. No.

17 Q. But he was holding something; correct?

18 A. It appears he's holding something.

19 Q. Okay. Okay.

20 MR. LEVENTHAL: If you could just keep going for a
21 couple more seconds.

22 (Exhibit 17 published.)

23 Okay. Stop. Stop.

24 BY MR. LEVENTHAL:

25 Q. Okay. So it does appear he's holding something in his

1 hand; correct?

2 A. Correct.

3 Q. And it's sort of long?

4 A. I -- I -- I don't know how long it is.

5 Q. You don't know how long it is. Okay.

6 MR. LEVENTHAL: If we can go to 32:02, please.

7 (Screenshot published.)

8 BY MR. LEVENTHAL:

9 Q. Okay. Here you have a -- you took a shot of now what is
10 considered, I guess, three vehicles; correct?

11 A. Correct.

12 Q. Whereas before we only saw one vehicle; correct?

13 A. Correct.

14 Q. Okay. So, two vehicles actually advanced forward;
15 correct? With the other one?

16 A. Yes.

17 Q. Right. Okay. And there's a number of individuals around
18 and behind those vehicles (indicating); correct?

19 A. Correct.

20 Q. Okay.

21 MR. LEVENTHAL: And if we could go to 32:56.

22 Okay. Stop. You can back -- okay. Stop right
23 there.

24 (Screenshot published.)

25 ///

1 BY MR. LEVENTHAL:

2 Q. Still the protestors -- or these people are still
3 underneath -- in a shaded area underneath the northbound
4 bridge; correct?

5 A. Correct.

6 Q. Okay. And there's nobody on the northbound bridge
7 (indicating); correct? In that shot?

8 A. Yeah. I mean, in this particular shot I can't see anyone
9 on the bridge in this shot, correct.

10 Q. Okay.

11 MR. LEVENTHAL: Okay. Go to 35:11. We'll
12 fast-forward it.

13 (Screenshot published.)

14 Okay. Stop

15 BY MR. LEVENTHAL:

16 Q. Okay. Again, here, we don't see anybody (indicating)
17 we're going forward on the northbound bridge; correct, except
18 for these two people here (indicating)?

19 A. In -- well, and it looks like there's another person on
20 the south side within that box that you drew.

21 Q. I'm sorry.

22 A. Otherwise, I don't see any other individuals.

23 Q. This individual here (indicating), is that who you're
24 referring to?

25 A. No. Go to the right. Right here (indicating).

1 Q. Okay. I see what you're saying. Okay. So there's
2 somebody -- but he's not on the bridge; he's off the bridge;
3 correct?

4 A. He's close to it.

5 Q. Close to it?

6 A. I guess you can't tell if he's exactly on it or not.

7 Q. Okay.

8 MR. LEVENTHAL: If we can go to 35:16.

9 (Screenshot published.)

10 BY MR. LEVENTHAL:

11 Q. Okay. There's -- we now know that there's people
12 underneath this bridge (indicating); correct?

13 A. Correct.

14 Q. The northbound bridge; correct?

15 We know that there's at least three vehicles here
16 (indicating) with men behind it; correct?

17 A. Correct.

18 Q. And a number of vehicles actually behind them. We saw
19 that; correct?

20 A. Correct.

21 Q. Okay. And so, at this point we are seeing, on this
22 bridge, this northbound bridge here (indicating), other than, I
23 believe, these two people (indicating), nobody on the bridge;
24 correct?

25 A. Well, if you saw, these individuals right here were

1 climbing onto the bridge --

2 Q. Okay. Fair enough.

3 A. -- as well.

4 Q. But for the most part, there's nobody there; correct?

5 A. It appears, correct. Yes.

6 Q. Okay. And we still have people down underneath the
7 northbound bridge; correct?

8 A. Correct.

9 Q. In a direct line of the vehicles that are there; correct?

10 A. Correct.

11 MR. LEVENTHAL: If we can go to 101:29.

12 Okay. Stop right there -- back -- right there.

13 Okay.

14 (Screenshot published.)

15 BY MR. LEVENTHAL:

16 Q. So now we see these three vehicles here (indicating);
17 correct? That we referred to earlier, the three B- -- white
18 vehicles?

19 A. Yes.

20 Q. That you now believe were BLM vehicles?

21 A. Yes.

22 Q. Okay. And we also have a number of vehicles lined up
23 behind that vehicle (indicating); correct?

24 A. Correct.

25 Q. Okay.

1 THE COURT: What time was that?

2 MR. LEVENTHAL: And that would be at 19:11, which
3 would be 12:11; correct?

4 THE WITNESS: Correct.

5 MR. LEVENTHAL: Okay. Very good.

6 Thank you.

7 THE COURT: Thank you.

8 MR. LEVENTHAL: I have nothing further. Thank you
9 very much.

10 THE COURT: Anyone else? No?

11 All right. Redirect, Ms. Ahmed?

12 MS. AHMED: Your Honor, may I have the Court's
13 indulgence for just a moment.

14 THE COURT: Yes.

15 (Counsel conferring.)

16 MS. AHMED: No further redirect, Your Honor. We'll
17 pass the witness. Thank you.

18 THE COURT: All right.

19 Thank you, FBI Agent -- Special Agent McEwen for
20 coming in. You're excused. Please be careful on the way
21 down with -- oh, no. I'm sorry. You're right.

22 Jury questions. Sorry. Stay in your seat there.
23 We're going to see if there are any jury questions and then
24 we'll ask attorneys to meet us at sidebar.

25 (Brief pause in proceedings.)

1 THE COURT: Counsel, please join me at sidebar.

2 (Proceedings at sidebar out of the hearing of the jury:)

3 THE COURT: So Jury Question No. 30, or rather Jury
4 Note No. 30 has two questions. The first one is, "You
5 testified that you saw individuals in the prone and crouching
6 positions. Give that it was known" -- given -- "Given that it
7 was known that there were armed individuals and these positions
8 are used in rifle marksmanship, did you advise anyone on the
9 ground of this observation to further evaluate?"

10 Any objection?

11 MR. TANASI: I don't -- I don't see an objection,
12 Your Honor.

13 THE COURT: All right. And then there's actually a
14 follow-up even though it's same Number 1. It says, "If not,
15 why not? And then if so, do you know -- no speculation," it
16 says -- "the result of the evaluation?"

17 So, any objection to those questions?

18 MR. TANASI: No objection.

19 MS. AHMED: No, Your Honor.

20 THE COURT: The second question on Jury Note No. 30
21 is, "If this surveillance was so important, why didn't you have
22 a" -- and then quotation marks -- "'relief aircraft' to avoid
23 interruption for early advisement of change in the crowd?"

24 Any objection to that?

25 MR. TANASI: No objection.

1 MR. MARCHESE: No objection.

2 MS. AHMED: No.

3 THE COURT: All right. So Jury Note No. 31 also has
4 two questions, and the first question is numbered Number 2 and
5 the bottom question is numbered Number 1 so I'm going to read
6 the bottom one first because it has Number 1.

7 It says, "Is it known if the defendants were on the
8 ground in the wash area or on one of the bridges?"

9 MS. AHMED: This witness doesn't know.

10 THE COURT: I guess this witness won't know, but
11 there's no objection to that question, so I'll just make sure
12 to be clear, "Do you know?"

13 And then the second question on Jury Note No. 31,
14 which is actually on the top, "If, on a bridge, would the
15 defendants have been visible -- in plain sight -- to the BLM
16 agents from their positions on the bridge?"

17 Any objection to that?

18 MR. LEVENTHAL: No.

19 MR. PEREZ: No.

20 MR. MYHRE: Your Honor, I'm sorry, just one.

21 THE COURT: Yes.

22 MR. MYHRE: We do have a matter to discuss before
23 Mr. Ellis testifies. I don't know if you want to take it up
24 now or just wait until he comes on the stand.

25 THE COURT: Sure. We can take it up now.

1 MR. MYHRE: Your Honor, in light of the
2 cross-examination by Mr. Leventhal, we believe that they may
3 try to adduce testimony from Mr. Ellis regarding what he heard
4 out there about shots being -- or people getting ready to be
5 shot in the wash or something like that. If you recall, from
6 the previous trial, he had testified that he heard someone say
7 something words to that effect. We would object to that
8 question even being asked. It's hearsay. It's not relevant to
9 anything, per the Court's order in the Motion in Limine. So we
10 don't -- we anticipate that's what they will adduce, but we
11 wish to object now and ask that the Court instruct that that
12 question not be asked.

13 THE COURT: All right. Who wants to respond to that?

14 MR. LEVENTHAL: In terms of hearsay, it would be an
15 excited utterance. We've heard numerous videos from these
16 things with which the Government has gotten in as an excited
17 utterance, so it would fall outside the exception to the
18 hearsay rule. If somebody was running back saying, "They're
19 going to shoot" or something and that's what he heard and
20 that's what he was perceiving. As a matter of fact, it was in
21 a video that they have -- the Government has now cut out.

22 THE COURT: Let's be clear on which statement it is
23 that we're referring to then.

24 Mr. Myhre, are you referring to the statement by the
25 man who's advancing towards the cattle gate saying, "Are you

1 going to shoot me? Are you going to shoot me?" or "Are you
2 going to shoot these people?" that statement --

3 MR. MYHRE: No --

4 THE COURT: -- or the other statement later?

5 MR. MYHRE: No, Your Honor. It actually precedes the
6 one in the wash. It's a statement that was -- Mr. Ellis
7 testified he had overheard while he was at the assembly area
8 before going to the bridge, that someone came by and said
9 they were going to shoot people in the wash and then the whole
10 crowd removed toward the bridge. That's -- that was the
11 testimony.

12 THE COURT: Oh, like in that --

13 MR. MYHRE: Correct.

14 THE COURT: -- parking lot sort of --

15 MR. MYHRE: Right. And it would not be an excited
16 utterance because there's no foundation laid as to what the --
17 who the declarant is or the circumstances under which the
18 declarant made that statement. It's a statement that he
19 overheard and the crowd then moved to the wash, but it's being
20 clearly offered for the truth of the matter asserted.

21 THE COURT: Okay. So as to the statement that
22 Mr. Ellis heard in the . . . we'll call it the impromptu
23 parking, it was just a desert, but, where people parked their
24 vehicles off the side of the road, how is that an excited
25 utterance?

1 MR. LEVENTHAL: Well, it would be explaining what was
2 going on and perceived at the time that whoever said it, but
3 it's no more or less than all the videos that we have received
4 that have people in the background screaming, you know, "This
5 is not your land," or, you know, "F-you, go home," or things of
6 that. These are all coming in, I guess, as excited utterances,
7 an exception to the hearsay rule. And so that would fall under
8 the same category.

9 MR. MYHRE: Those --

10 THE COURT: No. Those are not excited utterances.
11 I'll let you answer, Mr. Myhre.

12 MR. MYHRE: The -- an excited utterance has to be
13 made while someone or even persons --

14 THE COURT: It's impromptu. That's what provides the
15 credibility that otherwise is lacking.

16 MR. MYHRE: Correct.

17 THE COURT: It's, like, if you touch something hot
18 and you go, "Ow!" because it's hot, you don't premeditate that
19 you're going to say "ow," it's just an automatic response so
20 that makes it an excited utterance and that's what it gives it
21 the credibility that it otherwise wouldn't have and that's the
22 only reason why we allow those excited utterances.

23 MR. MARCHESE: Mr. Myhre wanted to say something.

24 MR. MYHRE: Right, Your Honor, and there's no
25 foundation that this person was under apprehension or was

1 perceiving the event at the time or anything; it's just a
2 statement that he overheard someone making as they were passing
3 by.

4 MR. MARCHESE: Well, I think we have a good faith
5 belief that we could ask the question because it would be made
6 at or near the time. What was elicited at the last trial
7 through both, I believe, Mr. Ellis, who is not on the stand,
8 Mr. Ellis and my client was that the lady came down in a
9 hurried fashion and was yelling, so I believe that we could --
10 before asking the actual nature of what was actually said, I
11 believe that we could lay the foundation to say -- you know,
12 talk about her outward appearance, how she was speaking. I
13 mean, this is not someone saying, "Oh, she has a green shirt."
14 This is a very emotional thing talking about someone having --
15 about to shoot people in the wash.

16 And to move on a little bit from the hearsay, and
17 obviously that's a valid objection and I understand Mr. Myhre's
18 point, but also, that was the exact reason that Mr. Ellis went
19 from the staging/parking-whatever-you-want-to-call-it-area to
20 the bridge. That was his testimony. He said, "I went to the
21 bridge" -- or we, him and Mr. Flynn, went to the bridge because
22 of that particular statement. So, it -- it's very important to
23 get that out because it tells the full story as to why he did
24 what he did and why he went where he did.

25 MR. MYHRE: And why Mr. Ellis moved from the parking

1 lot -- impromptu parking lot to the bridge is not relevant to
2 anything in this case. Secondly, with respect to the -- laying
3 the foundation, when Ellis heard that was not near the bridge;
4 it was away from the bridge. So whoever said that, you know,
5 there -- they were not under the immediate apprehension of what
6 was going on in the wash. They were well removed from the
7 wash. So, therefore, they can't lay the foundation for it.
8 And by going into it or trying to attempt to lay the
9 foundation, we're getting into the, you know, 403 area and
10 we're going into nullification where they're talking about
11 other people perceiving things going on down in the wash that
12 just doesn't go to anything except for nullification.

13 MR. TANASI: Your Honor, can I speak to that?

14 THE COURT: Yes.

15 MR. TANASI: We've kind of raised this before, but I
16 think this is probably a good time to raise it again.

17 The Government has put the crowd's mindset at issue
18 in this case. The Government has asked, through two witnesses,
19 one, first, Lombardo, Joseph Lombardo, what his temperament or
20 his idea of the crowd was, or his thought was of the crowd's
21 feeling, one; two, Ellis was asked similar questions about what
22 his perception of the crowd was and how they felt. So, the
23 crowd -- by the Government's own questioning in this case, the
24 crowd has been, and their temperament has been put at issue.
25 And so, when we ask questions, like, to Mr. Ellis, "Why did you

1 go from the wash or why did you go from the speech to the
2 wash," his -- his belief and his understanding is relevant to
3 the case because it's relevant to refute the Government's
4 position that everybody was hostile and fired up after Cliven's
5 speech, or, as the defense is advancing, everyone left the
6 speech, a lot of the individuals left the speech to go watch
7 the cows come home. And so, that's relevant for two reasons;
8 one, to refute the Government putting the crowd's -- this
9 hostile crowd notion at issue, one, and two, it's
10 circumstantial evidence of our clients' state of mind. And if
11 you can just bear with me for one second on this.

12 The Government is allowed to use circumstantial
13 evidence to prove a defendant's intent in a criminal case
14 because -- and I don't have the authority handy but I do have
15 it back at my desk and I can put it on the record later, but
16 the Government can use circumstantial evidence for purposes of
17 demonstrating the defendants' state of mind. I would argue the
18 reverse, which is the defense can do the same thing. We can
19 refute our client or prove our clients' state of mind through
20 circumstantial evidence because as the case -- that I don't
21 have handy and I'll give it to the Court -- points out, no one
22 can get into the defendants' mind, so you have to use -- you
23 can't use direct evidence; you can use circumstantial evidence.
24 And so, we would argue we can use circumstantial evidence to
25 also advance our clients' state of mind. So again, for two

1 issues; the effect of people leaving that first speech
2 and heading to the wash is relevant for two reasons; one, to
3 refute the crowd notion, this angry crowd mob that the
4 Government has put at issue, and two, as circumstantial
5 evidence of our clients' state of mind.

6 THE COURT: All right. Well, you'll have to show me
7 that case law because I'm not familiar with the defendant
8 having the authority to refer to the mindset of other people in
9 order to establish their own authority. As to the mindset of
10 the people who are not the defendants and why they moved from
11 one position to another, that's not at issue. And so it would
12 only really be relevant, at the very least, if the defendant
13 could use that as circumstantial evidence and I'm not aware
14 that that -- that that's something that is permissible, but of
15 course, I'm willing to look at that and I want to look at that.

16 Did you want to respond to anything else, Mr. Myhre?

17 MR. MYHRE: Well, Your Honor, we kind of moved off
18 the topic of the statement at the assembly area back to the
19 staging area.

20 THE COURT: Um-hmm.

21 MR. MYHRE: But we did not -- we adduced Mr. -- from
22 Mr. Ellis his testimony as to what the crowd was like when he
23 got there. We did not adduce any testimony with respect to, as
24 Mr. Tanasi said, the crowd being hostile or agitated or
25 whatever. We adduced that after Cliven Bundy's speech, they

1 moved to the wash. So, the notion that somehow now we're going
2 to go into what Mr. Ellis' observations were about the crowd
3 throughout the sequence of this, again, it's not relevant. The
4 crowd -- what Mr. -- what Sheriff Lombardo perceived is
5 relevant. He's a law enforcement officer. He was making
6 decisions there. Mr. Ellis is not a law enforcement officer.
7 He has no control over any of these events. He's there as an
8 observer recording. And so, what his mindset is or what the
9 crowd mindset around him is just -- it's not relevant to any
10 defense, it's not relevant to any element of the offense.

11 MR. TANASI: Your Honor, I don't mean to go back and
12 forth on this --

13 THE COURT: Well, I agree that his mindset is not
14 relevant, but the question is whether or not there's an excited
15 utterance made by . . . was it a female?

16 MR. LEVENTHAL: Yes.

17 THE COURT: I think it was a female. That appeared
18 near Mr. Ellis and that Mr. Ellis heard.

19 MR. MYHRE: Right. Again, we go back to she was not
20 in the wash. She was -- when Ellis heard that, they were not
21 in the wash.

22 We don't know where this person came from. We don't
23 know the circumstances under which she made -- she may have
24 been a provocateur. She may have been someone who made
25 something up. We just don't know. And just to throw it out

1 there just opens up the door to all sorts of prejudicial
2 information with respect to what the relevance of it is because
3 she can't speak -- whoever that declarant is, cannot speak to
4 what was going on in the wash. Did not -- there's no
5 foundation as to what she perceived or what she saw. And so,
6 therefore, we still contend it is just -- it's not relevant.
7 It goes to nullification.

8 MR. LEVENTHAL: It does put it in perspective as to
9 why Ellis ran from where he was at to the wash.

10 THE COURT: But it doesn't matter why he ran from
11 where he was at is the point. So it's not -- the question is,
12 if we knew who she was and you could establish that it was an
13 excited utterance, then it would be something different, but
14 because we don't know what she saw, what she perceived, where
15 she was, there's -- the credibility is gone. If it was -- you
16 know, if someone popped up from under the -- you know, behind
17 a -- a rock or something and she said, you know, "Oh, my
18 goodness, it's Charles!" then that would be an excited
19 utterance and someone else could say yes, she uttered that.
20 That was an excited utterance that she made and then there's
21 some credibility to it because she wouldn't have said "Charles"
22 if she didn't think it was Charles, but here, we don't know
23 what she saw so there's nothing that I have to articulate as to
24 why it's an excited utterance.

25 MR. LEVENTHAL: We don't even have any foundation as

1 to what Mr. Ellis perceived at the time. Maybe he'll be able
2 to provide that foundation for Your Honor and then --

3 THE COURT: It's not his perception, it's her
4 perception. What she -- where she was when she saw it is what
5 either does or does not lend credibility to her statement to
6 make an excited utterance or not.

7 MR. LEVENTHAL: Right. As the Court indicated last
8 week when we were here talking about excited utterance, it's
9 usually somebody else saying that somebody else said something.

10 THE COURT: Right.

11 MR. LEVENTHAL: This is the exact situation where
12 Ellis is saying that he heard somebody say and so, if she's
13 running, screaming going, "They're going to shoot protestors,"
14 then the foundation would be laid as an excited utterance.
15 That's exactly what the Court has indicated on why they come in
16 as opposed to having the lady come in, because they don't have
17 Flynn coming in.

18 THE COURT: I'm not saying she has to come in. We
19 don't have any evidence of running, screaming. We don't have
20 any evidence of what she was looking at when she said that.

21 MR. LEVENTHAL: Right.

22 THE COURT: So . . .

23 MR. LEVENTHAL: So I would lay the foundation for
24 that.

25 THE COURT: It's not sufficient for an excited

1 utterance.

2 MR. LEVENTHAL: How would we get there without --

3 THE COURT: I'm not saying it could never be an
4 excited utterance. We just don't have the foundation --

5 MR. LEVENTHAL: Right.

6 THE COURT: -- to determine that so that I can call
7 it and say yes, this is an excited utterance because. I don't
8 have that information.

9 MR. LEVENTHAL: So, I guess on those lines -- I'm
10 sorry. On those lines, if I were to lay the foundation for
11 that, then the Court would allow that to come in?

12 MR. MYHRE: He can't lay the foundation because Ellis
13 wasn't there to see what she was seeing or didn't see. The
14 fact that someone yells and screams and says their hair's on
15 fire doesn't mean it's an excited utterance. They have to be
16 perceiving something and then it's -- they're under the
17 apprehension of what they've seen. That makes it an excited
18 utterance. I can be excited today and animated about this, but
19 that doesn't mean it's an excited utterance. It could --
20 this -- that happened three years ago. Just because I'm
21 excited about it doesn't mean it's an excited utterance. It's
22 got to be, you know, at or near the time of the events
23 perceived --

24 THE COURT: Contemporaneous.

25 MR. MYHRE: Yes.

1 MR. LEVENTHAL: I'm not sure how much more
2 contemporaneous we are. We're on the bridge. We're there.
3 We're just -- we're just a little --

4 THE COURT: No. This is at the --

5 MR. LEVENTHAL: Yeah. Just beyond the --

6 THE COURT: -- the parking, which is like 75 yards
7 away --

8 MR. LEVENTHAL: Yes. Correct.

9 THE COURT: -- give or take, you know. If this
10 witness can estimate.

11 MR. MARCHESE: Just to be clear, so we don't violate
12 any of the Court's ruling. Is the Court's ruling that we
13 cannot attempt to lay the foundation?

14 THE COURT: I don't know that you have a good faith
15 basis.

16 MR. MARCHESE: Well --

17 MR. LEVENTHAL: We do, because he testified to it
18 last time, that he heard it. We just didn't get into it
19 because --

20 THE COURT: No. We know he heard it.

21 MR. LEVENTHAL: It was actually on direct when he --
22 when he made the excited utterance.

23 THE COURT: We know he heard it, but we don't know
24 that the statement was made contemporaneously or that the
25 person was excited or what the person saw. So, it's the other

1 prong. It's not enough that someone just yells and that
2 someone else hears them yell that makes it an excited
3 utterance.

4 MR. MARCHESE: I -- I agree, but I -- I believe
5 it's -- it's contemporaneous, or at or near the time. So, my
6 position, or our position, would be near the time, and I think
7 our good faith basis is our own clients. Eric testified last
8 time to the same statement.

9 THE COURT: But if you don't know where she was when
10 she saw what she saw, then you can't figure out if it's
11 contemporaneous or not.

12 MR. MARCHESE: Well, I -- I would disagree. If a
13 witness --

14 THE COURT: She could be running from Mesquite. We
15 doubt that, but she could be hundreds of yards away.

16 MR. MARCHESE: I would disagree. I would say if a
17 witness comes in and she yells in hurried fashion, "Oh, my God,
18 Eric Parker just killed so and so," that would come in against
19 him.

20 THE COURT: That's much more specific if she walks
21 into this courtroom and yells, "They're after me," you don't
22 know who or where or what -- where she was, what it is that
23 she's referring to. So, the statement itself --

24 MR. MARCHESE: Okay. Well, that's just -- that's our
25 position and I wanted to -- to lay the record.

1 THE COURT: Okay. That's the problem. Okay.

2 MR. MARCHESE: Thank you.

3 (Proceedings within hearing of the jury:)

4 THE COURT: All right. So, Special Agent McEwen, I'm
5 going to ask you some of these jury questions, but when you
6 respond, you may go ahead and face the jury because these are
7 not my questions, these are jury questions.

8 Jury Note No. 30 is a two-part question. The first
9 one is, "You testified that you saw an individual in the prone
10 and crouching positions. Given that it was known that there
11 were armed individuals and these positions are used in rifle
12 marksmanship, did you advise anyone on the ground of this
13 observation to further evaluate?"

14 THE WITNESS: So, that's a good question.

15 At the time that that video was taken, I did not
16 notice that there were individuals prone or crouched in that
17 position; it wasn't until after reviewing the video that that
18 was noticed.

19 THE COURT: Okay. Then the next part of the question
20 was, "if not, why not?" which I think you've answered.

21 And then, "If so, do you know -- without
22 speculation -- the result of the evaluation?" So again, I
23 think you've already answered that.

24 The second question on Jury Note No. 30 is, "If this
25 surveillance was so important, why didn't you have a relief

1 aircraft to avoid interruption for early advisement of change
2 in the crowd?"

3 THE WITNESS: Um . . . so, that's another good
4 question. That's the leadership above me advised that one
5 aircraft was required and so, we were up with one aircraft. We
6 did depart the area and refuel and got back up there as soon as
7 we could and then we were told to depart the area by
8 leadership. Thus, the video ended when it did.

9 THE COURT: All right. Jury Note No. 31 is a
10 two-part -- has two different questions.

11 The first one is, "Is it known if the defendants were
12 on the ground in the wash area or on one of the bridges?"

13 THE WITNESS: I'm sorry. Can you repeat that
14 question?

15 THE COURT: Yes.

16 "Is it known" -- I guess I'll change it to, do you
17 know if these particular defendants -- these four defendants
18 that are on trial here today -- were on the ground in the wash
19 area or on one of the bridges? And I think -- maybe by now,
20 we'll say could you see? Did you -- were you aware of whether
21 they were on the ground or in the wash area or one of the
22 bridges in your, while you were --

23 THE WITNESS: No. I could not determine that.

24 THE COURT: And then the second question was, "If, on
25 a bridge, would the defendants have been visible -- in plain

1 sight -- to the BLM agents from their position on the bridge?"
2 which you've already answered, you didn't know if they were
3 there or not.

4 All right. Any follow-up questions from the
5 Government?

6 MS. AHMED: No, Your Honor. Thank you.

7 THE COURT: Any follow-up by the defense?

8 MR. TANASI: Just briefly, Your Honor. Thank you.

9 THE COURT: All right.

10

11

RE-CROSS-EXAMINATION OF EARL MCEWEN

12 BY MR. TANASI:

13 Q. Briefly, Agent McEwen, one question for you. You had just
14 indicated that you -- at the time you're flying above on the
15 12th, you didn't notice those individuals in the crouched or
16 prone position. Fair?

17 A. At the time I could see people on the bridge, but I did
18 not, at that particular point in time, notice that that
19 individual was in a prone position.

20 Q. Sure.

21 So, when did you first come to that knowledge? When
22 did you first learn that those individuals were, as you called
23 it, crouched or prone on the bridge? When did you first learn
24 that?

25 MS. AHMED: Objection. Relevance.

1 MR. TANASI: Your Honor, it goes to bias.

2 MS. AHMED: I don't know that there's a good faith
3 basis to make that claim.

4 MR. TANASI: Your Honor, my good faith basis --

5 THE COURT: Overruled. He can answer the question.

6 MR. TANASI: Thank you.

7 THE WITNESS: So, when I hand in video surveillance,
8 I do not ever review that video evidence. In this particular
9 situation because there's a trial and I met with the
10 prosecution, we reviewed the video and it was at that time that
11 we noticed that the individual in the prone position was
12 visible in the video.

13 BY MR. TANASI:

14 Q. Sure.

15 Who was at that meeting?

16 A. The prosecution. I can't remember everyone who was at
17 that meeting.

18 Q. Were there other FBI agents there as well?

19 A. Yes.

20 Q. Okay.

21 MR. TANASI: Thank you.

22 THE COURT: Anyone else?

23 Government?

24 MS. AHMED: No follow-up, Your Honor. Thank you.

25 THE COURT: All right. Thank you.

1 Now, again, Special Agent McEwen, you're excused, for
2 real this time. Thank you very much for coming in. And please
3 be careful with the steps on the way down.

4 (Witness excused.)

5 THE COURT: I'm told that we should take a bathroom
6 break now. So, it's 12:09 [sic] and we'll go ahead and take
7 about a 15-minute break.

8 I do remind the jurors again, as before, that during
9 this break you are not to speak with anyone and discuss this
10 trial or anything that touches upon this case in any way with
11 someone else nor should anyone be speaking to you about it. So
12 please let the Court know if anyone does attempt to speak to
13 you about the case. You can speak to your fellow jurors about
14 other things, but just not about this case.

15 Please do not read or listen to or view anything
16 about that touches upon this case in any way and do not attempt
17 to perform any investigation or any independent research
18 regarding this case, and please do not form any opinion until
19 after you have heard all the testimony, reviewed the evidence.
20 I will give you the instructions of law to guide you so that
21 when you make your determinations of fact, you know how to
22 apply them to the law and then we will hear closing arguments
23 and then you can begin your deliberations. So until I excuse
24 you to deliberate, please do not form an opinion or discuss
25 this case with your fellow jurors.

1 Let's go ahead and stand for the jury. It's 10:10,
2 so we'll be back at 10:25.

3 COURTROOM ADMINISTRATOR: Yes, Your Honor.

4 (Jury excused from courtroom.)

5 THE COURT: All right. Off record.

6 (Recess was taken at 10:10 a.m.)

7 (Outside the presence of the jury at 10:32 a.m.:)

8 COURTROOM ADMINISTRATOR: All rise.

9 THE COURT: Thank you. You may be seated. Aaron's
10 going to go fetch the jury.

11 (Brief pause in proceedings.)

12 MR. TANASI: Your Honor, before we call the jury in,
13 can I --

14 THE COURT: Yes.

15 MR. TANASI: -- address a few issues outside the
16 presence?

17 THE COURT: All right. Yes.

18 MR. TANASI: Sorry, Aaron.

19 THE COURT: You may go ahead.

20 MR. TANASI: Thank you, Your Honor.

21 This is kind of spilling over from our sidebar
22 meeting and our discussions on the issue for circumstantial
23 evidence being used to prove my client's state of mind in this
24 case.

25 I'd point the Court's attention to -- it's an

1 Eleventh Circuit case -- *Lancaster v. Newsome*, 880 F.2d 362.

2 "Juries are free to infer" --

3 THE COURT: 880 F.2d . . .

4 MR. TANASI: 362.

5 THE COURT: 362?

6 MR. TANASI: Yes, ma'am.

7 THE COURT: Thank you. *Lancaster*.

8 MR. TANASI: "Juries are free to infer intent from
9 conduct. By its very nature, intent cannot be proven by direct
10 evidence unless the defendant expressly states his intent."

11 Now, that's a case where the Government was permitted
12 to use circumstantial evidence to demonstrate the defendant's
13 intent and reading that case in conjunction with two others, I
14 think it makes my point.

15 The next is *U.S. v. Stauffer*, 922 F.2d 508, a Ninth
16 Circuit case. "Circumstantial evidence can be used to prove
17 any fact, including facts from which another fact can be
18 inferred and is not to be distinguished from testimonial
19 evidence insofar as the jury's fact finding function is
20 concerned."

21 Final case I would cite, Your Honor, is *U.S. v.*
22 *Lyles*, a Sixth Circuit case, 380 F.2d 769. "Circumstantial
23 evidence may be used to corroborate an accomplice's testimony
24 as well as admissions which tend to incriminate the accused."

25 So, the Government essentially is permitted to use

1 circumstantial evidence to demonstrate and argue what the
2 defendant's intent is in their case. These line of cases,
3 Your Honor, I would submit, allow the reverse, which is the
4 defense can use circumstantial evidence to corroborate and
5 otherwise demonstrate what my client's state of mind was,
6 again, not from a mistake of fact or mistake of law standpoint,
7 but from a what was in his mind and was he intending to commit
8 a crime defense. And again, looking directly at Mr. Ellis, for
9 example, who is about to testify and be subject to
10 cross-examination. He testifies that he leaves the speech,
11 Cliven and sheriff's speech --

12 THE COURT: You don't have any case that actually
13 says that the defense may use circumstantial evidence to show
14 state of mind; what you have is three different cases where the
15 Court determined that the Government can use circumstantial
16 evidence to use [sic] the state of mind the defendant, because
17 the Government is not permitted to call the defendant to
18 testify; the defendant has the right not to testify and cannot
19 be compelled to testify. So the Government has the right to
20 show the state of mind of the defendant through circumstantial
21 evidence, but you don't have a case that shows that the defense
22 can rely on circumstantial evidence to show the defendant's
23 state of mind.

24 MR. TANASI: I don't have a case that specifically
25 articulates it in that manner, Your Honor, but what I'm saying

1 is the -- if we take a step back and look at the notion of what
2 we're trying to prove, which is -- or refute, which is our
3 clients' state of mind, those cases allow for us to do that.
4 Those cases -- those cases put state of mind at play. Those
5 cases put my client's intent at play, and those cases put
6 circumstantial evidence as the type of evidence that's
7 permitted to demonstrate state of mind.

8 THE COURT: All right. Mr. Myhre, did you want to
9 respond?

10 MR. MYHRE: Just as we responded previously,
11 Your Honor, the -- and I haven't read these cases, but I
12 presume they stand for the proposition that you can infer
13 intent based on consequences of the conduct or the conduct
14 itself may -- you may infer intent from that.

15 What the defendants here, based on the proffer we had
16 at sidebar earlier, is they hope to adduce some sort of state
17 of mind of other parties out there as circumstantial evidence
18 that this was the state of mind of their defendants, and the
19 state of mind of third parties, including Mr. Ellis or people
20 Mr. Ellis saw or people Mr. Ellis may have heard from, does not
21 advance proof of their state of mind. It's just that --
22 that -- what that person is thinking. It's totally -- it
23 doesn't connect. There's about 15 steps missing in there to
24 connect it to these defendants' state of mind. That's why it's
25 so prejudicial. That's why it's, you know, irrelevant in the

1 first instance.

2 MR. TANASI: Your Honor, if I could just address
3 that.

4 Again, the Government has put the crowd's state of
5 mind at issue. They did so through Sheriff Lombardo. I
6 objected when they asked Mr. Ellis as to what his -- what he
7 thought the crowd was doing or how they were feeling and I
8 objected because I said he wasn't qualified to do so because he
9 wasn't law enforcement and I recall Your Honor indicating he
10 didn't have to be law enforcement in allowing the line of
11 questioning. So, my point is the Government has put the
12 crowd's mindset at issue and so we're simply trying to refute
13 that.

14 MR. MYHRE: We have -- we have not put the -- there's
15 no such thing as a crowd mindset. We have put in evidence from
16 Sheriff Lombardo as to what his perception of the crowd was
17 because he's a law enforcement officer and has to adjust
18 according to what he's perceiving at the time. We did not put
19 in through Mr. Ellis any mindset of a crowd. We asked, early
20 on when he was first there, what he saw, what the crowd was
21 like. He just said it was -- it was calm. We have not adduced
22 any evidence at the wash or at the assembly area or after
23 Mr. Bundy's speech about what the crowd was thinking or doing.
24 He's not in a position to assess crowd -- crowd mindset or what
25 the crowd is doing, and even if he were, it's not relevant to

1 anything. It's not relevant to the conduct of the BLM
2 officers; it's not relevant to the conduct of the defendants.

3 MR. TANASI: Your Honor, and I think the question was
4 the --

5 THE COURT: I agree. My recollection was that
6 Sheriff Lombardo is a law enforcement officer, but the fact
7 that he was law enforcement officer is not what was important
8 for being able to provide a present sense impression of the
9 crowd. The purpose of the evidence was to show what actions he
10 took because he's one of the victims in this case and it was
11 his conduct that is an issue. The . . . evidence that --
12 you're seeking to ask this -- you're saying that the Government
13 put it in issue, but the Government put it -- asked the
14 question to Sheriff Lombardo, not to Mr. Ellis.

15 MR. TANASI: He -- he -- the question was --

16 THE COURT: So it would be beyond the scope of
17 cross-examination of this particular witness and I don't --

18 MR. TANASI: I don't mean to belabor, Your Honor, but
19 the question, I think, was what was the mood of the crowd and
20 he was allowed to answer that over objection.

21 THE COURT: And the explanation was to show his
22 conduct in the case and what steps he took in relationship to
23 that.

24 MR. TANASI: Mr. Ellis.

25 THE COURT: Oh, you're saying Mr. Ellis?

1 MR. TANASI: Mr. Ellis was asked what was the mood of
2 the crowd. And I specifically remember this objection,
3 Your Honor, because I had asked -- I objected as to the
4 relevance of the mood of the crowd as speculation and also that
5 he was not law enforcement and I, again, recall the response
6 being that he didn't have to be law enforcement.

7 MR. MYHRE: If -- if we asked that question,
8 Your Honor, it was only with respect to when he first got there
9 and he was waiting for something to happen.

10 (Brief pause in proceedings.)

11 THE COURT: All right. So at the rally site there
12 was a question about the mood of the crowd, at the rally in
13 between the -- the different individuals who were state -- who
14 were speaking or the different things that were being said.

15 MR. MYHRE: Right. And that was to set up the video,
16 Your Honor, that was then introduced as to Mr. Bundy's speech.
17 But we did not adduce any evidence about the mood of the crowd
18 at the staging -- or, excuse me -- at the assembly area or in
19 the wash or even after Mr. Bundy's speech.

20 THE COURT: Yeah. I don't have any notes regarding
21 any other questions after that. The only one was at the rally
22 site.

23 MR. TANASI: And I guess I would just point out,
24 Your Honor, that where the mood of the crowd was assessed isn't
25 the issue; it's the fact that the crowd and their mood has been

1 assessed by a witness.

2 MR. MYHRE: That doesn't open --

3 MR. TANASI: So that door's been opened.

4 THE COURT: Mr. Myhre?

5 MR. MYHRE: Your Honor, that doesn't -- that doesn't
6 open the door for everything that occurred from there on to
7 eternity; it's simply that was -- at that point it was adduced
8 merely to set up the video that he subsequently showed and the
9 videos that were introduced thereafter show what was going on
10 in the crowd. We did not adduce any evidence as to crowd
11 mindset or mood at either -- at the immediate aftermath of
12 Mr. Bundy's speech or anywhere along the continuum up through
13 the wash.

14 THE COURT: All right.

15 Well, I've made my ruling. You haven't provided any
16 other information that convinces me that the ruling was not
17 correct the first time, so it stands.

18 MR. TANASI: Understood. Thank you, Your Honor.

19 THE COURT: Let's go ahead and bring in the jury.

20 (Brief pause in proceedings.)

21 COURTROOM ADMINISTRATOR: All rise.

22 (Jury returned to courtroom at 10:49 a.m.)

23 THE COURT: Jury may go ahead and be seated.

24 Everyone else may be seated afterwards.

25 All right. So before we begin with the next witness,

1 which is actually Mr. Ellis, Alex Ellis, thank you for coming
2 back and returning. We welcome you back, the Government did
3 finish its direct examination and we will be starting
4 cross-examination with Mr. Ellis in a moment, but first I want
5 to read a Jury Note No. 32, which asks, "If we don't understand
6 a word, can we look it up -- can we look up the definition?"
7 And so, I'm sorry, but the answer is no. You need to let us
8 know if there is a word that you want clarified. So feel free
9 to do so. If there is a word that you're not sure how it's
10 being used or what it means or sometimes if you're not even
11 sure if you heard it properly, please, feel free to write down
12 the note and let us know so that we can get that clarified for
13 you.

14 All right. So, let's go ahead and begin with
15 cross-examination --

16 MR. TANASI: Thank you, Your Honor.

17 THE COURT: -- for Mr. Stewart.

18

19

ALEX ELLIS,

20 called as a witness on behalf of the Government, having been
21 first duly sworn, was examined and testified as follows:

22

23

CROSS-EXAMINATION OF ALEX ELLIS

24 BY MR. TANASI:

25 Q. Good morning, Mr. Ellis.

1 A. Good morning.

2 Q. I'm Rich Tanasi. I represent Steven Stewart (indicating).
3 I've got a few questions for you on cross. Okay?

4 A. Okay.

5 Q. All right. At some point on the 12th you wind up at -- on
6 the northbound bridge; correct?

7 A. Yes.

8 Q. All right. At some point on the 12th you then go from the
9 northbound bridge into the wash?

10 A. Yes.

11 Q. Okay. And when you're in the wash, how far do you go? Do
12 you go as far as underneath the southbound bridge or -- or
13 where?

14 A. Yes. Up to the gate.

15 Q. Go right up to the gate?

16 A. Yes.

17 Q. Okay. Did you ever cross over the gate?

18 A. No.

19 Q. No?

20 All right. And so you're at the gate and as you're
21 traveling from the northbound bridge to the southbound bridge,
22 is it fair to say that at some point you've got your back to
23 the northbound bridge; right?

24 A. Yes.

25 Q. Okay. And then when you're kind of down there underneath

1 the southbound bridge, at least at some point maybe you have
2 your side turned around, your back to the northbound bridge.
3 Fair?

4 A. Yes.

5 Q. Okay.

6 MR. TANASI: Brian, if you could please bring up
7 Exhibit 13a and go 31 seconds in.

8 BY MR. TANASI:

9 Q. And while we're cueing this up, back to kind of the last
10 line of questioning. When you're -- when you have your back at
11 some point to the northbound bridge, you'd agree with me that
12 articulates people on the northbound bridge at that point, too;
13 right?

14 A. Yes.

15 Q. Okay. So you have your back not only to the bridge, but
16 to the folks that are up on the bridge; right?

17 A. Correct.

18 Q. All right.

19 MR. TANASI: Go ahead, Brian. Is this 31 -- okay.
20 Stop. If you can back it up just a little, Brian.

21 All right. Stop right there.

22 (Screenshot published.)

23 BY MR. TANASI:

24 Q. Okay. So at 29 seconds, is this picture or this view kind
25 of indicative of where you were standing underneath the

1 southbound bridge?

2 A. No. At this point I was still at the northbound.

3 Q. You're still at the northbound bridge?

4 A. Yes.

5 Q. Okay. So, but does this -- does this view right here look
6 like what you would have seen when you were at the southbound
7 bridge at whatever point in time you were underneath the
8 southbound bridge?

9 A. Yes.

10 Q. All right. Now, the video's going to kind of pan -- and
11 we'll watch it do it -- back to the northbound bridge.

12 (Exhibit 13a published.)

13 MR. TANASI: Brian, if you could do that and then
14 stop it as it first picks up the northbound bridge.

15 Stop. All right. Can you back up a little more
16 before it zooms, please.

17 All right. Stop. Thank you.

18 (Screenshot published.)

19 BY MR. TANASI:

20 Q. Okay. So, is this view as you look at it here, is this
21 kind of an example of what it looked like for you when you were
22 on the -- underneath the southbound bridge kind of looking back
23 towards the northbound bridge?

24 A. Yes. When I was under the southbound bridge.

25 Q. Understood. So when you're under the southbound bridge,

1 you're turning, you're looking back at the northbound bridge,
2 this picture is a good illustration of that. You'd agree with
3 me?

4 A. Yes.

5 Q. All right.

6 MR. TANASI: Brian, if you could cue up Exhibit 8 at
7 1:19, please.

8 (Exhibit 8 published.)

9 13a

10 Court's indulgence, Your Honor.

11 THE COURT: Okay.

12 (Counsel conferring.)

13 MR. TANASI: Okay. I apologize. That's Exhibit 8.
14 We're going to get back to that 31 second -- or 1 minute and 19
15 second mark.

16 All right. Stop it.

17 (Screenshot published.)

18 BY MR. TANASI:

19 Q. Okay, sir. On this video we're stopped at 56 seconds. Do
20 you see that law enforcement vehicle there (indicating)?

21 A. Yes.

22 Q. It's NHP; right?

23 A. Sorry?

24 Q. Is that NHP?

25 MR. MYHRE: Objection, Your Honor, as to this

1 witness' perception of what these -- what vehicles are, who
2 they belong it. It's not relevant.

3 BY MR. TANASI:

4 Q. Did you see this vehicle, sir?

5 THE COURT: Well, the objection was the relevance of
6 this person's identification or ability to identify a vehicle
7 because we don't know how -- what his experience or foundation
8 would be. So the objection is sustained.

9 MR. TANASI: Understood.

10 BY MR. TANASI:

11 Q. Did you see that vehicle there when you were on the
12 bridge, without saying what the vehicle is or whose vehicle it
13 is?

14 A. I do not recall seeing it.

15 Q. Don't recall seeing that vehicle or any vehicle like that
16 on the 12th?

17 A. Right. I was not here at the -- when this was being
18 filmed. This is when Mr. Flynn and I were separated.

19 Q. Okay. So you didn't film this portion?

20 A. No, I did not.

21 Q. All right. At any time while you were on the bridge did
22 you see a vehicle like this or any other vehicle that looked
23 like this?

24 A. Not that I recall.

25 Q. Okay. Prior to today's testimony, did you have an

1 opportunity to meet with the FBI?

2 A. Not since last week.

3 Q. Okay. Prior to that, had you had an opportunity to meet
4 with the FBI?

5 A. Yes.

6 Q. How many times?

7 A. Three, I believe.

8 Q. Okay. And did you also have an opportunity to meet with
9 the U.S. Attorney's Office?

10 A. Yes.

11 Q. How many times?

12 A. I believe only twice.

13 Q. All right. Thank you.

14 MR. TANASI: I'll pass the witness.

15 THE COURT: On behalf of Mr. Parker?

16 MR. MARCHESE: Thank you, Your Honor.

17

18 CROSS-EXAMINATION OF ALEX ELLIS

19 BY MR. MARCHESE:

20 Q. Good afternoon, sir.

21 A. Afternoon.

22 Q. I'm just going to go back a little bit. I know we kind of
23 broke your testimony up a little bit.

24 So, turning your attention to April 12th of 2014, you
25 went to the Bunkerville area with Mr. Flynn; correct?

1 A. Correct.

2 Q. Okay. And we saw some videos that you -- that were
3 played.

4 Do you remember those?

5 A. Yes.

6 Q. Okay. In one of the particular videos you identified my
7 client, Mr. Parker. I don't know if you remember back then, he
8 had a shaved head and he was wearing like a plaid shirt?

9 A. Yes.

10 Q. Okay. And you had testified that you remembered seeing
11 him in the crowd that morning by the stage.

12 Do you remember that?

13 A. Yes.

14 Q. Okay. How many people were in the crowd at that time,
15 approximately?

16 A. Several hundred maybe. Between 2 and 3.

17 Q. Okay. And on direct examination you had testified that
18 he -- he had a weapon on him or something along those lines, I
19 believe?

20 A. Um . . . I believe so.

21 Q. Okay. And then the prosecution went back and they showed
22 you it and he actually did not have a weapon him, I believe.

23 A. Correct.

24 Q. Okay. Now, what was it that made you remember Mr. Parker
25 from that morning, from the stage?

1 A. He stood out from most of the other people there as he was
2 wearing a chest rig with magazines for a rifle in them.

3 Q. All right. But there were other people there with the --
4 I believe -- what did you say, chest what?

5 A. Chest rig.

6 Q. With chest rigs on; correct?

7 A. Correct, but they seemed to be together in a group whereas
8 he was separate on his own.

9 Q. Okay. You mean he was by himself is your testimony?

10 A. Yes.

11 Q. Okay. Now, you were present for --

12 THE COURT: Can we have you clarify which "he." I
13 think you talked about different individuals.

14 BY MR. MARCHESE:

15 Q. He as in Mr. Parker?

16 THE COURT: So which individual is together and which
17 individual is separate? You just said "he," "he," "he," so I'm
18 just trying to figure out which one you're referring to.

19 Can you ask the question? It may be a little bit
20 easier.

21 BY MR. MARCHESE:

22 Q. Now, when you say "he," I would imagine and I'm not trying
23 to put words in your mouth, but I would imagine you're
24 referring to Mr. Parker?

25 A. Correct.

1 Q. Okay. So Mr. Parker was by himself would be your
2 testimony?

3 A. He was not with a group.

4 Q. Okay. So if he's not with a group, he's by himself?

5 A. Correct.

6 Q. Okay. Now, we played -- I believe it was played for
7 you -- the sheriff's speech in reference to Mr. Bundy?

8 A. Yes.

9 Q. Okay. And after the sheriff gave his speech, the crowd
10 was happy; correct?

11 A. Yes.

12 Q. Said something to the effect of there was a press release,
13 that the BLM is ceasing their operation.

14 Do you remember that?

15 MR. MYHRE: Objection, Your Honor. I don't believe
16 we went through that with this witness on direct.

17 MR. MARCHESE: Well, regardless, we've laid the --
18 you were at the stage; correct?

19 THE COURT: Well, there's an objection pending. So
20 the objection is that it's beyond the scope of direct?

21 MR. MYHRE: Yes, Your Honor.

22 MR. MARCHESE: Your Honor, I --

23 THE COURT: The question is about the speech at the
24 rally. We discussed the speech at the rally on direct.

25 MR. MARCHESE: I was under the assumption that we

1 did. We might not have gone into the specifics, but I believe
2 he asked if we -- if he had heard it or something along those
3 lines, because that was when we talked about the mood of the
4 crowd, I believe.

5 THE COURT: So what -- so what is your question? Say
6 it again for me.

7 MR. MARCHESE: You heard when the sheriff gave --
8 said that the -- there was a press release, that the BLM was
9 ceasing their operations?

10 THE COURT: That's fine. He can answer that
11 question.

12 Overruled.

13 BY MR. MARCHESE:

14 Q. You heard that, sir?

15 A. Heard what? Sorry?

16 Q. When the sheriff spoke -- do you remember the sheriff
17 speaking?

18 A. Yes.

19 Q. And you heard when he gave the speech and he said
20 something to the effect of that there was a press release that
21 the BLM was ceasing their operations?

22 A. Yes.

23 Q. Do you remember that?

24 A. I do remember hearing that.

25 Q. Okay. And that the Gold Butte allotment would be reopened

1 to the public.

2 Do you remember that?

3 A. Yes.

4 Q. Did you know where the Gold Butte allotment was at the
5 time?

6 A. At the time, no, I didn't.

7 Q. Okay. And that the BLM would be removing their assets or
8 something along those lines; right?

9 A. Yes.

10 Q. Okay. And the crowd cheered and they were happy; correct?

11 A. Correct.

12 Q. And then at some point in time you went to the area that
13 you later found out was the Gold Butte allotment; right?

14 A. Yes.

15 Q. And I believe you drove Mr. Flynn; right?

16 A. Correct.

17 Q. We saw a video of that part -- partially; correct?

18 A. Yes.

19 Q. Okay. And you got there and you parked. You get out of
20 your vehicle; correct?

21 A. Um-hmm, yes.

22 Q. A lot of people there?

23 A. Yes.

24 Q. Okay. Did you see Mr. Parker at that point when you were
25 in the parking lot area?

1 A. Not in the parking lot area.

2 Q. Okay. When was the next time you saw Mr. Parker? Would
3 it have been when you -- well, when Mr. Flynn took the video of
4 him on the bridge?

5 A. A little bit before that. As we were arriving, or shortly
6 after we had arrived at the bridge.

7 Q. Okay. And then when you were still in the parking lot,
8 you saw Mr. Parker?

9 A. I did not see Mr. Parker at the parking lot.

10 Q. Okay. And at some point in time you went to the
11 northbound bridge?

12 A. Yes.

13 Q. Okay. When you went to the northbound bridge, was that
14 the general flow of the people? Were most of the people going
15 to the northbound bridge?

16 A. Yes.

17 Q. Okay. And at what point did you separate from Mr. Flynn?

18 A. Shortly before going to the northbound bridge.

19 Q. Okay. So Mr. Flynn did not go to the northbound bridge
20 with you?

21 A. He did.

22 Q. He did?

23 A. We rejoined and went together.

24 Q. Okay. So you're in the parking lot, you separate, you
25 rejoin, and then he leaves again. Is that a correct statement

1 of your testimony?

2 A. Not quite.

3 Q. Okay. All right. So you're with him in the parking lot;
4 right?

5 A. Yes.

6 Q. When do -- you separate again?

7 A. After arriving at the northbound bridge.

8 Q. Okay. To your knowledge, where did Mr. Flynn go, if you
9 know?

10 A. After arriving down at the northbound bridge he went down
11 into the wash towards the southbound.

12 Q. Okay. And where were you at that time?

13 A. I was still atop the northbound bridge.

14 Q. Okay. And did Mr. Flynn then come back or did you go to
15 him?

16 A. I went to him.

17 Q. Okay. And at what point was that?

18 A. That was after the crowd reached the gate.

19 Q. And then at some point in time the crowd moved back;
20 correct?

21 A. Yes.

22 Q. Okay. And Mr. Tanasi, I believe, had just shown you that
23 video. I think it might have been Exhibit 13a.

24 Do you remember that?

25 A. The crowd moving back?

1 Q. The crowd moving back, yes.

2 A. Yes.

3 Q. Are you in the wash at that point or no?

4 A. I apologize. It's been awhile.

5 When the crowd moves back, yes, I was in the wash.

6 Q. Okay. Had you got to Mr. Flynn or are you walking in that
7 direction at that point?

8 A. I was with Mr. Flynn. I believe that was around the time
9 we conducted the interview with Ammon Bundy.

10 Q. Okay. And that's the one that's under the southbound
11 bridge; correct?

12 A. Yes.

13 Q. When you went into the wash, what was the route that you
14 took?

15 A. Straight down and across.

16 Q. Okay. And when you say across, you were on the
17 embankment; correct? Of the northbound bridge at first; right?

18 A. Yes.

19 Q. And then you just went straight across to the southbound
20 bridge; correct?

21 A. Straight down to the middle where the gate was.

22 Q. Okay. So you never went up on the embankment under the
23 southbound bridge. Is that fair to say?

24 A. Yes.

25 Q. Okay.

1 MR. MARCHESE: Brief indulgence.

2 (Brief pause in proceedings.)

3 MR. MARCHESE: Pass the witness, Your Honor.

4 THE COURT: Just to clarify. When you're separated
5 from Mr. Flynn and Mr. Flynn, you said, went down the bridge
6 but you're still up on the bridge, are you seeing him? Are you
7 watching him?

8 THE WITNESS: Yes, I'm able to see him.

9 THE COURT: Okay.

10 Cross for -- on behalf of Mr. Drexler.

11 MR. LEVENTHAL: Yes. Thank you.

12

13 CROSS-EXAMINATION OF ALEX ELLIS

14 BY MR. LEVENTHAL:

15 Q. Good morning, sir.

16 A. Good morning.

17 Q. My name is Todd Leventhal. I represent Mr. Drexler.

18 So, you came down, Mr. Ellis, on the 11th or the
19 12th?

20 A. Both.

21 Q. Both.

22 Okay. And you came from Utah?

23 A. Yes.

24 Q. And you came with Mr. Flynn; correct?

25 A. Correct.

1 Q. Who drove?

2 A. He did.

3 Q. He did. In his vehicle?

4 A. Yes.

5 Q. Okay. So his vehicle would have had Utah plates?

6 A. Yes.

7 Q. License plates?

8 Okay. And why did you come down?

9 MR. MYHRE: Objection, Your Honor. Relevance.

10 MR. LEVENTHAL: It would go to bias, Your Honor.

11 If he came down --

12 MR. MYHRE: I don't see there's any bias established
13 by why he came down.

14 THE COURT: Yeah. I mean, let's go to sidebar.

15 (Proceedings at sidebar out of the hearing of the jury:)

16 THE COURT: All right. So we're at sidebar.

17 Mr. Leventhal, what do you think that the answer is going to be
18 that you're trying to elicit?

19 MR. LEVENTHAL: Well, it doesn't really matter. If
20 he comes -- if he says that he came --

21 THE COURT: Well, it does matter because if you don't
22 have a good faith belief, then you shouldn't be asking the
23 question.

24 MR. LEVENTHAL: Oh, no, no, no. I didn't mean it
25 that way. I didn't mean that. I do have a good faith belief

1 because I believe, based on the fact that he's tendered, if you
2 remember the last -- the last trial, he tendered or authored an
3 opinion that the Court was allowing me to get into which said
4 something about police states, something along those lines, you
5 remember, and that I -- police states, where he talked about
6 Margaret Houston being thrown down and all the -- he's got some
7 strong opinions, but I don't know if that opinion was before or
8 after. But, when I say it doesn't matter, what I'm saying
9 is if he -- even if he --

10 THE COURT: No. He wrote an article or a blog --

11 MR. LEVENTHAL: He did. He --

12 THE COURT: -- or a commentary after this event --

13 MR. LEVENTHAL: Correct. However, prior --

14 THE COURT: -- not before. So that wasn't the reason
15 he went.

16 MR. LEVENTHAL: Correct. And so my --

17 THE COURT: So what is your good faith basis to
18 believe he's going to say something that is not irrelevant?
19 Because that was the objection, was relevance.

20 MR. LEVENTHAL: Right. And so, it would go to bias,
21 one, because he indicated he -- he downplayed it, so it would
22 go to bias, but then when I say it doesn't matter, I didn't
23 mean it doesn't matter. Even if he says no, I came down here
24 to work, then it would go to the weight of the evidence. If
25 they came down here to work -- which I don't know what he's

1 going to say to be quite honest with you -- but if he came to
2 work, then it would go to -- and it would be a good faith basis
3 to believe that if he came down here to work, it would go to
4 the weight of the evidence and the videos that we saw and
5 whether or not -- and then I'm also going to get into, you
6 know, whether he was with him, because the Court indicated I'm
7 allowed to test the -- not the authenticity because it's
8 already been brought, but the weight of the evidence. So, he
9 could -- when I say it doesn't matter, if he had a reason for
10 coming down, then that would be bias. If he's biased against
11 the Bundys, because he's -- also, he commented, in many of his
12 editorials, that he hated the Bundys and he thought they were
13 freeloaders of some sort. But if he says he came down because
14 he also hates the police, he's a very dynamic -- he has both
15 views both ways. He goes against the Bundys, but he also goes
16 against strong police. So, there is clear bias there, but if
17 he doesn't get into that and he gets into, again, he came down
18 here for work, which is what, apparently, according to the
19 videos, it says he was doing, when the -- Mr. Flynn says, you
20 know, you're a liability, get away, you can't be here, if he
21 came here to work, then it would go to the weight of the
22 evidence.

23 THE COURT: Mr. Myhre.

24 MR. MYHRE: Well, Your Honor, I'm not sure exactly
25 how to respond to that directly other than to say that at the

1 last trial Mr. Leventhal used this same line of questioning to
2 adduce from the witness that he had seen videos of
3 Margaret Houston being thrown to the ground -- oh, I'm sorry --
4 that he saw videos of Margaret Houston being thrown to the
5 ground; that he had, you know, subsequently authored a opinion
6 piece about that as to, you know, he -- I'm assuming he wants
7 to adduce evidence that he came down because he had seen those
8 things and he was curious as to what was going on. So we don't
9 see the relevance of any of this. It doesn't -- doesn't go to
10 a defense. It doesn't go to an element of the offense as to
11 why this witness came down. It gets into this whole area that
12 the Court has already ruled upon.

13 MR. LEVENTHAL: I just -- briefly, I --

14 THE COURT: I agree. Sustained.

15 MR. LEVENTHAL: No, and just briefly. I -- I -- he's
16 also authored things against the Bundys, very strong opinions
17 against the Bundys and both him and Mr. Flynn have authored
18 those things up, so there's two different roles. It's not -- I
19 wasn't asking because of -- I was expecting him to say, and I
20 don't think I got him to say that he watched Margaret Houston
21 being taken down. The purpose of last time was because of an
22 article, but I'll move on.

23 (Proceedings within hearing of the jury:)

24 THE COURT: All right. The objection is sustained.

25 BY MR. LEVENTHAL:

1 Q. Okay. So --

2 THE COURT: You may ask a different question,
3 Mr. Leventhal.

4 MR. LEVENTHAL: Thank you.

5 BY MR. LEVENTHAL:

6 Q. Mr. Ellis, so, let's go right to where the rally was on
7 the 12th. Can we bring you there?

8 A. Sure.

9 Q. Thank you.

10 Okay. So, you were asked some questions you saw the
11 sheriff's speech and I won't go through that, but you saw that
12 speech?

13 A. I did.

14 Q. Okay. And approximately how many people were out there?
15 About 200 to 300? Is that what you indicated?

16 A. Yes.

17 Q. Okay. And some people were in camo, camo gear?

18 A. Some of them, yes.

19 Q. Okay. And many were not in camo gear; correct?

20 A. Correct.

21 Q. Okay. And do you see people with any sort of
22 communications, any earpieces, things of that nature?

23 A. Some of the news media members.

24 Q. Okay.

25 A. Other than that, I can't recall.

1 Q. Do you remember whether any of the people in the camo in
2 the front -- and we saw some video where you see people in camo
3 in the front -- had any communications?

4 A. I don't recall.

5 Q. Okay. All right. If we can go to 5b.

6 Now, this was a video that Mr. Flynn made; correct?

7 A. Correct.

8 Q. Okay.

9 MR. LEVENTHAL: And if we could go to 17 seconds.

10 Play it from there.

11 (Exhibit 5b published.)

12 BY MR. LEVENTHAL:

13 Q. And just -- this is where he's singing the national
14 anthem; correct?

15 A. Correct.

16 Q. Is this before Mr. Bundy took the stage?

17 A. Mr. Bundy took the stage twice.

18 Q. I'm sorry. Before the sheriff took the stage?

19 A. This would be afterwards.

20 Q. After the sheriff took the stage while everybody was
21 waiting around?

22 A. Yes.

23 Q. Okay.

24 MR. LEVENTHAL: Go ahead.

25 (Exhibit 5b published.)

1 You can stop right there.

2 BY MR. LEVENTHAL:

3 Q. Okay. So, so far we see a bunch of people with a flag
4 here (indicating); correct?

5 A. Correct.

6 Q. And a sign here (indicating); correct?

7 A. Yes.

8 Q. A lot of people with their hats off listening to the
9 national anthem; correct?

10 A. Yes.

11 MR. LEVENTHAL: Okay. Go ahead.

12 (Exhibit 5b published.)

13 Stop right there.

14 BY MR. LEVENTHAL:

15 Q. Okay. Did you see this (indicating) raise here, that --
16 what I've circled in the middle?

17 A. What am I drawing my attention to?

18 Q. This -- right where I circled. Did I -- did you see that?

19 A. And what was your question?

20 Q. Did -- did -- do you recognize what that is?

21 A. It appears to be a camera.

22 Q. A camera. Okay. It's -- it's pretty long. It has a
23 long, sort of a microphone on it; correct?

24 A. Yes.

25 Q. Okay.

1 MR. LEVENTHAL: If we can go to 1:04.

2 (Screenshot published.)

3 BY MR. LEVENTHAL:

4 Q. Now, you were shown this picture on direct; correct?

5 A. Correct.

6 Q. Okay. Now, you didn't actually see Mr. Drexler, my
7 client, at the rally; correct?

8 A. I did.

9 Q. You did? Okay. And do you -- how were you able to make
10 him out?

11 A. As I said before, he stood out from the other people there
12 by the rig that he was wearing and the magazines he was
13 carrying.

14 Q. Okay. Were you able to tell me where the magazines are --
15 can you tell me which one Mr. Drexler is in this picture?

16 A. He's the one wearing the chest rig with the magazines in
17 it and the plaid shirt.

18 Q. Can you circle him, please.

19 A. (Witness complies).

20 Q. Okay. So that's Mr. Drexler to you?

21 A. Oh, my apologies. I had names mixed up.

22 Q. No problem.

23 A. No. This was not him.

24 (Witness complies).

25 Q. Okay. So that's Mr. Drexler to you?

1 A. Yes, but I did not come to know this until after the
2 rally.

3 Q. Okay. How far -- how long after?

4 A. Very long time. Not until before previously testifying, I
5 believe.

6 Q. Okay. So, it was after you met with the Government?

7 A. Yes.

8 Q. Okay. So if I were to tell you that that, in fact, is not
9 Mr. Drexler --

10 THE COURT: Just a minute. Just a minute.

11 Mr. Ellis, did you know the first name of this
12 person?

13 THE WITNESS: No. I never learned his name, at least
14 while I was there.

15 THE COURT: Okay. Go ahead.

16 BY MR. LEVENTHAL:

17 Q. If I were to tell you that, in fact, Mr. Drexler is --
18 that is not Mr. Drexler, would you disagree or agree with me?

19 MR. MYHRE: Objection as to the relevance of the --
20 he did not identify anybody at the time and the subsequent
21 identifications have not been at issue here. We've not offered
22 Mr. Ellis to make in-court identifications of anybody.

23 MR. LEVENTHAL: Absolutely.

24 THE COURT: Sustained.

25 MR. LEVENTHAL: Your Honor, Mr. Ellis was requested

1 and asked on direct if he saw Mr. Drexler at the rally and he
2 indicated he did. Now he's -- can't. So, he was asked that.
3 He was asked all three individuals.

4 MR. MYHRE: Your Honor, I asked --

5 THE COURT: I don't recall that.

6 MR. MYHRE: The Government doesn't recall it either,
7 Your Honor. We asked -- recall showing him this scene as to
8 whether he recalls these individuals being there, but did not
9 ask him to name them or identify them.

10 THE COURT: Yeah. I thought he only knew the name of
11 -- the first name of the one he interviewed up on the bridge.
12 I don't remember him being asked to identify anyone by name.

13 So, the objection is sustained.

14 BY MR. LEVENTHAL:

15 Q. These three individuals, they're just standing around;
16 correct?

17 A. Correct.

18 Q. Okay. No pointing of guns? No? Correct?

19 A. Does not appear to be so.

20 Q. And none of them are in any kind of camo; right?

21 A. Correct.

22 MR. LEVENTHAL: If we can go to Number 6, please,
23 Brian.

24 And go to 1:28, Brian.

25 Stop. Right there. That's good. Okay. Thank you.

1 (Screenshot published.)

2 BY MR. LEVENTHAL:

3 Q. Now, these gentlemen you had identified in the front in
4 camo, you identified them as who?

5 A. I believe they identified themselves as being
6 Oath Keepers.

7 Q. Okay. And clearly, they're all in camo; correct?

8 A. Correct.

9 Q. Okay. This gentleman has a -- what I'm circling is a --
10 some kind of a communication device; correct?

11 A. Yes.

12 Q. Okay.

13 MR. LEVENTHAL: Okay. If we can pull up 192, Brian.

14 (Exhibit 192 published.)

15 BY MR. LEVENTHAL:

16 Q. I'm going to show you a picture of Bunkerville and ask
17 you, if you could, do you know where on here would be the
18 staging area that you were at? If you can -- if you can --
19 want to orient yourself, the I-15 is here (indicating).

20 A. Right. Okay.

21 MR. MYHRE: Your Honor, this exceeds the scope of the
22 direct. We did not have the witness cover this map or this --
23 point out all the geographic features on this map.

24 MR. LEVENTHAL: Your Honor, I'm not asking for
25 geographic, I'm only asking -- and they did -- the Government

1 provided video of him driving on the 15 with a bunch of law
2 enforcement in front of him. So, my -- I'm going to limit my
3 questions on how long it took him to get there and which
4 direction he took.

5 THE COURT: This exhibit wasn't shown to the witness.

6 MR. LEVENTHAL: No. I -- it's a map.

7 If he knows how he got there.

8 THE COURT: So the objection is that it's beyond the
9 scope of direct?

10 MR. MYHRE: Beyond the scope, Your Honor, yes.

11 THE COURT: It's beyond the scope of direct.

12 MR. LEVENTHAL: Okay.

13 BY MR. LEVENTHAL:

14 Q. How did you get from the rally to the wash?

15 A. From the rally to the wash?

16 Q. Yes.

17 A. We drove.

18 Q. Okay. And what road did you take?

19 A. I'm not sure of the name of it.

20 Q. Okay. At some point did you get on the 15?

21 A. Yes.

22 Q. Okay. Do you know where that was in comparison to how
23 far -- how far it was when you left in five minutes, 10
24 minutes?

25 A. It was hard to tell. Tensions were running high at the

1 time.

2 Q. Okay. And so when you got on the I-15, do you know how
3 long it took you before you parked?

4 A. Only several minutes.

5 Q. Several minutes. Okay.

6 If we could go to video 8, please, Brian.

7 BY MR. LEVENTHAL:

8 Q. Now, Mr. -- Mr. Flynn drove; correct?

9 A. Correct.

10 Q. Okay. And he parked in the parking lot I believe your
11 testimony was; right?

12 A. Yes.

13 Q. Okay.

14 MR. LEVENTHAL: If we could go to 1:29.

15 Okay. Stop right there.

16 (Screenshot published.)

17 BY MR. LEVENTHAL:

18 Q. Okay. So this would have been the parking lot?

19 A. Yes.

20 Q. Okay. So, we've got people here (indicating). Here
21 (indicating), this gentleman has -- he's holding what appears
22 to be what?

23 A. I'm not sure exactly. Some kind of stick.

24 Q. Okay. We've got a sign here (indicating)?

25 A. Yes.

1 Q. Okay. We've got people just standing here (indicating);
2 correct?

3 A. Correct.

4 Q. And this was true and accurate when you got there?

5 A. Yes.

6 Q. Okay. You don't see anybody in this picture pointing any
7 guns at anybody; correct?

8 MR. MYHRE: Objection. Argumentative, Your Honor.

9 THE COURT: Sustained.

10 MR. LEVENTHAL: Okay. If we could go to 1:33.

11 Stop. Right there.

12 (Screenshot published.)

13 BY MR. LEVENTHAL:

14 Q. Okay. Do you see this gentleman holding a camera
15 (indicating)?

16 A. I do.

17 Q. Do you see this gentleman holding a camera (indicating)?

18 MR. MYHRE: Objection, Your Honor. This, again, is
19 argument. Is there a -- this witness was not brought to
20 identify individuals in this particular video, or any of the
21 videos.

22 MR. LEVENTHAL: I -- I -- Your Honor, I'm not asking
23 him to identify any individuals; I'm asking him to identify
24 cameras versus guns because obviously that's going to be a
25 point of contention as we go forward.

1 MR. MYHRE: Then it's irrelevant.

2 THE COURT: I think the objection is are you asking
3 him to identify what is visible or what he saw on the day that
4 he was there or -- I'm not sure that I even understand --

5 MR. LEVENTHAL: My problem is this: I don't know
6 what he saw because I don't know when he was with Mr. Flynn,
7 who's taking these videos, and when he's not, okay, and the
8 Court has only required that it's a true and accurate
9 description of what was --

10 THE COURT: He's never said that he was not with
11 Mr. Flynn except when Mr. Flynn was going down the bridge and
12 he was standing above the bridge watching Mr. Flynn go down the
13 bridge.

14 MR. LEVENTHAL: Actually, he indicated that he went
15 back to his vehicle at some point when he was told he was a
16 liability.

17 THE COURT: Right. So you're asking if this is the
18 point where he went back to his vehicle, to the truck?

19 MR. LEVENTHAL: No. I'm asking if he saw this and
20 recognized people in the wash holding video cameras.

21 MR. MYHRE: Your Honor, he can ask whether he recalls
22 seeing that, but to go through these videos and just point out
23 things and ask him to describe what he's seeing, this witness
24 was not offered by the Government to identify different objects
25 that are -- appear in these videos, just what he recalls doing

1 when he was in the wash and what he saw.

2 THE COURT: All right. The objection is sustained.

3 BY MR. LEVENTHAL:

4 Q. Okay. At some point, sir, you went to the bridge?

5 A. Correct.

6 Q. From the parking area; correct?

7 A. Yes.

8 Q. Okay. And a lot of people went to the bridge from the
9 parking area?

10 A. Yes.

11 Q. Okay. Were they running or were they walking or how were
12 they getting there?

13 A. Mixture of both.

14 Q. Mixture of both. Okay.

15 All right.

16 MR. LEVENTHAL: If we can go to 9a.

17 Go to 17 seconds, please.

18 Okay. Stop. You can stop right there.

19 (Screenshot published.)

20 BY MR. LEVENTHAL:

21 Q. Now, when you were -- this is Flynn's video. You were
22 with him at this point; correct?

23 A. Correct.

24 Q. Okay. So you saw these people (indicating) over here;
25 correct? Under -- they weren't under the -- they were beyond

1 the southbound bridge; correct?

2 A. Yes.

3 Q. Okay. And you saw -- were you able to identify what this
4 gentleman was carrying (indicating)?

5 A. Not at the time. I was standing some hundred yards away.

6 Q. Okay.

7 MR. LEVENTHAL: If we can go to 26 seconds. Keep
8 going. Keep going. Keep going.

9 Stop.

10 (Screenshot published.)

11 BY MR. LEVENTHAL:

12 Q. Okay. Now, you see these people here (indicating) on
13 this -- would be the northbound bridge; correct?

14 A. Correct.

15 Q. Okay. But there's nobody sort of down in this area
16 (indicating); correct?

17 A. There doesn't seem to be.

18 MR. LEVENTHAL: If we could go to video 10, please.
19 Go to 1:51, please, Brian.

20 Stop right there.

21 (Screenshot published.)

22 BY MR. LEVENTHAL:

23 Q. Okay. Were you -- Mr. Ellis, were you able to see these
24 gentlemen (indicating) beyond the southbound bridge when you
25 were in the wash?

1 A. Yes.

2 Q. Okay.

3 A. Wait. When I was in the southbound?

4 Q. No. When you were in the wash.

5 A. When I was in the wash?

6 Q. Yes.

7 A. I believe that at the time that I went into the wash they
8 were clearing out.

9 Q. Okay. Were you able to see these people, though?

10 MR. MYHRE: At what point in time, Your Honor?
11 Foundation as to time.

12 THE COURT: Time?

13 MR. MYHRE: Or Mr. Ellis' location.

14 BY MR. LEVENTHAL:

15 Q. Well, this video indicates -- I don't -- these videos,
16 were these stamped videos?

17 A. Yes, they were.

18 Q. Okay. How would I get -- how would I know what time this
19 was on your time stamped video?

20 A. It's included in the metadata, the EXIF data.

21 Q. Okay. So it's not stamped on the video itself?

22 A. It's embedded in the file.

23 Q. Okay.

24 THE COURT: Your question is, is it visible?

25 MR. LEVENTHAL: Is it visible. Yeah. Sorry.

1 BY MR. LEVENTHAL:

2 Q. It's not visible?

3 A. Not currently, no.

4 Q. Okay. So we'd have no way of knowing what time this was
5 at, other than by the sequence of the videos; correct?

6 A. Correct.

7 Q. Okay. Would it help if I played it back a little bit to
8 get you oriented on what time this would be?

9 A. Sure.

10 MR. LEVENTHAL: Okay. If we could just back up a
11 little bit.

12 MR. MYHRE: Your Honor, I think the Government's
13 objection was as to foundation as to where Mr. Ellis was at the
14 time that this was taken, not necessarily what time of day it
15 was.

16 THE COURT: Right. But I think that he couldn't
17 answer that because we were zoomed in too close, so
18 Mr. Leventhal was going to rewind it a bit to get some
19 perspective?

20 MR. LEVENTHAL: Back up. Yes.

21 BY MR. LEVENTHAL:

22 Q. Does this help you get some perspective as to the time or
23 do you want me to back up a little more?

24 A. Yes. I believe I know when this is.

25 Q. Okay. When was this?

1 A. This was while I was standing on the northbound bridge.

2 Q. On the northbound bridge. Okay. So, this would have
3 been -- you would be standing next to Mr. Flynn then; correct?

4 A. Yes.

5 Q. Because this is a shot taken from the northbound bridge;
6 correct?

7 A. Correct.

8 Q. Okay. All right.

9 MR. LEVENTHAL: If we can go forward. And if we can
10 go back up to 1:51.

11 Okay. Stop.

12 (Screenshot published.)

13 BY MR. LEVENTHAL:

14 Q. So you were able to see these gentlemen here (indicating)?

15 A. Yes.

16 Q. Okay. Does it look like these gentlemen here are pointing
17 any rifles or anything?

18 MR. MYHRE: Objection, Your Honor. Again --

19 MR. LEVENTHAL: I'm asking from the video.

20 MR. MYHRE: -- relevance, and it goes to the pretrial
21 matters that we've discussed.

22 THE COURT: Again, are you asking him whether he can
23 see in this video right now that's blown up on the movie screen
24 what's on it, or if he could see when he was on the bridge?

25 MR. LEVENTHAL: I'd like -- what he saw on the

1 bridge.

2 THE COURT: Okay. Then ask him if he -- from his
3 vantage point of the bridge, if he could see.

4 BY MR. LEVENTHAL:

5 Q. Were you able to see these individuals on the bridge?

6 A. I could see them, yes.

7 Q. Okay. And you were able to see them pointing their
8 weapons?

9 A. I could not --

10 MR. MYHRE: Objection, Your Honor. Again, assumes
11 facts not evidence.

12 THE COURT: Overruled. He can answer the question.

13 THE WITNESS: From where I was standing, I couldn't
14 tell. It was too far to see them clearly.

15 BY MR. LEVENTHAL:

16 Q. Okay.

17 MR. LEVENTHAL: If we could go to 2:20, Brian.

18 (Screenshot published.)

19 BY MR. LEVENTHAL:

20 Q. Again, we just went forward a few seconds; correct,
21 Mr. Ellis?

22 A. Correct.

23 Q. Okay. And you -- you -- you recognize this picture or
24 these people in the wash; correct?

25 A. Correct.

1 Q. Okay.

2 MR. LEVENTHAL: If we can go to Number 12, Brian, and
3 go to 15 seconds.

4 BY MR. LEVENTHAL:

5 Q. Now, Mr. Flynn, when these were shown to you, 5, 6, 7, 8,
6 9, Government's exhibit, these are all done in sequential
7 order; correct?

8 A. Apologies. I'm not -- I'm not Mr. Flynn.

9 Q. I -- I apologize, Mr. Ellis. I'm sorry.

10 These were not done in sequential -- these were done
11 in sequential order; correct?

12 A. The videos?

13 Q. Yes.

14 A. Were taken in sequential order.

15 Q. Yes, but they were -- so, but when they were shown to you
16 as 5, 6, 7, they brought -- the Government brought them into
17 you, they were also shown in sequential order?

18 A. If I remember correctly, yes.

19 Q. Okay. Very good.

20 MR. LEVENTHAL: If we could go further on then to
21 Number 12 and go to 15 seconds. Can you go -- play that,
22 please.

23 (Exhibit 12 published.)

24 MR. LEVENTHAL: Okay. Stop right there. Stop,
25 Brian.

1 (Screenshot published.)

2 BY MR. LEVENTHAL:

3 Q. Mr. -- Mr. Flynn asked you to take a note. Was that to
4 you?

5 A. Yes.

6 Q. Okay. And I believe he said, "Take a note for what
7 they're saying"; correct?

8 A. Correct.

9 Q. And who was he referring to?

10 A. The agents on the other side of the gate.

11 Q. Okay. And why was he asking that?

12 A. So that we could report it.

13 Q. Okay. Were you able to hear what the agents were saying?

14 A. Vaguely, yes.

15 Q. Okay. Why -- do you know why that is?

16 A. Why what?

17 Q. Why -- why vaguely you could hear what they were saying?

18 A. There was lots of yelling and commotion and noise from the
19 crowd that made it difficult to understand exactly what they
20 were saying.

21 Q. Okay. Now, this is on -- were they speaking just like --
22 were they speaking just out loud or were they on a blow -- like
23 some kind of a microphone or --

24 A. Yes. It sounded like they were speaking through a
25 megaphone.

1 Q. Okay. And the megaphone was not clear?

2 A. No.

3 Q. Okay.

4 MR. LEVENTHAL: If we go to 23 seconds, just briefly.
5 Right -- just go right in front.

6 Okay. Stop right there.

7 (Screenshot published.)

8 BY MR. LEVENTHAL:

9 Q. Now, at this moment in time we have all these people here
10 (indicating) in front of the BLM; correct?

11 A. Correct.

12 Q. Okay. And there's -- you can't see anybody up on this
13 bridge (indicating); correct? Underneath the southbound?

14 A. That is correct.

15 Q. You can't see anybody here (indicating) underneath the
16 southbound bridge on the -- what is that, the south side;
17 correct?

18 A. That would be the east side and yes -- or the west side
19 and that is correct.

20 Q. Okay.

21 MR. LEVENTHAL: Okay. And at 46 seconds, Brian.
22 46.

23 Okay. Stop right there.

24 (Screenshot published.)

25 ///

1 BY MR. LEVENTHAL:

2 Q. Now, you were able to see all these -- sort of what we
3 call the horsemen in the wash; correct?

4 A. Correct.

5 Q. Did you see any of the horsemen while you were there point
6 their guns or a gun at the officers on the other side?

7 A. No, I did not.

8 MR. LEVENTHAL: Thank you.

9 I have nothing further. Thank you.

10 MR. PEREZ: Nothing from Lovelien, Your Honor.

11 MR. TANASI: Nothing further, Your Honor, from
12 Mr. Stewart.

13 THE COURT: Anybody else? No?

14 All right. Any redirect?

15 MR. MYHRE: Court's indulgence.

16 THE COURT: Yes.

17 (Counsel conferring.)

18 MR. MYHRE: Thank you, Your Honor. No redirect.

19 THE COURT: All right.

20 MR. LEVENTHAL: Your Honor, we're going to --

21 THE COURT: We do have jury questions so, let's go
22 ahead and give them a minute to write those down. Remember,
23 write them down on your forms. Don't give me your name or your
24 initials, your signature, your jury number, just write down the
25 question. Take your time and write neatly so we can read the

1 question.

2 Try not to use the pronoun so we know who you're
3 referring to.

4 (Brief pause in proceedings.)

5 THE COURT: Counsel, please join me at sidebar.

6 (Proceedings at sidebar out of the hearing of the jury:)

7 THE COURT: All right. So Jury Note No. 33 has two
8 questions. The first one is, "When you heard about the rally,
9 did you go just to see it or to be a part of it?"

10 Any objection to that?

11 MR. LEVENTHAL: No objection on behalf of the
12 defense.

13 MR. MARCHESE: Yeah.

14 MR. MYHRE: Same objection, Your Honor, as before, as
15 to why he went.

16 Could you repeat the question again, Your Honor?

17 THE COURT: Yes. "When you heard about the rally,
18 did you go just to see it or to be a part of it?"

19 MR. PEREZ: No objection.

20 MR. TANASI: No objection, Stewart.

21 MR. LEVENTHAL: And we may be stuck with the answer
22 of him with -- having his bias against the Bundys. I don't
23 know. He clearly does.

24 MR. MYHRE: I think as asked, it gives the two
25 alternatives and as long as he's not asked open-ended why he

1 went, to be part of it or . . .

2 THE COURT: All right. And then the second part of
3 the jury note is, "Why did you film it?"

4 MR. LEVENTHAL: Film it?

5 MR. MYHRE: Or why did Mr. Flynn film it?

6 THE COURT: Um-hmm.

7 MR. MYHRE: No objection to the second part.

8 THE COURT: Any objection?

9 MR. LEVENTHAL: No.

10 MR. MARCHESE: No.

11 THE COURT: All right. So Jury Question No. 34 is,
12 "You testified that you" . . . you well -- we were -- no -- you
13 testified that you -- we 17 -- oh, were.

14 So, "You testified that you were 17 when this
15 occurred. Was this the first time you encountered large
16 numbers of people, some with weapons? Did this impact your
17 perceptions of what was happening?"

18 Any objection to that question?

19 MR. LEVENTHAL: No objection.

20 MR. TANASI: I'm sorry. No objection.

21 THE COURT: Anyone else?

22 MR. MYHRE: None from the Government, Your Honor.

23 THE COURT: All right. The second part of Jury Note
24 No. 34 asks, "Did Mr. Flynn's attitude and emotion affect your
25 perception of what was happening?"

1 Any objection?

2 MR. TANASI: No objection, Stewart.

3 MR. MYHRE: None from the Government, Your Honor.

4 MR. PEREZ: None from Lovelien.

5 THE COURT: Jury Note No. 35, "In Government's
6 Exhibit 11, Mr. Flynn could be heard to say 'hit the dirt if
7 they start firing.' What was feeling of the situation at the
8 time for your well-being?"

9 MR. PEREZ: No objection.

10 MR. TANASI: No objection.

11 THE COURT: All right. So I'll -- he can say what
12 his feeling of -- was of the situation at that time.

13 MR. MYHRE: Well, we've taken the position,
14 Your Honor, that his -- the feelings -- his feelings are not
15 relevant as to these defendants. I can understand why the
16 question is being asked and concerned we're starting down a
17 slippery slope.

18 MR. TANASI: The other part of it's not necessarily
19 clear who "they" is, unless I misunderstood the question.

20 THE COURT: Yeah. And the jury is not asking for
21 clarification of who "they" is. They're -- the jury question
22 is as to "what was feeling of the situation at the time for
23 your well-being?"

24 So I'm not sure if they're asking if it's the feeling
25 of Mr. Flynn or the witness' feeling of his own well-being.

1 MR. MYHRE: Or whether he was worried for Mr. Flynn I
2 guess is . . .

3 THE COURT: Well, but it's for "your well-being." So
4 it's asking for his own perception of his well-being. I don't
5 see that that's -- how would that be objectionable. I don't
6 think it is.

7 You say "slippery slope," but I don't think this
8 question in and of itself --

9 MR. MYHRE: For that moment in time? Well, we -- may
10 I have just a moment, Your Honor?

11 (Counsel conferring.)

12 MR. MYHRE: Your Honor, our same objection stands as
13 to what we've been talking about before with respect to
14 eliciting state of mind of third parties. But if it's as to
15 his --

16 THE COURT: But it's his own state of mind.

17 MR. MYHRE: Right. If it's -- concern just is
18 whether he felt afraid and is cabin to that, I guess we would
19 be -- we're okay with that narrow sort of question.

20 THE COURT: Agreed. He can testify about his own
21 state of mind.

22 All right. Any objection from the defense?

23 MR. LEVENTHAL: No.

24 MR. MARCHESE: No.

25 THE COURT: All right. And Jury Note No. 36, "Did

1 you at any time feel that those non-BLM individuals carrying
2 firearms would fire their weapons if their protest demands were
3 not met?"

4 MR. MYHRE: We would clearly object to that,
5 Your Honor.

6 MR. MARCHESE: Yeah, we would -- yeah.

7 MR. LEVENTHAL: I think we all object to that.

8 THE COURT: Okay. And then it says, "Note for all.
9 Because there are so many references and photo angles of the
10 bridges, it would be helpful if the attorneys would label the
11 bridges with an 'S' or an 'N' during their video presentations.
12 Precludes confusion when the red arrows are added.
13 Additionally, when attorneys reference 'the bridge,' please ask
14 them to specify north bridge or southbound bridge."

15 I think that's a critique for me. I'll accept that
16 critique and try to do better.

17 MR. TANASI: I'll accept mine, too.

18 MR. LEVENTHAL: I'll accept my arrows.

19 THE COURT: All right. So, it sounds like everyone's
20 in agreement not to ask this question?

21 MR. LEVENTHAL: Yeah. Okay. Thank you.

22 MR. TANASI: Thank you.

23 (Proceedings within hearing of the jury:)

24 THE COURT: All right. So I'm going to read these
25 jury questions, Mr. Ellis, into the record, but when you answer

1 the question, you can go ahead and turn and face the jury
2 because these are not really my questions, they're the jury's
3 questions.

4 So Jury Note No. 33 has two questions. The first one
5 is, "When you heard about the rally, did you go just to see it
6 or to be part of it?"

7 THE WITNESS: I went just to see it and take
8 pictures.

9 THE COURT: And the second question is, "And why did
10 you film it?"

11 THE WITNESS: Uh . . . I did not film it. Mr. Flynn
12 was the one doing the filming and that was because he was a
13 reporter.

14 THE COURT: All right. Jury Note No. 34 asks, "You
15 testified that you were 17 when this occurred. Was this the
16 first time you encountered large numbers of people, some with
17 weapons and did this impact your perception of what was
18 happening?"

19 THE WITNESS: Was not the first time I had
20 encountered large numbers of people, certainly not with
21 weapons. I've been to shooting ranges and gun shows and the
22 likes before, but I would say that in this situation it would
23 have been a little different.

24 THE COURT: And then the last part of the Jury Note
25 No. 34 is, "Did Mr. Flynn's attitude and emotions affect your

1 perception of what was happening?"

2 THE WITNESS: Perhaps. I think we both felt about
3 the same, though.

4 THE COURT: All right. And then Jury Note No. 35,
5 "In Government's Exhibit No. 11, Mr. Flynn could be heard to
6 say 'hit the dirt if they start firing.'" So, the question is,
7 "What was your feeling of the situation at that time for your
8 well-being?"

9 So, was there -- did you have a concern about your
10 well-being at that time?

11 THE WITNESS: Yes. I was also, at the time,
12 concerned that there may be some gunfire from either side.

13 THE COURT: And then the last jury note, everybody
14 unanimously agreed we can't ask the first part of the question.
15 The second part of the question is actually a note for everyone
16 and it is a great reminder. When we refer to "the bridge," to
17 help the jury by either labeling it on the visuals with an "S"
18 and an "N" to clarify whether it's the southbound bridge or the
19 northbound bridge, especially on those close-ups when they're
20 just standing on the bridge and so, the jury doesn't know which
21 bridge it is that they're on. And likewise, for me, I will try
22 to remember to remind everyone, the attorneys, to also refer to
23 either the north or the southbound bridge instead of just "the
24 bridge," since there's not just the bridge, there's two
25 bridges. It's a good reminder. Thank you very much.

1 Any follow-up questions for our witness by the
2 Government?

3 MR. MYHRE: No, Your Honor.

4 THE COURT: And any follow-up questions from the
5 defense?

6 MR. TANASI: None from Stewart, Your Honor.

7 MR. LEVENTHAL: No, Your Honor. We would just like
8 Mr. Ellis to remain under subpoena.

9 MR. MARCHESE: May I briefly?

10 THE COURT: Yes.

11 MR. MARCHESE: It's follow-up. It's not beyond the
12 scope.

13 THE COURT: All right.

14

15 RE-CROSS-EXAMINATION OF ALEX ELLIS

16 BY MR. MARCHESE:

17 Q. All right. Just a quick clarification. You were asked a
18 question from the judge in reference to if Mr. Flynn's emotions
19 affected yours. Do you remember that? And you said something
20 to the effect of it was the same.

21 Do you remember answering that shortly ago?

22 A. Yes.

23 Q. Okay. And when you say "the same," what did you mean by
24 that?

25 A. We both had some slight fears about what might happen.

1 Q. Okay. Thank you.

2 MR. MARCHESE: No further questions.

3 THE COURT: Anyone else?

4 On behalf of Lovelien?

5 MR. PEREZ: No, Your Honor.

6 THE COURT: All right. Any -- Government, any other
7 redirect?

8 MR. MYHRE: No, Your Honor. Thank you.

9 THE COURT: All right.

10 So thank you, Mr. Ellis. You are excused from the
11 Government's subpoena but you are still on standby for the
12 defendants, all right?

13 THE WITNESS: Okay.

14 THE COURT: You can go ahead and go to lunch and just
15 be careful on the way down the steps there. Okay?

16 THE WITNESS: Okay. Thank you.

17 THE COURT: Thank you for coming.

18 (Witness excused.)

19 THE COURT: So, it is 11:47. Why don't we go ahead
20 and break for lunch rather than try to get started with only
21 five minutes or so of someone else's testimony, but we will
22 start with another witness after lunch, right?

23 MR. MYHRE: Yes, Your Honor.

24 THE COURT: All right. So during this lunch break I
25 do remind the jury that you are not to discuss this case with

1 anyone nor permit anyone to discuss it with you. You may speak
2 to your fellow jurors about other things, just not about this
3 case.

4 Do not read or listen to or view anything that
5 touches upon this case in any way and please do not perform any
6 research or any independent investigation regarding anything
7 that concerns this case.

8 Please go ahead and keep writing down your questions
9 whether they're related to a witness or just something in
10 general. We want to know what your questions are so that we
11 can help you as much as we can, and please do not form any
12 opinion about the case until after you have heard all the
13 testimony, reviewed all the evidence, been provided with the
14 jury instructions of law, then you will hear closing arguments.
15 After all that, I will excuse you to begin your deliberations.
16 Then you may start to form your opinions and discuss them with
17 each other.

18 So we'll stand for the jury. It's 11:50. We'll plan
19 to be back here at 1 o'clock.

20 (Jury excused from courtroom.)

21 THE COURT: All right. Off record.

22 (Recess was taken at 11:49 a.m.)

23 COURTROOM ADMINISTRATOR: All rise.

24 THE COURT: Thank you. You may be seated.

25 Can we go ahead and call in the jury?

1 Let's go ahead and do that.

2 COURTROOM ADMINISTRATOR: Yes.

3 (Brief pause in proceedings.)

4 COURTROOM ADMINISTRATOR: All rise.

5 (Jury returned to courtroom at 1:36 p.m.)

6 THE COURT: Jurors can go ahead and be seated,
7 everyone else as well.

8 Good afternoon. Welcome back. We're going to resume
9 now with another Government witness.

10 So, the Government may call its next witness.

11 MS. AHMED: Thank you, Your Honor.

12 The United States calls Mr. Trey Schillie.

13

14

15 TREY SCHILLIE,
16 called as a witness on behalf of the Government, having been
17 first duly sworn, was examined and testified as follows:

17

18 THE COURT: Good afternoon, sir. Come on in. We're
19 going to have you seated over here (indicating) to my right.
20 Please be careful with the steps on the way up and please
21 remain standing so we can have you sworn in.

22

23

24

25

 COURTROOM ADMINISTRATOR: Please raise your right
hand.

 You do solemnly swear that the testimony you shall
give in the cause now before this Court shall be the truth, the

1 whole truth, and nothing but the truth, so help you God?

2 THE WITNESS: Yes.

3 THE CLERK: Thank you, sir. You may be seated.

4 Please state your full name for the record and spell
5 your last name.

6 THE WITNESS: Trey Schillie, S-c-h-i-l-l-i-e.

7

8 DIRECT EXAMINATION OF TREY SCHILLIE

9 BY MS. AHMED:

10 Q. Good afternoon, Mr. Schillie.

11 A. Good afternoon.

12 Q. On April 12th, 2014, were you traveling through the
13 Bunkerville area?

14 A. Yes.

15 Q. And where were you going, generally? What was your route
16 of travel?

17 A. From Las Vegas to Denver on Interstate 15.

18 Q. Were you traveling northbound on Interstate 15?

19 A. I believe it -- I -- I don't know what the orientation is
20 there. Generally, east.

21 Q. Was it in the northbound lanes, at least as they were
22 labeled?

23 A. Yes.

24 Q. Now, at the time of April 12th, 2014, where did you work?

25 A. U.S. Forest Service.

1 Q. And was the trip that you were taking that caused you to
2 travel through the Bunkerville area related to your work in any
3 way?

4 A. No.

5 Q. And at the time that you were on northbound 15, were you
6 working?

7 A. No.

8 Q. Now, while you were traveling in the Bunkerville area on
9 Interstate 15, did anything happen to affect your travel?

10 A. Yes.

11 Q. And what was that, generally?

12 A. Traffic jam. Appeared to be a traffic jam as we
13 approached the scene.

14 Q. Can you tell the jury what it was that you first saw when
15 you approached it?

16 A. I just -- cars just generally backed up on the highway.
17 Appeared to be kind of a normal traffic jam like you would
18 associate with a car accident or something like that.

19 Q. Did you continue to make your way down the Interstate 15?

20 A. Yes.

21 Q. And did you see, in addition to the traffic on the
22 roadway, anything else then?

23 A. Yes. As we approached the scene, cars were pulled off the
24 side of the highway.

25 Q. Did you see, in addition to cars, people on foot?

1 MR. LEVENTHAL: Objection. Leading.

2 BY MS. AHMED:

3 Q. Did you see anything in addition to cars?

4 A. Yes.

5 Q. And what was that?

6 A. People outside of the cars.

7 Q. And what did they appear to be doing?

8 A. Just standing around. Looked like they were potentially
9 gathering for the protest.

10 Q. Did you continue in your vehicle at that time or did you
11 do something else?

12 A. Slowly, continued slowly as traffic -- traffic was slowing
13 down.

14 Q. And then did you pass through the area or did you do
15 something else?

16 MR. LEVENTHAL: Objection. Leading.

17 MS. AHMED: Your Honor, I've given him alternatives.
18 I'm not --

19 THE COURT: Is this foundational?

20 MS. AHMED: Yes, Your Honor.

21 THE COURT: Overruled. He may answer the question.

22 THE WITNESS: We continued passing through the area.

23 BY MS. AHMED:

24 Q. Then at some point did you change what you were doing as
25 you were driving or did you just continue on?

1 A. Continued driving.

2 Q. Did you pull over at any point?

3 A. Yes.

4 Q. And what did you do then?

5 A. Pulled over and got out of the vehicle.

6 Q. And at what point -- in relation to the crowd of vehicles
7 and people, at what point did you pull over?

8 A. After. After we crossed the bridge.

9 Q. And when you say "the bridge," can you explain to the jury
10 what you're talking about?

11 A. The bridge that was the scene of the event on the
12 interstate.

13 THE COURT: Which direction were you going?

14 Were you going to Las Vegas or from Las Vegas?

15 THE WITNESS: From Las Vegas to Denver.

16 THE COURT: All right. So, would that be northbound
17 then from Vegas to Denver?

18 THE WITNESS: I don't know what the orientation. I
19 think it is northbound.

20 THE COURT: I realize that it's not a straight line.

21 THE WITNESS: Yeah.

22 THE COURT: So I'm not asking you the orientation in
23 relation to everything else that's happening at the traffic
24 jam. There's just two bridges and for the jury, it's easier
25 for them to know if we're talking about -- we're calling the

1 one that leaves Las Vegas the northbound bridge and the one
2 that arrives in Las Vegas the southbound bridge.

3 THE WITNESS: The northbound.

4 THE COURT: You're right. They don't run north/south
5 the entire way.

6 THE WITNESS: So it would be the northbound bridge.

7 THE COURT: Thank you.

8 BY MS. AHMED:

9 Q. And again, just to be clear, where -- so, where did you
10 actually pull over, your vehicle?

11 A. The far end of the northbound bridge.

12 Q. And what did you do once you pulled over?

13 A. Exited the vehicle.

14 Q. And then what did you do?

15 A. We walked back onto the bridge.

16 Q. And what did you do once you had actually walked on to the
17 bridge?

18 A. Just noticed other people on the bridge. Noticed the
19 gathering of people underneath the bridge and in an area, I
20 think it's called the wash, under the bridge.

21 Q. And can you describe to the jury what it was you saw in
22 the wash?

23 A. Sure. Just a gathering of people that were obviously
24 protestors for the event.

25 Q. And did you see anything else in the wash?

1 A. People. Some people on horseback. Some people on ATVs,
2 and then at -- and then further up -- up the wash there was a
3 fence that had BLM law enforcement officers on the other side
4 of the fence.

5 Q. And in addition to making these observations, did you do
6 anything else or were you simply looking around?

7 A. Just took pictures. Took pictures of the scene.

8 MS. AHMED: And, Your Honor, may I publish to the
9 witness and counsel what's been marked for identification as
10 Government Exhibits 148 through 153?

11 THE COURT: 148 through 153?

12 MS. AHMED: That's correct, Your Honor.

13 THE COURT: Yes, you may.

14 BY MS. AHMED:

15 Q. And Mr. Schillie, there's a screen to your right --

16 THE COURT: Maybe we can save you some time. Is
17 there going to be any objection to 148 through 153?

18 MR. MARCHESE: None from Parker.

19 MR. TANASI: None from Stewart, Your Honor.

20 MR. LEVENTHAL: None from Drexler.

21 MR. PEREZ: None from Lovelien.

22 THE COURT: All right. So let's -- are you going
23 to --

24 MS. AHMED: Your Honor, may I move to then admit
25 those same exhibits?

1 THE COURT: Yes, you may. So, Exhibit 148 through
2 153 will be admitted.

3 (Exhibits 148 through 153 admitted.)

4 MS. AHMED: Thank you.

5 THE COURT: You may publish those to the jury.

6 MS. AHMED: Thank you, Your Honor.

7 So, can we start with 148, please?

8 THE COURT: Yes.

9 (Exhibit 148 published.)

10 BY MS. AHMED:

11 Q. Mr. Schillie, can you just explain to the jury what is
12 depicted in Exhibit 148?

13 A. So this is the bridge that we're calling north --
14 northbound bridge. You can see cars parked along the shoulder
15 as well as traffic backed up. A few pedestrians --

16 Q. Is this generally the area that you had parked in when you
17 stopped and got out of your vehicle?

18 A. Yes.

19 MS. AHMED: And may we move on to Exhibit 149?

20 THE COURT: Yes.

21 (Exhibit 149 published.)

22 BY MS. AHMED:

23 Q. And Mr. Schillie, can you explain to the jury what you've
24 photographed here?

25 A. Sure. This is looking down from the bridge into the wash

1 area. Crowd of protestors, and then you can see the fence and
2 underneath the other bridge with the law enforcement vehicles
3 on the other side of the fence.

4 Q. Now --

5 THE COURT: Is this view then still from the
6 northbound bridge or a different bridge?

7 THE WITNESS: Northbound bridge.

8 THE COURT: Did you ever take any pictures from the
9 southbound bridge?

10 THE WITNESS: No.

11 THE COURT: Okay.

12 BY MS. AHMED:

13 Q. And --

14 THE COURT: Thank you.

15 BY MS. AHMED:

16 Q. So, in this picture you indicated that further up where
17 I'm circling (indicating), is that where you're indicating you
18 saw the law enforcement vehicles?

19 A. Yes.

20 Q. And can you explain what this was (indicating)?

21 A. Yeah. It appeared to be a fence separating law
22 enforcement vehicles from the protestors.

23 MS. AHMED: And can we move to Exhibit 149, please --
24 oh, excuse me -- 150, please.

25 (Exhibit 150 published.)

1 BY MS. AHMED:

2 Q. At some point did you see the people that were in the wash
3 change their position in any way?

4 A. Yes.

5 Q. And in what -- how did they change their position?

6 A. I described it as gradually moving closer to the fence.

7 Q. And can you explain to the jury what then is depicted in
8 Exhibit 150?

9 A. So this would be a little bit of a later shot. You can
10 kind of see the progression. The crowd has moved up the wash
11 toward the fence.

12 Q. And while you were observing these events, did you see any
13 of the vehicles on the other side of that fence move forward in
14 any way?

15 A. I don't recall.

16 MS. AHMED: Can we move to Exhibit 151?

17 (Exhibit 151 published.)

18 BY MS. AHMED:

19 Q. Now, Mr. Schillie, can you explain to the jury what
20 they're seeing in Exhibit 151?

21 A. Sure. This is just a picture of the crowd. Obviously on
22 the -- person in the center of the picture caught our
23 attention, caught my attention, so I took a picture.

24 Q. And can you circle the person that caught your attention?

25 A. (Witness complies).

1 Q. And where is this person -- well, first of all, what did
2 you observe him doing?

3 A. Lying on the ground and pointing a rifle.

4 Q. And where was his rifle pointed?

5 MR. TANASI: Objection. Speculation.

6 THE COURT: Do you want to --

7 MS. AHMED: He's describing his observations.

8 THE COURT: -- clarify -- clarify your question.

9 BY MS. AHMED:

10 Q. Where did you observe his rifle to be pointing?

11 A. Pointing up the wash.

12 Q. And where -- looking at Exhibit 151, could you see his
13 whole rifle when you were looking at him?

14 A. No.

15 Q. Where was the tip of his rifle, so to speak?

16 A. It's kind of between the Jersey barriers or whatever the
17 name for those concrete structures are.

18 Q. And I'm going to clear the circle you've drawn around the
19 person laying down and when you say the "concrete structure,"
20 are you talking about what I've just marked on the screen?

21 A. Yes.

22 Q. And was there a gap between the pieces of the concrete?

23 A. Yes.

24 Q. And is that where his rifle was?

25 A. Yes.

1 MR. MARCHESE: Objection. Asked and answered.

2 BY MS. AHMED:

3 Q. Now, did you observe -- once you noticed this man laying
4 on the freeway, what, if anything, did you do in relation to
5 him, other than take this photograph?

6 Did you continue to observe him for a few minutes or
7 did you do something else?

8 A. Continued for a few minutes.

9 Q. And while you were observing him, to the extent you
10 observed this, where was he looking? Where did he appear to be
11 looking?

12 MR. MARCHESE: Objection. Speculation.

13 BY MS. AHMED:

14 Q. Based on your observations only.

15 A. Appeared to be looking down the rifle down into the wash.

16 MS. AHMED: Your Honor, may we move to Exhibit 152?

17 THE COURT: Yes, you may.

18 (Exhibit 152 published.)

19 BY MS. AHMED:

20 Q. And, Mr. Schillie, can you explain to the jury what you
21 were capturing in this photograph?

22 A. Yes. Similar to the previous photograph, the subject as
23 well as somebody talking to the subject, a blue -- in the blue
24 shirt.

25 Q. When you say "the subject," are you referring to that same

1 man laying on the freeway?

2 A. Yes.

3 Q. And while that person appeared to be talking to him, based
4 on your observations, where was he looking?

5 A. The same direction. Appeared to me to be down the rifle
6 into the wash.

7 Q. And while you were in this position, this is on the
8 northbound bridge; correct?

9 A. Correct.

10 Q. And did you observe anybody other than this individual who
11 caught your attention?

12 A. Yes.

13 Q. And what did -- what was it that you observed?

14 A. Appeared to be someone just beyond this individual in --
15 kind of behaving in a similar manner.

16 Q. And what did you observe that that person was doing?

17 A. I observed him crouching against the barrier.

18 Q. And did he have anything with him or was he just
19 crouching?

20 A. I don't recall.

21 Q. And do you see that person in this picture?

22 A. Yes.

23 Q. And can you circle for the jury, to draw the jury's
24 attention to it, where you saw that person?

25 A. Yes. And it's actually just a foot, I think, I see here.

1 (Witness complies).

2 Q. So in the photograph you've circled the foot of somebody
3 that's in the upper center portion of the screen; is that
4 correct?

5 A. Yes.

6 Q. At the time that you were on the bridge, did you -- were
7 you actually able to observe more than just a foot of that
8 person or was that all that you could see?

9 A. I could -- I observed more.

10 MS. AHMED: And can I advance to Exhibit 153, please?

11 (Exhibit 153 published.)

12 BY MS. AHMED:

13 Q. And can you explain to the jury what is depicted in
14 Exhibit 153?

15 A. Yes. Similar -- similar direction on the bridge. In this
16 picture you can see both individuals.

17 Q. And can you circle the two people that you're talking
18 about?

19 A. (Witness complies).

20 Q. Now, with respect to the person that appears to be
21 kneeling, he's further back in -- from your vantage point;
22 correct?

23 A. Yes.

24 Q. Could you see whether he had any -- any items with him at
25 all?

1 A. Could you clarify?

2 Q. Did you see whether or not he actually had any firearms
3 with him?

4 A. I don't recall.

5 Q. And then, with respect to the person that you've circled
6 in the foreground, who's -- was he continuing to lay down on
7 the freeway?

8 A. Yes.

9 Q. And based on your observations, where did he appear to be
10 looking?

11 A. He appeared to be looking through the concrete barriers in
12 the direction of the protest into the wash.

13 Q. And generally, where -- what was the direction that his
14 firearm was pointing?

15 A. Perpendicular to the northbound lane. I -- I thought it
16 was north before this, but I'm not sure of the direction,
17 so . . . generally toward where the fence is and the -- and BLM
18 law enforcement.

19 Q. Seeing this man's position, did you have concern for the
20 safety of the law enforcement officers?

21 MR. MARCHESE: Objection. Relevance.

22 MR. TANASI: Stewart joins.

23 MR. LEVENTHAL: Drexler joins.

24 MR. PEREZ: Lovelien joins.

25 MS. AHMED: Your Honor, it's directly relevant to the

1 threats charge the Government has charged and the jury has to
2 consider, which is that somebody observed and perceived that
3 person's position to be a threat to law enforcement. It
4 doesn't have to be law enforcement that observes it, but
5 anybody can observe that threat and perceive it to be a threat.

6 THE COURT: Objection's overruled. The witness may
7 answer the question.

8 THE WITNESS: Yes.

9 BY MS. AHMED:

10 Q. And just so the jury, to the extent -- to make sure we're
11 all on the same page. So, seeing this person's position, did
12 you have any concern, based on what he was doing, for the law
13 enforcement officers in the wash?

14 MR. MARCHESE: Objection. Asked and answered.

15 THE WITNESS: Yes.

16 THE COURT: He's clarifying it because you objected
17 the first time that she asked the question and so, the jury
18 hasn't heard the question and the answer together at the same
19 time.

20 BY MS. AHMED:

21 Q. Now --

22 THE COURT: Go ahead and restate the question again,
23 Ms. Ahmed, so the witness can answer it.

24 MS. AHMED: Yes, Your Honor.

25 ///

1 BY MS. AHMED:

2 Q. So, based on what you observed this man doing, laying in
3 the freeway had his rifle pointed through the gap in the
4 concrete, were his actions -- did they cause you to have
5 concern for the safety of the law enforcement officers that
6 were in the wash?

7 A. Yes.

8 Q. Now, what -- what, if anything, did you do from this point
9 onward, after taking this photograph?

10 A. I believe -- I believe I was on the bridge three or four
11 minutes after this photograph and then I proceeded back to my
12 vehicle en route to Denver.

13 Q. At some point after April 12th, 2014, did you meet with
14 the FBI regarding this event?

15 A. Yes.

16 Q. And in doing so, did you provide them with the photographs
17 you had taken on April 12th, 2014?

18 A. Yes.

19 Q. And along with the photographs, did you give them
20 anything -- well, how did you give the photographs to the FBI?

21 A. Copied them onto a CD and gave the CD to the FBI.

22 Q. And did -- in addition to the actual image, did you give
23 the -- in burning it to the CD, did you give the FBI metadata
24 that was associated with those pictures?

25 A. Yes.

1 Q. And can you just explain, generally, what that would
2 include to the jury?

3 A. Time/date stamp, file size, file format.

4 MS. AHMED: And, Your Honor, may I have the Court's
5 indulgence?

6 THE COURT: Yes.

7 (Counsel conferring.)

8 MS. AHMED: Your Honor, may we bring up Exhibit 153
9 again?

10 THE COURT: Yes.

11 (Exhibit 153 published.)

12 BY MS. AHMED:

13 Q. Now, Mr. Schillie, in this -- when you were taking this
14 photograph, what direction were you looking? Are you looking
15 back toward the direction of Las Vegas on the Interstate 15 or
16 in the other direction?

17 A. Toward Las Vegas.

18 MS. AHMED: Your Honor, no further questions. Thank
19 you. I'll pass the witness.

20 THE COURT: Cross for Mr. Parker?

21 MR. MARCHESE: Thank you, Your Honor.

22

23 CROSS-EXAMINATION OF TREY SCHILLIE

24 BY MR. MARCHESE:

25 Q. Good afternoon, Mr. Schillie.

1 So, April the 12th, 2014, you testified that you were
2 leaving from Las Vegas with Denver, Colorado being your
3 destination; is that correct?

4 A. Yes.

5 Q. And generally speaking -- obviously it goes in a
6 serpentine fashion -- it's the northbound direction that you
7 would going on the 15 freeway; is that right?

8 A. Yes.

9 Q. Okay. At some point in time you hit a traffic snag or
10 traffic slowdown somewhat?

11 A. Yes.

12 Q. All right. And then you pull over to the side of the
13 road; correct?

14 A. Correct.

15 Q. And I believe you were with a gentleman named Mr. Tu who
16 was a co-worker, I believe?

17 A. Yes.

18 Q. And the two of you, you pulled over to the side of the
19 road and then you took a series of pictures that Ms. Ahmed just
20 went over with you on direct examination; correct?

21 A. Yes.

22 Q. Okay. Now, those pictures, as they were taken, they were
23 admitted in a chronological order as Exhibits 148 through 153.
24 Is that -- is that a correct statement of your recollection?

25 A. I'd have to see the photos again, but generally they

1 looked to be in chronological order.

2 Q. Okay.

3 MR. MARCHESE: And Brian, if we can get Exhibit 148
4 up, please.

5 (Exhibit 148 published.)

6 BY MR. MARCHESE:

7 Q. Okay, sir. Mr. Schillie, would this be the first picture
8 that you took on that day?

9 A. No.

10 Q. It is not the first picture?

11 A. The question was the first picture I took on that day?

12 Q. Yes.

13 A. No.

14 Q. Okay. Is that the first picture that was taken that was
15 admitted into evidence on that day?

16 THE COURT: I think maybe he's referring to earlier
17 in the day, not on the bridge, somewhere else.

18 MR. MARCHESE: Right.

19 THE COURT: He's a tourist visiting here, so . . .

20 BY MR. MARCHESE:

21 Q. Out of the exhibits that were admitted, is this the first
22 picture chronologically that was taken?

23 A. Out of the exhibits I've seen today it's the first
24 picture.

25 Q. Okay. Now, is this in the general vicinity of where you

1 parked?

2 A. Yes.

3 Q. Is your car depicted in this or is it behind where the
4 picture would be taken?

5 A. Behind.

6 Q. Okay.

7 MR. MARCHESE: And Brian, if we can expand in the
8 middle here.

9 BY MR. MARCHESE:

10 Q. Okay. And if you see this white sedan there in the middle
11 with some sort of a gray, black, compact car, do you see that
12 in the middle of the screen there?

13 A. Yes.

14 Q. Okay. Now, I'm going to circle, in the middle here
15 (indicating), and do you see that circle?

16 A. Yes.

17 Q. And standing up, is that the individual that you later see
18 prone on the bridge? Appears that he has a black hat, a little
19 bit difficult to see, but maybe a red shirt and some sort of a
20 black vest?

21 A. I -- I can't conclude that.

22 MR. MARCHESE: Brian, can you make it bigger?

23 BY MR. MARCHESE:

24 Q. Okay, sir. I'm going to circle it once again
25 (indicating). And I made it larger for you at that -- at this

1 point. Is that a little bit easier for you to see?

2 A. Yes.

3 Q. Okay. And would you agree with me that that's that same
4 individual that you see and you spoke about on direct
5 examination being prone on the bridge?

6 A. It appears to be.

7 Q. Okay. And at this point it appears that the traffic might
8 be somewhat slowed down.

9 Is that fair to say?

10 A. Yes.

11 Q. Okay. And then you cross the street at some point; right?

12 A. Yes.

13 Q. Okay. How much after, if you remember, approximately,
14 after you took this picture did you cross the street?

15 A. Within two or three minutes.

16 Q. Okay.

17 A. Four minutes.

18 Q. So you cross the street. And then . . . If we can move
19 to the next one, Brian, which I believe is 149.

20 (Exhibit 149 published.)

21 BY MR. MARCHESE:

22 Q. Okay. Now, Exhibit 149, this is a picture of the wash as
23 we've established; correct?

24 A. Yes.

25 Q. And to your recollection, it was taken chronologically

1 after the last picture that we saw on the bridge; is that
2 correct?

3 A. Yes.

4 Q. Okay. And at this point you see some people gathering in
5 the wash; correct?

6 A. Yes.

7 Q. I believe on direct examination you referred to them as
8 protestors; is that right?

9 A. Yes.

10 Q. Okay.

11 MR. MARCHESE: And if we can go to Exhibit 150,
12 Brian, please.

13 (Exhibit 150 published.)

14 BY MR. MARCHESE:

15 Q. Okay, sir. Now, this particular picture, this is a
16 picture taken from the same vantage point as the last exhibit,
17 Exhibit 149.

18 Is that a fair statement?

19 A. Yes.

20 Q. Okay. The main difference is, is that the crowd has
21 advanced more towards that gate right in here (indicating). Is
22 that an accurate statement?

23 A. Yes.

24 Q. Okay. And -- okay. We're going to now move on to 151,
25 Brian.

1 (Exhibit 151 published.)

2 BY MR. MARCHESE:

3 Q. Okay. Now, Exhibit 151, that's taken after Exhibit 150
4 where the protestors had moved towards the gate.

5 Is that an accurate statement?

6 A. I believe so.

7 Q. Okay. Do you remember if you moved when you took the
8 picture that was -- the protestors at the gate and when you
9 took this picture, or was it the same area?

10 A. The same general area.

11 Q. Okay. Maybe a few steps, but for the most part the same
12 area?

13 A. Yes.

14 Q. Okay. Now, in this picture we have a -- some sort of a
15 burgundy Chevrolet SUV right here (indicating); is that
16 correct?

17 A. Yes.

18 Q. Okay. And then behind it we have some sort of a white
19 pickup. It appears to be pulling something where I've just
20 placed the X (indicating), and then we have a -- I believe it's
21 a Dodge truck and then some sort of a green-colored
22 tractor-trailer.

23 Is that fair to say?

24 A. Yes.

25 Q. Okay. And we have the individual that we've spoken about

1 with the plaid shirt. Appears to have some sort of rifle in
2 his right hand; correct?

3 A. Yes.

4 Q. Okay. And his finger, it is not on the trigger in this
5 particular picture.

6 Is that an accurate statement?

7 A. I believe so.

8 Q. Okay. And I believe -- it looks like he's flanked by two
9 women; one to his right has some sort of a black, white, and
10 pink shirt on; is that correct?

11 A. Yes.

12 Q. And she believes -- it looks like she's kneeling down or
13 bending down it looks like?

14 A. Yes.

15 Q. And then to his left it appears is some lady with a pen
16 and paper in her right hand; is that correct?

17 A. Yes.

18 Q. Okay. And correct me if I'm wrong, I believe you had
19 testified on direct examination she may be interviewing him or
20 something like that?

21 A. That -- that's what it appeared to me --

22 Q. Okay.

23 A. -- to be.

24 Q. And we also have another individual to this interviewer,
25 to her right, who's somewhat bent over a little bit; right?

1 With the circle there (indicating) in the black/gray hat there?

2 A. Can you repeat the question?

3 Q. He's somewhat bent over, the individual is?

4 A. Yes.

5 Q. Okay. Maybe he has a -- looks like he might have a camera
6 in his hand, it appears?

7 A. Yes.

8 Q. Okay.

9 MR. MARCHESE: Now, I'd like to move to Exhibit 152,
10 please, Brian.

11 (Exhibit 152 published.)

12 BY MR. MARCHESE:

13 Q. Okay. Now, Exhibit 152, would you agree with me that this
14 is taken very shortly after the last exhibit?

15 A. Yes.

16 Q. Okay. And that is because we -- we now -- we still have
17 this white pickup that appears to be pulling something in the
18 frame; correct?

19 A. Yes.

20 Q. But the difference is now the Chevrolet, the burgundy SUV
21 is not in the frame; correct?

22 A. That's correct.

23 Q. Okay. And in this particular picture, once again, the
24 individual that is proned in the plaid shirt, his right index
25 finger is not on the trigger of the rifle; is that correct?

1 A. Yes.

2 Q. Okay. And it appears that this lady, the interviewer I'm
3 circling (indicating), it appears she got down even more. Now
4 she's 100 percent on the ground. Is that so?

5 A. Yes.

6 Q. And this man (indicating) who was -- he was previously --
7 in the last frame he was bent over a little bit, now he's
8 fully, it appears, on his knees; is that right?

9 A. Yes.

10 Q. And these two ladies (indicating), in the last frame, they
11 were closer to you and now they have advanced forward somewhat;
12 is that right?

13 A. Yes.

14 Q. Okay.

15 MR. MARCHESE: And lastly, Brian, could we go to 153.

16 (Exhibit 153 published.)

17 BY MR. MARCHESE:

18 Q. Okay. Now, and this frame, once again, this is taken
19 after the last frame; correct? The last exhibit, 152?

20 A. Yes.

21 Q. Okay. And one of the reasons we know that is because now
22 the white pickup pulling something is out of the frame and now
23 we only see the gray Dodge and the green tractor-trailer which
24 have now advanced closer into the frame; is that right?

25 A. Yes.

1 Q. Okay. And once again, this gentleman with the plaid shirt
2 and the rifle (indicating), his right index finger is off of
3 the trigger of the vehicle, is that -- or the vehicle -- or the
4 rifle?

5 A. Yes.

6 Q. Now, this lady (indicating), the interviewee, or
7 interviewer -- excuse me -- she now appears to be standing up
8 or getting up out of her position on the ground; is that right?

9 A. That's what it appears, yes.

10 Q. Okay. And now this lady in the black (indicating), she
11 looks -- appears to be bending over, maybe, the Jersey barrier;
12 is that right?

13 A. Yes.

14 Q. Okay. And this man (indicating) with the -- I believe we
15 established earlier he has a camera, we can't see it in here
16 but with the blue shirt and hat and the camera strap, he's --
17 it appears he's still kneeling on the ground.

18 Is that an accurate statement?

19 A. Yes.

20 Q. Okay.

21 MR. MARCHESE: Thank you, sir. I have no further
22 questions.

23 THE WITNESS: Thank you.

24 THE COURT: Cross on behalf of Stewart?

25 MR. TANASI: Thank you, Your Honor.

1 Court's indulgence.

2 THE COURT: Yes.

3 (Brief pause in proceedings.)

4

5

CROSS-EXAMINATION OF TREY SCHILLIE

6 BY MR. TANASI:

7 Q. Good afternoon, Mr. Schillie.

8 A. Good afternoon.

9 Q. My name's Rich Tanasi. I represent Steven Stewart
10 (indicating). I have a few questions for you on cross. Okay?

11 A. Yes.

12 Q. All right. You had testified on direct exam that you were
13 concerned for the safety of law enforcement officers; correct?

14 A. Yes.

15 Q. Okay. Do you recall meeting with the FBI and the BLM
16 Senior Special Agent Kristof Pasquale on June 17th, 2014? Do
17 you recall that meeting?

18 A. Yes.

19 Q. Okay. Do you recall whether or not in that meeting you
20 indicated that you were concerned for the safety of law
21 enforcement officers? Whether or not you told Special Agent
22 Kristof Pasquale that you were concerned for the safety of law
23 enforcement officers? Do you recall that?

24 MS. AHMED: Your Honor, objection. This witness
25 didn't author the reports that Mr. Tanasi is referencing and he

1 didn't dictate the questions that he was asked and that he
2 answered that day.

3 THE COURT: All right. Well, you can clarify that on
4 cross. I don't think that it -- I think the witness can answer
5 the question.

6 MR. TANASI: Thank you, Your Honor.

7 THE WITNESS: Could you repeat the question, please?

8 BY MR. TANASI:

9 Q. Sure.

10 Do you recall whether or not you told Senior Special
11 Agent Kristof Pasquale, on June 17th, 2014, when you met with
12 him, that you were concerned for the safety of law enforcement
13 officers? Do you recall whether or not you told him that?

14 A. No.

15 Q. You don't recall. Okay. Would seeing a copy of notes
16 from that report -- or that report rather -- a report of that
17 meeting, would that help to refresh your recollection election?

18 A. Yes.

19 Q. All right.

20 MR. TANASI: Just for the witness, Brian.

21 (Document shown to witness.)

22 BY MR. TANASI:

23 Q. Okay, sir. Do you see that report before you?

24 A. Yes.

25 Q. All right. I'm going to scroll through it page by page,

1 let you read it. Let me know when your recollection is
2 refreshed, please.

3 Also let me know when I can scroll to the next page.

4 A. Oh, yes, please.

5 Q. Okay. (Counsel complies).

6 A. Okay.

7 Q. (Counsel complies).

8 A. Can you clarify what you're asking me to identify?

9 Q. Sure.

10 Do you recall whether or not you told the BLM special
11 agent when you met with him that you were concerned for the
12 safety of law enforcement officers?

13 A. So you're asking me to look for text that states that
14 concern, explicitly?

15 Q. Well, you've indicated that you don't recall and I'm
16 showing you a copy of a report from that interview to refresh
17 your recollection.

18 A. Okay. So if you scroll up about one page . . .

19 Q. (Counsel complies).

20 A. Okay. Stop there.

21 So, this report indicates that I stated that there's
22 a rifle that appeared to be pointed over the heads of --

23 Q. Sir, that wasn't my question.

24 A. Okay.

25 Q. It's specifically --

1 MS. AHMED: Your Honor, the witness is trying to
2 answer his question.

3 MR. TANASI: He's non-responsive to the question,
4 Your Honor. I'm asking, first, to refresh his recollection and
5 I haven't asked him a question as to whether or not it's
6 refreshed his recollection. The main topic that I'm asking to
7 refresh his recollection on is whether or not he noted concern
8 for the safety of law enforcement officers.

9 THE WITNESS: Yes.

10 BY MR. TANASI:

11 Q. So again, do you recall whether or not you conveyed that
12 concern for the safety of law enforcement officers to the BLM
13 when you had this interview in June of 2014?

14 A. Yes.

15 Q. You recall?

16 A. Yes.

17 Q. And what -- what did you say?

18 A. Can I read the sentence?

19 Q. Again, did you specifically say you had concern for the
20 safety of law enforcement officers? That's my specific
21 question.

22 A. I didn't specifically say those words.

23 Q. Okay, sir. That's essentially where I was heading. Thank
24 you.

25 So you agree with me, you didn't tell law

1 enforcement, when you interviewed with them on June -- in June
2 of 2014, that you had concern for the safety of law enforcement
3 officers? You never said those words; right?

4 A. I didn't say those words.

5 Q. Okay. Thank you, sir.

6 And at the time of the interview you were, in fact, a
7 government employee; correct?

8 A. Yes.

9 Q. Okay. You were employed as a Regional Inventory and
10 Monitoring Coordinator for the USFS; correct?

11 A. Correct.

12 Q. Okay. Do you hold that position still today?

13 A. Yes.

14 Q. Okay. So you're still, as you sit here today, a
15 government employee. Fair?

16 A. Yes.

17 Q. Okay. Prior to today's testimony, how many times have you
18 met with the U.S. Attorney's Office?

19 A. Three times total.

20 Q. Three times total.

21 Prior to today's testimony, how many times have you
22 met with the FBI?

23 A. I believe four times.

24 Q. Four times.

25 A. Including the three with the U.S. attorneys. I believe

1 the FBI was present there.

2 Q. Okay. Thank you, sir.

3 MR. TANASI: Pass the witness.

4 THE COURT: Any cross on behalf of Drexler or
5 Lovelien?

6 MR. LEVENTHAL: Thank you, Your Honor.

7

8 CROSS-EXAMINATION OF TREY SCHILLIE

9 BY MR. LEVENTHAL:

10 Q. Good afternoon, Mr. Schillie. How are you?

11 A. Good afternoon.

12 Q. My name is Todd Leventhal. I represent Scott Drexler.

13 Mr. Schillie, you -- when you arrived on the 12th,
14 prior to going on the bridge -- are you with me?

15 A. Yes.

16 Q. Okay. Just before the bridge --

17 A. Yes.

18 Q. -- how long were you in traffic?

19 A. I'd say approximately 30 to 45 minutes.

20 Q. Okay. And when you got up sort of closer to the bridge,
21 were you -- did you see people parking on the right-hand side
22 of -- as you traveled that I-15?

23 A. Yes.

24 Q. Okay. Did you see Metro police officers on the left-hand
25 side as you were traveling on that I-15?

1 A. I saw what appeared to be some law enforcement. I'm not
2 sure if they were -- what they were associated with.

3 Q. Fair enough.

4 Law enforcement officer and they had guns?

5 A. Yes.

6 Q. Okay. And approximately how many law enforcement officers
7 did you see there?

8 A. Approximately 15 to 20, maybe.

9 Q. 15 to 20. Okay.

10 Now, when you first got on the bridge, were you --
11 was there anybody out there directing you in any way in a green
12 sort of a suit?

13 A. Not when we arrived.

14 Q. I'm sorry?

15 A. Not -- not when I arrived.

16 Q. Okay. So, there's no one in green directing traffic?

17 A. Not when I arrived.

18 Q. Okay. All right. Approximately how long did you stay on
19 the bridge, sir? About 10 minutes?

20 A. Approximately 10 minutes.

21 Q. 10 minutes. Okay. And that was -- and when I say "on the
22 bridge," that's you parked your car and you got out of your
23 vehicle; correct?

24 A. Correct.

25 Q. And then you stayed for 10 minutes, got back in your

1 vehicle; correct?

2 A. 10 to 15 minutes.

3 Q. Okay. And then you went on to Colorado?

4 A. Correct.

5 Q. Okay. All right.

6 MR. LEVENTHAL: If we could pull up 149, Brian.

7 (Exhibit 149 published.)

8 BY MR. LEVENTHAL:

9 Q. Okay. Now, you were -- this is one of your pictures;
10 correct?

11 A. Yes.

12 Q. And this is a picture of protestors in the wash, you
13 indicated, on direct exam; correct?

14 A. Yes.

15 Q. Okay. And you were asked about that gate (indicating);
16 correct?

17 A. Yes.

18 Q. And you said it separated, I believe, the two; the BLM
19 from the protestors; correct?

20 A. Yes.

21 Q. Okay. There's nobody at that gate (indicating), is there,
22 sir?

23 A. Correct.

24 Q. Okay.

25 MR. LEVENTHAL: Could we go to 150.

1 (Exhibit 150 published.)

2 BY MR. LEVENTHAL:

3 Q. Okay. Now, the Government asked you if the position of
4 these protestors had changed; correct?

5 A. Yes.

6 Q. And you indicated that they had moved from sort of this
7 area (indicating), moved forward; correct?

8 A. Yes.

9 MR. LEVENTHAL: Could you blow that up for me, Brian.

10 BY MR. LEVENTHAL:

11 Q. Do you now see some people here at the gate (indicating)
12 that weren't there previously?

13 A. Yes.

14 Q. Okay.

15 MR. LEVENTHAL: And if you could blow it up a little
16 bit more.

17 BY MR. LEVENTHAL:

18 Q. From your vantage point, were you able to see these people
19 here (indicating)?

20 A. Yes.

21 Q. You were? Okay.

22 This gentleman right here (indicating), do you know
23 what he's carrying?

24 A. No.

25 Q. Now, do you know if there's anybody on this -- did you see

1 anybody approach from . . . I guess I will call it the BLM side
2 towards the gate?

3 A. Yes.

4 Q. Okay. So somebody from BLM came towards the gate and then
5 these people came towards the gate as well; correct?

6 A. I'm not sure of the order, but in general, yes.

7 Q. Okay.

8 MR. LEVENTHAL: If we could go to 151.

9 (Exhibit 151 published.)

10 BY MR. LEVENTHAL:

11 Q. I know Mr. Marchese asked you a number of questions and
12 I'm just going to go through it again. This individual right
13 here (indicating), she has a tan hat; correct?

14 A. Yes.

15 Q. Okay. This individual (indicating), he has a black hat;
16 correct?

17 A. He has a dark hat.

18 Q. Okay. Dark? Black?

19 This individual has a tan hat (indicating); correct?

20 A. Correct.

21 Q. Okay.

22 MR. LEVENTHAL: If we could go to 152, please.

23 (Exhibit 152 published.)

24 BY MR. LEVENTHAL:

25 Q. Okay. So, okay. This lady (indicating) is still laying

1 down here with the tan hat; correct?

2 A. She's sitting, yes.

3 Q. Okay. And this person (indicating) is sort of kneeling
4 with a black hat; correct?

5 A. Correct.

6 Q. Okay. And this person (indicating) is still here with a
7 tan hat; correct?

8 A. Yes.

9 MR. LEVENTHAL: Could we go to 153.

10 (Exhibit 153 published.)

11 BY MR. LEVENTHAL:

12 Q. This individual here (indicating) that I'm circling in the
13 tan hat, she's apparently getting up from her seat; correct?

14 A. Yes.

15 Q. So she would be now getting in view of the people -- the
16 BLM people on the other side; correct?

17 A. I don't know.

18 Q. Well, before, would they have been able to see her behind
19 that concrete?

20 MS. AHMED: Objection. Calls for speculation.

21 THE COURT: Sustained.

22 BY MR. LEVENTHAL:

23 Q. Well, she was laying down -- she was leaning down in our
24 last -- if you want me to show you -- in our last picture,
25 against the concrete; correct?

1 A. Yes.

2 Q. Okay. And the BLM would have been on this side
3 (indicating); correct?

4 A. Yes.

5 Q. She's in -- she apparently is getting up from that
6 position from being down; correct?

7 A. Yes.

8 Q. Okay. This gentleman here (indicating) with the tan hat,
9 he's actually moved further back into the lane of traffic from
10 the Jersey barrier; correct?

11 A. Yes.

12 Q. Okay.

13 MR. LEVENTHAL: Could you increase that for me,
14 Brian.

15 BY MR. LEVENTHAL:

16 Q. Now, you indicated that you had a concern for law
17 enforcement. True?

18 A. Yes.

19 Q. Okay. Do you see these two individuals here (indicating),
20 sir?

21 A. Yes.

22 Q. In the green?

23 A. Yes.

24 Q. Were they from Nevada Highway Patrol?

25 A. I don't know.

1 Q. Okay. You drove past them; correct?

2 A. I didn't see them as we approached the bridge.

3 Q. Okay.

4 A. I believe they came in after I parked.

5 Q. Okay. But, they're there now; correct?

6 A. Correct.

7 Q. Okay. They're about 20 feet from you; correct?

8 MS. AHMED: Objection. Calls for speculation.

9 BY MR. LEVENTHAL:

10 Q. Approximately how many feet from you are they, sir?

11 A. In this picture, it appears to be about 50 feet.

12 Q. Okay. Did you ever go talk to them or tell them about
13 this fear you had?

14 A. No.

15 Q. You simply just got in your vehicle and went back to
16 Denver?

17 A. Yes.

18 Q. You didn't make any phone calls along the way to indicate
19 911 or anything of that nature?

20 A. No. Law enforcement was present.

21 Q. There's no law enforcement present?

22 A. There's law enforcement present.

23 Q. There was law enforcement present on the bridge?

24 A. There was law enforcement present on the scene.

25 Q. Okay.

1 A. So at -- therefore, there would be no -- I didn't see a
2 reason to call law enforcement.

3 Q. Because -- you didn't see a reason to call law
4 enforcement?

5 A. Because they were present.

6 Q. Okay. And they were present on the bridge and before the
7 bridge; correct?

8 A. Yes.

9 MR. LEVENTHAL: I have nothing further. Thank you.
10 Thank you, sir.

11 THE WITNESS: Yep.

12 MR. PEREZ: Nothing from Lovelien, Your Honor.

13 THE COURT: All right. Redirect, Ms. Ahmed?

14 MS. AHMED: May I have the Court's indulgence,
15 Your Honor?

16 THE COURT: Yes.

17 (Counsel conferring.)

18 MS. AHMED: Your Honor, I do have some redirect.

19 THE COURT: Go ahead.

20 MS. AHMED: Thank you.

21

22 REDIRECT EXAMINATION OF TREY SCHILLIE

23 BY MS. AHMED:

24 Q. Mr. Schillie, you were asked by Mr. Tanasi on
25 cross-examination about meeting with the U.S. Attorney's Office

1 and the FBI.

2 Do you recall those questions?

3 A. Yes.

4 Q. And in meeting -- in the various meetings that you had
5 with the U.S. Attorney's Office and the FBI, were you ever
6 asked to do anything other than tell the truth?

7 A. No.

8 Q. Now, Mr. Schillie, you were also asked by Mr. Tanasi about
9 the interview that you gave when you -- to agents when you were
10 interviewed regarding this event.

11 Do you recall that?

12 A. Yes.

13 Q. And he specifically asked you what, if anything, you had
14 conveyed to them about your concern for the law enforcement
15 officers that were in the wash, their safety.

16 Do you remember him asking you that question?

17 A. Yes.

18 Q. And you, I believe, were indicating that you did give
19 that --

20 MR. LEVENTHAL: Objection. Leading.

21 MR. TANASI: And outside the scope of the cross. I
22 didn't ask that question, Your Honor. I had asked whether he
23 specifically said if he had any concern for law enforcement.
24 Those words.

25 MS. AHMED: Actually, Your Honor, he asked both

1 questions. Initially he asked whether he conveyed --

2 THE COURT: Overruled. He can answer -- he can
3 answer the question.

4 MR. LEVENTHAL: It's still leading, Judge.

5 THE COURT: I think it's foundational at this point.
6 She's just working up to the question.

7 BY MS. AHMED:

8 Q. And were you conveying -- were you attempting to convey to
9 Mr. Tanasi that you did tell the interviewers -- you saw
10 something in that report that indicated that you did express
11 your concern for the officers' safety?

12 A. Yes.

13 Q. And what -- can you tell the jury what it was that you saw
14 in the report that you had told the agents when they
15 interviewed you about the officers' safety?

16 A. Could we bring the report up?

17 MS. AHMED: Your Honor, may I approach the witness?
18 I have his report.

19 THE COURT: Yes, you may.

20 MR. MARCHESE: Brian, do you still have it up?

21 MR. LEVENTHAL: We can put it up, right?

22 MR. TANASI: It's on my laptop if you want.

23 MS. AHMED: And, Your Honor, we're -- may we publish
24 this just to the witness and counsel?

25 THE COURT: Yes, you may.

1 (Document shown to witness.)

2 THE COURT: And just to be clear, you're not asking
3 him to read what's in the report out loud; you're asking him
4 what it is that's in the report that refreshed his recollection
5 about his concern?

6 MS. AHMED: Correct, Your Honor.

7 THE COURT: Okay.

8 BY MS. AHMED:

9 Q. Mr. Schillie, do you see the report that you were looking
10 at earlier on the screen?

11 A. Yes.

12 Q. And do I need to move the page or do you see the area that
13 refreshed your recollection as to what you had told the
14 interviewers?

15 A. Could you scroll up a little bit, please?

16 Q. (Counsel complies).

17 A. Okay. Right there.

18 Q. And when you say "right there," where are you referring?

19 A. Well, I'm just -- I'm trying to catch up --

20 Q. Oh, I'm sorry. You wanted me to stop.

21 A. -- where I read that.

22 Maybe -- maybe down.

23 Q. (Counsel complies).

24 A. Could you scroll down a little, please.

25 Q. (Counsel complies).

1 A. Maybe back. Maybe if we just start at the top.

2 Q. (Counsel complies).

3 A. Okay. Down.

4 Q. (Counsel complies).

5 A. Down, please.

6 Q. (Counsel complies).

7 A. Okay. I see the sentence.

8 Q. And having reviewed the report, can you explain to the
9 jury what it was you conveyed to the interviewing agent
10 expressing your concern for those law enforcement officers?

11 A. The sentence that indicates, "A rifle appeared to be
12 pointed at individuals recognized as wearing BLM uniforms."

13 Q. And in providing that information, whose rifle were you
14 talking about?

15 A. The subject that was laying down on the bridge.

16 Q. And, so, you had told the interviewers that his rifle
17 appeared to be pointed to -- at the law enforcement officers?

18 A. Yes.

19 MS. AHMED: Your Honor, may I have the Court's
20 indulgence?

21 THE COURT: Yes.

22 (Counsel conferring.)

23 MS. AHMED: Nothing further, Your Honor. I'll pass
24 the witness. Thank you.

25 Thank you, Mr. Schillie.

1 THE COURT: Any further cross?

2 MR. TANASI: Real briefly, Your Honor.

3

4 RE-CROSS-EXAMINATION OF TREY SCHILLIE

5 BY MR. TANASI:

6 Q. Again, sir, just so the record is crystal clear. You
7 never told the agents when you met with them on June 17th,
8 2014, you never used the words "I had a concern for law
9 enforcement"; right?

10 A. Yes.

11 Q. You never said that; right?

12 A. Correct.

13 Q. Okay. And on that day you saw law enforcement up on the
14 bridge within walking distance of where you were; right?

15 MS. AHMED: Objection, Your Honor. I believe he's
16 going beyond the scope of the redirect.

17 THE COURT: Sustained.

18 MR. TANASI: Your Honor, I'd argue it's well within
19 this concern that he's now testifying to.

20 THE COURT: This is still back to his -- whether or
21 not he had a concern about the rifles pointed at the law
22 enforcement?

23 MR. TANASI: Correct.

24 THE COURT: Okay.

25 ///

1 BY MR. TANASI:

2 Q. You never walked down to those law enforcement officers
3 that were on the bridge, the Nevada Highway Patrol and told
4 them, "Hey, I've got a concern for the BLM folks on the other
5 side of the bridge"; right? Never did that?

6 A. I never approached the individuals in the green vests.

7 Q. Right. You got in the car and you drove away; right?

8 A. Yes.

9 Q. Didn't call 911 to address that concern; right?

10 A. That's correct.

11 Q. All right.

12 MR. TANASI: Thank you.

13 THE COURT: Anyone else?

14 MR. MARCHESE: None from Parker.

15 MR. LEVENTHAL: No, Your Honor.

16 MR. PEREZ: No, Your Honor.

17 MS. AHMED: Nothing further, Your Honor. Thank you.

18 THE COURT: All right. So, at this time if any
19 members of the jury have a question for our witness, please go
20 ahead and right them down on the space provided. Don't tell us
21 your name, just write neatly, carefully, slowly.

22 (Brief pause in proceedings.)

23 THE COURT: Counsel, please join me at sidebar.

24 (Proceedings at sidebar out of the hearing of the jury:)

25 THE COURT: I think I might have -- the one that we

1 had to deny the question that we answered that was not a jury
2 question but was -- oh, no, that one -- the bridge wasn't
3 separate.

4 MS. AHMED: It was the first two questions on one
5 note.

6 THE COURT: I started with 38. Should it have been
7 37?

8 COURTROOM ADMINISTRATOR: Yeah. It should have been
9 37.

10 THE COURT: Okay. So make a piece of paper and write
11 37 on it and I'll sign it so that we can make sure we're still
12 in order.

13 All right. So Jury Question No. 38, "Did you witness
14 the subject Parker pointing the gun at any individual or
15 persons -- BLM, law enforcement -- or just in a general area?"

16 Any objection?

17 MR. TANASI: None from Stewart.

18 MR. MARCHESE: None from Parker.

19 MR. PEREZ: None from Lovelien.

20 THE COURT: Okay. Second part of Jury Note 38 is,
21 "Did the subject Parker appearing threatening, hostile, or
22 aggressive?"

23 Any objection?

24 MS. AHMED: No.

25 MR. MARCHESE: None from Parker.

1 MR. TANASI: None from Stewart.

2 MR. PEREZ: None from Lovelien.

3 THE COURT: Jury Note No. 39, "If you were concerned
4 for the safety of the people, why didn't you go to the law
5 enforcement officers there on the bridge?"

6 Any objection?

7 MR. TANASI: None from Stewart.

8 MR. MARCHESE: No.

9 MR. PEREZ: None from Lovelien.

10 Jury Note No. 40, "Did Mr. Schillie speak with anyone
11 at the bridge and ask why was everyone gathering, what was the
12 demonstration for, or any other informative questions?"

13 Any objection?

14 MR. TANASI: None from Stewart.

15 MR. MARCHESE: None from Parker.

16 MR. PEREZ: None from Lovelien.

17 MS. AHMED: No, Your Honor.

18 THE COURT: Number 41, "How did the FBI know you had
19 photos of the people on the bridge? Did you notify them
20 voluntarily?"

21 Any objection?

22 MR. MARCHESE: No. That's a good question.

23 MR. TANASI: None from Stewart.

24 MS. AHMED: No.

25 MR. PEREZ: None.

1 THE COURT: Okay. 42, "Why did you not feel it
2 necessary to notify LEO of the presumed risk from an individual
3 in prone position pointing a weapon at a group of individuals?
4 You stated they were 50 feet from the individuals?"

5 Any objection?

6 MR. MARCHESE: None from Parker.

7 MR. TANASI: None from Stewart.

8 MR. PEREZ: None from Lovelien.

9 And then 43, "In this case are all the defendants
10 being tried together or is each individual being considered
11 separately?"

12 So I'll just . . . what do you want me to tell
13 them --

14 MR. TANASI: There will be a jury instruction --

15 THE COURT: -- there will be a jury instruction that
16 clarifies that or do you want me to tell them that --

17 MR. TANASI: I don't see the harm in telling them.

18 MS. AHMED: I would tell them now, yeah, that they
19 should be considering each of them separately.

20 THE COURT: Yeah. All right.

21 And then Jury Question No. 44 is, "Did you talk with
22 anybody during your time on the bridge?"

23 MR. TANASI: No objection.

24 THE COURT: "Did you talk to anybody during" -- we're
25 not going to ask him to say what -- what he told them or any

1 other follow-ups like that, but just -- because I don't want to
2 get into what he remembers people saying or not saying and then
3 got off on a tangent, but the question is, "Did you talk with
4 anybody during your time on the bridge?"

5 MR. TANASI: No objection.

6 MR. MARCHESE: No objection.

7 MR. PEREZ: No objection.

8 THE COURT: Okay. 45 is, "You were concerned about
9 the law enforcement safety when passing through. Did you have
10 any fear at that moment?"

11 I'm not sure I even understand the question. I'm
12 going to repeat it.

13 You were concerned about the law enforcement safety
14 when passing through. Did you have any fear at that moment?"

15 MS. AHMED: For himself, I presume they're asking.

16 THE COURT: Probably his own fear.

17 Any objection?

18 MR. TANASI: None from Stewart.

19 MR. PEREZ: None from Lovelien.

20 MR. MARCHESE: None from Parker.

21 (Counsel conferring.)

22 MS. AHMED: With the same caveat, Your Honor, we had
23 for Mr. Ellis, which is that the Government obviously would
24 object to third parties coming in and testifying in the defense
25 case about the defendants in order to put on their state of

1 mind and bootstrap that to the defendants. We would still
2 maintain our objection as to that, but with the same
3 limitations that Mr. Ellis had, we don't object to that
4 question.

5 THE COURT: All right. Okay. That's noted for the
6 record.

7 All right. Thank you.

8 MR. TANASI: Thank you.

9 (Proceedings within hearing of the jury:)

10 THE COURT: All right. Mr. Schillie, I've got a
11 couple questions for you from the jury. I'm going to go ahead
12 and read the questions into the record, but when you respond,
13 you may go ahead and turn to the jury because these are really
14 the jury's questions, not mine. All right?

15 All right. So Juror Note No. 38, Question No. 1,
16 "Did you witness the subject Parker pointing the gun at any
17 individuals or persons -- BLM, law enforcement -- or just in a
18 general area?"

19 THE WITNESS: Just in the general area.

20 THE COURT: And then Question No. 2, "Did the subject
21 Parker appear threatening, hostile or aggressive?"

22 (Brief pause in proceedings.)

23 THE WITNESS: The subject had a rifle pointed in
24 the -- in that general direction, but I didn't witness any body
25 language or any -- anything like that, besides pointing a

1 rifle.

2 THE COURT: All right. Jury Note No. 39, "If you
3 were concerned for the safety of the people, why didn't you go
4 to the law enforcement officers there on the bridge?"

5 THE WITNESS: Well, I wasn't aware that the -- I
6 wasn't completely aware that the people in green were law
7 enforcement and then I assumed that since they were there, they
8 had surely seen what -- everything that I had seen.

9 THE COURT: Okay. Jury Note No. 40, "Did
10 Mr. Schillie speak with anyone at the bridge and ask why was
11 everyone gathering, what was the demonstration for, or any
12 other informative questions?"

13 So this is a yes or no question. We don't want to
14 get into what other people are telling you; we just want to
15 know whether you ever asked an informative question.

16 THE WITNESS: No.

17 THE COURT: All right. And Jury Note No. 41, "How
18 did the FBI know you had photos of the people on the bridge?
19 Did you notify them voluntarily?"

20 THE WITNESS: I notified law enforcement where I work
21 at the U.S. Forest Service who then notified BLM law
22 enforcement and then I believe that the FBI was notified at the
23 same time.

24 THE COURT: And then the question was, "Did you
25 notify them voluntarily?"

1 THE WITNESS: Yes.

2 THE COURT: Jury Note No. 42, "Why did you not feel
3 it necessary to notify LEO of the presumed risk from an
4 individual in a proned position pointing a weapon at a group of
5 individuals? You stated they were 50 feet from the
6 individuals?"

7 THE WITNESS: Yes. It just seemed that there was law
8 enforcement presence. There was -- there were airplanes
9 circling above, airline surveillance of some kind. I assumed
10 that everyone there had been seeing the same thing.

11 THE COURT: Jury Note No. 43, "In this case are all
12 the defendants being tried together or is each individual being
13 considered separately?"

14 So, you will be provided instructions of law that
15 will clarify that for you, but I can take the suspense out of
16 it and let you know that yes, each individual is being tried
17 separately so you will be determining whether or not they're
18 guilty of the charges separately, individually. There might be
19 some charges that charge them together as a group, but you will
20 decide each person -- for each person whether or not the
21 Government has met its burden.

22 Jury Note No. 44, "Did you talk with anybody during
23 your time on the bridge?"

24 THE WITNESS: Yes. I was traveling with a friend.
25 Spoke -- I spoke with my friend who was also there.

1 THE COURT: Anybody else?

2 THE WITNESS: No.

3 THE COURT: And Jury Note No. 45, "You were concerned
4 about law enforcement safety when passing through. Did you
5 have any fear at that moment?" And the attorneys and I believe
6 that what the question is asking you is whether you had fear
7 for yourself at that moment.

8 THE WITNESS: Yes. Toward -- toward the end of the
9 10 minutes or so that I was on the bridge.

10 THE COURT: All right. So, does the Government have
11 any follow-up questions?

12 MS. AHMED: No, Your Honor. Thank you.

13 THE COURT: Defense, any follow-up questions?

14 MR. LEVENTHAL: Just to clarify. Thank you.

15

16 RE-CROSS-EXAMINATION OF TREY SCHILLIE

17 BY MR. LEVENTHAL:

18 Q. You were asked if you had any fear for yourself and you
19 said yes, you did?

20 A. I'm sorry. Could you repeat the question?

21 Q. The last question that the judge asked you was, was
22 whether or not you had fear for yourself and you indicated yes,
23 you had fear for your own safety?

24 A. Yes. Toward the end of the time I was on the bridge.

25 Q. Okay. So you were up there for 10 minutes; right?

1 A. Approximately.

2 Q. Okay. And you got out of your vehicle; correct?

3 A. Correct.

4 Q. Okay. And you walked away from your vehicle; correct?

5 A. Correct.

6 Q. Okay. You're not law enforcement; right?

7 A. Correct.

8 Q. Okay. You don't carry a gun; correct?

9 A. Correct.

10 Q. You don't carry a badge; correct?

11 A. Correct.

12 Q. Okay. You walked up to the people; correct?

13 MS. AHMED: Your Honor, I'd just object to this line
14 of questioning as being beyond the scope of the question.

15 MR. LEVENTHAL: It goes right directly towards his
16 fear that he indicated he had for himself.

17 THE COURT: Well, he just told you that it was at the
18 end of the 10 minutes that he had fear. So, I'll -- I'll allow
19 him to answer your question.

20 THE WITNESS: Could you repeat the last question?

21 BY MR. LEVENTHAL:

22 Q. You're not a law enforcement?

23 A. Correct.

24 Q. And again, you don't carry a weapon; right?

25 A. Correct.

1 Q. And you walked right up to these people on the bridge;
2 correct?

3 A. We walked -- I walked to people on the bridge. I didn't
4 see the individual in question until --

5 Q. As a matter of fact, you turned and you --

6 MS. AHMED: Your Honor, I would object to him cutting
7 off the witness answering the question.

8 BY MR. LEVENTHAL:

9 Q. Go ahead. I apologize if I cut you off.

10 A. Could you repeat the question?

11 Q. You walked up to individuals on the bridge?

12 A. Yes.

13 Q. Right?

14 A. Yes.

15 Q. You even took your eyes off of the individuals on the
16 bridge when you were focused down in the wash at some point;
17 correct?

18 A. Correct.

19 Q. Okay. And you -- you watched what was going on in total;
20 correct?

21 A. Could you restate the question?

22 Q. You were watching everything that was going on around you?
23 There wasn't any one thing you were focused on; right?

24 A. I don't understand the question.

25 Q. Okay. Well, you said you had fear, so I'm just trying to

1 find out where this fear came from and you indicated -- you
2 also just indicated that there were -- there were helicopters
3 that were -- you assumed were law enforcement?

4 MS. AHMED: Objection, Your Honor. It misstates the
5 witness' testimony. He didn't say anything about helicopters.

6 THE COURT: I think he said plane, but, overruled, he
7 can clarify that.

8 BY MR. LEVENTHAL:

9 Q. Planes?

10 A. I remember seeing an aerial surveillance. Appeared to be
11 a plane, airplane.

12 Q. Okay. And you -- you assumed that that was law
13 enforcement?

14 A. I assumed that, yes.

15 Q. Okay. And you passed by many law enforcement officers.
16 You indicated that; right?

17 A. Yes.

18 MR. LEVENTHAL: I have nothing further. Thank you.

19 THE COURT: Anyone else?

20 MR. MARCHESE: Just briefly.

21

22 RE-CROSS-EXAMINATION OF TREY SCHILLIE

23 BY MR. MARCHESE:

24 Q. Mr. Leventhal just asked you about the -- what I wrote
25 down was aerial surveillance.

1 Do you remember that?

2 A. Yes.

3 Q. And I believe you stated that it was your belief that it
4 was law enforcement; correct?

5 MS. AHMED: Your Honor, I would just object to
6 Mr. Marchese relying on Mr. Leventhal's questions. It's beyond
7 the scope of the jury question.

8 THE COURT: Overruled. He can clarify the responses.

9 BY MR. MARCHESE:

10 Q. Once again, you said "aerial surveillance" in reference to
11 the jury question; correct?

12 A. Yes.

13 Q. What did you mean by that?

14 A. An airplane, low-flying airplane.

15 Q. Okay. And it was your belief that it was law enforcement?

16 A. Yes.

17 Q. Why?

18 A. Because it seemed like something law enforcement would
19 have access to.

20 Q. Okay. You were also asked, one of the jury questions was
21 in reference to your pictures and turning them over to the FBI.

22 Do you remember that question, generally speaking?

23 A. Yes.

24 Q. Okay. Now, you were also asked another question that --
25 in reference to finding out what was going on, were a lot of

1 people in the wash; correct? You took the pictures?

2 A. Could you restate the question?

3 Q. Okay. You -- I believe the question was, did you ask
4 anyone what was going on, something along those lines.

5 Do you remember that question?

6 A. Yes.

7 Q. Okay. And I believe your answer was no, you didn't ask
8 anyone; correct?

9 A. Aside from the friend I was there with.

10 Q. Okay. And fair to say that your friend would not know
11 because he was traveling with you and you stumbled on to these
12 people, for lack of a better term?

13 A. Correct.

14 Q. Okay. When was it that you found out what was going on?

15 A. Could you be more specific?

16 Q. Well, at some point in time you took the affirmative step
17 to turn the pictures over to law enforcement. I believe you
18 said someone from your -- your employer; correct?

19 A. Correct.

20 Q. All right. What made you do that?

21 A. It seemed like important information for law enforcement
22 to have.

23 Q. Okay. At that particular time, when you turned it over,
24 did you know what was going on?

25 A. Yes.

1 Q. Okay. When did you turn it over?

2 A. First thing, first business morning after I arrived in
3 Denver.

4 Q. Okay. And when would that have been, if you morning?

5 A. 8:00 a.m. on the morning of the 13th.

6 Q. Okay. Prior to 8:00 a.m. on the morning of the 13th had
7 you found out what was going on?

8 A. We had heard reports on the radio. It was all over the
9 national news.

10 Q. Okay. Did you do any independent research?

11 A. Can you describe what "independent research"?

12 Q. Did you look on the Internet?

13 A. Yes.

14 Q. Okay. Did you see any similar pictures to the ones that
15 you took?

16 MS. AHMED: Objection, Your Honor. Relevance.

17 THE COURT: What is the relevance of this,
18 Mr. Marchese?

19 MR. MARCHESE: It goes to why he turned it over.

20 THE COURT: He just said why he turned it over. He
21 watched -- he heard something on the radio and he thought that
22 it was something that they should have; that it was important.

23 MR. MARCHESE: All right. And I was just going --
24 diving a little deeper into why he did what he did. That's
25 all. It's my -- one or two more questions and then I'll move

1 on. It's actually my last questions.

2 MS. AHMED: Objection, Your Honor, on relevance
3 still.

4 THE COURT: Ask the question and I'll let you know if
5 it's within the realm.

6 BY MR. MARCHESE:

7 Q. Sir, when you did your research, did you see any similar
8 pictures to the ones that you turned over to the FBI?

9 A. Could you describe similar in which way?

10 Q. Did you see any pictures of the man on the bridge with the
11 plaid shirt in the black vest, prone?

12 A. I don't recall.

13 Q. Okay.

14 MR. MARCHESE: Thank you.

15 THE COURT: Any other cross?

16 MR. TANASI: Briefly, Your Honor.

17

18 RE-CROSS-EXAMINATION OF TREY SCHILLIE

19 BY MR. TANASI:

20 Q. Sir, you've indicated that you felt fear on the bridge;
21 right?

22 A. Yes.

23 Q. Okay. We've also seen the pictures so I won't bring it up
24 again, but we saw a picture of a guy in the plaid shirt with
25 the black vest pointing his weapon while he's on the bridge;

1 right?

2 A. Yes.

3 Q. Away from you; right?

4 A. Away from me? Can you --

5 Q. Correct.

6 A. Yes. It was --

7 Q. That individual wasn't pointing his weapon at you. Fair?

8 A. Correct.

9 Q. Okay. In fact, the only individuals pointing their weapon
10 at you were the BLM agents that you saw --

11 MS. AHMED: Objection, Your Honor.

12 BY MR. TANASI:

13 Q. -- under the bridge; correct?

14 MS. AHMED: Objection. It assumes facts not in
15 evidence, argumentative, and frankly, Your Honor, it goes to
16 previous orders in this case.

17 THE COURT: Sustained.

18 MR. TANASI: Your Honor, it goes to his fear.

19 I'll pass the witness, Your Honor.

20 MR. PEREZ: Nothing from Lovelien, Your Honor.

21 THE COURT: All right.

22 Redirect?

23 (Counsel conferring.)

24 MS. AHMED: I'm sorry, Your Honor. The Court's
25 indulgence for just one moment.

1 (Counsel conferring.)

2 MS. AHMED: Your Honor, nothing further from the
3 United States. Thank you.

4 THE COURT: All right. I have a question,
5 Mr. Schillie.

6 The first picture we saw, everybody on that
7 northbound bridge is standing up; right? In the first picture.
8 There's no one pointing a gun that's in the prone position?

9 THE WITNESS: Yes.

10 THE COURT: That's when you get out of the car?

11 THE WITNESS: Correct.

12 THE COURT: And that's when you walk over to them?

13 THE WITNESS: Correct.

14 THE COURT: And then later you see someone prone
15 pointing a gun?

16 THE WITNESS: After the pictures of the wash.

17 THE COURT: And then you leave?

18 THE WITNESS: Then I -- yes.

19 THE COURT: All right.

20 Any other questions for Mr. Schillie?

21 MR. TANASI: No, Your Honor.

22 MR. MARCHESE: None from Parker.

23 MR. LEVENTHAL: No, Your Honor.

24 MS. AHMED: No, Your Honor. Thank you.

25 THE COURT: All right. Thank you, Mr. Schillie, for

1 coming in this afternoon. You are excused. Please be careful
2 on the way down with those steps.

3 (Witness excused.)

4 THE COURT: And the Government may call its next
5 witness.

6 MS. CREEGAN: Your Honor, the United States calls
7 Sergeant Shannon Serena.

8

9 SHANNON SERENA,
10 called as a witness on behalf of the Government, having been
11 first duly sworn, was examined and testified as follows:

12

13 THE COURT: Good afternoon.

14 Come on up. Please be careful with the steps.

15 THE WITNESS: Okay. Thank you, ma'am.

16 COURTROOM ADMINISTRATOR: Please remain standing and
17 raise your right hand.

18 You do solemnly swear that the testimony you shall
19 give in the cause now before this Court shall be the truth, the
20 whole truth, and nothing but the truth, so help you God?

21 THE WITNESS: Yes, sir.

22 COURTROOM ADMINISTRATOR: Thank you, sir. You may be
23 seated.

24 THE WITNESS: Thank you.

25 THE COURT: Please state your full name for the

1 record and spell your last name.

2 THE WITNESS: My name is Shannon Serena, last name of
3 S-e-r-e-n-a.

4

5 DIRECT EXAMINATION OF SHANNON SERENA

6 BY MS. CREEGAN:

7 Q. Thank you, Sergeant Serena.

8 Can you please tell the jury how you're currently
9 employed?

10 A. I'm currently a sergeant with the Nevada Highway Patrol
11 and the department I'm in now is Risk Management.

12 Q. How long have you been a sergeant with Nevada Highway
13 Patrol?

14 A. Since 2013.

15 Q. Have you been with Nevada Highway Patrol for longer than
16 that?

17 A. Yes. I started in 2008.

18 Q. When you started, were you a trooper, a cadet?

19 A. Originally started I was a cadet.

20 Q. And then you, from there, became a trooper?

21 A. Yes. I went through an academy. After I graduated the
22 academy, I became a trooper and then I promoted sergeant in
23 2013.

24 Q. As a cadet and then a trooper and then a sergeant with the
25 Nevada Highway Patrol, is there training that you're required

1 to complete?

2 A. Yes, ma'am.

3 Q. Can you please describe that training for the jury.

4 A. Yes. The -- you go through an extensive academy in which
5 you go through physical activities. You also learn sections of
6 law and how to handle yourself on a day-to-day basis.

7 Q. On April 12th, 2014, did you respond to an incident in
8 Bunkerville, Nevada?

9 A. Yes.

10 Q. You responded as a Nevada Highway Patrol trooper or
11 sergeant?

12 A. Sergeant.

13 Q. And can you tell us how you first learned that there was
14 an incident ongoing in Bunkerville, Nevada?

15 A. We were briefed. That day started off, I believe, pretty
16 much as many did for us. I was contacted by one of our
17 captains at the time and he told us to go up towards the Moapa
18 Substation and we would be briefed on the details of what was
19 going on there.

20 Q. Was that in the morning of April 2014?

21 A. Yes, ma'am.

22 Q. I'm sorry. Could you pull that microphone a little
23 closer. I'm not sure if --

24 A. There you go.

25 Q. It might just be me and where I'm at, but I couldn't hear

1 you too well.

2 So after the briefing that you received that morning
3 at the Moapa Substation, did you have an idea of what your
4 duties would be there from?

5 A. Yes.

6 Q. What was your understanding of what your duties would be?

7 A. At that time, I was in charge of the first squad. My
8 details of that were to contact the Department of
9 Transportation that was already on site with us and we were to
10 help them, assist them with security to put up a K-rail system
11 up there in the Moapa area.

12 Q. And did you have an understanding of what the K-rail
13 system was for?

14 A. Yes.

15 Q. And what was that for?

16 A. That was put there to help isolate traffic to help BLM
17 exit the area.

18 Q. And did there come a time when your understanding of what
19 your duties would be changed?

20 A. Yes.

21 Q. How did it change?

22 A. Approximately 20, 30 minutes after that initial briefing
23 Captain Jackson at that time contacted me. He said for me to
24 get the -- my squad ready to go. So I kind of asked him, like,
25 "For the K-rail ordeal?" And he's, like, no. He goes, "We

1 have officers that are in danger and we need to get up there as
2 fast as we can."

3 MR. LEVENTHAL: Objection. Hearsay.

4 BY MS. CREEGAN:

5 Q. Just generally, without what people said, what was your
6 understanding of how your duties changed?

7 A. Yes. They changed in which it went from going from
8 helping DOT to getting to the Bunkerville area.

9 Q. I'm sorry. It may be just that I'm not able to hear you
10 too well, but what were your duties -- you just described what
11 your duties were originally. What did they change to? What
12 were your new duties?

13 A. They changed to go out there and to assist. There was
14 officers that were held -- being held at gunpoint and we were
15 there to go and assist them.

16 Q. Did you actually drive to the area that you were supposed
17 to assist the officers?

18 A. Yes.

19 Q. And when you drove there, did you have a dash camera on
20 your law enforcement vehicle?

21 A. Yes, ma'am.

22 MS. CREEGAN: Your Honor, can I bring up Exhibit 31a
23 for the witness only, please?

24 THE COURT: Yes.

25 (Exhibit 31a published to witness.)

1 MS. CREEGAN: Thanks. And you can just stop right
2 there.

3 BY MS. CREEGAN:

4 Q. Sergeant Serena, is this video from your dash camera from
5 April 12th?

6 A. Yes.

7 Q. And does it have a date on it that you can see?

8 A. Yes, it does.

9 Q. And does it also identify that you're the officer by your
10 name and badge number?

11 A. Yes.

12 MS. CREEGAN: Your Honor, Government moves to admit
13 Exhibit 31a.

14 (Exhibit 31a offered.)

15 THE COURT: Any objection to 31a?

16 MR. MARCHESE: No objection, Parker.

17 MR. TANASI: None from Stewart, Your Honor.

18 MR. LEVENTHAL: No objection.

19 MR. PEREZ: None from Lovelien.

20 THE COURT: Objection -- oh, Exhibit 31a will be
21 admitted.

22 (Exhibit 31a received.)

23 MS. CREEGAN: Permission to publish?

24 THE COURT: Yes, you may.

25 (Exhibit 31a published.)

1 MS. CREEGAN: Okay. If just keeping -- sorry. Just
2 keeping that stopped for a moment at 11:28.

3 BY MS. CREEGAN:

4 Q. Just so we're familiar with what this looks like. We can
5 see that there's sort of a video portion; correct?

6 A. Yes.

7 Q. And can you show us the area where it's identified as your
8 dash cam by your name and badge number?

9 A. Yes. It will say over near -- where it says "officer" and
10 then in that box it will have my last name and then my unit
11 number.

12 Q. Could you circle that, please.

13 A. (Witness complies).

14 Q. And does it also have the current date on this dash cam,
15 the date that the actual video was taken?

16 A. Yes.

17 Q. Can you show us where that is?

18 A. Yes. (Indicating).

19 Q. And that's indicated at the bottom.

20 At the bottom there, is that the start and end time
21 of this particular recording?

22 A. Yes.

23 Q. Does the recording also give the current time?

24 A. Yes.

25 Q. And can you show us where that is?

1 A. (Indicating).

2 Q. Sorry. I had just asked you about the start and end time.
3 Where is the current time listed, of what the video is showing
4 right at that moment?

5 A. It will be in the media block.

6 Q. Okay. Could you circle that, please.

7 A. (Witness complies).

8 Q. Thank you.

9 MS. CREEGAN: Can you play, please.

10 (Exhibit 13a published.)

11 MS. CREEGAN: And can you stop there.

12 Stopping at 11:28:45 a.m.

13 BY MS. CREEGAN:

14 Q. Is that -- that time, is that local Nevada time?

15 A. Yes.

16 Q. Okay. And up until now we've seen a little bit of the
17 roadway heading toward Bunkerville. What roadway are you on?

18 A. That's the 15, northbound.

19 Q. Northbound?

20 A. Yes.

21 Q. And up until this point, have we seen any traffic?

22 A. Not much of anything.

23 Q. Is the traffic normal, abnormal so far?

24 A. That would be about normal in that spot there.

25 Q. Thank you.

1 MS. CREEGAN: Can you play, please.

2 (Exhibit 31a published.)

3 MS. CREEGAN: And stopping this at 11:30:09 a.m.

4 BY MS. CREEGAN:

5 Q. Have you observed any changes in the traffic at this
6 point?

7 A. The traffic got heavier at that point.

8 Q. Is this normal traffic for the northbound I-15 lane at --
9 in the morning on a Saturday?

10 A. No, ma'am.

11 MS. CREEGAN: Can you play, please.

12 (Exhibit 31a published.)

13 MS. CREEGAN: Stopping there, please. Stopping at
14 11:30:54 a.m.

15 BY MS. CREEGAN:

16 Q. Bringing your attention to a white vehicle on the right
17 side of the screen, did you observe this white vehicle
18 (indicating)?

19 A. Yes.

20 Q. What did you see in this vehicle?

21 A. I saw people dressed in military type of dress sitting in
22 the back of a pickup truck.

23 Q. Do you normally see an open pickup truck with people in
24 the back on northbound I-15?

25 A. No, ma'am.

1 MS. CREEGAN: Can you play, please.

2 (Exhibit 31a published.)

3 MS. CREEGAN: And stopping at about 11:33:10.

4 BY MS. CREEGAN:

5 Q. Sergeant Serena, did you observe this individual
6 (indicating) who appears to be in the roadway?

7 A. Yes, I did.

8 Q. What did you observe about that individual?

9 A. The individual who was in the roadway and stopping
10 traffic, walking back and forth with a assault rifle in his
11 hands.

12 Q. And up until this point, you've been driving through
13 traffic, what have you been observing as you're looking into
14 vehicles?

15 A. As we were going it got more and more congested. We
16 started to notice that there were more and more people dressed
17 in military fashion of some sort, seeing weapons. As the
18 camera shoots forward in my vehicle, it's hard to tell, but
19 because of the speeds we're going, all a sudden you can sit as
20 a driver and pan to the right and you can see into vehicles
21 very vividly. On that day, you know, the decision for me to
22 travel down the center was one that I still think about today.
23 It was --

24 MR. MARCHESE: Objection. Non-responsive.

25 MR. LEVENTHAL: Drexler joins.

1 MR. PEREZ: Lovelien joins.

2 MR. TANASI: Stewart joins.

3 MS. CREEGAN: He's describing his observations.

4 Non-responsive is the questioner's objection from a hostile
5 witness.

6 THE COURT: Overruled. He can answer the question.
7 He can finish answering his question.

8 THE WITNESS: The decision to do that was something
9 that was definitely awe-inspiring that day because we had found
10 out as we decided to head down, there were vehicles on both
11 sides of us that would have weapons in them and people there
12 looking at us, so it did not give us a very safe feeling. When
13 we got to the end, we could finally get up there enough to see
14 where the blockage was occurring and that's when we started to
15 observe, like this individual here (indicating), that's in the
16 camera.

17 BY MS. CREEGAN:

18 Q. And about how many officers were there in your team or
19 squad that were behind you?

20 A. In my group was approximately six or seven.

21 Q. Were they all in their own cars behind you?

22 A. Yes, from what I remember.

23 Q. You were the lead car at this time?

24 A. Yes, ma'am, I was.

25 Q. And did you observe -- we're not able to see it really

1 right now on the screen, but did you observe an area where
2 people were parking their cars?

3 A. Yes, ma'am.

4 Q. Where is it in relation to what we're able to see in this
5 video?

6 A. Off to the right side of the screen, you'll see where the
7 vehicles are kind of in that third lane or like the -- off to
8 the highway, there's an entrance into a right area over there
9 is where a group of people started to, you know, convene and
10 get all their vehicles parked over off to the right.

11 Q. Did you ultimately decide on a location to park?

12 A. Yes, I did.

13 Q. And where was that?

14 A. Once we got past this area here, we went further down so
15 that we could try to help open the freeway back up and I ended
16 up actually pulling over off to the right-side shoulder.

17 Q. Was that before or after the bridge area there?

18 A. Before the bridge.

19 Q. Did there come a time when you changed that location?

20 A. Yes.

21 Q. And why was that?

22 A. Once we arrived, we were able to get the freeway opened
23 back up and to allow the citizens to travel through the area.

24 At another point, though, while we were down there doing
25 traffic control there was another area on the bridge that

1 became locked down as well. So there were two of us, myself
2 and another trooper, who went down to that area of the bridge
3 to try to get that opened up as well again.

4 MS. CREEGAN: Thank you. You can take that down.

5 BY MS. CREEGAN:

6 Q. And, Sergeant Serena, when you were moving and you were
7 with another trooper, was that trooper, Trooper Madsen?

8 A. Yes.

9 Q. And where was your vehicle in relationship to his vehicle?

10 A. I was behind him.

11 Q. Okay. And have you previously reviewed dash cams from his
12 dash cam?

13 A. Yes.

14 Q. Do they fairly and accurately represent what you,
15 yourself, saw on April 12th?

16 A. Yes.

17 Q. And have you previously reviewed Government's Exhibit 32a
18 and 33a?

19 A. Yes.

20 Q. Are those Madsen's dash cams as you, yourself, saw them on
21 April 12th?

22 A. Yes.

23 MS. CREEGAN: Your Honor, the Government moves to
24 admit Exhibits 32a and 33a.

25 (Exhibits 32a and 33a offered.)

1 THE COURT: Any objection to 32a and 33a?

2 MR. TANASI: None from Stewart, Your Honor.

3 MR. LEVENTHAL: Only to the extent that they're not
4 his dash cams.

5 MR. MARCHESE: Parker joins.

6 MR. PEREZ: Lovelien joins.

7 THE COURT: Well, that's not a requirement for
8 admission. It's not required that it be his dash cam so long
9 as they fairly and accurately represent what he actually
10 personally saw on that date and time, which he just stated he
11 did.

12 Any other objection?

13 All right. So Exhibit 32a and 33a will be admitted.
14 (Exhibits 32a and 33a received.)

15 MS. CREEGAN: Thank you, Your Honor.

16 BY MS. CREEGAN:

17 Q. And before we publish 32a, I think you mentioned it
18 before, but you were talking about getting citizens through.
19 What did you have an understanding of your mission to be at the
20 time that you arrived and assessed the situation?

21 A. At the moment we arrived, vehicles were obviously stopped
22 on the 15 and traffic was backed up, so we immediately went
23 into the realm of getting people through and out of that area
24 so that they can continue on their way down the freeway.

25 Q. Did you observe any signs of distress from people who were

1 trapped on the roadway?

2 A. Yes.

3 MS. CREEGAN: Permission to publish 32a?

4 THE COURT: Yes.

5 (Exhibit 32a published.)

6 MS. CREEGAN: And stopping at 12:18:03.

7 BY MS. CREEGAN:

8 Q. Just first to orient ourselves. What time is it in local
9 Nevada time?

10 A. 12:18 it says.

11 Q. And what direction is the dash cam facing?

12 A. Northbound.

13 Q. So, we're facing -- the going direction of the northbound
14 lane?

15 A. Yes.

16 Q. Where is the bridge over the wash on the northbound lane
17 in relation to where the car is?

18 A. According to what relation, we're pretty much on the
19 bridge and we're off to the left side shoulder as much as we
20 are -- shoulder that it had at that time.

21 Q. And where is the wash area between the southbound and
22 northbound lane?

23 A. It's a little further, but it's underneath us.

24 Q. Bringing your attention to an individual on the left side
25 of the video (indicating), did you observe this individual on

1 April 12th, 2014?

2 A. Yes.

3 Q. And what drew your attention to this individual?

4 A. The fact that he was there. He's holding an assault rifle
5 and then later on, once we had gotten out of the vehicle, he
6 immediately approached us, started coming towards us and then
7 from there we had a conversation.

8 Q. And just generally, not what the discussion, but what was
9 the type of conversation that you had?

10 MR. LEVENTHAL: Objection. Relevance. And vague.

11 THE COURT: It is vague. You want to rephrase it?

12 BY MS. CREEGAN:

13 Q. Just generally, what was your understanding of what he was
14 trying to discuss with you?

15 MR. LEVENTHAL: Objection. Calls for speculation.

16 THE COURT: I'm not -- well, it depends on what his
17 answer is. I'm not sure if it does or not.

18 I'll let him answer.

19 THE WITNESS: Initially I could not tell really who
20 he was or who he was with. When he approached me, he started
21 telling me about --

22 MR. LEVENTHAL: Objection. Hearsay.

23 THE COURT: Sustained.

24 BY MS. CREEGAN:

25 Q. Just generally, what was the subject?

1 A. About other people with rifles that were aiming at him.

2 Q. Did you make contact with this individual?

3 A. I did.

4 MS. CREEGAN: Can you play, please.

5 (Exhibit 32a published.)

6 MS. CREEGAN: And just stopping at 12:18:37.

7 BY MS. CREEGAN:

8 Q. Sergeant Serena, do you see yourself in this video?

9 A. Yes.

10 Q. Can you circle yourself, please.

11 A. (Witness complies).

12 Q. And you seem to be wearing a sort of bright vest. Can you
13 describe what that is?

14 A. It's our traffic vest.

15 MS. CREEGAN: Can you play, please.

16 (Exhibit 32a published.)

17 MS. CREEGAN: And can you stop it there, please.

18 BY MS. CREEGAN:

19 Q. Sergeant Serena, did you just see a person in the middle
20 of the roadway?

21 A. Yes.

22 Q. What did you observe that person to do?

23 A. The individual was running across the roadway, back across
24 the other shoulder.

25 MS. CREEGAN: Can you play, please.

1 (Exhibit 32a published.)

2 MS. CREEGAN: And stopping at 12:21:13.

3 BY MS. CREEGAN:

4 Q. Circling an individual that appears in the foreground in
5 the center of the screen (indicating), did you observe this
6 individual on April 12th, 2014?

7 A. Yes, I did.

8 Q. Where did this individual come from before they came on
9 the screen?

10 A. That I'm not sure of.

11 Q. And what were they wearing?

12 A. Looked like military-style, you know, garb.

13 Q. Did you observe whether the person was armed or not?

14 A. Yes.

15 Q. What were they armed with?

16 A. From memory, I think I remember him having a rifle slung
17 over his shoulder.

18 MS. CREEGAN: Can you play it, please.

19 (Exhibit 32a published.)

20 MS. CREEGAN: And stopping at 12:21:58.

21 BY MS. CREEGAN:

22 Q. Sergeant Serena, the portion of the video we just watched,
23 you appear to have some interaction with this individual. Is
24 that accurate?

25 A. Yes.

1 Q. What was that interaction?

2 A. From what I recall, he was talking to the other individual
3 who initially approached us when we got out of vehicles. I do
4 not recall exactly what he had said or what was there, but I
5 remember, you know, him and the other individual having a
6 conversation.

7 Q. And what was the effect of this individual arriving?

8 A. The effect of the individual that showed up, once he was
9 there, the other person that was candidly speaking to me all of
10 a sudden decided to kind of leave me alone and then he wouldn't
11 talk to me again.

12 Q. And what time is this in local Nevada time?

13 A. 12:21.

14 Q. And at this point, looking up the northbound bridge away
15 from the vehicle, were you able to observe anything that took
16 your interest further down the bridge?

17 A. Beyond just large groups of people, no.

18 Q. Did you decide to stay where you were with these two
19 individuals or to leave and go to another location?

20 A. I decided to stay where I was.

21 Q. And why was that?

22 A. At that point I was dealing with the individual who I
23 initially spoke to, had told me about another vehicle that was
24 in the wash with an individual that was pointing a weapon down
25 at officers. So, at that point I was busy trying to get ahold

1 of other officers out there to try to make a contact or
2 something with that vehicle.

3 MR. MARCHESE: Your Honor, we're going to object as
4 to hearsay.

5 THE COURT: Sustained.

6 MR. MARCHESE: Motion to Strike.

7 THE COURT: Well, not the whole answer, just any
8 out-of-court statements.

9 MR. MARCHESE: Thank you.

10 BY MS. CREEGAN:

11 Q. And, Sergeant, if you could, without going into anything
12 that was said, why did you decide to stay with those two
13 individuals?

14 A. They were willing to sit there and talk to us.

15 Q. Did you have concerns about these individuals?

16 A. Yes.

17 Q. Why was that?

18 A. They were both heavily harmed and they weren't exactly the
19 most friendly with us.

20 MS. CREEGAN: Your Honor, I have a good deal more
21 questions for Special Agent Serena. I'm not sure what time
22 would be a good time, in the Court's opinion, to take a break
23 for the afternoon.

24 THE COURT: We're just going to go through because
25 we're stopping today at 4:15. One of the jurors has an

1 appointment.

2 MS. CREEGAN: Okay. Could we bring up Exhibit 8,
3 which has already been admitted.

4 (Exhibit 8 published.)

5 MS. CREEGAN: And stopping there. Stopping at 24
6 seconds at Exhibit 8.

7 BY MS. CREEGAN:

8 Q. Sergeant Serena, do you recognize this individual?

9 A. Yes, I do.

10 Q. Who is that individual?

11 A. That's the individual that approached me when we got out
12 of our vehicles there on the bridge.

13 Q. Was that the person who was first there or the second
14 person that came?

15 A. That's the first person that was there.

16 MS. CREEGAN: Okay. Can you play, please.

17 (Exhibit 8 published.)

18 MS. CREEGAN: And stopping at about 47 seconds.

19 BY MS. CREEGAN:

20 Q. Do you recognize this vehicle which I've circled
21 (indicating) which is behind the silver car in the foreground?

22 A. Yes.

23 Q. Which vehicle is that?

24 A. That would be my patrol car.

25 MS. CREEGAN: Thank you. You can take that down.

1 Permission to publish Exhibit 33a to the -- which has
2 already been admitted?

3 THE COURT: Yes, you may.

4 (Exhibit 33a published.)

5 BY MS. CREEGAN:

6 Q. And, Sergeant Serena, just bringing your attention again
7 to the time, what's the current time in local Nevada time?

8 A. 12:25.

9 MS. CREEGAN: And stopping at 12:36:04.

10 BY MS. CREEGAN:

11 Q. Circling an individual who appears to be in a lower
12 position, what did you observe that individual to be doing on
13 April 12th?

14 A. At that point he stuck his rifle over the embankment there
15 and started to point at something down in the wash.

16 MS. CREEGAN: And can we bring up what's been
17 previously admitted as Government's Exhibit 66?

18 THE COURT: Yes.

19 What time is it on this cam -- dash cam?

20 MS. CREEGAN: 12:26:04.

21 THE COURT: Thank you.

22 (Exhibit 66 published.)

23 BY MS. CREEGAN:

24 Q. And, Sergeant Serena, do you recognize this individual
25 (indicating) in the foreground here?

1 A. Yes.

2 Q. Who is that individual?

3 A. That's the first individual that greeted me when we got on
4 the bridge.

5 Q. And who is this individual (indicating) who appears to be
6 directly behind him in green?

7 A. I don't know exactly who he is, but I assumed he was like
8 his boss.

9 MR. LEVENTHAL: Objection. Calls for speculation.

10 THE COURT: Sustained.

11 BY MS. CREEGAN:

12 Q. Do you recognize this vehicle in the background here
13 (indicating)?

14 A. Yes, I do.

15 Q. Whose vehicle is that?

16 A. That's Trooper Madsen's vehicle.

17 Q. Is this the bridge on April 2014?

18 A. Yes, ma'am.

19 Q. April 12th, 2014.

20 MS. CREEGAN: Thank you. You can take that down.

21 Can you bring back up Exhibit 33a at 12:26:04.

22 (Exhibit 33a published.)

23 BY MS. CREEGAN:

24 Q. And, Sergeant Serena, at 12:26:08 what are you doing here?

25 A. At that point I went back up to approach that individual

1 to see what he was doing.

2 Q. And what was your objective in doing that?

3 A. So in case there was someone to be at harm, I wanted to
4 try it negate that if I can.

5 Q. And, Sergeant Serena, I think you indicated earlier you
6 had some concern about these individuals; correct?

7 A. Yes.

8 Q. But there appear to be some times when you have your back
9 to them. Is that accurate?

10 A. Yes.

11 Q. Why is that?

12 A. Because at some point they're there everyone -- there was
13 a ton of people that were armed. At some point my back was
14 going to be against somebody who was an armed individual.

15 Q. How long were you at this northbound bridge area on
16 April 12th, 2014?

17 A. I don't remember exactly. I would go to estimate a couple
18 of hours.

19 Q. What was the total number of people that you think that
20 you observed in that area?

21 A. Actually on the bridge or in the bridge and the wash?

22 Q. That you, yourself, observed total.

23 A. I'd say several hundred people.

24 Q. About how many people do you think you saw with firearms?

25 A. I would say three quarters of them. They were heavily

1 armed.

2 Q. And how many of those people had their firearms in their
3 hands?

4 A. Hard to tell exactly. Rough estimate, a lot of them would
5 leave the weapon hang in front of them, have their hands on
6 them, so I'd say about a good quarter or so.

7 Q. What was the total number of NHP officers that were in the
8 area on April 12th, 2014?

9 A. In my group alone we had six or seven and I think the
10 second group that came, there was another six or seven as well.

11 Q. So that would be as many as 14?

12 A. 14 to 16 I'm going to say that were there, roughly.

13 Q. If you saw an individual with a firearm -- a single
14 individual, normally, what would you do?

15 A. We would be able to handle the situation much differently.
16 At that time, you know, depending on so many circumstances
17 could arise of what exactly that individual is doing, but we
18 would definitely, you know, take different approaches with
19 them. So it's hard to say an exact answer, depending on the
20 situation.

21 Q. Okay. Were you able to do anything in this situation?

22 A. No.

23 Q. Why is that?

24 A. For the mere fact we were outnumbered by hundreds.

25 Q. Were you able to effect arrests in this situation?

1 A. No.

2 Q. Why is that?

3 A. There's just not enough of us. I mean, even if you stuck
4 one or two people in a vehicle and it wasn't exactly a very
5 safe environment that day to, you know, start making an arrest
6 on somebody when they have a few hundred of their friends.

7 MR. LEVENTHAL: I'm going to object to the friends
8 part. No indication that anybody knew anybody at this protest.

9 THE COURT: Overruled.

10 MS. CREEGAN: Court's indulgence for a moment,
11 Your Honor.

12 THE COURT: Yes.

13 (Counsel conferring.)

14 BY MS. CREEGAN:

15 Q. And, Sergeant Serena, on April 12th, 2014, did you go much
16 farther down the northbound bridge than you currently are in
17 this video at 33a at 12:26:11 a.m. -- p.m., excuse me?

18 A. No. I stayed within the general vicinity, within several
19 feet I would say.

20 MS. CREEGAN: Thank you. No further questions.

21 THE COURT: Cross?

22 MR. TANASI: Thank you, Your Honor.

23 ///

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25 ///

CROSS-EXAMINATION OF SHANNON SERENA

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BY MR. TANASI:

Q. Good afternoon, Sergeant Serena.

A. Good afternoon, sir.

Q. I'm Rich Tanasi. I represent Steven Stewart. I have a few questions for you on cross. Okay?

A. Yes.

Q. All right. So, if I understand your testimony correctly, originally you were at the Moapa Substation for briefing; correct?

A. Correct.

Q. All right. And originally that your job was essentially to assist the DOT in road closing. That was kind of originally what you thought you were going to do?

A. Set up a K-rail in order to help BLM leave the area, yes.

Q. Okay. So, that K-rail to help BLM kind of leave the area, that became your job? That was what your purpose was in heading to the bridge in Bunkerville, the north and southbound bridge; correct?

A. No. That was the original intent at the Moapa Substation. At the intent when we started to actually head to the bridge that role had changed.

Q. And what did that role change to?

A. To go assist other officers in the area that were in need of help.

1 Q. Okay. Now, you weren't at any time charged with the job
2 to assist the BLM in gathering cattle; correct?

3 A. No, sir.

4 Q. Okay. You weren't, at any time, charged with the job of
5 helping the BLM impound cattle; correct?

6 A. No, sir.

7 Q. Weren't charged ever with the job of helping the BLM sell
8 cattle; correct?

9 A. No, sir.

10 Q. Okay. You testified, again, if I understand, that your --
11 your purpose on the way to the wash changed; right?

12 A. Yes.

13 Q. Okay. And you testified on direct exam that you were
14 aware or learned that officers were being held at gunpoint;
15 right?

16 A. Yes.

17 Q. That's your testimony, held at gunpoint; right?

18 A. Yes.

19 Q. Okay. Now, prior to your testimony today you prepared a
20 report in this case; correct?

21 A. Yes.

22 Q. Okay. You prepared a report a lot sooner -- or let's put
23 it this way. When did you prepare that report, if you know?

24 A. Within a day or two of the event, I believe.

25 Q. Okay. Day or two of the event. So, it happens on

1 April 12th, 2014. That's the event we'll call it. Fair?

2 A. Yes.

3 Q. So by the 13th or 14th of 2014, April 2014, you prepare a
4 report; right?

5 A. Yes.

6 Q. Okay. And you're a trained law enforcement officer;
7 correct?

8 A. Yes.

9 Q. And part of your job is to prepare reports; right?

10 A. Yes.

11 Q. Something you learned in the academy; right?

12 A. Yes.

13 Q. Okay. You learned how to write reports and put everything
14 that's important in those reports; right?

15 A. Yes.

16 Q. Because you want to capture the day's events; right?

17 A. Sure.

18 Q. And if it's important, you want to make sure it shows up
19 in your report so that the next law enforcement officer who
20 looks at that report, they can rely on it. Fair?

21 A. Yes.

22 Q. And then if you ever have to testify in court, as you're
23 doing here today, you can rely on that report as well; right?

24 A. Yes.

25 Q. In fact, you probably or did you look at this -- your

1 report prior to your testimony here today?

2 A. I've seen it.

3 Q. Okay. So, do you recall that in the report that we're
4 talking about here, that you prepared two days after the event,
5 do you recall whether you put anywhere in that report that you
6 were assisting officers who were being held at gunpoint? Did
7 you ever put that in the report?

8 A. I did not.

9 Q. You don't recall or you didn't put it in the report, sir?

10 A. It's not in the report, sir.

11 Q. It's not in the report; right?

12 A. Yes.

13 Q. So you didn't say that you, you know, were heading over to
14 the wash because you were aware that folks were being held at
15 gunpoint; right?

16 A. Correct.

17 Q. But today, that's your testimony, that, in fact, officers
18 were being held at gunpoint; right?

19 A. Yes, sir.

20 Q. Okay. Prior to today's testimony, how many times have you
21 met with the United States Attorney's Office?

22 A. For this trial here?

23 Q. Prior to today's testimony, sir.

24 A. A handful of times.

25 Q. Handful of times?

1 A. Yeah.

2 Q. More than five?

3 A. I'd say about five actually.

4 Q. About five. And in those meetings were FBI agents present
5 as well?

6 A. Yes.

7 Q. Okay. All right. Let's back up to -- to your report and
8 report writing.

9 You, in fact, in your report, you indicate a
10 difference between tension, "Tensions being high on all sides."
11 You put that in your report; right?

12 A. Yes.

13 Q. Okay. And you say that there's -- there were weapons that
14 were pointed at you; right?

15 A. Yes.

16 Q. Okay. When you got there; right?

17 A. Yes.

18 Q. That's your testimony. Weapons were pointed at you?

19 A. Yes.

20 Q. Okay. Did any of those weapons being pointed at you
21 appear in any of the dash cam or any of the video that you've
22 seen in this case?

23 A. No, sir.

24 Q. No. But it's still your testimony that weapons were
25 pointed at you?

1 A. It is.

2 Q. Okay. You indicated that you had some fear. First time
3 you used the word "fear" in your report, you indicate that you
4 have fear; correct?

5 A. Yes.

6 Q. And then you go on in your report to say, "I had fear of
7 accidental discharge or backfire."

8 Do you remember that, sir?

9 A. No. That's not what I said.

10 Q. Okay. So it's your testimony that you didn't, in fact,
11 say, that "tension was high on all sides"?

12 A. Yes.

13 Q. Okay. You, in fact, said knowing that there were weapons
14 being pointed at you, which we could see, and know that the
15 weapons were pointed at us that we could not see.

16 That was your testimony in your report?

17 A. Yes.

18 Q. Correct?

19 A. Yes.

20 Q. Okay. And then you went as far after that to say, "The
21 fear of an accidental discharge or even a backfire from a
22 vehicle would have surely sent the entire area up into war."
23 That's your testimony --

24 A. That part --

25 Q. That's what you put in your report. Fair?

1 A. Yes, that part.

2 Q. Okay. Again, in this report that you write, you write
3 this when it's two days after the event; right?

4 A. Approximately, yes.

5 Q. Approximately two days after the event. Okay.

6 "Tons of people," you indicated. "Tons of people
7 were armed." I have that quoted.

8 That's right?

9 A. Yes.

10 Q. Okay. But again, you didn't arrest any of those
11 individuals; right?

12 A. No, sir.

13 Q. Okay. You weren't the only law enforcement agency there.
14 I mean, I understand you indicated that there were potentially
15 14 to 16 Nevada Highway Patrol officers there that day;
16 correct?

17 A. Correct.

18 Q. Okay. But you weren't the only law enforcement agency
19 there; correct?

20 A. Correct.

21 Q. In fact, there were folks who were with the BLM; right?

22 A. Yes.

23 Q. How many?

24 A. Don't know.

25 Q. Okay. More than 10?

1 A. Don't know.

2 Q. No idea?

3 A. No idea.

4 Q. All right. In addition to BLM, there's also National Park
5 Service that was there; correct?

6 A. That I'm unaware of.

7 Q. Unaware of that?

8 A. Yes, sir.

9 Q. Okay. In addition to the BLM and the National Park
10 Service, there was also the FBI in the sky; correct?

11 A. Don't know.

12 MS. CREEGAN: Objection. Relevance.

13 BY MR. TANASI:

14 Q. Don't know that. Okay.

15 MR. TANASI: Your Honor, the indication on direct is
16 that he didn't make any arrests because there was only 14 --

17 THE COURT: I understand the objection. Overruled.
18 He can say that he -- the question was whether the FBI was in
19 the sky and his answer was he was unaware if the FBI was in the
20 sky. That's fine. Move on.

21 MR. TANASI: Thank you, Your Honor.

22 BY MR. TANASI:

23 Q. And Metro was there; correct?

24 A. Yes.

25 Q. They were actually up kind of on or around the bridge area

1 that you were at. Is that fair?

2 A. A little south of it.

3 Q. A little south of it?

4 A. Yes.

5 Q. SWAT was there?

6 A. Don't know. Didn't see them.

7 Q. Didn't see SWAT.

8 How many Metro officers did you see?

9 A. Approximately 10 or 12.

10 Q. Okay. But again, you don't recall whether there was --
11 whether SWAT was present?

12 A. Do not, sir.

13 Q. Okay.

14 MR. TANASI: All right. Thank you, sir.

15 Nothing further. I'll pass the witness.

16 THE WITNESS: Yes, sir. Thank you.

17 THE COURT: On behalf of Mr. Lovelien.

18

19 CROSS-EXAMINATION OF SHANNON SERENA

20 BY MR. PEREZ:

21 Q. Good afternoon, Sergeant Serena.

22 A. Good afternoon, sir.

23 Q. Now, according to the video and your testimony, you said
24 that you arrived on the bridge at 12:18; correct?

25 A. Approximately or so.

1 MR. PEREZ: Okay. Brian, can you pull up Exhibit 32a
2 and go to 12:18.

3 Okay. Stop.

4 (Screenshot published.)

5 BY MR. PEREZ:

6 Q. Now, Sergeant, this appears to be where you stopped. And
7 I believe you testified that you stayed there for a period of
8 time?

9 A. Yes.

10 Q. How long?

11 A. In that general vicinity of the bridge, probably the
12 remainder of that part of the day.

13 Q. Okay. And, now, you said that the wash was beneath you;
14 correct?

15 A. Let's go maybe a little further north. I think that at
16 that exact spot, there's probably a dirt mound and then it
17 leads into there, but, so maybe a little more and then
18 underneath the truss of the bridge.

19 Q. Okay.

20 MR. PEREZ: Brian, can you bring up Exhibit 17b,
21 please.

22 (Counsel conferring.)

23 THE COURT: What's the exhibit number?

24 MR. PEREZ: 17b?

25 THE COURT: "B" as in boy.

1 MR. PEREZ: That's right.

2 Okay. Stop it right there, Brian.

3 You can stop it, Brian.

4 Now you need to back it up.

5 Stop it right there.

6 (Screenshot published.)

7 BY MR. PEREZ:

8 Q. Okay. Now, Sergeant, the -- on the screen, in this area
9 here (indicating), now that would be, is it Trooper Madsen?

10 A. Yes.

11 Q. And that would be his vehicle?

12 A. Correct.

13 Q. Okay. And using the screen, can you show me where the --
14 the actual overpass begins on that side of the highway?

15 A. On our side?

16 Q. Yes.

17 A. The one that we're on?

18 THE COURT: On the northbound bridge.

19 THE WITNESS: I believe it was a little bit further
20 out of -- you can see where the -- there was actually going
21 underneath it, so I would be about here (indicating).

22 BY MR. PEREZ:

23 Q. Okay. And approximately what's the distance from the
24 front of that vehicle to the bridge?

25 A. I'm not sure.

1 Q. Okay.

2 MR. PEREZ: Now, Brian, bring up Exhibit 66.

3 (Exhibit 66 published.)

4 BY MR. LEVENTHAL:

5 Q. Now, this gentleman in the background right here
6 (indicating), how far is he from that vehicle, approximately?

7 A. I'd say 10 feet or so.

8 Q. So he's not -- not actually on the bridge; correct?

9 A. I don't know exactly where they consider the bridge
10 starting, but if you're just talking about where everything
11 came through underneath, then no.

12 Q. Okay.

13 MR. PEREZ: Brian, Exhibit 33a, please, at 12:29.

14 (Exhibit 33a published.)

15 MR. PEREZ: Okay. You can let it play from there.

16 Okay. Stop it right there.

17 BY MR. PEREZ:

18 Q. Now, this individual here (indicating), that's the same
19 individual that we saw standing in front of the --

20 Trooper Madsen's vehicle?

21 A. Yes.

22 MR. PEREZ: Okay. Play it a little further, Brian.

23 (Exhibit 33a published.)

24 MR. PEREZ: Okay. Stop, Brian.

25 ///

1 BY MR. PEREZ:

2 Q. And what is that individual doing right there
3 (indicating)?

4 A. Leaning on a wall.

5 Q. Okay. And what time of the day is that?

6 A. 12:29.

7 MR. PEREZ: Okay. Brian, continue on, please.

8 (Exhibit 33a published.)

9 MR. PEREZ: Stop it right there, Brian.

10 BY MR. PEREZ:

11 Q. Could you tell what that man sitting on that Jersey
12 barrier was doing at that time?

13 A. No.

14 Q. Did it look like he was drinking a bottle of water?

15 A. Possibly.

16 MR. PEREZ: Okay. Brian, continue on, please.

17 (Exhibit 33a published.)

18 MR. PEREZ: Stop it right there, Brian.

19 BY MR. PEREZ:

20 Q. Now, is this you here (indicating)?

21 A. Yes.

22 Q. Okay. And you're turning away from the gentleman sitting
23 on the Jersey barrier; correct?

24 A. Turning my head.

25 Q. Okay.

1 MR. PEREZ: Brian, continue on, please.

2 (Exhibit 33a published.)

3 MR. PEREZ: You can stop right there for a moment.

4 BY MR. PEREZ:

5 Q. Well, now, you did almost a 360 right there; correct?

6 A. Yes.

7 Q. So you didn't just turn your head; you turned your back?

8 A. Yes.

9 MR. PEREZ: Okay. Brian, continue on, please.

10 (Exhibit 33a published.)

11 MR. PEREZ: Stop right there for a second, Brian.

12 BY MR. PEREZ:

13 Q. Okay. This gentleman sitting on the -- on the Jersey
14 barrier here (indicating), his attention seemed to be drawn in
15 the -- in the direction of Trooper Madsen's vehicle. Was there
16 anything significant going on up there?

17 A. Not that I remember.

18 Q. Okay. Thank you.

19 MR. PEREZ: Brian, please.

20 (Exhibit 33a published.)

21 MR. PEREZ: Okay. Now, stop it right there, Brian.

22 BY MR. PEREZ:

23 Q. Now, that gentleman's still sitting on the Jersey barrier
24 at that time?

25 A. Yes.

1 Q. At any time do you recall if he advanced forward towards
2 the bridge?

3 A. I do not recall.

4 Q. Okay.

5 MR. PEREZ: Thank you. I have nothing further.

6 THE COURT: Anyone else?

7 On behalf of Parker.

8 MR. MARCHESE: Brian, can we get up 31a, please.

9 Can you just stop it at any time. Thank you.

10

11 CROSS-EXAMINATION OF SHANNON SERENA

12 BY MR. MARCHESE:

13 Q. Okay, trooper. You went over 31a I believe on direct
14 examination. Do you remember this particular exhibit, your
15 dash cam?

16 A. Yes.

17 Q. Okay. And this -- the current time here is 11:28:17.
18 Would that be a.m. on April 12th, 2014?

19 A. Yes.

20 Q. Okay. And this right here (indicating), this is your
21 speed. It's -- I believe it says 104 miles an hour?

22 A. Yes.

23 Q. Okay. Now, where are you, if you remember, at this
24 particular juncture?

25 A. I'm north of the Moapa Substation.

1 Q. Okay. So you just left the Moapa Substation and you're
2 traveling where?

3 A. North to the area that traffic is stopped.

4 Q. Okay. And the reason you're following in that direction
5 at such a high rate of speed is it's your belief that officers
6 are in need.

7 Is that fair to say?

8 A. Yes.

9 Q. I believe the prior testimony that was elicited is that
10 officers were having weapons pointed at them or something along
11 those lines?

12 A. Yes.

13 Q. Okay. And that's in the general vicinity of which you are
14 going at 104 miles an hour; correct?

15 A. Yes.

16 Q. Okay.

17 MR. MARCHESE: Okay. Brian, if we could go to 2
18 minutes and 53 seconds in, please.

19 Okay. And stop it be please.

20 (Screenshot published.)

21 BY MR. MARCHESE:

22 Q. Now, on direct examination you were asked some questions
23 about this particular pickup truck?

24 A. Yes.

25 Q. I'm circling that (indicating).

1 Do you remember that?

2 A. Yes.

3 Q. And I believe you had testified something along the lines
4 of, I wrote down, these individuals had military gear on.

5 Do you remember that?

6 A. Yes.

7 Q. Can you describe that more in depth, what you saw?

8 A. They appear to be wearing BDUs, boots, things like that.

9 Q. I'm sorry. What was the first thing you said?

10 A. BDUs.

11 Q. I'm sorry. What's a BU or BEU [sic]?

12 A. It's a type of military pant.

13 Q. Okay. And what does that look like?

14 A. It's got cargo pockets and it usually sometimes they're
15 camouflage, sometimes they're single color, solid color. Just
16 depends.

17 Q. Okay. So how many people do you remember in the back of
18 that truck?

19 A. One or two.

20 Q. And you just remember that they were wearing some sort of
21 military pants?

22 A. Yes.

23 Q. Anything else that sticks out in your recollection?

24 A. Nothing at the moment.

25 Q. Okay.

1 MR. MARCHESE: And Brian, if we can go to 17d,
2 please.

3 17d, like David. I believe it's the first part.
4 19:32.

5 I'm sorry, try . . . If you can back up to
6 18:30 UTC.

7 Back up, Brian, 18:30 UTC. Upper left.

8 Okay. Just let it play and stop it right there.

9 (Screenshot published.)

10 BY MR. MARCHESE:

11 Q. Now, sir, this is the -- would you agree with me that this
12 is the Toquop Wash area (indicating)? It's an aerial footage
13 of it?

14 A. It can be. I can't say that that is exactly that area,
15 but it's of a wash.

16 Q. Okay. And would you agree with me on this particular
17 exhibit that we're showing that at this point there are no
18 people that you can see in these particular two dashes
19 (indicating) that I've drawn dangling across the screen in the
20 wash area?

21 A. Yes, at that moment.

22 Q. Okay. And are you familiar with UTC time?

23 A. I'm sorry. One more time?

24 Q. Are you familiar with UTC time?

25 A. No.

1 Q. Okay.

2 MS. CREEGAN: Your Honor, we object to this as beyond
3 the scope. We didn't go through this exhibit with this
4 witness. He's not even familiar what the area is that it
5 depicts.

6 MR. MARCHESE: Well, it's already been introduced
7 into evidence. I'm actually moving on, so . . . if he can
8 answer, he can. If he can't, he can't.

9 THE COURT: Go ahead.

10 MR. MARCHESE: And if we can go, Brian, to 32a when
11 you get a chance.

12 BY MR. MARCHESE:

13 Q. And before I -- we -- I show you 32a, I want to go back to
14 this -- and you can just stop it, Brian.

15 I want to go back to this -- what you said about
16 individuals pointing weapons at the officers when you were on
17 your way there.

18 Do you remember that line of questioning?

19 A. Yes.

20 Q. Mr. Tanasi asked you some questions about a report that
21 you authored. I wanted to talk to you about some prior
22 testimony that you gave at a hearing prior to today.

23 Do you remember doing that?

24 A. Yes.

25 Q. And isn't it true that at that particular testimony you

1 didn't mention anything about people pointing weapons at
2 officers?

3 MS. CREEGAN: Objection, Your Honor. The witness
4 doesn't choose what questions to answer in testimony; counsel
5 does.

6 THE COURT: So . . .

7 MR. MARCHESE: I'm just saying he didn't say it. If
8 they didn't ask it, I -- I mean --

9 THE COURT: So what was your objection?

10 MS. CREEGAN: I don't see how it's proper impeachment
11 to say he didn't mention something he wasn't asked.

12 THE COURT: All right. It's improper impeachment.
13 Sustained.

14 MR. MARCHESE: Your Honor, could we have a sidebar?

15 THE COURT: Yes.

16 (Proceedings at sidebar out of the hearing of the jury:)

17 MR. MARCHESE: If you can just bear with me a second.
18 I'm trying to pull up the portion here.

19 Your Honor, I can tell you exactly what it says. The
20 issue is, is that he was asked something to the effect of he
21 had a briefing and then at the briefing they were told that
22 they needed to get out because they needed to do something to
23 the effect of extract the BLM or something like that. I
24 believe it's a -- it's a very fair line of questioning. I
25 shouldn't be held to a disadvantage because the Government

1 didn't ask that. If it was a fair point, if it -- if he had --
2 if they had known about it, it's my belief that they would have
3 asked that previously at the last trial. He has not authored
4 any reports and it's not in any 302s. Mr. Tanasi correctly
5 elicited that it wasn't in his own report, so, I'm just simply
6 trying to admit that this is the first time, that I'm aware
7 of -- I think I have a good faith basis to ask it -- that he's
8 ever said anything along those lines.

9 MS. CREEGAN: Well, I'm not sure where counsel's
10 referring to the question about at gunpoint or whether the
11 question is a question about pointing, because I think it would
12 be a question, and it's already been asked, about whether he
13 said that before, but if the Government doesn't ask whether he
14 saw pointing, for whatever reason, they can't impeach
15 Government counsel through the witness for not asking the
16 question, whether it's accident or whatever other reason. The
17 witness was never inconsistent.

18 MR. MARCHESE: I'm not saying he's inconsistent. I'm
19 saying he's not said it. He's omitted it.

20 MS. CREEGAN: But if it's not something that he was
21 asked --

22 THE COURT: It's not omitted if he wasn't asked about
23 it. Was -- is it in -- was --

24 MR. MARCHESE: It's never been in a statement before.
25 This is the first time, three and a half years later, anyone's

1 hearing this.

2 MS. CREEGAN: I believe he did point [sic] that he
3 saw the weapons being pointed in his report.

4 THE COURT: Yeah.

5 MR. MARCHESE: No. What I'm talking about is when he
6 is going there and he's saying that officers are being held at
7 gunpoint. That's never been brought out.

8 MS. CREEGAN: So, if I'm understanding counsel
9 correctly, we're no longer talking about the pointing of guns;
10 we're talking about the gunpoint statement?

11 MR. MARCHESE: Him being held at gun -- well, not
12 him, excuse me, officers being held at gunpoint.

13 MS. CREEGAN: So my objection was to the question
14 about pointing guns because he's never been inconsistent on
15 that point, but if this is --

16 THE COURT: Yeah.

17 MS. CREEGAN: -- it's -- so I'm not sure what the
18 sidebar is for.

19 MR. MARCHESE: Maybe that was -- maybe I was -- I
20 wasn't articulating my point or my question properly. That's
21 where I was going.

22 THE COURT: All right. So the objection to the
23 question is sustained. You can rephrase it, that way that it
24 keeps in line --

25 MR. MARCHESE: Well, let me just get to the point so

1 I can save everybody some time. Can I ask, "Isn't it true, at
2 the prior hearing, you did not mention that officers were being
3 held at gunpoint in the wash?" Is that a proper question?

4 MS. CREEGAN: I think it wasn't -- if it's set up by
5 whether he was asked a relevant question, then yes. If it's
6 not set up by whether he was asked a relevant question, then
7 no.

8 THE COURT: Yeah. See, that's the misleading part of
9 it is, is that if no one's ever asked him. It would be
10 different if he was asked and he said no and now he's saying
11 yes. That's an inconsistent statement. But an omission --

12 MR. MARCHESE: The problem is he's bringing it up for
13 the first time now, three and a half years later. We've
14 already established he didn't put it in his report.

15 THE COURT: Right.

16 MR. MARCHESE: It's not any 302s.

17 MS. CREEGAN: Then I would say the point is made.

18 THE COURT: Well, he doesn't write his own -- yeah.

19 MR. MARCHESE: Well . . .

20 MS. CREEGAN: But I guess my objection would be asked
21 and answered.

22 THE COURT: Yeah. Either it's already been asked or
23 it's an omission, not an inconsistent statement and the
24 omission is whether -- unless you can give me a specific
25 question that he was asked that he should have included it? I

1 mean, if he said, "And it was red and it was white and it was
2 blue." "Any other color?" "No. No other color," and now
3 today he says, "Oh, and it was also green," then that's an
4 omission that would be --

5 MR. TANASI: I don't have the transcript to --

6 THE COURT: -- probably elicited, but otherwise, I'm
7 not sure -- he probably also didn't say a whole of other stuff.

8 MR. MARCHESE: Yeah, but, I mean, this is a huge
9 point.

10 MR. TANASI: I think -- I guess the only thing I
11 would add and I don't -- haven't had a chance to go through the
12 entire transcript, but I would add that I do recall that he was
13 asked about why -- how things changed on his way from the
14 briefing to what he hears on the radio. And so, in that line
15 of questioning he -- I'm fairly certain he doesn't say officers
16 were being held at gunpoint. That's the -- that's the silence
17 that's inconsistent with today's testimony.

18 MS. CREEGAN: Counsel's already pointed out that it's
19 not in the report, but in order to set up that it's omitted
20 from testimony, they have to set up the relevant portion. In
21 order to set up that it should have been included in testimony,
22 they need to point to a question and answer that it would have
23 been called for by. Otherwise, it's not his responsibility to
24 volunteer information when he testifies.

25 THE COURT: Yeah. Agreed.

1 MR. LEVENTHAL: Your Honor --

2 THE COURT: The objection is sustained.

3 MR. LEVENTHAL: Your Honor, on a different note, can
4 I -- I had some health issues this weekend and I'm going to
5 need to use the restroom before I cross-examine.

6 THE COURT: Okay. Well, we're -- you're not going to
7 get to cross-examine.

8 MR. LEVENTHAL: Oh. Okay. Well, I still need to use
9 the restroom.

10 THE COURT: We're done at 4:15.

11 MR. LEVENTHAL: Thank you. Okay. Okay.

12 THE COURT: I promised the jurors. They wanted to
13 leave. One of them has an appointment and has to go there.
14 Otherwise, he probably wouldn't be on the jury any more.

15 MR. LEVENTHAL: Okay. If you decide to change your
16 mind, I still need to use the restroom.

17 Thank you.

18 THE COURT: Thank you.

19 (Proceedings within hearing of the jury:)

20 THE COURT: The objection was sustained. So, go
21 ahead and ask your next question.

22 MR. MARCHESE: Are we back on the record?

23 THE COURT: Yeah.

24 MR. MARCHESE: And, Brian, if you go to 39:30.

25 Actually, that -- let's go with the current time,

1 12:21:08. It will be right in the middle there, Brian.

2 Okay. And you can just play it from here and go to 8
3 seconds and stop it to get the witness acclimated to the time
4 frame.

5 (Exhibit 32a published.)

6 MR. MARCHESE: Okay. And you can stop it there.

7 BY MR. MARCHESE:

8 Q. Okay. Have you had an opportunity to look at the last
9 couple seconds and what's been playing on the dash cam?

10 A. Yes.

11 Q. And that's off Trooper Madsen's dash cam; correct?

12 A. Yes.

13 Q. Is Trooper Madsen in this particular screenshot?

14 A. Yes.

15 Q. Okay. And where is he?

16 COURT SECURITY OFFICER: Your Honor, nothing.

17 THE COURT: Oh.

18 Has this been admitted? Yes. We can't see it,
19 though.

20 Thank you.

21 BY MR. MARCHESE:

22 Q. Okay. And just to -- I don't think you identified him,
23 but can you just identify Trooper Madsen?

24 A. He's the officer with the green vest in the Number 1
25 travel lane.

1 Q. Okay. Well, I'm guessing the jury doesn't know where the
2 Number 1 travel lane is.

3 A. It would be the far left lane. Sorry.

4 Q. Okay. Can you just circle him? I think you can do that.

5 A. It won't allow me.

6 Q. Okay. It won't allow me either.

7 Okay. Who is that (indicating)?

8 A. That's Trooper Madsen.

9 Q. All right. Thank you. Who's that (indicating)?

10 A. That's me.

11 Q. Okay.

12 MR. MARCHESE: And Brian, if you can just play it for
13 a few seconds.

14 (Exhibit 32a published.)

15 MR. MARCHESE: Okay. I'm going to stop it for a
16 moment.

17 BY MR. MARCHESE:

18 Q. Okay. Now, who is this individual that just came into the
19 frame?

20 A. I don't know who he is.

21 Q. Okay. But you were able to see him and some of his
22 behavior on that particular day; correct?

23 A. Yes.

24 Q. Okay. And I believe, and correct me if I'm wrong, he had
25 come into contact with another individual and you saw them

1 having some sort of dialogue together; correct?

2 A. Yes.

3 Q. And I believe that other individual was friendly to you
4 initially before this individual got there, or something along
5 your lines of testimony; is that right?

6 A. Yes.

7 Q. As a matter of fact, that other individual had pointed out
8 to you, before the individual that we've circled, he pointed
9 out something about people pointing weapons at him.

10 Is that your testimony?

11 A. Yes.

12 Q. Okay. And then once this individual got into the area,
13 you said he stopped talking to you?

14 A. Correct.

15 Q. Okay.

16 MR. MARCHESE: And, Brian, if you could play it for a
17 moment.

18 (Exhibit 32a published.)

19 MR. MARCHESE: Okay. And I'm going to ask you to
20 stop it right here.

21 BY MR. MARCHESE:

22 Q. And is this a -- is it fair to say this is a white pickup
23 truck holding a -- or pulling -- excuse me -- something?

24 A. Yes.

25 Q. Okay. And for the record, the time on your dash cam or

1 Madsen's dash cam is 12:21:20?

2 A. Yes.

3 MR. MARCHESE: And if we could just play it at -- a
4 little bit until the next vehicle comes into the frame, Brian.

5 (Exhibit 32a published.)

6 BY MR. MARCHESE:

7 Q. Okay. And this is a -- some sort of -- I believe it's a
8 gray, some sort of a pickup?

9 A. Yes.

10 Q. Okay.

11 A. Fair enough.

12 MR. MARCHESE: And play a little bit more, Brian.

13 (Exhibit 32a published.)

14 MR. MARCHESE: Okay. And stop it right there.

15 BY MR. MARCHESE:

16 Q. And this is some sort of a green tractor-trailer, along
17 those lines?

18 A. Sure.

19 Q. Okay. And time on that is very similar. It's 12:21:33;
20 correct?

21 A. Yes.

22 Q. Okay. Now, was there ever a point in time when you and
23 Trooper Madsen, while you're on this bridge together, after
24 12:21, where Trooper Madsen was not in your line of sight so to
25 speak?

1 A. I -- there was a point in time I believe where maybe line
2 of sight, but not exactly in the same vicinity as me.

3 Q. Okay. And where did he go, if you know?

4 A. I believe he went further on down the road on the bridge
5 closer to the overwash or underwash.

6 Q. Okay. And just to be clear, when we're talking about "the
7 bridge," we're talking about northbound?

8 A. Yes, northbound.

9 Q. And when you say "northbound," he would have went in this
10 frame, just further away.

11 Is that fair to say?

12 A. Further north, yes.

13 Q. Okay. Now, you had mentioned -- I don't think you used
14 this word, but something along these lines -- you felt somewhat
15 powerless. You were unable to -- you felt outnumbered.

16 Is that fair to say?

17 A. Yes.

18 Q. Okay. And I believe you said on direct examination, at
19 one point in time one of the individuals pointed their weapon
20 over the Jersey barrier?

21 A. Yes.

22 Q. And which individual was that? Was that the individual
23 who said, "Hey, they're pointing weapons at me" or . . .

24 A. Yes.

25 Q. Okay. That was the individual that you had actually had a

1 cordial conversation with prior to the other individual getting
2 there; correct?

3 A. Yes.

4 Q. You didn't speak with him at all during the rest of the
5 day?

6 A. I believe there may have been something -- some -- passing
7 some sort of short conversation but nothing like it was prior,
8 no details, no him not telling me anything, other -- nothing
9 worthwhile I guess after that. So I can't say exactly that he
10 didn't say something else to me, but I don't recall that.

11 Q. Okay. It would be hi and bye, something very quick and
12 nothing of -- substantive?

13 A. Nothing that I can actually remember.

14 Q. Okay. Did you ever just go up to him and say, "Hey,
15 what's going on"?

16 A. Yes.

17 Q. After he pointed his -- his weapon over the Jersey
18 barrier?

19 A. At that point when he was there in a crouched position,
20 you know, pointing his weapon over the Jersey barrier, that's
21 when I walked up to him, like, "What's going on?" you know,
22 "Why?"

23 Q. Okay. And in relation to that, did he stop doing that?

24 A. Did he stop?

25 Q. Yes.

1 A. Yes.

2 Q. Okay. Did he threaten you in any way after that or
3 anything like that?

4 A. No.

5 MS. CREEGAN: Objection. Calls for a legal
6 conclusion.

7 THE COURT: Sustained.

8 BY MR. MARCHESE:

9 Q. Did he have a volatile conversation with you after that?

10 A. In which manner?

11 Q. Right after you went up to him, you said, "What's going
12 on?" and then he pulled his weapon back in some way, shape, or
13 form.

14 A. What do you consider a volatile conversation?

15 Q. Well, did he say that he was going to inflict physical
16 injury on you?

17 A. No.

18 Q. Did he use any explicative language with you?

19 A. No. Not that I remember.

20 Q. Okay.

21 MR. MARCHESE: Court's indulgence.

22 THE COURT: Yes.

23 (Counsel conferring.)

24 MR. MARCHESE: No further questions, Your Honor.

25 THE COURT: Mr. Perez, did you have any questions?

1 MR. PEREZ: I've already -- I've already examined.

2 THE COURT: All right. So, Mr. Leventhal, are you
3 the last one?

4 MR. LEVENTHAL: Yes, Your Honor.

5 THE COURT: All right. So we'll go ahead and take
6 our evening break now. Please remember, you are not to discuss
7 this case with anyone nor permit anyone to discuss it with you.

8 Do not read or listen to or view anything that
9 touches upon this case in any way and do not attempt to perform
10 any research or any independent investigation and please do not
11 form any opinion until after you have heard all the testimony,
12 received all the evidence. We will provide you with the jury
13 instructions, the legal instructions that you can apply to the
14 facts and then you may hear the closing arguments of counsel.
15 After all that, then you can begin your deliberation process.

16 So let's go ahead and stand for the jury and we'll
17 welcome them back at 9:00 a.m. tomorrow morning.

18 (Jury excused from courtroom.)

19 THE COURT: Officer Serena, when they've exited, when
20 the jury has exited, then you're excused as well for the
21 evening. We'll need you back here at 9:00 a.m. tomorrow
22 morning.

23 THE WITNESS: Yes, ma'am. Thank you.

24 THE COURT: Thank you.

25 All right. We're off record.

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(Proceedings adjourned at 4:13 p.m.)

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COURT REPORTER'S CERTIFICATE

I, Heather K. Newman, Official Court Reporter, United States District Court, District of Nevada, Las Vegas, Nevada, do hereby certify that pursuant to Section 753, Title 28, United States Code, the foregoing is a true, complete, and correct transcript of the proceedings had in connection with the above-entitled matter.

DATED: 7-28-2017 /s/ Heather K. Newman
Heather K. Newman, CCR #774
OFFICIAL FEDERAL REPORTER

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,	)	Case No. 2:16-cr-046-GMN-PAL
)	
vs.	)	Las Vegas, Nevada
	)	Tuesday, July 25, 2017
ERIC PARKER, O. SCOTT	)	Courtroom 7C, 9:14 a.m.
DREXLER, RICKY LOVELIEN, and)	
STEVEN STEWART,	)	JURY TRIAL DAY NINE
)	
Defendants.)	
	)	<u>O R I G I N A L</u>

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BEFORE: THE HONORABLE GLORIA M. NAVARRO,
 UNITED STATES DISTRICT JUDGE, CHIEF

APPEARANCES:

See next page

COURT REPORTER:

Heather K. Newman, RPR, CRR, CCR #774
United States District Court
333 Las Vegas Boulevard South, Room 1334
Las Vegas, Nevada 89101
(702) 471-0002

Proceedings reported by machine shorthand, transcript produced
by computer-aided transcription.

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1 Also present:

2 Mamie Ott, Legal Assistant
3 Tori Bakken, Paralegal
4 Brian Glynn, IT
5 Nicole Reitz, IT

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1 LAS VEGAS, NEVADA; TUESDAY, JULY 25, 2017; 9:14 A.M.

2 --oOo--

3 P R O C E E D I N G S

4 (Outside the presence of the jury at 9:14 a.m.):

5 COURTROOM ADMINISTRATOR: All rise.

6 THE COURT: You may be seated. Good morning.

7 COURTROOM ADMINISTRATOR: This is the time set for
8 Jury Trial Day Nine in Case Number 2:16-cr-046-GMN-PAL,
9 United States of America vs. Eric Parker, O. Scott Drexler,
10 Ricky Lovelien, and Steven Stewart.

11 THE COURT: All right. So, my understanding is
12 Mr. Myhre wanted to place something on the record. Before we
13 do that, let me just remind everyone that -- about how to
14 conduct yourselves in court during trial, whether it's --
15 whether the jury's present or not. Please remember that this
16 is a courtroom; it is not is sporting event. So it is never
17 appropriate to show or display any expression, whether verbally
18 or through body language or any other distracting actions, no
19 matter how much you may agree or disagree with what is being
20 said.

21 In addition, we do have the microphones for the
22 attorneys. The podium is turned towards the witness so that we
23 can continue eliciting testimony. However, we do not allow
24 cell phones or any other electronic devices in the courtroom.
25 The attorneys have them so that they may review and prepare

1 their case, but no one else is permitted to have electronic
2 devices. The Court Security Officers and marshals do have them
3 so that they can communicate with each other, but there is,
4 otherwise, no other electronic devices that are appropriate.

5 There is never any recording, audio recording or
6 video recording that is permitted in federal court. So even if
7 you have your cell phone turned off or in vibrate mode or
8 privacy mode, it is not permitted in the courtroom so please
9 make sure that you remove it. The marshals and Court Security
10 Officers are authorized to remove anyone who does have an
11 electronic device.

12 I think that's it.

13 The defendants are aware and have heard these rules
14 several times. If there is anyone who speaks out of turn or
15 does anything distracting or an attempt to communicate with
16 each other or with the jury, they will be removed from the
17 courtroom. We do have a speaker system that is set up in the
18 holding room on the other side of that door (indicating) and so
19 that's where the defendant will spend the rest of the day if
20 they can't comply with these simple rules in order to be able
21 to stay in the courtroom and exhibit the proper decorum.

22 All right. So Mr. Myhre, what is it that you wanted
23 to place on the record, sir?

24 MR. MYHRE: Good morning, Your Honor, and thank you.

25 THE COURT: Good morning.

1 MR. MYHRE: I wanted to address this at the end of
2 the court day yesterday, but it was a long day and
3 Mr. Leventhal had to depart the courtroom fairly quickly. I
4 wanted to address the issue with Mr. Schillie's testimony.

5 At the end of the testimony we had a -- a question
6 from juror -- Question Number 45 from the jury about whether or
7 not Mr. Schillie felt fear on that bridge. We'd had a sidebar
8 about it. We had -- we had indicated that we did not object to
9 the question, but we did not want to go beyond just the fear
10 factoring into whatever else he may have seen out there and so
11 forth. In follow-up to that, Mr. Tanasi got up and asked the
12 question, words to the effect of, and you felt fear because BLM
13 was pointing weapons at you.

14 So, Your Honor, first of all, that is in direct
15 contravention to this Court's pretrial ruling in its motion in
16 response to our Motion in Limine, your ruling at -- your order
17 of 9 July of this year, which says that no evidence of third
18 party, either opinions or testimony or observations about BLM
19 conduct, is admissible until and unless the defense makes a
20 proffer outside the presence of the jury and demonstrates how
21 it is relevant to any defense or any element of the crime.
22 That was not done. That was in direct contravention to your
23 order. It was in direct contravention to what we talked about
24 at the sidebar. Furthermore, there was no good faith basis to
25 even ask the question because there's nothing in his 302 or any

1 other investigative document that says that this witness saw
2 BLM pointing guns at him. So now we're in the position of
3 hearing that question, us standing up and objecting, the Court
4 sustained the objection, but the jury's heard it and we've
5 already litigated this issue, we've talked about it a number of
6 times pretrial, Your Honor. So, we just believe that this was
7 done with some motive here and -- and we believe that sanctions
8 are appropriate at some level. We defer to the Court on that.
9 We have a number of thoughts about that, but we would seek
10 further admonishment that there needs to be a proffer before
11 these questions are asked of jurors [sic]. It's very clear in
12 the Pretrial Order what the parameters are and Your Honor, we
13 believe that they will continue -- the defense will continue to
14 try to press these issues in contravention of the order, try to
15 get things before the jury that shouldn't be before them. So
16 that's what we wanted to place on the record, Your Honor, and
17 we would defer to your judgment on that.

18 MR. TANASI: Your Honor, if I may address that?

19 THE COURT: Yes.

20 MR. TANASI: Turning to the Court's order, Item No. 3
21 as it's bullet pointed on Page 2 says, "What's precluded is
22 third party or layperson testimony or opinion about the level
23 of force displayed or used by law enforcement during
24 impoundment operations."

25 What happened at sidebar was a question that lend

1 itself to fear. He got on the stand and testified that he was
2 in fear. What preceded that were pictures of Mr. Parker laying
3 on the bridge, not pointing a weapon at him. He was asked
4 whether or not he felt fear because of the people who were on
5 the bridge. His answer was no. At that point, Your Honor, I
6 believe that we're entitled to get into the source of that
7 fear. The only other individuals that are in the entire mix,
8 for lack of a better word, on the day of the 12th are other law
9 enforcement individuals, who, logically, were the only
10 individuals who were pointing weapons at him.

11 I didn't get into whether or not he felt that
12 Mr. Parker was justified in being pruned out on the bridge or
13 whether or not the militia were justified in their presence
14 there. What I got into was establishing or understanding what
15 that level of fear was. That -- that question, that fear, when
16 ruled -- ruling out Mr. Parker on the bridge, lends itself to
17 the question of, where does that fear come from then. So I
18 believe that the door was -- was opened to get into that --
19 that area and that line of questioning. I didn't take it any
20 step further to get into whether or not he believed that the
21 BLM was excessive in using their force or whether or not he
22 knew that the BLM was properly marked as BLM or whether he knew
23 those folks who were down under the bridge were BLM people or
24 not BLM. I didn't take it that far at all. I asked the one
25 question, which logically ruled out the source of fear, which

1 is my client on the bridge next to Mr. Parker. I didn't go any
2 further than that, Your Honor.

3 THE COURT: I completely disagree. You purposely
4 misled the jury knowing what was in the 302 and knowing what
5 the witness had said. He said that he was in fear and that's
6 why he left, not that he was in fear when he got out of his car
7 and got on the bridge. So, he said he was not in fear of the
8 people on the bridge when he got out of the car. But at the
9 end -- and you remember from the photographs, and that's why I
10 asked him, are you referring to the -- when you first got out
11 of the car, everyone on the bridge was standing, and that was
12 the first picture, was everybody was standing when he got out
13 of the car so there was no fear of the people on the bridge.
14 After he looked down at the wash, he takes photos of the wash,
15 then he starts looking up again and now people are prone and
16 pointing guns and that's when he has fear and that's when he
17 leaves. And you knew from the 302 when you asked him, "were
18 you in fear" and he said "yes" and you said, "well, where is
19 that in your -- in the report," and it was the portion of the
20 report that records that he had said he saw people on the
21 bridge with firearms aimed over the protestors, or over the
22 crowd, towards the BLM.

23 MR. TANASI: But, Your Honor, and that --

24 THE COURT: That was the portion that he was
25 referring to when he said he was in fear. You wanted him to

1 say, well, but, specifically you didn't use the words "in fear
2 of" or in -- or "concerned for my well-being," but that was the
3 portion of the report that he was referring to when you said,
4 well, you never mentioned that you were in fear and he said,
5 well, I said there were people pointing guns at the BLM.

6 So, it -- I agree that that was beyond the scope of
7 the order that was not to get into third persons -- this
8 witness was a third person -- asking them about the actions of
9 the BLM in any way to show a self-defense. So that -- asking
10 him specifically whether those people were -- he was in fear
11 because the BLM was pointing guns at him was definitely going
12 in that direction, eliciting information and testimony that I
13 had ruled was not admissible.

14 MR. TANASI: May I make one more comment for the
15 record, Your Honor?

16 THE COURT: So, what kind of sanctions, Mr. Myhre?
17 Are you asking for a mistrial or are you asking for something
18 less?

19 MR. MYHRE: We're not asking for a mistrial,
20 Your Honor. We're asking for something less.

21 First of all, we think a verbal admonishment is
22 sanction as well, but we have also contemplated ordering that
23 the defendants preview their closing statements for us so that
24 we can address -- if these issues are going to be continually
25 raised, that we're able to address them well in advance of

1 closing when we get there as a -- a potential sanction.
2 Another potential sanction, and we're not asking for this yet,
3 but we -- we're contemplating an instruction at the end of this
4 case, assuming once all the evidence is in, as to what the --
5 specific instruction that BLM conduct is not at issue in this
6 case so that the jury is not misled or misdirected or thinking,
7 well, can BLM be raising guns or pointing guns or whatever. So
8 those are the potential sanctions, Your Honor, that we're
9 contemplating.

10 THE COURT: And you want me to . . . give that
11 instruction at the end with the jury instructions or do you
12 want a limiting instruction when the jury returns this morning?

13 MR. MYHRE: If I may have just a moment, Your Honor.

14 THE COURT: Sure.

15 (Counsel conferring.)

16 MR. MYHRE: I think we'd like to wait, Your Honor,
17 because we're into this Catch-22 of re-raising an issue to them
18 and that -- and flagging it and if it stops here, we may be
19 okay at the end of the trial from our perspective, but if it
20 continues on, we believe that instruction may be warranted.
21 But I don't want to highlight it for the jury now while we're
22 still in the Government's case-in-chief.

23 THE COURT: All right. So I'll take that under
24 submission then.

25 And, Mr. Tanasi, you're still standing. Is there

1 something else that you wanted to say?

2 MR. TANASI: There is, Your Honor, just with respect
3 to how the questioning went.

4 I understand the Court's order, which is for the
5 record, you know, I went through the 302 with him on my cross.
6 I didn't go through the 302 with him on my follow-up questions.
7 My follow-up questions were narrowly tailored to follow up the
8 questions that the juror asked, but I understand the Court's
9 ruling.

10 THE COURT: I didn't say you went through the 302
11 with him on cross. He had already seen it on direct and knew
12 what it was that he was referring to.

13 MR. TANASI: And the only reason I raise it,
14 Your Honor, is just to demonstrate that -- at least to advocate
15 that there's not the calculation that I think the Court has in
16 mind and that the Government is alleging, but, I understand the
17 Court's ruling.

18 THE COURT: I do believe the calculation was there.

19 All right. So let's go ahead then and bring in the
20 jury.

21 (Brief pause in proceedings.)

22 COURTROOM ADMINISTRATOR: All rise.

23 (Jury returned to courtroom at 9:30 a.m.)

24 THE COURT: Good morning. Jury may be seated.

25 Everyone else may take a seat as well.

1 Let's have counsel please record their presence on
2 the record, please.

3 MR. MYHRE: Good morning, Your Honor, ladies and
4 gentlemen.

5 Steve Myhre, Erin Creegan, and Nadia Ahmed on behalf
6 of the United States.

7 THE COURT: Good morning.

8 MR. TANASI: Good morning, Your Honor. Thank you.

9 Rich Tanasi for Steven Stewart who is present. Also
10 with us at counsel table is Tori Bakken and Brian Glynn.

11 Thank you.

12 MR. MARCHESE: Good morning everyone, Your Honor.

13 Jess Marchese on behalf of Eric Parker.

14 THE COURT: Good morning.

15 MR. LEVENTHAL: Good morning, Your Honor. Good
16 morning, everyone.

17 Todd Leventhal on behalf of Scott Drexler.

18 THE COURT: Good morning.

19 MR. PEREZ: Good morning, everyone.

20 Shawn Perez on behalf of Ricky Lovelien.

21 THE COURT: Good morning.

22 All right. So we're going to now continue with
23 cross-examination of our witness, Sergeant Serena, and I think
24 that, Mr. Leventhal, you were up next on behalf of defendant
25 Drexler.

1 MR. LEVENTHAL: Yes. Yes, Your Honor. Thank you.

2

3

CROSS-EXAMINATION OF SHANNON SERENA

4 BY MR. LEVENTHAL:

5 Q. Good morning, sir.

6 A. Good morning, sir.

7 Q. My name is Todd Leventhal and I represent Scott Drexler.

8 A. Okay.

9 Q. I want to, just because we took a break overnight, sort of
10 just bring us back.

11 You were a -- were you a sergeant of NHP back in
12 2014?

13 A. Yes, sir.

14 Q. Okay. And you were working on April 12th of 2014;
15 correct?

16 A. Yes, sir.

17 Q. Okay. And in the morning of April 12th, 2014, you
18 indicated that you had a briefing early in the morning;
19 correct?

20 A. Yes.

21 Q. At approximately 9:00?

22 A. Approximately.

23 Q. Okay. And from that briefing then you proceeded over to
24 the Bunker- -- Bunkerville area; correct?

25 A. Yes, sir.

1 Q. And specifically you went to the Toquop Wash; correct?

2 A. Yes.

3 Q. Okay. All right. Now, if -- Brian, could we pull up 31a,
4 please. And go to 3 minutes and 45 seconds, and just stop at
5 3:45.

6 And just stop it for a minute.

7 (Screenshot published.)

8 BY MR. LEVENTHAL:

9 Q. Okay. This is your -- sir, this is your dash cam;
10 correct?

11 A. Yes, sir.

12 Q. And this is -- so, this is the -- your vehicle and we see
13 your name where I am circling Serena (indicating). That would
14 be you; correct?

15 A. Yes, sir.

16 Q. Okay. And the current time would be here (indicating) at
17 11:28:01; correct?

18 A. Yes, sir.

19 Q. Okay. Now, does your dash cam go on automatically or do
20 you have to turn it on?

21 A. It has several different ways in which it can activate.
22 One, it can go on once we hit a certain speed. We can activate
23 it ourself, or once lights and sirens are activated.

24 Q. Okay. Then -- if the lights and sirens are activated, or
25 any one of those three, then it's an automatic thing or you can

1 manually do it; correct?

2 A. Yes.

3 Q. Okay. So you kept your -- from the time you left, you
4 kept it running, your dash cam?

5 A. As long as I remember.

6 Q. Okay. What about if the vehicle stopped, is it running?

7 A. Yes.

8 Q. Okay.

9 MR. LEVENTHAL: All right. Can you go ahead and play
10 that, Brain.

11 (Exhibit 31a published.)

12 MR. LEVENTHAL: Stop at 3:50. Stop. Back up just a
13 bit.

14 BY MR. LEVENTHAL:

15 Q. All right. Now . . . just back up a little bit, if you
16 could. A little bit more. Go back to 3:45. Stop. Play it.
17 There you go.

18 (Exhibit 31a published.)

19 MR. LEVENTHAL: Okay. Stop it.

20 BY MR. LEVENTHAL:

21 Q. Okay. So, we are -- just to put it in perspective, we're
22 on the northbound bridge; correct?

23 A. Yes.

24 Q. And we're going away from Las Vegas; correct?

25 A. Correct.

1 Q. Okay. And we're going towards the wash area; correct?

2 A. Correct.

3 Q. Okay. And you've encountered what appears to be a lot of
4 traffic there; correct?

5 A. Yes.

6 Q. Okay. And as you're driving by, you're seeing cars to the
7 right and to the left; correct?

8 A. Yes.

9 Q. Your rights and sirens are on?

10 A. Yes.

11 Q. Okay. If you could pay attention to this individual right
12 here (indicating) hanging out of his -- it looks like he's
13 hanging out of his sunroof there?

14 A. It appears to be.

15 Q. Okay. And at this point were you aware of what he was
16 holding?

17 A. No.

18 Q. Okay.

19 MR. LEVENTHAL: Can you go forward a little bit.

20 (Exhibit 31a published.)

21 MR. LEVENTHAL: Stop.

22 BY MR. LEVENTHAL:

23 Q. Do you have a better idea what he's holding there?

24 Is that a camera?

25 A. I can't honestly tell.

1 MR. LEVENTHAL: Okay. Go ahead and little bit more.
2 (Exhibit 31a published.)

3 Stop.

4 BY MR. LEVENTHAL:

5 Q. Can you see that?

6 A. It may be. I'm not a hundred percent sure.

7 Q. Okay.

8 MR. LEVENTHAL: All right. If we can go forward
9 then, Brian.

10 (Exhibit 31a published.)

11 MR. LEVENTHAL: And . . . stop.

12 BY MR. LEVENTHAL:

13 Q. This gentleman here (indicating) -- these two are in the
14 back of a pickup -- is that normal or typical of what you would
15 see on the I-15, people standing in the back of their pickup?

16 A. No.

17 Q. Okay. And these two people here (indicating), it looks
18 like this gentleman on the right, he's holding something?

19 A. Yes.

20 Q. Does that appear to be some kind of a phone or a camera,
21 or do you know?

22 A. I can't tell.

23 MR. LEVENTHAL: Okay. If we can keep going, Brian.
24 (Exhibit 31a published.)

25 MR. LEVENTHAL: If you can go to 5:26, Brian.

1 Okay. Stop right there.

2 BY MR. LEVENTHAL:

3 Q. Okay. Now, you've reached what's sort of the -- I guess
4 this impromptu parking lot?

5 A. Yes.

6 Q. Right? Okay. Because that wasn't a parking lot before;
7 correct?

8 A. As far as I know.

9 Q. Okay. And so, this would be the parking lot to the right
10 here (indicating), where I've circled, where a lot of people
11 pulled in?

12 A. Correct.

13 Q. Okay. All right. And this gentleman right here
14 (indicating), who seems to be pointing something, were you able
15 to determine what that was? Was that a camera?

16 A. Camera.

17 Q. That's a camera. Okay. Very good.

18 MR. LEVENTHAL: Okay. If you could just go on then,
19 Brian.

20 (Exhibit 31a published.)

21 MR. LEVENTHAL: Stop it right there.

22 Go back. To the end. 5:59.

23 That should be good.

24 Okay. Play it.

25 Okay. Stop.

1 BY MR. LEVENTHAL:

2 Q. All right. So, we then reach sort of the end of where, I
3 guess, the protestors were behind us; correct?

4 A. For the most part.

5 Q. Okay. And this white area where I'm drawing that line
6 (indicating), that would be the start of the wash area?

7 A. Yes.

8 Q. Would that be correct?

9 Okay. So the parking lot was a distance even away
10 from where the start of the bridge began; correct?

11 A. Yes.

12 Q. Okay. Do you know, approximately, that distance?

13 A. I do not.

14 Q. Okay. And that white area, that would be the Jersey
15 barrier that I'm pointing to right -- or circling right there
16 (indicating)?

17 A. Yes.

18 Q. Okay.

19 MR. LEVENTHAL: If we can back up to 2 minutes and 55
20 seconds.

21 (Screenshot published.)

22 BY MR. LEVENTHAL:

23 Q. Okay. Now, you were asked on direct about this van or
24 this truck here (indicating); correct?

25 A. Yes.

1 Q. And you indicated that you saw some people in the back
2 there with I think you said BDU?

3 A. Yes.

4 Q. Okay. And BDU is an acronym for Battle Dress Uniforms;
5 correct?

6 A. Correct.

7 Q. Okay. So that would be military style outfits?

8 A. Yes.

9 Q. Okay. Head to toe?

10 A. I don't recall.

11 Q. Okay.

12 MR. LEVENTHAL: If we can pull up Government's 6,
13 please. And this is just -- just for demonstrative purposes
14 only. I know you haven't seen this, sir, I'm just trying to
15 find out if -- what BDU is to you.

16 Go to 1:08, please.

17 That's fine. Stop right there.

18 (Screenshot published.)

19 BY MR. LEVENTHAL:

20 Q. Okay. Sir, these gentleman here in the front row
21 (indicating), would these gentlemen be -- what you consider
22 BDU, just for purposes of a definition?

23 A. For the pants, yes.

24 Q. Okay. Hats?

25 A. It's a military hat of some sort.

1 Q. Shirts are sort of like that. That's dress BDU, battle
2 ready --

3 A. Yes. There's different variations of it, but that would
4 be one similar to it.

5 Q. Okay.

6 MR. LEVENTHAL: If we could go back to 31, Brian.
7 And go back to . . . 2:55, please.

8 Okay. And stop.

9 (Screenshot published.)

10 BY MR. LEVENTHAL:

11 Q. Now, this vehicle right here (indicating) that you've
12 indicated had the people that are dressed in BDU, they pulled
13 over for you, sir?

14 A. They moved to the right.

15 Q. Okay. Your lights and sirens were on; correct?

16 A. Yes.

17 MR. LEVENTHAL: Okay. If we could just play that
18 going forward.

19 (Exhibit 31a published.)

20 MR. LEVENTHAL: Okay. Stop

21 BY MR. LEVENTHAL:

22 Q. All right. So you were able to actually pass them;
23 correct?

24 A. Yes.

25 Q. And you had your lights and sirens on and so, you were

1 able to actually maneuver within the traffic; correct?

2 A. Yes.

3 Q. Okay. Fair to say that you arrived then first to the wash
4 area?

5 A. From my squad, yes.

6 Q. Okay. Fair to say that you arrived before that truck did?

7 A. Yes.

8 Q. Okay. Now, you indicated yesterday that on the way over,
9 after the briefing, I believe, that you were to understand that
10 there were officers being held at gunpoint; correct?

11 A. Yes.

12 Q. Okay. Is that all you heard, that officers were being
13 held at gunpoint?

14 A. From what I recall.

15 Q. Okay. So, the gentlemen there in the truck, they arrived
16 after you did; correct?

17 A. I would say so.

18 Q. Okay. And as we saw -- if we can go forward to 5:59 --
19 just play it real quick. Okay. Stop.

20 (Screenshot published.)

21 BY MR. LEVENTHAL:

22 Q. There's nobody on this northbound bridge (indicating);
23 correct? No pedestrians? No traffic there; correct? At this
24 time when you arrived.

25 A. I can't tell.

1 Q. You can't tell from that?

2 MR. LEVENTHAL: Play a little bit more, maybe. Go
3 ahead, Brian. As much as you can.

4 (Exhibit 31a published.)

5 MR. LEVENTHAL: Stop.

6 BY MR. LEVENTHAL:

7 Q. Do you see anybody on that bridge (indicating)?

8 A. Not from that photo.

9 Q. No? Okay.

10 MR. LEVENTHAL: Okay. If we could go to 31b.

11 MS. CREEGAN: Your Honor, I don't believe 31b is
12 admitted.

13 MR. LEVENTHAL: Oh, it's not? Okay.

14 COURTROOM ADMINISTRATOR: It's not.

15 MS. CREEGAN: "a" is but not "b."

16 MR. LEVENTHAL: "a" is? Is "c" admitted?

17 COURTROOM ADMINISTRATOR: No.

18 MR. LEVENTHAL: Okay. Very good.

19 32a, has that been admitted?

20 COURTROOM ADMINISTRATOR: Yes.

21 THE COURT: Yes. 31a, 32a, and 33a were admitted.

22 MR. LEVENTHAL: Perfect.

23 If we can go to 32a.

24 (Screenshot published.)

25 ///

1 BY MR. LEVENTHAL:

2 Q. Now, in looking at this, this is actually not your camera;
3 correct?

4 A. Correct.

5 Q. This is Madsen's camera or dash cam, if you will?

6 A. Yes, sir.

7 Q. And he's your partner; correct?

8 A. Yes.

9 Q. Okay. Do you know whether your camera was rolling the
10 whole time?

11 A. I believe so. I can't be a hundred percent sure of it,
12 but I believe so.

13 Q. Okay. Did you have your mic -- do you have a mic that
14 links into your -- your vehicle?

15 A. Yes.

16 Q. Okay. So if you are on a call and you're speaking to --
17 let's say you pull somebody over, you're speaking to a driver,
18 does it pick up on a mic, in your vehicle?

19 A. Sometimes.

20 Q. Sometimes?

21 A. Not always, but yes.

22 Q. Okay.

23 MR. LEVENTHAL: If we can go to 1:47. Go ahead and
24 just play it to 1:49.

25 (Exhibit 32a published.)

1 MR. LEVENTHAL: Okay. Stop.

2 BY MR. LEVENTHAL:

3 Q. So, I believe you indicated that you're on the left there;
4 is that correct?

5 A. Yes.

6 Q. And that's Madsen on the right there; correct?

7 A. Correct.

8 Q. Okay. Now, this gentleman here (indicating), he's --
9 looks like he's pointing at something; correct?

10 A. Yes.

11 Q. Okay.

12 MR. LEVENTHAL: If you can go forward, please.

13 (Exhibit 32a published.)

14 MR. LEVENTHAL: Stop there.

15 BY MR. LEVENTHAL:

16 Q. Now, it looked like you engaged in some conversation with
17 this gentleman. Okay. Yes?

18 A. Yes.

19 Q. Okay.

20 MR. LEVENTHAL: If you could keep going, to 2:05.

21 (Exhibit 32a published.)

22 MR. LEVENTHAL: Stop there.

23 BY MR. LEVENTHAL:

24 Q. Now, it looks like you're pointing at something.

25 A. Yes.

1 Q. And do you remember what you were pointing at, sir?

2 A. Yes.

3 Q. Okay. And what was that?

4 A. There was an area in which the individual was explaining
5 to me about a vehicle that was parked down there.

6 Q. Okay.

7 MR. LEVENTHAL: And if you could go to 2:12 and stop
8 there.

9 (Screenshot published.)

10 BY MR. LEVENTHAL:

11 Q. These gentlemen right here (indicating), they seem to be
12 crouching down?

13 A. Yes.

14 Q. Okay. And you're still engaged in conversation with that
15 one gentleman; correct?

16 A. Yes.

17 MR. LEVENTHAL: Go to 3:09, please.

18 (Screenshot published.)

19 BY MR. LEVENTHAL:

20 Q. Okay. Now, you were also out there, sir, to do crowd
21 control?

22 A. Correct.

23 Q. And therefore, you had the bright green sort of uniforms
24 on; correct?

25 A. Yes.

1 MR. LEVENTHAL: Okay. If you could play it to 3:20.

2 (Exhibit 32a published.)

3 MR. LEVENTHAL: Stop there.

4 BY MR. LEVENTHAL:

5 Q. Okay. What -- we saw you. Now, there's no traffic going
6 by so you didn't have to do traffic control, but now you're
7 walking in the crowd; correct?

8 A. Yes.

9 Q. You're looking around and you're seeing what people are
10 doing?

11 A. Yes.

12 Q. Okay. I saw that you sort of spun around a little bit;
13 correct?

14 A. Yes.

15 Q. Okay. Now, you indicated yesterday, I believe your
16 testimony was, the reason why you had your back towards the
17 protestors was -- or back towards them was because you had guns
18 around you at all times; right?

19 A. There were people around us at all times.

20 Q. Okay. Just people, not necessarily with guns?

21 A. It was a good mix, sir.

22 Q. Okay.

23 A. To give you an exact number, I wouldn't know.

24 Q. I understand. Okay.

25 MR. LEVENTHAL: If we can go to 6:30.

1 (Screenshot published.)

2 MR. LEVENTHAL: Go ahead and play it.

3 (Exhibit 32a published.)

4 BY MR. LEVENTHAL:

5 Q. Okay. Now, do you remember talking to this trucker here
6 (indicating)?

7 A. I do not.

8 Q. Okay. And . . . stop.

9 Okay. That's you right there (indicating), sir?

10 A. Yes.

11 Q. It looked to be like you were waving at an individual in
12 this vehicle; correct?

13 A. I made some motion. I don't know exactly what it was.

14 Q. Now, were you aware of the presence of SWAT out in the
15 area that day?

16 A. I may have. I don't recall exactly and I don't remember
17 where I was ever seeing them.

18 Q. Okay. Were you aware of Metro's presence out there that
19 day?

20 A. Yes.

21 Q. Okay. And did you know -- I believe you were asked on
22 direct how many Metro officers were out there that day?

23 A. 10 to 12.

24 Q. Okay. Have you seen a copy of your dash cam?

25 A. Yes.

1 Q. Okay.

2 MR. LEVENTHAL: If I could play Defense Exhibit 5018e
3 just for the witness, please.

4 COURTROOM ADMINISTRATOR: 5018e?

5 MR. LEVENTHAL: Correct. "e."

6 (Exhibit 5018e published to witness.)

7 BY MR. LEVENTHAL:

8 Q. Do you recognize this dash cam?

9 A. Yes.

10 Q. Is that your dash cam?

11 A. Yes.

12 Q. Okay. Does that appear to be the dash cam on
13 April 14th -- April 12th, 2014?

14 A. Yes.

15 Q. The vehicle in front, does that appear to be your partner
16 Trooper Madsen's vehicle?

17 A. Yes.

18 Q. Okay.

19 MR. LEVENTHAL: Judge, at this time I would offer up
20 Defense Exhibit 5018e.

21 (Exhibit 5018e offered.)

22 THE COURT: You want to lay a foundation for whether
23 or not it's a fair and accurate depiction of what he saw?

24 MR. LEVENTHAL: Sure. I apologize.

25 ///

1 BY MR. LEVENTHAL:

2 Q. So, this is -- this was done on April 12th, 2014; correct?

3 A. Yes.

4 Q. Current time would be 13:00:40 seconds; correct?

5 A. Yes.

6 Q. That would be approximately what time?

7 A. About 1 o'clock.

8 Q. 1 o'clock.

9 Okay. And does this fairly and accurately represent
10 what it is that you were looking at during that day and time?

11 THE COURT: Well, first of all, you need to establish
12 whether -- where he was at that time and whether he was seeing,
13 or has previously seen, what is in this tape.

14 MR. LEVENTHAL: Okay. Do you know -- I'm sorry.

15 THE COURT: Go ahead.

16 BY MR. LEVENTHAL:

17 Q. Do you know where you were at 1 o'clock?

18 A. No.

19 Q. Okay. If I played it a little bit more, maybe that would
20 give you some perspective. Would that help?

21 A. Yes.

22 Q. Okay.

23 MR. LEVENTHAL: Go ahead and play it for just the
24 witness, please.

25 (Exhibit 5018e published to witness.)

1 MR. LEVENTHAL: You can move it forward just to see,
2 Brian, to about 6 minutes.

3 Go to 6:55, Brian, please.

4 There. Back up a little bit.

5 (Exhibit 5018e published to witness.)

6 MR. LEVENTHAL: Stop right there.

7 BY MR. LEVENTHAL:

8 Q. Is that you, sir?

9 A. Yes.

10 Q. Okay. Does that fairly and accurately -- now, do you
11 understand, does that fairly and accurately represent where you
12 were during that time?

13 A. At that moment, yes.

14 Q. Thank you.

15 MR. LEVENTHAL: At this time, we'd offer up
16 Defense Exhibit 5018e.

17 (Exhibit 5018e offered.)

18 THE COURT: Do you intend to play all of it or just
19 up until that point?

20 MR. LEVENTHAL: No. Actually, just from 5 -- 6
21 minutes -- about 7 minutes to 7 minutes and 30 seconds -- 7
22 minutes 40 seconds.

23 THE COURT: So, do you intend to show the portion
24 that you -- that he identified or a portion that he has not yet
25 identified?

1 MR. LEVENTHAL: I will -- I will go forward.

2 Go ahead. Brian, play, please.

3 (Exhibit 5018e published to witness.)

4 MR. LEVENTHAL: And stop there.

5 So, it would be from 7 minutes to about 7 minutes and
6 50 seconds, Your Honor, that clearly Sergeant Serena was
7 visible, it's his dash cam, it fairly and accurately represents
8 the area. He's identified the area, the time, and the --

9 THE COURT: You can't testify. The witness can
10 testify. You can ask him those questions and --

11 MR. LEVENTHAL: Do you want me to do it again?

12 THE COURT: Just ask him if all -- if the --
13 everything that he's seen fairly and accurately represents.

14 BY MR. LEVENTHAL:

15 Q. Everything you've seen fairly and accurately represents
16 the time; correct?

17 A. Yes.

18 Q. The place, which would have been your vehicle parked at
19 the bridge; correct?

20 A. Yes.

21 Q. Okay. And that was you in the video that we saw; correct?

22 A. Yes.

23 Q. Okay.

24 MR. LEVENTHAL: I would move for the admission of
25 5018e.

1 (Exhibit 5018e offered.)

2 THE COURT: Well, you only showed him up to -- I
3 can't read that current time, but, is it 13:07?

4 MR. LEVENTHAL: Yeah, just --

5 THE COURT: So, you can admit the portion that you've
6 shown him that he's laid the foundation for. If you want the
7 whole thing in, then you have to show him that.

8 MR. LEVENTHAL: I don't. Just from 7 to -- I'll say
9 7 to 8 minutes down here, which would be . . . if we can go
10 back to 7 minutes, Brian, so I can get a time, current time on
11 the . . . 7 minutes would be 13:07:01 -- and go to 8 minutes --
12 which would be 13:08:02.

13 THE COURT: Any objection from the Government?

14 MS. CREEGAN: Yes, Your Honor. We object on scope
15 and relevance. This time period puts it past the retreat of
16 the BLM and the assault that the Government alleges. So we
17 don't see how it's relevant.

18 MR. LEVENTHAL: If we can have a sidebar, I'd
19 appreciate it.

20 THE COURT: Sure.

21 MR. LEVENTHAL: Thank you.

22 (Proceedings at sidebar out of the hearing of the jury:)

23 THE COURT: I think it was Mr. Leventhal who asked
24 for the sidebar.

25 Go ahead, sir.

1 MR. LEVENTHAL: Yeah. So, the -- the Government has
2 indicated that this is an ongoing conspiracy. They have
3 brought in and brought forth testimony regarding after the --
4 this alleged consult -- assault happened of people saying
5 goodbye to people that occurred well into the afternoon.
6 They've brought that -- they brought that in. They're going to
7 continue on bringing that in. This is --

8 THE COURT: Wait. People saying goodbye to people?

9 MR. LEVENTHAL: Flipping them off. Saying -- you
10 know, when people are leaving -- actually, I don't know if
11 they've actually brought that in yet. I might be going back to
12 the other trial. I apologize.

13 They're going to probably be tendering, I've seen in
14 the evidence, of people flipping the BLM off when they leave,
15 which is well after this alleged assault they contend that's
16 part of the ongoing conspiracy. So, they can't now have it
17 both ways. It's not part of the ongoing conspiracy. That's
18 what they've alleged, it's an ongoing conspiracy, and they
19 bring in -- they're going to bring in testimony from -- and
20 witnesses and videos from -- I know that Stewart is coming in.
21 They had Engel last time, you know, yelling and saying "F" you
22 to the BLM leaving, which was after the alleged assault. So,
23 they can't have it both ways.

24 This was at 1 o'clock. It wasn't that far after the
25 assault had occurred. People are still leaving. There's a

1 gentleman with a gun in the video and I'm asking to offer it in
2 for -- I think it's very relevant. It's his video. It's his
3 dash cam and it's his words and him on it.

4 THE COURT: So what is the relevance?

5 MR. LEVENTHAL: That it -- it goes to this -- the
6 ongoing -- their theory that there's an ongoing conspiracy.

7 THE COURT: So how -- so you're referring to it to
8 rebut the --

9 MR. LEVENTHAL: Correct.

10 THE COURT: And how does it rebut the conspiracy
11 charge?

12 MR. LEVENTHAL: Because there's been testimony that
13 everybody out there was scared and nervous. It also would go
14 to bias because he indicates, on the radio, that everybody's
15 happy, everybody's okay, and there's nothing going on up here.
16 So that would also go to bias and impeachment of this witness
17 who said that he was scared when he gets on the radio and says
18 otherwise. But as far as the conspiracy goes, it's -- it's
19 just the alleged ongoing conspiracy that they've alleged that
20 if everybody says that -- and they were scared and that was the
21 part of this conspiracy, that's the rebut when he gets on the
22 radio and says, everything's happy, everyone's good up here.
23 That's what he says.

24 THE COURT: And he says that after the incident?

25 MR. LEVENTHAL: No. His car is still parked there;

1 it's not after the incident.

2 THE COURT: Oh, I thought you just said it was after
3 everyone is gone.

4 MR. LEVENTHAL: No. I'm saying -- No. I apologize.
5 No. No. People are still leaving. We just saw that on the
6 video. There's a guy walking with a gun. People are still
7 leaving and he's drinking a drink. Everybody's still around.

8 THE COURT: But the BLM is gone?

9 MR. LEVENTHAL: I think they're in the process of
10 leaving at this point. They haven't left yet. They're
11 still -- I believe even at the time when they put up the sign
12 that says the west -- I don't believe that's even been put up
13 at this point and they've gotten in -- that's definitely come
14 in, how the west is won. That's -- this is prior to that. It
15 would have been after sort of the backoff, yes, but the -- you
16 know, the unfolding of the how the west's been won sign that
17 they've already brought in, that's already come in. So,
18 that -- that came after, actually, this officer getting on
19 the -- and saying everybody's happy, we're all good, no
20 problems here.

21 THE COURT: Ms. Creegan?

22 MS. CREEGAN: Well, we certainly allege an ongoing
23 conspiracy and if this video showed Drexler and Stewart turning
24 teach other and saying, "I don't know you; I got to go," that
25 would be relevant to disprove an ongoing conspiracy. None of

1 the defendants actually appear in this video, but to say that
2 things are calmer once the assault has ended, I'm not sure how
3 that shows that he wouldn't have been afraid at the time that
4 the assault is ongoing.

5 THE COURT: Yeah. So it doesn't sound like it's
6 relevant to the conspiracy --

7 MR. LEVENTHAL: It's -- it's -- it's --

8 THE COURT: -- to the agreement part of the
9 conspiracy. So you're -- your relevance is to the fear --

10 MR. LEVENTHAL: Fear.

11 THE COURT: -- the assault to the --

12 MR. LEVENTHAL: Sure, yes.

13 THE COURT: -- fear element of the assault?

14 MR. LEVENTHAL: Yes. Yes. And whether he
15 actually --

16 THE COURT: I'm trying to not put words in your
17 mouth.

18 MR. LEVENTHAL: No. I'm -- and I'm trying to put --
19 I'm trying to put words in my -- I'm sorry. I'm trying to put
20 words in my mouth. All right? But it goes to his fear and
21 whether or not he was actually fearful that day and he --

22 THE COURT: So fear or lack of fear.

23 MR. LEVENTHAL: Correct. And it doesn't just go
24 forward in time and it doesn't just go there. He says, "We're
25 all good," so, meaning past tense. It was a -- it was a -- he

1 said it as if it was past tense. "We're all good.
2 Everything's fine up here. No problems. Everyone's
3 happy," something like that.

4 MS. CREEGAN: Right, but at the point the demands of
5 the people assaulting the BLM had been fulfilled so, that
6 doesn't show that he wasn't afraid at the time that the assault
7 was ongoing.

8 MR. LEVENTHAL: And I -- and -- and -- and -- again,
9 I think that's fair game for redirect, one, and two, I think
10 that -- that there's going to be testimony that some officers
11 actually left the scene and were -- I think our next one up --
12 has still fear to this day. They're going to testify that
13 still to this day they have fear and here's a guy who's on the
14 bridge with these people who apparently didn't have fear. But
15 we're going to -- we're going to hear from people who are going
16 to talk about fear, too, from three, four years ago up until
17 now. We're going to have fear -- this fear thing is going to
18 keep going, and this officer testified that he had fear and it
19 doesn't -- that's not what he says on the -- on his dash cam.

20 MS. CREEGAN: Well, he doesn't say I never had fear.
21 He says at this point things are calm and nothing's going on,
22 which is, to the charges that have been alleged, accurate. At
23 that point the BLM had strategically withdrew [sic] from the
24 people were assaulting them.

25 MR. LEVENTHAL: Then it shouldn't be a problem coming

1 in if that's what it is.

2 MS. CREEGAN: It just doesn't -- I guess my position
3 is that just doesn't establish threshold relevance if it's not
4 connected to a time period where people would be expected to
5 have --

6 MR. LEVENTHAL: Well, it --

7 MS. CREEGAN: -- said that there's something going on
8 or something. There would be nothing to say --

9 MR. LEVENTHAL: Even though it's --

10 MS. CREEGAN: -- is going on.

11 MR. LEVENTHAL: Even though it's at 1 o'clock in the
12 afternoon, I still believe there's still people up on the
13 bridge, because we see them walking on the dash cam. We --
14 he's still talking to people. He's still moving traffic.
15 They're still there in uniform. He hasn't changed anything,
16 other than -- and again, the -- the -- this whole fear thing
17 goes on until they leave, which they haven't left yet, and the
18 drape comes down how the west been won. This happens prior to
19 that. And he is not talking -- and you can -- you can take it
20 for what you want, but I don't believe he's talking future and
21 I don't believe he's talking present. To me, it's a past tense
22 statement that everybody's okay up here, we're all good.
23 That's what it seems like to me.

24 MS. CREEGAN: That's a present tense statement.

25 MR. LEVENTHAL: It was -- to me, it was a present and

1 then there was a past tense statement in there that talked
2 about everybody's good, we're all okay up here, we've been
3 okay, or something of that nature. I can go back through it,
4 but to me, there was a -- there was a hint of a past tense,
5 like everything was okay up there, that no problems had
6 occurred up there.

7 MS. CREEGAN: I think it was --

8 THE COURT: Okay. I'm going to allow it and you can
9 cross-examine [sic].

10 MR. LEVENTHAL: Thank you, Judge.

11 THE COURT: You may cross-examine [sic] the witness
12 on that point to clarify anything that's misleading.

13 (Proceedings within hearing of the jury:)

14 THE COURT: So the objection's been overruled.
15 Exhibit 5018e will be admitted and the Government will have an
16 opportunity to redirect the witness on that particular video.

17 (Exhibit 5018e received.)

18 MR. LEVENTHAL: And we'll need to clarify,
19 Your Honor. Thank you. Just 5018e from the time of 7 minutes
20 on the video to 8 minutes; correct? Just that one --

21 THE COURT: I believe that's the portion that he
22 identified.

23 MR. LEVENTHAL: That's correct.

24 THE COURT: Yes. Yes.

25 MR. LEVENTHAL: So just that portion?

1 THE COURT: Just that portion.

2 MR. LEVENTHAL: Okay. Very good. Thank you.

3 If we could go, Brian, to the 7 minute mark and play
4 it, please.

5 Do we have audio?

6 Well, may I produce that for the jury?

7 THE COURT: Did you wish to publish?

8 MR. LEVENTHAL: Yes. Thank you.

9 THE COURT: You may.

10 MR. LEVENTHAL: Thank you.

11 (Exhibit 5018e published.)

12 MR. LEVENTHAL: Okay. Stop right there.

13 BY MR. LEVENTHAL:

14 Q. Okay, sir. So . . . go ahead and play it, Brian.

15 (Exhibit 5018e published.)

16 MR. LEVENTHAL: Okay. Stop right there.

17 BY MR. LEVENTHAL:

18 Q. Okay. So, Sergeant Serena, this person here (indicating)
19 that I am circling, that is you; correct?

20 A. Yes.

21 Q. Okay. And we see a head here (indicating). Were you able
22 to discern who that was or do you need me to back it up just a
23 second?

24 A. Back it up just a second, please.

25 MR. LEVENTHAL: Back it up, please, Brian.

1 No? Okay. That's okay.

2 Go forward.

3 (Exhibit 5018e published.)

4 MR. LEVENTHAL: And again, if you could stop -- stop
5 right there.

6 BY MR. LEVENTHAL:

7 Q. This vehicle (indicating), I know we didn't go through
8 this for the jury, but this vehicle was Trooper Madsen's
9 vehicle; correct?

10 A. Yes.

11 Q. Okay. So, earlier today when we were showing you videos,
12 we -- we saw the videos from actually his dash cam; correct?

13 A. Yes.

14 Q. And we're facing the northbound bridge; correct?

15 A. Yes.

16 Q. And you're parked directly behind him; correct?

17 A. Yes.

18 Q. Okay. And again, the time now is 13:07:09; correct?

19 A. Yes.

20 Q. Okay. It looks like you are having some kind of a drink;
21 correct?

22 A. Yes.

23 Q. Okay.

24 MR. LEVENTHAL: Go ahead and play it, Brian.

25 (Exhibit 5018e published.)

1 MR. LEVENTHAL: Stop right there.

2 BY MR. LEVENTHAL:

3 Q. Okay. This gentleman (indicating) is walking towards you;
4 correct?

5 A. Yes.

6 Q. Okay. It looks like he has some kind of a long gun;
7 correct?

8 A. Yes.

9 Q. Okay.

10 MR. LEVENTHAL: Go ahead, Brian.

11 (Exhibit 5018e published.)

12 MR. LEVENTHAL: Stop right there, Brian.

13 BY MR. LEVENTHAL:

14 Q. Now, he said something to you; correct?

15 A. Yes.

16 Q. Do you remember what he said to you?

17 A. I believe "thank you."

18 Q. Okay. He said "thank you" to you?

19 A. I believe.

20 Q. Okay. And he walks on; correct?

21 A. Yes.

22 Q. Okay.

23 MR. LEVENTHAL: Go ahead, Brian.

24 (Exhibit 5018e published.)

25 MR. LEVENTHAL: Stop right there, Brian.

1 BY MR. LEVENTHAL:

2 Q. Now, you engage in conversation with him?

3 A. Some sort.

4 Q. Okay. And you also follow him; correct?

5 A. Yes.

6 Q. Okay. And it looks like you're smiling there; correct?

7 A. Yes.

8 Q. Okay.

9 MR. LEVENTHAL: Go ahead, Brian.

10 (Exhibit 5018e published.)

11 MR. LEVENTHAL: Okay. Stop right there.

12 BY MR. LEVENTHAL:

13 Q. Okay. So, you indicated that everyone down here is
14 peaceful; correct?

15 A. I don't know if that's exactly what I said.

16 Q. Do you want me to replay it for you?

17 A. Yes, please.

18 MR. LEVENTHAL: Can you back it up, Brian?

19 If you could turn it louder, too.

20 (Exhibit 5018e published.)

21 MR. LEVENTHAL: Stop right there.

22 BY MR. LEVENTHAL:

23 Q. Okay. So you indicated everyone down here is peaceful;
24 correct?

25 A. "Everything down here."

1 Q. Everything. I apologize. "Everything down here is
2 peaceful"?

3 A. Yes.

4 Q. And all is good?

5 A. And everyone's happy.

6 Q. And everybody's happy?

7 A. Yes.

8 Q. Very good.

9 MR. LEVENTHAL: Thank you very much. I have no
10 further questions.

11 THE WITNESS: Yeah.

12 THE COURT: Redirect?

13 MS. CREEGAN: Yes, Your Honor.

14

15 REDIRECT EXAMINATION OF SHANNON SERENA

16 BY MS. CREEGAN:

17 Q. Sergeant Serena, that clip you were just shown, do you
18 remember where -- when in the day that that was?

19 A. When the date of it?

20 Q. Yeah. When in the day it was?

21 A. Oh. It was at the -- more the end of the day after the
22 cattle had been released.

23 Q. So this is when tensions have come down?

24 A. Much.

25 Q. And the BLM's already evacuated somewhat?

1 A. Yes.

2 Q. Okay. So people have got -- the people with guns have
3 gotten what they wanted?

4 A. Yes.

5 Q. So now they're peaceful?

6 MR. TANASI: Objection. Leading, Your Honor.

7 MR. MARCHESE: Objection.

8 THE WITNESS: Yes.

9 THE COURT: Overruled -- I mean, overruled. He may
10 answer the question, which he did.

11 Go ahead.

12 BY MS. CREEGAN:

13 Q. And you were shown a little bit of video where you engaged
14 with an individual with a long gun.

15 Do you remember that?

16 A. Yes.

17 Q. What was your purpose in engaging with that individual?

18 A. He initially engaged with me and the manner in which he
19 was -- he presented himself, so it was conversation.

20 Q. Okay. Did you have a mission that you were -- while you
21 were still there at that time, what was your sort of general
22 mission at that time?

23 A. Keep the peace.

24 Q. Keep the -- I'm sorry. Could you repeat that?

25 A. To keep the peace.

1 Q. Okay. And again, were you in any sort of position to
2 arrest people?

3 A. No.

4 Q. Okay. And you were asked some questions about how many
5 law enforcement officer you saw there. Do you remember about
6 how many there were total from all agencies that you were aware
7 of?

8 A. Probably with what I actually physically saw, 30, 35. I
9 can't swear to it, but that's about all that I remember seeing.

10 Q. Were you in a position with 30 to 35 officers to effect
11 arrests?

12 A. No.

13 Q. Now, you were asked some questions by Mr. Tanasi yesterday
14 about your report.

15 Do you remember about how long your report for
16 April 12th, 2014, is?

17 A. About two pages.

18 Q. And how long were you at the Bunkerville area on
19 April 12th?

20 A. Several hours.

21 Q. About how many individuals did you observe?

22 A. Hundreds.

23 Q. Were you able to record every single observation?

24 A. No, ma'am.

25 Q. Is that what the purpose of a report is?

1 A. No, ma'am.

2 Q. What's the purpose of a report?

3 A. A general overview.

4 Q. You were also asked by Mr. Tanasi about meeting with the
5 FBI, with the U.S. Attorney's Office in the course of the
6 investigation.

7 Do you remember that?

8 A. Yes.

9 Q. Has anyone ever asked you to do anything other than tell
10 the truth as you remember it?

11 A. No, ma'am.

12 Q. Okay.

13 MS. CREEGAN: Thank you. No further questions.

14 THE COURT: Any recross?

15 MR. TANASI: Briefly, Your Honor.

16

17 RECCROSS-EXAMINATION OF SHANNON SERENA

18 BY MR. TANASI:

19 Q. Just heading back to that report. You agree with me it's
20 important and good police work to put everything that's
21 important in that report though; right?

22 A. As much as we can.

23 Q. Right. And so you agree with me that it's important for
24 you to testify, at least as you did yesterday, that you saw --
25 or you were made aware of law enforcement being held at

1 gunpoint. That was the testimony from yesterday; right?

2 That's an important fact; right?

3 A. It was a small point at that part, but yes.

4 Q. Okay.

5 A. In the overall scheme of what I did, it was a very small
6 part of everything that had happened.

7 Q. Okay. But again, you didn't report that important fact in
8 your report; right?

9 A. I did not.

10 Q. Okay. Thank you.

11 And actually, one last question. You just testified
12 that maybe you weren't in a position to make arrests; right?

13 A. Correct.

14 Q. But you still had the authority and the ability to make
15 arrests; correct?

16 A. Yes.

17 Q. And you did not; correct?

18 A. Did not.

19 MR. TANASI: Thank you, sir.

20 THE COURT: Anyone else?

21 MR. MARCHESE: None from Parker.

22 THE COURT: Any other redirect?

23 MR. LEVENTHAL: No, Your Honor.

24 MR. PEREZ: No, Your Honor.

25 MS. CREEGAN: No, Your Honor.

1 THE COURT: All right. Well, thank you,
2 Sergeant Serena for coming in. You are excused. Please be
3 careful --

4 MR. LEVENTHAL: Well, Your Honor --

5 THE COURT: Oh, no. I'm sorry. Jury questions.

6 Go ahead and take your time writing down the question
7 neatly. Please remember, try not to use the pronouns. Tell us
8 who you're talking about.

9 (Brief pause in proceedings.)

10 THE COURT: Counsel, please join me at sidebar.

11 (Proceedings at sidebar out of the hearing of the jury:)

12 THE COURT: So, Jury Note No. 46, "Did you or anyone
13 controlling traffic ever completely stop traffic either
14 direction on I-15?"

15 Any objection?

16 MS. CREEGAN: No.

17 THE COURT: Okay. Jury Note No. 47, "If your high
18 headquarters believed that there were officers being held at
19 gunpoint, why did they send reinforcements?"

20 Did or didn't? Let me see. "If your high
21 headquarters believed that there were officers being held at
22 gunpoint, why did they send reinforcements?"

23 I'm not sure I understand the question. Is there any
24 objection to it, other than that, that it's difficult?

25 MS. CREEGAN: No.

1 MR. MARCHESE: No.

2 MR. LEVENTHAL: No.

3 If you high -- If your headquarters believed that
4 there were officers being held at gunpoint why did they send --
5 why didn't --

6 MR. PEREZ: Maybe they mean why didn't they?

7 MR. LEVENTHAL: Why didn't.

8 THE COURT: That's what I'm thinking is didn't, but
9 it says did.

10 MR. LEVENTHAL: Did not or did. I don't know.

11 MS. CREEGAN: I don't know why they sent him in?

12 MR. LEVENTHAL: Why him?

13 THE COURT: Any objection?

14 MR. LEVENTHAL: To reading it that way?

15 THE COURT: Um-hmm.

16 MR. LEVENTHAL: Why did they send it in?

17 THE COURT: Yeah. I think I'll say I think what they
18 mean is did not, but either way --

19 MR. LEVENTHAL: Why did they? Because they did.

20 THE COURT: Yeah. Do you know? I mean, I don't
21 think he'll know. Anything other than -- he won't know the
22 mindset of why he was sent; he'll just know what he -- his
23 purpose was, what his assignment was, his duty was.

24 MR. LEVENTHAL: Right.

25 THE COURT: So, I'll ask that -- I'll read it the way

1 it is and tell him that perhaps the question is why did they
2 not send reinforcements or why did they send you, why -- just
3 phrase it in why were you sent, to the best of his knowledge.

4 Jury Note No. 48 has two questions. The first one
5 is, "What time were you informed officers were being held at
6 gunpoint?"

7 Any objection?

8 MS. CREEGAN: No.

9 MR. PEREZ: No.

10 MR. LEVENTHAL: No.

11 THE COURT: And the second one is, "To your
12 knowledge, was this statement accurate to what you observed
13 after you arrived?"

14 Any objection to that?

15 MS. CREEGAN: No.

16 THE COURT: Any objection?

17 MR. TANASI: No objection.

18 THE COURT: Okay. Jury Note No. 49 is long, so I'll
19 take it -- looks like four questions, possibly five questions.

20 "Did you observe anyone from down in the wash aiming
21 guns up at your position" -- and then in parenthesis --
22 "(protestors)?"

23 Any objection to that?

24 MR. LEVENTHAL: No.

25 THE COURT: The second question on Jury Note No. 49

1 is, "Did you see anyone" -- and then parenthesis --
2 "(protestors) down in the wash aiming guns at the BLM
3 officers?"

4 MS. CREEGAN: No objection.

5 MR. TANASI: No objection.

6 THE COURT: Objections?

7 Okay. The third question on Jury Note 49 is, "At any
8 time were the guns that were visible on the bridge aimed at you
9 or officers that were up on the bridge?"

10 Any objection?

11 MS. CREEGAN: No.

12 MR. TANASI: No objection.

13 THE COURT: Fourth question on Jury Note No. 49 is,
14 "At any time were the people with guns asked about them, the
15 purpose of -- or intent of carrying them or to surrender them?"

16 MR. TANASI: No objection.

17 THE COURT: Any objection?

18 MR. LEVENTHAL: No objection.

19 THE COURT: And then the fifth question on Jury Note
20 No. 49 is, "Are citizens allowed to openly carry weapons in
21 public?"

22 Any objection?

23 MR. PEREZ: No objection.

24 MR. LEVENTHAL: No.

25 MS. CREEGAN: We do object to that because that calls

1 for a legal conclusion.

2 MR. LEVENTHAL: But he's an officer.

3 MR. PEREZ: He knows. He's a police officer.

4 MR. LEVENTHAL: He's a police officer.

5 MS. CREEGAN: Well, would you also like his opinion
6 on whether it was a threat or an assault?

7 MR. LEVENTHAL: He's already given it.

8 MR. MARCHESE: He's given it already.

9 MR. LEVENTHAL: He's a police officer. I guess, you
10 know . . .

11 MS. CREEGAN: I think it calls for a legal
12 conclusion.

13 MR. LEVENTHAL: Would he arrest somebody if they were
14 openly carrying?

15 MS. CREEGAN: Nobody's been charged with an open
16 carry violation.

17 MR. LEVENTHAL: That's not the question. It's not a
18 legal conclusion.

19 THE COURT: I think if there's a distinction to be
20 made here between open carry and something else, it seems to me
21 the juror already knows the answer to this question and wants
22 to know the difference. So, I'm just afraid not to ask the
23 question because then they're going to go and look for the
24 answer somewhere else --

25 MR. PEREZ: That's right.

1 THE COURT: -- which is sort of the purpose of these
2 notes, is to . . .

3 MS. CREEGAN: Right. Well, could the Court instruct
4 them that that's not in question, is whether there's an open
5 carry violation; the question is whether the defendants
6 committed the offenses charged.

7 MR. TANASI: That's her question though. That's the
8 juror's question.

9 MR. PEREZ: It's going to be up to the jury.

10 MS. CREEGAN: Right. But it's an irrelevant legal
11 question.

12 THE COURT: All right. So, I'll ask the question and
13 just let them know that no one is charged here with violating
14 any weapon -- because they are -- sort of is a weapon charge,
15 isn't it? So I can't say it's not a . . .

16 MR. TANASI: It's possession in furtherance of a
17 crime. It's not -- the charge is not a simple possession
18 charge.

19 THE COURT: Right. Right. Or of having a status
20 that would prohibit them from having guns.

21 All right. Okay. Jury Question -- Jury Note No. 50
22 has two questions. The first one is, "When you initially
23 encountered the men with the assault weapons, did your
24 assessment of the situation determine an immediate danger?"

25 Any objection?

1 MS. CREEGAN: No objection.

2 MR. TANASI: No objection.

3 MR. LEVENTHAL: No.

4 THE COURT: The second question in Jury Note No. 50
5 is, "If so, did you relay your assessment of danger to your
6 supervisors while on the bridge?"

7 Any objection?

8 MS. CREEGAN: No objection.

9 MR. LEVENTHAL: No objection.

10 MR. TANASI: No objection.

11 THE COURT: Okay. Jury Note No. 51, "Did you know
12 which organization the guys that wear military outfits?"

13 "Did you know which organization a guys that wear
14 military outfits?"

15 Maybe it's "are guys." "Did you know which
16 organization are guys that wear military outfits?"

17 MR. TANASI: My only concern, which guys is he
18 referring -- is the question referring to. Is it the folks on
19 the bridge? Is it the other folks wearing military outfits?
20 Otherwise, I have no objection.

21 MS. CREEGAN: I don't have an objection to the
22 question. I think he might struggle to understand what it's
23 asking, but . . .

24 THE COURT: Other organizations who would wear
25 military outfits.

1 MS. CREEGAN: That he observed on that day?

2 THE COURT: Um-hmm.

3 Is that okay?

4 MR. TANASI: Fine. No objection.

5 THE COURT: And then Jury Note No. 52, "Was there a
6 plan to clear the unarmed people out of the area?"

7 MS. CREEGAN: No objection, Your Honor.

8 MR. LEVENTHAL: I'm sorry. I didn't hear it.

9 THE COURT: "Was there a plan to clear the unarmed
10 people out of the area?"

11 MR. LEVENTHAL: Oh, okay. No objection.

12 MR. TANASI: No objection.

13 THE COURT: Jury Note No. 53 has seven questions.
14 The first one is, "Did you witness any of the defendants
15 holding any individuals or law enforcement at gunpoint?"

16 MR. LEVENTHAL: No objection.

17 MR. PEREZ: No objection.

18 MR. TANASI: No objection.

19 THE COURT: Second question, "Were you armed?"

20 MR. LEVENTHAL: No objection.

21 MR. TANASI: No objection.

22 THE COURT: Third question, "Were the men with guns
23 who originally approached you hostile or aggressive towards
24 you?"

25 MR. LEVENTHAL: No objection.

1 MR. TANASI: No objection.

2 MS. CREEGAN: No objection.

3 THE COURT: Fourth question on Jury Note No. 53, "Did
4 the men threaten you in any way?"

5 MR. TANASI: No objection.

6 MR. MYHRE: The men?

7 THE COURT: You do have an objection?

8 MR. TANASI: No. No objection.

9 THE COURT: Oh, I'm waiting for you to tell me what
10 it was.

11 MR. TANASI: I'm sorry.

12 MS. CREEGAN: I assume that "the men" also refers
13 back to the armed men --

14 MR. MYHRE: Did the men --

15 MS. CREEGAN: -- that he encountered when he got
16 there.

17 THE COURT: Um-hmm. Yeah.

18 So, any objection?

19 MR. LEVENTHAL: No objection.

20 MR. TANASI: I guess it has that legal conclusion
21 issue, but I think it's -- no objection.

22 THE COURT: All right. So Number 5 on Jury Note 53,
23 "What did they say to you when they approached you?"

24 I think that would be hearsay.

25 MS. CREEGAN: That would be hearsay.

1 THE COURT: Unless you think that they're
2 co-conspirators.

3 MS. CREEGAN: We're not offering them for that
4 purpose.

5 MR. TANASI: Who's "they," I guess?

6 MS. CREEGAN: I assume it all refers back to the men.

7 MR. TANASI: No objection, Stewart.

8 THE COURT: Yeah. The first question is about
9 defendants, but all the rest of them are about the men with
10 guns.

11 Okay. So, Number 5, the question, "What did they say
12 to you when they approached you?" I'm just going to let them
13 know we're not -- we're not going to have him answer that
14 question because it would be calling for hearsay, which is not
15 admissible.

16 Jury Note No. 53, Number 6, is, "Did you witness any
17 of the defendants blocking off the freeway with their
18 vehicles?"

19 MR. TANASI: No objection.

20 THE COURT: Any objection?

21 MS. CREEGAN: No objection.

22 MR. LEVENTHAL: No objection.

23 THE COURT: And the last one on Jury Note No. 53 is,
24 "If you were responding to officers in danger, why was your
25 demeanor so calm, relaxed, and casual in the dash cam video?"

1 MR. PEREZ: No objection.

2 MR. LEVENTHAL: No objection.

3 MR. TANASI: No objection.

4 THE COURT: All right. So Jury Note No. 54 also has
5 multiple questions, six questions, the first one is, "You
6 testified that people were armed with assault rifles. What
7 makes a rifle an assault rifle? Are there any prohibitions on
8 owning an assault rifle in Nevada?"

9 MR. TANASI: No objection.

10 MR. LEVENTHAL: No objection.

11 MS. CREEGAN: Well, I think it's the same issue,
12 which is, they're not charged with improper ownership of an
13 assault rifle.

14 MR. LEVENTHAL: It's a good question of the assault
15 rifle.

16 THE COURT: This is the second part.

17 So the first part is, "You testified that people were
18 armed with assault rifles. What makes a rifle an assault
19 rifle?"

20 Any objection to that portion?

21 MR. LEVENTHAL: No.

22 MS. CREEGAN: No.

23 THE COURT: Okay. So then the second portion is,
24 "Are there any prohibitions on owning an assault rifle in
25 Nevada?" And so, I'll, again, explain that there's no charge

1 here of mere owning an assault rifle and that the elements of
2 the charge, what they are to consider will be provided in the
3 jury instruction so we're not going to confuse and complicate
4 things.

5 MR. LEVENTHAL: But you're also going to answer the
6 question, right? That there is no prohibition of owning an
7 assault rifle and then, that's not what they're charged with.

8 THE COURT: No. Of course there is. You could be an
9 excluded person, if you are a felon. That's the point. Are
10 you a drug addict? Are you a felon? There's other reasons,
11 you know.

12 MR. LEVENTHAL: Right.

13 THE COURT: Do you have a -- have you ever been in a
14 mental institution?

15 MR. LEVENTHAL: Sure.

16 THE COURT: So, I mean, it's going to get -- I can't,
17 off the top of my head, remember all of the exclusions.

18 MR. LEVENTHAL: No. I understand.

19 THE COURT: And I -- it's just going to make it more
20 complicated.

21 Okay. The next question is, "Is it unusual for
22 people to be wearing BDU on Saturdays in Las Vegas?"

23 MR. LEVENTHAL: We weren't in Las Vegas; we're in
24 Bunkerville, but, no objection.

25 THE COURT: Any objection from the Government?

1 MS. CREEGAN: No.

2 THE COURT: All right. Third question is, "You
3 indicated you were fearful," and then it goes into a (a), (b)
4 and (c). "What is the basis of this fear, (a), firsthand
5 experience; (b), have you ever been directly involved in a
6 civilian volatile event that escalated?"

7 Any objection to that?

8 MS. CREEGAN: No.

9 MR. TANASI: No objection.

10 THE COURT: Okay. And then one, two, three and then
11 Question No. 4 on Jury Note 54, "You indicated that dispatch
12 indicated that there were weapons pointed at police. Did that
13 color your decision and action factually" -- "did that color
14 your decision and action" -- and then in brackets -- "actually
15 held at gunpoint?"

16 I think the question is was he -- is that what you
17 said the people -- that you were responded to someone being
18 actually held at gunpoint, is that because what dispatch told
19 you. "You indicated that dispatch indicated that there were
20 weapons pointed at police. Did that color your decision and
21 action [actually held at gunpoint]?" To say that they were
22 actually held at gunpoint. I think the jury wants to know is
23 that why you said that, not because you saw it, but because
24 that's what dispatch told you.

25 MR. MYHRE: I think that's the thrust of the

1 question.

2 THE COURT: I think that's what they want to find
3 out.

4 Any objection to that question?

5 MS. CREEGAN: No.

6 MR. TANASI: No objection.

7 MR. LEVENTHAL: No, Your Honor.

8 THE COURT: Fifth question. "Did you ever advise
9 your dispatch of the actual scenario once you had boots on the
10 ground?"

11 Any objection?

12 MS. CREEGAN: No.

13 MR. LEVENTHAL: No objection.

14 MR. TANASI: No objection.

15 THE COURT: And last question in Jury Note No. 54 is,
16 "Who was the incident commander?"

17 MR. TANASI: No objection.

18 MS. CREEGAN: I don't think he'll know, but . . .

19 MR. PEREZ: No objection.

20 THE COURT: Any objection?

21 MS. CREEGAN: No.

22 THE COURT: All right. Jury Note No. 55, "Mr. Serena
23 testified that on his way to the wash to help regulate traffic
24 his duties changed. When was he told that there were officers
25 being held at gunpoint? Was he being updated about that

1 situation while monitoring the traffic and people? Did
2 Mr. Serena personally see any guns being pointed towards the
3 wash or the BLM officers?"

4 So it's two different questions. So one is, was he
5 updated, the second one is did he personally see anything.

6 MR. PEREZ: No objection.

7 MS. CREEGAN: No objection.

8 MR. LEVENTHAL: No objection.

9 MR. TANASI: No objection.

10 THE COURT: And Jury Note No. 56, actually put on
11 there Question No. 1. Was planning to do more. "You stated
12 you were responding to a call for support of LEOs that were
13 facing multiple armed individuals, or rather assist officers
14 held at gunpoint. What were your expectations as to what to
15 expect and how did that compare to what you actually saw?"

16 MS. CREEGAN: No objection.

17 MR. LEVENTHAL: No objection.

18 MR. TANASI: No objection.

19 THE COURT: And Jury Note 57, "Were you trained how
20 to de-escalate tense situations?"

21 MS. CREEGAN: No objection.

22 MR. TANASI: No objection.

23 MR. LEVENTHAL: No objection.

24 THE COURT: That's it.

25 MS. CREEGAN: That's all?

1 THE COURT: Yes. That's all.

2 (Proceedings within hearing of the jury:)

3 THE COURT: So, Sergeant Serena, I've got some
4 questions here that the jury has provided and I'm going to be
5 reading them into the record for you, but when you answer them,
6 you can turn to the jury and answer to the jury because these
7 are really the jury questions, not my questions.

8 THE WITNESS: Yes, Your Honor.

9 THE COURT: Okay?

10 So Jury Note No. 46 asks, "Did you or anyone
11 controlling traffic ever completely stop traffic, either
12 direction, on I-15?"

13 THE WITNESS: With that question be answered [sic], I
14 think there was a time that I know that I was involved in which
15 I stopped traffic because we had a mass group of people that
16 wanted to see the cattle leave. So, it was better to put them
17 on one side of the wall than the other. So initially, they
18 wanted to see them crossing; we stopped traffic and let them go
19 through. As to what happened on the southbound side, I
20 honestly can't answer that. I do not know. Our radio
21 communication was very bad that day so I couldn't hear a lot of
22 the traffic if something on the other side was stopped
23 completely.

24 THE COURT: So, are you saying that traffic was
25 completely stopped at one point so people could watch the --

1 from the bridge?

2 THE WITNESS: Yes. There was a point in which we
3 completely stopped traffic to aid people crossing the road
4 safely. We did do that for a length of time, maybe a minute,
5 you know, just get people across, and then traffic would
6 continue on, because my job there as much to protect anyone
7 that's there, citizens crossing through the area as much as the
8 people that were even on the bridge. It was still my job to
9 protect them to make sure that we didn't have a fatal car crash
10 up there.

11 THE COURT: So it sounds like you're sort of creating
12 a crosswalk where there is no crosswalk?

13 THE WITNESS: Yes, we did.

14 THE COURT: Was that one time only or more than once?

15 THE WITNESS: I would have to say maybe a handful of
16 times to safely get people across because initially what
17 happened was, if we didn't stop it, then the people on the
18 bridge were stopping traffic and then it was being held and
19 maintained there for quite a while. My job was to try to get
20 as many people in a group at a time that wanted to go over from
21 one side of the bridge. Like, as the cattle came, I remember
22 stopping it. We tried to get everyone to the other side of the
23 northbound bridge and then we stopped it again when they tried
24 to exit and leave the area after the cattle had crossed the
25 road.

1 THE COURT: All right. Jury Note No. 47 asks, "If
2 your high headquarters believed that there were officers being
3 held at gunpoint, why did they send reinforcements?" And we,
4 as we were looking at these, were not sure if they meant why
5 didn't they send reinforcements or why did they send, so I
6 don't -- so, are you a reinforcement? If not, why didn't they
7 send reinforcements?

8 THE WITNESS: Okay.

9 Initially when that happened, they did send
10 reinforcements and we were it. We didn't have a lot of people
11 on the road that day. It wasn't something that is a planned
12 thing that we were trying to organize ahead of time.
13 Initially, when this whole thing started to happen, you know, I
14 was one of whoever they had in the building and, like, hey,
15 you, you, and you, we need you to go up to the Moapa Sub. At
16 that point we had -- like I said, I was involved with and my
17 assignment with the squad was to just assist DOT. It changed
18 rapidly as they got information that it was relayed to me and
19 at that point they were, like, we need assistance and go. So,
20 I went northbound and they said this is what we have going on,
21 so, get to there and go and help out. By the time we got up to
22 there, I didn't see those officers, I didn't see that
23 situation, and we had to immediately start to deal with the
24 road blockage that we had had.

25 THE COURT: Okay. So Jury Note No. 48, "What time

1 were you informed that officers were being held at gunpoint?"

2 THE WITNESS: To give you an exact time, I do not
3 recall. I remember that at the briefing at the substation,
4 when Captain Jackson came out, he grabbed me, he was like,
5 Serena, grab your squad, we got to go, we have officers held at
6 gunpoint. That exact moment in time, I do not know. I'm going
7 to say that it was going to be sometime before my video camera
8 on. That's the best answer I can give you for the exact
9 timing. It was at the substation, which, that's what we heard,
10 and that's what the mad rush to get up there was for.

11 THE COURT: All right. And then the second question
12 on Jury Note No. 48 is, "To your knowledge, was the statement
13 accurate to what you observed after you arrived?" The
14 statement refers to the -- in quotation marks they have
15 officers were being held at gunpoint. So was that statement
16 accurate? Is that what you observed when you arrived?

17 THE WITNESS: At the moment where -- where I arrived,
18 I did not see it. What I saw and we all saw on video, when we
19 came up to there, we ended up dealing with the traffic issues
20 that we had and I had already had people that were in vehicles
21 being stopped because there were people with, you know, long
22 rifles and that standing in front of them not allowing traffic
23 to go. So, unfortunately, the first need that I had to handle
24 was that there and to open up the roadway so that citizens
25 could pass through safely. That became a primary versus even

1 our own officers being, you know, held at gunpoint, wherever
2 that was, and that I did not see.

3 THE COURT: All right. So Jury Note No. 49 has one,
4 two, three, four, five questions. The first one is, "Did you
5 observe anyone from down in the wash aiming guns up at your
6 position?" And then in parenthesis with quotation marks it
7 says "protestors."

8 THE WITNESS: I did not personally see anyone
9 pointing a gun up towards where I was at.

10 THE COURT: Okay. The second question of Jury Note
11 No. 49 is, "Did you see anyone" -- and then again in
12 parenthesis with quotation marks -- "(protestors) down in the
13 wash aiming guns at the BLM officers?"

14 THE WITNESS: From my position where I was, I never
15 saw the BLM officers, so I can't say if that happened or not.

16 THE COURT: Okay. Question No. 3 on Jury Note No.
17 49, "At any time were the guns that were visible on the bridge
18 aimed at you or officers that were up on the bridge?"

19 THE WITNESS: From the ones that we saw with the
20 interactions of the people that we had, those ones, no. There
21 were ones that we had also, other spotters, and things that
22 were out and around that were giving us information letting us
23 know, but the ones that I saw there, no.

24 THE COURT: The next question is, "At any time were
25 the people with guns asked about them" . . . oh, about the

1 guns. So, "At any time were the people with guns asked about
2 them -- the guns -- the purpose of the guns or their intent
3 of -- for carrying them," meaning the guns.

4 So let me just go back. "At any time were the people
5 with guns asked about the guns or the purpose or intent of
6 carrying the guns?"

7 THE WITNESS: No. It really -- to be in the moment,
8 to understand when you arrive there and the tension that was
9 there, that wasn't the time to say, "Hey, why do you have your
10 gun?" It was a very well understood reason of why. So, there
11 was no need to ask.

12 THE COURT: Okay. And the last question on Jury Note
13 No. 49 is, "Are citizens allowed to openly carry weapons in
14 public?" And that calls for a legal conclusion so I'm just
15 going to instruct the jury that no one in this case is charged
16 with merely opening -- openly carrying weapons. There are
17 rules and regulations about openly carrying weapons. There are
18 people who are prohibited from doing that and so forth. We
19 would probably be here another two days if we were going to get
20 into all those details and this case is not about that. So,
21 there will be jury instructions about the charges that are
22 actually at issue in this case, the charges that are actually
23 charged -- the offenses that are actually charged and so you'll
24 be provided with those. But, openly carrying is not one of the
25 charges and so I'm not going to have the witness answer that

1 question.

2 Jury Note No. 50 asks, "When you initially
3 encountered the men with the assault weapons, did your
4 assessment of the situation determine an immediate danger?"

5 THE WITNESS: Yes. As we went out there and
6 approached people, we tried to keep things as calm as possible
7 considering that situation in which you were that heavily, you
8 know, unarmed or unmatched with their weaponry. Yes, the
9 assessment of it was that we could be in danger at any time.

10 THE COURT: And then Question No. 2 on Jury Note No.
11 50 is, "If so, did you relay your assessment of danger to your
12 supervisors while on the bridge?"

13 So, communication. Was there communication of your
14 danger assessment?

15 THE WITNESS: No. There -- we had, like I said, bad
16 reception with our radios. Even when the one individual had
17 given me information, trying to even call someone over there
18 was bad. There was no reception. So there was no way for me
19 to contact, you know, one of my superiors who was probably in
20 the exact same situation, but further south of me, to tell him
21 exactly what we saw or what exactly the feeling was of the
22 threat assessment.

23 THE COURT: All right. Jury Note No. 51 asks, "Did
24 you know which organization of guys wears military outfits?"

25 So, we think what the question is asking, other than

1 the military, are you aware of what other organizations wear
2 military outfits that were on the bridge that day, that you saw
3 anywhere that day?

4 THE WITNESS: I can't say I was aware of another
5 group of military that was there beyond the individuals that we
6 dealt with. So, to give an exact answer to that, no, I can't
7 say there was another organization that I knew of that was --
8 that was there.

9 THE COURT: Okay. Not counting the military. So,
10 dis- -- just don't count the military. Just, any other people
11 who were not military that wear military uniforms as part of
12 their organization, are you aware or familiar with any
13 organization that does that? Did you see them there on the
14 bridge that day?

15 THE WITNESS: The militia is known to, you know, wear
16 that kind of military gear and those are a bunch of people that
17 we saw there that day.

18 THE COURT: And then Jury Note No. 52 asks, "Was
19 there a plan to clear the unarmed people out of the area?"

20 THE WITNESS: What we had kind of figured with that
21 day going on with the events is that we -- our process was that
22 we hoped that once the cattle had been released, that people
23 would go on their own free will and then leave the area because
24 that area is no longer an area of contention at that point.
25 So, our job was to get the cattle there, get the cattle

1 released, get it back to, you know, the people that were there
2 fighting for it, and then let them clear out on their own and
3 assist as that went on, but as our main thing was to get BLM
4 out, but after a while, we figured there's nothing more to see
5 and the people would start to leave on their own.

6 THE COURT: Okay. Jury Note No. 53 has one, two,
7 three, four, five, six, seven questions. The first one is,
8 "Did you witness any of the defendants holding any individuals
9 or law enforcements at gunpoint?"

10 THE WITNESS: No. Not that I can remember seeing
11 anything like that.

12 THE COURT: Second question is, "Were you armed?"

13 THE WITNESS: Yes. I had my -- my handgun on me that
14 day.

15 THE COURT: On your person? I'm sorry. Did you say
16 you had the handgun on your person?

17 THE WITNESS: Yes.

18 THE COURT: The next question is, "Were the men" --
19 and then in parenthesis with an arrow -- "(with guns) who
20 originally approached you hostile or aggressive towards you?"

21 THE WITNESS: No. I can say stern, if I will, but
22 no, they weren't hostile or aggressive towards me.

23 The initial -- in the video you saw the initial guy
24 when I got there. It was unique because for me, I didn't
25 know -- you couldn't tell who was on whose side. I didn't know

1 if it was military. I didn't know who was who. If it was an
2 undercover officer. I had no clue, but the individual -- the
3 first individual you saw me speak with, you know, he's telling
4 me of, like, this vehicle that he saw that is down in the wash
5 that is pointing guns at people and I kind of -- for a second I
6 was like, I don't know who's who; can we have shirts and skins
7 so we know who's the good guys, the bad guys. I couldn't tell.
8 So, it was a difference of, like, relaying information to me,
9 but at that point I won't say that they were hostile towards
10 me -- towards the ones that I had the one-on-one encounters
11 with that I actually spoke with.

12 THE COURT: Okay. The next question is, "Did the men
13 threaten you in any way?" We think they're -- it's still
14 referring to the men with guns. Did they threaten you in any
15 way?

16 THE WITNESS: If we're referring to the ones I spoke
17 to, no.

18 THE COURT: Okay. And then, why did they say --
19 "What did they say to you when they approached you?"

20 So, that question calls for hearsay because it would
21 be a statement that's an out-of-court statement that's not
22 otherwise admissible. There's no other exception through this
23 witness for that evidence to come in, so I'm not going to have
24 the witness answer that question.

25 The next question on Jury Note 53 is, "Did you

1 witness any of the defendants blocking off the freeway with
2 their vehicles?"

3 THE WITNESS: No. When -- from what I viewed, it was
4 just the people themselves that were actually physically
5 blocking the roadway, not allowing the citizens to pass that
6 day that were heavily armed.

7 THE COURT: And then the last question on Jury Note
8 No. 53 is, "If you were responding to officers in danger, why
9 was your demeanor so calm, relaxed, and casual in the dash cam
10 video?"

11 THE WITNESS: It's a good question.

12 I think that you try -- you don't want to go into a
13 situation like that. Going into a situation -- and I think
14 about this, you know, all the time, you know, what could have
15 gone right and wrong and going into something where you can
16 walk out, you feel where someone says, you know, the tension
17 was so, you know, thick, you could cut it with a knife. That's
18 what we felt. And as an officer, I've dealt with many
19 situations and dealing with this one in particular, we have to
20 give what we think that situation is going to need.

21 Unfortunately, it may not show and people may not go, "Oh,
22 well, you didn't look scared; you didn't look this." No one
23 can judge what someone feels on the inside and at that the
24 moment that's what was needed for that situation. Right or
25 wrong, I don't know, but all I can say is I -- I lived to tell

1 a story about it so, I'm going to go with it was right at that
2 time.

3 THE COURT: What do you mean by "what was needed at
4 that time"?

5 THE WITNESS: The demeanor that I had and if they --
6 and if someone gave me a certain demeanor and someone is --
7 just like with you, if someone's abrupt and short with you, you
8 give them short and abrupt back. If someone's kind to you,
9 you're kind back. So, I gave what I received at that point.
10 There's no need to be a jerk to someone or be rude to somebody
11 if they're coming up saying, you know, "Hey, how are you
12 doing?" "Don't talk to me." That's not appropriate. My job
13 as an officer is always to do the best to keep the peace and
14 de-escalate the situation. So, if they see that we're not
15 tense and we're not edge -- on edge, hopefully that will bring
16 down the crowd as well.

17 THE COURT: All right. Jury Note No. 54 also is a
18 multiple part question, one, two, three, four, five, has six
19 questions. The first one is, "You testified that people were
20 armed with assault rifles. What makes a rifle an assault
21 rifle?"

22 Why did you call them assault rifles?

23 THE WITNESS: The assault rifle, based on the
24 capacity of ammo that it carried on it or the amount of ammo
25 that it can fire off at any given rate.

1 THE COURT: So, it means higher capacity?

2 THE WITNESS: A higher capacity. I'm sorry. I'm
3 nodding.

4 THE COURT: Yeah. For people who don't know anything
5 about rifles.

6 THE WITNESS: I'm not a gun expert. If we're looking
7 at something that -- a certain weapon system of let's say an
8 AR-15 will be able to have maybe 15 rounds or 20, 30 rounds in
9 the magazine that's installed into the bottom of it so it can
10 fire off, that's what I consider an assault rifle. Different
11 than if you have, like, a single shot .308 with a bolt action
12 and you lock that in and you're going hunting. So it's just a
13 different type of weapon system with a higher capacity of
14 ammunition.

15 THE COURT: All right. And then the next question
16 is, "Are there any prohibitions on owning an assault rifle in
17 Nevada?"

18 So again, these defendants are not charged with
19 merely owning a assault rifle and being in the state of Nevada,
20 so I'm not going to have the witness answer that because again,
21 we would get into rules and regulations and exceptions and
22 things like that, and again, be here for two more days. So I'm
23 not going to have him answer that, but I appreciate your
24 concern and know that the attorneys are aware of that as well.

25 Question No. 2 on Jury Note No. 54 is, "Is it unusual

1 for people to be wearing BDU on Saturday in Las Vegas?"

2 So, in your experience.

3 THE WITNESS: From my experience, to see an
4 individual -- a single individual, one or two, no. To see a
5 mass of them, yes. In the situation which I was, that was
6 highly unusual. I've never seen that before in my career.

7 THE COURT: All right. The next question is, "You
8 indicated you were fearful." So the first one is, "What is the
9 basis of this fear?" And then there's an (a) and a (b). "(a),
10 firsthand experience, or (b), have you ever been directly
11 involved in a civilian volatile event that escalated?" So
12 maybe let's see if we can break that down.

13 "So you indicated you were fearful. What is the
14 basis of this fear?"

15 THE WITNESS: My basis was I was afraid I was going
16 to get shot and killed that day. You know, it's a -- I'm a
17 known person, like anyone sitting there, so to drive up into an
18 area and all of a sudden you see something like this going on,
19 it's nothing that I'd ever seen in my career before. You know,
20 it was a definite whole new experience. Like I said, there was
21 a part that one of the defense attorneys read and said that,
22 you know, in my report it read I was afraid of a backfire or an
23 accidental discharge. Yes, I was. I was extremely nervous.
24 There was a part where we heard something that happened and you
25 heard a pop and you're, like -- start, like, checking yourself

1 to make sure you're okay and everyone for a second in time
2 froze and stood still because the last thing anyone wanted was
3 to have a massive shootout. That's not what our intentions
4 were nor is that what we were ever looking for or to be in the
5 middle of. I was like anyone else; I just wanted to go home
6 that day and I got sent to a place where no one else was going
7 to be sent, especially with the limited resources we had, but
8 yes, I was very, very fearful that day of getting shot and
9 killed.

10 THE COURT: All right. And the second part of the
11 question was, "Have you ever been directly involved in a
12 civilian volatile event that escalated?"

13 THE WITNESS: Yes. I can't think of an exact
14 specific one, but yeah, we've had them where, you know, they
15 kind of -- you're arresting someone and someone goes off the
16 deep end. They get upset about something and it escalates and
17 then you work on de-escalating it again and safely, you know,
18 at that point probably arresting them and, you know, handling
19 them safely and get them to jail.

20 THE COURT: Okay. So the fourth question in Jury
21 Note No. 54 is, "You indicated that dispatch indicated there
22 were weapons pointed at police. Did that color your decision
23 and action?" And then in brackets it says, "actually held at
24 gunpoint."

25 THE WITNESS: No, it didn't. Obviously it raises the

1 bar for -- you know, where you sit for where you are
2 emotionally at, of course, but, you know, when we got there --
3 once we got there, that was honestly the last time I ever
4 thought of that situation that occurred. There were so many
5 things going on around us and now, all of a sudden, instead of
6 going to where we think, you know, you're going to go in and
7 rescue these people, now, all of a sudden, you're the ones in
8 trouble and may need rescued. So, going into it, you know, it
9 was something unusual to see people there walking in front of
10 the roadway with, you know, assault rifles not allowing traffic
11 to move. So, even though I had a concern for those officers,
12 they're on their own at that point and I had to deal with what,
13 you know, we had to deal with. We also had civilians that were
14 being stopped at gunpoint that really wanted out of that area.
15 So, my job was to get them through and to get them out of there
16 from -- you know, for their own safety as well at that point.

17 THE COURT: All right. And one, two, three, four,
18 fifth question on Jury Note No. 54 is, "Did you ever advise
19 your dispatch of the actual scenario when you had boots on the
20 ground?"

21 THE WITNESS: No. We had -- like I said earlier, I
22 had a hard time making one phone call there back when I was
23 told about a vehicle with a -- you know, someone pointing
24 weapons at people. I couldn't barely get out on a cell phone.
25 I could not hear anything on my radio and every time we clicked

1 down on it, it was just a dead tone sound to it. There was no
2 communication that I had. Maybe others did, but at that point
3 I did not.

4 THE COURT: All right. And then the last question on
5 Jury Note No. 54 is, "Who was the incident commander?" If you
6 know.

7 THE WITNESS: I believe at that point it would have
8 been Captain Jackson, the point. That's the last person that I
9 knew, because he actually came in my squad and when I had
10 separated away with Madsen, he stayed over in the other -- kind
11 of that whole parking lot area and stuff. So, he would have
12 been the ICS.

13 THE COURT: And is Captain -- Captain Jackson, is
14 that NHP?

15 THE WITNESS: Yes. Captain Jackson at that time was
16 a captain for the Nevada Highway Patrol out of Southern
17 Command.

18 THE COURT: Okay. And then Jury Note No. 55 asks,
19 "Mr. Serena testified that on his way to the wash to help
20 regulate traffic his duties changed when he was told that there
21 were officers being held at gunpoint. Was he being updated
22 about that situation while monitoring the traffic and people?"

23 THE WITNESS: No. After -- after we got there,
24 because our radios were dead, there was no real communication
25 with one another. We were within a line of sight of each

1 other, but the biggest thing was, is, you know, we went up
2 there for that sole purpose, because originally I was up for
3 traffic control with DOT. Then, you know, we get the thing
4 that there's people being held at gunpoint, so it changed again
5 and then we got out there and when we finally arrived, it
6 became traffic control again. Hence, why we put on our vest.
7 Not the way to blend in or hide because we're sticking out like
8 sore thumbs, but it was our job to take on that role and
9 responsibility of traffic control to get the 15 flowing
10 northbound again. So at that point, I didn't hear from -- I
11 don't recall or remember hearing anything from any other
12 commander there about any other situation and when we went down
13 to the bridge, I was the highest ranked individual on NHP side
14 with, you know, me and Trooper Madsen and I didn't get any
15 other intel to pass on to him, so it was just kind of me and
16 him on our own out there.

17 THE COURT: All right. And then the second part of
18 Jury Note No. 55's question is, "Did Mr. Serena personally see
19 any guns being pointed towards the wash or towards the BLM
20 officers?"

21 THE WITNESS: Okay. I saw -- when I was up on the
22 bridge, I did not see any of the BLM officers or where they
23 were at from my vantage point. Did I see people pointing them
24 over? Yes. But exactly who or what, no, I could not tell you.

25 THE COURT: What are you referring to when you say

1 "pointing them over"?

2 THE WITNESS: Pointing them over the Jersey wall
3 there, pointing them into the wash, but what exactly they're
4 pointing at, I could not tell you.

5 THE COURT: All right. And Jury Note No. 56, "You
6 stated you were responding to a call for support of LEOs" --
7 law enforcement officers -- "that were facing multiple armed
8 individuals or rather assist officers held at gunpoint. What
9 were your expectations as to what to expect and how did that
10 compare to what you actually saw?"

11 THE WITNESS: That's a good question.

12 To sit there and think about it for a minute, you
13 know, there's not too many times I can ever think in, like, my
14 own career ever that you may have a situation that, you know,
15 they tell you that you have some of your fellow colleagues down
16 there somewhere and they're being surrounded, being held at
17 gunpoint. So I don't know really what made up it. I thought
18 maybe there's 20 or 30 people and they're outnumbered and I'm
19 like, okay, we'll go in there, we'll extract them, get them all
20 safe and all kind of huddle back up again and come up with a
21 game plan to, you know, ease the tensions or do what we have to
22 do. That is not what I saw when I got down there. To show up
23 and have literally someone that's walking back and forth in the
24 roadway that's armed, I didn't know if I was going to be the
25 first target in, you know. I remember just sitting there

1 thinking, like, if this person was to fire on me, I'm just
2 going to gun it and keep going. There's no other realistic
3 observation to make. I mean, being outnumbered and outgunned,
4 I mean, we showed up with our handguns; they showed up with
5 rifles. So, we didn't have superiority and fire power and even
6 from, like, the video I wasn't -- and they're walking around
7 with their rifles slung, slung like that (indicating), so that
8 wasn't a possibility. But to see what we saw that day, to say
9 it's something that's in shock and awe, yeah, you kind of had
10 to have been there to experience that. That's something that
11 talking to many people that they have never heard of or seen
12 and it was overwhelming to begin with.

13 THE COURT: All right. And last question is Jury
14 Note No. 57, "Were you trained how to de-escalate a tense
15 situation?"

16 THE WITNESS: Yes. I refer to back, because I was
17 asked about my demeanor and that is one of the things that you
18 do as you're trained, to go through and to de-escalate.
19 Someone stops your car and he's like, "Hey, I need this, this,
20 and this from you." You're like, well, that come off a little
21 rough and you don't need to escalate that way up and you can.
22 In this situation, it was more of a calm, relaxing way, to try
23 to de-escalate the people that I spoke to and I was treating
24 them as fair as they were treating me. So if they were --
25 like, the one guy comes up, like, kind of, you know, smiling.

1 He's just all -- he was all happy. He saw the cattle go
2 through. I'm like, "All right, buddy. Good for you.
3 Everything's fine. Yeah, later." That's the impression he
4 gave me. But, when I was on the bridge with those folks,
5 that's not the impression that they got from me either nor did
6 I get from them.

7 You know, when I first got there and the individual
8 comes up and starts walking towards me, I'm like, uh-oh. I
9 have a major problem, because I'm not even out of my car and I
10 have me and my little handgun and he's coming at me with an
11 assault rifle and there's no real training for that one, you
12 know. It's something that, all of a sudden, your mind is
13 starting to think of things very, very fast. So, my greeting
14 to him was, like, "Hey, what's going on? How can I help you?"
15 Not like, "Hey, we're fine. We're cool. Everything's, you
16 know, going to be okay today." You know, whatever it's going
17 to take to escalate that situation and even if it's something
18 that -- just because even at that point that I was, like, hey,
19 it's okay, doesn't mean you're still not nervous or scared
20 inside. You have soldiers in battlefields and they go home and
21 they're sleeping and they're tense doesn't mean that they're
22 not still afraid of where they're at. Same kind of situation
23 for there, but we did the best we can to try to de-escalate the
24 situation, treat those folks with respect. You know, I
25 wouldn't treat them any different. It's still "yes, sir," "no,

1 sir," "yes, ma'am," "no, ma'am." There's no reason to go out
2 there and start name calling and treating people
3 disrespectfully. And it -- in that day, it worked for us.

4 THE COURT: All right. So let -- that's the end of
5 the jury questions.

6 Any follow-up questions from the Government?

7 MS. CREEGAN: No, Your Honor.

8 THE COURT: Any follow-up questions by the defense?

9 MR. TANASI: None from Stewart, Your Honor.

10 MR. MARCHESE: None from Parker.

11 MR. LEVENTHAL: No, Your Honor.

12 MR. PEREZ: Just one, Your Honor.

13 THE COURT: All right. Come on up.

14 On behalf of Mr. Lovelien, Mr. Perez.

15

16 REXCROSS-EXAMINATION OF SHANNON SERENA

17 BY MR. PEREZ:

18 Q. Good morning, Sergeant.

19 A. Good morning sir.

20 Q. You said that from your vantage point that you never saw
21 the BLM officers down below the bridge. Is that --

22 A. Yes, sir.

23 Q. Okay. So -- now, you're on the northbound side; correct?

24 A. Yes.

25 Q. And from that vantage point could you see -- could you see

1 under the southbound bridge?

2 A. Not clearly.

3 Q. No?

4 A. Not at all.

5 MR. PEREZ: Thank you. Nothing further.

6 THE WITNESS: Yes, sir.

7 THE COURT: All right. Anyone else?

8 MS. CREEGAN: No, Your Honor.

9 THE COURT: No? All right.

10 So thank you very much. You are excused,
11 Sergeant Serena. Please --

12 THE WITNESS: Thank you, Your Honor.

13 THE COURT: -- be careful on the way down on your
14 steps.

15 THE WITNESS: Thank you, jury.

16 THE COURT: -- and I think we'll go ahead and take
17 our bathroom break.

18 It's 11:01. We'll try to be back by 11:15.

19 I do remind the jury that during this break you are
20 not to discuss this case with anyone nor permit anyone to
21 discuss it with you.

22 Please do not attempt to perform any research or
23 listen to or view anything that touches upon this case in any
24 way or any independent investigation.

25 If you do want a definition to a word that we've

1 used, please feel free to let us know so that we can provide
2 you with that definition. We don't want you to go looking it
3 up in the dictionary and it might mean something different
4 colloquially than the way that it's used in this particular
5 case and so we don't want you to be even more confused, so
6 please let us know.

7 And also do not form any opinion until after you've
8 heard all the testimony, received the evidence, heard the
9 closing arguments. I'll give you the jury instructions and
10 then you can begin your deliberation process.

11 So let's go ahead and stand up for the jury and
12 welcome them back about 11:17 or so.

13 (Jury excused from courtroom.)

14 THE COURT: All right. We're off record.

15 (Recess was taken at 11:03 a.m.)

16 COURTROOM ADMINISTRATOR: All rise.

17 THE COURT: Thank you. You may be seated.

18 Go ahead and call in the jury so we can get the next
19 witness started.

20 (Brief pause in proceedings.)

21 COURTROOM ADMINISTRATOR: All rise.

22 (Jury returned to courtroom at 11:29 a.m.)

23 THE COURT: All right. Jury may go ahead and be
24 seated and everyone else may be seated afterwards.

25 The Government may call its next witness.

1 MS. AHMED: Thank you, Your Honor.

2 The United States calls Ranger Alexandra Burke.

3

4

ALEXANDRA BURKE,

5 called as a witness on behalf of the Government, having been

6 first duly sworn, was examined and testified as follows:

7

8

THE COURT: Good morning, Ranger Burke.

9

THE WITNESS: Good morning.

10

THE COURT: You're going to be seated right here next

11

to me (indicating).

12

Please go ahead and remain standing.

13

COURTROOM ADMINISTRATOR: Please raise your right

14

hand.

15

You do solemnly swear that the testimony you shall

16

give in the cause now before this Court shall be the truth, the

17

whole truth, and nothing but the truth, so help you God?

18

THE WITNESS: Yes.

19

COURTROOM ADMINISTRATOR: Thank you. You may be

20

seated.

21

THE WITNESS: Thank you.

22

THE COURT: Please state your full name for the

23

record and spell your last name.

24

THE WITNESS: Alexandra Burke, B-u-r-k-e.

25

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DIRECT EXAMINATION OF ALEXANDRA BURKE

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BY MS. AHMED:

Q. Good morning, Ranger Burke.

A. Good morning.

Q. Are you currently employed by the BLM?

A. Yes.

Q. And what is your position with the BLM?

A. I'm a Field Staff Ranger, law enforcement ranger.

Q. And are you a uniformed ranger?

THE COURT: Can you pull that microphone closer or just speak up loader because I didn't hear that second -- I heard field ranger and then the second part of that I didn't hear.

THE WITNESS: Field staff, law enforcement ranger.

THE COURT: Thank you.

BY MS. AHMED:

Q. Can you explain to the jury what that means basically?

A. I enforce federal and state rules and laws on federal land and I patrol daily, making contacts in the field, whether that be hunters or grazing permittees, just the public in general.

Q. And are you a uniformed officer?

A. Correct, yep.

Q. And are you commissioned to enforce federal laws?

A. Yes.

Q. How long have you held this position with the BLM?

1 A. With the BLM, since 2004.

2 Q. Prior to 2004 did you have any other law enforcement
3 position?

4 A. Yes. I worked for the National Park Service starting in
5 2001.

6 Q. And were you a law enforcement ranger with the Park
7 Service as well?

8 A. Yes.

9 Q. And did you attend any training prior to becoming a Park
10 Service law enforcement ranger?

11 A. I did. I went --

12 Q. What -- go ahead. What training was that?

13 A. I went to a police academy where I received both a federal
14 Type 2 commission it's called, to enforce federal laws in the
15 National Park Service, as well as a state peace officer
16 certification.

17 Q. And is that the Federal Law Enforcement Training Center
18 where you attended that training?

19 A. No. That would have actually been another -- in 2004, I
20 attended a second federal law enforcement academy and that was
21 at FLETC -- are or Glynco, Georgia, and that gave me a full
22 commission, a Type 1 commission they call it.

23 Q. So, with -- with that commission, you are, again, fully
24 authorized to enforce federal laws?

25 A. Correct.

1 Q. Now, in addition to being a field ranger, are you also a
2 field training officer?

3 A. Correct. I'm a field training officer.

4 Q. And can you explain to the jury what your duties are in
5 terms of that?

6 A. I -- when we have new hires that come into the agency, in
7 order for them to learn agency policy and specific things to
8 our agency, once they come onto the academy, they get placed
9 with an officer in the field, actually several officers, and
10 I'm one of several that they'll be with so they can
11 successfully do field patrol themselves.

12 Q. Now, in the course of your law enforcement career, have
13 you come into contact with people in the field who have
14 firearms?

15 A. Yes. Often.

16 Q. Are you familiar, yourself, with firearms?

17 A. Yes.

18 Q. And how would you describe your familiarity?

19 A. Well, I've been trained in them, obviously, as well as I'm
20 a hunter education instructor and plus, I grew up hunting and
21 have family members that hunt as well as running into countless
22 hunters out in the field that have weapons, rifles.

23 Q. How common -- if it is common -- is it for you to
24 encounter people with firearms in your normal duties?

25 A. Very common. In the fall, there's rifle season and

1 throughout the year there's different seasons that are open
2 during hunting season. So, I would say on a regular routine
3 basis I run into people with firearms out in the field.

4 Q. Now, in the course of your duties as a ranger for the BLM,
5 were you involved in a cattle impoundment operation the BLM was
6 conducting in Nevada in April of 2014?

7 A. Yes.

8 Q. Were you providing security at that impoundment?

9 A. Yes.

10 Q. Were you working in that role on April 12th, 2014?

11 A. Yes.

12 Q. And had your general providing of security, had it changed
13 in any way that morning?

14 A. That morning, no.

15 Q. Did it come to change over the course of that day?

16 A. No. I was still protecting the Incident Command Post.

17 Q. During the impoundment -- generally, were you
18 protecting -- were your duties to provide security for the
19 people?

20 A. During the impoundment overall I originally had been
21 placed on what's -- they call the TRAP Team and it was to
22 provide security for the contractors that were rounding up the
23 cattle.

24 Q. Okay. And on April 12th, 2014, you said that you were
25 providing security for the ICP. Is that what you just said?

1 A. Correct.

2 Q. Okay. So, you were not providing security for the BLM's
3 sort of makeshift police station; is that correct?

4 A. Yes. I was providing security for the civilian personnel
5 that were still there and the other law enforcement personnel
6 that were down at the Incident Command Post, as well as the
7 cattle that were -- had been seized and were down by the
8 command post itself.

9 Q. Now, where were you at the ICP, within the ICP, on the
10 morning of April 12th, 2014?

11 A. The morning, I was down in the parking area right next to
12 it.

13 Q. Did you move from that location at any point?

14 A. I did.

15 Q. Where did you go?

16 A. I went up to Post 1, which is one of the gates that's up
17 by the interstate.

18 Q. And what caused you to go to Post 1?

19 A. I heard someone say that we needed to --

20 MR. LEVENTHAL: Objection. Hearsay.

21 MS. AHMED: Your Honor, it's not being offered for
22 the truth; it's being offered for the effect on the listener
23 and it affected what she did next. That's . . . it's being --

24 THE COURT: Can she just answer the question a
25 different way without the hearsay?

1 BY MS. AHMED:

2 Q. Without going into what you were told, what caused you to
3 move up to the first -- Post 1, excuse me?

4 A. There were threats at the gate that I needed to respond
5 to.

6 Q. What did you do when you got to Post 1?

7 A. I immediately surveyed the scene. I observed armed gunmen
8 near the gate as well as a woman screaming and I started
9 identifying and relaying that information to dispatch, what
10 another ranger was observing, as well as I was observing, but I
11 was calling it in to dispatch so they could know what was going
12 on, what we were seeing.

13 Q. Did you at some point move from that location or did you
14 just stay there throughout your time that day?

15 A. I moved from that location. I went a little bit further
16 away. Had a little bit better view down into the wash, but we
17 were trying to create a little -- I was attempting to try to
18 create a -- more of a cover situation where I'd have a little
19 more protection.

20 MS. AHMED: And, Your Honor, may we publish what's
21 been previously admitted as Exhibit 17, clip 1?

22 THE COURT: Yes.

23 MS. AHMED: And could we please go to 19:13,
24 approximately.

25 (Screenshot published.)

1 BY MS. AHMED:

2 Q. Ranger Burke, I'm drawing your attention to the screen
3 that's on your right.

4 Do you see that?

5 A. Yes.

6 Q. And you can touch the screen, and touching the screen, can
7 you mark where -- generally where Post 1 was, where you
8 initially were, with an "x."

9 A. (Witness complies).

10 MS. AHMED: And the witness has marked an "x" in the
11 bottom right corner.

12 BY MS. AHMED:

13 Q. And can you then draw a circle where you moved that you
14 just described to the jury, that area that you moved to.

15 A. (Witness complies).

16 MS. AHMED: And the witness has drawn a circle in the
17 bottom center of the screen.

18 BY MS. AHMED:

19 Q. Now . . . can you indicate to the jury what you could
20 actually see from the vantage point that you had when you moved
21 to that second location.

22 A. Yeah. Do you just want me to touch it on the screen?

23 Q. Sure.

24 A. Okay. (Indicating), (indicating), and . . . let's see
25 (indicating). Sorry about that. I . . .

1 Q. So, the witness has drawn a sort of rectangle shape around
2 the northbound bridge -- or excuse me -- the northbound lanes
3 of the 15, is that correct? You could see both the northbound
4 lanes and the southbound lanes of the 15?

5 A. Correct.

6 Q. And you could see to where the 15 went over that wash; is
7 that correct?

8 A. Yes.

9 Q. The Toquop Wash?

10 A. Yes.

11 Q. And beyond that a little bit; correct?

12 A. Say that again.

13 Q. And you could see beyond the wash on the 15 lanes?

14 A. Yes.

15 Q. And could you also see -- you've also drawn a circle down
16 in the wash area that looks like it captures the first few cars
17 of the BLM position; is that right?

18 A. Correct.

19 Q. Could you see anything behind -- further north of that
20 position in the wash, or just what you circled?

21 A. Um . . . I have to sort of look at which way was north,
22 but yeah, that's basically what I saw, where it's circled.

23 That was the extent of it. I remember seeing a couple of
24 vehicles down in that way and I could see the gate, that there
25 was a secondary cattle gate down there and fence line.

1 Q. And was that under the southbound lane?

2 A. Yes. Yes.

3 Q. Now, while you were in this position that you've indicated
4 earlier, and I'll -- I'm drawing a circle where I believe you
5 had your circle earlier; is that correct?

6 A. Yep.

7 Q. While you're in that position, once you got there, what
8 did you start doing?

9 A. Immediately started looking at what our threats were. I
10 had my binoculars with me and started looking up and down the
11 interstate to identify threats to me and my partners.

12 Q. And when you say threats, can you explain to the jury what
13 you mean?

14 A. Guys with guns. There was -- when I had responded up to
15 Post 1, I had seen several individuals with weapons and I
16 wanted to continue to get in a better position, so I did, and I
17 then got to that point where I looked out and was able to start
18 identifying people with weapons, body armor, and watch them
19 congregating.

20 Q. Now, you mentioned body armor. Can you explain to the
21 jury what -- based on your training and experience, the
22 significance of -- well, first, what body armor is, what you
23 mean by that phrase?

24 A. Okay. Yeah. So, body armor is usually what police
25 officers wear in the line of duty just because there is a

1 threat of any time you're out, you have a gun on you, there's a
2 gun, but, it's a way to protect your life in case you do get
3 into a shooting so you can stop the threat against you or
4 whoever it may be against.

5 The other thing is, is you also see guys in the
6 military using it overseas, you know, when they're at war, but
7 it is not common whatsoever to have somebody wear body armor in
8 a normal interaction that I had been in in the field. So, to
9 see it here was particularly disturbing because it meant to me
10 that there was a very real threat of violence.

11 Sorry.

12 Q. Are you okay to continue?

13 A. Yeah.

14 Q. Now -- and there is water to your right.

15 THE COURT: There's water to your right, I think. I
16 can't see it, so I wasn't sure.

17 THE WITNESS: Okay.

18 THE COURT: Go ahead.

19 THE WITNESS: Thank you.

20 BY MS. AHMED:

21 Q. Now, you -- I think you mentioned this earlier, but to be
22 clear. Were you looking -- when you said you were looking for
23 threats, what general area were you looking at?

24 A. I was looking at anything along the interstate, anything
25 in front of me that I could see. My whole vantage point, I

1 kept looking at to see and I was calling it out to whoever was
2 around me as well as other people were so we could stay in the
3 know of what those threats were and where they were located.

4 Q. And did you identify people that you determined, based on
5 your training and experience, were threats to you guys at that
6 time?

7 A. Absolutely.

8 Q. And do you recall some specific people that you observed?

9 A. Yeah. There was several that stood out to me and I
10 announced them. The first being there was two guys that
11 were -- appeared to be together; one guy was in full camouflage
12 clothing, head to toe. He had a camouflage hat on and to me,
13 it stuck out because it was just a different style of military
14 hat that -- or than I have seen before.

15 Q. Can I stop you there?

16 A. Yes.

17 Q. Now, you mentioned before that you were looking for people
18 that had firearms and body armor. Did you -- were you looking
19 for people that were wearing camouflage clothing as you just
20 described?

21 A. My main -- camouflage clothing isn't going to kill me, but
22 a rifle will and so, my big thing was to identify people that
23 had weapons that I felt could hurt me or my colleagues and then
24 I was identifying them based off of what they were wearing.

25 Q. Now, based on your training and experience and your time

1 that you had spent out in that area, was the way that that
2 person was dressed, with the camouflage hat and clothing, was
3 that typical or atypical at that time?

4 A. It was not typical. There's not a hunting season on the
5 interstate right there I don't believe and there was no reason
6 to be using that unless you're attempting to conceal yourself
7 at some point to hide. And clearly, I knew that they had come
8 to this area to engage us and so they were, it appeared to be,
9 using it to hide.

10 MR. TANASI: Objection. Speculation, Your Honor.

11 BY MS. AHMED:

12 Q. And was that -- Your Honor, may I ask --

13 THE COURT: Overruled.

14 MS. AHMED: Thank you.

15 BY MS. AHMED:

16 Q. Now, going back to this individual that you've described
17 about the -- with the camouflage clothing, what, if anything,
18 did you observe him doing once you saw him?

19 A. Well, I want to also add that he had body armor on as well
20 because the camouflage because --

21 MR. MARCHESE: Objection. Non-responsive.

22 BY MS. AHMED:

23 Q. Was he wearing anything besides the camouflage clothing
24 that caught your attention?

25 A. Body armor.

1 Q. And can you --

2 A. And he also was carrying a rifle and he and another
3 individual that was next to him --

4 MR. MARCHESE: Objection. Non-responsive.

5 MS. AHMED: And just -- you're fine. Let me just ask
6 the questions.

7 THE WITNESS: Okay.

8 BY MS. AHMED:

9 Q. So, did he -- what did you observe him doing?

10 A. Pointing a rifle in our direction.

11 Q. And you indicated that he appeared to be with somebody
12 else?

13 A. Correct.

14 Q. What did you observe about the two people together?

15 A. They both had rifles pointed in our direction in what I
16 call a low ready or what law enforcement calls it a low ready
17 and they were together and both --

18 Q. May I ask how you knew they were together? What, based on
19 your training and experience, led you to believe they were
20 together?

21 A. They appeared to be interacting, talking with each other.
22 They -- they were next to each other, within reach of each
23 other.

24 Q. And looking at the screen that's still up, Exhibit 17, I'm
25 going to clear the circle that was there -- that's there and

1 can you mark on this screen where you observed these two
2 individuals together?

3 A. (Witness complies). Somewhere in there.

4 Q. And the witness has drawn a circle to the right of the
5 bridge area on the northbound lanes; is that correct?

6 A. Correct.

7 Q. To the -- to our right, looking toward it.

8 Directionally, that's west of the bridge; correct?

9 A. Yes.

10 Q. Now --

11 THE COURT: Can I just ask, because twice I think she
12 said pointing in "our" direction. I'm not sure, does she
13 mean --

14 MS. AHMED: And I am going to clarify that,
15 Your Honor.

16 THE COURT: Yeah. Okay. Go ahead.

17 MS. AHMED: I'll attempt to.

18 THE COURT: Thank you.

19 BY MS. AHMED:

20 Q. So, and I -- and you had started to explain that you
21 observed at least the camouflage individual pointing a rifle --
22 rifle; is that correct?

23 A. Correct.

24 Q. And can you explain to the jury where he was pointing that
25 rifle when you observed him doing so?

1 A. Where --

2 Q. To -- in what direction?

3 A. In my direction. In my direction.

4 Q. And can you show the jury, with your hands and your body,
5 with the Court's permission, what you observed him doing?

6 Your Honor, may she -- may the witness --

7 THE COURT: Yes, she may.

8 THE WITNESS: So, normally you carry a rifle like
9 this, perhaps (indicating). They were hands on their rifle in
10 a low ready position (indicating).

11 BY MS. AHMED:

12 Q. And when you say "they," are you referring both to the
13 camouflaged individual and the person that he was with?

14 A. Yes.

15 Q. Now -- and the -- for the record, you appear to be holding
16 your hands out as if you're holding a rifle?

17 A. Yes.

18 Q. Halfway down your chest?

19 A. Yes.

20 Q. And you used the term "low ready." Can you explain to the
21 jury what the term "low ready" means?

22 A. "Low ready" means that you're ready to engage somebody or
23 a target and able to shoot them, but you have a millisecond
24 reaction time. So it's not -- the bead isn't on you, but it's
25 the -- the reaction time is (indicating).

1 Q. And you raised your hand very quickly when you said that?

2 A. Yes, because they can -- while they're pointing it at you,
3 looks like it's not at your heart, but they can go, boom, like
4 that, within a millisecond.

5 Q. And were they -- you indicated on the screen where you saw
6 those people. Was that where they were when you saw them
7 pointing their weapons at you?

8 A. Yes.

9 Q. And did you observe -- the person that the camouflaged man
10 was with, did you observe what that person looked like or what
11 they were wearing?

12 A. Yes, I did.

13 Q. And what was that person wearing?

14 A. He had a darker colored T-shirt. It wasn't a camouflage
15 looking shirt, and body armor as well. It was dark in color,
16 and he had a ball cap on.

17 Q. And do you recall -- you've already indicated that he was
18 pointing a weapon. So, did he have a rifle with him?

19 A. Correct.

20 Q. And can you describe to the jury how he was holding the
21 rifle when he pointed it toward you?

22 A. Similar to the other individual. It was at a low ready.
23 It wasn't me looking at you right now like this (indicating),
24 it was like this (indicating).

25 Q. And for the record, you appeared to turn your body

1 sideways when you had showed where your arms were and halfway
2 down your chest?

3 A. Yes.

4 Q. Based on your training and experience, is -- your body
5 being sideways, is that known as any kind of position in
6 firearms usage?

7 A. Correct. Yeah. It's a blading position often used to --
8 so you can snug that rifle into your shoulder so when you
9 shoot, you're not bounced back too hard and often in hunting
10 classes it is what we teach people to -- to put their rifle
11 right there.

12 Q. And did you say that's called a "blading" position?

13 A. Yeah. You blade, um-hmm. It reduces the person who's
14 blading, their . . . them as a target. You know, if I'm
15 standing at you like this (indicating), I have a bigger target.
16 When I'm like this (indicating), you got half of me, if that
17 makes sense.

18 Q. So, the person, when they're blading their body, they're
19 reducing their profile that -- of -- their part of them that
20 can be struck?

21 A. Correct.

22 Q. And did you observe just the man in the dark shirt doing
23 that or both him --

24 A. Both.

25 Q. -- and the camouflaged man doing that?

1 A. Both.

2 Q. Now, while you were at the ICP on April 12th, did you
3 attempt to -- or did you do anything to document what you
4 observed of these individuals?

5 A. Yes.

6 Q. What did you do?

7 A. When I had time, I took photos and I attempted to take
8 photos of others that had pointed weapons at my direction.

9 Q. Did you take photos at the time that they were pointing
10 the weapons?

11 A. No. I -- I'm not going to put my iPhone up against
12 somebody's rifle barrel, so I waited until I had cover and I
13 had felt that I was in a safe enough place to try to document.

14 Q. When you observed the two individuals that you've just
15 been describing, how were you looking? Were you looking with
16 your naked eye or were you looking with some additional tool?

17 A. I was looking through my binoculars.

18 Q. And when you took the photographs you've just mentioned,
19 were you also utilizing your binoculars to take the photographs
20 or was it just with the phone?

21 A. No. I was attempting to take photos through my
22 binoculars, just to get a clearer picture of these individuals.
23 So, it was hard to line up at times, if you've ever tried it,
24 but I was able to get several.

25 MS. AHMED: And, Your Honor, may we publish to the

1 witness and counsel what's been marked for identification as
2 Government Exhibits 154 to 156?

3 THE COURT: Yes, you may.

4 (Exhibit 154 published to witness.)

5 BY MS. AHMED:

6 Q. Now, Ranger Burke, do you see Exhibit 154 that's on the
7 screen?

8 A. I do.

9 Q. And is that a photograph that you took on April 12th,
10 2014?

11 A. Correct.

12 Q. And does it fairly and accurately depict what you observed
13 on that day?

14 A. Yes.

15 MS. AHMED: And can we turn to Exhibit 155.

16 (Exhibit 155 published to witness.)

17 BY MS. AHMED:

18 Q. Ranger Burke, is this also a photograph that you took on
19 April 12th, 2014?

20 A. Correct.

21 Q. Does it also fairly and accurately depict what you,
22 yourself, observed on that day?

23 A. Yeah -- yes.

24 MS. AHMED: And moving to Exhibit 156.

25 (Exhibit 156 published to witness.)

1 BY MS. AHMED:

2 Q. Did you take this photograph?

3 A. Yes.

4 Q. And does it also fairly and accurately depict what you
5 observed on April 12th, 2014?

6 A. Yes.

7 MS. AHMED: Your Honor, Government moves to admit
8 Exhibits 154, 155, and 156.

9 (Exhibits 154, 155, and 156 offered.)

10 THE COURT: Any objection?

11 MR. MARCHESE: None from Parker.

12 MR. TANASI: None from Stewart.

13 MR. LEVENTHAL: No, Your Honor.

14 MR. PEREZ: No, Your Honor.

15 THE COURT: All right. Exhibit 154 through 156 will
16 be admitted.

17 (Exhibits 154, 155, and 156 received.)

18 THE COURT: You may go ahead and publish to the jury.

19 MS. AHMED: Thank you, Your Honor.

20 BY MS. AHMED:

21 Q. Starting with Exhibit 154, Ranger Burke, can you just
22 generally tell the jury what's depicted in this photograph?

23 (Exhibit 154 published.)

24 THE WITNESS: This is one of the views I had where I
25 parked after I left Post 1. That was my view down into the

1 wash.

2 BY MS. AHMED:

3 Q. Does -- was this photograph taken with the aid of your
4 binoculars?

5 A. No, I don't believe so.

6 Q. And moving to -- and you said this was just one of the
7 views that you had; is that correct?

8 A. Correct.

9 Q. Now, moving to Exhibit 156 -- 155 -- excuse me -- can you
10 explain to the jury what is -- what you were capturing in this
11 photograph?

12 (Exhibit 155 published.)

13 THE WITNESS: What I'm capturing here is this
14 individual right there (indicating). That was one of the men
15 that I previously described that had his weapon pointed at
16 us -- pointed at my direction earlier, and I'm using my
17 binoculars at this point to take his photo.

18 BY MS. AHMED:

19 Q. And moving to Exhibit 156, what were you capturing when
20 you took this photograph?

21 (Exhibit 156 published.)

22 THE WITNESS: That individual right there
23 (indicating). He was the second individual of the two men that
24 were together that had pointed their rifles at us, at me.

25 MS. AHMED: And the witness has circled an individual

1 that appears to be wearing camouflage clothing on the right of
2 the -- the viewer's right of the photograph.

3 BY MS. AHMED:

4 Q. Now, going back to Exhibit 17, clip 1, when you took the
5 photographs that we just saw, Ranger Burke, do you know where
6 those individuals were on the freeway?

7 (Exhibit 17 published.)

8 THE WITNESS: Yeah. Approximately (indicating).
9 They had just moved a little bit further from where I had seen
10 them pointing their rifles. They had moved further east on the
11 interstate, on the northbound lane.

12 BY MS. AHMED:

13 Q. So they were -- you observed them -- the photographs were
14 taken of these two individuals while they were on the
15 northbound lane; is that correct?

16 A. Correct.

17 Q. And they had -- this was further east of the position
18 where you had originally seen them pointing their weapons; is
19 that correct?

20 A. Correct.

21 Q. Now, going back to -- well, when you saw these two
22 individuals pointing their weapons, what side of the northbound
23 lanes were they on? The side closer to you or the side further
24 away?

25 A. The side closest to me.

1 Q. And how did you know that?

2 A. I saw them with my own eyes. They -- they were on this
3 side (indicating). There was traffic coming -- or going
4 northbound or beyond the northbound lane behind them.

5 Q. So, vehicles were not eclipsing your view of them; is that
6 correct?

7 A. No. I could see them full on.

8 Q. Now, when you observed these two individuals pointing
9 their rifles in the way that you've described, what, if any,
10 assessment did you make based on your training and experience
11 for your own and your fellow officers' safety at that time?

12 MR. LEVENTHAL: I'm going to object as to compound.

13 MS. AHMED: It might have been a long question,
14 Your Honor, but . . .

15 THE COURT: Go ahead and rephrase it.

16 BY MS. AHMED:

17 Q. Based on your training and experience, what assessment did
18 you make, if any, about your safety when you saw these two men
19 pointing weapons at you?

20 A. Based on my training and experience and as well as common
21 sense, I was completely -- I thought my life was in danger. I
22 thought I was going to die.

23 Q. Having observed them point their weapons, what -- what did
24 you do, if anything, to attempt to address the danger that they
25 posed to you?

1 A. I told other officers and I went for cover.

2 Q. If you encountered -- well, based on your training and
3 experience, what would you -- what does your training tell you
4 to do in a situation where someone uses -- points a weapon at
5 you?

6 A. If someone's pointing a weapon at me, in any other
7 scenario I would have pointed a weapon back at them and stopped
8 that threat. It's a -- if a person's pointing a gun at a
9 police officer, they're willing to do -- sorry.

10 MR. LEVENTHAL: Objection. Calls for speculation.

11 MR. TANASI: Stewart joins.

12 MR. LEVENTHAL: And relevance.

13 MS. AHMED: Your Honor -- I'm asking you to only
14 answer based on your training and experience. So if that's
15 what you're doing -- Your Honor, I think that is what the
16 witness is doing.

17 THE COURT: Overruled. She may answer the question.

18 THE WITNESS: I feel if someone's pointing a rifle at
19 me, they're definitely attempting to do me harm. And in my
20 experience, if someone's going do me harm and in my training, I
21 can point my rifle back at them and stop that threat, and I
22 couldn't do that here.

23 BY MS. AHMED:

24 Q. Can you explain to the jury why you felt you couldn't do
25 that on April 12th, 2014?

1 A. For several reasons. One, I did not have sufficient fire
2 power to make it the distance to where these individuals were
3 pointing their rifles at us from. I'm not trained in long
4 distance shooting and there were a lot of women and children,
5 bystanders going by. Had I shot, there's no telling who I
6 would have ended up shooting, and then on top of it, had I
7 shot, other shots would have certainly been fired.

8 Q. Now -- Your Honor, may I publish what's been previously
9 admitted as Government's Exhibit 32a?

10 THE COURT: Yes, you may.

11 MS. AHMED: And going to 12:21.

12 (Screenshot published.)

13 BY MS. AHMED:

14 Q. Ranger Burke, I'm just going to draw your attention to the
15 screen.

16 A. Okay.

17 MS. AHMED: Can we pause it? Paused at 12:21:18.

18 BY MS. AHMED:

19 Q. Ranger Burke, can you explain to the jury, what, if
20 anything, that you recognize that was just shown in that
21 exhibit?

22 MR. LEVENTHAL: I'm going to object as to relevance
23 and whether or not this -- the witness can talk about this and
24 foundation.

25 MR. TANASI: Stewart joins.

1 MS. AHMED: Your Honor, I can rephrase. I can step
2 back and ask a different question.

3 THE COURT: Okay.

4 BY MS. AHMED:

5 Q. You described an individual in camouflage clothing that
6 you observed on the northbound lanes.

7 A. Correct.

8 Q. And that person had a rifle?

9 A. Correct.

10 Q. Is the image that we just showed to you in Exhibit 17 --
11 excuse me -- Exhibit 32a --

12 THE COURT: 32a.

13 BY MS. AHMED:

14 Q. -- is that -- the person that walked across the screen, is
15 that person, the way they appear, consistent with your
16 description of what you observed?

17 A. To me, it appears to be the same person.

18 MS. AHMED: Can we take that down.

19 And, Your Honor, may I publish what's been previously
20 admitted as Exhibit 66?

21 THE COURT: Yes.

22 MS. AHMED: And can we zoom in on the photograph.

23 (Exhibit 66 published.)

24 BY MS. AHMED:

25 Q. Now, Ranger Burke, looking at Exhibit 66, are the

1 individuals -- are any of the individuals depicted in this
2 exhibit consistent with the descriptions you've provided of the
3 two people you saw pointing weapons?

4 A. It looks exactly like those two that I had identified
5 earlier.

6 Q. And you can see in Exhibit 66 what appears to be a law
7 enforcement vehicle in the background.

8 Do you see that?

9 A. Yes.

10 Q. When you saw those individuals pointing their weapons
11 toward you, was that law enforcement vehicle in their vicinity?

12 A. No. Not that I recall.

13 MS. AHMED: And you can take that down. Thank you.

14 BY MS. AHMED:

15 Q. Ranger Burke, did you observe anybody else on April 12th,
16 2014, that you determined was a threat?

17 A. Yes.

18 Q. And can you describe -- going one by one, can you describe
19 an individual that you saw that you determined was a threat?

20 A. Yes. I saw clearly a guy wearing a black hat with a
21 very -- it was a large white rectangular patch.

22 Q. And what did you see this -- well, what did you see this
23 person doing?

24 A. He was pointing a rifle in our direction.

25 MS. AHMED: And, Your Honor, can we go back to

1 Exhibit 17, clip 1?

2 THE COURT: Yes.

3 (Screenshot published.)

4 BY MS. AHMED:

5 Q. Can you indicate where you saw this person with the black
6 hat?

7 A. (Indicating).

8 MS. AHMED: The witness has drawn a circle in the
9 right -- or the most western third of the northbound bridge
10 area; is that correct?

11 THE WITNESS: Yes.

12 BY MS. AHMED:

13 Q. And can you describe to the jury what you could see of
14 this -- when you observed this person with the black hat with
15 the white patch, were you looking with your naked eye or with
16 binoculars?

17 A. I saw him through binoculars.

18 Q. And can you describe to the jury what, if anything else,
19 you observed about his person?

20 A. There was a couple things I noticed. He also was pointing
21 his rifle in our direction, but it was up. He . . . he had an
22 individual with him.

23 I -- can I go there? I don't know.

24 Q. You can describe what you saw.

25 A. Okay. Okay. Okay.

1 He had -- he was standing up and he was what I call
2 high ready. It's not low; he's on target and he's looking
3 around (indicating).

4 Q. Now, you appeared to have your arms raised up to your head
5 level. Can you -- and, Your Honor, may she demonstrate toward
6 the jury -- because she was looking toward me -- can she
7 demonstrate what she saw this person doing?

8 THE COURT: Yes, she may.

9 BY MS. AHMED:

10 Q. Ranger Burke, show the jury what you were just showing me,
11 what you saw the person with the black hat and white patch
12 doing.

13 A. Black hat, white patch (indicating). I was off, but he
14 was looking like this (indicating). And as he starts to look
15 down the wash, he started doing one of these (indicating).

16 Q. So, Ranger, just for the record, you, again, had your arms
17 up at your eye level. You appeared to be looking over your
18 hand and you were moving your body as if you were panning
19 the -- your hands across --

20 A. Yes.

21 Q. -- a certain area?

22 And you were also going up and down; is that correct?

23 A. Yep.

24 Q. Now, are these all things that you saw the individual with
25 the black hat with the white patch doing on April 12th, 2014?

1 A. Yes.

2 Q. And in what direction was his -- well, what kind of
3 firearm did he have?

4 A. It was a long gun of some sort.

5 Q. So, in what direction did you observe him pointing that
6 rifle?

7 A. In my direction and then he scanned, continued to scan and
8 then he pointed it down towards the wash into the wash and I --
9 into the wash.

10 Q. What did you -- based on your training and experience,
11 where did you think -- where did he appear to be pointing -- in
12 what direction in the wash?

13 A. Where my other law enforcement officers were at at the
14 gate.

15 Q. Now, when you were demonstrating to the jury what you saw
16 this person doing, you were moving up and down. Can you
17 explain to the jury, verbally, what it was that you saw him
18 doing?

19 A. He was going up and down, but getting behind cover. So
20 there would be -- there's big concrete barriers along the
21 interstate there and he would be standing up (indicating) and
22 then he would appear to go down (indicating), up (indicating),
23 almost -- it appeared that he was using cover --

24 MR. LEVENTHAL: Objection. Speculation.

25 BY MS. AHMED:

1 Q. Based on your training and experience, what did you assess
2 his movements to mean?

3 A. He was gauging how far his threats were away from him and
4 then he was going in for cover.

5 Q. Were you able to photograph this individual when you saw
6 him on April 12th, 2014?

7 A. No. He eventually disappeared I -- when I went back to
8 take a photo of that area, I didn't see him again.

9 Q. When he disappeared -- well, based on what you'd seen him
10 do, did you feel concerned for your safety based on his
11 actions?

12 A. Absolutely. He -- at that point you don't know where the
13 person is and you just saw him pointing a rifle in your
14 direction and at your colleagues down below and at that point,
15 you know, where is he? He's an even bigger threat because you
16 can't have eyes on him.

17 MS. AHMED: Your Honor, may we publish what's been
18 previously admitted as Government's Exhibit 14?

19 THE COURT: You may.

20 MS. AHMED: And going to 7 seconds in.

21 (Exhibit 14 published.)

22 MS. AHMED: Pause it. A little bit more.

23 (Screenshot published.)

24 BY MS. AHMED:

25 Q. Now, Ranger Burke, is the individual that's in the center

1 of this screen consistent with the person that you saw with the
2 black hat with the white patch on April 12th?

3 A. Yes.

4 MS. AHMED: You can take that down.

5 BY MS. AHMED:

6 Q. Now, based on the -- your observations of the three
7 individuals -- and I know I've touched on this before --

8 MR. LEVENTHAL: Objection. Misstates the testimony.

9 MS. AHMED: I haven't said anything -- I -- I got
10 like four words out.

11 MR. LEVENTHAL: I don't know about three individuals.

12 THE COURT: She said based on her identification of
13 the three individuals, we've seen three individuals and she's
14 identified them as the three individuals she saw.

15 MR. LEVENTHAL: I understand. Because the testimony
16 was two individuals and then two, but now I understand what she
17 said.

18 THE COURT: Yeah. I think we're still at two and
19 one.

20 MR. LEVENTHAL: Two and one. Right.

21 THE COURT: Two and one.

22 MR. LEVENTHAL: I understand that the witness
23 indicated there was -- she was working -- I understand.

24 MS. AHMED: I understand the confusion. I'll clear
25 it up, Your Honor.

1 THE COURT: Okay.

2 BY MS. AHMED:

3 Q. Now, Ranger Burke, you described the man in the
4 camouflage --

5 THE COURT: Are you moving on to the next person?

6 MS. AHMED: No, Your Honor. I'm going back to the
7 three that we've seen.

8 THE COURT: Okay.

9 MS. AHMED: Well, sorry. Let me just go on.

10 BY MS. AHMED:

11 Q. You had indicated -- Your Honor, I am now moving on to the
12 next person.

13 You indicated there was someone with this person with
14 the black hat?

15 A. Correct.

16 THE COURT: Okay. Let's -- if we're going to go on
17 to the fourth person, then let's go ahead and take the lunch
18 break.

19 MS. AHMED: Okay.

20 THE COURT: I just didn't want to break you up in the
21 middle of one of the -- don't want to make it more complicated
22 than it needs to be.

23 All right. So we're going to go ahead and take our
24 lunch break for an hour. It's 12:10. Be back here at 1:10.

25 During this break the jury is reminded, please do not

1 speak about this case to anyone nor permit anyone to speak to
2 you about the case. If you should inadvertently hear anything
3 about this case, please let us know right away or if anyone
4 attempts to speak to you about the case, please let us know
5 right away.

6 Also, do not listen to or view anything that touches
7 upon this case nor attempt to perform any research or any
8 independent investigation and please do not form any opinion
9 until after you have heard all the information and then be --
10 once you're released to begin your deliberations, then you may
11 start discussing your opinions, but not until then.

12 So, let's go ahead and stand for the jury. We'll
13 welcome them back here at 1:10.

14 And, Ranger Burke, after the jury exits, then you may
15 also step down and take your lunch break and we'll just need
16 you back here by 1:10.

17 THE WITNESS: Thank you.

18 (Jury excused from courtroom.)

19 THE COURT: All right. Off record.

20 (Recess was taken at 12:11 p.m.)

21 COURTROOM ADMINISTRATOR: All rise.

22 THE COURT: Thank you. You may be seated.

23 Can we go ahead and call in the jury?

24 Let's go ahead and do that, Aaron.

25 COURTROOM ADMINISTRATOR: Yes, Your Honor.

1 THE COURT: Thank you.

2 (Brief pause in proceedings.)

3 COURTROOM ADMINISTRATOR: All rise.

4 (Jury returned to courtroom at 1:27 p.m.)

5 THE COURT: All right. Jury may go ahead and be
6 seated and then everyone else afterwards.

7 We're back on the record and we have BLM Ranger Burke
8 back on the witness stand. Thank you.

9 Ms. Ahmed, you may go ahead and continue with direct
10 examination on behalf of the Government.

11 MS. AHMED: Thank you, Your Honor.

12

13 FURTHER DIRECT EXAMINATION OF ALEXANDRA BURKE

14 BY MS. AHMED:

15 Q. Ranger Burke, I think before we left off for lunch you
16 were describing -- you had described an individual with a black
17 hat with a white patch that you had seen pointing a rifle;
18 correct?

19 A. Correct.

20 Q. And you had stated that you'd seen someone close to him;
21 is that correct?

22 A. Correct.

23 Q. Can you explain to the jury what you observed about that
24 individual?

25 A. He was wearing dark clothes and standing nearby the

1 individual with the black hat and the white patch. They
2 appeared to be working together. They were close by, but I
3 didn't see him carrying a weapon at that point.

4 Q. So, to clarify. Did this person appear to have a dark
5 colored shirt on?

6 MR. MARCHESE: Objection. Leading. Asked and
7 answered.

8 MR. TANASI: Stewart joins.

9 BY MS. AHMED:

10 Q. What did you -- can you say just as to his clothing, what
11 could you see?

12 A. He was wearing dark clothing.

13 Q. Did he appear to have anything, like, what you described
14 earlier, like a tactical vest on?

15 MR. LEVENTHAL: Objection. Leading.

16 THE WITNESS: I -- I don't remember.

17 MR. LEVENTHAL: Objection. Leading.

18 THE COURT: Overruled. She may answer the question.

19 THE WITNESS: I don't remember. I just remember it
20 just being dark.

21 BY MS. AHMED:

22 Q. Did -- and what, if anything, did you observe about him
23 having firearms?

24 A. I don't remember him having a firearm. I just remember
25 somebody standing close by to the person with the black hat and

1 the white patch wearing dark clothing.

2 Q. And what, based on your training and experience, led you
3 to believe that they were together?

4 A. They were working close by each other and I had been
5 informed that --

6 MR. LEVENTHAL: Objection. Hearsay.

7 BY MS. AHMED:

8 Q. Without -- yeah. Without going into anything that you
9 were told, just your own observations about what about -- what
10 about their positions made you think that they were together?

11 A. Positioning, they were close by, but they had been
12 standing looking towards our direction and the person with him
13 had moved with the person with the black hat and the white
14 patch when that person was scanning, and that's all I remember
15 about that individual.

16 Q. Now, other than the people that you've already described
17 to the jury this morning and just now, did you observe any
18 other people on the bridge, generally, on the northbound lanes
19 generally?

20 A. Yeah. There were people all over the bridge. There was
21 others --

22 Q. And not just the bridge, I'm sorry. The whole northbound
23 lane that you had a view of.

24 A. Yeah. There was people walking about. There was vehicles
25 moving as well, but there were other individuals out there.

1 Absolutely.

2 Q. Were there anybody -- were there other people that you
3 assessed to be a threat to your safety?

4 A. These three stood out to me because of what they wore, but
5 there were others that were carrying weapons. They didn't have
6 them pointed at me at the times that I had observed them.

7 Q. And you said -- why did these three stand out to you?

8 A. Based off of what they were wearing. You know, I could
9 easily identify you got a black hat and a white patch and
10 there's only one person I saw wearing that. The -- the guy
11 with the -- all camouflage clothing, he had that distinctive
12 hat and he had the body armor with the quick -- that military
13 body armor has like this quick release stuff that you can get
14 to your bullets really quick, so he had that on as well. I
15 just -- what they were wearing stood out to me.

16 Q. And in relation to the other people on the bridge -- on
17 the northbound lanes -- let me -- let me step back from that.

18 The other people that you observed on the northbound
19 lanes, did you see any of those people pointing rifles towards
20 you or other law enforcement officers?

21 A. There were others, but there -- not necessarily at me and
22 others just had weapons on them that were holstered.

23 Q. Were these the only three that you recall pointing weapons
24 toward you?

25 MR. LEVENTHAL: Objection. Asked and answered.

1 THE COURT: Overruled. She may answer the question.

2 THE WITNESS: These three stood out to me.

3 BY MS. AHMED:

4 Q. Now, I just wanted to step back to a couple of things you
5 had said earlier this morning. So, to do that, I want to refer
6 back to that diagram that we put up earlier.

7 A. Um-hmm.

8 MS. AHMED: Your Honor, may we publish Exhibit 17,
9 clip 1 again?

10 THE COURT: Yes, you may.

11 MS. AHMED: At the 19:13:02 mark. 19:13:03.

12 (Screenshot published.)

13 BY MS. AHMED:

14 Q. And Ranger Burke, first of all, there's -- in the upper
15 left-hand corner there's a time stamp.

16 Do you see that?

17 A. The 19:13?

18 Q. Correct. Now, when I'm showing you this exhibit, when
19 you've been describing what you could see, were you specific to
20 this time that's displayed on the exhibit or are you just using
21 this as a frame of reference?

22 A. Just as a frame of reference. I -- my time scale in my
23 head is -- you know, it's just completely off. It seemed to
24 last hours, so I don't know what time it was at any given time.

25 Q. Do you recall the order in which you saw the three

1 individuals you've described that were pointing weapons at you?

2 A. Yes. I -- the two individuals I had seen a little bit
3 earlier because I had been scanning that -- the interstate --
4 the northbound lane and I had seen them previous to and then as
5 I was scanning more to the left or to the . . . east, then I
6 would eventually see the guy with the black hat and the white
7 patch.

8 Q. And in relation to -- can you mark, again, where you were
9 located when you made these observations?

10 A. (Witness complies).

11 Q. What was that -- and the witness has drawn a circle in the
12 bottom center portion of the screen around vehicles.

13 What was the elevation of that position in relation
14 to the freeway lanes?

15 A. I had come down a slight hill, but not much. It wasn't --
16 I hadn't lost many feet, I don't think. I certainly wasn't
17 going down into the wash or anything like that.

18 Q. So slightly lower?

19 A. Slightly lower. That would be a good way to describe it,
20 yeah.

21 Q. Now, you indicated earlier that you had seen the
22 camouflaged individual pointing the rifle where I've drawn that
23 circle; correct?

24 A. Um-hmm. Correct.

25 Q. On the northbound lane; is that right?

1 A. Yes.

2 Q. Can you draw an arrow in the direction you saw the rifle
3 being pointed?

4 A. (Witness complies).

5 MS. AHMED: And the witness has drawn an arrow from
6 the circle in the northbound lane going down to the arrow in
7 the bottom center portion of the screen.

8 BY MS. AHMED:

9 Q. And I want to clear those marks. In looking at this, it
10 appears that there are several vehicles in your area. Was
11 that -- is that your recollection?

12 A. Yes.

13 Q. How many officers were with you in the area that you were
14 at?

15 A. There were several, but I don't know an exact number. At
16 one point though, I do go up to a generator and hide behind
17 that to take additional photos and at that point it was me and
18 two other individuals, but prior to that, there was a lot of
19 others.

20 Q. In your vicinity?

21 A. In my vicinity, yeah.

22 Q. Do you see the generator that you went to in this
23 Exhibit 17?

24 A. I believe so.

25 Q. And can you circle it?

1 A. (Witness complies).

2 MS. AHMED: And the witness has drawn a small circle
3 around an item in Exhibit 17 in the bottom center of the
4 screen.

5 BY MS. AHMED:

6 Q. Now, so, the generator was in the same location that you
7 had generally been in throughout the event; is that correct?

8 A. Correct. It just was a little bit away from my vehicle.
9 I had to -- I didn't walk to it; I ran to get behind the cover.

10 Q. And when you indicated earlier in the morning session that
11 you were communicating what you were seeing to others around
12 you, were you -- or, excuse me -- when you were conveying that
13 information you were seeing to others, was that the people
14 around you, just talking to them, or were you also
15 communicating on the radio?

16 A. At that point I wasn't communicate on the radio --
17 communicating on the radio; I was talking to just those around
18 me.

19 Q. And I believe that you indicated that when you saw the
20 people pointing their firearms in the direction of law
21 enforcement, you were looking through binoculars; is that
22 correct?

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

24 Q. You were looking through binoculars when you observed them
25 pointing firearms?

1 A. Not at me, at -- the guys looking down into the wash, I
2 definitely saw the black hat, white patch looking down that
3 way. When -- oh, I take that back. When I -- are you asking
4 about the three gentlemen?

5 Q. When you saw the three people you have already described
6 that were pointing toward law enforcement, were you looking
7 through your binoculars when you were looking at all those
8 people?

9 A. I'm sorry. Yes, I was at that point as well.

10 Q. And with your binoculars, could you see how other people
11 were attired near them?

12 A. Yeah.

13 Q. What other people were wearing?

14 A. Yes.

15 Q. Could you make out whether other people near them had
16 anything that they were holding?

17 A. Yeah. There were individuals holding cameras or purses
18 there. Other people were walking without rifles and guns on
19 them and were carrying those items.

20 Q. So --

21 A. Several cameras.

22 Q. -- could you then see the difference between a rifle and a
23 camera?

24 A. Yes.

25 Q. Now, at some point did you move from the location

1 that's -- that you marked on Exhibit 17, during that event?

2 Did you leave that location?

3 A. Eventually I did, yes.

4 MS. AHMED: And you can take that down.

5 BY MS. AHMED:

6 Q. Where did you go?

7 A. I drove back down that hill to where the Incident Command
8 Post was, where the buildings were, and -- temporary
9 buildings -- and then eventually I would leave the area in a
10 convoy.

11 Q. Now, you had also -- just going back again -- I'm sorry --
12 to the morning session. You had also mentioned that based on
13 your training, when you would see someone like the man in
14 camouflage pointing a rifle at you, you would point a rifle
15 back. Is that what you said?

16 A. Normally I would, yes. I didn't.

17 Q. And you explained to the -- you were explaining to the
18 jury why you didn't take a shot at that person, essentially.

19 Do you recall that?

20 A. Yes.

21 Q. And I believe you said something about not being a long
22 distance range shooter, something to that effect?

23 A. Yeah. I -- well, that I'm not trained --

24 Q. Can you just explain what you meant to the jury?

25 A. Yes. I am -- I said I wasn't trained to shoot at those

1 distances, well, I am trained to shoot with that rifle, but
2 that rifle, without a scope, isn't near as accurate with the
3 naked eye going -- unless you're trained to it, to be
4 precision, and I'm certainly not a precision rifle handler at
5 those distances.

6 Q. And why, if at all, did precision matter to you in that
7 setting?

8 A. Because there were innocent people driving by, individuals
9 that had nothing to do what was going on -- or with what was
10 going on and they would have potentially been hit by my gunfire
11 and that would be awful to have to live with.

12 Q. Now, shifting back to what you had mentioned earlier.

13 Do you need a minute?

14 A. No. I'm good.

15 Q. You indicated that you went back down -- at some point you
16 left where you were positioned and went back down into the ICP;
17 is that right?

18 A. Correct.

19 Q. And when you got to the ICP, what did you do?

20 A. I filmed. I started filming our -- our exit out of the
21 ICP up the road and across on the interstate and then drive
22 into -- on the northbound lane into Mesquite.

23 Q. What did you use to film -- so you left the ICP; is that
24 correct?

25 A. Correct.

1 Q. And what did you use to film as you were leaving the ICP?

2 A. My iPhone, my work iPhone.

3 MS. AHMED: Your Honor, may we publish to the witness
4 and to counsel what's been marked for identification as
5 Government Exhibit 43?

6 THE COURT: Yes, you may.

7 MS. AHMED: Without sound, please.

8 (Exhibit 43 published to witness.)

9 MS. AHMED: And stopping it at 4 seconds.

10 THE COURT: Is there going to be any objection to the
11 admission of Exhibit 43?

12 MR. TANASI: The Court's indulgence.

13 (Counsel conferring.)

14 MR. MARCHESI: None from Parker.

15 MR. TANASI: None from Stewart.

16 MR. LEVENTHAL: Not on behalf of Mr. Drexler.

17 MR. PEREZ: None from Lovelien.

18 MS. AHMED: Your Honor, may we move to then admit
19 Exhibit 43?

20 (Exhibit 43 offered.)

21 THE COURT: Exhibit 43 will be admitted.

22 (Exhibit 43 received.)

23 THE COURT: You may go ahead and publish it to the
24 jury.

25 MS. AHMED: Thank you.

1 (Exhibit 43 published.)

2 BY MS. AHMED:

3 Q. Ranger Burke, can you explain to the jury what was -- what
4 you were capturing in that Exhibit 43?

5 A. I was attempting to capture anybody and everybody that had
6 been up on that -- on the interstate on the northbound lane,
7 just to see so, I could show later, what we had been through,
8 who was there.

9 Q. I'm sorry?

10 A. Oh, who was there.

11 MS. AHMED: And you can take that down. Thank you.

12 BY MS. AHMED:

13 Q. When we just watched Exhibit 43, did you see that there
14 were two NHP vehicles in that?

15 A. I did.

16 Q. Now, do you recall seeing vehicles -- those vehicles, or
17 vehicles similar to them, on the northbound freeway when you
18 were at the ICP -- when you were at that intermediate post at
19 the ICP?

20 A. I eventually saw some . . . looked like Highway Patrol
21 vehicles on that northbound lane at some point, yeah.

22 Q. And --

23 A. Prior to the video.

24 Q. Prior -- prior to the time that you saw --

25 A. Yeah. Yeah, um-hmm.

1 Q. In relation to the camouflaged man and the other man that
2 was with him pointing rifles in your direction, again, did you
3 see NHP at that time?

4 A. No.

5 Q. Now, when you were leaving the ICP, did your -- the
6 feeling of -- that -- feeling of fear that you had at that
7 time, did it change in any way or did it stay the same?

8 A. It stayed the same, yeah.

9 Q. And why was that?

10 A. Uh . . . there was still a threat out there. Nothing had
11 changed. Now I'm having to drive through these guys with
12 rifles. Now I'm even closer. And we had to go back, reconvene
13 in Mesquite and the threat just didn't stop.

14 Q. Now, we've all seen, obviously, today that this event is
15 emotional for you. Is that fair?

16 A. It's very fair.

17 Q. Prior to April 12th, 2014, in your law enforcement career,
18 had you encountered, in the course of your duties, somebody
19 using force on law enforcement?

20 A. Yes.

21 Q. Just briefly, can you explain the circumstances of that
22 event.

23 A. I was involved -- I responded to an active shooter event
24 and -- where somebody had been killed and the suspect had got
25 in a shootout with the police as well as injured a couple of

1 other civilians and I called on duty and ultimately helped
2 track him for about three and a half hours at 10 below and he
3 attempted to -- this individual attempted to kill myself and my
4 partners and I had to use a weapon to stop that threat.

5 Q. Now, in relation to the events that you just described of
6 that -- in that circumstance, how did the events of April 12th,
7 2014, rate in terms of the fear you felt for your safety?

8 A. This incident was absolutely worse. You know, in the
9 first incident, my -- you know, that's my job. You know, I
10 responded to that. In this case, I was doing my job, enforcing
11 court orders and these people came to us with rifles and there
12 wasn't -- you know, there was quite a few of them that did it
13 and they were pointing them at us and their -- their -- my
14 hands were tied and I felt that it wasn't a matter of if there
15 was going to be people shot, it was a matter of whom, of me and
16 my colleagues. It was a no-win situation. I felt like I
17 couldn't do anything.

18 MS. AHMED: Your Honor, may I have the Court's
19 indulgence?

20 THE COURT: Yes.

21 (Counsel conferring.)

22 MS. AHMED: Ranger Burke, thank you.

23 Your Honor, I'll pass the witness.

24 THE COURT: Okay. Cross?
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CROSS-EXAMINATION OF ALEXANDRA BURKE

BY MR. PEREZ:

Q. Good afternoon, Ranger. My name is Shawn Perez. I represent Ricky Lovelien.

A. Good afternoon.

Q. And I have a few questions for you.

A. Okay.

Q. What time did you arrive in that vicinity of the generator that you pointed out?

A. I don't recall the time.

Q. Well, before noon?

A. I -- I really don't recall the time.

Q. Do you recall the time that you left?

A. I don't recall the time, unless I have it in my report.

Q. Okay. When you first observed the two individuals that you say were pointing weapons at you -- so you have no recollection of what time of the day that would have been?

MS. AHMED: Objection. Vague as to "two individuals." Which individuals?

BY MR. PEREZ:

Q. You said there were two individuals that were pointing weapons at you from the area of the highway; correct?

A. Correct.

Q. One was in camouflage and the other one, I believe, had a hat on and may have had some sort of a vest; correct?

1 A. Correct.

2 Q. Okay. Now -- well, do you recall approximately what time
3 of day that would have been?

4 A. I know it was daylight hours.

5 Q. Okay. That's fair enough.

6 Now, when these two individuals were pointing the gun
7 at you, or their guns at you, were they together?

8 A. Yes. They were close to each other.

9 Q. Okay. And at the time that they were pointing these
10 weapons at you, was NHP on the scene?

11 A. No.

12 Q. Do you recall NHP arriving at all on the scene?

13 A. I remember seeing what appeared to be Nevada Highway
14 Patrolmen or vehicles on the interstate, but it was later. It
15 wasn't right then.

16 Q. Okay. Your Exhibit 43, that was your cell phone -- Brian,
17 can you bring up Exhibit 43 at 13 seconds, please.

18 Okay. Stop right there.

19 (Screenshot published.)

20 BY MR. PEREZ:

21 Q. Now, on the left side of the screen there's an NHP, it
22 looks like a truck, and a cruiser; correct?

23 A. Correct.

24 Q. And this is you passing by there?

25 A. Yes.

1 Q. Is there a time stamp on this at all?

2 A. I don't know.

3 Q. You don't know. Okay. Fair enough.

4 But, now, at this point you're leaving; correct?

5 A. Correct.

6 Q. Okay. And yet, you have no idea what time -- well, strike
7 that.

8 Let me ask you. At the time that you're leaving, is
9 there anything really going on at the bridge at that time?

10 A. Yes.

11 Q. And what's going on at the bridge at that time?

12 A. As I'm leaving, there's people screaming obscenities, guys
13 with rifles and I'm having to go through that crowd.

14 Q. Okay. But now, has the BLM left the wash area by this
15 time?

16 A. I don't know about the entire BLM; I know there was
17 several of us that had -- were leaving in this convoy.

18 Q. Okay. Now, from -- let me ask you. The two individuals
19 that were pointing weapons at you, did they arrive together? I
20 don't know if you responded to that?

21 A. I don't know.

22 Q. Well, where did you see them together?

23 A. On the interstate --

24 Q. Okay. If we --

25 A. -- on the northbound lane.

1 MR. PEREZ: Let's bring up 32a.

2 Go ahead and play it, Brian.

3 (Exhibit 32a published.)

4 MR. PEREZ: Let's stop right there.

5 BY MR. PEREZ:

6 Q. Now, the gentleman in the camouflaged attire --

7 A. Okay.

8 Q. -- is he any one of those three individuals?

9 A. I don't know.

10 Q. Well, are any of them wearing camo -- this guy's wearing
11 shorts, so that's not him, the guy on the right; correct?

12 A. I don't know. It's -- one, it's not my video.

13 Q. Well, I mean, you can see from the video. Is the guy
14 wearing shorts or not? Yes or no?

15 A. It looks like the guy on the right is wearing shorts.

16 Q. Okay. And the guy in the middle is wearing it looks like
17 jeans; correct?

18 A. It could be.

19 Q. Okay. But they're not wearing camouflage; correct?

20 A. I -- you know, I don't feel comfortable saying no. I
21 don't --

22 Q. Okay. Fair enough, Brian --

23 A. -- unless it was enlarged. I couldn't --

24 MR. PEREZ: Go ahead and play it again. Keep
25 playing.

1 Go, Brian.

2 (Exhibit 32a published.)

3 MR. PEREZ: Stop right about there.

4 BY MR. PEREZ:

5 Q. Now, according to this dash cam right here, it's 12:17 in
6 the afternoon.

7 Now, you say you saw the individuals pointing guns
8 and you saw both of them pointing guns together prior to NHP
9 getting there?

10 A. Prior -- prior to me seeing that NHP had arrived, I had
11 seen these two individuals pointing guns at the same time in
12 our direction.

13 Q. Okay.

14 MR. PEREZ: Brian, play the video, please.

15 (Exhibit 32a published.)

16 MR. PEREZ: Now stop right there, Brian.

17 BY MR. PEREZ:

18 Q. Now, these individuals climbing over the Jersey barrier,
19 are any of those individuals the gentlemen that you saw in full
20 camouflage?

21 A. I see somebody in white. That definitely isn't the
22 person, I don't believe. And I don't know who that other
23 person is.

24 MR. PEREZ: Okay, Brian. Keep playing.

25 (Exhibit 32a published.)

1 MR. PEREZ: Okay. Now, stop, Brian.

2 BY MR. PEREZ:

3 Q. Now, the gentleman on the far left of the screen --

4 A. Um-hmm.

5 Q. -- is that one of the two gentlemen that you saw pointing
6 the gun?

7 A. It looks similar. He looks like he's wearing -- for a
8 second it looked like he was wearing shorter sleeves, but I
9 don't -- right there it kind of looks longer.

10 Q. Do you see the gentleman in the camouflage standing there?

11 A. I guess that's who I thought you were talking about.
12 I'm --

13 Q. Well, there were two individuals that you saw. You
14 pointed out one gentleman that was fully in camouflage;
15 correct?

16 A. Right.

17 Q. With a distinctive hat?

18 A. Um-hmm.

19 Q. And then the other gentleman had some sort of, like a vest
20 on, like, you know, armament or something. I don't know. I
21 mean, you tell me. What was the other individual wearing?

22 A. Body armor.

23 Q. Okay.

24 A. And the other one was wearing a short -- that same
25 individual that had body armor was wearing, like, a darker

1 colored, like, T-shirt type thing.

2 Q. Okay. So, does this look like the gentleman that you saw?

3 A. A second ago, it looked like he did have a T-shirt on, but
4 now, the way it -- the film stopped, it almost looks like to me
5 he has long sleeves. So, if you could back it up, maybe I
6 could . . .

7 MR. PEREZ: Go ahead and back it up, Brian, just a
8 tad.

9 BY MR. PEREZ:

10 Q. How about now?

11 A. Can you enlarge it? Just --

12 Q. No.

13 A. -- I want to make sure that I can see his skin.

14 Q. It's video.

15 A. Okay.

16 Q. I mean, don't guess. If you don't know, it's okay. If
17 you're not sure.

18 A. Looks similar, but I couldn't say a hundred percent there.

19 Q. Okay.

20 MR. PEREZ: All right, Brian. Go ahead and run it.

21 (Exhibit 32a published.)

22 MR. PEREZ: Okay. Stop.

23 BY MR. PEREZ:

24 Q. Now, at any time did you see that first gentleman with the
25 body armor come back into view?

1 A. Well, there was a lot going on there. I was looking at a
2 lot of different things.

3 MR. PEREZ: Let's back it up a little bit, Brian.

4 Okay. Go forward.

5 (Exhibit 32a published.)

6 MR. PEREZ: Okay. Just stop there for a second.

7 BY MR. PEREZ:

8 Q. Now, you see the NHP trooper there; correct?

9 A. You'd have to -- I'm sorry. You'd have to rewind it.

10 Q. Well, you see the individual in the fluorescent vest?

11 A. Correct.

12 Q. Okay. And we saw him walk by and looked like an NHP
13 trooper; correct?

14 A. It's somebody in a white reflective vest. I --

15 Q. Okay. You're not sure if it's a trooper?

16 A. I don't know who that guy is.

17 Q. Okay. All right.

18 MR. PEREZ: Brian, please.

19 (Exhibit 32a published.)

20 MR. PEREZ: Okay. Stop right there.

21 BY MR. PEREZ:

22 Q. Now, you see the individual communicating with these
23 people that are in these fluorescent green vests?

24 A. Yeah. Yes.

25 Q. And the individual is pointing off into the wash; correct?

1 A. Yes.

2 MR. PEREZ: Okay, Brian, please.

3 (Exhibit 32a published.)

4 MR. PEREZ: Okay. Stop.

5 BY MR. PEREZ:

6 Q. Now, at this -- at this point, can you tell me if that
7 individual had -- did point his gun at you before this?

8 MS. AHMED: Objection, Your Honor. The witness has
9 already indicated they don't -- didn't have a sense of time out
10 there.

11 THE COURT: Overruled. She can answer the question.

12 THE WITNESS: Go ahead and answer the question; is
13 that correct?

14 BY MR. PEREZ:

15 Q. Yeah.

16 A. Okay. I -- I don't know what time I saw those individuals
17 pointing their rifles at me. My sense of time for that day,
18 sir, is --

19 Q. Okay.

20 A. -- very off.

21 MR. PEREZ: Brian, go ahead, play.

22 Oh, wait. No, stop. One second.

23 BY MR. PEREZ:

24 Q. Do you remember watching the taller individual in the
25 camouflage come on scene?

1 MS. AHMED: Objection. Vague as to -- watching
2 earlier today, or April 12th?

3 BY MR. PEREZ:

4 Q. Well, at any time. Strike that.

5 At some point you saw this -- the camouflaged man --

6 A. Correct.

7 Q. -- arrive in your focal point; correct?

8 A. Yes.

9 Q. Okay. And he was by himself?

10 A. No.

11 Q. He was with the other gentleman?

12 A. When I saw him, he was with the other gentleman.

13 Q. Okay.

14 MR. PEREZ: Brian, play it.

15 (Exhibit 32a published.)

16 MR. PEREZ: Stop right there for a second, Brian.

17 BY MR. PEREZ:

18 Q. So the gentleman that's talking to the person who's
19 wearing the fluorescent vest that seems to be directing
20 traffic, that gentleman has a tan hat on?

21 A. It appears in that segment of the video.

22 Q. Okay. Is that one of the two gentlemen that were pointing
23 a weapon at you?

24 A. In this video, I feel like I can't say with a hundred
25 percent certainty.

1 Q. Okay. That's fine.

2 MR. PEREZ: Brian, please.

3 (Exhibit 32a published.)

4 MR. PEREZ: Stop right there for a second, Brian.

5 BY MR. PEREZ:

6 Q. Now, at no time did that man leave that frame of vision,
7 correct, from that dash cam?

8 A. He did for a moment prior -- when you said did he come
9 back in and --

10 Q. For a moment. Okay. But you said when he -- when these
11 two gentlemen were pointing their weapons at you, there were
12 no -- there was no NHP vehicle present?

13 A. I don't remember seeing an NHP vehicle.

14 Q. Okay. Thank you.

15 MR. PEREZ: Please, go on, Brian.

16 (Exhibit 32a published.)

17 MR. PEREZ: Okay. Stop right there.

18 BY MR. PEREZ:

19 Q. So, from that particular part of the video you can tell
20 that that gentleman in the green fluorescent vest or yellow
21 fluorescent vest is NHP; correct?

22 A. It appears to be, yep.

23 Q. Okay.

24 MR. PEREZ: Brian, please.

25 (Exhibit 32a published.)

1 MR. PEREZ: Now stop right there.

2 BY MR. PEREZ:

3 Q. Now, the gentleman directly in front of the dash cam is
4 the taller gentleman in the camouflage; correct?

5 A. Correct.

6 Q. Okay. Did you see where he came from when he arrived?

7 A. Yes. He came from the right. On the video, is that what
8 you're talking about?

9 Q. No. I mean, when you were there, did you happen to notice
10 where he came from?

11 MS. AHMED: Objection, Your Honor, as to it's vague
12 as to "arrived."

13 THE COURT: Yeah. Are you talking --

14 BY MR. PEREZ:

15 Q. When you first --

16 THE COURT: -- about what she's seeing in the video
17 that you're having her watch or are you asking her about the
18 day --

19 MR. PEREZ: I'll ask a new question.

20 BY MR. PEREZ:

21 Q. When did you first see him?

22 A. When he was pointing rifles at us.

23 Q. And that was before NHP arrived; correct?

24 A. Yes.

25 Q. Okay.

1 MR. PEREZ: Brian, go ahead and play it.

2 MS. AHMED: Objection, Your Honor. Relevance. We're
3 watching -- I don't understand what -- well, Your Honor,
4 objection. Relevance as to this video being shown to this
5 witness. It's been asked repeatedly now on direct and cross
6 whether or not what she observed happened before or after NHP
7 arrived, and it's before.

8 MR. PEREZ: Your Honor, she said you saw --

9 THE COURT: Well, it's almost done, right? I mean --

10 MR. PEREZ: Right.

11 THE COURT: Yeah. Go ahead. Finish it up.

12 MR. PEREZ: Go ahead and play it out, Brian, all way
13 to the end.

14 (Exhibit 32a published.)

15 MR. PEREZ: Stop right there just for a second.

16 BY MR. PEREZ:

17 Q. Now the two gentlemen are together; correct?

18 A. They're close by each other, yes.

19 Q. Are each of them pointing a weapon at that point?

20 A. Doesn't appear at that point.

21 MR. PEREZ: Play it through, Brian.

22 (Exhibit 32a published.)

23 MR. PEREZ: Stop it right there for a second, Brian.

24 BY MR. PEREZ:

25 Q. So, let me ask you. I mean, do you think you could have

1 been mistaken that NHP may have been there when he was pointing
2 the weapon?

3 A. I don't believe I could be mistaken.

4 Q. Okay. So you're absolutely certain that NHP was on -- was
5 not there at the time that you saw those two individuals?

6 A. I know what I saw.

7 Q. Okay.

8 MR. PEREZ: Brian, bring up Exhibit 17 at 19:13:03.
9 And just stop it there.

10 Back it up. Yeah. 19:13:03.

11 Actually, that's good. We can use that. That will
12 work. Just stop.

13 BY MR. PEREZ:

14 Q. Now, you said that at some point you moved from your
15 vehicle to the generator; correct? The white -- I believe it
16 would be that right there (indicating). Would that be the
17 generator?

18 A. I think it is.

19 Q. Okay. Was there anyone else with you behind that
20 generator?

21 A. Yes.

22 Q. Who was that?

23 A. Agent --

24 MS. AHMED: Objection. Relevance.

25 MR. PEREZ: I wanted to -- well, okay.

1 BY MR. PEREZ:

2 Q. Was anyone else behind there taking any video with you?

3 A. I don't know.

4 Q. Or anybody else there with a camera?

5 A. I don't know. I didn't see another camera, but it doesn't
6 mean it wasn't there.

7 Q. Okay. But no one -- it would have maybe been within,
8 like, a couple feet of you?

9 A. My answer stays the same. I don't --

10 Q. Okay. Well, you weren't taking any video, were you?

11 A. I think I was only taking pictures at that point.

12 Q. Okay. The only video that you took was with your iPhone
13 when you left?

14 A. I would have to go back and see if there were any other
15 videos I took of that day. I --

16 Q. Okay. Now, this view that we're seeing right here,
17 presumably you were there at this time of day? It would have
18 been, like, 12:15?

19 A. Again, sir, I don't know the reference of time. I --

20 Q. Okay. Well, when you were looking down at the highway,
21 was the highway backed up?

22 MS. AHMED: Objection as to "looking down." Vague as
23 to . . .

24 BY MR. PEREZ:

25 Q. Was -- was -- all right. The -- this -- this line of cars

1 right here (indicating), do you recall if the traffic was
2 stopped at the time that you saw the individuals pointing
3 your -- the guns at you?

4 A. I don't recall the traffic pattern. I know there had been
5 traffic, but it got backed up at some point during the day but
6 I couldn't even tell you when that was.

7 Q. Okay. You -- well, when you left, the traffic was moving
8 again; correct?

9 A. We were moving --

10 Q. Okay.

11 A. -- I think.

12 Q. And NHP, the NHP vehicles were still -- I mean, you passed
13 by them, they're in your video; correct?

14 A. I did pass by two that are in my video, at least.

15 MR. PEREZ: The Court's indulgence.

16 (Counsel conferring.)

17 MR. PEREZ: Pass the witness, Your Honor.

18 Thank you.

19 THE WITNESS: You're welcome.

20 THE COURT: On behalf of Mr. Stewart?

21 MR. TANASI: Thank you, Your Honor.

22

23 CROSS-EXAMINATION OF ALEXANDRA BURKE

24 BY MR. TANASI:

25 Q. Good afternoon, Ranger Burke.

1 A. Good afternoon.

2 Q. I'm Rich Tanasi. I represent Steven Stewart (indicating).
3 I got a few questions for you on cross. Okay?

4 A. Okay.

5 Q. All right. On April 11th, 2014, approximately 0600 hours
6 you started your scheduled shift on the TRAP Team; right?

7 MS. AHMED: Objection. Relevance. Beyond the scope.

8 MR. TANASI: Your Honor, it goes -- it's relevant to
9 the objective reasonableness of fear in this case. I've asked
10 one question and I'm trying to get there.

11 MS. AHMED: Same objection.

12 THE COURT: To the time that she began her shift that
13 day?

14 MR. TANASI: It does.

15 THE COURT: All right. I'll allow it.

16 Let's stay on target.

17 BY MR. TANASI:

18 Q. Okay, ma'am. So, again, you -- on April 11th, 2014,
19 approximately 600, 0600 hours you started your scheduled shift
20 on the TRAP Team; right?

21 A. I would have to look at my notes or a time sheet. I don't
22 recall what time I started on the 11th.

23 Q. All right. So would seeing a copy of your report in this
24 case, would this help to refresh your recollection?

25 A. It might.

1 (Document shown to witness.)

2 BY MR. TANASI:

3 Q. All right. So I'm showing you a report prepared on
4 April 15th, 2014. Call your attention to the first paragraph.

5 A. Okay.

6 Q. If you could read that and let me know when your
7 recollection is refreshed.

8 A. Okay. I started at 0600.

9 Q. Okay. Thank you, ma'am.

10 All right. And at approximately 0630, 6:30 a.m. that
11 morning, you attended a day shift briefing; correct?

12 A. Correct.

13 Q. Okay. And at that briefing there were different officers
14 that were involved in that briefing; correct?

15 A. Yes.

16 Q. Okay. And you were assigned to security detail at the
17 Mormon Mesa area; correct?

18 MS. AHMED: Your Honor, objection. Relevance, and
19 I'd ask for a sidebar.

20 THE COURT: Let's go to sidebar.

21 (Proceedings at sidebar out of the hearing of the jury:)

22 THE COURT: You asked for a sidebar.

23 MS. AHMED: Yes, Your Honor.

24 The Government objects that this is not relevant and
25 it's beyond the scope. It's not even relevant to the fear that

1 the witness testified to on direct examination. She spoke
2 about seeing three individuals pointing firearms and that her
3 fear in relation to those individuals. Mr. Tanasi appears to
4 be getting into briefings she had the day before relating to
5 larger threats regarding militia groups supporting Mr. Bundy.
6 That stuff is not what she spoke about on the stand and her
7 fear was articulated specifically to what she observed on
8 April 12th. So, it doesn't affect the calculus of what she's
9 testified to regarding fear. For him to go into that is a
10 distraction and, frankly, appears to open the door to things
11 that the Court's already ruled should be kept out and that are
12 irrelevant and a distraction.

13 MR. TANASI: So, Your Honor, I'm laying out the time
14 frame and what I'm getting to eventually is that she was told
15 to remain on the shift and was assigned security detail
16 directly in front of the ICP. She remained on the shift
17 throughout the night. Team members took turns resting. "I
18 attempted to take a rest cycle in the medical building. Kept
19 my radio and my earpiece." The fact that she had a lack of
20 sleep goes to the objective reasonableness of her fear in this
21 case and the lack of sleep that she brings with her into the
22 12th, with not being able to sleep since she's up at 0600 hours
23 on the day before, on the 11th, is an objective
24 reasonableness -- for the circumstance would be an objective
25 reasonableness for her fear in this case. So I'm trying to lay

1 the foundation as to what was going on on the 11th, what's kept
2 her up, and then I also point out that in those briefings she's
3 learning about threats. She's learning about different things
4 that are filling her mind with fear before my client even gets
5 there on the 12th. So, for those two reasons, laying out what
6 occurred the day before and leading up and to her fear on the
7 12th is relevant. I'm not getting into --

8 THE COURT: Well, I think that's the objection,
9 though, right? Is those things that she's being told, you're
10 going to get into all that hearsay and then --

11 MR. TANASI: All I was going -- I'm, obviously, going
12 to be getting also into her learning that the operation was, at
13 that point, was to stop and yet she's still, like I said, awake
14 from the 11th all the way through into the 12th. So,
15 everything that's being filled into her mind, why the operation
16 was stopped, from credible threats, militia groups supporting
17 the Bundy family, again, none of these threats are associated
18 with my client and that's what I'm trying to demonstrate. She
19 has fear in her head already on the 11th before my client even
20 enters the picture on the 12th. And so, that's what I'm
21 getting at.

22 MS. AHMED: And I would go back to what I said
23 previously, Your Honor. If the question is, she's up all
24 night, he could ask her. "You were up all night the night
25 before?" "You were working all night?" He could ask that in

1 two questions and if it's -- but, he's getting into things --
2 hearsay that she was told about other threats, which she did
3 not testify to on direct examination. She spoke about the fear
4 as a result of what she observed on the 12th. So, this is
5 beyond the scope of the direct and it's misleading, causes
6 confusion, and goes into the areas that the Court has already
7 ruled are off limits.

8 MR. TANASI: I don't know how the Court's ruled that
9 objective reasonableness or circumstances that go to the
10 objective reasonableness of fear are off limits. I understand
11 the excessive force rulings. I'm not getting into anything
12 near any of that; it's all objective reasonableness of this
13 federal agent's fear in this case. And this is a circumstance
14 that the jury should have before them to make that
15 determination as to whether or not her fear was reasonable on
16 the 12th.

17 MS. AHMED: Your Honor, Mr. Tanasi's reading the
18 report line by line.

19 THE COURT: Yes. That's the problem. You've already
20 talked about --

21 MS. AHMED: He's raising things like Mormon mesa.

22 MR. TANASI: Your Honor, I'm cross-examining --

23 THE COURT: -- a specific area that is going to
24 confuse the jury. They don't know what -- how that is related
25 to this. You're going into way too much detail. You can get

1 into the fact that she was up all night and whether that
2 affected her ability to accurately assess the situation and,
3 you know, overreact or not, but . . . we're not going to go
4 over every single thing that she did or heard or was told for
5 the last day and a half.

6 MR. TANASI: The only two things, Your Honor --

7 THE COURT: And she doesn't know how to answer the
8 question precisely is -- was my concern, too. Is as you asked
9 the question, I'm afraid she's going to get into talking about
10 things that she heard that we're not going to be getting into.

11 MR. TANASI: Well, is it off limits then if I -- I
12 just want to understand the Court's ruling. It's off limits to
13 get into the fact that she learned that the operation was
14 stopping the night before? Is that -- that's off limits?

15 THE COURT: No.

16 MR. TANASI: Okay. Because that's what she learns on
17 the 11th and that's one of the things I wanted to get into with
18 her on it, and that she was up for a long time and didn't have
19 sleep. Those were the two things. I was simply laying the
20 foundation to get there, from her own report, which is my good
21 faith belief to do so. It's not as though I'm bullying her
22 time frame.

23 THE COURT: No. Those two things are fine.

24 MS. AHMED: Those two specific questions, Your Honor,
25 I -- I think it was just when Mr. Tanasi's confusing them about

1 the operation being over, confusing -- it's confusing because
2 he's -- I feel like he's purposely confusing the jury as to why
3 the officers are there on the 12th. I mean, the evidence has
4 consistently come in, in this proceeding and the prior one,
5 that they were still there doing their jobs, regardless of the
6 operation being over. So, it's -- to me it's irrelevant, so I
7 would continue the objection as to that -- to that point as to
8 relevance. If he wants to ask if she was up all night, I don't
9 have any objection to that.

10 THE COURT: I think you can clear that up on
11 cross-examination [sic], where it was that she was up all night
12 and why it was that she was still there if the operation was
13 over.

14 MS. AHMED: You mean on redirect?

15 THE COURT: Um-hmm.

16 MS. AHMED: Okay.

17 THE COURT: Sorry.

18 MR. TANASI: Thank you, Your Honor.

19 (Proceedings within hearing of the jury:)

20 THE COURT: All right. So the objection was
21 sustained in part, overruled in part and there's better
22 direction now.

23 So, Mr. Tanasi, you can continue.

24 MR. TANASI: Thank you, Your Honor.

25 BY MR. TANASI:

1 Q. Okay, ma'am. On April 12th, 2014, approximately 0800
2 hours, if you recall, you attended a morning briefing at the
3 ICP.

4 Does that sound right to you?

5 A. Um . . . I thought we were just talking about April 11th a
6 second ago. I'm sorry. I'm confused.

7 Q. Okay. Would seeing a copy -- and I don't want to confuse
8 you. Would seeing a copy of your report help to refresh your
9 recollection?

10 A. Yes, please.

11 Q. Okay.

12 (Document shown to witness.)

13 BY MR. TANASI:

14 Q. Particularly pointing your attention to the last sentence
15 on that page.

16 A. Okay.

17 Q. Okay. Does that refresh your recollection?

18 A. Yes.

19 Q. Did you, in fact, attend a morning briefing at the ICP at
20 0800 hours?

21 A. Yes.

22 Q. On April 12th?

23 A. Yes.

24 Q. Okay. And isn't it true that prior to that briefing, the
25 night before, your team was on shift and was assigned security

1 detail in front of the ICP; correct?

2 A. Correct.

3 Q. Okay. And you remained on shift throughout the night;
4 correct?

5 A. Correct.

6 Q. Okay. Team members, they took turns resting; right?

7 A. Trying to.

8 Q. Okay. You attempted a rest cycle, but -- but your radio
9 and your earpiece, they were plugged in while you attempted
10 your rest cycle. Is that fair?

11 A. It -- it was in my earpiece -- or my earpiece in my ear,
12 but it was -- it was just hard to sleep. We were under threat.

13 Q. Okay. So, you agree with me then as of 0800 hours,
14 8:00 a.m. on the 12th, you hadn't slept the night before that,
15 or at least it was hard for you to get a night's rest. Is that
16 fair?

17 THE COURT: That's compound.

18 BY MR. TANASI:

19 Q. Prior to 0800 hours -- I can rephrase. Prior to 0800
20 hours on April 12th, what kind of sleep did you get that night?

21 A. Not a good night's rest.

22 Q. Okay. Prior to 0600 hours, so 6:00 a.m. on the 11th, that
23 morning before, how much sleep did you get between -- strike
24 that. I'll rephrase.

25 How much sleep did you get between 0600 hours,

1 6:00 a.m. on April 11th, 2014, and 0800 hours, 8:00 a.m. on
2 April 12th, 2014, if you can remember? How many hours of sleep
3 did you get in that time frame?

4 A. Just to make sure I understand the question. So, between
5 the 11th, on that Friday, and the 12th in the morning, on that
6 Saturday?

7 Q. Yes, ma'am.

8 A. A few hours.

9 Q. A few hours?

10 A. Um-hmm.

11 Q. Okay. All right. Do you recall a briefing on the 11th,
12 the evening of the 11th at the ICP?

13 A. I do.

14 Q. Okay. And do you recall learning that the trapping
15 operations of the Gold Butte cattle impound were now done?

16 A. I'm trying to remember . . . I remember being told that we
17 were going to be leaving.

18 Q. Okay. And that was on the evening of the 11th; correct?

19 A. Correct.

20 Q. Okay. And that was because of threats that you were
21 learning about on the evening of the 11th; correct?

22 A. Cumulative threats.

23 Q. Do you remember what time that was on the evening of the
24 11th?

25 A. I don't recall at this second.

1 Q. Okay. Okay. Let's go back to the -- to the 12th, back to
2 that 0800 hours briefing.

3 A. Okay.

4 Q. All right. So, you learned, isn't it true, that the Bundy
5 family was planning to have an organized protest? Did you
6 learn that?

7 A. I believe I referenced that in my report.

8 Q. Ultimately, after 8:00 a.m. on the 12th, you arrive at
9 Post 1; correct?

10 A. I don't know what time it was that I went to -- you're
11 talking about at the gate, Post 1? I don't remember what time.

12 Q. At some point though, since you don't recall the time, at
13 some point you'd agree with me that you arrive at Post 1;
14 right?

15 A. Correct.

16 Q. Okay. And you observe protestors gathering on the
17 opposite side of the Interstate 15; correct? Protestors?

18 A. I observed them both close to the gate as well as across
19 from there to across the interstate.

20 Q. Sure. And when we say "them," protestors; correct?

21 A. Well, there was people.

22 MS. AHMED: Objection. Relevance, Your Honor.

23 MR. TANASI: Your Honor, again --

24 THE COURT: She's answered the question.

25 THE WITNESS: Answer the question?

1 THE COURT: The question was whether they were
2 protestors. The answer was they were people.

3 MR. TANASI: Understood.

4 BY MR. TANASI:

5 Q. So is it your testimony, as you sit here today, that you
6 just saw people gathering on the opposite side of the
7 Interstate 15?

8 A. I saw people, but they weren't holding any protest signs.

9 Q. Okay. So they're just people and it's your testimony
10 today that they're not protestors. Is that what your testimony
11 is today?

12 A. In my report I referenced that there were protestors, but
13 they were people as well. There was people with guns. There
14 was people screaming, but I definitely didn't see any protest
15 signs.

16 Q. Okay. But, again, you did refer to those folks as
17 protestors in your report; correct?

18 A. Correct.

19 Q. And you prepared that report on April . . . April 15th,
20 2014, three days after the event; correct?

21 A. I would have to look at the report to say which date I did
22 that, but --

23 Q. Okay.

24 A. -- I did write that report.

25 Q. Would seeing a copy of your report help to refresh your

1 recollection?

2 A. Perhaps.

3 (Document shown to witness.)

4 BY MR. TANASI:

5 Q. Has seeing a copy of your report helped to refresh your
6 recollection as to when you prepared it?

7 A. April 15th.

8 Q. Okay. When you first arrive at Post 1, fair to say you
9 identify three males wearing black cowboy hats with open carry
10 pistol on their hips? Do you recall that?

11 A. I believe I put that in my report.

12 Q. Okay. And there was a male holding a rifle with an insert
13 magazine.

14 Do you remember that?

15 A. I do.

16 Q. Okay. All right. And another male holding a shotgun on
17 the opposite side of the interstate, Post 1.

18 Do you remember that?

19 A. I remember it in my report, correct.

20 Q. Okay. You also remember, though, protestors, they were
21 increasing in number rapidly and they yelled at you. Fair?

22 A. I would have to look at my report to . . . I remember
23 seeing -- there was a couple of women or a woman near the gate
24 that was screaming obscenities at us and there was just a
25 general scream coming in our direction.

1 Q. All right. And those screams, you -- those were from
2 protestors; correct?

3 A. Those were from individuals that were at the gate and
4 across the interstate, correct.

5 Q. Okay. But they were protestors; correct?

6 MS. AHMED: Objection, Your Honor, to the relevance
7 of this line of questioning. The witness has already stated
8 that she used the word protestors in her report.

9 THE COURT: I agree. She also used the word
10 "identified three males." Move on, please, Mr. Tanasi.

11 You're not going to prove that whether they're
12 protestors or not just because she used the word in a report.
13 I think everyone understands that.

14 MR. TANASI: Well, Your Honor, what it goes to is
15 that she's called them different things as she testifies here
16 today as opposed to how she reported in her report that -- it
17 goes to bias, but I will move on.

18 MS. AHMED: Your Honor, I would just respond to that
19 that the witness didn't deny writing "protestor" in her report.
20 There's no inconsistency here.

21 THE COURT: And she doesn't call the people with
22 weapons protestors in the report either.

23 MR. TANASI: I'll move on.

24 BY MR. TANASI:

25 Q. You also observed Metro SWAT arriving; correct?

1 A. Correct.

2 Q. Okay. And did you have a briefing of some kind with
3 Metro?

4 A. I spoke with some of the Metro officers or a Metro
5 officer. I remember them pulling up at some point and somebody
6 that was on their SWAT Team asking me what was going on.

7 Q. Okay. And Metro made no arrests that day; correct?

8 A. I don't know that.

9 Q. You testified earlier that some of the folks you saw with
10 guns, I had written down, clearly they came to engage I think
11 was the way you put it.

12 Do you remember that testimony?

13 A. From today?

14 Q. From earlier today, yes, ma'am.

15 A. It sounds about right.

16 Q. Okay. In fact, nobody engaged; right?

17 MS. AHMED: Objection. Argumentative.

18 THE COURT: She can explain what she meant by the
19 word "engage."

20 THE WITNESS: Sir, if you're in a fight and somebody
21 puts their hands up, it looks like they're engaging you in a
22 fight. When somebody points a rifle at you, they're engaging
23 you in a gun battle, sir.

24 BY MR. TANASI:

25 Q. Okay. No shots were fired though, ma'am; right?

1 A. Excuse me?

2 Q. No shots were fired; right?

3 A. No.

4 Q. You testified earlier that there was an active shooter
5 situation you were involved in prior to this event?

6 A. Correct.

7 Q. Do you recall that?

8 Was there shooting in that event?

9 A. Yes.

10 Q. Okay. And if I have the scale right, that event where
11 there was shooting, as you've testified here today, was not as
12 scary as this event, the April 12th, 2014 event? Is that your
13 testimony if I have it right?

14 A. Both were awful incidents to be a part of. However, this
15 one lasted longer and in this case there was multiple
16 individuals --

17 Q. Ma'am, it was a yes or no question.

18 THE COURT: Let her answer the question -- I mean,
19 the answer.

20 MR. TANASI: Your Honor, I asked her a yes or no
21 question, though.

22 THE COURT: She's answering the question you asked.

23 MR. TANASI: Okay.

24 THE WITNESS: It isn't as easy as yes or no, sir.

25 When you have multiple individuals pointing guns at you and you

1 feel the threat is so high you've got to call your family and
2 say bye, it's a whole different gamut of what scared is.

3 BY MR. TANASI:

4 Q. But again, when you compared the two scenarios -- that was
5 the one question I asked you -- the active shooter situation
6 was not as bad as this one?

7 A. They were both equally as bad.

8 Q. Is that fair?

9 A. One was more scary than the other.

10 Q. Which one was more scary; ma'am?

11 A. Seeing . . . this one was.

12 Q. As you drove off, you testified that protestors were
13 yelling at you. We saw pictures of that; right? Or a video of
14 that?

15 A. Yes.

16 Q. And again, you're a commissioned law enforcement officer
17 at the time; right?

18 A. Yes.

19 Q. And you can enforce federal law; correct?

20 A. Yes.

21 Q. Okay. You made no arrests on your way out; correct?

22 A. I did not.

23 Q. Okay. As you sit here today -- well, why don't we do
24 this. Brian, if you could please bring up 155.

25 (Exhibit 155 published.)

1 BY MR. TANASI:

2 Q. In looking at Exhibit 155, do you see that now, ma'am?

3 A. Yes.

4 Q. Can you say whether or not my client, Steven Stewart
5 (indicating) -- take a look at him -- is in this picture?

6 MS. AHMED: Objection. Relevance, Your Honor. This
7 witness didn't identify any of these defendants.

8 MR. TANASI: And that's exactly --

9 THE COURT: Sustained. Sustained.

10 BY MR. TANASI:

11 Q. Prior to today's testimony, ma'am, have you had an
12 opportunity to meet with the U.S. Attorney's Office?

13 A. Yes.

14 Q. How many times?

15 A. We spoke on the phone once together and then face to face
16 I believe it was three times.

17 Q. Three times prior to today?

18 A. Yes.

19 Q. Did you also have an opportunity to meet with the FBI?

20 A. Yes.

21 Q. How many times?

22 A. One time at -- when we were still in Las Vegas after the
23 impound and then they have been at the same meetings as the
24 U.S. Attorney's Office, the ones since, on the phone, I believe
25 they were on the phone, as well as the face-to-face meetings.

1 MR. TANASI: Fair enough. Thank you, ma'am.

2 THE WITNESS: Um-hmm.

3 THE COURT: Cross on behalf of Mr. Parker?

4 MR. MARCHESE: Thank you, Your Honor.

5

6 CROSS-EXAMINATION OF ALEXANDRA BURKE

7 BY MR. MARCHESE:

8 Q. Good afternoon, ma'am.

9 A. Good afternoon.

10 Q. You testified on direct examination that you're obviously
11 a law enforcement officer. I believe you've worked in two
12 different departments.

13 Is that accurate?

14 A. Correct.

15 Q. Okay.

16 A. Two different agencies.

17 Q. Two different agencies?

18 A. Um-hmm.

19 Q. And so what's the total years of law enforcement
20 experience that you have?

21 A. Well, I would have went to my first police academy in
22 1999, but I didn't take an official position until 2001. So
23 that would give me, what is it, 2017, so 16ish years.

24 Q. Okay. So, you're not a rookie anymore?

25 A. No.

1 Q. Okay. So, let's turn to April 12th of 2014. I believe on
2 direct examination you originally started or testified that you
3 were down in the parking area.

4 Is that an accurate statement?

5 A. Correct.

6 Q. Okay. And then at some point in time -- I'm not going to
7 ask you any specific times, we've already been there.

8 A. Thank you.

9 Q. -- you went up to Post 1 area; is that right?

10 A. Yes.

11 Q. Okay. And that's kind of that makeshift gate area in the
12 ICP.

13 Is that accurate?

14 A. Yeah. There was some concrete barriers, I believe, up
15 there. At one point there had been some other gates, perhaps,
16 but . . .

17 Q. Okay. Now, at some point in time you testified that you
18 moved down from that location to the one a little bit further
19 away.

20 Is that an accurate statement?

21 A. Yes.

22 Q. Okay.

23 MR. MARCHESE: And Brian, if we can get up Exhibit 17
24 to 19:13, please.

25 Okay. And if you could pause it, please, Brian.

1 (Screenshot published.)

2 BY MR. MARCHESE:

3 Q. Okay. So now -- and correct me if I'm wrong. I'm going
4 to circle this area right here (indicating). Would that be
5 accurate to say that that was the area that you moved down to?

6 A. Yes.

7 Q. Okay. How did you get down to that area? Did you drive?

8 A. I drove, yeah.

9 Q. Okay. Is your vehicle depicted in that circle or is it
10 somewhere else?

11 A. I don't know if -- because the time. I'm not sure
12 timewise when I went down there, but it was in that vicinity at
13 some point.

14 Q. Okay. Did you drive up to Post 1 with your vehicle?

15 A. Yes.

16 Q. And then did you drive to that circle with your vehicle or
17 did you walk?

18 A. I drove.

19 Q. Okay. Who, if anyone, is in that area with you when you
20 first go down to that circled area, if you remember?

21 MS. AHMED: Objection. Relevance.

22 THE COURT: What's the relevance?

23 MR. MARCHESE: Your Honor, I think it's very relevant
24 of her perception what she remembers and what was going on at
25 the time of everything that she's testified to.

1 THE COURT: So repeat the question.

2 BY MR. MARCHESE:

3 Q. Okay. You got down to this circled area and when you got
4 down there, who was around you, if you remember?

5 THE COURT: Okay. So what is the relevance of
6 whether or not she remembers the names of people?

7 MR. MARCHESE: Perception. Memory. These are all
8 the kinds of things that are -- that we ask in courts to see if
9 people's perceptions and memory of the event.

10 THE COURT: All right. Let's have a sidebar.

11 (Proceedings at sidebar out of the hearing of the jury:)

12 THE COURT: All right. We're at sidebar and the
13 question was whether she -- whether this witness remembered the
14 names of the individuals who were around her. The objection
15 was relevancy and your response, Mr. Marchese, was that it's
16 relevant as to her recollection of whether she remembers the
17 people who were around her and here's why I called the sidebar.

18 MR. MARCHESE: Yeah.

19 THE COURT: Because from the first trial, every
20 single time the defense attorney got up there and asked to
21 identify, by name, first and last name, every single person who
22 was out there, I got the chills and I would look over at the
23 defendants and they'd be writing down these names. Now, there
24 was no objection from the Government, so I assume, well, maybe
25 these are names that the parties already know anyway and so

1 it's just a matter of putting a face to name and not a big
2 deal, but here, clearly, there is a question with whether or
3 not this name should be revealed?

4 MS. AHMED: I mean, just --

5 THE COURT: Or is it just --

6 MS. AHMED: As a general principle, Your Honor, yes,
7 there's no need to name these officers, but specifically,
8 there's no relevance to that question to the direct
9 examination. There's other ways -- more appropriate ways to
10 challenge her -- her memory or her recollection of these events
11 and to suggest that because she can't name every single officer
12 that was standing around her on April 12th somehow weighs
13 against her recollection of people pointing weapons to her is
14 improper. It's irrelevant.

15 THE COURT: So, is there something in her report that
16 says that she's having lapses in memory or can't remember --

17 MR. MARCHESE: Well, I'm going to get there because
18 there's a --

19 THE COURT: -- people -- the name of the people
20 around her? I don't understand the importance of the names of
21 the people.

22 You can ask other questions, but if it's not
23 important for someone to identify someone by name, I think
24 there's --

25 MR. MARCHESE: Well, I don't know what she told these

1 people. I don't know who's there and this is the first time
2 that she's testified. I mean, there -- I believe, like, for
3 example, I believe Ranger Johnson was in that area from the
4 first trial. I believe that Special Agent Shilaikis was in
5 that area, but I don't know who's around her. I don't know
6 who -- I'm not doing this because --

7 THE COURT: Well, then ask her if Johnson and
8 Shilaikis are around her --

9 MR. MARCHESE: But I don't know.

10 THE COURT: -- if that's what you're trying to
11 pinpoint is --

12 MS. AHMED: On even -- I apologize to interject. I
13 just feel that that doesn't even matter. It's irrelevant.

14 Is there some --

15 MR. MARCHESE: If she can't remember -- if she says,
16 yes, there were people around, I don't remember who, I think
17 that is very probative to the jury. That goes to her memory.

18 THE COURT: We could have the jury retire if you want
19 and then you can find out whether she remembers the names and
20 if she remembers the names, you're not going to ask them? I
21 mean, either way the defense would hear it. I'm just very
22 uncomfortable with having any more names that are not
23 necessary.

24 So . . .

25 MR. MARCHESE: I mean --

1 THE COURT: No. If you want to ask for initials, I'd
2 go with that, but I'm just not happy with all this identifying
3 people by name constantly in this case.

4 MS. AHMED: And, Your Honor, up until this point, we
5 have reports, they've referred to reports, what's in and not in
6 reports in order to probe a witness' accuracy and their
7 testimony, so it's -- they've had a way they've been doing this
8 the whole time.

9 MR. MARCHESE: Well, I --

10 THE COURT: Yeah. If her reports are different from
11 what -- who was supposed to be around her or not around her, I
12 don't understand if there's --

13 MR. MARCHESE: I --

14 THE COURT: -- something more than just to probe
15 memory. I believe there's other ways to probe her memory and
16 whether or not even that would be relevant if you remember or
17 don't remember the name of the person standing next to you
18 doesn't mean that you didn't see what you saw. It's just a
19 greater fact of what you saw --

20 MR. MARCHESE: I think it's probative.

21 THE COURT: -- and how much that's going to be
22 focused on what you remember and don't remember the other
23 thing. So I don't see that it's relevant or probative either
24 way.

25 The objection is sustained.

1 (Proceedings within hearing of the jury:)

2 THE COURT: All right. So the objection was
3 sustained.

4 Mr. -- you can proceed.

5 BY MR. MARCHESE:

6 Q. Okay. So we -- I was asking you about who was around.
7 We're going to move on from that question.

8 A. Okay.

9 Q. Now, at that point in time, when you're down in the circle
10 area, I believe it was your testimony that you got on your
11 binoculars and you started scanning for threats; is that
12 correct?

13 A. Correct.

14 Q. Okay. And chron- -- on direct examination, you
15 chronologically went with some people, or some individuals I
16 should say, that were -- became of interest to you.

17 Is that an accurate statement of your testimony?

18 A. Yes.

19 Q. Okay. And correct me if I'm wrong, but the first
20 individuals that you had interest in were the individual with
21 the dark shirt and then there was another one with the
22 camouflage.

23 Is that accurate?

24 A. The first individuals at that point when I was down by the
25 generator, yes -- or the floodlight generator thing, yes.

1 Q. Okay. And -- I'm sorry. I know we already went through
2 this, but it's not back up on the screen. So, if you can just
3 show me the area in which those individuals, when they became
4 of interest to you.

5 A. Uh . . . somewhere in here (indicating).

6 Q. Okay.

7 A. Maybe over here (indicating).

8 Q. So, you're looking in that general area and Mr. Perez
9 asked you a bunch of questions in reference to law enforcement
10 being present; correct?

11 Do you remember that?

12 A. I'm sorry. I was still looking at that --

13 Q. Okay.

14 A. -- thinking there might be --

15 Q. Is there anything you wanted to add? Did you want to
16 change that or do you believe that that's the general vicinity
17 they were in when you saw them?

18 MS. AHMED: Your Honor, for the record, may I just
19 point out that this is not the same exact time stamp that we
20 showed the witness. Just in the event that anyone was
21 utilizing that marker in the middle of the screen as a
22 reference point, it's in a different location on this time,
23 19:12:47 versus 19:13.

24 THE COURT: All right. Thank you for that
25 clarification.

1 BY MR. MARCHESE:

2 Q. Okay. Same general picture, though, that you were shown
3 on direct examination?

4 A. Well, that's why I'm confused because if they're -- if the
5 vehicles had moved any, I would feel more comfortable using the
6 picture I used prior just because --

7 Q. Okay. Well, let's do that. I've got the time stamp; we
8 just went a little bit ahead. So, just for point of clarity,
9 Brian, it's -- what I have is 19:13:03. So it's about 20 or so
10 seconds after.

11 Just let it play, Brian. Probably easiest. And stop
12 it at 03.

13 (Exhibit published.)

14 BY MR. MARCHESE:

15 Q. Okay. You're somewhere over here (indicating); correct?

16 A. Yes.

17 Q. All right. And where did you see those two individuals of
18 interest, the one with the dark shirt and the other one with
19 the camouflage?

20 A. Somewhere in there (indicating).

21 Q. Okay. Now, in reference to them, it's your belief that
22 law enforcement, NHP, was not present when you first saw them?

23 A. I don't recall them being there at that time.

24 Q. Okay.

25 A. Over there.

1 Q. Sure. And easily identifiable based on their green or
2 yellow fluorescent vests?

3 A. In that video, yes, but I -- I didn't identify them at all
4 that day that I recall with that yellow vest. I remember
5 seeing patrol cars come.

6 Q. Okay. So do you not remember seeing them on that day in
7 the yellow vests, the green or whatever you want to call it?

8 A. I saw them in the video just now with it, but nothing
9 stood out to me that day with the yellow vests.

10 Q. Okay.

11 A. Doesn't mean that they weren't there; I just -- I did not
12 see a yellow vest, meaning that they weren't in my vicinity at
13 times and I didn't see them.

14 Q. Okay. So . . . if we can -- Brian, if we can go to
15 Exhibit 66, please.

16 (Exhibit 66 published.)

17 BY MR. MARCHESE:

18 Q. And I believe -- there we go. Is that up on your screen,
19 too?

20 A. Yes, sir.

21 Q. Okay. And I believe this is just a close up picture of
22 what you had prior identified on direct examination?

23 A. Correct.

24 Q. Okay. And I believe your testimony was something to the
25 effect of -- don't quote me a hundred percent -- but that both

1 of them at one point had rifles pointing in your direction?

2 A. Correct.

3 Q. Okay. I think you had described one was in the blading
4 position and I think the other one was the low ready or
5 something along those lines?

6 A. They were both in the low ready.

7 Q. Okay. And generally in your vicinity; correct? Pointing,
8 that is.

9 A. They were pointing in our direction.

10 Q. Okay. Now, in reference to these two individuals, those
11 were the first individuals of interest that you saw pointing
12 weapons in your direction.

13 Is that a correct --- an accurate statement?

14 A. That I perceived as a real threat, yes.

15 Q. Okay. And then after that, there was another particular
16 individual and that was the individual with the black hat and
17 the white patch; is that correct?

18 A. Correct.

19 Q. Okay. So that happened chronologically after these two
20 individuals, I think you said, low readied in your area;
21 correct?

22 A. I believe so.

23 Q. Okay. Now, in reference to this case you filled out what
24 they call a Memorandum of Activity. Mr. Tanasi referenced that
25 a little bit on his cross-examination of you?

1 A. Yes. My report, um-hmm.

2 Q. Okay. Filled that out on April 15th, 2014. So it's a few
3 days after this event, but was it fair to say it's still fresh
4 in your mind?

5 A. It -- I had been thinking about it non-stop, yes.

6 Q. Of course, because, obviously, you've testified that it
7 was something that was a stressful situation, obviously;
8 correct?

9 A. Um-hmm.

10 Q. Is that a yes?

11 A. Yes.

12 Q. Okay. Now, in that particular report, you filled that out
13 true and accurately; correct?

14 A. Yes.

15 Q. Okay. To the best of your recollection; correct?

16 A. Yes.

17 Q. And in a Memorandum of Activity, you're going to put all
18 the important points into that particular document.

19 Is that accurate?

20 A. Typically.

21 Q. Typically, yes. Okay.

22 Now, in that particular report, is there any mention
23 of these two individuals that are depicted in Exhibit 66
24 pointing their weapons at you?

25 A. I'd have to look at my report to -- to double-check that.

1 Q. Okay.

2 (Document shown to witness.)

3 BY MR. MARCHESE:

4 Q. Ma'am, I'm just going to point you. It just starts at
5 April 12th and then I'll give you the next page.

6 A. Okay. Very good.

7 Q. Good.

8 Sorry. I apologize. It got a little fuzzy on you.
9 There we go.

10 A. All right.

11 Okay. Go ahead.

12 Q. (Counsel complies).

13 A. Okay. So your question again, sir?

14 Q. In reference to your Memorandum of Activity -- well, let
15 me ask you a question.

16 Does that refresh your recollection?

17 A. It does.

18 Q. Okay. And in reference to your Memorandum of Activity,
19 isn't it true that you did not reference those two individuals
20 that we prior saw in Exhibit 66, you did not reference them in
21 your report?

22 A. That is correct.

23 Q. Now, turning your attention to the second individual, the
24 one with the black hat that caught your attention; right?

25 A. Correct, yeah.

1 Q. I believe you testified something to the effect, on direct
2 examination, that when you initially saw him, he was on the
3 bridge; is that correct?

4 A. Yes.

5 Q. Okay. And I hate to do this, I'm going to go back to that
6 aerial. Is that okay? So you can show me Exhibit 17, and if
7 we can go to 19:13:03.

8 (Screenshot published.)

9 MR. MARCHESE: Oh, 13:03. I apologize, Brian.

10 (Screenshot published.)

11 BY MR. MARCHESE:

12 Q. And if you can show me on this screenshot where you saw
13 this individual when he caught your attention.

14 A. The black hat, white patch?

15 Q. Correct. Yes. I'm sorry.

16 A. (Indicating).

17 Q. Okay. And just to be clear for the purposes of the jury.
18 Where is -- is Las Vegas where I put that "x" (indicating)?

19 A. Las Vegas?

20 Q. Yes. The traffic that's flowing, it would be flowing
21 northbound from Las Vegas, that lane?

22 A. Yes.

23 Q. Okay. So, you see this individual. You're looking
24 through your binoculars, I believe, is your testimony; correct?

25 A. Correct.

1 Q. What's the distance, would you guesstimate, from the pack
2 or circle of trucks that -- that you were in and where you're
3 looking to where you saw this individual with the black hat?

4 A. I can't remember off the top of my head. If I put it in
5 my report, that might recollect my memory. Close enough to be
6 afraid of it, but far enough that I didn't feel like I could
7 shoot my .223 at him effectively.

8 Q. Okay. You had a .223?

9 A. Yeah. I have --

10 Q. That's -- is that the name -- the caliber of your rifle?

11 A. Yeah.

12 Q. Okay. Did you have a scope on that rifle?

13 A. No.

14 Q. So it just open sights?

15 A. At the time I did not. Yeah. At the time, it's just iron
16 sights so there's no scope on it at all.

17 Q. So it was your belief that -- one -- I believe you gave
18 many reasons, but one of the reasons that you didn't fire back
19 was with your .223 with open sights is that you didn't feel
20 that you could be accurate?

21 A. It wouldn't -- yeah. I didn't feel -- correct.

22 Q. Okay. So, you're scanning with your binoculars and you
23 see this individual of interest; correct?

24 A. Correct.

25 Q. When you first see him, what is it that you remember that

1 you saw him do?

2 A. With? Or just saw him?

3 Q. What -- yeah. You're scanning the crowd. You see him.

4 What do you remember?

5 A. I yelled out, "There's a guy with a black hat, white
6 patch" and there was conversation that took place. People were
7 affirming it and there was a rifle, he was pointing his rifle
8 at us and that was the -- what was being said.

9 Q. So when you initially saw him, was -- that was when I
10 believe you described it as the high ready position?

11 A. Um-hmm (indicating).

12 Q. Okay. And you're pointing to your left. So, am I correct
13 in stating that that's -- he was pointing directly, at you or
14 at least in your vicinity when you first saw him?

15 A. In my direction, yeah.

16 Q. Okay. So, he's pointing in your direction and I believe
17 on direct examination you kind of panned across?

18 A. Um-hmm.

19 Q. And when it -- when I say panned across, you were
20 describing what this individual with the black hat was doing.

21 Is that accurate?

22 A. That's accurate.

23 Q. Okay. And you're watching him this whole time; correct?

24 A. Yes.

25 Q. And he pans across. So when he's panning across, he's

1 panning away from you.

2 Is that fair to say?

3 A. He was.

4 Q. Okay. And he is panning away from you and I believe the
5 testimony was he got to a certain point and then your testimony
6 was he went then and lowered his -- his weapon down.

7 Is that accurate?

8 A. Yes.

9 Q. How long would you estimate that you viewed him for in
10 those positions?

11 A. It was . . . it's an approximation, but . . . it felt like
12 a long time, but I'm guessing it was probably closer to . . .
13 20 seconds, somewhere in there. It was less than a minute, I
14 would say.

15 Q. Okay. So it was a significant amount of time to be in
16 that sort of a position.

17 Is that accurate?

18 A. To be in what kind of position?

19 Q. Well, you viewing him to be in that sort of position.

20 A. Well, I was behind cover with my binoculars, but yeah. I
21 did see him for -- it was more than a couple of seconds, but it
22 wasn't, like, a minute of time even.

23 Q. Sure.

24 So, what it -- what's -- at some point you didn't see
25 him anymore; correct?

1 A. Correct.

2 Q. Did you pan off of him? How did that occur? When did you
3 stop seeing him?

4 A. He went down below. He -- so, he had been -- I use the
5 term gophering -- but it's where you pop up and down and
6 eventually he went down and he disappeared and while I did
7 watch for a little bit, he didn't pop back up and then I moved
8 on.

9 Q. You moved on because there might have been other threats
10 in the crowd that you were -- were of interest to you?

11 A. Well, I still looked into his direction. I was definitely
12 looking for him and when I went up to the -- the generator with
13 the floodlight, I had another discussion up there talking about
14 this person and they had said they'd seen him as well --

15 Q. Now --

16 A. -- but we couldn't find him.

17 Q. Yeah. So you -- you mentioned you went up to the
18 floodlight.

19 A. Um-hmm.

20 Q. Okay. That's a yes?

21 A. Yes.

22 Q. Okay. And when was that?

23 A. When was it?

24 Q. Yeah.

25 A. It was after I was at my vehicle looking at individuals

1 with rifles pointing at us and just the whole scene, I went up
2 there afterward to get a little bit closer. I knew one of the
3 individuals there and I -- it was a position of good cover
4 where I could get closer, a little bit, and take photos.

5 Q. And those photos, those are the ones -- we don't need to
6 show them again -- I think that they were Exhibits 155 and 156
7 or -- are those the photos that we're referring to? I mean, I
8 can show them if you want.

9 A. I don't know the number. I -- I don't want to confirm
10 anything without --

11 Q. The ones you took through your binoculars. I believe
12 there's kind of a green --

13 A. Yep.

14 Q. -- light in the corner?

15 A. Yeah. Those were both through my binoculars.

16 Q. Now, the Government had showed you, I believe it was
17 Exhibit 14. It was a video in which they stopped it and you
18 identified the individual in the black hat with the patch on
19 it.

20 Do you remember that?

21 A. Oh, yes. Yes.

22 Q. Okay. What was it about that particular screenshot of the
23 video that had you identify that particular individual with the
24 hat, black hat?

25 A. Well, the black hat and the large white patch. He was

1 wearing body armor. Had facial hair. He -- he looked
2 identical to the guy that I had seen on the overpass.

3 Q. Turning back to your Memorandum of Activity, you did, in
4 fact, reference that individual with the black hat and the
5 large white patch in that particular report.

6 Do you remember that?

7 A. Yes.

8 Q. Okay. But isn't it true you didn't write anything about
9 him having facial hair; correct?

10 A. That is true.

11 Q. Okay. And you didn't write anything about him having body
12 armor; is that correct?

13 A. I'd have to look at the report to confirm that, but . . .

14 (Document shown to witness.)

15 BY MR. MARCHESE:

16 Q. And if you can review that. Just take a quick look at it
17 and let me know if that refreshes your recollection.

18 A. Okay. Yes.

19 Q. You're good?

20 A. Yeah.

21 Q. And then in reference to this individual having body
22 armor, there's no reference in this report about that?

23 A. No, there isn't.

24 Q. Okay. And there's no reference to this individual working
25 with an individual wearing dark clothes standing nearby him; is

1 that correct?

2 A. Not in the report, no.

3 Q. Okay. And nothing about this individual having a plaid
4 shirt on or anything like that; is that correct?

5 A. Correct.

6 MR. MARCHESE: Thank you. No further questions.

7 THE COURT: On behalf of Drexler, any cross?

8 MR. LEVENTHAL: No, Your Honor. Thank you.

9 THE COURT: All right. Any redirect?

10 MS. AHMED: May I have the Court's indulgence,
11 Your Honor?

12 THE COURT: Yes. In fact, it's 3 o'clock. So why
13 don't we go ahead and take our restroom break now.

14 During this break I remind the jury please do not
15 discuss this case with anyone nor allow anyone to discuss it
16 with you.

17 Do not read, listen to, or view anything that touches
18 upon this case in this way.

19 Do not attempt to perform any investigation or
20 researches.

21 Write down your questions, and do not form an
22 opinion.

23 It's 3:04. So we'll go ahead and take a 15-minute
24 break and plan to be back here by 3:20.

25 Let's all stand for the jury.

1 And BLM -- the jury is excused and, BLM Ranger Burke,
2 you may leave as soon as the jury has exited and we just need
3 you back here by 3:20.

4 THE WITNESS: Okay. Thank you.

5 (Jury excused from courtroom.)

6 THE COURT: All right. We're off record.

7 (Recess was taken at 3:05 p.m.)

8 COURTROOM ADMINISTRATOR: All rise.

9 THE COURT: Thank you. You may be seated.
10 Bring in the jury.

11 COURTROOM ADMINISTRATOR: Yes, Your Honor.

12 (Brief pause in proceedings.)

13 COURTROOM ADMINISTRATOR: All rise.

14 (Jury returned to courtroom at 3:40 p.m.)

15 THE COURT: All right. Jury may be seated. Everyone
16 else may be seated afterwards.

17 We're back on the record and we have our witness,
18 BLM Agent Burke, back on the witness stand.

19 So, Ms. Ahmed, you may begin your direct -- redirect.

20 MS. AHMED: Your Honor, the Government has no
21 redirect at this time. Thank you.

22 THE COURT: All right. Any cross -- any -- oh, well,
23 I guess then we're done. Just jury questions.

24 (Brief pause in proceedings.)

25 THE COURT: Counsel, please join me at sidebar.

1 (Proceedings at sidebar out of the hearing of the jury:)

2 THE COURT: All right. Jury Note No. 58, "At any
3 time you were on the scene did you hear the men who were armed,
4 or anyone for that matter, say anything to you or your fellow
5 rangers?"

6 Any objection?

7 MS. AHMED: No.

8 MR. PEREZ: No objection.

9 MR. TANASI: No objection.

10 THE COURT: And then the second part of Jury Note 58,
11 "Did you hear anything from any of the people on the ground or
12 the interstate or anywhere? If so, were you able to make out
13 what was said?"

14 MS. AHMED: No objection.

15 MR. TANASI: No objection.

16 THE COURT: All right. Jury Note 59 has four
17 questions. The first one is, "Do park rangers have body armor?
18 If not, why? And do you carry any time of armor?" Any type it
19 should be, but it says "any time."

20 Maybe it's any time. "Do you carry any time of
21 armor?" I think they mean any type.

22 MR. TANASI: Type.

23 THE COURT: Any objection to that question?

24 MR. TANASI: No.

25 MS. AHMED: No, Your Honor.

1 THE COURT: Okay. Number 2, "Do you carry more
2 powerful weapons in your vehicles" -- and then if
3 parenthesis -- "(rifles)?"

4 Any objection?

5 MS. AHMED: No.

6 MR. TANASI: No objection.

7 THE COURT: Number 3, "When you noticed weapons
8 pointed at you at any time when possible" -- in parenthesis --
9 "(safe) did you call this in to dispatch or commanding officer
10 in charge?"

11 Any objection?

12 MR. PEREZ: No objection.

13 MR. TANASI: No objection.

14 THE COURT: Number 4, "Why wasn't report filled out
15 the same day? Instead, it was three days later."

16 Any objection?

17 MR. TANASI: No objection.

18 MR. PEREZ: No.

19 MS. AHMED: No, Your Honor.

20 THE COURT: Okay. Jury Note No. 60, Question No. 1.

21 "Being" -- well, b-e-i-g-h-i-n-g -- being -- weighing "in the
22 lower low wash looking up to the north highway, the position of
23 the long guns pointed down at your area have the look of the
24 ready position?" I think it's did the position of the weapons
25 pointed down at your area have the look of the ready position?

1 Any objection to that question?

2 MR. TANASI: No objection.

3 Number 2, "Could you see a finger on the trigger?"

4 Any objection?

5 MR. TANASI: No objection.

6 THE COURT: Number 3, "What is the difference in the
7 camo outfit this time compared to any other time?"

8 MS. AHMED: I'm not sure, yeah.

9 THE COURT: I'm not sure I understand the question.

10 MS. AHMED: I don't know if they're referring to
11 prior testimony, prior exhibits, or in her experience.

12 THE COURT: "What is the difference in the camo
13 outfit," the difference . . . I'm not sure what that could be
14 referring to.

15 MR. TANASI: Could we hear it one more time, Judge?

16 THE COURT: Yes.

17 MR. TANASI: I just want to hear it one more time.

18 THE COURT: "What is the difference in the camo
19 outfit this time compared to any other time?"

20 MR. MARCHESE: I got nothing.

21 MR. TANASI: Is that the camo that she saw on the
22 bridge or is it --

23 MS. AHMED: Yeah. I don't know exactly if she's --
24 if they're referring to her prior experience with hunters or
25 something.

1 (Counsel conferring.)

2 THE COURT: All right. But no objection --

3 MR. TANASI: No objection.

4 THE COURT: -- to that question? All right.

5 Jury Question Number No -- or Jury Note No. 61, first
6 question, "Who do you think was the incident commander?"

7 Any objection?

8 MR. TANASI: No objection.

9 THE COURT: Number 2, "Were you in regular
10 communication with the incident commander?"

11 Any objection?

12 MR. TANASI: No objection.

13 THE COURT: Number 3, "Were you told during the
14 incident that NHP was in the area?" I guess that's a question
15 mark.

16 Any objection?

17 MR. TANASI: No objection.

18 THE COURT: "Were you aware, when you observed the
19 men with the long guns, that Metro was there in support of
20 BLM?"

21 Any objection?

22 MR. TANASI: No objection.

23 THE COURT: "And when you observed the man with the
24 long gun scanning, could he have been using his scope as a
25 binocular?"

1 Any objection?

2 MR. PEREZ: No objection.

3 MR. TANASI: No objection.

4 THE COURT: Jury Note No. 62, "Did the individuals
5 with guns -- the three that concerned you -- have scopes on
6 their weapons?"

7 Any objection?

8 MS. AHMED: No objection.

9 MR. TANASI: No objection.

10 THE COURT: Second part of Jury Note No. 62, "Without
11 long distance training and scopes, would it have been a
12 difficult shot to make if you happened to be the target?"

13 Any objection?

14 MR. PEREZ: Calls for speculation, but . . .

15 MR. MYHRE: Based on her training and experience?

16 MS. AHMED: Yeah. I think --

17 THE COURT: Because she said that she didn't have a
18 scope.

19 MS. AHMED: Right. So if they're talking about her
20 making the shot to the northbound bridge or they're talking
21 about them making a shot to her?

22 MR. LEVENTHAL: She's the -- she'd be the target.

23 MS. AHMED: Right.

24 MR. LEVENTHAL: So it would be them hitting her, if
25 they could.

1 It would be speculating. She doesn't know what kind
2 of gun they have.

3 THE COURT: So it goes to her perception for the
4 objectiveness of her fear.

5 Do you have an objection?

6 MS. AHMED: No.

7 MR. LEVENTHAL: I just object as to the speculation
8 of it.

9 THE COURT: All right.

10 MR. PEREZ: Lovelien joins in that.

11 THE COURT: Any objection from the Government?

12 MS. AHMED: No. No, Your Honor.

13 THE COURT: All right. I'm going to go ahead and
14 give the question.

15 Jury Note No. 62, last question, "If you really
16 thought your life was in danger, why would you move closer to
17 the threat to take pictures?"

18 Any objection?

19 MR. TANASI: No objection.

20 MR. LEVENTHAL: No objection.

21 THE COURT: Jury Note No. 63 has three questions.
22 Number 1, "How many people and children were there,
23 approximately?"

24 Any objection?

25 MS. AHMED: No.

1 THE COURT: Okay. Number -- what -- oh, women and
2 children. I'm sorry. "How many women and children were there,
3 approximately?"

4 Any objection?

5 Second question, "How did you and your colleague calm
6 down the crowd that was screaming?" I think they mean the
7 crowd -- the crowd that was screaming.

8 Any objection?

9 MS. AHMED: No.

10 MR. TANASI: No objection.

11 THE COURT: And third question, "You indicated that
12 two men were pointing guns to your direction. What was your
13 reaction? Did you move away or stay in the same spot?"

14 Any objection?

15 MS. AHMED: No.

16 MR. TANASI: No objection.

17 MR. PEREZ: No objection.

18 THE COURT: Okay. That was the last one.

19 (Proceedings within hearing of the jury:)

20 THE COURT: All right. So Ranger Burke, I have some
21 questions here. I'm going to read them into the record but
22 these are really jury questions so when you respond, you may go
23 ahead and turn to the jury to respond. All right?

24 THE WITNESS: Okay.

25 THE COURT: So Jury Note No. 58, "At any time were

1 you on the" -- "At any time you were on the scene, did you
2 hear the men who were armed -- or anyone for that matter -- say
3 anything to you or your fellow rangers?"

4 THE WITNESS: Those three . . . I couldn't say for
5 sure that I heard anything that they said to us.

6 THE COURT: And then what about anyone else?

7 THE WITNESS: I heard people screaming at us. Pardon
8 the French, but telling us to "fuck off," "go the fuck home,"
9 "fuck you, BLM," "get the fuck out of here."

10 THE COURT: All right. And the second part of the
11 question on Jury Note No. 58 is, "Did you hear anything from
12 any of the people on the ground or the interstate or anywhere?"

13 THE WITNESS: Did I hear anything from people on the
14 ground? As in not our people on the ground, but . . . the
15 individuals on the interstate?

16 THE COURT: Yeah. I'm not sure if they're trying to
17 gauge how far you are or if they just . . .

18 THE WITNESS: Well, if it's the people that are on
19 the interstate, yeah. Same goes. I heard, again, people
20 screaming at us, you know, "get the fuck out of here," all the
21 last several things I said.

22 THE COURT: All right. "And if so, were you able to
23 make out what was being said?" So I think you've answered that
24 in the positive, that you did. I won't make you repeat it a
25 third time.

1 THE WITNESS: Thanks.

2 THE COURT: Jury Note No. 59 has four questions. The
3 first one is, "Do park rangers have body armor?"

4 THE WITNESS: Yes.

5 So, I'm a law enforcement ranger and, yeah, we all
6 are issued body armor, and we are supposed to wear it. It's
7 not mandatory that we wear it, but we should be wearing it.

8 THE COURT: Okay. And then the question was, "If
9 not, why not?" but you answered that.

10 So then it says, "Do you carry any type of armor?"

11 THE WITNESS: Yes. Not only the one that I wear, but
12 after this incident, we were issued a higher level of threat
13 body armor because the body armor we had wasn't . . . it
14 wouldn't -- the high-powered rifle rounds would have gone
15 through our body armor.

16 THE COURT: Are you ready?

17 Okay. Question No. 2 is, "Do you carry more powerful
18 weapons in your vehicles?"

19 THE WITNESS: In my vehicle, in our vehicles, so we
20 have our sidearm, you know, that normally would be here on your
21 hip, and then in your vehicles we are issued an AR-15, which is
22 a .223 rifle round and then a .870 shotgun. That's usually
23 close quarters-type.

24 THE COURT: And I guess it didn't ask, but I'm going
25 to ask. So were you wearing any type of body armor that day?

1 THE WITNESS: Yes.

2 THE COURT: Okay. Then Question No. 3 is, "When you
3 noticed weapons pointed at you, at any time, when possible" --
4 and in parenthesis -- "(safe) did you call this into dispatch
5 or communicate to officer in charge?"

6 THE WITNESS: When the weapons were pointed at us,
7 there was -- no, I did not put it on the radio. I told the
8 people immediately nearby for their safety, but there had been
9 a -- there was a lot of radio traffic and they had asked us to
10 not continue to inundate the radio because dispatch -- you
11 know, you got a lot of stuff going on there and if you key your
12 mic, then that actually makes somebody else not able to
13 communicate with dispatch. They can't get everything at the
14 same time. So, they were trying to limit the coms to dispatch
15 so they can get out what they needed to get out to people, if
16 that makes sense.

17 THE COURT: So, like our court reporter, who can only
18 type one person speaking at a time?

19 THE WITNESS: Exactly.

20 THE COURT: All right. Number 3 is . . . I'm sorry.
21 Number 4 is, "Why wasn't it" -- "Why wasn't report filled
22 out" -- oh, your report. "Why wasn't your report filled out
23 the same day? Instead, it was three days later."

24 THE WITNESS: Several reasons. The day of this
25 standoff, if you will, we were still under a heightened threat

1 and we didn't get in till later and it was -- you know, we were
2 calling family members to make sure -- I was calling family
3 members to make them know I was okay and we had to get to a
4 hotel in a place that was safe and it still wasn't safe. So,
5 there was not an option to fill it out. We had a lot of other
6 logistics going on at that point. The report was the last of
7 my worries, and certainly many others. And then the other
8 thing is, too, when you do a report, you tend to -- this isn't
9 a typical situation where I'm at the office and I run into
10 somebody out in the field and then I'm having to write a report
11 of what happened right then because it's -- while it's
12 significant, it's not like this and normally you'd go back to
13 your office, you'd type it up, be done with it and put it with
14 your paperwork and on you go, but here, it was such an event,
15 that we still stayed into it for many days and I had -- I had
16 to continue working under that. So, it took several days to
17 even get to a point where I could sit down to write one and it
18 still wasn't optimal; I was still working.

19 THE COURT: All right. Jury Note No. 60 has three
20 questions. The first one is, "Being in the lower low wash
21 looking up to the north highway, the position of the long guns
22 pointed down at your area, did they have the look of the ready
23 position?"

24 THE WITNESS: Okay. Just so I can understand. In
25 the low wash, what's the -- what they could see down in the

1 lower wash?

2 THE COURT: I'll read it again. "Being in the lower
3 low wash" -- I'm assuming that's referring to the description
4 of where you were at, I don't know. You can clarify that if
5 that's not where you were. The question is, "Being in the
6 lower low wash looking up to the north highway, the position of
7 the long guns pointed down at your area, did they have the look
8 of the ready position?"

9 THE WITNESS: Okay. I'll answer that to what I think
10 you're saying.

11 So, just to clarify. The wash itself I wasn't in. I
12 was up above on a -- kind of a hill to -- if you were looking
13 at the overpass, I was over here (indicating), right. And
14 while I had moved from the gate -- or Post 1, it was a little
15 bit lower, and yes, from there, I could see those individuals
16 pointing rifles in our direction, but then also the one
17 individual with the black hat and the white patch, I could see
18 him pointing it, which now would be to my left -- as I looked
19 down, he was pointing it in that direction -- and I could see
20 my colleagues down below in that wash.

21 THE COURT: And did the weapon have the look of the
22 ready position?

23 THE WITNESS: Yes. Yes.

24 THE COURT: Okay. Question No. 2 on Jury Note No. 60
25 is, "Could you see a finger on the trigger?"

1 THE WITNESS: I did not, but it doesn't mean it
2 wasn't there. It just -- at that point all I'm seeing is a
3 rifle pointed at somebody, many people.

4 THE COURT: And Question No. 3 on Jury Note No. 60,
5 "What is the difference in the camo outfit this time compared
6 to any other time?"

7 THE WITNESS: Well, I'd say, you know, typically on
8 my day-to-day patrols I do not run into people wearing
9 camouflage unless it's during hunting season or, you know, a
10 certain hunting season, bird season, big game season, bow
11 hunting season. To me, to see somebody in camouflage where
12 they come at you, you have people with body armor and rifles,
13 to me it was -- it was a threat. Normally when I see people in
14 camouflage out hunting, I don't consider them a threat; they're
15 just a contact, a hunter, but . . . did I answer that fully?

16 Yes. Okay.

17 THE COURT: Jury Note No. 61, the first question is,
18 "Who do you think was the incident commander?"

19 THE WITNESS: Of the entire Bundy event?

20 THE COURT: I think just your incident commander.

21 THE WITNESS: My immediate commander was --
22 supervisor was Don Miller. I had actually had a different
23 person. His name was Ranger John Simms prior to that and he
24 had left the day earlier because he had some family issues
25 where he was -- there was some threats going there and he

1 needed to leave to address those at home. So, the next person
2 that we got to be our boss was Ranger Don Miller.

3 THE COURT: Okay. The next question on Jury Note 61
4 is, "Were you in regular communication with the incident
5 commander?"

6 THE WITNESS: Yes. Throughout -- you know,
7 throughout the event, but at that day in particular, you know,
8 I drove over to talk to Don Miller, was in discussion with him
9 and stayed in communication with him throughout.

10 THE COURT: "Were you told during the incident that
11 NHP was in the area?"

12 THE WITNESS: I can't remember if I was told that or
13 not. I certainly saw their vehicles, but I can't remember if
14 somebody said that in passing or if it was just that I only saw
15 their vehicles.

16 THE COURT: Okay. The next jury question is, "Were
17 you aware, when you observed the men with the long guns, that
18 Metro was there in support of BLM?"

19 THE WITNESS: Metro's SWAT was -- I had been in
20 contact with them. So, yeah, they had pulled up and I had seen
21 their SWAT vehicle arrive and then they pulled in nearby. So I
22 had spoken with them.

23 THE COURT: Okay. And the last question on Jury Note
24 No. 61 is, "When you observed the man with the long gun
25 scanning, could he have been using his scope as a binocular?"

1 THE WITNESS: Uh . . . you know, I guess there's
2 always that possibility. However, I would say if you're a
3 hunter or you have any type of weapon experience, you don't do
4 that. You know, as a hunter, myself, I don't use my rifle
5 sights as a way to gauge something because I don't know what
6 I'm going to come across at that point and I could run into
7 another hunter and you should always point your rifle in a safe
8 direction unless you're willing to shoot what it is that's in
9 your sights. So, while certainly that could be possible, that
10 wouldn't be smart and I don't believe that's what he was doing.

11 THE COURT: All right. Jury Note No. 62, "Did the
12 individuals with guns" -- and then in parenthesis -- "(the
13 three that concerned you) have scopes on their weapons?"

14 THE WITNESS: I think I referenced it in one of my
15 reports, but, you know, as my memory stands this second, I
16 remember seeing long guns. You know, to me, when I saw those,
17 you almost see like the end of the barrel and it's just huge
18 because it's something that can kill you. My eyes were on that
19 more than the scope, but I don't remember at this second if
20 they were all scoped or not.

21 THE COURT: Okay. And second part of Jury Note No.
22 62 is, "Without long distance training and scopes, would it
23 have been a difficult shot to make if you happened to be the
24 target?"

25 THE WITNESS: Yes. It would have been a very

1 difficult -- for -- for me to shoot at somebody, yes.

2 THE COURT: I think they're -- if you happened to be
3 the target, would it have been -- I'll read it again.

4 "Without long distance training and scopes, would it
5 have been a difficult shot to make" -- and then in
6 parenthesis -- "(if you happened to be the target)?" So not if
7 you're the shooter, if you happened to be the target.

8 THE WITNESS: I'll say this. It -- it -- it's more
9 than just a yes or no answer to me. If -- like, when I was --
10 my training goes that you would normally shoot back or you
11 would at least -- you know, if you see a rifle pointing at you,
12 I have the option to shoot back. They're threatening me. And
13 I wasn't willing to shoot into that crowd of people not knowing
14 with a hundred percent certainty that I could hit that
15 individual with the rifle. But, you know, on the other side of
16 that, it was just a bunch of us in uniform and special agents
17 that might not be in uniform, but they're -- it didn't matter
18 if they hit me, they could have hit somebody right next to me.
19 I mean, they were going to get -- if they shot in my
20 direction -- most likely, somebody.

21 THE COURT: All right. And the third question from
22 Jury Note No. 62 is, "If you really thought your life was in
23 danger, why would you move closer to the threat to make
24 pictures?"

25 THE WITNESS: I -- I wanted to get good photos. I

1 did it at a time where I felt I was safe to get closer. It
2 wasn't a huge gap of distance and I had two other individuals
3 that were at -- where I went up to, where I ran up to, that had
4 weapons as well. So, I felt covered by them to go up there.

5 THE COURT: Okay. And Jury Question No. 63 has three
6 questions. The first one is, "How many women and children were
7 there, approximately?"

8 THE WITNESS: I'm sorry. I just can't give a number
9 as far as women and children. I know I saw women and I know I
10 saw children up there, and they were kind of sprinkled
11 throughout the crowds, but I -- I don't have a definitive
12 number for you. To me, one was too many.

13 THE COURT: All right. And the second question is,
14 "How did you and your colleague calm down the crowd that were
15 screaming?"

16 THE WITNESS: I don't know that we did. Eventually,
17 when we backed away, there was another officer that was
18 interacting with particularly the woman that was screaming and
19 I didn't end up dealing with her directly. So, I don't know
20 that we dealt with her or the group very well; we just
21 disengaged a little bit. Created some distance for safety.

22 THE COURT: And the last question on Jury Note No. 63
23 is, "You indicated that two men were pointing a gun to your
24 direction. What was your reaction? Did you move away or stay
25 in the same spot?"

1 THE WITNESS: I ducked. We were -- I was behind
2 cover anyways. I'm behind my vehicle, you know, and I have it
3 positioned as such and the interstate is out like this
4 (indicating) and I had been going between spots, but, yeah, I
5 ducked. And then I looked up. There's a term called "slicing
6 the pie" and as you get a little bit further away from a
7 vehicle and/or whatever it is, you can slowly bridge a gap
8 there that you can see out quite a distance without exposing
9 yourself too much and I was able to do that a little bit.

10 THE COURT: All right. So that's the last question.
11 Any follow-up questions from the Government?

12 MS. AHMED: Nothing, Your Honor. Thank you.

13 THE COURT: Anything follow-up by the defense?

14 MR. TANASI: None from Stewart, Your Honor.

15 MR. MARCHESE: None from Parker.

16 MR. LEVENTHAL: No, Your Honor.

17 MR. PEREZ: None from Lovelien.

18 THE COURT: All right. So, Ranger Burke, you're all
19 done. Thank you very much for coming in today. You are
20 excused.

21 THE WITNESS: Thank you.

22 THE COURT: And so, I just -- please be careful on
23 the way down with those steps.

24 THE WITNESS: Okay.

25 (Witness excused.)

1 THE COURT: Government may call its next witness.

2 MS. CREEGAN: Thank you, Your Honor.

3 The United States calls Officer Sean Cox.

4

5 SEAN COX,

6 called as a witness on behalf of the Government, having been
7 first duly sworn, was examined and testified as follows:

8

9 THE COURT: Good afternoon.

10 COURTROOM ADMINISTRATOR: Please remain standing and
11 raise your right hand.

12 You do solemnly swear that the testimony you shall
13 give in the cause now before this Court shall be the truth, the
14 whole truth, and nothing but the truth, so help you God?

15 THE WITNESS: Yes.

16 COURTROOM ADMINISTRATOR: Thank you, sir. You may be
17 seated.

18 Please state your full name for the record and spell
19 your last name.

20 THE WITNESS: My name is Sean Cox. My last name is
21 spelled C-o-x.

22

23 DIRECT EXAMINATION OF SEAN COX

24 BY MS. CREEGAN:

25 Q. Good afternoon, Officer Cox.

1 A. Good afternoon.

2 Q. What is your current position of employment?

3 A. Currently, I'm a police officer with the United States
4 Park Police in Washington, D.C.

5 Q. How long have you been an officer with the United States
6 Park Police?

7 A. Currently, I've been an officer for about four years and
8 11 months. I'm going on five years in August.

9 Q. Do you have any law enforcement experience before joining
10 the Park Police?

11 A. Yes. I worked as a municipal police officer in New Jersey
12 for approximately a year and a half prior to federal service.

13 Q. As a federal law enforcement officer, is there any
14 training that you're required to complete?

15 A. Correct. We do approximately six months of training in a
16 federal training academy in Georgia. It's called the Federal
17 Law Enforcement Training Center and it's a basic police
18 training to have you commissioned and certified to be a police
19 officer.

20 Q. Did you undergo subsequent training after being trained in
21 the academy or at the training center?

22 A. Correct. We do about 40 hours of in-service training
23 every year. On top of that we can apply for specialized
24 training throughout the year to hone our skills further.

25 Q. Did you participate in a cattle impoundment operation in

1 Bunkerville, Nevada, in April 2014?

2 A. Yes.

3 Q. And was that in your official capacity?

4 A. Correct, yes.

5 Q. Were you present at the Incident Command Post or
6 impoundment site on April 12, 2014?

7 A. Yes. Yes, I was.

8 Q. And did you have duties at that time?

9 A. Yes.

10 Q. What were your duties at that time?

11 A. My duties around the incident command center that morning
12 were just to provide site security. Make sure that any
13 unauthorized people weren't coming into the site and just to
14 protect the government property and most importantly, the
15 civilians that were working that site.

16 Q. And you said you were doing site security. Did you have
17 an understanding of why you were doing site security?

18 A. Yes.

19 Q. And what was that understanding?

20 A. It was my understanding after morning briefings that
21 threat levels have -- had risen between local militias in the
22 area and federal employees and that there was a chance that we
23 could be encountered by local militiamen or armed men at our
24 command center.

25 Q. What was your understanding of the status of the operation

1 on April 12, 2014?

2 A. The status of the operation at that time is we were trying
3 to de-escalate those tensions I just spoke about, so, we were
4 no longer collecting cattle. The -- the gathering of cattle
5 had ceased, but at that time we were still responsible for the
6 cattle that we had on property and we were working out
7 logistics to kind of break down our Incident Command Post and
8 move that cattle to other locations.

9 Q. Did you ever have an understanding that you were going to
10 leave the cattle behind?

11 A. No.

12 Q. Did you ever have an understanding the cattle were going
13 to be just released?

14 A. No.

15 Q. What was your understanding of what was going to happen
16 with the cattle?

17 A. It was my understanding we were going to be moving that
18 cattle out of state --

19 MR. LEVENTHAL: I'm going to object as to foundation.
20 Hearsay.

21 MR. MARCHESE: Asked and answered.

22 THE COURT: Any response?

23 MS. CREEGAN: Well, to asked and answered, I don't
24 think I've asked and answered that particular question. To
25 foundation, he's there at the Incident Command Post. He's

1 providing security for operations that are ongoing at that
2 time. He should have an understanding of what they are.

3 THE COURT: All right. That's enough.

4 Overruled. He may answer the question.

5 BY MS. CREEGAN:

6 Q. So, just to repeat it. What was your understanding of
7 what was going to happen to the cattle at that point?

8 A. Again, due to those growing tensions that were occurring,
9 we were trying move the cattle out of that area. So we were
10 just trying to move the cattle to an outside location,
11 preferably out of the state, and at that time my job was going
12 to be primarily to either trail or lead that cattle convoy back
13 and forth until we got all the equipment out of the incident
14 command center.

15 Q. Okay. So you mentioned that you were doing site security
16 on April 12, 2014. Did anything happen on April 12, 2014, that
17 challenged the security of the impoundment site?

18 A. Yes.

19 Q. And how did that first start to happen?

20 A. Initially we were contacted saying that a large group of
21 people were going to be approaching or on their way to our
22 Incident Command Post. We were told that some of them were on
23 horseback, some of them had rifles, long guns and -- and they
24 were on their way to our location.

25 Q. So, in response to that, what was your action, given that

1 you had duties to secure the site of the impound site?

2 A. As a SET Team and as the primary security of that Incident
3 Command Post, we found that there was two areas that were
4 mainly vulnerable; one was off of I-15 and the other was down
5 in a wash area under an overpass.

6 Q. So let me -- let me break down your answer just a little
7 bit.

8 So, first you mentioned as a member of the SET Team.
9 Can you tell what the SET Team is?

10 A. Correct. It's a Special Events Team that's utilized by
11 the Park Service in times where an event's going to take place
12 that they anticipate a large group of people becoming involved,
13 you know, coming to.

14 Q. So, is it fair to say that the SET Team regularly deals
15 with large crowds of people?

16 A. That's correct.

17 Q. Were you a member of the SET Team at that time?

18 A. Yes.

19 Q. Did you have special training in how to handle crowds?

20 A. Yes. We go through crowd control training often.

21 Q. Did you have any special training in how to handle a
22 violent crowd?

23 A. Yes. Our crowd control training, for the most part, is
24 for non-lethal, non-deadly force. So, we're equipped with
25 plastic shields, we're equipped with protective equipment,

1 helmets, visors, things that -- if broken bottles, for
2 instance, rocks, bricks, things that are non-lethal in force
3 hit us, we have the protective equipment to deal with those
4 type of projectiles.

5 Q. So you mentioned that the SET Team evaluated two potential
6 areas. Could you just describe, again, what those two areas
7 were that you were evaluating as possible areas that you might
8 need to secure?

9 A. Yeah. The one area was an entry point for vehicles. It
10 came off of I-15 and it came down into our ICP area. A second
11 area was under a overpass which we called the washout.

12 Q. And are those referred to as Post 1 and Post 2,
13 respectively?

14 A. That's correct.

15 Q. Did you respond to one of those areas, Post 1 or Post 2?

16 A. Yes. I responded to Post 2, which is that washout area
17 under the overpass.

18 Q. And is this -- which -- when you say "under the overpass,"
19 overpass of what?

20 A. The overpass of I-15. There was infrastructure there, a
21 bridge, that carried I-15 and we were in the dirt washout
22 underneath of it.

23 Q. Is this the southbound or the northbound lane of I-15?

24 A. We were closer to the southbound lane.

25 Q. So when you say "we responded"; that would be members of

1 the SET Team?

2 A. Yeah. Initially there was six of us that responded.

3 Q. Okay. And what was it that you -- when you're responding
4 to that area, that you decided to do?

5 A. When we responded, we just really wanted to observe what
6 was taking place and kind of develop a plan that would -- that
7 would best safeguard that area.

8 Q. So you mentioned you were going to observe what took
9 place. What did you first observe -- you know, did anybody, in
10 fact, come to the Post 2 area where you could observe them from
11 Post 2?

12 A. Yeah. I was able to observe a few different things. I
13 was utilizing binoculars and, you know, regular vision. At
14 first there was a large gathering of people, you know,
15 approximately 200 to 300 yards past the washout area that were
16 gathering in kind of a -- somewhat of a semicircle it appeared
17 to me.

18 Q. So you say you saw a large group of people. Where are
19 they in relation to where you are under the southbound
20 overpass?

21 A. Again, they're through the washout area, through the
22 underpasses and on the same level as I am. They're not up on
23 the overpasses, they're just straight through underneath the
24 overpasses, just about 2 or 3 hundred yards away.

25 Q. So would they be on the other side of the northbound

1 overpass, on the closer side of the northbound --

2 A. On the far side of the northbound overpass.

3 Q. Okay. And I think you mentioned you were watching them
4 with binoculars. What were you able to observe about them at
5 that time?

6 A. At that time, it just looked like a group that was coming,
7 like I said, into a circle to kind of talk. It didn't really
8 seem threatening in nature at that point.

9 Q. Okay. Did there come a time when things changed?

10 A. Yes.

11 Q. And how did they change?

12 A. Things started really developing quickly. The -- the
13 southbound lane of travel that was above me, all of a sudden
14 traffic started to stop and civilians that were up there
15 started to yell at us and their close proximity to us, they
16 could have hit us with any type of projectiles that they want
17 and they were also in an area where it would have been
18 difficult for us to get up to make contact with them because
19 they were up above us. Secondly, that crowd, that started
20 develop further in my line of vision, started making their way
21 closer to me and then horseback started to come with that
22 crowd, which also was another perceived threat that I felt
23 was -- was substantial.

24 Q. So taking your attention, you mentioned this crowd. You
25 mentioned they're being joined by people on horseback. What

1 did you observe, that combined crowd of those people and the
2 people on horseback, to do?

3 A. The -- the -- the people on horseback and the crowd, they
4 just continued to encroach towards our Incident Command Post.
5 We had a fence up. We were not trying to make contact with
6 them. We weren't trying to make contact with them or go closer
7 to them. We kind of had our fence and everything set up and we
8 just wanted to keep people out.

9 Q. How close were you to that fence that was under the
10 southbound overpass?

11 A. I'd say maybe 30 or 40 feet.

12 Q. And were the people drawing closer to you?

13 A. That's correct.

14 Q. Did there come a point where you could see them better
15 through by binoculars?

16 A. Yeah. Absolutely. They were at a point that they were so
17 close I didn't need to utilize my binoculars anymore.

18 Q. So you mentioned there's a point where they come forward
19 together. Could you see them through your binoculars at that
20 point?

21 A. Yes.

22 Q. What could you observe about the group at that point?

23 A. At that point, I -- like I said, I observed members on
24 horseback. I observed that there was some people in the crowd
25 that had sidearms holstered. I observed there were some people

1 in the crowd that had long guns braced across the front of
2 them. There was a lot of unleashed dogs that were in the
3 crowd, however, there was one individual that had a leashed
4 German Shepherd that, again, stood out to me just because it
5 wasn't the norm of that crowd at the time.

6 Q. So you mentioned you saw some individuals with long guns.
7 What particularly drew your attention to these individuals with
8 long guns?

9 A. Again, just -- my perceived threat level is based on the
10 type of training that I have, which is the type of caliber and
11 accuracy that those people could have with those guns and also
12 the movements that they were making. A lot of these people in
13 the crowd were just moving forward to us and, you know,
14 verbally voicing their opinions, where others were really
15 unconcerned with us and really just looking deliberately to
16 seek cover behind concrete infrastructure that was --

17 MR. LEVENTHAL: Objection. Speculation. Move to
18 trike.

19 MR. TANASI: Stewart joins.

20 MR. MARCHESE: Parker joins.

21 MR. PEREZ: Lovelien Jones.

22 MS. CREEGAN: He's giving his own observations of
23 what he saw the crowd doing.

24 THE COURT: Overruled.

25 BY MS. CREEGAN:

1 Q. So, Officer Cox, you mentioned saw some people kind of
2 coming forward voicing their opinions, but you saw other people
3 doing something else. What -- can you describe generally what
4 the other people were doing?

5 A. The other people, it appeared to me, were seeking cover.
6 They were walking behind the concrete pillars that held up the
7 interstate above. They were also utilizing the berms that rose
8 on the side to, again, go up and kind of get a better picture
9 of what took place in that ICP behind us. It appeared they
10 were, you know, moving to higher ground.

11 Q. So besides the fact that some of these individuals were
12 armed and some of them seemed to be seeking cover, is there
13 anything else you found concerning about these individuals?

14 A. Yeah. As I continued to scan the crowd, it looked like
15 they were able to talk to each other with hand signals. A lot
16 of these individuals were in groups of two or three that
17 appeared that they were working together. When I looked at the
18 north -- excuse me -- yes. When I looked at the northbound
19 lane of traffic, which was further from me, I saw that there
20 were also men up there that had long guns, which were kind of
21 providing an overwatch for the group below.

22 Q. So, taking your attention to people that you saw on the
23 northbound bridge, were there any individuals in particular
24 that caught your attention on the northbound bridge?

25 A. Yeah, that's correct. There were three individuals on the

1 northbound bridge that were able to stand out to me.

2 Q. What is the reason that these three individuals stood out
3 to you?

4 A. Very similar to the same things I mentioned earlier. They
5 were in a tactically superior place than we were, raised, up on
6 a bridge, with a concrete barrier in front of them to provide
7 them really well [sic] cover. They also had long black guns,
8 which, in my perspective, provided them with better accuracy
9 than the small sidearm, and they also were wearing vests,
10 which, again, was just better equipment to help utilize the
11 transfer of ammunition of things if they needed to.

12 Q. Did you observe anything about these three individuals in
13 terms of -- you mentioned coordination or hand signals. Was
14 there anything like that that you observed?

15 A. Yeah. They were kind of talking in a group and then they
16 split up. One individual split up and started walking
17 southbound in northbound traffic and I followed him for a
18 little bit. I was unable to locate the two other individuals
19 when I scanned back with binoculars.

20 Q. So you mentioned a little bit about these three
21 individuals and I just want to ask you, kind of taking them
22 person by person, everything that you can remember as you sit
23 here today about what those people looked like. So you
24 mentioned first, one person headed a little further south.
25 What's everything that you can kind of remember about what that

1 person looks like, or anything that they had on their person?

2 A. That individual had a long black gun. He was wearing a
3 T-shirt, and that's a -- the most vivid picture that I can
4 paint of him.

5 Q. Okay.

6 A. There was a second individual that had a beard. He did
7 have a darker colored tactical vest on and a long gun. He was
8 also wearing a hat. And then a third individual had a long gun
9 and a black vest on. He also had a beard and there was --
10 that's the best description I can provide.

11 Q. Okay. I'm going to bring up what's been previously
12 admitted as Government's Exhibit 14.

13 And can we stop it right there, please?

14 (Screenshot published.)

15 BY MS. CREEGAN:

16 Q. Officer Cox, we have a person who is depicted in the
17 foreground of the screen here. Does this person appear to be
18 consistent with one of the descriptions that you've just given,
19 the foreground here?

20 A. Yes.

21 Q. And which -- which person is this of the three that you've
22 just described?

23 A. That would be the individual with the beard and the black
24 tactical vest and the long gun.

25 Q. Okay.

1 MS. CREEGAN: And can you play for a little bit,
2 please.

3 (Exhibit 14 published.)

4 MS. CREEGAN: Can you stop that, please. Thank you.

5 BY MS. CREEGAN:

6 Q. And just taking your attention to the person on the left
7 side of the screen at 5 seconds, does that person appear to be
8 consistent with one of the persons you've just described?

9 MR. TANASI: Objection. Leading.

10 THE COURT: Overruled. He can answer the question.

11 THE WITNESS: Yes. Based on the T-shirt and the long
12 gun, yes.

13 BY MS. CREEGAN:

14 Q. Which person was this?

15 A. That would be the one who walked away from the group. He
16 walked south in the northbound lane of traffic.

17 Q. So, just so we understand what south is, you're underneath
18 the southbound bridge looking at the northbound bridge;
19 correct?

20 A. Um-hmm, correct.

21 Q. Did he go right or left?

22 A. He's walking to the right of my field of view.

23 Q. Okay.

24 MS. CREEGAN: And can you skip to the end, please.

25 To the still frame at the end.

1 (Screenshot published.)

2 BY MS. CREEGAN:

3 Q. And the person who's in Exhibit 14 at 1 minute and 28
4 seconds, is this consistent with one of the descriptions of the
5 persons that you saw?

6 A. That's correct.

7 Q. Which person is this?

8 A. He's the second individual with short sleeves, a tactical
9 vest, and the long gun, the beard and the hat.

10 Q. And you -- and I think I heard you say this, but you
11 observed them gathered together at one point. Did you observe
12 whether they appeared to be talking or doing anything else with
13 one another?

14 A. Again, you know, I'm looking with binoculars so I can't
15 hear them talking or anything like that. You know, based on
16 how they're gathered, facing each other and, you know, the
17 close proximity of where they're at, I would assume so.

18 Q. So, you mentioned also that they split up. Did you see
19 where they went when they split up?

20 A. Unfortunately, with the binoculars, I was only able to
21 follow that one gentleman to the right. When I scanned back
22 with the binoculars to the left, I was unable to locate the two
23 other gentlemen.

24 Q. Did that give you concern as a law enforcement officer
25 that you couldn't locate them?

1 A. Yes. You know, similar to -- in police training, you want
2 to always see a suspect's hands or an individual's hands and
3 very similar to when you can't see something and you can't
4 figure out where they're at, that was -- that was very similar
5 to me because I -- I had fear of the unknown of where these two
6 possibly went.

7 Q. Did you have concern at seeing a group of three people
8 with long guns that appeared to be working together?

9 A. Yes.

10 MR. TANASI: Objection. Leading.

11 THE COURT: Sustained.

12 BY MS. CREEGAN:

13 Q. Did you have concern observing these three individuals?

14 A. Yes.

15 Q. What was that concern?

16 A. The concern was what I mentioned earlier, the superior
17 positioning that they had on us, the type of weapons that they
18 were possibly utilizing, and the type of equipment that they
19 donned.

20 MS. CREEGAN: And can we bring up, for the witness
21 only, Exhibit 157.

22 THE COURT: Before we do that, could we have him
23 clarify the difference between the vest and the armor.

24 He was talking about vests. So he just means -- I
25 mean, I don't want to say what I think he means, so I would

1 rather just have him say what he means when he refers to
2 "vest."

3 BY MS. CREEGAN:

4 Q. So, when you use the term "vest," what does that mean to
5 you?

6 A. There's really a few different meanings. The vest that
7 I'm talking about is a carrier that can either carry body armor
8 and ammunition on the outside, or just ammunition. Both would
9 raise a perceived threat level to me.

10 Q. And you mentioned that you saw one individual with
11 something black and one individual with something dark color.
12 Was one of those a vest or body armor? Were you able to tell
13 which one it would be for the individuals that seemed to have
14 something on?

15 MR. MARCHESE: Objection. Leading.

16 MR. TANASI: Stewart joins.

17 THE COURT: Well, the question was whether he could
18 tell what it was that he was wearing, the different kinds of
19 vests, what vest means. So I don't think that's leading.

20 Overruled. He can answer the question.

21 THE WITNESS: I'm -- could you ask that again? I'm
22 sorry.

23 BY MS. CREEGAN:

24 Q. So, you described three individuals and you mentioned that
25 one had something black on. Was that a vest or was that body

1 armor or was that something else?

2 A. Again, from -- from my vantage point, I can't say that
3 they were donning body armor under the vests that they had.
4 All I can see is that their vests have compartments that were,
5 you know, easily accessible to ammunition. What is underneath
6 that cloth carrier, I'm unaware of.

7 Q. And does that apply to both the person with the black vest
8 and the person with the dark colored vest?

9 A. That's correct.

10 (Exhibit 157 published to witness.)

11 BY MS. CREEGAN:

12 Q. So drawing your attention to proposed Exhibit 157, do you
13 recognize the scene depicted in 157?

14 A. Yes.

15 Q. Does this fairly and accurately represent what you,
16 yourself, saw on April 12, 2014?

17 A. Yes.

18 Q. And this is not your exact position?

19 A. No.

20 Q. Where are you in the general scheme of what appears in
21 this picture, Exhibit 157?

22 A. There's a white BLM truck, the back window is marked ME4.
23 I am to the left of that truck.

24 Q. Okay.

25 MS. CREEGAN: Government moves to admit Exhibit 157.

1 (Exhibit 157 offered.)

2 THE COURT: Any objection to Exhibit 157?

3 MR. TANASI: None from Stewart, Your Honor.

4 MR. MARCHESE: None from Parker.

5 MR. LEVENTHAL: No, Your Honor.

6 MR. PEREZ: None from Lovelien.

7 THE COURT: All right. Exhibit 157 will be admitted.

8 (Exhibit 157 received.)

9 THE COURT: You may publish it to the jury.

10 MS. CREEGAN: Thank you.

11 (Exhibit 157 published.)

12 BY MS. CREEGAN:

13 Q. Officer Cox, now that the jury can see 157, what's
14 generally depicted in this picture?

15 A. The depiction is -- is, you know, just the growing crowd
16 of people making their way closer to the gates. Like I said,
17 that further BLM truck that is marked ME4, there's a -- kind of
18 a red flag and a light pole on top of it. I am to the left of
19 that.

20 Q. And from this position, can you see the northbound bridge?

21 A. Yes.

22 Q. And can you see the general area where you saw all these
23 three individuals?

24 A. Yes.

25 Q. Could you circle that, please.

1 A. (Witness complies).

2 Q. So --

3 A. That would --

4 Q. I'm sorry. Go ahead.

5 A. That would be the area, even possibly a little bit further
6 left, to where I -- I started to observe them. As they split
7 up, the one individual started walking closer to this, you
8 know, area of (indicating) --

9 Q. And when you say the one individual, you mean the one that
10 was heading south?

11 A. That's correct.

12 Q. I know that this picture doesn't have everything, but
13 how -- about how many pillars hold up the northbound bridge in
14 this wash area?

15 A. There's -- there's two pillars. Two primary pillars that
16 stand up, but each of those two primary ones have, you know,
17 three to four pillars there that you can use to conceal cover.

18 Q. So, from your perspective, looking onto the bridge and
19 seeing the two main pillars, where was this group of three
20 individuals in relationship to the two pillars?

21 A. They would have been in the middle of those two pillars,
22 kind of in the middle of the bridge at the time.

23 MS. CREEGAN: Thank you. You can take that down.

24 Court's indulgence for a moment?

25 THE COURT: Yes.

1 (Counsel conferring.)

2 MS. CREEGAN: I'm sorry. Can you bring up Exhibit
3 157 again, please?

4 (Exhibit 157 published.)

5 BY MS. CREEGAN:

6 Q. And again, Officer Cox, I'm sorry, I know you can't see
7 everything in this picture, but could you just draw an "N" on
8 where the northbound lane is.

9 A. (Witness complies).

10 Q. And could you draw an "S" if you see any of the
11 infrastructure of the southbound bridge in this picture.

12 A. (Witness complies).

13 MS. CREEGAN: Thank you. You can take that down.

14 No further questions, Your Honor.

15 THE COURT: Any cross?

16 MR. TANASI: Yes, Your Honor. Thank you.

17

18 CROSS-EXAMINATION OF SEAN COX

19 BY MR. TANASI:

20 Q. Good afternoon, Officer Cox.

21 A. Hi. How are you?

22 Q. I'm Rich Tanasi. I represent Steven Stewart (indicating).
23 I have a few questions for you on cross. Okay?

24 A. Yeah. Absolutely.

25 Q. All right. So, your testimony about the three individuals

1 that stood out to you on the northbound bridge, I want to take
2 you back there. Okay?

3 A. Okay.

4 Q. All right. Those three individuals stood out to you
5 because of the high ground; right?

6 A. That was one of the possible, you know, threats, you know.

7 Q. Okay. And yes or no, please.

8 Another reason the three individuals stood out to you
9 is because of their long guns; correct?

10 A. Yes.

11 Q. Okay. And the three individuals had vests; correct?

12 A. Yes.

13 Q. All right.

14 MR. TANASI: So if we could, Brian, please bring up
15 Exhibit 14.

16 (Exhibit 14 published.)

17 MR. TANASI: Okay. Brian, if you could play it --
18 well, with no audio, play it just for a couple -- a couple
19 moments. Two seconds in, three seconds in.

20 Stop.

21 BY MR. TANASI:

22 Q. All right, sir. And you identified this individual as
23 (indicating) somebody that you saw, one of those three
24 individuals that you've talked about here today; right?

25 A. That's correct.

1 Q. Okay. And this individual that I have circled
2 (indicating), you recognized him because of the T-shirt you
3 said; right?

4 A. That's correct.

5 Q. Okay. He's not wearing a vest; correct?

6 A. That is correct.

7 MR. TANASI: Take that down, Brian, please.

8 BY MR. TANASI:

9 Q. The three individuals, you said, appeared to be kind of
10 working together; right?

11 A. Yes.

12 Q. And one of the reasons they were working together you had
13 testified was because they were gathered at some point.

14 Is that fair?

15 A. Yes.

16 Q. Okay.

17 MR. TANASI: Brian, if you could bring up, please,
18 Exhibit 157.

19 (Exhibit 157 published.)

20 BY MR. TANASI:

21 Q. Okay. Sir, would you agree with me that these folks over
22 here (indicating) appear to be gathered?

23 A. That -- in a sense, that group is gathered. However, they
24 are not gathered at 45 degree angles somewhat, again, in a
25 semicircle.

1 Q. Okay. Yes or no.

2 This group here -- just yes or no, please -- that
3 group appear to be gathered? Just yes or no.

4 MS. CREEGAN: Object to a yes or no, if he needs to
5 qualify or explain his response.

6 MR. TANASI: Your Honor, that's the purpose of
7 redirect.

8 THE COURT: Sustained.

9 Well, you can't tell the witness to answer yes or no.
10 You can ask the question in a leading manner, but you need to
11 let him finish answering the question.

12 BY MR. TANASI:

13 Q. Go ahead, sir. Does this group appear to be gathered?

14 A. Some members in that group appear to be gathered. Others
15 do not.

16 Q. Okay.

17 MR. TANASI: Take that down, Brian, please.

18 BY MR. TANASI:

19 Q. Of the three individuals that you say appeared to be
20 working together, you said at one point one of those
21 individuals, he went to your right; right? He left your vision
22 and went to your right; correct?

23 A. Yes. That's correct.

24 Q. All right. And that was on the northbound bridge; right?

25 A. Yes, that's correct.

1 Q. The bridge that was further away from you?

2 A. Yes.

3 Q. Okay. All right. And for how long was he out of your
4 field of vision kind of heading to the right away from the
5 other two individuals?

6 A. That individual wasn't out of my field of vision. I -- I
7 was able to track him. It was when I looked back to where they
8 initially gathered at that I was unable to track the other two
9 individuals.

10 Q. Okay. The individual who went off to the right, it's your
11 testimony that you had eyes on him the whole time?

12 A. Not the whole time. There's continuing threats that are
13 coming to this area. My job is to point them out as to what I
14 feel is the highest to my teammates and then I'm on to the next
15 one.

16 Q. Okay. So it's fair to say the individual that you say was
17 running to the right, you didn't have eyes on him the entire
18 time you were in the wash on April 12, 2014. Fair?

19 A. That is correct.

20 Q. Okay. Fair to say that on the 12th you saw protestors?
21 Is that fair to say?

22 A. There were some protestors on the 12th.

23 Q. Okay. Sir, when did you first arrive in Bunkerville?

24 A. I would say I arrived sometime around April 1st, I
25 believe, is when my travel started.

1 MS. CREEGAN: Objection. Relevance.

2 THE COURT: Asked and answered.

3 MR. TANASI: Okay. I'll move on.

4 BY MR. TANASI:

5 Q. You were in Bunkerville on -- at 8:15 in the morning on
6 April 12th; correct?

7 A. Correct.

8 Q. Okay. And isn't it true that you learned that the BLM was
9 going to make an announcement that the media was going to be
10 informed the Gold Butte seizure had ended? Isn't that true?

11 A. The way that briefing was described to me was that we were
12 no longer seizing cattle. However, logistically, we needed to
13 work out how we were going to move that cattle and the
14 operation center out of that area to a less hostile area.

15 Q. But, in fact, isn't it true that you were advised that the
16 Gold Butte cattle seizure had ended?

17 A. I don't remember that quote coming from anyone --

18 Q. You don't?

19 A. -- particularly.

20 Q. Would seeing a copy of the report you prepared on
21 April 15th, 2014, help to refresh your recollection as to
22 exactly what you were informed?

23 A. Possibly.

24 Q. Okay.

25 (Document shown to witness.)

1 BY MR. TANASI:

2 Q. Okay, sir. I'm showing you a copy of your report. It
3 appears to be prepared on April 15th, 2014?

4 Do you see that?

5 A. That's correct.

6 Q. Okay. If I could direct your attention down to the last
7 paragraph.

8 A. Yep.

9 Q. Read that and let me know when that refreshes your
10 recollection as to what you learned with respect to the
11 Gold Butte cattle seizure.

12 A. Yeah. You know, I think perception is a little bit
13 different in my report. As I write this report -- and I'm not
14 sure if that's a report that was written by the FBI in regards
15 to an interview with me that may also be incorrect -- but if
16 you read there, it says the seizure of cattle had ended. The
17 logistic moving of the cattle we were still working out.

18 Q. Understood. But this report demonstrates that you --
19 well, let's back up. Let's unpack that for a minute.

20 I'm going to show you the last page of that report.
21 That's your signature there (indicating); right?

22 A. That's correct.

23 Q. So you wrote this report, didn't you?

24 A. That's -- yes.

25 Q. Okay. All right. So, again, having written this report

1 and now seeing that in the report, you wrote the Gold Butte
2 cattle seizure had ended as of 8:15 hours on April 12th?

3 MS. CREEGAN: Objection. Asked and answered. He
4 said yes, he had said that and also they were going to work out
5 the logistics of the cattle also in the report.

6 MR. TANASI: And, Your Honor, all I was trying to
7 clarify is whether or not these were his words that he wrote or
8 not. I think I've done so with him indicating he's signed the
9 report, but, that's what I'm trying to clarify.

10 THE COURT: Overruled. He can answer the question.

11 THE WITNESS: Yes. That's my report and those are
12 the words that I did write.

13 MR. TANASI: Okay. Thank you. I'll pass the
14 witness.

15

16 CROSS-EXAMINATION OF SEAN COX

17 BY MR. MARCHESE:

18 Q. Good afternoon, sir.

19 A. Good afternoon.

20 Q. Turning your attention to April 12, 2014.

21 Now, you established on direct examination at some
22 point you went down to the wash by the gate area was your
23 testimony; correct?

24 A. That is correct.

25 Q. And at some point in time you -- when you get down there,

1 I think you said you saw some people, approximately, give or
2 take, 200 yards away in some sort of a circle, semicircle area;
3 correct?

4 A. That's correct.

5 Q. Okay. And as time is progressing, there are more people
6 gathering; is that correct? In that area.

7 A. Yes, that's correct.

8 Q. Okay. And at some point in time the crowd begins to move
9 forward towards you. Isn't that right?

10 A. Yes.

11 Q. And that crowd comprised of horses; correct?

12 A. Yes.

13 Q. People on foot; correct?

14 A. Yes.

15 Q. Men; correct?

16 A. Yes.

17 Q. Women; correct?

18 A. That's correct.

19 Q. Might have even been some children and some dogs in the
20 crowd; correct?

21 A. That is all correct.

22 Q. All right. So, at that point you're still in the -- in
23 the wash, I believe, to the left of that middle truck that you
24 pointed out on Exhibit 157; is that right?

25 A. Yes.

1 Q. Okay. And you're scanning the crowd with binoculars.
2 That's your duty, is to just look and perceive and let your
3 fellow officers know what's going on; is that right?

4 A. That's correct.

5 Q. Okay. At what point in time did you see these three
6 individuals on the northbound bridge? And I don't need an
7 exact time. I'm sure you weren't looking at your watch, but
8 where was the crowd in the wash?

9 A. The crowd at that point was further -- a little further
10 back, but, again, encroaching. I can't come up with a -- an
11 exact description of where the crowd was in that wash. They
12 were, again, encroaching on us, but over time, they came closer
13 and closer. As I'm looking at these individuals, the crowd
14 isn't pressed up against the fence like they were later in the
15 day, but they were in the washout area under the bridges.

16 Q. Okay. Now, these three individuals, when you first see
17 them, you testified on direct examination that you remembered
18 them having long black guns and vests; correct?

19 A. That is correct.

20 Q. Okay. And how long did you perceive them before the
21 individual in the T-shirt broke away?

22 A. Again, they were -- based on the equipment that they were
23 carrying, their firearms, their vests, they were people of
24 interest.

25 Q. Sure.

1 A. If you're asking about perceived threat, they -- it's all
2 about what's high alert to me. People that had their firearms
3 holstered on their side, these gentlemen were more of a
4 perceived threat to me due, again, to their -- their accuracy
5 of their -- the potential accuracy of their weapons with the
6 length of the barrel, their superior location in regards to
7 where we were standing.

8 Q. Okay. The question I had asked actually, sir, was, in
9 reference to how long did you perceive them before the
10 individual with the dark T-shirt broke away from the group of
11 three?

12 A. Oh. Possibly 30 seconds.

13 Q. Okay. So you're just looking at them because based on all
14 the things you just said on the prior question, being raised,
15 having long arms, having dark colored vests, you're fixed --
16 fixated upon them for about 30 seconds and then the individual
17 breaks away; correct?

18 A. That's correct.

19 Q. Okay. And then you follow the individual with the
20 T-shirt.

21 Is that accurate?

22 A. That's correct.

23 Q. Okay. And how long did you follow him for, approximately?

24 A. Again, just the length of his walk across the bridge,
25 which might have been 10 to 15 seconds.

1 Q. Okay. And then you follow him for 10 to 15 seconds and
2 then you scan back to the other two men, that would be the two
3 men with the facial hair?

4 A. That's correct.

5 Q. Okay. And at that point in time you didn't see those two
6 individuals any longer.

7 Is that an accurate statement of your testimony?

8 A. That's correct. I couldn't locate them.

9 Q. Okay. Now, prior to you seeing these three individuals
10 together -- or actually at the time when you see the three
11 individuals together, you never saw them pointing their weapons
12 in your direction; is that correct?

13 A. No. When these individuals have their weapons, they have
14 them slung. Both hands are on their weapons; one is down
15 around the trigger guard, the other is by the barrel, kind of
16 at a low ready, but they never aim their weapon in my
17 direction.

18 Q. Okay.

19 MR. MARCHESE: No further questions. Thank you, sir.

20 THE WITNESS: Thank you.

21

22 CROSS-EXAMINATION OF SEAN COX

23 BY MR. LEVENTHAL:

24 Q. Good afternoon.

25 A. Good afternoon.

1 Q. So you indicated that you wanted to -- or one of the
2 reasons, on the 12th -- or the 11th -- was to de-escalate
3 tensions.

4 Is that what you indicated?

5 A. That's correct.

6 Q. Okay. And in order do that, I believe on direct, you said
7 that you had -- someone had decided to stop the gathering of
8 cattle; correct?

9 A. That's correct.

10 Q. Okay. But the -- you were involved in the logistics of
11 moving the cattle?

12 A. My job wasn't to do any type of planning or plan out any
13 type of logistics. There was a potential that I would have to
14 participate in the logistics of moving cattle and government
15 equipment.

16 Q. Okay. So, you don't know what kind of a press release was
17 sent out or anything, if there was one at all; right?
18 Communicating that; right?

19 A. No.

20 Q. You wouldn't have any idea about that. Okay.

21 Now, on the 12th, you indicated that there were two
22 areas that were vulnerable; the I-15 and the underpass;
23 correct?

24 A. That's correct.

25 Q. Okay. And that was the two areas that were vulnerable to

1 the ICP and the property -- the federal property that was
2 behind you; correct?

3 A. That's correct.

4 Q. Including the cows; correct?

5 A. I'm not sure I understand your question, sir.

6 Q. The cows were in the ICP behind you?

7 A. That's correct.

8 Q. Okay. So, that was part of the protection; correct?

9 A. Yes.

10 Q. Okay. All right. And now you were part of a SET Team;
11 correct?

12 A. That's correct.

13 Q. And that's a saturated -- explain what that -- what's that
14 acronym stand for again?

15 A. Special Event Team.

16 Q. Special Event Team.

17 Okay. And that's for crowd control?

18 A. Correct.

19 Q. Okay. And you were asked some questions on what you carry
20 with you.

21 Do you remember those questions?

22 A. Yes.

23 Q. Okay. And you indicated plastic shields and helmets.
24 What else do you carry with you?

25 A. I could go through my whole uniform.

1 We wear a style of green pants and shirts. We wear a
2 vest on the exterior as well. We'll have helmets with either
3 visors or goggles for eye protection. We can utilize plastic
4 vests. We also have long guns, rifles. We have less than
5 lethal force, which would be pepper ball guns and things like
6 that.

7 Q. Tasers as well?

8 A. That's correct.

9 MS. CREEGAN: Objection. Relevance.

10 MR. LEVENTHAL: I'm just going through the list.

11 BY MR. LEVENTHAL:

12 Q. Yes? I'm sorry?

13 MS. CREEGAN: I'm still objecting on relevance.

14 THE COURT: He's talking about his equipment. It's
15 relevant to the response. That's fine.

16 He can answer the question.

17 BY MS. LEVENTHAL:

18 Q. Tasers as well?

19 A. That's correct.

20 Q. Okay. And you indicated pepper balls?

21 A. Yes.

22 Q. Okay. Now, that uniform that you just described is very
23 different than a typical BLM agent; correct?

24 A. Yes.

25 Q. Okay. Now, when you got down there to Post 2

1 underneath -- sort of underneath the southbound, you indicated
2 you were with approximately six other BLM agents?

3 A. No. I'm with six other SET Team members.

4 Q. I see. Okay.

5 A. There's three other BLM agents that are down there at the
6 time.

7 Q. Okay. And you were able to observe the crowd; correct?

8 A. That's correct.

9 Q. Okay. And you indicated that they were -- at first there
10 was sort of an oval-shaped crowd 2 to 3 hundred yards away --
11 or 2 to 3 hundred people, 2 to 3 hundred yards away?

12 A. That's correct.

13 Q. They were underneath the northbound bridge, but even
14 beyond that; correct?

15 A. Yes, sir.

16 Q. Okay. And then at some point they move forward; correct?

17 A. Yes, sir.

18 Q. And this is prior to the horses coming; right?

19 A. Yes.

20 Q. Okay. And then they stopped before the horses came
21 underneath the southbound bridge; correct?

22 A. My recollection of the crowd's movements with -- in
23 conjunction with the horses is not very clear. I know that at
24 one point the crowd and the horses were moving towards me
25 together. I don't know the unison of how they were moving.

1 Q. Okay. Now, you had a gate up in front of you; correct?

2 A. Yes, sir.

3 Q. Okay. At no time did anybody ever, on the other side,
4 breach that gate? They never came over, did they?

5 A. There was a -- there was a time where two individuals in
6 this crowd came up to the gate and attempted to manipulate the
7 gate.

8 Q. Okay. Was that after -- do you know who Dan Love is?

9 A. Yes.

10 Q. Okay. Was that after he arrived at the gate?

11 A. No. That was prior to.

12 Q. It was prior to.

13 Okay. Did they ever breach the gate? Did they ever
14 get through the gate?

15 A. No.

16 Q. Okay.

17 MR. LEVENTHAL: Could we bring up, Brian, 157,
18 please.

19 (Exhibit 157 published.)

20 BY MR. LEVENTHAL:

21 Q. Now, you were just asked about this picture on direct
22 examination.

23 Do you remember this picture, just a minute ago?

24 A. Yes, sir.

25 Q. Okay. So, you indicated that this is the northbound

1 bridge (indicating); correct?

2 A. Yes, sir.

3 Q. Okay. And the southbound bridge, these are the pillars of
4 the southbound bridge (indicating); correct?

5 A. That is correct.

6 Q. Okay. These individuals here (indicating), in the middle,
7 they seem to be open without any cover; is that correct?

8 A. That is correct.

9 Q. Okay.

10 MR. LEVENTHAL: If we can expand that. Can you
11 expand that, Brian?

12 Keep going just a little bit more.

13 Okay. All right.

14 BY MR. LEVENTHAL:

15 Q. So, the northbound bridge is still there. You've got
16 these one, two, three, four, five, six, seven, eight different
17 people here in the middle of the wash; correct?

18 A. Are you -- are you talking about the people there in the
19 foreground?

20 Q. These people (indicating) --

21 A. Okay. Thank you.

22 Q. These people right here?

23 A. Okay.

24 Q. These are BLM agents, if you know?

25 A. I'm not sure what their -- all their job titles are.

1 Q. Okay. This person here (indicating), is that -- would
2 that be a SET person? Is that sort of a dress -- person SET --
3 as a dress person, SET?

4 A. That would be a SET Team member.

5 Q. That would be a SET Team member. Okay.

6 MR. LEVENTHAL: So, if we could blow that up.

7 So -- thank you.

8 BY MR. LEVENTHAL:

9 Q. So, I've indicated -- or you've indicated, he's got --
10 this person right here (indicating), he's got the helmet and
11 he's got exactly what you talked about as a SET Team member;
12 correct?

13 A. Yeah. That's correct.

14 Q. Okay. And I would assume that this person is a SET Team
15 member (indicating), this helmet right there; correct?

16 A. Yes. That's correct.

17 Q. This person right there (indicating), SET Team member;
18 correct? Gentleman right there with that thing --

19 A. Possibly. I mean, the only thing that I can identify is
20 the helmet. I'm not sure what other type of protective
21 equipment they have on --

22 Q. Okay?

23 A. -- or any other type of patch or insignia.

24 Q. Okay.

25 MR. LEVENTHAL: If we can move it over a little bit

1 to the left -- the other -- the other left.

2 There you go. Stop right there.

3 BY MR. LEVENTHAL:

4 Q. This person right here (indicating), right up against the
5 gate, he looks like law enforcement?

6 A. Yes.

7 Q. Okay. And he's right up against the gate and the crowd on
8 the other side is right there; correct?

9 A. That's what the picture depicts, yes.

10 Q. Okay. Thank you.

11 Now, you identified three individuals. Did all three
12 of those individuals -- we just looked at one -- had a T-shirt
13 on; correct?

14 A. Yes. Two of them had T-shirts on.

15 Q. Two of them had T-shirts on. Okay.

16 So, when you indicated this superior positioning that
17 they had, as well as the weapons that they had, as well as the
18 equipment, including the vest, two of them did not have any
19 kind of bullet proof vest; correct? That you saw?

20 A. Two of them did have bullet proof vests. Two of them were
21 just wearing T-shirts underneath them.

22 My apologies about the accuracy of that. Two of them
23 were wearing vests. We do not know if they were ballistic.

24 Q. You do not know? You did not know at the time?

25 A. Correct.

1 Q. And you indicated that you lost sight of two of them;
2 correct?

3 A. Yes, sir.

4 Q. Okay.

5 MR. LEVENTHAL: Nothing further. Thank you, sir.

6 THE COURT: All right. We're going to go ahead and
7 take our overnight break and at this time I do remind the jury
8 that tomorrow we will not be beginning at 9:00 a.m. like we
9 usually do; we'll be beginning at 10:30.

10 So during this overnight break, please do not discuss
11 this case with anyone nor allow anyone to discuss it with you.
12 If anyone should attempt to discuss it with you, you need to
13 let the Court know right away. As always, you can speak to
14 your fellow jurors about other things, but not about this case.
15 And if you inadvertently overhear anything about the case,
16 again, you need to bring it to the Court's attention.

17 Please do not read or listen to or view anything that
18 touches upon this case in any way and do not attempt to perform
19 any independent research or investigation about anything
20 related to this case.

21 And please do not form any opinion until after you
22 have heard all of the testimony, reviewed all the evidence. I
23 will provide to you the legal instructions that will help guide
24 you in how to apply the facts as you determine them to be to
25 the elements of the offenses and then you will hear closing

1 arguments from counsel. After that, I will excuse you to begin
2 the deliberation process.

3 So we'll go ahead and stand for the jury and welcome
4 them back at 10:30 tomorrow morning.

5 (Jury excused from courtroom.)

6 THE COURT: And then, Officer Cox, after the jury
7 exits, then you may also take your evening break and we'll need
8 you back here at 10:30 as well.

9 THE WITNESS: Thank you.

10 THE COURT: All right. Off record.

11 (Proceedings adjourned at 5:00 p.m.)

12

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COURT REPORTER'S CERTIFICATE

15

16 I, Heather K. Newman, Official Court Reporter, United
17 States District Court, District of Nevada, Las Vegas, Nevada,
do hereby certify that pursuant to Section 753, Title 28,
18 United States Code, the foregoing is a true, complete, and
correct transcript of the proceedings had in connection with
the above-entitled matter.

19

DATED: 7-30-2017

/s/ Heather K. Newman
Heather K. Newman, CCR #774
OFFICIAL FEDERAL REPORTER

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,)	CASE NO. 2:16-CR-46-GMN-PAL
)	
Plaintiff,	)	LAS VEGAS, NEVADA
	)	JULY 26, 2017
vs.	)	11:03 A.M.
	)	COURTROOM 7C
ERIC J. PARKER (11),)	
O. SCOTT DREXLER (12),	)	JURY TRIAL, DAY 10
RICHARD R. LOVELIEN (13),)	
STEVEN A. STEWART (14),)	
)	
DEFENDANTS.)	
)	
)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE GLORIA M. NAVARRO,
UNITED STATES DISTRICT CHIEF JUDGE

APPEARANCES:
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(continued next page)

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Proceedings reported by machine shorthand. Transcript produced
by computer-aided transcription.

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1 LAS VEGAS, NEVADA; WEDNESDAY; JULY 26, 2017; 11:03 A.M.

2 --oOo--

3 P R O C E E D I N G S

4 THE COURT: All right. Thank you. You may be seated.

5 COURTROOM ADMINISTRATOR: This is the time set for jury
6 trial, day 10, in Case No. 2:16-cr-46-GMN-PAL, United States of
7 America versus Eric Parker, O. Scott Drexler, Ricky Lovelein,
8 and Steven Stewart.

9 THE COURT: All right. Well, before we begin, just
10 some preliminary remarks so that everybody is aware of the
11 expectations regarding behavior in the courtroom. Please
12 remember this is not a sporting event. It is a courtroom, which
13 means that any expressions of opinions are not appropriate to be
14 made either verbally nor through body language no matter how
15 much you agree or disagree with what is being said. Likewise,
16 the defendants are not to make any expressions of their opinions
17 nor try to write any notes or communicate with each other or
18 with the jury.

19 We do have the speaker system set up in the holding
20 room on the other side of that door. So if any of the
21 defendants need to be removed, they can continue to hear the
22 proceeding. The proceeding will continue for the rest of the
23 day, but the defendant will be in the holding cell if they
24 cannot comply with these simple and very reasonable
25 requirements. The marshals as well as the court security

1 officers are authorized to remove anyone who cannot comply.

2 So we also have a rule regarding the cell phones,
3 iPads, laptops, any kind of electronic devices. They're not
4 permitted in the courtroom. The attorneys are permitted to have
5 the electronic devices so that they may follow along, prepare
6 for evidence, and present evidence. The court security officers
7 and the marshals are permitted to have their phones for -- to
8 aid them in communications; but, otherwise, none of us -- none
9 of the rest of us are permitted to have any electronic devices.
10 Even if they are turned off or in vibrate mode or in private
11 mode, they're not permitted. There is no recording permitted in
12 Federal Courts, no audio recording nor any video recording.

13 All right. So our microphones are at the table, and we
14 do have the podium angled towards the witness stand. And we do
15 have our witness back today. Is it -- it is not Officer McEwen.
16 I'm thinking of --

17 MS. CREEGAN: Cox, Your Honor.

18 THE COURT: Cox. That's right. Sean Cox. All right.
19 So we have Officer Sean Cox back with us today. Can we go ahead
20 and bring the jury in? All right. So let's go ahead and do
21 that, Aaron.

22 COURTROOM ADMINISTRATOR: Yes, Your Honor.

23 THE COURT: Thank you.

24 COURTROOM ADMINISTRATOR: All rise.

25 (Whereupon jury enters the courtroom at 11:08 a.m.)

1 THE COURT: All right. Jury may go ahead and be
2 seated. Everyone else may be seated as well.

3 All right. We're back on the record. If the parties
4 will please make their appearances on the record.

5 MR. MYHRE: Thank you, Your Honor. Good morning. Good
6 morning, ladies and gentlemen. Steve Myhre, Erin Creegan, and
7 Nadia Ahmed on behalf of the United States.

8 MR. TANASI: Thank you, Your Honor. Rich Tanasi
9 appearing for Steven Stewart. Also with us at counsel table is
10 Tori Bakken and Brian Glynn. Thank you.

11 MR. MARCHESE: Good morning, Your Honor. Good morning,
12 ladies and gentlemen. Jess Marchese on behalf of Eric Parker.

13 MR. LEVENTHAL: Good morning, everyone. Todd Leventhal
14 on behalf of Scott Drexler.

15 MR. PEREZ: Good morning, everyone. Shawn Perez on
16 behalf of Ricky Lovelein.

17 THE COURT: Well, good morning, everyone. We're going
18 to now continue with cross-examination of National Park Service
19 Law Enforcement Officer Sean Cox. He's back on the witness
20 stand. Good morning to you as well, sir.

21 And I believe that Mr. Leventhal on behalf of Defendant
22 Drexler, you were just about to begin cross-examination?

23 MR. LEVENTHAL: No, I finished, Your Honor.

24 THE COURT: You finished. All right. So that
25 means Mr. Perez?

1 MR. PEREZ: There's nothing from Lovelein, Your Honor.

2 THE COURT: All right. So no cross from -- and the
3 other two had already finished, right?

4 MR. TANASI: We did, Your Honor. Thank you.

5 THE COURT: Okay. So redirect.

6 MS. CREEGAN: Yes, Your Honor.

7 Can we please bring up Government's Exhibit 157. Thank
8 you.

9 REDIRECT EXAMINATION

10 BY MS. CREEGAN:

11 Q. Officer Cox, yesterday on cross you were asked some
12 questions about the officers standing in the open here in the
13 wash. Do you remember that?

14 A. Yes.

15 Q. When you were in the wash, were you in the position to get
16 into good cover and concealment?

17 A. No, the only cover that I found that would have been
18 possibly adequate was behind the engine blocks of some of those
19 BLM vehicles. Again, without knowing the exact caliber of
20 weapon that was being used, any type of bullet could travel
21 through the aluminum or steel of those vehicles.

22 MS. CREEGAN: Nothing further, Your Honor. Thank you.

23 THE COURT: Any recross?

24 MR. TANASI: No recross, Your Honor.

25 THE COURT: All right. So if any members of the jury

1 have a question for Officer Cox, please go ahead and write them
2 down in the form provided. Take your time. Write neatly. Try
3 not to use pronouns. Be clear. And we don't need to know your
4 name or your jury number; just your question.

5 All right. Counsel, please join me at sidebar.

6 (Whereupon, the following sidebar conference was held.)

7 THE COURT: So jury note No. 64: At any time you were
8 on scene, were you able to hear the crowd show anything and --
9 shout I think is what it says, shout anything? And if so, what
10 was it that you heard?

11 Any objection?

12 MS. CREEGAN: None from the Government.

13 MR. TANASI: None from Stewart.

14 THE COURT: All right. Jury note 65 has two questions.
15 The first one is: What does it mean to be commissioned? And
16 the word "commissioned" is in quotation marks.

17 Any objection?

18 MS. CREEGAN: No objection.

19 MR. TANASI: None from Stewart.

20 THE COURT: And the second question is: What is the
21 difference between a commissioned, in quotation marks, agent or
22 officer and a noncommissioned or regular employee?

23 Any objection?

24 MR. PEREZ: No objection.

25 MR. TANASI: None from Stewart.

1 MS. CREEGAN: No objection.

2 THE COURT: All right. Thank you.

3 (Sidebar conference was concluded.)

4 THE COURT: So jury note number -- I'm going to read
5 these jury notes. I'll read the questions, but these are jury
6 questions. So when you respond, Officer Cox, go ahead and turn
7 and face the jury because these are really jury questions; not
8 mine.

9 So jury note No. 64 asks: At any time that you were on
10 the scene were you able to hear the crowd shout anything? And
11 if so, what was it that you heard?

12 THE WITNESS: So in stressful situations like this as a
13 police officer and just as human beings in general you go
14 through something that's called auditory exclusion where
15 eventually only certain things that are really material are
16 what's heard. In this case initially when we first got down
17 there, I heard the protestors and just some of the women that
18 were on the overpass yelling that there were women and children
19 in the crowd. And that's when I really started to scan this
20 crowd, and that's where I wanted to relay to the rest of my
21 teammates that not only were there women and children in the
22 crowd, but there were also armed men with guns kind of walking
23 in and out of that crowd. So that's what I relayed after --
24 that's the only thing I really heard in the beginning.

25 THE COURT: Okay. And jury note No. 65 asks: What

1 does it mean to be commissioned? And then the second question
2 is: What is the difference between commissioned agent or
3 officer and a noncommissioned or regular employee?

4 THE WITNESS: When I say "commissioned," I just mean
5 that I have all of the certifications to be recognized as a
6 full-time police officer. I've gone through the training hours
7 that the Federal Law Enforcement Training Academy and the United
8 States Park Police, which is controlled by the Department of
9 Interior National Park Service, find fitting that I have the
10 correct and enough hours of training that I'm able to make the
11 correct and right decisions when it comes to anything police
12 related, law enforcement related for the most part.

13 THE COURT: All right. And those are the two questions
14 we have. Any follow-up?

15 MS. CREEGAN: Not from the United States.

16 MR. TANASI: None from Stewart, Your Honor.

17 MR. MARCHESE: Nothing based on that from Parker, Your
18 Honor.

19 MR. LEVENTHAL: No, Your Honor. Thank you.

20 THE COURT: On behalf of Lovelein, any follow-up?

21 MR. PEREZ: No, Your Honor.

22 THE COURT: All right. Thank you very much, Officer
23 Cox. You are excused. Thank you for coming in again this
24 morning, and please be careful on the way down with the steps.

25 Government may call its next witness.

1 MS. AHMED: Thank you, Your Honor. The United States
2 calls Special Agent Scott Swanson.

3 THE COURT: Good morning, Special Agent Swanson.

4 THE WITNESS: Good morning, Your Honor.

5 THE COURT: Careful there with the steps, and please
6 remain standing when you reach the seat.

7 SCOTT SWANSON, having duly been sworn, was examined and
8 testified as follows:

9 COURTROOM ADMINISTRATOR: Thank you, sir. You may be
10 seated. Please state your full name and spell your last name
11 for the record.

12 THE WITNESS: Scott Swanson, S-W-A-N-S-O-N.

13 DIRECT EXAMINATION

14 BY MS. AHMED:

15 Q. Good morning, Agent Swanson.

16 A. Good morning.

17 Q. Are you currently employed with the BLM?

18 A. Yes, I am.

19 Q. What's your position with the BLM?

20 A. I'm a special agent.

21 Q. Can you explain to the jury just generally what a special
22 agent does with the BLM?

23 A. Sure. Basically a special agent covers long-term
24 investigations. We're kind of the detectives for the BLM. If
25 you equate it to, say, like a sheriff's department, our rangers

1 would be the equivalent of a deputy, patrol deputy, and special
2 agents are the equivalent of what a detective would be for a
3 sheriff's department. That's how I kind of like to explain it.

4 Some of my duties, just a huge variety of long-term
5 investigations, anywhere from Indian artifacts to wild horse and
6 burrow, obviously trespass issues, and a lot of illicit marijuana
7 grows and that type of stuff on public lands.

8 Q. How long have you been a special agent with the BLM?

9 A. Approximately six years.

10 Q. Prior to this position, did you have any other law
11 enforcement experience with the BLM?

12 A. Yes, I did.

13 Q. And what was that?

14 A. I started as a patrol ranger in the sand dunes down in
15 California, a high recreation use area. And then I became a
16 field training officer as a patrol ranger, and then my last
17 position in uniform with the BLM was as the chief ranger for the
18 State of Utah.

19 Q. How many years were you a ranger with the BLM?

20 A. I was a ranger approximately four years, five years.

21 Q. Prior to all of your service with the BLM, did you have any
22 law enforcement experience prior to that?

23 A. Yes. Yeah. I started my federal career in law enforcement
24 as a United States Border Patrol agent in Yuma, Arizona. So I
25 did that for about four years, and I worked in various

1 capacities for the Border Patrol, mostly just working the
2 border, patrolling the border, but I also did investigations
3 with the Border Patrol as well.

4 Q. And prior to being with the Border Patrol, did you have any
5 other law enforcement or military experience?

6 A. Yes. I served in the United States Army. I started right
7 out of high school in the Reserves and then transferred to the
8 National Guard. And then eventually I received a commission
9 through the ROTC program at the University of South Dakota and
10 went on active duty. So total time in the military was probably
11 approximately seven years.

12 Q. Now, just generally, what training have you received in
13 relation to your various law enforcement positions that you went
14 through?

15 A. So I've been through three academies. So I'm kind of a
16 veteran at the Federal Law Enforcement Training Center down in
17 Glynco, Georgia, and also Federal Law Enforcement Training
18 Center in Charleston, South Carolina, where I attended the
19 United States Border Patrol Academy. After that I attended the
20 Land Management Police Training Program at the FLETC, which is
21 short for Federal Law Enforcement Training Center, in Glynco,
22 Georgia. And then most recently I attended the Criminal
23 Investigator Training Program or CITP, which is what most
24 special agents no matter what agency go through, and that was
25 also at Glynco, Georgia. So I've spent about a year of my life

1 in training in Georgia or South Carolina.

2 Q. Are you now and have you been -- as a special agent with the
3 BLM, are you authorized to investigate and enforce federal law?

4 A. Yes, I am.

5 Q. Now, in the course of your position with the BLM, were you
6 involved in an impoundment operation taking place in Nevada
7 April of 2014?

8 A. Yes, I was.

9 Q. And what -- generally, were you providing security for that
10 operation?

11 A. Yes, we ended up acting as a security team for the
12 operation.

13 Q. Were you on duty on the morning of April 12th, 2014?

14 A. Yes, I was.

15 Q. And where did you begin your duties on that morning?

16 A. I began my duties actually the night prior or the day prior
17 on the 11th and just continued through the night and into the
18 next day. And I was at an area that we termed as Post 6, and
19 that was basically -- there was an ICP or an incident command
20 post with several trailers in that. And then kind of behind
21 that further north was where they had the impounded cattle
22 penned up. And so we were kind of behind that because there's a
23 large wash behind that. And so we were covering basically
24 behind where the cattle were penned up.

25 Q. Why were you stationed near the cattle?

1 **A.** We had received some intelligence reports that there was
2 possibly going to be an attempted incursion that night, and that
3 they were going to try to set the cattle free.

4 **Q.** And based on your duties, was it your understanding that the
5 cattle were in the custody and possession of the United States?

6 **A.** Yes. Yes, they were.

7 **Q.** And was that pursuant to Court order?

8 **A.** Yes, it was.

9 **Q.** At some point in the morning of April 12th, 2014, did you
10 move from your position near the cattle pens?

11 **A.** Yes, I did.

12 **Q.** Where did you go?

13 **A.** I went down to an area known as -- which was termed Post 2
14 or down in what is commonly known as the wash where the bridges
15 are.

16 **Q.** And when you say "the bridges," are you referring to the
17 bridges of the I15?

18 **A.** Correct. Yes.

19 **Q.** And when you got down to Post 2, what did you do?

20 **A.** Well, the first thing I did, I went down there with my
21 partner, Special Agent Eric Richardson. Him and I drove down
22 from Post 6 to Post 2 together. Immediately there was radio
23 traffic that we had been listening to all morning that there
24 were -- there was a large crowd gathering under the bridges.
25 There was already officers down there, and those officers were

1 calling for assistance because they were witnessing people that
2 had long guns --

3 MR. LEVENTHAL: Objection, hearsay, foundation.

4 MS. AHMED: Your Honor, he's I think simply providing
5 an explanation of what he did. So the Government's not offering
6 what he's saying for the truth of the matter so much as for the
7 effect it had on him, why he does what he does next.

8 THE COURT: All right. In that case it's admissible.
9 Overruled.

10 THE WITNESS: So we -- with that in mind, once I got
11 down to the wash, I turned my vehicle around and faced it back
12 toward the ICP area and just parked my vehicle there. There was
13 already quite a few vehicles down there so I didn't take it all
14 the way down. I parked it along the access road, but I turned
15 it around and faced back the other way.

16 BY MS. AHMED:

17 Q. And what was your purpose in facing it back the other way?

18 A. Well, with the radio traffic that we had heard and the intel
19 reports that we were getting through the radio, I -- basically I
20 wanted a quick getaway. I wanted to face my vehicle that way so
21 if we did end up getting overrun by a large crowd, then I could
22 just make it back to my vehicle and get out of there without
23 having to do the 20-point turn to do it.

24 Q. Now, once you parked your vehicle, did you get out?

25 A. Yes.

1 Q. And where did you go then?

2 **A.** We -- I walked down toward the first bridge where our
3 officers were stationed down there. And so I walked in that
4 direction, just kind of not really knowing what was going on at
5 that time. So we just walked down in that general direction
6 where everybody was at.

7 Q. And at the point that you were walking down, who were you
8 with?

9 **A.** I was with Special Agent Richardson at that time.

10 Q. And when you said "the first bridge," are you referring to
11 the southbound lanes of the Interstate 15?

12 **A.** Yes.

13 Q. And did you get all the way up to where the frontline of
14 officers were?

15 **A.** No, we didn't make it that far.

16 Q. Where did you then go?

17 **A.** There was -- a little further back there was a truck that
18 was more centered in the wash, and that truck had a bunch of
19 officers around it already kind of behind it. And down in
20 the -- in the wash close to where they had erected a temporary
21 fence down underneath the wash under the southbound bridge there
22 was several marked units down there, and it looked like there
23 was a bunch of officers down there as well.

24 So as we were walking up, there was a -- there was a
25 truck. There was a blue Chevy 2,500 pickup truck, extra cab.

1 And it was parked parallel to the bridge this way. If this is
2 the bridge, it was parked parallel to it. And no one was behind
3 it at that time. So we just walked right up to that and kind of
4 took a position of cover and concealment behind that truck.

5 Q. Approximately how far from the southbound bridge was the
6 position that you took up?

7 A. I would estimate probably about 50 yards from where the
8 other vehicles were, the frontline vehicles were.

9 Q. When you got to that location, what, if anything, did you do
10 at that point?

11 A. I took a position behind the front of the vehicle behind the
12 engine block with the vehicle -- the majority of the vehicle was
13 in front of me. And just kind of took a minute to look around
14 to assess the situation and just kind of see what was going on.

15 Q. And what did you see?

16 A. Well, there was a lot going on. So it was kind of
17 overwhelming at first so we just -- I just kind of started
18 looking around. The first thing that I noticed and even walking
19 up I noticed that there were people gathered on the southbound
20 bridge and they were looking down at our officers. And that
21 they were yelling very loudly, obviously very agitated, yelling,
22 you know, cussing and yelling at us, telling us to leave,
23 telling us to get the F out of there, that we were traitors.
24 And so these -- these people had already had the high position
25 above us right there.

1 And the next thing I noticed were people on the
2 northbound bridge -- there was people down in the wash as well
3 and up on the sides, but there was people on the northbound
4 bridge starting to gather as well. And it looked like cars were
5 just kind of parked at various locations. So this -- you know,
6 taking this whole picture in, but definitely this -- the loud,
7 agitated yells and chants is the first thing that I noticed.

8 **Q.** You mentioned that they had, what you said, the high ground.
9 Can you explain to the jury the significance of their -- the
10 high ground?

11 **A.** Sure. And in my -- mostly in my military training working
12 around tanks, I mean, the high ground is always the preferred
13 position. So you look, and they had the high ground on the
14 northbound bridge. They had the high ground on the southbound
15 bridge. And basically we were down in a -- in a position --
16 what we call a position of disadvantage, and they were in a
17 position of what I would term a position of advantage.

18 **Q.** Now, when you were making these observations that you've
19 just described, were you looking just with your eyes or were you
20 using any other tools to help you see?

21 **A.** Initially there was the -- we were kind of in verbal contact
22 with the vehicle to -- it would be -- if I'm facing the bridge,
23 it would be to my left more centered in the wash. And also the
24 radio traffic that was starting to come over, people were
25 calling out descriptions of individuals that were threats,

1 meaning that they had long arms, that they had body armor. They
2 were calling off that there was people in full what we -- what
3 we term as like battle rattle in the Army or full combat gear
4 with vest carriers, extra ammo, extra magazines.

5 So the -- initially we're trying to -- I was trying to
6 pick up those threats with my naked eye, and then after I picked
7 them up, I would try to use my scope on my rifle to spot where
8 they were.

9 Q. Now, can you explain to the jury what kind of scope you had
10 on your rifle?

11 A. Yes, that day as far as I know down in the wash I was the
12 only one that had an ACOG scope which is -- it's slightly
13 magnified. I think it's three or three and a half times
14 magnified, which your normal eye would see it's magnified three
15 times. So it's not like a scope you would see on a hunting
16 rifle or anything like that, but it is a magnified scope which
17 helped bring things closer in when I looked through it.

18 Q. Were you able to observe the identified threats once you
19 started looking through your scope?

20 A. Yes. There was -- they were calling off threats underneath
21 the bridges, around the pillars of the bridges, and at -- in the
22 wash. And so I would try to pick that up and then bring my
23 scope up. And I would see that threat, you know, generally what
24 they were calling out, people with long guns, people with
25 sidearms, both in civilian clothes as well as, you know, full

1 type BDU, military-type dress.

2 Q. Did you -- at some point did you make any observations about
3 threats that you perceived on any of the bridges?

4 **A.** Yeah, they -- this became very overwhelming to try to pick
5 up all of these threats that were being called out. And it was,
6 Over to the right, over to the left. And just became too many.
7 I couldn't -- I couldn't keep up with what was going on. And at
8 some point Kelly Cole who was the acting State Chief Ranger at
9 that time came up, and he said, Swanson, you are the --

10 MR. LEVENTHAL: Objection, hearsay.

11 MS. AHMED: Again, Your Honor, it's being offered for
12 the effect it had on him and what he did next; not for the truth
13 of the statement.

14 THE COURT: For that purpose, it is admissible.

15 THE WITNESS: He --

16 BY MS. AHMED:

17 Q. Can I just stop you there for one moment, Agent Swanson?

18 **A.** Sure.

19 Q. So on scene who was -- Ranger Cole, what was his role in the
20 wash?

21 **A.** Ranger Cole was part of the leadership for the entire
22 operation. And I think Special Agent Stover and Special Agent
23 Opper were down there at different times as well, but no one
24 like -- they would just kind of walk by, make sure we were doing
25 okay, and that was just one of those times I think Ranger --

1 Chief Ranger Cole was walking by our location.

2 Q. And what, if anything, did he say to you at that point?

3 A. He said, Scott, you're the counter sniper. You have an ACOG
4 scope. And so you're in charge of being a counter sniper.

5 Q. What does that mean, "counter sniper"?

6 A. So to me it meant that I would look for these long-range
7 threats that -- with people with long guns out at a long
8 distance that were hiding and possibly going to shoot our
9 officers from a long distance. And my job was to try to counter
10 that, basically shoot back if we were shot at.

11 Q. Once you had been given that task, what did you do?

12 A. I told Special Agent Richardson, I said, Man, I'm having a
13 hard time picking up all of these targets. I said, Can you help
14 me find, you know, what you think is the most imminent threat to
15 us? And he had a pair of binoculars as well as his rifle, but
16 he didn't have a magnified scope on his. He just had a reflex,
17 which is just a peep -- it's kind of a scope, but it has a red
18 dot in it. And that's what you use to aim, but it's not
19 magnified.

20 So he used his binoculars. And he said, Man, I just
21 saw these two guys run. They were actually -- I think he used
22 bound -- bound and cover or he used the military term for
23 movement.

24 And they were bounding and covering from what would be
25 the right side of the bridge as we were looking at it to closer

1 to the middle of the bridge.

2 Q. When you --

3 **A.** On the north side, the farthest bridge away.

4 Q. On the northbound bridge?

5 **A.** Correct.

6 Q. Now, once you heard this information, did you follow-up on
7 it?

8 **A.** Yes, I started scanning that area and I -- as he was
9 explaining where they were or what they looked like, he said,
10 Their heads are just barely sticking up above the Jersey
11 barrier, which is the -- basically the barrier on the bridge,
12 the cement barrier or fence. And he said, They're kind of out
13 by themselves. And I spotted them with my naked eye first, and
14 then I put my scope up. And I said, Okay. I see who you're
15 talking about.

16 Q. And when you observed these two individuals, what did you
17 see them doing at that time?

18 **A.** I saw them just kind of what I would term peeking over the
19 Jersey barrier. I could just see kind of their heads, maybe
20 neck level or bust level. And then as I kept an eye on them,
21 they both stood up, and I got a pretty good look at both of them
22 at that time. I noticed right away that both of them had long
23 arms, rifles, that appeared to be assault rifle -- an
24 assault-type rifle rather than, say, like a hunting rifle or
25 something like that.

1 And I noticed that the way they were dressed and then
2 the movement that Special Agent Richardson had explained to me
3 just all culminated into me basically watching them as an
4 imminent threat.

5 Q. Now, just going back over what you just said. So you were
6 able to observe what they appeared to have on. Is that correct?

7 A. Yes.

8 Q. And can you describe one by one what you observed these
9 individuals to be wearing?

10 A. Sure. The two individuals -- one of the individuals had a
11 black hat on. It appeared to have like a large square in it. I
12 couldn't see, like, exactly what it said or anything, but it was
13 a black trucker-style hat, kind of like a high -- high-brimmed
14 hat with mesh in the back, that type, like a snap back.

15 He had -- most notably had a long arm, and it was --
16 appeared to be slung in the front like this. We term that like
17 the low ready position. Being slung like this is an automatic
18 threat to me as a law enforcement officer because it's different
19 than having it slung on your back or like a hunter walking
20 through the woods. It's slung out in front, and they're able to
21 bring that weapon up and go to work with it almost immediately.

22 So I noticed that, was hanging it in front of him. It
23 looked to me that he had a black or dark-colored vest carrier.
24 And what I mean by "vest carrier" would be like a vest that's
25 used to hold body armor or ballistic plates, and it's generally

1 worn over a -- over your clothes as opposed to like soft-body
2 armor that police officers generally wear underneath their
3 uniform and you can't really see them. You can kind of see the
4 bulge, but these are, like, worn over the top.

5 I noticed he had a dark-colored beard, sunglasses on,
6 but they appeared to be like shooting-type glasses, like -- like
7 a pilot-type glass rather than like an Oakley or something like
8 that.

9 And then I noticed that he had, like, a plaid shirt or
10 a flannel-type shirt on. And then I couldn't really tell
11 because of the Jersey barrier, but it appeared that he may have,
12 like, jeans on or something. I could just see the top of them,
13 but I couldn't really tell what his pants were.

14 The second individual --

15 Q. Now --

16 A. Oh. I'm sorry.

17 Q. Go ahead. I was going to say the second individual.

18 A. Okay. The second individual had a tan hat on, but it was a
19 totally different style of hat. Like, I call it like a slouch
20 hat where you pull it down, maybe like an old-time baseball hat,
21 something like that. You know, you see them a lot of times
22 tactical hat with like the American flag or something. I don't
23 know if his had anything on the front, but it was a tan hat.

24 He appeared to have facial hair, dark-colored clothing,
25 and what appeared to be a tan vest carrier on top, and then over

1 the top of that he also had a long gun that was slung in the low
2 ready position as well.

3 Q. And when you say "facial hair," do you mean a mustache or
4 beard or both?

5 A. Yeah, I believe -- I believe he had a beard, but it just
6 appeared -- you know, just thinking back, it appeared like he
7 had some facial hair.

8 Q. Now, you indicated that you also observed them moving in a
9 manner that caught your attention. Is that correct?

10 A. Yes.

11 Q. And can you explain based on your military and law
12 enforcement experience the way in which they were moving?

13 A. Yeah, so they didn't stay standing for very long. They took
14 cover behind the Jersey barrier, and I would term it like they
15 were popping up and down. Sometimes they would be like bust
16 high. Sometimes they would go all the way down. And they also
17 split up. So it was like they were covering a bigger distance.
18 The tan-hatted person moved I think more towards the middle of
19 the bridge, and the black hat person stayed kind of in place
20 where I saw him initially.

21 And then they would pop down below the barrier, and
22 they kind of looked like they were covering each other at times.
23 One would be up and one would be down, which is a textbook-type
24 military maneuver. And I watched them do that for a while.

25 MS. AHMED: Your Honor, may we publish what's been

1 previously admitted as Exhibit 157?

2 THE COURT: Yes, you may.

3 BY MS. AHMED:

4 Q. Agent Swanson, do you see the photograph that's displayed on
5 the screen to your right?

6 A. Yes.

7 Q. And do you see in that photograph the area in which you
8 initially observed these two individuals?

9 A. Yes.

10 Q. Touching the screen, can you circle where it is that you saw
11 them.

12 And, again, is that the northbound or the southbound
13 bridge?

14 A. That's the northbound bridge.

15 Q. And what was your approximate distance from where they were
16 located when you observed them?

17 A. That day I think we -- I approximated it to be about 200
18 yards.

19 Q. Based on your training and experience, is that a distance
20 from which someone with a long gun could make a shot from them
21 to you?

22 A. Yes.

23 MR. MARCHESE: Objection, improper opinion.

24 MR. TANASI: Stewart joins.

25 MS. AHMED: Your Honor, it was offered based on his

1 training and experience.

2 THE COURT: Based on his training and experience,
3 permitted.

4 MS. AHMED: And for the record, the witness has drawn a
5 circle on Exhibit 157 over the pillar on the northbound bridge
6 that is depicted in the photograph.

7 BY MS. AHMED:

8 Q. And, Agent Swanson, in terms of the whole bridge, where were
9 they when you first saw them in relation to the whole bridge on
10 the -- initially when you saw them? On the right side? Left
11 side? Center?

12 A. Uhm.

13 Q. From your view?

14 A. More toward the right side. It would be above the right
15 pillar of the bridge. I guess it would be from my view like
16 right of center.

17 Q. And directionally would that be the western side of the
18 bridge?

19 A. Yes.

20 Q. Now, once you observed these two individuals, what did you
21 do -- well, you had indicated earlier, you described them as an
22 imminent threat. And can you explain to the jury what -- why
23 they were an imminent threat as compared to the threats that you
24 had perceived earlier?

25 A. Well, just looking out and spotting that many people coming

1 to our location as opposed to us going to them or their location
2 or their camp. They came to where we were. And without much
3 fire power it was a constant threat. There was a constant
4 threat out there of what I termed to be a threat of harm to us.
5 You know, there was obviously regular people there. There were
6 people holding up signs. There were people that were probably
7 there to demonstrate our presence there, but there was
8 definitely a constant threat there of people that were armed and
9 that people who had obviously come to do us harm.

10 Now, an imminent threat would be someone that I
11 perceived through my training and experience to be just like --
12 for lack of a better term, just a heartbeat away from getting in
13 a fight, getting in a fire fight.

14 Q. Once you observed these two individuals, I think you
15 indicated earlier that the individual with the black hat stayed
16 in the area that you originally circled. Is that right?

17 A. Yes, he stayed in that area.

18 Q. Now -- but that the other individual, the tan-hatted
19 individual moved?

20 A. They moved at some point or went down below and just didn't
21 come -- I mean, went down below the Jersey barrier and didn't
22 come up, but eventually I kind of just started concentrating on
23 Black Hat.

24 Q. Now, how were -- when you were in the wash area, were you
25 referring to these two individuals in a certain way?

1 **A.** Yes, almost immediately for ease of communication between
2 the officers we called the guy with the black hat Black Hat and
3 the guy with the tan hat Tan Hat.

4 **Q.** And just going back to the description of the black hat.
5 You indicated earlier that it was a black trucker-style hat and
6 that there was something on it. Do you recall anything about
7 what color or shape that that -- what was on the hat?

8 **A.** It just appeared to be a white square, like a -- I couldn't
9 tell what was on it, but it was a white square in the middle of
10 the hat.

11 **Q.** So you began to refer to these individuals as what?

12 **A.** Black Hat and Tan Hat.

13 **Q.** And you I think just stated at some point you began to focus
14 on one of the two?

15 **A.** Yes, I began to focus on the black hat.

16 **Q.** And based on what you had seen of their -- based on your
17 training and experience, did their movements cause you concern
18 for your safety?

19 **A.** Yes.

20 **Q.** Why was that?

21 **A.** Because of the way they moved, it appeared to me that they
22 had some kind of training and they were probably in
23 communication with each other. So they appeared to be -- kind
24 of know what they were doing.

25 MR. LEVENTHAL: I'm going to objection as to

1 speculation.

2 MS. AHMED: I couldn't hear the objection, Your Honor.

3 THE COURT: To speculation when he said that they
4 appeared to know what they are doing.

5 MS. AHMED: I believe that, Your Honor, the question
6 was asked based on his training and experience again.

7 THE COURT: Overruled.

8 BY MS. AHMED:

9 Q. Now, Agent Swanson, once you focussed on Black Hat, what, if
10 anything, just generally did you see him doing?

11 **A.** Well, he was -- like I said, he was -- sometimes he was up.
12 Sometimes he was down. Mostly there was -- there was several
13 instances where he -- to me, he became an imminent threat on his
14 own and -- but I observed him kind of moving up. Sometimes you
15 could see his head. Sometimes you couldn't. And he would
16 disappear down below the Jersey barrier.

17 Q. Do you recall -- when you say there was several instances
18 when he became an imminent threat on his own, do you recall what
19 was -- what he was doing during those times?

20 **A.** Yes.

21 Q. So can you describe one of the occasions when you believe
22 that he was an imminent threat just on his own?

23 **A.** Yes. And these aren't in chronological order because
24 time -- time down there just kind of stood still. So when I
25 wrote my report, I did it as I remembered it, but I didn't put

1 any times or anything like that because I -- frankly, I was --
2 it was pretty much just focussed 100 percent up there and I
3 didn't keep track of time. I didn't keep any log or anything
4 like that. I just was focussed on there.

5 So as I wrote the record, I wrote it --

6 Q. Well, not talking about your report specifically, but just
7 your recollection generally as you are on the stand today.

8 A. Okay.

9 Q. Can you explain to the jury what you observed --

10 A. Sure.

11 Q. -- on one of those instances?

12 A. So one of the instances I remember the black hat came up to
13 the Jersey barrier. He rested his gun on the Jersey barrier,
14 and it appeared like either the stock or the magazine was
15 resting on the Jersey barrier. And he was using that as a stand
16 for his gun. And he was pointing it -- I felt he was pointing
17 it at me. And so -- and my reaction to that was for me --

18 Q. Can I stop you before you go onto your reaction?

19 A. Sure.

20 MS. AHMED: Your Honor, may I ask the witness to
21 demonstrate to the jury what he observed that black hat to do?

22 THE COURT: Yes, he may.

23 THE WITNESS: So if -- this is a little shaky up here,
24 but if this is the Jersey barrier, he would have been either
25 kneeling or on one or both knees. He had his gun up here, and

1 he was resting either the magazine or the stock on the Jersey
2 barrier itself. And I could see the barrel of the gun being
3 pointed in my direction.

4 BY MS. AHMED:

5 Q. Now, once you observed --

6 MR. MARCHESE: Your Honor, can I have the counsel
7 describe for the record what is being seen.

8 MS. AHMED: Oh, yes.

9 MR. MARCHESE: Thank you.

10 MS. AHMED: Yes. Your Honor, for the record, the
11 witness kneeled down behind the witness stand and placed both
12 hands on the witness stand in what appeared to be holding a
13 rifle and aimed it forward.

14 MR. MARCHESE: And my recollection was that his left
15 hand was placed forward in a cupped position and his right hand
16 was behind his left hand approximately two feet.

17 THE COURT: The record will so reflect.

18 BY MS. AHMED:

19 Q. And, Agent Swanson, I know that was not as articulate as you
20 have explained it, but does that sound accurate?

21 A. Yes.

22 Q. Now, when you saw Black Hat do that, what -- again, based on
23 your training and experience, what did you understand his
24 intention was at that time?

25 A. I thought he was going to shoot.

1 Q. Now, when you saw him doing that, then what did you do?

2 **A.** I pointed my gun or I pointed my rifle, put the -- my scope
3 reticle on him or the best I could on -- basically the only
4 thing I could see was his head. So I put my scope reticle in
5 that area. I took my rifle off of safe, and I took a small bit
6 of slack out of the trigger.

7 Q. Now, in the normal course of your duties if you encountered
8 an individual taking that kind of action, what Black Hat was
9 doing toward you, what is your training and experience -- in
10 your training and experience what are you to do in response to
11 that?

12 **A.** I would have shot him.

13 Q. Now, on this occasion, on April 12th, did you do that?

14 **A.** No.

15 Q. And was there something that prevented you from doing that?

16 **A.** Yes.

17 Q. And what was that?

18 **A.** Well, at the time the traffic on the interstate was going
19 slowly by. So although I was concentrating on him and my
20 target, I could also see the vehicles passing by behind him.
21 And as law enforcement officers, we're responsible for every
22 round that we fire and we can't just fire arbitrarily. We have
23 to make sure that no one else -- that innocent people aren't in
24 harm's way when we shoot. So I didn't feel that I could take a
25 shot based off of that background and the fact that there was

1 innocent civilians just driving down the highway.

2 Q. When -- so seeing what he was doing, the feeling that you
3 couldn't take any action, did you have any fear for your safety
4 or the safety of the officers around you?

5 A. Yes.

6 Q. And what -- what did you think was going to happen?

7 A. Well, like I explained before, he had the high ground. He
8 was in communication with another person. So I thought that at
9 that time if he shot and started opening up, I was hoping that
10 there would be a chance for me to return fire and that traffic
11 would clear or there was enough break in the traffic for that,
12 but I thought that people were about to lose their life on our
13 side.

14 Q. Now, did you observe -- well, what then did Black Hat do
15 when this was happening? The movement that you just described
16 him doing, what did he do after that?

17 A. He took the rifle off the Jersey barrier and slung it back
18 down into like a front slung position. And then he just kind of
19 ducked down behind the Jersey barrier.

20 Q. And over how much time did this all take place, what you
21 were just describing?

22 A. It was pretty quick. I mean, he brought it up. He had it
23 up there for a few seconds. And, you know, prior to that he had
24 been -- when I saw the weapon, it was like slung up front. So
25 I -- when he brought it up and pointed it, that was totally a

1 game changer. So when he brought it back down, you know, the
2 threat lessened, although I believed that there was still an
3 imminent threat.

4 Q. Did you observe him on another occasion to take action that
5 made you think again that he was an imminent threat?

6 A. Yes.

7 Q. And at that time what did you see him doing?

8 A. On one occasion he was down again crouched behind the Jersey
9 barrier in what we call furtive, which just is a fancy word for
10 fast basically, a very fast motion. He stood up and he pointed
11 his rifle. Again, I felt he was pointing at me and in my
12 general direction and brought the rifle up to his cheek and
13 pointed it. And that just -- like, very quickly just stood up
14 and pointed the rifle.

15 Q. And, again, based on your training and experience, what did
16 you believe his intention was at that time?

17 A. Again, I thought he was -- he was going to shoot.

18 Q. And what was the impact on you? Did you have an assessment
19 as to your safety at that time?

20 A. Yeah, immediately again, I mean, I felt like my life was in
21 danger or other people's lives were in danger. So immediately
22 again I took the weapon off of safe and again took some slack
23 out of the trigger and got ready for him to shoot.

24 Q. And based on your training and experience, in another
25 setting what action, if any, would you have taken in response to

1 him standing up like that?

2 **A.** I would have shot.

3 **Q.** And, again, did you do that here?

4 **A.** No.

5 **Q.** Why not?

6 **A.** Again, there was -- the traffic on the bridge was slow.
7 There was a few breaks here and there, but to take the shot I
8 would have had to time the break in the traffic in between cars
9 and also aiming at him and, you know, pull the trigger.

10 **Q.** At some point did you assess what your -- did you make an
11 assessment as to your ability to survive this event based on
12 what you were seeing Black Hat do?

13 **A.** Yes.

14 **Q.** And what did you think?

15 **A.** That I was going to die.

16 **Q.** Did you do anything to come to terms with that assessment?

17 **A.** Yes.

18 **Q.** What did you do?

19 **A.** I said a prayer and asked God to take care of my wife, my
20 kids, and then I said an Our Father. And then just got back on
21 it, just got back to work.

22 **Q.** Now, Agent Swanson, we can see that you are emotional as you
23 recount this moment. When you were in the field on April 12th,
24 were you emotional at that time or what was your demeanor?

25 **A.** It was -- I was emotional. Mostly I was mad that this was

1 happening. I was -- I felt like, you know, there was several
2 things going on. That I was trying to get the highway shut
3 down. I was -- there was -- you know, and because of the
4 backdrop and because this person was pointing the gun at me and
5 I couldn't return fire or take a shot at all, I felt, because
6 there was innocent civilians behind him. And so it was a very
7 frustrating, scary time.

8 Q. Did you -- in spite of that, did you continue to do your
9 job?

10 **A.** Yes.

11 Q. Now, did you have any other occasion to observe Black Hat
12 take action that you thought made him an imminent threat?

13 **A.** Yes.

14 MS. AHMED: Your Honor, do you want me to continue
15 or --

16 THE COURT: That's fine.

17 BY MS. AHMED:

18 Q. Go ahead, Agent Swanson.

19 THE COURT: You can go ahead.

20 MS. AHMED: Okay.

21 BY MS. AHMED:

22 Q. Go ahead, Agent Swanson.

23 **A.** On another occasion I observed Black Hat was again at the
24 barrier, and this -- and at various times there were people
25 around coming up and it appeared they were taking pictures. I

1 remember specifically this time the -- Black Hat went down below
2 the barrier and, you know, I -- just thinking like, What is he
3 doing back there?

4 But this time two female subjects came up to where he
5 was, and I saw them holding up a cell phone or what appeared to
6 be a cell phone like in the classic taking-a-cell-phone-picture
7 pose. And they were taking a picture of right where I saw him
8 go down.

9 And then there was another --

10 *Q.* So what -- I'm sorry to interrupt you. So then what -- what
11 did you conclude from what you could see that was going on on
12 the bridge about his position, if anything?

13 *A.* At that point I didn't really have an immediate reaction. I
14 just -- every time he went down, I'm like, I wonder what he's
15 doing back there. And so -- but this time those women start --
16 came up and were taking pictures, which I think people had been
17 doing, but they walked straight up and I noticed they took --
18 were, like, pointing their picture -- their camera or cell phone
19 right where he had gone down that time.

20 *Q.* Now -- so when other people were -- were other people on the
21 bridge then around Black Hat?

22 *A.* Yes. The larger parts of the crowd were more towards the
23 ends of the bridge, the east and west -- east and west side of
24 the bridge, but -- so it kind of -- the crowd kind of thinned
25 out as it got down towards the middle where he was at, but there

1 were people milling around pretty much the whole time.

2 Q. And could you clearly see if those individuals you already
3 described had cell phones in their hands?

4 A. It appeared they had cell phones or a camera, but the way
5 they were holding it, it wasn't like where you would hold a
6 camera up to your face. It could have been a camera with a
7 screen that they could see, but they were holding it out in
8 front of them like a self -- not a selfie, but a picture, be
9 like you're taking a picture.

10 Q. Now, when you saw them doing that, what, if anything,
11 happened after that?

12 A. We -- I observed also a male subject to what would have been
13 my right on the west side, and he also walked over. And he
14 appeared to be like a media person or maybe a reporter or a
15 professional photographer. He kind of had like a large camera
16 that had a big strap around his neck. And he brought the camera
17 up also, and the same thing, and started taking pictures as
18 well.

19 Q. Now, did you see Black Hat at that point?

20 A. No.

21 Q. Then what happened?

22 A. And then I thought to myself, Well, he's probably -- maybe
23 he's loading up or something like that. So I put my rifle
24 sights right above the Jersey barrier where I saw him go down
25 last. And then I could see the women just turn around and walk

1 away very quickly. And then almost immediately after that the
2 guy that was taking pictures that appeared to be like a
3 professional photographer, he dropped the camera down and put
4 his fingers up to his ears.

5 Q. And what, if anything, did you think at that point?

6 A. I thought that he was going to pop up and start shooting
7 because usually when someone puts their fingers in their ears --
8 and he could see what he was doing. I couldn't. So I figured
9 he was going to pop up and start shooting from where he was.

10 Q. When that happened, what, if anything, did you do at that
11 point?

12 A. Again, I kept my reticle on the top of the Jersey barrier,
13 just the last place that I saw him go down, and I figured that,
14 you know, he may come up in the same place. So I took my weapon
15 again off of safe. Again, I took a little slack out of the
16 trigger and just got ready for him to come up. And, hopefully,
17 if he was -- if he was to shot, then hopefully I'd have a chance
18 to return fire.

19 Q. Did you feel on that occasion that if he had come up you
20 were in a position to be able to return fire at that point?

21 A. No.

22 Q. And what was the reason at that time?

23 A. Again, the traffic behind him, the fact that he's, you know,
24 right above the Jersey barrier. I'm 200 yards away. And
25 there's traffic still going by, you know, at a fairly slow pace

1 to where I don't -- I didn't feel like -- that I could take a
2 shot and still protect the lives or the safety of the people
3 driving on the highway.

4 Q. Now, during this time, were you able to observe anything
5 that Tan Hat was doing?

6 THE COURT: All right. If we're going to turn over to
7 Tan Hat, then we'll take our lunch break now. The jury is
8 reminded during this lunch break, please do not discuss this
9 case with anyone nor permit anyone to discuss it with you. You
10 are ordered to report to the Court if anyone does attempt to
11 speak to you about the case.

12 Please do not listen to, review, or read anything in
13 connection with this case. Do not attempt any research or any
14 independent investigation. And please do not form any opinion
15 regarding this case until after you have heard all of the
16 testimony, received all of the evidence, reviewed the jury
17 instructions that I will provide to you. Then you will hear
18 closing arguments, and after that you may begin your
19 deliberation process.

20 So it's 12:04. We'll take a lunch break until 1:04,
21 and then we'll welcome the jury back. So please stand for the
22 jury.

23 And after they exit, Special Agent Swanson, then you
24 may also take your lunch break.

25 THE WITNESS: Yes, Your Honor. Thank you.

1 THE COURT: And we'll need you back here at 1:04 --
2 1:05.

3 THE WITNESS: Yes, ma'am.

4 (Whereupon jury leaves the courtroom at 12:05 p.m.)

5 THE COURT: All right. Off record.

6 (Recess taken at 12:05 p.m.)

7 (Resumed at 1:30 p.m.)

8 THE COURT: Thank you. You may be seated. Go ahead
9 and bring in the jury.

10 (Whereupon jury enters the courtroom at 1:34 p.m.)

11 THE COURT: Jury may go ahead and be seated. Welcome
12 back. Everyone else may be seated as well.

13 All right. We're back on the record after the lunch
14 break. And we have BLM Special Agent Swanson back on the
15 witness stand. Good afternoon, sir.

16 THE WITNESS: Good afternoon, Your Honor.

17 THE COURT: And we'll go ahead and continue now with
18 direct examination by the Government.

19 MS. AHMED: Thank you, Your Honor.

20 BY MS. AHMED:

21 Q. Good afternoon, Agent Swanson.

22 A. Good afternoon.

23 Q. Before we broke for lunch, I was asking you about your focus
24 on the northbound bridge. Do you recall that?

25 A. Yes.

1 Q. And you had described to the jury what you had observed
2 Black Hat doing?

3 **A.** Yes.

4 Q. And at some point when you -- from the time that you first
5 observed them until you stopped watching them, did you see Tan
6 Hat moving his location at all?

7 **A.** Yes.

8 Q. And so when you first observed Tan Hat in relation to Black
9 Hat, from your view looking at the bridge, what side was Tan Hat
10 on of Black Hat?

11 **A.** On his -- on my right-hand side.

12 Q. And then at some point did he move from that side?

13 **A.** Yes.

14 Q. And to where did he go?

15 **A.** He went to my left-hand side and closer to the center of the
16 bridge.

17 Q. And were you able to observe anything else about Tan Hat's
18 movements?

19 **A.** No, that just eventually he kind of disappeared at some
20 point. And I saw him move one more time away from the area, but
21 I -- no, I don't remember anything.

22 Q. So, again, the majority of your focus was on Black Hat then.
23 Is that right?

24 **A.** Yes.

25 Q. Now, going back to --

1 MS. AHMED: Just to make sure it's clear to the jury,
2 Your Honor, may we publish what's been previously admitted as
3 Exhibit 17, Clip 1?

4 THE COURT: Yes.

5 MS. AHMED: And can we go to 19:25:44, please.

6 BY MS. AHMED:

7 Q. Agent Swanson, do you see what's on the screen to your
8 right?

9 A. Yes.

10 Q. And do you recognize that as being the area of the wash that
11 you were in on April 12th, 2014?

12 A. Yes.

13 Q. Now, can you just show the jury where you were located in
14 the wash.

15 You can touch the screen and draw a circle. And the
16 witness has drawn a circle around the vehicle towards the bottom
17 of the screen.

18 And, again, can you explain to the jury what the
19 approximate distance was between your position and the
20 southbound bridge?

21 A. I approximated it to be about 50 yards.

22 Q. And can you write S on where the southbound bridge is.

23 A. I'm sorry. Can you --

24 Q. Can you write S on the southbound bridge in this picture.

25 So between the circle and the S you approximated that

1 to be about 50 yards. Is that right?

2 **A.** Yes, about 50 yards.

3 **Q.** And then can you write an N where you see the northbound
4 bridge.

5 And from the circle, your position, to the N,
6 northbound bridge, what was the approximate distance?

7 **A.** It was -- I approximated it to be about 200 yards.

8 **Q.** Now, when you were looking at Black Hat -- during the
9 morning when you were describing to the jury all of the things
10 you saw Black Hat doing, were you always looking through your
11 scope or were you at times looking with your naked eye?

12 **A.** No, at times I was looking with my naked eye.

13 **Q.** And what could you see of him with your naked eye in terms
14 of what he looked like and what he had with him?

15 **A.** I could generally make out his general appearance, his
16 clothing, without the details. And I could make out that he had
17 a long arm slung in front of him.

18 **Q.** And could you clearly see that it was a rifle?

19 **A.** Yes.

20 **Q.** Could you make out the difference between a rifle and what
21 other people in the bridge had in their hands, if they had
22 anything?

23 **A.** Yes.

24 **Q.** Now, at some point when you were looking at Black Hat, did
25 you see him do anything with what he had on him?

1 **A.** Yes.

2 **Q.** What did you see him do?

3 **A.** At one point --

4 MR. MARCHESE: I'm going to object as to vague.

5 THE COURT: You want to clarify?

6 MS. AHMED: Sure, Your Honor.

7 BY MS. AHMED:

8 **Q.** At some point -- at any point did you observe Black Hat do
9 anything to change his appearance in any way?

10 **A.** Yes.

11 **Q.** What did he do?

12 **A.** He turned his hat backwards.

13 **Q.** And what, if anything, did that -- did you take from that
14 based on your training and experience?

15 **A.** That based on my training and experience and spending some
16 time behind a gun, generally if you're wearing a hat, the bill
17 of the hat can interfere with your sight picture on your scope
18 or even an open sight. So when you're shooting, a lot of times
19 just flip your hat backwards so the bill doesn't interfere with
20 the gun.

21 **Q.** So based on your training and experience, did you believe
22 that he was improving his firing ability?

23 **A.** Yes.

24 MS. AHMED: Your Honor, may we publish what's been
25 previously admitted as Exhibit 14?

1 THE COURT: I think you may. I couldn't hear the
2 number.

3 MS. AHMED: 14.

4 THE COURT: 14. Yes, you may.

5 MS. AHMED: Thank you, Your Honor.

6 (Video playing.)

7 MS. AHMED: Could you pause it. Pause it about seven
8 seconds -- three seconds. Excuse me.

9 BY MS. AHMED:

10 Q. Agent Swanson, based on your description earlier to the
11 jury, do you recognize the individual, that's been consistent
12 with what you observed on April 12, 2014?

13 A. Yes, I do.

14 Q. In the foreground of the picture, which person is that that
15 you have been describing to them?

16 A. Black Hat.

17 Q. I want to -- you described earlier seeing him with some sort
18 of vest on. Is that right?

19 A. Yes.

20 Q. And it had pouches. Is that right?

21 A. Yes.

22 Q. And I'm circling an item that you can see on the individual
23 in the foreground in Exhibit 14. Do you see that circle?

24 A. Yes.

25 Q. Can you explain to the jury what's depicted in that circle?

1 **A.** Those are magazine pouches with what appears to be spare
2 magazines inside them.

3 **Q.** And just for anyone who might not know about firearms, what
4 are magazines in relation to firearms?

5 **A.** Simply they just hold the bullets. So you insert them into
6 the gun and they have the bullets in them. Sometimes there's --
7 magazines are bigger than others, but it's what ejects the
8 bullet into the gun after you fire it.

9 **Q.** So, these appear to be extra bullets. Is that right?

10 **A.** Yes.

11 MS. AHMED: And can we advance forward in Exhibit 14
12 toward the end? Maybe 120 -- yeah, right there.

13 BY MS. AHMED:

14 **Q.** Agent Swanson, based on your observations on April 12, 2014,
15 is the person that's in -- fully depicted in this picture at 128
16 consistent with anyone that you've been describing to the jury?

17 **A.** Yes.

18 **Q.** And who is that?

19 **A.** That's Tan Hat.

20 MS. AHMED: Your Honor, may I have the Court's
21 indulgence?

22 THE COURT: Yes.

23 (Government conferring.)

24 MS. AHMED: Can we go back to seven seconds in Exhibit
25 14. And play it for a second.

1 (Video playing.)

2 BY MS. AHMED:

3 Q. Now, Agent Swanson, stopped at eight seconds in Exhibit 14.
4 You identified him earlier as Black Hat, this individual that's
5 in the center of the screen. Is this hat consistent with what
6 you observed on April 12, 2014, to be the hat that Black Hat was
7 wearing?

8 **A.** Yes.

9 MS. AHMED: Your Honor, I have nothing further at this
10 time. I'll pass the witness.

11 THE COURT: All right.

12 MS. AHMED: Thank you, Agent Swanson.

13 THE WITNESS: You're welcome.

14 THE COURT: Cross?

15 MR. TANASI: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. TANASI:

18 Q. Good afternoon, Agent Swanson.

19 **A.** Good afternoon.

20 Q. My name is Rich Tanasi. I represent Steven Stewart. I got
21 a few questions for you on cross. Okay?

22 **A.** Yes, sir.

23 MR. TANASI: Okay. I want to go back -- if we can take
24 a look please, Brian, at Exhibit 157.

25 BY MR. TANASI:

1 Q. Okay. Sir, do you see Exhibit 157?

2 A. Yes, sir.

3 Q. All right. In looking at this exhibit, does this
4 demonstrate at least in part your view when you were in the
5 wash?

6 A. Yes. It's not my exact view, but in part, yes.

7 Q. In part your view. In other words, you're behind the folks
8 that we see depicted here, right?

9 A. Yes.

10 Q. Okay. And all of these folks here, right, these are all law
11 enforcement folks, fair?

12 A. Yeah. They appear to be, yes.

13 Q. Okay. Now, they're out in the open, right?

14 A. Yes.

15 Q. Okay. They're behind you or in front of you, rather, right?

16 A. Yes.

17 Q. Okay. The threats that you've described, you said they came
18 from -- from up here, right?

19 A. Yes.

20 Q. Okay. And from up there they're pointing, the threats that
21 you described, at these folks who are out in the open, correct?

22 A. I don't -- I don't know.

23 Q. You don't know? Okay.

24 MR. TANASI: All right. If we can also look, Brian,
25 please at Exhibit 17 and go back to that 19:25:44 mark.

1 (Video playing.)

2 MR. TANASI: All right. If you could stop it there.

3 BY MR. TANASI:

4 Q. Okay, sir. If you could just one more time circle where you
5 were located in this picture.

6 Okay. So that picture that you've just circled, that's
7 where you were located on the 12th, right?

8 **A.** That's the vehicle I was behind, yes.

9 Q. Okay. And that's where I was going. You were behind that
10 vehicle, right?

11 **A.** Correct.

12 Q. You were taking cover, right?

13 **A.** Yes.

14 Q. Okay. You used that vehicle I think as you had it -- I have
15 it termed as cover and concealment?

16 **A.** Yes, sir.

17 Q. Okay. But, again, the folks that we just looked at earlier,
18 they were somewhere in this area, correct?

19 **A.** I'm not sure exactly where they were from that angle.

20 Q. Okay.

21 **A.** They look to be behind the vehicles, but I don't know.

22 Q. Okay. Well, why don't we bring up -- just so we're clear on
23 it, why don't we bring up 157 one more time, please.

24 **A.** They're behind the vehicles. The vehicles are actually in
25 front of them. So they're back behind from where you pointed

1 out in the open.

2 Q. Okay. So the individual I just circled on Exhibit 157, he's
3 out in the open, correct?

4 A. Somewhat, yeah, but it appears that he has a vehicle in
5 front of him. It's hard to tell with that angle obviously
6 exactly where he is in relation to the vehicles.

7 Q. Okay. Where he is --

8 A. To me.

9 Q. -- in relation to the folks that you identified as threats
10 up here, right, where is he in relation to those folks?

11 A. He looks to be in a bad position.

12 Q. Okay. Fair to say, though, he appears to be in a direct
13 line of sight?

14 A. It's hard -- again, it's hard to tell from that angle; but,
15 yeah, it does.

16 Q. Thank you, sir.

17 Okay. So when you were positioned behind your vehicle
18 in the wash, I want to take you back there, are you with me?

19 A. Yes.

20 Q. Okay. You're not alone, right?

21 A. Correct.

22 Q. There's other agents who are with you, correct?

23 A. Yes.

24 Q. Without telling me their names, how many were there?

25 A. Off and on there's various numbers. Sometimes there was

1 just me and another agent, and sometimes there was four or five.

2 Q. Okay. And some of those agents, in fact, they had body cam,
3 correct?

4 A. I believe so, yeah. I didn't -- I did not.

5 Q. Okay. You didn't, but some of the folks that were close to
6 you while you were down there behind your vehicle had body cam,
7 correct?

8 A. I'm not sure.

9 Q. You're not sure?

10 A. No.

11 Q. Okay. What I want to do is show you a copy of --

12 MS. AHMED: Objection -- go ahead. Are you planning to
13 show body cam?

14 MR. TANASI: Well, I'm going to show him a portion of
15 the body cam, yes.

16 MS. AHMED: Your Honor, I'd ask for a sidebar. I'd
17 object to that and ask for a sidebar.

18 THE COURT: All right. Let's go to sidebar.

19 MR. TANASI: Okay.

20 (Whereupon, the following sidebar conference was held.)

21 THE COURT: Go ahead.

22 MS. AHMED: Your Honor, I objected because from my
23 recollection from the previous trial the body cams that are
24 around Agent Swanson primarily depict the officers -- primarily
25 focus on the officers as opposed to anything that's on the

1 bridges or in the center of the wash and, therefore, it's not
2 relevant. You know, it's not -- this is not a case about the
3 BLM or their positions or what they're wearing.

4 Defendants haven't made any proffer of any kind of
5 defense that would suggest that anything that they're doing is
6 an issue. So it's merely a distraction and it's irrelevant.

7 And so that's -- unless there's some new body cam that
8 I don't know about, all other body cams were either the officers
9 discussions amongst themselves or just what they're wearing and
10 what they're doing.

11 MR. TANASI: So, Your Honor, the body cams that I'm
12 seeking to admit were on the Government's exhibit list in
13 association on that list with this particular witness. So
14 that's where I'm coming from, as far as where I got them.

15 MS. AHMED: But to be clear, Your Honor, I haven't put
16 any body cam evidence in.

17 MR. TANASI: I understand. I just first wanted to
18 start off with the origin of where the body cam come from and
19 then get to how they are relevant. So it was Exhibit 36 and
20 36A. And so just for the record, these would be Defense
21 Proposed Exhibits 5333-A and 5033-B.

22 And these body cams depict this particular agent and
23 his position, pointing weapons up at the bridge. To his right
24 are Special Agent Love, I can't remember which Bundy, one of the
25 Bundy sons, Dennis Michael Lynch walking up and down that area

1 that he to the left is taking cover on. And these other folks
2 are wide out in the open.

3 And the reason that's relevant is because it's a
4 circumstance to the reasonableness, the objective
5 reasonableness, of the officer's fear. And so you have officers
6 who are walking up and down the wash. You have other officers
7 who are taking concealed positions. And so that dichotomy, that
8 conflict, is evidence of what we argue is unreasonable fear in
9 this case.

10 There is -- there are statements on these cameras as
11 well. I would suggest that the statements on these cameras
12 essentially are the same as the Flynn and Ellis issues where we
13 had video that came in of what Mr. Ellis had seen, what he
14 depicted the day, what he was observing. And then those
15 statements were still part of that video, and so we have that
16 situation in this case as well.

17 We have -- we do have reference to, you know, the
18 impromptu church time, which again would be a present sense kind
19 of impression of what's going on. They're laughing. They're
20 joking. Again, that's all relevant to whether or not this
21 particular officer's fear in this case is reasonable when you
22 have some officers who are testifying that they're very scared
23 and they're saying prayers, and you have others who are in the
24 wash and who are laughing and making jokes about Metro walking
25 up and down and getting their shoes dirty.

1 So it's relevant for the purposes of the objective
2 reasonableness of the fear.

3 MS. AHMED: Your Honor, I don't think that those
4 qualify as excited utterances. I think that that's merely
5 offered to prejudice the jury against the BLM. I think that
6 basically the officer probably has no idea of those comments
7 because from what he testified to at both trials he was focussed
8 on Black Hat, and right now he wasn't even aware that other
9 people had body cams. I don't know that he even knew who was
10 around him. He does know that at times different numbers of
11 people were around him. He was not a part of the conversations
12 that Mr. Tanasi has referenced.

13 So, essentially, he wants to put things in front of the
14 jury that have no relevance to anything that's at issue in this
15 trial that goes to either a defense or an element of one of the
16 defenses which defendants are charged with.

17 THE COURT: All right. Well, he's saying that it's
18 relevant to show the objective reasonableness of the subjective
19 fear that these witnesses are testifying about. So what's your
20 response to that?

21 MS. AHMED: Well, Your Honor, I would say that, first
22 of all, I think we have had testimony in this case and in the
23 previous trial, but in any event, in this trial that there was
24 really no good area to have cover. So for him to proffer that
25 people walking out behind cover is a reflection of those

1 people's lacking fear, I think that that's probably not
2 something that's really -- there's really no good faith basis to
3 say that because we had -- the only evidence we really have
4 about cover is that there was really no great -- you couldn't
5 stay under cover -- in cover.

6 And he doesn't know whether or not those specific
7 people that are depicted in the video have fear or not just
8 because they're not in cover; because he can certainly elicit
9 and he already has through 157 and then just through questions,
10 Were there not other officers who were moving around out of
11 cover, without showing these videos.

12 THE COURT: So are you saying that his proffer is a
13 pretext; that there's already been other evidence that's no
14 different than this?

15 MS. AHMED: Yes, or evidence that would -- evidence as
16 to cover that has come in just through asking witnesses
17 questions, which he could still do and which he did already with
18 other exhibits. So, yes, Your Honor.

19 MR. TANASI: Your Honor --

20 THE COURT: All right. You said these statements are
21 present sense impressions or excited utterances?

22 MR. TANASI: My position was not they were excited
23 utterances. They were present sense impressions. It was how
24 they were feeling when they were in the wash. And they
25 demonstrated how they were feeling because at times they're

1 laughing. So it's not just the cover issue. It's also the
2 laughter.

3 MS. AHMED: And none of them are Swanson, Agent
4 Swanson. He's not depicted laughing in any of these body cam
5 videos.

6 MR. TANASI: That is correct. The agents that are next
7 to him are and --

8 THE COURT: So it's not this particular witness's
9 present sense impression?

10 MR. TANASI: It's the other witness that are -- the
11 other declarants. It's their present sense impressions.

12 THE COURT: They're not describing what they're seeing,
13 are they?

14 MS. AHMED: Correct.

15 MR. TANASI: Well, they're laughing. Agent Briscoe, he
16 pulls out his camera and talks about, Maybe this isn't the best
17 tactical time for me to do this, and then he takes a picture.
18 They -- as Metro was walking up the -- walking up the wash area,
19 they make a joke about how maybe they, you know, are going to
20 get their shoes dirty. And then at the very end they make a
21 joke about the crowd and say that we should do an impromptu
22 church time. And that's when Ranger Apley, you might remember
23 from the last trial, covers it up at the last minute with his
24 hand.

25 MS. AHMED: Your Honor, just in response to that -- I'm

1 sorry.

2 MR. TANASI: No, but --

3 MS. AHMED: In response to those I would say, A, with
4 respect to Ranger Briscoe, Agent Swanson isn't even anywhere
5 near him. So that portion of the video is when the person who
6 is wearing the body cam is further back away from Agent Swanson.
7 So it's nothing he even saw. But, secondly, they weren't
8 talking about what Agent Swanson was seeing. It has nothing to
9 do with what he was observing. And I don't even know that it's
10 clear that they're making a joke about the church thing.

11 THE COURT: All right. So can you play the video
12 without the sound?

13 MR. TANASI: If that's the Court's ruling, I can do it
14 that way.

15 THE COURT: All right. And so -- because I'm not
16 seeing any exception to the hearsay rule. It's not a present
17 sense impression just because there are voices on there talking
18 about things. Present sense impressions require more than that.

19 As to the relevance question, so what is the portion of
20 that if it were to be played without the sound?

21 MR. TANASI: Sure, and I can -- understanding the
22 Court's ruling, that would essentially do away with 36, which is
23 actually now Defense Exhibit 5033-A. I wouldn't -- if I
24 understand the Court's ruling, I wouldn't be able to get into
25 that one because that was more for the conversations.

1 THE COURT: Okay.

2 MR. TANASI: Doesn't have the cover issue necessarily
3 in that one. The other, 5033-B, that one is a three-minute
4 video. We could play it. I would ask to play it in its
5 entirety and play it muted. And that's the one where again you
6 have Special Agent Love walking up to the gate, and he has
7 Michael Lynch with him, another two individuals with him. Their
8 backs are to the folks that are up on the bridge pointing
9 weapons. And so that would be the one that I guess I would
10 offer to play in its entirety for three minutes to demonstrate
11 that, and on mute.

12 THE COURT: How is that admissible with this witness,
13 though? Is this witness there?

14 MR. TANASI: He is right next to them. This is the
15 one, Your Honor, where he is -- there are two. And this is the
16 one that I'm offering where it's depicted in the video. You see
17 Agent Swanson. He's right there, and then to the right of him
18 is the bed end of the truck. To the right of that is where
19 Special Agent In Charge Love is coming up and down the wash.
20 These are all things that he would see.

21 MS. AHMED: Your honor, actually --

22 MR. TANASI: Because in his position he's looking this
23 way, and these folks come walking around the side of him and
24 come up in front of him, turn around, and then come back. These
25 are all things he would have seen because he's right in the

1 picture on the left-hand side.

2 MS. AHMED: Your Honor, I don't -- my recollection from
3 Agent Swanson from his testimony was he didn't go into seeing
4 Special Agent Love or anybody walking with him in this trial.
5 And in the last trial I don't believe he saw him approach. I
6 know that he knew at some point he was at the gate and at some
7 point he was gone.

8 THE COURT: He's testified numerous times that his eyes
9 are trained on his scope sight looking at the folks that are up
10 on the bridge because on and off at least three times he sees
11 them pointing at him.

12 MS. AHMED: I believe he knew that Love had come to the
13 gate at some point, but he didn't see it -- the entry or exit.

14 MR. MARCHESE: Actually, the testimony from the last
15 trial was that he did, in fact, see him. I believe there was
16 some kind of a nod or something like that was his testimony.

17 MS. AHMED: Oh, that was on the approach; not on the
18 leaving.

19 MR. MARCHESE: I'm saying that he saw him.

20 MS. AHMED: But he did not see him leave.

21 THE COURT: All right. So you want to show the --

22 MR. TANASI: Three minute --

23 THE COURT: -- the video.

24 MR. TANASI: On mute.

25 THE COURT: On mute.

1 MR. TANASI: If I'm understanding the Court's --

2 THE COURT: To ask him if that's a fair depiction of
3 the area of where he's in or something to that effect?

4 MR. TANASI: Correct.

5 THE COURT: Okay. And so then what would the line of
6 questioning -- would that be just only as to whether those folks
7 are in clear view or not in hiding?

8 MR. TANASI: That's it.

9 THE COURT: Or not taking cover?

10 MR. TANASI: My understanding of the Court's ruling,
11 that's all I would get into is just, Do you see them? They're
12 walking. They're walking back. And then I'd move on.

13 THE COURT: All right. So I'll permit you to do that.
14 And you said that's 5033-B?

15 MR. TANASI: 5033-B, yes, ma'am.

16 THE COURT: Okay. All right.

17 MS. AHMED: Thank you, Your Honor.

18 MR. TANASI: Thank you.

19 (Sidebar conference was concluded.)

20 THE COURT: All right. So the objection was sustained
21 in part and overruled in part. And, Mr. Tanasi, on behalf of
22 Mr. Stewart you may continue consistent with the Court's ruling.

23 MR. TANASI: Understood. Thank you, Your Honor.

24 Brian, if we could please pull up just for the witness
25 only Defense Proposed Exhibit 5033-B.

1 (Video playing.)

2 MR. TANASI: Okay. If you can stop it there, Brian.

3 BY MR. TANASI:

4 Q. Okay. Agent Swanson, is this a picture of you that I'm
5 circling, kind of the portion here off to the left?

6 A. Yes, it is.

7 Q. Okay. And then to the right we have other agents, without
8 giving me their name, correct?

9 A. Yes.

10 Q. Okay. And then to the right there, do you see -- what do
11 you see?

12 A. The wash.

13 Q. Okay.

14 MR. TANASI: Your Honor, I'd move to admit Defense
15 Exhibit 5033-B and publish it.

16 THE COURT: You can ask him if it's a fair and accurate
17 depiction.

18 MR. TANASI: I apologize.

19 BY MR. TANASI:

20 Q. Is this a fair and accurate depiction of what you saw and
21 where you were on April 12, 2014?

22 MS. AHMED: Objection, Your Honor. This is not -- this
23 is one scene in a three-minute video. I would ask that the
24 witness be allowed to see the whole thing.

25 THE COURT: Well, he doesn't have to watch the whole

1 thing if we are not going to see the whole thing. How much of
2 it are you going to play?

3 MR. TANASI: Your Honor, I didn't intend to play the
4 whole thing from start to finish.

5 THE COURT: Okay. Well, whichever part you intend to
6 play, go ahead and show it to him to make sure that all of that
7 is something that's in his purview and not behind him or
8 somewhere else.

9 MR. TANASI: Understood. Thank you, Your Honor.
10 Brian, if you could go ahead and play that, please.

11 (Video playing.)

12 MR. TANASI: All right. If you could stop there,
13 Brian.

14 BY MR. TANASI:

15 Q. What we've watched so far, is that a fair and accurate
16 depiction of what you saw on April 12th, 2014?

17 **A.** That's not -- that's not my view, if that's what you mean.
18 I mean, that's where I was standing. That's -- that is where I
19 was standing and that's the vehicle that I was behind, but
20 obviously that's not my view. I was looking over the hood.

21 Q. Circling this bridge here, was that part of your view, sir?

22 **A.** It was, yes.

23 Q. Okay. Circling this bridge over here, sir, this part of the
24 bridge, was that part of your view, sir?

25 **A.** Yes.

1 Q. Okay. Circling over here kind of in front of those agents,
2 would that be part of your view, sir?

3 A. Yes.

4 Q. Okay. Circling this wash area here -- and why don't we do
5 this. I'll do it even cleaner. Circling from here over, that
6 wash area to the right, is that part of your view, sir?

7 A. Yeah. I mean, assuming that the wash is beyond there, yes.

8 Q. Would there be something else that was beyond there?

9 A. Well, you're circling the agents so --

10 Q. I understand. Behind the agents?

11 A. Yes, the wash is there.

12 Q. Understood.

13 And in that wash area, these folks that I'm circling
14 here, they came from that wash area, fair?

15 A. Yeah. Yes.

16 Q. So is this a fair and accurate depiction of what you saw on
17 April 12, 2014, sir?

18 A. I didn't see them right there; but, yeah, it's -- where --
19 all of those places you circled, I could see, yes.

20 Q. Okay. All right.

21 MR. TANASI: If we could continue to play it, please.

22 (Video playing.)

23 MR. TANASI: Stop it there, please.

24 BY MR. TANASI:

25 Q. Sir, again, is this you depicted still?

1 **A.** Yes, sir.

2 **Q.** Right here?

3 **A.** Yes, sir.

4 **Q.** Okay. And we have agents who are kind of walking around
5 behind you?

6 **A.** Yes.

7 **Q.** Okay. Are you familiar with those agents being there on
8 April 12th, 2014?

9 **A.** Just peripherally, yes.

10 **Q.** Peripherally, but --

11 **A.** Yeah, I don't know who -- actually, I never saw the --
12 whoever the body cam's coming from, I didn't see that person.

13 **Q.** Okay. But what the body cam is depicting, is it fair and
14 accurate?

15 **A.** Yes.

16 **Q.** Fair and accurate depiction of what you were looking at and
17 what you were seeing on the 12th?

18 **A.** No.

19 **Q.** This portion is not?

20 **A.** No.

21 **Q.** Okay.

22 MR. TANASI: Brian, play it.

23 (Video playing.)

24 MR. TANASI: Brian, if you could speed it up just a
25 little. Okay.

1 All right. If we could, Brian, just go back to the
2 very beginning and play it, please, about 50 -- play it about 25
3 seconds in, please. Just move it along 45 seconds in.

4 (Video playing.)

5 MR. TANASI: Okay. Stop there.

6 All right. Your Honor, Defense would move to admit
7 Defense Proposed Exhibit 5033-B from the zero to 20 second mark.

8 THE COURT: Any objection to the admission of Exhibit
9 5033-B from zero to the 22 second mark?

10 MS. AHMED: No, Your Honor. Thank you.

11 THE COURT: All right. So Exhibit 5033-B will be
12 admitted from zero to the 22 second mark.

13 MR. TANASI: Thank you, Your Honor. If we could
14 publish that, please.

15 THE COURT: Yes you may.

16 MR. TANASI: Thank you.

17 (Defense Exhibit 5033-B from the zero to 22 second mark
18 is admitted.)

19 BY MR. TANASI:

20 Q. Okay, sir. Circling this individual over here, that's you,
21 correct?

22 A. Yes, sir.

23 Q. All right. These are other law enforcement agents, correct?

24 A. Yes.

25 Q. This is the southbound bridge that I'm circling right here,

1 correct?

2 **A.** That's correct.

3 **Q.** Okay. And back here, this little portion I'm circling, that
4 would be the northbound bridge, at least a portion of it, fair?

5 **A.** Yeah. Pretty much, yeah.

6 **Q.** This area here, this is the wash, correct?

7 **A.** Yes.

8 **Q.** Okay. This area is the area that would be used to walk to
9 the southbound bridge, correct?

10 **A.** Yeah. Yes.

11 **Q.** Okay. And also to keep going, right, to the northbound
12 bridge, correct?

13 **A.** Yeah, the -- yeah, the wash runs under both bridges.

14 **Q.** Got it.

15 MR. TANASI: Go ahead, Brian, if you could play it,
16 please.

17 (Video playing.)

18 MR. TANASI: I'm sorry. Could you stop, please. Could
19 you mute it. Go ahead.

20 (Video playing.)

21 MR. TANASI: All right. Could you stop there, Brian.

22 BY MR. TANASI:

23 **Q.** Okay. Do you see this group of individuals that I'm
24 circling here?

25 **A.** Yes.

1 Q. Okay. This person, is that -- do you know who that
2 individual is?

3 **A.** Yes.

4 Q. Okay. Is that Special Agent In Charge Dan Love?

5 **A.** Yes.

6 Q. Okay. Do you see these other three folks here?

7 **A.** Yes.

8 Q. Okay. Do you know who they are?

9 **A.** I do not.

10 Q. Okay. These folks all have their back to the northbound
11 bridge, correct?

12 **A.** Yes.

13 Q. All right. While you were in the wash, you testified that
14 you had noticed a guy with a black hat, Black Hat, right?

15 **A.** Yes.

16 Q. Okay. And isn't it true that you pleaded for the northbound
17 lanes to be closed with SWAT? You pleaded with SWAT to close
18 the northbound lanes. Isn't that true?

19 MS. AHMED: Objection, relevance.

20 MR. TANASI: Your Honor, it again goes to the
21 reasonableness in this case, what different law enforcement
22 agencies are doing.

23 THE COURT: Did you say pleaded?

24 MR. TANASI: Yes.

25 THE COURT: Okay. I didn't hear him say pleaded

1 before, but he did testify as to the fact that he was trying to
2 get them to close down the highway so he could take a shot. So
3 that's fine. Objection overruled.

4 MR. TANASI: Thank you, Your Honor.

5 BY MR. TANASI:

6 Q. Isn't it true you pleaded for the northbound lanes to be
7 closed? You pleaded with SWAT to have that happen, correct?

8 A. No.

9 Q. You didn't?

10 A. No.

11 Q. Okay. In this case did you offer -- did you author a
12 report?

13 A. Yes.

14 Q. And do you remember doing so on April 14th, 2014?

15 A. Yes.

16 Q. And that was two days after the events in Bunkerville?

17 A. Yes.

18 Q. Two days would it be fresh in your mind, right, the events
19 in Bunkerville?

20 A. Fairly fresh, yes.

21 Q. Fairly fresh, right. And you said you went through how many
22 academies?

23 A. Three academies.

24 Q. Did you go over report writing in those academies?

25 A. Yes.

1 Q. The importance of report writing, correct?

2 A. Yes.

3 Q. Went over how it's important to put all of the important
4 information into reports, fair?

5 A. Correct.

6 Q. Okay. All right. I'm going to draw your attention, sir --
7 well, here, let's look at the first page if we could just for
8 the witness.

9 Okay. Sir, I'm going to show you the first page dated
10 4/14/2014. Do you see that there?

11 A. Yes.

12 Q. Is this the first page of your report? Fair?

13 A. Yes.

14 Q. All right. I'm going to show you page 5 of 7 of that
15 report. Do you see down here?

16 A. Yes.

17 Q. Okay. And draw your attention to where you indicated:
18 Black Hat took the weapon down and again pleaded for the
19 northbound lanes to be closed and asked SWAT team or SWAT assets
20 to take the subjects on the bridge down?

21 A. Yes.

22 Q. Do you see that there?

23 MS. AHMED: Your Honor, I'd just object to counsel
24 reading from reports without --

25 MR. TANASI: Your Honor, it's impeachment.

1 THE COURT: Sustained.

2 MS. AHMED: And it's not even proper impeachment
3 because ...

4 THE COURT: It's not.

5 BY MR. TANASI:

6 Q. Fair to say you pleaded with SWAT?

7 A. I -- I was talking to my dispatch, so I had no direct
8 contact with SWAT. I was asking my dispatch to see if there was
9 SWAT assets available to help clear the bridge.

10 Q. Okay. Do you recall indicating in your report that you
11 pleaded with SWAT?

12 A. Yes, but I indicated in my report that I was speaking to
13 dispatch on the radio.

14 Q. Okay. Fair enough.

15 Those requests, though, those were ignored, right?

16 A. As far as I know, because SWAT never showed up.

17 Q. Okay. Prior to today's testimony, have you had an
18 opportunity to meet with the U.S. Attorneys Office?

19 A. Yes.

20 Q. How many times?

21 A. Approximately five -- five to six times, one time on the
22 phone.

23 Q. And was that in preparation for today's testimony?

24 A. Other hearings as well, yes.

25 Q. Okay. How many times have you met with the FBI?

1 **A.** Well, they were present -- the case agent is FBI, and they
2 were present when I met with the U.S. Attorney and also one
3 other time prior directly after the 14th.

4 MR. TANASI: Thank you, sir. Pass the witness.

5 CROSS-EXAMINATION

6 BY MR. MARCHESE:

7 Q. Good afternoon, sir.

8 **A.** Good afternoon.

9 Q. So turning your attention to April 12th, 2014. I believe
10 you testified on direct examination that you began your duties
11 the night prior at Post 6. Is that correct?

12 **A.** That's correct, yes.

13 Q. And if we're talking about the body cam that we just saw,
14 Post 6 would be directly behind you on that body cam. Is that
15 correct?

16 **A.** Yeah. At a much greater distance, yes.

17 Q. Okay. And you started the night prior. You said something
18 to the effect of there was an attempted -- you were looking for
19 an attempted incursion to set the cattle free. Is that somewhat
20 accurate?

21 **A.** Yes.

22 Q. Okay. Long night, correct?

23 **A.** Yes.

24 Q. I believe you guys were working in shifts, correct?

25 **A.** That's correct, yes.

1 Q. You weren't able to get too much sleep that evening,
2 correct?

3 **A.** We just slept in shifts, like you said.

4 Q. Okay. Fortunately that never came. It was for the most
5 part an uneventful evening, correct?

6 **A.** As far as I know, yes.

7 Q. Next morning at some point in time you and Agent Richardson
8 were told to go down to Post 2. Is that right?

9 **A.** That's correct, yes.

10 Q. So you drive down to Post 2 I believe you said in your
11 vehicle, correct?

12 **A.** Yes.

13 Q. You back it in for an easy exit out of the area, correct?

14 **A.** Yes.

15 Q. And you start walking down and you just picked that pickup
16 truck because there was nobody on it, correct?

17 **A.** Correct.

18 Q. And by the pickup truck, I believe you said it was a
19 Chevy -- a blue Chevy 2,500 with no markings, the one we saw in
20 the body cam?

21 **A.** Yes.

22 Q. Okay. Was there any plan when you got down there or did you
23 just go and -- you were just told to go and you went to the
24 first area you saw and thought it was a good place to be?

25 **A.** Correct. Yeah, there was no plan.

1 Q. All right. And you said -- on direct examination you said
2 "we." So I assume when you said "we," you were referring to you
3 and Agent Richardson, correct?

4 **A.** That's correct, yes.

5 Q. And I believe you said he was your partner on that day,
6 right?

7 **A.** He was.

8 Q. Okay. So you got on that truck and you were towards the
9 windshield towards the engine block, correct?

10 **A.** Yes.

11 Q. And you had your rifle with you, correct?

12 **A.** Yes.

13 Q. And that had some sort of a scope. I believe you called it
14 an ACOG scope?

15 **A.** Yes, sir.

16 Q. Okay. And that's somewhere in the vicinity of a three-time
17 magnification, right?

18 **A.** Yes.

19 Q. Okay. I think you said your testimony is you may be about
20 200 yards or so from the northbound bridge, correct?

21 **A.** Yes, sir. Yes.

22 Q. And what you and Agent Richardson were doing is you were
23 looking for threats in the crowd, correct?

24 **A.** That's correct.

25 Q. When you got down to that blue Chevy pickup, was anyone in

1 the wash?

2 **A.** Yes.

3 **Q.** Okay. Were they in that line or were they already at the
4 gate?

5 **A.** They were -- they were back further from the gate.

6 **Q.** Okay. So would they be midway through the wash? Under the
7 northbound bridge? What was your recollection?

8 **A.** To my recollection, they -- there were more -- the crowd was
9 more gathered toward the northbound bridge and, like, on the
10 sides down in the wash, but not close up to the gate.

11 **Q.** Okay. Midway, generally speaking?

12 **A.** I would think. I mean, it's -- the pictures kind of distort
13 the view and the actual distances; but, yeah, closer to the
14 south -- closer to the northbound bridge or the farther-away
15 bridge than the southbound bridge.

16 **Q.** We can agree they weren't at the gate. Fair enough?

17 **A.** Correct.

18 **Q.** Okay. So you get down there and you're calling out threats,
19 both of you, correct?

20 **A.** Yeah.

21 **Q.** I believe you said Agent Richardson -- he would have been to
22 your right, correct?

23 **A.** Yes.

24 **Q.** He had binoculars, correct?

25 **A.** Yes.

1 Q. And you're on the windshield of the truck and you were using
2 your scope and your naked eye I believe was your testimony,
3 right?

4 **A.** Correct.

5 MS. AHMED: Your Honor, I'd just ask that if counsel is
6 going to make motions like that, that he put that on the record.

7 THE COURT: You want to describe the motion you just
8 made.

9 BY MR. MARCHESE:

10 Q. Well, is what will be depicted on the body cam, would that
11 be the general -- the body positioning that you were in on --

12 THE COURT: Can you please describe the conduct -- the
13 motion that you made when you were --

14 BY MR. MARCHESE:

15 Q. And what's depicted in the body cam is what -- the general
16 position you were in, correct?

17 **A.** Yes.

18 Q. And that would be your right elbow would be on the
19 windshield of the pickup, correct?

20 THE COURT: No. The question was for you to depict --
21 for you to describe your action that you just made when you were
22 asking that question --

23 MR. MARCHESE: Okay.

24 THE COURT: -- when you said, "Like this, right."

25 MR. MARCHESE: All right.

1 THE COURT: And he said right. So he's adopting some
2 movement that you made that's not in the record.

3 MR. MARCHESE: Okay.

4 BY MR. MARCHESE:

5 Q. Would you agree with me that your right elbow was on what I
6 just --

7 THE COURT: The record will reflect that Mr. Marchese
8 was moving from side to side. I don't know what else he did.
9 You moved your arms about somehow.

10 BY MR. MARCHESE:

11 Q. You had your right elbow up in the air and was resting on
12 the windshield of the vehicle, the pickup truck, correct?

13 A. Most of the time. I moved around.

14 Q. Okay. And your left arm was cupped under your rifle. Is
15 that correct?

16 A. Most of the time.

17 Q. You were looking through your scope with your right eye. Is
18 that fair to say?

19 A. Yes.

20 Q. Okay. And then sometimes you would move your head to the
21 left and look out of the scope sights with both of your eyes
22 being naked eyes. Fair to say?

23 A. Correct. Yes.

24 MR. MARCHESE: Okay. Is that good enough?

25 MR. LEVENTHAL: Court's indulgence.

1 MS. AHMED: I believe Your Honor did it.

2 (Defense conferring.)

3 BY MR. MARCHESE:

4 Q. At some point in time you concentrated on two particular
5 individuals, correct?

6 A. Yes.

7 Q. And those individuals, you've testified that they were --
8 you believed that they were imminent threats, correct?

9 A. Correct.

10 Q. I believe that you said that they were someone that was
11 there to possibly do you harm, correct?

12 A. Yes.

13 Q. And those two individuals were on the northbound bridge,
14 correct?

15 A. Yes.

16 Q. Approximately 200 yards away, correct?

17 A. Yes.

18 Q. Let's focus on this individual that you've described as
19 Black Hat. You obviously remember him, correct?

20 A. Yes.

21 Q. A lot of testimony on direct examination about this
22 individual, right?

23 A. Yes.

24 Q. You said that he had a black trucker hat with some sort of a
25 patch on it, right?

- 1 **A.** Correct.
- 2 **Q.** He had a long arm, correct?
- 3 **A.** Yes.
- 4 **Q.** And when you mean "long arm," you mean rifle?
- 5 **A.** Correct.
- 6 **Q.** And that was slung, correct?
- 7 **A.** Yes.
- 8 **Q.** Okay. And when you say "slung," is that because there was
- 9 some sort of a strap on it or something along those lines?
- 10 **A.** Yes.
- 11 **Q.** Okay. Black vest, correct?
- 12 **A.** Yes.
- 13 **Q.** A beard, correct?
- 14 **A.** Yes.
- 15 **Q.** He also had some sort of sunglasses on, correct?
- 16 **A.** Yes.
- 17 **Q.** I believe you testified today that they were some sort of
- 18 shooting-type glasses, correct?
- 19 **A.** Wire -- yes.
- 20 **Q.** I'm sorry?
- 21 **A.** Yes.
- 22 **Q.** Wire-rim glasses?
- 23 **A.** Correct. Yes.
- 24 **Q.** And he had a plaid shirt on, right?
- 25 **A.** Yes.

1 Q. Now, let's talk about this other individual, Tan Hat. You
2 said that he had dark-colored clothing on, correct?

3 **A.** Yes.

4 Q. And he had a tan vest carrier, correct?

5 **A.** That's what it appeared to be, yes.

6 Q. And you said you believe he had a beard, right?

7 **A.** Facial hair, yes.

8 Q. Okay.

9 Now, at some point in time Black Hat pointed his weapon
10 at you, correct?

11 **A.** Yes.

12 Q. Now, on direct examination you said that -- something to the
13 effect of it's not in chronological order. Do you remember
14 that?

15 **A.** Yes.

16 Q. What did you mean by that?

17 **A.** So the events as they happened, I don't -- I don't know if
18 they're in my report exactly how they happened because when I
19 wrote my report, I didn't put down times. I didn't keep track
20 of time while I was down there. So when I wrote my report, I
21 did it off of memory as those events came to me. This
22 happened -- that's why I put, In this instance, in another
23 instance. I didn't put like, At 11:59 this happened, because I
24 didn't know.

25 Q. Sure. Well, you're -- I think it's fair to say you were

1 stressed out on that day, correct?

2 **A.** Yes, I was.

3 **Q.** Showing a little bit of emotion, even here today in court
4 three and a half years later, correct?

5 **A.** That's right.

6 **Q.** So based on everything that's going on you're not saying,
7 Okay, everybody, hold on, I'm going to check my watch, right?

8 **A.** Yes.

9 **Q.** You're more worried about doing your job on that particular
10 day?

11 **A.** That's right.

12 **Q.** Okay. So you can't give me any specific times for those
13 reasons I just put forward, right?

14 **A.** Yes.

15 **Q.** Now, chronologically, though, can you tell me what happened
16 when? Is -- are you able to do that?

17 **A.** No.

18 **Q.** There were two instances which you've testified about in
19 which it was your belief that Black Hat pointed his weapon at
20 you, correct?

21 **A.** Yes.

22 **Q.** Okay. Which one happened first?

23 MS. AHMED: Objection. The witness just said he can't
24 do that.

25 BY MR. MARCHESE:

1 Q. Well, if you know, which one happened first?

2 A. I do not know.

3 Q. Okay. Let's first focus on the one where the individual was
4 kneeling, was your belief, pointing his weapon at you. Do you
5 know which one I'm referring to then?

6 A. Yeah, where he used the Jersey barrier as a -- to rest.

7 Q. Correct. Your testimony was that you rested -- he rested
8 his gun on the Jersey barrier, correct?

9 A. Correct. Yes.

10 Q. And he was using it as a stand, correct?

11 A. Yes.

12 Q. And he was pointing it -- his weapon at you, correct?

13 A. Yes.

14 Q. Okay. Now, one of the other -- the things that you were
15 talking about on direct examination was your duties as an
16 officer in a situation like that, and what I mean by that is if
17 and when you're going to shoot. Do you remember that testimony?

18 A. Yes.

19 Q. Now, I believe you've previously said that you don't get
20 free shots as an officer, correct?

21 A. That's right.

22 Q. And what you mean by that is there was obviously a lot of
23 people in the area on April 14th, 2014. Is that fair to say?

24 A. Yes.

25 Q. So if you're going to take a shot at approximately 200 yards

1 away, you want to make sure you're going to hit your target,
2 correct?

3 **A.** Yes.

4 **Q.** Because the last thing you want to do is miss your target
5 and hit someone that is not your intended target, correct?

6 **A.** Exactly, yes.

7 **Q.** An innocent bystander, for lack of a better term?

8 **A.** Yes.

9 **Q.** Okay. So in this particular time is the -- the traffic was
10 moving slow, correct?

11 **A.** I'm sorry. I didn't hear you.

12 **Q.** The traffic was moving somewhat slowly, correct?

13 **A.** Yes.

14 **Q.** So that was one of the issues with you taking a shot,
15 correct?

16 **A.** Yes.

17 **Q.** Because what you're going to have to do is you're going to
18 have to wait for the traffic to go past before you take the
19 shot. Is that correct?

20 **A.** Yes.

21 **Q.** And were there other individuals around Black Hat when he
22 was kneeling and had the rifle rested on the Jersey barrier?

23 **A.** I don't recall any -- anyone specifically, no.

24 **Q.** Okay. But one of the biggest issues was that there was a
25 van, correct?

1 **A.** Well, there's a lot of vehicles passing by.

2 **Q.** Okay. In that particular time, though, there was a van. I
3 believe you've previously talked about a white passenger van.
4 Do you remember that testimony?

5 **A.** Yes.

6 **Q.** Okay. And that white passenger van had I believe you said
7 some -- maybe like a young child in the back of it, correct?

8 **A.** I saw a van with young children in it, yes, during that
9 time.

10 **Q.** Okay. Pressed up against the glass, seeing what was going
11 on, correct?

12 **A.** Yes.

13 **Q.** Okay. And I think there was even some talk about a soccer
14 ball with shoe polish in the window, correct?

15 **A.** That's in my report, yep.

16 **Q.** And that is one of the reasons that you didn't fire because
17 you didn't want to possibly hit that van, correct?

18 **A.** Obviously, yeah.

19 **Q.** Sure. Because they have absolutely, to your knowledge,
20 nothing to do with Black Hat?

21 **A.** Correct.

22 **Q.** Okay. Another particular incident in which you testified
23 that Black Hat pointed his weapon at you would have been I
24 believe at one point he was kneeling behind the Jersey barrier,
25 correct?

1 **A.** Yes.

2 *Q.* And then he stood up at one point, correct?

3 **A.** Yes.

4 *Q.* And there was some sort of -- I think this was your
5 testimony. If it's not, disagree with me and correct me. There
6 was some sort of a furtive movement and he pointed his weapon at
7 you, correct?

8 **A.** Correct.

9 *Q.* This was a quicker, for lack of a better term, action than
10 the first incident we were just discussing where the rifle was
11 on the Jersey barrier. Is that an accurate statement?

12 **A.** That's correct, yes.

13 MR. MARCHESE: Now, if I could bring up for only Court
14 and counsel Defense Proposed Exhibit 5031-A through C.

15 BY MR. MARCHESE:

16 *Q.* Sir, you have some screen shots on your -- I think you do.
17 I think I can see it from here. Do you see those, sir?

18 **A.** Yes.

19 *Q.* Okay. And have you had an opportunity to look at 5031-A?

20 **A.** Yes.

21 *Q.* Okay.

22 MR. MARCHESE: And, Brian, if you could go to the
23 second one.

24 BY MR. MARCHESE:

25 *Q.* Now, we're looking at B. Have you had an opportunity to

1 look at that one?

2 **A.** Yes.

3 **Q.** Okay. And lastly C.

4 Now, you've seen these before, sir, haven't you?

5 **A.** Yes.

6 **Q.** Okay. And have they fairly and accurately depict what you
7 have seen before?

8 **A.** Yes.

9 **Q.** Okay.

10 MR. MARCHESE: Your Honor, at this time Defense moves
11 for publication -- or admission and then publication of Defense
12 Exhibit 5031-A through C.

13 THE COURT: The question is not whether it fairly and
14 accurately depicts what he's seen before when he's reviewed
15 these pictures before. The question is whether it fairly and
16 accurately depicts what he saw on the day in question.

17 BY MR. MARCHESE:

18 **Q.** Does this fairly and accurately depict what you saw on April
19 14, 2014 [sic]?

20 **A.** Well, yeah, it's obviously not -- I wasn't right there, but
21 from my position it's similar to what I saw. I don't know if
22 it's the exact same thing that I saw, but it's similar to the
23 actions that I saw Black Hat take.

24 MR. MARCHESE: Same thing, Your Honor. We now move for
25 5031-A through C.

1 THE COURT: Any objection?

2 MS. AHMED: No objection, Your Honor.

3 THE COURT: Okay. 5031-A through C will be admitted.
4 You may go ahead and publish it.

5 (Defense Exhibits 5031-A through C are admitted.)

6 BY MR. MARCHESE:

7 Q. Okay, sir. Turning your attention to the first slide which
8 would be A, as in apple.

9 A. Yes.

10 Q. So I'm going to put a circle over an individual. Would that
11 be Black Hat at that time?

12 A. Yes.

13 Q. Okay. And just to be clear so we can acclimate the jury a
14 little bit, and you touched upon this a little bit earlier, this
15 is not necessarily your vantage point, correct?

16 A. That's true, yes.

17 Q. This is a screen shot of a video that you didn't take,
18 correct?

19 A. Correct.

20 Q. All right. Now, in this particular screen shot we see --
21 would you agree with me that Black Hat is kneeling down or some
22 sort of crouched position?

23 A. Yes.

24 Q. Okay. You can't see the lower part of his body, maybe from
25 his chest up. Is that accurate?

1 **A.** Yes.

2 **Q.** Okay. But you can generally tell it's him just from some of
3 the things you've said earlier. He's obviously got a hat on and
4 there appears to be maybe some sort of patch on the front of it,
5 right?

6 **A.** Yes.

7 **Q.** Okay. Do you see Tan Hat in this particular screen shot?

8 **A.** I think so.

9 **Q.** Okay. And where would Tan Hat be, to your knowledge or your
10 belief?

11 **A.** Crouched down to his left. Right where that -- that guy's
12 standing, like right below him.

13 **Q.** If you want to just put an X, it will probably make it
14 easier.

15 **A.** Okay. So, I don't know, 10 feet-ish to Black Hat's
16 right?

17 **A.** Your guess is as good as mine.

18 **Q.** Okay.

19 **A.** I can't tell from that angle.

20 **Q.** All right.

21 **A.** Okay. We're going to go to Slide B now, please. Okay.
22 Now, in this particular slide, sir, show me where Black Hat is.

23 **A.** Just circle him?

24 **Q.** Yes, please.

25 **A.** My circle's not working.

1 Q. Okay. How about I do it for you and you agree with me if
2 it's ...

3 All right. Let's try that again.

4 **A.** Do it again.

5 Q. I think we got it. There we go.

6 **A.** Okay.

7 Q. And that's where Black Hat is. Where is Tan Hat, if you
8 know?

9 **A.** I believe he's right here.

10 Q. Now, in this particular screen shot is Black Hat pointing at
11 you at this time?

12 **A.** Appears to be. I don't know if he's pointing at me, but he
13 appears to be pointing his weapon.

14 Q. Okay. And what makes you say that?

15 **A.** Because it's pointed.

16 Q. Okay. Can you see the barrel of the weapon?

17 **A.** Not from this vantage point.

18 Q. Okay. How about his left arm? Can you see his left arm?
19 Where is that in this screen shot?

20 **A.** I can't clearly see it, no.

21 Q. Okay. And do you see any vans with soccer balls?

22 **A.** No.

23 Q. Okay. And then just to back up a little bit, and I can put
24 it back up for you if you need. Did you see any vans with
25 soccer balls in 5031-A, as in apple?

1 **A.** No.

2 MR. MARCHESE: And, Brian, if we can go to C, as in
3 Charlie.

4 BY MR. MARCHESE:

5 Q. Okay, sir. 5031-C. Circle Mr. Black Hat, if you can,
6 please.

7 All right. Is he pointing his weapon at you in this
8 particular screen?

9 **A.** No.

10 Q. Okay. Tan Hat, can you please point out where your
11 recollection is Tan Hat is at this juncture?

12 **A.** Well --

13 MS. AHMED: Objection, Your Honor. The witness never
14 said it was his recollection. He said it appeared to him to be.

15 MR. MARCHESE: Well, if he doesn't --

16 BY MR. MARCHESE:

17 Q. You don't know, then you don't know. Do you know or based
18 on your memory of April 14th, 2014 -- or April 12th, 2014, do
19 you recollect based on this screen shot where Tan Hat is?

20 MS. AHMED: Your Honor, objection. I just want to be
21 clear, the witness had I believe testified earlier that he
22 wasn't sure that this is what he saw.

23 MR. MARCHESE: Then he can say that.

24 MS. AHMED: It looks similar.

25 THE COURT: So is there an objection?

1 MS. AHMED: It just mischaracterized his previous
2 testimony.

3 MR. MARCHESE: I just asked him if he knew where it
4 was. I don't think I said you testified --

5 THE COURT: Yes, overruled.

6 MR. MARCHESE: -- where he was.

7 BY MR. MARCHESE:

8 Q. Do you know where Tan Hat is in this screen shot?

9 A. I believe I do, but it's not what I saw. But I can -- from
10 this picture, I can probably -- I think I know where it is, but
11 not 100 percent.

12 Q. Okay.

13 A. Because I can just see the very top of the head. So I
14 assume it's in the same spot.

15 Q. Okay. So somewhere to the right of Black Hat. Is that your
16 recollection?

17 A. Correct. Our left.

18 Q. Correct.

19 Somewhere near this individual with looks like some
20 kind of blue shirt and a maybe light-colored hat?

21 A. Right. It looks like he's looking down at that spot.

22 Q. Okay. Once again, no white van with a soccer ball on it?

23 A. No.

24 Q. Okay. Thank you, sir.

25 MR. MARCHESE: Brian, if you can publish to just Court

1 and counsel 5032-A through E. Blow it up a little bit more,
2 please.

3 BY MR. MARCHESE:

4 Q. And, sir, can you see -- yeah. You can see it on your
5 screen?

6 A. Yes, sir.

7 Q. You see 5032-A, correct?

8 A. Yes.

9 Q. And that particular screen shot, does it fairly and
10 accurately depict what you saw on April 14th or 12th -- excuse
11 me -- 2014?

12 A. Again, same answer. I mean, it's obviously not the angle.

13 Q. Yeah.

14 A. I was much -- at a greater distance, and I wasn't at bridge
15 height. So it's hard to tell if it is exactly what I saw at
16 that time.

17 Q. Okay. Do you have any reason to disbelieve it?

18 A. Disbelieve?

19 Q. Disbelieve what's in there is not a fair and accurate
20 depiction.

21 MS. AHMED: Objection, Your Honor, vague. Confusing.

22 BY MR. MARCHESE:

23 Q. Well, you've seen these before, correct?

24 A. Yes.

25 Q. And you've said that they're fair and accurate depictions

1 before at a prior hearing, correct?

2 **A.** Well, it's not the angle that I -- that I was at during that
3 day.

4 **Q.** Okay. So they're not fair and accurate today is what you're
5 saying?

6 **A.** They are the same fair and accurate as they were before.
7 I'm just pointing out that I wasn't at that angle.

8 **Q.** Sure.

9 **A.** So it's not fair and accurate to say, yeah, I was at the
10 bridge level. I don't want to give the misconception that I was
11 standing right there and could see that exact picture.

12 **Q.** Correct. I'm not trying to put words in your mouth.

13 You were in the wash, correct?

14 **A.** Correct.

15 **Q.** At a lower angle, trajectory, whatever you want to call it,
16 from this particular shot, correct?

17 **A.** Absolutely.

18 **Q.** Okay.

19 MR. MARCHESE: And, Brian, if you can go to 5032-B.

20 BY MR. MARCHESE:

21 **Q.** Another screen shot in succession. You've seen this one
22 before, correct?

23 **A.** Yes. Excuse me.

24 **Q.** Absent the angle, it does fairly and accurately depict what
25 you saw on April 12, 2014?

1 **A.** Generally, yes.

2 *Q.* Okay.

3 MR. MARCHESE: And go to C, please.

4 BY MR. MARCHESE:

5 *Q.* Another screen shot. Once again, you've seen this before,
6 correct?

7 **A.** Yes.

8 *Q.* And it fairly and accurately depicts your recollection of
9 what you saw on April 12th, 2014?

10 **A.** Same answer, yes.

11 *Q.* And I'll say it for you.

12 **A.** Thank you.

13 *Q.* You were at a slightly different angle, correct?

14 **A.** Yes. Thanks.

15 *Q.* Okay. Fair enough.

16 MR. MARCHESE: Go to D, as in David.

17 BY MR. MARCHESE:

18 *Q.* Same question, sir. Does this fairly and accurately depict
19 with a slightly different angle what you saw on April 12th,
20 2014?

21 **A.** Yes.

22 *Q.* Okay. And lastly, E, as in Edward. And does this fairly
23 and accurately depict what you saw from your angle on April
24 12th, 2014?

25 **A.** Same thing, yes, minus the angle and where it was taken

1 from, yep.

2 MR. MARCHESE: Your Honor, at this time Defense would
3 move for admission of 5032-A through E.

4 THE COURT: Any objection?

5 MS. AHMED: No, Your Honor.

6 THE COURT: All right. We will admit -- 5032-A through
7 E will be admitted. You can go ahead and publish it.

8 MR. MARCHESE: Thank you, Your Honor. Can we go to A,
9 please?

10 (Defense Exhibits 5032-A through E are admitted.)

11 BY MR. MARCHESE:

12 Q. Can you see that over there, sir?

13 A. Yes.

14 Q. You can see it. Okay.

15 MR. MARCHESE: Brian, can you slide that over just a
16 little bit to the left, if possible. No, that's fine.

17 BY MR. MARCHESE:

18 Q. Do you see Black Hat depicted in this particular screen
19 shot?

20 A. Yes.

21 Q. And hopefully it's working. Can you circle him.

22 Okay. And what is your recollection of what he's doing
23 in that particular screen shot?

24 A. He looks like he's just, like, bust high or chest high and
25 looking over the Jersey barrier, and he has his weapon slung in

1 front of him.

2 Q. Okay. He's not pointing his weapon in this particular
3 screen shot?

4 **A.** No.

5 Q. And do you see Tan Hat in this particular screen shot?

6 **A.** No.

7 Q. Okay. To your recollection, and I'm not asking you to
8 guess, just your recollection, where is Tan Hat at this time?

9 **A.** I don't know.

10 Q. Okay.

11 MR. MARCHESE: Brian, can you go to B, please.

12 BY MR. MARCHESE:

13 Q. Okay. And if you could find me Black Hat once again.

14 All right. And you see Tan Hat?

15 **A.** No.

16 Q. Okay. Black Hat, what is your recollection of what he's
17 doing in that particular screen shot?

18 **A.** Standing up.

19 Q. Okay. Not pointing his weapon at you at this time?

20 **A.** It doesn't appear to be, no.

21 MR. MARCHESE: And, Brian, if we can go to --

22 THE COURT: Wait. Is this your recollection or you're
23 just describing what you're seeing on the photograph?

24 THE WITNESS: I'm describing what I'm seeing on the
25 photograph, Your Honor.

1 BY MR. MARCHESE:

2 Q. What was your recollection?

3 **A.** I don't -- I don't know if I have a recollection of this
4 exact moment. You know, when I pictured him as I described
5 standing up, then he was standing up and blading off towards me.

6 Q. Okay. And that was the, I think you said, furtive movement,
7 correct?

8 **A.** Yes.

9 Q. Okay. And here we are in C. I'm just going to get right to
10 it. That's Black Hat, correct?

11 **A.** Yes.

12 Q. Where's Tan Hat, if you know?

13 **A.** No.

14 Q. Okay. Is he pointing his -- Black Hat, is he pointing his
15 weapon at you in this particular screen shot?

16 **A.** No, from my recollection this is where the gun was coming
17 up.

18 Q. Okay.

19 **A.** So it's coming. It's like halfway up right there.

20 Q. Okay.

21 MR. MARCHESE: Brian, can you make that a little bit
22 larger, if possible.

23 BY MR. MARCHESE:

24 Q. All right. And just to get back to it, there's Black Hat
25 again, correct?

1 **A.** Correct.

2 **Q.** And it's your testimony that it's your belief that he's
3 bringing his gun up at that point on Slide Show C?

4 **A.** That's what I perceived, yes.

5 MR. MARCHESE: Okay. And if we can go to D, next one,
6 please. And if we -- no, that's probably good.

7 BY MR. MARCHESE:

8 **Q.** All right. There's Black Hat?

9 **A.** Yes.

10 **Q.** And we can shrink it for you, if you want, D. Is Tan Hat in
11 this particular slide?

12 **A.** No, I don't see him.

13 **Q.** Okay. Was it your recollection that he was around at this
14 point or ...

15 **A.** No, I don't -- I don't have any recollection of him being --

16 **Q.** Fair enough.

17 MR. MARCHESE: All right. And if you could make it
18 larger again, Brian. I apologize.

19 BY MR. MARCHESE:

20 **Q.** Okay. And I'm circling Black Hat for you. What is
21 depicted, to your recollection, in this particular screen shot?

22 **A.** I didn't -- I don't have a recollection of that. I mean,
23 are you asking me what's depicted in the picture?

24 **Q.** What was your -- let's get our mind off the picture for a
25 moment. What was your recollection at the time?

1 **A.** Again, he -- it was a very fast, furtive movement. He stood
2 up and brought the gun up, and that's what it appears to me that
3 he's doing, as I described, bringing the gun up.

4 **Q.** Okay. Now, let's focus on D and the circle. Does he have
5 his gun up at this point?

6 **A.** It doesn't appear to be up aimed in, but it looks like -- to
7 me in the picture it looks like he's coming up with it.

8 **Q.** Okay. Would you agree with me that this line I'm going to
9 drawn is along his weapon?

10 **A.** I would say yes. I mean, it's kind of fuzzy, but ...

11 **Q.** Okay. Now, you can see his left arm. I'm going to kind of
12 give you a little ...

13 You'd agree with me that that's his left arm, correct?

14 **A.** I would assume, yeah.

15 **Q.** And it appears that his left arm is across his chest
16 somewhere in the region of his right collarbone/shoulder area.
17 Is that accurate?

18 **A.** I don't -- I can't really tell from there. It looks like
19 it's where your line is kind of midway through his body like
20 that.

21 **Q.** Okay. And the reason you say that is because you can see
22 the forearm slightly under what appears to be the head area.
23 Would you agree with me with that?

24 **A.** I think so, yeah.

25 MR. MARCHESE: Okay. And lastly, Brian, if we can go

1 to the last one which I believe is E, as in Edward. And just
2 leave it right there.

3 BY MR. MARCHESE:

4 Q. Once again, Tan Hat, do you see him in this particular
5 screen shot?

6 A. No, I don't.

7 Q. Okay. And we do see Black Hat, however, correct?

8 A. Yes.

9 Q. And he's right down there, correct?

10 A. Yes.

11 Q. A clearer depiction of his gun, correct?

12 A. Correct.

13 Q. Not pointing in your area, correct, or direction?

14 A. No.

15 Q. Okay. Pointing more towards the ground, correct?

16 A. Yes.

17 Q. And the left arm is raised and towards maybe the ear of the
18 individual, of Black Hat?

19 A. It kind of looks like that.

20 Q. Yeah, somewhere by the face --

21 MS. AHMED: Your Honor, I'd just object to this line of
22 questioning. It's unclear if he's asking the witness to recount
23 his observations on April 12, 2014, or just to comment on slides
24 that he's being shown.

25 MR. MARCHESE: Your Honor, I'm giving him every

1 opportunity to disagree with me. If he wants to disagree, then
2 he's welcome to.

3 MS. AHMED: Your Honor, so the objection is
4 argumentative.

5 THE COURT: Sustained.

6 BY MR. MARCHESE:

7 Q. Yes or no, would you agree with me that his arm -- his left
8 arm is somewhere up in the vicinity of the left side of his
9 face?

10 **A.** Yes.

11 THE COURT: Again, you're asking him in the photograph
12 what is he seeing; not what he remembers from his own
13 recollection of what he saw.

14 BY MR. MARCHESE:

15 Q. In this particular screen shot, would you agree with me, yes
16 or no, say whatever you want, I'm not putting words in your
17 mouth, that his left arm is by his left side of his face,
18 correct?

19 MS. AHMED: Objection, argumentative.

20 THE COURT: You're telling him, "Yes or no," but then
21 you're also telling him, "Say whatever you want." So please
22 rephrase the question.

23 MR. MARCHESE: Your Honor, I'm just trying to give him
24 the opportunity.

25 BY MR. MARCHESE:

1 Q. I'm not forcing you, sir. Okay? Here, let's just do it
2 this way --

3 THE COURT: Let's just take a break. We're going to go
4 ahead and take an early bathroom break today. So during this
5 break, the jury is not to discuss this case with anyone nor
6 permit anyone to discuss it with you. Please do not attempt to
7 perform any kind of research or investigation independently on
8 your own, and please do not read or listen to or review anything
9 that touches upon this case in any way. And please do not form
10 any opinion until after you've heard all of the evidence,
11 received all of the testimony, the jury instructions, heard
12 closing arguments. Then I will excuse you to begin
13 deliberation.

14 So we'll take about a 15-minute bathroom break. It's
15 2:45. We'll be back here at 3 p.m.

16 Special Agent Swanson, after the jury leaves -- the
17 jury is excused. After the jury leaves, then you can step down
18 and take a restroom break and stretch.

19 THE WITNESS: Yes, Your Honor. Thank you.

20 THE COURT: And then we just need you back here by
21 3 p.m.

22 THE WITNESS: Yes, ma'am. Thank you.

23 (Whereupon jury leaves the courtroom at 2:45 p.m.)

24 THE COURT: Off record.

25 (Recess taken at 2:46 p.m.)

1 (Resumed at 3:14 p.m.)

2 THE COURT: All right. You may be seated. You can go
3 ahead and bring in the jury.

4 COURTROOM ADMINISTRATOR: Yes, Your Honor.

5 (Whereupon jury enters the courtroom at 3:19 p.m.)

6 THE COURT: Jury may go ahead and be seated. Everyone
7 else may be seated as well.

8 Let's go ahead and continue with cross-examination of
9 BLM Special Agent Scott Swanson by Mr. Marchese on behalf of
10 Mr. Parker.

11 MR. MARCHESE: Almost done, sir.

12 BY MR. MARCHESE:

13 Q. At some point in time it came to your attention that Black
14 Hat had went down behind the barriers. Is that accurate?

15 **A.** Yes.

16 Q. As a matter of fact, there was some pictures that he was
17 pointing weapon -- his rifle in your direction?

18 MS. AHMED: Objection, vague.

19 MR. MARCHESE: I'm sorry. What was the objection?

20 THE COURT: Vague?

21 MS. AHMED: There was some pictures? Maybe I didn't
22 hear the question.

23 BY MR. MARCHESE:

24 Q. Have you ever seen pictures of Black Hat pointing his weapon
25 in -- through the Jersey barrier?

1 **A.** Yes.

2 **Q.** And when did you first see those?

3 **A.** I can't recall exactly when I saw them. Later -- later on.
4 I can't recall.

5 **Q.** Okay. Would it have been like a day after the event? Two
6 days?

7 **A.** No, it was after that.

8 **Q.** Okay. How did you find out that he was doing so, pointing
9 his weapon at you?

10 **A.** Through those pictures.

11 **Q.** Okay. You authored a Memorandum of Activity on April 15th,
12 2014. Do you remember that?

13 **A.** Yes.

14 **Q.** Okay. And that was all about this particular event,
15 correct?

16 **A.** Yes.

17 **Q.** I believe there might have been some dates prior to that,
18 but it went over the events on April 12th of 2014, correct?

19 **A.** Correct.

20 **Q.** And when you authored that, it was fresh in your mind,
21 correct?

22 **A.** Yes.

23 **Q.** And you do those accurately to the best of your abilities,
24 correct?

25 **A.** Yes.

1 Q. And isn't it true that in that report you wrote that you
2 later learned that black-hatted sniper was using a small gap in
3 the concrete barriers?

4 MS. AHMED: Objection, hearsay.

5 THE COURT: The objection was what? Hearsay?

6 MS. AHMED: Hearsay. And it's also improper
7 impeachment. And he's reading from his report, Your Honor.
8 That's why I say hearsay.

9 THE COURT: Please don't read from the report. Go
10 ahead and ask him the question.

11 BY MR. MARCHESE:

12 Q. Let's do it this way. If I showed you a copy of your
13 report, would it refresh your recollection as to what you wrote
14 in that report?

15 A. Yes.

16 Q. Okay.

17 MS. AHMED: Your Honor, I would object to this line of
18 refreshing because the witness said he recalled -- recalled
19 seeing pictures.

20 THE COURT: You can impeach, if you can impeach
21 correctly.

22 MR. MARCHESE: Well, he's -- well, may I show him a
23 copy of the report to refresh his recollection, Your Honor?

24 THE COURT: Only if he says he can't remember.

25 MR. MARCHESE: Okay.

1 BY MR. MARCHESE:

2 Q. Do you remember writing in your report that you later
3 learned that black-hatted sniper was pointing his weapon through
4 concrete barriers?

5 MS. AHMED: Objection. Hearsay, Your Honor. He
6 continues to read from the report.

7 THE COURT: Sustained.

8 BY MR. MARCHESE:

9 Q. Did you learn before writing your report that he was
10 pointing his weapon at you?

11 A. Yes.

12 Q. Okay. And how did you learn that, sir?

13 A. I don't recall.

14 Q. Okay. You just -- I know it was three and a half years ago,
15 but just from your recollection you learned it, you're just not
16 sure how?

17 A. Correct.

18 MR. MARCHESE: No further questions.

19 THE COURT: Anyone else?

20 CROSS-EXAMINATION

21 BY MR. LEVENTHAL:

22 Q. Good afternoon.

23 A. Good afternoon.

24 Q. Special Agent Swanson, my name is Todd Leventhal. How are
25 you today?

- 1 **A.** Good, sir. Thank you.
- 2 **Q.** You're an investigator with the BLM. Is that correct?
- 3 **A.** Yes, sir.
- 4 **Q.** Okay. And you indicated you had military training for seven
5 years?
- 6 **A.** No, I was in the military for seven years.
- 7 **Q.** Seven years. Okay.
- 8 **A.** Most of those were training actually, yeah, because it's
9 pretty much what you do in the military.
- 10 **Q.** Now, on April 12th, 2014, you testified that you were behind
11 Post 6, correct?
- 12 **A.** On April -- in the morning, yes.
- 13 **Q.** Okay. And that would be behind the ICP?
- 14 **A.** Yes.
- 15 **Q.** And that's where the cattle were stored, correct?
- 16 **A.** Correct.
- 17 **Q.** Okay. And you indicated that you were there because there
18 was a possible incursion, correct?
- 19 **A.** Yes.
- 20 **Q.** Okay. And so you had already heard about that or something
21 to that effect, correct?
- 22 **A.** Not sure of the question.
- 23 **Q.** Okay. Approximately --
- 24 **A.** Go ahead.
- 25 **Q.** Go ahead.

1 MS. AHMED: Objection, vague.

2 MR. LEVENTHAL: I'll clear it up.

3 THE WITNESS: I'm sorry.

4 MR. LEVENTHAL: I'll clear it up.

5 BY MR. LEVENTHAL:

6 Q. What time in the morning -- did you hear that in the morning
7 or in the evening prior to on the 11th?

8 A. Yeah, the evening of the 11th.

9 Q. Okay. And so you were -- on the 12th in the morning you
10 were at Post 6 at approximately what time?

11 A. At Post 6 until about 11 o'clock.

12 Q. Until 11?

13 A. 11, 11:15.

14 Q. Do you remember when you got to Post 6?

15 A. The day before you mean?

16 Q. Were you there the day before?

17 A. Yes.

18 Q. Okay. And then -- sorry.

19 A. On the 11th.

20 Q. And the day before was when you heard there was this
21 possible incursion, correct?

22 A. Yes.

23 Q. Now, there was no protestors in either the wash or on I15
24 northbound or southbound bridge on the 11th, correct?

25 A. I couldn't tell you. I wasn't there. I wasn't on the

1 bridge or anywhere where I could see the bridge.

2 Q. Okay. So you couldn't see anything from Post 6 where the
3 cows were?

4 **A.** No.

5 Q. Okay. What is the distance from Post 6 to where the
6 northbound bridge is?

7 **A.** I would say maybe -- I mean, I can guesstimate. Maybe three
8 quarters of a mile or more.

9 Q. Okay. And is it sort of straight or is there a turn? Do
10 you remember?

11 **A.** Well, there was a large sand hill --

12 Q. Okay.

13 **A.** -- where I was, and I was faced up the wash away -- like
14 facing away from the bridges. So my vehicle's faced up the wash
15 because we were protecting the cattle from any threats that
16 might come from the north. So we were faced away from the
17 bridges. There's also a big sand hill. There's a lot of things
18 in between, the ICP, etc.

19 Q. Okay. So you're indicating that would be somehow difficult
20 to see the bridge from where you were stationed at the -- where
21 the cows where?

22 **A.** I don't recall exactly what my view of the bridge was, but I
23 would think it would be hard to see protestors if there were
24 any.

25 Q. Okay. Were you aware of a press release that was released

1 regarding the releasing or the ceasing of operations?

2 **A.** No.

3 **Q.** Okay. So you at some point around I guess 11, 11:15 you
4 left Post 6 to go to Post 2, correct?

5 **A.** Yeah, 11:15 in the morning. Correct.

6 **Q.** And I believe you indicated it was you and Richardsons?

7 **A.** Yes, sir.

8 **Q.** That would be your partner?

9 **A.** Yes.

10 **Q.** Okay. And the two of you walked down to Post 2 from Post 6,
11 right?

12 **A.** No, sir. We drove.

13 **Q.** I mean Post 6 to Post 2.

14 **A.** No, sir.

15 **Q.** Okay. How did you get to Post 2?

16 **A.** We drove in my vehicle. I drove.

17 **Q.** Oh, you drove?

18 **A.** He was in the passenger seat.

19 **Q.** I see. Okay.

20 Now, when you drove, where did you park your vehicle
21 when you got to Post 2?

22 **A.** On the access road leading down to Post 2, probably -- from
23 that truck that we stopped at was probably maybe 100 yards from
24 there, of the wash.

25 **Q.** So the truck that we saw you in in the video was not your

1 truck, correct?

2 **A.** Correct, sir.

3 **Q.** And that truck was parked east to west, correct?

4 **A.** Yes.

5 **Q.** And you were primarily on the hood of that truck, correct?

6 **A.** Yes, sir.

7 **Q.** Okay. And you didn't move from the hood of that truck, did
8 you?

9 **A.** At one point I think I went to the -- like to look through
10 -- on the driver's side window to look through the
11 passenger-side window, but the windows were down, like through
12 the doors.

13 **Q.** Okay. But for the most part of you spent -- during that
14 morning you spent at the -- on the hood of that vehicle,
15 correct?

16 **A.** Yes, sir.

17 **Q.** Okay.

18 All right. Now, you indicated that the protestors had
19 high ground?

20 **A.** Yes, sir.

21 **Q.** Okay. But did the BLM -- they were there first, correct?

22 **A.** I don't know.

23 **Q.** You had been there for at least the day before, correct?

24 **A.** In that spot?

25 **Q.** Well, you had been -- do you know when they put the gates up

1 in front?

2 **A.** No, sir.

3 **Q.** Okay. And, no, not in that spot. You had been -- the ICP
4 had there, correct, for a few days at least?

5 MS. AHMED: Objection, relevance.

6 THE COURT: Relevance?

7 MR. LEVENTHAL: It's tending to show who took the high
8 ground. He just indicated they got the high ground as if, you
9 know, they took it in some military style. The relevance is
10 whether or not they did or didn't do that, whether it was just
11 there or there was some plan. It's coming out like there's some
12 plan that they took the high ground, Your Honor. If we want to
13 go to the sidebar, I can explain it. That's the relevance of
14 it. I can move on.

15 THE COURT: The relevance of him being there three days
16 before? I'm not seeing it. Go ahead.

17 BY MR. LEVENTHAL:

18 **Q.** Well, the real question is who was there first. Was the BLM
19 there? Was the ICP, the unit, there before the protestors were
20 there?

21 MS. AHMED: Objection. Same objection. Relevance.

22 MR. LEVENTHAL: Would be the same answer.

23 THE COURT: Overruled. You can answer the question.

24 THE WITNESS: I'm sorry.

25 BY MR. LEVENTHAL:

1 Q. That's okay. Let me back up.

2 A. State it again.

3 Q. Let me back up. The BLM -- or you or BLM, they were
4 stationed in that area, the ICP, that area, prior to protestors
5 even arriving, correct?

6 A. Yes.

7 Q. You had established that location, correct?

8 A. Correct.

9 Q. Okay. Thank you.

10 Okay. Now, you indicated that you were having a hard
11 time picking out targets, correct?

12 A. Yes.

13 Q. When you first got to Post 2.

14 A. Yes.

15 Q. I think you indicated because there was a lot of confusion?

16 A. No, there was a lot of targets.

17 Q. A lot of movements?

18 A. Yes.

19 Q. Okay. Lot of targets, a lot of people out there?

20 A. Lot of threats, yes.

21 Q. Okay.

22 Lot of people with cameras out there?

23 A. Yes, there was a lot of cameras. Lot of -- well, a lot of
24 cell phones for sure.

25 Q. A lot of cell phones. Any long cameras, long lens cameras?

1 **A.** I don't recall any when I first got there.

2 **Q.** Okay. Now, you had a magnification and a CODE? A cod, I
3 believe you called it?

4 **A.** Yes. It's an ACOG.

5 **Q.** ACOG?

6 **A.** The brand, yes, or the model, I guess.

7 **Q.** And you indicated that you were one of the only ones that
8 had this type of magnification, correct?

9 **A.** Yes.

10 **Q.** Okay. And that's why somebody asked you to take a look to
11 see what was going on, right?

12 **A.** Correct.

13 **Q.** Okay. Now, you gave some very specific details of Black
14 Hat, correct? You were able to identify Black Hat with some
15 specific details?

16 **A.** Yes.

17 **Q.** Okay. That he had a large hat, correct?

18 **A.** Yes.

19 **Q.** All right. And some kind of an emblem?

20 **A.** Yes.

21 **Q.** You even indicated he had some mesh on the back of his hat,
22 correct?

23 **A.** Yeah.

24 **Q.** You indicated that?

25 **A.** I indicated that was the type of hat that -- a trucker hat

1 generally has mesh and a snap back.

2 Q. Oh. So it was a general description; not a specific one?

3 A. Well, when I was describing what type of hat it was, I
4 described exactly what it looked like and then described what a
5 trucker hat is in my opinion.

6 Q. All right. And you indicated that he had a gun that was
7 slung?

8 A. Yes, sir.

9 Q. Okay. And he had a vest carrier, correct?

10 A. Yes, sir.

11 Q. All right. He had a beard of some sort, correct?

12 A. Yes, sir.

13 Q. Sunglasses, pilot type?

14 A. Yes.

15 Q. Okay. Plaid shirt?

16 A. Yes.

17 Q. Okay. Now, Tan Hat, you weren't so descriptive, correct?

18 A. Yes.

19 Q. Is that true?

20 A. True.

21 Q. Okay. And you only talked about Tan Hat having a baseball
22 cap of some sort, correct?

23 A. Well, I gave more of a description of him; but, yeah,
24 based -- tan hat, yes.

25 Q. Some facial hair?

1 **A.** Yes.

2 **Q.** Okay. And he also had some kind of a long gun, correct?

3 **A.** Correct.

4 MR. LEVENTHAL: Okay. If we could pull up Government's
5 151, please.

6 BY MR. LEVENTHAL:

7 **Q.** Now, you were asked some questions on cross. You didn't
8 actually see this while you were out there on the ...

9 **A.** No, I didn't.

10 **Q.** No. Okay. But you saw this picture or this gentleman here
11 at some later time, correct?

12 **A.** I don't know if it was this exact picture, but -- depicting,
13 yes. From a different angle, yes.

14 **Q.** All right. Were you able to see who this person was here?

15 **A.** Did I see them?

16 **Q.** Yes.

17 **A.** I believe so, yes.

18 **Q.** Okay. Would that be the cameraman that you indicated put
19 his fingers in his ear?

20 **A.** No.

21 **Q.** No?

22 Now, this gentleman here has a black cap, correct?

23 **A.** Yes.

24 **Q.** And this female here, she's got a tan cap, correct?

25 **A.** Yes.

1 Q. And this gentleman here has a dark-colored cap, correct?

2 A. Yes.

3 Q. And another tan hat here, correct?

4 A. Yes.

5 Q. Okay. And he looks like he's holding what looks to be
6 something long, correct?

7 A. A camera, yes.

8 Q. Camera. From this angle you can see that as a camera,
9 right?

10 A. Yes.

11 Q. With a longer lens, correct?

12 A. It looks like it, yeah.

13 MR. LEVENTHAL: If we could go to 159, please.

14 BY MR. LEVENTHAL:

15 Q. All right. So just to orientate you, this would be a
16 picture from the northbound bridge. Would that be correct
17 from -- coming the opposite angle of you, where you were at?

18 A. Yes.

19 Q. Okay. And what we see here -- if you could draw an S on the
20 southbound bridge for me.

21 Okay.

22 A. It's kind of an S.

23 MR. LEVENTHAL: Brian, could you increase that, please.

24 A little -- little bit more. There you go.

25 BY MR. LEVENTHAL:

1 Q. Sir, can you tell me, is this your vehicle here behind this
2 tree?

3 **A.** Out on that angle, yeah, it is behind that tree.

4 THE COURT: By "your vehicle," you're referring to his
5 actual vehicle or the vehicle he was using?

6 MR. LEVENTHAL: Oh. I'm sorry. I'll rephrase. I
7 appreciate that, Your Honor.

8 BY MR. LEVENTHAL:

9 Q. This vehicle is where you indicated you were on the hood,
10 correct?

11 **A.** Yes.

12 Q. Okay. And this would be the hood because the vehicle would
13 be facing west or east?

14 **A.** Well, it would be facing east.

15 Q. Okay. So this would be the hood where you would have been
16 sitting, correct?

17 **A.** Yeah.

18 Q. Right behind that tree, right?

19 **A.** Well, it's a different angle; but yeah. The truck on that
20 picture at that angle is behind the tree.

21 MR. LEVENTHAL: Can we go back a little bit. And go
22 back to 152, please. Okay.

23 BY MR. LEVENTHAL:

24 Q. So at 152 we're looking back at the northbound bridge,
25 correct, if you know?

1 **A.** This is the northbound bridge.

2 **Q.** This is, yes.

3 **A.** As far as I know, yeah.

4 **Q.** All right.

5 MR. LEVENTHAL: You can take that off. Thank you,

6 Brian.

7 BY MR. LEVENTHAL:

8 **Q.** Now, on direct you indicated that Tan Hat moved to your
9 left, correct?

10 **A.** Yes.

11 **Q.** Okay. And he disappeared at some point, correct?

12 **A.** Yes.

13 **Q.** Okay. Actually, you indicated that he went towards the
14 center of the bridge, I believe, correct?

15 **A.** More towards the center, yes.

16 **Q.** Okay. And when you say your left, that's as you're looking
17 at the bridge, correct?

18 **A.** Correct.

19 **Q.** Do you remember giving testimony, prior testimony, in this
20 matter?

21 **A.** No, I don't.

22 **Q.** No? You don't remember giving prior testimony in this
23 matter under oath?

24 **A.** Oh. Yes.

25 **Q.** You did?

1 **A.** At a prior hearing you mean?

2 **Q.** Yes.

3 **A.** Yes.

4 **Q.** Okay. Do you remember telling -- saying that he was moving
5 to the right?

6 **A.** Yes.

7 **Q.** So which is it? Was he moving to the left, sir, or moving
8 to the right?

9 **A.** He moved --

10 MS. AHMED: Objection, Your Honor, argumentative. The
11 witness on direct said both.

12 BY MR. LEVENTHAL:

13 **Q.** Did he move to the right?

14 MS. AHMED: I'd also object, Your Honor, as to vague in
15 terms of viewer's left or viewer's right.

16 THE COURT: I didn't understand the question myself,
17 but go ahead, please.

18 BY MR. LEVENTHAL:

19 **Q.** Okay. When you were with Mr. -- is it Sergeant Richardsons?

20 **A.** Special Agent Richardson.

21 **Q.** Special Agent Richardson. Do you remember a time when you
22 lost track of Tan Hat?

23 **A.** Yes.

24 **Q.** Did you ask Special Agent Richardson to pick up Tan Hat for
25 you?

1 **A.** I recall him asking -- I recall asking him to help me find
2 the threats, but specifically I may have. I don't remember -- I
3 don't recall that.

4 **Q.** Okay. You don't remember telling Special Agent Richardsons
5 that Tan Hat ran to the right?

6 **A.** Oh, yes.

7 **Q.** You did?

8 **A.** Yes.

9 **Q.** Okay. So at one point he did run to the right?

10 **A.** Yes.

11 **Q.** Okay.

12 MR. LEVENTHAL: Thank you. I have nothing further.

13 THE COURT: All right. So I believe we've had counsel
14 for Stewart, Parker, Drexler --

15 MR. PEREZ: Nothing from Lovelein.

16 THE COURT: Okay. Any redirect?

17 MS. AHMED: Yes, Your Honor.

18 (Prosecution conferring.)

19 REDIRECT EXAMINATION

20 BY MS. AHMED:

21 **Q.** Agent Swanson, you were asked some questions by Mr. Marchese
22 about what you observed the black hat individual to be doing on
23 April 12, 2014, correct?

24 **A.** Yes.

25 **Q.** And he showed you some slides, right?

1 **A.** Yes.

2 *Q.* Now, when you were explaining to the jury what you saw on
3 April 12th, 2014, do you -- were those examples of what you saw
4 or is that the only movement you saw that you described to them,
5 those two instances?

6 MR. LEVENTHAL: Objection, vague and compound.

7 THE COURT: It's compound.

8 BY MS. AHMED:

9 *Q.* When you were describing to the jury Black Hat's movements,
10 when Mr. Marchese showed you those slides, are those the exact
11 things that you observed yourself?

12 **A.** No.

13 *Q.* Can you explain to the jury what -- what you observed versus
14 what you were shown? What's the difference?

15 **A.** Well, the -- that was a -- kind of a depiction of what I
16 described seeing, but I can't say for sure that those were the
17 exact moments depicted in what I was describing that Black Hat
18 did at that time in my report. I can't say that those are the
19 exact times. It was similar to the actions that I saw, but I
20 can't say that that was exactly it.

21 *Q.* Do you know whether or not Black Hat moved up and down more
22 than twice?

23 **A.** Yes.

24 *Q.* Did he move up and down more than twice?

25 **A.** Yes.

1 MR. LEVENTHAL: Objection, leading.

2 THE COURT: Overruled.

3 BY MS. AHMED:

4 Q. Now, you indicated that you had previously seen the slides
5 that Mr. Marchese showed you. Do you recall saying that?

6 A. Yes.

7 Q. And are those from -- do you know what the source of those
8 slides are in terms of photographs? A video? Something else?

9 A. I don't recall, no.

10 Q. Do you recall -- do you know whether or not he showed you
11 every segment of those motions that he was -- every slide that
12 goes in that sequence?

13 A. It didn't appear so, no.

14 Q. Now, Mr. Marchese also asked you about -- something about a
15 white van with a soccer ball painted on it. Do you recall those
16 questions?

17 A. Yes.

18 Q. Now, on -- in terms -- and that was in terms of having a bad
19 backdrop. Is that right?

20 A. Yes.

21 Q. Can you explain to the jury what the term "backdrop" means
22 in relation to this event?

23 A. Kind of just what I said before. The backdrop is what's
24 beyond your target, what -- beyond your target. So you have to
25 take into account any kind of backdrop, whether it's a

1 structure, a house, anything like that. If you're in a
2 neighborhood, you know, obviously there's a lot of backdrops.
3 This particular backdrop for my threat was traffic which was
4 moving slowly.

5 And one instance that I described was seeing a white
6 van that appeared to be like a junior soccer team.

7 Q. Can you explain to the jury what, if any, significance the
8 white van with the soccer ball had to you in relation to what
9 you observed about Black Hat?

10 A. I think we're always aware as professional law enforcement
11 officers of our backdrop, and I was that day, but that
12 particular van just happened to catch my eye because it was --
13 it just stood out in my mind because it was a van full of kids.

14 So when you're looking at your backdrop, I mean, you're
15 seeing vehicles go by, big rigs and cars, but you don't --
16 they're not personal. They're not -- like, you can't generally
17 identify, you know, Okay. That's the Smiths or whatever because
18 you're not concentrated on that. But that particular van just
19 really brought ... brought things home to me for -- because it
20 was a van full of just young soccer players.

21 Q. And in terms of the two instances that you described to the
22 jury earlier of Mr. -- of Black Hat crouching and then the other
23 instance where you saw him standing, do you know whether or not
24 the soccer van passed during either of those instances?

25 A. No.

1 Q. Now, Mr. Marchese also asked you questions about seeing a
2 photo of Black Hat laying down on the freeway with his rifle in
3 the gap of the cement barriers after April 12, 2014. Do you
4 recall those questions?

5 **A.** Yes.

6 Q. Do you have a recollection of Black Hat that's independent
7 of that photo or the photos that you observed after April 12th,
8 2014?

9 **A.** Yes.

10 Q. And what you've testified and explained to the jury today,
11 is that from your independent recollection?

12 **A.** Yes.

13 Q. When you saw Black Hat turn his hat around, he was on the
14 bridge. Is that right?

15 **A.** That's correct.

16 MR. TANASI: Objection, leading.

17 BY MS. AHMED:

18 Q. Where was he when you saw him -- his hat turn around
19 backwards?

20 **A.** He was on that bridge in the location that I indicated
21 earlier.

22 Q. Did you advise anyone around you of his hat being backwards?

23 **A.** Yes.

24 Q. To your knowledge, was you -- is there -- was it recorded
25 you telling others around you that the hat was backwards?

1 MR. LEVENTHAL: Objection, relevance.

2 MS. AHMED: Your Honor, it's a prior consistent
3 statement.

4 (Government conferring.)

5 MS. AHMED: Your Honor, it's a prior consistent
6 statement. They've suggested that he didn't see what he saw and
7 that, in fact, not only didn't he see it, but he said it at the
8 time to other people.

9 THE COURT: Overruled. He can answer the question.
10 Consistency has been put in issue, so it can be used.

11 BY MS. AHMED:

12 Q. Do you know whether or not you telling the officers around
13 you that the hat had been turned backwards, if that was
14 recorded?

15 **A.** I believe it was, yes.

16 MS. AHMED: Your Honor, may I show the witness and
17 counsel what's been marked for identification as Exhibit 143?

18 THE COURT: Yes, you may.

19 MS. AHMED: Your Honor, I apologize for the confusion.
20 Can I actually have Exhibit 36, what's been marked for
21 identification as 36, for counsel -- for the witness and
22 counsel.

23 THE COURT: Yes.

24 MS. AHMED: Thank you. Now, can we advance to 12:30 on
25 the clock that's embedded in the video.

1 BY MS. AHMED:

2 Q. Agent Swanson, do you recognize what's depicted in -- you
3 can pause it here. Do you recognize what's depicted in Exhibit
4 36 at 12:30?

5 **A.** Yes.

6 Q. Have you previously viewed this portion of Exhibit 36?

7 **A.** Yes.

8 Q. And does it fairly and accurately depict the events,
9 including comments that you made on April 12th, 2014?

10 **A.** Yes.

11 MS. AHMED: Your Honor, Government would move to admit
12 only Exhibit 12 -- 36, just the statement that the witness made
13 regarding the hat.

14 THE COURT: Any objection?

15 MR. TANASI: None from Stewart, Your Honor.

16 MR. LEVENTHAL: Can we have a sidebar?

17 THE COURT: Yes.

18 (Whereupon, the following sidebar conference was held.)

19 THE COURT: Mr. Leventhal?

20 MR. LEVENTHAL: Yes, I'm going to object on the grounds
21 that this is just -- one, it's bolstering. Two, it's
22 cumulative. And on the grounds that this witness has already
23 testified that he said something to somebody. He's already
24 indicated that he has and over our objection as to hearsay. And
25 now I guess we're bringing in another statement. I mean, how

1 many statements are we going to be bringing in?

2 If that's what this statement is. I assume that it's a
3 statement that he says, I see Black Hat or something in his
4 sights.

5 THE COURT: Is this his description of what he saw
6 contemporaneously from when he saw it?

7 MS. AHMED: That is correct, Your Honor. This is
8 where --

9 THE COURT: Present sense impression exception to the
10 hearsay rule?

11 MS. AHMED: That's correct. And if you'll recall from
12 the previous hearing and trial, this is where he said, The black
13 hat -- he's turned his hat around. That's the statement.

14 MR. LEVENTHAL: No, none of us asked --

15 MR. MARCHESE: None of us asked about this.

16 MS. AHMED: And, Your Honor, they did imply that he was
17 fabricating what he saw generally by suggesting that he'd
18 seen --

19 THE COURT: That the only reason that he was testifying
20 this way is because he had already seen a previous picture so
21 that his description was provided after; not before. So you're
22 requesting to provide a contemporaneous description to rebut --

23 MS. AHMED: His suggestion of fabrication.

24 THE COURT: -- his suggestion of untruthfulness.

25 MS. AHMED: Correct, Your Honor.

1 MR. LEVENTHAL: Is this a description or just the mere
2 fact that he's turning his hat? That's not a description of all
3 of the things that he suggested. If it's a description, it's a
4 description. If it's just turning of the hat, that's not a
5 description.

6 MS. AHMED: And, Your Honor, there's also a photograph
7 that we have that we intend to put into evidence with another
8 witness that we would show this witness where that same black
9 hat, the hat is turned around.

10 THE COURT: So that --

11 MS. AHMED: It's consistent with other evidence --

12 THE COURT: So the recording that you're going to play
13 is of this witness saying what?

14 MS. AHMED: That he's turned his hat around or
15 something -- I don't know if he says -- yeah, he's turned his
16 hat around.

17 MR. LEVENTHAL: Well, we didn't cross him on that. We
18 never asked him about that.

19 THE COURT: It's a permissible consistent statement
20 present sense impression. Objection overruled.

21 (Sidebar conference was concluded.)

22 THE COURT: All right. The objection is overruled. So
23 you may go ahead, Ms. Ahmed. Exhibit 1236 is admitted.

24 MS. AHMED: It's 36, Your Honor. I'm sorry. It's 36
25 at approximately the 12:30 mark.

1 THE COURT: At the 12:30 mark.

2 MS. AHMED: 36-A.

3 THE COURT: So Exhibit 36-A at the 12:30 mark is
4 admitted. You may go ahead and publish.

5 MS. AHMED: And it's just that statement, Your Honor.

6 (Government's Exhibit 36 at the 12:30 mark is
7 admitted.)

8 MS. AHMED: Can we play it at 12:30.

9 (Video playing.)

10 MS. AHMED: Can you move it back actually a little bit
11 to right at the beginning of 12:30.

12 (Video playing.)

13 MS. AHMED: Can you stop it there.

14 BY MS. AHMED:

15 Q. Agent Swanson, did you hear someone say something in that
16 recording?

17 **A.** Yes.

18 Q. Who was that that was talking?

19 **A.** That was me.

20 Q. And what did you say?

21 **A.** He's got his hat on backwards now.

22 Q. And who were you talking about?

23 **A.** Black Hat.

24 MS. AHMED: Your Honor, may I show to the witness and
25 counsel what's been marked for identification as Exhibit 143?

1 THE COURT: Yes, you may.

2 BY MS. AHMED:

3 Q. Agent Swanson, do you recognize what is -- the individual
4 that I've circled that's depicted in Exhibit 143?

5 A. Yes.

6 Q. And who do you recognize that to be?

7 A. Black Hat.

8 Q. And do you recognize what I've circled at the top of the
9 screen in this image?

10 MR. MARCHESE: Objection. This hasn't been admitted.
11 He's testifying to it.

12 MS. AHMED: Your Honor, I'm laying foundation for this
13 witness to identify the distinctive characteristics of this
14 exhibit so that we may move for admission.

15 THE COURT: All right. Overruled.

16 BY MS. AHMED:

17 Q. Agent Swanson, I've circled an area at the top of Exhibit
18 143. Do you see where I've circled?

19 A. Yes.

20 Q. And do you recognize what is depicted in Exhibit 143?

21 A. Yes.

22 Q. And what is that?

23 A. Those are law enforcement vehicles down in the wash.

24 Q. And do you recognize what date this is based on that area
25 that I've circled?

1 **A.** Yes.

2 **Q.** What date?

3 **A.** That's the 12th of April 2014.

4 **Q.** Were the law enforcement vehicles that are in that circle in
5 that formation at any other time during the impoundment
6 operation?

7 **A.** No, not that I know of.

8 **Q.** Now, in addition to the individual that you have identified
9 in those vehicles, do you recognize what I'm circling in the
10 center of the picture?

11 **A.** Yes.

12 **Q.** And what is that?

13 **A.** That's the Jersey barrier -- the other side of the Jersey
14 barrier that I was looking at the front side of.

15 **Q.** And I'm circling another area on the far left top corner of
16 the screen. Do you see that?

17 **A.** Yes.

18 **Q.** And what is that?

19 **A.** That's the west side of the southbound -- south side --
20 southbound bridge.

21 **Q.** The west side of the southbound bridge?

22 **A.** Yes.

23 **Q.** And are the things that you're seeing that we've discussed,
24 are they consistent with what you observed on April 12th, 2014?

25 **A.** Yeah. Obviously from a different angle; but, yeah, they

1 are.

2 Q. And do they fairly and accurately depict features of things
3 that you observed on April 12th, 2014?

4 **A.** Yes.

5 MS. AHMED: Your Honor, the witness has recognized
6 distinctive characteristics that were only present on April 12,
7 2014, in this area, so the Government would move to admit
8 Exhibit 143.

9 THE COURT: Any objection to the admission of 143?

10 MR. MARCHESE: Parker objects, authentication.

11 MR. TANASI: Stewart would also object with respect to
12 the vantage point from where it's coming from. This picture
13 appears to be what would be looking at him; not what he would be
14 looking at.

15 MR. LEVENTHAL: Drexler joins in that.

16 MR. PEREZ: Lovelein joins.

17 THE COURT: Ms. Ahmed?

18 MS. AHMED: And, Your Honor, the -- we don't intend to
19 elicit any testimony from the witness that he observed from this
20 vantage point, but do simply want to discuss the area that I've
21 circled in the picture. That's something -- to simply the
22 position of the hat, which is something he did observe on April
23 12, 2014.

24 THE COURT: All right. Exhibit 143 is admitted. You
25 may go ahead and publish it.

1 MS. AHMED: Thank you, Your Honor.

2 (Government's Exhibit 143 is admitted.)

3 THE COURT: And that's with the caveat that the
4 foundation is that he's recognizing the elements that are shown
5 in the photograph and admits that his point of view was from the
6 opposite side.

7 MS. AHMED: Thank you, Your Honor.

8 BY MS. AHMED:

9 Q. Agent Swanson, looking at 143, you never saw Black Hat in
10 this position, correct?

11 A. That's right. Correct.

12 Q. And I've drawn a circle around the individual that you've
13 identified as Black Hat, right?

14 A. Yes.

15 Q. Now, looking specifically at Black Hat's -- at the hat
16 itself, can you explain to the jury the position of the hat on
17 Black Hat's head at this time?

18 A. It's on backwards.

19 Q. And on April 12th, 2014, when you were observing Black Hat
20 in the wash, did you see the hat appear in this position?

21 A. Yeah. Obviously he was above the pillar when I saw it; but,
22 yes, it was in that position. I saw it from my location.

23 Q. Now, you were also asked --

24 MS. AHMED: You can take that picture down. Thank you.

25 BY MS. AHMED:

1 Q. You were also asked by Mr. Leventhal on cross-examination to
2 look at Exhibit 151. Do you recall that?

3 **A.** Yes.

4 MS. AHMED: May we publish 151, Your Honor?

5 THE COURT: Yes, you may.

6 BY MS. AHMED:

7 Q. Agent Swanson, do you recall seeing this exhibit and being
8 asked questions by Mr. Leventhal?

9 **A.** Yes.

10 Q. Now, on April 12, 2014, did you -- could you see that people
11 were carrying different things on the northbound freeway?

12 **A.** Yes.

13 Q. Is there ...

14 Could you see that people had cameras?

15 **A.** Yes.

16 Q. Could you see that people had rifles?

17 **A.** Yes.

18 Q. Do you see this camera in particular?

19 **A.** Yes.

20 Q. That I've circled?

21 **A.** Yes.

22 Q. From what you can see, does that black camera appear to have
23 any kind of white insignia on?

24 MR. LEVENTHAL: I'm going to object. Leading.

25 THE COURT: Sustained.

1 BY MS. AHMED:

2 Q. Is there any chance that you confused the rifle that Black
3 Hat had with any other object?

4 **A.** No.

5 Q. Now, Agent Swanson, you were asked by Mr. Tanasi how many
6 times you met with the U.S. Attorneys Office. Do you recall
7 that?

8 **A.** Yes.

9 Q. And how many times you met with the FBI?

10 **A.** Yes.

11 Q. Do you remember that question?

12 **A.** Yes.

13 Q. On any of the occasions that you've ever met with the FBI or
14 the U.S. Attorneys Office, have you ever been asked to do
15 anything other than tell the truth based on what you observed on
16 April 12, 2014?

17 **A.** No, never.

18 MS. AHMED: Your Honor, may I have the Court's
19 indulgence?

20 THE COURT: Yes.

21 (Prosecution conferring.)

22 MS. AHMED: Thank you, Your Honor. Thank you, Agent
23 Swanson. I'll pass the witness.

24 THE COURT: Any recross?

25 MR. TANASI: None from Stewart, Your Honor.

1 MR. MARCHESE: Brian, if you could get up 5031-B.

2 THE COURT: Which exhibit is this?

3 MR. MARCHESE: 5031-B, as in boy, Your Honor.

4 THE COURT: Thank you.

5 RE-CROSS-EXAMINATION

6 BY MR. MARCHESE:

7 Q. And just to back up a little bit to my cross-examination, we
8 had -- I believe you had identified Black Hat as pointing his
9 weapon in this particular screen shot earlier. You would agree
10 with that?

11 A. Yes, I did. It appears to be from that angle, yes.

12 Q. And I believe on direct examination --

13 MS. AHMED: Your Honor, I'd just object to this as
14 argumentative. The witness is commenting on photos that he's
15 seeing now. He's testified that he doesn't know if this is what
16 he observed himself on April 12th. I just -- counsel's
17 essentially doing closing argument through this witness. It's
18 an inappropriate argument.

19 THE COURT: You want to rephrase the question?

20 MR. MARCHESE: Okay.

21 BY MR. MARCHESE:

22 Q. Okay. You've previously seen this exhibit before, sir,
23 haven't you?

24 A. Yes.

25 Q. Okay. And at a previous hearing isn't it true that you also

1 said at that hearing that Black Hat was pointing the weapon at
2 you on this particular screen shot, correct?

3 **A.** It appeared to be, yes. It appears that he's pointing his
4 weapon, yes.

5 **Q.** Okay. So taking your mind off of this screen shot, you had
6 testified on direct examination that you saw the individual
7 placing the weapon on the Jersey barrier, correct, and you saw
8 it?

9 **A.** Yes, sir.

10 **Q.** And then I believe you had your -- were you looking at him
11 through your scope at that time?

12 **A.** Yes.

13 **Q.** If you remember. Okay.

14 And I believe you said you took the slack off of the
15 trigger?

16 **A.** Yes.

17 **Q.** Okay. And is "slack" for lack of a better term -- describe
18 that to the jury. What did you mean by that?

19 **A.** On a trigger there's play, I guess. It's kind of hard to
20 describe, but there's a play. And then the trigger just stops.
21 And then that's when the actual trigger pull starts, but it
22 doesn't fire right then if you -- you can take the slack out and
23 then start to pull the trigger, and it still doesn't fire.
24 You'd have to put a certain amount of pounds of pressure on that
25 trigger for it to pull even after you take the slack out.

1 Q. Okay. And so basically what happens is you apply pressure,
2 it gets to a certain point, and then you have to apply more
3 pressure to fire the weapon. Is that fair to say?

4 **A.** That's correct.

5 Q. Okay. And in this particular case you took the slack out of
6 the trigger, correct?

7 **A.** Yes.

8 Q. And then at that point that was when you saw the passenger
9 van. Is that right?

10 **A.** No.

11 Q. Okay. You testified at a previous hearing, correct?

12 **A.** Yes.

13 Q. Okay. And you testified honestly and truthfully, correct?

14 **A.** Yes.

15 Q. And you were under oath at that time, correct?

16 **A.** Yes.

17 Q. And you also testified at that hearing about taking the
18 slack out of the trigger, correct?

19 **A.** Correct.

20 Q. Okay. And that after you took the slack out of the trigger
21 that the traffic was flowing behind Black Hat, correct?

22 **A.** Yes.

23 Q. Okay. And you observed that a white passenger van was
24 passing directly behind Black Hat's location. Is that correct?

25 **A.** I don't know if it's this exact moment. That's why I can't

1 say like this is the exact moment that I saw the passenger van
2 'cause there -- this may or may not have been the time that I
3 had the slack out of the trigger and my safety off.

4 Q. Okay.

5 A. I can't -- I didn't film it.

6 Q. Sure. Right. And you didn't have a body cam, correct?

7 A. No.

8 Q. You didn't have your -- well, I don't know if you have an
9 iPhone or back then did you have an iPhone?

10 A. Probably.

11 Q. Yeah. Regardless, you didn't have it out?

12 A. Yes.

13 Q. Your hands were on your weapon?

14 A. Yes.

15 Q. Your binoculars, whatever?

16 A. Correct.

17 MR. MARCHESE: No further questions.

18 THE COURT: Anyone else?

19 MR. TANASI: No, Your Honor.

20 THE COURT: Any re-redirect?

21 MS. AHMED: No, Your Honor. Thank you.

22 THE COURT: All right. At this time if any members of
23 the jury have a question for our witness, please go ahead and
24 write them down. Take your time. Write neatly. Don't give us
25 your name or your jury number. Make sure your question is

1 clear.

2 THE COURT: Counsel, please join me at sidebar.

3 (Whereupon, the following sidebar conference was held.)

4 THE COURT: Jury note No. 66: Officer, Black Hat had
5 malascenes [sic] on his vest -- maybe it's magazines --
6 magazines on his vest. Were they for small arms or for his long
7 gun?

8 Any objection?

9 MR. TANASI: No objection.

10 MR. MARCHESE: No objection.

11 THE COURT: If he knows.

12 Jury note No. 67, two questions, it looks like. The
13 first one is: The moment you saw an individual pointing a
14 weapon at you, what was your reaction?

15 Any objection?

16 MR. TANASI: No objection.

17 THE COURT: And then the second part of that first
18 question is: How do you control your emotion -- it says your
19 emotional; but how do you control your emotional?

20 Any objection?

21 MR. TANASI: No objection Stewart.

22 MS. AHMED: No objection.

23 THE COURT: The second or third part of jury note
24 No. 67 depending on how you count that: When people yield at
25 you and said you are a traitor, what you felt like as a human

1 because you just do your job?

2 MS. AHMED: No objection.

3 THE COURT: I think it is: When people yell at you and
4 say that you are a traitor, what did you feel like as a human
5 because you're just doing your job?

6 MR. LEVENTHAL: I'd object to the relevance of that
7 question.

8 MR. PEREZ: Yeah, Lovelein objects.

9 MR. TANASI: Stewart joins.

10 MS. AHMED: I don't think this is the first irrelevant
11 question that the jury has asked, but I don't think it's
12 irrelevant. He discussed his emotions that day. It goes to his
13 testimony and potentially --

14 THE COURT: Well, I think what they're trying to find
15 out is what could have affected his judgment which is what
16 Defense was arguing about before as far as being up all night or
17 the night before, being told that people are coming. But if you
18 both agree not to ask it, I don't have to ask it.

19 MS. AHMED: Yeah, Government thinks the question should
20 be posed. No objection to the question being asked.

21 MR. MARCHESE: I think the Defense collectively
22 objects.

23 THE COURT: And so what is the objection from the
24 Defense?

25 MR. MARCHESE: Relevance.

1 MR. PEREZ: Relevance.

2 THE COURT: Well, the question above is about his
3 emotions and how to control his emotions and what is his
4 reaction when he sees a person with a weapon. So I'm going to
5 go ahead and ask it. I think it is relevant.

6 Jury note No. 68 has multiple parts. The first one is:
7 Did you see individuals in camo with long arms on the bridge as
8 well as Black Hat and Tan Hat?

9 MS. AHMED: No objection.

10 MR. TANASI: No objection Stewart.

11 THE COURT: Any objection? Anyone else any objection?

12 MR. MARCHESE: No.

13 THE COURT: Jury note 68: Were you aware that there
14 were officers directing traffic next to armed individuals on the
15 bridge?

16 Any objection?

17 MR. TANASI: No objection Stewart.

18 MS. AHMED: No objection from the Government.

19 MR. MARCHESE: No objection Parker.

20 MR. PEREZ: No objection.

21 THE COURT: And, Mr. Leventhal, I don't think Patty
22 hears you. I see you, but I don't think Patty can see you.

23 MR. LEVENTHAL: I'm sorry. I'm nodding my head no.

24 THE COURT: Next part is: Did you perceive the
25 individuals in the wash as a threat or just the individuals on

1 the bridge?

2 Any objection?

3 MR. PEREZ: No objection.

4 MR. TANASI: No objection Stewart.

5 MS. AHMED: No objection from the Government.

6 MR. MARCHESE: None Parker.

7 THE COURT: All right. Jury note 68: Did you hear any
8 verbal threats from the individuals with long arms or were you
9 just threatened by their presence?

10 MR. LEVENTHAL: No objection.

11 MS. AHMED: No objection from the Government.

12 MR. PEREZ: No objection.

13 MR. TANASI: None Stewart.

14 MR. MARCHESE: None Parker.

15 THE COURT: Okay. Still on jury note No. 68: To your
16 knowledge, was anyone physically harmed during this protest, law
17 enforcement or others?

18 MR. PEREZ: No objection.

19 MR. TANASI: No objection Stewart.

20 MR. LEVENTHAL: No objection.

21 MR. MARCHESE: None Parker.

22 THE COURT: The next one is: In your opinion, would
23 you consider this a violent protest?

24 MS. AHMED: No objection.

25 MS. CREEGAN: No objection.

1 MR. PEREZ: No objection.

2 MR. TANASI: No objection Stewart.

3 MR. MARCHESE: No objection.

4 MR. LEVENTHAL: No objection.

5 THE COURT: And the last question, jury note 68 -- I
6 wanted to make sure there wasn't any more on the back -- If you
7 could have shut down the traffic on the bridge, would you have
8 taken a shot at the individual with long arms on the bridge?

9 Any objection?

10 MS. AHMED: No objection from the Government.

11 MR. TANASI: None from Stewart.

12 MR. LEVENTHAL: No objection.

13 MR. PEREZ: None from Lovelein.

14 MR. MARCHESE: None Parker.

15 THE COURT: All right. Jury No. 69 has two questions.
16 Number one, did any of the BLM officials use a bullhorn to give
17 any instructions or verbal messages to the public gathering on
18 the other side of the fence? If so, what was said by the law
19 enforcement officers to the crowd?

20 MS. AHMED: No objection from the Government.

21 THE COURT: Any objection?

22 MR. TANASI: None from Stewart.

23 MR. PEREZ: No objection.

24 MR. MARCHESE: None Parker.

25 MR. LEVENTHAL: Only to the extent of what they heard.

1 What was said and what was heard, two different things. That's
2 all.

3 THE COURT: So you want me to direct him not to tell me
4 word for word, but rather a description of ...

5 MR. LEVENTHAL: Or just say not what they heard, but
6 what you heard them say; but not what the listener heard because
7 he wouldn't know that.

8 MR. TANASI: Your Honor, can we go backwards? Was that
9 question with respect to what they said to the people just on
10 their side of the fence, including the folks that are on the
11 bridge or is it just left at other side of the fence?

12 THE COURT: It says: If so, what was said by the law
13 enforcement officers to the crowd?

14 MR. TANASI: Okay.

15 THE COURT: And then the second question for jury note
16 69 is for the Judge: Why is it that some of the exhibits are
17 only for the witness and not offered for we, the jury, to
18 observe?

19 MR. LEVENTHAL: You can answer that one. No objection.

20 MR. TANASI: No objection.

21 THE COURT: Yeah, unless the parties want to stipulate
22 to admit, then the witness has to lay a foundation and it has to
23 be offered into evidence before it can be shown to the jury, but
24 I don't think that there's anything that we've shown the
25 witness. Maybe -- have we not admitted anything?

1 MR. TANASI: Well, I think my video. There was part of
2 it that --

3 THE COURT: Okay. So there was two videos. We
4 admitted one; not the other.

5 MR. TANASI: Right.

6 THE COURT: Well, you withdrew the one because you
7 couldn't play it with the sound.

8 MR. TANASI: Right, there was portions of it.

9 THE COURT: So, okay.

10 MS. AHMED: It was only with this witness, though.

11 THE COURT: All right. Jury note No. 70 has three
12 questions. First one: With your scope could you make out
13 facial features of the people on the bridge?

14 Any objection?

15 MS. AHMED: No objection Government.

16 MR. TANASI: None from Stewart.

17 MR. PEREZ: No objection.

18 MR. MARCHESE: No objection.

19 THE COURT: Number two, if you focussed on Black Hat,
20 was there anyone watching Tan Hat?

21 MS. AHMED: No objection.

22 MR. TANASI: None from Stewart.

23 MR. MARCHESE: None Parker.

24 MR. PEREZ: No objection.

25 THE COURT: And, number three, in Exhibit No. 14 was

1 the two women in that picture the ones Black Hat was taking
2 pictures with?

3 MS. AHMED: No objection.

4 MR. LEVENTHAL: Is that the video?

5 THE COURT: Any objection?

6 MR. TANASI: None from Stewart.

7 MR. PEREZ: No objection.

8 MR. MARCHESE: None Parker.

9 THE COURT: I think -- was it Mr. Marchese? One of you
10 was talking about taking a selfie with the photo. I think
11 that's what she or he thinks that you were describing a woman
12 taking a selfie with Black Hat.

13 MR. TANASI: I think back here we had argued about the
14 selfie with Mr. Briscoe, but I don't think that actually got in.
15 Is there a different selfie?

16 MS. AHMED: He testified there was two women taking a
17 picture with their iPhones, and they quickly left.

18 THE COURT: Oh. Maybe it was the witness. Right. It
19 wasn't clear on whether they meant he was taking a picture of
20 something or with --

21 MS. AHMED: Of him or with him.

22 THE COURT: Yeah. So for that I'll clarify it.

23 Jury note No. 71, Special Agent Swanson stated that he
24 was told to keep an eye on specific threats such as Black Hat
25 and Tan Hat because they were pointing their long guns towards

1 Agent Swanson's direction, but then Agent Swanson later stated
2 that he didn't know Black Hat was pointing a gun towards him
3 until he saw the pictures days later. Could he please clarify
4 this?

5 MR. TANASI: No objection.

6 MR. MARCHESE: No objection.

7 MS. AHMED: No objection.

8 MR. PEREZ: No objection.

9 THE COURT: 72: Have you had prior similar
10 experiences, i.e., armed aggressors that colored your reaction
11 at this time?

12 MS. AHMED: No objection.

13 THE COURT: Any objection?

14 MR. MARCHESE: No objection.

15 MR. TANASI: None from Stewart.

16 THE COURT: Do you have any prior training and
17 experience in the role of a sniper; not just a -- not just
18 marksmanship?

19 Any objection?

20 MR. TANASI: None from Stewart.

21 MR. MARCHESE: None Parker.

22 MS. AHMED: No objection.

23 THE COURT: You testified that there was radio traffic
24 and that they -- and the word "they" is in quotations -- were
25 spotting potential threats. Who were they and what was their

1 guidance as to who or what was a threat?

2 Any objection?

3 MS. AHMED: No objection.

4 MR. TANASI: None from Stewart.

5 MR. PEREZ: No objection.

6 THE COURT: And then on jury note No. 72: When you
7 were target ranging, did you have a spotter?

8 Any objection?

9 MS. AHMED: No objection.

10 MR. TANASI: None from Stewart.

11 MR. MARCHESE: No objection.

12 MR. PEREZ: No objection.

13 THE COURT: And last question on No. 72, when and how
14 were your weapon and scope calibrated or dialled in?

15 MS. AHMED: No objection.

16 THE COURT: Any objection?

17 MR. MARCHESE: None Parker.

18 MR. PEREZ: No objection.

19 MR. TANASI: None from Stewart.

20 THE COURT: Okay. Jury note No. 73: When you were
21 observing Black Hat from behind the truck, was there significant
22 glare or haze that could impact visual acuity?

23 MS. AHMED: No objection.

24 MR. TANASI: None from Stewart.

25 MR. MARCHESE: No objection.

1 MR. PEREZ: No objection.

2 THE COURT: And do you believe that you're
3 instructed -- do you believe that you were -- okay. The arrow's
4 up here. Do you believe that you were instructed to remove a
5 threat if possible?

6 Any objection?

7 MS. AHMED: No objection.

8 MR. TANASI: None from Stewart.

9 MR. MARCHESE: None Parker.

10 THE COURT: And the last question on jury note No. 73
11 is: The end of a rifle barrel is about half an inch and black.
12 How were you certain the weapon was aimed at you?

13 MS. AHMED: No objection.

14 MR. TANASI: None from Stewart.

15 MR. MARCHESE: No objection.

16 MR. PEREZ: No objection.

17 THE COURT: Jury note No. 74 has three questions. As
18 an officer of the law don't you realize that pointing your
19 weapon, long gun, at the police -- I'm sorry -- at the public
20 that you will get a reaction back?

21 MR. PEREZ: No objection Lovelein.

22 MR. TANASI: None from Stewart.

23 MR. MARCHESE: None Parker.

24 THE COURT: Number two, as an officer with military
25 experience in a heightened moment react -- let me say that

1 again. As an officer with military experience in a heightened
2 moment react? Or did your imagination take over as to what was
3 happening?

4 Any objection?

5 MR. PEREZ: No objection.

6 MR. TANASI: None from Stewart.

7 THE COURT: And then the last question is: Did the
8 lack of sleeping and resting play a part to all the tension that
9 was taking place?

10 Any objection?

11 MR. TANASI: None from Stewart.

12 MR. LEVENTHAL: No objection.

13 MS. AHMED: No objection.

14 MR. PEREZ: No objection.

15 MR. MARCHESE: No objection.

16 THE COURT: That's it. Thank you.

17 (Sidebar conference was concluded.)

18 THE COURT: All right. So, Special Agent Swanson, I
19 have a few questions here from the jury. I'm going to go ahead
20 and read them into the record, but when you respond, you may go
21 ahead and turn and look at the jury and respond to them because
22 these are the jury's questions; not mine. All right?

23 THE WITNESS: Yes, Your Honor.

24 THE COURT: So jury note No. 66 asks: Officer, Black
25 Hat had magazines on his vest. Were they for small arms or for

1 his long gun?

2 THE WITNESS: The magazines on his vest appeared to be
3 for a handgun, which he had on a drop holster on his leg.

4 THE COURT: All right. Jury note 67 is two parts.
5 First one is: The moment you saw an individual pointing a
6 weapon at you, what was your reaction?

7 THE WITNESS: Can you read that one more time, Your
8 Honor?

9 THE COURT: Yes. The moment you saw an individual
10 pointing a weapon at you, what was your reaction?

11 THE WITNESS: Well, my reaction was just basically my
12 training kicked in. When you go through training and you go
13 through so many scenarios and these shoot scenarios where, you
14 know, you go through these things where someone points a gun at
15 you, and your first reaction is to shoot. You pull a gun, and
16 if you don't already have one out, and you shoot because as a
17 police officer that's an imminent threat of serious bodily
18 injury or death to you or another. And that's when deadly force
19 is authorized.

20 So when someone points a gun at you, that's when you
21 shoot. And that was my first -- that was my first thought that
22 crossed my mind when I saw that gun pointed at me was to shoot.
23 I had kind of pre-assessed the situation and knew that to take a
24 shot would probably be really hard. And, you know, just in that
25 split second I had to make that choice and it was a very tough

1 choice, very tough.

2 THE COURT: All right. And the second part of the
3 first question is: How do you control your emotions?

4 THE WITNESS: That's kind of a tough question, but
5 probably in that situation you control your emotions just by
6 work -- going to work. I mean, you're doing a job. It's kind
7 of hard to believe if you don't have law enforcement experience,
8 but it is work, you know, just like you -- everyone has a job.
9 It's kind of the same thing. You're going through it and you're
10 doing your job. All of your training and experiences is guiding
11 you and helping you. You're taking in hundreds of different
12 things at a time, and you have to make these really, really
13 split-second decisions.

14 So emotions don't generally get in the way. There was
15 some emotions that day just because it was such a prolonged
16 event and things weren't going our way, I didn't feel. So --
17 but you talk to your other officers. You get what you're
18 thinking off your chest. You know, a lot of times when I was
19 behind that scope or even using my naked eye, I wasn't looking
20 at them, but I was -- I was communicating with my officers. We
21 were talking.

22 There was some levity involved, believe it or not, and
23 that's pretty common. You know, you have to kind of laugh and
24 get that nervous energy out. Drank a lot of water. One of our
25 officers was going around and just sticking water and whatever

1 we had in my cargo pocket. I'd feel that go into my cargo
2 pocket and not take my eyes off that. So I would reach down and
3 drink -- just like drink the whole bottle at once. And at one
4 point I looked down, I'm like, Man, I drank a lot of water.

5 I think one of the big things that I do to control my
6 emotions and my tempo is breathing, and I do what's called a
7 combat breathe. You breathe in really deeply. You hold your
8 breathe for a couple of seconds and then breathe out of your
9 mouth. So that's a side training that I got one time, and it's
10 proved to be invaluable. And it just kind of helps oxygenate
11 your blood and keep your mind right.

12 THE COURT: And then the last question on jury note
13 No. 67 is: For example, when people are yelling at you and
14 saying that you're a traitor, what did you feel like as a human
15 because you're just doing your job?

16 THE WITNESS: Yeah. Sorry. That brings up some
17 emotion because I served my country. I volunteered to serve my
18 country at a very young age, and I continue to serve my country.
19 I take a lot of pride in what I do and how I serve my fellow
20 Americans. So for someone to call me a traitor, you don't --
21 you try not to take anything personally, but, you know, you're
22 listening to these people. And it's different than, you know,
23 being in Iraq or Afghanistan where, you know, those people
24 are --

25 MR. LEVENTHAL: I'm going to object as to nonresponsive

1 at this point.

2 MR. MARCHESE: Parker joins.

3 MR. PEREZ: Lovelein joins.

4 MR. TANASI: Stewart joins.

5 THE COURT: Overruled. It's responsive.

6 THE WITNESS: The -- these were Americans. These were
7 people that I've dedicated my life, my adult life, to
8 protecting. And it was shocking and appalling to see that, that
9 the rule of law that day was trampled on.

10 MR. MARCHESE: Objection. It's a legal conclusion.

11 MR. TANASI: Stewart joins.

12 MR. LEVENTHAL: Drexler joins.

13 MR. PEREZ: Lovelein joins.

14 THE COURT: Overruled.

15 Jury note No. 68 asks: Did you see individuals in camo
16 with long arms on the bridge as well as Black Hat and Tan Hat?

17 THE WITNESS: Yes.

18 THE COURT: Were you aware that there were officers
19 directing traffic next to armed individuals on the bridge?

20 THE WITNESS: No, I was not. I wasn't aware of that.

21 THE COURT: Did you perceive the individuals in the
22 wash as a threat or just the individuals on the bridge?

23 THE WITNESS: The individual in the wash -- from my
24 vantage point I could only see certain parts of the wash, but
25 when I first got there and I was assessing, and then people

1 starting calling out threats. There was threats up on -- you
2 saw like the cement embankment that came from the bridge down to
3 the wash, and there were armed people up there. And they were
4 visible. So to answer your question, yes, I perceived people in
5 the wash to be threats as well.

6 THE COURT: When you refer to the embankment, are you
7 talking like the cement skirt that ...

8 THE WITNESS: Yes, Your Honor. The skirt that comes
9 down from the bottom of the bridge, underneath the bridge, the
10 cement portion that comes down to the wash.

11 THE COURT: And so the question was: Did you perceive
12 individuals in the wash as a threat or just individuals on the
13 bridge? So are you considering the people on those skirts as
14 being a threat in the wash?

15 THE WITNESS: Yes, Your Honor.

16 THE COURT: Okay. Next question is: Did you hear any
17 verbal threats from the individuals with long arms or were you
18 just threatened by their presence?

19 THE WITNESS: I didn't hear any threats from
20 individuals with long arms that -- I didn't see them armed, but
21 they -- the people that were -- I heard most of the yelling
22 from -- it was coming from all over the place, but the most of
23 the yelling that you could hear and understand and really was
24 coming from the closest bridge here. So you couldn't see --
25 because of the angle, you couldn't see their whole body. So I

1 don't know if people were armed up there or not. You couldn't
2 really tell.

3 THE COURT: All right. To your knowledge, was anyone
4 physically harmed during this protest, law enforcement or
5 others?

6 THE WITNESS: Not to my knowledge, no.

7 THE COURT: In your opinion, would you consider this a
8 violent protest?

9 THE WITNESS: Absolutely. It was a violent protest.
10 No doubt about it. There's no -- the rules are that you bring a
11 gun to a gun fight. You bring a knife to a knife fight. You
12 bring fists to a fist fight. They brought guns at us. We were
13 there. The defense attorney was correct. We were in place. We
14 didn't -- we didn't -- we weren't serving a warrant at their
15 house. We weren't going to their encampment. We were doing our
16 jobs. We were in place. They brought guns to us. They brought
17 the fight to us.

18 THE COURT: And the last question on jury note 68 is:
19 If you could have shut down the traffic on the bridge, would you
20 have taken a shot at the individual with long arms on the
21 bridge?

22 THE WITNESS: That's -- that's kind of hard to say
23 because, I mean, given the same situation and I had a safe
24 backdrop, I would -- I would have to answer unfortunately yes.
25 That's not something that you ever want to do in your career is

1 take the life of another human being, but the threat was great
2 enough to where if I had a safe backdrop at those -- at those
3 times, I believe in hindsight -- of course we have to make those
4 split-second decisions at the time, but I believe that I
5 probably would have, yes.

6 THE COURT: All right. Jury note No. 69, question 1:
7 Did any of the BLM officers use a bullhorn to give any
8 instructions or verbal messages to the public gathering on the
9 other side of the fence? If so, what was said by the law
10 enforcement officers to the crowd?

11 THE WITNESS: I can't tell you exactly what was said,
12 but there was -- the videos -- or the picture showed the
13 vehicles down closest to the fence that they had erected. And
14 there was an officer on a PA system, which was very loud, and
15 they were constantly announcing. It wasn't intermittent. It
16 was constantly that I remember they were telling them to
17 disperse; that their -- they're to get back to, to disperse;
18 that this -- they were telling the -- they were telling them
19 that this was a lawful impoundment and it was a lawful court
20 order issued by a federal judge. The federal judge told us
21 we -- not if you want to. You have to go get those cattle off
22 of public land.

23 MR. LEVENTHAL: Objection, hearsay.

24 MR. MARCHESE: Parker joins.

25 MR. PEREZ: Lovelein joins.

1 MR. TANASI: Stewart joins.

2 THE COURT: Untimely objection, but I'll ask the jury
3 to disregard those statements as -- to not consider them as
4 statements of what was actually said, but merely what the
5 witness remembers being said.

6 Second question for jury note 69 is: Why is it that
7 some of the exhibits are only for the witness and not offered
8 for we, the jury, to observe?

9 So that's a great question. Whenever the parties don't
10 stipulate or agree to whether an exhibit is admissible, then the
11 party that's offering the exhibit to be used with a particular
12 witness has to lay a foundation in the legal sense for why that
13 exhibit should be admitted. In order to do that, they have to
14 ask questions of the witness regarding the picture and only the
15 witness can see it because it might be that it was not going to
16 be admitted. So once the pictures are shown or the video,
17 whatever it is, to the witness and the witness can lay the
18 proper foundation, then I make the ruling that it's admissible.

19 Sometimes it's not admissible. If it's not admissible,
20 you don't get to see it for good reason because legally it's not
21 admissible. But if it is admissible, then you get to see it and
22 it's the same thing that was shown to the witness before. And
23 usually actually you get to talk about it and hear more about
24 it, but just for the foundation.

25 Jury note No. 70 has three questions. The first one

1 is: With your scope, could you make out facial -- facial
2 features of the people on the bridge?

3 THE WITNESS: Yes.

4 THE COURT: And then number two, if you focussed on
5 Black Hat, was there anyone watching Tan Hat?

6 THE WITNESS: No, at some point Tan Hat just kind of
7 disappeared. We looked for him. I scanned left and right and
8 tried to pick him back up, but we -- to answer your question,
9 yeah, we were looking for him, but we couldn't find him.

10 THE COURT: All right. And question No. 3 of jury note
11 70: In Exhibit No. 14 was that the two women in the picture,
12 the ones that Black Hat was taking pictures with?

13 THE WITNESS: Yes. To my recollection that was, yes.

14 THE COURT: And jury note No. 71: Special Agent
15 Swanson stated that he was told to keep an eye on specific
16 threats such as Black Hat and Tan Hat because they were pointing
17 their long guns towards Agent Swanson's direction, but then
18 Agent Swanson later stated that he didn't know Black Hat was
19 pointing a gun towards him until he saw the picture days later.
20 Could he please clarify this?

21 THE WITNESS: Oh, yeah. I didn't know that he was
22 pointing a gun through the Jersey barrier because from my
23 position, my vantage point, the break in the Jersey barrier
24 appeared small. So I didn't know he was using it as a firing
25 position, basically. It looked to me -- I couldn't see through

1 it. I couldn't see beyond it. It looked like they weren't
2 connected, but it didn't look to me like you could actually use
3 it as a firing position. I only found out later that he was
4 using that as a firing position through viewing that picture.
5 However, there were other instances where I witnessed him
6 pointing his gun at me over the Jersey barrier.

7 THE COURT: All right. Jury note No. 72: Have you had
8 prior similar experiences, i.e., armed aggressors that colored
9 your reaction at this time?

10 THE WITNESS: No. I've never had -- I mean, I've been
11 around peaceful protests, regular protests where people have
12 signs, even some of them not being so nice to you, but never had
13 someone or multiple people aggress on me with a gun, no.

14 THE COURT: Okay. And do you have prior training and
15 experience in the role of a sniper; not just marksmanship?

16 THE WITNESS: No, I don't. I'm not a trained sniper.
17 I never went through a sniper course or anything like that. So,
18 you know, I used the term counter sniper, but that doesn't
19 necessarily -- I was the guy with the slightly magnified scope.
20 So they're like, Hey, you're the counter sniper, but as far as
21 like actual sniper training, I didn't have it. Actually, my
22 partner has -- was a sniper in the Air Force, but I -- but he
23 didn't have the scope, so ...

24 THE COURT: All right. And you testified that there
25 was radio traffic and that they, and the word they is in

1 quotation marks, were spotting potential threats. Who were they
2 and what was their guidance as to who or what was a threat?

3 THE WITNESS: I don't think there was any guidance. I
4 mean, we were just -- I mean, we're trained to know that someone
5 with a long gun with body armor with full battle rattle or full
6 BDU or even if they're in civilian clothes and they have guns,
7 they're a threat to us. So the radio traffic for the most part
8 I think was coming from those vehicles that were up front doing
9 the announcing. And there was quite a few officers around that,
10 and they were calling out threats down in the wash and up on the
11 embankments.

12 Other radio traffic was coming from, I believe, the
13 other vehicle that was to our left. And we -- and as well as we
14 were putting out some radio traffic, too. I'm sorry, Your
15 Honor. I don't know if that answered it completely or not.

16 THE COURT: Yes, they wanted to know which -- who was
17 the "they" that you were referring to.

18 When you were target ranging, did you have a spotter?

19 THE WITNESS: Yes, the other people on the truck, we
20 had different people on binoculars at different times, but where
21 you saw me is where I was most of the time. Where I was -- I
22 stayed pretty much behind my scope the whole time or, you know,
23 it would be looking with my naked eye as well, but the -- we had
24 other people spotting with binoculars next to me.

25 THE COURT: All right. When and how were your weapon

1 and scope calibrated or dialled in?

2 THE WITNESS: Well, we have to qualify with our weapon
3 quarterly. So every quarter, you know, every four months or so,
4 we have to qualify with our long guns or we do -- we also do
5 tactical shoots. So I guess to answer your question every
6 quarter it's tested, and if it's not sighted in, you're going to
7 know because your target is going to be bad. So you're going to
8 have to recalibrate it in, but generally they're pretty -- I
9 don't think I've ever had that ACOG get knocked off to where it
10 wasn't on still, but that -- that's what we do about every
11 quarter.

12 THE COURT: All right. And jury note No. 73: When you
13 were observing Black Hat from behind the truck, was there
14 significant glare or haze that could impact visual acuity?

15 THE WITNESS: No, it was a very clear, sunny day. It
16 was actually very hot. That's the reason why we drank so much
17 water, but I was -- it was a clear day. I don't remember any
18 kind of haze or anything like that or any kind of visual
19 obstruction at all.

20 THE COURT: Do you believe that you were instructed to
21 remove a threat if possible?

22 THE WITNESS: No, to ... If ... No, I don't believe I
23 was instructed to remove a threat. I think that I was
24 instructed to determine whether or not a threat was imminent and
25 that was going to cause serious death or bodily injury to me or

1 someone else, one of the other officers. And that would have
2 been my job to take care of that threat.

3 THE COURT: And the end of a rifle barrel is about half
4 an inch and black. So how were you so certain that the weapon
5 was aimed at you?

6 THE WITNESS: Well, it's I guess the way that it was
7 pointed and the way I'm looking at it, I'm -- I'm detecting it's
8 aimed in at me. It was pointed in my direction. I can't say
9 for certainty that, yes, that weapon was pointed directly at me,
10 but I know that it was pointed in the direction of me or one of
11 my fellow officers because of the orientation of the gun and the
12 direction in which it was pointed. And I was perceiving that
13 that threat was pointed at me.

14 THE COURT: All right. Jury note 74 has three
15 questions. The first one is: As an officer of the law, don't
16 you realize that pointing your weapon, long gun, at the public
17 that you will get a reaction back?

18 THE WITNESS: Well, I would think that the public
19 pointing their weapon at me is -- it's commonly known that if
20 you're going to point your gun at a cop, that you're going to
21 get a gun pointed back at you. And that's what was happening
22 that day. We were having guns pointed at us. So I reacted
23 within my training and within our use of force to counteract
24 that threat. They pointed their guns at us and brought -- like
25 I said before, they brought guns to us. We didn't -- we didn't

1 go to where they were. They came and they brought guns and
2 pointed them at us. And that is our job is to protect our life.
3 In no instance are we ever expected to lay down our life.

4 THE COURT: As an officer with military experience in
5 heightened moment -- as an officer with military experience in a
6 heightened moment react? Or did your imagination take over as
7 to what was happening?

8 THE WITNESS: No, my imagination did not take over. My
9 training and experience took over. And I reacted to exactly
10 what was in front of me. There was no -- there was no
11 imagination involved, believe me. It was very, very real.

12 THE COURT: And did the lack of sleeping and resting
13 play a part to all the tension that was taking place?

14 THE WITNESS: I -- physiologically, when you're in that
15 kind of stress, it doesn't matter how much sleep you have or
16 don't have. Your body reacts the same way. So my physiological
17 reaction to that -- to that encounter was the same no matter
18 what kind of sleep I got. Increased heart rate. I probably had
19 some tunnel vision. I did some exercises to counteract that,
20 move my head around.

21 You -- basically we were running on pure adrenaline. I
22 mean, I didn't feel -- I felt a certain body fatigue because I
23 was in the same position a lot, and I did have a lot of
24 adrenaline running through my body so there was parts of me that
25 was just shaking. And I couldn't -- you know, I couldn't

1 control that. And that's the physiological reaction to stress.
2 When someone's pointing a gun at you or you're in that kind of
3 stressful situation, scientifically just certain things happen.

4 And so to answer your question, no, I don't think it
5 played any kind of negative role because it was -- it was just
6 pure adrenaline and pure concentration. There wasn't a time
7 where I felt, Wow, I wish I could go to sleep right now ever.

8 THE COURT: All right. Any follow-up questions from
9 the Government?

10 MS. AHMED: Yes, Your Honor.

11 REDIRECT EXAMINATION

12 BY MS. AHMED:

13 Q. Agent Swanson, I just wanted to follow-up on a couple of
14 things that you had said in explaining or answering the jury's
15 questions. I think you said in terms of the -- you pointing a
16 weapon that you were acting within your training and within your
17 use of force. Did you mean use of force policies for agency or
18 can you just explain what you meant by that phrase, "use of
19 force"?

20 A. Yes. There's a use of force policy within our agency, and
21 it just goes basically along with Supreme Court decisions. And
22 I think I stated it before, but deadly force is authorized when
23 you feel that there is a threat of imminent serious bodily injury
24 or death to you or another.

25 Q. And is that consistent with your other law enforcement

1 experience as well?

2 **A.** Yes.

3 **Q.** Now, there was a question about the Black Hat going. You
4 didn't know that he was pointing his weapon between the gap in
5 the concrete barriers. Do you recall that?

6 **A.** Yes.

7 **Q.** When -- you testified also on direct that he disappeared at
8 some point and he didn't come back up as far as you observed --

9 MR. LEVENTHAL: Objection, leading.

10 MS. AHMED: Your Honor, I'm just doing foundational
11 questions to get to the ...

12 BY MS. AHMED:

13 **Q.** Do you recall testifying that he went down and you didn't
14 see him come back up?

15 **A.** Black hat?

16 **Q.** Yes.

17 **A.** Yes.

18 **Q.** And when he disappeared behind that concrete barrier, the
19 Jersey barriers as you were calling it, what assessment did you
20 make about whether or not he was still a threat?

21 **A.** Well ...

22 **Q.** When you could no longer see him, was he still a threat?

23 **A.** No, he wasn't -- I mean, by the reaction of the camera
24 people about -- after that when he was still -- when he was --
25 when they walked away and he was still out of sight, he was not

1 a threat to me. I didn't perceive him as a threat because I
2 didn't know that he was aiming his gun through that Jersey
3 barrier.

4 Q. And was his presence on the northbound bridge with his rifle
5 and the movements he was making, did that make him a threat to
6 you?

7 **A.** Yes.

8 MS. AHMED: Your Honor, may I have the Court's
9 indulgence?

10 THE COURT: Yes.

11 (Government conferring.)

12 MS. AHMED: Nothing further. Thank you. Thank you.

13 THE COURT: Follow-up by Defense on behalf of
14 Mr. Stewart?

15 MR. TANASI: Your Honor, thank you. Thank you, Your
16 Honor.

17 RE-CROSS-EXAMINATION

18 BY MR. TANASI:

19 Q. Agent Swanson, I just want to make sure I'm clear on
20 something. Were you aware that NHP was on the northbound
21 bridge?

22 **A.** Yes, I saw -- well, I saw an NHP cruiser at one point.

23 Q. So you were aware that NHP was on the bridge, the northbound
24 bridge, fair?

25 **A.** I'm aware that there was a NHP cruiser on the bridge at one

1 point driving across it, yes.

2 MR. TANASI: Okay. Thank you. No further questions.

3 MR. MARCHESE: No, Your Honor.

4 THE COURT: On behalf of Drexler, go ahead.

5 MR. LEVENTHAL: Thank you.

6 RE-CROSS-EXAMINATION

7 BY MR. LEVENTHAL:

8 Q. Sir, so let me get this. You lost Tan Hat, you lost
9 visually where he went, right? Correct?

10 A. Yes.

11 Q. Okay. So how long were you able to spot him? No more than
12 a couple of seconds?

13 A. Not sure what you're asking, sir.

14 Q. Well, if you ran -- if he ran away and you could no longer
15 see him because you were focussed on Black Hat, how long in
16 total do you think you saw Tan Hat?

17 A. Oh, no. It was minutes. I mean, he was there with Black
18 Hat for quite a long time.

19 Q. Okay. And you indicated that you could not see through the
20 Jersey barrier, correct?

21 A. Correct. Yes.

22 Q. Okay. And you had, as you called it, the code which is the
23 highest level of magnification out there, correct?

24 MS. AHMED: Objection.

25 THE WITNESS: No.

1 BY MR. LEVENTHAL:

2 Q. No? The code, this -- your lens?

3 A. It's an ACOG.

4 Q. ACOG?

5 A. Yes.

6 Q. Was what high magnification?

7 A. No.

8 Q. It was not. What was so special about it that they asked
9 you to do that?

10 A. It was the only magnified scope that we had out there that
11 day.

12 Q. Okay.

13 A. But when you say highest magnification, there's sniper
14 scopes that are that long. It wasn't that.

15 Q. And did you have those out there?

16 A. No.

17 Q. Okay. So when I say was it the highest magnification scope
18 out there, "out there" being with the BLM at that time?

19 A. Yes.

20 Q. That's what I mean.

21 A. Oh, yeah. You didn't ask that.

22 Q. I apologize. So is that a correct statement then?

23 A. Yes.

24 Q. And even with that you couldn't see through the Jersey
25 barrier, correct?

1 **A.** Correct.

2 **Q.** Okay. Now, you indicated that there were no other visual
3 obstructions, but, yet, we saw a tree visually obstructing you,
4 correct?

5 **A.** From the angle that you put that picture up, yeah.

6 **Q.** We saw a tree obstructing you, correct?

7 **A.** From that side, yes.

8 **Q.** I understand. That did obstruct you from that angle,
9 correct?

10 MS. AHMED: Objection, Your Honor, argumentative. The
11 witness has answered the question three times.

12 BY MR. LEVENTHAL:

13 **Q.** How many --

14 MS. AHMED: He thinks that from the other view from
15 that angle he was obstructed; not his view.

16 BY MR. LEVENTHAL:

17 **Q.** How many people were out there that day?

18 **A.** I don't know.

19 **Q.** In terms of protestors on the other side?

20 **A.** I don't know.

21 **Q.** Approximately? 200?

22 **A.** I don't know.

23 MS. AHMED: Your Honor, I'm just going to object. This
24 appears to be going beyond the jury question follow-up.

25 BY MR. LEVENTHAL:

1 Q. Was there a lot of dust?

2 MS. AHMED: Same objection, Your Honor.

3 MR. LEVENTHAL: It goes to visual obstruction, Your
4 Honor, which was one of the questions.

5 THE WITNESS: I did not see any visual obstruction when
6 I was looking at the north bridge.

7 BY MR. LEVENTHAL:

8 Q. Okay. The horses came in. You saw that?

9 A. Yes.

10 Q. Were they in a wash that was concrete?

11 A. No.

12 Q. Was it dust? Was it dirt?

13 A. I'm sure they raised some dust, yeah. But I didn't see any
14 visual obstruction.

15 MR. LEVENTHAL: Nothing further.

16 THE COURT: Anyone else?

17 MR. PEREZ: No, Your Honor.

18 THE COURT: Any redirect follow-up?

19 MS. AHMED: Yes, Your Honor.

20 REDIRECT EXAMINATION

21 BY MS. AHMED:

22 Q. Agent Swanson, just with respect to the questions that
23 Mr. Leventhal asked you about the tree that -- so there was a
24 picture that he showed you. Do you recall that?

25 A. Yes.

1 Q. And in that picture there was a tree that obstructed your
2 vehicle. Is that right?

3 **A.** Yes.

4 Q. Now, can you explain to the jury, did that -- did that tree
5 play any role in your line of sight on April 12, 2014?

6 **A.** No.

7 Q. What could you see of the northbound bridge?

8 **A.** I could see the whole bridge, from the crowd to the right
9 all the way to the left.

10 Q. Did the tree obstruct -- based on your experience in that
11 position and in that area, were you obstructed from the
12 northbound bridge by that tree?

13 MR. MARCHESE: Objection, asked and answered.

14 THE COURT: Overruled. He can answer the questions.

15 Clearly --

16 THE WITNESS: No.

17 THE COURT: -- there's confusion. So we need to
18 clarify it now before we let him go.

19 BY MS. AHMED:

20 Q. And so can you explain -- what was your answer that were --
21 about the tree?

22 **A.** That tree did not obstruct anything, any part of the
23 northbound bridge for me.

24 Q. But were you obstructed or hidden by the tree?

25 **A.** I don't know. I wasn't -- I couldn't see from the

1 northbound bridge. It appeared from the picture that he showed,
2 whatever angle that was and wherever it was taken, it looked
3 like I was obstructed, but it did not obstruct my view at all.
4 The only thing that tree obstructed was just a small part,
5 mostly of where our own officers were down in the bridge --
6 under the bridge and the temporary gate that was erected down
7 there.

8 Q. Were officers visible from the bridge in the wash in your
9 area?

10 **A.** Yes.

11 MS. AHMED: Nothing further. Thank you.

12 THE COURT: Anything else from the Defense?

13 MR. LEVENTHAL: Yeah. Just can I bring up 149 again,
14 please?

15 THE COURT: Yes.

16 MR. LEVENTHAL: Thank you. Go ahead and zoom it in
17 please, Brian. Thank you.

18 RE-CROSS-EXAMINATION

19 BY MR. LEVENTHAL:

20 Q. Okay, sir. This picture, do we agree, was taken from the
21 northbound bridge?

22 **A.** Yes.

23 Q. Okay. And you are behind this tree, correct?

24 **A.** Yes.

25 Q. Okay. These officers are in front of this tree. Is that

1 what you were referring to?

2 **A.** Yes.

3 **Q.** Okay. So it would not obstruct their view, but it would
4 obstruct your view from that angle, correct?

5 **A.** Of them, yes.

6 MS. AHMED: I'm really -- objection, Your Honor. I
7 think the question's confusing as to view of this witness? The
8 witness's view and of what and of ...

9 MR. LEVENTHAL: Because counsel is confused -- the
10 witness has just answered my question, so apparently he wasn't
11 confused.

12 THE COURT: Well, was your question about the photo or
13 about his view on the day of?

14 MR. LEVENTHAL: Well, his view he indicated was behind
15 here and he was not obstructed.

16 MS. AHMED: Meaning he could see.

17 MR. LEVENTHAL: These officers in front of him had a
18 clear view who were in front of this gate.

19 BY MR. LEVENTHAL:

20 **Q.** Correct? Is that your testimony?

21 **A.** I'm really confused. I'm sorry, so ...

22 THE COURT: What, if anything, did that tree obstruct?
23 What view, if any, did that tree obstruct from your position
24 behind the blue truck on the day in question disregarding this
25 photo? Just what could you see from your truck on April 12th of

1 2014?

2 THE WITNESS: Yes, ma'am. The only thing that that
3 tree obstructed was part of my view of those officers that were
4 down by the gate right there.

5 BY MR. LEVENTHAL:

6 Q. I see. So you could not see these individual officers here?

7 A. Not all of them.

8 Q. That's your testimony?

9 A. Not all of them, no.

10 MR. LEVENTHAL: Okay. Nothing further.

11 THE COURT: Anyone else?

12 MR. TANASI: No, Your Honor.

13 THE COURT: All right. So we're going to go ahead and
14 take our evening break, and we will excuse Special Agent
15 Swanson. And during this overnight break, the jury is reminded
16 that you are not to discuss this case with anyone nor permit
17 anyone to discuss it with you. You are not to read or listen to
18 or view anything that touches upon this case in any way nor to
19 conduct any research or any independent investigation about this
20 case. You are ordered to advise the Court right away if anyone
21 does attempt to talk to you about the case, or if you know of
22 anyone else on the jury who's doing any kind of independent
23 investigation or anything like that, you need to bring it to our
24 attention.

25 Also, please do not form any opinion regarding the

1 issues in this case. We will be providing you still more
2 testimony, more exhibits. Once you've seen all of those, then
3 I'll provide to you the written jury instructions of law so you
4 can apply those to the facts as you find them. Then you will
5 hear closing arguments, which is the attorneys' opportunity to
6 explain to you what they believe the testimony has been so far
7 and how that should be applied to the jury instructions of law.
8 Then I will excuse you to begin the deliberation process. Then
9 you can start talking to each other about the case and your
10 opinions and things like that, but not until then.

11 So we will go ahead and take our overnight break. We
12 were going to break until 10:30 tomorrow morning. Then we
13 thought we could get you in at 9, but it looks like -- no,
14 there's some folks that had already made arrangements. So we
15 can't bring you back in at 9 tomorrow. So we'll be starting at
16 10:30 a.m. tomorrow until 5 p.m., and then we're dark on Friday.
17 So then we would start back up again at Monday from 9 to 5.

18 So we'll go ahead and excuse the jury and welcome them
19 back tomorrow at 10:30 a.m. And then, Special Agent Shannon,
20 after the jury exits, you may also exit the courtroom, and
21 you're excused. You don't need to come back tomorrow morning.

22 THE WITNESS: Thanks, Your Honor.

23 THE COURT: Everyone else needs to be here tomorrow at
24 10:30.

25 (Whereupon the jury leaves the courtroom at 4:56 p.m.)

1 THE COURT: Off record.

2 MR. TANASI: Your Honor, can I address real quickly
3 with respect to scheduling?

4 THE COURT: All right. Back on record.

5 MR. TANASI: I apologize. On August 9th I was hoping
6 to be able to drop off my son for his first day of kindergarten.
7 And so what I was asking for is a late start on the 9th.

8 THE COURT: Okay. What time do you want to start?

9 MR. TANASI: I'd say I could be here by 10 no problem.

10 THE COURT: I don't have a problem with that. Anyone
11 else have any problem with that?

12 MR. MYHRE: No.

13 THE COURT: I don't have a problem with starting at
14 10 a.m. on Wednesday, August 9th.

15 MR. MYHRE: Not from the Government, Your Honor.

16 THE COURT: All right. So go ahead and mark your
17 calendars, and we'll let the jury know tomorrow. If you don't
18 mind, Mr. Tanasi, if -- just remind me tomorrow again to make
19 sure to remind the jury just so they know, too.

20 MR. TANASI: Absolutely. Thank you, Your Honor.

21 THE COURT: Thank you.

22 (Whereupon the proceedings concluded at 4:58 p.m.)
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COURT REPORTER'S CERTIFICATE

I, PATRICIA L. GANCI, Official Court Reporter, United States District Court, District of Nevada, Las Vegas, Nevada, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Date: August 1, 2017.

/s/ Patricia L. Ganci
Patricia L. Ganci, RMR, CRR
CCR #937

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,)	
	)	Case No. 2:16-cr-00046-GMN-PAL
Plaintiff,)	
	)	Las Vegas, Nevada
vs.	)	July 27, 2017
	)	10:46 a.m.
ERIC J. PARKER (11), O.)	
SCOTT DREXLER(12), RICHARD)	
LOVELIEN (13), and STEVEN A.))	
STEWART (14),)	
)	
Defendants.	)	Day 11

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE GLORIA M. NAVARRO
UNITED STATES DISTRICT COURT CHIEF JUDGE, AND A JURY

APPEARANCES:

For the Government:

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ERIN M. CREEGAN, SAUSA
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Appearances continued on next page.

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Proceedings reported by machine shorthand, transcript produced
by computer-aided transcription.

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25 Also present:

Sharon Gavin, Special Agent FBI
Joel Willis, Special Agent FBI
Chris Allen, Bureau of Land Management
Mike Abercrombi, FBI
Mamie Ott
Nona Dodson
Tori Bakken
Brian Glynn

1 (Thursday, July 27, 2017, 10:46 a.m.)

2 --oOo--

3 P R O C E E D I N G S

4 (Jury out.)

5 THE COURT: Thank you. You may be seated.

6 COURTROOM ADMINISTRATOR: This is the time set for
7 Jury Trial, Day 11, in Case No. 2:16-cr-046-GMN-PAL, United
8 States of America versus Eric Parker, O. Scott Drexler, Ricky
9 Lovelien, and Steven Stewart.

10 THE COURT: All right. So, before we bring in the
11 jury and permit the attorneys to place their presence on the
12 record, I just want to remind everyone about the conduct that
13 is expected in the courtroom.

14 It is a courtroom. It is not a sporting event, so
15 please remember, no expressions of opinions are permitted,
16 whether they be verbal expressions or through your conduct,
17 facial expressions and so forth. No matter how much you agree
18 or disagree with something that you hear that is being said,
19 please do not make any expressions.

20 The defendants have been warned about this as well.
21 We do have a holding cell with a speaker system. If any of the
22 defendant do make expressions that are inappropriate, the US
23 Marshals have the authority to remove them and place them in
24 the holding cell to listen to the rest of the trial, but they
25 will not be permitted to be physically present.

1 Likewise, there are no cell phones or electronic
2 devices that are permitted in the courtroom. That means no
3 audio recording, no video recording. The marshals and the
4 court security officers are also authorized to remove any
5 persons who do have an electronic device. Whether it's on
6 private mode or vibrate mode or even turned off, it's not
7 permitted in the courtroom. So please double-check and be
8 careful about that and leave it outside.

9 The attorneys have electronic devices. They need to
10 be able to follow along with the presentation of evidence and
11 to present their own evidence on the equipment. I think the
12 rest doesn't apply.

13 Okay. Can we go ahead and bring in the jury? I saw
14 Mr. Marchese stand up, so I wasn't sure. Do you need to
15 address something?

16 MR. MARCHESE: Just briefly, Your Honor. I spoke --

17 THE COURT: Okay.

18 MR. MARCHESE: I spoke with the government in
19 reference to bringing some evidence possibly before the court
20 today. It's in reference to the dash cams. There's two
21 particular dash cams the defense is seeking to admit.

22 THE COURT: Okay.

23 MR. MARCHESE: Your Honor saw them both at the last
24 time. Probably don't remember whose was whose. One was Sones
25 and one was Ranger Johnson.

1 I believe the government -- and I don't want to put
2 words in their mouth. They don't have any issue in reference
3 to authenticity. However, I believe they might have a
4 relevance objection in reference to them.

5 THE COURT: Oh, so it's not your objection. It's the
6 government's objection?

7 MR. MARCHESE: Well, we're going to be seeking it.
8 We have spoke with them. I don't believe, in their case in
9 chief, that they are going to be seeking to admit these pieces
10 of evidence.

11 I have spoken to them. We've obviously had issues
12 with the audio. I would like the whole thing in; but, at least
13 at this point, I am seeking to admit those two particular dash
14 cams with just the video, not the audio and all the
15 extracurricular, you know, comments that are made on those dash
16 cams.

17 THE COURT: All right. And so which are the two
18 exhibits? The exhibit numbers?

19 MR. MARCHESE: I haven't marked them yet. I will get
20 them marked. I think the next one up is, Brian, 5033?

21 MR. GLYNN: 5034.

22 MR. MARCHESE: 5034 and 5035 will be those two
23 exhibits.

24 THE COURT: All right. So, what is the government's
25 position on Exhibit 5034 and 5035?

1 MR. MYHRE: Your Honor, I expressed to Mr. Marchese
2 if he can designate what portions he seeks to admit, we can
3 look at them right now. Our objection would be relevance. But
4 I don't think -- my understanding of our conversation was, were
5 we going to be objecting as to authenticity of those -- of
6 those video -- or, excuse me -- those dash cams, because he
7 would seek to authenticate them through BLM agents who are
8 here.

9 The government doesn't anticipate objecting on
10 authenticity grounds, but we have an objection on relevance
11 until I can get from the defense what it is they seek to
12 introduce.

13 THE COURT: Okay. So, you want -- can we do that at
14 the lunch hour? Because we have --

15 MR. MARCHESE: I can let them know. I'm just saying
16 it just -- I just want it for when people are in the wash.
17 Because, obviously, that is when the -- the main allegations
18 occur, is when people are gathering in the wash, on the bridge.
19 And I want to be able to show the jury and argue to the jury
20 the facts as to what is depicted on those particular dash cams.
21 So --

22 THE COURT: All right. But whether or not they're
23 relevant is something you need to address with the government,
24 and whether or not they're going to object to that. If they
25 are, then I'll make a ruling. But if you can get together with

1 them and see if there's a portion that --

2 MR. MARCHESE: Well, I --

3 THE COURT: -- you can identify for them, so they can
4 be satisfied they don't need to make the objection, then that
5 will --

6 MR. MARCHESE: Okay.

7 THE COURT: -- make things move quicker.

8 MR. MARCHESE: Yeah. I'll speak with them, but I --
9 I've already told them. I want them when people are in the
10 wash and on the bridges.

11 What it is -- those would be the relevant time
12 frames. I'll get to them. It's not a problem. I'll fast
13 forward and find the exact moment on. I don't think it's
14 relevant or necessary to have the jury sit through, you know,
15 tumbleweeds.

16 So, but I'll get with them, and I guess we can
17 address it later, as long as they are okay with authentication.
18 Because I don't want to miss my opportunity because I think I
19 might have difficulty authenticating those particular videos
20 with, say, Mr. Parker or another witness who might have been on
21 the bridge.

22 THE COURT: All right. Anything else?

23 MR. MARCHESE: Not from Parker.

24 THE COURT: All right.

25 MR. TANASI: Well --

1 THE COURT: Let's go ahead then and bring in the
2 jury.

3 MR. TANASI: Yeah, Your Honor. I apologize. There
4 is one more thing. We did -- Mr. Myhre and I had a
5 conversation, and I think we do have an agreement on a piece of
6 evidence through -- to be admitted through Mr. Whitteaker, who
7 I understand is to testify next.

8 Brian, what was our next number? 5036. Okay. Your
9 Honor, so this would be Defense Exhibit 5036. And it's
10 particularly 35 seconds to the 1 minute and 6 second mark of
11 that Apley body cam.

12 And it was formerly marked on the Government's or
13 listed on the Government's Exhibit list, at least the entire
14 three minutes, as Government Exhibit 36A.

15 THE COURT: I'm sorry. So, is it -- are you telling
16 me that you are stipulating or are you asking me to do
17 something?

18 MR. TANASI: We are stipulating. That's, at least,
19 my understanding.

20 THE COURT: Is that right?

21 MR. MYHRE: Excuse me just one minute, Your Honor.

22 MR. TANASI: And in addition, the stipulation, Your
23 Honor, would be muted.

24 MR. MYHRE: Your Honor, we -- we stipulate to that
25 providing no audio is being played.

1 MR. TANASI: That's correct, Your Honor.

2 THE COURT: All right. So, Exhibit 5036 is going to
3 be stipulated and but with the condition of what?

4 MR. MYHRE: Yes, Your Honor. We stipulate to
5 approximately 35 seconds to 1 minute and 6 seconds.

6 MR. TANASI: That's correct.

7 MR. MYHRE: And no audio.

8 COURTROOM ADMINISTRATOR: Mr. Myhre, what were those
9 times?

10 MR. MYHRE: 35 seconds to 1 minute and 6 seconds.

11 THE COURT: All right. Thank you.

12 MR. TANASI: Thank you, Your Honor.

13 THE COURT: All right. Anything?

14 MR. LEVENTHAL: No, Your Honor, not on behalf of
15 Mr. Drexler. Thank you.

16 THE COURT: You had a look on your face like maybe
17 you were going to say something. All right. So, let's go
18 ahead and bring in the jury, Aaron.

19 COURTROOM ADMINISTRATOR: Exhibit 5036 is admitted,
20 Your Honor?

21 THE COURT: Yes.

22 COURTROOM ADMINISTRATOR: Thank you.

23 (Exhibit 5036 admitted.)

24 (Jury in.)

25 THE COURT: The jury may go ahead and be seated.

1 Everyone else may be seated as well.

2 All right. So, before we begin, I just want to read
3 a jury note that I received today. We're marking it Jury Note
4 No. 75. And this is a very helpful reminder.

5 "Can the Court please ask all parties to speak up?
6 There are times it is very difficult for us to hear the
7 questions and responses."

8 Okay. So, thank you very much for that reminder.

9 All right. So, we finished up last night with BLM
10 Special Agent Scott Shannon, so the government may call its
11 next witness.

12 MS. AHMED: Your Honor, did you want the parties to
13 identify ourselves for the record?

14 THE COURT: Oh, yes, please. Loudly. Speak up.

15 MR. MYHRE: Good morning, Your Honor. Good morning,
16 ladies and gentlemen. Steve Myhre, Erin Creegan, and Nadia
17 Ahmed on behalf of the United States.

18 THE COURT: Good morning.

19 MR. TANASI: Thank you, Your Honor. Good morning,
20 folks. Rich Tanasi for Steve Stewart. Also with us at counsel
21 table is Tori Bakken and Brian Glynn. Thank you.

22 THE COURT: Good morning.

23 MR. MARCHESE: Good morning, Your Honor. Good
24 morning, ladies and gentlemen. Jess Marchese on behalf of Eric
25 Parker.

1 THE COURT: Good morning.

2 MR. LEVENTHAL: Good morning, everyone. Todd
3 Leventhal of behalf of Scott Drexler.

4 THE COURT: Good morning.

5 MR. PEREZ: Good morning, everyone. Shawn Perez on
6 behalf of the Ricky Lovelien.

7 THE COURT: Good morning. All right. So, now let's
8 go ahead and call the next witness, please.

9 MS. AHMED: Thank you, Your Honor. The United States
10 calls Ranger Edwin Whitteaker.

11 THE COURT: Good morning, Agent -- Ranger Whitteaker.

12 THE WITNESS: Good morning.

13 THE COURT: Come on up, please. Be careful with
14 those steps.

15 EDWIN WHITTEAKER,
16 having been duly sworn, was examined and testified as follows:

17 COURTROOM ADMINISTRATOR: Please state your full name
18 for the record and spell your last name.

19 THE WITNESS: My full name is Edwin Whitteaker.
20 Whitteaker, W-H-I-T-T-E-A-K-E-R.

21 DIRECT EXAMINATION

22 BY MS. AHMED:

23 Q. Good morning, Ranger Whitteaker.

24 A. Good morning, ma'am.

25 Q. Are you currently working for the BLM?

Edwin Whitteaker - Direct

1 A. That is correct, ma'am.

2 Q. And what is your position with the BLM?

3 A. I'm a field staff ranger, law enforcement ranger with the
4 BLM, ma'am.

5 Q. How long have you held that position with the BLM?

6 A. Seven years, ma'am.

7 Q. Prior to the position that you currently hold with the
8 BLM, do you have any other law enforcement experience?

9 A. Yes, ma'am. I was a US border patrol. I was also in the
10 INS. I was an ATF, local police officer, and I worked for the
11 Veterans Affairs.

12 Q. And can I ask you to pull the microphone a little get bit
13 closer to you? And just try to speak into the mike.

14 A. Okay. Ma'am.

15 Q. Thank you.

16 A. Is that better?

17 Q. That's good for me. Thank you.

18 Now, how many years total combined law enforcement
19 experience do you have?

20 A. Currently I have 20 years, ma'am.

21 Q. Now, and you indicated that you're a law enforcement
22 ranger with the BLM; is that right?

23 A. That is correct, ma'am.

24 Q. Are you then a commissioned law enforcement officer?

25 A. Yes, I am, ma'am.

Edwin Whitteaker - Direct

1 Q. Are you authorized to enforce federal laws?

2 A. Yes, ma'am.

3 Q. And what training, generally, have you received in support
4 of your position as a BLM ranger?

5 A. I went to Glencoe, for both the Border Patrol Academy, the
6 ATF Academy, and also new professional training. I continue to
7 go to training. I was a defensive tactics coordinator. I was
8 a taser armor instructor, and I am currently a K9 handler.

9 Q. Now, in April of 2014, were you involved in an -- in an
10 impoundment operation that the BLM was conducting in Nevada?

11 A. Yes, ma'am.

12 Q. Were you specifically providing security for that
13 operation?

14 A. Yes, I was, ma'am.

15 Q. And were you -- did you join the operation around
16 April 10th of 2014?

17 A. That is correct, ma'am.

18 Q. Were you on duty in the morning of April 12th of 2014?

19 A. Yes, I was, ma'am.

20 Q. When you began your morning on April 12th, where were you?

21 A. I was at what we called Post 1 which is the front gate,
22 ma'am.

23 Q. And that's the front gate that would lead down eventually
24 to the ICP?

25 A. Yes, it would.

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1 Q. And while you were at Post 1, what, if anything, did you
2 observe that seemed to you out of the ordinary?

3 A. When I was at Post 1, on the northbound lanes of the
4 highway, I saw individuals parking on the side of the highway,
5 which is abnormal. A large amount of them. They started
6 coming out of the vehicles. Some of the individuals, the
7 rangers I was with had binoculars and were calling out that
8 they were coming out with firearms.

9 Q. Now, in the course of your duties as a BLM ranger, do you
10 come into contact with people that have firearms regularly?

11 A. On a daily basis, I come across individuals with firearms.
12 My duties, we do a lot of shooting compliance checks. And in
13 the state I work in, everybody's armed. So, most anybody I
14 contact in my state is going to be armed with a firearm.

15 Q. Did the firearms that were being called out on April 12th,
16 then, seem like the normal course of duties for you or were
17 they different in any way?

18 A. I have been at protests before. We have a lot of burro
19 and burro protests that I have attended. And we usually don't
20 see armed subjects there. These subjected seemed animated,
21 angry, were coming out. They had firearms. So, it was unusual
22 for me to see them at a protest.

23 Q. Now, at some point, did you move from your position at
24 Post 1, or did you stay there all day?

25 A. I didn't stay there the whole time. I went down to Post 2

Edwin Whitteaker - Direct

1 which was in the wash.

2 Q. And why did you go to Post 2?

3 A. There was calls for assistance. They said there was armed
4 individuals. I heard over the radio several times. I asked
5 for permission to go down there, I was granted permission, and
6 I went down there.

7 Q. And when you went down to Post 2, what did you do when you
8 first got there?

9 A. When I first got to Post 2, I talked to Kelly Cole. He
10 was one of the leads down there. He told me to take position
11 and look for subjects with weapons.

12 Q. And did you do that?

13 A. Yes, I did.

14 Q. And when you were looking for subjects, where generally
15 were you looking?

16 A. I was looking on the northbound bridge, the top of the
17 bridge. That was our most vulnerable point. We were in a
18 wash, a fatal funnel. They had the high ground. They had the
19 cover of the concrete barriers.

20 We were basically all out in the open. You know, we
21 had concealment with our vehicles, but any of their long guns
22 could have easily gone through those vehicles.

23 Q. Now, you used the phrase "fatal funnel." Can you explain
24 to the jury what you mean by that phrase?

25 A. A fatal funnel is from my training. I used to -- I used

Edwin Whitteaker - Direct

1 to be the guy who goes -- when I was with the ATF, the first
2 guy through the door with the shield.

3 Now, the fatal funnel is that danger point. You are
4 going into, basically, a funnel, where they can shoot you. You
5 are either the first guy in or you are trapped in that wash.
6 You are trapped in that doorway. We were trapped in that wash.
7 There was -- you know, the only way we would have had to go is
8 retreat back out of that wash.

9 Q. Now, what -- in terms of your duties on April 12th, why
10 did you stay in the wash?

11 A. Oh, because I was there with my brothers and sisters. I
12 mean, we were outnumbered, outgunned, and in a horrible
13 position with basically no cover at all. But, I mean, that was
14 my job that day.

15 Q. And what was your job that day?

16 A. My job that day was to protect the IC. It was a very
17 confusing day. I mean, we originally went there on a cattle
18 impound, and then it became that we had a -- a mob of American
19 crowd looking down at us pointing weapons at us.

20 Q. Now, when you began to look for threats that you --
21 threats and the subjects that could be threats to you on the
22 northbound bridge, did you see anything?

23 A. Yes, I saw an individual with a long gun.

24 Q. And were you looking with your naked eyes or were you
25 looking with --

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1 A. Naked eyes --

2 Q. -- binoculars?

3 A. -- ma'am.

4 Q. And can you describe what you observed about the
5 individual with the long gun?

6 A. He had a darker shirt, a longer gun. At that point, I
7 couldn't tell what type of a long gun it was.

8 Q. And what particularly caught your attention about this
9 person?

10 A. He was putting -- he was actually walking. Can I stand
11 up, ma'am?

12 MS. AHMED: Your Honor, may the witness demonstrate
13 to the jury what he observed?

14 THE COURT: Yes, he may.

15 THE WITNESS: He was walking on the bridge, and he
16 was going with the firearm like that. And he was just -- while
17 he was walking, he was going like that, and that. And we were
18 down where he was pointing that.

19 BY MS. AHMED:

20 Q. And, for the record, the witness was walking back and
21 forth in the witness box, moving his hands at his hips, as if
22 you were swinging a firearm?

23 A. A firearm. That would have -- the swing of my arms, he
24 had a firearm in his hands.

25 Q. And when you said he was pointing down at the officers; is

Edwin Whitteaker - Direct

1 that right?

2 A. Yes, down into the wash.

3 Q. Now, when you observed this individual with the dark shirt
4 doing that, what assessment, if any, did you make for the
5 safety of yourself and the other officers?

6 A. I considered the individual a threat, and I had my sights
7 of my AR-15 on him.

8 Q. And in a -- in your training and experience, what would
9 you normally do if you encountered someone like that?

10 A. If I encountered that person on a traffic stop, I would
11 have considered that individual pointing a firearm at me, and I
12 would engage --

13 MR. MARCHESE: Objection.

14 THE WITNESS: -- that individual to stop it.

15 MR. MARCHESE: Speculation.

16 THE COURT: Well, it's not speculation. It's what he
17 would do.

18 MS. AHMED: Your Honor, he's speaking based on his
19 training and experience.

20 THE COURT: Overruled.

21 MS. AHMED: And, Your Honor, may the witness repeat
22 his answer, since it was --

23 THE COURT: Yes, he may.

24 BY MS. AHMED:

25 Q. What would you normally do?

Edwin Whitteaker - Direct

1 A. If I was on a traffic stop or if I was on a stop and an
2 individual pointed a firearm at me, yes, I would engage that
3 subject to stop him.

4 Q. Now, here, what did you do?

5 A. Due to the -- it was a powder keg out there that day.
6 One -- there were women and children within that crowd. There
7 were kids 12, 9 years old. Little kids, women, and children
8 were intermixed with these individuals pointing firearms.

9 So, I have to account for every round. So did every
10 one of those rangers. We had to account for all our rounds.
11 And we're not going to fire into a crowd of women and children
12 unless it's in self-defense, and then we wouldn't fire at the
13 women or children.

14 I don't know if a lot of us would have been able to
15 fire, you know. I know I wouldn't have been able to fire, you
16 know. Because, you know, I would have been able to fire, but
17 not at some of the targets that had women and children around
18 them. Because that's not what I signed up to do. I signed up
19 to enforce federal laws and enforce the constitution.

20 Q. Did you -- did you raise your weapon toward that person --

21 A. Yes, I --

22 Q. -- that you saw?

23 A. -- did raise my weapon towards that person.

24 Q. And did you --

25 A. At the time, I had the -- my sights on that -- that

Edwin Whitteaker - Direct

1 person, he did not have women and children around him.

2 Q. And did you continue to observe him?

3 A. Yes, I did.

4 Q. At some point, did you stop observing him?

5 A. Yes, I did.

6 Q. And why did you stop?

7 A. I have a K9. I'm a K9 handler, and my emergency alarm
8 went off in my K9 vehicle. When it gets too hot in my K9
9 vehicle, the alarm will go off. I went back to see the safety
10 of my dog. There was just an issue with the air-conditioning.
11 I fixed that, and then I got water --

12 Q. So --

13 A. -- for everybody.

14 Q. Did you leave because you were concerned about your --
15 your dog's welfare?

16 A. Yes. I was very concerned about my dog's welfare. It was
17 getting hot out there.

18 Q. At any point, did your dog ever come out of the vehicle on
19 April 12th, 2014?

20 A. No. This was not a situation where I would ever deploy my
21 dog. We had individuals that were up on the bridge in a better
22 position than we were. Had cover and concealment. This was
23 not a K9 deployment. This was my K9 was staying in the
24 vehicle. My K9 doesn't have a vest, and it would not be able
25 to be utilized.

Edwin Whitteaker - Direct

1 Q. Now, you also indicated that you got water from your
2 vehicle; is that right?

3 A. Yes, ma'am.

4 Q. And what was the purpose of doing that?

5 A. We were all getting hot. One of the things that I've
6 learned, through my 20 years of law enforcement, when you're in
7 a pressure situation, you know, you lose your hearing. You
8 forget to do simple things like drink water.

9 I got the water, and I was going to make sure
10 everybody was hydrated. Because all it took was one of our
11 guys to pass out, press his trigger by accident, or go down to
12 the ground. Somebody thinking he was shot, and then it would
13 have been a real bad day for everybody.

14 Q. So was your purpose in getting the water to ensure
15 everybody's welfare?

16 A. Yes.

17 Q. All officers?

18 A. Yes.

19 Q. And what did you do once you got the water?

20 A. When I got the water, I went throughout, from vehicle to
21 vehicle, all the way up to the front giving officers water. I
22 also had on the Gatorade and stuff like that. I think it was
23 Powerade. Sorry.

24 And I was giving it to all the officers to make sure
25 they stay hydrated. Some were, like, "What are you doing?" I

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1 was, like -- like Swanson. I was, like, I put it in their
2 pocket. I was, like, "There's a water. You need to drink."
3 So, I went throughout giving guys water, you know, making sure
4 they are okay.

5 Q. Now, when you were walking around the wash giving the
6 other officers water, were you sometimes out in the open?

7 A. Most of the time I was out in the open. But in the -- in
8 the funnel that -- that we were at, no matter where you're at,
9 you're going to be in the open.

10 If I was doing to do my -- the only way that I
11 couldn't have been in the open is if I went down in the fetal
12 position and hid behind an engine block, and I wasn't going to
13 do that.

14 Yes, I -- I did go out in the open for a long time
15 and give guys water, but I thought that was the most important
16 thing to do at the time.

17 Q. Were you concerned about your physical safety, your
18 personal safety when you were out passing out water without
19 cover?

20 A. I was, but I didn't think about it. You know, I had to
21 make sure everybody was okay. It wasn't thinking about, "Hey,
22 I'm not coming home," because if I'm going to think like that,
23 then you always got to think you are going to get through a
24 situation.

25 Yes, I was in the open. If my wife were to see it,

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1 she probably wouldn't be too happy about what she saw me
2 walking in the wash.

3 MR. MARCHESE: Objection, Your Honor. Nonresponsive.

4 MS. AHMED: Your Honor, he was responding, but I'll
5 move on.

6 THE COURT: Okay.

7 BY MS. AHMED:

8 Q. Now, you -- after you handed out water to the different
9 officers in the wash, did you end up then taking up another
10 position or did you continue to move around?

11 A. Yes, I took a position around one of the vehicles, and
12 there were binoculars. So, no one was using the binoculars, so
13 I took the binoculars and started looking through crowd, ma'am.

14 Q. When you -- so, you went up to a vehicle that was
15 stationed in the wash; is that right?

16 A. Yes, ma'am.

17 Q. And this was a law enforcement vehicle?

18 A. I -- yes, it what either a special agent -- I believe it
19 was a BLM truck or a BLM special agent. It was one of the law
20 enforcement vehicles, ma'am.

21 Q. And when you got there, you found binoculars; is that
22 right?

23 A. That is correct, ma'am.

24 Q. And then you started to look through the binoculars?

25 A. Yes, ma'am.

Edwin Whitteaker - Direct

1 Q. And where, if anywhere, did you focus when you started to
2 look?

3 A. The people that had the best view of us was on the
4 northbound bridge, because they had the high ground on us, and
5 they had the best cover. They had the concrete blocks that
6 support the bridge.

7 So, I looked on top of the northbound bridge. And
8 that's originally where I saw the -- that individual that I
9 placed my sights on with the rifle.

10 Q. So, you went back to looking at the northbound bridge, and
11 that -- is that right?

12 A. Yes.

13 Q. And that's where you had originally seen the individual
14 pointing a rifle?

15 A. That is correct.

16 Q. Now, when you started to look with the binoculars at the
17 northbound bridge, did you observe anything that caused you
18 concern?

19 A. Yes, there were individuals up there with firearms.

20 Q. And did you see any individuals in particular that you
21 considered a threat?

22 A. There is one individual I called the -- the Crack Guy.
23 It's in my report. He was a white male with a beard and a long
24 gun.

25 Q. And did he -- and why did you call him Crack Guy?

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1 A. Because when I originally saw him, there was a crack in
2 the bridge. I looked in my binos, and there was a crack in the
3 bridge, so that was the only reason.

4 Q. So, when you saw him, you saw that he was near a crack in
5 the foundation of the bridge?

6 A. Yes, in the foundation of the bridge, ma'am.

7 Q. And --

8 A. It's a slight -- it's just an odd thing to see, and it
9 just stood out.

10 Q. So, you referred to this individual as Crack Guy?

11 A. That is correct, ma'am.

12 Q. And were you able to observe anyone else around Crack Guy?

13 A. There was the individual that I originally saw, and I
14 believe what he was carrying -- looked through the
15 binoculars -- was a shotgun due to not having a magazine
16 attachment to it, and it was longer than rifles.

17 Q. So, the person that you'd originally seen when you very
18 first looked, that was the one that you saw again?

19 A. Yes.

20 Q. And now you were able to determine what about him?

21 A. I believed it was a shotgun that he was carrying.

22 Q. So, you had originally seen him and thought it was a
23 rifle, but now it appeared to be a shotgun?

24 A. That is correct.

25 Q. But it was the same person?

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1 A. Yes.

2 Q. And what, if anything, did you see him doing?

3 A. He was pointing the shotgun back and forth, going in and
4 out of cover.

5 Q. And where was he in relation to Crack Guy?

6 A. He was in the middle between him and the individual I
7 called Pillar Guy.

8 Q. So, there was a person?

9 THE COURT: What was that last part? Between?

10 THE WITNESS: Pillar Guy, man.

11 THE COURT: Pillar. Okay. P-I-L-L-A-R?

12 THE WITNESS: Yes, the pillar of the bridge. So, I
13 saw him originally under the pillar of the bridge.

14 BY MS. AHMED:

15 Q. So, did you see then a third person in this group of
16 individuals?

17 A. Yes.

18 Q. And where was this third person?

19 A. He was under -- he was under the pillar of the bridge,
20 ma'am.

21 Q. So was he on the bridge?

22 A. He was --

23 Q. On the northbound bridge or --

24 A. He was on top of the bridge under the pillar.

25 Q. So --

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1 A. Underneath the pillar.

2 THE REPORTER: You need to wait for her finish her
3 question before you answer.

4 THE WITNESS: Oh, sorry, ma'am.

5 BY MS. AHMED:

6 Q. So he was on top of the bridge where the pillar is
7 underneath him?

8 A. Yes. He was on top of the bridge with the pillar
9 underneath him.

10 Q. And what did you -- and you started to call this person
11 Pillar Guy?

12 A. That is correct, ma'am.

13 MS. AHMED: Your Honor, may we publish what's been
14 previously admitted as Exhibit 157?

15 THE COURT: Yes, you may.

16 BY MS. AHMED:

17 Q. Ranger Whitteaker, do you see Exhibit 157 on the screen to
18 your right?

19 A. Yes, ma'am.

20 Q. Can you mark on the picture where you saw these
21 individuals and use a "C" for Crack Guy and "P" for Pillar Guy.
22 And what did you call the third person?

23 A. I -- I called the third person basically Shotgun Guy.

24 Q. So, can you write an "S" where you saw Shotgun Guy?

25 A. The Pillar Guy would have been here. So, the Shotgun Guy

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1 would have been in here. I can't -- from these photos, the
2 Shotgun Guy would have been here, and the Crack Guy would have
3 been in there.

4 Q. Now, so, can you circle the general area then where you
5 saw all three of them?

6 A. They were moving -- the Pillar Guy -- not the Pillar. The
7 Shotgun Guy and the Crack Guy were moving.

8 Q. And the witness has drawn a "P" over the pillar of the
9 northbound bridge, an "S" in the middle of the section between
10 the right pillar -- the west pillar and where the bridge meets
11 the embankment, and a "C" close to that embankment and drawn a
12 circle around all three.

13 Now, Ranger -- Your Honor, may we publish to both the
14 witness and to counsel what's been marked for identification as
15 13B?

16 THE COURT: Yes, you may.

17 BY MS. AHMED:

18 Q. Ranger Whitteaker, can you look at the picture that's on
19 the screen in front of you?

20 A. Yes.

21 Q. Do you recognize what is depicted in that picture?

22 A. That is in northbound bridge, ma'am.

23 Q. And does it look like a fair and accurate representation
24 of what you observed on April 12, 2014?

25 A. Yes, ma'am.

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1 MS. AHMED: Your Honor, the government moves to admit
2 Exhibit 13B.

3 THE COURT: Any objection to 13B?

4 MR. LEVENTHAL: I am going to object as to the
5 distance. This witness has testified that he was not as close
6 as what this picture shows.

7 MR. TANASI: Stewart joins.

8 MR. MARCHESE: Parker joins.

9 MR. PEREZ: Lovelien joins.

10 THE COURT: Do you want to clarify whether this is a
11 close-up of what he could see?

12 MS. AHMED: Yes, Your Honor. I will do that. I
13 would also just note, for the record, that this is screenshot
14 from what's already been admitted as 13A. It's a still from
15 the video that was admitted as 13A.

16 Q. Ranger Whitteaker, looking this exhibit, were you -- was
17 your view at this level, at this angle and this distance as
18 what is depicted in the picture?

19 A. Yes, ma'am.

20 Q. Were you further away than what is -- were you as close as
21 this or were you further away?

22 A. I was further away from this picture.

23 Q. Does this nonetheless look like a fair and accurate
24 representation of what you could see with your binoculars?

25 A. Yes, with my binoculars, ma'am.

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1 MS. AHMED: The government moves to admit
2 Exhibit 13B, Your Honor.

3 THE COURT: Any other objection to 13B?

4 MR. TANASI: I'd say the same objection, Your Honor.

5 THE COURT: All right. Exhibit 13B will be admitted.

6 MS. AHMED: Your Honor, may we publish it to the
7 jury?

8 THE COURT: Yes, you may.

9 (Exhibit 13B admitted.)

10 BY MS. AHMED:

11 Q. Now, Ranger Whitteaker, you had indicated earlier that
12 this was the northbound bridge as you saw it on April 12, 2014;
13 right?

14 A. Yes.

15 Q. Can you explain to the jury, to the extent that you can
16 see it, where that crack was that you were -- where you
17 originally saw Crack Guy?

18 So, and the witnesses has drawn a circle around a --
19 a line that appears on the northbound bridge or where he
20 believes the crack was. And which is to the west of the
21 western pillar on the northbound bridge.

22 Ranger Whitteaker, so when you were saying "crack,"
23 were you distinguishing between the gaps like what we see that
24 are --

25 A. Yeah, it wasn't a gap in one of the pillars that I

Edwin Whitteaker - Direct

1 originally saw him. He was constantly moving. The -- it
2 wasn't one of the -- can I write on it again, Your Honor?

3 THE COURT: Yes, you may.

4 BY MS. AHMED:

5 Q. Can you draw an X where you say the gaps that you're
6 referencing? So it was -- was it -- it was not a gap --

7 A. It was not a gap.

8 Q. -- that you saw. You saw a crack in the foundation; is
9 that right?

10 A. That's where I originally saw him.

11 Q. And looking at Exhibit 13B, do you see the individual that
12 you described as Crack Guy?

13 A. That would be him, ma'am.

14 MS. AHMED: And, Your Honor, for the record, the
15 witness has drawn a circle around an individual that appears --
16 a head and a hat of an individual on the northbound bridge.

17 THE COURT: The record will so reflect.

18 BY MS. AHMED:

19 Q. Now, Ranger Whitteaker, I think you said that both Crack
20 Guy and Shotgun Guy were moving around?

21 A. Yeah, so he wasn't always on the crack. He was moving.
22 So was the individual with the shotgun.

23 Q. And you can take that down. Thank you.

24 Now, let's go back to these individuals one by one.
25 Can you describe for the jury what you observed -- what, if

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1 anything, you observed of the physical appearance of Crack Guy?

2 A. He had a gray baseball cap, a white male, and a beard.

3 Q. And what, if anything, were you able to discern about his
4 firearm?

5 A. Yeah, I believed that it was a rifle of some sort.

6 Q. And then turning to Shotgun Guy, can you describe to the
7 jury what you observed about the appearance of Shotgun Guy?

8 A. He had a darker shirt on and was carrying a shotgun.

9 Q. And with respect to the person that you -- you called
10 Pillar Guy, can you describe his physical appearance to the
11 jury?

12 A. He had a black hat. He was wearing what I believed to be
13 body armor, and he had a rifle.

14 Q. Now, again going back one by one, can you describe to the
15 jury what you observed -- well, what you observed Crack Guy
16 doing when you were looking through your binoculars?

17 A. Crack Guy was going in and out of cover. He was moving
18 around. He was pointing his rifle down into the wash.

19 Q. And when you say he was going in and out of cover, what do
20 you mean?

21 A. The cover of the -- when you saw over the pillar the
22 cement block, the cover of that. They were going up and under.
23 Moving. Sometimes they weren't in cover. The Crack Guy and
24 the Shotgun Guy were moving.

25 Q. And when you -- and you observed Crack Guy pointing a

Edwin Whitteaker - Direct

1 rifle?

2 A. Yes, I did, ma'am.

3 MS. AHMED: Your Honor, may the witness demonstrate
4 to the jury how he -- what he observed Crack Guy doing?

5 THE COURT: Yes, he may.

6 THE WITNESS: Crack Guy, unlike Shotgun Guy, was more
7 deliberate when he pointed his rifle. He would come up over
8 like that, where whenever I saw the Shotgun Guy, he was more
9 just like up and down pointing it down there.

10 BY MS. AHMED:

11 Q. So, for the record, you were describing Crack Guy's
12 movements as his hands were up at his eye level?

13 A. They were more -- I mean, you might not understand it, but
14 they were more tactical. They were more deliberate. He would
15 actually get up under and go like that and then go down from
16 undercover. But he was taking deliberate -- it seemed to me
17 that he was taking deliberate aim.

18 Q. Now, was that based on your training and experience?

19 A. Yes, ma'am.

20 Q. And how did Shotgun Guy's movements compare to that?

21 A. His were more just going up and quick putting the gun over
22 there quick. Just going like that. Not taking as deliberate
23 movements.

24 Q. And for the record, for Shotgun Guy, the witness raised
25 his hands quickly to his head and put them down quickly as if

Edwin Whitteaker - Direct

1 he was holding a firearm.

2 A. That is correct, ma'am.

3 Q. Now, what, if anything, did you observe in terms of
4 Shotgun Guy's movements on the bridge?

5 A. He was -- he was -- he was more mobile. He was moving
6 back and forth. He -- he -- so --

7 Q. Would he stand and walk at times?

8 A. Yes, he would stand and walk at times, ma'am.

9 Q. Would he also kneel at times?

10 A. Yes, he would, ma'am.

11 Q. Now, what, if anything, did you observe about Pillar Guy's
12 actions when you were looking at him on the bridge?

13 A. I really -- he came up and down a few times. I never saw
14 Pillar Guy point a weapon at any of us. He was mostly in cover
15 whenever I brought the binos. I didn't have constant view of
16 all those guys, because I was constantly panning the crowd, not
17 only on the north bridge, but in the wash, to the right of
18 them, to the left of them.

19 Q. Now, when you were unable to see Pillar Guy, did he then
20 stop being a threat in your assessment?

21 A. I still considered him a threat. He had a firearm. I
22 considered any individual with a firearm, because they could
23 have readily lifted that firearm. Got under some cover.
24 Anybody carrying a firearm is a threat, because it just takes a
25 second to raise that firearm.

Edwin Whitteaker - Direct

1 Q. Did you observe anything about the three individuals,
2 Crack Guy, Pillar Guy, and Shotgun Guy, in terms of their
3 interaction together?

4 A. It seemed like the two that were up, Crack Guy and Shotgun
5 Guy, they -- they were going back and forth with conversations.
6 I don't know what they were about, but they did make
7 communications with each other it appeared to me.

8 Q. You could see that they were speaking to each other?

9 A. Yes, ma'am.

10 Q. Did you see any interaction between them and Pillar Guy?

11 A. He was on the ground. I mean, they could have possibly
12 been talking to me --

13 Q. Only --

14 A. Talking to them.

15 Q. -- what you observed.

16 A. But it wouldn't have been anything that I observed.

17 Q. Now, at some point, did you -- I think you already
18 indicated this. But did you continuously watch them or did you
19 look around?

20 A. I was continuously looking around. I mean, we had
21 multiple armed subjects within the crowd, so I couldn't just
22 focus on those three. There were so many other individuals to
23 focus on.

24 Q. What, if anything, did you do, when you saw them, in terms
25 of the information they were --

Edwin Whitteaker - Direct

1 A. I was --

2 Q. -- pointing weapons?

3 A. I was calling out individuals with weapons. Trying to
4 give -- I got a guy with a gun here. We'll call him Crack Guy.
5 We'd -- we'd point him out. Explain to other rangers.

6 Q. Were you -- when you say you with were calling it out,
7 were you telling the people around you or were you --

8 A. Yes. I was telling the rangers around me, because not
9 everybody had binoculars. I mean, you'd be able to see them
10 without binoculars, but you had a better view using binoculars.

11 Q. Based on your training and experience, were the rangers
12 who were in the wash, were they within the line of fire from
13 these three individuals?

14 A. Any individual I could see could see me. So, we were --
15 we were all in danger from any of those three individuals if
16 they decided to shoot.

17 MS. AHMED: Your Honor, may we publish what's been
18 previously admitted as Exhibit 14?

19 THE COURT: Yes, you may.

20 BY MS. AHMED:

21 Q. And can we go ahead and play it?

22 (Exhibit 14 being played.)

23 Q. Can you continue to play?

24 (Exhibit 14 being played.)

25 Q. Can you stop it when the person in the foreground is

Edwin Whitteaker - Direct

1 facing the camera?

2 (Exhibit 14 being played.)

3 Q. And paused at 8 seconds.

4 Ranger Whitteaker, based on what you observed on
5 April 12, 2014, does the person in the foreground of this video
6 look consistent with any of the people you were just
7 describing?

8 A. That would be Pillar Guy, ma'am.

9 Q. Can we continue to play?

10 (Exhibit 14 being played.)

11 Can we pause it? Pause it when the person --

12 (Exhibit 14 being played.)

13 Paused at 17 seconds.

14 Ranger Whitteaker, do you see the individual on the
15 far left of the screen?

16 A. Yes, ma'am.

17 Q. Based on your observations on April 12th, 2014, is this
18 person consistent with any of the three individuals you were
19 just describing?

20 A. That's Shotgun Guy, ma'am.

21 Q. And do you see the item that is -- that Shotgun Guy is
22 holding?

23 A. Yes, ma'am.

24 Q. And what is that?

25 A. I believe it to be a shotgun. I'm not a firearms expert

Edwin Whitteaker - Direct

1 though, ma'am.

2 Q. Was that the weapon that you observed --

3 A. That's the --

4 Q. -- on April 12th?

5 A. Yes, ma'am.

6 Q. That you described as a shotgun?

7 A. Yes, ma'am.

8 Q. And can we advance to the end of Exhibit 14, please? And
9 play from it there.

10 (Exhibit 14 being played.)

11 Stop. Yeah. That's fine. Stopped at 1:27.

12 Ranger Whitteaker, do you see the individual that's
13 in -- fully in the screen or relatively in the center of the
14 screen on Exhibit 14?

15 A. Yes, ma'am.

16 Q. And again, based on what you observed on April 12th, is
17 this person consistent with any of the three that you were just
18 describing?

19 A. That's the individual I called -- that I originally saw
20 under the crack, ma'am. Crack Guy.

21 Q. You can take that down. Thank you.

22 Now, in addition to Pillar Guy, Shotgun Guy, and
23 Crack Guy, did you observe anyone else on or near the
24 northbound bridge that you discerned as a threat?

25 A. There was -- there was lots of threats out there, ma'am.

Edwin Whitteaker - Direct

1 There was lots of individuals with firearms.

2 Q. Did you see anyone else that pointed a rifle toward law
3 enforcement officers?

4 A. Yeah.

5 Q. On or near the bridge?

6 A. Yes, there was an individual with sunglasses and wearing
7 what I believed to be a beige tac vest that pointed a rifle
8 right down at the rangers.

9 Q. And was he -- where was he in relation to the northbound
10 bridge?

11 A. He was -- he was on the right side of these individuals.

12 MS. AHMED: Your Honor, may we publish what's been
13 previously admitted as Exhibit 13B?

14 THE COURT: Yes, you may.

15 MS. AHMED: Oh, I'm sorry. Your Honor, may we
16 publish Exhibit 157?

17 THE COURT: Yes.

18 BY MS. AHMED:

19 Q. Now, Ranger Whitteaker, is the area where you observed
20 this fourth person that saw pointing a rifle, is it depicted in
21 Exhibit 157?

22 A. It's barely, ma'am.

23 Q. Can you put -- draw a circle around the general area that
24 you saw him?

25 A. It's more over towards there, where there was a bush,

Edwin Whitteaker - Direct

1 ma'am. I believe from that photo, there's the -- you can see
2 the -- I believe it's Palo Verde tree. I'm not a tree expert,
3 but the bush thing is over there.

4 Q. And the witness has drawn a circle on the top right side
5 of the embankment that's depicted in Exhibit 157.

6 And can you describe to the jury what you observed of
7 the person -- I know you've already said some of it, but what
8 you observed of the person's physical appearance?

9 A. He was white male. He gave me the finger. He also had an
10 individual around him that had binoculars. At one point, he
11 got those binoculars from that guy, and we were just both
12 looking at each other in the binoculars.

13 Q. And what, if anything, did you observe him doing with his
14 firearm?

15 A. He pointed it at us several times.

16 Q. Now, did you -- and how did you describe his physical
17 appearance? What did he have on him?

18 A. He had --

19 Q. Or what did you see of his physical appearance?

20 A. He had a tac vest, sunglasses.

21 Q. And did you see -- I think you indicated that someone was
22 with him?

23 A. Yes, there was an individual that I considered a spotter
24 with him. He had binoculars. I didn't know if it was
25 binoculars or range finder or anything like that.

Edwin Whitteaker - Direct

1 Q. And was there anyone else that you observed with the
2 person that you saw?

3 A. At some points, there was an individual walking around
4 behind those individuals. He had a firearm. It was always
5 slung. I never saw it pointed or aimed at anyone. It was
6 always slung. He was in full camouflage.

7 Q. And did that person cause you any concern for your safety
8 or the safety of the officers around you?

9 A. Any individual with a long gun that day I considered a
10 threat, because the ease of bringing a firearm from here to
11 here. Even if you have it slung, it's readily easy to get that
12 firearm up and on target. And where we have to choose our
13 targets, they could just spray us down.

14 Q. Did you see anything about what the person in the full
15 camouflage, what -- did you -- based on your training and
16 experience, did you assess anything about his movements or his
17 demeanor --

18 A. He was --

19 Q. -- on the bridge?

20 A. He was walking -- he was walking behind the people, kind
21 of like -- I like history. Kind of like an officer behind the
22 guys in a Civil War. You know, walking back and forth. Never
23 saw him -- I did never see him put a firearm on anybody though.

24 Q. And when you say like an officer, did you --

25 A. Like -- like, he was just walking back and forth like he

Edwin Whitteaker - Direct

1 was in command.

2 Q. And I neglected to ask you in the beginning, but do you
3 also have military experience?

4 A. Yes. I was in the United States Marine Corps.

5 Q. Now, did the -- did you -- again, based on your training
6 and experience, did camouflage -- the person that was fully in
7 camouflage and the man that you saw pointing a rifle, were they
8 in the same general area or were they in different areas?

9 A. At times, they were in the same general area but not
10 always.

11 Q. And did it appear -- did you see anything that made you
12 think that they were working together?

13 A. I saw him -- I can't say that -- what they were saying,
14 but they -- I saw them conversate, but I'm not sure if they
15 were working together. I mean --

16 Q. You saw them speaking to each other?

17 A. Yes.

18 MS. AHMED: Your Honor, may we publish what's been
19 previously admitted as Exhibit 66?

20 THE COURT: Yes, you may.

21 BY MS. AHMED:

22 Q. And can we focus on that photograph?

23 Ranger Whitteaker, do you see what's on your screen
24 as Exhibit 66?

25 A. Yes, ma'am.

Edwin Whitteaker - Direct

1 Q. And looking at the person that's in the foreground of the
2 picture, is that person consistent with anybody that you've
3 described to the jury today?

4 A. Sorry, ma'am. I don't know what foreground --

5 Q. The person in the front.

6 A. Okay. Sorry, ma'am. Yes. That was the individual that
7 gave me the middle finger.

8 Q. And did you also see him pointing a rifle at you?

9 A. Yes, ma'am.

10 Q. And looking at the individual that's behind him, that I've
11 drawn a circle around, is he consistent with anyone that you've
12 described to the jury today?

13 A. Yes, he was the individual walking back and forth, ma'am.

14 Q. The one that seemed to be in command?

15 A. Yes.

16 Q. Now, when you were looking at the bridge with the
17 binoculars, did you observe any law enforcement vehicles on the
18 bridge in the area where these people were?

19 A. Not really, ma'am. They -- it was a different perspective
20 when I saw them together. It's not in that photo. When I saw
21 them together, they were closer to a bush.

22 Q. You can take that down.

23 Now, when -- eventually, you left the area in the
24 wash; correct? Eventually, you left Post 2; is that right?

25 A. That is correct, ma'am.

Edwin Whitteaker - Direct

1 Q. And, in fact, you left the ICP?

2 A. That is correct, ma'am.

3 Q. Now, based on your 20 years of experience in law
4 enforcement, how do you rate the fear for your safety and the
5 safety that you had -- the other officers -- the other
6 officers' safety, the fear that you had for that safety on
7 April 12, 2014?

8 A. This was the most I was afraid in my law enforcement
9 career. We were in a position of disadvantage. They had all
10 the advantages. They had the cover. They didn't have to use
11 fire discipline.

12 They were in a mix with women and children, so we
13 wouldn't be able to engage any individual mixed in with
14 innocent women and children in fear of hurting them. Because,
15 yeah, I can put a round on somebody, but that round hits the
16 concrete barrier and takes a ricochet, I'm accountable for
17 where that round ricochets and where that round goes. I'm
18 accountable for every single one of my rounds.

19 So, I was in fear for myself, but I was in most fear,
20 if it really went bad, what would happen to the innocent people
21 that were just there to protest. That were there, their Second
22 Amendment right, to say, "Hey, we don't believe what the
23 government was." They were in jeopardy. They were who I most
24 feared for, because if it went bad, they were caught in the
25 middle of a gun fight that I don't think some of those

Edwin Whitteaker - Direct

1 protesters came to be at.

2 Q. Based on your training and experience, both in military
3 and in law enforcement, were the -- did it appear to you that
4 the people on the bridge were utilizing the presence of the
5 other people to their advantage?

6 A. Yeah. I truly believed they did, and it was very
7 disheartening. These are the same tactics that they use over
8 in the Middle East.

9 MR. MARCHESE: Objection. Nonresponsive.

10 MS. AHMED: Your Honor, he's responding based on his
11 training and experience.

12 THE COURT: Overruled. It was responsive.

13 THE WITNESS: I mean, these are the tactics they use
14 in the Middle East. If we look at *Black Hawk Down*, that's the
15 same exact tactics that they use.

16 MR. TANASI: Objection. Relevance, Your Honor.

17 MR. MARCHESE: Your Honor.

18 MR. TANASI: Was he at *Black Hawk Down*?

19 MR. MARCHESE: I mean, this is completely beyond the
20 scope of the question.

21 BY MS. AHMED:

22 Q. Did you --

23 THE COURT: It's responsive to the question.

24 MS. AHMED: Your Honor, I'll move on.

25 Q. Now, Ranger Whitteaker --

Edwin Whitteaker - Cross

1 A. Yes, ma'am.

2 Q. -- you've already indicated that this is the most afraid
3 for your safety and the other officers' safeties. Is there
4 anything in your experience that's comparable to what you guys
5 experienced on April 12, 2014?

6 A. I've -- with the ATF, I was on our -- our team that took
7 down doors for the gun squad. I pointed guns at many people.
8 Had them drop their guns.

9 But this was the worst experience I ever had. I was
10 never at such a disadvantage. Any of those other times, I
11 mean, I -- I do drug interdiction and armed smugglers, and
12 I've -- you know, and had high-speed chases with them, armed
13 smugglers, again, hundreds of pounds of dope knowing that
14 they're armed. But I was never as scared in any of those
15 situations as I was this day.

16 MS. AHMED: Your Honor, may I have the Court's
17 indulgence?

18 THE COURT: Yes.

19 (Pause in the proceedings.)

20 MS. AHMED: Thank you, Ranger Whitteaker.

21 Your Honor, I will pass the witness.

22 THE COURT: Cross.

23 MR. TANASI: Yes, Your Honor. Thank you.

24

25

Edwin Whitteaker - Cross

1 CROSS-EXAMINATION

2 BY MR. TANASI:

3 Q. Good morning, Ranger Whitteaker.

4 A. Good morning, sir.

5 Q. I'm Richard Tanasi. I represent Steven Stewart. I have a
6 few questions for you on cross. Okay?

7 A. Yes, sir.

8 Q. All right. You indicated that you were you in the Gold
9 Butte area as early as April 10th, 2014; correct?

10 A. That is correct, sir.

11 Q. All right. So, it's fair to say that you were aware that
12 as of April 11, 2014, the operation was over? The impound
13 operation was over; correct?

14 A. No, I wasn't, ma'am -- sir.

15 Q. You weren't aware of that?

16 A. Not at that time, sir.

17 Q. Okay. That's your testimony, that you weren't aware as of
18 April 11th that the operation was over; correct?

19 A. I had no idea the operation was over, sir.

20 Q. Okay. Who was your commander that day, sir?

21 A. The -- the commander of the whole operation or --

22 Q. Yes, sir.

23 A. I believe it was SAC Love.

24 Q. Okay. Would that have been information that you would
25 have wanted to know? The operation was over?

Edwin Whitteaker - Cross

1 A. Yes, it would have been.

2 MS. AHMED: Objection. Relevance. Facts not in
3 evidence. Assumes facts not in evidence. Excuse me, Your
4 Honor.

5 MR. TANASI: Your Honor, he's indicated he didn't.

6 MS. AHMED: Your Honor, he's assuming facts not in
7 evidence, which is that any of the operation that this officer
8 was participating in was over.

9 THE COURT: Let's go over to sidebar.

10 (Sidebar.)

11 THE COURT: All right. We are at sidebar.

12 So, is your objection that it was the seizure that
13 was over, not the entire operation? That the impound operation
14 was not over --

15 MS. AHMED: Right.

16 THE COURT: -- just the seizure portion of it?

17 MS. AHMED: When he's saying would you have wanted to
18 know that the operation was over, right.

19 THE COURT: That the operation actually was over,
20 which it wasn't over, just the seizure portion.

21 MS. AHMED: Correct.

22 MR. TANASI: Your Honor, again, that's a point --

23 THE COURT: Do you want to clarify that?

24 MR. TANASI: It's a point of contention. I think
25 that the argument is there that the entire operation was over.

Edwin Whitteaker - Cross

1 What's come from the witness's testimony, which is different
2 from what's in a lot their reports, is that the operation was
3 over. The operation was ending. The cease -- operation was
4 ceasing.

5 What the government has done through soliciting
6 different testimony from different witnesses along the way is
7 broaden what that operation was. To say that the operation was
8 still in effect. The cattle impound, the cattle gather, all of
9 that was still in effect on the 12th.

10 And there are reports and there's different testimony
11 that says the entire operation was over. And so --

12 THE COURT: I am not aware of any testimony that says
13 that the entire operation was over.

14 MR. TANASI: Words as sweeping as "the operation was
15 over." And what the government has done, through the last
16 trial and through this one, is now broaden that operation to
17 the 12th and into what they were doing on the 12th. Providing
18 security for an operation that was already over.

19 So, the way that it's categorized as the operation, I
20 think is a point of contention, and it's an issue for the jury
21 to ultimately decide.

22 THE COURT: All right. Well, I am unaware of any
23 information that's provided that clarifies that the cattle that
24 had already been seized were not going to be still in the
25 custody of the federal government, and that there was not still

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1 an operation in place to determine how to dispose of those
2 cattle, and whether to transport them or not, or how and so
3 forth.

4 So, I don't think that it's fair to say the operation
5 was over in the sense that that includes going back, you know,
6 to step one, status quo, whatever it was, you know, a week ago
7 or two weeks ago, whatever it was when this all started. I
8 don't -- I don't think that we've had that testimony. I
9 realize that that's your argument, but I don't think we've had
10 that testimony.

11 MR. TANASI: And I would add that the Court order is
12 impound --

13 THE COURT: That's fine. That's your objection.
14 Facts not in evidence. And I disagree. There were no facts in
15 evidence that support your position that the operation was over
16 in its entirety, including the cattle not being federal
17 property any longer.

18 MR. TANASI: And just for the record --

19 MS. AHMED: Your Honor --

20 MR. TANASI: -- Your Honor, I would just add the
21 Court order was impound, gather, and sale from Mr. Petrie. So,
22 that's why I would argue that that's what encapsulates the
23 order, and that's what encapsulates the operation. But I
24 understand the Court's ruling.

25 MS. AHMED: Your Honor, I would just add for the

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1 record that we would also object on relevance, hearing
2 Mr. Tanasi's explanation. When the cattle impoundment
3 operation was over is relevant. These federal officers were
4 holding opposed on -- there's no allegation. There's nothing
5 that's relevant to the charges or to a defense that they were
6 doing anything other than their duties.

7 There's, again, been no proffer that they've been
8 doing anything other than their appropriate duties. But I
9 would also note, Your Honor, that the order itself that
10 Mr. Tanasi is referencing said "seize and impound to remove.
11 To remove."

12 And I think ever -- all the evidence and the reports
13 have been consistent with it, is that the -- they were no
14 longer gathering cattle. There was no issue that they were
15 going to now stay in place and remove. They had to figure out
16 how they were going to remove their assets, including the
17 cattle.

18 And it's just, you know, a figment of his imagination
19 to think that they announced they were going to finish this
20 operation on the night of April 11th, and they were expected to
21 be gone the morning of April 12th, an operation of that size.
22 It doesn't made sense.

23 MR. TANASI: Can I, Your Honor, just respond to the
24 relevance briefly?

25 THE COURT: Yes.

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1 MR. TANASI: You can't, at least so goes the defense
2 theory and the defense argument, extort that which is over.
3 And so that's why it's relevant to defending against the
4 extortion, the threats, and the interference or the -- the
5 obstruction of justice counts.

6 And it also goes to our clients' state of mind,
7 because as the time line reveals, our clients weren't there
8 until the late evening, early morning hours of the 12th, after
9 the operation had already been determined to be over. So,
10 that's why it's relevant to our defense.

11 THE COURT: Well, the objection is sustained. The
12 testimony has been clear that regardless of how you interpret
13 the words, "the operation is over," there's still been many
14 other witnesses who have testified that the cattle were still
15 there.

16 That as early as April 11th, the day before the
17 event, the individuals were told to stay there overnight to
18 guard the cattle. And that the -- even if they were to be
19 pulling out, that there was still plans that need to be made
20 regarding how to effect that.

21 And that the Sheriff, starting with the first
22 witness, Sheriff Lombardo, everyone that's spoken so far said
23 that the cattle were still in the possession of the US
24 Government, and that they were still, as far as they are
25 concerned, supposed to be guarding and protecting it, and not

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1 allowing it to be released. So, the objection is sustained.

2 MR. TANASI: Understood. Thank you.

3 (End of sidebar.)

4 THE COURT: All right. The objection is sustained.

5 MR. TANASI: Thank you. May I proceed?

6 THE COURT: Yes, you may.

7 BY MR. TANASI:

8 Q. All right. Sir, let's turn back to the morning of the
9 12th when you arrived in the wash. Are you with me?

10 A. Yes, sir.

11 Q. Okay. You formed a line to prevent protesters from
12 entering the area of control; correct?

13 A. Yeah. Are you talking about at Post 1 or Post 2, sir?

14 Q. Sir, I'm talking about Post 2.

15 A. That is correct, sir.

16 Q. Formed a line to prevent protesters from entering;
17 correct?

18 A. Yes, sir.

19 Q. All right. You were with other rangers; right?

20 A. That is correct, sir.

21 Q. Okay. And they utilized binoculars to spot and call out
22 protesters with long guns; correct?

23 A. At that time, anybody pointing a long gun at me was not
24 considered a protester by me. Protesters wouldn't be pointing
25 firearms at me.

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1 Q. Okay. So, it's your testimony now that a person pointing
2 a firearm is not a protester; is that fair? Is that what your
3 testimony is?

4 A. Sir, that -- at the time he pointed the firearm, then he
5 becomes a threat to me.

6 Q. Okay.

7 A. I mean, I don't consider that protesting anymore.

8 Q. Okay. But again, the folks with firearms; right?
9 Protesters? Is that your testimony?

10 A. There were protesters who most likely had firearms, but
11 those protesters didn't point them at me, sir.

12 Q. Understood. Protesters had firearms though; fair?

13 A. That is fair --

14 Q. All right.

15 A. -- to say, sir.

16 Q. All right. And as you were in the wash, you noticed
17 different protesters arrive on the northbound bridge; correct?

18 A. That is correct, sir.

19 Q. And also on the southbound bridge; fair?

20 A. That is fair to say, sir.

21 Q. Okay. You indicated that you called out or at least
22 identified three targets at some point? A Crack Guy; correct?

23 A. That is correct, sir.

24 Q. Okay. A white male with dark clothing; correct?

25 A. That is correct, sir.

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1 Q. Pillar Guy, too; correct?

2 A. That is correct, sir.

3 Q. Okay. And you did this all from what you called the fatal
4 funnel; correct?

5 A. That is correct, sir.

6 Q. Okay. Brian, if could you please bring up 157.

7 Okay. Sir, I am going to circle these folks right
8 here. Those are law enforcement folks working with you on
9 April 12; correct?

10 A. That is correct, sir.

11 Q. All right. Are these folks in the fatal funnel?

12 A. Yes, they are, sir.

13 Q. Okay. And they don't appear to be under cover of any of
14 the vehicles; correct?

15 A. There was no real cover to have. Those vehicles wouldn't
16 have given us enough cover against long fire -- long gun fire,
17 sir.

18 Q. There were folks who did take cover behind vehicles
19 though; right?

20 A. I'm not sure of everybody's movement, but I can testify to
21 that photo that those individuals at that time were not under
22 cover, sir.

23 Q. All right. So, some chose to take cover and others
24 didn't; fair?

25 A. That is correct, sir. At times, I chose not to take cover

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1 also.

2 Q. Understood. And these folks right here, they're wide open
3 in the fatal funnel; right?

4 MS. AHMED: Objection. Asked and answered.

5 THE WITNESS: That is --

6 THE COURT: Overruled. He can answer.

7 THE WITNESS: That is correct, sir.

8 BY MR. TANASI:

9 Q. Thank you. All right. And then these folks up here, you
10 see them gathered?

11 A. Yes, sir.

12 Q. Okay. They all appear to be next to each other; correct?

13 A. That is correct, sir.

14 Q. All right. You testified earlier that at least two of the
15 targets that you called, you spotted, they were talking to each
16 other; right?

17 A. Yes, sir.

18 Q. Okay. These folks, did you happen to set your binoculars
19 on them to see if they were talking to each other as well?

20 A. Yeah, they were also talking to each other, sir.

21 Q. Fair to say everybody on the bridge was talking to each
22 other?

23 A. That is fair to say, sir.

24 Q. Thank you.

25 All right. Brian, if could you please bring up

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1 Exhibit 14, 17 seconds in.

2 (Exhibit 14 being played.)

3 Okay. Go ahead. Stop. Back to 17, if you could,
4 please. All right. Stop.

5 Okay. This individual, you identified him as one of
6 your targets; correct?

7 A. That is correct, sir.

8 MS. AHMED: Objection as to the use of the word
9 target. The witness testified to subjects or threats.

10 BY MR. TANASI:

11 Q. Is this one of the --

12 THE COURT: Sustained.

13 BY MR. TANASI:

14 Q. -- subjects you identified?

15 A. That is correct, sir.

16 Q. All right. Now, again, this individual, you said he was
17 carrying this firearm; right? That's what you observed?

18 A. That is correct, sir.

19 Q. Right. But as you sit here today, you can't tell whether
20 that's a shotgun or a rifle; right?

21 A. I believe it's a shotgun even from that photo, but I can't
22 see the entire weapon, sir.

23 Q. Okay.

24 A. I'm not a weapons expert, sir.

25 Q. Understood. But at one point, you -- you thought it was a

Edwin Whitteaker - Cross

1 rifle, and then at another point, you believed it was a
2 shotgun; right?

3 A. That is correct, sir.

4 Q. Because you weren't sure of the difference between the
5 gun; correct?

6 MS. AHMED: Objection. Misstates is witness's
7 testimony. The second time he had binoculars.

8 BY MR. TANASI:

9 Q. Is it your testimony that he used two different guns?

10 A. No, it isn't. I believe that was the -- the same gun the
11 entire time. The reason I thought it was a shotgun, there was
12 no magazine coming out of it, sir. And when I had my
13 binoculars, I was able to see that better, sir.

14 Q. Okay. But fair to say, you still -- as you sit here
15 today, you don't know whether it was a shotgun or a rifle;
16 right?

17 A. I believe that it's a shotgun looking at it, and I
18 believed in the binoculars it was a shotgun, sir.

19 Q. And you also believed it was a rifle; right?

20 MS. AHMED: Objection. Argumentative and misstates
21 the witness's testimony.

22 THE COURT: Sustained.

23 MR. TANASI: Your Honor, he testified that he
24 believed, at one point, it was a rifle. That's exactly what
25 his testimony is.

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1 THE COURT: You can ask him that.

2 BY MR. TANASI:

3 Q. At one point, did you believe that was a rifle?

4 A. That is correct, sir.

5 Q. And at one point you believed it was a shotgun; right?

6 A. That is correct, sir.

7 Q. Okay. Thank you, sir.

8 All right. Again, going back to the -- the fatal
9 funnel, I want to take you there. Okay? Are you with me?

10 A. Yes, sir.

11 Q. All right. Brian, if you could bring up Defense
12 Exhibit 5036 at the 35 second mark, and play it without audio,
13 please.

14 (Exhibit 5036 being played.)

15 Q. Actually, Brian, why don't we stop for a second, please.

16 All right, sir. I'm going to circle this -- thank
17 you.

18 All right. This individual that I'm circling here;
19 is that you, sir?

20 A. That is correct, sir.

21 Q. All right. And it appears as though you are not behind
22 either of these two vehicles; right?

23 A. No, I am not, sir.

24 Q. And this individual here, he is; right?

25 A. Yes, he is, sir.

Edwin Whitteaker - Cross

1 Q. Okay. All right. Now, this area right here, is that the
2 area kind of, if we looked at it behind the truck, that would
3 be part of the fatal funnel?

4 A. The entire wash was the fatal funnel, sir.

5 Q. Understood. All right. Go ahead Brian, if you could
6 continue to play that, please, to the 1 minute and 6 second
7 mark.

8 (Exhibit 5036 being played.)

9 Q. All right. Brian, if you could stop it, please.

10 Again, sir, this is you; correct?

11 A. That is correct, sir.

12 Q. Brian, go ahead and take that down.

13 At one point, sir, SWAT arrived; right?

14 A. Yes, SWAT arrived, sir.

15 Q. Okay. And they lined up behind you?

16 A. When I was originally at Post 1, they lined up behind me.
17 I'm not sure where they went in there, sir. I do not know
18 their movements, sir.

19 Q. Okay. But SWAT was there; fair?

20 MS. AHMED: Objection. Asked and answered.

21 THE WITNESS: It's fair to say SWAT was there.

22 BY MR. TANASI:

23 Q. Okay. Metro also arrived; right?

24 A. Yes, Metro police arrived.

25 Q. Uniformed officers?

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1 A. That is correct, sir.

2 Q. Okay. And those folks, at least maybe one or two of them,
3 were in the wash with you as well?

4 A. I saw two walk through, but I -- I'm not sure. I don't --
5 I don't really recall, sir.

6 Q. So you saw them walk --

7 A. I saw two walk through, but I know they were going to talk
8 at the front gate.

9 Q. All right.

10 A. So, I saw two -- two Metro officers walk through. I
11 didn't know if there were any other officers behind us or
12 anything like that, sir.

13 Q. Fair to say, but you saw those two officers walk through
14 the fatal funnel right up to the gate and chat with the
15 protesters at the gate; right?

16 A. That is correct, sir.

17 Q. All right. You also saw several NHP vehicles up on the
18 I-15, the northbound bridge; correct?

19 A. Yes, I saw the -- the tops of the vehicles, sir.

20 Q. Okay. And SWAT made no arrests that day; right?

21 MS. AHMED: Objection. Relevance.

22 THE WITNESS: No.

23 MR. TANASI: Goes to the circumstance and the
24 reasonableness of this officer's fear, Your Honor.

25 MS. AHMED: It does not, Your Honor. Everybody knows

Edwin Whitteaker - Cross

1 that these arrests were impossible to make.

2 MR. TANASI: Your Honor, I think that was counsel
3 testifying.

4 THE COURT: I will allow it. He can answer the
5 question.

6 MR. TANASI: Thank you.

7 THE WITNESS: Sir, I'm not sure if any arrests -- or
8 what SWAT did. I'm not part of their organization. I'm not
9 part of Las Vegas Metro. I don't know what they did.

10 BY MR. TANASI:

11 Q. That day you didn't observe any --

12 A. No.

13 Q. -- arrests; right?

14 A. -- I did not. I can't say I observed any arrests, sir.

15 Q. Didn't observe --

16 A. That's right.

17 Q. Didn't observe the Nevada Highway Patrol make any arrests
18 of the folks that were up on the bridge; right?

19 A. None that I observed, sir.

20 Q. Okay. At some point, you went back to your vehicle to
21 obtain cloth cuffs; right?

22 A. That is correct, sir.

23 Q. Okay. And you never used those cuffs to make any arrests
24 that day; correct?

25 A. That is correct, sir.

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1 Q. Okay. And you are an authorized -- or you were a federal
2 officer who is authorized to enforce federal laws; right?

3 A. That is correct, sir.

4 Q. Okay. Okay. So, do you recall preparing a report in this
5 case on April 14th, 2014?

6 A. Yes, I do, sir.

7 Q. Okay. And in that report, you laid out all the events as
8 you best recall them on the 12th; fair to say?

9 A. That is correct, sir.

10 Q. Okay. And they were fresh in your mind a couple days
11 after the 12th; right?

12 A. Yes, they were, sir.

13 Q. Okay. You wanted to put everything that was important in
14 that report; right?

15 A. I wanted to, but I don't think everything made it to that
16 report, sir.

17 Q. It's fair to say you didn't indicate that there was a
18 fatal funnel; right?

19 A. No, I didn't use that word, sir.

20 Q. Didn't use that word fatal funnel; right?

21 A. No, I did not use that and you won't find that in my
22 report, sir.

23 Q. Okay. You called it earlier a powder keg, too. Didn't
24 use that word in your report either; did you?

25 A. No, I didn't use that in my report, sir.

Edwin Whitteaker - Cross

1 Q. Okay. You also described an individual, like, swinging a
2 gun. You stood up, and you had the gun out in front of you,
3 and you kind of swung it a little. Do you remember doing that
4 here?

5 A. Yes, sir.

6 Q. You didn't describe that in your report; did you?

7 A. No, I didn't describe that in my report, sir.

8 Q. Okay.

9 A. I said he pointed a firearm.

10 Q. Okay. Thank you, sir. Prior to today's testimony, have
11 you had an opportunity to meet with the US Attorney's Office?

12 A. Yes, I have.

13 Q. How many times?

14 A. It would be twice, sir.

15 Q. Twice. And have you had an opportunity to meet with the
16 FBI?

17 A. Yes, on both occasions sir.

18 Q. Both occasions, and did you discuss your testimony here
19 today?

20 A. They went over my testimony, sir.

21 Q. Okay. And did you discuss cross-examination and different
22 questions that the defense lawyers might be asking you?

23 A. Not really.

24 Q. Not really? Well, yes or no?

25 A. I mean, no.

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1 MR. TANASI: Okay. I will pass the witness. Thank
2 you, Your Honor.

3 THE COURT: Mr. Marchese, on behalf of Mr. Parker,
4 did you have any cross?

5 MR. MARCHESE: I'll wait until after. I'll reserve
6 until after one of the other counsel go.

7 THE COURT: All right. Mr. Leventhal on behalf of
8 Mr. Drexler?

9 CROSS-EXAMINATION

10 BY MR. PEREZ:

11 Q. Good morning.

12 A. Good morning, sir.

13 Q. My name is Shawn Perez, and I represent Ricky Lovelien.

14 Now, you said that you saw an individual in a tac
15 vest and sunglasses; correct? On the -- on the -- it would
16 have been the right side of the bridge; correct?

17 A. Yes, it would have been on the right side, sir.

18 Q. Okay. And when you saw him initially, which direction did
19 he come from? Do you recall? Did you see him arrive?

20 A. I did not see him arrive, sir.

21 Q. Okay. So, do you recall approximately what time of day
22 you saw him there?

23 A. I have no concept of time during that day.

24 Q. Now, the other individual, the individual that you said
25 was walking around behind him, did you see him arrive?

Edwin Whitteaker - Cross

1 A. I did not see him arrive, sir.

2 Q. Okay. So, when -- when you did finally see these two
3 individuals, they were already together?

4 A. They -- I saw them at the same point on the bridge. I did
5 not see them arrive together, if that's the question you are
6 asking, sir.

7 Q. Okay. And, well, let me ask you. Where exactly were you
8 in the wash when you first saw them?

9 A. When I first saw them, I was behind one of the vehicles
10 with the binoculars, sir.

11 Q. Would that be the vehicle where you were -- where we see
12 you in the video walking behind with the water?

13 A. I believe so, sir.

14 Q. So, it was that -- it was that vehicle and not the vehicle
15 forward more towards the bridge; correct?

16 A. It wasn't the vehicle all the way at the front, if you are
17 asking the one that had the --

18 Q. Right.

19 A. -- Park Service individuals, no. It was in the cluster of
20 the vehicles that was in the middle of the wash, sir.

21 Q. Okay. And when you saw these two individuals on the right
22 side of the bridge, did you see NHP troopers on the highway?

23 A. I saw -- I saw the top their lights. I didn't see any NHP
24 troopers. I saw the tops of their vehicles, sir.

25 Q. You didn't see any individuals with fluorescent vests?

Edwin Whitteaker - Cross

1 A. Not that I recall, sir.

2 Q. Okay. When you saw the -- the individual that was walking
3 around in the background, you said you saw him speaking to the
4 other individual. Was there any other individuals in that
5 immediate vicinity?

6 A. Yes, sir.

7 Q. Okay. Could you tell if any of them were NHP troopers?

8 A. I could not tell if any were NHP troopers, sir.

9 Q. Okay. Now, I'm assuming that their viewpoint -- I think
10 you said this -- that their viewpoint from that part of the
11 bridge was probably superior to yours on the ground; correct?

12 A. That is correct, sir.

13 Q. Okay. But you had a pretty clear view of that part of the
14 bridge?

15 A. I -- I don't know what you are talking --

16 Q. Well -- and we'll do this from memory. I don't want to do
17 this from a photograph. But when you were at that vehicle and
18 you were handing out that water, there's a view. And I'm sure
19 you probably remember it. You were there. You lived this.

20 A. Yes, sir.

21 Q. There is the northbound bridge, and there is the
22 southbound bridge. Now, which bridge was closest to you?

23 A. The southbound bridge, sir.

24 Q. Okay. Now, this southbound bridge, the bridge itself goes
25 over the wash; correct?

Edwin Whitteaker - Cross

1 A. Yes. Correct, sir.

2 Q. And on both sides of the bridge, there's -- let's call it
3 an abutment; right?

4 A. That is correct, sir.

5 Q. It's an embankment.

6 A. That is correct, sir.

7 Q. Okay. Now, there was -- obviously, there's the embankment
8 from the southbound bridge that obstructed your view; correct?

9 A. There was some -- we would see the northbound side from
10 where we are, sir.

11 Q. Brian, can you bring up Exhibit 17 at -- I believe it's
12 19:29:30. Actually, try 19:11:23. That's good. Stop it right
13 there.

14 Now, if -- if you can mark on your screen, if you
15 could mark on the -- the screen where you were approximately
16 when you saw the individuals.

17 A. I was somewhere in here, sir.

18 MS. AHMED: Objection as to vague as to individuals.

19 BY MR. PEREZ:

20 Q. Well, the two individuals that we're talking about. The
21 gentleman in the tac vest with the sunglasses and the gentleman
22 that was walking behind him.

23 A. Yes, but that photo doesn't relate to where I actually saw
24 them when that photo was taken.

25 Q. I understand that.

Edwin Whitteaker - Cross

1 A. Okay.

2 Q. I want to know where you were in this picture, because
3 this picture -- is this picture a picture of both bridges, the
4 northbound and southbound bridge?

5 A. That is correct, sir.

6 Q. Okay. And down here in the foreground, isn't that the BLM
7 vehicles?

8 A. Where I marked the red line, sir.

9 Q. Okay. So, that's where you were?

10 A. I was somewhere in there, sir.

11 Q. Okay. And that's below the elevation of those two
12 bridges; correct?

13 A. Yes, sir.

14 Q. Okay. And so where on this -- from where you were on that
15 northbound bridge, can you draw a little red X where you saw
16 those individuals?

17 A. Do you have a closer picture that shows the tree area?

18 Q. Well, not with --

19 A. It's hard with that picture, sir.

20 Q. Well, I mean -- okay. Well, let's do it this way.
21 There's the area of the wash; correct?

22 A. Yes, sir.

23 Q. Approximately how many yards or feet from the wash were
24 those individuals?

25 A. Could have been a football field, sir.

Edwin Whitteaker - Cross

1 Q. So a hundred yards --

2 A. Yes, sir.

3 Q. -- from the wash?

4 MS. AHMED: Objection as to the portion of the wash
5 we are talking about.

6 BY MR. PEREZ:

7 Q. Well, okay. From the edge of where the abutment under the
8 highway -- like, right here. Let's call that the start of the
9 bridge. That's -- it's probably back a little bit further,
10 but --

11 A. I -- I don't know the distance. It could have been
12 50 yards. I'm not sure, sir. Especially from these photos. I
13 mean, everything seemed so much closer when I was there that
14 day. I'm not a professional person at telling distances, sir.

15 Q. Okay. Well, so, would you -- well, let's just -- we're
16 not -- let's forget about the distances. Let's just talk
17 about, "Hey, you know, I saw him, like, over here," for
18 example. I mean, did you see them there?

19 A. If I had a better photo, a closer up photo, I'd be able to
20 tell you, sir. Is there a closer up photo, sir? If you bring
21 up the --

22 Q. Brian, can you back it up a couple of seconds? How is
23 that? Is that close enough?

24 A. That is close enough, sir.

25 Q. Okay. So now, where in relationship to the -- let's call

Edwin Whitteaker - Cross

1 it the bridge starting right here. There is the area of the
2 wash; correct?

3 A. That is correct, sir.

4 Q. Okay. Now, where were those individuals, those two
5 individuals?

6 A. I believe there's a tree somewhere in here, sir.

7 Q. Okay.

8 A. But without being able to see the tree, then I'm not sure,
9 sir. And I can't really see it on that photo. But that's just
10 my best guesstimate, sir.

11 Q. Okay. And you were back behind these vehicles; correct?
12 So, back somewhere over here?

13 A. That would be correct, sir.

14 Q. Brian, so go up a couple of seconds. Let it play a bit.
15 So, stop.

16 (Exhibit 17 being played.)

17 So, right about there?

18 A. Possibly, sir.

19 Q. So, you would be over in this area somewhere; correct?

20 A. That is correct, sir.

21 Q. So, if I'm not mistaken, you're -- where you marked was
22 somewhere over here by this tree.

23 Now, you say you did not see any NHP troopers at the
24 time; correct? No vehicles?

25 A. I saw the tops of some of the vehicles. I heard over the

Edwin Whitteaker - Cross

1 radio that they were there.

2 Q. Okay. So, can you guesstimate how far the individuals
3 were from the -- from the front of that trooper's vehicle?

4 A. I can't, sir.

5 Q. Okay. Brian, bring up 66.

6 MS. AHMED: Objection, Your Honor. The witness has
7 testified that he did not observe the troopers near these
8 people when he was looking at the bridge. Lack of foundation,
9 I guess.

10 MR. PEREZ: Well, we've used this exhibit, Your
11 Honor. I mean, this is how he identified them.

12 Q. So, you could see the top of that -- that truck?

13 A. That's not where I originally saw the individual. I've
14 testified to that, sir.

15 Q. Okay.

16 A. So I don't know if that was the exact truck that I saw the
17 top of it. I don't know exactly where all the NHP vehicles
18 were. I have testified that that's not the location I saw them
19 by. It was by a tree, sir.

20 Q. It was by a tree?

21 A. That is correct, sir.

22 Q. Like that tree behind him maybe?

23 A. No, it was a bigger tree, sir. It's definitely not in
24 that area, sir, that I saw them.

25 Q. Okay. And you don't recall what time of day that was?

Edwin Whitteaker - Cross

1 A. I lost all track of time, sir, during that whole incident.

2 Q. And now you said you saw this -- they were near that tree
3 when you saw them communicating?

4 A. Yes, sir.

5 Q. Okay. Did you ever see this individual in the back sit on
6 the Jersey barrier?

7 A. No, sir. I wasn't constantly looking at him. I was
8 constantly looking --

9 Q. But you did say you never pointed a weapon?

10 THE COURT: Mr. Perez, you need to let the witness
11 finish his answer.

12 THE WITNESS: Sorry, Your Honor.

13 THE COURT: Not you. He started asking you a next
14 question before you were done with the first question.

15 MR. PEREZ: My bad habit.

16 THE COURT: So let the witness answer the first
17 question. Did you ever see him sitting on the bridge?

18 THE WITNESS: I never saw him sitting on the barrier,
19 sir.

20 BY MR. PEREZ:

21 Q. And you can't -- you couldn't hear any of this
22 conversation from where you were; could you?

23 A. No, I was way too far away, sir.

24 Q. Right. How many yards away do you think you were?

25 A. Possibly a football field. Maybe a little over a football

Edwin Whitteaker - Cross

1 field. I'm not -- I'm not sure. I'm sorry, sir.

2 MR. PEREZ: All right. I have nothing further.

3 Thank you.

4 THE WITNESS: You are welcome, sir.

5 THE COURT: All right. Let's go ahead and take our
6 lunch break. It's 12:10, so we'll plan to be back here at
7 1:10.

8 I do remind you, during this break, please do not
9 discuss this case with anyone nor permit anyone to discuss it
10 with you. And remember if anyone should attempt to speak to
11 you about this case, or if you inadvertently hear something
12 about the case, you need to bring it to the Court's attention.

13 Also, please do not read, or listen to, or review
14 anything that touches upon this case in any way, and do not
15 attempt to perform any independent research or investigation
16 about anything related to the case. Feel free to use your
17 forms to write down all the questions that you have.

18 And finally, don't form any opinion about this case
19 until after you have heard all the testimony, received or had
20 an opportunity to view the exhibits. I will provide you the
21 legal instructions of law that you will apply to the facts as
22 you determine them to be, and then we will hear closing
23 arguments. And then after that, I will excuse you to begin
24 your deliberation process. Then you can begin to form your
25 opinion and discuss it with each other.

Edwin Whitteaker - Cross

1 So, we'll go ahead and stand for the jury. And then,
2 Ranger Whitteaker, after the jury exits, you may also take your
3 lunch break. And we need you back here at 1:10.

4 THE WITNESS: Yes, Your Honor.

5 THE COURT: Thank you.

6 (Jury out.)

7 THE COURT: All right. Off record.

8 (Recess 12:12 p.m. Resumed 1:31 p.m. Jury out.)

9 THE COURT: Thank you. You may be seated. Can we go
10 ahead and call in the jury?

11 COURTROOM ADMINISTRATOR: Yes, Your Honor.

12 (Jury in.)

13 COURTROOM ADMINISTRATOR: All rise.

14 THE COURT: The jury may go ahead and be seated.

15 Welcome, back ladies and gentlemen of the jury.

16 Everyone else may be seated as well.

17 We are going to continue now with cross-examination
18 of BLM Ranger Whitteaker. I believe, Mr. Perez, you were done;
19 right?

20 Mr. Marchese on behalf of Mr. Parker. Go ahead, sir.

21 CROSS-EXAMINATION

22 BY MR. MARCHESE:

23 Q. Good afternoon, sir.

24 A. Good afternoon, sir.

25 Q. And for the record, we were going to start with

Edwin Whitteaker - Cross

1 Exhibit 17. Do you have that ready, Brian?

2 We are going to go to 19:23:20. There we go. Well,
3 actually, it's 19.

4 Sir, do you have that on your screen?

5 A. I do, sir.

6 Q. Okay. So, you've had some questions, on
7 cross-examination, about locations and whatnot, and I figured
8 this might be a good place to start. So, you recognize this as
9 the wash as depicted on April 12th, 2014?

10 A. That is correct, sir.

11 Q. Okay. And would you agree with me that this would be the
12 northbound lane? I am putting an "N" on it, and the southbound
13 lane would be an "S." Is that -- you'd agree with that?

14 A. Yes, I do agree with that, sir.

15 Q. Okay. So, let's take you back to the beginning. So, you
16 get down to -- I believe it's towards these three trucks in the
17 front where you initially go down on the 12th; is that correct?

18 A. What three trucks are you talking about? Those three
19 trucks? Do you want me to circle it, sir?

20 Q. If you can, yeah.

21 A. It was not these three trucks if you considered the first
22 three trucks.

23 Q. Okay. So where --

24 A. It was these back trucks, sir.

25 Q. Okay. Did you ever get up to those three trucks?

Edwin Whitteaker - Cross

- 1 A. Yes, I did, sir.
- 2 Q. Okay. And that's later though in time; correct?
- 3 A. That is later. That's when I was delivering water. I
4 gave water to those individuals, sir.
- 5 Q. Gotcha. All right. So, initially, you're back at this
6 slash at those trucks; correct?
- 7 A. Yes, sir.
- 8 Q. Okay. And at that point, you're scanning for threats?
- 9 A. Yes, I was, sir.
- 10 Q. All right. And at some point in time, I believe you
11 testified that on the northbound bridge, you saw the individual
12 with the darker shirt and the long gun; correct?
- 13 A. The --
- 14 Q. The darker shirt and the long gun?
- 15 A. That is correct, sir.
- 16 Q. Okay. And I'm not going to get into the debate about
17 whether it was shotgun or a rifle, but we'll agree it was some
18 kind of gun?
- 19 A. Okay, sir. That's fine.
- 20 Q. Is that fair?
- 21 A. Yes, sir.
- 22 Q. And then at that point, you didn't see this individual
23 pointing at you; correct?
- 24 A. I saw him point it not at me directly but pointing into
25 the wash.

Edwin Whitteaker - Cross

1 Q. Okay. And so based upon that, I believe you got him in
2 your AR sights?

3 A. That is correct, sir.

4 Q. Do you have a scope on your rifle or was it just open
5 sights?

6 A. No, I use open sights, sir.

7 Q. Okay. So, you are continuing to scan for threats;
8 correct?

9 A. No. At that time, I was -- because I saw him as a threat,
10 since he had pointed a weapon at people.

11 Q. Sure.

12 A. So I had my sights on him at that time.

13 Q. Okay. How long did you keep --

14 A. In that time.

15 Q. How long approximately?

16 A. I'm not sure, sir. In all honesty, time -- time, I can't
17 recall any of the times.

18 Q. Okay.

19 A. I don't recall when I got down there, when we left, or any
20 of the times what happened.

21 Q. Okay.

22 A. I apologize, sir.

23 Q. No, that's fine. So, was it -- would you say it was quick
24 or would you say it was a long time?

25 A. It wasn't a long time.

Edwin Whitteaker - Cross

1 Q. Okay. Maybe a couple seconds give or take?

2 A. No. Over a couple of seconds, sir, maybe --

3 Q. Okay. What -- what made you stop having your sights on
4 him?

5 A. When my K9 alarm went off, sir.

6 Q. Okay. Yeah, and there was some testimony. You said there
7 was an alarm. What -- the horn started beeping?

8 A. I have a K9 vehicle. And within our K9 vehicles, per our
9 GOs and just for the safety of the K9, what happens is lights
10 and sirens and horns start beeping. A ranger came up and was
11 like, "Hey, Whitteaker, your K9 vehicle, everything is going
12 off." So, I ran back to make sure Tessa was okay and to get
13 the vehicle back into shape.

14 Q. Okay.

15 A. So, get the air-conditioning on. Because what it does, it
16 closes the windows. And after a while, if it's still going on,
17 it will actually deploy the K9 door so the K9 can get out for
18 their safety.

19 Q. So, where is your K9 vehicle?

20 A. It's back here, sir.

21 Q. Did you mark the screen?

22 A. I believe it was somewhere back here, sir.

23 Q. All right. So, it's behind your location?

24 A. Yes, it's behind my location, sir.

25 Q. So, you go back to that location, and then is that when

Edwin Whitteaker - Cross

1 you started -- you grabbed the water, and you started to hand
2 it out?

3 A. Yes. As you saw in the other exhibits, I was carrying a
4 case of water, sir.

5 Q. Okay. And you're going all around to your other officers
6 and just, you know, looking out for their safety, because I
7 think you said -- I think you said something to the effect it
8 was warm out that day; correct?

9 A. It was warm and plus the stress. You are not going to
10 take in as much liquids as you think you should, sir.

11 Q. Right. So, you're giving water, and you want to make sure
12 everybody is hydrated; correct?

13 A. That is correct, sir.

14 Q. So then after you handed out the water, where did you go?

15 A. I went back to where the slash mark is, sir.

16 Q. Okay. And is that when you grabbed the binoculars?

17 A. That is correct, sir.

18 Q. Okay. And I can bring it up for you again, but
19 Mr. Tanasi, the gentleman with the burgundy tie, on
20 cross-examination, he brought up the body cam.

21 Do you remember that? Where you actually -- you see
22 you going up to one of the agents and giving him water?

23 A. That is correct.

24 Q. Okay. Was that the truck that you were at or were you
25 behind that?

Edwin Whitteaker - Cross

1 A. I believe it was that truck or the truck behind it. I
2 think I might have moved between the two. I'm not sure, sir.
3 I think it could have, because I know there was a truck behind
4 it and in front of it. I don't believe I was at the truck in
5 front of it, sir.

6 Q. Okay. So, it was either Agent Swanson's truck or the
7 truck behind it?

8 A. Yes, sir.

9 Q. Okay. And I believe you said, on direct examination --
10 and if I'm wrong correct me -- it had markings? BLM markings?

11 A. I know one of the trucks at one time that I was behind had
12 BLM markings, sir.

13 Q. Okay. And if I was to tell you that Agent Swanson's truck
14 did not have markings, would that help your recollection or
15 would it not?

16 A. It would not help, sir.

17 Q. Okay. So, when you got to that truck, you started to
18 looking for threats once again with your binoculars; correct?

19 A. That is correct, sir.

20 Q. And I believe you had testified that you saw those three
21 individuals once again. And when I am talking about the three
22 individuals, I am talking about -- I think it's Crack Guy,
23 Pillar Guy, and what's the other one?

24 A. Shotgun Guy, sir.

25 Q. And Shotgun Guy. Okay. You saw those three individuals

Edwin Whitteaker - Cross

1 again. Is that fair to say?

2 A. Well, I originally only saw Shotgun Guy, sir.

3 Q. Okay.

4 A. So, when I got the binoculars, that's when I saw the other
5 two subjects.

6 Q. All right. And that's the first time you see them?

7 A. Yes, sir.

8 Q. Okay. When you handed out water, did you go to the first
9 three trucks to give them water as well?

10 A. Yes, I did, sir.

11 Q. Okay. And then you doubled back?

12 A. Yes, I did, sir.

13 Q. All right. So, you're somewhere over by Swanson's truck.
14 Is that when you saw these two individuals? I believe you said
15 one of them was giving you the finger or something along those
16 lines?

17 A. Well, that wasn't -- that was -- that was the individual
18 to the right, sir.

19 Q. Right.

20 A. That was the individual to the right. It wasn't the --
21 the Pillar Guy, it wasn't the Crack Guy, or it wasn't Shotgun
22 Guy. That was the individual to the right of them, sir.

23 Q. All right. And when you say right, you're referring to
24 your right?

25 A. My right. Sure. Sorry about that, sir.

Edwin Whitteaker - Cross

1 Q. No, I understand. I just want to make sure. And then
2 there was another individual that you felt that he was somehow
3 acting in concert with?

4 A. There was the guy with the binoculars -- I believe the
5 binoculars, a range finder.

6 Q. Okay. And what about the other individual that was just
7 standing around in camouflage, I believe, that you didn't see
8 him point his weapon at you?

9 A. He had a weapon and he was walking around behind
10 everybody.

11 Q. Okay. And that's really all you personally perceived from
12 that individual?

13 A. That is correct, sir.

14 Q. And when you saw that, just him walking around, was --
15 were you -- was this after you handing out water and getting
16 back with the binoculars?

17 A. That is correct, sir.

18 MR. MARCHESE: Okay. No, further questions. Thank
19 you, sir.

20 THE WITNESS: You are welcome, sir.

21 THE COURT: Mr. Leventhal, cross on behalf of
22 Mr. Drexler?

23 MR. LEVENTHAL: Yes, thank you, Judge.

24

25

Edwin Whitteaker - Cross

1 CROSS-EXAMINATION

2 BY MR. LEVENTHAL:

3 Q. Good afternoon.

4 A. Good afternoon, sir.

5 Q. My name is Todd Leventhal. How are you?

6 A. I'm well. How are you doing?

7 Q. Very good. I'm going to go through a couple things. I
8 know you've already been through it, but I just -- it helps to
9 orientate sort of where we're at. You started in Post 1;
10 correct?

11 A. Could you speak a little closer to the mike, sir?

12 Q. Sure.

13 A. My hearing is not --

14 Q. You started in --

15 A. -- the greatest. I apologize, sir.

16 Q. Sorry. You started in Post 1; correct?

17 A. Yes, I did, sir.

18 Q. Okay. And how did you get to Post 2?

19 A. I heard calls over the radio that they needed assistance,
20 so I asked for permission to go down there, sir.

21 Q. I'm sorry. How did you? Did you walk down? Did you run
22 down? Did you drive down?

23 A. I took my vehicle down there, sir, so I had my K9 close to
24 me, sir.

25 Q. Okay. So, your vehicle was at Post 1 with you and then

Edwin Whitteaker - Cross

1 you drove down to Post 2?

2 A. That is correct, sir.

3 Q. And it's sort of a long path going back towards the ICP?

4 A. Yes.

5 Q. Okay. I think it's 190 -- just 193? That's okay.

6 There's a map.

7 Now, you talked about a fatal funnel. I didn't bring
8 anything up.

9 A. I thought you were bringing up an exhibit.

10 Q. I apologize. Yeah.

11 A. I apologize, sir.

12 Q. That's okay. You brought -- you talked about a fatal
13 funnel on direct. Do you remember that?

14 A. Yes, I do, sir.

15 Q. What's a fatal funnel?

16 A. A fatal funnel, like I explained before. It's like you're
17 in a doorway. You're trapped in that doorway. We were trapped
18 in that wash by both sides of the wash, sir.

19 Q. Okay. So, you indicate that you're trapped. So, you
20 can't move forward, side to side, or back; correct?

21 A. We can move forward, to side to side, but the
22 individual -- it is very sandy in there.

23 Q. Uh-huh.

24 A. Vehicles getting stuck. We started taking fire, we're not
25 going to be able to run up the embankments of the wash to get

Edwin Whitteaker - Cross

1 out of there. Our vehicles -- we're literally trapped, with
2 all the different vehicles in there, the soft sand, them having
3 high ground over us. So, that's why I considered that a fatal
4 funnel, sir.

5 It wasn't like a doorway where I'm stuck in the
6 doorway. Yeah, I could have moved left or right, but could I
7 have got out of that wash within seconds, like I could get out
8 of a doorway, which is a fatal funnel I never want to go
9 through?

10 Yeah, it's easier to go through that, but that --
11 that wash was the hardest fatal funnel I've ever been in. We
12 had multiple armed subjects on top of a bridge, on embankments,
13 pointing weapons at us, with women and children around. So,
14 that was a fatal funnel, sir, and I consider that a fatal
15 funnel.

16 Q. Okay. Very good. Could we pull up Exhibit 17, Brian?
17 And go to 28:13. It will be up there.

18 A. Okay. I'm not getting anything on my screen, sir.

19 Q. You will.

20 A. Okay.

21 Q. There we go. Go to 28:13, Brian. You can stop it right
22 there. Stop.

23 Okay. Let me just orientate you. This would be the
24 northbound bridge; is that correct?

25 A. Yes, sir.

Edwin Whitteaker - Cross

- 1 Q. Okay. That would be the southbound bridge; is that
2 correct?
- 3 A. That is correct, sir.
- 4 Q. Okay. This would be the Post 1 area; correct?
- 5 A. Negative, sir.
- 6 Q. No? Okay. Why don't you go ahead and circle where Post 1
7 would be.
- 8 A. I believe Post 1 is to the right of that. I -- I can't
9 really see with this video.
- 10 Q. Okay. Is this the wash area here?
- 11 A. Yes, that's the wash area. Okay. Now -- now I can --
- 12 Q. Is this the parking lot that you described earlier across
13 from a Post 1?
- 14 A. Yes. And that -- that is Post 1. Yes, you are correct.
- 15 Q. This would be, in fact, Post 1?
- 16 A. Now I have an orientation, yes.
- 17 Q. That's why I do this. Okay.
- 18 A. I apologize, sir.
- 19 Q. You are okay now.
- 20 A. That is Post 1.
- 21 Q. All right. Very good. Okay. So then I -- I assume that
22 this is the road that you took, sort of that leading down and
23 then coming back this way; correct?
- 24 A. That is correct, sir.
- 25 Q. Okay. Very good. All right. And if we could go to

Edwin Whitteaker - Cross

1 20:13 real quick. Just play it forward. Okay. Stop right
2 there.

3 Now, you talked about the fatal funnel; correct?

4 A. Yes, sir.

5 Q. So, this area underneath this wash would be the fatal
6 funnel; correct?

7 A. All that entire wash will be the fatal funnel, sir.

8 Q. Okay. The -- when you say the entire wash, are you
9 talking about the entire middle of --

10 A. No, the entire -- for us, the entire fatal funnel was the
11 individuals that were originally the park service guys that
12 were there and back through there.

13 Q. Okay.

14 A. Because we -- we had the low ground. They had the high
15 ground, sir.

16 Q. I understand. There's -- but there's these two sort of
17 embankments, I guess; right?

18 A. Yes, they were embankments.

19 Q. Okay. That's the funnel part of the fatal funnel; right?

20 A. No. We're talking about -- we're talking about our fatal
21 funnel, sir. I'm not talking about any other fatal funnels.

22 Q. No, I understand.

23 A. The fatal funnels would be -- for us would have been in
24 here. They can control the high ground here. They control the
25 high ground here. They control the high ground here. They

Edwin Whitteaker - Cross

1 control the high ground here, and they control the ground
2 there.

3 Q. Okay.

4 A. So they controlled all the ground, which placed us in the
5 fatal funnel, sir.

6 Q. Okay. If we could play that forward real quick, Brian.

7 (Exhibit 17 being played.)

8 Okay. And stop right there. Okay. Over here we've
9 got these are BLM agents; correct?

10 A. BLM agents and rangers, sir.

11 Q. Okay.

12 A. Park service personnel, sir.

13 Q. Okay. Go ahead, Brian. Okay. Stop.

14 (Exhibit 17 being played.)

15 Okay. So, we've got the middle of the bridge here;
16 correct?

17 A. Yeah. That would be the middle area between the bridges,
18 sir.

19 Q. Okay. Go ahead, Brian.

20 (Exhibit 17 being played.)

21 Stop right there. Okay.

22 Now, were you aware that there were protesters -- did
23 you hear or were you aware that protesters were congregating
24 underneath the northbound bridge?

25 A. Originally, the call came out that individuals on horses

Edwin Whitteaker - Cross

1 were coming down towards Post 2, sir.

2 Q. Okay. You haven't seen, so far, just the little clip that
3 you saw any horses; correct? In the clip that I've showed you
4 so far, you haven't see any horses; correct?

5 A. I -- I don't know if there's horses in there. I can't
6 really tell from the -- if you could zoom in, sir, please.

7 Q. Okay. Go ahead and play it just another second.

8 MS. AHMED: Your Honor, I just object on foundation
9 as to whether or not the witness was where he was at the time
10 of these events or --

11 MR. LEVENTHAL: I asked him if he was aware. If it
12 was over the radio.

13 MS. AHMED: Your Honor, to the extent that counsel is
14 going to be showing this witness video of a certain time
15 period, I ask that he clarify what the witness -- witness's
16 position or knowledge of these events.

17 THE COURT: Sustained. You can be a little more
18 clear as to what this witness actually personally saw versus
19 what he was aware of or what he's just looking at on the video.

20 MR. LEVENTHAL: Or heard over the radio, because
21 there's something that led him to go from Post 1 to Post 2;
22 correct?

23 THE COURT: So long as we are clear as to what the
24 question is you are asking or what the question is he's
25 responding to.

Edwin Whitteaker - Cross

1 BY MR. LEVENTHAL:

2 Q. So, did you hear over the radio that there were people
3 congregating under the northbound bridge that led you to go
4 from Post 1 to Post 2?

5 A. I heard people on the -- I heard that people were coming
6 towards. When I went to Post -- from 1 -- Post 1 to 2, they
7 were calling for assistance, because they had individuals with
8 firearms.

9 Q. Okay. If we could go to 9A, please.

10 (Exhibit 9A being played.)

11 Okay. Stop. Okay. So, if we came down to -- we
12 came down to a bird's eye view sort of or -- well, from a
13 bird's eye view down to the ground, correct? Now, we're -- we
14 could see the BLM agents here; correct? And park service --

15 A. Yes.

16 Q. -- or law enforcement officers; correct?

17 A. Yes, sir.

18 Q. Okay. Nobody's in the wash; correct?

19 A. Yeah. When I arrived there, there was plenty of people in
20 the wash and on the bridge.

21 Q. Okay. But -- and you were at Post 1 at this point?

22 A. I was at Post 1 at this point.

23 Q. If we could play to 17 seconds.

24 (Exhibit 17 being played.)

25 Tell me if you recognize when you got there.

Edwin Whitteaker - Cross

1 MS. AHMED: Objection, Your Honor. I don't -- in
2 this 30 second clip, I don't believe that the wash is going to
3 fill with people. So, basically, lack of foundation as to this
4 exhibit with this witness.

5 BY MR. LEVENTHAL:

6 Q. Well, let me clarify. When you got down to Post 2, were
7 there people in the wash at that point?

8 A. Yes, sir.

9 Q. Okay. So, they were in the middle there?

10 A. I believe they were in the middle, sir. There were
11 people -- there were people on the bridge. I was looking at
12 the bridge. I didn't -- I believe there was people in there.
13 I mean, I -- I was not there. I don't believe I was there at
14 this time.

15 Q. Okay. Fair enough. Well, we saw two people in the wash.
16 Do you know if there were more than two people in the wash?

17 A. When I got there?

18 Q. Correct.

19 A. I believe there was more than two people, sir.

20 Q. Okay. Was there a hundred people in the wash?

21 A. I didn't count them, sir. I'm not sure, sir.

22 Q. I understand. But, I'm trying to figure out when you got
23 there, because that's what we're trying to figure out what --
24 what you can look at to see if you recognize it.

25 So, was there more than two but less than a hundred?

Edwin Whitteaker - Cross

1 Somewhere around there?

2 A. Somewhere between there, sir.

3 Q. Okay. Now, you indicated that this was, I guess, one of
4 the worst days of your life; correct?

5 A. That is correct, sir.

6 Q. Okay. Now, I understand that during this time, you went
7 from Post 1 to Post 2. And I also understand that you went and
8 you took care of the air-conditioning for your dog; correct?

9 A. That is correct, sir.

10 Q. Okay. And I understand that you picked up some water;
11 correct?

12 A. That is correct, sir.

13 Q. Okay. And how long after you arrived at Post 2 did you do
14 all this?

15 A. I'm not sure. In all honesty, time was going -- I -- I
16 don't even recall the time, sir. I -- just things were
17 happening.

18 Q. Understood. So, when you get to Post 2, you get out of
19 your vehicle; correct?

20 A. Yes, sir.

21 Q. You lock your vehicle, and then you walk towards Post 2;
22 correct?

23 A. That is correct, sir.

24 Q. Do you make it to another vehicle before you have to go
25 back, or do you go back before -- at what point do you go back

Edwin Whitteaker - Cross

1 to your vehicle, I guess?

2 A. I go back to my vehicle when my K9 alarm goes off, sir.

3 Q. And you don't know how much time had elapsed from the time
4 you got out of your vehicle to that time?

5 A. In all honesty, I have no idea.

6 Q. Fair enough. Okay. Now, ultimately, you got back, and
7 you picked up binoculars; correct?

8 A. I picked up binoculars that were on the vehicle. I didn't
9 get them out of my vehicle, if you are asking if I got them out
10 of my vehicle.

11 Q. No, just that you picked them up --

12 A. Yes, sir.

13 Q. -- at some point. Okay. And at that point, do you
14 remember approximately -- I don't want you to tell me --
15 approximately how many people were in the wash?

16 A. I'm not sure, sir. There were people in the wash.
17 Everything was going on, sir. There was people --

18 Q. And were there horses in the wash?

19 A. I believe there was horses, because I -- I heard -- we
20 were talking. I know when I was there that there was horses in
21 the wash, because he was talked about if the horses came
22 through, what we would do. And my plan was to jump into the
23 back of a pickup truck, because I'm from the East Coast and not
24 used to horses, sir.

25 Q. So, you didn't actually see horses. You heard of horses

Edwin Whitteaker - Cross

1 being there?

2 A. The -- I mean, I saw that there was horses from my point
3 of view.

4 Q. Okay.

5 A. But, you know, if they broke through, that's what we were
6 afraid. Because they got very close to the gate that was up.

7 Q. Sure. You were conjecturing. You were trying to figure
8 out --

9 A. Figure out what we were going to do in case the horses
10 broke through.

11 Q. Or what they were going to do, if they were going to do
12 anything?

13 A. Yes, sir.

14 Q. Right? Okay. Now, you identified today a gentleman, as
15 you called him, Crack -- the Crack Guy?

16 A. Yes, sir.

17 Q. Okay. And you picked him out on a picture that the
18 government showed you; correct?

19 A. That is correct, sir.

20 Q. Okay. Now, when you were out there and you did your
21 report, how specific, if you remember, was your report in
22 identifying Crack Guy?

23 A. I -- I -- my original report and how I remembered it, he
24 was a white male with a beard and a gray cap.

25 Q. Okay. And you were able to identify him with what the

Edwin Whitteaker - Cross

1 government showed you was a picture, and you circled a head;
2 correct?

3 A. That is correct. I identified him on the -- the photo --
4 not the head, the photo that they show me when he was next to
5 Pillar Guy.

6 Q. On the northbound bridge?

7 A. Yeah. You showed -- the prosecution showed me a picture.
8 It was the Pillar Guy, and then -- no. No, it was a different
9 picture. No, that was Pillar Guy and Shotgun Guy. The picture
10 after that was the picture of the Crack Guy. Sorry about that,
11 sir.

12 Q. No, that's okay. Okay. That would be 13B, if we can pull
13 that up.

14 Now, the government showed you this picture; correct?

15 A. Yes, they did, sir.

16 Q. Had you seen this picture before today?

17 A. Yeah, the government showed me that picture, sir.

18 Q. They showed you this picture?

19 A. That is correct, sir.

20 Q. When did they show you this picture?

21 A. I believe they showed it to me the -- the first time I
22 came in.

23 Q. When was that?

24 A. I'm not sure, sir.

25 Q. Was that yesterday or today?

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1 A. It was, I think, a few weeks ago.

2 Q. Okay. So, they showed you this picture a few weeks ago?

3 A. I know they showed me pictures, and I know I saw that
4 picture yesterday, I can say.

5 Q. Okay. And that was the first time you saw that picture?

6 A. Yes, sir.

7 Q. Okay. And you were able to spot this gentleman right here
8 that you said was Crack Guy?

9 A. Yes, I believe that is Crack Guy, sir.

10 Q. Okay. Now, this happened in 2014; correct?

11 A. That is correct, sir.

12 Q. Three and half years ago; correct?

13 A. With -- is it not two? Oh, yeah. I -- if you -- I'm not
14 the greatest on time. So if you believe it's three and a half
15 years, then it's three and half years, sir.

16 Q. It's not a belief, but okay. If we could just go to 13A,
17 please.

18 (Exhibit 13A being played.)

19 And just stop it real quick. Stop it.

20 Now, the picture -- did you see this video or did you
21 see -- did you see the -- this is a picture from the video.

22 Did you see this video?

23 A. I'm not sure, sir.

24 Q. Okay. Now, you indicated that you were concerned for the
25 women and children?

Edwin Whitteaker - Cross

1 A. That is correct, sir.

2 Q. Okay. If we can go ahead and just play that real quick.

3 (Exhibit 13A being played.)

4 Now, this would have been a view you would have seen;
5 correct? Horses -- now we see some horses in there.

6 A. Yes, sir.

7 Q. Okay. Go ahead and play this, Brian.

8 (Exhibit 13A being played.)

9 Stop. Now, actually, back it up to the first -- to
10 the first part, Brian. All the way. Keep going. Keep going.

11 A. I believe that was me, sir.

12 Q. Keep going, Brian. All the way. Thank you.

13 Are you over here?

14 A. I believe that is me, sir.

15 Q. That's you there?

16 A. I believe that -- I -- it looks like someone holding a
17 case of water, and --

18 Q. Okay.

19 A. -- that would be me, sir.

20 Q. Okay. And you see a number of individuals here; correct?

21 A. Yes, I do, sir.

22 Q. Okay. And you saw that that day; right?

23 A. Yes, I saw that.

24 Q. And there were some people right here at the gate. Did
25 you see that?

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1 A. There was so many people around, I'm not sure if I saw
2 those individual people right there.

3 Q. Okay. Did there ever come a time where you saw different
4 BLM agents approach that gate?

5 A. Yes, sir. I did, sir.

6 Q. And who was that?

7 A. It was Dan Love.

8 Q. Okay. You saw him approach that gate?

9 A. Yes, I saw him approach that gate, sir.

10 Q. And did you hear, since you were so close, what he was
11 asking? Was he asking for anything?

12 A. I didn't hear anything, sir.

13 Q. You didn't hear anything?

14 A. No, I did not, sir.

15 Q. All right. The -- this line or these people didn't
16 approach until Mr. Love actually -- Dan Love came to the gate;
17 is that correct?

18 MS. AHMED: Objection. Assumes facts not in
19 evidence.

20 MR. LEVENTHAL: Well, he can answer the question. I
21 am asking.

22 Q. You saw Dan Love approach the gate; correct?

23 A. Yes, I saw Dan Love approach the gate.

24 Q. Was this -- was this group of people here, or were they
25 back here when Dan Love approached the gate?

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1 A. I'm not sure, sir. I saw Dan Love approach the gate. I
2 don't know where these certain people were at the time. There
3 was so much going on, sir.

4 Q. Okay. There was a lot going on; right?

5 A. Yeah, there was a lot going on, sir.

6 Q. If we could just go ahead and play that.

7 (Exhibit 13A being played.)

8 Now, these people are facing, for the most part,
9 towards the BLM; correct?

10 A. That is -- and the park service, sir.

11 Q. Correct. But they are facing towards park service and
12 BLM; correct?

13 A. That is correct, sir.

14 Q. Okay. Play.

15 (Exhibit 13A being played.)

16 Now, stop. It looks like they are backing up. Do
17 you see that?

18 A. Yes, I do, sir.

19 Q. Do you know why they were backing up?

20 A. I have no idea, sir.

21 Q. Okay. But you -- again, you are in this group here that I
22 have just circled; correct?

23 A. Yes.

24 Q. So, you are not far from the gate; right?

25 A. Not at all, sir.

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1 Q. Okay. And so you saw them actually back up from the gate;
2 correct?

3 A. I don't remember them backing up. I mean, on this video,
4 I see them backing up off the gate, but I don't remember, in
5 person --

6 Q. Okay.

7 A. -- remember them backing off the gate, sir.

8 Q. All right. Go ahead and keep playing it, Brian.

9 (Exhibit 13A being played.)

10 And stop at 35 seconds. Stop.

11 Okay. Now, this is the northbound bridge; is that
12 correct?

13 A. That is correct.

14 Q. Part of it. Okay. And you indicated that there's some
15 people on the northbound bridge that had guns; correct?

16 A. That is correct, sir.

17 Q. And you -- I think you indicated that you saw some lights
18 of an NHP vehicle? I don't know if that --

19 A. They weren't by the bush. They were farther to the right,
20 sir. By the bush is where I actually saw the individual who
21 gave me the middle finger, but the lights were farther out,
22 sir.

23 Q. Okay. Did you see -- and you saw NHP personnel in bright
24 green fluorescent?

25 A. I have already testified that I did not see any personnel

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1 on the bridge.

2 Q. Okay. These people are just sort of sitting around; is
3 that correct?

4 A. That is correct, sir.

5 Q. Do you know what this gentleman is holding here?

6 A. I do not, sir. Can you blow up the picture, and I might
7 be able to tell, sir.

8 MR. LEVENTHAL: No, that's okay. Thank you very
9 much. I have nothing further.

10 THE COURT: Redirect?

11 MS. AHMED: May I have the Court's indulgence?

12 THE COURT: Yes.

13 (Pause in the proceedings.)

14 MS. AHMED: Thank you, Your Honor. I have no
15 redirect at this time.

16 THE COURT: All right. At this time, if any members
17 of the jury have a question for Ranger Whitteaker, please go
18 ahead and write it down on the form provided. Take your time,
19 write neatly, be clear not to use the pronouns, and please
20 don't tell us your name or your jury number.

21 Counsel, please join me at sidebar.

22 (Sidebar.)

23 THE COURT: All right. Jury Note No. 76 asks, "When
24 you seen the subject, Shotgun Guy, pacing back and forth, did
25 he appear excited, or mad, or another emotion?"

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1 Any objection?

2 MR. TANASI: No, objection Stewart.

3 THE COURT: Okay. Jury Note 77 has three questions.

4 The first question is: "Officer, from the distance of your
5 post, how were you able to see through the southbound Jersey
6 barriers, that are cement, to the northbound Jersey barriers,
7 that are cement, and see persons and what they are doing?"

8 Any objection?

9 MR. TANASI: None from Stewart.

10 THE COURT: Question No. 2, "Officer, if you had a
11 clear shot, would you have taken it knowing you have fellow
12 officer, NHP, on the overpass?"

13 Any objection?

14 MR. TANASI: None from Stewart.

15 THE COURT: And No. 3, "Can we, the jury, ever see
16 what the officer is testifying to in distance, not up close,
17 standing over them, or from 2,000 feet in the air?"

18 Do you want me to reread it? I will reread it.

19 "Can we, the jury, ever see what the officer is
20 testifying to in distance, not up close, standing over them, or
21 from 2,000 feet in the air?"

22 MS. AHMED: The evidence is what it is. I mean --

23 THE COURT: So, it looks like this juror wants to see
24 the exact view as opposed to --

25 MR. PEREZ: We don't have one.

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1 THE COURT: -- yeah, the photos and videos that are
2 being shown.

3 MS. AHMED: If there's more evidence --

4 THE COURT: The witness isn't going to know the
5 answer to that question. I'll let them know that, in many
6 cases, we don't have photos or video. And here we have some.
7 They are not exactly from every single person's point of view,
8 but --

9 MR. TANASI: An eye glass camera.

10 THE COURT: -- to help you to understand the scene.

11 All right. So, Jury Note No. 78 asks: "You
12 indicated April 12th, 2014, protest was the most fear you
13 experienced in your career. Can you please explain?" Any
14 objection?

15 MS. AHMED: No.

16 MR. MARCHESE: It's asked and answered.

17 THE REPORTER: Speak up.

18 MR. MARCHESE: It's been asked and answered,
19 Marchese.

20 MR. PEREZ: Lovelien joins.

21 MR. LEVENTHAL: Relevance.

22 MS. AHMED: It's clearly relevant. And, obviously,
23 they didn't get the answer, so I would -- no objection from the
24 government. I think it's an appropriate question.

25 MR. LEVENTHAL: My problem is we're going to have a

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1 long narrative with this again that we've had with other
2 witnesses that are bringing in, you know, hearsay, bringing in
3 nonrelevant evidence. And I -- I can see this question being
4 posed as, again, having that narrative where he can go on and
5 on about, you know, Middle Eastern or --

6 MR. TANASI: Or *Black Hawk Down*.

7 MR. LEVENTHAL: Yeah, whatever *Black Hawk Down* is. I
8 didn't even know what that was. So I don't think it's
9 relevant. He's already answered the question.

10 MS. AHMED: Your Honor, it's clearly relevant to some
11 of the elements of some of the charges. So, if they are asking
12 they do not either hear or understand the answer, it's an
13 appropriate question to be asked. If there's objections as to
14 the form of the answer, they can always be made at the time.

15 MR. LEVENTHAL: The elements are not to compare and
16 contrast whether this is the most --

17 THE COURT: All right. The element is fear.

18 MR. LEVENTHAL: Right.

19 THE COURT: And they are saying that there's a
20 defense theory that the fear subjectively testified to is not
21 objectively reasonable. So, it is a fact not only that's
22 relevant to an element, but also that's been put in issue in
23 the case.

24 So, I'm going to go ahead and ask the question, but
25 I'm going to try to limit him to not providing a narrative, but

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1 just more precisely explaining why he said that this was the
2 most fear he had experienced in his career.

3 The next question on Jury Note 78 is, "In your
4 opinion, any individual that carried a weapon is considered
5 that person a threat. Why?"

6 MS. AHMED: I think they might have misunderstood the
7 testimony, but no objection from the government.

8 MR. TANASI: None from Stewart.

9 MR. PEREZ: None from Lovelien.

10 THE COURT: All right. I think what they are asking
11 is do you consider any person who carries a weapon a threat,
12 and, if so, why?

13 So, okay. Jury Note 79, "If any shooting would have
14 started, and you and your fellow officers felt that you were in
15 real danger, would you return fire?"

16 Any objection to the question?

17 MS. AHMED: No.

18 MR. TANASI: None from Stewart.

19 MR. LEVENTHAL: Just on the speculation of other
20 officers. I mean, I think he can answer to what he would do,
21 but to speculate as to what other officers would do would be, I
22 think, outside the realm of anything relative or speculation.

23 THE COURT: All right. That's fair. I will limit
24 it.

25 Jury Note No. 80 has, looks like, about four

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1 different parts to it. The first one is, "Do you feel that the
2 defendants' intent was to kill officers, agents on the day in
3 question?"

4 Any objection?

5 MR. LEVENTHAL: I'm sorry. Can you repeat that real
6 quick?

7 THE COURT: "Do you feel that the defendants' intent
8 was to kill officers and agents on the day in question?"

9 MR. LEVENTHAL: That's speculation.

10 MR. MARCHESE: Yeah.

11 MR. LEVENTHAL: It's not relevant.

12 MR. MARCHESE: I don't believe he's -- he can get
13 into their minds.

14 MR. LEVENTHAL: All he did was see them in the
15 binoculars for a couple seconds.

16 MS. AHMED: Maybe he can speak to his -- based on his
17 training and experience.

18 THE COURT: The fear is one of the elements that's in
19 question, so it's his fear.

20 MS. AHMED: And his perception of the events there
21 and their actions.

22 MR. LEVENTHAL: Well, no, it's going beyond the
23 perceptions and the event. It's going into the mindset of our
24 clients their intent, and that would be highly speculative.

25 THE COURT: No, it specifically asks him "Do you feel

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1 that the defendants' intent was," not what was the defendants'
2 intent. So, again, I'll qualify it to make sure it's clear.
3 We are just asking him what he believes.

4 All right. Question Number 2 on Jury Note 80 is,
5 "Did agents or law enforcement have guns pointed at the
6 individuals that were armed on the bridge in a standoff
7 fashion?"

8 Any objection?

9 MS. AHMED: None from government.

10 MR. TANASI: None from Stewart.

11 THE COURT: All right. Third question is, "Did the
12 presence of women and children and countless witnesses lessen
13 the feelings of fear of losing your life at all?"

14 Any objection?

15 MS. AHMED: No.

16 MR. TANASI: None from Stewart.

17 THE COURT: And the last one is, "Did you wear a body
18 cam that day? If so, would it have captured and displayed the
19 officers' sense of fear in a visible, perceivable way?"

20 MR. TANASI: No objection, Stewart.

21 MR. PEREZ: No objection, Lovelien.

22 MS. AHMED: No objection.

23 THE COURT: Jury Note 81, "Have you, prior to your
24 interview with the prosecution and/or the FBI, had any
25 conversation or other discussion with your professional

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1 colleagues in regards to the events of April 11th through the
2 13th and discussed your opinions and feelings?"

3 MR. TANASI: No objection Stewart.

4 MS. AHMED: No objection.

5 THE COURT: "And as a former marine and having served
6 in the border patrol and ATF, are you familiar with the concept
7 of the incident command system and structure? Was this
8 management system in place during the event? And if the
9 structure was not in place, would having it activate change
10 your experience?"

11 MS. AHMED: No objection.

12 MR. TANASI: No objection, Stewart.

13 MR. LEVENTHAL: No objection.

14 MR. MYHRE: What number is that, Your Honor? I'm
15 sorry.

16 THE COURT: 81.

17 MR. MYHRE: 81. Thank you.

18 THE COURT: And then Jury Note 82: "During your
19 meetings with the prosecution" -- did I already ask this one?
20 No. Okay. I didn't get done numbering then.

21 This is 82. "During the meetings with the
22 prosecution and the FBI, were you ever coached as to keyword,
23 terminology, or behaviors to use as a witness in this
24 proceeding?"

25 Any objection?

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1 MS. AHMED: No.

2 MR. TANASI: No objection, Stewart.

3 THE COURT: And second part of 82 is: "During your
4 period of observation, was there haze, glare, or dust that
5 affected your ability to clearly view the people on the
6 northbound bridge?"

7 Any objection?

8 MR. TANASI: None from Stewart.

9 MS. AHMED: No objection.

10 THE COURT: Jury Note 83: "Will the jury have access
11 to the exhibits during deliberation?"

12 MR. LEVENTHAL: There's always one.

13 THE COURT: The answer is "Yes."

14 MR. LEVENTHAL: There's always one for the Judge.

15 THE COURT: Okay. And then Jury Note 84: "What is
16 the difference between a rifle and a shotgun, and does it make
17 a difference when determining the degree of the threat level
18 that you experienced?"

19 MS. AHMED: No objection.

20 MR. TANASI: No objection.

21 MR. MYHRE: Your Honor, can we go back -- I'm sorry.
22 Can we go back to 80 for a minute?

23 THE COURT: 80 was four parts.

24 MR. MYHRE: The last part, is it --

25 THE COURT: "Did you wear a body cam that day, and,

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1 if so, would the footage have captured and displaced the
2 officers' fear in a visible, perceived" -- oh, I'm sorry.
3 Misread that.

4 "Did you wear a body cam that day? If so, would the
5 footage have captured and displayed the officers' sense of fear
6 in a visible, perceivable way?"

7 MR. MYHRE: Okay. While we anticipate the answer is
8 going to be no as to that, so we would object probably to the
9 speculation in the last part in terms of if he had one.

10 MR. MARCHESE: I think I asked him that; didn't I?
11 They are all the same.

12 MR. MYHRE: I'm assuming they want to know if he has
13 one.

14 THE COURT: If he has a body cam. Okay.

15 MR. TANASI: I think question is fine as is. I mean,
16 they are asking whether -- if he had a body cam, would that
17 have essentially helped them decide or determine or outline
18 what was happening in front of them. I think that would be
19 speculation.

20 THE COURT: "Would that have captured and displayed
21 the officers' sense of fear in a visible, perceivable way?"

22 THE REPORTER: Is "officers" plural or possessive?

23 THE COURT: It's not grammatically correct that they
24 are referring to officers plural, possessive. Well, I agree.
25 It's too speculative.

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1 MR. MYHRE: Okay.

2 MR. TANASI: Thank you.

3 (End of sidebar.)

4 THE COURT: All right. So, I am going to read to you
5 some jury questions. I will read them into the record. But
6 when you respond, you may go ahead and turn to the jury,
7 because these are not my questions. These are really the
8 jurors' questions. Okay?

9 THE WITNESS: Yes, Your Honor.

10 THE COURT: Thank you.

11 Jury Note No. 76, "When you seen the subject, Shotgun
12 Guy, pacing back and forth, did he appear excited, or mad, or
13 another emotion?"

14 THE WITNESS: I think everybody on that -- everybody
15 in the entire situation was excited, mad. I mean, he seemed
16 like he was amped up would be my -- how he looked. He was
17 amped up like he was at something important.

18 THE COURT: Okay. Jury Note No. 77, has three
19 questions. The first one is: "Officer, from the distance of
20 your post, how were you able to see through the southbound
21 Jersey barriers, that are cement, to the northbound Jersey
22 barriers, that are cement, and see persons and what they are
23 doing?"

24 THE WITNESS: Those -- the topographical views don't
25 show it. Those are the individuals I saw. I don't know how

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1 the layout of the land goes, but I was able to see those
2 subjects on the northbound bridge, and they were able to see
3 us.

4 I can't explain how I could -- because, when I even
5 see the pictures, the topographical and how they show it, it's
6 not the perspective that I had at that wash. I can guarantee
7 you that I saw those subjects on that northbound bridge.

8 THE COURT: And so are you seeing through the cement
9 barriers, I think is the question. There may or may not be a
10 clarification here that needs to be made.

11 THE WITNESS: I believe how it was -- the bridge and
12 the layout of the land is, the northbound bridge is higher than
13 the other bridge, and that's how I believe we were able to see.

14 I was not a physics major or anything like that, so I
15 apologize that I can't articulate it better.

16 THE COURT: So, there's an angle is what you are
17 saying. There's angle.

18 THE WITNESS: Yes.

19 THE COURT: And that not everything is the same.

20 THE WITNESS: I believe that's how we were able to
21 see them. At the time, I was just viewing people. I don't
22 know how we were able to see them, but I could see them. I
23 guarantee you that.

24 THE COURT: Okay. Question No. 2 is: "If you had a
25 clear shot, would you have taken it knowing that you had fellow

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1 officer, NHP, on that overpass?"

2 THE WITNESS: If you say a clear shot, we were not
3 taking fire at that time. I would not have initiated fire into
4 that crowd due to the amount of protesters. If I was taking
5 fire, I didn't see any NHP around those three subjects in the
6 center of the bridge. And I -- if I knew there was a clear
7 shot, and there was a danger that other officers were being
8 shot at, and I felt I could account for my round, I would have
9 shot to stop.

10 THE COURT: All right. No. 3 is: "Can you --
11 can" -- I'm sorry -- "Can we the jury ever see what the officer
12 is testifying to in distance, not up close, standing over them,
13 or from 2,000 feet in the air?"

14 So, I'm going to answer that question for you. In
15 many of our cases, we don't have photos, and we don't have
16 video. And the testimony is based on sometimes just documents
17 and testimony.

18 In this case, we do have photos, and we do have
19 videos, but it is unusual to have photos and videos of
20 everything. And in this case, the attorneys are doing the best
21 they can to go through all the photos and videos that were
22 taken that day by various and sundry people to show you the --
23 the views that will be helpful to you.

24 But it would be unreasonable to believe that they can
25 provide a view of every single thing that happened from every

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1 single witness's point of view. That's not a reasonable
2 expectation so, please don't expect that.

3 Jury Note No. 78 is two parts. The first part is:
4 "You indicated April 12th, 2014, the protest was the more --
5 most fear that you experienced in your career. Can you please
6 explain?"

7 And so we don't -- we don't need a narrative, not a
8 very long answer, but rather, as succinctly as you can, why did
9 you say that this was the most fear that you experienced in
10 your long career?

11 THE WITNESS: In law enforcement, I have never been
12 in a fatal funnel like that with American citizens pointing
13 guns at me. I was -- there was the possibility that I would
14 have to engage another American citizen with -- within a
15 protest, and I feared that.

16 I mean, my interactions have been with -- with people
17 that are drug smugglers, you know, people that are felons. I
18 had American citizens pointing guns at me, pointing guns at my
19 brothers and sisters. That was the fear.

20 I mean, they were -- again, they -- we as federal
21 officers represent the government. Even if they don't believe
22 that, they have the right to protest us. But when you point
23 guns during a protest, at federal officers, that no longer
24 becomes a protest. That becomes direct assault on the flag.
25 This country --

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1 MR. TANASI: Objection.

2 MR. MARCHESE: Objection. Nonresponsive.

3 THE COURT: All right. So, I think that you've made
4 your point.

5 The next part of the question is: "In your opinion,
6 any individual -- is any individual that carries a weapon
7 considered a threat. And, if so, why?"

8 THE WITNESS: Not at all. I contact people
9 constantly with firearms. I carry a firearm. My wife carries
10 a firearm. Almost everybody I know carries a firearm.
11 Carrying a firearm doesn't mean you are a bad person. This is
12 America. We have the right to have a firearm.

13 MR. MARCHESE: Objection. Nonresponsive.

14 THE COURT: All right. So, the question was: "So is
15 it -- do you consider everyone who carries a weapon a threat?"

16 THE WITNESS: Not at all. When they point it at me,
17 then they become a threat.

18 THE COURT: Okay. And then Jury Note No. 79 asks:
19 "If any shooting would have started, would you and your fellow
20 officers felt that you were in real -- you and your fellow
21 officers felt that you were in real danger, would you return
22 fire?"

23 So, obviously, you can't testify as to what your
24 fellow officers would or would not have felt. But from your
25 point of view, if any shooting would have started and you felt

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1 that you were in real danger, would you have returned fire?

2 THE WITNESS: If I had the ability -- if we were
3 taking fire and I had the ability safely to stop one of those
4 subjects with my firearm, yes, I would have. I would have
5 returned fire, as long it was in a safe manner that I could
6 account for that round.

7 If they were in the open with nobody around, and they
8 were firing on my brothers or sisters and myself, I would shoot
9 to stop.

10 THE COURT: All right. And Jury Note No. 80, I
11 think, has four questions. The first one is: "Do you feel
12 that the defendants' intent was to kill officers and agents on
13 the day in question?"

14 So, just your belief. Your fear, was it based on a
15 fear that the intent was to kill officers and agents on the day
16 in question?

17 THE WITNESS: Yes, it was. They pointed guns at us.

18 THE COURT: Okay. "Did agents or law enforcement
19 have guns pointed at the individuals that were armed on the
20 bridge in a standoff fashion?"

21 THE WITNESS: I can't testify to what the other the
22 agents and rangers have. But with the -- the individual
23 Shotgun Guy, yes, I did have my sights on him. He had pointed
24 his weapon at the wash towards the rangers and agents. And,
25 yes. I can't testify who the other rangers were pointing their

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1 guns at, but I was pointing my gun at him.

2 THE COURT: "Did the presence of women, children, and
3 countless witnesses lessen" -- like to make less -- the fear
4 of -- "the feeling of fear of losing your life at all?"

5 THE WITNESS: Actually, it increased the fear of my
6 loss. Because the whole thing is, is we started taking fire,
7 just like I've said before, I had to account for each one of my
8 rounds. I'm not about to shoot a woman and child. And where
9 they could have sprayed down on us as many rounds, they don't
10 have to account for their rounds.

11 I, in the end, have to account for -- if I have a
12 30-round magazine, everywhere one of those rounds go, I have to
13 account for. So, having those women and children there, I was
14 scared.

15 I'm starting to take fire, and a guy has women and
16 children around, am I going to take that shot? No. What
17 happens if I hit -- what happens if I miss? Hit a barricade --
18 hit the concrete barricade, and that ricochets and hits that
19 woman? What happens if it hits that child?

20 I mean, I was afraid. They were innocent people that
21 were doing what the Second Amendment allows us to do is
22 protest, but we had individuals within them pointing firearms
23 at us, taking their Second Amendment right away, because they
24 made it no longer a protest.

25 THE COURT: All right. The last question on Jury

Edwin Whitteaker - Cross

1 Note No. 80 is: "Did you wear a body cam that day?"

2 THE WITNESS: No, I did not have a body cam that day.
3 But after that, now I wear my body cam every day.

4 THE COURT: Jury Note No. 81: "Have you, prior to
5 your interviews with the prosecution and/or FBI, had any
6 conversation or other discussion with your professional
7 colleagues in regards to the events of April 11th through 13
8 and discussed your opinions and feelings?"

9 THE WITNESS: I discussed my opinions. I was upset
10 about it. I -- I've told my colleagues that it really put me
11 down. I was pretty depressed about it. And I have talked to
12 them about it, that American citizens pointed their guns at me.

13 These weren't drug smugglers. These weren't felons.
14 These weren't guys -- these were American citizens that decided
15 to go against us, us federal officers. So, I've discussed my
16 feelings, you know, and I think it's helped me work -- work
17 through some of the feelings I had.

18 I felt betrayed. Seriously, I felt betrayed by
19 Americans pointing guns at me like that. I'm used to being
20 down in the border and dealing with drug smugglers. Or when I
21 was with the ATF, felons. So, I needed to talk some of my
22 emotions out.

23 THE COURT: And the second part of Jury Note 81 asks:
24 "As a former marine and having served in the border patrol and
25 ATF, are you familiar with the concept of the incident command

Edwin Whitteaker - Cross

1 system and structure? Was this management system in place
2 during this event? And if the structure was not in place,
3 would having it activate -- would having it activate change
4 your experience?"

5 THE WITNESS: We had an incident command center. We
6 had an incident command. I came in later. I was called in off
7 of a leave, and I came down. But there was an incident command
8 structure set up.

9 THE COURT: All right. And then Jury Note No. 82
10 asks: "During your meetings with the prosecution, the FBI,
11 were you ever coached as to any keywords, terminology, or
12 behaviors to use as a witness in this proceeding?"

13 THE WITNESS: No, I wasn't coached at all. They went
14 over my testimony.

15 THE COURT: "During your period of observation, was
16 there haze, glare, or dust that affected your ability to
17 clearly view the people on the northbound bridge?"

18 THE WITNESS: There was dust caused by the -- there
19 was dust, people moving around, but I was clearly able to
20 identify them at certain points, most of the points.

21 I mean, I'm not going to say there wasn't dust.
22 There wasn't stress. There wasn't sweat in my eyes, but I am
23 able to clearly identify all the people that I identified in my
24 report.

25 THE COURT: And Jury Question No. 83 asks: "Will the

Edwin Whitteaker - Redirect

1 jury have access to the exhibits during deliberation?"

2 And the answer is yes, that any exhibit that has been
3 admitted will be provided to you during the deliberation
4 process, and you'll have access to them and time to see them
5 for a longer period of time than you have now. You are going
6 to have them for the entire time that you are deliberating.

7 Jury Note 84 asks: "What is the difference between a
8 rifle and a shotgun, and does it make a difference when
9 determining a degree of threat level that you experienced?"

10 THE WITNESS: They both have the same threat level.
11 I am not a gun expert. A rifle shoots a small round. A
12 shotgun doesn't have as much distance. The -- it depends on
13 who the shooter is. I am definitely not a -- a gun
14 connoisseur, but those rounds would kill me, either round.

15 THE COURT: And Jury Note No. -- oh, that is the last
16 one. All right.

17 Any follow-up by the government?

18 MS. AHMED: Your Honor, may I have a moment?

19 THE COURT: Yes.

20 (Pause in the proceedings.)

21 MS. AHMED: Your Honor, I do have some redirect.

22 THE COURT: Go ahead. Thank you.

23 REDIRECT-EXAMINATION

24 BY MS. AHMED:

25 Q. Ranger Whitteaker, you were asked some questions about

Edwin Whitteaker - Redirect

1 what you could see of the bridges from the position that you
2 were in. Do you recall that?

3 A. Yes, I do, ma'am.

4 Q. Now, just to clarify, was your position on the same level
5 as the concrete barriers of the bridges or higher or lower?

6 A. I believe we were lower. I don't really -- I saw those
7 individuals. I saw everything on the bridge. We were lower
8 down in the wash looking that way.

9 Q. And you were gesturing upward with your hands. Were you
10 looking up?

11 A. Yes.

12 MS. AHMED: Your Honor, may I publish what's been
13 previously admitted as Exhibit 157?

14 THE COURT: Yes, you may.

15 BY MS. AHMED:

16 Q. Now, Ranger, is this -- the vehicles at the bottom of the
17 picture, do you see them?

18 A. Yes.

19 Q. And at one point were you by those vehicles?

20 A. Yes, I was.

21 Q. And at some points you were further back?

22 A. Yes, I was.

23 Q. But when you were further back, were you on the same level
24 or a different level?

25 A. I'm not sure, ma'am.

Edwin Whitteaker - Redirect

1 Q. I mean relatively same level or were you --

2 A. Yes, ma'am.

3 Q. Now, at any point, were you at the same level as the
4 bridges themselves?

5 A. No, ma'am.

6 Q. So, when you were looking at bridges, both the south and
7 the north, again, you would -- what direction would you be
8 looking?

9 A. I would be looking up, ma'am.

10 Q. And so did the southbound bridge interfere with your view
11 of the northbound in any way?

12 A. No, it did not, ma'am.

13 Q. You can take that down. Thank you.

14 You were also asked some questions about the fear
15 that you had that day. Do you recall those questions?

16 A. Yes, ma'am.

17 Q. Now, the -- just so that the jury understands clearly, did
18 you have any fear for your physical safety and that of your
19 fellow officers?

20 A. Oh, definitely. I mean, we were in a horrible position.
21 I mean, they could have rained down heck on us.

22 Q. So, was that fear specific to the people that were on the
23 northbound bridge that you identified?

24 A. Yes, they had the best position. They had cover with the
25 cement, they had a higher elevation than us, and then we were

Edwin Whitteaker - Redirect

1 stuck in a wash. So, they had a far superior position than we
2 did.

3 Q. Now, you were also asked about the difference between a
4 rifle and a shotgun. Do you recall that?

5 A. Yes.

6 Q. On direct examination, do you recall testifying as to the
7 person -- the first person on the bridge that posed a threat?
8 Do you recall that?

9 A. Yes.

10 Q. And you were looking at that person with your naked eye
11 initially?

12 A. Yes.

13 Q. And you thought they had a -- some kind of long gun; is
14 that right?

15 A. That is correct.

16 Q. And so you initially thought it might have been a rifle;
17 is that correct?

18 A. Yes. And when I got my binoculars, I believed that it was
19 a shotgun.

20 Q. So, you weren't confused about what they had. But when
21 you got your binoculars, you could simply see it better; is
22 that correct?

23 A. That is correct.

24 Q. And when you saw that it -- it appeared to a shotgun, that
25 was frame of reference --

Edwin Whitteaker - Redirect

1 MR. MARCHESE: Objection. Leading.

2 MR. TANASI: Leading.

3 BY MS. AHMED:

4 Q. And when you saw that it was a shotgun --

5 MR. MARCHESE: Objection. Leading.

6 BY MS. AHMED:

7 Q. When you saw that it was -- Your Honor, may I --

8 THE COURT: She's withdrawing the question and
9 clarifying it in --

10 MS. AHMED: Thank you.

11 THE COURT: -- a non-leading way. Go ahead.

12 BY MS. AHMED:

13 Q. When you saw it was a shotgun, what, if anything, did that
14 help you do in terms of that person on the bridge?

15 A. I referenced him as Shotgun Guy.

16 Q. Now, you were also asked about whether or not you were
17 coached in any way by the prosecution. Do you recall that?

18 A. Yes.

19 Q. At any time, whether it was the FBI or one of the
20 prosecutors, have you ever been asked to do anything other than
21 tell the truth to the jury?

22 A. No, that's all I've been asked to do is tell the truth.

23 Q. And were words ever put in your mouth?

24 A. Words were never put in my mouth.

25 MS. AHMED: Your Honor, can I have the Court's

Edwin Whitteaker - RX

1 indulgence?

2 THE COURT: Yes.

3 (Pause in the proceedings.)

4 MS. AHMED: Nothing further. Thank you.

5 THE COURT: Any redirect?

6 MR. TANASI: Briefly, Your Honor. Thank you.

7 THE COURT: Go ahead, Mr. Tanasi, on behalf of
8 Defendant Stewart.

9 RECCROSS-EXAMINATION

10 BY MR. TANASI:

11 Q. Okay, sir. You just were asked about the folks on the
12 northbound bridge and their intent. Do you remember those
13 questions?

14 A. Yes, sir.

15 Q. Okay. And you testified that you believed that their
16 intent was to kill; right?

17 A. They were pointing firearms at me, sir.

18 Q. Understood. And you took that one step further and said
19 that that means that, according to you, that's their intent to
20 kill; right?

21 A. That -- I believe it could -- was their intent in the end
22 was to kill us.

23 Q. That's what you believe, but you don't know for sure;
24 right?

25 A. I do not know for sure, but that's what I believe, sir.

Edwin Whitteaker - RX

1 Q. That's what you believe. You are essentially guessing;
2 correct?

3 MS. AHMED: Objection. Argumentative.

4 THE COURT: Sustained. It went to his fear, not to
5 whether or not the defendants did or did not actually intend.
6 The question was whether the fear was based on a belief that
7 the pointing of the gun was meant to kill.

8 BY MR. TANASI:

9 Q. No shots were fired that day; correct, sir?

10 A. That is correct, sir.

11 Q. All right. You testified that part of your fear was that
12 the folks on the northbound bridge, they had the high ground;
13 right?

14 A. That is correct, sir.

15 Q. Okay. Were you aware that the FBI was flying a plane
16 above you?

17 MS. AHMED: Objection. Argumentative and relevance.

18 MR. TANASI: Your Honor, it goes to his fear.

19 THE COURT: What was the question? Whether he was
20 aware there was a plane?

21 MR. TANASI: A plane flown by the FBI in the sky
22 above him.

23 THE COURT: He can answer that question. I don't --
24 I don't recall him saying that he knew who was flying the
25 plane, but that doesn't matter. He can -- he can answer that

Edwin Whitteaker - RX

1 question.

2 THE WITNESS: I had no idea that an FBI plane was
3 flying overhead, sir.

4 BY MR. TANASI:

5 Q. That wasn't communicated to you?

6 A. It could have been communicated, but there was a lot of
7 radio chatter and a lot of stuff going on. I knew of no FBI
8 plane flying over, sir.

9 Q. You had indicated that you spoke with some others, some
10 other rangers and potentially BLM agents prior to today about
11 your events and what took place on the 12th; fair?

12 A. That is fair to say, sir.

13 Q. Okay. Did you talk to Agent or Ranger Swanson?

14 A. I have talked to Ranger Swanson before.

15 Q. Okay. Did you talk to him about the events on the 12th
16 after?

17 A. Not really. He wasn't at my field office. I talked to
18 the people at the field office that I worked with. I've talked
19 to Scott, you know, maybe I asked him how he was doing.

20 Q. Did you talk to him about what happened on the 12th, sir?

21 MS. AHMED: Objection, Your Honor. I believe the
22 witness said he talked about his feelings.

23 MR. TANASI: He also said "Not really," Your Honor.

24 THE COURT: So what is the objection? He's already
25 responded to the question?

Edwin Whitteaker - RX

1 MR. TANASI: Your Honor, I'm trying to drill down on
2 the "not really," whether it's yes or no. Whether he spoke
3 with Agent Swanson or not about the events on the 12th.

4 THE COURT: He can answer that question.

5 THE WITNESS: I most likely talked to him about my
6 feelings. I mean, I know he wasn't one of the primary guys I
7 talked to. The primary people I talked to were at my field
8 office, but they were about my feelings about what went on.

9 BY MR. TANASI:

10 Q. Understood. And did you talk about your feelings about
11 what went on also with Mr. Whitworth?

12 A. I don't believe so.

13 Q. Did you speak at all with Agent Cox, Ranger Cox?

14 A. I believe he's dead, sir.

15 Q. You believe Ranger Cox is dead?

16 A. Yeah. What's his name? What's his full name?

17 Q. Sean Cox?

18 A. Yeah, I think he's dead, sir. I really wasn't too
19 friendly with him.

20 Q. Did you speak with Ranger Burke?

21 A. No, sir.

22 Q. Okay. Did you speak at all with Guss Warr?

23 A. I don't know who Guss Warr is, sir.

24 Q. Did you speak at all with Ranger/Agent Sully?

25 A. I don't know who that is, sir.

Edwin Whitteaker - Cross

1 Q. Ranger or Agent Martinez? Did you speak with him?

2 A. No, I'm not close to Marty.

3 Q. You are not close to Martin?

4 A. Marty.

5 Q. Marty?

6 A. I believe it's Marty Martinez.

7 Q. Did you speak with Marty Martinez about the events that
8 took place on the 12th?

9 A. Nope.

10 MR. TANASI: All right. Thank you, sir. Pass the
11 witness.

12 THE COURT: Cross, Mr. Marchese, on behalf of
13 Mr. Parker?

14 CROSS-EXAMINATION

15 BY MR. MARCHESE:

16 Q. You were asked a question by the jury in reference to
17 Shotgun Guy and his intentions or something along those lines.
18 Do you remember those lines of -- that question?

19 A. Yes, I think I answered that, sir --

20 Q. Yes.

21 A. -- previously with the other attorney.

22 Q. Okay. And you had mentioned you weren't sure. And we've
23 had some questions about that and answers whether it was a
24 shotgun or a rifle. Do you remember that?

25 A. Yes, I remember that, sir.

Edwin Whitteaker - RX

1 Q. Okay. And you just answered something to the effect of
2 that didn't necessarily change your feeling or your fears
3 whether it was a shotgun or a rifle?

4 A. No, because a shotgun and rifle can do the same damage.
5 That shotgun would have been able to reach out to the
6 individuals, the park service guys that were in the front.

7 Q. What was your distance to the northbound bridge when you
8 were viewing with your binoculars?

9 A. I think we have gone over this before, sir. I am not sure
10 of the distance, sir.

11 Q. Okay. Well, you don't know.

12 A. I'm not sure of the distance, sir.

13 Q. Okay. Would you have been able to make that shot with
14 your AR?

15 A. Yes, I would have, sir.

16 Q. Okay. Would someone with a shotgun be able to make that
17 shot?

18 A. I don't believe the individual with the shotgun could have
19 reached me. But as I just said, he could reach the individuals
20 that were the park service employees.

21 MR. MARCHESE: Okay. No, further questions.

22 THE COURT: Mr. Leventhal or Mr. Perez? All right.

23 On behalf of Mr. Drexler.

24 RE-CROSS-EXAMINATION

25 MR. LEVENTHAL: Could you bring up 17, Brian?

Edwin Whitteaker - RX

1 Q. You were asked some questions regarding the high ground.
2 Do you remember?

3 A. Yes, sir.

4 Q. Okay. Go to 29:05. Play it to 29:10 please. Just go to
5 10. Just play it.

6 (Exhibit 17 being played.)

7 Okay. Stop. This is the northbound bridge; correct?

8 A. That is correct, sir.

9 Q. Southbound bridge; correct?

10 A. That is correct, sir.

11 Q. Anybody on that bridge?

12 A. Not at that point, sir.

13 Q. You see people down there; correct?

14 MS. AHMED: Your Honor, I would object as to
15 misleading as to the evidence. He has not established a time
16 with this witness, and the witness was not in the wash at this
17 time.

18 There's a time stamp on here as 11:39, and
19 Mr. Leventhal knows this witness was not in the wash at this
20 time.

21 MR. LEVENTHAL: Thank you. Just showing that they
22 didn't always have the high ground.

23 THE COURT: Excuse me, Mr. Leventhal?

24 MR. LEVENTHAL: I said I'm just showing the relevance
25 that's showing that they didn't always have the high ground.

Edwin Whitteaker - RX

1 They didn't always the have the high ground. This witness has
2 testified that they had the high ground.

3 THE COURT: All right, then say that. The relevance
4 is --

5 MR. LEVENTHAL: I apologize. The relevance is, is
6 that they didn't always have the high ground. That's all.
7 Thank you.

8 THE COURT: All right. Mr. Perez.

9 RECROSS-EXAMINATION

10 BY MR. PEREZ:

11 Q. Just one or two questions. When you were looking through
12 your binoculars up at the northbound bridge, where were you
13 exactly?

14 A. I was in the wash, sir.

15 Q. Well, I mean, there's two sets of vehicles. There's the
16 closer BLM vehicles.

17 A. I have gone over this within testimony. I was in the
18 second group of vehicles, not the group of vehicles with the
19 park service, sir.

20 Q. Okay. And I just want to make sure that the individual
21 that you saw walking behind the gentleman with the tactical
22 vest and the sunglasses was approximately 100 yards. That
23 would be to the south of the bridge; correct?

24 A. I'm confused by your question. I said --

25 Q. Well --

Edwin Whitteaker - Further Direct

1 A. -- when I saw him, he was by the tree, which was to the
2 right of the pillar, Shotgun and Crack Guy. It wasn't
3 originally where you showed me the photo -- I was shown the
4 photo by the prosecution and you. It was by that tree.

5 MR. PEREZ: By that tree. Okay. Thank you. I have
6 nothing further.

7 THE COURT: Any redirect?

8 MS. AHMED: Just one question, Your Honor.

9 FURTHER REDIRECT EXAMINATION

10 BY MS. AHMED:

11 Q. Ranger Whitteaker, when you were asked about the other
12 rangers that you had spoken to, you were asked about a Ranger
13 Cox. So, do you recall that?

14 A. Yes.

15 Q. And Ranger Cox, the one you are referring to that's now
16 passed away, that was a BLM ranger; right?

17 A. A BLM K9 handler that passed away.

18 Q. Are you familiar with anyone at the National Park Service
19 that was involved in the impoundment that also has the name of
20 Cox?

21 A. No, I wasn't familiar with any of the park service
22 individuals.

23 MS. AHMED: Your Honor, nothing further. Thank you.
24 Thank you, Ranger Whitteaker.

25 THE COURT: Anything else from the defense?

Maurice Martinez - Direct

1 MR. TANASI: None from Stewart, Your Honor.

2 MR. MARCHESE: No, Your Honor. Sorry.

3 MR. LEVENTHAL: No, Your Honor.

4 MR. PEREZ: No, Your Honor.

5 THE COURT: All right. Well, thank you. BLM Ranger
6 Whitteaker, you are excused. Please be careful on the way down
7 with the steps.

8 Does the government want to call its next witness?

9 MS. CREEGAN: Yes, Your Honor. The United States
10 calls Ranger Maurice Martinez.

11 THE COURT: Good afternoon, Ranger Martinez. Please
12 go ahead and remain standing.

13 MAURICE MARTINEZ,
14 having been duly sworn, was examined and testified as follows:

15 COURTROOM ADMINISTRATOR: State your full name and
16 spell it for the record.

17 THE WITNESS: Maurice Martinez, M-A-R-T-I-N-E-Z.

18 DIRECT EXAMINATION

19 BY MS. CREEGAN:

20 Q. Thank you. And Ranger Martinez, could you pull that
21 microphone as close as you can?

22 A. Uh-huh.

23 Q. Thank you, sir. Now, Ranger Martinez, what is your
24 current employment, job?

25 A. I'm a law enforcement ranger in Anchorage, Alaska.

Maurice Martinez - Direct

1 Q. And with what agency?

2 A. BLM.

3 Q. How long have you been a ranger with the Bureau of Land
4 Management?

5 A. 14 years.

6 Q. Are you a sworn federal law enforcement officer?

7 A. Yes.

8 Q. Is there any training that you have to complete in order
9 to become a law enforcement ranger with the Bureau of Land
10 Management?

11 A. Yes. We go to the Federal Law Enforcement Academy, and
12 there we get trained in firearms, driving, defensive tactics,
13 medical training, report writing, legal.

14 Q. Did you have any law enforcement experience before
15 becoming a Bureau of Land Management ranger?

16 A. Yes. I started my career with DOD as security police in
17 Tooele, Utah, working for -- there's a base there that has
18 chemical weapons. Then I moved on to Department of Commerce,
19 in Colorado, and I was there for four years approximately.

20 After 9/11, I was relocated to Atlanta to work for
21 the FAA and Department of Homeland Security as an air marshal,
22 and I did that for two years.

23 Q. All together, how much law enforcement experience do you
24 have?

25 A. It is 23 years.

Maurice Martinez - Direct

1 Q. Do you have any military experience as well?

2 A. Yes, four years Navy.

3 Q. And I won't ask you to go through it all, but fair to say
4 that you've also had some training in those other law
5 enforcement positions as well?

6 A. Yes. I have been through the Federal Academy twice and
7 also went through the Air Marshal Academy.

8 Q. Are you familiar with an impoundment operation that
9 occurred in Bunkerville on April 2014?

10 A. Yes.

11 Q. Were you assigned to that operation in your official
12 capacity as a law enforcement ranger?

13 A. Yes.

14 Q. And were you present at the incident command post or
15 impound site on April 12th, 2014?

16 A. Yes.

17 Q. What were your duties at that time?

18 A. I was doing security for the ICP and assigned to Post 1.
19 That's the front gate.

20 Q. And Post 1, when you say it's the front gate, is that
21 where it joins the southbound lane of I-15?

22 A. Yes.

23 Q. Did there come a time that you moved to Post 2?

24 A. Yes.

25 Q. And what was the reason for that?

Maurice Martinez - Direct

1 A. It was my understanding that there were protesters that
2 were coming down the wash, which is the location for Post 2.
3 It's right over by the overpasses. And so I knew that they
4 were going to need more support.

5 Q. Was there anything in particular that there was concern
6 about with regard to needing to be securing Post 2?

7 A. Well, we -- we didn't know how many people there were
8 going to be. But if there's a large crowd, then you want more
9 than just two rangers down there, so --

10 Q. Did there come a time that you actually did arrive at Post
11 2?

12 A. I'm sorry?

13 Q. Did there come a time that you did arrive at Post 2?

14 A. Yes.

15 Q. Okay. And when you got there, about how close were you to
16 that gate that's under the southbound lane of I-15?

17 A. Roughly 100 yards.

18 Q. And is that behind or to the north of that gate?

19 A. Yes.

20 Q. So, you weren't one of the front few vehicles that was
21 right behind the gate?

22 A. Correct.

23 Q. Okay. And from your position about 100 yards back from
24 that gate, were you able to make observations from there about
25 people that actually did arrive in the wash?

Maurice Martinez - Direct

1 A. Yes.

2 Q. And did you do that with the aid of any device or any
3 instrument?

4 A. Yes. I had some binoculars, and I used the binoculars to
5 observe the crowd in the wash, and I was mostly looking for
6 weapons.

7 Q. What was the magnification level on your binoculars if you
8 can remember?

9 A. 8X.

10 Q. I'm sorry?

11 A. 8.

12 Q. Is that 8 times -- just to understand, what does that
13 mean?

14 A. It's 8 times, yes.

15 Q. Okay. And did you observe people with firearms?

16 A. Not in the wash. I continued glassing and --

17 Q. And just for the jury to understand, what does glassing
18 mean?

19 A. Just looking through the binoculars, observing. So, as I
20 was glassing, I -- I looked at the overpass and specifically
21 the northbound lane. And I saw someone in a brown shirt and
22 black vest. I wasn't sure if that was just a vest or some sort
23 of body armor. I assumed it was body armor. He also had a
24 dark baseball cap and a white patch on the front.

25 Q. And what drew your attention to this individual?

Maurice Martinez - Direct

1 A. He was carrying a AR/AK-type long gun, rifle. And it was
2 in front. And he was just kind of pacing back and forth and
3 sort of fidgeting with the rifle.

4 Q. When you say that he was fidgeting with the rifle, what
5 does that mean?

6 A. He was moving it away from his body and -- and I did
7 observe him one time pull it up like this, and -- as if he were
8 checking the sights or checking the optic. I couldn't tell if
9 there was an optic on the rifle. But as he did that, and that
10 was -- that put the muzzle in the -- basically pointing
11 downrange toward law enforcement. So --

12 Q. And, so, when you say "like this," I'm just going to make
13 a verbal record. You mean sighting with the weapon in a sort
14 of downward trajectory down lower than himself?

15 A. Correct.

16 Q. Okay. About how long did you observe this individual?

17 A. I's not sure exactly the time.

18 Q. Would it have been seconds, minutes, hours?

19 A. Oh, definitely minutes, but at least 30 minutes. But we
20 were watching the entire -- that whole overpass area. It
21 wasn't just limited to one individual, so --

22 Q. You mentioned that you saw this individual pacing and at
23 one point looking downrange. Is there anything else that this
24 person did that caught your attention?

25 A. Yes. At one point, he -- I looked up, and I didn't see

Maurice Martinez - Direct

1 him. And so I kept looking. And then I saw him pop up from
2 behind one of the Jersey barriers. So I thought, "Well, he
3 must have gotten tired, and he was sitting down taking a
4 break."

5 And he went back down, and I happened to see --
6 something caught my eye, and I saw a shadow from between the
7 gap of the two Jersey barriers that had a -- I'm not sure
8 exactly how far apart they were, but a couple inches maybe.

9 And I saw a shadow in there, and I could see that he
10 was putting his barrel between that gap. And so I figured out
11 that he was -- must have been lying prone and aiming in on the
12 officers that were downrange from his gun. So --

13 Q. So, I'm going to ask you about both of these things. So,
14 when you first saw him doing the downrange motion, did you have
15 concern for your safety or the safety of other officers at that
16 point?

17 A. Yes.

18 Q. Why was that?

19 A. Well, because he was pointing a gun at law enforcement.
20 And that's -- that's a big threat.

21 Q. When you saw this shadow in the gap between the Jersey
22 barriers, did you have concern at that point?

23 A. Yes.

24 Q. And why was that?

25 A. For the same reason. It shows intent that -- to -- to

Maurice Martinez - Direct

1 commit a violent act.

2 Q. That's how you interpreted it?

3 A. That's how I interpreted it, yes.

4 Q. Can we bring up for the witness, please, what's been
5 already admitted as Government's Exhibit 157?

6 THE COURT: Yes.

7 BY MS. CREEGAN:

8 Q. And Ranger Martinez, you mentioned you had some
9 binoculars. So, you are a little further back from this, but
10 were you able to see what's depicted in Exhibit 157?

11 A. Yes.

12 Q. Do you see, in this picture, where you observed this
13 person with the dark hat with the white patch?

14 A. Well, it's a little difficult to see in this picture.
15 It's also at a different angle from where we were. We were
16 more toward the right. But where the gap is, is pretty much
17 above the pillar.

18 If you look at the far pillars, on the far overpass
19 there, the gap is -- is right around there. It's -- I cannot
20 see it from here on this picture here. So --

21 Q. Can you circle the area where you saw it?

22 A. Yes.

23 Q. And you can touch the screen and circle on that screen
24 right there.

25 A. Okay.

Maurice Martinez - Direct

1 Q. And just to orient ourselves, what are these -- on the
2 right side of the screen, we see that there are these three
3 pillars. What are those?

4 A. Those pillars are for the southbound overpass.

5 Q. And which overpass is the one that you just placed a
6 circle on?

7 A. The northbound.

8 Q. Okay. And can we please zoom in on the area where Ranger
9 Martinez has indicated?

10 Okay. And Ranger Martinez, with this a little bit
11 more zoomed in, are you able to see the crack that you were
12 talking about or the gap that you were talking about?

13 A. Yes.

14 Q. And can you circle that, please? And the witness has
15 circled the center of this screen right over the pillar at a
16 small gap area. Thank you. We can take that down.

17 Can we bring up, for the witness only, Exhibit 158,
18 please.

19 And Ranger Martinez, is this another picture of that
20 area on April 12, 2014?

21 A. Yes.

22 Q. Does this fairly and accurately depict what you yourself
23 saw on April 2014?

24 A. Yes.

25 MS. CREEGAN: Your Honor, the government moves to

Maurice Martinez - Direct

1 admit Exhibit 158.

2 THE COURT: Any objection to Exhibit 158?

3 MR. TANASI: None from Stewart.

4 MR. MARCHESE: None from Parker.

5 MR. LEVENTHAL: No, Your Honor.

6 MR. PEREZ: None from Lovelien.

7 THE COURT: Exhibit 158 will be admitted. You may go
8 ahead and publish to the jury.

9 (Exhibit 158 admitted.)

10 MS. CREEGAN: Thank you, Your Honor.

11 Q. And Ranger Martinez, I know this is a little bit different
12 of a perspective, but do you see that same area where you
13 observed the individual with the black hat with the white
14 bill -- white face in the picture as well?

15 A. I see the gap, if that's what you're asking. I'm not sure
16 if I see the individual we're talking about.

17 Q. Thank you for clarifying. Do you see the area where you
18 saw the individual?

19 A. Yes.

20 Q. Could you circle that, please?

21 And the witness has circled an area in the top left
22 corner of the picture.

23 Could you please zoom in on that?

24 And Ranger Martinez, in this zoom up, can you also
25 see that area where you saw the individual?

Maurice Martinez - Direct

1 A. Yes.

2 Q. Could you circle that, please? Thank you. You can take
3 that down.

4 And Ranger Martinez, is the person with the black hat
5 with the white face the only person that you saw with a firearm
6 on the northbound bridge?

7 A. No.

8 Q. Did you see another individual that had a blue T-shirt?

9 MR. LEVENTHAL: Objection. Leading.

10 MR. TANASI: Stewart joins.

11 THE COURT: Sustained.

12 BY MS. CREEGAN:

13 Q. You saw a few individuals, but is there anybody who stood
14 out in your opinion?

15 A. Yes.

16 Q. Who stood out to you?

17 A. Well, the second person that I noticed was wearing a gray
18 T-shirt and a AR/AK-type long gun. And the third person I saw
19 was wearing a blue T-shirt and appeared to be carrying a
20 shotgun.

21 Q. And the person with the blue T-shirt and the shotgun,
22 what, if anything, did you observe them to do?

23 A. I'm sorry. I didn't hear that.

24 Q. Thank you. Please let me know if you can't hear me.

25 What did you observe that individual with the blue

Maurice Martinez - Direct

1 T-shirt and the shotgun to do?

2 A. He was just standing, you know, walking around, not doing
3 much really.

4 Q. What -- how did he appear to have his firearm when you
5 observed him?

6 A. It was pointed down.

7 Q. Was it in front or slung in back?

8 A. In front.

9 MR. TANASI: Objection. Asked and answered, Your
10 Honor.

11 THE COURT: Overruled. He can clarify.

12 BY MS. CREEGAN:

13 Q. Sorry. Just in case they didn't hear that, where did you
14 observe the gun to be on his person?

15 A. It was in front.

16 Q. Thank you. Can we bring up Exhibit 14? And stopping it
17 there.

18 (Exhibit 14 being played.)

19 And stopping Exhibit 14 at 7 seconds, bringing your
20 attention to this individual who's in the front of the video,
21 is this individual consistent with one of the persons that you
22 just described?

23 A. Yes.

24 Q. Which person?

25 A. The first person that I observed who had the AR/AK-type

Maurice Martinez - Direct

1 rifle and a brown shirt and black vest.

2 Q. And taking your attention to the individual on the left
3 side of this frame in Exhibit 14 at 7 seconds, is this person
4 consistent with one of the individuals that you saw?

5 MR. TANASI: Objection. Leading.

6 THE WITNESS: Yes, it is.

7 THE COURT: It's not leading. Overruled. He may
8 answer the question. The form was proper.

9 BY MS. CREEGAN:

10 Q. So, sorry. Was this person on the left consistent with
11 one of the persons that you saw?

12 A. Yes.

13 Q. Which person was that?

14 A. The individual that you last asked me about, that I said
15 was just standing with his shotgun pointed down.

16 Q. Where did you see this -- when you saw -- when you saw the
17 person with the blue T-shirt on the day, where did you see them
18 in relation to the person with the black hat?

19 A. They were to -- they were to the right, from our
20 perspective, to our right.

21 Q. Is that looker's right?

22 A. Yes, looker's right.

23 Q. And that would be to the right of that area you indicated
24 before?

25 A. Correct.

Maurice Martinez - Cross

1 Q. And Ranger Martinez, did this person give you concern?

2 MR. TANASI: Objection. Leading.

3 THE WITNESS: Yes. Not as much, but --

4 THE COURT: I didn't hear the objection.

5 MR. TANASI: It was leading, Your Honor, again.

6 THE COURT: Overruled. And he's already answered the
7 question.

8 BY MS. CREEGAN:

9 Q. So, Ranger Martinez, after you observed this individual
10 with the blue T-shirt and the shotgun, did you have a concern
11 to your safety?

12 A. Yes.

13 Q. Why was that?

14 A. Well, typically, in protests, you don't bring long guns.

15 MS. CREEGAN: Court's indulgence.

16 (Pause in the proceedings.)

17 MS. CREEGAN: Thank you, Your Honor. Nothing
18 further.

19 THE COURT: Cross.

20 MR. TANASI: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. TANASI:

23 Q. Okay, sir. Good afternoon.

24 A. Good afternoon.

25 Q. I'm Rich Tanasi. I represent Steven Stewart. I have a

Maurice Martinez - Cross

1 few questions for you on cross. All right?

2 A. Sure.

3 Q. Okay. At some point, you start your day on the 12th off
4 at Post 1?

5 A. Yes.

6 Q. Okay. And then you eventually make your way down to Post
7 2; right?

8 A. Correct.

9 Q. Going back to Post 1, approximately 11:20, is that when
10 you roughly arrived?

11 A. Correct.

12 Q. Okay. And when you arrive at Post 1, you run into two Las
13 Vegas Metropolitan Police Department officers; correct, at Post
14 1?

15 A. At Post 1, yes.

16 Q. Okay. And those officers, they tell you to put your long
17 guns --

18 MS. CREEGAN: Objection.

19 BY MR. TANASI:

20 Q. -- away; correct?

21 MS. CREEGAN: Relevance. Hearsay.

22 MR. TANASI: Your Honor, it goes to, A, effect on the
23 listener. That's why it's not hearsay. It's not being offered
24 for the truth, and --

25 THE COURT: Let's go to sidebar.

Maurice Martinez - Cross

1 (Sidebar.)

2 THE COURT: Go ahead and make your objection.

3 MS. CREEGAN: So, Your Honor, the objection is
4 relevance and hearsay. He's at Post 1. Metro takes over the
5 Post, and they tell him that -- to sling their long guns, which
6 they don't, because they perceived the threat to be too great.

7 And I assume that the purpose of this question is
8 solely say, I don't know, because I didn't follow Metro's
9 instructions, that's somehow bad.

10 MR. TANASI: That's the wrong assumption, but go
11 ahead.

12 THE COURT: So, what is the relevance?

13 MR. TANASI: Okay. The relevance, Your Honor, again
14 it's the circumstance of fear. You have Metro saying "Put your
15 guns away. There is no need for them." That's, at least, the
16 arguments. "Put your guns away," and they don't follow that
17 order.

18 Again, it goes back to a circumstance of fear. You
19 have different law enforcement agencies acting differently on
20 the day in question. You have Metro who is clearly not as
21 afraid as these agents are when they come in and talk about how
22 afraid they are, because Metro is instructing them to put their
23 guns away.

24 I am not offering it for the purpose of saying they
25 are not listening to Metro or they are somehow becoming more

Maurice Martinez - Cross

1 aggressive than Metro. It's for the sole purpose of putting
2 all the pieces together of fear, circumstantial pieces of fear,
3 to try to figure out objectively whether this individual's fear
4 is reasonable.

5 THE COURT: It's a misleading question, because the
6 Sheriff himself has testified that the reason they were trying
7 not to put out guns was to deescalate the situation, not
8 because they were not in fear. He testified very clearly that
9 there was fear.

10 So, it's not relevant if you are trying to show that
11 the reason that -- that he was fearful is opposite to reality,
12 because other people are being instructed to put away their
13 guns because there is no fear in the area.

14 MR. TANASI: And, Your Honor, again, I understand the
15 Court's ruling, but I would just, for the record, point out
16 that that's a credibility determination ultimately for the
17 jury, whether or not these individuals are truly as afraid as
18 they are getting up and testifying they are.

19 And I think that in not permitting us to offer up
20 different circumstances of law enforcement's fear, through
21 different law enforcement perceptions, is taking up --

22 THE COURT: There's been no evidence of different law
23 enforcement perception. There's been no evidence of law
24 enforcement not having fear.

25 MR. TANASI: Again, I would --

Maurice Martinez - Cross

1 THE COURT: So, that's not in evidence as well. But
2 for the relevance portion, you are trying to draw a conclusion
3 that is not supported in good faith yet.

4 MR. TANASI: I wasn't --

5 THE COURT: You have got a law enforcement officer
6 you are going to be calling in and you want to make that
7 proffer who is going to say "I was there, and I wasn't afraid,"
8 maybe we would have a different situation.

9 MR. TANASI: I wasn't asking -- Your Honor, I wasn't
10 going to go to whether or not he believed Metro was fearful or
11 not or whether he truly was fearful or not. Again, I'm going
12 to the circumstantial argument of it.

13 And I would also point out that the evidence of the
14 individuals who were walking up and down what's been called the
15 fatal funnel, strutting, walking up and down the fatal funnel,
16 that's evidence, circumstantial evidence of unreasonable fear.

17 MS. CREEGAN: Well --

18 THE COURT: Ms. Creegan.

19 MS. CREEGAN: First of all, the elements are an
20 objective reasonableness of fear. So even if there were one
21 officer who was particularly steely and not afraid, that would
22 not in any what disprove an element of the crime.

23 So, even if this one officer were to say that at the
24 Metro Post, it wouldn't support or defeat a defense or an
25 element of the crime. But it is misleading to jury, because

Maurice Martinez - Cross

1 it's not based on some good faith knowledge that there's a law
2 enforcement officer that didn't think that it was an
3 intimidating situation.

4 Also, this occurs at the very beginning of the
5 incident, and there would have to be no objective reason for
6 fear for the entirety of the incident. So it seems it's also
7 just got very, very, very little relevance.

8 THE COURT: I agree. There's very little probative
9 value and the prejudicial effect is very high, because it's
10 very misleading and confusing to the jury. The objection is
11 sustained.

12 MR. TANASI: Okay. Thank you.

13 (End of sidebar.)

14 MR. TANASI: Brian, if could you please pull up 13A.

15 THE COURT: Just a second. I want to make sure. Are
16 we ready for the Court?

17 THE REPORTER: Yes.

18 THE COURT: All right. Thank you. So, the objection
19 is sustained, and you may ask a different question.

20 MR. TANASI: Thank you, Your Honor.

21 Actually, Brian, could we pull up Exhibit 158,
22 please.

23 Q. Okay, sir. Do you see Exhibit 158 there before you?

24 A. It says 150 on the screen.

25 Q. And I apologize. It must be 150. I had it down as 158.

Maurice Martinez - Cross

1 MS. CREEGAN: Your Honor, the government will
2 stipulate this is Exhibit 158. It looks like the sticker is
3 just a little blurry in the picture.

4 THE COURT: It does look like 150, but everybody is
5 in agreement that it actually is 158; right?

6 MR. TANASI: I believe so.

7 THE COURT: Okay.

8 BY MR. TANASI:

9 Q. All right, sir. This picture you testified on direct exam
10 about; correct?

11 A. Correct.

12 Q. And this, at some level, was your vantage point; fair?

13 A. My vantage point was more to the right and back somewhat,
14 but, yeah.

15 Q. Okay. These folks here at the gate, do you see them?

16 A. Yes.

17 Q. All right. Did you see those folks at the gate when you
18 were in the wash?

19 A. No.

20 Q. You never saw those individuals in the gate when you were
21 at the wash?

22 A. No, I can't say I have. Maybe I did, but --

23 Q. So you don't know for sure?

24 A. Those specific people, no.

25 Q. Okay. Are you aware of Metropolitan -- uniformed

Maurice Martinez - Cross

1 Metropolitan Police officers -- Las Vegas Metropolitan Police
2 officers uniformed, walking up to that gate. Are you aware of
3 that, sir? Do you recall seeing that on the 12th?

4 A. Yes.

5 Q. Do you recall seeing Special Agent in Charge Dan Love
6 walking up to that gate on the 12th?

7 A. Yes.

8 Q. Do you remember seeing any other individuals walking up to
9 the gate on the 12th?

10 A. There may have been some others, but I -- I don't -- I
11 can't say who.

12 Q. Okay. What was your position on the 12th in the wash?
13 Were you under any kind of concealment?

14 A. I was behind a vehicle.

15 Q. You were behind a vehicle; right?

16 A. Yes.

17 Q. Okay. And these folks who are at the gate, they are not
18 behind a vehicle; right?

19 A. Correct.

20 Q. Okay. And then these folks right here, I'm circling here
21 on the outside, not behind a gate or not behind a vehicle;
22 correct?

23 A. Correct.

24 Q. All right. All right, sir. If we could take a look at
25 13A. Brian, if you could play that.

Maurice Martinez - Cross

1 (Exhibit 13A being played.)

2 Q. Okay, sir. Are you familiar with this vantage point?

3 A. I have never been there myself, but I -- I think I can see
4 where -- where it's -- where the shot was taken from.

5 Q. Okay. And, so, this is the wash area here; correct?

6 A. Correct.

7 Q. All right. And, Brian, if you could play it just until
8 the northbound bridge comes into focus.

9 (Exhibit 13A being played.)

10 Stop it there.

11 Okay, sir. Do you see this there?

12 A. Yes.

13 Q. All right. And this is the northbound bridge?

14 A. Yes.

15 Q. Okay. Would this be a good visual of what your vantage
16 point was, at least in terms of distance from your position in
17 the wash?

18 A. I was further away.

19 Q. Okay. So, in looking at these individuals with the naked
20 eye right here, you would say you were even further away than
21 how this is depicted; fair?

22 MS. CREEGAN: Objection. Leading. The witness has
23 testified he had binoculars.

24 MR. TANASI: I didn't ask him with binoculars, Your
25 Honor. I asked him with his naked eye.

Maurice Martinez - Cross

1 THE COURT: Overruled. He can answer the question.

2 THE WITNESS: Yes. Can you repeat the question,
3 please?

4 BY MR. TANASI:

5 Q. Sure. Does this picture that we're looking at here, does
6 this reflect that you would be looking at, with your naked eye,
7 from the vantage point when you were in the wash on the 12th?

8 A. I was further away than that.

9 Q. So, it would be even further back than this here; fair?

10 A. Correct.

11 Q. Okay. Brian, if could you pull up Exhibit 14, please.

12 All right, sir. So, you identified this
13 individual's -- individual as one of the individuals you saw on
14 the 12th; correct?

15 A. Yes.

16 Q. Okay. And one of the things you used to identify him was
17 that you believe he was holding a shotgun; correct?

18 A. Correct.

19 Q. This is not a shotgun; correct?

20 A. I don't know.

21 Q. You don't know if that's a shotgun or not?

22 A. No.

23 Q. Okay. Now, you've testified that that individual that I
24 just had circled, he was -- he had his gun pointed down the
25 whole time. Do you remember that?

Maurice Martinez - Cross

1 A. Correct.

2 Q. And I wrote it down, and so correct me if I'm wrong. But
3 your observation of what he was doing was "not really doing
4 much." Those were your words a few moments ago; is that fair?

5 A. Yes.

6 MR. TANASI: Thank you, Your Honor. Nothing further.

7 THE COURT: Anyone else?

8 CROSS-EXAMINATION

9 BY MR. MARCHESE:

10 Q. Good afternoon, sir.

11 A. Afternoon.

12 Q. And Brian, if we can go to Exhibit 17 at 18:37:20, please.
13 Perfect.

14 Now, sir, on direct examination, you were asked some
15 questions about your location on the date in question. Do you
16 remember those -- that line of questioning?

17 A. Yes.

18 Q. And I believe you said something to the effect of you were
19 approximately 100 yards behind Post 2; is that correct?

20 A. Correct.

21 Q. You would have been in this mass of trucks that is
22 depicted on the screen right now?

23 A. Yes.

24 Q. Okay. And can you please show which truck you were
25 stationed at?

Maurice Martinez - Cross

1 A. I can't be a hundred percent sure, but I believe the
2 majority of the time I was behind this truck here, and I moved
3 to two different vehicles several times. So, but I believe it
4 that was truck was the -- was the primary vehicle I was behind.

5 Q. Okay. And can you put maybe a one on that truck on the
6 screen? The one that you circled.

7 Okay. And you said -- you just said you went to two
8 other trucks.

9 A. One other truck.

10 Q. One other truck. Okay. And put a two to the other truck
11 that you went to.

12 And that appears to be some sort of an SUV or
13 something along those lines?

14 A. Correct.

15 Q. Okay. Now, you stated that you were -- you had
16 binoculars; correct?

17 A. Correct.

18 Q. And you were scanning the northbound bridge, which is not
19 depicted on this particular screenshot; is that right?

20 A. Correct.

21 Q. So, that would be -- if the screen continued on, it would
22 be to the right of the screen; is that accurate?

23 A. Yes.

24 Q. Okay. And there is maybe three-quarters of the southbound
25 bridge which is depicted to the far right of this screenshot;

Maurice Martinez - Cross

1 fair to say?

2 A. Yes.

3 Q. Okay. So, you're scanning for threats with your
4 binoculars, and you're looking at the northbound bridge.

5 At this point -- I think at some point in time, you
6 said you saw an individual pacing up on the northbound bridge,
7 and I believe you said he had a brown shirt and a dark vest on;
8 correct?

9 A. Correct.

10 Q. And that would be -- he also had a dark baseball cap, I
11 believe, was your testimony?

12 A. Correct.

13 Q. Okay. Which truck were you at when you see that?

14 A. I'm not sure.

15 Q. You are not sure?

16 A. No.

17 Q. Okay. You did testify, however, you are started at the
18 darker truck; correct?

19 A. I don't believe I testified verbally, like, in
20 questioning. I just circled it, yes. But that was the primary
21 truck I was at. I think that's what I said.

22 Q. Okay. When you first got down to the wash, which truck
23 were you at?

24 A. I'm not a hundred percent sure, but I know that I spent
25 more time behind a darker truck.

Maurice Martinez - Cross

1 Q. Okay. Well, you say a darker truck. Are you sure that
2 that's the truck?

3 A. I am relatively sure. I'm not a hundred percent sure that
4 that is truck, but it was in that position, and that's the only
5 truck that's in that position, so --

6 Q. Okay. And when you moved from the first truck to the
7 second truck, why did you do that, if you remember?

8 A. I had to go back to my own truck several times during the
9 incident to pick up items, and there were other officers behind
10 the vehicles, so, you -- you just had to get in where you could
11 fit.

12 Q. Now, in reference to the two trucks, the number one and
13 the number two that we have on the screen, are either of those
14 trucks your truck?

15 A. No.

16 Q. Okay. And is your truck depicted in this particular
17 screenshot?

18 A. I don't believe it is. No.

19 Q. Okay. Where would it be in reference to these trucks?

20 A. It's on this road here, but it's off the screen.

21 Q. Okay. And I'm going to put an arrow. Would that be
22 accurate to say that your truck is somewhere to the left of
23 this screenshot?

24 A. Yes.

25 Q. Okay. And you testified that you had to go back to your

Maurice Martinez - Cross

1 truck a few times in order to get items?

2 A. Correct.

3 Q. How many times?

4 A. I don't know.

5 Q. More than once?

6 A. More than once, yes.

7 Q. Okay. So, at some point in time, you state that you see
8 this individual with the brown shirt, the dark vest, the dark
9 baseball cap pacing back and forth; correct?

10 A. Yes.

11 Q. How far of a distance do you see them moving on the
12 bridge?

13 A. I can't say for sure.

14 Q. Well, how far did they go? Was it less than 5 feet?

15 A. More than 5 feet. I -- I can't say for sure though.

16 Q. Okay. Did they go all the way to the south --

17 A. I didn't measure.

18 Q. I'm sorry?

19 A. I didn't measure it.

20 Q. All right. Let's look at the -- actually, let's do this.
21 Let's get Exhibit 158 up.

22 Okay. Do you have that exhibit on your screen, sir?

23 A. Yes.

24 Q. Okay. Now, this individual that you saw pacing back and
25 forth, how far did you see them go to the left on this

Maurice Martinez - Cross

1 particular exhibit? And that's 158 for the record.

2 A. I can't say.

3 Q. How far did you see them go to the right, if you can say?

4 A. I can't say.

5 Q. Now, this particular screenshot, this is closer than your
6 vantage point; is that correct?

7 A. Correct.

8 Q. And are you directly behind this; are you to the left, to
9 the right? Where are you?

10 A. I would have been behind this to the right.

11 Q. And if we can get up 157, please.

12 Now, you'd agree with me that is a similar photo,
13 probably a little bit further back?

14 A. Yes.

15 Q. Okay. Now, does this help you in reference to where you
16 saw this individual with the brown shirt and the dark vest
17 pacing back and forth?

18 A. It's -- I'm not sure what you are asking.

19 Q. Okay. You said you saw him pacing back and forth;
20 correct?

21 A. Correct.

22 Q. And by showing you this exhibit, it's a little bit further
23 back, is my point. Are you able to tell us how far you saw him
24 pacing back and forth?

25 A. No.

Maurice Martinez - Cross

1 Q. Now, on direct examination, you indicated that at some
2 point, you saw -- you did not see this individual any longer
3 with the black hat; correct?

4 A. Correct.

5 Q. All right. And I believe you testified that you saw he
6 was in the vicinity of a crack; correct?

7 A. A gap between the Jersey barriers.

8 Q. Correct. And that's over the pillar that is right here
9 actually. I will just show it to you on Exhibit 157.

10 A. Correct.

11 Q. Okay. How big is that gap?

12 A. I'm not exactly sure. Enough for daylight to show
13 through.

14 Q. Okay.

15 A. That's all I could see really.

16 Q. Would you agree with me it was small?

17 A. Less than 6 inches.

18 Q. Okay. Now, when you saw that, it was your belief that
19 this individual was pointing a weapon through the gap in the
20 Jersey barrier?

21 A. Yes.

22 Q. Okay. Is it your testimony that you were able to see the
23 rifle protruding from the crack?

24 A. That is in my report, although after thinking about it, it
25 must have the shadow that I was seeing, which would look very

Maurice Martinez - Cross

1 similar to a barrel. And I was seeing the shadow reflected on
2 the side wall of the Jersey barrier, which the shadow is in my
3 report as well.

4 Q. Okay. So, what you are saying is that your report is
5 inaccurate?

6 A. In that regard, yes.

7 Q. Okay. So, when did you author your report?

8 A. The day after the incident.

9 Q. Okay. And you would agree with me that your recollection
10 of the events is usually fresher closer to the incident than
11 after the incident; correct?

12 A. Correct.

13 Q. And how long have you been in law enforcement?

14 A. 26 years.

15 Q. And in your 26 years, I'm sure you've had some sort of
16 training; correct?

17 A. Yes.

18 Q. Been to an academy; correct?

19 A. Yes.

20 Q. Had some training after the academy; right?

21 A. Yes.

22 Q. And in all your training and experience, you are taught
23 that you need to put all the important points accurately into
24 your reports; correct?

25 A. Yes.

Maurice Martinez - Cross

1 Q. Because at some point in time, you might have to come and
2 reply on those reports in court; correct?

3 A. Yes.

4 Q. And, Brian, if you can bring up -- I will circle it for
5 you, and then I will erase it. If you can get closer on that
6 area.

7 Okay. Now, do you see the individual with the black
8 hat in this particular photo?

9 A. I'm not sure.

10 Q. Okay. And is this the crack that you were referring to
11 where it was your belief that there was a rifle, whether
12 protruding, or in it, or somewhere in that vicinity?

13 A. Yes.

14 Q. Okay. Are you able to see a rifle protruding out in this
15 particular screenshot?

16 A. No.

17 Q. And Brian, if we can go to 158.

18 And I believe we might have went over this already,
19 but your frame of reference is maybe behind this, maybe a
20 little bit to the right.

21 A. Correct.

22 Q. And Brian, if you can get closer up on the bridge itself.

23 Okay. And this would be the crack that you are
24 referring to, sir?

25 A. Yes.

Maurice Martinez - Cross

1 Q. Okay. And in this particular screenshot, you can't see a
2 rifle protruding out of that crack?

3 A. No.

4 Q. And are you able to see the individual with the dark brown
5 shirt and the vest in this particular screenshot?

6 A. No.

7 Q. And Brian, if we can bring up Exhibit 13B as in boy, so
8 this should be a still shot.

9 And, sir, are you able to see the individual with the
10 brown shirt and the dark vest in this particular screenshot?

11 A. No.

12 Q. And to be clear, you are -- this is a little bit of a
13 higher vantage point than where you would have been on the date
14 in question; correct?

15 A. Correct.

16 Q. And you would have been further off and back to the left;
17 is that accurate?

18 A. Correct.

19 Q. And would this be the -- the gap in question that you have
20 been asked questions about?

21 A. Yes.

22 Q. Okay. And isn't it true, you cannot see a rifle barrel
23 protruding out of that crack in the particular screenshot?

24 A. Yes.

25 Q. And Brian, if you can go to Exhibit 151.

Maurice Martinez - Cross

1 Now, sir, this was obviously not your vantage point
2 on the date in question; correct?

3 A. Correct.

4 Q. Would it be an accurate statement that this is the
5 northbound bridge?

6 A. Yes.

7 Q. Okay. And the individual prone in the middle with the
8 plaid shirt and the black vest, is that the individual that
9 you've -- we've been discussing that you've authored in your
10 report and on direct examination you referenced?

11 A. Yes.

12 Q. And in looking at this, do you see the crack right here in
13 the middle; correct?

14 A. Yes.

15 Q. Okay. And you see the top of the barrier right there;
16 correct?

17 A. Yes.

18 Q. And would you agree with me that the concrete gets larger
19 as it goes down towards the asphalt on the street?

20 A. Yes.

21 MR. MARCHESE: Thank you. No further questions.

22 THE COURT: Anyone else?

23 MR. PEREZ: Nothing from Lovelien.

24 MR. LEVENTHAL: No, Your Honor. Thank you.

25 THE COURT: All right. Any redirect?

Maurice Martinez - Cross

1 MS. CREEGAN: Court's indulgence.

2 THE COURT: Yes. Why don't we go ahead and take our
3 restroom break now.

4 During this time, I remind the jury, please do not
5 discuss this case with anyone, do not permit anyone to discuss
6 it with you, do not perform any research or any independent
7 investigation, do not read or listen to or view anything that
8 touches upon this case in any way, and please do not form any
9 opinion.

10 It's 3:33. Let's try to be back here by 3:45, 3:50,
11 before 4:00, so we can see if we can get something done.

12 We'll go ahead and stand for the jury, and they are
13 excused. After they are done exiting the courtroom, then,
14 Ranger Martinez, you may also take your break, restroom break,
15 stretch break, whatever you like. We just need you back here
16 by 3:45, 3:50.

17 THE WITNESS: Thank you.

18 (Jury out.)

19 THE COURT: Off record.

20 (Recess, 3:34 p.m. Resumed 4:07 p.m. Jury out.)

21 COURTROOM ADMINISTRATOR: All rise.

22 MR. MYHRE: Your honor.

23 THE COURT: Yes.

24 MR. MYHRE: Can we just address some really quick
25 scheduling things before the jury comes in?

Maurice Martinez - Cross

1 THE COURT: I think Aaron already went to go pick
2 them up.

3 MR. MYHRE: I was just going to say, depending on how
4 far we get with the witness, with the questions, with jury
5 questions -- excuse me -- we were going to call Agent Willis,
6 but we were going to call him out of order from our normal
7 witness charts. Because we are at the end of the day, I don't
8 have a witness in the shoe. I just wanted to alert the Court
9 to today.

10 So, I don't intend to get through all his testimony.
11 I will go as far as I can with what we've got left today. But
12 I want -- I'd like to do this -- in essence, I will be
13 presenting him in two parts. Part one will be bringing in
14 exhibits, and part two will be his time line.

15 But I want to do the time line at the end toward the
16 end of the case as opposed to this point in time if that makes
17 sense.

18 THE COURT: I understand what you are saying. Let's
19 see how -- how much longer we have with this witness, because I
20 have now two other meetings, so I wouldn't mind --

21 MR. MYHRE: Well, no. Obviously --

22 THE COURT: -- having a little time to work those
23 into my schedule.

24 MR. MYHRE: It was all contingent on the Court's
25 time, obviously. I was just -- if you were intending to go to

Maurice Martinez - Cross

1 5:00, I was going to use up the time.

2 THE COURT: Okay. I'd just as soon call it a day. I
3 mean, for purposes of this, so I can move on to other things
4 that need my attention.

5 MR. MYHRE: I think Mr. Marchese wanted to go to
6 6:30.

7 MR. MARCHESE: Yeah, I did drink that Monster, I'm
8 afraid.

9 (Jury in.)

10 THE COURT: All right. The jury may go ahead and be
11 seated. Everyone else may be seated as well.

12 We have Ranger Martinez back in the witness chair.
13 Thank you very much, sir, for being here on time.

14 All right. So, I think we were going to have some
15 redirect.

16 MS. CREEGAN: No, redirect, Your Honor.

17 THE COURT: No, redirect. All right. So, at this
18 time then, we'll ask the members of the jury if they have any
19 questions for our witness to please go ahead and take this
20 opportunity to write them down, neatly, carefully. Take your
21 time. Try to avoid using pronouns. Let us know who you are
22 referring to, and don't give us your name or your initials.
23 You don't need to sign it, and we don't need your jury number.

24 (Pause in the proceedings.)

25 THE COURT: Counsel, please join me at sidebar.

Maurice Martinez - Cross

1 (Sidebar.)

2 THE COURT: All right. Jury Note No. 85, two
3 questions. The first one is, "How were you, Ranger Martinez,
4 communicating with the different branches of law enforcement on
5 the scene?" Any objection?

6 MS. CREEGAN: No.

7 MR. TANASI: No objection.

8 THE COURT: And the second question is "Who was your
9 supervisor?"

10 MS. CREEGAN: No objection.

11 MR. TANASI: None from Stewart.

12 MR. PEREZ: None from Lovelien.

13 THE COURT: Jury Note No. 86, "What was the term the
14 witness is nonresponsive?"

15 MR. MYHRE: Is that from the -- sorry.

16 MS. CREEGAN: I think they probably -- we can
17 probably just alert them there's an instruction that they are
18 not to consider the objections of counsel. They are not
19 evidence.

20 THE COURT: The next question is: "We have hear the
21 witness is hostile. What does that mean?"

22 MS. CREEGAN: I referred to the fact that
23 nonresponsive is an objection that's only proper for a hostile
24 witness in my response to a nonresponsive objection, so I
25 assume that that's the basis for the question.

Maurice Martinez - Cross

1 THE COURT: All right. So, the next question is
2 still on Jury Note No. 86. "The bottom at the Jersey barrier
3 is about 12 to 14 inches thick. If one assumes the length of
4 the barrel for a long gun to be about 24 inches from the
5 receiver to the tip, that would mean only 6 inches or less of
6 the barrel would be exposed. How could you clearly have seen
7 this?"

8 MR. TANASI: No objection, Stewart.

9 MR. PEREZ: No objection.

10 MS. CREEGAN: Well, I think first you might have to
11 ask if he saw it, what he saw and how he saw it. Because I'm
12 not sure that that matches his testimony. And they also
13 haven't received evidence about --

14 THE COURT: "If one assumes the length of the barrel
15 of a long gun to be about 24 inches," so you are assuming facts
16 not in evidence, so that is not a proper question anyway. But
17 how can that be fixed.

18 We did have testimony that the Jersey barrier bottom
19 is about 12 to 14 inches thick, did we? No, it wasn't the
20 thickness. It was the height or the --

21 MS. CREEGAN: They said it was not more than 6 inches
22 apart.

23 MS. AHMED: He said the gap is not more than 6 inches
24 apart and the top was smaller than the bottom.

25 THE COURT: So, have we had testimony that the bottom

Maurice Martinez - Cross

1 of the Jersey barrier is about 12 to 14 inches thick?

2 MS. CREEGAN: No.

3 THE COURT: So, neither of those assumptions are in
4 evidence. I'll just say the question assumes a particular
5 thickness of the barrier and a particular length of the gun.
6 Since there's no testimony about that, it would be improper to
7 assume those facts since they are not in evidence.

8 However, the question truly is, whether or not you
9 use this mathematical equation or another one, this person
10 wants to know how could you clearly have seen the barrel being
11 exposed if there wasn't the entire gun that's being exposed or
12 something to that effect.

13 I will think of something that would be -- thinking
14 of an opportunity to try to respond to this, if -- that would
15 mean 6 inches or less of the barrel would be exposed.

16 The math doesn't even work. He's saying the long gun
17 is 24 inches, and that the thickness of the barrier is 12 to
18 14, and then he or she says that equals 16 inches or less of
19 barrel. Well, that's not. It would be --

20 MS. CREEGAN: 18.

21 THE COURT: Yeah, 12.

22 MS. CREEGAN: Protruding.

23 THE COURT: Yeah, it would be 10 to 12 would actually
24 be exposed, not six. Even the math doesn't work even if this
25 was the number. So, I will try to be respectful and think of a

Maurice Martinez - Cross

1 way to explain that.

2 All right. Jury Note No. 87 is: "Did Ranger
3 Martinez ever aim a gun back to any of the threats he saw or
4 only watched through binoculars?" Any objection?

5 MR. TANASI: No objection.

6 MS. CREEGAN: No.

7 THE COURT: 88 is three parts. First one is: "Would
8 you describe this as a violent protest or nonviolent?"

9 MS. CREEGAN: No objection.

10 MR. TANASI: No objection.

11 THE COURT: Second part is: "Is this the most
12 fearful situation you experienced in your law enforcement
13 career? Why or why not?"

14 MS. CREEGAN: No objection.

15 THE COURT: Any objection?

16 MR. TANASI: I would say that since he didn't raise
17 fear or discuss fear on direct, at least that's my
18 recollection, then it wouldn't be relevant.

19 MS. CREEGAN: I did ask him if he was concerned for
20 safety, so that might be interpreted by this person as being
21 the same spectrum as fear.

22 THE COURT: So, is there an objection? I'm not sure.

23 MR. TANASI: Yeah, I was objecting in terms of it
24 being, I guess, relevant or outside the scope of what he was
25 asked. Because I don't -- I don't think he was asked about

Maurice Martinez - Cross

1 fear and gave no opinions on fear, so --

2 THE COURT: Okay. So, is it --

3 MS. CREEGAN: Could it be rephrased a concern for
4 safety to use the same terms that I have used? Is this the
5 most concern for your safety that you have been in your law
6 enforcement career?

7 MR. TANASI: I still think that goes further than
8 what he's testified to already.

9 THE COURT: Yeah. I'll just -- why don't I say the
10 question asks whether this is -- how can I say it without --
11 it's outside the scope. It's beyond -- but we asked other
12 people, so they are not going to know. They are going to say
13 why did you ask other people and not this person?

14 How can I rephrase it to not ask the question and to
15 explain why I'm not asking the question when we asked other
16 people that same question.

17 MS. CREEGAN: I think rephrase it concerning for
18 safety. I think it's within the scope, because I did ask him
19 about concern for safety.

20 THE COURT: All right. Then I'll change it to is
21 this the most concern for your safety that you have experienced
22 in your law enforcement career.

23 The last question on Jury Note 88 is: "Did you think
24 that the individual in the blue shirt was a high threat in
25 comparison to other armed individuals present that day?"

Maurice Martinez - Cross

1 MS. CREEGAN: No objection.

2 MR. TANASI: None from Stewart.

3 THE COURT: That's it.

4 (End of sidebar.)

5 THE COURT: All right. So, Ranger Martinez, I have a
6 couple of questions for you here. I'm going to be reading them
7 into the record, but these are jury questions. So, when you
8 respond, please feel free to turn and face the jury, because
9 these are not my questions.

10 So, Jury Note No. 85 asks: "How were you, Ranger
11 Martinez, communicating with the different branches of law
12 enforcement on the scene?"

13 THE WITNESS: Earlier on, before we moved down to
14 Post 2, we didn't communicate very much with Metro. Metro
15 showed up and basically started issuing orders, and then they
16 talked to some of our leadership, and they came to a decision.
17 And we were supposed to go down to Post 2.

18 So, prior to that day, there was -- there was almost
19 zero communication with -- with Las Vegas Metro, and no
20 communication with NHP either.

21 THE COURT: So, you say almost no communication with
22 Metro and NHP, but the communication you did have, what were
23 the means? How -- was it mouth-to-mouth, radio, hand signals?
24 What method?

25 THE WITNESS: Well, the only communication that I had

Maurice Martinez - Cross

1 personally was when one of the Metro officers looked at me and
2 told me to put away --

3 MS. CREEGAN: Your Honor, I just going --

4 THE WITNESS: -- my long gun.

5 MS. CREEGAN: -- to object. That's a hearsay answer.

6 THE COURT: That's not what I'm asking. The method.
7 Did you have radio communications? Not what someone said,
8 because that would be hearsay, just the method.

9 THE WITNESS: Just verbal.

10 THE COURT: So hand signals, eye contact, verbal,
11 radio, megaphone. I am trying to think of all the different
12 ways.

13 THE WITNESS: Verbal.

14 THE COURT: Just go ahead and in the microphone.

15 THE WITNESS: It was just verbal.

16 THE COURT: Okay.

17 THE WITNESS: That one -- that one interaction.

18 THE COURT: All right. Thank you. And the next
19 question was: "Who was your supervisor?"

20 THE WITNESS: On that detail, it was Logan Briscoe.

21 THE COURT: And Jury Note 86 asks, and this is really
22 for me: "What does the term nonresponsive mean and hostile
23 witness mean?"

24 So, those are legal terms that are used in legal
25 rules of evidence of what questions the attorneys may or may

Maurice Martinez - Cross

1 not ask and when something is or is not appropriate. So,
2 that's what I'm here for. You don't have to worry about that.

3 I'll make those rulings, and you don't have to worry
4 about it. I did instruct you, at the beginning -- I know it's
5 been a while -- but I did instruct you, at the beginning, when
6 you were sworn in, that there are two duties that we share.

7 The duty that I have is to make the decisions based
8 on the law, with my legal education and experience, and then
9 your duties are the ones -- is to determine the facts; who to
10 believe; how much of it to believe. You can believe all of it,
11 none of it, some of it. It's up to you to determine what the
12 facts are. In light of many facts that you hear, it's for you
13 to determine what happened and then later to apply those facts
14 to the law as I give them to you.

15 So, don't worry about what the objections are. The
16 other instruction I gave you was not to guess what the answer
17 would have been. Also, the questions are that asked by the
18 attorneys are not evidence, so don't consider those either.

19 You are only to consider the statements, you know,
20 provided by the witnesses or statements that the parties agree
21 to. From time to time, there will be something written that
22 everybody agrees you can accept as a fact, and we don't have to
23 bother bringing somebody in.

24 As far as these particular objections, I've made the
25 rulings, so you don't have to worry about them anymore.

Maurice Martinez - Cross

1 The next question is: "The bottom at the Jersey
2 barrier is" -- and then it assumes a particular measurement.
3 And then it says: "And if one assumes the length of the barrel
4 of a gun is" -- and then it assumes a particular measurement.
5 And then it calculates how much of the barrel would have been
6 exposed through the crack in the Jersey barrier.

7 The math actually doesn't work, so I'm not really
8 sure if they really meant for those numbers to be used or not.

9 But, in general, the question is: How could you
10 clearly have seen the amount of the barrel that would have been
11 sticking through, taking into consideration the thickness of
12 the barrier, the Jersey barrier, the cement barrier, and the
13 length of the barrel and the gun, however much would have been
14 pointing out. So, how could you clearly have seen this?
15 That's the question.

16 Also, that those measurements are not facts in
17 evidence, which is another reason why I can't ask it the way
18 it's written. So the -- the question at the end is a good
19 question.

20 If there's a barrier. It's cement. The gun can only
21 be so long. There's only so much of it that could actually
22 point -- you know, stick out. So how -- how could you have
23 seen this?

24 THE WITNESS: Well, there are other variables, too.
25 We don't know exactly where on the height of the barrier the

Maurice Martinez - Cross

1 gun was positioned. And I'm writing -- I was writing that day
2 on what I perceived. What visual information I had. I wasn't,
3 you know, analyzing the thickness of the Jersey barrier or not.

4 And our reactions as law enforcement are based off of
5 our perceptions. They are not based off of necessarily what is
6 the final truth. If somebody points a squirt gun at you,
7 and -- but it looks like a real gun, you have to react off of
8 what you know, which is it looks like a real gun.

9 So, that's -- that's what I did. And it looked as if
10 the barrel was extending from -- from the Jersey barrier,
11 and -- but, you know, it's possible that it could have been a
12 shadow. That's -- that's how I would answer that.

13 THE COURT: All right. Jury Note No. 87 asks: "Did
14 Ranger Martinez ever aim a gun back to any of the threats that
15 he saw or did he only watch through binoculars?"

16 THE WITNESS: I did not aim a gun.

17 THE COURT: And then Jury Question No. 88 is a
18 three-part question. The first one is: "Would you describe
19 this as a violent protest or nonviolent?"

20 THE WITNESS: Well, I guess you could -- depends how
21 you define violence, I suppose.

22 THE COURT: Well, they are asking how would you
23 describe this.

24 THE WITNESS: I would say nonviolent in the end, but
25 with the possibility -- at the time, there was possibility of

Maurice Martinez - Cross

1 extreme violence, which is what we were basing our decision
2 making on.

3 THE COURT: The second part of Jury Note 88 asks:
4 "Is this" -- and the question actually again assumes
5 information that hasn't been provided yet, so we've agreed that
6 it can be restated in a way so that it's proper, so that we can
7 still ask the question, which is: "Is this the most concern
8 for your safety that you have experienced in your law
9 enforcement career? Why or why not?"

10 THE WITNESS: I would say yes, that it was a
11 completely different situation than any other situation I've
12 been in before or since.

13 I mean, it would have -- if something -- if somebody
14 would have accidentally fired, if there would have been a
15 backfire on a vehicle, then it could have been a tragedy. And,
16 you know, it was -- it was a tense situation, and I was very
17 concerned.

18 I wasn't afraid at the time, but I was concerned just
19 because I could see that it was a serious situation that could
20 turn very ugly very quickly.

21 THE COURT: All right. And the third question on
22 Jury Note 88 says: "Did you think that the individual in the
23 blue shirt was a high threat in comparison to other armed
24 individuals present that day?"

25 THE WITNESS: In comparison, I would say he was

Maurice Martinez - Cross

1 equal, but I only -- I only saw three, so I was only talking
2 about three in my report. And, you know, out of the three, the
3 most threat was the individual that was laying prone.

4 THE COURT: All right. Any follow-up from the
5 government?

6 MS. CREEGAN: Not from the United States.

7 THE COURT: Any follow-up by the defense?

8 MR. TANASI: None from Stewart, Your Honor.

9 MR. MARCHESE: None from Parker.

10 MR. LEVENTHAL: No, Your Honor. Thank you.

11 MR. PEREZ: None from Lovelien.

12 THE COURT: All right. Thank you very much, Ranger
13 Martinez, for coming in this afternoon. You are excused.

14 Please be very careful on the way down with those
15 steps. I think one of those or both of those water bottles are
16 yours. Go ahead and take those with you.

17 THE WITNESS: Thank you.

18 THE COURT: And it is 4:33, so it's the jury's
19 Friday. Not our Friday, but it is a Friday for the jury in the
20 sense that it is our last day today. You wouldn't be back here
21 for trial tomorrow.

22 You are excused. You can go ahead and go.

23 So, that means I need to remind you what the plan is
24 for Monday, which will be the 31st. We will start again at
25 9:00 a.m. and plan to be here until 5:00 p.m.

1 I do want to let you know that there has been a
2 change in the August schedule. So, if you want to write this
3 down, Wednesday, August 9th -- so not next week, but the week
4 after -- instead of starting at 9:00 a.m., we're going to be
5 starting at 10:00 a.m. That's Wednesday, August 9th, we'll
6 start at 10:00 instead of 9:00. Otherwise, we are still
7 starting at 9:00.

8 All right. So, I'm told that I do have a hearing at
9 8:00 a.m. on August 1st, which is a Tuesday, that we now
10 believe is going to take more than an hour and might even take
11 more than an hour and a half. Sometimes people call more
12 witnesses than others.

13 And so it just would be safer if we had you come in
14 at 10:00 on Tuesday, August 1st, instead of at 9:00. So, we'll
15 make those two changes to the August calendar.

16 August 1st, Tuesday, we'll start at 10:00 a.m., and
17 then August 9th, Wednesday, start at 10:00 a.m. But Monday
18 we'll be starting at 9:00. And I will remind you every day
19 what the schedule is, and I think -- are you going to update
20 the schedule then --

21 COURTROOM ADMINISTRATOR: Yes, Your Honor.

22 THE COURT: -- so they have a printed updated
23 schedule?

24 COURTROOM ADMINISTRATOR: Yes.

25 THE COURT: All right. So, Aaron will update that

1 for you.

2 Thank you, ladies and gentlemen, for your patience
3 this week and for your attention and your questions. We are
4 going to excuse you and then welcome you back on Monday at
5 9:00 a.m.

6 Go ahead and stand for the jury, please.

7 (Jury out.)

8 THE COURT: All right. Anything else that we need to
9 address before Monday morning? Are we set to go for Monday
10 morning?

11 MR. MYHRE: Yes, Your Honor.

12 MR. TANASI: Yes, Your Honor.

13 MR. MARCHESE: Yes.

14 THE COURT: All right. Have a great weekend. We
15 will see you Monday morning at 9:00 a.m.

16 COURTROOM ADMINISTRATOR: Off record.

17 (Recess, 4:37 p.m.)

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COURT REPORTER'S CERTIFICATE

I, KATHERINE EISMANN, Official Court Reporter, United States District Court, District of Nevada, Las Vegas, Nevada, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Date: August 2, 2017.

/s/ Katherine Eismann

Katherine Eismann, CSR CRR RDR

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,)	CASE NO. 2:16-CR-46-GMN-PAL
)	
Plaintiff,	)	LAS VEGAS, NEVADA
	)	JULY 31, 2017
vs.	)	9:14 A.M.
	)	COURTROOM 7C
ERIC J. PARKER (11),)	
O. SCOTT DREXLER (12),	)	JURY TRIAL, DAY 12
RICHARD R. LOVELIEN (13),)	
STEVEN A. STEWART (14),)	
)	
DEFENDANTS.)	
)	
)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE GLORIA M. NAVARRO,
UNITED STATES DISTRICT CHIEF JUDGE

APPEARANCES:
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(continued next page)

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22 Mamie Ott, Legal Assistant

22

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P R O C E E D I N G S

7

THE COURT: Thank you. You may be seated.

8

9 COURTROOM ADMINISTRATOR: This is the time for jury
10 trial, day 12, Case No. 2:16-cv-046-GMN-PAL, United States of
11 America versus Eric Parker, O. Scott Drexler, Rick Lovelein, and
12 Steven Stewart.

12

13 THE COURT: All right. Before we bring in the jury and
14 have counsel place their appearances on the record, I just want
15 to say a few words to remind everyone about proper conduct in a
16 courtroom and what is expected during the hearing. It is a
17 courtroom; not a sporting event. So it is important for
18 everyone to realize that you are not permitted to make any
19 expression of your opinion, whether it be verbally or through
20 body language or anything else that is distracting, no matter
21 how much you approve or disapprove with what is being said and
22 you are hearing.

22

23 In addition, please also double-check and remember you
24 are not permitted to have any electronic devices with you, so no
25 phones, laptops, pads, any of those things. Even if they're in
the private mode or vibrate mode or turned off, they're still

1 not permitted in the courtroom. There is no audio recording or
2 video recording that is permitted in the courtroom. The
3 attorneys do have electronic devices so that they may review
4 discovery and their preparatory information and also to provide
5 that information into the court system so that we can display it
6 for the jury. Likewise, the marshals and court security
7 officers have communication devices that are electronic so that
8 they may provide security.

9 We do have the podium towards the witness. Did we
10 finish up with the witness last time? We did. Then we stopped
11 a little early, and so we could begin fresh with a new one. I
12 think that's helpful for the jury as well to keep track.

13 Any other issues that you want me to address before we
14 bring them in?

15 The defendants, as I've told them every day for quite
16 some time now, we do have the same rules that apply to the
17 defendants. And so if the defendants do exhibit any kind of
18 inappropriate conduct, distracting conduct, trying to
19 communicate with family or the jury or each other during the
20 sidebars or make any expressions of opinions, they will be
21 removed. We do have the holding cell next door with the speaker
22 system so they can continue to hear the proceedings, but they
23 will not be physically present in the proceedings if they cannot
24 behave accordingly.

25 So should we bring them in?

1 MR. MYHRE: Yes, Your Honor. I just wanted to raise
2 one housekeeping matter very quickly.

3 THE COURT: All right.

4 MR. MYHRE: The Government intends to lead this morning
5 with Agent Shilaikis, and following him we will present Special
6 Agent Joel Willis from the FBI. And as I alluded to last week,
7 we intend to present Agent Willis's testimony in two parts, just
8 bringing in documentary evidence in the first part and then
9 later in the trial he will be presenting his summary timeline
10 and so forth. So I just wanted to alert the Court that that was
11 our intention. I don't know if the Defense wants to reserve
12 cross or cross after his first part, but I just wanted to let
13 the Court know that's what our intention was.

14 THE COURT: All right. So I think the question is,
15 does the Defense want to cross twice? So cross the first time
16 as to the portion of the direct the first time and cross the
17 second time as to the portion provided in the second direct, or
18 do you want to reserve and just cross the one time?

19 MR. TANASI: I think we'll reserve, Your Honor.

20 MR. MARCHESE: I concur, Parker.

21 MR. LEVENTHAL: I'd reserve my reservation. Can I do
22 that? I don't know how it's going to come out. So if I see the
23 need to cross him on his first testimony, then I'll inform the
24 Court. If not, then I'll reserve, but ...

25 THE COURT: All right. So I'll just ask any cross now

1 and then you can reserve.

2 MR. LEVENTHAL: Thank you, Your Honor.

3 THE COURT: If that's what you want, or if not, you can
4 just come up and cross. Mr. Perez?

5 MR. PEREZ: I concur with Mr. Leventhal.

6 THE COURT: All right. Let's go and ahead bring in the
7 jury, Aaron.

8 COURTROOM ADMINISTRATOR: Yes, Your Honor.

9 THE COURT: And then I'll ask the counsel to make their
10 appearances on the record so the jury can remember who everyone
11 is.

12 (Whereupon jury enters the courtroom at 9:22 a.m.)

13 THE COURT: Jury may go ahead and be seated. Everyone
14 else may be seated as well.

15 And we welcome back the jury after a weekend break.
16 Will counsel please make their appearances on the record.

17 MR. MYHRE: Good morning, Your Honor. Good morning,
18 ladies and gentlemen. Steve Myhre, Erin Creegan, Nadia Ahmed on
19 behalf of the United States.

20 THE COURT: Good morning.

21 MR. TANASI: Good morning, Your Honor. Thank you.
22 Good morning, folks. Rich Tanasi for Steven Stewart. Also with
23 us at counsel table is Tori Bakken and Brian Glynn. Thank you.

24 MR. MARCHESE: Good morning, Your Honor. Good morning,
25 ladies and gentlemen. Jess Marchese appearing on behalf of Eric

1 Parker.

2 THE COURT: Good morning.

3 MR. LEVENTHAL: Good morning, everyone. Todd Leventhal
4 on behalf of Scott Drexler.

5 THE COURT: Good morning.

6 MR. PEREZ: Good morning, Your Honor. Good morning,
7 everyone. Shawn Perez on behalf of Rick Lovelein.

8 THE COURT: Good morning.

9 All right. We're going to begin now with a new witness
10 this morning. Government may call its next witness.

11 MS. CREEGAN: Thank you, Your Honor. The United States
12 calls Special Agent Robert Shilaikis.

13 THE COURT: Good morning, Agent Shilaikis. Come on up.
14 You're going to stay over here. Please stay standing when you
15 get to that chair.

16 THE WITNESS: Good morning.

17 COURTROOM ADMINISTRATOR: Please raise your right hand.

18 ROBERT HOWARD SHILAIKIS, having duly been sworn, was
19 examined and testified as follows:

20 COURTROOM ADMINISTRATOR: Thank you, sir. You may be
21 seated. Please state your full name and spell your last name.

22 THE WITNESS: My name is Robert Howard Shilaikis,
23 S-H-I-L-A-I-K-I-S.

24 DIRECT EXAMINATION

25 BY MS. CREEGAN:

1 Q. Good morning, Agent Shilaikis.

2 A. Good morning.

3 Q. Agent Shilaikis, what is your current job or position?

4 A. My current job is I'm a special agent with the Bureau of
5 Land Management Office of Law Enforcement and Security.

6 Q. How long have you held that position?

7 A. I've had it since 20 -- 2011.

8 Q. How long have you been a law enforcement officer?

9 A. This year makes about 29 years. I started my law
10 enforcement career in 1988.

11 Q. And just very briefly can you explain to the jury your law
12 enforcement experience?

13 A. Yes. I was with the Air Force Office of Special
14 Investigation was my first academy, and it was the Bolling Air
15 Force Base back in 1988. I was a special agent active duty
16 along with -- as a civilian agent with OSI until 2007. And I
17 held various jobs, done various types of investigations from
18 person-on-person crimes to property crimes to the
19 counter-intelligence/antiterrorism, those types of operations.

20 Q. When you were with the Air Force, did you have occasion to
21 deploy abroad?

22 A. Yes. So I was deployed in four different war zones starting
23 with Desert Storm; from there to Bosnia, Afghanistan, and Iraq.

24 Q. And just generally, I know you've had an extensive career,
25 but do you receive training as a law enforcement officer?

1 **A.** Yes. Throughout my career I receive training, and currently
2 we do quarterly training and inservice training annually within
3 BLM.

4 **Q.** Are you a sworn federal law enforcement officer?

5 **A.** Yes, I am.

6 **Q.** Are you familiar with an impoundment operation that was
7 occurring in Bunkerville, Nevada, in April of 2014?

8 **A.** Yes, ma'am.

9 **Q.** Were you assigned to that operation?

10 **A.** Yes, I was.

11 **Q.** What was your assignment?

12 **A.** I was part of the investigative team. There was
13 approximately 10 of us that were assigned to that.

14 **Q.** Were you present at the Incident Command Post on April 12,
15 2014?

16 **A.** Yes, ma'am.

17 **Q.** Were you working in your official capacity at that time?

18 **A.** Yes.

19 **Q.** And what were your duties at that time?

20 **A.** On the 12th it changed that we were to secure the -- what we
21 call the ICP, the Incident Command Post. And that was a
22 location where the command was set up, with our dispatch, with
23 our personnel, both law enforcement and civilian, to take care
24 of the over -- the umbrella of gathering all of the cattle that
25 we were there under two federal injunctions.

1 Q. And what was the status of the operation on April 12, 2014,
2 in the morning?

3 **A.** On the 12th the operation had ceased to gather cattle. So
4 we were basically there to protect the Government property, the
5 personnel that there were there, and the cows that were in our
6 custody and control.

7 Q. And when you started your morning on April 12, 2014, where
8 were you located?

9 **A.** I was there at the ICP and then was told that we needed to
10 move up to Post 1, which was the access road into where ICP was
11 off the interstate of I15.

12 Q. Did you have an understanding of why you were needed at Post
13 1?

14 **A.** Yes, from what I was told through Special Agent Mike
15 Johnson --

16 MR. LEVENTHAL: Objection, hearsay.

17 THE COURT: Sustained.

18 BY MS. CREEGAN:

19 Q. Just generally, did you have an understanding of what your
20 duties would be at Post 1?

21 **A.** Yes.

22 MR. LEVENTHAL: Same objection. It would be
23 foundational, Judge.

24 MS. CREEGAN: Just asking for his understanding of what
25 his duties were at Post 1.

1 THE COURT: Overruled. He can testify as to what his
2 understanding was of his duty and purpose.

3 MR. LEVENTHAL: Then I would ask for a foundation as to
4 where he got that understanding from, which would be hearsay.

5 THE COURT: It wouldn't be hearsay because it wouldn't
6 be an out-of-court statement. It's his understanding. It's
7 not -- we can get the foundation as to who told him. I think he
8 already said it was Officer Johnson.

9 BY MS. CREEGAN:

10 Q. Did you receive an assignment from your supervisor?

11 A. Yes.

12 Q. What was your understanding of that assignment?

13 A. My understanding was to secure Post 1. We anticipated --
14 Cliven Bundy had called for the protestors and militia to come
15 and take back the cattle. And we were to secure that location
16 to keep that from happening.

17 Q. And while you were at Post 1, were there any investigative
18 steps that you took while you there?

19 A. Yes. Based on what was developing in front of me, I took
20 upon it myself to go ahead and start videoing that day, the
21 events that occurred that day.

22 Q. Have you previously had an opportunity to review
23 Government's Exhibits 26 and 27?

24 A. Yes, ma'am.

25 Q. And are those videos that you took on April 12, 2014?

1 **A.** Yes.

2 **Q.** And were they taken at Post 1?

3 **A.** They're a combination between Post 1 and then when I --
4 myself and Forest Service Law Enforcement Officer Jarvis moved
5 between Post 1 and what we called Post 2, which was the wash
6 area. We moved to an advantage point so that we could cover
7 that because the main protest and militia were headed down into
8 the wash.

9 **Q.** Before I ask you about videos taken at your second location,
10 were there some videos that you took at Post 1?

11 **A.** Yes.

12 **Q.** Would that include Exhibits 26 and 27?

13 **A.** Yes, ma'am.

14 **Q.** Do those fairly and accurately represent what you yourself
15 saw on April 12th, 2014?

16 **A.** Yes, ma'am.

17 MS. CREEGAN: Your Honor, the Government moves to admit
18 Exhibits 26 and 27.

19 THE COURT: Any objection?

20 MR. TANASI: None from Stewart, Your Honor.

21 MR. MARCHESE: No, Your Honor.

22 MR. LEVENTHAL: No, Your Honor.

23 MR. PEREZ: No, Your Honor.

24 THE COURT: All right. Exhibits 26 and 27 will be
25 admitted. You may go ahead and publish.

1 MS. CREEGAN: Thank you.

2 (Government's Exhibits 26 and 27 are admitted.)

3 MS. CREEGAN: Thank you. May we bring up 26, please.

4 (Video playing.)

5 MS. CREEGAN: Can you stop that, please. So stopping
6 at 21 seconds in Exhibit 26.

7 BY MS. CREEGAN:

8 Q. And circling an individual in the center of the screen by an
9 American flag. Did you observe this individual, Agent
10 Shilaikis?

11 **A.** Yes, ma'am.

12 Q. What did you observe about this individual?

13 **A.** That he appeared to be militia based on his dress and attire
14 with its -- what appeared to be a tactical vest or bullet-proof
15 vest and what I thought to be a long arm and just in camouflage
16 attire.

17 MS. CREEGAN: Can we keep playing, please.

18 (Video playing.)

19 MS. CREEGAN: Can we back up till about 10 seconds and
20 play again, please.

21 (Video playing.)

22 MS. CREEGAN: And stop there, please. And just back
23 up, I'm sorry, just a couple seconds. Sorry. Can you play that
24 again, please.

25 (Video playing.)

1 MS. CREEGAN: Stop there. Thank you.

2 BY MS. CREEGAN:

3 Q. And circling an individual on the right side of the screen
4 in front of a white truck, did you observe this individual at 15
5 seconds on Exhibit 26?

6 A. Yes, ma'am.

7 Q. What did you observe about this individual?

8 A. Just the same, just kind of dressed with camouflage.

9 MS. CREEGAN: And can you play for just about a second
10 or two.

11 (Video playing.)

12 MS. CREEGAN: And just, sorry, one more second.

13 (Video playing.)

14 MS. CREEGAN: Sorry. Can you go back to 17, please. I
15 apologize.

16 BY MS. CREEGAN:

17 Q. So just circling an individual that appears on the right
18 side of the screen before a white sedan, did you observe this
19 individual on the day?

20 A. Yes, ma'am.

21 Q. What did you observe about this individual?

22 A. The same thing, being tacked out, looked like he had a
23 bullet-proof vest, and he definitely had a long arm rifle.

24 MS. CREEGAN: Thank you. You can take that exhibit
25 down. Can you bring up Exhibit 27, please. And play from 1

1 minute and 38 seconds on.

2 Sorry, 1 minute and 38 seconds.

3 (Video playing.)

4 MS. CREEGAN: And stopping a few seconds back, about
5 1:39 -- 1:38, actually. Can you play.

6 (Video playing.)

7 MS. CREEGAN: Stopping. Thank you.

8 BY MS. CREEGAN:

9 Q. At 1:39, did you observe this individual who appears in the
10 center right of the screen right before a white pickup truck?

11 A. Yes, ma'am.

12 Q. What did you observe about this individual?

13 A. The same thing, that configuration of camouflage and just
14 what we call kidded up or tacked out, appeared to be militia.

15 MS. CREEGAN: Thank you. You can take that down.

16 BY MS. CREEGAN:

17 Q. And, Agent Shilaikis, you've already mentioned it, but did
18 there come a time when you changed positions?

19 A. Yes, ma'am. Based on what we were seeing developing, the
20 amount of people were coming into Post 1, the access road, that
21 they were continuing down on the backside of I15 down into the
22 wash area. So that's where -- from what I -- appeared to me as
23 protestors and appeared to be militia were diving down in the
24 bottom, people on horseback. So we moved to a different area so
25 that I could capture that and video it to memorialize it.

1 MS. CREEGAN: Can I bring up Exhibit 17, Clip 1, at
2 19:13:03.

3 (Video playing.)

4 MS. CREEGAN: Thank you. You can stop there. This is
5 19:13:06.

6 BY MS. CREEGAN:

7 Q. Special Agent Shilaikis, do you recognize what is depicted
8 in Exhibit 17 at 19:13:06?

9 A. Yes, ma'am.

10 Q. What's this general area that's depicted here?

11 A. If you look down towards the bottom left-hand corner, that's
12 going towards the ICP. That's the north and southbound lanes of
13 I15, but in this section of interstate that actually runs east
14 and west. So the ICP was actually to the north of the
15 interstate.

16 Q. Can you put an N on the northbound lane and an S on the
17 southbound lane.

18 A. Yes. Let me think about this for a second, yeah. Does it
19 work?

20 Q. Are you able to draw on the screen with your finger?

21 A. No, ma'am.

22 COURTROOM ADMINISTRATOR: Are you able to?

23 THE WITNESS: I could tell you.

24 BY MS. CREEGAN:

25 Q. Are you able to describe it to me? And I'll mark it for

1 you. Can you describe to me which one of these bridges is the
2 northbound bridge?

3 **A.** Yes, ma'am. My understanding, the one that's up towards the
4 top of the screen is going to be your northbound. The one
5 towards the bottom of your screen is going to be your southbound
6 lanes.

7 **Q.** Is that accurate as I've marked it here?

8 **A.** Yes, ma'am.

9 **Q.** And, again, which direction is the ICP?

10 **A.** It's going to be back towards the bottom left of that
11 photograph.

12 **Q.** So I'm drawing an arrow. Is this accurate to your
13 description?

14 **A.** That direction. That's the wash. So it will be to -- as
15 I'm looking at it, to the right of that wash. It's up out of
16 the wash, but just out of the sight of that photograph.

17 **Q.** And do you see the area that you were located depicted here?

18 **A.** Yes, I do.

19 **Q.** And can you just generally describe it so that I can mark it
20 for the jury?

21 **A.** Yes. So you see the two vehicles that are by themselves
22 towards the wash, the two closest to the wash. That area right
23 there.

24 **Q.** So this is in the bottom left-hand corner of the screen?

25 **A.** Yes, ma'am.

1 Q. And did you take video from this location as well?

2 A. I did.

3 MS. CREEGAN: Thank you. You can take that down.

4 BY MS. CREEGAN:

5 Q. Have you previously reviewed Government's Exhibits 28, 29A
6 and B, and 30?

7 A. Yes, I did.

8 Q. Are those videos that you took at that location between Post
9 1 and Post 2?

10 A. Yes, ma'am.

11 Q. Do they fairly and accurately represent what you yourself
12 saw on April 12th, 2014?

13 A. They do.

14 MS. CREEGAN: Your Honor, the Government moves to admit
15 Exhibits 28, 29A and B, and 30.

16 THE COURT: Any objection to Exhibit 28, 29A and B, and
17 Exhibit 30?

18 MR. TANASI: None from Stewart, Your Honor.

19 MR. MARCHESE: None from Parker, Your Honor.

20 MR. LEVENTHAL: No, Your Honor. Thank you.

21 MR. PEREZ: None from Lovelein.

22 THE COURT: All right. Exhibit 28, Exhibit 29A and B,
23 and Exhibit 30 are admitted. You may go ahead and publish.

24 MS. CREEGAN: Thank you, Your Honor.

25 (Government's Exhibits 28, 29A and B, and 30 are

1 admitted.)

2 MS. CREEGAN: Can you bring up Exhibit 28, please.

3 (Video playing.)

4 MS. CREEGAN: Can you stop that there, please. Can you
5 advance --

6 BY MS. CREEGAN:

7 Q. Agent Shilaikis, about how long is this video?

8 A. I don't recall. There's 15 segments I videoed. So each one
9 are a little bit different.

10 Q. So I'm going to take your attention to some specific areas.
11 Okay?

12 MS. CREEGAN: So can we advance this to 1 minute and 50
13 seconds.

14 (Video playing.)

15 MS. CREEGAN: And stop there, please.

16 BY MS. CREEGAN:

17 Q. And drawing your attention to an individual who's behind a
18 white SUV on the left side of the screen at 1 minute and 53
19 seconds. Did you observe this individual on the day?

20 A. Yes, ma'am.

21 Q. What did you observe about that individual?

22 A. The same thing as the others is that he was tacked out, you
23 know, in a bullet-proof or tactical vest, camouflage, definitely
24 had a long -- long gun or a rifle.

25 Q. Okay.

1 MS. CREEGAN: Can you advance to 3 minutes and 50
2 seconds.

3 (Video playing.)

4 MS. CREEGAN: And stop there, please.

5 BY MS. CREEGAN:

6 Q. And at 3 minutes and 54 seconds, drawing your attention to
7 an area on the center right-hand side of the screen. Did you
8 observe this on the day?

9 A. I did.

10 Q. What did you observe in the area that I've indicated?

11 A. The same thing. That these guys were tacked out in that
12 same kind of configuration as militia, but they were squatted
13 down behind that barrier as if taking cover and concealment from
14 me.

15 Q. So as a law enforcement officer, does this movement have
16 some significance to you?

17 A. Yes, it does.

18 Q. What significance is that?

19 A. If you look right next to him, this couple in civilian
20 clothes, they're just standing up looking where they're taking
21 cover and concealment. To me, that's a tactical movement,
22 whether it's in my military career or in law enforcement.

23 Q. Did that give you concern for your safety?

24 A. Absolutely.

25 Q. Why is that?

1 **A.** Because I didn't know what their intentions were at the time
2 other than that they were giving these types of movements that
3 caused me some great concern.

4 MS. CREEGAN: Can you play, please.

5 (Video playing.)

6 MS. CREEGAN: Stop there, please.

7 BY MS. CREEGAN:

8 Q. And stopped at 4:16. Drawing your attention back to the
9 same individuals in front of a white SUV. Did you observe a
10 change in their movements?

11 **A.** No, the same two individuals were, you know, tucked down
12 behind that concrete barrier. The other individual has
13 definitely got a long arm. He's got it slung in front of him.

14 MS. CREEGAN: Can you play, please.

15 (Video playing.)

16 MS. CREEGAN: And stopping there at 4:30.

17 BY MS. CREEGAN:

18 Q. And drawing your attention to an individual in the top left
19 corner of the screen. Did you observe this individual on the
20 day?

21 **A.** Yes, ma'am.

22 Q. What did you observe about this individual?

23 **A.** The same thing. That he was in that type of configuration
24 with camouflage-type uniform, and that he was -- to me, he
25 didn't appear like a regular protestor. He was in the back

1 using his concealment as that edge of that barrier coming off
2 the interstate.

3 Q. Did that give you any concern for your safety or for the
4 safety of other officers?

5 MR. TANASI: Objection, leading.

6 THE WITNESS: Yes. Absolutely. My training --

7 MR. LEVENTHAL: Objection, leading.

8 THE COURT: Overruled. He can answer the question.

9 MS. CREEGAN: Sorry. I'll ask again.

10 BY MS. CREEGAN:

11 Q. Did that give you any concern for your safety or for the
12 safety of other officers?

13 **A.** Yes. Absolutely. Again, based on my training and
14 experience, both military and law enforcement, that he was, lack
15 of a better term, lurking in the shadows, moving. He didn't
16 appear to be like a regular protestor.

17 MS. CREEGAN: Can we advance to 8 minutes, please.

18 (Video playing.)

19 MS. CREEGAN: And stopping there, please.

20 BY MS. CREEGAN:

21 Q. Stopping at 8:07. Bringing your attention to an individual
22 in the center of the screen before the red cab of a truck. Did
23 you observe this individual on April 12th?

24 **A.** Yes, ma'am.

25 Q. What did you observe him to be doing?

1 **A.** The same thing, kidded up. You know, he appeared to be a
2 militia type. He had his weapon in what we call the low ready.

3 **Q.** What's low ready?

4 **A.** Basically, you know, with law enforcement and also my
5 military experience we're trained to keep our weapon at that low
6 ready, and then we could bring it up at a moment's notice, a
7 nanosecond, to engage targets.

8 MS. CREEGAN: Can you play, please.

9 (Video playing.)

10 MS. CREEGAN: And stopping there at 8:19.

11 BY MS. CREEGAN:

12 **Q.** Drawing your attention to some individuals on the right side
13 of the screen. Did you observe those individuals?

14 **A.** I did.

15 **Q.** What did you observe about them?

16 **A.** The same is that they were using that concrete Jersey
17 barriers as cover and concealment.

18 **Q.** Can you tell what this individual on the right-hand side
19 has, if anything?

20 **A.** I'm not sure in this particular frame, but I'd seen him in
21 the past.

22 **Q.** What had you seen him with in the past?

23 **A.** In the video when I was reviewing it that he definitely had
24 a long arm.

25 MS. CREEGAN: And can you advance to 11 minutes and 20

1 seconds, please.

2 (Video playing.)

3 MS. CREEGAN: And stopping at -- can you go back to
4 about 11:25.

5 BY MS. CREEGAN:

6 Q. And circling an individual who appears to be right before a
7 camper at 11:25. What did you observe this individual to do?

8 **A.** Could you repeat the question?

9 Q. What did you observe this individual to do?

10 **A.** It looked like he appeared to -- he pops up from that
11 position with his long arm. I think it's later in this video
12 right here.

13 MS. CREEGAN: Can you play, please.

14 (Video playing.)

15 MS. CREEGAN: And stopping at 11:34.

16 BY MS. CREEGAN:

17 Q. Over the course of the video since I last asked you, what
18 did you observe the individual to do?

19 **A.** When he stood up, it appeared that he brought that weapon
20 around in front of him.

21 MS. CREEGAN: And can you advance to 12 minutes and 50
22 seconds, please.

23 (Video playing.)

24 MS. CREEGAN: And stopping at 13:02.

25 BY MS. CREEGAN:

1 Q. Taking your individual -- your attention to two individuals
2 in the bottom right side of the screen. Did you observe these
3 two individuals on the day?

4 **A.** Yes, I did.

5 Q. What did you observe about them?

6 **A.** Again, these two appeared that they definitely knew each
7 other, talking to each other. The one in the peach-colored
8 pants had a long arm. You know, it's over his right shoulder.
9 The other one is, you know, same configuration with camouflaged
10 clothing with tack gear and a long arm and a booney hat.

11 Q. What could you observe about the position that they were in?

12 **A.** It's the same thing that they were not to me from what I was
13 seeing part of the regular protestors. He was -- they were back
14 in the back using, you know, that area as cover and concealment,
15 walking back and forth. So to me it was cause for concern. I
16 didn't know what their intentions were.

17 MS. CREEGAN: Can you play for a little bit, please.

18 (Video playing.)

19 MS. CREEGAN: And can you advance to 16 minutes,
20 please.

21 (Video playing.)

22 MS. CREEGAN: And stop it there, please.

23 BY MS. CREEGAN:

24 Q. Bringing your attention to an individual who is right behind
25 the two people that you were just discussing at 16:08. Did you

1 observe that individual?

2 **A.** Yes, I did.

3 **Q.** What did you observe them to do?

4 **A.** Again, it appeared to be part of the, you know, what I
5 believed to be a militia, but he was running down the side of
6 the hill to join these areas.

7 **Q.** What did you think was significant about his position, if
8 anything?

9 **A.** Again, he was back behind cover and concealment. He was out
10 of my view from where my -- my vantage point was. He was just
11 staying out in the shadows.

12 MS. CREEGAN: Can you continue to play, please.

13 (Video playing.)

14 MS. CREEGAN: And stopping it right there at 16:21.

15 BY MS. CREEGAN:

16 **Q.** There is an individual who has just moved to the right of
17 those individuals. Did you observe where that individual came
18 from?

19 **A.** Yeah, it was back from -- based on what I'm looking at on
20 the screen, from left to right, so moving south.

21 **Q.** Did it give you concern to see that individual?

22 **A.** Anybody in that configuration caused me concern that day,
23 ma'am.

24 **Q.** Why was that?

25 **A.** I honestly thought they were coming to -- to start a fire

1 fight with the Federal Government.

2 Q. What was the reason that you thought that from your
3 observations?

4 **A.** Based on their tactics. You know, my training and
5 experience told me that. The way they were moving, the way they
6 were communicating, the way they were using cover and
7 concealment, the configuration and gear that they had, all of
8 that came into play.

9 MS. CREEGAN: Can we bring up Exhibit 30, please.

10 (Video playing.)

11 MS. CREEGAN: And stopping at 8 seconds.

12 BY MS. CREEGAN:

13 Q. So, Agent Shilaikis, have you just given a time?

14 **A.** Yes, I did.

15 Q. And what's that time in local Nevada time?

16 **A.** It was local.

17 Q. Is that military --

18 **A.** To Nevada.

19 Q. I apologize. Is that military time that you've just given?

20 **A.** Yes, ma'am.

21 Q. Could you give it in civilian time?

22 **A.** You have to repeat it again. I will.

23 MS. CREEGAN: Can we go back to the beginning and play.

24 (Video playing.)

25 THE WITNESS: So the time would be 1:13.

1 BY MS. CREEGAN:

2 Q. Would that be a.m. or p.m.?

3 A. P.m.

4 Q. Do you know what was happening in the wash at that time?

5 A. Excuse me?

6 Q. What was happening in the wash at that time?

7 A. Again, I think everyone -- at this time I believe everybody
8 was backing off. We were told to stand down.

9 Q. When you say "everybody," are you referring to the BLM or
10 someone else?

11 A. Referring to the BLM and those parts of the ICP that we were
12 standing down and we were going to be demobilizing and leaving
13 the area.

14 MS. CREEGAN: Can you play, please.

15 (Video playing.)

16 MS. CREEGAN: And stopping at 15 seconds.

17 BY MS. CREEGAN:

18 Q. And circling an individual who appears to be before a dark
19 pickup truck on the right center of the screen. Did you observe
20 that individual?

21 A. I did.

22 Q. What did you observe about that individual?

23 A. The same deal. It was how he was configured with tactical
24 gear and all that, and then he was standing up behind the Jersey
25 barrier.

1 Q. Where did he appear to be in relation to the farther-away
2 Jersey barrier on the northbound lane?

3 **A.** Oh, he was right up against it in the northbound lanes. So
4 he was closest to me from -- if you were standing on the
5 interstate, that portion of the interstate.

6 MS. CREEGAN: Can you play to the end, please.

7 (Video playing.)

8 MS. CREEGAN: Thank you. You can take that down.

9 BY MS. CREEGAN:

10 Q. Agent Shilaikis, was there an incident command structure at
11 the Incident Command Post?

12 **A.** Yes, there was.

13 Q. What was the incident -- or the objective of the incident
14 command structure?

15 **A.** Right, this incident command, the IC, was -- we do it for
16 everything. We do it for fire. We do it for big, you know,
17 operations. This was specifically for the gathering of the
18 cattle, the cattle impoundment.

19 Q. Was what occurred on April 12th, 2014, anticipated by the
20 incident command structure?

21 MR. TANASI: Objection, leading.

22 THE COURT: I don't -- well, overruled.

23 BY MS. CREEGAN:

24 Q. Was the incident that the incident command structure was
25 designed to handle, was it what happened on April 12, 2014, or

1 was it something else?

2 **A.** No, the only design for the IC was to gather cattle. No one
3 anticipated the 12th.

4 **Q.** Were Metro or NHP a part of the incident command structure,
5 to your knowledge?

6 **A.** I don't -- I'm not aware of that.

7 **Q.** You took -- you mentioned you took some of these videos on
8 April 12th, 2014. What was the reason for your doing that?

9 **A.** Because in my experience, especially in law enforcement, the
10 best evidence is going to be a video or a photograph. You know,
11 memories fade. So I absolutely anticipated that there was going
12 to be gunfire that day. That this militia groups -- that
13 somebody was going to shoot a round, and then there would have
14 been a lot of carnage; to document it.

15 **Q.** Were you concerned for your safety on April 12th, 2014?

16 **A.** Yes, ma'am.

17 **Q.** Why was that?

18 **A.** It's hard to describe. I've been in four different war
19 zones. I had clear missions down range. We had clear
20 objectives, but what unrolled there, to see that transpire was
21 unnerving, especially to see people that had stopped on the
22 interstate, had no understanding of what was going on and the
23 magnitude of it. That if there was rounds fired, there was
24 definitely going to be other people that were going to be killed
25 that day. So it's unnerving.

1 MS. CREEGAN: One moment.

2 (Government conferring.)

3 MS. CREEGAN: Thank you, Agent Shilaikis. Nothing
4 further.

5 THE COURT: Cross?

6 MR. TANASI: Yes, Your Honor. Thank you.

7 CROSS-EXAMINATION

8 BY MR. TANASI:

9 Q. Good morning, Agent Shilaikis.

10 A. Good morning.

11 Q. I'm Rich Tanasi. I represent Steven Stewart. I have a few
12 questions for you on cross. Okay, sir?

13 A. Yes, sir.

14 Q. All right. You indicated on direct exam that the operation
15 had -- had ceased, correct, as of -- on the 12th, as of the
16 morning of the 12th, correct?

17 A. The gathering of the cattle had ceased, yes.

18 Q. The gathering of cattle had ceased, right?

19 And isn't it true that at least part of the reason that
20 the gathering of the cattle had ceased was because there was a
21 funeral for a helicopter pilot?

22 A. Yes, that was part of it.

23 Q. That was part of the reason, fair?

24 A. Yes, sir.

25 Q. All right.

1 MR. TANASI: Brian, if you could bring up Exhibit 6 and
2 go to 29 seconds.

3 Okay. Actually, we'll start right there for ...

4 Back up just a little, Brian, I apologize, 59 seconds.
5 Go ahead. Play it. I think the quality might be a little
6 better on the media player.

7 (Video playing.)

8 MR. TANASI: Okay. I apologize, Brian. If you could
9 please back it up to the 1 minute mark. Stop.

10 BY MR. TANASI:

11 Q. The individual that we saw prior while I was kind of dancing
12 around with the time, who was that?

13 A. Which one? There was a couple, sir.

14 Q. The very first individual we saw standing there.

15 A. Could you back that up, please.

16 Q. Sure.

17 MR. TANASI: Brian, if you could back it up.

18 (Video playing.)

19 BY MR. TANASI:

20 Q. Those folks there, what role in the command structure did
21 they play?

22 A. These ones here?

23 Q. Yes, sir.

24 A. I have no idea.

25 Q. Okay.

1 MR. TANASI: All right. Keep playing it, Brian.

2 (Video playing.)

3 MR. TANASI: Go ahead. Stop. Stop it where that one
4 individual kind of walks across the screen, Brian, if you could.
5 And go backwards.

6 (Video playing.)

7 MR. TANASI: All right. Stop it there, please.

8 BY MR. TANASI:

9 Q. These folks here, who are they?

10 A. Local law enforcement. So it's going to either be a Nevada
11 Highway Patrol or Las Vegas Metro.

12 Q. Okay. What role, if any, did they play in the command
13 structure?

14 A. They were at Post 1. Their role, I don't know. I didn't
15 have information on that.

16 Q. Okay.

17 MR. TANASI: Brian, if you could fast-forward it two
18 minutes.

19 Actually, since we're here, let's go back. There's one
20 individual who crosses the screen roughly at the 1 minute mark.
21 That's what I'm trying to capture.

22 (Video playing.)

23 MR. TANASI: Right there. There you go.

24 BY MR. TANASI:

25 Q. This individual here, sir, can't really see his head, but we

1 can see his body. Who's he?

2 **A.** Yeah, at the time that was Special Agent In Charge Dan Love.

3 He was the SAC out of Salt Lake City, Utah, for BLM Region 3.

4 *Q.* Okay.

5 MR. TANASI: Brian, if you could go to 2 minutes and 52
6 seconds, please.

7 (Video playing.)

8 MR. TANASI: Okay. Stop.

9 BY MR. TANASI:

10 *Q.* All right. Who are these two folks?

11 **A.** The one on the right is Special Agent Dan Love. The one on
12 the left is -- I don't know who he is.

13 *Q.* Okay. Did you overhear this conversation?

14 **A.** Not from where I was standing, sir, no.

15 *Q.* Okay.

16 MR. TANASI: All right. Brian, if you could go to
17 Exhibit 28, please, 7 minutes and 43 seconds in.

18 (Video playing.)

19 MR. TANASI: Stop it there, Brian. Maybe stop it on a
20 clearer picture. There we go. Thank you.

21 BY MR. TANASI:

22 *Q.* All right. So, sir, drawing on the screen, this is the
23 southbound bridge, correct?

24 **A.** Yes, sir.

25 *Q.* All right. And now behind it is the northbound bridge,

1 correct?

2 **A.** Yes.

3 **Q.** Okay. Would this demonstrate your view of the northbound
4 bridge from where you were standing on the 12th?

5 **A.** Say this one more time.

6 **Q.** Would this fairly and accurately depict your view of the
7 northbound bridge when you're standing there on the 12th?

8 **A.** Yes.

9 **Q.** So from this vantage point, is this with the naked eye?
10 This is what you would see, fair?

11 **A.** Yes.

12 **Q.** All right.

13 MR. TANASI: All right, Brian. If you could bring up
14 Exhibit 30, please. And go to 43 seconds in.

15 Court's indulgence.

16 THE COURT: Yes.

17 MR. TANASI: I had 30 admitted, Your Honor. I just
18 wanted to make sure before I play it. Aaron, do you show that?
19 Do you show 30 as being admitted?

20 COURTROOM ADMINISTRATOR: 30 is admitted.

21 MR. TANASI: All right. Thank you.

22 All right. 43 seconds in please, Brian.

23 BY MR. TANASI:

24 **Q.** All right. So looking at this picture, sir, is this -- is
25 this a view of the southbound and northbound bridge?

1 **A.** It is.

2 **Q.** It is. Okay. Do you know whose truck that is?

3 **A.** I do not.

4 **Q.** Okay, sir.

5 MR. TANASI: Brian, if you could bring up 28 and go to

6 8:18 in.

7 (Video playing.)

8 MR. TANASI: If we could maybe stop it where it's

9 clear.

10 (Video playing.)

11 BY MR. TANASI:

12 **Q.** All right. So you've -- on direct exam you pointed out that
13 there were individuals on the northbound bridge, fair?

14 **A.** The what now?

15 **Q.** On the northbound bridge you've pointed out different
16 individuals on direct exam, correct?

17 **A.** Yes, I did.

18 **Q.** Okay. Now, do you see these two folks here that I'm
19 circling?

20 **A.** Yes, sir.

21 **Q.** Okay. And do you see that there's one standing up?
22 Correct?

23 **A.** Yep.

24 **Q.** And then the one to the left, do you see a head there? Do
25 you see that?

1 **A.** I do.

2 **Q.** Okay.

3 MR. TANASI: Brian, if we could go to 11:20, please.

4 (Video playing.)

5 MR. TANASI: Okay. Go ahead and play it.

6 (Video playing.)

7 MR. TANASI: All right. Stop.

8 BY MR. TANASI:

9 **Q.** All right. Again, circling those two individuals we just
10 talked about at the 18 mark, correct?

11 **A.** Yes, sir.

12 **Q.** Okay. Both of them are standing up, correct?

13 **A.** Yes.

14 **Q.** All right. And isn't it true that the person here was the
15 person who was ducked down, correct?

16 **A.** Yes.

17 **Q.** And that person has a camera in their hand, fair?

18 **A.** I can't tell right here.

19 **Q.** Why don't we play it.

20 MR. TANASI: Go ahead, Brian.

21 (Video playing.)

22 MR. TANASI: Go ahead and stop.

23 BY MR. TANASI:

24 **Q.** Does that appear to be a camera?

25 **A.** It does.

1 MR. TANASI: All right. Go ahead, Brian. Play it.

2 (Video playing.)

3 MR. TANASI: All right. Stop. Thank you.

4 Brian, if we could bring up 26 one more time, please.
5 And if you go to 15 seconds in and stop it at a clear point.

6 BY MR. TANASI:

7 Q. All right. On direct exam you identified this individual,
8 correct?

9 A. Yes, I did.

10 Q. Okay. And the note I had is that that's an individual who
11 had camo, camouflage?

12 A. If I said that, I was mistaken on that. I was -- I actually
13 didn't pay attention on that one.

14 Q. Didn't pay attention. Okay.

15 A. Well, I don't -- this one is not wearing camouflage right
16 now where you stopped that at this particular slide.

17 Q. But on direct examination you said he had camouflage on,
18 fair?

19 A. I did and I was mistaken.

20 Q. All right. Thank you.

21 All right. Sir, you testified that you had some --
22 well, you testified that as to the events on the 12th you were
23 concerned that there would be a fire fight with the Federal
24 Government, correct?

25 A. I did.

1 Q. Okay. And isn't it true on April 15th, 2014, you authored a
2 report relative to the events that had occurred on the 12th?

3 Correct?

4 **A.** I did.

5 Q. And isn't it true you did not say in that report that you
6 were concerned that there would be a fire fight with the Federal
7 Government? Isn't that true?

8 **A.** Exactly. That would have been my opinion.

9 Q. You didn't put that in your report, fair?

10 **A.** That's fair.

11 Q. Okay. You also testified that you had concern for your
12 safety here on direct exam this morning, correct?

13 **A.** I did.

14 Q. Okay. Didn't put that in your report either, right?

15 **A.** I did not, no.

16 Q. Okay. And you also testified this morning that it was
17 unnerving on the 12th. It was unnerving. Your words, right?

18 **A.** Absolutely.

19 Q. Didn't put those words into the report that you authored on
20 the 15th, three days after the event itself, correct?

21 **A.** I did not.

22 Q. Okay. And you'd agree with me that report writing, it's an
23 important function of police work, correct?

24 **A.** Yes.

25 Q. You want to put everything that you're feeling, everything

1 that you're thinking, everything that you're observing that's
2 important to your case in that report, fair?

3 **A.** No.

4 **Q.** You don't want to put everything in the report?

5 **A.** Not what I'm feeling or anything because at the time I was
6 still a law enforcement officer. So I looked through it through
7 that scope to write what was factually that happened that day.
8 I didn't negate to put my feelings in my report.

9 **Q.** You didn't think it was important to put that you thought
10 there would be a fire fight with the United States Government,
11 didn't want to put that in your report, fair?

12 **A.** I put the facts that happened that day.

13 **Q.** Okay. Prior to today's testimony, did you have an
14 opportunity to meet with the U.S. Attorneys Office?

15 **A.** I did.

16 **Q.** How many times?

17 **A.** Counting yesterday?

18 **Q.** Yes, please.

19 **A.** For three years, I'm going to estimate four times.

20 **Q.** Four times. And how many times had you met with the FBI?

21 **A.** The FBI?

22 **Q.** Yes, sir.

23 **A.** Outside of the U.S. Attorneys Office, none.

24 **Q.** How about with the U.S. Attorneys Office?

25 **A.** Every time.

1 Q. Okay.

2 MR. TANASI: Thank you, sir. Nothing further.

3 THE WITNESS: You're welcome, sir.

4 THE COURT: Any from Parker?

5 MR. MARCHESE: Thank you, Your Honor.

6 Okay. We're going to start with Exhibit 28. Aaron,
7 it's actually -- I just hooked it up to myself to make it easier
8 for Brian.

9 CROSS-EXAMINATION

10 BY MR. MARCHESE:

11 Q. And, sir, do you have Exhibit 28 on your screen?

12 A. I have an exhibit. I don't see where it's numbered.

13 Q. Okay. I'm just going to play it for a moment just to
14 acclimate you to the exhibit and then I'll stop.

15 (Video playing.)

16 BY MR. MARCHESE:

17 Q. Okay. And, sir, do you remember this particular video?

18 A. Yes, that's the one I recorded.

19 Q. Okay. And just to be clear, this was the one that starts at
20 approximately 12:04 p.m.?

21 A. Yes, sir.

22 Q. Okay. And in this particular video, you went over it on
23 direct examination, this was a video which you took of the
24 events on April 12, 2014, correct?

25 A. It is.

1 Q. And you had identified an individual on direct examination.
2 I'm going to go for the record to 1 minute and 30 seconds into
3 this.

4 Okay. And I'm going to circle an individual on the
5 screen. You recognize that individual, sir?

6 **A.** Yeah, I don't know him.

7 Q. Sure.

8 **A.** But if you're asking me if I recognize this particular point
9 in the video, yes.

10 Q. Okay. And you've seen him throughout these videos, correct?

11 **A.** Yes.

12 Q. All right. Now, for the purposes of these -- the
13 cross-examination, we'll call him Black Hat. Is that fair
14 enough?

15 **A.** Yes, sir.

16 Q. Okay. Because he's wearing a black hat, correct?

17 **A.** Yes.

18 Q. And it has a white insignia, correct?

19 **A.** Yes, sir.

20 Q. And he appears to be somewhere on the northbound bridge,
21 correct?

22 **A.** Yes.

23 Q. Okay. Now, to his left, our right, of the screen I'm going
24 to put an X on a motor vehicle there. Do you see that?

25 **A.** Yes.

1 Q. Okay. And that is some sort of a pickup with a camper
2 shell. Is that right?

3 **A.** Yes, it is.

4 Q. Okay. And in this particular screen shot, Black Hat just
5 appears to be kneeling, correct?

6 **A.** Yes.

7 Q. And looking to his left. Is that right?

8 **A.** Yes.

9 MR. MARCHESE: Okay. I'm going to fast-forward for the
10 record to 2 minutes and 12 seconds.

11 BY MR. MARCHESE:

12 Q. Okay, sir. Once again, we have this pickup that I've placed
13 an X on with the camper shell, correct?

14 **A.** Yes.

15 Q. Is it fair to say that that vehicle was parked, didn't move
16 throughout the video?

17 **A.** This portion of it, yeah, looked like he was stopped right
18 there.

19 Q. Okay. And we have Black Hat once again. I'm going to
20 circle him again for you. You'd agree with me that that is him,
21 correct?

22 **A.** Yes, sir.

23 Q. Hasn't moved from the same general location as the last clip
24 that we stopped it at at 1:30, correct?

25 **A.** Yes, sir.

1 Q. And it appears that he might be looking maybe to his right,
2 our left, of the screen?

3 **A.** Yes.

4 MR. MARCHESE: Okay. And I'm going to move forward to
5 approximately 24 seconds to 2:36.

6 BY MR. MARCHESE:

7 Q. Okay, sir. Once again, we have this parked truck there on
8 the screen. I put an X on it, correct?

9 **A.** Yep.

10 Q. I'm going to circle Black Hat once again. You see him
11 there, correct?

12 **A.** Yes, sir.

13 Q. He appears to be kneeling, correct?

14 **A.** Yes, sir.

15 Q. Stayed in the same general vicinity as the last shot,
16 correct?

17 **A.** Yes, sir.

18 MR. MARCHESE: Move forward approximately 23 seconds to
19 2 minutes and 59 seconds.

20 BY MR. MARCHESE:

21 Q. Okay, sir. We have the pickup truck once again, correct?

22 **A.** Yes, sir.

23 Q. I'm going to circle the individual. Probably a little bit
24 fuzzy on the screen, but it does appear that there might be
25 someone kneeling behind the barricade, possibly?

1 **A.** Yeah, that's a real bad stop on that video.

2 **Q.** Yeah. But if you look and you focus on the middle, it does
3 appear that there is an individual there. Would you agree with
4 me with that?

5 **A.** If you could move it one frame up or one frame back. I
6 can't really definitely see it right there. I'm sorry, sir.

7 **Q.** Nope. It's tough.

8 **A.** That's worse.

9 **Q.** Yeah. I'm trying. Now we're off.

10 Okay. May or may not be somebody there, fair enough?

11 **A.** Yes, sir.

12 MR. MARCHESE: Okay. And we're going to move forward
13 to 3:54. Actually, it's 3:53.

14 BY MR. MARCHESE:

15 **Q.** This is a little bit better than the last one. You'd agree
16 with me on that, right?

17 **A.** Yes, sir.

18 **Q.** Okay. Got Black Hat here at the edge of this camper truck,
19 correct?

20 **A.** Yes, sir.

21 **Q.** Still hasn't moved, correct?

22 **A.** Yes, sir.

23 **Q.** Still appears to be in some sort of kneeling position,
24 squatting?

25 **A.** Yeah. This --

1 Q. Correct?

2 A. -- particular stop does that show.

3 Q. You can't see behind the barricade, but obviously he's --
4 he's taller than three feet or whatever that is, right?

5 A. Yes.

6 MR. MARCHESE: Okay. And I'm just going to play it
7 actually for about three seconds here.

8 (Video playing.)

9 MR. MARCHESE: Okay. Back it up to 3:56 for the
10 record. Okay.

11 BY MR. MARCHESE:

12 Q. And he's still in that general vicinity, correct?

13 A. Yes.

14 Q. And it appears might have his left arm just kind of on top
15 of the Jersey barrier railing right there, right?

16 A. He does.

17 Q. Doesn't look like there's anything in his hand, though,
18 correct?

19 A. Not in his left hand, sir, no.

20 MR. MARCHESE: And we'll go to 4:15 for the record.

21 BY MR. MARCHESE:

22 Q. Okay. Same camper truck in the -- little bit to the left of
23 the middle of the screen, correct?

24 A. Yes, sir.

25 Q. And then we've got Black Hat here. Now, he appears to be

1 standing behind the Jersey barrier on the northbound bridge,
2 correct?

3 **A.** Yes, sir.

4 MR. MARCHESE: Okay. And I'm going to play it until
5 about 4:19.

6 (Video playing.)

7 BY MR. MARCHESE:

8 Q. Okay. And here we are at 4:16. He appears once again to be
9 standing and maybe has his arms crossed or something along those
10 lines. Would you agree with that?

11 **A.** Yeah, it appears he had that -- his long gun slung on his
12 right shoulder.

13 Q. And then at 4:16, does it appear he might have something in
14 his hand? He might be checking a phone, possibly?

15 **A.** He's looking down at his hands. I don't know what he's got
16 in his hands.

17 Q. Sure. It does appear, though, that there's something
18 brighter maybe in his hands than the rest of the backdrop?

19 **A.** Yeah, it's a bright spot. I don't know if that's the video
20 or what.

21 Q. Sure.

22 MR. MARCHESE: Move to 4:44 for the record. Okay.
23 Once again, we have the camper in the middle. I've placed an X
24 on it. And I'm going to circle the two individuals there.

25 BY MR. MARCHESE:

1 Q. First off, these two individuals, they're still in the same
2 general vicinity at the end of that camper truck, correct?

3 **A.** Yes, sir.

4 Q. And it appears that -- would you agree with me that Black
5 Hat would be on the left of the screen to the individual closer
6 to the back of the pickup truck?

7 **A.** Yes, sir.

8 Q. Okay. And it appears he might be looking down into his
9 hands or something like that?

10 **A.** Yes.

11 MR. MARCHESE: Move to 5:09 for the record. Okay. And
12 this is 5:09 at the end.

13 BY MR. MARCHESE:

14 Q. Black Hat is all the way to the edge of the screen, same
15 general area as the camper shell, correct?

16 **A.** Yes, sir.

17 Q. Okay. He appears to have his hands cupped together. Would
18 you agree with that?

19 **A.** It appears that way.

20 Q. I'm going to move it up just one second. I think we lose
21 him after that. Okay.

22 And same depiction, would you agree with me, just more
23 fuzzy?

24 **A.** It's definitely a lot fuzzier.

25 Q. Yeah. Sorry, sir.

1 You'd agree he's standing, correct?

2 **A.** Yes.

3 **Q.** Same area, right?

4 **A.** Right.

5 **Q.** And this is 5:10. This one clears up a little bit. First
6 one's probably the best, but he's still standing at the end of
7 the truck, correct?

8 **A.** He is, sir.

9 **Q.** Hands appear to be cupped together?

10 **A.** Yes.

11 MR. MARCHESE: And for the record, I'm going to go to
12 5:48.

13 These half frames are killing me. All right. We're
14 going to move ahead four seconds to 5:52. There we go, or 5:51.
15 Sorry.

16 BY MR. MARCHESE:

17 **Q.** Once again, we see Black Hat depicted at the end or the back
18 of the pickup truck with the camper shell, correct?

19 **A.** Yes.

20 **Q.** And I've circled him there in the middle, correct?

21 **A.** Yes, sir. You did.

22 **Q.** He appears to be standing, correct?

23 **A.** Yes.

24 **Q.** He might even have his back to the wash area. Is that fair
25 to say?

1 **A.** Again, this one that you stopped it on is blurry, but it
2 appears that way. So I can't say definitely.

3 **Q.** Okay. We'll move it up just a frame.

4 **A.** No, that one's worse.

5 **Q.** There we go.

6 **A.** Yes.

7 **Q.** Now we've got Black Hat all the way to the right of the
8 screen. I just circled him. He's probably a little bit clearer
9 on this one, right?

10 **A.** Yeah, that's a lot clearer. You see his long gun slung in
11 front of him.

12 **Q.** Right. But he appears to have his back actually to the wash
13 area, correct?

14 **A.** This actually looks straight down the interstate, so to his
15 north. Well, north lane looking south.

16 **Q.** Okay. So would it be your testimony he's facing this way?

17 **A.** Yes. Thank you.

18 **Q.** Okay. And the wash from the -- it's tough to see obviously
19 because of the hill, but the wash would be in this trajectory?

20 **A.** Yes, sir. Exactly.

21 MR. MARCHESE: Okay. Move up to 6:11. 6:11. Okay.

22 BY MR. MARCHESE:

23 **Q.** Now, obviously this is a little bit farther back in the
24 distance, correct?

25 **A.** It is.

1 Q. Okay. And I'm going to circle an individual and the camper
2 shell truck, correct?

3 **A.** Yes.

4 Q. And that's all the way to the left of the screen, correct?

5 **A.** It is, sir.

6 Q. Now, to be fair, I mean, you can't really see what this
7 individual in the distance at the foot of the back of the truck
8 is doing, correct?

9 **A.** Yes.

10 Q. All right. But he does appear to be standing, correct?

11 **A.** He does.

12 Q. And the area he's standing in is consistent with where Black
13 Hat has been throughout the last few screen shots we've shown?

14 **A.** Say that one more time, please.

15 Q. The area in which this individual in this -- at the 6:11
16 mark is standing tends to be consistent with where Black Hat has
17 been throughout these screen shots I've been showing you?

18 **A.** Yes, sir.

19 Q. Thank you.

20 MR. MARCHESE: I'm going to go forward about one minute
21 to 7:11.

22 BY MR. MARCHESE:

23 Q. Okay. And at 7:11 you see Black Hat here. He appears to be
24 maybe sitting down or -- he's not kneeling. He's not standing.
25 He's kind of in between. Would you agree with that?

1 **A.** Yes.

2 **Q.** Okay. And same general area, at the foot of that pickup
3 truck, correct?

4 **A.** Yes.

5 **Q.** Appears to be looking same area he was before that you had
6 mentioned. That would be in this general area that I've placed
7 an arrow to the right of the screen?

8 **A.** Yes.

9 MR. MARCHESE: I'm going to play it for about four
10 seconds.

11 (Video playing.)

12 MR. MARCHESE: Okay. And I'm going to back it up to
13 7:14.

14 BY MR. MARCHESE:

15 **Q.** Okay. So for those couple of seconds we just played, now
16 Black Hat has actually stood up and he continues to look down
17 the northbound interstate, correct?

18 **A.** Yes, he does.

19 MR. MARCHESE: Okay. I'm going to fast-forward to
20 7:32. This is one of those distant shots.

21 BY MR. MARCHESE:

22 **Q.** Okay. And in the center of the screen here we have that
23 truck again with the camper shell, correct?

24 **A.** Yes.

25 **Q.** Someone is standing. You can't tell, it's too far away, if

1 it's Black Hat or not, correct?

2 **A.** Yes.

3 **Q.** But the individual that is standing is in the same general
4 location that Black Hat has been throughout these past screen
5 shots, correct?

6 **A.** Correct.

7 MR. MARCHESE: Move it up 12 seconds to 7:44.

8 BY MR. MARCHESE:

9 **Q.** Okay. And all the way to the right of the screen we have
10 that camper shell, correct, the pickup with the camper?

11 **A.** Can you circle it, sir?

12 **Q.** Let me move it up just a little bit.

13 **A.** Okay. That's better.

14 **Q.** Is that better?

15 **A.** Uh-hmm.

16 **Q.** Do you see the circle?

17 **A.** I do now.

18 **Q.** Okay. Once again, too far to tell who that is, right?

19 **A.** Yes.

20 **Q.** Appears to be someone standing at the -- near the bumper of
21 the camper shell, correct?

22 **A.** It does.

23 **Q.** Except this individual's on the northbound bridge and the
24 camper is on the southbound bridge, right?

25 **A.** Yes.

1 Q. Okay.

2 (Video playing.)

3 BY MR. MARCHESE:

4 Q. Okay, sir. And I've stopped it at 7:56.

5 Somewhat in the distance once again so it's difficult
6 to tell what the individual's doing, other than maybe standing
7 in the same general area, correct?

8 **A.** Yes.

9 MR. MARCHESE: Move up to 8:16.

10 BY MR. MARCHESE:

11 Q. Okay. And on this screen shot, this is a better view.

12 Appears to be Black Hat again at the foot of this truck,
13 correct?

14 **A.** Yes.

15 Q. Appears to be kneeling or squatting behind this barrier at
16 this point, right?

17 **A.** He is.

18 MR. MARCHESE: Okay. Play it for two, three seconds.

19 (Video playing.)

20 BY MR. MARCHESE:

21 Q. Okay. And same general area, kneeling at the foot of the
22 truck, correct?

23 **A.** Right. Didn't you just show me this earlier?

24 Q. Maybe it was one of the other counsel. I've just been going
25 chronologically.

1 **A.** Apologize.

2 *Q.* No, that's fine.

3 MR. MARCHESE: And go to 9:01 for the record.

4 Actually, it's 9:02.

5 BY MR. MARCHESE:

6 *Q.* Somewhat difficult to tell. There is a head at the edge of
7 the truck, correct, to the back of it?

8 **A.** Yes.

9 *Q.* Just popping over the barrier. Maybe he has a hat on.
10 Would you agree with that?

11 **A.** Yes.

12 *Q.* Same general area as we've seen Black Hat depicted this
13 entire video, correct?

14 **A.** Yes.

15 MR. MARCHESE: Move up to 9:15.

16 BY MR. MARCHESE:

17 *Q.* Okay. And then we have Black Hat once again at the edge of
18 this truck, correct?

19 **A.** Yes, sir.

20 *Q.* Appears to be kneeling or squatting, correct?

21 **A.** Yes.

22 *Q.* You can see the top of the Jersey barrier right there,
23 correct?

24 **A.** Yes.

25 MR. MARCHESE: Play it just for a couple seconds.

1 (Video playing.)

2 MR. MARCHESE: Okay. And we are at 9:17 right now for
3 the record.

4 BY MR. MARCHESE:

5 Q. Black Hat doesn't appear to have moved, correct?

6 A. You mean stood up moved or just moved around?

7 Q. Same general area. I'm sorry.

8 A. Oh. Yeah, he's in the same general area.

9 Q. Still kneeling or squatting, correct?

10 A. Yes.

11 Q. Still see the top of the Jersey barrier right there,
12 correct?

13 I'm sorry if I put a line where I told you -- asked you
14 to see.

15 You can still see the top of the Jersey barrier right
16 there, correct?

17 A. Yes.

18 Q. Okay. Sorry. And I only got three more, sir. So just bear
19 with me.

20 MR. MARCHESE: And we're going to move up to 10:32 for
21 the record. Okay. Actually, move up just a tad more.

22 BY MR. MARCHESE:

23 Q. Are you able to see the camper on the right of the screen,
24 sir?

25 A. Is it at the very right?

1 Q. Yeah, it's where all of the -- the eraser and the pencil --

2 A. I got a ...

3 Q. No problem. I can move it.

4 A. The access to this computer screen is right there on the
5 right-hand side.

6 Q. There we go.

7 A. Yes.

8 Q. OKAY. Now I moved it into the screen, so now you can
9 actually see it.

10 All right. So I'm making a circle at the end of the
11 camper truck and some sort of individual at the end of it.
12 You'd agree with, right?

13 A. Yes, sir.

14 Q. Tough to see. Not quite as far as the other ones, but not
15 as close as some of the others as well, right?

16 A. Correct.

17 Q. Appears to be the individual's probably kneeling or
18 squatting at this point?

19 A. It appears that way, sir.

20 MR. MARCHESE: I'm just going to play it for about
21 seven seconds.

22 (Video playing.)

23 BY MR. MARCHESE:

24 Q. Okay. And tough to see what he's doing, but the individual
25 hasn't moved from that same general location, correct?

1 **A.** Yes.

2 MR. MARCHESE: Okay. Move up to 11:23.

3 BY MR. MARCHESE:

4 Q. In this particular screen shot you see Black Hat once again.
5 He's at the foot or the back of the camper shell squatting,
6 correct?

7 **A.** Yes.

8 Q. Now, on direct examination you were asked some questions
9 about this particular time frame. This was the one where I
10 believe you stated that Black Hat popped up, I believe was your
11 testimony?

12 **A.** Yeah. If this is the same segment, then yes.

13 Q. Yes. He popped up and then -- isn't it true that in this
14 segment he actually adjusts his shoulder strap on his rifle?

15 **A.** Run through it, sir, and I'll be able to tell you that.

16 (Video playing.)

17 THE WITNESS: It's quick. So from what I see is that
18 he's definitely, you know, bringing his gun around in front of
19 him.

20 BY MR. MARCHESE:

21 Q. Okay.

22 **A.** So whether, you know, on the shoulder strap, frame by frame
23 that will dictate that.

24 Q. Okay.

25 MR. MARCHESE: And, Brian, can you get up 5032-A

1 through E, please.

2 BY MR. MARCHESE:

3 Q. Okay, sir. In this particular -- these are just screen
4 shots of what I have just shown you. They've previously been
5 marked and admitted into evidence.

6 You see Black Hat there, correct?

7 A. Yes, sir.

8 Q. You agree he's kneeling down, squatting, something along
9 those lines, correct?

10 A. Say again.

11 Q. He's kneeling or squatting at that point, correct?

12 A. Yes.

13 Q. Okay.

14 A. You can refer to him as Mr. Parker if you'd like, sir,
15 instead of saying Black Hat. It's kind of demoralizing.

16 Q. Well, we've been doing Black Hat. So let's just keep it
17 consistent for the record.

18 A. Okay, sir.

19 MR. MARCHESE: All right. And we can go to B, please.

20 Okay, Brian. And if you can -- yeah, there we go. Thank you.

21 BY MR. MARCHESE:

22 Q. And I'm going to circle him for you just to make it easier
23 for you. That's Black Hat right there, correct?

24 A. Yes, sir.

25 Q. He appears to be just standing up at this point, correct?

1 **A.** Yes.

2 **Q.** You can see his left forearm next to his left hip area,
3 correct?

4 **A.** Yes, sir.

5 **Q.** Okay.

6 MR. MARCHESE: We can go to C, as in Charlie. All
7 right. And if you could make that a little bigger, Brian, if
8 possible.

9 BY MR. MARCHESE:

10 **Q.** Okay, sir. And I'm going to circle Black Hat once again,
11 correct?

12 **A.** Yes.

13 **Q.** Little bit difficult to see the rifle in this picture due to
14 the coloring from the RV. Is that fair to say?

15 **A.** It is.

16 **Q.** Appears that Black Hat's left arm is going up a little bit
17 towards his chest/neck area, correct?

18 **A.** It appears that way, sir.

19 MR. MARCHESE: D, as in David, Brian.

20 BY MR. MARCHESE:

21 **Q.** And in this particular screen shot again we have Mr. Black
22 Hat right there. Appears that you can see the skin from his
23 forearm in the middle there, correct?

24 **A.** I do.

25 **Q.** Okay. Appears a little difficult to see, but that might be

1 the trajectory of the rifle. Is that accurate? Would you agree
2 with that?

3 I'll move it off, sorry.

4 **A.** Whether it had it on there or not, it doesn't matter. It's
5 blurry, but it appears to be that way, yes. He's adjusted his
6 rifle slung, correct.

7 **Q.** Okay. And E, as in Edward.

8 Okay. And this you can actually see something. All
9 right. I'm going to circle Black Hat. You see his rifle a
10 little bit clearer now with the backdrop. It appears to be
11 pointed not straight down, but, I don't know, maybe 15, 20
12 degrees. Somewhat accurate, right?

13 **A.** It appears that way, yes.

14 **Q.** Okay. And his left forearm and hand appear to be somewhere
15 near his left chin/ear area?

16 **A.** It possibly can. That's blurry.

17 **Q.** Okay. If you don't agree, you don't agree. That's fine.

18 MR. MARCHESE: And, Aaron, I'm going to go back to
19 Exhibit 28. And for the record, this is Exhibit 28 at 14:46.

20 BY MR. MARCHESE:

21 **Q.** And lastly, sir, I've circled Black Hat. You'd agree with
22 me that's him?

23 **A.** Yes.

24 **Q.** He appears to be looking to his left which would be
25 northbound, correct?

1 **A.** He is.

2 **Q.** And he's in the same general area at the end of the foot of
3 that camper or shell truck, correct?

4 **A.** He is.

5 **MR. MARCHESE:** Thank you, sir. I've got no further
6 questions.

7 **THE COURT:** All right. Let's go ahead and take our
8 morning restroom break. During this time I do remind the jury
9 that you are not to discuss this case with anyone nor permit
10 anyone to discuss it with you. You may speak to your fellow
11 jurors about other things, but not about this trial. Please do
12 not read or listen to or review anything that touches about this
13 case in any way nor attempt to perform any research or any
14 independent investigation. And please do not form any opinion
15 regarding the issues in this case until after you have received
16 the jury instructions, heard the testimony, seen the evidence.
17 After that I will excuse you to begin your deliberation process,
18 but not until then.

19 So it's 10:37. Let's go ahead and stand for the jury
20 and be back here 11?

21 **COURTROOM ADMINISTRATOR:** Yes.

22 **THE COURT:** All right. We'll be back here at 11. So
23 go ahead and excuse the jury.

24 And, Special Agent Shilaikis, after the jury exits,
25 then you may also take your stretch break, and we'll just need

1 you back here by 11 so we can resume.

2 THE WITNESS: Thank you, Your Honor.

3 THE COURT: Thank you.

4 (Whereupon jury leaves the courtroom at 10:37 a.m.)

5 THE COURT: Off record.

6 (Recess taken at 10:37 a.m.)

7 (Resumed at 11:08 a.m.)

8 THE COURT: Thank you. You may be seated. Go ahead
9 and bring in the jury.

10 (Whereupon jury enters the courtroom at 11:11 a.m.)

11 THE COURT: Jury may go ahead and be seated, and then
12 everyone else be may be seated as well.

13 Back on the record. And we have Special Agent
14 Shilaikis back on the witness stand as well. Thank you, sir.
15 So we can now continue with cross-examination. I think,
16 Mr. Leventhal, were you next or Mr. Perez?

17 MR. LEVENTHAL: Mr. Perez, Your Honor.

18 THE COURT: All right. Go ahead on behalf of
19 Mr. Lovelein.

20 MR. PEREZ: Thank you.

21 COURTROOM ADMINISTRATOR: And, Your Honor, the
22 witness's touch screen is now working.

23 THE COURT: Oh, good. All right. So your touch screen
24 is working now.

25 CROSS-EXAMINATION

1 BY MR. PEREZ:

2 Q. Good morning, Special Agent. My name is Shawn Perez. I
3 represent Mr. Lovelein. I only have a couple of questions
4 concerning time.

5 In Exhibit 26, the video, you say it's 11:53 and, you
6 know, where you are, correct?

7 A. Yes, there's 15 segments of it. So each one has been ...

8 Q. And you do that for each -- for each video, for each
9 exhibit?

10 A. I attempted to, yes, sir.

11 Q. Okay. And so, like, for example, on Exhibit 28, if it were
12 eight minutes into the video and the video started at 12:04,
13 give or take, we're looking at, you know, 12:12 in the
14 afternoon, correct? Would that be right?

15 A. You're confusing me. I'm trying to follow you.

16 Q. Well, the time on the exhibits -- I'm sorry for talking over
17 you.

18 The time indicator on the video, I mean, I'm assuming
19 that that's like a minute and something seconds, right?

20 A. Oh, I gather. I'm following you now. So, yes, I was using
21 my watch to time it every time that I would try to start a
22 segment and end a segment.

23 Q. Okay. So -- well, within a couple of minutes. If you say
24 you're starting at 12:04, we can assume that's pretty correct?

25 A. Yes, sir.

1 Q. Okay. And then so eight minutes into the video would be
2 12:12?

3 **A.** I believe so. Yes, sir.

4 Q. Okay. Now, one other thing, I just want to clarify where
5 someone was.

6 MR. PEREZ: Brian, can you bring up Exhibit 30, please,
7 at 14 seconds.

8 BY MR. PEREZ:

9 Q. I'm not sure if I heard this correct. I just want to
10 clarify. This individual in the center of the screen, now, did
11 you say they were on the -- closer to you or farther back, on
12 that side of the highway?

13 **A.** Meaning what, sir?

14 Q. Well, I mean, you said they were on the Jersey barrier. On
15 the Jersey barrier closer to you on the northbound lane?

16 **A.** No, I did not. He's on -- I am following you now. What I'm
17 saying on that particular lane of traffic, on that particular
18 highway, he's to the closest side of that Jersey barrier.
19 There's one behind him. Make sense?

20 Q. Okay. But he's not on the -- I guess that would be the
21 eastern side of the --

22 **A.** It's confusing in there, yes, sir, you know.

23 Q. So you're saying he's on the eastern side of the northbound
24 lane? So there wouldn't be any traffic passing in front of him,
25 correct?

1 **A.** No.

2 **Q.** Okay.

3 MR. PEREZ: Brian, can you just, like, back that up
4 slowly. That truck, that's good right there.

5 BY MR. PEREZ:

6 **Q.** So does that change your --

7 **A.** It does, sir. Thank you for that.

8 MR. PEREZ: All right. Thank you. I have nothing
9 further.

10 THE COURT: On behalf of Mr. Drexler, any cross?

11 MR. LEVENTHAL: Yes. Thank you.

12 CROSS-EXAMINATION

13 BY MR. LEVENTHAL:

14 **Q.** Good morning, sir.

15 **A.** Good morning, sir.

16 **Q.** My name is Todd Leventhal. How are you today?

17 **A.** Fine, sir.

18 **Q.** Good.

19 MR. LEVENTHAL: Brian, if we could get 17, Government's
20 Exhibit 17, at 40:56.

21 BY MR. LEVENTHAL:

22 **Q.** What I'd like to do is just show you a map real quick and
23 where you were at. I know you went through it on direct.

24 MR. LEVENTHAL: It's 40:56.

25 Okay. Back it up just a bit, just like a half a

1 second. Stop. Perfect.

2 BY MR. LEVENTHAL:

3 Q. All right. Now, since you're a -- your video there or your
4 screen there works, if you could touch, just so we orient
5 ourselves, where the northbound bridge is. Can you see it from
6 there?

7 A. Do you want me to put an X there or an N?

8 Q. An N, please, just so we -- perfect. Okay. And the
9 southbound bridge?

10 Okay. Now, Agent Shilaikis, at some point you moved
11 positions, correct?

12 A. I did, sir.

13 Q. Okay. And so where were you when you first started
14 videotaping?

15 A. Approximately in this general location right there.

16 Q. Okay. That would be considered Post 1?

17 A. This is considered Post 1, right there.

18 Q. Okay. Fair enough.

19 And you were in your vehicle?

20 A. No.

21 Q. Whose vehicle were you in?

22 A. I wasn't in a vehicle.

23 Q. So when you were filming, you were not in a vehicle at all?

24 A. I was next to a light-all, so a big tower that could come up
25 and light Post 1 during the night. I was next to that.

1 Q. Okay. Now -- and we saw some videos from where you just put
2 that X, correct?

3 **A.** Yes, sir.

4 Q. Okay. And those started at 11:53:15 seconds, correct?

5 **A.** I started the video at 11:23, sir.

6 Q. 11:23?

7 **A.** I believe so. I'd have to go back and see the very first
8 segment of my video, the very first one.

9 Q. Okay. But you remember that your first video started at
10 11:23?

11 **A.** I'd have to review it and make sure that date and time stamp
12 and what I did on my watch; because I started the video when I
13 filmed my watch and I said the time and the date. And so I'd
14 have to see that.

15 Q. Okay.

16 **A.** Best of my knowledge, I think it was around -- it was after
17 11.

18 Q. Okay. So 11:23 is when you would have started is your
19 testimony, correct?

20 **A.** I'm saying if you show it to me again, I'll tell you
21 exactly.

22 Q. Very good. Okay. And you said that your watch would have
23 been in that video?

24 **A.** It is.

25 MR. LEVENTHAL: Okay. If we could go to 26, Brian.

1 And just start it and play it. If you can back it up.

2 (Video playing.)

3 MR. LEVENTHAL: Do we have sound, Brian? Brian, you
4 can stop it. Is there sound on there?

5 Okay. Back it up to the beginning, please, Brian.

6 Thank you. And if you want to hit that sound button on the far
7 right, that might work. There you go. Go ahead and play it.

8 (Video playing.)

9 MR. LEVENTHAL: Stop there, Brian. Thank you.

10 BY MR. LEVENTHAL:

11 Q. Agent Shilaikis, did you see your hand with the watch in
12 that video?

13 A. Not in this one, sir.

14 Q. Okay. So there's another one. This one started at 11:15.
15 You indicated that there another's another video that you
16 started at 11:23?

17 A. If you watch all 15 segments and the totality, you'll see me
18 periodically look at my watch. But I'm reading off my watch
19 because I didn't know how that camera was set up at the time,
20 but I knew my watch was correct on the date and the time.

21 Q. I understand that. So your watch would have said 11:23 when
22 you filmed it, correct?

23 A. Yes, sir.

24 Q. Okay. And that's not in this video, right?

25 A. It is not, sir.

1 Q. Okay. So this video is not the first video that you filmed,
2 correct?

3 **A.** I viewed -- recorded 15 segments because I was worried about
4 the battery strength also because I just pulled this camera out.
5 I was worried about it dying.

6 Q. I understand that, but my question was, this was not the
7 first video that you videotaped. You videotaped at 11:23,
8 correct?

9 **A.** Yes. The segments -- if it was video segment 1, that would
10 be video segment 1.

11 Q. Correct. Okay. So, again, there's a different segment
12 prior to 11:53, correct?

13 **A.** Oh. Gotcha. Yes, sir.

14 Q. Okay. So this is the video that we're seeing for the first
15 time that says 11:53, correct?

16 **A.** I'm following now, sir. Thank you.

17 Q. You are. Okay. And there's no watch?

18 **A.** No.

19 Q. Okay. And you indicated at 11:23 you videotaped your watch?

20 **A.** Yes, sir.

21 MR. LEVENTHAL: Okay. All right. If we can go to --
22 just back it up a little bit at 14 seconds. And play to 34
23 seconds.

24 (Video playing.)

25 MR. LEVENTHAL: Okay. Stop it there. Now just back it

1 up a bit.

2 BY MR. LEVENTHAL:

3 Q. You were asked on direct examination if you were able --

4 MR. LEVENTHAL: Back it up just another second.

5 BY MR. LEVENTHAL:

6 Q. If you were able to see this person that I am circling here
7 in the middle. Do you remember that question?

8 **A.** I do.

9 Q. Okay. And you indicated that you remember seeing him,
10 correct?

11 **A.** I did.

12 Q. Okay. And you remember seeing him on April 12th, 2014,
13 correct?

14 **A.** Yes, sir.

15 Q. Okay. And you saw him while you were videotaping this,
16 right?

17 **A.** Yes.

18 MR. LEVENTHAL: Okay. So if we can just keep going,
19 Brian.

20 (Video playing.)

21 MR. LEVENTHAL: Stop right there, Brian.

22 BY MR. LEVENTHAL:

23 Q. Okay. Now, you kind of swung the camera past that
24 individual that you indicated that you saw that day, correct?

25 **A.** I did.

1 Q. Okay. And you stopped at a person that you indicated was a
2 Ryan Bundy, right?

3 **A.** That's who I believe he was, yes, sir.

4 Q. Okay. And you even sort of verbally acknowledged that while
5 you were filming, correct?

6 **A.** I did.

7 Q. Okay.

8 MR. LEVENTHAL: If we can go back just to 17 seconds,
9 please.

10 BY MR. LEVENTHAL:

11 Q. Now, this person here, on direct exam you said he was
12 militia, correct?

13 **A.** You don't have anything circled, sir.

14 Q. Oh, I'm sorry. That person right there.

15 **A.** Okay. Yeah, I believed he was militia. Yes, sir.

16 Q. Okay. And you indicated that it was his dress that gave you
17 the -- the indication that he was some kind of militia, correct?

18 **A.** At that point with the totality of the circumstances that he
19 appeared to be, yes, sir.

20 Q. Okay. So let's talk about totality of the circumstances.
21 That's just a lot of facts that you're taking in as you're
22 observing, correct?

23 **A.** From the start of this, absolutely, and the information I
24 had at hand prior to.

25 Q. Okay. You indicated that part of the totality of the

1 circumstances would have been his dress, right?

2 **A.** Yes, sir.

3 **Q.** How he was dressed, right? Okay. He's wearing a blue
4 t-shirt, correct?

5 **A.** Yes, sir.

6 **Q.** Okay. Also, you indicated that militia look in camouflage.
7 They come in camouflage of some sort, correct?

8 **A.** All variations of dress, yes, sir.

9 **Q.** All variations of dress?

10 I'm sorry?

11 **A.** Do you want me to follow through with that, sir?

12 **Q.** Yes.

13 **A.** This gentleman has a blue shirt on and a tack vest and a
14 long gun.

15 **Q.** Okay. And that to you is an indication of an ideology or a
16 militia?

17 **A.** An ideology, sir?

18 **Q.** Yes.

19 **A.** No.

20 **Q.** Can you spot militia people just like that?

21 **A.** With this individual with a long gun and the way he was
22 dressed with a tactical vest, yes, sir. He would be a cause of
23 concern.

24 **Q.** Okay. He has a baseball cap on?

25 **A.** Yes, sir.

1 Q. It doesn't look to -- seem like he's got any kind of
2 helmets, does he?

3 **A.** A helmet?

4 Q. Yes.

5 **A.** No, sir.

6 Q. No ballistic helmet, correct?

7 **A.** No, sir.

8 Q. Okay. Ballistic tack plates or anything of that sort?

9 **A.** I don't know what he's wearing under that vest, sir.

10 Q. Okay. Were you able to discern whether he had multiple
11 weapons on him?

12 **A.** Not at -- no, I did not.

13 Q. Okay.

14 MR. LEVENTHAL: If we can go to 58 seconds.

15 BY MR. LEVENTHAL:

16 Q. Now, these gentlemen here, they have ballistic helmets on,
17 correct?

18 **A.** They do.

19 Q. They're in some sort of a --

20 MS. CREEGAN: Objection, relevance.

21 MR. LEVENTHAL: Was going to compare and contrast on
22 why he's calling people militia and what it is about their --
23 what they're wearing that causes him to label somebody in a
24 militia group. He's testified on direct examination he has
25 spotted multiple people that he said was militia, and I'm just

1 trying to figure out what is militia to him.

2 THE COURT: And so how does the photograph of these
3 individuals have anything to do with the people that he called
4 militia?

5 MR. LEVENTHAL: Well, if he's calling people militia
6 and he's indicating that they are -- he's indicating on direct
7 that they're wearing a certain type of uniform, if you will, and
8 the person that was not wearing it was not wearing it; yet,
9 these other people are wearing it. I'm just trying to figure
10 out how he knows what a militia person is. He's the one who
11 spotted them. He's the one telling us.

12 If it's spotting someone who is a democrat versus a
13 republican because of the way they dress, that to me is the same
14 thing, but that's how he is discerning militia and a threat.

15 THE COURT: Well, if you're trying to figure out how he
16 defines someone who is in the militia, you can ask him that
17 question.

18 MR. LEVENTHAL: I did, Your Honor. He said it was
19 camouflage and plates and --

20 THE COURT: That doesn't have anything to do with this
21 photograph. So the objection is sustained.

22 MR. LEVENTHAL: Okay.

23 If we can go to 26, please. And at 2:57. We're at 26.
24 2:57. Okay. Stop right there.

25 BY MR. LEVENTHAL:

1 Q. Now, you were asked on direct examination who these people
2 are, and you indicated this is Agent Dan Love, correct?

3 **A.** Yes, Special Agent In Charge, at the time, Dan Love out of
4 Utah.

5 Q. So he was in charge of the entire, sort of, cattle gather?

6 **A.** No, he was not.

7 Q. No, he was not. Okay.

8 I notice that he's wearing a baseball cap, black, with
9 an insignia on it, correct?

10 MS. CREEGAN: Same objection.

11 MR. LEVENTHAL: Your Honor, they made a big deal about
12 pulling a cap backwards, a black cap, and whether or not
13 somebody wears it and what does that represent.

14 MS. CREEGAN: That has no relevance to this picture.

15 THE COURT: Sustained.

16 MR. LEVENTHAL: All right.

17 You can go to 28, please. And go just two seconds in.

18 BY MR. LEVENTHAL:

19 Q. Okay. Now, at this point you've switched positions,
20 correct?

21 **A.** Yes, sir.

22 Q. Okay. And are you in a vehicle now or are you still behind
23 that white light, if you will?

24 **A.** No. When we moved up forward, there was a Forest Service
25 Law Enforcement vehicle there. I asked that officer to stay

1 there so we'd have some type of cover and concealment. So we
2 were on the side of the vehicle, the driver's side of the
3 vehicle.

4 Q. Okay. You were in concealment, but you never actually got
5 into the vehicle?

6 A. No, sir.

7 Q. Okay. So you were outside of the vehicle. Doors open?

8 A. I did not -- I wasn't in the vehicle. The doors were shut.
9 The law enforcement that belonged to that vehicle was inside of
10 it.

11 Q. I see. Were you leaning on the hood or were you leaning on
12 the trunk?

13 A. The hood of it, sir.

14 Q. The hood of it. Okay. All right. And these individuals
15 here, these are, as you know it, BLM agents, correct?

16 A. Yes, between BLM law enforcement officers and I knew Park
17 Police law enforcement officers were down in the wash.

18 Q. Okay. So that would be a mixture of -- these people here on
19 the left, that would be a mixture of law enforcement officers,
20 correct?

21 A. Yes, sir.

22 Q. Okay.

23 MR. LEVENTHAL: If we could go to 14 seconds, please.

24 BY MR. LEVENTHAL:

25 Q. Okay. This area right here, what would you consider this

1 area? Would you consider this -- would you consider it the
2 fatal funnel?

3 **A.** I would, sir.

4 **Q.** Okay. And that extends all the way through the whole wash,
5 correct?

6 **A.** Yes, sir.

7 **Q.** Okay.

8 MR. LEVENTHAL: If we could go to 4:15, 4 minutes and
9 15 seconds. Play it to 4:30.

10 (Video playing.)

11 MR. LEVENTHAL: Just stop it right there.

12 BY MR. LEVENTHAL:

13 **Q.** Were you able to discern who in this picture is a militia
14 member?

15 **A.** I believe when I refer to my testimony, I said what appears
16 to be militia. Did I actually say that they are militia? I
17 have no idea.

18 **Q.** Okay.

19 MR. LEVENTHAL: Go ahead to 9:06, please.

20 BY MR. LEVENTHAL:

21 **Q.** Now, while you were down there and you were noticing all of
22 these people up there, did you also notice other law enforcement
23 officers on the bridge?

24 **A.** I did.

25 **Q.** Okay. So here you see -- does that seem to be like a law

1 enforcement officer on the bridge?

2 **A.** It is.

3 **Q.** Okay.

4 MR. LEVENTHAL: If we can go to 9:06 just one second
5 later. And 9:30, if you will.

6 BY MR. LEVENTHAL:

7 **Q.** Okay. Does that seem -- I'm sorry. Right in the middle of
8 the screen there, that's a vehicle driving on the bridge,
9 correct?

10 **A.** It is.

11 **Q.** And that looks to be like some kind of a Ranger or National
12 Park Service vehicle, correct?

13 **A.** Yes. It's green, so it's either Parks or Forest Service.

14 **Q.** Okay.

15 MS. CREEGAN: Your Honor, could we just get some
16 foundation? Which bridge these are on.

17 BY MR. LEVENTHAL:

18 **Q.** Do you know which bridge that is on?

19 **A.** It's the one closest to me. So it would be the northbound.

20 **Q.** That would be north?

21 **A.** Southbound.

22 **Q.** That would be the southbound bridge?

23 **A.** Yes, sir.

24 **Q.** Okay. So these people here, they're above and looking
25 almost straight down at BLM and Park Service law enforcement,

1 correct?

2 **A.** They are.

3 **Q.** Okay.

4 MR. LEVENTHAL: If you could go to 9:59 -- 9:55 and
5 play to 10, please.

6 (Video playing.)

7 MR. LEVENTHAL: Just keep going for a second.

8 (Video playing.)

9 MR. LEVENTHAL: Stop right there.

10 BY MR. LEVENTHAL:

11 **Q.** Did you hear what came over the radio there, sir?

12 **A.** No, I didn't hear it.

13 **Q.** Okay.

14 MR. LEVENTHAL: Back it up for just a second, please.

15 (Video playing.)

16 BY MR. LEVENTHAL:

17 **Q.** Did you hear that?

18 **A.** I did.

19 **Q.** Okay. Was he saying: All units with long guns sling your
20 long guns?

21 **A.** He did.

22 **Q.** Okay. And he repeated it twice, correct?

23 **A.** He did.

24 **Q.** Okay. Very good.

25 MR. LEVENTHAL: Can we go to 10 minutes and 12 seconds,

1 which would have been after what we just heard.

2 (Video playing.)

3 MR. LEVENTHAL: Stop.

4 MS. CREEGAN: Your Honor, what's the -- I'm going to
5 object on the relevance of this.

6 THE COURT: You want to go to sidebar?

7 MR. LEVENTHAL: Sure.

8 (Whereupon, the following sidebar conference was held.)

9 MS. CREEGAN: Your Honor, a number of these questions
10 appear to be intended to ask about the dress of law enforcement
11 officers, I assume to attempt to portray them as aggressive.
12 There has just been an exhibit where it said: Sling your long
13 guns, and I assume it's to show Swanson with his long gun in an
14 effort to say, I don't know, that they didn't follow that
15 instruction and that has some meaning.

16 But whether law enforcement officers followed that
17 instruction or not has nothing to do with any of the elements of
18 any of these charges or with any applicable defense. So it
19 seems to be just an effort to try to divert the jury's attention
20 to things that are irrelevant or to blame the officers for being
21 assaulted.

22 THE COURT: You want to respond?

23 MR. LEVENTHAL: Sure, I'll respond exactly the way I
24 did before. They've elicited testimony on direct examination,
25 the Government has, to indicate that this witness, while he was

1 filming, can point out militia members, non-militia members, and
2 what his threat level was. At no time can you I think even
3 discern what a militia member is, and so I tried to get into
4 that. That's irrelevant.

5 But now I'm talking about the difference between he's
6 indicated that a militia member is somebody who wears
7 camouflage, some kind of bullet-proof vest, some kind of -- kind
8 of a vest, a ballistic vest. And I'm just comparing and
9 contrasting who's wearing the bullet-proof vest and who's
10 wearing that stuff. Otherwise, it's left with the jury to think
11 that these guys -- this gentleman can figure out who's militia.
12 And it's an ideology. It's not a look. It's nothing else other
13 than a look. It's an ideology. It doesn't go to show that
14 anybody in particular is a militia considering that the guys
15 that he's picking out are not wearing the stuff that he's saying
16 that militia members wear. And so I --

17 THE COURT: If you can lower your voice, please.

18 MR. LEVENTHAL: I'm sorry. I apologize.

19 Going into that, it's ripe on cross-examination to test
20 this witness's credibility because he's already indicated in --
21 and I'll get to it -- in one of his MOAs that he didn't see any
22 of these people with guns. He puts it right in his MOA, Judge.
23 He says, I didn't see it because I was too busy filming.

24 THE COURT: That's a total different issue.

25 MR. LEVENTHAL: Well, and I understand.

1 THE COURT: The issue is why it would be relevant to
2 show him photos and ask him --

3 MR. LEVENTHAL: Credibility.

4 THE COURT: -- about how the federal officers were
5 dressed.

6 MR. LEVENTHAL: Goes to credibility.

7 THE COURT: You haven't asked him why he thinks someone
8 is militia. He explained to you he didn't know that they were
9 militia, that that was what they appeared to be to him, and you
10 don't ask him anything about -- you say you want to know why he
11 thinks that they're militia, but you don't. What you're really
12 asking him is how did they look in contrast to the Government
13 officers so that you can show the jury that the Government
14 officers are armed or look in some way militaristic, which is
15 getting into the self-defense instruction. That is not legally
16 cognizable. So --

17 MR. LEVENTHAL: And I'm not using --

18 THE COURT: -- I agree with the Government that it's
19 not relevant. The objection is sustained.

20 MR. LEVENTHAL: May I make --

21 THE COURT: And twice I saw Mr. Marchese's client
22 talking to Mr. Drexler from here, just so you're aware of that.

23 MR. MARCHESE: Okay.

24 THE COURT: All right.

25 (Sidebar conference was concluded.)

1 THE COURT: All right. We're back on the record. The
2 objection is sustained. So, Mr. Leventhal, go ahead and move
3 on.

4 MR. LEVENTHAL: Go to 10:27, please, and play to 10:36.
5 (Video playing.)

6 MR. LEVENTHAL: Stop right there.

7 BY MR. LEVENTHAL:

8 Q. Okay. Sir, now, while you were filming this, this is a
9 direct view of the -- under obviously the southbound bridge,
10 correct?

11 A. It is.

12 Q. Okay. And at this time that you were filming there is
13 nobody sort of on the skirt, correct?

14 A. No, not in that area. No, sir.

15 Q. Okay. And there's nobody in between -- no protestors in
16 between or underneath the southbound bridge, correct?

17 A. From my view, I couldn't see anybody. You're right, sir.

18 Q. Okay. And we can barely make it out, but this would be the
19 gate, correct?

20 A. If you're talking the cattle panels that are across the wash
21 area?

22 Q. Yes, sir.

23 A. Yes, sir.

24 Q. Okay. That would be there, right? We don't see any
25 individuals there, correct?

1 **A.** No, sir.

2 **Q.** And this light that you were talking about, would that be an
3 example -- that I'm circling right now. Would that be an
4 example of the light that you were behind, something like that?

5 **A.** At Post 1, yes. That is what I call a light-all.

6 **Q.** Okay.

7 MR. LEVENTHAL: If we can go to 11:35, please. Play it
8 until 11:40.

9 (Video playing.)

10 MR. LEVENTHAL: Okay.

11 BY MR. LEVENTHAL:

12 **Q.** Again, nobody's down approaching yet, correct?

13 **A.** From my vantage point, I couldn't see anybody, sir.

14 MR. LEVENTHAL: Okay. If we can go to 12 minutes,
15 please. Oh, no. 11:35, actually. Go ahead -- oh, we just did
16 that.

17 All right. Go to 12 minutes, please, 12:06. Okay.

18 Now stop.

19 BY MR. LEVENTHAL:

20 **Q.** Now, these people right here we didn't see just now. People
21 are now approaching, protestors are now approaching the fence,
22 correct?

23 **A.** Yes, sir.

24 **Q.** Underneath the southbound bridge, which would be these
25 pillars, yes?

1 **A.** Yes.

2 **Q.** Okay. These individuals here, they seem to have their hands
3 up, correct?

4 **A.** They do.

5 **Q.** This individual has his hands away from himself, correct?

6 **A.** Yes, sir.

7 **Q.** Okay.

8 MR. LEVENTHAL: If you go to 12:20, please, Brian.

9 Just go ahead and play it.

10 (Video playing.)

11 MR. LEVENTHAL: Stop.

12 BY MR. LEVENTHAL:

13 **Q.** Okay. This tree right here, what -- let me ask you about
14 the conditions that day. Was it windy?

15 **A.** It was breezy.

16 **Q.** Breezy. Okay. It was hot?

17 **A.** Yes.

18 **Q.** Dusty?

19 **A.** I wouldn't say dusty.

20 **Q.** Okay. This tree that seems to be blocking some of your
21 view, was that moving about?

22 If we can move back, can you watch that tree real quick
23 to see if it obstructed any of your view while you were
24 videotaping?

25 MR. LEVENTHAL: Go forward. Stop. Go ahead and play

1 it.

2 (Video playing.)

3 BY MR. LEVENTHAL:

4 Q. Would you agree -- stop please -- that tree did block some
5 of your view?

6 A. I'd say it's waving in the video, yes, sir.

7 Q. Okay.

8 MR. LEVENTHAL: If we could go to 13:04. Stop right
9 there.

10 BY MR. LEVENTHAL:

11 Q. Okay. You were asked on direct examination about this
12 individual right here. Do you remember that?

13 A. Yes.

14 Q. Okay. This individual has red pants, correct?

15 A. I called them peach colored, sir.

16 Q. Peach? Okay. Now, you've had extensive training in the
17 military, correct?

18 A. I have.

19 Q. Served four tours, correct?

20 A. I served 20 years, sir.

21 Q. 20 years? You ever wear red pants to go to any type of
22 combat or --

23 A. Overseas, no, sir.

24 Q. No? How about here?

25 A. To combat here? Are you talking this day?

1 Q. Yeah, I'm not sure why you prefaced it by saying "overseas."

2 **A.** Overseas in combat. I haven't been in combat in the United
3 States, sir.

4 Q. Okay. Overseas you've never worn peach-colored pants?

5 **A.** No, I have not. No, sir.

6 Q. Okay.

7 You indicated that you were in fear that day, correct,
8 Agent Shilaikis?

9 **A.** I did, sir.

10 MR. LEVENTHAL: Okay. If we could bring up 17 again.
11 Go to 40:56. Stop right there. No. Actually, go forward.
12 Backwards. 40:56, please.

13 (Video playing.)

14 MR. LEVENTHAL: Okay. Stop right there.

15 BY MR. LEVENTHAL:

16 Q. All right. And you indicated -- and I'm going to put an X.
17 If I'm correct, that's where you started out, correct?

18 **A.** Yes, sir.

19 Q. And then at some point you moved to, I believe you indicated
20 where I'm putting an O, correct?

21 **A.** Do you mind if I make a circle?

22 Q. Yeah. Go ahead. You tell me where you were.

23 **A.** I believe I was in this general area right here.

24 Q. Over this area?

25 **A.** Yes.

1 Q. Okay. And you indicated there was a vehicle that you were
2 behind in that area, correct?

3 **A.** Yes, sir. So somewhere in that vicinity. I was a little
4 bit pressured that day. So somewhere in this vicinity I was at.

5 Q. Okay.

6 **A.** Next to a vehicle.

7 Q. Okay. Fair enough.

8 And you saw all of the law enforcement vehicles at Post
9 1 gathering, correct, Metro?

10 **A.** Yes, sir.

11 Q. You saw SWAT come in, correct?

12 **A.** A SWAT vehicle?

13 Q. Yes.

14 **A.** Yes, sir.

15 Q. You saw them all come in, right?

16 **A.** Yes, sir.

17 Q. You recognized NHP that was on the northbound bridge,
18 correct?

19 **A.** I did.

20 Q. They were in those green fluorescents?

21 **A.** I believe so.

22 Q. And you stayed up here in this area or in this area pretty
23 much for about how long? An hour?

24 **A.** Approximately, yes, sir.

25 Q. Okay. You never moved down towards the bridge or towards

1 any of these people, correct?

2 **A.** I did not.

3 MR. LEVENTHAL: Thank you. I have nothing further.

4 THE COURT: Mr. Perez, did you cross?

5 MR. PEREZ: Yes, Your Honor.

6 THE COURT: Okay. Any redirect?

7 MS. CREEGAN: Briefly, Your Honor.

8 REDIRECT EXAMINATION

9 BY MS. CREEGAN:

10 Q. Agent Shilaikis, do you remember Mr. Marchese asking you
11 some questions about an individual he called Black Hat?

12 **A.** Yes. Referring to Mr. Parker?

13 Q. Well, with Mr. Marchese's questions was he asking you about
14 an individual that he termed as Black Hat?

15 **A.** Vaguely, ma'am, I'm sorry, with all of the testimony that's
16 gone on today.

17 Q. Do you remember Mr. Marchese showing you a frame of the same
18 individual by the camper over and over?

19 **A.** Yes, sir. And the over and over about calling him Black
20 Hat.

21 Q. Do you remember that?

22 **A.** I do.

23 Q. Those questions?

24 Were you focusing on Black Hat with your video camera?

25 Were you intending to follow him for the entire time?

1 **A.** I did not.

2 **Q.** About how many seconds or minutes of footage was that that
3 you reviewed with Mr. Marchese?

4 **A.** It varied. There wasn't very much. It was frame by frame,
5 if that's what you're asking. If it's how much video was on
6 Mr. Parker, who I know now, there wasn't much. It was trying to
7 encompass everything that was going on.

8 **Q.** I think you've just explained it, but what were you trying
9 to do with your video camera?

10 **A.** Memorialize the entire event and then focus in; because in
11 my heart of hearts I thought there was going to be somebody
12 shooting from that side; that I could zero in on that to
13 memorialize it for any type of further investigation after the
14 fact.

15 MS. CREEGAN: Thank you.

16 THE COURT: Any recross?

17 MR. TANASI: None from Stewart, Your Honor.

18 MR. MARCHESE: None from Parker.

19 MR. LEVENTHAL: No, Your Honor.

20 MR. PEREZ: No, Your Honor.

21 THE COURT: All right. So at this time if any members
22 of the jury have questions for our witness, Special Agent
23 Shilaikis, go ahead and please write them down on the forms
24 provided. Take your time. Write neatly. Try and be clear and
25 not use too many pronouns. We don't need your name or your

1 signature or jury number. Just your questions.

2 Counsel, please join me at sidebar.

3 (Whereupon, the following sidebar conference was held.)

4 THE COURT: All right. Jury note No. 89, did anyone
5 point a weapon at you?

6 Any objection?

7 MR. MARCHESE: No objection.

8 MR. TANASI: None from Stewart.

9 THE COURT: Jury note 90: When we heard the comment to
10 sling arms, did that apply only to BML -- they mean BLM, but
11 they wrote BML -- or to all armed federal law enforcement?

12 Any objection?

13 MR. TANASI: None from Stewart.

14 MS. CREEGAN: No, Your Honor.

15 THE COURT: And then: Who gave that command?

16 Any objection?

17 MR. TANASI: None from Stewart.

18 MS. CREEGAN: No, Your Honor.

19 MR. PEREZ: None from Lovelein.

20 THE COURT: And the second part of jury note 90 is:
21 Have you ever participated in or heard an after action report of
22 a fire fight with the Federal Government?

23 MR. MARCHESE: Can you read that again? I'm sorry.

24 THE COURT: Have you ever participated in or heard an
25 after action report of a fire fight with the Federal Government?

1 MR. PEREZ: After action?

2 MR. LEVENTHAL: I would object on relevancy grounds. I
3 think it's completely irrelevant if he's ever heard of one. I
4 don't know if there even is one or not. It's just it's not
5 relevant to whether or not my client was involved in it or not
6 involved with it; it's not them; it's not a protest.

7 MR. MARCHESE: Parker joins.

8 MR. TANASI: Stewart joins.

9 MR. PEREZ: Lovelein joins.

10 MS. CREEGAN: Just as an initial matter, I'm not sure I
11 even understand what the question's trying to ask.

12 MR. MARCHESE: Parker, it's unintelligible.

13 THE COURT: Well, it's not unintelligible. It's just a
14 matter of this witness knows about an after action report and we
15 haven't heard of anything like that. I don't know if there's --

16 MS. CREEGAN: I think one way to understand the
17 question, and this may not be correct, is they're asking if
18 people normally refer to -- Agent Shilaikis was cross-examined
19 on whether he said he was afraid that there would be a fire
20 fight. And this person might be attempting to find out if that
21 would be a normal part of a report or not, but I can't tell if
22 that's exactly what they're trying to ask.

23 MR. TANASI: Is the question about this case or any
24 after action reports in general? It seems very vague.

25 THE COURT: All right. So it sounds like the parties

1 don't want me to ask that question. So I'll have to ...

2 I don't know what an after action report is.

3 MS. CREEGAN: Just let them know we're not clear on it,
4 and maybe phrase it a little more clearly in the future if they
5 can.

6 THE COURT: All right. Jury note No. 91: Were you
7 still concerned for your life when you noticed the presence of
8 other law enforcement, NHP, Metro, and etc., next to the
9 individuals with long guns?

10 MS. CREEGAN: No objection.

11 MR. MARCHESE: No objection Parker.

12 MR. TANASI: None from Stewart.

13 MR. PEREZ: None from Lovelein.

14 THE COURT: And that's it.

15 (Sidebar conference was concluded.)

16 THE COURT: All right. Special Agent Shilaikis, I've
17 got a couple of jury questions here. I'm going to go ahead and
18 read them into the record, but these are not my questions.
19 These are jury questions. So when you respond, you may go ahead
20 and turn look at the jury. All right?

21 THE WITNESS: Yes, ma'am.

22 THE COURT: So jury note No. 89 asks: Did anyone point
23 a weapon at you?

24 THE WITNESS: Not that I could see. I was
25 concentrating on the video camera to basically, like I told you,

1 to memorialize the events of that day. So if they did, I didn't
2 see it.

3 THE COURT: Right. Jury question No. 90: When we
4 heard the comment to sling arms, did that apply only to BML --
5 BLM -- or to all armed federal law enforcement?

6 THE WITNESS: To explain that, each individual officer
7 in law enforcement has to make the determination of what threat
8 that they are observing at that time. The voice that you heard
9 was Acting State Chief Ranger Kelly Cole, and he made that
10 comment. So he made the comment, but each individual officer as
11 they see something that was pointed at them can make that
12 determination based on what they purview the -- perceive the
13 threat to be.

14 THE COURT: And then the next part of -- or the second
15 part of the question is: Who gave that command?

16 THE WITNESS: That was Acting State Chief Ranger Kelly
17 Cole. He's the one that came over the radio. Who told him, I
18 have no idea.

19 THE COURT: All right. And then the next question on
20 jury note No. 90 is about participating in or hearing an after
21 action report. And the parties agree and I agree also that,
22 because we're not really sure what it's referring to, we're not
23 going to ask that question because it's just not clear to us
24 what the question is asking.

25 Jury note No. 91 asks: Were you still concerned for

1 your life when you noticed the presence of other law
2 enforcement, NHP, Metro, etc., next to the individuals with the
3 long guns?

4 THE WITNESS: Yes. So to further expand on that, I
5 wasn't only just worried about myself. I was worried about all
6 life that day. Our mission was to go gather cows, to take them
7 off our public lands that were in trespass. We were not
8 prepared that day. So I was worried about any loss of life.
9 Probably what affects me the most is the people that got stopped
10 there for no reason, they had no idea what was evolving in front
11 of them, and the potential that somebody just had to be in the
12 wrong spot at the wrong time. That affects me to this day.

13 THE COURT: Okay. Any follow-up by the Government?

14 MS. CREEGAN: No, Your Honor.

15 THE COURT: Any follow-up by the Defense?

16 MR. TANASI: None from Stewart, Your Honor. Thank you.

17 MR. MARCHESE: Just one question, Your Honor.

18 THE COURT: All right.

19 RECROSS-EXAMINATION

20 BY MR. MARCHESE:

21 Q. You were asked about the command about slinging long guns.
22 Do you remember that?

23 **A.** I do.

24 Q. And I believe your testimony was that it was Kelly Cole that
25 made that?

1 **A.** I believe it was based on his voice. That's who I recognize
2 it to make that comment coming over the radio.

3 **Q.** Okay. And to your personal knowledge, was Mr. Cole in the
4 wash at the time on April 12th, 2014?

5 **A.** I do not know where Chief Ranger Cole was at.

6 **Q.** Okay. Was -- he wasn't next to you, though, correct?

7 **A.** He was not.

8 MR. MARCHESE: Okay. No further questions.

9 THE COURT: Anyone else?

10 RE-CROSS-EXAMINATION

11 BY MR. LEVENTHAL:

12 **Q.** So, Agent Shilaikis, as I understand, Sling your long guns,
13 sling your long guns, what you've indicated is that's the
14 discretion of the people that were holding the long guns and
15 pointing the long guns on the BLM or the law enforcement side?

16 **A.** I would say yes. If there's an officer that is pointing his
17 gun at some thing, he sees that threat. The totality of the
18 circumstances belongs to that officer and he made that choice.

19 **Q.** So the order, Sling your long guns, sling your long guns, is
20 in fact not just that; it's at your discretion or if you want to
21 or if you don't feel safe, something along those lines, right?

22 **A.** I cannot tell you what the determination of what that meant.
23 I know for myself that if I were seeing a threat where I had to
24 point my weapon at somebody and I heard that, I would not take
25 it off that person.

1 Q. Did you sling your long gun that day?

2 **A.** I had the video camera. My long gun was slung in front of
3 me, yes, sir.

4 MR. LEVENTHAL: Thank you.

5 THE COURT: Anyone else? Any redirect?

6 MS. CREEGAN: No, Your Honor. Thank you.

7 THE COURT: Okay. Well, thank you, Special Agent
8 Shilaikis, for coming in this morning. You are excused.

9 THE WITNESS: Thank you, Your Honor.

10 THE COURT: Please be careful on the way down with
11 those steps.

12 And then the rest of us are going to go ahead and take
13 our one-hour lunch break today. I do remind the jury during the
14 lunch break, please do not discuss this case with anyone, not
15 even your fellow jurors. You may speak to them about other
16 things, but not about this case. Also, please do not read or
17 listen to or review anything that touches upon this case in any
18 way nor attempt to perform any research or any independent
19 investigation.

20 If you do have a question, please write it down. And
21 do not form any opinion until after you have heard all of the
22 testimony, reviewed the evidence. I will provide you with the
23 written instructions of law to apply to the facts as you
24 determine the facts to be. And then you will hear closing
25 arguments. After that, I will excuse you to begin

1 deliberations. That's when you will begin to discuss the case
2 with each other, express your opinions, and so forth, but not
3 until then should you begin your deliberation process.

4 So we'll go ahead and stand up for the jury and excuse
5 them for their lunch break. We'll welcome them back at 1
6 o'clock.

7 (Whereupon jury leaves the courtroom at 12:01 p.m.)

8 THE COURT: All right. Before we go off record, I want
9 to address the -- you can go ahead and have a seat -- the
10 conduct of Defendant Parker during sidebar. Twice I saw him
11 turn around and talking to Mr. Drexler. I didn't see if
12 Mr. Drexler responded, but when Mr. Parker saw me, then he
13 turned his chair around so that his back was facing me. And he
14 picked up a book and either put it on his lap or had it
15 somewhere where his elbows were bent.

16 So, Mr. Marchese, did you want to make any statement
17 for the record?

18 MR. MARCHESE: I've addressed this with Mr. Parker. He
19 indicated to me he was looking at the back screen. Regardless,
20 I have instructed --

21 THE COURT: He was not looking up at the back screen,
22 which is way above even the heads of the marshals that were
23 standing up. He was looking straight at Mr. Drexler who was
24 sitting downward.

25 MR. MARCHESE: I have no -- I don't have any personal

1 knowledge, Your Honor. The position I was standing in, I would
2 have to -- you know, the partition is right there. But,
3 regardless, I have instructed him at any further sidebars to
4 either look down. Do not move his chair in any way, shape, or
5 form. Just look forward. Do not turn in any way, shape, or
6 form towards Mr. Drexler or Mr. Stewart or Mr. Lovelein.

7 THE COURT: All right. Well, I'm not going to allow
8 Mr. Parker to return after the lunch break. He can come back in
9 after the afternoon bathroom break, but I'm not going to allow
10 him to be in the courtroom after lunch as a result of his
11 disobeying the Court's admonishment every day, day after day,
12 and he's well aware.

13 And the defendants have been getting closer and closer,
14 pushing that line. Multiple times I've had to tell them to quit
15 it and cut it out with the writing things on the notebook and
16 turning it towards the juror and so forth. And so I can't let
17 it go on because my fear actually is that if I don't do
18 something about it, they're going to do something even worse.

19 So I'm not going to let him return after the lunch
20 break. He can come back after the bathroom stretch break in the
21 middle of the afternoon.

22 THE DEFENDANT: Your Honor?

23 THE COURT: No, you've got an attorney. You speak
24 through him. You don't want to speak to me directly, trust me.
25 Let's go ahead and take our lunch break.

1 (Recess taken at 12:04 p.m.)

2 (Resumed at 1:19 p.m.)

3 THE COURT: All right. You may be seated. Thank you.
4 Go ahead and call in the jury.

5 COURTROOM ADMINISTRATOR: Yes, Your Honor.

6 (Whereupon jury enters the courtroom at 1:22 p.m.)

7 THE COURT: Jury may go ahead and be seated. Everyone
8 else may be seated as well.

9 The Government may call its next witness.

10 MR. MYHRE: Thank you, Your Honor. The Government
11 calls Special Agent Joel Willis.

12 THE COURT: Good afternoon, Agent Willis.

13 THE WITNESS: Good afternoon.

14 THE COURT: Come on up. Please be careful with the
15 steps.

16 JOEL WILLIS, having duly been sworn, was examined and
17 testified as follows:

18 COURTROOM ADMINISTRATOR: Thank you. You may be
19 seated. Please state your full name for the record and spell
20 your last name.

21 THE WITNESS: Joel Willis, W-I-L-L-I-S.

22 MR. MYHRE: Thank you, Your Honor.

23 DIRECT EXAMINATION

24 BY MR. MYHRE:

25 Q. Good afternoon, Agent Willis.

1 **A.** Good afternoon.

2 **Q.** You are currently a special agent with the Federal Bureau of
3 Investigation. Is that correct?

4 **A.** Yes.

5 **Q.** Where are you currently officed?

6 **A.** At the FBI office here in Las Vegas.

7 **Q.** How long have you been employed by the FBI?

8 **A.** 13 and a half years.

9 **Q.** And all of that time as a special agent?

10 **A.** Yes.

11 **Q.** Was the Las Vegas office your first office?

12 **A.** No, I was assigned to the Newark, New Jersey/Philadelphia
13 office for five years before here.

14 **Q.** Now, in the course of your duties at the Las Vegas field
15 office, were you assigned an investigation into the events of
16 April 12th, 2014?

17 **A.** Yes.

18 **Q.** What was your assignment?

19 **A.** To oversee all evidence collection, interviews, and
20 documentation of the investigation into the events of April
21 12th, 2014.

22 **Q.** And was that essentially as a case agent?

23 **A.** Yes.

24 **Q.** Had you -- before being assigned as a case agent in this
25 investigation, had you been involved in other criminal

1 investigations as well?

2 **A.** Yes.

3 **Q.** Just ballpark how many.

4 **A.** Between 50 and 100.

5 **Q.** Aside from your entry into the FBI and going through the FBI
6 Academy, have you had other specialized training as well?

7 **A.** Yes, I have.

8 **Q.** In connection with this investigation in particular, have
9 you had training and experience with respect to reviewing social
10 media?

11 **A.** Yes, we call it social media exploitation. And it's
12 basically identifying information, digital information,
13 collecting that evidence, and documenting it into a case file.

14 **Q.** And when I use the term "social media," what generally does
15 that mean for you?

16 **A.** Information sharing through the Internet.

17 **Q.** And we've talked about during the course of this trial
18 Facebook. That qualifies as social media?

19 **A.** Yes.

20 **Q.** How about YouTube?

21 **A.** Yes.

22 **Q.** And I'm not sure we've talked much about YouTube, but what
23 generally is YouTube?

24 **A.** YouTube is an Internet video-sharing platform or website.

25 **Q.** Now, in the course of your investigation of the events of

1 April 12, have you reviewed social media looking for images from
2 that date?

3 **A.** Yes, I have.

4 **Q.** And just generally, we'll drill down a little bit to more
5 specifics, but generally explain what type of investigative
6 technique, for example, you used when reviewing social media?

7 **A.** Well, it's very simple. I would typically go -- go onto the
8 Internet. Do search terms. If it was something to do with
9 Bundy or April 12, 2014, basically start there where anybody
10 else would start and then drill down into different social media
11 websites like Facebook and YouTube. And I would then collect or
12 capture screen shots, capture and download photographs and
13 videos, and then I would document those things into our case
14 file.

15 **Q.** Are you familiar with the term "public source"?

16 **A.** Yes, very.

17 **Q.** What generally does that mean?

18 **A.** Public source or open source is something that is generally
19 available to the public. You would not need a user name or a
20 password or any type of special permission to access this
21 information on the Internet.

22 **Q.** So any member of the public could go onto one of those sites
23 and look for something?

24 **A.** Yes.

25 **Q.** That's what you refer to as open source?

1 **A.** Yes.

2 **Q.** So as part of your investigation, did you review reopen
3 source?

4 **A.** Yes, I did.

5 **Q.** Now, during the course of this trial thus far, we've heard
6 from an individual named Alex Ellis. Are you familiar with
7 Mr. Ellis?

8 **A.** Yes.

9 **Q.** And he referred to a film that was obtained or captured,
10 excuse me, a video captured by an individual by the name of
11 Michael Flynn?

12 **A.** Yes.

13 **Q.** Are you familiar with that?

14 **A.** Yes, I am.

15 **Q.** In the course of your investigation, have you reviewed the
16 video that was captured by Mr. Flynn from April 12?

17 **A.** Yes.

18 **Q.** Did you, in fact, obtain that video from him?

19 **A.** Yes, I did.

20 **Q.** Now, we've also heard from an individual by the name of Trey
21 Schillie. Do you recall that testimony?

22 **A.** Yes.

23 **Q.** Had you interviewed Mr. Schillie?

24 **A.** Yes, I did.

25 **Q.** And did you obtain images and data from Mr. Schillie as

1 well?

2 **A.** Yes.

3 **Q.** In the course of your investigation, have you reviewed all
4 of that?

5 **A.** Yes, I have.

6 **Q.** We also heard from a Special Agent McEwen concerning aerial
7 surveillance video. Do you recall that testimony?

8 **A.** Yes.

9 **Q.** During the course of your investigation, have you reviewed
10 that aerial?

11 **A.** Yes, I have.

12 **Q.** And just generally speaking, when you say you reviewed it,
13 what are you referring to?

14 **A.** I'm referring to reviewing the video by playing it on a
15 media player on a computer. So I'm reviewing the digital
16 information that was collected from that aerial photography.
17 And oftentimes or actually throughout the entire video,
18 reviewing it numerous times frame by frame, slowing it down,
19 speeding it up, things like that.

20 **Q.** Now, aside from that surveillance film, were there any other
21 surveillance films from the northbound 15 that day on April 12,
22 2014?

23 **A.** As far as official surveillance?

24 **Q.** Correct.

25 **A.** No.

1 Q. So there were no, like, pole cameras out there or anything
2 by the Nevada State Highway Department out there that would
3 capture images?

4 **A.** No, sir.

5 Q. Now, during the course of your investigation, however, or
6 during the events of April 12th, 2014, on the northbound bridge,
7 were there other -- were there other people there capturing
8 images as well?

9 **A.** Yes.

10 Q. We already talked about Schillie and we've talked about
11 Flynn, correct?

12 **A.** Yes.

13 Q. But there were other individuals as well?

14 **A.** Yes, there were.

15 Q. As part of your investigation, was -- were you tasked with
16 trying to obtain the identity of some of the people who may be
17 capturing images out there?

18 **A.** Yes, I was.

19 Q. Now, have you also reviewed the video that Special Agent
20 Shilaikis captured that day?

21 **A.** Yes.

22 Q. And how about with respect to Sergeant Serena?

23 **A.** Yes.

24 Q. You reviewed that video as well?

25 **A.** Yes, I did.

1 Q. And did you review the video that was captured by Trooper
2 Madsen's dash cam?

3 **A.** Yes, I have.

4 Q. Now, I also want to talk a little bit about the area out
5 there near Bunkerville at the northbound 15. Did you -- have
6 you physically visited the site where the -- what we've referred
7 to as the ICP, where that was located?

8 **A.** Yes, I have.

9 Q. Approximately how many times have you visited that site?

10 **A.** Approximately six times. I'm pretty confident six times,
11 actually.

12 Q. And as part of your investigation, have you walked that
13 ground where the ICP is?

14 **A.** Yes, I have.

15 Q. How about the area which people have identified, witnesses
16 have identified, as Post 1?

17 **A.** Yes, I have.

18 Q. How about the area that people have identified as Post 2?

19 **A.** Yes, I have.

20 Q. Have you been up on the northbound bridge?

21 **A.** Yes, I have.

22 Q. And have you been down in the wash?

23 **A.** Yes, I have.

24 Q. Now, how about the area that's south of Post 1 across the
25 freeway which we've identified and referred to as sort of the

1 parking area, makeshift parking area, or the assembly area?

2 **A.** Yes, I have been there.

3 **Q.** Also, in the course of your investigation, have you been to
4 the area that -- where the stage was located on April the 12th,
5 2014?

6 **A.** Yes.

7 **Q.** Have you walked through that area?

8 **A.** Yes.

9 **Q.** Are you familiar with the terrain in that area?

10 **A.** Yes, I am.

11 **Q.** Now, in the course of your investigation, does the name
12 Dennis Michael Lynch -- is that familiar to you?

13 **A.** Yes.

14 **Q.** And who is Dennis Michael Lynch?

15 **A.** Dennis Michael Lynch was a photographer that was in the
16 Bunkerville area on April 12, 2014, representing Fox News.

17 MR. MYHRE: And, Your Honor, may we draw up what's been
18 previously admitted as Exhibit 6A and just play the first
19 portion of that?

20 COURTROOM ADMINISTRATOR: Did you say 6A?

21 MR. MYHRE: Yes, Exhibit 6A. Correct. It should be --
22 it should be 6A.

23 Has 6A not been admitted? Okay. If you could just
24 draw up just for the witness -- Your Honor, permission just to
25 draw up for the witness only Exhibit 6A.

1 THE COURT: All right. Just for the witness.

2 MR. MYHRE: And that's fine. Right there, 9 seconds
3 into 6A.

4 BY MR. MYHRE:

5 Q. Agent Willis, is this image here from images captured on
6 April the 12th, 2014?

7 MR. LEVENTHAL: Objection, calls for speculation.

8 MR. MARCHESE: Parker joins.

9 MR. TANASI: Stewart joins.

10 MR. PEREZ: Lovelein joins.

11 THE COURT: The objection was speculation. Do you want
12 to lay a foundation for how he would know that this is --

13 MR. MYHRE: Sure, Your Honor.

14 THE COURT: -- the video?

15 BY MR. MYHRE:

16 Q. Well, first of all, is this part of Exhibit 6 that has
17 already been admitted?

18 **A.** Yes.

19 Q. Okay. And do you recognize an individual in this who's
20 wearing a blue shirt?

21 **A.** Yes, I do.

22 Q. In Exhibit 6A?

23 **A.** Yes.

24 Q. And is that individual -- who is that individual?

25 **A.** Dennis Michael Lynch.

1 Q. And, again, this is a portion of the video that's already
2 been admitted into evidence, correct?

3 **A.** Yes, it is.

4 MR. MYHRE: We offer Exhibit 6A, Your Honor.

5 THE COURT: Any other objection?

6 MR. LEVENTHAL: As to foundation as to how he knows
7 Mr. Lynch and he knows that's Mr. Lynch.

8 MR. MYHRE: I'll be glad to lay that, Your Honor.

9 THE COURT: All right.

10 BY MR. MYHRE:

11 Q. So did you meet with Mr. Lynch?

12 **A.** Yes.

13 Q. Did he identify himself to you?

14 **A.** Yes, he did.

15 Q. Did you verify his identity?

16 **A.** Yes, I did.

17 MR. MYHRE: And, again, we offer 6A, Your Honor.

18 THE COURT: Any other objection?

19 MR. MARCHESI: None from Parker.

20 MR. TANASI: None from Stewart, Your Honor.

21 MR. LEVENTHAL: No, Your Honor.

22 MR. PEREZ: No, Your Honor.

23 THE COURT: All right. Exhibit 6A is admitted. You
24 may go ahead and publish it to the jury.

25 MR. MYHRE: Thank you, Your Honor.

1 (Government's Exhibit 6A is admitted.)

2 MR. MYHRE: And I'm just going to play the first eight
3 seconds.

4 (Video playing.)

5 MR. MYHRE: And you can stop there.

6 BY MR. MYHRE:

7 Q. And, Agent Willis, if you could just -- you see the
8 individual there holding a camera?

9 A. Yes, I do.

10 Q. Who is that?

11 A. That's Dennis Michael Lynch.

12 Q. Now, you've indicated that you met with him. Is that
13 correct?

14 A. Yes.

15 Q. And you interviewed him?

16 A. Yes, I did.

17 Q. And as part of your investigation, did you issue a subpoena
18 to Mr. Lynch?

19 A. Yes.

20 Q. And just for record purposes, we're all sort of familiar
21 with it, but what is a subpoena?

22 A. A subpoena is a -- for this video segment collection that
23 Dennis Michael Lynch provided to us. It is a document that is
24 from the grand jury of a district court, Federal District Court,
25 that requests and compels a person to provide the information

1 requested within the -- one of the attachments for the subpoena.
2 So, again, for this case it would have been the
3 video/photographic evidence that he would have possessed from
4 April 12, 2014, requesting that.

5 Q. And as a special agent of the FBI, are you authorized to
6 serve subpoenas?

7 A. Yes, I am.

8 Q. And did you serve one to Mr. Lynch?

9 A. Yes, I did.

10 Q. Did you receive a response from that subpoena?

11 A. Yes, I did.

12 Q. What did you receive back?

13 A. Approximately 120 video segments that had been captured by
14 Mr. Lynch on April 12th, 2014.

15 Q. And how were you able to verify that they were captured on
16 April 12th, 2014?

17 A. By reviewing them, number one, but, more importantly, this
18 is what he provided to us and explained to us during the
19 interview --

20 Q. I don't want to talk about the explanation.

21 A. Oh.

22 Q. That's what he provided in response to the subpoena?

23 A. Yes.

24 Q. And did the subpoena ask for video images from April 12,
25 2014?

1 **A.** Yes.

2 **Q.** Now, when you reviewed the various videos, were you -- how
3 were you able to verify from looking at the video whether it was
4 from April the 12th, 2014?

5 **A.** The video itself was -- did not include accurate metadata
6 that would tell me when that video was created, the correct date
7 and time. So I used just my knowledge of other admitted
8 evidence and evidence -- video, photo, audio evidence that has
9 been collected to verify that the events depicted in Dennis
10 Michael Lynch's videos are consistent with other video, photo,
11 and audio that was captured on that day.

12 **Q.** So all the things that we've talked about previously that
13 you reviewed, you used that base of knowledge to compare them to
14 what Mr. Lynch gave you?

15 **A.** Yes.

16 **Q.** When you say that there was no metadata there, to what are
17 you referring?

18 **A.** Metadata is typically information within the properties of a
19 data file. So if it's again an audio, video, photograph on a
20 computer, if you right click and go down to Properties, click
21 Properties, you can get information, including GPS information,
22 the type of camera that was used, and of course the date and
23 time that that image was created and/or modified.

24 **MR. MYHRE:** Your Honor, so may we call up for the
25 witness only what's been marked as Exhibit 19, please?

1 THE COURT: Yes, you may.

2 BY MR. MYHRE:

3 Q. And, Agent Willis, do you recognize what's been marked as
4 Exhibit 19?

5 A. Yes, I do.

6 Q. And you've seen this before, correct?

7 A. Yes.

8 Q. And what is Exhibit 19?

9 A. This image right now is depicting the rally site or staging
10 area in Bunkerville, Nevada, on Riverside Road, which is also
11 State Route 170, on April 12, 2014.

12 Q. And how do you know that it's, first of all, the stage area
13 at Riverside Road?

14 A. Well, there is a stage, but also near that stage there are
15 two flagpoles with a banner strung in between them. And I'm --
16 there's other things in the background of that image, the
17 terrain, the road, things like that that I'm familiar with based
18 on my review of other evidence.

19 Q. And you walked that area as well?

20 A. Yes, I have.

21 Q. The images that are depicted there appear -- there appear to
22 be people gathered at that site. Is that correct?

23 A. That's correct.

24 Q. Is that consistent with other images you viewed in terms of
25 the gathering on April 12th, 2014?

1 **A.** Yes.

2 **Q.** And what other types of images that -- for example, is it
3 consistent with the images you reviewed from the Michael Flynn
4 video?

5 **A.** Yes.

6 **Q.** And how is it consistent with the Flynn video?

7 **A.** Well, the Flynn video would have been from a different
8 vantage point of this, but it's the same people in the crowd
9 that you can see in the Dennis -- I'm sorry -- in the Michael
10 Flynn videos.

11 **Q.** But this video is taken from a different vantage point. Is
12 that correct?

13 **A.** Yes.

14 **MR. MYHRE:** Your Honor, we offer Government's Exhibit
15 19 for identification.

16 **THE COURT:** Any objection to Exhibit 19?

17 **MR. TANASI:** Stewart objects on foundation, Your Honor.
18 I think he's testified it's based on inaccurate metadata that
19 he's piecing together.

20 **MR. MARCHESE:** Parker joins. He's not the individual
21 that took these videos nor was he there on the date and time.

22 **MR. LEVENTHAL:** Drexler joins on those grounds.

23 **MR. PEREZ:** Lovelein joins as well.

24 **THE COURT:** He's not seeking to admit the metadata,
25 right?

1 MR. MYHRE: That's correct, Your Honor. We're offering
2 these images under 901(b)(4), the specific characteristics that
3 the agent will be able to identify from his investigation and
4 from other known sources of media that he has reviewed such as
5 the Michael Flynn video.

6 THE COURT: All right. Well, 901(b)(4), Distinctive
7 Characteristics and the Like. The appearance, contents,
8 substance, internal patterns, or other distinctive
9 characteristics of the item, taken together with all the
10 circumstances.

11 On that basis the objections are overruled and Exhibit
12 19 is admitted.

13 MR. MYHRE: Thank you, Your Honor. May we publish?

14 THE COURT: Yes, you may.

15 (Government's Exhibit 19 is admitted.)

16 (Video playing.)

17 MR. MYHRE: And if we could stop there at 32 seconds,
18 please. And, Nicole, if you could back up to about 27 seconds,
19 please.

20 So the record should reflect that we stopped the video
21 at 32 and backed up to 27 seconds.

22 BY MR. MYHRE:

23 Q. Agent Willis, do you see a truck in the foreground of this
24 image?

25 A. Yes, I do.

1 Q. Have you been able, during the course of your investigation,
2 to determine the registration for that truck?

3 **A.** Yes, I have.

4 Q. And have you done that by viewing images that are
5 consistent --

6 MR. LEVENTHAL: Objection, leading.

7 MR. MYHRE: Your Honor, this is purely foundational, as
8 counsel knows.

9 MR. LEVENTHAL: Your Honor, it's not foundational in
10 terms of this picture shows no license plate. So counsel's
11 leading him through. Just ask him how does he know that.
12 That's one --

13 MR. MYHRE: I'm not -- I can get there a different way,
14 Your Honor, if that's ...

15 THE COURT: All right. Go ahead and do it the long
16 way.

17 BY MR. MYHRE:

18 Q. Did you -- in the course of identifying the registration for
19 this vehicle, did you review other images?

20 **A.** Yes, I have.

21 MR. MYHRE: Your Honor, may we call up for the witness
22 Exhibit 40, please?

23 THE COURT: Yes.

24 (Video playing.)

25 MR. MYHRE: And we can stop there. And if you could

1 just back it up a little bit, please. Thank you.

2 BY MR. MYHRE:

3 Q. Now, Agent Willis, looking at Exhibit 40, do you recognize
4 this image?

5 A. Yes, I do.

6 Q. Where did you -- did you obtain this image?

7 A. Yes, I did.

8 Q. How did you obtain it?

9 A. This was on YouTube.com. Doing a search similar to what I
10 was mentioning earlier with a Google search for Bundy Ranch
11 produced a number of results. This was one of them. And once I
12 discovered this video, I downloaded it off of YouTube and
13 documented it in our case file.

14 Q. And does this image depict a vehicle in it?

15 A. Yes, it does.

16 Q. Is that consistent with the image that we viewed in Exhibit
17 19?

18 A. Yes, it is.

19 Q. Can you tell where this image was captured?

20 A. Yes.

21 Q. And where was that?

22 A. This would be to the -- on the south portion of the staging
23 area or rally site in Bunkerville, Nevada.

24 Q. And how do you recognize that?

25 A. Again, the flagpoles with the banner between. There's a

1 camper to the right, the road, the terrain on either side of the
2 road.

3 MR. MYHRE: Your Honor, we offer Exhibit 40.

4 THE COURT: Any objection to Exhibit 40?

5 MR. TANASI: Your Honor, same objection as before with
6 respect to the metadata and the issue that was raised prior.

7 MR. MARCHESE: Parker joins.

8 MR. LEVENTHAL: Drexler joins.

9 MR. PEREZ: Lovelein joins.

10 THE COURT: All right. I didn't hear anything about
11 the metadata on this one.

12 MR. MYHRE: It's not being offered for metadata, Your
13 Honor, just for the images that have been captured.

14 THE COURT: And this is -- he testified he downloaded
15 it from YouTube.

16 MR. MYHRE: That's correct, Your Honor.

17 THE COURT: And publicly available. All right.
18 Exhibit 40 -- objection's overruled. Exhibit 40 is admitted.
19 You may go ahead and publish it.

20 MR. MYHRE: Thank you, Your Honor.

21 (Government's Exhibit 40 is admitted.)

22 MR. MYHRE: If we could just start from the beginning.

23 (Video playing.)

24 MR. MYHRE: No audio. Thank you. And you can stop
25 there. And the record should reflect we stopped at 12 seconds.

1 Now, if we could just back up back to the beginning, please.

2 And the record should reflect that we're back at the
3 very beginning of this segment.

4 BY MR. MYHRE:

5 Q. In that brief segment we saw there, Agent Willis, again,
6 just describe for us what we're seeing in the image that is now
7 before the jury.

8 **A.** Well, in the foreground is the back of a white-colored Ford
9 Ranger truck, pickup truck. In the background is the two poles
10 with the banner in between. It looks like there might be a
11 media truck in front of the Ranger pickup truck. There's a
12 camper to the right of that. There's a road, which is Riverside
13 Road, S.R. 71, a hill to the left, and terrain on the right that
14 I recognize.

15 Q. Now, on this -- on the vehicle we see a license plate. Is
16 that correct?

17 **A.** That's correct.

18 Q. And were you able to obtain registration information
19 pertaining to that license number?

20 **A.** Yes, I was.

21 MR. MYHRE: And, Your Honor, we offer -- excuse me.
22 May we call up for the witness Exhibit 177, please?

23 THE COURT: Yes.

24 BY MR. MYHRE:

25 Q. Do you see 177, Agent Willis?

1 **A.** Yes, I do.

2 **Q.** And what is that?

3 **A.** This is a report from a registration inquiry of the Montana
4 DMV.

5 **Q.** Did you obtain this in the course of your investigation?

6 **A.** Yes, I did.

7 **Q.** And does it bear indicia that it's an official document?

8 **A.** Yes.

9 **Q.** And what indicia is that?

10 **A.** It's notarized, and it's also -- it's -- I believe it's
11 notarized, and it's also signed by a -- I guess a Montana County
12 official, somebody from the -- representative from the DMV.

13 **Q.** And in your training and experience, is this consistent with
14 other registration documents you've seen?

15 **A.** Yes.

16 MR. MYHRE: Your Honor, we offer Government Exhibit
17 177.

18 THE COURT: Any objection?

19 MR. MARCHESE: None from Parker.

20 MR. TANASI: None from Stewart, Your Honor.

21 MR. LEVENTHAL: None on behalf of Mr. Drexler.

22 MR. PEREZ: None from Lovelein.

23 THE COURT: All right. Exhibit 177 is admitted.

24 MR. MYHRE: And thank you, Your Honor. And may we
25 publish as well?

1 THE COURT: Yes, you may.

2 (Government's Exhibit 177 is admitted.)

3 BY MR. MYHRE:

4 Q. Does the information in Exhibit 177 correspond to the
5 license plate number that we saw in the previous image of
6 Exhibit 40?

7 A. Yes, it does.

8 Q. And can you point out, just generally circle, where that is.

9 And would you read into the record what the
10 registration -- excuse me -- the license number is?

11 A. 565491B, as in Bravo.

12 Q. Does this document indicate the individual to whom that
13 vehicle is registered?

14 A. Yes.

15 Q. And who is that individual?

16 A. Ricky Ray Lovelein.

17 MR. MYHRE: And you can take that down. Thank you.

18 BY MR. MYHRE:

19 Q. Are you familiar with an individual by the name of Hugh
20 Gourgeon?

21 A. Yes.

22 Q. And who is Hugh Gourgeon?

23 A. Hugh Gourgeon was an individual that was in the area of
24 Bunkerville, Nevada, and on the northbound I15 bridge on April
25 12, 2014.

1 MR. LEVENTHAL: Objection, foundation.

2 BY MR. MYHRE:

3 Q. Were you able to meet Mr. Gourgeon?

4 A. Yes.

5 Q. Did you identify him?

6 A. Yes.

7 Q. And did you identify his photograph or images in or around
8 the northbound 15?

9 A. Yes.

10 THE COURT: All right. Objection overruled.

11 BY MR. MYHRE:

12 Q. Now, during the course of your investigation, you talked
13 about reviewing open source Facebook pages, correct?

14 A. Yes.

15 MR. MYHRE: And, Your Honor, may we show for the
16 witness what has been marked as Exhibit 147?

17 THE COURT: Yes, you may.

18 BY MR. MYHRE:

19 Q. You see Exhibit 147 before you?

20 A. Yes, I do.

21 Q. And what is 147?

22 A. 147 is a screen capture from the Facebook page of Hugh
23 Gourgeon.

24 Q. Who captured that image?

25 A. There was an agent assigned to this project that I oversaw,

1 but it was another FBI agent in my field office.

2 Q. And was this entered into evidence?

3 A. Yes, it was.

4 Q. Now, what is depicted in the exhibit?

5 A. What's depicted is a -- from the vantage point of the
6 northbound I15 bridge, including part of a Jersey barrier --

7 MR. MARCHESE: Your Honor, I'm going to object. This
8 hasn't been entered into evidence.

9 MR. MYHRE: Just ...

10 THE COURT: Want just generally?

11 MR. MYHRE: Yes, Your Honor.

12 BY MR. MYHRE:

13 Q. Just generally, what's depicted in this image?

14 A. The northbound and southbound I15 bridge in Bunkerville,
15 Nevada.

16 Q. Was this image captured on or about April 12th or on April
17 12th, 2014?

18 A. Yes, it was.

19 Q. And are there distinctive characteristics in this image that
20 help you identify it as coming from April the 12th?

21 A. Yes.

22 Q. And can you identify for us some of those just generally
23 speaking?

24 A. The individuals that are depicted in the photograph, the
25 vehicles, and the general activity that is taking place when

1 this photograph was captured.

2 Q. There appear to be vehicles on that southbound lane,
3 correct?

4 **A.** Correct.

5 Q. Are the images of those vehicles visible in other media that
6 you reviewed?

7 **A.** Yes.

8 Q. And what type of media?

9 **A.** The aerial FBI plane footage.

10 Q. So from the aerial FBI plane footage you were able to verify
11 that those vehicles were on that southbound bridge at that time?

12 **A.** Yes, I am.

13 Q. On April 12, 2014?

14 **A.** Yes, I am.

15 MR. MYHRE: Your Honor, we offer Exhibit 147.

16 THE COURT: Any objection to Exhibit 147?

17 MR. MARCHESE: Parker objects. It's our position that
18 we don't even know if this individual, this Mr. Gurgeon, is the
19 one who took this photo. Another agent apparently is the one
20 who took it off of a Facebook at some point around April 12th.
21 So it's our position, with all due respect to Agent Willis, he
22 cannot authenticate this particular document.

23 THE COURT: Any other objection?

24 MR. TANASI: Stewart joins, Your Honor.

25 MR. LEVENTHAL: Drexler joins.

1 MR. PEREZ: Lovelein joins.

2 MR. MYHRE: Same position, Your Honor. The agent
3 made -- excuse me -- can authenticate through the specific
4 characteristics available and other known media and specifically
5 in this case the aerial photographs. And whether the Hugh
6 Gourgeon portion of it is -- that's what is part of that image.

7 THE COURT: All right. So the objection's overruled
8 pursuant to Federal Rule of Evidence 901(b)(4). This exhibit,
9 No. 147, is admitted.

10 MR. MYHRE: Thank you, Your Honor. And may we publish?

11 THE COURT: Yes, you may.

12 (Government's Exhibit 147 is admitted.)

13 BY MR. MYHRE:

14 Q. 147 is now available to the jury as well. And, Agent
15 Willis, would you please just on your screen there just circle
16 the portion of this image that identifies Mr. Gourgeon.

17 A. Sorry. The screen doesn't seem to be liking me.

18 Q. I've circled for you. Do you see where I've circled?

19 A. Yes.

20 Q. And in those two places it identifies Mr. Gourgeon, correct?

21 A. Yes, it does.

22 Q. And this was -- again, it appears to be from Facebook. Is
23 that correct?

24 A. Yes.

25 Q. The image that is below this, you had -- you spoke about

1 vehicles that you were able to verify, correct?

2 **A.** Yes.

3 **Q.** And just are you able to circle those that you --

4 **A.** Yeah, I'll try it again.

5 No, it's not letting me circle.

6 **Q.** Okay. I'll do it. Tell me if, you know, we're --

7 **A.** Yes.

8 **Q.** I just circled an image or a portion of the image on the
9 screen for you. Do you see that?

10 **A.** Yes, I do.

11 **Q.** Okay. So you were able to verify those through the aerial
12 images you reviewed?

13 **A.** Yes.

14 **Q.** Now, the individual in the lower portion of this -- of this
15 image, have you been able to identify that person?

16 **A.** Yes, I have.

17 **Q.** And who is that?

18 **A.** That's Scott Drexler.

19 **Q.** And how do you know that?

20 **A.** By his hat, his hair, the vest that I could see, a portion
21 of his shirt that I can see, his rifle, the blanket that he is
22 leaning on, and when I've compared it to other admitted
23 photographic and video evidence.

24 MR. MYHRE: And specifically, Your Honor, may we draw
25 up Exhibit 14, please?

1 THE COURT: Yes.

2 MR. MYHRE: If we could advance to 1:27.

3 BY MR. MYHRE:

4 Q. This is from what video?

5 **A.** This is an Alex Ellis or Michael Flynn video taking -- taken
6 after the stand-off and before the cattle have been released on
7 April 12, 2014.

8 MR. MYHRE: And, again, the record should reflect that
9 we've drawn up Exhibit 14 at 1:27.

10 BY MR. MYHRE:

11 Q. And who is the individual depicted in this image at that
12 time?

13 **A.** Scott Drexler.

14 Q. As we see Mr. Drexler in this image, is that -- the clothing
15 he's wearing is on what date?

16 **A.** On April 12, 2014.

17 MR. LEVENTHAL: Objection, foundation.

18 BY MR. MYHRE:

19 Q. The date this image was taken was what?

20 **A.** April 12th, 2014.

21 MR. LEVENTHAL: Objection, hearsay.

22 MR. MYHRE: This is an admitted exhibit.

23 THE COURT: Well, the objection was foundation. So how
24 does he know it's that date and not a different date?

25 BY MR. MYHRE:

1 Q. This exhibit has already been entered into evidence. Is
2 that correct?

3 **A.** Yes.

4 Q. And it was entered in by Mr. Ellis?

5 **A.** Yes, it was.

6 Q. And he testified he was out there on April 12th, 2014?

7 **A.** Yes.

8 Q. And verified the images as occurring on that date?

9 **A.** Yes.

10 THE COURT: All right. Objection overruled.

11 BY MR. MYHRE:

12 Q. Now, in terms of the clothing and how he's attired and so
13 forth, did you use this image as part of your ability to
14 identify images captured in other medium?

15 **A.** Yes.

16 Q. Including what we just looked at in Exhibit 147. Is that
17 correct?

18 **A.** That's correct.

19 Q. Now, we talked about subpoenas earlier. You met with
20 Mr. Gourgeon, correct?

21 **A.** Yes.

22 Q. And did you issue him a subpoena as well?

23 **A.** Yes.

24 Q. Just generally speaking, what was -- what did you seek in
25 the subpoena?

1 **A.** I -- the same thing as Mr. Lynch was any photographic, video
2 evidence, audio evidence that he might have collected on April
3 12, 2014, in the Bunkerville area.

4 **Q.** Did he respond to the subpoena?

5 **A.** Yes, he did.

6 **Q.** Did he provide anything to you?

7 **A.** A thumb drive.

8 **Q.** And what was contained on the thumb drive?

9 **A.** Approximately 46 photographs and seven video segments,
10 digital files.

11 **Q.** Did you review all of those?

12 **A.** Yes.

13 **Q.** Were they consistent or not consistent with images from
14 April 12th?

15 **A.** They were consistent.

16 MR. MYHRE: Your Honor, may we draw up what's been
17 previously marked as Exhibit 13?

18 THE COURT: Yes, you may.

19 MR. MYHRE: And if we could go to approximately 33
20 seconds in. I'm sorry. It would be 13A.

21 (Video playing.)

22 MR. MYHRE: Back just a tad. Okay. Thank you. We're
23 at 32 seconds on Exhibit 13A.

24 BY MR. MYHRE:

25 **Q.** Now, do you see any images you recognize in this particular

1 segment of the video?

2 **A.** Yes, I do.

3 **Q.** And who do you recognize?

4 **A.** I recognize a couple people in this image. Let me see if my
5 screen's working. That is Hugh Gourgeon in the yellow shirt.

6 And that is Trey Schillie.

7 **Q.** Is that the same Mr. Schillie who testified in this
8 courtroom?

9 **A.** Yes.

10 **Q.** Excuse me.

11 And this image was again taken on April the 12th, 2014?

12 **A.** Yes, it was.

13 **Q.** By Mr. Flynn?

14 **A.** Yes.

15 MR. MYHRE: Thank you. You may take that down.

16 Now, Your Honor, may we bring up for the witness what's
17 been marked as Exhibit 137?

18 THE COURT: Yes, you may.

19 BY MR. MYHRE:

20 **Q.** Do you see 137 before you, Mr. -- or excuse me -- Agent
21 Willis?

22 **A.** Yes, I do.

23 **Q.** What is this generally an image of?

24 **A.** In general, it's people standing near the rally site/staging
25 area in Bunkerville, Nevada. There's a hill in the background

1 with several people on horseback on the hills.

2 Q. Where did you obtain this image from?

3 A. Hugh Gourgeon.

4 Q. Was that part of the image that he -- those images he
5 provided you?

6 A. Yeah, with -- from the subpoena response.

7 Q. And you talked about -- you mentioned about the hill.
8 What's on top of the hill?

9 A. On top of the hill is several people on horseback, a number
10 of them are holding flags, it appears.

11 Q. And does this image contain the specific characteristics of
12 other known images that you've obtained from April the 12th,
13 2014?

14 A. Yes, it does.

15 MR. MYHRE: Your Honor, we offer Exhibit 137.

16 THE COURT: Any objection to 137?

17 MR. MARCHESE: None from Parker.

18 MR. TANASI: None from Stewart, Your Honor.

19 MR. LEVENTHAL: None on behalf of Mr. Drexler.

20 MR. PEREZ: None from Lovelein.

21 THE COURT: All right. Exhibit 137 will be admitted.

22 You may go ahead and publish it to the jury.

23 MR. MYHRE: Thank you, Your Honor.

24 (Government's Exhibit 137 is admitted.)

25 BY MR. MYHRE:

1 Q. And do you recognize any individuals in this particular
2 image?

3 **A.** Yes, I do.

4 Q. And who do you recognize?

5 **A.** I recognize Mr. Ricky Ray Lovelein. He's standing there
6 with I guess like an olive-colored shirt, brown shirt, a
7 wristwatch. He has like a band around his waist, a handgun.

8 Q. Are you able to circle his image? Is your screen working
9 well enough?

10 **A.** Yeah. Let's see if ...

11 Q. Thank you.

12 **A.** It works this time.

13 Q. How were you able to identify this individual as Ricky Ray
14 Lovelein?

15 **A.** A couple things. Based on other photographic and video
16 evidence from that day, but also based on his facial features
17 and his tattoo that's on his left forearm.

18 Q. And if we could, could you just circle where the tattoo is
19 there.

20 Thank you. And if we could draw a close-up on that.

21 You see the enlarged image in front of you,

22 Agent Willis?

23 **A.** Yes, sir.

24 Q. If you would just circle the tattoo again, please.

25 MR. MYHRE: And, Your Honor, if we may draw up Exhibit

1 130 -- what's been previously admitted as Exhibit 132, page 4.

2 And are we able to put those side-by-side?

3 BY MR. MYHRE:

4 Q. And 132-4, page 4, is what, Agent Willis, the image to your
5 left?

6 A. That is one of the booking photos after Mr. Lovelein was
7 arrested on --

8 Q. But it's for -- it pertains to Mr. Lovelein?

9 A. Yes.

10 Q. And is that consistent or not consistent with the image to
11 the right?

12 A. It's consistent.

13 Q. Is that a point of identification that you've used to
14 identify Mr. Lovelein?

15 A. Yes.

16 MR. MYHRE: You can take those down. Thank you.

17 Your Honor, may I show the witness what has been
18 previously marked as Exhibit 20, please?

19 THE COURT: Yes.

20 (Video playing.)

21 MR. MYHRE: And thank you.

22 BY MR. MYHRE:

23 Q. Do you recognize the images captured in Exhibit 20?

24 A. Yes, I do.

25 Q. And what are those images of, generally speaking?

1 **A.** Individuals standing near or in the staging area/rally site
2 in Bunkerville, Nevada, on April 12, 2014.

3 **Q.** And is this from images received from Mr. Dennis Michael
4 Lynch?

5 **A.** Yes.

6 **Q.** You said it was the staging area. Do you recognize specific
7 individuals in this image?

8 **A.** Yes, I do.

9 **Q.** And who are they?

10 **A.** Ricky Ray Lovelein and Eric Parker.

11 MR. MYHRE: Your Honor, we offer Exhibit 20 for
12 identification.

13 THE COURT: Any objection to Exhibit 20?

14 MR. TANASI: None from Stewart, Your Honor.

15 MR. MARCHESE: Same objection, Parker. This individual
16 is not the individual that took these particular videos. It's
17 our position that Mr. -- the individual that took the video was
18 the only one that could authenticate it.

19 MR. LEVENTHAL: I would object on the grounds of
20 foundation. This witness has not testified as to what time this
21 was taken in.

22 MR. PEREZ: Lovelein joins the previous objection.

23 THE COURT: Government's response? Is this offered
24 under 90 --

25 MR. MYHRE: Yes, Your Honor. Again, we're offering

1 this under 901(b)(4). So the specific person taking it does not
2 have to testify. The agent's identified specific individuals in
3 this image. I can ask a further foundational question.

4 BY MR. MYHRE:

5 Q. Agent, looking at these images of the individuals that you
6 recognize, is their clothing consistent with other known images
7 from April the 12th, 2014?

8 A. Yes.

9 Q. And specifically with respect to Mr. Lovelein?

10 A. Yes.

11 MR. MYHRE: And we believe we've laid sufficient
12 foundation, Your Honor, for authenticity.

13 THE COURT: Exhibit 20 will be admitted. You may go
14 ahead and publish it to the jury.

15 MR. MYHRE: Thank you, Your Honor.

16 (Government's Exhibit 20 is admitted.)

17 (Video playing.)

18 MR. MYHRE: The record should reflect the segment
19 lasted approximately 16 seconds. If we could back up to about 8
20 seconds, please.

21 I'm sorry. A little bit further. Maybe 5 seconds.
22 Thank you.

23 And the record should reflect the video stopped at 7
24 seconds.

25 BY MR. MYHRE:

1 Q. Now, Agent, you said you recognize Mr. Lovelein. Could you
2 just circle where Mr. Lovelein is.

3 And is -- looking at this image to the person to the
4 right of Mr. Lovelein, do you know who that is?

5 **A.** Yes.

6 Q. And who is that?

7 **A.** That's Eric Parker.

8 Q. And how are you able to identify Mr. Parker?

9 **A.** His facial features from the side, including his beard,
10 tactical vest, the shirt that he is wearing that he is seen in
11 in other photographic and video evidence and has been admitted,
12 things like that. And his hat, black hat.

13 Q. And with respect to Mr. Lovelein, does he appear to have
14 any -- well, what is he wearing aside from what you've
15 identified in the previous photo?

16 **A.** He has a camouflage-pattern hat on, the
17 brownish-olive-colored shirt, dark band, and camouflage pants.

18 Q. Does he appear to have anything in his ear?

19 **A.** Yes. It's a little bit hard to see from this image, but he
20 has a -- kind of an opaque or clear earpiece in that's coming
21 down his left side from his left ear.

22 Q. If you could just circle that, please. Whoops.

23 MR. MYHRE: And just advance just one --

24 THE WITNESS: Oh, sorry.

25 MR. MYHRE: If we could advance one second and see if

1 we can capture it. No. Go back. I'm sorry. Thank you. Right
2 there. Thank you.

3 BY MR. MYHRE:

4 Q. Again, the image is stopped at 6 seconds. If you could just
5 circle it -- circle what you believe to be a device in his ear.

6 MR. MYHRE: And if we could zoom in on that a little
7 bit. Now it's somewhat blurry in this image.

8 BY MR. MYHRE:

9 Q. Is this consistent with other images that you've seen?

10 A. Yes, it is.

11 MR. MYHRE: Thank you. You can take that down, please.

12 Your Honor, may we show the witness Exhibit 139?

13 THE COURT: Yes, you may.

14 BY MR. MYHRE:

15 Q. Do you have Exhibit 139 before you?

16 A. Yes, I do.

17 Q. Do you recognize this image?

18 A. Yes, I do.

19 Q. Where was this image obtained?

20 A. Hugh Gourgeon.

21 Q. Was this part of the images that you reviewed from what you
22 obtained from him?

23 A. Yes.

24 Q. And do you recognize this as -- from April the 12th, 2014?

25 A. Yes, I do.

1 Q. And just generally speaking, what are the characteristics
2 that lead you to believe this is from April 12, 2014?

3 **A.** The people standing on the roadway and the individual who is
4 laying down on the roadway.

5 Q. And who's the individual laying down on the roadway?

6 **A.** Eric Parker.

7 Q. And you're able to from this image identify his clothing?

8 **A.** Yes, I am.

9 Q. Is it consistent with what he was wearing on April 12, 2014,
10 as seen in other images?

11 **A.** Yes, it is.

12 MR. MYHRE: Your Honor, we offer Exhibit 139.

13 THE COURT: Any objection to Exhibit 39?

14 MR. MYHRE: 139.

15 THE COURT: I'm sorry, 139.

16 MR. MARCHESI: Same objection Parker.

17 MR. TANASI: Same from Stewart, Your Honor.

18 MR. LEVENTHAL: Same, Your Honor. And I didn't hear if
19 this was an image or captured from a video. So I would say
20 foundationally from that.

21 THE COURT: Mr. Myhre, you want to clarify whether this
22 is a photograph or a video?

23 MR. MYHRE: Thank you, Your Honor.

24 BY MR. MYHRE:

25 Q. Do you know whether this was a photograph or a video that

1 was obtained from Mr. Gourgeon?

2 **A.** A photograph.

3 THE COURT: Any other objection?

4 All right. Government's response the same to the --

5 MR. MYHRE: Yes, Your Honor.

6 THE COURT: -- continuing objection?

7 MR. MYHRE: 901(b)(4).

8 THE COURT: All right. The objection is overruled.

9 Exhibit 139 is admitted. You may go ahead and publish it.

10 MR. MYHRE: Thank you, Your Honor.

11 (Government's Exhibit 139 is admitted.)

12 BY MR. MYHRE:

13 Q. Agent Willis, we talked about again -- for each of these
14 we're going to go over certain characteristics so that you are
15 able to explain to the jury how it's from April the 12th, 2014.

16 Could you identify for the jury what -- the
17 characteristics from this image that you find consistent with
18 known images that you viewed from April 12, 2014?

19 **A.** Yes. So Mr. Parker laying in the prone position with his
20 black hat, his black vest, his pattern plaid-type shirt, his
21 pants. He has a large knife on his right side, as well as other
22 individuals on that bridge, including a couple photographers or
23 a few photographers, and other people that I have observed in
24 other video and photographic evidence.

25 Q. Well, while we're talking about photographers, have you

1 identified individuals as photographers in this image?

2 **A.** Yes.

3 **Q.** And who are those individuals?

4 **A.** This individual is Jim Urquhart, Urquhart.

5 MR. MYHRE: And the record should reflect that the
6 witness has circled the individual -- the image of an individual
7 to the left-hand side of the screen.

8 BY MR. MYHRE:

9 **Q.** Who is he again?

10 **A.** Jim Urquhart.

11 **Q.** And who does -- does Mr. Urquhart work for someone?

12 **A.** He's a photographer for primarily Reuters.

13 **Q.** And how about the individual to the right of where you've
14 circled Mr. Parker?

15 **A.** I do not know the identity of this person, but this
16 person -- their photographs were located by me on a Facebook
17 page titled Citizens Action Network.

18 **Q.** The individual you've just circled now to the right of
19 Mr. Parker, is that -- does that person appear in other images
20 that we will see?

21 **A.** Yes.

22 MR. MYHRE: Now, just to go back just so the record is
23 clear with respect to Mr. Parker. Your Honor, may we draw up
24 Exhibit 14 at 18 seconds?

25 THE COURT: Yes, you may.

1 MR. MYHRE: That's good. And the record should reflect
2 we're at Exhibit 14, 18 seconds.

3 BY MR. MYHRE:

4 Q. And we've seen this image before, but is this one of the
5 images that you've used to verify the clothing Mr. Parker was
6 wearing that today?

7 A. Yes, it is.

8 Q. And this Exhibit 14 again is from whom?

9 A. Michael Flynn and Alex Ellis.

10 Q. Just for record purposes, if you could just describe --
11 first of all, point out Mr. Parker in this image.

12 MR. MYHRE: And the record should reflect the agent has
13 circled the individual wearing the black hat with the white
14 insignia.

15 BY MR. MYHRE:

16 Q. And just for record purposes, describe generally again the
17 clothing from this known image.

18 A. His black hat with the white emblem on the front, facial
19 hair, his shirt, and his black tactical vest he's wearing.

20 MR. MYHRE: Thank you. You can bring that down.

21 Your Honor, may we draw up Exhibit 141, please?

22 THE COURT: Yes, you may.

23 MR. MYHRE: For the witness only.

24 BY MR. MYHRE:

25 Q. And do you recognize Exhibit 141?

1 **A.** Yes, I do.

2 **Q.** Generally speaking, what is depicted in that exhibit?

3 **A.** Eric Parker laying in the prone position on a roadway.

4 **Q.** And was this -- where was this image obtained from?

5 **A.** Hugh Gourgeon.

6 **Q.** Is it consistent with the clothing that Mr. Parker was
7 wearing on April 12, 2014?

8 **A.** Yes, it is.

9 **Q.** And where was this image taken?

10 **A.** This was taken face --

11 **Q.** Just location. Was it --

12 **A.** Oh. Northbound.

13 **Q.** Northbound 15?

14 **A.** Northbound I15 bridge near Bunkerville, Nevada.

15 MR. MYHRE: Your Honor, we offer Exhibit 141.

16 THE COURT: Any objection to Exhibit 141?

17 MR. MARCHESE: Continuing objection Parker.

18 MR. TANASI: Stewart joins, Your Honor.

19 MR. LEVENTHAL: Drexler joins.

20 MR. PEREZ: Lovelein joins.

21 MR. MYHRE: Same response, Your Honor.

22 THE COURT: All right. Same ruling. Exhibit 141 will
23 be admitted. You may go ahead and publish it to the jury.

24 MR. MYHRE: Thank you, Your Honor.

25 (Government's Exhibit 141 is admitted.)

1 BY MR. MYHRE:

2 Q. Now, Agent Willis, you talked about metadata. When you
3 received the images from Mr. Gourgeon, was there metadata
4 contained in there?

5 A. Yes.

6 Q. And you already described generally what that is, but from
7 that metadata were you able to derive also dates that these
8 images were taken?

9 A. Yes.

10 Q. And that would have been April the 12th?

11 A. Yes.

12 Q. Were you also able to derive specific times?

13 A. Yes, on his images, his photographs, I was.

14 Q. And is that visible in this image we see here?

15 A. No. You would need to review the original image that was
16 provided to us, to the FBI, by Mr. Gourgeon. And again go
17 through that same process of right clicking, going to the
18 Properties, and reviewing the metadata information within that
19 image.

20 Q. Now, in the course of your investigation, have you been
21 asked to construct a timeline?

22 A. Yes.

23 Q. And in that timeline did you use the metadata to derive
24 specific times that these images were taken?

25 A. Yes.

1 Q. And have you compiled the results of your investigation and
2 analysis into an exhibit -- into an exhibit?

3 **A.** Yes, I have.

4 Q. And we're not going to talk about that now, but I just
5 wanted to raise that with you now.

6 While this image does not contain the time, you were
7 able to derive the time at -- through the process you just
8 described, correct?

9 **A.** Yes, I was.

10 Q. And in the process of pulling together this other exhibit,
11 you've indicated the times. Is that right?

12 **A.** Yes.

13 MR. MYHRE: And, Your Honor, may we draw up Exhibit 142
14 for the witness only?

15 THE COURT: Yes, you may.

16 MR. MYHRE: 142. Thank you.

17 BY MR. MYHRE:

18 Q. Agent Willis, I'm going to go through the same series of
19 questions with you for all of these that are going to be
20 following.

21 Do you recognize Exhibit 142?

22 **A.** Yes, I do.

23 Q. And was this obtained from Mr. Gourgeon?

24 **A.** Yes, it was.

25 Q. Do you recognize the individual in this image?

1 **A.** Yes, I do.

2 **Q.** Does the date and time appear on this image?

3 **A.** No, it does not.

4 **Q.** But it does appear in the metadata?

5 **A.** Yes, it does.

6 **Q.** And is the individual in this image -- who is that?

7 **A.** That is Scott Drexler.

8 **Q.** And you were able to identify him how?

9 **A.** By his attire, his clothing, his tactical vest, boots, and
10 his rifle.

11 **Q.** Based on your understanding of that area and your
12 investigation, where was this image captured?

13 **A.** This is captured on the northbound I15 bridge near
14 Bunkerville, Nevada.

15 MR. MYHRE: Your Honor, we offer Exhibit 142.

16 THE COURT: Any objection to 142?

17 MR. TANASI: Same continuing objection Stewart, Your
18 Honor.

19 MR. MARCHESE: Parker joins.

20 MR. LEVENTHAL: Join.

21 MR. PEREZ: Lovelein joins.

22 MR. MYHRE: And the same response, Your Honor.

23 THE COURT: Same ruling. Exhibit 142 will be admitted.
24 You may go ahead and publish it to the jury.

25 MR. MYHRE: Thank you, Your Honor.

1 (Government's Exhibit 142 is admitted.)

2 BY MR. MYHRE:

3 Q. And, Agent Willis, do you use this image later in your
4 timeline?

5 A. Yes, I do.

6 MR. MYHRE: Your Honor, may we call up for the witness
7 Exhibit 143?

8 THE COURT: Yes, you may.

9 BY MR. MYHRE:

10 Q. And what's been previously admitted as Exhibit 143, thank
11 you, is ...

12 M. MYHRE: If I could have just one moment, Your Honor.

13 THE COURT: Yes, you can.

14 (Government conferring.)

15 MR. MYHRE: Thank you, Your Honor.

16 BY MR. MYHRE:

17 Q. Now, looking at 143, you recognize Mr. Parker in this image,
18 correct?

19 A. Yes, I do.

20 Q. And just indicate where he is.

21 The individual to his right, do you recognize that
22 individual?

23 A. Yes, I do.

24 Q. And have you been able to identify that person?

25 A. Yes.

1 Q. And who have you identified him as?

2 **A.** Steven Stewart.

3 Q. What -- and how is it that you're able to identify that
4 image as the image of Mr. Stewart?

5 **A.** Right there he has a blue shirt with a design on the back,
6 his jeans, he has a large knife on his left side, and also the
7 butt of the rifle that is leaning up against the Jersey barrier
8 in front of Mr. Stewart.

9 MR. MYHRE: And, Your Honor, may we draw up what's been
10 previously admitted as Exhibit 14 at 47 seconds?

11 THE COURT: Yes, you may.

12 (Video playing.)

13 MR. MYHRE: Thank you. And the record should reflect
14 that Exhibit 14 is up at 47 seconds.

15 BY MR. MYHRE:

16 Q. Do you see Mr. Stewart depicted in this image?

17 **A.** Yes, I do.

18 Q. And circle him, please.

19 And you've viewed Mr. Stewart in other images we're
20 going to see in the future, correct?

21 **A.** Yes.

22 Q. If you could just point out some of the features -- and this
23 is -- again, Exhibit 14 is from Ellis Flynn [sic]. Is that
24 correct?

25 **A.** Yes.

1 Q. And this is the interview on the bridge, right?

2 A. Yes.

3 Q. If you could just please point out some of the features or
4 the distinctive characteristics of Mr. Stewart that you've used
5 to identify not only the image that we saw, but future images as
6 well?

7 A. His hair, his facial features, the blue shirt, and from this
8 vantage point it's from the front, but I believe it's some type
9 of like Orange County Choppers or something like that shirt with
10 a similar emblem on the front. His blue jeans, his tatoos, and
11 again the butt of the rifle that's in his right hand. In this
12 picture he has a backpack on. In the last picture he did not.

13 MR. MYHRE: And, Your Honor, may we draw up Exhibit 5A
14 at 2 seconds as well?

15 THE COURT: Yes.

16 MR. MYHRE: Thank you, Your Honor. At about 2 seconds.
17 If you could play it forward from there, please.

18 (Video playing.)

19 MR. MYHRE: And just go back one last time to 2. Thank
20 you.

21 BY MR. MYHRE:

22 Q. And do you see Mr. Stewart in this image here at about 1
23 second?

24 MR. TANASI: Objection, leading.

25 THE COURT: Well, it's not leading. There's 30 people

1 in that picture, and he's asking if he can see Mr. Stewart.

2 It's overruled. He can answer the question.

3 THE WITNESS: Yes, I can. Circle him right here.

4 MR. MYHRE: And he's circling.

5 BY MR. MYHRE:

6 Q. And do you see anything that Mr. Stewart is wearing that's
7 distinctive to you?

8 **A.** Yes, my red line is kind of over it, but his shirt, blue
9 shirt, with the design on the back, his blue jeans. In this
10 image he's wearing a dark-colored hat, but he has the large
11 knife in a sheath, looks like a brown or leather sheath, with a
12 fluorescent pink label on it on his left side of his left thigh.

13 Q. And could we just focus on that area where --

14 MR. MYHRE: The record should reflect, first of all,
15 that the witness has circled an individual at about the 2 second
16 interval of Exhibit 5A. If we could just enlarge that portion,
17 please.

18 And the record should reflect that image has been
19 enlarged.

20 BY MR. MYHRE:

21 Q. If you would, Agent Willis, identify what you previously
22 identified as the knife by circling it.

23 And is this consistent with the last image we saw at
24 Exhibit 143?

25 **A.** Yes.

1 Q. "This" being the knife?

2 A. Yes.

3 Q. And are the blue jeans consistent with the jeans in 143?

4 A. Yes, they are.

5 MR. MYHRE: Thank you. You can bring that down.

6 Your Honor, may we call up for the witness Exhibit 144?

7 THE COURT: Yes, you may.

8 MR. MYHRE: Thank you, Your Honor.

9 BY MR. MYHRE:

10 Q. Do you have 144 before you, Agent?

11 A. Yes, I do.

12 Q. Generally speaking, what is this?

13 A. This is an image of Mr. Scott Drexler laying in the prone
14 position on a roadway.

15 Q. And was this obtained from Mr. Gurgeon?

16 A. Yes, it was.

17 Q. The clothing of Mr. -- the individual we identified as
18 Mr. Drexler, is that consistent with the clothing we've seen in
19 other images?

20 A. Yes, it is.

21 MR. MYHRE: Your Honor, we offer --

22 BY MR. MYHRE:

23 Q. Other images from April the 12th, 2014? From April the
24 12th, 2014?

25 A. Yes, yes. I'm sorry.

1 Q. No, my bad. My apologies.

2 MR. MYHRE: Your Honor, the Government offers Exhibit
3 144.

4 THE COURT: Any objection to Exhibit 144?

5 MR. MARCHESE: Continuing objection Parker.

6 MR. TANASI: Stewart joins.

7 MR. LEVENTHAL: Drexler joins.

8 MR. PEREZ: Lovelein joins.

9 MR. MYHRE: And same response, Your Honor.

10 THE COURT: Same ruling. Exhibit 144 will be admitted.
11 You may go ahead and publish it to the jury.

12 MR. MYHRE: Thank you, Your Honor.

13 (Government's Exhibit 144 is admitted.)

14 BY MR. MYHRE:

15 Q. And, Agent Willis, this image at 144, this is taken from
16 where?

17 **A.** The northbound I15 bridge near Bunkerville, Nevada.

18 Q. And this image had embedded within it metadata?

19 **A.** Yes, it did.

20 Q. And it showed from April the 12th, correct?

21 **A.** Yes.

22 Q. And a particular time?

23 **A.** Yes.

24 Q. Do you use this image later in the timeline you've
25 constructed?

1 **A.** Yes, I do.

2 MR. MYHRE: Your Honor, may we call up for the witness
3 Exhibit 145?

4 THE COURT: Yes, you may.

5 BY MR. MYHRE:

6 Q. And do you have 145 before you?

7 **A.** Yes, I do.

8 Q. What is depicted in this image?

9 **A.** This is a number of individuals walking on or standing to
10 the side of northbound I15 on the bridge near Bunkerville,
11 Nevada.

12 Q. This was obtained from Mr. Gourgeon?

13 **A.** Yes, it was.

14 Q. And metadata was embedded in this image as well?

15 **A.** The -- this is a screen shot or still shot of a video that
16 was provided by Mr. Gourgeon. His videos did not have metadata
17 that were consistent or accurate with the date and time that
18 this was taken on April 12th.

19 Q. Do you recognize the clothing -- well, first of all, do you
20 recognize Mr. Drexler and Mr. Parker in that image?

21 **A.** Yes, I do.

22 Q. Is it consistent with the clothing that they were wearing
23 April 12th, 2014?

24 **A.** Yes.

25 Q. Do you see vehicles in the background?

1 **A.** Yes, I do.

2 **Q.** And were you able to identify vehicles that are in the
3 background of this photo and verify them with aerial shots?

4 **A.** Yes. This -- yes, I was. I'll explain later.

5 **Q.** Did you use other -- did you use the aerial shots to verify
6 this -- by "aerial shots," I mean the aerial surveillance film.
7 Were you able to use that to verify other aspects of this image?

8 **A.** Yes, I was.

9 **Q.** And what were those?

10 **A.** Again, the vehicles traveling on the northbound I15 bridge
11 that were visible in the aerial photography or footage.

12 MR. MYHRE: And, Your Honor, we offer Exhibit 145.

13 THE COURT: Objections to 145?

14 MR. TANASI: Same continuing objection Stewart, Your
15 Honor.

16 MR. MARCHESE: Parker joins.

17 MR. LEVENTHAL: Drexler joins.

18 MR. PEREZ: Lovelein joins.

19 THE COURT: Same response from the Government?

20 MR. MYHRE: Yes, Your Honor.

21 THE COURT: All right. Same ruling, 901(b)(4). The
22 Exhibit No. 145 will be admitted. You may go ahead and publish
23 it to the jury.

24 MR. MYHRE: Thank you, Your Honor.

25 (Government's Exhibit 145 is admitted.)

1 BY MR. MYHRE:

2 Q. The image now that we see at 145?

3 **A.** Yes.

4 Q. Does this image appear later in your timeline as well?

5 **A.** Yes, it does.

6 Q. Just -- and, again, if you would circle where Mr. Drexler is
7 located.

8 MR. MYHRE: And the witness is circling the individual
9 in approximately the middle of the screen.

10 BY MR. MYHRE:

11 Q. And Mr. Parker as well?

12 MR. MYHRE: And the witness has circled an individual
13 to the right of the individual he's identified as Mr. Drexler.

14 BY MR. MYHRE:

15 Q. And, again, this is on the northbound, correct?

16 **A.** Yes, it is.

17 MR. MYHRE: Your Honor, may we offer or, excuse me,
18 show the witness what's been marked as Exhibit 146?

19 THE COURT: Yes, you may.

20 BY MR. MYHRE:

21 Q. Do you see 146?

22 **A.** Yes, I do.

23 Q. Was this obtained from Mr. Gourgeon?

24 **A.** Yes, it was.

25 Q. Is this also a screen shot from his video?

1 **A.** Yes.

2 **Q.** What's depicted in this screen shot?

3 **A.** Three individuals standing on a roadway as well as Mr. Scott
4 Drexler in a prone position with his rifle pointed in between a
5 gap in the -- in Jersey barriers on the bridge.

6 **Q.** And with respect to Mr. Drexler, is his clothing consistent
7 with other known images from April the 12th, 2014?

8 **A.** Yes.

9 **Q.** Aside from his clothing, what other aspects of this
10 photograph were you able to identify as specific to April the
11 12th, 2014?

12 **A.** There was individuals on the embankment of the southbound
13 I15 bridge that I've identified in other video and photographic
14 evidence.

15 **Q.** And is that evidence from April the 12th, 2014?

16 **A.** Yes.

17 **MR. MYHRE:** Your Honor, we offer Government's Exhibit
18 146.

19 **MR. LEVENTHAL:** I'm going to object on new grounds as
20 to cumulative. This is the same picture just being shown over
21 and over, Your Honor, from a different angle. It's cumulative.

22 **MR. MARCHESE:** Parker joins.

23 **MR. PEREZ:** Lovelein joins.

24 **MR. TANASI:** Stewart joins.

25 **THE COURT:** Mr. Myhre?

1 MR. MYHRE: Thank you, Your Honor.

2 BY MR. MYHRE:

3 Q. Is this image captured at a different time from the previous
4 images that we have previously seen?

5 A. It is captured at a different time, but this image depicts
6 other characteristics of the bridge, of the area, of the people
7 around that is unique to this image compared to the other image.

8 Q. And, specifically, with respect to the three individuals you
9 previously testified about, is that unique to this particular
10 image?

11 A. Yes.

12 Q. Just -- we're just up now just for the Court. If you would
13 just circle for the Court the image of the three individuals to
14 which you refer.

15 And those individuals you've identified from other
16 media?

17 A. Yes.

18 Q. And that's from April the 12th, 2014?

19 A. Yes.

20 Q. And, specifically, what media or images are you referring
21 to?

22 A. To the Michael Flynn videos, to the Dennis Michael Lynch
23 videos, through other Hugh Gourgeon photographs.

24 MR. MYHRE: Again, Your Honor, we offer Exhibit 146.
25 It's unique.

1 THE COURT: All right. The objection's overruled.
2 Exhibit 146 is admitted.

3 (Government's Exhibit 146 is admitted.)

4 MR. MYHRE: And may we publish?

5 THE COURT: Yes, you may.

6 BY MR. MYHRE:

7 Q. Again, Agent, if you'd circle Mr. Drexler, please.

8 Now, the individuals about whom you just testified that
9 were on the south -- or the embankment on the southbound, would
10 you circle those individuals.

11 A. Yes.

12 Q. And describe for the record what you've just circled there.

13 A. I've circled three individuals who are crouching on the
14 non-road side of the southbound I15 bridge. So that would just
15 be the beginning of the embankment before the concrete or cement
16 skirt would begin and leads down into the wash.

17 I note from reviewing this image that they're all
18 wearing some type of camouflage clothing and hats.

19 MR. MYHRE: And if we could enlarge on that particular
20 portion. Just draw it up a little bit, more perspective on it.
21 Draw a larger area. There we go. Thank you.

22 BY MR. MYHRE:

23 Q. So now in this larger image if you could just draw little
24 lines to those individuals.

25 A. I'll put a line under each person.

1 Q. And in this image, this is taken from, again, what bridge?

2 A. This is taken from the northbound bridge.

3 Q. And it's looking in which direction?

4 A. North, towards the southbound bridge.

5 MR. MYHRE: If you could take that down, please.

6 And, Your Honor, may we draw up what's been previously
7 marked as Exhibit 21 at approximately 6:21?

8 THE COURT: Yes.

9 (Video playing.)

10 MR. MYHRE: And if I could get a time. There we go.
11 Thank you. If you would go back just two seconds. Thank you.

12 BY MR. MYHRE:

13 Q. Now, we've heard this image is in front of the stage. Is
14 that correct?

15 A. Yes.

16 Q. And we've heard testimony about this, but generally when was
17 this taken?

18 A. This would have been taken around 9:40 a.m. in the morning
19 on April 12, 2014.

20 Q. And during what event?

21 A. This would have been the -- when -- the time when Sheriff
22 Douglas Gillespie was on stage with Cliven Bundy and they both
23 spoke.

24 Q. Now, do you see -- you see some uniformed individuals in the
25 foreground here. Is that correct?

1 **A.** Yes.

2 **Q.** And were you able to -- from these uniforms, based on your
3 investigation and your training and experience, are you able to
4 identify any particular organizations these individuals belonged
5 to?

6 **A.** Yes, I was.

7 **Q.** And what organization is that?

8 **A.** The Arizona State Militia.

9 **Q.** And I believe that Mr. Ellis testified earlier that he
10 thought these people were Oath Keepers --

11 **MR. LEVENTHAL:** Objection as to commenting on someone
12 else's testimony.

13 **BY MR. MYHRE:**

14 **Q.** Do you recall that testimony?

15 **A.** Yes, I do.

16 **MR. LEVENTHAL:** Same objection, Your Honor.

17 **THE COURT:** That's not a legal objection. You can ...

18 **MR. LEVENTHAL:** You can comment on other people's
19 testimony?

20 **THE COURT:** You're not questioning the credibility of
21 the testimony, are you?

22 **MR. MYHRE:** No, Your Honor. I was just asking whether
23 he had recalled that testimony. He was present during the
24 testimony.

25 **THE COURT:** That's overruled. He can't ask him to say

1 whether or not another witness was lying or telling the truth.
2 Those kind of comments on testimony are not permitted, but just
3 to --

4 MR. MYHRE: I'm just -- all I'm doing --

5 THE COURT: Elicit it, yeah, as foundational for a
6 different question, that's permitted. Overruled.

7 MR. LEVENTHAL: If I may be heard just briefly. I
8 think he is going because he asked about Arizona State Militia,
9 and I think Mr. Ellis testified this was a different group. So
10 it would go towards that.

11 MR. MYHRE: Your Honor, I was just going to say
12 basically what was previously identified as Oath Keepers and ask
13 him to describe how he understands these to be Arizona State
14 Militia.

15 MR. LEVENTHAL: That goes to credibility.

16 THE COURT: All right. Well, if it does -- if you
17 are -- if you are impeaching Mr. Ellis, then it is -- then the
18 objection is sustained to that extent.

19 MR. MYHRE: Well --

20 THE COURT: If you're asking a different question
21 without respect to the testimony of Mr. Ellis, then that would
22 be appropriate.

23 MR. MYHRE: Thank you, Your Honor. And I'll just -- we
24 can strike that answer, and I will move to strike it. We'll
25 just move on from there.

1 BY MR. MYHRE:

2 Q. With respect to the individuals that were in front of that
3 stage, okay, you indicated that you've identified them as
4 belonging to the Arizona State Militia?

5 **A.** Yes.

6 Q. What type of indicia did you look for in order to make that
7 identification?

8 **A.** A patch or something on their chest that would indicate an
9 affiliation with a militia, specifically the Arizona State
10 Militia.

11 Q. Now, based on your review of Exhibit 146, was that
12 consistent -- the image is that of the three individuals up on
13 the embankment on southbound?

14 **A.** Yes.

15 Q. Is that consistent or inconsistent with your identification
16 of Arizona State Militia?

17 **A.** Well, I couldn't see their patches from that image obviously
18 because it's so far away, but I know that all of those
19 individuals are also lined up --

20 MR. LEVENTHAL: Objection, nonresponsive.

21 THE WITNESS: -- in front of this stage.

22 MR. LEVENTHAL: Objection, nonresponsive.

23 MR. MYHRE: The nonresponsive objection, Your Honor,
24 belongs to the questioner, but irrespective of that, the -- he
25 was responding to the question of how he knows the individuals

1 on the southbound were Arizona State Militia.

2 THE COURT: All right. He may answer that question.

3 THE WITNESS: Again, all of those individuals are lined
4 up in front of the stage in close proximity to these other
5 people. And I can see just from this image that one of the
6 people who I have -- we have identified is actually wearing an
7 Arizona State Militia patch on his chest.

8 BY MR. MYHRE:

9 Q. On this image?

10 A. Yes.

11 Q. And if you could just circle that.

12 MR. MYHRE: And the record should reflect that the
13 image is at 6:21, circling a patch on the individual who's
14 wearing camouflage and is about the left center of this screen.

15 And if we could just play forward of this a little bit.

16 (Video playing.)

17 MR. MYHRE: And back up -- just stop there and just
18 back up just a little bit. Play forward, please. Thank you.

19 (Video playing.)

20 MR. MYHRE: And stop there.

21 BY MR. MYHRE:

22 Q. This individual in the foreground here with the hat, were
23 you able to identify that individual?

24 A. Yes, I was.

25 Q. And how were you able to identify him?

1 **A.** By his activities on April 12th, 2014, including his vehicle
2 that is seen transporting other individuals which he would later
3 end up with on the embankment on the southbound I15 bridge in
4 Bunkerville.

5 MR. MYHRE: If we could take that down for the time
6 being.

7 And if we could, Your Honor, may I show the witness
8 what's been previously marked as Exhibit 24?

9 THE COURT: You may.

10 (Video playing.)

11 BY MR. MYHRE:

12 Q. And do you recognize Exhibit 24?

13 **A.** Yes, I do.

14 Q. Was that obtained from Mr. Gourgeon?

15 **A.** Yes.

16 Q. And what is it?

17 **A.** This is a video segment from which we had collected the
18 earlier screen shot. It includes Eric Parker in the prone
19 position with his rifle between the gap in the Jersey barrier
20 and Scott Drexler kneeling with his rifle in the low ready
21 position looking over the Jersey barrier north into the wash.

22 Q. And was -- this video you indicated was used to obtain the
23 screen shots we looked at, Exhibit 146?

24 **A.** Yes.

25 Q. And, again, it's consistent with April the 12th, 2014, the

1 other images you've seen, correct?

2 **A.** Correct.

3 **Q.** It was with all of the items that Mr. Gourgeon provided to
4 you, correct?

5 **A.** Yes.

6 **Q.** There are other images in the Gourgeon materials that are
7 time stamped with April 12, 2014, correct?

8 **A.** Yes.

9 **Q.** And we see a number of vehicles in the video. Is that
10 correct?

11 **A.** Yes.

12 **Q.** Are those -- were you able to also identify those vehicles
13 from the aerial surveillance film?

14 **A.** Yes, I was.

15 MR. MYHRE: Your Honor, we offer Exhibit 24.

16 THE COURT: Any objection to Exhibit 24?

17 MR. LEVENTHAL: Same objection as to cumulative, Your
18 Honor. It's the same picture that we've seen before.

19 MR. MARCHESE: Parker joins, also authentication.

20 MR. TANASI: Stewart joins.

21 MR. PEREZ: Lovelein joins.

22 MR. MYHRE: With respect to cumulative, Your Honor.

23 BY MR. MYHRE:

24 **Q.** Agent Willis, was this used to time stamp other images in
25 your timeline?

1 **A.** Yes, it was.

2 THE COURT: And the Court also doesn't find it to be
3 cumulative because the lady with a diamond shirt is in a
4 different location in each of these pictures.

5 All right. Exhibit 24 will be admitted. You may go
6 ahead and publish it.

7 MR. MYHRE: Thank you, Your Honor.

8 (Government's Exhibit 24 is admitted.)

9 (Video playing.)

10 MR. MYHRE: And the record should reflect that the
11 video stopped at 12 seconds.

12 BY MR. MYHRE:

13 Q. Is that generally how you received it?

14 **A.** Yes.

15 Q. The images that we saw there, again, are from where?

16 **A.** These are from the northbound I15 bridge --

17 Q. From the perspective -- oh, I'm sorry.

18 The perspective of? Which direction are we looking?

19 **A.** Specifically, we would be looking northwest.

20 Q. And, again, in these images do we see Mr. Drexler and
21 Mr. Parker?

22 **A.** Yes, we do.

23 Q. Now, the vehicles we saw -- you saw vehicles go through in
24 this video, correct?

25 **A.** Yes.

1 Q. Did you use those vehicles to assist you in putting together
2 the timeline to time stamp some of these images that we've just
3 reviewed?

4 **A.** Yes, I did.

5 MR. MYHRE: And, Your Honor, may we show the witness
6 Exhibit 25?

7 THE COURT: Yes, you may.

8 BY MR. MYHRE:

9 Q. And did you see that, Agent Willis?

10 **A.** No, I'm sorry. Can you play it again?

11 (Video playing.)

12 BY MR. MYHRE:

13 Q. And that image lasts about one second?

14 **A.** Yes.

15 Q. And was that the video you obtained from Mr. Gourgeon?

16 **A.** Yes, it is.

17 Q. And is that identical to the image that we've looked at in
18 Exhibit 146?

19 **A.** Yes.

20 Q. And this image contains, again, the individuals on that
21 embankment on the southbound?

22 **A.** Yes, it does.

23 MR. MYHRE: And, Your Honor, we offer Exhibit 20.

24 THE COURT: It is 20 or 25? 25.

25 MR. MYHRE: 25, Your Honor.

1 THE COURT: Yes, Exhibit 25. Any objection?

2 MR. TANASI: Same continuing objection, Your Honor.

3 MR. MARCHESE: Parker joins.

4 MR. LEVENTHAL: Same objection as to cumulative. It's
5 the same picture that we've seen already three times -- four
6 times now.

7 MR. PEREZ: Lovelein joins.

8 MR. MYHRE: Again, Your Honor, it's a video. It's not
9 the same -- same photograph.

10 THE COURT: All right. Exhibit 25 will be admitted.
11 You may go ahead and publish it to the jury.

12 MR. MYHRE: Thank you, Your Honor.

13 (Government's Exhibit 25 is admitted.)

14 (Video playing.)

15 BY MR. MYHRE:

16 Q. And again, Agent Willis, did this video assist you in
17 constructing your timeline?

18 A. Yes.

19 Q. Now, did you also have an opportunity to review images that
20 were captured from a Dropbox?

21 A. Yes.

22 Q. And did you -- you were present for Agent Seyler's
23 testimony. Is that correct?

24 A. Yes, I was.

25 Q. And he discussed the Dropbox belonging to someone named

1 Shannon Bushman?

2 **A.** Yes.

3 **Q.** And did you review that Dropbox in the course of your
4 investigation for images that would assist you in putting
5 together this timeline?

6 **A.** Yes, I did.

7 MR. MYHRE: And, Your Honor, may we show the witness
8 what's been marked as Exhibit 159?

9 THE COURT: Yes, you may.

10 BY MR. MYHRE:

11 **Q.** Do you see 159?

12 **A.** Yes, I do.

13 **Q.** And what is generally depicted in 159?

14 **A.** A number of individuals standing at the staging area/rally
15 site in Bunkerville, Nevada, on April 12, 2014.

16 **Q.** And do you recognize individuals depicted in this image?

17 **A.** Yes, I do.

18 **Q.** And do you see -- do you see any of the defendants in this
19 image?

20 **A.** Yes, Ricky Ray Lovelein and Eric Parker.

21 **Q.** And what date does this appear to be taken?

22 **A.** April 12th, 2014.

23 **Q.** Now, in the Shannon Bushman photographs that were in --
24 obtained from the Dropbox, was metadata contained within those?

25 **A.** Yes.

1 Q. And did the metadata reflect images that these images were
2 taken on April the 12th, 2014?

3 **A.** Yes.

4 Q. And is the clothing worn by the Defendants Parker and
5 Lovelein consistent with the clothing we've seen in other known
6 videos that have already been introduced into evidence?

7 **A.** Yes.

8 MR. MYHRE: Your Honor, we offered Exhibit 159.

9 THE COURT: Any objection to Exhibit 159?

10 MR. MARCHESE: Same objection as to authentication.

11 This witness has no personal knowledge of what transpired on the
12 dates in question. He was not present.

13 MR. TANASI: Stewart joins.

14 MR. LEVENTHAL: Drexler joins.

15 MR. PEREZ: Lovelein joins.

16 MR. MYHRE: Same response, Your Honor.

17 THE COURT: Same response. Same ruling. It's
18 admissible pursuant to Federal Rule of Evidence 901(b)(4).

19 Exhibit 159 is admitted. You may publish it to the jury.

20 MR. MYHRE: Thank you.

21 (Government's Exhibit 159 is admitted.)

22 BY MR. MYHRE:

23 Q. Now, if you could, Agent Willis, you said the defendants are
24 indicated or, excuse me, depicted in this image. If you would
25 just for record purposes identify who they are.

1 **A.** Eric Parker and Ricky Ray Lovelein.

2 *Q.* Now, in this image with --

3 MR. MYHRE: And the record should reflect that the
4 witness has -- has put circles around two individuals in the
5 right portion of the screen. One wearing a black hat. Another
6 one wearing a camouflage hat.

7 BY MR. MYHRE:

8 *Q.* Now, focussing on the individual identified as Mr. Lovelein,
9 from this image are you able to see whether there's any
10 communication device in Mr. Lovelein's ear?

11 **A.** Yes. He has an earpiece in his ear, and there's also a
12 hand-held radio on his left hip.

13 MR. MYHRE: And if we're able to focus in on that,
14 please. And the record should reflect we've enlarged the image.

15 BY MR. MYHRE:

16 *Q.* And, again, if you would point those out, please.

17 **A.** Earpiece in his left ear and hand-held radio on his left
18 hip.

19 *Q.* Now, based on your training and experience, what type of
20 device is it that you've just circled? Not necessarily the make
21 and model. What are those devices typically used for?

22 **A.** It's a communications device, just person to person or a
23 number of people can use them as long as everybody's on the same
24 radio frequency.

25 MR. MYHRE: And if we could go back to the broader

1 image, please.

2 BY MR. MYHRE:

3 Q. Now, we talked about individuals with the Arizona State
4 Militia, correct?

5 A. Yes.

6 Q. Do you see individuals in this image affiliated with Arizona
7 State Militia?

8 A. Yes, I do.

9 Q. And are you able to point them out?

10 A. Yes, there's an individual there, an individual there.

11 Q. And is this -- and how are you able to discern that they
12 belong to the Arizona State Militia?

13 A. Based on other video and photo evidence, including the Flynn
14 and Lynch videos.

15 Q. Now, did you in the course of your investigation also review
16 conventional media like newspapers and network television shows
17 and so forth?

18 A. Yes, I did.

19 Q. And your purpose in doing so was again to find images that
20 were relevant to your investigation of April 12th, 2014?

21 A. Correct.

22 MR. MYHRE: And, Your Honor, may we show the witness
23 171?

24 THE COURT: Yes, you may.

25 BY MR. MYHRE:

1 Q. And do you see Exhibit 171?

2 A. Yes, I do.

3 Q. And where was this image obtained?

4 A. This was obtained from a Las Vegas Review Journal article
5 that was on the Internet. I believe it was published in March
6 of 2016, I believe.

7 Q. And what -- are any of the defendants depicted in this
8 image?

9 A. Yes.

10 Q. And specifically which one?

11 A. Ricky Ray Lovelein and Eric Parker.

12 Q. And is this consistent with the images -- other images we
13 viewed from April 12th, 2014?

14 A. Yes.

15 Q. And is it consistent by the clothing being worn?

16 A. Yes.

17 Q. And is this simply a different angle from other images that
18 we've seen before?

19 A. Yes.

20 Q. And was this useful to you in constructing your timeline?

21 A. Yes, it was.

22 MR. MYHRE: Your Honor, we offer Exhibit 171.

23 THE COURT: Any objection to 171?

24 MR. TANASI: Stewart objects on authenticity, Your
25 Honor, and chain of custody, and that the origin is unknown,

1 passes through to a media outlet, and then ultimately to the
2 FBI.

3 MR. MARCHESE: Parker joins.

4 MR. LEVENTHAL: Drexler joins.

5 MR. PEREZ: Lovelein joins.

6 THE COURT: Government's response?

7 MR. MYHRE: Same response, Your Honor. The unique
8 characteristics of this image more than qualifies it as
9 authentic from April 12, 2014.

10 THE COURT: Admissible pursuant to 901(b)(4). Exhibit
11 No. 171 is admitted. You may go ahead and publish it to the
12 jury.

13 MR. MYHRE: Thank you, Your Honor.

14 (Government's Exhibit 171 is admitted.)

15 BY MR. MYHRE:

16 Q. Again, Agent, if you would, just identify Mr. Lovelein for
17 us.

18 **A.** That's Ricky Ray Lovelein.

19 Q. And in this --

20 MR. MYHRE: And the record should reflect the witness
21 has circled an image to the far left of the screen.

22 BY MR. MYHRE:

23 Q. And in the image do you see any firearms that Mr. Lovelein
24 is carrying at all?

25 **A.** Yes, he has a handgun on his right hip.

1 Q. And if you would circle that, please.

2 And, again, with respect to his ear, do you see
3 anything there?

4 **A.** Yes, he has the earpiece that would be used for a
5 communications device such as this hand-held radio that's on his
6 left hip.

7 MR. MYHRE: So the record should reflect that within
8 the circle drawn around Mr. Lovelein the witness has drawn a
9 circle around the right hip area of Mr. Lovelein which appears
10 to be a firearm, as well as the left ear with the device affixed
11 to the left ear, as well as the left hip which appears to be
12 another device.

13 BY MR. MYHRE:

14 Q. Taking that down, if you would circle the person you
15 identified as Mr. Parker.

16 MR. MYHRE: The record should reflect that the witness
17 has circled an individual to the right of Mr. Lovelein.

18 BY MR. MYHRE:

19 Q. And in this image do you see whether Mr. Parker is carrying
20 a firearm or not?

21 **A.** Yes, he has a handgun I just circled on his right thigh.

22 MR. MYHRE: And the record should reflect the witness
23 has, indeed, circled what appears to be a firearm on the right
24 thigh of the individual.

25 BY MR. MYHRE:

1 Q. And what is that next to the left of the firearm?

2 A. He has a large knife in a sheath.

3 Q. Where is this -- based on your investigation and based on
4 your knowledge of that area, again, where is this image
5 captured?

6 A. This is at the staging area or rally site in Bunkerville,
7 Nevada.

8 Q. Would that have been on April the 12th?

9 A. Yes.

10 Q. Would it have been morning or afternoon?

11 A. This is morning.

12 Q. And how are you able to tell that?

13 A. Based on the review of other video and photo evidence that
14 is time stamped, I could tell by the positioning of not only the
15 defendants that are in the picture, but other individuals where
16 they're standing.

17 MR. MYHRE: And we can take that down.

18 BY MR. MYHRE:

19 Q. Are you familiar with a website or a Facebook page called
20 Citizens Action Network?

21 A. Yes.

22 Q. What is that, just generally?

23 A. It's a Facebook page that seems to post things that -- any
24 type of -- I don't know -- an array of different things, but it
25 included an album for the Bundy Ranch and it included all of

1 photographs -- that album had photographs of April 12th, 2014,
2 and those events.

3 Q. How were you able to find this particular site?

4 A. It's as simple again as like a Google search, but instead of
5 on Google doing a Facebook search for terms, including Bundy
6 Ranch. And this is a result that came up based on that search.

7 Q. And what you viewed was available to the general public?

8 A. Yes.

9 Q. This is what you referred to previously as open source?

10 A. Yes.

11 MR. MYHRE: May we show Exhibit 161 to the witness,
12 Your Honor?

13 THE COURT: Yes, you may.

14 BY MR. MYHRE:

15 Q. And what is Exhibit 161?

16 A. This is an image of Scott Drexler kneeling with his -- with
17 a rifle low slung, but leaning on his left leg and he appears to
18 be on northbound I15 bridge looking north.

19 Q. Was this an image you obtained from the -- your review of
20 the Citizens Action Network Facebook?

21 A. Yes.

22 Q. Is the clothing that Mr. Drexler's wearing consistent with
23 April 12th, 2014?

24 A. Yes, it is.

25 Q. Are there other images in this image that we've captured

1 here that are consistent with known images you viewed from April
2 12th, 2014?

3 **A.** Yes.

4 **Q.** And what are those?

5 **A.** The -- well, the people in their position to Mr. Drexler's
6 left, but also the dark gray Dodge Ram pickup truck that is in
7 front of a gold-colored semi-truck with a white trailer that's
8 in the background of the image on I15.

9 **Q.** Okay. And where were you able to see those images?

10 **A.** Through the aerial footage.

11 MR. MYHRE: Your Honor, we offer Government's Exhibit
12 161.

13 THE COURT: Same objection to 161?

14 MR. TANASI: Yes, Your Honor. Thank you.

15 MR. MARCHESE: Yes, Your Honor.

16 MR. LEVENTHAL: Yes, Your Honor. Thank you.

17 THE COURT: Same response?

18 MR. MYHRE: Yes, Your Honor.

19 THE COURT: All right. So Exhibit 161 is admitted
20 under the same ruling. You may publish it to the jury.

21 MR. MYHRE: Thank you, Your Honor.

22 (Government's Exhibit 161 is admitted.)

23 BY MR. MYHRE:

24 **Q.** Looking at 161 now, Agent Willis. Now this is before the
25 jury. Was this image time stamped within the Facebook page?

1 **A.** No, it was not.

2 **Q.** Were you able, however, to time stamp it?

3 **A.** Yes, I was.

4 **Q.** And as part of the time stamping, did you use this image and
5 incorporate it into the timeline which we will later present?

6 **A.** Yes.

7 **Q.** And in this image does Mr. Drexler appear also to be
8 carrying a handgun?

9 **A.** Yes, on his right hip.

10 MR. MYHRE: We can take that down for the time being.

11 May I show the witness Exhibit 172?

12 THE COURT: Yes, you may.

13 BY MR. MYHRE:

14 **Q.** Do you recognize 172, Agent?

15 **A.** Yes, I do.

16 **Q.** Was this an image captured from Citizens Action Network?

17 **A.** Yes, it was.

18 **Q.** And, generally, where was this -- were you able to use
19 special characteristics observed in this image to identify it as
20 an image from April 12th, 2014?

21 **A.** Yes.

22 **Q.** And what characteristics did you review in making that
23 determination?

24 **A.** The position of Mr. Eric Parker, the position of the people
25 in the wash, of the BLM Law Enforcement vehicles in the wash,

1 and of the National Park Service and BLM employees that are on
2 the other side of the cattle gate.

3 Q. So you've identified the individual in this photo as
4 Mr. Parker?

5 A. Yes.

6 Q. And that's based upon his clothing?

7 A. Yes.

8 Q. With respect to the other characteristics you mentioned, the
9 people, for example, in the wash, was that verified from the
10 aerial surveillance?

11 A. Yes, it was.

12 Q. How about with respect to the BLM vehicles?

13 A. Yes.

14 MR. MYHRE: Your Honor, we offer Exhibit 172.

15 THE COURT: Continuing objection?

16 MR. TANASI: Yes, Your Honor. And I'd also add to it
17 hearsay.

18 MR. MARCHESE: The writing in the upper right-hand
19 corner, it's irrelevant. It's hearsay.

20 THE COURT: Can we cover that up, Mr. Myhre?

21 MR. MYHRE: I believe we could. If we can just have a
22 moment in Court, Your Honor, we could --

23 THE COURT: Well, yes. How about if we go ahead and
24 take a bathroom break, and that way you can cover it up before
25 we continue. All right?

1 MR. MYHRE: Sure.

2 THE COURT: So during this break, I am reminding the
3 jury, please, do not discuss this case with anyone, not even
4 your fellow jurors. You may speak to them about other things,
5 but not about this case. Please do not attempt to read or
6 listen to or view anything that touches upon this case in any
7 way, and do not perform any independent research or any
8 investigation about the case. Please go ahead and keep writing
9 down your questions for us.

10 We are going to go ahead and take a 15-minute break.
11 It's 3:01. We'll plan to be back here about 3:16. So let's
12 stand for the jury, and they can be excused.

13 And, Special Agent Willis, we'll just need you to be
14 back here at 3:15 as well, sir.

15 THE WITNESS: Thank you.

16 THE COURT: Thank you.

17 (Whereupon jury leaves the courtroom at 3:02 p.m.)

18 THE COURT: Oh, okay. So this is jury note -- oh,
19 boy -- 91? 92?

20 All right. Jury note No. 92 makes a good point. There
21 is a one- to two-second delay between when it is published. Can
22 the attorney please be sure the jury can see the full exhibit
23 for more than two seconds?

24 MR. MYHRE: Okay.

25 THE COURT: Okay. So even though we can see it the

1 first time around while the witness is laying the foundation,
2 the jury doesn't see it right when we say, yes, it may be
3 published. It takes a little while for the monitor to bring it
4 up, and then when you say you can take it down, apparently
5 they're not always having enough time to see it.

6 MR. MYHRE: Will do, Your Honor.

7 THE COURT: So let's keep that in mind.

8 All right. Let's everyone take your bathroom break.

9 And, marshals, you can bring in Mr. Parker for the second half
10 of the afternoon.

11 (Recess taken at 3:03 p.m.)

12 (Resumed at 3:31 p.m.)

13 THE COURT: All right. Thank you. You may be seated.

14 So everybody's back. We're on the record. Before we
15 call the jury back in, we did receive another jury note. This
16 one would be 93, Aaron? Is that right?

17 COURTROOM ADMINISTRATOR: Yes, Your Honor.

18 THE COURT: Okay. No. 93, it asks: Is it possible to
19 instruct the jurors to not use military or law enforcement terms
20 in their questions? There are times some of us don't know what
21 those terms mean.

22 So I'll go ahead and read that to them when we get
23 around to jury questions again, or should I read it now, when
24 they come back. I don't know that we're going to get to jury
25 questions with Agent Willis, are we?

1 MR. MYHRE: I'll do my best, Your Honor.

2 THE COURT: All right. Yes. Let's go ahead and call
3 them back in.

4 (Court conferring with courtroom administrator.)

5 THE COURT: All right. So we're going to bring in a
6 juror. She received apparently an unsolicited text -- I mean,
7 from someone she knows, but she wasn't -- it doesn't look like
8 they were discussing -- I don't know. I guess she'll tell us
9 what it is. She's very upset. And she's very scared that she's
10 going to get disciplined, I guess, or kicked off the jury.

11 And so she received a text from someone who said: You
12 have two hours more to finish -- to finished, past tense. You
13 have two hours more to finished. Pass death sentence on these
14 prisoner.

15 So I think that we need to question her about that.
16 And you guys can think about it if you want me to do something
17 about it at the end. But I don't think there's anything else we
18 can do, but just ask her -- I mean, I can assume a lot. I'm
19 sure all of us can start thinking about all different
20 possibilities, but the best way probably to address this is have
21 her come in and tell us as much of the circumstances as she can.

22 This is juror No. 1, by the way.

23 MR. TANASI: Which number, Your Honor?

24 THE COURT: No. 1.

25 COURTROOM ADMINISTRATOR: All rise.

1 (Whereupon juror No. 1 enters the courtroom.)

2 THE COURT: All right. Everybody else may be seated.

3 So, first of all, juror No. 1, thank you very much for
4 bringing it to our attention. I do always try to remind the
5 jurors that if they do hear something inadvertently that they
6 should bring it to the Court's attention right away. So thank
7 you, first of all, for doing that.

8 So, secondly, it looks like the text was sent to you by
9 someone that you know. Is that right?

10 A JUROR: Yes.

11 THE COURT: Okay. So it's not unusual for people to
12 know that you're in trial or what trial you're in because it's
13 such a long trial and people have to know so they know not to
14 talk to you about it.

15 So do you have -- have you discussed with this other
16 person -- well, how much about this case have you discussed with
17 this other person?

18 A JUROR: Nothing at all. He just knows that I'm on
19 jury duty.

20 THE COURT: All right. So is it a coworker? Friend?
21 Neighbor? Family?

22 A JUROR: A friend.

23 THE COURT: A friend. Okay. And so how often do you
24 speak to this friend?

25 A JUROR: Before yesterday, it was probably once a

1 week. He just got my number so started texting me yesterday.

2 THE COURT: Okay. So yesterday was the first text that
3 you received from him?

4 A JUROR: Yes. Correct.

5 THE COURT: Ever or in a while?

6 A JUROR: Ever.

7 THE COURT: Ever. Oh. Okay. So is this a new friend?

8 A JUROR: Well, we know each other through a mutual
9 friend. He dated a mutual friend of mine that ... so ...

10 THE COURT: Okay. And all right. So obviously he
11 knows that you are on -- you're a juror and that you are on this
12 trial. Is there anything else about this case that you've
13 discussed with him?

14 A JUROR: No, not at all. I don't even think he knows
15 what trial because I have not told him; just that I'm a
16 federal -- a juror on a federal trial. That's it. He doesn't
17 know anything at all about the case, at least not from me, or he
18 hasn't ever expressed that he's heard anything in the news or
19 said anything that he knows what case I'm on or anything at all.
20 He just knows I'm a juror.

21 THE COURT: But from the language used in the text it
22 seems that he knows that it's a criminal case; not a civil case.

23 A JUROR: I don't know how he would.

24 THE COURT: What about the friend that you have in
25 common? Could that person have told him?

1 A JUROR: No, she's not speaking to me anymore. So she
2 doesn't even know I'm a juror.

3 THE COURT: Oh, okay. Does he know other folks that
4 know you, like coworkers or someone else, that would know that
5 you are here for a lengthy period of time? Family?

6 A JUROR: Not that I know of. I mean, they may go to
7 the casino. I don't really know that they know him, no.

8 THE COURT: All right.

9 Do the parties have any other questions you could think
10 of that I should ask as sort of ... Probably just as surprised
11 as everyone else. So go ahead and take some time.

12 MR. TANASI: Thank you, Your Honor.

13 (Defense counsel conferring.)

14 A JUROR: Your Honor, can I say something?

15 THE COURT: Yes.

16 A JUROR: I was just shocked and completely taken aback
17 to have received that text, like, so completely out of the blue
18 that my first thought was, I need to talk to Aaron.

19 THE COURT: No, I appreciate that. That was the right
20 decision to make, definitely.

21 MR. MYHRE: And, Your Honor, the Government would just
22 ask if the Court could inquire as to whether there's anything
23 about that text that --

24 THE COURT: Right, and that's my last question, but
25 before I asked the last question, I wanted to know if there was

1 anything -- any discovery-type questions that we needed to ask
2 to get more information. But ultimately, yes, I'll ask her.

3 MR. TANASI: I don't think -- Your Honor, there's no
4 additional questions from the Defense.

5 THE COURT: All right.

6 MR. TANASI: Thank you.

7 THE COURT: So, juror No. 1, just to make sure I got
8 this clear. So it's a new friend -- or a preexisting friend,
9 but a new texting friend, a new person who has just started
10 texting recently within the week?

11 A PROSPECTIVE JUROR: Right.

12 THE COURT: And you have not discussed with him this
13 case?

14 A PROSPECTIVE JUROR: No, I have not.

15 THE COURT: And you don't even know how he knew that
16 you were in this particular case?

17 A PROSPECTIVE JUROR: No, I do not.

18 THE COURT: And the only friend that you have in common
19 is one that you're not even speaking to anymore?

20 A PROSPECTIVE JUROR: Correct.

21 THE COURT: Okay. Well, so can you put out of your
22 mind the recommendation or suggestion that your friend is making
23 to you? Whether he's serious or joking around and thinks he's
24 funny, can you put that out of your mind?

25 A PROSPECTIVE JUROR: Absolutely.

1 THE COURT: And do you think that you can continue to
2 be fair and impartial in this trial?

3 A PROSPECTIVE JUROR: Yes, I do.

4 THE COURT: Now, is this friend someone that, you know,
5 aside from this unfortunate incident, that you would like to
6 have a long-term relationship with? Is this something where
7 you're going to feel some sympathy or some mixed feelings about
8 whether he would like for you to do something, you know, vote a
9 particular way? Is it that kind of a friend?

10 I'm trying not to pry into your personal life, but I
11 apologize that I have to.

12 A PROSPECTIVE JUROR: No, that's fine. No, he's not.
13 And, no, it will not affect me in any way. His -- that text
14 will not affect me in any way, or my ability to be impartial and
15 remain impartial.

16 THE COURT: All right. Okay. So I think that's all
17 the information that we can think of getting at this point. If
18 we think of something else, we'll let you know. Okay. Thank
19 you again for bringing that to our attention.

20 And, Aaron, you can go ahead and bring everybody else
21 in, too.

22 COURTROOM ADMINISTRATOR: Yes, Your Honor.

23 (Whereupon juror No. 1 leaves the courtroom.)

24 THE COURT: So we can at least get going. We'll go
25 ahead and proceed with Special Agent Willis, and then at the end

1 of the day if anyone wants to make any record or make any other
2 comments, we'll have some time to do that.

3 MR. MYHRE: Thank you, Your Honor.

4 (Whereupon jury enters the courtroom at 3:48 p.m.)

5 THE COURT: Jury can go ahead and be seated. Everyone
6 else can be seated as well.

7 We're back on the record. We have Special Agent Willis
8 back on the witness stand. Thank you, sir.

9 And, Mr. Myhre, you may continue with your direct
10 examination.

11 MR. MYHRE: Thank you, Your Honor. I believe we were
12 showing the witness Exhibit 172.

13 BY MR. MYHRE:

14 Q. Now, Agent Willis, you have 172 before you, correct?

15 A. Yes.

16 Q. And we talked about, again, this individual depicted in this
17 is Mr. Parker, right?

18 A. Yes.

19 Q. And we talked about people in the wash as well. Now, at the
20 top right portion of that, is this -- does this indicate where
21 this is derived from?

22 A. Yes, the Citizens Action Network Facebook page.

23 Q. That's the Facebook page where you received this?

24 A. Yes.

25 Q. This was not time stamped at the time you received it?

1 **A.** That's correct.

2 **Q.** Or downloaded, I should say.

3 **A.** Yes.

4 **Q.** You actually physically downloaded it from the Internet,
5 correct?

6 **A.** Yes.

7 **Q.** Were you able, however, through extrinsic evidence able to
8 authenticate this -- excuse me -- to time stamp this at some
9 later portion?

10 **A.** Yes, I was.

11 **Q.** And is this image documented and incorporated in your
12 timeline that you constructed?

13 **A.** Yes, it is.

14 MR. MYHRE: Your Honor, we offer Exhibit 172.

15 THE COURT: Any objection to Exhibit 172? The
16 redaction's been made.

17 MR. MARCHESE: No objection Parker.

18 MR. TANASI: None from Stewart, Your Honor.

19 MR. LEVENTHAL: Foundationally he indicated that he
20 could time stamp it, but he didn't indicate how he time stamped
21 it. He's been able to time stamp other pictures through I guess
22 vehicles and things of that nature. Just foundationally I
23 didn't hear how he did it.

24 MR. MYHRE: Your Honor --

25 MR. LEVENTHAL: That's my objection is to the

1 foundational ...

2 MR. MYHRE: Your Honor, the --

3 THE COURT: Well, the foundation was that he found it
4 from the Citizens Action Network. So Exhibit 172 is admissible,
5 and it is admitted. You may publish it, but it would be helpful
6 to know whether or not this can be time stamped, and if so, how
7 was that determined.

8 MR. MYHRE: Thank you, Your Honor.

9 THE COURT: Not necessarily for admissibility, but it
10 is a good question just for the weight of the evidence.

11 MR. MYHRE: And may we publish, Your Honor?

12 THE COURT: Yes, you may.

13 (Government's Exhibit 172 is admitted.)

14 COURTROOM ADMINISTRATOR: The projector turned off.
15 It's on its way back up.

16 THE COURT: Please raise your hand if the jury can't
17 see the image.

18 All right. So there's -- their screens are working.
19 It's just the big projector sometimes takes a little while to
20 warm up. There it goes.

21 MR. MYHRE: Thank you, Your Honor.

22 BY MR. MYHRE:

23 Q. So, Agent Willis, looking at 172 that's been published,
24 would you just circle the portion on this image that shows the
25 individuals in the wash.

1 And Agent --

2 MR. MYHRE: Excuse me. The record should reflect that
3 the witness has circled individuals at the top of this image.

4 BY MR. MYHRE:

5 Q. And if you would also circle the individual identified as
6 Mr. Parker.

7 MR. MYHRE: The record should reflect that the witness
8 has circled an individual and that image identifies Mr. Parker.

9 BY MR. MYHRE:

10 Q. And if you would just sort of point out for us where the BLM
11 vehicles are located.

12 **A.** They're on the other side of the cattle gate, so ...

13 Q. Now, you -- we talked about -- oh, I'm sorry. You --

14 MR. MYHRE: The witness has marked with vertical lines
15 the images of trucks and vehicles on the other -- north of the
16 cattle gate.

17 BY MR. MYHRE:

18 Q. That is in the northbound direction. Is that correct?

19 **A.** Yes.

20 Q. You indicated that you were able to time stamp this,
21 correct?

22 **A.** Yes, I was.

23 Q. And you used the time-stamped version of this image in your
24 timeline?

25 **A.** Yes, I do.

1 Q. What other -- what type of evidence did you use in order to
2 derive a time?

3 **A.** Well, as I said earlier, the BLM vehicles on the other side
4 of the cattle gate and the people, they are depicted in the
5 aerial footage, but also through the Trey Schillie photographs
6 as well as the Hugh Gourgeon photographs. Knowing what the
7 photographer for the Citizens Action Network looks like and was
8 wearing on that day on the bridge as well as also seeing her in
9 the Shilaikis footage from Post 1, I could track her movements
10 and estimate the time when she stops and takes this picture with
11 her camera from all of those things combined.

12 MR. MYHRE: So, Your Honor, may we bring up Exhibit
13 151?

14 THE COURT: Yes, you may.

15 BY MR. MYHRE:

16 Q. Do you see -- this has been previously admitted -- Agent
17 Willis, 151?

18 **A.** Yes.

19 Q. Now, is this a different angle of that same image that we
20 just viewed in Exhibit 172?

21 **A.** Yes, taken at approximately the same time.

22 Q. Approximately the same time. Now, you indicated that you
23 could identify the photographer for Citizens Action Network?

24 **A.** Yes.

25 Q. Could you please using this image draw a circle around that

1 individual.

2 **A.** It's the woman with the short black hair with the black top
3 on, and she has a neck strap for her Cannon camera around her
4 neck, and you can see Cannon.

5 **Q.** And for record purposes, in this imagine where is she
6 located relative to where Mr. Parker is located?

7 **A.** She would just be just to his right side or east of him on
8 the northbound I15 bridge.

9 **Q.** And which way is she faced?

10 **A.** She's facing west.

11 MR. MYHRE: And, Your Honor, may we bring up image --
12 excuse me -- Exhibit 139, please?

13 THE COURT: Yes, you may.

14 BY MR. MYHRE:

15 **Q.** And this has been previously admitted as Exhibit 139?

16 **A.** Yes.

17 **Q.** Do you recognize the person who's the photographer in this
18 image?

19 **A.** Yes. So here's the woman with the black top on and the dark
20 pants. I believe at this moment she's actually taking the
21 photograph. And then Jim Urquhart, he later -- who is on the
22 left side will later move around to Mr. Parker's left. And then
23 that's where we saw the previous photo Mr. Schillie took.

24 **Q.** Now, just focusing for a moment on the individual that
25 you've drawn a circle around.

1 **A.** Yes.

2 **Q.** Which way is that person now faced relative to Mr. Parker's
3 position?

4 **A.** She would be facing Mr. Parker, but facing northwest. So
5 north looking over the Jersey barrier, but capturing Mr. Parker
6 and the Jersey barrier.

7 MR. MYHRE: Now if we could go back to 172.

8 BY MR. MYHRE:

9 **Q.** Would this have been from the direction she was faced, this
10 image?

11 **A.** Yes.

12 **Q.** Now, knowing those images of the individual in black who
13 took the photograph, does that person appear in other images
14 that you were able then to time stamp?

15 **A.** Yes.

16 **Q.** And which images were those?

17 **A.** The Shilaikis video, the Trey Schillie photographs.

18 **Q.** And the Hugh Gourgeon?

19 **A.** And Hugh Gourgeon.

20 **Q.** Okay. So Exhibit 139 was from Gourgeon. Is that correct?

21 **A.** Yes.

22 **Q.** Those were time stamped?

23 **A.** Yes.

24 **Q.** Correct?

25 **A.** Yes.

1 Q. Metadata?

2 **A.** Yes.

3 Q. And Exhibit 151 was from Trey Schillie, correct?

4 **A.** Yes.

5 Q. And that was time stamped as well?

6 **A.** Yes.

7 Q. And that's how you were ultimately able to derive the time
8 stamp for this exhibit?

9 **A.** Yes.

10 Q. And that will be incorporated in your timeline which we will
11 visit later?

12 **A.** Yes.

13 MR. MYHRE: And, Your Honor, if I could go back, I
14 neglected one exhibit. If I could go back to show the witness
15 Exhibit 140, please.

16 THE COURT: Yes, you may.

17 BY MR. MYHRE:

18 Q. And do you see 140 there, Agent Willis?

19 **A.** Yes, I do.

20 Q. Was this also from Mr. Gourgeon?

21 **A.** Yes.

22 Q. Was this image -- when you received it, did it have metadata
23 time stamping it?

24 **A.** Yes, it did.

25 Q. And was it time stamped for April 12th?

1 **A.** Yes.

2 **Q.** And do you recognize the individual in this image?

3 **A.** Yes, I do, Eric Parker.

4 **Q.** And how do you recognize him?

5 **A.** By his hat, his rifle, his shirt, his tactical vest, the
6 knife, his pants.

7 **Q.** And does his -- does he have a firearm?

8 **A.** Yes, he has a rifle that he is pointing through the gap in
9 the Jersey barrier.

10 **Q.** Was that -- is the position of that rifle consistent or not
11 consistent with the image we just viewed in 172?

12 **A.** It is consistent.

13 MR. MYHRE: Your Honor, we offer Exhibit 140.

14 THE COURT: Any objection to Exhibit 140?

15 MR. TANASI: Same objection Stewart, Your Honor, and
16 also to add cumulative.

17 MR. MARCHESE: Parker joins.

18 MR. LEVENTHAL: Drexler joins.

19 MR. PEREZ: Lovelein joins.

20 MR. MYHRE: I didn't catch the last part of
21 Mr. Tanasi's objection.

22 MR. TANASI: Cumulative, Your Honor.

23 MR. MYHRE: Your Honor, this is a different time,
24 different angle, of Mr. Parker on the northbound bridge, and is
25 consistent or -- excuse me -- is integral to the timeline that

1 will be later introduced.

2 THE COURT: All right. Exhibit 140 is admitted over
3 objection. You may go ahead and publish it to the jury.

4 (Government's Exhibit 140 is admitted.)

5 BY MR. MYHRE:

6 Q. And, Special Agent Willis, in the course of your
7 investigation, were you able to determine -- we see here in this
8 image the gap in the Jersey barrier, correct?

9 A. Yes.

10 Q. In that concrete barrier. And you've walked that bridge.
11 Is that correct?

12 A. Yes, I have.

13 Q. In the course of your investigation, based on the
14 photographic images that we've seen, were you able to locate
15 where that gap is in that bridge?

16 A. Yes.

17 Q. And will that be discussed within your timeline?

18 A. Yes.

19 Q. Okay.

20 MR. MYHRE: And, Your Honor, if I could go back for a
21 moment to Exhibit 171.

22 THE COURT: Yes.

23 BY MR. MYHRE:

24 Q. With 171, Agent Willis, we described Mr. Lovelein and his
25 earpiece. Is that correct?

1 **A.** Yes.

2 **Q.** And if you would circle that again for us.

3 MR. MYHRE: Now, Your Honor, may we call up Exhibit 21
4 at approximately 2 seconds?

5 THE COURT: Yes.

6 (Video playing.)

7 MR. MYHRE: Right there.

8 BY MR. MYHRE:

9 **Q.** Now, do you see an individual in the foreground of this
10 image at Exhibit 21 at approximately 2 seconds?

11 **A.** Yes, I do.

12 **Q.** And what is depicted in that image?

13 **A.** Well, the individual in the foreground is wearing a digital
14 camo-type pattern hat, and he has an earpiece for a
15 communications device in his left ear.

16 **Q.** If you could just circle that, please.

17 Is that consistent or not consistent with the earpiece
18 we just looked at in Exhibit 171?

19 **A.** Consistent.

20 **Q.** Now, this individual depicted in this image at the 2 second
21 mark, where is he located -- well, first of all, the individual
22 in the center of the screen is who?

23 **A.** The individual on the stage is Ammon Bundy.

24 **Q.** Where is the individual for record purposes located relative
25 to Mr. Bundy in this image?

1 **A.** Directly in front of Mr. Bundy.

2 **Q.** Does he appear to be wearing a uniform of some sort?

3 **A.** Yes.

4 **Q.** And what type of uniform?

5 **A.** It's a camouflage uniform, but he is also bearing insignia
6 that would indicate that he's part of the Arizona State Militia.

7 **Q.** And this image is taken approximately when during the day?

8 **A.** This would be in the morning prior to Sheriff Gillespie and
9 Cliven Bundy speaking on stage.

10 MR. MYHRE: Okay. We can bring that down, please.

11 And, Your Honor, may I show the witness Exhibit 162?

12 THE COURT: Yes, you may.

13 BY MR. MYHRE:

14 **Q.** Now, you talked, Agent Willis, about reviewing other public
15 media. Did you also review images posted by Reuters and the
16 Washington Post?

17 **A.** Yes.

18 **Q.** And what is Reuters?

19 **A.** Reuters is just a news publication, news outlet, and they do
20 articles and stories on stuff.

21 **Q.** And are those -- are those published or posted publicly?

22 **A.** Yes, on the Reuters.com or .org website, I believe. It's
23 just open to the public. Anybody can access them.

24 **Q.** And how about with respect to the Washington Post?

25 **A.** It's the same thing. They have an Internet website that you

1 can go on and read articles published by the Washington Post.

2 Q. Now, the exhibit at 162 do you -- first of all, do you
3 recognize this image?

4 **A.** Yes, I do.

5 Q. And what is it generally?

6 **A.** This is an image of Scott Drexler, Steven Stewart, and Eric
7 Parker on the northbound I15 bridge in Bunkerville.

8 Q. Does this have a date stamp with it?

9 **A.** No, it does not.

10 Q. Were you able to derive the date?

11 **A.** Yes, I was.

12 Q. And how were you able -- what -- did you look at specific
13 characteristics in this image to get the date?

14 **A.** Yes, I did. I looked at the position of the vehicles in the
15 background on the I15 northbound bridge and compared that to the
16 aerial footage.

17 Q. And when you compared it, did it -- were you able to make
18 consistent identifications?

19 **A.** Yes, I was.

20 Q. Identifications of these distinctive characteristics?

21 **A.** Yes, I was.

22 MR. MYHRE: Your Honor, we offer Exhibit 162.

23 THE COURT: Any objection to 162?

24 MR. TANASI: Continuing objection, authenticity, Your
25 Honor.

1 MR. MARCHESE: Parker joins.

2 MR. LEVENTHAL: Drexler joins.

3 MR. PEREZ: Lovelein joins.

4 THE COURT: Same response?

5 MR. MYHRE: Same response, Your Honor.

6 THE COURT: Same ruling. 162 will be admitted. You
7 may go ahead and publish it.

8 MR. MYHRE: Thank you, Your Honor.

9 (Government's Exhibit 162 is admitted.)

10 BY MR. MYHRE:

11 Q. Now, this image was downloaded from Reuters?

12 A. Yes, sir.

13 Q. And do you recognize Steven Stewart in this image?

14 A. Yes, I do. He's standing in the image. He's holding a
15 rifle above the Jersey barrier pointed -- pointed upward.

16 Q. If you could just circle his image, please.

17 And you've identified a firearm as well, correct?

18 A. Yes.

19 Q. If you could just identify that just for record purposes.

20 MR. MYHRE: And the record should reflect that he's
21 circled an individual he's identified as Steven Stewart and also
22 identified an object that appears to be a firearm.

23 BY MR. MYHRE:

24 Q. Is he also carrying any other firearms?

25 A. He has a handgun on his right hip.

1 Q. If you would circle that, please.

2 Now, the clothing that this individual's wearing, is
3 that consistent with other images of Mr. Stewart?

4 **A.** Yes, it is.

5 Q. Is that consistent with those images for April 12th, 2014?

6 **A.** Yes.

7 Q. In which direction does Mr. Stewart appear to be facing in
8 this image?

9 **A.** He looks to be facing north or northwest and looking down
10 into the wash area.

11 Q. Which bridge is this located on from your investigation?

12 **A.** Northbound I15 bridge.

13 Q. Now, in the foreground, you recognize that individual?

14 **A.** Yes, that's Scott Drexler. He's kneeling. Appears to be
15 drinking out of a jug of water.

16 Q. And --

17 **A.** Go ahead.

18 Q. And in this image where is he in relation to Mr. Stewart?

19 **A.** He's to Mr. Stewart's right.

20 Q. Now, you mentioned that this did not come with a time stamp
21 on it. However, were you able to time stamp this?

22 **A.** Yes, I was.

23 Q. And how did you do that?

24 **A.** This small silver SUV with the person, the hand out,
25 appearing to be either holding a camera or cell phone out. And

1 behind that in the second furthest lane, but behind is a white
2 truck and then it's passing a dark vehicle. From the aerial
3 footage I can find -- I found that -- that specific point in
4 time with that SUV, with the white truck, and it's consistent
5 also with the location of the people that are on the bridge, but
6 from the aerial footage perspective.

7 Q. Was this image then incorporated into your timeline?

8 A. Yes, it was.

9 MR. MYHRE: Take that down.

10 Your Honor, may we show the witness 163?

11 THE COURT: Yes.

12 BY MR. MYHRE:

13 Q. Agent, do you see 163?

14 A. Yes, I do.

15 Q. What is this?

16 A. This is a Reuters.com photograph, also captured by Jim
17 Urquhart, as was the last one. Eric Parker is in this image.
18 He's kneeling against the Jersey barrier and holding a rifle
19 pointed down.

20 Q. Was this time stamped when you obtained this image?

21 A. It did not include metadata, but I was able to determine the
22 time.

23 Q. And, again, how did you do that?

24 A. Again, to the aerial footage. The people on the concrete
25 skirting, I know the identity of one of those people, and I've

1 tracked their movements throughout the day on April 12th, 2014,
2 especially in the wash. And then also the tractor-trailer being
3 followed by that white car, I can see that in the aerial
4 footage.

5 Q. And that's the aerial footage from April 12th, 2014?

6 A. Yes.

7 MR. MYHRE: Your Honor, we offer Exhibit 163.

8 THE COURT: Continuing objection?

9 MR. TANASI: Yes, Your Honor. Thank you.

10 THE COURT: Same response?

11 MR. MYHRE: Yes, Your Honor.

12 THE COURT: Same ruling. Exhibit 163 will be admitted.

13 You may go ahead and publish it to the jury.

14 MR. MYHRE: Thank you, Your Honor.

15 (Government's Exhibit 163 is admitted.)

16 BY MR. MYHRE:

17 Q. Agent, you -- in your testimony you indicated that you were
18 able to time stamp this by following movements of individuals in
19 the wash. Is that correct?

20 A. Yes.

21 Q. Would you -- are you able to identify in this image the
22 individuals you were able to track in the wash?

23 A. Yes. Specifically -- I'll try to draw an arrow. Not a very
24 good arrow, but that individual right there with the backpack on
25 and the light-colored shirt.

1 Q. So you were able to view other known video from April 12th
2 where that individual appears. Is that correct?

3 **A.** Yes.

4 Q. Now, you also identified some vehicles in this image that
5 helped you time stamp from the aerial. Is that correct?

6 **A.** Yes.

7 Q. If you would just identify those.

8 **A.** This tractor-trailer truck followed by this white vehicle
9 behind it.

10 MR. MYHRE: And the record should reflect that the
11 witness has drawn an arrow to an individual image that appears
12 below the barrier into the wash and then has drawn two circles
13 in the upper left portion of the exhibit, one of a truck
14 trailer -- truck trailer, excuse me, and another vehicle behind
15 that.

16 BY MR. MYHRE:

17 Q. Now, you indicated Mr. Parker is in this image, correct?

18 **A.** Yes, he is.

19 Q. If you could circle him as well.

20 And you know him by his -- by what?

21 **A.** By his clothing, his hat, his rifle, and his facial
22 features.

23 Q. Do you see -- have you been able to identify any other
24 defendants in this image?

25 **A.** Behind -- well, I'm sorry. In the background of this image

1 and to Mr. Parker's left Mr. Stewart is crouched down. And you
2 can see his blue shirt with the design on the back next to the
3 guy in the white shirt.

4 MR. MYHRE: And the witness -- the record should
5 reflect that the witness has drawn an arrow or line, excuse me,
6 above an image of an individual with a blue shirt.

7 BY MR. MYHRE:

8 Q. You've identified that individual as Defendant Stewart?

9 A. Yes.

10 Q. And you were able to, as you described, time stamp this.

11 Did you then incorporate this image into your timeline?

12 A. Yes, I did.

13 MR. MYHRE: Thank you. Your Honor, may we then move to
14 Exhibit 164?

15 THE COURT: Yes, you may.

16 BY MR. MYHRE:

17 Q. And do you see Agent -- excuse me. Agent Willis, do you see
18 164 before you?

19 A. Yes, I do.

20 Q. Where was this image obtained from?

21 A. This was obtained from Washington -- the Washington Post.com
22 website.

23 Q. And who obtained this image?

24 A. I did.

25 Q. And how did you do that?

1 **A.** Accessed their website and downloaded the image.

2 **Q.** And based on the distinctive characteristics in this image,
3 were you able to determine that it was taken on April 12th,
4 2014?

5 **A.** Yes.

6 **Q.** If you could just recite for us a few of those
7 characteristics that you used.

8 **A.** Well, knowing that this photo, because of the caption within
9 the Washington Post website, was also taken by Jim Urquhart, and
10 I can track his movements. I could compare it to the Hugh
11 Gourgeon photography -- photographs with Hugh Gourgeon's
12 movements on the bridge. But on the top of the image there is a
13 tractor-trailer truck carrying a dark -- what looks like a dark,
14 I guess, load on its trailer. And I can track that as well as
15 other vehicles on the bridge as they pass by on the southbound
16 I15 bridge heading west.

17 **Q.** Again, using the aerial surveillance from April 12th?

18 **A.** Yes.

19 **Q.** And those were consistent with those images?

20 **A.** Yes.

21 **Q.** And this image appears to be Mr. Parker as well, correct?

22 **A.** That is correct.

23 **Q.** And how are you able to identify him?

24 **A.** Again, his hat, his tactical vest, shirt, pants, knife,
25 firearm.

1 MR. MYHRE: Your Honor, we offer Exhibit 164.

2 THE COURT: Any objection to 164?

3 MR. TANASI: Same objection.

4 MR. MARCHESE: Parker joins.

5 MR. PEREZ: Lovelein joins.

6 MR. LEVENTHAL: Drexler joins.

7 MR. MYHRE: Same response, Your Honor.

8 THE COURT: Same ruling. 164 will be admitted. You
9 may go ahead and publish it to the jury.

10 MR. MYHRE: Thank you.

11 THE COURT: Can I just have the witness clarify?
12 Because he keeps calling it a tractor-trailer, and I think that
13 may be a term that's used, but not one that I've used. So maybe
14 just to clarify what you're talking about.

15 MR. MYHRE: Yes, Your Honor.

16 THE WITNESS: Sorry. That's just what I grew up
17 calling it. So it's like a semi-truck, a 16 wheeler.

18 BY MR. MYHRE:

19 Q. If you would draw a circle around the image that you
20 referred to as a tractor-trailer.

21 MR. MYHRE: And the record should reflect the witness
22 has drawn a circle around an image of what appears to be a truck
23 on the top center portion of the image.

24 BY MR. MYHRE:

25 Q. That's what you're referring to as a tractor-trailer?

1 **A.** Yes.

2 *Q.* It's also known, perhaps, as a semi?

3 **A.** Yes.

4 THE COURT: Thank you.

5 BY MR. MYHRE:

6 *Q.* And that was -- assisted you in time stamping this
7 particular image?

8 **A.** Yes, sir.

9 *Q.* Now, just generally speaking, you indicated that Mr. -- you
10 believe Mr. Urquhart appears somewhere in this image or in
11 another image?

12 **A.** His shadow is in this image on the bottom. And based on the
13 Hugh Gourgeon photograph of the Citizens Action Network
14 photographer in the black taking the photo with Hugh Gourgeon
15 right next to her, I can approximate, again comparing that to
16 the aerial, of the exact time when this photograph was taken.

17 *Q.* So I may have misspoken. So the shadow that you've circled
18 there in the bottom portion of the image, that's of Citizens
19 Action Network?

20 **A.** No, that's of Hugh -- Hugh Gourgeon and his camera. So you
21 can see somebody holding a camera, and the sun creating --
22 casting a shadow in the picture.

23 *Q.* And you're able to verify that through -- well, let's take a
24 look at Exhibit 139.

25 Does that assist you at all?

1 **A.** Yes.

2 **Q.** And this is -- oh, excuse me.

3 And this is the image taken by Mr. Gourgeon, correct?

4 **A.** Yes. And this would be Mr. Urquhart and his shadow.

5 **Q.** So the shadow that you drew before was of Mr. Urquhart?

6 **A.** That's what I believe, yes.

7 **Q.** And that image now in 139 was captured by Mr. Gourgeon?

8 **A.** 139 is?

9 **Q.** Yes.

10 **A.** Yes.

11 **Q.** So going back -- if we go back to 164, now looking over to
12 your left, is that -- which image do you believe is the shadow
13 of Urquhart?

14 And from this you were able to time stamp this
15 particular image?

16 **A.** Along with the aerial photography with the semi-truck
17 passing on the southbound bridge.

18 **MR. MYHRE:** And, Your Honor, may we show Exhibit 195 to
19 the witness?

20 **THE COURT:** Yes, you may.

21 **BY MR. MYHRE:**

22 **Q.** And do you see 195, Agent?

23 **A.** Yes, I do.

24 **Q.** Where was this obtained?

25 **A.** This was obtained from Reuters.com.

1 Q. And what is depicted in this image generally?

2 **A.** Eric Parker in the prone position with his rifle between the
3 gap in the Jersey barriers.

4 Q. And you recognize him by his clothing?

5 **A.** Yes, I do.

6 Q. And you recognize this image as taken on April the 12th,
7 2014?

8 **A.** Yes.

9 Q. And do you see any other individuals in this image that you
10 recognize?

11 **A.** Yes, I do.

12 Q. And who is that?

13 **A.** Trey Schillie and Hugh Gourgeon.

14 Q. And you knew them to be on the bridge on April 12, 2015?

15 **A.** Yes.

16 MR. MYHRE: Your Honor, we offer Exhibit 195.

17 THE COURT: Continuing objection?

18 MR. TANASI: Yes, Your Honor. Thank you.

19 MR. MARCHESE: Yes, Your Honor.

20 MR. PEREZ: Yes, Your Honor.

21 MR. LEVENTHAL: Yes.

22 MR. MYHRE: Same response, Your Honor.

23 THE COURT: All right. Same ruling. Exhibit 195 is
24 admitted. You may go ahead and publish it to the jury.

25 (Government's Exhibit 195 is admitted.)

1 BY MR. MYHRE:

2 Q. So this image, 195, in which direction are we looking now
3 from the photographer's standpoint?

4 **A.** We're looking east on the northbound I15 bridge.

5 Q. And east at this point would actually be going northbound,
6 correct?

7 **A.** Yes, that would be correct.

8 Q. It would be going with traffic?

9 **A.** Yes.

10 Q. You indicated you recognize Mr. Schillie in this photo?

11 **A.** Yes, I do.

12 Q. And if you would circle the image of that individual.

13 MR. MYHRE: And the record should reflect that the
14 witness has drawn a circle around an individual appears to be in
15 a blue shirt about the center of the screen.

16 BY MR. MYHRE:

17 Q. Is this the same individual you know to be Trey Schillie who
18 testified in court?

19 **A.** Yes, it is.

20 Q. Clearing that.

21 Now, you also said you recognized Mr. Gourgeon?

22 **A.** Yes.

23 Q. And if you would circle his image.

24 MR. MYHRE: And the record should reflect the witness
25 has circled an image about the center of the screen.

1 BY MR. MYHRE:

2 Q. The individual appears to be in a yellow shirt?

3 A. Yes.

4 Q. And from those images -- excuse me.

5 When you downloaded this image, did it have a time
6 stamp?

7 A. No, it was just from a public website.

8 Q. Were you able to time stamp it?

9 A. Yes, I was.

10 Q. And how did you derive a time?

11 A. Based on the Hugh Gourgeon photography and the known
12 time-stamping information on those photos.

13 MR. MYHRE: And, Your Honor, may we show 196 to the
14 witness?

15 THE COURT: Yes.

16 BY MR. MYHRE:

17 Q. Agent Willis, do you see 196?

18 A. Yes, I do.

19 Q. What is this an image of generally?

20 A. This is an image of several people standing at the entrance
21 to the assembly area/parking area off of northbound I15.

22 Q. Where was this image obtained from?

23 A. This is also a Reuters/Jim Urquhart photo -- photograph.

24 Q. So this came from the Reuters.com?

25 A. Yes.

1 Q. Who downloaded this image?

2 A. I did.

3 Q. So you actually saw it on the website?

4 A. Yes, I did.

5 Q. Is this taken from April 12th, 2014?

6 A. Yes, it was.

7 Q. And how were you able to derive that?

8 A. By the activities happening, the Metro officers moving
9 across the I15 roadway/highway, and as well as the other
10 individuals that are in that area compared to other video and
11 photo evidence.

12 Q. And who appears in this image?

13 A. Eric Parker.

14 MR. MYHRE: Your Honor, we offer Exhibit 196.

15 MR. MARCHESI: No objection Parker.

16 MR. TANASI: None from Stewart, Your Honor.

17 MR. LEVENTHAL: No objection, Your Honor.

18 MR. PEREZ: None from Lovelein.

19 THE COURT: Exhibit 196 will be admitted. You may go
20 ahead and publish it.

21 MR. MYHRE: Thank you, Your Honor.

22 (Government's Exhibit 196 is admitted.)

23 BY MR. MYHRE:

24 Q. Now, the image that's before the jury, Agent Willis, for
25 record purposes, please draw a circle around Mr. Parker.

1 And where is this image taken with respect to location
2 on the ground?

3 **A.** This image was taken from the median on the north side of
4 the northbound I15 highway or interstate looking south, facing
5 south.

6 **Q.** Now, I've cleared the circle you've drawn. There are law
7 enforcement officers in this image as well, correct?

8 **A.** Yes.

9 **Q.** And who are those -- not by name, but who are those officers
10 affiliated with?

11 **A.** Las Vegas Metropolitan Police Department.

12 **Q.** If you could just draw a circle around them.

13 MR. MYHRE: The record should reflect the witness has
14 drawn a circle around several officers in the right-hand portion
15 of the screen.

16 BY MR. MYHRE:

17 **Q.** And do you see anyone -- do you recognize anyone in this
18 image to be Sheriff Lombardo?

19 **A.** Sheriff Lombardo, you can't see his face, but his head is
20 right there. He's -- at this time he's preparing to walk across
21 the highway, and he's facing back to the individuals on the side
22 of I15.

23 **Q.** Now, for record purposes, where is he in relation to
24 Mr. Parker in this image?

25 **A.** He would be almost directly to his north or in front of

1 Mr. Parker.

2 MR. MYHRE: Now, Your Honor, may we refer back to
3 Exhibit 160, please?

4 THE COURT: Yes.

5 BY MR. MYHRE:

6 Q. And this was earlier introduced through Sheriff Lombardo?

7 A. Yes.

8 Q. And you see Sheriff Lombardo in this image as well?

9 A. Yes, I do.

10 Q. Is this as well in the approximate area where the -- that we
11 just viewed in Exhibit 196?

12 A. Yes.

13 Q. Now, does -- are there any other defendants that appear in
14 this image?

15 A. Yes. Scott Drexler in the background behind that
16 dark-colored pickup truck.

17 Q. Would you circle that image, please.

18 MR. MYHRE: And the record should reflect the witness
19 circling an image of an individual in the top right portion of
20 the Exhibit 160.

21 BY MR. MYHRE:

22 Q. How are you able to identify this as Mr. Drexler?

23 A. By his hat, his tactical vest, and his shirt, and his hair
24 also.

25 Q. Now, this Exhibit 160 was from the Bushman Dropbox. Is that

1 correct?

2 **A.** That's correct.

3 **Q.** So you were able to time stamp that image. Is that right?

4 **A.** Yes, I was.

5 MR. MYHRE: Go back to 196, please.

6 BY MR. MYHRE:

7 **Q.** And what other -- did you use 160 to help you time stamp
8 this particular image?

9 **A.** Yes, the approximate time. So this would be taking place --
10 I would approximate it at one minute after that Bush -- that
11 Shannon Bushman photograph was taken after Sheriff Lombardo had
12 completed or finished his conversation with Dave Bundy, turned
13 around, and began walking across I15.

14 **Q.** Is this image at 196 incorporated in your timeline?

15 **A.** Yes, it is.

16 **Q.** So we will revisit this image later.

17 **A.** Yes.

18 **Q.** Did you also review local network broadcasts as well?

19 **A.** Yes, I did.

20 **Q.** And, specifically, did you look at Fox News?

21 **A.** Yes.

22 **Q.** And how about with respect to Channel 8?

23 **A.** Yes.

24 **Q.** In the course of your review of that media, did you also
25 find relevant images captured from conventional reporters?

1 **A.** Yes.

2 MR. MYHRE: Your Honor, may we show the witness Exhibit
3 168?

4 THE COURT: Yes, you may.

5 (Video playing.)

6 MR. MYHRE: Thank you. That's fine right there.

7 BY MR. MYHRE:

8 Q. And do you recognize 168?

9 **A.** Yes, I do.

10 Q. And what is that?

11 **A.** This is a Fox News live broadcast. I believe this was aired
12 on April 13th, 2014.

13 Q. And if -- and from that news broadcast were you able to find
14 relevant photos of defendant?

15 **A.** Yes.

16 MR. MYHRE: And may I show the witness 168B, Your
17 Honor?

18 THE COURT: Yes, you may.

19 BY MR. MYHRE:

20 Q. Do you see 168B?

21 **A.** Yes, I do.

22 Q. What is that an image of?

23 **A.** It's an image of Eric Parker laying in the prone position on
24 I15 bridge. Several people are in the wash in the background.

25 Q. And this image was taken from that news broadcast?

1 **A.** Yes, it was.

2 **Q.** And there's a banner below it that indicates -- so
3 indicates. Is that correct?

4 **A.** Yes.

5 **Q.** In this image what is -- have you identified specific
6 characteristics in this image that identified April 12th, 2014?

7 **A.** Yes.

8 **Q.** And specifically what types of characteristics?

9 **A.** The individuals in the wash, the northbound and southbound
10 I15 bridges, and Eric Parker and his positioning on the bridge.

11 **Q.** And his clothing as well?

12 **A.** Yes.

13 MR. MYHRE: Your Honor, we offer 168B.

14 MR. MARCHESE: Parker objects --

15 THE COURT: Any objection?

16 MR. MARCHESE: -- to the commentary writing at the
17 bottom.

18 THE COURT: The white or the yellow letters?

19 MR. MARCHESE: I guess both, but mainly the white as to
20 hearsay and relevance.

21 MR. MYHRE: I believe we can redact these, Your Honor.

22 THE COURT: Well, I was going to say, it's a picture
23 and not a video. So we should be able to redact it, right?

24 MR. MYHRE: Yes, Your Honor.

25 THE COURT: Okay. Any other objections?

1 MR. MARCHESE: None from Parker.

2 MR. TANASI: Stewart joins, Your Honor.

3 THE COURT: Anything else?

4 MR. LEVENTHAL: No objection.

5 THE COURT: All right. So Exhibit 168B will be
6 admitted with that redaction eliminating the yellow and white
7 letters.

8 (Government's Exhibit 168B is admitted.)

9 MR. MYHRE: If I could just for the witness only 168B,
10 please.

11 And, Your Honor, we have the redacted version there.
12 I'm not sure if there are any further objections based on the
13 redactions.

14 MR. TANASI: Nothing further from Stewart, Your Honor.
15 Thank you.

16 MR. MARCHESE: None from Parker.

17 THE COURT: All right. So Exhibit 168B, as in bravo,
18 is admitted. You may go ahead and publish it now.

19 MR. MYHRE: Thank you, Your Honor.

20 BY MR. MYHRE:

21 Q. Well, 168B now is in front of the jury. And if you would
22 describe for us Mr. Parker's position relative to the wash.

23 **A.** He is in the prone position, laying down on the northbound
24 I15 bridge. He would be -- he's facing north over the wash
25 towards the southbound I15 bridge and the BLM vehicles.

1 Q. For record purposes, can you see which way his head is
2 turned in this image?

3 **A.** Oh. He is -- he is facing east down the highway.

4 Q. So he would be facing --

5 **A.** To his right.

6 Q. His head would be facing sort of with traffic on the
7 northbound?

8 **A.** Yes.

9 Q. Does there appear to be an object under his elbow?

10 **A.** Yes. It is a backpack, it appears to be.

11 Q. When you downloaded this image, did it have a time stamp
12 with it?

13 **A.** No, it did not.

14 Q. And were you able to later time stamp this?

15 **A.** Yes.

16 Q. If you would describe the methodology you generally went
17 through for that.

18 **A.** In a photograph that we reviewed earlier from Reuters.com
19 with Scott Drexler drinking out of the jug of water, I described
20 a silver SUV driving by and how I determined the time stamping
21 from the aerial footage for that SUV. This photograph, because
22 of -- due to the way he is facing, his position on the bridge,
23 and I can match that up to the Reuters photograph of Mr. Drexler
24 taking the chug of water and Mr. Stewart holding his rifle.

25 I believe that the silver SUV with the person holding

1 the camera or the phone out had taken this photo as they were
2 driving by a moment before the photograph was taken with the
3 water and the gun, which again I time stamped through the aerial
4 photography footage.

5 Q. So the image we saw earlier with the vehicle driving by?

6 A. Yes.

7 Q. Was that individual, based on your review, affiliated then
8 with Fox?

9 A. Yes, that vehicle had been in the median between the north
10 and southbound I15 bridges earlier. They had been on the
11 northbound I15 bridge earlier in that day. It appeared to be
12 some type of news outlet representative or representatives. So
13 I can track that vehicle and reach the conclusion that those
14 individuals as they were passing by and appearing to be leaving
15 the area were taking this photo -- this photo.

16 MR. MYHRE: So if we could go back to 162 briefly.

17 BY MR. MYHRE:

18 Q. Do you see the vehicle to which you refer?

19 A. Yes. So here's the vehicle. Here's the camera or phone
20 that I had described. And I believe that that picture was taken
21 moments before as that vehicle --

22 MR. LEVENTHAL: I'm going to object to speculation.

23 THE WITNESS: -- passed by.

24 MR. LEVENTHAL: Objection, speculation.

25 MR. MYHRE: Well --

1 THE COURT: Overruled. That's what he's explaining is
2 how he determined the time.

3 MR. LEVENTHAL: And, Your Honor, I would just say that
4 he indicated that it's his belief. He's not -- it's a belief.

5 MR. MYHRE: I can drill down further on that, Your
6 Honor.

7 THE COURT: All right. Go ahead.

8 BY MR. MYHRE:

9 Q. So you've drawn -- the record should reflect you've drawn a
10 line directly above what appears to be someone's hand outside a
11 window of a vehicle, correct?

12 **A.** Yes.

13 Q. And what does that individual appear to be doing based on
14 what you observed in this image?

15 **A.** Taking a photograph or video.

16 Q. Do you see Mr. Parker in this image?

17 **A.** Yes, I do.

18 Q. And would you circle him?

19 **A.** He's right here looking to his right in the prone position
20 with his rifle pointed through the Jersey barrier.

21 Q. Do you see his arm braced on anything?

22 **A.** Yes, same as the last image where his arm is resting on a
23 backpack.

24 Q. And if you'd just draw a little line toward the arm toward
25 that backpack.

1 MR. MYHRE: The record should reflect that the witness
2 has drawn a circle around an image he believes to be -- he's
3 identified as Mr. Parker as well as a line underneath an object
4 he has identified as a backpack.

5 BY MR. MYHRE:

6 Q. Now, you say that based on your review of this that the
7 individual in this car took the image of Mr. Parker. Is that
8 correct?

9 A. That's correct.

10 Q. And from what angle would that image have been taken?

11 A. The previous image?

12 Q. Based on the travel of this car, yes.

13 A. It would have been taken from right behind and slightly to
14 Mr. Parker's right as the vehicle was passing by.

15 Q. And so based on your review of this image, what has caused
16 you to observe that this vehicle would have taken that image of
17 Mr. Parker?

18 A. Again, the person with the hand out, the camera, and the
19 position of Mr. Parker in the exact -- almost exact same
20 position as the previous Fox News photograph looking to his
21 right on the backpack with his rifle pointed between the Jersey
22 barriers.

23 Q. Thank you.

24 And so from all of that, you were able to ultimately
25 derive a time stamp, correct?

1 **A.** That's correct.

2 **Q.** And that's incorporated in your timeline?

3 **A.** Yes, it is.

4 **MR. MYHRE:** Your Honor, may we show Exhibit 166A?

5 **THE COURT:** Yes, you may.

6 **BY MR. MYHRE:**

7 **Q.** Do you see 166A, Agent Willis?

8 **A.** Yes, I do.

9 **Q.** What is depicted in that image?

10 **A.** This is Steven Stewart kneeling on the northbound I15 bridge
11 holding a rifle in front of him pointed upward.

12 **Q.** Where was this image obtained?

13 **A.** This was obtained from the 8 News NOW I-Team broadcast. I
14 believe this was broadcast on May -- well, it says it actually.
15 May 8th, 2014.

16 **Q.** And with respect to this broadcast, did you review that
17 broadcast?

18 **A.** Yes, I did.

19 **Q.** And did you obtain this image from that broadcast?

20 **A.** Yes, I did.

21 **Q.** You identified it as Mr. Stewart, but the image itself has
22 embedded within it a date. Is that correct?

23 **A.** Yes.

24 **Q.** What is that date?

25 **A.** May 8th, 2014.

1 Q. Off to the right of Mr. Stewart, do you see a date there?

2 A. Yes, it says April 12th.

3 Q. Now, the clothing Mr. Stewart's wearing, is that consistent
4 or not consistent with what he's wearing in known images of
5 April 12th?

6 A. It's consistent.

7 MR. MYHRE: Your Honor, we offer 166A.

8 THE COURT: 166A. Any objection?

9 MR. TANASI: Continuing objection from Stewart, Your
10 Honor.

11 MR. MARCHESE: Parker joins.

12 MR. LEVENTHAL: Drexler joins.

13 MR. PEREZ: Lovelein joins.

14 MR. MYHRE: Same response, Your Honor.

15 THE COURT: All right. Same ruling. 166A will be
16 admitted. You may go ahead and publish it to the jury.

17 MR. MYHRE: Thank you.

18 (Government's Exhibit 166A is admitted.)

19 BY MR. MYHRE:

20 Q. Agent Willis, the jury now has before it 166A. Would you
21 for record purposes just please circle the individual you
22 identified as Mr. Stewart.

23 And do you see objects that are consistent -- objects
24 and clothing that's consistent with previous images, known
25 images, of Mr. Stewart?

1 **A.** Yes.

2 **Q.** And just please identify those as well.

3 **A.** As we saw Mr. Stewart at the rally site/staging area, his
4 hat, his blue shirt with the design on the back, his large knife
5 on his left thigh with the leather or brown sheath and the
6 fluorescent pink label on it.

7 **Q.** Does he appear to be holding anything?

8 **A.** Yes, he's holding a rifle.

9 **Q.** And where approximately is he located in this image?

10 **A.** He is on the northbound I15 bridge facing north.

11 **Q.** What's in front of him?

12 **A.** A Jersey barrier and the wash.

13 **Q.** And where is the firearm in relationship to the Jersey
14 barrier?

15 **A.** It is maybe the tip of the barrel. The first part of the
16 barrel is slightly above the Jersey barrier pointed up. And the
17 rest of the rifle is below the Jersey barrier in front of him.

18 **MR. TANASI:** Objection, Your Honor. I move to strike.
19 That's speculation, and the best evidence rule, the picture
20 speaks for itself as to where the barrel of the rifle is.

21 **MR. MYHRE:** Your Honor, he's entitled to testify as to
22 what he observed in the image based on his investigation.

23 **THE COURT:** Objection overruled.

24 **BY MR. MYHRE:**

25 **Q.** And would you also -- Agent Willis, do you see Mr. Stewart

1 carrying any other objects on his left hip?

2 **A.** He has the knife on his left hip.

3 **Q.** And if you could circle that.

4 MR. MYHRE: Witness indicating an object on
5 Mr. Stewart's left hip he's identified as a knife.

6 BY MR. MYHRE:

7 **Q.** And you've seen that in previous images. Is that correct?

8 **A.** Yes.

9 **Q.** Were you able to time stamp this image?

10 **A.** Yes, I was.

11 **Q.** Did you use other images to assist you in doing that?

12 **A.** Yes.

13 MR. MYHRE: Your Honor, may we show Exhibit 167A?

14 THE COURT: Yes, you may.

15 BY MR. MYHRE:

16 **Q.** Do you see 167A?

17 **A.** Yes.

18 **Q.** What is depicted in this image?

19 **A.** This is a pulled-back view, slightly pulled-back view, of
20 the image that we just saw. This is -- this includes part of
21 the Toquop Wash and also northbound I15 bridge facing east.

22 **Q.** East or northbound, correct?

23 **A.** Or northbound, correct.

24 **Q.** Where was this image obtained?

25 **A.** This was obtained from 8 News NOW.

1 Q. From the -- was this broadcast in April of 2014?

2 A. Yeah, April 13th, 2014 -- April 30th, 2014. Excuse me.

3 Q. And does it appear to be from the same footage as the
4 earlier image we saw?

5 A. Yes.

6 Q. You downloaded or you captured this image from that
7 broadcast?

8 A. Yes, I did.

9 Q. And you observed the broadcast?

10 A. Yes, I did.

11 Q. Now, is Mr. -- in this image is Mr. Stewart in the same or
12 in a different position?

13 A. He's in a slightly different position. He's moved his gun
14 down behind the Jersey barrier, and now he's fully kneeled. It
15 appears that he's kneeling on the ground with both knees looking
16 over the Jersey barrier into the wash.

17 Q. And what he's wearing there is consistent with the previous
18 image?

19 A. Yes.

20 Q. Is it consistent with everything on April 12?

21 A. Yes.

22 MR. MYHRE: Your Honor, we offer Exhibit 167A.

23 THE COURT: Any objection to 167A?

24 MR. TANASI: Same objection Stewart, Your Honor.

25 MR. MARCHESE: Parker joins.

1 MR. LEVENTHAL: Join, Drexler.

2 MR. PEREZ: Lovelein joins.

3 MR. MYHRE: Same response, Your Honor.

4 THE COURT: All right. Same ruling. Exhibit 167A will
5 be admitted. You may go ahead and publish it to the jury.

6 (Government's Exhibit 167A is admitted.)

7 BY MR. MYHRE:

8 Q. Looking now at 167A, Agent Willis, you described that
9 Mr. Stewart changed positions, correct?

10 **A.** Yes.

11 Q. And would you please circle his image.

12 MR. MYHRE: The record should reflect the witness is
13 circling an image identified in the center of the screen that
14 he's identified as Mr. Stewart.

15 BY MR. MYHRE:

16 Q. Did you use this image to assist you in time stamping the
17 previous image?

18 **A.** Yes, I did.

19 Q. And you could time stamp this as well. Is that correct?

20 **A.** Yes.

21 Q. And you described the location, but if you could just again
22 describe where were you -- where were you looking up and --
23 excuse me -- where we are looking, which direction, and where on
24 the bridge we're looking.

25 **A.** We're looking east on northbound I15.

1 Q. And is this on the bridge itself?

2 A. Yeah. I'm sorry. On the bridge.

3 Q. Clearing that.

4 Now, with respect to time stamping, are there images
5 depicted in this particular exhibit that assisted you in time
6 stamping?

7 A. Yes.

8 Q. What are those?

9 A. So from the aerial footage, not only the position of the
10 people in the wash, but more importantly in the background there
11 is a -- like a Can-Am Spyder trike motorcycle that's driving by
12 on the first lane. At the same time there's a dark-colored
13 vehicle driving by this white vehicle over here. And behind
14 that vehicle is this white pickup truck that has a steel or
15 metal toolbox in the bed of the truck. I could see all of those
16 vehicles proceeding northbound on northbound I15 bridge over the
17 bridge at this time in the aerial footage.

18 Q. And is this image incorporated in your timeline?

19 A. Yes.

20 Q. And it will depict in your timeline the time that you were
21 able to derive while looking at the aerial surveillance?

22 A. Yes.

23 MR. MYHRE: Your Honor, may we show the witness Exhibit
24 169A?

25 THE COURT: Yes, you may.

1 BY MR. MYHRE:

2 Q. Now, Agent Willis, were you able also to -- you talked about
3 reviewing public media. Did you also review any documentaries
4 that had been published about the Bunkerville events?

5 **A.** Yes.

6 Q. And was one of those called -- published by PBS?

7 **A.** Yes.

8 Q. And what was that documentary?

9 **A.** American Patriot.

10 Q. And was that by a particular show affiliated with PBS?

11 **A.** Frontline.

12 Q. And approximately when did that show air?

13 **A.** On May 16th, 2017.

14 Q. Did you review the entire documentary?

15 **A.** Yes.

16 Q. And based on your review, did you capture images that
17 pertain and are relevant to the events of April 12th, 2014?

18 **A.** Yes.

19 Q. Looking at 169A. What is this an image of?

20 **A.** This is an image of Scott Drexler.

21 Q. And how are you able to determine that?

22 **A.** The image include -- it does not include his face, but I
23 have determined that this is Scott Drexler from his tattoo on
24 his arm, his firearm, his camouflage pants, his handgun, his
25 shirt, and his tactical vest.

1 Q. And those are consistent with known images of April 12th,
2 2014?

3 **A.** Yes.

4 Q. Do you know where in terms of the events of April 12th,
5 2014, this image was captured?

6 **A.** Yes, this would be -- would have been taken at the entrance
7 to the assembly area/parking area off of northbound I15 across
8 from the BLM Post 1 entrance to the ICP.

9 MR. MYHRE: Your Honor, we offer Exhibit 169A.

10 THE COURT: Same objection?

11 MR. TANASI: Yes, Your Honor. Thank you.

12 MR. LEVENTHAL: Yes, Your Honor. Drexler joins.

13 THE COURT: Same response?

14 MR. MYHRE: Same response.

15 THE COURT: Same ruling. Exhibit 169A is admitted.

16 You may go ahead and publish it for the jury.

17 MR. MYHRE: Thank you, Your Honor.

18 (Government's Exhibit 169A is admitted.)

19 BY MR. MYHRE:

20 Q. Okay. I believe that's up before the jury now, Agent
21 Willis. 169A, if you would just circle the individual
22 identified as Mr. Drexler.

23 MR. MYHRE: And the record should reflect the witness
24 is circling the image of an individual directly in the center of
25 the exhibit.

1 BY MR. MYHRE:

2 Q. And if you would just point out for the jury what
3 characteristics of this image you used to identify it as
4 Mr. Drexler?

5 **A.** His shirt, his tactical vest, his rifle, his handgun, and
6 his camouflage pants.

7 Q. You indicated that this was taken near the assembly area.
8 Is that right?

9 **A.** That's correct.

10 Q. And how can you -- can you tell from this image that it was
11 taken near the assembly area?

12 **A.** Yes, I'm familiar with the location of the cars that had
13 parked in that area and the times when they were -- they had
14 arrived as well as the other individuals in the area, including
15 the individual behind Mr. Drexler with the handgun and the
16 individual in front of him with the long gun and the peach or
17 salmon-colored pants.

18 Q. So there's an individual also with a blue shirt, correct?

19 **A.** Yes.

20 Q. And could you circle that image, please.

21 And is there another individual with a blue shirt
22 there, too, as well?

23 **A.** Yes.

24 Q. And so those two images that you've circled --

25 MR. MYHRE: And the record should reflect the witness

1 has circled two images of individuals in blue shirts about the
2 right portion of Exhibit 169A.

3 BY MR. MYHRE:

4 Q. Did you use those images in assisting you to time stamp this
5 particular ...

6 A. I did, along with other admitted evidence.

7 Q. Now, I neglected to ask that predicate question, but was
8 this image time stamped when you derived it?

9 A. No, it was not.

10 Q. But you were able to do so. Is that correct?

11 A. Yes.

12 MR. MYHRE: Your Honor, may we show the witness Exhibit
13 160?

14 THE COURT: Yes, you may.

15 BY MR. MYHRE:

16 Q. This was previously identified as the exhibit from the
17 Bushman Dropbox, right?

18 A. Yes.

19 Q. We've looked at it before?

20 A. Yes.

21 Q. Did you use this image in assisting you to time stamp?

22 A. Yes, I did.

23 Q. And how did this assist you in that process?

24 A. The image we just -- we previously saw, just saw, would have
25 been taken at approximately the same time based on the position

1 of Mr. Drexler as well as the person standing next to him with
2 his arms crossed in the blue shirt.

3 Q. If you would circle that individual, please.

4 Circling an individual in the blue shirt?

5 A. Yes.

6 Q. And you used that image to assist you in time stamping what
7 we just looked at as 169A?

8 A. Yes.

9 Q. Now, the Bushman photo that we're looking at here at 160,
10 again, this was time stamped, correct?

11 A. Yes, it was.

12 Q. Now, obviously with this image, but with 169A, that image
13 you incorporated in your timeline?

14 A. Yes, I did.

15 Q. Which will be shown later. Is that correct?

16 A. Yes.

17 MR. MYHRE: Your Honor, may we show the witness 169C?

18 THE COURT: Yes, you may.

19 MR. MYHRE: 169C.

20 May I have just a moment, Your Honor?

21 THE COURT: Sure.

22 (Prosecution conferring.)

23 MR. MYHRE: I'm sorry. I think I -- Your Honor, may we
24 go back to 160?

25 THE COURT: Yes.

1 MR. MYHRE: I think I may have brought it down before
2 the jury was able to see it. I apologize for that.

3 BY MR. MYHRE:

4 Q. Okay. 160 now appears before the jury. If you could again,
5 Agent Willis, identify the individuals that assisted this -- how
6 this image assisted you in time stamping 169A?

7 A. So in the previous image where we just see Mr. Drexler from
8 pretty much the collarbone down where he's standing slightly
9 turned to his left, that's where he would be here. And he's
10 standing next to a person with their arms crossed in a
11 short-sleeved blue shirt, and that's this individual here.

12 MR. MYHRE: Again, the record should reflect that the
13 witness has drawn two circles. One -- both individuals -- both
14 circles to the right side, right half of Exhibit 160. The
15 individual to the left identified as Mr. Drexler. The
16 individual to the right identified as an individual with the
17 blue shirt, arms crossed.

18 BY MR. MYHRE:

19 Q. And is that individual that -- or that image that assisted
20 you in time stamping 169A?

21 A. Yes.

22 Q. And that's -- and both of these are incorporated in your
23 timeline, correct?

24 A. Yes.

25 MR. MYHRE: Thank you. Now, if we could bring up 169C,

1 Your Honor, just for witness and counsel only.

2 THE COURT: Yes.

3 BY MR. MYHRE:

4 Q. Do you see 169C?

5 A. Yes, I do.

6 Q. Where was this exhibit derived from?

7 A. The American Patriot Frontline documentary.

8 Q. Same program as 169A that we just looked at?

9 A. Yes.

10 Q. Where is -- what is generally depicted in 169C?

11 A. It is Scott Drexler in the foreground appearing to be
12 kneeling. To his right and with his rifle pointed between the
13 Jersey barriers on northbound I15 is Mr. Eric Parker.

14 Q. Do both individuals -- are they wearing clothing consistent
15 with known images that you reviewed for April 12, 2014?

16 A. Yes.

17 Q. And approximately where is this image taken with respect to
18 the events of April 12th?

19 A. This would be taken facing east or northbound on the
20 northbound I15 bridge in Bunkerville.

21 MR. MYHRE: And, Your Honor, we offer Exhibit 169C.

22 THE COURT: Continuing objection to 169C?

23 MR. TANASI: Yes, Your Honor.

24 MR. LEVENTHAL: Yes, Your Honor.

25 MR. MARCHESE: Correct, Your Honor.

1 THE COURT: Same response, Mr. Myhre?

2 MR. MYHRE: Yes, Your Honor. Thank you.

3 THE COURT: All right. Same ruling. Exhibit 169C will
4 be admitted. You may go ahead and publish it to the jury.

5 MR. MYHRE: Thank you, Your Honor.

6 (Government's Exhibit 169C is admitted.)

7 BY MR. MYHRE:

8 Q. And, Agent Willis, 169C now appears to be in front of the
9 jury. Again, would you circle Mr. -- for record --

10 MR. MYHRE: Oh. It is not apparently in front of the
11 jury.

12 A JUROR: Some.

13 THE COURT: Do we have it now?

14 BY MR. MYHRE:

15 Q. Now 169C appears to be in front of the jury. Would you
16 please for record purposes identify Mr. Drexler.

17 MR. MYHRE: Witness circling an image he identifies as
18 Mr. Drexler, bottom half toward just right center of the
19 exhibit.

20 BY MR. MYHRE:

21 Q. And would you please also circle Mr. Parker.

22 MR. MYHRE: Witness has circled an individual
23 approximately center screen of Exhibit 169C he's identified as
24 Mr. Parker.

25 BY MR. MYHRE:

1 Q. Now, when you obtained this image, was this time stamped?

2 A. No.

3 Q. Were you able to do so?

4 A. Yes.

5 Q. And using other exhibits?

6 A. Yes.

7 Q. And do you see within this exhibit itself other images that
8 assisted you in time stamping this particular image?

9 A. Yeah. So the positioning of the people in general on the
10 bridge, but also what we had done previously with the Hugh
11 Gourgeon photo where you could see Jim Urquhart, who is here,
12 and then the Citizens Action Network lady, who is right next to
13 him, I was able to approximate the time that this was taken.

14 Q. And is that from the Gourgeon photo?

15 A. Yes.

16 MR. MYHRE: Just for purposes of refreshing
17 recollection, can we go back to 139, please.

18 MR. LEVENTHAL: I'm going to object. His recollection
19 has not been impaired in any way at this point.

20 MR. MYHRE: Just for point of reference, Your Honor,
21 may we see Exhibit 139?

22 THE COURT: So not to refresh recollection, but just
23 for point of reference visually. Is that what you're saying?

24 MR. MYHRE: Yes, Your Honor.

25 THE COURT: All right. Go ahead. Objection overruled.

1 BY MR. MYHRE:

2 Q. And do you see the individuals again you mentioned in this
3 image?

4 **A.** Yes.

5 Q. Did this image from 139 assist you then in time stamping
6 169C?

7 **A.** Yes, as well as the Gourgeon video that we had discussed
8 earlier with the similar positioning of both Mr. Parker and
9 Drexler as the vehicles are passing by, short segment video.

10 Q. And from that video, those vehicles were -- you were able to
11 derive -- or excuse me -- compare to aerial surveillance?

12 **A.** Yes, sir. Yes.

13 Q. And the aerial surveillance is time stamped and you used
14 that?

15 **A.** Yes.

16 MR. MYHRE: So if we could go back to 169C.

17 BY MR. MYHRE:

18 Q. So this image will be incorporated in your summary timeline?

19 **A.** Yes.

20 Q. And will have the time stamp on there that you've derived?

21 **A.** Yes.

22 MR. MYHRE: Your Honor, may we show the witness 169D?

23 THE COURT: Yes, you may.

24 BY MR. MYHRE:

25 Q. And, Agent Willis, showing you 169D. What does that appear

1 to be?

2 **A.** This appears to be an image of Scott Drexler kneeling down
3 with his rifle slung in front of him on the northbound I15
4 bridge.

5 *Q.* And you know it to be Mr. Drexler how?

6 **A.** Based on his clothing, his facial features, and his rifle.

7 *Q.* And where was this image derived from?

8 **A.** This is, again, the American Patriot Frontline documentary.

9 *Q.* And from this image were you able to identify specific
10 characteristics that allowed you to correlate it to April 12,
11 2014?

12 **A.** Yes.

13 *Q.* And what were those?

14 **A.** Well, the positioning of the people on the northbound I15
15 bridge, but also when comparing it in the same methodology as I
16 had mentioned in the previous photograph through the Gourgeon --
17 Hugh Gourgeon photographs, I was able to determine an
18 approximate time stamping for this photograph.

19 *Q.* And it's April 12, 2014, correct?

20 **A.** Yes.

21 MR. MYHRE: Your Honor, we offer Exhibit 169D.

22 THE COURT: Continuing objection?

23 MR. TANASI: Yes, Your Honor. Thank you.

24 MR. MARCHESE: Yes, Your Honor.

25 MR. LEVENTHAL: Yes, Your Honor.

1 MR. PEREZ: Yes, Your Honor.

2 MR. MYHRE: Same response, Your Honor.

3 THE COURT: All right. Same ruling. 169D will be
4 admitted. You may go ahead and publish it.

5 (Government's Exhibit 169D is admitted.)

6 BY MR. MYHRE:

7 Q. And 169D appears to be before the jury. And for record
8 purposes, would you please circle the individual who appears to
9 be Mr. Drexler.

10 MR. MYHRE: And the record should reflect the witness
11 circling an individual in the right center of the image.

12 BY MR. MYHRE:

13 Q. And does Mr. Drexler appear to be holding anything?

14 **A.** Yes, he's holding a rifle in front of him.

15 Q. Now, we just saw 169C. Is there a correlation between 169C
16 and 169D?

17 **A.** Yes, it would have been taken around the same time. Jim
18 Urquhart is actually kneeling at this point to Mr. Drexler's
19 right. He's in the blue shirt holding the camera down to his
20 left.

21 Q. If you would circle Mr. Urquhart, please.

22 MR. MYHRE: And the record should reflect witness is
23 circling an individual to the far right portion of Exhibit 169D
24 wearing a blue shirt, appears to be holding a camera.

25 BY MR. MYHRE:

1 Q. And did that image assist you in time stamping this
2 particular image?

3 **A.** Yes, along with the Gourgeon video and photographs.

4 Q. So the same images and media that you reviewed for 169C
5 assisted you with 169D in terms of time stamping?

6 **A.** That is correct.

7 Q. And both of those images, including this one, will be
8 incorporated in your summary timeline?

9 **A.** Yes.

10 Q. And that will reflect the time that you derived?

11 **A.** Yes.

12 MR. MYHRE: Your Honor, may we show Exhibit 50 to the
13 witness?

14 THE COURT: 50 or 150?

15 MR. MYHRE: 50, Your Honor.

16 THE COURT: 50. Thank you. You may.

17 BY MR. MYHRE:

18 Q. Do you see Exhibit 50?

19 **A.** Yes, I do.

20 Q. Where was Exhibit 50 -- well, first of all, what is depicted
21 in Exhibit 50?

22 **A.** It is a screen capture from a Facebook page for David Lee
23 Williams.

24 Q. Was this a public posting or private posting?

25 **A.** Public.

1 Q. How -- who derived this image or who obtained this image?

2 **A.** This was done by one of my fellow agents, this screen
3 capture in particular. But this image, the actual photograph,
4 is available today. I viewed it a day ago on Mr. Williams'
5 Facebook page.

6 Q. So this image is available publicly. Is that correct?

7 **A.** Yes.

8 Q. And, generally speaking, what's depicted in that image?

9 **A.** Again, it's a screen shot of a Facebook page, but the image
10 within that is a photograph of the northbound I15 bridge facing
11 the southbound I15 bridge. And Eric Parker is in the prone
12 position with his rifle pointed between the Jersey barriers.
13 And Steven Stewart is crouched down, and he's -- he has his
14 rifle leaned up against the Jersey barriers.

15 Q. Was there a time stamp associated with this image?

16 **A.** No.

17 Q. Were you able to time stamp it?

18 **A.** Yes.

19 Q. And how did you do that?

20 **A.** By the vehicles on the southbound I15 bridge, I was able to
21 time this as those vehicles are passing by.

22 Q. Using the aerial surveillance?

23 **A.** Yes.

24 Q. So this correlates to April 12, 2014?

25 **A.** Yes, it does.

1 MR. MYHRE: Your Honor, we offer Government's Exhibit
2 50.

3 THE COURT: Same objection?

4 MR. TANASI: Yes, Your Honor.

5 MR. MARCHESE: Parker joins.

6 MR. PEREZ: Lovelein joins.

7 MR. LEVENTHAL: Drexler joins.

8 MR. MYHRE: Same response.

9 THE COURT: Same ruling. Exhibit 50 will be admitted.
10 You may go ahead and publish it to the jury.

11 MR. MYHRE: Thank you, Your Honor.

12 (Government's Exhibit 50 is admitted.)

13 BY MR. MYHRE:

14 Q. And Exhibit 50 is before the jury now, Agent Willis. And if
15 you would, please, identify again for record purposes Mr. Parker
16 in this exhibit.

17 MR. MYHRE: Witness is circling an individual in the
18 lower-left portion of the exhibit.

19 BY MR. MYHRE:

20 Q. And Mr. Stewart.

21 And you know them based upon the clothing -- known
22 clothing they wore that day, correct?

23 **A.** Yes.

24 Q. And just circle the images that you used to help you to time
25 stamp this.

1 MR. MYHRE: And, again, witness indicating on the
2 exhibit vehicles that appear in about the center portion of the
3 exhibit, but above the images that he's described as Mr. Parker
4 and Mr. Stewart.

5 BY MR. MYHRE:

6 Q. And is this image used in your timeline as well?

7 A. Yes.

8 Q. And is -- does that reflect the time that you derived
9 correlating it to the aerial images?

10 A. Yes, it does.

11 MR. MYHRE: And lastly, Your Honor, may we show the
12 witness Exhibit 51?

13 THE COURT: Yes.

14 BY MR. MYHRE:

15 Q. Do you see Exhibit 51?

16 A. Yes, I do.

17 Q. And what is depicted there?

18 A. This is a -- another screen shot from a Facebook page. This
19 time from the page of Eric Dahlen, the Third. In the image on
20 the screen capture is Scott Drexler with his rifle pointed
21 between the gap in the Jersey barriers in a prone position on
22 northbound I15.

23 Q. Was this image on Mr. Dahlen's Facebook page, was this
24 available publicly?

25 A. Yes, and it still is after -- I mean, as of a day or two

1 ago.

2 Q. Oh, I'm sorry. I didn't mean to speak over you.

3 A. I'm sorry.

4 Q. But this was an image then that you were able to physically
5 observe on the public posting?

6 A. Yes.

7 Q. And you recognize Mr. Drexler from clothing?

8 A. Yes.

9 Q. And you recognize the position of his body?

10 A. Yes.

11 Q. And is it consistent with other known photos you've derived
12 of Mr. Parker on April 12, 2014?

13 A. Yes.

14 MR. MYHRE: Your Honor, we offer Exhibit 51.

15 THE COURT: Same objection continuing?

16 MR. TANASI: Yes, Your Honor.

17 MR. MARCHESE: Yes, Your Honor.

18 MR. TANASI: Thank you.

19 MR. LEVENTHAL: Yes, Your Honor.

20 THE COURT: Same response?

21 MR. MYHRE: Same response.

22 THE COURT: All right. Same ruling. Exhibit 51 is
23 admitted. You may go ahead and publish it to the jury.

24 MR. MYHRE: Thank you, Your Honor.

25 (Government's Exhibit 51 is admitted.)

1 BY MR. MYHRE:

2 Q. It appears now that the image is before the jury. Looking
3 at Exhibit 51, again, for record purposes draw a circle around
4 Mr. Drexler.

5 Did this image --

6 MR. MYHRE: And the record should reflect that the
7 witness has drawn a circle around the image about the center
8 portion of the exhibit he's identified as Mr. Drexler.

9 BY MR. MYHRE:

10 Q. Did this image come with a time stamp?

11 A. No, it did not.

12 Q. And were you able to derive a time?

13 A. Yes, I was.

14 Q. And how did you do that?

15 A. From the Hugh Gourgeon photographs and video.

16 MR. MYHRE: Your Honor, may I draw up 146?

17 THE COURT: Yes.

18 BY MR. MYHRE:

19 Q. And do you see 146?

20 A. Yes, I do.

21 Q. Is this -- did this assist you in deriving a time stamp for
22 Exhibit 51?

23 A. Yes, along with the -- this is a screen shot from Hugh
24 Gourgeon's video, but the photograph from Hugh Gourgeon that is
25 time stamped with this similar imagery in. So those two things,

1 the screen shot from the video and the photograph, helped me
2 approximate a time for the Eric Dahlen, the Third, Facebook
3 photo.

4 Q. And was -- for the Eric Dahlen, which was Exhibit 51?

5 A. Yes.

6 Q. Is that incorporated in your timeline?

7 A. Yes, it is.

8 Q. And did you indicate the time that you derived following
9 this methodology?

10 A. Yes.

11 MR. MYHRE: May I have just one moment, Your Honor?

12 THE COURT: Yes.

13 (Prosecution conferring.)

14 MR. MYHRE: And, Your Honor, I did say lastly before,
15 but this time, lastly, may I show Exhibit 170?

16 THE COURT: Yes.

17 MR. MYHRE: This will be the last one for today. I
18 know we're coming up to the ...

19 THE COURT: Yes.

20 BY MR. MYHRE:

21 Q. Do you see Exhibit 170 before you?

22 A. Yes, I do.

23 Q. Where was this derived?

24 A. This was -- so the American Patriot Frontline video
25 documentary, that was linked to a PBS.com article that included

1 this photograph. So this is just a still photograph that was
2 embedded within a PBS article.

3 Q. And if you would just -- and do you recognize the images
4 captured in that article?

5 A. Yes, I do.

6 Q. And what are they? What is it, I should say?

7 A. Eric Parker in a prone position with his rifle between the
8 Jersey barrier gap.

9 Q. And is this at a different time than the previous photos
10 we've seen of this?

11 A. No, this would be a similar time as the other Frontline
12 screen captures from the video.

13 Q. And is this consistent with the other Frontline screen
14 captures?

15 A. Yes, it is.

16 MR. MYHRE: Your Honor, we offer Exhibit 170.

17 THE COURT: Any objection to 170?

18 MR. TANASI: Same objection Stewart, Your Honor.

19 MR. MARCHESE: Parker joins.

20 MR. LEVENTHAL: I would also object to the cumulative
21 nature of this one picture that we've seen over and over.

22 MR. MARCHESE: It appears to be the same photo as 169C.

23 THE COURT: Mr. Myhre?

24 MR. MYHRE: With respect to --

25 BY MR. MYHRE:

1 Q. Well, Agent, looking at this photograph, is this the same or
2 a different image that appeared in 169C?

3 **A.** This would be different. This is a still shot, slightly
4 zoomed in than 169C.

5 Q. So this is a more close-up view of Mr. Parker than from
6 169C?

7 **A.** Yes.

8 THE COURT: All right. The objection's overruled as to
9 cumulativeness, and the same ruling on the other objection,
10 901(b)(4). Exhibit 170 is admitted. You may go ahead and
11 publish it, and then we'll take our overnight break. So go
12 ahead.

13 (Government's Exhibit 170 is admitted.)

14 BY MR. MYHRE:

15 Q. And again, Agent Willis, it's now before the jury and just
16 for record purposes circle Mr. Parker.

17 MR. MYHRE: The record should reflect witness circling
18 170 approximately the middle of the image an individual
19 identified as Mr. Parker.

20 BY MR. MYHRE:

21 Q. And in terms of time stamping this, did you use other
22 extrinsic evidence to time stamp this image?

23 **A.** Yes, I did.

24 Q. This image did not come with the time stamp embedded in it?

25 **A.** That's correct.

1 Q. But you've used this image in constructing your timeline?

2 **A.** Yes.

3 Q. Thank you.

4 MR. MYHRE: I believe those are all of the questions
5 that the Government has at this time, Your Honor. We will be
6 recalling Agent Willis later in the trial to work on the
7 timeline.

8 THE COURT: All right. So go ahead and take our
9 overnight break. During this time, I do remind everyone, all of
10 the jurors, that you are not to discuss this case with anyone,
11 not even your fellow jurors. And please remember also do not
12 listen to or view or read -- view, listen, read anything that
13 has to do with this case. Please do not perform any independent
14 research or any investigation.

15 And please do not form any opinion until after you have
16 heard all of the testimony, been provided with all of the
17 exhibits. Then I will provide you with the jury instructions
18 that are the legal instructions that you will apply to the facts
19 as you determine them to be. Then you will hear the closing
20 arguments by all of the parties explaining to you what they
21 believe you have just seen and what that means. Then you will
22 begin your deliberation process, which is when you finally have
23 an opportunity to speak to each other about your opinions,
24 beliefs, findings. And then that will be the deliberation
25 portion when you finally discuss the case. In fact, you have a

1 duty to discuss the case with each other.

2 So we'll go ahead and take our break. I think tomorrow
3 it's different ...

4 COURTROOM ADMINISTRATOR: 10 a.m.

5 THE COURT: 10 a.m. All right. So we'll see you back
6 here at 10 a.m. tomorrow morning. And let's go ahead and stand
7 for the jury. We'll go ahead and excuse them and welcome them
8 back at 10 a.m. tomorrow morning.

9 And, Special Agent Willis, we'll have you come back at
10 10 a.m. tomorrow morning, too, and see if there's any
11 cross-examination.

12 (Whereupon jury leaves the courtroom at 5:10 p.m.)

13 THE COURT: All right. You may be excused, Special
14 Agent Willis. But before we go off record, do we want to
15 discuss juror No. 1 or do you want to do that tomorrow morning?

16 I'm conflicted myself about her. If you want to take a
17 seat. I find it hard to believe that this gentleman, whoever he
18 is, new friend, didn't know that she was on -- a juror in this
19 trial, but sent her that text.

20 And I double-checked her jury questionnaire. She's
21 separated from her ex-husband who is a U.S. Park Service Ranger.

22 MR. MYHRE: We show that her former spouse was not law
23 enforcement, Your Honor, was with Park Service, but not
24 necessarily -- Park Service? Park Service, but not a ranger
25 with the Park Service.

1 (Defense conferring.)

2 MR. TANASI: Your Honor, I think --

3 THE COURT: Does the Defense wish to make a motion or
4 sleep on it?

5 MR. LEVENTHAL: If we could have the night to think
6 about it, if that would be okay. I think we need to
7 get-together based upon what, you know, she's indicated here and
8 now that -- I mean, I understand that she has family who's been
9 in the Park Service. I think that changes things. If we could
10 just have the night to think about it and come in tomorrow?

11 THE COURT: Sure.

12 MR. LEVENTHAL: That would be great. Thank you.

13 MR. MARCHESE: Thank you.

14 THE COURT: Can we get the exact wording of that text
15 for tomorrow? I mean, I read it into the record. So will we
16 have that, Patty? Can we get that?

17 (Court reporter responding affirmatively.)

18 THE COURT: All right. So that we can -- in case we
19 need to discuss it some more in the morning. All right. Then
20 let's go ahead and talk about it tomorrow morning at 10 a.m.
21 we'll be back here. Off record.

22 MR. TANASI: Thank you, Your Honor.

23 (Whereupon the proceedings concluded at 5:12 p.m.)

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COURT REPORTER'S CERTIFICATE

I, PATRICIA L. GANCI, Official Court Reporter, United States District Court, District of Nevada, Las Vegas, Nevada, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Date: August 6, 2017.

/s/ Patricia L. Ganci

Patricia L. Ganci, RMR, CRR
CCR #937

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,)	
	)	Case No. 2:16-cr-00046-GMN-PAL
Plaintiff,)	
	)	Las Vegas, Nevada
vs.	)	August 1, 2017
	)	9:45 a.m.
ERIC J. PARKER (11), O.)	
SCOTT DREXLER(12), RICHARD)	
LOVELIEN (13), and STEVEN A.))	
STEWART (14),)	
)	
Defendants.	)	Day 13
)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE GLORIA M. NAVARRO
UNITED STATES DISTRICT COURT CHIEF JUDGE, AND A JURY

APPEARANCES:

For the Government:

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Appearances continued on next page.

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Proceedings reported by machine shorthand, transcript produced
by computer-aided transcription.

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17 Also present:

18 Sharon Gavin, Special Agent FBI
19 Joel Willis, Special Agent FBI
Chris Allen, Bureau of Land Management
20 Mike Abercrombi, FBI
Mamie Ott
21 Nona Dodson
Tori Bakken
22 Brian Glynn

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(Tuesday, August 1, 2017, 9:45 a.m.)

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P R O C E E D I N G S

(Jury out.)

COURTROOM ADMINISTRATOR: All rise.

THE COURT: All right. Thank you. You may be seated.

COURTROOM ADMINISTRATOR: This is the time set for Jury Trial, Day 13, in Case No. 2:16-cr-046-GMN-PAL, United States of America versus Eric Parker, O. Scott Drexler, Ricky Lovelien, and Steven Stewart.

THE COURT: All right. Well, I understand you all want to speak about the juror. I think that's a good idea that we discuss it before we bring everybody back in.

But before we even get to that, let me just remind everyone about the conduct that is expected in the courtroom today. Whether or not the jurors are here, whether or not we are at sidebar or taking a break or otherwise, this is a courtroom. It's not a sporting event, so it's never appropriate to show any expression of your opinion no matter how much you may agree or disagree with what is being said in court.

Likewise, the defendants have been warned every day, every morning that we do have the holding cell with recording equipment providing speaker communications so they can hear

1 what is happening in the courtroom, if they waive and forfeit
2 their right to be in the courtroom by displaying any kind of
3 inappropriate language, distraction, speaking to each other
4 during sidebar or to the jury or trying to communicate in any
5 way by writing things down and showing them to somebody.

6 So, the other thing that we need to remind everyone
7 of is that there are no electronic devices permitted in the
8 courtroom, so that means that if you have a phone, laptop,
9 iPad, any kind of device like that, it needs to be outside.
10 Even if it's turned off, even if it's in vibrate mode or
11 privacy mode, they are not permitted in the courtroom.

12 There is no audio recording or video recording
13 permitted in the courtroom in federal courts. And the
14 attorneys and the defendants are permitted to have
15 communication devices, and laptops, and computers and things.
16 They need to be able to follow along with the evidence or
17 present evidence or review their notes.

18 The marshals and the court security officers are
19 permitted to have communication devices so that they can
20 operate and fulfill their duty to keep everything safe.

21 So, we do have the podium in the right direction.
22 All the attorneys have a speaker. I'm sorry. I mean a
23 microphone with on and off buttons. I know it's difficult to
24 remember sometimes, but when we go do sidebar, if you could
25 please try to remember to turn off your microphone when you get

1 up to leave to go to sidebar, so that if there is anything
2 that's being said, it won't accidentally get picked up. But --

3 MR. TANASI: Your Honor, can I just address that
4 point?

5 THE COURT: Yes.

6 MR. TANASI: I don't know how to do that. I can
7 press to kind of mute when I talk, but I don't know how to turn
8 it off.

9 THE COURT: Oh, it doesn't stay off when you push it?

10 MR. TANASI: No.

11 THE COURT: Oh, yours don't --

12 COURTROOM ADMINISTRATOR: They do not, Your Honor.

13 When we go to sidebar, I mute every other microphone.

14 THE COURT: All right. So, you are doing that. You
15 mute it from your panel?

16 COURTROOM ADMINISTRATOR: That's correct, Your Honor.

17 THE COURT: Okay. So, we'll take care of that,
18 apparently. You don't have to worry about that.

19 MR. TANASI: Okay.

20 THE COURT: All right. So, I think that's all. So,
21 let's go ahead then and address the issue with the juror.

22 I did ask the court reporter yesterday to provide me
23 with the exact language again to make sure that I didn't
24 misremember it today or paraphrase it. So, here's what it is.
25 The text that she received said -- and I am quoting -- "You

1 have two hours more to finish -- to finished," past tense.

2 "You have two hours more to finished, pass death sentence on
3 these prisoner."

4 All right. So, who wants to be heard first?

5 Mr. Tanasi? You are looking at me.

6 MR. TANASI: Yeah.

7 THE COURT: Okay.

8 MR. TANASI: Your Honor, I think after giving it some
9 thought overnight, the defense doesn't have a motion at this
10 point to -- to excuse the juror. I think when she came in, she
11 was very -- it seemed hard for her. She seemed honest about
12 it.

13 She seemed like it was something that offended her
14 that she got it. And again, I'm kind of reading the tea leaves
15 with it, but I don't -- I don't think -- and then when pressed,
16 she ultimately said that, you know, she still could be fair and
17 impartial despite that text, receiving that text.

18 So, I don't think that there's sufficient grounds to
19 move to excuse her at this point.

20 THE COURT: All right. Anyone else wish to be heard?

21 MR. LEVENTHAL: I would just add that, you know,
22 while the message to her was somewhat concerning to us, there's
23 two additional.

24 First of all, she indicated that -- well, first of
25 all, she came to you. So, you know, that shows honesty that

1 she's listening to what the Court has to say, and that's what
2 we're here to get is a juror that is honest. And immediately
3 when she got it, she gave it over to the Court, so it shows
4 honesty.

5 And then secondly, she indicated in her note that she
6 wants to sit on the jury. So, I think that, you know, added
7 with the fact that she indicated that she could still remain
8 fair and impartial, we -- we, at this time at least, would not
9 move to have her dismissed.

10 THE COURT: What do you mean by she added in her
11 note?

12 MR. LEVENTHAL: I believe she indicated that she
13 wanted to serve on the jury at some point? Oh, it was in
14 response to your questions, I guess.

15 THE COURT: Oh, I was thinking I don't remember the
16 note.

17 MR. LEVENTHAL: I apologize. I don't know I heard
18 it. I don't know from -- when you're sitting up there, I don't
19 know if you are reading. But she indicated, in response to one
20 of your questions, that she wants to remain on the jury.

21 So, given all that and the totality, we discussed it;
22 and, at this time, we would not ask that she be removed.

23 THE COURT: All right. Mr. Myhre, what's the
24 government's position? Or Ms. Creegan, whoever wants to speak.

25 MR. MYHRE: Yeah, the government's position is the

1 same, Your Honor. We have no motion to strike the juror at
2 this time. We believe her responses to the Court's inquiry
3 were sincere.

4 And as Mr. Leventhal points out, the fact that she
5 came to you shows that she takes her duties as a juror very
6 seriously. And her demeanor in response to your questions we
7 felt corroborated that as well.

8 THE COURT: All right. All right. Well, thank you.
9 I'm glad that you're in agreement, so that makes it easier.

10 And this morning, when she came in, in the hallway,
11 she told Aaron that she blocked that person, so that she won't
12 be receiving any texts. That doesn't stop that person from
13 sending more texts, but her understanding is that it blocks her
14 from receiving the text.

15 MR. LEVENTHAL: The only question I would have, if
16 the Court were to inquire more, just one more question is
17 whether or not she shared that with any of the other jurors or
18 if she just shared that with the Court immediately.

19 Because then we would have to ask other jurors,
20 because it is a pretty concerning statement. So, that's the
21 only question I don't think the Court inquired --

22 THE COURT: Right.

23 MR. LEVENTHAL: -- yesterday on, and that's something
24 I would like to know is whether or not she just shared that
25 with anybody or anybody saw it.

1 THE COURT: That's a fair question. We can certainly
2 ask her that.

3 Aaron, do you want to bring her in? Anything else
4 that you want me to ask her before we bring her in so I can be
5 thorough?

6 MR. MYHRE: Nothing from the government, Your Honor.

7 THE COURT: All right.

8 (Pause in the proceedings.)

9 (Juror No. 1 entered the courtroom.)

10 THE COURT: Good morning. Go ahead and have a seat,
11 Juror No. 1. Everyone may be seated.

12 All right. So we just had a follow-up question that
13 I wish I had remembered to ask you yesterday, but I didn't, and
14 so I just need to clarify with you.

15 When did you receive that text?

16 JUROR NO. 1: Like five minutes before I showed Aaron
17 my phone.

18 THE COURT: Okay. So, that was -- was that lunchtime
19 or was that the afternoon break? I'm trying to remember.

20 COURTROOM ADMINISTRATOR: That was the afternoon
21 break.

22 THE COURT: Afternoon break? All right. And when
23 you received the text, did you show anyone else the text?

24 JUROR NO. 1: No.

25 THE COURT: Did you discuss it with any of the other

1 jurors?

2 JUROR NO. 1: No.

3 THE COURT: All right. And after you were called in
4 to the courtroom, by yourself -- I'm sure some of the jurors
5 must have noticed that -- and then came back, did you discuss
6 with them anything about what happened in court?

7 JUROR NO. 1: I just said that I had received a text,
8 and that I came in and talked to you.

9 THE COURT: All right.

10 JUROR NO. 1: But not about what the text was about
11 or anything. No, I have not shared that text with anyone. You
12 and Aaron have seen it.

13 THE COURT: Okay.

14 JUROR NO. 1: And, in fact, I have deleted it off my
15 phone.

16 THE COURT: All right. And Aaron told me that you
17 said that you have now blocked that particular person, so that
18 even if they do try to --

19 JUROR NO. 1: Yes.

20 THE COURT: -- text you again, you won't receive it,
21 at least not a text. If they call you --

22 JUROR NO. 1: They are blocked. The whole contact
23 information is blocked, so they can't contact me.

24 THE COURT: Okay. So even a phone call --

25 JUROR NO. 1: Right.

1 THE COURT: -- would be blocked.

2 JUROR NO. 1: They can't call me.

3 THE COURT: Okay. All right. I think that's
4 everything that we have.

5 All right. Well, thank you very much. And I
6 appreciate you letting us know right away. And if you do
7 receive any other communications, please continue to let us
8 know right away.

9 JUROR NO. 1: Okay. Thank you.

10 THE COURT: Thank you.

11 (Juror No. 1 left the courtroom.)

12 THE COURT: All right. So, the juror has left the
13 courtroom. It's just us. No jurors are in the courtroom.

14 Any other motion or any other request, or can we go
15 ahead and bring all of the jurors back in?

16 MR. MYHRE: Nothing in light of that from the
17 government, Your Honor.

18 MR. LEVENTHAL: Nothing on behalf of the defense.

19 MR. TANASI: That's correct, Your Honor. We are
20 ready to go.

21 THE COURT: All right. So, let's go ahead and bring
22 the rest of the jury in, Aaron.

23 (Pause in the proceedings.)

24 (Jury in.)

25 THE COURT: All right. The jury may go ahead and be

1 seated. Everyone else may be seated as well.

2 All right. We are back on the record. Everyone is
3 present. We have our witness, FBI Special Agent Joel Willis on
4 the witness stand.

5 Let's go ahead and have counsel make their
6 appearances on the record, and then we'll proceed.

7 MR. MYHRE: Good morning, Your Honor. Good morning
8 ladies and gentlemen. Steven Myhre, Erin Creegan, Nadia Ahmed
9 on behalf of the United States.

10 THE COURT: Good morning.

11 MR. TANASI: Thank you, Your Honor. Good morning,
12 folks. Richard Tanasi for Steven Stewart who is present.

13 THE COURT: Good morning.

14 MR. TANASI: Also with us at counsel table is Tori
15 Bakken and Brian Glynn. Thank you.

16 MR. MARCHESE: Good morning, Your Honor. Good
17 morning ladies and gentlemen. Jess Marchese appearing on
18 behalf of Eric Parker.

19 THE COURT: Good morning.

20 MR. LEVENTHAL: Good morning, everyone. Todd
21 Leventhal here on behalf of the Mr. Scott Drexler.

22 THE COURT: Good morning.

23 MR. PEREZ: Good morning, Your Honor. Shawn Perez on
24 behalf of Ricky Lovelien.

25 THE COURT: Good morning. So, we ended yesterday

1 with the direct examination by the government.

2 Does the defense have any cross-examination
3 questions?

4 MR. MARCHESE: Parker will reserve at this time.

5 MR. TANASI: Stewart's also going to reserve at this
6 time, Your Honor.

7 MR. LEVENTHAL: Mr. Drexler is going to reserve at
8 this time.

9 MR. PEREZ: Your Honor, one question. If I was to
10 examine Agent Willis now, would that limit me from examining
11 him again? Because, I mean, I have a few questions that I can
12 ask, but I don't -- I mean, I did reserve my cross.

13 THE COURT: All right. So, you can cross-examine him
14 on the information that he has provided during direct
15 examination, and then if and when he testifies again, you could
16 cross-examine him on the new information but not the old
17 information.

18 MR. PEREZ: Okay.

19 THE COURT: So, just as if he was two different
20 witnesses.

21 MR. PEREZ: Right.

22 THE COURT: If you treat it that way, I think it will
23 be more clear.

24 JOEL WILLIS,
25 having been previously sworn, was examined and testified as

Joel Willis - Cross

1 follows:

2 CROSS-EXAMINATION

3 BY MR. PEREZ:

4 Q. Good morning, Agent Willis.

5 A. Good morning.

6 Q. I just have a few questions.

7 Brian, can you bring up 171, please?

8 THE COURT: And this is Mr. Perez on behalf of
9 Mr. Lovelien. Go ahead.

10 BY MR. PEREZ:

11 Q. Now, Agent, this is Mr. Lovelien here on the far left;
12 correct?

13 A. Yes, sir.

14 Q. And you were commenting about the earpiece that he had in
15 his left ear?

16 A. Yes.

17 Q. Now, in this picture, you can see -- I believe this is
18 Mr. Parker; correct? To his right?

19 A. Yes, it is.

20 Q. And it doesn't appear that he has an earpiece in his -- at
21 least in this picture, in his right ear; correct?

22 A. Correct.

23 Q. Okay. Did you ever pick up any radio traffic or do you
24 know if any radio traffic was intercepted?

25 A. No, I do not.

Joel Willis - Cross

1 Q. Okay. So, you do not know or there wasn't any picked up?

2 A. Are you speaking of law enforcement or just anyone --

3 Q. No.

4 A. -- that was there that day?

5 Q. Well, the suggestion is this radio that Mr. Lovelien was
6 utilizing, was there any radio traffic on it?

7 A. I -- I have no knowledge of anyone intercepting any radio
8 traffic coming from or to Mr. Lovelien.

9 Q. Did you ever find any evidence of whether or not the radio
10 was actually working?

11 A. No, and I have no evidence of it not working either.

12 Q. Okay. Brian, can you bring up 5A?

13 That did come in, right, Aaron?

14 COURTROOM ADMINISTRATOR: Yes.

15 MR. PEREZ: Okay.

16 Q. And Brian, can you -- okay. Just stop right there.

17 Now, over on the far right of the screen, I believe
18 that's Mr. Parker?

19 A. Yes.

20 Q. And that would be his left ear. Does he have an earpiece
21 in his left ear?

22 A. I did not see any earpiece in his left ear.

23 Q. Okay. And Brian, can you go to 9:32 a.m. perchance on
24 that video? No, that's the time on the -- go back to the rally
25 site, so go all the way back.

Joel Willis - Cross

1 Aaron, did 5A -- the screenshot of 5A come in
2 perchance at 9:32?

3 COURTROOM ADMINISTRATOR: I don't see a separate
4 exhibit for it. It may have.

5 MR. PEREZ: It looks like -- go back to -- let it
6 play for a second there.

7 (Exhibit 5A being played.)

8 Q. Stop. Back it up a little bit. A little more. All
9 right. Stop right there.

10 Now, this gentleman on the far right, that would be
11 Mr. Stewart?

12 A. Yes.

13 Q. And does he have an earpiece in his left ear?

14 A. I do not see an earpiece in his left ear in this
15 photograph.

16 Q. Brian, back it up just a little bit more to bring in this
17 individual on the far right.

18 Now, you see the individual on the far right?

19 A. Yes, I do.

20 Q. And that would be Mr. Drexler?

21 A. Yes.

22 Q. And do you see an earpiece in his ear, in his left ear?

23 A. I do not.

24 Q. Okay. Now, you looked at, I'm assuming, hundreds of
25 photos if not thousands of photos; correct?

Joel Willis - Cross

1 A. Correct.

2 Q. Can you give me a ballpark as to how many photos you've
3 reviewed?

4 A. About --

5 MR. MYHRE: Objection. Relevance, Your Honor.

6 THE COURT: How many?

7 BY MR. PEREZ:

8 Q. Yeah, just -- you know, obviously, we've seen a number of
9 photographs, and you've selected a few.

10 I mean, do you recall approximately how many photos
11 you've reviewed?

12 MR. MYHRE: Same objection, Your Honor.

13 THE COURT: Let's go to sidebar.

14 (Sidebar.)

15 THE COURT: All right. So, this is Mr. Myhre and
16 Mr. Perez. So, I'm assuming the objection is not to how many
17 but to the questions that follows how many.

18 MR. MYHRE: Yes, Your Honor.

19 MR. PEREZ: What's the question?

20 MR. MYHRE: Well, my objection -- excuse me. The
21 government's objection is, is that this gets into beyond the
22 scope of the direct, because we are into the investigation
23 itself.

24 We did not adduce, during direct examination,
25 everything this witness looked at or reviewed in connection

Joel Willis - Cross

1 with the investigation. I'm assuming that the -- the only
2 pertinent aspect of this would be out of the thousands or
3 hundreds of thousands, how many photos did you have of my
4 client?

5 MR. PEREZ: No, I'm not going there, because this was
6 the time line; right? I mean, you established the time line
7 yesterday. That is what it was. They used the photos from
8 this. I used Facebook. I used Flynn video. I used Madsen
9 dash cam. I'm just trying to get a sense of the volume.

10 THE COURT: Was the question how many --

11 MR. PEREZ: Yeah, just --

12 THE COURT: -- images did he review overall --

13 MR. PEREZ: Right. Yeah, how many --

14 THE COURT: -- or just establishing a time line?

15 MR. PEREZ: No, overall in establishing his time
16 line, the photos, the Facebook posts. I'll tell you what my
17 next question is. How many videos? How many Facebook pages?
18 Basically, that's it.

19 MR. MYHRE: Same objection. I don't see the
20 relevance of it.

21 MR. PEREZ: Well, I mean, they brought all this in
22 yesterday. I mean, yeah, I looked at this. I mean, that's
23 where we started. We started with I believe he said --

24 THE COURT: Why --

25 MR. PEREZ: -- Schillie and --

Joel Willis - Cross

1 THE COURT: Why is the answer to this question
2 relevant?

3 MR. PEREZ: Well, it is to me. I mean, I can't
4 divulge why. I mean, I already have my closing and my theory.
5 I mean, it's no big secret. But I'm not going to ask him is
6 this all you have on him. I'm not going do that now.

7 I just want to know how many. I think the jury
8 deserves to know, or do you want me to do it next time?

9 THE COURT: All right. So, you don't have a response
10 for why it's relevant.

11 MR. PEREZ: Well, I mean, other than in the
12 investigation, I want to know, you know, how did he -- I mean,
13 did he limit the things that he used for creating the time
14 line?

15 There's -- there's a couple of photos that, you know,
16 I am wondering why they didn't come in on the time line that we
17 used in the last trial. I want to know why they are not there.
18 I'm not going to get there now, but at least foundationally, I
19 mean, I will be able to ask him. That's why I wanted to
20 reserve my cross-examination for later to go beyond that.

21 THE COURT: All right. I am trying to parse your
22 response to see if --

23 MR. PEREZ: Good luck.

24 THE COURT: -- see if there's anything. All right.
25 So, you understand the objection is relevance and --

Joel Willis - Cross

1 MR. PEREZ: I don't think there's a relevance
2 objection, because it's certainly relevant.

3 THE COURT: All right.

4 MR. PEREZ: The question is whether --

5 THE COURT: How is it relevant?

6 MR. PEREZ: I mean, it's probative of what he looked
7 at in establishing the time line. I don't know that it's any
8 more prejudicial than the fact that we saw the same photo,
9 like, from here, here, here, back and forth yesterday all day
10 long. I mean, that's -- I mean, you know, I can't imagine
11 that --

12 THE COURT: So how is the number of images that he
13 reviewed relevant?

14 MR. PEREZ: Well, I mean --

15 THE COURT: If it's two, if it's 2 million, what is
16 the relevance?

17 MR. PEREZ: Well, I mean, the scope of the
18 investigation, I guess. I mean, what did you look at? How did
19 you find these? But I'm not -- I just want to know the
20 numbers. I mean if --

21 MR. MYHRE: I understand. I'm sorry. Steve Myhre.

22 THE COURT: You understand better than I do.

23 MR. MYHRE: No, I don't, Your Honor. But I
24 understand you want to know the numbers, but the issue is
25 numbers aren't relevant to anything.

Joel Willis - Cross

1 MR. PEREZ: Okay. I will withdraw the question so we
2 can move on, because I don't want to spend the whole day back
3 here.

4 THE COURT: Okay. Thank you.

5 (End of sidebar.)

6 THE COURT: All right. All right. We are back on
7 the record. The question is withdrawn. So, let's move on.

8 MR. PEREZ: Yes, Your Honor.

9 Q. So, Agent Willis, in order to put together your time line,
10 yesterday you suggested that you looked at photos, and videos,
11 and Facebook, and things of that nature; correct?

12 A. Yes.

13 Q. Anything else that you utilized to establish time line?

14 A. Well, like I mentioned yesterday, the actual metadata
15 within the photographs and audio, to include audio.

16 Q. Okay. And as far as the metadata, I mean, we saw quite a
17 few photos yesterday. I mean, were you -- and I understand
18 that some of the photos you weren't able to get metadata off
19 of; correct?

20 A. Well, all the photos have metadata, but whether or not
21 it's accurate to the day and time when that photo was taken,
22 that would be the factor that would make the photograph not
23 time stampable without other characteristics that I can
24 identify within the photo.

25 Q. Right. I believe that you said yesterday something about

Joel Willis - Cross

1 Mr. Gourgeon's photos, that the metadata might have been off.
2 Would that be a function of inputting the time and date into a
3 video camera, for example?

4 A. Well, if it's a video camera, yes. You could set a
5 certain date and time. Your smart phones typically will do it
6 for you or whatever your time zone is on your smart phone.

7 But just to clarify, yesterday I had mentioned that
8 Mr. Gourgeon's photographs were correctly time stamped. The
9 metadata included the time stamping. But for some reason, the
10 videos that he provided, through the subpoena response, were
11 not correctly time stamped.

12 Q. So, he was using two different -- two different cameras
13 then I take it?

14 A. I don't think so. I think he was using the same camera
15 that -- or smart -- smart phone that you could shoot video or
16 take photos with.

17 Q. Okay. But you are not sure?

18 A. I -- I don't recall specifically what camera or device he
19 was using to capture those images that day.

20 MR. PEREZ: All right. Thank you. I have nothing
21 further.

22 THE COURT: Anyone else? Any redirect?

23 MR. MYHRE: Not from the government, Your Honor.

24 THE COURT: All right. So, at this time, do the
25 jurors have any questions for Special Agent Willis?

Joel Willis - Cross

1 Please go ahead and write them on the forms provided.
2 Take your time. Be careful. Try not to use pronouns. When
3 you can, give us the names of the people or a description.

4 And also, this might be a good time to remind
5 everyone, if you do have a specialized knowledge in a
6 particular field, whether it be photography, or military, or
7 any other kind of things, please don't use jargon that might
8 not be familiar to everyone else.

9 So -- or if you want to use the jargon, go ahead and
10 in parentheses or somewhere explain what that word means. You
11 probably know what that word means if you have a
12 specialization, but the rest of the jurors might not. So, it
13 might actually make it more unclear instead of clarifying
14 things.

15 Same thing if you have legal knowledge or have legal
16 terminology -- any kind of terminology, just be careful and put
17 it in parenthesis if you think it's another word the other
18 jurors might not be familiar with.

19 (Pause in the proceedings.)

20 THE COURT: All right. If counsel could please join
21 me at sidebar.

22 (Sidebar.)

23 THE COURT: All right. Jury question or Jury Note,
24 rather, No. 94. The question is: "Did the gap related to the
25 aerial flyover, having to go refuel, have an effect on your

Joel Willis - Cross

1 analysis?"

2 Let me read that again, because there's a couple of
3 things that are crossed out. So, "Did the gap related to the
4 aerial flyover, having to go refuel, have an effect on your
5 analysis?"

6 MR. PEREZ: That refers to time line?

7 THE COURT: Any objection?

8 MR. TANASI: None from Stewart.

9 MR. PEREZ: No.

10 MR. MYHRE: No.

11 THE COURT: All right. Jury Note No. 95. "You were
12 concerned for safety at the site. You don't know what their
13 intention. Did anything happen that day? Did the individual
14 point a weapon at you?"

15 MR. MYHRE: No, that's irrelevant.

16 MS. CREEGAN: That's for another witness.

17 MR. LEVENTHAL: Is that for him?

18 THE REPORTER: Please speak up.

19 MR. PEREZ: I don't think he was on scene, so --

20 MR. MYHRE: The government agrees, Your Honor. He
21 was not there during the event of April 12th.

22 THE COURT: Okay. So, I think it bears clarifying.
23 I will go ahead and ask the question and add to that "Were you
24 at the site on the day 4/12/2014?"

25 MR. LEVENTHAL: Right.

Joel Willis - Cross

1 THE COURT: I think it was left over, and they forgot
2 to ask another witness.

3 All right. So, Jury Note No. 96. "At the later date
4 when you visited the site, did you happen to crouch down and
5 look through the gaps in the Jersey barriers? If so, what
6 could you see? Did you take any pictures?" Any objection?

7 MR. PEREZ: No objection.

8 MR. MYHRE: No objection. However, we -- just so the
9 Court understands, we were going to address that in the second
10 half of his testimony.

11 THE COURT: Okay.

12 MR. MYHRE: But I have no objection to him asking the
13 question now.

14 THE COURT: Okay. So do you want me not to go into
15 "What did you see?" Or just say, "I understand that we are
16 going to have testimony about that later."

17 MR. MYHRE: I think that would be the better.

18 THE COURT: So, we don't go into it now.

19 MR. MYHRE: Yes, Your Honor.

20 THE COURT: Okay. And then Jury Note No. 97 has two
21 questions. The first one is: "How would you describe the
22 nature of the content posted on the Citizens Action Network?
23 Your last description was vague."

24 MR. PEREZ: What is that, Your Honor? I'm sorry.

25 THE COURT: "How would you describe the nature of the

Joel Willis - Cross

1 content posted on the Citizens Action Network? Your last
2 description was vague."

3 MR. MYHRE: No, objection from the government, Your
4 Honor.

5 MR. PEREZ: No, objection.

6 THE COURT: All right. And the second question on
7 Jury Note 97 asks: "Besides the Bundy incident, can you offer
8 any other examples of content displayed on the Citizens Action
9 page website?"

10 MR. PEREZ: That's irrelevant.

11 MR. MYHRE: I think it calls for a yes or no
12 response. I'm not sure it's particularly relevant, but I don't
13 think it's horribly prejudicial either.

14 THE COURT: Well, I don't know the answer, so I
15 can't -- I don't -- what do you think the answer is? I can't
16 tell.

17 MR. MYHRE: I know what the answer is to the first
18 one. I don't know about the second one in terms of what he
19 viewed in the overall content on Citizens Action Network.

20 If it's just, like, were there -- I don't know --
21 advertisements on there, or, you know, notifications of going
22 to a party or something like that, I don't think it's
23 particularly relevant, but I don't think it's particularly
24 prejudicial. Maybe the answer to the first will address the
25 second.

Joel Willis - Cross

1 THE COURT: Yeah. I'm trying to imagine what the
2 juror's purpose is in asking this question, and I'm wondering
3 if they are getting confused with -- it's not character
4 evidence, because it's not really --

5 MR. PEREZ: Yeah, but the nature of the site --

6 THE COURT: -- evidence of these individuals.

7 MR. PEREZ: It's the nature of the site.

8 THE COURT: Yeah, they are looking outside of the
9 evidence being presented --

10 MR. PEREZ: Right.

11 THE COURT: -- for some clues. So --

12 MR. TANASI: Maybe if the question is asked with some
13 qualification as Citizens is not a defendant in this case. You
14 know, they are not a coconspirator. I don't believe the
15 government is alleging that Citizens is an unindicted
16 coconspirator, so just some qualification that --

17 MR. LEVENTHAL: Maybe they are looking --

18 MR. TANASI: -- outside of -- go ahead.

19 MR. LEVENTHAL: Maybe they are looking to see whether
20 or not there a skew. You know, is this a website that is for
21 patriots or against patriots?

22 MR. PEREZ: That's exactly --

23 MR. LEVENTHAL: I don't know what weight to give the
24 pictures. Maybe that's where -- that's how I read it, is what
25 weight to give it. If it's a website that is for the patriot,

Joel Willis - Cross

1 against the patriot, maybe somebody is having a hard time
2 weighing that.

3 MR. MARCHESE: Parker objects. I don't know what the
4 answer is going to be, and I don't want to take that chance.

5 THE COURT: All right. So, I think we all agree with
6 Mr. Myhre that the answer is just a yes or no answer, and we
7 don't want to go into --

8 MR. MARCHESE: That's fine. I don't have any
9 problems with that.

10 THE COURT: -- actual descriptions of the other
11 contents or other examples of content displayed on the Citizen
12 website.

13 MR. LEVENTHAL: I have never seen the website. I
14 don't know what it is myself.

15 MR. PEREZ: I saw it yesterday.

16 MR. LEVENTHAL: So a yes or no would probably be
17 sufficient.

18 THE COURT: What's your description --

19 MR. MYHRE: We will call you.

20 THE COURT: -- of the other content posted?

21 MR. PEREZ: That's why I'm sitting here going I don't
22 know.

23 MR. LEVENTHAL: If it's limited to a yes or no,
24 that's fine.

25 THE COURT: So, I guess maybe the question -- okay.

Joel Willis - Cross

1 "Did you look at other information on that website?" And he's
2 going to say yes or no. Probably yes from what Mr. Myhre is
3 saying. So, maybe a clarifying question by you all, if you
4 wish to afterwards or not, ask whether in having -- having
5 looked at the other information, did that change your decision
6 to use this photo or did this -- were you concerned about
7 the -- I don't know.

8 Are they trying to see -- are they trying to think
9 maybe it was Photoshopped or something because it's on a site
10 that they have never heard of? I mean, they have some kind of
11 suspicion and curiosity. So, I don't know if there is a way to
12 answer their question without getting into the content of the
13 Citizens Action page, other than clarifying whether or not he
14 had any concerns about the legitimacy of it or the usefulness
15 of it. That seems to be what they are worried about.

16 MR. MYHRE: The government thinks that's an
17 appropriate follow-up question, depending on the answer, if it
18 caused him concern when deciding to download the images he
19 downloaded.

20 MR. LEVENTHAL: I am not sure what concerns. What do
21 you mean? Did it cause you any concern to download?

22 MR. MYHRE: Affect your decision to download or not
23 download.

24 THE COURT: Like the usefulness of it.

25 MR. PEREZ: Not concern. I don't like that word.

Joel Willis - Cross

1 MR. LEVENTHAL: Well then, it would open it up to how
2 he picked and choosed [sic] which he's going to bring in, so
3 then that will all become relevant, which I believe wasn't
4 before, which --

5 MR. PEREZ: Which goes back to my question.

6 MR. LEVENTHAL: -- is fine. I don't have a problem
7 with opening that up, but there's follow-up on that. What made
8 him decide to take this picture and not that picture? So, as
9 long as they follow-up on that.

10 THE COURT: All right. So, do you want me to ask a
11 follow-up question or not?

12 MR. MYHRE: Well, we don't -- our position is it
13 wouldn't open up the door that we just talked about in the last
14 sidebar.

15 And again, I can see where the Court is going with
16 the second question with respect to whether the jurors are
17 wondering would the nature of the website cause any bias in
18 what they put on the website or how they displayed it on
19 website.

20 I think that the Court has identified what the motive
21 behind that question is. So, we start going down that -- that
22 slope.

23 MR. PEREZ: Or even how they selected the photos,
24 which goes to how many photos did they look at? How did they
25 make that determination?

Joel Willis - Cross

1 MR. MYHRE: On that website?

2 MR. PEREZ: I mean on all. I mean, that's why I was
3 asking the question, you know, before at the last sidebar.

4 MR. MYHRE: I think we're straying way outside this
5 question right now.

6 THE COURT: Yes. This question is just "Looking at
7 the other content on this website," because it's probably not a
8 website that they are familiar with, as opposed to if they were
9 on a website that they are familiar with so they already have a
10 basic understanding of whether things on that website are
11 worthy of their -- of them giving any weight to it or not.

12 So, all right. So, I will just ask the question and
13 then direct the witness to answer yes or no to the second part
14 of it, and then if you all want to follow up you can or not.

15 MR. TANASI: All right. If we do choose to follow
16 up, I know that I have reserved my questioning for when he
17 testifies a second time. If I did follow up with any questions
18 that came from here, would I still be able to keep that
19 reservation, I guess, in place?

20 Because my understanding is that when he testifies a
21 second time, I still can question him on anything from
22 testimony one and direct two.

23 THE COURT: Yes.

24 MR. TANASI: So, any follow-ups, I just didn't want
25 to shoot myself in the foot --

Joel Willis - Cross

1 MR. PEREZ: Exactly.

2 MR. TANASI: -- and lose the ability to still cross
3 him on yesterday's testimony.

4 THE COURT: My guess is I would be pretty lenient on
5 that.

6 MR. TANASI: Okay.

7 THE COURT: And not hold you to a -- because there's
8 going to be some crossover in the information that he's
9 provided today and the information he's going to provide at
10 some other date.

11 MR. TANASI: Okay.

12 THE COURT: So, it's going to be hard to distinguish
13 the difference, but --

14 MR. TANASI: Okay.

15 THE COURT: -- clearly here the question is not about
16 why didn't you include other information. The question is why
17 this -- this particular website. They want to know more about
18 it, so that they can gauge its usefulness.

19 MR. TANASI: Okay.

20 THE COURT: Is it a cartoon network site, you know,
21 or something like that where maybe things are portrayed in a
22 particular way that isn't honest.

23 All right. So, I'll just ask the question, and it's
24 up to you if you want to get into anything else.

25 Jury Note No. 98 has two questions. First one is:

Joel Willis - Cross

1 "Were you investigating anyone involved with the incident that
2 happened on 4/12/14 prior to that day?"

3 MR. MYHRE: Anyone involved?

4 THE COURT: Anyone.

5 MR. MYHRE: I think that's --

6 MR. LEVENTHAL: Is the question whether Agent Willis
7 was -- I'm trying to get clarity -- prior to the 12th or prior
8 to when he started his investigation?

9 THE COURT: So, the question is: "Were you
10 investigating anyone involved with the incident that happened
11 on 4/12/14 prior to that day?"

12 MR. LEVENTHAL: Prior to 4/12.

13 THE COURT: And they were. They had the undercover
14 guys at the rally. There is that.

15 MR. LEVENTHAL: Correct.

16 THE COURT: I think the answer is going to be "Yes";
17 right?

18 MR. MYHRE: I think the answer is probably going --
19 well, the problem is, is that --

20 MR. PEREZ: Yeah, that opens it up. Because, I mean,
21 obviously, if they were, we're going to have to ask -- we are
22 not going to leave the jury thinking, "Oh, well. They were
23 investigating these guys before." We are going to say, who,
24 what, why, where, when?

25 MR. MYHRE: We would concur that it's irrelevant and

Joel Willis - Cross

1 prejudicial as well.

2 THE COURT: All right. So, the second question on
3 Jury Note 98 is: "If you -- if your investigation started
4 after the events of 4/12/14, was it a focused investigation or
5 broad?"

6 MR. MYHRE: Vague.

7 MS. CREEGAN: Very vague.

8 MR. MYHRE: If -- I don't think the FBI, at least in
9 my experience, has investigations labeled broad or --

10 THE COURT: Focused.

11 MR. MYHRE: -- focused. So, I'm not sure those words
12 have any meaning in Agent Willis's world.

13 MR. PEREZ: Or maybe they want to know if it was just
14 focused on the Bundy Ranch situation or something more beyond
15 that.

16 MS. CREEGAN: Seems like we should probably give the
17 jury some sort of instruction; right? That they should just
18 consider the evidence going to the particular charges. Seems
19 like they are trying to reach around.

20 THE COURT: Have we not already had testimony that
21 there were -- that there was information the day before in the
22 rally the day before? Or just have we only had testimony about
23 the rally the day of.

24 MR. TANASI: We've had testimony as --

25 MR. LEVENTHAL: Sully came in and said he went

Joel Willis - Cross

1 undercover in two -- two different rallies before, the rally on
2 the 12th and the rally before.

3 MR. MYHRE: There was evidence from Sully as to an
4 undercover he performed before April 12, but that was not part
5 of the FBI investigation. In other words, the FBI was not
6 conducting an undercover out there.

7 THE COURT: All right. So, do you want me to just
8 instruct the jury that any investigations involving someone
9 other than the defendants should not be considered? I don't
10 know.

11 MR. TANASI: If I could chime in.

12 THE COURT: Yes.

13 MR. TANASI: I know with respect to my client, I know
14 there's no investigation prior to the 12th. And so I think
15 that if the question is not asked, then that's going to plant
16 the seed in the jury's mind that there was an investigation
17 potentially into him. And, so, I guess I would not object to
18 the question.

19 MR. MYHRE: Well, that would then be implying that
20 there's some good character that is involved here, and that's
21 not relevant either. So --

22 MR. TANASI: I think it negates the conspiracy. It
23 has nothing to do with character.

24 MR. MYHRE: No, it doesn't. I mean, that would not
25 be admissible evidence for showing what his intent was on

Joel Willis - Cross

1 April 12th.

2 THE COURT: Yeah, whether or not there's an
3 investigation doesn't mean that there isn't a conspiracy.

4 "Were you investigating anyone prior to the incident
5 that happened on 4/12 prior to that day? If your investigation
6 started after the investigation on 4/12/14, was it a focused
7 investigation or broad?"

8 MR. TANASI: So, I guess, Your Honor, I would ask if
9 you are not going to read it, to not read it at all.

10 In other words, if it's one that you wouldn't read
11 it, wouldn't be one that you would ask the question and then
12 say, you know, "We're not going to ask you to answer that." I
13 guess not call attention to the question at all if Your Honor's
14 not inclined to ask it.

15 MR. MYHRE: We object, too, Your Honor. It's just
16 not -- it opens up too many Pandora's boxes, because we get
17 into whether they were -- anyone suspected of criminal
18 activity. If they say there was an investigation, that would
19 be prejudicial. If they say, "No, it's not. There was no
20 investigation," again, it would imply that somehow character or
21 prior conduct is somehow at issue in this case.

22 So, we would suggest that either the Court say that
23 these are not relevant to this or that the Court instructs
24 saying that your deliberations are confined to the evidence
25 that's presented here, not -- and not other investigations or

Joel Willis - Cross

1 something along that line.

2 I know it's not very helpful, but --

3 THE COURT: In my mind, I'm trying to see if there's
4 some way to satisfy this juror's curiosity, but I don't think
5 that they are going to be able to go off and research this
6 anywhere. So, maybe it doesn't need to be satisfied to prevent
7 them from going off on their own.

8 All right. So, I just won't ask the question. But
9 you do want me to say -- give some kind of limiting instruction
10 about focusing on the --

11 MR. TANASI: I think --

12 MR. MARCHESE: What would Your Honor say?

13 THE COURT: I don't know. That's what I'm trying to
14 figure out.

15 MR. MARCHESE: Steve, what did you say?

16 MR. MYHRE: Words to the effect that you will be
17 instructed at the end of the case about what -- what you may
18 consider and may not consider during your deliberations.

19 MR. MARCHESE: I don't have a problem with that.

20 MR. TANASI: And not actually ask the question.

21 MR. MYHRE: Not ask the question.

22 MR. TANASI: Yeah, I think that's fine.

23 MR. MARCHESE: Yeah.

24 MR. LEVENTHAL: Yes.

25 THE COURT: Okay. Jury Note No. 99: "When a photo

Joel Willis - Cross

1 is downloaded from an exterior source, can that distort the
2 metadata in any way? Is it possible to still rely on the
3 accuracy of the metadata once it has been uploaded and then
4 downloaded?"

5 MR. TANASI: No, objection, Stewart.

6 MR. MYHRE: No, objection, Your Honor.

7 THE COURT: That's the last one. Thank you.

8 MR. TANASI: Thank you.

9 MR. MYHRE: Did we break the record?

10 THE COURT: I think we are right there. I will have
11 to ask Aaron if it was 98.

12 (End of sidebar.)

13 THE COURT: So, Special Agent Willis, I do have a
14 couple of questions for you here. They are from the jury. I
15 am going to read them into the record. However, when you
16 respond, you may go ahead and turn and face the jury, because
17 these are jury questions. They are not my questions. All
18 right?

19 THE WITNESS: Yes, Your Honor.

20 THE COURT: So Jury Note No. 94 asks: "Did the gap
21 related to the aerial flyover, having to go refuel, have an
22 effect on your analysis?"

23 THE WITNESS: As far as the time period when the
24 standoff occurred to the time when the BLM left, it would have
25 affected it, because I was not able to see from the aerial

Joel Willis - Cross

1 photography the leaving or demobilization of the BLM and
2 National Park Service vehicles out of the ICP.

3 That would have been the only thing that I would have
4 missed, but I can time that by other means, including photos
5 and videos that were taken that day.

6 THE COURT: All right. Jury Note No. 95 asks: "Were
7 you concerned for your safety at the site when you don't know
8 what their intention is? Did anything happen that day? Did
9 the individual point a weapon at you?"

10 So, I think the first question really is were you at
11 the site on April 12th of 2014?

12 THE WITNESS: No, I was not.

13 THE COURT: All right. And then Jury Note No. 96
14 asks: "At the later date when you visited the site, did you
15 happen to crouch down and look through the gaps in the Jersey
16 barriers?"

17 THE WITNESS: Yes, I did.

18 THE COURT: And then the next question is: "If so,
19 what could you see?"

20 And my understanding from the attorneys is that we'll
21 have more -- a lot more information about that, so we are not
22 going ask the question now, because there will be more
23 information for the jury about that later.

24 And then the next question is: "Did you take any
25 pictures?"

Joel Willis - Cross

1 THE WITNESS: Yes, I did.

2 THE COURT: All right. Then Jury Note No. 97 asks:
3 "How would you describe the nature of the content posted on the
4 Citizens Action Network? Your last description was vague."

5 So, first, do you recall what your last description
6 was?

7 THE WITNESS: Yes, and I remember it being vague.
8 There's a number of photo albums. That's how they organize
9 their photos on there. It appears that the person that
10 populates the images in Citizens Action Network also
11 participates in protests. And I believe that they were out
12 there to document what they believed was possibly going to be a
13 protest on April 12th.

14 And so they have other things. I believe they were
15 involved maybe in, like, the Occupy movement, things like that.
16 And they just happened to be out there during the standoff.
17 And you saw the pictures. That's a sample of the pictures that
18 I collected from that Facebook page. I believe there was,
19 like, 33, approximately, total that they had actually put on
20 that Facebook page. Hopefully that helps.

21 THE COURT: All right. And I think that answers --
22 the next question was also about other examples of contents on
23 the page. So, you've explained that.

24 Jury Note No. 98, the attorneys and I have discussed
25 this question, and we agree that the best instruction, perhaps,

Joel Willis - Cross

1 to give regarding this question is that after you have heard
2 all the testimony and been -- and seen the evidence that's been
3 admitted, I will provide to you jury instructions that will
4 guide you as to what evidence you may consider in reaching your
5 decision in this case.

6 And so this question is asking about information that
7 likely would not be relevant or helpful to information that you
8 can consider. So, rather than introducing that information,
9 I'm just not going to ask that question.

10 Jury Note No. 99 asks: "When a photo is downloaded
11 from an exterior source, can that distort the metadata in any
12 way?"

13 A. When -- when I capture something off of Facebook, it is
14 very likely that Facebook has included some type of EXIF or
15 metadata within that photograph to make it theirs. I'm sure
16 you could track any photograph downloaded from Facebook back to
17 its origin, again, based on the data within the photograph.

18 But on the other side, if you're talking about the
19 Internet and thinking that the Internet just automatically
20 alters things. So, if you have a Dropbox account and you put
21 in photographs of your -- of a family event or something like
22 that, that photograph should be in its native form.

23 Dropbox is just basically a cloud storage service.
24 So, for instance, the Shannon Bushman photographs that Mark
25 Seyler had testified about, and so did I, that was downloaded

Joel Willis - Cross

1 off of a public Dropbox account, just somebody's public cloud
2 storage.

3 So, in that case I would not anticipate any type of
4 EXIF data or metadata change in that -- in that photograph. I
5 did not see a difference in quality, if that's what the
6 question is about, from how I'm viewing it on the computer to
7 what I end up with when I download that and put it on a media
8 device for turning over as evidence to the Court.

9 THE COURT: All right. So, I don't think the
10 question is about whether it distorted the photo itself, like,
11 is it more blurry or whatnot.

12 The question was about the metadata -- that photo's
13 metadata, can that be distorted? I'll just reread it.

14 "When a photo is downloaded from an exterior source,
15 can that" -- the process of downloading from an exterior
16 source -- "can that distort the metadata in any way?"

17 THE WITNESS: Yes. So, when you move a photo from
18 file to file and you store it somewhere on your computer,
19 within the metadata, you can see where -- track which folder
20 that's in.

21 So, it would be like the -- the destination folder or
22 the folder where you were storing that. So that also gets
23 recorded as you move the image from file to file. But certain
24 things, depending on the photograph, don't change.

25 So, during the course of my investigation, I noticed

Joel Willis - Cross

1 that the majority of the photographs, when we've downloaded
2 them -- because with the case with Hugh Gourgeon, with the case
3 of Dennis Michael Lynch, Michael Flynn, all of those things
4 were given to us off of either their computer, which they had
5 used to import the image, or an external media device like a
6 thumb drive. So, it was -- it was not downloaded directly from
7 their -- their camera or their -- their phone.

8 However, in going over that information with them,
9 sitting down and reviewing those photos, we determined that the
10 modified date and time for that -- that image, within the
11 general section of the properties of that photo, so, the
12 metadata, was always consistent. That never changed as we
13 moved it from file to file.

14 Now, if I went in and renamed that file -- that file
15 name to a different file name from what we originally got it
16 from, that would change everything. But we never did that. We
17 downloaded it, sometimes burned it onto a disc, submitted to
18 evidence, and that's what we used to generate our time line --
19 my time line in doing our analysis as far as when that photo or
20 video was taken.

21 THE COURT: So, what if you are downloading it from
22 an exterior source that's not the owner of the camera? For
23 example, off a website? Would the metadata then be possibly
24 corrupted in anyway or distorted, or would it stay continuously
25 the same no matter what?

Joel Willis - Cross

1 THE WITNESS: Yes. Again, if -- if you are
2 downloading a video from YouTube, that video essentially
3 belongs to YouTube, and they have embedded their own
4 information in it.

5 You know, you film a video, you edit a video, you
6 upload it to YouTube, you create that page that -- and the
7 caption for that video, and then you publish the video on
8 YouTube. All of those things, all of those steps can possibly
9 change what you are -- what you would observe in metadata.

10 So, if I downloaded something off of YouTube using
11 the option, if there is, in YouTube to download it, that would
12 include any information that YouTube would allow me to have as
13 well as the information generated by me creating that file on
14 my computer.

15 Like I was saying with Dropbox, that should just be a
16 cloud storage device. And with Shannon Bushman, that was just
17 a public link to his cloud storage. Therefore, the metadata
18 was consistent with what settings he had on his camera that day
19 which embedded that information in those photographs.

20 THE COURT: All right. And the next part of Jury
21 Note No. 99 asks: "Is it possible to still rely on the
22 accuracy of metadata once it has been uploaded and then
23 downloaded?"

24 THE WITNESS: Again, depending on the ways that it
25 was downloaded, like I had mentioned. However, with every

Joel Willis - Redirect

1 photograph and every screenshot that you will see in my time
2 line, I have corroborated that time and that metadata 2 to 10
3 ways. So, there was -- like we've seen -- we've seen dash
4 camera. We've seen aerial photography. We've seen multiple
5 sources of photographs and videos.

6 Through all of that and through my ability to look at
7 everything frame by frame, I was able to synchronize all the
8 videos and synchronize photographs along with those videos to
9 basically have multiple references, not only through the
10 metadata, but also visually and through audio of how I'm time
11 stamping it with every photo.

12 Not just saying this photo matches up, so all of them
13 must match up. Every photo was corroborated through a number
14 of references based on other admitted evidence.

15 THE COURT: All right. Any follow-up by the
16 government?

17 MR. MYHRE: Just a couple questions, Your Honor.

18 THE COURT: Sure. Go ahead.

REDIRECT-EXAMINATION

19
20 BY MR. MYHRE:

21 Q. Agent Willis, just in response to Question 94, you were
22 asked about the gap, the gap being the time from when the
23 aerial surveillance plane left the Bunkerville area, refueled,
24 and came back.

25 A. Yes.

Joel Willis - Redirect

1 Q. And you responded to that question. I just wanted to
2 follow-up a little bit more.

3 In terms of your analysis, for the time period during
4 which the defendants were on the bridge, from the time that the
5 people in the wash lined up in the middle to the time they
6 pushed forward, was that -- did your analysis -- was that
7 affected at all by the aerial plane -- or, excuse me -- the
8 airplane leaving the site?

9 A. Not at all.

10 Q. In other words, the airplane was on-site during that
11 period of time?

12 A. That's correct.

13 Q. And was the aircraft always -- was it also on-site up
14 until the point that the BLM initially pulled back from the
15 gate?

16 A. Yes.

17 Q. So, that time period, from the time period of when the
18 horses first arrived at the wash to the time period at which
19 the BLM vehicles are seen pulling back from the gate, that
20 aircraft was on-site during the entire time?

21 A. Yes.

22 Q. So, it would not have affected your time line analysis?

23 A. No.

24 Q. And just following up to Question 99, you mentioned
25 YouTube, but I wanted to drill down more on Facebook. And we

Joel Willis - Redirect

1 talked about this a little bit on direct.

2 But when you download an image from a Facebook
3 account, is there metadata embedded in that photograph as to
4 when that was initially taken?

5 A. No.

6 Q. So, in order to derive when that photograph was taken, you
7 used other source data; is that correct?

8 A. That's correct.

9 Q. And, so, with respect to your time line analysis, you will
10 be able to explain what outside sources you relied upon in
11 order to verify the time?

12 A. Yes.

13 Q. And one last follow-up. You indicated about when
14 downloading from an outside or external source, that the
15 metadata would change on certain files where you received them;
16 correct?

17 A. Yes.

18 Q. Do you recall that testimony?

19 A. Yes.

20 Q. So, when -- with respect to that, if you receive, for
21 example, the metadata or the images from Mr. Ellis and
22 Mr. Flynn, that would contain metadata; correct?

23 A. It does.

24 Q. In terms of whether they had copied that from the original
25 device that took the photograph, does that metadata still

Joel Willis - Cross

1 contain data as to when that photograph or image was initially
2 captured?

3 A. Yes.

4 Q. So that would not change?

5 A. That's correct.

6 MR. MYHRE: Thank you, Your Honor.

7 THE COURT: Okay. Any follow up from the defense?

8 MR. TANASI: Not at this time, Your Honor. Thank
9 you.

10 MR. MARCHESE: None from Parker.

11 THE COURT: On behalf of Mr. Drexler?

12 MR. LEVENTHAL: Yes.

13 THE COURT: Go ahead.

14 MR. LEVENTHAL: Just a few questions. Thank you.

15 CROSS-EXAMINATION

16 BY MR. LEVENTHAL:

17 Q. Good morning.

18 A. Good morning.

19 Q. Regarding the aerial, even though the question was, did
20 the fact that the aerial camera refuel affect your analysis?

21 A. No.

22 Q. Okay. And that's because it was sort of later in time,
23 around 2:00-ish, 1:00-ish?

24 A. So when you say my analysis, are you speaking of my time
25 line of significant events of that day?

Joel Willis - Cross

1 Q. Yes.

2 A. It did not affect it.

3 Q. Right. Okay. And you indicated that the aerial was
4 flying around when the people were in the wash, and they were
5 sort of -- the horses were in the wash; correct?

6 A. Yes.

7 Q. Okay. But it wasn't focused on the wash the whole time;
8 correct?

9 A. That's correct.

10 Q. Bunkerville is how many acres? Do you know how large
11 Bunkerville is?

12 A. No, I do not.

13 Q. Okay. And that aerial was sort of all over the place;
14 right?

15 A. No, I wouldn't say that.

16 Q. Okay. It had views of other areas; the ICP, for example?

17 A. Yes.

18 Q. Okay. So, it wasn't focused on that particular site
19 underneath the wash on or the bridge; correct? The whole time?

20 A. At all times, that's correct.

21 Q. That's correct. Okay. Thank you. And I know Mr. Myhre
22 tried to clear up metadata. And I just want to -- because I
23 didn't get your answer, and I am not really -- it's -- I don't
24 know what time it is. But right now, what time is it?

25 A. It's 11:23.

Joel Willis - Redirect

1 Q. Okay. So, if I were to videotape you right now at
2 11:20 and I put it on YouTube, would you, pulling that video
3 off of YouTube at 11:20, would that change the metadata?
4 That's my question. That's it. Not whether what Ellis did or
5 anybody else. That's the hypothetical.

6 A. Yes.

7 Q. Would it then change the time, the metadata after you
8 pulled it off?

9 A. It would create metadata as I would be creating a native
10 new video.

11 Q. Right.

12 A. Because I --

13 Q. I'm sorry. So would it change the time?

14 A. Yes.

15 MR. LEVENTHAL: Thank you. That's all. Thank you
16 very much.

17 THE COURT: Anyone else?

18 MR. PEREZ: Nothing from Lovelien.

19 THE COURT: All right.

20 MR. MYHRE: Just one question, Your Honor.

21 FURTHER REDIRECT-EXAMINATION

22 BY MR. MYHRE:

23 Q. In response to Mr. Leventhal's question, you said it would
24 change the time with respect to a YouTube --

25 A. That's correct.

Joel Willis - Redirect

1 Q. -- video? You are not saying with respect to every medium
2 you reviewed?

3 A. That's correct.

4 MR. MYHRE: Nothing further, Your Honor.

5 THE COURT: Wait. I'm sorry. Mr. Leventhal, was
6 your hypothetical based on YouTube or Facebook?

7 MR. LEVENTHAL: It was based on YouTube, Your Honor.

8 THE COURT: All right. Thank you.

9 MR. LEVENTHAL: I can follow up on Facebook.

10 THE COURT: No, that's fine. For some reason, I
11 was -- we talked about a lot of things at sidebar. I was
12 making sure as to what it was.

13 MR. LEVENTHAL: The question was to YouTube, but the
14 overall question was the web, because that's what was asked.

15 THE COURT: Anyone else?

16 All right. So, Special Agent Willis, you are excused
17 for the time being.

18 THE WITNESS: Thank you, Your Honor.

19 THE COURT: So, thank you very much. Please be
20 careful with those steps on your way down.

21 And the government may call its next witness.

22 MS. AHMED: Thank you, Your Honor. The United States
23 calls Special Agent Sarah Draper.

24 THE COURT: Good morning, Special Agent. Come on up.
25 You are going to be seated right here to my right.

Sarah Gibson Draper - Direct

1 THE WITNESS: Thank you.

2 THE COURT: Be careful with the steps on the way.

3 SARAH GIBSON DRAPER,

4 having been duly sworn, was examined and testified as follows:

5 COURTROOM ADMINISTRATOR: State your full name and
6 spell it for the record.

7 THE WITNESS: My name is Sarah Gibson Draper. Last
8 name is spelled D-R-A-P-E-R.

9 DIRECT EXAMINATION

10 BY MS. AHMED:

11 Q. Good morning, Agent Draper.

12 A. Good morning.

13 Q. Are you currently employed by the Federal Bureau of
14 Investigation?

15 A. Yes, I am.

16 Q. That's the FBI?

17 A. Correct.

18 Q. How long have you -- and what is your position with the
19 FBI?

20 A. I'm currently a supervisory special agent in Boise, Idaho.

21 Q. How long have you been a special agent generally with the
22 FBI?

23 A. Almost 14 years.

24 Q. And prior to your service with FBI, do you have any other
25 law enforcement experience?

Sarah Gibson Draper - Direct

1 A. I do. I was an officer in the US Army's Military Police
2 Corp for eight years.

3 Q. So, approximately a total of 21 years of law enforcement
4 experience?

5 A. Almost 22. Correct.

6 Q. In the course of your experience as a law enforcement
7 officer, have you had training that you've received?

8 A. Yes, I have.

9 Q. Does that include having attended the Federal Training
10 Academy to become an investigator with the FBI?

11 A. Correct. It's called the FBI Academy, yes.

12 Q. Now, in the course of your position as a federal -- as a
13 special agent with the FBI, were you involved in an
14 investigation of events that took place in the Bunkerville,
15 Nevada, area in April of 2014?

16 A. Yes, I was.

17 Q. And specifically, events taking place on April 12th of
18 2014?

19 A. That's correct.

20 Q. Now, generally, what was your role in this investigation?

21 A. Once -- after the events occurred on April 12th, 2014, and
22 it became apparent, through media posts, that individuals from
23 Idaho had been involved, I began looking in to those
24 individuals from Idaho who had been involved.

25 Q. And specifically, which individuals -- well, were you

Sarah Gibson Draper - Direct

1 considered a case agent as a part of the investigation?

2 A. Yes, on three of those individuals. Eric James Parker,
3 Orville Scott Drexler, and Steven Arthur Stewart.

4 MS. AHMED: And, Your Honor, may we publish what's
5 been previously admitted as Exhibit 5B?

6 THE COURT: Yes, you may.

7 MS. AHMED: And can we advance to the 1 minute mark?

8 THE COURT: Yes.

9 MS. AHMED: And can you play from there?

10 (Exhibit 5B being played.)

11 BY MS. AHMED:

12 Q. Stop there. Stop. Can you go back about one second?

13 Agent Draper, looking at Exhibit 5B on the screen
14 before you, do you see the individuals that you have just named
15 that you were investigating?

16 MR. LEVENTHAL: Objection. No foundation. Lack of
17 personal knowledge.

18 BY MS. AHMED:

19 Q. May I lay a foundation?

20 Did you review -- you indicated, I believe, that you
21 reviewed media in identifying individuals from Idaho; is that
22 right?

23 A. Yes, that's correct.

24 Q. And it included the three individuals that you named?

25 A. Correct.

Sarah Gibson Draper - Direct

1 Q. And that included photo and video media?

2 A. Yes, that's correct.

3 Q. And do you see any of them, the individuals that you've
4 named, in this video that was just playing?

5 MR. LEVENTHAL: Objection. No foundation. Lack of
6 knowledge.

7 MS. AHMED: Your Honor, she's indicated that she was
8 a case agent investigating three individuals.

9 THE COURT: So how does she know who they are?
10 That's the question.

11 BY MS. AHMED:

12 Q. Did you -- having viewed individuals -- images of
13 individuals that were displayed, having participated in
14 April 12th, 2014, events in Nevada, did you take steps to learn
15 their identities?

16 A. Yes.

17 Q. Their names?

18 A. Yes. Yes. Do you want me to go through some of the
19 steps?

20 Q. Can you explain what you did to identify them?

21 A. It included -- well, one of the individuals was identified
22 by name in the media, and so confirmation through Department of
23 Military Vehicles [sic] photos. And then associates that --
24 the identity of the associates was developed from there based
25 upon other media analysis or social media analysis.

Sarah Gibson Draper - Direct

1 Q. And is that what you did to derive the names of
2 individuals that you --

3 A. Yes.

4 Q. -- believed had participated from Idaho?

5 A. Correct.

6 Q. Having confirmed names, did you match -- did you also
7 review, then, their DMV photographs?

8 A. Yes. Yes.

9 Q. And they matched -- the names of those individuals matched
10 with -- the photographs in the DMV records, did those also
11 match photographs you had seen from the April 12th, 2014,
12 events?

13 A. Yes.

14 Q. Now, looking at Exhibit 5B on the screen to your right, do
15 you see the individuals that you were investigating from Idaho?

16 A. Yes, I do.

17 Q. And can you identify them, going from the viewer's left to
18 viewer's right, looking that screenshot?

19 A. So --

20 Q. Stopped at 1:04 on 5B.

21 A. Thank you. So, on the left-hand side is Mr. Stewart, in
22 the center in the plaid shirt is Mr. Parker, and on the right
23 side of the three left-most individuals in the blue shirt is
24 Mr. Drexler.

25 Q. And so just to be clear, where I'm writing an "S," is that

Sarah Gibson Draper - Direct

1 who you indicated was Stewart?

2 A. Yes.

3 MR. LEVENTHAL: Objection. Asked and answered,
4 Judge. And leading.

5 MS. AHMED: Your Honor, I'm just --

6 THE COURT: Overruled. Do you want to have her mark
7 on there who's who?

8 MS. AHMED: That's fine, Your Honor.

9 Q. Would you then mark on the screen where you see the other
10 two individuals with the first letter of their last name?

11 And for the record, the agent has confirmed that the
12 individual with an "S" on it, wearing a blue T-shirt, that's
13 Mr. Stewart; correct?

14 A. Yes, that's correct.

15 Q. And the individual with the -- that you wrote a "P" on in
16 the plaid shirt, that's Mr. Parker?

17 A. Correct.

18 Q. And the individual where you wrote a "D," that's
19 Mr. Drexler?

20 A. Yes. Correct.

21 Q. You can take that down. Thank you.

22 Now, in the course of your investigation, did you
23 take steps to obtain any documents related to the
24 investigation?

25 A. I -- I assisted in the drafting of a search warrant

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1 affidavit to obtain search warrants on the three or four
2 mentioned individuals' Facebook pages, after confirming they --
3 those Facebook pages belonged to them through subpoenas for
4 subscriber information.

5 Q. And, so, you determined that the three individuals you've
6 just described had Facebook accounts; is that correct?

7 A. Yes.

8 Q. And did you actually, you yourself, go to those Facebook
9 accounts and see what was openly displayed on them?

10 A. Correct. I reviewed public posts.

11 Q. And in doing so, did you -- were you able to confirm that
12 these were the individuals that you were looking -- that you
13 were investigating?

14 A. Yes.

15 Q. And what items did you observe that allowed you to do
16 that?

17 A. Well --

18 Q. Just generally.

19 A. Oh, generally, just photos -- I mean, photos were -- were
20 sufficient.

21 Q. And then having identified the individual accounts, you
22 indicated that you assisted in drafting search warrants; is
23 that correct?

24 A. Yes, affidavits for search warrants for the three
25 different accounts.

Sarah Gibson Draper - Direct

1 Q. And then did you submit those to the Court?

2 A. Submit -- someone else submitted those to the Court.

3 Q. And then were search warrants obtained?

4 A. Yes, they were.

5 Q. And were documents ultimately provided from Facebook in
6 response to those search warrants?

7 A. Yes, they were.

8 Q. Did you review the documents that Facebook provided in
9 response to the search warrants?

10 A. Yes, I did.

11 Q. And what then, if anything, did you do with those
12 documents?

13 A. With the -- with the returns? What I --

14 Q. After you had reviewed them, yes.

15 A. I documented what I found to be relevant to the parameters
16 set forth in the -- in the search warrant. So, there's an
17 attachment that establishes what can be kept.

18 Q. And when Facebook provided the records to you, in what
19 format were they?

20 A. It comes in a PDF format, and it's -- it's called a
21 business record. It doesn't look like a Facebook page. If you
22 were a user and looking at it on the computer, it's got a
23 different format, but it's a PDF document.

24 Q. And along with the search warrant, after obtaining these
25 business records from Facebook, in response to the search

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1 warrant, were you -- did you also obtain any certification from
2 Facebook that these were authentic business records?

3 A. Yes, I -- I reviewed that -- the certifications that
4 Facebook sent. I myself didn't receive them directly from
5 Facebook but reviewed them.

6 Q. And Facebook provided them in relation to the search
7 warrant?

8 A. Yes. Correct.

9 MS. AHMED: Your Honor, may we publish to the witness
10 and counsel what's been marked as Exhibit 49, page 1.

11 THE COURT: Exhibit 49, page 1?

12 MS. AHMED: Yes, Your Honor.

13 THE COURT: Yes, you may.

14 BY MS. AHMED:

15 Q. Agent Draper, do you see the document that's on the screen
16 in front of you?

17 A. Yes, I do.

18 Q. And just generally, what is it?

19 A. This is called a Certificate of Authenticity of Domestic
20 Records of Regularly Conducted Activity. So, it's Facebook's
21 certificate of authenticity that the records they provided are
22 true and accurate as described under these four provisions.

23 Q. And looking at page 1 of Exhibit 49, what account is this
24 page referencing?

25 A. This -- this particular account is referencing Eric

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1 Parker's account.

2 Q. Eric Parker's Facebook account?

3 A. Yes. Yes, his Facebook account.

4 Q. And this is relating, again, to the search warrant that
5 was submitted --

6 A. Right. Correct.

7 Q. -- for his Facebook account?

8 A. This is one of a couple accounts, but this is the only one
9 I did the search warrant on.

10 MS. AHMED: Your Honor, the government moves admit
11 Exhibit 49, page 1.

12 THE COURT: Any objection to Exhibit 49?

13 MR. MARCHESE: No objection, Parker.

14 MR. TANASI: None from Stewart, Your Honor.

15 MR. LEVENTHAL: No objection.

16 MR. PEREZ: No objection, Lovelien.

17 MS. AHMED: And, Your Honor, just to clarify, that
18 was page 1 of 49?

19 THE COURT: All right. Page 1 of Exhibit 49 is
20 admitted. You may go ahead and publish it to the jury.

21 MS. AHMED: Thank you.

22 (Exhibit 49, page 1 admitted.)

23 BY MS. AHMED:

24 Q. And again, Agent Draper, just -- now that the jury can see
25 it, can you explain to them just generally what it is?

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1 A. Oh, they can't see it.

2 Q. When the jury can see it, I should say.

3 A. Very good. This is the -- so, this is the Certificate of
4 Authenticity of Domestic Records of Regularly Conducted
5 Activity. And it's signed by the records custodian and
6 notarized and explains that the individual received the search
7 warrant and provided the records.

8 Q. And then again, this was for the -- looking at the second
9 paragraph, there's an identification number.

10 A. Yes.

11 Q. Do you see that?

12 A. Yes.

13 Q. And that identification number is associated with whose
14 account?

15 A. That was the account for Eric "EJ" Parker.

16 Q. You can take that down. And I believe you indicated
17 earlier that you then reviewed the documents Facebook provided
18 and identified posts in those documents that related to the
19 search warrant?

20 A. Yes, that's correct.

21 MS. AHMED: Your Honor, may we publish what's been
22 previously marked as Exhibit 88? Just, excuse me. May we show
23 counsel and the witness what's been marked as 88?

24 THE COURT: Yes, you may.

25

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1 BY MS. AHMED:

2 Q. Agent Draper, do you see what's on the screen in front of
3 you as 88?

4 A. Yes, I do.

5 Q. And do you recognize this document?

6 A. Yes, I do.

7 Q. What generally is it?

8 A. This is a page. It's a part of Mr. Parker's Facebook
9 return.

10 Q. Your Honor --

11 A. This is a portion of a page.

12 Q. And was this provided by Facebook --

13 A. Yes.

14 Q. -- in response to the search warrant?

15 A. Yes, this was.

16 MS. AHMED: The government moves to admit Exhibit 88,
17 Your Honor.

18 THE COURT: Any objection to Exhibit 88?

19 MR. MARCHESE: No objection, Parker.

20 MR. TANASI: None from Stewart, Your Honor.

21 MR. LEVENTHAL: No objection.

22 MR. PEREZ: No objection Lovelien.

23 THE COURT: All right. Exception -- exception.

24 Exhibit 88 will be admitted. You may go ahead and
25 publish it to the jury.

Sarah Gibson Draper - Direct

1 MS. AHMED: Thank you.

2 (Exhibit 88 admitted.)

3 BY MS. AHMED:

4 Q. Now, Agent Draper, once it's visible to the jury, which I
5 believe they can all see it now, can you explain what's
6 depicted on the screen generally and then we'll talk about the
7 actual post?

8 A. Certainly. So, the top banner is titled Facebook Business
9 Record, that top blue banner. And it's page 349 of the PDF I
10 was talking about earlier. So, that's what their returns come
11 back as. Again, doesn't look similar to -- if you were
12 actually on a page -- on a computer looking at a Facebook page.

13 And then this is a text -- being highlighted here is
14 a text message written by the user, and then with a title and a
15 URL, which is a link to some other document.

16 Q. So, going -- going line by line looking at this --

17 A. Yes.

18 Q. -- this is a single post that appeared on Mr. Parker's
19 Facebook page; is that correct?

20 A. Yes, that's correct.

21 Q. And Facebook generally, can you explain to the jury what
22 are the different kind of posts that can be made?

23 A. Well, there are -- there are wall posts, there are private
24 messages, and then there's sometimes responses back and forth.

25 Q. So, there might be --

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1 A. Right.

2 Q. -- something that's publicly available on their Facebook
3 page --

4 A. Right.

5 Q. -- and underneath that there could be comments?

6 A. There could be comments, correct.

7 Q. Now, looking at this, is this a wall post that was
8 generally -- that would have been on the Facebook page itself?

9 A. Yes. Yes.

10 Q. And can you -- looking at the first line, where it says
11 "date created," what is that?

12 A. So, that is the UTC date, which is the Universal Time
13 Coordinated, the former Greenwich Mean Time or Zulu Time. Kind
14 of the international clock.

15 That says 0:22 UTC. In Idaho, Idaho is Mountain Time
16 Zone, so it's six hours prior to that. So that would have been
17 actually posted approximately 8:22 p.m. the day prior. So, on
18 April 9th. So just subtract six hours from that.

19 Q. So, it says April 9th, but you said it was actually --

20 A. Excuse me.

21 Q. -- the night prior?

22 A. April 8th, yes.

23 Q. So, this post was created and posted on the night of
24 April 8th; is that correct?

25 A. That's correct.

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1 Q. And then where it says "text" two lines below, do you see
2 that?

3 A. I do.

4 Q. And is that something that -- well, can you explain to the
5 jury what text means? What is it?

6 A. It would have been something the user would have written.

7 Q. So, presumably the account holder would enter that --

8 A. The account --

9 Q. -- information?

10 A. -- holder. Correct.

11 Q. And then where it says "title" below that, do you see
12 that?

13 A. Right.

14 Q. And what is that information?

15 A. That is describing whatever attachment might -- or
16 hyperlink, if you will, the URL that's attached below, the
17 title describing that.

18 Q. And then below that, you see there's a URL. Do you see
19 that?

20 A. Yes.

21 Q. And again, can you explain to the jury just generally what
22 is that?

23 A. It's just a link -- link, kind of a unique address to link
24 to something that's been attached to that message.

25 Q. So, if you are reviewing this post on Facebook, could you,

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1 as the person looking at it, could you do anything with that
2 URL?

3 A. Presumably, since that's another Facebook account,
4 depending upon their security settings. But, in general, yes,
5 you can. If you get the business return, those are all active
6 hyperlinks. Someone reviewing it can click on that, and it
7 will pull up whatever is attached.

8 Again, this is another Facebook account, so they
9 might have security settings that would prohibit someone else
10 from looking at that. But in general, that's a -- it's
11 hyperlinked, so it's kind of embedded in there. If you click
12 on it, you can go to that.

13 Q. And in this case, what is the URL that was being shared?

14 A. It was another Facebook posting from the Elko County
15 Lightfoot Militia.

16 Q. And what is the title of the post --

17 A. That is --

18 Q. -- that was being shared?

19 A. -- Northern Nevada Lightfoot Patriot.

20 Q. And generally, can you explain to the jury what are
21 Lightfoot Patriots?

22 A. Oh, Lightfoot would be a militia organization. They do
23 military-style tactical training, and there's -- there's
24 militias throughout the US organized in different fashions.

25 Q. And this one was about the Northern Nevada one; is that

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1 correct?

2 A. Correct. Uh-huh.

3 Q. And what then was the text that was put in in association
4 with this URL that was put by the account?

5 A. It says "Got a neighbor in some trouble down in Nevada.
6 What are you going to do when the shooting starts?"

7 Q. And then again, this is -- which account holder is this?

8 A. This is Mr. Parker.

9 MS. AHMED: You can take that down.

10 THE COURT: Hold on a second. I have a question. If
11 we put that back up.

12 So, is it your understanding that he's posting two
13 different links or one link?

14 THE WITNESS: Your Honor, my understanding is he's
15 posting the one link.

16 MS. AHMED: Your Honor, I can follow up on that.

17 THE COURT: All right. Because --

18 BY MS. AHMED:

19 Q. So, the way that it's --

20 THE COURT: -- the way that it's described on the
21 page, I think, might be misleading to what --

22 BY MS. AHMED:

23 Q. Understood, so --

24 THE COURT: Or confusing to me.

25

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1 BY MS. AHMED:

2 Q. -- you described date created. Do you see that where it
3 says date created?

4 A. Yes.

5 Q. And the next line says "link." Do you see that?

6 A. Yes.

7 Q. And in the link, where it says "link," what information is
8 being provided on that line?

9 A. So, that is the -- the www.facebook.com would just be
10 Facebook's general URL address. The slash ericej.parker would
11 be his accounts, and that would be under his posts section.
12 And then that would be a -- an identifier for this particular
13 post.

14 Q. So, is this essentially internal information that Facebook
15 attaches to a post an individual makes?

16 A. Right.

17 Q. And then if you were to follow that link, depending on the
18 user's privacy settings, you could go to that post; is that
19 right?

20 A. That's my understanding.

21 Q. Now, that was not the content of what was put on the
22 Facebook page on April 8th; right? That -- that top link line,
23 that's not a part of the content that was displayed?

24 A. Right. That's my understanding, right. Uh-huh.

25 Q. So, what's actually displayed by the user on Facebook is

Sarah Gibson Draper - Direct

1 the text and the title and the URL; correct?

2 A. Correct. Yes.

3 THE COURT: The link is not the link. Is that what
4 you you're saying? Right? So, when it says "link," that's not
5 really the link that is on the Facebook page.

6 THE WITNESS: Your Honor --

7 THE COURT: That's a link to the page.

8 THE WITNESS: -- that is my understanding. Correct.

9 THE COURT: The link is actually going to come up
10 under URL; correct?

11 MS. AHMED: Correct. Well, I'm not testifying.

12 Q. Is that correct?

13 A. That's my understanding, yes.

14 MS. AHMED: Okay. Thank you. Your Honor, may we
15 publish then what's already been admitted as 89? Or, it was
16 Government's 89. I don't know if it was admitted as a defense
17 exhibit.

18 COURTROOM ADMINISTRATOR: 89 is admitted.

19 MS. AHMED: Your Honor, may we publish what's been
20 admitted as 89?

21 THE COURT: Yes.

22 MS. AHMED: Thank you.

23 Q. Agent Draper, looking at 89, can you tell the jury what
24 this is?

25 A. So, this is another post with another URL hyperlinked to

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1 something else that Mr. Parker has posted onto his page. It
2 has a -- so, starting at the bottom, it has a unique title, and
3 he did not attach any text to this.

4 Q. So then going back up to the top, where it says "date
5 created; on what date was this post made?

6 A. This would be April 10th of 2014.

7 Q. And the morning of April 10th?

8 A. Yes, approximately 9:32 in the morning in Mountain Time.

9 Q. And again, where it says "link," that's not a part of the
10 content of the post; correct?

11 A. Right.

12 Q. But then going to a line below it, it says "summary." Do
13 you see that?

14 A. Yes.

15 Q. And based on your investigation, what is the summary line?
16 What's contained in that?

17 A. Information about whatever is attached. So, if -- someone
18 else might have written that. If the user wrote something, it
19 would show up under "text."

20 Q. So where it says "summary," that's a summary that's
21 associated with whatever has been shared?

22 A. Yes.

23 Q. Now, here can you read what the summary says?

24 A. "Things are getting heated near the rural Nevada ranch of
25 Cliven Bundy. Mr. Bundy has called out for help, and now it

Sarah Gibson Draper - Direct

1 appears more and more unorganized militia are going to Bundy's
2 ranch. What is un-" -- and then it drops off from there.

3 Q. So, only a certain amount of the text associated with the
4 attachment shows up in the summary section; is that correct?

5 A. Right. Correct.

6 Q. Now, here what title -- what was the title of the item
7 that was being attached to the post?

8 A. "Militias Mobilizing to Support Embattled Clark County
9 Rancher and Clash with Federal Rangers."

10 Q. And then below that where it has URL, can you read that
11 information?

12 A. Yes. That is a link to a video on -- called Prepperchimp,
13 from April 9th, 2014, titled "Militias Mobilizing to Support
14 Embattled Clark County Rancher in Clash with Federal Rangers."

15 Q. And so this is a post that was being shared on
16 Mr. Parker's Facebook account's --

17 A. Yes.

18 Q. -- wall?

19 A. Correct.

20 Q. On April 10th, 2014?

21 A. Yes.

22 Q. And you indicated that there was a video associated with
23 this link; is that correct?

24 A. Yes.

25 Q. And have you previously reviewed that video?

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1 A. Previously. It's been a few months.

2 Q. And was that actually a video embedded in a news article
3 that would come up when you pulled up this link?

4 A. Yes.

5 MS. AHMED: And, Your Honor, may we go Exhibit 37,
6 which has been previously admitted?

7 THE COURT: Before we leave Exhibit 89, could the
8 witness please clarify if this is posted by the host of the
9 website, by Parker, or by someone else on his website? I
10 apologize if she already said that, but I missed it.

11 THE WITNESS: Your Honor, my belief is that he had
12 posted this onto his web -- onto his Facebook page.

13 BY MS. AHMED:

14 Q. And just to follow up on that, Agent Draper, looking at a
15 Facebook account, can -- if someone -- if someone has a
16 Facebook account, can another Facebook holder put information
17 on their wall?

18 A. I'm sorry?

19 Q. Can another Facebook holder post information to their
20 publicly available wall?

21 A. Yes.

22 Q. Now, when looking at the Facebook business records, are
23 you able to differentiate, looking at them, if the post was
24 from another user versus that -- the actual account holder?

25 A. I believe so. But right now, honestly, I couldn't explain

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1 right without seeing it, the difference. So --

2 Q. When you're looking at the Facebook account openly, can
3 you see the difference between --

4 A. Yes.

5 Q. -- a user posting and another user?

6 A. You can tell when you are looking at it openly.

7 MS. AHMED: And, Your Honor, may I move to the next
8 exhibit?

9 THE COURT: So this is just a summary? This isn't
10 the actual information. Is the next exhibit --

11 MS. AHMED: So --

12 THE COURT: -- explaining this better.

13 MS. AHMED: So, the next exhibit would be the video
14 that she referenced was associated with the article.

15 THE COURT: All right.

16 MS. AHMED: So, then may we publish, Your Honor,
17 Exhibit 37?

18 THE COURT: Yes.

19 BY MS. AHMED:

20 Q. And Agent Draper, so when you went to the -- when you
21 followed that link, it would go to a news article; is that
22 correct?

23 A. Right.

24 Q. And then embedded in that was a video?

25 A. Correct.

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1 Q. And have you previously reviewed Exhibit 37?

2 A. Yes.

3 Q. And is it that video that would be embedded in that
4 article?

5 A. You know -- yes, this is the video. I don't know it by
6 exhibit number, but this is the video.

7 MR. MARCHESE: I'm going to object as for to
8 foundation, where and when she reviewed this.

9 BY MS. AHMED:

10 Q. And how long ago did you review that link?

11 A. Probably in this spring. It would have been around April,
12 I believe, time frame.

13 MS. AHMED: Your Honor, may we play the video?

14 THE COURT: Yes, you may.

15 (Exhibit 37 being played.)

16 BY MS. AHMED:

17 Q. And --

18 A. That might have been March when I last reviewed it. I
19 don't recall the exact month.

20 Q. Now, just to clarify, at this point, when was the search
21 warrant submitted to Facebook, generally in --

22 A. In July of 2014.

23 Q. And when were the documents provided back from Facebook,
24 generally?

25 A. Probably in August, September of 2014.

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1 Q. And --

2 A. Within the latter.

3 Q. When you initially did your review of the documents
4 provided, was it close in time to when the documents were
5 returned from Facebook?

6 A. Yes. Yes. It took a while to go through everything. A
7 few months.

8 Q. So, is it -- would it be correct then that sometime
9 between when you received the documents and the present is when
10 you followed that link that was exhibited in --

11 A. That's --

12 Q. -- the provided link?

13 A. That's correct. Yes.

14 MS. AHMED: Now, Your Honor, may we then show the
15 witness what's been previously marked as Exhibit 90?

16 THE COURT: Yes, you may.

17 BY MS. AHMED:

18 Q. Agent Draper, do you recognize what's contained in
19 Exhibit 90?

20 A. This would be a -- a status update posted by Mr. Parker.

21 Q. And is this a business record that was provided from
22 Facebook --

23 A. Yes.

24 Q. -- in response to the search warrant?

25 A. Yes.

Sarah Gibson Draper - Direct

1 MS. AHMED: Your Honor, government moves to admit
2 Exhibit 90.

3 MR. TANASI: No objection, Parker.

4 MR. MARCHESE: None from Stewart, Your Honor.

5 MR. LEVENTHAL: No objection.

6 MR. PEREZ: No objection, Lovelien.

7 THE COURT: All right. Exhibit 90 will be admitted.

8 MS. AHMED: And may we publish?

9 THE COURT: Yes, you may.

10 BY MS. AHMED:

11 Q. Now, Agent Draper, looking at Exhibit 90, can you just
12 explain to the jury what it means by updated his status or the
13 status update? Where -- where would it have been displayed on
14 Facebook?

15 A. It's displayed somewhere on his page.

16 Q. It would be something that was openly displayed depending
17 on his privacy settings?

18 A. Depending upon his privacy settings, right.

19 Q. Now, meaning this is not a private message between him and
20 another user; is that correct?

21 A. Right. Correct.

22 Q. And what time was this particular post made? What date
23 and time? Excuse me.

24 A. This would be April 10th of 2014 at approximately
25 2:53 p.m., Mountain Time, Idaho.

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1 Q. So, in the afternoon of April 10th; correct?

2 A. Yes.

3 Q. And what -- where it says "story," do you see that?

4 A. Yes.

5 Q. And is that -- what -- just generally, what information is
6 provided in that line?

7 A. Just tells what he did. It says, "Eric "EJ" Parker
8 updated his status."

9 Q. And then "message," do you see that line?

10 A. Yes, I do.

11 Q. And what information is contained there?

12 A. Something he would have posted written. And it says "Does
13 anybody know anybody in the Nevada militia?"

14 Q. And, so, looking at his Facebook account, just going into
15 your computer and looking at it, would you see that last
16 message line? Is that what you would see?

17 A. Yes. Yes, if you had the right accesses.

18 Q. So, on April -- the afternoon of April 10, 2014, Eric
19 Parker's account, there was a message posted on it that says,
20 "Does anyone know anybody in the Nevada militia?"

21 A. That's correct.

22 MS. AHMED: Your Honor, may I move on to Exhibit 91?

23 THE COURT: Yes.

24 MS. AHMED: And may we just publish that to the
25 witness and counsel.

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1 Q. Agent Draper, do you see Exhibit 91?

2 A. Yes, I do.

3 Q. And is this another page that you were provided by
4 Facebook in response to the search warrant?

5 A. Yes, this is part of their business records.

6 Q. And are these posts that were made on Eric Parker's
7 Facebook account?

8 A. Yes.

9 MS. AHMED: Your Honor, the government moves to admit
10 Exhibit 91.

11 MR. TANASI: No objection, Stewart, Your Honor.

12 MR. MARCHESE: And just for point of clarification,
13 that has two posts on it, Exhibit 91?

14 MS. AHMED: Can we move out of the --

15 MR. MARCHESE: That's fine. I was just making sure I
16 had the same exhibit. No objection, Parker.

17 MR. LEVENTHAL: No objection.

18 MR. PEREZ: No objection, Lovelien.

19 THE COURT: All right. So, Exhibit 91 will be
20 admitted. You may go ahead and publish it to the jury.

21 (Exhibit 91 admitted.)

22 BY MS. AHMED:

23 Q. And can we just start at the bottom, or can we move out of
24 the zoom in, please? Thank you.

25 Again, Agent Draper, there's more than one post that

Sarah Gibson Draper - Direct

1 appears on this page; is that correct?

2 A. Yes, that's correct.

3 Q. Now, looking at the page, in what order, chronologically,
4 are these posts provided?

5 A. Reverse. So, the older one is at the bottom. The newer
6 one at the top.

7 Q. So, can we then look at the bottom post, please?

8 Now, turning your attention to this bottom post,
9 which has been zoomed out, on what date and approximate time
10 was this posted?

11 A. April 11th, so subtracting six hours would have been
12 approximately 7:30 -- 6:30 p.m. on April 11th, and --
13 April 11th of 2014.

14 Q. So, it was posted on the evening of April 11th --

15 A. Yes.

16 Q. -- is that correct?

17 A. That's correct.

18 Q. And again, this comes from Eric Parker's Facebook account?

19 A. Yes.

20 Q. And what -- what was the content of the post, just
21 generally? Is it a status update or is he sharing content?

22 A. He's sharing other's content.

23 Q. And, so, what is it that he's sharing?

24 A. A link to an article titled "Armed Militias Head to Nevada
25 Ranch as Populous Showdown with Federal Government Teeters on

Sarah Gibson Draper - Direct

1 Brink of Violence, Bloodshed."

2 Q. So, looking at the field of "title," is that where you see
3 what you were just reading?

4 A. That's -- yes. That's the summary. I read the full title
5 from the URL. It's hyphenated at the bottom.

6 Q. Now, was the summary also provided with this post?

7 A. Yes, there was a summary that was provided.

8 Q. And what does the summary say?

9 A. It says, "Nevada rancher Cliven Bundy, Bundy's
10 decades-long battle against the federal government over grazing
11 rights has heated to the point where militia groups have
12 joined," and it cuts off.

13 Q. And you indicated that you were reading the rest of the
14 title had been cut off from the URL section; is that correct?

15 A. Yes, that's correct.

16 Q. And then again, in the URL, is there a hyperlink that was
17 provided?

18 A. It is to a website "America's Freedom Fighters."

19 Q. So, the name of the website is
20 "Americasfreedomfighters.com?"

21 A. Yes. Correct.

22 Q. And did you yourself follow this link?

23 A. I -- I don't recall.

24 Q. But that's the link that is provided --

25 A. Right.

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1 Q. -- with the returns?

2 A. That is the link that is provided there.

3 Q. And again, it's to a news article; is that --

4 A. Yes.

5 Q. -- correct?

6 A. Correct.

7 MS. AHMED: Your Honor, may we move to Exhibit 92?

8 THE COURT: Yes, you may.

9 MS. AHMED: And just for counsel and the witness,
10 please.

11 Q. So, Agent Draper, looking at Exhibit 92, is this also a
12 document provided from Facebook in response to the search
13 warrant?

14 A. Yes, this is.

15 Q. As a part of their business records?

16 A. Yes, as part of the business record. Correct.

17 Q. And this -- is this a post related to Eric Parker's
18 Facebook account?

19 A. Correct.

20 MS. AHMED: Your Honor, the government moves to admit
21 Exhibit 92.

22 MR. MARCHESE: No objection, Parker.

23 MR. TANASI: None from Stewart, Your Honor.

24 MR. LEVENTHAL: No objection, Your Honor.

25 MR. PEREZ: None from Lovelien.

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1 THE COURT: All right. Exhibit 92 will be admitted.
2 You may go ahead and publish it to the jury.

3 BY MS. AHMED:

4 Q. Agent Draper, can you explain to the jury what generally
5 is this post that's displayed on Exhibit 92?

6 A. This would be a message authored by the account holder,
7 Eric "EJ" Parker, sent to the recipient page of Support Cliven
8 Bundy.

9 Q. So, Eric Parker -- the Facebook account of Eric Parker,
10 there was a message from that Facebook account to another
11 Facebook account?

12 A. Yes.

13 MR. MARCHESE: Objection. Asked and answered.
14 Leading.

15 THE COURT: I think it bears clarifying, so
16 overruled.

17 BY MS. AHMED:

18 Q. So, that was a message posted from Eric Parker's --

19 A. Yes.

20 Q. -- Facebook account to another Facebook account called
21 Support Cliven Bundy?

22 A. Yes. Correct.

23 Q. And what date was that message posted?

24 A. So this would be, in Nevada time now, Pacific Time,
25 approximately seven hours prior to the UTC time, which would be

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1 approximately 8:34 p.m.

2 Q. So, in Nevada time, it would have been 8:30 p.m. and --
3 or, in other words, the night of April 11th?

4 A. Yes, I'm sorry. April 11th. 8:30 p.m. on April 11th,
5 2014.

6 Q. And what was the message that was posted?

7 A. The message says, "We are going to be showing up late
8 tonight. Is that okay at around 11:30?"

9 Q. And you were reading that from where it says "body;" is
10 that correct?

11 A. I'm sorry. Yes, it's from the part that says "body."

12 MS. AHMED: Your Honor, may we move to Exhibit 93?

13 THE COURT: I'm sorry. No, I have another question.
14 So, how do you know that it's Nevada time and not --

15 THE WITNESS: Oh, well, I -- based upon my
16 investigation, he was in Nevada by that time. So -- or
17 somewhere -- you know, thank you, Your Honor. He was in
18 transit between Idaho and Nevada. So it could still be
19 actually Mountain Time.

20 So, it would be six or seven hours prior to that UTC
21 time, so either approximately 9:34 p.m., if still in Mountain
22 Time, or 8:34 p.m. if over into Pacific Time.

23 BY MS. AHMED:

24 Q. In any event, it's posted the night of April 11th though;
25 is that correct?

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1 A. Yes, that's correct.

2 THE COURT: And where it says "deleted, false," what
3 does that mean?

4 THE WITNESS: Your Honor, that means when the return
5 was provided from Facebook, this post was still active. It had
6 not been deleted by the user.

7 THE COURT: Okay.

8 THE WITNESS: Previously.

9 THE COURT: Thank you.

10 THE WITNESS: Thank you.

11 BY MS. AHMED:

12 Q. And based on your investigation, did Eric Parker travel to
13 Nevada on the night of April 11th?

14 A. Yes.

15 Q. Did he travel alone or with others?

16 A. With others.

17 MR. LEVENTHAL: Objection. Leading.

18 MR. TANASI: Stewart joins.

19 MR. MARCHESE: Parker joins.

20 THE COURT: Overruled.

21 MR. PEREZ: Lovelien joins.

22 BY MS. AHMED:

23 Q. Did he travel alone or with others?

24 A. He traveled with two others.

25 Q. And who did he travel with?

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1 MR. MARCHESE: Objection. Foundation.

2 THE COURT: Do you want to rephrase it? Do you know
3 who he traveled with? How do you know who he traveled with?

4 MS. AHMED: I can, Your Honor.

5 THE COURT: Not who did he travel with?

6 BY MS. AHMED:

7 Q. Do you know if he traveled with others?

8 A. I do know that he traveled with others. And based upon my
9 investigation, review of media and social media, I know those
10 other individuals to be Mr. Drexler and Mr. Stewart.

11 MS. AHMED: Your Honor, may we move to Exhibit 93?

12 THE COURT: Yes.

13 BY MS. AHMED:

14 Q. And just for the witness and counsel.

15 Agent Draper, do you see Exhibit 93?

16 A. Yes, I do.

17 Q. Is that another page that was provided by Facebook in --

18 A. Yes, this is another Facebook Business Record return with
19 what we would call mobile updates. So, posts made from
20 presumably a mobile device.

21 Q. And were these -- and this is a page provided in response
22 to the Eric Parker search warrant?

23 A. Yes, this is -- this was in Mr. Parker's search warrant.

24 MS. AHMED: Your Honor, the government moves to admit
25 Exhibit 93.

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1 THE COURT: Any objection to 93?

2 MR. TANASI: None from Stewart, Your Honor.

3 MR. MARCHESE: None from Parker.

4 MR. LEVENTHAL: No objection.

5 MR. PEREZ: No, objection Lovelien.

6 THE COURT: All right. Exhibit 93 is admitted. You
7 may go ahead and publish it for the jury.

8 (Exhibit 93 admitted.)

9 BY MS. AHMED:

10 Q. Now, Agent Draper, I'm drawing your attention to
11 Exhibit 93. Looking at Exhibit 93, how many posts are visible
12 on this exhibit?

13 A. There are two posts visible.

14 Q. And you were stating earlier something about a mobile
15 upload; is that correct?

16 A. That's correct.

17 Q. Can you explain to the jury generally what you mean by
18 that -- that mobile upload?

19 A. Generally -- generally, that's if someone makes an update
20 on a mobile device.

21 Q. And what are mobile devices?

22 A. Oh, sorry. Like a cell phone, mobile phone.

23 Q. And how do you know that these posts are made -- were made
24 by a mobile device?

25 A. So, on the left-hand side, there's four headers there.

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1 And one -- on each post, and one of the headers says "mobile"
2 and the Facebook record -- business records says "true."

3 Q. And so based on your investigation, is that indicative
4 that this post was made with a mobile phone?

5 A. Yes.

6 Q. Now, you indicated that there were also other headers. Do
7 you see those?

8 A. Yes, I do.

9 Q. And can you just -- looking at the bottom post
10 specifically, if we can zoom in just on the bottom one.

11 Where it says "posted," what information is provided
12 in that header?

13 A. Under "posted" would be the date and time that was posted.
14 So in this circumstance, this would be April 12th, 2014. And
15 now approximately seven hours, because I know Mr. Parker was in
16 Nevada on that day. So, approximately 11:24 a.m. Pacific Time.

17 Q. So, this mobile post was made at about 11:24 a.m. on
18 April 12th, 2014?

19 A. Yes, that's correct.

20 Q. And you indicated that you know that Mr. Parker was in
21 Nevada at that time. How do you know that?

22 A. Through my investigation, I know he traveled down the day
23 before and was still there until later that evening in Nevada.

24 Q. Did you see photos and videos of him in Nevada --

25 A. Yes.

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1 Q. -- on April 12th?

2 A. Yes, I've seen -- I've seen both.

3 Q. That placed him in Nevada at this time?

4 A. Yes.

5 Q. Based on your investigation, at approximately 11:30, what
6 area was he in in the morning on April 11th -- excuse me -- on
7 April 12th?

8 A. The area of Bundy Ranch.

9 Q. And where it says "status," do you see that header on the
10 left side?

11 A. Yes.

12 Q. And what information is provided in that section?

13 A. This would be something he posted. Shall I read it?

14 Q. On -- so, the account holder --

15 A. The account holder --

16 Q. -- posted this on --

17 A. The account holder would have posted this.

18 Q. On Facebook?

19 A. Right. On Facebook.

20 Q. And so this is posted on the publicly visible section of
21 the Facebook page; is that correct?

22 A. Again, depending upon their security settings, but it
23 wouldn't be -- it wouldn't be like a private message, no.

24 Q. And what -- and can you -- yes, can you read that to the
25 jury?

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1 A. Yes. This says, "Bundy gave the sheriff one hour to
2 disarm the BLM." Dot, dot, dot. "He did not reply. We are
3 now going to free the cattle by any means. The sheriff claimed
4 that the BLM is standing down but offered no proof. This is
5 when Mr. Bundy gave him the 'do it or else.' We will not be
6 lied to."

7 Q. And in the course of the investigation, have you reviewed
8 videos of events taking place on April 12th, 2014, in that
9 Bundy Ranch area?

10 A. Yes, I have.

11 Q. Including speeches that were made that day?

12 A. Yes.

13 Q. And speeches -- a speech made by the sheriff of Clark
14 County?

15 A. I'm aware of the speech, yes.

16 Q. And based on your investigation, was this post made after
17 that speech?

18 A. That is my understanding. I don't know exactly what time
19 that speech was made, but that is my understanding.

20 Q. Now, there's another post on this page as well; correct?

21 A. Yes.

22 THE COURT: Let's go ahead and take a break, because
23 it's already 12:10. I was waiting for -- I don't think we're
24 going to get any closer to a better time to just take our
25 break.

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1 So, it's 12:11. We'll plan to take our lunch break
2 until 1:15. During that time, I do remind the jury.

3 Please do not discuss this case with anyone nor
4 permit anyone to discuss it with you. You may speak to your
5 fellow jurors about other things, but not about this case.

6 Please do not read, or listen to, or view anything
7 that touches upon this case in any way, and please do not
8 perform any investigation or independent research about
9 anything that touches upon this case in any way.

10 Please write down your questions. And do not form
11 any opinion until after you have been provided all of the
12 testimony, evidence, I will provide you the jury instructions,
13 with the legal instructions, the law to be applied to the facts
14 as you find them. Then you will hear closing arguments, and
15 then you will begin your deliberative process, which is the
16 sharing of your opinions, and views, and voting, and so forth.
17 So, not until then should you form any opinion.

18 So, let's go ahead and stand for the jury so they may
19 be excused. We will welcome them back at 1:15. And after they
20 exit, then Special Agent Draper, you may also take your lunch
21 break. And we'll ask you to be back here by 1:15 as well.

22 (Jury out.)

23 THE COURT: Off record.

24 (Recess, 12:12 p.m. Resumed 1:19 p.m. Jury out.)

25 COURTROOM ADMINISTRATOR: All rise.

1 THE COURT: Thank you. You may be seated.

2 Can we go ahead and bring in the jury?

3 MS. AHMED: Your Honor, I just wanted to raise one
4 issue before we did so --

5 THE COURT: All right.

6 MS. AHMED: -- in the hope that we could resolve this
7 outside the presence of jury. But there's two exhibits that
8 the government would seek to put into evidence with Agent
9 Draper, Exhibit 95 and 102.

10 And in those two exhibits, we have redacted some
11 content consistent with the in limine regarding trying to put
12 in a self-defense theory when there's been no proffer.

13 So, in Exhibit 95, this is a post made to Eric
14 Parker's Facebook account, and -- can we bring it up? Your
15 Honor, if you want, we can publish it on the screen --

16 THE COURT: Okay. Thank you.

17 MS. AHMED: -- so you can see it, with the redaction
18 to explain what's under the redaction.

19 So, Exhibit 59 is on the screen, Your Honor. And
20 it's just three comments. And the last one is Eric Parker's
21 comment. And what's been redacted is where he goes on to say
22 "Now, Steve, he's got balls. Head up -- he's got balls. Head
23 up above that concrete telling me exactly what they were doing
24 after the snipers had been green lighted."

25 So, we took out that whole sentence, just so there

1 would be no confusion about, you know, not just taking out the
2 snipers being green lighted, we took out the whole sentence so
3 the previous part would be complete, and there wouldn't be any
4 additional verbiage that would be improper.

5 THE COURT: Any objection from the defense?

6 MR. MARCHESE: Yes, we object, Your Honor. It's the
7 rule of completeness. The last sentence beginning with "now"
8 and going to -- ending in "green lighted" is basically an
9 explanation as to why my buddy, Steven Stewart, had to relate
10 to me what was going on through binoculars.

11 I believe it's misleading to the jury to leave out
12 that last sentence, because by leaving that last sentence out,
13 it doesn't give the full explanation as to what Mr. Stewart was
14 doing what he was doing.

15 MS. AHMED: Your Honor, I think that the post, with
16 that redaction, is still complete. It's not misleading in any
17 way, which is all that the rule requires, is that it be -- not
18 cause confusion at all. It doesn't require additional.

19 And, clearly, that information about the sniper being
20 green lighted would be information that's irrelevant. It
21 doesn't go to any recognizable defense at this point, and so it
22 would be both prejudicial and irrelevant.

23 And I don't think -- I think -- or the government
24 would submit to the Court that the way it's been redacted, it
25 is still a whole statement on its own. It's not misleading.

1 THE COURT: All right. And then let's see, 102, what
2 is the redaction there?

3 MS. AHMED: Can we go to 102? It's on the screen,
4 Your Honor. It's a somewhat lengthy post, so I don't know if
5 the Court wants a moment to read it, and then I will explain
6 what's been redacted.

7 THE COURT: So, what is the line that's redacted?

8 MS. AHMED: So, at the -- the midway down the screen,
9 Your Honor, the line that was redacted reads, "Once they
10 threatened to kill everybody if the crowd did not disburse."

11 THE COURT: And this post is dated June 12th of 2015?

12 MS. AHMED: That's correct, Your Honor.

13 THE COURT: That's a year later.

14 MS. AHMED: That's correct. And Your Honor, there is
15 an additional redaction towards the bottom. That word was "And
16 he would be Millers away," referring, apparently, to Jared and
17 Amanda Miller who assassinated those two police officers
18 shortly after the Bundy Ranch incident. So, we redacted the
19 word "Millers."

20 THE COURT: All right. And is there an objection to
21 those two redactions on Exhibit 102?

22 MR. MARCHESE: Parker objects to the whole exhibit,
23 first of all. First, I don't know, beginning with Eric "EJ"
24 Parker, starting with "McVeigh," and then going down to
25 "decade," I think that's completely irrelevant and has nothing

1 to do with the facts of this case.

2 Obviously, Mr. McVeigh is a very polarizing name
3 slash force, so I don't see any reason why that should be
4 brought into this trial as it has nothing to do with the facts
5 at hand.

6 I'd also point out that the date of this post is
7 June 12th, 2015, over a year after this incident. Do have the
8 incidents in reference to the Bundy Ranch, but I don't see the
9 relevance there, given the fact that -- I mean, it's not in
10 dispute that Mr. Parker was there. So, based upon that, I
11 would say it's more prejudicial than probative.

12 And then, of course, we get into the 3%, Sugar Pine
13 Mine, after-the-fact post bad acts, which we argue are way more
14 prejudicial than probative and have nothing to do with the
15 facts at hand here.

16 THE COURT: All right. And, so, what's the
17 government's response to the relevance of 102, and why is it
18 more probative than prejudicial?

19 MS. AHMED: Your Honor, it's consistent with the --
20 obviously, the government noticed that we would be putting in
21 404(b) that the defendants continued to do what they did at
22 Bundy Ranch. That was the springboard, and then they continued
23 to participate in additional operations, specifically Parker.

24 And that they also were involved in the 3% for the
25 purpose of continuing this movement that they perceived them

1 themselves to be in that was opposed to public lands agencies.
2 And so it's all, as we argued in the motion, which -- and the
3 Court, I think, ordered that the 404(b) was permissible. That
4 this would all -- inextricably intertwined with the events of
5 the Bundy Ranch conspiracy, which was ongoing, but it's also
6 subsequent acts that are consistent with what they did at Bundy
7 Ranch.

8 And, so, we would -- it's relevant both for what he's
9 talking about in reference to the events of April 12, 2014, and
10 also in reference to the subsequent additional acts that they
11 participated in.

12 Your Honor, we'd also say that it's not -- it --
13 basically, he's discussing what he has accomplished in relation
14 to this movement that he's a part of, and he's comparing
15 himself to McVeigh. So, it's -- they are both in the same
16 movement. However, he feels that McVeigh didn't -- didn't do
17 what he's done, and he's explaining what it is that he has
18 done.

19 And so it would be consistent with our 404(b) notice
20 again, and it's all inextricably intertwined, because he's a
21 part -- he's in this conspiracy to do what he did on
22 April 12th and continued to do, and this is his explanation of
23 what that is.

24 THE COURT: All right. So, you're saying they are
25 relevant admissions. And under 404(b), what is -- what is it

1 probative for? Which of the exceptions does it fit?

2 MS. AHMED: Your Honor, we would -- we would -- as we
3 have argued, we would say that it goes -- it shows both his
4 motive, both with respect to Bundy Ranch, and then the
5 conspiracy -- the ongoing conspiracy. His motive, absence of
6 mistakes in terms of what happened on April 12th. He continues
7 to do it thereafter.

8 And -- and it goes, obviously, to his intent then on
9 April 12th and to the -- so, specifically, in relation to the
10 charges that are -- he's facing now, it would go to obviously
11 the greater conspiracy charge, the 372 conspiracy to interfere
12 and impede with federal officers, and his intent in relation to
13 all of the charges that there's no mistake in what he was doing
14 on April 12th, 2014.

15 MR. MARCHESE: Your Honor, I would argue that in
16 reference to all three of those 404(b) exceptions, they are not
17 relevant; because, first of all, you can't show someone's
18 intent back in April of 2014 by a post in which they made in --
19 this is June of 2015. Same thing as to his motive.

20 And then as to absence of mistake, if we were to use
21 that exception, it would be the absence of mistake at the Sugar
22 Pine Mine, not at the Bundy Ranch. Because once again, you
23 can't go back in time to show that Mr. Parker didn't make a
24 mistake on that day.

25 If they wanted to use it for Sugar Pine Mine, they

1 could, I would argue. But, at the same time, this is just bad
2 character evidence. They are just trying to show some post bad
3 act to conformity with the events of the Bundy Ranch in April
4 of 2012 or '14. Excuse me.

5 THE COURT: Why are you saying that you can't use a
6 post from 2015 to show his intent in 2014?

7 MR. MARCHESE: Because you can't go back in time to
8 know what someone's intent was.

9 THE COURT: But he's telling us. This is purported
10 to be an admission. It's a post that he made himself; right?
11 Did I miss that? Did I misunderstand that?

12 MS. AHMED: That is what it is, Your Honor.

13 MR. MARCHESE: Well, an admission, yes. I agree. If
14 someone says "I shot whoever, you know, a year ago," sure.
15 That -- I would agree with the Court on that.

16 But in reference to all this Sugar Pine Mine stuff,
17 what the -- I believe the government is arguing is they are
18 saying that that incident, whatever you want to call it,
19 protest that occurred, that is probative of my client's intent
20 at the Bundy Ranch.

21 And that -- that's where I argue I don't believe that
22 I agree with their logic, because like I said, you can't go
23 back in time to show someone's motive or intent.

24 MS. AHMED: And, Your Honor, just to clarify, I mean,
25 although, of course, I know you've read the post, Your Honor.

1 But for the record, he's saying -- he's explaining that half a
2 year before Bundy Ranch, he and his friends began to train for
3 failure of government.

4 They then saw the opportunity at Bundy Ranch. They
5 were successful there. Then they continued on to Sugar Pine
6 Mine and then to Oregon. So --

7 THE COURT: Well, the Court does find that it's
8 relevant. It is an admission. There's no other reason
9 provided why the admission wouldn't be relevant.

10 The information that's covered does relate to this
11 particular conspiracy time. The amount of time that was
12 charged in the superseding indictment for the counts in the
13 conspiracy, that overarching time does encompass this period.
14 And it is admissible 404(b) evidence to show motive, intent,
15 and absence of mistake.

16 However, I'm willing to give a limiting instruction
17 now and then again at the time of the jury instructions if the
18 defense would like me to do that.

19 MR. MARCHESE: In reference to the three exceptions
20 that the government proffered; the intent, motive or absence of
21 mistake?

22 THE COURT: Yes. That they are not to consider this
23 as evidence of character, but it is of limited use. And it's
24 only to be considered for purposes of determining the motive,
25 absence of mistake, and intent of the Defendant Parker.

1 MR. MARCHESE: Okay. Obviously, I would assume next
2 week, week after, we will get together on jury instructions.
3 So, I'll try to fashion something, somewhat of a standard stock
4 instruction for 404(b) stuff. So, I'll prepare something and
5 get to it the government. Hopefully we can agree on it.

6 THE COURT: And do you want me to give something
7 during as well or just at the end?

8 It's a strategic decision on your part. It either
9 calls the attention to --

10 MR. MARCHESE: Well, it's coming in.

11 THE COURT: -- to the exhibit if I give the
12 instruction contemporaneously, or it might help to mitigate the
13 effect if I give the instruction contemporaneously. It's
14 really up to you.

15 MR. MARCHESE: Your Honor, I would actually ask that
16 you just ask that it be brought in for those three purposes.
17 And then at the time of jury instructions, I will probably
18 draft something that can also be submitted.

19 THE COURT: All right. So, you don't want a
20 contemporaneous limiting instruction to the jury when that
21 exhibit is admitted?

22 MR. MARCHESE: Actually, I would, if possible. And
23 then memorialize it in a jury instruction, or can I just get
24 one or the other?

25 THE COURT: No, we can do both.

1 MR. MARCHESE: Okay.

2 THE COURT: You can have both.

3 MR. MARCHESE: And then in reference to the first
4 four sentences, talking about Mr. McVeigh, Your Honor --

5 THE COURT: Yes.

6 MR. MARCHESE: -- would the Court consider redacting
7 that?

8 THE COURT: What's the government's position on that?

9 MS. AHMED: Your Honor, we would object to that
10 redaction, because the context of this post is that McVeigh --
11 he's comparing his accomplishments to McVeigh's accomplishments
12 or his perceived lack of accomplishments.

13 But they were both in this moment together that he
14 attached -- McVeigh's actions attached a stigma to the
15 movement, whereas Parker pushed the movement forward is the
16 context. And so it needs that context, and we would object to
17 that redaction.

18 THE COURT: So, is it the defense's position that
19 it's overly prejudicial for the limited probative effect?

20 MR. MARCHESE: Well, I disagree with the government's
21 interpretation. But even if I did, I would still say that it's
22 overly prejudicial.

23 You still can get in the facts that the government is
24 seeking to elicit by redacting those four sentences. I mean,
25 we're talking about an individual who is considered, in many

1 lights, as, you know, just an absolutely horrible human being.
2 He was given the death penalty.

3 And now the government is basically saying that my
4 client is comparing himself and putting himself in the same ilk
5 as this individual who, by all accounts -- I mean, everyone,
6 even I'm sure the government and the defense would agree that
7 he's a horrible individual.

8 So, I just think that to even use this individual's
9 name is overly prejudicial. Just like I think the government
10 even agrees to my point, because they redacted out the Millers.
11 And it's no right -- no less right or wrong that he killed two
12 police officers, but McVeigh killed way more than two.

13 THE COURT: All right. So, what is the distinction
14 that the government makes between the Millers and the McVeigh
15 at the top of the line?

16 MS. AHMED: Your Honor, it's really the context of
17 the post. He's discussing McVeigh; A, being set up by the FBI
18 first, but also that he was a part of the same movement that
19 Parker was in. But that he attached a stigma to the movement
20 by, I guess, getting it wrong, whereas Parker has done it
21 right.

22 If that's -- when you read the post, you need the
23 context of the McVeigh top four lines. Whereas the Millers,
24 you don't need that. That's at the very, very end. It's the
25 last couple words, and it doesn't give context to the whole

1 post.

2 And, Your Honor, additionally, if you read the
3 content of the post, you will see that he's essentially
4 adopting the actions of McVeigh in that he's a part of -- and
5 rejecting the actions of the Millers.

6 THE COURT: Well, that's true. He's bragging about
7 the vetting. Keeping away any would-be Millers, but at the
8 top, he -- his mention to McVeigh is that he attached a stigma
9 to the movement for a decade.

10 MS. AHMED: And, Your Honor, also we had redacted the
11 Millers, because we had voluntarily represented to the Court
12 prior to the previously trial or in the course of the
13 litigation that we would not be eliciting any information about
14 the fact that the Millers were also present at the Bundy Ranch
15 and then went on to do what they did.

16 So, we had already -- we had conceded we would not go
17 into that. Or offered.

18 THE COURT: All right. Well, I think that does
19 clarify the probative value of keeping it in.

20 I agree with the defense that there is a prejudicial
21 effect, but it does not seem to be outweighed by the probative
22 effect.

23 So, the Court doesn't find that 403 requires
24 exclusion of Exhibits 95 or 102.

25 MR. TANASI: Your Honor, if I may be heard on 95.

1 THE COURT: Well, actually, that was going to be my
2 next question for the government is, so, are you moving to
3 admit these only as to Defendant Parker or as to all
4 defendants?

5 MS. AHMED: Your Honor, we would be moving to admit
6 them as to all defendants. It's -- again, these are statements
7 both that are made during the ongoing conspiracy and in
8 furtherance of the ongoing conspiracy in that he's both -- in
9 publicizing what he's done, and in bragging about what he's
10 done, and in talking about how he's done it with the 3%, this
11 is, again, informing other people about what they've
12 accomplished and also recruiting people to that.

13 And it's -- also sends a message to these lands
14 agencies, which is really the goal of the conspiracy, which is
15 that they should not be doing what they are doing. And so by
16 making these public statements, they are furthering that
17 conspiracy by publicly informing these agencies of their
18 actions that they have done, and that they will continue to do
19 them.

20 We would ask that they both be admitted as to all the
21 defendants under 801(d)(2)(E).

22 MR. MARCHESE: Your Honor, I think I might have
23 misheard. But in reference to the government saying that the
24 goal of the conspiracy was to what?

25 MS. AHMED: Keep -- keep the BLM from doing their

1 jobs on public lands and other public lands agencies.

2 MR. MARCHESE: I would argue that the indictment says
3 otherwise. It's all about cattle. It's about extorting
4 cattle. It's about stopping the BLM specifically from
5 enforcing the Court orders.

6 MS. AHMED: I would refer counsel to the charge
7 alleging the violation of 18, USC, 372.

8 MR. TANASI: And, Your Honor, the object of that
9 conspiracy, which I think Ms. Ahmed is alluding to, was the
10 events that occurred on the 12th.

11 And what further demonstrates that is the
12 government's notice, under 404(b), to bring in events outside
13 of the 12th, and not to bring them in just as events that
14 occurred as would be under the umbrella of the indictment.

15 THE COURT: Well, the 404(b) evidence, I've already
16 ruled on that. The question is whether or not they meet the
17 801(d)(2)(E) test.

18 There is a preponderance of the evidence that's been
19 demonstrated that the conspiracy existed, and that the
20 declarant and the other defendants were members of the same
21 conspiracy. It was made during the conspiracy, but was it made
22 in furtherance of the conspiracy.

23 It is sufficient to keep, if a statement is made to
24 keep coconspirators abreast of ongoing conspiracy activity.
25 That is sufficient for the in furtherance of requirement.

1 And this is posted on his Facebook? Is that where
2 this comes from?

3 MS. AHMED: That's correct, Your Honor. Both 95 and
4 102 come from his Facebook page.

5 THE COURT: All right. Well, that does meet the
6 801(d)(2)(E) requirements.

7 MR. TANASI: Your Honor, I'm sorry.

8 THE COURT: Yes.

9 MR. TANASI: And I just wanted to make the record
10 that I joined in Mr. Marchese's objections to both Exhibits 95
11 and 102.

12 And I guess I would also add, in terms of the door
13 that is or is not still open with respect to self-defense --
14 and again, I'm going from the Court's order, Document 2138 --
15 to the extent the Court found the defendant failed to establish
16 the essential elements necessary for a defense instruction be
17 given. Any other evidence relating only to the defense is
18 irrelevant at retrial unless the defense can provide an offer
19 of proof outside the presence of the jury for that defense.

20 And I would go back, I guess, at least in part, to
21 95. The identification of the snipers would just be one of
22 those pieces of evidence that the defense is proffering is what
23 supports the self-defense instruction in this case.

24 And so now, with that redaction, that piece of
25 evidence is removed.

1 THE COURT: This is Parker's own statement, so that
2 doesn't add anything to what was missing.

3 MR. TANASI: His statement, Your Honor, it's not a
4 third-party statement. It's his statement related to snipers.
5 And then that lends itself is to the excessive force of the
6 BLM, which potentially is one of the elements under one of the
7 two theories of self-defense.

8 Which, again, I understand the Court's order, but at
9 the same time, it appears as though the door is still open
10 to proffer the self- --

11 THE COURT: I don't know if you do understand the
12 Court's order. The subjective intent was not what remained at
13 issue. It was the objective reasonableness that was not met.
14 So, Mr. Parker's statement still doesn't fill that void.

15 All right. So, I've got the -- so, Exhibit 102 and
16 Exhibit -- what was it? 95?

17 MS. AHMED: Correct, Your Honor.

18 THE COURT: -- 95 are admitted.

19 (Exhibits 95 and 102 admitted.)

20 THE COURT: I am looking at the Jury Model
21 Instructions for the Ninth Circuit, No. 2.11. And this is in
22 the June 2017 edition, which right in the front of it tells you
23 that they have renumbered things. So, if you look at a
24 different version, it will be a different instruction. I'm
25 looking at the 2017 version.

1 It says, "You are about to hear evidence that" blank.
2 That's where you describe the evidence to be received for a
3 limited purpose. And then you say "I instruct you" -- or the
4 Court says, "I instruct you that this evidence is admitted only
5 for the limited purpose of" blank; "and, therefore, you must
6 consider it only for that limited purpose and not for any other
7 purpose."

8 So, Mr. Marchese, is that -- is that the one you want
9 me to use?

10 MR. MARCHESE: Yes, that's correct. Just to be
11 clear, we do object to it coming in. But in the alternative,
12 we would ask for that instruction to be given, please, Your
13 Honor.

14 THE COURT: All right. I will go ahead and do that.

15 MR. LEVENTHAL: And just for the record, Drexler
16 joins.

17 THE COURT: Thank you.

18 MR. PEREZ: Lovelien joins as well, Your Honor.

19 THE COURT: So noted. Anything else?

20 MS. AHMED: No, Your Honor. Thank you.

21 THE COURT: All right. So, let's go ahead and call
22 in the jury.

23 (Jury in.)

24 THE COURT: The jury may go ahead and take a seat.
25 Everyone else may be seated as well.

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1 We have our witness, FBI Special Agent Sarah Draper
2 back on the witness stand. Thank you.

3 THE WITNESS: Thank you, Your Honor.

4 THE COURT: And Ms. Ahmed, on behalf of the
5 government, you may continue with your direct examination. I
6 think I cut you off in the middle of exhibit -- was it 93?

7 MS. AHMED: 93, Your Honor. Yes. Thank you. May we
8 publish, Your Honor?

9 THE COURT: Yes, you may.

10 BY MS. AHMED:

11 Q. Agent Draper, before we took the lunch break, we were
12 looking at the business records you'd received back from
13 Facebook in response to the search warrant for Eric Parker's
14 Facebook account; correct?

15 A. Correct.

16 Q. And we were looking specifically as Exhibit 93; correct?

17 A. Correct.

18 Q. Now, just to clarify -- just to step back for a moment and
19 talk -- and clarify how Facebook works generally, can you
20 explain to the jury just what a Facebook account looks like
21 when you go onto it from your computer, just generally?

22 A. Absolutely. Facebook is a social media site. And when a
23 user has an account, they have a user name, and they log in
24 through that account.

25 If you were to go to your Facebook page, it would

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1 be -- essentially, they are called a wall. It's just your
2 screen. It's your initial screen when you see it. There's a
3 spot -- the very top banner, which is a cover photo that user
4 chooses. There is a profile photo to the upper left, some type
5 of image that they -- the user chooses that will then represent
6 them at any posts they make. And that will be kind of attached
7 to any content they put onto Facebook.

8 Continuing down, there's a place for the user to post
9 things. And then there's a section which might show all sorts
10 of various things. One of the common ones we'll talk about is
11 friends. Friends are other Facebook users with whom the -- the
12 owner of the account, the original owner of the account has
13 chosen to establish a connection with.

14 They have a lot of other places to show likes of
15 various -- various items. But basically, there's a page where
16 people can engage in communications with each other in sharing
17 and reviewing different content.

18 And then there's a separate feature that's of note
19 that is a private message feature. So, an individual who has a
20 Facebook account could exchange messages privately with chosen
21 individual or individuals. That wouldn't show up then on
22 their -- their wall or their main page.

23 Q. So, status updates, are those things that would show up on
24 the wall?

25 A. Yes, those would show up on the wall.

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1 Q. And posts where sharing -- content is being shared, as we
2 saw earlier, is that being posted on the wall?

3 A. Yes, that's being posted on the wall.

4 Q. And then turning specifically to Exhibit 93, as an
5 example, when you look at those headers, what you called
6 headers that are off to the side where it says "posted, status,
7 mobile, comments." Do you see that?

8 A. Yes, I do.

9 Q. Now, are those headers, did those -- when you look at the
10 Facebook page, just on your computer, not through the returns,
11 would you see those headers?

12 A. No, it would not appear like this.

13 Q. Would you -- but when you look at the Facebook account,
14 when you look at a specific post, looking on the computer,
15 would you be able to see a date -- a date and time associated
16 with the -- or at least a date associated with the post?

17 A. You would see a date. Correct.

18 Q. Now, turning back to the top post of Exhibit 93, can you
19 explain to the jury when this post was posted on Mr. Parker's
20 Facebook account?

21 A. This would have been on April 12th, 2014. And this would
22 have been seven hours prior to approximately 22:00 hours. So,
23 approximately 3:00 p.m. in Pacific Time, Nevada.

24 Q. So, at 3:00 p.m. on April 12th, 2014, what -- what was
25 posted to Mr. Parker's Facebook account? What message, if any?

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1 A. The message was, "We have cows, happy cows, free cows,
2 American cows raised in an open range, not a cage."

3 MS. AHMED: And, Your Honor, may we move on to
4 Exhibit 94?

5 THE COURT: Yes, you may.

6 MS. AHMED: Just for counsel and the witness, please.

7 Q. Agent Draper, do you see Exhibit 94 on your screen?

8 A. Yes, I do.

9 Q. Is this another exhibit -- page that was provided by
10 Facebook in response to the search warrant?

11 A. Yes, this is another Facebook business record.

12 Q. Relating to Mr. Parker's account?

13 A. Yes, that's correct.

14 MS. AHMED: Your Honor, the government moves to admit
15 Exhibit 94.

16 THE COURT: Any objection to 94?

17 MR. LEVENTHAL: I do object on hearsay grounds.

18 MR. TANASI: Stewart joins, Your Honor.

19 MR. PEREZ: Lovelien joins.

20 MR. MARCHESE: Parker joins.

21 THE COURT: Is it the top one?

22 MR. TANASI: Yes, Your Honor.

23 MR. LEVENTHAL: Yes.

24 MR. MARCHESE: Correct, Your Honor.

25 MS. AHMED: Your Honor, I would just respond that the

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1 bottom post, which is by the account holder, makes clear that
2 they are essentially adopting what was said in the top post in
3 saying the circumstances under which that was achieved.

4 So, their response essentially adopts, as part of
5 their -- their response would not make sense without that top.
6 So, even if that person's statement wasn't being offered, you
7 know, for the truth of the matter, essentially by the response,
8 he is adopting what that person said. So, I would want to
9 be --

10 THE COURT: I'm not seeing anything under 801 or 803.
11 Can you point me to something in particular? Otherwise, it
12 needs to be redacted.

13 MS. AHMED: Are you asking me, Your Honor, to point
14 you to a rule that would not require --

15 THE COURT: Yeah. Is it not hearsay under 801, or is
16 it an exception to hearsay under 803?

17 MS. AHMED: Well, I guess, Your Honor, I would
18 offer -- I would offer that the top post -- the government's
19 not offering that into evidence under the theory that that
20 person is stating the truth, but that that part is needed to
21 give context to the bottom statement. So, it's --

22 THE COURT: I think you're offering it -- well, I
23 think --

24 MS. AHMED: Well --

25 THE COURT: It does seem to be offered for the truth

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1 of the matter asserted, so I think it would be hearsay unless
2 there's an exception or unless it's not hearsay because of
3 some -- something under 801 that's not obvious to me as I look
4 through these.

5 MS. AHMED: May I have a moment, Your Honor?

6 THE COURT: Yes. Go ahead, please.

7 MS. AHMED: Thank you, Your Honor.

8 (Pause in the proceedings.)

9 MS. AHMED: Your Honor, what I would add is just
10 looking at that, if you look at your screen, you'll see that
11 there's -- so, there's that statement at the top, and there's a
12 thumbs up image, which we would argue, along with statement
13 below it together, they are adoptive admissions of the top
14 post.

15 (Pause in the proceedings.)

16 THE COURT: All right. So, you're saying it's
17 801(d)(2)(B)?

18 MS. AHMED: Your Honor, the Court's indulgence one
19 moment.

20 THE COURT: Yes.

21 (Pause in the proceedings.)

22 MR. LEVENTHAL: Your Honor, I would like to just say,
23 while she's looking that up, if she's indicating -- if counsel
24 is indicating that it's that's blue square is what's being
25 adopted, we don't know. Because there's an attachment here

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1 that says sticker.png.

2 So, we don't know what it relates to. I don't know
3 that the thumbs up is adopting a statement and I don't think
4 that falls under any exception to the hearsay rule. Because
5 it's not even clear from here what that thumbs up is for. Like
6 I said, there's an attachment, and it may just be "Here. Look
7 at this."

8 MS. AHMED: In response to your question, Your Honor,
9 yes, we would say that it is -- it would fit under that
10 exception as a statement in furtherance of the conspiracy.

11 THE COURT: All right. Well, I think it is
12 801(d)(2)(B) if you can establish that that -- that the thumbs
13 up sticker is referring to the post.

14 So, do you want to lay that foundation with her?
15 What is a sticker, a thumbs up, and how do you know what it
16 relates to?

17 MS. AHMED: Yes, Your Honor.

18 Q. Agent Draper, when you're looking at this screen, it
19 appears to be a conversation that's going back and forth;
20 correct?

21 A. Yes. Correct.

22 Q. And in the returns, how would Facebook provide something
23 that was a comment back and forth? Would they put those
24 together, or would they put them separately or --

25 A. They do put those contemporaneously, so in order.

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1 Q. And in looking at this screen, what is the apparent order
2 of the conversation?

3 A. The first individual made a statement to -- this hasn't
4 been published; right? So, the first individual made a
5 statement, then there was an indication of approval of that
6 statement, and then a comment in response.

7 Q. Now, when you say an indication of approval, in your
8 experience with Facebook, are individuals able to indicate
9 approval by -- in certain ways that are evidenced
10 iconographically?

11 A. Yes. And one of the most traditional of those -- there's
12 new ways to do it now, but at this time was just a simple image
13 of a thumb up.

14 Q. So, you could give a thumbs up to the -- another person's
15 comment?

16 A. Yes, that's correct.

17 Q. And visually, a thumbs up image would show up; is that
18 correct?

19 A. Yes.

20 Q. And based on your experience -- in your experience and
21 based on your review of these documents, is this thumbs up in
22 reference to the comment above?

23 MR. LEVENTHAL: Objection. Calls for speculation.

24 MR. TANASI: Steward joins.

25 MR. PEREZ: Lovelien joins.

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1 MR. MARCHESE: Parker joins.

2 MS. AHMED: It's being asked only in relation to her
3 experience with respect to her review.

4 THE COURT: Based on her experience and review, I
5 will allow it. Overruled.

6 THE WITNESS: Yes, based upon my experience, that is
7 in response to the previous statement.

8 THE COURT: And so I think the objection was that the
9 URL that's represented there, where the sticker is, is a
10 different attachment. Do you know what that URL refers to?

11 THE WITNESS: Your Honor, my -- if I may correct,
12 Your Honor. My understanding is that is for that icon of the
13 thumbs up. That's my understanding.

14 THE COURT: So, it's not a link to an article or to
15 something else? That's not -- it's not a link to something
16 outside of that page?

17 THE WITNESS: Not that I'm aware of, Your Honor.

18 MS. AHMED: And Your Honor, may I continue to lay
19 some foundation?

20 THE COURT: Yes.

21 BY MS. AHMED:

22 Q. Where it says "attachments" in that middle post, do you
23 see that where it says sticker.png?

24 A. Yes, I see that.

25 Q. And what is that sticker.png, would that be an image?

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1 A. Again, based on my understanding and experience, that is
2 that image, yes.

3 THE COURT: All right. So, based on that foundation,
4 the Court finds that by a preponderance of the evidence, it
5 does appear to be, for purposes of 801(d)(2)(B), an adopted
6 admission.

7 So, Exhibit 94 is admitted. You may go ahead and
8 publish to it the jury.

9 MS. AHMED: Thank you, Your Honor.

10 (Exhibit 94 admitted.)

11 BY MS. AHMED:

12 Q. Agent Draper, can you explain to the jury then what is
13 depicted in Exhibit 94 now that they can see it? What kind of
14 communication is this?

15 A. So, this is again a part of the Facebook business record.
16 This is -- the top post is sent from an individual to the
17 account holder Eric "EJ" Parker, and then the following two are
18 responses to that post.

19 Q. In looking at the top post then, where it says "body," is
20 that the actual message that was conveyed?

21 A. Yes, that would be what was written by the author.

22 Q. And what is the message?

23 A. The words are "Feds get scared when you got there and
24 backed off? LOL."

25 Q. And based on your experience with Facebook, what does

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1 "LOL" mean?

2 A. That's an abbreviation for laugh out loud.

3 Q. And what time was that -- on what date and time was that
4 message sent?

5 A. That was sent on April 12th, 2014, at approximately
6 11:03 a.m.

7 Q. Nevada time?

8 A. Excuse me. Nevada time.

9 Q. And then is there -- is there a message beneath that one?
10 There's two messages beneath that one; is that correct?

11 A. Yes, there are.

12 Q. Can you explain what that middle one is? The one
13 immediately below that top one.

14 A. Now, the author on this one -- it's a response to the
15 message above it. The author on this one is Eric "EJ" Parker
16 responding to the initial author, who is now listed as the
17 recipient. And it's a thumbs up icon as a like or approval of
18 that. And that was sent on April 12th, 2014, at approximately
19 6:07 p.m. Pacific Time.

20 Q. Now, there's a third post on that page; correct?

21 A. Yes, that's correct.

22 Q. And what -- who is the author of this bottom post?

23 A. The author for this third is again Eric "EJ" Parker.

24 Q. And what date did he make this post, bottom post?

25 A. That is April 12th of 2014. And again, approximately

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1 6:07, 6:08 p.m. Pacific Time.

2 Q. And, so, the time on the -- on these two posts is 23:07;
3 correct? The bottom two posts?

4 A. Yes.

5 Q. UTC?

6 A. Yes. Correct. They are about 20 seconds apart.

7 Q. And to calculate local time, you would subtract seven from
8 that?

9 A. Yes. I'm sorry. You subtract seven. Correct.

10 Q. So then it would be 16:07?

11 A. Yes. Excuse me. Yes, 16:07. Yes. Correct.

12 Q. So you would translate --

13 A. 4:00 p.m. 4:00 p.m.

14 Q. So, those bottom two posts that were authored by Eric "EJ"
15 Parker, those are posted at 4:00 p.m.; is that correct?

16 A. Correct. Correct. My apologies.

17 Q. 4:00 p.m. on April 12th, 2014?

18 A. Correct.

19 MS. AHMED: Your Honor, may we go back to Exhibit 91
20 which was previously admitted?

21 THE COURT: Yes, you may.

22 BY MS. AHMED:

23 Q. Now, Agent Draper, when you first looked at that with the
24 jury earlier, we noted that there was two posts; correct, that
25 are visible on this page?

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1 A. Yes.

2 Q. And the bottom one was earlier in time, and then the top
3 one was later; is that right?

4 A. That's correct.

5 Q. So, can we zoom -- can we zoom in on the top post then,
6 please?

7 And on what date was the top post that we can now see
8 zoomed in? What date was that posted?

9 A. April 13th, 2014.

10 Q. And in the early morning; is that correct, or --

11 A. Yes, that would be -- now understanding Mr. Parker to be
12 back in Idaho, so I'm subtracting six hours from UTC. That
13 would be approximately 5:47 --

14 Q. And if he was --

15 A. -- a.m.

16 Q. And if he was in -- well, and then can you again just
17 explain to the jury, what kind of post is this?

18 A. This would be -- this would be just an update, like a --
19 he would post on his page with -- with a link to an article.

20 Q. So, it says "date created." That's where you saw the
21 data; correct?

22 A. Yes.

23 Q. And then the link below that is what again?

24 A. That's a unique identifier for this particular post.

25 Q. And that's just something that Facebook provides in the

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1 returns?

2 A. Yes.

3 Q. Would that be visible on his Facebook page?

4 A. No.

5 Q. And then going to the summary, what is that?

6 A. "Are US" -- I'm sorry. Explain it or to read it.

7 Q. Can you read what the summary is?

8 A. "Are USG thugs being forced to back down in Nevada?"

9 Q. And then what, if any, message did this account holder,
10 Eric Parker, post -- Eric "EJ" Parker, the account, post in
11 relation to this article?

12 A. He posted the text, "I'm home. That was one for the
13 books."

14 Q. And that's his own message; correct?

15 A. Yes.

16 Q. And then below that where it says "title," what is the
17 title of the article that's being shared?

18 A. The title says, "The beginning of the 2nd American
19 Revolution?"

20 Q. And then below that, where it says URL, what is shared
21 there?

22 A. That's a link to an article with that title.

23 MS. AHMED: Your Honor, may we publish just to the
24 witness and counsel what's been previously --

25 THE COURT: Well, wait a minute. What's the

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1 difference between the summary and the title? Are you saying
2 the title is the title of the article that's linked? Then
3 what's the summary?

4 THE WITNESS: Yes.

5 THE COURT: I'm lost. I'm sorry.

6 THE WITNESS: Yes, Your Honor. The title would be
7 the title of the article. So, as you can see under the title
8 section, "The Beginning of the 2nd American Revolution?" Under
9 the URL follows a link to the article. After that last back
10 splash it has -- back slash. Excuse me -- it has the same
11 title there.

12 The summary would be a different summary that someone
13 else might have posted about that particular link.

14 THE COURT: So, like the summary of the thread or
15 something? Like if you're -- who would add that? That's --

16 THE WITNESS: Your Honor, I don't know who would add
17 that. The defendant would not. That would -- his would be the
18 text.

19 BY MS. AHMED:

20 Q. When an article is shared on Facebook, in -- in the
21 back -- in the returns that are provided by Facebook --

22 A. Right.

23 Q. -- they provide the summary section; correct?

24 A. Yes.

25 Q. And on the actual post, you would see the user's message?

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1 A. Yes.

2 Q. Here --

3 A. You would see the user's message, yes.

4 Q. Here where it says "text," you'd see that?

5 A. That's what it would look like.

6 Q. And you would also see the title of the article?

7 A. Yes.

8 Q. And you are not sure if the summary part would be visible
9 or not?

10 A. I -- I don't know.

11 MS. AHMED: Your Honor, did you want me to follow up
12 on that more?

13 THE COURT: I just don't know what the summary is.
14 But if she's saying she doesn't know where that comes from
15 either, that's fine. I just didn't know if there was a
16 clarification.

17 BY MS. AHMED:

18 Q. So, to your knowledge, that's not something that the
19 account holder is authoring; correct?

20 A. Correct. To the best of my knowledge, right.

21 THE COURT: So the text is what the author wrote.

22 THE WITNESS: Yes. Yes, Your Honor.

23 THE COURT: Thank you.

24 MS. AHMED: Your Honor, may we go to Exhibit 95?

25 THE COURT: Yes.

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1 MS. AHMED: Just for the witness -- actually, Your
2 Honor, I believe this was admitted.

3 THE COURT: It was admitted.

4 MS. AHMED: And me way publish?

5 THE COURT: Yes, you may.

6 BY MS. AHMED:

7 Q. Can we zoom in on just the posts?

8 Now, Agent Draper, looking at 95, it looks different
9 from what we have been reviewing previously; correct?

10 A. That's correct.

11 Q. Can you explain to the jury then what -- what are they
12 looking at in Exhibit 95?

13 A. So, this would not have come from a Facebook business
14 records return. So this would not have come back with a search
15 warrant return. This would have been something that had been
16 captured -- I guess screen captured, collected directly off the
17 Facebook page. Essentially, saved a snapshot of it as it would
18 appear on the page.

19 Q. And have you seen this post -- these posts on Eric
20 Parker's --

21 A. Yes.

22 Q. -- Facebook account?

23 A. Yes.

24 Q. And, so, where on his account did they appear? Were these
25 public posts?

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1 A. Yes, this was a public post.

2 Q. And, so, you indicated earlier that the Facebook returns
3 were provided in 2014; is that correct?

4 A. That's correct.

5 Q. As part of your investigation, did you go back to look at
6 this Facebook account after those returns were provided back to
7 you?

8 A. Yes, I did.

9 Q. And in doing so, is that when you observed this post on
10 his Facebook page?

11 A. Yes, and in a follow-on review.

12 Q. Can you then, looking at the very top where it says Steven
13 Hill, who was posting that?

14 A. That would be posted by an individual whose user name is
15 Steven Hill.

16 Q. And what was the message posted?

17 A. "I want a bridge guy T-shirt."

18 Q. And what date was that post provided?

19 A. September 16th, 2014.

20 Q. And then below that, where it says David Hoffman, do you
21 see that?

22 A. I do.

23 Q. And who is making that post?

24 A. That would be an individual whose user name is David
25 Hoffman.

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- 1 Q. And then what is the message that's been posted?
- 2 A. That individual posts "And an NVG scope."
- 3 Q. What is an NVG scope based on your training and
4 experience?
- 5 A. So, NVG is an acronym for night vision goggles. So, that
6 would be presumably a rifle scope that could be used to see in
7 low-light situations.
- 8 Q. And when was that comment posted?
- 9 A. September 16th of 2014.
- 10 Q. And then going to the next post where it says Eric "EJ"
11 Parker, do you see that?
- 12 A. Yes.
- 13 Q. And who is making that post?
- 14 A. The account holder for the Eric "EJ" Parker account.
- 15 Q. And this is -- this was -- you observed this Eric --
- 16 A. Yes.
- 17 Q. -- Eric "EJ" Parker's wall?
- 18 A. Right. And this is the -- this is the user name of the
19 account that we just reviewed the business records from.
- 20 Q. So, this is the same account where you observed
21 photographs of the defendant?
- 22 A. Yes.
- 23 Q. And what -- of an individual named Eric Parker?
- 24 A. I am sorry?
- 25 Q. Of Eric Parker?

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1 A. Yes.

2 Q. And what is the content of the post that is made by Eric
3 "EJ" Parker at the bottom of this exhibit?

4 A. "That's what I kept saying when people were calling me the
5 Bundy sniper. My buddy Steven Stewart had to relay to me what
6 was going on through binoculars. Not much good at that
7 distance with open sights."

8 Q. Now, where it says "My buddy Steven Stewart," do you see
9 that?

10 A. I do.

11 Q. And the words "Steven Stewart" appear in blue on your
12 screen. Do you see that?

13 A. That's correct.

14 Q. Can you explain to the jury why those two words are in
15 blue?

16 A. That would be a hyperlink or a connection to a Facebook --
17 another Facebook user whose user name is Steven Stewart. So
18 that would be directly connected to that other Facebook
19 account.

20 Q. And did you click on that hyperlink in your review?

21 A. I did not click on this hyperlink, no.

22 Q. Are you familiar with the account that Steven Stewart --
23 whose account that is?

24 A. Yes, I am familiar with that.

25 Q. Whose account is that?

Sarah Gibson Draper - Direct

1 A. And that is Mr. Stewart's, one of our defendants.

2 Q. And on what date was this post made?

3 A. September 16th of 2014.

4 MS. AHMED: Your Honor, may we publish to the witness
5 and counsel Exhibit 96?

6 THE COURT: Yes. Did we get an explanation of what
7 "the bridge guy T-shirt" is?

8 MS. AHMED: I did not, Your Honor, elicit that from
9 her, but I can ask her if you'd like.

10 THE COURT: If she knows.

11 BY MS. AHMED:

12 Q. Going back to Exhibit 95, to the extent that you know what
13 that top comment is talking about, where it says "Steven Hill,
14 I want a bridge guy T-shirt," can you explain to the jury what
15 that means?

16 A. So, the image depicted, that's the profile photo for
17 Mr. Hill at that time. So, that image that's within that
18 profile photo is the word "resist" with an individual with a
19 rifle in a prone position in front of that.

20 That is -- that image is taken from a photo taken of
21 Mr. Parker at Bundy Ranch up on the bridge. So, that's a
22 sketch of -- of him in front of that word or an image of a
23 silhouette appearing to be the same image that was captured in
24 a photograph in front of the word "resist."

25

Sarah Gibson Draper - Direct

1 BY MS. AHMED:

2 Q. And when the comment -- what then is your understanding,
3 based on your investigation, of the statement "I want a bridge
4 guy T-shirt"?

5 A. I'm aware that following -- following the Bundy Ranch
6 incident, there were T-shirts made, and Mr. Parker was in some
7 circles referred to as the "bridge guy."

8 Q. And what appeared on the T-shirt. You said T-shirts were
9 made. What were the T-shirts depicting?

10 A. Oh, with that image on it. I'm sorry.

11 Q. And --

12 A. Or a similar image.

13 Q. And in looking at your screen, can you circle, touching
14 the screen, the image that you were referencing when you were
15 describing it?

16 A. I will. And I will say I don't know what these words on
17 this are, so I will just circle what I am familiar with.

18 Q. And the witness has drawn a circle over an image in a box
19 on the top left-hand side of the post of the screen.

20 And what you've circled is what you -- what were on
21 T-shirts that you've described already? That what you have
22 circled is what is on the T-shirt?

23 A. Yes.

24 MS. AHMED: Thank you. Your Honor, may way go to
25 Exhibit 96?

Sarah Gibson Draper - Direct

1 THE COURT: Yes.

2 THE WITNESS: May I make a statement just to further
3 clarify. I don't know if --

4 MR. MARCHESE: Objection, nonresponsive.

5 BY MS. AHMED:

6 Q. Did you want to clarify your previous response with
7 respect to Exhibit 95?

8 A. Yes.

9 Q. Could you please do so?

10 A. I don't know if T-shirts had been produced yet in
11 September of 2014, but I've -- since know that T-shirts have
12 been produced.

13 Q. So, in September 2014, you did not know?

14 A. Correct.

15 Q. But subsequent to September of 2014, you have learned that
16 there are T-shirts?

17 A. Yes.

18 Q. And you don't know when the T-shirts were made?

19 A. Right. Right.

20 MS. AHMED: Okay. May we publish to the witness and
21 counsel Exhibit 96, Your Honor?

22 THE COURT: Yes, you may.

23 BY MS. AHMED:

24 Q. Agent Draper, do you see Exhibit 96?

25 A. Yes, I do.

Sarah Gibson Draper - Direct

1 Q. And just generally, what do you recognize this to be?

2 A. This is a photo that was posted on Mr. Parker's Facebook
3 page.

4 Q. And who posted the photo? Is it the account holder
5 uploading the photo, or is it somebody else putting the photo
6 on that person's Facebook page?

7 A. That would have been the account holder putting that on
8 there as his cover photo.

9 Q. And is this something that you've personally observed on
10 the -- Eric Parker's Facebook account?

11 A. Yes.

12 Q. And does it fairly and accurately depict what you observed
13 on his Facebook account?

14 A. Yes, it does.

15 MS. AHMED: Your Honor, the government moves to admit
16 Exhibit 96.

17 MR. MARCHESE: Objection, relevance.

18 MR. TANASI: Stewart joins.

19 MR. LEVENTHAL: Drexler joins.

20 MR. PEREZ: Lovelien joins.

21 THE COURT: Relevance?

22 MS. AHMED: Your Honor, again, it goes to the ongoing
23 conspiracy. The -- as indicated in Exhibit 95, statements
24 about training prior to April 12th, 2014. And there's both a
25 picture from prior to April 2014 and subsequent to April 2014

Sarah Gibson Draper - Direct

1 discussing what appears to be training exercises, a photograph
2 depicting training.

3 So, it would be offered for -- as evidence in
4 furtherance of the -- of basically statements in evidence of
5 the conspiracy, ongoing conspiracy.

6 THE COURT: So, the continuation of the conspiracy?

7 MS. AHMED: Yes, Your Honor.

8 THE COURT: All right. Exhibit 96 is admitted. You
9 may go ahead and publish it.

10 (Exhibit 96 admitted.)

11 BY MS. AHMED:

12 Q. And Agent Draper, can you explain to the jury what is --
13 just going from the top, the top portion, can you explain to
14 the jury what, again, this is?

15 A. So, the top line says Eric "EJ" Parker updated his cover
16 photo January 19th of 2014. That --

17 Q. And so would you -- and the cover photo, I believe, you
18 indicated earlier is something that would be visible on the
19 Facebook page?

20 A. Correct. It's essentially a banner at the top of the
21 page.

22 Q. And then what is the content of the cover photo that was
23 posted?

24 A. It's a photo of two individuals engaged in -- appears to
25 be firearms training with targets.

Sarah Gibson Draper - Direct

1 Q. And then below the photograph, there appear to be
2 comments. Do you see that?

3 A. I do.

4 Q. Turning to the top comment, can you explain to the jury
5 what that is?

6 A. The top comment, written by user Steven Stewart,
7 January 19th, 2015, responded -- so, the year after that.
8 Responded. Said "Sun's barely hitting the top of the hill.
9 Early starts."

10 Q. So, is this a comment that's being made in response to the
11 photograph?

12 A. Yes.

13 Q. And so would it be visible on the Facebook page under the
14 photograph?

15 A. Yes.

16 Q. And to the extent that you know, whose account is that
17 Steven Stewart account?

18 A. Mr. -- Mr. Stewart's.

19 Q. And you indicated it was being posted -- the comment was
20 posted a year after. That's because the date underneath says
21 January 19, 2015; is that correct?

22 A. Yes, that's correct.

23 Q. And then there's a comment below that one. Can you tell
24 the jury who posted it as what it says?

25 A. Eric "EJ" Parker user name posted, "This is exactly one

Sarah Gibson Draper - Direct

1 year ago today. We are doing good." And that was 11 minutes
2 after Mr. Stewart made his post.

3 MS. AHMED: Your Honor, may I publish to the witness
4 and counsel Exhibit 97?

5 THE COURT: Yes, you may.

6 BY MS. AHMED:

7 Q. Agent Draper, do you see Exhibit 97?

8 A. Yes, I do.

9 Q. Is this -- and what is it generally?

10 A. This is an image Mr. Parker shared from another Facebook
11 page and he made a comment.

12 Q. And was it shared on his Facebook account?

13 A. Yes. Yes, it was.

14 Q. And did you view this post on Mr. Parker's Facebook
15 account?

16 A. Yes, I did.

17 Q. And does what is depicted in Exhibit 97 fairly and
18 accurately depict what you observed on Mr. Parker's Facebook
19 account with respect to this post?

20 A. Yes, it does.

21 MS. AHMED: Your Honor, the government moves to admit
22 Exhibit 97.

23 THE COURT: Any objection to 97?

24 MR. MARCHESE: Objection. Relevance. More
25 prejudicial than probative.

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1 MR. TANASI: Stewart joins.

2 MR. LEVENTHAL: As well as hearsay.

3 MR. PEREZ: Lovelien joins.

4 MS. AHMED: Your Honor, I would -- it's being
5 offered, essentially, as you can see there's -- it's being
6 shared from -- the source that it's being shared from and the
7 content of it both go, again, to the 404(b). It shows absence
8 of mistake with respect to the events of April 12, 2014, and
9 it's part of the ongoing conspiracy. Offer it as evidence of
10 the ongoing conspiracy.

11 THE COURT: So, this is something that Mr. Parker
12 posted?

13 MS. AHMED: He posted this to his Facebook page.
14 It's a post made by another that he shared to his Facebook
15 page. But additionally -- and I can have the witness lay this
16 foundation, but that is his own comment.

17 MR. MARCHESE: We would disagree that it shows
18 absence of mistake. It's after the fact.

19 MS. AHMED: I would say, Your Honor, absence of
20 mistake, intent, and motive. And the timing doesn't have any
21 relevance. It doesn't matter when, whether it's before or
22 after. We would show say it shows absence of mistake, intent,
23 and motive.

24 MR. MARCHESE: I would respectfully disagree that the
25 timing is very relevant in reference to intent or motive.

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1 MR. LEVENTHAL: And, Your Honor, I would add that
2 this is almost three years later.

3 THE COURT: What did you say? Three years later?

4 MR. LEVENTHAL: Well, it's 2014, October. So, two
5 and a half, almost three years? '12, '13, '14.

6 MS. AHMED: Well, with respect to that, it's the same
7 year. It was posted the same year as the event which happened
8 in April. It's just a few months afterwards within the time of
9 the alleged conspiracy.

10 THE COURT: Yeah, it's a few months later.

11 MR. LEVENTHAL: Yeah.

12 THE COURT: It's adoptive admission. Exhibit 97 is
13 admitted. You may publish it to the jury.

14 (Exhibit 97 admitted.)

15 BY MS. AHMED:

16 Q. Agent Draper, can you explain to the jury again, so who --
17 who is posting this and where did you see it posted?

18 A. So, user name Eric "EJ" Parker shared this post from a
19 Facebook page titled -- or they call it a photo. Shared this
20 photo from a Facebook page titled III% Patriot Countries --
21 Country. Excuse me. And I found this on Mr. Parker's Facebook
22 page.

23 Q. And can you just explain briefly what, based on your
24 experience, a 3% is?

25 A. Sure. 3% is a -- a movement in the United States that

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1 bases itself upon an idea that only 3% of Americas stood up
2 against -- drew their arms against the British during the
3 Revolutionary War. So, III Patriot is kind of a movement.
4 There's different loosely connected chapters throughout the
5 United States.

6 So, there's -- now there's a modern-day incarnation
7 of that concept, that assertion about 3% being willing to fight
8 against the British.

9 Q. Now, you indicated that Mr. Parker -- this post is being
10 shared by him.

11 Can you draw on the screen and indicate what part is
12 being shared?

13 And the witness has drawn a box around the photograph
14 and the comments below it.

15 And can you read -- and can you describe for the
16 record what's in the photograph and what -- what's depicted in
17 the photograph?

18 A. It's apparently a wolf with the words "never tread on
19 someone who wants to die in battle."

20 Q. And underneath the photograph, what are the words that are
21 stated there?

22 A. It gives credit to the III% Patriot Country,
23 September 30th, 2014. "I don't mind. I even signed up for it
24 once. Where are our wolves in the midst of sheep?" And that
25 would be all part of the original post, and then dot, dot, dot

Sarah Gibson Draper - Direct

1 "malice."

2 Q. And then clearing the marks that you just drew, Mr. Parker
3 also includes a comment that he made himself on this post?

4 A. Yes.

5 Q. And where do you see that? Can you circle it?

6 And the witness has circled words that appear above
7 the photograph in Exhibit 97.

8 And can you read those to the jury?

9 A. "Lo, there do I see my family all the way back to the
10 beginning. They call to me to take my place amongst them."

11 Q. In the course of your investigation, did you learn what
12 these words appeared to be referencing?

13 A. They appear to be a summary of a -- of an old Viking or
14 Norse poem harkening folks to Valhalla, which is a place Viking
15 warriors --

16 MR. MARCHESE: Objection. Hearsay and relevance.

17 MR. TANASI: Stewart joins.

18 MR. LEVENTHAL: Drexler joins.

19 MR. PEREZ: Lovelien joins.

20 MS. AHMED: Your Honor, the witness is just
21 explaining the post, the context of the statements made by
22 Mr. Parker, so the jury can understand their significance in
23 relation to the photographs based on her investigation.

24 THE COURT: Do you want to lay a foundation for that?

25

Sarah Gibson Draper - Direct

1 BY MS. AHMED:

2 Q. Did you take any steps to understand what the statements
3 that were being posted by Mr. Parker himself, what they were?

4 A. I looked at an old Norse poem, and the content is similar.
5 It's a lot lengthier but similar, so this appears to be a
6 summary of that.

7 Q. It's a summary. Is the language used the same language
8 that's used in that poem?

9 A. It's very similar.

10 Q. And did you understand this to be actually words that were
11 referencing that poem?

12 A. That's my understanding.

13 MR. TANASI: Same objection, Your Honor.

14 MR. MARCHESE: Parker joins.

15 MR. TANASI: Speculation and hearsay as to the poem
16 that she reviewed.

17 THE COURT: Well, you can cross-examine her. She
18 said she reviewed a poem that had similar language. There was
19 a Valhalla reference in the Norse poem. So, it's admissible.
20 You can cross-examine her on it.

21 BY MS. AHMED:

22 Q. So then can you explain to the jury, basically, this poem
23 that you reviewed that this language appears to be summarizing,
24 according -- what -- what is it? What was that poem?

25 A. It's a Norse or a Viking poem, maybe a prayer, that's used

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1 often to talk about this concept of Valhalla. That Viking
2 warriors, half of them would -- if they died in battle, half
3 would be called to Valhalla, which is a -- it's a great place
4 that these warriors would go to upon death in battle.

5 MS. AHMED: And, Your Honor, may we publish to the
6 witness and counsel what's been marked for identification as
7 Exhibit 98?

8 THE COURT: Yes, you may.

9 BY MS. AHMED:

10 Q. Agent Draper, do you recognized what's depicted based in
11 Exhibit 98?

12 A. Yes, I do.

13 Q. What is it just generally?

14 A. It's a post seen by Mr. Parker of a -- of a YouTube video
15 and a comment by Mr. Parker.

16 Q. And generally, what does the video appear to be about?

17 A. About the Bundy Ranch.

18 Q. And did you yourself observe this post on Mr. Parker's
19 Facebook page?

20 A. Yes.

21 Q. Does Exhibit 98 fairly and accurately depict what you
22 observed on the page?

23 A. Yes.

24 MS. AHMED: Your Honor, the government moves to admit
25 Exhibit 98.

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1 THE COURT: Any objection to 98?

2 MR. LEVENTHAL: I would object to hearsay.

3 MR. MARCHESE: Hearsay as well.

4 MR. TANASI: Steward joins.

5 MR. PEREZ: Lovelien joins.

6 THE COURT: All right. So, the first post seems to
7 be made by Mr. Parker.

8 MS. AHMED: Can we take the zoom out?

9 THE COURT: And the second post is not. The third
10 one is. The fourth one is. There's a list of them, let's say.
11 Not all of them are statements of Mr. Parker.

12 MS. AHMED: Your Honor, I apologize for speaking over
13 you. I was trying to zoom out.

14 You're correct that underneath the main post, there
15 are a series of statements are being offered. If you read
16 the -- it's a back and forth -- appears to be a back-and-forth
17 conversation.

18 Again, the context of the statements made by
19 Mr. Parker and then later there are also comments by Mr. -- by
20 a Steven Stewart, Mr. Stewart. So we would offer those,
21 obviously, as admissions. And the rest of it is context for
22 that conversation, that you don't really understand what he's
23 talking about without the rest of it.

24 THE COURT: Let's go to sidebar.

25 (Sidebar.)

Sarah Gibson Draper - Direct

1 MS. AHMED: Your Honor, just, I mean --

2 THE COURT: So, he's not adopting these statements.
3 It's a conversation back and forth. He is responding to it,
4 and it may be necessary to explain his response.

5 But I need to be careful about why is it not hearsay,
6 when it's a statement being made by someone else. So, rather
7 than discussing it in front of the jury, it'd be easier to do
8 it here.

9 So, I'm looking at 801(d)(2), which is opposing
10 party's statements -- okay. It's not being made in a
11 representative capacity, so it's not (a). (b) is the one we
12 used before where it's something that they are adopting or
13 believing to be true. (c) is made by a person whom the party
14 authorized to make a statement on the subject. That's not it.

15 (d) was made by the party's agent or employee on a
16 matter within the scope in that relationship, et cetera. Not
17 that one. Made by the party's coconspirator during and in
18 furtherance -- those other individuals, to my knowledge, are
19 not -- at least they are not indicted coconspirators.

20 MS. AHMED: That's correct, Your Honor.

21 THE COURT: Okay.

22 MS. AHMED: Except for, obviously, Steven Stewart at
23 the bottom.

24 Your Honor, I can -- for the record, Your Honor, I
25 would say that I would at least want the top comment to give

Sarah Gibson Draper - Direct

1 context to Mr. Parker's subsequent statements.

2 But then, I mean, there's definitely portions that
3 can be redacted. I would ask for at least "Need a little work
4 on your leg positioning, Eric." And then --

5 THE REPORTER: Speak up, please.

6 MS. AHMED: Sorry. "Need a little positioning --
7 need a little work on your leg positioning, Eric." Then I
8 would want the next two comments, because they are basically --
9 I mean, it's --

10 THE COURT: Because of his leg position. I
11 understand that.

12 MS. AHMED: Yes.

13 THE COURT: Otherwise, it doesn't make since.

14 MS. AHMED: I would -- also, I have no problem
15 redacting those three -- next three, and then keeping the
16 comment that Parker -- the next two comments Parker makes.

17 THE COURT: Right.

18 MS. AHMED: And then redacting the subsequent
19 comments by Blackburn. So, really, the only comment we want by
20 Blackburn would be that top one, and then the rest we would
21 just want --

22 THE COURT: Okay.

23 MS. AHMED: -- from both defendants.

24 MR. MARCHESE: So, to be clear, because we might
25 actually be in agreement on something once. You want the last

Sarah Gibson Draper - Direct

1 two Stewart comments and then above that redact up to --

2 MS. AHMED: The only comment we would keep from -- we
3 would propose the only comment we would keep would be the top
4 Blackburn.

5 MR. MARCHESE: And then Eric.

6 MS. AHMED: And then keep all defendants' statements
7 and redact the rest of Blackburn.

8 MR. MARCHESE: All right. I don't have a problem
9 with that.

10 MR. LEVENTHAL: Look at that. Wow. Impressive.

11 MS. AHMED: You have had these exhibits for a long
12 time, you know.

13 MR. TANASI: It seems like thousands of exhibits for
14 a long time.

15 THE COURT: Okay. So, the first one that we're
16 leaving in, the Blackburn statement --

17 MS. AHMED: I guess they would be withdrawing --

18 THE COURT: -- is an 801(d)(2)(B) --

19 MS. AHMED: (B). That's --

20 THE COURT: -- because he's adopting the reference to
21 his leg --

22 MS. AHMED: Correct.

23 THE COURT: -- positioning.

24 MS. AHMED: And then the rest --

25 THE COURT: The other Blackburn statements you're

Sarah Gibson Draper - Direct

1 going to redact, so that the only ones that are left are Steven
2 Stewart's statements and Parker's statements.

3 MS. AHMED: Correct, Your Honor.

4 THE COURT: All right. I agree with that.

5 MS. AHMED: Thank you.

6 MR. TANASI: Thank you, Your Honor.

7 (End of sidebar.)

8 THE COURT: All right. So, Exhibit 98 is admitted
9 with the redactions noted by the Court.

10 Are you going to need a moment to make those
11 redactions?

12 MS. AHMED: Yes, Your Honor.

13 THE COURT: Okay. Go ahead.

14 (Pause in the proceedings.)

15 BY MS. AHMED:

16 Q. May we pull up, just for counsel and the witness,
17 Exhibit 98?

18 THE COURT: Yes, you may.

19 MR. MARCHESE: No objection, Parker.

20 THE COURT: So, Exhibit 98 is admitted with those
21 redactions. Thank you.

22 (Exhibit 98 admitted.)

23 MS. AHMED: Thank you, Your Honor. May we publish?

24 THE COURT: Yes, you may.

25

Sarah Gibson Draper - Direct

1 BY MS. AHMED:

2 Q. Agent Draper, is this a Facebook post made on Eric
3 Parker's Facebook page?

4 A. Yes, this is.

5 Q. And did he share a video along with his own comment about
6 the video?

7 A. Yes, he did.

8 Q. So, can you show the jury where his comment is on this
9 post?

10 And the witness has circled lines near the top of the
11 page.

12 Now, can you tell the jury first what date was the
13 post made?

14 A. January 8th, 2015.

15 Q. And can you read to the jury what it is that Eric Parker
16 stated with respect to the video?

17 A. "I love watching this stuff. Scott Drexler, Steven
18 Stewart, 2.5 min in, remember that guy? He just seemed so
19 nonchalant, I liked him. Give me liberty or give me death."

20 Q. And then below that, is that where the video is that he
21 shared?

22 A. Yes.

23 Q. And can you read to the jury what -- the description that
24 appears to be attached to the video?

25 A. "Political Cause Growing at Bundy Ranch."

Sarah Gibson Draper - Direct

1 Q. And then the words below that?

2 A. "Las Vegas. Tensions remain high at the Bundy cattle
3 ranch in Bunkerville as self-described militia patrol the
4 grounds. They say they're sticking around," and then it cuts
5 off.

6 Q. And then immediately below the post, were there comments
7 made by Mr. Parker and other Facebook users?

8 A. Yes, there were.

9 Q. And in the zoom-out portion, can you see the top repost
10 there at the bottom of the zoomed-out part?

11 A. Yes, I can.

12 Q. Can you -- beginning where it says "Matt Blackburn," can
13 you read that first comment?

14 A. The first comment by that user says, "Need a little
15 leg" -- whoops. Correction. "Need a little work on your leg
16 positions, Eric."

17 Q. And then below that, was that comment made on January 8th,
18 2015?

19 A. Yes, it was.

20 Q. And then below that, does it -- Eric "EJ" Parker respond?

21 A. He responds, "I've learned a lot since that day." And
22 then continues, "It was a tricky angle."

23 Q. And were both of those posts made on January 8th, 2015, as
24 well?

25 A. Yes, they were.

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1 Q. And were there additional posts made by Eric Parker -- by
2 Eric Parker and Steven Stewart?

3 A. Yes, there are.

4 Q. Beginning at the top of the zoomed out portion, can you
5 read that first post?

6 A. From Eric "EJ" Parker. "Steven kept yelling at me about
7 getting my feet out of the road."

8 Q. And "Steven" appears in blue; is that correct?

9 A. These correct.

10 Q. And what does that mean?

11 A. I assume that's Steven Stewart.

12 Q. To your -- based on your experience with Facebook, is that
13 a hyperlink to his -- Steven Stewart's Facebook page?

14 A. I make that assumption. But normally, would it show up
15 "Steven Stewart," but he does respond at the bottom, so that
16 leads me to believe it's connected to him. But it doesn't
17 normally show just the first name.

18 Q. So, in your experience, it would have been both "Steven"
19 and "Stewart" in blue; correct?

20 A. Correct.

21 Q. And then going to the post immediately below that top one
22 where it says Eric "EJ" Parker, what does it state?

23 A. Yes. "I told him not to worry. That Nevada sent the
24 highway patrol to shut down the lane for me."

25 Q. And was that also made -- comment made on January 8, 2015?

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1 A. Yes, they both were.

2 Q. And then going to the bottom two posts made by Steven
3 Stewart, do you see those?

4 A. Yes, I do.

5 Q. And can you -- beginning with the top one, where it says
6 "Steven Stewart," based on your experience and your
7 investigation, whose page is that?

8 A. It's Mr. Stewart's and also based upon the profile photo.

9 Q. And what does that first comment say?

10 A. "When the F-U-C-K was that asshole recording the guy next
11 to me. I would have hid better. Like when you were" --
12 correction -- "like when they were interviewing your ass.
13 LOL."

14 Q. And you indicated that you recognized the profile picture.
15 Is that the photograph that appears next to the words "Steven
16 Stewart"?

17 A. Yes, it is.

18 Q. And based on your investigation, what is that a picture
19 of?

20 A. That's Mr. Stewart's profile photo.

21 Q. And then was that comment posted on January 9, 2015?

22 A. Yes.

23 Q. And then does Mr. Stewart make another comment?

24 A. He does, also on January 9th, 2015.

25 Q. And can you read that one -- statement?

Sarah Gibson Draper - Direct

1 A. Yes. "Okay. I'll admit. It's cool to see vid of me on
2 freeway, but anyways."

3 Q. And then zooming back out.

4 Your Honor, may we publish what's been marked for
5 identification as Exhibit 45A?

6 THE COURT: Yes.

7 BY MS. AHMED:

8 Q. And without playing it, Agent Draper, did you review
9 Exhibit 45A prior to being in the courtroom today? Exhibit 45A
10 which is a video?

11 A. Can you refresh me on which video? I'm sorry.

12 Q. And so without sound, can we play the first few seconds?

13 (Exhibit 45A being played.)

14 A. Yes.

15 Q. And what is this a video of just generally?

16 A. This is a video about an Idaho organization called the "3%
17 of Idaho."

18 Q. And is this a video that was posted to the Idaho 3%
19 YouTube page?

20 A. They had it on their YouTube channel.

21 Q. And did you view it on the YouTube channel?

22 A. Yes.

23 Q. And what is in Exhibit 45A, does that fairly and
24 accurately depict what you observed on the YouTube channel?

25 A. Yes.

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1 MS. AHMED: Your Honor, the government moves to admit
2 Exhibit 45A.

3 MR. LEVENTHAL: Objection. Relevance to the time
4 when she viewed it.

5 MR. TANASI: Okay. Stewart also --

6 THE COURT: What was the objection?

7 MR. MARCHESI: It's a foundational objection.

8 THE COURT: Foundational as to time?

9 MR. LEVENTHAL: It's foundational. That's all. I
10 don't know when she viewed it.

11 MR. TANASI: Stewart adds relevance as to Steven
12 Stewart, Your Honor.

13 MS. AHMED: Your Honor, I'll ask a couple follow-up.
14 Thank you.

15 Q. Agent Draper, when did you view this video? Approximately
16 when did you view this individual on the Idaho 3% YouTube
17 Channel?

18 A. Well, probably first maybe around December. January 2016,
19 December 2015, approximately.

20 Q. That was the first time you viewed it there?

21 A. I believe so.

22 Q. And in this video, which is depicted in 45A, are there
23 images -- does it contain any images of the defendants -- of
24 any of the defendants?

25 A. Yes, it does.

Sarah Gibson Draper - Direct

1 Q. Does that include Mr. Parker?

2 MR. LEVENTHAL: Objection. Leading.

3 BY MS. AHMED:

4 Q. Which of the four defendants does it include images of?

5 A. Mr. Parker, Mr. Drexler, Mr. Stewart.

6 Q. And is this in relation -- and what do the images depict,
7 just generally, them doing?

8 A. Training or operations with this organization.

9 Q. And that's Idaho, the 3%?

10 A. Yes.

11 Q. And just generally, can you explain what the Idaho 3% is?

12 A. It's Idaho --

13 MR. LEVENTHAL: Asked and answered. Objection.

14 MS. AHMED: This is specific to the Idaho 3%. I
15 believe that you -- Agent Draper previously testified as to the
16 3% movement generally. Now I'm asking her specifically about
17 the Idaho 3%?

18 THE COURT: All right. She can answer the question.

19 THE WITNESS: All right. It's -- as previously
20 discussed, the 3% movement is -- there's organizations
21 throughout the country, and Idaho has a -- has a chapter as
22 well.

23 BY MS. AHMED:

24 Q. What kind of organization is it?

25 A. They do -- they do trainings, like, type of military-style

Sarah Gibson Draper - Direct

1 training, firearms or tactical. They do some operations. They
2 do some community service.

3 Q. And when you say operations, what -- just generally, what
4 do you mean?

5 A. They've been -- individuals associated with the
6 organization have been involved in other interactions with the
7 federal -- federal regulation, federal regulatory acts.

8 Q. Have they -- in this video, are there images of the
9 defendants that you named participating in those operations?

10 A. Yes.

11 Q. And there are also -- are there images in this video of
12 their participation in the events of April 12th, 2014?

13 A. Yes.

14 Q. And are there images depicting them conducting the
15 training that you just described?

16 A. Yes.

17 Q. Participating in training?

18 A. Yes. Yes.

19 MS. AHMED: Your Honor, the government would move to
20 admit 45A.

21 MR. MARCHESE: Parker objects as to relevance. More
22 prejudicial than probative.

23 MR. TANASI: Stewart joins, Your Honor.

24 MR. PEREZ: Lovelien joins.

25 MR. LEVENTHAL: Drexler joins.

Sarah Gibson Draper - Direct

1 THE COURT: All right. Indulge me, please, in
2 sidebar, so I can ask a couple questions follow-up.

3 (Sidebar.)

4 THE COURT: All right. So, my question is, since I
5 haven't seen the video and the objection is more prejudicial
6 and probative, I am not sure how I can make that finding as to
7 whether it's relevant.

8 If it does portray images of the defendants during
9 the incident, then, obviously, that portion of it is relevant.
10 If there's other portions that are not relevant and maybe are
11 more prejudicial, then I need to know more about what this
12 video displays. Is it like a training video or recruiting
13 video for them?

14 MR. TANASI: It's essentially a montage of just that
15 almost.

16 MR. LEVENTHAL: Essentially, yes. I was about to
17 join. It got me.

18 MR. MARCHESE: Three minutes long. Some of images
19 are of Bundy. I think all of them have already been admitted
20 into evidence. If not, then very similar ones have been.

21 There are just some general pictures. Guys just
22 hanging out. There are also some pictures with guys, you know,
23 with guns and whatnot. There are also some pictures of the two
24 mining incidents, which assuming the government is laying the
25 foundation for getting into. What else?

Sarah Gibson Draper - Direct

1 MR. LEVENTHAL: No community service. I didn't see
2 community services --

3 THE COURT: She mentioned that.

4 MR. LEVENTHAL: I mean, I heard it, I just didn't see
5 it on the training.

6 MR. MARCHESE: I missed --

7 MR. LEVENTHAL: I was looking for it.

8 MR. MARCHESE: The 3% bake sale was not in there. I
9 want that put in there.

10 MS. AHMED: The 3% what?

11 MR. MARCHESE: Bake sale.

12 MR. LEVENTHAL: Yeah, the bake sale.

13 MS. AHMED: Your Honor, this --

14 THE COURT: You will in your next case. We will be
15 back here, and I will remind you of that.

16 MR. LEVENTHAL: Right. Don't tell me that.

17 MS. AHMED: This is a video posted to the Idaho 3%
18 YouTube page, and I believe the title of it is "3% of Idaho, an
19 Overview."

20 And, obviously, I can play it for Your Honor, so you
21 can see it. But it's montage of photographs that include both.
22 That are the Bundy Ranch photographs, that event, interspersed
23 with the photographs from the Sugar Pine Mine event and the
24 White Hope Mine event, both of which we noticed as 404(b)
25 evidence.

Sarah Gibson Draper - Direct

1 So, if Your Honor would want to take a restroom break
2 right now, I would propose that we do that, and I can show it
3 to you. We don't need the audio. It's just a song, but we
4 were going to put in the images.

5 And I was thinking, Your Honor, that in order --

6 THE COURT: So, there's no words? There's no --

7 MS. AHMED: There's no audio. It's just images.

8 Correct. It's just images.

9 THE COURT: Okay. And then is there some reference
10 to this video at some point by somebody's Facebook page, or
11 text, or something?

12 MS. AHMED: Another witness that we had listed on our
13 witness list shared this video at some point. We are not
14 saying that any of these three shared it, but they are featured
15 in it, and they participated -- they were affiliated with the
16 organization is what she had testified to. That they trained
17 with this organization, and they -- and so -- I mean, I can do
18 it that way. I can have her describe more of what she knows
19 about their involvement in the organization.

20 THE COURT: This witness or a different witness?

21 MS. AHMED: This witness.

22 THE COURT: This witness.

23 MS. AHMED: Yeah. No, I was saying another witness
24 had shared it at some point but not these three Idaho
25 defendants.

Sarah Gibson Draper - Direct

1 THE COURT: All right. Because in weighing its
2 prohibitiveness, it doesn't sound like it's any more probative
3 than the images we already have. So, I'm trying to see, is
4 there something --

5 MS. AHMED: So, these --

6 THE COURT: -- else that this adds to the equation.

7 MS. AHMED: These are images of the other two
8 operations that we noticed as 404(b) that defendants Parker and
9 Drexler participated in, and there's also a photograph -- a
10 still of Mr. Stewart training with Mr. Parker and another
11 individual. And they are wearing Idaho 3% T-shirts and so
12 it's --

13 THE COURT: And, so, this group lifted, from
14 somewhere else, some of the videos and images we have already
15 seen and threw them into --

16 MS. AHMED: No, these are all --

17 THE COURT: -- the recruitment video.

18 MS. AHMED: I would say that the Bundy Ranch ones
19 are probably -- they are lifted from somewhere else. These are
20 old images that, at least, we all have seen.

21 THE COURT: Uh-huh.

22 MS. AHMED: But the other images are from the other
23 two events, White Hope Mine and Sugar Pine Mine.

24 THE COURT: And the images of other two events, do
25 those include any of the defendants?

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1 MS. AHMED: Yes.

2 THE COURT: Oh.

3 MS. AHMED: They do. The other two events, there's
4 images of both Mr. Parker and Mr. Drexler from the White Hope
5 Mine event, and then with respect to the Sugar Pine Mine event,
6 there's images with Mr. Parker, both with others who were --
7 who also went to Sugar Pine Mine.

8 THE COURT: So, it's sounding more and more like it
9 would be admissible, but then we need to go back to the
10 limiting instruction and provide that first.

11 MS. AHMED: That's fine. It would --

12 THE COURT: The 404(b) is what you're telling me now.

13 MS. AHMED: Yes.

14 THE COURT: Okay.

15 MR. TANASI: And Your Honor, we're going to be --

16 THE COURT: I didn't get that from the beginning of
17 the conversation when you were --

18 MR. PEREZ: And then with respect to Mr. Lovelien --

19 THE COURT: Right.

20 MR. PEREZ: -- I mean, he's not even anywhere in any
21 of this stuff. I mean --

22 THE COURT: How does this relate to Mr. Lovelien? Is
23 this admitted only as to these three defendants' intent,
24 absence of mistake, and motive?

25 MS. AHMED: Your Honor, we would --

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1 THE COURT: It doesn't seem to implicate Mr. Lovelien
2 or does it in the video?

3 MS. AHMED: The video -- Mr. Lovelien does not
4 feature in the video. We do know that after -- there was
5 evidence that after the April 12th events, he did want to
6 become more involved in OMA, so thereby staying involved in
7 this movement generally.

8 THE COURT: But this movement. He's not a 3%er.

9 MS. AHMED: Idaho 3%.

10 MR. PEREZ: He's not a 3%er. There's been no
11 evidence of that.

12 MS. AHMED: And, Your Honor, yeah. We --

13 THE COURT: So, that's my inclination. I will look
14 at the video, but my inclination, at this point, with what's
15 been shared, is that it is relevant. It is 404(b), but I do
16 need to give a limiting instruction first.

17 And I don't see how it's related to Mr. Lovelien's
18 intent, motive, or absence of mistake, so I would instruct the
19 jury that it's also only admitted as to the other three and not
20 to Mr. Lovelien.

21 MR. TANASI: I guess I would just kind of add or join
22 with Mr. Perez as to Mr. Stewart. He is depicted in one split
23 second of the frame, so I don't know that that would
24 automatically prove his membership in 3%, which my client
25 disputes to this day. Simply being there or being a member are

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1 two different things.

2 MS. AHMED: Your Honor will see when we get there,
3 that he's actually depicted in the photograph that's included
4 in the video montage training with Mr. Parker and another
5 individual. And they are all wearing Idaho 3% T-shirts.

6 So, we would -- we would say that it's both relevant
7 for the reasons we've already stated, and that it would also be
8 applicable to him with the limiting instruction as well.

9 THE COURT: Let's give them a stretch break, and then
10 I'll watch the video, and you guys with take a quick stretch
11 break.

12 MS. AHMED: Your Honor, may I propose one other
13 thing?

14 THE COURT: Yes.

15 MS. AHMED: In order not to just torture everybody
16 else into the ground. Since it appears that there's -- there's
17 still quite a bit of Facebook to put in, so I would be
18 proposing that we would just put in the firearms with Agent
19 Draper, and then take her off --

20 THE COURT: Put in the what?

21 MR. MYHRE: The firearms.

22 MS. AHMED: The firearms that she was going to be
23 putting in.

24 THE COURT: You said firehouse.

25 MS. AHMED: Oh, firearms. The two firearms that we

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1 were intending to put in with her, we would ask that we be
2 allowed to put those into evidence with her, and then take her
3 off the stand, and put the firearms expert on to testify with
4 respect to those firearms.

5 And then in the meantime, we could, outside the
6 presence of the jury --

7 THE COURT: Go through all --

8 MS. AHMED: -- go through the rest of the --

9 THE COURT: -- the evidence and see what changes or
10 what --

11 MS. AHMED: Facebook posts depending --

12 THE COURT: -- things you all can agree to before you
13 bring it back to me, so we don't waste the jury's time.

14 MS. AHMED: That would be our proposal. So --

15 THE COURT: Okay. And then any objection to these to
16 weapons that are coming in?

17 MR. LEVENTHAL: I think they are Parker's; right?

18 MS. AHMED: One Parker, one Stewart.

19 MR. LEVENTHAL: Okay. I have no objection.

20 MR. TANASI: No objection.

21 MR. MARCHESE: No objection.

22 THE COURT: Okay. Let's do that.

23 MR. LEVENTHAL: And just on the video, you are
24 playing the sound, too?

25 MS. AHMED: No, we were not going to include the

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1 sound. It's just a song.

2 MR. LEVENTHAL: Yeah, I know. I know.

3 MS. AHMED: So --

4 MR. LEVENTHAL: But I think it goes with the whole
5 thing. We would ask that it go in.

6 MR. TANASI: You Know, Your Honor -- I'm sorry. I
7 don't mean to backtrack.

8 MR. LEVENTHAL: No, really.

9 MR. TANASI: But with respect to the firearms, I
10 guess I would actually object on prejudicial grounds. I think
11 they are more prejudicial than probative.

12 We've seen picture, on picture, on picture of
13 firearms. I don't think we actually need to see the gun
14 itself. I think that would be have more of a prejudicial
15 impact than in probative value, having seen them --

16 MR. LEVENTHAL: Is it the gun from that day?

17 MR. TANASI: I don't think there's any dispute, but-

18 MR. LEVENTHAL: Probably from the search warrant.

19 MR. TANASI: Correct.

20 MS. AHMED: So, with respect to the firearm, Your
21 Honor, we would -- obviously, the firearm expert is going to
22 testify about his observations regarding the weapon, and it
23 would facilitate his testimony. And it's obviously relevant to
24 this case. So, we would just disagree with that objection and
25 think it should be admitted.

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1 And then with respect to Mr. Leventhal's request for
2 the music, we thought it was just a distraction from the
3 images. We are only offering it for the images, not to for the
4 music. But when Your Honor reviews it, I'll obviously play the
5 sound, so you can --

6 THE COURT: Okay. Play the sound.

7 (End of sidebar.)

8 THE COURT: All right. So, we are back on the
9 record, back from sidebar.

10 The Court's going to research its ruling and review
11 the video during break. We are going to allow the jury to go
12 ahead and have a break. And then after that, we're likely
13 going to have a different witness; right? We are just going to
14 switch lanes and have a different witness come in.

15 MS. AHMED: Just put in two more pieces s of
16 evidence.

17 THE COURT: Quickly to put in two more pieces of
18 evidence, so they don't have to come back again tomorrow;
19 because obviously we are not going to be done with Special
20 Agent Draper at this point.

21 MS. AHMED: Correct, Your Honor.

22 THE COURT: All right. So, that's the plan. We will
23 go ahead and take about -- I don't know. How long is the
24 video? I should ask that first.

25 MS. AHMED: Two and half to three minutes, Your

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1 Honor.

2 THE COURT: All right. So, we can take a break until
3 3:30. It's 3:11 now.

4 I remind the jury during this break, please do not
5 discuss this case with anyone nor permit anyone to discuss it
6 with you. Do not read, review, or listen to anything that
7 touches upon this case in any way.

8 Please do tell the Court right away if you do
9 inadvertently hear anything about the case, and please do not
10 perform any research or any independent investigation
11 concerning this case.

12 We don't expect you to be familiar with every term or
13 everything that's being discussed. If you do have a question,
14 please feel free to write it down. It's an anonymous question.
15 And do not form any opinion until after you have received all
16 the information and been released to begin your deliberation
17 process.

18 So, we'll go ahead and stand for the jury. We'll
19 welcome them back at 3:30.

20 And Special Agent Draper, you may take your stretch
21 break as well, and please be back here by 3:30 so we can --
22 well, we are not going to have her back here at 3:30; is that
23 right?

24 MS. AHMED: We do need to have her back, Your Honor.

25 THE COURT: All right. We are going to have you back

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1 just for a minute at 3:30, then we'll switch gears.

2 (Jury out.)

3 THE COURT: All right. The jury has left the
4 courtroom.

5 Agent Draper, you are welcome to stay or go, but this
6 is -- yes, I am ready.

7 MR. TANASI: Your Honor, I don't mean to complicate
8 this, but would there be any way to take a bathroom break and
9 do this before the jury comes in? I know my client has to use
10 the bathroom.

11 THE COURT: Sure.

12 MR. TANASI: If we come back earlier maybe.

13 THE COURT: Yeah, because it's 3:13 now. What did I
14 say? Did I say be back at 3:30? Right?

15 COURTROOM ADMINISTRATOR: Correct.

16 THE COURT: Yes. So, take a 10 -- quick 10 minutes
17 and come right back.

18 MR. TANASI: Okay. Thank you.

19 (Recess, 3:13 p.m. Resumed 3:33 p.m. Jury out.)

20 THE COURT: Thank you. You may be seated.

21 All right. We are still outside the presence of the
22 jury. Can you go ahead and cue up the video so I can see it?

23 MS. AHMED: Your Honor --

24 THE COURT: Or did you come to an agreement?

25 MS. AHMED: No, we did not. Sorry. But the

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1 government would actually withdraw the request for admission of
2 the video, and we'll actually submit screenshots from the
3 video --

4 THE COURT: Okay.

5 MS. AHMED: -- when we bring this witness back for
6 part two.

7 THE COURT: All right.

8 MS. AHMED: Which I guess we are hoping tomorrow,
9 obviously. And then hopefully in the meantime we can hash out
10 specific screen shots and the Facebook posts that -- so we
11 would just --

12 THE COURT: All right. So, Exhibit 45A is withdrawn.

13 MS. AHMED: Yes, Your Honor.

14 THE COURT: And I can call the jury back in.

15 MS. AHMED: Your Honor, may we just -- may I just
16 approach the witness?

17 THE COURT: Yes.

18 MS. AHMED: I think that the exhibits that we were
19 going to put into evidence are up there, and I want to --

20 THE COURT: Mark them.

21 MS. AHMED: Yes.

22 MR. MARCHESE: Is this in reference to firearms,
23 Nadia?

24 MS. AHMED: These are the firearms.

25 MR. MARCHESE: In reference to him, we can just

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1 stipulate.

2 MS. AHMED: Stip to admission of the firearm?

3 MR. MARCHESE: Since we've already admitted in a live
4 trial, I think it's fine.

5 MS. AHMED: And then --

6 MR. TANASI: Court's indulgence, Your Honor.

7 (Pause in the proceedings.)

8 MR. TANASI: Well, Your Honor, I think we would stip
9 ultimately to admitting the firearm as well for Mr. Stewart.
10 But I guess I still would reserve my right to cross-examine the
11 witness on questions related to the firearm.

12 THE COURT: Oh, of course. Okay.

13 MS. AHMED: Your Honor --

14 THE COURT: Were they both Mr. Stewart's firearms or
15 no?

16 MS. AHMED: Your Honor, there's two firearms that are
17 being admitted. We wanted to admit both the box that each
18 firearm came in and the firearm itself. But both counsel have
19 now said that they would stip to the admission of the firearms,
20 in which case we would not have any further questions at this
21 time for Agent Draper. But we would --

22 THE COURT: So, the questions for her were going to
23 be as to the boxes?

24 MS. AHMED: No, just to get the firearms into
25 evidence period. So, if they are admitted, then we would just

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1 put the expert -- the firearms witness -- our next witness up
2 with them.

3 THE COURT: Okay.

4 MS. AHMED: So, we -- but, Your Honor, for -- for the
5 record, and I'd ask again to approach the mark them.

6 THE COURT: Yes, you may.

7 MS. AHMED: Exhibit 190A would be the firearm -- the
8 box in which Defendant Parker's firearm is currently encased
9 in.

10 THE COURT: All right.

11 MS. AHMED: And then Exhibit 190B is the firearm
12 itself. Exhibit 197A is the box for Mr. Stewart's firearm.

13 THE COURT: 190A was the box for Parker's firearm.
14 190B --

15 MS. AHMED: Is the firearm.

16 THE COURT: Is the firearm.

17 MS. AHMED: For Mr. Parker. And 197A is the box for
18 Mr. Stewart's firearm, and 197B is the box -- is the actual
19 firearm.

20 THE COURT: Okay.

21 MR. LEVENTHAL: Your Honor, on behalf of Mr. Drexler,
22 to the extent -- we don't -- we don't stipulate to them coming
23 in. So, if the Court -- if they are only coming in to those
24 two defendants, then I would ask to have a limiting instruction
25 be given to the jury that Mr. Parker's gun is coming in as to

Sarah Gibson Draper - Direct

1 Mr. Parker, and Mr. Stewart's gun is coming in for Mr. Stewart.

2 THE COURT: Is the government offering this evidence
3 only as to those two defendants, or is it part of the
4 conspiracy?

5 MS. AHMED: Your Honor, it would be the latter. We
6 would not -- they were not -- we would not agree to -- or we
7 would oppose a limiting instruction just because they are
8 evidence of the conspiracy in which all four of these
9 defendants participated in.

10 THE COURT: So, this is inextricably intertwined?

11 MS. AHMED: Correct, Your Honor.

12 THE COURT: That's the Court's ruling, so the
13 objection is overruled.

14 MS. AHMED: Your Honor, may I approach?

15 THE COURT: Yes, you may.

16 MS. AHMED: Your Honor, with respect to the remainder
17 of the Facebook posts and things that we intended to offer
18 through Agent Draper, I don't believe that we'll be able to
19 agree upon the remaining Facebook exhibits.

20 And so I would ask the Court, if the Court is
21 willing, that we have the jury come in possibly later tomorrow
22 morning, so that we could, without the jury present, go through
23 those with Your Honor.

24 THE COURT: We were going to come in at
25 9:00 tomorrow. What time were you proposing?

Sarah Gibson Draper - Direct

1 MS. AHMED: Your Honor, there are -- I would think if
2 the jury was here by 10:00, that would give us sufficient time
3 to go through.

4 THE COURT: All right. Any objection to that?

5 MR. MARCHESE: None from Parker.

6 MR. TANASI: None from Stewart.

7 THE COURT: All right. So, we'll do that. We'll
8 have them come in at 10:00 instead of 9:00 tomorrow.

9 MS. AHMED: It can obviously move much faster if
10 counsel would look through the exhibits and let me know which
11 ones they have objections to.

12 MR. MARCHESE: I mean, generally speaking, I think
13 for appellate purposes, I need to be consistent and continue to
14 object to any of the after-the-fact stuff.

15 COURTROOM ADMINISTRATOR: Your Honor, for
16 clarification, the jury would come in at 10:00 and the rest
17 would be here at 9:00 for trial; is that correct? Is that your
18 intention?

19 THE COURT: No, I think that the parties are going to
20 be meeting between -- right? 9:00 and 10:00?

21 MS. AHMED: We were hoping, actually, Your Honor --
22 Your Honor, I anticipate that we will not be in agreement about
23 the majority of these exhibits --

24 THE COURT: Oh.

25 MS. AHMED: -- so I was anticipating that we would

Sarah Gibson Draper - Direct

1 need Your Honor to be here to rule upon them. So --

2 THE COURT: Oh, okay.

3 MS. AHMED: In which case, we would all start at
4 9:00 and have the jury come at 10:00.

5 THE COURT: All right.

6 (Pause in the proceedings.)

7 MS. AHMED: Thank you, Your Honor. The firearms are
8 now marked according to what I stated on the record earlier
9 with exhibit stickers and the boxes.

10 THE COURT: All right. So, we can bring the jury
11 back in?

12 MS. AHMED: Yes, Your Honor. Thank you.

13 COURTROOM ADMINISTRATOR: And those four exhibits,
14 Your Honor, the firearms, those have not been yet admitted;
15 correct?

16 THE COURT: Correct.

17 MS. AHMED: Your Honor, my understanding was that
18 counsel was stipulating to the admission, so could we now move
19 to admit them then at this time?

20 THE COURT: All right. No objection; right?

21 MR. TANASI: That's correct, Your Honor. No
22 objection.

23 MR. LEVENTHAL: Drexler objects.

24 THE COURT: Is that a correct representation?

25 MR. MARCHESE: None from Parker.

Sarah Gibson Draper - Direct

1 THE COURT: Exhibit 190A as in apple, 190B as boy,
2 197A as in apple and 197B as in boy is admitted.

3 MS. AHMED: Thank you, Your Honor.

4 (Exhibits 190A, 190B, 197A and 197B admitted.)

5 (Jury in.)

6 THE COURT: All right. Welcome back to the jury who
7 may be seated. Go ahead and take your seats. Everyone else
8 may take a seat as well.

9 All right. So, Ms. Ahmed, you withdraw the Exhibit
10 No. 45A?

11 MS. AHMED: Your Honor, at this time, we would
12 request that we be allowed to withdraw, which was offered for
13 admission, Exhibit 45A and resubmit some portion of it when we
14 return Agent Draper to the stand.

15 We would also ask, Your Honor, to be allowed to break
16 with Agent Draper for the day, so that counsel can go through
17 the exhibits without subjecting the jury to this process
18 unnecessarily, and return with her back on the stand tomorrow.

19 THE COURT: All right.

20 MS. AHMED: And, Your Honor, just for the record, our
21 understanding also was, at the break, the parties all
22 stipulated to the admission of Exhibit 190B, which is Eric
23 Parker's firearm obtained from Eric Parker, and 197B, which is
24 Steven Stewart's firearm, obtained from Mr. Stewart.

25 MR. LEVENTHAL: And Your Honor --

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1 THE COURT: That's correct.

2 MR. LEVENTHAL: Your Honor, I apologize. Your Honor,
3 that's not correct. Mr. Drexler objected to those being
4 admitted at this time.

5 THE COURT: Okay. And the Court ruled on the
6 objection. So, over the objection of Mr. Drexler, yes, the
7 Court did admit Exhibit 190A, which is the box for Mr. Parker's
8 firearm, 190B, which is the firearm attributed to Mr. Parker,
9 and then 197A is the box for the firearm and 197B is the
10 firearm attributed to Mr. Stewart. Those were admitted.

11 MS. AHMED: Thank you, Your Honor. So, at this time,
12 Your Honor, we would just recess with Agent Draper at this
13 point.

14 THE COURT: And she's going coming back when?

15 MS. AHMED: Tomorrow, Your Honor.

16 THE COURT: Tomorrow morning?

17 MS. AHMED: Yes.

18 THE COURT: All right. Thank you.

19 MS. AHMED: Thank you.

20 THE COURT: So, thank you, Special Agent Draper. We
21 are going to have you come back in -- do we think, what?
22 10:00? 10:00, 10:30, Miss Ahmed?

23 MS. AHMED: Your Honor, I believe 10:00 would be a
24 sufficient amount of time.

25 THE COURT: All right. So, we'll have you come back

Erich Smith - Direct

1 at 10:00 a.m. tomorrow.

2 THE WITNESS: Thank you.

3 MS. AHMED: Thank you, Your Honor.

4 THE COURT: Please be careful on the way down with
5 those steps.

6 The government may call its next witness.

7 MR. MYHRE: Your Honor, the government calls Erich
8 Smith.

9 THE COURT: Good afternoon, Mr. Smith. Come on in.
10 You are going to be seated over here to my right. Please be
11 careful on what your way up those steps, and remain standing.

12 ERICH SMITH,
13 having been duly sworn, was examined and testified as follows:

14 COURTROOM ADMINISTRATOR: State your full name and
15 spell it for the record.

16 THE WITNESS: My first name is Erich, and it's
17 spelled E-R-I-C-H. Last name is Smith, S-M-I-T-H.

18 MR. MYHRE: Thank you, Your Honor.

19 DIRECT EXAMINATION

20 BY MR. MYHRE:

21 Q. Good afternoon, Mr. Smith.

22 A. Good afternoon.

23 Q. What is your current occupation?

24 A. I'm a physical scientist forensic examiner.

25 Q. And what is a physical science forensic examiner?

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1 A. Well, I'm a physical scientist forensic examiner at the
2 FBI laboratory. And my primary duties are with firearms and
3 tool mark identification.

4 So, I receive evidence that pertains to firearms and
5 tool marks. I conduct the necessary examinations involving
6 those. I issue reports to my findings and, in some cases, I
7 testify.

8 Q. How long have you been employed by the FBI?

9 A. I started working for the FBI in 1998.

10 Q. And what type of -- could you describe for us briefly your
11 educational background?

12 A. Sure. So, I have a Bachelor's of Science in Biology from
13 Virginia Commonwealth University. That's in Richmond,
14 Virginia. And then I also have Master's in Forensic Science
15 from Virginia Commonwealth University as well.

16 Q. And have you -- upon receiving your master's then, did you
17 pursue any specialized training as a forensic examiner?

18 A. Yes. Actually, when I was doing my master's program, I
19 got an internship with the Virginia Division of Forensic
20 Science working in their firearms and tool marks crew. And
21 basically, I was assisting other examiners on their case work.

22 From that stage, I actually moved from Virginia
23 Division of Forensic Science to the FBI laboratory. I started
24 there in 2000 -- or, excuse me -- in 1998, and I was a
25 technician at that point.

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1 Q. And how long did you serve as a technician?

2 A. I served as a technician from 1998 to 2000.

3 Q. Now, once -- after serving your time as a technician, then
4 did you then receive further certification?

5 A. Yes, I did. I got qualified. I went through the
6 qualifying process to become a forensic examiner with the FBI
7 laboratory.

8 Q. Now, we all understand generally the term forensic
9 examiner, but in terms of your specialty, tool mark and
10 firearms identification, can you drill down a little bit on
11 that and tell us specifically what your field of discipline
12 pertains to?

13 A. Sure. What you have to understand, with my discipline,
14 it's more of an apprenticeship. So, when I started into the
15 training program, I was assigned to a qualified forensic
16 examiner in firearms and tool mark identification. So, all my
17 learning and experience came through that individual.

18 But I also received a manual that outlined all the
19 elements that I needed to learn to be competent in the
20 discipline of firearms, tool mark identification, gunshot
21 residue, and serial number restoration.

22 At the end of that, which takes approximately two
23 years, we go through a series of tests, and at which I went
24 through six of them. The first three are oral boards. And
25 basically, all the examiners get to come together, and they ask

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1 you questions and test your knowledge base to see if you're
2 competent in the areas of firearms, tool marks, and gunshot
3 residue.

4 After that, you have to take three more additional
5 tests which are moot courts. You are given a mock case, you
6 are in a courtroom setting, and you present your evidence. If
7 you successfully complete all these tests, you are qualified by
8 the FBI laboratory.

9 Q. And have you been so qualified?

10 A. I have.

11 Q. Now, you've -- where is the laboratory located?

12 A. It's in Quantico, Virginia.

13 Q. Now, have you testified in trials before this one as an
14 expert in firearms identification?

15 A. Yes, I have.

16 Q. And approximately how many times?

17 A. Approximately 43 times.

18 Q. Was that in any one particular jurisdiction or all over?

19 A. Both in state, federal, and local trials.

20 Q. Now, in connection with -- oh, one aspect I want to ask
21 about. With respect to your laboratory, do you have a
22 collection of firearms at the laboratory?

23 A. Yes, we do.

24 Q. And what -- can you describe generally what that
25 collection consists of?

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1 A. We have a reference firearms collection. It has
2 approximately 8,000 firearms. And they represent multiple
3 calibers as well as different platforms. Be it a pistol,
4 shotgun, rifle, machine gun, submachine guns, we have the whole
5 variety of different firearms in our collection.

6 Q. Now, in connection with the events to which you are going
7 to be testifying today, were you asked to perform any sort of
8 identification of firearms?

9 A. Well, let me explain that term. When I hear
10 identification, that's where I would be identifying a bullet or
11 a cartridge case as having been fired from a particular
12 firearm. That's not the examination that I conducted in this
13 case.

14 Q. And did you conduct an examination using photographic
15 evidence?

16 A. I did.

17 Q. And can you describe the method by -- or, excuse me -- can
18 you describe what you were asked to perform in connection with
19 reviewing the photographic evidence?

20 A. I received a series of PowerPoints which had multiple
21 images in them. And I was asked to review the images and try
22 to determine if the objects depicted in there were any
23 particular firearm.

24 Q. And I'm going to go through a number of images with you in
25 a moment, but can you just explain the methodology used in

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1 reviewing photographs to identify particular firearms?

2 A. You have to think of it as like the first level in our
3 examination. The very first thing that we would do, looking at
4 an image, it doesn't matter what the object is, is you are
5 going to look for class characteristics.

6 Let's assume it's a car that's pictured, and you are
7 asked to determine what kind of vehicle is in that picture.
8 You look at it. It meets certain specifications. You narrow
9 it down. It's not a pickup truck. It's now a sedan. It's a
10 sedan. It's a certain color. It's a certain make and model.
11 That's the same type of examination that I did here.

12 So, I'm looking at the class characteristics of an
13 object in an image and trying to determine from a large group
14 of firearms could I narrow it down to a smaller group of
15 firearms.

16 Q. And is the methodology you employed in doing that, is that
17 a method that is generally used and accepted within the
18 community of firearms identification and tool marks
19 identification?

20 A. All right. So when we're speaking about firearms
21 identification, my job is looking at a bullet or cartridge
22 case. The very first thing that I would do, is I would examine
23 the class characteristics. What is the caliber of the bullet.
24 So, I'd actually measure it. What's it's diameter? Just
25 physical features about that bullet.

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1 So, it falls in that same category. If I'm looking
2 at an image and I'm trying to figure out what object's depicted
3 in the image, I'm looking at class characteristics to try to
4 narrow the pool of candidates.

5 THE COURT: The question was whether or not this was
6 a method used.

7 Do you want to repeat the question?

8 BY MR. MYHRE:

9 Q. Yes. Was this -- the method that you used in using
10 photographs to identify whether something was a firearm, was
11 that -- is that the method that is generally used and relied
12 upon by experts within your field?

13 A. Yes, it was.

14 MR. MYHRE: Okay. Your Honor, may we show the
15 witness Exhibit 196?

16 THE COURT: Yes.

17 BY MR. MYHRE:

18 Q. 196, please. I'm sorry.

19 Mr. Smith, I am just going to run through a series of
20 photographs with you that have already been admitted into
21 evidence here and ask whether these are images that you
22 reviewed in connection with your analysis?

23 A. Yes, this appears to be one of the images that I looked
24 at.

25 MR. MYHRE: And if I may show the witness

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1 Exhibit 141, Your Honor?

2 THE COURT: Yes, you may.

3 THE WITNESS: That is also an image that I looked at
4 in my examination.

5 MR. MYHRE: And, Your Honor, may I show the witness
6 152?

7 THE COURT: Yes, you may.

8 THE WITNESS: That also is another image that I
9 looked at as well.

10 BY MR. MYHRE:

11 Q. Now, with respect to those three images, were the
12 objects -- well, first of all, do you see a firearm depicted in
13 this image at 152?

14 A. All right. The way the examination would go, if this was
15 just in the laboratory when I was looking at this image, the
16 very first thing is I would look at it, and I see a black
17 object that's being held. It's actually being shouldered.
18 It's actually placed up into the shoulder, and that's
19 consistent with being a rifle.

20 So, that's, like, the first thing when I look at the
21 image. Now, I'm going to look at several elements about the
22 actual object to try to figure out if I can discern what type
23 of firearm it might be.

24 Q. Now, did you subsequently receive a physical object that
25 was consistent with this image that's depicted in 152, the

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1 object being held here?

2 A. Yes, I did.

3 MR. MARCHESE: Your Honor, we'll stipulate that it
4 was Eric Parker's Saiga .223 rifle that this witness examined.

5 MR. MYHRE: Your Honor, we understand we're
6 getting -- we're getting there right now.

7 THE COURT: Okay.

8 BY MR. MYHRE:

9 Q. Now, Mr. Smith, near your witness stand there, there
10 should be a box marked Exhibit 190A.

11 A. There is.

12 MR. MYHRE: And, Your Honor, with the Court's
13 permission, may I ask the witness to retrieve 190A and 190B
14 that he may use during --

15 THE COURT: Yes.

16 MR. MYHRE: -- for his testimony?

17 THE COURT: Yes, he may.

18 BY MR. MYHRE:

19 Q. So, by stipulation, this object, Mr. Smith, is the object
20 depicted in the -- in Exhibit 152 as belonging to Eric Parker.

21 So, if you would just describe what -- 190A is -- is
22 the box. That's what you would have received at the lab; is
23 that correct?

24 A. Right. So, it actually has Exhibit 190A on it, and it has
25 my FBI laboratory number on it as well. And then this is the

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1 evidence tape that we use -- the yellow evidence tape that we
2 use to seal the box up for return.

3 Q. You can open that box, and with the Court's permission,
4 may the witness remove the contents of the box?

5 THE COURT: Yes, he may.

6 THE WITNESS: Do you want me to take it out of the
7 box?

8 BY MR. MYHRE:

9 Q. Yes. And the record should reflect that the witness now
10 has removed the object from the box at 190A.

11 And is that marked 190B, Mr. Smith?

12 A. It is.

13 Q. Yes. And can you describe -- have you identified what you
14 are now holding in your hand as 190B?

15 A. I did check to make sure that it was rendered safe.

16 Q. So, just for the record, by rendered safe, what do you
17 mean?

18 A. I mean that the firearm is not loaded at this time.

19 Q. And there are -- there appear to be some tags on there.
20 Can you explain what those are? Some ties?

21 A. Right. So, the green tie is actually put on at the
22 laboratory. It signifies that it's been checked to be clear
23 and safe, and we put it through the action just to make sure
24 that it can't be loaded easily.

25 Q. Okay. Now, I neglected to ask this of you earlier, but is

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1 there a definition for what a firearm is?

2 A. Sure. A firearm is a device that pushes a bullet or
3 projectile by means of explosion, in simple terms.

4 Q. And based on your analysis of what you're now holding as
5 190B, have you determined whether or not that is a firearm?

6 A. Yes, I did.

7 Q. And can you explain how you arrived at that determination?

8 A. One of the examinations that we do with firearms is to
9 determine if it functions properly. So, at my laboratory, we
10 have a water tank, a very large tank of water. It's about
11 10 feet long. It stands about 4 feet tall. It's about 4 feet
12 wide.

13 And I took this to our collection -- or I took it to
14 our water tank. I actually loaded cartridges into the chamber,
15 physically loaded them in, and I test fired it into the water
16 tank.

17 And the reason that we do that is that we can collect
18 the specimens. The water actually slows the bullet down and
19 preserves the bullet and the microscopic features on it so I
20 can collect them for future analysis. And it also lets me
21 determine if the firearm functioned properly.

22 Q. Were you able to determine the make and model of that
23 firearm?

24 A. Yes. So, this is actually a Russian-made Izhmash rifle.
25 And it's the Saiga model.

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1 THE COURT: Can you spell that? I'm sorry.

2 THE WITNESS: All right. Excuse me.

3 THE COURT: If you can't spell it, that's all right,
4 too.

5 THE WITNESS: It's I-Z -- I'll check my notes, if
6 that's okay, just to make sure it's correct.

7 THE COURT: Sure. Yeah.

8 BY MR. MYHRE:

9 Q. For the record, your notes that you are checking is the
10 report that you prepared in connection with your examination?

11 A. That's correct. I-Z-H-M-A-S-H.

12 THE COURT: Thank you.

13 BY MR. MYHRE:

14 Q. And can you spell Saiga also for the record, please?

15 A. Sure. That's S-A-I-G-A.

16 THE COURT: Thank you. That's not the way I spelled
17 it, so thank you.

18 THE WITNESS: So, Izhmash is the factory in Russia
19 that actually produced the rifle, and then the model is the
20 Saiga. It shoots the .223 caliber cartridge, also known as the
21 .556 in metric designation.

22 BY MR. MYHRE:

23 Q. Now, you explained that you test fired it. It functioned;
24 is that correct?

25 A. That's correct.

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1 Q. Can you explain, in just basic terms, using the exhibit,
2 what -- how does that rifle function? What is the
3 functionality of it? And by that I mean how does it actually
4 fire the projectile mechanically using that weapon?

5 A. Your Honor, can I stand up to show the jury?

6 THE COURT: Yes.

7 THE WITNESS: Can I cut the zip tie off to actually
8 use the action?

9 THE COURT: Yes, you may. You might need to move the
10 microphone up to the bench? Mike, if you want to help him,
11 just -- so otherwise, I don't know if we'll still hear you.

12 THE WITNESS: This is the rifle. It's designed to be
13 shouldered.

14 BY MR. MYHRE:

15 Q. You might have to stand back just a little bit or move the
16 microphone.

17 THE COURT: The microphone moves, so feel free to
18 move it and adjust it.

19 THE WITNESS: The way it functions, there's a
20 component missing, and that's the magazine. This portion right
21 here, this opening -- actually, let me back up.

22 This portion here is called the receiver. This is
23 the rear stock. This is a pistol grip. This is the fore-end.
24 If we had a magazine, the magazine holds cartridges. We'd
25 insert the magazine into this magazine opening. It's not ready

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1 to fire at this moment. It's just holding cartridges in the
2 magazine.

3 We have to actually manually manipulate the firearm
4 to put a cartridge into the chamber. By doing so, this little
5 handle here grabs the bullet. The bullets inside, and it
6 allows you to pull it back, exposing the cartridge on the top
7 of the magazine. When you let this go, it strips off the
8 cartridge from the top of the magazine and puts it into the
9 chamber.

10 At this point -- one thing I should show you, too, is
11 this lever right here. This is called the selector switch. In
12 order to fire -- or, actually, to load it, I need to move it
13 down in this direction here. That allows the bolt to go back
14 far enough to strip that cartridge off and put it into the
15 chamber.

16 If I put it back in this position, it's safe. It
17 won't fire. Okay. But in order to fire, at this point, I'd
18 have to put the selector switch down. Okay.

19 BY MR. MYHRE:

20 Q. If I could stop you there for just for one moment.

21 In terms of loading, you explained that there was a
22 component missing with the magazine. In order to load that
23 weapon, does the magazine need to be inserted into the weapon?

24 A. It doesn't. I could actually physically pull the
25 chamber -- or pull the bolt back and insert a cartridge into

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1 the chamber, and then when I let the bolt go forward, it would
2 fire when I pulled the trigger.

3 Q. But in terms of the normal course of the functioning, if
4 the magazine is inserted, you can load a weapon -- or, excuse
5 me -- load a bullet into the chamber with the magazine
6 inserted?

7 A. That's correct. The cartridge.

8 Q. Cartridge. Excuse me.

9 A. At this point, if there's a cartridge in the chamber, the
10 firearm has been essentially cocked. There's a hammer inside.
11 It's in a cocked position. If I pull the trigger now, the
12 hammer will fall.

13 That strikes the firing pin. The firing pin hits the
14 primer on the cartridge, which causes a small little explosion.
15 Gets the gun powder burning. That gun powder expands as a gas
16 rapidly, and it pushes the bullet out the muzzle end.

17 This particular rifle is a gas-operated system. At
18 this point right here, some of the gas is bled off. It
19 actually pushes on a piston inside here. Opens the chamber.
20 The cartridge case is expelled. The bullet moves back. If
21 there's another cartridge in the magazine, it puts it in the
22 chamber, but it wouldn't fire again, because it's a
23 semi-automatic rifle. In order to fire it, I have to release
24 the trigger, it resets the hammer, and then I can fire it. So,
25 this is semi-automatic rifle.

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1 Q. So, with each -- each round then to be fired requires the
2 user of that weapon to pull the trigger?

3 A. That's correct.

4 Q. But once the trigger is pulled, another round is
5 automatically chambered; is that correct?

6 A. As long as there's a cartridge in the magazine, another
7 one will be put in the chamber.

8 Q. And then, but again, to fire that next round would require
9 pulling the trigger?

10 A. That's correct.

11 Q. Would you explain for us, with respect especially to the
12 selector switch, you mentioned that it had to be in the fire
13 position to load, and it has to be in the fire position as well
14 to pull the trigger; is that correct?

15 A. That's correct.

16 Q. When it's in safe, can you explain how that prevents the
17 firing of the weapon?

18 A. All right. So, it's set up right now to fire. If I pull
19 it back up -- actually, if you see this opening right here.
20 This dark spot? That allows this handle right here to pass
21 through. That moves the bolt back far enough to allow the
22 cartridge to be exposed.

23 Okay. In this position, I can't pull the bolt back
24 far enough to deliver a cartridge into the chamber, so it
25 blocks the bolt to include, our trigger's blocked. So, in this

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1 position, you wouldn't be able to fire.

2 Q. Now, you mentioned the 2.223 [sic] round. What is that --
3 in common parlance, is that equivalent to what type of --
4 what -- explain that caliber, if you would, for the jury?

5 A. .223 is a caliber family, caliber families. When I use
6 that term, there are a lot of different bullets that are a
7 quarter inch in diameter, because .223 is almost a quarter
8 inch. Okay. So, there are a lot of different bullets that are
9 that same diameter. But this particular rifle shoots a .223
10 Remington or a .556x45 millimeter.

11 Q. Now, is it within -- with respect to the range of this
12 weapon, do you have any information with respect to the range
13 of this particular weapon?

14 A. That is an examination that I do not conduct. I didn't
15 conduct on this one as far as the accuracy or the precision of
16 this particular firearm.

17 Q. You just examined it for functionality; correct?

18 A. Exactly.

19 Q. Now, does this weapon have sights on it?

20 A. It does.

21 Q. And we can see from here it's a -- can you just explain
22 the sights and how they operate?

23 A. Sure. So, this is the front sight. And this portion back
24 here, this the rear sight. And it will move up and down.

25 Q. And what -- and as it moves up and down, does it require

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1 some physical force be applied to it?

2 A. Not really. This little tab or cylinder piece that you
3 see here, you pinch it in. It will allow you to move it back
4 and forth. It's going to be hard for you to see, but as you
5 move it back and forth, the height of the rear sight moves up
6 and down. And that's allowing the shooter to adjust for
7 different distances in shooting. I guess what I --

8 Q. Oh, I am sorry. So, the rear sight on this particular
9 weapon is used to adjust for distances?

10 A. That's correct.

11 Q. And as the sight goes up, does that mean -- how does that
12 affect the distance sight? Or, excuse me. How does that
13 affect the ability to shoot at particular distances?

14 A. You have to understand what happens to the bullet when it
15 leaves the muzzle. People think that the bullet leaves, and
16 it's just going in a straight line. And it is.

17 But the problem is gravity is acting on the bullet,
18 so the bullet wants to fall as gravity's pulling on the bullet.
19 You don't see that. You just see the bullet leaving straight.

20 So, if you are shooting at a great -- a farther
21 distance, not close, the bullet will start to drop. It will
22 eventually hit the ground if it goes far enough. So, this
23 particular firearm and most firearms will have some way to
24 adjust for that out to a certain distance.

25 And you can see here, it has markings one, two, and

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1 three. Those are going to be designated probably for meter
2 distances, because it's a Russian-made rifle. So, you can
3 correct for how far out your target is based on these settings
4 here.

5 Q. And does the one, two, and three pertain to 100, 200, and
6 300?

7 A. That's correct.

8 Q. There was a question earlier from the jury about the
9 difference between a shotgun and a rifle. Can you generally
10 explain the differences between the two?

11 A. A shotgun is a smooth bore gun that you shoulder. As
12 opposed to this particular firearm, which you do shoulder, it
13 has a rifled barrel. So, inside this barrel, if we could look
14 down inside of it, you would see these grooves cut all the way
15 through from the breach end all the way to the muzzle end. And
16 they do that purposefully.

17 And the best analogy I can give you is, if you notice
18 a quarterback throwing a football, it's a real tight spiral.
19 If the quarterback just threw the football ought there, it
20 would just flutter along and fall to the ground. But because
21 there's rifling inside the barrel, the bullet starts to spin
22 and rotate quickly. And what that does, is it stabilizes the
23 bullet to fly straight and further.

24 Q. Thank you. You may resume the -- your seat at the stand,
25 the witness stand, Mr. Smith. I have a few more questions.

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1 Now, you talked about the selector switch. In
2 looking at Exhibit 152 before you, were you able -- upon
3 examination of this image, were you able to determine where the
4 position of the selector switch is on this particular image
5 152?

6 A. I was, but not in this configuration.

7 Q. And did you use color contrasts and so forth to enhance
8 the image at all?

9 A. Yes, I used the tools in Microsoft PowerPoint to enlarge
10 the image and change the contrast.

11 MR. MYHRE: And, Your Honor, for the witness only,
12 may we show the witness Exhibit 152A?

13 THE COURT: Yes, you may.

14 BY MR. MYHRE:

15 Q. And Mr. Smith, you have before you, the jury does not,
16 152A. Do you recognize this image?

17 A. Yes, I do.

18 Q. And what is that image?

19 A. That is the same image of a Saiga rifle I examined.

20 Q. And has the -- is this the slide that you assisted in
21 preparing with respect to the contrast?

22 A. It is.

23 Q. And will this assist you in determining the position of
24 the selector switch on 152?

25 A. It should. It might be -- need to be a little bit larger

Erich Smith - Direct

1 to see the actual selector switch in this position.

2 MR. MYHRE: Your Honor, we offer Exhibit 152A at this
3 time.

4 THE COURT: Any objection to 152A?

5 MR. MARCHESI: No objection, Parker.

6 MR. TANASI: None from Stewart, Your Honor.

7 MR. LEVENTHAL: No objection.

8 MR. PEREZ: No objection, Lovelien.

9 THE COURT: Exhibit 152A will be admitted. You may
10 go ahead --

11 MR. MYHRE: And may we publish?

12 THE COURT: -- and publish. Yes.

13 MR. MYHRE: Thank you, Your Honor.

14 (Exhibit 152A admitted.)

15 BY MR. MYHRE:

16 Q. And I believe the jury now has 152A in front of it.

17 And if could you, Mr. Smith, please just circle --
18 you can write on your monitor there. If you would just circle
19 the area where the selector switch is located.

20 Is that not working?

21 A. I have a red dot on my screen.

22 Q. Oh, there you go. Okay. Thank you. And if we could
23 enlarge that portion. And do you see the selector switch in
24 this image?

25 A. Yes, I do.

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1 Q. And would you draw a line or -- okay. You have placed a
2 dot there.

3 A. Yes, I did.

4 Q. Okay. Now, the record should reflect that the witness has
5 placed a dot at the area he's identified as the selector
6 switch.

7 Could you please describe for the jury what you see
8 in this image and what the position is of that selector switch?

9 A. Can I use the rifle to --

10 Q. Yes, you may.

11 A. -- demonstrate?

12 When I did the examination, what came apparent, if
13 you look at this dark section right here, very dark area. And
14 in this position, when it's on safe, it's not present. When
15 you put it in the fire mode, it exposes that dark area.

16 That's the cutout right here for the bolt to
17 reciprocate back to load. To include, right where the dot is,
18 is the thumb portion of the selector switch to actuate it down.

19 Q. And what is the -- just again, what is the position in the
20 image?

21 A. It's in the fire position.

22 Q. Now, in order to get to the fire position, can that --
23 that switch, that lever just fall down by gravity? By force of
24 gravity?

25 A. Well, I can't speak to this firearm, but in reference to

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1 this firearm, there is tension. There are actually notches in
2 the receiver portion that they actually fit into. So, when you
3 move it down, you can feel it click into place.

4 Q. And when you say this firearm, you are referring to 190B
5 that you just held up in front of the jury?

6 A. That's correct.

7 Q. So, it requires human intervention and force to move that?

8 A. It manually has to be operated.

9 Q. Now, in the image 152A, does this image have -- show a
10 magazine in the weapon?

11 A. It does.

12 Q. And do you -- can you identify what type of magazine that
13 is?

14 A. It's a -- actually, in the image, you can see the element
15 that's missing from this rifle here, and that's the magazine.
16 That's this portion here.

17 Q. And the record should reflect the witness has drawn a line
18 on an object protruding from the bottom of the -- what he's
19 previously identified as a firearm.

20 A. Now, this is the Saiga Izhmash rifle. It comes in
21 different calibers. We're talking about .223 or .566. It also
22 comes in a larger caliber, a .30 caliber, which is .762x39.
23 The magazine for the .30 caliber is a different shape. This is
24 consistent with a .223 caliber magazine.

25 Q. Are you able to tell from the size of the -- in the image

Erich Smith - Direct

1 displayed here, how many rounds can be carried in that
2 magazine?

3 A. I don't know how many are specifically carried in that
4 one, but it's typically 30 rounds.

5 Q. We can take down 152.

6 And Mr. Smith, you can put that firearm down for a
7 moment.

8 Your Honor, may we show Exhibit 144?

9 THE COURT: Yes, you may.

10 BY MR. MYHRE:

11 Q. Now, Mr. Smith, were you asked to look at image 144 in
12 connection with your analysis of the firearms?

13 A. Yes, I was.

14 MR. MYHRE: May we show Exhibit 162, Your Honor, as
15 well?

16 THE COURT: Yes, you may.

17 BY MR. MYHRE:

18 Q. And focusing your attention on the individual in this
19 exhibit who is drinking from the jug of water, were you asked
20 to look at this photograph, or this image, rather, to determine
21 whether the object depicted there is a firearm?

22 A. I was.

23 MR. MYHRE: And lastly, Your Honor, may we show the
24 witness Exhibit 161?

25 THE COURT: Yes, you may.

Erich Smith - Direct

1 BY MR. MYHRE:

2 Q. In looking at Exhibit 161, Mr. Smith, were you asked to
3 look at this image in connection with your analysis to
4 determine whether the object being held there is a firearm?

5 A. I was.

6 Q. Now, with respect to the three images I have shown you,
7 were you able to reach a conclusion as to whether or not the
8 object depicted in 140 -- excuse me -- 161, that's being held
9 by the individual there, whether that is a firearm?

10 A. The object depicted there looks like a rifle.

11 Q. Okay. And would you circle the object that you're
12 referring to?

13 Now, unlike the images that -- that you reviewed in
14 196, 141, 152, and you did not have a physical object to verify
15 this; is that correct?

16 A. I did not.

17 Q. Nevertheless, based on this -- on these images that you've
18 seen and using this image, are you able to determine what type
19 of firearm this -- or, first of all, whether it is a firearm
20 and then what type of firearm it is?

21 A. I can't. One thing you have to understand about the
22 limitation of this exam, remember I gave the analogy of a
23 vehicle, looking at a vehicle, a picture.

24 Although this looks like a rifle, I don't know if it
25 works or functions. That's the limitation of it. I don't know

Erich Smith - Direct

1 if the car in the picture runs. But in this picture, the
2 person holding this object appears to be a rifle, and it
3 appears to be an AR-15-type rifle.

4 Q. Did you have physical objects of AR-15 variance to which
5 to compare this in your laboratory?

6 A. I do. I have numerous AR-15s. Typically, how the
7 examination goes, it's a lineup. I pull out guns from the
8 collection, and I compare them based on the image to try to
9 eliminate possible candidates.

10 Q. Can you walk us through some of the characteristics that
11 you found in the image that led you to the conclusion that this
12 is consistent with a firearm?

13 A. Well, it's consistent with an AR-15. And what stands out
14 prominently is this item right here.

15 Q. The witness has indicated with a dot just above the right
16 hand of the individual holding the object.

17 A. For the AR-15, that feature is a bolt assist. On this
18 particular rifle, it has a history of the bolt not locking,
19 getting stuck, and it's trying to put the cartridge into the
20 chamber.

21 That feature that I pointed there allows the shooter
22 to hit it, and it will force the bolt home and lock it for
23 them.

24 Q. And why would an individual need to -- to hit that?

25 A. If the cartridge wasn't -- or the bolt wasn't closing

Erich Smith - Direct

1 properly in the firearm, that gives them more -- it allows them
2 to apply more energy to the bolt by hitting it and actually
3 forcing it forward and locking the chamber.

4 Q. So, it would be -- it would not have to be done each time
5 that a round would be chambered. It would be only in the event
6 that there would be some slight malfunction of the bolt?

7 A. Right. If there's debris inside the chamber that's
8 preventing it from closing, this allows you to actually push it
9 forward for closing.

10 Q. Now, with this -- the image depicted in 161, you've
11 described the functionality of the Saiga. Is there -- and I
12 don't want to go into great detail, but is this essentially a
13 semi-automatic rifle as well?

14 A. That I can't answer, because I don't know if it's full
15 auto or semi-automatic. That's a question I can't answer.

16 Q. Are you able to determine from the image, however, whether
17 it's a rifle or not?

18 A. It is a rifle. I also could determine that it's a
19 .223 caliber as well.

20 Q. And how are you able to determine it's a .223?

21 A. Based on the magazine.

22 Q. And that was my next question. Is there a magazine in
23 this weapon as well?

24 A. There is. It's right here.

25 Q. And the record should reflect the witness has drawn a line

Erich Smith - Direct

1 on the image just below the right hand of the individual
2 holding the object.

3 And can you tell from this image how many rounds this
4 particular magazine will hold?

5 A. That I cannot. I'm not certain on the number of rounds
6 for this magazine.

7 Q. Now, also drawing your attention to -- I've circled an
8 area on the right hip of the individual in 161. And what have
9 I circled there?

10 A. That's actually a handgun, and it is a pistol.

11 Q. And are you able to, from this image, determine any
12 specific characteristics of this pistol as to whether it's a
13 firearm?

14 A. It appears to be a 1911 Colt variant. What you need to
15 understand is the Colt 1911 -- the actual year that it was
16 introduced, US Military adopted it. There are many firearms --
17 many firearm manufacturers that make very similar models to
18 this.

19 So, although I may call it a Colt 1911,
20 Smith & Wesson makes a version of it. Para-Ordnance makes a
21 version of it. There are other companies that make versions
22 very similar to this.

23 Q. And are you able to determine anything with respect to --
24 well, first of all, does a Colt have a hammer mechanism?

25 A. It does.

Erich Smith - Direct

1 Q. And how does the hammer mechanism work?

2 A. So, for this particular firearm, it's semi-auto -- excuse
3 me. It's single action. So, in this particular firearm,
4 there's a slide. You actually grab this portion right here and
5 pull it backwards. And when it goes forward, it puts a
6 cartridge into the chamber.

7 At the same time, the hammer's cocked. Now, all I
8 have to do is pull the trigger, and it fires. So, single
9 action basically means with a single pull of the trigger, it
10 will fire. The hammer is cocked, and it will fire.

11 Q. Now, with respect -- just to update the record, you've
12 drawn a line on the image at 161, on the object you've
13 identified as a Colt just near the top of the object.

14 Now, with respect to the hammer position in the
15 object in 161 or the firearm in 161, what is the position
16 there? Were you able to determine a position, first of all?

17 A. So, just like with the other image, I enlarged it and
18 enhanced the contrast. And I could see that the hammer was in
19 the cocked position.

20 Q. So, in a cocked position, would that then have required,
21 as you mentioned before, pulling the slide back at some point?

22 A. No. Because if the hammer -- well, I could cock the
23 firearm, and there would be no cartridge in the chamber. It
24 would just be -- the hammer would just be cocked. But if I --
25 if I pull the slide back and deliver a cartridge into the

Erich Smith - Direct

1 chamber, the hammer will be cocked as well.

2 Q. So, it can be done by -- what? Using a thumb to pull it
3 back?

4 A. That's correct.

5 Q. Or through the slide mechanism on the weapon itself?

6 A. That's right. But in order to load it, you need to
7 articulate the slide back and forth.

8 Q. And are you -- you mentioned, does this -- does this
9 firearm also require a magazine in order to have rounds in it?

10 A. That's correct. Actually, right in this portion right
11 here at the base, the butt of the grip is where the magazine is
12 actually inserted into the firearm.

13 Q. And the witness has drawn a line toward the base or the
14 butt of the stock of that particular -- or the pistol grip,
15 rather, of that firearm.

16 Can you tell from this image as onto whether or not
17 there's a magazine in that weapon?

18 A. I cannot.

19 MR. MYHRE: Your Honor, may I go back to Exhibit 162?

20 THE COURT: Yes.

21 BY MR. MYHRE:

22 Q. Mr. Smith, now this is Exhibit 162, which you have seen
23 previously. But now focusing on the individual behind the
24 individual who is drinking the water, and I'm circling that
25 individual for you, were you asked to look at this image to

Erich Smith - Direct

1 determine whether the individual I've just circled is -- is
2 holding a firearm?

3 A. Yes, I did.

4 MR. MYHRE: And, Your Honor, may I also show the
5 witness Exhibit 14 at 5 seconds?

6 THE COURT: Yes, you may.

7 BY MR. MYHRE:

8 Q. Exhibit 14 at five seconds.

9 And do you see that image before you, Mr. Smith?

10 A. Yes, I do.

11 Q. Were you also asked to examine this image as well?

12 A. One similar to this, yes.

13 Q. And circling for you an individual on the left-hand side
14 of the screen, were you -- in particular, were you asked to
15 look at this image in connection with the object being held by
16 that individual?

17 A. I was.

18 Q. And lastly, may we go to the same exhibit but to one
19 minute, 27 seconds.

20 And lastly, Mr. Smith, if you'd look at your monitor
21 at 1:27, Exhibit 14, and circling again the individual on the
22 left-hand side, were you asked to look at this imagine in
23 connection with your examination as to whether that object is a
24 firearm?

25 A. Yes, I did.

Erich Smith - Direct

1 Q. Now, after examining those images, you also received the
2 physical object; is that correct?

3 A. I received an object similar to that.

4 MR. MYHRE: And Your Honor, may we show the witness
5 what's been previously stipulated to as 197A and B, which is
6 the firearm belonging to Mr. Stewart?

7 THE COURT: Yes.

8 BY MR. MYHRE:

9 Q. And Mr. Smith, you now have 197A in front of you; is that
10 correct?

11 A. That's correct.

12 Q. And as before, this is the box that you would have
13 received the object?

14 A. That's correct. It has my laboratory number on it as well
15 as the evidence tape.

16 Q. So, from the -- those markings, that's consistent with
17 what you received; is that correct?

18 A. That's correct.

19 MR. MYHRE: And Your Honor, may we ask the witness to
20 remove the contents of the box?

21 THE COURT: Yes, you may.

22 BY MR. MYHRE:

23 Q. And the record should reflect that the witness has removed
24 the contents. So, is this rendered safe?

25 A. It has been rendered safe.

Erich Smith - Direct

1 Q. And again, it has tags on it; is that right? Not tags but
2 ties if you will?

3 A. Right. So, there's a green zip tie through the action.

4 Q. Now, is this the object that you examined as well?

5 A. Yes. What you won't be able to see is this silver mark
6 here, which was on the other firearm as well. I actually put
7 this on here. It has the laboratory number and my initials on
8 it.

9 Q. And what was your purpose in doing that?

10 A. That is so that I have a record that I physically touched
11 this item; that I can actually share that I did touch this
12 item.

13 Q. Now, is that item that you're holding, is that consistent
14 with the objects that we viewed in Exhibits 162 and Exhibit 14?

15 A. It is.

16 Q. And have you made a conclusion as to whether or not what
17 you now hold as 197B is a firearm?

18 A. This one is. I actually test fired it in the laboratory
19 just like I did with the other firearm, and it functioned
20 properly.

21 Q. Now, what -- have you been able to determine the make and
22 model of 197B?

23 A. Yes, this is a Hi-Point. It's made in Mansfield, Ohio,
24 and it's a carbine. That term basically means that it's a
25 shortened rifle, and it's model 995.

Erich Smith - Direct

1 Q. Now, in the other images we looked at in 144 and 161, for
2 example, and as well as the previous firearm that you -- that
3 you looked at at 190B, those have magazines. Does this -- does
4 this firearm have a magazine?

5 A. It does. The magazine's missing, but this is the magazine
6 well here in the grip. If we had a magazine, it would insert
7 in here.

8 Q. So, how does that differ from the other firearms you have
9 just looked at?

10 A. This one actually shoots a pistol cartridge. We were
11 taking about a rifle with the previous firearm. This one
12 actually shoots the 9-millimeter Luger. That's referred to as
13 a 9x19. It's a pistol round. To operate it, if we had the
14 magazine -- Your Honor, may I cut the zip tie?

15 THE COURT: Yes, you may.

16 THE WITNESS: This portion right here is called the
17 bolt. If we insert the magazine with the cartridges on it,
18 this is the bolt handle, very similar to what we had on the
19 rifle. You pull it backwards. When you let it go, it pulls
20 the cartridge off the magazine and inserts it into the chamber.

21 BY MR. MYHRE:

22 Q. Then if you --

23 A. This particular --

24 Q. Oh, I am sorry. Go ahead?

25 A. This particular firearm has a selector switch -- not a

Erich Smith - Direct

1 selector switch, but a switch for the safety. You can see the
2 red dot right here. That means it can fire. If I push it in
3 this position, it will not fire.

4 Q. And is this a semi-automatic or an automatic-type of
5 weapon?

6 A. It's a semi-automatic.

7 Q. So then the action would be as you described previously?
8 It would require a trigger pull each time?

9 A. Right. There would be a single pull of the trigger to
10 fire one cartridge.

11 Q. Thank you. You may place that down.

12 And Your Honor, may I show the witness what's been
13 previously marked as Exhibit 67?

14 THE COURT: Yes, you may.

15 BY MR. MYHRE:

16 Q. Now, Mr. Smith, on your monitor, you see Exhibit 67, which
17 has been introduced into evidence. Did you review this image
18 in connection with your analysis?

19 A. I did.

20 COURTROOM ADMINISTRATOR: It has been previously
21 admitted. Do you want this to be published to the jury as
22 well?

23 MR. MYHRE: Oh, I'm sorry. Yes. Yes.

24 Q. I believe 67 is now before the jury as well. My
25 apologies.

Erich Smith - Direct

1 Did you examine -- review this image in connection
2 with your analysis?

3 A. I did.

4 Q. And if I may, at page 2 of 67, did you also review this
5 image?

6 A. I did.

7 Q. And lastly, page 3. Did you review that image, sir?

8 A. I did.

9 Q. In reviewing these images, were you able to, based on your
10 expertise and your training, determine whether the images
11 depicted at Exhibit 167 is a firearm or reflects a firearm?

12 A. It's consistent with being a firearm.

13 Q. It's consistent with being a firearm. And have you been
14 able to determine what type of firearm it is consistent with,
15 make and model?

16 A. Can I go -- can you go back to image -- I believe it's 67?

17 Q. Is it the first page you would like?

18 A. The first one.

19 Q. Yes.

20 A. Exhibit 67.

21 Q. Now we have page 1 of Exhibit 67.

22 A. This was the first image that I looked at. And
23 immediately, it stood out as being a particular firearm. It
24 looked like a Bullpup Steyr. AUG Bullpup, which isn't -- I
25 don't see that very often. But if we go to the next image,

Erich Smith - Direct

1 number two --

2 Q. Page 2?

3 A. There is a feature that stood out that made me suspicious
4 that it was not a Bullpup. This right here, that appears to be
5 the takedown for a SKS rifle. And I did some research, and I
6 found out that there was a company that sold an aftermarket
7 configuration that looks like a Bullpup, but it lets you take
8 an SKS rifle and make it look like that.

9 Q. Now, the record should reflect the witness has drawn a
10 tiny mark at the upper left-hand portion of the exhibit.

11 In terms of your determination as to whether the
12 images depicted here are or are not consistent with a firearm,
13 does it make a difference as to whether it's an SKS or a
14 Bullpup from your standpoint?

15 A. It doesn't.

16 Q. But just for general information purposes, what's the
17 difference between an SKS and a Bullpup?

18 A. Well, just historically, an SKS is an older rifle. It
19 predates World War II. The Bullpup Steyr's a more -- it's a
20 later version rifle.

21 They are two different generations. And I don't know
22 how -- I mean, I can readily see that there's a difference
23 between them, and their actions are totally different between
24 them.

25 And in looking at this image, what I did is I

Erich Smith - Direct

1 actually took apart an SKS rifle from our collection to
2 actually see the internal components to be able to compare them
3 to this image to indicate that that's what this is.

4 Q. Now, turning to page 3 of the exhibit, if you could, just
5 describe for the jury whether this is consistent or not
6 consistent with a semi-automatic rifle?

7 A. All right. I don't know if this -- what's depicted is
8 semi-automatic or automatic.

9 Q. Do you see features consistent with that?

10 A. I mean, I don't know if this firearm fires
11 semi-automatically or automatically. I can't answer that
12 question.

13 Q. You might --

14 A. What I should point out to you though is I mentioned the
15 concept of Bullpup. As far as history of firearms, if we look
16 at this portion right here, that's the bolt for the firearm.
17 You can see the little handle there with the dot.

18 The design for a Bullpup takes that bolt and puts it
19 back further towards the person's face. It actually -- in a
20 real Bullpup, the firearm is shortened. Okay. And the -- and
21 the bolt is actually behind the trigger, which you see here.
22 Here's the trigger. But this aftermarket configuration
23 compensates for that.

24 If we took this apart, and we took this plastic cover
25 off, and we looked inside, the actual trigger mechanism for the

Erich Smith - Direct

1 SKS rifle would be in the area here.

2 Q. Now, does this -- does this weapon have a magazine with it
3 as well?

4 A. It does.

5 Q. And for the record purposes, the witness has previously
6 put a dot near the object he identified as a bolt on about the
7 left center portion of Exhibit 67, page 3, and has also drawn a
8 line toward the bottom of the weapon indicating where you
9 believe the trigger housing or the trigger mechanism to be
10 operating for this particular weapon; is that correct?

11 A. That's correct.

12 Q. Now, clearing those markings, if you would.

13 Could you identify -- by circling, identify where the
14 magazine is located on this weapon?

15 A. Right here.

16 Q. And the witness has drawn a line to the object protruding
17 from the bottom of the image depicted at 67-3.

18 Can you tell from this image, in this magazine, what
19 the caliber of this particular weapon is?

20 A. If you remember the previous pictures where the magazine
21 was .223, the magazine was almost straight. Came out in a
22 straight configuration. This one's curved. This one's
23 designed for the .762x39. That's what it's consistent with.

24 Q. And is the .762 larger or smaller than the .223?

25 A. It's larger. It's around .30 caliber.

Erich Smith - Cross

1 Q. And when you say larger, does that mean longer or larger
2 around?

3 A. The diameter of the bullet is larger for this particular
4 firearm in this configuration.

5 Q. Now, there appear to be some markings on this image at
6 167-3. Almost appears to be like a decal. Is that something
7 that was significant for your analysis?

8 A. Are you referring to all the skulls?

9 Q. The skulls, yes.

10 A. No, they weren't.

11 Q. Have you seen skulls like this in other firearms?

12 A. There are -- people tend to decorate their firearms in
13 certain fashions. Most often, it's camouflage.

14 MR. MYHRE: Your Honor, may I have just one moment?

15 THE COURT: Yes, you may.

16 (Pause in the proceedings.)

17 MR. MYHRE: You can take 167 down.

18 Thank you, Mr. Smith.

19 Your Honor, those are all the questions I have at
20 this time.

21 THE COURT: Cross?

22 MR. TANASI: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. TANASI:

25 Q. Okay. Good afternoon, Mr. Smith.

Erich Smith - Cross

1 A. How you doing?

2 Q. Rich Tanasi. I represent Steven Stewart. I have a few
3 questions for you on cross. Okay?

4 A. (Nods head.)

5 Q. All right. If we could still just have you retrieve 197B
6 again.

7 Okay, sir. If you don't mind just standing up for
8 me?

9 A. Sure.

10 Q. Thank you. All right. That weapon that you're holding
11 right there, that's not a shotgun; correct?

12 A. That is correct. This is not a shotgun.

13 Q. All right. And isn't it true that that weapon has a
14 broken front sight?

15 A. The front sight is broken on this.

16 Q. And you testified earlier that it carries a 9-millimeter
17 pistol round; correct?

18 A. That's correct.

19 Q. Okay. That firearm, as you're holding it, and as its
20 currently put together, and given all of its characteristics,
21 isn't it true that that firearm is not an illegal firearm in
22 any way?

23 MR. MYHRE: Objection, Your Honor. Call for a legal
24 conclusion that's not even relevant to anything in this case.

25 THE COURT: The defendants are not charged with

Erich Smith - Cross

1 possession of illegal firearms. It's not relevant.

2 MR. TANASI: I will move on, Your Honor.

3 Q. Now, sir, as you are standing there now, would you say
4 you're roughly 5 to 10 feet away from the jury box?

5 A. I'd say probably 10 feet or greater.

6 Q. Okay. How much greater? 15 at the most?

7 A. I think it would be best to have a tape to measure that.

8 Q. Sure. But would you agree with me it's probably less than
9 15 feet?

10 A. Sure.

11 Q. All right. Brian, if we could please pull up 162.

12 Sir, you can sit down and put the gun down, too.

13 Thank you.

14 Okay, sir. I draw your attention to this gentleman
15 here. See I have him circled?

16 A. Yes, sir.

17 Q. All right. Now, that firearm, wouldn't you agree with me
18 he is not pointing that in any direction?

19 MR. MYHRE: Objection, Your Honor. First of all, he
20 wasn't -- this witness is determining -- is here to testify
21 about a firearm, not whether it's being pointed or any legal
22 aspect of how this weapon's being carried.

23 THE COURT: Beyond the scope, and there's no
24 foundation for him to give an opinion.

25 MR. TANASI: Your Honor, he's gone through --

Erich Smith - Cross

1 THE COURT: Sustained.

2 MR. TANASI: Okay. I will move on.

3 Q. Sir, you'd agree with me that the individual right now in
4 this picture doesn't have his hands on the trigger; fair?

5 A. That's correct.

6 Q. Okay. In fact, he doesn't even have his finger on the
7 pistol grip of the gun; correct?

8 A. That's correct.

9 Q. All right. It's actually even almost as far back as you
10 can go on the weapon; fair?

11 A. The dot is the pistol grip. So, his hand is beyond the
12 pistol grip. Behind it.

13 Q. Thank you, sir. Sir, you've been employed by the FBI
14 roughly since 1998; is that fair?

15 A. That's correct.

16 Q. Okay. And prior to that, in 1996 or 1996 to 1998, you
17 were employed by the Virginia Division of Forensic Science;
18 fair?

19 A. That's correct.

20 Q. Okay. Both the FBI and the Virginia Division of Forensic
21 Science, those are law enforcement agencies; correct?

22 A. Yes, they were. The Virginia Division of Forensic Science
23 moved their element outside of the state police, so they work
24 independently now.

25 Q. But at the time, it was a law enforcement agency?

Erich Smith - Cross

1 A. It was.

2 Q. Okay. So, you've been in law enforcement and you've
3 worked in law enforcement since 1996; correct?

4 A. Roughly, yes. That's correct.

5 Q. All right. You said you testified 43 times?

6 A. Yes.

7 Q. In trial? Okay. And in all those times, did you testify
8 in your law enforcement capacity?

9 A. No.

10 Q. How many times did you testify outside of the law
11 enforcement capacity, sir?

12 A. I think more accurately, I testified as an expert witness
13 not related to firearms and tool mark identification. As a
14 private citizen testifying as an expert in another element.

15 Q. And how many times?

16 A. Just once.

17 Q. So, one out of the 43 times you've testified in a private
18 capacity. The other 42 times you testified as a law
19 enforcement expert?

20 MR. MYHRE: Objection, Your Honor. Mischaracterizes.
21 He said as a forensic examiner, I believe, as opposed to a law
22 enforcement officer.

23 THE COURT: Sustained.

24 MR. TANASI: Your Honor -- let's break this apart
25 then again.

Erich Smith - Cross

1 Q. 19 -- 43 times that you have testified; right?

2 A. (Nods head.)

3 Q. Okay. And was that over the span of your career since
4 1996?

5 A. No, you have to start back in 2002. That's when I was
6 qualified and I could start to testify.

7 Q. Okay. And what year was that again?

8 A. 2002.

9 Q. 2002. How many times between 2002 and today have you
10 testified in a non-law enforcement capacity?

11 MR. MYHRE: Same objection. I don't know what he
12 means by "law enforcement capacity."

13 MR. TANASI: Your Honor, it goes to bias. And I'm
14 asking how many times he's testified for either the United
15 States government as a FBI agent or in some other law
16 enforcement capacity for some other member of law enforcement.

17 THE COURT: So, why don't you ask it that way? It
18 might be easier. So, you're saying who called him to testify.

19 BY MR. TANASI:

20 Q. Sure. In those 43 times you testified, who called you?

21 A. Most often the prosecution calls me. The state.

22 Q. All right. Now, when you say most often, how many times
23 of those 43 times?

24 A. I want to say almost -- probably all of them.

25 MR. TANASI: Okay. Thank you. Nothing further.

Erich Smith - Cross

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CROSS-EXAMINATION

BY MR. MARCHESE:

Q. Good afternoon, sir.

A. How you doing, sir?

Q. Brief -- let's get up Exhibit 152A, please.

Okay. So, you obviously recognize this picture. You had some questions on direct examination about your examining this particular firearm; correct?

A. That's correct.

Q. And I believe you said it was a Saiga .223 rifle; correct?

A. That's correct.

Q. Okay. And this particular rifle, you said you had tested it at some point in time to see if it was functional; correct?

A. I tested this rifle back here.

Q. Correct.

A. That I received.

Q. All right. Assuming that's the same rifle, you tested that rifle behind you at some point in time; correct?

A. That's correct.

Q. All right. And that particular rifle, you just tested it for functionality; right?

A. That's correct.

Q. I believe you shot it into some sort of water tube or something along those lines?

A. Right. I shot it into a water tank to collect the

Erich Smith - Cross

1 bullets.

2 Q. And --

3 A. There's one other analysis that I did do with it.

4 Q. Okay. What was the date of the water test?

5 A. Can I refer to my notes?

6 Q. Sure.

7 A. January 18th, 2017.

8 Q. Now, this particular rifle here on the screen -- I will
9 circle it for you. Does it have any advanced optics or
10 anything like that?

11 A. I guess when you ask me the question about advanced
12 optics, you're talking about a scope?

13 Q. Scope. Yes.

14 A. There is no scope on this.

15 Q. Okay. So that would be just iron sights?

16 A. That's correct.

17 Q. Okay. And the rifle that you -- you have in court behind
18 you today -- I believe it's Exhibit 190 -- does that one have a
19 scope?

20 A. It does not.

21 Q. Okay. And that one also has iron sights?

22 A. That's correct.

23 Q. Okay. Now, this particular rifle you were asked -- the
24 one in 152A, you were asked some questions about a safety. Do
25 you remember that?

Erich Smith - Cross

1 A. Yes.

2 Q. Okay. And this particular rifle does have a safety;
3 correct?

4 A. It does.

5 Q. And I believe it was your testimony that it was your
6 belief that the safety was off or disengaged in this particular
7 photo; correct?

8 A. That's correct.

9 Q. Okay. And this particular individual doesn't appear to
10 have his index finger on the trigger; is that right?

11 A. That's correct.

12 Q. And from this particular photo, you cannot tell whether or
13 not there is round or a bullet in the chamber; is that correct?

14 A. That is correct.

15 MR. MARCHESE: No, further questions.

16 MR. LEVENTHAL: Cross.

17 CROSS-EXAMINATION

18 BY MR. LEVENTHAL:

19 Q. Good afternoon, sir.

20 A. How you doing?

21 Q. If we could bring up 162, Brian.

22 Okay. Sir, I'm going to draw your attention to the
23 gentleman who is sitting down drinking the water. You
24 testified to this; correct?

25 A. To that rifle, yes.

Erich Smith - Cross

1 Q. Okay. Well, you indicated that it looks like a rifle, but
2 you aren't sure; correct?

3 A. It's consistent with being a rifle.

4 Q. Okay. It could be an airsoft though? Do you know what an
5 airsoft is?

6 A. Yes. I do know what an airsoft is.

7 Q. And it could be an airsoft; correct?

8 A. Sure.

9 Q. You don't know -- okay.

10 And an airsoft, just -- you could put plastic pellets
11 in there; correct?

12 A. It shoots pellets.

13 Q. Okay. And those would be plastic?

14 A. That's correct.

15 Q. Okay. And you indicated you don't know if that works;
16 correct?

17 A. That is correct.

18 Q. And you indicated that you have no way of knowing if there
19 was even a cartridge in the chamber on that; correct?

20 A. That is correct.

21 Q. Now, you were asked some questions on direct exam
22 regarding gravity and what it does to the cartridge. Do you
23 remember that?

24 A. To the bullet.

25 Q. To the bullet.

Erich Smith - Cross

1 A. Yes.

2 Q. Okay. And you indicated that the bullet wants to keep
3 being pulled down; correct?

4 A. It can't overcome gravity.

5 Q. Okay.

6 A. It wants to drop.

7 Q. Okay. What other -- what other -- what else would affect
8 it? Would wind also affect the bullet?

9 A. Right. So, anything that's in the environment, be it
10 wind, rain, can affect the flight of the bullet.

11 Q. Okay. The flight meaning the range; correct?

12 A. Yes.

13 Q. Okay. What about the rifle being put into a -- sort of a
14 1-inch slit. Would that affect the velocity of the bullet?

15 A. I'm not clear on what you're asking.

16 Q. Okay. We saw some pictures of these -- well, maybe
17 rifles -- put between this slit here in the Jersey barrier.

18 A. Okay.

19 Q. Would that affect the velocity of the bullet as well?

20 A. It wouldn't affect the velocity. It would give a stable
21 platform to hold the rifle.

22 Q. Would it affect the range?

23 A. No, it wouldn't have any bearing on the range.

24 Q. Okay. So, when I say range, I'm -- I guess I'm describing
25 right to left instead of up and down.

Erich Smith - Redirect

1 A. Okay. So when I hear range, I think about distance.

2 Q. Apologize.

3 A. So you're talking about the lateral movement?

4 Q. Correct.

5 A. Well, I don't know -- yes, theoretically, if there's a
6 pinch point, you can only turn it so far left and right.

7 Q. So, you're limited to your range in terms of where that --
8 your -- the rifle is going; correct, or towards; right?

9 A. Your side.

10 MR. LEVENTHAL: Okay. Thank you very much, sir.

11 Have a good day.

12 MR. PEREZ: Nothing from Lovelien, Your Honor.

13 THE COURT: Redirect?

14 MR. MYHRE: Just one moment, Your Honor.

15 (Pause in the proceedings.)

16 MR. MYHRE: May I, Your Honor?

17 THE COURT: Yes, you may.

18 MR. MYHRE: Thank you.

19 REDIRECT-EXAMINATION

20 BY MR. MYHRE:

21 Q. Mr. Smith, Mr. Marchese asked you a question with respect
22 to firing the weapon into a water barrel. Do you recall that?

23 A. Yes.

24 Q. You were going to add that you did another -- you
25 performed another analysis in connection with that?

Erich Smith - Redirect

1 A. That's correct.

2 Q. And what were you going to go add with respect to that
3 aspect?

4 MR. MARCHESE: Objection. Going beyond the scope of
5 cross.

6 BY MR. MYHRE:

7 Q. Was the -- were you going to add this in response to the
8 question asked of you in cross-examination?

9 A. Yes, I was.

10 MR. MARCHESE: Your Honor, I asked him about the
11 water test. He was the one that added that. Not me.

12 THE COURT: Overruled. He can answer the question.

13 BY MR. MYHRE:

14 Q. And would you -- what other analysis did you perform?

15 A. So, I had the bullet and the cartridge case from the test
16 firing. We have a national database of unsolved shooting.
17 It's kind the National Integrated Ballistic --

18 Q. Oh, in connection -- without going into detail, you
19 performed analysis in terms of whether the weapon would be
20 involved in other shootings?

21 A. That's correct.

22 Q. And your results were it was not; correct?

23 A. That's correct.

24 Q. You were asked by Mr. Tanasi with respect to 197B.

25 And when I say other shootings, I mean with respect

Erich Smith - Redirect

1 to other criminal investigations involving --

2 A. Unsolved shooting.

3 Q. -- unsolved shootings.

4 A. That's correct.

5 Q. And just to clarify, it was not?

6 A. It was not.

7 Q. Okay. Now, with respect to Mr. Tanasi's questions about
8 the weapon at 197B, was that -- you were asked whether or not
9 that's a shotgun; correct?

10 A. That's correct.

11 Q. Are you able to, just from an appearance of a weapon,
12 necessarily tell whether a weapon is a shotgun or not a
13 shotgun?

14 A. Yes, I can.

15 Q. You can. But in terms of -- let me ask it this way.

16 Is 197B just -- from its appearance, is it consistent
17 or not consistent with being a shotgun?

18 MR. TANASI: Objection. Leading, Your Honor.

19 MR. MYHRE: I am just asking him whether it would be
20 consistent or not consistent, Your Honor. He has a choice.
21 It's not a -- I am not suggesting the answer.

22 MR. TANASI: And I'd also add asked and answered,
23 Your Honor. He's indicated he could not tell the difference.

24 THE COURT: He could not or that he could? He
25 said --

Erich Smith - Redirect

1 MR. TANASI: My understanding is that he could not,
2 or that --

3 MR. MYHRE: He said -- as I recall, he said he could
4 tell.

5 THE COURT: I have he said he could.

6 Yeah, let's get that clarified. I thought he said he
7 could tell the difference.

8 MR. MYHRE: Maybe I can rephrase, Your Honor.

9 THE COURT: Go ahead.

10 BY MR. MYHRE:

11 Q. You've said you can tell the difference?

12 A. That's correct.

13 Q. And that's because of your training and expertise?

14 A. That's correct.

15 Q. To a lay person or someone not in your training and
16 expertise, is there anything about the appearance of that
17 weapon that makes it universally understood to be a rifle?

18 A. I mean, I understand it to be a rifle, a carbine. But I
19 can see how someone might think that it was a shotgun.

20 Q. And what is it about the characteristics where someone
21 might view it as shotgun?

22 A. Can I retrieve the firearm, Your Honor?

23 THE COURT: Yes, you may.

24 THE WITNESS: A typical shotgun gauge -- that's the
25 terminology we use for a shotgun is 12 gauge. And that's

Erich Smith - Redirect

1 typically three-quarters of an inch barrel diameter. So, it's
2 a large diameter.

3 So, looking at the shroud here that's over the
4 barrel, this is just a cover. It's a pretty large diameter, so
5 you could misconstrue this as being the actual barrel, but it's
6 not. This inner portion, this inner diameter here is the
7 barrel and not this outer portion here that's housed within the
8 foregrip.

9 BY MR. MYHRE:

10 Q. Thank you. You may put that down.

11 You testified --

12 THE COURT: What was the purpose of that outer
13 barrel? It's not part of -- it's not functional? Is it --

14 THE WITNESS: Well, for this particular firearm, it's
15 cosmetic.

16 THE COURT: Okay.

17 THE WITNESS: But in actuality, on certain firearms,
18 this allows you to not come in contact with a barrel that might
19 be hot, because it blocks your touching it, a hot barrel. But
20 for this one, it's cosmetic.

21 THE COURT: Thank you.

22 BY MR. MYHRE:

23 Q. Now, you also testified to Mr. Tanasi's question about the
24 front sight that it was broken; is that correct?

25 A. That's correct.

Erich Smith - Redirect

1 Q. Did you receive it in that condition?

2 A. I did. I received it broken.

3 Q. And did you receive, along with it, any other parts?

4 A. Yes, I received broken parts.

5 Q. And what were the broken parts?

6 A. Can I pull them out of the box?

7 Q. Sure.

8 A. These were the broken parts that we received, and they
9 appear to be the metal portion of the sight.

10 Q. Thank you. And you -- just for the record purposes, you
11 are holding up a plastic baggie; is that correct?

12 A. That's correct. And there are three metal objects inside
13 of it.

14 Q. And that was recovered from 197A?

15 A. 197A, that's correct.

16 BY MR. MYHRE:

17 Q. Thank you. You may put that back.

18 Now, Mr. Leventhal asked you, based on the images you
19 reviewed -- if I may have just one moment, Your Honor.

20 The image you reviewed at 162 with the individual
21 drinking water, do you recall that image?

22 A. Yes, sir.

23 Q. He asked you whether that weapon could be an airsoft; is
24 that correct?

25 A. That's correct.

Erich Smith - RX

1 Q. And then just for the explanation purposes, an airsoft
2 fires plastic rounds?

3 A. That's correct. Plastic, little pellets.

4 Q. And based on your analysis of 152, you are not able to
5 tell one way or the other; is that your testimony?

6 A. That's correct.

7 Q. But in terms of the other characteristics --
8 characteristics you testified to, you found those
9 characteristics consistent with a firearm; is that correct?

10 A. Consistent with an AR-15.

11 Q. Or a variant thereof?

12 A. A variant. That's correct.

13 MR. MYHRE: If I may have just one moment, Your
14 Honor.

15 THE COURT: Yes.

16 (Pause in the proceedings.)

17 MR. MYHRE: Nothing further, Your Honor. Thank you.

18 THE COURT: Any other cross?

19 MR. TANASI: Very briefly, Your Honor.

20 RE-CROSS-EXAMINATION

21 BY MR. TANASI:

22 Q. Okay, sir. One more time with 197B, please.

23 A. Yeah.

24 Q. All right. If you could --

25 A. Do you want me to pull it out?

Erich Smith - RX

1 Q. -- just pull it out, and just hold it, please.

2 All right. So, for record, that is not a shotgun;
3 correct?

4 A. That is correct.

5 Q. Okay. And you know the difference between a rifle and a
6 shotgun; correct?

7 A. That is correct.

8 Q. Because there is a difference between a rifle and a
9 shotgun; correct?

10 A. That is correct.

11 Q. And you know that because of your law enforcement
12 training; correct?

13 A. Well, I work for law enforcement, but I am not a sworn
14 officer.

15 Q. I understand. But in working for law enforcement, you
16 understand the difference between a shotgun and a rifle; fair?

17 A. Sure.

18 MR. TANASI: Thank you, sir. Nothing further.

19 MR. MYHRE: Nothing in light of that, Your Honor.

20 THE COURT: Anyone else? Mr. Leventhal?

21 MR. LEVENTHAL: No. Thank you.

22 MR. MARCHESE: Nothing from Parker.

23 THE COURT: All right. Well, Mr. Smith, you gave us
24 a definition of firearm, and then you told us that the firearm
25 that you see in Mr. Drexler's possession in the photograph

Erich Smith - RX

1 could be an airsoft. So, I have to ask you, is an airsoft a
2 firearm?

3 THE WITNESS: It is not.

4 THE COURT: Thank you. Now, does anyone have any
5 other questions before we go to the jury?

6 MR. TANASI: None from Stewart, Your Honor.

7 THE COURT: All right. So, members of the jury, go
8 ahead and write down your questions on the form provided. I
9 know it's 5:06, but we want to know your questions, so please
10 write them down immediately, but take your time. Don't rush.

11 (Pause in the proceedings.)

12 THE COURT: All right. Counsel, please join me at
13 sidebar. Shall we finish tomorrow?

14 All right. So, it's a 5:11. Please raise your hand
15 if you have an appointment and you need to leave, because I
16 don't need to torture you and keep you here any longer. We can
17 finish it. All right.

18 So, I can still meet with the attorneys. We can
19 excuse the jury. And they will be back here tomorrow we said
20 at 10:00 a.m.? Right?

21 COURTROOM ADMINISTRATOR: Correct.

22 THE COURT: All right. So, we are going to go ahead
23 and excuse the jury.

24 On this overnight break, I do remind you that, as
25 always, please do not discuss this case with anyone nor permit

1 anyone to discuss it with you. Do not read, or listen to, or
2 view anything that touches upon this case in any way, and
3 please do not attempt to perform any independent research or
4 investigation.

5 And do not form an opinion until after you've heard
6 all the testimony, received the evidence, heard the jury
7 instructions. I will provide those to you. Then you will
8 listen to closing arguments. After that, I will excuse you to
9 begin your deliberation process, and that's when you can start
10 forming opinions and discussing with each other everything, but
11 not until then.

12 So, we'll go ahead and stand for the jury. They are
13 excused, and welcome them back at 10:00 a.m. tomorrow morning.

14 COURT SECURITY OFFICER: Your Honor, I'm sorry.
15 There is some confusion.

16 THE COURT: Yes.

17 COURT SECURITY OFFICER: Their schedule says 9:00
18 tomorrow, not 10:00.

19 THE COURT: Right, but we have some other things that
20 we are going to be doing, so you don't have to be here until
21 10:00.

22 So, you're right. The schedule does say 9:00, and
23 just today that changed. So, we won't need you back here until
24 10:00.

25 You are welcome at 9:00, but you are just going to

1 sit for an hour. We won't be able to have court until 10:00.
2 Thank you.

3 (Jury out.)

4 THE COURT: All right. We are outside the presence
5 of the jury.

6 MR. TANASI: Can we sit at counsel table, Your Honor?

7 THE COURT: Right. We can just sit here. Can we
8 excuse Mr. Smith?

9 MR. MYHRE: Yes, Your Honor.

10 THE COURT: He doesn't need to stay, does he?
11 So, we welcome him back at 10:00 a.m. tomorrow
12 morning. We also have Miss Draper coming back. But if you
13 could, Mr. Smith, please come back at 10:00 a.m. tomorrow. We
14 will finish with him and then go to Miss Draper?

15 MR. MYHRE: Yes, Your Honor.

16 THE COURT: Okay. So, we will have you back here at
17 10:00 a.m., please.

18 THE WITNESS: Thank you.

19 THE COURT: Thank you.

20 All right. So, Jury Note No. 100 asks: "In your
21 expert opinion, could a trained law enforcement officer
22 misidentify Exhibit 197B as a shotgun from 100 yards away with
23 the naked eye and binoculars?"

24 Any objection to that question?

25 MR. TANASI: Not from Stewart, Your Honor.

1 MR. MARCHESE: None from Parker.

2 MR. MYHRE: None, Your Honor.

3 THE COURT: All right. Jury Note No. 101: "The type
4 of bullets used in both weapons, can they go through body
5 armor?"

6 Any objection?

7 MR. MYHRE: No objection.

8 MR. TANASI: I don't know that the bullets and all
9 the different types of bullets were necessarily thoroughly
10 covered to trigger that, but I guess no objection from Stewart,
11 Your Honor.

12 MR. MARCHESE: None from Parker.

13 MR. LEVENTHAL: Not on behalf of Mr. Drexler.

14 MR. PEREZ: No, Your Honor.

15 MR. MYHRE: None from the government, Your Honor.

16 THE COURT: All right. Question No. 102 has three
17 parts. The first -- I'm sorry. Note No. 102 has three
18 questions. The first one is: "Of any of the pictured weapons,
19 could you determine if they had a round in the chamber?"

20 MR. MYHRE: No objection, Your Honor.

21 MR. MARCHESE: None from Parker.

22 MR. TANASI: None from Stewart.

23 MR. LEVENTHAL: No, Your Honor.

24 MR. PEREZ: None from Lovelien.

25 THE COURT: The second question in Jury Note 102

1 asks: "Of any of the weapons pictured, could you determine if
2 they had been modified to fire automatic?"

3 Any objection?

4 MR. MYHRE: None from the government, Your Honor.

5 MR. TANASI: None from Stewart, Your Honor.

6 MR. MARCHESE: None from Parker.

7 MR. PEREZ: None from Lovelien.

8 MR. LEVENTHAL: None on behalf of Mr. Drexler.

9 THE COURT: And the third question in Jury Note No.
10 102 asks: "What is the difference between a rifle and a long
11 gun?"

12 Any objection.

13 MR. TANASI: None from Stewart.

14 MR. MARCHESE: None from Parker.

15 MR. PEREZ: None from Mr. Lovelien.

16 MR. LEVENTHAL: No, Your Honor.

17 MR. MYHRE: None, Your Honor. I'm sorry.

18 THE COURT: All right. Jury Note No. 103 asks: "If
19 a person threatened another person with an airsoft object, that
20 looked like a rifle or shotgun, would their threatening still
21 be considered meeting its intent?"

22 So, obviously, that's a legal question, not a factual
23 question that the witness can answer. But I'll just let them
24 know you have a copy of this question, and we'll provide them
25 with the legal instructions after they've heard all the

1 testimony.

2 Jury Note No. 104 has a lot of scratches on it. I'll
3 see if I can -- "Did the sights on 197A break in the
4 transportation of the gun?"

5 Any objection?

6 MR. TANASI: I don't know if he knows the answer to
7 that, Your Honor.

8 MR. MYHRE: Same response, Your Honor.

9 THE COURT: Is he capable of saying, "I don't know?"

10 MR. MYHRE: I have no objection. I don't -- I don't
11 know if he knows the answer.

12 THE COURT: Okay. So, I'll try to remember to remind
13 him that he can say "I don't know," if he doesn't know. We
14 don't want him to speculate. Any other objection?

15 MR. MARCHESE: None from Parker.

16 MR. LEVENTHAL: No, Your Honor.

17 MR. PEREZ: None from Lovelien.

18 THE COURT: The second part of Jury Note No. 104
19 asks: "Can you determine if the sights were broken on the day
20 in question on Exhibit 197A?"

21 MR. TANASI: Same objection.

22 THE COURT: I don't know what day in question is,
23 since he just -- since the question asked about transportation
24 beforehand, but I think it's the same thing, just if he knows.

25 MR. TANASI: Sure.

1 THE COURT: I mean, it could happen in the lab;
2 right? Then he might know, but if it happened elsewhere.

3 MR. TANASI: Right.

4 THE COURT: I'll try to remember to tell him that if
5 you don't know, you don't know is okay. No need to speculate.

6 MR. TANASI: Okay. Thank you.

7 THE COURT: Any other objection or suggestions?

8 MR. MARCHESE: None from Parker.

9 THE COURT: All right. Jury Note No. 105 asks two
10 questions. The first one is: "The rifle that uses the
11 9-millimeter round, is it capable of that rifle to shoot as far
12 and accurate as a rifle that uses the .223 round?"

13 Any objection to that question?

14 MR. TANASI: None from Stewart.

15 MR. MARCHESE: None from Parker.

16 MR. LEVENTHAL: No, Your Honor.

17 MR. PEREZ: None from Lovelien.

18 MR. MYHRE: None from the government, Your Honor.

19 THE COURT: And then it says: "Or the .762 round?"

20 So, same question asking about the capability of the
21 rifle to shoot as far and as accurate, the 9-millimeter round
22 compared to the .762 round. Any objection?

23 MR. MYHRE: None from the government, Your Honor.

24 MR. TANASI: None from Stewart.

25 MR. MARCHESE: No, Your Honor.

1 MR. LEVENTHAL: No, Your Honor.

2 MR. PEREZ: No, Your Honor.

3 THE COURT: All right. And then the second question
4 on Jury Note No. 105 asks: "Can you explain the difference
5 between the 9-millimeter versus the .223 versus the .762 in
6 terms of size and velocity?"

7 Any objection?

8 MR. MARCHESE: None from Parker.

9 MR. TANASI: None from Stewart, Your Honor.

10 MR. LEVENTHAL: No, Your Honor.

11 MR. PEREZ: No, Your Honor.

12 MR. MYHRE: None, Your Honor.

13 THE COURT: And the last question is, Jury Note No.
14 106: "Can you tell by looking at the butt of a rifle if it is
15 a shotgun or not?"

16 Any objection?

17 MR. TANASI: None from Stewart, Your Honor.

18 MR. MARCHESE: None from Parker.

19 MR. LEVENTHAL: No, Your Honor.

20 MR. PEREZ: No, Your Honor.

21 MR. MYHRE: None from the government.

22 THE COURT: All right. So, those will be our
23 questions for tomorrow. We'll make sure you get copies of
24 them, and then I'll -- after I ask the question and the witness
25 provides the answer, I'll ask you if you have follow-up

1 questions. And then once we're done with this witness, then we
2 can move back on to Miss Draper; right?

3 MR. MYHRE: Yes, Your Honor.

4 MR. TANASI: Thank you, Your Honor.

5 THE COURT: So, we were discussing coming back, the
6 attorney -- just the attorneys at 9:00 tomorrow. I'm going to
7 change it to 9:30. So, we'll come back at 9:30, and then we'll
8 expect to be able to be done by 10:00 and have the jury resume
9 at 10:00.

10 MR. MYHRE: Thank you.

11 MR. TANASI: Thank you.

12 MR. MYHRE: We'll try to work some of these issues
13 out well in advance of that time.

14 THE COURT: You're welcome to come in at 9:00 so that
15 you can have the courtroom area to discuss, compare, and
16 contrast, and come up with possible solutions, if there are
17 redactions needed and so forth.

18 MR. MYHRE: That will be helpful, Your Honor. Thank
19 you.

20 THE COURT: All right. We will see you tomorrow.
21 Off record.

22 (Recess 5:21 p.m.)
23
24
25

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COURT REPORTER'S CERTIFICATE

I, KATHERINE EISMANN, Official Court Reporter, United States District Court, District of Nevada, Las Vegas, Nevada, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Date: August 7, 2017.

/s/ Katherine Eismann

Katherine Eismann, CSR CRR RDR

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,	)	Case No. 2:16-cr-046-GMN-PAL
)	
vs.	)	Las Vegas, Nevada
	)	Wednesday, August 2, 2017
ERIC PARKER, O. SCOTT	)	Courtroom 7C, 9:50 a.m.
DREXLER, RICKY LOVELIEN, and)	
STEVEN STEWART,	)	JURY TRIAL DAY FOURTEEN
)	
Defendants.)	
	)	<u>O R I G I N A L</u>

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BEFORE: THE HONORABLE GLORIA M. NAVARRO,
UNITED STATES DISTRICT JUDGE, CHIEF

APPEARANCES:

See next page

COURT REPORTER:

Heather K. Newman, RPR, CRR, CCR #774
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333 Las Vegas Boulevard South, Room 1334
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Proceedings reported by machine shorthand, transcript produced by computer-aided transcription.

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25 Joel Willis, Special Agent, FBI
Chris Allen, Bureau of Land Management
Mike Abercrombie, FBI

1 Also present:

2 Mamie Ott, Legal Assistant
3 Tori Bakken, Paralegal
4 Brian Glynn, IT
5 Nicole Reitz, IT

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1 LAS VEGAS, NEVADA; WEDNESDAY, AUGUST 2, 2017; 9:50 A.M.

2 --oOo--

3 P R O C E E D I N G S

4 (Outside the presence of the jury at 9:50 a.m.):

5 COURTROOM ADMINISTRATOR: All rise.

6 THE COURT: Thank you. You maybe seated.

7 COURTROOM ADMINISTRATOR: This is the time set for
8 Jury Trial Day Fourteen in Case Number 2:16-cr-046-GMN-PAL,
9 United States of America vs. Eric Parker, O. Scott Drexler,
10 Ricky Lovelien, and Steven Stewart.

11 THE COURT: All right. Why don't you go ahead and
12 make your appearances on the record since we're going to be
13 discussing exhibits and objections.

14 MR. MYHRE: Good morning, Your Honor.

15 Steve Myhre, Erin Creegan, Nadia Ahmed on behalf of
16 the United States.

17 THE COURT: Good morning.

18 MR. TANASI: Good morning, Your Honor.

19 Rich Tanasi for Steven Stewart who is present.

20 THE COURT: Good morning.

21 MR. MARCHESE: Good morning, Your Honor.

22 Jess Marchese on behalf of Eric Parker.

23 THE COURT: Good morning.

24 MR. LEVENTHAL: Good morning, Your Honor.

25 Todd Leventhal on behalf of Scott Drexler.

1 THE COURT: Good morning.

2 MR. PEREZ: Good morning, Your Honor.

3 Shawn Perez on behalf of Rick Lovelien.

4 THE COURT: Good morning.

5 All right. So, the parties met between yesterday,
6 when we ended at 5:10, and today, to review exhibits and
7 determine if there were objections or redactions or any
8 accommodations that could be made to minimize interruptions
9 during trial. So before we call back in the jury and the
10 witness for the jury questions that we still need to ask, are
11 there any objections that you want to place on the record for
12 my ruling?

13 MR. TANASI: Your Honor, we actually were, I think,
14 almost finishing up that meeting when Your Honor took the
15 bench.

16 THE COURT: Oh, I'm sorry. I thought you were done.

17 MR. TANASI: So if we could maybe have a couple more
18 minutes to do that.

19 THE COURT: Okay. Go ahead.

20 MR. MARCHESE: It's actually been productive.

21 THE COURT: All right. So, I'm politely being asked
22 to leave. So I'll leave, and I'm come back when you tell me
23 you're ready.

24 MR. MARCHESE: Thank you.

25 MR. TANASI: Thank you.

1 COURTROOM ADMINISTRATOR: All rise.

2 (Recess was taken at 9:52 a.m.)

3 (Outside the presence of the jury at 10:12 a.m.):

4 COURTROOM ADMINISTRATOR: All rise.

5 THE COURT: Thank you. You may be seated.

6 All right. So, do the parties have any objections or
7 decisions that you want me to make before we resume with the
8 jury and witness?

9 MS. AHMED: Your Honor, we were able to go through
10 all of the Facebook exhibits for Mr. Parker, Mr. Drexler, and
11 Mr. Stewart and there was a few in which there were no
12 objections and then there was some more where there were some
13 objections that needed to be resolved.

14 THE COURT: Okay. Go ahead.

15 MS. AHMED: So, my understanding was that -- does
16 Your Honor want to see the ones where there were no objections?

17 THE COURT: No. If there's no objection, then that
18 will come in. You can tell me when -- that this is something
19 that's been stipulated that is admissible and we'll just admit
20 it.

21 MS. AHMED: And then -- so then -- can we pull up
22 Exhibit 113?

23 May we pull up Exhibit 113?

24 COURTROOM ADMINISTRATOR: I apologize.

25 MS. AHMED: Thank you.

1 (Exhibit 113 published.)

2 MS. AHMED: So, it's my understanding that there was
3 an objection by the defendants to this and we would submit that
4 this is relevant because it, obviously -- in that it's a
5 picture from the April 12th standoff and it's a post shared by
6 Mr. Parker on his Facebook page with comments made by him
7 referencing their -- that they showed up that day.

8 THE COURT: And so what is the objection?

9 MR. MARCHESE: Parker objects to relevance. It's
10 mainly -- I don't have a problem with the picture, with his own
11 verbiage; it's just the Valhalla quote which I find is more
12 prejudicial than probative than it is relevant as it is after
13 the fact.

14 MR. TANASI: Stewart joins, Your Honor, and I'd add
15 that this is an exhibit, in addition to some of the other
16 Valhalla related exhibits, that I'd also move for a severance
17 under Rule 14 for prejudicial spillover given the effect and if
18 Your Honor is not inclined to grant the severance motion, then
19 some limiting instruction because there's not any and there
20 won't be any Facebook post related to Valhalla and
21 Steve Stewart.

22 MR. LEVENTHAL: And Drexler, we also -- I would say
23 that Mr. Drexler's picture's on here and the words below it
24 seem to suggest that he's saying that, I guess, and that's not
25 what he's saying. So it's misleading the jury thinking that

1 he's saying it because we're not going to have a witness who is
2 going to be able to testify to who said it, who wrote it, who
3 did that, but it's not just a natural picture that we have; we
4 now have words coming in on a picture that are not my client's
5 words. They're not on his Facebook, but yet his -- his picture
6 is there. And so, I would object to it being unduly
7 prejudicial to my client.

8 MR. PEREZ: Lovelien would join as well.

9 THE COURT: All right. So, Ms. Ahmed, the relevance
10 of this statement, is this -- are you offering this as an
11 adopted statement by Mr. Parker when he posts it on the -- on
12 his Facebook page as a weekly tribute in furtherance of the
13 conspiracy because it's glorifying and encouraging others to
14 continue? This was stated -- this was posted November 20th of
15 2015, according to the date on the exhibit. And then, I guess,
16 the other question is, whether or not it would be admissible
17 against the other defendants. So, is your argument that it's a
18 co-conspirator statement?

19 MS. AHMED: That's correct, Your Honor. We would --
20 we would submit that it is -- it is adopted when Mr. Parker
21 posts the entire picture with the words, what we would call a
22 meme. He's adopting that meme and also placing his own
23 comments on it and that it's admissible, as to everybody, under
24 an 801(d)(2)(E).

25 THE COURT: All right. And so, the 801(d)(2)(E)

1 includes any response to the objection of spillover from
2 Mr. Stewart?

3 MS. AHMED: Yes, Your Honor.

4 THE COURT: All right. So the Court does find that
5 it appears to be an adopted statement by Mr. Parker posting it
6 on his website and that it is a co-conspirator statement made
7 in furtherance of the conspiracy during the conspiracy. It
8 states, "Our ongoing weekly tribute to the men and women who
9 showed up that day that were not me."

10 And then the other language that's on the photo says,
11 "Lo, do they call to me. They bid me to take my place among
12 them in the hollowed halls of Valhalla where the brave shall
13 live forever." So, again, appears to be glorifying and
14 encouraging others to act likewise, either by joining or on
15 their own as part of their shared belief and it is made during
16 the alleged conspiracy, November 20th, 2015. So the Court does
17 find that Exhibit 113 is admissible.

18 (Exhibit 113 received.)

19 MR. TANASI: Your Honor, and as we -- as it's kind of
20 presented to the jury, I just wanted to have an understanding
21 of that. Would our objections be noted for the record as well?

22 THE COURT: Oh, yes.

23 MR. TANASI: In other words, these have been admitted
24 over defense counsel's objection?

25 THE COURT: Correct.

1 MR. TANASI: Okay.

2 THE COURT: Yes.

3 Is there another one?

4 MS. AHMED: Yes, Your Honor. The next one would be
5 Exhibit 101.

6 (Exhibit 101 published.)

7 MS. AHMED: I understand, Your Honor, that there was
8 an objection by counsel to this one.

9 MR. MARCHESE: I don't have a problem with the
10 picture. It's obviously come in in a myriad of locations
11 throughout the trial. My biggest issue is the verbiage,
12 specifically the III% portion. That's irrelevant.

13 MR. TANASI: Stewart joins, Your Honor.

14 MR. PEREZ: Lovelien joins as well.

15 MR. LEVENTHAL: Drexler joins.

16 MR. MARCHESE: And the issue here is, is that it's
17 misleading to the jury given the fact that at the time this
18 picture was taken, there was no III%.

19 MS. AHMED: Your Honor, again, this is something that
20 we actually put in our response to their Motion in Limine to
21 keep out our 404(b). This is a picture of Mr. Parker from
22 April 12th, 2014, with these words and the III% superimposed on
23 top. He's sharing all of it on June 11th of 2015. And so,
24 although he might not have been in the III% at the time of the
25 April 12th standoff, that doesn't make this picture less

1 relevant in any way. It's inextricably intertwined with the
2 events, both because it's showing a picture, but also because
3 it's -- of the timing, as the Court has ruled in its order on
4 the 404(b) motion.

5 And his membership in the III% was also inextricably
6 intertwined in that he uses this as a platform, his membership
7 as a platform to continue to do similar operations.

8 THE COURT: All right. So this posting is dated 14
9 months later; right? This is June 11th, 2015.

10 Is he a member of the III% by then?

11 MS. AHMED: Yes.

12 THE COURT: All right. So that's what it represents
13 on Exhibit 101, is that Mr. Parker posted this on June 11th,
14 2015. It's a photograph of him in the prone position on the
15 bridge from June -- I'm sorry -- from April 12th of 2014, and
16 the language on the photograph says, "You give peace a chance
17 . . I'll cover you." That's on the top of the photo and then
18 on the bottom of the photo it says Roman Numeral III and then
19 the percent sign.

20 All right. So, again, it does appear to be an
21 adopted statement under 801(d)(2)(B) --

22 MR. PEREZ: Your Honor, with respect to Mr. Lovelien
23 and that 3%ers, there's no evidence that Mr. Lovelien is in the
24 3%ers, at all. So, I mean, I would request at least a limiting
25 instruction in terms of 3%ers. I don't know how we can do

1 that.

2 THE COURT: Ms. Ahmed, do you have any objection to
3 that?

4 MS. AHMED: Your Honor, we would oppose a limiting
5 instruction as to Mr. Lovelien for this post. It's a post made
6 by Mr. Parker, Mr. Lovelien's co-conspirator, regarding the
7 events of April 12th, 2014, which Mr. Lovelien participated in
8 and it -- the statements that Mr. Parker's adopting show his
9 intent -- intent -- excuse me -- on April 12th, 2014, and so it
10 goes directly to the elements that Mr. Lovelien's facing.

11 MR. PEREZ: But, Your Honor --

12 MS. AHMED: And, additionally, obviously, Your Honor,
13 as the Court was stating earlier, it would fit under
14 801(d) (2) (E).

15 MR. PEREZ: Your Honor, a lot of this 3%er evidence
16 that's coming in is clearly not relevant to Mr. Lovelien and a
17 limiting instruction would be appropriate. I mean, all this is
18 doing is misleading the jury with respect to Mr. Lovelien. He
19 doesn't have any affiliation with the 3%ers.

20 MR. TANASI: Your Honor, I would join with similar
21 arguments with respect to Mr. Stewart. We will see here,
22 momentarily, a picture of Mr. Stewart depicted with members of
23 the 3%ers, but that's it. Training, one picture. Doesn't
24 necessarily amount or necessarily prove that he's a member of
25 the 3%ers just by simply being with them in a picture.

1 THE COURT: Wasn't he wearing a 3%er T-shirt?

2 MR. TANASI: He's wearing a T-shirt that -- I don't
3 believe it displays a 3%er mark on it; I think it just shows
4 the American flag on his shoulder.

5 THE COURT: Okay. Ms. Ahmed, did you want to
6 respond?

7 MS. AHMED: Your Honor, we would, again, offer it
8 with respect to both Mr. Stewart and Mr. Lovelien that neither
9 of -- they both were members of this conspiracy; that as
10 alleged in the Indictment, neither of them have ever withdrawn
11 from the conspiracy. These statements on this image are going
12 to the events of April 12th, 2014.

13 And with respect to Mr. Stewart -- I would just leave
14 it at that, Your Honor. Basically, they're all a part of this
15 conspiracy, no one has withdrawn from conspiracy and this is
16 talking about the conspiracy and events taking place during the
17 time alleged in the Indictment.

18 MR. PEREZ: But it's not alleged that Mr. Lovelien
19 was part of the 3%ers is -- as part and parcel of this
20 conspiracy, whether before or after.

21 THE COURT: Right. And there's no allegation nor any
22 element of the offense that the individuals need to be part of
23 a organization or members of the same organization in order to
24 be found guilty of a conspiracy; there just needs to be the
25 agreement. Doesn't necessarily mean that they need to be part

1 of the same organization. But I understand the argument that
2 you're making as it's misleading to the jury, so misleading or
3 confusing to the jury. So I'll -- I'm -- I'm willing to give a
4 limiting instruction. I'm not sure that it's the Court's --
5 there's no -- all right. So there is a number of limiting
6 instructions that are common, that are generally provided in
7 certain situations. This is not necessarily one of them
8 because it doesn't go to the admissibility of the evidence; it
9 really goes to the weight. So clearly, you could examine --
10 cross-examine on that point. The Government could elicit it.
11 I could state it, but I think then that would be providing
12 testimony or providing evidence. So I think that the -- the
13 better way to handle this is for you all to either raise it on
14 direct or cross, or both so that it's not misleading to the
15 jury. If you don't, then maybe I need to make a limiting
16 instruction so that the jury is not misled. But otherwise, I
17 think that you all need to have the ability to comment on it
18 first.

19 But the Court does agree that it's -- would otherwise
20 be misleading if it's not clarified that Mr. Lovelien and --
21 well, as to Mr. Lovelien, I haven't seen any evidence yet that
22 would tend to demonstrate that he's a member. As to
23 Mr. Tanasi's client, Mr. Stewart, I'm not sure yet because the
24 representation was that he was training with the 3%ers and that
25 it was represented in the 3%ers recruitment video and that he

1 was wearing the same shirt that the other 3%ers were wearing.
2 So I can't say one way or the other for sure whether he is or
3 is not a member and I don't know how -- how much other evidence
4 there is or is not on that point, but I think it's definitely
5 an area that the parties can address in direct and
6 cross-examination. But it doesn't go to admissibility, so
7 Exhibit 101 is admitted.

8 (Exhibit 101 received.)

9 MS. AHMED: Your Honor, the next exhibit would be
10 103.

11 (Exhibit 103 published.)

12 MR. MARCHESE: Parker objects to relevance. It's
13 after the fact. Just some guys standing around the desert.
14 Appear to be target practice or recreational shooting.

15 MR. TANASI: Stewart joins and makes the same
16 objections from the previous exhibit, Your Honor.

17 THE COURT: What's the relevance of the photo,
18 Ms. Ahmed?

19 MS. AHMED: Your Honor, this is a photo that depicts
20 Mr. Parker and Mr. Stewart along with a third person and you
21 can see that they're wearing -- at least Mr. Parker and
22 Mr. Stewart are wearing tactical vests and there's a target
23 sign in the background. We would submit that this is a
24 depiction of them training, consistent with other posts that
25 have been admitted where Mr. Parker discussed training and that

1 they're wearing III% -- that the T-shirt that Mr. Stewart is
2 wearing from the other side -- from the front you would be
3 able -- you would be able to see or it's III%, but it's
4 consistent with Mr. Parker's T-shirt and the other individual's
5 T-shirt where you can see in other pictures that there's a flag
6 like that on the side. And additionally, Mr. Parker and the
7 other individual, clearly you can see that they have III% logos
8 on their clothing. So, we would submit that this is, again,
9 part and parcel of their continued efforts to train and recruit
10 and to glorify their movement, as they call it, to interfere
11 with federal officers.

12 MR. PEREZ: And, Your Honor, again, with respect to
13 Mr. Lovelien, I mean, it has nothing to do with Mr. Lovelien.
14 Mr. Lovelien, there's no evidence that he ever went to Idaho.
15 He's not a member of the 3%ers. There's no pictures of him
16 wearing any 3%er T-shirts or anything of the kind. I mean, for
17 them to say that this is just a continuation of the same
18 conspiracy is . . . I think, again, it's misleading at best,
19 and certainly not relevant to Lovelien.

20 MR. TANASI: And, Your Honor, with respect to
21 Mr. Stewart, again, the Government is, I think, connecting dots
22 and assuming facts that aren't in evidence yet that would lay
23 the foundation to make this piece of evidence admissible and
24 then make it relevant. They're -- they're just jumping over
25 all of that and saying that this conclusion is clearly

1 Steven Stewart training with 3%ers and then the way they
2 connect the dots is circumstantially and I think assuming facts
3 that aren't in evidence yet. So the picture would lack
4 foundation as well.

5 THE COURT: All right. Well, the three individuals
6 in the picture, Mr. Parker on the left, Mr. Stewart on the
7 right, and the unknown individual in the right appear to be
8 wearing the same shirt. All of the shirt is not visible on all
9 three of the individuals. The individual in the middle, his
10 shirt does have what appears to be a III% on the back of the
11 shirt with stars and sort of like a -- I guess it looks almost
12 like a stamp design in white on the Navy blue shirt.

13 So, the Government's position is, this is
14 inextricably intertwined with the conspiracy allegation and
15 that it's ongoing conduct and evidence of the ongoing
16 conspiracy.

17 MS. AHMED: Which, again, Your Honor --

18 THE COURT: How does it relate then to Mr. Lovelien?

19 MS. AHMED: Sorry, Your Honor, to speak over you.

20 I was going to say, which, again, none of the
21 defendants have ever withdrawn from. So, Mr. Lovelien is still
22 a part of this ongoing conspiracy at this time.

23 And, as of course the Court knows, under the law, as
24 a result, he's responsible for all of their actions in
25 furtherance of the conspiracy, criminal actions.

1 And as Your Honor pointed out, you know, I think
2 counsel's stretching the realm of limiting instruction pretty
3 far. This is something that would be appropriate for
4 cross-examination and not for a limiting instruction.

5 THE COURT: All right. Well, inasmuch as the exhibit
6 does purport to present the individuals in the tactical gear
7 with -- in the desert with some targets in the background and
8 it does appear that the tactical vest has some kind of
9 ammunition or something that's bulky in the pockets and we can
10 see a handgun on the hol- -- on the -- on a holster on the
11 right hip of Mr. Parker there in the picture, it -- I think
12 that Mr. Parker's hat might have an Idaho 3%er logo on it,
13 similar to the logo on the shirt worn by the person in the
14 middle, but nevertheless, it does appear to be part of the
15 ongoing conspiracy inextricably intertwined. The date on the
16 photograph is June 27th, 2015.

17 As to its relation to Mr. Drexler and Mr. Lovelien,
18 as the Government noted, there's no evidence of any abandonment
19 of the conspiracy and that it is ongoing and therefore, it
20 would be evidence that is admissible against all of the
21 defendants. And the parties are not prevented from asking
22 questions of the witness related to any clarification that they
23 believe needs to be made as to whether or not the other
24 individuals are members, or included in the photograph, or
25 anything else that would go to the weight of the evidence as

1 opposed to the admissibility.

2 Next one?

3 (Exhibit 103 received.)

4 MS. AHMED: Your Honor, there's three more that are
5 in the similar fashion; they combine elements of Bundy Ranch
6 with the 3% or about the 3% posted by Mr. Parker and that's --
7 the first one is 107.

8 I'll just show you all three, Your Honor, and then
9 come back to 107.

10 THE COURT: Okay.

11 (Exhibit 107 published.)

12 MS. AHMED: But this is the first one. It's
13 Mr. Parker sharing a 3%er -- 3% of Idaho, their Facebook page
14 and commenting on the top, "For updates on our Resistance," and
15 then the next one is 110.

16 (Exhibit 110 published.)

17 MS. AHMED: This was a post on Mr. Parker's Facebook
18 page where an individual asks him about -- somebody agrees with
19 the 3% but works for BLM and USFS -- meaning the Forest
20 Service -- and Mr. Parker provided a response to that.

21 (Brief pause in proceedings.)

22 MS. AHMED: And he's referencing Bundy Ranch in his
23 response, or the events on April 12th.

24 THE COURT: In Nevada. All right.

25 (Exhibit 116 published.)

1 MS. AHMED: And then the last one is Exhibit 116,
2 which is, again, a silhouette of Mr. Parker prone, taken from
3 him prone on the bridge on April 12th, 2014, and it's behind
4 that silhouette or the word -- is the word "resist" and
5 underneath is "Three Percent" and the objection, to my
6 understanding, was just to the words "Three Percent."

7 And so, we would submit that this is similar to ones
8 that the Court has already ruled upon. All three of these are
9 similar in that they're inextricably intertwined with their
10 conduct in April of 2014. It's part of the ongoing conspiracy,
11 and they continue to tie the events of April 2014 to their
12 ongoing movement and to their participation in III% -- to
13 Mr. Parker's participation in III%.

14 THE COURT: All right.

15 MS. AHMED: And it would go to all of them under
16 801(d)(2)(E).

17 THE COURT: So the Government Exhibit 116, that's the
18 T-shirt or the close-up photo of the design on the T-shirt,
19 where Mr. Parker is prone and the long gun is shooting through
20 the letter "E" of the word "resist," which is in giant letters
21 and then it has "Three Percent" underneath it in cursive,
22 that's dated February 17th of 2016 and that's -- appears to be
23 posted by him on his Facebook page; is that right?

24 MS. AHMED: That's correct, Your Honor.

25 THE COURT: And so the objection to the "Three

1 Percent" on that is because why?

2 MR. MARCHESE: That's correct, Your Honor. Generally
3 speaking, I mean, it's the same objection and I might as well
4 go with all three just in the interests of judicial economy.

5 THE COURT: Okay.

6 MR. MARCHESE: In reference to 3%, it's our position
7 it's after the fact, it's irrelevant, it's not inextricably
8 intertwined. The Government can easily convey their case to
9 the jury without bringing in all this extraneous after-the-fact
10 post-bad act information. In addition, it's our position that
11 the conspiracy as alleged in the Indictment mentions nothing
12 about 3%. It mentions nothing about mines. So, it's our
13 position that it's not part of the ongoing conspiracy. The
14 ongoing conspiracy is specifically -- if there even is one --
15 related to Bundy Ranch.

16 So, based on those things, we would say it's
17 irrelevant, it's not inextricably intertwined, and it's nothing
18 but bad character evidence.

19 MR. TANASI: Start joins, Your Honor.

20 MR. PEREZ: Lovelien joins.

21 MR. LEVENTHAL: Drexler.

22 THE COURT: All right. What's the Government's
23 response to the statement that the conspiracy is limited to the
24 events at the Bundy Ranch?

25 MS. AHMED: Your Honor, we -- the date of the

1 conspiracy continues through the timing of the Indictment,
2 which was March of 2016. Additionally, it was alleged that
3 they -- under 372, that they continued to -- that they are
4 continuing to impede, interfere with the -- with the ability to
5 patrol -- excuse me -- with the ability by public lands law
6 enforcement to patrol the area in and around that Bundy Ranch
7 area and we would submit that this is part of that because when
8 they do this, they're celebrating what happened on April 12th.
9 They're sending a message, via glorification, to others, to
10 stand up with them. By putting "Three Percent," he's giving
11 the vehicle for them to join him in his movement. And so, it's
12 all part and parcel of that process of celebrating what they
13 did, recruiting others to do it with them, to continue it with
14 them, and also sending a message to law enforcement that it is
15 not safe to go back, that they're still there, they're still a
16 part this have movement and they're still continuing in their
17 resistance. So we would submit that that's -- it's all related
18 and that's -- in that sense.

19 MR. PEREZ: Your Honor, I think that's pushing the
20 limit on what this one particular exhibit is saying. I mean,
21 "resist" and "Three Percent." I mean, I don't see the
22 relevance to Bundy. I mean, certainly --

23 THE COURT: Well, it's a image of Mr. Parker taken
24 from the incident on April 12th of 2014 that's then
25 incorporated into this T-shirt and as the Government explains,

1 it does appear to be glorifying, recruiting, encouraging others
2 during this conspiracy to continue with their conduct, not to
3 abandon it, and to even have other folks join in. It does
4 appear to be inextricably intertwined. The Superseding
5 Indictment does allege that the conduct continued through March
6 of 2016. The posting is he made a month before that, in
7 February of 2016, and it would be a co-conspirator statement.

8 So, 116 is admitted.

9 Let's go back and look at 110, though.

10 (Exhibit 116 received.)

11 (Exhibit 110 published.)

12 THE COURT: I'm not sure. What is the relevance of
13 this post?

14 MS. AHMED: So, Your Honor, we would submit that
15 Mr. Parker was asked about people who agree with the 3%ers but
16 work for these agencies and in his response he indicates that
17 he reaches out to these people, but he shakes their hands and
18 looks them in the eye and hopes that he doesn't have to kill
19 them or lets -- lets them know that he doesn't want to kill
20 them and they don't -- and hopefully they won't kill him and it
21 will never get to the point it did in Nevada ever again. And
22 so, Your Honor, we could submit that it goes to -- it is
23 evidence of his intent in April of 2014, on April 12th, 2014.
24 It's also, again, inextricably intertwined with the conspiracy
25 and his efforts to get the officers to not do their jobs,

1 to desist.

2 The bottom response, he indicates, his short answer
3 is, he wishes they would just find another job. And so, we
4 would submit that this is, again, he's reaching out to other
5 people who are asking him what he thinks about this issue and
6 he's telling them that -- what he thinks about it, which is
7 that hopefully, it will never get to what it did in Nevada,
8 meaning, obviously, the April 12th incident and that what he
9 means is that he hopes he doesn't have to kill any federal
10 officer and that they should just find another job. And so, we
11 would submit that it shows his intent and his evidence of the
12 ongoing conspiracy as we've previously stated.

13 THE COURT: And so what's the defense objection?

14 MR. MARCHESE: Once again, we're just objecting to
15 the 3%, Your Honor. You mean, the -- I think the Court's been
16 pretty clear on its ruling in reference to the 3%. So, I guess
17 you just admit it in over defense's objection in reference to
18 the 3% and go to the next one.

19 MS. AHMED: Your Honor, I wouldn't have a problem
20 redacting that comment underneath it by Ryan Gargano. I mean,
21 that -- we could easily redact that.

22 MR. MARCHESE: No -- no objection from the defense.

23 THE COURT: All right. Well, it sounds like the
24 defense only is requesting the redaction of the 3%ers on the
25 top line?

1 MR. MARCHESE: Correct, and Mr. --

2 THE COURT: The Government's willing to do that,
3 so --

4 MR. MARCHESE: Mr. Gargano's statement.

5 MS. AHMED: Your Honor, we would -- we would ask that
6 we only redact -- be required to redact the Ryan Gargano
7 comments that's in between Mr. Parker's responses. We would
8 ask that Court allow us to keep the 3%ers for the reasons that
9 we've previously articulated, which is that his -- it's all
10 part and parcel. His membership in 3% is part of his
11 participation in the movement which began with Bundy Ranch.

12 THE COURT: All right. So I thought you were -- I
13 thought the Government was saying they agreed to the redaction
14 of 3%ers. You're saying you agree -- the Government agrees to
15 the redaction of Ryan Gargano's statement, "Look 'em dead in
16 the eye"?

17 MS. AHMED: Correct, Your Honor.

18 THE COURT: But Mr. Marchese, that -- was that your
19 request, or was it the 3%ers, or both?

20 MR. MARCHESE: Well, yeah. Obviously, I don't object
21 to the Gargano statement and then just a blanket objection to
22 anything 3%.

23 THE COURT: All right. So the objection is just to
24 the term 3% percent as mentioned in the question posed to
25 Mr. Parker that Mr. Parker is responding to.

1 MR. MARCHESE: That's correct.

2 THE COURT: So, again, it appears that he is adopting
3 the position of representing the point of view of the 3%ers
4 there, or at least his point of view as a member of the 3%ers,
5 or being in agreement with the 3%ers, but providing an opinion
6 as to what to do if one agrees with the 3%ers but works for BLM
7 or the U.S. Forest Service, that's the question, and then
8 Mr. Parker provides the answer.

9 Again, it does appear to be inextricably intertwined
10 with the conspiracy alleged and is relevant to the intent of
11 the defendant.

12 As far as it being a co-conspirator statement, it's
13 providing counsel or information about the ideology and their
14 purpose or intent in this particular conduct. And as the
15 Government stated, there's no evidence that any of the other
16 defendants had abandoned the conspiracy at this point, so it
17 does seem that Exhibit 110 is admissible. Again, the
18 parties -- doesn't prevent the parties from questioning the
19 witness about the participation of the defendants in the 3%ers.

20 (Exhibit 110 received.)

21 THE COURT: How about Exhibit 107?

22 (Exhibit 107 published.)

23 MS. AHMED: Your Honor, we would submit the same
24 arguments that -- I understand that the objection is to 3% and
25 our response is what it has been with other exhibits, that

1 it's his membership in it and part of the movement that he
2 participates in that began at Bundy -- with the events in
3 April 2014 -- excuse me -- and that he also states, "For
4 updates on a resistance," and shares their Facebook page.

5 THE COURT: Same objection as to the 3%ers? Anything
6 else --

7 MR. MARCHESE: Correct.

8 THE COURT: -- you want to add?

9 MR. MARCHESE: No, Your Honor.

10 THE COURT: I won't make you say it over and over
11 again, but --

12 MR. MARCHESE: Thank you.

13 THE COURT: -- just in case there's anything special
14 about this one.

15 MR. TANASI: Stewart joins, Your Honor.

16 THE COURT: Well, in this one actually it seems like
17 it's a little more clear that he is promoting the 3%ers and
18 participation in the organization, joining the organization.
19 He says, "For updates on our resistance, please like, follow,
20 and share our page," and then it has the 3%er logo on top of
21 the flag and looks to have a little map indicating where they
22 are and he's posting this on August 9th of 2015, which is
23 during the alleged conspiracy.

24 So, Exhibit 107 is admitted.

25 (Exhibit 107 received.)

1 MS. AHMED: Your Honor, the next five that are at
2 issue -- well, really the next six, are all discussing the
3 Sugar Pine Mine and White Hope Mine events which we had briefed
4 previously with the Court in the -- which we had noticed before
5 as 404(b) and then, of course, we relitigated it in the
6 defendants' Motion in Limine. So, the first one is Exhibit 99.

7 (Exhibit 99 published.)

8 MS. AHMED: And this is Mr. Parker sharing a link
9 about the Sugar Pine Mine event in April of 2015 and then
10 there's comments beneath that where he's sharing information
11 about the Sugar Pine Mine event and responding to questions
12 regarding it

13 THE COURT: All right. So is the objection the same
14 as the -- as I addressed in the Motion in Limine?

15 MR. MARCHESE: Yes, Your Honor. Just in reference to
16 anything Sugar Pine or White Hope Mine, the general objection
17 would be to relevance. It's our position that it's -- it's not
18 404(b) evidence; it is -- it's nothing but bad character
19 evidence. It's after the fact. It's too remote in time. It's
20 not inextricably intertwined. The Government can convey their
21 case to the jury in an intelligible fashion without this
22 information, and it's also outside the scope of the conspiracy.

23 MR. TANASI: And, Your Honor, Stewart would join and
24 then also add that there's no evidence of Mr. Stewart's
25 involvement in either of those two protests, standoffs,

1 whatever we would call them.

2 MR. PEREZ: Lovelien would join with Mr. Stewart's
3 objections as well.

4 MR. LEVENTHAL: Drexler joins.

5 THE COURT: All right. Well, they are statements
6 made during the alleged conspiracy. These are posted by
7 Mr. Parker in April of 2015, looks like April 11th. I can't
8 tell if all three are -- at least two of them I see the dates
9 clearly are April 11th, 2015.

10 Yes. Okay. So all of them are April 11th, 2015, and
11 they do mention the Bundy Ranch-type standoff and then talks
12 about the other event and is -- states -- it's an alert and
13 "This is a standby order for all 3%ers and militia. You are
14 not protestors. We need to get a head count and start setting
15 up supply routes." So it is a recruitment -- more than a
16 recruitment, I suppose, because at this point it's for an
17 actual -- it's not for just membership or training, but to
18 actually conduct a similar type of conduct.

19 I did rule in the Motion in Limine orders that it is
20 inextricably intertwined for that reason.

21 And did the Government want to respond to the comment
22 that Mr. Stewart did not participate in the subsequent event
23 during the conspiracy?

24 MS. AHMED: Your Honor, we would submit the same
25 arguments that we've made with respect to the previous post,

1 which is that all of these defendants were in the conspiracy
2 alleged in the Indictment together. No one has withdrawn.
3 They're responsible for each other's conduct.

4 MR. PEREZ: Your Honor, but this is expanding the
5 conspiracy beyond, I mean -- you know, we can have events all
6 over the country and all of a sudden it's going to be the same
7 conspiracy? I mean, there's a number of groups throughout the
8 country that challenged the position of the federal government
9 and now, all of a sudden, you know, we've got -- we've got one
10 conspiracy here in -- at the Bundy Ranch and -- that the
11 alleged conspiracy is to interfere with the gathering of the
12 cattle at the Bundy Ranch and to return it to the Bundys. I
13 don't think that anybody, beyond maybe individuals that were
14 involved in the Sugar Pine thing, you know, ever agreed to
15 anything beyond that. I don't think that that was -- if
16 there's a conspiracy -- that that's the scope of the
17 conspiracy.

18 MS. AHMED: Your Honor, I'd also just add that
19 there's -- this is also evidence of their intent and their
20 actions. With respect to the April 2014 event, they're
21 clarifying that this is a Bundy -- excuse me -- a Bundy
22 Ranch-type standoff brewing. They also reference the fact that
23 this is -- they're looking for militia and that you are not
24 protestors. And so, we would submit that is also intent of the
25 co-conspirators -- I mean, evidence of a co-conspirator's

1 intent and it would be admissible under 801(d) (2) (E).

2 THE COURT: Well, the Court agrees, as it did in its
3 Motion in Limine, and that's Number 2137. It's not
4 inadmissible. It is inextricably intertwined. It is a
5 co-conspirator statement and the other co-conspirators that are
6 alleged to have participated in the conspiracy as alleged in
7 the Superseding Indictment continues through March 2016. No
8 abandonment.

9 So, Exhibit 99 is admitted.

10 (Exhibit 99 received.)

11 MS. AHMED: The next one, Your Honor, is 100 and it's
12 very similar. It's also about Sugar Pine Mine.

13 And Your -- this is a multiple page, Your Honor. So,
14 I think on the next page there are some comments.

15 THE COURT: And this is May 20th of 2015?

16 MS. AHMED: That's correct, Your Honor, and it's a
17 post by Mr. Parker on his Facebook page. They're celebrating
18 with their perceived victory at Sugar Pine and he's stating,
19 "That's two for two fascists," referring both to this and to
20 the Bundy Ranch standoff.

21 And if we go to Page 2, there are -- there's a
22 comment by him, and there's Page 3 as well and he's explaining
23 in his comment that -- another individual said it best when he
24 said, "Don't worry about the guns, folks. We've got the guns.
25 What we need is support. 10 people for every man in the

1 field."

2 And as the Court, of course, knows, from the last
3 trial, that there essentially was approximately 400 people
4 present April 12th and about 40 of them were armed. So, it's
5 the same ratio, but clearly calling for stating that they have
6 guns and they need additional people.

7 And then the last post on this page is -- the last
8 two comments are -- one is by Mr. Engel, who was obviously a
9 co-conspirator celebrating this victory, or the two victories
10 and then Eric Parker discussing this -- this operation further.

11 We would just submit all the same arguments as to why
12 it's admissible.

13 THE COURT: What is this referencing? "Security
14 stays in place until he gets a court date"?

15 MS. AHMED: That's about the Sugar Pine Mine event,
16 Your Honor.

17 THE COURT: Oh.

18 MS. AHMED: Which, it began in April and it continued
19 into May of 2015.

20 THE COURT: So the reference to security is
21 individuals providing security, armed security?

22 MS. AHMED: To the miners, that's correct,
23 Your Honor.

24 THE COURT: All right.

25 Well, again, this is May 20th, 2015.

1 MR. MARCHESE: It's the same objection, Your Honor.
2 I can keep us here all morning.

3 The other thing I would add is there's obviously an
4 issue with the Southern Poverty Law Center and I'm assuming
5 that's Reuters, the publisher. I don't see how that's
6 relevant.

7 THE COURT: Anyone else?

8 MR. TANASI: Stewart joins, Your Honor.

9 MR. PEREZ: Lovelien joins.

10 MR. LEVENTHAL: Drexler joins.

11 THE COURT: All right. Well, these are all Parker's
12 posts. He does appear to be adopting the statements that he is
13 posting as well as the photographs that -- he's included in the
14 photograph with the other individuals. So, it . . . is
15 801(d) (2) (B) statements.

16 As far as whether or not they're co-conspirator
17 statements that come in against the co-defendants, he is
18 celebrating, or does appear to be celebrating, certainly the
19 success of the Sugar Pine Mine and it is posted prior to the
20 end date of the Indictment, which is March of 2016. This is
21 dated May of 2015. So, a clear year beforehand.

22 So same reasoning as before. It's inextricably
23 intertwined co-conspirator statement made by Mr. Parker as
24 adopted by him in his post.

25 So Exhibit 100 is admitted.

1 (Exhibit 100 received.)

2 MS. AHMED: Your Honor, the next -- again, the next
3 four are also along the same lines. The White Hope Mine ones
4 are 108, 109, and then a video that was uploaded to his
5 Facebook account which is a part of 109.

6 (Exhibit 108 published.)

7 MS. AHMED: So 108 is Mr. Parker now posting about
8 the White Hope Mine incident, which happened in August of 2015.
9 There's photographs that show both Mr. Parker and Mr. Drexler
10 and Mr. Parker where it says, "Montana Defenders of the
11 Republic" and he's holding a firearm and underneath it says,
12 "Share! Operation Big Sky! More information here," and it
13 shares a link to a press release by the Pacific Patriot Network
14 which is all Operation Big Sky as we've noticed in the 404(b)
15 was the name given to the operation relating to White Hope Mine
16 which was a mine on Forest Service land in Montana. And Mr.
17 Parker and Mr. Drexler are both, again, as I stated earlier,
18 appear in this post.

19 And then at the bottom there's also a comment by
20 Mr. Parker saying, "Shifts . . . and we still need volunteers."
21 And so, we would submit the same arguments that we've
22 previously submitted.

23 MR. MARCHESE: Same objection as Parker.

24 MR. TANASI: Stewart joins, Your Honor.

25 MR. LEVENTHAL: Drexler joins.

1 MR. PEREZ: Lovelien joins.

2 THE COURT: All right. So the same ruling.

3 The statement is adopted by Mr. Parker as posted.
4 Also includes one of the other defendants that are listed in
5 the conspiracy. It's dated August 20th of 2015, which is
6 within the conspiracy requesting volunteers for a similar
7 operation during the conspiracy. So it is an 801(d)(2)(E)
8 co-conspirator statement that is admissible against all
9 parties.

10 So, Exhibit 108 will be admitted -- is admitted.

11 (Exhibit 108 received.)

12 (Exhibit 109 published.)

13 MS. AHMED: Your Honor, 109 is very similar. It's a
14 post shared by Mr. Parker of a video from White Hope Mine
15 depicting -- you can see from this post that there's a video
16 where Mr. Parker and Mr. Drexler both appear in. They're
17 armed and it's referring to that same event of the White Hope
18 Mine Operation Big Sky and we would submit the same arguments
19 for its admissibility.

20 MR. MARCHESE: Same objection Parker.

21 MR. TANASI: Stewart joins, Your Honor.

22 MR. LEVENTHAL: Drexler joins.

23 MR. PEREZ: Lovelien joins.

24 THE COURT: So is this the video that Mr. Parker was
25 watching just now with the headphones on? Did he get a chance

1 to see all of it? It's 11 minutes it looks like.

2 MS. AHMED: Your Honor, we --

3 MR. MARCHESE: He's seen it, Your Honor.

4 MS. AHMED: And for the record, Your Honor, we -- the
5 video is 11 minutes. Mr. Parker and Mr. Drexler only appear in
6 the first few seconds of it, possibly the first minute, so we
7 were -- as a separate exhibit, 48a, we were going to seek to
8 admit the video clipped just to the part that they're in.

9 THE COURT: Oh, okay. So not the whole 11 minutes?

10 MS. AHMED: Just the 20 to -- I think it's about 20
11 to 30 seconds.

12 THE COURT: All right.

13 MS. AHMED: And that's -- so this post is 109 and the
14 video is 48a.

15 THE COURT: All right. So, in Exhibit 109, are you
16 alleging that -- of the three people pictured there, that the
17 person on the far right is Mr. Parker and the far left is
18 Mr. Drexler?

19 MS. AHMED: Yes, Your Honor.

20 THE COURT: Do you know who the person in the middle
21 is? Is that Mr. Blaine Cooper?

22 MS. AHMED: Yes, Your Honor, a co-conspirator and
23 who, obviously as the Court knows, already pled guilty in this
24 case.

25 THE COURT: All right. And the posting is made in

1 August 20th of 2015 and . . . Mr. Parker is sharing
2 Mr. Cooper's video on Mr. Parker's Facebook page on that date.

3 So, where it says, "Breaking, share, get viral!
4 Operation Big Sky armed patriots and Oath Keepers from across
5 the U.S. show up to defend the Constitution! What's it all
6 about? Watch our report and the dispute between the U.S.
7 Forest Service and miners in a small Montana town!" is it your
8 argument that this is posted by Mr. Parker as well?

9 MS. AHMED: Your Honor, yes. We would submit that
10 it's an adoptive admission, essentially, as to the intent for
11 that operation and for his movement generally, as evidence of
12 the movement generally and the conspiracy generally.

13 THE COURT: All right. So he's adopted the statement
14 and he's furthering the recruitment effort, and it's made
15 during the conspiracy, inextricably intertwined and admissible
16 against all parties.

17 All right. So same ruling as before. The Exhibit
18 109 is admitted.

19 (Exhibit 109 received.)

20 MS. AHMED: And, Your Honor, would that also be the
21 case for the video that's -- we would then -- the video is 48a
22 and it's just -- it's this video, the first 28 seconds in which
23 they're featured.

24 THE COURT: Does defense have any different objection
25 to video 48a -- what did you say, about the first minute?

1 MS. AHMED: It's less than a minute, Your Honor.

2 MR. MARCHESE: Your Honor, we would object, but if
3 it -- if the Court does rule that it comes in, we would ask
4 that the entire video come in under the rule of completeness.

5 MS. AHMED: Your Honor, we would submit if you --
6 that the entire video -- essentially the first 20 to 30 seconds
7 or whatever is in our -- the clip that we're submitting, is
8 where you see these three individuals standing at the White
9 Hope Mine and then it cuts away to a lengthy interview with, I
10 believe, one of the miners and so we would submit that that
11 portion is not needed under the rule of completeness. It's a
12 completely different scene, different interview.

13 THE COURT: All right. Well, there's no explanation
14 of how the rule of completeness would require that the 11
15 minutes of the video needs to be shown in Exhibit 48a. The
16 first minute is alleged to be the portion that includes the
17 defendants in this case. So the Court admits video 48a, but
18 only up to the 1-minute part -- part or -- within the 1-minute
19 part.

20 (Exhibit 48a received.)

21 (Exhibit 114 published.)

22 MS. AHMED: Thank you, Your Honor.

23 And then, Your Honor, the last post at issue from
24 Mr. Parker's Facebook pages is Exhibit 114, and this is similar
25 to the others. It's a post he shared on his Facebook page,

1 which was obtained in December of 2015. The agent would
2 testify to the date that it was obtained, which was the date
3 was documented in a 302. It's not reflected in that post which
4 is why I say when it was obtained, but it was obtained in
5 December 2015, which is also the same that this individual that
6 he's discussing, Schuyler Barbeau, was arrested. Mr. Barbeau
7 did participate in the events of April 12th, 2014, and is a
8 co-conspirator. Additionally, Mr. Parker states in the post,
9 "He helped stand down the BLM at the Bundy Ranch, the BLM at
10 the mine in Oregon, and the USFS at the mine in Montana."

11 We would submit all the same arguments with respect
12 to its being inextricably intertwined and evidence of their
13 intent.

14 MR. MARCHESE: Your Honor, we would give the same
15 objections, but I would focus a little bit more on the fact
16 that Mr. Parker isn't necessarily talking about what he did,
17 he's talking about what someone else did. So I would say that
18 the relevance and the prejudicial value goes up significantly
19 in reference to the prejudice and the relevance goes down
20 significantly because Mr. Barbeau -- Eric is talking about what
21 Mr. Barbeau did. So, I'm failing to see the relevance of all
22 this.

23 MR. TANASI: Stewart joins.

24 MR. PEREZ: Lovelien joins.

25 MR. LEVENTHAL: Drexler joins.

1 MS. AHMED: Your Honor, he's saying he -- he --
2 Mr. Parker's post states "he," referring to Barbeau, helped
3 stand down the BLM at these incidents which there's evidence
4 that Mr. Parker participated in. And so, it would go to
5 Mr. Parker's conduct and his intent, that their purpose was to
6 stand down these law enforcement -- these federal -- these
7 public land agencies.

8 THE COURT: And you said that -- how do you know the
9 date of this post?

10 MS. AHMED: Your Honor, it was -- the date was
11 documented in a report by an FBI -- by the FBI agent who
12 captured it to be December of 2015.

13 And, Your Honor, also, Mr. Barbeau was arrested in
14 2015 -- December of 2015.

15 THE COURT: All right. So same ruling as before.
16 Exhibit 114 is admitted. Does reference the April 2014
17 incident as a standdown and draws the similarity between it and
18 the similar incidents at the Oregon and Montana mines.

19 MS. AHMED: Your Honor --

20 THE COURT: So Exhibit 114 is admitted.

21 (Exhibit 114 received.)

22 MS. AHMED: Your Honor, those were the only exhibits
23 that we had -- those were the remaining exhibits from
24 Mr. Parker's Facebook page. We were able to resolve all the
25 issues with respect to the exhibits from Mr. Drexler's Facebook

1 page and so, I don't think there's any outstanding -- or there
2 were no objections; there was just one exhibit that
3 Mr. Leventhal wanted to make sure was redacted and we made that
4 redaction.

5 So, those are Exhibits 123 through 128. There's no
6 issue on those.

7 THE COURT: All right. So, Exhibits 123 through 128,
8 with the requested redactions, has the defense had an
9 opportunity to see those redactions to make sure --

10 MR. LEVENTHAL: I have not.

11 THE COURT: -- we're good to go?

12 MS. AHMED: It's Exhibit 125 if we can -- excuse
13 me -- it's either 125 or 126. Can we pull up 125?

14 (Exhibit 125 published.)

15 MS. AHMED: It's actually 126.

16 (Exhibit 126 published.)

17 MS. AHMED: Uh, maybe 127.

18 I'm sorry, Your Honor.

19 (Exhibit 127 published.)

20 MS. AHMED: This was the post that Mr. Leventhal
21 wanted to make sure it was redacted. So we have made that
22 redaction.

23 MR. LEVENTHAL: And this is referencing a post that
24 came in yesterday at sidebar --

25 THE COURT: Um-hmm.

1 MR. LEVENTHAL: -- that we agreed to take out. It's
2 the same reason. For some reason it got onto Mr. Drexler's
3 page. So it's just -- we've already redacted it from a
4 prior --

5 THE COURT: Okay.

6 MR. LEVENTHAL: Prior --

7 THE COURT: All right. So there's no other objection
8 to Exhibits 123 to 128; is that right?

9 MR. LEVENTHAL: That's -- that's correct, Your Honor.

10 MR. MARCHESE: For Mr. Drexler, but in reference to
11 Mr. Parker, once again, same continuing objections to the
12 post-bad act issues, 3%ers, mine references, things of that
13 nature.

14 MR. TANASI: Stewart joins, Your Honor.

15 THE COURT: Mr. Perez, do you object or not object?

16 MR. PEREZ: Yes, Your Honor. I'll join in the
17 objection.

18 THE COURT: All right. So, same ruling. Exhibit 123
19 through 128 then is admitted with those redactions.

20 (Exhibits 123 through 128 received.)

21 MS. AHMED: Your Honor, I would just request that we
22 do have some -- there are some Facebook posts for Mr. Stewart
23 where there were issues. There were objections that we were
24 unable to resolve just between ourselves that we would submit
25 to the Court for ruling, however, we would ask that the court

1 allow Mr. Smith to finish up because he does have a flight to
2 catch, so --

3 THE COURT: Okay. So we'll just address those later.

4 MS. AHMED: Yes.

5 THE COURT: They're not coming in this morning?

6 MS. AHMED: They would not come in this morning,
7 Your Honor.

8 THE COURT: Okay. So let's go ahead then and bring
9 in the jury and . . . Mr. Smith. We can go ahead and have him
10 take the stand while Aaron, you go get the jury?

11 MS. AHMED: Thank you, Your Honor.

12 COURTROOM ADMINISTRATOR: May I confirm the exhibit
13 numbers that were admitted, Your Honor?

14 THE COURT: Yes.

15 COURTROOM ADMINISTRATOR: I have 113; 101; 103; 107;
16 110; 116; 99; 100; 108; 109; 48a, 1 minute of the video; 114;
17 123 through 128.

18 THE COURT: That's what I have written down.

19 MS. AHMED: That's correct.

20 COURTROOM ADMINISTRATOR: Thank you.

21 THE COURT: Okay.

22 MS. AHMED: Thank you.

23 (Brief pause in proceedings.)

24 THE COURT: All right. While we're waiting for the
25 jury to come in, I just want to remind everyone about the

1 expectations regarding the courtroom and how people should
2 conduct themselves and what is expected of them. It is a
3 courtroom, not a sporting event. So no expressions, whether
4 verbally or through body language, are permitted.

5 They are -- the defense attorneys have their computer
6 devices, but no one else is permitted to have computer devices.
7 The security officers here do have communication devices.
8 There's no audio or video recording that is permitted. So even
9 if your devices are in the "off" position or the "vibrate" or
10 "private" position, that's not good enough. We just simply
11 cannot have any of the devices in the courtroom.

12 The defendants are aware that the holding cell does
13 have a speaker system so that they may be able to still hear
14 the proceedings if they are -- if we need to remove them
15 because they cannot comply with the court conduct rules.

16 And the marshals and the Court Security Officers have
17 the authority to remove anyone from the public that cannot
18 comply with these expectations for the conduct in court.

19 (Brief pause in proceedings.)

20 COURTROOM ADMINISTRATOR: All rise.

21 (Jury returned to courtroom at 11:13 a.m.)

22 THE COURT: Jury may go ahead and be seated.

23 Everyone else may be seated as well.

24 Let's go ahead and have counsel make their
25 appearances on the record and then we'll proceed.

1 MR. MYHRE: Good morning, Your Honor, ladies and
2 gentlemen.

3 Steven Myhre, Erin Creegan, Nadia Ahmed on behalf of
4 the United States.

5 THE COURT: Good morning.

6 MR. TANASI: Good morning, Your Honor. Thank you.
7 Good morning, folks.

8 Rich Tanasi for Steven Stewart. Also with us at
9 counsel table is Tori Bakken and Brian Glynn.

10 Thank you.

11 THE COURT: Good morning.

12 MR. MARCHESE: Good morning, Your Honor. Good
13 morning, ladies and gentlemen of the jury.

14 Jess Marchese on behalf of Eric Parker.

15 THE COURT: Good morning.

16 MR. LEVENTHAL: Good morning, everyone.

17 Todd Leventhal on behalf of Scott Drexler.

18 THE COURT: Good morning.

19 MR. PEREZ: Good morning, Your Honor. Good morning,
20 ladies and gentlemen.

21 Shawn Perez on behalf of Ricky Lovelien.

22 THE COURT: Good morning.

23 (Erich Smith returned to stand.)

24 THE COURT: All right. So, we're going to now
25 continue with our witness, Mr. Erich Smith, Erich Smith,

1 rather, and I do have some jury questions for you, sir. I'm
2 going to read them into the record, but when you respond, you
3 may go ahead and turn to the jury to face them because these
4 are jury questions; not my questions. All right?

5 THE WITNESS: Okay.

6 THE COURT: So, Jury Note No. 100 asks, "In your
7 expert opinion, could a trained law enforcement officer
8 misidentify Exhibit No. 197b as a shotgun from a hundred yards
9 away with the naked eye and binoculars?"

10 THE WITNESS: Yes. I believe that's possible.

11 THE COURT: All right. Question No. 101, "The type
12 of bullets used in both weapons, can't they go through body
13 armor?"

14 THE WITNESS: It depends on the top of body armor
15 that's being used. Body armor comes in different ratings based
16 on the type of projectile that it's -- or designed to stop.

17 That really is outside my expertise to answer that
18 question --

19 THE COURT: Okay.

20 THE WITNESS: -- if it would effectively defeat body
21 armor.

22 THE COURT: All right. Question 102 has three parts;
23 the first part is, "If any of the pictured weapons" -- "Of any
24 of the pictured weapons, could you determine if they had a
25 round in the chamber?"

1 THE WITNESS: That, I could not.

2 THE COURT: And the second question in Jury Note No.
3 102 asks, "Of any of the weapons pictured, could you determine
4 if they had been modified to fire automatic?"

5 THE WITNESS: I can't determine that either.

6 THE COURT: And the last question in Jury Note No.
7 102 asks, "What is the difference between a rifle and a long
8 gun?"

9 THE WITNESS: Those are synonymous, a long gun and a
10 rifle.

11 THE COURT: So, no difference?

12 THE WITNESS: No. In my terminology, there would be
13 no difference between those.

14 THE COURT: All right. Jury Note No. 103 asks, "If a
15 person threatens another person with an airsoft object that
16 looked like a rifle or shotgun, would their threatening still
17 be considered meeting its intent?"

18 So again, that's a legal question and we will provide
19 you -- I will provide you with the legal instructions that will
20 assist you in answering that question. So it's not a factual
21 question for this witness to answer, but I appreciate your
22 concern.

23 All right. And then Jury Note No. 104 asks, "Did the
24 sights on Exhibit 197a break in the transportation of the gun?"

25 THE WITNESS: I don't have any knowledge of when

1 those sights or that sight was broken. It was not -- it was
2 already broken when I received the firearm.

3 THE COURT: Okay. And the second part of the
4 question asks, "Can you determine if the sights were broken on
5 the day in question on Exhibit 197a?"

6 THE WITNESS: That, I cannot determine as well.

7 THE COURT: And then Jury Note 105 asks two
8 questions: The first one is, "The rifle that used the 9mm
9 round, is it capable of that rifle to shoot as far and accurate
10 as a rifle that uses the .223 round or the 6 -- or the 7.62
11 round?"

12 THE WITNESS: I can't -- I don't know the accuracy of
13 the two firearms, but you really need to think about the
14 cartridges. So the rifle that shot the 9mm Luger, that bullet
15 is larger in diameter. It measures .355. You remember the
16 rifle that shot the .223, that's closer to a quarter of an
17 inch. So the object itself is larger; it's not going to fly
18 the air as far. So its ballistic co-efficient is not as good
19 as the .223 rifle. So, basically in a short answer, it would
20 not fire as far as the .223.

21 THE COURT: All right. And the second question in
22 Jury Note No. 105 asks, "Can you explain the difference between
23 the 9mm versus the .223 versus the 7.62 in terms of size and
24 velocity."

25 THE WITNESS: Sure.

1 We'll start with the smaller and we'll work our way
2 up.

3 So, the 223, .223, that's close to a quarter inch in
4 diameter. So if he took the bullet and cut it in half, it
5 measures about a quarter inch across. A .223 is a full metal
6 jacket and when I say that, if we actually looked at the
7 bullet, there's a metal jacket around a led core. Those
8 typically fly at a velocity of around 3100 feet per second. So
9 they're very fast bullets.

10 The next one up would be your .30 caliber, 7.62 by
11 39. Again, this is a full metal jacket bullet. It's typically
12 wrapped around a led core and it also is a high velocity
13 around. That particular velocity, I'm not certain on how fast
14 that one actually travels. But then the 9mm Luger, that
15 measures .355 in diameter if we cut it in half. That one
16 typically runs around 1150 feet per second. So, it's slower
17 than the other two cartridges.

18 THE COURT: So the largest is the 9mm?

19 THE WITNESS: That's .355 and then the .30 caliber
20 measures .308. So it's a little bit -- little bit smaller
21 diameter.

22 THE COURT: All right. Jury Note No. 106 asks, "Can
23 you tell by looking at the butt of a rifle if it is a shotgun
24 or not?"

25 THE WITNESS: I don't know if I'd be able to do that

1 or not, because the stock -- when we talk about the butt,
2 that's the portion that actually fits into your shoulder.
3 They're very similar between rifles and shotguns, so I may not
4 be able to distinguish one being another, unless there was
5 something really specific about the butt.

6 THE COURT: All right. Any follow-up questions by
7 the Government?

8 MR. MYHRE: Yes, Your Honor. Just a couple.

9 THE COURT: Go ahead.

10

11 REDIRECT EXAMINATION OF ERICH SMITH

12 BY MR. MYHRE:

13 Q. Good morning, Mr. Smith.

14 A. Good morning.

15 Q. Just in follow-up to question 102 where you were asked
16 about whether you could determine from the photos whether there
17 was a round in the chamber, I would ask the converse. Could
18 you tell from the photos that a round was not in the chamber?

19 A. I could not.

20 Q. And you fired this weapon; correct? This weapon, being
21 the weapon at 190b, the Saiga?

22 A. Yes, I did.

23 Q. When you fired that weapon, what was -- did you have a
24 magazine in it?

25 A. Actually, I had no magazine in it when I test-fired it. I

1 actually physically loaded the cartridge into the chamber and
2 fired it.

3 Q. When you fired that weapon, was the bolt opened or closed?

4 A. It was closed.

5 Q. And when the bolt is closed, where is the firing pin?
6 What is the position of the firing pin?

7 A. The firing pin is sitting in the bolt. It's prepared,
8 it's ready so that when I pull the trigger, the hammer falls
9 forward and it slams into the firing pin and now the firing pin
10 is allowed to hit the primer.

11 Q. So for -- for that weapon to fire, does the bolt have to
12 be closed?

13 A. Yes, it does.

14 MR. MYHRE: And if I may show, Your Honor, the
15 witness what was previously admitted as 152a?

16 THE COURT: Yes, you may.

17 (Exhibit 152a published.)

18 BY MR. MYHRE:

19 Q. And I believe the jury has that image in front of it as
20 well. And in this image can you tell where that bolt is
21 forward or not?

22 A. Yes. This is the same image we looked at yesterday and
23 the bolt is forward.

24 Q. Thank you.

25 THE COURT: When you say "forward," do you mean

1 closed or not closed?

2 THE WITNESS: Closed.

3 THE COURT: Okay.

4 BY MR. MYHRE:

5 Q. In response to Question 104 you were asked about the front
6 sight of 197b. When you looked at -- you looked at 197b
7 yesterday and it's available for you to look at today, is the
8 post of the sight intact on that weapon?

9 A. Can I take it out so I'm sure?

10 MR. MYHRE: With the Court's permission.

11 THE COURT: Yes, you may.

12 THE WITNESS: This is the front sight, this portion
13 right here (indicating). This portion right here (indicating)
14 is a shroud that would go over this little post here
15 (indicating). This post is actually what you sight in on to
16 shoot. The portion that's broken off would wrap around and
17 creates a -- basically a cover to block any kind of glare off
18 the front sight. So, the front sight is still there; it's
19 still intact.

20 MR. MYHRE: And the record should reflect that the
21 witness held 197b in front of the jury and was pointing to the
22 front sight of the weapon.

23 BY MR. MYHRE:

24 Q. So, in other words, with the sight in the condition it is
25 now, that weapon could still be aimed and be functional?

1 MR. TANASI: Objection. Leading.

2 MR. MYHRE: Your Honor --

3 THE COURT: You asked the question, is it still
4 functional then with that front sight?

5 MR. MYHRE: Is the weapon still functional in the
6 condition it's in?

7 MR. LEVENTHAL: Objection. Beyond the scope of the
8 question as well.

9 MR. TANASI: Stewart joins.

10 MR. MYHRE: Your Honor, I think that's what the
11 question implies, as to whether the weapon can be used or not.

12 THE COURT: This is the one with the broken --

13 MR. MYHRE: This is Juror Question No. 104, whether
14 the gun -- the sight broke in transportation. I'm inferring
15 from that whether or not if this sight had been broken on the
16 day in question, would it have been functional or usable.

17 THE COURT: All right. Objection's overruled.

18 The witness may answer the question.

19 THE WITNESS: Would you like to rephrase the question
20 or --

21 BY MR. MYHRE:

22 Q. Sure.

23 With the sight -- you've described the sight in its
24 present condition; correct? The front sight?

25 A. That's correct.

1 Q. With the condition it's in as it sits here today, would
2 someone be able to use that weapon and use the sight?

3 A. Sure. The sight is still -- the front sight is still
4 available to shoot with. It's still present.

5 MR. MYHRE: All right. Thank you, Mr. Smith.

6 No further questions, Your Honor. Thank you.

7 THE COURT: Follow-up by the defense?

8 MR. TANASI: None from Stewart, Your Honor.

9 MR. MARCHESE: None from Parker.

10 MR. LEVENTHAL: No, Your Honor.

11 MR. PEREZ: None from Lovelien.

12 THE COURT: All right. Well, thank you, Mr. Smith,
13 for coming in today. You are excused.

14 THE WITNESS: Thank you.

15 (Witness excused.)

16 THE COURT: Are we going to recall Special Agent
17 Sarah Draper?

18 MS. AHMED: Yes, Your Honor.

19 THE COURT: Okay. Let's go ahead and do that, then.

20 MS. AHMED: Your Honor, the United States recalls
21 Agent Draper.

22

23

SARAH DRAPER,

24 called as a witness on behalf of the Government, having been

25 first duly sworn, was examined and testified as follows:

1 THE COURT: Good morning, Special Agent Draper.
2 Thank you for coming back. We're going to have you sit up here
3 just in a minute, as soon as we can clear -- just have you wait
4 there while he clears up the evidence.

5 MS. AHMED: Your Honor, may I move the podium?

6 THE COURT: Yes.

7 Aaron, move it.

8 (Brief pause in proceedings.)

9 THE COURT: All right. Ms. Draper, I do remind you
10 that you are still under oath.

11 THE WITNESS: Thank you, Your Honor.

12 THE COURT: Go ahead and continue, Ms. Ahmed, with
13 direct.

14 MS. AHMED: Thank you, Your Honor.

15

16 FURTHER DIRECT EXAMINATION OF SARAH DRAPER

17 BY MS. AHMED:

18 Q. Good morning again, Agent Draper.

19 A. Good morning.

20 Q. When we left off, we were looking at Facebook posts -- we
21 had been looking at Facebook posts yesterday that you reviewed
22 and obtained from Mr. Parker's Facebook account.

23 Do you recall that?

24 A. Yes.

25 Q. And after his participation in the events of April 12th,

1 2014, did he continue to post on his Facebook account regarding
2 those events?

3 A. Yes.

4 MS. AHMED: Your Honor, may we publish what's been
5 stipulated to admission -- for admission as Exhibit 105?

6 THE COURT: Yes, you may.

7 (Exhibit 105 published.)

8 MS. AHMED: And Your Honor, may we -- may we admit it
9 as well, for the record?

10 THE COURT: Yes. 105 is admitted.

11 (Exhibit 105 received.)

12 BY MS. AHMED:

13 Q. Agent Draper, do you see what's on the screen in front of
14 you as 105?

15 A. Yes, I do.

16 Q. Ask you just explain to the jury what is depicted in
17 Exhibit 105?

18 A. This is a screen capture of a picture from Mr. Parker's
19 Facebook page.

20 Q. And is that picture from April 12th of 2014?

21 A. Yes, this is.

22 Q. And is this actually taken at the BLM's ICP impoundment
23 site?

24 A. This is at the -- at Bundy Ranch.

25 Q. The bridge?

1 A. Yes. At the bridge.

2 Q. And looking at the individual that's depicted on the
3 viewer's right, do you recognize that person?

4 A. Yes. That's Mr. Parker.

5 Q. And the individual that's depicted on the viewer's far
6 left, do you recognize that person?

7 A. Yes. That's Mr. Drexler.

8 MS. AHMED: Your Honor, may we admit and publish
9 what's been stipulated for admission as Exhibit 111?

10 THE COURT: Yes, you may.

11 (Exhibit 111 received and published.)

12 BY MS. AHMED:

13 Q. Agent Draper, can you explain to the jury what is depicted
14 in Exhibit 111?

15 A. This is a posting of a picture from Mr. Parker on his
16 Facebook page updating his profile photo on October 11th of
17 2015.

18 Q. And what photo did Mr. Parker update his profile picture
19 with?

20 A. This is a picture of him -- taken of him at the Bundy
21 Ranch on the bridge on April 12th, 2014.

22 Q. And he posted this on October 11th of 2015?

23 A. Yes, that's correct.

24 Q. And looking below the picture, do you see that there are
25 also -- that individuals have "liked" and commented on that

1 picture?

2 A. Yes.

3 Q. Do you see the name Blaine Cooper?

4 A. Yes.

5 Q. Are you familiar with that name?

6 A. Yes.

7 Q. And who is Blaine Cooper?

8 A. Mr. Cooper was also involved in the events at Bundy Ranch
9 on April 12th, 2014.

10 Q. And below that, do you see that there are comments?

11 A. Yes.

12 Q. Can you read those comments?

13 A. Yes. An individual asks, "What rifle is that? A VZ?"

14 Q. And does Mr. Parker post a response?

15 A. Yes, he does.

16 Q. Can you read the response?

17 A. It says, "Saiga .223."

18 Q. And for the record, in the photograph that Mr. Parker made
19 his profile picture, is he -- what is he holding in his hands?

20 A. A Saiga .223.

21 MS. AHMED: Your Honor, may we publish --

22 THE COURT: Can I just go back a little bit?

23 You were asking the witness about Mr. Blaine Cooper
24 and she said he was present at the events at Bundy Ranch. Was
25 he present at the events at the wash and the bridge --

1 THE WITNESS: Your Honor, I don't know if --

2 THE COURT: -- or the rally beforehand?

3 THE WITNESS: Oh, I'm sorry.

4 THE COURT: I'm sorry. Was it just the rally
5 beforehand at the ranch or also later on at the wash?

6 THE WITNESS: Your Honor, I don't know exactly if he
7 was on the bridge or on the wash.

8 THE COURT: Okay.

9 THE WITNESS: I recall through investigation he was
10 on the wash, but I don't know exactly.

11 THE COURT: Okay.

12 Okay. You can move on.

13 MS. AHMED: Thank you, Your Honor.

14 May we publish what's been admitted as Exhibit 113?

15 (Exhibit 113 published.)

16 BY MS. AHMED:

17 Q. Agent Draper, can you explain to the jury what is
18 displayed in Exhibit 113?

19 MR. MARCHESE: And, Your Honor, for the record, this
20 was over defense objection.

21 MR. LEVENTHAL: That's correct, Your Honor.

22 THE COURT: That's correct.

23 MR. TANASI: That's correct, Your Honor.

24 BY MS. AHMED:

25 Q. Agent Draper, can you explain to the jury what's depicted

1 in Exhibit 113?

2 A. This is another capture from Eric Parker's Facebook page
3 dated November 20th of 2015. It shows a picture of Mr. Drexler
4 on April 12th, 2014, on the bridge and there have been words
5 written on it and Mr. Parker made a comment.

6 Q. And what is Mr. Drexler doing in the picture?

7 A. He's standing --

8 MR. LEVENTHAL: I'm going to object as to
9 speculation. What's he doing?

10 BY MS. AHMED:

11 Q. What does it appear that he's doing from the photograph?

12 A. It appears as though he's standing on the bridge carrying
13 a rifle.

14 Q. And what are the words that are superimposed over that
15 picture?

16 A. Says, "Lo, do they call to me. They bid me to take my
17 place among them in the hollowed halls of Valhalla where the
18 brave shall live forever."

19 Q. And are these words words that you've become familiar with
20 through your investigation of this case?

21 A. Yes.

22 Q. And what -- what are they from, if you know?

23 A. Just --

24 MR. MARCHESE: Objection. Hearsay.

25 MR. TANASI: Stewart joins.

1 MR. LEVENTHAL: Drexler joins.

2 MR. PEREZ: Lovelien joins.

3 THE COURT: Well, it's not offered for the truth --
4 well, you -- Ms. Ahmed, what's your response?

5 MS. AHMED: Your Honor, we would submit that this is
6 an adopted admission by Mr. Parker.

7 MR. MARCHESE: Your Honor, but it's our position that
8 she's going to testify to what she found out, so she's
9 basically testifying as to hearsay. It's not from her personal
10 knowledge.

11 BY MS. AHMED:

12 Q. Just were these words --

13 THE COURT: It's her personal knowledge. What she
14 found out, right? She's not --

15 MS. AHMED: She --

16 THE COURT: -- getting this information from someone
17 else?

18 MS. AHMED: That's correct, Your Honor. She
19 investigated the origin of these words.

20 THE COURT: All right. I'll allow it over the
21 objection.

22 BY MS. AHMED:

23 Q. Can you explain to the jury where these words come from?

24 A. Again, as yesterday, this is a summary of a -- of a Norse
25 or Viking prayer or poem about warriors seeking a place in

1 Valhalla.

2 Q. And how do they get that place in Valhalla?

3 A. If they died in battle.

4 Q. Now, above the picture with these words, you mentioned
5 that there -- there are also words above the picture; correct?

6 A. Yes, correct.

7 Q. And is that a comment that Mr. Parker posted separately
8 from the picture?

9 A. Yes.

10 Q. But in relation to the picture?

11 A. Correct.

12 Q. Can you read that to the jury?

13 A. It says, "Our ongoing weekly tribute to the men and women
14 who showed up that day that were not me."

15 MS. AHMED: Your Honor, may we publish what's been
16 stipulated to for admission -- may we admit and publish Exhibit
17 115?

18 THE COURT: Yes, you may.

19 (Exhibit 115 received and published.)

20 BY MS. AHMED:

21 Q. Agent Draper, is this a post that Mr. Parker posted to his
22 Facebook page?

23 A. Yes.

24 Q. And what date did he make this post?

25 A. February 5th, 2016.

1 Q. And does -- in the post, is he sharing a photograph with
2 words on it?

3 A. Yes.

4 Q. And what is depicted in the actual photograph?

5 A. This is a photograph of BLM at Bundy Ranch.

6 Q. These are the officers that were present on April 12th,
7 2014?

8 A. Yes, some.

9 Q. And what words are -- there appear to be words and circles
10 over the picture.

11 Do you see that?

12 A. Yes.

13 Q. Written in blue?

14 A. Yes.

15 Q. Can you read what those say?

16 A. The word "dicks" three times.

17 Q. And is there -- do there -- do those words appear to be in
18 relation to the circles and the arrows that are also drawn on
19 the picture?

20 A. They appear to be.

21 Q. So, and it appears that they were referring to the
22 officers; is that correct?

23 A. Yes.

24 Q. And above and below the photograph there are also words.

25 Do you see that?

1 A. Yes.

2 Q. Can you read those to the jury?

3 A. "The reason Nevada went so well, the dicks were there when
4 we got there."

5 Q. Now, below this photograph, are there also comments?

6 A. Yes, there are.

7 Q. Beginning where it says "Don Knight," can you read the
8 first comment?

9 A. It says -- "Don Knight: Yes. Always let your opponents
10 take the field first. That's one of the arts of war."

11 Q. And does Mr. Parker respond to that comment?

12 A. Yes, he does. He says, "Same idea. I just wrote it down
13 a little different."

14 Q. And where it says "Jeff Alldredge," can you read that
15 comment?

16 A. It says, "I always thought one would want to pick the
17 ground they fight from."

18 Q. And does Mr. Parker respond to that?

19 A. He does. And it says, "That's the hard part. Pick the
20 battlefield, but let them take it first."

21 MS. AHMED: Your Honor, may we publish what was
22 admitted over defense objection as Exhibit 101?

23 THE COURT: Yes, you may.

24 (Exhibit 101 published.)

25 ///

1 BY MS. AHMED:

2 Q. Agent Draper, do you see Exhibit 101?

3 A. Yes, I do.

4 Q. Now, you testified yesterday about a group known as the
5 3%.

6 Do you recall that?

7 A. Yes.

8 Q. And also about the Idaho 3% which I believe you said was a
9 part of that greater 3%?

10 A. It's a part of a greater affiliation. It's not
11 necessarily a national connection, but a movement.

12 Q. And you described to the jury some of the things that the
13 Idaho 3% does; correct?

14 A. Yes.

15 Q. What kind of group is the Idaho 3%?

16 A. Well, the FBI considers it a militia group.

17 Q. And --

18 MR. LEVENTHAL: I'm going to object as to hearsay.

19 Move to strike.

20 BY MS. AHMED:

21 Q. Is that based on your investigation and your familiarity
22 with the Idaho 3%?

23 A. Yes.

24 Q. And also in your training and experience as an FBI agent?

25 A. Yes.

1 THE COURT: Objection overruled.

2 BY MS. AHMED:

3 Q. Now, based on your investigation in this case, in June of
4 2015, was Mr. Parker affiliated with the Idaho 3%?

5 A. Yes.

6 Q. Looking at this exhibit, Exhibit 101, do you see where
7 I've circled on the screen a symbol?

8 A. Yes.

9 Q. I've circled toward the bottom of the picture.

10 Do you see that?

11 A. Correct.

12 Q. And can you explain to the jury, what is that symbol?

13 A. That is three Roman Numeral -- three Roman Numeral I's,
14 III%.

15 Q. And is that a symbol that's used by the Idaho 3%?

16 A. It's -- it's used by different 3% organizations, correct.

17 Q. Including the Idaho 3%?

18 A. Including, correct.

19 Q. And what is the photo -- photograph that is depicted in
20 Exhibit 101?

21 A. This is a photograph of Mr. Parker proned on the bridge at
22 Bundy Ranch on April 12th, 2014.

23 Q. And what do the words -- and where is his rifle in this
24 photograph?

25 A. The rifle is through a crack in the Jersey barrier -- the

1 highway barricade.

2 Q. The concrete barriers?

3 A. The concrete barriers, yes.

4 Q. And that's also known as the Jersey barriers?

5 A. Correct.

6 Q. And it appears to be pointing through that gap?

7 A. Yes.

8 Q. And what are the words written above that photograph?

9 A. "You give peace a chance . . . I'll cover you."

10 Q. And is this a post that Mr. Parker shared on his Facebook
11 page?

12 A. Yes.

13 Q. In June of 2015?

14 A. Correct.

15 MS. AHMED: Your Honor, may we publish what was
16 admitted over defense objection as Exhibit 103?

17 THE COURT: Yes, you may.

18 (Exhibit 103 published.)

19 BY MS. AHMED:

20 Q. Agent Draper, do you see Exhibit 103?

21 A. I do.

22 Q. And can you describe to the jury what is depicted in
23 Exhibit 103?

24 A. This is a picture that Mr. Parker put on his Facebook page
25 in June of 2015 that at the time was made as a cover photo.

1 Q. And can you just remind the jury what a cover photo is in
2 Facebook?

3 A. That would be a -- kind of a -- a banner that would remain
4 until the individual user changes. It's a banner that would
5 remain consistent each time their page comes up. The content
6 may change, but that banner at the top of the page stays
7 consistent.

8 Q. So, if you make a photo your cover photo, that photo will
9 appear as the banner on your Facebook page?

10 A. That's correct.

11 Q. And so when people go to your Facebook page, that's the
12 first thing they would see?

13 A. Yes, and your profile would also be consistent.

14 Q. Now, looking at the photo itself, do you recognize any of
15 the people in that photo?

16 A. Yes, I do.

17 Q. And going from viewer's left to right, can you indicate,
18 mark and identify who you recognize?

19 A. (Indicating) that's Mr. Parker.

20 MS. AHMED: And the witness has drawn a circle over
21 the person that's on the far left.

22 THE WITNESS: (Indicating).

23 MS. AHMED: And then the witness has drawn a circle
24 over an individual in the far right.

25 ///

1 BY MS. AHMED:

2 Q. Who is that individual?

3 A. Mr. Stewart.

4 Q. And what do they appear to be doing in this picture?

5 A. Based upon the settings and -- they appear to be doing
6 some type of tactical training based upon their gear. It looks
7 like there's a target behind them. So, from my training, I
8 would assess they're doing some type of tactical and/or
9 firearms training.

10 Q. And the individual in the foreground that I've circled, do
11 you see what he is -- the shirt that he's wearing?

12 A. Yes, I do.

13 Q. Can you explain to the jury, based on your investigation,
14 what you know about that shirt? What is that shirt?

15 A. That is a shirt that members of the Idaho 3% wore. It has
16 a symbol of the organization on it.

17 Q. So, that image on the back of the shirt is the Idaho 3%
18 image?

19 A. Part of it, yes. Part of it on the back of that shirt is,
20 yes.

21 Q. And have you seen other pictures depicting Idaho 3%
22 shirts?

23 A. Yes.

24 Q. And in those pictures, have you observed that they have --
25 what they have, if anything, on the sleeves of those shirts?

1 A. A flag sometimes, yes.

2 Q. And would the flag be consistent with the flag that
3 appears on Mr. Stewart's shirt in this picture (indicating)?

4 MR. TANASI: Objection. Leading, Your Honor.

5 THE COURT: Sustained.

6 Do you want to rephrase the question?

7 BY MS. AHMED:

8 Q. Looking at the picture, the circle that I've drawn around
9 Mr. Stewart's shirt, is that shirt consistent or not consistent
10 with the other Idaho 3% shirts that you've seen?

11 A. That sleeve would be consistent.

12 Q. And do you observe what Mr. Stewart has on top of his
13 shirt?

14 A. You mean the vest? Like a tactical vest.

15 Q. Can you explain to the jury what it is?

16 A. Oh, okay.

17 It's a -- it looks like some type of tactical vest to
18 carry gear, perhaps magazines. I can't tell if there's any
19 type of armoring in that or not, from here.

20 Q. And in this picture can you tell whether Mr. Parker has
21 something similar on?

22 A. He has something on. I -- I can't tell what it is.

23 Q. Now -- and this is a picture that Mr. Parker made his
24 cover photo in June of 2015 --

25 A. Yes.

1 Q. -- is that correct?

2 A. Yes.

3 MS. AHMED: Your Honor, may we publish what was
4 admitted over defense exhibit -- excuse me -- over defense
5 objection as Exhibit 107?

6 THE COURT: Yes, you may.

7 (Exhibit 107 published.)

8 BY MS. AHMED:

9 Q. Now, looking at this exhibit, Agent Draper, is this a post
10 that Mr. Parker made on his Facebook in August of 2015?

11 A. Yes.

12 Q. And does he appear to be sharing some information in this
13 post?

14 A. Yes.

15 Q. What is he sharing in this post?

16 A. He's sharing a link to a Facebook page for the 3% of
17 Idaho, the organization.

18 Q. And looking at the 3%er image, where it says "Three
19 Percenter," do you see that, in the near of the screen?

20 A. Oh, yes, I do. Sorry.

21 Q. Drawing a square around the circle in that, do you see
22 that --

23 A. Yes, I do.

24 Q. -- square?

25 A. Yes, I see that.

1 Q. Can you read the words that are written in that -- around
2 the -- in the circle form around that?

3 A. "When tyranny becomes law, rebellion becomes duty."

4 Q. And then looking above that, do you see that Mr. Parker
5 also made comments on this post?

6 A. Yes.

7 Q. And can you read the comments from the top to the bottom
8 that Mr. Parker posted?

9 A. "For updates on our resistance, please like and follow" --
10 correction -- "please like, follow, and share our page."

11 Q. And those were the words that Mr. Parker's account posted?
12 He posted this on his account?

13 A. This was, yes, posted on his account, correct.

14 MS. AHMED: Your Honor, may we publish what was
15 admitted over defense objection as Exhibit 110?

16 THE COURT: Yes, you may.

17 (Exhibit 110 published.)

18 BY MS. AHMED:

19 Q. Now, Agent Draper, is this a -- what appears to be a post
20 that another user made on Mr. Parker's page?

21 A. Yes.

22 Q. And that post was made in September of 2015; correct?

23 A. That's correct.

24 Q. Can you read what that person wrote on Mr. Parker's page?

25 A. The individual who posted this wrote, "Question . . . What

1 if one is/agrees with 3%ers but works for BLM/USFS?" Which
2 would be the United States Forest Service. "Serious question,
3 just occurred to me today."

4 Q. Now, did Mr. Parker post a response to that question?

5 A. Yes, he did.

6 Q. And what did he write?

7 A. "Got a lot of area to cover in that question and folks who
8 work for the BLM/US Forest Service just do the job they were
9 meant to at the founding of these organizations. You have
10 firefighters on both sides . . . I reach out to as many of the
11 LE branches that I can, especially in my local area, shake
12 their hand, look them in the eye, let him know I don't want to
13 kill him and I don't want him to kill me. Hopefully, it will
14 never have to get to the point it did in Nevada ever again."

15 Q. And what does "LE" stand for?

16 A. Law enforcement.

17 Q. And did Mr. Parker make another comment to this question?

18 A. Yes, he did.

19 Q. What did he write?

20 A. "Short answer is, I wish they would just find another
21 job."

22 MS. AHMED: Your Honor, may we publish what was
23 admitted over defense objection as Exhibit 116?

24 THE COURT: Yes, you may.

25 (Exhibit 116 published.)

1 BY MS. AHMED:

2 Q. Agent Draper, is this another post made on Mr. Parker's
3 Facebook account?

4 A. Yes. This is another updated cover photo.

5 Q. And again, this would be then the banner that would appear
6 at the top of his page?

7 A. That's correct.

8 Q. And when was this post made?

9 A. February 17th, 2016.

10 Q. And what is the post that he made -- he made his cover
11 photo?

12 A. It's the word "resist" and it shows a sketch of the image
13 of him on the bridge in Bundy Ranch on April 12th, 2014, where
14 he's proned behind a rifle at the Jersey barriers, the concrete
15 barriers, and it has the word "Three Percent" below it.

16 Q. And yesterday you were describing a T-shirt that you had
17 seen to the jury. Is this what, the T-shirt that you were
18 describing, is on that T-shirt?

19 A. That's -- my investigation leads me to believe this is the
20 shirt, yes.

21 Q. That this is actually a photograph of the shirt?

22 A. That's what my investigation leads, yes.

23 Q. Now, you indicated yesterday that the Idaho 3% conducts
24 operations.

25 Do you recall that?

1 A. Yes.

2 Q. And during the course of your investigation in this case,
3 did you become aware of an operation that the Idaho 3%
4 participated in taking place in Oregon in April of 2015?

5 A. Yes.

6 Q. And generally, what was the nature of the operation?

7 A. There was -- there was a dispute where perceived laws
8 regarding, like, regulations of mines on public lands, between
9 a miner outside of Grants Pass, Oregon and the Bureau of Land
10 Management.

11 Q. So, there was a mine that was located on land administered
12 by the BLM --

13 A. Yes.

14 Q. -- is that correct?

15 A. Um-hmm.

16 Q. And the miner disputed the BLM's regulations?

17 MR. MARCHESE: Objection. Leading.

18 MS. AHMED: Your Honor, I was just trying to clarify
19 her answer.

20 THE COURT: Rephrase.

21 BY MS. AHMED:

22 Q. So, you indicated there was some kind of dispute. What
23 was the dispute?

24 A. It was -- had to do with the surface rights of the -- of
25 the mine on the -- on the BLM land and there was a process that

1 was being taken to resolve that dispute.

2 Q. And when you say "a process," do you mean that there was
3 administrative --

4 A. There was an administrative process ongoing, um-hmm.

5 Q. So, was the miner appealing the BLM's decisions regarding
6 the mine?

7 MR. MARCHESE: Objection. Leading.

8 THE COURT: Sustained.

9 BY MS. AHMED:

10 Q. What -- when you say "administrative process," what --
11 what -- can you just explain to the jury what you mean?

12 A. So, there was -- the miners had filed an appeal based upon
13 something they had received from the BLM.

14 Q. And did the miners -- while that appeal was going on,
15 what, if any, other steps did the miners take?

16 A. While that process was going on, they reached out and
17 asked for militia assistance.

18 Q. And did militias respond to that request?

19 A. Yes.

20 Q. Including the Idaho 3%?

21 A. Individuals from, correct.

22 Q. Individuals from the Idaho 3%?

23 A. Yes. Individuals from the Idaho 3%.

24 MR. MARCHESE: Objection. Foundation.

25 MS. AHMED: Your Honor, she's already explained that

1 this is based on her investigation.

2 THE COURT: Sustained.

3 MS. AHMED: Should I rephrase?

4 THE COURT: If you want to lay a foundation.

5 BY MS. AHMED:

6 Q. So, did you observe social media postings regarding
7 individuals from the Idaho 3% related to this event?

8 A. Yes, I did.

9 Q. And what, if anything, did those postings lead you
10 understand?

11 A. That individuals from that organization responded to this
12 location in Oregon based upon this request.

13 Q. And what did they do when they responded?

14 A. As a whole, all the -- as a whole, the individuals who
15 responded conducted -- and again, this is from big picture --
16 conducted things such as armed patrols of the area and acted
17 somewhat --

18 MR. MARCHESE: Objection. Foundation.

19 BY MS. AHMED:

20 Q. Did you -- in the course of this investigation, did you
21 follow the events that were taking place at this mine?

22 A. Yes.

23 Q. And just stepping back. You indicated -- again, was
24 this -- was this an operation such as what you were referring
25 to yesterday?

1 A. Yes.

2 Q. And what was the name of this operation?

3 A. It was named Operation Gold Rush.

4 Q. Now, in following the events that were taking place during
5 this operation, did you learn what, if anything, these militia
6 groups were doing in relation to that request for help from the
7 miners? Did you learn over the course of your investigation?

8 A. Yes. Conducting activities such as armed patrol.

9 MR. MARCHESE: Objection. Hearsay.

10 BY MS. AHMED:

11 Q. Did you observe social media postings, including photos
12 and videos?

13 A. I observed social media with images of individuals armed
14 at the site.

15 Q. And based on your investigation, what was their purpose in
16 being there with arms?

17 MR. MARCHESE: Objection. Speculation.

18 MR. TANASI: Objection. Relevance to Steven Stewart,
19 Your Honor.

20 MR. LEVENTHAL: Foundation.

21 MR. PEREZ: Lovelien joins.

22 MR. MARCHESE: Lack of personal knowledge.

23 MS. AHMED: Your Honor, we're asking her based on her
24 investigation. So I can ask -- I can rephrase to say to the
25 extent you know if -- but -- so I can step back, Your Honor.

1 BY MS. AHMED:

2 Q. To the extent that you know and based on your
3 investigation, what was your understanding of their purpose in
4 being present with arms?

5 MR. LEVENTHAL: Foundation, Your Honor. All she said
6 was she looked at a picture on Facebook -- on social media.

7 MR. TANASI: Stewart joins.

8 MS. AHMED: Your Honor, I would respond that this is
9 an FBI agent who has testified that she was a case agent
10 following the Idaho defendants who participated in the events
11 of April 2014 and in the course of her investigation she
12 followed this event that was taking place in Oregon, as she's
13 indicated, in Grants Pass, Oregon, and that she followed it and
14 monitored it. She subsequently reviewed social media to
15 include photos.

16 THE COURT: All right. So it wasn't clear to me that
17 her investigation was prior to her following or reviewing. So,
18 she's participate -- why don't you clarify it --

19 MS. AHMED: Sure, Your Honor.

20 THE COURT: -- when she's investigating this. Is it
21 contemporaneously with the events or is it after the events
22 occurred?

23 BY MS. AHMED:

24 Q. Now, you began your investigation into the events of
25 April 12th, 2014, when?

1 A. In April of 2014.

2 Q. And did you continue to investigate that up and through
3 the present?

4 A. Yes. Well, yes. Yeah.

5 Q. In the course of that investigation, you became aware of
6 these events that were taking place in Oregon in April of 2015;
7 is that right?

8 A. Correct.

9 Q. Did you subsequently investigate what had happened in
10 Oregon?

11 A. To the extent of being aware of the involvement of
12 individuals that I was conducting investigations on from
13 April 12th, yes.

14 Q. So, your investigation in this case involved you following
15 specific subjects; correct?

16 A. Correct.

17 Q. And those were the subjects that you stated yesterday?

18 A. Yes.

19 Q. Mr. Parker, Mr. Drexler, and Mr. Stewart?

20 MR. MARCHESE: Objection. Leading.

21 MR. LEVENTHAL: Leading, Judge.

22 MR. TANASI: Stewart joins.

23 MS. AHMED: Your Honor, this is foundational. She
24 said it yesterday.

25 THE COURT: Yeah. She's already testified to who the

1 individuals are and the foundation is permissible.

2 BY MS. AHMED:

3 Q. So, and that was Mr. Parker, Mr. Drexler, and Mr. Stewart;
4 correct?

5 A. Yes. Correct.

6 Q. So, in the course of following these three individuals, is
7 that how you became aware of the events in Oregon in April of
8 2015?

9 A. Correct, as well as in communication with other FBI
10 employees.

11 Q. Now, through your investigation into this case but with
12 the focus on the events in Oregon in April of 2015, this
13 Operation Gold Rush, did you learn if any of the defendants
14 that -- excuse me -- if any of the subjects that you were
15 following participated in that operation?

16 A. Yes.

17 Q. So, the people who had participated in the April 12th,
18 2014, event, you learned that some of them had participated in
19 this new operation; is that correct?

20 A. Correct.

21 Q. And who, based on your investigation, participated in this
22 new operation, Operation Gold Rush?

23 A. Mr. Parker. There's photos of that, that I've observed,
24 and Mr. Drexler. I have not observed photos of him there, but
25 other indicators that he was there, Facebook posts.

1 Q. And did you observe photos of other individuals who also
2 participated in this operation?

3 A. Just other individuals?

4 Q. Correct.

5 A. Yes.

6 Q. And in -- have you observed -- through those photos, did
7 you observe what their activities were at this operation,
8 generally?

9 A. Generally, yes.

10 Q. And what did it appear to you, based on your training and
11 experience?

12 A. Generally, some of the activities involved conducting
13 armed patrols, security-type operations.

14 Q. And what were they patrolling for? What was purpose the
15 controlling the patrols, based on your investigation?

16 A. Based upon the investigation, as well as communication
17 with other FBI employees --

18 MR. MARCHESE: Objection. Hearsay.

19 BY MS. AHMED:

20 Q. Was your investigation informed by information that was
21 shared amongst FBI employees?

22 A. Yes. Yes. This wasn't --

23 MR. MARCHESE: Objection. Hearsay.

24 MS. AHMED: That question, Your Honor, did not elicit
25 any hearsay. I'm just asking if she shared information with

1 other FBI employees.

2 MR. MARCHESE: Your Honor, she's trying to elicit
3 testimony as to what other FBI employees told her which is
4 being offered for the truth of the matter asserted. We have no
5 way to question the veracity of the statement.

6 THE COURT: All right. So the objection as to what
7 someone else told her, an out-of-court statement, that
8 objection is sustained. The next question was, did you discuss
9 with others or did others discuss with you, something to that
10 effect?

11 MS. AHMED: I don't know if I can repeat the exact
12 question, Your Honor, but the investigation -- was the
13 investigation -- did she share information with other FBI
14 employees in the course of investigating.

15 THE COURT: All right. And the objection is
16 overruled as to that question. That -- the form of that
17 question is appropriate.

18 BY MS. AHMED:

19 Q. Now, just based on your training and your experience and
20 your investigation that you've done in this case, from the
21 photos that you reviewed in relation to that event, what did it
22 appear that those individuals were doing in -- during Operation
23 Gold Rush in April of 2015?

24 MR. LEVENTHAL: Vague as to which individuals.

25 MR. TANASI: Stewart joins.

1 MS. AHMED: Well, Your Honor, I'd actually withdraw
2 that question. I believe the witness has already answered that
3 they were conducting armed patrols.

4 So, let me -- let me ask you a different question.

5 MR. LEVENTHAL: I'm going to object to counsel's
6 restatement. That's -- I'd move to strike what she just said.

7 MS. AHMED: Your Honor --

8 MR. TANASI: Stewart joins.

9 MR. MARCHESE: Parker joins.

10 THE COURT: Overruled.

11 Go ahead.

12 BY MS. AHMED:

13 Q. Agent Draper, so the question is, from your own knowledge,
14 what you've observed and during your investigation, what was
15 your understanding of what the armed patrols were meant to do?

16 A. My understanding was that they were meant to act as a
17 deterrent to the Bureau of Land Management to have engagement
18 with the miners.

19 Q. Now, in relation to this operation, did you observe
20 Facebook posts made by Eric Parker regarding this event?

21 A. Yes.

22 MS. AHMED: Your Honor, may we publish what was
23 admitted over defense objection as Exhibit 99?

24 THE COURT: Yes, you may.

25 (Exhibit 99 published.)

1 BY MS. AHMED:

2 Q. Agent Draper, this a post that Mr. Parker shared about
3 that event that we were just discussing?

4 A. Yes. This is a shared link from April -- excuse me -- a
5 shared link from April 11th, 2015.

6 Q. And is there a -- does the link appear to be some sort of
7 article -- does there appear to be a headline associated with
8 the link in this "share," in this post?

9 A. Yes.

10 Q. Can you read what that is?

11 A. It says, "'Bundy Ranch' type standoff brewing in
12 Southern Oregon between miners and BLM."

13 Q. And what is the date that this post was shared on
14 Mr. Parker's Facebook page?

15 A. April 11th, 2015.

16 Q. And can you read the words that are under that headline,
17 that appear in that top portion but are under that headline
18 that you just read?

19 A. "Grants Pass, Oregon, April" -- O-R being Oregon -- "April
20 11th, 2015."

21 "For the past several years, the miners from the
22 Galice Mining District, about 30 minutes west of Grants Pass,
23 Oregon have been . . ."

24 Q. Now, what we were just talking about this Operation Gold
25 Rush, is -- and I think you indicated where it took place. Can

1 you tell the jury again, what was this operation taking place?

2 A. It was near Grants Pass, Oregon.

3 Q. And there appear to be additional comments posted by
4 Mr. Parker on his account regarding this initial post; is that
5 right?

6 A. Yes, that's correct.

7 Q. And do you see that one that's been zoomed out?

8 A. Yes, I do.

9 Q. Can you read that to the jury?

10 A. Yes.

11 It says, "Alert. Alert. Alert. Alert.

12 "This is a standby order for all 3%ers and militias.
13 You are not protestors. We need to get head counts and start
14 setting up supply routes. We will have more info by Monday.

15 "Josephine County, Oregon.

16 "We have word from Galice Mining District that BLM
17 has given them a cease and desist order. They are working a
18 mining claim that is believed to be one of the oldest
19 continuing claims in the United States and have the records to
20 prove their rights to the claim. They are protected under the
21 General Mining Act of 1872.

22 "Sheriff Gil" -- correction -- "Sheriff Gilbertson
23 stood between the miners and BLM, protecting their rights under
24 the 1872 law. BLM is testing the new sheriff, Dave Daniel, and
25 where he stands on this issue. He allowed one of the

1 Josephine County's deputies to accompany a BLM ranger to serve
2 the papers on the miners. This is setting up to become a Bundy
3 Ranch type standoff.

4 "They have been given until April 25th to remove all
5 of their mining equipment off the claim, to include a cabin
6 they expect BLM to burn to the ground. Oregon III% is going to
7 support them in whatever capacity we are able to, to include a
8 response team for the protection of their claim. Understanding
9 the dynamics of this group of independent miners, this has the
10 potential to ramp up very quickly. They will be challenging
11 this in the court system, but their first hearing is after
12 April 25th.

13 "Josephine County Sheriff's Office.

14 "601 Northwest 5th Street.

15 "Grants Pass, Oregon, 97526.

16 "Phone Number (541) 474-5123."

17 Q. And did that post -- did that -- did Eric Parker post an
18 additional comment in relation to his post that you've just
19 read?

20 A. Correct. He says, "Posted to Idaho from Oregon," which,
21 to me, from my investigation, indicates he just shared this.
22 He did not write that post I just read.

23 Q. And based on your investigation, when he says, "Posted to
24 Idaho from Oregon," does he mean the Idaho -- posted from the
25 Oregon 3% to the Idaho 3%?

1 A. Yes.

2 Q. There are additional comments below that.

3 Do you see those?

4 A. Yes, I do.

5 Q. And where it says, "Eric Ej Parker," can you read what
6 that says?

7 A. It says, "Call me for details."

8 Q. And then below that where it says "Jason Patrick," what
9 does that say?

10 A. "Coordinates?"

11 Q. And was it a question that was being asked?

12 A. Yes.

13 Q. And then does Mr. Parker respond to that person's
14 question?

15 A. He writes, "Send me a PM" -- which is a private message --
16 "so I remember and I'll get it to you in the morning, Jason."

17 MS. AHMED: Your Honor, may we publish what has been
18 admitted over defense objection as Exhibit 100?

19 THE COURT: Yes, you may.

20 Actually, why don't we go ahead and take our lunch
21 break now.

22 It's 12:06, so I do remind the jury during this break
23 that you are not to discuss this case with anyone, not even
24 your fellow jurors. You may discuss other things with your
25 fellow jurors, but not this case.

1 Please do not read or listen to or view anything that
2 touches upon this case in any way.

3 Do not perform any independent research or
4 investigation nor attempt to do so, and please do not form any
5 opinion until after you have heard all the testimony, seen the
6 evidence. I will provide you with the jury instructions of
7 law. Then you will hear closing arguments and after that I
8 will excuse you to begin your deliberation process, your duty
9 to deliberate and discuss with each other your opinions in
10 effort to attempt to reach a unanimous decision.

11 So, we'll go ahead and take our break now. It's
12 12:07. Plan to be back here at 1:10.

13 (Off-record discussion.)

14 THE COURT: Okay. So plan to be back here at 1:10.

15 Let's stand for the jury so they can be excused and
16 then FBI Special Agent Draper, after they exit -- after the
17 jury exits, then you may also take your brunch break and then
18 we'll need you back here at 1:10, please.

19 THE WITNESS: Thank you, Your Honor.

20 (Jury excused from courtroom.)

21 THE COURT: All right. Off record.

22 (Recess was taken at 12:08 p.m.)

23 (Outside the presence of the jury at 1:41 p.m.:)

24 COURTROOM ADMINISTRATOR: All rise.

25 THE COURT: Thank you. You maybe seated.

1 I understand the parties want me to address some
2 other objections before we bring in the jury; is that right?

3 MS. AHMED: That's correct, Your Honor. We just
4 wanted to go through the Stewart. There are six exhibits for
5 Mr. Stewart's Facebook, so it's his Facebook account that we
6 had -- didn't -- were unable to agree on them and then there
7 was also the question of the booking photos that we have -- we
8 are intending to put in with this witness. I think that there
9 was an objection on those as well.

10 THE COURT: All right. So let's see the first one.

11 MS. AHMED: It's -- I'm sorry, Your Honor. It's
12 Exhibit 117.

13 (Exhibit 117 published.)

14 THE COURT: What's the objection to 117?

15 MR. TANASI: Okay, Your Honor. With respect to 117,
16 I was arguing 106 completeness under what's been redacted and
17 in that the way that it's presented, it's misleading as
18 presented, 117.

19 And so, what I proffered with Ms. Ahmed was 5037a,
20 Defense Exhibit 5037a, which hopefully Brian can bring that up
21 for you so you could look at --

22 THE COURT: Okay.

23 MR. TANASI: -- how I was hoping to complete it.
24 5037a.

25 MS. AHMED: And, Your Honor, just -- while it's being

1 pulled up, my understanding is that 5037a is what it would look
2 like if you went to the actual Facebook page on the Internet,
3 but it's numerous posts that are here, not just the two posts
4 that we have included in 117.

5 MR. TANASI: That's correct, Your Honor. This is --
6 this is how the actual Facebook post would appear and -- and --
7 but the comment on the bottom, "First they said they were going
8 to release everything and leave. Then they held the gates to
9 Gold Butte and threatened us with chemicals and they pushed
10 forward and had to back off. They are releasing the cows now.
11 BLM is leaving," so that -- that's the one portion that the
12 Government intends to offer and I'm seeking to complete the
13 entire document to avoid misleading the jury to show what my
14 client's state of mind was, which was, "United we stand. We,
15 the people, will be heard in Nevada. No more government
16 bullying."

17 MS. AHMED: And, Your Honor, those -- those are
18 clearly separate posts. Everything above the bottom post,
19 those are distinctive posts, distinct, separate, and also
20 irrelevant.

21 MR. TANASI: Your Honor, they're -- again, they're on
22 the same day and looking at the raw data, it's at 3 :47 UTC
23 time that Mr. Stewart posts, "United we stand. We, the people,
24 will be heard in Nevada. No more government bullying," and
25 it's 2:52 that the post related to releasing everything and

1 leaving was made. So, they're close in time and, again, the
2 Government is offering this to demonstrate my client's . . .
3 illegal state of mind, for lack of a better way of putting it
4 on the bridge, and for why he was in Nevada in the first place
5 and entering just this misleading, kind of, excerpt from his
6 Facebook to prove that and the remainder of his Facebook that
7 I'm seeking to admit demonstrates why he went to Nevada.

8 MS. AHMED: So, Your Honor, we would just follow-up
9 that this is essentially self-serving hearsay. It's
10 distinctive -- it's distinct from the other post and the other
11 post is not misleading; it's complete. And so, there's no
12 confusion as to what the message in that post that we are
13 seeking to admit as an admission -- there's nothing that's
14 incomplete in that post and the rest of it is self-serving
15 hearsay.

16 THE COURT: All right. So, Mr. Tanasi, I don't
17 understand why you think that Government's 117 is misleading
18 and requires the extra information on Defense 5037a.

19 MR. TANASI: Because the way that it's presented is
20 the implication that he was on the bridge attempting to extort
21 BLM officers and that's why he was there in the first place and
22 that's what his object was. The language of "pushing forward,"
23 all of that is -- is to imply that he was up there threatening
24 and extorting federal officers. The remainder of the post
25 demonstrates that . . . that's not what he was doing. He was

1 up there standing with other protestors against what he
2 believed was a government bully, or at least protesting against
3 what he believed was a government bully.

4 THE COURT: So, in Exhibit 117, where it says, "Then
5 we pushed forward and they had to back off, they are releasing
6 the cows now and BLM is leaving," you're saying that's
7 misleading and that in 537a, where it says "united we stand,"
8 that's the -- the clarification is that they were standing, not
9 pushing forward so that the government had to back off?

10 MR. TANASI: That's -- that's it, Your Honor. Yes.

11 And I agree there is probably some other portions of
12 that post above it that probably could be redacted and the
13 reason I didn't kind of catch those sooner, I think, was just
14 in an effort of putting this together and putting --
15 screenshotting it and, you know, as I look at it, and yes,
16 we're okay that that probably doesn't go to the same argument
17 that I'm making, so I'm fine with actually, you know, redacting
18 that portion, but the "united we stand" part, I think, is
19 what's critical.

20 THE COURT: All right. And so the Government's
21 position is that it's not in need of clarification because it's
22 an entire statement; it's within its own block for lack of a
23 better word. It's a white block on the page, not -- not within
24 the other white blocks. They're separated by gray lines, so to
25 speak. So, it's threads, I suppose, maybe is the way to refer

1 to them. So the -- they're two separate threads with different
2 commentaries, not part of the same thread.

3 MS. AHMED: And it would also be just self-serving
4 hearsay.

5 THE COURT: So the Government's position is that the
6 united-we-stand-we-the-people-will-be-heard statement posted by
7 Steven Stewart is a self-serving statement by the defendant
8 that would -- is not admissible?

9 MS. AHMED: Correct, Your Honor.

10 MR. TANASI: And again, Your Honor, defines the push.
11 The Government's position is the push is an armed push and an
12 armed standoff and an intimidating standoff. The post on the
13 top shows something different and explains further what that
14 push was.

15 THE COURT: All right. Well, he's not available for
16 cross-examination.

17 MR. TANASI: Your Honor, I was basing this on 106.

18 THE COURT: Well, it's not part of the same . . .
19 it's not the same -- it's not part of the other statements.
20 It's not part of a recorded statement or writing.

21 It's not admissible under 106. It is not subject to
22 cross-examination at this point yet, so it doesn't look like
23 it's admissible.

24 All right. So Exhibit 117 is admitted. Defense
25 Exhibit 5073a at this time is not admitted, but without

1 prejudice it can be offered later if there's a basis for it to
2 be admitted.

3 (Exhibit 117 received.)

4 MR. TANASI: And just -- so the record is clear, is
5 that in the event my client were to testify it could be offered
6 later? Is that how I'm to understand the ruling?

7 THE COURT: Well, that's part of it. It needs to --
8 it needs to be admissible according to the Rules of Evidence.

9 MR. TANASI: Understood.

10 (Exhibit 118 published.)

11 MS. AHMED: Your Honor, the next exhibit is 118 and I
12 think we had redacted a comment at the bottom just to be
13 consistent with the concerns the defense had raised yesterday
14 about hearsay because there was a comment at the bottom by a
15 Mr. -- by Steve Hill that said "come back safe" or something to
16 that effect and so, we redacted that and I think Mr. Tanasi
17 wanted that part to be un -- to not be redacted. So, I mean
18 . . . we just left it as -- as-is, but I don't think there was
19 an objection to the rest of the post.

20 THE COURT: Is that right? You objected to the
21 removal of the comment by another individual, "come back safe"?

22 MR. TANASI: That's correct, Your Honor.

23 THE COURT: Isn't that hearsay?

24 MR. TANASI: Your Honor, I think, again, it's --
25 it's -- I think it's -- again, falls under the 106 purview and

1 that it's the entire statement or writing to be presented in
2 its entirety so as to not mislead the jury and for fairness.

3 THE COURT: All right. Well, it doesn't appear to
4 me -- the writing isn't even really a writing, it's a posting
5 of a photograph image with a title that says "Going to Get the
6 Cattle Back" and then a link to a photo, which is that photo.
7 So, the comment does -- the comment would be extraneous.

8 So, Exhibit 118 with the redaction is admitted.

9 (Exhibit 118 received.)

10 (Exhibit 119a published.)

11 MS. AHMED: Your Honor, 119a is the next one, and
12 that one, actually, I believe, 119a, counsel had no objection
13 to. It was from the Facebook returns and it's a video that was
14 uploaded -- a link to a video that was uploaded with a comment,
15 "Somebody said they had 104 vehicles." So, 119a, I believe,
16 there was no objection.

17 MR. TANASI: That's correct, Your Honor.

18 THE COURT: Okay. It says -- does that say 118. It
19 looks like 119 on my screen.

20 MS. AHMED: Oh, it's 119a. I apologize.

21 THE COURT: Okay.

22 MS. AHMED: 119a. And then --

23 THE COURT: So Exhibit 119a is admitted.

24 (Exhibit 119a received.)

25 MS. AHMED: And then 119b, Your Honor, is the video

1 itself that if you follow that link, it goes to the video and
2 if Your Honor recalls, this was the video that -- where
3 Mr. Stewart was filming the BLM's departure from the ICP and if
4 you -- if Your Honor would like, I can play it now, but
5 Mr. Tanasi did object to the admission of that one.

6 THE COURT: Okay. And what's the objection to 119b?

7 MR. TANASI: Two grounds, Your Honor: One, relevance
8 in that I don't know that it's probative to anything that was
9 occurring on the bridge because at that point they were -- the
10 BLM agents were driving away and so the standoff had concluded.
11 So -- so relevance, and then the other is the prejudicial
12 nature of it outweighs any probative value because there is
13 reference to the word "martyr" that my client uses. That word,
14 I think, inherently has prejudice that would kind of mislead
15 the jury and ultimately prejudice the jury into a conclusion in
16 this case.

17 THE COURT: All right. So as to the objection to --
18 regarding the relevance, the objection is that this video
19 captures events after the bridge event, but the conspiracy
20 spans beyond just the bridge event; right?

21 MS. AHMED: Correct, Your Honor. And -- and it's
22 showing -- it is a part -- this is actually contemporaneous to
23 the event. It's showing the BLM's final departure from the ICP
24 after they had been essentially forced to leave and
25 Mr. Tanasi's commenting -- excuse me -- Mr. Stewart is

1 commenting on the video and -- about the BLM being forced to
2 leave and focusing on law enforcement that's on the bridge with
3 him at the time. And Your Honor is correct, the conspiracy is
4 charged to be ongoing.

5 And just as to the other objection, Your Honor, as to
6 prejudice, obviously is the rule is that it has to be unfairly
7 prejudice. This is his comments at the time showing his intent
8 at the time.

9 THE COURT: So is it just the word "martyr" or is it
10 used in a sentence?

11 MR. TANASI: He uses the word "martyr" and it is part
12 of a sentence. He says something to the effect of that . . .
13 they couldn't kill us or they couldn't stop us, something along
14 those lines, we were going to be martyrs if they did. So
15 again, the use of that word "martyr," I think, has inherent
16 prejudice, especially in this day and age. When I hear that
17 word, Your Honor, my mind goes to Afghanistan or the
18 Middle East or -- not Bunkerville.

19 THE COURT: All right. Well, I don't see that it's
20 unfairly prejudiced. If it wasn't prejudicial, the Government
21 wouldn't be seeking to use it. So, the 403 rule is whether or
22 not it's unfairly prejudicial, not just merely whether it's
23 prejudicial and it does appear to be relevant as it captures
24 events occurring during the alleged conspiracy.

25 Is the Government offering it for evidence of intent

1 or just all kinds of different things? I haven't seen the
2 video, so I don't know.

3 MS. AHMED: Your Honor, it's being offered for -- you
4 know, evidence as to what was occurring at the time, but also
5 for his intent, yes.

6 And sharing it on Facebook, obviously, he would be
7 also -- it would go back to the arguments from earlier, that
8 he's sharing it and alerting other people to what they've
9 achieved, what they're doing.

10 THE COURT: He's adopting, encouraging, recruiting,
11 glorifying, so forth?

12 MS. AHMED: Correct, Your Honor.

13 THE COURT: All right. Well, I -- that's certainly
14 seems that it is admissible. Exhibit 119b will be admitted.

15 (Exhibit 119b received.)

16 (Exhibit 120 published.)

17 MS. AHMED: 119 -- excuse me -- 120, Your Honor, is
18 the next exhibit and I believe Mr. Tanasi wanted, again, to
19 include open source Facebook posts in addition to this one that
20 would also have appeared on the actual page, other posts that
21 would have appeared around this one.

22 MR. TANASI: Your Honor, there is no additional pages
23 I -- at this point I'm looking to offer. That was something we
24 discussed and I neglected to tell Ms. Ahmed that, that at this
25 point I'm not trying to add anything else to this particular

1 post.

2 I do -- I did object to it, though, in its entirety
3 on relevance grounds. Again, going back to the date, it's the
4 15th. Again, it's two days or three days after the events in
5 Bunkerville and I -- not to sound like a broken record, that's
6 why I would say it lacks any probative value to the case
7 because it's commenting on an order two days or three days
8 after the events in Bunkerville and the events in Bunkerville
9 were precipitated --

10 THE COURT: Wait. I think we're looking at two
11 different things.

12 MR. TANASI: Okay.

13 THE COURT: Maybe I'm --

14 MR. TANASI: Apologize.

15 MS. AHMED: Exhibit 120 --

16 THE COURT: The one I'm looking at, Exhibit 120, says
17 is from 4-18.

18 MS. AHMED: I -- the last two are --

19 THE COURT: So, six days later, and it says, "Guys, I
20 only went for the weekend. We helped Cliven Bundy get his
21 cattle back. Straight there; straight back. Two hours of
22 sleep in between."

23 MR. TANASI: That's my mistake, Your Honor.

24 THE COURT: Oh, okay.

25 MR. TANASI: I was looking at the wrong exhibit.

1 So, with that exhibit, I don't think we have an
2 objection and I wasn't seeking to add anything in addition to
3 it as well.

4 THE COURT: All right. So Exhibit 120 is admitted.
5 (Exhibit 120 received.)

6 MR. TANASI: Okay.

7 MR. MARCHESE: Parker would object as to hearsay in
8 reference to him. It's not done in furtherance of the
9 conspiracy.

10 MS. AHMED: Your Honor, we would submit that it's
11 admissible as to everybody under 801(d)(2)(E).

12 THE COURT: Well, how is it in furtherance of the
13 conspiracy?

14 MS. AHMED: He's basically advising his Facebook
15 friends and followers of what they achieved, which was helping
16 Cliven get his cattle back. Again, Your Honor, it would go
17 back to that glorification which also serves for recruitment
18 and also serves to -- as a deterrent to law enforcement.

19 THE COURT: Well, it's not made to keep others
20 abreast of an ongoing conspiracy activity. I think that was
21 the -- the reason the other one . . .

22 All right. It's 4-18-2014. So, it is during the
23 time period of the conspirators alleged and it is alleged
24 they're all members of the same conspiracy and there's
25 preponderance of the evidence sufficient for the Court to find

1 that element met and it's during the conspiracy. The question
2 is, how is this made in furtherance of the conspiracy for it to
3 qualify as under 801(d)(2)(E).

4 I mean, I agree it's admissible against Mr. Stewart,
5 but I'm not seeing that it's admissible against the other
6 three.

7 (Counsel conferring.)

8 MS. AHMED: Your Honor . . .

9 (Counsel conferring.)

10 MS. AHMED: Your Honor, maybe I wasn't so artful the
11 first time I said it, but, I guess, my point is that this is a
12 public post he's posting on Facebook explaining what they have
13 just achieved and part of the ongoing conspiracy was that they
14 got the cattle back and that they were going to help him keep
15 the cattle. So, getting the cattle back was the first step in
16 that conspiracy as it's alleged, which was to continue to
17 prevent the law enforcement from taking the action that they
18 were ordered to do by the court in conducting the impoundment.
19 So, the first step of that is getting the cattle back and so in
20 apprising the public of that goal, it's alerting them to the
21 first step of the conspiracy and keeping people apprised of
22 what they've done and so we would say it's in furtherance of
23 the conspiracy because he's telling everybody, "Hey, we've got
24 the cattle back now."

25 THE COURT: All right. So you're saying that it is

1 keeping them abreast of the ongoing conspiracy by publicly
2 stating which of the objectives have been met?

3 MS. AHMED: Correct, Your Honor.

4 THE COURT: All right. Well . . . all right.

5 So, pursuant to 801(d)(2)(E), Exhibit 120 is
6 admissible as to the other alleged co-conspirators. So, the
7 objection's overruled.

8 MS. AHMED: Your Honor, the final exhibit from
9 Mr. Stewart's Facebook would be Exhibit 121.

10 (Exhibit 121 published.)

11 MR. TANASI: So now that we're on the right exhibit,
12 Your Honor, I'll take a stab at it again.

13 THE COURT: Yeah. Thank you.

14 MR. TANASI: Exhibit 121, I object to it on relevance
15 grounds. It's created on 4-15-2014, which is three days after
16 the event in Bunkerville. The events in Bunkerville were
17 premised on court orders and my client's knowledge of violating
18 court orders and the duties that stem from those court orders.
19 This post has no relevance to further the Government's theory
20 in this case in that it's simply a post about Lloyd D. -- the
21 Honorable Lloyd D. George and then his comment that, you know,
22 "These people think that they own us." Again, I -- I think
23 when looking at it in a vacuum, just as it's posted, it has no
24 relevance to the Government's case.

25 MS. AHMED: Your Honor --

1 THE COURT: Ms. Ahmed?

2 MS. AHMED: Your Honor, I'd respond that his
3 knowledge of the court orders which, as we all know from the
4 exhibits that have already been admitted, Judge George was the
5 judge on one of the orders that was issued in 2013. His
6 knowledge of the court orders at any time during the conspiracy
7 is relevant to his intent on April 12th, 2014. It's evidence
8 that we would argue is relevant to his intent and, again, he's
9 never withdrawn from the conspiracy so he's still a member of
10 the conspiracy at this time. And the conspiracy itself is also
11 alleged to be ongoing in that they're -- under 372, the charge
12 relating to 372, part of the conspiracy is to prevent the
13 officers from returning and continuing -- attempting to do the
14 impoundment again.

15 THE COURT: Well, it does seem to be relevant to his
16 intent and his absence of mistake in . . .

17 So, Exhibit 121 is admitted.

18 (Exhibit 121 received.)

19 MR. LEVENTHAL: On behalf of Mr. Drexler I would
20 object that it comes in for him for purposes of -- it's not in
21 furtherance of a conspiracy. If it has to do with intent,
22 that's not in furtherance.

23 MR. MARCHESE: Parker joins.

24 THE COURT: And, Ms. Ahmed, what is your response?

25 MS. AHMED: Your Honor -- Your Honor, we would submit

1 that again it would come in -- come in as to all of the
2 defendants under 801(d)(2)(E). He's sharing it. He's alerting
3 them to information about this judge and -- who is the author
4 of one of the court orders that they had just impeded and he's
5 furthering their knowledge about the ongoing conspiracy.
6 Riling them up. "These people think they own us."

7 THE COURT: So the riling them up, you're referring
8 to . . .

9 MS. AHMED: And sharing the post and sharing
10 information about the judge that authored the court order that
11 they obviously interfered with on April 12th or that they
12 interfered with on April 12th and then he's commenting on that
13 judge in his own text in the -- sharing this information with
14 all of his Facebook followers, including his co-conspirators.

15 THE COURT: So, that makes it in furtherance of the
16 conspiracy?

17 MS. AHMED: That's what we -- what we would argue,
18 Your Honor.

19 THE COURT: All right. By a preponderance of the
20 evidence that is sufficient. So, Exhibit 121 is admitted as to
21 Mr. Stewart as well as to the other co-conspirators pursuant to
22 801(d)(2)(E).

23 That was the last one?

24 MS. AHMED: That was the last Facebook post,
25 Your Honor. There are also the booking photos as to Mr. Parker

1 and Mr. Stewart and Mr. Drexler. I had the impression that
2 those were -- that counsel was objecting to those, the
3 admission of those as well.

4 THE COURT: All right. Let's look at those.

5 MS. AHMED: Exhibit 129 is Mr. Parker's booking
6 photos.

7 (Exhibit 129 published.)

8 MR. MARCHESE: Parker objects.

9 MS. AHMED: And there's -- it's a multiple page
10 exhibit, Your Honor.

11 THE COURT: Is that three pages? No, it looks like
12 5.

13 Let's go back to 1.

14 All right. Any objection to Page 1?

15 MR. MARCHESE: I object to all of them. There's
16 no -- in my opinion, there's no reason for any of this to come
17 in. Multiple witnesses have identified Mr. Parker. We have a
18 video of Mr. Parker saying he's Eric from Idaho. There's no
19 reason to bring this in.

20 We have admissions that were read into the record by
21 Agent Seyler of Mr. Parker admitting that he was at the
22 Bundy Ranch. So, the need to identify him with a booking photo
23 at this juncture is overly prejudicial and irrelevant.

24 MR. TANASI: Stewart joins, Your Honor.

25 MR. LEVENTHAL: Drexler joins.

1 THE COURT: Ms. Ahmed?

2 MS. AHMED: Your Honor, just to be clear. For
3 Exhibit 129, we would primarily seek to admit -- we don't need
4 the first page; we really are only seeking to admit Page 4.

5 THE COURT: All right. Let's look at Page 4.

6 MS. AHMED: Or Page 3.

7 Sorry. Page 5. Page 5.

8 THE COURT: So 3, 4, 5, or just 5?

9 MS. AHMED: Just -- just -- I'm sorry, Your Honor.
10 Page 5, which is -- and we're seeking to admit it for the
11 tattoo that appears on his right forearm which you can see in
12 the picture which is a tattoo of the Idaho 3% logo, and that's
13 already come into evidence that that's what that is and we
14 would say that it goes to his -- again, his ties to this
15 movement to the conspiracy. It's evidence that, you know, he's
16 willing to tattoo this on his body, how committed he is to this
17 conspiracy.

18 MR. MARCHESE: Well, Your Honor, I mean, the Court is
19 well aware of my continuing objection in reference to the 3%.

20 MS. AHMED: Your Honor, I'd also just note that there
21 have been times when the jury has been in the courtroom where
22 Mr. Parker's sleeves have been rolled up where the -- that same
23 tattoo has been on display, so . . .

24 MR. MARCHESE: So that's -- then we don't need it.

25 THE COURT: All right. Well, I addressed some of

1 this in the -- a Motion in Limine Order 2176, but the photos
2 were not attached to that Motion in Limine so all I could say
3 was that the photos could be of assistance for purposes of
4 identifying. So, I -- I agree that the other -- well, the
5 first page -- well, let's leave it at it's not being sought to
6 be admitted. So the only page that you are seeking to admit of
7 Exhibit 129 is Page 5, which is the picture of
8 Mr. Parker's . . . I guess it would be like belly button up.
9 It looks like it's sort of waist -- well, it's higher than the
10 waist. So mid-section up where you can see his left bicep and
11 right bicep and forearm and then his chest and his face, and
12 the right arm, on the forearm, has stars encircling the outline
13 of the state of Idaho, so the state of Idaho is inside the
14 stars that are circling it and then Roman Numeral III
15 apostrophe "S" is in the middle of the state of Idaho.

16 Since we have seen other shirt, hat, I think there
17 was also something on the Facebook posting with this same or
18 similar consistent marking, it is relevant.

19 So, Exhibit 129, Page 5 is admitted.

20 (Exhibit 129, Page 5 received.)

21 MR. TANASI: Your Honor, and I would just renew my
22 motion for severance in terms of prejudicial spillover effect.
23 I think, with all due respect to Mr. Parker, that picture is
24 pretty menacing and I think that the image that it portrays has
25 an unfair prejudice to my client. I would offer, maybe as

1 potential alternative relief, possibly just having this
2 redacted so that only the 3%er is demonstrated and shown and
3 the parties stipulate that that's Eric Parker, some -- some way
4 to tone it do down, Your Honor, I guess is what I'm asking for.

5 MR. MARCHESE: We -- generally, we object, but if the
6 Court is going to allow it that's what we would ask, that the
7 right forearm only be shown. The other two tattoos are
8 completely irrelevant.

9 MS. AHMED: Your Honor, the Government has no problem
10 with redacting those other two tattoos.

11 THE COURT: All right. Let's go ahead then and
12 redact the other two tattoos so you can just see his face and
13 his tattoo and where it is on his arm. That will be fine.

14 MS. AHMED: So, Your Honor, we would redact
15 everything above -- oh, just --

16 THE COURT: Just put a box on the other two tattoos
17 that aren't relevant to this particular case.

18 MS. AHMED: Understood.

19 THE COURT: I think that's the objection; right? Is
20 the prejudice to the other -- what the other two tattoos might
21 be symbolic of if they have some other -- or if the jury can be
22 mistaken about what they are or start asking questions about
23 what they mean or what they are.

24 I agree; it's a good idea to just hide the other two
25 tattoos.

1 And then as to how this would be admissible against
2 the co-defendants, I don't see that it would be. Is it being
3 offered against anyone other than Mr. Parker?

4 MS. AHMED: Your Honor, we would just ask that it be
5 offered as to Mr. Parker.

6 THE COURT: All right.

7 (Exhibit 130 published.)

8 MS. AHMED: And then, Your Honor, Exhibit 130 is the
9 next. These are obviously Mr. Stewart's booking photos.
10 We're -- we only need -- we are only seeking to introduce --
11 well, sorry, Your Honor.

12 Going back to Mr. Parker's photo. This is what it
13 would look like. It's on the screen with a redaction.

14 (Exhibit 129, Page 5 published.)

15 THE COURT: That's fine.

16 (Exhibit 130 published.)

17 MS. AHMED: And then Exhibit 130. Also a multiple
18 page exhibit. We would only seek to introduce Page 5, this
19 page, and that is, Your Honor, the tattoo, the vine tattoo that
20 appears on the left forearm is also visible in that photograph
21 that we already put into evidence where that's training with
22 Mr. Parker and had helps with identification of Mr. Stewart in
23 that photograph.

24 THE COURT: Any objection to Page 5 of Exhibit 130?

25 MR. TANASI: Your Honor, I'd object on one ground --

1 well, relevance and also unfair prejudice to my client.

2 The -- the same as Mr. Marchese had outlined. I
3 don't think identity is at all an issue in the case. Mr.
4 Stewart has been identified on the bridge. He's been
5 identified in a picture with other 3%ers. Putting up pictures
6 to further identify him with tattoos and then also his orange
7 jumpsuit in the back, which everybody -- I think it's pretty
8 common knowledge that that's an arrest jumpsuit, it's an
9 in-custody jumpsuit. I think on those two grounds it's, (a),
10 not relevant to identification in the case, and (b), it's
11 unfairly prejudicial to my client.

12 MS. AHMED: Your Honor, I would just -- that picture
13 where that's training with Mr. Parker wearing 3% -- where they
14 appear to all be wearing 3% T-shirts is a side view of him.
15 You can clearly see the tattoo, you cannot clearly see his
16 face. And so, if Mr. Tanasi is willing to stipulate that that
17 is Mr. Stewart in that picture and then we can do that in front
18 of the jury when they return, then we would not seek to put
19 this exhibit in.

20 MR. TANASI: Your Honor, I -- we'd make that
21 stipulation, that he's in that picture, absolutely, but not
22 stipulate that he is a member of the 3%ers just because he's in
23 that picture.

24 THE COURT: Okay.

25 MS. AHMED: That's -- that's not what we're asking,

1 Your Honor. Yes, just that he was in -- that's him that's in
2 that picture.

3 THE COURT: All right. So Exhibit 130, Page 5 is
4 withdrawn?

5 MS. AHMED: Yes, Your Honor. And we would just ask
6 that it be put on the record when the jury returns.

7 THE COURT: Okay.

8 (Exhibit 131 published.)

9 MS. AHMED: And then, Your Honor, the last exhibit
10 for the booking photos is 131, and this is Mr. Drexler's
11 booking photos and we are only seeking to introduce Page 4 and
12 that -- it's the same -- as you can see on his right arm, on
13 his right arm -- I believe that's his right arm -- that's
14 there's a tattoo of the same symbol that Mr. Parker had which
15 is the Idaho 3% emblem and the word "Bundy" and then some other
16 words underneath that.

17 THE COURT: Any objection?

18 MR. LEVENTHAL: Same objections as prior counsel
19 noted, that it's unduly prejudicial to my client and it has no
20 relevancy to this. Also, there's the orange jumpsuit, which we
21 try very hard to keep our clients dressed in normal civilian
22 clothes. The marshals are in clothes. They don't see the
23 chains that they're wearing right now, but I would also note
24 that at the bottom he's got some -- on his left wrist he's got
25 some kind of identification it looks to be like, again, it's

1 some kind of booking or bar code of some sort, and obviously,
2 the -- with the right tattoo would have no relevancy at all to
3 this.

4 MS. AHMED: Just responding to the right tattoo,
5 Your Honor, that's clearly visible in the photos from
6 April 12th, 2014. But, in any event, Your Honor, we would --
7 with the stipulation that this is Mr. Drexler's arm, we could
8 simply zoom in on that tattoo that is currently zoomed in on.
9 It would be a little bit blurry, but with the stipulation that
10 that is Mr. Drexler's arm, that this is a tattoo that's on his
11 arm, we could just admit that.

12 THE COURT: All right. So let's redact the photo so
13 that not so much of the orange is showing, but it doesn't have
14 to be -- you don't have to eliminate all of the orange to the
15 point where we can't actually see the tattoo, but I think it
16 would be sufficient to just eliminate some of the orange. It
17 does go to identity. I don't see that it's admissible against
18 co-defendants.

19 MR. MARCHESE: And, Your Honor, I hate to back up,
20 but in reference to Mr. Parker, I understand the Court's
21 ruling. What I would ask for as an alternative, rather than
22 bringing out that photo, and I appreciate the Government trying
23 to redact it, but, to me, it's almost like the darned if you do
24 darned if you don't with asking for a limiting instruction.
25 You almost wind up giving more attention to what you're trying

1 to hide. So by putting the blocking out his chest and his
2 shoulder, to me, it almost makes me think that the jury is
3 going to start wondering what is under there, if this is some
4 sort of swastika or some sort of, you know, horrible tattoo and
5 let their minds wander. What I would be willing to do, and
6 I've already spoken with Mr. Parker, if Agent Draper or
7 Agent Willis or some other witness would just like to have
8 Mr. Parker, he can stand up and just show the tattoo to the
9 jury rather than showing the picture.

10 THE COURT: Do you want to just use the close-up of
11 the tattoo on the -- on Mr. Parker's picture so that --

12 MS. AHMED: Your Honor, we would, obviously, prefer
13 to have something that can go back to the jury delirious
14 deliberations. So we can try to do a close-up of that one and
15 see.

16 THE COURT: Because that's what you're doing for
17 Drexler.

18 MS. AHMED: So, for Drexler -- for Drexler I thought
19 we were just going to -- we can do a close-up for both of them,
20 Your Honor. So we'll attempt do that right now.

21 MR. MARCHESE: Thank you.

22 THE COURT: So a close-up of the tattoo with as
23 little orange as necessary, but where you can still actually
24 see the tattoo.

25 MS. AHMED: Understood.

1 THE COURT: And then the parties are going to
2 stipulate that that's --

3 MR. MARCHESE: That's correct, yeah.

4 THE COURT: -- their tattoo.

5 MR. MARCHESE: And Mr. Parker, he doesn't have the
6 orange problem, or whatever you want to call it.

7 THE COURT: Right. Right. Yeah.

8 MR. MARCHESE: Yeah.

9 THE COURT: He just has the other tattoo problem.
10 But regardless, just a close-up of that tattoo with the
11 stipulation who it belongs to, then that way we can still have
12 that available for identification but without any other issues
13 coming up.

14 MS. AHMED: Your Honor, there's also -- Exhibit 45a
15 was offered yesterday. That was the video. We withdrew that
16 but we laid the foundation to admit it and then there were
17 objections as to relevance and we had argued the relevance of
18 it. We've created -- we captured screenshots from that video
19 that we would seek to put into evidence, which would be 45b and
20 so Your Honor had reserved ruling on 45a; "b" is just a subset
21 of the photo montage that's depicted in "a" so I wanted to put
22 that before Your Honor now.

23 THE COURT: All right. So how many screenshots?

24 MS. AHMED: It's -- so, 45b is -- it's 19
25 screenshots, but it's all one exhibit. So, and it's -- all of

1 the images depict one of these defendants, or -- or, like, a
2 sign that indicates White Hope Mine or something like that.

3 THE COURT: What's the objection? Is it the same
4 objection, in general, to the other incident after April of
5 2014?

6 MR. MARCHESE: Correct, Your Honor. We feel that all
7 the after-the-fact incidents are irrelevant, they're not
8 inextricably intertwined, they're outside the course and scope
9 of the conspiracy, and they're too remote in time.

10 MR. LEVENTHAL: I would add that a number of these
11 images have already been brought in, so they would be
12 cumulative. There's -- I mean, they've been brought in
13 numerous time, the same exact picture. So if they want to play
14 the video, we don't have an objection to playing the whole
15 video, but these screenshots are the same exact pictures that
16 they've already introduced into this in terms of what went on
17 at Bundy. There's also other stuff that's --

18 THE COURT: Probably be less cumulative to play the
19 video instead of using the screenshots.

20 MR. LEVENTHAL: It -- it puts it more into
21 perspective because when you just have a screenshot of that one
22 photo that's already come in, it puts everything in
23 perspective. It's a -- it's a video and it moves, I guess,
24 rather quickly or differently than when you're just looking at
25 the same picture that you've seen over and over and over and

1 over again. So it would be -- it would be different.

2 MS. AHMED: Your Honor, I think there's only two --
3 maybe two to three images that were from Bundy Ranch. The
4 point is that this is a video taken from the Idaho 3% YouTube
5 page. It's titled "Idaho 3% an Overview" and so, the agent was
6 viewing this video that they -- this organization had
7 disseminated and these are the images that are in this video
8 that they are considering an overview for the Idaho 3%. So the
9 three images, the three or four that are from Bundy Ranch are,
10 at most, three or four, but they are including that in an
11 overview of their organization. And then additionally, they
12 have images of these defendants participating in the other two
13 operations. And then Mr. Stewart training -- or the photo of
14 him training with Mr. Parker.

15 MR. TANASI: Your Honor, Stewart would join
16 Mr. Drexler's objections and add, you know, forced to pick
17 between video or a cut up screenshotted version of it, the
18 video would be the better way to play it.

19 THE COURT: All right. So when you say that there
20 are two or three images from Bundy Ranch, do you mean --

21 MS. AHMED: The April 12th --

22 THE COURT: -- the rally outside of the ranch or do
23 you mean the wash?

24 MS. AHMED: I apologize, Your Honor.

25 It's pictures of the defendants on the bridge at the

1 ICP on April 12th, 2014.

2 THE COURT: Okay. And that's not Bundy Ranch --

3 MS. AHMED: No.

4 THE COURT: -- that's the public land.

5 MS. AHMED: Yes. I apologize for that.

6 Your Honor, we -- if the defense is willing to
7 stipulate to the admission of the video, that -- we had offered
8 that yesterday. So, video or stills, it's -- either way is
9 fine. We just -- we don't intend to play the video's audio,
10 because there's no speech or anything associated with the video
11 montage, it's just a song, so we're not seeking to admit the
12 audio, but for the video to play, the montage, there's no
13 objection from the Government, if that's what defense will
14 stipulate to.

15 THE COURT: All right. So Exhibit 45, the video, no
16 audio, 1 minute in, or Exhibit 45b, the 19 screenshots?

17 MS. AHMED: It's more than one minute, Your Honor.
18 It's probably like three minutes. This is a different one from
19 the one we did before.

20 THE COURT: Oh, okay.

21 MS. AHMED: So this is about a three-minute video
22 montage of photographs compiled into this video, but we
23 would -- yes, that would be 45a and, as Your Honor said, no
24 audio.

25 MR. LEVENTHAL: And again --

1 THE COURT: All right. It sounds like that's what --
2 that's defendants' preference of those two choices, is the
3 video with no audio, 3 minutes long?

4 MR. MARCHESE: Over my objection, my preference would
5 be the video, the whole video to come in.

6 MR. LEVENTHAL: With the audio.

7 MR. MARCHESE: Correct.

8 MR. LEVENTHAL: Put it in context on what it is.
9 Otherwise, you're just left with a video and nobody knows what
10 it is. There's music behind it which shows something. It will
11 show something completely different than the still picture or
12 just the -- the -- the video itself. So, if it's going to come
13 in, I'd ask that the --

14 THE COURT: How does the music add to what it is?

15 MR. LEVENTHAL: Because it's -- it's --

16 THE COURT: I mean, I haven't heard it, so I'm not --

17 MR. LEVENTHAL: It's more like an advisement. It's
18 more like, you know, an advisement, than it is anything and
19 that's how it should come in.

20 THE COURT: Like, there's a jingle?

21 MR. LEVENTHAL: Well, if you consider heavy metal a
22 jingle, sure. I mean . . .

23 THE COURT: Okay.

24 MR. LEVENTHAL: We were going to play it for
25 Your Honor yesterday, so -- and Your Honor was going to watch

1 it and listen to it with the audio and I think the -- you can
2 make that determination.

3 MR. PEREZ: Your Honor, and for the record, Lovelien
4 would object to any of it. It's not relevant to him,
5 especially if it's an advisement for the 3%ers with a heavy
6 metal jingle.

7 MS. AHMED: Your Honor, if you -- if this would
8 clarify it, we could play the video for you to see. I mean,
9 it's -- the song does not, to the Government's view, appear to
10 add to the montage of photographs, so . . . it's not a song
11 commenting on the photographs; it's a separate song.

12 THE COURT: Is it a song I've heard of or is it an
13 original?

14 MS. AHMED: I don't know the answer to that,
15 Your Honor.

16 THE COURT: Are there words to the song --

17 MS. AHMED: Yes.

18 THE COURT: -- or is it just instrumental?

19 Okay. So are there words to the song that I need to
20 be aware of?

21 MS. AHMED: I can't recall the words to the song,
22 Your Honor. I -- to me --

23 THE COURT: Okay. If you want to play it, just play
24 it then.

25 MS. AHMED: Could we ask the defense to play it.

1 We -- our litigation specialist is not here. It's 45a.

2 MR. TANASI: 45a?

3 (Exhibit 45a published.)

4 MS. AHMED: Your Honor, if it resolves the matter and
5 it -- there's no -- the Government has no objection to the
6 sound coming in then, if that would be the defense stipulation,
7 that the video is admissible with the sound.

8 THE COURT: Is that the defense position, they want
9 the song to be played?

10 MR. TANASI: Your Honor, again, for the record, you
11 know, Stewart objects to it in its entirety, but if we're
12 trying to fashion some reasonable middle ground, then yes, if
13 it's to be played, then it would be played in its entirety with
14 the audio.

15 MR. LEVENTHAL: Drexler would join in that.

16 MR. MARCHESE: Parker joins.

17 MR. PEREZ: Lovelien joins.

18 THE COURT: All right.

19 For the record, the name of the song is "Soldiers" by
20 the band "Otherwise." The lyrics refer to a perfect day to
21 die. No surrender. We'll never be broken. Fight to the
22 death. We are soldiers and stand shoulder to shoulder. I
23 think a local band.

24 All right. So, Exhibit 45a is admitted, and 45b is
25 withdrawn?

1 MS. AHMED: Yes, Your Honor. Thank you.

2 THE COURT: Okay.

3 (Exhibit 45a received.)

4 MS. AHMED: And, Your Honor, did you want to just --
5 can we just show everybody that -- what we did with the tattoos
6 so that --

7 THE COURT: Yes. Go ahead.

8 MS. AHMED: Can we start with 129, Page 5.

9 Oh, excuse me. This is Mr. Drexler's. 131, Page 5.
10 (Exhibit 131, Page 5 published.)

11 THE COURT: Mr. Leventhal, is that good?

12 MR. LEVENTHAL: It's the best it could be.

13 THE COURT: Okay.

14 MR. LEVENTHAL: I still object to it, but it's better
15 than it was before.

16 THE COURT: Okay.

17 MR. LEVENTHAL: So my objection will still remain on
18 the record, but . . .

19 THE COURT: I appreciate that. Thanks.

20 MS. AHMED: Your Honor, the -- we're still working on
21 129, which is Mr. Parker's, but I can publish it before -- I
22 mean, ask the Court to publish it just to counsel and the
23 witness so that they can see it before it's displayed to
24 everybody.

25 THE COURT: All right.

1 MS. AHMED: And those were all the objections that I
2 was aware of that -- to raise at this time with respect to the
3 exhibits for this witness.

4 THE COURT: All right. Then let's go ahead and go,
5 Aaron, please, invite the jury to come back. Maybe if you can,
6 let them know there's probably not going to be bathroom break,
7 but we'll take, like, 10 minutes so at least counsel and
8 anybody else that needs to take bathroom break can. So we'll
9 bring the jury back in about 10 minutes and everybody use the
10 bathroom so that we don't need to before the --

11 MR. LEVENTHAL: And, Your Honor, before we --

12 THE COURT: -- break, if possible.

13 MR. LEVENTHAL: Should I make one more objection
14 after we come back of do you want me to --

15 THE COURT: Well, go ahead and make your objection
16 now.

17 MR. LEVENTHAL: Okay. You know, the other issue here
18 is authentication. I -- if this is coming in through this
19 witness, I don't know if there's a foundation that this witness
20 was at the arrest or saw these pictures or can verify these
21 pictures. I don't know that. So I would object on those
22 grounds as well. I don't know if we ever got there.

23 THE COURT: Oh, for the booking photos, you mean?

24 MR. LEVENTHAL: That's correct.

25 THE COURT: The foundation for the booking photos?

1 MR. LEVENTHAL: The booking photos. I -- I -- we
2 never got there, whether this witness can even, you know,
3 testify to these, whether she saw them, they're accurate,
4 they're true, I don't know that. So . . . and it's just
5 another ground that I would object to on those grounds.

6 THE COURT: All right. So noted.

7 COURTROOM ADMINISTRATOR: May I confirm the exhibits
8 that were admitted, Your Honor?

9 THE COURT: Yes. Let's do that.

10 COURTROOM ADMINISTRATOR: Let me know when you're
11 ready.

12 I believe it started with 117.

13 THE COURT: Oh, yeah. I'm on the wrong page.

14 117 was admitted. Then 118.

15 COURTROOM ADMINISTRATOR: 119a.

16 THE COURT: 119a. 119b.

17 COURTROOM ADMINISTRATOR: 119b; 120; 121, Page -- or
18 129, Page 5 redacted, as to Parker only.

19 THE COURT: Page 5 only. Yes. Right.

20 COURTROOM ADMINISTRATOR: 131, Page 5 redacted.
21 Was that to Mr. Drexler only?

22 THE COURT: Stewart is -- Exhibit 30, Page 5 is
23 Stewart.

24 COURTROOM ADMINISTRATOR: I believe that one was
25 withdrawn, Your Honor.

1 MS. AHMED: Your Honor, it was withdrawn based on the
2 stipulation --

3 THE COURT: That's right. I see. I see the "W" now.
4 You're right.

5 So 131, Page 4 is the Drexler tattoo with the
6 redaction only admitted as to Drexler.

7 COURTROOM ADMINISTRATOR: Okay.

8 And 45b was withdrawn and 45a was admitted.

9 THE COURT: Correct.

10 COURTROOM ADMINISTRATOR: Okay. Thank you, Your
11 Honor.

12 THE COURT: Thank you.

13 Off record.

14 (Recess was taken at 2:35 p.m.)

15 COURTROOM ADMINISTRATOR: All rise.

16 THE COURT: Thank you. You may be seated.

17 You want to go ahead and call in the jury?

18 COURTROOM ADMINISTRATOR: Yes, Your Honor.

19 (Brief pause in proceedings.)

20 COURTROOM ADMINISTRATOR: All rise.

21 (Jury returned to courtroom at 3:06 p.m.)

22 THE COURT: All right. Jury may go ahead and be
23 seated.

24 Welcome back. We're going to resume with
25 direct-examination of FBI Special Agent Sarah Draper by

1 Ms. Ahmed.

2 Go ahead.

3 MS. AHMED: Thank you, Your Honor.

4 Your Honor, may we publish what's been previously
5 admitted as Exhibit 103?

6 THE COURT: Yes, you may.

7 (Exhibit 103 published.)

8 MS. AHMED: Your Honor, for both the jury and for the
9 record, I wanted to note that the parties stipulated that the
10 individual that's on the viewer's right is, in fact, the
11 defendant Mr. Steven Stewart.

12 THE COURT: All right. Mr. Tanasi, you agree?

13 MR. TANASI: Yes, Your Honor.

14 THE COURT: All right. The record will so note.

15 MS. AHMED: Thank you, Your Honor.

16 And may we move to Exhibit 100, which is also
17 previously admitted?

18 THE COURT: Yes, you may.

19 (Exhibit 100 published.)

20

21 FURTHER DIRECT EXAMINATION OF SARAH DRAPER

22 BY MS. AHMED:

23 Q. Agent Draper, before the break we were discussing an event
24 that you indicated Mr. Parker and Mr. Drexler participated in
25 was in Oregon, Operation Gold Rush; correct?

1 A. Yes, that's correct.

2 Q. Turning to Exhibit 100, is this a post that Mr. Parker
3 shared on his Facebook page?

4 A. Yes, correct.

5 Q. And what date did he make that post?

6 A. May 20th, 2015.

7 Q. And can you read the content of the post?

8 A. It says, "From us to you BLM . . . oh, let's not forget
9 the Southern Law" -- correction -- "Southern Poverty Law Center
10 and Reuters. Looks like the judge agreed with us!! Granted
11 stay of appeals states you have" -- correction -- "Granted stay
12 of appeal. States you have no jurisdiction or right to
13 terrorize that man!! You'll be getting our bill for the cost
14 of we the people mounting an effective resistance to your
15 threats. That's two for two fascists!! See you next time."

16 Q. And where it says "two for two," based on your
17 investigation, what is that referring to?

18 A. Based upon my investigation, that would be referring to
19 the Bundyville -- the Bundy Ranch standoff as well as this
20 operation.

21 MS. AHMED: And can we go to Page 2 of Exhibit 100.

22 BY MS. AHMED:

23 Q. Did Mr. Parker also make a post in the comment section in
24 relation to that post?

25 A. Yes, he did.

1 Q. And what did he say?

2 A. "Brandon Rapolla said it best while giving a speech to the
3 miners and citizens of Josephine County in the BLM parking lot,
4 'Don't worry about the guns, folks, we've got the guns. What
5 we need is support. 10 people for every man in the field.'
6 Couldn't have done it without the people willing to dedicate
7 their time and money to the logistics."

8 Q. And was this post -- this comment made on May 20th of
9 2015?

10 A. Yes.

11 Q. And is he referring to the Operation Gold Rush which you
12 had previously described?

13 A. Yes.

14 Q. And was that in Josephine County?

15 A. Oregon.

16 Q. Josephine County, Oregon?

17 A. Yes.

18 Q. And what was the name of the mine?

19 A. I've forgotten. Sorry.

20 Q. Now -- may we go, Your Honor --

21 A. The Galice Mining District. I don't remember the exact
22 mine.

23 Q. The mine was in the Galice Mining District?

24 A. Yes. Sorry.

25 MS. AHMED: And may we go -- can we go to the next

1 page?

2 BY MS. AHMED:

3 Q. Were there additional comments made on this post?

4 A. Yes.

5 Q. And do you see, at the top of the third page of Exhibit
6 100, two comments?

7 A. Yes.

8 Q. And the first one being made by a Facebook user called
9 Todd Engel; correct?

10 A. Correct.

11 Q. And, again, based on your investigation, who is Todd
12 Engel?

13 A. He was another person from Idaho who had participated in
14 Bundy Ranch as well as this Oregon operation.

15 Q. And when you say "Bundy Ranch," do you mean the
16 April 12th, 2014?

17 A. Yes. Correction. The April 12th, 2014, events.

18 Q. And can you read the comment that user posted?

19 A. "Get you some!"

20 Q. And did Mr. Parker made an additional comment with respect
21 to this post?

22 A. He did.

23 Q. What did he say?

24 A. "***security stays in place until he gets a court
25 date . . ."

1 Q. And again, is this in reference to the Operation Gold
2 Rush?

3 A. Yes.

4 MS. AHMED: And can we go back to the first page of
5 Exhibit 100, please.

6 BY MS. AHMED:

7 Q. And there is also a picture that was posted in relation to
8 this Facebook post that Mr. Parker made?

9 A. Yes.

10 Q. And can you describe the -- bless you -- bless you,
11 Your Honor -- can you describe the content of the photo that
12 was included in this post, just generally?

13 A. Three individuals displaying their middle fingers with the
14 3% of Idaho flag behind them.

15 Q. And do you recognize any of the subjects as being the
16 subjects that you were following -- any of the individuals in
17 this picture being one of the subjects that you were following
18 in this investigation?

19 A. Yes. Mr. Parker's in the middle.

20 Q. Now, in the course of your investigation -- well, I'm
21 sorry. I just wanted to back up.

22 When I asked you that, "that's two or two fascists,"
23 you indicated that was both -- you said Bundy -- the Bundy
24 Ranch incident, meaning April 12th, 2014; correct?

25 A. Correct.

1 Q. And what was the other one?

2 A. This Oregon operation at the mine.

3 Q. Now, in the course of this investigation, did you continue
4 to follow the subjects that you've previously indicated in
5 August of 2015?

6 A. Yes.

7 Q. And in doing so, did you learn of some of their
8 participation -- some of them participated in an additional
9 operation?

10 A. Yes.

11 Q. And what was that operation?

12 A. That was another -- another operation with miners, this
13 one involving the U.S. Forest Service in Montana, in western
14 Montana, in August of 2015.

15 Q. And did Mr. Parker -- in your investigation, did you see
16 that Mr. Parker made posts on his Facebook regarding this
17 operation?

18 A. Yes.

19 MS. AHMED: Your Honor, may we publish what's been
20 admitted over defense objection as Exhibit 108?

21 THE COURT: Yes, you may.

22 (Exhibit 108 published.)

23 BY MS. AHMED:

24 Q. Agent Draper, what is -- what is exhibit -- what does
25 Exhibit 108 contain?

1 A. This is from Mr. Parker's Facebook page and it contains
2 two photos that Mr. Parker has shared from another Facebook
3 user's posts.

4 Q. And on what date did he share this post?

5 A. August 20th of 2015.

6 Q. And what is depicted in the left photo -- the viewer's
7 left, excuse me.

8 A. Based upon what is at the bottom, "Share! Operation Big
9 Sky! More information here," I conclude this is a photo of
10 individuals who were --

11 MR. LEVENTHAL: Objection. Speculation.

12 BY MS. AHMED:

13 Q. Can you just describe the contents of the photo generally.

14 A. Yes. It's a group of individuals.

15 Q. And what, if anything, is depicted behind them?

16 A. 3% -- a flag with a 3% logo on it, the blue field.

17 Q. And do any of the individuals include the subjects that
18 you were following in this investigation?

19 A. Yes.

20 Q. Can you circle who you see and identify them?

21 A. (Indicating) Mr. Drexler.

22 MS. AHMED: And for the record the witness has
23 circled an individual standing on the far left side of this
24 picture.

25 THE WITNESS: And then this one (indicating) is

1 Mr. Parker.

2 MS. AHMED: And for the record, the witness has
3 circled an individual that's second to the far left on the
4 bottom front.

5 BY MS. AHMED:

6 Q. And can you tell from that picture what, if anything, is
7 on the T-shirts that both Mr. Drexler and Mr. Parker are
8 wearing?

9 A. It appears to be the 3% of Idaho logo.

10 Q. And then turning to the picture that's on the right, what
11 is depicted in that picture?

12 A. It's Mr. Parker.

13 Q. And what, if anything, does he have in his arms?

14 A. Carrying a rifle.

15 Q. And are -- and what, if anything, does he appear to be
16 wearing that's of note?

17 A. It appears to be a tactical vest and he has a hat that
18 appears to be of the 3% of Idaho logo on it.

19 Q. And there appear to be words on that picture as well.

20 Do you see those?

21 A. I do.

22 Q. And can you read them to the jury?

23 A. "Montana Defenders of the Republic."

24 Q. And this operation that you indicated that took place in
25 August of 2015, was it in Montana?

1 A. Yes, it was.

2 Q. And based on your investigation, what was the name of the
3 operation?

4 A. Operation Big Sky.

5 Q. And what, if any, groups that the defendants are -- that
6 your subjects are affiliated with participated in this
7 operation?

8 A. Members of the 3% of Idaho participated.

9 Q. Now, turning to the bottom of this post --

10 A. Yes.

11 Q. -- do you see where it says, "Blaine Cooper added two
12 photographs"?

13 A. Yes.

14 Q. And then it says, "with Schuyler Barbeau and 16 others."

15 Do you see that?

16 A. Yes.

17 Q. And based on your investigation, who is Schuyler Barbeau?

18 A. Schuyler Barbeau is an individual from Washington state
19 who had also participated in this operation as well as Bundy --
20 events on -- of Bundy Ranch events.

21 Q. In April of 2014?

22 A. Yes.

23 Q. Now, at the bottom of the post, of this portion of the
24 post, can you read what it says down there (indicating),
25 starting with "share"?

1 A. "Operation Big Sky! More information here," and then
2 there's a website address for a press release from the Pacific
3 Patriots Network.

4 MS. AHMED: And can we come out of the zoom on this
5 exhibit.

6 BY MS. AHMED:

7 Q. Did Mr. Parker make additional comments to this post?

8 A. Yes.

9 Q. And what did he say?

10 A. On August 20th, 2015, he said, "Shifts . . . still need
11 volunteers."

12 MS. AHMED: Your Honor, may we publish what's been
13 admitted over defense objection as Exhibit 109?

14 THE COURT: Yes, you may.

15 (Exhibit 109 published.)

16 BY MS. AHMED:

17 Q. Agent Draper, is this also a post that Mr. Parker shared
18 on his Facebook on August 20th, 2015?

19 A. Yes.

20 Q. And what -- what is it that he shared?

21 A. It's a video from Blaine Cooper's Facebook page.

22 Q. And looking at the screen, there appears to -- that you
23 can see a still from that video; correct?

24 A. That's correct.

25 Q. And looking at that still, can you identify any of the

1 subjects that you were investigating in relation to this case?

2 A. May I write on the screen?

3 THE COURT: Yes, you may.

4 THE WITNESS: Oh, thank you, Your Honor.

5 This is Mr. Drexler (indicating).

6 MS. AHMED: And for the record, the witness has drawn
7 a circle around the individual on the far left and identified
8 that person as Mr. Drexler.

9 THE WITNESS: And Mr. Parker (indicating).

10 MS. AHMED: And the witness has drawn a circle on the
11 individual on the right and identified him as Mr. Parker.

12 BY MS. AHMED:

13 Q. And do you know who the person in the middle of the
14 picture is?

15 A. That's Blaine Cooper.

16 Q. And based on your investigation, Mr. Cooper was also a
17 participant in the events of April 2014?

18 A. Yes.

19 Q. Now, is this -- so, did Mr. Parker, was he sharing the
20 video -- a video in this post?

21 A. Yes.

22 Q. And were there also -- was he also sharing words that
23 appear at the bottom of the post?

24 A. Yes.

25 Q. Can -- starting with "breaking," can you please read that

1 to the jury?

2 A. Yes.

3 "Breaking. Share. Get viral. Operation Big Sky
4 armed patriots and Oath Keepers from across the U.S. show up to
5 defend Constitution. What's it all about? Watch our report
6 and the dispute between the U.S. Forest Service and miners in a
7 small Montana town."

8 Q. Have you viewed the video that was uploaded on this
9 Facebook post?

10 A. Yes.

11 MS. AHMED: Your Honor, may we publish what's been
12 admitted over defense objection as Exhibit 48a?

13 THE COURT: What number was that?

14 MS. AHMED: 48a, Your Honor.

15 THE COURT: 48a. Yes, you may.

16 BY MS. AHMED:

17 Q. And, Agent Draper, you've previously reviewed Exhibit 48a;
18 correct?

19 A. Yes.

20 Q. And is that the video that was posted in the last exhibit
21 that we just saw?

22 A. Yes.

23 (Exhibit 48a published.)

24 BY MS. AHMED:

25 Q. And again, Agent Draper, looking at this video, who is the

1 individual on the far left?

2 A. I -- on my far left --

3 Q. On the viewer's far left.

4 A. -- or from -- on the video side?

5 It's Mr. Drexler.

6 Q. And who is the individual on the far right?

7 A. Mr. Parker.

8 MS. AHMED: Your Honor, may we publish what's been
9 admitted over defense objection as Exhibit 114?

10 THE COURT: Yes, you may.

11 COURTROOM ADMINISTRATOR: Ms. Ahmed, if you open up
12 the tool bar on the touch screen, click the button that has the
13 "T" in the lines, I believe, change that line thickness a
14 little thicker so it's more viewable.

15 MS. AHMED: Thank you.

16 (Exhibit 114 published.)

17 BY MS. AHMED:

18 Q. Agent Draper, do you see Exhibit 114?

19 A. Yes, I do.

20 Q. And what is this?

21 A. This is a post from Mr. Parker's Facebook page.

22 Q. And it looks like it says "13 hours."

23 Do you see that?

24 A. Yes.

25 Q. And normally that's where the date and time would appear?

1 A. Correct. Depending upon when it was captured. If it was
2 captured after that date, the date would appear there.

3 Q. So if the post was captured the same date that the date
4 was -- that the post was created, what would it show?

5 A. Just amount of hours since.

6 Q. And just generally, in what time frame was this post
7 captured or -- excuse me -- created?

8 A. December of 2015.

9 Q. And can you read -- this is a post that Mr. Parker made to
10 his Facebook page?

11 A. Yes, that's correct.

12 Q. And can you read it -- read the post to the jury?

13 A. "Alert. Patriot kidnapped by FBI and U.S. marshals.

14 "My friend Schuyler Barbeau has been kidnapped by the
15 FBI and the U.S. marshals. They have him on trumped up weapons
16 charges. They found no weapon (short barreled rifle) or
17 explosive or detonators that they were looking for. Didn't
18 find them because they don't exist. He helped stand down the
19 BLM at the Bundy Ranch, the BLM at the mine in Oregon, the USFS
20 at the mine in Montana, and county of . . ." and then it -- the
21 post cuts off.

22 Q. And below that, there appears to be some information.

23 Do you see what that is?

24 A. Yes.

25 Q. And just generally, what is the information that was being

1 shared with this post?

2 A. That would be the booking information for Mr. Barbeau.

3 Q. And is there a date that indicates when he was booked?

4 A. December 6th, 2015.

5 Q. And then going back up to the -- and for the record, the
6 witness circled the date.

7 Going back up to the top part of the post, which was
8 Mr. Parker's words, where it says "he helped stand down the BLM
9 at the Bundy Ranch," what is -- is that referring to the events
10 of April 12th, 2014?

11 A. Yes.

12 Q. And the BLM at the mine in Oregon, what event that is
13 relating to?

14 A. That would be the Operation Gold Rush in -- in the Galice
15 Mining District.

16 Q. And with respect to "the USFS at the mine in Montana,"
17 what operation is that?

18 A. That would be Operation Big Sky from August time frame of
19 2015.

20 MS. AHMED: Your Honor, may we publish what the Court
21 admitted yesterday as Exhibit 102?

22 THE COURT: Yes, you may.

23 I think this is . . . one of those times when I told
24 the jury that sometimes I will give you a limiting instruction
25 letting you know that if a particular piece of evidence is

1 being introduced for a limited purpose, that means you can only
2 consider it for that limited purpose and for no other purpose.
3 So, in this case, Exhibit 102 is being admitted only for the
4 limited purpose of demonstrating intent, absence of mistake,
5 and motive. And so, therefore, you may only consider it for
6 that limited purpose and not for any other reason.

7 All right. You may go ahead and publish Exhibit 102.

8 (Exhibit 102 published.)

9 BY MS. AHMED:

10 Q. Agent Draper, is this -- can you explain to the jury what
11 is contained -- just generally, what is this Exhibit 102?

12 A. Yes. This is a -- this is a comment Mr. Parker made on
13 his Facebook page in a series of comments in regards to a
14 picture that was posted.

15 Q. And so, there was a picture posted on Mr. Parker's
16 Facebook page?

17 A. Yes.

18 Q. And then comments were made --

19 A. Correct.

20 Q. -- under that photo?

21 A. Correct, yes.

22 Q. And this is one of the comments that Mr. Parker posted?

23 A. Yes. Mr. Parker posted this.

24 Q. And when was it posted?

25 A. June 12th of 2015.

1 Q. And can you read the first four lines of this post?

2 A. "McVeigh didn't accomplish shit. I'll even pretend for a
3 minute like he wasn't an idiot that got set up by the FBI. The
4 only thing he accomplished was getting himself executed and
5 attaching a stigma to the movement for a decade."

6 Q. And in the context of this -- the full post which you
7 reviewed and based on your investigation, who is he referring
8 to when he says "McVeigh"?

9 MR. LEVENTHAL: Objection. Speculation.

10 MR. TANASI: Stewart joins.

11 MR. PEREZ: Lovelien joins.

12 MR. MARCHESE: Parker joins.

13 MS. AHMED: Your Honor, the question is limited on
14 her review of the entire -- the entire post and the comments
15 above this post.

16 MR. LEVENTHAL: Still speculating.

17 MS. AHMED: Your Honor, I can ask additional
18 foundational questions.

19 THE COURT: Lay a foundation, yes.

20 BY MS. AHMED:

21 Q. Did you review the comments above this post?

22 A. Yes, I did.

23 Q. And did those comments also make reference to a person
24 named McVeigh?

25 A. Yes.

1 Q. And from those comments, did you understand -- have an
2 understanding of who that person was?

3 A. Yes.

4 MR. LEVENTHAL: I'm going to object as to hearsay
5 then.

6 BY MS. AHMED:

7 Q. And is this response being given in response to those
8 comments directly?

9 A. Yes.

10 Q. And based both on the comments above this post and the
11 context of the statement itself, do you have an understanding
12 of who McVeigh is?

13 A. Yes, I do.

14 MS. AHMED: Your Honor, may I continue?

15 THE COURT: Yes, you may.

16 BY MS. AHMED:

17 Q. Can you explain to the jury who McVeigh is that this post
18 is referring to?

19 A. I said it would be in reference to Timothy McVeigh who is
20 responsible for the 1995 bombing of the Murrah Federal Building
21 in Oklahoma City, Oklahoma.

22 Q. And can you continue to read from "now what did I
23 accomplish"?

24 A. Yes, I will.

25 "Now what did I accomplish in the past two and a half

1 years. About half a year before the Bundy Ranch a small group
2 of friends and I got together and agreed that we had all had
3 enough and we had to get proactive. We promised each other
4 that we would meet once a week to work on prepping and
5 training. Prior to that, I had never even held an AR-15, maybe
6 once or twice. We acquired weapons and became familiar with
7 them. We watched current events closely and we prepped for
8 failure of government. The right time presented itself and we
9 decided to stand."

10 Continuing?

11 Q. Please continue.

12 A. Okay.

13 "Decisions were made. Lines were drawn. Something
14 very similar happened in 1770, except nobody died at the ranch.
15 1770 was the Boston Massacre. The invading fascist force left
16 the field. Spent the next couple of months waiting for them to
17 come bag my head, but they didn't. Do you know why they
18 didn't? Because we did it right. You stay within the confines
19 of the law, the Bill of Rights and do it publicly in the light.
20 We joined the Idaho 3%. We network, recruit, and train. Lo
21 and behold, spring came around and we had another opportunity.
22 The situation was right. Rick, at the Sugar Pine Mine was in
23 the right. Through our networking, we were asked as a group to
24 come do security and vetting. The public call for security
25 teams to come help was made and a lot of the same people that

1 showed up in Nevada showed up in Oregon. The reason being the
2 lines in the sand that were drawn and the oath taken on
3 individual's souls will never go away. Bonds were made. Those
4 individuals will never stop and the idea that the men and women
5 who are standing next to them in Nevada may be standing
6 somewhere else will light that fire and they will be there.
7 That is a paradigm shift.

8 "We were 10 times better and more efficient at Sugar
9 Pine Mine. We won without a standoff and the professionalism
10 of the vetting kept any would-be" -- blank -- "away.

11 "From where I'm standing, you're the only one that
12 hasn't done anything. Get active or shut the f-u-c-k up."

13 Q. Based on your investigation, what is the Sugar Pine Mine?

14 A. That was the mine in Oregon.

15 Q. That was the name of the mine?

16 A. Yes.

17 Q. In Oregon?

18 A. Yes.

19 Q. In relation to Operation Gold Rush?

20 A. Yes.

21 MS. AHMED: Your Honor, may we publish what's been, I
22 believe, stipulated for admission as Exhibit 49, Page 3.

23 THE COURT: 49, Page 3. Yes, you may.

24 (Exhibit 49, Page 3 published.)

25 BY MS. AHMED:

1 Q. Now, Agent Draper, you indicated yesterday that you
2 obtained search warrants for not just Mr. Parker's account, but
3 also for other -- the other two subjects as well; correct?

4 A. Yes, that's correct.

5 Q. Looking at Exhibit 49-3, can you explain to the jury, just
6 generally, what is this?

7 A. This is a Facebook Certificate of Authenticity for the
8 account belonging to Mr. Drexler.

9 Q. And, so, a search warrant was submitted for Mr. Drexler's
10 account?

11 A. That's correct.

12 Q. And Facebook returned documents?

13 A. Yes.

14 Q. And they provided also this certificate?

15 A. Correct.

16 MS. AHMED: Your Honor, may we publish what's been
17 admitted -- stipulated for admission as Exhibit 123?

18 THE COURT: Yes, you may.

19 (Exhibit 123 published.)

20 BY MS. AHMED:

21 Q. Looking at Exhibit 123, Agent Draper, is this a page from
22 the Facebook Business Records that you received in response to
23 the search warrant?

24 A. Yes. This is.

25 Q. And what is depicted in Exhibit 123?

1 A. This is a photograph posted on -- a profile picture posted
2 by Mr. Drexler of him.

3 Q. And based on your investigation, is that photograph from
4 April 12th, 2014?

5 A. Yes.

6 Q. And is that the bridge from April 12th, 2014?

7 A. Yes, it is.

8 Q. And what does Mr. Drexler appear to be holding?

9 A. He appears to be holding a rifle.

10 Q. Now, is this -- can you explain to the jury, in terms of a
11 Facebook post, what kind of post was this? What did -- how did
12 it come on to Mr. Drexler's Facebook page?

13 A. Well, this would be under a profile photo.

14 Q. And, again -- sorry. What is a profile picture, on
15 Facebook?

16 A. That would be the image an individual uses which is
17 connected with their -- their vanity name, so the name that you
18 see on the screen with them when they make posts.

19 Q. And so, Mr. Drexler made this his profile picture on his
20 Facebook account?

21 A. Yes.

22 Q. On what date?

23 A. April 15th, 2014.

24 Q. And so, would that be three days after the April 12th
25 standoff?

1 A. Correct.

2 Q. And looking at the bottom of that page, were there
3 comments on that profile picture?

4 A. Yes. One user made a comment and then Mr. Drexler
5 replied.

6 Q. And what did that user say?

7 A. "Careful. Bridges are choke points."

8 Q. And what response did Mr. Drexler post?

9 A. He posted, "That's why we use them to shut down the
10 freeway."

11 Q. And when did he make that response?

12 A. April 17th.

13 Q. Of 2014?

14 A. Yes.

15 Q. And that's five days after the April 12th standoff?

16 A. Yes.

17 MS. AHMED: Your Honor, may we publish what was
18 admitted by stipulation as Exhibit 124?

19 THE COURT: Yes, you may.

20 (Exhibit 124 published.)

21 BY MS. AHMED:

22 Q. Agent Draper, is this another -- is Exhibit 124 also a
23 business record received from Facebook in response to the
24 search warrant?

25 A. Yes.

1 Q. And what's -- zoomed out, are these two posts that were
2 made on Mr. Drexler's Facebook page?

3 A. That's correct.

4 Q. And in what -- chronologically, are they going from the
5 bottom up or the top down?

6 A. Bottom up.

7 Q. So turning to the bottom post, can you just explain to the
8 jury what was actually posted to Mr. Drexler's Facebook page?

9 A. This is -- this is an article with a picture attached
10 titled "The Bundy Crisis in Nevada." There's text there
11 written by the Facebook user. Says, "Nice pic, Eric," and
12 there's a summary and I can explain what summary is.

13 Q. Did you -- after testifying yesterday, did you
14 investigate --

15 A. Yes.

16 Q. -- how that summary field is populated on Facebook?

17 A. Yes.

18 Q. And what is your understanding, based on your
19 investigation?

20 A. Based upon my investigation, it's some content from the
21 original article that is being attached or posted, generally a
22 couple of sentences from the first paragraph.

23 Q. Now, so, here, you indicated that there was an article
24 that was being shared on Mr. Drexler's Facebook page. What is
25 the title of that article?

- 1 A. "The Bundy Crisis in Nevada."
- 2 Q. And did you actually go to that link and see the article?
- 3 A. Yes.
- 4 Q. And what, if any, picture shows when you load the article?
- 5 A. It's a picture of Mr. Parker kneeling on the bridge on
- 6 April 12th, 2014, holding a rifle.
- 7 Q. And so, where it stays "text," is that a comment that was
- 8 posted by Mr. Drexler?
- 9 A. Yes.
- 10 Q. And what did he say?
- 11 A. "Nice pic, Eric."
- 12 Q. And what date did he make this post?
- 13 A. April 15th, 2014.
- 14 Q. And in the summary section, so you've indicated that's
- 15 content that was pulled out of the article itself; correct?
- 16 A. Correct.
- 17 Q. Can you read what that says?
- 18 A. "If you don't know the story of Cliven Bundy in Nevada,
- 19 it's time to get up to speed."
- 20 Q. Now, did Mr. Drexler -- the top post, was that also made
- 21 on April 15th, 2014?
- 22 A. Yes.
- 23 Q. And what was the top post? What kind of post is that?
- 24 A. This is a Reuters article.
- 25 Q. So was Mr. Drexler sharing another news article?

1 A. Yes.

2 Q. And so, where it says "Url," is that the link to the
3 article?

4 A. Yes.

5 Q. And then going up from that, to the title, what was the
6 title of the article?

7 A. "Nevada Ranching Family Claims Victory as Government
8 Releases Cattle."

9 Q. And just going -- skipping text, we'll come back to
10 that -- but where it says summary, can you read what is
11 indicated in the summary section?

12 A. "Bunkerville, Nevada, (Reuters) - U.S. officials ended a
13 standoff with hundreds of armed protestors in the Nevada desert
14 on Saturday, calling off the government's roundup of cattle it
15 said were illegally" -- and then the summary cuts off.

16 Q. And in the "text" section, again, is that content that was
17 posted by Mr. Drexler?

18 A. Yes.

19 Q. And what does it say?

20 A. "But it looks like we may have to go back."

21 Q. And, again, this post was made on what date?

22 A. April 15th, 2014.

23 Q. And that's three days after the April 12th standoff?

24 A. Correct.

25 MS. AHMED: Your Honor, may we publish what was

1 admitted by stipulation as Exhibit 125?

2 THE COURT: Yes, you may.

3 (Exhibit 125 published.)

4 BY MS. AHMED:

5 Q. Agent Draper, in addition to the documents that you
6 received back from Facebook in response to the search warrant,
7 were other -- did you continue to monitor Mr. Drexler's
8 Facebook page?

9 A. Yes.

10 Q. And were other posts captured as evidence, from his page?

11 A. Yes.

12 Q. And looking at Exhibit 125, is that one such posting made
13 on his Facebook page?

14 A. Correct. This is part of a capture that shows a cover
15 photo and a profile picture.

16 Q. And on what date was this captured from the Facebook page?

17 A. May of 2015. May 4th.

18 Q. So, in May of 2015, was this the profile picture and the
19 cover photo that appeared when you went to Mr. Drexler's
20 Facebook page?

21 A. Yes.

22 Q. And can you just -- starting with the profile picture, can
23 you indicate where it is and describe -- can you indicate where
24 it is by touching the screen.

25 A. Um . . . the profile picture (indicating).

1 MS. AHMED: And the witness has drawn a circle around
2 an area that's in a small box on the left side, the viewer's
3 left.

4 BY MS. AHMED:

5 Q. Can you describe what is the content of the profile
6 picture?

7 A. It has the words "I am the" Roman Numeral III. "I am the
8 III Percent" and there should be 13 stars around it. 13 stars
9 around it.

10 Q. And then can you indicate where the cover photo appears?

11 A. (Indicating).

12 MS. AHMED: And the witness has drawn a circular
13 shape around the -- of the larger rectangle in the picture.

14 BY MS. AHMED:

15 Q. And can you describe what is contained in the pro- -- in
16 the cover photo, excuse me?

17 A. It shows the back of an unidentified individual wearing a
18 T-shirt holding some type of firearm.

19 Q. And what are the words on that T-shirt?

20 A. "When all else fails . . . vote from the rooftops."

21 MS. AHMED: Your Honor, may we publish what was
22 admitted by stipulation as Exhibit 126?

23 THE COURT: Yes, you may.

24 (Exhibit 126 published.)

25 BY MS. AHMED:

1 Q. Agent Draper, is this also a Facebook post made by
2 Mr. Drexler on his Facebook account?

3 A. Yes.

4 Q. And what is the date of this post?

5 A. Well, it says April 20th. I know it to be April 20th of
6 2015, because this was part of that same capture from May of
7 2015. So it would have the year on it if it was a different
8 year other than the one during which it was viewed.

9 Q. So, this is a post made in April of 2015?

10 A. Correct.

11 Q. And is that the time of when the Operation Gold Rush was
12 taking place?

13 A. Yes.

14 Q. And what post -- what did Mr. Drexler -- what is this post
15 here?

16 A. "And this is how we take our country back. Glad I got to
17 spend a few days in Oregon."

18 Q. And does the post continue on the next page?

19 A. Yes.

20 Q. So along with that comment, did he also share a video?

21 A. Yes.

22 Q. And what is the title of the video as it appears here?

23 A. "Idaho III Percent - Call to Action for Sugar Pine Mine."

24 Q. And what is the description of the video that's provided
25 here?

1 A. "III Percent groups are called on to support the
2 constitutional defense operation at Sugar Pine Mine in southern
3 Oregon."

4 Q. And does it appear that there's also a video embedded with
5 this post?

6 A. Yes.

7 Q. And so, the comment that we saw on the previous page --
8 going back to Page 1 of this exhibit -- on Facebook, this --
9 that -- both that video and this comment, they were all made
10 together as one post?

11 A. Correct.

12 Q. But the portion that's displayed now, these are
13 Mr. Drexler's words; correct?

14 A. Yes, these are.

15 MS. AHMED: Your Honor, may we publish what's
16 admitted by stipulation as Exhibit 127?

17 THE COURT: Yes, you may.

18 (Exhibit 127 published.)

19 BY MS. AHMED:

20 Q. Now, Agent Draper, looking at Exhibit 127, is this a post
21 that appeared on Mr. Drexler's Facebook page?

22 A. Yes.

23 Q. And did this appear on his page in May of 2015?

24 A. That's correct.

25 Q. Now, the post -- who -- who made this post?

1 A. Mr. Parker.

2 Q. And based on your investigation and experience with
3 Facebook, why does it appear on Mr. Drexler's page?

4 A. He could link it to Mr. Drexler's page.

5 Q. Did Mr. Parker tag Mr. Drexler in the post?

6 A. The fact that his name is blue indicates he did.

7 Q. And what -- and we've seen this post previously; correct?

8 A. Yes, we have.

9 Q. This also appeared on Mr. Parker's Facebook page?

10 A. Correct.

11 Q. And can you read what the content of the post Mr. Parker
12 made, what does it say?

13 A. "I love watching this stuff. Scott Drexler, Steven
14 Stewart 2.5 minute in remember that guy he just seemed so
15 nonchalant I liked him . . . give me liberty or give me death."

16 Q. And at the bottom of this post there are two comments by
17 Steven Stewart.

18 Do you see that?

19 A. Yes.

20 Q. And are those the same comments that appeared on the -- in
21 Mr. Parker's Facebook page?

22 A. I do not recall.

23 Q. Are these -- to your knowledge and based on your
24 investigation, are these comments made by the subject that you
25 were following, Steven Stewart?

1 A. Yes.

2 Q. Can you read those two comments to the jury?

3 A. "What in the f-u-c-k was that asshole recording the guy
4 next to me. I would have hid better. Like when they were
5 interviewing your ass lol."

6 Q. And what was the second comment?

7 A. "Ok. I'll admit, it's cool to see vid of me on the
8 freeway, but anyways . . ."

9 Q. Now, you indicated that this was -- post was present on
10 Mr. Drexler's Facebook page in May of 2015?

11 A. Correct.

12 Q. When was the post actually posted to the Facebook page?

13 A. January 8th, 2015.

14 MS. AHMED: Your Honor, may we publish what was
15 admitted by stipulation as Exhibit 128?

16 THE COURT: Yes, you may.

17 (Exhibit 128 published.)

18 BY MS. AHMED:

19 Q. Agent Draper, is this also a post that appeared on
20 Mr. Drexler's Facebook page?

21 A. Yes.

22 Q. And when was this post made?

23 A. December 11th, 2014.

24 Q. And what -- what is the post -- what is the content of the
25 post, just generally?

1 A. It's attaching a news article about something going on in
2 Utah.

3 Q. What is the title of the news article that appears in this
4 post?

5 A. "Utah to seize own land from government, challenge federal
6 dominance of Western states."

7 Q. And was there text provided from the article beneath the
8 title?

9 A. From the article.

10 "In three weeks, Utah intends to seize control of
11 31.2 million acres of its own land now under the control of the
12 federal government. At least, that's the plan."

13 Q. Did Mr. Drexler also make a comment on the post --

14 A. Yes.

15 Q. -- at the top of that -- at the top of that post?

16 A. Yes.

17 Q. Above the article, excuse me.

18 A. Yes. Yes.

19 Q. And what does it say?

20 A. "Looks like New Year's will be about time to go, Eric,"
21 and then he links Eric Ej Parker.

22 Q. And that link, is that to your -- the subject that you
23 were investigating?

24 A. Yes.

25 Q. Mr. Parker?

1 A. Yes. Mr. Parker's page.

2 Q. And you said -- I might have spoken over what -- can you
3 read what he posted?

4 A. "Looks like New Year's will be about time to go, Eric
5 Eric Ej Parker."

6 Q. And did -- and are there comments below the post in
7 response to Mr. Drexler's post?

8 A. Yes.

9 Q. And above the comments, do you see where there's a
10 thumb -- a symbol of a thumb?

11 A. Yes.

12 Q. And, again, can you explain to the jury what that is?

13 A. A thumb's up is a "like" symbol on Facebook.

14 Q. And here, what does it indicate?

15 A. That -- it indicates that Mr. Parker liked that post.

16 Q. And looking at the first comment, who made that comment?

17 A. Mr. Stewart.

18 Q. And what did he say?

19 A. "Don't be trying to go without me."

20 Q. And the comment below that, who made that comment?

21 A. Mr. Parker.

22 Q. And what did he say?

23 A. "Wouldn't dream of it."

24 Q. And were all of these posts made in December of 2014?

25 A. Yes.

1 MS. AHMED: Your Honor, may we publish what was
2 admitted by stipulation as Exhibit 49, Page 11?

3 THE COURT: Yes, you may.

4 (Exhibit 49, Page 11 published.)

5 BY MS. AHMED:

6 Q. Agent Draper, you also obtained documents from Facebook in
7 response to a search warrant for Mr. Stewart's account;
8 correct?

9 A. Yes.

10 Q. Looking at Exhibit 49, Page 11, is this the Certificate of
11 Authenticity for those documents?

12 A. Yes, this is.

13 Q. For Mr. Stewart's account?

14 A. Yes. For Mr. Stewart's Facebook account.

15 MS. AHMED: Your Honor, may we go to Exhibit 117
16 which was admitted over defense objection?

17 THE COURT: Yes, you may.

18 (Exhibit 117 published.)

19 BY MS. AHMED:

20 Q. Agent Draper, is this a page of the Facebook Business
21 Records that were returned in response to the warrant?

22 A. Yes, it is.

23 Q. For Mr. Stewart's account?

24 A. That's correct.

25 Q. Looking at the bottom of this page, are there posts that

1 are made by Mr. Stewart?

2 A. Yes.

3 Q. And just looking at them chronologically, what order do
4 the posts go?

5 A. The first post is lower.

6 Q. And so, what time was the first post made -- excuse me --
7 what date and time?

8 A. April 12th, 2014, at approximately 12:58 Pacific time.

9 Q. And what kind of post was this?

10 A. It's a -- a status update.

11 Q. And do you know that from the "story" section?

12 A. Yes.

13 Q. And what was the message that was posted?

14 A. "It's been a long day. What's up why I have a little
15 earlier with a really high powered scope show me F*****
16 awesome."

17 Q. And then turning to the top post, what -- what date and
18 time was this post made?

19 A. April 12th, 2014, at approximately 1:02 p.m. Pacific, 1:03
20 p.m. pacific.

21 Q. And what kind of post was this?

22 A. Another -- another status update.

23 Q. And what did the post say?

24 A. "First they said they were going to release everything and
25 leave. Then they held the gates to Gold Butte and threatened

1 us with chemicals. Then we pushed forward and they had to back
2 off. They are releasing the cows now. BLM is leaving."

3 MS. AHMED: Your Honor, may we publish what was
4 admitted as Exhibit 118?

5 THE COURT: Yes, you may.

6 (Exhibit 118 published.)

7 BY MS. AHMED:

8 Q. Agent Draper, is this also a Facebook Business Record that
9 was returned in response to the Steven Stewart search warrant?

10 A. Yes, it is.

11 Q. And what is contained in Exhibit 118?

12 A. This is an image that has been uploaded by -- it's a
13 mobile upload.

14 Q. And on -- who -- who uploaded it, excuse me?

15 A. The user of the Facebook account.

16 Q. And that's Mr. --

17 A. Would be Mr. Stewart.

18 Q. And on what date was this image uploaded?

19 A. April 12th, 2014, at approximately 1:33 p.m. Pacific.

20 Q. And do you know that from the field that says "uploaded"?

21 A. Yes, that's correct.

22 Q. And above that, where it says "album name," what is the
23 album name?

24 A. "Mobile Uploads."

25 Q. And what does that mean, "Album Name," "Mobile Uploads"?

1 A. That would be an image that was uploaded from a mobile
2 device.

3 Q. And was there any information -- statement or title or
4 caption included with the photograph?

5 A. On the second line down, at "title," is -- are the words
6 "going to get the cattle back."

7 Q. And is that something that would have to have been entered
8 by the Facebook user?

9 A. Yes.

10 Q. So it was essentially the title given to this photograph?

11 A. That's correct.

12 MS. AHMED: Your Honor, may we publish what was
13 admitted by stipulation as Exhibit 119a?

14 THE COURT: Yes, you may.

15 (Exhibit 119a published.)

16 BY MS. AHMED:

17 Q. Agent Draper, is this another Facebook Business Record
18 that was provided in response to the Steven Stewart Facebook
19 search warrant?

20 A. Yes, this is.

21 Q. And looking at the post that has been zoomed in on in
22 Exhibit 119a, what is this?

23 A. This is an upload of a video.

24 Q. And so, was this a video that was uploaded by the account
25 holder --

1 A. Yes.

2 Q. -- to Mr. Stewart's account?

3 A. Yes.

4 Q. And did Mr. Stewart also describe the video when he
5 uploaded it?

6 A. Yes.

7 Q. And what is the description?

8 A. "Somebody said they had 104 vehicles."

9 Q. And is the description that was provided, is that also
10 visible on his Facebook page?

11 A. Yes.

12 Q. And would the video that was uploaded also be visible on
13 his Facebook page?

14 A. Yes.

15 Q. And so, if you could view his page, could you play the
16 video?

17 A. Yes.

18 Q. Have you viewed the video that was uploaded?

19 A. I have.

20 MS. AHMED: Your Honor, may we publish what was
21 admitted over defense objection as Exhibit 119b?

22 THE COURT: Yes, you may.

23 BY MS. AHMED:

24 Q. And, Agent Draper, have you previously reviewed
25 Exhibit 119b?

1 A. Yes.

2 Q. Is this the video that was linked that we saw from the
3 last exhibit?

4 A. Once we play it, I will -- yes, this is.

5 MS. AHMED: And can we go ahead and play it.

6 (Exhibit 119b published.)

7 BY MS. AHMED:

8 Q. Agent Draper, based on your investigation, whose voice is
9 heard speaking on that video?

10 A. Mr. Stewart's.

11 Q. And from your investigation, again, looking at the content
12 of the video, when -- what is depicted in the video?

13 A. It's when BLM was leaving the ICP on April 12th.

14 Q. 2014?

15 A. 2014.

16 Q. And just going back, briefly, to Exhibit 119a, and going
17 on to the second page, on -- zooming in on that top part. Is
18 this a continuation of that post where the video was shared?

19 A. Yes.

20 Q. What -- on what date was the video shared?

21 A. Because this is UTC time, again, subtracting seven hours
22 from what shows as 1:01, it would be approximately 6:01 p.m. on
23 April 12th, 2014.

24 Q. And is that the same day as the standoff?

25 A. Yes.

1 MS. AHMED: Your Honor, may we publish what was
2 admitted over defense objection as Exhibit 121?

3 THE COURT: Yes, you may.

4 (Exhibit 121 published.)

5 BY MS. AHMED:

6 Q. Agent Draper, is this also a post that was provided by
7 Facebook in response to the search warrant for Mr. Stewart's
8 Facebook account?

9 A. Yes, it is.

10 Q. And is it a post that was made on Mr. Stewart's Facebook
11 page?

12 A. Yes.

13 Q. What date was this post made?

14 A. April 15th, 2014.

15 Q. And is that three days after the April 12th standoff?

16 A. Yes, it is.

17 Q. So, going from the bottom of this post upward, where it
18 says "Url," what is shared there?

19 A. A biography from U.S. -- the Nevada district court.

20 Q. And is there a link to that biography?

21 A. Yes.

22 Q. And so, where it says "Url," is that the actual link that
23 he shared?

24 A. Correct. That is the actual link.

25 Q. Going one line up where it says "title," what is the title

1 of the information or the link that was shared?

2 A. "U.S. District Court - District of Nevada - Home."

3 Q. And then going up two lines to where it says "summary,"
4 what does it say in the summary description for that link that
5 was shared?

6 A. Judge Lloyd D. George was appointed United States District
7 Judge for the District of Nevada by President Ronald Reagan in
8 May 1984. He served as Chief United States District Judge from
9 1992 to 1997, and assumed senior status in December 1997."

10 Q. And did Mr. Stewart make a comment on this post as well?

11 A. Yes.

12 Q. And what is that comment?

13 A. "These people think they own us."

14 Q. And is that found in the "text" field?

15 A. It is.

16 MS. AHMED: Your Honor, may we publish what has been
17 previously admitted as Exhibit 3?

18 THE COURT: Yes, you may.

19 (Exhibit 3 published.)

20 BY MS. AHMED:

21 Q. Agent Draper, in your investigation -- based on your
22 investigation, what do you recognize Exhibit 3 to be?

23 A. This appears to be an order, court order.

24 Q. And is it in the case of United States vs. Cliven Bundy?

25 A. Yes.

1 Q. And turning to Page 5, do you see where -- there appears
2 to be a signature.

3 Do you see that?

4 A. Yes, I do.

5 Q. And what is the name of the judge that authored this Court
6 order?

7 A. Lloyd D. George, United States District Judge.

8 MS. AHMED: Your Honor, may we publish what was
9 admitted over defense objection as Exhibit 120?

10 THE COURT: Yes, you may.

11 (Exhibit 120 published.)

12 BY MS. AHMED:

13 Q. Agent Draper, is this also a Facebook page that Facebook
14 provided in response to the search warrant for Steven Stewart's
15 account?

16 A. Yes, this is.

17 Q. And looking at it, is this a post that was made by
18 Steven Stewart on his Facebook account?

19 A. Yes.

20 Q. And on what date was this post made?

21 A. April 18th, 2014.

22 Q. And so, is that six days after the April 12th standoff?

23 A. Yes, this is.

24 Q. And what is the post that he actually made? What was the
25 content of that post?

1 A. "Guys, I only went for the weekend. We helped
2 Cliven Bundy get his cattle back. Straight there; straight
3 back. 2 hours of sleep in between."

4 MS. AHMED: Now, Your Honor, may we publish what was
5 admitted by stipulation as Exhibit 129, Page 5?

6 THE COURT: Yes, you may.

7 MS. AHMED: And can we first show that just to
8 counsel and the witness?

9 THE COURT: Yes.

10 (Exhibit 129, Page 5 published to witness.)

11 MR. MARCHESE: No objection.

12 MS. AHMED: Your Honor, may we publish it to the
13 jury?

14 THE COURT: Yes, you may.

15 This one doesn't have a number on it. Doesn't have
16 a --

17 MS. AHMED: Your Honor, we'll add that exhibit
18 sticker to reflect that this is Page 5 of Exhibit 129.

19 THE COURT: Thank you.

20 (Exhibit 129, Page 5 published.)

21 MS. AHMED: And, Your Honor, for the record, it was
22 stipulated by the parties that this exhibit depicts the arm of
23 the defendant, Mr. Eric Parker.

24 THE COURT: Is that right?

25 MR. MARCHESE: It's a correct statement, Your Honor.

1 MR. TANASI: That's correct, Your Honor.

2 THE COURT: Thank you.

3 BY MS. AHMED:

4 Q. Agent Draper, can you describe what is displayed on the
5 screen as Exhibit 129, Page 5?

6 A. That's Mr. Parker's arm as stipulated, and that's a tattoo
7 on it of the 3% of the Idaho logo.

8 Q. Based on your investigation, did he have that tattoo in
9 April of 2014?

10 A. No.

11 MS. AHMED: Your Honor, may we publish what was
12 admitted by stipulation as Exhibit 131, Page 5?

13 THE COURT: Yes, you may.

14 MS. AHMED: And, again, just for counsel and the
15 parties -- excuse me -- the witness and the parties.

16 (Exhibit 131, Page 5 published to witness.)

17 MR. LEVENTHAL: 131?

18 MS. AHMED: 131, Page 5.

19 MR. LEVENTHAL: No objection.

20 MS. AHMED: Your Honor, may we publish to the jury
21 Exhibit 131, Page 5?

22 THE COURT: Yes, you may.

23 (Exhibit 131, Page 5 published.)

24 MS. AHMED: And, Your Honor, the parties have also
25 stipulated with respect to Exhibit 131, Page 5, that this is

1 the arm of the defendant O. Scott Drexler.

2 THE COURT: Is that right, Mr. Leventhal?

3 MR. LEVENTHAL: That's correct, Your Honor. Thank
4 you.

5 THE COURT: Thank you.

6 BY MS. AHMED:

7 Q. Agent Draper, can you explain to the jury, what is
8 depicted in Exhibit 131, Page 5?

9 A. This is a tattoo on the arm of Mr. Drexler as stipulated.
10 The center portion is the 3% of Idaho logo. The top is the
11 word "Bundy" and what appears to be in kind of a tab in a
12 military style, and underneath are two blocks containing
13 additional letters which, from my investigation, I believe to
14 be "OGR" and "OBS."

15 Q. And what does "OGR" stand for?

16 A. Operation Gold Rush and Operation Big Sky.

17 Q. So the "OGR" stands for Operation Gold Rush and the "OBS"
18 stand for what?

19 A. Operation Big Sky.

20 Q. And were these the two operations that you described that
21 took place after April of 2014?

22 A. Yes.

23 Q. Were any of these tattoos -- based on your investigation,
24 did Mr. Drexler have any of these tattoos in April of 2014?

25 A. No.

1 (Counsel conferring.)

2 MS. AHMED: Your Honor, I apologize. For the record,
3 it's actually Exhibit 131, Page 4 that was entered by
4 stipulation and which we have just displayed and gone over.

5 THE COURT: All right. So please make sure you mark
6 these --

7 MS. AHMED: I will, Your Honor.

8 THE COURT: -- so that we're clear.

9 So this is Exhibit 131, Page 4, not Page 5.

10 MS. AHMED: I apologize, and that's correct,
11 Your Honor.

12 THE COURT: Thank you.

13 BY MS. AHMED:

14 Q. Now, Agent Draper, you were describing yesterday -- you
15 can take that down. Thank you.

16 You were describing yesterday that you observed a
17 video on the Idaho 3% YouTube page.

18 Do you recall that?

19 A. Yes.

20 Q. And can you explain to the jury the title of the video
21 that you observed on the Idaho 3% Facebook page -- excuse me --
22 YouTube page?

23 A. It's an overview of the 3% of the Idaho.

24 Q. So the title said "overview"?

25 A. Correct.

1 Q. "Idaho 3% Overview"?

2 A. Yes.

3 Q. And have you reviewed that video?

4 A. Yes, I have.

5 Q. And have you seen Exhibit 45a as that video that you
6 reviewed?

7 MS. AHMED: Your Honor, may we publish what's been
8 admitted by stipulation as Exhibit 45a?

9 THE COURT: Yes, you may.

10 (Exhibit 45a published.)

11 MS. AHMED: Can we pause here.

12 Paused at 44 seconds.

13 BY MS. AHMED:

14 Q. Agent Draper, do you recognize any of the subjects that
15 you were investigating in this case in this scene?

16 A. Yes, I do.

17 Q. Can you circle and identify them.

18 A. (Indicating). That's Mr. Drexler.

19 MS. AHMED: And the witness has drawn a circle from
20 the third from the right -- the viewer's right -- indicating
21 that's Mr. Drexler, and then a second circle, second from the
22 right.

23 BY MS. AHMED:

24 Q. Who is that?

25 A. Mr. Parker.

1 MS. AHMED: And these are the individuals that are
2 standing in the background.

3 BY MS. AHMED:

4 Q. So, the two people you circled were Mr. Drexler and
5 Mr. Parker?

6 A. Correct.

7 MS. AHMED: Can we continue to play?

8 (Exhibit 45a published.)

9 MS. AHMED: Can you pause it here?

10 Paused at 57 seconds.

11 BY MS. AHMED:

12 Q. So, Special Agent Draper, in this Idaho 3% - an overview
13 video, is this -- does this appear to be an image taken from
14 the April 12th, 2014, standoff?

15 A. Yes.

16 Q. And who is depicted in this image?

17 A. Mr. Parker.

18 Q. And what is he doing in this image?

19 A. He's prone on the bridge behind a rifle that's between the
20 concrete Jersey barriers.

21 MS. AHMED: Can we continue to play?

22 (Exhibit 45a published.)

23 MS. AHMED: Pause it here.

24 Paused at 1:02.

25 BY MS. AHMED:

1 Q. Agent Draper, is this another image in this Idaho 3%
2 overview video of Mr. Parker on April 12th, 2014?

3 A. Yes, it is.

4 Q. And is he, again, behind that same concrete barrier?

5 A. Along the same bridge. I don't know if it's the actual
6 barrier section, but in the same vicinity.

7 Q. Holding a firearm?

8 A. Correct.

9 MS. AHMED: Can we continue to play?

10 (Exhibit 45a published.)

11 Pause here.

12 And paused at 1:05.

13 BY MS. AHMED:

14 Q. Agent Draper, what is depicted here?

15 A. This is a picture of Mr. Drexler with a rifle on that
16 bridge on April 12th, 2014.

17 MS. AHMED: Continue to play.

18 (Exhibit 45a published.)

19 Pause it here.

20 BY MS. AHMED:

21 Q. Agents Draper, what were the words that were just panned
22 past the top line where I've circled? What does that say?

23 A. "Operation Gold Rush Open House."

24 Q. And does this appear to be some sort of flier or something
25 for the Operation Gold Rush?

1 A. Yes, and there's a date on it that's --

2 Q. And what is that day?

3 A. May 9th, 2015.

4 MS. AHMED: Continue to play.

5 (Exhibit 45a published.)

6 Pause it here.

7 Paused at 1:23.

8 BY MS. AHMED:

9 Q. Is this -- what is depicted at 1:23?

10 A. The sign in the back says, "The Galice Mining District."

11 MS. AHMED: And the witness has drawn a circle around
12 a sign that appears in the background of the picture.

13 BY MS. AHMED:

14 Q. And what is depicted in the foreground, generally?

15 A. Individuals.

16 Q. How are they dressed?

17 A. In -- some are in camouflage attire, tactical vests on
18 some, some with rifles.

19 MS. AHMED: Continuing to play.

20 (Exhibit 45a published.)

21 Pausing here.

22 BY MS. AHMED:

23 Q. Agent Draper -- paused at 1:27.

24 Do you recognize the individual that's standing in
25 the middle in this . . .

1 A. (Indicating).

2 MS. AHMED: And the witness has drawn a line under
3 the person in the middle.

4 BY MS. AHMED:

5 Q. Who is that?

6 A. Mr. Parker.

7 MS. AHMED: Continue to play.

8 (Exhibit 45A published.)

9 Pausing here.

10 BY MS. AHMED:

11 Q. Now, Agent Draper -- paused at 1:31 -- what is depicted in
12 this screen?

13 A. This is a group of individuals indicating
14 Josephine County, Oregon and Mr. Parker is in the image
15 (indicating).

16 MS. AHMED: And the witness has drawn a circle around
17 an individual that appears in the left side of the group
18 standing and identified that person as Mr. Parker and has also
19 circled words on the banner at the bottom where it says
20 "Josephine County, Oregon."

21 BY MS. AHMED:

22 Q. And again, Agent Draper, with regard to Operation Gold
23 Rush, where did that take place?

24 A. In Josephine County, Oregon.

25 MS. AHMED: Continue to play.

1 (Exhibit 45a published.)

2 Pause.

3 Can you go back? I apologize.

4 Thank you.

5 BY MS. AHMED:

6 Q. Now, Agent Draper, what is depicted at 1:37? We've paused
7 at 1:37. What is depicted here?

8 A. Three individuals with Mr. Parker in the middle extending
9 their middle fingers. 3% of Idaho logo behind them, and the
10 words "hash tag stand down BLM at the bottom."

11 MS. AHMED: Continue to play.

12 (Exhibit 45a published.)

13 Pausing at 1:40.

14 BY MS. AHMED:

15 Q. And do you recognize any of your subjects that you were
16 investigating in this case here?

17 A. (Indicating).

18 MS. AHMED: And the witness has circled an individual
19 in the far right, viewer's right.

20 BY MS. AHMED:

21 Q. Who is that?

22 A. Mr. Parker.

23 Q. And looking at this image, what is Mr. Parker wearing?

24 A. A 3% of Idaho T-shirt and a hat.

25 Q. And looking at the T-shirt, what is on the left sleeve --

1 left arm sleeve of that shirt?

2 A. The U.S. flag.

3 MS. AHMED: Continue to play.

4 (Exhibit 45a published.)

5 Stopping here.

6 Paused at 1:45.

7 BY MS. AHMED:

8 Q. Do you see any of the subjects that you were investigating
9 in this case here?

10 A. (Indicating).

11 MS. AHMED: And the witness has drawn a circle around
12 an individual in the middle who is standing in the background.

13 BY MS. AHMED:

14 Q. Who is that?

15 A. Mr. Parker.

16 MS. AHMED: Continue to play.

17 (Exhibit 45a published.)

18 Pausing here.

19 Paused at 1:49.

20 BY MS. AHMED:

21 Q. Again, Agent Draper, what is depicted here?

22 A. A group of individuals with rifles, some with tactical
23 vests on, together, and again, Josephine County, Oregon and
24 Mr. Parker is in the back center (indicating).

25 MS. AHMED: And the witness has drawn a circle around

1 an individual that's in the center holding a firearm and also
2 around the words on a banner, some of which are obscured which
3 the witness indicated read "Josephine County, Oregon."

4 Continue to play.

5 (Exhibit 45a published.)

6 Pausing here.

7 Going back to 1:57.

8 BY MS. AHMED:

9 Q. And, Agent Draper, what appears to be depicted in
10 Exhibit 157 [sic], generally? What does that look like?

11 A. Generally it appears to be some type of roadblock.

12 Q. And do you see individuals in this picture?

13 A. Yes, I do.

14 Q. And how are they dressed?

15 A. Camouflage attire.

16 MS. AHMED: Continuing to play.

17 (Exhibit 45a published.)

18 Pausing here.

19 Paused at 2 minutes and 1 second.

20 MS. AHMED:

21 Q. Looking at this scene, Agent Draper, do you see any of the
22 subjects that you had been investigating in this case?

23 A. Yes.

24 Q. And can you circle them and identify who they are.

25 A. (Indicating), Mr. Parker.

1 MS. AHMED: And the witness has circled an individual
2 in the center with a black hat and black T-shirt.

3 THE WITNESS: (Indicating), Mr. Drexler.

4 MS. AHMED: And the witness has circled an individual
5 slightly to the left of center wearing a red shirt and a
6 tan-ish colored hat.

7 MS. AHMED: Continue to play.

8 (Exhibit 45a published.)

9 Pausing here.

10 Paused at 2:04.

11 BY MS. AHMED:

12 Q. Is this just the back view of the same people?

13 A. It is.

14 Q. And do you see any of the subjects you were -- you had
15 been investigating?

16 A. At -- yes. Mr. Parker (indicating) and Mr. Drexler
17 (indicating).

18 MS. AHMED: And the witness has drawn a circle on an
19 individual who is on the left side in a black T-shirt
20 indicating Mr. Parker and another circle around the head of an
21 individual next to him in a red shirt indicating Mr. Drexler.

22 MS. AHMED: Continue to play.

23 (Exhibit 45a published.)

24 Pause here.

25 Paused at 2:17, or 2:18.

1 BY MS. AHMED:

2 Q. And, Agent Draper, what is depicted at 2:18 in the video?

3 A. A sign that says "White Hope Mine" below a light.

4 MS. AHMED: Continue to play.

5 (Exhibit 45a published.)

6 Pausing here.

7 Paused at 2:24.

8 BY MS. AHMED:

9 Q. Agent Draper, what is depicted here?

10 A. Three individuals with rifles. (Indicating), Mr. Drexler,
11 (indicating), and Mr. Parker.

12 MS. AHMED: And the witness has drawn a circle around
13 the individual on the left indicating Mr. Drexler and a circle
14 around the individual on the right indicating Mr. Parker.

15 BY MS. AHMED:

16 Q. And what do both Mr. Drexler and Mr. Parker appear to be
17 holding in this scene?

18 A. Rifles.

19 MS. AHMED: Continuing to play.

20 (Exhibit 45a published.)

21 Pausing here.

22 Going back to 2:37.

23 BY MS. AHMED:

24 Q. Do you see any of the subjects you've been following in
25 this case in this?

1 A. (Indicating).

2 MS. AHMED: And the witness that is drawn a circle
3 around an individual who is standing.

4 BY MS. AHMED:

5 Q. And who is that?

6 A. Mr. Drexler.

7 Q. And what does he appear to be wearing?

8 A. A 3% of Idaho T-shirt.

9 MS. AHMED: Continuing to play.

10 (Exhibit 45a published.)

11 Pausing here.

12 Paused at 2:40.

13 BY MS. AHMED:

14 Q. Do you see two individuals in this scene?

15 A. Yes.

16 Q. Can you identify them?

17 A. (Indicating), Mr. Parker. (Indicating), Mr. Drexler.

18 MS. AHMED: And the witness has drawn a line under
19 the face of the individual on the left indicating Mr. Parker
20 and a line on the -- under the face of the individual on the
21 right indicating Mr. Drexler.

22 BY MS. AHMED:

23 Q. And how is Mr. Parker dressed in this scene?

24 A. He has a camouflage shirt on.

25 Q. And what is Mr. Drexler wearing in this scene?

1 A. A 3% of Idaho shirt.

2 MS. AHMED: Continue to play.

3 (Exhibit 45a published.)

4 Pausing here.

5 Paused at 2:46.

6 The witness has drawn a circle around an individual
7 that's squatting down.

8 BY MS. AHMED:

9 Q. Who is that?

10 A. Mr. Drexler.

11 MS. AHMED: Continue to play.

12 (Exhibit 45a published.)

13 Pausing at 2:49.

14 BY MS. AHMED:

15 Q. And do you see any of your subjects here?

16 A. (Indicating).

17 MS. AHMED: And the witness has drawn a circle around
18 the individual on the right.

19 BY MS. AHMED:

20 Q. Who is that?

21 A. Mr. Parker.

22 MS. AHMED: Continue to play.

23 (Exhibit 45a published.)

24 Going back one second to 2:54.

25 Paused at 2:54.

1 BY MS. AHMED:

2 Q. Agent Draper, do you see this image here?

3 A. Yes.

4 Q. And do you see any of the subjects you were investigating
5 in this case here?

6 A. (Indicating). Yes.

7 MS. AHMED: And the witness that is drawn a circle
8 around an individual who is standing on the top left.

9 BY MS. AHMED:

10 Q. Who is that?

11 A. Mr. Drexler.

12 MS. AHMED: And the witness has drawn a circle around
13 an individual who is second from the left, again, viewer's
14 left, squatting down.

15 BY MS. AHMED:

16 Q. Who is that?

17 A. Mr. Parker.

18 Q. And who is the individual to Mr. Parker's left, if you
19 know?

20 A. (Indicating) that one?

21 Q. Yes.

22 A. Mr. Blaine Cooper.

23 Q. And is this an image that Mr. Parker also shared on his
24 Facebook page that you previously viewed today?

25 A. Yes.

1 Q. And that was in relation to the White Hope Mine operation;
2 correct?

3 A. Correct.

4 Q. Also known as Operation --

5 MR. MARCHESE: Objection. Leading.

6 BY MS. AHMED:

7 Q. And what was the name of the operation?

8 A. Operation Big Sky.

9 MS. AHMED: Continue to play.

10 (Exhibit 45a published.)

11 Pausing here.

12 Paused at 3 minutes and 11 seconds.

13 BY MS. AHMED:

14 Q. Agent Draper, what is depicted here?

15 A. We've seen this photo already. There's three individuals
16 who appear to be engaged in some type of training based upon
17 their attire as well as it looks like a target for firearms
18 training behind them.

19 Q. And do you recognize any of your subjects in this image?

20 A. (Indicating). This is Mr. Parker.

21 MS. AHMED: And the witness has circled the head of
22 the person on the far left, viewer's left (indicating).

23 THE WITNESS: And this is Mr. Stewart (indicating).

24 MS. AHMED: And the witness has drawn a circle around
25 the head of the individual on the far right.

1 BY MS. AHMED:

2 Q. Now, is this also an image that Mr. Parker shared on his
3 Facebook page?

4 A. Yes.

5 Q. And this is, again, in the video that's Idaho 3% - an
6 Overview; correct?

7 A. Correct.

8 MS. AHMED: Continue to play.

9 (Exhibit 45a published.)

10 Paused at 3 here -- excuse me -- paused at 3:15.

11 BY MS. AHMED:

12 Q. And who is that person in the middle of the scene?

13 A. That's Mr. Parker.

14 Q. And what is he doing? What does he appear to be doing?

15 A. Appears to be engaged in firearms training.

16 Q. And what's he holding in his hand?

17 A. A handgun.

18 MS. AHMED: Continue to play.

19 (Exhibit 45a published.)

20 BY MS. AHMED:

21 Q. And the video ending at 3:20, do you see any of your
22 subjects that you've been investigating in this case in this
23 scene?

24 A. (Indicating).

25 MS. AHMED: And the witness has drawn a circle around

1 an individual who is kneeling second from the right, viewer's
2 right.

3 BY MS. AHMED:

4 Q. Who is that?

5 A. Mr. Parker.

6 Q. And what is he holding?

7 A. A rifle.

8 MS. AHMED: You can take that down. Thank you.

9 BY MS. AHMED:

10 Q. Now, Agent Draper, in the course of your investigation,
11 did you -- you reviewed several Facebook accounts; correct?

12 A. Yes, that's correct.

13 Q. And was there a large volume of pages in those Facebook
14 accounts?

15 A. Yes.

16 Q. And was the volume of information that you reviewed
17 generally voluminous?

18 A. Yes.

19 Q. And did you then create a summary to aid the jury in
20 understanding the -- the documents that you viewed?

21 A. I -- I assisted in that.

22 Q. Did you build upon a summary that had already been made in
23 this case?

24 A. Yes.

25 Q. And admitted in this trial?

1 A. Yes.

2 Q. And then did you add to that summary?

3 A. Yes.

4 MS. AHMED: And, Your Honor, may we publish both to
5 the witness and to counsel what's been marked as Exhibit 189?

6 THE COURT: Yes, you may.

7 (Exhibit 189 published to witness.)

8 BY MS. AHMED:

9 Q. And, Agent Draper, is this the summary that you added to?

10 A. Yes.

11 Q. And specifically, did you add content from the Facebook
12 accounts of Mr. Parker, Mr. Stewart, and Mr. Drexler?

13 A. Yes.

14 Q. And this is a multiple-page document -- summary; correct?

15 A. That's correct.

16 Q. In looking at -- can we go through all the pages?

17 And does this fairly and accurately reflect the
18 summary that you created to assist the jury?

19 A. The one I assisted in creating, yes.

20 MS. AHMED: Your Honor, the Government moves to admit
21 Exhibit 189.

22 (Exhibit 189 offered.)

23 THE COURT: Any objection to 189?

24 MR. TANASI: None from Stewart, Your Honor.

25 MR. MARCHESE: None from Parker.

1 MR. LEVENTHAL: No, Your Honor.

2 MR. PEREZ: No, Your Honor.

3 THE COURT: All right. Exhibit 189 will be admitted.

4 (Exhibit 189 received.)

5 MS. AHMED: May we publish, Your Honor?

6 THE COURT: Yes, you may.

7 (Exhibit 189 published.)

8 BY MS. AHMED:

9 Q. Agent Draper, starting with Page 1 of Exhibit 189, can
10 you -- on the right side, where it has a time, can you start
11 from there and read those entries down the page? First,
12 starting with the date and then those entries.

13 A. Yes, I will.

14 "April 7th, 2014. 9:17 a.m. Ryan Payne calls
15 Cliven Bundy's home phone.

16 "9:30 a.m. Ryan Payne calls Cliven Bundy's cell
17 phone.

18 "12:11 p.m. Ryan Payne calls Cliven Bundy's cell
19 phone.

20 "12:15 p.m. On Facebook, Payne messages
21 Rick Lovelien to call him.

22 "12:16 p.m. Rick Lovelien calls Ryan Payne.

23 "12:30 p.m. On Facebook, Rick Lovelien tells militia
24 leaders 'contact info to coordinate groups. Ryan Payne OMA,
25 406-560-2540. They have made live contact and are setting up

1 security ops.'

2 "8:50 p.m. Payne calls Cliven Bundy's cell phone.

3 "9:57 p.m. On Facebook, Jerry Burkhart messages
4 Carol Bundy, 'Significant units will likely be coming.'"

5 MS. AHMED: Can we turn to the next page.

6 BY MS. AHMED:

7 Q. And can you read the date and then the entries on this
8 page?

9 A. "April 8, 2014.

10 "10:12 a.m. On Facebook, James Lardy messages
11 Rick Lovelien he is going to Nevada with Payne's West Mountain
12 Rangers. Says he is 'going to fight with them' and is 'off to
13 war.'

14 "10:28 a.m. Rick Lovelien calls Ryan Payne.

15 "10:40 a.m. On Facebook, Lovelien messages
16 Ryan Payne. 'Do we have an exact location?'

17 "10:43 a.m. Ryan Payne calls Cliven Bundy's cell
18 phone.

19 "10:53 a.m. On Facebook, Lovelien messages
20 James Lardy. 'We are coordinating our efforts to get all units
21 together when they get there.'

22 "11:22 a.m. On Facebook, Ryan Payne messages
23 Lovelien the coordinates for the Bundy Ranch.

24 "12:01 p.m. Ryan Payne calls Cliven Bundy's home
25 phone."

1 Q. Is that 2:01 p.m.?

2 A. Correction. Yes. "2:01 p.m. Ryan Payne calls
3 Cliven Bundy's home phone.

4 "2:26 p.m. Ryan Payne calls Cliven Bundy's home
5 phone.

6 "8:37 p.m. OMA e-mails mobilization alert to over
7 200 supporters providing directions to the Bundy Ranch."

8 Q. Continuing to the next page. And please read the date and
9 the entries here.

10 A. "April 9, 2014.

11 "6:17 a.m. Ryan Payne calls Cliven Bundy's home
12 phone.

13 "11:08 a.m. On Facebook, Rick Lovelien searches for
14 and 'likes' Operation Mutual Aid's Facebook page.

15 "11:59 a.m. On Facebook, Payne messages Lovelien to
16 'give me a ring ASAP.'

17 "11:59 a.m. Rick Lovelien calls Ryan Payne.

18 "12:18 p.m. On Facebook, Rick Lovelien posts to MTRDF
19 group. 'We are now in direct contact with personnel at the
20 Bundy Ranch. I will be heading out shortly. There was a
21 direct request made by Mr. Bundy.'

22 "12:33 p.m. On Facebook, Carol Bundy issues public
23 status update. 'The Bundy family has requested aid from
24 militia groups including Operation Mutual Aid, 3%ers Club,
25 Freedom Fighters.'

1 "12:34 p.m. On Facebook, Carol Bundy issues a public
2 status update. 'Key Operation Mutual Aid coordinator is here
3 with us now.'

4 "12:36 p.m. On Facebook, Lovelien messages Nick
5 Witting to coordinate travel.

6 "Late afternoon. Las Vegas Review Journal releases
7 article and video of Ryan Payne, 'Militias mobilizing to
8 support embattled Clark County rancher and clash with federal
9 rangers.'

10 "7:40 p.m. Lovelien calls Nick Witting from Missoula
11 cell tower."

12 Q. Continuing to the next page. And please read the date and
13 the entries here.

14 A. "April 10th, 2014.

15 "1:55 a.m. OMA issues objectives via e-mail and
16 Facebook status update. 'In cohesion with Cliven Bundy.'
17 Objectives include 'return to Mr. Bundy's ranch the mounting
18 number of cattle which have been confiscated by BLM agents.'

19 "2:02 a.m. On Facebook, Rick Lovelien's sister,
20 Cheyenne Miller, posts OMA's 'objectives' to MD -- MTRDF Group.
21 Received in Payne's e-mail.

22 "9:31 a.m. Mountain time. On Facebook, Eric Parker
23 shares public link to Las Vegas Review Journal" -- LVRJ --
24 "article and video of Ryan Payne entitled 'Militias mobilizing
25 to support embattled Clark County rancher in clash in federal

1 rangers.'

2 "9:48 a.m. Now in Nevada, Rick Lovelien calls
3 Ryan Payne.

4 "11:00 a.m. On Facebook, Cheyenne Miller posts to
5 MTFDF group. Rick Lovelien is -- correction -- Rick Lovelien
6 'is on site at the Bundy Ranch.'

7 "12:24 p.m. On Facebook, Ryan Payne messages Texas
8 Militia leader, 'Montana has most guys. Utah, Nevada,
9 unorganized. Idaho, many more en route. I am designated
10 liaison for militia via Cliven Bundy. All information
11 disseminated is vetted by him.'

12 "3:30 p.m., approximately. Bundy Ranch Facebook
13 posts, 'Attention all militia groups, the Bundy family has a
14 militia coordinator. His name is Ryan Payne.'"

15 Q. Continuing to the next page. Can you read the date and
16 also the entries on this page.

17 A. "April 11th, 2014.

18 "10:22 a.m. On Facebook, Cheyenne Miller tells MTFDF
19 group Rick Lovelien is 'running the security detail at the
20 protest site on the Bundy Ranch.'

21 "6:38 p.m. Mountain. On Facebook, Parker publicly
22 shares article 'Armed militias head to Nevada ranch as populist
23 showdown with federal government teeters on brink of violence
24 bloodshed.'

25 "7:30 p.m., approximately. On Facebook, 'We support

1 Cliven Bundy' page posts Bundy's cattle will be taken to the
2 Euclid stockyards and gives contact phone number.

3 "7:36 p.m. Eric Parker makes telephone calls to
4 Euclid stockyards. Parker's telephone is using a Nevada cell
5 tower at that point.

6 "8:34 or 9:34 p.m. Mountain or Pacific. Eric Parker
7 sends message to 'Support Cliven Bundy Facebook page' stating,
8 'We are going to be showing up late tonight. Is that okay, at
9 around 11:30?'"

10 Q. Continuing to the next page. And can you read the date on
11 this page as well as the entries on this page?

12 A. "April 12th" -- correction. Yes. "April 12th, 2014.

13 "7:32 a.m. Ryan Payne calls Cliven Bundy's home
14 telephone.

15 "9:40 p.m., approximately. Cliven Bundy meets
16 Sheriff Gillespie on stage and tells him to disarm federal
17 agents in one hour.

18 "11 o'clock a.m., approximately. Cliven Bundy speaks
19 to crowd, including Payne, Lovelien, Parker, Stewart and
20 Drexler, about shutting down the freeway and going to get the
21 cattle.

22 "11:24 a.m. On Facebook, Eric Parker posts status
23 update. 'Bundy gave the sheriff one hour to disarm the BLM.
24 He did not reply. We are now going to free the cattle by any
25 means. The sheriff claimed that the BLM is standing down, but

1 offered no proof. This is when Mr. Bundy gave him the
2 do-it-or-else. We will not be lied to.'

3 "12:58 p.m. On Facebook, Steven Stewart posts status
4 update. 'It's been a long day. What's up why I have a little
5 earlier with a really high powered scope show me F*****
6 awesome.'

7 "1:02 p.m. On Facebook, Steven Stewart posts status
8 update. 'First they said they were going to release everything
9 and leave. Then they held the gates to Gold Butte and
10 threatened us with chemicals. Then we pushed forward and they
11 had to back off. They are releasing the cows now. BLM is
12 leaving.'

13 "2:59 p.m. On Facebook, Eric Parker posts status
14 update. 'We have happy cows' -- correction. 'We have cows.
15 Happy cows. Free cows. American cows raised in an open range
16 not a cage.'

17 "4:07 p.m. Eric Parker sends Facebook message. 'It
18 took a standoff,' after being asked if the feds got scared when
19 he got there and backed off.

20 "April 17th, 2014.

21 "5:09 p.m. Mountain time. Scott Drexler posts a
22 message on Facebook regarding a picture of Drexler on the
23 bridge on April 12th, 2014. In response to a comment that
24 bridges are choke points, Drexler responded, 'That's why we use
25 them to shut down the freeway.'"

1 MS. AHMED: Thank you, Agent Draper.

2 Your Honor, I have nothing further on direct. I'll
3 pass the witness.

4 THE COURT: Cross?

5 MR. TANASI: Thank you, Your Honor.

6

7 CROSS-EXAMINATION OF SARAH DRAPER

8 BY MR. TANASI:

9 Q. Good afternoon, Special Agent Draper.

10 A. Good afternoon.

11 Q. I'm Rich Tanasi. I represent Steven Stewart (indicating).

12 A. Thank you.

13 Q. I have a few questions for you on cross. Okay?

14 A. Very good.

15 Q. All right. You testified on direct exam regarding a
16 video -- it was Exhibit 119 -- taken by Steven Stewart.

17 Do you recall that?

18 A. Yes.

19 Q. Okay. And do you recall that in that video Mr. Stewart
20 was on the northbound bridge. Fair?

21 A. He was on the bridge. I don't know what direction the
22 traffic was.

23 Q. Okay. He was on a bridge?

24 A. Correct.

25 Q. In a bridge in Bunkerville; correct?

1 A. Correct, yes.

2 Q. All right. And traffic at that point was actually driving
3 past him; right?

4 A. Yes.

5 Q. Okay. And some of that traffic was BLM --

6 A. Correct.

7 Q. -- folks; right?

8 A. Yes.

9 Q. And so that was the point in the day where the BLM was
10 driving away; correct?

11 A. Correct.

12 Q. All right. And in that video, my client was making
13 different comments; right?

14 A. Yes.

15 Q. Okay. Mr. Stewart was saying things to the effect of they
16 threatened us with chemicals to back down; correct?

17 A. Yes.

18 Q. But we pushed forward; correct?

19 A. Correct.

20 Q. Okay. They couldn't gas us?

21 A. Correct.

22 Q. Correct?

23 We were going to be martyrs if they wanted to
24 continue this; correct?

25 A. Correct.

1 Q. All right. Now, you are a trained law enforcement agent;
2 correct?

3 A. Correct.

4 Q. How many years of training do you have?

5 A. Training -- years of training or years of experience?

6 Q. Years of training to start.

7 A. Probably -- years of training total in my career? I'm
8 sorry. I don't know how to answer that question.

9 Q. Sure.

10 How many hours of training would you --

11 A. Oh . . . straight training, initially four to five months
12 and then many hours a year thereafter.

13 Q. Okay. And as part of that training, isn't it true you're
14 trained, at least in part, to identify threats?

15 A. Yes.

16 Q. Okay. You're also trained to identify violence?

17 A. Correct.

18 Q. Okay. Now, wouldn't you agree with me that in that
19 statement that we heard from Mr. Stewart, he didn't appear like
20 he was threatening anybody at that time; correct?

21 A. At that time, no.

22 MS. AHMED: Objection. Calls for speculation.

23 MR. TANASI: Your Honor, she's laid out her
24 ability --

25 MS. AHMED: Also calls for a legal conclusion. I

1 apologize for speaking over counsel. Also calls for a legal
2 conclusion.

3 MR. TANASI: Your Honor, she's laid out her ability
4 as a law enforcement agent to identify threats and to identify
5 violence.

6 THE COURT: The second objection is that it's calling
7 for a legal conclusion which is ultimately up to the jury to
8 decide.

9 MR. TANASI: Again, threatening behavior, Your Honor.
10 I'm not asking her to conclude whether a threat occurred in the
11 case or not.

12 THE COURT: Let's go to sidebar.

13 (Proceedings at sidebar out of the hearing of the jury:)

14 THE COURT: All right. So the objection was by the
15 Government. The question was whether this line of questioning
16 is calling for legal conclusion from the witness.

17 MR. TANASI: Yes, ma'am. And I was saying --

18 THE COURT: Go ahead, Mr. Tanasi. I called the
19 sidebar because I didn't want to limit your ability to
20 respond --

21 MR. TANASI: I understand.

22 THE COURT: -- to the objection because we were in
23 front of the jury.

24 MR. TANASI: Understood.

25 THE COURT: So now you're free to go ahead.

1 MR. TANASI: Thank you.

2 I would say that it doesn't call for a legal
3 conclusion because I'm not asking her to go to that -- that end
4 to say in this case, did Mr. Stewart threaten anybody. I'm not
5 asking her to go that far. I'm saying in this instance, as
6 he's videotaping the BLM drive by, on the videotape, is he
7 threatening in any way? His behavior, is it threatening in any
8 way as a characteristic of his behavior. And my next question
9 was whether it sounded violent in any way and violence -- which
10 I didn't get to yet, but that's where I was getting next --
11 also doesn't call for a legal conclusion. It's his behavior
12 and her trained law enforcement experience. Did it sound like
13 or appear to her that it was threatening or violent in that
14 time frame, not overall in the case.

15 MS. AHMED: Your Honor, we would re- -- reiterate our
16 objection that it calls -- it is calling for a legal
17 conclusion. You're asking if someone's making a threat.
18 That's a question that is for the jury. Also, it's asking her
19 for her opinion about these things and she's not indicated that
20 she's in any way qualified to make expert opinions about a
21 video that she observed. She's not a percipient witness. She
22 wasn't there that day. She didn't observe his behavior and his
23 context in full. Her -- I don't know how much her objection --
24 her -- excuse me -- her investigation into that day would allow
25 her to weigh in on this question and again, she's not a

1 percipient witness. She wasn't a victim. She wasn't present
2 that day, and it is ultimately calling her -- asking her to
3 make an opinion about things that she's not qualified to do.

4 MR. TANASI: On the qualifications, Your Honor, if I
5 can just be heard.

6 On the qualifications argument, she testified to the
7 two questions that I asked her prior as a trained law
8 enforcement expert or trained law enforcement individual -- not
9 expert, but trained law enforcement individual -- she's been
10 trained to identify threats and violence.

11 MS. AHMED: Your Honor, may I just add one more
12 thing? It's also -- I would say that in terms of the
13 threatening and the violence, it's not relevant because at this
14 point it's clear that the BLM has already backed down and
15 they're leaving. He's, if anything, celebratory, so it's an
16 irrelevant question.

17 MR. TANASI: Your Honor --

18 THE COURT: So, the charge relating to the threat,
19 the assault, is not the leaving of the BLM or the portion of
20 the -- I think she called it -- somebody called it a convoy --
21 the portion that we're looking at in the video where the BLM is
22 leaving. So you're saying that that is not the assault, so
23 it's confusing to the jury --

24 MS. AHMED: It is confusing to the jury.

25 THE COURT: -- what is the threat or the assaulting

1 behavior that the Government is alleging?

2 MS. AHMED: Correct.

3 THE COURT: All right. Well, I agree that it's a
4 legal conclusion and as far as her ability or her expertise,
5 she said she is, but I don't know that there's a foundation
6 actually for me to find that she is. Perhaps it's not
7 necessary for me to even make that kind of a call. I mean,
8 certainly there's not enough information for me to say that she
9 is.

10 I -- I thought that it was very misleading for the
11 jury, so -- and confusing to them as well. So, I'm going to
12 sustain the objection.

13 MR. TANASI: Okay. And does that also go for the
14 questions that I had coming up, I guess, essentially with
15 respect to whether he sounded violent in that statement in that
16 moment? Where, in the last trial, she indicated, no, he did
17 not.

18 MS. AHMED: Your Honor, we would make the same
19 objection to that line of questioning for the same reasons that
20 we just argued and in that -- and just so the record is clear,
21 in the last trial Mr. Tanasi gave her two options and said, is
22 it this or is this and she said if I have to choose between
23 those two options, I would say it's not. The question here
24 today is slightly different. It's just, generally, is this a
25 threat? Is this violent?

1 MR. TANASI: I can ask it the exact way as I did in
2 the last trial, Your Honor.

3 MS. AHMED: Again, Your Honor, ultimately we'd make
4 the same objections, that it's confusing, it's irrelevant, it's
5 after the BLM's already left and been backed down and, so, it's
6 therefore, irrelevant and also asking for an opinion.

7 THE COURT: Well, I agree it seems irrelevant.
8 Violence is not an element that's charged to have taken place
9 during the exit of the BLM, at least not in this video, not on
10 the bridge. I'm not sure -- I'm trying to remember if there
11 was -- I think in the other trial if they said something or not
12 about the -- the property that was still there, if it was --
13 something happened to it or not, but in any case, it's not part
14 of the charge, even if there was some kind of vandalism or
15 something that happened to any of the assets. So I don't see
16 that it's relevant. It's confusing for the jury. It's still
17 . . . not clear to me that she's really qualified in the sense
18 that the Court would need to qualify her to be able to make
19 that opinion.

20 MR. TANASI: If I could just add one more thing for
21 the record.

22 My understanding of the Government's theory is, and
23 this is in response to when we make the argument that the
24 operation was over, what they -- the Government has proffered
25 is that the operation wasn't over because part of the operation

1 was the BLM securing the cattle or realizing they couldn't
2 secure the cattle and ultimately leaving. The whole BLM
3 operation, as we've tried to argue, is not over and the
4 Government extends that to keep us from getting into the
5 argument that the operation was over. And so, in this instance
6 I'm saying that the operation, under the Government's theory --

7 THE COURT: I think you misrepresent what the
8 Government's position is, first of all. My understanding of
9 the Government's position is that the -- the roundup, the
10 trapping of the cattle, that portion of the operation was over,
11 but that the cattle that had already been trapped and tagged
12 and penned were still property of the U.S. government and that
13 they did not ever cease that portion of the operation; they
14 still intended on transporting them to the auction and selling
15 them.

16 MR. TANASI: Well, what I'm -- what I'm offering
17 though, Your Honor, is as the BLM is driving away, they're
18 still acting in their official duties, in their official
19 capacities driving away and the Government has extended that
20 umbrella to include what is happening right now in the video,
21 which is the government driving away. The BLM's operation has
22 been extended till today, essentially. And so, I'm saying that
23 that driving away is just a part of that operation that the
24 Government's alleging my client obstructed or threatened or
25 otherwise assaulted them.

1 THE COURT: That the Government's operation is
2 extended until today?

3 MR. TANASI: Under the conspiracy theory.

4 THE COURT: No. I think it's till March of 2016 was
5 the conspiracy charge.

6 MS. AHMED: That's correct, Your Honor.

7 MR. TANASI: To the date of the -- that's correct.

8 MS. AHMED: But in any event, the -- the way in which
9 they left and when they left, it was not -- we're not saying
10 that that's a part of the operation because clearly, they left
11 under duress and not as they had planned with the cattle. So,
12 I -- I don't know if I'm just not following the argument, but
13 that -- we're not saying that their departure at that time
14 that's depicted in the video was a part of the operation,
15 ongoing operation; they left in spite of the operation under
16 duress.

17 THE COURT: So, did you have a motion? I think I
18 lost track of where this started.

19 MR. TANASI: Yeah. No. Where I was going is that
20 what -- that's why it's relevant. I might have lost track for
21 a second, too, but that's why I believe the line of questioning
22 is relevant, because the Government has extended the operation
23 through just being in the wash until the end of the conspiracy,
24 essentially, and especially with that portion of them driving
25 away. They're acting in their official duties, in their

1 official capacity, which they allege is -- our clients have
2 obstructed them while they've been acting in their official
3 duties.

4 THE COURT: Okay. So I think you're confusing and
5 conflating operation with conspiracy. The acts of the
6 conspiracy versus the operation itself.

7 So I -- I understand, and for the record, I think
8 you've clarified it as much as we can --

9 MR. TANASI: Understood.

10 THE COURT: -- outside the presence of the jury so
11 that you could speak more freely.

12 The ruling stands.

13 MR. TANASI: Understood. I'll move on. Thank you.

14 (Proceedings within hearing of the jury:)

15 THE COURT: All right. So the objection was
16 sustained.

17 Go ahead and move on, Mr. Tanasi.

18 MR. TANASI: Thank you, Your Honor.

19 Brian, if you could please publish for the jury
20 Exhibit 95.

21 (Exhibit 95 published.)

22 BY MR. TANASI:

23 Q. All right. Okay. Ma'am, do you see Exhibit 95?

24 A. Yes, I do.

25 Q. All right. With respect to Exhibit 95, this isn't

1 something you testified about today; correct?

2 A. Not today.

3 Q. This particular exhibit, this was earlier this week;
4 correct?

5 A. Correct.

6 Q. All right. So I just want to take you back there.

7 This particular post, it indicates that
8 "Steven Stewart had relayed to me what was going on through
9 binoculars"; correct?

10 A. Yes.

11 Q. Okay. So this post indicates that Steven Stewart had
12 binoculars; correct?

13 A. That's what it says, yes.

14 Q. Okay. And this was posted on September 19 -- or
15 September 16th, 2014; correct?

16 A. Correct.

17 Q. Okay. And the events in Bunkerville, this took place in
18 April of 2014; correct?

19 A. That's correct.

20 Q. All right. So this is some months after. Fair? Five?

21 A. Yes, five. Yes.

22 Q. Okay. All right. All right. So, in this particular
23 post, you can't tell from this post where Mr. Parker or
24 Mr. Stewart were located when they were describing this post;
25 right?

1 A. Not that specific sentence, but the context indicates to
2 me.

3 Q. I understand.

4 A. Yeah.

5 Q. And it indicates to you, from what I understand of your
6 testimony, is that it's sometime or someplace in Bunkerville on
7 the 12th; right?

8 A. Yes.

9 Q. Okay. But drilling down further, from this particular
10 post, fair to say you don't know where exactly that took place;
11 right? You don't know whether it's Post 1. Fair?

12 A. I'm sorry. I don't know whether it's what?

13 Q. You don't know whether it's Post 1 in Bunkerville; right?

14 A. Can you familiarize me, please, with Post 1?

15 Q. Okay. Are you familiar with the wash in Bunkerville?

16 A. Yes.

17 Q. Okay. Are you familiar with the northbound and the
18 southbound bridge in Bunkerville?

19 A. Okay. Correct. Yes.

20 Q. All right. And you're familiar with the BLM erecting a
21 Post 1; correct?

22 A. Yes. Okay.

23 Q. And Post 2?

24 A. Right. Okay.

25 Q. And then across from the Post 1, you're familiar in your

1 investigation with the parking lot; correct?

2 A. Yes.

3 Q. All right. So, you, from this post, fair to say, can't
4 determine, through your investigation, where they were standing
5 when they're talking about this particular set of binoculars;
6 correct?

7 A. From -- from that sentence, that's correct.

8 Q. Okay.

9 MR. TANASI: All right. Brian, if you could please
10 bring up Number 96.

11 (Exhibit 96 published.)

12 Actually, strike that, Brian. I apologize.

13 Number 97.

14 (Exhibit 97 published.)

15 BY MR. TANASI:

16 Q. Okay. Talked about this post today; correct?

17 A. Yesterday.

18 Q. All right.

19 A. Yes, yesterday.

20 Q. Fair to say this is not Steven Stewart; right?

21 A. Correct.

22 Q. All right.

23 MR. TANASI: And now if we can go to 105, please,
24 Brian.

25 (Exhibit 105 published.)

1 BY MR. TANASI:

2 Q. All right. In this particular picture, do you see what
3 I'm circling here (indicating)?

4 A. Yes.

5 Q. Okay. What does that appear to be?

6 A. Appears to be the barrel of some type of rifle.

7 Q. All right. And that rifle's sitting there without anyone
8 holding it; correct?

9 A. Correct.

10 Q. All right.

11 MR. TANASI: If you could, please, Brian, bring up
12 118.

13 (Exhibit 118 published.)

14 MR. TANASI: All right. Actually, if we can just
15 take a look at the picture, please, Brian.

16 BY MR. TANASI:

17 Q. All right. So in this particular picture, this is a
18 picture of the wash; right?

19 A. Yes.

20 Q. In between the northbound and the southbound bridge;
21 correct?

22 A. Correct.

23 Q. All right. And over here (indicating), this is the gate
24 that was underneath the wash; right?

25 A. Yes.

1 Q. All right. And back here (indicating), who does that
2 appear to be?

3 A. Appear to be BLM vehicles.

4 Q. Okay. In this particular post -- Brian, if you could
5 scroll down, please, so we can take a look at what time -- what
6 time was this particular post made?

7 A. So this would have been uploaded -- I don't know what time
8 it was taken -- but it would have been uploaded April 12th,
9 2014, at approximately 1:33 p.m. Pacific time.

10 Q. Okay. Now -- go ahead, Brian. You can take that down --
11 today we've heard testimony concerning Sugar Pine operation;
12 right?

13 A. Yes.

14 Q. And that took place at some point after April 12th, 2014;
15 right?

16 A. Correct.

17 Q. All right. And we also, or interchangeably, that Sugar
18 Pine also was referred to as the Gold Rush.

19 Is that fair?

20 A. Correct.

21 Q. All right. So that's one and the same --

22 A. Correct, yes.

23 Q. -- when we talk about the operations?

24 All right. Okay. Through the course of your
25 investigation you didn't determine or learn anything that lent

1 itself to believe that Mr. Stewart was at all involved with
2 Sugar Pine or Gold Rush; correct?

3 A. Correct.

4 Q. All right. And then we also talked about an Operation Big
5 Sky.

6 Do you remember that?

7 A. Correct.

8 Q. All right. And same question. Through the course of your
9 investigation, you didn't learn anything that would lend itself
10 to Mr. Stewart's involvement in the Operation Big Sky; correct?

11 A. Correct.

12 Q. All right.

13 MR. TANASI: Brian, if you could bring up 189,
14 please.

15 (Exhibit 189 published.)

16 BY MR. TANASI:

17 Q. All right. So, going through this again, ma'am, on the
18 first page that we're looking at, there is nothing on the
19 right, when we go through that time line, that involves
20 Steven Stewart; correct?

21 A. Correct.

22 MR. TANASI: All right. Brian, if we can go to the
23 next page.

24 BY MR. TANASI:

25 Q. Same question. On April 8th, 2014, there's no

1 communication on the right that involves Steven Stewart;
2 correct?

3 A. Correct.

4 Q. All right.

5 MR. TANASI: If we can take it with the next page,
6 please, Brian.

7 BY MR. TANASI:

8 Q. Again, nothing on the lines in that time line that
9 involves Steven Stewart; correct?

10 A. Correct.

11 MR. TANASI: All right. If we can go to the next
12 page, please, Brian.

13 BY MR. TANASI:

14 Q. April 10th, 2014. Nothing on this particular page with
15 this time line that involves Steven Stewart; correct?

16 A. Correct.

17 Q. All right.

18 MR. TANASI: And if we can go to the next page,
19 please, Brian.

20 BY MR. TANASI:

21 Q. All right. The time line entry on the bottom right-hand
22 corner, the 8:34, 9:34.

23 Do you see that there?

24 A. Yes, I do.

25 Q. All right. That says, "We are going to be showing up late

1 tonight"; correct?

2 A. That's correct.

3 Q. And it says, "Is that okay, at around 11:30"; correct?

4 A. Yes, that's correct.

5 Q. All right. So, fair to say that's Eric Parker indicating
6 he's going to be showing up somewhere around 11:30 that
7 evening?

8 A. Yes. That's fair to say.

9 Q. And there's a "we" there; right?

10 A. A "we."

11 Q. But it says 11:30; right?

12 A. Yes. Yes.

13 Q. All right. All right.

14 MR. TANASI: Brian, if you could bring up 120,
15 please.

16 (Exhibit 120 published.)

17 BY MR. TANASI:

18 Q. Okay. This particular post, this is from Steven Stewart;
19 correct?

20 A. That's correct.

21 Q. Okay. He indicated he went -- helped Cliven Bundy get his
22 cattle back; right?

23 A. Yes.

24 Q. Okay. He says, "Straight there, straight back, two
25 hours"; right?

1 A. He says, "two hours of sleep in between," correct.

2 Q. "Two hours of sleep in between"; correct?

3 A. Yes. Um-hmm. That's what he says.

4 Q. Okay.

5 MR. TANASI: Brian, take that down.

6 121, please, Brian.

7 (Exhibit 121 published.)

8 BY MR. TANASI:

9 Q. All right. This particular post regarding the
10 Honorable Judge Lloyd D. George, do you see that there?

11 A. Yes.

12 Q. All right. The date on that post is April 15th, 2014;
13 correct?

14 A. Correct.

15 Q. All right. And that's three days after the events in
16 Bunkerville; right?

17 A. Yes.

18 Q. Okay. Thank you.

19 MR. TANASI: Brian, could we just go back to 189 for
20 a moment.

21 Go to the last page, please.

22 (Exhibit 189 published.)

23 BY MR. TANASI:

24 Q. All right. You see the 12:58 entry?

25 A. Yes, I do.

1 Q. Okay. And -- and that is a post from Steven Stewart where
2 he says, "It's been a long day. What's up why I have a little
3 earlier with a really high powered scope. Show me F*****
4 awesome"; right?

5 A. Right.

6 Q. All right. So, he's indicating in that post that somebody
7 showed him a high powered scope. Fair?

8 MS. AHMED: Objection. Calls for speculation.

9 THE COURT: She can answer the question, if -- if she
10 knows. If she has personal knowledge.

11 THE WITNESS: I -- I don't interpret that statement
12 that way.

13 BY MR. TANASI:

14 Q. You don't?

15 A. No.

16 Q. Okay. But he used the word "show"; right? "Show me the
17 scope." Fair?

18 MS. AHMED: Objection. Misstates the -- it doesn't
19 say "show me the scope."

20 BY MR. TANASI:

21 Q. Again, "What's up" --

22 THE COURT: You want to just rephrase the question?

23 MR. TANASI: I can -- I can do that. I apologize.

24 I'll just read it just like it is to make sure we're on the
25 same page. "What's up why I have a little earlier with a

1 really high powered scope. Show me F*** awesome"; right.

2 THE WITNESS: Those are the words, but that's not my
3 interpretation.

4 BY MR. TANASI:

5 Q. That's not your interpretation?

6 A. No.

7 Q. How do you interpret it?

8 A. I read this, I believe that there's a mistake in the
9 initial word and some missing -- one of the initial words and
10 some missing punctuation.

11 Q. Where is that?

12 A. The word -- excuse me. Sorry. The word "have." This
13 would make sense if it said, "I was a little earlier with a
14 really high powered scope" -- then some type of comma or some
15 type of punctuation -- "show me F awesome."

16 Q. Okay.

17 A. That's how I would interpret that, but that's not what the
18 words say.

19 Q. Understood.

20 Prior to today's testimony, have you had an
21 opportunity to meet with the U.S. Attorney's Office?

22 A. Yes, I have.

23 Q. How many times?

24 A. Total, probably nine or 10.

25 Q. Nine or 10 times?

1 A. Um-hmm.

2 MR. TANASI: Okay. Thank you.

3 Pass the witness.

4 THE WITNESS: Thank you.

5 THE COURT: All right. Well, let's go ahead and take
6 our overnight break.

7 Aaron, are we back at 9:00 tomorrow?

8 COURTROOM ADMINISTRATOR: 10 o'clock, Your Honor.

9 THE COURT: 10:00 again?

10 All right. So tomorrow we'll be starting again at
11 10 o'clock.

12 I do remind the jury during this overnight break that
13 you are not to speak about this case with anyone. Not to your
14 spouse, employer, neighbors, friends, family. You can tell
15 them, yes, we're still in trial. Yes, I'm still a juror. It's
16 not over yet, but please do not talk to them about the case at
17 all.

18 Also, please do not read or listen to or view
19 anything that touches upon this case in any way nor attempt to
20 perform any research or independent investigation. If you do
21 have a question, please write them down on the forms provided.

22 And do not form any opinion until after you have
23 heard all the testimony, reviewed the evidence. We will
24 provide you -- I will provide you with the jury instructions
25 that are the legal instructions that will guide you. You will

1 apply to them the facts as you find them, and then you will
2 hear closing arguments. After closing arguments, then I'll
3 excuse you to begin your deliberation process. You recall when
4 you took your oath that's a duty, your duty to deliberate. So
5 that's the duty to discuss your opinions with each other and
6 attempt to reach a verdict.

7 So, at this time we'll go ahead and excuse our jury
8 and welcome them back at 10:00 a.m.

9 And so we also want Ms. Draper to return at
10 10:00 a.m.; is that right?

11 MS. AHMED: Yes, Your Honor.

12 THE COURT: Yes?

13 All right. So --

14 THE WITNESS: Yes.

15 THE COURT: Thank you.

16 So the jury is free to leave and then Special Agent
17 Draper, if you'll please return again tomorrow at 10:00 a.m. so
18 we can begin where we left off with cross.

19 THE WITNESS: Okay. Thank you.

20 (Jury excused from courtroom.)

21 THE COURT: All right. Off the record.

22 MR. LEVENTHAL: Your Honor, before we go off record,
23 can I just make a record real quick while we're here? I didn't
24 want to do it at sidebar because it was sort of out of context.

25 THE COURT: Go ahead.

1 MR. LEVENTHAL: The Government --

2 THE COURT: You may be excused --

3 THE WITNESS: Thank you, Your Honor.

4 THE COURT: -- Agent Draper. That's fine.

5 (Witness excused.)

6 THE COURT: We can all sit down, or if you're tired
7 of sitting and you want to stand, that's okay too, but . . .

8 MR. LEVENTHAL: The Government elicited testimony
9 today regarding Timothy McVeigh and it was more in the line --
10 the line of what had -- was written on Mr. Parker's Facebook
11 that had zero to do with my client, but it went even further
12 than that, it went deeper in terms of they elicited from
13 Sarah Draper who was Timothy McVeigh and not only that, but
14 what he did. All it said was McVeigh and based on that,
15 McVeigh, they elicited from that witness that it was
16 Timothy McVeigh, that he was a bomber, that he bombed a
17 building, that he -- they went through a litany of different
18 things that Timothy McVeigh did, somehow comparing
19 Timothy McVeigh to these individuals here.

20 I would also couple that with testimony that they
21 elicited from a BLM agent that indicated that what they were
22 doing was like what terrorists in Afghanistan, I believe is
23 what he said, did when he saw them up on the bridge. We
24 objected to that and we objected to this.

25 That is highly prejudicial, way more prejudicial than

1 just reading -- which is what I thought was going to happen
2 when the Court allowed it to come in -- reading McVeigh and
3 then on. But to go into deeper details than that, I think
4 that's so prejudicial, I don't think we can erase that from the
5 minds of the jury so at this point, I would be asking for
6 either a mistrial, one, a limiting instruction, two, that it
7 doesn't come in on Mr. Drexler, because he had nothing to do
8 with that post, he was not tagged on it. He -- there's no
9 inference that he read it or knew about it or anything of that
10 nature, but to elicit that kind of testimony, I think it calls
11 for a mistrial or at the least, at the very minimum, a limiting
12 instruction saying that it does not come in under -- for -- for
13 Mr. Drexler. That's -- that would be my motion.

14 THE COURT: All right. Well, I did give a limiting
15 instruction as to what purpose the information could be
16 considered, for intent, motive, and absence of mistake.

17 What's the Government's response?

18 MS. AHMED: Your Honor, just to clear the record.
19 There was not a lengthy line of questioning on this point. The
20 con- -- the post indicated that -- was speaking about McVeigh
21 and it referenced that he was set up by the federal -- by the
22 FBI and that he got himself caught and set the movement back.
23 And so, to give context to that post, I asked the witness who
24 Mr. McVeigh was and she explained who he was and said his name
25 and that he was the Oklahoma City bomber. And so, Your Honor,

1 that's -- that doesn't -- certainly is not so overly
2 prejudicial.

3 As the Court indicated earlier, these posts are
4 prejudicial, which is why we're putting them in; they're not
5 unfairly prejudicial. And since the post was invoking his
6 actions and referencing his actions and comparing his actions,
7 it was relevant information and it was, again, not overly
8 prejudicial and certainly doesn't rise to the level of a
9 mistrial. And as the Court indicated, therefore already a
10 limiting instruction given in this case on that particular
11 post.

12 So -- and in terms of Mr. Leventhal's further points,
13 those are all clearly things that he could cross-examine the
14 witness on to establish that that's not Mr. Drexler's post, he
15 didn't write those words, et cetera.

16 So, again, Your Honor, consistent with the Court's
17 earlier rulings, Mr. Leventhal can elicit that same information
18 through cross-examination. It certainly isn't something that
19 he can't clear up and it doesn't call for a mistrial.

20 (Counsel conferring.)

21 MR. MARCHESE: And, Your Honor, and just for the
22 record, Parker would join Mr. Drexler's motion. Obviously, we
23 had a long colloquy yesterday in reference to this post coming
24 in and our -- my feelings in reference to Timothy McVeigh and
25 that he's an overly prejudicial individual so just the post

1 itself, I felt, was overly prejudicial and then to somehow
2 qualify it by who is Timothy McVeigh and somehow add fuel to
3 the fire and getting more information about Mr. McVeigh out at
4 this trial, I think Mr. Drexler is right in bringing this
5 motion and we join.

6 THE COURT: All right. Well, in regards to the --

7 MR. TANASI: Stewart joins.

8 THE COURT: -- words, they were invoked by Mr. Parker
9 in the post. He's the one who has the name McVeigh in the
10 post. He's using that name and its connotation to explain and
11 express his disappointment with the failure of McVeigh and the
12 distinction between his actions and -- by his I mean -- so, the
13 difference between McVeigh's actions or failures and the
14 successes that he, Mr. Parker, completed. So, I think that the
15 . . . it's clearly relevant and admissible against Mr. Parker.
16 I think the bigger question, and the point that Mr. Leventhal
17 is trying to make, is whether or not the spillover effect, as
18 Mr. Tanasi usually brings up -- to give you credit for bringing
19 that up -- but, is the spillover effect, if any, even though it
20 is a co-conspirator statement, is it, you know, so prejudicial
21 that it cannot simply be cured on cross-examination with the
22 other individuals. The Court has found that the statement was
23 provided during the conspiracy, in furtherance of the
24 conspiracy, as part of the conspiracy, recruitment,
25 glorification, encouraging others and so forth.

1 So, if you'll respond to that portion, I think,
2 Ms. Ahmed, I think that's the . . . the only thing that I think
3 you didn't mention.

4 MS. AHMED: Your Honor, that's exactly it. The post
5 ends with that's -- you know, essentially that's what I've done
6 so either get active or shut up. And so, again, it's -- these
7 are the things that we did. He claims that they were
8 successful and describes how they were successful and it's all
9 in the context of furthering this movement in a positive way.
10 And so, again, it -- he is specifically referencing the
11 April 12th, 2014, event in Nevada as well as the other two
12 operations. And so, it's that same continuing conspiracy in
13 which they are glorifying and recruiting others as the Court
14 referenced. And so, it would be admissible as to all of these
15 defendants under 801(d)(2)(E).

16 MR. PEREZ: And, Your Honor, just for the record, on
17 behalf of Mr. Lovelien, I would join in Mr. Leventhal's motion
18 and his objection. I mean, I've said numerous times, I mean,
19 none of this has anything to do with Mr. Lovelien. He's not a
20 3%er. And so, just for the record, I'm making that objection.

21 MR. LEVENTHAL: And going back to whether or not I
22 can clean up on cross-examination --

23 THE COURT: All right. Well, I'm -- I'm going to
24 deny your Motion for a Mistrial and deny your motion for a more
25 limiting or clarifying instruction until after

1 cross-examination. So, it's denied without prejudice. You can
2 re-raise it and furthermore, if you have some case law that you
3 want me to look at, I'll look at that as well.

4 I think we're kind of stuck with the problem of it
5 being a co-conspirator statement, but I understand your concern
6 and I think that it's a reasonable objection to make. So, with
7 that, I'll -- I -- it's denied, but without prejudice. You may
8 re-raise it after we've had an opportunity to cross and you can
9 see if you can find some other cases that -- or any other
10 information that might be more -- that might guide this -- this
11 discussion more so than just talking about the facts. I think
12 we're all familiar with the facts; the problem is, how does the
13 law treat this type of situation. And it looks like there is a
14 disadvantage to being a co-conspirator during a conspiracy when
15 some conspirators are saying certain things and the
16 admissibility of those things with other defendants. So, it's
17 not the spillover that we see in the other situations where
18 after arrest, a person makes a statement that inculcates maybe
19 himself or one of the co-defendants. Then you have more of an
20 issue of whether or not that information should be cleaned up
21 or clarified or sanitized in some way so that there isn't a
22 spillover. That's not what's happening here. This isn't after
23 the conspiracy, it's during the conspiracy. So it falls into
24 that 801(d)(2)(E) realm. It's a different legal analysis.

25 So, let's --

1 MR. LEVENTHAL: Your Honor --

2 THE COURT: -- sleep on it and see if it's clear in
3 the morning or after cross-examination and do some research.

4 MR. LEVENTHAL: Just briefly.

5 I'm not sure how I'm going to cross-examine a witness
6 that just testified and I usually would not touch that on
7 cross-examination.

8 THE COURT: Well, you don't have to. I'm not -- I'm
9 not saying that you have to, but I -- I think maybe if we . . .
10 if you look into it, maybe it will be more clear. I think
11 you're -- I can't tell you what to do, but --

12 MR. LEVENTHAL: No. I appreciate that.

13 THE COURT: -- you can see that I'm struggling with
14 that.

15 MR. LEVENTHAL: Well, I don't need guidance from the
16 Court to tell me what to do. I understand what I need to do
17 and that's why I'm making this motion. And -- and as it sat,
18 if it was just reading, as this witness did on almost all of
19 the other e-mails, then I -- I don't think I would even be
20 making this motion. It was the eliciting of the further
21 information, "and who was that?" "and how do you know that?"
22 That is the issue that I'm having. Not just McVeigh, because
23 McVeigh is innocuous. It's the going into Timothy McVeigh, the
24 Oklahoma City bomber, without anything further from that
25 document that would suggest that that was even that person.

1 That's what I'm talking about. It's that further step that the
2 Government took and that's my issue. I would have had no
3 problem had she just read McVeigh and then moved on because
4 they got rid of the Millers, and nobody probably even knows who
5 that is, but all they had do -- they had no problem getting rid
6 of the Millers, the term "Millers." They redacted that, but
7 when it came to McVeigh, the guy who killed a hundred people in
8 a building, that's okay, that's fair game, I'm going to go into
9 that. So that's my issue.

10 I will deal with it in -- I guess, tomorrow on cross
11 if I figure out a way to do that, but generally, I don't put a
12 big spotlight on something that I'm asking for a mistrial for.

13 THE COURT: All right. Well, the distinction between
14 the Millers and McVeigh was that in the posting, Mr. Parker was
15 disavowing himself of the Millers and in -- in the same posting
16 he's not disavowing himself of McVeigh, but rather the failure
17 of McVeigh to move the -- the progress of the movement and so
18 forth. So, it was -- that was the distinction that was being
19 made there and to why one is included and why is not.

20 All right. So, we'll see you tomorrow at 10:00.

21 Off record.

22 COURTROOM ADMINISTRATOR: All rise.

23 (Proceedings adjourned at 5:12 p.m)

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COURT REPORTER'S CERTIFICATE

I, Heather K. Newman, Official Court Reporter, United States District Court, District of Nevada, Las Vegas, Nevada, do hereby certify that pursuant to Section 753, Title 28, United States Code, the foregoing is a true, complete, and correct transcript of the proceedings had in connection with the above-entitled matter.

DATED: 8-7-2017 /s/ Heather K. Newman
Heather K. Newman, CCR #774
OFFICIAL FEDERAL REPORTER

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,)	Case No. 2:16-cr-46-GMN-PAL
)	
Plaintiff,	)	Las Vegas, Nevada
	)	Thursday, August 3, 2017
vs.	)	10:10 a.m.
	)	Courtroom 7C
ERIC J. PARKER (11),)	
O. SCOTT DREXLER (12),	)	JURY TRIAL, DAY 15
RICHARD R. LOVELIEN (13),)	
STEVEN A. STEWART (14),)	
)	
Defendants.	)	ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE GLORIA M. NAVARRO, CHIEF JUDGE,
UNITED STATES DISTRICT COURT

APPEARANCES:

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(continued next page)

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Proceedings reported by machine shorthand. Transcript produced
by computer-aided transcription.

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1 LAS VEGAS, NEVADA; THURSDAY, AUGUST 3, 2017; 10:10 A.M.

2 --oOo--

3 P R O C E E D I N G S

4 (Jury not present.)

5 COURTROOM ADMINISTRATOR: All rise.

6 THE COURT: All right. Thank you. You may be seated.

7 Good morning.

8 MR. TANASI: Good morning.

9 THE COURT: All right. Before we bring in the jurors,
10 let me just go ahead and make my preliminary remarks to remind
11 everyone that this is a courtroom and not a sporting event. So
12 no displays or expressions of opinion, whether verbally or
13 through body language, are permitted.

14 Please remember, to the defendants, that we do have the
15 holding cell with a speaker system so that you may continue to
16 hear the trial if you forfeit your right to be in trial by
17 making any kind of inappropriate expressions.

18 Let's see. There are other court rules. For example,
19 that no electronic devices are permitted in the courtroom. The
20 reason for this being that no audio or video recordings are
21 permitted in federal court. So if you have an iPad, iPhone,
22 any kind of phone, laptop, electronic device, please make sure
23 that you leave it outside. Even if it is turned off or in
24 vibrate mode or private mode, that is not sufficient; it needs
25 to be completely outside the courtroom.

1 The attorneys are permitted to have electronic devices.
2 They need them to be able to review evidence, discovery, their
3 notes, and to present evidence during trial. Likewise, the
4 Marshals and the Court Security Officers do have electronics
5 for communication to provide security for the safety of
6 everyone.

7 We do need to turn the podium. We had hearings earlier
8 this morning which is why we always have to -- not always, but
9 a lot of times we have to readjust the podium. So we will move
10 the podium so it is facing the witness so we can continue.

11 All right. Anything that we need to address before we
12 bring in the jury?

13 MS. AHMED: Good morning, Your Honor. Yes.

14 I just wanted to, Your Honor, take a moment to just
15 respond more fulsomely to Mr. Leventhal's motion that he made
16 at the end of the very long day yesterday. And so I would
17 like, Your Honor, to be permitted to just make clear on the
18 record the Government's position regarding that motion.

19 THE COURT: All right. Go ahead.

20 MS. AHMED: Thank you, Your Honor.

21 So, Your Honor, of course Mr. Leventhal moved for a
22 mistrial yesterday and the Government responded. We believe,
23 and we still believe, that there's absolutely no showing of
24 manifest necessity requiring a mistrial in this case. But
25 there's also no showing that any lesser relief is required as

1 well.

2 The defendant -- Your Honor, the Government clearly
3 intended to put evidence into this case regarding the mindset
4 behind the defendants and their -- what they did on April 12th,
5 2014. We made that clear in our opening; we put evidence in to
6 that effect.

7 The defendants were on a bridge. They are documented
8 with rifles pointed towards law enforcement officers. And,
9 although Mr. Leventhal would now try to -- like to distance
10 their actions from Mr. McVeigh's actions, the truth is, is that
11 there's not really that much of a difference between what
12 Timothy McVeigh did and what these defendants wanted to do and
13 what they did do on April 12th, 2014.

14 Your Honor, additionally, we put in evidence that Ammon
15 Bundy said on screen that if the BLM comes back they were gonna
16 do it again and they would make sure that the BLM didn't
17 return. There's evidence that the defendants continued their
18 movement, continued the conspiracy in an effort to make clear
19 not only that they were gonna stand up to law enforcement and
20 these public land agencies around the country but that they
21 were gonna make sure no one went back to Gold Butte to get
22 those cattle.

23 And so, Your Honor, this is all part of the
24 glorification and the recruitment that we've continued to argue
25 is relevant and admissible evidence in this case and it's

1 relevant and admissible as to all of these defendants because
2 they joined this conspiracy together, they never disavowed the
3 conspiracy. And, if anything, Mr. Drexler has continued, along
4 with Mr. Parker, to do the exact same things. They went to
5 Sugar Pine; they went to White Hope. And Mr. Drexler has it
6 all tattooed on his arm together: Bundy, III%, Operation Gold
7 Rush, Operation Big Sky.

8 And so, Your Honor, to suggest that they need any
9 relief from the clarification of who Mr. McVeigh was in that
10 post is simply a distraction from actually relevant, admissible
11 evidence.

12 And my understanding, Your Honor, is that
13 Mr. Leventhal's objection was to clarifying who McVeigh was
14 rather than to the admission of the exhibit itself which --
15 obviously explaining the context of an admitted exhibit is
16 clearly permissible. It didn't go beyond saying who McVeigh
17 was; explained who he was. And the -- it gave context to the
18 post. And, again, Your Honor, as we said yesterday, in the
19 post it's clear that this is a post in which the defendant,
20 Mr. Parker, is comparing himself to Mr. McVeigh; that they are
21 in a movement -- they were in the same movement; and that,
22 while McVeigh failed, Mr. Parker achieved. And what did he
23 achieve? He achieved the ousting of the BLM in Nevada and then
24 the other two operations. And, at the end, he says, "Get
25 active or shut up."

1 It's clearly recruiting, clearly glorification, part of
2 the same conspiracy, relevant to all of these defendants.
3 There is nothing in it that was manifest -- that would manifest
4 any kind of mistrial or require any other lesser relief.

5 Thank you, Your Honor.

6 MR. MARCHESE: Your --

7 THE COURT: All right.

8 MR. MARCHESE: -- Honor, if --

9 THE COURT: Mr. Marchese --

10 MR. MARCHESE: -- I may briefly respond.

11 I don't want to go backwards. Obviously we argued this
12 yesterday. But I would just like to point out that what
13 Mr. Parker said 18 months after the incident in question I fail
14 to see how that is probative of his intent on what happened 18
15 months prior.

16 But, what is happening here --

17 THE COURT: It's not 18 months prior because the
18 conspiracy is alleged to have continued until March of 2016 --

19 MR. MARCHESE: Well . . .

20 THE COURT: -- and this post was made in 2015.

21 MR. MARCHESE: And that's what I would like to address,
22 that the Government -- you know, an indictment is supposed to
23 be a clear, concise recitation of what the actual charges are
24 in order to put defendants on notice of what they are charged
25 with and how to defend themselves against it.

1 The issue is none of this is pled in the Indictment.
2 If you look at the actual language of the Indictment, if you
3 look at it in the best light in reference to the Government,
4 there is maybe some very vague terminology in which they
5 reference security operations in stopping the government from
6 doing their job. However, when you look at it contextually,
7 all of it is about one thing and it's about Cliven Bundy and
8 his cattle. There is absolutely no reference to these post-bad
9 acts in the Government's Indictment.

10 But, even if we want to look at it and give the
11 Government the benefit of the doubt on that, how do we get an
12 indictment? Let's look at that. Let's look at the Grand Jury
13 testimony. There is nothing in the Grand Jury testimony about
14 these particular acts. So, therefore, it's not part of the
15 conspiracy. Because if it was, they would have testified to it
16 and they would be on trial for it; but they are not.

17 So the fact that the Government has now made the
18 conspiracy some amorphous, vague goalpost changing document,
19 it's making it impossible for these men to get a fair trial
20 because they are saying any piece of evidence that they want to
21 get in is now part of this conspiracy, and it's just not.
22 There is no record of it. It's not in the Indictment; it's not
23 in the Grand Jury testimony. And it's our position that for
24 them to keep saying it it's just not true. The record does not
25 support it.

1 THE COURT: All right.

2 So, as you know, the Government has discretion to
3 choose which acts to prosecute or not to prosecute and the
4 Government does not have the burden -- or the duty to allege
5 every single offense that they possibly could that transpired
6 during a conspiracy.

7 So the Court's not persuaded that the fact that conduct
8 related to either the Oregon mine or the Montana mine are not
9 crimes that are outlined in the Superseding Indictment, that
10 that is sufficient to state that those actions are not taken
11 during the conspiracy, in furtherance of the conspiracy, part
12 of the conspiracy, and inextricably intertwined with the
13 conspiracy. So the Court's order speaks for itself.

14 Anything else that we need to discuss?

15 MR. TANASI: Your Honor --

16 THE COURT: Mr.

17 MR. TANASI: -- if I --

18 THE COURT: -- Tanasi.

19 MR. TANASI: -- if I may, just for the record, just
20 join in yesterday's motion that Mr. Leventhal raised and then
21 also the arguments of the counsel from Mr. Marchese today.

22 And then I would also just add that on a 403 balancing
23 test I don't think we can lose sight of that. I understand the
24 attempt to kind of stretch the conspiracy and I understand, you
25 know, these acts potentially coming in under the 404(b)

1 analysis. But not losing sight of 403 I think is what's
2 important in that the --

3 THE COURT: These are --

4 MR. TANASI: -- prejudice --

5 THE COURT: -- not --

6 MR. TANASI: -- to my client.

7 THE COURT: -- 404(b). That was my order, that they
8 are not 404(b) because they are not other acts that are not
9 part of the conspiracy. They're inextricably intertwined --
10 intertwined with the conspiracy so they are not 404(b). In the
11 alternative, if they are 404(b), we can get into that. But
12 that was not the Court's order. And the balancing test is the
13 prejudicial effect -- whether it's unfairly prejudicial -- you
14 balance that with probative value. So an admission by a
15 defendant to the offense has incredibly high probative value.

16 MR. TANASI: Understood, Your Honor. But what I'm
17 getting at is the unfair prejudice that outweighs the probative
18 value, especially with respect to my client, Steven Stewart,
19 who is not making that post and even with respect to Mr. Parker
20 in that the Government has expanded what Timothy McVeigh means;
21 what Timothy McVeigh did; and somehow is drawing a comparison
22 and likening of Timothy McVeigh to our clients which I think is
23 just way out of bounds. You know, in the Bunkerville case, not
24 one person died. Not one person died. In Timothy McVeigh's
25 scenario, many people died. They are completely different

1 things.

2 (Pause in the proceedings.)

3 THE COURT: Mr. Leventhal, did you find any case law
4 that you wanted to show me regarding how a balancing test would
5 apply to a coconspirator statement.

6 MR. LEVENTHAL: To be honest, I didn't have time, Your
7 Honor.

8 THE COURT: Okay.

9 MR. LEVENTHAL: I had other things going on --

10 THE COURT: Oh.

11 MR. LEVENTHAL: -- last night.

12 THE COURT: You're right actually.

13 MR. LEVENTHAL: I apologize.

14 THE COURT: I do know about that. I apologize.

15 MR. LEVENTHAL: I will. No, don't worry. I'll -- I
16 can look today.

17 But I would just note that, while I made that motion
18 yesterday, I don't want to get off track on what the Court has
19 already considered 404(b). That's not, I think, my motion. My
20 motion was that it was the bringing in of that but then going
21 into it and, as we've already termed it, the spillover effect.
22 I think the Court still needs to now analyze that under whether
23 or not it's relevant as a coconspirator statement because this
24 is on every statement somebody makes is obviously a
25 coconspirator statement.

1 I would also a say that Timothy McVeigh killed, I
2 think, 126 people. That's nowhere close to what happened here.
3 My client, in addition, there's been no showing that he was
4 part of any militia movement or patriot movement. Prior to the
5 12th of April 2014, he was not in a movement. His tattoo that
6 the Government's alluding to didn't come until after that event
7 happened.

8 So the prejudicial or the spillover effect from that
9 statement and then -- not only just that statement but then the
10 Government's eliciting testimony to that statement and who it
11 is and what he did -- and I think that was somewhere -- 20-some
12 years ago, I believe. I don't even know when he did it -- has
13 no -- should have no effect on my client. And so even though
14 the Court has denied a mistrial -- and I understand that --
15 something a little bit less would be a limiting instruction
16 that could clear it up that just says this does not come in for
17 Mr. Drexler because that prejudicial effect on Mr. Drexler,
18 having nothing to do with that statement, there's no probative
19 value to it and so it's just highly prejudicial.

20 If it was just McVeigh, then I'd understand; we already
21 discussed that. But to elicit the information -- more
22 information about the Oklahoma City bombing, you know, that
23 brings back something completely contextually different that
24 leaves in the jury's mind something different. And, if the
25 Government wants to talk about mind-set, obviously we have an

1 ulterior view of mind-set that we have not been able to elicit
2 any evidence on mind-set on why my client was there -- or went
3 there because the Court has deemed that to be irrelevant. So
4 we can't even get into mind-set.

5 So I would renew just at least a limiting instruction
6 motion based on what I said yesterday and today. And, if I
7 have time this afternoon, I'll bring some case law to the
8 Court.

9 THE COURT: All right.

10 So 801(d)(2)(E) -- and I thought I did make this
11 finding, but I'll state it on the record again to be more
12 clear -- the conspiracy did -- was existing during the time
13 period when the statement was made -- statement being made as
14 posted on December 2015th [sic] -- and the conspiracy not
15 ending until much later, in March of 2016.

16 I did find that it was made in furtherance of the
17 conspiracy to keep the coconspirators abreast of ongoing
18 conspiracy activity, to recruit, glorify, I think riling up was
19 one of the words I used also, encourage others who either
20 already were part of the organization or recruiting others to
21 join the organization, explaining their success -- the reason
22 for their success in contrast to prior earlier members.

23 The other factor to consider is whether the declarant
24 and the trial defendants were members of the same conspiracy.
25 Here these four individuals are charged in the same conspiracy.

1 I think that's all -- that's all the --

2 MR. PEREZ: Your Honor --

3 THE COURT: -- factors.

4 MR. PEREZ: -- for --

5 THE COURT: And I made that ruling earlier. So it does
6 come in as a 801(d)(2)(E) coconspirator statement; therefore,
7 there's no limiting instruction. The limiting instruction
8 would be -- that's requested is the opposite of that. It comes
9 in, but it's not to be considered against. That doesn't make
10 sense.

11 MR. PEREZ: Yes, Your Honor.

12 And, for the record, on behalf of Mr. Lovelien, we
13 would join in prior counsel's arguments set forth this morning.
14 I believe we joined all the arguments yesterday.

15 THE COURT: I think you did. But the record is now
16 more clear, if not, that you are joining as well.

17 And, again, for the record, I did give a limiting
18 instruction before this Exhibit 102 was provided instructing
19 the jury that it was being admitted for a limited purpose only
20 to be considered as evidence of intent, motive, and absence of
21 mistake, and for no other reason.

22 All right. So let's go ahead then. Unless there's
23 anything else? No.

24 MR. MYHRE: No.

25 THE COURT: Okay.

1 Let's go ahead and call in the jury, Aaron, then,
2 please.

3 COURTROOM ADMINISTRATOR: Yes, Your Honor.

4 (Pause in the proceedings.)

5 (Sarah Draper resumes the witness stand. Pause.)

6 COURTROOM ADMINISTRATOR: All rise.

7 (Jury in, 10:29 a.m.)

8 THE COURT: You can go ahead and be seated. We'll wait
9 for, is it Juror No. -- one, two, three, four, five -- Juror
10 No. 6 just want back to the jury room, I think, to retrieve her
11 notebook.

12 (Pause in the proceedings.)

13 THE COURT: All right. So Juror No. 6 has returned.
14 You got your notebook. I didn't see it. You found it? Oh,
15 good. All right. So it looks like we're ready to begin.

16 So let's go ahead and start by thanking our witness,
17 Special Agent Draper, for coming back. And we do have the
18 parties all present.

19 So let's go ahead and have them make their presence on
20 the record and then we'll continue with cross-examination.

21 MR. MYHRE: Thank you.

22 And good morning, Your Honor.

23 Good morning, ladies and gentlemen.

24 Steve Myhre, Erin Creegan, and Nadia Ahmed on behalf of
25 the United States.

1 THE COURT: Good morning.

2 MR. TANASI: Thank you, Your Honor.

3 Good morning. Morning folks.

4 Rich Tanasi for Steven Stewart. Also with us at
5 counsel table is Brian Glynn and Tori Bakken. Thank you.

6 THE COURT: Good morning.

7 MR. MARCHESE: Good morning, Your Honor.

8 Good morning, ladies and gentlemen.

9 Jess Marchese on behalf of Eric Parker.

10 THE COURT: Good morning.

11 MR. LEVENTHAL: Good morning, Your Honor.

12 Good morning everyone.

13 Todd Leventhal on behalf of Mr. Drexler.

14 THE COURT: Good morning.

15 MR. PEREZ: Good morning, everyone.

16 Shawn Perez on behalf of Ricky Lovelien.

17 THE COURT: All right. And good morning.

18 So let's go ahead and continue with cross-examination,
19 Mr. Marchese.

20 MR. MARCHESE: Yes. Thank you, Your Honor.

21 SARAH DRAPER,

22 called as a witness on behalf of the Government, having been
23 previously duly sworn, was examined and testified as follows:

24 ///

25 ///

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1 CROSS-EXAMINATION

2 BY MR. MARCHESE:

3 Q. Good morning, Agent Draper.

4 A. Good morning, sir.

5 Q. So, on direct examination, they gave you just some
6 preliminary questions about how you got involved with this
7 case. I believe you're a special agent out of Idaho, I
8 believe?

9 A. That's correct.

10 Q. Okay. And, at some point in time, you were tasked with
11 reviewing social media of individuals who were alleged to be a
12 part of the Bundy incident?

13 A. Correct.

14 Q. Okay. And one of those individuals would be my client,
15 Mr. Eric Parker there with the blue shirt and the beard behind
16 me?

17 A. That's correct.

18 Q. Okay. Approximately when did you get assigned that task?

19 A. Approximately April of 2014.

20 Q. Okay. So I think -- you obviously testified on direct
21 examination that you looked at some Open Source social media;
22 correct?

23 A. That's correct.

24 Q. You also -- either you drafted a search warrant or were you
25 a part of drafting a search warrant for Facebook; correct?

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1 **A.** Correct. I was part of the drafting of the affidavit.

2 Correct.

3 **Q.** Okay. So obviously you got some Facebook returns. We went
4 over those the last few days. Correct?

5 **A.** Yes, sir.

6 **Q.** And, in reference to that, you were looking at Mr. Perez's
7 Facebook for a few years after the incident; correct?

8 **A.** Correct.

9 **Q.** Was there -- one of the things that you testified to --

10 MR. MARCHESE: And, Brian, if you can bring up
11 Exhibit 89, please.

12 THE COURT: Bless you.

13 (Exhibit displayed in open court.)

14 BY MR. MARCHESE:

15 **Q.** Okay. And you talked about this particular Facebook post
16 which was made by Mr. Parker. Do you remember that?

17 **A.** Yes, sir.

18 **Q.** All right. And part of your testimony (drawing) was in
19 reference to this link right here; correct?

20 **A.** Yes.

21 **Q.** And I think you had talked about hyperlinks when you get the
22 search warrant return back. Do you remember that testimony?

23 **A.** Yes.

24 **Q.** Okay. And you had stated on direct examination that there
25 was a Ryan Payne video linked with this particular article. Do

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1 you remember this?

2 **A.** Yes.

3 **Q.** Okay. You viewed that particular video?

4 **A.** Yes.

5 **Q.** Okay. Where did you view the video?

6 **A.** So it -- it's no longer -- that's not the video link to this
7 any longer. So originally through this link that was the
8 video.

9 **Q.** Okay. So you're saying that there's a different video now?

10 **A.** Yes.

11 **Q.** Okay. To your knowledge, do you know when that video was
12 changed?

13 **A.** I do not.

14 **Q.** So how did you view the Ryan Payne video if it was not
15 linked with this particular link? If you remember.

16 **A.** I -- well, I -- I viewed it before it was changed and then
17 there was a -- also a report written by another agent that
18 captured it --

19 **Q.** Okay.

20 **A.** -- as well.

21 **Q.** So my question to you is did you view it online or did you
22 view it, I guess, back at your own personal computer or an FBI
23 computer or something like that?

24 **A.** I have viewed it online. I don't -- I don't recall the
25 timeline of that though. Is that -- and I've also reviewed it

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1 based upon the collection in evidence.

2 Q. Okay. So, just to be fair, you can't remember exactly when
3 you viewed this Ryan Payne video.

4 A. As embedded with that article?

5 Q. Yes.

6 A. Well, it seems to be -- well, no. As -- as -- going to the
7 article and finding that link right now, I can't recall when
8 that was. But I have.

9 Q. Sure.

10 A. Um-hum.

11 Q. And obviously, based on your testimony, this post (drawing)
12 was done April the 10th of 2014; correct?

13 A. That's correct.

14 Q. And, actually, with UTC time -- okay. It would still the
15 10th, right, with UTC?

16 A. Yes, sir.

17 Q. Okay. And that was before you had even got on the case.

18 A. Correct.

19 Q. Okay.

20 MR. MARCHESE: And, Brian, if we can go to Exhibit 90,
21 please.

22 (Exhibit displayed in open court.)

23 BY MR. MARCHESE:

24 Q. Okay. And this was another post that you had went over;
25 correct?

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1 **A.** Correct.

2 **Q.** And it's from (drawing) April 10th, 2014; right?

3 **A.** Yes.

4 **Q.** And this was a post where Mr. Parker is asking something in
5 reference to the Nevada militia; right?

6 **A.** Correct.

7 **Q.** There were no Likes on this particular post by Mr. Parker to
8 your knowledge?

9 **A.** To my knowledge, no.

10 **Q.** Okay. And there was no responses to this particular post by
11 Mr. Parker to your knowledge?

12 **MS. AHMED:** Objection, vague as to "responses." On
13 Facebook or other -- any other responses?

14 **MR. MARCHESE:** Well --

15 **THE COURT:** All right.

16 Clarify that.

17 **BY MR. MARCHESE:**

18 **Q.** In reference to this Facebook post which we are talking
19 about, which is circled currently on the screen, to your
20 knowledge, were there any responses to this post by Mr. Parker?

21 **MS. AHMED:** Same objection. I'm just asking for
22 clarification if he's speaking on Facebook specifically.

23 **BY MR. MARCHESE:**

24 **Q.** Were there any responses on Facebook to this particular post
25 to your knowledge?

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1 **A.** To my -- to my recollection, without seeing any of the rest
2 of the return, I would have to say no, I don't recall any.

3 **Q.** Okay.

4 **MR. MARCHESE:** And, Brian, if we can go back to
5 Exhibit 88, please.

6 (Exhibit displayed in open court.)

7 **BY MR. MARCHESE:**

8 **Q.** And I apologize. I went a little bit out of turn. But this
9 was one of the first posts that you went over. (Drawing.)
10 This is -- it shows April 9, 2014, on here; correct?

11 **A.** That's correct.

12 **Q.** And now, with UTC time, it's actually April 8th; correct?

13 **A.** Yes, yes.

14 **Q.** Okay.

15 **A.** Very good.

16 **Q.** And, just for the jury because they might not remember,
17 what -- UTC time goes back how many hours?

18 **A.** In Pacific Time Zone, Nevada, it's 7 hours prior; in
19 Mountain, Idaho, it's 6.

20 **Q.** Okay. So, if you're doing it in Idaho, you're gonna go back
21 6; correct?

22 **A.** Yes, yes.

23 **Q.** And, if you're doing it here in the State of Nevada or
24 anywhere that's Pacific Time Zone, you're gonna go back 7.

25 **A.** Yes.

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1 Q. And, to your knowledge, Mr. Parker was in Idaho when this
2 post was made?

3 **A.** To my knowledge, yes.

4 Q. Okay. And some sort of a link. This is just Mr. Parker, I
5 believe, sharing some sort of (drawing) link from this Northern
6 Nevada group?

7 **A.** That's correct.

8 Q. Okay. And let me clear that. It's getting a little
9 convoluted.

10 And he's referring to that there's "some trouble down
11 in Nevada" (drawing); correct?

12 **A.** Correct.

13 Q. And (drawing) he's referencing something about there being
14 possibly some shooting or something along those lines; correct?

15 **A.** Correct.

16 Q. Okay.

17 MR. MARCHESE: And, Brian, if we can go to Exhibit 91.
18 (Exhibit displayed in open court.)

19 BY MR. MARCHESE:

20 Q. Now, this is another post from Mr. Parker (drawing). This
21 is post-Bundy Ranch. It would be April 13, 2014; correct?

22 **A.** Yes.

23 Q. Okay. Now, on this particular one, there's also another
24 link -- I think we saw that on a few of Mr. Parker's posts. Do
25 you see that (drawing) down there at the bottom?

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1 **A.** Yes, I do.

2 **Q.** As part of your investigation, do you review these links or
3 do you just look at the Facebook posts?

4 **A.** I don't review every link, but I do review some links.

5 **Q.** All right.

6 **A.** Right.

7 **Q.** It just depends on -- based on the course and scope of your
8 investigation if you think it's something that has evidentiary
9 value?

10 **A.** Absolutely.

11 **Q.** Okay.

12 MR. MARCHESE: And if we can go to Exhibit 94.

13 (Exhibit displayed in open court.)

14 BY MR. MARCHESE:

15 **Q.** Now, in reference to Exhibit 94, we have this Sankaku Atama,
16 I believe the name is, and he's making this post to Mr. Parker
17 on April 12th, 2014; correct?

18 **A.** Yes.

19 **Q.** Now, this is 18:03 UTC time; correct?

20 **A.** Correct.

21 **Q.** All right. Now, is this 6 or 7 hours back, if you know?

22 **A.** I would consider that 7 because -- based upon my
23 investigation. I understand Mr. Parker was in Nevada at that
24 time so that would be 7 hours prior.

25 **Q.** Okay. So, in actuality, on a regular clock, I guess for

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1 lack --

2 **A.** Um-hum.

3 **Q.** -- of a better term, this would -- actually had been made at
4 11:03 a.m. --

5 **A.** That's.

6 **Q.** -- correct?

7 **A.** -- that's correct.

8 **Q.** Okay. And, during the course and scope of your
9 investigation, are you aware of when the BLM left the ICP
10 compound on that date?

11 **A.** I could only say midday. I don't know the exact time.

12 **Q.** Okay. If you can testify to it, would it have been before
13 or after 11:03 a.m.?

14 **A.** I believe -- well -- I believe it was after, but . . .

15 **Q.** And Mr. Parker's response is approximately (drawing) 5 hours
16 or so after that particular post to him; correct?

17 **A.** Correct.

18 **Q.** Okay.

19 **A.** Yes.

20 MR. MARCHESE: If we can go to Exhibit 95, please,
21 Brian.

22 (Exhibit displayed in open court.)

23 MR. MARCHESE: And if we can make that just a little
24 bit bigger, if possible. Thank you very much.

25 ///

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1 BY MR. MARCHESE:

2 Q. This was a post -- this is actually after the Bundy incident
3 (drawing). It's, oh, say, 5 months-ish after the fact. Now,
4 you had testified (drawing) on direct examination about this
5 particular picture. Do you remember that?

6 A. Yes.

7 Q. Okay. And you've seen that picture before; correct?

8 A. Yes. Well --

9 Q. It's Eric Parker, correct, from your knowledge?

10 A. Right. Not -- not with those red words written under it,
11 that part of that image. But the word "resist" and then the
12 sketch of Mr. --

13 Q. Okay.

14 A. -- Parker.

15 Q. So someone had made these -- this picture or whatever it is
16 up at some point in time; correct?

17 A. Yes.

18 Q. All right. And (drawing), during the course and scope of
19 your investigation, did you happen to hear that Mr. Parker was
20 at any time referred to as "the bridge guy"?

21 A. Yes. Or, yeah, other variations of that. Yes.

22 Q. All right. And they did in fact -- someone made up
23 (drawing) -- I think you even testified to this -- that there
24 were T-shirts at some point in time made up?

25 A. Right.

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1 Q. Okay. Now, in your reviewing of Mr. Parker's Open Source
2 Facebook or through your search warrant returns, was there an
3 increase in Mr. Parker's Facebook traffic from April of 2014
4 until this time period of September of 2014?

5 **A.** So, if I may, I -- the -- the time frame of the warrant, if
6 I recall correctly -- I'd have to see it exactly -- was March
7 of 2014; served in July of 2014. It was quite limited in
8 timeframe and scope. So I would have a hard time answering
9 that question about an increase because it would have only
10 encompassed a little over a month prior to April 12th.

11 Q. Okay. So it would be a smaller amount of information than,
12 say, you would be able to see in Open Source?

13 **A.** I'm sorry. Could you ask that again --

14 Q. What --

15 **A.** -- so I understand?

16 Q. -- what you got on the search warrant, is that a smaller
17 amount of information than you would be able to see on a open
18 source?

19 **A.** Oh, no, no. The search warrant is everything. I -- I must
20 have misunderstood your question. I thought you were asking if
21 there was an increase in his Facebook traffic pre-event and
22 post-event.

23 Q. Well, actually post-event. Would you be able to testify to
24 that?

25 **A.** My basis would only be upon probably 6 weeks of Facebook

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1 activity prior to the event of April 12th. So I -- I can't
2 definitively answer that.

3 Q. Okay. Because you can't compare and contrast something you
4 don't know.

5 A. Right, right.

6 Q. Fair --

7 A. Yea.

8 Q. -- enough.

9 A. Okay.

10 Q. You would, however, agree with me that there was an increase
11 in his Facebook friends over that time period?

12 A. Yes.

13 Q. Okay. And, obviously, there's some people that, I guess for
14 lack of a better term, maybe look up to Mr. Parker; correct?

15 A. Correct.

16 Q. Now, in reference to this, I think you even testified as to
17 what NVG was. Do you remember that?

18 A. Yes.

19 Q. Okay. You've seen Mr. Parker's rifle; correct?

20 A. Yes.

21 Q. I believe you were even the one who impounded it; correct?

22 A. Yes.

23 Q. It didn't have an NVG scope when you took it into evidence;
24 correct?

25 A. I -- I'd have to recall when we took it into evidence. But

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1 I don't believe on April 12th it did.

2 Q. That was their next question.

3 A. I know.

4 Q. April 12th --

5 A. Sorry.

6 Q. -- did it have an NVG scope?

7 A. Not that I recall.

8 Q. Okay. Thank you.

9 Now, we've also had some testimony yesterday about
10 these mining operations.

11 A. Yes.

12 Q. Do you remember that testimony?

13 A. Yes.

14 Q. It seems, and correct me if I'm wrong, you mainly focused on
15 the Sugar Pine Mine? Is that fair to say? Or both?

16 A. It -- in my testimony or in awareness of activities?

17 Q. Just in the course and scope of your investigation.

18 A. Both.

19 Q. Both. Okay.

20 A. Um-hum.

21 Q. So you're aware of both --

22 A. Yes.

23 Q. -- incidents?

24 A. Yes.

25 Q. All right. And you're aware of it through your Facebook

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1 Open Source; correct?

2 **A.** Yes.

3 **Q.** Now, that --

4 **A.** Part of that --

5 **Q.** And --

6 **A.** -- yes.

7 **Q.** -- and those events wouldn't have anything to do with the
8 search warrant, correct, because they were after the fact?

9 Right?

10 **A.** That's correct.

11 **Q.** Okay. Now, on those particular events, you -- I believe you
12 described them as there were "armed patrols as a deterrent to
13 the BLM"; correct?

14 **A.** The Sugar Pine Mine operation involved the BLM.

15 **Q.** I'm sorry. I was --

16 **A.** Yes.

17 **Q.** -- I should have been a little bit more pointed on my
18 question.

19 Correct. The Sugar Pine Mine you described as "armed
20 patrols as a deterrent to the BLM"; correct?

21 **A.** That was part of what was going on there. Correct.

22 **Q.** Okay. And you've seen some pictures of Mr. Parker that were
23 brought into evidence in reference to that event; correct?

24 **A.** Yes.

25 **Q.** Do you have any pictures that you're aware of through your

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1 investigation where Mr. Parker was actually on the mine
2 property?

3 **A.** I wouldn't know if he was on the mining property so . . .

4 **Q.** Okay.

5 **A.** Yeah.

6 **Q.** How would you not know?

7 **A.** I don't know where the boundaries were --

8 **Q.** Okay.

9 **A.** -- because I --

10 **Q.** Did --

11 **A.** I'm sorry.

12 **Q.** -- did you ever visit the --

13 **A.** No.

14 **Q.** -- mine area?

15 **A.** No.

16 **Q.** Okay. So you didn't travel to the location; correct?

17 **A.** I do not.

18 **Q.** All right. So you're unaware of where all those pictures
19 were taken or not taken?

20 **A.** Specifically where on the ground or the general operation?

21 **Q.** Right.

22 Well, we know that they were in the general vicinity of
23 this Grants Pass, I believe. Is that --

24 **A.** Correct.

25 **Q.** -- is that --

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1 **A.** Out --

2 **Q.** -- accurate?

3 **A.** -- outside of -- yes.

4 **Q.** Okay. But, in reference to the actual mine and anything
5 else, you can't tell me geographically where it was; correct?

6 **A.** Correct.

7 **Q.** Okay. Were you aware that there was a staging area
8 approximately 30 minutes away from the mine?

9 **A.** I -- personally, no.

10 **Q.** So personally, in reference to the mine, you basically can
11 only testify to what you saw on Facebook and what other agents
12 told you. Is it fair to say?

13 **A.** Yes.

14 **Q.** Okay.

15 **MR. MARCHESE:** No further questions. Thank you, Your
16 Honor.

17 **THE COURT:** Mr. Leventhal, on behalf of Mr. Drexler?
18 (Defense counsel conferring.)

19 CROSS-EXAMINATION

20 **THE WITNESS:** Hi.

21 **BY MR. PEREZ:**

22 **Q.** Good morning, Agent. My name is Shawn Perez, and I
23 represent Ricky Lovelien.

24 **A.** Hello, sir.

25 **Q.** I have just a few questions.

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1 The scope of your warrant was March 2014?

2 **A.** I would -- that's my recollection. I would have to review
3 the exact warrant to confirm that.

4 **Q.** Okay.

5 **A.** But . . .

6 **Q.** And the ending date? Approximate.

7 **A.** It was served in July of 2014. So that it was written
8 through present. Facebook returned the returns in August or
9 September of 2014.

10 **Q.** Okay. Now, in your investigation of the Facebook posts
11 and -- for Mr. Parker, Mr. Stewart, Mr. Drexler -- you did all
12 three; correct?

13 **A.** Yes.

14 **Q.** Okay.

15 -- did you go through the list of Facebook Friends?

16 **A.** I did.

17 **Q.** Okay. Do --

18 **A.** Yes, sir.

19 **Q.** -- do you recall if Mr. Lovelien was a Facebook friend of
20 Mr. Parker?

21 **A.** I do not recall.

22 **Q.** Okay. And how about of Mr. Drexler?

23 **A.** Yes.

24 **Q.** Okay.

25 **A.** Oh, I'm sorry. May I clarify that question?

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1 Q. Sure.

2 **A.** Was Mr. Drexler a friend of Mr. Lovelien's or was
3 Mr. Drexler a friend of Mr. Parker's? I'm sorry.

4 Q. No. Of Mr. Lovelien.

5 **A.** Oh, okay. No. I -- I --

6 Q. Okay.

7 **A.** -- retract that last answer. No, I do not recall that.

8 Q. And same question, Mr. Parker.

9 **A.** I do not recall that.

10 Q. Okay. Now, you investigated The Three Percenters. Was that
11 specifically the Idaho Three Percenters or was that Three
12 Percenters in general?

13 **A.** That was, as discussed -- it was the defendant's involvement
14 with that organization. I --

15 Q. Okay.

16 **A.** -- mean, they were -- that was part of -- part of their
17 involvement was with that organization --

18 Q. Okay. And in --

19 **A.** -- if that --

20 Q. -- your --

21 **A.** -- makes sense.

22 Q. -- investigation, did Mr. Lovelien's name come up in
23 connection with The Three Percenters?

24 **A.** I don't recall that it did.

25 Q. Okay. Now, with respect to Operation Gold Rush --

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1 **A.** Yes, sir.

2 **Q.** -- that was a -- Operation Gold Rush, was that the name
3 given to it by The Three Percenters?

4 **A.** There were a few organizations that participated. But
5 that's my understanding, that the organizations named it that
6 based upon what we saw with the sign.

7 **Q.** Okay. And you investigated individuals that participated in
8 the -- in Operation Gold Rush?

9 **A.** The -- my -- my subjects and their involvements. Correct.

10 **Q.** Okay. And do you know if Mr. Lovelien was involved in
11 Operation Gold Rush?

12 **A.** I do not know that.

13 **Q.** Okay. How about with Operation Big Sky?

14 **A.** I do not know that.

15 **Q.** Okay. Did you ever see any posts by Mr. Lovelien on any of
16 the -- the -- with Mr. Drexler, Mr. Parker, or Mr. Stewart?

17 **A.** I do not recall --

18 **Q.** Okay.

19 **A.** -- so . . .

20 **Q.** And how about -- so, if you didn't see any posts, you
21 probably didn't see any Likes?

22 **A.** I don't recall seeing any.

23 **Q.** Okay.

24 MR. PEREZ: I have --

25 THE WITNESS: I would have --

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1 MR. PEREZ: -- nothing --

2 THE WITNESS: -- to go --

3 MR. PEREZ: -- further.

4 THE WITNESS: -- back through. I apologize. I --
5 yeah, I --

6 MR. PEREZ: Great.

7 THE WITNESS: -- would have to go back.

8 MR. PEREZ: I have --

9 THE WITNESS: Thank you, sir.

10 MR. PEREZ: I have nothing further.

11 THE WITNESS: Okay. Thank you, sir.

12 (Pause in the proceedings.)

13 THE COURT: On behalf of Mr. Drexler, go ahead with
14 cross.

15 MR. LEVENTHAL: Thank you, Judge.

16 CROSS-EXAMINATION

17 BY MR. LEVENTHAL:

18 Q. Good morning.

19 A. Hello, sir.

20 Q. I know you've been asked questions and I may repeat myself.
21 So just --

22 A. That's fine.

23 Q. -- indulge me. Thank you very much.

24 A. Yes.

25 Q. So, as I understand it, there was a couple ways that you

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1 received information regarding Mr. Drexler. One would be
2 Facebook and the other one would be sort of a search warrant
3 that you sent out. Would that be fair to say?

4 **A.** Yes.

5 **Q.** Okay. And the search warrant, I know you were asked,
6 covered the period of time March 2nd, 2014? I believe you
7 indicated you wouldn't know until you saw your return.

8 **A.** Correct.

9 **Q.** Okay. But would that be around the time --

10 **A.** Yes.

11 **Q.** -- the 2nd? Okay.

12 And it said "to present" when you sent it out on
13 July -- until July 4, 2014; correct?

14 **A.** Right.

15 **Q.** Okay. It was just those 2 months of Facebook returns that
16 you had to actually receive; correct?

17 **A.** That would be 4-plus months. But --

18 **Q.** Fair enough.

19 **A.** -- from the Facebook, right --

20 **Q.** Okay.

21 **A.** -- just . . .

22 **Q.** And the other way that you were able to get Facebook posts
23 were you actually looked yourself; correct?

24 **A.** Yes. Or other employees looked.

25 **Q.** Okay. And then you were able to capture, as we saw,

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1 screenshots.

2 **A.** Yes.

3 **Q.** Correct?

4 **A.** Right.

5 **Q.** What program -- do you know what program you used to capture
6 these screenshots?

7 **A.** So it -- it varies. Snagit is one. Some people do Snips.
8 So just kind of a -- you -- a snip is a -- drawing a block;
9 it's a function of -- you know, software. You just draw a
10 block through something and save that. Another is -- you can
11 do -- through the toolbar at the top of a -- like, a Windows
12 screen, you can do File and Print As or Save As and that will
13 save as well.

14 **Q.** So. And I'm only referring to you 'cuz --

15 **A.** Okay.

16 **Q.** -- I don't want you to testify what other people were doing.

17 **A.** Okay.

18 **Q.** What did you do specifically? What did you use
19 specifically?

20 **A.** When I would have captured the time, Snips mostly.

21 **Q.** Okay. So does it sort of PDF it, if you will, and then save
22 it onto your computer? Is that how it works?

23 **A.** With the -- a snip is just a capture of the image. I don't
24 think it makes it into a -- I'd have to go back and see if it
25 makes it into a separate PDF document. I don't believe so

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1 though.

2 Q. Okay. When you're looking at somebody's Facebook page and
3 you're looking at a picture, are you able to look at the
4 metadata on that picture?

5 **A.** No. If you just look -- that would only be becoming through
6 a search warrant. If you're just viewing it, I wouldn't have
7 access to that.

8 Q. Okay. So the pictures that -- some of the pictures that we
9 saw, you wouldn't know when that picture was taken other than
10 the characteristics of the picture; correct?

11 **A.** Correct.

12 Q. Okay. So there's no metadata on there that you would be
13 able to take off of that picture; right?

14 **A.** And, again, unless it was something that come in through the
15 search warrant -- through the search warrant, Facebook would
16 provide that but not for a general viewer.

17 Q. Right.

18 And now I'm only speaking -- I spoke about the search
19 warrant before --

20 **A.** Yep.

21 Q. -- the returns. Now I'm only speaking about what you
22 actually captured.

23 **A.** Correct.

24 Q. Okay. All right. And did you also serve a search warrant
25 on any other social media, for example, YouTube?

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1 **A.** No. No other social media.

2 **Q.** No other. No Twitter?

3 **A.** No, sir.

4 **Q.** No Google?

5 **A.** No.

6 **Q.** No Yahoo!?

7 **A.** No.

8 **Q.** So what we have here that you brought forward, in terms of
9 evidence or what you were asked about, is sort of the world of
10 what you found on Mr. Drexler; correct?

11 **A.** Yes, yeah.

12 **Q.** Okay.

13 **A.** Okay.

14 **Q.** And I believe I counted -- there was a total of seven pages
15 that you testified to yesterday when the Government asked you
16 regarding Mr. Drexler's Facebook. Does that sound about right?

17 **A.** I -- I would --

18 MS. AHMED: Objection --

19 THE WITNESS: -- have to --

20 MS. AHMED: -- I would ask for clarification as to
21 pages of what?

22 BY MR. LEVENTHAL:

23 **Q.** Of Facebook or -- well, of Facebook. Does that sound about
24 right?

25 **A.** If I can think through for a moment.

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1 Q. Okay.

2 A. If you --

3 Q. That's okay.

4 A. -- don't mind. So I -- based upon my recollection . . .

5 (Pause.) That sounds about right.

6 Q. Okay. And your search warrant was obviously March so that
7 would have been a month before April 12th, the Bundy -- when
8 we -- sort of when Mr. Drexler was on the bridge. That would
9 have been a month before. Correct?

10 A. Yes, sir.

11 Q. Okay.

12 MR. LEVENTHAL: Okay. If we could pull up 124, please,
13 Brian.

14 (Exhibit displayed in open court.)

15 MR. LEVENTHAL: Go to the top, please.

16 BY MR. LEVENTHAL:

17 Q. Okay. So, as I understood your testimony yesterday,
18 whenever there's a blue (drawing) heading with a "Facebook
19 Business Record" that would have come from a search warrant;
20 correct?

21 A. Yes, sir.

22 Q. Okay. And we see "Page 87" here (drawing); correct?

23 A. Yes.

24 Q. Okay. And there's some big, obviously, block. You don't
25 get it that way; correct?

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1 **A.** No. There's content there.

2 **Q.** Okay.

3 MR. LEVENTHAL: If we can go down, Brian.

4 BY MR. LEVENTHAL:

5 **Q.** All right. So this is what you testified to yesterday
6 (drawing) in terms of what you got returned back from Facebook
7 regarding Mr. Drexler; correct?

8 **A.** Yeah, I -- I testified to those. Correct.

9 **Q.** Okay. Now, there's no conversations going on with
10 Mr. Drexler or anybody here; right?

11 **A.** No, not with those.

12 **Q.** Right. All this is, is a reposting of an article, the first
13 one being from (drawing) "reuters"; correct?

14 **A.** Yes.

15 **Q.** And Reuters is what? Is that a news organization?

16 **A.** It's a news service, yes.

17 **Q.** Okay. A respectable, I guess, news source?

18 **A.** It's -- it's mainstream, yes.

19 **Q.** Okay. And this one (drawing) is down here, "msnbc";
20 correct?

21 **A.** Yes.

22 **Q.** Okay. And that is somebody called "rachel-maddow" --
23 "maddow" -- "maddow-show"?

24 **A.** Yes.

25 **Q.** Are you aware of who Rachel Maddow is?

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1 **A.** She's a journalist.

2 **Q.** Okay. Is this a journalist that would have written an
3 article or would that have been a video?

4 **A.** You know, honest -- there was -- I -- I would have to go
5 back. There was a picture associated with that. But I'd have
6 to see if there was a video too.

7 **Q.** Okay.

8 **A.** So --

9 **Q.** And MS --

10 **A.** -- I believe --

11 **Q.** -- NBC --

12 **A.** -- that was --

13 **Q.** -- that's --

14 **A.** I'm sorry.

15 **Q.** -- a reputable, I guess source --

16 **A.** Yes.

17 **Q.** -- correct?

18 **A.** Also mainstream.

19 **Q.** Okay.

20 **A.** Um-hum.

21 **Q.** And I believe you testified that this summary is not
22 something (drawing) that the person who is posting this website
23 (drawing) is not something they would do; correct?

24 **A.** That's correct.

25 **Q.** This would be generated, this summary, "BUNKERVILLE, Nevada

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1 (Reuters)" -- if I can just read it -- "U.S. officials ended a
2 stand-off," that would have been something that is a synopsis
3 of this article; correct?

4 **A.** It's a portion of the article. Right.

5 **Q.** Okay.

6 **A.** Um-hum.

7 **Q.** But --

8 **A.** And in that one I believe it was just the beginning.

9 **Q.** Okay. But the person posting this has no control over this
10 summary (drawing); correct?

11 **A.** I don't believe they have any control over it, no.

12 **Q.** Okay. Now, you indicate -- or you didn't -- you testified
13 that this text (drawing) is what somebody could control.

14 **A.** Yes.

15 **Q.** Okay. And so your testimony is, is that Mr. Drexler
16 (drawing) wrote the text, "But it looks like we may have to go
17 back."

18 **A.** Correct.

19 **Q.** Correct? Okay.

20 **A.** Yes, sir.

21 **Q.** And this was after (drawing) the 12th of April; correct?

22 **A.** Yes.

23 **Q.** Okay. Now, in your investigation, did you ever know whether
24 Mr. Drexler actually went back to Bunkerville?

25 **A.** I'm not aware that he did.

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1 Q. Okay. So maybe I asked that wrong.

2 You don't know or your investigation did not reveal
3 anything that suggested he ever went back to Nevada or
4 Bunkerville?

5 **A.** Correct. The latter.

6 Q. The latter. Very good.

7 This text (drawing), again, says "nice pic Eric";
8 correct?

9 **A.** Yes.

10 Q. And that's something that Mr. Drexler would have written?

11 **A.** Yes.

12 Q. Okay. Do you know what that's referring to? I don't have
13 any pictures here (pointing). I don't have any pictures here
14 (pointing). Do you know what that would be referring to?

15 **A.** That was a picture that was associated with that article
16 with Mr. Parker in a -- in a kneeling position with a rifle on
17 the bridge.

18 Q. Okay. And that came from this (drawing) MSNBC Rachel Maddow
19 Show?

20 **A.** Yes. That was associated with that.

21 Q. Okay.

22 **A.** Um-hum.

23 Q. And, again, you don't know if that's a video or an article
24 written.

25 **A.** Unfortunately, I don't, no, or recall right now.

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1 Q. Okay.

2 MR. LEVENTHAL: If we can go to 126, please, Brian.

3 (Exhibit displayed in open court.)

4 MR. LEVENTHAL: Go to the top, please. Okay.

5 BY MR. LEVENTHAL:

6 Q. Okay. So we don't have any blue (drawing) up here.

7 A. Correct.

8 Q. So this is something that would have captured?

9 A. I did not capture this one, no. I reviewed this.

10 Q. You did not capture it.

11 A. No. Another FBI employee did.

12 Q. Okay. Were you -- did you capture anything with

13 Mr. Drexler?

14 A. Did I capture -- did I capture anything with -- I reviewed
15 everything that was captured. Did I capture? I believe so. I
16 don't know if any of those items are in here.

17 Q. So you actually got onto -- personally -- and I just want to
18 know what you did -- you actually got on Mr. Drexler's web
19 page --

20 A. I'm sorry?

21 Q. -- or Facebook page? You personally?

22 A. As an -- as an investigator?

23 Q. Correct.

24 A. To view it, yes.

25 Q. Okay. But, looking at just this page right here, you can

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1 tell that you did not look at that page. You just reviewed
2 that later.

3 **A.** Correct. Right.

4 **Q.** So another FBI agent actually took this screenshot.

5 **A.** Another FBI employee. Correct.

6 **Q.** Okay. You don't know how they took this screenshot, do you?

7 **A.** That was a -- that other option I was talking about, the
8 File and it's a Print Screen and it's a capture. So it's a
9 File, Print Screen, and it captures everything.

10 **Q.** Okay. But you testified that other agents used different
11 programs to capture these images; right?

12 **A.** Right.

13 **Q.** Okay. And so you wouldn't know what that -- another agent
14 used to capture this image, do you?

15 **A.** I talked with the individual.

16 **Q.** Okay. What program did they use to --

17 **A.** That --

18 **Q.** -- capture?

19 **A.** -- that was File, Print, Print Screen, or Save As/Print As,
20 and then it captures the entire document. And it -- it puts
21 those headers on there.

22 **Q.** Okay. Was the only source -- the Facebook that you brought
23 in, the only source from either you, Facebook, or other
24 investigators then that we have these?

25 **A.** Yes.

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1 Q. That would be it; right?

2 **A.** Facebook, other . . . I believe so, yes.

3 Q. Okay.

4 MR. LEVENTHAL: If we can go down, please, Brian.

5 Stop.

6 BY MR. LEVENTHAL:

7 Q. It says here -- now, you indicated that another agent
8 brought this off guard -- or downloaded this or got a snapshot
9 of this; correct?

10 **A.** Another employee. Correct.

11 Q. Okay. And, now, you indicated (drawing) this is something
12 that Scott Drexler would have written; correct?

13 **A.** Correct.

14 Q. Okay. But you don't know whether he actually wrote that, do
15 you?

16 **A.** No. Based upon how it shows there, I believe he wrote that
17 but . . .

18 Q. It's a belief --

19 **A.** Right.

20 Q. -- it's not a certainty; correct?

21 **A.** Right. I wasn't with him when it was written.

22 Q. Okay. And, even if you weren't with him when it was
23 written, just because there's text here that doesn't mean that
24 it didn't come from someone else; correct?

25 **A.** Certainly. Within Facebook, such as an email address, if

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1 you give your username and password to someone else, they could
2 enter something for you.

3 Q. Okay. Now, it says here, "Glad . . . to spend a few days in
4 Oregon."

5 **A.** Correct.

6 Q. Were you aware that he went to Oregon?

7 **A.** Prior to this -- viewing this, no, I hadn't seen anything --
8 any -- anything else with him in Oregon.

9 Q. Okay. Were -- were you made aware at any time that
10 Mr. Drexler was ever arrested in Oregon?

11 MS. AHMED: Objection, relevance.

12 MR. LEVENTHAL: It goes to her investigation, Your
13 Honor. She's testified to Oregon; she's testified to Montana.
14 And it just goes into her investigation and how deep she went
15 and what she showed.

16 MS. AHMED: Obligation, relevance.

17 THE COURT: Let's go to sidebar.

18 (Begin sidebar conference.)

19 THE COURT: All right. So we're at sidebar.

20 The objection was to relevance. Mr. Leventhal, do you
21 believe the answer's gonna be "yes" or "no"? Because I don't
22 know if Mr. Drexler was --

23 MR. LEVENTHAL: No, he --

24 THE COURT: -- arrested --

25 MR. LEVENTHAL: -- was not.

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1 THE COURT: -- in Oregon.

2 MR. LEVENTHAL: I --

3 THE COURT: -- so I didn't want that to come in if it's
4 not --

5 MR. LEVENTHAL: No, I wouldn't --

6 THE COURT: All right. Okay.

7 MR. LEVENTHAL: -- I would never raise that if I
8 thought that was --

9 THE COURT: Right. That's what my --

10 MR. LEVENTHAL: No.

11 THE COURT: -- concern was --

12 MR. LEVENTHAL: No, no, no.

13 THE COURT: Where are --

14 MR. LEVENTHAL: The -- no.

15 THE COURT: Okay.

16 COURT REPORTER: One at a time, please.

17 MR. LEVENTHAL: I'm sorry.

18 And I don't think they would have objected to it if he
19 was.

20 THE COURT: Okay.

21 MR. LEVENTHAL: So I know the answer is no. But the
22 point is, is that obviously under 404(b) they've said it's
23 intwix -- I can't speak. I got a shot this morning --
24 inexplicably -- whatever it is -- intertwined. And, you know,
25 it's leaving the impression with the jury that this was some

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1 unlawful event that they went to. And, if it wasn't an
2 unlawful event, then you're gonna leave it with the jury, like
3 we've left a lot of things just sort of hanging there, that it
4 was unlawful.

5 He was not arrested there. He was not indicted there.
6 And so I should be able to -- at least in terms of not leaving
7 some hanging fruit out there that, oh, my God. He went to
8 Montana, he went here, and he went to all these places. But
9 maybe he just went. Maybe he just went on vacation. Maybe he
10 just -- you know, they've brought in pictures of him being
11 there. But nothing more. But obviously leaving that with the
12 jury gives an impression that he went for some illegal or
13 nefarious reason when he never was arrested, he went there, he
14 spent a few days there, that's it, and came back. So that's
15 why it's relevant.

16 MS. AHMED: Your Honor, whether or not Mr. Drexler was
17 arrested is relevant. We wouldn't -- we would object to it
18 regardless of the answer. It doesn't go to -- just as these
19 defendants are not presumed guilty because they've been
20 indicted nor arrested in this case, it doesn't mean that the
21 absence of an arrest means that what their activities were was
22 not unlawful. By asking that question, you're trying to imply
23 to the jury what he's doing was lawful. There are other ways
24 to ask that without getting into this irrelevant question and
25 then trying to leverage it to something that it is not. So --

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1 MR. LEVENTHAL: I --

2 MS. AHMED: -- he can ask her if she knows whether he
3 went on vacation.

4 MR. LEVENTHAL: Well, I --

5 MS. AHMED: That --

6 MR. LEVENTHAL: -- pretty --

7 MS. AHMED: No. I'm just saying that that's an area
8 that I don't think that that was the point of your questioning
9 is that she doesn't know what he did when he got there other
10 than what she's seen in photographs. There are other ways, I
11 believe, Your Honor, that he could do that without getting into
12 whether or not he was arrested and then trying to imply through
13 that question that he was not doing anything criminal because
14 he wasn't arrested.

15 MR. LEVENTHAL: Well, then I can ask her questions
16 based upon whether or not she knows whether he pointed a gun at
17 anybody; whether he went there to assault anybody; and I can go
18 through all that if that's what she's saying. I don't have a
19 problem with that.

20 MS. AHMED: Obviously, I'd object to anything that
21 calls for legal conclusions but . . .

22 MR. LEVENTHAL: Well, that's what --

23 THE COURT: Right, the factual questions. Do you -- do
24 you know if he pulled a gun at someone. Do you -- but not
25 actually saying did he assault someone.

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1 MR. LEVENTHAL: Well --

2 THE COURT: I think that's her objection. Right? You
3 don't want to use a legal terminology, just factually.

4 MR. LEVENTHAL: Okay. Fair enough.

5 MS. AHMED: Your Honor --

6 THE COURT: Does that clarify all the objections? All
7 right.

8 MR. LEVENTHAL: Okay. Thank you.

9 (End sidebar conference.)

10 THE COURT: All right. Well, the -- you know, I don't
11 know if really the objection is sustained or overruled. I
12 think it was withdrawn and the form of the question was
13 clarified.

14 And so you may continue, Mr. Leventhal.

15 MR. LEVENTHAL: Correct. Thank you, Your Honor.

16 BY MR. LEVENTHAL:

17 Q. Agent Draper, you testified regarding this -- I guess, a
18 trip to Oregon yesterday. Do you remember --

19 **A.** Yes.

20 Q. -- on direct?

21 **A.** Um-hum.

22 Q. Okay. Were you aware whether or not Mr. Drexler pointed a
23 gun at anybody in Oregon?

24 **A.** I'm not aware of that.

25 Q. Okay. Were you aware whether or not Mr. Drexler demanded

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1 anything back from anybody in terms of property in Oregon?

2 **A.** Nope.

3 **Q.** Okay. Do you know how long Mr. Drexler stayed in Oregon?

4 **A.** I do not.

5 **Q.** Okay. Have you -- you live in Idaho, correct, I think you
6 said?

7 **A.** Yes.

8 **Q.** Okay.

9 MS. AHMED: Objection, relevance.

10 BY MR. LEVENTHAL:

11 **Q.** You're the case agent on this because you're in Idaho and
12 Mr. Drexler lives in Idaho; correct?

13 **A.** Correct.

14 **Q.** Okay. And, during your investigation, you came to know that
15 Mr. Drexler lives in a town called "Challis"; correct?

16 **A.** Yes.

17 **Q.** And have you ever been to Challis?

18 **A.** Yes.

19 **Q.** Okay. Had you ever had any dealings with The Three Percent
20 club prior to or after the 12th of April 2014?

21 MS. AHMED: Objection, vague --

22 MR. LEVENTHAL: Okay.

23 MS. AHMED: -- compound.

24 MR. LEVENTHAL: I can break it down.

25 THE COURT: Please.

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1 BY MR. LEVENTHAL:

2 Q. Prior to 2012-2014, had you had any dealings with the club
3 called "The Three Percenters"?

4 **A.** No.

5 Q. After 2012-2014, did you have any personal dealings with
6 anybody in this club called "The Three Percenters"?

7 MS. AHMED: Objection both to personal dealings and
8 reference to this organize as "club." I don't think she
9 testified to that.

10 THE COURT: Do you want to explain what "personal
11 dealings" mean? I mean, 'cuz I have to agree. It sounds,
12 like, are you asking, like, outside of her profession? Or you
13 just mean her personally as opposed to her agency?

14 MR. LEVENTHAL: I'll ask both.

15 BY MR. LEVENTHAL:

16 Q. Personally have you had any dealings with anybody who is in
17 The Three Percenter club and . . .

18 MS. AHMED: Objection, relevance.

19 MR. LEVENTHAL: I can -- if we need another sidebar, I
20 can tell why, the Court, it's relevant.

21 THE COURT: Okay. Let's go to sidebar.

22 (Begin sidebar conference.)

23 MR. LEVENTHAL: I'm sorry, Your Honor.

24 THE COURT: All right.

25 MR. LEVENTHAL: I apologize.

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1 The relevance is this. One of the Facebook pages that
2 Agent Draper has given us has under the word "Friends" -- it
3 wasn't redacted for some reason -- it says "4 mutual Friends."
4 I want to -- these are a precursor so that when I ask her, how
5 do you have four mutual friends with Scott Drexler? I want to
6 know why she has four personal; if it's her or if it's another
7 FBI agent.

8 I've already asked her whether or not she took the
9 screenshot. She said no, that was another agent. Okay.

10 So my question is because there is some writing on
11 the -- there's some text. And, if she went undercover or if
12 she knows these people or she has assumed another name, it goes
13 to the weight of the evidence. And that's clearly allowed --
14 it's already been brought in for the jury to weigh whether or
15 not she was under cover at the time, whether she was using an
16 alias. Why would she have four mutual friends with Scott
17 Drexler? I have no idea.

18 Otherwise, I'm gonna ask her whether or not she used
19 her name when she went on because she needs to have a password
20 and she needs to have all that stuff too. There should be no
21 reason why she should have four mutual friends with Scott
22 Drexler. So this is all setting up a foundation because I
23 gotta make sure that that's what she's gonna say. And, when I
24 ask her the ultimate question -- that's where I'm going -- why
25 do you have four mutual friends? It's on there, I want to make

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1 sure that she doesn't say, well, that was another agent or --
2 she -- she's already testifies that it was her, another agent,
3 or Facebook that gave her the stuff. So I don't want her to
4 now at the end of it say, oh, that wasn't me; that was from
5 something else.

6 So that's where I'm going with it. I just gave you
7 where I'm going with it. That's the relevance.

8 THE COURT: Okay.

9 MR. LEVENTHAL: It's building a foundation.

10 MS. AHMED: Your Honor, the question itself is still
11 irrelevant. There's no way to get -- I will say that the
12 agent's already said that she didn't capture that post. All of
13 those Open Source posts that are in evidence are all from the
14 same capture. So you're gonna -- she's not the one who
15 captured them. I'll just -- if that's where you're trying to
16 go, I can tell you right now that she's not the one who
17 captured them. But if you want -- if you were to put that post
18 in front of her and say "Did you capture this post?" and then
19 she said "yes" or "no," that's the way, I would think, that one
20 could --

21 THE COURT: Are the four mutual friends the
22 codefendants?

23 MR. LEVENTHAL: No.

24 THE COURT: Okay.

25 MS. AHMED: But I would just say that the way this

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1 question is currently before this witness is irrelevant, Your
2 Honor.

3 MR. LEVENTHAL: Well --

4 MS. AHMED: And if Drexler was -- excuse me --

5 Mr. Leventhal was to put that post in front of her and ask
6 specific questions about that post, we could clarify whether or
7 not she was the one who captured it and resolve that question
8 of these four mutual friends that way.

9 MR. LEVENTHAL: Thank you for telling me.

10 This is how I'm building it up, one. I'll get to that
11 post. It's not this post; it's another post that -- where it
12 says "4 mutual Friends."

13 THE COURT: Yeah, because I didn't see that on --

14 MR. LEVENTHAL: No, it's --

15 THE COURT: -- this post.

16 MR. LEVENTHAL: -- not this one. It's --

17 MS. AHMED: No, no.

18 MR. LEVENTHAL: -- a different one. But I'm just
19 building -- along the way building a foundation to get to that
20 question on why she has four mutual friends or somebody else.

21 And that's, again, the problem with what I'm having
22 is -- I'm having a confrontation problem because I'm now
23 talking to somebody who didn't even capture the post. It's now
24 through another agent who this was given to her. And that's
25 been a problem all along. So, even when I ask her the ultimate

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1 question, she's gonna say I don't know what the other agent did
2 or didn't do. That's not -- that's not -- that's not what a
3 trial is for. This is the right to confront and cross-examine
4 those who are here. And now we've got this witness who is
5 gonna be -- probably gonna say I don't know; I didn't do it.
6 And so, again, I would object on confrontation --

7 THE COURT: So you're trying --

8 MR. LEVENTHAL: -- grounds but --

9 THE COURT: -- impeach her ability to lay a foundation
10 for the admissibility of that exhibit?

11 MR. LEVENTHAL: No, not at all.

12 THE COURT: She doesn't have personal knowledge because
13 she's not the one who --

14 MR. LEVENTHAL: I haven't gotten to the --

15 THE COURT: -- was involved in the screenshot? I guess
16 I'm . . .

17 MR. LEVENTHAL: Well, I haven't asked her that
18 question.

19 THE COURT: Okay.

20 MR. LEVENTHAL: The po- -- well, I haven't gotten to
21 the post yet. So I haven't gotten to that one. She said she
22 did some; she didn't do other ones. So I don't know whether
23 she captured it. I'm just hearing this from Ms. Ahmed that
24 that's -- she'll say no, she doesn't know. But I haven't ask
25 her --

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1 MS. AHMED: No. I'm --

2 MR. LEVENTHAL: -- that.

3 MS. AHMED: -- not saying she won't know. I'm saying
4 she didn't capture it. But --

5 MR. LEVENTHAL: But she didn't say --

6 MS. AHMED: -- I'm --

7 MR. LEVENTHAL: -- that.

8 MS. AHMED: -- I'm just saying that -- I just want it
9 to be clear on what I said just now.

10 I didn't say that she won't know the answer to your
11 question. But I'm just saying that, from my understanding, she
12 was not the one who captured any of the public posts that were
13 put into evidence that are already admitted.

14 But, Your Honor, asking her about her personal
15 relationships with other people in The Three Percent is
16 irrelevant to this. I mean, he's asking her about personal
17 contacts she has with The Three Percent.

18 MR. LEVENTHAL: It says "four mutual Friends." So if
19 she says yes --

20 MS. AHMED: You could ask --

21 COURT REPORTER: One at a time.

22 MR. LEVENTHAL: Sorry.

23 THE COURT: Okay. So I think the objection is not to
24 Mr. Leventhal's purpose or intent or the testimony that he
25 hopes to elicit. The objection is that it might go in a

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1 different direction and it might get into her personal life and
2 the people she knows and their contacts with The Three
3 Percenters because of the -- so I think it's a form-of-the-
4 question objection as to whether or not you're asking her if
5 she has any friends or relatives who know someone who have --
6 you know, are in The Three -- it's a small town --

7 MR. LEVENTHAL: Right.

8 THE COURT: -- I think --

9 MR. LEVENTHAL: Right.

10 THE COURT: -- Challis.

11 MR. LEVENTHAL: It's Challis. But --

12 THE COURT: Right.

13 MR. LEVENTHAL: -- it's a small little town.

14 THE COURT: We already --

15 MR. LEVENTHAL: That's why --

16 THE COURT: -- know that.

17 MR. LEVENTHAL: -- I'm building that up to find out why
18 she has mutual friends with Scott Drexler.

19 MS. AHMED: Which is why, Your Honor, I would ask --

20 THE COURT: So I don't think -- I don't have any
21 problem with Mr. Leventhal's intended line of questioning. I
22 think what I'm understanding the Government to say is that if
23 you hear that we're going into her brother's, sister's,
24 daughter's ex-boyfriend who used to be a member; like those --

25 MR. LEVENTHAL: No.

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1 THE COURT: -- type of -- and we don't know if
2 that's --

3 MR. LEVENTHAL: No.

4 THE COURT: -- true, but it could be. Right?

5 MR. LEVENTHAL: Right.

6 THE COURT: It could be somebody's ex-boyfriend
7 that's --

8 MR. LEVENTHAL: Right.

9 THE COURT: -- related to her was a member in
10 something.

11 So I think that's the concern is -- if you focus --
12 maybe restate the question a little more focused to avoid
13 accidentally going somewhere we don't want to go.

14 MR. LEVENTHAL: I just don't want the ultimate answer
15 to be, oh, my brother who was a Three Percenter actually pulled
16 that off the page who happened to be friends with Scott.
17 That's all I'm trying to avoid is that when we get to that
18 ultimate question she says, oh, I didn't take that one; that
19 was a brother who had four mutual friends. That's what I'm --

20 THE COURT: Well, if that's --

21 MR. LEVENTHAL: -- trying to avoid.

22 THE COURT: -- what it was, then, I mean, you want to
23 know that.

24 MR. LEVENTHAL: Well, but yes.

25 THE COURT: We'd just . . .

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1 MS. AHMED: So I would just ask that those questions be
2 to the actual exhibit -- relate to the actual exhibit that's in
3 question as opposed to just broad questions about her personal
4 life when she's here as a case agent and she's spoken only on
5 direct to her investigation as a case agent. So --

6 MR. LEVENTHAL: I will --

7 MS. AHMED: -- I --

8 MR. LEVENTHAL: -- keep it -- if it's okay, I will keep
9 it as a professional line of questioning as to what she did
10 professionally in her investigation, if she ever had any
11 communications or spoke to anybody from The Three Percenters or
12 Scott or she knew Scott personally or anything like that.

13 THE COURT: I think the foundation question is did you
14 personally download any of these screenshots from the
15 Facebook --

16 MR. LEVENTHAL: She --

17 THE COURT: -- account.

18 MR. LEVENTHAL: -- well, I'm going through each one.
19 And she said -- the first one I had showed her she said, no,
20 she didn't do that one.

21 THE COURT: Right.

22 MR. LEVENTHAL: So I was gonna go through each one.
23 And then ultimately why does this person have four mutual
24 friends with Scott Drexler if -- did he go undercover?

25 THE COURT: Okay. So I think you need to lay

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1 foundation first that she actually has at some point been on
2 Facebook and been potentially the person who took the
3 screenshot of the post in question that you're saying has four
4 mutual friends listed on it.

5 MR. LEVENTHAL: Right.

6 MS. AHMED: That's my point, Your Honor, is --

7 MR. LEVENTHAL: And ultimately I --

8 MS. AHMED: -- it ultimately should be related to an
9 exhibit. If they are about an exhibit, they should be related
10 to the exhibit and not just broad, general questions about
11 relationships with people in The Three Percent. It's so broad.
12 I mean, it could go into -- it just seems like it's fishing for
13 information about possible other investigations or other -- you
14 know, it could go -- again, it's a huge question when it's --
15 all that it seems Mr. Leventhal's purpose is to establish
16 something about a specific exhibit.

17 THE COURT: All right. Well, I just recall her saying
18 that she -- she's seen some of the videos and she's been on the
19 pages and such. But I don't remember her saying yet that she's
20 actually downloaded any of these in a screenshot or by other
21 applications. I know she talked about other applications that
22 are used.

23 MR. LEVENTHAL: Um-hum.

24 THE COURT: But I don't remember her saying that she
25 did it herself.

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1 MR. LEVENTHAL: Right.

2 THE COURT: But it was some other agent or some other
3 employee under her supervision but not that it was her account.
4 Maybe just lay a little bit of foundation and
5 then . . .

6 MR. LEVENTHAL: Thank you, Judge.

7 (End sidebar conference.)

8 THE COURT: All right. So the objection is sustained
9 as to the form of the question.

10 And, Mr. Leventhal, you may go ahead and continue down
11 the path and just be more --

12 MR. LEVENTHAL: Thank you.

13 THE COURT: -- specific to the form of the question.

14 MR. LEVENTHAL: Thank you, Your Honor.

15 BY MR. LEVENTHAL:

16 Q. Agent Draper, let me back up for a minute.

17 Did you have in your capacity as a FBI agent any
18 personal -- not personal -- dealings with anybody from The
19 Three Percent? As an FBI agent.

20 **A.** Yes.

21 Q. Okay.

22 MS. AHMED: Objection, Your Honor. It's what we just
23 discussed. It's overbroad, vague.

24 THE COURT: Sustained.

25 MR. LEVENTHAL: Okay.

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1 MS. AHMED: I'd ask to strike both the question and
2 answer.

3 THE COURT: The question and answer will be stricken.

4 BY MR. LEVENTHAL:

5 Q. Is there a hierarchy in Idaho with the FBI?

6 A. Yes.

7 Q. Okay. And the individuals that you indicated earlier that
8 may have taken off some of the screenshots, were they -- were
9 you the lead on this investigation or were you all working
10 together?

11 A. No. I was the lead on that investigation on -- on
12 Mr. Drexler.

13 Q. Okay.

14 A. There were other people who helped but . . .

15 Q. So when we spoke earlier about the fact that I showed you a
16 post and you indicated you did not take that screenshot, it was
17 someone else.

18 A. Yes.

19 Q. Okay. So these -- is this someone else that works for the
20 FBI?

21 A. Yes.

22 Q. Doesn't necessarily work for you. But you were the lead
23 agent on this?

24 A. That's right.

25 Q. So I guess everything sort of would have gotten filtered up

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1 to you.

2 **A.** Yes.

3 **Q.** Okay.

4 MR. LEVENTHAL: If we can go to 127, please, Brian.

5 (Exhibit displayed in open court.)

6 BY MR. LEVENTHAL:

7 **Q.** Okay. Again, this is a post that has no (drawing) blue so

8 that would not have been through a search warrant; correct?

9 **A.** That's right.

10 **Q.** This is something that either yourself or another agent

11 would have taken a screenshot of; correct?

12 **A.** Right. Another employee, right.

13 **Q.** Okay. How many employees did you have working taking

14 screenshots?

15 **A.** I -- there were a num- -- a number of people who assisted

16 with the investigation over time. I . . .

17 **Q.** Let me --

18 **A.** Okay.

19 **Q.** -- sort of --

20 **A.** Okay.

21 **Q.** -- clarify. I --

22 **A.** Sure.

23 **Q.** -- apologize. And I don't mean to speak over you.

24 In terms of these pages, just --

25 **A.** Yes.

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1 Q. -- just focusing on Mr. Drexler pages --

2 **A.** Yes.

3 Q. -- we don't have a number of them. We only have, I believe
4 we indicated, about seven; correct?

5 **A.** Right.

6 Q. Okay. And the world of sort of Facebook was not enormous
7 when it came to Mr. Drexler; correct?

8 **A.** Correct.

9 Q. Okay. I think we saw other people had 7-8 thousand pages.
10 That clearly wasn't with Mr. Drexler; correct?

11 **A.** Correct.

12 Q. Okay. So how many of your agents would look and take a
13 screenshot and filter it up to you? How many different agents,
14 if you know?

15 **A.** Over time?

16 Q. Well, let me go to this --

17 **A.** Yep.

18 Q. -- right here.

19 **A.** Yes, sir.

20 Q. May 4th, 20 --

21 **A.** Yes.

22 Q. -- 15.

23 **A.** Yes.

24 Q. How many agents would have been on Mr. Drexler's Facebook
25 May 4th, 2015?

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1 **A.** Maybe five other employees at a given -- five or six. I --
2 just a guess.

3 **Q.** So five or six different people would have looked at
4 Mr. Drexler's Facebook and then filtered that up to you in some
5 way, shape, or form?

6 **A.** If there was something relevant, correct.

7 **Q.** Okay. And relevant is what you -- they determined to be
8 relevant?

9 **A.** Right. But then I would approve if it was something that
10 would be captured of it for evidentiary reasons into a case
11 file. Does --

12 **Q.** Okay.

13 **A.** -- that make sense?

14 **Q.** So they didn't pull everything off of Facebook in terms --
15 just for Mr. Drexler. They didn't pull everything; they just
16 kinda spot-checked what they thought was relevant and they
17 would pull that off. Correct?

18 **A.** I -- on that day or total? I'm . . . It was an ongoing
19 review. I'm sorry. I'm, um . . .

20 **Q.** Let me back up.

21 **A.** Okay.

22 **Q.** Did you ever -- did you ever get on Scott Drexler's web
23 page -- or Facebook page?

24 **A.** Yes, I did.

25 **Q.** Personally?

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1 **A.** Yes, in my official capacity.

2 **Q.** Yes, of --

3 **A.** Right.

4 **Q.** -- course.

5 **A.** Right. Yes.

6 **Q.** As your official capacity, you got --

7 **A.** Yes.

8 **Q.** -- on his web page; right? Okay.

9 On 5-4-2015, do you remember getting on Scott Drexler's
10 personal web page?

11 **A.** No, I did not remember.

12 **Q.** Okay. Now, in looking at this heading here (drawing), this
13 is Scott Drexler's Facebook page; correct?

14 **A.** Yes.

15 **Q.** We've seen this before, though. And I believe we saw it on
16 Eric Parker's web page; correct? (Drawing.)

17 **A.** Right.

18 **Q.** Okay. So, if somebody obviously puts something on their web
19 page, I think you indicated that because Scott's name is here
20 (drawing) it then goes to his page; correct?

21 MS. AHMED: Objection as to web page generally. I
22 don't know if we're talking about all web pages or Facebook.
23 Vague, I guess.

24 MR. LEVENTHAL: Okay.

25 ///

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1 BY MR. LEVENTHAL:

2 Q. If Eric Ej Parker posts something, Scott Drexler (drawing)
3 without knowing his name is in there, it goes on his web page;
4 is that correct?

5 **A.** I can't speak as an expert on Facebook at that time.
6 Generally -- well, I -- generally someone would have to approve
7 if they were tagged in something. But I don't -- I'm -- in May
8 of 2015, I don't know what the Facebook settings or rules would
9 have been. I'm sorry.

10 Q. Well, in 2015, you were investigating this case; correct?

11 **A.** Yes.

12 Q. And so did you familiarize yourself with the -- how Facebook
13 sort of did what they did?

14 **A.** Yes.

15 Q. Okay. So then you should be able to answer how does Eric's
16 words and page get onto Scott Drexler's page.

17 **A.** My understanding is he would have to approve that, but
18 that's just my understanding.

19 Q. How would one approve something?

20 **A.** So if something was suggested to someone's timeline, my
21 understanding is that user would have to approve that that
22 actually be posted to their timeline.

23 Q. Okay. So verbatim (drawing) this shows up on Eric Parker's
24 web page and verbatim it shows up on Scott Drexler's web page;
25 is that correct?

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1 MS. AHMED: Objection as to a web page. Can we clarify
2 what web page we're --

3 MR. LEVENTHAL: Facebook. I apologize.

4 BY MR. LEVENTHAL:

5 Q. Facebook page.

6 A. Yes. I mean, I -- I -- it appears to be the same without
7 doing side-by-side analysis.

8 Q. Okay. So, again, Scott Drexler would not have written
9 (drawing) this text.

10 A. No.

11 Q. Scott Drexler would not have posted (drawing) this video.

12 A. Correct.

13 Q. Okay.

14 MR. LEVENTHAL: If we can go down this, please. Brian,
15 go down. Okay. Stop.

16 BY MR. LEVENTHAL:

17 Q. Now, again, this is Scott (drawing) Drexler's Facebook page
18 and yet there's only one person there saying something;
19 correct?

20 A. That's not been redacted. Right.

21 Q. Okay. That's not been redacted (drawing); right?

22 A. Yes.

23 Q. Okay. And that's the exact same word for word that was on
24 Eric Parker's Facebook page; correct?

25 A. Yes.

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1 MR. LEVENTHAL: If we can go down a little bit more,
2 please. I think it's all. All right. Go to 128, please,
3 Brian.

4 (Exhibit displayed in open court.)

5 MR. LEVENTHAL: Okay. If we go down.

6 BY MR. LEVENTHAL:

7 Q. Now, again --

8 MR. LEVENTHAL: Go back up. I apologize.

9 BY MR. LEVENTHAL:

10 Q. Again, this is -- there's no (drawing), I guess, blue up
11 there. So --

12 **A.** Right.

13 Q. -- again, this is something that either yourself or an agent
14 captured; correct?

15 **A.** Yes. Another employee, right.

16 Q. Okay. And, again, it's on 5/4/15, the same day that we saw
17 (drawing) previous; correct?

18 **A.** Yes.

19 MR. LEVENTHAL: Okay. If we go down a little bit
20 please, Brian. Thank you. Okay. Stop.

21 BY MR. LEVENTHAL:

22 Q. Okay. So now we see that this is a -- (drawing) Scott
23 Drexler's name is there; correct?

24 **A.** Correct.

25 Q. And it's dated December 11th 2014 (drawing); correct?

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1 **A.** Correct.

2 **Q.** Okay. And it says, "Challis, Idaho." Does he actually
3 input that or is that automatic?

4 **A.** I believe that's automatic. I don't think he inputs that.

5 **Q.** Okay. Is that Challis, Idaho, based upon (drawing) where he
6 was at the time? Or is that Challis -- go ahead and answer
7 that. I don't want a compound question so . . .

8 **A.** I believe it's based upon where their settings are. But
9 I -- I don't want to -- I can't answer that definitively.

10 **Q.** Okay.

11 **A.** I . . .

12 MR. LEVENTHAL: And if we could go just down.

13 BY MR. LEVENTHAL:

14 **Q.** And now the post looks like a *Washington Times* post;
15 correct? (Drawing.)

16 **A.** Yes.

17 **Q.** Okay. Again, he's posting from -- have you -- is that a
18 reputable news organization?

19 **A.** I believe so.

20 **Q.** Okay. So, again, so far we've got Reuters; correct?

21 **A.** Yes.

22 **Q.** MSNBC?

23 **A.** Yes.

24 **Q.** And wasingtontimes.com; correct?

25 **A.** Yes.

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1 Q. Okay. And this obviously --

2 MR. LEVENTHAL: Just go up a little bit, Brian, please.

3 BY MR. LEVENTHAL:

4 Q. This "Utah to seize own land from government, challenge
5 federal dominance of Western states," did you actually read
6 that? Was that a -- or did you watch a video? Or was that a
7 news -- written?

8 A. I did not read it, no.

9 Q. Okay. Do you know whether it was written or whether it's a
10 video?

11 A. I believe that was -- well, I don't -- I don't watch it
12 so . . .

13 Q. Okay. Can you read what it says here (drawing) and then
14 just go ahead and . . .

15 A. Yes. I'm sorry. I'll move over here.

16 "In" -- "In three weeks, Utah intends to seize
17 control" -- or I'm sorry. Just those three words?

18 Q. Yes. No. Go ahead. The whole thing.

19 A. "In three weeks, Utah intends to seize control of
20 31.2 million acres of its own land now under the control of the
21 federal government. At least, that's the plan."

22 Q. Okay. Obviously this is not authored by Mr. Drexler; it's
23 authored by somebody named Valerie Richardson (drawing);
24 correct?

25 A. Yes, correct.

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1 Q. Okay.

2 MR. LEVENTHAL: If we can go to 125, please.

3 THE COURT: Before we get off that, can we go back to
4 Exhibit, I think it was, 127. Was that the Drexler Facebook
5 page?

6 MR. LEVENTHAL: Yes.

7 (Exhibit displayed in open court.)

8 THE COURT: Special Agent Draper, is there a tag alert
9 on that post?

10 THE WITNESS: Your Honor, I don't -- I don't know.

11 THE COURT: Is this Drexler's page or Parker's page?

12 THE WITNESS: This is Drexler's, Your Honor.

13 THE COURT: All right. That's fine.

14 MR. LEVENTHAL: 125, please.

15 (Exhibit displayed in open court.)

16 MR. LEVENTHAL: Okay.

17 BY MR. LEVENTHAL:

18 Q. So, again, there's no blue (drawing); correct?

19 A. That's correct.

20 Q. Okay. So this would not be a search warrant. This would be
21 something either you or one of --

22 A. Yes.

23 Q. -- your agents --

24 A. One of -- one of the employees. Correct. Yep. Um-hum.

25 Q. And this is indicating that there's a person with a T-shirt

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1 here; correct?

2 **A.** Yes, yes.

3 **Q.** Okay. And you don't know who that person is, do you?

4 **A.** Correct.

5 **Q.** Okay. And it says something about the "I AM III PERCENT";
6 correct?

7 **A.** That's correct.

8 **Q.** And it says something about Scott Drexler (drawing);
9 correct?

10 **A.** Yep.

11 **Q.** Okay. Tell me something. (Drawing.) It says there that
12 the person who pulled this off --

13 **A.** Um-hum.

14 **Q.** -- had four mutual friends --

15 **A.** Okay.

16 **Q.** -- with Scott Drexler.

17 **A.** Yes.

18 **Q.** Were you or any of your agents in an undercover capacity at
19 the time that you took these screenshots?

20 **A.** This particular --

21 MS. AHMED: Objection, relevance.

22 MR. LEVENTHAL: It goes to weight of the evidence and
23 whether or not this jury can look at all of these and say
24 whether or not they are worthy of what they are bringing in or
25 if there's some doubt to 'em. The fact that an FBI agent

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1 and --

2 THE COURT: Just a minute.

3 So the objection is to relevance?

4 MS. AHMED: Correct, Your Honor, relevance and --

5 THE COURT: And the response is --

6 MR. LEVENTHAL: Goes to --

7 THE COURT: -- that it goes to the weight.

8 MR. LEVENTHAL: Absolutely, Judge.

9 MS. AHMED: Your Honor, I don't think there's any posts
10 that were offered other than things that appeared by
11 Mr. Parker's account or by Mr. Drexler's account that posted to
12 that page. So whether or not anyone else was posting would be
13 irrelevant.

14 MR. LEVENTHAL: That what?

15 MS. AHMED: If anyone else is a friend and they are
16 putting content to that page, it's irrelevant; it wasn't put
17 into issue.

18 MR. LEVENTHAL: We're gonna get to that.

19 THE COURT: Okay. So what is your current question
20 then? Because I need to rule on the current objection --

21 MR. LEVENTHAL: My current --

22 THE COURT: -- not what --

23 MR. LEVENTHAL: -- question is --

24 THE COURT: -- we're gonna get to.

25 MR. LEVENTHAL: -- is, is whether or not she or any of

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1 her FBI agents went undercover in order to get onto
2 Mr. Drexler's web page. And that would go to the weight
3 because we have -- there is one -- there is one communication
4 with a gentleman named Chris Willard --

5 THE COURT: Why don't you clarify that as -- going
6 undercover has a whole other vague connotation there. Are you
7 just asking what name -- what Facebook page was used to look at
8 these things or to obtain access?

9 MR. LEVENTHAL: That would be one question, yes, Your
10 Honor.

11 THE COURT: Okay. That's fine. You can ask that
12 question.

13 MR. LEVENTHAL: Thank you, Your Honor.

14 BY MR. LEVENTHAL:

15 Q. What name did -- did you use an alias or another name in
16 order to get onto other people's web -- Facebook page?

17 A. Did I?

18 Q. Yes.

19 A. To view it passively, yes.

20 Q. What does that's mean, "passively"?

21 A. Not interact with someone.

22 Q. Okay. You said you indicated you had six -- five or six
23 agents that were also pulling off Facebook posts; correct?

24 A. Other -- other employees.

25 Q. Other employees. Okay.

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1 And you indicated already that they sort of worked for
2 you; correct? You were the case agent; correct?

3 **A.** Correct.

4 **Q.** Did the other five or six case agents also use aliases to
5 get onto people's web -- Facebook pages?

6 **A.** Yes. We would not do it in our true name.

7 **Q.** Okay. So the fact that -- and you would agree with me that
8 this page right here is taken from the FBI; correct?

9 **A.** Yes.

10 **Q.** This snapshot; right?

11 **A.** Yes, yes.

12 **Q.** Either yourself or one of your six; correct?

13 **A.** Correct.

14 **Q.** Okay. And it's indicating that (drawing) whoever that FBI
15 agent is had four mutual friends with Scott Drexler; correct?

16 **A.** Yes, that employee.

17 **Q.** Okay. That employee.

18 **A.** Right.

19 **Q.** Okay. And, once you become friends with somebody, as we saw
20 earlier --

21 **A.** Right.

22 **Q.** -- with Eric Parker, once you post something it then goes
23 to -- or tag somebody, it goes to their page; correct?

24 **A.** That's my understanding.

25 **Q.** Okay.

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1 MR. LEVENTHAL: If we can go to 123, please.

2 BY MR. LEVENTHAL:

3 Q. You started investigating that case in April of 2014;
4 correct?

5 A. Correct.

6 Q. Okay.

7 (Exhibit displayed in open court.)

8 MR. LEVENTHAL: If we can go down, please.

9 BY MR. LEVENTHAL:

10 Q. (Drawing.) This conversation right here --

11 A. Yes.

12 Q. -- Chris Willard --

13 A. Yes.

14 Q. -- were you aware of the names that your agents used in
15 order to get on these web pages?

16 A. No.

17 Q. Okay.

18 A. But --

19 Q. No, no.

20 A. I'm sorry.

21 Q. You were --

22 MS. AHMED: Your Honor --

23 BY MR. LEVENTHAL:

24 Q. -- not aware --

25 MS. AHMED: -- I'd ask that the witness be allowed to

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1 answer the question --

2 MR. LEVENTHAL: She --

3 MS. AHMED: -- fully.

4 MR. LEVENTHAL: -- answered it. She said no.

5 THE COURT: No, she didn't. Let her finish her
6 response, please.

7 BY MR. LEVENTHAL:

8 Q. Go ahead. You said no, you don't.

9 **A.** Correct. You can ask your next question. I . . . That's
10 fine.

11 Q. Okay. So --

12 **A.** That's fine.

13 Q. -- just so we're clear, you were not aware of what your five
14 or six agents' names they used in order to get onto Scott
15 Drexler's web page; correct?

16 **A.** Correct. But -- except for but in an approved undercover
17 capacity, we would not be communicating. That's what the
18 passive viewing would be so . . .

19 Q. Well, I understand that you indicated you did passive --

20 **A.** Right.

21 Q. -- but were you sitting over your agents?

22 **A.** No.

23 Q. Okay.

24 MR. LEVENTHAL: Thank you, Agent Draper. I have
25 nothing further.

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1 THE WITNESS: Okay. Thank you.

2 THE COURT: Any cross --

3 MR. PEREZ: I've already crossed, Your Honor.

4 THE COURT: Oh, you already -- oh, you did yesterday;
5 right? Okay. I'm losing track of time.

6 All right. So any redirect from the Government?

7 MS. AHMED: Your Honor, may I just have one moment?

8 THE COURT: Yes, of course.

9 (Government counsel conferring.)

10 MS. AHMED: Your Honor, I do have just a brief
11 redirect.

12 REDIRECT EXAMINATION

13 BY MS. AHMED:

14 Q. Good morning again, Agent Draper.

15 A. Good morning.

16 Q. Now, Mr. Leventhal was just asking you questions about
17 whether or not there was any undercover communications with
18 Mr. Drexler on Facebook. Do you recall that line of
19 questioning?

20 A. Yes.

21 Q. And so you were differentiating between how Facebook --
22 Mr. Drexler's Facebook account would have been reviewed and
23 captured. Do you recall that?

24 A. Yes.

25 Q. And you indicated something about an approved -- any

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1 undercover communications would have to have been approved.

2 **A.** That's correct.

3 **Q.** To your knowledge, were any undercover communications made
4 under the name Chris Willard with Drexler?

5 **A.** No, not to my knowledge. No.

6 **Q.** And were -- had Mr. Drexler's response underneath --

7 MS. AHMED: Your Honor, may we publish Exhibit 123?

8 COURTROOM ADMINISTRATOR: Is that 23?

9 MS. AHMED: 123.

10 (Exhibit displayed in open court.)

11 BY MS. AHMED:

12 **Q.** So I believe you were explaining to the jury yesterday this
13 was from the search warrant returns; correct?

14 **A.** Correct.

15 **Q.** And so there was a picture that Mr. Drexler had made his
16 profile picture from the April 12th, 2014, incident; correct?

17 **A.** Correct.

18 **Q.** And these were comments made in response to that picture.

19 MR. LEVENTHAL: Objection, leading.

20 MS. AHMED: Your Honor, it's foundational.

21 MR. LEVENTHAL: It's not.

22 THE COURT: Overruled for foundational purposes so we
23 can get to the point.

24 THE WITNESS: Yes.

25 ///

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1 BY MS. AHMED:

2 Q. So, to your knowledge, this was not an approved undercover
3 FBI agent asking that question -- or making that statement;
4 correct?

5 **A.** To my knowledge, that was not an FBI employee making that
6 statement, no.

7 Q. And, in any event, what was the statement that that person
8 wrote?

9 MR. LEVENTHAL: Objection, asked and answered. Beyond
10 the scope.

11 MS. AHMED: Your Honor, I'm following up with what
12 Mr. Leventhal --

13 THE COURT: Overruled. She may answer the question.

14 THE WITNESS: "Careful, Bridges are choke points."

15 BY MS. AHMED:

16 Q. And below that where I've drawn that red line, this is the
17 response made on Mr. Drexler's account; correct?

18 **A.** Correct.

19 Q. By username "Scott Drexler"?

20 **A.** Yes.

21 Q. And what was that response?

22 **A.** "That's why we used them to shut down the freeway."

23 MS. AHMED: Your Honor, thank you. Nothing further.

24 THE COURT: Any recross?

25 MR. MARCHESE: It doesn't raise anything new from

1 Parker, Your Honor.

2 MR. TANASI: None from Stewart, Your Honor.

3 MR. PEREZ: None from Lovelien.

4 MR. LEVENTHAL: I'm thinking.

5 THE COURT: You say you're thinking about it? Go
6 ahead.

7 MR. LEVENTHAL: Thank you.

8 No recross. Thank you, Judge.

9 THE COURT: All right.

10 So, if any members of the jury have a question for
11 Special Agent Draper, please go ahead and write them on the
12 form provided. Take your time. Try not to use pronouns. More
13 descriptive is better so that we can be sure we ask the right
14 question that you hope to receive the answer for. And then
15 please do not write your name or your jury number or your
16 signature or any other identifying information.

17 (Pause in the proceedings.)

18 THE COURT: Oh. And please remember if you use any
19 terminology -- legal, military, technical, IT, any kind of
20 terminology like that -- it would be helpful if you maybe
21 define it in parentheses or something so that we can be sure
22 that we understand the question and that fellow jurors
23 understand it as well.

24 (Pause. The Courtroom Administrator and the Court
25 conferring.)

1 THE COURT: Take your time writing your questions.
2 We're going -- the attorneys and I will meet about the
3 questions while you all go to have lunch and then we'll ask the
4 questions after lunch. So take your time and write your
5 questions. Don't feel rushed that we need to get this all done
6 before lunch -- before you can have your lunch.

7 (Pause. The Courtroom Administrator and the Court
8 conferring.)

9 THE COURT: All right. So we'll go ahead and excuse
10 the jury so they can begin their lunch while the attorneys and
11 I go through the questions.

12 I do remind the jury during this lunch break that you
13 are not to discuss this case with anyone nor permit anyone to
14 discuss it with you. If someone should attempt to discuss the
15 case with you or if you inadvertently overhear anything about
16 the case, please bring it to the Court's attention right away.

17 You may speak to your fellow jurors about other things
18 but not about this case which includes the questions. So you
19 can't ask, "What question did you ask?" So we're -- don't even
20 go there. Please don't ask any questions about questions;
21 anything referring to this case.

22 Please do not read or listen to or view anything that
23 touches about this case in any way and do not attempt to
24 perform any research or any independent investigation. Just
25 let us know your questions. And, even if we can't get to the

1 answer right away through this particular witness or another
2 witness that might be coming in this afternoon, the attorneys
3 will have your questions and they'll find some way to provide
4 you the answer before the end of trial. So please do not
5 attempt any independent research or investigation if you don't
6 get the answer to your questions right away.

7 And please do not form any opinion until after you have
8 heard all the testimony, received all the evidence. I will
9 provide to you the jury instructions which are the legal
10 instructions. You will apply the facts as you find them. You
11 remember I told you early on it's up to you to decide what to
12 believe: all of it, none of it, some of it. So you decide
13 that and then you apply that to the legal jury instructions,
14 the instructions of law.

15 After that you will hear from the attorneys in their
16 closing arguments. And then, after you've heard the closing
17 arguments, I will excuse you to begin the deliberation process.
18 And that's when you start discussing the case with each other
19 in an effort to complete your jury duty service.

20 So we will excuse you and invite you back at 1:00
21 o'clock -- no? 1:10?

22 COURTROOM ADMINISTRATOR: 1:30.

23 THE COURT: Really? 1:30?

24 COURTROOM ADMINISTRATOR: Yes.

25 THE COURT: Okay. So we're thinking 1:30 so take your

1 time eating. And we will have you ready to come back at 1:30.

2 So let's go ahead and stand for the jury. You may be
3 excused.

4 (Jury out, 11:53 p.m.)

5 THE COURT: And, Special Agent Draper, after they exit
6 you may also exit and take your lunch break, stretch break, get
7 some fresh air and we'll have you back here at 1:30, please.

8 THE WITNESS: Thank you, Your Honor.

9 (Pause in the proceedings.)

10 THE COURT: All right. So do you all want to use the
11 restroom first and then we'll come back and discuss these
12 questions? There's quite a bit of 'em. And they're --

13 MR. MARCHESE: How many do we have, Your Honor?

14 THE COURT: Some are messy, which means I think you've
15 already answered some of them, and some are four-part
16 questions. You want to know how many? Is that what you said?
17 I didn't hear you.

18 MR. MARCHESE: Yeah.

19 THE COURT: Okay. One --

20 MR. MARCHESE: Mr. Tanasi says let's do the
21 questions --

22 THE COURT: Oh, was that not your question?

23 MR. TANASI: That was my --

24 THE COURT: I'm sorry.

25 MR. TANASI: -- suggestion to Mr. Marchese. I was --

1 MR. MARCHESE: Sure.

2 MR. TANASI: -- brainstorming, Your Honor. I certainly
3 wasn't instructing the Court as to what to do.

4 THE COURT: One, two, three, four, five, six, seven,
5 eight, nine, ten, eleven, twelve, thirteen. So there's
6 thirteen notes. But, as I said, some are short, one question,
7 and some of 'em go on and on. This one has four and there as
8 another one that I saw that had four. This one looks like it
9 has three or five depending on if those sub -- so there's a
10 lot. So do you want to just go take your bathroom break first
11 and then come back? We're talking an hour and a half lunch so
12 I'm not trying to cut into the one-hour break.

13 MR. TANASI: Okay. Perfect. Yes. Thank you, Your
14 Honor.

15 THE COURT: So let's go ahead and take about a 10-,
16 15-minute break. Use the restroom. I'll ask Aaron to call me
17 back into the courtroom after everyone's had a chance to seek
18 relief and then come back here.

19 Off record.

20 (Recess, 11:55 a.m. Resumed, 12:15 p.m.)

21 COURTROOM ADMINISTRATOR: All rise.

22 THE COURT: All right. Thank you. You may be seated.

23 Since the jury is out having lunch, we don't need to go
24 to sidebar. We can just stay at our seats.

25 The first jury question is on Jury Note No. -- my voice

1 is going -- Jury Note 107 asks, "Is there other sources that
2 you capture the post relating to Bundy's ranch in your
3 investigation besides Facebook?"

4 Any objection?

5 MS. AHMED: No objection, Your Honor.

6 MR. TANASI: None from Stewart, Your Honor.

7 MR. MARCHESE: None from Parker.

8 MR. LEVENTHAL: No, no objection.

9 MR. PEREZ: No, Your Honor.

10 THE COURT: Okay.

11 Jury Note 108 looks like two questions. First one is,
12 "Was your team looking at the Facebook pages of Mr. Parker,
13 Mr. Stewart, or Mr. Drexler on or before April 17, 2014?"

14 MS. AHMED: No objection, Your Honor.

15 MR. MARCHESE: None from --

16 MR. TANASI: None --

17 MR. MARCHESE: -- Parker.

18 MR. TANASI: -- from Stewart, Your Honor.

19 THE COURT: And the second question is, "What did you
20 and you team start looking at the Facebook pages" -- I'm
21 sorry -- "What date did you and your team start looking at the
22 Facebook pages of Mr. Parker, Mr. Stewart, and Mr. Drexler?"

23 Any objection?

24 MR. TANASI: None from --

25 MS. AHMED: No.

1 MR. TANASI: -- Stewart, Your Honor.

2 MR. MARCHESE: None from Parker.

3 THE COURT: All right. Jury Note 109, "Were the
4 Facebook posts" -- and then in parentheses -- "(screenshots)
5 only visible to friends of the users or were they visible to
6 anyone that went to that user's page?"

7 Any objection?

8 MS. AHMED: No, Your Honor.

9 MR. TANASI: None from Stewart.

10 MR. MARCHESE: None from Parker.

11 MR. PEREZ: None from Lovelien.

12 MR. LEVENTHAL: No, Your Honor.

13 THE COURT: All right.

14 Jury Note No. 110: "Agent Draper has testified that
15 outside of the search warrant the material collected from the
16 defendants' Facebook pages was publicly viewable content.
17 However, if one sets their account to private, you must become
18 the friend of that user to see the content that is being
19 posted. Does becoming friends with a user and having access to
20 their content automatically make the content publicly viewable
21 since their account is still technically private?"

22 Any objection to the question?

23 MR. PEREZ: No, Your Honor.

24 MR. TANASI: None from Stewart, Your Honor.

25 MR. LEVENTHAL: No, Your Honor.

1 MR. MARCHESE: None --

2 MS. AHMED: Your Honor --

3 MR. MARCHESE: -- from Parker.

4 MS. AHMED: -- I would just -- I'm a little confused
5 about the question sort of.

6 THE COURT: Do you want me to reread it?

7 It says: "Agent Draper testified that outside of the
8 search warrant the material collected from the defendants'
9 Facebook pages was publicly viewable an content" -- and I'll
10 say they put quotation marks around the three words "publicly
11 viewable content" -- "however, if one sets their account to
12 private, you must become the friend of the user to see the
13 content that is being posted. Does becoming friends with the
14 user and having access to their content automatically make the
15 content" -- and then again with a quotation marks --
16 "'publically viewable' since their account is still technically
17 private?"

18 MS. AHMED: Are they asking if that's what she
19 considers -- when she uses the phrase "publicly viewable
20 content," she's also including stuff that would have had to
21 have been viewed through establishing a friendship on Facebook?
22 I guess asking her for what she includes in that term -- that
23 phrase. I don't know.

24 THE COURT: The question could be asking if the account
25 is private and you become the friend of that person with the

1 private account does that now make the post publicly viewable
2 because now you can see it. So maybe they are asking what the
3 witness meant by the word "publicly viewable." In any case, it
4 bears clarification for this particular juror.

5 MS. AHMED: That's fine, Your Honor.

6 THE COURT: You could follow up and reiterate the
7 question in a more clear format. But do you have an objection
8 to my asking the question?

9 MS. AHMED: No, Your Honor.

10 MR. TANASI: None from Stewart.

11 MR. PEREZ: None from Lovelien.

12 MR. LEVENTHAL: No, Your Honor.

13 MR. MARCHESE: No, Your Honor.

14 THE COURT: Jury Note 111, "Would pictures attached to
15 a Facebook post be visible in the Business Account view?"

16 Any objection?

17 MS. AHMED: No objection, Your Honor.

18 THE COURT: And the second question on Jury Note 11,
19 "In order to be a 'friend' on Facebook, does that action
20 require the agreement of both parties?"

21 Any objection?

22 MS. AHMED: No objection.

23 MR. TANASI: None from Stewart.

24 MR. MARCHESE: No objection.

25 MR. LEVENTHAL: No.

1 THE COURT: All right. Jury Note 112 looks like it has
2 four parts. The first one is, "What training and experience do
3 you have to interpret and analyze Facebook account data?"

4 Any objection?

5 MR. TANASI: None from Stewart, Your Honor.

6 MR. LEVENTHAL: No, Your Honor.

7 MS. AHMED: No, Your Honor.

8 MR. PEREZ: No, Your Honor.

9 THE COURT: And the next question is, "Does a subpoena
10 for a Facebook account permit excursions into the 'friends' and
11 the 'about'" -- okay. So let me say this with the quotation
12 marks so it's easier to follow.

13 "Does the subpoena for a Facebook account permit
14 excursions into the" -- and then in quotations -- "'friends'
15 and the" -- in quotation marks -- "'about' sections of the
16 subject as well as to the following" -- "as well as to follow
17 links? Is there a limit as to how far you can search?"

18 (Counsel conferring.)

19 THE COURT: So it sounds like this person thinks that
20 the subpoena for the Facebook account gave permission to look
21 into accounts as if you're a pretend friend. This person
22 didn't really follow the distinction between the search warrant
23 return and the glimpses into the Facebook using the alias.

24 So any objection to that question? Do you need me to
25 reread it?

1 MR. TANASI: I think it's -- Stewart has no objection.

2 THE COURT: Okay.

3 MR. MARCHESE: Parker, none.

4 MR. LEVENTHAL: None from Mr. Drexler.

5 MR. PEREZ: None from Lovelien.

6 THE COURT: Any objection from the Government?

7 (Government counsel conferring.)

8 MR. MYHRE: May I have just one moment, Your Honor?

9 THE COURT: Sure.

10 (Government counsel conferring.)

11 MS. AHMED: Your Honor, we would just object,
12 relevance.

13 (Pause in the proceedings.)

14 THE COURT: Well, I think it's relevant because this
15 juror seems to be misunderstanding what the subpoena for the
16 Facebook account permitted -- or provided versus how you get
17 into a Friend's section. So I understand your objection to be,
18 well -- I think there was no testimony that any of the FBI
19 agents using an alias became a friend of the defendants. So
20 the question is assuming in part --

21 MS. AHMED: Your Honor, could --

22 THE COURT: -- that perhaps --

23 MS. AHMED: -- we just --

24 THE COURT: -- there was friends. They're just asking
25 questions about when you become a friend. But I think the

1 question, "Is there a limit to how far you can search" -- so
2 I'll read it again. "How does" -- okay. "Does a subpoena for
3 a Facebook account permit excursions into the 'friends' and the
4 'about' section of the subject as well as to follow links?"

5 So I think we all expect the answer's gonna be no to
6 that unless there are other things that -- I didn't see the
7 subpoena, but I'm not aware that there was any subpoena that
8 would allow you to become a friend of a Facebook poster.

9 MS. AHMED: Yeah. Your Honor, it's confusing too
10 because obviously they are conflating subpoena and search
11 warrant. And she did testify on day one that she had
12 subpoenaed subscriber information. So there is a subpoena out
13 there. So I don't know if this witness will then get confused
14 as to what this person wants to know about the subpoena which
15 was more limited versus the search warrant which obviously had
16 broad and more -- but clearly defined protocols but . . .

17 THE COURT: So do you have a suggestion for how we can
18 still answer this juror's question but ask the question in the
19 way that the witness can be more helpful?

20 MS. AHMED: Could we just generally ask for the witness
21 to explain what information was subpoenaed, what information
22 was asked for in the search warrant?

23 THE COURT: Any objection to that from the defense?
24 (Defense counsel conferring.)

25 MR. TANASI: Your Honor, I guess I would just stand by

1 asking the question as written. I think trying to narrow it
2 won't necessarily answer the question as written.

3 (Pause in the proceedings.)

4 THE COURT: Okay. Well, it's triple compound. So I'll
5 break it down. And, if it's not clear, obviously the
6 Government has the opportunity to ask the follow-up question:
7 what was subpoenaed, which was pursuant to a search
8 warrant . . .

9 So I'm gonna ask it the way it is except not with the
10 triple compound. I'll just -- I'll break it up.

11 The third question on Jury Note No. 12 asks: "Do you
12 know a method to determine who physically created and posted a
13 post? Could a friend/spouse have made a post?"

14 Any objection?

15 MR. PEREZ: No objection, Lovelien.

16 MR. TANASI: None --

17 MS. AHMED: No --

18 MR. TANASI: -- from Stewart.

19 MS. AHMED: -- Your Honor.

20 MR. MARCHESE: None from Parker.

21 MR. LEVENTHAL: No, Your Honor.

22 THE COURT: Okay.

23 Jury Note No. 12 still. The last questions asks, "How
24 did you decide which links to follow or did you follow them
25 all?"

1 Any objection?

2 MS. AHMED: No, Your Honor.

3 MR. TANASI: None from Stewart, Your Honor.

4 MR. LEVENTHAL: No, Your Honor.

5 MR. MARCHESE: No, Your Honor.

6 MR. PEREZ: No, Your Honor, from Lovelien.

7 THE COURT: All right.

8 Jury Note 113 has four questions, it looks like; maybe
9 five. But let's start. "Did your investigation of the three
10 defendants include any background checks or looking into any
11 past criminal history or police records? Example: speeding
12 tickets or previous arrests or just Facebook posts?"

13 MR. LEVENTHAL: No objection, Your Honor.

14 MR. MARCHESE: No objection, Parker.

15 MR. PEREZ: None from Lovelien.

16 MR. TANASI: Court's indulgence.

17 (Attorney-client discussion, Stewart. Counsel conferring.)

18 MR. TANASI: No objection, Stewart, Your Honor.

19 MS. AHMED: Your Honor, the Government would object as
20 irrelevant. And we would just ask the Court to possibly
21 instruct the jury that they are only to consider these -- the
22 evidence in this case and the acts that are alleged to have
23 been committed in this case.

24 THE COURT: What was the last part?

25 MS. AHMED: The acts that are -- just the crimes that

1 they are alleged to have committed in this case.

2 (Defense counsel conferring.)

3 THE COURT: All right. What if we modified the
4 question to ask: "Did your investigation of the three
5 defendants include any background checks or looking into any
6 past history or records?" So taking out the words "criminal"
7 and "police."

8 (Government counsel conferring.)

9 MS. AHMED: Your Honor, just may I have one moment?

10 THE COURT: Sure. I'm trying to see if we can answer
11 that juror's question without eliciting inadmissible evidence.

12 (Government counsel conferring.)

13 MS. AHMED: Your Honor, my concern is that these
14 defendants, as they know, some of them have criminal history
15 which will be put on the record in front of this jury. And
16 that's gonna be a problem if she answers that way and . . .

17 MR. LEVENTHAL: I believe we all said no objection to
18 it, though.

19 MS. AHMED: Yeah. I mean -- yeah, inviting error is
20 not a reason to allow an inadmissible question.

21 THE COURT: All right. Well, this is a question that
22 would not -- if we don't ask the question, it's not gonna tempt
23 the juror to do independent research because there's no way
24 that the juror could go online and find out whether or not this
25 witness performed background checks. So okay.

1 MS. AHMED: The concern obviously, Your Honor, would be
2 that they would be considering something that's not relevant;
3 that . . .

4 THE COURT: No. I understand.

5 All right. So I won't ask that first question on Jury
6 Note 113.

7 The second question is, "If so, did any of the
8 previous" -- "did any of the defendants have any previous
9 violent or criminal charges or history?" So, of course, that
10 is not an admissible question.

11 The third question is, "Was Eric Parker the person who
12 asked, 'What are you going to do when the shooting starts?' on
13 Facebook or was he the individual being questioned?"

14 Any objection to that question?

15 MS. AHMED: No, Your Honor.

16 MR. MARCHESI: None from Parker.

17 MR. TANASI: None from Stewart, Your Honor.

18 MR. PEREZ: None --

19 MR. LEVENTHAL: No, Your Honor.

20 MR. PEREZ: -- from Lovelien.

21 THE COURT: And --

22 MS. AHMED: And I believe that's Exhibit 88, Your
23 Honor. I'll double-check.

24 (Pause in the proceedings.)

25 THE COURT: Okay. While you're looking for that, I'll

1 tell ya the fourth question on Jury Note 113 is, "In any
2 posting on Facebook or social media that you have reviewed from
3 Eric Parker, did any post actually state specifically what he
4 intended or would shoot officers/agents of the law" --

5 MR. MARCHESE: No objection --

6 THE COURT: -- "or did he" --

7 MR. MARCHESE: -- Parker.

8 THE COURT: -- "just use descript statements like" --
9 oh, "did he just use nondescript statements, like 'by any means
10 necessary'?"

11 Any objection to that question? Do you need me to
12 reread it?

13 MS. AHMED: No, Your Honor. I don't need you to reread
14 it. Um . . .

15 (Government counsel conferring.)

16 MR. MARCHESE: Parker doesn't object.

17 MR. TANASI: None from --

18 THE COURT: Does or --

19 MR. TANASI: -- Stewart.

20 THE COURT: -- does not? I'm sorry.

21 MR. MARCHESE: Does not.

22 THE COURT: Does not. Thank you.

23 MS. AHMED: Your Honor, just the way it's phrased, we
24 would object that it's argumentative; characterizing as
25 nondescript versus -- versus explicit.

1 (Pause in the proceedings.)

2 THE COURT: So is your objection that you want to
3 modify the question or just not ask the question at all?

4 MS. AHMED: Your Honor, I guess we would just . . .
5 I'm sorry, Your Honor. Just one moment.

6 THE COURT: Sure.

7 (Government counsel conferring.)

8 MS. AHMED: Your Honor, our -- the Government's request
9 would be that it be modified just to simply ask, "Did you see
10 in your review any posts stating that he would shoot."
11 Whatever the phrase was in that part.

12 THE COURT: All right. And so just leave off the last
13 clause. All right. I'll make that . . .

14 MS. AHMED: And, Your Honor, just -- that was
15 Exhibit 88 on the third question --

16 THE COURT: Oh.

17 MS. AHMED: -- in case the Court wants to pull it up --

18 THE COURT: Yeah.

19 MS. AHMED: -- when the question arises.

20 THE COURT: All right. So I added Exhibit 88 and I'll
21 make that modification to the last question on Note 113.

22 So moving on to Jury Note 114, "On Government
23 Exhibit 97, did Mr. Parker author the bottom text" -- in
24 quotation marks it says -- "'I don't mind even signed up for it
25 once. Where are our wolves in the midst of sheep?'"

1 Any objection?

2 MR. LEVENTHAL: Could you read it one more time? I'm
3 sorry.

4 THE COURT: Yes. It's Exhibit 97 if you want to --

5 MR. LEVENTHAL: Oh, okay.

6 THE COURT: -- pull it up so it's easier to see what
7 she's talking about or he's talking about.

8 MR. MARCHESE: None from Parker.

9 MR. TANASI: None from Stewart, Your Honor.

10 (Pause in the proceedings.)

11 MS. AHMED: No objection from the Government, Your
12 Honor.

13 THE COURT: Mr. Perez, Mr. Leventhal, any objection?

14 MR. LEVENTHAL: The question is what about the wolves
15 in . . .

16 THE COURT: Oh. "Did Mr. Parker author the bottom
17 text" -- and then the quote is -- "'I don't mind even signed up
18 for it once. Where are our wolves in the midst of sheep?'"

19 MR. LEVENTHAL: No objection.

20 MR. PEREZ: No objection from Lovelien.

21 THE COURT: Okay.

22 And then the other question on Jury Note 14 [sic] calls
23 for a legal answer, "Is it against the law to be involved in a
24 militia group?"

25 MR. LEVENTHAL: No objection.

1 MR. PEREZ: No --

2 MR. MARCHESE: No --

3 MR. PEREZ: -- objection.

4 MR. MARCHESE: -- objection, Parker.

5 MR. TANASI: None from Stewart, Your Honor.

6 MS. AHMED: Your Honor, we would object that it calls
7 for a legal conclusion.

8 THE COURT: I agree. I won't give that question.

9 Jury Note No. 115 asks, "Are the defendants being
10 prosecuted for their actions at Operation Gold Rush and
11 Operation Big Sky as well or just for their actions in Nevada
12 on April 12th?"

13 So this -- again, this witness wouldn't know the answer
14 to it. If you want to enter into some stipulation during lunch
15 so I could give that; but, if you don't want to, that's okay
16 too. I . . . If you think of a way to address that question.

17 (Counsel conferring.)

18 MS. AHMED: Your Honor, we would object obviously that
19 that's asking for irrelevant and legal conclusions. But we
20 would ask the Court to give an instruction -- or just advise
21 the jury that the Court will instruct them on the charges in
22 this case.

23 MR. TANASI: And, Your Honor, perhaps adding to that
24 would be an instruction, even going back to the last question,
25 is that being in a militia in and of itself is not a crime and

1 the defendants are not charged for those other two acts that
2 that question questions.

3 MS. AHMED: We would object to that. And that's
4 actually -- in some states, it is actually a crime so that
5 would -- including Montana.

6 MR. TANASI: Well, then I guess something to the effect
7 that the defendants are not being charged with a crime for
8 simply being in a militia.

9 MS. AHMED: Your Honor, the Government thinks it would
10 be sufficient for the Court to simply advise the jury that you
11 will be providing them the law on the charges that they are
12 facing -- instructions on the charges that they are to consider
13 in this case.

14 MR. PEREZ: Your Honor, I don't believe we have an
15 instruction on militia unless we let, I guess, the Second
16 Amendment in.

17 (Pause in the proceedings.)

18 THE COURT: Well, the question is it against the law is
19 a legal question that calls for a legal conclusion so I'm not
20 asking that question. If there is a stipulation that the
21 parties want to enter into and have me or them read or if
22 there's an instruction that you want to be included that
23 addresses this situation, the correct legal instruction, I'm
24 open to consider that as well. But I'm not gonna ask the
25 witness the question.

1 So, moving on to Jury Note No. 111 about whether or not
2 the defendants are being prosecuted for their actions at
3 Operation Gold Rush and Operation Big Sky, you know, inasmuch
4 as the conspiracy charged actions through that time period all
5 the way until March, I mean, the answer could be yes; the
6 answer could be no. So I don't think this witness should be
7 answering this question. But it is information that probably
8 the jury's not gonna remember that -- and I don't remember if
9 at the beginning of the case we told them the span of the
10 conspiracy other than they were charged with conspiracy. I
11 don't remember if the start date and end date were included in
12 the statement. And, even if it did, we told them the statement
13 wasn't evidence; it was just for purposes of voir dire so they
14 would know what the case was about. Possibly during opening
15 statements that information was also provided. But we've also
16 told them that's not evidence.

17 MR. MYHRE: I went over conspiracy quite a bit in
18 opening, but I don't recall going over the inclusive dates of
19 the conspiracy.

20 But the problem is, is that we've -- our theory of the
21 case incorporates the acts of White -- of Operation Big Sky and
22 Sugar Pine Mine as part of the -- part and parcel of the
23 conspiracy in this case. So they are in fact being prosecuted
24 in that sense for the conspiracy. That's why we believe that
25 the instruction from the Court would be the appropriate way to

1 respond to that and just say we're gonna be instructing you at
2 the end of the case what the law is and what you need to
3 consider.

4 (Government counsel conferring.)

5 THE COURT: All right. Then the next question on Jury
6 Note 115 asks, "What criteria do you use for a post to be
7 considered relevant enough for review?"

8 Any objection to that question?

9 MS. AHMED: No, Your Honor.

10 MR. TANASI: None from Stewart.

11 MR. MARCHESE: None from Parker.

12 MR. LEVENTHAL: No, Your Honor.

13 MR. PEREZ: None from Lovelien.

14 THE COURT: And then the last question, I think, last
15 question on Jury Note 115 asks, "Are the exhibits presented
16 thus far items with the highest relevance?"

17 MR. MYHRE: Yes.

18 MS. AHMED: I don't know that -- Your Honor, if that's
19 a question that would be appropriate to pose to the witness
20 since that's actually a determination made by the attorneys.

21 MR. TANASI: And maybe, Your Honor, that -- that's
22 another place for an instruction into their role as to
23 determining the weight of the evidence.

24 MR. MARCHESE: Parker objects.

25 MR. LEVENTHAL: And Drexler would object because this

1 witness only brought in a percentage or a portion of the
2 evidence. We've had other witnesses bring in other evidence,
3 like Agent Willis. And so she wouldn't be able to comment on
4 how relevant or what relevancy with what Agent Willis brought
5 in.

6 MR. PEREZ: Lovelien would join in that objection.

7 (Defense counsel conferring.)

8 THE COURT: All right. So instead of asking the
9 question the way that it's asked, I'm gonna ask -- or I'm gonna
10 instruct them that they are only to consider the evidence
11 presented.

12 All right. Jury Note 116 asks, "Did your agents
13 attempt to provoke incriminating responses from the defendants
14 on Facebook by casual conversation or any other means?"

15 Any objection?

16 MR. MARCHESI: None from Parker.

17 MR. TANASI: None from Stewart, Your Honor.

18 MR. LEVENTHAL: No, Your Honor.

19 MS. AHMED: No, Your Honor.

20 THE COURT: All right. Jury Note No. 17 [sic] asks,
21 "When a date is created to an average person, how do we know to
22 subtract 6 hours or 7 hours from the UTC time?"

23 Any objection to that question?

24 MS. AHMED: No, Your Honor.

25 MR. TANASI: None from Stewart, Your Honor.

1 THE COURT: Okay.

2 The second question is: "During previous testimony
3 another witness stated it was 8 hours for Pacific Time. Can
4 you please clarify."

5 Any objection?

6 MR. TANASI: None from Stewart, Your Honor.

7 MS. AHMED: I don't think that's actually true. But no
8 objection, Your Honor. Maybe that -- maybe they did, Your
9 Honor. In any event, we don't object.

10 THE COURT: Daylight savings? I don't know. I think
11 it's a good question to clarify if there's a juror who is not
12 sure how to calculate time.

13 Third question is, "If you were to post something right
14 now on Facebook, should it be current time or UTC time?"

15 Any objection?

16 MR. TANASI: None from Stewart, Your Honor.

17 MR. LEVENTHAL: No, Your Honor.

18 MR. PEREZ: None from Lovelien.

19 MS. AHMED: No objection, Your Honor.

20 THE COURT: And the last question on Jury Note 117, "If
21 the search warrant was issued in March of 2014, why take so
22 long to serve in July of 2014?"

23 MS. AHMED: No objection. I mean, that's -- the
24 witness can obviously explain what they were saying.

25 THE COURT: Any objection?

1 MR. TANASI: None from Stewart, Your Honor.

2 MR. LEVENTHAL: No, Your Honor.

3 MR. PEREZ: No, Your Honor.

4 THE COURT: All right.

5 Jury Note 118 asks, "A word you used frequently is
6 'metadata'" -- and she put -- he or she put -- the juror put
7 quotation marks around "metadata" -- "please define the word
8 and explain why metadata was essential to your investigation?"

9 Any objection?

10 MS. AHMED: Your Honor, I would just say that I think
11 that question -- I mean, Agent Draper didn't really talk about
12 metadata. It was --

13 THE COURT: Yeah, it --

14 MS. AHMED: -- really more --

15 THE COURT: -- was the previous --

16 MS. AHMED: -- for the . . . Yeah. So I would just
17 ask the Court to at least advise the jury that we'll have
18 another witness who can better . . .

19 (Government counsel conferring.)

20 THE COURT: Can this witness define the word
21 "metadata"?

22 MS. AHMED: I'm sure the witness would be able to have
23 some explanation for what metadata is. I don't know -- that
24 the second part about why it was essential might be
25 argumentative. I don't know that she would be able to -- since

1 she was not involved in the metadata aspect of the
2 investigation, I don't know what, if anything, she would say to
3 that.

4 THE COURT: All right. Well, I think you can follow up
5 with her about whether she herself used metadata or someone
6 else and not -- I won't ask why it was essential. But I will
7 ask her to define the word. The question is "Explain why it
8 was essential to your investigation." I could ask her whether
9 it was essential to her investigation.

10 Does the defense object or agree or have an alternative
11 suggestion?

12 MR. TANASI: I think to the --

13 THE COURT: Because it --

14 MR. TANASI: -- extent --

15 THE COURT: -- is the --

16 MR. TANASI: -- she can --

17 THE COURT: -- wrong -- I think we all agree it's the
18 wrong witness. It was the previous witness who talked about
19 metadata but . . .

20 MR. TANASI: I don't necessarily have a problem with
21 her answering whatever she can. And, if she can't, I guess we
22 could wait for Mr. Willis. I think that's probably more in his
23 wheelhouse. Just so long as the question's asked, I guess we
24 don't have an objection to the --

25 MR. LEVENTHAL: To the --

1 MR. TANASI: -- question.

2 MR. LEVENTHAL: Sorry.

3 To the extent that she knows metadata and how she used
4 it. I mean, I asked her what -- if she used it. She said
5 she -- it wasn't there; it wasn't available so . . .

6 THE COURT: Yeah.

7 MR. LEVENTHAL: But, to the extent that she used it, I
8 guess that's fine.

9 THE COURT: All right.

10 Mr. Perez.

11 MR. PEREZ: And I concur with that.

12 THE COURT: Okay.

13 And the second question on Jury Note 118 asks, "What
14 were the guidelines for initiating 'redactions'" -- the word
15 "redactions" is in quotation marks -- "shown on the FB
16 screenshot exhibits" -- oh, Facebook -- so, "What were the
17 guidelines for initiating redactions shown on the Facebook
18 screenshot exhibits? Were the redactions either made by you or
19 approved by you, a lead investigator?"

20 I can just tell them I authorized redactions so that we
21 don't get into distractions. Is that okay with everyone?

22 MS. AHMED: That's fine with the Government, Your
23 Honor.

24 MR. TANASI: That's fair.

25 MR. LEVENTHAL: No.

1 THE COURT: All right. Jury Note 119, "Regarding
2 'passive' Facebook interaction" -- and the word "passive" is in
3 quotation marks -- "does that include 'likes'" -- and the word
4 "likes" is in quotation marks -- "and sharing posts? Please
5 clarify."

6 So I'll read it again, "Regarding 'passive' Facebook
7 interaction, does that exclude 'likes' and sharing posts?
8 Please clarify."

9 MS. AHMED: No objection, Your Honor.

10 THE COURT: Any objection from the defense?

11 MR. TANASI: Not from Stewart, Your Honor.

12 MR. MARCHESE: None from Parker.

13 THE COURT: All right. We're done. Go have lunch.
14 We'll see you back here at 1:30.

15 MR. TANASI: Okay. Thank you.

16 THE COURT: Thank you.

17 Off record.

18 (Pause, 12:47 p.m. Resumed, 1:40 p.m.)

19 (Sarah Draper resumed the witness stand. Jury not present.)

20 COURTROOM ADMINISTRATOR: All rise.

21 THE COURT: All right. Thank you. You maybe be
22 seated.

23 May we go ahead call the jury back in? Go ahead.
24 Thanks.

25 (The Courtroom Administrator and the Court conferring.)

1 THE COURT: Thank you.

2 (Pause in the proceedings.)

3 COURTROOM ADMINISTRATOR: All rise.

4 (Jury in, 1:49 p.m.)

5 THE COURT: Jury may go ahead and be seated.

6 Everyone else may go ahead and be seated as well.

7 All right. So we have FBI Special Agent Draper back on
8 the stand. So good afternoon.

9 THE WITNESS: Good afternoon, Your Honor.

10 THE COURT: I'm going to ask you a series of questions.
11 I will read the questions into the record. But, when you
12 respond to the question, please feel free to turn and face the
13 jury because these are jury questions; they are not my
14 questions.

15 THE WITNESS: Yes, Your Honor.

16 THE COURT: So Jury Note 107 asks, "Is there other
17 sources that you capture the post relating to Bundy's ranch in
18 your investigation besides Facebook?"

19 THE WITNESS: And it -- "other sources" -- I understand
20 the question to be online -- would be news articles; um . . .

21 (Pause.) So no, that I can recall right now; no other social
22 media sites. But media, mainstream media, like news articles,
23 or there were some news broadcasts that were later captured
24 online. Some of those were captured.

25 And, Your Honor, could you clarify if the question is

1 looking for additional investigative techniques or just
2 capturing of --

3 THE COURT: I'll reread it for you.

4 THE WITNESS: -- media?

5 THE COURT: "Is there other sources that you capture
6 the post relating to Bundy's ranch in your investigation
7 besides Facebook?" So sources other than Facebook.

8 THE WITNESS: So -- thank you, Your Honor -- so in a --
9 so I guess I'll answer one of two ways. And to make sure I
10 cover -- if I -- make sure I interpret the question -- or
11 understand the question properly, if in addition to Facebook,
12 such as media, there were other media captures -- such as print
13 media or news media -- sometimes they would later post their
14 videos online. If the question is intended to determine if
15 those Facebook posts were also captured a separate way other
16 than through Facebook, that answer would be no; that would be
17 unique to that platform.

18 THE COURT: All right. Jury Note 108 asks, "Was your
19 team looking at the Facebook pages of Mr. Parker, Mr. Stewart,
20 or Mr. Drexler on or before April 17th of 2014?" And that
21 could be April 12th of 2014. I'm not sure. But it looks like
22 it's April 17th of 2014.

23 THE WITNESS: Thank you, Your Honor.

24 So the April 12th would have been no. I would have to
25 look back at my investigative notes to determine when exactly I

1 was part of this determination that individuals from Idaho and
2 then their identities, who they were, if that hit before
3 April 17th. I would have to look back at investigative notes.
4 But, if there was any checking, it would have just been purely
5 viewing social media to determine -- confirm identities at that
6 point. Again, I would have to go back and look at
7 investigative notes for that exact date.

8 THE COURT: Do you have those notes with you?

9 THE WITNESS: No, Your Honor. I --

10 THE COURT: That's fine. That was just a --

11 THE WITNESS: Okay.

12 THE COURT: -- question.

13 THE WITNESS: Oh, sorry. Thank you --

14 THE COURT: All right.

15 THE WITNESS: -- Your Honor. Trying --

16 THE COURT: And so --

17 THE WITNESS: -- to think how accessible -- sorry.

18 THE COURT: The next question is also on Jury Note
19 No. 108, "What date did you and your team start looking at the
20 Facebook pages of Mr. Parker, Mr. Stewart, and Mr. Drexler?"

21 THE WITNESS: Thank you, Your Honor.

22 I -- again, I would have to look back -- I would have
23 to go back to the investigative file and determine that. But
24 probably sometime around there is my -- is my best recollection
25 based upon it took a little bit of time to determine the

1 identities and then work towards -- you know, confirm the
2 identities of the individuals.

3 THE COURT: All right. Jury Note 109 asks, "Were the
4 Facebook posts (screenshots) only visible to friends of the
5 users or were they visible to anyone that went to the user's
6 page?"

7 THE WITNESS: So the majority of what was -- thank you,
8 Your Honor -- the majority of what was presented was -- well,
9 actually, a variety. So a lot of it was -- a great deal was
10 publicly available information and some was only available to
11 friends or friends of friends.

12 THE COURT: The question is specifically referring to
13 the Facebook post screenshots. So were the screenshots only
14 visible to friends or were they visible to anyone that went to
15 the user's page?

16 THE WITNESS: So at -- so -- thank you, Your Honor --
17 understanding that question to be absent the Facebook Business
18 Records, again, based upon the security settings of -- the
19 chosen security settings of the Facebook user, they could be
20 any of those. It could be publicly viewable -- some were -- or
21 friends -- some were. So that's kind of both. I'd have to
22 talk about a specific -- if there's a specific question -- or a
23 specific one to answer that further.

24 THE COURT: Okay. And Jury Note 110: "Agent Draper
25 has testified that outside of the search warrant the material

1 collected from the defendants' Facebook pages was 'publicly
2 viewable content'" -- and they put in the quotation marks the
3 words "publicly viewable content" -- "however, if one sets
4 their account to private, you must become the friend of the
5 user to see the content that is being posted. Does becoming
6 friends with the user and having access to their content
7 automatically make the content publicly viewable since their
8 account is still technically private?"

9 THE WITNESS: Thank you, Your Honor.

10 So, breaking that question down -- and I might need to
11 go back in the court record and look at that -- I recall my
12 question would have been what I viewed on the page outside of
13 the search warrant would have been publicly viewable, what I
14 myself would have been able to see through Facebook. But, if
15 another individual -- another FBI employee who was acting in an
16 undercover capacity with, like, an alias account had seen
17 something that was a friend post, that would not make that --
18 that would not turn that into a publicly available post.

19 So, if further, I am happy to go back through the
20 transcript and -- and confirm my initial answer. But my
21 recollection is that it was -- when I went to Facebook what I
22 had seen would have been publicly available outside the search
23 warrant.

24 THE COURT: All right.

25 Then Jury Question No. 111 asks two questions. The

1 first one is, "Would pictures attached to a Facebook post be
2 visible in the Business Account view?"

3 THE WITNESS: Thank you, Your Honor.

4 Not the -- not the way the record comes across. So
5 what was presented to you all is -- some pictures would be in a
6 separate section, the way the Business Record comes back. But
7 some pictures -- well, yes, some pictures would be attached.
8 But, if there was a hyperlink, say, to an attached news
9 article, that would not automatically populate the -- the
10 visual of that with the Facebook Business Records returned.
11 There would be that URL, that unique locator address, that
12 someone reviewing a Facebook account could click on that and
13 pull up that content.

14 But, again, in some circumstances, the photos would be
15 attached -- the returns are returned in multiple ways. So
16 sometimes the photos are attached kind of contemporaneously
17 with -- with the attached messages but also other photos are
18 returned in a different setting. So kind of two answers there.

19 And then, again, the first -- or the third being if
20 it's an attached article, or something like that, you'd have to
21 go into that URL and actually click. And that would go to the
22 web and pull that content out if it's still available at the
23 time of review.

24 THE COURT: All right. And the second question in Jury
25 Note 111 asks, "In order to be a 'friend'" -- that's in

1 quotation marks --

2 THE WITNESS: Yes.

3 THE COURT: -- "on Facebook, does that action require
4 the agreement of both parties?"

5 THE WITNESS: Yes. And, for our protocols, that would
6 only be done in a strict approved undercover capacity why
7 that -- that would even be allowed. But the -- the user has to
8 accept what they called a "Friend Request." So it's both
9 parties.

10 THE COURT: All right.

11 Jury Note No. 112 has four parts. The first one is,
12 "What training and experience do you have to interpret and
13 analyze Facebook account data?"

14 THE WITNESS: Thank you, Your Honor.

15 So the -- from the business returns, just experience
16 manipulating the way the returns come across. So no -- no
17 specific class on how to interpret Facebook returns, but just
18 experience going through it and -- and working with the
19 returns.

20 (Pause in the proceedings.)

21 THE COURT: Okay. So, when you say "just experience,"
22 I think that's part of the question is what training and
23 experience. So what experience do you have to interpret and
24 analyze Facebook --

25 THE WITNESS: Oh.

1 THE COURT: -- account data?

2 THE WITNESS: Thank you, Your Honor.

3 Experience on other cases. So other times I've used a
4 search warrant on Facebook to obtain information and done a
5 similar review process based upon what was returned by Facebook
6 to review.

7 THE COURT: Okay. The second part of Jury Note 112
8 asks about -- well, it's a multipart question. So it's written
9 as one big question. I'm gonna break it down because I think
10 it'll -- we think it'll be easier for you to answer it.

11 So did you receive information as a result of a
12 subpoena in this case for Facebook data?

13 THE WITNESS: Thank you, Your Honor.

14 Yes, I did, for all three individuals, to confirm what
15 we call "subscriber information"; that those accounts belonged
16 to our defendants prior to doing the search warrant. I'm sorry
17 to cut you off, Your Honor.

18 THE COURT: No. That's good. That's fine.

19 And then the search warrant -- was there a search
20 warrant in this case for the Facebook account?

21 THE WITNESS: Thank you, Your Honor.

22 Yes, there were three separate search warrants, one for
23 each of those three accounts.

24 THE COURT: All right.

25 And so does a subpoena for a Facebook account permit

1 you excursions into the 'friends' and the 'about' sections of
2 the subject?"

3 THE WITNESS: Thank you, Your Honor.

4 No. The subpoena would just return subscriber
5 information that would help to identify the actual user of that
6 account. Depending upon an individual's security settings on
7 their Facebook account, the -- the Friends as well as other
8 information about them could be available or it could not be
9 available publicly. The user has an opportunity to select the
10 security settings.

11 THE COURT: And, in response to the search warrant,
12 would you obtained from Facebook information about what is in
13 the Friends section?

14 THE WITNESS: Yes. Yes -- thank you, Your Honor --
15 yes. The Facebook return lists -- as one of the sections, it
16 lists all the friends.

17 THE COURT: And would the information provided to you
18 as a result of the search warrant provide you Facebook account
19 information regarding the "About" section of . . .

20 THE WITNESS: Yes. Anything that is in that Facebook
21 account would come back with the search warrant.

22 THE COURT: Okay.

23 And I think that goes right into the next -- "Is there
24 a limit to how far you can search?"

25 THE WITNESS: So -- well, the search warrant is limited

1 to the parameters approved by the issuing Magistrate Judge. So
2 we would request -- request a set, say, time period; request,
3 um -- request what we want to review; and then we take that one
4 step further to what can be seized. So not everything that can
5 be searched can be seized. So it's a -- I would call it the
6 four corners of the warrant. It's kind of parameters set upon
7 whereas everything within, say, a time frame on a Facebook
8 account, once Facebook returns that to the investigator or the
9 affiant, as we call it, the person who has sworn out the search
10 warrant, the -- Facebook would return all the information. But
11 then we're further -- further limited with what -- what we can
12 actually keep from that account. It's got to match what the
13 issuing judge has approved for us that's -- that meets the
14 probable cause sets out in the affidavit.

15 THE COURT: And the third question in Jury Note 12
16 [sic] asks, "Do you have a method to determine who physically
17 created and posted a post? Could a friend/spouse have made a
18 post?"

19 THE WITNESS: Yes. If a user has -- such as with an
20 email address, if you have an email address and you give that
21 to a friend or spouse and they can write an email in your name,
22 the same can be done with a social media account such as
23 Facebook.

24 And to ask if I -- if I have a method for determining
25 that, who did it, it's the -- it's the individual's Facebook

1 account. So I don't have a way as an investigator looking at
2 those returns from determining if a spouse or a friend had got
3 in an account and -- and made a posting in someone else's name.

4 THE COURT: And the last question on Jury Note 112 is,
5 "How did you decide which links to follow or did you follow
6 them all?"

7 THE WITNESS: Thank you, Your Honor.

8 No, I did not follow them all. Based upon the content
9 that was with a link, the words or if there is a picture with
10 it -- again, the returns come back in a very different format
11 view than looking at a Facebook page -- it would indicate to me
12 that that might be something that needed to be looked at
13 further. But, if it's -- again, I wouldn't dive into anything
14 that didn't meet -- on surface would appear to be outside of
15 the parameters set in the initial search warrant.

16 THE COURT: All right. So Jury Note No. 113 asks
17 several questions. The first one asks about whether you looked
18 into other information. And so I'm just gonna instruct the
19 jury that they are to concentrate on the evidence that is
20 actually presented. And we're not gonna ask you the questions
21 about -- related to other information.

22 THE WITNESS: Okay. Thank you, Your Honor.

23 THE COURT: The second question on Jury Note 113
24 asks -- again, it's about other information; whether you came
25 across other information. And so, again, I'm gonna instruct

1 the jury that if the evidence is not admissible then you're not
2 gonna hear about it. If it is admissible, you probably will
3 hear about it if it's available. And I'll just leave it at
4 that. And then you can apply that to the legal instructions.
5 And my hope is it'll make more sense later when you see
6 everything. And I appreciate the curiosity of whoever wrote
7 this question.

8 So the next question for Jury Note 113 is, "Was Eric
9 Parker the person who asked" -- oh, and I think we identified
10 which exhibit they're referring to. Do we want to put that up?
11 Exhibit No. 88.

12 (Exhibit displayed in open court.)

13 THE COURT: So the question is, "Was Eric Parker the
14 person who asked" -- and then it says in quotation marks on the
15 note here -- "'What are you going to do when the shooting
16 starts?'" So is Eric Parker the person who asked this on
17 Facebook or was he the individual being questioned.

18 THE WITNESS: Thank you, Your Honor.

19 THE COURT: If you know.

20 THE WITNESS: Yes, he would have asked that, his
21 account.

22 THE COURT: Okay.

23 And how do you know that or why do you think you know
24 that?

25 THE WITNESS: Your Honor, because that was posted on

1 his Facebook page and that was the text that was posted with
2 that attached link to the Northern Nevada Light Foot Patriots.
3 So, based upon my experience with Facebook returns, that text
4 would be entered by the user.

5 THE COURT: All right.

6 And the last question for Jury Note 113 asks, "In any
7 of the postings, whether Facebook or social media" -- so we're
8 including both -- "In any posting on Facebook or social media
9 that you have reviewed from Eric Parker, did he state that he
10 would shoot officers or agents of the law?"

11 THE WITNESS: I do not recall seeing anything that said
12 he would shoot agents or officers of the law.

13 THE COURT: All right.

14 Jury Note No. 114 asks, "On Government's Exhibit 97" --
15 did you want to put that one up?

16 (Exhibit displayed in open court.)

17 THE COURT: -- "did Mr. Parker author the bottom
18 text" -- and then in quotation marks -- "'I don't mind even
19 signed up for it once. Where are our wolves in the midst of
20 sheep?'"

21 THE WITNESS: Thank you, Your Honor.

22 No. That came with the original post which would have
23 been -- may I mark this screen?

24 THE COURT: Yes, you may write on it.

25 THE WITNESS: (Drawing.)

1 So that would have come with the post and then
2 Mr. Parker would have commented -- whoops. Excuse me. There.
3 Sorry. (Drawing.) But, no, not that -- that I didn't even --
4 or "don't [even mind]" would not have been his words.

5 THE COURT: All right. And then the last question on
6 Jury Note No. 114 asks about the legality of a particular thing
7 that has come up. And so, again, I'm gonna instruct the jury
8 that you will be instructed on the legality. The legal
9 instructions will provide to you more information to guide you.
10 So we're not gonna ask this witness whether or not something is
11 or is not legal.

12 All right. Jury Note No. 115 is a question about the
13 scope of information, the different information related to Gold
14 Rush, Big Sky, Nevada, and so forth, and how to evaluate that.
15 So, again, that will be something that will be addressed in the
16 jury instructions that we'll provide you, the legal analysis
17 footprint diagram. It'll provide you what the elements are
18 that you need to consider in determining whether it is or is
19 not. So that's not something that this witness would be
20 answering for you.

21 So the next question on Jury Note 115 asks, "What
22 criteria do you use for a post to be considered relevant enough
23 for you to review?"

24 THE WITNESS: So if it had to do with the events of
25 April 12th, 2014; if it had to do with any intent behind those

1 events or any -- anything else that has to do with what has
2 been charged in this case, including the ongoing acts, that
3 would be -- that would be relevant.

4 THE COURT: All right.

5 And the last question asked about all the exhibits
6 presented so far and asks for an opinion that is actually up to
7 the jury to decide how much weight to give to the evidence
8 that's provided. So I'm not gonna ask the witness for her
9 opinion on --

10 THE WITNESS: Yes, Your Honor.

11 THE COURT: -- the weight of the evidence provided so
12 far.

13 Jury Note No. 116 asks, "Did your agents attempt to
14 provide incriminating responses from the defendants on Facebook
15 by casual conversation or any other means?"

16 THE WITNESS: No.

17 THE COURT: Jury Note No. 117 asks, "When a date is
18 created, to an average person, how do we know to subtract 6
19 hours or 7 hours from UTC time?"

20 THE WITNESS: Thank you, Your Honor.

21 So the UTC only comes up in the Facebook returns, the
22 Business Record, that's how it's -- that's how they put the
23 time on there so it's standardized across different time zones.
24 For -- so, if you have a Business Record, it would be marked
25 "UTC" after the date and it would be the -- correction -- after

1 the time. The time would be in a 24-hour clock format and say
2 "UTC." If a user's just looking at a Facebook page, that's
3 going to be normal a.m./p.m. time per their local time zone.

4 THE COURT: For whose local time zone? The person to
5 whom the Facebook posts belongs or the person looking at it
6 somewhere else? I think that's what they are trying to figure
7 out.

8 THE WITNESS: Your Honor, I --

9 THE COURT: If it's a screenshot that you took from
10 Nevada, is that screenshot gonna represent Nevada time or the
11 time in Idaho if the user is in Idaho?

12 THE WITNESS: Your Honor, I apol- -- I am not qualified
13 to answer that question.

14 THE COURT: Okay.

15 The second question in Jury Note No. 117 is, "During
16 previous testimony another witness stated that it was 8 hours
17 for Pacific Time. Can you please clarify?"

18 So was the answer --

19 THE WITNESS: Oh.

20 THE COURT: -- yes, you can clarify or, no, you can't
21 clarify?

22 THE WITNESS: Seven is my -- my math. So I've been
23 going off of seven.

24 THE COURT: Okay.

25 And, just to be clear, there was a previous witness --

1 I know you weren't here -- there was a previous witness that
2 talked about the UTC time quite a bit. So I don't know if this
3 question was meant to be for that witness or if there was
4 something else that they wanted to clarify since we're looking
5 at a lot of different things that have time stamps on them.

6 And I think that the parties agreed there would be
7 another witness that will come in later that will also be able
8 to clarify how UTC time is calculated; is that right?

9 MR. MYHRE: Yes.

10 THE COURT: Okay.

11 MR. LEVENTHAL: Your Honor, before we get to 118, could
12 we have a quick sidebar?

13 THE COURT: Yes.

14 MR. LEVENTHAL: Thank you.

15 THE COURT: Jury Question No. 117 asks, "If you were to
16 post something right now on Facebook, should it be current time
17 or UTC time?"

18 THE WITNESS: So if -- for the user, it would be
19 current time. If later, a business record were produced on
20 that, it would be transferred to -- it would be calculated out
21 as UTC time, which would be the same time just -- that is
22 irrespective of time zones. So it's, again, a worldwide clock,
23 if you will, and all the time zones throughout the world.

24 THE COURT: Okay.

25 And then the last question on Jury Note No. 117 asks,

1 "If the search warrant was issued in March of 2014, why take so
2 long to serve in July of 2014?"

3 THE WITNESS: Thank you, Your Honor. Appreciate that
4 clarification.

5 The search warrant was served in July. The requested
6 records return date was in March of 2014. So we requested the
7 records back to March up through the present date of when the
8 search warrant was served.

9 THE COURT: I'm sorry. I didn't understand that. Can
10 you say it again?

11 THE WITNESS: Yes. I'm sorry, Your Honor.

12 So, in July, the search warrant was served requesting
13 to Facebook records dating back to March. It was finalized --
14 it was finalized in July, but the records went back to March.
15 So it wasn't -- it wasn't -- the search warrant requests, the
16 affidavit that goes with that, wasn't written in March and then
17 held on for 3 months to be served in July. It was a process.
18 Once it was completed in July, then it went back to include
19 records going back to that March of 2014.

20 THE COURT: Okay.

21 THE WITNESS: Does that --

22 THE COURT: So I think my confusion was 'cuz you used
23 the word "it." And I --

24 THE WITNESS: I'm sorry, Your Honor.

25 THE COURT: -- I think I assumed that you were

1 referring to something you actually weren't.

2 So, just to clarify, the search warrant was created and
3 serve -- approved and every -- it was served in July of 2014.

4 THE WITNESS: Yes, Your Honor.

5 THE COURT: And the request in that search warrant was
6 for information on the records going back all the way to
7 March 2014.

8 THE WITNESS: That's correct.

9 THE COURT: Okay. I just finally got it. Thank you.
10 All right. All right. So now we're on to Jury Note
11 No. 118. Did you want a sidebar?

12 MR. LEVENTHAL: Yes. Thank you, Judge.

13 (Begin sidebar conference.)

14 MR. LEVENTHAL: Thank you. I'm sorry for interrupting.
15 Actually, it's going to Question No. 2.

16 THE COURT: Oh.

17 MR. LEVENTHAL: I wasn't sure what -- I wasn't sure
18 what the Court indicated was gonna be the answer 'cuz the
19 question is, "What were the guidelines for initiating
20 'redactions' shown on the FB" account, Facebook account,
21 document --

22 COURT REPORTER: I'm sorry. Document . . .

23 MR. LEVENTHAL: I'm sorry.

24 -- "exhibits? Were the redactions either made by you
25 or" --

1 THE COURT: "Approved by you."

2 MR. LEVENTHAL: -- "approved by you or lead
3 investigator?"

4 And I think the Court indicated that they were gonna --
5 you were gonna say --

6 THE COURT: I was gonna --

7 MR. LEVENTHAL: -- it was you.

8 THE COURT: -- take the hit and say that I'm the one
9 who --

10 MR. LEVENTHAL: Right.

11 THE COURT: -- approved --

12 MR. LEVENTHAL: And I think --

13 THE COURT: -- what may or may not be redacted.

14 MR. LEVENTHAL: And I think that's somewhat misleading
15 because you haven't gone through all of this stuff and you
16 haven't approved all this stuff. This is -- just been --

17 THE COURT: But I've ruled --

18 MR. LEVENTHAL: -- what's been --

19 THE COURT: -- on the objections where you thought
20 there was something that should not have been redacted or
21 should have been reacted.

22 MR. LEVENTHAL: Actually, I --

23 THE COURT: So anything the parties didn't agree to --
24 if you want me to just say that -- anything the parties didn't
25 agree to I make the final call as to what should be redacted.

1 MR. LEVENTHAL: Yeah. I think more along those lines
2 because it just --

3 THE COURT: Okay.

4 MR. LEVENTHAL: -- means that you're, like, you know, I
5 say "yes" or "no." And I didn't want them to think that --

6 THE COURT: Okay.

7 MR. LEVENTHAL: -- this is, you know . . . But we
8 neither agreed or we haven't and you make the final ruling, I
9 guess.

10 THE COURT: I can do that.

11 MR. LEVENTHAL: But there are objections to 'em.

12 THE COURT: Right.

13 MR. LEVENTHAL: Right. Perfect. Thank you very much.

14 (End sidebar conference.)

15 THE COURT: Okay. So Jury Note 118 asks two questions.
16 The first one is, "A word you used frequently is 'metadata.'
17 Please define the word and explain why metadata" -- well,
18 "Please" -- let's it one at a time -- "Please define the word
19 'metadata.'"

20 THE WITNESS: Thank you, Your Honor.

21 I am not an expert in metadata. But it is essentially
22 the information that is attached to, say, an image that might
23 reflect what type of camera the image was taken on; the -- the
24 location -- in a -- in a -- in kind of an IP address location
25 that that image would have been taken from; a date; a time.

1 Additional information that would help more uniquely identify
2 the origin of, say, a photograph.

3 THE COURT: All right.

4 And the next part of that question is, was the
5 metadata -- or how was -- well, I guess it's either was the
6 metadata essential to your investigation or how did you use the
7 metadata in your investigation?

8 THE WITNESS: Thank you --

9 THE COURT: If you used it. I think that it's assuming
10 a lot of things, but . . .

11 So did you use the metadata in your investigation, if
12 so how?

13 THE WITNESS: Thank you, Your Honor.

14 Somewhat. With photo -- for example, photo posted by
15 Mr. Stewart on his account of going to get the cows back, that
16 date/time would have been part of that when that would have
17 been uploaded. But generally, no, I didn't spend much time
18 with metadata.

19 THE COURT: And, again, just to clarify, we had a
20 previous witness that I realize you're not aware of who spoke
21 to metadata more so in setting a timeline.

22 And are we gonna have another witness who talks about
23 metadata some more?

24 MR. MYHRE: Yes, Your Honor.

25 THE COURT: Oh, okay. So we'll have a chance to

1 clarify that even more.

2 And then the second question to Jury Note No. 18 [sic]
3 asks, "What were the guidelines for initiating redactions shown
4 on the [Facebook] screenshot exhibits? Were the redactions
5 either made by you or approved by you or a lead investigator?"

6 So I can answer that question for the jury. Any
7 redactions that the parties didn't agree to I'm the final
8 arbiter -- I'm the decisionmaker as to whether it is or is not
9 redacted depending on either legal or other concerns. And so
10 sometimes the redactions are made over the objection of one
11 party or the other or sometimes the redactions aren't made over
12 the objection of one party or the other. But ultimately it's
13 my call if the parties don't agree what should be redacted.

14 All right. Jury Note No. 119 asks, "Regarding" -- and
15 then the word "passive" is in quotation marks -- "Regarding
16 'passive' Facebook interaction, does that include (likes)" --
17 and the word likes is in parentheses -- "and sharing posts?
18 Please clarify." So, "Regarding 'passive' Facebook
19 interaction, does that include (likes) and sharing of posts?"

20 THE WITNESS: Thank you, Your Honor.

21 No, that would not include those. Just strictly
22 viewing.

23 THE COURT: I didn't hear the last part.

24 THE WITNESS: Oh, just --

25 THE COURT: "Just strictly" what?

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1 THE WITNESS: Just viewing, observing.

2 THE COURT: Observing, yes.

3 THE WITNESS: Viewing. Sorry.

4 THE COURT: All right.

5 Does the Government have follow-up questions?

6 MS. AHMED: No, Your Honor. Thank you.

7 THE COURT: Defense, any follow-up questions?

8 MR. TANASI: None from Stewart, Your Honor. Thank you.

9 THE COURT: All right.

10 Well, thank you very much --

11 MR. LEVENTHAL: Your Honor --

12 THE COURT: Oh.

13 THE WITNESS: Your Honor, I'm sorry. I think they do.

14 Sorry.

15 MR. MARCHESE: You can go ahead.

16 MR. LEVENTHAL: Okay. I'll go ahead. I got one.

17 THE COURT: Okay.

18 FURTHER CROSS-EXAMINATION

19 BY MR. LEVENTHAL:

20 Q. Good afternoon, Agent.

21 A. Hello, sir.

22 Q. How are you?

23 There was a question regarding mutual agreement between
24 a person who has a Facebook account and wants to be friends
25 with somebody else.

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1 **A.** Um-hum.

2 **Q.** You indicated there needs to be a mutual agreement; correct?

3 **A.** Yes.

4 **Q.** In order for somebody to accept that person, there was the
5 acceptance; there's the person that's saying I want to be your
6 friend.

7 **A.** Um-hum.

8 **Q.** Okay. In that case that would be --

9 **A.** Um-hum.

10 **Q.** -- the person that's asking and then requesting and then the
11 person saying I'm gonna allow you; correct?

12 **A.** Right.

13 **Q.** Okay.

14 **A.** Correct. Um-hum.

15 **Q.** And that's what you meant by "mutual agreement"; correct?

16 **A.** Yes.

17 **Q.** Okay. Now, in order to even ask somebody to be a friend, by
18 definition you need to have your own Facebook account; correct?

19 **A.** Yes.

20 **Q.** Okay. So, when we saw there that you had or your agents had
21 four or five, I think you indicated, mutual friends with Scott
22 Drexler --

23 **A.** Right.

24 **Q.** -- those agents would have had to make their own page;
25 correct?

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1 **A.** Yes.

2 **Q.** Okay.

3 **A.** I -- yes.

4 **Q.** Now --

5 **A.** Right.

6 **Q.** -- when your agents went out and they made their own pages,
7 they wouldn't put on there obviously that -- "FBI" or anything
8 of that nature; right?

9 MS. AHMED: Your Honor, I'd just object. This is
10 beyond the scope of the question posed by the jury.

11 MR. LEVENTHAL: It's clearly not, Your Honor, because
12 it's a question regarding invoking conversations; there's
13 questions regarding accepting and mutual friendships and why
14 people would ask for or actually accept someone else as a
15 Facebook friend whether or not that Facebook person that's
16 asking or requesting is going to make it as relevant to the
17 person that's going to say "yes" or "no" or not. So it goes
18 directly to this investigation and it answers the question.

19 THE COURT: Well, the question was whether there was a
20 mutual agreement that was required for a person to become a
21 friend with another person.

22 MR. LEVENTHAL: And there was also -- I apologize --
23 there was also another question regarding invoking
24 conversations, Your Honor.

25 THE COURT: I didn't hear you. What was the second --

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1 MR. LEVENTHAL: Invoking --

2 THE COURT: -- part?

3 MR. LEVENTHAL: -- conversations. There's a question,
4 I believe --

5 THE COURT: Oh, the --

6 MR. LEVENTHAL: -- towards the end --

7 THE COURT: -- question about whether or not any of the
8 undercover agents using an alias elicited an incriminatory
9 statement from any of the defendants?

10 MR. LEVENTHAL: It seemed to be a little bit more
11 generic than that. It was --

12 THE COURT: "Did your agents" -- this Jury Note
13 No. 116 -- "Did your agents attempt to provoke incriminating
14 responses from the defendants on Facebook by casual
15 conversation or any other means?"

16 MR. LEVENTHAL: Correct.

17 THE COURT: So that's your follow-up is to this
18 question.

19 MR. LEVENTHAL: Correct.

20 MS. AHMED: Her answer was no. So I don't know why
21 there would be -- how this further question is within the scope
22 of that.

23 MR. LEVENTHAL: Well, invoking conversations would
24 be -- if I'm going to make a web page that has to do with Bundy
25 that would invoke conversation and that is a --

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1 THE COURT: Now you're just arguing.

2 MR. LEVENTHAL: No. And I apologize.

3 THE COURT: So what is the question and I'll rule on
4 whether or not --

5 MR. LEVENTHAL: The question is gonna be whether or not
6 they tailor-made this fake Facebook account.

7 THE COURT: Okay. So --

8 MR. LEVENTHAL: Can --

9 THE COURT: -- ask that. Just ask that.

10 MR. LEVENTHAL: That's it.

11 THE COURT: All right.

12 MR. LEVENTHAL: That I can ask?

13 THE COURT: Yes.

14 MR. LEVENTHAL: Thank you.

15 BY MR. LEVENTHAL:

16 Q. Agent, so when you and your people went out and falsified or
17 faked or --

18 MS. AHMED: Objection --

19 BY MR. LEVENTHAL:

20 Q. -- created --

21 MS. AHMED: -- argumentive.

22 THE COURT: Correct. So --

23 BY MR. LEVENTHAL:

24 Q. -- created --

25 THE COURT: -- form of the question.

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1 MR. LEVENTHAL: I apologize. Created.

2 BY MR. LEVENTHAL:

3 Q. -- created these accounts on or about April 12th, 2014,
4 around there; correct?

5 A. Cor- -- beginning around there. There would . . . Right.

6 Q. Okay. Did you or your agents create these accounts with the
7 intent or the mind-set that you -- on your audience, on who you
8 were trying to befriend?

9 MS. AHMED: Objection, relevance. It's just --
10 relevance, beyond the scope.

11 MR. LEVENTHAL: It's --

12 MS. AHMED: It's not the question the Court approved
13 obviously.

14 THE COURT: Yeah, it's not the question I said you
15 could ask.

16 BY MR. LEVENTHAL:

17 Q. Well, when you indicated that you didn't engage or invoke in
18 conversation, the Facebook page that you created or your people
19 created was intended to become friends with someone. Would
20 that be correct?

21 MS. AHMED: Objection. Beyond the scope and eliciting
22 irrelevant information. Also misstates the witness's
23 testimony.

24 THE COURT: No. I think she can answer that question.

25 Was the Facebook post created under an alias by the

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1 undercover agent created with the purpose of being accepted as
2 a friend?

3 MR. LEVENTHAL: Correct.

4 THE WITNESS: Thank you, Your Honor.

5 And so there's two categories here. So the earlier
6 passive browsing category is just the general. But to the --
7 one was created with -- yeah, with the intent of becoming a
8 friend --

9 BY MR. LEVENTHAL:

10 Q. Okay.

11 **A.** -- right, so -- so what was not publicly available would be
12 viewable.

13 Q. Okay. So, when you say "intended," it went towards
14 Mr. Drexler's, if he was a friend, his likes and dislikes if
15 you will. Would that be fair?

16 MS. AHMED: Objection, vague and --

17 THE COURT: Oh --

18 MS. AHMED: -- relevance.

19 THE COURT: Oh, I'm sorry.

20 MR. LEVENTHAL: Just following up on the same question
21 that she's answering. I don't . . .

22 THE COURT: It would -- okay. So it was sort of vague
23 to me. I'm not sure what you were asking. But it was -- so
24 you're asking what you can and cannot see as a friend? Is that
25 what you're saying or what the --

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1 MR. LEVENTHAL: No. I'm asking more about how they
2 determine what would be on a page in order to ask somebody to
3 be a friend 'cuz they are not gonna put up there, you know -- I
4 don't know -- tuxedos for sale. I mean, we're talking about
5 tailor-made to have someone say yes, you can be my friend. And
6 I would suggest that that would be invoking conversation by
7 doing so.

8 THE COURT: Okay. So, again, that's -- the last part
9 is argument. So that's stricken. So I think you can ask your
10 question about how was the Facebook account created on the
11 accounts that were used for friendship --

12 MR. LEVENTHAL: Okay.

13 THE COURT: -- to see the private posts.

14 MS. AHMED: Your Honor, I'd also just say foundational
15 because Mr. Leventhal's not even established that the account
16 in question, that that person Friend Requested Mr. Drexler. We
17 don't know if it's that direction or if Mr. Drexler Friend
18 Requested that person. It's unclear. So it's just a -- just
19 lack of foundation if that's what he's getting at.

20 THE COURT: A lack of foundation as to whether there
21 was a Friend Request or . . .

22 MS. AHMED: So he's trying to establish that that
23 Facebook page was tailored towards Mr. Drexler's interests.
24 It's unclear who friended who so to speak; who sent out that
25 request and who accepted.

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1 MR. LEVENTHAL: Well, I think we . . .

2 THE COURT: Okay. So just ask a couple foundational
3 questions. I think we'll probably get there.

4 MR. LEVENTHAL: No problem.

5 BY MR. LEVENTHAL:

6 Q. We saw a Facebook page wherein either yourself or one of
7 your agents had taken a screenshot. Do you remember that?

8 **A.** Yes.

9 Q. Okay. And on there it said, I think, four mutual friends;
10 correct?

11 **A.** Yes.

12 Q. Okay. And so those mutual friends or that person, by
13 definition, would have been one of your agents; correct?

14 **A.** I don't know. I don't believe so. Those -- the mutual
15 friends, no.

16 Q. Did you become or one of your agents become friends with
17 Mr. Drexler?

18 **A.** One of our employees did, yes.

19 Q. Right. Okay.

20 And so one of your employees became friends. So we
21 don't know who the mutual friends are, whether or not --

22 **A.** Right.

23 Q. -- they were FBI agents; correct?

24 **A.** I -- I -- I don't know who they were, but I don't believe
25 they were.

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1 Q. Okay. So that agent could have also with that same made-up
2 Facebook account become friends with other people that
3 Mr. Drexler knows; right?

4 THE COURT: You're assuming that she said agents. She
5 didn't say "agent." She said one employee became a friend.

6 BY MR. LEVENTHAL:

7 Q. One employee became a friend with Mr. Drexler?

8 A. Yes.

9 Q. Okay. And, by having four mutual friends, that means that
10 that employee --

11 A. Yes.

12 Q. -- was also friends with other people who were friends with
13 Mr. Drexler.

14 A. Correct.

15 Q. Okay. All right. So we know that at least one undercover
16 FBI agent was a friend with Mr. Drexler?

17 A. An employee, yes.

18 Q. Okay. And we know by looking that when you ask to be a
19 friend you want to tailor-make that Facebook account to appease
20 to the person accepting; correct?

21 MS. AHMED: Objection, assumes facts not in evidence.

22 THE COURT: Now, you want to ask her if she was
23 involved in the making of the account used to friend
24 Mr. Drexler or that Mr. Drexler was friends with?

25 MR. LEVENTHAL: That's not a problem, Your Honor. I

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1 apologize.

2 BY MR. LEVENTHAL:

3 Q. Were you involved in the making of this fake web page?

4 MS. AHMED: Objection, argumentative.

5 BY MR. LEVENTHAL:

6 Q. Well, was it real?

7 MS. AHMED: It's a real Facebook account.

8 BY MR. LEVENTHAL:

9 Q. Well, was it true?

10 MR. LEVENTHAL: Yeah, I'm being forced --

11 THE COURT: All right.

12 MR. LEVENTHAL: -- to go --

13 THE COURT: An alias --

14 MR. LEVENTHAL: -- there. And I wasn't --

15 THE COURT: -- an alias --

16 MR. LEVENTHAL: -- expecting to go there.

17 THE COURT: All right. An alias was used by an

18 employee --

19 MR. LEVENTHAL: Correct.

20 THE COURT: -- to create an account.

21 MR. LEVENTHAL: Right. So how do you want me to label

22 it, this . . .

23 THE WITNESS: "Alias" is fine.

24 BY MR. LEVENTHAL:

25 Q. I'm sorry?

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1 **A.** "Alias" is fine.

2 **Q.** Oh, wait. This alias account that was created to befriend
3 Mr. Drexler, on this page were you involved in tailor-making
4 that page to help become friends with Mr. Drexler?

5 **A.** No. I would have to -- well, I believe that it was already
6 an existing account anyhow. But I would have to go -- I don't
7 recall being a part of creating that page.

8 **Q.** Okay. So, when you sit here today and you say that you
9 don't -- that you were passive, you don't know how the page
10 was -- not how the page was created -- but you weren't there
11 when the page was created; correct?

12 **A.** That's correct.

13 **Q.** And you weren't standing over your agents when they were
14 involved in looking on Mr. Drexler's page; correct?

15 **MS. AHMED:** Your Honor, I'd just object that
16 Mr. Leventhal has no good-faith basis for these questions.
17 It's just --

18 **MR. LEVENTHAL:** I have a --

19 **MS. AHMED:** -- well beyond the scope also of the jury
20 question.

21 **MR. LEVENTHAL:** Well, it's going back to the invoking.
22 And I'm suggesting there's other ways to invoke conversation.
23 So it goes directly towards the question and it's on point.
24 But . . .

25 **THE COURT:** But it sounds like you're getting further

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1 away from it if she didn't have anything to do with the
2 creation of the account and the account already existed.

3 MR. LEVENTHAL: Right. Okay. So . . .

4 MS. AHMED: And who friended who has little to do with
5 provoking statements.

6 MR. LEVENTHAL: I'm sorry?

7 MS. AHMED: You're talking about friendships, the
8 friendship not provoking statements.

9 THE COURT: Provoking friendship and provoking
10 statements -- I think is the objection -- is two different
11 things.

12 MR. LEVENTHAL: Right.

13 THE COURT: But we're not gonna get into an argument in
14 front of --

15 MR. LEVENTHAL: Absolutely.

16 THE COURT: -- the jury --

17 MR. LEVENTHAL: I have --

18 THE COURT: -- until closing --

19 MR. LEVENTHAL: -- nothing further.

20 THE COURT: -- argument.

21 MR. LEVENTHAL: Thank you very much.

22 THE COURT: Then you can argue all you want.

23 THE WITNESS: Yes, sir.

24 MR. LEVENTHAL: Have a good day.

25 ///

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1 FURTHER CROSS-EXAMINATION

2 BY MR. MARCHESE:

3 Q. Afternoon again.

4 A. Good afternoon, sir.

5 Q. I just want to clarify a few things.

6 So you were asked a -- kind of a dual question in
7 reference to your course and scope of your duties in reference
8 to Mr. Parker, Mr. Stewart, and Mr. Dres- -- Drexler's --
9 excuse me -- Facebooks. Do you remember that?

10 A. Yes.

11 Q. Okay. And one of the questions you were asked is when you
12 started looking. And I don't believe you were able to answer
13 that because you would have needed your notes; correct?

14 A. That's correct.

15 Q. Okay. But you can definitively say today here in court that
16 you were not looking at their Facebook pages on April 12th,
17 2014; correct?

18 A. Correct. I didn't know about them then.

19 Q. Okay. And then, in addition, you were asked another
20 question in reference to Mr. Parker's Facebook account and
21 social media -- or Facebook account -- we need be correct --
22 and that was in reference to if you saw any posts about him
23 intending to shoot officers or agents of the law. Do you
24 remember that?

25 A. I believe the word was "would," but --

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1 Q. Yes, if you --

2 A. -- yes.

3 Q. -- would. You're correct.

4 A. I remember that.

5 Q. And was your testimony something to the effect of you don't
6 recollect seeing anything along that nature; right?

7 A. I said he -- correct.

8 Q. Okay. And that would be something that you would obviously
9 note in your investigation if you saw --

10 A. Yes.

11 Q. -- a post like that; correct?

12 A. Yes.

13 MR. MARCHESE: All right. Thank you.

14 No further questions, Your Honor.

15 (Government counsel conferring.)

16 THE COURT: So the question was were you looking at
17 the Facebook account on April 12th and you said no you weren't
18 looking at it on April 12th. But earlier you said that the
19 search warrant that was served in July 2014 requested
20 information going back to March of 2014; right?

21 THE WITNESS: That's correct, Your Honor.

22 THE COURT: And did you receive information going all
23 the way back to March 2014?

24 THE WITNESS: I believe so, Your Honor.

25 THE COURT: That would have included information from

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1 April 12th.

2 THE WITNESS: Correct. And I apologize if I -- I
3 misunderstood or answered that incorrectly.

4 THE COURT: No, no. I think you answered it correctly
5 the way --

6 THE WITNESS: Okay.

7 THE COURT: -- that it was asked.

8 So did you want to clarify, Mr. Marchese? Are you
9 asking about maybe something that was visible but then is no
10 longer visible later or isn't included in a . . .

11 MR. MARCHESE: I was just following up on a jury
12 question. But I can clean it up.

13 THE COURT: Okay.

14 FURTHER CROSS-EXAMINATION (Continued)

15 BY MR. MARCHESE:

16 Q. So, on April 12th, 2014, you were not assigned to this case
17 at that time; correct?

18 A. That is correct.

19 Q. However, at some point in time -- you'd have to look at your
20 notes -- you were assigned to the case; correct?

21 A. Yes.

22 Q. And, in the course and scope of your duties, as Her Honor
23 just alluded to, you got a search warrant; correct?

24 A. Yes.

25 Q. And the search warrant went back approximately one month

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1 prior to April 12th, 2014 --

2 **A.** That is --

3 **Q.** -- correct?

4 **A.** -- correct.

5 **Q.** So the posts that you saw were in relation to that search
6 warrant; correct?

7 **A.** Yes.

8 **Q.** Well -- and, when I say "the posts," the pre -- when your
9 investigation started or you were assigned to it, anything that
10 you saw Facebook-wise would have been the result of a search
11 warrant; correct?

12 **A.** Well, not exclusive, no. But with the search warrant that
13 would have -- on April 12th, I was not looking at the Facebook
14 page.

15 **Q.** Right.

16 **A.** I didn't know about these individuals then. The search
17 warrant goes back to that. But -- and then I reviewed the
18 search warrant Business Record, as we've discussed, after that;
19 again, the investigation has continued. So I have since viewed
20 things that were publically -- is that what you're getting at?
21 I apologize if I've answered it --

22 **Q.** No. No.

23 **A.** -- if I --

24 **Q.** You're fine.

25 **A.** -- misunderstood before. Since the search warrant returns,

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1 I have been able to view publicly available information prior
2 to that date.

3 Q. Okay. Yes.

4 A. Does that clarify --

5 Q. Right.

6 A. -- or . . . Okay.

7 Q. No. It does. I just wanted -- Her Honor brought up a good
8 point about the search warrant. I wanted to --

9 A. Yes.

10 Q. -- clear that up.

11 A. Thank you.

12 Q. All right.

13 A. Okay. Kinda of --

14 Q. No. Thank you.

15 A. -- two prongs here, two parts. Okay.

16 Q. All right. Thanks.

17 THE COURT: Mr. Perez?

18 MR. PEREZ: Nothing from Mr. Lovelien.

19 THE COURT: All right.

20 MR. TANASI: None from Stewart. Thank you, Your Honor.

21 THE COURT: All right.

22 Anything else from the Government?

23 MS. AHMED: No, Your Honor. Thank you.

24 THE COURT: All right.

25 So thank you, Special Agent Draper, for coming in so

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1 many different days. We appreciate it. You are excused.

2 Please be --

3 THE WITNESS: Thank you, Your Honor.

4 THE COURT: -- careful on the way down with those
5 steps.

6 And the Government may call its next witness.

7 MR. MYHRE: Your Honor, the Government recalls Special
8 Agent Willis.

9 (Pause in the proceedings.)

10 THE COURT: Good afternoon.

11 THE WITNESS: Good afternoon.

12 THE COURT: Agent Willis, again, so we'll have you take
13 the witness stand up here.

14 (Joel Willis takes the witness stand.)

15 THE COURT: Aaron, did you want to swear him in again
16 since it's been a while?

17 COURTROOM ADMINISTRATOR: Yes.

18 THE COURT: Thank you.

19 COURTROOM ADMINISTRATOR: Please raise your right hand.

20 You do solemnly swear that the testimony you shall give
21 in the cause now before this court shall be the truth, the
22 whole truth, and nothing but the truth, so help you God?

23 THE WITNESS: I do.

24 ///

25 ///

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1 JOEL WILLIS,
2 recalled as a witness on behalf of the Government, having been
3 first duly sworn, was examined and testified as follows:

4 COURTROOM ADMINISTRATOR: Thank you, sir. You may be
5 seated.

6 THE WITNESS: Thank you.

7 COURTROOM ADMINISTRATOR: Please state your full name
8 for the record and spell your last name.

9 THE WITNESS: Joel Willis, W-i-l-l-i-s.

10 MR. MYHRE: Thank you, Your Honor.

11 DIRECT EXAMINATION

12 BY MR. MYHRE:

13 Q. Good afternoon again, Agent Willis. How are you today?

14 A. Good. How are you?

15 Q. I'm gonna ask you a few questions sort of beginning where we
16 left off the last time. I'm going to lead first with a
17 Facebook return that you reviewed and then I'm gonna go into a
18 video that you recovered and then I'm going to go into your
19 timeline. So that's sort of the order that I'm going to follow
20 with you --

21 A. Yes, sir.

22 Q. -- in the first part of this afternoon.

23 So, turning first to this Facebook, did you have an
24 opportunity to review a Facebook search warrant return for Todd
25 Engel?

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1 **A.** Yes, I did.

2 **Q.** And, first of all, who is Todd Engel?

3 **A.** Todd Engel is an individual that was involved in the
4 April 12th, 2014, standoff. He was on the bridge that day with
5 a rifle.

6 MR. MYHRE: And, Your Honor, may we recall Exhibit 66,
7 please.

8 THE COURT: Yes, you may.

9 (Exhibit displayed in open court.)

10 BY MR. MYHRE:

11 **Q.** And you see Exhibit 66?

12 **A.** Yes, I do.

13 **Q.** So would you -- do you see Todd Engel in this particular
14 view?

15 **A.** Yes, I do.

16 **Q.** If you would circle him, please.

17 **A.** (Complies.)

18 **Q.** Okay. And the record should reflect that the witness has
19 circled the individual in the foreground in Exhibit 66.

20 Now, in reviewing -- in order to obtain the account
21 information from Todd Engel's Facebook account, you first
22 discovered there was a Facebook account; correct?

23 **A.** Correct.

24 **Q.** And did you supervise or prepare a search warrant
25 application for his Facebook account?

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1 **A.** Yes, I did.

2 **Q.** Did you receive a return in response to that?

3 **A.** Yes, I did.

4 **Q.** So your search warrant application was approved?

5 **A.** That's correct.

6 **Q.** After it's approved, what did you do with it?

7 **A.** We -- it comes in a page-by-page PDF form, several hundred
8 pages. And essentially we go page by page and we review
9 starting with the administrative information, you know, the
10 first page is his name, his email addresses, his phone numbers
11 associated with the account. And then we go in and section by
12 section we review the Facebook page and summarize it.

13 **Q.** Now --

14 **A.** And --

15 **Q.** -- when you receive -- so you received something back from
16 Facebook; correct?

17 **A.** That is correct.

18 **Q.** Was there a letter of authenticity in the information you
19 received back from them?

20 **A.** We did receive a letter of authenticity from Facebook.

21 **Q.** And that essentially says what?

22 **A.** It -- it just -- it's -- it's notarized, it's signed by a --
23 by someone authenticating that those are true, accurate
24 Business Records that include a summary of the Facebook records
25 requested within the subpoena within the time frame requested.

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1 Q. Do you mean "subpoena" or "search warrant"?

2 **A.** I'm sorry. Excuse me. Search warrant, not subpoena.

3 MR. MYHRE: And, Your Honor, may we show the witness
4 what's been marked as, just witness and counsel only,
5 Exhibit 49, page 10?

6 THE COURT: Yes.

7 (Document displayed to the witness.)

8 BY MR. MYHRE:

9 Q. Do you have Exhibit 49, page 10, in front of you,
10 Agent Willis?

11 **A.** Yes, I do.

12 Q. And what does that's appear to be?

13 **A.** This is a Certificate of Authenticity of Domestic Records of
14 Regularly Conducted Activity. It's -- this is the
15 authentication document for the Todd Engel Business Records
16 from Facebook.

17 MR. MYHRE: And, Your Honor, we offer Exhibit 49,
18 page 10.

19 (Government's Exhibit No. 49, page 10, offered.)

20 THE COURT: Any objection to Exhibit 49, page 10?

21 MR. TANASI: None from Stewart, Your Honor.

22 MR. MARCHESE: None from Parker.

23 MR. LEVENTHAL: On relevance grounds. Other than
24 that . . .

25 MR. PEREZ: None from Lovelien.

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1 THE COURT: 801(d)(2)(E)?

2 MR. MYHRE: The authenticity page, Your Honor? We're
3 establishing that it's just -- for weight of the evidence to
4 establish the authenticity of the records.

5 MR. LEVENTHAL: And counsel --

6 MR. MYHRE: It's a Business Record itself.

7 MR. LEVENTHAL: I apologize.

8 Counsel's correct. I don't have an objection to
9 just --

10 THE COURT: All right. So Exhibit 49, page 10, will be
11 admitted.

12 MR. MYHRE: Thank you, Your Honor.

13 (Government's Exhibit No. 49, page 10, received.)

14 MR. MYHRE: And may we just publish briefly for the
15 jury.

16 THE COURT: Yes.

17 (Exhibit displayed in the courtroom.)

18 BY MR. MYHRE:

19 Q. So this is what you received back from Facebook once you get
20 the return from them; correct?

21 A. Correct.

22 Q. Now, once you received the return, you searched through the
23 records; correct?

24 A. Yes.

25 Q. And you search for the records as they relate to what is

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1 specified in the search warrant itself.

2 **A.** Correct.

3 **Q.** Did you recover -- during your search of the return, did you
4 find documents that were responsive to that search warrant?

5 **A.** Yes, we did.

6 MR. MYHRE: And, Your Honor, may I show the witness
7 what's been marked as Exhibit 122?

8 THE COURT: Yes, you may.

9 (Exhibit displayed to the witness.)

10 BY MR. MYHRE:

11 **Q.** And do you see 122 in front of you there, Agent Willis?

12 **A.** Yes, I do.

13 **Q.** And how many pages are there to 122?

14 **A.** I think there's only two. Yes, page 198 and 199 of the
15 Business Records.

16 **Q.** And from this -- from these two-page documents, do they
17 contain entries from Mr. Engel's Facebook that are responsive
18 to the return?

19 **A.** Yes.

20 **Q.** Are they -- do they relate to entries that were made on or
21 about April the 12th, 2014?

22 **A.** Yes.

23 **Q.** Can you tell from the sequence here whether it starts
24 sequentially, what is earlier in time versus what is later in
25 time?

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1 **A.** Yes, that's correct. It's reverse chronological. So
2 starting at the bottom of the second page working our way up to
3 get to the most recent post.

4 **Q.** Does that conform to usually how the Business Records are
5 returned to you?

6 **A.** Ye- -- yes, for -- for wall posts or timeline posts, based
7 on my knowledge and the review of these Facebook returns, that
8 that's the way the records are provided by Facebook.

9 MR. MYHRE: Your Honor, we offer Exhibit 122 for
10 identification. Ask it be admitted.

11 (Government's Exhibit No. 122, offered.)

12 THE COURT: Any objection to Exhibit 122.

13 MR. TANASI: Just a continuing hearing and relevance
14 objection, Your Honor.

15 MR. MARCHESE: Parker joins.

16 MR. LEVENTHAL: Drexler joins.

17 MR. PEREZ: Lovelien joins.

18 MR. MYHRE: The same response, Your Honor,
19 801(d)(2)(E).

20 THE COURT: All right. So the objection is overruled.
21 Exhibit 122 will be admitted as 801(d)(2)(E).

22 (Government's Exhibit No. 122, received.)

23 MR. MYHRE: And may we publish, Your Honor?

24 THE COURT: Yes, you may.

25 MR. MYHRE: Thank you, Your Honor.

1 (Exhibit displayed in open court.)

2 BY MR. MYHRE:

3 Q. And if we could begin with page 2 'cuz that's where the
4 earlier entries are; correct?

5 **A.** Yes.

6 Q. Starting on the bottom entry, there were -- there have been
7 questions about UTC time. And I don't . . .

8 **A.** Yes.

9 Q. In terms of you -- you've done a lot of work during the
10 course of this information with converting times; is that
11 correct?

12 **A.** That's correct.

13 Q. Yeah.

14 And your understanding of "UTC time" is what?

15 **A.** Well, it's Universal Time Coordinated. Again, Zulu Time.
16 It's the time that all times are based off of.

17 For our investigation, when we say, "local time" or
18 when we convert the time from UTC to Nevada, Las Vegas, time,
19 we are subtracting 7 hours. And that's also based on the --
20 the event of April 12th, 2014; the fact that we were at that
21 point in -- I believe it's standard time. So we -- it's spring
22 forward, fall back. We had sprung forward. So, if we were in
23 between where it's daylight savings time, in between November
24 and I believe it's March [sic], it would actually be back 8
25 hours. So we've based our review and the review of the aerial

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1 photography and other things on UTC-7 hours to give us local
2 time on April 12th, 2014.

3 Q. So, from here on in, when we're talking "Nevada local time,"
4 we're talking about minus 7 UTC?

5 A. That is correct.

6 Q. So, based on that premise looking at this first entry,
7 approximately what time was this entry made?

8 A. At approximately 9:52 a.m. on April 12th, 2014.

9 Q. And circling along the bottom there, it says, "Message,"
10 what does that mean in Facebook parlance?

11 A. This is just a -- essentially a record of somebody adding a
12 video to their Facebook wall and they included a description or
13 a message, as we see here, of that video or something they
14 wanted to relay or accompany that video that they posted to
15 Facebook.

16 Q. And, based on the Facebook records, who would have entered
17 that message?

18 A. Todd Engel.

19 Q. And why do you say that?

20 A. Because I have no reason to believe that it's anybody else.
21 It says it's "Todd Engel added a . . . video." I know that
22 Todd Engel was present on the day of April 12th, 2014 --

23 MR. LEVENTHAL: Objection, foundation. I don't think
24 this witness testified he was present on April 12th, 2014.

25 MR. PEREZ: Lovelien joins.

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1 MR. TANASI: Stewart joins.

2 MR. MARCHESE: Parker joins.

3 THE COURT: I'm sorry. Didn't he just identify
4 Mr. Engel in the photo in Exhibit 66?

5 MR. MYHRE: Yes, Your Honor.

6 THE COURT: All right. So objection's overruled.

7 BY MR. MYHRE:

8 Q. So, based on your experience and training and your
9 investigation, you know that Engel was there on the 12th, and
10 this is his account; correct?

11 A. That is correct.

12 Q. And, just for the record purposes, read what the message is
13 there.

14 A. "Sheriffs" -- sorry. Excuse me -- "Sheriff has given one
15 hour to disarm blm."

16 Q. Now, proceeding up the page to the next entry --

17 MR. MYHRE: If we can get the shot just above that,
18 please. Thank you. Thank you.

19 BY MR. MYHRE:

20 Q. Next entry in time sequence is at 18:05:11; correct?

21 A. That is correct.

22 Q. And that would be approximately what in local Nevada time?

23 A. So minus 7 hours, 11 -- approximately 11:05 a.m. on
24 April 12th, 2014.

25 Q. And is there another message there that's been placed by the

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1 account holder?

2 **A.** Yes, there is.

3 **Q.** And what is that?

4 **A.** "Headed out to block freeway and takes cows back."

5 **Q.** Now, the next entry above that is about what? 12 minutes
6 later?

7 **A.** Yes.

8 **Q.** What is that message?

9 **A.** "Leaving now to shut down freeway" -- excuse me. Start
10 over -- "Leaving now to shut the freeway down by force of
11 arms."

12 **Q.** Now, we've had some testimony about this. But, based on
13 your training and experience, how can -- how is it possible for
14 an account holder if they are out in the middle of Bunkerville
15 to be updating their Facebook page?

16 MR. LEVENTHAL: Objection, calls for speculation.

17 MR. MYHRE: It's based on his training and his
18 experience, Your Honor.

19 THE COURT: He may answer the question. He's asking
20 how may a person generally.

21 BY MR. MYHRE:

22 **Q.** Generally, how may a person update a Facebook or put a
23 message on Facebook if they were in Bunker -- Bunkerville,
24 Nevada?

25 **A.** Using a smartphone with the Facebook app as long as you had

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1 cell phone service or cellular tower service.

2 Q. Now, going up to the entry after the 18:17:40 entry, what is
3 that entry there?

4 A. This entry --

5 Q. This is 19:04 --

6 A. Right.

7 Q. -- 19. So if you could tell us what the local time was
8 there.

9 A. It would have been 12 -- approximately 12:04 p.m. on
10 April 12th, 2014. And the message reads, "Armed stand off."

11 Q. Now, the line that says "**Story**" it says, "Todd Engel added a
12 new video"; correct?

13 A. Yes.

14 Q. Do you have the information that was added there?

15 A. No, I do not.

16 Q. And why is that?

17 A. It was not included in the Facebook Business Record. We did
18 not receive any videos from any of our search warrants on
19 Facebook accounts. So, when we received these records, we went
20 to his public Facebook page and attempted to find that post and
21 see if the video was still there and it was not there. It had
22 been removed or it wasn't publicly available.

23 MR. MYHRE: Now, if we could move to page 1. And again
24 beginning at the bottom of page 1.

25 (Exhibit displayed in the courtroom.)

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1 BY MR. MYHRE:

2 Q. And there's an entry there, again from the 12th of April,
3 2014, at 21:04:41 [sic]. If you could tell us what time
4 locally in Nevada in April that was?

5 **A.** Yes. That would have been at 2:01 p.m. on April 12th, 2014.

6 Q. And, in this entry, we see a line that says, "**Story** Todd
7 Engel updated his status." What does that mean?

8 **A.** Somebody posts on -- on their wall, you give a status
9 update. If you're using an app, you could just go in there and
10 it's -- it's, like, what's on your mind; what you're doing.
11 You -- you could link information like where you are, things
12 like that; if you're at a restaurant. Well, he was just
13 updating his status with a message in this post at this time.

14 Q. Okay. And do you see a message there?

15 **A.** Yes, I do.

16 Q. And would you read that into the record, please.

17 **A.** "BLM lost and has backed down due to overwhelming force of
18 the people and our arms. WE WIN! Cattle being released as we
19 speak. If they don't trouble will start."

20 Q. And proceeding to the entry above that --

21 **A.** So this would be, "if they don't" --

22 Q. Sorry. I meant -- I'm sorry. I misspoke.

23 Proceeding to page 2, the entry then is completed on
24 page 2; correct?

25 **A.** Yes.

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1 Q. Okay. Thank you.

2 **A.** So then the previous sentence, "if they don't trouble will
3 start again" -- is the first word on this page -- and then the
4 next sentence is, "It was very very close to an exchange of gun
5 fire. We rushed their barricades with armed people and cowboys
6 on horseback. Crazy."

7 Q. So, just so the record's clear, the last words you spoke
8 were on page 2 of Exhibit 122.

9 **A.** Yes.

10 Q. Now, proceeding up on page 1 to the entry above the last one
11 we read --

12 (Exhibit displayed in open court.)

13 BY MR. MYHRE:

14 Q. -- this entry appears to have occurred again on the 12th of
15 April 2014; this time at 22:22:57. What time is that locally?

16 **A.** That would have been 3:22 p.m.

17 Q. And, again, the line besides "**Story**" reads, "Todd Engel
18 added a new video." So, again, this is a video being added?

19 **A.** Yes.

20 Q. And then there's a message; correct?

21 **A.** Yes.

22 Q. And what does that message read?

23 **A.** In all caps, "WE WIN!"

24 Q. Now, you mentioned this was a -- these are wall posts?

25 **A.** Yes, or timeline posts.

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1 Q. I think we've had some testimony with respect to that. But
2 if you could just speak a little bit about what is a wall post?

3 **A.** Well, a wall post is just generally information that you
4 would like to share, depending on your settings, either
5 publicly to everyone or with your friends. Each post can
6 actually be tailored to who you want it to be viewable to. If
7 you go on somebody's Facebook page, your timeline or wall -- it
8 seems to change names back and forth -- but would just be
9 basically that, it's your information. As I had mentioned
10 earlier, if you went out to a restaurant and you wanted people
11 to know that you were here at this time and that the food was
12 great, you could put that there and somebody could actually go
13 on and see a -- like a Google Maps image of that restaurant or
14 something and along with your message. So it's just basically
15 information that you want to share with -- with people who
16 either have access to your Facebook page, again depending on
17 your settings, or just anybody in public -- in the public.

18 Q. From the Facebook search warrant return, the Business Record
19 returns, are you able to tell their privacy settings?

20 **A.** No.

21 Q. Okay. So it would just depend -- in terms of who could view
22 this, it would be a public post, public to the extent others
23 allow someone to view it.

24 **A.** Yes.

25 Q. Okay.

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1 MR. MYHRE: Thank you. You could take down 122 for the
2 time being. Thank you.

3 BY MR. MYHRE:

4 Q. Now, when we last spoke, Agent Willis, you discussed how you
5 did public or Open Source reviews --

6 A. Yes.

7 Q. -- as well. And you did searches in the Internet for
8 whatever would be available to an Internet user; is that
9 correct?

10 A. Yes.

11 Q. And, in the course of doing that search, did you discover a
12 video involving the events of posts immediately in the
13 aftermath of the events on the bridge on 4-12?

14 A. Yes, I did.

15 Q. And was that event -- did that event take place at what we
16 referred to as "the staging area" or "the rally point" along
17 Riverside Road in Bunkerville?

18 A. Yes, it did.

19 Q. Did it involve Cliven Bundy making a speech?

20 A. Yes, it did.

21 Q. Can you explain generally how you discovered this particular
22 video?

23 A. As I had mentioned in my previous testimony, it -- it's as
24 simple as going on and doing a term search: Bundy, Bundy
25 Ranch, Bundy standoff; anything that, as far as terms that I

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1 could use to generate a different search result, like a Google
2 Search. This was a video or actually a group of videos that --
3 this is a video from a group of videos -- excuse me -- on
4 YouTube where I had essentially done that. Like, doing a
5 Google Search; but instead of Google, YouTube for Bundy Ranch.
6 And this was part of the -- my search result that showed up on
7 the side of the screen there.

8 Q. Do you recall the name of the YouTube account or the site
9 that you visited?

10 A. Yes, I do.

11 Q. And what was that?

12 A. It was "sexy702latina," all one word and that was their
13 Facebook page name -- I'm sorry -- YouTube channel name.

14 Q. So YouTube channel?

15 A. Yes.

16 Q. And after -- and did this YouTube channel contain the video
17 we just discussed?

18 A. Yes, it did.

19 Q. And was the content relevant to your investigation?

20 A. Yes.

21 Q. When you discovered it, what did you do with the information
22 that you saw?

23 A. I captured the video by downloading it from YouTube and
24 submitting it as a piece of evidence to our case file.

25 MR. MYHRE: And, Your Honor, may we show the witness

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1 what's been marked as Exhibit 47a.

2 THE COURT: Yes, you may.

3 (Video played.)

4 BY MR. MYHRE:

5 Q. And you've had a chance to look at 47a briefly in court.

6 You've seen it outside the courtroom; correct?

7 A. Yes.

8 Q. Is that the video that you downloaded on the 20 -- on --

9 excuse me -- from the sexylatina website --

10 A. Yes, it is.

11 Q. -- or excuse me -- YouTube channel?

12 A. Yes, YouTube channel.

13 Q. And does it contain a speech by Mr. Cliven Bundy of

14 April 12th, 2014?

15 A. Yes.

16 MR. MYHRE: Your Honor, we offer Exhibit 47a.

17 (Government's Exhibit No. 47a, offered.)

18 MR. MARCHESE: No objection, Parker.

19 MR. TANASI: Stewart objects on relevance, Your Honor.

20 MR. PEREZ: No objection, Lovelien.

21 MR. LEVENTHAL: Drexler objects on relevance grounds.

22 MR. MYHRE: Did they say "object on relevance," your

23 Honor?

24 THE COURT: Yes.

25 MR. MYHRE: I had difficulty hearing. Okay.

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1 THE COURT: Yes.

2 MR. MYHRE: Your Honor, it's directly relevant. These
3 are statements made in furtherance of the conspiracy. It's
4 actually -- they are admissions being made during the course of
5 this video. But they relate directly to the events of
6 April 12th, 2014.

7 THE COURT: So these are 801(d)(2)(E) statements?

8 MR. MYHRE: Yes, Your Honor.

9 THE COURT: All right. So the objection is overruled.
10 And Exhibit 49a -- 47 -- 47?

11 MR. MYHRE: 47a, Your Honor.

12 THE COURT: -- 47a is admitted.

13 (Government's Exhibit No. 47a, received.)

14 MR. MYHRE: 47a.

15 THE COURT: You may go ahead and publish it.

16 MR. MYHRE: Thank you, Your Honor.

17 (Video played.)

18 MR. MYHRE: Stop right there, please. Thank you.

19 BY MR. MYHRE:

20 Q. So we stopped at 5 seconds. If you can provide for us a
21 little setting, Agent Willis. First of all, where is this --
22 based on your knowledge from the investigation, where is this
23 event or this scene that we are currently viewing at 5 seconds
24 in? Where is this occurring?

25 **A.** This is occurring at the staging area or rally site in

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1 Bunkerville, Nevada; it's on State Route 170, approximately
2 2 miles from the Bundy Ranch.

3 Q. And the individual that appears in this image to be holding
4 a microphone, who is that?

5 A. That's Cliven Bundy.

6 Q. Are you able to tell from this image approximately what time
7 of day this would have occurred?

8 A. It would be at approximately 4:00 p.m. And I say
9 "approximately" because we -- other than this video and -- and
10 aerial footage, which is what I based my time on, we did not
11 have any time stamped photography or video of this. So, when I
12 say "the aerial footage," after the standoff people came back
13 to the staging rally site area. That is captured starting at
14 approximately 4:00 p.m. You see a large group of people
15 gathered at the stage -- staging area rally site in
16 Bunkerville. So, again, approximately 4:00 p.m. based on the
17 aerial footage.

18 Q. And, in this image, we -- I'm gonna circle an individual
19 here in the lower left-hand corner. Do you know the identity
20 of that person?

21 A. Yes, I do.

22 Q. And who is that person?

23 A. That's Schuyler Barbeau.

24 Q. Is that the same Schuyler Barbeau that was referenced in
25 earlier testimony?

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1 **A.** Yes.

2 THE COURT: Can you spell that for me again?

3 THE WITNESS: His name is spelled S-c-h-u-y-l-e-r; last
4 name, B-a-r-b-e-a-u.

5 THE COURT: Thank you.

6 And did you say that the stage is or is not on the
7 ranch -- on the Bundy Ranch?

8 THE WITNESS: So the -- the Bundy Ranch is actually
9 a -- a plot of land on the Virgin River approximately 2 miles
10 from this stage. This is a different piece of property that
11 does not belong to Cliven Bundy that is off the side of State
12 Route 170 near the bridge that goes over the Virgin River and
13 opposite to where Cliven Bundy's -- the road leading to Cliven
14 Bundy's house intersects with State Route 170. So it's --
15 again, this is not on the Bundy Ranch, this stage. It's on the
16 side of a road.

17 THE COURT: Okay. Thank you.

18 BY MR. MYHRE:

19 Q. And, just for further clarification, it is approximately how
20 many miles from the ICP?

21 **A.** 5 miles.

22 MR. MYHRE: Continue video, please.

23 (Video played.)

24 MR. MYHRE: And the record should reflect that the
25 video stops at approximately 2:13. Nicole, if we could back up

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1 to about 50 seconds, please.

2 (Pause in the proceedings.)

3 MR. MYHRE: That's fine.

4 Record should reflect that the video has been rewound
5 to approximately 50 seconds, 49 seconds in.

6 BY MR. MYHRE:

7 Q. Agent Willis, Mr. Bundy in this image appears to be holding
8 something in his hand; correct?

9 A. Yes.

10 Q. What is that object?

11 A. That is a "Closure Area" sign that, according to Cliven
12 Bundy, had been taken off the fence that was underneath the
13 southbound I-15 bridge in the Toquop Wash.

14 Q. Now, based on your information, where do those signs come
15 from?

16 A. They came from the BLM.

17 Q. And how were they used?

18 A. They were used -- they were posted throughout --

19 MR. LEVENTHAL: Objection, hearsay --

20 THE WITNESS: -- the --

21 MR. LEVENTHAL: -- foundation.

22 MR. MARCHESE: Parker joins.

23 MR. TANASI: Stewart joins.

24 MR. LEVENTHAL: Lovelien joins.

25 MR. MYHRE: Your Honor, just based on his investigation

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1 just generally what he determined is how -- I'll ask it where
2 they were posted as opposed to how they were used.

3 THE COURT: All right.

4 BY MR. MYHRE:

5 Q. Based on your investigation, where were these signs posted?

6 A. They were posted throughout the impoundment area. So by the
7 BLM through several -- several areas notifying the public that
8 this was a closure area --

9 MR. LEVENTHAL: Objection, nonresponsive, move to
10 strike.

11 MR. MYHRE: I'm --

12 THE COURT: Okay. So the question was where and he
13 answered where. And I think he was going -- he was continuing
14 to answer why. But that question wasn't posed yet.

15 MR. MYHRE: No. It just --

16 THE COURT: Is that the objection?

17 MR. LEVENTHAL: Yes, Judge. Thank you.

18 THE COURT: Okay. So he was anticipating your next
19 question essentially.

20 MR. MYHRE: Thank you. Thank you, Your Honor.

21 BY MR. MYHRE:

22 Q. So you indicated where they were posted. And what was the
23 bases for posting them?

24 MR. LEVENTHAL: Objection, foundation, calls for
25 hearsay.

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1 BY MR. MYHRE:

2 Q. Were public records available in terms of posting of signs?

3 A. Yes. So this was another step --

4 Q. Before you -- were those records available --

5 A. Yes --

6 Q. Public --

7 A. -- publically.

8 Q. -- records?

9 A. Yes.

10 Q. In the course of your investigation, did you review the
11 public records pertaining to the impoundment action?

12 A. Yes.

13 Q. And, from your review of those public records, were you able
14 to determine the purpose for posting the closed area signs?

15 A. Yes.

16 Q. And what was that purpose?

17 MR. LEVENTHAL: Your Honor, objection, hearsay. A
18 public record is still hearsay. It doesn't need to be a
19 statement. Hearsay could be a document; it could be any
20 out-of-court statement/document for the truth of the matter
21 asserted. So it's still -- it's still hearsay. And I would
22 object on hearsay and foundation grounds.

23 MR. MYHRE: Your Honor, it's information from a public
24 record. So it's an exception to the hearsay rule because it's
25 a public record.

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1 THE COURT: Objection's overruled. He may answer the
2 question.

3 BY MR. MYHRE:

4 Q. You can answer what was the purpose for posting the signs.

5 A. For safety purposes to the public notifying them that there
6 would be an impoundment operation in this area.

7 MR. MYHRE: And we can take that down for the time
8 being.

9 Your Honor, I'm getting ready to move into the time
10 line. I don't know if you wanted to take a break now or do it
11 later.

12 THE COURT: Sure, we can go ahead and take a break now.

13 I do remind the jury during this break:

14 Please do not discuss this case with anyone nor permit
15 anyone to discuss it with you. Do not read or view or listen
16 to anything that touches upon this case in any way. And,
17 please do not perform any independent investigation or any
18 research regarding anything that touches upon this case in any
19 way.

20 And please do not reach any opinion or form any opinion
21 regarding the issues in this case until after you've heard all
22 the testimony, received the evidence, I will provide you the
23 jury instructions of law, and then you will hear closing
24 arguments. After that I will excuse you and then you can begin
25 your deliberation process which includes speaking about the

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1 case with each other.

2 So we'll go ahead and take a break. It's 3:15. Be
3 back here at 3:30.

4 All right. So let's go ahead and stand for the jury.
5 The jury is excused.

6 And, Special Agent Willis, after the jury exits, then
7 you may also take your stretch break.

8 THE WITNESS: Thank you.

9 THE COURT: And we just need you back here by 3:30,
10 please.

11 THE WITNESS: Thank you, Judge.

12 THE COURT: Off record.

13 (Jury out. Recess, 3:15 p.m. Resumed, 3:46 p.m. Jury not
14 present.)

15 COURTROOM ADMINISTRATOR: All rise.

16 THE COURT: All right. Thank you. You may be seated.

17 Aaron, do you want to call back in the jury.

18 (Pause in the proceedings.)

19 COURTROOM ADMINISTRATOR: All rise.

20 (Jury in, 3:49 p.m.)

21 THE COURT: Jury may go ahead and take a seat.

22 All right. Welcome back. We still have Special Agent
23 Joel Willis on the stand. Thank you, sir.

24 THE WITNESS: Thank you.

25 THE COURT: And, Mr. Myhre, you may continue with your

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1 direct examination.

2 MR. MYHRE: Thank you, Your Honor.

3 BY MR. MYHRE:

4 Q. Agent Willis, on the witness stand to your left, we have
5 what's been previously marked as Exhibit 182. Do you see that?

6 A. Yes, I do.

7 Q. What is Exhibit 182?

8 A. This is a timeline which provides a sequence of events that
9 occurred prior to Cliven Bundy getting on the stage with
10 Sheriff Douglas Gillespie the morning of April 12th, 2014,
11 through the release of the cattle and the speech that you just
12 previously saw with Cliven Bundy with the Closed Area sign in
13 that video pertaining to the activities of the four defendants
14 on April 12th, 2014.

15 Q. So let's talk a little bit about how you went about
16 constructing this timeline.

17 First of all, it consists of individual slides;
18 correct?

19 A. Correct.

20 Q. And you put those slides into a PowerPoint presentation?

21 A. Yes, I did.

22 Q. And does that presentation consist of approximately 88
23 separate slides?

24 A. Yes.

25 Q. Now, you mentioned that you used information that pertained

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1 to the four defendants based on the events of April 12th, 2014;
2 correct?

3 **A.** Yes.

4 **Q.** And, in compiling this, you did so from evidence that has
5 already been admitted during the course of these proceedings;
6 correct?

7 **A.** Yes.

8 **Q.** So there are approximately 195-plus exhibits thus far
9 admitted. So, in the course of putting this together, you
10 reviewed all of the those exhibits; correct?

11 **A.** Correct.

12 **Q.** Some of those exhibits contain video evidence that we've
13 seen; correct?

14 **A.** Yes.

15 **Q.** Now, if you found something that pertained to these
16 defendants within the video evidence, would you -- how would
17 you isolate that event?

18 **A.** I would essentially take a screenshot of how I'm viewing it
19 on the -- on the player. So, if I'm using Windows Media Player
20 I would take a screenshot of that media player including the
21 play time on the bottom and any and other information I would
22 see in that player window on my computer.

23 **Q.** And, in your timeline, you would indicate that's a
24 particular image, for example, that was derived from a
25 screenshot that you would put "screenshot" on it.

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1 **A.** That's correct.

2 **Q.** You would also indicate on the slide the exhibit number that
3 it was derived from.

4 **A.** Yes.

5 **Q.** Now, you talked about sequence of events and we talked quite
6 a bit the last time in your testimony about time stamping these
7 images; correct?

8 **A.** Yes.

9 **Q.** Some of these images you were able to time stamp based on
10 metadata contained in the image itself; correct?

11 **A.** Correct.

12 **Q.** In other images you were able to time stamp based on other
13 characteristics you've noticed in the image that you could
14 verify through other media; correct?

15 **A.** Yes.

16 **Q.** Now -- and each of your entries in your timeline you've
17 indicated the time that you derived on the exhibit itself;
18 correct?

19 **A.** Yes.

20 **Q.** And you've indicated that the timeline runs essentially from
21 about 9:00 a.m. on April the 12th through sometime around 4:00
22 p.m., the last video that we viewed here.

23 **A.** Yes. And also at the end there's a -- there's a couple of
24 Facebook posts as well.

25 **Q.** Right.

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1 And -- but, just with respect to that video, that was
2 Exhibit 47a; correct?

3 **A.** Yes.

4 **Q.** Now, you mentioned Facebook posts. So, in addition to
5 images that were compiled in connection with your timeline, you
6 also compiled various Facebook entries that would be pertinent
7 to the timeline itself; correct?

8 **A.** Correct.

9 **Q.** And they would relate to images that appear in the timeline.

10 **A.** Yes.

11 **Q.** And this was done to assist the trier of fact, the jury, in
12 understanding the evidence that's been presented in court as
13 well as organizing the many exhibits that have been presented
14 thus far.

15 **A.** Yes.

16 MR. MYHRE: Your Honor, we offer Government's
17 Exhibit 182 which consists of 88 slides, 1 through 88.

18 (Government's Exhibit No. 182, offered.)

19 THE COURT: Any objection to 188 [sic]?

20 MR. LEVENTHAL: Your Honor, I'm gonna object. I don't
21 believe all of these slides have actually been introduced.

22 THE COURT: Do you -- all right. Do you have some
23 numbers? Are the --

24 MR. LEVENTHAL: Well, right off --

25 THE COURT: Are the slides --

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1 MR. LEVENTHAL: -- the bat --

2 THE COURT: -- so there's 88 slides that are --

3 MR. MYHRE: Correct.

4 THE COURT: -- contained in Exhibit 182 --

5 MR. MYHRE: That's --

6 THE COURT: -- is that right?

7 MR. MYHRE: -- correct, Your Honor.

8 THE COURT: Okay.

9 Are there page numbers?

10 MR. MYHRE: Yes, Your Honor. Each slide --

11 THE COURT: All right.

12 MR. MYHRE: -- is individually numbered 1 through 88.

13 THE COURT: Okay.

14 MR. LEVENTHAL: I don't believe 19 was admitted. And I
15 could be wrong.

16 MR. MYHRE: Slide No. 19?

17 MR. LEVENTHAL: It would be the first one. I believe I
18 had objected to it and I don't think -- did it come in?

19 MR. MYHRE: If I could seek clarification, Your Honor.
20 Are we talking about slide No. 19 or Exhibit No. 19?

21 THE COURT: Let's just go over -- do you have a copy?
22 Let's go over to sidebar and you can show us.

23 (Begin sidebar conference.)

24 MR. LEVENTHAL: So as I -- do you want to start? -- so
25 I opened it up I saw first as I opened up the exhibit the first

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1 page would be 19, this one. I believe I --

2 THE COURT: It's on page 1.

3 MR. LEVENTHAL: Page 1. I'm sorry. It's Exhibit 19.
4 Exhibit 19.

5 THE COURT: Right. But page 1 of Exhibit 88 comes
6 from -- or is derived from . . .

7 MR. MYHRE: Exhibit 19, Your Honor.

8 MR. LEVENTHAL: It's --

9 THE COURT: Exhibit 19.

10 MR. LEVENTHAL: -- 182; right?

11 MR. MYHRE: But the exhibit that we're offering --

12 THE COURT: Okay.

13 MR. MYHRE: -- is Exhibit 182.

14 MR. LEVENTHAL: Right. The first one..

15 MR. MYHRE: The first slide is derived from Exhibit 19.

16 MR. LEVENTHAL: So I remember that I had objected to it
17 and Mr. Myhre had indicated that there was going to be another
18 way he was going to admit that. And, again, I just looked at
19 that one slide. He moved on to other slides and, as he moved
20 on to other slides, I don't believe that we ever got back to
21 that slide and that was admitted at some point.

22 MR. MYHRE: I've got it admitted 7-13-17.

23 COURTROOM ADMINISTRATOR: Exhibit 19 was admitted, Your
24 Honor.

25 MR. LEVENTHAL: Because if you remember, he said, I'll

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1 do it the long way.

2 MS. AHMED: It's in. It was admitted.

3 THE COURT: Can I see that? What . . .

4 MR. LEVENTHAL: And I'll just -- it's in a supposed
5 exhibit that shows a truck with two people --

6 THE COURT: Right.

7 MR. LEVENTHAL: -- in the back that has a label of
8 "Drexler" and so I objected to that. And Your Honor had
9 somewhat sustained it, but then told Mr. Myhre to get it in and
10 go the long way around and so he did that. But he never came
11 back to this. And I've never --

12 THE COURT: I think that was just the license plate.

13 MR. LEVENTHAL: No. Then he went to the license plate,
14 another truck with the license plate and said, okay, I'll do
15 this a different way. Then he went to the license plate, but
16 he never came back to this image.

17 MR. TANASI: Stewart would join --

18 COURT REPORTER: I'm sorry?

19 MR. TANASI: -- would join with respect to the
20 identification of Stewart as well. I don't know that . . .
21 And the time additionally.

22 MR. LEVENTHAL: I know I objected to it because there's
23 no way to know that that's Drexler's, Stewart, and there's a
24 label there and you can't tell from that image. And that's
25 what I was objecting to. So I don't ever remember coming back

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1 to that image.

2 MR. MYHRE: Your Honor, the exhibit was admitted. I
3 recall it being admitted. And the agent's gonna testify
4 that -- as he already has -- that he isolated screenshots from
5 the images that pertain to these defendants. He will explain
6 how he identifies Stewart and Drexler within the exhibit
7 itself. We don't believe that makes it inadmissible because
8 the exhibit itself is already in evidence.

9 MR. TANASI: Is that what you said, leading --

10 THE COURT: Aaron, do you see that Exhibit 19 has been
11 admitted?

12 COURTROOM ADMINISTRATOR: Exhibit 19 was admitted, Your
13 Honor.

14 THE COURT: And when?

15 COURTROOM ADMINISTRATOR: On July 31st.

16 THE COURT: With which witness?

17 COURTROOM ADMINISTRATOR: It was with Willis.

18 THE COURT: Willis. So Willis the first time.

19 MR. TANASI: Was it admitted with the actual arrows --

20 COURT REPORTER: I'm sorry?

21 MR. TANASI: Was it admitted with the actual arrows
22 identifying Scott Drexler and Steven Stewart?

23 MR. MYHRE: No.

24 MR. TANASI: No. Then that's the issue.

25 MR. LEVENTHAL: Yeah. I believe -- because I remember

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1 you showing me.

2 THE COURT: I have it highlighted on my notes too --
3 I'm looking at my notes here -- Exhibit 19 was admitted. I
4 highlight them in yellow when they're -- I put "obj" when
5 there's an objection; I highlight in yellow if it is admitted.
6 I got like a little color-coded thing goin' on. But I do show
7 that it's highlighted in yellow that it was admitted.

8 MR. LEVENTHAL: But the screenshot then would have been
9 part of --

10 THE COURT: "White truck" --

11 COURT REPORTER: I'm sorry?

12 THE COURT: "White truck at rally" is what I wrote next
13 to Exhibit 19. I wrote down, "FRE 901(d)(4), similar
14 characteristics." So I think that was the ruling over the
15 objection.

16 MR. LEVENTHAL: From that exhibit, have you tried to
17 offer -- and maybe I'm wrong -- that still shot at another time
18 with Willis? With Drexler and --

19 MR. MYHRE: Not Exhibit 182, slide 1.

20 MR. LEVENTHAL: So this would have been the first time
21 he sees this with the two names on it.

22 MR. MYHRE: The two names -- the witness will testify
23 as to the two names that he put that on the image. That's not
24 on the original image.

25 MR. LEVENTHAL: Right. So that would make it a

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1 different image than what's in 19.

2 MR. MYHRE: Only to the extent that the witness has
3 added identifiers to the exhibit itself which -- and he'll
4 testify that he based on his investigation's been able to
5 identify the individuals at slide No. 1 as Drexler and Stewart
6 in the back of the truck and he's put arrows with yellow boxes
7 there depicting where they were, which is the same exhibit we
8 introduced at the last trial. Maybe that's what you're
9 thinking about.

10 MR. LEVENTHAL: Do you remember this between -- when
11 you said I'll go around the long way? Or no? I know it's been
12 a long week. Do you remember it?

13 MS. AHMED: It was the video --

14 COURT REPORTER: I'm sorry?

15 MS. AHMED: I was just explaining to Mr. Leventhal that
16 the video was not -- there were no labels on the video.

17 MR. LEVENTHAL: Right.

18 MS. AHMED: So the video went in.

19 MR. LEVENTHAL: Right. And I remember that you
20 showed -- or somebody showed -- Mr. Myhre showed Mr. Willis
21 this and I objected to it and you said, okay, I'll go the long
22 way around. Do you remember that?

23 MS. AHMED: And then it went in, yeah.

24 MR. LEVENTHAL: It went in at what point because I
25 never -- I don't remember it coming back.

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1 MR. MYHRE: I have no response to that because I know
2 it's admitted, but I don't know the exact time it was admitted
3 during the course of Mr. Willis's testimony.

4 (Government counsel conferring.)

5 THE COURT: After Exhibit 19 was Exhibit 40, the
6 license plate of the white truck from the YouTube video,
7 publicly available; and then Exhibit 177, the registration
8 inquiry regarding Lovelien's Ford from Montana.

9 COURTROOM ADMINISTRATOR: And, Your Honor, that would
10 have been admitted in the afternoon between lunch and the first
11 break. I can't narrow it down closer, but . . .

12 MR. TANASI: Your Honor, if I could maybe clarify.

13 I know that at least -- and I was gonna voice an
14 objection in addition to Mr. Leventhal's -- it's the
15 identification of the two individuals in the back of the truck
16 that has not previously been admitted nor has the time on the
17 bottom of the exhibit been previously admitted. So that's
18 foundation --

19 COURT REPORTER: "Foundation" what?

20 MR. TANASI: -- foundationally one of the issues as
21 well.

22 THE COURT: As well or instead? Because Exhibit 19 has
23 been admitted so . . . So the other issue is whether or not we
24 have heard testimony from somebody identifying?

25 MR. TANASI: Correct. That's Stewart's issue, Your

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1 Honor, is that the picture itself has Stewart and Drexler
2 labeled with yellow arrows and that hasn't been done by anybody
3 and now it's being offered in a summary.

4 MR. MYHRE: The agent will testify as to his
5 identification of the individuals in the image, how he placed
6 labels on the image --

7 COURTROOM ADMINISTRATOR: (Gesturing.)

8 MR. MYHRE: -- placed labels on the image to identify
9 them, and that he then will explain how he affixed the time
10 stamp to it. But these are all admitted exhibits and all he's
11 doing now is putting them in sequence adding the time stamp and
12 his identification of the defendants which he will testify to
13 to each one. So it would not go to the admissibility of the
14 summary. They -- the defendants can certainly cross-examine
15 all day long as to why he put the labels where he put 'em or
16 the time stamp he put 'em. But that would go to the weight of
17 the evidence, not the admissibility. It's a summary. It's
18 offered to assist the trier of fact in understanding voluminous
19 evidence and we've laid the foundation of how the agent pulled
20 together this summary based on his review of the voluminous
21 number of exhibits and video that have been identified.

22 THE COURT: The why I understand the objection is what
23 did this witness use to determine the identity of the
24 individuals? Maybe -- is it based on testimony that we've
25 already heard or is it something --

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1 MR. MYHRE: On the specific --

2 THE COURT: -- new?

3 MR. MYHRE: -- no, it's based on --

4 THE COURT: I don't --

5 MR. MYHRE: -- his --

6 THE COURT: -- want to paraphrase you.

7 MR. TANASI: No. That's essentially it. In other
8 words, he'll be asking question "where is Steven Stewart?" and
9 now for the first time he's gonna identify he's right there.
10 When he does that, though, there's a big yellow arrow that's
11 pointing towards Steven Stewart so it's not happening
12 foundationally; it's happening, you know, in a leading manner.

13 MR. LEVENTHAL: Independent.

14 THE COURT: There was --

15 COURT REPORTER: I'm sorry. What?

16 THE COURT: -- there was the NHP Trooper that
17 identified as he's pulling in.

18 MR. LEVENTHAL: He sees people in camo.

19 THE COURT: He sees people in --

20 MR. LEVENTHAL: Camo.

21 THE COURT: I don't remember --

22 MR. LEVENTHAL: He testified in camo --

23 MR. MYHRE: Right.

24 THE COURT: One of the trucks that he passed by and
25 saw.

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1 MR. MYHRE: Right. And that's Sergeant Serena; we have
2 that in our summary as well. But, with respect to his identity
3 of these individuals, he's the investigating agent. He's
4 reviewed thousands of images. He will identify specific
5 identifying characteristics that -- based on his review of
6 this, to identify those individuals as being Stewart and
7 Drexler in the back of the vehicle.

8 THE COURT: So it is the 901(b)(4), the similar
9 characteristics.

10 MR. MYHRE: Yes, Your Honor.

11 THE COURT: Okay. All right.

12 MR. MYHRE: And we believe --

13 THE COURT: That objection -- I overrule that objection
14 based on that information.

15 Was there another page on there that you thought might
16 not be the correct --

17 MR. LEVENTHAL: No, that was the only one at that time.
18 I'll alert the Court if I see something else. But everything
19 else probably came in. But, again, just to voice my objection
20 would be, again, the leading nature of this and it's not an
21 independent saying that I remember that; that's what I did.

22 Go ahead.

23 MR. MARCHESE: And Mr. Tanasi did also bring up --

24 COURT REPORTER: I'm sorry. "Bring up" what?

25 MR. MARCHESE: Brought up the reference to the time

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1 stamps. I know the first time that this particular witness was
2 here. He started laying some of the foundation for -- as to
3 how he derived these time stamps for each of the 88 slides,
4 however, if we can get a little bit more foundation as to that.

5 THE COURT: More foundation. I don't know what you
6 mean by "more foundation" --

7 MR. MARCHESE: Well, how --

8 THE COURT: -- because --

9 MR. MARCHESE: -- he came --

10 THE COURT: -- he's already testified --

11 MR. MARCHESE: -- up with these times, with --

12 COURT REPORTER: I'm sorry. I can't quite --

13 MR. MARCHESE: -- we had a myriad of exhibits from
14 different sources. My recollection of his testimony last time
15 was that many of these sources he said were wrong. Some were
16 faster, some were slower. He used --

17 COURT REPORTER: He used what?

18 MR. MARCHESE: -- the Lynch videos was my recollection
19 as some sort of a baseline. So I don't know. There was no
20 testimony if that's what he did this time. You know, I just
21 want to know how he came about with the times.

22 MR. MYHRE: I believe he testified in his first
23 sequence that he used the aerial as the base time --

24 THE COURT: That's what I was thinking too.

25 MR. MYHRE: -- and that he then used other -- either

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1 the metadata imbedded within the image or other characteristics
2 that he compared to the aerial to derive the time locally based
3 on the aerial as the baseline.

4 MR. MARCHESE: Okay.

5 MR. MYHRE: And I can --

6 THE COURT: And I believe it was on cross the
7 explanation given for that was just because that was the
8 longest time period of information that he had available
9 because there was a question as to whether or not the timing
10 was exactly correct or not. Oh, yes, because then one of the
11 questions was the flyover --

12 MR. MYHRE: There was a gap.

13 THE COURT: And there was a gap, right, when the gap --
14 it was being gassed did that affect your timeline. So he did
15 testify about the basis of his . . .

16 MR. MYHRE: His methodology, Your Honor, in deriving
17 the time. That's how I described it. And each slide has a
18 time stamp on it that he will explain during the course of his
19 testimony that's how he derived that time.

20 MR. TANASI: I think that addresses, I guess, at least
21 one of the concerns is if he is going to give testimony as to
22 each --

23 COURT REPORTER: I'm sorry. "Testimony as to
24 each" . . .

25 MR. TANASI: -- as to each slide as to how he derived

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1 the time.

2 THE COURT: Well, he can give -- he doesn't have to
3 slide by slide by slide if he can group them; if they are all
4 based on the same thing or if some of them are based on one
5 calculation and others based on another.

6 MR. MYHRE: What we could do, Your Honor, is -- if
7 there's going to be questions on each individual slide, we'd
8 offer it subject to connection; that we could connect it to,
9 you know, prove up the time. And, if it's insufficient
10 foundation based on the Court, we can just unadmit it. But to
11 go through each one of these 88 slides laying separate
12 foundation for each one when there's really no, you know,
13 serious objection to it, I think is going to eat up a ton of
14 court time.

15 MR. TANASI: Again, my recollection though, Your Honor,
16 with this time stamping is that it comes from a few different
17 sources; not just all based on one source. And so that's the
18 concern is that -- which source did you utilize to base your
19 time from on this particular slide. I understand maybe slide
20 by slide is not the most efficient way to go at it. But, if
21 there is a grouping of some kind: These are all based on --
22 that's Michael Lynch time. This is all based on -- for
23 example, this is all based on the aerial surveillance time.
24 This is all based on Shilakis time.

25 MR. MYHRE: Well, Your Honor, I -- the defense have had

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1 this exhibit for a long time. Now I'm hearing about now
2 there's a serious objection to the time stamping on it. And,
3 if we're gonna be doing groupings based on Michael Lynch versus
4 Michael Flynn versus Huge Gourgeon, I'll have to redo my entire
5 direct and regroup them.

6 We would offer them subject to connection, that we
7 connect up the time, that we prove it up. And, if the
8 defendants wish to object to the lack of foundation and the
9 Court rules that we haven't met it, then we just withdraw it.
10 But if -- you know, we can go whichever way the Court rules
11 obviously. But I just think for the basis of admitting the
12 exhibit the foundation's been laid to, you know, lay the
13 summary -- or enter it as one exhibit.

14 THE COURT: All right. So the way I'm understanding it
15 is the objection is not to the chronological; it's just as to
16 the exact timing that is given on these slides? And there's no
17 question that the slides are shown in chronological order.
18 It's just a matter of where do you get the time stamps for each
19 one of these, how is it derived, is it . . .

20 MR. TANASI: I think that's hard to say if the time is
21 somehow off whether or not chronologically they are accurate.

22 MR. MYHRE: And, again, the time -- as the witness just
23 testified, his object in putting this together was to show the
24 sequence of events. And whether an event occurred at 9:57 or
25 9:58 and a half is not as important as whether or not the event

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1 in that slide is in chronological order in proper sequence.
2 We're not offering it to show that Steven Stewart was staying
3 on the bridge at precisely, you know, 12:17. We're there to
4 show that he was standing on the bridge at the time when horses
5 had pushed through the bridge, for example.

6 THE COURT: Right. There's no alibi defense here.

7 All right. I agree. Objection's overruled. We can
8 continue with the admission of Exhibit 182.

9 MR. MYHRE: Thank you, Your Honor.

10 MR. TANASI: Thank you, Your Honor.

11 (End sidebar conference.)

12 THE COURT: All right. I think we're ready; right?

13 MR. MYHRE: Thank you, Your Honor.

14 THE COURT: Okay. Go ahead, Mr. Myhre. You may
15 continue. Objection's overruled.

16 MR. MYHRE: Thank you, Your Honor. And may we -- we've
17 offered 182, slides 1 through 88. That's admitted in its
18 entirety, Your Honor?

19 THE COURT: Yes, Exhibit 182 is admitted.

20 (Government's Exhibit No. 182, received.)

21 THE COURT: You may go ahead and publish it to the
22 jury.

23 MR. MYHRE: Thank you, Your Honor.

24 And if we could call up the first slide.

25 (Slide displayed in open court.)

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1 BY MR. MYHRE:

2 Q. And, Agent Willis, before we begin on the first slide, just
3 to recap, you have a paper version of this on in front of you;
4 correct?

5 A. Yes, I do.

6 Q. You've also reviewed the electronic version; is that
7 correct?

8 A. Yes, I have.

9 Q. And that accurately reflects what you've compiled --

10 A. Yes.

11 Q. -- correct?

12 All right. Turning, then, to 182, slide 1. This image
13 is derived from Exhibit 19; is that correct?

14 A. Yes.

15 Q. And that -- what was Exhibit 19?

16 A. Exhibit 19 was a video by Dennis Michael Lynch.

17 Q. Now, you described how you would make a -- you would
18 indicate whether a slide was from a screenshot or not; correct?

19 A. Yes.

20 Q. And this indicates a screenshot.

21 A. Yes.

22 Q. So I would just -- when you reviewed the Dennis Michael
23 Lynch video, you made this image from that; correct?

24 A. Correct.

25 Q. Now, what are we seeing in this particular image?

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1 **A.** This image is taken from the vantage -- a vantage point on a
2 hill across the street from the staging area rally site in
3 Bunkerville. There's several people standing. There's
4 actually a -- a stage on the other side of those two flagpoles
5 with the American flags and the banner in between and we're
6 seeing a vehicle that is traveling, which that would be
7 northbound on State Route 170 past the staging area.

8 **Q.** Now, you previously identified this vehicle; is that
9 correct?

10 **A.** Yes, I did.

11 **Q.** And to whom is that vehicle registered?

12 **A.** Ricky Ray Lovelien.

13 **Q.** Now, we see some boxes with some names in them with some
14 arrows. Do you see that?

15 **A.** Yes.

16 **Q.** Were those boxes and those arrows and those names on the
17 Dennis Michael Lynch video?

18 **A.** No. I added them afterwards.

19 **Q.** And what was your purpose in adding them?

20 **A.** Just for demonstrative purposes. This image and -- which we
21 will see later on in the presentation, depicts two people in
22 the back of that truck. Based on their clothing, I can
23 identify them -- and, again, after reviewing numerous
24 photographs and video evidence -- that that is Steven Stewart
25 and Scott Drexler.

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1 Q. If you would, please, for the individual where you've
2 labeled Steven Stewart, what were the characteristics that you
3 used to identify this individual, Steven Stewart?

4 A. The jeans he's wearing, the shirt -- blue shirt with the
5 lighter color, like Orange County Chopper sign or design on it;
6 his hat; and then for that -- so that's for Steven Stewart.

7 Q. How about with the individual you've identified as Scott
8 Drexler?

9 A. His pants, they are a lighter color but camouflage pants;
10 darker shirt and his boots; and kinda make out in this image --
11 and, of course, I've zoomed in on this; I've lightened it and
12 done all -- you know, other things to help me identify these
13 people -- but you could see his facial hair and also his light
14 color -- or like -- it's like a faded tan hat.

15 MR. LEVENTHAL: I'm going to object as to testimony to
16 something that is not before the jury. And I would ask to move
17 to strike that last answer in terms of facial hair. The
18 picture is what it is, Your Honor. If he's referring back to
19 some other image that's not here, that's not how he got the
20 name Drexler or Stewart on there.

21 MR. MYHRE: All right. Your Honor, the witness --

22 MR. TANASI: Stewart joins.

23 MR. MYHRE: -- is fully legally competent to testify as
24 to what his examination was, what he observed during the course
25 of his examination. And the issues that Mr. Leventhal raises

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1 he may cross-examine the witness on, but we do not need to
2 bring in every step he went through in order to make those
3 identifications.

4 THE COURT: The objection is overruled. Federal Rule
5 of Evidence 901(b)(4) does provide for the admissibility or the
6 identification of Mr. Drexler and Mr. Stewart on page 1 of
7 Exhibit 182 by this particular witness.

8 MR. MYHRE: Thank you, Your Honor.

9 BY MR. MYHRE:

10 Q. Now, with respect to the image that we see here at slide 1,
11 was this vehicle parked in front of the -- these flagpoles?

12 A. No, it was not.

13 Q. Was it moving?

14 A. Yes. It -- it moves in and out of the frame, but definitely
15 moving northbound on State Route --

16 Q. If you --

17 A. -- 170.

18 Q. -- wouldn't mind using -- I'm sorry. If you wouldn't mind
19 using your monitor, just use an arrow the direction it's
20 moving.

21 A. (Drawing.)

22 Q. And the witness has reflect -- has drawn an arrow on there.
23 Approximately how long does this vehicle -- how long is
24 it in the frame?

25 A. A couple seconds.

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1 Q. Now, the time in the lower right-hand corner, I'm circling,
2 is 9:00 a.m.; is that correct?

3 A. Yes.

4 Q. Is that an approximation or the exact time?

5 A. That is an approximation.

6 Q. And how do you base the time stamp of 9:00 a.m.?

7 A. I base that on the Michael Flynn and Alex Ellis videos that
8 I also used to create this sequence of events, this timeline,
9 and also Shannon Bushman photographs which -- or a
10 photograph -- which we will see people standing in the general
11 area or approximately around this time. But obviously this is
12 occurring before the -- Steven Stewart and Scott Drexler arrive
13 at the rally site.

14 But, again, there is people standing around the staging
15 area and rally site in other time-stamped photos that are still
16 there when the defendants are in the area and are out of the
17 vehicle.

18 Q. You referred to the Flynn/Ellis video. You're talking about
19 Alex Ellis who testified; correct?

20 A. Yes.

21 Q. And, with respect to that, that is -- that's found at
22 Exhibit 5; is that correct?

23 A. Yes.

24 Q. But this image itself does not appear on Exhibit 5; is that
25 correct?

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1 **A.** That's correct.

2 **Q.** But other images on Exhibit 5 correlate to images that are
3 viewable in Exhibit 19.

4 **A.** Yes.

5 **Q.** But, from Exhibit 5, you were able to get the time stamping.

6 **A.** Correct.

7 MR. MYHRE: May I have 182-2, please.

8 (Slide displayed in open court.)

9 BY MR. MYHRE:

10 **Q.** Now, slide 2 occurs later in time; correct?

11 **A.** That is correct.

12 **Q.** And you have stamped this at 9:07; is that correct?

13 **A.** Yes.

14 **Q.** From Exhibit 171?

15 **A.** Yes.

16 **Q.** And what is the image that we see at slide 2?

17 **A.** This image is Ricky Ray Lovelien standing on the left, Eric
18 Parker standing to his right, and they are standing in -- or at
19 the rally site staging area in Bunkerville.

20 **Q.** And you discussed this image at your previous testimony;
21 correct?

22 **A.** Yes.

23 **Q.** That was Exhibit 171?

24 **A.** Yes.

25 **Q.** And the difference now in terms of additions to this image

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1 is that you've time stamped it.

2 **A.** That is correct.

3 **Q.** Based on the metadata within the Bushman -- or excuse me --
4 the -- how did you time stamp this?

5 **A.** So this photograph was not time stamped; this was collected
6 from the *Las Vegas Review-Journal* website. However, I used
7 Shannon Bushman, his time stamp through the metadata photograph
8 to get an approximate time for this photograph.

9 **Q.** The individuals you've placed their names with an arrow to
10 whom you identified; correct?

11 **A.** Yes.

12 **Q.** And you identified them in previous testimony.

13 **A.** Yes.

14 MR. MYHRE: If we could move to slide 3, please.

15 (Slide displayed in open court.)

16 BY MR. MYHRE:

17 **Q.** And, at slide 3, this image comes from Exhibit 159; is that
18 correct?

19 **A.** Yes.

20 **Q.** And what are we seeing in this image?

21 **A.** So this is a similar image but from a slightly different
22 angle and with a few changes. So now Eric Parker is standing
23 to Ricky Ray Lovelien's left and they are both standing at the
24 rally site staging area in Bunkerville. And we see similar
25 people in the area as we did -- or the same people as we did in

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1 the *Las Vegas Review-Journal* photograph that we just reviewed
2 as well as in the screenshot from the Dennis Michael Lynch
3 video.

4 Q. And this particular image comes from Bushman?

5 A. This comes from Shannon Bushman.

6 Q. So it had the metadata imbedded.

7 A. Yes.

8 Q. And did you use this photo then to help you time stamp the
9 previous image?

10 A. Yes.

11 Q. You've stamped this at 9:07; correct?

12 A. Correct.

13 Q. Now, with all these times -- we've talked about, you know,
14 UTC time and all of that before --

15 A. Yes.

16 Q. -- but, with all these times, this is going to be local
17 Nevada time in April.

18 A. Yes.

19 Q. Okay. Now, with respect to this particular time, does --
20 were you able to derive the time approximately that

21 Sheriff Gillespie came to the stage; got on the stage; and had
22 his -- or gave his speech to the crowd at the stage?

23 A. Yes. At approximately 9:40 and then following that, there
24 was a National -- the Anthem, and then afterwards he came onto
25 the stage.

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1 Q. So you said following. So the *National Anthem* occurred
2 before he got to the stage?

3 A. Yes.

4 Q. And, once he was on the stage, then he made his speech;
5 Mr. Bundy made his and then left.

6 A. Yes.

7 Q. So this image occurs in time before Gillespie is there.

8 A. Yes.

9 MR. MYHRE: Next slide, please.

10 (Slide displayed in open court.)

11 BY MR. MYHRE:

12 Q. Slide 4 is derived from Exhibit 5a; correct?

13 A. Yes.

14 Q. That is from the -- one of the Flynn videos; correct?

15 A. Yes, it is.

16 Q. Now, is this before or after Gillespie takes the stage to
17 make his speech?

18 A. This is before.

19 Q. And what's depicted in this image?

20 A. As is marked, Eric Parker, Steven Stewart, and Scott Drexler
21 are standing in the rally site staging area and there are --
22 are people scattered throughout the area and gathered in that
23 area.

24 Q. Now, you've walked that area; correct?

25 A. Yes, I have.

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1 Q. We see a flagpole off to the left-hand side there; correct?

2 A. Yes.

3 Q. Is that one of the two flagpoles that is in that area?

4 A. Yes, it is.

5 Q. So approximately what's the distance that they are standing
6 from where the stage would have been back on April the 12th?

7 A. I would approximate that at about 40 or 50 feet.

8 Q. And behind them there appears to be a surface road; is that
9 correct?

10 A. Yes.

11 Q. Is that State Route 170?

12 A. Yes, it is.

13 MR. MYHRE: Next slide, please.

14 (Slide displayed in open court.)

15 BY MR. MYHRE:

16 Q. And slide 5 is from Exhibit 5b. You've time stamped this at
17 9:42; correct?

18 A. Yes.

19 Q. And how does slide 5 differ from slide 4?

20 A. This is just slightly later in time, obviously. And we have
21 more of a close-up shot of Steven Stewart, Eric Parker, Scott
22 Drexler standing near the stage at the rally site.

23 Q. And you've indicated their names with arrows pointing to
24 those individuals.

25 A. Yes.

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1 Q. Again, the same question that but it would pertain to all
2 these. You identified them by their clothing; correct?

3 **A.** Yes, I did.

4 Q. And you've identified them previously in your previous
5 testimony.

6 **A.** Yes.

7 MR. MYHRE: If we may go to slide 6, please.

8 (Slide displayed in open court.)

9 BY MR. MYHRE:

10 Q. Now, slide 6 is Exhibit 622 [sic]; is that correct?

11 **A.** Yes, 122.

12 Q. Excuse me. 122. I apologize.

13 And what time is this?

14 **A.** So this would have been posted at 9:53 a.m. approximately.

15 Q. Would this have been before or after Sheriff Gillespie made
16 his speech to the crowd?

17 **A.** This would have been right after.

18 Q. You testified about this just an hour or so ago; correct?

19 **A.** Yes.

20 Q. And this is Todd Engel's message.

21 **A.** Yes.

22 MR. MYHRE: And next slide, please.

23 (Slide displayed in open court.)

24 BY MR. MYHRE:

25 Q. This is slide 7. We have an Exhibit -- this is from

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1 Exhibit 137; is that correct?

2 **A.** Yes.

3 **Q.** And what do we see in this image?

4 **A.** This is taken from the vantage point of inside the rally
5 site looking northwest. You could see the hill that is on the
6 other side of State Route 170 across from the stage area rally
7 site. There's people on horseback on the top of the hill and
8 then on a ridge area lower down on the hill. And we have -- we
9 could see Ricky Ray Lovelien; he's standing there with his arms
10 crossed in the rally site area.

11 **Q.** And you testified about this image previously, correct --

12 **A.** Yes. Yes, I did.

13 **Q.** -- in terms of your identification of Mr. Lovelien?

14 **A.** Yes.

15 **Q.** The time stamp is derived how?

16 **A.** Hugh Gourgeon, who is the capturer of this photo, he took
17 this picture, those images are time stamped.

18 **Q.** And are they time stamped precisely at 10:37 a.m.?

19 **A.** The only difference I could find is maybe a 4-second
20 difference with his photographs compared to all the other
21 aerial photography. So that would be subtracting 4 seconds
22 from his photography. So essentially, with determining to the
23 minute approximation time for the sequence of events, I assume
24 it's accurate with local time. It's -- his photographs, the
25 metadata is consistent with local time.

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1 Q. Now, you mentioned subtracting a minute. You -- or --

2 **A.** 4 seconds.

3 Q. Yes, certain amount of time.

4 What caused -- what was your methodology in terms of --
5 for example, with Gourgeon, subtracting 4 seconds. How would
6 you determine 4 seconds would be -- match with local Nevada
7 time?

8 **A.** So in reviewing all of his photos -- and as I had previously
9 testified to -- I wanted to corroborate my time that I derived
10 for each of these photographs through as many ways as possible.
11 From this photo, from knowing other events that are taking
12 place also through the Flynn video but also later on, on the
13 bridge with the aerial photography, I was able to determine if
14 there was any deviation from being true, accurate, local time.
15 And it was either it's right on with local time or there might
16 have been a 4-second difference just because the plane is
17 circling around and I don't catch -- I catch a lot but not
18 every second of where Mr. Gourgeon was taking a photo so to the
19 best of my ability.

20 Q. But your baseline data point, again, was the aerial.

21 **A.** Yes.

22 Q. And, using that data point and looking at other
23 characteristics and images, you were then able to synchronize
24 the times to correspond to the aerial time.

25 **A.** Yes, sir.

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1 Q. Does this -- one last point on that. In terms of your
2 analysis for this, you've derived times to -- as best you can,
3 to how -- to what level of degree?

4 **A.** To the second.

5 Q. To the second.

6 But, in terms of your analysis and your compiling of
7 this summary, was it necessary to derive a time down to the
8 minute or the second?

9 **A.** Again, this is, to the best of my ability based on my
10 investigation, a sequence of events as they occurred on
11 April 12th. So, no, we -- or I focused onto the minute. So
12 the answer would be no as far as this exhibit.

13 Q. Now, for slide 7, is this after the Sheriff Gillespie
14 speech?

15 **A.** Yes.

16 Q. When does -- were you able from your investigation derive a
17 time approximately that Mr. Bundy then took the stage a second
18 time?

19 **A.** At approximately 11:00 a.m.

20 Q. So this would have been before that event?

21 **A.** Yes. Right before it.

22 MR. MYHRE: Next slide in order, please.

23 (Slide displayed in open court.)

24 BY MR. MYHRE:

25 Q. Now, slide 8 we -- is from Exhibit 22, a screenshot. And

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1 what was Exhibit 22?

2 **A.** Exhibit 22 was the Dennis Michael Lynch video and this is a
3 screenshot from one of his videos in front of the stage at the
4 rally site.

5 **Q.** And how did you derive the time of 11:01?

6 **A.** Based on the Michael Lynch/Alex Ellis videos that are time
7 stamped that are capturing the same events happening at the
8 same time that this video's captured. And, actually, I believe
9 Alex Ellis testified to actually standing just to the right out
10 of -- out of this frame and we see him for a brief second
11 standing next to Michael Flynn while they are capturing their
12 video.

13 **Q.** And what is captured in the screenshot at Exhibit --
14 slide 8? Excuse me.

15 **A.** So we have Ryan Payne, who is the OMA militia leader, is
16 standing on the stage -- well, actually crouching down; he has
17 a rifle slung on his chest. He's communicating with other
18 militia members that we have identified and we know were
19 present on April 12th, 2014. And also Ryan Bundy is labeled
20 there. That's one of Cliven Bundy's sons that we had seen in
21 the Dennis Michael Lynch video of the conversation as the
22 standoff was trying to deescalate -- that they were trying to
23 deescalate at Post 1 later on in the day.

24 **Q.** So, just to walk through briefly, so we see Ryan Payne. His
25 name is there; correct?

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1 **A.** Yes.

2 **Q.** And how -- what is it about him that you're able
3 (drawing) -- and what he's wearing that you're able to identify
4 him?

5 **A.** His facial features, number one; his clothing; the tactical
6 vest he's wearing.

7 **Q.** And he appears in other videos that have been admitted into
8 evidence --

9 **A.** Yes.

10 **Q.** -- correct?

11 And specifically he appears in the video from
12 approximately April the 9th, I believe --

13 **A.** Yes.

14 **Q.** Yes.

15 -- where he's indicating that he is here to call
16 militia; correct?

17 **A.** Yes.

18 **Q.** And what does he appear to be holding?

19 **A.** He's holding a rifle.

20 **Q.** Now, you indicated Mr. Ryan Bundy, which I'm also
21 circling -- and you talked about identifying him -- you were
22 able to view his images from the discussion he had with Dan
23 Love at Post 1 on April the 12th; correct?

24 **A.** Yes.

25 **Q.** As well as Sheriff Lombardo being present; correct?

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1 **A.** Yes.

2 **Q.** And does this clothing match what he's wearing that day?

3 **A.** Yes, it does.

4 **Q.** Now, in terms of sequence, does this -- is this occurring
5 before or after or during Mr. Bundy's speech?

6 **A.** This is during Mr. Bundy's speech.

7 **Q.** And, while it's not pictured in this frame, where is
8 Mr. Bundy in relation to the individuals we see at slide 8?

9 **A.** He would be off the frame to the left on the stage -- up on
10 the stage.

11 **Q.** So is he behind -- is Payne facing away or to the side of
12 him?

13 **A.** He -- he's facing away. Cliven Bundy would be standing
14 behind this individual on the left in the camouflage clothing.

15 **Q.** So somewhere over here --

16 **A.** Yes.

17 **Q.** -- drawing an arrow. Okay.

18 MR. MYHRE: Next slide, please.

19 (Slide displayed in open court.)

20 BY MR. MYHRE:

21 **Q.** Now, in slide 9, you have it time stamped 11:01; is that
22 right?

23 **A.** Yes.

24 **Q.** And what are we seeing in this image?

25 **A.** So this would just be seconds later in the same video.

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1 Again, Ryan Payne, which is labeled -- which I've identified,
2 who I've identified by his facial features; his clothing. He's
3 still talking to the same individual who is standing near the
4 stage. And we see in this screenshot Dave Bundy standing to
5 the side of the stage.

6 Q. And you have labeled Dave Bundy with an arrow to that
7 individual; correct?

8 A. Yes.

9 Q. How were you able to identify this individual as Dave Bundy?

10 A. Well, by his facial features, his clothing which we see him
11 wearing again later on in the video where he is speaking with
12 Dan Love and Sheriff Lombardo at Post 1 by the BLM ICP.

13 Q. Do we also have other images where Dave Bundy is speaking
14 with Sheriff Lombardo?

15 A. Yes, we do.

16 Q. And does that appear later in the timeline?

17 A. Yes, it does.

18 Q. Now, in terms of the individual that appears to be facing
19 Ryan Payne -- and I'm drawing an arrow to that individual --
20 were you able to derive any -- based on what this individual is
21 wearing, is this individual affiliated with any militia units?

22 A. Yes.

23 MR. LEVENTHAL: Objection, calls for speculation.

24 MR. MARCHESE: Parker --

25 MR. TANASI: Stewart --

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1 MR. MARCHESE: -- joins.

2 MR. TANASI: -- joins.

3 MR. PEREZ: Lovelien joins.

4 THE COURT: Do you want to lay a foundation?

5 MR. MYHRE: Sure, Your Honor. Thank you.

6 BY MR. MYHRE:

7 Q. Are you familiar -- based on your training and experience,
8 are you familiar with militia units?

9 A. Yes, I am.

10 Q. And, in terms of identifying militia units, do people who
11 identify with militia units wear -- at times do they wear
12 insignia or uniforms or bear other indicia of what units they
13 belong to?

14 A. Yes, they do.

15 Q. Okay. And is that present in this photograph?

16 A. Yes, it is.

17 Q. And, from your review of this image and the uniform and so
18 forth, are you able to identify whether this person wearing
19 this uniform identifies with a militia unit?

20 A. Yes.

21 Q. And what militia unit is that?

22 A. The Arizona State Militia.

23 Q. And how are you able to determine that?

24 A. By the patch that he has on his left shoulder.

25 Q. If you could -- do you see it in that image?

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1 **A.** (Drawing.)

2 **Q.** And the witness has indicated drawing a circle around a
3 patch on the -- appears to be the left shoulder of the person
4 depicted in the far right side of the image contained at 182,
5 slide 9.

6 **MR. MYHRE:** Next slide, please.

7 (Slide displayed in open court.)

8 **BY MR. MYHRE:**

9 **Q.** This is a Facebook posting you just testified about;
10 correct?

11 **A.** Yes.

12 **Q.** This is time stamped at 11:05.

13 **A.** Yes.

14 **Q.** This is from Todd Engel?

15 **A.** Yes.

16 **Q.** Now, is this post made before or after Mr. Bundy's second
17 speech on the stage?

18 **A.** This would have occurred right after Cliven Bundy's speech.

19 **Q.** And, in Cliven Bundy's speech -- we've seen the video of it;
20 correct?

21 **A.** Yes.

22 **Q.** You've reviewed it; right?

23 **A.** Yes.

24 **Q.** And, in essence, in that speech does Mr. Bundy give a
25 command about his cattle?

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1 **A.** Yes.

2 MR. LEVENTHAL: Objection, calls for speculation.

3 BY MR. MYHRE:

4 Q. Based on your review of the evidence.

5 **A.** Yes.

6 THE COURT: Overruled.

7 BY MR. MYHRE:

8 Q. And what does Mr. Bundy command?

9 **A.** Well, essentially to go to the wash and get his cattle,
10 including other things, like, he's telling people to block the
11 freeway and things like that.

12 Q. So, based on your investigation, does this entry correlate
13 to what Mr. Bundy -- the contents of Mr. Bundy's speech?

14 **A.** Yes.

15 MR. MYHRE: Next slide, please.

16 (Slide displayed in open court.)

17 BY MR. MYHRE:

18 Q. And this occurs a few minutes later in time; is that
19 correct?

20 **A.** Correct.

21 Q. And what -- and this is about a message that you just
22 testified about; correct?

23 **A.** Yes.

24 Q. And this indicates that Todd Engel posted, "leaving now to
25 shut the freeway down by force of arms"; correct?

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1 **A.** Correct.

2 **Q.** Does this correlate generally to the content of Mr. Bundy's
3 speech?

4 **A.** Yes.

5 MR. MYHRE: And next slide, please.

6 (Slide displayed in open court.)

7 BY MR. MYHRE:

8 **Q.** Slide 12 comes from Exhibit 17, which is the aerial
9 surveillance film; is that correct?

10 **A.** Yes.

11 **Q.** What do we see in the image at slide 12?

12 **A.** We see northbound and southbound I-15 including the median
13 between the two directions of the highway, Post 1 for the BLM
14 ICP, law enforcement vehicles lined up at Post 1. And this is
15 the first clear shot we have of the assembly area from the
16 aerial photography after the aerial photog- -- photography
17 transitions from the staging area to what's happening near the
18 wash after Cliven gives his demands. And we see that vehicles
19 have already began to form in -- or, I guess, to gather in the
20 assembly area parking lot across from the ICP.

21 **Q.** So, just to orient us, would you circle what you've referred
22 to as the assembly area?

23 **A.** (Complies.)

24 **Q.** And just put an "N" over the northbound.

25 **A.** (Complies.)

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1 Q. And an "S" over the southbound.

2 A. (Complies.)

3 Q. And if you would put a "1" where Post 1's located.

4 A. (Complies.)

5 Q. So the time stamp here is 11:20, which you derive from UTC
6 time which is stamped on the image itself; correct?

7 A. Yes. Rounding down to the nearest minute as far as the
8 seconds that you see there.

9 Q. If you would just circle the data that you used.

10 A. (Complies.)

11 Q. And witness circling top left-hand corner. The record
12 should also reflect the witness has placed a circle to the left
13 of what he's marked as the northbound with an "N" and has
14 placed a "1" to the right of what he's marked has a southbound
15 line with an "S."

16 You said this was the first shot you have transitioning
17 from the assembly area -- excuse me -- from the rally site to
18 the assembly area; is that correct?

19 A. Yes.

20 Q. So, in terms of sequence, does this shot come before or
21 after Mr. Bundy's second speech?

22 A. This would have been after.

23 Q. It would have been Mr. Engel's post.

24 A. Correct.

25 MR. MYHRE: And next slide, please.

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1 (Slide displayed in open court.)

2 BY MR. MYHRE:

3 Q. And this is from Exhibit 93; is that correct?

4 A. Yes.

5 Q. And what is this?

6 A. This is a Facebook status update, mobile update, by Eric Ej
7 Parker.

8 Q. You've time stamped it 11:25. Is that based on this UTC
9 time?

10 A. Yes.

11 Q. If you could just read into the record what that says.

12 A. "Bundy gave the Sheriff 1 hour to disarm the BLM ...he did
13 not reply. We are now going to free the cattle by any means.
14 The sheriff claimed that the blm is standing down but offered
15 no proof this is when Mr. Bundy gave him the 'do it or else.'
16 We will not be lied to."

17 Q. 11:25 is after Mr. Bundy's second speech; correct?

18 A. Yes.

19 Q. And it's after Sheriff Gillespie's first speech; correct?

20 A. Yes.

21 Q. And, based on your investigation, does this message
22 generally correlate to the content of those two speeches?

23 A. Yes.

24 Q. Exhibit -- slide 14, please. Thank you.

25 (Slide displayed in open court.)

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1 BY MR. MYHRE:

2 Q. This is from Exhibit 31a; correct?

3 A. Yes.

4 Q. It's a screenshot?

5 A. Yes.

6 Q. And what was Exhibit 31a?

7 A. This is Trooper Serena's, Nevada Highway Patrol, his dash
8 cam as he is proceeding towards the assembly area on northbound
9 I-15.

10 Q. And Trooper, now Sergeant Serena?

11 A. Yes, Sergeant Serena. Excuse me.

12 Q. The same individual who's testified here?

13 A. Yes. Excuse me.

14 Q. You've time stamped this at 11:31. Where is that derived?

15 A. That's derived from -- if you look to the bottom left of
16 the --

17 Q. Just circle on --

18 A. -- video --

19 Q. -- why don't you circle on the --

20 A. There is --

21 Q. -- monitor.

22 A. -- media time (drawing) and underneath that is current time.
23 I did not find any deviation between that time and the UTC
24 time, minus 7 hours from the aerial, in my review of the
25 evidence.

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1 BY MR. MYHRE:

2 Q. And the record should reflect the witness has circled --
3 excuse me -- placed a circle around some data labeled "current
4 time" left center of Exhibit 182, slide 14.

5 On this image, you've -- well, explain for us what we
6 see in this image.

7 **A.** We see numerous vehicles. I -- I know from the -- reviewing
8 the video that they are stopped or moving very slowly. You can
9 see the brake lights on on the vehicles. But on the left --
10 I'm sorry. Excuse me -- on the right side of the scene, Ricky
11 Ray Lovelien's truck has pulled over onto -- or is pulling over
12 onto the shoulder of the road. The back bed is open as well as
13 the camper door or topper door on the back of the truck and
14 Steven Stewart is sitting on the tail -- tailgate of the truck.

15 Q. From this image, how are you to iden- -- how did you
16 identify the person depicted in this image as Steven Stewart?

17 **A.** By his clothing.

18 Q. The clothing that is visible to you in this image?

19 **A.** Yes.

20 Q. You've indicated with an arrow and then the name --

21 **A.** Yes.

22 Q. -- where Steven Stewart is; is that correct?

23 **A.** That is correct.

24 Q. Would you draw an arrow, please, just to orient us where the
25 ICP is from this position?

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1 **A.** (Complies.)

2 **Q.** And approximately -- and the record should reflect that the
3 witness has drawn an arrow left center of Exhibit 182-14.

4 Would you also draw another arrow to the area where the
5 assembly area is approximately?

6 **A.** (Complies.)

7 **Q.** And the record should reflect the witness has identified
8 with another arrow where the assembly area is approximately.

9 This is 11:31. So this is after Cliven's second
10 speech; correct?

11 **A.** Yes.

12 **Q.** Approximately where is this position located with respect to
13 the arrow you've drawn on the right-hand side where the
14 assembly area is?

15 **A.** To the entrance of the assembly area, I'd say this would be
16 2 -- 200 yards away.

17 **Q.** At this point, how is the traffic moving?

18 **A.** Very slow.

19 **Q.** And, in terms of the image that you've captured here, how
20 long does that image -- is it something that -- well, strike
21 that.

22 How long is this image on the media you reviewed, the
23 dash cam?

24 **A.** Only for a few seconds.

25 **MR. MYHRE:** All right. Next image, please.

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1 (Slide displayed in open court.)

2 BY MR. MYHRE:

3 Q. Showing you slide 15. This is a screenshot; correct?

4 A. Yes.

5 Q. This comes from one of the Ellis films?

6 A. Yes, it does.

7 Q. Or video, I should say.

8 So the time stamp was part of the metadata imbedded;
9 correct?

10 A. Yes.

11 Q. Synchronized to the aerial surveillance plane?

12 A. Correct.

13 Q. Now, you've indicated this individual is Todd Engel;
14 correct?

15 A. Yes.

16 Q. And how did you make that identification?

17 A. Based on his facial features, his clothing, his firearm.

18 Q. And what do we see in this image?

19 A. Vehicles moving very slowly on I-15. In the background, we
20 have Las Vegas Metro vehicles that are parked throughout the
21 median. There's Metro officers in the background closer to
22 southbound I-15. Todd Engel is preparing to put his hand down
23 on the top of the jersey barrier and hopping over to the other
24 side off the shoulder of northbound I-15.

25 Q. If you could circle where you see Metro vehicles.

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1 **A.** (Complies.)

2 **Q.** Now, this image -- and the record should reflect that the
3 witness has drawn a circle around the top portion of slide 15.

4 Is this near the assembly area?

5 **A.** Yes --

6 **Q.** Where --

7 **A.** -- very --

8 **Q.** -- is the --

9 **A.** -- close.

10 **Q.** -- assembly area in relation to Mr. Engel?

11 **A.** I would say 30 yards.

12 **Q.** Now, this point in time is later in time than the previous
13 slide; correct?

14 **A.** Yes.

15 **Q.** Are you able to tell, though, from the sequence of events
16 whether Mr. Engel gets there before the truck Mr. Lovelien is
17 driving gets there?

18 **A.** He's there before.

19 **Q.** And how are you able to tell that?

20 **A.** From the Serena dash cam that we were looking at, those
21 screenshots. So where Mr. Engel is right now his truck is
22 probably 20 feet behind him. At this time in this shot
23 Sergeant Serena's vehicle is just about to pass Mr. Engel's
24 truck. And actually in this video we see Serena and Madsen --
25 we've also seen Madsen's -- Trooper Madsen's video come by this

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1 area where Todd Engel has just hopped over the wall.

2 Q. And by "this video," you're referring to Exhibit 8; correct?

3 A. Yes.

4 MR. MYHRE: And may I have the next slide in sequence.

5 (Slide displayed in open court.)

6 BY MR. MYHRE:

7 Q. Now, we're at slide 16. This is derived from Exhibit 160;
8 is that correct?

9 A. Yes.

10 Q. You have a time stamp there of 11:42.

11 A. Yes.

12 Q. And how is that derived?

13 A. That's derived from Shannon Bushman's photograph's metadata
14 which is time stamped.

15 Q. And you discussed this exhibit in your earlier testimony --

16 A. Yes.

17 Q. -- correct?

18 We talked about Dave Bundy earlier. Do you see Dave
19 Bundy in this image?

20 A. Yes, I do. He's in the bottom right of the image.

21 Q. Circle him, please.

22 A. (Complies.)

23 Q. Witness circling an image at the lower right-hand corner of
24 what's been marked as 182-16.

25 And you've identified Scott Drexler by name -- with a

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1 little box with his name in it; correct?

2 **A.** Yes.

3 **Q.** Arrow pointing to him?

4 **A.** Yes.

5 **Q.** And you identified him in your previous testimony; correct?

6 **A.** Yes, I did.

7 **Q.** Now, this is at 11:42.

8 **A.** Yes.

9 **Q.** And this is occurring where in relationship to Post 1?

10 **A.** This would be across from Post 1 on the other side of
11 northbound I-15 and across the median.

12 MR. MYHRE: Next slide in order, please.

13 (Slide displayed in open court.)

14 BY MR. MYHRE:

15 **Q.** Now, we're looking at slide 17. This is from 169a; is that
16 correct?

17 **A.** Yes.

18 **Q.** You've identified in this image an individual, Scott
19 Drexler; correct?

20 **A.** Yes.

21 **Q.** You've discussed this image in your previous testimony.

22 **A.** Yes, I did.

23 **Q.** How did you derive the time of 11:42?

24 **A.** I used the previous Shannon Bushman photograph and
25 determined that this photograph was taken at approximately the

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1 same time where Mr. Drexler is facing slightly westbound on the
2 other -- on the south side of northbound I-15 and the
3 individual with the blue shirt on the upper right-hand side of
4 the image is standing next to him and he's also visible in the
5 Shannon Bushman photograph.

6 Q. And you described that process in your previous testimony.

7 A. Yes.

8 Q. Again --

9 (Slide displayed in open court.)

10 BY MR. MYHRE:

11 Q. -- this shot is taken, this screenshot, where physically is
12 the person you identified as Mr. Drexler -- where physically is
13 he standing?

14 A. He's physically standing on the south side of northbound
15 I-15 at the entrance to the assembly area.

16 MR. MYHRE: Next slide in order, please.

17 (Slide displayed in open court.)

18 BY MR. MYHRE:

19 Q. Looking at slide 18. This is an image from 196; correct?

20 A. Yes.

21 Q. This is a Reuters?

22 A. Yes, it is.

23 Q. And you've discussed this slide in your previous testimony;
24 correct?

25 A. Yes.

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1 Q. And the time stamp was derived again how?

2 **A.** So this would have taken place very soon after the -- the
3 Bushman photo, which is capturing Sheriff Lombardo speaking
4 with Dave Bundy. Sheriff Lombardo is now walking across -- or
5 walking down I-15 and he'll eventually head back towards the
6 median.

7 Q. So this image is later in time from Mr. Bundy's meeting with
8 Sheriff Lombardo.

9 **A.** Yes.

10 Q. But it's at or near the same location --

11 **A.** Yes, it is.

12 Q. -- where that meeting occurred.

13 **A.** Yes, it is.

14 MR. MYHRE: Next image, please.

15 (Slide displayed in open court.)

16 BY MR. MYHRE:

17 Q. Now, this is from Exhibit 26; correct?

18 **A.** Yes.

19 Q. And we're referring to slide 19 of Exhibit 182.

20 And Exhibit 26 was the film taken by Agent Shilakis;
21 correct?

22 **A.** Correct.

23 Q. Now, in reviewing that film, were you able to identify
24 individuals who are defendants in this case?

25 **A.** Yes, I did.

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1 Q. And you've indicated them in this image?

2 A. Yes.

3 Q. For record purposes, state who they are.

4 A. This is Scott Drexler and Eric Parker.

5 Q. This is a screenshot from that sur- -- from that film that
6 Shilakis took; correct?

7 A. Yes.

8 Q. Now, you've derived a time of what?

9 A. 11:53 a.m.

10 Q. And how did you come to that time?

11 A. Using the time that was stated by Robert Shilakis from his
12 watch where he is filming the video and states the local time.
13 When comparing that to the aerial footage to the dash camera
14 footage from Madsen and Serena, I did not find any significant
15 deviation from the time that he's providing audibly during the
16 video to any of those other times that were consistent with
17 local time.

18 Q. Now, the image we see here captured -- this is a
19 screenshot -- and you've indicated an individual. Eric Parker;
20 correct?

21 A. Yes.

22 Q. And you identified him how?

23 A. Based on his clothing, his hat, and his firearm.

24 Q. And also an individual you've labeled Scott Drexler.

25 A. Yes. Based on the same identifiers: his hat, his tactical

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1 vest, his shirt, and his firearm.

2 Q. Now, this is occurring later in time from the time that
3 Sheriff Lombardo met with Dave Bundy across from Post 1.

4 A. Yes.

5 Q. Approximately where is this shot -- where are these
6 individuals that you've labeled Parker and Drexler -- where are
7 they physically located on the ground?

8 A. So they are walking east on the side of northbound I-15
9 heading towards the bridge.

10 Q. So -- and what side of the northbound are they located?

11 A. From reviewing this photo -- photograph and comparing it to
12 the vehicles and other individuals around -- around there, they
13 are on the south side of northbound I-15.

14 Q. Now, the vehicles we see in the background, are they on the
15 northbound or are they someplace else?

16 A. They are in the assembly area, which is on the south -- on
17 the south side of northbound I-15.

18 Q. So does this show the background, the assembly area itself?

19 A. Yes.

20 Q. Now, it appears -- you walked this ground many times;
21 correct?

22 A. Yes.

23 Q. And have you stood in the area where Agent Shilakis
24 indicated where he took his video from --

25 A. Yes, I have.

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1 Q. -- from this perspective?

2 **A.** Yes.

3 Q. Now, we see this individual here. Just to get sort of a
4 sense of what we're looking at here, this individual appears --
5 and I'm drawing an arrow to a person in the left-hand side
6 wearing a blue shirt -- appears to be lower in elevation to the
7 individual labeled Scott Drexler; is that correct?

8 **A.** That is correct.

9 Q. Is he standing in a hole or is he doing something else?
10 What's going on?

11 MR. LEVENTHAL: Objection, calls for speculation.

12 MR. MYHRE: I was just asking what his -- where he's
13 located, Your Honor.

14 MR. LEVENTHAL: And it would be speculating as to what
15 he's standing in. Could be a midget.

16 THE COURT: Just change the form of the question, do
17 you know.

18 BY MR. MYHRE:

19 Q. Do you know where this individual is standing in
20 relationship to Mr. Drexler?

21 **A.** Based on my observations after being there in that location
22 and watching that -- that ground, these individuals are
23 actually walking down and onto the side of northbound I-15. So
24 they are go -- going northbound. Before you come to the
25 bridge, the road actually comes down -- (gesturing) -- comes

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1 down and then it goes back up to -- into Mesquite.

2 So where this is -- if -- if this is level ground
3 (gesturing), which -- which it is approximately -- it's rough
4 terrain out there. It's, you know, desert -- the road would
5 actually be coming down (gesturing) at an angle. So people
6 look like -- or would appear that they are standing in a hole.
7 But essentially they are walking down either on the road or
8 onto the road -- the roadway and out of the assembly area.

9 Q. Now, in terms of Mr. Drexler and Mr. Parker's position, are
10 they on the road or they're just off?

11 **A.** They -- they appear to be off the road still walking in the
12 assembly area elevated -- slightly elevated and level ground.

13 Q. And in which -- based on your understanding of that area,
14 based on having walked it, in which direction are they walking?

15 **A.** They are walking east.

16 Q. And is that toward or away from the northbound bridge?

17 **A.** Toward the northbound bridge.

18 Q. Now, at this point, approximately how far are they from the
19 northbound bridge?

20 **A.** At this point, I would say 300 yards.

21 Q. And you base that upon what?

22 **A.** I have been out there with a laser range finder and have
23 done multiple measurements while -- while being out there. I'm
24 familiar with (gesturing) how the terrain begins and ends
25 starting from the entrance to the assembly area and then moving

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1 down to where the bridge is. So it would be an estimate. But,
2 again, after being there that would be the approximate distance
3 that they are from the bridge.

4 MR. MYHRE: And next slide in order, please.

5 (Slide displayed in open court.)

6 BY MR. MYHRE:

7 Q. And this is just a little bit later in time; is that
8 correct?

9 A. That's correct.

10 Q. And you've indicated an individual here named Steven
11 Stewart; correct?

12 A. Yes.

13 Q. 11:53?

14 A. Yes.

15 Q. In which direction is the individual headed?

16 A. East towards the northbound I-15 bridge.

17 Q. And is he on the -- where is he in relationship to the
18 northbound highway, first of all?

19 A. So the northbound highway would be below him but closer --
20 if I was a person taking this photo, it would be closer to me,
21 the northbound I-15 road.

22 Q. And approximately how far is he from the northbound bridge?

23 A. I -- I would say approximately the -- the same distance,
24 2 -- 200 [sic] yards.

25 MR. MYHRE: Next slide in order, please.

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1 (Slide displayed in open court.)

2 BY MR. MYHRE:

3 Q. We're now looking at slide 21 of 182. We see this is later
4 in time; correct?

5 A. Yes.

6 Q. It's now 11:54.

7 A. Yes.

8 Q. This is still from the Shilakis video.

9 A. Yes.

10 Q. And you've derived the time using the same methodology?

11 A. Yes.

12 Q. You've labeled another individual, Steven Stewart; correct?

13 A. Correct.

14 Q. Identified him by clothing?

15 A. Clothing and his firearm which is visible in this image.

16 Q. And where do you see the firearm?

17 A. Slung in front of him (drawing) down to his left side.

18 Q. The witness has drawn a line where he's indicated to have
19 observed a firearm.

20 Where is Mr. Stewart in relationship now to the
21 northbound bridge?

22 A. He's a little bit closer. But, as you could see, he's come
23 down from that elevated area on the south side of I-15 and is
24 now walking either on the roadway or close to the roadway
25 towards the northbound I-15 bridge.

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1 Q. And, again, the northbound is -- the bridge is the direction
2 I am pointing that arrow; correct?

3 A. Yes.

4 Q. To the left of the screen?

5 A. Yes.

6 MR. MYHRE: Next slide in order.

7 (Slide displayed in open court.)

8 BY MR. MYHRE:

9 Q. Slide 22 is from Exhibit 9, which is one of the Flynn/Ellis
10 videos; correct?

11 A. Correct.

12 Q. What's depicted from this image?

13 A. This is a number of individuals including Eric Parker
14 standing or walking on the -- this is where the northbound
15 I-15, if you were heading eastbound, begins. So you could see
16 that there's people actually standing on the opposite side of
17 this jersey barrier and then the individual in the lower
18 right -- you can see his head -- that's actually Alex Ellis.
19 It drops down from there leading to a gravel embankment and
20 then the concrete skirt that leads down into the wash on the
21 west side of that north -- of the northbound I-15 bridge.

22 Q. And 11:56 is the time you derived; correct?

23 A. Yes.

24 Q. And this is later in time from the time of the meeting
25 between Dave Bundy and Sheriff Lombardo; correct?

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1 **A.** Yes.

2 **Q.** Were you able to derive a time approximately when the horses
3 passed through underneath the northbound bridge?

4 **A.** Yes.

5 **Q.** And approximately what time was that?

6 **A.** At approximately 12:00 p.m.

7 **Q.** So this is just briefly before the horses arrive underneath
8 the bridge.

9 **A.** Yes.

10 MR. MYHRE: Next slide in order, please.

11 (Slide displayed in open court.)

12 BY MR. MYHRE:

13 **Q.** Now, we're on slide 23. And that is -- slide 23 is also
14 from Exhibit 27; correct?

15 **A.** Yes.

16 **Q.** Which is what?

17 **A.** This is a Robert Shilakis video.

18 **Q.** And what do we see in this image?

19 **A.** So this is a screenshot of -- taken during the video of
20 Ricky Ray Lovelien. He -- he is standing on the south side of
21 the I-15 highway so in, essentially, the assembly area. He has
22 a tactical vest on. He's now wearing a long-sleeve camouflage
23 shirt; has a hat on; and he appears to be holding a firearm on
24 the right side.

25 **Q.** And that's the clothing and the objects you used to identify

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1 him as Ricky Ray Lovelien?

2 **A.** Yes.

3 **Q.** And you used the previous exhibits where he was at the
4 assembly area; correct?

5 **A.** Yes.

6 **Q.** And also used the exhibits where he appears in the Facebook
7 page with Todd Engel.

8 **A.** That's correct.

9 **Q.** Now, this isn't -- where is the assembly area in
10 relationship to Mr. Lovelien?

11 **A.** So Mr. Lovelien is actually standing in the assembly area.
12 The vehicles are all parked in the assembly area and you see in
13 front of Mr. Lovelien, if -- from where he's standing is
14 actually tops of vehicles that are passing by. And this goes,
15 again, to my explanation of how the road comes down over --
16 over the wash and then up again into Mesquite from Las Vegas.
17 These would be vehicles actually passing by on the roadway
18 which, again, is lower --

19 **Q.** Just circle --

20 **A.** -- than Mr. --

21 **Q.** -- the vehicles --

22 **A.** -- Lovelien.

23 **Q.** -- that you're describing.

24 **A.** Yeah. (Complies.)

25 **Q.** The record should reflect witness indicating the vehicles.

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1 Now, you said Mr. Lovelien is facing in which direction
2 compared to the northbound bridge?

3 **A.** So he would be facing west, away from the northbound bridge.

4 **Q.** Now, this is 12:01. And when is this taken in relationship
5 to when the horses arrive on the northbound bridge?

6 **A.** They would --

7 MR. LEVENTHAL: Objection. I don't believe there's
8 been a foundation as to when the horses arrived.

9 MR. MYHRE: I believe he just testified to that, Your
10 Honor. And with respect --

11 MR. LEVENTHAL: I should have objected. There was no
12 foundation to that.

13 THE COURT: Is this -- you want to ask him where he saw
14 the horses?

15 BY MR. MYHRE:

16 **Q.** When you saw -- when you derived the time that the horses
17 arrived --

18 **A.** Yes.

19 **Q.** -- what did you review to arrive at that time?

20 **A.** The Michael Flynn/Alex Ellis videos.

21 **Q.** And those -- that video shows the horses arriving under the
22 northbound bridge?

23 **A.** Yes, it does.

24 **Q.** And, from that video, you were able to derive a time based
25 on the time stamp?

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1 **A.** Yes.

2 **Q.** And that time was approximately when?

3 **A.** 12:00 p.m.

4 **Q.** So this is occurring at or near the time the horses are
5 arriving?

6 **A.** Correct.

7 MR. MYHRE: Next slide in order, please.

8 (Slide displayed in open court.)

9 BY MR. MYHRE:

10 **Q.** Now, slide 24 is a screenshot from the aerial surveillance
11 craft; is that correct?

12 **A.** That's correct.

13 **Q.** And this is taken at 12:01?

14 **A.** Yes.

15 **Q.** And, again, based on UTC up here (drawing); correct?

16 **A.** Yes.

17 **Q.** What do we see depicted in this image?

18 **A.** A line of horseman and other individuals has formed in the
19 center, approximately, of the Toquop Wash between the
20 northbound and southbound I-15 bridges.

21 **Q.** If you would just circle that in the image.

22 **A.** (Complies.)

23 **Q.** Witness drawing a circle around the horses and the
24 individuals in the Toquop Wash.

25 Do you see the BLM position located here?

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1 **A.** Yes, I do.

2 **Q.** And circle that.

3 **A.** (Complies.) It's three vehicles here and there's other
4 vehicles there.

5 **Q.** So witness has circled vehicles at the lower portion of the
6 screen.

7 Do you have an approximation of where the gate is
8 located?

9 **A.** Yes. (Drawing.)

10 **Q.** Is that directly visible in this image?

11 **A.** Uh, it -- it's hard to see, but it is visible.

12 **Q.** Is it in the shadow?

13 **A.** Yes, it is.

14 **Q.** And this is, again, Post 2; correct?

15 **A.** Yes.

16 **Q.** And the northbound is at the top (drawing); correct?

17 **A.** Correct.

18 **Q.** Southbound, (drawing) lower portion.

19 **A.** Yes.

20 MR. MYHRE: Next slide in order, please.

21 (Slide displayed in open court.)

22 BY MR. MYHRE:

23 **Q.** This is image 25. This is taken -- you've time stamped this
24 at 12:02. What do we see in this image?

25 **A.** This is Steven Stewart. He's kneeling on the northbound

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1 I-15 bridge. See his clothing, which I used to identify him;
2 his facial features; his hat; his knife sheath with the
3 fluorescent pink tag on it -- or label to it; and he's holding
4 a firearm pointed up.

5 Q. And this image is taken from what?

6 A. It's an 8 News NOW I-Team broadcast from May 8, 2014.

7 Q. And you've testified previously of how you obtained this
8 image; correct?

9 A. Yes.

10 Q. The 12:02 time stamp is derived in what fashion?

11 A. From the aerial photography or footage.

12 Q. This occurs later in time than the previous slide; correct?

13 A. Yes.

14 Q. If we can go back to the previous slide.

15 (Slide displayed in open court.)

16 BY MR. MYHRE:

17 Q. This is the position of the horses at 12:01; correct?

18 A. Yes.

19 Q. This is the position of the horses and the people in the
20 wash at the time Mr. Stewart's on the bridge.

21 A. Correct.

22 Q. As depicted in the next image; correct?

23 A. Yes.

24 MR. MYHRE: If we can go to 25 again, please.

25 (Slide displayed in open court.)

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1 MR. MYHRE: And to 26.

2 (Slide displayed in open court.)

3 BY MR. MYHRE:

4 Q. This is taken at 12:02; correct?

5 A. Yes.

6 Q. And this shows, again, the horses in the wash.

7 A. Yes, it does.

8 Q. This is from the aerial surveillance; correct?

9 A. Correct.

10 Q. And, generally, this was taken, again, at the time when
11 Mr. Stewart's on the bridge?

12 A. Ye- -- yes. And this is what I used to derive the time in
13 the previous screenshot as well as in the following screenshot.

14 Q. And can you just point out the feature you used to derive
15 the time?

16 A. Yes. I -- I had -- as I stated previously, (drawing) there
17 is a Can-Am Spyder trike motorcycle that passes by from the
18 short segment from the 8 News I-Team video and it is being
19 followed by a dark vehicle and a lighter-colored truck with a
20 steel toolbox that's in the back of the truck as it's passing
21 that flatbed trailer on the -- the shoulder of northbound I-15.

22 Q. And the record should reflect the witness is indicating the
23 characteristics used to time stamp the image on the top
24 right-hand corner.

25 And can you tell from this image approximately the

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1 location of where Mr. Stewart's located?

2 **A.** It would be hard to tell. But he is (drawing) amongst these
3 individuals that are on the west side -- on the north -- north
4 side of -- west and on the north side of the northbound I-15
5 bridge.

6 **Q.** Okay. Just so we're clear in this image, the north side of
7 the northbound --

8 **A.** Northwest side.

9 **Q.** -- lane actually faces -- is closest to the wash where the
10 horses are.

11 **A.** That is correct.

12 **Q.** And the northbound -- I'm drawing an arrow -- is actually
13 headed west at this portion.

14 **A.** That would be heading --

15 **Q.** I'm sorry. Heading --

16 **A.** -- east.

17 **Q.** -- east. East is the direction I'm drawing the arrow;
18 correct?

19 **A.** Yes.

20 **Q.** Which is northbound.

21 **A.** Yes.

22 **Q.** Okay.

23 THE COURT: Mr. Myhre, is this a good place to stop
24 because it's five --

25 MR. MYHRE: Yes --

1 THE COURT: -- 0 five?

2 MR. MYHRE: -- yes, Your Honor.

3 THE COURT: Obviously we're not gonna get through all
4 88 tonight so . . .

5 Let's go ahead and take our overnight break. We're
6 coming back Monday at 9:00 if . . .

7 COURTROOM ADMINISTRATOR: 9:00 o'clock, Your Honor.

8 THE COURT: All right, yes.

9 So be back on Monday morning at 9:00 o'clock to resume.

10 Please remember over this break:

11 You are not to speak to anyone about this case nor
12 permit anybody to speak to you about the case. You may tell
13 your family, friends, employers that, yes, you're still in
14 trial for purposes of making arrangements; but otherwise please
15 do not speak about this case in any other way.

16 Also, if you accidentally overhear anything about the
17 case or if someone should attempt to speak to you about the
18 case, please remember you need to bring it to the Court's
19 attention.

20 Also, do not read or listen to or view anything that
21 touches upon this case in any way nor attempt to perform any
22 research or any independent investigation.

23 And please do not form any opinion about this case
24 until after you've received all the evidence. You'll hear more
25 testimony. After you have heard all of the testimony, then I

1 will provide to you the written instructions of law and that
2 will help you; you will apply the facts to the law as I provide
3 it to you. And then you will hear closing arguments.

4 After closing arguments, then you will be excused to
5 begin your deliberation. Then you can start to speak to each
6 other about the case. In fact, you have a duty to do so. And
7 then -- not until then may you speak about the case or share
8 your opinions or even form one.

9 So let's go ahead and stand for the jury. We'll take
10 our break and welcome them back at 9:00 a.m. on Monday morning.
11 Thank you.

12 (Jury out, 5:08 p.m.)

13 THE COURT: All right. So the jury's exited.

14 Special Agent Willis, I think you're gonna be back here
15 whether you're testifying or not; right? So we'll ask you to
16 come back. Please be here at 9:00 a.m. in the morning so we
17 can resume on Monday.

18 Any issues or anything you need me to address before we
19 resume on Monday morning?

20 MR. LEVENTHAL: Not on behalf of defense, Your Honor.

21 MR. MARCHESE: No.

22 THE COURT: All right. Thank you, Counsel.

23 MR. LEVENTHAL: Thank you very much.

24 THE COURT: We'll see you back here then on Monday at
25 9:00.

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MR. MYHRE: Thank you, Your Honor.

MR. LEVENTHAL: Thank you.

MR. MYHRE: Have a good weekend.

THE COURT: Thank you.

Off record.

COURTROOM ADMINISTRATOR: Off record.

(Proceedings adjourned at 5:09 p.m. Trial to resume on Monday, August 7, 2017, at 9:00 a.m.)

--oOo--

COURT REPORTER'S CERTIFICATE

I, FELICIA RENE ZABIN, Official Court Reporter, United States District Court, District of Nevada, Las Vegas, Nevada, do hereby certify that pursuant to 28 U.S.C. § 753 the foregoing is a true, complete, and correct transcript of the proceedings had in connection with the above-entitled matter.

DATED: August 9, 2017

/s/ Felicia Rene Zabin
FELICIA RENE ZABIN, RPR, CCR NO. 478

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,	)	Case No. 2:16-cr-046-GMN-PAL
)	
vs.	)	Las Vegas, Nevada
	)	Monday, August 7, 2017
ERIC PARKER, O. SCOTT	)	Courtroom 7C, 9:01 a.m.
DREXLER, RICKY LOVELIEN, and)	
STEVEN STEWART,	)	JURY TRIAL DAY SIXTEEN
)	
Defendants.)	
	)	<u>O R I G I N A L</u>

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BEFORE: THE HONORABLE GLORIA M. NAVARRO,
UNITED STATES DISTRICT JUDGE, CHIEF

APPEARANCES:

See next page

COURT REPORTER:

Heather K. Newman, RPR, CRR, CCR #774
United States District Court
333 Las Vegas Boulevard South, Room 1334
Las Vegas, Nevada 89101
(702) 471-0002

Proceedings reported by machine shorthand, transcript produced
by computer-aided transcription.

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23 Also present:

24 Sharon Gavin, Special Agent, FBI
25 Joel Willis, Special Agent, FBI
Chris Allen, Bureau of Land Management
Mike Abercrombie, FBI

1 Also present:

2 Mamie Ott, Legal Assistant
3 Tori Bakken, Paralegal
4 Brian Glynn, IT
5 Nicole Reitz, IT

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I N D E X

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E X H I B I T S

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1 LAS VEGAS, NEVADA; MONDAY, AUGUST 7, 2017; 9:01 A.M.

2 --oOo--

3 P R O C E E D I N G S

4 (Outside the presence of the jury at 9:50 a.m.):

5 COURTROOM ADMINISTRATOR: All rise.

6 THE COURT: Thank you. You may be seated.

7 COURTROOM ADMINISTRATOR: This is the time set for
8 Jury Trial Day Sixteen in Case Number 2:16-cr-046-GMN-PAL,
9 United States of America vs. Eric Parker, O. Scott Drexler,
10 Ricky Lovelien, and Steven Stewart.

11 THE COURT: All right. Well, before we get started,
12 let me just remind everyone about the expectations for court.
13 Remember, this is a courtroom and not a sporting event, so
14 please do not make any expression, whether audibly or through
15 body expression, through conduct, that is either in agreement
16 or disagreement with what someone is saying. We don't want any
17 distractions and it is a courtroom, so we need to have respect
18 for the proceeding and not act out in any way.

19 The marshals are authorized to remove anyone who does
20 so. Likewise, the defendants have been told that there is a
21 holding room right over here on the left (indicating) with a
22 speaker system set up so that if an individual forfeits his
23 right to be present in court because they cannot comply with
24 the . . . requirements for the conduct that is displayed in a
25 courtroom, then they will be removed and can listen to the rest

1 of the hearing through that cell but will not be permitted to
2 remain present in the courtroom.

3 Also, please remember there are no recording devices
4 that are permitted in court. So that means no electronic
5 devices of any kind. Whether it be a phone or a laptop or an
6 iPad, none of those devices are permitted. Please make sure
7 they're not in the courtroom. Even if they're turned off in
8 the private mode or vibrate mode, they're not permitted in the
9 courtroom, so please take them outside. Attorneys are
10 permitted to have them so they can present evidence and review
11 evidence and likewise, the marshals and the Court Security
12 Officers are permitted to have electronic devices for
13 communication purposes.

14 Is there anything that we need to address before we
15 bring in the jury?

16 MR. MYHRE: Not from the Government, Your Honor.

17 THE COURT: No?

18 All right. And do we have our witness, Special Agent
19 Willis? If you want to come on up, sir, and take your place on
20 the witness stand.

21 So, is he the Government's last witness?

22 MR. MYHRE: Yes, Your Honor.

23 THE COURT: All right. And so, if we're done by the
24 end of today, is the defense going to be ready to begin
25 tomorrow calling witnesses? Assuming there are witnesses you

1 want to call?

2 MR. TANASI: Your Honor, I know that . . . we have
3 folks ready, it looks, for, as it stands now, as early as
4 Wednesday. To try to get them here tomorrow might be
5 problematic. Throughout the day, we can still try to be in
6 communication with our investigators who are in communication
7 with those folks and try to see, depending on how we finish up
8 today, whether they could be ready, in fact, to go tomorrow.
9 And then there's, I think, some issues or discussions that we
10 would probably have that would eat up potentially a large
11 portion of the day tomorrow. The defense, you know, does seek
12 to read in Dennis Michael Lynch's testimony through either one
13 of our investigators or perhaps Mr. Glynn. I'm anticipating
14 the Government probably will have objections to that, so that's
15 maybe something we need to sort out as well. But, in a perfect
16 world from the defense side, if we were able to read the whole
17 thing in, that would take up a large part of the day tomorrow,
18 which would then put us on pace with the remainder of the
19 witnesses that we have lined up for the rest of the week.

20 THE COURT: All right. And so why are we -- or why
21 are you requesting to read in his testimony? Did he pass away?
22 I'm thinking of, like, there's not --

23 MR. TANASI: No. I --

24 THE COURT: Is there something I don't know?

25 MR. TANASI: No. We have an -- he is unavailable. I

1 have a doctor's note from him. I -- I would, just on account
2 of HIPAA issues, I don't -- kind of strange waters to just turn
3 it over to everybody. I do have a note from him. He did have
4 a procedure scheduled for . . . it was last week and when we
5 were trying to secure his availability for trial, at some point
6 he made it very clear that he wouldn't be able to come out here
7 because of this procedure and the recovery related to this
8 procedure and anything else related to this procedure and he
9 was very adamant about that. We have e-mails to that effect
10 and I -- he may have even contacted Your Honor because in some
11 of his e-mails to us, he threatened, since not hearing back
12 from us, he was going to contact Your Honor. So I don't know
13 if he's done that or not, but based on his unavailability,
14 under 804(a) and 804(b), you know, we would seek to read in his
15 testimony.

16 THE COURT: So, can he appear by video? Or -- I
17 mean, is he --

18 MR. TANASI: He -- he --

19 THE COURT: -- he's medicated so he's out or is it
20 just that he can't travel?

21 MR. TANASI: He did offer Skype as an option and,
22 truthfully, I've not had that issue or had that done on my
23 watch in my career, so, I looked at it just from him being
24 unavailable. If Your Honor is inclined to allow him, at some
25 level, to testify via Skype, then certainly we can work with

1 him as quickly as possible to try to get that accomplished.

2 THE COURT: All right. Well, I have done that before
3 with an expert who ran long and had to be in a different
4 jurisdiction for another court hearing and we ended up having
5 cross-examination on Skype because the alternative was that I
6 was going to strike his direct exam if we weren't going to be
7 able to cross-examine.

8 MR. TANASI: Sure.

9 THE COURT: And so we were able to set it up through
10 the laptop, Aaron, of the attorney, right? And then it hooked
11 it into the podium so that it would project --

12 COURTROOM ADMINISTRATOR: Correct.

13 THE COURT: -- on all the screens. So, if you want
14 to just get together with Aaron on one of the breaks and see
15 if --

16 MR. TANASI: Okay.

17 THE COURT: -- that is an option or not and,
18 obviously, talk to the Government about whether or not that's
19 an option because one of the objections that they had in that
20 case also was, well, who's going to be in the room with the
21 witness, because it was an expert witness, but I -- you know,
22 like, you know, somebody feeding him information from across
23 the room that's not in the view and things like that. So, I'll
24 let you all get together and discuss those options before I
25 address it because I haven't seen the note either and I'm sure

1 the Government is going to want to see the note, if they
2 haven't already.

3 MR. MYHRE: Yes.

4 THE COURT: So --

5 MR. MYHRE: Your Honor, we have another issue in that
6 regard as well and that's having -- and Mr. Tanasi was kind
7 enough to send us a list this weekend of who they -- who the
8 defense anticipates calling. In our review of their witness
9 list, as well as the Dennis Michael Lynch testimony that they
10 seek to introduce, we fail to see the relevance of any of this
11 and the -- especially, we believe that it falls within the
12 purview of the Court's ruling on the Motion in Limine regarding
13 the inability of the -- well, with respect to addressing BLM
14 conduct in the wash or events of the 6th through the 9th, we
15 believe that this ruling would preclude much of what they
16 intend to introduce, at least from -- based on what they've
17 indicated to us through their witness list and through what
18 we've read of Mr. Lynch's testimony. And so, we would ask,
19 again, that the defendants, before they start calling witnesses
20 to the stand, that they make an offer of proof as to what the
21 witnesses are going to say so that we can address the predicate
22 issue of whether any of this is relevant and admissible in
23 light of the Court's ruling.

24 THE COURT: All right. And I would think you'd want
25 to do that before opening. I forgot who reserved opening but I

1 think --

2 MR. MARCHESE: I did, Your Honor. I mean --

3 THE COURT: -- was it Mr. -- yeah. Somebody reserved
4 opening.

5 MR. MARCHESE: -- I can work it either way, but it
6 would be my preference that we just resolve these issues ahead
7 of time so we don't have 900 sidebars and that kind of thing.

8 THE COURT: I agree.

9 All right. Well, other than those two issues then,
10 anything else?

11 MR. MYHRE: No, Your Honor.

12 THE COURT: No? All right. So, let's go ahead and
13 get the jury, Aaron, please, if you will.

14 COURTROOM ADMINISTRATOR: Yes, Your Honor.

15 MR. TANASI: Thank you, Your Honor. And I apologize
16 for running late this morning.

17 THE COURT: That's fine.

18 (Brief pause in proceedings.)

19 COURTROOM ADMINISTRATOR: All rise.

20 (Jury returned to courtroom at 9:27 a.m.)

21 THE COURT: All right. Well, good morning. Jury may
22 be seated. Everyone else may be seated as well.

23 All right. We're back on the record and we've got
24 our witness, Special Agent Joel Willis, back on the stand.

25 Good morning to you, sir.

1 THE WITNESS: Good morning.

2 THE COURT: All right. So now we're going to
3 continue, to re- -- we're going to resume with
4 direct-examination by the Government of FBI Special Agent Joel
5 Willis.

6 My notes indicate we were on Exhibit 182, which was
7 an 88-page -- or slide document.

8 MR. MYHRE: Yes, Your Honor.

9 THE COURT: And we got as far as Slide 26 is the last
10 note that I have, but, I defer to you if you --

11 MR. MYHRE: Yes, Your Honor. Did you wish us --

12 THE COURT: -- if I missed something.

13 MR. MYHRE: -- to make appearances, Your Honor,
14 or just --

15 THE COURT: That's a great idea. Yes. Thank you.
16 Please. Let's do that for the jury.

17 MR. MYHRE: Thank you.

18 Good morning, Your Honor.

19 Good morning, ladies and gentlemen.

20 Steven Myhre, Erin Creegan, Nadia Ahmed on behalf of
21 the United States.

22 THE COURT: Good morning.

23 MR. TANASI: Thank you, Your Honor.

24 Good morning, folks. Rich Tanasi for Steve Stewart.

25 Also with us at counsel table is Tori Bakken and Brian Glynn.

1 Thank you.

2 THE COURT: Good morning.

3 MR. MARCHESE: Good morning, Your Honor. Good
4 morning, ladies and gentlemen.

5 Jess Marchese appearing on behalf of Eric Parker.

6 THE COURT: Good morning.

7 MR. LEVENTHAL: Good morning, everyone.

8 Todd Leventhal on behalf of Scott Drexler.

9 THE COURT: Good morning.

10 MR. PEREZ: Good morning, Your Honor.

11 Good morning, everyone.

12 Shawn Perez on behalf of Ricky Lovelien.

13 THE COURT: Good morning.

14 MR. MYHRE: Thank you, Your Honor.

15 May we call up Exhibit 182 at Slide 26, Your Honor?

16 THE COURT: Yes, please.

17 (Exhibit 186-2 published.)

18

19 FURTHER DIRECT EXAMINATION OF JOEL WILLIS

20 BY MR. MYHRE:

21 Q. Agent Willis, you have both a copy version of this and the
22 electronic version in front of you; correct?

23 A. Yes.

24 Q. This is -- we discussed this slide at the last session;
25 correct? You used this slide to assist you with time stamping;

1 correct?

2 A. Yes.

3 Q. And can you explain how you used this slide?

4 A. So, the slide before this and the slide after this are
5 related to a News 8 NOW I-Team segment that we captured
6 screenshots from. In that segment, if you recall, I circled a
7 Can-Am Spyder trike motorcycle as well as a dark vehicle and a
8 truck with a steel tool box in the bed of the truck. So,
9 those -- the previous photo, as well as the following slide for
10 this presentation, was time stamped using this aerial and . . .
11 may I circle?

12 Q. You wish to circle the vehicles used to time stamp?

13 A. Yes, please.

14 Q. Yes, please.

15 A. As I had mentioned, the trike motorcycle (indicating), the
16 dark vehicle (indicating), and the truck with the tool box on
17 the back -- in the back (indicating).

18 MR. MYHRE: And the record should reflect the witness
19 has indicated three circles, top right-hand corner of 26.

20 And may we go to 27, please.

21 (Exhibit 182-27 published.)

22 BY MR. MYHRE:

23 Q. Now you see an image in front of you for 182-27; correct?

24 A. Yes.

25 Q. And you indicate individuals present in this image; is

1 that right?

2 A. Yes, I do.

3 Q. And what -- what do we see in this image?

4 A. Well, we see Steven Stewart kneeling. He's holding a long
5 gun. To his right is Scott Drexler and Eric Parker. As I
6 pointed out in the previous aerial screenshot -- may I circle?

7 Q. You wish to circle the vehicles?

8 A. Yes, please.

9 Q. Yes, please.

10 A. Is the Can-Am trike motorcycle (indicating), the dark
11 vehicle (indicating) and then here is the -- it's either a
12 light silver or white truck (indicating) with the steel tool
13 box on the back and that's how I was able to time these two
14 screenshots from 8 News.

15 MR. MYHRE: And the record should reflect the witness
16 has drawn three circles around vehicles at the top right-hand
17 corner of the screen.

18 Clearing it.

19 BY MR. MYHRE:

20 Q. And this image comes from Exhibit 167A; correct?

21 A. Yes.

22 MR. MYHRE: May we go back to Slide 25, please.

23 (Exhibit 182-25 published.)

24 BY MR. MYHRE:

25 Q. And 25, you said, is from 8 News NOW as well; correct?

1 A. Correct.

2 Q. From 166A; is that correct?

3 A. Yes.

4 MR. MYHRE: Your Honor, may we show the witness what
5 has been marked as 166B?

6 THE COURT: Yes, you may.

7 MR. MYHRE: Just for witness and counsel and Court
8 only.

9 (Exhibit 166B published to witness.)

10 THE COURT: When you say Slide 25 is from News 8
11 video as well, as well as what?

12 MR. MYHRE: Oh, I'm sorry.

13 THE COURT: Because 26 is not, right? 26 is the FBI
14 aerial? That's what he used to time stamp 25?

15 MR. MYHRE: I'll clear that up, Your Honor.

16 THE COURT: I think I missed something. Okay.

17 MR. MYHRE: No. That's fine. I'll clear that up.
18 So if I could go back to Slide 25.

19 (Exhibit 182-25 published.)

20 BY MR. MYHRE:

21 Q. Slide 25 is from what -- is from Exhibit 166A; correct?

22 A. That's correct.

23 Q. And this is from what news program?

24 A. This is 8 News NOW I-Team reporting.

25 Q. And that was from May 8th, 2014; correct?

1 A. Yes.

2 Q. Now, you just viewed 166B; correct?

3 A. Correct.

4 Q. What was 166B?

5 A. That is from a similar vantage point. Same cameraman as
6 it appears, but just from a different broadcast from 8 News.

7 Q. Is this -- is 160 -- look at 166 -- excuse me -- look at
8 Slide 25.

9 A. Yes.

10 Q. Is that -- it says 166A; correct? Now, when you look
11 at -- I showed you 166. Is that the same or of a different
12 news broadcast, Exhibit 25?

13 A. That is the same.

14 Q. All right. So just so we're clear. Slide 25 is from 8
15 News NOW, May 8th, 2014?

16 A. Correct.

17 Q. 166 that you just viewed, 166B is also from May 8th, 2014,
18 8 News NOW?

19 A. Yes. The short video clip that I viewed on my monitor.

20 Q. And the image we see at 182, Slide 25 appears on 166B that
21 you just watched?

22 A. Correct.

23 MR. MYHRE: Your Honor, we offer 166B and ask that it
24 be admitted and published.

25 THE COURT: Any objection to 166B?

1 MR. TANASI: None from Stewart, Your Honor.

2 MR. MARCHESE: None from Parker.

3 MR. LEVENTHAL: Objection as to foundation,
4 Your Honor. Apparently, this comes off of a 8 News NOW Team
5 video montage, I guess, that this witness has not testified
6 that he's seen it or he knows about it.

7 BY MR. MYHRE:

8 Q. You -- Agent Willis, you viewed the entire program; is
9 that correct?

10 A. Yes, I have.

11 Q. And the segment that you just reviewed at 166B you
12 reviewed as well?

13 A. Yes.

14 Q. You've identified it as related to the Exhibit --
15 actually, depicting the image at Exhibit 182-25?

16 A. Yes.

17 THE COURT: All right. Any other objection?

18 All right. Exhibit 166B is admitted.

19 You may go ahead and publish to the jury.

20 MR. MYHRE: Thank you, Your Honor.

21 (Exhibit 166B received and published.)

22 BY MR. MYHRE:

23 Q. Agent Willis, we saw the segment just now played for about
24 2 seconds; is that correct?

25 A. Yes.

1 Q. What -- for the record purposes, what did we view in that
2 image?

3 A. This is Steven Stewart kneeling on the north side of the
4 northbound I-15 bridge. He's looking north. He moves his
5 rifle, which is in his right hand and also holding it with his
6 left hand, to his right side and then he puts his elbow on top
7 of the Jersey barrier and appears to look over the Jersey
8 barrier.

9 Q. And during that segment was his rifle above or below the
10 barrier?

11 A. At one point maybe the barrel was above the Jersey
12 barrier.

13 MR. MYHRE: And, Your Honor, may we now move to
14 182-27?

15 THE COURT: Yes.

16 (Exhibit 182-27 published.)

17 BY MR. MYHRE:

18 Q. And just to clear up the Court's question. 182-27 is from
19 Exhibit 167A; is that correct?

20 A. Yes.

21 Q. That was from the 8 News NOW that aired on April 30, 2014,
22 at 11:00 p.m.?

23 A. Yes.

24 Q. And again, the -- you've already discussed the images that
25 appear in this slide; is that correct?

1 A. Yes.

2 MR. MYHRE: May we go to Slide 28, please.

3 (Exhibit 182-28 published.)

4 BY MR. MYHRE:

5 Q. And Slide 28, you've indicated this is from Exhibit 163;
6 is that correct?

7 A. Yes.

8 Q. And you've time stamped this at 12:03?

9 A. Yes.

10 Q. What did we -- for record purposes, what do we see in the
11 image at 182-28?

12 A. In the foreground is Eric Parker. He's kneeling. He has
13 his stock of the rifle up by his shoulder. His gun pointed
14 down. His knee's against the Jersey barrier. In the
15 background, we -- I have labeled "Steven Stewart." You can see
16 the design on the back of his blue shirt, and then also in
17 between where Steven Stewart is and Eric Parker is, you see a
18 shadow on the ground and you can see the -- the end -- front
19 end of Scott Drexler's gun. So this would have been from the
20 opposite vantage point as the photographs or still shot that we
21 just reviewed from 8 News NOW.

22 MR. LEVENTHAL: Objection. Speculation.

23 BY MR. MYHRE:

24 Q. Were you able to determine that based on your review of
25 Slides 25 and 27?

1 A. Yes.

2 THE COURT: Objection overruled.

3 BY MR. MYHRE:

4 Q. If you would, please, Agent Willis, circle on this image
5 where you see the barrel of Mr. Drexler's weapon.

6 A. (Witness complies).

7 MR. MYHRE: Record should reflect the witness has
8 drawn a circle above the shoulder, left shoulder of the
9 individual he's labeled as Eric Parker about left center, upper
10 quadrant of Exhibit 182-28.

11 Clearing that image.

12 BY MR. MYHRE:

13 Q. Now, at 12:03 we see -- in the right-hand corner, we see
14 some -- what appears to be some individuals in the wash;
15 correct?

16 A. Yes.

17 Q. At 12:03, where were the individuals in the wash in
18 relationship to Mr. Parker and Mr. Stewart and Mr. Drexler as
19 indicated in this image?

20 A. They would have been to their north in the middle of the
21 wash in a line in front of them.

22 Q. So they still would be in the middle in a line at this
23 point?

24 A. Yes.

25 MR. MYHRE: And, Your Honor, may we show the witness

1 what's been marked as Exhibit 166C?

2 THE COURT: Yes, you may.

3 And this would be for witness, Court, and counsel
4 only.

5 (Exhibit 166C published to witness.)

6 BY MR. MYHRE:

7 Q. Have you viewed 166C; Agent Willis?

8 A. Yes.

9 Q. Did you see that?

10 A. Yes.

11 Q. And what was depicted in 166C?

12 A. Scott Drexler and Eric Parker standing on the northbound
13 I-15 bridge looking north and they have their rifles slung on
14 their chest.

15 Q. Now, is -- in relationship to Mr. Parker, where is
16 Mr. Drexler located?

17 A. To his left.

18 Q. As we look at this image, in which direction are we
19 facing?

20 A. We are facing east.

21 Q. So, from Mr. Parker's position, would Drexler be west or
22 east of Mr. Parker?

23 A. West.

24 Q. And was this image from the 8 News NOW broadcast that
25 occurred on May the 8th, 2014, at 5:00 p.m.?

1 A. Yes.

2 Q. Does this -- does this image -- does the segment you just
3 viewed depict Mr. Drexler and Mr. Parker as they appeared on
4 April 12th, 2014?

5 A. Yes.

6 MR. LEVENTHAL: Objection. Speculation.

7 MR. TANASI: Stewart joins.

8 MR. MARCHESE: Parker joins.

9 MR. PEREZ: Lovelien joins.

10 BY MR. MYHRE:

11 Q. Do -- do they -- are they dressed similarly to what they
12 were on April the 12th, 2014?

13 A. Yes, they are.

14 Q. Based on your review of other images, known images from
15 April 12th, 2014?

16 A. Yes.

17 Q. Where do they appear to be located?

18 A. On the north side of the northbound I-15 bridge over the
19 Toquop Wash.

20 Q. And you know that how?

21 A. Based on the terrain. There's other people that are in
22 this shot that are also visible in other photograph and video
23 evidence, specifically one person that walks behind them,
24 things like that. And also, as you mentioned, their clothes
25 that they're wearing.

1 MR. MYHRE: Your Honor, we offer 166C and ask that it
2 be moved into evidence and published.

3 (Exhibit 166C offered.)

4 THE COURT: All right. Well, based on the
5 similarities listed by the witness, the rules permit that as
6 sufficient foundation.

7 Is there any other objection?

8 MR. LEVENTHAL: Authenticity.

9 MR. TANASI: Start joins, Your Honor.

10 MR. MARCHESE: Parker joins.

11 MR. PEREZ: Lovelien joins.

12 MR. MYHRE: It would be 901(b)(4), Your Honor.

13 THE COURT: Likewise, under 901(b)(4) Exhibit 166C is
14 admitted.

15 You may go ahead and publish it to the jury.

16 MR. MYHRE: Thank you, Your Honor.

17 (Exhibit 166C received and published.)

18 BY MR. MYHRE:

19 Q. Now, we've -- we've seen 166C that has now been published
20 before the jury; correct?

21 A. Yes.

22 Q. And for record purposes, could you describe what we saw in
23 this segment?

24 A. This video short clip starts off with the facial features
25 from that viewpoint of Scott Drexler in the foreground and

1 Eric Parker in the background. Again, they're standing with
2 their rifles slung on their chest. We're looking north.
3 They're on the north side of the northbound I-15 bridge over
4 the wash.

5 MR. MYHRE: Now, the record should reflect that the
6 segment lasted about 4 seconds.

7 BY MR. MYHRE:

8 Q. Turning back to second -- the first second of this image,
9 do you see Eric Parker in that image?

10 A. Yes, I do.

11 Q. And can you describe what he's doing in this image?

12 A. He has his rifle slung in front of him, left hand down,
13 right hand up by the grip.

14 Q. And is this a particular position?

15 A. This would be the low ready slung.

16 Q. He's holding -- you said it's slung, but what do you mean
17 by "slung"?

18 A. Slung typically means that you have a sling or a strap
19 around the gun and you're -- you're resting the sling on your
20 neck, but holding it in the low ready close to your chest. So,
21 you would be able to move it up but also it gives you a little
22 help with holding the weight of the gun by slinging it.

23 Q. So in this image his hands are on the weapon; correct?

24 A. Yes.

25 Q. And where is the weapon in relationship to the barrier?

1 A. It's above. Almost all the weapon, maybe with the
2 exception of the last inch of the end of barrel, is above the
3 Jersey barrier.

4 MR. MYHRE: May we now move to Slide 29, please?

5 (Exhibit 182-29 published.)

6 BY MR. MYHRE:

7 Q. And Slide 29, this is from Exhibit 163; correct?

8 A. Yes.

9 Q. Okay. What is depicted in Slide 29 at 12:03?

10 A. So, throughout the -- this presentation or sequence of
11 events and time line I included examples of how I determined
12 and was able to time stamp other photos.

13 So, this particular screenshot does two things: It
14 shows the position of the people on horseback and the other
15 individuals in the wash. It shows the traffic on the north and
16 southbound I-15 bridge, the people on the bridges, but also in
17 the previous slide, in Slide 28, where Eric Parker is kneeling
18 with his knee against the Jersey barrier, this -- this shows
19 how I time stamped that. There is a semitruck with a white
20 trailer followed by a white car and in this video, I can tell
21 that this is the same vehicles that are in that previous
22 photograph that we viewed of Eric Parker.

23 Q. So, 182-29 is an aerial image; is that correct?

24 A. That's correct.

25 Q. That's at Exhibit 17; correct?

1 A. Yes.

2 Q. So, where it says "163," that should be 17?

3 A. Oh, yes.

4 Q. So that needs to be corrected?

5 A. Yes.

6 Q. So, can you circle on this image the vehicles that you
7 used to time stamp the previous photo?

8 A. (Witness complies).

9 MR. MYHRE: And the witness is circling a semitrailer
10 right -- appears to be on the right-hand upper quadrant of
11 the -- of the slide at 28.

12 BY MR. MYHRE:

13 Q. And this is at 12:03; correct?

14 A. Yes.

15 Q. So when you described, in the previous slide, about where
16 the skirmish line -- or where the people were lined up, rather,
17 in the wash, this is the image to which you referred?

18 A. Yes.

19 MR. MYHRE: May we go to Slide 29, please.

20 (Exhibit 182-29 published.)

21 Excuse me, Slide 30. I apologize. That was 29.

22 (Exhibit 182-30 published.)

23 BY MR. MYHRE:

24 Q. So we're at Slide 30. What is in this image,

25 Agent Willis?

1 A. This is a screenshot of the Business Record for the
2 Facebook account holder Todd Engel.

3 Q. This is from Exhibit 122; correct?

4 A. Yes.

5 Q. And you discussed this entry in your testimony previously;
6 correct?

7 A. Yes.

8 Q. And the message there, for the record purposes, reads
9 what?

10 A. "Armed standoff."

11 Q. And this would have occurred approximately 1 minute after
12 the previous slide where we saw the people lined up in the
13 wash?

14 A. Yes.

15 MR. MYHRE: And may we move to Slide 31, please.

16 (Exhibit 182-31 published.)

17 BY MR. MYHRE:

18 Q. Slide 31 we're at 12:06 p.m.; correct?

19 A. Yes.

20 Q. This is from an aerial image?

21 A. Yes.

22 Q. Exhibit 17?

23 A. Yes.

24 Q. And you time stamped it by the aerial image embedded UTC
25 time; correct?

1 A. Correct.

2 Q. What do we see depicted in this image?

3 A. Well, the people in the line in the wash sort of in the
4 background, but in the more foreground, the people standing on
5 the bridge, along with, to the right, Steven Stewart,
6 Scott Drexler, and Eric Parker all kneeling on the bridge.
7 Again, this would be to the east of the majority of the people
8 who are standing on the bridge.

9 Q. And when you say "the bridge," are you referring to the
10 northbound 15 bridge?

11 A. Yes.

12 Q. And what are they kneeling behind?

13 A. They're kneeling behind a Jersey barrier.

14 Q. You have their names indicated on this image; correct?

15 A. Yes.

16 Q. And this image shows their relative -- their position
17 relative to the people in the wash at 12:06 p.m.?

18 A. Correct.

19 Q. And for record purposes, where is defendant Drexler in
20 this image in relationship to defendant Parker?

21 A. To his left.

22 Q. To his left, as in looking northbound?

23 A. Yes.

24 Q. With respect to the directions, east and west, is he west
25 or east of where Mr. Parker is depicted in this image?

1 A. West.

2 MR. MYHRE: And may we move to Slide 32, please.

3 (Exhibit 182-32 published.)

4 BY MR. MYHRE:

5 Q. Slide 32 you've time stamped it 12:09 p.m.; correct?

6 A. Correct.

7 Q. About 3 minutes after the previous slide?

8 A. Yes.

9 Q. This image is from Exhibit 148; correct?

10 A. Correct.

11 Q. And this is . . . 148 was an exhibit introduced by
12 Mr. Schillie?

13 A. Correct.

14 Q. So how did you derive the time as 12:09?

15 A. Mr. Schillie's photos were timed stamped. I could derive
16 the time based on the metadata.

17 Q. What is depicted in the image at 182-Slide 32?

18 A. Well, in the foreground there's vehicles, including
19 vehicles moving slowly. They're moving eastbound on the
20 northbound I-15 bridge. Eric Parker and Steven Stewart are now
21 standing amongst the other people standing, looking -- well,
22 Mr. Parker would be -- seems like he's maybe doing something
23 with his hands, but looking north, and Steven Stewart is
24 looking over his left shoulder south.

25 Q. South, as in true south or south as in south -- is

1 southbound?

2 A. Yeah. Just southbound or . . . yes.

3 Q. So would he be facing -- would his head be facing east or
4 west at this point?

5 A. It would be southwest.

6 Q. Or south -- if left is to the east, would it be east or
7 west -- or -- excuse me. West is to the left, so it would be
8 southwest; correct?

9 A. Yes.

10 Q. Now, where is he in relationship to Mr. Parker?

11 A. To Mr. Parker's left.

12 Q. As Parker is looking north; correct?

13 A. Yes.

14 Q. And how -- have these positions changed relative to the
15 slide that we saw at Exhibit 31?

16 A. Yes.

17 Q. And how have their positions changed?

18 A. They're now standing.

19 MR. MYHRE: May we move to Slide 33, please?

20 (Exhibit 182-33 published.)

21 BY MR. MYHRE:

22 Q. Slide 33 you have indicated is from Exhibit 28; correct?

23 A. Yes.

24 Q. That's a screenshot?

25 A. Yes, it is.

1 Q. That's from the Shilaikis video?

2 A. Yes.

3 Q. How were you able to derive the time stamp 12:13?

4 A. Based on Robert Shilaikis' time that he gives at the
5 beginning of each of his video segments.

6 Q. And you used the time at the beginning of the segment and
7 the run time of where this screenshot was taken?

8 A. Yes, and also compared with the aerial footage at this
9 time based on the vehicles traveling on I-15.

10 Q. So this is at 12:14, about 4 minutes after the previous
11 slide; correct?

12 A. Yes.

13 Q. And what's depicted in this image?

14 A. Eric Parker is kneeling below the Jersey barrier with his
15 head and neck above the Jersey barrier. The stock of his rifle
16 is above the Jersey barrier.

17 Q. Which bridge is he on?

18 A. He's on the northbound I-15 bridge.

19 Q. Which direction is he facing?

20 A. North.

21 Q. Is that toward or away from the BLM position?

22 A. Toward.

23 Q. Is his position different from that that we saw in the
24 previous slide at Slide 32?

25 A. Yes. He's kneeling again.

1 MR. MYHRE: May we move to Slide 34?

2 (Exhibit 182-34 published.)

3 BY MR. MYHRE:

4 Q. Slide 34 is an image, again, that you've indicated from
5 Exhibit 28; correct?

6 A. Yes.

7 Q. This is from the Shilaikis video?

8 A. Yes.

9 Q. You've time stamped this at 12:16 p.m.; correct?

10 A. Correct.

11 Q. And did -- what methodology did you use to get the time
12 stamp?

13 A. The Shilaikis time that he provides at the beginning of
14 each video segment and also compared with the aerial footage at
15 this time that I synchronized to this video.

16 Q. This appears to be about 3 minutes after the previous
17 video; correct?

18 A. Yes.

19 Q. What do we see appear in this image?

20 A. Eric Parker has now stood up. His legs are behind the
21 Jersey barrier, so you could see his torso, his upper body.
22 He's -- he is moving his rifle and appears to be maybe
23 manipulating the sling or adjusting the sling that's around his
24 neck and his rifle is visible above the Jersey barrier at this
25 time.

1 Q. Which bridge is he standing on?

2 A. The northbound I-15 bridge.

3 Q. What direction is he facing?

4 A. North, towards the BLM.

5 MR. MYHRE: And may we have Slide 35, please.

6 (Exhibit 182-35 published.)

7 BY MR. MYHRE:

8 Q. Slide 35 is an image that you derived from Exhibit 150;
9 correct?

10 A. Yes.

11 Q. And that is one of the photographs provided by
12 Mr. Schillie?

13 A. Yes.

14 Q. So how did you derive that time stamp?

15 A. Mr. Schillie's photos were time stamped, so I used the
16 metadata from the photographs.

17 Q. The time stamp on this photograph is 12:18?

18 A. Correct.

19 Q. It's approximately 2 minutes after the slide we just
20 viewed?

21 A. Yes.

22 Q. What is depicted in this image?

23 A. This is Toquop Wash in between the southbound and
24 northbound I-15 bridge. The people in the wash, along with the
25 people on horseback, have now pushed forward towards the cattle

1 gate into where the BLM vehicles are located on the other side
2 of the gate.

3 Q. Which -- and from looking from the viewer's vantage point,
4 in which direction is the viewer looking?

5 A. North.

6 Q. Is that toward or away from the BLM?

7 A. Towards the BLM law enforcement vehicles.

8 Q. And do you see the BLM position depicted in this image?

9 A. Yes, I do.

10 Q. And if you would just circle that, please.

11 A. (Witness complies).

12 MR. MYHRE: Record should reflect the witness has
13 drawn a circle around some vehicles on Exhibit 182-35, in
14 approximately the center upper half of the screen.

15 Clearing that image.

16 BY MR. MYHRE:

17 Q. Now, previously in Slide 31 we saw the people in the wash
18 sort of in the middle of the wash; correct?

19 A. Correct.

20 Q. Now, in this image, that was at 12:06, this is about 12
21 minutes later -- those people have moved; correct?

22 A. Yes.

23 Q. And would this be the image as seen from the northbound
24 bridge?

25 A. Yes.

1 MR. MYHRE: May we move to Slide 36, please?

2 (Exhibit 182-36 published.)

3 BY MR. MYHRE:

4 Q. Slide 36 is derived from Exhibit 32A; correct?

5 A. Yes.

6 Q. That is the Madsen dash cam introduced by Sergeant Serena?

7 A. Yes.

8 Q. And you've time stamped this at 12:19 p.m.; correct?

9 A. Yes.

10 Q. How did you derive the time?

11 A. Based on the current time on the player for the Madsen
12 dash cam.

13 Q. You've determined the Madsen dash cam player synchronizes
14 with the aerial photo?

15 A. That's correct.

16 Q. What do we see depicted in this image at 12:19 p.m.?

17 A. This is a screenshot as Steven Stewart, who, just previous
18 to this was walking down on I-15 westbound towards the assembly
19 area. At one point he makes a quick 90-degree turns and runs
20 across I-15 to the other side of the vehicles that are parked
21 on the shoulder on the south side of the I-15 bridge.

22 Q. So in this image, where is Mr. Stewart depicted in this
23 particular image that we have at 182-36?

24 A. Well, it's labeled "Steven Stewart" on there. Would you
25 like me to also circle him?

1 Q. No. Where is he in relationship to the bridge? Is he in
2 the middle, is he on the --

3 A. He would have just came off of the bridge at this point.
4 So, maybe at the start of the bridge where the I-15 bridge
5 starts, northbound.

6 Q. When you say "starts," that's where the skirt meets the
7 bridge?

8 A. Correct.

9 Q. The skirt being that portion that's slanted that goes
10 down -- extends down into the wash; correct?

11 A. Yes. Yes.

12 Q. In which direction does it -- is it Mr. Stewart's headed
13 at this point?

14 A. He's moving quickly to the south.

15 Q. Would he be moving down the road, or across the road, in
16 the road? How would you describe his movement?

17 A. Across the road.

18 Q. Now, this occurs very quickly in 32A; correct?

19 A. Yes.

20 Q. How are you able to determine that's Mr. Stewart?

21 A. Based on -- it's -- it's a little grainy, I admit, in this
22 shot, but when he is walking down and then also when he crosses
23 the road and then walks west towards the assembly area, he
24 appears just for a moment between these two white trucks
25 (indicating) on the shoulder and I can make out his hat and his

1 shirt and the fact that he has his firearm.

2 Q. Now, in relationship to this image, where is the assembly
3 area located? In relationship to the viewer of this image?

4 A. Behind them.

5 Q. And that would be west?

6 A. Yes.

7 MR. MYHRE: May we move to Slide 37, please.

8 (Exhibit 182-37 published.)

9 BY MR. MYHRE:

10 Q. Slide 37 is derived from Exhibit 139; correct?

11 A. Yes.

12 Q. And 139 is an image obtained from Mr. Gourgeon?

13 A. Correct.

14 Q. So, the time stamp was derived how?

15 A. From his metadata.

16 Q. And you've timed this at 12:21 p.m.?

17 A. Yes.

18 Q. What is depicted in this image at 182-37?

19 A. Eric Parker is laying in a prone position. You can't see
20 his gun in this shot, but he appears to be looking northbound
21 through the gap in the Jersey barrier to -- on the left upper
22 portion of this photograph is Jim Urquhart, who is the Reuters
23 photograph that I had mentioned earlier and the woman with the
24 blue pants on and the dark longer shirt, that is the Citizens
25 Action Network photographer, which I had also mentioned

1 earlier.

2 MR. MYHRE: Now, if we could go back to Image 34,
3 please.

4 (Exhibit 182-34 published.)

5 BY MR. MYHRE:

6 Q. Now, this image at 34 was the 12:16 p.m.; correct?

7 A. Yes.

8 MR. MYHRE: So now if we could go to Image 37.

9 (Exhibit 182-37 published.)

10 BY MR. MYHRE:

11 Q. So this is approximately -- this is at 12:21 p.m. That's
12 about 5 minutes later; correct?

13 A. Yes.

14 Q. Has -- based on these images, has Mr. Parker changed
15 positions from Exhibit 182-34 to 37?

16 A. Yes.

17 Q. How has he changed positions?

18 A. He's prone now.

19 Q. What direction is he facing?

20 A. North, towards the BLM vehicles.

21 Q. And I'm referring specifically to image at Exhibit 182-37
22 now; correct?

23 A. Yes.

24 Q. And this is approximately 2 minutes after the image -- the
25 previous image where we saw Mr. Stewart walking across the

1 road?

2 A. Yes.

3 Q. Or moving across the road.

4 MR. MYHRE: May we move to Exhibit 38, please.

5 (Exhibit 182-38 published.)

6 BY MR. MYHRE:

7 Q. This image was derived from Exhibit 172; correct?

8 A. Yes.

9 Q. And 172 was -- again, where was that image derived from?

10 A. This is a Citizens Action Network Facebook page for the
11 Bundy Ranch Standoff album on their page.

12 Q. And you described that previously as something you found
13 during your public search in the Internet; correct?

14 A. Yes.

15 Q. Now the time stamp here is 12:21; correct?

16 A. Yes.

17 Q. How did you derive that?

18 A. I derived interest from the previous photograph where you
19 can see the Citizens Action Network photographer. This would
20 be the approximate time that she would have been in the -- that
21 location as she was heading west down I-15 and I track her
22 movements through other video and photographic evidence, and
23 that's how I derived that time.

24 Q. What is depicted in 182-38?

25 A. This shows Eric Parker's line of sight as he is laying in

1 the prone position. He has his rifle pointed between the gap
2 in the Jersey barriers pointed at the law enforcement officers
3 on the other side of the cattle gate in the wash.

4 Q. In which direction is he then facing?

5 A. North.

6 Q. Can you see in this image people located in the wash?

7 A. Yes.

8 Q. Where are they located with respect to Mr. Parker's image?

9 A. To his north but now pushed all the way to the cattle
10 gate.

11 Q. Do you see the cattle gate depicted in this image?

12 A. Yes, I do.

13 Q. If you could just draw a line for us where you see the
14 cattle gate.

15 A. (Witness complies).

16 MR. MYHRE: Record should reflect image -- excuse
17 me -- witness has drawn a line top-half middle quadrant of the
18 image located at 182-38.

19 BY MR. MYHRE:

20 Q. And behind that line is what?

21 A. National Park Service and BLM law enforcement officers
22 behind their vehicles.

23 Q. And closest to the viewer, in front of that line, is what?

24 A. The -- the cattle -- the cattle gate and the people pushed
25 up against the cattle gate.

1 MR. TANASI: Your Honor, I'm going to object to
2 speculation and move to strike. The continued use of the word
3 "push." Best evidence, the video, the picture, it speaks for
4 itself. Commentating on the nature of their movement is
5 improper.

6 MR. MYHRE: The --

7 THE COURT: The Court disagrees. Commenting on the
8 nature of the movement is the purpose of the different screens
9 and the time stamping, to see who's moving in what direction,
10 when, and where. As to the word "push," if you want to use a
11 different word, that's fine. If you want to -- I mean --

12 BY MR. MYHRE:

13 Q. Well, Agent --

14 THE COURT: The word "advance" was, I think, objected
15 to before. So "push," "advance" . . . they're moving. Do you
16 want to just say are they moving forward or backwards? Closer
17 or further away?

18 BY MR. MYHRE:

19 Q. Well, they have -- do they move beyond -- in this scene --
20 excuse me -- in this image, have they moved beyond that fence
21 that you've indicated with the line?

22 A. The people in the wash and the people on horseback, no.
23 They -- they have moved up to the cattle gate.

24 Q. So they moved up to the gate itself?

25 A. Yes.

1 Q. Now, you've reviewed numerous videos of that movement;
2 correct?

3 A. Correct.

4 Q. And do they move all the way to the gate?

5 A. Yes.

6 MR. MYHRE: And may we move to Slide 39, please.

7 (Exhibit 182-39 published.)

8 BY MR. MYHRE:

9 Q. 39 is an image derived from Exhibit 164; correct?

10 A. Yes.

11 Q. 164 was derived from what source?

12 A. This would have been a Washington Post -- online
13 WashingtonPost.com article, but the photograph, based on the
14 caption of the photo that -- when we captured it, was, again,
15 Jim Urquhart. So, this photo would have accompanied the second
16 photo and is also -- well, this is used to help time stamp what
17 was the photo before of Jim Urquhart and the woman in black
18 with the blue pants standing behind Eric Parker who is in
19 prone. So this would have been the approximate time and
20 photograph that Jim Urquhart, the photographer, would have
21 taken of Eric Parker prone on the northbound I-15 bridge.

22 Q. So the time stamp is 12:21; correct?

23 A. Yes.

24 Q. And you've described how you derived that?

25 A. Yes. I derived it two ways actually, through the

1 Hugh Gourgeon photo, again, with Jim Urquhart and the woman in
2 black standing, but also through the aerial photography and
3 we'll see that in the next slide.

4 Q. And this is virtually -- this is around the same time as
5 our previous exhibit; correct?

6 A. Yes.

7 Q. This image shows what?

8 A. This shows Eric Parker, again, his line of sight, view as
9 his gun is appointed between the gap in the Jersey barrier.
10 He's prone, looking north. The -- the people, again, have
11 moved -- the majority of them have moved up to the cattle gate
12 and he is looking north towards the law enforcement officers
13 behind the BLM and vehicles on the other side of the gate.

14 Q. Is he in the same relative position as he was in the
15 previous slide?

16 A. Yes.

17 MR. MYHRE: If we could move to Slide 40, please.

18 (Exhibit 182-40 published.)

19 BY MR. MYHRE:

20 Q. Now, Slide 40 is, again, an aerial shot from the
21 surveillance aircraft; correct?

22 A. Yes.

23 Q. At -- you time stamped this at 12:21 p.m.; correct?

24 A. Yes.

25 Q. And what is depicted in the image at 1:30 -- excuse me --

1 182-40?

2 A. So, this is, again, an aerial shot of the locations of the
3 National Park Service people and BLM -- I'm sorry -- people --
4 law enforcement officers and BLM law enforcement officers
5 behind their vehicles, of the people in the wash, along with
6 the people on horseback in the wash, and then also in the
7 middle of this screenshot is this white semitruck with the
8 black load on its trailer. This trailer can be seen in the
9 previous photograph of Eric Parker pointing his gun through the
10 gap in the Jersey barrier, and again, another example of how I
11 time stamped these photos through as many means -- ways as
12 possible as going through this and creating this time line.

13 Q. If you would, please, circle the vehicle you used to time
14 stamp.

15 A. (Witness complies).

16 MR. MYHRE: Witness drawing a circle around a
17 large -- appears to be a white vehicle pulling something in the
18 middle, about dead center of the image.

19 Clearing that.

20 If we could go back to Slide 39.

21 (Exhibit 182-39 published.)

22 BY MR. MYHRE:

23 Q. And do you see that image of this vehicle depicted in the
24 image at 39?

25 A. Yes.

1 Q. And circle that, please.

2 A. (Witness complies).

3 MR. MYHRE: And witness circling a vehicle top center
4 of Exhibit 182-39.

5 BY MR. MYHRE:

6 Q. And that's the vehicle you used to time stamp these images
7 that we've been talking about at 38 and 39?

8 A. Yes, that's correct.

9 MR. MYHRE: Go back to 40, please.

10 (Exhibit 182-40 published.)

11 BY MR. MYHRE:

12 Q. Now, you've described generally what we see in this image
13 just for record purposes. We see three vehicles to the left
14 side of this -- in this image; is that correct?

15 A. Yes.

16 Q. And you -- to the right side, we see images of individuals
17 in the wash on horseback and on foot, et cetera?

18 A. Yes.

19 Q. Now, that's -- is this the northbound or southbound bridge
20 that we see in this image?

21 A. Southbound.

22 Q. So, relative to the people in the wash, on foot, and on
23 horseback, which direction are they facing?

24 A. The law enforcement officers?

25 Q. No. The people on the left -- on the right side of the --

1 circling (indicating), right side of the bridge, in which
2 direction are they facing?

3 A. It seems like the majority of them are facing north and
4 towards the law enforcement officers and -- but several of them
5 appear to be moving back at this point and that's consistent
6 with my review of the video evidence. They move up, they move
7 back, and then they move up --

8 Q. Okay.

9 A. -- a number of times.

10 Q. So the vehicles to the left, relative to the people on the
11 right, in which direction are the vehicles relative to the
12 people?

13 A. They're north.

14 MR. MYHRE: And next slide, please.

15 (Exhibit 182-41 published.)

16 BY MR. MYHRE:

17 Q. Now, this image was derived from 169C; correct?

18 A. Yes.

19 Q. And 169C was a video that you obtained from the Frontline,
20 PBS Frontline; correct?

21 A. Yes.

22 Q. Now, you've time stamped this at 12:21 p.m.; correct?

23 A. Yes.

24 Q. How did you derive the time?

25 A. Based on the Gourgeon photograph, again, going back to

1 that, where Eric Parker is in the prone position and you see
2 Jim Urquhart and the woman in black from Citizens Action
3 Network taking the photo.

4 May I circle?

5 Q. Yes.

6 A. They're both standing right here (indicating). And also
7 in the Hugh Gourgeon photograph you can see this woman's feet
8 at this approximate location (indicating) in the bottom of that
9 photograph and so I used that to time stamp this, as well as
10 following photographs that we'll see from the vantage point a
11 little bit further east of where this was taken.

12 MR. MYHRE: Now, if we could go back to Slide 39,
13 please.

14 (Exhibit 182-39 published.)

15 BY MR. MYHRE:

16 Q. Slide 39 was what you depicted as Mr. Parker at
17 12:21 p.m.; correct?

18 A. Yes.

19 MR. MYHRE: And if we could go forward to 41.

20 (Exhibit 182-41 published.)

21 BY MR. MYHRE:

22 Q. And 41 is also Mr. Parker at 12:21 p.m. --

23 A. Yes.

24 Q. -- correct?

25 A. Yes.

1 Q. Now, from this -- this vantage point, from the viewer's
2 vantage point, is taken from what perspective of Mr. Parker?

3 A. Looking east on the northbound I-15 bridge.

4 Q. Now in this image, Mr. -- is Mr. Drexler depicted?

5 A. Yes. He's in the foreground looking down.

6 Q. Now, from Mr. Parker's view, viewing north, is -- is
7 Drexler -- is Mr. Drexler right or left of Mr. Parker?

8 A. To Mr. Parker's left.

9 Q. And this -- from the viewer's perspective -- or from
10 Mr. Parker's perspective, would Mr. Drexler be east or west of
11 his position?

12 A. West.

13 Q. What is Mr. Parker -- or -- excuse me -- what does
14 Mr. Parker appear to be doing in this image?

15 A. He appears to be squatting or kneeling in this image.
16 He's looking down. You cannot see below his mid-torso. His
17 gun is not visible in this screenshot.

18 MR. LEVENTHAL: I'm going to object to speculation.
19 He could be standing. It could be just the image, the depth.
20 He doesn't know.

21 MR. MARCHESE: Parker joins.

22 MR. TANASI: Stewart joins.

23 MR. PEREZ: Lovelien joins.

24 THE COURT: Mr. Myhre?

25 BY MR. MYHRE:

1 Q. Based on your review of all the video and photographic
2 images, are you able to determine from this angle whether
3 Mr. Parker is sitting or kneeling or standing?

4 A. Yeah. Well, other than the field of view that we are
5 looking at here and the fact that Mr. Drexler is lower than the
6 woman to his right, in the following photographs see
7 Mr. Drexler kneeling in this position on a number of
8 screenshots and photographs in the time line.

9 THE COURT: All right. Objection overruled.

10 MR. MYHRE: And may we move to Exhibit -- excuse
11 me -- Slide 42, please.

12 (Exhibit 182-42 published.)

13 BY MR. MYHRE:

14 Q. Now, this is -- Exhibit 182-42 is derived from
15 Exhibit 140; is that correct?

16 A. Yes.

17 Q. And 140 was an image from -- obtained from Mr. Gourgeon?

18 A. Yes, it was.

19 Q. So your time stamping from 12:21 was from the metadata?

20 A. Correct.

21 Q. What is depicted, again, in Exhibit 182-42?

22 A. Mr. Parker prone on northbound I-15 looking north with his
23 rifle pointed in the gap of the Jersey barrier.

24 Q. And you used this image to assist you in time stamping the
25 previous image; correct?

1 A. That is correct.

2 Q. And again, in this image, in which direction is
3 Mr. Parker's weapon facing?

4 A. North.

5 Q. Is that toward or away from the BLM position?

6 A. Toward the BLM.

7 Q. At 12:21, were you able to determine where the people in
8 the wash are relative to Mr. Parker's position?

9 A. Yes. They would have -- would have moved up close to the
10 cattle gate in the Toquop Wash.

11 MR. MYHRE: Next image, at 43, please.

12 (Exhibit 182-43 published.)

13 BY MR. MYHRE:

14 Q. At 182-43, we -- this is derived from 32 -- Exhibit 32A;
15 correct?

16 A. Yes.

17 Q. Which is, again, the Madsen video?

18 A. Yes.

19 Q. The time stamp, 12:21 p.m.; correct?

20 A. Yes.

21 Q. And you're able to derive that from the video itself, the
22 counter in the video?

23 A. Yes.

24 Q. What do we see depicted at image 182-43?

25 A. In the foreground Ricky Ray Lovelien is walking north

1 across the northbound I-15 bridge. As we had seen in a
2 previous screenshot from Shilaikis, he's now wearing a
3 camouflage long sleeve shirt or jacket. He has a tactical vest
4 on. He's got his hat on and he's holding a rifle on his right
5 side down by his right thigh.

6 Q. In which direction does he appear to be moving?

7 A. North.

8 Q. That's toward or away from the BLM position?

9 A. Toward the BLM.

10 MR. MYHRE: Now, if we could go back to Exhibit 23,
11 please.

12 Slide 23.

13 (Exhibit 182-23 published.)

14 BY MR. MYHRE:

15 Q. Now, at Slide 23 we have a -- the image of Mr. Lovelien at
16 12:01 p.m.; correct?

17 A. Yes.

18 Q. And this was, to refresh the jury's recollection, where is
19 this image, approximately, in relationship to the bridge?

20 A. This is the assembly area. He's standing in the gravel
21 desert area next to the vehicles in the assembly area. He
22 appears to be looking west on the northbound I-15 -- I-15, but
23 on the other side of the road, or the south side of the road.

24 Q. So the bridge, in relationship to him, is it to the left
25 or to his right as we're looking at this image?

1 A. It would be to his right.

2 Q. It would be to the viewer's -- which direction from the
3 viewer?

4 A. It would be to the left of the viewer.

5 Q. So drawing a line, it would be that direction
6 (indicating); correct?

7 A. Yes.

8 MR. MYHRE: And the record should reflect an arrow
9 drawn to the left side of the screen.

10 Now, going back again to Exhibit 43, please.

11 (Exhibit 182-43 published.)

12 BY MR. MYHRE:

13 Q. So this is approximately 20 minutes later; correct?

14 A. Yes.

15 Q. So, as opposed to Exhibit 23, has Mr. Lovelien changed his
16 position?

17 A. Yes.

18 Q. And he now is -- you explained generally and we talked
19 about where the skirt comes up to meet the bridge?

20 A. Yes.

21 Q. So, where is he relative to that position of where the
22 skirt meets the bridge on the northbound 15?

23 A. From this location, he would have been approximately 150
24 yards away from that location.

25 Q. Can you draw a line approximating where the bridge meets

1 the skirt?

2 A. I could give an approximate.

3 Q. On your screen, please.

4 A. Oh, yeah. Hold on. Hold on. I'm looking at the people.

5 (Witness complies).

6 MR. MYHRE: Witness should -- excuse me. The record
7 should reflect the witness has drawn a line about the midpoint
8 of the image that's depicted at 182-43.

9 Clearing that.

10 BY MR. MYHRE:

11 Q. Now, you have there in this image, Mr. Engel; is that
12 correct?

13 A. Yes, I do.

14 Q. How are you able to identify him?

15 A. Based on his clothing, his hat, his tactical vest, and his
16 long gun.

17 Q. Now, the image of -- that you've depicted as Mr. Lovelien,
18 do you see that?

19 A. Yes.

20 Q. Is he dressed the same as was depicted in that previous
21 image that we saw at 182-23?

22 A. Yes.

23 MR. MYHRE: If we can move to 182-44, please.

24 (Exhibit 182-44 published.)

25 BY MR. MYHRE:

1 Q. 182-44, again, is from the Serena dash cam; correct?

2 A. Correct.

3 Q. It is time stamped at 12:21 p.m.?

4 A. Yes.

5 Q. About the -- a little -- is this later in time or earlier
6 in time than the previous slide?

7 A. Just a few moments later.

8 Q. Is Mr. -- is -- what's depicted in this image?

9 A. Mr. Lovelien has walked across all the way north on the
10 northbound I-15 bridge. He's now on the north shoulder. He
11 turns and begins walking eastbound on northbound I-15 towards
12 Todd Engel.

13 Q. In this image, in which direction is he facing?

14 A. He would be facing northeast.

15 Q. And from this position, where is he relative to the wash
16 where the people are who we saw at the gate?

17 A. He would have been -- he would be just to the southwest
18 of -- and, of course, above on the bridge of those individuals.

19 Q. And does Mr. Engel have a firearm in this image?

20 A. Yes, he does. You could see the sling coming down from
21 his left shoulder and the firearm is -- appears to be holding
22 it with his hand, but it's slung down on his right side.

23 Q. If you could just draw a line where the firearm is
24 located.

25 A. (Witness complies).

1 MR. MYHRE: Witness drawing line midportion of the
2 screen about the left side of the image depicted in the screen
3 at 182-44.

4 Clearing that.

5 If we could go to 45, please.

6 (Exhibit 182-45 published.)

7 BY MR. MYHRE:

8 Q. Now, Exhibit 182-45 is derived from Exhibit 13; correct?

9 A. Yes.

10 Q. And that is a video that Mr. Flynn took from the wash;
11 correct?

12 A. Yes.

13 Q. You've time stamped this at 12:22 p.m.; correct?

14 A. Yes.

15 Q. And that's about a 1-minute difference from the previous
16 slide?

17 A. Yes.

18 Q. What is depicted in the image at 182-45?

19 A. These are several individuals standing on the northbound
20 I-15 bridge. We have Scott Drexler on the right side is
21 squatting down or kneeling behind the Jersey barrier on the
22 right side. In the middle of the frame is the gap which has
23 been identified as where Eric Parker would have been at this
24 time prone with his rifle pointed through the gap in the Jersey
25 barrier.

1 Q. Now taking this one step at a time. From the viewer's
2 position, which direction are we facing?

3 A. South.

4 Q. And we're seeing a bridge, and that's the northbound?

5 A. Yes.

6 Q. Now, you've indicated an individual as Scott Drexler?

7 A. Yes.

8 Q. How are you able to identify him?

9 A. His facial hair, facial features, and the hat that he's
10 wearing.

11 Q. You compared that to the other images we've seen?

12 A. Yes.

13 Q. In which direction does Mr. Drexler, in this image, appear
14 to be facing?

15 A. North.

16 Q. Would that be toward the BLM position or away from it?

17 A. Toward.

18 Q. Now, where is he -- you've described generally, but why
19 don't you circle for us, the gap that you've identified as the
20 gap where Mr. Parker is prone.

21 A. Would have been right above this first pillar
22 (indicating).

23 MR. MYHRE: Witness circling on the image a gap that
24 appears in the approximately the dead center portion of Exhibit
25 182-45.

1 BY MR. MYHRE:

2 Q. Now, is Mr. Drexler, in this image, is he to the left or
3 right of Mr. Parker from Mr. Parker's vantage point?

4 A. To Mr. Parker's left.

5 Q. And would that be -- in this shot, would this be west or
6 east of Mr. Parker's position?

7 A. West.

8 Q. And do you see Mr. Schillie in this image as well?

9 A. Yes, do I.

10 Q. And if you could just draw an arrow toward him -- or
11 circle him?

12 A. (Witness complies).

13 MR. MYHRE: Witness circled --

14 THE WITNESS: I'm sorry.

15 MR. MYHRE: Witness is circling an image left center
16 of the image at 182-45.

17 Clearing that.

18 BY MR. MYHRE:

19 Q. Now, where Mr. Drexler is located, do you see any other
20 aspects of the bridge that help identify his position?

21 A. It's a little hard to see in this photograph, but there is
22 a crack -- I'm kind of drawing over it, but you can clear it --
23 in the Jersey barrier where Mr. Drexler -- or near
24 Mr. Drexler's location on the northbound I-15 bridge.

25 MR. MYHRE: And the witness is drawing with a zig-zag

1 line an area on the image approximately right center of the
2 image of the northbound bridge.

3 BY MR. MYHRE:

4 Q. You describe it as a crack. Is it a crack that goes all
5 the way through the barrier or partially through?

6 MR. LEVENTHAL: Objection. Speculation.

7 BY MR. MYHRE:

8 Q. Based on your review of this image, are you able to
9 determine where -- whether this crack goes all the way through
10 the barrier or partially through the barrier?

11 A. I don't think it goes all the way through the barrier.

12 MR. LEVENTHAL: Objection. Speculation.

13 THE WITNESS: It --

14 BY MR. MYHRE:

15 Q. Based on your review of the image, what's your --

16 A. It does not go all the way through the Jersey barrier.

17 THE COURT: I don't know what that means. "Through."
18 You mean all the way down or all the way across the width of
19 it?

20 MR. MYHRE: Thank you, Your Honor.

21 BY MR. MYHRE:

22 Q. Looking at the area you've circled as the gap to the -- do
23 you see that, where I've circled it (indicating)?

24 A. Yes.

25 Q. Okay. Now, you've described the crack as -- from the

1 viewer's vantage point here, as to the right or to the west of
2 the gap; correct?

3 A. Yes.

4 Q. You've described that generally right in this area
5 (indicating); correct?

6 A. Yes.

7 Q. Drawing.

8 Comparing -- does this gap go all the way through the
9 barrier?

10 A. Yes, it does.

11 Q. In other words, someone on the other side, on the south
12 side of that barrier can look through that gap and look north;
13 correct?

14 A. Yes.

15 Q. Can someone sitting on the -- from your observation of
16 these videos and your photographs, can someone sitting on the
17 south side of that barrier view north going through that line
18 I've just drawn (indicating), see where the crack is?

19 A. No.

20 MR. MYHRE: Your Honor, is there still an objection?
21 I'm not sure if there is.

22 MR. LEVENTHAL: Objection has been withdrawn --

23 THE COURT: Okay. Thank you.

24 MR. LEVENTHAL: -- based on the answer.

25 MR. MYHRE: Thank you.

1 If we could go to Slide 46, please.

2 (Exhibit 182-46 published.)

3 BY MR. MYHRE:

4 Q. Now, this is -- again, this is derived from Exhibit 195;
5 correct?

6 A. Yes.

7 Q. And where was 195 derived from?

8 A. This is another Jim Urquhart photograph. This was located
9 on Reuters.com on one of their articles.

10 Q. You derived the time stamp at 12:22 p.m.; correct?

11 A. Yes.

12 Q. And how did you derive the time?

13 A. By the other activities that are taking place in the
14 background of this photograph, including Trey Schillie pointing
15 to Eric Parker. He would take a photograph soon after this was
16 captured.

17 Q. And in the previous slide we just saw, was the Flynn
18 video; correct?

19 A. Yes.

20 Q. Which was time stamped?

21 A. Yes.

22 Q. And Mr. Schillie appears in that; correct?

23 A. That's correct.

24 Q. And just circle Mr. Schillie here for us, please.

25 A. (Witness complies).

1 MR. MYHRE: Witness circling on Exhibit 182-46 about
2 center top portion of the image identifying as Mr. Schillie.

3 BY MR. MYHRE:

4 Q. And what do we see depicted in the foreground of this
5 image at 182-46?

6 A. Eric Parker in the prone position on the northbound I-15
7 bridge with his rifle pointed between the gap in the Jersey
8 barrier facing north towards the BLM officers.

9 Q. And this was the gap that you identified in the previous
10 screen at 182-45?

11 A. Yes.

12 Q. This is approximately the same time or is it later in time
13 than the previous one?

14 A. This would have been at approximately the same time.

15 Q. Also, just to clarify, does Mr. Gurgeon appear in this
16 image as well?

17 A. Yes. He's in the far background. He has his pale-colored
18 yellow shirt on (indicating).

19 MR. MYHRE: Witness circling another image behind
20 Mr. Schillie and to the right of Mr. Schillie. Right center
21 portion of the screen.

22 May we go to Slide 47, please.

23 (Exhibit 182-47 published.)

24 BY MR. MYHRE:

25 Q. This also is at 12:22 p.m.; correct?

1 A. Yes.

2 Q. And this is from Exhibit 153?

3 A. Yes.

4 Q. This is the photo taken by Mr. Schillie?

5 A. Correct.

6 Q. Who we saw in the previous image?

7 A. Yes.

8 Q. And what is depicted at the image at Exhibit 47, 182-47?

9 A. Eric Parker is in the foreground prone with his rifle
10 pointed between the gap in the Jersey barrier facing north
11 towards the BLM officers. Number of people down from him is
12 Scott Drexler, which is labeled. He's kneeling against the
13 Jersey barrier. The woman in black from Citizens Action
14 Network and Jim Urquhart are both in this photograph.
15 Jim Urquhart is with the blue shirt looking down kneeling and
16 the woman from Citizens Action Network with the dark hair or
17 the black shirt, she's leaning over the Jersey barrier
18 appearing to be taking a photograph.

19 Q. And if you would circle those individuals for us.

20 A. Citizens Action Network (indicating). Jim Urquhart
21 (indicating).

22 MR. MYHRE: Witness has drawn a circle around two
23 images approximately center of the screen; one wearing a blue
24 shirt, one wearing a black shirt -- or black clothing.

25 ///

1 BY MR. MYHRE:

2 Q. Now, in this image, from the viewer's perspective, which
3 direction are we facing?

4 A. West.

5 Q. In the previous image we were facing which direction?

6 A. East.

7 Q. So we just have an opposite view; correct?

8 A. Yes.

9 Q. Now, in this image, you've labeled someone as Mr. Drexler?

10 A. Yes.

11 Q. You've talked about him?

12 A. Yes.

13 Q. And what is his position?

14 A. He's kneeling on the north side of the northbound I-15
15 bridge looking north towards the BLM officers.

16 Q. And his position relative to Mr. Parker is,
17 direction-wise?

18 A. To his -- to the west -- or to Mr. Parker's left.

19 Q. From Mr. Parker's point of view, his left?

20 A. Yes.

21 MR. MYHRE: If we could go to Slide 48, please.

22 (Exhibit 182-48 published.)

23 BY MR. MYHRE:

24 Q. Slide 48 is from Exhibit 161; correct?

25 A. Yes.

1 Q. And Exhibit 161 was the Citizens Action Network?

2 A. Yes.

3 Q. That was from the person who was dressed in black from the
4 previous slide?

5 A. Yes.

6 Q. You've derived a time of 12:22 p.m.; correct?

7 A. Yes.

8 Q. And you derived that time how?

9 A. Based on the previous photograph from Trey Schillie with
10 the woman in black leaning over the Jersey barrier appearing to
11 take the photograph, but also as in the same -- excuse me --
12 the previous image, the same activity is happening in the
13 background where the silver or gray Dodge truck and there's a
14 gold semitruck with a white trailer, that is passing by, that
15 is also in the previous photograph in the background from the
16 Schillie photograph.

17 Q. So you're able to verify through Schillie and not only
18 from the Citizens Action Network photographer, but also from
19 the vehicles that are portrayed in the Schillie photo?

20 A. Yes, and we'll see also in the following slide where I
21 found that, as an example, in the aerial footage, that truck
22 and that gold semitruck passing by at that location on the
23 bridge.

24 Q. Now, this image, in terms of the time, is approximately
25 the same time as the previous image; correct?

1 A. Correct.

2 Q. But in this image we have a different view -- point of
3 view of Mr. Drexler; correct?

4 A. Yes.

5 Q. Describe for the record what we see in Exhibit 182-48.

6 A. Mr. Drexler is kneeling on one knee. He -- he would just
7 be south of the Jersey barrier on the north side of the
8 northbound I-15 on the bridge. He's looking north over the
9 Jersey barrier, and he has his rifle in front of him in the low
10 ready or slung position.

11 Q. And when you say -- where are his hands relative to the
12 rifle?

13 A. They're both on his rifle.

14 Q. Where is his right hand?

15 A. On the pistol grip of the rifle.

16 Q. Where is his left hand?

17 A. It's on the -- the -- closer to the barrel, the front of
18 the -- the rifle. I can't see his whole hand.

19 THE COURT: All right. Mr. Myhre, it's 10:30. Can
20 we take a quick little break?

21 MR. MYHRE: Oh, yes, absolutely, Your Honor.

22 THE COURT: Morning break?

23 All right. So during this morning break, I do remind
24 the jury please do not discuss this case with each other. You
25 may discuss other things with your fellow jurors, but not this

1 case. And please do not attempt to perform any research or any
2 independent investigation nor read or view or listen to
3 anything that touches upon this case in this way. And please
4 do not form any opinion.

5 We're going to take a -- it's 10:30. We'll take a
6 break until 10:45.

7 Let's stand for the jury. Jury is excused.

8 And Special Agent Willis, after the jury exits the
9 courtroom, then you may also take your break.

10 THE WITNESS: Thank you.

11 THE COURT: And we'll just need everyone back here by
12 10:45.

13 THE WITNESS: Thank you.

14 (Jury excused from courtroom.)

15 THE COURT: All right. Off record.

16 (Recess was taken at 10:32 a.m.)

17 (Outside the presence of the jury at 11:03 a.m.:)

18 COURTROOM ADMINISTRATOR: All rise.

19 THE COURT: All right. Thank you. You may be
20 seated.

21 Can we call in the jury?

22 MR. TANASI: Your Honor?

23 THE COURT: Yes.

24 MR. TANASI: Can we handle one matter outside the
25 presence?

1 THE COURT: Okay.

2 MR. TANASI: It strikes me kind of odd. The jury, I
3 don't know if Your Honor noticed, there appear to be several of
4 them dressed in red today. And I don't know if that was just
5 complete coincidence or if it was some kind of planned event.
6 And so, I've got, you know, the numbers listed that are dressed
7 in red. I mean, there's two who are also, they have kind of
8 like black, but they have flower -- flowery print on them that
9 also has red. And so, my concern is this:

10 Your Honor has instructed them numerous times, every
11 time they leave, that they're not to deliberate or make up
12 their minds until the end of the case. When I see a group
13 largely comprised of red, you know, I kind of go the
14 pessimistic route and tend to think that they've already got
15 their mind made up. So, I think the right potential solution
16 is to ask each one of them why they're wearing red today. You
17 know, not to ask just one, because, again, they are all wearing
18 red and so, we can't just rely necessarily on one answer.

19 I know it's time consuming and I know, that's right,
20 we've seen other days, and I don't have the days, where they've
21 worn, I think, blue, and green, and I think Mr. Leventhal had
22 made that -- made a comment to that effect once before and
23 brought that to the Court's attention.

24 So, it's -- again, you know, to me, it -- it seems as
25 though, potentially, they've formed some kind of team. What

1 team they've formed, what decision they've made, I don't know,
2 but I think we need to find out.

3 THE COURT: So what's your -- is there an objection
4 or . . . I'm not sure I understand the legal basis.

5 MR. TANASI: Okay. Legal basis is, is Your Honor has
6 instructed them every day they're not to deliberate or make up
7 their mind until the end of the case. And so I don't know
8 that they've -- I think they may have already done that in that
9 they're already forming teams with one another and they're
10 wearing the same clothes to make some kind of statement for
11 some purpose, for some reason, I don't know, but, again, I
12 think it cuts against their job to be fair and impartial and
13 their job to make their decision at the end of the case after
14 the presentation of all the evidence. Coming in dressed up as
15 a team runs counter to that.

16 MR. MYHRE: We would object, Your Honor. The
17 Government -- whether they discussed what clothing they wore or
18 whether they didn't discuss what clothing they wore has nothing
19 do with their deliberations. They can talk to one another
20 without deliberating. So, we don't believe that the clothing
21 itself would be indicative of anything; it would just be
22 designed to embarrass the jury at some level and I don't think
23 we should be, you know, putting the jurors on the spot over
24 something as innocuous as what clothing they're wearing.

25 THE COURT: So, the instruction is that they are not

1 to discuss this case. They are permitted to discuss other
2 things, but not this case. So . . . I don't know what my
3 response would be to them if I ask them, "Why are you wearing
4 similar clothing?" and they say, "We got together and decided
5 we wanted to wear similar clothing sometimes," what am I
6 supposed to say to that? "You can't do that"? There's -- I
7 can't tell them they can't do that and I don't know what --

8 MR. TANASI: I think the question would be why.

9 THE COURT: Why not? I don't know. That's -- the
10 question is, what else would I say? Just because you want to
11 get inside the minds of the jurors to find out why they're
12 wearing something -- I mean, it seems to me that they're
13 wearing, I think there was either patterns or Hawaiian. I
14 mean, it's kind of, I think, just for fun and we're just kind
15 of watching them and guessing if they're going to dress up or
16 not from one day to the other and I don't see that there --
17 there's anything that -- like Mr. Myhre said, that we would
18 gain from asking them, except to embarrass them and discourage
19 them from dressing and I -- and it's not really anything
20 they're not allowed to do. So, I'm not sure what I would . . .
21 is it just the color red today. Is that the problem?

22 MR. TANASI: It is.

23 THE COURT: Because we saw blue before. We saw green
24 before. We saw either -- and I'm not sure because I was trying
25 to guess, is it flowers, or patterns, or I think at one point

1 there was either gray or flowers. You know, I -- I think -- I
2 don't mind asking them; I just don't know what the purpose of
3 that would be, other than to embarrass them and dissuade them
4 from doing that.

5 MR. TANASI: That's not the purpose. I have no
6 desire to embarrass them either. I'm trying to convince them
7 to go my way in the same way that Mr. Myhre is as well. It's
8 certainly not designed to embarrass them; it's just designed to
9 figure out if they've already reached a conclusion.

10 And I can just list for the record, Your Honor, the
11 numbers that I've noticed. Number 3, Number 4, Number 5,
12 Number 7, Number 8, 9, 10, 11, 13, and 15 all appear to have
13 red, and the red floral would be Juror No. 1, Juror No. 6.

14 THE COURT: All right. Juror No. 12 always wears
15 either a black dress shirt or a creamy off-white could be light
16 yellow dress shirt and I think I've seen him wear one more
17 other dress shirt. Could be someone who just wears uniforms at
18 work and so doesn't really have a lot of dressy clothes, but he
19 does wear -- he does at least wear a dress shirt with a
20 collar -- you know, long sleeve, and button down and all that.

21 Juror No. 2, I think is the one I'm thinking of,
22 always wears that big, long, gray sweater that goes all the way
23 down to your knees, sort of like a '60s style long-sleeved gray
24 sweater.

25 It's not indicative to me just because they're

1 wearing clothing of a particular color or style or some kind of
2 theme once in awhile -- I haven't seen it more than once a
3 week -- it's not indicative to me that they're talking about
4 the case or disobeying any of the Court's admonitions, so, I'm
5 not going to ask them any questions.

6 MR. TANASI: Understood. Thank you.

7 THE COURT: I just don't know what I would say.

8 Because they'll say, "Oh, are we not supposed to wear
9 it?" and I can't say, "No, you're not supposed to talk to each
10 other about clothes, you're not supposed to" -- they'll think,
11 "Well, why did she ask us what we were wearing?" you know, then
12 I just -- you know, I don't know what I would do with that.

13 All right. So, but if you want to make a record that
14 it's happening, I think that's clear and I don't think anybody
15 disagrees, although I haven't seen it more than once a week.

16 All right. So, for example, another case that we
17 have is a motorcycle gang case where they actually have a team
18 color. So I guess if the jury was wearing that color or
19 wearing a rival motorcycle gang color, then that would to see
20 be something more indicative of something that we would need to
21 talk about and maybe question, but . . .

22 MR. MYHRE: Right, Your Honor. There's been no
23 evidence in this case that colors are particularly relevant to
24 anything, to affiliations with any particular organization or
25 anything of that nature. So, again, our position is, is that

1 it indicates nothing other than perhaps they talk about what
2 they're going to wear the next day, which is not impermissible.

3 THE COURT: All right. So let's go ahead then and
4 move on and not waste any more time. It's already 11:12.

5 Aaron, can you please go get the jury?

6 COURTROOM ADMINISTRATOR: Yes, Your Honor.

7 (Brief pause in proceedings.)

8 COURTROOM ADMINISTRATOR: All rise.

9 (Jury returned to courtroom at 11:14 a.m.)

10 THE COURT: All right. Jury may be seated, and we
11 have Special Agent Willis back on the stand.

12 So, Mr. Myhre, you may continue with your
13 direct-examination.

14 MR. MYHRE: Thank you, Your Honor.

15 If we could move to -- I think we finished with
16 Slide 48, Agent Willis. If we could move to Slide 49, please.

17 (Exhibit 182-49 published.)

18

19 FURTHER DIRECT EXAMINATION OF JOEL WILLIS

20 BY MR. MYHRE:

21 Q. Slide 49 appears to be an image, again, from Exhibit 17;
22 is that correct?

23 A. Yes.

24 Q. That's the aerial surveillance aircraft?

25 A. Yes, it is.

1 Q. You've time stamped this 12:23 based on the time in the
2 image itself; correct?

3 A. Yes.

4 Q. What do we see depicted at Slide 49?

5 A. As is pointed out, Eric Parker, you could see from the
6 aerial. Also, based on the backside of the bridge, you could
7 see the pillars so that he would be in the gap between the
8 Jersey barriers above the west pillars of the northbound I-15
9 bridge and just to show you his line of sight or the line of
10 sight to the law enforcement officers on the other side of the
11 cattle gate.

12 Q. For record purposes, you've depicted Mr. Parker's position
13 as you've identified it by his name on the image itself;
14 correct?

15 A. Yes.

16 Q. You've put that there; correct?

17 A. Yes.

18 Q. The position where you've indicated his location, is
19 that -- in what -- where is that located with respect to the
20 gap that we saw in the previous slides?

21 A. He is just to the south or behind that gap on the
22 northbound I-15.

23 Q. Has he moved position from the previous slide?

24 A. No, he has not.

25 Q. And off to the right, we see some vehicles. And what are

1 those vehicles there?

2 A. Those are BLM vehicles.

3 Q. And if you'd circle those for us, please.

4 A. (Witness complies).

5 Q. And that's where the law enforcement officers are located?

6 A. Yes.

7 Q. And 12:23, just describe generally the position of the
8 people opposite of the law enforcement officers' position.

9 A. Most of them are still moved up against the cattle gate.
10 You see a number of them in a group that have moved back and to
11 the east side of the wash.

12 Q. Are they -- with respect to the southbound bridge, where
13 are they located?

14 A. The majority of them are underneath the southbound bridge.

15 Q. And the southbound bridge is located in the middle of this
16 image?

17 A. Yes.

18 MR. MYHRE: Clearing that.

19 If we could move to Slide 50, please.

20 (Exhibit 182-50 published.)

21 BY MR. MYHRE:

22 Q. Slide 50 is derived from Exhibit 158; correct?

23 A. Yes.

24 Q. This was an image that Agent Swanson addressed when he
25 testified; is that correct?

1 A. That's correct.

2 Q. You've derived a time of 12:25 p.m.?

3 A. Yes.

4 Q. That's approximately 2 minutes later in time than the
5 previous slide?

6 A. Yes.

7 Q. You have some names that you've inscribed on this image as
8 well; correct?

9 A. Yes.

10 Q. If you could just describe for us, generally, what we see
11 in this image?

12 A. There's a number of BLM and National Park Service officers
13 . . . it's actually in front of a BLM vehicle, which is facing
14 north. So they would be behind the vehicle if you were in the
15 wash. In the background is the northbound I-15 bridge and I
16 have pointed out there where Scott Drexler would be kneeling
17 down behind the Jersey barrier and the location and the gap in
18 the Jersey barrier where Eric Parker would be prone at this
19 time.

20 Q. So, from the viewer standpoint, which direction are we
21 looking?

22 A. This would be south.

23 Q. And we're looking at the northbound?

24 A. Yes.

25 Q. And this is from the point of view of the law enforcement

1 officers on the ground?

2 A. Yes.

3 Q. This time stamp of 12:25, how was that derived?

4 A. This is from -- I -- BLM officer Salvatore Nieblas and his
5 photographs were time stamped.

6 Q. So it's from the metadata embedded in the photograph?

7 A. Correct.

8 Q. Now, where you've indicated the images of where Mr. Parker
9 and Mr. Drexler are located, with respect to Mr. Parker, has
10 his position changed from the previous photograph?

11 A. No.

12 Q. With respect to Mr. Drexler, has his position changed?

13 A. No.

14 MR. MYHRE: If we could move to Slide 51, please.

15 (Exhibit 182-51 published.)

16 BY MR. MYHRE:

17 Q. Slide 51 is derived from Exhibit 33A; correct?

18 A. Yes.

19 Q. Again, that's the Madsen video?

20 A. Yes.

21 Q. So the time stamp of 12:26 p.m. was derived from the
22 Madsen screenshot here; correct?

23 A. Yes.

24 Q. This is approximately 1 minute later in time; correct?

25 A. Correct.

1 Q. What do we see depicted on image 182-51?

2 A. On the left side of the image is Ricky Ray Lovelien and he
3 is standing to the left of Todd Engel who is further east down
4 the I-15 -- northbound I-15. Todd Engel is kneeling. To
5 Lovelien -- Mr. Lovelien's left, there's a gentleman with a
6 white shirt and a hat on and a woman in a light blue or
7 white-almost shirt is passing walking behind that individual
8 and Ricky Lovelien.

9 Q. And what is the significance of the individual in the
10 white?

11 A. It is used to time stamp the next photograph that does not
12 have metadata.

13 Q. Is that individual in white, is that -- is that person
14 carrying anything, to your knowledge?

15 A. A camera, it appears.

16 Q. Now, with respect to Mr. Lovelien's position, in which
17 direction, if any, does he appear to be facing?

18 A. North.

19 Q. North?

20 A. Yes.

21 Q. And we're on the northbound bridge?

22 A. Yes.

23 Q. And would you describe, for the record, Mr. Engel's
24 position?

25 A. He's kneeling, also facing north, looking over the Jersey

1 barrier.

2 Q. From Mr. Lovelien's standpoint, point of view, is he to
3 the right or left of Mr. Lovelien?

4 A. To Mr. Lovelien's right.

5 MR. MYHRE: And if we could have the next slide in
6 order, 52.

7 (Exhibit 182-52 published.)

8 BY MR. MYHRE:

9 Q. Now, 52 is derived from Exhibit 66; is that correct?

10 A. Yes.

11 Q. And what is Exhibit 66?

12 A. It is a photograph that was found on Ricky Ray Lovelien's
13 Facebook page that he posted or shared linked to his Facebook
14 page.

15 Q. From the viewer's point of view, in which direction are we
16 facing?

17 A. West.

18 Q. And what is depicted in the image at Exhibit 182-52?

19 A. So this would be the opposite view of the previous
20 photograph and actually, in the previous photograph, the -- the
21 woman in black that we had discussed earlier from Citizens
22 Action Network, you could see her stop and hold up a camera.
23 She's taking this photo facing west of Todd Engel in the
24 foreground kneeling with his rifle looking over the Jersey
25 barrier, Ricky Ray Lovelien to his left, further west down the

1 road. The individual with the white shirt and the hat, and if
2 you look over or just in front of Ricky Ray Lovelien's chest,
3 in front of his vest, you could see the left shoulder of the
4 woman with the light blue shirt passing by at this time.

5 Q. Now, the time stamp of 12:26 was derived from the previous
6 photo?

7 A. Correct.

8 Q. Again, Mr. Engel's position in this image?

9 A. Kneeling.

10 Q. And Mr. Lovelien's position?

11 A. Standing.

12 Q. And in his right hand, does he appear to be holding
13 something?

14 A. Yes. He's holding a rifle, and you can see the barrel
15 down below Todd Engel's forearm. You can see the tip of the
16 barrel.

17 Q. And are they in the same relative position as they were in
18 the previous slide?

19 A. Yes.

20 MR. MYHRE: If we could move to Exhibit 182-53,
21 please.

22 (Exhibit 182-53 published.)

23 BY MR. MYHRE:

24 Q. Now, this is from Exhibit 169D; is that correct?

25 A. Yes.

1 Q. And 169D was the -- from -- derived from the PBS Frontline
2 video?

3 A. Correct.

4 Q. You've time stamped this at 12:26 p.m.; correct?

5 A. Yes.

6 Q. How did you derive the time?

7 A. Based on the next slide, which is a screenshot from
8 Hugh Gourgeon's -- one of Hugh Gourgeon's videos, well,
9 Hugh Gourgeon's videos are not time stamped, but in that video
10 I could time stamp that video by the aerial. So, kind of
11 working backwards from the aerial what's going on, comparing
12 that to the Hugh Gourgeon photograph, and then compare it to
13 this one, the activity is relatively generally the same as
14 what's occurring in this photograph.

15 Q. With respect to what -- what do we see depicted in this
16 image?

17 A. Scott Drexler, which is labeled. He has a tactical vest
18 on. His dark-colored blue shirt. His faded tan or brown hat.
19 He's holding his rifle with his left hand on the -- the front
20 hand guard of the rifle.

21 Q. Now the last image we saw of direct-examination was at 48;
22 correct, in your time line?

23 A. Yes.

24 Q. And that was at 12:22 p.m.; correct?

25 A. Correct.

1 Q. This is approximately 4 minutes later?

2 A. Yes.

3 Q. Is Mr. Drexler in the same or a different position, if you
4 can tell, from Exhibit 182-48?

5 A. In general, the same position on the bridge, the
6 northbound bridge.

7 MR. MYHRE: Just for purposes of reference, if we
8 could go back to Slide 48 for just a moment.

9 (Exhibit 182-48 published.)

10 BY MR. MYHRE:

11 Q. And this was the image that we saw at 12:22; correct, at
12 Slide 48?

13 A. Yes.

14 MR. MYHRE: And if you could move toward to 53.

15 (Exhibit 182-53 published.)

16 BY MR. MYHRE:

17 Q. And this is his position at 12:26?

18 A. Yes.

19 MR. MYHRE: And if we could have the next slide,
20 please.

21 (Exhibit 182-54 published.)

22 BY MR. MYHRE:

23 Q. At 12:26 p.m. -- excuse me. At 182-54, this slide you've
24 time stamped it the same time, 12:26 p.m.; correct?

25 A. Correct.

1 Q. You referenced this image at 182-54 as assisting you in
2 time stamping the previous image; correct?

3 A. Yes.

4 Q. And if you would, tell us, first of all, Exhibit -- this
5 is from Exhibit 24; correct?

6 A. Yes.

7 Q. What was Exhibit 24?

8 A. So as it says, after Exhibit 24, this is a screenshot. So
9 this is actually a still shot taken from a video. In the
10 video, which is only a few seconds long, you can see -- well,
11 there's an individual on the right side of the shot. He's
12 walking towards the cameraman, but on the left, you see
13 vehicles passing by, including a white colored it looks --- I
14 think it was a Ford Excursion, like SUV. Right behind that is
15 a dark sedan and then right behind that is a red semitruck that
16 you could see the front of. And I used that activity and those
17 vehicles moving slowly on I-15 to time stamp this based on the
18 aerial footage.

19 Q. And Exhibit 24 was the video from Mr. Gourgeon?

20 A. That's correct.

21 Q. In this image, we see two defendants; correct?

22 A. Yes.

23 Q. And who have you identified there?

24 A. Eric Parker, who is in a prone position, with his rifle
25 pointed between the gap in the Jersey barrier facing north and

1 Scott Drexler kneeling, looking over the top of the Jersey
2 barrier to Mr. Parker's left.

3 Q. Is Mr. Drexler in the same relative position on the bridge
4 as he was in the previous image depicted at 53?

5 A. Yes.

6 Q. And it's about the same time; correct?

7 A. About -- about -- yeah. Approximately the same time.

8 Q. So at this time, at 12:26, this image shows us the
9 relative position of Mr. Parker compared to Mr. Drexler?

10 A. Yes.

11 MR. MYHRE: And if we could move to Slide 55, please.

12 (Exhibit 182-55 published.)

13 BY MR. MYHRE:

14 Q. Slide 55 is from Exhibit 17 as you've indicated; correct?

15 A. Yes.

16 Q. That's the aerial surveillance aircraft?

17 A. Yes.

18 Q. The time stamp is 12:26 p.m.; correct?

19 A. Yes.

20 Q. And what is depicted in this image?

21 A. In the foreground we could see the law enforcement
22 vehicles, the BLM vehicles and where they're lined up,
23 including push -- or -- I'm sorry -- move -- their location
24 closer to the cattle gate. We see southbound I-15, the
25 individuals in the wash, but on northbound I-15, as I mentioned

1 earlier or in the previous slide -- and may I circle the
2 vehicles?

3 Q. These are vehicles you used to assist you in time
4 stamping?

5 A. Yes.

6 Q. Yes.

7 A. The white Ford Excursion (indicating) followed by the dark
8 sedan (indicating) followed by the red semitruck with the white
9 trailer (indicating).

10 Q. And those are later -- those are depicted in the Gourgeon
11 video?

12 A. Yes.

13 Q. The video that we saw the screenshot on the previous
14 slide?

15 A. Yes.

16 MR. MYHRE: And the witness -- the record should
17 reflect the witness has drawn a circle around vehicles he's
18 identified on the northbound bridge headed east about the right
19 upper quadrant of the image.

20 Clearing that.

21 BY MR. MYHRE:

22 Q. Does this image then depict, generally, the position of
23 the people in the wash relative to Mr. Parker and Mr. Drexler
24 at 12:26 p.m.?

25 A. Yes.

1 Q. As well as the law enforcement vehicles?

2 A. Yes.

3 MR. MYHRE: If we could move to Slide 56, please.

4 (Exhibit 182-56 published.)

5 BY MR. MYHRE:

6 Q. Slide 56 was derived from Exhibit 25; correct?

7 A. Yes.

8 Q. And that was from Mr. Gourgeon?

9 A. Yes.

10 Q. Is that a video or a still?

11 A. Yes. This is another video as it says. There's a -- this
12 is a screenshot of his video.

13 Q. This is time stamped at 12:29 p.m.; correct?

14 A. Yes.

15 Q. How did you derive that time?

16 A. In the following slide, that is a Gourgeon photograph
17 which is time stamped through the metadata. It's a very
18 similar image. However, in this image is a wider field of view
19 so we could see, as we -- as I had stated earlier, the
20 individuals from the Arizona State Militia in the camouflage
21 gear that are on the northbound I-15 embankment. Scott Drexler
22 is in the foreground on the -- on the lower right of the image
23 in the prone position with his rifle pointed between the gap in
24 the Jersey barrier.

25 Q. So this is approximately 3 minutes later in time than the

1 previous image; correct?

2 A. Yes.

3 Q. Now, you mentioned Arizona State Militia individuals. If
4 you would circle them on this image, please.

5 A. (Witness complies).

6 MR. MYHRE: Record should reflect circling three
7 images top left quadrant of the image at 182-56.

8 BY MR. MYHRE:

9 Q. You described them as on the northbound. Are they in the
10 opt-out or southbound?

11 A. They're in the southbound skirt.

12 Q. They're in the southbound skirt. And with respect to the
13 law enforcement vehicles near the southbound, where are they
14 relative to that position?

15 A. They would just be to the southeast of where the law
16 enforcement vehicles would be, but above them, in the elevated
17 position.

18 Q. Now, you've identified Mr. Drexler in this image?

19 A. Yes, I have.

20 MR. MYHRE: The record should reflect I've cleared
21 the circle.

22 BY MR. MYHRE:

23 Q. What -- describe Mr. Drexler's position in this image.

24 A. He's in a prone position and he has his rifle pointed
25 between the gap in the Jersey barriers and there's a water

1 bottle in the -- stuck in that gap above his rifle.

2 MR. MYHRE: Now, if we could go back to Image 54,
3 please.

4 (Exhibit 182-54 published.)

5 BY MR. MYHRE:

6 Q. Is Mr. Drexler's position in Slide 56 the same or
7 different than that in Slide 54?

8 A. It is different.

9 Q. Has he moved?

10 A. Yes. He's moved east down the I-15 -- the northbound I-15
11 bridge and he is now in the -- with his rifle in the next gap
12 in the bridge to the east of where Mr. Parker is, but now
13 Mr. Drexler is in -- he's in the middle of the bridge, where
14 Mr. Parker is more to the west side of the bridge.

15 Q. If you would, on Slide 54, would you draw an arrow,
16 please, in the direction Mr. Drexler moves.

17 A. (Witness complies).

18 MR. MYHRE: Witness is drawing an arrow pointing to
19 the right side of the screen which he's identified as to the
20 east.

21 Clearing that.

22 If we could move back to Slide 56, please.

23 (Exhibit 182-56 published.)

24 BY MR. MYHRE:

25 Q. This is 3 minutes later in time; correct?

1 A. Yes.

2 Q. And, again, for record purposes, Mr. Drexler, in this
3 image, is facing in which direction?

4 A. North.

5 Q. In which direction is his weapon pointed?

6 A. North.

7 Q. And relative to the three Arizona State Militia people in
8 the upper left-hand corner, which -- in which direction is
9 Mr. Drexler?

10 A. To their south.

11 MR. MYHRE: If we could have the next slide, at 57,
12 please.

13 (Exhibit 182-57 published.)

14 BY MR. MYHRE:

15 Q. This appears to be a very similar image to the one we saw
16 in 56; correct?

17 A. Yes.

18 Q. That was derived from Exhibit 142?

19 A. Yes.

20 Q. An image from Mr. Gourgeon?

21 A. Correct.

22 Q. Did you use this image to assist you in time stamping the
23 previous image?

24 A. Yes, I did.

25 Q. And this time stamp is at 12:29 p.m.; correct?

1 A. Correct.

2 MR. MYHRE: And to Exhibit 58, please.

3 (Exhibit 182-58 published.)

4 BY MR. MYHRE:

5 Q. Now Exhibit 58 is from Exhibit 51; correct?

6 A. Yes.

7 Q. And 51 was derived from where -- from where?

8 A. Is a Bundy Ranch Standoff photo album on the Facebook page
9 of Eric Dahlen.

10 Q. This was on Mr. Dahlen's Facebook page?

11 A. Yes.

12 Q. Is Mr. Drexler in the same basic position as he was in the
13 previous image?

14 A. Yes.

15 Q. And did this image -- how did you derive the time stamp?

16 A. Based on the two previous images, it's generally the same
17 activity taking place in this image and including Mr. Drexler's
18 location, but also my knowledge of where he is in that gap, the
19 characteristics of the Jersey barrier, and also the water
20 bottle that's stuck in between the gap in the Jersey barrier
21 there.

22 MR. MYHRE: If we could have Slide 59, please.

23 (Exhibit 182-59 published.)

24 BY MR. MYHRE:

25 Q. Now, Slide 59 is from Exhibit 143; correct?

1 A. Yes.

2 Q. 143 was an image you obtained from Mr. Gourgeon?

3 A. Yes.

4 Q. So the time stamp was derived how?

5 A. From his metadata.

6 Q. This is at 12:29 p.m.; correct?

7 A. Yes.

8 Q. This is where in relationship to Mr. -- well, first of
9 all, what is depicted in the image at 182-59?

10 A. Eric Parker is in a prone position on the northbound I-15
11 bridge facing north with his gun between the gap in the Jersey
12 barrier. Now his hat with the white emblem is turned
13 backwards. He's improved his shooting position by now he's
14 leaning on a backpack or laying on a backpack on the asphalt.
15 Steven Stewart is to his right. He's standing, appears to be
16 looking north over the Jersey barrier and his rifle is leaning
17 up against the Jersey barrier in front of him just in front of
18 his right leg. You could see the stock of his gun.

19 Q. And you've indicated in -- on the exhibit the individuals
20 you have identified as Mr. Parker and Mr. Stewart; correct?

21 A. Yes.

22 MR. MYHRE: If we could go back to Slide 54, please.

23 (Exhibit 182-54 published.)

24 BY MR. MYHRE:

25 Q. 54 was 12:26 p.m.; correct?

1 A. Correct.

2 Q. Mr. Parker's depicted in this image; right?

3 A. Yes.

4 Q. In which direction is his hat faced in this image?

5 A. It's forward.

6 Q. And with respect to his position on the northbound, does
7 he have anything that -- underneath his elbow in this image?

8 A. Just his hand at this point.

9 Q. And just for record purposes, his left hand appears to be
10 under his right elbow?

11 A. Yes.

12 MR. MYHRE: Now, if we could move to 59, please.

13 (Exhibit 182-59 published.)

14 BY MR. MYHRE:

15 Q. So this is approximately 3 minutes later; correct?

16 A. Yes.

17 Q. And you've described that now, under his right elbow,
18 appears to be what?

19 A. A backpack.

20 Q. And his hat appears to be in what direction?

21 A. Backwards.

22 Q. Mr. Drexler's not depicted in this image; correct?

23 A. No, he's not.

24 Q. And we saw him at 12:26 in the previous image. Is he in
25 that same position or is he moved?

1 A. Are you speaking of Mr. Drexler or Eric Parker?

2 Q. Mr. Drexler was depicted in Image 54; correct?

3 A. Yes. He -- at this point, he has moved. This is -- he
4 would be to Mr. Parker's right, further east down the bridge.

5 Q. Okay. So, from Mr. Parker's point of view, Mr. Drexler is
6 to his right or to his left?

7 A. To his right.

8 Q. And is he to Mr. Stewart's right or left from
9 Mr. Stewart's point of view in this image?

10 A. To his right.

11 MR. MYHRE: If we could move to Slide 60.

12 (Exhibit 182-60 published.)

13 BY MR. MYHRE:

14 Q. Slide 60 is derived from Exhibit 17; correct?

15 A. Yes.

16 Q. Which is, again, the aerial --

17 A. Yes.

18 Q. -- surveillance?

19 A. Yes.

20 Q. So the time of 12:31 stamped there is from the image, the
21 UTC time embedded in the image itself; correct?

22 A. Yes.

23 Q. What is depicted at 182-60?

24 A. In the foreground is the northbound I-15 bridge. You see
25 the people standing on the north side of northbound I-15

1 bridge. Traffic on both northbound and southbound I-15. The
2 people in the wash, along with the people on horseback, and as
3 is labeled, Scott Drexler in his gap that he is at at this
4 point, which is in the middle of the bridge, where Eric Parker
5 would be above the west side pillars on the bridge and then
6 also labeled is Ricky Ray Lovelien who, at this point, would be
7 a number of yards in front of the NHP vehicles, but he is
8 sitting on the Jersey barriers and at this point he would have
9 had his rifle on his lap or on his legs.

10 Q. So, let's walk through a couple of these things. First of
11 all, are the BLM law enforcement vehicles depicted in this
12 image?

13 A. Yes, they are. There's a few of them that are difficult
14 to see.

15 Can I point those out?

16 Q. If you would, the vehicles that are closest to the people
17 that are depicted in this image as being under the bridge.

18 A. These are the front of the -- two of the BLM vehicles
19 (indicating) and I also know that by the fact that they are on
20 an asphalt raised area in the wash that -- that -- it goes in
21 here (indicating) and then comes down this way (indicating),
22 but you could see the fronts of those vehicles. So, the
23 forward most to the cattle gate BLM vehicles are not hundred
24 percent viewable in this image.

25 MR. MYHRE: So, the witness has circled just below

1 the southbound bridge, about the left -- upper left quadrant of
2 the image at 182-60 what appears to be some images of vehicles
3 below -- just depicted below the image of the southbound.

4 Witness has also drawn a line depicting where he
5 observed the asphalt on the other side of that -- the area.

6 BY MR. MYHRE:

7 Q. Where's -- and just for record purposes, can you -- do you
8 see where the fence is located in this image?

9 A. Yes (indicating).

10 MR. MYHRE: Witness is drawing a line through where
11 he's depicted the fence, which is, again, upper left toward the
12 center, left center of the image.

13 BY MR. MYHRE:

14 Q. Now, you've indicated an individual as Ricky Ray Lovelien;
15 correct?

16 A. Yes.

17 Q. Would you explain to the jury how, from this viewpoint,
18 you're able to identify that image as Mr. Lovelien?

19 A. Based on the Madsen dash cam.

20 Q. And how did the Madsen dash cam assist you in identifying
21 this individual as Mr. Lovelien?

22 A. Because I could follow his movements throughout the dash
23 cam. The front of the NHP vehicle is actually right there
24 (indicating), so . . .

25 MR. MYHRE: Witness circling, to the left lower

1 quadrant, an image just off -- just off screen that appears to
2 be the front of a vehicle.

3 BY MR. MYHRE:

4 Q. Is that the Madsen vehicle?

5 A. Yes.

6 Q. So that would be the position that the dash cam was taken
7 from?

8 A. Correct.

9 Q. Now, from Mr. Lovelien's position is -- well, let me ask
10 this question. Is Post 1 depicted in this image?

11 A. No, it is not.

12 Q. Where -- relative to the people that we see in the wash,
13 where is Post 1 relative to that position?

14 A. So, it would have been this way (indicating).

15 MR. MYHRE: Witness drawing an arrow off the left
16 lower quadrant of the image pointed to the left of the screen,
17 which would be in what direction?

18 THE WITNESS: That would be northwest of where
19 Ricky Lovelien would be.

20 BY MR. MYHRE:

21 Q. Now, you talked earlier about where the bridge joins the
22 wash; correct?

23 A. Yes.

24 Q. Joins the . . . the little incline portion there; correct?
25 The skirt?

1 A. Yes.

2 Q. Okay. If you would just circle that point.

3 A. (Witness complies).

4 MR. MYHRE: Witness circling about mid-center, lower
5 center of the screen.

6 BY MR. MYHRE:

7 Q. That is where the bridge meets the skirt; correct?

8 A. Yes.

9 Q. What's the approximate distance -- you described it
10 earlier -- between that position and where Mr. Lovelien is?

11 A. I would say approximately 150 yards.

12 Q. Now, from Mr. Lovelien's position there, is there a line
13 of sight into the wash?

14 A. Yes.

15 Q. Have you been able to determine that line of sight?

16 A. Yes.

17 Q. How have you been able to determine that?

18 A. I've walked on I-15 all throughout that area. I've taken
19 photographs from all sides of the road, from the bridge, from
20 where Mr. Lovelien is, from behind him, and including in --
21 photographs into the wash and of the highway itself.

22 Q. Based on your walking that ground and based on this
23 photograph, what would be the approximate line of sight for
24 Mr. Lovelien from that position depicted at 182-60?

25 A. To the wash?

1 Q. To the wash.

2 A. (Indicating). And again, the BLM vehicles would be on the
3 other side of that -- where the road is covering them right
4 now.

5 MR. MYHRE: So witness has drawn a line with an
6 arrow -- excuse me -- from the position where Mr. Lovelien is
7 toward -- pointed at the vehicles that he earlier circled on
8 the image, which would be to the right and -- actually be to
9 the north and to the east of Mr. Lovelien's position.

10 BY MR. MYHRE:

11 Q. From that position, is -- would an individual be able to
12 see the area where those vehicles are located?

13 MR. LEVENTHAL: Objection. Calls for speculation.

14 BY MR. MYHRE:

15 Q. Based on your being out there and standing in that
16 position?

17 MR. LEVENTHAL: Objection. Same objection. He
18 wasn't out there on the 12th.

19 THE COURT: Overruled. He's already explained that
20 he's been out there and taken pictures from various places to
21 see what the view was, the line of sight view.

22 BY MR. MYHRE:

23 Q. You may answer.

24 A. Yes. Again, with studying the terrain and the fea- -- and
25 the natural features there and knowing where those vehicles are

1 and the features of this asphalt area in the wash, yes. From
2 where he is sitting on the Jersey barrier, he would not only
3 have a vantage point where he would see the NHP and BLM
4 officers behind the vehicles, but he would also be able to see
5 Post 1 and the officers there.

6 Q. You said NHP. Did you mean NPS?

7 A. I'm sorry, NPS. Excuse me.

8 Q. So you -- and you've used the asphalt as your point of
9 reference when you went to the area sometime after this event?

10 A. Yes.

11 Q. Now, the arrow to -- that you've drawn to the left, from
12 that vantage point where you've indicated Mr. Lovelien's
13 position, what can you see looking off to the west?

14 A. I can see Post 1.

15 Q. And Post 1 is just, for record purposes, was the --

16 A. Entrance to the BLM ICP, for the most part.

17 MR. MYHRE: And clearing Exhibit 60.

18 Can we move to 61, please.

19 THE COURT: Can I just clarify? When he says he's
20 using "the asphalt," maybe I don't know what asphalt is. Do --
21 do you mean the street asphalt or do you mean the cement on the
22 skirt?

23 MR. MYHRE: Yes, Your Honor. I could probably do
24 that with the next slide, Your Honor.

25 THE COURT: Okay. Go ahead.

1 (Exhibit 182-61 published.)

2 BY MR. MYHRE:

3 Q. So, turning to 61 -- first of all, again, 61 is
4 Exhibit 17; correct?

5 A. Yes.

6 Q. Again, another aerial shot?

7 A. Yes.

8 Q. This is at 12:32 p.m., about a minute later in time;
9 correct?

10 A. Correct.

11 Q. Now, do -- do you see the area in this image -- do you see
12 the asphalt that you were describing earlier when discussing
13 Exhibit 182-60?

14 A. Yes.

15 May I draw on the screen?

16 Q. You may.

17 A. Okay. So, it actually appears even -- you know, this is a
18 wash. So, but it appears that there, at one point, was a road
19 that went underneath these two bridges. So, this right here
20 (indicating) and into here (indicating) is actually -- it's not
21 cement, it's asphalt where all of -- in this area (indicating)
22 is all washed out, like, very fine powder sand. So, the -- the
23 vehicles that would be on the other side of the bridge right
24 there (indicating), the three BLM vehicles, are actually on
25 asphalt and as I had indicated, the asphalt goes down and kind

1 of cuts in and then goes down. I used that as a point of
2 reference where I was measuring distances and also taking
3 photographs of different vantage points of the defendants on
4 the bridge and on I-15.

5 MR. MYHRE: So the witness, for the record purposes,
6 has drawn two lines, about center upper quadrant -- excuse
7 me -- upper center, rather, of the image encasing or depicting
8 where the asphalt is. He's drawn another line from the
9 viewer's left of those two lines indicating where sand or
10 gravel is located.

11 BY MR. MYHRE:

12 Q. With respect to the asphalt, is that asphalt, is it intact
13 or is it improved or unimproved? How would you describe it?

14 A. It is somewhat intact, but definitely unimproved at this
15 point. It looks very old. It looks like it -- the wash washed
16 out at some point, washing the asphalt out and that is the --
17 what was left of it underneath the bridge and in the wash.

18 Q. From your observation of it, did it appear that it was an
19 area that was used regularly?

20 A. No.

21 Q. By "used," I mean vehicles would traverse this area
22 regularly?

23 A. At some point, I don't know, but definitely not at this
24 point when these images were captured.

25 Q. On the 12th of April?

1 A. Right. Yes.

2 Q. Now, the area where you indicated where there's sand and
3 gravel there, is that -- in terms of elevation, is that lower
4 or higher than where the asphalt is?

5 A. It's lower by two or three feet.

6 MR. MYHRE: Clearing the image.

7 BY MR. MYHRE:

8 Q. Now, in -- what else do we see depicted in Exhibit 182-61?

9 A. As is labeled, this would be Scott Drexler's position in
10 the middle of the I-15 northbound bridge in the prone position
11 where he would have his gun between the gap in the Jersey
12 barriers.

13 Q. Does this image then, from the aerial standpoint, show
14 Mr. Drexler's position relative to the people in the wash at
15 12:32 p.m.?

16 A. Yes.

17 Q. How are you able, from this vantage point, to determine
18 that the individual you've drawn the arrow and the box
19 indicating defendant Drexler, how are you able to determine
20 that that is defendant Drexler?

21 A. Based on the previous images, and also the characteristics
22 of the Jersey barrier which I'm familiar with, having about out
23 there myself. That's how I know that this is Scott Drexler.
24 And at no other time was anybody in a prone position on that
25 bridge that day other than Eric Parker and Scott Drexler,

1 especially in those locations, based on all of my review of the
2 evidence.

3 Q. Were you able to determine -- you said you walked out in
4 that area; correct?

5 A. Yes.

6 Q. Did you go to this position where Mr. Drexler has been
7 indicated?

8 A. Yes.

9 Q. And could you determine a line of sight from this position
10 to the wash?

11 A. Yes. There would have been a direct line of sight,
12 again -- and if I could circle on the other side of the -- on
13 the other side of the bridge (indicating) where the three BLM
14 vehicles would have been parked.

15 MR. MYHRE: Witness circling just upper center of the
16 image at 182-61.

17 BY MR. MYHRE:

18 Q. And if you would draw an arrow of the line of sight from
19 the position where you've indicated Mr. Drexler is located.

20 A. (Witness complies).

21 MR. MYHRE: Witness drawing an arrow from the
22 position of Mr. Drexler to the circle depicting where the
23 vehicles are located.

24 Clearing that image.

25 Can we go to Slide 62, please.

1 (Exhibit 182-62 published.)

2 BY MR. MYHRE:

3 Q. Slide 62 is Exhibit 1 -- is from Exhibit 147; correct?

4 A. Yes.

5 Q. And 147 is an image that you obtained from Mr. Gourgeon?

6 A. Yes. From his Facebook page.

7 Q. So this image was -- the time stamp on this image was from
8 the metadata; correct?

9 A. No. There was no metadata with this photograph, so I used
10 the aerial surveillance footage to time stamp this photograph.

11 Q. And there was no metadata because this was the video;
12 correct?

13 A. There's no metadata because this was captured from
14 Hugh Gourgeon's Facebook page and it was not provided -- after
15 we served a subpoena on Mr. Gourgeon, this photo was not
16 provided, but it was found on his publicly viewable Facebook
17 page.

18 Q. So, how were you able to time stamp this?

19 A. Based on the vehicles, well, specifically one vehicle that
20 is on the southbound I-15 bridge moving on the bridge at this
21 time when this photo was captured.

22 Q. If you would circle that image for us.

23 A. (Witness complies).

24 MR. MYHRE: Witness circling top right quadrant of
25 the image at 182-62.

1 BY MR. MYHRE:

2 Q. It appears to be some sort of truck with -- towing two --

3 A. Like a tandem trailer.

4 Q. Like a tandem trailer.

5 And that's heading southbound in the southbound lane;
6 correct?

7 A. Yes.

8 Q. Now, can -- this is -- going back to the previous image --
9 (Exhibit 182-61 published.)

10 BY MR. MYHRE:

11 Q. The previous image was at 12:32. This one, according to
12 your time stamp, is about 6 minutes later; correct?

13 A. Yes.

14 Q. Has Mr. -- if we could go to 62?

15 (Exhibit 182-62 published.)

16 BY MR. MYHRE:

17 Q. Has Mr. Drexler changed position between 61 and 62 based
18 on your review of these images?

19 A. No. His general position is still the same in the same
20 gap in the middle of the bridge, but he now is resting his arm
21 on a -- what appears to be a blanket, a red blanket.

22 Q. You've talked about his line of sight using the previous
23 image?

24 A. Yes.

25 Q. Is this -- does this image depict his line of sight?

1 A. Yes. He -- he would have had a line of sight to the BLM
2 vehicles in this area (indicating), including the officers
3 behind the vehicles.

4 MR. MYHRE: And witness is circling law enforcement
5 vehicles center -- upper center portion of the image.

6 BY MR. MYHRE:

7 Q. And that's approximately 6 minutes later in time than the
8 previous image; correct?

9 A. Yes.

10 MR. MYHRE: If we could move to Exhibit 63.

11 (Exhibit 182-63 published.)

12 BY MR. MYHRE:

13 Q. Now, Exhibit 63, is, again, is a screenshot; correct?

14 A. Yes.

15 Q. And you used this exhibit to help you time stamp the
16 previous one; correct?

17 A. Correct.

18 Q. Do you see the -- the time stamp on this is 12:38 p.m.;
19 correct?

20 A. Yes.

21 Q. Based on the UTC time embedded in the image?

22 A. Yes.

23 Q. If you could circle the vehicles that you used to assist
24 you in time stamping the previous image.

25 A. (Witness complies).

1 The red semitruck with the tandem trailers.

2 MR. MYHRE: The witness circling left center portion
3 of the -- of the image at 182-53 [sic].

4 And if we could go to Exhibit 64, please.

5 (Exhibit 182-64 published.)

6 BY MR. MYHRE:

7 Q. 64 is in Exhibit 144; correct?

8 A. Yes.

9 Q. And is this -- this is an image from Mr. Gourgeon?

10 A. Yes.

11 Q. So the time stamp was derived how?

12 A. From his metadata.

13 Q. And did this image assist you in time stamping the
14 previous image?

15 A. Yes.

16 Q. Excuse me. The two images ago, at 62?

17 A. Yes, it did assist.

18 MR. MYHRE: Okay. Let's go back to 62.

19 (Exhibit 182-62 published.)

20 BY MR. MYHRE:

21 Q. That's the image to which I'm referring; correct?

22 A. Yes.

23 Q. That's the Facebook page?

24 A. Yes.

25 MR. MYHRE: Now advancing to 64.

1 (Exhibit 182-64 published.)

2 BY MR. MYHRE:

3 Q. So the Gourgeon metadata assisted you in time stamping 62;
4 correct?

5 A. Yes. So this would have been an example of how I used as
6 many sources possible as far as photographs and videos to
7 corroborate the time stamping of each photograph and
8 screenshot.

9 MR. MYHRE: Now if we could go to 65, please.

10 (Exhibit 182-65 published.)

11 BY MR. MYHRE:

12 Q. 65 is derived from Exhibit 29; correct?

13 A. Yes.

14 Q. Is that a Shilaikis video?

15 A. Yes, it is.

16 Q. How did you derive the time?

17 A. Based on the Shilaikis watch time that he is reading out
18 at the beginning of each video.

19 Q. And you've time stamped this at 12:39?

20 A. Yes.

21 Q. This is approximately 1 minute later in time than the
22 previous image?

23 A. Correct.

24 Q. What do we see depicted in the image at Exhibit 182-65?

25 A. This would have been one of the three vehicles that were

1 moved up close to the cattle gate, the BLM vehicles with the
2 people behind it and the people have moved out behind those
3 vehicles so that the vehicles can move out of either the
4 asphalt area or on the side of the asphalt area and they're
5 slowly backing up. You could see this vehicle (indicating) has
6 the lights on the back. It's got the reverse lights on and it
7 is backing up and these people are walking backwards away from
8 the southbound I-15 bridge in the wash.

9 Q. So, in which direction then are they walking or moving
10 relative to the southbound lane?

11 A. They're moving north, but walking backwards.

12 Q. Moving backwards.

13 Do you -- do you see the asphalt depicted in this
14 image?

15 A. Yes. So, this is an example of the asphalt that the truck
16 is actually driving on, the two to three foot drop into the
17 gravel and sand area that would be to the next -- to the right
18 of that asphalt if you were from the vantage point of the truck
19 driver.

20 Q. Just put a line where you see the asphalt.

21 A. (Witness complies).

22 MR. MYHRE: Witness indicating.

23 BY MR. MYHRE:

24 Q. Now, with respect to the backup was -- how many
25 vehicles -- well, first of all, we saw the vehicles -- the

1 three vehicles toward the front nearest to the gate; is that
2 correct?

3 A. Yes.

4 Q. How many of those vehicles -- based on your review of the
5 images, how many of those vehicles backed up?

6 A. Well, one vehicle was facing towards the ICP, so that
7 vehicle moved first, that drove -- and it drove straight. This
8 vehicle would have been the vehicle -- the first vehicle, if
9 you were looking at the vehicles above with the wash being in
10 front, that has backed out of the desert and next to the
11 asphalt and has moved backwards. So, there's still one vehicle
12 at this point that is either still close to the gate or
13 beginning to move back far -- to a closer position to the BLM
14 ICP.

15 MR. MYHRE: So if we could go back to Image 63,
16 please.

17 (Exhibit 182-63 published.)

18 BY MR. MYHRE:

19 Q. This image is about 1 minute earlier in time.

20 A. Yes.

21 Q. So, these are three of the law enforcement vehicles;
22 correct?

23 A. Yes.

24 Q. They're the ones closest to the makeshift gate?

25 A. Yes.

1 Q. So which of these -- are these the vehicles to which you
2 refer when you describe the backing motion?

3 A. Yes.

4 Q. If you would just draw an arrow in the direction that they
5 move.

6 A. (Witness complies).

7 This vehicle would move (indicating). This vehicle
8 would move out backwards (indicating) and would move and that's
9 the vehicle that we saw in the previous slide.

10 MR. MYHRE: So the witness has drawn two arrows
11 paint -- pointed down to the lower right corner of the image.
12 The arrow to the left is the -- drawn to the vehicle the
13 witness described in Exhibit 65 as the vehicle depicted in
14 Image 65; is that correct?

15 THE WITNESS: Yes. Yes.

16 MR. MYHRE: Okay. Now, if -- go back. If you could
17 just go back to 63 again. I'm sorry.

18 (Exhibit 182-63 published.)

19 BY MR. MYHRE:

20 Q. So, were you able to determine how far -- did these
21 vehicles just keep going all the way back to the ICP or did
22 they stop at some point?

23 A. They stop at some point. It seems that they might have
24 ran out of room to be able to back up because there was several
25 other vehicles that also had to pull back from that area and

1 move back to the ICP.

2 Q. So there are -- there are vehicles located behind them;
3 correct?

4 A. Yes.

5 Q. And we'll see those vehicles depicted later; is that
6 right?

7 A. Yes.

8 MR. MYHRE: Okay. Now if we could go back to --

9 THE COURT: Can I just ask, so are you saying the
10 vehicles in Slide 63 are the same as the vehicle in Slide 64?

11 MR. MYHRE: In 65, Your Honor?

12 THE COURT: Yes.

13 MR. MYHRE: Right.

14 THE COURT: Sorry.

15 BY MR. MYHRE:

16 Q. If you could, in Slide 63, circle the vehicle you've
17 identified as being in Slide 64.

18 A. So you could actually see, it's got a white cooler in the
19 truck bed of this vehicle (indicating).

20 MR. MYHRE: And witness is circling the vehicle to
21 the -- to the left.

22 Now if we could just advance to 65.

23 (Exhibit 182-65 published.)

24 THE WITNESS: And that's that vehicle now that has --
25 it has backed up more on to the asphalt, all four tires are now

1 on the asphalt, and it is moving back and the BLM officers and
2 National Park Service officers are walking behind it backwards.

3 THE COURT: Thank you.

4 MR. MYHRE: If we could move to 66, please.

5 (Exhibit 182-66 published.)

6 BY MR. MYHRE:

7 Q. Exhibit 66 is from 168B; correct?

8 A. Yes.

9 Q. 168B was from a Fox report of April 13th, 2014; correct?

10 A. Yes.

11 Q. This is time stamped at 12:40 p.m.?

12 A. Yes.

13 Q. So is this later in time from the previous slide?

14 A. Yes.

15 Q. What is depicted in Image 66?

16 A. This is another line of sight example for Eric Parker.
17 He's in the prone position with his gun pointed between the gap
18 in the Jersey barrier. At this point he's looking to his
19 right. He's looking over his right shoulder, east down to the
20 north side of the northbound I-15 bridge. And the BLM vehicles
21 in the background, you could see, they've now moved back. All
22 of them have moved back slightly, including the last vehicle to
23 move has moved back several yards.

24 Q. Now if you could, first of all, explain how you derived
25 the 12:40 time stamp?

1 A. Based on the aerial surveillance footage.

2 Q. Images derived from the aerial?

3 A. Yes.

4 Q. You've -- you talked about the BLM pullback. Would you
5 indicate with a line the position the -- strike that.

6 Draw a line and then mark it with Number 1 of the
7 position of the vehicles before the pullback.

8 A. Here's that little cut in the -- in the asphalt where they
9 were (indicating) and the last vehicle has moved back 20 yards.

10 Q. Okay. If you would just put a "1" next to that line.

11 A. Next to that vehicle or --

12 Q. No. Next to the line you just drew. A "1."

13 A. (Witness complies).

14 Q. There we go.

15 MR. MYHRE: So we have -- the witness has drawn a
16 horizontal line with the Number 1 next to it about upper center
17 of the image?

18 BY MR. MYHRE:

19 Q. Now if you would draw a line to the position where the
20 vehicles have at this point in time pulled back to and just
21 draw a "2" there.

22 A. (Witness complies).

23 Q. And if you'd just --

24 A. 2 (indicating).

25 Q. There we go.

1 MR. MYHRE: And the witness has indicated a line --
2 another horizontal line above the previous line near -- or
3 under some vehicles that appear in this image with the Number 2
4 indicated therein.

5 BY MR. MYHRE:

6 Q. And Mr. -- you described Mr. Parker's head turned to the
7 right; correct?

8 A. Yes.

9 Q. In which direction would that be facing?

10 A. East.

11 Q. Into -- and are any of the defendants to his right?

12 A. Yes.

13 Q. Who's -- who's to his right?

14 A. Both Steven Stewart and Scott Drexler.

15 MR. MYHRE: Clearing the image at 66.

16 And if we could go to 67.

17 (Exhibit 187-67 published.)

18 BY MR. MYHRE:

19 Q. 67 is from Exhibit 162?

20 A. Yes.

21 Q. 162 was from Reuters; correct?

22 A. Correct.

23 Q. You've time stamped this at 12:40?

24 A. Yes.

25 Q. And how did you time stamp this particular image?

1 A. From the aerial surveillance footage.

2 Q. What -- did you use any vehicles that are depicted in this
3 image to help you do that?

4 A. Yes. This silver Ford SUV (indicating) and there's also
5 a -- it's either a light gray or white truck that's passing by
6 a dark vehicle that is on the shoulder, south shoulder of
7 northbound I-15.

8 MR. MYHRE: And witness has so indicated with two
9 circles drawn left center of the image in 182-67.

10 BY MR. MYHRE:

11 Q. Now, you've indicated all three defendants in this image;
12 correct?

13 A. Yes.

14 Q. If you would describe for us their -- their positions.

15 A. In the foreground is Scott Drexler. He's kneeling. You
16 can see the red blanket that he was using earlier for his
17 forearm. He's drinking out of a jug of water, but he has his
18 rifle resting on his lap.

19 Steven Stewart is to Drexler -- Mr. Drexler's left.
20 He has his rifle in his hands pointed slightly upwards. He
21 appears to be looking north or northwest, but towards the wash
22 area and the people in the wash.

23 And then in the background is Eric Parker, which we
24 had seen in the previous photograph basically -- essentially in
25 the same position. He's looking to his right, but he has his

1 gun pointed between the gap in the Jersey barrier leaning on
2 that backpack.

3 Q. Is there anyone depicted in this image as standing or
4 coming between Mr. Parker's position and Mr. Stewart and
5 Mr. Drexler's position?

6 A. No.

7 Q. With respect to Mr. Stewart, you indicated he's facing
8 northbound?

9 A. Yes.

10 Q. Northward?

11 That would be toward the BLM law enforcement
12 officers?

13 A. That's correct.

14 Q. With respect to his -- his rifle that you've described as
15 him holding, what is his position relative to the barrier in
16 front of him?

17 A. It's above the barrier, the whole rifle.

18 MR. MYHRE: If we could go to Exhibit 68, please.

19 THE COURT: Let's go ahead -- can we go ahead and
20 take our lunch break? It's 12:05.

21 MR. MYHRE: Okay, Your Honor. Thank you.

22 THE COURT: Okay. So, let's go ahead and take our
23 lunch break until 1:05, or probably 1:10. During this lunch
24 break please remember you are not to discuss this case with
25 anyone, not even your fellow jurors, and please also do not

1 permit anyone to discuss the case with you. If you
2 inadvertently hear anything about the case or if someone
3 attempts to speak to you about the case, please remember that
4 it is your duty to advise the Court right away.

5 Also, please do not read or listen to or view
6 anything that touches upon this case in any way nor attempt to
7 perform any research or independent investigation. If you have
8 a question, please go ahead and write it down even if you're
9 not sure if this witness can answer it because we do share the
10 questions with the attorneys so they can still have an idea of
11 what you're wondering about and try to get that information for
12 you so that it can be presented here in court with all the
13 attorneys able to view it and address it with you.

14 And finally, do not form any opinion regarding the
15 issues in this case until after you have heard all the
16 testimony, seen all the evidence. Then I will provide to you
17 the jury instructions of law that will guide you in determining
18 how to apply the facts as you find the facts to be and then
19 you'll hear the closing arguments from counsel with their
20 interpretation of the facts and how they think you should see
21 it and then you will begin your deliberation process. So,
22 until I excuse you to begin that process, you are not to
23 discuss the case nor form any opinions.

24 So we'll go ahead and stand for the jury so they may
25 be excused and start their lunch break.

1 And Sergeant -- Sergeant? Special Agent Willis,
2 after the jury exits, then you may also exit and take your
3 lunch break. We'll just need you back here by 1:10.

4 THE WITNESS: Thank you.

5 (Jury excused from courtroom.)

6 THE COURT: All right. Off record till 1:10.

7 (Recess was taken at 12:08 p.m.)

8 COURTROOM ADMINISTRATOR: All rise.

9 THE COURT: All right. Thank you. You may be
10 seated.

11 So when we took our break, lunch wasn't here yet for
12 the jury so we had to wait a little bit and that's why we're
13 not starting on time. But now, my understanding is, they've
14 gotten their food and they have a chance to eat it and they
15 should be ready to come in?

16 COURTROOM ADMINISTRATOR: Yes, Your Honor.

17 THE COURT: Okay. So, let's go ahead and have them
18 come in.

19 (Brief pause in proceedings.)

20 COURTROOM ADMINISTRATOR: All rise.

21 (Jury returned to courtroom at 1:31 p.m.)

22 THE COURT: All right. Jury may go ahead and be
23 seated and everyone else may be seated afterwards.

24 Welcome back. We're back on the record and we can
25 continue now with direct-examination by the Government of our

1 witness, FBI Special Agent Willis.

2 MR. MYHRE: Thank you, Your Honor.

3

4 FURTHER DIRECT EXAMINATION OF JOEL WILLIS

5 BY MR. MYHRE:

6 Q. Good afternoon, Agent Willis.

7 A. Good afternoon.

8 Q. I think we last were on Slide 68. We had just finished.

9 A. Yes.

10 MR. MYHRE: If we could go to Slide -- start with 68,
11 please.

12 (Exhibit 182-68 published.)

13 And if we could move to Slide 69.

14 (Exhibit 182-69 published.)

15 BY MR. MYHRE:

16 Q. Slide 69 is, again, an aerial shot derived from
17 Exhibit 17; correct?

18 A. Yes.

19 Q. You've time stamped it at 12:41?

20 A. Yes.

21 Q. This is about 1 minute later in time than the previous
22 slide; correct?

23 A. Yes.

24 Q. In this slide you have an arrow indicating to a position
25 labeled "Steven Stewart."

1 Do you see that?

2 A. Yes, I do.

3 Q. What does that indicate?

4 A. That is the position of Steven Stewart at this time. This
5 particular photo I used to time stamp the next photograph at
6 which time you see Steven Stewart squatting down or kneeling
7 down next to Eric Parker who is in the prone position. At this
8 time Eric Parker would be to Steven Stewart's left and
9 Scott Drexler would be to Steven Stewart's right on the bridge.

10 Q. So for finding Mr. Stewart from this vantage point from
11 the aerial, you used the slide to follow as well?

12 A. Yes.

13 Q. And you used the slide to follow -- you used this slide to
14 time stamp the following slide as well?

15 A. Yes. Based on the vehicles that are on the southbound
16 bridge in the middle of this screenshot.

17 Q. If you could just circle those vehicles that you see.

18 A. Specifically, these two vehicles (indicating). There's a
19 white vehicle and then a darker colored vehicle with a travel
20 topper on the roof that you will be able to see in the next
21 photograph.

22 MR. MYHRE: The witness has circled the image of two
23 vehicles approximately center of the image at 182-69.

24 BY MR. MYHRE:

25 Q. And this image shows, again, Mr. Stewart's position

1 relative to the individuals in the wash, people in the wash,
2 and the law enforcement vehicles at 12:41; correct?

3 A. Correct.

4 MR. MYHRE: Clearing that screen.

5 If we could move to Slide 70, please.

6 (Exhibit 182-70 published.)

7 BY MR. MYHRE:

8 Q. This is the slide you described in the previous slide as
9 using the previous slide to time stamp; correct?

10 A. That's correct.

11 Q. And this is at Exhibit 182-70. This is derived from
12 Exhibit 50?

13 A. Yes.

14 Q. And Exhibit 50 is what again?

15 A. It's a David Lee Williamson Facebook page photograph that
16 was on his Bundy Ranch Standoff photo album on his Facebook
17 page.

18 Q. So this -- since it was on Facebook, it didn't have a time
19 stamp with it?

20 A. That is correct.

21 Q. What is depicted in this image at 182-70?

22 A. This shows Eric Parker's line of sight with his rifle
23 through the gap in the Jersey barrier. He's, again, leaning or
24 resting his elbow on the backpack looking north towards the BLM
25 vehicles and officers which you can see have pulled back, some

1 of them quite far back, and one of them just slightly back from
2 their original advanced position closer to the cattle gate.

3 Steven Stewart is kind of crouching down or kneeling
4 on the Jersey barrier. You can see the barrel of his gun
5 resting on the Jersey barrier, and he's looking over the Jersey
6 barrier north towards the BLM.

7 MR. MYHRE: So if we could go back to Slide 67 for a
8 moment.

9 (Exhibit 182-67 published.)

10 BY MR. MYHRE:

11 Q. In this position, in 67, at 12:40, Mr. Stewart is --
12 what's his position?

13 A. He's closer to Scott Drexler at this point.

14 Q. But is he standing? Kneeling? Sitting?

15 A. He's standing.

16 Q. Standing?

17 MR. MYHRE: And moving forward to 170 -- or -- excuse
18 me -- Slide 70. I apologize.

19 (Exhibit 182-70 published.)

20 BY MR. MYHRE:

21 Q. And has Mr. Stewart's position changed from that in 67?

22 A. Yes. He's moved further to the west, closer to
23 Eric Parker and he's now kneeling down.

24 Q. This is approximately 1 minute later in time from the
25 slide we viewed at 67?

1 A. Yes.

2 Q. Now, what you -- can you indicate the vehicles you used in
3 the background to help you time stamp this image?

4 A. Yes. (Indicating).

5 MR. MYHRE: Witness has circled two vehicles that
6 appear in the left -- upper left quadrant of the image at
7 182-70.

8 BY MR. MYHRE:

9 Q. And those, in your observations, correspond to those
10 images we saw in the previous slide?

11 A. Yes.

12 MR. MYHRE: If we could move to Slide 71, please.

13 (Exhibit 182-71 published.)

14 BY MR. MYHRE:

15 Q. Slide 71 is derived from Exhibit 17, the aerial; is that
16 correct?

17 A. Yes.

18 Q. So the time stamp corresponds to what's depicted
19 there?

20 A. Correct.

21 Q. What is depicted in Image 182-71?

22 A. So this is an aerial shot of Eric Parker, Steven Stewart,
23 and Scott Drexler in their -- in the positions that they are at
24 on the northbound I-15 bridge. You can see that Eric Parker is
25 prone. Steven Stewart is now standing and his rifle is leaning

1 against the Jersey barrier. At this point, Scott Drexler is
2 either kneeling or crouching down behind the Jersey barrier.
3 The BLM vehicles have continued to move back further away from
4 the cattle gate and north towards the ICP.

5 Q. And this is about 3 minutes later in time from the
6 previous slide?

7 A. Yes.

8 Q. And you described Mr. Stewart has changed his position?

9 A. Yes.

10 Q. And now he's --

11 A. Standing.

12 Q. Now he's standing?

13 A. Yes.

14 Q. In terms of their position relative to each other, are
15 they essentially in the same position?

16 A. Yes.

17 Q. And this image depicts their position relative to the
18 people in the wash; correct?

19 A. Yes.

20 Q. And just for reference purposes, where are the law
21 enforcement vehicles at this point?

22 A. They're moving out of this particular frame, but you could
23 see in the top left, upper left they're continuing to move
24 north and into the ICP preparing to de-mobilize.

25 Q. Where -- if you could just draw a circle around where you

1 see a law enforcement vehicle.

2 A. (Witness complies).

3 MR. MYHRE: Witness is indicating circling a vehicle
4 top left portion of the image at 182-71.

5 And clearing that.

6 If we could go to Exhibit 72.

7 (Exhibit 182-72 published.)

8 BY MR. MYHRE:

9 Q. Now, Exhibit 72 is at 12:59 p.m.; correct?

10 A. Yes.

11 Q. Where did you derive that -- derive that time?

12 A. This is from the Facebook search warrant response, the
13 Business Records for account holder Steven Stewart.

14 Q. And this is found at Exhibit 117?

15 A. Yes.

16 Q. And this is a Facebook entry?

17 A. Yes.

18 Q. This is approximately 15 minutes later in time from the
19 previous slide?

20 A. Yes.

21 Q. There's a message that appears on -- in this image; is
22 that correct?

23 A. Yes.

24 Q. What does -- could you read that message into the record,
25 please.

1 A. "It's been a long day. What's up why I have a little
2 earlier with a really high powered scope show me f*****
3 awesome."

4 MR. MYHRE: And if we could proceed to Exhibit --
5 Slide 73, please.

6 (Exhibit 182-73 published.)

7 BY MR. MYHRE:

8 Q. And 73 is at 1:03 p.m.; correct?

9 A. Yes.

10 Q. This is another Facebook entry?

11 A. Yes.

12 Q. This also is found at Exhibit 117?

13 A. Yes.

14 Q. This entry now you've time stamped at 1:03 p.m.?

15 A. Yes.

16 Q. Approximately 4 minutes later?

17 A. Yes.

18 Q. And this entry is from whom?

19 A. This is Steven Stewart.

20 Q. Same as the previous entry?

21 A. Correct.

22 Q. And if -- can you read this message, please?

23 A. Yes.

24 "First they said they were going to release
25 everything and leave. Then they held the gates to Gold Butte

1 and threatened us with chemicals. Then we pushed forward and
2 they had to back off. They are releasing the cows now. BLM is
3 leaving."

4 Q. And with respect to this time at 1:03, where is BLM's
5 position relative to that makeshift fence that was under the
6 southbound 15?

7 A. They're continuing to move back into the ICP and preparing
8 to leave.

9 MR. MYHRE: And the next slide, please, at 74.

10 (Exhibit 182-74 published.)

11 BY MR. MYHRE:

12 Q. 74 is derived from Exhibit 14; correct?

13 A. Yes.

14 Q. And that is the Flynn/Ellis video?

15 A. Correct.

16 Q. So the time is derived from that video itself?

17 A. Yes.

18 Q. So it's approximately 1:10 p.m.; correct?

19 A. Yes.

20 Q. Now, this image captured here depicts what?

21 A. This is Eric Parker. He's facing north at this -- this
22 time. And Steven Stewart, facing east. They're both on the
23 northbound I-15 bridge. Steven Stewart is there with the
24 backpack that Eric Parker had been leaning his elbow -- or
25 elbow or forearm against earlier while he was in the prone

1 position. Eric Parker is standing there. He has his gun --
2 his long gun, rifle in front of him. Steven Stewart, in his
3 right hand, he's holding the pistol grip of his rifle.

4 Q. And Steven Stewart, again, is facing which direction here?

5 A. He would be facing east, away from the -- Michael Flynn.

6 Q. Now, you described what Mr. Stewart's wearing in this
7 image; correct?

8 A. Yes. A blue shirt with a backpack, yes.

9 Q. And specifically the backpack?

10 A. Yes.

11 MR. MYHRE: If we could go back to Image 59.

12 (Exhibit 182-59 published.)

13 BY MR. MYHRE:

14 Q. And 59, you've already discussed what's underneath
15 Mr. Parker's right elbow is depicted here?

16 A. Yes.

17 Q. What is that?

18 A. That's a backpack.

19 Q. So based on your review of this -- these images and your
20 investigation, comparing 59 to -- if we could go to 74 --

21 (Exhibit 182-74 published.)

22 BY MR. MYHRE:

23 Q. -- is this the same or different than the image depicted
24 in 59?

25 A. It appears to be the same backpack.

1 Q. And what leads you to that conclusion?

2 A. The color, the straps, characteristics of the bag appear
3 to be the same as the bag that Eric Parker was resting on while
4 he was in the prone position.

5 MR. MYHRE: And if we could proceed to Slide 75,
6 please.

7 (Exhibit 182-75 published.)

8 BY MR. MYHRE:

9 Q. And this also is from Exhibit 14; correct?

10 A. Yes.

11 Q. This is the image derived from the Flynn/Ellis video?

12 A. Yes.

13 Q. So the time stamp is about 1 minute later in time;
14 correct?

15 A. Yes.

16 Q. Than the previous slide?

17 A. Yes.

18 Q. And in this image does Mr. Stewart appear to be holding
19 something?

20 A. Yes. He's holding his rifle in his right hand.

21 Q. What is he -- and what is his position -- where is his
22 position? Where is this located?

23 A. He's leaning on the Jersey barriers but facing south. So
24 to his back would be north and where the BLM ICP would be.

25 Q. So his back is toward where the BLM position was?

1 A. Yes.

2 Q. In terms of from viewer standpoint, where are we looking?

3 A. We're looking east.

4 Q. On which -- on what?

5 A. On northbound I-15.

6 Q. Okay.

7 MR. MYHRE: And if we could move to Slide 76, please.

8 (Exhibit 182-76 published.)

9 BY MR. MYHRE:

10 Q. And this, again, appears to be derived from Exhibit 14;
11 correct?

12 A. Yes.

13 Q. Again, it's 1:11 p.m.; correct?

14 A. Yes.

15 Q. That's from the Flynn/Ellis video?

16 A. Yes.

17 Q. And what's depicted in this image?

18 A. This is Scott Drexler. He is also leaning up against the
19 Jersey barrier on the northbound I-15 bridge and he is holding
20 his rifle against his chest.

21 Q. Now, in -- behind Mr. Drexler's back is faced which
22 direction?

23 A. His back is faced north towards where the BLM ICP is.

24 Q. Now, in this image are there individuals in the wash?

25 A. There are.

1 Q. And are they the same -- in terms of the size -- number of
2 individuals, are they more or less than our previous slide
3 indicated?

4 A. Oh, less at this point.

5 Q. Now, at 1:11, are you able to tell where the BLM law
6 enforcement vehicles are from this image?

7 A. No.

8 Q. Can you draw where they used to be located?

9 A. (Witness complies).

10 MR. MYHRE: And the witness has drawn three lines --
11 four lines, horizontal lines up, upper left quadrant of the
12 image depicting BLM's position before departing the area.

13 And if I could have the next slide in order, please.

14 (Exhibit 182-77 published.)

15 BY MR. MYHRE:

16 Q. Now looking at Image 77, this image is derived from
17 Exhibit 30; correct?

18 A. Yes.

19 Q. And Exhibit 30 was what?

20 A. It's a Robert Shilaikis video segment.

21 Q. So you derived the time stamp of 1:14 how?

22 A. Based on his watch time that he gives at the start of each
23 segment.

24 Q. And the run time of the video?

25 A. Yes.

1 Q. What is depicted in this image at 182-77?

2 A. A number of people that are on the north side of the
3 northbound I-15 bridge. Several of them are actually on the
4 other side of the Jersey barrier sitting on the Jersey barrier.
5 Towards the right is labeled "Ricky Ray Lovelien." So he would
6 be on the north side of the northbound I-15 bridge, possibly
7 leaning against that Jersey barrier, but he would be visible to
8 the officers that were still at Post 1 at this point.

9 Q. And in terms of -- this is 3 minute later in time than the
10 previous slide we saw; correct?

11 A. Yes.

12 Q. So in terms of BLM's position at Post 2, they are no
13 longer at Post 2?

14 A. That's correct.

15 MR. MYHRE: If we could go to Slide 78, please.

16 (Exhibit 182-78 published.)

17 BY MR. MYHRE:

18 Q. Now, Slide 78 is from Exhibit 156; correct?

19 A. Yes.

20 Q. And what is 156?

21 A. This is Ranger Alex Burke's photograph. As it is labeled,
22 this is Ricky Ray Lovelien, pretty much the same time for
23 timing that we saw in the Robert Shilaikis screenshot in the
24 previous slide.

25 Alex Burke's photographs were not time stamped. So I

1 used the Shilaikis video screenshot to time stamp this
2 photograph.

3 Q. And Mr. Lovelien is in about the same position as he was
4 in the previous slide?

5 A. Yes.

6 MR. MYHRE: Now, if we could go to Slide 79, please.

7 (Exhibit 182-79 published.)

8 BY MR. MYHRE:

9 Q. Slide 79 is from Exhibit 118; correct?

10 A. Yes.

11 Q. And what is this?

12 A. This is another Business Record from the Facebook account
13 holder search warrant response from Facebook for
14 Steven Stewart.

15 Q. That is -- was introduced as Exhibit 118; correct?

16 A. Yes.

17 Q. You've time stamped this at 1:34 p.m.?

18 A. Yes.

19 Q. How did you time stamp this?

20 A. It's -- it's based on the -- the -- I'm sorry -- the
21 uploaded time that is -- I'm sorry -- I'm having a hard time
22 finding it. Would you like me to underline it?

23 Q. Where it says -- yes. I see it there, but if you could
24 underline or circle it, whichever is easiest.

25 A. Underlined uploaded time from Facebook.

1 Q. So you've converted UTC to local time?

2 A. Yes.

3 Q. And is there a title that goes with this particular image?

4 A. Yes, there is. "Going to get the cattle back."

5 Q. And what is depicted in this image?

6 A. These are the horsemen that had been -- had moved under
7 the northbound I-15 in the wash that have now -- are now moving
8 back north towards the cattle gate and the southbound I-15
9 overpass and they would eventually make their way through the
10 cattle gate and into the ICP to release the cattle.

11 Q. So from viewer standpoint, we're looking north; correct?

12 A. Yes.

13 Q. From -- and we're looking at the southbound bridge?

14 A. Yes.

15 Q. So we would be looking toward the ICP?

16 A. Correct.

17 MR. MYHRE: If we could proceed to the next slide,
18 please.

19 (Exhibit 182-80 published.)

20 BY MR. MYHRE:

21 Q. Now, this slide was derived from Exhibit 16; correct?

22 A. Yes.

23 Q. And Exhibit 16 is, again, what?

24 A. It's a Michael Flynn video.

25 Q. And this was time stamped at 1:35?

1 A. Yes.

2 Q. So you derived the metadata from the Flynn video to get
3 that?

4 A. That's correct.

5 Q. What do we see depicted in this image at 182-80?

6 A. So this is taken from the vantage point of in the wash
7 looking up and this is the northbound I-15 bridge. So this
8 would be the north side of the northbound I-15 bridge. A
9 number of people have put a sign over the side of the Jersey
10 barrier that says "The West Has Now Been Won." To the right of
11 that in this frame, as is labeled, Steven Stewart, Eric Parker,
12 Ricky Ray Lovelien, and Scott Drexler standing together.

13 Q. And you identify them by their clothing?

14 A. Yes.

15 Q. And this is on the northbound bridge; correct?

16 A. Yes.

17 MR. MYHRE: If we could go back to the previous
18 slide.

19 (Exhibit 182-79 published.)

20 BY MR. MYHRE:

21 Q. Where would this -- where would those individuals be in
22 relationship to this view?

23 A. At approximately the same position.

24 Q. As what the viewer is looking at here?

25 A. Yes.

1 MR. MYHRE: And if we could go to Slide 81, please.

2 (Exhibit 182-81 published.)

3 BY MR. MYHRE:

4 Q. 81 is time stamped at 2:02 p.m.; correct?

5 A. Correct.

6 Q. What is -- what is depicted in Exhibit 182-81?

7 A. This is a Business Record from Facebook for the account
8 holder Todd Engel.

9 Q. And this is found at Exhibit 122 introduced into evidence?

10 A. Yes.

11 Q. So the time stamp was derived from UTC time; correct?

12 A. Correct.

13 Q. And is this -- did Todd Engel post a message?

14 A. Yes, he did.

15 Q. And is this -- does this message occur approximately 25
16 minutes or so after "The West Has Now Been Won" from the
17 previous slide?

18 A. Yes.

19 Q. And could you read that message, please.

20 A. "BLM lost and has backed down due to overwhelming force of
21 the people and our arms. WE WIN! Cattle being released as we
22 speak. If they don't trouble will start again. It was very
23 very close to an exchange of gunfire. We rushed their
24 barricades with armed people and cowboys on horseback. Crazy."

25 MR. MYHRE: And if we could have the next slide in

1 order, Slide 82.

2 (Exhibit 182-82 published.)

3 BY MR. MYHRE:

4 Q. Agent Willis, at 182-82, you've time stamped this at
5 2:14 p.m.; correct?

6 A. Yes.

7 Q. And this is from Exhibit 43?

8 A. Yes.

9 Q. And what is 43?

10 A. That's Ranger Alex Burke's video as the BLM is exiting the
11 ICP crossing the median and continuing northbound on I-15.

12 Q. And how did you time stamp this image?

13 A. The video contains metadata that I used to time stamp the
14 image.

15 Q. And this occurs approximately 12 minutes later in time
16 from when Mr. Engel's message was uploaded to Facebook?

17 A. Yes.

18 Q. What is depicted in this image?

19 A. On -- on the left labeled is "Steven Stewart." He appears
20 to be holding a smartphone or a camera and waving or doing a
21 gesturing in some way with his hand. Also to the right is
22 Eric Parker and Scott Drexler who are standing or leaning up
23 against the south side Jersey barrier for the northbound I-15.

24 Q. So this would be on the northbound?

25 A. Yes.

1 Q. Are we -- where, on the northbound, is this relative to
2 the bridge?

3 A. So the bridge would be a little bit further down from
4 this. So they've -- they've moved closer to the assembly area.

5 Q. When you say "the bridge is further down from this,"
6 are -- which -- from viewer standpoint, which direction are we
7 headed?

8 A. This would be heading west. So this would -- this would
9 be at approximately maybe on the left side of the frame where
10 the bridge would begin.

11 Q. All right. Is this vehicle headed toward Mesquite or away
12 from Mesquite?

13 A. This would be heading toward Mesquite.

14 Q. So which direction would that be from there?

15 A. That would be heading east.

16 Q. East.

17 A. On northbound I-15.

18 Q. All right. So the viewer is headed eastbound?

19 A. Yes.

20 Q. Eastbound in this frame?

21 A. Yes.

22 Q. So would the bridge be behind the viewer?

23 A. No. The bridge would be in front of the viewer.

24 Q. In front of the viewer.

25 MR. MYHRE: So to the next slide, please, 83?

1 (Exhibit 182-83 published.)

2 BY MR. MYHRE:

3 Q. 83 is, again, approximately the same time as the previous
4 slide, 82; correct?

5 A. Correct.

6 Q. This is also from Burke, Exhibit 43?

7 A. Yes.

8 Q. What is depicted in this image?

9 A. As is labeled, "Ricky Ray Lovelien" is standing there.
10 Appears to have his arms, I guess, on his tactical vest. He's
11 looking east but standing on the south side of the northbound
12 I-15 bridge.

13 Q. Is this later in time than the previous slide?

14 A. Like a moment, a split second.

15 Q. So Mr. Lovelien, in this slide, is depicted more east than
16 the other?

17 A. Yes.

18 Q. The other defendants?

19 A. Yes.

20 MR. MYHRE: If we could move to Slide 84.

21 (Exhibit 182-84 published.)

22 BY MR. MYHRE:

23 Q. Now, 84 is from Exhibit 18 which is the -- also the
24 aerial; correct?

25 A. Yes.

1 Q. You've time stamped this at 2:50?

2 A. Yes.

3 Q. Which was derived from the UTC time embedded in the image;
4 correct?

5 A. Yes.

6 Q. What do we see in this image depicted at 182-84?

7 A. So this is aerial surveillance after the plane was able to
8 get back to Bunkerville after refueling and we are seeing
9 the -- a portion of the BLM ICP after the cattle gates had been
10 opened and the cattle are being driven out of the ICP.

11 Q. It's -- it seems fairly clear, but if you could just draw
12 a circle around the cattle.

13 A. (Witness complies).

14 MR. MYHRE: Witness circling about the center of the
15 image a number of objects which appear to be animals, dark in
16 color.

17 And if we could proceed to Slide 85, please.

18 (Exhibit 182-85 published.)

19 BY MR. MYHRE:

20 Q. 85 is another aerial image, this time at 2:53 p.m.;
21 correct?

22 A. Yes.

23 Q. And that's about three minutes later in time than the
24 previous slide?

25 A. Yes.

1 Q. What is depicted at 182-85?

2 A. May I circle?

3 Q. Yes.

4 A. So, (indicating), again, this is the cattle being driven.
5 Now they're on the south side of the ICP. They're heading
6 towards Post 2. So this road here (indicating) would lead up
7 to Post 1. So the cattle are heading towards the Toquop Wash
8 and the bridges over the wash.

9 Q. If you could draw an arrow toward the area of the Toquop
10 and Post 2.

11 A. It would be directly south (indicating).

12 MR. MYHRE: So the record should reflect the witness
13 has circled images in the center of the -- of the exhibit that
14 appear to be animals, dark in color. He's also drawn an arrow
15 toward Post 1 at the top of the image and then an arrow at the
16 left lower quadrant of the image toward Post 2.

17 BY MR. MYHRE:

18 Q. And the arrow that you've depicted there, is that the
19 general direction the cattle are headed based on your review?

20 A. Yes.

21 MR. MYHRE: Clearing that.

22 If we could go to Slide 86, please.

23 (Exhibit 182-86 published.)

24 BY MR. MYHRE:

25 Q. Now at 86 we have a time stamp of 2:59; correct?

1 A. Yes.

2 Q. What is -- and this is an image derived from Exhibit 93;
3 correct?

4 A. Yes.

5 Q. And what is Exhibit 93?

6 A. So, this would be from the Business Records from the
7 Facebook account holder Eric Parker.

8 Q. And in this Facebook account, do we have a status update?

9 A. Yes, we do.

10 Q. And what is written there?

11 A. "We have cows. Happy cows ... free cows ... American cows
12 raised in an open range" -- and it -- "not a cage."

13 Q. And the word "not" is -- there we go.

14 A. Yes.

15 Q. This is approximately 6 minutes later in time than the
16 previous image where we saw the cows running toward Post 2?

17 A. Yes.

18 MR. MYHRE: If we could have Exhibit 87, please.

19 (Exhibit 182-87 published.)

20 BY MR. MYHRE:

21 Q. At 182-87 we have an image that's derived from
22 Exhibit 122; correct?

23 A. Yes.

24 Q. And you've addressed this previously in your testimony?

25 A. Yes.

1 Q. Time stamp is at 3:23 p.m.; correct?

2 A. Yes.

3 Q. And you derive that from UTC time?

4 A. Correct.

5 Q. So this is about 20 minutes or so later than the previous
6 slide?

7 A. Yes.

8 Q. And what does the -- and who is this -- well, first of
9 all, what is exhibited in 182-87?

10 A. It's the Business Record for the Facebook account holder
11 Todd Engel and it is a message after he added a video.

12 Q. And what is the message?

13 A. "WE WIN!"

14 Q. And is there an exclamation point after that?

15 A. Yes.

16 MR. MYHRE: And moving on to Slide 88.

17 (Exhibit 182-88 published.)

18 BY MR. MYHRE:

19 Q. Here we have an image -- or Slide 88 contains an image
20 derived from Exhibit 47; correct?

21 A. Yes.

22 Q. And what is 47?

23 A. 47 is one of the videos from the Sexy 702 Latina YouTube
24 channel that we had captured.

25 Q. And you addressed this -- this video in your previous

1 testimony?

2 A. Yes.

3 Q. Now, in this image -- first of all, you time stamp it at
4 4 o'clock. How did you -- were you able to derive a time for
5 this image?

6 A. From the aerial surveillance, when it began -- when it
7 switched from the wash to -- back towards the staging area or
8 rally site, we could see numerous people forming, again, as
9 they had earlier that day in the morning at the staging area.
10 That was approximately 4:00 p.m. The plane stayed on station
11 in that area for another, I think, hour and 15 minutes, give or
12 take -- well, approximately, and, so, this is a estimate of the
13 time when this would have taken place, again, as I could
14 observe the people forming at the staging area. So it would
15 have occurred, based on my review of the video evidence from
16 the aerial surveillance, either 4:00 p.m. or after but some
17 time in the afternoon after the standoff and the cattle were
18 released.

19 Q. And this was Cliven's speech back at the stage; correct?

20 A. Yes.

21 Q. Now, at approximately 2:10 into that video that you've
22 just described you have here captured an image; correct?

23 A. Yes.

24 Q. And what is this an image of?

25 A. This is Ricky Ray Lovelien. He's standing in the crowd at

1 the staging area and he has an earpiece on his -- in his left
2 ear coming down the side of his neck on his left side. He has
3 his sunglasses on and his hat and he appears to have his long
4 sleeve camouflage jacket or shirt on.

5 Q. Where is the stage relative to Mr. Lovelien's position
6 here?

7 A. Maybe 10 feet in front of Mr. Lovelien.

8 Q. Would it be off the screen that we have here?

9 A. Yes. To the left of the frame that we're looking at.

10 Q. You described an earpiece. Would you circle that, please.

11 A. Yes. (Witness complies).

12 MR. MYHRE: And the record should reflect the witness
13 has circled an earpiece in the image he described as
14 Mr. Lovelien about center point of the Exhibit 88.

15 And clearing that.

16 BY MR. MYHRE:

17 Q. Now, Agent Willis, were you present at a prior proceeding
18 where Mr. Eric Parker testified?

19 A. Yes.

20 Q. And was that on April the 6th of 2014 -- 2017?

21 A. Yes.

22 Q. Now I want to show you an image from your time line. I
23 would like to go to 182-5, please.

24 (Exhibit 182-5 published.)

25 BY MR. MYHRE:

1 Q. Do you see 182-5 up at that -- on that screen?

2 A. Yes.

3 Q. During -- first of all, when Mr. Parker testified, was he
4 under oath?

5 A. Yes.

6 Q. And was he shown this image that's at 182-5?

7 A. Yes.

8 Q. And was he asked some questions about this image?

9 A. Yes.

10 MR. MYHRE: And, Your Honor, we'd ask the witness to
11 review what's been previously marked as Exhibit 213. We're not
12 offering the exhibit, but we'd like to address the testimony.

13 THE COURT: All right.

14 BY MR. MYHRE:

15 Q. And starting at Page 119, beginning at Line 12, do you
16 see -- and continuing through the end of that page, do you see
17 some questions and answers depicted there?

18 A. Yes.

19 Q. And do the answers correspond to Mr. Parker?

20 A. Yes.

21 Q. So I'll read you the question and I would like you to
22 respond with the answer.

23 So, beginning at Line 12, was Mr. Parker asked:

24 [Reading] Okay. That's you (indicating). That's
25 Steven Stewart (indicating). That's Scott Drexler

1 (indicating); correct?

2 A. Yes, sir.

3 Q. Where is your long gun?

4 A. It's in the truck.

5 Q. What truck?

6 A. The truck we rode over in.

7 Q. Rode over from where, the militia camp?

8 A. Yeah. The camp. Yes, sir.

9 Q. The militia camp; correct?

10 A. Yeah. The militia camp. Sure. [Reading concluded]

11 MR. MYHRE: And if we could go to 182-1.

12 (Exhibit 182-1 published.)

13 BY MR. MYHRE:

14 Q. Was Mr. Parker shown the image currently depicted at
15 182-1?

16 A. Yes.

17 Q. And was he asked the following questions and did he
18 provide the following answer -- answers:

19 [Reading] Question: Is this the truck?

20 A. Yes, sir.

21 Q. And that's Mr. Lovelien's truck; correct?

22 A. Yes.

23 Q. And, sir, were you in the passenger's seat?

24 A. Yes.

25 Q. And Mr. Lovelien's was driving?

1 A. Yes.

2 Q. And Mr. Drexler and Stewart are in the back. And where is
3 your long gun?

4 A. It's in the truck, sir.

5 Q. In the back? In the front with you?

6 A. It's in the front with me, sir.

7 Q. And I noticed, in the picture before, Mr. Stewart and
8 Mr. Drexler, they didn't have their long guns. Were they also
9 in the truck?

10 A. I believe so, sir. Yes. [Reading concluded]

11 MR. MYHRE: Now I'd like to proceed to image 182-14.
12 (Exhibit 182-14 published.)

13 BY MR. MYHRE:

14 Q. And if you could turn to Page 125 -- actually, look to
15 Page 124. Was Mr. Parker shown the image that is now before
16 you as 182-14?

17 A. Yes.

18 Q. Turning to Page 125, beginning at Line 2, was he asked the
19 following questions and did he provide the following answers:

20 [Reading] Do you see that (indicating), Mr. Parker?
21 [Reading concluded]

22 A. I'm sorry. Can you say where you're starting from again?

23 Q. Sure. Page 125.

24 A. Okay.

25 Q. Line 2.

1 A. Yes. Now I got it.

2 Q. [Reading] Do you see that (indicating), Mr. Parker?

3 A. Yes, sir. That's Ricky Lovelien's truck, sir.

4 Q. And you would have been in the passenger seat?

5 A. Yes, sir.

6 Q. And Mr. Drexler and Mr. Stewart in the back seat; correct?

7 A. In the back of -- in the bed.

8 Q. I mean, in the back of the truck?

9 A. Yes, sir.

10 Q. And you're going toward the compound; correct?

11 A. Towards the parking lot, sir.

12 Q. Across from the compound?

13 A. Across from the entrance to the impoundment site. [Reading
14 concluded]

15 Q. And were you also present at a prior proceeding where
16 Mr. Parker testified on April the 10th, 2017?

17 A. Yes.

18 Q. If I could draw your attention to Exhibit 214,
19 specifically to Page 25 -- strike that. Page 24, Line 23.

20 A. Yes.

21 MR. MYHRE: And if we could go to Image 182-19.

22 (Exhibit 182-19 published.)

23 BY MR. MYHRE:

24 Q. Was Mr. Parker shown this image which is before you at
25 182-19?

1 A. Yes.

2 Q. And was he asked the following questions and did he
3 provide the following answers:

4 [Reading] Question: This picture, this is you
5 (indicating); correct?

6 A. Yes, sir. [Reading concluded]

7 Q. Proceeding to Page 25.

8 [Reading] And this is before you got onto the
9 northbound bridge?

10 A. Yes, it is, sir.

11 Q. And you're holding your -- you're holding your firearm in
12 this picture?

13 A. I am.

14 Q. And you're wearing your vest with plates?

15 A. I am.

16 Q. And you're wearing your black hat with the white insignia?

17 A. Yes, sir. [Reading concluded]

18 MR. MYHRE: Now if we could go to Image 182-22.

19 (Exhibit 182-22 published.)

20 BY MR. MYHRE:

21 Q. And was Mr. Parker shown the image at 182-22?

22 A. Yes.

23 Q. And was he asked the following question beginning at
24 Line 14:

25 [Reading] That's you (indicating)?

1 A. It is, sir.

2 Q. And you're walking onto the northbound bridge?

3 A. I am.

4 Q. And you're holding your weapon?

5 A. Yes, sir.

6 Q. And you're wearing your vest with plates?

7 A. Yes, sir.

8 Q. And you're wearing a black hat with white insignia?

9 A. I am, sir.

10 Q. And that's Mr. Engel (indicating)?

11 A. It appears to be, sir, yes.

12 Q. And he has his weapon?

13 A. Yes, sir. [Reading concluded]

14 Q. Ending at 26, Line 2.

15 Now, if you would proceed to Page 46, Line 23.

16 MR. MYHRE: And if we could go to Image 182-39.

17 (Exhibit 182-39 published.)

18 BY MR. MYHRE:

19 Q. Was Mr. Parker shown the image that's before you as
20 182-39?

21 A. Yes.

22 Q. And was he asked the following question:

23 [Reading] This is you (indicating); correct?

24 A. Yes, sir.

25 Q. Proned out, laying in a proned position on the northbound

1 bridge; correct?

2 A. Yes, sir.

3 Q. And your firearm is pointed through the gap; correct?

4 A. Yeah. It's placed in the gap, sir.

5 Q. Toward the law enforcement?

6 A. Yes, sir. [Reading concluded].

7 Q. And if we could -- if you would turn to Page 50, beginning
8 at Line 23, please.

9 MR. MYHRE: And if I could get Image 182-59.

10 (Exhibit 182-59 published.)

11 BY MR. MYHRE:

12 Q. Was Mr. Parker shown the image now before you at 182-59?

13 A. Yes.

14 Q. And beginning at Page 50, Line 23, was he asked the
15 following question:

16 [Reading] Now you're in a different position here;
17 correct?

18 A. No. Not --

19 Q. Well, you're still in a prone position on the bridge;
20 correct?

21 A. I'm still laying on the bridge, sir, yes.

22 Q. But now your left elbow -- your left hand is not under
23 your right elbow here; correct?

24 A. Yeah. No, it's not, sir.

25 Q. Your right elbow is resting on a backpack; correct?

1 A. Yes, sir.

2 Q. Mr. Stewart's backpack; correct?

3 A. It's my backpack actually, sir.

4 Q. Mr. Stewart brought you the backpack; correct?

5 A. He -- I asked for it and he brought it over. He was -- he
6 went to go get water and my backpack.

7 Q. So when he went to go get water, you asked him to bring
8 your backpack?

9 A. Water was in the backpack, sir.

10 Q. But now you're using the backpack to rest your right
11 elbow; correct?

12 A. Yes. I asked him for my backpack, sir.

13 Q. And now your hat is backwards; correct?

14 A. Yes, sir.

15 Q. So you've moved from -- you've moved positions from
16 before; correct?

17 A. Yeah. Yes, sir. I -- [Reading concluded]

18 Q. You can set that exhibit aside.

19 Agent Willis, you described earlier in your testimony
20 that you -- you have been out in that area a number of times;
21 correct? That area being the northbound/southbound I-15
22 ICP.

23 A. Yes.

24 Q. And in connection with your trips out there you've walked
25 the ground over many of these events we've covered and have

1 been depicted in these slides that we've just gone through;
2 correct?

3 A. Yes.

4 Q. I want to focus a little bit on the wash and the BLM's
5 position in the wash.

6 First of all, if we could -- go to Exhibit 182-71.

7 (Exhibit 182-71 published.)

8 BY MR. MYHRE:

9 Q. Now we looked at this earlier and this shows the positions
10 of the three defendants relative to the people in the wash and
11 the BLM -- excuse me -- the -- where Post 2 is located;
12 correct?

13 A. Yes.

14 MR. MYHRE: Now, if I could go -- and this is from
15 the point of the view of the aerial; right?

16 THE WITNESS: Yes.

17 MR. MYHRE: Now if we could go to Exhibit 157,
18 please.

19 (Exhibit 157 published.)

20 BY MR. MYHRE:

21 Q. Now 157 was admitted through Officer Shawn Cox; correct?

22 A. Yes.

23 Q. And this depicts the image from a -- of the northbound
24 from the point of view of the officers in the wash; correct?

25 A. Yes.

1 Q. And if you could just generally describe what we see in
2 this image.

3 A. Well, in the foreground are a number of BLM officers and
4 National Park Service officers who are walking backwards at
5 this time.

6 We had seen another photograph similar to this where
7 the truck that's --

8 MR. MARCHESE: Objection. Non-responsive.

9 BY MR. MYHRE:

10 Q. So this is from -- without going into the next photograph,
11 this -- this image shows as they're backing up, you say?

12 A. Yes. The -- the BLM vehicle on the left side of this shot
13 is backing up. You can see the reverse lights are on on the
14 taillights and this vehicle will make its way back onto the
15 asphalt area where the officers that are on the asphalt will be
16 backing up towards the ICP behind the -- this vehicle.

17 MR. MYHRE: And if we could go to 158, please.

18 (Exhibit 158 published.)

19 BY MR. MYHRE:

20 Q. And back to -- in 158, we see what portion of the
21 northbound bridge?

22 A. We would see the west portion of the northbound bridge.

23 Q. And do you see -- in this image, do you see the gap where
24 Mr. Parker's position was located?

25 A. Yes.

1 Q. And if you would circle that, please.

2 A. (Witness complies).

3 MR. MYHRE: Witness circling on the left side of the
4 image.

5 Now, if we go back to -- and clearing that.

6 Go back to 157.

7 (Exhibit 157 published.)

8 Thank you.

9 BY MR. MYHRE:

10 Q. Do you see the gap for the position of Mr. Drexler?

11 A. Yes. So this would be later in time when Mr. Drexler has
12 now moved to Mr. Parker's right and he is in the gap in the
13 middle of the bridge, right there (indicating).

14 MR. MYHRE: Witness circling on 157 approximately
15 left upper quadrant of the image.

16 BY MR. MYHRE:

17 Q. And you say at this point from -- from the viewer's
18 standpoint --

19 A. Yes.

20 Q. -- is he left or right of Mr. Parker?

21 A. To the left.

22 Q. And if you would draw where Mr. Parker's position is.

23 A. (Witness complies).

24 MR. MYHRE: And witness indicating a gap in the
25 bridge to the right of the circle previously drawn about the

1 center point of the upper left quadrant of this image.

2 BY MR. MYHRE:

3 Q. Now, did you stand down in the wash as well in the
4 approximate position of where the BLM was located?

5 A. Yes.

6 Q. And where, approximately, did you stand in one of your
7 trips to the wash?

8 A. Well, again, I had mentioned there's -- and if I could
9 draw a line -- there's a little bit of a cutout in the asphalt.
10 And, so, going out there, every time I went out there I would
11 actually take screenshots like what you've seen in this
12 sequence of events and the time line and I would try to
13 position myself to get into that same vantage point. So where
14 the first vehicle is, furthest away in this shot on the
15 asphalt, I essentially stood where that right passenger side
16 door was open and I took pictures, but I -- I mean, I -- I took
17 pictures all over the place but tried to get certain areas
18 where I -- I could base my position for that photograph off of
19 other known video and photo evidence.

20 Q. And with respect to -- if you could just draw a line or --
21 excuse me -- an arrow approximately where you stood.

22 A. So, it would have been there (indicating).

23 Q. Where the individual is standing or in front of that
24 individual?

25 A. In front of that individual.

1 So if -- if -- there's the side of the truck
2 (indicating) --

3 Q. So you're standing up where the truck is?

4 A. Yes. I would have stood up where the truck is.

5 MR. MYHRE: Witness indicating a line next to the
6 foremost vehicle in the -- depicted in the image at 157.

7 And clearing that.

8 If we could go to Exhibit 209, please.

9 COURTROOM ADMINISTRATOR: Mr. Myhre, 209, I don't
10 have that at as --

11 MR. MYHRE: Oh, I'm sorry. For the wit- -- I'm
12 sorry. For witness and counsel only, may we show 209,
13 Your Honor?

14 THE COURT: Yes, you may.

15 MR. MYHRE: I apologize.

16 (Exhibit 209 published to witness.)

17 BY MR. MYHRE:

18 Q. In looking, Agent Willis, at 209, what is that?

19 A. That would have been my vantage point while I captured one
20 of the photographs that I took while I was in the wash.

21 Q. And what is depicted in this image?

22 A. Above is the southbound I-15 bridge and in the background
23 is the northbound I-15 bridge.

24 Q. Now, this is taken much later in time from April 12th,
25 2014?

1 A. Yes.

2 Q. But based on your review of the photographic evidence, in
3 terms of the structures that are present in this image, has
4 there been any substantial change to the structure --
5 structural depictions of these images that we see in 209?

6 A. No.

7 MR. LEVENTHAL: Objection. Speculation. He wasn't
8 there on the 12th. He'd have nothing to compare it to.

9 BY MR. MYHRE:

10 Q. You -- this was based on your review of the images and
11 photographs that were captured from April 12th, 2014?

12 A. Correct.

13 Q. Based on your review of that evidence and your physical
14 inspection of this site, were there any major changes to any of
15 these structures that we view in this image?

16 A. Not that I could see, no.

17 Q. And are you offering -- and you're providing this to --
18 for demonstrative purposes to show what the point of view would
19 have been, in the wash, from that foremost truck where you
20 stood?

21 A. Correct.

22 MR. MYHRE: Your Honor, we offer Exhibit 209 for
23 demonstrative purposes.

24 (Exhibit 209 offered.)

25 THE COURT: Any objection to Exhibit 209 for

1 demonstrative purposes?

2 MR. TANASI: None from Stewart, Your Honor.

3 MR. MARCHESE: None from Parker.

4 MR. LEVENTHAL: Other than the ones I've already
5 indicated.

6 (Counsel conferring.)

7 THE COURT: Any objection on behalf of Lovelien?

8 MR. PEREZ: No, Your Honor.

9 THE COURT: All right. So Exhibit 209 will be
10 admitted for demonstrative purposes.

11 (Exhibit 209 received.)

12 MR. MYHRE: May we publish, Your Honor?

13 THE COURT: Yes, you may.

14 MR. MYHRE: Thank you.

15 (Exhibit 209 published.)

16 BY MR. MYHRE:

17 Q. So, Agent Willis, now the jury has before it Exhibit 209.

18 Would you please indicate -- you talked about the asphalt.

19 Could you show where the asphalt is located in this image.

20 A. Yes.

21 So here's the asphalt (indicating) and as you can
22 see, it's slightly elevated above a very sandy area that's two
23 to three feet below it. And as you can see, it appears that
24 there was once a road that made its way all the way through
25 the -- at least under the southbound I-15 bridge but has been

1 washed out, as you can see, with the jagged edge of the
2 asphalt.

3 Q. And from the point of view depicted in this image, which
4 direction are we looking?

5 A. We would be looking south.

6 Q. And the farther -- the bridge farthest away from us is
7 what?

8 A. The northbound I-15 bridge.

9 Q. Now off to the right of that bridge, which direction
10 are -- would we be proceeding?

11 A. That would be going west.

12 Q. And then, obviously, to left would be east?

13 A. Correct.

14 Q. Now, from this vantage point are you able to tell, just by
15 naked eye, how far away that -- the northbound bridge is from
16 this standpoint?

17 A. By a -- by naked eye, I could say that it is not very far,
18 that that's -- I could not -- I had a laser range finder that I
19 would eventually use out there and I would use that to get all
20 the -- all the -- excuse me -- all these distances, but with
21 these photographs, it does not do it justice that the
22 northbound bridge is -- you see it does not appear to be very
23 far whatsoever from this point where I'm standing while I'm
24 taking this picture.

25 Q. From the naked eye are you able to make out, for example,

1 vehicles going across that bridge?

2 A. Absolutely. Yes.

3 Q. Now I'd like to talk a little bit about Mr. Lovelien's
4 point of view from his position.

5 MR. MYHRE: If I could bring up 182-52, please.

6 (Exhibit 182-52 published.)

7 BY MR. MYHRE:

8 Q. Now, we've talked about 182-52, and I'm clearing the
9 screen.

10 This is Mr. Lovelien's position; correct?

11 A. Yes.

12 Q. At 12:26 p.m.?

13 A. Yes.

14 Q. Based on this image, are you able -- were you able to
15 generally find the area on the northbound bridge where this
16 image was captured?

17 A. Yes.

18 MR. MYHRE: And if he could go to . . . Your Honor
19 may we show the witness and for counsel what's been marked as
20 Exhibit 204?

21 THE COURT: Yes, you may.

22 (Exhibit 204 published to witness.)

23 BY MR. MYHRE:

24 Q. Do you see Image 204 before you?

25 A. Yes, I do.

1 Q. Exhibit 204, excuse me.

2 And what is Exhibit 204?

3 A. So this is on the south shoulder of the northbound I-15.
4 I'm standing on the bridge at this point, approximately halfway
5 across the bridge. I'm looking west and I'm taking a photo of
6 the bushes that you see on the side of I-15. There is a mile
7 marker on the left side of the shot. You can see the entrance
8 to the BLM ICP, where that was, and Post 1, and just the
9 general features of the roadway from this vantage point.

10 Q. And are you able to see where Mr. Lovelien's position
11 would have been on this bridge?

12 A. Yes. Generally speaking, yes.

13 Q. And this was taken much later in time?

14 A. Yes.

15 Q. But in terms of the structures present in Exhibit 204, are
16 they generally the same condition that they were, based on your
17 review of the images, from April 12th, 2014?

18 A. Yes.

19 MR. MYHRE: Your Honor, we offer, for demonstrative
20 purposes, Exhibit 204.

21 (Exhibit 204 offered.)

22 THE COURT: Any objection?

23 MR. TANASI: None from Stewart, Your Honor.

24 MR. MARCHESE: None from Parker.

25 MR. LEVENTHAL: No, Your Honor -- no objection.

1 MR. PEREZ: None from Lovelien.

2 THE COURT: All right. Exhibit 204 will be admitted
3 for demonstrative purposes.

4 (Exhibit 204 received.)

5 MR. MYHRE: May we publish, Your Honor?

6 THE COURT: Yes, you may.

7 (Exhibit 204 published.)

8 BY MR. MYHRE:

9 Q. So now the jury has before it Exhibit 204. And if you
10 could describe your -- you described your point of view as
11 looking west; correct?

12 A. Yes.

13 Q. And in this image were you able to determine approximately
14 where Mr. Lovelien was standing?

15 A. Yes.

16 Q. And where is that?

17 A. (Indicating).

18 MR. MYHRE: Witness drawing an arrow.

19 BY MR. MYHRE:

20 Q. Do you -- the two bushes we see, did you use those as
21 reference points to help you determine Mr. Lovelien's location?

22 A. Yes, I did.

23 Q. And how did that assist you in determining his location?

24 A. I -- I used them in the images as -- in the images from
25 Exhibit 66 that we just saw as well as aerial footage and

1 footage from Michael Flynn to orient myself to where Mr. Engel
2 and Ricky Ray Lovelien would have been standing on the bridge
3 that day.

4 Q. Now, with respect to that arrow you've drawn on
5 Exhibit 204, do you -- can you see where the Post 1 for the ICP
6 is?

7 A. Yes.

8 Q. And if you could draw an arrow or circle that portion.

9 A. (Witness complies).

10 MR. MYHRE: Witness is circling, about the -- just
11 right of center top half of Exhibit 204, the area where he's
12 identified as the ICP.

13 Now, if we could go to -- show for the witness and
14 counsel only, Exhibit 202.

15 (Exhibit 202 published to witness.)

16 And clearing the screen.

17 BY MR. MYHRE:

18 Q. What is depicted in Exhibit 202, Agent Willis?

19 A. This would be from the vantage point looking west. So
20 towards the entrance to the assembly area from where Ricky Ray
21 Lovelien would have been standing in front of the NHP vehicles,
22 and I essentially used that photograph, Todd Engel kneeling,
23 Ricky Ray Lovelien standing, and I held it up and I tried to
24 get the same vantage point from where that -- that was taken
25 and where Mr. Lovelien was standing that day.

1 Q. And, again, this was taken later in time?

2 A. Yes.

3 Q. Later in time from April 12th, 2014?

4 A. Yes.

5 Q. But the structure of the images we see depicted in 202
6 have not changed substantially over time?

7 A. No.

8 Q. Based on your observations and review of the exhibits for
9 April 12th, 2014?

10 A. Correct.

11 Q. And does this position -- does this exhibit have a closer
12 view of where -- of Mr. Lovelien's position?

13 A. Yes. So this is where Mr. Lovelien would have been
14 standing but -- and from this vantage point, looking west, back
15 towards where the assembly area was.

16 MR. MYHRE: Your Honor, we offer, for demonstrative
17 purposes, Government Exhibit 202.

18 (Exhibit 202 offered.)

19 MR. MARCHESE: No objection Parker.

20 MR. TANASI: None from Stewart, Your Honor.

21 MR. LEVENTHAL: No objection.

22 MR. PEREZ: None from Lovelien.

23 THE COURT: All right. So Exhibit 202 will be
24 admitted for demonstrative purposes.

25 MR. MYHRE: And may we publish, Your Honor?

1 THE COURT: Yes, you may.

2 (Exhibit 202 received and published.)

3 BY MR. MYHRE:

4 Q. So, Agent, in the previous image we saw, Image 204, we now
5 have moved -- moved up to the position that we saw at distance
6 in 204; correct?

7 A. Yes.

8 Q. So at 202, where did you derive where Mr. Lovelien was
9 standing?

10 A. Based on the features of the road, the hills in the
11 background, the sign that's in the middle upper portion of
12 the -- this shot, and the bush that's on the right side of the
13 road on the other side of the Jersey barrier.

14 Q. If you'd just draw an arrow to where -- the position.

15 A. To . . . I'm sorry. To what position?

16 Q. To where Mr. Lovelien was standing.

17 A. Essentially he would have been standing right here
18 (indicating).

19 Q. Right where you are?

20 A. Yes.

21 Q. So this would have been his point of view looking west?

22 A. Correct.

23 Q. And just to be clear, we'll go back to 182-52, please.

24 (Exhibit 182-52 published.)

25 BY MR. MYHRE:

1 Q. And this is one of the images you used to help find that
2 spot?

3 A. Yes.

4 So that spot that I just marked with an arrow would
5 be where Mr. Lovelien is standing right now. Again, that photo
6 is more of an orienting photo to orient myself with his
7 location to get a view of the wash as it pertains to the
8 features of the land behind in the -- in the background of the
9 image and also the bush that -- or tree that's on the north
10 side of the road on the other side of the Jersey barrier.

11 MR. MYHRE: Your Honor, may we show what's been
12 previously marked for witness, counsel, and the Court only,
13 Exhibit 203?

14 THE COURT: Yes, you may.

15 (Exhibit 203 published to witness.)

16 BY MR. MYHRE:

17 Q. Do you see Exhibit 203 before you, Mr. Willis?

18 A. Yes.

19 Q. Or Agent Willis?

20 A. Yes, I do.

21 Q. What is depicted in Exhibit 203?

22 A. So in this image, just to the left, would have been the
23 bush in the previous or tree in the previous photo on the other
24 side of I-15, but essentially what we're looking at is a view
25 that Mr. Lovelien would have had as he walked up to the Jersey

1 barrier when he came across the frame in front of
2 Trooper Madsen's vehicle and where he walks up to the Jersey
3 barrier, his vantage point into the wash underneath the
4 southbound I-15 bridge where he would be able to see the BLM
5 vehicles parked on the asphalt area in the wash.

6 Q. Again, this photo was taken later in time from April 12th,
7 2014?

8 A. Yes.

9 Q. But the structures of the images depicted in this view at
10 203 have not changed substantially from April 12th, 2014?

11 A. No.

12 MR. MYHRE: Your Honor, we offer Government's Exhibit
13 203 for demonstrative purposes.

14 (Exhibit 203 offered.)

15 THE COURT: Any objection to 203?

16 MR. TANASI: None from Stewart, Your Honor.

17 MR. MARCHESE: None from Parker.

18 MR. LEVENTHAL: No, Your Honor.

19 MR. PEREZ: No, Your Honor.

20 THE COURT: All right. Exhibit 203 will be admitted
21 for demonstrative purposes --

22 MR. MYHRE: May we publish.

23 THE COURT: -- and you may go ahead and publish.

24 MR. MYHRE: Thank you.

25 (Exhibit 203 received and published.)

1 BY MR. MYHRE:

2 Q. So we now see -- the jury now has Exhibit 203 in front of
3 it --

4 A. Yes.

5 Q. -- Agent wills?

6 Now, if you would -- so describe the point of view
7 that we see here.

8 A. So this is looking --

9 THE COURT: Wait just a minute. I think --
10 Is it working or not working?

11 MR. MYHRE: Oh, good. Sorry.

12 THE COURT: Oh, okay. I thought for a minute there
13 it wasn't working. Thank you.

14 THE WITNESS: This would be looking northeast into
15 the wash and underneath the southbound I-15 bridge.

16 BY MR. MYHRE:

17 Q. From the point of view of whom?

18 A. This would be the point of view of Ricky Ray Lovelien as
19 he walked in front of Trooper Madsen's truck and we see -- we
20 have seen in the dash cam footage and this would have -- the --
21 the tree or bush that we observed in the previous image would
22 have been right here (indicating) as I'm taking this photo.

23 Q. So it's off -- off screen to the left as you've drawn an
24 arc?

25 A. Correct.

1 And then Mr. Lovelien, after he walked here
2 (indicating), he would move further this way (indicating) along
3 the northbound I-15 bridge and his vantage point would change
4 and open up and he would be able to see more of what is going
5 on underneath the southbound I-15 and the BLM vehicles.

6 Q. Now you've drawn an arrow in the lower right quadrant of
7 this image found at 203. That direction is east?

8 A. Yes.

9 Q. Now, from this standpoint right here before the movement
10 you've described with the arrow, where was that vehicle, that
11 foremost vehicle that we discussed in our previous slide?

12 A. Yeah. So as I had mentioned before, the wash -- washed
13 out asphalt under -- deny -- or in the wash. There's a little
14 cutout right there -- and if I could clear that again -- but it
15 cuts in. The BLM vehicles, the first line started right there
16 (indicating). So the BLM officers and NPS officers would have
17 been standing right there (indicating) on the asphalt.

18 MR. MYHRE: So the witness has drawn a line about --
19 just left center of Exhibit 203 depicting where the asphalt
20 edge is. Then above that line, two arrows. The arrow to the
21 most furthest right was where the witness depicted where the
22 BLM vehicles is.

23 Correct? Located.

24 THE WITNESS: Correct.

25 BY MR. MYHRE:

1 Q. And that's where you were standing when you took the photo
2 Exhibit 209?

3 A. That's correct.

4 Q. Now the arrow to the left depicts what again?

5 A. That would have been where the NPS and BLM law enforcement
6 officers would have been standing those three vehicles.

7 Q. Now, as an individual moves to the right of this position,
8 in other words, headed east, does the view of going up the wash
9 to the north, does it increase or decrease as you move further
10 east?

11 A. It increases.

12 Q. Now I'd like to talk a little bit about Mr. Parker's
13 position on the bridge.

14 MR. MYHRE: If I could go to . . . Your Honor, may I
15 show the witness what has been previously marked -- this would
16 be for witness, Court, and counsel only -- Exhibit 207?

17 THE COURT: Yes, you may.

18 (Exhibit 207 published to witness.)

19 BY MR. MYHRE:

20 Q. Do you have -- Agent Willis, do you have Exhibit 207 in
21 front of you?

22 A. Yes, I do.

23 Q. What is depicted in 207?

24 A. This is a photograph of the gap in the Jersey barrier from
25 the opposite side of the northbound I-15 bridge. This is the

1 gap where Eric Parker would have been prone behind and pointing
2 his gun through that gap. And the background of the image is
3 the southbound I-15 and the wash.

4 Q. This image was taken later in time from April 12th, 2014?

5 A. Yes.

6 Q. But the structures, particularly the gap and the relative
7 position of the bridges, are substantially in the same
8 condition as they were on April 12th, 2014, based on your
9 review of all the photographs and video evidence in this case?

10 A. Yes.

11 Q. And this image will -- is depicted from the viewer's
12 standing and looking north across the northbound 15 bridge?

13 A. Yes.

14 MR. MYHRE: Your Honor, we offer, for demonstrative
15 purposes, Exhibit 207.

16 (Exhibit 207 offered.)

17 THE COURT: Any objection to 207?

18 MR. MARCHESE: None from Parker.

19 MR. TANASI: None from Stewart, Your Honor.

20 MR. LEVENTHAL: No, Your Honor.

21 MR. PEREZ: No, Your Honor.

22 THE COURT: All right. Exhibit 207 will be admitted
23 for demonstrative purposes.

24 (Exhibit 207 received.)

25 MR. MYHRE: And may we publish, Your Honor?

1 THE COURT: Yes, you may.

2 MR. MYHRE: Thank you.

3 (Exhibit 207 published.)

4 It looks like 207's up.

5 BY MR. MYHRE:

6 Q. So, Agent Willis, now that the jury has 207 before it,
7 could you explain, again, where you're standing and your point
8 of view is oriented.

9 A. Okay. I'm standing on the south side of the I-15 bridge
10 over the wash facing north towards the gap where Eric Parker
11 was prone and had his gun through the gap.

12 MR. MYHRE: And can we enhance sort of the center
13 portion of this image?

14 BY MR. MYHRE:

15 Q. Now we've enhanced sort of the center portion of that
16 image that we had at 207.

17 What do we see here?

18 A. Well, as you can see, there's a broom in the gap and we'll
19 have pictures without the broom but it -- essentially I brought
20 something with me that I would be able to show that you could
21 take a -- something straight -- the broom diameter is
22 approximately one inch. So the gap is between an inch and a
23 half to two inches depending on where you're measuring it, and
24 while on the other side of the northbound I-15, I was able to
25 take the broom and aim it and put it in the gap and point it

1 directly towards where the three BLM vehicles were parked on
2 the asphalt in the wash.

3 Q. That position being the position you indicated in the
4 previous slide where you were standing?

5 A. Yes.

6 Q. Were you able then to point this broom in the general area
7 of where you were standing?

8 A. Yes.

9 MR. MYHRE: And may I show the witness what's been
10 marked as 205 as well, Your Honor?

11 THE COURT: Yes, you may.

12 (Exhibit 205 published to witness.)

13 BY MR. MYHRE:

14 Q. Do you see 205?

15 A. Yes, I do.

16 Q. What's depicted in 205?

17 A. That is the gap on the northbound I-15 bridge that
18 Eric Parker used on April 12th, 2014.

19 Q. And this is without the broom in it?

20 A. That's correct.

21 Q. And your purpose in taking this point of view was what?

22 A. Just another shot. This is without the broom and to just
23 give a -- to -- just to demonstrate the width of the gap and
24 how much is actually viewable between that gap from the bridge.

25 Q. And, again, the -- this was taken later in time?

1 A. Yes.

2 Q. But the structural components or -- excuse me -- the
3 structures contained in this image are in substantially the
4 same condition as they were on April 12th, 2014?

5 A. Yes.

6 Q. Based on your review of all the videos and photos?

7 A. Yes.

8 Q. In evidence in this case?

9 A. Yes.

10 MR. MYHRE: Your Honor, we offer Exhibit 205 for
11 demonstrative purposes.

12 (Exhibit 205 offered.)

13 THE COURT: Any objection to Exhibit 205?

14 MR. TANASI: None from Stewart, Your Honor.

15 MR. MARCHESE: None from Parker.

16 MR. LEVENTHAL: No objection.

17 MR. PEREZ: No, Your Honor.

18 THE COURT: All right. Exhibit 205 will be admitted
19 for demonstrative purposes.

20 You may go ahead and publish.

21 MR. MYHRE: Thank you, Your Honor.

22 (Exhibit 205 received and published.)

23 MR. MYHRE: And I believe 205 is now up.

24 BY MR. MYHRE:

25 Q. Again, Agent Willis, from this image we see the gap in the

1 foreground; correct?

2 A. Correct.

3 Q. Now, were you able to actually lie down and peer through
4 that gap at all?

5 A. No. This was a -- a -- this particular day was a busy day
6 with traffic and I was not able to lay down.

7 Q. It would have been too dangerous?

8 A. Yes.

9 Q. Nevertheless, were you able to get up to that gap?

10 A. Yes, I was.

11 Q. And from that point of view from the gap, what were you
12 able to see below?

13 A. As I described earlier, very much of the right side of the
14 wash underneath the southbound I-15 bridge. Again, that
15 asphalt area almost lines up perfectly with what you can see
16 through that gap, very clearly.

17 Q. And in this point of view we're looking north; correct?

18 A. Yes.

19 Q. And we are also looking at the southbound bridge?

20 A. Yes.

21 Q. And you can see below the southbound bridge?

22 A. Yes.

23 Q. The -- into the wash below the southbound bridge.

24 A. Yes, into the wash, underneath the southbound bridge.

25 MR. MYHRE: Your Honor, may I show what's been marked

1 previously as Exhibit 208?

2 THE COURT: Yes, you may.

3 (Exhibit 208 published to witness.)

4 BY MR. MYHRE:

5 Q. You see 208; Agent Willis?

6 A. Yes, I do.

7 Q. What's depicted in this image?

8 A. This is from the gravel area that's -- that starts off
9 where the skirting for the -- underneath the northbound bridge
10 that leads down into the concrete embankment into the wash. So
11 I'm standing on a gravel area at the beginning of the bridge
12 just on the north side of the Jersey barriers.

13 Q. And what is depicted in this image from that point of
14 view?

15 A. This demonstrates how the Jersey barrier is indented. It
16 shows that the thickness of the Jersey barriers changes from
17 the top to the bottom and it gives you a vantage point of a
18 long -- on the same level as the northbound I-15 bridge but,
19 again, I'm on the other side, the north side, on the gravel.

20 Q. And is the gap -- is Mr. Parker's gap depicted in this
21 image?

22 A. You can't see the gap, but what I did in this image is
23 that I left that broom there and -- and I came down the bridge
24 and took this picture so the gap is actually marked with where
25 the broom had been sticking out of the gap on the bridge.

1 Q. This is, again, taken later in time from April 12, 2014?

2 A. Yes.

3 Q. But the structures -- based on your review of all the
4 evidence, the structures are in substantially the same
5 condition when this photo was taken as they were on April 12th,
6 2014?

7 A. Yes.

8 Q. And this helps you to show where Mr. Parker's position was
9 on the bridge; correct?

10 A. Correct.

11 MR. MYHRE: Your Honor, we offer Government -- for
12 demonstrative purposes, Government Exhibit 208.

13 (Exhibit 208 offered.)

14 THE COURT: Any objection to 208?

15 MR. MARCHESE: None from Parker.

16 MR. TANASI: None from Stewart, Your Honor.

17 MR. LEVENTHAL: No, Your Honor.

18 MR. PEREZ: None from Lovelien.

19 THE COURT: All right. Exhibit 208 will be admitted
20 for demonstrative purposes.

21 You may publish to the jury.

22 MR. MYHRE: Thank you, Your Honor.

23 (Exhibit 208 received and published.)

24 BY MR. MYHRE:

25 Q. Okay. Agent Willis, I believe 208 is now before the jury.

1 Again, you talked a little bit about -- when
2 describing this image, about the -- how the Jersey barrier is
3 configured.

4 A. Yes.

5 Q. Could you indicate what you were describing in terms of
6 the narrowing of the Jersey barrier.

7 A. As I had said, there's a variation in the Jersey barrier
8 and I'm just going to draw a line (indicating) to where the
9 thickness is -- it changes on this side from thick to thinner
10 to thick at the bottom on this side of the bridge.

11 MR. MYHRE: So you've indicated with a line in the
12 image. So the portion that we see depicted in this image,
13 about -- you've drawn the line about top center -- top half
14 center of this image.

15 BY MR. MYHRE:

16 Q. So the part that's in the middle, is that narrower or
17 wider at the top and the bottom?

18 A. It's narrower.

19 Q. Now, the other side of the barrier we saw, how is that
20 shaped relative to this viewpoint we're seeing in 208?

21 A. So that thickness changes as well. So if you were looking
22 at it from that side, it would be slanted down. So the
23 thickness on that side changes from thin up -- up top to thick
24 on the bottom as that goes down.

25 Q. Would you draw a line juxtapose to this line that you've

1 drawn in the center depicting how it would be viewed on the
2 other side.

3 A. (Witness complies).

4 MR. MYHRE: And witness has drawn another line
5 adjacent to this first line, again, going off to the right at
6 about right center portion of Exhibit 208.

7 BY MR. MYHRE:

8 Q. And the lines you've drawn there is the general shape if
9 you were to cut that Jersey barrier in half?

10 A. Correct.

11 Q. Again, the viewpoint where you're standing here, is that
12 similar to any of the other videos we've seen in evidence?

13 A. Yes. This is almost the exact location, based on my
14 review of the evidence, of the Michael Flynn video as the
15 people on horseback are making their way down from the gravel
16 road into the wash and moving to the center of the wash and
17 forming a line.

18 Q. So that would be Exhibit -- what's been admitted as
19 Exhibit 10, showing the horses entering the wash?

20 A. I -- I think that's correct. I'd have to check my notes.

21 Q. Now I'd like to discuss with you Mr. Drexler's position.

22 A. Okay.

23 Q. Were you able to determine his position, again, based on
24 your physical examination of the site?

25 A. Yes.

1 Q. And did you take images of that?

2 A. Yes, I did.

3 MR. MYHRE: Your Honor, may we show the witness
4 what's been marked as 198, for witness, Court, and counsel
5 only?

6 THE COURT: Yes, you may.

7 (Exhibit 198 published to witness.)

8 BY MR. MYHRE:

9 Q. Do you see 198?

10 A. Yes, I do.

11 Q. And what is that?

12 A. This would have been the gap in the Jersey barrier that
13 Scott Drexler used to point his gun through on April 12th,
14 2014.

15 Q. And again, as before, this was taken later in time?

16 A. Yes.

17 Q. Structures substantially the same?

18 A. Yes.

19 Q. You -- you've taken this to demonstrate the point of view
20 for Mr. Drexler at that position; correct?

21 A. Correct.

22 MS. MYHRE: Your Honor, for demonstrative purposes,
23 we offer Government's Exhibit 198.

24 (Exhibit 198 offered.)

25 THE COURT: Any objection to 198 for demonstrative

1 purposes?

2 MR. TANASI: None from Stewart, Your Honor.

3 MR. MARCHESE: None from Parker.

4 MR. LEVENTHAL: No, Your Honor.

5 MR. PEREZ: None from Lovelien.

6 THE COURT: All right. Exhibit 198 will be admitted
7 for demonstrative purposes.

8 You may go ahead and publish it to the jury.

9 MR. MYHRE: Thank you, Your Honor.

10 (Exhibit 198 received and published.)

11 BY MR. MYHRE:

12 Q. So we see 198, I believe, is now before the jury.

13 Relative to Mr. Parker's position that we just viewed
14 in the previous slides, where is this position?

15 A. This would be further to the east. So to where Mr. -- to
16 the right of where Mr. Parker -- Mr. Parker's gap was located.

17 Q. As with Mr. Parker's position, did you also put a
18 broomstick through this position?

19 A. Yes, I did.

20 Q. And what was your purpose in doing that?

21 A. Again, something approximately an inch in diameter. I was
22 able to set the broom down, put it in, and turn it and it sat
23 pointed directly to where the three BLM vehicles were parked on
24 the asphalt in the wash.

25 Q. And you physically pointed that broomstick?

1 A. Yes, I did.

2 MR. MYHRE: Your Honor, may we show Exhibit 199 to
3 the witness, Court, and counsel?

4 THE COURT: Yes, you may.

5 (Exhibit 199 published to witness.)

6 BY MR. MYHRE:

7 Q. And do you see 199?

8 A. Yes, I do.

9 Q. And what is depicted in that image?

10 A. As -- as I described earlier, this is the broomstick in
11 that gap pointed at the asphalt in the wash.

12 MR. MYHRE: And, Your Honor, we offer Government's
13 Exhibit 199 for demonstrative purposes.

14 (Exhibit 199 offered.)

15 THE COURT: Any objection to 199?

16 MR. TANASI: None from Stewart, Your Honor.

17 MR. MARCHESE: None from Parker.

18 MR. LEVENTHAL: No, Your Honor.

19 MR. TANASI: No, Your Honor.

20 THE COURT: All right. Exhibit 199 will be admitted.
21 Do you want to go ahead and publish?

22 MR. MYHRE: Yes -- yes, Your Honor. Thank you.

23 THE COURT: Go ahead.

24 (Exhibit 199 received and published.)

25 BY MR. MYHRE:

1 Q. And I believe the jury now has 199 before it,
2 Agent Willis, and this has -- is depicted here is the broom;
3 correct?

4 A. Yes.

5 Q. And would you draw a circle in this image where the
6 vehicles were located on April 12th, 2014?

7 A. (Witness complies).

8 MR. MYHRE: Witness drawing a circle center left top
9 portion of the exhibit, just left of the column in the middle
10 portion of the southbound bridge.

11 BY MR. MYHRE:

12 Q. And is that approximately where you stood?

13 A. Yes.

14 Q. And from this vantage point here, you're able to get a
15 line of sight to that circle?

16 A. Yes, I was.

17 MR. MYHRE: And bringing that down. We can take 199
18 down.

19 BY MR. MYHRE:

20 Q. Now I'd like to talk a little bit about the number of
21 people in the wash and the number of law enforcement officers
22 in the wash from the period of about noon until about 12:18,
23 12:20 on April 12th, 2014. Okay?

24 If I could have 182-24, please.

25 (Exhibit 182-24 published.)

1 BY MR. MYHRE:

2 Q. We've previously discussed 182-24 as a screenshot from the
3 aerial; correct?

4 A. Yes.

5 Q. Now, were you able to determine by -- by counting and by
6 viewing these images approximately how many law enforcement
7 officers were located here at Post 2 and extending behind Post
8 2 -- I'm circling this area (indicating) -- at around
9 approximately the 12 o'clock time period?

10 A. It started off at about -- with about 21 officers and then
11 as the line formed and people started to move forward to the
12 gate, we counted 29 officers in that area.

13 Q. So during this -- during the time period between 12:01 and
14 about 12:20 you would have had between 21 and 29 law
15 enforcement officers?

16 A. That's correct.

17 Q. Now, drawing a circle around the middle portion between
18 the two bridges (indicating) where the image depicts a number
19 of people on horseback and on foot, were you able to determine
20 approximately how many people were in this position in the
21 wash, roughly, between, again, noon and 12:20?

22 A. Approximately 270 people.

23 Q. That would include both people on horseback and on foot?

24 A. Yes.

25 Q. Now, circling the entire screen here (indicating), to

1 include the north and southbound bridge, there are people on
2 those bridges depicted in this image; correct?

3 A. Yes.

4 Q. And during that time period, approximately noon to about
5 12:20, there were people on those bridges; correct?

6 A. Correct.

7 Q. And counting the people on the bridges as well as in the
8 wash, approximately how many people were present?

9 A. Not counting the law enforcement, approximately 410
10 people.

11 Q. And did the officer count remain substantially the same
12 between 21 and 29?

13 A. Yes, in the wash, that's correct.

14 Q. Now, you mentioned that you'd also taken some distances
15 using a range finder; correct?

16 A. That's correct.

17 MR. MYHRE: Your Honor, may we show the witness what
18 has previously been marked as Exhibit -- just for Court,
19 counsel, and the witness -- Exhibit 210 which consists of three
20 pages?

21 THE COURT: Yes, you may.

22 (Exhibit 210 published to witness.)

23 BY MR. MYHRE:

24 Q. Do you see Exhibit 210 there, Agent Willis?

25 A. Yes.

1 Q. What is depicted in 210?

2 A. This is an aerial surveillance screenshot from April 12th,
3 2014. Labeled on here are a number of distances that I
4 determined with the laser range finder after being in this area
5 a number of times.

6 Q. And this image shows the assembly area across from Post 1;
7 correct?

8 A. Yes.

9 Q. It shows the wash area between the bridges, the
10 northbound, southbound 15?

11 A. Yes.

12 Q. And a number of -- where you've indicated yard, those are
13 yards you've determined or derived?

14 A. Yes.

15 Q. Using a range finder?

16 A. That's correct.

17 Q. And the distances are located -- excuse me -- are measured
18 on this image by arrows drawn?

19 A. Yes.

20 Q. Would that be the one point of the arrow to the other
21 point of the arrow would depict the yardage?

22 A. Correct.

23 Q. I'll show you what's been marked as Page 2 of 210.

24 What is depicted in Page 2?

25 A. So, again, this is aerial surveillance footage. This is a

1 screenshot and it's depicting just a different vantage point as
2 the plane circled around. So -- but also on here is, again,
3 labeled distances of areas between southbound and northbound
4 I-15.

5 Q. At the wash area?

6 A. Yes, at the wash area.

7 Q. And your yardage is indicated by arrows?

8 A. Yes.

9 Q. The measurements being one point of the arrow to the other
10 point; correct?

11 A. Correct.

12 MR. MYHRE: Your Honor, may we show Page 3 of Exhibit
13 210?

14 THE COURT: Yes, you may.

15 BY MR. MYHRE:

16 Q. What's a -- what's depicted on Page 3?

17 A. Same thing. Aerial surveillance screenshot. More
18 distances and measurements. For these particular -- for this
19 particular vantage point and these measurements, not only did I
20 personally go out there with a laser range finder, but we
21 reached out to the Nevada Department of Transportation to ask
22 them if they had measurements of the bridges so the width of
23 the roadway as its -- the bridges go over the wash and also the
24 height of the bridges, both on northbound and southbound I-15,
25 over the wash.

1 Q. And the height is measured in feet?

2 A. Yes.

3 Q. And depicts an arrow?

4 A. Yes.

5 Q. And the measurements between the points of the arrow;
6 correct?

7 A. Yes.

8 Q. So the height of the bridge is from the bottom of the wash
9 to the bridge?

10 A. Yes, to the bottom of the bridge.

11 MR. MYHRE: Your Honor, we offer, for demonstrative
12 purposes, what's been marked as Exhibit 210, consisting of
13 three pages.

14 (Exhibit 210 offered.)

15 THE COURT: Any objection to Exhibit 210?

16 MR. LEVENTHAL: Only to the extent that Agent Willis
17 indicated that he used Nevada Highway Patrol or NDOT or some
18 other form of identification for how he came to these numbers,
19 which would be hearsay.

20 MR. TANASI: Stewart joins.

21 MR. MARCHESE: Parker joins.

22 MR. PEREZ: Lovelien joins.

23 MR. MYHRE: For our purposes, we don't need the NDOT
24 reference, Your Honor. We can proceed without that.

25 MR. LEVENTHAL: I'm sorry?

1 THE COURT: All right. So he's just offering
2 Exhibit 210 and the numbers that are -- the measurements that
3 were found using his own laser range finder, not any NDOT
4 numbers; is that right?

5 MR. MYHRE: That's correct, Your Honor.

6 THE COURT: All right. Any other objection?

7 MR. LEVENTHAL: I'm sorry. Did I hear that -- so
8 what we're seeing is just his own personal range finder;
9 correct?

10 THE WITNESS: Yeah. As I said, I corroborated the
11 information that we --

12 BY MR. MYHRE:

13 Q. Don't refer to NDOT. Just in terms of the image that we
14 see on Page 3, are those numbers that you derived your range
15 finder?

16 A. That reflects my personal measurements with the range
17 finder.

18 MR. LEVENTHAL: Okay, Your Honor. No objection then.

19 THE COURT: All right. So Exhibit 210 will be
20 admitted, all three pages.

21 You may go ahead and publish it to the jury.

22 MR. MYHRE: Thank you, Your Honor.

23 (Exhibit 210 received and published.)

24 BY MR. MYHRE:

25 Q. And turning to Page 1 of Exhibit 210, we discussed

1 previously this image shows the assembly area; correct?

2 A. Correct.

3 Q. And shows the wash as well as the northbound/southbound
4 15?

5 A. Yes.

6 Q. So in the front part of the image we see 45- -- 458 yards.
7 Would you describe what you're -- what we see there depicted by
8 the arrows?

9 A. So this would have been the measurement from over that
10 first pillar on the west side underneath the northbound I- --
11 I-15 bridge to the entrance -- beginning of the entrance, if
12 you were heading northbound toward -- towards Mesquite on I-15
13 to the assembly area, and marked there is 458 yards. And -- go
14 ahead.

15 Q. So that would have been the distance if one were to walk
16 from this area depicted -- excuse me -- the area where the
17 assembly or the parking -- makeshift parking lot is, the
18 assembly area; correct?

19 A. Yes.

20 Q. If one were to walk along the northbound 15 to the point
21 where you've indicated by the pillar, that would have 458 yard?

22 A. Yes.

23 Q. Now, we see two measurements between the northbound and
24 southbound lanes; one 98 yards and one 170 yards. Could you
25 explain what the 98-yard measurement is?

1 A. So that would have been pillar to pillar. So standing
2 above the pillar on northbound I-15, that bridge, I could see
3 the pillar underneath. I aimed the laser range finder across
4 the wash to above that other pillar and got a yardage reading
5 of 98 yards.

6 Q. There's also a measurement indicating 170 yards. What
7 does that depict?

8 A. So that's standing in the middle of northbound I-15 and
9 measuring to the beginning or the -- just the ground right
10 before trees, the tree that was in front of or near some of the
11 BLM vehicles that were parked in the wash on the 12th.

12 Q. So looking at this image, approximately where would the
13 first line of vehicles be in this image?

14 A. In this image, they're covered up by the southbound I-15
15 bridge.

16 Q. If you'd draw a line just at the area where you believe
17 they're covered up.

18 A. (Witness complies).

19 MR. MYHRE: And witness has drawn a line right over
20 the north -- excuse me -- the southbound 15 as depicted in
21 Exhibit 210, right center, lower portion of the image.

22 BY MR. MYHRE:

23 Q. And is that -- that's the approximate location of where
24 the first row of law enforcement vehicles would have been?

25 A. Yes.

1 Q. Would that be greater than or less than the 170 yards
2 depicted here?

3 A. That would have been less than.

4 Q. Now, can you draw a line where the second line of vehicles
5 would have appeared for the law enforcement officers?

6 A. (Witness complies).

7 MR. MYHRE: Witness is drawing a line essentially
8 where the dark spot on the image loops about right center of
9 the image at Exhibit 210.

10 BY MR. MYHRE:

11 Q. And is that line that you've drawn, is that less than or
12 greater than the 170 yards that you've indicated?

13 A. It's greater than but maybe by five yards, at the most.

14 Q. And how do you know it's five yards?

15 A. I actually used the laser range finder all over that area.
16 For the point of this demonstrative exhibit, I just used that
17 bush as a point of reference, but I stood on that bridge and
18 used the laser range finder through that all that area.

19 Q. So is it approximately plus or minus five or 10 yards?

20 A. Yes.

21 MR. MYHRE: And if we could go to Page 2, please.

22 BY MR. MYHRE:

23 Q. Now, on Page 2 we see, again, the north and southbound
24 lanes; correct?

25 A. Yes.

1 Q. From the aerial standpoint; correct?

2 A. Yes.

3 Q. Now, we see the number 90 yards in one of the boxes at the
4 . . . sort of the mid -- just upper mid-section of the
5 Exhibit 210, Page 2?

6 A. Yes.

7 Q. What does that measure?

8 A. So the 122 would be from the middle of the northbound I-15
9 bridge to where the cattle gate was located underneath the
10 southbound I-15 bridge.

11 Q. And you derived that number how?

12 A. Standing on the bridge and using the laser range finder
13 down to where I knew, based on my review of the photo and video
14 evidence, of where that -- the gate was located.

15 Q. So now we see the 90 yards depicted there between the two
16 lanes; is that correct?

17 A. Yes.

18 Q. Is that 90 yards with the lanes perpendicular to each
19 other?

20 A. Yes. So the -- in the previous slide, the 98 yards -- I'm
21 going to -- you can see that the wash is at an angle. It
22 doesn't intersect. The bridge is perpendicular. So the
23 measurement from -- 98 from pillar to pillar is longer. So I
24 just took a measurement directly across standing and looking
25 directly across leaning against the Jersey barrier and we came

1 up with a measurement, based on the laser range finder, of 98
2 yards.

3 Q. Now, the 122, that's longer than the 90 because of the
4 angle that the wash runs in relationship to north and
5 southbound?

6 A. Yeah. Well, two reasons: that, because of the angle, and
7 also because I'm looking down. I'm standing on the bridge from
8 the north side looking down, which also creates more distance
9 down into the wash.

10 Q. Now you also have indicated there the number 64 yards.

11 A. Yes.

12 Q. What does that measure?

13 A. That would be from the middle of the northbound I-15
14 bridge, standing on the north side, and pointing the laser
15 range finder in the middle of the wash where the line would
16 have formed of horsemen and people in the wash.

17 Q. That would have been the approximate distance then from
18 the bridge so where the -- from the northbound bridge to where
19 the line formed?

20 A. Down to where the line formed, yes.

21 MR. MYHRE: And if we could turn to Page 3, please.

22 And clearing the screen.

23 BY MR. MYHRE:

24 Q. You described this earlier, but in Page 3 we see distances
25 for the height of the bridges; correct?

1 A. Yes.

2 Q. And the further -- the nearest image is the southbound
3 bridge; correct?

4 A. Correct.

5 Q. And that, you've indicated, a distance of 52 feet high;
6 correct?

7 A. That's correct.

8 Q. And you used a laser finder for that?

9 A. Yes.

10 Q. So that would be from the bottom of the wash to the bottom
11 of that bridge?

12 A. That's correct.

13 Q. The same true for the northbound?

14 A. Yes.

15 Q. You -- doing -- conducting that measurement you derived 45
16 feet?

17 A. Correct.

18 Q. And you determined that the lanes -- the width of the
19 northbound lanes is 44 feet?

20 A. Correct.

21 MR. MYHRE: And we can take that down.

22 BY MR. MYHRE:

23 Q. Now, Agent Willis, we've covered a lot of ground, but
24 we've got a couple more exhibits I want to discuss with you.
25 One is, in your review of public source or your review of the

1 Internet of what's publicly available, did you discover an
2 interview -- excuse me -- a video posted by Todd Engel?

3 A. Yes.

4 Q. And drawing your attention to Exhibit 46 -- and may we
5 show Exhibit 46, Your Honor, to the witness and to counsel and
6 to the Court?

7 THE COURT: Yes, you may.

8 (Exhibit 46 published to witness.)

9 BY MR. MYHRE:

10 Q. And first -- this is in three segments and the first one
11 I'm going to show you, Agent Willis, with the Court's
12 permission, is 46A.

13 (Exhibit 46A published to witness.)

14 And you can stop there. And if we can show 46B.

15 (Exhibit 46B published to witness.)

16 And lastly, 46C.

17 (Exhibit 46C published to witness.)

18 BY MR. MYHRE:

19 Q. Now having reviewed -- and you can stop there. That's
20 fine.

21 Having -- you've seen these videos before, but
22 looking at 46A, B, and C, what generally is depicted in those
23 images?

24 A. This is Todd Engel. He's driving in a pickup truck and he
25 is filming a video and speaking into what appears to be his

1 smartphone and this was captured on March 3rd, 2016.

2 Q. And this is the same Todd Engel that we saw depicted in
3 other images in your time line?

4 A. Yes.

5 Q. Specifically at -- at 182-52 which we just reviewed in
6 connection with Mr. Lovelien; correct?

7 A. Correct.

8 Q. Now, in the video -- you mentioned this was captured on
9 March the 3rd of 2016?

10 A. Yes.

11 Q. What had occurred on March the 3rd, 2016, with respect to
12 Mr. Engel?

13 A. He was arrested.

14 Q. And in this video does he discuss his -- the arrest of any
15 other of his co-defendants?

16 A. Yes.

17 Q. And does he mention Mr. Parker?

18 A. Yes, he does.

19 Q. And does he mention -- during the course of this video,
20 does he talk about the so-called movement or the resistance?

21 A. Yes.

22 MR. MYHRE: Your Honor, we offer what's been marked
23 as Exhibit 46A, B, and C and request that they be admitted and
24 published.

25 (Exhibit 46A, B, and C offered.)

1 THE COURT: Any objection to Exhibit 46A, B, and C?

2 MR. TANASI: Stewart objects on relevance,
3 Your Honor.

4 MR. MARCHESE: Parker joins and adds hearsay.

5 MR. LEVENTHAL: Drexler joins and confrontation.

6 MR. PEREZ: Lovelien joins. All the previous
7 objections.

8 MR. MYHRE: Your Honor, these are offered as
9 801(d)(2)(E). There's no confrontation issues since these are
10 non-testimonial and this is directly relevant to -- to the
11 conspiracy counts charged in this case.

12 THE COURT: So that's what I'm looking at is
13 801(d)(2)(E) and it does meet all the conditions.

14 So Exhibits 46A, B, and C are admitted.

15 Did you want to go ahead and publish?

16 MR. MYHRE: Yes, Your Honor.

17 THE COURT: Go ahead.

18 (Exhibit 46A, B, and C received and published.)

19 BY MR. MYHRE:

20 Q. Again, before we publish 46A, just to set the scene again,
21 where -- based on your review of this evidence, where is this
22 image taking place?

23 A. In northern Idaho as Todd Engel is driving his pickup
24 truck.

25 Q. So it's a view from within his vehicle?

1 A. Yes.

2 Q. Is -- does it appear as though someone's recording what
3 he's saying?

4 A. It appears that he's recording what he's saying.

5 Q. And does it -- can you -- from your observations of this
6 video, what -- what type of device is he using to record this
7 image?

8 A. It appears to be his smartphone he's . . .

9 MR. MYHRE: And if we could publish 46A, please.

10 (Exhibit 46A published.)

11 MR. MYHRE: And the record should reflect that 46A
12 ran from 0 to approximately 28 seconds.

13 If we could publish 46B.

14 THE COURT: Yes, you may.

15 (Exhibit 46B published.)

16 MR. MYHRE: Record should reflect that the 46B ran
17 from approximately -- for approximately 23 second, from 0 to
18 23.

19 And, Your Honor, may we publish 46C?

20 THE COURT: Yes, you may.

21 (Exhibit 46C published.)

22 BY MR. MYHRE:

23 Q. Now, Agent Willis, when he refers to -- he says "everybody
24 stay on their toes," to whom is he referring?

25 A. He's referring to the movement as he refers to it.

1 MR. LEVENTHAL: Objection. Calls for speculation.

2 MR. TANASI: Stewart joins.

3 MR. MARCHESE: Parker joins.

4 MR. LEVENTHAL: Strike.

5 MR. PEREZ: Lovelien joins.

6 THE COURT: Sustained without foundation.

7 BY MR. MYHRE:

8 Q. Well, you've reviewed this -- this video; correct?

9 A. Yes.

10 Q. And you've reviewed all the videos that have been
11 published in this case; correct?

12 A. Yes.

13 Q. Now, you've talked about how you obtained this video
14 through open source; correct?

15 A. Correct.

16 Q. Anybody viewing this video could watch this?

17 A. Yes.

18 Q. So when he's directing to everybody, is he directing to
19 people who are watching the video?

20 A. Yes.

21 MR. LEVENTHAL: Objection. Calls for speculation.

22 BY MR. MYHRE:

23 Q. Based on your investigation and your experience?

24 A. Yes.

25 THE COURT: All right. I'll allow it.

1 Overruled.

2 BY MR. MYHRE:

3 Q. Now this was captured on the 3rd of March of 2016;
4 correct?

5 A. Correct.

6 Q. That was almost two years after the events of April 12th,
7 2014; correct?

8 A. Yes.

9 Q. So I want to go back in time, as we sort of close out your
10 testimony here, and I want to go back to the events of
11 April the 12th, 2014.

12 In the course of your investigation, did you obtain a
13 video interview of Ammon Bundy from April 12th, 2014?

14 A. Yes, I did.

15 Q. And in that video was he interviewed by an individual by
16 the name of Stewart Rhodes?

17 A. Yes.

18 Q. Was the interview recorded?

19 A. Yes.

20 Q. And was it published and publicly on the Internet?

21 A. Yes.

22 Q. And specifically was it on YouTube?

23 A. Yes.

24 Q. And in that interview with Mr. Bundy does Mr. Bundy talk
25 about the events of April 12th, 2014?

1 A. Yes, he does.

2 Q. And does he describe the events that occurred in the wash
3 on April 12th, 2014?

4 A. Yes, he does.

5 MR. MYHRE: And, Your Honor, may we show for witness,
6 Court, and counsel only Exhibit 44?

7 THE COURT: Yes, you may.

8 (Exhibit 44 published to witness.)

9 BY MR. MYHRE:

10 Q. Have you had a chance to see Exhibit 44, Agent Willis?

11 A. Yes.

12 Q. Is that the video of the Stewart Rhodes interview of
13 Ammon Bundy?

14 A. Yes, it is.

15 Q. And is that of April 12, 2014?

16 A. Yes.

17 MR. MYHRE: Your Honor, we offer what's been marked
18 as Exhibit 44 and as 801(d)(2)(E) and we also ask that it be
19 published.

20 (Exhibit 44 offered.)

21 THE COURT: Any objection to Exhibit 44?

22 MR. TANASI: Stewart objects. Hearsay and relevance,
23 Your Honor.

24 MR. MARCHESE: Parker joins and especially in
25 reference to this individual Stewart Rhodes.

1 MR. PEREZ: Lovelien joins.

2 MR. LEVENTHAL: Drexler joins on confrontation
3 grounds and terms of who else is in this video.

4 THE COURT: All right. The relevance and the
5 confrontation clause are not applicable to an 801(d)(2)(E).
6 I'm not sure I understood the objection as to Stewart Rhodes?
7 Is that the --

8 MR. MARCHESE: Well, there's another individual in
9 this particular video speaking and that's why we're objecting
10 as to hearsay as to his statements.

11 THE COURT: All right. So are those -- are there
12 statements by Mr. Rhodes that we're going to be hearing on this
13 video that are offered for the truth of the matter asserted?

14 MR. MYHRE: Your Honor, only to the extent that
15 Mr. Bundy adopts them, so they would be adoptive statements of
16 Mr. Rhodes, adoptive admissions, if you will, by Mr. Bundy and
17 the only other words that are from Mr. Rhodes are questions
18 that he asked which are not offered for the truth of the matter
19 but merely to establish what Mr. Bundy is talking about when he
20 answers the questions.

21 THE COURT: All right. So with that clarification,
22 the -- that's appropriate. So Exhibit 44 will be admitted.

23 (Exhibit 44A received.)

24 MR. MYHRE: Thank you, Your Honor. And I
25 misidentified that. It should be 44A. I apologize.

1 THE COURT: 44A?

2 MR. MYHRE: Yes.

3 THE COURT: Thank you.

4 MR. MYHRE: Thank you.

5 And may we publish, Your Honor?

6 THE COURT: Yes, you may.

7 (Exhibit 44A published.)

8 MR. MYHRE: And the record should reflect the video
9 ended at approximately 6 minutes and 48 seconds.

10 BY MR. MYHRE:

11 Q. Now, at 6:48 here, the individual who was just speaking
12 obviously was -- and I'm drawing an arrow to him -- who is
13 that?

14 A. It's Ammon Bundy.

15 Q. And do you -- based on what you can observe in the footage
16 we just observed, where approximately is this interview taking
17 place?

18 A. This is in the trailer -- Ammon's trailer that's parked at
19 the staging area rally site off the State Route 170 in
20 Bunkerville.

21 Q. And during the course of this interview he talked about a
22 plan; correct?

23 A. Yes.

24 Q. What, in essence, did he say about the plan?

25 A. That they had a plan to go get the cattle and they had

1 armed people and militia available in case a gun battle ensued.

2 Q. And with respect to the militia, did he indicate the
3 militia was present?

4 A. Yes.

5 Q. And from his -- did he explain from his point of view,
6 that -- his being Ammon Bundy's point of view -- what he
7 speculated as to what the BLM was thinking with respect to
8 whether or not shots were fired?

9 MR. LEVENTHAL: Objection. Vague.

10 BY MR. MYHRE:

11 Q. Do you -- I can rephrase the question.

12 THE COURT: Thank you.

13 BY MR. MYHRE:

14 Q. Did Mr. Bundy talk about whether BLM believed shots would
15 be fired or whether they knew whether shots would be fired or
16 not?

17 A. No, they did not.

18 Q. What did he -- what did he indicate with respect to that?

19 Why don't we go back -- if we can go back to 2:48,
20 approximately.

21 (Exhibit 44A published.)

22 MR. MYHRE: Stop there. If you could go back to
23 about 2:38. I'm sorry.

24 (Exhibit 44A published.)

25 Stop there, please.

1 BY MR. MYHRE:

2 Q. So from the segment about 2:38 to 2:45, did he indicate
3 what the BLM knew or didn't know about with respect to the
4 shooting?

5 A. They did not know what they were going to do.

6 MR. MYHRE: Your Honor, may I have just a few
7 moments?

8 THE COURT: Yes.

9 (Counsel conferring.)

10 BY MR. MYHRE:

11 Q. Just for record purposes, Agent Willis, we talked about
12 the measurements and, generally speaking, a football field is
13 approximately how long?

14 A. From the end zone to end zone is a hundred yards. If you
15 count the end zones, it's 120 yards.

16 Q. And have you been able to determine how many yards this
17 courtroom is wide?

18 A. I had a laser range finder in here and approximately 17
19 yards. I measured yardage, not feet, but 17 yards by 17 yards.

20 Q. Now, you pointed which -- are you pointing from back to
21 front or side to side?

22 A. Back to front and side to side.

23 Q. Is it square?

24 A. Yes.

25 Q. And 17 yards?

1 A. Yes.

2 (Counsel conferring.)

3 MR. MYHRE: Now, Your Honor, can we go back to 208
4 for a moment, please?

5 THE COURT: Yes.

6 (Exhibit 208 published.)

7 BY MR. MYHRE:

8 Q. And I think I may have neglected to ask. In 208, do you
9 see the broomstick extending here?

10 A. Yes, I do.

11 Q. And if you could just draw a circle over that.

12 A. So it's right here (indicating), again, above the west
13 side pillars that are underneath the northbound I-15 bridge.

14 Q. And this is for depicting Mr. Parker's position?

15 A. Yes.

16 Q. Thank you.

17 MR. MYHRE: And if I could get . . . Your Honor, may
18 I have 210-2, please?

19 THE COURT: Yes.

20 (Exhibit 210-2 published.)

21 BY MR. MYHRE:

22 Q. So we're back on 210, Image 2, and you've indicated
23 approximately 122 yards there between the bridge to where the
24 BLM vehicles are located?

25 A. No. That would have been from the bridge to the cattle

1 gate.

2 Q. Or to the cattle gate. I apologize.

3 A. To where the BLM vehicles would have been located, it
4 would have been 130 yards.

5 Q. Now, in terms of a football field, what's the relative
6 measurement of this -- what you've indicated there with respect
7 to a football field?

8 A. Well, 90 yards. So football field would have been
9 approximately the other end instead of the inner measurement
10 from the -- inside the bridges, basically from the outer side
11 of each bridge.

12 Q. Right. I'm referring to the 122. A football field within
13 that 122; correct?

14 A. Oh, I -- excuse me.

15 So, again, counting the end zones, football field 120
16 yards, so that would have been 2 yards longer, but again, I'm
17 measuring slightly down.

18 Q. Okay. Now, from that end to end you've described where
19 you stood before.

20 A. Yes.

21 Q. Can you -- from where you were standing in the wash
22 looking up at that bridge, would you -- were you able to --
23 could you depict, clearly, people -- if people were on that
24 bridge, whether you could depict their image or not?

25 A. Oh, yes. Definitely.

1 MR. TANASI: Objection to speculation, Your Honor.

2 BY MR. MYHRE:

3 Q. Based on your experience and your training?

4 A. Yes.

5 Q. Considering the length of a football field?

6 A. Yes.

7 Q. Could you -- can you see a human image and depict clearly
8 an image at 120 yards?

9 A. Yes.

10 MR. MYHRE: No further questions, Your Honor. We
11 pass the witness.

12 THE COURT: All right. Let's go ahead and take our
13 afternoon break. I do remind the jury, please do not discuss
14 this case or read anything about this case or view anything or
15 listen to anything about this case.

16 Please do not perform any research or any independent
17 investigation and do not form an opinion.

18 We'll go ahead and take our break until 3:45.

19 Please stand for the jury. They are excused.

20 And Special Agent Willis, you may take your afternoon
21 break as well after the jury exits.

22 THE WITNESS: Thank you.

23 THE COURT: Please be back here by 3:45.

24 (Jury excused from courtroom.)

25 THE COURT: All right. Off record.

1 (Recess was taken at 3:31 p.m.)

2 COURTROOM ADMINISTRATOR: All rise.

3 THE COURT: You may be seated.

4 So let's and bring back in the jury.

5 COURTROOM ADMINISTRATOR: Your Honor.

6 THE COURT: Thank you.

7 (Brief pause in proceedings.)

8 COURTROOM ADMINISTRATOR: All rise.

9 (Jury returned to courtroom at 4:07 p.m.)

10 THE COURT: All right. Jury may be seated. Welcome
11 back. We've got our witness ready and we're going to begin now
12 with cross-examination.

13 MR. TANASI: Thank you, Your Honor.

14

15 CROSS-EXAMINATION OF JOEL WILLIS

16 BY MR. TANASI:

17 Q. Good afternoon, Agent Willis.

18 A. Good afternoon.

19 Q. I'm Rich Tanasi. I represent Steven Stewart (indicating).

20 Few questions for you on cross. Okay?

21 A. Yes, sir.

22 Q. All right.

23 MR. TANASI: Brian, if you could please publish 182,
24 Slide 1.

25 (Exhibit 182-1 published.)

1 BY MR. TANASI:

2 Q. Okay, sir. You see this slide here in front of you;
3 right?

4 A. Yes.

5 Q. Okay. Now, in this particular slide you've identified
6 Steven Stewart in this white truck; correct?

7 A. Yes.

8 Q. All right. And this is Mr. Stewart arriving at this rally
9 or speech area. Fair?

10 A. Yes.

11 Q. Okay. Now, this -- after this speech, it's your testimony
12 that Mr. Stewart is in this truck and heads over to the parking
13 lot on the northbound bridge. Fair?

14 A. Yes.

15 Q. Okay. So the distances between this rally site and that
16 particular parking lot, what would you estimate?

17 A. Approximately five miles.

18 Q. Okay. Now, isn't it true that this vehicle isn't the only
19 vehicle that drives from the rally site over to that parking
20 lot. Fair?

21 A. That is true.

22 Q. Okay.

23 MR. TANASI: Brian, if we could please look at Number
24 2.

25 (Exhibit 182-2 published.)

1 BY MR. TANASI:

2 Q. All right. And this picture here, sir, you have
3 identified Mr. Lovelien and Mr. Parker; correct?

4 A. Yes.

5 Q. Okay. And with respect to Mr. Lovelien -- you testified
6 to this on direct but I just want to make sure I understand
7 it -- that's an earpiece. Fair?

8 A. Yes.

9 Q. Okay. And the other gentlemen that I'm circling here
10 (indicating), they're wearing camo; correct?

11 A. Yes.

12 Q. All right.

13 MR. TANASI: All right, Brian. If we could look at
14 Number 4, please.

15 (Exhibit 182-4 published.)

16 BY MR. TANASI:

17 Q. All right. In this picture you've identified Mr. Stewart;
18 correct?

19 A. Yes.

20 Q. All right. And Mr. Stewart is here (indicating) in the
21 blue; correct?

22 A. Correct.

23 Q. All right. He's not wearing camo; right?

24 A. That is correct.

25 Q. Okay. Doesn't have an earpiece; right?

1 A. That is true.

2 Q. Okay. Doesn't have a backpack on either; right?

3 A. No.

4 Q. Okay.

5 MR. TANASI: If we can going to Number 8, please.

6 (Exhibit 182-8 published.)

7 BY MR. TANASI:

8 Q. All right. Again, in this particular picture more folks
9 in camo that I'm circling; right (indicating)?

10 A. Yes.

11 Q. Another individual here (indicating) in camo; right?

12 A. Yes.

13 Q. And -- okay. If we could now go to Number 14, please.

14 (Exhibit 182-14 published.)

15 BY MR. TANASI:

16 Q. All right. In this picture you've identified Mr. Stewart
17 here in the back of this truck (indicating); correct?

18 A. Correct.

19 Q. All right. Now this truck is in front of NHP; correct?

20 A. Yes.

21 Q. Because this is NHP dash cam; right?

22 A. Correct.

23 Q. All right. This truck is actually pulling off to the side
24 of the road; correct?

25 A. Yes, it is.

1 Q. Complying with NHP; correct?

2 A. It's moving out of NHP's way, yes.

3 Q. Correct.

4 And, again, this would be roughly covering the five
5 mile or part of the five-mile distance in between that first
6 rally site we talked about and then ultimately the parking lot;
7 correct?

8 A. Correct.

9 MR. TANASI: All right. Number 15, please, Brian.

10 (Exhibit 182-15 published.)

11 BY MR. TANASI:

12 Q. This particular individual here (indicating), we've talked
13 about him. He's Todd Engel; right?

14 A. Yes.

15 Q. Okay. Now, this -- this individual here (indicating), he
16 has kind of beige pants on; right?

17 A. Yes.

18 Q. Okay. And then he's got kind of this tactical vest on;
19 right?

20 A. Yes.

21 Q. That you called it?

22 And he's kind of -- beige hat; right?

23 A. Yes.

24 Q. Okay. And this is not quite at the northbound bridge over
25 the wash area yet; this is kind of right at the ICP; right?

1 A. Across from the ICP, yes.

2 Q. And this individual, he was not in the vehicle with
3 Steven Stewart; right?

4 A. That's correct.

5 Q. And you'd agree with me that Steven Stewart is dressed a
6 lot differently than this gentleman; correct?

7 A. Yes.

8 Q. All right.

9 MR. TANASI: Can we go to 16, please, Brian.

10 (Exhibit 182-16 published.)

11 BY MR. TANASI:

12 Q. All right. In this particular picture the head that I'm
13 circling here (indicating) is Sheriff Lombardo; correct?

14 A. Yes.

15 Q. All right. Now, behind Sheriff Lombardo, is there another
16 law enforcement officer here that I'm circling (indicating), if
17 you know?

18 A. Yes. That appears to be another law enforcement officer.

19 Q. Okay. And Mr. Lombardo's speaking with, is it Ammon here
20 that I'm circling (indicating)?

21 A. That's Dave Bundy.

22 Q. I apologize. Dave Bundy; correct?

23 A. Yes.

24 Q. All right. And so this conversation is happening where,
25 roughly at the -- just outside of the parking lot area?

1 A. Yes.

2 Q. Okay. And they're not making any arrests right now;
3 right?

4 A. That is correct.

5 Q. All right.

6 MR. TANASI: Go to 18, please, Brian.

7 (Exhibit 182-18 published.)

8 BY MR. TANASI:

9 Q. All right. In this picture here, this individual I'm
10 circling (indicating), he's with Metro; correct?

11 A. Yes.

12 Q. All right. And the person that he has his back to is
13 Eric Parker; correct?

14 A. Yes.

15 Q. All right. And, however, looking at Eric Parker are -- is
16 this individual here (indicating); correct?

17 A. Um, he would -- he would be facing east -- I don't know if
18 he's exactly looking at Eric Parker but definitely turned
19 towards Eric Parker.

20 Q. Okay. He's in that direction?

21 A. Yes.

22 Q. Or at least looking toward that direction; correct?

23 A. Yes.

24 Q. Okay. And he's not arresting anybody in this area;
25 correct?

1 MR. MYHRE: Objection. Relevance, Your Honor, as to
2 arrests.

3 MR. TANASI: Your Honor, it goes to -- it goes to
4 negate the charges in this case. The Government has alleged
5 conduct that warrants arrest. In this case, this conduct
6 that's occurring --

7 MR. MYHRE: Object to this --

8 MR. TANASI: -- is not triggering an arrest.

9 THE COURT: Objection is sustained.

10 MR. TANASI: Okay.

11 BY MR. TANASI:

12 Q. This officer that I'm circling here (indicating), does he
13 appear to be stopping traffic?

14 A. That's what it appears to be.

15 Q. Okay.

16 A. Yes.

17 MR. TANASI: All right. If we can go to 20, please.

18 (Exhibit 182-20 published.)

19 BY MR. TANASI:

20 Q. All right. So, here, again, Steven Stewart (indicating);
21 right?

22 A. Yes.

23 Q. Okay. Same blue jeans, blue shirt; right?

24 A. Yes.

25 Q. Okay. And no camo; right?

1 A. No.

2 Q. No earpiece; right?

3 A. Not that I can see.

4 Q. Okay. No binoculars in his hands; right?

5 A. Not that I can see.

6 Q. Okay. No backpack; correct?

7 A. Not at this time.

8 MR. TANASI: 21, please, Brian.

9 (Exhibit 182-21 published.)

10 BY MR. TANASI:

11 Q. Steven Stewart again (indicating)?

12 A. Yes.

13 Q. Steven Stewart has no binoculars that you can see;
14 correct?

15 A. Correct.

16 Q. Okay. He has the same outfit, same blue; right?

17 A. Yes.

18 Q. Again, no camo; right?

19 A. Correct.

20 MR. TANASI: Go to 25, please.

21 (Exhibit 182-25 published.)

22 BY MR. TANASI:

23 Q. All right. In this particular picture here, again, we see
24 Steven Stewart that I've circled (indicating); right?

25 A. Yes.

1 Q. Okay. Now, his -- he has no binoculars; right?

2 A. Not that I could see.

3 Q. No backpack; right?

4 A. Correct.

5 Q. Okay. He is holding his gun; correct?

6 A. Yes, he is.

7 Q. Okay. Now, the barrel of that gun, would you agree with
8 me is about right here (indicating), maybe even less than that,
9 over the Jersey barrier. Fair?

10 A. Yes.

11 Q. Okay. In fact, you just barely see the shadow of it right
12 here (indicating); correct?

13 A. Correct.

14 Q. All right. And, again, he's kind of down; right, on his
15 knees?

16 A. Yes.

17 Q. All right. This individual next to him (indicating), do
18 you see him there that I circled? The white shirt?

19 A. Yes.

20 Q. Okay. This individual, he appears to be holding something
21 in his hand; correct?

22 A. Yes.

23 Q. Okay. Appears to be maybe a camera?

24 A. It's possible, yes.

25 Q. Possibly a range finder?

1 A. Possibly.

2 Q. Okay. And he's also on his knees; right?

3 A. Yes.

4 Q. Okay. And then this individual here (indicating), we just
5 see the top of his head. You also see that he appears to be
6 kind of on his knees as well; right?

7 A. It appears that he's crouching on his knees, yes.

8 MR. TANASI: Brian, if we could go to . . . and
9 again, with this picture, we don't see Mr. Stewart with an
10 earpiece; right?

11 THE WITNESS: Correct.

12 BY MR. TANASI:

13 Q. Okay. And, again, no backpack; correct?

14 A. Correct.

15 Q. All right.

16 MR. TANASI: Can we go to 27, please, Brian.

17 (Exhibit 182-27 published.)

18 BY MR. TANASI:

19 Q. All right. Again, another picture of Steven Stewart
20 (indicating) kind of crouched down; right?

21 A. Yes.

22 Q. Okay. Again, his gun is pointing down here (indicating);
23 correct?

24 A. Yes.

25 Q. Into the Jersey barrier; right?

1 A. Yes.

2 Q. Okay. And below the Jersey barrier's top; correct?

3 A. Yes.

4 Q. Again, no backpack; right?

5 A. Correct.

6 Q. No binoculars; right?

7 A. Not that I could see.

8 Q. No earpiece; right?

9 A. Correct.

10 Q. All right.

11 MR. TANASI: 28, please, Brian.

12 (Exhibit 182-28 published.)

13 BY MR. TANASI:

14 Q. All right. So, this particular picture here,
15 Steven Stewart is kind of back here (indicating); right?

16 A. Yes.

17 Q. All right. And he's also, again, next to the guy in the
18 white who is kind of crouched down as well; right?

19 A. Yes.

20 Q. All right. And in this picture his gun appears to be at
21 least below the Jersey barrier; right?

22 A. Yes. I don't see it above the Jersey barrier.

23 Q. Okay. Which would mean it's below the Jersey barrier;
24 right?

25 A. Yes.

1 Q. Okay. No earpiece in this picture; right?

2 A. Not that I could see.

3 Q. No camo; right?

4 A. Correct.

5 Q. No backpack; right?

6 A. Correct.

7 Q. All right. And in this picture, no Scott Drexler either;
8 right?

9 A. I don't see him, but I could see the end of his gun in
10 this picture.

11 Q. But you haven't identified that?

12 A. Not in this, but I did point it out while we were going
13 over this exhibit.

14 Q. Okay. But you don't see him. Where do you -- where do
15 you see Scott Drexler in this picture, sir?

16 A. So may I draw on the picture?

17 Q. Sure.

18 A. So there's his shadow (indicating) and there is the end of
19 his gun (indicating), and then also in the previous photo,
20 where you had also pointed out the guy in the white, the guy in
21 the red shirt is actually the News 8 photographer with the
22 camera, so that would have been from that vantage point and
23 Mr. Drexler is in there and also with other photographs I could
24 tell that he's to Mr. Parker's left.

25 Q. Right. That's your testimony, but you didn't draw the

1 little yellow arrow that I identified Mr. Drexler with though;
2 correct?

3 A. Correct.

4 Q. Okay. And Mr. Lovelien, he's not in this picture either;
5 correct?

6 A. Correct.

7 Q. All right.

8 MR. TANASI: Go to 32, please.

9 (Exhibit 182-32 published.)

10 BY MR. TANASI:

11 Q. Okay. So, in 32, sir, you've identified Steven Stewart
12 here (indicating); correct?

13 A. Yes.

14 Q. Okay. His gun, where is his gun, if you're able to
15 identify that?

16 A. I can't see it from this vantage point.

17 Q. Okay. Fair to say -- well, if you can't see it, fair to
18 say it's at least below the top of this car (indicating);
19 right?

20 A. Yes. That's fair to say.

21 Q. Fair to say that it's probably even below that and below
22 the Jersey barrier? Fair to say?

23 A. I don't -- I don't know that from looking at this picture.

24 Q. Okay. And kind of coming off of this red line that I drew
25 (indicating), he's turned away from the Jersey barrier; right?

1 A. Yes.

2 Q. Okay. You don't see an earpiece; correct?

3 A. Not in this picture, no.

4 Q. No backpack; correct?

5 A. Correct.

6 MR. TANASI: All right. If we could go to -- if we
7 could just go back to 31, please, Brian.

8 (Exhibit 182-31 published.)

9 BY MR. TANASI:

10 Q. All right. So in this picture you've identified this
11 person (indicating) that I've circled as Steven Stewart;
12 correct?

13 A. Yes.

14 Q. All right. Steven Stewart, as we've established, he's
15 wearing blue; right?

16 A. Yes.

17 Q. Would you agree with me that the person that I've circled
18 doesn't appear to have a shade of blue on?

19 A. I can't see from this vantage point -- or this image, but
20 tracking Steven Stewart, you know, he -- he is crouching down.
21 He's standing up throughout this video. So that's who I, based
22 on my investigation for this frame, believe is Steven Stewart
23 in this photograph.

24 Q. Right. But as we've identified prior to this, there's
25 other individuals who were crouching down; correct?

1 A. Yes, in the area.

2 Q. In the area; correct?

3 A. Yes.

4 Q. And so that could be one of those other individuals.
5 Fair?

6 A. I -- I don't think that's likely.

7 Q. You don't think --

8 A. But there is other individuals in the area crouching down.

9 Q. Understood. And you'd agree with me that the person that
10 you've identified as Steven Stewart that I'm circling here
11 (indicating) doesn't appear to have blue on?

12 A. I can't tell from this picture.

13 Q. Okay.

14 MR. TANASI: Brian, 33, please.

15 (Exhibit 182-33 published.)

16 BY MR. TANASI:

17 Q. All right. In this particular picture you've identified
18 Eric Parker; correct?

19 A. Yes.

20 Q. No Steven Stewart; right?

21 A. That is correct.

22 Q. All right.

23 MR. TANASI: If you could, Brian, please go to 36.

24 (Exhibit 182-36 published.)

25 BY MR. TANASI:

1 Q. All right. Here again you've identified Mr. Stewart
2 (indicating); right?

3 A. Yes.

4 Q. Okay. He appears to be crossing traffic; correct?

5 A. Yes.

6 Q. Okay. Again, he appears to be walking away from the
7 northbound bridge over the -- over the wash area; correct?

8 A. He's either moving fast or running in this video.

9 Q. Right. Again, there's traffic on the road; right?

10 A. Yes.

11 Q. Okay.

12 MR. TANASI: 37, please, Brian.

13 (Exhibit 182-37 published.)

14 BY MR. TANASI:

15 Q. All right. So in this particular picture, this lady that
16 I'm circling here, she's crouched down; correct?

17 A. Yes.

18 Q. Okay. And in this particular picture, we don't see
19 Steven Stewart; right?

20 A. Correct.

21 Q. All right.

22 MR. TANASI: 39, please, Brian.

23 (Exhibit 182-39 published.)

24 BY MR. TANASI:

25 Q. Okay. Again, we see the lady in the kind of pink and

1 black sequins blouse (indicating); right?

2 A. Yes.

3 Q. She's crouched down; correct?

4 A. Yes.

5 Q. All right. In this particular picture we don't see
6 Steven Stewart; right?

7 A. Correct.

8 MR. TANASI: All right. 41, please, Brian.

9 (Exhibit 182-41 published.)

10 BY MR. TANASI:

11 Q. Again, another angle kind of what we've looked at a few
12 times, but crouched down, the lady in the pink and black
13 (indicating); correct?

14 A. Yes.

15 Q. Okay. This person back here (indicating), he's kind of
16 crouched down too; correct?

17 A. Yes.

18 Q. Okay.

19 MR. TANASI: Go to 43, please, Brian.

20 (Exhibit 182-43 published.)

21 BY MR. TANASI:

22 Q. All right. Here (indicating) we have NHP; correct?

23 A. Yes.

24 Q. All right. And then I'm circling another individual
25 (indicating) also with NHP; correct?

1 A. Yes.

2 Q. All right. And this is on the northbound bridge; correct?

3 A. Yes.

4 Q. And we've seen pictures of Steven Stewart; right? On this
5 bridge; right?

6 A. Yes.

7 Q. Okay. Somewhere down kind of in this area (indicating);
8 right?

9 A. At this time he wouldn't be on the bridge, but yes, he was
10 in that area in other photographs.

11 Q. Okay.

12 MR. TANASI: 45, please, Brian.

13 (Exhibit 182-45 published.)

14 BY MR. TANASI:

15 Q. Okay. Again, no Steven Stewart in this particular
16 picture. Fair?

17 A. Correct.

18 Q. Okay. This individual here (indicating), blue shirt;
19 correct?

20 A. Yes.

21 Q. Dark hat; correct?

22 A. Yes.

23 Q. Crouching down or bending down; correct?

24 A. He seems to just be leaning down looking into his camera.

25 Q. Okay. And then again we see the gentleman with the white

1 shirt (indicating); correct?

2 A. Yes.

3 Q. And, again, he has -- appears to have something in his
4 hands. Fair?

5 A. Yes.

6 Q. Okay.

7 MR. TANASI: 47, please, Brian.

8 (Exhibit 182-47 published.)

9 BY MR. TANASI:

10 Q. All right. Again, more folks crouching down. Lady in the
11 pink and black (indicating); correct?

12 A. Yes.

13 Q. This lady here (indicating) with the blue shirt and the
14 white hat; correct?

15 A. Yes.

16 Q. Okay. Again, the other individual with the blue shirt
17 (indicating), cameraman; right? Crouched down?

18 A. Yes.

19 Q. Dark hat; correct?

20 Okay. This person here (indicating) also kind of
21 hunched over a little. Fair?

22 A. Yes.

23 Q. Okay. No Steven Stewart in this picture; right?

24 A. That's correct.

25 MR. TANASI: 50, please, Brian.

1 (Exhibit 182-50 published.)

2 BY MR. TANASI:

3 Q. Okay. Again, I've identified Mr. Parker and Mr. Drexler.
4 No Steven Stewart; right?

5 A. Correct.

6 Q. Okay. No Mr. Lovelien in this picture; right?

7 A. That is correct.

8 Q. Okay.

9 MR. TANASI: 53, please, Brian.

10 (Exhibit 182-53 published.)

11 BY MR. TANASI:

12 Q. Okay. Again, crouching down over here (indicating), you
13 agree with me, cameraman? Same cameraman, different angle?

14 A. Yes.

15 Q. Okay. Same gal in the blue that we circled earlier
16 (indicating)?

17 A. Yes.

18 Q. Kind of crouching down; right?

19 A. Yes.

20 Q. All right.

21 MR. TANASI: 56, please, Brian.

22 (Exhibit 182-56 published.)

23 BY MR. TANASI:

24 Q. Okay. Again, this gal (indicating), she's kind of leaning
25 over at this point; right?

1 A. Yes.

2 Q. Okay. We see Mr. Drexler; right?

3 A. Yes.

4 Q. No Steven Stewart; correct?

5 A. No.

6 Q. Okay.

7 MR. TANASI: 59, please, Brian.

8 (Exhibit 182-59 published.)

9 BY MR. TANASI:

10 Q. All right. In this picture we see Steven; right? It's
11 who you've identified; correct?

12 A. Yes.

13 Q. Again, you see both of his hands are on or over the Jersey
14 barrier (indicating); right?

15 A. Yes.

16 Q. Okay. And this is the butt of his gun (indicating);
17 correct?

18 A. Yes.

19 Q. Okay. So his gun is behind the Jersey barrier. You'd
20 agree with me?

21 A. Yes.

22 Q. Okay. No backpack; right?

23 A. The backpack's being used by Mr. Parker.

24 Q. Right, but he's not wearing it; right?

25 A. Correct.

1 Q. Okay. No binoculars in Mr. Stewart's hand; right?

2 A. Not that I can see.

3 Q. Okay. And, again, not holding his gun; right?

4 A. Correct.

5 Q. All right.

6 MR. TANASI: Go to 60, please, Brian.

7 (Exhibit 182-60 published.)

8 BY MR. TANASI:

9 Q. Okay. Again, in this particular picture you have not
10 identified Steven Stewart; correct?

11 A. That is correct.

12 Q. All right.

13 MR. TANASI: And 61, please, Brian.

14 (Exhibit 182-61 published.)

15 BY MR. TANASI:

16 Q. Again, this particular picture, you have not identified
17 Steven Stewart; right?

18 A. Correct.

19 Q. All right. And you also haven't identified Eric Parker;
20 correct?

21 A. That is correct.

22 Q. All right.

23 MR. TANASI: 65, please, Brian.

24 (Exhibit 182-65 published.)

25 BY MR. TANASI:

1 Q. All right. You testified on direct that this is a
2 picture, a still shot, of the BLM backing away from the fence;
3 correct?

4 A. Yes.

5 Q. All right. And you have that at 12:39. Fair?

6 A. Yes.

7 Q. All right. And, again, this is not right up against the
8 fence anymore. This is now starting to back away. Fair?

9 A. Correct.

10 Q. All right.

11 MR. TANASI: Brian, if we could look at 67, please.

12 (Exhibit 182-67 published.)

13 BY MR. TANASI:

14 Q. This is the first picture that we've seen of
15 Steven Stewart standing over the Jersey barrier; correct?

16 A. In this presentation, yes.

17 Q. Okay. First picture we've seen with his gun up over the
18 Jersey barrier; correct?

19 A. That is correct.

20 Q. All right. And this comes after the BLM had already
21 started backing away from the fence as you just testified;
22 correct?

23 A. Yes.

24 Q. All right. Now, this gun that he's holding, his finger is
25 not on the trigger; correct?

1 A. Correct.

2 Q. Okay. And the gun is -- if we followed maybe this rough
3 trajectory (indicating) -- pointing up this way, or somewhere
4 thereabouts?

5 A. Yes.

6 Q. Okay. Not pointing down into the wash; correct?

7 A. Correct.

8 Q. All right.

9 MR. TANASI: 69, please, Brian.

10 (Exhibit 182-69 published.)

11 BY MR. TANASI:

12 Q. All right. You've identified just Steven Stewart in this
13 picture; correct?

14 A. Yes.

15 Q. No Eric Parker, no Scott Drexler; right?

16 A. Correct.

17 Q. Okay. No Ricky Lovelien; right?

18 A. That's correct.

19 MR. TANASI: Look at Number 70, please, Brian.

20 (Exhibit 182-70 published.)

21 BY MR. TANASI:

22 Q. Okay. In this particular picture, again, Steven Stewart
23 is now down; right?

24 A. Yes.

25 Q. Okay. And this is his gun (indicating); correct?

1 A. Yes.

2 Q. All right. Again, the gun is below the Jersey barrier;
3 right?

4 A. Correct.

5 Q. Okay. And he's looking over into the wash. Fair?

6 A. Yes.

7 Q. Okay. No binoculars?

8 A. Not that I could see.

9 Q. No earpiece?

10 A. Not that I could see.

11 Q. Okay.

12 MR. TANASI: 75, please, Brian.

13 (Exhibit 182-75 published.)

14 BY MR. TANASI:

15 Q. All right. In this particular picture it's -- you have is
16 at 1:11; right?

17 A. Yes.

18 Q. All right. In this picture Mr. Stewart is depicted in;
19 right?

20 A. Yes.

21 Q. Okay. And you've -- you see his gun here (indicating);
22 correct?

23 A. Yes.

24 Q. Okay. Again, it's roughly below -- it's actually behind
25 or in front of him; right?

1 A. Yes.

2 Q. In other words, he's standing in between the gun and the
3 BLM. Fair?

4 A. That is correct.

5 Q. Okay. All right. And in this particular picture he's got
6 the backpack on; right?

7 A. Yes.

8 Q. Okay. And these folks back here (indicating), he's
9 chatting with; right?

10 A. Yes.

11 Q. Okay. They appear to be smiling; right?

12 A. Yes.

13 Q. All right.

14 MR. TANASI: 77, please.

15 (Exhibit 182-77 published.)

16 BY MR. TANASI:

17 Q. All right. In this picture you've identified
18 Mr. Lovelien; right?

19 A. Correct.

20 Q. Okay. No Eric Parker; right?

21 A. That's correct.

22 Q. No Scott Drexler; right?

23 A. Correct.

24 Q. No Steven Stewart; right?

25 A. Correct.

1 Q. All right.

2 MR. TANASI: 79, please.

3 (Exhibit 182-79 published.)

4 BY MR. TANASI:

5 Q. Okay. In this picture you -- what time do you have this
6 mobile upload occurring? I think you have it at 1:34. Is
7 that --

8 A. Right.

9 Q. -- about right?

10 A. Yes.

11 Q. And that's from the UTC time off of the post?

12 A. Yes.

13 Q. And in this picture the cowboys are kind of -- they're
14 riding their horses up the wash; right?

15 A. Correct.

16 Q. All right. Steven Stewart's not on any of those horses;
17 right?

18 A. That is correct.

19 Q. Okay.

20 MR. TANASI: Go to 81, please, Brian.

21 (Exhibit 182-81 published.)

22 BY MR. TANASI:

23 Q. All right. So in this particular picture, this is not --
24 this post here -- I apologize -- this is not Steven Stewart;
25 correct?

1 A. Correct.

2 Q. This is Todd Engel; right?

3 A. Yes.

4 Q. And we've seen no pictures of Steven Stewart and
5 Todd Engel together; correct?

6 A. Correct.

7 Q. All right.

8 MR. TANASI: 82, please, Brian.

9 (Exhibit 182-82 published.)

10 BY MR. TANASI:

11 Q. All right. In this picture we see Steven again about
12 2:14; right?

13 A. Yes.

14 Q. Okay. I've got him circled here (indicating); correct?

15 A. Yes.

16 Q. Okay. And he's kind of got his camera out (indicating);
17 right?

18 A. Yes.

19 Q. All right. He's not pointing a weapon; right?

20 A. Correct.

21 Q. Not holding a weapon; right?

22 A. Correct.

23 Q. Don't see a gun in that picture; right?

24 A. That's correct.

25 Q. Okay. No earpiece; right?

1 A. Not that I could see.

2 MR. TANASI: All right. 84, please, Brian.

3 (Exhibit 182-84 published.)

4 BY MR. TANASI:

5 Q. All right. And this picture is when the cattle are being
6 released; right?

7 A. Yes.

8 Q. Okay. Cattle driven out of the ICP; correct?

9 A. Yes.

10 Q. All right.

11 MR. TANASI: Now, Brian, if we could go back to 73 --
12 oh, hold on one second. I apologize.

13 BY MR. TANASI:

14 Q. And this is at 2:50 p.m.; correct?

15 A. Yes.

16 MR. TANASI: All right. If we can go back to 73.

17 (Exhibit 182-73 published.)

18 BY MR. TANASI:

19 Q. All right. Steven Stewart's post; correct?

20 A. Yes.

21 Q. All right. And this is at 1:03; right?

22 A. Yes.

23 Q. And he says, "First they said they were going to release
24 everything and leave"; correct?

25 A. That's what that post says, yes.

1 Q. Okay.

2 MR. TANASI: And then if we can about go back to 84,
3 please.

4 (Exhibit 182-84 published.)

5 BY MR. TANASI:

6 Q. Now they're releasing the cattle at 2:50; correct?

7 A. When you say "they," who are you speaking of?

8 Q. BLM.

9 A. Are you asking me if the BLM are releasing the cattle?

10 Q. Let me ask you this way. The cattle are being released
11 now at 2:50?

12 A. Yes.

13 Q. Okay. Over an hour or so later, over an hour or so after
14 that post we just looked at from Steven Stewart?

15 A. Yes.

16 Q. All right.

17 MR. TANASI: If we could go now, Brian, to 82,
18 please.

19 (Exhibit 182-82 published.)

20 I apologize. We did that one already. Let's go 88.

21 (Exhibit 182-88 published.)

22 BY MR. TANASI:

23 Q. Okay. In this particular picture we see Mr. Lovelien;
24 right?

25 A. Yes.

1 Q. All right. He's got an earpiece; right?

2 A. Yes.

3 Q. Okay. Again, we've seen no pictures of Steven Stewart
4 with an earpiece. Fair?

5 A. That's correct.

6 Q. All right. And this is at 4:00 p.m.; correct?

7 A. Approximately, yes.

8 Q. All right. And Steven Stewart's not in this picture;
9 correct?

10 A. That is correct.

11 Q. And you have -- through all of the evidence that you've
12 reviewed, you'd agree with me that there's no picture of
13 Steven Stewart in this area at 4:00 p.m. on that day. Fair?

14 MR. MYHRE: Objection, Your Honor. It's beyond the
15 scope of direct and he was referring to the entire
16 investigation. There's no foundation.

17 MR. TANASI: I can keep it confined to this summary.

18 BY MR. TANASI:

19 Q. This is a -- this is a summary, this is your time line of
20 events in this case; correct? Fair?

21 A. A summary time line, yes.

22 Q. All right. And so it comprises what is important in this
23 case. Fair?

24 A. Yes.

25 Q. Okay. And in this 88-page slide show that we've looked

1 at, there's not one picture of Steven Stewart in this area at
2 4:00 p.m. Fair?

3 A. That is correct.

4 Q. All right. We listened to Todd Engel, Exhibit 46B,
5 indicating -- and it was a video from his car on or about
6 March of 2016; correct?

7 A. Yes.

8 Q. Okay. He referenced gun battles; right?

9 A. Yes.

10 Q. There were no gun battles; correct?

11 A. No.

12 Q. All right.

13 MR. TANASI: Thank you. Nothing further.

14

15 CROSS-EXAMINATION OF JOEL WILLIS

16 BY MR. PEREZ:

17 Q. Good afternoon, Agent Willis.

18 A. Good afternoon.

19 Q. My name is Shawn Perez. I represent Ricky Lovelien.

20 MR. PEREZ: Brian, can you bring up 182, please, and
21 go to Slide 30.

22 (Exhibit 182-30 published.)

23 Go up to -- go up . . .

24 BY MR. PEREZ:

25 Q. Now, this was posted by Mr. Engel -- excuse me -- at

1 approximately 12:04?

2 A. Yes.

3 Q. Okay. So now from the videos and the still photographs
4 and things that we've seen, Mr. Engel was in the vicinity of
5 the bridge at that time; correct?

6 A. Yes, he was.

7 Q. So how did he post that?

8 A. From his smartphone.

9 Q. From his smartphone. Okay.

10 MR. PEREZ: Brian, go to Slide 43.

11 (Exhibit 182-43 published.)

12 BY MR. PEREZ:

13 Q. Okay. Now, Slide 43 is from the video at Exhibit 32A;
14 correct?

15 A. Yes.

16 Q. Okay. And in this particular picture Mr. Lovelien has his
17 rifle slung over his shoulder; correct?

18 A. Yes.

19 Q. Okay.

20 MR. PEREZ: Brian, go to 44.

21 (Exhibit 182-44 published.)

22 BY MR. PEREZ:

23 Q. Now, in this picture, again, it's 12:21 p.m. that the
24 rifle is still slung over his right shoulder; correct?

25 A. I believe the strap is on his left shoulder, but yeah,

1 it's on his right side.

2 Q. On his right side?

3 A. Yeah. Slung to his right side, yes.

4 MR. PEREZ: Okay. Brian, bring up 32A and go to 39
5 seconds, okay, and let it play for a minute.

6 (Exhibit 32A published.)

7 Stop right there.

8 BY MR. PEREZ:

9 Q. Now, the -- did you see the bush on the left-hand side of
10 the video screen?

11 A. Yes.

12 Q. Now, is that this -- the bush that we're talking about
13 that you depicted in that later photo?

14 A. Yes.

15 Q. I believe it was, what -- later exhibit that you had taken
16 when you had gone to the scene; correct?

17 A. Yes.

18 Q. Okay. And that's the approximate placement that you had
19 Mr. Lovelien?

20 A. Yes. Just beyond that bush.

21 Q. Just beyond that. Okay.

22 MR. PEREZ: Brian, continue, please.

23 (Exhibit 32A published.)

24 Now stop right there.

25 BY MR. PEREZ:

1 Q. Now, there was a barren tree right there?

2 A. Yes.

3 Q. Now, that wasn't the bush, was it?

4 A. Yes, it was.

5 Q. That was the bush?

6 A. Yes.

7 Q. Or the prior tree -- the prior bush that we passed by?

8 A. No. That prior bush was in the wash. So at -- at -- in
9 April 2014 there was a barren bush there.

10 Q. Okay.

11 A. In July of this year, that bush, as well as the one
12 further down --

13 Q. Right?

14 A. -- is green.

15 Q. So on April 12th it didn't have any foliage on it?

16 A. Not that I could see from this footage.

17 Q. Okay. Thank you.

18 MR. PEREZ: Brian, continue on a little bit.

19 (Exhibit 32A published.)

20 Okay. Now you can stop right there.

21 BY MR. PEREZ:

22 Q. Now, the individual on the left-hand side of the screen,
23 that's Mr. Engel; correct?

24 A. Yes.

25 MR. PEREZ: Now, Brian, play it a little bit.

1 (Exhibit 32A published.)

2 Okay. Stop right there.

3 BY MR. PEREZ:

4 Q. Okay. Now, Mr. Engel leaves that particular viewpoint;
5 correct?

6 A. Yes, he does.

7 Q. And that's at 12:18 and 10 seconds?

8 A. Yes.

9 MR. PEREZ: Okay. Brian, play it again -- little
10 further.

11 (Exhibit 32A published.)

12 Okay. Stop right there.

13 BY MR. PEREZ:

14 Q. Now, the individual farthest over on the left-hand side of
15 the screen, that's also Mr. Engel?

16 A. Yes.

17 Q. And before -- prior to him entering the scene, we saw
18 looks like an NHP trooper in a fluorescent vest; correct?

19 A. Yes.

20 MR. PEREZ: Brian, go to . . . it would be 2 minutes
21 on the -- on the video.

22 (Exhibit 32A published.)

23 Okay. Just stop right there.

24 BY MR. PEREZ:

25 Q. Now, at -- in that last few seconds of the frame Mr. Engel

1 was engaged in some sort of a conversation with what appears to
2 be an NHP trooper; correct?

3 A. Yes.

4 Q. Okay.

5 MR. PEREZ: Okay. Brian, go to 4 minutes and 10
6 seconds. Okay. Go ahead and play.

7 (Exhibit 32A published.)

8 All right. Stop.

9 BY MR. PEREZ:

10 Q. Okay. Now, this is Mr. Lovelien entering the view of
11 Trooper Madsen's dash cam; correct?

12 A. Yes.

13 MR. PEREZ: Okay. Brian, play this through to 6:38.

14 (Exhibit 32A published.)

15 BY MR. PEREZ:

16 Q. Now, while this is playing, I'm going to talk for a
17 second.

18 Mr. Lovelien's gun is still on his right shoulder;
19 correct?

20 A. Yes.

21 MR. PEREZ: Now stop right there.

22 BY MR. PEREZ:

23 Q. Now, the individual on the far left, that's Mr. Lovelien;
24 correct?

25 A. Yes.

1 Q. With Mr. Engel?

2 A. Yes.

3 Q. And with Mr. Engel and Mr. Lovelien. Prior to this scene
4 we see right here, there was an NHP trooper with them; correct?

5 A. That is correct.

6 MR. PEREZ: Okay. Brian, keep going.

7 (Exhibit 32A published.)

8 Stop right there.

9 BY MR. PEREZ:

10 Q. Okay. Now the individual on the far side of the screen --

11 MR. MYHRE: Can we get a foundation, Your Honor, as
12 to where we're stopped? I'm sorry.

13 BY MR. PEREZ:

14 Q. We've stopped the video at 12:22:38?

15 A. Yes.

16 Q. Okay. And that's still Mr. Lovelien off on the -- on the
17 far left?

18 A. Yes.

19 Q. And his gun is still on his right shoulder?

20 A. Yes.

21 Q. And you can see his left hand is free --

22 A. Yes.

23 Q. -- correct?

24 MR. PEREZ: Okay. Brian, play it a little more.

25 (Exhibit 32A published.)

1 Okay. Stop right there.

2 BY MR. PEREZ:

3 Q. Now, at this point Mr. Lovelien is going back towards --
4 back towards Trooper Madsen's vehicle; correct?

5 A. Yes.

6 MR. MYHRE: Objection, Your Honor. Foundation as to
7 where we stopped.

8 BY MR. PEREZ:

9 Q. Well, now you've been up on this highway?

10 A. Yes.

11 Q. And you've looked --

12 THE COURT: Mr. Perez, the objection was, please, for
13 the record, state when the video was stopped so we can --

14 MR. PEREZ: Oh, it's stopped at 12:22:49. I'm sorry.

15 THE WITNESS: Yes.

16 THE COURT: Thank you. Okay.

17 MR. PEREZ: Brian, go ahead and play from there.

18 (Exhibit 32A published.)

19 Okay. Brian, just stop it right there.

20 BY MR. PEREZ:

21 Q. And the time on that -- on the dash cam is what?

22 A. 12:23:11.

23 Q. Okay. And Mr. Lovelien is still standing in approximately
24 the same place he was a minute and a half ago?

25 A. Yes.

1 Q. And his gun is still on his right shoulder?

2 A. Yes.

3 Q. And his left hand, it looks like it's pointing up at his
4 head --

5 A. Yes.

6 Q. -- adjusting his hat.

7 MR. PEREZ: Okay. Brian, go to Slide 23 for a
8 moment, on -- yeah 182, Slide 23.

9 (Exhibit 182-23 published.)

10 BY MR. PEREZ:

11 Q. Now, I'm just trying to get a little bit of perspective
12 here because we've seen views from different sides of the
13 highway and things like that.

14 Now, there's this orange temporary-type fence or some
15 sort of fence that's there; correct?

16 A. Yes.

17 Q. Now, which side of -- well, now behind that fence we have
18 a northbound and a southbound side of the I-15; correct?

19 A. Yes.

20 Q. Okay. So Mr. Lovelien is how many yards would you say
21 from that orange fence?

22 A. From the orange fence -- yards?

23 Q. Well, let me ask you another question.

24 He's on the other side of the northbound highway?

25 A. Yes.

1 Q. Okay. So there's the southbound lanes in between the --
2 whoever took this photo?

3 A. Yes.

4 Q. And then there's the gap in between?

5 A. Correct.

6 Q. Which is what, approximately? A hundred yards?

7 A. 90 yards.

8 Q. 90 yards?

9 A. Yes.

10 Q. What's the width of the highway?

11 A. 44 feet.

12 Q. Okay. So we have two of those. So that's 88 feet; right?

13 A. Right.

14 Q. Another hundred yards. And then he's beyond that;
15 correct?

16 A. Yes. So if -- I'd say 140, 150 yards to the -- to the
17 fence from where Mr. Lovelien's standing.

18 Q. Okay. Now, according to I believe it was Exhibit 210 --
19 can you bring up 210 for a second, Brian.

20 (Exhibit 210 published.)

21 BY MR. PEREZ:

22 Q. Okay. Now, in -- in 210, Slide 1, we've got a measurement
23 of 458 yards it looks like from that rally point, the parking
24 lot -- parking area?

25 A. Yes.

1 Q. To the -- to the bridge.

2 A. Yes.

3 Q. Now that parking area at the end of the 458-yard mark,
4 that's approximately where Mr. Lovelien was at the time that
5 that picture was taken?

6 A. He would have been standing slightly east of the entrance
7 to the assembly area. So maybe instead of 458 yards, it would
8 have been 400 yards or something.

9 Q. 400?

10 A. Yeah.

11 Q. Still a considerable distance?

12 A. Yes.

13 Q. 458 yards is what, just about a tenth of a mile over a
14 quarter of a mile, something like that?

15 A. Uh . . . it would be . . . I'm trying to do the math,
16 excuse me. Yeah. Quarter -- I'd say a quarter of a mile.

17 Q. Okay.

18 MR. PEREZ: Brian, go to Slide -- 182, Slide 51.

19 (Exhibit 182-51 published.)

20 BY MR. PEREZ:

21 Q. Okay. Now, this particular slide is a screenshot of
22 Trooper Madsen's dash cam; correct?

23 A. Yes.

24 Q. At 12:25?

25 A. Yes.

1 Q. Okay. And we see Mr. Engel is bent down at that
2 particular point in time; correct?

3 A. Yes.

4 Q. And this is from video Exhibit 33A?

5 A. Yes.

6 Q. Okay. And you used this -- the gentleman, I believe, in
7 the -- well, I don't know if we can see him clearly, but the
8 gentleman in the white shirt and the white hat is what you used
9 to establish your time line; correct?

10 A. That, and the woman walking behind him.

11 Q. Right. Okay.

12 A. Yes.

13 MR. PEREZ: Brian, go to 33A, please, at 30 seconds.
14 (Exhibit 33A published.)

15 MR. PEREZ: Okay. And let it play.

16 Okay. Stop it right there.

17 BY MR. PEREZ:

18 Q. Okay. So that's where Mr. Engel crouches down on the
19 highway; correct?

20 A. Yes.

21 MR. MYHRE: Your Honor, can we have a time stamp,
22 please? Objection, Your Honor.

23 BY MR. PEREZ:

24 Q. The time is 12:25 and 23 seconds; correct?

25 A. Yes.

1 Q. Okay. And Mr. Lovelien still has his rifle on his right
2 shoulder; correct?

3 A. It's on his right side, yes.

4 Q. Right side?

5 A. Yes.

6 Q. Okay.

7 MR. PEREZ: Okay. Brian, play it from there, please.

8 (Exhibit 33A published.)

9 Stop it right there for a second.

10 BY MR. PEREZ:

11 Q. We're stopping at 12:25:43; correct?

12 A. Yes.

13 Q. What is the approximate distance between Mr. Engel and
14 Mr. Lovelien at -- at this point, if you can tell?

15 A. Less than 10 feet.

16 Q. Less than 10 feet. And then how about from the -- the NHP
17 trooper that is directing traffic in the center of the screen?

18 A. Maybe 20 feet.

19 Q. Maybe 20 feet. Okay.

20 MR. PEREZ: Go ahead, Brian.

21 (Exhibit 33A published.)

22 Okay. Brian, stop right there.

23 BY MR. PEREZ:

24 Q. So, at this point there's another --

25 MR. MYHRE: Objection, Your Honor. Time stamp.

1 BY MR. PEREZ:

2 Q. Time -- time signature 12:36 and 30 seconds?

3 A. Yes.

4 Q. And in this particular frame there's another unidentified
5 individual that comes over and is speaking to Mr. Lovelien;
6 correct?

7 A. Yes.

8 Q. Okay. And Mr. Lovelien's gun is still on his right side?

9 A. Yes.

10 Q. And his left hand is gesturing as he's conversing with
11 this person; correct?

12 A. Yes.

13 MR. PEREZ: Go ahead, Brian.

14 (Exhibit 33A published.)

15 Okay. Stop right there.

16 BY MR. PEREZ:

17 Q. Now, we've watched another -- it's 12:27:36; correct?

18 A. Yes. Yes.

19 Q. And we've watched another few -- maybe a minute or two of
20 video. Has Mr. Lovelien moved from that particular area?

21 A. No.

22 MR. MYHRE: Your Honor, I'm going to object to this
23 line of questioning. I thought we were going to be roping back
24 into the time line, but the agent did not testify as to 33A.
25 We've already had testimony on this video. We've done this

1 cross-examination on this video. The agent -- Agent Willis
2 testified as to screenshots from the video to establish the
3 time line. Now we're talking about redoing the entire video
4 which this agent did not testify directly to.

5 MR. PEREZ: Actually, Your Honor, if I may respond?

6 THE COURT: Are you close to --

7 MR. PEREZ: Agent Willis testified that --

8 THE COURT: The question is, are you close to being
9 done or are you going to go through the entire video?

10 MR. PEREZ: No. I'm not going to go through the
11 entire video. I'm almost done with this. I mean, you know,
12 the whole point is he's testified --

13 THE COURT: I don't need to know what the whole point
14 is just --

15 MR. PEREZ: I'll get there.

16 THE COURT: I'll let you finish up but we need to
17 hurry up and get it done. Don't -- we're not going to spend a
18 whole --

19 MR. PEREZ: Okay.

20 THE COURT: -- all this time going through all of it
21 all over again when it's not part --

22 BY MR. PEREZ:

23 Q. Okay. Now --

24 THE COURT: It's beyond the scope.

25 MR. PEREZ: Thank you, Your Honor.

1 BY MR. PEREZ:

2 Q. At any point in the last few minutes of video have we seen
3 Mr. Lovelien focus on Post 1?

4 A. In the last -- what time frame?

5 Q. The last two minutes of video, three minutes of video.

6 A. When you say "focus," you mean --

7 Q. Well, let me start over.

8 Where would Post 1 be in this particular video, in
9 relationship to where Mr. Lovelien is on the left-hand side of
10 the screen?

11 A. May I draw?

12 Q. Sure.

13 A. So it would be back this way (indicating). So over his
14 left shoulder.

15 Q. Okay. And at this point, in this particular frame,
16 Mr. Lovelien is focused where?

17 A. Seems to be focused into the wash.

18 Q. Okay.

19 MR. PEREZ: Brian, go to 4:06.

20 (Exhibit 33A published.)

21 Okay. Back it up just -- just a little bit.

22 There you go. Thanks.

23 Okay. Stop right there.

24 BY MR. PEREZ:

25 Q. Okay. Agent Willis, now, it looks like Mr. Lovelien, his

1 gun is still on his right side; correct?

2 A. Yes.

3 Q. And he's reaching down and looks like into his cargo pants
4 to grab something out of the pocket; correct?

5 A. Yes.

6 Q. Okay.

7 MR. PEREZ: Brian, go ahead.

8 (Exhibit 33A published.)

9 Stop right there.

10 BY MR. PEREZ:

11 Q. Looks like he's drinking water?

12 MR. MYHRE: Time stamp, Your Honor? Objection. Time
13 stamp.

14 BY MR. PEREZ:

15 Q. At 12:29:04?

16 A. Yes.

17 Q. And it looks like he's drinking water from a bottle?

18 A. Yes.

19 Q. That he took out of his cargo pants?

20 A. Yes.

21 MR. MYHRE: Objection. Same objection as before,
22 Your Honor. Mr. -- this agent did not go through this video to
23 describe every moment Mr. Lovelien made. We've already had
24 this exhibit. We've already done this cross-examination. It's
25 beyond the scope and it cumulative.

1 MR. PEREZ: Your Honor, he testified that at a point
2 in time right in here that Mr. Lovelien sat on the Jersey
3 barrier and when he was referencing Exhibit -- Exhibit 66 I
4 believe it is, he said that he put the gun on his lap, across
5 his lap. He took it off his shoulder. Well, I mean, I'm
6 trying to break it up as best I can and keep it in the same
7 time frame, but the gun's never left his shoulder.

8 THE COURT: You say it was --

9 MR. PEREZ: Well, it was --

10 THE COURT: -- referenced in Slide 66?

11 MR. PEREZ: It was Slide 60, Exhibit 182.

12 Brian, bring it up.

13 (Exhibit 182-60 published.)

14 THE COURT: Yes, I have that. 12:31 p.m. from
15 Exhibit 17's aerial labeled with Lovelien and Drexler on the
16 bridge, prone. Lovelien sitting on barrier. Weapon lap.

17 MR. PEREZ: Right.

18 MR. MYHRE: And we're at 12:29:04.

19 MR. PEREZ: Okay. So, Brian, let's go back to
20 Exhibit 33 at . . . I guess it would be, what, 12:29?

21 (Exhibit 33A published.)

22 Looks like you can play from there, Brian.

23 (Exhibit 33A published.)

24 Okay. You can stop right there at 12:29:36.

25 BY MR. PEREZ:

1 Q. Now, Mr. Lovelien's sitting on the Jersey barrier;
2 correct?

3 A. Yes.

4 Q. And he was drinking a bottle of water it looks like?

5 A. Yes.

6 Q. His gun is still on his shoulder?

7 A. I cannot see where the gun is in this frame.

8 Q. Well, did you see him take it off in the few seconds
9 before?

10 A. When you say "take it off," it's slung.

11 Q. Well, did he remove it from his shoulder?

12 A. No.

13 MR. PEREZ: Brian, go to Slide -- 182, Slide 52.

14 (Exhibit 182-52 published.)

15 BY MR. PEREZ:

16 Q. Okay. Before we talk about this particular slide, is
17 there a margin of error for your time line? Like one or two
18 minutes or . . .

19 A. I tried to get it to the second --

20 Q. Okay.

21 A. -- but it's rounded to the nearest minute. So to the best
22 of my ability to the nearest minute.

23 Q. Okay. So 12:26 might be 12:25 and 22 seconds or something
24 like that?

25 A. Yes. That is possible.

1 Q. Okay. Now, in this particular picture, this is at 12:26;
2 correct?

3 A. Yes.

4 Q. And we saw, in the video --

5 A. Um-hmm.

6 Q. -- the prior video, which would have been I believe it's
7 33A?

8 A. Yes.

9 Q. And we saw Engel sit down; correct?

10 And what would you estimate the distance to be?

11 A. From what to what?

12 Q. From -- from Mr. Engel -- I'm sorry -- from Mr. Engel to
13 Mr. Lovelien at that point?

14 A. Less than 10 feet.

15 Q. Less than -- okay.

16 Now, from this particular point, did you measure the
17 distance to the wash from where Mr. Lovelien was right here?
18 Do you recall?

19 A. No. I don't recall doing that.

20 Q. Well, okay.

21 MR. PEREZ: Let's look at Slide 55 for a second.

22 (Exhibit 182-55 published.)

23 BY MR. PEREZ:

24 Q. Now, Slide 55 is a screenshot from approximately 12:26;
25 correct?

1 A. Yes.

2 Q. Okay. And Mr. Lovelien would be on the northbound bridge
3 at this point in time; correct?

4 A. He's on northbound I-15. He's not on the bridge though.

5 Q. Well, okay.

6 A. Yes. So, to the west of the bridge.

7 Q. Okay. Can you -- can you sort of point him out?

8 A. He would be in this area (indicating).

9 Q. So, one of those two individuals?

10 A. Yes.

11 Q. Okay.

12 MR. PEREZ: Now, go back to 66 for a second, Brian.

13 (Exhibit 66 published.)

14 No. Excuse me. Exhibit 66.

15 BY MR. PEREZ:

16 Q. Okay. So from -- and can we see the time on this, down at
17 the bottom?

18 Oh, there is no time.

19 Okay. Is -- from this picture -- go back up -- and
20 go -- now go back to Exhibit 55 on 182, Slide 55, 182.

21 (Exhibit 182-55 published.)

22 BY MR. PEREZ:

23 Q. So looking at this picture after looking at the prior
24 photo, it would appear that the gentleman that you used to
25 establish your time line in the white T-shirt and the white hat

1 would be the individual closer to Trooper Madsen's vehicle;
2 correct?

3 A. Yeah. It's hard to see in this picture, but I believe
4 that there's two people there (indicating).

5 Q. And -- and it's safe to say that Mr. Lovelien would be --
6 that that individual would be in between the trooper's vehicle
7 and where Mr. Lovelien is; correct?

8 A. Yes.

9 Q. Okay. Now, his viewpoint from -- I'm -- I'm -- let's
10 just -- it looks like it would be Mr. Lovelien leaning on that
11 Jersey barrier if it's the second spot; correct?

12 A. He would be in that vicinity, yes.

13 Q. Right. Okay. Now --

14 MR. MYHRE: Your Honor, could we have -- objection --
15 some foundation as to where we're talking about.

16 MR. PEREZ: Well, I want to get his viewpoint.

17 BY MR. PEREZ:

18 Q. We're talking about these two individuals right here
19 (indicating); correct? They're on the right side of the
20 screen. There's two little dots in front of Trooper Madsen's
21 vehicle; correct?

22 A. Yes.

23 Q. Mr. Lovelien would be -- inside that circle, would be the
24 farthest to the left?

25 A. Closer to the Jersey barrier, yes.

1 Q. Okay. Now, from that particular vantage point,
2 Mr. Lovelien cannot see these vehicles back here (indicating);
3 correct?

4 A. Which vehicles are you pointing to with the line?

5 Q. Well, the -- the -- these vehicles back here behind the
6 bridge (indicating)?

7 A. Yes, that is correct.

8 Q. Okay. So those are totally out of view?

9 A. Yes.

10 Q. Okay. And then, now, you testified that when you went up
11 on the bridge in that close proximity, that you were able to
12 see these vehicles here (indicating); correct?

13 A. I was able to see the area where those vehicles would have
14 been parked, yes.

15 Q. But not necessarily those vehicles? I mean, it would
16 be --

17 A. I was not there that day and the vehicles weren't there
18 the day I went out to take photos.

19 Q. Okay. So you can't say within a certain degree of
20 certainty that Mr. Lovelien actually had a view of those
21 vehicles from where he was?

22 A. Yes, I can.

23 Q. You can?

24 A. Yes, I can.

25 Q. Okay. And why is that?

1 A. Again, I walked that area. I compared the video and photo
2 evidence to where Mr. Lovelien was on I-15 and I compared it to
3 the concrete or the roadway area there in the wash and where
4 those vehicles would have been parked and I was able to see
5 from that vantage point those vehicles. I would have been able
6 to see those vehicles.

7 Q. Okay. Well, now, let's talk about this abutment.

8 THE COURT: Well, before we talk about the abutment,
9 it's 5:05. So I let it go a little bit --

10 MR. PEREZ: Okay.

11 THE COURT: -- so we could kind of wrap it up without
12 breaking it up. So now that we're changing over to a different
13 topic let's go ahead and take our overnight break. We will be
14 starting again tomorrow at 9:00 a.m. So I do remind the jury
15 over the over -- during this overnight break please do not
16 discuss this case with anyone nor permit anyone to discuss it
17 with you.

18 Please also do not read or listen to or view anything
19 that touches upon this case in any way nor attempt to perform
20 any research or any independent investigation about anything
21 that touches upon this case or any issues.

22 Do not form any opinion, and we will welcome you back
23 tomorrow at 9:00 a.m.

24 Let's all please stand for the jury.

25 The jury is excused, and Special Agent Willis, after

1 the jury exits, then you may be excused as well. We'll need
2 you back here at 9:00 a.m.

3 THE WITNESS: Thank you.

4 THE COURT: And then we'll resume with
5 cross-examination.

6 (Jury excused from courtroom.)

7 THE COURT: All right. Off record.

8 Thank you.

9 MR. MYHRE: Your Honor, may we have just a quick
10 moment on the record at the end here?

11 THE COURT: Can we do it tomorrow morning?

12 MR. MYHRE: Yes. Yes, Your Honor. That's fine. I
13 was just trying to --

14 THE COURT: Okay. Let's do it tomorrow morning.

15 I'm pretty sure they already turned off the air.

16 MR. MYHRE: I'm sorry?

17 THE COURT: The air conditioning. I'm pretty sure
18 they already turned off the air conditioning.

19 MR. MYHRE: Oh. No, it wasn't -- it was just about
20 what our agenda is going to be for tomorrow in terms of -- I'm
21 assuming we're going to finish cross-examination with respect
22 to this -- to Agent Willis.

23 THE COURT: Right. We have to finish cross,
24 redirect, jury questions. So if we're lucky, we'll be done
25 early tomorrow and then begin with defense on Wednesday.

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MR. MYHRE: Thank you, Your Honor.

MR. TANASI: Okay. Thank you, Your Honor.

(Proceedings adjourned at 5:08 p.m.)

--oOo--

COURT REPORTER'S CERTIFICATE

I, Heather K. Newman, Official Court Reporter, United States District Court, District of Nevada, Las Vegas, Nevada, do hereby certify that pursuant to Section 753, Title 28, United States Code, the foregoing is a true, complete, and correct transcript of the proceedings had in connection with the above-entitled matter.

DATED: 8-11-2017 /s/ Heather K. Newman
Heather K. Newman, CCR #774
OFFICIAL FEDERAL REPORTER

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,	)	Case No. 2:16-cr-046-GMN-PAL
)	
vs.	)	Las Vegas, Nevada
	)	Wednesday, August 2, 2017
ERIC PARKER, O. SCOTT	)	Courtroom 7C, 9:50 a.m.
DREXLER, RICKY LOVELIEN, and)	
STEVEN STEWART,	)	JURY TRIAL DAY FOURTEEN
)	
Defendants.)	
	)	<u>O R I G I N A L</u>

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BEFORE: THE HONORABLE GLORIA M. NAVARRO,
 UNITED STATES DISTRICT JUDGE, CHIEF

APPEARANCES:

See next page

COURT REPORTER:

Heather K. Newman, RPR, CRR, CCR #774
United States District Court
333 Las Vegas Boulevard South, Room 1334
Las Vegas, Nevada 89101
(702) 471-0002

Proceedings reported by machine shorthand, transcript produced by computer-aided transcription.

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23 Also present:

24 Sharon Gavin, Special Agent, FBI
25 Joel Willis, Special Agent, FBI
Chris Allen, Bureau of Land Management
Mike Abercrombie, FBI

1 Also present:

2 Mamie Ott, Legal Assistant
3 Tori Bakken, Paralegal
4 Brian Glynn, IT
5 Nicole Reitz, IT

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E X H I B I T S

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1 LAS VEGAS, NEVADA; WEDNESDAY, AUGUST 2, 2017; 9:50 A.M.

2 --oOo--

3 P R O C E E D I N G S

4 (Outside the presence of the jury at 9:50 a.m.):

5 COURTROOM ADMINISTRATOR: All rise.

6 THE COURT: Thank you. You maybe seated.

7 COURTROOM ADMINISTRATOR: This is the time set for
8 Jury Trial Day Fourteen in Case Number 2:16-cr-046-GMN-PAL,
9 United States of America vs. Eric Parker, O. Scott Drexler,
10 Ricky Lovelien, and Steven Stewart.

11 THE COURT: All right. Why don't you go ahead and
12 make your appearances on the record since we're going to be
13 discussing exhibits and objections.

14 MR. MYHRE: Good morning, Your Honor.

15 Steve Myhre, Erin Creegan, Nadia Ahmed on behalf of
16 the United States.

17 THE COURT: Good morning.

18 MR. TANASI: Good morning, Your Honor.

19 Rich Tanasi for Steven Stewart who is present.

20 THE COURT: Good morning.

21 MR. MARCHESE: Good morning, Your Honor.

22 Jess Marchese on behalf of Eric Parker.

23 THE COURT: Good morning.

24 MR. LEVENTHAL: Good morning, Your Honor.

25 Todd Leventhal on behalf of Scott Drexler.

1 THE COURT: Good morning.

2 MR. PEREZ: Good morning, Your Honor.

3 Shawn Perez on behalf of Rick Lovelien.

4 THE COURT: Good morning.

5 All right. So, the parties met between yesterday,
6 when we ended at 5:10, and today, to review exhibits and
7 determine if there were objections or redactions or any
8 accommodations that could be made to minimize interruptions
9 during trial. So before we call back in the jury and the
10 witness for the jury questions that we still need to ask, are
11 there any objections that you want to place on the record for
12 my ruling?

13 MR. TANASI: Your Honor, we actually were, I think,
14 almost finishing up that meeting when Your Honor took the
15 bench.

16 THE COURT: Oh, I'm sorry. I thought you were done.

17 MR. TANASI: So if we could maybe have a couple more
18 minutes to do that.

19 THE COURT: Okay. Go ahead.

20 MR. MARCHESE: It's actually been productive.

21 THE COURT: All right. So, I'm politely being asked
22 to leave. So I'll leave, and I'm come back when you tell me
23 you're ready.

24 MR. MARCHESE: Thank you.

25 MR. TANASI: Thank you.

1 COURTROOM ADMINISTRATOR: All rise.

2 (Recess was taken at 9:52 a.m.)

3 (Outside the presence of the jury at 10:12 a.m.):

4 COURTROOM ADMINISTRATOR: All rise.

5 THE COURT: Thank you. You may be seated.

6 All right. So, do the parties have any objections or
7 decisions that you want me to make before we resume with the
8 jury and witness?

9 MS. AHMED: Your Honor, we were able to go through
10 all of the Facebook exhibits for Mr. Parker, Mr. Drexler, and
11 Mr. Stewart and there was a few in which there were no
12 objections and then there was some more where there were some
13 objections that needed to be resolved.

14 THE COURT: Okay. Go ahead.

15 MS. AHMED: So, my understanding was that -- does
16 Your Honor want to see the ones where there were no objections?

17 THE COURT: No. If there's no objection, then that
18 will come in. You can tell me when -- that this is something
19 that's been stipulated that is admissible and we'll just admit
20 it.

21 MS. AHMED: And then -- so then -- can we pull up
22 Exhibit 113?

23 May we pull up Exhibit 113?

24 COURTROOM ADMINISTRATOR: I apologize.

25 MS. AHMED: Thank you.

1 (Exhibit 113 published.)

2 MS. AHMED: So, it's my understanding that there was
3 an objection by the defendants to this and we would submit that
4 this is relevant because it, obviously -- in that it's a
5 picture from the April 12th standoff and it's a post shared by
6 Mr. Parker on his Facebook page with comments made by him
7 referencing their -- that they showed up that day.

8 THE COURT: And so what is the objection?

9 MR. MARCHESE: Parker objects to relevance. It's
10 mainly -- I don't have a problem with the picture, with his own
11 verbiage; it's just the Valhalla quote which I find is more
12 prejudicial than probative than it is relevant as it is after
13 the fact.

14 MR. TANASI: Stewart joins, Your Honor, and I'd add
15 that this is an exhibit, in addition to some of the other
16 Valhalla related exhibits, that I'd also move for a severance
17 under Rule 14 for prejudicial spillover given the effect and if
18 Your Honor is not inclined to grant the severance motion, then
19 some limiting instruction because there's not any and there
20 won't be any Facebook post related to Valhalla and
21 Steve Stewart.

22 MR. LEVENTHAL: And Drexler, we also -- I would say
23 that Mr. Drexler's picture's on here and the words below it
24 seem to suggest that he's saying that, I guess, and that's not
25 what he's saying. So it's misleading the jury thinking that

1 he's saying it because we're not going to have a witness who is
2 going to be able to testify to who said it, who wrote it, who
3 did that, but it's not just a natural picture that we have; we
4 now have words coming in on a picture that are not my client's
5 words. They're not on his Facebook, but yet his -- his picture
6 is there. And so, I would object to it being unduly
7 prejudicial to my client.

8 MR. PEREZ: Lovelien would join as well.

9 THE COURT: All right. So, Ms. Ahmed, the relevance
10 of this statement, is this -- are you offering this as an
11 adopted statement by Mr. Parker when he posts it on the -- on
12 his Facebook page as a weekly tribute in furtherance of the
13 conspiracy because it's glorifying and encouraging others to
14 continue? This was stated -- this was posted November 20th of
15 2015, according to the date on the exhibit. And then, I guess,
16 the other question is, whether or not it would be admissible
17 against the other defendants. So, is your argument that it's a
18 co-conspirator statement?

19 MS. AHMED: That's correct, Your Honor. We would --
20 we would submit that it is -- it is adopted when Mr. Parker
21 posts the entire picture with the words, what we would call a
22 meme. He's adopting that meme and also placing his own
23 comments on it and that it's admissible, as to everybody, under
24 an 801(d)(2)(E).

25 THE COURT: All right. And so, the 801(d)(2)(E)

1 includes any response to the objection of spillover from
2 Mr. Stewart?

3 MS. AHMED: Yes, Your Honor.

4 THE COURT: All right. So the Court does find that
5 it appears to be an adopted statement by Mr. Parker posting it
6 on his website and that it is a co-conspirator statement made
7 in furtherance of the conspiracy during the conspiracy. It
8 states, "Our ongoing weekly tribute to the men and women who
9 showed up that day that were not me."

10 And then the other language that's on the photo says,
11 "Lo, do they call to me. They bid me to take my place among
12 them in the hollowed halls of Valhalla where the brave shall
13 live forever." So, again, appears to be glorifying and
14 encouraging others to act likewise, either by joining or on
15 their own as part of their shared belief and it is made during
16 the alleged conspiracy, November 20th, 2015. So the Court does
17 find that Exhibit 113 is admissible.

18 (Exhibit 113 received.)

19 MR. TANASI: Your Honor, and as we -- as it's kind of
20 presented to the jury, I just wanted to have an understanding
21 of that. Would our objections be noted for the record as well?

22 THE COURT: Oh, yes.

23 MR. TANASI: In other words, these have been admitted
24 over defense counsel's objection?

25 THE COURT: Correct.

1 MR. TANASI: Okay.

2 THE COURT: Yes.

3 Is there another one?

4 MS. AHMED: Yes, Your Honor. The next one would be
5 Exhibit 101.

6 (Exhibit 101 published.)

7 MS. AHMED: I understand, Your Honor, that there was
8 an objection by counsel to this one.

9 MR. MARCHESE: I don't have a problem with the
10 picture. It's obviously come in in a myriad of locations
11 throughout the trial. My biggest issue is the verbiage,
12 specifically the III% portion. That's irrelevant.

13 MR. TANASI: Stewart joins, Your Honor.

14 MR. PEREZ: Lovelien joins as well.

15 MR. LEVENTHAL: Drexler joins.

16 MR. MARCHESE: And the issue here is, is that it's
17 misleading to the jury given the fact that at the time this
18 picture was taken, there was no III%.

19 MS. AHMED: Your Honor, again, this is something that
20 we actually put in our response to their Motion in Limine to
21 keep out our 404(b). This is a picture of Mr. Parker from
22 April 12th, 2014, with these words and the III% superimposed on
23 top. He's sharing all of it on June 11th of 2015. And so,
24 although he might not have been in the III% at the time of the
25 April 12th standoff, that doesn't make this picture less

1 relevant in any way. It's inextricably intertwined with the
2 events, both because it's showing a picture, but also because
3 it's -- of the timing, as the Court has ruled in its order on
4 the 404(b) motion.

5 And his membership in the III% was also inextricably
6 intertwined in that he uses this as a platform, his membership
7 as a platform to continue to do similar operations.

8 THE COURT: All right. So this posting is dated 14
9 months later; right? This is June 11th, 2015.

10 Is he a member of the III% by then?

11 MS. AHMED: Yes.

12 THE COURT: All right. So that's what it represents
13 on Exhibit 101, is that Mr. Parker posted this on June 11th,
14 2015. It's a photograph of him in the prone position on the
15 bridge from June -- I'm sorry -- from April 12th of 2014, and
16 the language on the photograph says, "You give peace a chance
17 . . I'll cover you." That's on the top of the photo and then
18 on the bottom of the photo it says Roman Numeral III and then
19 the percent sign.

20 All right. So, again, it does appear to be an
21 adopted statement under 801(d)(2)(B) --

22 MR. PEREZ: Your Honor, with respect to Mr. Lovelien
23 and that 3%ers, there's no evidence that Mr. Lovelien is in the
24 3%ers, at all. So, I mean, I would request at least a limiting
25 instruction in terms of 3%ers. I don't know how we can do

1 that.

2 THE COURT: Ms. Ahmed, do you have any objection to
3 that?

4 MS. AHMED: Your Honor, we would oppose a limiting
5 instruction as to Mr. Lovelien for this post. It's a post made
6 by Mr. Parker, Mr. Lovelien's co-conspirator, regarding the
7 events of April 12th, 2014, which Mr. Lovelien participated in
8 and it -- the statements that Mr. Parker's adopting show his
9 intent -- intent -- excuse me -- on April 12th, 2014, and so it
10 goes directly to the elements that Mr. Lovelien's facing.

11 MR. PEREZ: But, Your Honor --

12 MS. AHMED: And, additionally, obviously, Your Honor,
13 as the Court was stating earlier, it would fit under
14 801(d) (2) (E).

15 MR. PEREZ: Your Honor, a lot of this 3%er evidence
16 that's coming in is clearly not relevant to Mr. Lovelien and a
17 limiting instruction would be appropriate. I mean, all this is
18 doing is misleading the jury with respect to Mr. Lovelien. He
19 doesn't have any affiliation with the 3%ers.

20 MR. TANASI: Your Honor, I would join with similar
21 arguments with respect to Mr. Stewart. We will see here,
22 momentarily, a picture of Mr. Stewart depicted with members of
23 the 3%ers, but that's it. Training, one picture. Doesn't
24 necessarily amount or necessarily prove that he's a member of
25 the 3%ers just by simply being with them in a picture.

1 THE COURT: Wasn't he wearing a 3%er T-shirt?

2 MR. TANASI: He's wearing a T-shirt that -- I don't
3 believe it displays a 3%er mark on it; I think it just shows
4 the American flag on his shoulder.

5 THE COURT: Okay. Ms. Ahmed, did you want to
6 respond?

7 MS. AHMED: Your Honor, we would, again, offer it
8 with respect to both Mr. Stewart and Mr. Lovelien that neither
9 of -- they both were members of this conspiracy; that as
10 alleged in the Indictment, neither of them have ever withdrawn
11 from the conspiracy. These statements on this image are going
12 to the events of April 12th, 2014.

13 And with respect to Mr. Stewart -- I would just leave
14 it at that, Your Honor. Basically, they're all a part of this
15 conspiracy, no one has withdrawn from conspiracy and this is
16 talking about the conspiracy and events taking place during the
17 time alleged in the Indictment.

18 MR. PEREZ: But it's not alleged that Mr. Lovelien
19 was part of the 3%ers is -- as part and parcel of this
20 conspiracy, whether before or after.

21 THE COURT: Right. And there's no allegation nor any
22 element of the offense that the individuals need to be part of
23 a organization or members of the same organization in order to
24 be found guilty of a conspiracy; there just needs to be the
25 agreement. Doesn't necessarily mean that they need to be part

1 of the same organization. But I understand the argument that
2 you're making as it's misleading to the jury, so misleading or
3 confusing to the jury. So I'll -- I'm -- I'm willing to give a
4 limiting instruction. I'm not sure that it's the Court's --
5 there's no -- all right. So there is a number of limiting
6 instructions that are common, that are generally provided in
7 certain situations. This is not necessarily one of them
8 because it doesn't go to the admissibility of the evidence; it
9 really goes to the weight. So clearly, you could examine --
10 cross-examine on that point. The Government could elicit it.
11 I could state it, but I think then that would be providing
12 testimony or providing evidence. So I think that the -- the
13 better way to handle this is for you all to either raise it on
14 direct or cross, or both so that it's not misleading to the
15 jury. If you don't, then maybe I need to make a limiting
16 instruction so that the jury is not misled. But otherwise, I
17 think that you all need to have the ability to comment on it
18 first.

19 But the Court does agree that it's -- would otherwise
20 be misleading if it's not clarified that Mr. Lovelien and --
21 well, as to Mr. Lovelien, I haven't seen any evidence yet that
22 would tend to demonstrate that he's a member. As to
23 Mr. Tanasi's client, Mr. Stewart, I'm not sure yet because the
24 representation was that he was training with the 3%ers and that
25 it was represented in the 3%ers recruitment video and that he

1 was wearing the same shirt that the other 3%ers were wearing.
2 So I can't say one way or the other for sure whether he is or
3 is not a member and I don't know how -- how much other evidence
4 there is or is not on that point, but I think it's definitely
5 an area that the parties can address in direct and
6 cross-examination. But it doesn't go to admissibility, so
7 Exhibit 101 is admitted.

8 (Exhibit 101 received.)

9 MS. AHMED: Your Honor, the next exhibit would be
10 103.

11 (Exhibit 103 published.)

12 MR. MARCHESE: Parker objects to relevance. It's
13 after the fact. Just some guys standing around the desert.
14 Appear to be target practice or recreational shooting.

15 MR. TANASI: Stewart joins and makes the same
16 objections from the previous exhibit, Your Honor.

17 THE COURT: What's the relevance of the photo,
18 Ms. Ahmed?

19 MS. AHMED: Your Honor, this is a photo that depicts
20 Mr. Parker and Mr. Stewart along with a third person and you
21 can see that they're wearing -- at least Mr. Parker and
22 Mr. Stewart are wearing tactical vests and there's a target
23 sign in the background. We would submit that this is a
24 depiction of them training, consistent with other posts that
25 have been admitted where Mr. Parker discussed training and that

1 they're wearing III% -- that the T-shirt that Mr. Stewart is
2 wearing from the other side -- from the front you would be
3 able -- you would be able to see or it's III%, but it's
4 consistent with Mr. Parker's T-shirt and the other individual's
5 T-shirt where you can see in other pictures that there's a flag
6 like that on the side. And additionally, Mr. Parker and the
7 other individual, clearly you can see that they have III% logos
8 on their clothing. So, we would submit that this is, again,
9 part and parcel of their continued efforts to train and recruit
10 and to glorify their movement, as they call it, to interfere
11 with federal officers.

12 MR. PEREZ: And, Your Honor, again, with respect to
13 Mr. Lovelien, I mean, it has nothing to do with Mr. Lovelien.
14 Mr. Lovelien, there's no evidence that he ever went to Idaho.
15 He's not a member of the 3%ers. There's no pictures of him
16 wearing any 3%er T-shirts or anything of the kind. I mean, for
17 them to say that this is just a continuation of the same
18 conspiracy is . . . I think, again, it's misleading at best,
19 and certainly not relevant to Lovelien.

20 MR. TANASI: And, Your Honor, with respect to
21 Mr. Stewart, again, the Government is, I think, connecting dots
22 and assuming facts that aren't in evidence yet that would lay
23 the foundation to make this piece of evidence admissible and
24 then make it relevant. They're -- they're just jumping over
25 all of that and saying that this conclusion is clearly

1 Steven Stewart training with 3%ers and then the way they
2 connect the dots is circumstantially and I think assuming facts
3 that aren't in evidence yet. So the picture would lack
4 foundation as well.

5 THE COURT: All right. Well, the three individuals
6 in the picture, Mr. Parker on the left, Mr. Stewart on the
7 right, and the unknown individual in the right appear to be
8 wearing the same shirt. All of the shirt is not visible on all
9 three of the individuals. The individual in the middle, his
10 shirt does have what appears to be a III% on the back of the
11 shirt with stars and sort of like a -- I guess it looks almost
12 like a stamp design in white on the Navy blue shirt.

13 So, the Government's position is, this is
14 inextricably intertwined with the conspiracy allegation and
15 that it's ongoing conduct and evidence of the ongoing
16 conspiracy.

17 MS. AHMED: Which, again, Your Honor --

18 THE COURT: How does it relate then to Mr. Lovelien?

19 MS. AHMED: Sorry, Your Honor, to speak over you.

20 I was going to say, which, again, none of the
21 defendants have ever withdrawn from. So, Mr. Lovelien is still
22 a part of this ongoing conspiracy at this time.

23 And, as of course the Court knows, under the law, as
24 a result, he's responsible for all of their actions in
25 furtherance of the conspiracy, criminal actions.

1 And as Your Honor pointed out, you know, I think
2 counsel's stretching the realm of limiting instruction pretty
3 far. This is something that would be appropriate for
4 cross-examination and not for a limiting instruction.

5 THE COURT: All right. Well, inasmuch as the exhibit
6 does purport to present the individuals in the tactical gear
7 with -- in the desert with some targets in the background and
8 it does appear that the tactical vest has some kind of
9 ammunition or something that's bulky in the pockets and we can
10 see a handgun on the hol- -- on the -- on a holster on the
11 right hip of Mr. Parker there in the picture, it -- I think
12 that Mr. Parker's hat might have an Idaho 3%er logo on it,
13 similar to the logo on the shirt worn by the person in the
14 middle, but nevertheless, it does appear to be part of the
15 ongoing conspiracy inextricably intertwined. The date on the
16 photograph is June 27th, 2015.

17 As to its relation to Mr. Drexler and Mr. Lovelien,
18 as the Government noted, there's no evidence of any abandonment
19 of the conspiracy and that it is ongoing and therefore, it
20 would be evidence that is admissible against all of the
21 defendants. And the parties are not prevented from asking
22 questions of the witness related to any clarification that they
23 believe needs to be made as to whether or not the other
24 individuals are members, or included in the photograph, or
25 anything else that would go to the weight of the evidence as

1 opposed to the admissibility.

2 Next one?

3 (Exhibit 103 received.)

4 MS. AHMED: Your Honor, there's three more that are
5 in the similar fashion; they combine elements of Bundy Ranch
6 with the 3% or about the 3% posted by Mr. Parker and that's --
7 the first one is 107.

8 I'll just show you all three, Your Honor, and then
9 come back to 107.

10 THE COURT: Okay.

11 (Exhibit 107 published.)

12 MS. AHMED: But this is the first one. It's
13 Mr. Parker sharing a 3%er -- 3% of Idaho, their Facebook page
14 and commenting on the top, "For updates on our Resistance," and
15 then the next one is 110.

16 (Exhibit 110 published.)

17 MS. AHMED: This was a post on Mr. Parker's Facebook
18 page where an individual asks him about -- somebody agrees with
19 the 3% but works for BLM and USFS -- meaning the Forest
20 Service -- and Mr. Parker provided a response to that.

21 (Brief pause in proceedings.)

22 MS. AHMED: And he's referencing Bundy Ranch in his
23 response, or the events on April 12th.

24 THE COURT: In Nevada. All right.

25 (Exhibit 116 published.)

1 MS. AHMED: And then the last one is Exhibit 116,
2 which is, again, a silhouette of Mr. Parker prone, taken from
3 him prone on the bridge on April 12th, 2014, and it's behind
4 that silhouette or the word -- is the word "resist" and
5 underneath is "Three Percent" and the objection, to my
6 understanding, was just to the words "Three Percent."

7 And so, we would submit that this is similar to ones
8 that the Court has already ruled upon. All three of these are
9 similar in that they're inextricably intertwined with their
10 conduct in April of 2014. It's part of the ongoing conspiracy,
11 and they continue to tie the events of April 2014 to their
12 ongoing movement and to their participation in III% -- to
13 Mr. Parker's participation in III%.

14 THE COURT: All right.

15 MS. AHMED: And it would go to all of them under
16 801(d)(2)(E).

17 THE COURT: So the Government Exhibit 116, that's the
18 T-shirt or the close-up photo of the design on the T-shirt,
19 where Mr. Parker is prone and the long gun is shooting through
20 the letter "E" of the word "resist," which is in giant letters
21 and then it has "Three Percent" underneath it in cursive,
22 that's dated February 17th of 2016 and that's -- appears to be
23 posted by him on his Facebook page; is that right?

24 MS. AHMED: That's correct, Your Honor.

25 THE COURT: And so the objection to the "Three

1 Percent" on that is because why?

2 MR. MARCHESE: That's correct, Your Honor. Generally
3 speaking, I mean, it's the same objection and I might as well
4 go with all three just in the interests of judicial economy.

5 THE COURT: Okay.

6 MR. MARCHESE: In reference to 3%, it's our position
7 it's after the fact, it's irrelevant, it's not inextricably
8 intertwined. The Government can easily convey their case to
9 the jury without bringing in all this extraneous after-the-fact
10 post-bad act information. In addition, it's our position that
11 the conspiracy as alleged in the Indictment mentions nothing
12 about 3%. It mentions nothing about mines. So, it's our
13 position that it's not part of the ongoing conspiracy. The
14 ongoing conspiracy is specifically -- if there even is one --
15 related to Bundy Ranch.

16 So, based on those things, we would say it's
17 irrelevant, it's not inextricably intertwined, and it's nothing
18 but bad character evidence.

19 MR. TANASI: Start joins, Your Honor.

20 MR. PEREZ: Lovelien joins.

21 MR. LEVENTHAL: Drexler.

22 THE COURT: All right. What's the Government's
23 response to the statement that the conspiracy is limited to the
24 events at the Bundy Ranch?

25 MS. AHMED: Your Honor, we -- the date of the

1 conspiracy continues through the timing of the Indictment,
2 which was March of 2016. Additionally, it was alleged that
3 they -- under 372, that they continued to -- that they are
4 continuing to impede, interfere with the -- with the ability to
5 patrol -- excuse me -- with the ability by public lands law
6 enforcement to patrol the area in and around that Bundy Ranch
7 area and we would submit that this is part of that because when
8 they do this, they're celebrating what happened on April 12th.
9 They're sending a message, via glorification, to others, to
10 stand up with them. By putting "Three Percent," he's giving
11 the vehicle for them to join him in his movement. And so, it's
12 all part and parcel of that process of celebrating what they
13 did, recruiting others to do it with them, to continue it with
14 them, and also sending a message to law enforcement that it is
15 not safe to go back, that they're still there, they're still a
16 part this have movement and they're still continuing in their
17 resistance. So we would submit that that's -- it's all related
18 and that's -- in that sense.

19 MR. PEREZ: Your Honor, I think that's pushing the
20 limit on what this one particular exhibit is saying. I mean,
21 "resist" and "Three Percent." I mean, I don't see the
22 relevance to Bundy. I mean, certainly --

23 THE COURT: Well, it's a image of Mr. Parker taken
24 from the incident on April 12th of 2014 that's then
25 incorporated into this T-shirt and as the Government explains,

1 it does appear to be glorifying, recruiting, encouraging others
2 during this conspiracy to continue with their conduct, not to
3 abandon it, and to even have other folks join in. It does
4 appear to be inextricably intertwined. The Superseding
5 Indictment does allege that the conduct continued through March
6 of 2016. The posting is he made a month before that, in
7 February of 2016, and it would be a co-conspirator statement.

8 So, 116 is admitted.

9 Let's go back and look at 110, though.

10 (Exhibit 116 received.)

11 (Exhibit 110 published.)

12 THE COURT: I'm not sure. What is the relevance of
13 this post?

14 MS. AHMED: So, Your Honor, we would submit that
15 Mr. Parker was asked about people who agree with the 3%ers but
16 work for these agencies and in his response he indicates that
17 he reaches out to these people, but he shakes their hands and
18 looks them in the eye and hopes that he doesn't have to kill
19 them or lets -- lets them know that he doesn't want to kill
20 them and they don't -- and hopefully they won't kill him and it
21 will never get to the point it did in Nevada ever again. And
22 so, Your Honor, we could submit that it goes to -- it is
23 evidence of his intent in April of 2014, on April 12th, 2014.
24 It's also, again, inextricably intertwined with the conspiracy
25 and his efforts to get the officers to not do their jobs,

1 to desist.

2 The bottom response, he indicates, his short answer
3 is, he wishes they would just find another job. And so, we
4 would submit that this is, again, he's reaching out to other
5 people who are asking him what he thinks about this issue and
6 he's telling them that -- what he thinks about it, which is
7 that hopefully, it will never get to what it did in Nevada,
8 meaning, obviously, the April 12th incident and that what he
9 means is that he hopes he doesn't have to kill any federal
10 officer and that they should just find another job. And so, we
11 would submit that it shows his intent and his evidence of the
12 ongoing conspiracy as we've previously stated.

13 THE COURT: And so what's the defense objection?

14 MR. MARCHESE: Once again, we're just objecting to
15 the 3%, Your Honor. You mean, the -- I think the Court's been
16 pretty clear on its ruling in reference to the 3%. So, I guess
17 you just admit it in over defense's objection in reference to
18 the 3% and go to the next one.

19 MS. AHMED: Your Honor, I wouldn't have a problem
20 redacting that comment underneath it by Ryan Gargano. I mean,
21 that -- we could easily redact that.

22 MR. MARCHESE: No -- no objection from the defense.

23 THE COURT: All right. Well, it sounds like the
24 defense only is requesting the redaction of the 3%ers on the
25 top line?

1 MR. MARCHESE: Correct, and Mr. --

2 THE COURT: The Government's willing to do that,
3 so --

4 MR. MARCHESE: Mr. Gargano's statement.

5 MS. AHMED: Your Honor, we would -- we would ask that
6 we only redact -- be required to redact the Ryan Gargano
7 comments that's in between Mr. Parker's responses. We would
8 ask that Court allow us to keep the 3%ers for the reasons that
9 we've previously articulated, which is that his -- it's all
10 part and parcel. His membership in 3% is part of his
11 participation in the movement which began with Bundy Ranch.

12 THE COURT: All right. So I thought you were -- I
13 thought the Government was saying they agreed to the redaction
14 of 3%ers. You're saying you agree -- the Government agrees to
15 the redaction of Ryan Gargano's statement, "Look 'em dead in
16 the eye"?

17 MS. AHMED: Correct, Your Honor.

18 THE COURT: But Mr. Marchese, that -- was that your
19 request, or was it the 3%ers, or both?

20 MR. MARCHESE: Well, yeah. Obviously, I don't object
21 to the Gargano statement and then just a blanket objection to
22 anything 3%.

23 THE COURT: All right. So the objection is just to
24 the term 3% percent as mentioned in the question posed to
25 Mr. Parker that Mr. Parker is responding to.

1 MR. MARCHESE: That's correct.

2 THE COURT: So, again, it appears that he is adopting
3 the position of representing the point of view of the 3%ers
4 there, or at least his point of view as a member of the 3%ers,
5 or being in agreement with the 3%ers, but providing an opinion
6 as to what to do if one agrees with the 3%ers but works for BLM
7 or the U.S. Forest Service, that's the question, and then
8 Mr. Parker provides the answer.

9 Again, it does appear to be inextricably intertwined
10 with the conspiracy alleged and is relevant to the intent of
11 the defendant.

12 As far as it being a co-conspirator statement, it's
13 providing counsel or information about the ideology and their
14 purpose or intent in this particular conduct. And as the
15 Government stated, there's no evidence that any of the other
16 defendants had abandoned the conspiracy at this point, so it
17 does seem that Exhibit 110 is admissible. Again, the
18 parties -- doesn't prevent the parties from questioning the
19 witness about the participation of the defendants in the 3%ers.

20 (Exhibit 110 received.)

21 THE COURT: How about Exhibit 107?

22 (Exhibit 107 published.)

23 MS. AHMED: Your Honor, we would submit the same
24 arguments that -- I understand that the objection is to 3% and
25 our response is what it has been with other exhibits, that

1 it's his membership in it and part of the movement that he
2 participates in that began at Bundy -- with the events in
3 April 2014 -- excuse me -- and that he also states, "For
4 updates on a resistance," and shares their Facebook page.

5 THE COURT: Same objection as to the 3%ers? Anything
6 else --

7 MR. MARCHESE: Correct.

8 THE COURT: -- you want to add?

9 MR. MARCHESE: No, Your Honor.

10 THE COURT: I won't make you say it over and over
11 again, but --

12 MR. MARCHESE: Thank you.

13 THE COURT: -- just in case there's anything special
14 about this one.

15 MR. TANASI: Stewart joins, Your Honor.

16 THE COURT: Well, in this one actually it seems like
17 it's a little more clear that he is promoting the 3%ers and
18 participation in the organization, joining the organization.
19 He says, "For updates on our resistance, please like, follow,
20 and share our page," and then it has the 3%er logo on top of
21 the flag and looks to have a little map indicating where they
22 are and he's posting this on August 9th of 2015, which is
23 during the alleged conspiracy.

24 So, Exhibit 107 is admitted.

25 (Exhibit 107 received.)

1 MS. AHMED: Your Honor, the next five that are at
2 issue -- well, really the next six, are all discussing the
3 Sugar Pine Mine and White Hope Mine events which we had briefed
4 previously with the Court in the -- which we had noticed before
5 as 404(b) and then, of course, we relitigated it in the
6 defendants' Motion in Limine. So, the first one is Exhibit 99.

7 (Exhibit 99 published.)

8 MS. AHMED: And this is Mr. Parker sharing a link
9 about the Sugar Pine Mine event in April of 2015 and then
10 there's comments beneath that where he's sharing information
11 about the Sugar Pine Mine event and responding to questions
12 regarding it

13 THE COURT: All right. So is the objection the same
14 as the -- as I addressed in the Motion in Limine?

15 MR. MARCHESE: Yes, Your Honor. Just in reference to
16 anything Sugar Pine or White Hope Mine, the general objection
17 would be to relevance. It's our position that it's -- it's not
18 404(b) evidence; it is -- it's nothing but bad character
19 evidence. It's after the fact. It's too remote in time. It's
20 not inextricably intertwined. The Government can convey their
21 case to the jury in an intelligible fashion without this
22 information, and it's also outside the scope of the conspiracy.

23 MR. TANASI: And, Your Honor, Stewart would join and
24 then also add that there's no evidence of Mr. Stewart's
25 involvement in either of those two protests, standoffs,

1 whatever we would call them.

2 MR. PEREZ: Lovelien would join with Mr. Stewart's
3 objections as well.

4 MR. LEVENTHAL: Drexler joins.

5 THE COURT: All right. Well, they are statements
6 made during the alleged conspiracy. These are posted by
7 Mr. Parker in April of 2015, looks like April 11th. I can't
8 tell if all three are -- at least two of them I see the dates
9 clearly are April 11th, 2015.

10 Yes. Okay. So all of them are April 11th, 2015, and
11 they do mention the Bundy Ranch-type standoff and then talks
12 about the other event and is -- states -- it's an alert and
13 "This is a standby order for all 3%ers and militia. You are
14 not protestors. We need to get a head count and start setting
15 up supply routes." So it is a recruitment -- more than a
16 recruitment, I suppose, because at this point it's for an
17 actual -- it's not for just membership or training, but to
18 actually conduct a similar type of conduct.

19 I did rule in the Motion in Limine orders that it is
20 inextricably intertwined for that reason.

21 And did the Government want to respond to the comment
22 that Mr. Stewart did not participate in the subsequent event
23 during the conspiracy?

24 MS. AHMED: Your Honor, we would submit the same
25 arguments that we've made with respect to the previous post,

1 which is that all of these defendants were in the conspiracy
2 alleged in the Indictment together. No one has withdrawn.
3 They're responsible for each other's conduct.

4 MR. PEREZ: Your Honor, but this is expanding the
5 conspiracy beyond, I mean -- you know, we can have events all
6 over the country and all of a sudden it's going to be the same
7 conspiracy? I mean, there's a number of groups throughout the
8 country that challenged the position of the federal government
9 and now, all of a sudden, you know, we've got -- we've got one
10 conspiracy here in -- at the Bundy Ranch and -- that the
11 alleged conspiracy is to interfere with the gathering of the
12 cattle at the Bundy Ranch and to return it to the Bundys. I
13 don't think that anybody, beyond maybe individuals that were
14 involved in the Sugar Pine thing, you know, ever agreed to
15 anything beyond that. I don't think that that was -- if
16 there's a conspiracy -- that that's the scope of the
17 conspiracy.

18 MS. AHMED: Your Honor, I'd also just add that
19 there's -- this is also evidence of their intent and their
20 actions. With respect to the April 2014 event, they're
21 clarifying that this is a Bundy -- excuse me -- a Bundy
22 Ranch-type standoff brewing. They also reference the fact that
23 this is -- they're looking for militia and that you are not
24 protestors. And so, we would submit that is also intent of the
25 co-conspirators -- I mean, evidence of a co-conspirator's

1 intent and it would be admissible under 801(d) (2) (E).

2 THE COURT: Well, the Court agrees, as it did in its
3 Motion in Limine, and that's Number 2137. It's not
4 inadmissible. It is inextricably intertwined. It is a
5 co-conspirator statement and the other co-conspirators that are
6 alleged to have participated in the conspiracy as alleged in
7 the Superseding Indictment continues through March 2016. No
8 abandonment.

9 So, Exhibit 99 is admitted.

10 (Exhibit 99 received.)

11 MS. AHMED: The next one, Your Honor, is 100 and it's
12 very similar. It's also about Sugar Pine Mine.

13 And Your -- this is a multiple page, Your Honor. So,
14 I think on the next page there are some comments.

15 THE COURT: And this is May 20th of 2015?

16 MS. AHMED: That's correct, Your Honor, and it's a
17 post by Mr. Parker on his Facebook page. They're celebrating
18 with their perceived victory at Sugar Pine and he's stating,
19 "That's two for two fascists," referring both to this and to
20 the Bundy Ranch standoff.

21 And if we go to Page 2, there are -- there's a
22 comment by him, and there's Page 3 as well and he's explaining
23 in his comment that -- another individual said it best when he
24 said, "Don't worry about the guns, folks. We've got the guns.
25 What we need is support. 10 people for every man in the

1 field."

2 And as the Court, of course, knows, from the last
3 trial, that there essentially was approximately 400 people
4 present April 12th and about 40 of them were armed. So, it's
5 the same ratio, but clearly calling for stating that they have
6 guns and they need additional people.

7 And then the last post on this page is -- the last
8 two comments are -- one is by Mr. Engel, who was obviously a
9 co-conspirator celebrating this victory, or the two victories
10 and then Eric Parker discussing this -- this operation further.

11 We would just submit all the same arguments as to why
12 it's admissible.

13 THE COURT: What is this referencing? "Security
14 stays in place until he gets a court date"?

15 MS. AHMED: That's about the Sugar Pine Mine event,
16 Your Honor.

17 THE COURT: Oh.

18 MS. AHMED: Which, it began in April and it continued
19 into May of 2015.

20 THE COURT: So the reference to security is
21 individuals providing security, armed security?

22 MS. AHMED: To the miners, that's correct,
23 Your Honor.

24 THE COURT: All right.

25 Well, again, this is May 20th, 2015.

1 MR. MARCHESE: It's the same objection, Your Honor.
2 I can keep us here all morning.

3 The other thing I would add is there's obviously an
4 issue with the Southern Poverty Law Center and I'm assuming
5 that's Reuters, the publisher. I don't see how that's
6 relevant.

7 THE COURT: Anyone else?

8 MR. TANASI: Stewart joins, Your Honor.

9 MR. PEREZ: Lovelien joins.

10 MR. LEVENTHAL: Drexler joins.

11 THE COURT: All right. Well, these are all Parker's
12 posts. He does appear to be adopting the statements that he is
13 posting as well as the photographs that -- he's included in the
14 photograph with the other individuals. So, it . . . is
15 801(d) (2) (B) statements.

16 As far as whether or not they're co-conspirator
17 statements that come in against the co-defendants, he is
18 celebrating, or does appear to be celebrating, certainly the
19 success of the Sugar Pine Mine and it is posted prior to the
20 end date of the Indictment, which is March of 2016. This is
21 dated May of 2015. So, a clear year beforehand.

22 So same reasoning as before. It's inextricably
23 intertwined co-conspirator statement made by Mr. Parker as
24 adopted by him in his post.

25 So Exhibit 100 is admitted.

1 (Exhibit 100 received.)

2 MS. AHMED: Your Honor, the next -- again, the next
3 four are also along the same lines. The White Hope Mine ones
4 are 108, 109, and then a video that was uploaded to his
5 Facebook account which is a part of 109.

6 (Exhibit 108 published.)

7 MS. AHMED: So 108 is Mr. Parker now posting about
8 the White Hope Mine incident, which happened in August of 2015.
9 There's photographs that show both Mr. Parker and Mr. Drexler
10 and Mr. Parker where it says, "Montana Defenders of the
11 Republic" and he's holding a firearm and underneath it says,
12 "Share! Operation Big Sky! More information here," and it
13 shares a link to a press release by the Pacific Patriot Network
14 which is all Operation Big Sky as we've noticed in the 404(b)
15 was the name given to the operation relating to White Hope Mine
16 which was a mine on Forest Service land in Montana. And Mr.
17 Parker and Mr. Drexler are both, again, as I stated earlier,
18 appear in this post.

19 And then at the bottom there's also a comment by
20 Mr. Parker saying, "Shifts . . . and we still need volunteers."
21 And so, we would submit the same arguments that we've
22 previously submitted.

23 MR. MARCHESE: Same objection as Parker.

24 MR. TANASI: Stewart joins, Your Honor.

25 MR. LEVENTHAL: Drexler joins.

1 MR. PEREZ: Lovelien joins.

2 THE COURT: All right. So the same ruling.

3 The statement is adopted by Mr. Parker as posted.
4 Also includes one of the other defendants that are listed in
5 the conspiracy. It's dated August 20th of 2015, which is
6 within the conspiracy requesting volunteers for a similar
7 operation during the conspiracy. So it is an 801(d)(2)(E)
8 co-conspirator statement that is admissible against all
9 parties.

10 So, Exhibit 108 will be admitted -- is admitted.

11 (Exhibit 108 received.)

12 (Exhibit 109 published.)

13 MS. AHMED: Your Honor, 109 is very similar. It's a
14 post shared by Mr. Parker of a video from White Hope Mine
15 depicting -- you can see from this post that there's a video
16 where Mr. Parker and Mr. Drexler both appear in. They're
17 armed and it's referring to that same event of the White Hope
18 Mine Operation Big Sky and we would submit the same arguments
19 for its admissibility.

20 MR. MARCHESE: Same objection Parker.

21 MR. TANASI: Stewart joins, Your Honor.

22 MR. LEVENTHAL: Drexler joins.

23 MR. PEREZ: Lovelien joins.

24 THE COURT: So is this the video that Mr. Parker was
25 watching just now with the headphones on? Did he get a chance

1 to see all of it? It's 11 minutes it looks like.

2 MS. AHMED: Your Honor, we --

3 MR. MARCHESE: He's seen it, Your Honor.

4 MS. AHMED: And for the record, Your Honor, we -- the
5 video is 11 minutes. Mr. Parker and Mr. Drexler only appear in
6 the first few seconds of it, possibly the first minute, so we
7 were -- as a separate exhibit, 48a, we were going to seek to
8 admit the video clipped just to the part that they're in.

9 THE COURT: Oh, okay. So not the whole 11 minutes?

10 MS. AHMED: Just the 20 to -- I think it's about 20
11 to 30 seconds.

12 THE COURT: All right.

13 MS. AHMED: And that's -- so this post is 109 and the
14 video is 48a.

15 THE COURT: All right. So, in Exhibit 109, are you
16 alleging that -- of the three people pictured there, that the
17 person on the far right is Mr. Parker and the far left is
18 Mr. Drexler?

19 MS. AHMED: Yes, Your Honor.

20 THE COURT: Do you know who the person in the middle
21 is? Is that Mr. Blaine Cooper?

22 MS. AHMED: Yes, Your Honor, a co-conspirator and
23 who, obviously as the Court knows, already pled guilty in this
24 case.

25 THE COURT: All right. And the posting is made in

1 August 20th of 2015 and . . . Mr. Parker is sharing
2 Mr. Cooper's video on Mr. Parker's Facebook page on that date.

3 So, where it says, "Breaking, share, get viral!
4 Operation Big Sky armed patriots and Oath Keepers from across
5 the U.S. show up to defend the Constitution! What's it all
6 about? Watch our report and the dispute between the U.S.
7 Forest Service and miners in a small Montana town!" is it your
8 argument that this is posted by Mr. Parker as well?

9 MS. AHMED: Your Honor, yes. We would submit that
10 it's an adoptive admission, essentially, as to the intent for
11 that operation and for his movement generally, as evidence of
12 the movement generally and the conspiracy generally.

13 THE COURT: All right. So he's adopted the statement
14 and he's furthering the recruitment effort, and it's made
15 during the conspiracy, inextricably intertwined and admissible
16 against all parties.

17 All right. So same ruling as before. The Exhibit
18 109 is admitted.

19 (Exhibit 109 received.)

20 MS. AHMED: And, Your Honor, would that also be the
21 case for the video that's -- we would then -- the video is 48a
22 and it's just -- it's this video, the first 28 seconds in which
23 they're featured.

24 THE COURT: Does defense have any different objection
25 to video 48a -- what did you say, about the first minute?

1 MS. AHMED: It's less than a minute, Your Honor.

2 MR. MARCHESE: Your Honor, we would object, but if
3 it -- if the Court does rule that it comes in, we would ask
4 that the entire video come in under the rule of completeness.

5 MS. AHMED: Your Honor, we would submit if you --
6 that the entire video -- essentially the first 20 to 30 seconds
7 or whatever is in our -- the clip that we're submitting, is
8 where you see these three individuals standing at the White
9 Hope Mine and then it cuts away to a lengthy interview with, I
10 believe, one of the miners and so we would submit that that
11 portion is not needed under the rule of completeness. It's a
12 completely different scene, different interview.

13 THE COURT: All right. Well, there's no explanation
14 of how the rule of completeness would require that the 11
15 minutes of the video needs to be shown in Exhibit 48a. The
16 first minute is alleged to be the portion that includes the
17 defendants in this case. So the Court admits video 48a, but
18 only up to the 1-minute part -- part or -- within the 1-minute
19 part.

20 (Exhibit 48a received.)

21 (Exhibit 114 published.)

22 MS. AHMED: Thank you, Your Honor.

23 And then, Your Honor, the last post at issue from
24 Mr. Parker's Facebook pages is Exhibit 114, and this is similar
25 to the others. It's a post he shared on his Facebook page,

1 which was obtained in December of 2015. The agent would
2 testify to the date that it was obtained, which was the date
3 was documented in a 302. It's not reflected in that post which
4 is why I say when it was obtained, but it was obtained in
5 December 2015, which is also the same that this individual that
6 he's discussing, Schuyler Barbeau, was arrested. Mr. Barbeau
7 did participate in the events of April 12th, 2014, and is a
8 co-conspirator. Additionally, Mr. Parker states in the post,
9 "He helped stand down the BLM at the Bundy Ranch, the BLM at
10 the mine in Oregon, and the USFS at the mine in Montana."

11 We would submit all the same arguments with respect
12 to its being inextricably intertwined and evidence of their
13 intent.

14 MR. MARCHESE: Your Honor, we would give the same
15 objections, but I would focus a little bit more on the fact
16 that Mr. Parker isn't necessarily talking about what he did,
17 he's talking about what someone else did. So I would say that
18 the relevance and the prejudicial value goes up significantly
19 in reference to the prejudice and the relevance goes down
20 significantly because Mr. Barbeau -- Eric is talking about what
21 Mr. Barbeau did. So, I'm failing to see the relevance of all
22 this.

23 MR. TANASI: Stewart joins.

24 MR. PEREZ: Lovelien joins.

25 MR. LEVENTHAL: Drexler joins.

1 MS. AHMED: Your Honor, he's saying he -- he --
2 Mr. Parker's post states "he," referring to Barbeau, helped
3 stand down the BLM at these incidents which there's evidence
4 that Mr. Parker participated in. And so, it would go to
5 Mr. Parker's conduct and his intent, that their purpose was to
6 stand down these law enforcement -- these federal -- these
7 public land agencies.

8 THE COURT: And you said that -- how do you know the
9 date of this post?

10 MS. AHMED: Your Honor, it was -- the date was
11 documented in a report by an FBI -- by the FBI agent who
12 captured it to be December of 2015.

13 And, Your Honor, also, Mr. Barbeau was arrested in
14 2015 -- December of 2015.

15 THE COURT: All right. So same ruling as before.
16 Exhibit 114 is admitted. Does reference the April 2014
17 incident as a standdown and draws the similarity between it and
18 the similar incidents at the Oregon and Montana mines.

19 MS. AHMED: Your Honor --

20 THE COURT: So Exhibit 114 is admitted.

21 (Exhibit 114 received.)

22 MS. AHMED: Your Honor, those were the only exhibits
23 that we had -- those were the remaining exhibits from
24 Mr. Parker's Facebook page. We were able to resolve all the
25 issues with respect to the exhibits from Mr. Drexler's Facebook

1 page and so, I don't think there's any outstanding -- or there
2 were no objections; there was just one exhibit that
3 Mr. Leventhal wanted to make sure was redacted and we made that
4 redaction.

5 So, those are Exhibits 123 through 128. There's no
6 issue on those.

7 THE COURT: All right. So, Exhibits 123 through 128,
8 with the requested redactions, has the defense had an
9 opportunity to see those redactions to make sure --

10 MR. LEVENTHAL: I have not.

11 THE COURT: -- we're good to go?

12 MS. AHMED: It's Exhibit 125 if we can -- excuse
13 me -- it's either 125 or 126. Can we pull up 125?

14 (Exhibit 125 published.)

15 MS. AHMED: It's actually 126.

16 (Exhibit 126 published.)

17 MS. AHMED: Uh, maybe 127.

18 I'm sorry, Your Honor.

19 (Exhibit 127 published.)

20 MS. AHMED: This was the post that Mr. Leventhal
21 wanted to make sure it was redacted. So we have made that
22 redaction.

23 MR. LEVENTHAL: And this is referencing a post that
24 came in yesterday at sidebar --

25 THE COURT: Um-hmm.

1 MR. LEVENTHAL: -- that we agreed to take out. It's
2 the same reason. For some reason it got onto Mr. Drexler's
3 page. So it's just -- we've already redacted it from a
4 prior --

5 THE COURT: Okay.

6 MR. LEVENTHAL: Prior --

7 THE COURT: All right. So there's no other objection
8 to Exhibits 123 to 128; is that right?

9 MR. LEVENTHAL: That's -- that's correct, Your Honor.

10 MR. MARCHESE: For Mr. Drexler, but in reference to
11 Mr. Parker, once again, same continuing objections to the
12 post-bad act issues, 3%ers, mine references, things of that
13 nature.

14 MR. TANASI: Stewart joins, Your Honor.

15 THE COURT: Mr. Perez, do you object or not object?

16 MR. PEREZ: Yes, Your Honor. I'll join in the
17 objection.

18 THE COURT: All right. So, same ruling. Exhibit 123
19 through 128 then is admitted with those redactions.

20 (Exhibits 123 through 128 received.)

21 MS. AHMED: Your Honor, I would just request that we
22 do have some -- there are some Facebook posts for Mr. Stewart
23 where there were issues. There were objections that we were
24 unable to resolve just between ourselves that we would submit
25 to the Court for ruling, however, we would ask that the court

1 allow Mr. Smith to finish up because he does have a flight to
2 catch, so --

3 THE COURT: Okay. So we'll just address those later.

4 MS. AHMED: Yes.

5 THE COURT: They're not coming in this morning?

6 MS. AHMED: They would not come in this morning,
7 Your Honor.

8 THE COURT: Okay. So let's go ahead then and bring
9 in the jury and . . . Mr. Smith. We can go ahead and have him
10 take the stand while Aaron, you go get the jury?

11 MS. AHMED: Thank you, Your Honor.

12 COURTROOM ADMINISTRATOR: May I confirm the exhibit
13 numbers that were admitted, Your Honor?

14 THE COURT: Yes.

15 COURTROOM ADMINISTRATOR: I have 113; 101; 103; 107;
16 110; 116; 99; 100; 108; 109; 48a, 1 minute of the video; 114;
17 123 through 128.

18 THE COURT: That's what I have written down.

19 MS. AHMED: That's correct.

20 COURTROOM ADMINISTRATOR: Thank you.

21 THE COURT: Okay.

22 MS. AHMED: Thank you.

23 (Brief pause in proceedings.)

24 THE COURT: All right. While we're waiting for the
25 jury to come in, I just want to remind everyone about the

1 expectations regarding the courtroom and how people should
2 conduct themselves and what is expected of them. It is a
3 courtroom, not a sporting event. So no expressions, whether
4 verbally or through body language, are permitted.

5 They are -- the defense attorneys have their computer
6 devices, but no one else is permitted to have computer devices.
7 The security officers here do have communication devices.
8 There's no audio or video recording that is permitted. So even
9 if your devices are in the "off" position or the "vibrate" or
10 "private" position, that's not good enough. We just simply
11 cannot have any of the devices in the courtroom.

12 The defendants are aware that the holding cell does
13 have a speaker system so that they may be able to still hear
14 the proceedings if they are -- if we need to remove them
15 because they cannot comply with the court conduct rules.

16 And the marshals and the Court Security Officers have
17 the authority to remove anyone from the public that cannot
18 comply with these expectations for the conduct in court.

19 (Brief pause in proceedings.)

20 COURTROOM ADMINISTRATOR: All rise.

21 (Jury returned to courtroom at 11:13 a.m.)

22 THE COURT: Jury may go ahead and be seated.

23 Everyone else may be seated as well.

24 Let's go ahead and have counsel make their
25 appearances on the record and then we'll proceed.

1 MR. MYHRE: Good morning, Your Honor, ladies and
2 gentlemen.

3 Steven Myhre, Erin Creegan, Nadia Ahmed on behalf of
4 the United States.

5 THE COURT: Good morning.

6 MR. TANASI: Good morning, Your Honor. Thank you.
7 Good morning, folks.

8 Rich Tanasi for Steven Stewart. Also with us at
9 counsel table is Tori Bakken and Brian Glynn.

10 Thank you.

11 THE COURT: Good morning.

12 MR. MARCHESE: Good morning, Your Honor. Good
13 morning, ladies and gentlemen of the jury.

14 Jess Marchese on behalf of Eric Parker.

15 THE COURT: Good morning.

16 MR. LEVENTHAL: Good morning, everyone.

17 Todd Leventhal on behalf of Scott Drexler.

18 THE COURT: Good morning.

19 MR. PEREZ: Good morning, Your Honor. Good morning,
20 ladies and gentlemen.

21 Shawn Perez on behalf of Ricky Lovelien.

22 THE COURT: Good morning.

23 (Erich Smith returned to stand.)

24 THE COURT: All right. So, we're going to now
25 continue with our witness, Mr. Erich Smith, Erich Smith,

1 rather, and I do have some jury questions for you, sir. I'm
2 going to read them into the record, but when you respond, you
3 may go ahead and turn to the jury to face them because these
4 are jury questions; not my questions. All right?

5 THE WITNESS: Okay.

6 THE COURT: So, Jury Note No. 100 asks, "In your
7 expert opinion, could a trained law enforcement officer
8 misidentify Exhibit No. 197b as a shotgun from a hundred yards
9 away with the naked eye and binoculars?"

10 THE WITNESS: Yes. I believe that's possible.

11 THE COURT: All right. Question No. 101, "The type
12 of bullets used in both weapons, can't they go through body
13 armor?"

14 THE WITNESS: It depends on the top of body armor
15 that's being used. Body armor comes in different ratings based
16 on the type of projectile that it's -- or designed to stop.

17 That really is outside my expertise to answer that
18 question --

19 THE COURT: Okay.

20 THE WITNESS: -- if it would effectively defeat body
21 armor.

22 THE COURT: All right. Question 102 has three parts;
23 the first part is, "If any of the pictured weapons" -- "Of any
24 of the pictured weapons, could you determine if they had a
25 round in the chamber?"

1 THE WITNESS: That, I could not.

2 THE COURT: And the second question in Jury Note No.
3 102 asks, "Of any of the weapons pictured, could you determine
4 if they had been modified to fire automatic?"

5 THE WITNESS: I can't determine that either.

6 THE COURT: And the last question in Jury Note No.
7 102 asks, "What is the difference between a rifle and a long
8 gun?"

9 THE WITNESS: Those are synonymous, a long gun and a
10 rifle.

11 THE COURT: So, no difference?

12 THE WITNESS: No. In my terminology, there would be
13 no difference between those.

14 THE COURT: All right. Jury Note No. 103 asks, "If a
15 person threatens another person with an airsoft object that
16 looked like a rifle or shotgun, would their threatening still
17 be considered meeting its intent?"

18 So again, that's a legal question and we will provide
19 you -- I will provide you with the legal instructions that will
20 assist you in answering that question. So it's not a factual
21 question for this witness to answer, but I appreciate your
22 concern.

23 All right. And then Jury Note No. 104 asks, "Did the
24 sights on Exhibit 197a break in the transportation of the gun?"

25 THE WITNESS: I don't have any knowledge of when

1 those sights or that sight was broken. It was not -- it was
2 already broken when I received the firearm.

3 THE COURT: Okay. And the second part of the
4 question asks, "Can you determine if the sights were broken on
5 the day in question on Exhibit 197a?"

6 THE WITNESS: That, I cannot determine as well.

7 THE COURT: And then Jury Note 105 asks two
8 questions: The first one is, "The rifle that used the 9mm
9 round, is it capable of that rifle to shoot as far and accurate
10 as a rifle that uses the .223 round or the 6 -- or the 7.62
11 round?"

12 THE WITNESS: I can't -- I don't know the accuracy of
13 the two firearms, but you really need to think about the
14 cartridges. So the rifle that shot the 9mm Luger, that bullet
15 is larger in diameter. It measures .355. You remember the
16 rifle that shot the .223, that's closer to a quarter of an
17 inch. So the object itself is larger; it's not going to fly
18 the air as far. So its ballistic co-efficient is not as good
19 as the .223 rifle. So, basically in a short answer, it would
20 not fire as far as the .223.

21 THE COURT: All right. And the second question in
22 Jury Note No. 105 asks, "Can you explain the difference between
23 the 9mm versus the .223 versus the 7.62 in terms of size and
24 velocity."

25 THE WITNESS: Sure.

1 We'll start with the smaller and we'll work our way
2 up.

3 So, the 223, .223, that's close to a quarter inch in
4 diameter. So if he took the bullet and cut it in half, it
5 measures about a quarter inch across. A .223 is a full metal
6 jacket and when I say that, if we actually looked at the
7 bullet, there's a metal jacket around a lead core. Those
8 typically fly at a velocity of around 3100 feet per second. So
9 they're very fast bullets.

10 The next one up would be your .30 caliber, 7.62 by
11 39. Again, this is a full metal jacket bullet. It's typically
12 wrapped around a lead core and it also is a high velocity
13 around. That particular velocity, I'm not certain on how fast
14 that one actually travels. But then the 9mm Luger, that
15 measures .355 in diameter if we cut it in half. That one
16 typically runs around 1150 feet per second. So, it's slower
17 than the other two cartridges.

18 THE COURT: So the largest is the 9mm?

19 THE WITNESS: That's .355 and then the .30 caliber
20 measures .308. So it's a little bit -- little bit smaller
21 diameter.

22 THE COURT: All right. Jury Note No. 106 asks, "Can
23 you tell by looking at the butt of a rifle if it is a shotgun
24 or not?"

25 THE WITNESS: I don't know if I'd be able to do that

1 or not, because the stock -- when we talk about the butt,
2 that's the portion that actually fits into your shoulder.
3 They're very similar between rifles and shotguns, so I may not
4 be able to distinguish one being another, unless there was
5 something really specific about the butt.

6 THE COURT: All right. Any follow-up questions by
7 the Government?

8 MR. MYHRE: Yes, Your Honor. Just a couple.

9 THE COURT: Go ahead.

10

11 REDIRECT EXAMINATION OF ERICH SMITH

12 BY MR. MYHRE:

13 Q. Good morning, Mr. Smith.

14 A. Good morning.

15 Q. Just in follow-up to question 102 where you were asked
16 about whether you could determine from the photos whether there
17 was a round in the chamber, I would ask the converse. Could
18 you tell from the photos that a round was not in the chamber?

19 A. I could not.

20 Q. And you fired this weapon; correct? This weapon, being
21 the weapon at 190b, the Saiga?

22 A. Yes, I did.

23 Q. When you fired that weapon, what was -- did you have a
24 magazine in it?

25 A. Actually, I had no magazine in it when I test-fired it. I

1 actually physically loaded the cartridge into the chamber and
2 fired it.

3 Q. When you fired that weapon, was the bolt opened or closed?

4 A. It was closed.

5 Q. And when the bolt is closed, where is the firing pin?
6 What is the position of the firing pin?

7 A. The firing pin is sitting in the bolt. It's prepared,
8 it's ready so that when I pull the trigger, the hammer falls
9 forward and it slams into the firing pin and now the firing pin
10 is allowed to hit the primer.

11 Q. So for -- for that weapon to fire, does the bolt have to
12 be closed?

13 A. Yes, it does.

14 MR. MYHRE: And if I may show, Your Honor, the
15 witness what was previously admitted as 152a?

16 THE COURT: Yes, you may.

17 (Exhibit 152a published.)

18 BY MR. MYHRE:

19 Q. And I believe the jury has that image in front of it as
20 well. And in this image can you tell where that bolt is
21 forward or not?

22 A. Yes. This is the same image we looked at yesterday and
23 the bolt is forward.

24 Q. Thank you.

25 THE COURT: When you say "forward," do you mean

1 closed or not closed?

2 THE WITNESS: Closed.

3 THE COURT: Okay.

4 BY MR. MYHRE:

5 Q. In response to Question 104 you were asked about the front
6 sight of 197b. When you looked at -- you looked at 197b
7 yesterday and it's available for you to look at today, is the
8 post of the sight intact on that weapon?

9 A. Can I take it out so I'm sure?

10 MR. MYHRE: With the Court's permission.

11 THE COURT: Yes, you may.

12 THE WITNESS: This is the front sight, this portion
13 right here (indicating). This portion right here (indicating)
14 is a shroud that would go over this little post here
15 (indicating). This post is actually what you sight in on to
16 shoot. The portion that's broken off would wrap around and
17 creates a -- basically a cover to block any kind of glare off
18 the front sight. So, the front sight is still there; it's
19 still intact.

20 MR. MYHRE: And the record should reflect that the
21 witness held 197b in front of the jury and was pointing to the
22 front sight of the weapon.

23 BY MR. MYHRE:

24 Q. So, in other words, with the sight in the condition it is
25 now, that weapon could still be aimed and be functional?

1 MR. TANASI: Objection. Leading.

2 MR. MYHRE: Your Honor --

3 THE COURT: You asked the question, is it still
4 functional then with that front sight?

5 MR. MYHRE: Is the weapon still functional in the
6 condition it's in?

7 MR. LEVENTHAL: Objection. Beyond the scope of the
8 question as well.

9 MR. TANASI: Stewart joins.

10 MR. MYHRE: Your Honor, I think that's what the
11 question implies, as to whether the weapon can be used or not.

12 THE COURT: This is the one with the broken --

13 MR. MYHRE: This is Juror Question No. 104, whether
14 the gun -- the sight broke in transportation. I'm inferring
15 from that whether or not if this sight had been broken on the
16 day in question, would it have been functional or usable.

17 THE COURT: All right. Objection's overruled.

18 The witness may answer the question.

19 THE WITNESS: Would you like to rephrase the question
20 or --

21 BY MR. MYHRE:

22 Q. Sure.

23 With the sight -- you've described the sight in its
24 present condition; correct? The front sight?

25 A. That's correct.

1 Q. With the condition it's in as it sits here today, would
2 someone be able to use that weapon and use the sight?

3 A. Sure. The sight is still -- the front sight is still
4 available to shoot with. It's still present.

5 MR. MYHRE: All right. Thank you, Mr. Smith.

6 No further questions, Your Honor. Thank you.

7 THE COURT: Follow-up by the defense?

8 MR. TANASI: None from Stewart, Your Honor.

9 MR. MARCHESE: None from Parker.

10 MR. LEVENTHAL: No, Your Honor.

11 MR. PEREZ: None from Lovelien.

12 THE COURT: All right. Well, thank you, Mr. Smith,
13 for coming in today. You are excused.

14 THE WITNESS: Thank you.

15 (Witness excused.)

16 THE COURT: Are we going to recall Special Agent
17 Sarah Draper?

18 MS. AHMED: Yes, Your Honor.

19 THE COURT: Okay. Let's go ahead and do that, then.

20 MS. AHMED: Your Honor, the United States recalls
21 Agent Draper.

22

23

SARAH DRAPER,

24 called as a witness on behalf of the Government, having been

25 first duly sworn, was examined and testified as follows:

1 THE COURT: Good morning, Special Agent Draper.
2 Thank you for coming back. We're going to have you sit up here
3 just in a minute, as soon as we can clear -- just have you wait
4 there while he clears up the evidence.

5 MS. AHMED: Your Honor, may I move the podium?

6 THE COURT: Yes.

7 Aaron, move it.

8 (Brief pause in proceedings.)

9 THE COURT: All right. Ms. Draper, I do remind you
10 that you are still under oath.

11 THE WITNESS: Thank you, Your Honor.

12 THE COURT: Go ahead and continue, Ms. Ahmed, with
13 direct.

14 MS. AHMED: Thank you, Your Honor.

15

16 FURTHER DIRECT EXAMINATION OF SARAH DRAPER

17 BY MS. AHMED:

18 Q. Good morning again, Agent Draper.

19 A. Good morning.

20 Q. When we left off, we were looking at Facebook posts -- we
21 had been looking at Facebook posts yesterday that you reviewed
22 and obtained from Mr. Parker's Facebook account.

23 Do you recall that?

24 A. Yes.

25 Q. And after his participation in the events of April 12th,

1 2014, did he continue to post on his Facebook account regarding
2 those events?

3 A. Yes.

4 MS. AHMED: Your Honor, may we publish what's been
5 stipulated to admission -- for admission as Exhibit 105?

6 THE COURT: Yes, you may.

7 (Exhibit 105 published.)

8 MS. AHMED: And Your Honor, may we -- may we admit it
9 as well, for the record?

10 THE COURT: Yes. 105 is admitted.

11 (Exhibit 105 received.)

12 BY MS. AHMED:

13 Q. Agent Draper, do you see what's on the screen in front of
14 you as 105?

15 A. Yes, I do.

16 Q. Ask you just explain to the jury what is depicted in
17 Exhibit 105?

18 A. This is a screen capture of a picture from Mr. Parker's
19 Facebook page.

20 Q. And is that picture from April 12th of 2014?

21 A. Yes, this is.

22 Q. And is this actually taken at the BLM's ICP impoundment
23 site?

24 A. This is at the -- at Bundy Ranch.

25 Q. The bridge?

1 A. Yes. At the bridge.

2 Q. And looking at the individual that's depicted on the
3 viewer's right, do you recognize that person?

4 A. Yes. That's Mr. Parker.

5 Q. And the individual that's depicted on the viewer's far
6 left, do you recognize that person?

7 A. Yes. That's Mr. Drexler.

8 MS. AHMED: Your Honor, may we admit and publish
9 what's been stipulated for admission as Exhibit 111?

10 THE COURT: Yes, you may.

11 (Exhibit 111 received and published.)

12 BY MS. AHMED:

13 Q. Agent Draper, can you explain to the jury what is depicted
14 in Exhibit 111?

15 A. This is a posting of a picture from Mr. Parker on his
16 Facebook page updating his profile photo on October 11th of
17 2015.

18 Q. And what photo did Mr. Parker update his profile picture
19 with?

20 A. This is a picture of him -- taken of him at the Bundy
21 Ranch on the bridge on April 12th, 2014.

22 Q. And he posted this on October 11th of 2015?

23 A. Yes, that's correct.

24 Q. And looking below the picture, do you see that there are
25 also -- that individuals have "liked" and commented on that

1 picture?

2 A. Yes.

3 Q. Do you see the name Blaine Cooper?

4 A. Yes.

5 Q. Are you familiar with that name?

6 A. Yes.

7 Q. And who is Blaine Cooper?

8 A. Mr. Cooper was also involved in the events at Bundy Ranch
9 on April 12th, 2014.

10 Q. And below that, do you see that there are comments?

11 A. Yes.

12 Q. Can you read those comments?

13 A. Yes. An individual asks, "What rifle is that? A VZ?"

14 Q. And does Mr. Parker post a response?

15 A. Yes, he does.

16 Q. Can you read the response?

17 A. It says, "Saiga .223."

18 Q. And for the record, in the photograph that Mr. Parker made
19 his profile picture, is he -- what is he holding in his hands?

20 A. A Saiga .223.

21 MS. AHMED: Your Honor, may we publish --

22 THE COURT: Can I just go back a little bit?

23 You were asking the witness about Mr. Blaine Cooper
24 and she said he was present at the events at Bundy Ranch. Was
25 he present at the events at the wash and the bridge --

1 THE WITNESS: Your Honor, I don't know if --

2 THE COURT: -- or the rally beforehand?

3 THE WITNESS: Oh, I'm sorry.

4 THE COURT: I'm sorry. Was it just the rally
5 beforehand at the ranch or also later on at the wash?

6 THE WITNESS: Your Honor, I don't know exactly if he
7 was on the bridge or on the wash.

8 THE COURT: Okay.

9 THE WITNESS: I recall through investigation he was
10 on the wash, but I don't know exactly.

11 THE COURT: Okay.

12 Okay. You can move on.

13 MS. AHMED: Thank you, Your Honor.

14 May we publish what's been admitted as Exhibit 113?

15 (Exhibit 113 published.)

16 BY MS. AHMED:

17 Q. Agent Draper, can you explain to the jury what is
18 displayed in Exhibit 113?

19 MR. MARCHESE: And, Your Honor, for the record, this
20 was over defense objection.

21 MR. LEVENTHAL: That's correct, Your Honor.

22 THE COURT: That's correct.

23 MR. TANASI: That's correct, Your Honor.

24 BY MS. AHMED:

25 Q. Agent Draper, can you explain to the jury what's depicted

1 in Exhibit 113?

2 A. This is another capture from Eric Parker's Facebook page
3 dated November 20th of 2015. It shows a picture of Mr. Drexler
4 on April 12th, 2014, on the bridge and there have been words
5 written on it and Mr. Parker made a comment.

6 Q. And what is Mr. Drexler doing in the picture?

7 A. He's standing --

8 MR. LEVENTHAL: I'm going to object as to
9 speculation. What's he doing?

10 BY MS. AHMED:

11 Q. What does it appear that he's doing from the photograph?

12 A. It appears as though he's standing on the bridge carrying
13 a rifle.

14 Q. And what are the words that are superimposed over that
15 picture?

16 A. Says, "Lo, do they call to me. They bid me to take my
17 place among them in the hollowed halls of Valhalla where the
18 brave shall live forever."

19 Q. And are these words words that you've become familiar with
20 through your investigation of this case?

21 A. Yes.

22 Q. And what -- what are they from, if you know?

23 A. Just --

24 MR. MARCHESE: Objection. Hearsay.

25 MR. TANASI: Stewart joins.

1 MR. LEVENTHAL: Drexler joins.

2 MR. PEREZ: Lovelien joins.

3 THE COURT: Well, it's not offered for the truth --
4 well, you -- Ms. Ahmed, what's your response?

5 MS. AHMED: Your Honor, we would submit that this is
6 an adopted admission by Mr. Parker.

7 MR. MARCHESE: Your Honor, but it's our position that
8 she's going to testify to what she found out, so she's
9 basically testifying as to hearsay. It's not from her personal
10 knowledge.

11 BY MS. AHMED:

12 Q. Just were these words --

13 THE COURT: It's her personal knowledge. What she
14 found out, right? She's not --

15 MS. AHMED: She --

16 THE COURT: -- getting this information from someone
17 else?

18 MS. AHMED: That's correct, Your Honor. She
19 investigated the origin of these words.

20 THE COURT: All right. I'll allow it over the
21 objection.

22 BY MS. AHMED:

23 Q. Can you explain to the jury where these words come from?

24 A. Again, as yesterday, this is a summary of a -- of a Norse
25 or Viking prayer or poem about warriors seeking a place in

1 Valhalla.

2 Q. And how do they get that place in Valhalla?

3 A. If they died in battle.

4 Q. Now, above the picture with these words, you mentioned
5 that there -- there are also words above the picture; correct?

6 A. Yes, correct.

7 Q. And is that a comment that Mr. Parker posted separately
8 from the picture?

9 A. Yes.

10 Q. But in relation to the picture?

11 A. Correct.

12 Q. Can you read that to the jury?

13 A. It says, "Our ongoing weekly tribute to the men and women
14 who showed up that day that were not me."

15 MS. AHMED: Your Honor, may we publish what's been
16 stipulated to for admission -- may we admit and publish Exhibit
17 115?

18 THE COURT: Yes, you may.

19 (Exhibit 115 received and published.)

20 BY MS. AHMED:

21 Q. Agent Draper, is this a post that Mr. Parker posted to his
22 Facebook page?

23 A. Yes.

24 Q. And what date did he make this post?

25 A. February 5th, 2016.

1 Q. And does -- in the post, is he sharing a photograph with
2 words on it?

3 A. Yes.

4 Q. And what is depicted in the actual photograph?

5 A. This is a photograph of BLM at Bundy Ranch.

6 Q. These are the officers that were present on April 12th,
7 2014?

8 A. Yes, some.

9 Q. And what words are -- there appear to be words and circles
10 over the picture.

11 Do you see that?

12 A. Yes.

13 Q. Written in blue?

14 A. Yes.

15 Q. Can you read what those say?

16 A. The word "dicks" three times.

17 Q. And is there -- do there -- do those words appear to be in
18 relation to the circles and the arrows that are also drawn on
19 the picture?

20 A. They appear to be.

21 Q. So, and it appears that they were referring to the
22 officers; is that correct?

23 A. Yes.

24 Q. And above and below the photograph there are also words.

25 Do you see that?

1 A. Yes.

2 Q. Can you read those to the jury?

3 A. "The reason Nevada went so well, the dicks were there when
4 we got there."

5 Q. Now, below this photograph, are there also comments?

6 A. Yes, there are.

7 Q. Beginning where it says "Don Knight," can you read the
8 first comment?

9 A. It says -- "Don Knight: Yes. Always let your opponents
10 take the field first. That's one of the arts of war."

11 Q. And does Mr. Parker respond to that comment?

12 A. Yes, he does. He says, "Same idea. I just wrote it down
13 a little different."

14 Q. And where it says "Jeff Alldredge," can you read that
15 comment?

16 A. It says, "I always thought one would want to pick the
17 ground they fight from."

18 Q. And does Mr. Parker respond to that?

19 A. He does. And it says, "That's the hard part. Pick the
20 battlefield, but let them take it first."

21 MS. AHMED: Your Honor, may we publish what was
22 admitted over defense objection as Exhibit 101?

23 THE COURT: Yes, you may.

24 (Exhibit 101 published.)

25 ///

1 BY MS. AHMED:

2 Q. Agent Draper, do you see Exhibit 101?

3 A. Yes, I do.

4 Q. Now, you testified yesterday about a group known as the
5 3%.

6 Do you recall that?

7 A. Yes.

8 Q. And also about the Idaho 3% which I believe you said was a
9 part of that greater 3%?

10 A. It's a part of a greater affiliation. It's not
11 necessarily a national connection, but a movement.

12 Q. And you described to the jury some of the things that the
13 Idaho 3% does; correct?

14 A. Yes.

15 Q. What kind of group is the Idaho 3%?

16 A. Well, the FBI considers it a militia group.

17 Q. And --

18 MR. LEVENTHAL: I'm going to object as to hearsay.

19 Move to strike.

20 BY MS. AHMED:

21 Q. Is that based on your investigation and your familiarity
22 with the Idaho 3%?

23 A. Yes.

24 Q. And also in your training and experience as an FBI agent?

25 A. Yes.

1 THE COURT: Objection overruled.

2 BY MS. AHMED:

3 Q. Now, based on your investigation in this case, in June of
4 2015, was Mr. Parker affiliated with the Idaho 3%?

5 A. Yes.

6 Q. Looking at this exhibit, Exhibit 101, do you see where
7 I've circled on the screen a symbol?

8 A. Yes.

9 Q. I've circled toward the bottom of the picture.

10 Do you see that?

11 A. Correct.

12 Q. And can you explain to the jury, what is that symbol?

13 A. That is three Roman Numeral -- three Roman Numeral I's,
14 III%.

15 Q. And is that a symbol that's used by the Idaho 3%?

16 A. It's -- it's used by different 3% organizations, correct.

17 Q. Including the Idaho 3%?

18 A. Including, correct.

19 Q. And what is the photo -- photograph that is depicted in
20 Exhibit 101?

21 A. This is a photograph of Mr. Parker proned on the bridge at
22 Bundy Ranch on April 12th, 2014.

23 Q. And what do the words -- and where is his rifle in this
24 photograph?

25 A. The rifle is through a crack in the Jersey barrier -- the

1 highway barricade.

2 Q. The concrete barriers?

3 A. The concrete barriers, yes.

4 Q. And that's also known as the Jersey barriers?

5 A. Correct.

6 Q. And it appears to be pointing through that gap?

7 A. Yes.

8 Q. And what are the words written above that photograph?

9 A. "You give peace a chance . . . I'll cover you."

10 Q. And is this a post that Mr. Parker shared on his Facebook
11 page?

12 A. Yes.

13 Q. In June of 2015?

14 A. Correct.

15 MS. AHMED: Your Honor, may we publish what was
16 admitted over defense objection as Exhibit 103?

17 THE COURT: Yes, you may.

18 (Exhibit 103 published.)

19 BY MS. AHMED:

20 Q. Agent Draper, do you see Exhibit 103?

21 A. I do.

22 Q. And can you describe to the jury what is depicted in
23 Exhibit 103?

24 A. This is a picture that Mr. Parker put on his Facebook page
25 in June of 2015 that at the time was made as a cover photo.

1 Q. And can you just remind the jury what a cover photo is in
2 Facebook?

3 A. That would be a -- kind of a -- a banner that would remain
4 until the individual user changes. It's a banner that would
5 remain consistent each time their page comes up. The content
6 may change, but that banner at the top of the page stays
7 consistent.

8 Q. So, if you make a photo your cover photo, that photo will
9 appear as the banner on your Facebook page?

10 A. That's correct.

11 Q. And so when people go to your Facebook page, that's the
12 first thing they would see?

13 A. Yes, and your profile would also be consistent.

14 Q. Now, looking at the photo itself, do you recognize any of
15 the people in that photo?

16 A. Yes, I do.

17 Q. And going from viewer's left to right, can you indicate,
18 mark and identify who you recognize?

19 A. (Indicating) that's Mr. Parker.

20 MS. AHMED: And the witness has drawn a circle over
21 the person that's on the far left.

22 THE WITNESS: (Indicating).

23 MS. AHMED: And then the witness has drawn a circle
24 over an individual in the far right.

25 ///

1 BY MS. AHMED:

2 Q. Who is that individual?

3 A. Mr. Stewart.

4 Q. And what do they appear to be doing in this picture?

5 A. Based upon the settings and -- they appear to be doing
6 some type of tactical training based upon their gear. It looks
7 like there's a target behind them. So, from my training, I
8 would assess they're doing some type of tactical and/or
9 firearms training.

10 Q. And the individual in the foreground that I've circled, do
11 you see what he is -- the shirt that he's wearing?

12 A. Yes, I do.

13 Q. Can you explain to the jury, based on your investigation,
14 what you know about that shirt? What is that shirt?

15 A. That is a shirt that members of the Idaho 3% wore. It has
16 a symbol of the organization on it.

17 Q. So, that image on the back of the shirt is the Idaho 3%
18 image?

19 A. Part of it, yes. Part of it on the back of that shirt is,
20 yes.

21 Q. And have you seen other pictures depicting Idaho 3%
22 shirts?

23 A. Yes.

24 Q. And in those pictures, have you observed that they have --
25 what they have, if anything, on the sleeves of those shirts?

1 A. A flag sometimes, yes.

2 Q. And would the flag be consistent with the flag that
3 appears on Mr. Stewart's shirt in this picture (indicating)?

4 MR. TANASI: Objection. Leading, Your Honor.

5 THE COURT: Sustained.

6 Do you want to rephrase the question?

7 BY MS. AHMED:

8 Q. Looking at the picture, the circle that I've drawn around
9 Mr. Stewart's shirt, is that shirt consistent or not consistent
10 with the other Idaho 3% shirts that you've seen?

11 A. That sleeve would be consistent.

12 Q. And do you observe what Mr. Stewart has on top of his
13 shirt?

14 A. You mean the vest? Like a tactical vest.

15 Q. Can you explain to the jury what it is?

16 A. Oh, okay.

17 It's a -- it looks like some type of tactical vest to
18 carry gear, perhaps magazines. I can't tell if there's any
19 type of armoring in that or not, from here.

20 Q. And in this picture can you tell whether Mr. Parker has
21 something similar on?

22 A. He has something on. I -- I can't tell what it is.

23 Q. Now -- and this is a picture that Mr. Parker made his
24 cover photo in June of 2015 --

25 A. Yes.

1 Q. -- is that correct?

2 A. Yes.

3 MS. AHMED: Your Honor, may we publish what was
4 admitted over defense exhibit -- excuse me -- over defense
5 objection as Exhibit 107?

6 THE COURT: Yes, you may.

7 (Exhibit 107 published.)

8 BY MS. AHMED:

9 Q. Now, looking at this exhibit, Agent Draper, is this a post
10 that Mr. Parker made on his Facebook in August of 2015?

11 A. Yes.

12 Q. And does he appear to be sharing some information in this
13 post?

14 A. Yes.

15 Q. What is he sharing in this post?

16 A. He's sharing a link to a Facebook page for the 3% of
17 Idaho, the organization.

18 Q. And looking at the 3%er image, where it says "Three
19 Percenter," do you see that, in the near of the screen?

20 A. Oh, yes, I do. Sorry.

21 Q. Drawing a square around the circle in that, do you see
22 that --

23 A. Yes, I do.

24 Q. -- square?

25 A. Yes, I see that.

1 Q. Can you read the words that are written in that -- around
2 the -- in the circle form around that?

3 A. "When tyranny becomes law, rebellion becomes duty."

4 Q. And then looking above that, do you see that Mr. Parker
5 also made comments on this post?

6 A. Yes.

7 Q. And can you read the comments from the top to the bottom
8 that Mr. Parker posted?

9 A. "For updates on our resistance, please like and follow" --
10 correction -- "please like, follow, and share our page."

11 Q. And those were the words that Mr. Parker's account posted?
12 He posted this on his account?

13 A. This was, yes, posted on his account, correct.

14 MS. AHMED: Your Honor, may we publish what was
15 admitted over defense objection as Exhibit 110?

16 THE COURT: Yes, you may.

17 (Exhibit 110 published.)

18 BY MS. AHMED:

19 Q. Now, Agent Draper, is this a -- what appears to be a post
20 that another user made on Mr. Parker's page?

21 A. Yes.

22 Q. And that post was made in September of 2015; correct?

23 A. That's correct.

24 Q. Can you read what that person wrote on Mr. Parker's page?

25 A. The individual who posted this wrote, "Question . . . What

1 if one is/agrees with 3%ers but works for BLM/USFS?" Which
2 would be the United States Forest Service. "Serious question,
3 just occurred to me today."

4 Q. Now, did Mr. Parker post a response to that question?

5 A. Yes, he did.

6 Q. And what did he write?

7 A. "Got a lot of area to cover in that question and folks who
8 work for the BLM/US Forest Service just do the job they were
9 meant to at the founding of these organizations. You have
10 firefighters on both sides . . . I reach out to as many of the
11 LE branches that I can, especially in my local area, shake
12 their hand, look them in the eye, let him know I don't want to
13 kill him and I don't want him to kill me. Hopefully, it will
14 never have to get to the point it did in Nevada ever again."

15 Q. And what does "LE" stand for?

16 A. Law enforcement.

17 Q. And did Mr. Parker make another comment to this question?

18 A. Yes, he did.

19 Q. What did he write?

20 A. "Short answer is, I wish they would just find another
21 job."

22 MS. AHMED: Your Honor, may we publish what was
23 admitted over defense objection as Exhibit 116?

24 THE COURT: Yes, you may.

25 (Exhibit 116 published.)

1 BY MS. AHMED:

2 Q. Agent Draper, is this another post made on Mr. Parker's
3 Facebook account?

4 A. Yes. This is another updated cover photo.

5 Q. And again, this would be then the banner that would appear
6 at the top of his page?

7 A. That's correct.

8 Q. And when was this post made?

9 A. February 17th, 2016.

10 Q. And what is the post that he made -- he made his cover
11 photo?

12 A. It's the word "resist" and it shows a sketch of the image
13 of him on the bridge in Bundy Ranch on April 12th, 2014, where
14 he's proned behind a rifle at the Jersey barriers, the concrete
15 barriers, and it has the word "Three Percent" below it.

16 Q. And yesterday you were describing a T-shirt that you had
17 seen to the jury. Is this what, the T-shirt that you were
18 describing, is on that T-shirt?

19 A. That's -- my investigation leads me to believe this is the
20 shirt, yes.

21 Q. That this is actually a photograph of the shirt?

22 A. That's what my investigation leads, yes.

23 Q. Now, you indicated yesterday that the Idaho 3% conducts
24 operations.

25 Do you recall that?

1 A. Yes.

2 Q. And during the course of your investigation in this case,
3 did you become aware of an operation that the Idaho 3%
4 participated in taking place in Oregon in April of 2015?

5 A. Yes.

6 Q. And generally, what was the nature of the operation?

7 A. There was -- there was a dispute where perceived laws
8 regarding, like, regulations of mines on public lands, between
9 a miner outside of Grants Pass, Oregon and the Bureau of Land
10 Management.

11 Q. So, there was a mine that was located on land administered
12 by the BLM --

13 A. Yes.

14 Q. -- is that correct?

15 A. Um-hmm.

16 Q. And the miner disputed the BLM's regulations?

17 MR. MARCHESE: Objection. Leading.

18 MS. AHMED: Your Honor, I was just trying to clarify
19 her answer.

20 THE COURT: Rephrase.

21 BY MS. AHMED:

22 Q. So, you indicated there was some kind of dispute. What
23 was the dispute?

24 A. It was -- had to do with the surface rights of the -- of
25 the mine on the -- on the BLM land and there was a process that

1 was being taken to resolve that dispute.

2 Q. And when you say "a process," do you mean that there was
3 administrative --

4 A. There was an administrative process ongoing, um-hmm.

5 Q. So, was the miner appealing the BLM's decisions regarding
6 the mine?

7 MR. MARCHESE: Objection. Leading.

8 THE COURT: Sustained.

9 BY MS. AHMED:

10 Q. What -- when you say "administrative process," what --
11 what -- can you just explain to the jury what you mean?

12 A. So, there was -- the miners had filed an appeal based upon
13 something they had received from the BLM.

14 Q. And did the miners -- while that appeal was going on,
15 what, if any, other steps did the miners take?

16 A. While that process was going on, they reached out and
17 asked for militia assistance.

18 Q. And did militias respond to that request?

19 A. Yes.

20 Q. Including the Idaho 3%?

21 A. Individuals from, correct.

22 Q. Individuals from the Idaho 3%?

23 A. Yes. Individuals from the Idaho 3%.

24 MR. MARCHESE: Objection. Foundation.

25 MS. AHMED: Your Honor, she's already explained that

1 this is based on her investigation.

2 THE COURT: Sustained.

3 MS. AHMED: Should I rephrase?

4 THE COURT: If you want to lay a foundation.

5 BY MS. AHMED:

6 Q. So, did you observe social media postings regarding
7 individuals from the Idaho 3% related to this event?

8 A. Yes, I did.

9 Q. And what, if anything, did those postings lead you
10 understand?

11 A. That individuals from that organization responded to this
12 location in Oregon based upon this request.

13 Q. And what did they do when they responded?

14 A. As a whole, all the -- as a whole, the individuals who
15 responded conducted -- and again, this is from big picture --
16 conducted things such as armed patrols of the area and acted
17 somewhat --

18 MR. MARCHESE: Objection. Foundation.

19 BY MS. AHMED:

20 Q. Did you -- in the course of this investigation, did you
21 follow the events that were taking place at this mine?

22 A. Yes.

23 Q. And just stepping back. You indicated -- again, was
24 this -- was this an operation such as what you were referring
25 to yesterday?

1 A. Yes.

2 Q. And what was the name of this operation?

3 A. It was named Operation Gold Rush.

4 Q. Now, in following the events that were taking place during
5 this operation, did you learn what, if anything, these militia
6 groups were doing in relation to that request for help from the
7 miners? Did you learn over the course of your investigation?

8 A. Yes. Conducting activities such as armed patrol.

9 MR. MARCHESE: Objection. Hearsay.

10 BY MS. AHMED:

11 Q. Did you observe social media postings, including photos
12 and videos?

13 A. I observed social media with images of individuals armed
14 at the site.

15 Q. And based on your investigation, what was their purpose in
16 being there with arms?

17 MR. MARCHESE: Objection. Speculation.

18 MR. TANASI: Objection. Relevance to Steven Stewart,
19 Your Honor.

20 MR. LEVENTHAL: Foundation.

21 MR. PEREZ: Lovelien joins.

22 MR. MARCHESE: Lack of personal knowledge.

23 MS. AHMED: Your Honor, we're asking her based on her
24 investigation. So I can ask -- I can rephrase to say to the
25 extent you know if -- but -- so I can step back, Your Honor.

1 BY MS. AHMED:

2 Q. To the extent that you know and based on your
3 investigation, what was your understanding of their purpose in
4 being present with arms?

5 MR. LEVENTHAL: Foundation, Your Honor. All she said
6 was she looked at a picture on Facebook -- on social media.

7 MR. TANASI: Stewart joins.

8 MS. AHMED: Your Honor, I would respond that this is
9 an FBI agent who has testified that she was a case agent
10 following the Idaho defendants who participated in the events
11 of April 2014 and in the course of her investigation she
12 followed this event that was taking place in Oregon, as she's
13 indicated, in Grants Pass, Oregon, and that she followed it and
14 monitored it. She subsequently reviewed social media to
15 include photos.

16 THE COURT: All right. So it wasn't clear to me that
17 her investigation was prior to her following or reviewing. So,
18 she's participate -- why don't you clarify it --

19 MS. AHMED: Sure, Your Honor.

20 THE COURT: -- when she's investigating this. Is it
21 contemporaneously with the events or is it after the events
22 occurred?

23 BY MS. AHMED:

24 Q. Now, you began your investigation into the events of
25 April 12th, 2014, when?

1 A. In April of 2014.

2 Q. And did you continue to investigate that up and through
3 the present?

4 A. Yes. Well, yes. Yeah.

5 Q. In the course of that investigation, you became aware of
6 these events that were taking place in Oregon in April of 2015;
7 is that right?

8 A. Correct.

9 Q. Did you subsequently investigate what had happened in
10 Oregon?

11 A. To the extent of being aware of the involvement of
12 individuals that I was conducting investigations on from
13 April 12th, yes.

14 Q. So, your investigation in this case involved you following
15 specific subjects; correct?

16 A. Correct.

17 Q. And those were the subjects that you stated yesterday?

18 A. Yes.

19 Q. Mr. Parker, Mr. Drexler, and Mr. Stewart?

20 MR. MARCHESE: Objection. Leading.

21 MR. LEVENTHAL: Leading, Judge.

22 MR. TANASI: Stewart joins.

23 MS. AHMED: Your Honor, this is foundational. She
24 said it yesterday.

25 THE COURT: Yeah. She's already testified to who the

1 individuals are and the foundation is permissible.

2 BY MS. AHMED:

3 Q. So, and that was Mr. Parker, Mr. Drexler, and Mr. Stewart;
4 correct?

5 A. Yes. Correct.

6 Q. So, in the course of following these three individuals, is
7 that how you became aware of the events in Oregon in April of
8 2015?

9 A. Correct, as well as in communication with other FBI
10 employees.

11 Q. Now, through your investigation into this case but with
12 the focus on the events in Oregon in April of 2015, this
13 Operation Gold Rush, did you learn if any of the defendants
14 that -- excuse me -- if any of the subjects that you were
15 following participated in that operation?

16 A. Yes.

17 Q. So, the people who had participated in the April 12th,
18 2014, event, you learned that some of them had participated in
19 this new operation; is that correct?

20 A. Correct.

21 Q. And who, based on your investigation, participated in this
22 new operation, Operation Gold Rush?

23 A. Mr. Parker. There's photos of that, that I've observed,
24 and Mr. Drexler. I have not observed photos of him there, but
25 other indicators that he was there, Facebook posts.

1 Q. And did you observe photos of other individuals who also
2 participated in this operation?

3 A. Just other individuals?

4 Q. Correct.

5 A. Yes.

6 Q. And in -- have you observed -- through those photos, did
7 you observe what their activities were at this operation,
8 generally?

9 A. Generally, yes.

10 Q. And what did it appear to you, based on your training and
11 experience?

12 A. Generally, some of the activities involved conducting
13 armed patrols, security-type operations.

14 Q. And what were they patrolling for? What was purpose the
15 controlling the patrols, based on your investigation?

16 A. Based upon the investigation, as well as communication
17 with other FBI employees --

18 MR. MARCHESE: Objection. Hearsay.

19 BY MS. AHMED:

20 Q. Was your investigation informed by information that was
21 shared amongst FBI employees?

22 A. Yes. Yes. This wasn't --

23 MR. MARCHESE: Objection. Hearsay.

24 MS. AHMED: That question, Your Honor, did not elicit
25 any hearsay. I'm just asking if she shared information with

1 other FBI employees.

2 MR. MARCHESE: Your Honor, she's trying to elicit
3 testimony as to what other FBI employees told her which is
4 being offered for the truth of the matter asserted. We have no
5 way to question the veracity of the statement.

6 THE COURT: All right. So the objection as to what
7 someone else told her, an out-of-court statement, that
8 objection is sustained. The next question was, did you discuss
9 with others or did others discuss with you, something to that
10 effect?

11 MS. AHMED: I don't know if I can repeat the exact
12 question, Your Honor, but the investigation -- was the
13 investigation -- did she share information with other FBI
14 employees in the course of investigating.

15 THE COURT: All right. And the objection is
16 overruled as to that question. That -- the form of that
17 question is appropriate.

18 BY MS. AHMED:

19 Q. Now, just based on your training and your experience and
20 your investigation that you've done in this case, from the
21 photos that you reviewed in relation to that event, what did it
22 appear that those individuals were doing in -- during Operation
23 Gold Rush in April of 2015?

24 MR. LEVENTHAL: Vague as to which individuals.

25 MR. TANASI: Stewart joins.

1 MS. AHMED: Well, Your Honor, I'd actually withdraw
2 that question. I believe the witness has already answered that
3 they were conducting armed patrols.

4 So, let me -- let me ask you a different question.

5 MR. LEVENTHAL: I'm going to object to counsel's
6 restatement. That's -- I'd move to strike what she just said.

7 MS. AHMED: Your Honor --

8 MR. TANASI: Stewart joins.

9 MR. MARCHESE: Parker joins.

10 THE COURT: Overruled.

11 Go ahead.

12 BY MS. AHMED:

13 Q. Agent Draper, so the question is, from your own knowledge,
14 what you've observed and during your investigation, what was
15 your understanding of what the armed patrols were meant to do?

16 A. My understanding was that they were meant to act as a
17 deterrent to the Bureau of Land Management to have engagement
18 with the miners.

19 Q. Now, in relation to this operation, did you observe
20 Facebook posts made by Eric Parker regarding this event?

21 A. Yes.

22 MS. AHMED: Your Honor, may we publish what was
23 admitted over defense objection as Exhibit 99?

24 THE COURT: Yes, you may.

25 (Exhibit 99 published.)

1 BY MS. AHMED:

2 Q. Agent Draper, this a post that Mr. Parker shared about
3 that event that we were just discussing?

4 A. Yes. This is a shared link from April -- excuse me -- a
5 shared link from April 11th, 2015.

6 Q. And is there a -- does the link appear to be some sort of
7 article -- does there appear to be a headline associated with
8 the link in this "share," in this post?

9 A. Yes.

10 Q. Can you read what that is?

11 A. It says, "'Bundy Ranch' type standoff brewing in
12 Southern Oregon between miners and BLM."

13 Q. And what is the date that this post was shared on
14 Mr. Parker's Facebook page?

15 A. April 11th, 2015.

16 Q. And can you read the words that are under that headline,
17 that appear in that top portion but are under that headline
18 that you just read?

19 A. "Grants Pass, Oregon, April" -- O-R being Oregon -- "April
20 11th, 2015."

21 "For the past several years, the miners from the
22 Galice Mining District, about 30 minutes west of Grants Pass,
23 Oregon have been . . ."

24 Q. Now, what we were just talking about this Operation Gold
25 Rush, is -- and I think you indicated where it took place. Can

1 you tell the jury again, what was this operation taking place?

2 A. It was near Grants Pass, Oregon.

3 Q. And there appear to be additional comments posted by
4 Mr. Parker on his account regarding this initial post; is that
5 right?

6 A. Yes, that's correct.

7 Q. And do you see that one that's been zoomed out?

8 A. Yes, I do.

9 Q. Can you read that to the jury?

10 A. Yes.

11 It says, "Alert. Alert. Alert. Alert.

12 "This is a standby order for all 3%ers and militias.
13 You are not protestors. We need to get head counts and start
14 setting up supply routes. We will have more info by Monday.

15 "Josephine County, Oregon.

16 "We have word from Galice Mining District that BLM
17 has given them a cease and desist order. They are working a
18 mining claim that is believed to be one of the oldest
19 continuing claims in the United States and have the records to
20 prove their rights to the claim. They are protected under the
21 General Mining Act of 1872.

22 "Sheriff Gil" -- correction -- "Sheriff Gilbertson
23 stood between the miners and BLM, protecting their rights under
24 the 1872 law. BLM is testing the new sheriff, Dave Daniel, and
25 where he stands on this issue. He allowed one of the

1 Josephine County's deputies to accompany a BLM ranger to serve
2 the papers on the miners. This is setting up to become a Bundy
3 Ranch type standoff.

4 "They have been given until April 25th to remove all
5 of their mining equipment off the claim, to include a cabin
6 they expect BLM to burn to the ground. Oregon III% is going to
7 support them in whatever capacity we are able to, to include a
8 response team for the protection of their claim. Understanding
9 the dynamics of this group of independent miners, this has the
10 potential to ramp up very quickly. They will be challenging
11 this in the court system, but their first hearing is after
12 April 25th.

13 "Josephine County Sheriff's Office.

14 "601 Northwest 5th Street.

15 "Grants Pass, Oregon, 97526.

16 "Phone Number (541) 474-5123."

17 Q. And did that post -- did that -- did Eric Parker post an
18 additional comment in relation to his post that you've just
19 read?

20 A. Correct. He says, "Posted to Idaho from Oregon," which,
21 to me, from my investigation, indicates he just shared this.
22 He did not write that post I just read.

23 Q. And based on your investigation, when he says, "Posted to
24 Idaho from Oregon," does he mean the Idaho -- posted from the
25 Oregon 3% to the Idaho 3%?

1 A. Yes.

2 Q. There are additional comments below that.

3 Do you see those?

4 A. Yes, I do.

5 Q. And where it says, "Eric Ej Parker," can you read what
6 that says?

7 A. It says, "Call me for details."

8 Q. And then below that where it says "Jason Patrick," what
9 does that say?

10 A. "Coordinates?"

11 Q. And was it a question that was being asked?

12 A. Yes.

13 Q. And then does Mr. Parker respond to that person's
14 question?

15 A. He writes, "Send me a PM" -- which is a private message --
16 "so I remember and I'll get it to you in the morning, Jason."

17 MS. AHMED: Your Honor, may we publish what has been
18 admitted over defense objection as Exhibit 100?

19 THE COURT: Yes, you may.

20 Actually, why don't we go ahead and take our lunch
21 break now.

22 It's 12:06, so I do remind the jury during this break
23 that you are not to discuss this case with anyone, not even
24 your fellow jurors. You may discuss other things with your
25 fellow jurors, but not this case.

1 Please do not read or listen to or view anything that
2 touches upon this case in any way.

3 Do not perform any independent research or
4 investigation nor attempt to do so, and please do not form any
5 opinion until after you have heard all the testimony, seen the
6 evidence. I will provide you with the jury instructions of
7 law. Then you will hear closing arguments and after that I
8 will excuse you to begin your deliberation process, your duty
9 to deliberate and discuss with each other your opinions in
10 effort to attempt to reach a unanimous decision.

11 So, we'll go ahead and take our break now. It's
12 12:07. Plan to be back here at 1:10.

13 (Off-record discussion.)

14 THE COURT: Okay. So plan to be back here at 1:10.

15 Let's stand for the jury so they can be excused and
16 then FBI Special Agent Draper, after they exit -- after the
17 jury exits, then you may also take your brunch break and then
18 we'll need you back here at 1:10, please.

19 THE WITNESS: Thank you, Your Honor.

20 (Jury excused from courtroom.)

21 THE COURT: All right. Off record.

22 (Recess was taken at 12:08 p.m.)

23 (Outside the presence of the jury at 1:41 p.m.:)

24 COURTROOM ADMINISTRATOR: All rise.

25 THE COURT: Thank you. You maybe seated.

1 I understand the parties want me to address some
2 other objections before we bring in the jury; is that right?

3 MS. AHMED: That's correct, Your Honor. We just
4 wanted to go through the Stewart. There are six exhibits for
5 Mr. Stewart's Facebook, so it's his Facebook account that we
6 had -- didn't -- were unable to agree on them and then there
7 was also the question of the booking photos that we have -- we
8 are intending to put in with this witness. I think that there
9 was an objection on those as well.

10 THE COURT: All right. So let's see the first one.

11 MS. AHMED: It's -- I'm sorry, Your Honor. It's
12 Exhibit 117.

13 (Exhibit 117 published.)

14 THE COURT: What's the objection to 117?

15 MR. TANASI: Okay, Your Honor. With respect to 117,
16 I was arguing 106 completeness under what's been redacted and
17 in that the way that it's presented, it's misleading as
18 presented, 117.

19 And so, what I proffered with Ms. Ahmed was 5037a,
20 Defense Exhibit 5037a, which hopefully Brian can bring that up
21 for you so you could look at --

22 THE COURT: Okay.

23 MR. TANASI: -- how I was hoping to complete it.
24 5037a.

25 MS. AHMED: And, Your Honor, just -- while it's being

1 pulled up, my understanding is that 5037a is what it would look
2 like if you went to the actual Facebook page on the Internet,
3 but it's numerous posts that are here, not just the two posts
4 that we have included in 117.

5 MR. TANASI: That's correct, Your Honor. This is --
6 this is how the actual Facebook post would appear and -- and --
7 but the comment on the bottom, "First they said they were going
8 to release everything and leave. Then they held the gates to
9 Gold Butte and threatened us with chemicals and they pushed
10 forward and had to back off. They are releasing the cows now.
11 BLM is leaving," so that -- that's the one portion that the
12 Government intends to offer and I'm seeking to complete the
13 entire document to avoid misleading the jury to show what my
14 client's state of mind was, which was, "United we stand. We,
15 the people, will be heard in Nevada. No more government
16 bullying."

17 MS. AHMED: And, Your Honor, those -- those are
18 clearly separate posts. Everything above the bottom post,
19 those are distinctive posts, distinct, separate, and also
20 irrelevant.

21 MR. TANASI: Your Honor, they're -- again, they're on
22 the same day and looking at the raw data, it's at 3 :47 UTC
23 time that Mr. Stewart posts, "United we stand. We, the people,
24 will be heard in Nevada. No more government bullying," and
25 it's 2:52 that the post related to releasing everything and

1 leaving was made. So, they're close in time and, again, the
2 Government is offering this to demonstrate my client's . . .
3 illegal state of mind, for lack of a better way of putting it
4 on the bridge, and for why he was in Nevada in the first place
5 and entering just this misleading, kind of, excerpt from his
6 Facebook to prove that and the remainder of his Facebook that
7 I'm seeking to admit demonstrates why he went to Nevada.

8 MS. AHMED: So, Your Honor, we would just follow-up
9 that this is essentially self-serving hearsay. It's
10 distinctive -- it's distinct from the other post and the other
11 post is not misleading; it's complete. And so, there's no
12 confusion as to what the message in that post that we are
13 seeking to admit as an admission -- there's nothing that's
14 incomplete in that post and the rest of it is self-serving
15 hearsay.

16 THE COURT: All right. So, Mr. Tanasi, I don't
17 understand why you think that Government's 117 is misleading
18 and requires the extra information on Defense 5037a.

19 MR. TANASI: Because the way that it's presented is
20 the implication that he was on the bridge attempting to extort
21 BLM officers and that's why he was there in the first place and
22 that's what his object was. The language of "pushing forward,"
23 all of that is -- is to imply that he was up there threatening
24 and extorting federal officers. The remainder of the post
25 demonstrates that . . . that's not what he was doing. He was

1 up there standing with other protestors against what he
2 believed was a government bully, or at least protesting against
3 what he believed was a government bully.

4 THE COURT: So, in Exhibit 117, where it says, "Then
5 we pushed forward and they had to back off, they are releasing
6 the cows now and BLM is leaving," you're saying that's
7 misleading and that in 537a, where it says "united we stand,"
8 that's the -- the clarification is that they were standing, not
9 pushing forward so that the government had to back off?

10 MR. TANASI: That's -- that's it, Your Honor. Yes.

11 And I agree there is probably some other portions of
12 that post above it that probably could be redacted and the
13 reason I didn't kind of catch those sooner, I think, was just
14 in an effort of putting this together and putting --
15 screenshotting it and, you know, as I look at it, and yes,
16 we're okay that that probably doesn't go to the same argument
17 that I'm making, so I'm fine with actually, you know, redacting
18 that portion, but the "united we stand" part, I think, is
19 what's critical.

20 THE COURT: All right. And so the Government's
21 position is that it's not in need of clarification because it's
22 an entire statement; it's within its own block for lack of a
23 better word. It's a white block on the page, not -- not within
24 the other white blocks. They're separated by gray lines, so to
25 speak. So, it's threads, I suppose, maybe is the way to refer

1 to them. So the -- they're two separate threads with different
2 commentaries, not part of the same thread.

3 MS. AHMED: And it would also be just self-serving
4 hearsay.

5 THE COURT: So the Government's position is that the
6 united-we-stand-we-the-people-will-be-heard statement posted by
7 Steven Stewart is a self-serving statement by the defendant
8 that would -- is not admissible?

9 MS. AHMED: Correct, Your Honor.

10 MR. TANASI: And again, Your Honor, defines the push.
11 The Government's position is the push is an armed push and an
12 armed standoff and an intimidating standoff. The post on the
13 top shows something different and explains further what that
14 push was.

15 THE COURT: All right. Well, he's not available for
16 cross-examination.

17 MR. TANASI: Your Honor, I was basing this on 106.

18 THE COURT: Well, it's not part of the same . . .
19 it's not the same -- it's not part of the other statements.
20 It's not part of a recorded statement or writing.

21 It's not admissible under 106. It is not subject to
22 cross-examination at this point yet, so it doesn't look like
23 it's admissible.

24 All right. So Exhibit 117 is admitted. Defense
25 Exhibit 5073a at this time is not admitted, but without

1 prejudice it can be offered later if there's a basis for it to
2 be admitted.

3 (Exhibit 117 received.)

4 MR. TANASI: And just -- so the record is clear, is
5 that in the event my client were to testify it could be offered
6 later? Is that how I'm to understand the ruling?

7 THE COURT: Well, that's part of it. It needs to --
8 it needs to be admissible according to the Rules of Evidence.

9 MR. TANASI: Understood.

10 (Exhibit 118 published.)

11 MS. AHMED: Your Honor, the next exhibit is 118 and I
12 think we had redacted a comment at the bottom just to be
13 consistent with the concerns the defense had raised yesterday
14 about hearsay because there was a comment at the bottom by a
15 Mr. -- by Steve Hill that said "come back safe" or something to
16 that effect and so, we redacted that and I think Mr. Tanasi
17 wanted that part to be un -- to not be redacted. So, I mean
18 . . . we just left it as -- as-is, but I don't think there was
19 an objection to the rest of the post.

20 THE COURT: Is that right? You objected to the
21 removal of the comment by another individual, "come back safe"?

22 MR. TANASI: That's correct, Your Honor.

23 THE COURT: Isn't that hearsay?

24 MR. TANASI: Your Honor, I think, again, it's --
25 it's -- I think it's -- again, falls under the 106 purview and

1 that it's the entire statement or writing to be presented in
2 its entirety so as to not mislead the jury and for fairness.

3 THE COURT: All right. Well, it doesn't appear to
4 me -- the writing isn't even really a writing, it's a posting
5 of a photograph image with a title that says "Going to Get the
6 Cattle Back" and then a link to a photo, which is that photo.
7 So, the comment does -- the comment would be extraneous.

8 So, Exhibit 118 with the redaction is admitted.

9 (Exhibit 118 received.)

10 (Exhibit 119a published.)

11 MS. AHMED: Your Honor, 119a is the next one, and
12 that one, actually, I believe, 119a, counsel had no objection
13 to. It was from the Facebook returns and it's a video that was
14 uploaded -- a link to a video that was uploaded with a comment,
15 "Somebody said they had 104 vehicles." So, 119a, I believe,
16 there was no objection.

17 MR. TANASI: That's correct, Your Honor.

18 THE COURT: Okay. It says -- does that say 118. It
19 looks like 119 on my screen.

20 MS. AHMED: Oh, it's 119a. I apologize.

21 THE COURT: Okay.

22 MS. AHMED: 119a. And then --

23 THE COURT: So Exhibit 119a is admitted.

24 (Exhibit 119a received.)

25 MS. AHMED: And then 119b, Your Honor, is the video

1 itself that if you follow that link, it goes to the video and
2 if Your Honor recalls, this was the video that -- where
3 Mr. Stewart was filming the BLM's departure from the ICP and if
4 you -- if Your Honor would like, I can play it now, but
5 Mr. Tanasi did object to the admission of that one.

6 THE COURT: Okay. And what's the objection to 119b?

7 MR. TANASI: Two grounds, Your Honor: One, relevance
8 in that I don't know that it's probative to anything that was
9 occurring on the bridge because at that point they were -- the
10 BLM agents were driving away and so the standoff had concluded.
11 So -- so relevance, and then the other is the prejudicial
12 nature of it outweighs any probative value because there is
13 reference to the word "martyr" that my client uses. That word,
14 I think, inherently has prejudice that would kind of mislead
15 the jury and ultimately prejudice the jury into a conclusion in
16 this case.

17 THE COURT: All right. So as to the objection to --
18 regarding the relevance, the objection is that this video
19 captures events after the bridge event, but the conspiracy
20 spans beyond just the bridge event; right?

21 MS. AHMED: Correct, Your Honor. And -- and it's
22 showing -- it is a part -- this is actually contemporaneous to
23 the event. It's showing the BLM's final departure from the ICP
24 after they had been essentially forced to leave and
25 Mr. Tanasi's commenting -- excuse me -- Mr. Stewart is

1 commenting on the video and -- about the BLM being forced to
2 leave and focusing on law enforcement that's on the bridge with
3 him at the time. And Your Honor is correct, the conspiracy is
4 charged to be ongoing.

5 And just as to the other objection, Your Honor, as to
6 prejudice, obviously is the rule is that it has to be unfairly
7 prejudice. This is his comments at the time showing his intent
8 at the time.

9 THE COURT: So is it just the word "martyr" or is it
10 used in a sentence?

11 MR. TANASI: He uses the word "martyr" and it is part
12 of a sentence. He says something to the effect of that . . .
13 they couldn't kill us or they couldn't stop us, something along
14 those lines, we were going to be martyrs if they did. So
15 again, the use of that word "martyr," I think, has inherent
16 prejudice, especially in this day and age. When I hear that
17 word, Your Honor, my mind goes to Afghanistan or the
18 Middle East or -- not Bunkerville.

19 THE COURT: All right. Well, I don't see that it's
20 unfairly prejudiced. If it wasn't prejudicial, the Government
21 wouldn't be seeking to use it. So, the 403 rule is whether or
22 not it's unfairly prejudicial, not just merely whether it's
23 prejudicial and it does appear to be relevant as it captures
24 events occurring during the alleged conspiracy.

25 Is the Government offering it for evidence of intent

1 or just all kinds of different things? I haven't seen the
2 video, so I don't know.

3 MS. AHMED: Your Honor, it's being offered for -- you
4 know, evidence as to what was occurring at the time, but also
5 for his intent, yes.

6 And sharing it on Facebook, obviously, he would be
7 also -- it would go back to the arguments from earlier, that
8 he's sharing it and alerting other people to what they've
9 achieved, what they're doing.

10 THE COURT: He's adopting, encouraging, recruiting,
11 glorifying, so forth?

12 MS. AHMED: Correct, Your Honor.

13 THE COURT: All right. Well, I -- that's certainly
14 seems that it is admissible. Exhibit 119b will be admitted.

15 (Exhibit 119b received.)

16 (Exhibit 120 published.)

17 MS. AHMED: 119 -- excuse me -- 120, Your Honor, is
18 the next exhibit and I believe Mr. Tanasi wanted, again, to
19 include open source Facebook posts in addition to this one that
20 would also have appeared on the actual page, other posts that
21 would have appeared around this one.

22 MR. TANASI: Your Honor, there is no additional pages
23 I -- at this point I'm looking to offer. That was something we
24 discussed and I neglected to tell Ms. Ahmed that, that at this
25 point I'm not trying to add anything else to this particular

1 post.

2 I do -- I did object to it, though, in its entirety
3 on relevance grounds. Again, going back to the date, it's the
4 15th. Again, it's two days or three days after the events in
5 Bunkerville and I -- not to sound like a broken record, that's
6 why I would say it lacks any probative value to the case
7 because it's commenting on an order two days or three days
8 after the events in Bunkerville and the events in Bunkerville
9 were precipitated --

10 THE COURT: Wait. I think we're looking at two
11 different things.

12 MR. TANASI: Okay.

13 THE COURT: Maybe I'm --

14 MR. TANASI: Apologize.

15 MS. AHMED: Exhibit 120 --

16 THE COURT: The one I'm looking at, Exhibit 120, says
17 is from 4-18.

18 MS. AHMED: I -- the last two are --

19 THE COURT: So, six days later, and it says, "Guys, I
20 only went for the weekend. We helped Cliven Bundy get his
21 cattle back. Straight there; straight back. Two hours of
22 sleep in between."

23 MR. TANASI: That's my mistake, Your Honor.

24 THE COURT: Oh, okay.

25 MR. TANASI: I was looking at the wrong exhibit.

1 So, with that exhibit, I don't think we have an
2 objection and I wasn't seeking to add anything in addition to
3 it as well.

4 THE COURT: All right. So Exhibit 120 is admitted.
5 (Exhibit 120 received.)

6 MR. TANASI: Okay.

7 MR. MARCHESE: Parker would object as to hearsay in
8 reference to him. It's not done in furtherance of the
9 conspiracy.

10 MS. AHMED: Your Honor, we would submit that it's
11 admissible as to everybody under 801(d)(2)(E).

12 THE COURT: Well, how is it in furtherance of the
13 conspiracy?

14 MS. AHMED: He's basically advising his Facebook
15 friends and followers of what they achieved, which was helping
16 Cliven get his cattle back. Again, Your Honor, it would go
17 back to that glorification which also serves for recruitment
18 and also serves to -- as a deterrent to law enforcement.

19 THE COURT: Well, it's not made to keep others
20 abreast of an ongoing conspiracy activity. I think that was
21 the -- the reason the other one . . .

22 All right. It's 4-18-2014. So, it is during the
23 time period of the conspirators alleged and it is alleged
24 they're all members of the same conspiracy and there's
25 preponderance of the evidence sufficient for the Court to find

1 that element met and it's during the conspiracy. The question
2 is, how is this made in furtherance of the conspiracy for it to
3 qualify as under 801(d)(2)(E).

4 I mean, I agree it's admissible against Mr. Stewart,
5 but I'm not seeing that it's admissible against the other
6 three.

7 (Counsel conferring.)

8 MS. AHMED: Your Honor . . .

9 (Counsel conferring.)

10 MS. AHMED: Your Honor, maybe I wasn't so artful the
11 first time I said it, but, I guess, my point is that this is a
12 public post he's posting on Facebook explaining what they have
13 just achieved and part of the ongoing conspiracy was that they
14 got the cattle back and that they were going to help him keep
15 the cattle. So, getting the cattle back was the first step in
16 that conspiracy as it's alleged, which was to continue to
17 prevent the law enforcement from taking the action that they
18 were ordered to do by the court in conducting the impoundment.
19 So, the first step of that is getting the cattle back and so in
20 apprising the public of that goal, it's alerting them to the
21 first step of the conspiracy and keeping people apprised of
22 what they've done and so we would say it's in furtherance of
23 the conspiracy because he's telling everybody, "Hey, we've got
24 the cattle back now."

25 THE COURT: All right. So you're saying that it is

1 keeping them abreast of the ongoing conspiracy by publicly
2 stating which of the objectives have been met?

3 MS. AHMED: Correct, Your Honor.

4 THE COURT: All right. Well . . . all right.

5 So, pursuant to 801(d)(2)(E), Exhibit 120 is
6 admissible as to the other alleged co-conspirators. So, the
7 objection's overruled.

8 MS. AHMED: Your Honor, the final exhibit from
9 Mr. Stewart's Facebook would be Exhibit 121.

10 (Exhibit 121 published.)

11 MR. TANASI: So now that we're on the right exhibit,
12 Your Honor, I'll take a stab at it again.

13 THE COURT: Yeah. Thank you.

14 MR. TANASI: Exhibit 121, I object to it on relevance
15 grounds. It's created on 4-15-2014, which is three days after
16 the event in Bunkerville. The events in Bunkerville were
17 premised on court orders and my client's knowledge of violating
18 court orders and the duties that stem from those court orders.
19 This post has no relevance to further the Government's theory
20 in this case in that it's simply a post about Lloyd D. -- the
21 Honorable Lloyd D. George and then his comment that, you know,
22 "These people think that they own us." Again, I -- I think
23 when looking at it in a vacuum, just as it's posted, it has no
24 relevance to the Government's case.

25 MS. AHMED: Your Honor --

1 THE COURT: Ms. Ahmed?

2 MS. AHMED: Your Honor, I'd respond that his
3 knowledge of the court orders which, as we all know from the
4 exhibits that have already been admitted, Judge George was the
5 judge on one of the orders that was issued in 2013. His
6 knowledge of the court orders at any time during the conspiracy
7 is relevant to his intent on April 12th, 2014. It's evidence
8 that we would argue is relevant to his intent and, again, he's
9 never withdrawn from the conspiracy so he's still a member of
10 the conspiracy at this time. And the conspiracy itself is also
11 alleged to be ongoing in that they're -- under 372, the charge
12 relating to 372, part of the conspiracy is to prevent the
13 officers from returning and continuing -- attempting to do the
14 impoundment again.

15 THE COURT: Well, it does seem to be relevant to his
16 intent and his absence of mistake in . . .

17 So, Exhibit 121 is admitted.

18 (Exhibit 121 received.)

19 MR. LEVENTHAL: On behalf of Mr. Drexler I would
20 object that it comes in for him for purposes of -- it's not in
21 furtherance of a conspiracy. If it has to do with intent,
22 that's not in furtherance.

23 MR. MARCHESE: Parker joins.

24 THE COURT: And, Ms. Ahmed, what is your response?

25 MS. AHMED: Your Honor -- Your Honor, we would submit

1 that again it would come in -- come in as to all of the
2 defendants under 801(d)(2)(E). He's sharing it. He's alerting
3 them to information about this judge and -- who is the author
4 of one of the court orders that they had just impeded and he's
5 furthering their knowledge about the ongoing conspiracy.
6 Riling them up. "These people think they own us."

7 THE COURT: So the riling them up, you're referring
8 to . . .

9 MS. AHMED: And sharing the post and sharing
10 information about the judge that authored the court order that
11 they obviously interfered with on April 12th or that they
12 interfered with on April 12th and then he's commenting on that
13 judge in his own text in the -- sharing this information with
14 all of his Facebook followers, including his co-conspirators.

15 THE COURT: So, that makes it in furtherance of the
16 conspiracy?

17 MS. AHMED: That's what we -- what we would argue,
18 Your Honor.

19 THE COURT: All right. By a preponderance of the
20 evidence that is sufficient. So, Exhibit 121 is admitted as to
21 Mr. Stewart as well as to the other co-conspirators pursuant to
22 801(d)(2)(E).

23 That was the last one?

24 MS. AHMED: That was the last Facebook post,
25 Your Honor. There are also the booking photos as to Mr. Parker

1 and Mr. Stewart and Mr. Drexler. I had the impression that
2 those were -- that counsel was objecting to those, the
3 admission of those as well.

4 THE COURT: All right. Let's look at those.

5 MS. AHMED: Exhibit 129 is Mr. Parker's booking
6 photos.

7 (Exhibit 129 published.)

8 MR. MARCHESE: Parker objects.

9 MS. AHMED: And there's -- it's a multiple page
10 exhibit, Your Honor.

11 THE COURT: Is that three pages? No, it looks like
12 5.

13 Let's go back to 1.

14 All right. Any objection to Page 1?

15 MR. MARCHESE: I object to all of them. There's
16 no -- in my opinion, there's no reason for any of this to come
17 in. Multiple witnesses have identified Mr. Parker. We have a
18 video of Mr. Parker saying he's Eric from Idaho. There's no
19 reason to bring this in.

20 We have admissions that were read into the record by
21 Agent Seyler of Mr. Parker admitting that he was at the
22 Bundy Ranch. So, the need to identify him with a booking photo
23 at this juncture is overly prejudicial and irrelevant.

24 MR. TANASI: Stewart joins, Your Honor.

25 MR. LEVENTHAL: Drexler joins.

1 THE COURT: Ms. Ahmed?

2 MS. AHMED: Your Honor, just to be clear. For
3 Exhibit 129, we would primarily seek to admit -- we don't need
4 the first page; we really are only seeking to admit Page 4.

5 THE COURT: All right. Let's look at Page 4.

6 MS. AHMED: Or Page 3.

7 Sorry. Page 5. Page 5.

8 THE COURT: So 3, 4, 5, or just 5?

9 MS. AHMED: Just -- just -- I'm sorry, Your Honor.
10 Page 5, which is -- and we're seeking to admit it for the
11 tattoo that appears on his right forearm which you can see in
12 the picture which is a tattoo of the Idaho 3% logo, and that's
13 already come into evidence that that's what that is and we
14 would say that it goes to his -- again, his ties to this
15 movement to the conspiracy. It's evidence that, you know, he's
16 willing to tattoo this on his body, how committed he is to this
17 conspiracy.

18 MR. MARCHESE: Well, Your Honor, I mean, the Court is
19 well aware of my continuing objection in reference to the 3%.

20 MS. AHMED: Your Honor, I'd also just note that there
21 have been times when the jury has been in the courtroom where
22 Mr. Parker's sleeves have been rolled up where the -- that same
23 tattoo has been on display, so . . .

24 MR. MARCHESE: So that's -- then we don't need it.

25 THE COURT: All right. Well, I addressed some of

1 this in the -- a Motion in Limine Order 2176, but the photos
2 were not attached to that Motion in Limine so all I could say
3 was that the photos could be of assistance for purposes of
4 identifying. So, I -- I agree that the other -- well, the
5 first page -- well, let's leave it at it's not being sought to
6 be admitted. So the only page that you are seeking to admit of
7 Exhibit 129 is Page 5, which is the picture of
8 Mr. Parker's . . . I guess it would be like belly button up.
9 It looks like it's sort of waist -- well, it's higher than the
10 waist. So mid-section up where you can see his left bicep and
11 right bicep and forearm and then his chest and his face, and
12 the right arm, on the forearm, has stars encircling the outline
13 of the state of Idaho, so the state of Idaho is inside the
14 stars that are circling it and then Roman Numeral III
15 apostrophe "S" is in the middle of the state of Idaho.

16 Since we have seen other shirt, hat, I think there
17 was also something on the Facebook posting with this same or
18 similar consistent marking, it is relevant.

19 So, Exhibit 129, Page 5 is admitted.

20 (Exhibit 129, Page 5 received.)

21 MR. TANASI: Your Honor, and I would just renew my
22 motion for severance in terms of prejudicial spillover effect.
23 I think, with all due respect to Mr. Parker, that picture is
24 pretty menacing and I think that the image that it portrays has
25 an unfair prejudice to my client. I would offer, maybe as

1 potential alternative relief, possibly just having this
2 redacted so that only the 3%er is demonstrated and shown and
3 the parties stipulate that that's Eric Parker, some -- some way
4 to tone it do down, Your Honor, I guess is what I'm asking for.

5 MR. MARCHESE: We -- generally, we object, but if the
6 Court is going to allow it that's what we would ask, that the
7 right forearm only be shown. The other two tattoos are
8 completely irrelevant.

9 MS. AHMED: Your Honor, the Government has no problem
10 with redacting those other two tattoos.

11 THE COURT: All right. Let's go ahead then and
12 redact the other two tattoos so you can just see his face and
13 his tattoo and where it is on his arm. That will be fine.

14 MS. AHMED: So, Your Honor, we would redact
15 everything above -- oh, just --

16 THE COURT: Just put a box on the other two tattoos
17 that aren't relevant to this particular case.

18 MS. AHMED: Understood.

19 THE COURT: I think that's the objection; right? Is
20 the prejudice to the other -- what the other two tattoos might
21 be symbolic of if they have some other -- or if the jury can be
22 mistaken about what they are or start asking questions about
23 what they mean or what they are.

24 I agree; it's a good idea to just hide the other two
25 tattoos.

1 And then as to how this would be admissible against
2 the co-defendants, I don't see that it would be. Is it being
3 offered against anyone other than Mr. Parker?

4 MS. AHMED: Your Honor, we would just ask that it be
5 offered as to Mr. Parker.

6 THE COURT: All right.

7 (Exhibit 130 published.)

8 MS. AHMED: And then, Your Honor, Exhibit 130 is the
9 next. These are obviously Mr. Stewart's booking photos.
10 We're -- we only need -- we are only seeking to introduce --
11 well, sorry, Your Honor.

12 Going back to Mr. Parker's photo. This is what it
13 would look like. It's on the screen with a redaction.

14 (Exhibit 129, Page 5 published.)

15 THE COURT: That's fine.

16 (Exhibit 130 published.)

17 MS. AHMED: And then Exhibit 130. Also a multiple
18 page exhibit. We would only seek to introduce Page 5, this
19 page, and that is, Your Honor, the tattoo, the vine tattoo that
20 appears on the left forearm is also visible in that photograph
21 that we already put into evidence where that's training with
22 Mr. Parker and had helps with identification of Mr. Stewart in
23 that photograph.

24 THE COURT: Any objection to Page 5 of Exhibit 130?

25 MR. TANASI: Your Honor, I'd object on one ground --

1 well, relevance and also unfair prejudice to my client.

2 The -- the same as Mr. Marchese had outlined. I
3 don't think identity is at all an issue in the case. Mr.
4 Stewart has been identified on the bridge. He's been
5 identified in a picture with other 3%ers. Putting up pictures
6 to further identify him with tattoos and then also his orange
7 jumpsuit in the back, which everybody -- I think it's pretty
8 common knowledge that that's an arrest jumpsuit, it's an
9 in-custody jumpsuit. I think on those two grounds it's, (a),
10 not relevant to identification in the case, and (b), it's
11 unfairly prejudicial to my client.

12 MS. AHMED: Your Honor, I would just -- that picture
13 where that's training with Mr. Parker wearing 3% -- where they
14 appear to all be wearing 3% T-shirts is a side view of him.
15 You can clearly see the tattoo, you cannot clearly see his
16 face. And so, if Mr. Tanasi is willing to stipulate that that
17 is Mr. Stewart in that picture and then we can do that in front
18 of the jury when they return, then we would not seek to put
19 this exhibit in.

20 MR. TANASI: Your Honor, I -- we'd make that
21 stipulation, that he's in that picture, absolutely, but not
22 stipulate that he is a member of the 3%ers just because he's in
23 that picture.

24 THE COURT: Okay.

25 MS. AHMED: That's -- that's not what we're asking,

1 Your Honor. Yes, just that he was in -- that's him that's in
2 that picture.

3 THE COURT: All right. So Exhibit 130, Page 5 is
4 withdrawn?

5 MS. AHMED: Yes, Your Honor. And we would just ask
6 that it be put on the record when the jury returns.

7 THE COURT: Okay.

8 (Exhibit 131 published.)

9 MS. AHMED: And then, Your Honor, the last exhibit
10 for the booking photos is 131, and this is Mr. Drexler's
11 booking photos and we are only seeking to introduce Page 4 and
12 that -- it's the same -- as you can see on his right arm, on
13 his right arm -- I believe that's his right arm -- that's
14 there's a tattoo of the same symbol that Mr. Parker had which
15 is the Idaho 3% emblem and the word "Bundy" and then some other
16 words underneath that.

17 THE COURT: Any objection?

18 MR. LEVENTHAL: Same objections as prior counsel
19 noted, that it's unduly prejudicial to my client and it has no
20 relevancy to this. Also, there's the orange jumpsuit, which we
21 try very hard to keep our clients dressed in normal civilian
22 clothes. The marshals are in clothes. They don't see the
23 chains that they're wearing right now, but I would also note
24 that at the bottom he's got some -- on his left wrist he's got
25 some kind of identification it looks to be like, again, it's

1 some kind of booking or bar code of some sort, and obviously,
2 the -- with the right tattoo would have no relevancy at all to
3 this.

4 MS. AHMED: Just responding to the right tattoo,
5 Your Honor, that's clearly visible in the photos from
6 April 12th, 2014. But, in any event, Your Honor, we would --
7 with the stipulation that this is Mr. Drexler's arm, we could
8 simply zoom in on that tattoo that is currently zoomed in on.
9 It would be a little bit blurry, but with the stipulation that
10 that is Mr. Drexler's arm, that this is a tattoo that's on his
11 arm, we could just admit that.

12 THE COURT: All right. So let's redact the photo so
13 that not so much of the orange is showing, but it doesn't have
14 to be -- you don't have to eliminate all of the orange to the
15 point where we can't actually see the tattoo, but I think it
16 would be sufficient to just eliminate some of the orange. It
17 does go to identity. I don't see that it's admissible against
18 co-defendants.

19 MR. MARCHESE: And, Your Honor, I hate to back up,
20 but in reference to Mr. Parker, I understand the Court's
21 ruling. What I would ask for as an alternative, rather than
22 bringing out that photo, and I appreciate the Government trying
23 to redact it, but, to me, it's almost like the darned if you do
24 darned if you don't with asking for a limiting instruction.
25 You almost wind up giving more attention to what you're trying

1 to hide. So by putting the blocking out his chest and his
2 shoulder, to me, it almost makes me think that the jury is
3 going to start wondering what is under there, if this is some
4 sort of swastika or some sort of, you know, horrible tattoo and
5 let their minds wander. What I would be willing to do, and
6 I've already spoken with Mr. Parker, if Agent Draper or
7 Agent Willis or some other witness would just like to have
8 Mr. Parker, he can stand up and just show the tattoo to the
9 jury rather than showing the picture.

10 THE COURT: Do you want to just use the close-up of
11 the tattoo on the -- on Mr. Parker's picture so that --

12 MS. AHMED: Your Honor, we would, obviously, prefer
13 to have something that can go back to the jury delirious
14 deliberations. So we can try to do a close-up of that one and
15 see.

16 THE COURT: Because that's what you're doing for
17 Drexler.

18 MS. AHMED: So, for Drexler -- for Drexler I thought
19 we were just going to -- we can do a close-up for both of them,
20 Your Honor. So we'll attempt do that right now.

21 MR. MARCHESE: Thank you.

22 THE COURT: So a close-up of the tattoo with as
23 little orange as necessary, but where you can still actually
24 see the tattoo.

25 MS. AHMED: Understood.

1 THE COURT: And then the parties are going to
2 stipulate that that's --

3 MR. MARCHESE: That's correct, yeah.

4 THE COURT: -- their tattoo.

5 MR. MARCHESE: And Mr. Parker, he doesn't have the
6 orange problem, or whatever you want to call it.

7 THE COURT: Right. Right. Yeah.

8 MR. MARCHESE: Yeah.

9 THE COURT: He just has the other tattoo problem.
10 But regardless, just a close-up of that tattoo with the
11 stipulation who it belongs to, then that way we can still have
12 that available for identification but without any other issues
13 coming up.

14 MS. AHMED: Your Honor, there's also -- Exhibit 45a
15 was offered yesterday. That was the video. We withdrew that
16 but we laid the foundation to admit it and then there were
17 objections as to relevance and we had argued the relevance of
18 it. We've created -- we captured screenshots from that video
19 that we would seek to put into evidence, which would be 45b and
20 so Your Honor had reserved ruling on 45a; "b" is just a subset
21 of the photo montage that's depicted in "a" so I wanted to put
22 that before Your Honor now.

23 THE COURT: All right. So how many screenshots?

24 MS. AHMED: It's -- so, 45b is -- it's 19
25 screenshots, but it's all one exhibit. So, and it's -- all of

1 the images depict one of these defendants, or -- or, like, a
2 sign that indicates White Hope Mine or something like that.

3 THE COURT: What's the objection? Is it the same
4 objection, in general, to the other incident after April of
5 2014?

6 MR. MARCHESE: Correct, Your Honor. We feel that all
7 the after-the-fact incidents are irrelevant, they're not
8 inextricably intertwined, they're outside the course and scope
9 of the conspiracy, and they're too remote in time.

10 MR. LEVENTHAL: I would add that a number of these
11 images have already been brought in, so they would be
12 cumulative. There's -- I mean, they've been brought in
13 numerous time, the same exact picture. So if they want to play
14 the video, we don't have an objection to playing the whole
15 video, but these screenshots are the same exact pictures that
16 they've already introduced into this in terms of what went on
17 at Bundy. There's also other stuff that's --

18 THE COURT: Probably be less cumulative to play the
19 video instead of using the screenshots.

20 MR. LEVENTHAL: It -- it puts it more into
21 perspective because when you just have a screenshot of that one
22 photo that's already come in, it puts everything in
23 perspective. It's a -- it's a video and it moves, I guess,
24 rather quickly or differently than when you're just looking at
25 the same picture that you've seen over and over and over and

1 over again. So it would be -- it would be different.

2 MS. AHMED: Your Honor, I think there's only two --
3 maybe two to three images that were from Bundy Ranch. The
4 point is that this is a video taken from the Idaho 3% YouTube
5 page. It's titled "Idaho 3% an Overview" and so, the agent was
6 viewing this video that they -- this organization had
7 disseminated and these are the images that are in this video
8 that they are considering an overview for the Idaho 3%. So the
9 three images, the three or four that are from Bundy Ranch are,
10 at most, three or four, but they are including that in an
11 overview of their organization. And then additionally, they
12 have images of these defendants participating in the other two
13 operations. And then Mr. Stewart training -- or the photo of
14 him training with Mr. Parker.

15 MR. TANASI: Your Honor, Stewart would join
16 Mr. Drexler's objections and add, you know, forced to pick
17 between video or a cut up screenshotted version of it, the
18 video would be the better way to play it.

19 THE COURT: All right. So when you say that there
20 are two or three images from Bundy Ranch, do you mean --

21 MS. AHMED: The April 12th --

22 THE COURT: -- the rally outside of the ranch or do
23 you mean the wash?

24 MS. AHMED: I apologize, Your Honor.

25 It's pictures of the defendants on the bridge at the

1 ICP on April 12th, 2014.

2 THE COURT: Okay. And that's not Bundy Ranch --

3 MS. AHMED: No.

4 THE COURT: -- that's the public land.

5 MS. AHMED: Yes. I apologize for that.

6 Your Honor, we -- if the defense is willing to
7 stipulate to the admission of the video, that -- we had offered
8 that yesterday. So, video or stills, it's -- either way is
9 fine. We just -- we don't intend to play the video's audio,
10 because there's no speech or anything associated with the video
11 montage, it's just a song, so we're not seeking to admit the
12 audio, but for the video to play, the montage, there's no
13 objection from the Government, if that's what defense will
14 stipulate to.

15 THE COURT: All right. So Exhibit 45, the video, no
16 audio, 1 minute in, or Exhibit 45b, the 19 screenshots?

17 MS. AHMED: It's more than one minute, Your Honor.
18 It's probably like three minutes. This is a different one from
19 the one we did before.

20 THE COURT: Oh, okay.

21 MS. AHMED: So this is about a three-minute video
22 montage of photographs compiled into this video, but we
23 would -- yes, that would be 45a and, as Your Honor said, no
24 audio.

25 MR. LEVENTHAL: And again --

1 THE COURT: All right. It sounds like that's what --
2 that's defendants' preference of those two choices, is the
3 video with no audio, 3 minutes long?

4 MR. MARCHESE: Over my objection, my preference would
5 be the video, the whole video to come in.

6 MR. LEVENTHAL: With the audio.

7 MR. MARCHESE: Correct.

8 MR. LEVENTHAL: Put it in context on what it is.
9 Otherwise, you're just left with a video and nobody knows what
10 it is. There's music behind it which shows something. It will
11 show something completely different than the still picture or
12 just the -- the -- the video itself. So, if it's going to come
13 in, I'd ask that the --

14 THE COURT: How does the music add to what it is?

15 MR. LEVENTHAL: Because it's -- it's --

16 THE COURT: I mean, I haven't heard it, so I'm not --

17 MR. LEVENTHAL: It's more like an advisement. It's
18 more like, you know, an advisement, than it is anything and
19 that's how it should come in.

20 THE COURT: Like, there's a jingle?

21 MR. LEVENTHAL: Well, if you consider heavy metal a
22 jingle, sure. I mean . . .

23 THE COURT: Okay.

24 MR. LEVENTHAL: We were going to play it for
25 Your Honor yesterday, so -- and Your Honor was going to watch

1 it and listen to it with the audio and I think the -- you can
2 make that determination.

3 MR. PEREZ: Your Honor, and for the record, Lovelien
4 would object to any of it. It's not relevant to him,
5 especially if it's an advisement for the 3%ers with a heavy
6 metal jingle.

7 MS. AHMED: Your Honor, if you -- if this would
8 clarify it, we could play the video for you to see. I mean,
9 it's -- the song does not, to the Government's view, appear to
10 add to the montage of photographs, so . . . it's not a song
11 commenting on the photographs; it's a separate song.

12 THE COURT: Is it a song I've heard of or is it an
13 original?

14 MS. AHMED: I don't know the answer to that,
15 Your Honor.

16 THE COURT: Are there words to the song --

17 MS. AHMED: Yes.

18 THE COURT: -- or is it just instrumental?

19 Okay. So are there words to the song that I need to
20 be aware of?

21 MS. AHMED: I can't recall the words to the song,
22 Your Honor. I -- to me --

23 THE COURT: Okay. If you want to play it, just play
24 it then.

25 MS. AHMED: Could we ask the defense to play it.

1 We -- our litigation specialist is not here. It's 45a.

2 MR. TANASI: 45a?

3 (Exhibit 45a published.)

4 MS. AHMED: Your Honor, if it resolves the matter and
5 it -- there's no -- the Government has no objection to the
6 sound coming in then, if that would be the defense stipulation,
7 that the video is admissible with the sound.

8 THE COURT: Is that the defense position, they want
9 the song to be played?

10 MR. TANASI: Your Honor, again, for the record, you
11 know, Stewart objects to it in its entirety, but if we're
12 trying to fashion some reasonable middle ground, then yes, if
13 it's to be played, then it would be played in its entirety with
14 the audio.

15 MR. LEVENTHAL: Drexler would join in that.

16 MR. MARCHESE: Parker joins.

17 MR. PEREZ: Lovelien joins.

18 THE COURT: All right.

19 For the record, the name of the song is "Soldiers" by
20 the band "Otherwise." The lyrics refer to a perfect day to
21 die. No surrender. We'll never be broken. Fight to the
22 death. We are soldiers and stand shoulder to shoulder. I
23 think a local band.

24 All right. So, Exhibit 45a is admitted, and 45b is
25 withdrawn?

1 MS. AHMED: Yes, Your Honor. Thank you.

2 THE COURT: Okay.

3 (Exhibit 45a received.)

4 MS. AHMED: And, Your Honor, did you want to just --
5 can we just show everybody that -- what we did with the tattoos
6 so that --

7 THE COURT: Yes. Go ahead.

8 MS. AHMED: Can we start with 129, Page 5.

9 Oh, excuse me. This is Mr. Drexler's. 131, Page 5.
10 (Exhibit 131, Page 5 published.)

11 THE COURT: Mr. Leventhal, is that good?

12 MR. LEVENTHAL: It's the best it could be.

13 THE COURT: Okay.

14 MR. LEVENTHAL: I still object to it, but it's better
15 than it was before.

16 THE COURT: Okay.

17 MR. LEVENTHAL: So my objection will still remain on
18 the record, but . . .

19 THE COURT: I appreciate that. Thanks.

20 MS. AHMED: Your Honor, the -- we're still working on
21 129, which is Mr. Parker's, but I can publish it before -- I
22 mean, ask the Court to publish it just to counsel and the
23 witness so that they can see it before it's displayed to
24 everybody.

25 THE COURT: All right.

1 MS. AHMED: And those were all the objections that I
2 was aware of that -- to raise at this time with respect to the
3 exhibits for this witness.

4 THE COURT: All right. Then let's go ahead and go,
5 Aaron, please, invite the jury to come back. Maybe if you can,
6 let them know there's probably not going to be bathroom break,
7 but we'll take, like, 10 minutes so at least counsel and
8 anybody else that needs to take bathroom break can. So we'll
9 bring the jury back in about 10 minutes and everybody use the
10 bathroom so that we don't need to before the --

11 MR. LEVENTHAL: And, Your Honor, before we --

12 THE COURT: -- break, if possible.

13 MR. LEVENTHAL: Should I make one more objection
14 after we come back of do you want me to --

15 THE COURT: Well, go ahead and make your objection
16 now.

17 MR. LEVENTHAL: Okay. You know, the other issue here
18 is authentication. I -- if this is coming in through this
19 witness, I don't know if there's a foundation that this witness
20 was at the arrest or saw these pictures or can verify these
21 pictures. I don't know that. So I would object on those
22 grounds as well. I don't know if we ever got there.

23 THE COURT: Oh, for the booking photos, you mean?

24 MR. LEVENTHAL: That's correct.

25 THE COURT: The foundation for the booking photos?

1 MR. LEVENTHAL: The booking photos. I -- I -- we
2 never got there, whether this witness can even, you know,
3 testify to these, whether she saw them, they're accurate,
4 they're true, I don't know that. So . . . and it's just
5 another ground that I would object to on those grounds.

6 THE COURT: All right. So noted.

7 COURTROOM ADMINISTRATOR: May I confirm the exhibits
8 that were admitted, Your Honor?

9 THE COURT: Yes. Let's do that.

10 COURTROOM ADMINISTRATOR: Let me know when you're
11 ready.

12 I believe it started with 117.

13 THE COURT: Oh, yeah. I'm on the wrong page.

14 117 was admitted. Then 118.

15 COURTROOM ADMINISTRATOR: 119a.

16 THE COURT: 119a. 119b.

17 COURTROOM ADMINISTRATOR: 119b; 120; 121, Page -- or
18 129, Page 5 redacted, as to Parker only.

19 THE COURT: Page 5 only. Yes. Right.

20 COURTROOM ADMINISTRATOR: 131, Page 5 redacted.

21 Was that to Mr. Drexler only?

22 THE COURT: Stewart is -- Exhibit 30, Page 5 is
23 Stewart.

24 COURTROOM ADMINISTRATOR: I believe that one was
25 withdrawn, Your Honor.

1 MS. AHMED: Your Honor, it was withdrawn based on the
2 stipulation --

3 THE COURT: That's right. I see. I see the "W" now.
4 You're right.

5 So 131, Page 4 is the Drexler tattoo with the
6 redaction only admitted as to Drexler.

7 COURTROOM ADMINISTRATOR: Okay.

8 And 45b was withdrawn and 45a was admitted.

9 THE COURT: Correct.

10 COURTROOM ADMINISTRATOR: Okay. Thank you, Your
11 Honor.

12 THE COURT: Thank you.

13 Off record.

14 (Recess was taken at 2:35 p.m.)

15 COURTROOM ADMINISTRATOR: All rise.

16 THE COURT: Thank you. You may be seated.

17 You want to go ahead and call in the jury?

18 COURTROOM ADMINISTRATOR: Yes, Your Honor.

19 (Brief pause in proceedings.)

20 COURTROOM ADMINISTRATOR: All rise.

21 (Jury returned to courtroom at 3:06 p.m.)

22 THE COURT: All right. Jury may go ahead and be
23 seated.

24 Welcome back. We're going to resume with
25 direct-examination of FBI Special Agent Sarah Draper by

1 Ms. Ahmed.

2 Go ahead.

3 MS. AHMED: Thank you, Your Honor.

4 Your Honor, may we publish what's been previously
5 admitted as Exhibit 103?

6 THE COURT: Yes, you may.

7 (Exhibit 103 published.)

8 MS. AHMED: Your Honor, for both the jury and for the
9 record, I wanted to note that the parties stipulated that the
10 individual that's on the viewer's right is, in fact, the
11 defendant Mr. Steven Stewart.

12 THE COURT: All right. Mr. Tanasi, you agree?

13 MR. TANASI: Yes, Your Honor.

14 THE COURT: All right. The record will so note.

15 MS. AHMED: Thank you, Your Honor.

16 And may we move to Exhibit 100, which is also
17 previously admitted?

18 THE COURT: Yes, you may.

19 (Exhibit 100 published.)

20

21 FURTHER DIRECT EXAMINATION OF SARAH DRAPER

22 BY MS. AHMED:

23 Q. Agent Draper, before the break we were discussing an event
24 that you indicated Mr. Parker and Mr. Drexler participated in
25 was in Oregon, Operation Gold Rush; correct?

1 A. Yes, that's correct.

2 Q. Turning to Exhibit 100, is this a post that Mr. Parker
3 shared on his Facebook page?

4 A. Yes, correct.

5 Q. And what date did he make that post?

6 A. May 20th, 2015.

7 Q. And can you read the content of the post?

8 A. It says, "From us to you BLM . . . oh, let's not forget
9 the Southern Law" -- correction -- "Southern Poverty Law Center
10 and Reuters. Looks like the judge agreed with us!! Granted
11 stay of appeals states you have" -- correction -- "Granted stay
12 of appeal. States you have no jurisdiction or right to
13 terrorize that man!! You'll be getting our bill for the cost
14 of we the people mounting an effective resistance to your
15 threats. That's two for two fascists!! See you next time."

16 Q. And where it says "two for two," based on your
17 investigation, what is that referring to?

18 A. Based upon my investigation, that would be referring to
19 the Bundyville -- the Bundy Ranch standoff as well as this
20 operation.

21 MS. AHMED: And can we go to Page 2 of Exhibit 100.

22 BY MS. AHMED:

23 Q. Did Mr. Parker also make a post in the comment section in
24 relation to that post?

25 A. Yes, he did.

1 Q. And what did he say?

2 A. "Brandon Rapolla said it best while giving a speech to the
3 miners and citizens of Josephine County in the BLM parking lot,
4 'Don't worry about the guns, folks, we've got the guns. What
5 we need is support. 10 people for every man in the field.'
6 Couldn't have done it without the people willing to dedicate
7 their time and money to the logistics."

8 Q. And was this post -- this comment made on May 20th of
9 2015?

10 A. Yes.

11 Q. And is he referring to the Operation Gold Rush which you
12 had previously described?

13 A. Yes.

14 Q. And was that in Josephine County?

15 A. Oregon.

16 Q. Josephine County, Oregon?

17 A. Yes.

18 Q. And what was the name of the mine?

19 A. I've forgotten. Sorry.

20 Q. Now -- may we go, Your Honor --

21 A. The Galice Mining District. I don't remember the exact
22 mine.

23 Q. The mine was in the Galice Mining District?

24 A. Yes. Sorry.

25 MS. AHMED: And may we go -- can we go to the next

1 page?

2 BY MS. AHMED:

3 Q. Were there additional comments made on this post?

4 A. Yes.

5 Q. And do you see, at the top of the third page of Exhibit
6 100, two comments?

7 A. Yes.

8 Q. And the first one being made by a Facebook user called
9 Todd Engel; correct?

10 A. Correct.

11 Q. And, again, based on your investigation, who is Todd
12 Engel?

13 A. He was another person from Idaho who had participated in
14 Bundy Ranch as well as this Oregon operation.

15 Q. And when you say "Bundy Ranch," do you mean the
16 April 12th, 2014?

17 A. Yes. Correction. The April 12th, 2014, events.

18 Q. And can you read the comment that user posted?

19 A. "Get you some!"

20 Q. And did Mr. Parker made an additional comment with respect
21 to this post?

22 A. He did.

23 Q. What did he say?

24 A. "***security stays in place until he gets a court
25 date . . ."

1 Q. And again, is this in reference to the Operation Gold
2 Rush?

3 A. Yes.

4 MS. AHMED: And can we go back to the first page of
5 Exhibit 100, please.

6 BY MS. AHMED:

7 Q. And there is also a picture that was posted in relation to
8 this Facebook post that Mr. Parker made?

9 A. Yes.

10 Q. And can you describe the -- bless you -- bless you,
11 Your Honor -- can you describe the content of the photo that
12 was included in this post, just generally?

13 A. Three individuals displaying their middle fingers with the
14 3% of Idaho flag behind them.

15 Q. And do you recognize any of the subjects as being the
16 subjects that you were following -- any of the individuals in
17 this picture being one of the subjects that you were following
18 in this investigation?

19 A. Yes. Mr. Parker's in the middle.

20 Q. Now, in the course of your investigation -- well, I'm
21 sorry. I just wanted to back up.

22 When I asked you that, "that's two or two fascists,"
23 you indicated that was both -- you said Bundy -- the Bundy
24 Ranch incident, meaning April 12th, 2014; correct?

25 A. Correct.

1 Q. And what was the other one?

2 A. This Oregon operation at the mine.

3 Q. Now, in the course of this investigation, did you continue
4 to follow the subjects that you've previously indicated in
5 August of 2015?

6 A. Yes.

7 Q. And in doing so, did you learn of some of their
8 participation -- some of them participated in an additional
9 operation?

10 A. Yes.

11 Q. And what was that operation?

12 A. That was another -- another operation with miners, this
13 one involving the U.S. Forest Service in Montana, in western
14 Montana, in August of 2015.

15 Q. And did Mr. Parker -- in your investigation, did you see
16 that Mr. Parker made posts on his Facebook regarding this
17 operation?

18 A. Yes.

19 MS. AHMED: Your Honor, may we publish what's been
20 admitted over defense objection as Exhibit 108?

21 THE COURT: Yes, you may.

22 (Exhibit 108 published.)

23 BY MS. AHMED:

24 Q. Agent Draper, what is -- what is exhibit -- what does
25 Exhibit 108 contain?

1 A. This is from Mr. Parker's Facebook page and it contains
2 two photos that Mr. Parker has shared from another Facebook
3 user's posts.

4 Q. And on what date did he share this post?

5 A. August 20th of 2015.

6 Q. And what is depicted in the left photo -- the viewer's
7 left, excuse me.

8 A. Based upon what is at the bottom, "Share! Operation Big
9 Sky! More information here," I conclude this is a photo of
10 individuals who were --

11 MR. LEVENTHAL: Objection. Speculation.

12 BY MS. AHMED:

13 Q. Can you just describe the contents of the photo generally.

14 A. Yes. It's a group of individuals.

15 Q. And what, if anything, is depicted behind them?

16 A. 3% -- a flag with a 3% logo on it, the blue field.

17 Q. And do any of the individuals include the subjects that
18 you were following in this investigation?

19 A. Yes.

20 Q. Can you circle who you see and identify them?

21 A. (Indicating) Mr. Drexler.

22 MS. AHMED: And for the record the witness has
23 circled an individual standing on the far left side of this
24 picture.

25 THE WITNESS: And then this one (indicating) is

1 Mr. Parker.

2 MS. AHMED: And for the record, the witness has
3 circled an individual that's second to the far left on the
4 bottom front.

5 BY MS. AHMED:

6 Q. And can you tell from that picture what, if anything, is
7 on the T-shirts that both Mr. Drexler and Mr. Parker are
8 wearing?

9 A. It appears to be the 3% of Idaho logo.

10 Q. And then turning to the picture that's on the right, what
11 is depicted in that picture?

12 A. It's Mr. Parker.

13 Q. And what, if anything, does he have in his arms?

14 A. Carrying a rifle.

15 Q. And are -- and what, if anything, does he appear to be
16 wearing that's of note?

17 A. It appears to be a tactical vest and he has a hat that
18 appears to be of the 3% of Idaho logo on it.

19 Q. And there appear to be words on that picture as well.

20 Do you see those?

21 A. I do.

22 Q. And can you read them to the jury?

23 A. "Montana Defenders of the Republic."

24 Q. And this operation that you indicated that took place in
25 August of 2015, was it in Montana?

1 A. Yes, it was.

2 Q. And based on your investigation, what was the name of the
3 operation?

4 A. Operation Big Sky.

5 Q. And what, if any, groups that the defendants are -- that
6 your subjects are affiliated with participated in this
7 operation?

8 A. Members of the 3% of Idaho participated.

9 Q. Now, turning to the bottom of this post --

10 A. Yes.

11 Q. -- do you see where it says, "Blaine Cooper added two
12 photographs"?

13 A. Yes.

14 Q. And then it says, "with Schuyler Barbeau and 16 others."

15 Do you see that?

16 A. Yes.

17 Q. And based on your investigation, who is Schuyler Barbeau?

18 A. Schuyler Barbeau is an individual from Washington state
19 who had also participated in this operation as well as Bundy --
20 events on -- of Bundy Ranch events.

21 Q. In April of 2014?

22 A. Yes.

23 Q. Now, at the bottom of the post, of this portion of the
24 post, can you read what it says down there (indicating),
25 starting with "share"?

1 A. "Operation Big Sky! More information here," and then
2 there's a website address for a press release from the Pacific
3 Patriots Network.

4 MS. AHMED: And can we come out of the zoom on this
5 exhibit.

6 BY MS. AHMED:

7 Q. Did Mr. Parker make additional comments to this post?

8 A. Yes.

9 Q. And what did he say?

10 A. On August 20th, 2015, he said, "Shifts . . . still need
11 volunteers."

12 MS. AHMED: Your Honor, may we publish what's been
13 admitted over defense objection as Exhibit 109?

14 THE COURT: Yes, you may.

15 (Exhibit 109 published.)

16 BY MS. AHMED:

17 Q. Agent Draper, is this also a post that Mr. Parker shared
18 on his Facebook on August 20th, 2015?

19 A. Yes.

20 Q. And what -- what is it that he shared?

21 A. It's a video from Blaine Cooper's Facebook page.

22 Q. And looking at the screen, there appears to -- that you
23 can see a still from that video; correct?

24 A. That's correct.

25 Q. And looking at that still, can you identify any of the

1 subjects that you were investigating in relation to this case?

2 A. May I write on the screen?

3 THE COURT: Yes, you may.

4 THE WITNESS: Oh, thank you, Your Honor.

5 This is Mr. Drexler (indicating).

6 MS. AHMED: And for the record, the witness has drawn
7 a circle around the individual on the far left and identified
8 that person as Mr. Drexler.

9 THE WITNESS: And Mr. Parker (indicating).

10 MS. AHMED: And the witness has drawn a circle on the
11 individual on the right and identified him as Mr. Parker.

12 BY MS. AHMED:

13 Q. And do you know who the person in the middle of the
14 picture is?

15 A. That's Blaine Cooper.

16 Q. And based on your investigation, Mr. Cooper was also a
17 participant in the events of April 2014?

18 A. Yes.

19 Q. Now, is this -- so, did Mr. Parker, was he sharing the
20 video -- a video in this post?

21 A. Yes.

22 Q. And were there also -- was he also sharing words that
23 appear at the bottom of the post?

24 A. Yes.

25 Q. Can -- starting with "breaking," can you please read that

1 to the jury?

2 A. Yes.

3 "Breaking. Share. Get viral. Operation Big Sky
4 armed patriots and Oath Keepers from across the U.S. show up to
5 defend Constitution. What's it all about? Watch our report
6 and the dispute between the U.S. Forest Service and miners in a
7 small Montana town."

8 Q. Have you viewed the video that was uploaded on this
9 Facebook post?

10 A. Yes.

11 MS. AHMED: Your Honor, may we publish what's been
12 admitted over defense objection as Exhibit 48a?

13 THE COURT: What number was that?

14 MS. AHMED: 48a, Your Honor.

15 THE COURT: 48a. Yes, you may.

16 BY MS. AHMED:

17 Q. And, Agent Draper, you've previously reviewed Exhibit 48a;
18 correct?

19 A. Yes.

20 Q. And is that the video that was posted in the last exhibit
21 that we just saw?

22 A. Yes.

23 (Exhibit 48a published.)

24 BY MS. AHMED:

25 Q. And again, Agent Draper, looking at this video, who is the

1 individual on the far left?

2 A. I -- on my far left --

3 Q. On the viewer's far left.

4 A. -- or from -- on the video side?

5 It's Mr. Drexler.

6 Q. And who is the individual on the far right?

7 A. Mr. Parker.

8 MS. AHMED: Your Honor, may we publish what's been
9 admitted over defense objection as Exhibit 114?

10 THE COURT: Yes, you may.

11 COURTROOM ADMINISTRATOR: Ms. Ahmed, if you open up
12 the tool bar on the touch screen, click the button that has the
13 "T" in the lines, I believe, change that line thickness a
14 little thicker so it's more viewable.

15 MS. AHMED: Thank you.

16 (Exhibit 114 published.)

17 BY MS. AHMED:

18 Q. Agent Draper, do you see Exhibit 114?

19 A. Yes, I do.

20 Q. And what is this?

21 A. This is a post from Mr. Parker's Facebook page.

22 Q. And it looks like it says "13 hours."

23 Do you see that?

24 A. Yes.

25 Q. And normally that's where the date and time would appear?

1 A. Correct. Depending upon when it was captured. If it was
2 captured after that date, the date would appear there.

3 Q. So if the post was captured the same date that the date
4 was -- that the post was created, what would it show?

5 A. Just amount of hours since.

6 Q. And just generally, in what time frame was this post
7 captured or -- excuse me -- created?

8 A. December of 2015.

9 Q. And can you read -- this is a post that Mr. Parker made to
10 his Facebook page?

11 A. Yes, that's correct.

12 Q. And can you read it -- read the post to the jury?

13 A. "Alert. Patriot kidnapped by FBI and U.S. marshals.

14 "My friend Schuyler Barbeau has been kidnapped by the
15 FBI and the U.S. marshals. They have him on trumped up weapons
16 charges. They found no weapon (short barreled rifle) or
17 explosive or detonators that they were looking for. Didn't
18 find them because they don't exist. He helped stand down the
19 BLM at the Bundy Ranch, the BLM at the mine in Oregon, the USFS
20 at the mine in Montana, and county of . . ." and then it -- the
21 post cuts off.

22 Q. And below that, there appears to be some information.

23 Do you see what that is?

24 A. Yes.

25 Q. And just generally, what is the information that was being

1 shared with this post?

2 A. That would be the booking information for Mr. Barbeau.

3 Q. And is there a date that indicates when he was booked?

4 A. December 6th, 2015.

5 Q. And then going back up to the -- and for the record, the
6 witness circled the date.

7 Going back up to the top part of the post, which was
8 Mr. Parker's words, where it says "he helped stand down the BLM
9 at the Bundy Ranch," what is -- is that referring to the events
10 of April 12th, 2014?

11 A. Yes.

12 Q. And the BLM at the mine in Oregon, what event that is
13 relating to?

14 A. That would be the Operation Gold Rush in -- in the Galice
15 Mining District.

16 Q. And with respect to "the USFS at the mine in Montana,"
17 what operation is that?

18 A. That would be Operation Big Sky from August time frame of
19 2015.

20 MS. AHMED: Your Honor, may we publish what the Court
21 admitted yesterday as Exhibit 102?

22 THE COURT: Yes, you may.

23 I think this is . . . one of those times when I told
24 the jury that sometimes I will give you a limiting instruction
25 letting you know that if a particular piece of evidence is

1 being introduced for a limited purpose, that means you can only
2 consider it for that limited purpose and for no other purpose.
3 So, in this case, Exhibit 102 is being admitted only for the
4 limited purpose of demonstrating intent, absence of mistake,
5 and motive. And so, therefore, you may only consider it for
6 that limited purpose and not for any other reason.

7 All right. You may go ahead and publish Exhibit 102.

8 (Exhibit 102 published.)

9 BY MS. AHMED:

10 Q. Agent Draper, is this -- can you explain to the jury what
11 is contained -- just generally, what is this Exhibit 102?

12 A. Yes. This is a -- this is a comment Mr. Parker made on
13 his Facebook page in a series of comments in regards to a
14 picture that was posted.

15 Q. And so, there was a picture posted on Mr. Parker's
16 Facebook page?

17 A. Yes.

18 Q. And then comments were made --

19 A. Correct.

20 Q. -- under that photo?

21 A. Correct, yes.

22 Q. And this is one of the comments that Mr. Parker posted?

23 A. Yes. Mr. Parker posted this.

24 Q. And when was it posted?

25 A. June 12th of 2015.

1 Q. And can you read the first four lines of this post?

2 A. "McVeigh didn't accomplish shit. I'll even pretend for a
3 minute like he wasn't an idiot that got set up by the FBI. The
4 only thing he accomplished was getting himself executed and
5 attaching a stigma to the movement for a decade."

6 Q. And in the context of this -- the full post which you
7 reviewed and based on your investigation, who is he referring
8 to when he says "McVeigh"?

9 MR. LEVENTHAL: Objection. Speculation.

10 MR. TANASI: Stewart joins.

11 MR. PEREZ: Lovelien joins.

12 MR. MARCHESE: Parker joins.

13 MS. AHMED: Your Honor, the question is limited on
14 her review of the entire -- the entire post and the comments
15 above this post.

16 MR. LEVENTHAL: Still speculating.

17 MS. AHMED: Your Honor, I can ask additional
18 foundational questions.

19 THE COURT: Lay a foundation, yes.

20 BY MS. AHMED:

21 Q. Did you review the comments above this post?

22 A. Yes, I did.

23 Q. And did those comments also make reference to a person
24 named McVeigh?

25 A. Yes.

1 Q. And from those comments, did you understand -- have an
2 understanding of who that person was?

3 A. Yes.

4 MR. LEVENTHAL: I'm going to object as to hearsay
5 then.

6 BY MS. AHMED:

7 Q. And is this response being given in response to those
8 comments directly?

9 A. Yes.

10 Q. And based both on the comments above this post and the
11 context of the statement itself, do you have an understanding
12 of who McVeigh is?

13 A. Yes, I do.

14 MS. AHMED: Your Honor, may I continue?

15 THE COURT: Yes, you may.

16 BY MS. AHMED:

17 Q. Can you explain to the jury who McVeigh is that this post
18 is referring to?

19 A. I said it would be in reference to Timothy McVeigh who is
20 responsible for the 1995 bombing of the Murrah Federal Building
21 in Oklahoma City, Oklahoma.

22 Q. And can you continue to read from "now what did I
23 accomplish"?

24 A. Yes, I will.

25 "Now what did I accomplish in the past two and a half

1 years. About half a year before the Bundy Ranch a small group
2 of friends and I got together and agreed that we had all had
3 enough and we had to get proactive. We promised each other
4 that we would meet once a week to work on prepping and
5 training. Prior to that, I had never even held an AR-15, maybe
6 once or twice. We acquired weapons and became familiar with
7 them. We watched current events closely and we prepped for
8 failure of government. The right time presented itself and we
9 decided to stand."

10 Continuing?

11 Q. Please continue.

12 A. Okay.

13 "Decisions were made. Lines were drawn. Something
14 very similar happened in 1770, except nobody died at the ranch.
15 1770 was the Boston Massacre. The invading fascist force left
16 the field. Spent the next couple of months waiting for them to
17 come bag my head, but they didn't. Do you know why they
18 didn't? Because we did it right. You stay within the confines
19 of the law, the Bill of Rights and do it publicly in the light.
20 We joined the Idaho 3%. We network, recruit, and train. Lo
21 and behold, spring came around and we had another opportunity.
22 The situation was right. Rick, at the Sugar Pine Mine was in
23 the right. Through our networking, we were asked as a group to
24 come do security and vetting. The public call for security
25 teams to come help was made and a lot of the same people that

1 showed up in Nevada showed up in Oregon. The reason being the
2 lines in the sand that were drawn and the oath taken on
3 individual's souls will never go away. Bonds were made. Those
4 individuals will never stop and the idea that the men and women
5 who are standing next to them in Nevada may be standing
6 somewhere else will light that fire and they will be there.
7 That is a paradigm shift.

8 "We were 10 times better and more efficient at Sugar
9 Pine Mine. We won without a standoff and the professionalism
10 of the vetting kept any would-be" -- blank -- "away.

11 "From where I'm standing, you're the only one that
12 hasn't done anything. Get active or shut the f-u-c-k up."

13 Q. Based on your investigation, what is the Sugar Pine Mine?

14 A. That was the mine in Oregon.

15 Q. That was the name of the mine?

16 A. Yes.

17 Q. In Oregon?

18 A. Yes.

19 Q. In relation to Operation Gold Rush?

20 A. Yes.

21 MS. AHMED: Your Honor, may we publish what's been, I
22 believe, stipulated for admission as Exhibit 49, Page 3.

23 THE COURT: 49, Page 3. Yes, you may.

24 (Exhibit 49, Page 3 published.)

25 BY MS. AHMED:

1 Q. Now, Agent Draper, you indicated yesterday that you
2 obtained search warrants for not just Mr. Parker's account, but
3 also for other -- the other two subjects as well; correct?

4 A. Yes, that's correct.

5 Q. Looking at Exhibit 49-3, can you explain to the jury, just
6 generally, what is this?

7 A. This is a Facebook Certificate of Authenticity for the
8 account belonging to Mr. Drexler.

9 Q. And, so, a search warrant was submitted for Mr. Drexler's
10 account?

11 A. That's correct.

12 Q. And Facebook returned documents?

13 A. Yes.

14 Q. And they provided also this certificate?

15 A. Correct.

16 MS. AHMED: Your Honor, may we publish what's been
17 admitted -- stipulated for admission as Exhibit 123?

18 THE COURT: Yes, you may.

19 (Exhibit 123 published.)

20 BY MS. AHMED:

21 Q. Looking at Exhibit 123, Agent Draper, is this a page from
22 the Facebook Business Records that you received in response to
23 the search warrant?

24 A. Yes. This is.

25 Q. And what is depicted in Exhibit 123?

1 A. This is a photograph posted on -- a profile picture posted
2 by Mr. Drexler of him.

3 Q. And based on your investigation, is that photograph from
4 April 12th, 2014?

5 A. Yes.

6 Q. And is that the bridge from April 12th, 2014?

7 A. Yes, it is.

8 Q. And what does Mr. Drexler appear to be holding?

9 A. He appears to be holding a rifle.

10 Q. Now, is this -- can you explain to the jury, in terms of a
11 Facebook post, what kind of post was this? What did -- how did
12 it come on to Mr. Drexler's Facebook page?

13 A. Well, this would be under a profile photo.

14 Q. And, again -- sorry. What is a profile picture, on
15 Facebook?

16 A. That would be the image an individual uses which is
17 connected with their -- their vanity name, so the name that you
18 see on the screen with them when they make posts.

19 Q. And so, Mr. Drexler made this his profile picture on his
20 Facebook account?

21 A. Yes.

22 Q. On what date?

23 A. April 15th, 2014.

24 Q. And so, would that be three days after the April 12th
25 standoff?

1 A. Correct.

2 Q. And looking at the bottom of that page, were there
3 comments on that profile picture?

4 A. Yes. One user made a comment and then Mr. Drexler
5 replied.

6 Q. And what did that user say?

7 A. "Careful. Bridges are choke points."

8 Q. And what response did Mr. Drexler post?

9 A. He posted, "That's why we use them to shut down the
10 freeway."

11 Q. And when did he make that response?

12 A. April 17th.

13 Q. Of 2014?

14 A. Yes.

15 Q. And that's five days after the April 12th standoff?

16 A. Yes.

17 MS. AHMED: Your Honor, may we publish what was
18 admitted by stipulation as Exhibit 124?

19 THE COURT: Yes, you may.

20 (Exhibit 124 published.)

21 BY MS. AHMED:

22 Q. Agent Draper, is this another -- is Exhibit 124 also a
23 business record received from Facebook in response to the
24 search warrant?

25 A. Yes.

1 Q. And what's -- zoomed out, are these two posts that were
2 made on Mr. Drexler's Facebook page?

3 A. That's correct.

4 Q. And in what -- chronologically, are they going from the
5 bottom up or the top down?

6 A. Bottom up.

7 Q. So turning to the bottom post, can you just explain to the
8 jury what was actually posted to Mr. Drexler's Facebook page?

9 A. This is -- this is an article with a picture attached
10 titled "The Bundy Crisis in Nevada." There's text there
11 written by the Facebook user. Says, "Nice pic, Eric," and
12 there's a summary and I can explain what summary is.

13 Q. Did you -- after testifying yesterday, did you
14 investigate --

15 A. Yes.

16 Q. -- how that summary field is populated on Facebook?

17 A. Yes.

18 Q. And what is your understanding, based on your
19 investigation?

20 A. Based upon my investigation, it's some content from the
21 original article that is being attached or posted, generally a
22 couple of sentences from the first paragraph.

23 Q. Now, so, here, you indicated that there was an article
24 that was being shared on Mr. Drexler's Facebook page. What is
25 the title of that article?

1 A. "The Bundy Crisis in Nevada."

2 Q. And did you actually go to that link and see the article?

3 A. Yes.

4 Q. And what, if any, picture shows when you load the article?

5 A. It's a picture of Mr. Parker kneeling on the bridge on
6 April 12th, 2014, holding a rifle.

7 Q. And so, where it stays "text," is that a comment that was
8 posted by Mr. Drexler?

9 A. Yes.

10 Q. And what did he say?

11 A. "Nice pic, Eric."

12 Q. And what date did he make this post?

13 A. April 15th, 2014.

14 Q. And in the summary section, so you've indicated that's
15 content that was pulled out of the article itself; correct?

16 A. Correct.

17 Q. Can you read what that says?

18 A. "If you don't know the story of Cliven Bundy in Nevada,
19 it's time to get up to speed."

20 Q. Now, did Mr. Drexler -- the top post, was that also made
21 on April 15th, 2014?

22 A. Yes.

23 Q. And what was the top post? What kind of post is that?

24 A. This is a Reuters article.

25 Q. So was Mr. Drexler sharing another news article?

1 A. Yes.

2 Q. And so, where it says "Url," is that the link to the
3 article?

4 A. Yes.

5 Q. And then going up from that, to the title, what was the
6 title of the article?

7 A. "Nevada Ranching Family Claims Victory as Government
8 Releases Cattle."

9 Q. And just going -- skipping text, we'll come back to
10 that -- but where it says summary, can you read what is
11 indicated in the summary section?

12 A. "Bunkerville, Nevada, (Reuters) - U.S. officials ended a
13 standoff with hundreds of armed protestors in the Nevada desert
14 on Saturday, calling off the government's roundup of cattle it
15 said were illegally" -- and then the summary cuts off.

16 Q. And in the "text" section, again, is that content that was
17 posted by Mr. Drexler?

18 A. Yes.

19 Q. And what does it say?

20 A. "But it looks like we may have to go back."

21 Q. And, again, this post was made on what date?

22 A. April 15th, 2014.

23 Q. And that's three days after the April 12th standoff?

24 A. Correct.

25 MS. AHMED: Your Honor, may we publish what was

1 admitted by stipulation as Exhibit 125?

2 THE COURT: Yes, you may.

3 (Exhibit 125 published.)

4 BY MS. AHMED:

5 Q. Agent Draper, in addition to the documents that you
6 received back from Facebook in response to the search warrant,
7 were other -- did you continue to monitor Mr. Drexler's
8 Facebook page?

9 A. Yes.

10 Q. And were other posts captured as evidence, from his page?

11 A. Yes.

12 Q. And looking at Exhibit 125, is that one such posting made
13 on his Facebook page?

14 A. Correct. This is part of a capture that shows a cover
15 photo and a profile picture.

16 Q. And on what date was this captured from the Facebook page?

17 A. May of 2015. May 4th.

18 Q. So, in May of 2015, was this the profile picture and the
19 cover photo that appeared when you went to Mr. Drexler's
20 Facebook page?

21 A. Yes.

22 Q. And can you just -- starting with the profile picture, can
23 you indicate where it is and describe -- can you indicate where
24 it is by touching the screen.

25 A. Um . . . the profile picture (indicating).

1 MS. AHMED: And the witness has drawn a circle around
2 an area that's in a small box on the left side, the viewer's
3 left.

4 BY MS. AHMED:

5 Q. Can you describe what is the content of the profile
6 picture?

7 A. It has the words "I am the" Roman Numeral III. "I am the
8 III Percent" and there should be 13 stars around it. 13 stars
9 around it.

10 Q. And then can you indicate where the cover photo appears?

11 A. (Indicating).

12 MS. AHMED: And the witness has drawn a circular
13 shape around the -- of the larger rectangle in the picture.

14 BY MS. AHMED:

15 Q. And can you describe what is contained in the pro- -- in
16 the cover photo, excuse me?

17 A. It shows the back of an unidentified individual wearing a
18 T-shirt holding some type of firearm.

19 Q. And what are the words on that T-shirt?

20 A. "When all else fails . . . vote from the rooftops."

21 MS. AHMED: Your Honor, may we publish what was
22 admitted by stipulation as Exhibit 126?

23 THE COURT: Yes, you may.

24 (Exhibit 126 published.)

25 BY MS. AHMED:

1 Q. Agent Draper, is this also a Facebook post made by
2 Mr. Drexler on his Facebook account?

3 A. Yes.

4 Q. And what is the date of this post?

5 A. Well, it says April 20th. I know it to be April 20th of
6 2015, because this was part of that same capture from May of
7 2015. So it would have the year on it if it was a different
8 year other than the one during which it was viewed.

9 Q. So, this is a post made in April of 2015?

10 A. Correct.

11 Q. And is that the time of when the Operation Gold Rush was
12 taking place?

13 A. Yes.

14 Q. And what post -- what did Mr. Drexler -- what is this post
15 here?

16 A. "And this is how we take our country back. Glad I got to
17 spend a few days in Oregon."

18 Q. And does the post continue on the next page?

19 A. Yes.

20 Q. So along with that comment, did he also share a video?

21 A. Yes.

22 Q. And what is the title of the video as it appears here?

23 A. "Idaho III Percent - Call to Action for Sugar Pine Mine."

24 Q. And what is the description of the video that's provided
25 here?

1 A. "III Percent groups are called on to support the
2 constitutional defense operation at Sugar Pine Mine in southern
3 Oregon."

4 Q. And does it appear that there's also a video embedded with
5 this post?

6 A. Yes.

7 Q. And so, the comment that we saw on the previous page --
8 going back to Page 1 of this exhibit -- on Facebook, this --
9 that -- both that video and this comment, they were all made
10 together as one post?

11 A. Correct.

12 Q. But the portion that's displayed now, these are
13 Mr. Drexler's words; correct?

14 A. Yes, these are.

15 MS. AHMED: Your Honor, may we publish what's
16 admitted by stipulation as Exhibit 127?

17 THE COURT: Yes, you may.

18 (Exhibit 127 published.)

19 BY MS. AHMED:

20 Q. Now, Agent Draper, looking at Exhibit 127, is this a post
21 that appeared on Mr. Drexler's Facebook page?

22 A. Yes.

23 Q. And did this appear on his page in May of 2015?

24 A. That's correct.

25 Q. Now, the post -- who -- who made this post?

1 A. Mr. Parker.

2 Q. And based on your investigation and experience with
3 Facebook, why does it appear on Mr. Drexler's page?

4 A. He could link it to Mr. Drexler's page.

5 Q. Did Mr. Parker tag Mr. Drexler in the post?

6 A. The fact that his name is blue indicates he did.

7 Q. And what -- and we've seen this post previously; correct?

8 A. Yes, we have.

9 Q. This also appeared on Mr. Parker's Facebook page?

10 A. Correct.

11 Q. And can you read what the content of the post Mr. Parker
12 made, what does it say?

13 A. "I love watching this stuff. Scott Drexler, Steven
14 Stewart 2.5 minute in remember that guy he just seemed so
15 nonchalant I liked him . . . give me liberty or give me death."

16 Q. And at the bottom of this post there are two comments by
17 Steven Stewart.

18 Do you see that?

19 A. Yes.

20 Q. And are those the same comments that appeared on the -- in
21 Mr. Parker's Facebook page?

22 A. I do not recall.

23 Q. Are these -- to your knowledge and based on your
24 investigation, are these comments made by the subject that you
25 were following, Steven Stewart?

1 A. Yes.

2 Q. Can you read those two comments to the jury?

3 A. "What in the f-u-c-k was that asshole recording the guy
4 next to me. I would have hid better. Like when they were
5 interviewing your ass lol."

6 Q. And what was the second comment?

7 A. "Ok. I'll admit, it's cool to see vid of me on the
8 freeway, but anyways . . ."

9 Q. Now, you indicated that this was -- post was present on
10 Mr. Drexler's Facebook page in May of 2015?

11 A. Correct.

12 Q. When was the post actually posted to the Facebook page?

13 A. January 8th, 2015.

14 MS. AHMED: Your Honor, may we publish what was
15 admitted by stipulation as Exhibit 128?

16 THE COURT: Yes, you may.

17 (Exhibit 128 published.)

18 BY MS. AHMED:

19 Q. Agent Draper, is this also a post that appeared on
20 Mr. Drexler's Facebook page?

21 A. Yes.

22 Q. And when was this post made?

23 A. December 11th, 2014.

24 Q. And what -- what is the post -- what is the content of the
25 post, just generally?

1 A. It's attaching a news article about something going on in
2 Utah.

3 Q. What is the title of the news article that appears in this
4 post?

5 A. "Utah to seize own land from government, challenge federal
6 dominance of Western states."

7 Q. And was there text provided from the article beneath the
8 title?

9 A. From the article.

10 "In three weeks, Utah intends to seize control of
11 31.2 million acres of its own land now under the control of the
12 federal government. At least, that's the plan."

13 Q. Did Mr. Drexler also make a comment on the post --

14 A. Yes.

15 Q. -- at the top of that -- at the top of that post?

16 A. Yes.

17 Q. Above the article, excuse me.

18 A. Yes. Yes.

19 Q. And what does it say?

20 A. "Looks like New Year's will be about time to go, Eric,"
21 and then he links Eric Ej Parker.

22 Q. And that link, is that to your -- the subject that you
23 were investigating?

24 A. Yes.

25 Q. Mr. Parker?

1 A. Yes. Mr. Parker's page.

2 Q. And you said -- I might have spoken over what -- can you
3 read what he posted?

4 A. "Looks like New Year's will be about time to go, Eric
5 Eric Ej Parker."

6 Q. And did -- and are there comments below the post in
7 response to Mr. Drexler's post?

8 A. Yes.

9 Q. And above the comments, do you see where there's a
10 thumb -- a symbol of a thumb?

11 A. Yes.

12 Q. And, again, can you explain to the jury what that is?

13 A. A thumb's up is a "like" symbol on Facebook.

14 Q. And here, what does it indicate?

15 A. That -- it indicates that Mr. Parker liked that post.

16 Q. And looking at the first comment, who made that comment?

17 A. Mr. Stewart.

18 Q. And what did he say?

19 A. "Don't be trying to go without me."

20 Q. And the comment below that, who made that comment?

21 A. Mr. Parker.

22 Q. And what did he say?

23 A. "Wouldn't dream of it."

24 Q. And were all of these posts made in December of 2014?

25 A. Yes.

1 MS. AHMED: Your Honor, may we publish what was
2 admitted by stipulation as Exhibit 49, Page 11?

3 THE COURT: Yes, you may.

4 (Exhibit 49, Page 11 published.)

5 BY MS. AHMED:

6 Q. Agent Draper, you also obtained documents from Facebook in
7 response to a search warrant for Mr. Stewart's account;
8 correct?

9 A. Yes.

10 Q. Looking at Exhibit 49, Page 11, is this the Certificate of
11 Authenticity for those documents?

12 A. Yes, this is.

13 Q. For Mr. Stewart's account?

14 A. Yes. For Mr. Stewart's Facebook account.

15 MS. AHMED: Your Honor, may we go to Exhibit 117
16 which was admitted over defense objection?

17 THE COURT: Yes, you may.

18 (Exhibit 117 published.)

19 BY MS. AHMED:

20 Q. Agent Draper, is this a page of the Facebook Business
21 Records that were returned in response to the warrant?

22 A. Yes, it is.

23 Q. For Mr. Stewart's account?

24 A. That's correct.

25 Q. Looking at the bottom of this page, are there posts that

1 are made by Mr. Stewart?

2 A. Yes.

3 Q. And just looking at them chronologically, what order do
4 the posts go?

5 A. The first post is lower.

6 Q. And so, what time was the first post made -- excuse me --
7 what date and time?

8 A. April 12th, 2014, at approximately 12:58 Pacific time.

9 Q. And what kind of post was this?

10 A. It's a -- a status update.

11 Q. And do you know that from the "story" section?

12 A. Yes.

13 Q. And what was the message that was posted?

14 A. "It's been a long day. What's up why I have a little
15 earlier with a really high powered scope show me F*****
16 awesome."

17 Q. And then turning to the top post, what -- what date and
18 time was this post made?

19 A. April 12th, 2014, at approximately 1:02 p.m. Pacific, 1:03
20 p.m. pacific.

21 Q. And what kind of post was this?

22 A. Another -- another status update.

23 Q. And what did the post say?

24 A. "First they said they were going to release everything and
25 leave. Then they held the gates to Gold Butte and threatened

1 us with chemicals. Then we pushed forward and they had to back
2 off. They are releasing the cows now. BLM is leaving."

3 MS. AHMED: Your Honor, may we publish what was
4 admitted as Exhibit 118?

5 THE COURT: Yes, you may.

6 (Exhibit 118 published.)

7 BY MS. AHMED:

8 Q. Agent Draper, is this also a Facebook Business Record that
9 was returned in response to the Steven Stewart search warrant?

10 A. Yes, it is.

11 Q. And what is contained in Exhibit 118?

12 A. This is an image that has been uploaded by -- it's a
13 mobile upload.

14 Q. And on -- who -- who uploaded it, excuse me?

15 A. The user of the Facebook account.

16 Q. And that's Mr. --

17 A. Would be Mr. Stewart.

18 Q. And on what date was this image uploaded?

19 A. April 12th, 2014, at approximately 1:33 p.m. Pacific.

20 Q. And do you know that from the field that says "uploaded"?

21 A. Yes, that's correct.

22 Q. And above that, where it says "album name," what is the
23 album name?

24 A. "Mobile Uploads."

25 Q. And what does that mean, "Album Name," "Mobile Uploads"?

1 A. That would be an image that was uploaded from a mobile
2 device.

3 Q. And was there any information -- statement or title or
4 caption included with the photograph?

5 A. On the second line down, at "title," is -- are the words
6 "going to get the cattle back."

7 Q. And is that something that would have to have been entered
8 by the Facebook user?

9 A. Yes.

10 Q. So it was essentially the title given to this photograph?

11 A. That's correct.

12 MS. AHMED: Your Honor, may we publish what was
13 admitted by stipulation as Exhibit 119a?

14 THE COURT: Yes, you may.

15 (Exhibit 119a published.)

16 BY MS. AHMED:

17 Q. Agent Draper, is this another Facebook Business Record
18 that was provided in response to the Steven Stewart Facebook
19 search warrant?

20 A. Yes, this is.

21 Q. And looking at the post that has been zoomed in on in
22 Exhibit 119a, what is this?

23 A. This is an upload of a video.

24 Q. And so, was this a video that was uploaded by the account
25 holder --

1 A. Yes.

2 Q. -- to Mr. Stewart's account?

3 A. Yes.

4 Q. And did Mr. Stewart also describe the video when he
5 uploaded it?

6 A. Yes.

7 Q. And what is the description?

8 A. "Somebody said they had 104 vehicles."

9 Q. And is the description that was provided, is that also
10 visible on his Facebook page?

11 A. Yes.

12 Q. And would the video that was uploaded also be visible on
13 his Facebook page?

14 A. Yes.

15 Q. And so, if you could view his page, could you play the
16 video?

17 A. Yes.

18 Q. Have you viewed the video that was uploaded?

19 A. I have.

20 MS. AHMED: Your Honor, may we publish what was
21 admitted over defense objection as Exhibit 119b?

22 THE COURT: Yes, you may.

23 BY MS. AHMED:

24 Q. And, Agent Draper, have you previously reviewed
25 Exhibit 119b?

1 A. Yes.

2 Q. Is this the video that was linked that we saw from the
3 last exhibit?

4 A. Once we play it, I will -- yes, this is.

5 MS. AHMED: And can we go ahead and play it.

6 (Exhibit 119b published.)

7 BY MS. AHMED:

8 Q. Agent Draper, based on your investigation, whose voice is
9 heard speaking on that video?

10 A. Mr. Stewart's.

11 Q. And from your investigation, again, looking at the content
12 of the video, when -- what is depicted in the video?

13 A. It's when BLM was leaving the ICP on April 12th.

14 Q. 2014?

15 A. 2014.

16 Q. And just going back, briefly, to Exhibit 119a, and going
17 on to the second page, on -- zooming in on that top part. Is
18 this a continuation of that post where the video was shared?

19 A. Yes.

20 Q. What -- on what date was the video shared?

21 A. Because this is UTC time, again, subtracting seven hours
22 from what shows as 1:01, it would be approximately 6:01 p.m. on
23 April 12th, 2014.

24 Q. And is that the same day as the standoff?

25 A. Yes.

1 MS. AHMED: Your Honor, may we publish what was
2 admitted over defense objection as Exhibit 121?

3 THE COURT: Yes, you may.

4 (Exhibit 121 published.)

5 BY MS. AHMED:

6 Q. Agent Draper, is this also a post that was provided by
7 Facebook in response to the search warrant for Mr. Stewart's
8 Facebook account?

9 A. Yes, it is.

10 Q. And is it a post that was made on Mr. Stewart's Facebook
11 page?

12 A. Yes.

13 Q. What date was this post made?

14 A. April 15th, 2014.

15 Q. And is that three days after the April 12th standoff?

16 A. Yes, it is.

17 Q. So, going from the bottom of this post upward, where it
18 says "Url," what is shared there?

19 A. A biography from U.S. -- the Nevada district court.

20 Q. And is there a link to that biography?

21 A. Yes.

22 Q. And so, where it says "Url," is that the actual link that
23 he shared?

24 A. Correct. That is the actual link.

25 Q. Going one line up where it says "title," what is the title

1 of the information or the link that was shared?

2 A. "U.S. District Court - District of Nevada - Home."

3 Q. And then going up two lines to where it says "summary,"
4 what does it say in the summary description for that link that
5 was shared?

6 A. Judge Lloyd D. George was appointed United States District
7 Judge for the District of Nevada by President Ronald Reagan in
8 May 1984. He served as Chief United States District Judge from
9 1992 to 1997, and assumed senior status in December 1997."

10 Q. And did Mr. Stewart make a comment on this post as well?

11 A. Yes.

12 Q. And what is that comment?

13 A. "These people think they own us."

14 Q. And is that found in the "text" field?

15 A. It is.

16 MS. AHMED: Your Honor, may we publish what has been
17 previously admitted as Exhibit 3?

18 THE COURT: Yes, you may.

19 (Exhibit 3 published.)

20 BY MS. AHMED:

21 Q. Agent Draper, in your investigation -- based on your
22 investigation, what do you recognize Exhibit 3 to be?

23 A. This appears to be an order, court order.

24 Q. And is it in the case of United States vs. Cliven Bundy?

25 A. Yes.

1 Q. And turning to Page 5, do you see where -- there appears
2 to be a signature.

3 Do you see that?

4 A. Yes, I do.

5 Q. And what is the name of the judge that authored this Court
6 order?

7 A. Lloyd D. George, United States District Judge.

8 MS. AHMED: Your Honor, may we publish what was
9 admitted over defense objection as Exhibit 120?

10 THE COURT: Yes, you may.

11 (Exhibit 120 published.)

12 BY MS. AHMED:

13 Q. Agent Draper, is this also a Facebook page that Facebook
14 provided in response to the search warrant for Steven Stewart's
15 account?

16 A. Yes, this is.

17 Q. And looking at it, is this a post that was made by
18 Steven Stewart on his Facebook account?

19 A. Yes.

20 Q. And on what date was this post made?

21 A. April 18th, 2014.

22 Q. And so, is that six days after the April 12th standoff?

23 A. Yes, this is.

24 Q. And what is the post that he actually made? What was the
25 content of that post?

1 A. "Guys, I only went for the weekend. We helped
2 Cliven Bundy get his cattle back. Straight there; straight
3 back. 2 hours of sleep in between."

4 MS. AHMED: Now, Your Honor, may we publish what was
5 admitted by stipulation as Exhibit 129, Page 5?

6 THE COURT: Yes, you may.

7 MS. AHMED: And can we first show that just to
8 counsel and the witness?

9 THE COURT: Yes.

10 (Exhibit 129, Page 5 published to witness.)

11 MR. MARCHESE: No objection.

12 MS. AHMED: Your Honor, may we publish it to the
13 jury?

14 THE COURT: Yes, you may.

15 This one doesn't have a number on it. Doesn't have
16 a --

17 MS. AHMED: Your Honor, we'll add that exhibit
18 sticker to reflect that this is Page 5 of Exhibit 129.

19 THE COURT: Thank you.

20 (Exhibit 129, Page 5 published.)

21 MS. AHMED: And, Your Honor, for the record, it was
22 stipulated by the parties that this exhibit depicts the arm of
23 the defendant, Mr. Eric Parker.

24 THE COURT: Is that right?

25 MR. MARCHESE: It's a correct statement, Your Honor.

1 MR. TANASI: That's correct, Your Honor.

2 THE COURT: Thank you.

3 BY MS. AHMED:

4 Q. Agent Draper, can you describe what is displayed on the
5 screen as Exhibit 129, Page 5?

6 A. That's Mr. Parker's arm as stipulated, and that's a tattoo
7 on it of the 3% of the Idaho logo.

8 Q. Based on your investigation, did he have that tattoo in
9 April of 2014?

10 A. No.

11 MS. AHMED: Your Honor, may we publish what was
12 admitted by stipulation as Exhibit 131, Page 5?

13 THE COURT: Yes, you may.

14 MS. AHMED: And, again, just for counsel and the
15 parties -- excuse me -- the witness and the parties.

16 (Exhibit 131, Page 5 published to witness.)

17 MR. LEVENTHAL: 131?

18 MS. AHMED: 131, Page 5.

19 MR. LEVENTHAL: No objection.

20 MS. AHMED: Your Honor, may we publish to the jury
21 Exhibit 131, Page 5?

22 THE COURT: Yes, you may.

23 (Exhibit 131, Page 5 published.)

24 MS. AHMED: And, Your Honor, the parties have also
25 stipulated with respect to Exhibit 131, Page 5, that this is

1 the arm of the defendant O. Scott Drexler.

2 THE COURT: Is that right, Mr. Leventhal?

3 MR. LEVENTHAL: That's correct, Your Honor. Thank
4 you.

5 THE COURT: Thank you.

6 BY MS. AHMED:

7 Q. Agent Draper, can you explain to the jury, what is
8 depicted in Exhibit 131, Page 5?

9 A. This is a tattoo on the arm of Mr. Drexler as stipulated.
10 The center portion is the 3% of Idaho logo. The top is the
11 word "Bundy" and what appears to be in kind of a tab in a
12 military style, and underneath are two blocks containing
13 additional letters which, from my investigation, I believe to
14 be "OGR" and "OBS."

15 Q. And what does "OGR" stand for?

16 A. Operation Gold Rush and Operation Big Sky.

17 Q. So the "OGR" stands for Operation Gold Rush and the "OBS"
18 stand for what?

19 A. Operation Big Sky.

20 Q. And were these the two operations that you described that
21 took place after April of 2014?

22 A. Yes.

23 Q. Were any of these tattoos -- based on your investigation,
24 did Mr. Drexler have any of these tattoos in April of 2014?

25 A. No.

1 (Counsel conferring.)

2 MS. AHMED: Your Honor, I apologize. For the record,
3 it's actually Exhibit 131, Page 4 that was entered by
4 stipulation and which we have just displayed and gone over.

5 THE COURT: All right. So please make sure you mark
6 these --

7 MS. AHMED: I will, Your Honor.

8 THE COURT: -- so that we're clear.

9 So this is Exhibit 131, Page 4, not Page 5.

10 MS. AHMED: I apologize, and that's correct,
11 Your Honor.

12 THE COURT: Thank you.

13 BY MS. AHMED:

14 Q. Now, Agent Draper, you were describing yesterday -- you
15 can take that down. Thank you.

16 You were describing yesterday that you observed a
17 video on the Idaho 3% YouTube page.

18 Do you recall that?

19 A. Yes.

20 Q. And can you explain to the jury the title of the video
21 that you observed on the Idaho 3% Facebook page -- excuse me --
22 YouTube page?

23 A. It's an overview of the 3% of the Idaho.

24 Q. So the title said "overview"?

25 A. Correct.

1 Q. "Idaho 3% Overview"?

2 A. Yes.

3 Q. And have you reviewed that video?

4 A. Yes, I have.

5 Q. And have you seen Exhibit 45a as that video that you
6 reviewed?

7 MS. AHMED: Your Honor, may we publish what's been
8 admitted by stipulation as Exhibit 45a?

9 THE COURT: Yes, you may.

10 (Exhibit 45a published.)

11 MS. AHMED: Can we pause here.

12 Paused at 44 seconds.

13 BY MS. AHMED:

14 Q. Agent Draper, do you recognize any of the subjects that
15 you were investigating in this case in this scene?

16 A. Yes, I do.

17 Q. Can you circle and identify them.

18 A. (Indicating). That's Mr. Drexler.

19 MS. AHMED: And the witness has drawn a circle from
20 the third from the right -- the viewer's right -- indicating
21 that's Mr. Drexler, and then a second circle, second from the
22 right.

23 BY MS. AHMED:

24 Q. Who is that?

25 A. Mr. Parker.

1 MS. AHMED: And these are the individuals that are
2 standing in the background.

3 BY MS. AHMED:

4 Q. So, the two people you circled were Mr. Drexler and
5 Mr. Parker?

6 A. Correct.

7 MS. AHMED: Can we continue to play?

8 (Exhibit 45a published.)

9 MS. AHMED: Can you pause it here?

10 Paused at 57 seconds.

11 BY MS. AHMED:

12 Q. So, Special Agent Draper, in this Idaho 3% - an overview
13 video, is this -- does this appear to be an image taken from
14 the April 12th, 2014, standoff?

15 A. Yes.

16 Q. And who is depicted in this image?

17 A. Mr. Parker.

18 Q. And what is he doing in this image?

19 A. He's prone on the bridge behind a rifle that's between the
20 concrete Jersey barriers.

21 MS. AHMED: Can we continue to play?

22 (Exhibit 45a published.)

23 MS. AHMED: Pause it here.

24 Paused at 1:02.

25 BY MS. AHMED:

1 Q. Agent Draper, is this another image in this Idaho 3%
2 overview video of Mr. Parker on April 12th, 2014?

3 A. Yes, it is.

4 Q. And is he, again, behind that same concrete barrier?

5 A. Along the same bridge. I don't know if it's the actual
6 barrier section, but in the same vicinity.

7 Q. Holding a firearm?

8 A. Correct.

9 MS. AHMED: Can we continue to play?

10 (Exhibit 45a published.)

11 Pause here.

12 And paused at 1:05.

13 BY MS. AHMED:

14 Q. Agent Draper, what is depicted here?

15 A. This is a picture of Mr. Drexler with a rifle on that
16 bridge on April 12th, 2014.

17 MS. AHMED: Continue to play.

18 (Exhibit 45a published.)

19 Pause it here.

20 BY MS. AHMED:

21 Q. Agents Draper, what were the words that were just panned
22 past the top line where I've circled? What does that say?

23 A. "Operation Gold Rush Open House."

24 Q. And does this appear to be some sort of flier or something
25 for the Operation Gold Rush?

1 A. Yes, and there's a date on it that's --

2 Q. And what is that day?

3 A. May 9th, 2015.

4 MS. AHMED: Continue to play.

5 (Exhibit 45a published.)

6 Pause it here.

7 Paused at 1:23.

8 BY MS. AHMED:

9 Q. Is this -- what is depicted at 1:23?

10 A. The sign in the back says, "The Galice Mining District."

11 MS. AHMED: And the witness has drawn a circle around
12 a sign that appears in the background of the picture.

13 BY MS. AHMED:

14 Q. And what is depicted in the foreground, generally?

15 A. Individuals.

16 Q. How are they dressed?

17 A. In -- some are in camouflage attire, tactical vests on
18 some, some with rifles.

19 MS. AHMED: Continuing to play.

20 (Exhibit 45a published.)

21 Pausing here.

22 BY MS. AHMED:

23 Q. Agent Draper -- paused at 1:27.

24 Do you recognize the individual that's standing in
25 the middle in this . . .

1 A. (Indicating).

2 MS. AHMED: And the witness has drawn a line under
3 the person in the middle.

4 BY MS. AHMED:

5 Q. Who is that?

6 A. Mr. Parker.

7 MS. AHMED: Continue to play.

8 (Exhibit 45A published.)

9 Pausing here.

10 BY MS. AHMED:

11 Q. Now, Agent Draper -- paused at 1:31 -- what is depicted in
12 this screen?

13 A. This is a group of individuals indicating
14 Josephine County, Oregon and Mr. Parker is in the image
15 (indicating).

16 MS. AHMED: And the witness has drawn a circle around
17 an individual that appears in the left side of the group
18 standing and identified that person as Mr. Parker and has also
19 circled words on the banner at the bottom where it says
20 "Josephine County, Oregon."

21 BY MS. AHMED:

22 Q. And again, Agent Draper, with regard to Operation Gold
23 Rush, where did that take place?

24 A. In Josephine County, Oregon.

25 MS. AHMED: Continue to play.

1 (Exhibit 45a published.)

2 Pause.

3 Can you go back? I apologize.

4 Thank you.

5 BY MS. AHMED:

6 Q. Now, Agent Draper, what is depicted at 1:37? We've paused
7 at 1:37. What is depicted here?

8 A. Three individuals with Mr. Parker in the middle extending
9 their middle fingers. 3% of Idaho logo behind them, and the
10 words "hash tag stand down BLM at the bottom."

11 MS. AHMED: Continue to play.

12 (Exhibit 45a published.)

13 Pausing at 1:40.

14 BY MS. AHMED:

15 Q. And do you recognize any of your subjects that you were
16 investigating in this case here?

17 A. (Indicating).

18 MS. AHMED: And the witness has circled an individual
19 in the far right, viewer's right.

20 BY MS. AHMED:

21 Q. Who is that?

22 A. Mr. Parker.

23 Q. And looking at this image, what is Mr. Parker wearing?

24 A. A 3% of Idaho T-shirt and a hat.

25 Q. And looking at the T-shirt, what is on the left sleeve --

1 left arm sleeve of that shirt?

2 A. The U.S. flag.

3 MS. AHMED: Continue to play.

4 (Exhibit 45a published.)

5 Stopping here.

6 Paused at 1:45.

7 BY MS. AHMED:

8 Q. Do you see any of the subjects that you were investigating
9 in this case here?

10 A. (Indicating).

11 MS. AHMED: And the witness has drawn a circle around
12 an individual in the middle who is standing in the background.

13 BY MS. AHMED:

14 Q. Who is that?

15 A. Mr. Parker.

16 MS. AHMED: Continue to play.

17 (Exhibit 45a published.)

18 Pausing here.

19 Paused at 1:49.

20 BY MS. AHMED:

21 Q. Again, Agent Draper, what is depicted here?

22 A. A group of individuals with rifles, some with tactical
23 vests on, together, and again, Josephine County, Oregon and
24 Mr. Parker is in the back center (indicating).

25 MS. AHMED: And the witness has drawn a circle around

1 an individual that's in the center holding a firearm and also
2 around the words on a banner, some of which are obscured which
3 the witness indicated read "Josephine County, Oregon."

4 Continue to play.

5 (Exhibit 45a published.)

6 Pausing here.

7 Going back to 1:57.

8 BY MS. AHMED:

9 Q. And, Agent Draper, what appears to be depicted in
10 Exhibit 157 [sic], generally? What does that look like?

11 A. Generally it appears to be some type of roadblock.

12 Q. And do you see individuals in this picture?

13 A. Yes, I do.

14 Q. And how are they dressed?

15 A. Camouflage attire.

16 MS. AHMED: Continuing to play.

17 (Exhibit 45a published.)

18 Pausing here.

19 Paused at 2 minutes and 1 second.

20 MS. AHMED:

21 Q. Looking at this scene, Agent Draper, do you see any of the
22 subjects that you had been investigating in this case?

23 A. Yes.

24 Q. And can you circle them and identify who they are.

25 A. (Indicating), Mr. Parker.

1 MS. AHMED: And the witness has circled an individual
2 in the center with a black hat and black T-shirt.

3 THE WITNESS: (Indicating), Mr. Drexler.

4 MS. AHMED: And the witness has circled an individual
5 slightly to the left of center wearing a red shirt and a
6 tan-ish colored hat.

7 MS. AHMED: Continue to play.

8 (Exhibit 45a published.)

9 Pausing here.

10 Paused at 2:04.

11 BY MS. AHMED:

12 Q. Is this just the back view of the same people?

13 A. It is.

14 Q. And do you see any of the subjects you were -- you had
15 been investigating?

16 A. At -- yes. Mr. Parker (indicating) and Mr. Drexler
17 (indicating).

18 MS. AHMED: And the witness has drawn a circle on an
19 individual who is on the left side in a black T-shirt
20 indicating Mr. Parker and another circle around the head of an
21 individual next to him in a red shirt indicating Mr. Drexler.

22 MS. AHMED: Continue to play.

23 (Exhibit 45a published.)

24 Pause here.

25 Paused at 2:17, or 2:18.

1 BY MS. AHMED:

2 Q. And, Agent Draper, what is depicted at 2:18 in the video?

3 A. A sign that says "White Hope Mine" below a light.

4 MS. AHMED: Continue to play.

5 (Exhibit 45a published.)

6 Pausing here.

7 Paused at 2:24.

8 BY MS. AHMED:

9 Q. Agent Draper, what is depicted here?

10 A. Three individuals with rifles. (Indicating), Mr. Drexler,
11 (indicating), and Mr. Parker.

12 MS. AHMED: And the witness has drawn a circle around
13 the individual on the left indicating Mr. Drexler and a circle
14 around the individual on the right indicating Mr. Parker.

15 BY MS. AHMED:

16 Q. And what do both Mr. Drexler and Mr. Parker appear to be
17 holding in this scene?

18 A. Rifles.

19 MS. AHMED: Continuing to play.

20 (Exhibit 45a published.)

21 Pausing here.

22 Going back to 2:37.

23 BY MS. AHMED:

24 Q. Do you see any of the subjects you've been following in
25 this case in this?

1 A. (Indicating).

2 MS. AHMED: And the witness that is drawn a circle
3 around an individual who is standing.

4 BY MS. AHMED:

5 Q. And who is that?

6 A. Mr. Drexler.

7 Q. And what does he appear to be wearing?

8 A. A 3% of Idaho T-shirt.

9 MS. AHMED: Continuing to play.

10 (Exhibit 45a published.)

11 Pausing here.

12 Paused at 2:40.

13 BY MS. AHMED:

14 Q. Do you see two individuals in this scene?

15 A. Yes.

16 Q. Can you identify them?

17 A. (Indicating), Mr. Parker. (Indicating), Mr. Drexler.

18 MS. AHMED: And the witness has drawn a line under
19 the face of the individual on the left indicating Mr. Parker
20 and a line on the -- under the face of the individual on the
21 right indicating Mr. Drexler.

22 BY MS. AHMED:

23 Q. And how is Mr. Parker dressed in this scene?

24 A. He has a camouflage shirt on.

25 Q. And what is Mr. Drexler wearing in this scene?

1 A. A 3% of Idaho shirt.

2 MS. AHMED: Continue to play.

3 (Exhibit 45a published.)

4 Pausing here.

5 Paused at 2:46.

6 The witness has drawn a circle around an individual
7 that's squatting down.

8 BY MS. AHMED:

9 Q. Who is that?

10 A. Mr. Drexler.

11 MS. AHMED: Continue to play.

12 (Exhibit 45a published.)

13 Pausing at 2:49.

14 BY MS. AHMED:

15 Q. And do you see any of your subjects here?

16 A. (Indicating).

17 MS. AHMED: And the witness has drawn a circle around
18 the individual on the right.

19 BY MS. AHMED:

20 Q. Who is that?

21 A. Mr. Parker.

22 MS. AHMED: Continue to play.

23 (Exhibit 45a published.)

24 Going back one second to 2:54.

25 Paused at 2:54.

1 BY MS. AHMED:

2 Q. Agent Draper, do you see this image here?

3 A. Yes.

4 Q. And do you see any of the subjects you were investigating
5 in this case here?

6 A. (Indicating). Yes.

7 MS. AHMED: And the witness that is drawn a circle
8 around an individual who is standing on the top left.

9 BY MS. AHMED:

10 Q. Who is that?

11 A. Mr. Drexler.

12 MS. AHMED: And the witness has drawn a circle around
13 an individual who is second from the left, again, viewer's
14 left, squatting down.

15 BY MS. AHMED:

16 Q. Who is that?

17 A. Mr. Parker.

18 Q. And who is the individual to Mr. Parker's left, if you
19 know?

20 A. (Indicating) that one?

21 Q. Yes.

22 A. Mr. Blaine Cooper.

23 Q. And is this an image that Mr. Parker also shared on his
24 Facebook page that you previously viewed today?

25 A. Yes.

1 Q. And that was in relation to the White Hope Mine operation;
2 correct?

3 A. Correct.

4 Q. Also known as Operation --

5 MR. MARCHESE: Objection. Leading.

6 BY MS. AHMED:

7 Q. And what was the name of the operation?

8 A. Operation Big Sky.

9 MS. AHMED: Continue to play.

10 (Exhibit 45a published.)

11 Pausing here.

12 Paused at 3 minutes and 11 seconds.

13 BY MS. AHMED:

14 Q. Agent Draper, what is depicted here?

15 A. We've seen this photo already. There's three individuals
16 who appear to be engaged in some type of training based upon
17 their attire as well as it looks like a target for firearms
18 training behind them.

19 Q. And do you recognize any of your subjects in this image?

20 A. (Indicating). This is Mr. Parker.

21 MS. AHMED: And the witness has circled the head of
22 the person on the far left, viewer's left (indicating).

23 THE WITNESS: And this is Mr. Stewart (indicating).

24 MS. AHMED: And the witness has drawn a circle around
25 the head of the individual on the far right.

1 BY MS. AHMED:

2 Q. Now, is this also an image that Mr. Parker shared on his
3 Facebook page?

4 A. Yes.

5 Q. And this is, again, in the video that's Idaho 3% - an
6 Overview; correct?

7 A. Correct.

8 MS. AHMED: Continue to play.

9 (Exhibit 45a published.)

10 Paused at 3 here -- excuse me -- paused at 3:15.

11 BY MS. AHMED:

12 Q. And who is that person in the middle of the scene?

13 A. That's Mr. Parker.

14 Q. And what is he doing? What does he appear to be doing?

15 A. Appears to be engaged in firearms training.

16 Q. And what's he holding in his hand?

17 A. A handgun.

18 MS. AHMED: Continue to play.

19 (Exhibit 45a published.)

20 BY MS. AHMED:

21 Q. And the video ending at 3:20, do you see any of your
22 subjects that you've been investigating in this case in this
23 scene?

24 A. (Indicating).

25 MS. AHMED: And the witness has drawn a circle around

1 an individual who is kneeling second from the right, viewer's
2 right.

3 BY MS. AHMED:

4 Q. Who is that?

5 A. Mr. Parker.

6 Q. And what is he holding?

7 A. A rifle.

8 MS. AHMED: You can take that down. Thank you.

9 BY MS. AHMED:

10 Q. Now, Agent Draper, in the course of your investigation,
11 did you -- you reviewed several Facebook accounts; correct?

12 A. Yes, that's correct.

13 Q. And was there a large volume of pages in those Facebook
14 accounts?

15 A. Yes.

16 Q. And was the volume of information that you reviewed
17 generally voluminous?

18 A. Yes.

19 Q. And did you then create a summary to aid the jury in
20 understanding the -- the documents that you viewed?

21 A. I -- I assisted in that.

22 Q. Did you build upon a summary that had already been made in
23 this case?

24 A. Yes.

25 Q. And admitted in this trial?

1 A. Yes.

2 Q. And then did you add to that summary?

3 A. Yes.

4 MS. AHMED: And, Your Honor, may we publish both to
5 the witness and to counsel what's been marked as Exhibit 189?

6 THE COURT: Yes, you may.

7 (Exhibit 189 published to witness.)

8 BY MS. AHMED:

9 Q. And, Agent Draper, is this the summary that you added to?

10 A. Yes.

11 Q. And specifically, did you add content from the Facebook
12 accounts of Mr. Parker, Mr. Stewart, and Mr. Drexler?

13 A. Yes.

14 Q. And this is a multiple-page document -- summary; correct?

15 A. That's correct.

16 Q. In looking at -- can we go through all the pages?

17 And does this fairly and accurately reflect the
18 summary that you created to assist the jury?

19 A. The one I assisted in creating, yes.

20 MS. AHMED: Your Honor, the Government moves to admit
21 Exhibit 189.

22 (Exhibit 189 offered.)

23 THE COURT: Any objection to 189?

24 MR. TANASI: None from Stewart, Your Honor.

25 MR. MARCHESE: None from Parker.

1 MR. LEVENTHAL: No, Your Honor.

2 MR. PEREZ: No, Your Honor.

3 THE COURT: All right. Exhibit 189 will be admitted.

4 (Exhibit 189 received.)

5 MS. AHMED: May we publish, Your Honor?

6 THE COURT: Yes, you may.

7 (Exhibit 189 published.)

8 BY MS. AHMED:

9 Q. Agent Draper, starting with Page 1 of Exhibit 189, can
10 you -- on the right side, where it has a time, can you start
11 from there and read those entries down the page? First,
12 starting with the date and then those entries.

13 A. Yes, I will.

14 "April 7th, 2014. 9:17 a.m. Ryan Payne calls
15 Cliven Bundy's home phone.

16 "9:30 a.m. Ryan Payne calls Cliven Bundy's cell
17 phone.

18 "12:11 p.m. Ryan Payne calls Cliven Bundy's cell
19 phone.

20 "12:15 p.m. On Facebook, Payne messages
21 Rick Lovelien to call him.

22 "12:16 p.m. Rick Lovelien calls Ryan Payne.

23 "12:30 p.m. On Facebook, Rick Lovelien tells militia
24 leaders 'contact info to coordinate groups. Ryan Payne OMA,
25 406-560-2540. They have made live contact and are setting up

1 security ops.'

2 "8:50 p.m. Payne calls Cliven Bundy's cell phone.

3 "9:57 p.m. On Facebook, Jerry Burkhart messages
4 Carol Bundy, 'Significant units will likely be coming.'"

5 MS. AHMED: Can we turn to the next page.

6 BY MS. AHMED:

7 Q. And can you read the date and then the entries on this
8 page?

9 A. "April 8, 2014.

10 "10:12 a.m. On Facebook, James Lardy messages
11 Rick Lovelien he is going to Nevada with Payne's West Mountain
12 Rangers. Says he is 'going to fight with them' and is 'off to
13 war.'

14 "10:28 a.m. Rick Lovelien calls Ryan Payne.

15 "10:40 a.m. On Facebook, Lovelien messages
16 Ryan Payne. 'Do we have an exact location?'

17 "10:43 a.m. Ryan Payne calls Cliven Bundy's cell
18 phone.

19 "10:53 a.m. On Facebook, Lovelien messages
20 James Lardy. 'We are coordinating our efforts to get all units
21 together when they get there.'

22 "11:22 a.m. On Facebook, Ryan Payne messages
23 Lovelien the coordinates for the Bundy Ranch.

24 "12:01 p.m. Ryan Payne calls Cliven Bundy's home
25 phone."

1 Q. Is that 2:01 p.m.?

2 A. Correction. Yes. "2:01 p.m. Ryan Payne calls
3 Cliven Bundy's home phone.

4 "2:26 p.m. Ryan Payne calls Cliven Bundy's home
5 phone.

6 "8:37 p.m. OMA e-mails mobilization alert to over
7 200 supporters providing directions to the Bundy Ranch."

8 Q. Continuing to the next page. And please read the date and
9 the entries here.

10 A. "April 9, 2014.

11 "6:17 a.m. Ryan Payne calls Cliven Bundy's home
12 phone.

13 "11:08 a.m. On Facebook, Rick Lovelien searches for
14 and 'likes' Operation Mutual Aid's Facebook page.

15 "11:59 a.m. On Facebook, Payne messages Lovelien to
16 'give me a ring ASAP.'

17 "11:59 a.m. Rick Lovelien calls Ryan Payne.

18 "12:18 p.m. On Facebook, Rick Lovelien posts to MTRDF
19 group. 'We are now in direct contact with personnel at the
20 Bundy Ranch. I will be heading out shortly. There was a
21 direct request made by Mr. Bundy.'

22 "12:33 p.m. On Facebook, Carol Bundy issues public
23 status update. 'The Bundy family has requested aid from
24 militia groups including Operation Mutual Aid, 3%ers Club,
25 Freedom Fighters.'

1 "12:34 p.m. On Facebook, Carol Bundy issues a public
2 status update. 'Key Operation Mutual Aid coordinator is here
3 with us now.'

4 "12:36 p.m. On Facebook, Lovelien messages Nick
5 Witting to coordinate travel.

6 "Late afternoon. Las Vegas Review Journal releases
7 article and video of Ryan Payne, 'Militias mobilizing to
8 support embattled Clark County rancher and clash with federal
9 rangers.'

10 "7:40 p.m. Lovelien calls Nick Witting from Missoula
11 cell tower."

12 Q. Continuing to the next page. And please read the date and
13 the entries here.

14 A. "April 10th, 2014.

15 "1:55 a.m. OMA issues objectives via e-mail and
16 Facebook status update. 'In cohesion with Cliven Bundy.'
17 Objectives include 'return to Mr. Bundy's ranch the mounting
18 number of cattle which have been confiscated by BLM agents.'

19 "2:02 a.m. On Facebook, Rick Lovelien's sister,
20 Cheyenne Miller, posts OMA's 'objectives' to MD -- MTRF Group.
21 Received in Payne's e-mail.

22 "9:31 a.m. Mountain time. On Facebook, Eric Parker
23 shares public link to Las Vegas Review Journal" -- LVRJ --
24 "article and video of Ryan Payne entitled 'Militias mobilizing
25 to support embattled Clark County rancher in clash in federal

1 rangers.'

2 "9:48 a.m. Now in Nevada, Rick Lovelien calls
3 Ryan Payne.

4 "11:00 a.m. On Facebook, Cheyenne Miller posts to
5 MTFDF group. Rick Lovelien is -- correction -- Rick Lovelien
6 'is on site at the Bundy Ranch.'

7 "12:24 p.m. On Facebook, Ryan Payne messages Texas
8 Militia leader, 'Montana has most guys. Utah, Nevada,
9 unorganized. Idaho, many more en route. I am designated
10 liaison for militia via Cliven Bundy. All information
11 disseminated is vetted by him.'

12 "3:30 p.m., approximately. Bundy Ranch Facebook
13 posts, 'Attention all militia groups, the Bundy family has a
14 militia coordinator. His name is Ryan Payne.'"

15 Q. Continuing to the next page. Can you read the date and
16 also the entries on this page.

17 A. "April 11th, 2014.

18 "10:22 a.m. On Facebook, Cheyenne Miller tells MTFDF
19 group Rick Lovelien is 'running the security detail at the
20 protest site on the Bundy Ranch.'

21 "6:38 p.m. Mountain. On Facebook, Parker publicly
22 shares article 'Armed militias head to Nevada ranch as populist
23 showdown with federal government teeters on brink of violence
24 bloodshed.'

25 "7:30 p.m., approximately. On Facebook, 'We support

1 Cliven Bundy' page posts Bundy's cattle will be taken to the
2 Euclid stockyards and gives contact phone number.

3 "7:36 p.m. Eric Parker makes telephone calls to
4 Euclid stockyards. Parker's telephone is using a Nevada cell
5 tower at that point.

6 "8:34 or 9:34 p.m. Mountain or Pacific. Eric Parker
7 sends message to 'Support Cliven Bundy Facebook page' stating,
8 'We are going to be showing up late tonight. Is that okay, at
9 around 11:30?'"

10 Q. Continuing to the next page. And can you read the date on
11 this page as well as the entries on this page?

12 A. "April 12th" -- correction. Yes. "April 12th, 2014.

13 "7:32 a.m. Ryan Payne calls Cliven Bundy's home
14 telephone.

15 "9:40 p.m., approximately. Cliven Bundy meets
16 Sheriff Gillespie on stage and tells him to disarm federal
17 agents in one hour.

18 "11 o'clock a.m., approximately. Cliven Bundy speaks
19 to crowd, including Payne, Lovelien, Parker, Stewart and
20 Drexler, about shutting down the freeway and going to get the
21 cattle.

22 "11:24 a.m. On Facebook, Eric Parker posts status
23 update. 'Bundy gave the sheriff one hour to disarm the BLM.
24 He did not reply. We are now going to free the cattle by any
25 means. The sheriff claimed that the BLM is standing down, but

1 offered no proof. This is when Mr. Bundy gave him the
2 do-it-or-else. We will not be lied to.'

3 "12:58 p.m. On Facebook, Steven Stewart posts status
4 update. 'It's been a long day. What's up why I have a little
5 earlier with a really high powered scope show me F*****
6 awesome.'

7 "1:02 p.m. On Facebook, Steven Stewart posts status
8 update. 'First they said they were going to release everything
9 and leave. Then they held the gates to Gold Butte and
10 threatened us with chemicals. Then we pushed forward and they
11 had to back off. They are releasing the cows now. BLM is
12 leaving.'

13 "2:59 p.m. On Facebook, Eric Parker posts status
14 update. 'We have happy cows' -- correction. 'We have cows.
15 Happy cows. Free cows. American cows raised in an open range
16 not a cage.'

17 "4:07 p.m. Eric Parker sends Facebook message. 'It
18 took a standoff,' after being asked if the feds got scared when
19 he got there and backed off.

20 "April 17th, 2014.

21 "5:09 p.m. Mountain time. Scott Drexler posts a
22 message on Facebook regarding a picture of Drexler on the
23 bridge on April 12th, 2014. In response to a comment that
24 bridges are choke points, Drexler responded, 'That's why we use
25 them to shut down the freeway.'"

1 MS. AHMED: Thank you, Agent Draper.

2 Your Honor, I have nothing further on direct. I'll
3 pass the witness.

4 THE COURT: Cross?

5 MR. TANASI: Thank you, Your Honor.

6

7 CROSS-EXAMINATION OF SARAH DRAPER

8 BY MR. TANASI:

9 Q. Good afternoon, Special Agent Draper.

10 A. Good afternoon.

11 Q. I'm Rich Tanasi. I represent Steven Stewart (indicating).

12 A. Thank you.

13 Q. I have a few questions for you on cross. Okay?

14 A. Very good.

15 Q. All right. You testified on direct exam regarding a
16 video -- it was Exhibit 119 -- taken by Steven Stewart.

17 Do you recall that?

18 A. Yes.

19 Q. Okay. And do you recall that in that video Mr. Stewart
20 was on the northbound bridge. Fair?

21 A. He was on the bridge. I don't know what direction the
22 traffic was.

23 Q. Okay. He was on a bridge?

24 A. Correct.

25 Q. In a bridge in Bunkerville; correct?

1 A. Correct, yes.

2 Q. All right. And traffic at that point was actually driving
3 past him; right?

4 A. Yes.

5 Q. Okay. And some of that traffic was BLM --

6 A. Correct.

7 Q. -- folks; right?

8 A. Yes.

9 Q. And so that was the point in the day where the BLM was
10 driving away; correct?

11 A. Correct.

12 Q. All right. And in that video, my client was making
13 different comments; right?

14 A. Yes.

15 Q. Okay. Mr. Stewart was saying things to the effect of they
16 threatened us with chemicals to back down; correct?

17 A. Yes.

18 Q. But we pushed forward; correct?

19 A. Correct.

20 Q. Okay. They couldn't gas us?

21 A. Correct.

22 Q. Correct?

23 We were going to be martyrs if they wanted to
24 continue this; correct?

25 A. Correct.

1 Q. All right. Now, you are a trained law enforcement agent;
2 correct?

3 A. Correct.

4 Q. How many years of training do you have?

5 A. Training -- years of training or years of experience?

6 Q. Years of training to start.

7 A. Probably -- years of training total in my career? I'm
8 sorry. I don't know how to answer that question.

9 Q. Sure.

10 How many hours of training would you --

11 A. Oh . . . straight training, initially four to five months
12 and then many hours a year thereafter.

13 Q. Okay. And as part of that training, isn't it true you're
14 trained, at least in part, to identify threats?

15 A. Yes.

16 Q. Okay. You're also trained to identify violence?

17 A. Correct.

18 Q. Okay. Now, wouldn't you agree with me that in that
19 statement that we heard from Mr. Stewart, he didn't appear like
20 he was threatening anybody at that time; correct?

21 A. At that time, no.

22 MS. AHMED: Objection. Calls for speculation.

23 MR. TANASI: Your Honor, she's laid out her
24 ability --

25 MS. AHMED: Also calls for a legal conclusion. I

1 apologize for speaking over counsel. Also calls for a legal
2 conclusion.

3 MR. TANASI: Your Honor, she's laid out her ability
4 as a law enforcement agent to identify threats and to identify
5 violence.

6 THE COURT: The second objection is that it's calling
7 for a legal conclusion which is ultimately up to the jury to
8 decide.

9 MR. TANASI: Again, threatening behavior, Your Honor.
10 I'm not asking her to conclude whether a threat occurred in the
11 case or not.

12 THE COURT: Let's go to sidebar.

13 (Proceedings at sidebar out of the hearing of the jury:)

14 THE COURT: All right. So the objection was by the
15 Government. The question was whether this line of questioning
16 is calling for legal conclusion from the witness.

17 MR. TANASI: Yes, ma'am. And I was saying --

18 THE COURT: Go ahead, Mr. Tanasi. I called the
19 sidebar because I didn't want to limit your ability to
20 respond --

21 MR. TANASI: I understand.

22 THE COURT: -- to the objection because we were in
23 front of the jury.

24 MR. TANASI: Understood.

25 THE COURT: So now you're free to go ahead.

1 MR. TANASI: Thank you.

2 I would say that it doesn't call for a legal
3 conclusion because I'm not asking her to go to that -- that end
4 to say in this case, did Mr. Stewart threaten anybody. I'm not
5 asking her to go that far. I'm saying in this instance, as
6 he's videotaping the BLM drive by, on the videotape, is he
7 threatening in any way? His behavior, is it threatening in any
8 way as a characteristic of his behavior. And my next question
9 was whether it sounded violent in any way and violence -- which
10 I didn't get to yet, but that's where I was getting next --
11 also doesn't call for a legal conclusion. It's his behavior
12 and her trained law enforcement experience. Did it sound like
13 or appear to her that it was threatening or violent in that
14 time frame, not overall in the case.

15 MS. AHMED: Your Honor, we would re- -- reiterate our
16 objection that it calls -- it is calling for a legal
17 conclusion. You're asking if someone's making a threat.
18 That's a question that is for the jury. Also, it's asking her
19 for her opinion about these things and she's not indicated that
20 she's in any way qualified to make expert opinions about a
21 video that she observed. She's not a percipient witness. She
22 wasn't there that day. She didn't observe his behavior and his
23 context in full. Her -- I don't know how much her objection --
24 her -- excuse me -- her investigation into that day would allow
25 her to weigh in on this question and again, she's not a

1 percipient witness. She wasn't a victim. She wasn't present
2 that day, and it is ultimately calling her -- asking her to
3 make an opinion about things that she's not qualified to do.

4 MR. TANASI: On the qualifications, Your Honor, if I
5 can just be heard.

6 On the qualifications argument, she testified to the
7 two questions that I asked her prior as a trained law
8 enforcement expert or trained law enforcement individual -- not
9 expert, but trained law enforcement individual -- she's been
10 trained to identify threats and violence.

11 MS. AHMED: Your Honor, may I just add one more
12 thing? It's also -- I would say that in terms of the
13 threatening and the violence, it's not relevant because at this
14 point it's clear that the BLM has already backed down and
15 they're leaving. He's, if anything, celebratory, so it's an
16 irrelevant question.

17 MR. TANASI: Your Honor --

18 THE COURT: So, the charge relating to the threat,
19 the assault, is not the leaving of the BLM or the portion of
20 the -- I think she called it -- somebody called it a convoy --
21 the portion that we're looking at in the video where the BLM is
22 leaving. So you're saying that that is not the assault, so
23 it's confusing to the jury --

24 MS. AHMED: It is confusing to the jury.

25 THE COURT: -- what is the threat or the assaulting

1 behavior that the Government is alleging?

2 MS. AHMED: Correct.

3 THE COURT: All right. Well, I agree that it's a
4 legal conclusion and as far as her ability or her expertise,
5 she said she is, but I don't know that there's a foundation
6 actually for me to find that she is. Perhaps it's not
7 necessary for me to even make that kind of a call. I mean,
8 certainly there's not enough information for me to say that she
9 is.

10 I -- I thought that it was very misleading for the
11 jury, so -- and confusing to them as well. So, I'm going to
12 sustain the objection.

13 MR. TANASI: Okay. And does that also go for the
14 questions that I had coming up, I guess, essentially with
15 respect to whether he sounded violent in that statement in that
16 moment? Where, in the last trial, she indicated, no, he did
17 not.

18 MS. AHMED: Your Honor, we would make the same
19 objection to that line of questioning for the same reasons that
20 we just argued and in that -- and just so the record is clear,
21 in the last trial Mr. Tanasi gave her two options and said, is
22 it this or is this and she said if I have to choose between
23 those two options, I would say it's not. The question here
24 today is slightly different. It's just, generally, is this a
25 threat? Is this violent?

1 MR. TANASI: I can ask it the exact way as I did in
2 the last trial, Your Honor.

3 MS. AHMED: Again, Your Honor, ultimately we'd make
4 the same objections, that it's confusing, it's irrelevant, it's
5 after the BLM's already left and been backed down and, so, it's
6 therefore, irrelevant and also asking for an opinion.

7 THE COURT: Well, I agree it seems irrelevant.
8 Violence is not an element that's charged to have taken place
9 during the exit of the BLM, at least not in this video, not on
10 the bridge. I'm not sure -- I'm trying to remember if there
11 was -- I think in the other trial if they said something or not
12 about the -- the property that was still there, if it was --
13 something happened to it or not, but in any case, it's not part
14 of the charge, even if there was some kind of vandalism or
15 something that happened to any of the assets. So I don't see
16 that it's relevant. It's confusing for the jury. It's still
17 . . . not clear to me that she's really qualified in the sense
18 that the Court would need to qualify her to be able to make
19 that opinion.

20 MR. TANASI: If I could just add one more thing for
21 the record.

22 My understanding of the Government's theory is, and
23 this is in response to when we make the argument that the
24 operation was over, what they -- the Government has proffered
25 is that the operation wasn't over because part of the operation

1 was the BLM securing the cattle or realizing they couldn't
2 secure the cattle and ultimately leaving. The whole BLM
3 operation, as we've tried to argue, is not over and the
4 Government extends that to keep us from getting into the
5 argument that the operation was over. And so, in this instance
6 I'm saying that the operation, under the Government's theory --

7 THE COURT: I think you misrepresent what the
8 Government's position is, first of all. My understanding of
9 the Government's position is that the -- the roundup, the
10 trapping of the cattle, that portion of the operation was over,
11 but that the cattle that had already been trapped and tagged
12 and penned were still property of the U.S. government and that
13 they did not ever cease that portion of the operation; they
14 still intended on transporting them to the auction and selling
15 them.

16 MR. TANASI: Well, what I'm -- what I'm offering
17 though, Your Honor, is as the BLM is driving away, they're
18 still acting in their official duties, in their official
19 capacities driving away and the Government has extended that
20 umbrella to include what is happening right now in the video,
21 which is the government driving away. The BLM's operation has
22 been extended till today, essentially. And so, I'm saying that
23 that driving away is just a part of that operation that the
24 Government's alleging my client obstructed or threatened or
25 otherwise assaulted them.

1 THE COURT: That the Government's operation is
2 extended until today?

3 MR. TANASI: Under the conspiracy theory.

4 THE COURT: No. I think it's till March of 2016 was
5 the conspiracy charge.

6 MS. AHMED: That's correct, Your Honor.

7 MR. TANASI: To the date of the -- that's correct.

8 MS. AHMED: But in any event, the -- the way in which
9 they left and when they left, it was not -- we're not saying
10 that that's a part of the operation because clearly, they left
11 under duress and not as they had planned with the cattle. So,
12 I -- I don't know if I'm just not following the argument, but
13 that -- we're not saying that their departure at that time
14 that's depicted in the video was a part of the operation,
15 ongoing operation; they left in spite of the operation under
16 duress.

17 THE COURT: So, did you have a motion? I think I
18 lost track of where this started.

19 MR. TANASI: Yeah. No. Where I was going is that
20 what -- that's why it's relevant. I might have lost track for
21 a second, too, but that's why I believe the line of questioning
22 is relevant, because the Government has extended the operation
23 through just being in the wash until the end of the conspiracy,
24 essentially, and especially with that portion of them driving
25 away. They're acting in their official duties, in their

1 official capacity, which they allege is -- our clients have
2 obstructed them while they've been acting in their official
3 duties.

4 THE COURT: Okay. So I think you're confusing and
5 conflating operation with conspiracy. The acts of the
6 conspiracy versus the operation itself.

7 So I -- I understand, and for the record, I think
8 you've clarified it as much as we can --

9 MR. TANASI: Understood.

10 THE COURT: -- outside the presence of the jury so
11 that you could speak more freely.

12 The ruling stands.

13 MR. TANASI: Understood. I'll move on. Thank you.

14 (Proceedings within hearing of the jury:)

15 THE COURT: All right. So the objection was
16 sustained.

17 Go ahead and move on, Mr. Tanasi.

18 MR. TANASI: Thank you, Your Honor.

19 Brian, if you could please publish for the jury
20 Exhibit 95.

21 (Exhibit 95 published.)

22 BY MR. TANASI:

23 Q. All right. Okay. Ma'am, do you see Exhibit 95?

24 A. Yes, I do.

25 Q. All right. With respect to Exhibit 95, this isn't

1 something you testified about today; correct?

2 A. Not today.

3 Q. This particular exhibit, this was earlier this week;
4 correct?

5 A. Correct.

6 Q. All right. So I just want to take you back there.

7 This particular post, it indicates that
8 "Steven Stewart had relayed to me what was going on through
9 binoculars"; correct?

10 A. Yes.

11 Q. Okay. So this post indicates that Steven Stewart had
12 binoculars; correct?

13 A. That's what it says, yes.

14 Q. Okay. And this was posted on September 19 -- or
15 September 16th, 2014; correct?

16 A. Correct.

17 Q. Okay. And the events in Bunkerville, this took place in
18 April of 2014; correct?

19 A. That's correct.

20 Q. All right. So this is some months after. Fair? Five?

21 A. Yes, five. Yes.

22 Q. Okay. All right. All right. So, in this particular
23 post, you can't tell from this post where Mr. Parker or
24 Mr. Stewart were located when they were describing this post;
25 right?

1 A. Not that specific sentence, but the context indicates to
2 me.

3 Q. I understand.

4 A. Yeah.

5 Q. And it indicates to you, from what I understand of your
6 testimony, is that it's sometime or someplace in Bunkerville on
7 the 12th; right?

8 A. Yes.

9 Q. Okay. But drilling down further, from this particular
10 post, fair to say you don't know where exactly that took place;
11 right? You don't know whether it's Post 1. Fair?

12 A. I'm sorry. I don't know whether it's what?

13 Q. You don't know whether it's Post 1 in Bunkerville; right?

14 A. Can you familiarize me, please, with Post 1?

15 Q. Okay. Are you familiar with the wash in Bunkerville?

16 A. Yes.

17 Q. Okay. Are you familiar with the northbound and the
18 southbound bridge in Bunkerville?

19 A. Okay. Correct. Yes.

20 Q. All right. And you're familiar with the BLM erecting a
21 Post 1; correct?

22 A. Yes. Okay.

23 Q. And Post 2?

24 A. Right. Okay.

25 Q. And then across from the Post 1, you're familiar in your

1 investigation with the parking lot; correct?

2 A. Yes.

3 Q. All right. So, you, from this post, fair to say, can't
4 determine, through your investigation, where they were standing
5 when they're talking about this particular set of binoculars;
6 correct?

7 A. From -- from that sentence, that's correct.

8 Q. Okay.

9 MR. TANASI: All right. Brian, if you could please
10 bring up Number 96.

11 (Exhibit 96 published.)

12 Actually, strike that, Brian. I apologize.

13 Number 97.

14 (Exhibit 97 published.)

15 BY MR. TANASI:

16 Q. Okay. Talked about this post today; correct?

17 A. Yesterday.

18 Q. All right.

19 A. Yes, yesterday.

20 Q. Fair to say this is not Steven Stewart; right?

21 A. Correct.

22 Q. All right.

23 MR. TANASI: And now if we can go to 105, please,
24 Brian.

25 (Exhibit 105 published.)

1 BY MR. TANASI:

2 Q. All right. In this particular picture, do you see what
3 I'm circling here (indicating)?

4 A. Yes.

5 Q. Okay. What does that appear to be?

6 A. Appears to be the barrel of some type of rifle.

7 Q. All right. And that rifle's sitting there without anyone
8 holding it; correct?

9 A. Correct.

10 Q. All right.

11 MR. TANASI: If you could, please, Brian, bring up
12 118.

13 (Exhibit 118 published.)

14 MR. TANASI: All right. Actually, if we can just
15 take a look at the picture, please, Brian.

16 BY MR. TANASI:

17 Q. All right. So in this particular picture, this is a
18 picture of the wash; right?

19 A. Yes.

20 Q. In between the northbound and the southbound bridge;
21 correct?

22 A. Correct.

23 Q. All right. And over here (indicating), this is the gate
24 that was underneath the wash; right?

25 A. Yes.

1 Q. All right. And back here (indicating), who does that
2 appear to be?

3 A. Appear to be BLM vehicles.

4 Q. Okay. In this particular post -- Brian, if you could
5 scroll down, please, so we can take a look at what time -- what
6 time was this particular post made?

7 A. So this would have been uploaded -- I don't know what time
8 it was taken -- but it would have been uploaded April 12th,
9 2014, at approximately 1:33 p.m. Pacific time.

10 Q. Okay. Now -- go ahead, Brian. You can take that down --
11 today we've heard testimony concerning Sugar Pine operation;
12 right?

13 A. Yes.

14 Q. And that took place at some point after April 12th, 2014;
15 right?

16 A. Correct.

17 Q. All right. And we also, or interchangeably, that Sugar
18 Pine also was referred to as the Gold Rush.

19 Is that fair?

20 A. Correct.

21 Q. All right. So that's one and the same --

22 A. Correct, yes.

23 Q. -- when we talk about the operations?

24 All right. Okay. Through the course of your
25 investigation you didn't determine or learn anything that lent

1 itself to believe that Mr. Stewart was at all involved with
2 Sugar Pine or Gold Rush; correct?

3 A. Correct.

4 Q. All right. And then we also talked about an Operation Big
5 Sky.

6 Do you remember that?

7 A. Correct.

8 Q. All right. And same question. Through the course of your
9 investigation, you didn't learn anything that would lend itself
10 to Mr. Stewart's involvement in the Operation Big Sky; correct?

11 A. Correct.

12 Q. All right.

13 MR. TANASI: Brian, if you could bring up 189,
14 please.

15 (Exhibit 189 published.)

16 BY MR. TANASI:

17 Q. All right. So, going through this again, ma'am, on the
18 first page that we're looking at, there is nothing on the
19 right, when we go through that time line, that involves
20 Steven Stewart; correct?

21 A. Correct.

22 MR. TANASI: All right. Brian, if we can go to the
23 next page.

24 BY MR. TANASI:

25 Q. Same question. On April 8th, 2014, there's no

1 communication on the right that involves Steven Stewart;
2 correct?

3 A. Correct.

4 Q. All right.

5 MR. TANASI: If we can take it with the next page,
6 please, Brian.

7 BY MR. TANASI:

8 Q. Again, nothing on the lines in that time line that
9 involves Steven Stewart; correct?

10 A. Correct.

11 MR. TANASI: All right. If we can go to the next
12 page, please, Brian.

13 BY MR. TANASI:

14 Q. April 10th, 2014. Nothing on this particular page with
15 this time line that involves Steven Stewart; correct?

16 A. Correct.

17 Q. All right.

18 MR. TANASI: And if we can go to the next page,
19 please, Brian.

20 BY MR. TANASI:

21 Q. All right. The time line entry on the bottom right-hand
22 corner, the 8:34, 9:34.

23 Do you see that there?

24 A. Yes, I do.

25 Q. All right. That says, "We are going to be showing up late

1 tonight"; correct?

2 A. That's correct.

3 Q. And it says, "Is that okay, at around 11:30"; correct?

4 A. Yes, that's correct.

5 Q. All right. So, fair to say that's Eric Parker indicating
6 he's going to be showing up somewhere around 11:30 that
7 evening?

8 A. Yes. That's fair to say.

9 Q. And there's a "we" there; right?

10 A. A "we."

11 Q. But it says 11:30; right?

12 A. Yes. Yes.

13 Q. All right. All right.

14 MR. TANASI: Brian, if you could bring up 120,
15 please.

16 (Exhibit 120 published.)

17 BY MR. TANASI:

18 Q. Okay. This particular post, this is from Steven Stewart;
19 correct?

20 A. That's correct.

21 Q. Okay. He indicated he went -- helped Cliven Bundy get his
22 cattle back; right?

23 A. Yes.

24 Q. Okay. He says, "Straight there, straight back, two
25 hours"; right?

1 A. He says, "two hours of sleep in between," correct.

2 Q. "Two hours of sleep in between"; correct?

3 A. Yes. Um-hmm. That's what he says.

4 Q. Okay.

5 MR. TANASI: Brian, take that down.

6 121, please, Brian.

7 (Exhibit 121 published.)

8 BY MR. TANASI:

9 Q. All right. This particular post regarding the
10 Honorable Judge Lloyd D. George, do you see that there?

11 A. Yes.

12 Q. All right. The date on that post is April 15th, 2014;
13 correct?

14 A. Correct.

15 Q. All right. And that's three days after the events in
16 Bunkerville; right?

17 A. Yes.

18 Q. Okay. Thank you.

19 MR. TANASI: Brian, could we just go back to 189 for
20 a moment.

21 Go to the last page, please.

22 (Exhibit 189 published.)

23 BY MR. TANASI:

24 Q. All right. You see the 12:58 entry?

25 A. Yes, I do.

1 Q. Okay. And -- and that is a post from Steven Stewart where
2 he says, "It's been a long day. What's up why I have a little
3 earlier with a really high powered scope. Show me F*****
4 awesome"; right?

5 A. Right.

6 Q. All right. So, he's indicating in that post that somebody
7 showed him a high powered scope. Fair?

8 MS. AHMED: Objection. Calls for speculation.

9 THE COURT: She can answer the question, if -- if she
10 knows. If she has personal knowledge.

11 THE WITNESS: I -- I don't interpret that statement
12 that way.

13 BY MR. TANASI:

14 Q. You don't?

15 A. No.

16 Q. Okay. But he used the word "show"; right? "Show me the
17 scope." Fair?

18 MS. AHMED: Objection. Misstates the -- it doesn't
19 say "show me the scope."

20 BY MR. TANASI:

21 Q. Again, "What's up" --

22 THE COURT: You want to just rephrase the question?

23 MR. TANASI: I can -- I can do that. I apologize.

24 I'll just read it just like it is to make sure we're on the
25 same page. "What's up why I have a little earlier with a

1 really high powered scope. Show me F*** awesome"; right.

2 THE WITNESS: Those are the words, but that's not my
3 interpretation.

4 BY MR. TANASI:

5 Q. That's not your interpretation?

6 A. No.

7 Q. How do you interpret it?

8 A. I read this, I believe that there's a mistake in the
9 initial word and some missing -- one of the initial words and
10 some missing punctuation.

11 Q. Where is that?

12 A. The word -- excuse me. Sorry. The word "have." This
13 would make sense if it said, "I was a little earlier with a
14 really high powered scope" -- then some type of comma or some
15 type of punctuation -- "show me F awesome."

16 Q. Okay.

17 A. That's how I would interpret that, but that's not what the
18 words say.

19 Q. Understood.

20 Prior to today's testimony, have you had an
21 opportunity to meet with the U.S. Attorney's Office?

22 A. Yes, I have.

23 Q. How many times?

24 A. Total, probably nine or 10.

25 Q. Nine or 10 times?

1 A. Um-hmm.

2 MR. TANASI: Okay. Thank you.

3 Pass the witness.

4 THE WITNESS: Thank you.

5 THE COURT: All right. Well, let's go ahead and take
6 our overnight break.

7 Aaron, are we back at 9:00 tomorrow?

8 COURTROOM ADMINISTRATOR: 10 o'clock, Your Honor.

9 THE COURT: 10:00 again?

10 All right. So tomorrow we'll be starting again at
11 10 o'clock.

12 I do remind the jury during this overnight break that
13 you are not to speak about this case with anyone. Not to your
14 spouse, employer, neighbors, friends, family. You can tell
15 them, yes, we're still in trial. Yes, I'm still a juror. It's
16 not over yet, but please do not talk to them about the case at
17 all.

18 Also, please do not read or listen to or view
19 anything that touches upon this case in any way nor attempt to
20 perform any research or independent investigation. If you do
21 have a question, please write them down on the forms provided.

22 And do not form any opinion until after you have
23 heard all the testimony, reviewed the evidence. We will
24 provide you -- I will provide you with the jury instructions
25 that are the legal instructions that will guide you. You will

1 apply to them the facts as you find them, and then you will
2 hear closing arguments. After closing arguments, then I'll
3 excuse you to begin your deliberation process. You recall when
4 you took your oath that's a duty, your duty to deliberate. So
5 that's the duty to discuss your opinions with each other and
6 attempt to reach a verdict.

7 So, at this time we'll go ahead and excuse our jury
8 and welcome them back at 10:00 a.m.

9 And so we also want Ms. Draper to return at
10 10:00 a.m.; is that right?

11 MS. AHMED: Yes, Your Honor.

12 THE COURT: Yes?

13 All right. So --

14 THE WITNESS: Yes.

15 THE COURT: Thank you.

16 So the jury is free to leave and then Special Agent
17 Draper, if you'll please return again tomorrow at 10:00 a.m. so
18 we can begin where we left off with cross.

19 THE WITNESS: Okay. Thank you.

20 (Jury excused from courtroom.)

21 THE COURT: All right. Off the record.

22 MR. LEVENTHAL: Your Honor, before we go off record,
23 can I just make a record real quick while we're here? I didn't
24 want to do it at sidebar because it was sort of out of context.

25 THE COURT: Go ahead.

1 MR. LEVENTHAL: The Government --

2 THE COURT: You may be excused --

3 THE WITNESS: Thank you, Your Honor.

4 THE COURT: -- Agent Draper. That's fine.

5 (Witness excused.)

6 THE COURT: We can all sit down, or if you're tired
7 of sitting and you want to stand, that's okay too, but . . .

8 MR. LEVENTHAL: The Government elicited testimony
9 today regarding Timothy McVeigh and it was more in the line --
10 the line of what had -- was written on Mr. Parker's Facebook
11 that had zero to do with my client, but it went even further
12 than that, it went deeper in terms of they elicited from
13 Sarah Draper who was Timothy McVeigh and not only that, but
14 what he did. All it said was McVeigh and based on that,
15 McVeigh, they elicited from that witness that it was
16 Timothy McVeigh, that he was a bomber, that he bombed a
17 building, that he -- they went through a litany of different
18 things that Timothy McVeigh did, somehow comparing
19 Timothy McVeigh to these individuals here.

20 I would also couple that with testimony that they
21 elicited from a BLM agent that indicated that what they were
22 doing was like what terrorists in Afghanistan, I believe is
23 what he said, did when he saw them up on the bridge. We
24 objected to that and we objected to this.

25 That is highly prejudicial, way more prejudicial than

1 just reading -- which is what I thought was going to happen
2 when the Court allowed it to come in -- reading McVeigh and
3 then on. But to go into deeper details than that, I think
4 that's so prejudicial, I don't think we can erase that from the
5 minds of the jury so at this point, I would be asking for
6 either a mistrial, one, a limiting instruction, two, that it
7 doesn't come in on Mr. Drexler, because he had nothing to do
8 with that post, he was not tagged on it. He -- there's no
9 inference that he read it or knew about it or anything of that
10 nature, but to elicit that kind of testimony, I think it calls
11 for a mistrial or at the least, at the very minimum, a limiting
12 instruction saying that it does not come in under -- for -- for
13 Mr. Drexler. That's -- that would be my motion.

14 THE COURT: All right. Well, I did give a limiting
15 instruction as to what purpose the information could be
16 considered, for intent, motive, and absence of mistake.

17 What's the Government's response?

18 MS. AHMED: Your Honor, just to clear the record.
19 There was not a lengthy line of questioning on this point. The
20 con- -- the post indicated that -- was speaking about McVeigh
21 and it referenced that he was set up by the federal -- by the
22 FBI and that he got himself caught and set the movement back.
23 And so, to give context to that post, I asked the witness who
24 Mr. McVeigh was and she explained who he was and said his name
25 and that he was the Oklahoma City bomber. And so, Your Honor,

1 that's -- that doesn't -- certainly is not so overly
2 prejudicial.

3 As the Court indicated earlier, these posts are
4 prejudicial, which is why we're putting them in; they're not
5 unfairly prejudicial. And since the post was invoking his
6 actions and referencing his actions and comparing his actions,
7 it was relevant information and it was, again, not overly
8 prejudicial and certainly doesn't rise to the level of a
9 mistrial. And as the Court indicated, therefore already a
10 limiting instruction given in this case on that particular
11 post.

12 So -- and in terms of Mr. Leventhal's further points,
13 those are all clearly things that he could cross-examine the
14 witness on to establish that that's not Mr. Drexler's post, he
15 didn't write those words, et cetera.

16 So, again, Your Honor, consistent with the Court's
17 earlier rulings, Mr. Leventhal can elicit that same information
18 through cross-examination. It certainly isn't something that
19 he can't clear up and it doesn't call for a mistrial.

20 (Counsel conferring.)

21 MR. MARCHESE: And, Your Honor, and just for the
22 record, Parker would join Mr. Drexler's motion. Obviously, we
23 had a long colloquy yesterday in reference to this post coming
24 in and our -- my feelings in reference to Timothy McVeigh and
25 that he's an overly prejudicial individual so just the post

1 itself, I felt, was overly prejudicial and then to somehow
2 qualify it by who is Timothy McVeigh and somehow add fuel to
3 the fire and getting more information about Mr. McVeigh out at
4 this trial, I think Mr. Drexler is right in bringing this
5 motion and we join.

6 THE COURT: All right. Well, in regards to the --

7 MR. TANASI: Stewart joins.

8 THE COURT: -- words, they were invoked by Mr. Parker
9 in the post. He's the one who has the name McVeigh in the
10 post. He's using that name and its connotation to explain and
11 express his disappointment with the failure of McVeigh and the
12 distinction between his actions and -- by his I mean -- so, the
13 difference between McVeigh's actions or failures and the
14 successes that he, Mr. Parker, completed. So, I think that the
15 . . . it's clearly relevant and admissible against Mr. Parker.
16 I think the bigger question, and the point that Mr. Leventhal
17 is trying to make, is whether or not the spillover effect, as
18 Mr. Tanasi usually brings up -- to give you credit for bringing
19 that up -- but, is the spillover effect, if any, even though it
20 is a co-conspirator statement, is it, you know, so prejudicial
21 that it cannot simply be cured on cross-examination with the
22 other individuals. The Court has found that the statement was
23 provided during the conspiracy, in furtherance of the
24 conspiracy, as part of the conspiracy, recruitment,
25 glorification, encouraging others and so forth.

1 So, if you'll respond to that portion, I think,
2 Ms. Ahmed, I think that's the . . . the only thing that I think
3 you didn't mention.

4 MS. AHMED: Your Honor, that's exactly it. The post
5 ends with that's -- you know, essentially that's what I've done
6 so either get active or shut up. And so, again, it's -- these
7 are the things that we did. He claims that they were
8 successful and describes how they were successful and it's all
9 in the context of furthering this movement in a positive way.
10 And so, again, it -- he is specifically referencing the
11 April 12th, 2014, event in Nevada as well as the other two
12 operations. And so, it's that same continuing conspiracy in
13 which they are glorifying and recruiting others as the Court
14 referenced. And so, it would be admissible as to all of these
15 defendants under 801(d)(2)(E).

16 MR. PEREZ: And, Your Honor, just for the record, on
17 behalf of Mr. Lovelien, I would join in Mr. Leventhal's motion
18 and his objection. I mean, I've said numerous times, I mean,
19 none of this has anything to do with Mr. Lovelien. He's not a
20 3%er. And so, just for the record, I'm making that objection.

21 MR. LEVENTHAL: And going back to whether or not I
22 can clean up on cross-examination --

23 THE COURT: All right. Well, I'm -- I'm going to
24 deny your Motion for a Mistrial and deny your motion for a more
25 limiting or clarifying instruction until after

1 cross-examination. So, it's denied without prejudice. You can
2 re-raise it and furthermore, if you have some case law that you
3 want me to look at, I'll look at that as well.

4 I think we're kind of stuck with the problem of it
5 being a co-conspirator statement, but I understand your concern
6 and I think that it's a reasonable objection to make. So, with
7 that, I'll -- I -- it's denied, but without prejudice. You may
8 re-raise it after we've had an opportunity to cross and you can
9 see if you can find some other cases that -- or any other
10 information that might be more -- that might guide this -- this
11 discussion more so than just talking about the facts. I think
12 we're all familiar with the facts; the problem is, how does the
13 law treat this type of situation. And it looks like there is a
14 disadvantage to being a co-conspirator during a conspiracy when
15 some conspirators are saying certain things and the
16 admissibility of those things with other defendants. So, it's
17 not the spillover that we see in the other situations where
18 after arrest, a person makes a statement that inculcates maybe
19 himself or one of the co-defendants. Then you have more of an
20 issue of whether or not that information should be cleaned up
21 or clarified or sanitized in some way so that there isn't a
22 spillover. That's not what's happening here. This isn't after
23 the conspiracy, it's during the conspiracy. So it falls into
24 that 801(d)(2)(E) realm. It's a different legal analysis.

25 So, let's --

1 MR. LEVENTHAL: Your Honor --

2 THE COURT: -- sleep on it and see if it's clear in
3 the morning or after cross-examination and do some research.

4 MR. LEVENTHAL: Just briefly.

5 I'm not sure how I'm going to cross-examine a witness
6 that just testified and I usually would not touch that on
7 cross-examination.

8 THE COURT: Well, you don't have to. I'm not -- I'm
9 not saying that you have to, but I -- I think maybe if we . . .
10 if you look into it, maybe it will be more clear. I think
11 you're -- I can't tell you what to do, but --

12 MR. LEVENTHAL: No. I appreciate that.

13 THE COURT: -- you can see that I'm struggling with
14 that.

15 MR. LEVENTHAL: Well, I don't need guidance from the
16 Court to tell me what to do. I understand what I need to do
17 and that's why I'm making this motion. And -- and as it sat,
18 if it was just reading, as this witness did on almost all of
19 the other e-mails, then I -- I don't think I would even be
20 making this motion. It was the eliciting of the further
21 information, "and who was that?" "and how do you know that?"
22 That is the issue that I'm having. Not just McVeigh, because
23 McVeigh is innocuous. It's the going into Timothy McVeigh, the
24 Oklahoma City bomber, without anything further from that
25 document that would suggest that that was even that person.

1 That's what I'm talking about. It's that further step that the
2 Government took and that's my issue. I would have had no
3 problem had she just read McVeigh and then moved on because
4 they got rid of the Millers, and nobody probably even knows who
5 that is, but all they had do -- they had no problem getting rid
6 of the Millers, the term "Millers." They redacted that, but
7 when it came to McVeigh, the guy who killed a hundred people in
8 a building, that's okay, that's fair game, I'm going to go into
9 that. So that's my issue.

10 I will deal with it in -- I guess, tomorrow on cross
11 if I figure out a way to do that, but generally, I don't put a
12 big spotlight on something that I'm asking for a mistrial for.

13 THE COURT: All right. Well, the distinction between
14 the Millers and McVeigh was that in the posting, Mr. Parker was
15 disavowing himself of the Millers and in -- in the same posting
16 he's not disavowing himself of McVeigh, but rather the failure
17 of McVeigh to move the -- the progress of the movement and so
18 forth. So, it was -- that was the distinction that was being
19 made there and to why one is included and why is not.

20 All right. So, we'll see you tomorrow at 10:00.

21 Off record.

22 COURTROOM ADMINISTRATOR: All rise.

23 (Proceedings adjourned at 5:12 p.m)

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COURT REPORTER'S CERTIFICATE

I, Heather K. Newman, Official Court Reporter, United States District Court, District of Nevada, Las Vegas, Nevada, do hereby certify that pursuant to Section 753, Title 28, United States Code, the foregoing is a true, complete, and correct transcript of the proceedings had in connection with the above-entitled matter.

DATED: 8-7-2017 /s/ Heather K. Newman
Heather K. Newman, CCR #774
OFFICIAL FEDERAL REPORTER

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,)	Case No. 2:16-cr-46-GMN-PAL
)	
Plaintiff,	)	Las Vegas, Nevada
	)	Tuesday, August 8, 2017
vs.	)	9:36 a.m.
	)	Courtroom 7C
ERIC J. PARKER (11),)	
O. SCOTT DREXLER (12),	)	JURY TRIAL, DAY 17
RICHARD R. LOVELIEN (13),)	
STEVEN A. STEWART (14),)	
)	
Defendants.	)	ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE GLORIA M. NAVARRO, CHIEF JUDGE,
UNITED STATES DISTRICT COURT

APPEARANCES:

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(continued next page)

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Proceedings reported by machine shorthand. Transcript produced
by computer-aided transcription.

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EXHIBITS

<u>EXHIBIT NO.:</u>	<u>OFFERED</u>	<u>RECEIVED</u>
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NOTE: "(ph)" means "phonetic"

1 LAS VEGAS, NEVADA; TUESDAY, AUGUST 8, 2017; 9:36 A.M.

2 --oOo--

3 P R O C E E D I N G S

4 (Joel Willis resumes the witness stand.)

5 (Pause. Jury not present.)

6 COURTROOM ADMINISTRATOR: All rise.

7 THE COURT: Thank you. You may be seated.

8 COURTROOM ADMINISTRATOR: This is the time set for Jury
9 Trial, Day 17, in the Case No. 2:16-cr-46-GMN-PAL, United
10 States of America versus Eric Parker, O. Scott Drexler, Ricky
11 Lovelein, and Steven Stewart.

12 THE COURT: All right. Well, before we begin, let me
13 just remind everyone that there is conduct that is expected in
14 a courtroom. This is a courtroom, not a sporting event. That
15 means that no expression, whether verbally or through body
16 language, is permissible regarding anything you might hear or
17 see even. If you very strongly agree or disagree with it, it
18 is not proper to make any kind of distracting or inappropriate
19 expressions.

20 Please remember that we do not allow any electronic
21 devices in federal court. There is no audio or video recording
22 permitted in federal court. So, if you do have an electronic
23 device, please go ahead and take it outside. Even if it is in
24 vibrate mode or private mode or turned off, they are just not
25 permitted in the courtroom. And the Marshals do have the

1 authority to remove individuals who have electronic devices.
2 So double check now and go ahead and put it outside so you
3 don't have any issues later.

4 The attorneys do have electronic devices so that they
5 may review their discovery and present discovery and any other
6 trial presentations. The communication devices are permitted
7 for the Marshals and the Court Security Officers.

8 And I think that covers everything.

9 Do we need to talk about anything before we bring in
10 the jury?

11 MR. MYHRE: Not from the Government, Your Honor.

12 THE COURT: No? All right. So let's go ahead and
13 bring them in. Did -- let's see, Mr. Tanasi. You finished.

14 MR. TANASI: I did, Your Honor. It's Mr. Perez, I
15 think.

16 THE COURT: And I wasn't sure. Yeah, Mr. Perez, you
17 didn't finish, did you?

18 MR. PEREZ: No, Your Honor.

19 THE COURT: Okay. So we'll continue with you. Thank
20 you.

21 (Pause in the proceedings.)

22 COURTROOM ADMINISTRATOR: All rise.

23 (Jury in, 9:41 a.m.)

24 THE COURT: All right. Jury may go ahead and be
25 seated.

1 Everyone else may be and be seated as well.

2 Good morning. Welcome back.

3 Let's go ahead and have the attorneys make their
4 appearances on the record in front of the jury and then we'll
5 resume.

6 MR. MYHRE: Thank you. Good morning, Your Honor.

7 Good morning, ladies and gentlemen.

8 Steve Myhre, Erin Creegan, Nadia Ahmed on behalf of the
9 United States.

10 THE COURT: Good morning.

11 MR. PEREZ: Good morning, Your Honor.

12 Good morning, ladies and gentlemen.

13 Shawn Perez on behalf of Mr. Lovelien in the back
14 there.

15 THE COURT: Good morning.

16 MR. TANASI: Thank you, Your Honor.

17 Good morning, folks.

18 Rich Tanasi for Steven Stewart. Also with us at
19 counsel table is Tori Bakken and Brian Glynn. Thank you.

20 THE COURT: Good morning.

21 MR. MARCHESE: Good morning, Your Honor.

22 Good morning, ladies and gentlemen.

23 Jess Marchese on behalf of Eric Parker.

24 THE COURT: Good morning.

25 MR. LEVENTHAL: Good morning, Your Honor.

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1 Good morning, everybody.

2 Todd Leventhal on behalf of Scott Drexler.

3 THE COURT: Good morning.

4 All right. So we're gonna continue now with
5 cross-examination by Mr. Perez on behalf of Mr. Lovelien.

6 And we have with us back on the witness stand our
7 special agent from the FBI, Agent Willis. So let's go ahead
8 and resume.

9 MR. MYHRE: Thank you, Your Honor.

10 Brian, can you bring up 182, slide 44.

11 (Slide displayed in open court.)

12 JOEL WILLIS,

13 called as a witness on behalf of the Government, having been
14 previously duly sworn, was examined and testified as follows:

15 CROSS-EXAMINATION (Continued)

16 BY MR. PEREZ:

17 Q. Agent Willis, yesterday you testified that the view would be
18 better -- or the view under the --

19 COURT SECURITY OFFICER: (Hand raised.)

20 MR. PEREZ: We have a problem, Your Honor.

21 THE COURT: One of 'em, Aaron, isn't working.

22 COURTROOM ADMINISTRATOR: Did you hit the power button.
23 Probably got . . .

24 (Pause in the proceedings.)

25 ///

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1 BY MR. PEREZ:

2 Q. Agent Willis, this particular picture is 12:21:16,

3 correct --

4 A. Yes.

5 Q. -- on April 12th?

6 A. Yes.

7 Q. Okay. And you testified yesterday on direct that the view
8 would be better -- the view of the wash under the southbound
9 bridge would be better as you move away from where Mr. Lovelien
10 is pictured in this picture. More towards Todd Engel; correct?

11 A. Yes. As you move east, you would be able to see under more
12 of the southbound bridge and to the ICP.

13 Q. Okay. So, for example, the two NHP officers would have a
14 better viewpoint than Mr. Lovelien where he is right here.

15 A. A better viewpoint of what?

16 Q. Of under the bridge.

17 A. From where they are standing in this picture, they would be
18 able to see further north instead of northeast under the bridge
19 to the ICP --

20 Q. Okay.

21 A. -- yes.

22 Q. Now, in assembling your timeline, you pulled images from a
23 variety of sources; some were Facebook. I believe that we saw
24 the video -- or not the video -- but the photograph of
25 Mr. Lovelien with Mr. Engel crouching behind him and that came

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1 from Mr. Lovelien's Facebook; correct?

2 **A.** Yes.

3 **Q.** Okay. Well, did Mr. Lovelien make any posts on the 12th
4 that you recall?

5 **A.** I don't recall.

6 **Q.** Okay. And, when you were looking at the timeline -- I'm
7 assuming that you looked at Facebook for a lot of other
8 reasons: content, things of that nature; correct?

9 **A.** Yes, I did.

10 **Q.** Okay. And did you pay any attention to Mr. Lovelien's
11 friends?

12 **A.** I recall looking through his friends' list on his Facebook
13 search warrant return, the Business Records, yes.

14 **Q.** Okay. And did you --

15 **A.** I did not memorize that list.

16 **Q.** Okay. Do you recall if Mr. Engel was a Facebook friend of
17 Mr. Lovelien?

18 **A.** Not on the 12th. I don't believe.

19 **Q.** Okay. All right. Now --

20 MR. PEREZ: Exhibit 210, Brian.

21 (Exhibit displayed in open court.)

22 BY MR. PEREZ:

23 **Q.** Now, Exhibit 210 consists of three pages. And you did a
24 series of measurements using this infrared measuring device;
25 correct?

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1 **A.** A laser range finder, yes.

2 **Q.** Okay. And did you measure the distance from where

3 Mr. Lovelien was to the southbound bridge?

4 **A.** I think you asked me that yesterday. And I -- I don't

5 recall --

6 **Q.** Did you --

7 **A.** -- taking that measurement.

8 **Q.** Did you take a measurement from the rally point to Post 1?

9 **A.** From the rally point to --

10 **Q.** To where --

11 **A.** -- Post 1. So the rally point is a staging area. If you're

12 referring to the assembly area --

13 **Q.** Right.

14 **A.** -- to Post 1?

15 **Q.** Right.

16 **A.** So I had to use an object. I had to -- so I was able to

17 take a measurement from the beginning of the median across the

18 street using the road signs. And I think we discussed that

19 yesterday. It was -- it was 90 yards, the same as the distance

20 between the bridges. So -- and, with the road being 44 feet on

21 either side, about, you know, 110, 120 yards, I would say,

22 between the entrance of the assembly area to Post 1 --

23 **Q.** Okay. And how about a measurement from where Mr. Lovelien

24 was using on the Jersey barrier behind that bush to Post 1?

25 **A.** To -- no, I did not.

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1 Q. Can you approximate the distance using this particular
2 photograph with the designation of 458 yards between the
3 parking area and the wash?

4 **A.** I would say 300 to 350 yards --

5 Q. Okay.

6 **A.** -- approximately.

7 MR. PEREZ: All right, Brian. 182, slide 77.

8 (Slide displayed in open court.)

9 BY MR. PEREZ:

10 Q. Okay. Now, things are kind of distorted in these
11 photographs I believe you said yesterday. It's kind of hard to
12 tell if, you know, things are in front of one another or behind
13 one another.

14 What side of the highway is Mr. Lovelien on?

15 **A.** He would be on the south side. So the furthest side of
16 northbound I-15.

17 Q. So then the truck passing would be passing in front of
18 Mr. Lovelien, not behind him?

19 **A.** That's --

20 MR. MYHRE: Objection --

21 THE WITNESS: -- correct.

22 MR. MYHRE: -- Your Honor. Foundation as to what truck
23 we're talking about.

24 MR. PEREZ: Well, the big rig here (drawing).

25 THE WITNESS: Yes.

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1 MR. PEREZ: Okay.

2 And then Brian, slide 80.

3 (Slide displayed in open court.)

4 BY MR. PEREZ:

5 Q. Now, this particular shot -- who was the photographer of
6 this particular shot? Do you recall?

7 A. Michael Flynn.

8 Q. Michael Flynn.

9 And this is part of a video?

10 A. Yes.

11 Q. Okay. And this particular exhibit says "1:35pm"?

12 A. Yes.

13 Q. Now, at 1:35 p.m., was the BLM already out of the wash at
14 that point in time?

15 A. No. They were in the process of moving back, but they were
16 not out of the wash.

17 Q. Do you recall if the -- I believe there was three vehicles
18 in the forefront -- they may have been Ranger vehicles -- under
19 the southbound bridge; right?

20 A. Well, ye- -- yes. They -- they had not left the ICP or the
21 wash area at this time.

22 Q. Okay. But, as far as, like, the bridge area itself, though,
23 they had already retreated from that area?

24 A. Yes, they were pull -- pulling back into the ICP. Yes, they
25 had retreated from that area.

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1 Q. Okay.

2 MR. PEREZ: I have nothing further. Thank you.

3 (Pause in the proceedings.)

4 CROSS-EXAMINATION

5 BY MR. MARCHESE:

6 Q. Good morning, Agent Willis.

7 A. Good morning.

8 Q. So I wanted to talk a little bit about your slideshow in
9 reference to Mr. Parker. We're gonna go to Exhibit 182; that's
10 your slideshow, slide No. 22.

11 (Slide displayed in open court.)

12 BY MR. MARCHESE:

13 Q. Do you see that on the screen, sir?

14 A. Yes, sir.

15 Q. So on your particular slideshow, this is the first shot that
16 you have of Eric Parker in the general vicinity of the
17 northbound bridge? Is that fair to say?

18 A. Yes.

19 Q. He's not really -- is he on the bridge yet or he's just
20 about to get on it?

21 A. He was -- is on the bridge at this point.

22 Q. Okay. Is that where, like, the beginning of the bridge --

23 A. Yes.

24 Q. -- would start?

25 A. Yes.

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1 Q. Okay. And I believe on direct examination you mentioned
2 (drawing) this individual here. That individual is Mr. Engel;
3 correct?

4 **A.** Yes.

5 Q. And this particular screenshot, that's taken from a video.
6 I believe it is the one that we got in through Mr. Ellis?

7 **A.** Yes.

8 Q. Okay. And, in this particular video, Mr. Parker is just
9 seen walking; he doesn't stop at any point on this particular
10 video; correct?

11 **A.** That's correct.

12 Q. There's no dialogue with him and Mr. Engel to your
13 knowledge; correct?

14 **A.** That's correct.

15 Q. Okay. No communications, to your knowledge, whatsoever?

16 **A.** That's correct.

17 Q. Okay. And, for the record, we're gonna move to number 27.

18 THE COURT: Bless you.

19 (Slide displayed in open court.)

20 BY MR. MARCHESE:

21 Q. Now, this is the first shot in your screen -- your
22 slideshow -- excuse me -- in which you've indicated that
23 Mr. Parker is -- looks like he's kneeling down or something or
24 another; correct?

25 **A.** Yes.

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1 Q. Okay. Kinda hard to tell where he's looking. I mean,
2 there's his head (drawing), but it looks somewhat blurry. Is
3 that fair to say?

4 **A.** Yes.

5 Q. Okay. However, this is at approximately 12:02; correct?

6 **A.** Yes.

7 Q. And I believe you testified that you did the best that you
8 could on these times; correct?

9 **A.** Correct.

10 Q. Because you're bringing them in from a myriad of different
11 sources; correct?

12 **A.** Yes, sir.

13 Q. Some have metadata; correct?

14 **A.** Yes.

15 Q. Some don't?

16 **A.** Correct.

17 Q. So you're just gonna take whatever tools and resources are
18 at your disposal to try to come up with the best time frame --

19 **A.** That's --

20 Q. -- right?

21 **A.** -- that's correct.

22 Q. Now, for the record, we're gonna go to 28 on the same
23 slideshow.

24 (Slide displayed in open court.)

25 ///

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1 BY MR. MARCHESE:

2 Q. Okay. This is a better picture of Mr. Parker taken
3 approximately 1 minute after the last slide. Is that accurate?

4 **A.** Yes.

5 Q. Okay. Now, we've had some testimony in reference to
6 (drawing) a tattoo of The Three Percenter. Do you remember
7 that? Correct?

8 **A.** Yes.

9 Q. And this is April 12th, 2014, this shot; correct?

10 **A.** Yes.

11 Q. And that tattoo on Mr. Parker's right forearm is not present
12 at this time; correct?

13 **A.** That's correct.

14 Q. And, in this particular screenshot, it appears Mr. Parker is
15 kneeling down with his rifle in his hands; correct?

16 **A.** Yes.

17 Q. His finger's not on the trigger; correct?

18 **A.** That's correct.

19 Q. And he appears to be looking forward into the wash
20 (drawing). Would that be accurate?

21 **A.** Yes.

22 Q. Okay. And, for the record, we're gonna move to number 32.
23 (Slide displayed in open court.)

24 BY MR. MARCHESE:

25 Q. All right. This is another photo taken a little bit later.

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1 For the record, you have it down as 12:09 approximately;
2 correct?

3 **A.** Yes.

4 **Q.** Okay. At this point, Mr. Parker appears to be standing;
5 correct?

6 **A.** Yes, he is.

7 **Q.** Okay. And just circling him in the middle of the screen as
8 if we don't already know who he is.

9 Appears to be looking down possibly. Is that fair to
10 say?

11 **A.** Yes.

12 **Q.** You can tell because the brim of his hat (drawing) appears
13 to be facing at a downward trajectory; right?

14 **A.** Yes.

15 **Q.** And I think on direct examination you said he appears to be
16 doing something with his hands maybe?

17 **A.** Yes.

18 **Q.** Okay. Not pointing his weapon though, however, at this
19 juncture; correct?

20 **A.** That's correct.

21 **Q.** Okay. And we're gonna move to Exhibit 33 -- or slide 33, I
22 should say.

23 (Slide displayed in open court.)

24 BY MR. MARCHESE:

25 **Q.** Okay. This is another instance in which you picked

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1 Mr. Parker and used him in your slideshow. This is at
2 approximately 12:13; correct?

3 **A.** Yes.

4 **Q.** And you have Mr. Parker arrowed in the middle of the screen
5 here?

6 **A.** Yes.

7 **Q.** And he is -- (drawing) appears to be kneeling; correct?

8 **A.** Yes.

9 **Q.** On direct examination, you had mentioned that the stock of
10 his -- or the back end of his rifle is pointing upward;
11 correct?

12 **A.** Yes.

13 **Q.** You can't see the rest of his rifle, but it appears to be
14 under the Jersey barrier; correct?

15 **A.** Correct.

16 **Q.** Okay. May be a little difficult to see. You do see the
17 front -- or at least the white insignia on his black hat;
18 correct?

19 **A.** Yes.

20 **Q.** But he appears to be looking towards the wash once again.
21 Is that accurate?

22 **A.** Yes.

23 **Q.** Okay. And we're gonna move to number 34.

24 (Slide displayed in open court.)

25 ///

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1 BY MR. MARCHESE:

2 Q. Okay. This is another shot of Mr. Parker taken a little bit
3 later, 12:16 for the record.

4 And this was the -- this is actually a screenshot of
5 the Shilakis video. Do you remember that?

6 **A.** Yes.

7 Q. Okay. And this is the one I believe -- and if I'm wrong
8 correct me -- I believe it was your testimony that you said
9 something to the effect of he was manipulating his rifle sling
10 or something along that --

11 **A.** Yes.

12 Q. -- those lines? Okay.

13 Once again, he appears to be looking forward into the
14 wash area; correct?

15 **A.** Yes.

16 Q. He obviously can't see the wash from this trajectory, but
17 you're well aware of the geography of that locale; correct?

18 **A.** Yes.

19 Q. Gonna move to slide 35.

20 (Slide displayed in open court.)

21 BY MR. MARCHESE:

22 Q. Okay. Now, this was -- I think Mr. Schillie took this
23 photo?

24 **A.** Yes, that's correct.

25 Q. Okay. And this is about 12:18 p.m.; correct?

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1 **A.** Yes.

2 **Q.** We had another photo from Mr. Schillie -- I don't know if
3 it's in this slideshow -- but where the crowd is further back
4 in the wash.

5 **A.** Yes.

6 **Q.** Fair to say?

7 **A.** That's correct.

8 **Q.** And, from all your investigation (drawing), you were aware
9 that at some point in time there was some sort of a line that
10 formed generally around the area that I've depicted on the
11 screen; correct?

12 **A.** Yes.

13 **Q.** So this is later in time. And, at this point in time, the
14 crowd has started to move forward toward the gate area; is that
15 right?

16 **A.** That's correct.

17 **Q.** Okay. And this is at 12:18.

18 Now, Mr. Schillie, at this point, he would be to the
19 right of Mr. Parker generally; correct?

20 **A.** Yes.

21 **Q.** Okay. And move to 37 for the record.

22 (Slide displayed in open court.)

23 BY MR. MARCHESE:

24 **Q.** Okay. And this is a photo, obviously, of Mr. Parker down in
25 the prone position. That is approximately at 12:21 p.m.;

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1 correct?

2 **A.** Yes.

3 **Q.** Okay. So this is after, obviously, the last photo we showed
4 of the crowd moving forward or some of 'em are near the gate,
5 some of 'em a little further back; correct?

6 **A.** Yes.

7 **Q.** Okay. And this is a Mr. Gourgeon photo?

8 **A.** Yes.

9 **Q.** But Mr. Schillie, he's in the general vicinity of this
10 particular photo; correct?

11 **A.** Yes. He would have been to the right of the --

12 **Q.** Correct.

13 **A.** -- frame.

14 **Q.** He'd probably be -- he's not depicted on this screen -- but
15 he'd probably be somewhere in this photo the right of the
16 yellow line. Is that accurate?

17 **A.** Um, yes, to the right of the --

18 **Q.** Yeah.

19 **A.** -- frame, yes.

20 **Q.** But more directly to Mr. Parker's right --

21 **A.** Correct.

22 **Q.** -- to make it easier.

23 **A.** Correct.

24 **Q.** Okay. Now, I'm gonna fast forward a little bit to slide 61.
25 (Slide displayed in open court.)

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1 BY MR. MARCHESE:

2 Q. Okay. Now, this is one of the aerial shots. It's about
3 12:32, but . . .

4 You had some questions on direct examination in
5 reference to the number of people in the wash (drawing) and --
6 versus the number of people (drawing) -- or officers in this
7 general vicinity; correct?

8 **A.** Yes.

9 Q. Now, in reference to the wash, did you count the number of
10 individuals on the bridges as well?

11 **A.** Yes.

12 Q. Okay. And what was that number?

13 **A.** Total was approximately 140 between the two bridges.

14 Q. Okay.

15 **A.** The breakdown between the two bridges I don't recall at this
16 time.

17 Q. But both bridges are approximately 140?

18 **A.** Yes.

19 Q. Okay. And then the wash is what?

20 **A.** I'm sorry. Can you repeat the question?

21 Q. The wash, the number of people --

22 **A.** Uh --

23 Q. -- in the wash. I apologize.

24 **A.** -- 270.

25 Q. 270.

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1 **A.** Yes.

2 **Q.** Okay. And then you had testified about all these
3 individuals, the officers in this little bubble area; correct?

4 **A.** Ye- -- yes.

5 **Q.** And I think -- was it 29?

6 **A.** 29 at this time, yes.

7 **Q.** Okay. And is that the largest number of officers in that
8 area?

9 **A.** Yes.

10 **Q.** Okay. 'Cuz at some point in time, there was a call made by
11 someone to go down to this general vicinity; correct?

12 **A.** Correct.

13 **Q.** And more officers went there.

14 **A.** That's correct.

15 **Q.** Okay. I'm gonna switch over to Exhibit 210 for the record.

16 (Exhibit displayed in open court.)

17 BY MR. MARCHESE:

18 **Q.** Okay. Now, this is your measurement photo. But it's a good
19 shot of the overview of the wash and the staging/parking area,
20 whatever you want to call it; correct?

21 **A.** Yes.

22 **Q.** Okay. So, now, when you were doing your estimations of the
23 number of people in the wash versus the number of people behind
24 the gate -- or officers behind the gate, did you take into
25 account any of the officers on the northbound bridge (drawing),

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1 for example?

2 **A.** No.

3 **Q.** Okay. Were there any officers (drawing), based on your
4 investigation, on the southbound bridge?

5 **A.** Standing or . . .

6 **Q.** Well, just on there. I mean, I know it's a fluid situation;
7 they are moving.

8 **A.** At what -- at what point in time? In this frame or . . .

9 **Q.** Well, given the -- what time did you do your estimations of
10 the wash individuals versus officer individuals at? What time
11 was that based upon?

12 **A.** So you had mentioned the Trey Schillie photographs.

13 **Q.** Yes.

14 **A.** So approximately 12:00 p.m. and then approximately 12:20
15 p.m. So, when the line formed and then when the line moved up,
16 we used his photos and zoomed in; we blew up the photos and
17 counted the people. So that's what we used for the people in
18 the wash. The people on the bridge, we -- we used similar
19 shots to this and the aerial photography for that.

20 **Q.** Okay. So, if I'm accurate, it would have been -- 12:20 was
21 the time that you used?

22 **A.** Again, that is one of the two times that we used. Again,
23 for -- approximately for his -- Trey Schillie's photographs for
24 when the people formed a line and then when the people moved
25 up.

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1 Q. Okay. So you used 12:00 p.m. and 12:20 p.m.?

2 A. Correct. All we have to go on are photographs.

3 Q. Sure.

4 A. So, when people are standing in a -- in a line all bunched
5 together, it's harder to count some -- you know, certain people
6 than when they spread -- they spread out and began to move to
7 the gate. So we used different photographs to tally up that
8 total of people.

9 Q. So the numbers that you had given me were 140 on the
10 bridges; correct?

11 A. Yes.

12 Q. Okay. Did those change between 12:00 and 12:20?

13 A. I'm sure that they did --

14 Q. Okay.

15 A. -- yes.

16 Q. So the 140 number you gave me, is that from 12:00 or 12:20?

17 A. I -- I -- I don't recall the exact time where we end --
18 where we determined that number. That was the highest number
19 of people based on the photo and video review that we did that
20 we could count on those bridges. And then same thing for the
21 wash --

22 Q. Okay.

23 A. -- with the clearest photographs and video that we could
24 review -- that I --

25 Q. Right --

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1 **A.** -- can review.

2 **Q.** 'Cuz you're not there; correct?

3 **A.** That's correct.

4 **Q.** You don't have the checklist on how many people are there.

5 **A.** That is correct.

6 **Q.** Okay. So you're just doin' the best that you can.

7 **A.** Yes.

8 **Q.** Now -- so did you count any officers on the southbound
9 bridge at 12:00 or 12:20 for that matter?

10 **A.** No.

11 **Q.** Okay. Did you count any of these (drawing) officers -- I
12 don't know. I guess you'd call it halfway on the bridge or the
13 road down to the wash -- did you count any of those
14 individuals?

15 **A.** No. Our people count was focused on where the standoff was
16 happening. So that would have been the wash and the bridges.

17 **Q.** Okay. So, based upon that, no one at Post 1; correct?

18 **A.** Do -- do I have an estimate of the people? Yes. Do I have
19 the exact number? No.

20 **Q.** But you didn't count it in your 29 people is what I'm
21 saying.

22 **A.** That is correct.

23 **Q.** Okay. And then at some point in time, probably around
24 12:20, there were (drawing) a number of Metro officers in this
25 particular area, the third circle that I've shown --

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1 **A.** Yes.

2 **Q.** -- correct? Okay.

3 Now, it's not depicted in this particular map -- but
4 I'll draw an arrow (drawing) -- the ICP would be somewhere back
5 here; correct?

6 **A.** Yes.

7 **Q.** Do you know the distance by any chance?

8 **A.** To the ICP, I don't -- I don't recall, no.

9 **Q.** Okay. That wasn't something that you were overly interested
10 in; you were mainly looking at the bridges and the wash. That
11 was your focus; correct?

12 **A.** Yes.

13 **Q.** Okay. So fair to say you didn't count any of the
14 individuals at the ICP; correct?

15 **A.** That is correct.

16 **Q.** Okay. Didn't count any individuals -- you saw some aerial
17 footage; correct?

18 **A.** A count of what?

19 **Q.** In your --

20 **A.** In the ICP?

21 **Q.** -- in your count of the 29 people, that wasn't part of your
22 29 count; correct?

23 **A.** The people in the ICP?

24 **Q.** No. The aerial -- anyone flying a plane or --

25 **A.** Oh, no --

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1 Q. -- along --

2 A. -- no.

3 Q. -- those lines.

4 A. Did I count the pilots?

5 Q. Correct.

6 A. No.

7 Q. Now, on direct examination, we were shown a video of

8 Mr. Todd Engel; correct?

9 A. Yes.

10 Q. He referenced possible gun battles or somethin' along those
11 lines; correct?

12 A. Yes.

13 Q. Through the course and scope of your investigation, to your
14 knowledge, when Eric Parker was arrested, there was no gun
15 battle; correct?

16 A. That is correct.

17 Q. Okay. Now, I want to bring ya back to -- this is
18 Exhibit 210.

19 (Exhibit displayed in open court.)

20 BY MR. MARCHESE:

21 Q. Now, first off -- and I know ya answered this. I
22 apologize -- the 170 yards --

23 A. Yes.

24 Q. -- that is taken from the front of the northbound bridge to
25 where?

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1 **A.** So I used the laser range finder and I pointed it at that
2 tree that is there in the middle of the wash. And I used the
3 laser range finder -- it -- it has a scan mode -- and I went
4 all the way around that and determined that to the best of the
5 laser range finder's accuracy that to the front of that tree is
6 170 yards.

7 *Q.* Okay.

8 **A.** And -- and, again, it would have been the ground, not the
9 tree. The laser range finder does not work well off of a -- a
10 bush or a tree. It needs more of a reflective or solid
11 surface.

12 *Q.* Okay. So it needs a fixed object. Is it fair to say?

13 **A.** Well, a tree is a fixed object. It would just need
14 something more solid and not -- you know, a leafy- or
15 foliage-bearing object. It would -- you -- you would need a
16 solid object to use that laser range finder to get a good
17 reading.

18 *Q.* So would I be accurate in saying that -- let's say you were
19 using your laser range finder to measure the distance from you
20 to I. Would it be easier to use this podium as opposed to just
21 a spot on the floor? Is that accurate?

22 **A.** It depends on the distance. So, as the distance gets
23 further, a more reflective object or solid object will actually
24 give you a -- a more accurate reading so . . . But we are
25 solid. And depending on, again, the distance, it might be the

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1 same exact reading. But, if you were a thousand yards away and
2 I had a choice to use a laser range finder on you or a vehicle
3 that's reflective, I would use the vehicle if I had to choose;
4 if I had the choice.

5 Q. So, if I was just wearing a solid suite with a black shirt
6 and black tie --

7 A. That wouldn't --

8 Q. -- it would be --

9 A. -- affect it.

10 Q. -- difficult to pick me up.

11 A. That would not affect it.

12 Q. Or, if we took the example of Trooper Madsen and
13 Trooper Serena, it would be a easier to find them because they
14 have that reflective vest on; correct?

15 A. I -- I don't -- no, I don't think that that would make a
16 difference.

17 Q. Okay.

18 A. The color of their vests I don't think would make a
19 difference.

20 Q. All right. Now, getting back to this.

21 So this was -- you said you focused on this bush
22 (drawing).

23 A. Yes.

24 Q. So this would be -- I think we had some testimony that this
25 is generally -- it's kind of fuzzy there -- but this is

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1 generally the area in which Special Agent Swanson was? Is
2 that --

3 **A.** Yes.

4 **Q.** -- is that accurate?

5 **A.** Yes.

6 **Q.** And then obviously his pickup truck or the pickup truck that
7 he was at would be behind that particular bush; correct?

8 **A.** Yes.

9 **Q.** Okay. Now, we also had your measurements in reference to --
10 okay. This 122 yards. Now, obviously -- well, not
11 obviously -- you'd agree with me (drawing) this is the
12 northbound lane; correct?

13 **A.** Yes.

14 **Q.** Okay. So you've measured 122 yards. Explain that further.

15 **A.** That would be from the middle of the bridge down and into
16 the middle of the wash at approximately where the cattle gate
17 had spanned the wash on April 12th, 2014.

18 **Q.** Okay. And, when you say "the middle of the bridge," you
19 mean the middle of the northbound bridge; correct?

20 **A.** Yes.

21 **Q.** Okay. So you're -- when you're --

22 **A.** And -- and I'm sorry. Standing on the north side but in the
23 middle of the span of the bridge that goes across the wash.

24 **Q.** Okay.

25 **A.** Just to clarify. I wasn't standing in the middle of the

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1 road.

2 Q. Okay. So --

3 A. I was standing --

4 Q. -- well, the --

5 A. -- against --

6 COURT REPORTER: One at a time.

7 BY MR. MARCHESE:

8 Q. So more the shoulder?

9 A. Yes.

10 Q. Okay. And --

11 A. I apologize.

12 Q. -- to use Mr. Parker as a reference, we've seen the pictures
13 of him proned out and his -- I don't know -- his knees or
14 something are on that yellow line; correct?

15 A. Yes.

16 Q. So, if you were standing in that area, you'd be somewhere
17 around Mr. Parker's torso somewhere?

18 A. I would have been where Mr. Drexler was in the prone
19 position.

20 Q. Okay.

21 A. I was -- so where Mr. Drexler was with his rifle pointed
22 between the gap and the Jersey barrier, that's where I took
23 that measurement from --

24 Q. Okay.

25 A. -- not Mr. Parker's pillar gap.

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1 Q. Right. Okay. So from Mr. Drexler's position.

2 But how far was Mr. Drexler from Mr. Parker when both
3 individuals were prone if you know?

4 **A.** I could -- I could approximate. 30 feet.

5 Q. Okay. You didn't -- I know you went up there and you took
6 measurements and we'll get to that. You didn't measure from
7 Jersey barrier to Jersey barrier; correct?

8 **A.** I measured from Jersey barrier to Jersey barrier across the
9 road, I did not measure gap to gap.

10 Q. Okay. Now, you had mentioned that this was at -- this 122
11 yards was at somewhat of a downward trajectory?

12 **A.** Correct. I'm standing on the bridge and pointing it down --

13 Q. Sure.

14 **A.** -- underneath the southbound bridge.

15 Q. All right. Now -- and you also said that you went to the --
16 you measured up to the gate; correct?

17 **A.** From that point --

18 Q. Yeah.

19 **A.** -- to the gate.

20 Q. Where the makeshift gate would have been; right?

21 **A.** Yes.

22 Q. Okay. When did you do your measurements if you remember?

23 **A.** Twice. There was two times when either myself or -- I also
24 went out there with another agent at different times -- I've
25 been out there a number of times. But some of these

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1 measurements were only a month ago -- a month or so ago and
2 then -- well, actually -- actually no. I apologize. It was
3 only a couple weeks ago, a couple of these measurements. But
4 we also went out there a year and a half ago and took some
5 measurements as well.

6 Q. Okay. Are the measurements that you have on these
7 particular exhibits are they from the one that you did a couple
8 weeks ago or the one you did further in time? I think a year
9 and a half or whatever it was.

10 A. Both. I took a lot of the same measurements just to -- I --
11 we had two laser range finders -- used one the first time, used
12 another one the second time -- just to make sure that we had
13 all the measurements correct with each time that we went out
14 there.

15 Q. Did you use the same range finder?

16 A. No. This was another range finder that we used here.

17 Q. Okay. Did you get the same measurements both times you went
18 out?

19 A. Yes.

20 (Slide displayed in open court.)

21 BY MR. MARCHESE:

22 Q. Now, this was just when you measured across. And I believe
23 Mr. Perez and both Mr. Myhre went over this with you. It's 44
24 feet across the northbound bridge; correct?

25 A. Yes.

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1 Q. And then 45 feet -- and I'm imagining that's from the bottom
2 of the northbound bridge to the dirt; correct?

3 A. Correct.

4 Q. Where are you measuring from the bottom of the northbound
5 bridge? Is it from the very bottom? Is it from the top of the
6 Jersey barrier? Where?

7 A. From -- from the very bottom. So standing underneath the
8 bridge going from ground level to where the bridge starts
9 underneath.

10 Q. Okay. So obviously we've had a lot of testimony about these
11 Jersey barrier cracks; correct?

12 A. Yes.

13 Q. You'd agree with me that the Jersey barrier crack would be
14 higher than 45 feet; correct?

15 A. Ye- -- yes. It would just be . . .

16 Q. Whatever that distance is.

17 A. Right. A foot or two possibly.

18 Q. Okay. And then the southbound bridge, that's 52 feet;
19 correct?

20 A. Yes.

21 Q. So is that a higher elevation than the northbound bridge?

22 A. Yes, at that -- at that point, from the middle of the
23 wash --

24 Q. Okay.

25 A. -- to the bottom of the bridges.

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1 Q. The wash itself is it -- when you go from (drawing) the --
2 under the northbound bridge to under the southbound bridge,
3 which isn't necessarily (drawing) depicted in this screenshot,
4 is it pretty much level? Or is it higher at one point or . . .

5 **A.** That is -- that -- that terrain fluctuates greatly in its
6 elevation and it goes from rock to gravel to, like, quicksand,
7 you know, very fine sand. That would be very difficult to
8 tell.

9 Q. Okay. And, obviously, it's about 3 years' difference now;
10 correct?

11 **A.** Yes.

12 Q. And they call this the wash because it's washed out for lack
13 of a better term; right?

14 **A.** That is correct.

15 Q. So has the terrain changed in the last 3 years to your
16 knowledge?

17 **A.** It -- it did not -- if it did change, it did not appear to
18 be a drastic change. My review of the photo and video evidence
19 from April 12th, 2014, does not reveal to me when I go out
20 there -- and, like I said, I walked out there essentially with
21 these photographs and comparing the area -- there does not
22 appear to be a significant change.

23 Q. Okay. Well, I think -- were there any bushes that were
24 different or trees?

25 **A.** Yes.

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1 Q. Okay. And how about erosion, particularly on this what used
2 to be or I guess is still somewhat of a road leading through
3 (drawing)? Was there any erosion?

4 **A.** Nothing significant that I could see.

5 Q. Now, in reference to this 122-yard measurement, as you're
6 aware, there was this makeshift gate on April 12th, 2014;
7 correct?

8 **A.** There -- there was a gate, yes.

9 Q. Yeah.

10 And then behind that gate at, say -- I don't know --
11 12:40 -- we'll just pick a time -- at 12:40, there were three
12 BLM trucks; correct?

13 **A.** At -- at 12:40, they had moved back --

14 Q. Okay. Let's say --

15 **A.** -- or they were moving back.

16 Q. At 12:30, let's say.

17 **A.** Yes.

18 Q. Okay. There were three BLM trucks.

19 What was the distance, to your knowledge, of those
20 trucks behind the gate?

21 **A.** 130 yards.

22 Q. And did you measure that?

23 **A.** Yes, I did.

24 Q. Okay. And how did you measure that? With a range finder
25 or --

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1 **A.** Yes. As -- as I stated, I compared the images. I stood
2 where the trucks would have been parked and I used the laser
3 range finder to the northbound I-15 bridge.

4 **Q.** Okay. And one last question on measurements.

5 (Slide displayed in open court.)

6 BY MR. MARCHESE:

7 **Q.** Okay. So we're back to slide 1.

8 Now, you've obviously measured across north- to
9 southbound bridges; correct (drawing)?

10 **A.** Yes.

11 **Q.** And you obviously measured from -- I don't know -- parking
12 lot staging area (drawing) down to the foot of the wash, this
13 45 yards; correct?

14 **A.** Yes.

15 **Q.** Did you ever do any measurements of this particular area
16 which I'm circling with the -- little bit halfway or so down
17 the wash road?

18 **A.** No, I did not.

19 **Q.** All right.

20 MR. MARCHESE: And if we can switch over to Brian. And
21 we can start with Exhibit 209, please.

22 (Exhibit displayed in open court.)

23 BY MR. MARCHESE:

24 **Q.** Okay. So this was a picture that you took; correct?

25 **A.** Yes.

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1 Q. And what's the date you took this, if you know? Was this
2 about a few weeks ago?

3 A. No. This would have been months ago. Again, I've been out
4 there several times. This . . . Yeah, I -- I guess a couple
5 of months ago; a few months ago.

6 Q. Okay.

7 A. Okay. This was not weeks ago.

8 Q. All right. Say March-ish, give or take. I'm not gonna hold
9 you to it.

10 A. Yes. I don't recall off the top of my head.

11 Q. Okay. Looks like it's a nice day out; correct?

12 A. Yes.

13 Q. Probably approximately noon given the shadows. Is that fair
14 to say?

15 A. Sometime mid-morning.

16 Q. Okay. Now, this was the makeshift road that we just talked
17 about. That's where I put the -- the squiggly line; correct?

18 A. Yeah, that's the --

19 Q. Okay.

20 A. -- asphalt road.

21 Q. Right.

22 And it's your testimony that this has not significantly
23 eroded in the last 3 years; correct?

24 A. Again, not that I could tell.

25 Q. Okay. Now -- and this was the very fine sand (drawing)

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1 which you had referenced as well; right?

2 **A.** Yes.

3 **Q.** Okay. And you took this photo, I believe, is because this
4 is the general vicinity in which the three trucks that we just
5 referenced were parked; correct?

6 **A.** Yes.

7 MR. MARCHESE: And, Brian, if you can focus in on the
8 northbound bridge, please.

9 BY MR. MARCHESE:

10 **Q.** Okay. Now -- thank you -- now, this is (drawing) the Jersey
11 barrier in which Mr. Parker was at on the date in question;
12 correct?

13 **A.** Yes.

14 **Q.** Okay. And that's one of the reasons that you took this
15 particular photo; correct?

16 **A.** Correct.

17 **Q.** You wanted to try to show the vantage point from behind the
18 gate; right?

19 **A.** Yes.

20 **Q.** Now, is this (drawing) a Jersey barrier as well, a crack?

21 **A.** The crack would have been in the Jersey barrier. So just
22 above that.

23 **Q.** Okay. Right. And so that's an opening right there;
24 correct?

25 **A.** It's -- it's -- I'm sorry. I -- I didn't hear the question.

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1 Q. Is this an opening where I'm circling?

2 A. No, that is not an opening.

3 Q. Okay. Is this an opening (drawing)?

4 A. Yes, it is.

5 Q. Okay. And then --

6 A. I'm -- I'm sorry. I'm -- I'm trying to look at it there.

7 The -- your second circle, that is an opening.

8 Q. Let me --

9 A. All -- all the circles you circled are all openings.

10 Q. Okay. Let me do this so --

11 A. I need a --

12 Q. -- we're not confusing everyone.

13 A. Sure.

14 Q. That's why -- why don't you just circle the openings.

15 A. Sure okay.

16 Q. That you see; that you're aware of.

17 A. Okay. (Drawing.)

18 Q. Okay.

19 A. That are in that shot.

20 Q. Of course.

21 Okay. So, for the record, we have five openings and
22 the one which you have indicated Mr. Parker is at (drawing) is
23 this one right above the pillar there.

24 A. Yes, sir.

25 Q. Okay.

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1 MR. MARCHESE: And, Brian, if we could move to 208,
2 please.

3 (Exhibit displayed in open court.)

4 BY MR. MARCHESE:

5 Q. Okay. Now, this is a photo which you took from the top of
6 the embankment; correct?

7 A. Yes.

8 Q. So the area that I'm X'ing right here, you're on the
9 other -- you're basically on that embankment except on the
10 other side.

11 A. That is correct.

12 Q. All right. And, in this particular photo, this is -- and
13 we'll get to it -- that is that broomstick (drawing) that you
14 took and you placed through the crack; correct?

15 A. Yes.

16 Q. Okay. How -- what's the size of that broomstick?

17 A. The diameter?

18 Q. Yes.

19 A. It's just under an inch.

20 Q. Okay. And you put that as a demonstrative exhibit to just
21 help aid the photo; correct?

22 A. That is correct.

23 Q. All right. And it appears that it's pointed in somewhat of
24 an upward trajectory in this particular photo?

25 A. Yes. I've laid it in the gap, yes.

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1 Q. Now, in reference -- you can't really see that gap 'cuz
2 obviously it's a little bit further down. But would you agree
3 with me that this gap, for example, (drawing) is very similar
4 to the one that I just X'd on, to the one that you placed the
5 broomstick through?

6 **A.** Yes.

7 Q. Okay. Now, in reference to this crack, I wrote down that
8 you had indicated that it's approximately 1.5 to 2 inches
9 depending on where. Is that accurate?

10 **A.** That's correct.

11 Q. And, when we say "1.5 to 2 inches," I would imagine that is
12 the width of it?

13 **A.** Of the gap?

14 Q. Yes.

15 **A.** Yes.

16 Q. Okay. Now, where is the 1.5?

17 **A.** Well, it -- again, it depends on where you are in the gap.
18 But as it comes down -- so where my broom is actually
19 resting -- at the bottom there it was more difficult to move
20 the broom side to side. So I -- from my pictures, I had to lay
21 it there. If I was able to hold the broom up a couple of
22 inches, it would have had a lot more play and I would have been
23 able to move it side to side more.

24 Q. Okay. So, based upon that, would I be accurate in stating
25 that the higher you are on the Jersey barrier -- so let's say

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1 up here (drawing) -- it would be easier to maneuver; correct?

2 **A.** Again, just getting out of that -- that bottom inch to two
3 inches in that gap, it -- it would be pretty consistent going
4 up from there. So yes.

5 **Q.** So, when you say "the bottom 2 inches," so maybe from here
6 up (drawing). Is that accurate?

7 **A.** Well, it -- the Jersey barrier does get thicker at the top.
8 So you're -- the most man- -- maneuverability you would have --
9 well, and -- and this gap it would be here to there (drawing).

10 **Q.** Okay. So the bottom of the gap is the thinnest; correct?

11 **A.** Yes.

12 **Q.** That's approximately 1.5 inches --

13 **A.** Uh, yes.

14 **Q.** -- correct?

15 **A.** Yeah.

16 **Q.** And then, from the two lines that you have drawn where the
17 bottom one is maybe an inch or two up and then extending to
18 where the Jersey barrier gets thicker --

19 **A.** Yes.

20 **Q.** -- that's a little bit easier to maneuver; correct?

21 **A.** Yes.

22 **Q.** Okay.

23 MR. MARCHESE: And, Aaron, if I can go back to
24 Exhibit 182 on my computer. And, for the record, this would be
25 number 45.

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1 (Slide displayed in open court.)

2 BY MR. MARCHESE:

3 Q. All right. This is 45 taken at 12:22 on your slideshow.

4 A. Yes.

5 Q. All right. So this is a picture of (drawing) the crack in
6 the Jersey barrier; correct?

7 A. Correct.

8 Q. It's our belief that Mr. Parker is in the prone position at
9 this juncture; correct?

10 A. That's correct.

11 Q. And we know that because the general vicinity is that he's
12 over this pillar; right (drawing)?

13 A. Yes.

14 Q. And that these individuals (drawing) -- I believe one of
15 them is Mr. Schillie, another one from the Citizens Action
16 Network, and then we got Mr. Urquhart -- they've taken his
17 photo at various points in time in this general vicinity,
18 correct --

19 A. Yes.

20 Q. -- in the prone position?

21 A. Yes.

22 Q. In this particular photo, it's -- where is this taken from?
23 This a video under the southbound bridge?

24 A. This would have been a -- so taken from the embankment on
25 the southbound bridge.

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1 Q. Okay. So basically where you just took the last shots on
2 the northbound bridge --

3 A. Right.

4 Q. -- except on the other side.

5 A. Correct.

6 Q. Okay. Now, you'd agree with me on this particular
7 screenshot of the video you can't see through that crack;
8 correct?

9 A. Through the gap?

10 Q. Yes.

11 A. That's correct.

12 Q. Okay. You don't see Mr. Parker's rifle protruding out or
13 anything like that; correct?

14 A. That's correct.

15 MR. MARCHESE: We're gonna move up to number 50, five
16 zero.

17 (Slide displayed in open court.)

18 BY MR. MARCHESE:

19 Q. Now -- blow it up just a tad -- and this is -- for the
20 record, it was taken -- oop. I'm sorry -- this was taken at
21 approximately 12:25.

22 A. Yes.

23 Q. Okay. Now, here is the (drawing) -- the same crack. And
24 it's our belief that -- I blew it up -- but the arrow is
25 actually pointing to Mr. Parker; correct?

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1 **A.** Yes. That would be where Mr. Parker would have been at this
2 time.

3 **Q.** Okay. So would you agree with me you don't see his black
4 hat; correct?

5 **A.** That's correct.

6 **Q.** No white insignia; correct?

7 **A.** That is true.

8 **Q.** And you can't see any rifle; correct?

9 **A.** No, I cannot.

10 **Q.** All right. Now, on this particular photo, is this the one
11 that it was our belief that it was from Mr. Swanson or
12 Mr. Neyavos's (ph) position?

13 **A.** So I believe Mr. Swanson or Mr. Cox testified to this. But
14 this was -- this photo was taken by Salvatore Nieblas.

15 **Q.** Okay. And, just to be clear, Mr. Swanson's position in
16 reference to this particular photo, based on your
17 investigation, is that he is behind this photo; correct?

18 **A.** It would have been behind and to the right.

19 **Q.** Okay. And that would be -- I think at some point in time
20 you even stated that you used a range finder on that bush that
21 was in front of him --

22 **A.** Yes.

23 **Q.** -- correct? Okay.

24 And that he was a little bit behind that.

25 **A.** Yes.

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1 MR. MARCHESE: Brian, if we can move to Exhibit 207,
2 please.

3 (Exhibit displayed in open court.)

4 BY MR. MARCHESE:

5 Q. All right. Now, this is one of those photos of the
6 northbound bridge; correct?

7 A. Yes.

8 Q. And this is the other side of that broomstick that we saw in
9 Exhibit 208; correct?

10 A. Yes.

11 Q. Now, obviously, you can't see through the road so you can't
12 see the pillar. But is this the crack that you believe that
13 Mr. Parker was at?

14 A. Yes.

15 Q. Okay. So this is a photo taken from across the street;
16 correct?

17 A. Yes.

18 MR. MARCHESE: And if we could move to Exhibit 206.

19 (Exhibit displayed in open court.)

20 BY MR. MARCHESE:

21 Q. All right. Just a closer -- wait for it to get up -- and
22 this is a closer view of that particular crack; correct?

23 A. Yes.

24 Q. Did you take any other photos of this crack? Is 205 of that
25 crack as well, Exhibit 205? I can get it up --

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1 **A.** I --

2 **Q.** -- for you.

3 **A.** -- I don't know off the top of my head. I believe so, yeah.

4 **Q.** All right. Did you take a photo without the broomstick in
5 the crack?

6 **A.** Ye- -- yes, yes. I just don't know the exhibit number.

7 **Q.** Right. And I'm sorry. I'll get it. Let's --

8 MR. MARCHESE: Can we go to Exhibit 205, Brian?

9 THE WITNESS: It's either . . .

10 (Exhibit displayed in open court.)

11 BY MR. MARCHESE:

12 **Q.** Okay. And this would be that other photo? Is that
13 accurate?

14 **A.** Ye- -- yes.

15 **Q.** Okay. 'Cuz I get a little confused with Mr. Parker's and
16 Mr. Drexler's Jersey barriers. So this is also that same crack
17 without the broomstick; correct?

18 **A.** Yes.

19 **Q.** All right. And where are you when you take this photo?

20 **A.** I'm across the -- the road on the shoulder on the south side
21 of the I-15 --

22 **Q.** Okay.

23 **A.** -- bridge.

24 **Q.** So you would be somewhere in this line (drawing), obviously
25 on the other side of the street?

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1 **A.** Yes.

2 **Q.** Okay. Because I believe you said there's a fair bit of
3 traffic that day and obviously you don't want to injure
4 yourself doing your job.

5 **A.** That's correct.

6 MR. MARCHESE: Now, if we can go back to number 206,
7 please.

8 (Exhibit displayed in open court.)

9 BY MR. MARCHESE:

10 **Q.** Now, you used this for demonstrative purposes, this
11 broomstick, because obviously there's -- trying to show the
12 broomstick versus the rifle; correct?

13 **A.** That is correct.

14 **Q.** Okay. And you laid this broomstick down; correct?

15 **A.** Yes.

16 **Q.** So this would be (drawing) at an upward trajectory; correct?

17 **A.** That's correct.

18 **Q.** Did you ever -- you can't really see it from here. But
19 obviously the crack in the Jersey barrier starts right about
20 here (drawing); correct?

21 **A.** Yes.

22 **Q.** I mean, give or take. You can't see it because the
23 broomstick is in front of it. But it's somewhere in that
24 general vicinity; right?

25 **A.** Yes.

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1 Q. Did you ever measure the distance from the start of the
2 crack of the Jersey barrier to the end of the crack of the
3 Jersey barrier?

4 **A.** Go- -- going through this (gesturing) this way --

5 Q. Correct.

6 **A.** -- straight? No, I did not.

7 Q. Okay. So this particular broom, it's actually -- would you
8 agree with me it's at somewhat of an angle in reference to the
9 Jersey barrier?

10 **A.** Can you repeat that question, please?

11 Q. Is this at somewhat of an angle in reference to the Jersey
12 barrier? It's not --

13 **A.** Yes.

14 Q. -- put in at a 90-degree angle; right?

15 **A.** That -- that is correct. It's not straight through. I -- I
16 put it straight through and then turned it to where the BLM
17 vehicles would have been parked on April 12th.

18 Q. Okay.

19 MR. MARCHESE: And, Brian, if we can go to Exhibit 195,
20 please.

21 (Exhibit displayed in open court.)

22 BY MR. MARCHESE:

23 Q. Okay. Now, this is one of many pictures that we've seen of
24 Mr. Parker in this general position you'd agree with; right?

25 **A.** Yes.

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1 Q. When he went prone, for the most part, he was always in a
2 position similar to this; correct?

3 A. Yes.

4 Q. The only variable is he may be -- I think at one point he
5 had a backpack; correct?

6 A. Yes.

7 Q. And at one point in time his hat's turned backwards; right?

8 A. Correct.

9 Q. Now, I don't know. How far would you say Mr. Parker's
10 (drawing) eyes are from the asphalt?

11 A. A foot.

12 Q. Okay.

13 A. 1 foot.

14 Q. So there's that.

15 And then approximately how far would you say
16 Mr. Parker's eyes are from the back or the front, depending on
17 how you look at it, of the Jersey barrier?

18 A. About a foot and a half.

19 Q. Okay. You'd agree that his rifle is pretty much straight?
20 If it is -- if it's off, it's very small amount. Correct?

21 A. When you say "straight," you mean --

22 Q. -- horizontal --

23 A. -- level?

24 Q. -- horizontal to the ground.

25 A. Yes.

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1 Q. Okay. Isn't it true you never took a photo from this
2 vantage point, approximately a foot and a half back and a foot
3 off the ground facing directly through the Jersey barrier?

4 **A.** Um, I -- I don't recall taking that photo specifically from
5 that distance.

6 Q. Okay.

7 **A.** The --

8 Q. Well, there's no photo of it; correct?

9 **A.** Not -- not that I'm -- not that I have.

10 Q. Okay. Thank you.

11 MR. MARCHESE: No further questions. I appreciate your
12 time.

13 THE WITNESS: Thank you.

14 THE COURT: Mr. Leventhal.

15 MR. LEVENTHAL: Thank you.

16 CROSS-EXAMINATION

17 BY MR. LEVENTHAL:

18 Q. Good morning.

19 **A.** Good morning.

20 Q. How are you today?

21 **A.** Good. How are you?

22 Q. Good.

23 My name is Todd Leventhal. You've been here the whole
24 time so you know who I am.

25 MR. LEVENTHAL: Brian, could we pull up 182-8, please.

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1 (Slide displayed in open court.)

2 BY MR. LEVENTHAL:

3 Q. Okay. Now, you testified on direct examination regarding
4 this screenshot regarding the 11:01; correct?

5 A. Yes.

6 Q. Okay. You have a -- now, were you the one that put, prior
7 to coming to court today, these yellow squares with the names?

8 A. Yes.

9 Q. Okay. And you did that based upon your investigation
10 throughout this?

11 A. Yes.

12 Q. Okay. And your investigation throughout this was very
13 thorough. You reviewed a lot of Facebook and a lot of
14 different telephone numbers and pictures and videos; correct?

15 A. Yes.

16 Q. Okay. And so that's Ryan Payne; correct?

17 A. Yes.

18 Q. And Ryan Payne, as you know at the time on -- and, again,
19 this is gonna be on the 12th of April 2014; right?

20 A. Yes.

21 Q. Okay. And this is at the -- what they called the -- sort of
22 the rally area?

23 A. Yes.

24 Q. Okay. And I believe you indicated it was about 5 miles away
25 from the wash.

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1 **A.** Correct.

2 **Q.** Okay. And so at the rally area, Ryan Payne -- and you knew
3 Ryan Payne to be who? The -- he founded what -- he wrote OMA
4 or something like that?

5 **A.** Yeah. He's one of cofounders of Operation Mutual Aid.

6 **Q.** Okay. All right. And, now, he's speaking to somebody here
7 that you have indicated is a Ryan Bundy or Ryan Bundy's at
8 least in that picture; correct?

9 **A.** No. He was speaking to the gentleman with the rifle that is
10 standing off the stage. Ryan Bundy is just in the background.

11 **Q.** Okay. You put a little yellow square, or whatever that is,
12 above Ryan Bundy; correct?

13 **A.** Yes.

14 **Q.** Okay. You weren't able to -- or were you able to identify
15 this person (drawing) that he's speaking to?

16 **A.** Yes, I know who that person is.

17 **Q.** You do. Okay.

18 But you didn't put a little yellow -- you didn't
19 indicate who that was; correct?

20 **A.** Not for this timeline. Correct.

21 **Q.** Okay. And this person here, that you (drawing) decided not
22 to indicate who he was, he is wearing camouflage; correct?

23 **A.** Yes.

24 **Q.** He's got a gun here (drawing) --

25 **A.** Yes.

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1 Q. -- correct? Okay.

2 And another weapon here (drawing); correct?

3 A. Yes.

4 Q. Okay. And Ryan Payne, he's got a weapon here (drawing);
5 correct?

6 A. Yes.

7 Q. Okay. Now, Ryan is on a stage. Is that true?

8 A. Yes.

9 Q. And he's leaning down on the stage that we saw earlier?

10 A. Yes.

11 Q. Okay. And there was a number of gentlemen in front of the
12 stage that (drawing) would look like -- or dress like this
13 individual; correct?

14 A. In front of the stage, yes.

15 Q. Okay. And they all sorta had that camouflage look; right?

16 A. Yes.

17 Q. Okay. They have patches on the hats?

18 A. Yes. (Drawing.)

19 Q. And patches on (drawing) their shoulder area?

20 A. Yes.

21 Q. And that would indicate what?

22 A. Well, not all the patches indicate an affiliation with a
23 militia if that's what you're asking. But some of the patches
24 that they are wearing do indicate an association with for
25 example, the Arizona State Militia.

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1 Q. Okay. Arizona State Militia. There were other militias, I
2 guess, that came in that were there --

3 A. Yes.

4 Q. -- from other states?

5 A. Yes.

6 Q. Okay. We heard some -- we heard -- and I know you were
7 here -- there was a number of license plates from out of town;
8 correct?

9 A. That's correct.

10 Q. Okay. So there were a lot of people that came in from out
11 of town; correct?

12 A. Yes.

13 Q. Okay. For different reasons; right?

14 A. I -- I don't know their reasons.

15 Q. You don't know the reasons. Okay.

16 MR. LEVENTHAL: If we can go to number 9, please.

17 (Slide displayed in open court.)

18 BY MR. LEVENTHAL:

19 Q. And now, we've got, again, another picture. You've got --
20 now you've indicated this is Dave Bundy; correct?

21 A. Yes.

22 Q. Okay. And, again, we've got Ryan Payne --

23 A. Yes.

24 Q. -- in the middle there?

25 A. Yes.

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1 Q. Okay. And this gentleman that you did not identify;
2 correct?

3 **A.** I'm sorry. Which person --

4 Q. This gentleman (indicating) --

5 **A.** -- are you --

6 Q. -- here --

7 **A.** Yes.

8 Q. -- you had --

9 **A.** Yeah, I --

10 Q. -- you had not identified. But you know who he is.

11 **A.** That's correct.

12 Q. I don't mean to speak over you. I apologize.

13 Now, in terms of Scott Drexler -- this is the 12th --
14 had you had any indication during your course of your
15 investigation that Mr. Drexler was in communication with either
16 of they people here?

17 **A.** No.

18 Q. Okay. No Facebooks; correct?

19 **A.** Correct.

20 Q. No emails; correct?

21 **A.** Correct.

22 Q. And no phone calls; correct?

23 **A.** Correct.

24 Q. Okay.

25 MR. LEVENTHAL: If we can go to number 10, please.

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1 (Slide displayed in open court.)

2 BY MR. LEVENTHAL:

3 Q. Okay. Now, part of your timeline that you've assembled here
4 for this jury is you've put a number of -- I guess these are --
5 are these Facebooks -- and I apologize -- are these Facebook
6 posts?

7 **A.** Yes.

8 Q. Okay. These are Facebook posts. And they were assumed to
9 be written on April 12th, 2014 --

10 **A.** Yes.

11 Q. -- correct? Okay.

12 And the 18:05 UTC time -- well, I'm not gonna get into
13 all that -- but that's about what time?

14 **A.** That would be 11:05 --

15 Q. 11 --

16 **A.** -- a.m. --

17 Q. -- 05 --

18 **A.** Local time.

19 Q. -- Nevada time. Local time.

20 **A.** Yes.

21 Q. Local time. Okay.

22 And that's from a gentleman named Todd Engel.

23 **A.** Correct.

24 Q. Okay?

25 MR. LEVENTHAL: And, again, if we can go to number 11.

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1 (Slide displayed in open court.)

2 BY MR. LEVENTHAL:

3 Q. Same: Todd Engel, Facebook?

4 **A.** Yes.

5 MR. LEVENTHAL: Number 13.

6 (Slide displayed in open court.)

7 BY MR. LEVENTHAL:

8 Q. Again, Todd Engel, Facebook?

9 **A.** This is Eric Parker.

10 Q. This is Eric Parker's Facebook?

11 **A.** Yes.

12 Q. Okay.

13 MR. LEVENTHAL: And number 15.

14 (Slide displayed in open court.)

15 BY MR. LEVENTHAL:

16 Q. And that is Todd Engel.

17 **A.** Yes, sir.

18 Q. Okay. And Todd Engel -- had you had -- during your course
19 of your investigation, did you know whether Mr. Drexler was in
20 communication with Todd Engel?

21 **A.** No.

22 Q. I'm sorry?

23 **A.** No. That is --

24 Q. Okay --

25 **A.** -- that is correct.

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1 Q. No Facebook?

2 A. No.

3 Q. They were not friends on Facebook?

4 A. Not that I can recall.

5 Q. Okay. Emails? Anything like that?

6 A. No.

7 Q. Okay.

8 MR. LEVENTHAL: If we can go to number 40, please.

9 (Slide displayed in open court.)

10 BY MR. LEVENTHAL:

11 Q. Okay. This would be the southbound bridge; is that correct
12 (drawing)?

13 A. Yes.

14 Q. And it's just above the (drawing) BLM/officers, correct,
15 there?

16 A. Yes.

17 Q. The law enforcement officers?

18 A. Yes.

19 Q. Okay. The northbound bridge would be 120 -- I believe you
20 said 120 yards approximately to this (drawing) line right
21 there?

22 A. Aiming down with my laser range finder, 130 yards.

23 Q. 130 yards to that line (drawing) right there?

24 A. Yes, from the northbound bridge.

25 Q. Okay. What is the yards from that (drawing) line there to

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1 the end of the southbound bridge?

2 **A.** Approximately 8 yards.

3 **Q.** 8 yards?

4 **A.** Yes.

5 **Q.** Okay. So the southbound bridge is obviously much closer to
6 the officers than the northbound bridge?

7 **A.** Yes.

8 **Q.** By quite a distance?

9 **A.** Yes.

10 **Q.** Okay.

11 MR. LEVENTHAL: Okay. If we could go to -- you were
12 asked about video number 44a. Could we go to it and play it
13 for -- to 6 seconds, please, Brian.

14 (Video played.)

15 MR. LEVENTHAL: Thank you. That's it.

16 BY MR. LEVENTHAL:

17 **Q.** So, again, going back to my questions, this is (drawing) who
18 I'm circling. Who is that?

19 **A.** Ammon Bundy.

20 **Q.** Any connection with Mr. Drexler, communications with
21 Mr. Ammon Bundy?

22 MR. MYHRE: Objection, Your Honor, compound. Are we
23 talking any communications or any contacts? I'm . . .

24 MR. LEVENTHAL: I apologize. I'll break it down.

25 ///

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1 BY MR. LEVENTHAL:

2 Q. Did you -- during your course of your investigation, did you
3 have any indication that Mr. Drexler was emailing Mr. Ammon
4 Bundy?

5 **A.** No.

6 Q. Was he on Facebook with Mr. Ammon Bundy?

7 **A.** No.

8 Q. Was he friends with Mr. Ammon Bundy on Facebook?

9 **A.** Not that I can recall.

10 Q. Did you go through Mr. Drexler's phone conversations or any
11 conversations that he would have had communicating with
12 Mr. Bundy in any way?

13 MR. MYHRE: Again, Your Honor, objection as to time
14 frame.

15 MR. LEVENTHAL: Time frame.

16 BY MR. LEVENTHAL:

17 Q. Prior to the 12th, 2014.

18 **A.** I -- I did not have access to any of their phone call
19 communications. If you're speaking to records, no, no records
20 to show that Mr. Drexler was in communication with Ammon.

21 Q. With Mr. Bundy. Okay.

22 **A.** With Mr. Bundy.

23 Q. Okay. So no records indicated there was any connection
24 there, correct, communication-wise?

25 MR. MYHRE: Objection, Your Honor. Again, "any

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1 communication" -- "any connections communication-wise," I'm not
2 sure what that means. But . . .

3 MR. LEVENTHAL: Well, if the -- I appreciate that. But
4 if --

5 THE COURT: You mean -- do you mean even through
6 another person? Or do you mean directly?

7 MR. LEVENTHAL: Directly.

8 THE COURT: Okay.

9 MR. LEVENTHAL: Did he have --

10 THE COURT: Then ask --

11 MR. LEVENTHAL: -- any proof directly -- okay.

12 BY MR. LEVENTHAL:

13 Q. Did you have any proof directly that Mr. Bundy and
14 Mr. Drexler communicated by way of Facebook?

15 MR. MYHRE: Objection, argumentative. Proof.

16 BY MR. LEVENTHAL:

17 Q. During your course of your investigation prior to the 12th,
18 did you have anything -- any indication that Mr. Drexler
19 communicated with Mr. Ammon Bundy?

20 MR. MYHRE: Objection, Your Honor, again,
21 argumentative --

22 MR. LEVENTHAL: I'm asking --

23 MR. MYHRE: -- and vague.

24 MR. LEVENTHAL: I apologize.

25 I'm asking for his investigation. I don't think that's

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1 argumentative. I'm not arguing with him. If he didn't have
2 any, he didn't have any communication.

3 THE COURT: Well, I think you said do you have any
4 indication.

5 MR. MYHRE: He -- basically it's the word "anything."
6 It's vague for -- can be specific as to any information that he
7 obtained about specific information.

8 MR. LEVENTHAL: I'll do it his way.

9 BY MR. LEVENTHAL:

10 Q. Sir, did you have any --

11 THE COURT: It's not that it's his way. That's the
12 proper --

13 MR. LEVENTHAL: Well --

14 THE COURT: -- form of the question.

15 MR. LEVENTHAL: -- I thought I did that. But . . .

16 BY MR. LEVENTHAL:

17 Q. Sir, did you have any -- did you have any -- during your
18 course of your investigation, did you have any proof or
19 anything that came in that showed Mr. Drexler was on, say,
20 Twitter with Mr. Bundy?

21 **A.** No.

22 MR. MYHRE: Objection, Your Honor. Again, it's
23 compound.

24 THE COURT: Sustained.

25 ///

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1 BY MR. LEVENTHAL:

2 Q. Did you have any proof that Mr. Drexler was communicating by
3 way of Facebook with Mr. Bundy?

4 MR. MYHRE: Again, objection, argumentative, Your
5 Honor. The word "proof."

6 THE COURT: Just ask him if he saw in his review any
7 communications -- any email communications between Ammon and
8 Mr. Drexler.

9 BY MR. LEVENTHAL:

10 Q. Did you see or -- did you see during your course of your
11 investigation anything that would -- well, there we go back to
12 the indication -- any -- any proof that Mr. Drexler and
13 Mr. Bundy were in communications?

14 MR. MYHRE: Again, Your Honor, objection to the word
15 "proof."

16 THE COURT: Sustained.

17 BY MR. LEVENTHAL:

18 Q. Was there anything Facebook -- was there -- was there a
19 Facebook account opened by Mr. Drexler?

20 **A.** Yes.

21 Q. Okay. Was there a Facebook opened account [sic] by
22 Mr. Bundy?

23 **A.** Yes.

24 Q. Were they friends on that Facebook account?

25 **A.** Not that I can recall.

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1 Q. Okay. During your course of investigation, were you able to
2 obtain the cellular phone records of Mr. Drexler prior to the
3 12th of April?

4 **A.** I -- I believe -- I believe so, yes.

5 Q. Did you review those?

6 **A.** Yes.

7 Q. Did you also during your course of your investigation review
8 and receive Mr. Bundy's telephone calls on his cellular?

9 **A.** Yes.

10 Q. As you sit here today, was there any phone calls between
11 Mr. Bundy and Mr. Drexler?

12 **A.** Not that I can recall.

13 Q. How about his wife? She indicated her name's Lisa. Any
14 indication that Mr. Drexler was in communication with Lisa
15 Bundy?

16 **A.** In what way?

17 MR. MYHRE: Objection --

18 BY MR. LEVENTHAL:

19 Q. Facebook.

20 MR. MYHRE: -- Your Honor -- I'm sorry.

21 BY MR. LEVENTHAL:

22 Q. On Facebook.

23 MR. MYHRE: Objection, Your Honor. This exceeds the
24 scope of direct now. We're into -- we're talking about people
25 that were not addressed during the direct testimony.

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1 THE COURT: Sustained.

2 BY MR. LEVENTHAL:

3 Q. The person who gave this interview, his name was Mr. Rhodes.

4 A. Yes.

5 Q. Any indication that Mr. Drexler communicated with Mr. Rhodes
6 on Facebook?

7 MR. MYHRE: Objection, relevance, Your Honor.

8 MR. LEVENTHAL: I'll move on.

9 Can we go to 182 and go to 5, please.

10 (Slide displayed in open court.)

11 BY MR. LEVENTHAL:

12 Q. Now, we had heard some -- that Mr. Drexler had a tattoo of
13 The Three Percenters on his left arm; correct?

14 A. At -- at what point?

15 Q. During this trial.

16 A. He does have a tattoo of The Three Percenters on his arm,
17 yes.

18 Q. This picture was taken April 12th, 2014; correct?

19 A. Yes.

20 Q. Okay. And it's from a video?

21 A. Yes.

22 Q. Okay. He doesn't have a tattoo on April 12th, 2014, to
23 indicate that he's part of any militia or movement; correct?

24 MR. MYHRE: Objection, Your Honor, as -- again, it's
25 compound.

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1 BY MR. LEVENTHAL:

2 Q. He doesn't have a tattoo that says Three Percent; correct?

3 A. On his left forearm --

4 Q. Correct.

5 A. -- that I could see on this screenshot? No.

6 Q. Okay. And we saw some pictures of people dressed in camo.

7 Mr. Drexler is dressed in a blue T-shirt; correct (drawing)?

8 A. Yes.

9 Q. And he's holding a hat (drawing); correct?

10 A. Yes.

11 MR. LEVENTHAL: If we can go to 182 and go to 14,
12 please.

13 (Slide displayed in open court.)

14 BY MR. LEVENTHAL:

15 Q. All right. Now, you indicated Steven Stewart's in this
16 vehicle; correct?

17 A. Yes.

18 Q. Okay. And this is an NHP video cam; right?

19 A. Yes.

20 Q. And the NHP officer is going forward; correct?

21 A. Yes.

22 Q. Passing the truck or the vehicle; correct?

23 A. That's correct.

24 Q. Okay. And that is at 11:31 a.m.; correct?

25 A. Yes.

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1 MR. LEVENTHAL: Could we go to 16, please.

2 (Slide displayed in open court.)

3 BY MR. LEVENTHAL:

4 Q. Now, on 16 at 11:42 a.m., your timeline indicates that
5 Mr. Drexler was -- that's Mr. Drexler (drawing); correct?

6 A. Yes.

7 Q. Okay. And you based that on a number of different aerial
8 and -- what exactly did you base that on this? Since we don't
9 see Mr. Drexler's head.

10 A. His -- his clothing, his tactical vest, his hat, his hair;
11 and then also compared to the frontline videos, screenshot of
12 his rifle and -- with him from the neck down also wearing the
13 same items of clothing.

14 Q. Okay. Now, I see that this is (drawing)
15 Undersheriff Lombardo; correct?

16 A. Yes, at that time.

17 Q. And there's a number of officers that you've already
18 testified to (drawing). There's an officer behind
19 Undersheriff Lombardo; correct?

20 A. Yes.

21 Q. And this discussion between Mr. Lombardo and Mr. Bundy here
22 (drawing) -- is that correct? Mr. Bundy?

23 A. Dave Bundy.

24 Q. Yeah.

25 -- that would have happened, I believe, across from

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1 Post 1; correct?

2 **A.** Yes.

3 **Q.** Okay. So we're at 11:42.

4 MR. LEVENTHAL: Could we pull up Government's 210,
5 please.

6 (Exhibit displayed in open court.)

7 BY MR. LEVENTHAL:

8 **Q.** So, at 11:42, that would have been approximately in this
9 area, correct --

10 **A.** Yes.

11 **Q.** -- where I've just circled?

12 **A.** Yes, sir.

13 **Q.** Okay. And this is across (drawing) from Post 1; correct?

14 **A.** Yes.

15 **Q.** Okay. And there's still (drawing) 458 yards to get down to
16 what you called the -- well, what is the wash; correct?

17 **A.** Yes.

18 **Q.** Okay. That's, like, four football fields; correct?

19 Approximately.

20 **A.** Well, over -- yeah, yes.

21 **Q.** Over four football fields?

22 **A.** Yes.

23 **Q.** Okay.

24 MR. LEVENTHAL: So if we can go to 17 and go to 18:38.

25 (Video played.)

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1 MR. LEVENTHAL: Actually, I'm going up -- on the time
2 up here (drawing), Brian.

3 (Video played.)

4 MR. LEVENTHAL: Stop. Well, 18:38. Back it up just a
5 bit.

6 (Video played.)

7 MR. LEVENTHAL: Keep going just a little bit.

8 (Video played.)

9 MR. LEVENTHAL: Okay. Stop right there.

10 BY MR. LEVENTHAL:

11 Q. Okay. So now, at 11:42, you had Mr. Drexler in this
12 (drawing) sort of area; correct?

13 A. Yes.

14 Q. Okay. And this is from here -- we can't see it yet -- but
15 from here (drawing) traveling to get to the wash, that's that
16 458 yards.

17 A. Yes.

18 Q. Correct? Okay.

19 So this now is at what time?

20 A. This would be at 11:38 --

21 Q. Okay.

22 A. -- a.m.

23 Q. So this aerial is taken prior to or while Mr. Drexler is in
24 this (drawing) area.

25 A. Yes.

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1 Q. Correct? Okay.

2 MR. LEVENTHAL: Go ahead, Brian.

3 (Video played.)

4 MR. LEVENTHAL: Okay. Stop.

5 BY MR. LEVENTHAL:

6 Q. Okay. We see a number of vehicles over here (drawing).

7 These are BLM vehicles; correct?

8 A. Yes.

9 Q. Okay. And, again, Mr. Drexler is still at the -- at 11:42
10 is still at that parking area; right?

11 A. Yes.

12 Q. Which is over four football fields away; correct?

13 A. (No audible response.)

14 MR. LEVENTHAL: Okay. Go ahead, Brian. If we can go
15 ahead and play it.

16 (Video played.)

17 MR. LEVENTHAL: Okay. Stop right there.

18 BY MR. LEVENTHAL:

19 Q. Okay. Now, there's a number of people down in the wash
20 (drawing) already; correct?

21 A. Yes.

22 Q. Okay. And that's, again, prior to Mr. Drexler even leaving
23 that area; correct?

24 A. Yes.

25 Q. Okay. Okay. Once Mr. Drexler got on the bridge --

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1 MR. LEVENTHAL: If we can go to 53, please; that would
2 be 182-53.

3 (Slide displayed in open court.)

4 BY MR. LEVENTHAL:

5 Q. Now, this is at 12:26 now; correct?

6 A. Yes.

7 Q. Okay. So that would have been almost 45 minutes after we
8 saw him in the parking lot, 11:40? Somewhere around there?

9 A. Yes.

10 Q. Okay. And now he's sort of kneeling down on a bridge;
11 correct?

12 A. Yes.

13 Q. Okay. And he's got somebody next to him (drawing). Were
14 you able to identify this female here in the tan hat?

15 A. I believe at one point I was. She is the Reuters reporter
16 that was there with Jim Urquhart, who was the photographer to
17 her right.

18 Q. Okay. So --

19 A. I don't recall her name.

20 Q. So this is (drawing) Jim Urquhart you're indicating as I'm
21 circling this person here?

22 A. Yes.

23 Q. Okay. And he's holding what looks like a -- I guess, a
24 long-lensed camera; correct?

25 A. Yes.

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1 Q. Okay.

2 MR. LEVENTHAL: If we can go to 54, which is the next
3 one over.

4 (Slide displayed in open court.)

5 BY MR. LEVENTHAL:

6 Q. Now, 54. Again, this seems to be that same lady (drawing);
7 is that correct?

8 A. Yes.

9 Q. Okay. She's the reporter --

10 A. Yes.

11 Q. -- with the tan hat here (drawing); correct?

12 A. Correct.

13 Q. And Jim Urquhart, I believe you indicated is here (drawing).
14 He's kneeling down now?

15 A. Yes, sir.

16 Q. Okay. And looking at something. I don't know what. He's
17 being blocked; correct?

18 A. Correct.

19 Q. Okay. And it looks like -- is it -- does it look like she's
20 doing some kind of interview or talking or just writing notes
21 or leaning --

22 A. All --

23 Q. -- there?

24 A. -- all of the above --

25 Q. All --

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1 **A.** -- yes.

2 **Q.** -- of the above.

3 But basically she's out of sight from the BLM officers
4 that are underneath the bridge; correct?

5 **A.** Yes.

6 **Q.** They wouldn't be able to see what she's doing there; right?

7 **A.** I -- at this point, I don't think so.

8 **Q.** Okay.

9 **A.** That's correct.

10 MR. LEVENTHAL: If we can go back to 50, please.

11 (Slide displayed in open court.)

12 BY MR. LEVENTHAL:

13 **Q.** Okay. Now, this is at 12:25, at approximately around that
14 time that we just saw where Mr. Drexler was kneeling; correct?

15 **A.** Yes.

16 **Q.** Okay. And we also saw that that lady, that female who had
17 the tan hat, the reporter, she was leaning against the
18 bridge -- obviously the concrete on the other side; correct?

19 **A.** Yes.

20 **Q.** Okay. Now -- and I asked you already. These (drawing)
21 individuals would not have seen or been able to understand what
22 that lady was doing while she was leaning there; correct?

23 **A.** No. I wouldn't say that.

24 **Q.** Okay. These individuals here (drawing), they seem to be
25 looking somewhere. Do they look to -- are they looking up at

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1 the northbound bridge or are they looking towards the right?

2 MR. LEVENTHAL: Can you just go ahead and bring that
3 up.

4 BY MR. LEVENTHAL:

5 Q. These individuals here, they seem to be looking towards the
6 right?

7 A. Yes, and up.

8 Q. To the . . . Okay.

9 MR. LEVENTHAL: If we can go to 45, please.

10 (Slide displayed in open court.)

11 BY MR. LEVENTHAL:

12 Q. Now, we talked a little bit about what this female was
13 doing; right? She was sort of (drawing) up and down and had
14 her notes; correct?

15 A. Yes.

16 Q. She was --

17 MR. MYHRE: Objection, Your Honor. I don't believe
18 that was the testimony.

19 BY MR. LEVENTHAL:

20 Q. Okay. She had a piece of paper in her hand?

21 A. Yes.

22 Q. Okay. Did you see her with a pen?

23 A. I -- it appeared that she was writing. So I assume she has
24 a pen or pencil.

25 Q. Did you see her get up and down?

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1 **A.** Yes.

2 MR. MYHRE: Objection, Your Honor, as to time. What
3 are we talking about in terms of the time frame, Your Honor?

4 THE COURT: Do you want to set the time frame?

5 BY MR. LEVENTHAL:

6 Q. While you were watching this between, let's say, 12:15 and
7 12:45, did you see her get up and down in a number of different
8 pictures and videos?

9 **A.** I believe so. But my review of the photo and video evidence
10 focused on the people on the bridge with the guns --

11 Q. I --

12 **A.** -- and not --

13 Q. -- understand.

14 **A.** -- not the reporter with the --

15 Q. I understand --

16 **A.** -- paper and the pencil.

17 Q. I understand.

18 But also, when you were focused on people with guns,
19 you were also focused on everybody because you wanted any
20 evidence you could gather; correct?

21 MR. MYHRE: Objection, Your Honor, argumentative.

22 BY MR. LEVENTHAL:

23 Q. Were you only focused on people with the guns?

24 **A.** My primary focus, yes.

25 Q. Right.

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1 But you were able to discern or at least identify
2 (drawing) this person here that I've circled?

3 **A.** Yes.

4 **Q.** This person here (drawing)?

5 **A.** Yes.

6 **Q.** How about this person here (drawing)? Were you able to
7 identify him?

8 MR. MYHRE: Objection to the relevance, Your Honor.

9 MR. LEVENTHAL: Well, he's indicated --

10 MR. MYHRE: This case --

11 MR. LEVENTHAL: -- he's only --

12 MR. MYHRE: -- is not about the cameraman.

13 MR. LEVENTHAL: -- he's only focused --

14 THE COURT: Mr. Leventhal, it's not relevant.

15 MR. LEVENTHAL: What is not relevant?

16 BY MR. LEVENTHAL:

17 **Q.** Were you able to identify other people, other than people
18 with the guns, on the bridge?

19 MR. MYHRE: Same objection, Your Honor, relevance.

20 THE COURT: Sustained.

21 BY MR. LEVENTHAL:

22 **Q.** Would you agree that there's a number of people here that
23 have cameras that seem to be pointing in one direction?

24 MR. MYHRE: Objection, Your Honor, relevance and
25 argumentative.

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1 THE COURT: Sustained.

2 MR. LEVENTHAL: Okay. If we can go to 64, please.

3 (Slide displayed in open court.)

4 BY MR. LEVENTHAL:

5 Q. So you indicated that -- down here -- that Mr. Drexler went
6 prone at 12:38?

7 A. Yes.

8 Q. Okay.

9 MR. LEVENTHAL: If we can go to 65, please.

10 (Slide displayed in open court.)

11 BY MR. LEVENTHAL:

12 Q. Okay. This is your next slide at 12 --

13 MR. LEVENTHAL: Go up a little bit, please, Brian --

14 BY MR. LEVENTHAL:

15 Q. -- 12:39?

16 A. Yes.

17 Q. Okay. And this picture shows a big tree (drawing) in front
18 of, I guess, some (drawing) agents back there behind there;
19 correct?

20 A. It's a tree or a bush. But, yes, it's large. Yes.

21 Q. Okay. And I think you indicated on direct that these people
22 were backing up.

23 A. Yes.

24 MR. LEVENTHAL: Could we go to 29a, please, Bryan.

25 ///

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1 BY MR. LEVENTHAL:

2 Q. Now, before he pulls that up, you actually got that still
3 from video 29a; correct? That would be the Shilakis video?

4 **A.** Which slide was that, just so I could verify?

5 Q. 65.

6 **A.** 29, yes. It might have been clipped at --

7 (Video started/stopped.)

8 THE WITNESS: -- 29a.

9 BY MR. LEVENTHAL:

10 Q. What's that?

11 **A.** It was Exhibit 29.

12 Q. Okay.

13 MR. LEVENTHAL: Could we pull 29a.

14 (Video played.)

15 MR. LEVENTHAL: Stop right there. Stop right there.

16 Okay.

17 BY MR. LEVENTHAL:

18 Q. So Shilakis is indicating it's 12:39 I think you said?

19 **A.** Yes.

20 Q. Okay. And the BLM agents (drawing) over here, they are
21 backing up; correct?

22 **A.** I don't know if that vehicle in this shot is backing up yet.
23 But the vehicle behind that is in the process. It's -- it's in
24 reverse; it's backing up.

25 Q. Okay. This gentleman right here looks like he's with

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1 Metropolitan Police Department --

2 **A.** Yes.

3 **Q.** -- correct? Okay.

4 He's actually going forward; correct (drawing)?

5 **A.** That's correct.

6 MR. LEVENTHAL: Okay. Go ahead, Brian.

7 (Video played.)

8 MR. LEVENTHAL: Stop right there.

9 BY MR. LEVENTHAL:

10 **Q.** Okay. Now, this looks like the tree that you took the still
11 from?

12 **A.** Yes.

13 **Q.** And this vehicle is backing up; correct (drawing)?

14 **A.** Yes.

15 **Q.** Shilakis indicates, "We just need to give them some space in
16 hopes they disburse." Is that what we heard?

17 **A.** Correct.

18 **Q.** Okay.

19 MR. LEVENTHAL: Keep going, Brian.

20 (Video started/stopped.)

21 MR. MYHRE: Your Honor, objection. I don't believe the
22 Government admitted the audio to this video section into
23 evidence. Just the images.

24 THE COURT: Just play the images without the audio,
25 please.

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1 MR. LEVENTHAL: That's fine.

2 Can you turn it down, please, Brian.

3 (Video played.)

4 MR. LEVENTHAL: Stop right there, Brian.

5 BY MR. LEVENTHAL:

6 Q. Okay. Now, here's the gate that keeps the protestors on one
7 side and, I guess, the BLM on the other, correct, underneath
8 the southbound bridge?

9 A. That's not what that gate was there for, but it was used --
10 well, at this point, it was separating people underneath the
11 southbound bridge from where the BLM was.

12 Q. Okay.

13 MR. LEVENTHAL: Go ahead, Brian.

14 (Video played.)

15 MR. LEVENTHAL: Stop right there, Brian.

16 BY MR. LEVENTHAL:

17 Q. This gentleman right here (drawing), he looks like he's
18 walking with his back towards the protestors; correct?

19 A. Yes.

20 Q. Okay.

21 MR. LEVENTHAL: Go ahead, Brian.

22 (Video played.)

23 MR. LEVENTHAL: Stop right there, Brian.

24 BY MR. LEVENTHAL:

25 Q. Okay. Now, this vehicle backed up (drawing); correct?

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1 **A.** It had backed up, yes.

2 **Q.** And, now, it's sort of backing out and it's gonna go
3 forward, correct --

4 **A.** Yes.

5 **Q.** -- as you keep watching? Okay.

6 And this BLM officer (drawing), he just sort of walked
7 back; correct?

8 **A.** It's a Park Service officer. And, yes, he walked back.

9 **Q.** Okay. Now, these individuals here (drawing) behind this
10 vehicle, they are still in their position; correct?

11 **A.** I -- there are people next to that vehicle, yes.

12 **Q.** Okay.

13 **MR. LEVENTHAL:** Can you take that down and bring up
14 182-58, please.

15 (Slide displayed in open court.)

16 **BY MR. LEVENTHAL:**

17 **Q.** Okay. If we could clue in on -- just up in this area. If
18 you put that up here real quick (drawing).

19 There's a water bottle up there.

20 **A.** Yes.

21 **Q.** Okay. And it seemed like it's a crushed water bottle;
22 correct?

23 **A.** Somewhat, yes.

24 **Q.** Okay. Now, Mr. Drexler here, he's got his gun (drawing) and
25 it's sort of resting on the bottom; is that correct?

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1 **A.** Yes.

2 **Q.** The bottom of that slit, if you will. Right?

3 **A.** The gap, yes.

4 **Q.** Yeah.

5 Now, you indicated -- I believe you indicated that it's
6 easier to maneuver as you go upwards; correct (drawing) --

7 **A.** For a --

8 **Q.** -- with the broom?

9 **A.** -- for a portion of that Jersey barrier, yes.

10 **Q.** Okay.

11 MR. LEVENTHAL: Could we go to 199, please, Brian.

12 (Exhibit displayed in open court.)

13 MR. LEVENTHAL: And if you could just zoom in on this
14 upper portion here.

15 BY MR. LEVENTHAL:

16 **Q.** So that -- so this bridge -- you took this picture; correct?

17 **A.** Yes.

18 **Q.** And I think you indicated you were not able to get down or
19 get a view as to what the person who was sitting there was
20 doing, correct, that view?

21 **A.** I was not able to lay down on the road.

22 **Q.** Right. Okay.

23 And so, if you look at some trajectory, this sort of
24 spins off. It's deceiving; correct? It's not straight. Is
25 that true?

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1 MR. MYHRE: Objection, Your Honor, as to the
2 characterization, "deceiving."

3 BY MR. LEVENTHAL:

4 Q. Well, tell me something. Does that look like it's going
5 straight? If you were to put a line here, does that marking
6 look like it's going straight (drawing)?

7 A. I'm -- I apologize. I -- I don't understand. If -- if --
8 you're talking about the vantage point from this photograph is
9 that straight through the gap or is the gap slightly on the
10 right?

11 Q. Correct.

12 A. That would be true, yes.

13 Q. It would be true.

14 A. Yes.

15 Q. So it would be slightly, actually, to the right. So if you
16 would follow that that would be to the right.

17 A. Yeah. The upper portion that you had indicated, yes.

18 Q. Very good.

19 MR. LEVENTHAL: Thank you. I have nothing further.

20 THE COURT: Any redirect?

21 MR. MYHRE: May I have just one moment, Your Honor?

22 THE COURT: Yes.

23 (Government counsel conferring.)

24 MR. MARCHESE: Your Honor, I apologize. May we have a
25 bathroom break?

1 THE COURT: Yes. Let's go ahead and take a break.

2 During this time, I remind the jury:

3 You are not to discuss this case with anyone nor permit
4 anyone to discuss it with you. If you should inadvertently
5 hear anything about the case or anyone attempts to speak to you
6 about the case, remember that you have a duty to let the Court
7 know right away.

8 Also do not read or listen to or view anything that
9 touches upon this case and do not attempt to perform any
10 research or any independent investigation about anything or any
11 issues concerning this case.

12 And please do not form any opinion.

13 We'll go ahead and -- it's 11:08; let's call it 11:10.
14 Be back here by 11:20.

15 All right. Let's go ahead and stand for the jury.
16 They are excused.

17 And, Special Agent Willis, we just need you back here
18 at 11:20, please.

19 THE WITNESS: Yes, Your Honor.

20 (Jury out, 11:09 a.m.)

21 THE COURT: Off record.

22 (Recess, 11:09 a.m. Resumed, 11:31 a.m.)

23 COURTROOM ADMINISTRATOR: All rise.

24 THE COURT: Thank you. You may be seated.

25 All right. Can we call the jury back in.

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1 (Pause in the proceedings.)

2 COURTROOM ADMINISTRATOR: All rise.

3 (Jury in, 11:34 a.m.)

4 THE COURT: All right. Jury may go ahead and be
5 seated.

6 And everyone else may be seated as well.

7 Mr. Myhre, redirect?

8 MR. MYHRE: Yes, Your Honor, briefly.

9 If we could go to 210-2, please.

10 (Exhibit displayed in open court.)

11 REDIRECT EXAMINATION

12 BY MR. MYHRE:

13 Q. Agent Willis, you were asked a number of questions about
14 210-2, which should be up on your monitor now. In reference to
15 a question that Mr. Marchese asked during cross-examination, he
16 asked you the distance from the makeshift gate, which is under
17 the southbound lane -- drawing a line there -- to where the
18 first trucks were, the first -- the three trucks that were sort
19 of the first line. Do you recall that --

20 A. Yes.

21 Q. -- question?

22 And I believe your answer was 130 yards. Was that --
23 do you -- have you determined the distance between where the
24 cars were located and where the makeshift gate was?

25 A. Yeah. I believe I said 8 yards.

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1 MR. MYHRE: Just to be clear, so if we could go to
2 182-40.

3 (Slide displayed in open court.)

4 BY MR. MYHRE:

5 Q. So here's -- in 182-40, there's an image of the three
6 vehicles just north of the southbound lane in the wash;
7 correct?

8 A. Yes.

9 Q. And the makeshift gate is not visible in this image, but
10 it's underneath the southbound bridge; correct?

11 A. Yes.

12 Q. So, just to be clear -- and I believe you discussed this
13 with Mr. Leventhal as well -- we're talking about the distance
14 from here and I'm drawing a line underneath the southbound
15 where the gate would be (drawing). And what is this distance
16 between those two marks?

17 A. Yeah. So, as I was standing there (drawing), I believe the
18 distance would have been approximately 8 yards; could have been
19 10 yards. It -- it's not that very far -- it's not that far.

20 Q. Thank you. Just wanted to --

21 A. Yeah.

22 Q. -- clarify that.

23 MR. MYHRE: And you could bring that down. Thank you.
24 If you could bring up 199 again.

25 (Exhibit displayed in open court.)

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1 BY MR. MYHRE:

2 Q. And, just to clarify, Agent Willis, Mr. Leventhal asked you
3 a number of questions about 199 specifically concerning the
4 direction of this broom as it's placed in here; correct?

5 **A.** Yes.

6 Q. From your visit to that site and your placement of this
7 broom, from this gap where is -- what direction is this broom
8 pointed?

9 **A.** It would have been pointed north.

10 Q. If you could just draw a line in the direction it's pointed.

11 **A.** (Complies.)

12 Q. And is that the area -- now, the witnesses has drawn a line
13 from the base of the broom handle to an area in the wash under
14 the southbound bridge.

15 And that area generally that you've drawn to, where
16 does that correspond to the placement of the vehicles on April
17 the 12th?

18 **A.** That is generally the place where the three vehicles would
19 have been parked closest to the cattle gate.

20 Q. Thank you.

21 MR. MYHRE: And clearing 199. You can bring that down.

22 And, Your Honor, just as a housekeeping matter of
23 clarification -- I may just have this wrong on my notes --
24 Mr. Marchese referenced 206, Government Exhibit 206, during
25 Mr. Willis's testimony. I don't believe that was admitted.

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1 But we'll offer it and I believe there's a stipulation for its
2 admission if it hasn't been.

3 (Government's Exhibit No. 206, offered.)

4 THE COURT: That's correct. 206 was not admitted
5 previously along -- we were sort of jumping around from 202,
6 208 to 204, back and forth. And 206 was not one that was
7 admitted.

8 But is that correct that the defense has no objection
9 to the admission of 206 for demonstrative purposes?

10 MR. MARCHESE: That's correct, Your Honor. And I
11 apologize. I overlooked that.

12 THE COURT: All right. So Exhibit 206 will be admitted
13 for demonstrative purposes.

14 (Government's Exhibit No. 206, received.)

15 MR. MYHRE: No further redirect, Your Honor.

16 THE COURT: All right.

17 Any recross?

18 MR. TANASI: Not from Stewart, Your Honor.

19 MR. MARCHESE: None from Parker, Your Honor.

20 MR. LEVENTHAL: No, Your Honor. Thank you.

21 MR. PEREZ: None from Lovelien.

22 THE COURT: All right.

23 So, at this time if any member of the jury have a
24 question for Special Agent Willis, please go ahead and write
25 them down on the form provided. Take your time, write neatly.

1 We don't need your name or your jury number or your initials.
2 Go ahead and write down as many questions as you have and be
3 careful not to include any words that we might not be familiar
4 with or go ahead and define them in parentheses if you need to
5 use a word. And try not to use pronouns. Let us know exactly
6 who you're referring to if you can.

7 (Pause in the proceedings.)

8 (Courtroom Administrator and the Court conferring.)

9 THE COURT: All right. So we're gonna go ahead and
10 excuse the jury so they can go ahead and get started on their
11 lunch, which I understand has already arrived stay, and then
12 the rest of us can stay and go through the jury questions.

13 So if you'll please stand up for the jury. It's 11:45.
14 We'll welcome them back at 1:00 o'clock.

15 (Jury out, 11:42 a.m.)

16 THE COURT: And, Special Agent Willis, after the jury
17 exits, you're free to also take your lunch break. We just need
18 you back here by 1:00 o'clock.

19 THE WITNESS: Yes, Your Honor.

20 (Pause. Jury not present.)

21 THE COURT: All right. Everyone else may be seated.

22 So the first jury question is number 120. It asks,
23 "You indicated that on the slide name were labeled only on the
24 individual that has gun. There are other individuals that have
25 gun also. Why is that not labeled?"

1 Any objection?

2 MR. MARCHESE: None from Parker.

3 MR. TANASI: None from Stewart, Your Honor.

4 MR. MYHRE: None from the Government, Your Honor.

5 THE COURT: All right.

6 Jury Note No. 121 asks, "At the base of the gap, how
7 many degrees would you say the broom could from side to side?"
8 Let me reread that. "At the base of the gap, how many degrees
9 would you say the broom could from side to side?" Might be
10 missing the word --

11 MR. MYHRE: "Move."

12 THE COURT: -- "move." But that seems to be what they
13 are asking is the degrees within the gap that the broom could
14 move.

15 Any objection to that?

16 MR. TANASI: None from Stewart.

17 MR. MYHRE: None from the Government, Your Honor.

18 Unless we want to reference a specific exhibit, but . . .

19 MR. MARCHESE: Parker doesn't object.

20 THE COURT: So would we reference Exhibit 199?

21 MR. MYHRE: Well, with 199 --

22 THE COURT: Or a different one?

23 MR. MYHRE: -- and 208, I believe, address the gaps
24 for -- related to Mr. Parker and Mr. Drexler. 199 was Drexler
25 and 208 was Mr. Parker.

1 MR. MARCHESE: 208? I think it's -- I have it at 206
2 and '7.

3 (Pause in the proceedings.)

4 MR. MYHRE: Correct, two 0 -- I'm sorry.

5 THE COURT: 208 is broom through the gap.

6 MR. MYHRE: 208 is the broom, but it's from the other
7 side. 20- --

8 MR. MARCHESE: 206 --

9 MR. MYHRE: -- '7 and 206 are --

10 MR. MARCHESE: Yeah, 206 is probably closer to 199 from
11 the vantage point -- or the distance, I should say.

12 (Pause in the proceedings.)

13 THE COURT: All right. I have written down 207 is the
14 view of the gap where Parker was prone, the broom was 1 inch
15 around the gap; and then 205 was the gap view of the BLM. So
16 that's a different view.

17 MR. MARCHESE: 207 was the one taken across the street.
18 206 was the one we just admitted; it's a little bit closer up.
19 And 205 is without the broomstick.

20 THE COURT: 208 is the outside.

21 (Pause in the proceedings.)

22 THE COURT: So you want me to reference 208 and 199?

23 MR. MYHRE: 206, Your Honor, and 199.

24 THE COURT: 206 and 199.

25 MR. MARCHESE: Parker agrees.

1 THE COURT: All right.

2 Then Jury Question 122 is: "May we bring up the last
3 exhibit that Mr. Leventhal asked Agent Willis about the broom?
4 Exhibit 199 - not sure what frame. Mr. Willis testified the
5 upper part of the gap leaned or veered right at the top of the
6 gap. The gap seemed to be more open and not veering to the
7 right near the bottom of it. Is that correct? So one could
8 have a wider view at the bottom of the gap?? Could the
9 broomstick move more freely through the gap at or near the
10 bottom of the gap?"

11 I'm reading it like that because it's not separated out
12 into questions; it's just one run-on paragraph. So, if you
13 want, I could ask it as separate questions or just as one. Or
14 I could ask it the way it's written.

15 (Government counsel conferring.)

16 THE COURT: Any objections?

17 MR. MYHRE: None from the Government, Your Honor.

18 MR. TANASI: None from Stewart, Your Honor.

19 MR. MARCHESE: No objection, Parker. We would ask,
20 though, if Your Honor could break it down.

21 THE COURT: Okay. Let me . . .

22 (Pause in the proceedings.)

23 THE COURT: Okay. And then Jury Question 123, "Will
24 there be an exhibit list index provided to the jury?" I think
25 we can answer that yes. We don't need to ask the witness that.

1 Jury Note No. 124, "What was the reason to have the FBI
2 survey the area?"

3 (Government counsel conferring.)

4 MR. MYHRE: I'm not sure, Your Honor, what the juror
5 means by "survey the area."

6 THE COURT: Right. I think they are referring to the
7 aerial because the second question is, "If the BLM was in
8 charge of the cattle impoundment operation, at what point did
9 the FBI get involved?"

10 (Government counsel conferring.)

11 MR. MYHRE: We would object to the -- well, first of
12 all, it's still kind of vague in terms of "get involved." I'm
13 assuming get involved in the investigation. But it's really
14 not relevant to anything and -- that's at issue in the case.

15 THE COURT: Defense agree? Disagree?

16 MR. TANASI: I think I'd disagree, Your Honor. I think
17 that, you know, the investigation leading up and to the charges
18 I think is relevant to the case. And I think the FBI's the
19 investigating agency. And so, if this juror wants to know when
20 and why the FBI got involved, I think that that's relevant.

21 THE COURT: Why?

22 MR. TANASI: Because what was the purpose for the FBI
23 to first look into the case? What was the crime that they were
24 investigating? What were they first looking into and why were
25 they looking into it? I think the origin of all that is

1 relevant. A police officer's probable cause, a police
2 officer's investigation -- it's -- I think the investigation's
3 relevant.

4 THE COURT: You just keep saying it's relevant, but
5 you're not saying why. So I don't see that it's relevant. So
6 I'm not gonna ask Jury Question No. 124.

7 125 asks, "Government 205 how much lateral (side to
8 side) movement could be made with a barrel?" And then it has
9 "(field of fire.)" So the first question is as to lateral
10 movement and the second question is, "How much vertical
11 movement could be made with the rifle barrel? (Field of
12 fire.)" And then there's a picture. There's a drawing, I
13 should say; not a picture. A drawing that defines "field of
14 fire."

15 (Counsel conferring.)

16 MR. MYHRE: Your Honor, is the juror asking the witness
17 to verify the drawing of the -- or is it just --

18 THE COURT: No. The drawings have numbers. It's just
19 defining "field of fire." So there seems to be two rectangles
20 that are separated by a gap and then from the top of that gap
21 there are dotted lines go out sort of in a "V." And then
22 there's a line that connects the "V" at the top that has the
23 words "field of fire." So it's as if there's a funnel field
24 from the gap that's protruding at an outward angle and that's
25 what they are referring to and they are asking about field of

1 fire.

2 MR. MYHRE: All right.

3 THE COURT: So the first question is, "How much lateral
4 (side to side) movement could be made with a gun barrel?
5 (Field of fire.)" And the second one is, "How much vertical
6 movement could be made with the rifle barrel? (Field of
7 fire.)"

8 Do you have any --

9 MR. MYHRE: No objection from --

10 THE COURT: -- objection --

11 MR. MYHRE: -- the Government.

12 THE COURT: -- to those two?

13 MR. MYHRE: I'm sorry, Your Honor. I didn't mean to
14 speak --

15 THE COURT: That's --

16 MR. MYHRE: -- over you.

17 THE COURT: -- okay.

18 MR. MYHRE: None from the Government.

19 MR. TANASI: Court's indulgence.

20 (Defense counsel conferring.)

21 MR. MARCHESE: No objection, Parker.

22 MR. TANASI: None from Stewart, Your Honor.

23 MR. LEVENTHAL: No objection.

24 MR. PEREZ: None from Lovelien.

25 THE COURT: All right. The third question Juror Note

1 125 asks, "Why didn't you take help/support for the range
2 finding experiment - if not, why not?"

3 MR. MARCHESE: No objection, Parker.

4 MR. TANASI: None from Stewart.

5 MR. LEVENTHAL: No objection.

6 MR. PEREZ: None from Lovelien.

7 MR. MYHRE: Your Honor, could you read the first part
8 again. I'm sorry. I didn't hear it all.

9 THE COURT: "Why didn't you take help/support for the
10 range finding experiment - if not, why not?"

11 (Government counsel conferring.)

12 MR. MYHRE: I'm not sure what they mean by
13 "help/support."

14 THE COURT: Neither do I. "Why didn't you take" . . .
15 (Pause in the proceedings.)

16 THE COURT: Are they asking why didn't he -- why did he
17 go alone? Why didn't he take more people? Is that how you're
18 reading it?

19 MR. TANASI: That's the way I read it.

20 THE COURT: That's one interpretation.

21 MR. TANASI: Right. That's how I read it -- or heard
22 it.

23 MR. MYHRE: I think that's probably interpretation. I
24 don't think we have any objection. But, again, I believe the
25 agent testified he went out there on multiple occasions. So

1 I'm not sure if the Court wants to focus it on any particular
2 occasion or just whether at any point in time he took another
3 individual with him to assist.

4 THE COURT: All right. And then Question 4 on Jury
5 Note 125 asks, "Did you calibrate the range finders - if not,
6 why not?"

7 MR. MYHRE: No objection from the Government.

8 MR. MARCHESE: None from Parker.

9 MR. TANASI: None from Stewart, Your Honor.

10 MR. LEVENTHAL: No objection..

11 THE COURT: All right. And then, "Did you use GPS
12 validated positions and height of bridge - if not, why not?"

13 Any objection?

14 MR. MYHRE: That question was objected to by
15 Mr. Leventhal during -- we -- during Agent Willis's testimony.
16 But we have no objection to that question.

17 (Defense counsel conferring.)

18 MR. LEVENTHAL: As to leading or . . .

19 MR. MARCHESE: In reference to Parker, we have no
20 objection.

21 MR. LEVENTHAL: I don't know what I objected to.

22 Relevance --

23 THE COURT: Hearsay.

24 MR. LEVENTHAL: Leading, I don't know. But I --

25 THE COURT: You objected to hearsay.

1 MR. LEVENTHAL: Hearsay? No. I don't have any
2 objection to that question.

3 MR. PEREZ: None from Lovelien.

4 THE COURT: All right.

5 And then the last question is, "Are the bridges exactly
6 parallel?"

7 Any objection?

8 MR. MYHRE: None from the Government, Your Honor.

9 MR. TANASI: None from are Stewart, Your Honor.

10 MR. MARCHESE: None from Parker.

11 MR. PEREZ: None from Lovelien.

12 MR. LEVENTHAL: No, Your Honor.

13 THE COURT: All right.

14 Jury Question 126, "Although Steven Stewart stated 'We
15 pushed forward' on his Facebook [page], would it be accurate to
16 say that none of the defendants ever 'pushed forward'" -- and
17 it's in quotation marks -- "toward the gate but remained mainly
18 stationary on the bridge?"

19 Any objection to that question?

20 MR. TANASI: None from Stewart, Your Honor.

21 MR. MARCHESE: None from Parker.

22 MR. LEVENTHAL: No objection.

23 MR. PEREZ: None from Lovelien.

24 THE COURT: All right.

25 And second part of Jury Note 126, "In your observations

1 through photographs and video from the day in question, did you
2 observe Ricky Lovelien point a weapon at law enforcement at any
3 time?"

4 Any objection?

5 MR. PEREZ: No objection, Lovelien.

6 MR. TANASI: Not from Stewart, Your Honor.

7 MR. MARCHESE: None from Parker.

8 MR. LEVENTHAL: No objection.

9 MR. MYHRE: None from the Government as to either of
10 those portions of the question, Your Honor.

11 THE COURT: And Jury -- the third question on Jury
12 Note 26 [sic], "Out of the 410 people" -- and then "protestors"
13 are in parentheses -- "present how many were women? How many
14 were children? How many were members of the media/news
15 reporters? How many were armed? How many were militia?
16 (Estimations are fine if exact numbers are unclear)."

17 Any objection?

18 MR. TANASI: None from Stewart, Your Honor.

19 MR. MARCHESE: None from Parker.

20 MR. PEREZ: None from Lovelien.

21 MR. LEVENTHAL: No objection.

22 MR. MYHRE: I don't think the witness knows that level
23 of detail based on his analysis, but I don't think we have an
24 objection to the question in general other than if the Court
25 could preface it "if you could determine that from your

1 analysis."

2 THE COURT: Okay.

3 And then Jury Question 127, "Did Scott Drexler or
4 Steven Steward [sic] have any direct communication" -- and then
5 in parentheses -- "(Facebook messages, phone conversations,
6 private messages, etc. . . .)" -- close parentheses -- "with
7 individuals that rallied for or organized the Bundy protest" --
8 and then open parentheses -- "(outside of any of the defendants
9 present in the courtroom)" -- close parentheses -- "before the
10 date in question?"

11 MR. TANASI: No objection, Stewart, Your Honor.

12 (Government counsel conferring.)

13 MR. LEVENTHAL: Could you reread the question again,
14 please?

15 THE COURT: Sure.

16 MR. LEVENTHAL: Thank you.

17 THE COURT: "Did Scott Drexler or Steven Steward" --
18 and I realize it's a misspelling, but I'm just reading it the
19 way that it's spelled. It's spelled "Steward" like a
20 stewardess, steward -- "Did Scott Drexler or Steven Steward
21 have any direct communication (Facebook messages, phone
22 conversations, private messages, etc. . . .) with individuals
23 that rallied for or organized the Bundy protest (outside of any
24 of the defendants present in the courtroom) before the date in
25 question?"

1 MR. LEVENTHAL: No objection on behalf of Mr. Drexler.

2 MR. MARCHESE: None from Parker.

3 THE COURT: Was there any objection from the
4 Government?

5 MR. MYHRE: I'm --

6 THE COURT: I don't --

7 MR. MYHRE: -- I'm thinking --

8 THE COURT: -- recall --

9 MR. MYHRE: -- still, Your Honor. There's something
10 objectionable about that question, but I'm not sure as I think
11 about what it is other than if it could be caven (ph) to the
12 agent's review of those specific items, the Facebook that were
13 mentioned there. I have an objection to just any communication
14 because it could be a wink and a nod or whatever. And I -- if
15 we were specific -- I had the same objection to Mr. Leventhal's
16 questions -- if it could be directed specifically to those
17 items that the juror listed, I think we're fine with it.
18 Again, it's just sort of this broad brush, any communication
19 because that's vague and could encompass anything.

20 THE COURT: All right.

21 And Jury Question 28 [sic] asks, "Regarding the Joel
22 Lewis demonstration photos what month were they taken and what
23 time of day?"

24 (Government conferring.)

25 MR. MYHRE: No objection, Your Honor.

1 MR. MARCHESE: None from Parker.

2 MR. TANASI: None from Stewart, Your Honor.

3 MR. LEVENTHAL: No objection.

4 MR. PEREZ: None from Lovelien.

5 THE COURT: And then the last question on 128 is, "Did
6 you or your team enhance or Photoshop any of the images?"

7 MR. MARCHESE: No objection --

8 THE COURT: Any --

9 MR. MARCHESE: -- Parker.

10 THE COURT: -- objection?

11 MR. TANASI: None from Stewart, Your Honor.

12 MR. MYHRE: None from the Government, Your Honor.

13 THE COURT: All right.

14 So we'll ask the questions when they come back from
15 lunch at 1:00 o'clock. It's 12:00 o'clock so you all have an
16 hour. We'll see you back here at 1:00 o'clock.

17 MR. MYHRE: Your Honor, could I --

18 THE COURT: Oh --

19 MR. MYHRE: -- I'm sorry --

20 THE COURT: -- yeah.

21 MR. MYHRE: -- to interrupt.

22 Could I just raise one thing? This is our last
23 witness. I'm assuming we're gonna be done within the next --
24 before the next mid-afternoon break.

25 THE COURT: Right.

1 MR. MYHRE: We -- if we're not going to proceed any
2 further with evidence today, we would like to say it's our last
3 witness. But we'd like to formally rest till tomorrow morning
4 just so we can review our exhibit list one last time just to be
5 doubly sure. I don't know how the judge intends to address
6 that with the Court [sic]. But we would just represent that
7 it's our last witness.

8 THE COURT: All right. So it's your last witness for
9 today.

10 MR. MYHRE: For today, yes, Your Honor. Thank you.

11 THE COURT: And then we'll let the jury go.

12 MR. MYHRE: Yes, Your Honor. That's fine.

13 THE COURT: Okay. All right.

14 MR. TANASI: No objection. Thank you.

15 COURTROOM ADMINISTRATOR: All rise.

16 (Pause, 12:02 p.m. Resumed, 1:17 p.m. Jury not present.)

17 (Joel Willis resumes the witness stand.)

18 COURTROOM ADMINISTRATOR: All rise.

19 THE COURT: Thank you. You may be seated.

20 All right. So we'll bring the jury in. I'll ask the
21 witness the jury's questions. Then I'll ask the parties if
22 they have follow-ups. And then, once we're finished, then I'll
23 excuse Agent Willis and ask the Government if you have another
24 witness to call today and the Government can say you don't have
25 another witness or this was our last witness for today and then

1 I will excuse the jury. And then we can discuss what comes
2 next.

3 MR. TANASI: Great.

4 THE COURT: Does that work?

5 MR. TANASI: Sounds good.

6 THE COURT: Okay.

7 So let's go ahead and do that, Aaron, please.

8 COURTROOM ADMINISTRATOR: Yes, Your Honor.

9 (Pause in the proceedings.)

10 COURTROOM ADMINISTRATOR: All rise.

11 (Jury in, 1:22 p.m.)

12 THE COURT: All right. Jury may go ahead and be
13 seated.

14 Everyone else may be seated as well.

15 Welcome back from the lunch break.

16 All right. So, Special Agent Willis, I do have some
17 jury questions here that I am going to read into the record,
18 but they are jury questions. So, when you respond, you may go
19 ahead and turn and face the jury instead. All right?

20 THE WITNESS: Yes.

21 THE COURT: So Jury Note No. 120 asks, "You indicated
22 that on the slide the names were labeled only on the individual
23 that has a gun. There are other individuals that also have a
24 gun. Why is that not labeled?"

25 THE WITNESS: For the purpose of this sequential

1 timeline that I created, I -- I labeled certain slides.
2 There -- there were slides that had three of the defendants
3 labeled; there were slides that had two of the defendants
4 labeled; one of the defendants labeled. But, focusing on this
5 case and the defendants that we have here on trial, that's who
6 I focused on labeling for the purpose of this timeline. There
7 were other individuals that were armed on the bridge. But my
8 investigation focused specifically on the defendants in this
9 trial who posed a threat to the law enforcement officers in the
10 wash. And that's who I focused --

11 MR. LEVENTHAL: I'm gonna --

12 THE WITNESS: -- on labeling.

13 MR. LEVENTHAL: -- object as to a legal conclusion. I
14 move to strike that final answer.

15 MR. MARCHESE: Parker joins.

16 MR. PEREZ: Lovelien --

17 MR. TANASI: Stewart --

18 MR. PEREZ: -- joins.

19 MR. TANASI: -- joins.

20 THE COURT: Sustained.

21 So the jury will disregard the use of the word
22 "threat." I think you get the general idea that he's focusing
23 on these folks for this trial.

24 All right. So Jury Note No. 121 asks, "At the base of
25 the gap, how many degrees would you say the broom could move

1 from side to side?"

2 THE WITNESS: Going back to my geometry days, I would
3 say --

4 THE COURT: I think we were gonna pull up a couple of
5 exhibits for this one.

6 THE WITNESS: Okay.

7 THE COURT: We decided Exhibit 199 and Exhibit 206
8 would be a helpful demonstrative for you to answer this
9 question.

10 (Exhibit displayed in open court.)

11 THE COURT: So the first one that's pulled up is 199.

12 THE WITNESS: I would say a 20- to 25-degree
13 (gesturing) change in vantage point. If you were staring at
14 the gap and the broom was in the gap (gesturing), I'm just
15 imagining, you know, kinda of a slice of a pie, and that would
16 approximately be 20 degrees that I would be able to move that
17 broom backwards and forward.

18 THE COURT: All right.

19 And then Exhibit No. 206 --

20 (Exhibit displayed in open court.)

21 THE COURT: -- is now up on the screen. Same or
22 different?

23 THE WITNESS: Yeah. Again, I'm not moving the broom,
24 as you could see in this -- in this picture. I had set the
25 broom, like I said, straight down and was able to move it and

1 point it at the asphalt area in the wash. But the full
2 movement of the broom back and forth would have been
3 approximately 20 degrees, I would say, from that point in the
4 gap moving the broom back and forth.

5 THE COURT: And when you say that you were able to
6 yourself move the broom that was in the gap to point it at the
7 asphalt, is that true for both of the exhibits or just for one
8 of the two exhibits?

9 THE WITNESS: For both of the gaps. The gap that Eric
10 Parker used and the gap that Scott Drexler used that would be
11 the same; I would say the same ability to move that broom.

12 THE COURT: And, just to be sure that I'm being true to
13 the question here -- I'm not sure if you recall this -- but
14 specifically the question was as to the base of the gap. So we
15 have space in the bottom of the gap and space at the top of the
16 gap so just to make sure you're talking about space at the
17 bottom of the gap.

18 THE WITNESS: Uh, yes, that would be accurate.

19 THE COURT: All right.

20 THE WITNESS: 20 degrees.

21 THE COURT: So Jury Note No. 122 has a couple different
22 parts. You sort of have to hear all the parts maybe to get a
23 better idea of where it's going, but I'm gonna try to break it
24 up so that you can answer it.

25 So the first part is, "May we bring up the last exhibit

1 that Mr. Leventhal asked Agent Willis with the broom. [And
2 that's] Exhibit 199. Not sure what frame. But Mr. Willis
3 testified the upper part of the gap" --

4 (Exhibit displayed in open court.)

5 THE COURT: -- "leaned or veered right at the top of
6 the gap. The gap seemed to be more open and not veering to the
7 right near the bottom of it. Is that correct?"

8 THE WITNESS: No. It is slightly veering to the right.
9 But, as we had shown in the picture where I'm standing at the
10 beginning of the embankment (gesturing), that that Jersey
11 barrier is thinner in the middle of the Jersey barrier and
12 widens at the top so that that shift to the right, at least
13 from the vantage point of this photograph, is definitely more
14 drastic. There is a significance in the thickness of that
15 Jersey barrier on -- on the top compared to on the bottom.

16 So it -- it does go to the right. But, as you could
17 see, not as much. It -- it is significantly thinner than the
18 top from my vantage point while I was taking the picture. I
19 did not measure it. But I could see and you could see from
20 this picture the ability to see through the bottom of that
21 Jersey barrier as compared to the top of the Jersey barrier.

22 THE COURT: All right. I'm not sure that we're talking
23 about the same thing.

24 So you're talking about from the upper part of the
25 barrier to the lower part of the barrier; right?

1 THE WITNESS: Yes.

2 THE COURT: Okay. I think that this question is asking
3 something else. I'll read it again.

4 "The upper part of the gap leaned or veered right at
5 the gap. The gap seems to be more open and not veering to the
6 right near the bottom of it" -- oh, I guess you are answering
7 the correct question. Okay. Never mind. I was thinking it
8 was asking about the top.

9 All right. So the next part of the question is, "So
10 one would have a wider view at" -- "So would one have a wider
11 view at the bottom of the gap?"

12 THE WITNESS: Yes.

13 THE COURT: And then, Could the broomstick move more
14 freely through the gap or near the bottom of the gap?

15 THE WITNESS: Near the bottom of the gap. The -- the
16 broomstick or a rifle would be able to move (gesturing) more
17 freely in either direction.

18 THE COURT: All right. So Jury Note 123 asks, "Will
19 there be an exhibit list or an index provided to the jury?"
20 And the answer is yes, there will be.

21 Jury Note No. 124 asks about other parts of the
22 investigation that are not relevant to the elements of the
23 offense in this case. So I'm not asking that question.

24 Jury Note No. 125 has a diagram. And the question is
25 about Government's Exhibit 205. So if you want to put that

1 back up, please.

2 (Exhibit displayed in open court.)

3 THE COURT: Thank you.

4 "How much lateral (side to side) movement could be made
5 with a gun barrel? And it's asking for the field of fire and
6 has a diagram showing from the top of the barrier on each side
7 of the gaps, a line going out sort of in a "V," and then at the
8 top it has a connection of the two "V" lines and it says that's
9 the -- the field of fire that they are asking about.

10 THE WITNESS: So, similar to the earlier question where
11 I was explaining the bottom of the gap, the 20 degree, and,
12 again, that's specifically me using that broomstick which is
13 approximately an inch in diameter.

14 I -- I don't know the exact diameter of the rifles --
15 the rifle barrels that Mr. Parker and Mr. Drexler had in the
16 gaps. But I would say that the field of view compared to that
17 20 degrees of the broomstick and field of movement would be
18 greater, especially at the bottom of the gap. The exact
19 degrees of -- of view with that gun or at least movement of
20 that gun, I -- I -- I don't know. But I would say it would be
21 either 20 degrees or just 25 degrees, somethin' like that; a
22 little bit larger.

23 THE COURT: And then also Jury Note No. 25 asks, "How
24 much vertical movement could be made with the rifle barrel?"
25 So field of fire vertical as opposed to lateral. So the first

1 question asks about lateral; this question asks about vertical.

2 THE WITNESS: Well, you would have been able to move
3 the gun all the way out of -- out of the gap. But, again, the
4 top portion of the Jersey barrier is thick (gesturing), it --
5 it goes thinner, and then it -- it stops (gesturing). So, in
6 the middle, it -- it -- it wouldn't have changed at -- at
7 least -- at least vertically. But it's the middle where the
8 horizontal would change. So that . . . There would be no
9 variation going vertically (gesturing), but it's the horizontal
10 movement that would change towards the bottom of the gap.

11 THE COURT: All right. So the next question is, "Why
12 didn't you take help/support for the range finding experiment -
13 [or] if not, why not?" And so the parties agree that we need
14 to probably add the words "how many times did you visit" and
15 then "did you take help and why or why not."

16 THE WITNESS: I think I've been out there approximately
17 six times. Every time but this time when I took the broom
18 photos I was out there with at least one to five other people.
19 For this experiment, it was just me. I -- I did not have help
20 that day. But, essentially for what I wanted to accomplish, I
21 knew I needed something to be able to put into that Jersey
22 barrier. I -- I knew the images that I wanted to capture. So
23 it was just me that day.

24 But, as far as the laser range finder, there were other
25 instances where we were out there at that -- at that time -- or

1 in that location with the laser range finder and we had other
2 people. One time we went out there we actually put a -- rocks,
3 like, in the middle of the Toquop Wash or a rock, a large rock,
4 where the cattle gate was to help us orient ourselves from the
5 bridge to these locations in that area.

6 THE COURT: All right. And the next question is, "Did
7 you calibrate the range finder -- if not, why not?"

8 THE WITNESS: I bought the range finder the day before
9 I went out there this second time. So I've mentioned using two
10 different range finders. I bought a brand new range finder the
11 last time I went out there to -- to get the last measurements.
12 I specifically asked about calibrating when I purchased it.
13 I'm not an expert at range finders. But I spoke to the person
14 at the store who -- I asked around and found that person -- and
15 they explained that there is -- you know, information on that
16 that says -- on the range finder that says, you know, when it
17 was manufactured and things like that. It was brand new out of
18 the package.

19 So, as far as calibrating and I guess sort of sending
20 it back to the company and making sure that they had calibrated
21 it, it was as good as I could get it as far as a brand new
22 laser range finder. Again, purchased it the day before the
23 last time I went out there to -- to double check all of the
24 distances.

25 THE COURT: And then, "Did you use GPS to validate the

1 positions and the height of the bridges - if not, why not?"

2 THE WITNESS: I -- I did not. I did not have any type
3 of device that I could use to measure height or distance as far
4 as using GPS while I was out there.

5 THE COURT: And then "why not" is the second part of
6 the question.

7 THE WITNESS: I -- I just did not have access to that
8 type of equipment.

9 THE COURT: And the last question is, "Are the bridges
10 exactly parallel?"

11 THE WITNESS: I would say yes.

12 THE COURT: Okay. Jury question -- I'm sorry -- Jury
13 Note No. 126 has a couple different questions. The first one
14 is, "Although Steven Steward stated" -- and there's quotations
15 around there -- "'We pushed forward'" -- close quotation -- "on
16 his Facebook update, would it be accurate to say that none of
17 the defendants ever pushed forward towards the gate but
18 remained mainly stationary on the bridge?"

19 THE WITNESS: The defendants, that is true, were not in
20 the wash moving forward with the crowd of people and people on
21 horseback. But their position on the bridge, as -- as we saw
22 in the timeline was definitely not stationary. They were up;
23 they were down. They were moving from location to location.
24 They were running away from the bridge, coming back to the
25 bridge with a backpack and water. But they, yes, did not

1 participate in the activity in the wash pushing forward to the
2 cattle gate.

3 THE COURT: "In your observations through photographs
4 and video from the day in question, did you observe Ricky
5 Lovelien point a weapon at law enforcement at any time?"

6 THE WITNESS: No, I did not.

7 THE COURT: And then, "If you know, out of the 410
8 people" -- and then parentheses -- "(protesters) present, how
9 many were women? How many were children? And how many were
10 members of the media or news reporters?"

11 THE WITNESS: I -- I know that there were women and
12 children and also reporters in the wash. I do not have a
13 specific count for those people. Again, and, as I had said on
14 cross, my investigation did not focus on the people in the wash
15 and the children and the women in the wash. I focused on the
16 people who were on the bridge and who were present on the
17 bridge with firearms.

18 THE COURT: And then, "How many were armed and how many
19 were militia?" Again, if you know.

20 THE WITNESS: As far as armed people, I believe we
21 counted 41 armed. I believe there -- of the armed people out
22 of the 410 -- so 41 armed -- 26 of them were in the wash; the
23 rest of them were on the bridges with the majority of them --
24 vast majority of them being on the northbound bridge.

25 As far as how many of them were militia, I can't give

1 you a specific number. But I know -- and -- and, as we have
2 gone over with the slide where we have Mr. Drexler in a prone
3 position and in the -- in the background there was three people
4 up on the skirt area on the southbound bridge, that would be an
5 example of militia because they are all representing their
6 militia based on the patches that they had that we observed on
7 their arms at the rally site. But I do not have a specific
8 number of people who were there on behalf or representing a
9 militia group.

10 THE COURT: All right.

11 Jury Note No. 127, "Based upon your individual review,
12 did Scott Drexler or Steven Steward have any direct
13 communication" -- and then in parentheses it says --
14 "(Facebook, messages, phone conversations, private messages,
15 etc. . . .) with individuals that rallied for or organized the
16 Bundy protest" -- and then in parentheses -- "(outside of any
17 of the defendants present in the courtroom)" -- close
18 parentheses -- "before the date in question."

19 So I'll read it again so it's clear.

20 So, "Based upon your own individual review, did Scott
21 Drexler or Steven Steward have any direct communication
22 (Facebook messages, phone conversations, private messages,
23 etc. . . .) with individuals that rallied for or organized the
24 Bundy protest outside of the any of the defendants present in
25 the courtroom before the date in question?"

1 THE WITNESS: I'm trying to -- I'm tryin' to -- it
2 seems like there's three questions there. I'm just trying
3 to -- to sort through it.

4 Well, as far as electronic telephone communication, I
5 don't recall. But they all traveled together. Steven Stewart,
6 Scott Drexler, and Eric Parker traveled together to
7 Bunkerville. So it would be inferred by me --

8 MR. LEVENTHAL: Objection --

9 THE WITNESS: -- that they --

10 MR. LEVENTHAL: -- calls for speculation. Move to
11 strike.

12 MR. TANASI: Stewart joins, Your Honor.

13 MR. PEREZ: Lovelien joins.

14 MR. LEVENTHAL: And nonresponsive.

15 MR. MARCHESE: Parker joins.

16 MR. MYHRE: It's directly responsive, Your Honor.

17 THE COURT: I'm sorry?

18 MR. MYHRE: It is directly responsive to the question,
19 any direct communication.

20 MR. LEVENTHAL: Yes, Your Honor. And he's indicating
21 it would infer to me. What -- what -- it's a direct
22 communication. It's a clear question that he's now inferring.
23 Nothing direct about that.

24 MR. MYHRE: The question asked did they have --

25 THE COURT: Right.

1 MR. MYHRE: -- any direct communication.

2 THE COURT: Yeah. Objection's overruled.

3 You may answer the question.

4 THE WITNESS: So, yes, I -- they would have had
5 communication together with each other to ultimately lead to
6 the three of them traveling to Bunkerville together and
7 arriving early in the morning on April 12th.

8 MR. TANASI: Your Honor, same objection. I'd move to
9 strike 'cuz it's not responsive. It's not whether they had
10 communications with one another; it's communication with
11 individuals, other individuals that rallied for or organized
12 the Bundy protest.

13 THE COURT: So other than the communications among the
14 three that traveled together -- so Drexler, Stewart, and
15 Parker -- based on your review did you find any direct
16 communication between Drexler and Stewart with individuals that
17 rallied or organized for the Bundy protest?

18 THE WITNESS: No.

19 THE COURT: All right.

20 And then Jury Note No. 128, "Regarding the Joel Lewis
21 [sic] demonstration photos, what month were they taken and what
22 time of day?"

23 THE WITNESS: My last name is Willis, W-i-l-l-i-s.
24 Just for the first part of that question.

25 And the photos that we see of the bridge, of the Jersey

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1 barrier were taken approximately 2 weeks ago. The photos from
2 inside the wash were taken 3 months ago, 4 months ago
3 approximately.

4 THE COURT: And, "Did you or your team enhance or
5 Photoshop any of those images?"

6 THE WITNESS: No.

7 THE COURT: All right. So that's the last question.

8 Does the Government have any follow-up?

9 (Government counsel conferring.)

10 MR. MYHRE: One moment, Your Honor.

11 THE COURT: Sure.

12 (Government counsel conferring.)

13 (Pause in the proceedings.)

14 MR. MYHRE: Just one, Your Honor.

15 FURTHER REDIRECT EXAMINATION

16 BY MR. MYHRE:

17 Q. Agent Willis, you were asked about whether in your timeline
18 you -- or during your -- the period of the event whether you
19 saw images of Lovelien pointing weapons; correct?

20 **A.** Yes.

21 Q. Now, throughout the entirety of that event, was Lovelien
22 captured on film or in video throughout the entire time?

23 **A.** No.

24 Q. So there were times between the images that we see, for
25 example, in your timeline during the -- there were times when

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1 Lovelien would not have been captured on video.

2 **A.** That's correct.

3 MR. MYHRE: Just one moment, Your Honor.

4 (Government counsel conferring.)

5 BY MR. MYHRE:

6 Q. In your timeline analysis, are there periods of time where
7 you cannot account for Defendant Lovelien at all?

8 **A.** Yes.

9 Q. And what are those time periods generally?

10 **A.** That would be from 10:32 in the morning till just before
11 12:00 p.m. From 12:00 p.m. -- or just before 12:00 p.m. to
12 12:19 and then there is times later in the day that I cannot
13 account for his exact location. Uh . . .

14 MR. MYHRE: Nothing further, Your Honor.

15 THE COURT: All right.

16 Any follow-up?

17 MR. TANASI: None from Stewart, Your Honor. Thank you.

18 MR. MARCHESE: Do you want to go?

19 MR. PEREZ: (Shakes head.)

20 FURTHER CROSS-EXAMINATION

21 BY MR. MARCHESE:

22 Q. Afternoon again.

23 **A.** Good afternoon.

24 Q. You were asked -- one of the first questions was in
25 reference to the site line in the Jersey barrier.

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1 **A.** Yes.

2 **Q.** Do you remember that?

3 And talking about specifically degrees, what degree of
4 sight line is there. Do you remember that?

5 **A.** I -- I think I said 20 degrees with the broom.

6 **Q.** Correct. And that was my next question.

7 So you said 20 degrees. That's just a guesstimate;
8 correct?

9 **A.** Yes.

10 **Q.** There was no -- I don't even know what type of test you
11 could do for that. But you didn't do any specific testing;
12 correct?

13 **A.** No.

14 **MR. MARCHESE:** Now, Brian, if we could bring up
15 Exhibit 208, please.

16 (Exhibit displayed in open court.)

17 **BY MR. MARCHESE:**

18 **Q.** So there was some questions about, you know, width and from
19 the top to the bottom of the Jersey barrier. Do you remember
20 that line of questioning?

21 **A.** Yes.

22 **Q.** Okay. And I believe you and I went over it again on cross,
23 but let's just clear it up so the jury understands it fully.

24 So this here in the middle (drawing), this is where
25 Eric Parker's Jersey barrier crack would be is your testimony;

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1 correct?

2 **A.** Yes.

3 **Q.** We can't see it from here. So let's just focus on this
4 crack closest to the furthest right of the screen (drawing)
5 over here. Do you see that one?

6 **A.** Yes.

7 **Q.** All right. So, as you've testified, you know, up here, as
8 (drawing) depicted, from here on up that's thicker, the
9 thickest part of the Jersey barrier. Is that accurate?

10 **A.** Other than maybe the very bottom that is outside the
11 range -- or the span of the gap, yes.

12 **Q.** All right. And, when you're referring to the "very bottom,"
13 please point on the screen where you're referring to?

14 **A.** (Drawing.) So, if the Jersey barrier went all the way
15 through to the same level as the roadway, that's what I would
16 be referring to.

17 **Q.** Sure.

18 But, focusing on the crack, the open portion --

19 **A.** Yes.

20 **Q.** -- you see that portion?

21 **A.** Yes.

22 **Q.** -- so you'd agree with me (drawing) that would be the
23 bottom; correct?

24 **A.** Yes.

25 **Q.** All right. And there are no pictures that I'm aware of that

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1 have been brought into evidence that depict anything with
2 anyone with their rifle (drawing) anywhere from here up;
3 correct?

4 **A.** Are you --

5 **Q.** In the --

6 **A.** -- talking about --

7 **Q.** -- in the crack.

8 **A.** That's correct.

9 **Q.** Okay. The greater majority, if not all of the photos that
10 I'm aware of, are in this (drawing) vicinity here --

11 **MR. MYHRE:** Objection --

12 **BY MR. MARCHESE:**

13 **Q.** -- at the --

14 **MR. MYHRE:** -- Your --

15 **BY MR. MARCHESE:**

16 **Q.** -- bottom.

17 **MR. MYHRE:** -- Honor. As to counsel testifying as to
18 what he's aware of or not --

19 **THE COURT:** Sustained.

20 **MR. MYHRE:** -- aware of.

21 **BY MR. MARCHESE:**

22 **Q.** The greater majority of the pictures that have been brought
23 into evidence all depict this particular area here on the
24 bottom; correct?

25 **A.** If we're using this gap as an example of the other two --

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1 Q. Yes.

2 A. -- gaps that would be correct.

3 Q. Right.

4 And, to be clear, we're not talking about this gap. We
5 don't have any picture in this gap.

6 A. Correct.

7 Q. But, for demonstrative purposes, it's easier -- 'cuz this is
8 the only picture we have of the outside; correct?

9 A. Right.

10 Q. Or at least one where we focused on the outside; right?

11 A. Yes.

12 Q. And I believe your testimony earlier -- and I'm gonna clear
13 it. It's gettin' a little muddled here -- I believe your
14 testimony earlier was that this portion (drawing), the bottom
15 here, is thinner and it goes up (drawing) and gets thicker --
16 and when I say "thicker," wider -- as this crack goes up. Is
17 that an accurate statement?

18 A. No. It would be slightly thinner (drawing) as that goes up
19 and then thicken at the top portion, that you can see from this
20 picture how it gets thicker --

21 Q. Right.

22 A. -- at the very top.

23 Q. Okay. But, from the bottom to the top, it gets wider. Is
24 that accurate?

25 A. At the very -- at the very top, the top portion is wider.

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1 If you go from the bottom of that gap to the top of the gap
2 before it gets wider --

3 Q. Yes.

4 **A.** -- it would get slightly thinner. And I'd drawn a --
5 basically the other side of the Jersey barrier that would come
6 down (gesturing) like that.

7 Q. Okay.

8 MR. MARCHESE: And, Brian, if we can go to Exhibit 210,
9 number -- slide 3.

10 (Exhibit displayed in open court.)

11 BY MR. MARCHESE:

12 Q. And you were asked some questions about the bridges. And I
13 believe your testimony was that they were parallel; correct?

14 **A.** Yes.

15 Q. Okay. So, based upon your estimates, the northbound bridge
16 which I'm circling, that's 45 feet from the bottom of the
17 bridge to the ground; correct?

18 **A.** Yes.

19 Q. And right over here (drawing) we have 52 feet from the
20 southbound bridge to the ground; correct?

21 **A.** Yes.

22 Q. So, based upon that, would I be accurate in stating that
23 it's approximately 7 feet difference from the ground under each
24 of the bridges?

25 **A.** Yes.

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1 Q. Okay.

2 MR. MARCHESE: No further questions. Thank you.

3 FURTHER CROSS-EXAMINATION

4 BY MR. LEVENTHAL:

5 Q. Good afternoon again.

6 A. Good afternoon.

7 Q. Question 120 from the jury asked that you labeled people
8 with guns, why not other people. Do you remember that
9 question?

10 A. Yes.

11 Q. And you indicated that you were only focusing on people in
12 this case, in this trial; correct?

13 A. Yes.

14 MR. LEVENTHAL: Brian, can you bring up 182-8, please.
15 (Slide displayed in open court.)

16 BY MR. LEVENTHAL:

17 Q. I'm circling a gentleman there; correct?

18 A. Yes.

19 Q. You labeled him?

20 A. Yes.

21 Q. I'm circling a gentleman there. You labeled -- I labeled --
22 you labeled him?

23 A. Yes.

24 MR. MYHRE: Objection to the relevance of this, Your
25 Honor.

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1 THE COURT: Mr. Leventhal, are you misleading the jury?

2 I don't under --

3 MR. LEVENTHAL: Not at all.

4 THE COURT: -- stand your point in --

5 MR. LEVENTHAL: Not at all. He's --

6 THE COURT: -- the question.

7 MR. LEVENTHAL: No. Actually, if you'd like a sidebar,

8 I think it's the other way around actually.

9 THE COURT: You -- there . . .

10 MR. LEVENTHAL: I'll move on.

11 MR. MYHRE: What's the . . . It's . . .

12 BY MR. LEVENTHAL:

13 Q. You were asked whether or not these defendants on the
14 northbound bridge pushed forward.

15 **A.** Yes.

16 Q. The question was, was whether or not they pushed forward to
17 the gate. And your response was no; correct?

18 **A.** That's correct.

19 Q. Okay. You were asked about the protestors: women,
20 children, media and news reporters. Do you remember that
21 question?

22 **A.** Yes.

23 MR. MYHRE: Objection, vague. Which question?

24 MR. LEVENTHAL: It wasn't my question.

25 ///

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1 BY MR. LEVENTHAL:

2 Q. The question regarding the people, the protestors, you
3 indicated there are 410 people.

4 A. That -- that is the -- the count, yes.

5 Q. That's the count.

6 A. People, yes.

7 Q. Okay. But you weren't sure of the number of women,
8 children, media, and news reporters out there; correct?

9 A. Correct.

10 Q. Okay. You indicated that there were 26 people in the wash
11 that were armed?

12 A. Yeah, yes, that's what we counted.

13 Q. Okay. And you weren't sure about how many militia people
14 were there out there; correct?

15 A. Correct.

16 Q. Okay. And you didn't count Mr. Drexler as a militia person
17 out there; correct?

18 MR. MYHRE: Objection, relevance.

19 MR. LEVENTHAL: Well, he's asked about counting people
20 and whether they were militia, armed people. I just want to
21 know if he's one of those militia people.

22 MR. MYHRE: I believe he said he didn't have a count
23 for militia.

24 BY MR. LEVENTHAL:

25 Q. Did you have a count for militia?

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1 **A.** I said no.

2 **Q.** I'm sorry?

3 **A.** No.

4 **Q.** No, you don't?

5 **A.** No.

6 **Q.** Okay. I'm sorry. Oh, you were indicating that there was a
7 picture of Mr. Drexler prone and the people behind him on the
8 southbound bridge were militia people.

9 **A.** That -- that would have been an example of militia
10 representatives that were there that day.

11 **Q.** I see. Okay. All right.

12 And you were asked about whether or not specifically
13 Scott Drexler, Steven Stewart had any direct communication.
14 And I wrote down "Facebook, messages, phone, or private
15 messages." Do you remember that?

16 **A.** Yes.

17 **Q.** "With anyone directly communicating." Your answer was no;
18 correct?

19 MR. MYHRE: Objection, mischaracterizes the question
20 and the answer.

21 THE COURT: Sustained.

22 MR. LEVENTHAL: Thank you.

23 THE COURT: It is misleading.

24 MR. LEVENTHAL: Okay.

25 ///

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1 BY MR. LEVENTHAL:

2 Q. Question was, "Did Scott Drexler, Steven Stewart have any
3 direct communication (Facebook messages, phone conversation,
4 private messages, etc. . . .) with individuals that rallied for
5 or organized the Bundy protest outside of any of the defendants
6 present in the courtroom before the date in question?"

7 MR. MYHRE: Asked and answered.

8 THE COURT: Sustained.

9 MR. LEVENTHAL: I didn't get a response 'cuz it was
10 misleading.

11 BY MR. LEVENTHAL:

12 Q. Okay. You were asked finally whether or not the FBI
13 enhanced or used Photoshop for any of these videos or pictures.
14 Do you remember that?

15 **A.** Yes.

16 Q. And you indicated no; right?

17 **A.** Correct.

18 Q. But the FBI didn't actually take all those videos and
19 pictures, did they?

20 **A.** That's correct.

21 MR. MYHRE: Objection, Your Honor, beyond the scope and
22 irrelevant.

23 THE COURT: Sustained.

24 BY MR. LEVENTHAL:

25 Q. These pictures came from other news organizations? For

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1 example, FOX News?

2 **A.** Yes.

3 **Q.** Okay. So you don't know whether or not they were enhanced
4 or Photoshopped prior to your getting them; correct?

5 **A.** When -- when you say "Photoshopped," are you speaking of
6 enhanced? Or are you asking if what is depicted in the
7 photograph was changed?

8 **Q.** I'm just read -- going by the question that was asked,
9 whether or not the FBI ever enhanced or Photoshopped or you
10 personally ever enhanced or Photoshopped any of the pictures or
11 videos.

12 **A.** No.

13 **Q.** No. Correct.

14 **A.** Correct.

15 **Q.** But you don't know whether that was done prior to you
16 receiving them; correct?

17 **MR. MYHRE:** Objection, relevance and vague as to what
18 we're talking about in terms of photographs.

19 **THE COURT:** Sustained.

20 **MR. LEVENTHAL:** Nothing further.

21 FURTHER CROSS-EXAMINATION

22 **BY MR. PEREZ:**

23 **Q.** Good afternoon.

24 **A.** Good afternoon.

25 **Q.** You were asked by the jury whether or not -- in your

1 observations whether or not you saw any photographs or videos
2 of Mr. Lovelien pointing a weapon.

3 **A.** Yes.

4 **Q.** And your response was?

5 **A.** No.

6 **Q.** Thank you.

7 THE COURT: Any follow-up from the Government?

8 (Government counsel conferring.)

9 MR. MYHRE: None from the Government, Your Honor.

10 THE COURT: All right. So thank you, Special
11 Agent Willis. You are excused.

12 THE WITNESS: Thank you.

13 THE COURT: Does the Government have another witness to
14 call today?

15 MR. MYHRE: No, Your Honor.

16 THE COURT: All right. So it looks like the jury gets
17 to go home a little bit early today.

18 JUROR: (Gesturing.)

19 THE COURT: And tomorrow is Wednesday the 9th. So
20 tomorrow is a late start day; right? Okay. So we'll welcome
21 you back at 10:00 a.m. tomorrow morning.

22 Let's all please stand for the jury. And the jury is
23 excused.

24 (Jury out, 2:00 p.m.)

25 THE COURT: All right. Everyone may be seated. The

1 jury has left the courtroom now.

2 So does defense have a motion to make?

3 MR. TANASI: Your Honor, I don't think defense has a
4 motion at this time. The Government hasn't formally rested. I
5 know the goal would be to get our Rule 29 filed this evening
6 and I guess we can perhaps argue that, you know, first thing
7 tomorrow. But I'm guessing also, you know, the --

8 THE COURT: Well, why can't we argue it now? 'Cuz I
9 just told the jury to come back at 10:00. That's when we're
10 starting is at 10:00. I have other things in the morning at
11 8:00. That's the only reason why they are coming in at 10:00.

12 MR. TANASI: Sure.

13 THE COURT: So I thought we would argue it now if you
14 had one.

15 MR. TANASI: I don't at this point, Your Honor. I
16 mean, from what I understand, they still haven't formally
17 rested. They are waiting until tomorrow to decide that
18 formally.

19 THE COURT: The Government said they were resting
20 except they wanted to not tell the jury that until they had a
21 chance to check their witness list with the Court's -- not
22 witness list -- the exhibit list with the Court's witness [sic]
23 list.

24 So what you're telling me either way is that you don't
25 have a 29(a) motion ready for today.

1 MR. TANASI: I don't right for this moment today.
2 Correct, Your Honor.

3 THE COURT: Will you be ready to call your first
4 witness then tomorrow morning?

5 MR. TANASI: We will, Your Honor.

6 And, again, I don't know if we want to go through the
7 proffer at this point, you know, with respect to the witnesses.
8 But we do have one of our first witnesses ready. And then
9 Dennis Michael Lynch is the second that we have ready via Skype
10 if we can work that out. He does have a Skype account. So,
11 again, if the Court's inclined to allow him to testify via
12 Skype.

13 THE COURT: So is your first witness one that can
14 testify in front of the jury or is it --

15 MR. TANASI: Yes.

16 THE COURT: -- a proffer witness?

17 MR. TANASI: Again, I believe it's someone who can
18 testify in front of the jury, Your Honor. And so it's -- but,
19 from what I understand, Your Honor would like us to proffer
20 essentially what our witnesses would be testifying to.

21 THE COURT: Aaron, see if you can catch up with the
22 jurors and have them come back tomorrow at 1:00.

23 COURTROOM ADMINISTRATOR: 1:00 o'clock, Your Honor?

24 THE COURT: Yes, please.

25 (Pause in the proceedings.)

1 THE COURT: Too late or you got them?

2 COURTROOM ADMINISTRATOR: They were still there, Your
3 Honor.

4 THE COURT: Oh, good. All right. So we'll have them
5 back at 1:00.

6 All right. So, at 10:00 a.m. tomorrow morning, I want
7 the parties to be prepared so that we can address the 29(a)
8 motion.

9 And then who is your first witness?

10 MR. TANASI: Patricia Kent, Your Honor.

11 THE COURT: Say again?

12 MR. TANASI: Patricia Kent.

13 THE COURT: Kent.

14 MR. TANASI: Yes.

15 THE COURT: All right.

16 And why do you think that she can testify in front of
17 the jury?

18 MR. TANASI: Okay. So, Your Honor, with respect to
19 Patricia Kent, she is a witness who was both at the rally and
20 on the bridge. And what -- essentially, Your Honor -- and if I
21 can just back up for a moment. The Government in this case, I
22 think, has put the crowd at issue. I have specific citations
23 to the record where that's occurred. Mr. Myhre in his opening
24 indicated that Mr. Bundy told the crowd "We're going to go up
25 to the freeway and block to the freeway." When you get to the

1 Toquop Wash, he told them to get out of their cars and they
2 were going to open the cattle pens.

3 There's other specific references to the crowd in this
4 case. So, after Cliven Bundy gave the command to get the
5 cattle, the staging area is roughly down in this area here,
6 indicating left. They left by car. Hundreds of his followers
7 went to State Route 270 [sic]. Now we're talking hundreds of
8 people. And what I'm reading from, Your Honor, is Day 4,
9 page 46, of the opening statement: "[We'll] show you that as
10 the crowd in the wash pushed forward, Parker went into the
11 prone position."

12 There's more discussion of the crowd on page 59,
13 "[We'll] show [you] that they were present when the sheriff did
14 not return and they were present when they had heard Bundy tell
15 the crowd [to] go get his cattle."

16 Mr. -- or, on Sheriff Lombardo's direct, he was asked,
17 "Did you -- when the sheriff was on the stage, could you assess
18 the mood of the crowd that was in front of the stage?"

19 "When we" -- and the answer was: "When we originally
20 arrived, I could have described the crowd as calm. . . . some
21 of the individuals seemed to welcome us, but then the mood
22 started to change once Cliven ascended to the stage and then
23 the rhetoric" -- "rhetoric progressed, [and] the mood
24 definitely changed."

25 Goes on, on page 4 -- page 116, "And how would you

1 compare the mood of the crowd after the speeches compared to
2 your assessment of the crowd before the speeches?"

3 I objected over -- Your Honor overruled the objection.
4 He was allowed to give his assessment; he was personally there
5 was the ruling.

6 The witness went on to testify, "As I testified
7 earlier, the mood of the crowd was calm and welcoming when we
8 first arrived at the assembly area."

9 Goes on to describe the crowd as being embolden --
10 becoming emboldened; asked what he meant by that. And he gave
11 his answer that: "Well, they got louder. They felt
12 comfortable shouting derogatory remarks toward us and my
13 opinion, they . . . felt no fear of law enforcement."

14 So, Your Honor, we have -- starting with Ms. Kent, we
15 have a group of witnesses who are members of this crowd. And
16 the crowd, as I've indicated, Your Honor, has now become
17 relevant to the case and has now essentially shifted the burden
18 onto the defense to defend the actions of the crowd because our
19 clients were members of this crowd.

20 Under the res gestae analysis, Your Honor, basically
21 the Government has essentially, as I said, shifted the burden.
22 And, under res gestae, fact or circumstances which was
23 properly -- of the res gestae of the fact was admissible in
24 evidence. That's the *May v. United States* case, 157 F.1, a
25 1907 case. I have a longer LexisNexis citation as well. It's

1 a Ninth Circuit case.

2 I also have another case, Your Honor, *United States v.*
3 *Lumiguid*, 499 F. App'x 682, 692. The evidence in that case was
4 part of the *res gestae*, the events explaining the conduct
5 underlying the charged offenses.

6 And so starting with Patricia Kent, you know, her
7 testimony essentially, Your Honor, is not going to be that she
8 was a follower of Cliven Bundy and that she was motivated by
9 the speech. It's just the opposite. It's that she understood
10 the cows were coming home and she was going to the bridge to
11 watch that occur which is essentially the argument that we've
12 made from our clients' perspective as well.

13 And so, again -- and I've touched on it before -- it's
14 circumstantial evidence of our clients' state of mind and it's
15 also now, because the burden's been shifted onto us to explain
16 and describe the nature of this crowd, *res gestae*. And so
17 Patricia Kent is one of those witnesses, Your Honor. And we do
18 have others that fall into that same category.

19 THE COURT: So it sounds like you're trying to infer --
20 have the jury infer the state of mind of the defendant by use
21 of the state of mind of a witness?

22 MR. TANASI: Again, Your Honor, it's this crowd that
23 has now become relevant because the Government has put the
24 crowd on trial by rendering -- or by referencing the crowd and
25 how they've become emboldened, what the crowd did and how the

1 crowd acted. My client was a person in that crowd, so was
2 Patricia Kent.

3 THE COURT: Well, I don't know which element you're
4 referring to because I'm looking at the Count Five, Assault.
5 It's the apprehension of the person -- of the victim, the
6 person who is being threatened. It's not the apprehension of
7 the crowd. So that's not an issue. I don't understand what
8 you're saying about -- that the Government has put it in issue.
9 It doesn't relate to any of the elements of the offense.

10 MR. TANASI: One of the offenses, Your Honor, is
11 conspiracy. And, again, the Government has kind of made it a
12 conspiracy to be in the crowd. And so this is another way for
13 the defense, now that the burden has shifted on us, to explain
14 the entire events of the day and the folks that were a part of
15 the events of the day.

16 THE COURT: What's the Government's position?

17 MS. CREEGAN: Your Honor, our position is that we have
18 never alleged a conspiracy of all 410 people. What the crowd
19 does at different points or the fact that Coconspirator Cliven
20 Bundy addresses the crowd intending for his message to be
21 received by members of the crowd is certainly relevant. But to
22 say 390 people were not in the conspiracy has such low
23 probative value -- it has no probative value. I assume that
24 the purpose is just to try to do this improper imputation to a
25 person who the Government has never alleged is an unindicted

1 coconspirator and say: I'm not a member of the conspiracy.
2 I'm not aware of what these guys were doing. But I had no bad
3 intent so they must not either. That seems to have no
4 probative value at all and to run completely against the
5 Court's order about not inferring intent is from a
6 third-party's intent.

7 THE COURT: All right, Mr. Tanasi. Why don't you give
8 me those cites again.

9 MR. TANASI: Sure.

10 THE COURT: One of 'em you said was in the 100's of
11 F.2d?

12 MR. TANASI: Sure. Your Honor, the first case is
13 *Alcala v. Woodford*; it's 334 F.3d 862, Ninth Circuit case,
14 2003.

15 The second case, Your Honor, is *May v.* --

16 THE COURT: Let's do one at a time.

17 So what is --

18 MR. TANASI: I'm sorry.

19 THE COURT: -- the first ca . . . Well, I'm not sure
20 you got the right cite. Say it again 'cuz I got -- it's a
21 civil case.

22 MR. TANASI: Sure. It's --

23 THE COURT: *Maybe it is a civil case* --

24 MR. TANASI: -- *Alcala* --

25 THE COURT: -- you're citing.

1 MR. TANASI: -- *v. Woodford*, 334 F.3d 862 or 865. I
2 apologize, Your Honor.

3 (Pause in the proceedings.)

4 THE COURT: All right. So this is an ineffective
5 assistance of counsel claim?

6 MR. TANASI: Correct, Your Honor.

7 THE COURT: And what is your understanding of the
8 court's holding?

9 MR. TANASI: My understanding of the Court's ruling,
10 Your Honor, is that the right of the defense to present its
11 defense and to rebut the government's evidence. In this case,
12 the court goes on to explain how not calling a defense expert
13 to rebut the government's defense expert essentially was -- was
14 error.

15 And I understand the argument I'm making is not one of
16 experts in nature, but it's the burden shifting and it's the
17 right for the defense to present its case in its entirety.
18 This *Alcala* case also sets up and gets further into the
19 remainder of the cases that I cited which go to the *res gestae*.

20 MS. CREEGAN: As the Government understands *res gestae*,
21 that's that you have to awkwardly tell a story going around
22 something. In this case, this is just going outside the
23 parameters of the defendants and their conduct to talk about
24 something completely different which is another person who is
25 not charged.

1 MR. TANASI: In the --

2 THE COURT: I'm not seeing the similarity between this
3 case, Knotts Berry Farm case, ineffective assistance case. I'm
4 not -- I'm . . . How does that relate to the proffered
5 testimony of Ms. Kent?

6 MR. TANASI: Well, again, Your Honor, it's for the
7 over -- the prevailing notion of the right of the defense to
8 present evidence to rebut the Government's case. And the
9 Government has put the crowd now at issue and has put the crowd
10 at a conspiracy and so the evidence, again, is now -- it's
11 now -- the burden has now shifted onto us, the defense, to
12 refute that. And that's what the *Alcala* case essentially sets
13 up. But, again, the *Lumiguid* case describes what *res gestae*
14 is, the evidence was part of the *res gestae*, the events
15 explaining the conduct underlying the charged offense.

16 And so the conduct in this case, Your Honor --

17 THE COURT: All right. So give me the other cite 'cuz
18 the first one is not persuasive. What's the next cite?

19 MR. TANASI: *United States v. Lumiguid*, 499 F. App'x
20 689. That's the cite as I pulled it off of Lexis. It's a
21 Ninth Circuit case from 2012. Lumiguid is L-u-m-i-g-u-i-d.

22 (Pause in the proceedings.)

23 THE COURT: This is about the court not abusing its
24 discretion and refusing to take judicial notice of the nurse's
25 licensure because it was not relevant to the issues that the

1 jury had to decide in this case. It sounds like it's actually
2 the opposite of what you're arguing.

3 MR. TANASI: I was referring, Your Honor, to the
4 section where -- I think it's at 692 -- "The district court did
5 not abuse its discretion, . . ., in admitting evidence that
6 Lumiguid was married to, and lived with, his co-defendant
7 Narciso. This evidence was part of the res gestae, the events
8 explaining the conduct underlying the charge[s] . . . and was
9 also probative of Lumiguid's guilt."

10 So, again, it was a case that allowed in that case the
11 prosecution to put on more evidence to describe the conduct
12 underlying the charged offenses. And that's what the defense
13 is attempting to do in this case.

14 THE COURT: And the Court -- and the Appellate Court in
15 that case found that it was proper.

16 MR. TANASI: Correct.

17 (Pause in the proceedings.)

18 THE COURT: So I don't see how that case is favorable
19 to your position either. Let's see what we've got here.

20 (Pause in the proceedings.)

21 THE COURT: So, as we talked about before in the Order,
22 the right to present evidence in its defense is not an absolute
23 right and it doesn't mean that it's not -- the right is not
24 unlimited but rather the evidence must be relevant.

25 (Pause in the proceedings.)

1 THE COURT: So even under the res -- what's left of the
2 res gestae doctrine, it needs to be related to the charges, to
3 the elements, probative, relative -- relevant.

4 (Pause in the proceedings.)

5 THE COURT: All right. And then, in the *Lumiguid*
6 case -- I don't know if I'm saying that right.
7 L-u-m-i-g-u-i-d -- it's citing to an inextricably intertwined
8 case, *U.S. v. Degeorge*.

9 (Pause in the proceedings.)

10 THE COURT: All I'm finding: It has to be material,
11 relevant, probative, relate to the charges, and it's
12 evidence -- and so, in the *Degeorge* case, the evidence of the
13 prior loss is inextricably intertwined with the charge; need
14 not consider the 404(b); probative value.

15 (Pause in the proceedings.)

16 THE COURT: Was that all that she was gonna testify to
17 is that she's in the crowd and that she's not pushing forward
18 and that her mood is not -- had not changed or the mood was not
19 threatening or yelling or intimidating?

20 MR. TANASI: Essentially. And that she always
21 understood after hearing the -- after hearing the Sheriff's
22 speech that the Gold Butte was reopened and that she was going
23 to watch the cows come home. That's part A of what she would
24 testify to.

25 Part B gets into the self-defense argument, which I

1 know Your Honor has ruled on. But, as I understand the Order,
2 if there are additional proffered evidence, you would entertain
3 it -- Your Honor, would entertain it. And I would defer to my
4 cocounsel here on the self-defense component for Ms. Kent, the
5 remainder of my witnesses.

6 MR. MARCHESE: I mean, I'll just jump in, Your Honor.
7 I don't think that she's gonna testify anything differently
8 than what we've already heard at the last trial in reference to
9 self-defense. She would testify that she was on the bridge.
10 She would testify to what she saw behind the gate. What -- her
11 belief that the BLM had in fact left; she was not sure if they
12 were in fact federal officers. She would also testify that she
13 saw weapons being pointed in her general vicinity.

14 Off the top of my head, I can't remember if she said
15 that she would believe that the weapons were pointed directly
16 at her. But I do believe she would testify that she saw them
17 from behind the gate being testified [sic] in her general
18 direction. She would also testify to just the general
19 environment around -- whether it be seeing the aircraft,
20 whether it be seeing individuals up on the ridge -- and also
21 she would testify to the warnings that were being given by the
22 I believe it was -- didn't really come out so much at this
23 trial -- but it would be Ranger Johnson that were made over the
24 loudspeaker. She would testify to what her belief was being
25 said, which -- although it's my understanding from the evidence

1 and hearing the dash cam or the -- yeah, hearing the audio on
2 the dash cam, it's my understanding that they said something to
3 the effect of "less than lethal." However, her subjective
4 belief that it was -- that was -- from what she heard was that
5 it would be lethal force.

6 (Defense counsel conferring.)

7 THE COURT: All right. So, again, it all sounds like
8 it's a third-person state of mind being used to infer the state
9 of mind of the defendant.

10 Did you want to go ahead and put -- I'm not seeing that
11 it is appropriate -- did you want to go ahead and have her
12 proffer and be questioned so that you could make a record?
13 Because I'm not gonna permit her to testify in front of the
14 jury if that's -- if what you've just proffered is what she
15 was -- you were intending to elicit from her.

16 MR. MARCHESE: Correct. Um . . .

17 THE COURT: But if you wanted to do that in a -- rather
18 than just, you know, proffering it, if you actually wanted to
19 proffer it on the stand with her actual answers to your
20 questions, I'll let you have time to do that.

21 (Defense counsel conferring.)

22 MR. MARCHESE: That would be our preference if Your
23 Honor would allow it.

24 THE COURT: Yes.

25 MR. MARCHESE: Thank you.

1 (Defense counsel conferring.)

2 THE COURT: All right. So Ms. Kent was the first.
3 Who is the second?

4 MR. TANASI: Dennis Michael Lynch was, Your Honor.
5 But -- if I could just have the Court's indulgence for one
6 moment?

7 THE COURT: Sure.

8 (Defense counsel conferring.)

9 MR. TANASI: Your Honor, if I can just read in for the
10 record the witnesses that I would say essentially all fall into
11 the same category that we've just articulated and Your Honor
12 has precluded us from bringing. Right?

13 THE COURT: Right.

14 MR. TANASI: Okay.

15 So Dennis Michael Lynch, Shannon Bushman, Huge
16 Gourgeon, Patricia Kent, Kenneth Rhodes, Daryl Spencer, Wendy
17 Spencer, William Sudweeks, Morgan McKay.

18 What that leaves, Your Honor, is our investigator, Mark
19 Preusch, and then Tom Zuiderveld and Shaun Horn who are Three
20 Percenter witnesses, as I have them kind of categorized.
21 Preusch is not though. Preusch is a -- as I mentioned, he's
22 our investigator. He's taken pictures, similar to
23 Agent Willis, of the wash and so he would fall out of the
24 category of what we've discussed up until this point.

25 MR. MARCHESE: And I don't believe we need to make a

1 proffer on the Three Percenter witnesses. They would not, in
2 my opinion, fall into any of the jury nullification issues on
3 Your Honor's Order.

4 MS. CREEGAN: Well, the Government does have an inquiry
5 into that which is whether the same type of information would
6 try to be elicited about, for example, either Sugar Pine or
7 White Hope which is that the government agents in question in
8 some way deserved to be assaulted because they were going to do
9 something bad. Essentially the same kind of lead-up to
10 April 12th which is they did the tasing so we came to the
11 bridge; they were gonna take this miner's mine away so we had a
12 right to go and do this. So it seems like that could lend
13 itself to jury nullification depending on what it is the
14 defense intends to elicit.

15 MR. MARCHESE: Well, I -- you know, at this point, I
16 don't think I need to proffer in front of the Government what
17 my witnesses are gonna say. I'm well aware of what the Court's
18 Order is. I'm not -- I have no intent to violate it. So
19 that's my proffer.

20 MS. CREEGAN: Then we just want to make a record that
21 the motion was specifically to the events of April 12th. And
22 so it's the same type of information, but it might not be
23 specifically articulated in the Court's Order and that's why
24 we're raising this concern.

25 THE COURT: Well, these two individuals that you intend

1 to call that are -- you identify as Three Percenters,
2 Zuiderveld and Horn, are they present during this conspiracy?
3 Are they eyewitness or witnesses for other purposes?

4 MR. MARCHESE: They were not present on April 12th,
5 2014.

6 THE COURT: So are they good character witnesses or
7 some other form of admissible evidence? Just a general . . .

8 MR. MARCHESE: Right.

9 THE COURT: Give me something so I can say okay, they
10 can testify. I'm not asking you to tell me everything.

11 MR. MARCHESE: Well --

12 THE COURT: But --

13 MR. MARCHESE: -- I mean --

14 THE COURT: -- just a general category of something
15 that would be appropriate and admissible.

16 MR. MARCHESE: My first general question to them would
17 be: If I was moved into your area, what would you tell me
18 about the Idaho 3%. That would be a general question that I
19 would ask them so they can explain. 'Cuz right now we've had
20 an agent testify who really doesn't know very much about the
21 Idaho 3% other than the fact that she's looked at some social
22 media and whatnot and then we played a snippet of a recruitment
23 video -- well, I shouldn't say "a snippet" -- about 75 percent
24 of a recruitment video that the agent or at least another agent
25 pulled offline -- or pulled off YouTube online.

1 (Pause in the proceedings.)

2 THE COURT: And do these individuals -- were they
3 members for a long enough period of time to be able to speak as
4 to the organization at a particular time that would be
5 relevant --

6 MR. MARCHESE: They --

7 THE COURT: -- here?

8 MR. MARCHESE: -- know both Mr. Parker and Mr. Drexler.
9 And I believe that -- do their membership periods exactly
10 aligned? No. But they know those individuals and they know
11 the organization.

12 THE COURT: All right.

13 So, between March 28th of 2014 and March 2nd, 2016,
14 because that's the conspiracy dates.

15 MR. MARCHESE: Correct.

16 THE COURT: Okay.

17 MR. MARCHESE: That is correct.

18 THE COURT: All right.

19 And then, as to Mr. Lynch, did you say he was or was
20 not going to be testifying by Skype?

21 MR. LEVENTHAL: He's available.

22 MR. TANASI: He's available, Your Honor. But, from
23 what I understood, again, 'cuz he falls into the two
24 categories, the res gestae category and the self-defense
25 category, so if Your Honor's not allowing that line of

1 testimony then that would rule him out as well. But he is
2 available via Skype.

3 THE COURT: Well, it's not up to me to allow it or not
4 to allow it. It's up to you to meet the burden of what the law
5 permits and doesn't permit and the law does not permit
6 self-defense as a defense to law enforcement unless there's
7 additional conditions and characteristics that are also
8 presented. And so that was what the Order was about and said
9 it's not a traditional self-defense as we would think of if
10 we're at home or, you know, in some area where someone comes up
11 and starts to do something and you defend yourself. It's --
12 the law requires more.

13 And then, as to the res gestae, the two cases that you
14 provided to me did not directly relate to the testimony that
15 you plan to elicit from Ms. Kent regarding her intent or mood
16 or conduct at the crowd -- in the crowd at the rally or on the
17 bridge.

18 MR. LEVENTHAL: Your Honor, Mr. Lynch would fit
19 squarely within what the Court has just indicated would be a
20 self-defense wherein he's in the middle of the wash asking the
21 BLM or asking the people on the other side whether or not --
22 and this is on video -- whether or not they were gonna shoot
23 these people. Then he runs back. And we have video of him
24 saying -- somebody saying, "What did they say?" "They said
25 they were gonna shoot you" -- "They were gonna shoot us."

1 So he goes beyond just mere speculation or mere
2 feeling. He actually, on his videos that he videotaped the
3 entire day, goes squarely in terms of what the Court is
4 requesting from us in terms of proof; that it needs more. And
5 that's where more comes from is from the video and from
6 Mr. Lynch when he's in those videos telling other people that
7 he had actually spoken to the BLM and he got back -- right or
8 wrong, indifferent, whatever -- that they were gonna shoot
9 these people.

10 And so, again, it fits squarely within what the Court's
11 indicating that it needs more and it's not just a traditional
12 I'm at home and I'm defending myself or defense of others,
13 which would be the same elements of self-defense and defense of
14 others.

15 MS. CREEGAN: Well, it wouldn't be more. That all came
16 in in the first trial and the Court found that that evidence
17 was insufficient to warrant a self-defense instruction because,
18 amongst other things, it failed objective reasonableness. The
19 fact that Mr. Parker testified -- or that other defendants said
20 "I thought they would shoot or I thought I said shoot" is not
21 enough. They have to have actual excessive force by law
22 enforcement agents. Instead, as Mr. Parker and other defense
23 witnesses testified, they observed a large crowd of people
24 advance on the officers and covered them. And that is not
25 enough to make out either a span or a feel defense. And this

1 wouldn't be in addition because this all came in in the first
2 trial; this is just the same evidence that was introduced in
3 the first trial. So it makes no difference to the Court's
4 request for evidence of an objectively reasonable reason to
5 have self-defense against these officers.

6 MR. LEVENTHAL: But, as the Court is aware, in the
7 first trial, that did come in; however, the Court precluded
8 us --

9 THE COURT: It came in because you said you were going
10 to be able to meet the *prima facie* case for those defenses and
11 I believed that you were going to be able to do it. But that's
12 not what it turned out to be. And whether it was intentional
13 or just a misunderstanding on your part of what was required
14 for those defense instructions, it's clear now. And it can't
15 just be someone saying that they thought something was going to
16 happen; it needs to be either an objective belief that they are
17 not law enforcement or it has to be some evidence of excessive
18 force. Not of force, of excessive force. Bless you.

19 So, if someone is legally protesting and they are
20 blocking something where they are not supposed to be -- they
21 don't have a permit to be there or whatever -- and the cop
22 comes over and arrests them, that's not excessive force. Here
23 they didn't even come over and try to arrest anybody. So I
24 don't see how you're going to be able to show excessive force,
25 but I wanted to give you that opportunity. Just because I

1 can't conceive of one, doesn't mean that I'm foreclosing you.
2 I'm giving you the opportunity to meet either one of those two
3 tests because that's just what the law requires. I can't
4 ignore it. It's -- the law is what it is. And, if you could
5 meet the burden, great; let's put the witnesses on. But, if
6 you can't, I can't articulate it otherwise.

7 MR. LEVENTHAL: I understand.

8 And, Your Honor, I want to make one thing clear. We
9 didn't proffer Dennis Michael Lynch. Actually, it was the
10 Government that brought him as their witness at the first trial
11 and brought in the videos, brought in everything. We didn't do
12 that. We didn't come to the Court and say we're gonna be able
13 to do this and then fail. This was something that the
14 Government brought forward. We didn't call Dennis Michael
15 Lynch; we merely cross-examined him and utilized the videos and
16 all of the discovery that was in there with him up there. So
17 that wasn't ours; that was the Government bringing him forward
18 first. But I'm just saying --

19 THE COURT: Government called Mr. Lynch to lay the
20 foundation for his videotape.

21 MR. LEVENTHAL: I'm sorry?

22 THE COURT: They called Mr. Lynch to lay the foundation
23 for the videotape, the admission of the videotape that
24 Mr. Lynch took for FOX. Am I thinking of the wrong person?

25 MS. CREEGAN: That's correct, Your Honor. We called

1 him to lay foundation for exhibits and it was elicited on cross
2 all of the things which Mr. Leventhal is talking about.

3 MR. LEVENTHAL: I didn't make any proffer indicating
4 anything. I just -- they were his videotapes.

5 (Pause in the proceedings.)

6 MR. LEVENTHAL: And, again, with Mr. Ellis,
7 Mr. Ellis -- we didn't elicit information from him that when he
8 was -- he heard that someone said -- and that's why everybody
9 ran from the parking lot to the wash when some -- I think he
10 just sort of blurted it out on direct that he heard a lady say
11 they were gonna shoot protestors. That wasn't elicited by us;
12 that was elicited by the Government when he was on direct
13 examination.

14 MS. CREEGAN: And I don't know how that would help to
15 support the argument that a witness blurted out something,
16 essentially unsolicited, that that would mean that that same
17 statement would have to be admitted in the subsequent trial.

18 THE COURT: And, again, it --

19 MR. LEVENTHAL: I don't --

20 THE COURT: -- goes back to you want the jury to infer
21 the state of mind of the defendant merely because one out of
22 400 people had a state of mind.

23 MR. LEVENTHAL: Well, many of our witnesses that
24 Mr. Tanasi just indicated to Your Honor would also have heard
25 those same things; also saw the same things. And so they would

1 be -- they would be witnesses to actually make that showing
2 that a defense -- or self-defense is a proper jury instruction
3 and is a proper defense in this case. Without even getting
4 there, the door is closed with us even being able to do that.

5 I understand what the Court's saying. I'm just -- in
6 order for us to get to that point, we have to be able to
7 proffer these witnesses and we've done so, at least Mr. Tanasi
8 did so in the first one, and we can do it in front of the court
9 on each one and see if we get to that level.

10 I think Mr. Marchese indicated at the beginning of this
11 trial that we're gonna have more witnesses because the Court
12 indicated that we did not meet our burden at the last trial.
13 So we brought in more witnesses that are going to say, from
14 different angles, on what they saw/what they heard to coincide
15 with the self-defense or defense of others defense -- or jury
16 instruction.

17 MS. CREEGAN: That would be an addition of quantity but
18 not quality. The problem wasn't that Mr. Parker's testimony
19 couldn't be believed by the jury if they chose. The problem
20 was even if believed it would not make out the legal defense.
21 And adding more people to say the same thing does not change
22 that.

23 MR. LEVENTHAL: Well . . .

24 MR. MARCHESE: I would respectfully disagree with that.
25 At the last trial, basically the only evidence that we had was

1 the Government's case in chief and whatever we could put
2 together for a self-defense argument based upon that evidence.
3 We had Mr. Parker and then we had two lay witnesses. In all
4 candor, we would not call Ms. -- I think it's Arnett at this
5 trial. But it was our intention to call Mr. Bushman and then
6 other witnesses on top of that.

7 As Your Honor has pointed out, it's an objective
8 reasonableness standard. So I would respectfully disagree with
9 the Government given the fact that, you know, last time we only
10 had Mr. Parker and two witnesses. If this time we had
11 Mr. Parker and, say, you know, six witnesses or somethin' like
12 that, I would argue to the Court that that is more. I
13 understand and I respect the Court's ruling in the last trial.
14 It is what it is and we'll live with it.

15 But why I brought it up that we bring more evidence and
16 more witnesses, I think it does go to the weight of the
17 evidence and the reason that we should be able to get a jury
18 instruction if we can proffer the -- enough evidence that
19 satisfies the Court because to me more evidence goes to the
20 fact that it was objective reasonableness. I mean, if it's
21 just one person that heard that, I understand that. But I
22 think that the argument gets stronger, I think the argument
23 gets more convincing when we have more witnesses in different
24 areas of the wash and the bridge and whatnot all stating the
25 same thing.

1 THE COURT: All right. So we'll start at 10:00 a.m.
2 with the argument on the 29(a) motion. And then the defense --
3 well, the Government can close in front of the jury. But, if
4 we're gonna make good use of our time, after the 29(a) motion
5 is addressed, if there are any counts that are remaining then
6 we will let the defense have some time to put any kind of
7 individuals on the stand that you want to proffer actual
8 testimony from. I suppose you could also file it as maybe a
9 sworn affidavit. I'm not gonna tell you how to preserve your
10 issues for appeal, but I'll make those different avenues
11 available for you to proceed whichever way you choose to do
12 that so that you can preserve that testimony, whatever it would
13 be, in case you need it later and that person is not around.
14 So just --

15 MR. TANASI: Thank you.

16 THE COURT: -- to let you have that opportunity. Just
17 let me know if we need to make time for them to proffer in
18 court or if you just want to do it by affidavit or by some
19 other means.

20 MR. TANASI: Okay.

21 And, Your Honor, if I can just -- I want to just
22 correct something I said earlier about Ms. Kent. She actually
23 arrived at the time of the speech for Cliven; she didn't hear
24 the Sheriff's speech. I think she heard about it; didn't
25 actually hear it. But other witnesses, Shannon Bushman

1 included, heard the Sheriff's speech. So that's just one point
2 of clarity I wanted to make. I was mistaken on that so . . .

3 THE COURT: Okay. Thank you.

4 MS. CREEGAN: And the Government would object to
5 eliciting testimony from anyone about what they thought those
6 words mean since that would be irrelevant. The jury has what
7 the words actually are.

8 MR. TANASI: And, again, Your Honor, it negates
9 conspiracy. I mean, not to go round and round. She hears
10 Cliven speak and she goes to the bridge, not as a follower in
11 the crowd, not as somebody who is going to carry out one of
12 Cliven's directives; it's to go see what's going to happen at
13 the bridge because she understands the cows are going to be
14 released.

15 So it's -- I mean, again, not to go round and round,
16 that's -- I think the hearsay issue is not necessarily on point
17 with her. I think that the basic foundational reason why we
18 would call her doesn't change simply because she heard that, as
19 a member of the crowd, from somebody else. It's the crowd and
20 its idea and this crowd that's been put essentially on trial.
21 And the burden shifted on us now to defend what the crowd's
22 mind-set was.

23 THE COURT: All right.

24 And we've got Investigator Preusch, Zuiderveld and --
25 is it "Form"? I wrote down "Form," but I also put a question

1 mark right next to it. So the two individuals that are Three
2 Percenters. And then anyone else? I mean, we're not gonna --
3 that will more than fill up the day tomorrow I would think.

4 MR. TANASI: Well, the two other individuals --

5 THE COURT: Was it Horn? I'm sorry. It was Horn
6 actually; right?

7 MR. TANASI: Horn, yes.

8 THE COURT: Yeah. I don't know why I wrote down
9 "Form." Maybe I can't read my own handwriting.

10 (Defense counsel conferring.)

11 MR. TANASI: Your Honor, those two other individuals,
12 the -- we'll call they go the Three Percenter -- Horn and
13 Zuiderveld, they are not available till Wednesday -- or
14 Thursday, rather. I'm sorry.

15 MR. MARCHESE: Yes. We had to procure flights for them
16 because they're coming in from Idaho.

17 THE COURT: Okay.

18 MR. MARCHESE: And it was just hard to figure out with
19 the schedule. You know, they both have jobs; they both have
20 families; they both have responsibilities. So we had to get
21 them in and out in one day and that's the way the flights
22 worked out.

23 THE COURT: All right.

24 So can you put on then Investigator Preusch tomorrow?

25 MR. LEVENTHAL: I don't see why not. He wouldn't be

1 more than 20 minutes, Your Honor. All he's going to do is --
2 he took pictures on the bridge.

3 (Defense counsel conferring.)

4 THE COURT: All right. So is there anybody else that
5 you are able to call for tomorrow besides --

6 MR. TANASI: Patricia Kent.

7 THE COURT: -- the investigator?

8 MR. TANASI: Patricia Kent, Your Honor.

9 THE COURT: Well, it doesn't look like she's -- for a
10 proffer, not for in front of the jury.

11 MR. TANASI: Correct.

12 THE COURT: Okay.

13 MR. LEVENTHAL: And Dennis Michael Lynch on Skype. But
14 he is in New York, I believe, so he would be three hours ahead
15 so . . .

16 THE COURT: So you want to do him earlier so that it's
17 still . . .

18 MR. LEVENTHAL: Yes, Judge.

19 THE COURT: So maybe have him before -- is Kent coming
20 in person?

21 MR. LEVENTHAL: Yes.

22 THE COURT: Okay. So I'll leave it up to you. It
23 sounds like if Lynch is on East Coast time might make sense to
24 have him start at 1:00 o'clock our time, which is 3:00 [sic]
25 o'clock his time -- otherwise we're in his dinnertime -- and

1 then have -- well -- or maybe we got to do . . .

2 Okay. I guess what we could do is start with 29(a)
3 motion at 10:00. If we have any time, you can call the
4 investigator. If we don't have time, then the investigator
5 would start at 1:00. Then, if that's the only person that
6 you're gonna be able to put on tomorrow in front of the jury,
7 then we let the jury go home early. And then you have the rest
8 of the afternoon to put on anyone else that you have available
9 that you want to present as a proffer with the option that if
10 it works out they can come back on Thursday and testify in
11 front of the jury. And then we'll have the two individuals,
12 Zuiderveld and Horn coming in on Thursday. I think we're
13 planning to start at 9:00.

14 Will they be available at 9:00? Will they be here by
15 9:00 -- --

16 MR. MARCHESE: They land at --

17 THE COURT: -- on Thursday?

18 MR. MARCHESE: -- 11:30 a.m., both of them. They are
19 on the same flight.

20 THE COURT: Okay.

21 MR. MARCHESE: And I do have my opening still to give
22 although I don't anticipate it being very long.

23 THE COURT: Okay. That's good. We could do that in
24 the morning as well if we have time.

25 (Pause in the proceedings.)

1 THE COURT: All right. So that will be the plan then
2 for tomorrow.

3 MS. CREEGAN: Your Honor, this is just a suggestion.
4 But should we move the jury till Thursday so we can have a
5 solid day of their time and hopefully resolve any proffering
6 that needs to occur outside their presence and maybe all these
7 things tomorrow, not wedded to that, but just instead of having
8 them come for two half days?

9 THE COURT: Well, it doesn't sound like we're gonna get
10 much done tomorrow except for perhaps opening and the
11 investigator in front of the jury.

12 MR. TANASI: I would --

13 THE COURT: So I would say leave tomorrow open for any
14 other proffers that we can.

15 MR. TANASI: I think that's a good idea. I just --
16 with respect to the folks flying in from Idaho, the Three
17 Percenters, they don't get here until 11:30 on Thursday.

18 THE COURT: Oh. I thought you said 8:30. I'm sorry.
19 11:30?

20 MR. TANASI: 11:30.

21 THE COURT: Okay. I misheard.

22 All right. All right. And it sounds like that's what
23 both parties agree to is not have the jury come in tomorrow and
24 have them instead come in on Thursday at 9:00?

25 (Counsel conferring.)

1 MS. CREEGAN: I think that's the best use of their time
2 and they can get the opening and the investigator and then the
3 Idaho witnesses when they come in.

4 (Defense counsel conferring.)

5 MR. TANASI: That's fine, Your Honor.

6 THE COURT: Okay.

7 All right. Then we'll do that.

8 Sorry, Mike.

9 COURT SECURITY OFFICER: No. It's your courtroom.

10 THE COURT: Okay.

11 All right. So we'll have the jury come back -- instead
12 of tomorrow we'll have them come back on Thursday at 9:00 a.m.
13 But we could still argue tomorrow the 29(a) before we go into
14 the proffers. So you all still plan to be here at 10:00
15 tomorrow.

16 MR. TANASI: Will do.

17 MR. MARCHESE: Correct, Your Honor.

18 THE COURT: All right.

19 Okay. Well, then that's the plan. We'll see you
20 tomorrow at 10:00. Court's in recess.

21 COURTROOM ADMINISTRATOR: All rise.

22 (Proceedings adjourned at 2:52 p.m. Trial to resume on
23 Wednesday, August 9, 2017, at 10:00 a.m.)

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,)	Case No.
	)	2:16-cr-46-GMN-PAL
Plaintiff,)	
	)	Las Vegas, Nevada
vs.	)	Tuesday, August 8, 2017
	)	9:36 a.m.
ERIC J. PARKER (11),	)	Courtroom 7C
O. SCOTT DREXLER (12),)	
RICHARD R. LOVELIEN (13),	)	JURY TRIAL, DAY 17
STEVEN A. STEWART (14),)	
)	
Defendants.)	

ORIGINAL

C E R T I F I C A T E

I, FELICIA RENE ZABIN, Official Court Reporter, United States District Court, District of Nevada, Las Vegas, Nevada, do hereby certify that pursuant to 28 U.S.C. § 753 the foregoing is a true, complete, and correct transcript of the proceedings had in connection with the above-entitled matter.

/s/ Felicia Rene Zabin
FELICIA RENE ZABIN, CCR No. 478
OFFICIAL FEDERAL REPORTER

Dated: August 13, 2017

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,)	CASE NO. 2:16-CR-46-GMN-PAL
)	
Plaintiff,	)	LAS VEGAS, NEVADA
	)	AUGUST 9, 2017
vs.	)	10:55 A.M.
	)	COURTROOM 7C
ERIC J. PARKER (11),)	
O. SCOTT DREXLER (12),	)	JURY TRIAL, DAY 18
RICHARD R. LOVELIEN (13),)	
STEVEN A. STEWART (14),)	
)	
DEFENDANTS.)	
)	
)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE GLORIA M. NAVARRO,
UNITED STATES DISTRICT CHIEF JUDGE

APPEARANCES:
FOR THE PLAINTIFF:

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(continued next page)

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11 LAS VEGAS, NEVADA; WEDNESDAY; AUGUST 9, 2017; 10:55 A.M.

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P R O C E E D I N G S

14

THE COURT: Thank you. You may be seated.

15

Counsel, please go ahead and make your appearances for
16 the record.

17

MR. MYHRE: Good morning, Your Honor. Steve Myhre,
18 Erin Creegan, and Nadia Ahmed on behalf of the United States.

19

THE COURT: Good morning.

20

MR. TANASI: Good morning, Your Honor. Rich Tanasi for
21 Steven Stewart. Also with us is Tori Bakken and Brian Glynn.

22

THE COURT: Good morning.

23

MR. MARCHESE: Good morning, Your Honor. Jess Marchese
24 on behalf of Eric Parker.

25

THE COURT: Good morning.

1 MR. LEVENTHAL: Good morning, Your Honor. Todd
2 Leventhal on behalf of Scott Drexler.

3 THE COURT: Good morning.

4 MR. PEREZ: Good morning, Your Honor. Shawn Perez on
5 behalf of Mr. Lovelein who is -- who remains in the lockup right
6 now.

7 THE COURT: All right. And so is he going to be
8 joining us soon?

9 MR. PEREZ: No, actually we'd like to waive his
10 presence if we could. He had a death in the family, and he's
11 grieving and dealing with it as he can. He's listening, but if
12 we could waive his presence, that would be greatly appreciated
13 today.

14 THE COURT: All right. Any objection from the
15 Government?

16 MR. MYHRE: None from the Government, Your Honor.

17 THE COURT: All right. So the Court will waive his
18 presence for this morning.

19 We did have a 29(a) motion that was filed by the
20 Defense. Is there anything else that the defendants want to add
21 to that 29(a) motion?

22 And I'm not clear if Mr. Lovelein joined in that motion
23 or not.

24 MR. PEREZ: Your Honor, it was my intention to join
25 this morning on the record. There's a couple of other points

1 that I'd like to make --

2 THE COURT: Okay.

3 MR. PEREZ: -- other than that. One of the points I
4 wanted to make is, the Government really hasn't rested at this
5 point. And so I think it's sort of premature to even file or
6 address a 29(a) at this point.

7 THE COURT: All right. Did the Government have a
8 chance to review its witness list and evidence list?

9 MR. MYHRE: We did, Your Honor.

10 THE COURT: So, does the Government rest then?

11 MR. MYHRE: The Government rests, Your Honor, as we
12 stated we intended to do yesterday in front of these defendants.

13 THE COURT: All right. And so did the Defense want to
14 add anything to the issues that are raised in the 29(a) motion?
15 And then we'll move onto any additional things that are not
16 included in that written 29(a) motion.

17 MR. TANASI: Your Honor, I'll submit it on the brief
18 that was filed last night.

19 MR. LEVENTHAL: Same for Mr. Drexler.

20 MR. MARCHESE: Same for Parker.

21 THE COURT: All right. And so on behalf of
22 Mr. Lovelein, you are joining in the 29(a) motion that was
23 filed?

24 MR. PEREZ: Yes, Your Honor.

25 THE COURT: But you also said there were additional

1 points that you wanted to make?

2 MR. PEREZ: Yes, Your Honor. And specifically with
3 respect to the fact that, you know, there really is no evidence
4 of Mr. Lovelein certainly pointing a weapon, which would go to
5 threatening a federal officer. Mr. Lovelein, by all of the
6 evidence we've seen, was not in the wash, clearly, as were none
7 of the defendants. He never made it onto the actual bridge, and
8 even in the location that he was at, he didn't engage in any
9 conduct that fits the -- I mean, any elements of the crime as
10 they're charged in the indictment.

11 I mean, specifically with respect to extortion, I mean,
12 if there's no evidence that Mr. Lovelein adopted anyone's
13 comments, he certainly didn't make any comments. There's no
14 postings by Mr. Lovelein concerning the return of Mr. Bundy's
15 cattle or traveling there with the intent to interfere with any
16 of the BLM operations. I mean, certainly he was present, but,
17 you know, under case law, I mean, that's not necessarily enough,
18 even as far as the conspiracy is concerned.

19 And upon that, you know, I'll submit.

20 THE COURT: All right. So let's hear the Government's
21 response.

22 MS. CREEGAN: Thank you, Your Honor.

23 Specifically in response to Mr. Perez's arguments, the
24 representation that there is no evidence of Mr. Lovelein
25 pointing is false. Ranger Alex Burke testified that she did

1 observe him to point his firearm at law enforcement officers.
2 So there is sufficient evidence for the jury to find that he did
3 so.

4 Secondly, there's no law that's been charged that
5 requires pointing. There's assault, which can be accomplished a
6 number of ways. There's threats, which can be accomplished a
7 number of ways, and there's brandishing of a firearm. So
8 there's no legal requirement for him to have pointed, even
9 though there is evidence that he did so.

10 And, thirdly, even if there was such a legal
11 requirement, there was testimony that every other defendant
12 pointed their firearm, and he would be liable under aiding and
13 abetting in Pinkerton as the Government has charged.

14 In the terms of his specific argument that there was no
15 extortion, he was a part of Operation Mutual Aid and coordinated
16 with Ryan Payne and was party to the objectives which included
17 the return of the cattle. He was the head of security over at
18 the rally area. He ferried the other defendants over to the
19 area where the BLM was in order to extort the cattle after
20 hearing Mr. Cliven Bundy say, Go get my cattle. And then he
21 returned back to the second rally that was held later in the
22 day, in no way disavowing Mr. Bundy's directive to go -- assist
23 him and go get his cattle. And then he continued to recruit
24 funds for the militia to remain active at the Bundy Ranch so
25 that there would be no return of the BLM to the area.

1 So, in terms of those specific arguments of pointing
2 and extortion, we don't believe that that raises any issue for
3 the Court to address.

4 THE COURT: So, Mr. Perez, were you referring to Count
5 Sixteen, Interstate Travel in Aid of Extortion, or
6 Count Fourteen, Interference With Interstate Commerce? Because
7 that sounds like you -- I think maybe both.

8 MR. PEREZ: Well, actually, Your Honor -- yeah, I think
9 they kind of both overlap.

10 But with respect to the Government's comments about
11 Mr. Lovelein being the head of security, the only evidence that
12 suggests that he might have been the head of security was a post
13 by his sister. There's no evidence. I mean, we've seen
14 hundreds of hours of video and photographs. I mean, there's no
15 interaction between Mr. Payne and Mr. Lovelein but for, you
16 know, the conversation that happened on, I believe it was either
17 April 8th or April 9th.

18 And, certainly, if Mr. Lovelein was so involved in
19 security and things of that nature, at the time -- at the height
20 of the tension of April 12th, there's no reason for him to be
21 checking his voicemail for two minutes and then being on the
22 phone to his sister for four minutes and sitting on a bridge not
23 really paying attention to what's going on in the wash below.

24 MS. CREEGAN: Mr. Perez's arguments are
25 weight-of-the-evidence arguments, but not that the jury could

1 not find that he was a member of this conspiracy. The evidence
2 established that he's in contact with Operation Mutual Aid,
3 checks and likes their web page in which they adopt the idea
4 that they should use violence against government officials. He
5 and coconspirators receive objectives which include the return
6 of the cattle. He travels interstate, recruits other people,
7 continues to communicate with Ryan Payne, continues to
8 communicate with OMA.

9 His coconspirator and member of the OMA, his sister,
10 posts that he is running security at the site, tags him in it.
11 He never disavows that statement. He himself posts to the MTFD
12 page when he returns and says that operations are still active
13 and more people are still needed in Nevada.

14 His cofounder of MTFD, Randy Eaton, puts out an e-mail
15 in which he says, If you want to join MTFD today so you can help
16 with the issue in Nevada, call me, on April 11th. Then there's
17 a number of calls back and forth between Randy Eaton and Ricky
18 Lovelein. He continues to function as a recruiter up until the
19 very end, up until he takes these three defendants over to that
20 area, allowing them to store their firearms in his vehicle.
21 Takes them there with their firearms. They deploy down the
22 northbound bridge. He occupies the state trooper. He never
23 goes to the location where these three Idaho defendants went.

24 That is more than enough evidence for the jury to find
25 that he is intimately involved with this conspiracy, that he's

1 liable for everyone else's acts, that he intended to assault
2 these officers, that he intended to threaten them, that he
3 intended to extort them.

4 THE COURT: All right. So that was as to
5 Count Sixteen. And the Court agrees that the elements of
6 Count Sixteen are few and that the Government has presented
7 evidence to allow and permit a jury, a reasonable jury, to
8 reasonably find that those elements have been met. Doesn't mean
9 that the jury will find that, but that they could.

10 There is some evidence that's been proffered that meets
11 the standard for each of the elements. The elements being
12 travel, all four defendants traveled; or the use of Internet,
13 and we have Facebook coordination and other posts, communicative
14 posts, with the intent to commit a crime of violence. We have
15 the individuals traveling with their guns and other types of
16 gear in preparation of a violent event, and they committed or
17 attempted to commit the crime in furtherance of unlawful
18 activity, which is to force the BLM, the federal law enforcement
19 officers, to back down and/or to leave and/or to get the cows
20 back and/or to not come back and not bother with the Bundy
21 family anymore.

22 Do you want to -- does Government want to respond to
23 the other counts as well?

24 MS. CREEGAN: Your Honor, are there specific arguments
25 that you would find helpful to have addressed?

1 THE COURT: Yes. If ... If you could address on
2 Count Twelve, the obstruction of due administration of justice
3 under Section 1503 or under Section 2 of Aiding and Abetting.
4 So, due administration of justice requires a proof of a pending
5 judicial proceeding, which we know existed here. And Order
6 No. 1544 is amended as 1574 finds that enforcement of a
7 permanent injunction is sufficient to support the requirement of
8 a pending judicial proceeding.

9 But we also have the mens rea requirement of acting
10 corruptly or by threats or force, and so we do have a show of
11 force and a threatening show of force here, but with the intent
12 to obstruct justice. So the intent does -- the defendants'
13 intent to obstruct justice doesn't need to be the only intent or
14 the sole or even primary intention as long as it is one of the
15 defendant's intentions.

16 So remind me, did we -- because I -- I am not
17 remembering whether we had any testimony or audio. I know that
18 Officer Johnson didn't testify this time so we didn't hear the
19 audio speaker, car speaker, announcing the court order. We did
20 see the posting by Stewart of Judge George's information, and
21 then we had, I think it was Petrie, the attorney, testify about
22 how the orders in the Bundy lawsuit was filed -- was signed by
23 Judge George. So is there circumstantial evidence -- an
24 inference from that circumstantial evidence that Stewart posted
25 that afterwards because he knew beforehand or none of them

1 disavowed?

2 I'm not sure that I'm clear on what is the Government
3 evidence that supports the intent to obstruct justice under
4 1503, or are you merely relying on the Aiding and Abetting,
5 Section 2?

6 MS. CREEGAN: Your Honor, we're not relying solely on
7 Aiding and Abetting. We had testimony from Officer Scott
8 Swanson that the PA was constantly broadcasting that there are
9 court orders. We also introduced against all defendants Eric
10 Parker's previous testimony wherein he stated he heard the PA
11 saying court orders. We also introduced Michael Flynn's video
12 where you can hear from the northbound bridge the PA system in
13 which there are repeated court orders over and over again. We
14 also introduced Eric Parker's testimony that he was aware of the
15 court orders before traveling.

16 THE COURT: All right. So the Parker court order
17 admission, was that when he testified or when he was arrested
18 and interviewed?

19 MS. CREEGAN: That was his testimony in the previous
20 trial when he was subject to cross-examination.

21 THE COURT: Was it the court order or the impoundment
22 order that he testified about?

23 MS. CREEGAN: He testified that he knew there was a
24 court order, but that he did not read it.

25 THE COURT: Okay. So knew or should have known, is

1 that --

2 MS. CREEGAN: He has testified that he was aware that
3 there was a court order in his research before traveling. And
4 they certainly all should have been able to hear from both the
5 video taken from the northbound bridge, from Eric Parker being
6 able to hear it on the northbound bridge, those PA
7 announcements.

8 THE COURT: All right. So from the bridge being able
9 to hear the announcements, who testified about that, about the
10 ability to hear from the bridge?

11 MS. CREEGAN: It's captured in Michael Flynn's video,
12 which he takes from the northbound bridge.

13 THE COURT: Oh. So it would have been Ellis's
14 testimony?

15 MS. CREEGAN: That's correct.

16 THE COURT: And then what about Mr. Lovelein, who was
17 not in the same location?

18 MS. CREEGAN: Same location. Should have been able to
19 hear it from the northbound ...

20 THE COURT: All right. And then for Aiding and
21 Abetting, that count, that's an easier one, too, to meet because
22 it merely requires aiding, counseling, commanding, and inducing
23 or procuring for the principals; so in this case the Bundy
24 family or any of the other coconspirators are considered as the
25 principal. Clearly these individuals responded to a call to

1 arms to assist them. So with respect to an element of the
2 offense to -- in this case for the obstruction, to obstruct or
3 impede or to try to obstruct or impede, that's been met.

4 And the second element of Aiding and Abetting is acting
5 with intent to facilitate; so, again, to assist with the
6 obstruction of the court order. And the action has to be
7 committed before the crime is completed, and they did appear on
8 the scene before the BLM relented and moved out.

9 All right. Let me see if there was another one. Oh,
10 okay. And so then connected to Count Twelve is ...

11 Okay. So I think I understand on the interference --
12 Count Fourteen, the Interference With Interstate Commerce By
13 Extortion, that the second element, the not entitled to receive,
14 the intent to obtain -- not entitled to receive doesn't
15 necessarily mean that the defendants needed to know that the
16 cows had been tagged as government property or anything like
17 that. It's just sufficient that they knew that the Bundy family
18 was not entitled to receive the cows --

19 MS. CREEGAN: Correct, Your Honor.

20 THE COURT: -- pursuant to the sheriff's statement on
21 the stage.

22 And then the interstate commerce being affected in
23 multiple ways with them traveling with the guns, but also with
24 the fact that they were -- that the cows were going to be
25 auctioned off at Euclid, E-U-C-L-I-D, not sure how to pronounce

1 that, in California, which is outside of Nevada. They also
2 stopped the interstate traffic on I15. And we did see semis and
3 other vehicles on there, and I think there was some testimony
4 about some out-of-state plates.

5 All right. So did you want me to go -- I can go
6 through all of it. So Count One, the conspiracy from March 28th
7 of 2014 through March 2nd of 2016, requires an agreement between
8 a defendant and one or more persons to commit at least one of
9 the crimes in the superseding indictment to become a member of
10 that conspiracy agreement, knowing of at least one of its
11 objects; doesn't have to know the entire plan, but does intend
12 to help accomplish at least one of its objects. And at least
13 one of those members, not necessarily a defendant, has to have
14 committed an overt act. The agreement does not need to be
15 explicit. And the defendants do need to believe that their own
16 contributions were required to -- or that the success of the
17 venture depended on their own -- their own benefits and their
18 own actions.

19 And here we do have Facebook posts and e-mails and
20 communications between the defendants, either with each other or
21 with the other indicted or unindicted coconspirators.
22 Mr. Lovelein's contacts with Mr. Payne as well.

23 Stewart, Parker, and Drexler driving up together with
24 weapons and other accessories like armor, vests, and tack vests,
25 and camo, gear to be used in a confrontation.

1 Overt acts of Stewart standing in a show of force with
2 a weapon above the barrier, the Jersey barrier, on the bridge.
3 And Parker and Drexler likewise standing up on the bridge.

4 Calling a show of force in order to intimidate or
5 induce or prevent law enforcement from carrying out its orders
6 to enforce the court order to complete the operation -- the
7 impoundment operation, the closure, trapping, and so forth of
8 the cows and auctioning them off.

9 Count Two, Conspiracy to Impede Or Injure a Federal
10 Officer, same time span for the conspiracy, March 28th of 2014
11 to March 2nd of 2016. Again, there needs to be an agreement
12 between two or more persons to either prevent or to induce. In
13 this case I think we have both, evidence of both, by the
14 prevention and the inducement. It must be by force,
15 intimidation, or threats. We have the show of force by the
16 defendants with their weapons and their gear, standing up,
17 arriving from out of state, leaving the rally stage where they
18 did not have their weapons, going to retrieve their weapons to
19 bring them to the wash where the federal law enforcement
20 officers are stationed. Stopping the federal law enforcement
21 operation in regards to execution of court orders to obtain the
22 cattle is unlawfully on the public lands.

23 Inducing the federal law enforcement officers, forcing
24 them to leave, forcing them to give up the federal property of
25 the cattle, and stopping them from further contact or conduct

1 related to the Bundy family. And the defendants became a member
2 knowing of at least one of its objects, driving there with the
3 long guns in response to the call for arms, and their tactical
4 clothes and so on to help.

5 So to be clear on Count Two, no overt act from the
6 defendant is required and, again, no formal agreement is
7 required.

8 So Count Five, the Assault on a Federal Officer, we
9 have the element of forcible assault, which is defined as
10 intentionally threatening another, coupled with the apparent
11 ability to inflict injury. So there's no need for pointing of
12 the gun. It is just an intentional threat with an apparent
13 ability to inflict injury. The apprehension is the victim's
14 apprehension based on a reasonable person aware of the
15 circumstances known to the victim.

16 And we did have testimony from several victims that
17 they did see individuals with firearms and that they were
18 concerned for their safety. And I think it was Ms. Burke who
19 said that she was afraid that she was going to die. We know
20 that the officers -- the victims were aware of individuals with
21 guns because they called out the positions of the guns.

22 And then the last element is the use of a deadly
23 weapon. We have pictures of each of the defendants with
24 weapons, Exhibit No. 66 for Mr. Lovelein. Exhibit 14 shows the
25 three others with weapons. As to Mr. Drexler, the testimony

1 from the individual about the firearms was that Mr. Drexler's
2 apparent firearm could, in fact, have been an air gun, and that
3 would seem to be sufficient reasonable doubt that Mr. Drexler
4 actually carried a long gun, as opposed to an air gun. So an
5 air gun being exploded by air as opposed to by incendiary
6 device, which was required under the definition of the firearm.

7 However, under Aiding and Abetting, the individual does
8 not have to actually have access to a firearm. Doesn't -- needs
9 only to take an affirmative act in furtherance of that offense
10 with the intent to facilitate the offense. And so here the act
11 of responding to the call to show force for the purposes of
12 stopping the operation of the auction and so forth is sufficient
13 even if the firearm's not in fact a firearm, but an air gun.

14 And to be clear for Count Five, the defendant does not
15 need to know that the victim was a federal officer, and the
16 defendant does not need to intend to cause bodily injury. It is
17 a general intent crime.

18 Count Six is the Use and Carry of a Firearm in Relation
19 to a Crime of Violence. And the first element is that the
20 defendant committed Count Five, and as the Court has said, it
21 finds that the Government has produced sufficient evidence for
22 the jury to find that Count Five was committed by all four of
23 the defendants. Second element of the Use and Carry of a
24 Firearm in Relation to a Crime of Violence is that the defendant
25 knowingly brandished or used and carried the firearm. Again,

1 we've got Lovelein with the firearm and the three others with
2 the firearm.

3 As to Mr. Drexler, if his apparent long gun was an air
4 gun and not a firearm, that still doesn't eliminate the second
5 element because, again, for Aiding and Abetting the Government
6 need not necessarily prove that the defendant took action with
7 respect to any firearm, so long as he facilitated another of the
8 elements and had advanced knowledge of the firearm. In this
9 case we know that Mr. Drexler did drive in the same truck with
10 Stewart and Parker and their firearms and was also standing
11 right there at the bridge with the other two holding the
12 firearms. And so he clearly had knowledge of the other two
13 having a firearm.

14 And for purposes of use and carry, it's not necessary
15 that the weapon be brandished, but in this case we also have
16 evidence of brandishing, which means making the presence of the
17 firearm known in order to intimidate, regardless of whether the
18 firearm is directly visible to that person. So the crime can be
19 committed both ways, with use and carry or with brandishing, and
20 it just changes the penalty, but not whether or not the crime
21 was committed.

22 Count Eight is the Threatening of a Law Enforcement
23 Officer. Does not need to be statements. Can be an act that
24 constitutes a threat to assault. The defendants need to intend
25 their act to be a threat and not joking around or idle careless

1 actions. In this case we know because of the communication on
2 Facebook and otherwise on e-mails that they were responding to a
3 specific call for folks to bring their weapons in order to stand
4 up to the federal government. So there was knowledge that the
5 acts were going to be viewed as a threat.

6 We have evidence that a reasonable person would foresee
7 the act would be interpreted as a serious threat. Very first
8 witness, Lombardo, and a number of witnesses afterwards
9 testified about that, and the common sense is clear that the
10 defendants would know that their actions would be interpreted as
11 a serious threat as opposed to a joke.

12 The Government need not prove exact words or exact
13 actions that constitute the threat. The defendant does not need
14 to communicate the threat directly to the intended target,
15 doesn't need to be pointing the firearm. And the victim,
16 however, does need to be a federal law enforcement officer,
17 which here we did have -- back to her name -- the woman who said
18 she was afraid for her life and the other individuals, or I
19 think he was concerned for his safety, Shilaikis. Ms. Burke was
20 the one who said she thought she was going to die.

21 And the threat must be made for the purposes of
22 impeding or interfering with federal law enforcement, or to
23 retaliate, which here might also be the case, but either way
24 there was evidence that the defendants specifically were
25 targeting the federal law enforcement officers to stop them and

1 intimidate them or interfere with their operation of executing
2 court orders.

3 And also for this Count Eight the defendant does not
4 need to know that the victim is a federal law enforcement
5 officer.

6 Count Nine is the use and carry. So Count Eight is --
7 needs to be evidence of Count Eight, which I already said there
8 is, and then also the use and carry or brandishing of a firearm.
9 So the same goes to Mr. Parker and Mr. Stewart pictured with
10 their rifles, brandishing them, which is making the presence of
11 the firearm known. And then Mr. Drexler, if his weapon is not a
12 firearm, he still aided and abetted the other individuals by
13 taking action to facilitate the element of threatening a law
14 enforcement officer.

15 I think we already covered Count Twelve, which is the
16 due process of -- the due administration of justice. With
17 Swanson testifying about the PA system, and the court order
18 being spoken over the loudspeaker, can be heard on the Flynn
19 video that came in through Ellis's testimony. Parker admitting
20 in prior testimony that he was aware of the court orders, but
21 didn't read them. And all four individuals on the bridge could
22 hear the PA system announcing the court order.

23 I may be repeating myself now. Count Fourteen is the
24 Interference With Interstate Commerce By Extortion. Inducing
25 someone to part with property by actual or threatened force. So

1 it doesn't have to be actual force. It can be threatened force
2 of -- or fear. There was pointing of guns, but even those who
3 weren't pointing of guns, that would be sufficient to -- for
4 this element. And the cows do not need -- we know were
5 Government property, there was evidence that they were
6 Government property, but the defendants do not need to know they
7 were Government property. They just need to know that they were
8 not entitled to receive that property. And clearly, after the
9 sheriff was on the stage, it was clear that the family at
10 least -- at the very least, was not entitled to receive those
11 cows that had already been seized.

12 I think that in the 29(a) motion it refers to the
13 ceasing of the operations, and there's a mixup on the way that
14 it's stated. But I think that argument is that because they
15 were no longer seizing more cattle, but those aren't the cattle
16 that were sought to be released. The cattle that the defendants
17 sought to release were the ones that were in the pens that had
18 already been rounded up; not the ones that the BLM had stopped
19 attempting to round up. And, again, under interstate commerce
20 it's de minimus. It doesn't need to be an actual effect on
21 interstate commerce. It's sufficient that it be probable or
22 potential. And here they stopped interstate traffic and stopped
23 the auctioning of the cows and so forth.

24 Fifteen is the use and carry committing Count Fourteen.
25 Same evidence applies there.

1 And then Sixteen we already addressed, was the
2 traveling in interstate commerce with Facebook coordination,
3 e-mails, and response to the Internet postings for a call to arm
4 and e-mail requests with the intent to travel. They received
5 their objectives to respond with the guns and the other gear in
6 preparation of violence at the wash. They bring them over --
7 they bring them out of state. Come to the rally. No guns at
8 the rally. And then they go retrieve the guns to go to the wash
9 in furtherance of stopping the BLM, forcing them to stop,
10 forcing them to leave, forcing them to discontinue future
11 operations.

12 All right. So does the Defense have a witness to
13 proffer?

14 MR. TANASI: Yes, Your Honor.

15 THE COURT: Okay. Go ahead and call the first witness.

16 MR. TANASI: Kenneth Rhoades, Your Honor. He is, I
17 understand, available now on Skype and through teleconferencing.

18 MR. MYHRE: Your Honor, just for the record, we
19 would -- the Government objects to this process. It was our
20 understanding from the Court's ruling yesterday that -- and it
21 was our understanding as well from the Defense representations
22 that they were going to call Dennis Michael Lynch by Skype for
23 the purposes of making some proffer. Now we understand it's
24 expanded to Mr. Rhoades and Mr. Spencer and others who they
25 intend to call.

1 It's difficult for us to cross-examine, to show
2 witnesses exhibits, to even explore what these witnesses are
3 going to say when they're not here. We don't understand how
4 this paradigm just shifted all of a sudden. Now we're dealing
5 with witnesses by Skype appearing, apparently, from their living
6 rooms. So we just -- we object for the record. I understand
7 the Court's ruling with respect to --

8 THE COURT: Mr. Lynch because the representation was
9 that he was unavailable and had a doctor's note because of some
10 surgery and was not able to travel.

11 MR. TANASI: That's correct, Your Honor, and --

12 THE COURT: So what's the representation for these
13 individuals?

14 MR. TANASI: And part of what I also understood from
15 Your Honor was you would entertain the affidavit -- potential
16 affidavit submissions. And so, I guess, essentially
17 understanding that it was a proffer and, I guess, maybe just
18 assuming that the Court was flexible in how we were going to
19 make that proffer, this particular witness lives out of state as
20 well. So rather than have him fly in next Monday, I figured try
21 and go this route through the proffer process only. And then if
22 Your Honor is inclined to allow his testimony, of course have
23 him present and ready to do so.

24 So this was just trying to kind of deal with what I
25 understood the Court's kind of understand -- or the Court's

1 order was as far as the proffer goes and the flexibility in
2 terms of the affidavit. So I did just kind of -- kind of put
3 this together thinking it would be no different than an
4 affidavit. And under this scenario the Government has a chance
5 to cross; where an affidavit they wouldn't even have that. So I
6 don't think this is unfair for the proffer purposes and ...

7 THE COURT: All right. So for the proffer purposes I
8 will allow these individuals to testify by Skype, but if at the
9 end of the proffer it appears that they could -- their testimony
10 would potentially be admissible, then we'll have to discuss
11 whether or not we'll need to bring them in in person.

12 So this is not for purposes of any evidence that's
13 going to be provided to the jury. I just want to make sure
14 you're clear. This is just a proffer for the record of what
15 they would say if they were permitted to testify in front of the
16 jury.

17 MR. TANASI: Understood.

18 THE COURT: Okay.

19 MR. LEVENTHAL: And, Your Honor, in terms of Mr. Lynch,
20 I'm sorry. Mr. Lynch needed 60 minutes, and I knew that we were
21 going to be arguing this morning. So he needed 60 minutes to
22 prepare because he just had surgery. So I didn't know how long
23 this was going to take, so I wasn't able to give him that time,
24 and plus he's three hours difference in New York. So we decided
25 rather than waste everybody's time, we were going to bring in

1 this proffer. But I can have him on Skype within 60 minutes of
2 the time that we know he's going to be on Skype.

3 THE COURT: Okay. So is that 60 minutes from now?

4 MR. LEVENTHAL: I can text my investigator right now
5 and let him know that he'll be -- if he can be available. Are
6 we planning on taking a lunch at 12 so that I have him ready at
7 1 or 1:30?

8 THE COURT: Yeah, if you could have him ready at 1 our
9 time, which is -- would it be his time at 4?

10 MR. LEVENTHAL: Very good. Thank you.

11 MR. TANASI: That sounds good, Your Honor. And
12 depending on how this goes, we might even be able to get another
13 witness or two in via Skype as well.

14 THE COURT: All right. So who is this gentleman?

15 MR. TANASI: Kenneth Rhoades, Your Honor.

16 THE COURT: All right. Aaron, if you'll please swear
17 in Mr. Rhoades.

18 COURTROOM ADMINISTRATOR: Yes, Your Honor.

19 KENNETH RHOADES, having duly been sworn, was examined
20 and testified as follows:

21 COURTROOM ADMINISTRATOR: Thank you, sir. Please state
22 your name for the record and spell your last name.

23 THE WITNESS: Kenneth Rhoades, R-H-O-A-D-E-S.

24 MR. TANASI: May I proceed?

25 THE COURT: Yes, you may.

1 MR. TANASI: Thank you, Your Honor.

2 DIRECT EXAMINATION

3 BY MR. TANASI:

4 Q. Good morning, Mr. Rhoades.

5 A. Morning.

6 Q. Hi. I just want to make sure you can hear me okay, can you?

7 A. Yes. Yes, I can hear you.

8 Q. All right, sir. What do you do for a living?

9 A. I'm retired.

10 Q. Retired from what, sir?

11 A. From printing. I owned my own business. I had a printing
12 shop.

13 Q. Understood. And where are you currently living?

14 A. At 48310 Heydenreich Road, Macomb Township, Michigan.

15 Q. Okay. Sir, I want to turn your attention to Bunkerville
16 April 12th, 2014.

17 A. Yes.

18 Q. Okay. Were you in Bunkerville on April 12th, 2014?

19 A. Yes, I was.

20 Q. And why were you there, sir?

21 A. Well, I heard on the radio that -- from the Pete Santilli
22 Show that they were -- somebody was taking the guy's cattle. So
23 I got in my car and I drove down there.

24 Q. Okay. What was your -- what was your plan?

25 A. My plan was --

1 MS. CREEGAN: Objection, relevance, as to what his plan
2 was.

3 MR. TANASI: Your Honor, again, my understanding of
4 this point of the proffer is to establish the relevant evidence.
5 I'm foundationally getting to the two kind of areas that I
6 discussed on the record yesterday as to why I believe these
7 witnesses are relevant. One being the res gestae evidence to
8 rebut the crowd's notion, that they're a crowd-based conspiracy,
9 to thwart the Government's efforts, A. And, B, it goes -- this
10 potential witness also goes to our self-defense evidence that
11 we're trying to proffer now to see if we have enough to
12 ultimately get there.

13 THE COURT: All right. Proceed.

14 MR. TANASI: Thank you, Your Honor.

15 BY MR. TANASI:

16 Q. Sir, did you -- what was your plan heading to Bunkerville?

17 A. Yeah, I was going to a protest because I really didn't -- I
18 didn't know anybody there, so ... I was just going to a
19 call-out protest.

20 Q. All right. In the morning of the 12th, did there come a
21 time where you attended a speech by the sheriff?

22 A. Yes, I did. I was at the trailer and Sheriff Gillespie -- I
23 think a couple of undersheriffs came with him. I even put my
24 hand out and helped him get up the trailer, and he told us that
25 the BLM was standing down. They were leaving.

1 And then -- then Cliven gave a speech, which I won't
2 get into that, but Cliven gave a speech. And we waited an hour.
3 Then we went to the wash.

4 Q. Okay. After hearing both Cliven's speech and the sheriff's
5 speech, what did you understand was to happen in the wash?

6 A. I thought we was going over just to watch the cattle being
7 released.

8 Q. Okay. Did you in fact go over to the wash?

9 A. Yes, I did.

10 Q. How did you get there?

11 A. I rode over with -- I rode with a man -- a father and his
12 son, because I had -- my car was there. And they said, Just hop
13 in the truck with us, because they was going out into the field.
14 So I got in the truck with them. And we parked on the top, and
15 as I was going down, I fell down a 30-foot embankment, so ...

16 Q. Sorry to hear that.

17 A. Go ahead.

18 Q. So after your fall, what did you do next?

19 A. I went to the front gate and I did -- I did hear them saying
20 something over the speaker, but down in the wash you couldn't
21 hear it because it was echoing off the walls. So I had no clue
22 what they were even saying.

23 But then when we got closer to the gate, there was guns
24 pointed at us and they were -- I didn't say they were very
25 aggressive, but they were pointing guns at us.

1 Q. When you say "they," who are you referring to?

2 **A.** I guess as it turned out it was the BLM. It looked to me
3 like -- I thought it was Army, but I guess it was the BLM and
4 Park rangers, but some of them had tan suits on, some of them
5 had green. But they were heavily -- like, all of the body armor
6 on them.

7 Q. How did it make you feel when the guns were pointed at you,
8 sir?

9 **A.** Well, I actually thought we might die in the wash that day,
10 to be honest with you, because I thought they might -- I thought
11 they might shoot us; because they -- they guns was up and they
12 wasn't sling. They were up and they were pointing them at us.

13 Q. Were you armed that day, sir?

14 **A.** No, I wasn't. I wasn't armed any day.

15 Q. And how close were you when you saw them with the guns?

16 **A.** Probably 100 feet, 200 feet.

17 But, actually, when I was going under the first bridge
18 on the south side there to the -- to the north side, then I seen
19 the guns pointing, so ...

20 MR. TANASI: Okay, sir. Thank you. That's all the
21 questions I have for you. The Government may have some
22 questions, and Her Honor may have some questions for you as
23 well.

24 THE WITNESS: Sure.

25 THE COURT: Go ahead, Ms. Creegan.

1 MS. CREEGAN: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MS. CREEGAN:

4 Q. We do have some questions for you from the Government, sir.
5 Can you answer my questions, please?

6 A. Sure. Go ahead.

7 Q. And please just let me know if you can't hear me.

8 A. I can hear you fine.

9 Q. Thank you.

10 Sir, is it correct that you arrived at Bunkerville on
11 April 9th of 2014?

12 A. Yes, I did.

13 Q. And when you did that, you did that at the Patriot
14 checkpoint. Is that correct? You met Pete Santilli there?

15 A. Yes, I did.

16 Q. And that was a checkpoint to the militia camp?

17 A. I didn't know -- I didn't even know they had a militia camp
18 there. I went -- they called it a welcome center. They had
19 a -- two flagpoles up, and that's where I went to when I went
20 down there. That's where I met Pete Santilli.

21 Q. You saw there was a Patriot checkpoint?

22 A. Yes.

23 Q. And is it true that the night before April 12th, which would
24 be April 11th, Pete told you that you were going to take the
25 cattle back, that he was going to help take the cattle back?

1 **A.** He -- Pete didn't say he was going to take the cattle back.

2 He said they was going to take the cattle back.

3 **Q.** That they were going to take the cattle back?

4 **A.** Right.

5 **Q.** And were you concerned that you didn't have enough people to
6 take the cattle back from the BLM?

7 **A.** Well, at that time there was probably 400 people. And the
8 morning of -- Saturday morning it was, like, 2,000 people.

9 **Q.** And so on Friday you were concerned you didn't have enough
10 people, but on Saturday you thought there were enough people to
11 take the cattle back?

12 **A.** That was my opinion.

13 **Q.** And you knew that it was the BLM impounding the cattle,
14 correct?

15 **A.** Yes, I did.

16 **Q.** And you knew that they were federal government officers?

17 **A.** Yes. Yes, I did.

18 **Q.** Okay. And you were present when Cliven Bundy demanded that
19 the BLM's guns be taken away?

20 **A.** Yes, I was.

21 **Q.** And you believe that Cliven then said, If the people want to
22 go take the cattle, then go get it?

23 **A.** That was after the sheriff told us that they were leaving --
24 that they were leaving. They were leaving that area. So I
25 assumed that we were going over then to watch the cowboys go and

1 take the cattle.

2 Q. Mr. Rhoades, do you remember being interviewed by Pete
3 Santilli for a video? I believe it's called A Targeted
4 Individual.

5 **A.** Yes, I do.

6 Q. And do you remember mentioning anything about thinking that
7 the BLM was gone in that interview?

8 **A.** I don't even think -- I don't even know that we talked about
9 it on that interview.

10 Q. But you do remember that you heard Cliven say, If the people
11 want to go take the cattle, then go get it?

12 **A.** Cliven said, You can go get the cattle, yes.

13 Q. And then you went with the people to go get the cattle?

14 **A.** Right.

15 Q. And you saw that there were armed people present in the
16 crowd?

17 **A.** Where I was at, all I seen -- I didn't see any long rifles
18 where I was at. I was down in the wash after I fell. All I
19 seen was a few sidearms on people.

20 Q. Do you remember seeing somebody with a gun on the overpass?

21 **A.** Yes, I do.

22 Q. Do you remember a trooper telling the person to put the gun
23 away and the person didn't put the gun away?

24 **A.** I remember the trooper saying something to the guy about the
25 gun.

1 Q. Do you remember telling Pete Santilli that the trooper told
2 the guy to put the gun away and the guy did not put the gun
3 away?

4 **A.** I don't remember saying it. I may have. I don't remember
5 saying it.

6 Q. Okay. So it's possible that that could have happened and
7 you may just not remember now?

8 **A.** Yes.

9 Q. Okay. And you yourself went into the wash?

10 **A.** Yes, I went into the wash.

11 Q. And were you part of a large group of people?

12 **A.** Yes, there was quite a few down there. I don't know how
13 many, but there was quite a few.

14 Q. Do you remember walking up --

15 **A.** There was --

16 Q. I'm sorry. Go ahead, sir.

17 **A.** There were children, women, men, everybody down there.

18 Q. Did you see people in camouflage?

19 **A.** You know what, very few.

20 Q. Did you see people with firearms?

21 **A.** I seen them with sidearms. Some of them had sidearms. And
22 the cowboys had -- they had -- some of them had a rifle on the
23 side of the horse. That's the only thing I seen. I didn't see
24 any -- a big bunch of long arms -- long guns down there.

25 Q. But you did see that some people had sidearms and some

1 people had long guns?

2 **A.** I seen the long guns on the horses.

3 **Q.** Okay. And when you got to the wash, you could see that
4 there were people in uniform on the other side of the gate. Is
5 that correct?

6 **A.** Yes.

7 **Q.** And you could see that those people were wearing uniforms?

8 **A.** Yes.

9 **Q.** And you could see that there were patrol vehicles in that
10 area?

11 **A.** Down in the wash, all I seen was the trucks and the
12 Suburbans and stuff down there.

13 **Q.** So those trucks that you saw, could you see whether they had
14 light bars on the top, like a cop car would?

15 **A.** You know, I don't recall that. I remember after I looked at
16 them later some of them had BLM with white -- some kind of white
17 marker on the back -- on the side windows.

18 **Q.** So you do remember that some of them had official BLM
19 markings on them?

20 **A.** Yes.

21 **Q.** Did you understand those people on the other side of the
22 gate could be federal government employees?

23 **A.** Well, I assumed they were.

24 **Q.** Did you assume that some of them were law enforcement
25 officers?

1 **A.** I considered them BLM agents.

2 **Q.** Okay.

3 **A.** I don't know if you consider a Park ranger and all of them a
4 law enforcement or not. I guess you could say they are.

5 **Q.** All right. So you knew these were BLM and Park Service
6 employees?

7 **A.** Yes.

8 **Q.** And you knew that some of them were law enforcement
9 officers?

10 **A.** The law enforcement officers that I recall were up on the
11 top.

12 **Q.** But you knew there were law enforcement officers in the
13 area?

14 **A.** Yes, up on the top.

15 **Q.** And when you say from the top, is that the entranceway
16 leading down to where the cattle were?

17 **A.** No. No, it's up on the bridge. I seen law enforcement up
18 on the bridge.

19 **Q.** Okay. But you knew --

20 **A.** What I consider law enforcement.

21 **Q.** So is it correct, sir, that you only acknowledge state and
22 local law enforcement to be law enforcement?

23 **A.** Well, I don't consider the BLM -- I didn't think they had
24 law enforcement -- I didn't think they were allowed to have
25 guns. I was surprised to see it, yes.

1 Q. So you just didn't -- you did not accept that the BLM or the
2 National Park Service could have law enforcement authority?

3 **A.** No, I didn't think they did.

4 Q. Okay.

5 **A.** That's my opinion.

6 Q. That's your opinion. Okay. Thank you.

7 And you walked forward to the gate that was in front of
8 those people with the uniforms, correct?

9 **A.** Yes.

10 Q. And you heard Ammon Bundy talking to the person behind the
11 gate who came from the BLM and Park Service side?

12 **A.** Yes, he was talking to Daniel P. Love.

13 Q. You know that person to be Daniel P. Love?

14 **A.** Yes, I do.

15 Q. Was he the special agent in charge of the impoundment
16 operation?

17 **A.** Yes, he was.

18 Q. And did you hear Ammon Bundy tell him that he had to leave
19 right now?

20 **A.** Yes, I do.

21 Q. And did you hear Special Agent Love ask for an hour and
22 Ammon Bundy said no?

23 **A.** But I also heard Daniel P. Love tell the guy to put the guns
24 down because they still had the guns pointed at us. He had --

25 Q. I understand, sir, but I just want to ask you just for the

1 first part of that question, did you hear Dan P. Love, the
2 special agent in charge of the impoundment operation, ask for an
3 hour and Ammon Bundy told him no?

4 **A.** I know he -- I know I heard him tell him he had to leave.

5 **Q.** Do you remember telling Pete Santilli that Love asked for an
6 hour and that Ammon told him, no, he had to leave right now?

7 **A.** You know, I don't remember that. I remember him telling him
8 he had to leave. I didn't know if it was one hour. Maybe it
9 was one hour. I just don't remember. I don't recall.

10 **Q.** Is it correct that the -- you did not believe that the BLM
11 was going to fire?

12 **A.** They was going to fire on us? No. I did believe they might
13 fire on us.

14 **Q.** Do you remember telling Pete Santilli that you did not
15 believe that the BLM would fire on you?

16 **A.** No, I don't remember telling Pete Santilli that.

17 **Q.** So in your tape-recorded interview, which is available on
18 YouTube, you never said that you did not believe that the BLM
19 was going to fire because they knew we had too many people?

20 **A.** I didn't say I didn't -- I didn't say it. I don't remember
21 saying it.

22 **Q.** So you might have said it; you just don't remember?

23 **A.** Right.

24 **Q.** Okay. BLM never fired on anybody, correct?

25 **A.** No, but nobody fired on them either.

1 Q. Well, I appreciate that, sir, but if you could just please
2 confine your response to my question.

3 Next question is: Did they arrest anybody?

4 **A.** Not that I'm aware of.

5 Q. Did they use any crowd dispersant, like pepper ball?

6 **A.** No.

7 Q. Did you see anyone from the BLM or National Park Service
8 physically touch anybody else?

9 **A.** No.

10 Q. Did you see them throw something that hit someone else?

11 **A.** No.

12 Q. And you've mentioned that you know Daniel P. Love. Is it
13 correct that you and Peter Santilli called him and threatened to
14 kill his family in November of 2015?

15 **A.** No, I never threatened to kill Daniel P. Love's family.

16 Q. You never called his voicemail and said that his family was
17 going to disappear?

18 **A.** No, I did not.

19 Q. You were not part of a voicemail that was left by Peter
20 Santilli?

21 **A.** The only thing I said, that I hoped he got fired. I didn't
22 -- I never hoped -- would ever say anything about doing harm to
23 anyone's family, period.

24 Q. Do you remember if Pete Santilli said anything about hurting
25 his family or never seeing his family again?

1 **A.** No, I didn't -- I'd never -- I don't recall hearing Pete say
2 it either.

3 **Q.** Is it correct that Pete Santilli is your friend?

4 **A.** Yes.

5 **Q.** And you also know Ryan Payne and Ammon Bundy?

6 **A.** I know them now. I didn't -- when I went down there, I knew
7 no one, when I went to Nevada.

8 **Q.** Okay. Did you go with them to Burns, Oregon, in January of
9 2016?

10 **A.** Yes, I did.

11 **Q.** Were you present for the --

12 **A.** Yes, I did.

13 **Q.** Thank you.

14 Were you present for the occupation of the Malheur
15 National Wildlife Refuge?

16 **A.** I was up there at that time. I wasn't part of it, but I was
17 up there. I went to a march -- I went for a march for two days
18 for Ammon. I had two pair of pants and two shirts, and we end
19 up being there 30 days.

20 **Q.** You ended up being there for 30 days?

21 **A.** Yes.

22 **Q.** Did you stay at the Malheur National Wildlife Refuge?

23 **A.** No.

24 **Q.** Did you enter the Malheur National Wildlife Refuge while it
25 was being occupied?

1 **A.** When the news went down there, I went down there with Pete.

2 **Q.** Did you travel with Ammon -- did you travel with Peter

3 Santilli and Ryan Payne to visit the FBI in Burns, Oregon?

4 **A.** I went with Pete Santilli to visit -- go and talk to the
5 FBI, yes.

6 **Q.** And Ryan Payne was armed at that time?

7 **A.** You know, I don't -- I don't recall if he was or if he
8 wasn't.

9 **Q.** Do you remember if they communicated to the FBI the things
10 that would need to be done in order for the situation to remain
11 peaceful?

12 **MR. MARCHESE:** Objection, relevance.

13 **THE WITNESS:** You know, I wasn't -- I wasn't part of
14 the conversation. I did -- I was there, but I wasn't part of
15 the conversation.

16 **BY MS. CREEGAN:**

17 **Q.** How often do you speak to Mr. Santilli?

18 **A.** I haven't talked to Pete now in about probably six months.

19 **Q.** Have you ever visited him in prison?

20 **A.** No.

21 **Q.** Have you ever visited any of the defendants in prison?

22 **A.** Yes, I visited with -- I went to see Todd Engel.

23 **Q.** Is he a friend of yours?

24 **A.** I didn't -- I didn't know him. I just knew he was one of
25 the guys.

1 Q. Do you maintain any contact with the Bundy family?

2 A. Yes, I have.

3 Q. How often do you speak with the Bundys?

4 A. How often do I speak to them? Probably about every four or
5 five months.

6 Q. Have you ever given them any money or support?

7 A. No.

8 Q. Did you attend the one-year reunion of the Bundy Ranch
9 standoff?

10 A. Yes, I did.

11 Q. Have you ever signed a petition to have the judge over this
12 trial impeached?

13 A. I didn't even know they had a petition.

14 MS. CREEGAN: Thank you, Your Honor. Nothing further.

15 THE COURT: Any redirect, Mr. Tanasi?

16 MR. TANASI: No, Your Honor. Thank you.

17 THE COURT: All right. You want to take our lunch
18 break and then we'll call -- or are we calling Mr. Lynch or is
19 Mr. Lynch calling us?

20 MR. LEVENTHAL: I'll facilitate that with the Court.

21 THE COURT: Okay.

22 MR. LEVENTHAL: Thank you.

23 THE COURT: All right. So go ahead and take our lunch
24 break. It's 12 o'clock. We'll be back here at 1 o'clock.

25 COURTROOM ADMINISTRATOR: All rise.

1 (Recess taken at 12:00 p.m.)

2 (Resumed at 1:15 p.m.)

3 THE COURT: Thank you. You may be seated.

4 All right. So everyone is back from lunch, except I
5 don't see Mr. Lovelein.

6 So, Mr. Perez, is Mr. Lovelein also going to ask to
7 have his presence waived in the afternoon session as well?

8 MR. PEREZ: Yes, Your Honor.

9 THE COURT: Okay. And still no objection from the
10 Government?

11 MR. MYHRE: No objection, Your Honor.

12 THE COURT: All right. So Mr. Lovelein's presence is
13 waived for this afternoon.

14 Do we have Mr. Lynch ready to go?

15 MR. LEVENTHAL: Yes, Your Honor.

16 THE COURT: All right. Do you want to go ahead and
17 call him? We'll have him sworn in.

18 MR. LEVENTHAL: Mr. Lynch, can you hear me?

19 THE WITNESS: I can hear you through the phone. I
20 can't hear you through the Skype.

21 MR. LEVENTHAL: Okay. Well, we can hear you.

22 THE WITNESS: Okay.

23 MR. LEVENTHAL: I'm going to ask you a couple of
24 questions, if that's okay. Are you okay today?

25 THE WITNESS: Yeah. Go ahead.

1 MR. LEVENTHAL: All right.

2 COURTROOM ADMINISTRATOR: Your Honor, would you like
3 Mr. Lynch sworn?

4 THE COURT: Yes, please.

5 COURTROOM ADMINISTRATOR: Mr. Lynch, please raise your
6 right hand.

7 DENNIS MICHAEL LYNCH, having duly been sworn, was
8 examined and testified as follows:

9 COURTROOM ADMINISTRATOR: Thank you, sir. Please state
10 your full name for the record and spell your last name.

11 THE WITNESS: My full name is Dennis Michael Lynch, and
12 the last name is L-Y-N-C-H.

13 DIRECT EXAMINATION

14 BY MR. LEVENTHAL:

15 Q. Mr. Lynch, were you in Bunkerville, Nevada, on or around
16 April 12th, 2014?

17 A. Yes, I was.

18 Q. And when did you arrive in Bunkerville, Nevada?

19 A. The night before.

20 Q. Okay. That would be April 11th. Okay. So on April 12th,
21 did you attend a rally?

22 A. Yes, as the -- being the cameraman.

23 Q. Okay. And what do you do for a living?

24 A. I produce videos and news.

25 Q. Okay. Do you do that for yourself or for an organization?

1 **A.** I do it for myself. I'm the CEO of my own company.

2 **Q.** Okay. So when you went to the rally, approximately what
3 time did you get there at?

4 **A.** I believe I was there at the very start, which would be, I
5 think, either 8 a.m. or 9 a.m. in the morning.

6 **Q.** Okay. Was there -- tell us, was there a stage? What did
7 you see when you arrived there?

8 **A.** Upon arriving, when I got off the exit, maybe, I don't know,
9 a quarter mile down the road there was a stage, what looked like
10 a wooden stage you would see at a rally, if you will, where
11 speakers will go up. That was to my left. And to my right was
12 sort of a -- I guess you would say a hill. And in the road
13 there were a bunch of cars. People were starting to pile in.
14 And at that time in the morning it was sort of, you know, you
15 just saw that there was activity starting.

16 **Q.** Okay. When you say activities, what do you mean by that?

17 **A.** Well, participants coming together for what was obviously a
18 planned rally. And pretty much it -- without you asking more
19 details, I don't know what else it is you're looking for.

20 **Q.** Okay. Did there come a time when -- did you ever know any
21 of the Bundys: Cliven Bundy, Ammon Bundy, David, did you know
22 any of them prior to the 12th?

23 **A.** I did not know any of them. I had spoke to the daughter. I
24 believe her name is Bailey. I had spoke to her on the phone
25 briefly just to get some information about the event, because I

1 was actually going there on behalf of Fox News and Megyn Kelly,
2 who used to be called The Kelly File. So you just sort of call
3 in advance to make sure that the event is taking place,
4 whatever, because I was coming from New York. So I was looking
5 to basically just -- you know, a lot of times things like this,
6 in my business, they cancel at the last second, so that's why I
7 had made the phone call.

8 Q. Okay. So you talked about a stage. Did there ever come a
9 time when you saw Mr. Bundy, Cliven Bundy, on the stage?

10 A. Yeah. First Ammon Bundy was speaking for quite some time,
11 and then his father did come up on the stage.

12 Q. Okay. And was -- did anybody join them on the stage?

13 A. Yeah, there were a bunch of people up there. I mean, Ammon
14 being one of them. I believe Cliven's wife was there, and there
15 was some other participants. There were members of, I guess you
16 would call it, the militia, and there was also at one point the
17 local sheriff.

18 Q. Okay. Do you remember approximately what time the local
19 sheriff got up on the stage?

20 A. Unfortunately, I don't recall.

21 Q. Okay. Do you remember who took the stage first, who spoke
22 first? Was it -- did Cliven Bundy speak prior to the sheriff?

23 A. It was -- well, Ammon Bundy was the first person to take the
24 stage for the day. Then there were a couple of other people.
25 And then Cliven took the stage, and the sheriff took the stage.

1 And I think Cliven spoke first, and then the sheriff spoke
2 second.

3 Q. Okay. Do you remember what the sheriff said?

4 A. Well, I don't remember exactly what he said, but I -- he was
5 there in reference to the fact that he was announcing that the
6 BLM was withdrawing from the area. I don't remember what you'd
7 call the area, but they were withdrawing from the area.

8 Q. Okay. Now, from that point did you stay around the stage
9 after you heard that announcement?

10 A. Yes. There -- after the announcement was made, Cliven Bundy
11 had requested that within the hour that BLM were -- was to
12 withdraw from the area, and that they were also -- he wanted
13 them to hand over their guns. And he gave them an hour to come
14 back to confirm that was true. So I was there for that hour,
15 but the sheriff never returned.

16 Q. Okay. What did you do after the hour?

17 A. Well, when the sheriff didn't return, Cliven had made an
18 announcement that he -- well, I don't know if he necessarily
19 said himself, but he said that everybody was going to an area
20 that you in Nevada call the wash. And that's where I think the
21 cattle or the BLM was at least staged and the cattle was behind
22 that. You'll have to forgive me, I don't know the name of the
23 roads and I -- being from New York, we use different sort of
24 language.

25 But there was an indication that it was time to go, if

1 you will, to go get the cattle and to speak head-to-head, I
2 guess, with the BLM. And that at that point I got into the
3 truck with Ammon Bundy and his wife and two other gentlemen, who
4 I don't recall who they were, and we drove to the wash.

5 Q. And how far -- how long did it take you to get to the wash
6 from the rally? Do you remember?

7 A. I'm going to say 20 minutes, but you could -- you know, give
8 or take five minutes either way, I guess.

9 Q. When you got to the wash area, what did you guys do? Park
10 the car?

11 A. Yeah. I mean, the first thing was obviously park the truck,
12 and then we were -- we were -- we were the first people to get
13 there. Ammon was sort of the leader of the long parade of cars,
14 if you will. And so we got out, and as we got out, I basically
15 started filming the cars packing in.

16 Q. Okay. And from -- and so that was at a parking lot. You
17 wouldn't know what Post 1 is, would you?

18 A. No. And, you know, again, what I consider a parking lot,
19 what you consider a parking lot is different things. To me it
20 was just the side of the highway, sort of like a dirt patch.

21 Q. Okay. Then a lot -- sorry. Go ahead.

22 A. It wasn't paved. I mean, it wasn't like a parking lot like
23 you go and there's lines and things of that nature.

24 Q. Right.

25 A. But it was, you know, you pull your car over, I guess, there

1 if you wanted to take a rest or make a phone call or something
2 of that nature.

3 Q. Okay. So you were one of the first ones to arrive, you
4 said?

5 A. We were the first ones to arrive.

6 Q. What did you do at that point?

7 A. Well, as I said, I got out and I started to film because
8 more cars were coming in. And across the street it looked like
9 there was a mix of BLM and local authorities, and I was filming
10 a lot of that.

11 Q. Okay. Did you go anywhere from that point?

12 A. I'm sorry. Can you repeat that?

13 Q. Did you go anywhere? Did you stay in that --

14 A. Did I go anywhere?

15 Q. From that parking area.

16 A. No, I -- I crossed the street. I mean, at that part the
17 highway sort of splits into two. You've got traffic going in
18 one direction. Then there's, like, a -- I guess you would say a
19 parking lot in between the other side of where the highway's
20 going in the other direction. And that, for the most part, was
21 where some of the police were, the local police. So I would go
22 over there a little bit, and then I would come back over the
23 road. But I basically stayed in that vicinity for quite some
24 time until I went down into the wash.

25 Q. Okay. So you went down into the wash?

1 **A.** Eventually I did, yes.

2 **Q.** Okay. And do you know how you got there? Did you walk?

3 Which way --

4 **A.** Yeah, I walked. It's downhill. So, you know, I basically
5 just -- I walk -- well, actually I sort of ran, to be honest,
6 because at that point I was told that Ammon Bundy and some of
7 the other supporters, if you will, were going to face off with
8 the BLM. And I wanted to make sure I was there.

9 **Q.** Okay. So where did you meet up with these other supporters?

10 **A.** Again, you're probably familiar so I don't know if you need
11 me to describe what the wash looks like, but you've got the --
12 the highway at that point splits, and so now you've got what we
13 call an overpass. And so there's the overpass on our side and
14 there's an overpass on the other side. I would have to guess
15 about 100 yards separating the two.

16 And so when I went down the -- Ammon Bundy and some of
17 his supporters were there, and they were talking about what they
18 were going to do next in terms of moving forward towards the
19 BLM. And they got down to the prayer, and I was in the midst of
20 that recording most of it with my camera.

21 **Q.** All right. If I told you it was a northbound bridge, would
22 you agree with that or would you have no idea?

23 **A.** I wouldn't know if we were going north or south, no. I
24 wouldn't know.

25 **Q.** Do you remember where the prayer was? Was it directly under

1 the bridge or was it to the side of that bridge -- underpass?

2 **A.** I -- it was just to the side, and it was -- if that is the
3 northbound lane and the BLM was on the southbound lane, they
4 took a knee north of the northbound lane.

5 **Q.** Okay. Gotcha.

6 All right. At some point -- now, tell me, was it hot
7 that day?

8 **A.** Yes, it was very hot that day.

9 **Q.** All right. Were there people -- you know, you said there
10 were BLM agents. Were there people on the other side across
11 from the southbound bridge that you could see?

12 **A.** Yes. So if we were -- if we were north of the northbound
13 bridge, they were south of the southbound bridge, but right
14 there up against it.

15 **Q.** Okay. And can you describe what you saw.

16 **A.** Yeah. If you're from -- if you're on the north side looking
17 over at the south side, again you're going across 100 yards, but
18 from what I could see, there was almost, like, a fence. I guess
19 you would call it a cattle fencing, that sort -- it wasn't a
20 chain link or anything. It just, like, a cattle fencing. And
21 on the other side of that were trucks, I believe, were for the
22 BLM, sort of like SO -- SUVs, if you will. And members of the
23 BLM, they were there and holding guns and BDU dress and military
24 style.

25 **Q.** Okay. And what about -- did you hear anything at that

1 point? Any announcements?

2 **A.** At that point there wasn't any announcements. And the only
3 thing I could hear at that point, other than the prayers and
4 everybody's chatter, was there was a helicopter overhead. But I
5 didn't hear anything specific until the movement toward the BLM
6 started to take place.

7 **Q.** Okay. Let's talk about that. At some point you did move
8 ahead into the middle of the wash?

9 **A.** That's correct.

10 **Q.** Okay. Did anybody follow you, of the people that -- or did
11 they stay in the back?

12 **A.** Okay. No, what wound up taking place is that when the
13 prayer was finished, there was some debate as to who would go
14 forward to the BLM. And one person suggested that one person
15 would go and then somebody else said, No, we go together. It
16 just -- it was a situation where I thought that it would be best
17 for me to just go alone, so I went alone.

18 **Q.** Okay. Were you filming that at the time?

19 **A.** As -- yes. I mean, my camera was rolling. Yeah, I was
20 catching visuals and audio, but by far not my best work because,
21 first of all, I'm walking; and second of all is, I was a bit
22 nervous at the time.

23 **Q.** And why were you nervous?

24 **A.** Oh, because it was a situation that was getting heated,
25 and -- I'm hearing -- I'm hearing -- the reason why I'm pausing

1 is I'm hearing myself. For some reason I'm getting a reverb, so
2 I apologize.

3 But -- so I was nervous because there were guns in the
4 area. And, you know, the BLM was there and I thought that I had
5 heard that, you know, If you move forward, you will be shot.
6 And people behind me were saying that they heard the same thing.
7 And I was told prior to going down into the was from a gentleman
8 who was wearing a staff shirt -- I don't know what that exactly
9 meant, but he was on the north side. He was on the Bundy side,
10 if you will. And he said that they had heard over the radio
11 that if anybody approached the BLM and tried to get the cows,
12 that they had the approval to shoot.

13 So I didn't want anybody to get hurt, myself included.
14 And I thought that if I moved forward, being that I had nothing
15 to do with the situation at all. I was from New York. I was
16 there as a member of the media. A lot of the people that were
17 there knew who I was because at that time I was on Fox News all
18 the time. And so I just thought that it would be good if maybe
19 somebody who had no skin in the game, so to say, went and tried
20 to just make kind of a difficult situation peaceful.

21 Q. And did you do that?

22 **A.** I'd like to believe I did. Nobody got shot that day, and it
23 wound up becoming a situation where I think everybody got what
24 they wanted at the time.

25 Q. Okay. Well, let's go back. When you say you thought you

1 could handle the situation, what did you do in order to handle
2 that situation?

3 **A.** What I did was I walked forward and I was trying to call out
4 the BLM because the difficulty of that day was that it was so
5 windy that it was very hard to ascertain exactly what it was
6 being said over the loudspeaker by the BLM. And so I was trying
7 to move forward to tell them that the people behind me did not
8 want to get hurt, that they were just looking to come forward
9 and to speak, but that they were afraid that they were going to
10 be shot at.

11 And I was just trying to speak to somebody on the other
12 side of the BLM. And I walked over and I lifted up my shirt. I
13 showed them I had no gun. I said it a bunch of different times
14 that, you know, I was from New York and from the media. And,
15 you know, I just tried to go forward and tried to make peace
16 with -- with both sides.

17 **Q.** Did it work out? Were you -- when you say trying to speak
18 with the BLM, why are you saying "trying"? Why are you using
19 the word "trying"?

20 **A.** Well, because it's not like I'm talking to you now. You
21 know, I'm yelling across 100 yards and 50 yards and 30 yards and
22 I'm getting closer. And, unfortunately, I wasn't getting the
23 sort of response I was looking for, which was, Sure, come on
24 over and we'll speak to you. I kept on getting some sort of
25 message read off to me on the loudspeaker as if it was being

1 read from a piece of paper. And then additionally, once in a
2 while somebody would yell back from the BLM side, you know, Go
3 back.

4 And so, anyway, I was just trying to get a conversation
5 sparked with them. And I'd like to believe it served its
6 purpose because soon after they wound up sending in, I believe
7 his name is, Agent Love and he wound up having a conversation
8 with myself and the Bundys.

9 Q. All right. Before we get to Agent Love, did you ever return
10 back to the protestors that were underneath the northbound
11 bridge, the prayer group, as you called it?

12 A. Well, yeah, at that point the prayer had ended and so the
13 participants that were with the Bundys had now moved underneath
14 the bridge. So they were actually standing in the shade because
15 it was so hot that day. And I had turned back, actually, twice.
16 Once, I turned back just in general because somebody started to
17 come forward, and I turned back and yelled at him, Move back.
18 You're going to get me shot. And that person stopped moving
19 forward and they did go back.

20 And then I eventually did go back to the wash because I
21 felt at that point I wasn't getting anything accomplished like I
22 wanted to; although, ultimately it worked out. But at that
23 point I went back and spoke to the people who were under the
24 bridge.

25 Q. Okay. When you spoke to people, did you relay any of kind

1 of message to the people?

2 **A.** Yeah, I told them that from what I heard it appeared as if
3 they had said that, you know, If you moved forward, you would be
4 shot. That's basically the same thing that they had thought
5 they heard prior to me walking up; because when the prayer was
6 over, like I said, everybody moved underneath the bridge and
7 that's when I made my determination that I would move forward.
8 And I actually asked somebody behind me -- because I didn't know
9 who owned the wash. I didn't know if it was state property,
10 Bundy property. I didn't know whose it was. And I said, If I
11 move forward, am I allowed to go in that space? And they said,
12 Yeah. Well, if you do, you're going to get shot. And so that
13 was it, you know. So that's -- I don't know what else to say to
14 you about that.

15 **Q.** Okay. After you left the -- did there come a point where
16 you left that position underneath the northbound bridge, the
17 protestors, if you will?

18 **A.** Yeah. So just so this way to be accurate, I moved forward
19 toward the BLM. I think that lasted for approximately
20 10 minutes, give or take a couple of minutes. Then I walked
21 back to the underpass. And right after I got back to the
22 underpass, probably within seconds, if I recall correctly, the
23 horses -- men on horses, cowboys, they came underneath the
24 bridge. And what I did is, I ran ahead and ran off to the side
25 along -- call that maybe the apron, more southbound as the

1 horses and Bundy supporters all started to file into the wash
2 moving toward ...

3 Q. Okay. So you call it an apron, like, a skirt? The skirt
4 underneath the bridge, that concrete or cement area?

5 A. Yeah, that's on a -- it's on a steep -- a steep angle.

6 Q. Okay. And so you were up on that skirt. Is that the time
7 when the horses came into the wash?

8 A. Yes, the horses and Bundys only got about halfway through
9 the wash and that's when Agent Love came. And when I saw Agent
10 Love come into the situation, I ran down to the fence, to the
11 -- I guess you would call it the cattle fence.

12 Q. Okay. Did you come in contact with Agent Love?

13 A. Yes.

14 Q. And what did -- did you have a conversation with him?

15 A. It was brief. He wanted to speak with the Bundys.

16 Q. Were you one of the first, sort of, people on that side of
17 the bridge, the northern side of the bridge, that approached the
18 gate?

19 A. Yes, both times. The first time I was the only person, the
20 one I explained to you when I moved forward with my camera by
21 myself. And then the second time when I ran down there, it was
22 myself and, I believe, one or two other gentlemen. And
23 eventually another camera person from a local Nevada station had
24 also.

25 Q. Okay. Do you remember, did Agent Love summon you over or

1 ask somebody to come on over to talk to him or ...

2 **A.** You know, I wouldn't -- I don't recall. I mean, I did see
3 him come over and it was very clear to me or at least, you know,
4 I got the impression that he was the guy in charge and that he
5 was coming to talk. And so that's why I wanted to run down
6 right away. And I wanted to be the person that he spoke to.

7 **Q.** Okay. And from there did you ever cross over the gate, that
8 gate area, and go onto where the BLM actually was?

9 **A.** Yes, I did. Eventually what wound up happening was that
10 Agent Love, like I said, asked to speak to the Bundy boys.
11 David and Ammon Bundy went to the gate. So did all of the
12 supporters, but then, you know, we asked the supporters to move
13 back, not to crowd the gate. The situation was obviously
14 escalating in terms of emotions on both sides.

15 And so eventually what it was that the agent --
16 Agent Love, had requested that the Bundy boys come over to his
17 side, promised he wouldn't arrest them, and that a conversation
18 was to be had about releasing the cattle and making it so this
19 way the situation would be peaceful. Ammon Bundy said he wasn't
20 going over. David was reluctant. Agent Love said -- I offered
21 to go over with David. Agent Love said, Hey, look, this guy's
22 here. He's capturing the whole thing. You know, he can capture
23 the whole thing. He's got me on camera so you won't be
24 arrested. And so at that point myself, David Bundy, and the
25 cameraman from the local -- I believe it was a CBS affiliate --

1 we jumped ...

2 Q. I didn't catch that last part. I'm sorry. You what? You
3 jumped over?

4 A. Myself -- yeah, we jumped over the cattle -- the cattle
5 fence. And myself, the other cameraman from I think it was a
6 local CBS affiliate there, and David Bundy went with Agent Love
7 to have a meeting.

8 Q. And where did you go to have that meeting?

9 A. It was back up on the road. So it was, you know, we walked
10 up the -- we walked up the apron or the skirt, as you call it,
11 and then there was more of a parking lot setting there. And it
12 was Agent Love, myself, David Bundy, the cameraman I talked to
13 you about, a few sheriffs and other law enforcement people, and
14 also Ryan Bundy.

15 Q. Your camera -- now, when you got back, did you review the
16 videos that you had taken?

17 A. When I got back, what, to New York?

18 Q. At some point you got back to New York, right? You left
19 Bunkerville?

20 A. Yes, I went back to New York. And we were -- we played some
21 of the footage on The Kelly File that night -- on Monday night.

22 Q. At some point did you meet with the FBI and give them your
23 videos?

24 A. Yes, the FBI contacted me, a gentleman named Joel, and he
25 asked me if I would send him every bit of video that I had.

1 Told me that I would be subpoenaed for it either way. And so I
2 voluntarily handed over everything. I got the subpoena -- he
3 sent me the subpoena, but I handed over everything I had.

4 Q. Okay. Did your video -- did you edit any of your videos
5 prior to handing them over to the FBI?

6 A. Did I -- well, yes and no. In terms of the edited, the
7 videos that were given to the FBI, no, I didn't touch any of
8 those. He got the raw footage. But in terms of editing what
9 was seen on The Kelly File, just cutting it down.

10 Q. Okay. Did you review the videos that you handed over to the
11 FBI prior to you handing them over?

12 A. Well, yeah, I mean, you have to look through all of -- you
13 know, as an editor, if somebody's going to be putting things on
14 television, I had to look through everything I had, and -- so
15 you get the best stuff, obviously.

16 Q. Okay. And they fairly and accurately represented what you
17 saw and heard that day on your -- on your videos?

18 A. Absolutely.

19 Q. Okay.

20 MR. LEVENTHAL: I'll ...

21 (Defense counsel conferring.)

22 MR. LEVENTHAL: I pass the witness.

23 Thank you very much, Mr. Lynch.

24 THE WITNESS: Thank you. Am I done?

25 THE COURT: Mr. Myhre, cross-examination?

1 MR. MYHRE: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. MYHRE:

4 Q. Good afternoon, Mr. Lynch. This is Steve Myhre speaking.

5 A. Hi.

6 Q. And let me know if you can't hear any of my questions. I
7 know there's probably some bit of a delay between my voice
8 communication and what you ultimately hear.

9 A. Hold on one second. Can we test something? I'd like to try
10 to put the phone down for a second and see if I can just do it
11 with the headphones. Give me one second.

12 All right. Go ahead and speak.

13 MR. MYHRE: Can you hear me? Can you hear me speaking,
14 Mr. Lynch?

15 THE WITNESS: Okay. No, I'm going to do it with the
16 phone. Go ahead.

17 BY MR. MYHRE:

18 Q. Okay. So going back to the stage when Mr. Bundy spoke after
19 the sheriff left and the sheriff didn't come back, Mr. Bundy
20 spoke again, correct?

21 A. Say that one more time.

22 Q. When you -- at the staging area, you saw the sheriff speak,
23 correct?

24 A. Yes.

25 Q. And you saw the sheriff leave, right?

1 **A.** Yes.

2 **Q.** And the sheriff didn't come back, correct?

3 **A.** Sheriff never came back.

4 **Q.** And Mr. Bundy took the stage again, correct?

5 **A.** Yes.

6 **Q.** And Mr. Bundy told the crowd to -- in essence, to go get the
7 cattle, correct?

8 **A.** In not -- not in those exact words, but yes.

9 **Q.** Did you understand him -- after you listened to him, did you
10 understand him to say, Go get the cattle?

11 **A.** Again, I don't remember the exact words he used, but it was
12 basically referencing to go to the wash and -- and to bring back
13 the cattle, I guess you could say that, yes.

14 **Q.** Well, I'm just asking for what your understanding was --
15 based on your recollection now what your understanding was. And
16 I take it from your answer that you understood him to mean go to
17 the wash to go get the cattle?

18 **A.** I would say that -- I don't want to put any words in my
19 mouth; other than the words I'd like to say, which is that I
20 recall him saying that he was going to give one hour for the
21 sheriff to come back. And then if the sheriff did not come
22 back, and then, if I had to remember his exact words, there was
23 something to the line of, Go do what you have to do, or
24 something to that level. I don't remember if he ever said the
25 exact words, Go get the cattle.

1 Q. Right. I'm not asking you what you remember. I'm asking
2 you what you understood.

3 **A.** I understood that my job was to follow wherever the crowd
4 was going, and that's what I understood at the time.

5 Q. No, I didn't mean to ask you -- didn't mean to ask you what
6 you understood your job to be. I meant -- I asked you what you
7 understood his words to mean to you.

8 **A.** I don't recall.

9 Q. All right. So when -- after he said these words that now
10 you have no recollection of what you understood, then did you
11 see people with guns at that time after he spoke?

12 **A.** Where?

13 Q. In front of the stage.

14 **A.** Yes, there were people with guns.

15 Q. Did you see them passing in front of the stage?

16 **A.** Yes, they were on the stage, in front of the stage, walking
17 around the stage. Yes.

18 Q. Okay. After Mr. Bundy spoke, did those people leave that
19 area and get in cars to go to the wash?

20 **A.** I don't know what they did. I was the first -- we were in
21 the first car. So when it was over, the first thing I did was
22 ask Ammon Bundy if I could get a ride.

23 Q. So --

24 **A.** He said yes, so --

25 Q. So you didn't see what the people with the guns did?

1 **A.** I did not see what -- I did not see what they did exactly
2 right after they were done speaking, no.

3 **Q.** When you got to the wash, did you see supporters of
4 Mr. Bundy with guns?

5 **A.** Yes.

6 **Q.** And did you see them in the assembly area or the area where
7 you described as the little area where people pulled off, did
8 you see people there with guns?

9 **A.** Yes.

10 **Q.** Did you see people getting out of their vehicles with guns?

11 **A.** I saw people riding in the back of vehicles with guns.

12 **Q.** So you saw people arriving in the area with guns, right?

13 **A.** Yes.

14 **Q.** And, in fact, the person that you spoke with who you said
15 heard on the radio or overheard someone say that there was radio
16 traffic to the effect that they were -- that BLM was authorized
17 to shoot, that person had a gun, too, didn't he?

18 **A.** He did have a gun, yes.

19 **Q.** Now, when you rode up from the staging area to the -- excuse
20 me -- from the stage, that part where Mr. Bundy made his speech,
21 up to the wash area, you rode with Ammon Bundy, correct?

22 **A.** I got from the stage to the wash area by riding in the front
23 seat of Ammon Bundy's pickup truck.

24 **Q.** And when you were riding with him, you spoke to him?

25 **A.** I did.

1 Q. And you asked him what -- in essence, what he was going to
2 do when he got there, correct?

3 A. Yeah.

4 Q. And he told you they were there to get the cattle, right?

5 A. I don't remember his exact words at this point; but, yeah,
6 it was more or less that they were going to go get the cattle.

7 Q. And you asked him -- didn't he at one point say words to the
8 effect of, Well, if a thug moves to your neighborhood, you deal
9 with them. Is that right?

10 A. He had asked me.

11 Q. Yeah, he asked you that question -- oh, Mr. Lynch, are you
12 there?

13 A. I am here, yes.

14 Q. Oh, I'm sorry. We lost your image on the screen, but you
15 can hear me fine. Is that correct?

16 A. I can hear you loud and clear, yes.

17 Q. So, in essence, you asked Mr. Bundy -- or Mr. Bundy asked
18 you, If a thug moves into your neighborhood, do you deal with
19 them. And then you answered, Yes, correct?

20 A. Yeah, if I recall correctly, I asked him, What was the plan?
21 And I believe he responded to the nature of what you're saying,
22 If thugs came into your neighborhood, would -- would you deal
23 with them? And I said, Yes. And he responded, You would?
24 Surprising -- surprised that I said yes. And I said, Yeah, I'd
25 deal with them. He said, You'd deal with them? You'd let them

1 stay? And so then this is what I was talking about before about
2 the way that maybe you speak in Nevada and how we speak in New
3 York.

4 I was deeming it as, Would you deal with them, meaning
5 like, you know, would I go after them or would I deal with them
6 physically. And I -- that's why I said, Yes, if they came into
7 my -- I don't even know if he said your neighborhood. I think
8 he may have said in your house. But, you know, I was saying,
9 Yes, in the sense of, Yeah, I would deal with it. I wouldn't
10 just turn my back to it.

11 And he meant that -- what I understood is that he meant
12 it like you shouldn't have to deal with it.

13 Q. You -- in fact, when you said deal with them, you said, I
14 meant in a New York kind of way, or words to that effect,
15 correct?

16 A. Yeah. And we were -- we were laughing.

17 Q. And you were laughing. And your -- when you said that, it
18 was your communication to him that you would -- you meant by
19 that that you would deal with it in some sort of physical way or
20 confrontational way. Is that correct?

21 A. No.

22 Q. No, you did not? You did not intend to convey that meaning?
23 The New York kind of way would not be a confrontation or using
24 force?

25 A. No. Actually, in New York we don't have guns like you do.

1 In fact, it's very hard to get a gun here. When somebody's
2 asking me if somebody walked into my house would I deal with
3 them, the answer is, yes, I would deal with them. So that's
4 what I meant. I didn't mean I was going to turn my back on
5 them. So that's where my message was.

6 And, again, because we're from two different places --
7 and the same thing. You know, you refer to a dirt area as a
8 wash. We don't use that sort of terms here. I've said this to
9 -- people have asked me before when you say the word "wash" here
10 in New York, that means laundry to me. So I --

11 Q. I'm not talking about the wash, Mr. Lynch. I'm talking
12 about your conversation with Ammon Bundy in his vehicle on the
13 way to the impoundment site where the BLM was located. And when
14 you -- when you conveyed to him that you would -- when you said
15 the word "deal with them," you meant in a New York kind of way,
16 did you understand his response -- was it your understanding
17 that his intent was to create a confrontation with the BLM?

18 A. I never really meant to or designed to or wanted to sit
19 there and interpret his every single word like you're asking me
20 to. I was asking him simply what the plan was just so this way
21 I could know -- I would be in position. So -- and I mean
22 position, I mean with my camera. So --

23 Q. Well, what did you understand the plan -- what did you
24 understand the plan to be after you asked him that question?

25 A. I -- to be quite honest with you, sir, the reason why I

1 walked forward to the BLM is because I didn't see any good plans
2 on either side. To be perfectly frank and honest, I thought
3 this entire thing was a complete mess on both sides.

4 Q. I didn't ask what --

5 A. So --

6 Q. I didn't ask you whether it was a good plan or a bad plan --
7 Mr. Lynch, please, sir.

8 A. You asked me what the plan was.

9 Q. I'm asking -- I asked you what your impression of what the
10 plan was based on Mr. Bundy's response to you in the car or in
11 the truck, whatever vehicle you were riding in.

12 A. And I have answered you. I did not see or understand any
13 sort of clear plan whatsoever throughout the entire day.

14 Q. What was your impression, then, as to what his purpose was
15 in going there, based on your conversation with him in the
16 truck?

17 A. My impression the entire day was that this is a complete
18 mess and I have no idea what's going on here.

19 Q. So is it your testimony you had no idea what Mr. Bundy meant
20 when he said, Would you deal with a thug if he moved into your
21 neighborhood?

22 A. I -- in terms of how to deal with the BLM?

23 Q. I'm asking you what your impression was of what he meant
24 when he said that.

25 A. I don't recall.

1 Q. Okay. So when you get to the impoundment site, we talked
2 about how you saw people getting out of vehicles or arriving in
3 vehicles with guns. Was it your impression that there were a
4 lot of guns in the area from -- you know, on the people who were
5 arriving in these cars and these trucks and these vehicles?

6 **A.** As a guy from New York, anything more than one gun seems
7 like a lot.

8 Q. So it was your impression that there were a number of guns
9 there. Is that correct?

10 **A.** I saw a lot of guns there.

11 Q. You also saw the Las Vegas Metropolitan Police, correct?

12 **A.** Yes.

13 Q. You saw them lined up across the road, the median area?

14 **A.** I saw them filing in, yes.

15 Q. Did you see them when they formed a line in the median?

16 **A.** Yes, they were in the median. And there was also -- I don't
17 know if it was the police or the BLM on the south side of the
18 road. There were also trucks and people there as well.

19 Q. So you -- did you understand these people in the median to
20 be law enforcement?

21 **A.** Based on their dress, yes.

22 Q. And did you understand that the BLM also was in this area?

23 **A.** I ... I guess they were from the sense that that's what
24 people were saying, but I could not tell the difference between
25 who is from the sheriff's department or from the Metro Police or

1 from the BLM. To me it was just, you know, law enforcement was
2 there.

3 Q. And so at least from your impression of what you saw, the
4 people where the -- on the other side of the median were law
5 enforcement people?

6 A. On the south side was the law enforcement people. On the
7 north side would be the Bundy people.

8 Q. Okay. And you were on -- and then after you were up in the
9 area by the -- where the cars had pulled over, then you moved
10 down into the, what we've called the wash area, which you
11 understand now to be the wash, right?

12 A. Yes, they eventually moved downward.

13 Q. When you got down to the wash, there were people gathered
14 under the -- sort of, just by the northbound bridge underneath
15 the bridge. Is that correct?

16 A. Yes, when I got down there, there was a crowd of people
17 there. Yes.

18 Q. And you said, I believe, in your testimony that they formed
19 some sort of prayer circle or said a prayer?

20 A. Yeah, they all took a knee and started saying, yeah, a
21 prayer of some kind.

22 Q. And when you got down there and you saw this, did you look
23 to the north and see the fence underneath the northbound bridge?

24 A. As I've already said, yes.

25 Q. Or the southbound bridge?

1 **A.** The fence was on the southbound -- if the BLM was on the
2 south side, if that's the south bridge, yes, I said that I saw
3 them there and there was a fence there, yes.

4 **Q.** So you saw -- and did you see any weapons pointed at you
5 when you got down there?

6 **A.** When I got down there when we were doing the prayer?

7 **Q.** Yes.

8 **A.** I was filming the prayer. I didn't see any guns, no.

9 **Q.** You saw no guns raised at anybody from the BLM?

10 **A.** When -- during the prayer circle, my back was to the BLM,
11 but when everybody stood up and sort of was looking back and
12 forth, I could just tell that there was law enforcement there.
13 I didn't see anybody specific pointing a gun at me or anybody.

14 **Q.** And you recognized the people on the other side of that
15 fence to be law enforcement, right?

16 **A.** Yeah.

17 **Q.** And you moved out then from the bridge after you
18 determined -- or at least you felt that the people that you were
19 with under that northbound bridge were going to move forward,
20 right?

21 **A.** I'm sorry. Can you repeat that question?

22 **Q.** Sure. You talked about how you went ahead of everybody. Is
23 that right? In moving toward --

24 **A.** Yes, I did.

25 **Q.** Yeah, you went in front of or before everybody else. You

1 sort of walked out into the middle of the wash toward where the
2 BLM law enforcement officers were. Is that right?

3 **A.** That's correct.

4 **Q.** And you did that because you felt that the people under the
5 bridge were going to be moving forward, right?

6 **A.** No, I did that because I wanted to get involved as maybe a
7 mediator, if you will, because I just sensed that the situation
8 was getting escalated.

9 **Q.** Well, you sensed it was getting escalated because you knew
10 that they were determined to move -- the people under the
11 wash -- or excuse me -- under the bridge were determined to move
12 out into the wash. Isn't that right?

13 **A.** No, that's not right. I moved forward for the same reason
14 that I have said multiple times that I moved forward. I moved
15 forward because the situation was getting escalated because the
16 person up at the top had told me that the radio announcement was
17 that they were permitted to shoot -- and I don't know the exact
18 words, but I could go back to look at my videotapes and get the
19 exact words.

20 And that I did not feel comfortable that with them on
21 the other side making an announcement that sounded as if they
22 were saying, Don't move forward or you could be shot. People
23 behind me saying if I move forward I could be shot. A person at
24 the top saying that there's going to be shooting. Seeing guns
25 on both sides now at this point from all over the place, knowing

1 how many law enforcement was there, I felt as if that, maybe,
2 lives could be saved on both sides if somebody with some common
3 sense and no skin in the game at that particular moment was to
4 move forward and try to speak on a level mind, if you will. And
5 that's why I moved forward.

6 Q. All right. You said a number of things there. But with
7 respect to what BLM was saying, what the law enforcement
8 officers were saying, I thought you testified that you could not
9 hear what they were saying.

10 A. So the message was hard to decipher exactly word for word,
11 but everybody thought that the message was, If you moved
12 forward, you would be shot.

13 Q. Okay.

14 A. Because it was so windy ...

15 Q. Without focusing on what everybody thought, what did you
16 hear?

17 A. I heard what I thought was to be, You can be shot. I don't
18 know the exact words. I don't recall them.

19 Q. You don't recall the words, but now you're testifying that
20 you have some sort of an impression that that's what was being
21 said over the loudspeaker?

22 A. What I said to you was, I don't recall the exact words.

23 Q. Well, what do you recall them saying over the loudspeaker?

24 A. I recall them saying a message where they were explaining, I
25 can't remember the exact words at this point, that some sort of

1 law -- whatever it may be that they were saying. I can't
2 remember the exact, but it sounded as if at some point they were
3 saying, If you move forward, you could be in violation. You
4 could be shot. I asked somebody behind me if they knew.
5 Somebody said, If you go forward into that area, you could be
6 shot.

7 So I don't remember exactly what it was. That's why I
8 was moving closer. One of the reasons being that I was moving
9 closer was to try to get a better earshot of what was being
10 said.

11 Q. So as you're moving closer, did you see guns raised at you
12 from the law enforcement?

13 A. As I moved forward, I did see men holding guns and I saw
14 some of them behind -- behind, like, open doors -- I believe
15 it's open doors -- in what I would consider a military-style
16 position.

17 Q. And military-style position is what?

18 A. Holding a gun and they were dressed in military, so that's
19 why I got that impression.

20 Q. So your --

21 A. But I don't --

22 Q. So, in essence, what you're saying is that you saw people in
23 a uniform wearing -- holding a gun. Is that correct?

24 A. I saw men in what appeared to me as being military-style
25 clothing holding guns and walking around. There was a guy with

1 a bullhorn. There was a lot of different stuff. It was a long
2 time ago, so I don't exactly remember what every single member
3 there was doing.

4 Q. Okay. But you knew they were law enforcement, correct?

5 A. Yes, I did.

6 Q. And so as you moved forward then, I believe we've seen your
7 video where you move forward, and you're continually asking
8 them -- asking the law enforcement officers whether they are
9 going to shoot. Is that what your questions were, in essence,
10 to them?

11 A. I asked -- if I recall my words, I believe I said, Are you
12 really going to shoot these people? That's one of the questions
13 I asked.

14 Q. And did you hear what their -- and you couldn't hear their
15 response over the loudspeaker because of the wind. Is that
16 correct?

17 A. It was very hard to decipher what they were saying. And per
18 your reference to my videos that we've all watched, it's very
19 clear that I continued to ask them and say that I can't hear
20 you.

21 Q. And it's very clear from your video as well that they
22 continue to say, Move back, that you're in violation of court
23 order, move back. Isn't that right?

24 A. Very clear that they continued to say something.

25 Q. And those words are recorded on your video, correct?

1 **A.** Words are recorded on my video.

2 **Q.** But you couldn't -- it's your testimony you couldn't hear
3 those words because of the wind in your ears down in the wash.
4 Is that right?

5 **A.** No, sir. I could hear words being spoken, but I could not
6 decipher the exact words that were being spoken.

7 **Q.** Okay. So now you're standing there, and how far were you
8 from the gate at your furthest-most point when you moved forward
9 to the gate?

10 **A.** You mean my closest?

11 **Q.** Yes. How close? What's the closest?

12 **A.** How close -- how close did I get? 30 yards.

13 **Q.** Okay. You're 30 yards from the gate and you're standing
14 there and you're asking -- you're trying to talk to the officers
15 on the other side of the gate. Is that a fair statement?

16 **A.** I was trying to have them speak to me normally, not through
17 the loudspeaker system, yes.

18 **Q.** And they were clearly not engaging you in conversation,
19 correct?

20 **A.** One -- one person did actually say something to me that did
21 not come over the loudspeaker, and that I could clearly hear.

22 **Q.** What did he say?

23 **A.** Move back.

24 **Q.** So you heard him say, Move back. Did you move back?

25 **A.** Actually I did, yes.

1 Q. At some point when you were standing there -- and how far
2 back did you move after you moved back?

3 **A.** I eventually went back to the northbound bridge.

4 Q. Well, you eventually went back. Did you go back to the
5 northbound bridge after the person you heard say, Move back, did
6 you then go back to the bridge or did you stay there?

7 **A.** What I recall, shortly right after he said that I started to
8 go back.

9 Q. Okay. Immediately or was there still some time lapse before
10 you left?

11 **A.** I would have to watch my video to give you the exact time,
12 sir, but I did that shortly after. And I'm guessing it was
13 right afterwards, but without seeing the video I wouldn't know
14 the exact time, if you're asking me an exact time frame.

15 Q. So when you're within 30 yards -- you said 30 yards of the
16 gate at your furthest-most point?

17 **A.** On or about 30 yards.

18 Q. Anybody point any rifles or weapons at you that you saw?

19 **A.** I don't know if they were pointed exactly right at me.

20 Q. I'm sorry. You don't recall or you didn't see? I didn't
21 hear your response.

22 **A.** I don't recall if they were pointed right exactly at me.

23 Q. Well, that would be something you'd recall right? I mean,
24 if someone points a rifle at you, you'd recall that?

25 **A.** No, actually, what it is is that when there's a situation of

1 that kind where you think that there could be shots fired and
2 you're trying to videotape at the same time as trying to be a
3 mediator and save lives, you know, I wasn't sitting there in the
4 way that you're trying to depict the way I was just standing
5 there, as if I'm taking in every last sight and trying to see
6 every single last thing.

7 I was trying to get a message conveyed over at the same
8 time as, you know, my heart is -- is beating fast, and I know I
9 got one guy who already tried coming up behind me. So I was
10 trying to stay alive and trying to keep other people alive at
11 the same time. I can't remember exactly how many people were
12 standing across the other way from me. I'd have to look at my
13 video. I don't remember if they were pointing the gun at me,
14 pointing at somebody else. I don't recall.

15 Q. You don't recall. So your testimony is you're standing
16 there 30 feet from the officers, this is a situation --

17 A. No. 30 yards.

18 Q. Hmm? Say what?

19 A. There's a difference between 30 feet and 30 yards.

20 Q. Did I say 30 feet? I meant to say 30 yards.

21 Were you 30 yards or 30 feet from that fence?

22 A. I said in my testimony 30 yards.

23 Q. And that's what I recall as well. So if I said feet, I
24 misspoke.

25 So you're there within 30 feet -- or 30 yards, excuse

1 me, of the law enforcement officers and you don't remember
2 whether they pointed a weapon at you or not?

3 **A.** You're asking me whether or not they were pointing a weapon
4 directly at me?

5 *Q.* Yes, that's what I'm asking.

6 **A.** I don't know if the weapon was pointed directly at me.

7 *Q.* Well, did you see a weapon pointed when you were up at the
8 far-most point of where you were at 30 yards?

9 **A.** I saw men holding weapons.

10 *Q.* You saw men holding -- you saw law enforcement officers
11 holding weapons, correct?

12 **A.** I saw weapons, yes.

13 *Q.* Now, at some point you were saying to the officers that you
14 were from Fox News or from the media or words to that effect.
15 Is that right?

16 **A.** At one point I did say that, yes.

17 *Q.* And you were telling them that you were unarmed. Is that
18 right?

19 **A.** I did tell them that I was unarmed, yes.

20 *Q.* And at some point didn't you reach your hand down to pull
21 your shirt up?

22 **A.** At one point I did. I pulled up my shirt to indicate that
23 there was no gun being hidden.

24 *Q.* So, and when you reached down to pull your shirt up, you
25 reached towards your waist, right?

1 **A.** Correct.

2 **Q.** So which hand did you use? Your right or left hand?

3 **A.** I don't recall.

4 **Q.** So it was either your right or left hand. So you took your
5 right or left hand and reached down towards where your belt was,
6 right?

7 **A.** I reached down to where my pants -- my shirt was by my
8 pants, yes.

9 **Q.** And to pull your shirt up, you moved your hand up, correct?

10 **A.** Correct.

11 **Q.** Away from your waist or belt area. Is that right?

12 **A.** Pulled my shirt up with my hand.

13 **Q.** Your hand -- your hand, sir, moved --

14 **A.** My hand went up.

15 **Q.** Your hand went up?

16 **A.** Yeah.

17 **Q.** And none of the officers on the other side of that gate
18 pointed a weapon at you at that point, did they?

19 **A.** I don't know. When I -- when I pulled my shirt up, I was
20 more than 30 yards away.

21 **Q.** When you pulled your shirt up, did anybody shoot at you?

22 **A.** Nobody shot at me all day long.

23 **Q.** When you put your hand down to your waist, did anybody tell
24 you to get down on the ground or to put your hands up?

25 **A.** I do not recall any instructions of anybody telling me to

1 hit the ground.

2 Q. Did anybody arrest you?

3 A. I was not arrested.

4 Q. Did anybody attempt to arrest you?

5 A. I was never attempted to be arrested.

6 Q. You turned around and walked away from the BLM position. Is
7 that correct?

8 A. Can you repeat that?

9 Q. Yes. When you left that area at your farthest-most point,
10 the 30 yards away from the gate, did you turn around to walk
11 back to the bridge, the northbound bridge?

12 A. Yes, I turned around and I walked backwards -- walked with
13 my back to the BLM.

14 Q. And did you walk or did you run back to the bridge?

15 A. I walked back.

16 Q. When you walked back to the bridge, did you stay under the
17 bridge at that point?

18 A. Temporarily.

19 Q. And when you got back to the area under the bridge and you
20 saw the people there, and then you told them that you thought
21 the BLM was going to shoot?

22 A. I didn't tell them that I thought that the BLM was going to
23 shoot.

24 Q. What did you tell them?

25 A. I told them that I thought I heard them say a message, but I

1 did not tell them that I thought that they were going to shoot.

2 Q. And you told them that you thought you heard them say they
3 were going to shoot?

4 A. They asked me, if I recall correctly, What -- what are they
5 saying? And I believe I told them that, I think the message is
6 if you move forward, you will be shot.

7 Q. And you told them that after you yourself had been up there
8 within 30 yards or at 30 yards and no one shot you, correct?

9 A. Well, nobody shot me. Somebody asked me what I thought I
10 heard and I told them what I thought I heard.

11 Q. Did you also tell them that you didn't see any weapons
12 pointed at you?

13 A. I don't recall if I said anything about weapons being
14 pointed at me. I just don't recall.

15 Q. Did you tell them that they were law enforcement -- was
16 there any dispute as to whether there were law enforcement
17 officers when you were down there? Did you talk to them about
18 that?

19 A. No, I did not.

20 Q. You never spoke --

21 A. I don't recall.

22 Q. -- to anybody above your area there on the bridge itself,
23 correct, when you came back from your position by the BLM gate?

24 A. Did I speak to anybody above the bridge?

25 Q. Yes, on the bridge.

1 **A.** No, the only time I ever communicated with some -- well, if
2 you're talking about when I'm still down in the wash?

3 **Q.** Yes.

4 **A.** The only time that I communicated with somebody that was up
5 on the bridge when I was down in the wash was there was a
6 gentleman at the top of the bridge who was trying to scream a
7 message to the BLM. And every time he did that, it sort of went
8 at the same time that they were trying to say their message
9 across to us. "Them" being the BLM. And one time I just told
10 him, you know, to be quiet because we can't hear what they're
11 saying. But besides from that, I talked to nobody else.

12 **Q.** Okay. So then after -- and I believe you testified that
13 after you got back to under the bridge, that's when the horses
14 came through, right?

15 **A.** Yes.

16 **Q.** And that's when you moved up the wash again heading north
17 toward where the law enforcement officers were, correct?

18 **A.** Yes, up into that apron area.

19 **Q.** And when you went up into -- you went up into the apron area
20 underneath the southbound bridge, right?

21 **A.** Yes.

22 **Q.** And nobody pointed a weapon at you when you went up there,
23 correct, from the BLM?

24 **A.** I don't know if anybody had anything pointed at me.

25 **Q.** Did you see anybody pointing a weapon at you?

1 **A.** All I saw was BLM on their side and the Bundy supporters and
2 the Bundys halfway through on the wash. I was trying to go back
3 and forth.

4 **Q.** So you didn't see --

5 **A.** I don't know if anybody --

6 **Q.** So you didn't see anybody pointing a weapon at you when you
7 went up onto that skirt, correct?

8 **A.** Not that I recall, no.

9 **Q.** When you were up on that skirt under the southbound bridge,
10 could you hear what the BLM officers were saying on their
11 loudspeaker?

12 **A.** I don't recall. I think that -- I think the messages
13 actually started to slow down at that point.

14 **Q.** Do you recall any words to the effect that the BLM was
15 telling people to back away?

16 **A.** I'm sorry. I just -- I don't recall.

17 **Q.** Do you recall any words, them saying that -- over the
18 loudspeaker that they were in violation of court order?

19 **A.** At what point, sir? When I'm up on the apron?

20 **Q.** When you're on the apron, yes, sir.

21 **A.** I don't recall.

22 **Q.** When you went down the apron and were now by the gate
23 with -- where Mr. Love was, do you recall that?

24 **A.** Yes, I do.

25 **Q.** Could you hear the BLM officers on the loudspeaker at that

1 point?

2 **A.** I don't know. I don't even know if -- I don't know if they
3 were even saying anything more, sir. At that point I was
4 focussed in on my conversations with Agent Love and trying to do
5 my part in getting the Bundy boys to move forward and to keep
6 the rest of the supporters to stay back. I don't know what was
7 being said by the other people.

8 **Q.** And then when you were speaking with -- when Mr. Ammon Bundy
9 came forward to speak to Dan Love, do you remember that?

10 **A.** Yes, I do.

11 **Q.** Do you remember Ammon Bundy telling Dan Love that the BLM
12 had to leave?

13 **A.** I recall him saying something to that level. I don't
14 remember the exact words.

15 **Q.** And do you recall Agent Love telling Mr. Bundy that he was
16 not going to be arrested?

17 **A.** I do recall that, yes.

18 **Q.** And do you recall that he said that he was not going to
19 arrest any of his brothers, correct?

20 **A.** I don't know if he said anything about the brothers.

21 **Q.** When Mr. Bundy came forward --

22 **A.** I don't -- I don't recall the exact words. I just -- I do
23 know my impression was that he was not going to arrest anybody
24 who jumped over the fence.

25 **Q.** And when the -- when Mr. Bundy moved to the gate to speak

1 with Mr. -- or with Agent Love, the other people behind
2 Mr. Bundy began to move forward to the gate as well, correct?
3 **A.** At some point they stopped, but they were moving closer to
4 the gate and we had told them to stop. And they listened to
5 that for a period of time.
6 **Q.** For a period of time, and then they moved forward to the
7 gate itself, right?
8 **A.** Some did, yes.
9 **Q.** Well, there were a number of -- there were hundreds of
10 people in that wash. Do you agree with that?
11 **A.** Hundreds of people in the wash?
12 **Q.** Yes.
13 **A.** No, I think your number's overestimated.
14 **Q.** How many people do you estimate were in the wash?
15 **A.** My estimate would be between 50 to 70, 75, maybe. It wasn't
16 hundreds.
17 **Q.** So of the estimated people that you saw in the wash, they
18 moved to the gate. Is that right?
19 **A.** Are you asking me how many people moved to the gate?
20 **Q.** No. The people that you saw there, you estimated they moved
21 to the gate, correct?
22 **A.** A portion of the people that were down in the wash had moved
23 closer to the gate, but not all of them were at the gate.
24 **Q.** And as they moved to the gate, they were told to move back.
25 Is that correct?

1 **A.** Agent Love had asked that the Bundy brothers come forward
2 and speak to him, but that everybody else stay back. And that
3 was pretty much it. There were already at that point some other
4 people at the gate; not just myself. Those people stayed there.

5 **Q.** Well, my point --

6 **A.** And --

7 **Q.** I guess my question is, is that: Did the people that -- as
8 you're there and you see Bundy move forward, the other people
9 move forward as well, correct? And you said they were told to
10 stop, and they stopped momentarily you said, but they kept
11 coming anyway, ultimately, correct?

12 **A.** Well, no, first of all, it was the Bundy brothers, both of
13 them, came forward. And then the other ones sort of stayed
14 back. Some of them stayed back 10 yards. Some of them stayed
15 back 20 yards. Some of them were within 15 feet. Sort of
16 scattered, if you will.

17 **Q.** And did you see them actually move up to the gate itself?

18 **A.** Who's "them"?

19 **Q.** The people who were supporting Ammon Bundy and his brothers.

20 **A.** As I've noted, sir, of the people that were down there, some
21 of them moved closer than others, but it wasn't as if there was
22 this mad rush to the gate.

23 **Q.** I didn't ask about a mad rush. I just asked simply did they
24 move up to the gate. Did they press up against the gate?

25 **A.** Actually, your question isn't simple because it's not being

1 asked in a simple manner. There -- I've explained in multiple
2 different ways. I don't know how else to say it for you.

3 There was a crowd of people. Some of them came up to
4 the gate. Some of them were 10 feet back. Some of them were 20
5 feet back. Some of them were more than that feet back. It was
6 sort of lined up, but their -- it was not -- the entire crowd
7 was not at the gate.

8 Q. Okay. Whoever was at the gate then, did you hear the BLM
9 officers tell them to back away, to back up?

10 A. Again, I was focussed completely on what Agent Love had
11 said, and Agent Love had requested that we tell these people to
12 move back and this way the BLM could open the gate.

13 Q. Do you recall anybody rapping something on the gate making a
14 noise with it?

15 A. I don't recall.

16 Q. You don't recall that. Do you recall -- there were no
17 arrests of anybody at the gate, correct?

18 A. There were no arrests at the gate that I saw.

19 Q. Anybody attempted to make any arrests that you saw, from the
20 BLM?

21 A. I did not see anybody make any arrests or attempt to make
22 arrests.

23 Q. Nobody used any batons?

24 A. There was no violence at the gate.

25 Q. There was no use of force at the gate?

1 **A.** No violence, use of force at the gate.

2 **Q.** Now, you talked about going over the gate and speaking up
3 toward the ICP. I really don't want to go into that, but I
4 would like to know, you know, since this event, have you had any
5 conversations with Ammon Bundy?

6 **A.** Yes, I interviewed him from jail.

7 **Q.** And you interviewed him where? Was this in Oregon?

8 **A.** Yes.

9 **Q.** And have you had conversations -- aside from that interview
10 with Mr. Bundy in Oregon, have you had conversations with any of
11 the members of the Bundy family?

12 **A.** After that event? Yes.

13 **Q.** Yes.

14 And were those conversations in person or by telephone?

15 **A.** Some of the conversations were by telephone. None of them
16 were in person.

17 **Q.** And who did you speak with from the Bundy family?

18 **A.** I had Carol -- I had Carol Bundy on my television show. I
19 had Lisa Bundy on my television show. I had, I believe, Bailey
20 Bundy on my television show. And, I believe, Mel -- Mel Bundy's
21 wife spoke to me on the phone.

22 **Q.** And in any of your conversations with all those members of
23 the Bundy family, did you express support for them?

24 **A.** In what sense?

25 **Q.** Have you expressed support? Have you said that, for

1 example, that you support what they do or what they're standing
2 for?

3 **A.** Have I support what they do, what they -- what they stand
4 for. I don't know what they stand for, sir. I don't understand
5 the --

6 **Q.** What did you talk about -- when you invited them on the
7 show, what did you talk about?

8 **A.** Oh, man. I believe the one time was with regard to the
9 treatment of one of the Bundy brothers in jail. Another time
10 was about the shooting of a gentleman named -- I think I have
11 his name right -- LaVoy Finicum. That -- in terms of my show, I
12 think that's it. That's ...

13 **Q.** Did you ever -- did you ever express to them that you
14 believed the federal government is overreaching its authority?

15 **A.** Did I ever say I think the government is overreaching their
16 authority? I don't recall.

17 **Q.** Did you believe that the BLM, on April 12th, was
18 overreaching its authority?

19 **A.** With regard to what?

20 **Q.** With regard to their actions in the wash on April the 12th.

21 **A.** Unfortunately, I don't know enough about -- when you're
22 saying about overreaching their authority, I don't know enough
23 of the context of what you're trying to put that into. I will
24 say that I thought that that situation was handled poorly on all
25 ends that day. I've said that many -- many a times.

1 Q. Did you believe, though -- from what you observed, did you
2 believe the BLM was not acting appropriately within its
3 authority?

4 **A.** I think the BLM could have handled it better.

5 Q. I'm not asking whether you felt they could handle it better.
6 I'm asking you, did you observe them doing anything that was
7 outside of what their exercise -- or lawful exercise of their
8 duties to be?

9 **A.** Unfortunately, I don't have, you know, the complete
10 knowledge up and down of what their authority is and what their
11 authority is not.

12 Q. Did you know -- well, did you know that there were court
13 orders that day that the BLM was executing to gather cattle?

14 **A.** As I've explained to you directly many different times, I
15 was there as a camera person. I wasn't all too familiar with a
16 lot of different nuances that were taking place that day. And
17 so I was there with the objective of shooting video of what I
18 had learned about just days before. So I didn't have enough
19 time to do the sort of homework that, perhaps, would be able to
20 deliver you the sort of answer that would be what you're looking
21 for.

22 Q. I'm not looking for anything in particular. I'm asking you
23 what you knew. Did you know that on April the 12th that the BLM
24 was out there exercising court orders to gather cattle?

25 **A.** I didn't know anything about court orders. At that point

1 I -- from what I knew from, really, what would be described as a
2 novice's point of view, I knew that the cattle was being held by
3 the BLM and that it had something to do over grazing rights.
4 And that leading to that event was -- the only thing I knew
5 about it was the things I had seen on Hannity, which is on Fox
6 News, and that was clips that I had basically seen before I had
7 gone out.

8 Q. Now, have you also -- since, have you made a movie about the
9 Bundy -- about the Bundys?

10 A. I made a DVD, yes, with the same footage that I handed over
11 to the FBI.

12 Q. And what is the title of your DVD?

13 A. I believe it's A Day of Bundys.

14 Q. And do you narrate on that DVD?

15 A. I do.

16 Q. And do you sell that DVD for -- to make money?

17 A. Yes, we do sell DVDs to make money.

18 Q. And do you advertise on your website or something that
19 you've made this DVD?

20 A. Yes, we advertise it.

21 Q. And in your narration at all during that DVD do you talk
22 about the BLM being in any way heavy-handed?

23 A. I don't know. Embarrassingly enough, I don't watch -- I
24 don't watch my own movies. You know, I make them and then --
25 and then I move on.

1 Q. You don't remember what you said?

2 A. I don't recall what I said.

3 Q. You don't --

4 A. I don't recall. I don't recall, but I would be able to
5 watch it or if you played it in front of me, I would be able to
6 say, Yes, I said that or, No, I didn't. I don't recall what I
7 said exactly.

8 (Prosecution conferring.)

9 MR. MYHRE: No further questions, Your Honor.

10 THE COURT: All right. Thank you.

11 Did the Defense have any other witnesses?

12 MR. TANASI: Your Honor, we do. I might need a moment
13 just to have them --

14 MR. LEVENTHAL: Before we go there, is Mr. Lynch
15 excused for now? I know he's --

16 THE COURT: Yes, Mr. Lynch is excused.

17 MR. LEVENTHAL: Thank you very much, Mr. Lynch.

18 THE WITNESS: Thank you very much.

19 MR. LEVENTHAL: Thank you.

20 (Defense conferring.)

21 THE COURT: Does Defense have another witness to call?

22 MR. TANASI: We do, Your Honor. I'm trying to arrange
23 that right now so we can call him.

24 THE COURT: Oh, okay.

25 How many more do you have?

1 MR. TANASI: Two, Your Honor.

2 THE COURT: Two more?

3 MR. TANASI: Yes, Your Honor.

4 THE COURT: And neither of them is here?

5 MR. TANASI: Neither of them are here. Both of them
6 are attending via Skype.

7 THE COURT: Okay. Why don't we go ahead, then, and
8 take our bathroom break. It's 2:30. We'll be back around 2:45.

9 MR. TANASI: Perfect. Thank you.

10 (Recess taken at 2:31 p.m.)

11 (Resumed at 3:11 p.m.)

12 THE COURT: Thank you. You may be seated.

13 All right. Defense may call its next witness.

14 MR. TANASI: Thank you, Your Honor. Defense calls
15 Wendy Spencer.

16 THE COURT: Aaron, could you please have her sworn in.

17 COURTROOM ADMINISTRATOR: Yes, Your Honor.

18 Ms. Spencer, please raise your right hand.

19 WENDY SPENCER, having duly been sworn, was examined and
20 testified as follows:

21 COURTROOM ADMINISTRATOR: Thank you, ma'am. Please
22 state your full name for the record and spell your last name.

23 THE WITNESS: Wendy Sue Spencer, S-P-E-N-C-E-R.

24 MR. TANASI: May I proceed?

25 THE COURT: Yes, you may.

1 MR. TANASI: Thank you, Your Honor.

2 DIRECT EXAMINATION

3 BY MR. TANASI:

4 Q. Good afternoon, Wendy. It's Rich Tanasi. Can you hear me
5 okay?

6 A. Yes.

7 Q. Okay. Where are you currently living, what city and state?

8 A. I live in Phoenix, Arizona.

9 Q. Okay. And where were you living in April of 2014?

10 A. Same place, Phoenix, Arizona.

11 Q. All right. And what do you do for a living?

12 A. I'm a homemaker.

13 Q. Okay. And were you also a homemaker in April 2014?

14 A. Yes.

15 Q. All right. Are you familiar with Bunkerville, Nevada?

16 A. Yes.

17 Q. I'd like to turn your attention to April 12th, 2014, in
18 Bunkerville. Okay?

19 A. Yes.

20 Q. Okay. Did you go to Bunkerville in April of 2014?

21 A. Yes.

22 Q. And why did you go there?

23 A. Well, mostly I wanted to, but I wanted to be there as a
24 support and also to defend my own rights.

25 Q. And what rights are those?

1 **A.** Well, the rights of -- at that point the BLM had -- they had
2 closed all roads off of the pavement so we couldn't go where
3 we'd gone our whole life with friends, family, school, anyway.
4 So I didn't like that; that we couldn't go on these or get in
5 trouble.

6 **Q.** Okay. Do you recall what time you arrived in Bunkerville?

7 **A.** I don't.

8 **Q.** Okay. But you were there -- or were you there in the
9 morning of April 12th, 2014?

10 **A.** Yes.

11 **Q.** Okay. Did you attend a speech where the sheriff spoke and
12 Cliven Bundy spoke?

13 **A.** Yes.

14 **Q.** Okay. What did you hear the sheriff say?

15 **A.** What I remember is that he -- when he came in he said that
16 the BLM were going to back down and leave, and the cops, and
17 they were going to let the cattle go.

18 **Q.** Did you also hear Cliven Bundy's speech?

19 **A.** Yes.

20 **Q.** And what did you hear Mr. Bundy say?

21 **A.** He just -- he just said that was great, but he wanted
22 certain things from the sheriff, and gave him time anyway to go
23 do that. I don't recall everything he said.

24 **Q.** Right. After hearing the sheriff's speech and Cliven
25 Bundy's speech, what did you do next?

1 **A.** We actually just waited there. We were there about an hour
2 to see if the sheriff would come back, and he did not. We were
3 there -- we just hung out there for about an hour.

4 **Q.** What did you do next?

5 **A.** From there when he didn't come back, then the cowboys went
6 down to the wash and I went down also.

7 **Q.** Okay. How did you get to the wash?

8 **A.** I drove my car.

9 **Q.** Who did you drive with?

10 **A.** Myself.

11 **Q.** What did you do first when you got to the wash?

12 **A.** Well, once we parked and got out and got down in the wash,
13 we just -- just waiting for people to gather. And then more of
14 the first thing as people gathered, everybody knelt in the sand
15 and prayed.

16 **Q.** And why did you go from the speech to the wash?

17 **A.** Because I wanted to go. I wanted to see it through.

18 **Q.** What did you want to see through?

19 **A.** That they -- that they leave and let that -- let the cattle
20 go. And, anyway, turn the rights back to the people.

21 **Q.** All right. And so when you get to the wash, what was in
22 your mind? What did you expect that you were going to see
23 happen, after hearing the speeches?

24 **A.** I basically expected that -- that they were going to do what
25 they said and they were going to leave and let -- turn the

1 cattle loose.

2 Q. And then you said when you first got there you -- you were a
3 part of a prayer circle. Is that right?

4 **A.** Yes. Yes.

5 Q. And why did you guys -- why did you pray?

6 **A.** Why did we pray?

7 Q. Yes.

8 **A.** Well, it ... hard for me. Prayer is a part of my life every
9 day. We pray for -- over everything. So we was praying for His
10 help in things going the way they were supposed to go.

11 Q. When you're in the wash, can you describe what you saw?

12 **A.** I just saw people on both sides, and we were just kind of
13 there waiting. And some of them went up to the fence. And then
14 they asked if people would please go back and give time, they
15 said about a half hour, that they would -- they would let it go,
16 but go back. And everybody did. Everybody went back
17 peacefully. Everything was peaceful and just waited out the
18 time.

19 Q. Okay. While you were in the wash, did you see anybody from
20 law enforcement?

21 **A.** Yes.

22 Q. Okay. Can you describe what you saw?

23 **A.** Well, saw -- well, I saw BLM agents, of course, and saw SWAT
24 and police.

25 Q. And what were they doing?

1 **A.** Some were actually pointing guns. Some were actually on a
2 blowhorn telling them to cease and desist or they would shoot.
3 They would just over -- yeah, that's basically it.

4 *Q.* Did you look at any other areas out from the wash?

5 **A.** Yes.

6 *Q.* Where?

7 **A.** I was up on a hill. Someone pointed out to me -- I can't
8 remember who, but pointed out seeing -- said, Look, there's a
9 sniper. And I did look up on that hill and there was a sniper
10 pointed at us.

11 MR. TANASI: Okay. Thank you. I'll pass the witness.

12 CROSS-EXAMINATION

13 BY MS. AHMED:

14 *Q.* Good afternoon, ma'am.

15 **A.** Good afternoon.

16 *Q.* My name is Nadia Ahmed, and I'm going to be asking you some
17 questions. Can you hear me?

18 **A.** Yes.

19 *Q.* If at any point you are unable to hear me, just let me know.

20 **A.** Okay.

21 *Q.* Now, ma'am, did you grow up in Bunkerville, Nevada?

22 **A.** Yes.

23 *Q.* Are you related to Cliven Bundy in any way?

24 **A.** No. Just friends of the family.

25 *Q.* Have you been family friends your whole life?

1 **A.** Yes.

2 **Q.** And so were you aware on April 2014 that he had his cattle
3 trespassing on public land?

4 **A.** No.

5 **Q.** Were you aware that there were court orders requiring him to
6 remove his cattle from public land?

7 **A.** No.

8 **Q.** Were you aware that he had stated he would do whatever it
9 takes to make sure the BLM did not remove his cattle from public
10 land?

11 **A.** No.

12 **Q.** Were you present in Bunkerville prior to April 12th, 2014,
13 in that month? Did you get there before April 12th?

14 **A.** No -- sorry. Say that again.

15 **Q.** That was a confusing question.

16 Did you get there before April 12th, 2014?

17 **A.** Yes.

18 **Q.** What day did you get there?

19 **A.** That, I -- I do not recall the date.

20 **Q.** Were you aware that there were militia camps set up around
21 Riverside Road and Gold Butte Road?

22 **A.** Yes.

23 **Q.** Were you aware that there were individuals with firearms
24 patrolling that area that were not law enforcement -- that these
25 were not law enforcement?

1 **A.** Yes, yes.

2 **Q.** Were you aware that the BLM had an impoundment site set up
3 off of the I15 between Bunkerville and Mesquite?

4 **A.** Yes.

5 **Q.** Now, when you went to the rally on the morning of
6 April 12th, 2014, that stage area, do you recall seeing a stage
7 over there?

8 **A.** Yes.

9 **Q.** Do you recall seeing individuals dressed in camouflage
10 clothing present during the speeches?

11 **A.** I think so, yes.

12 **Q.** Do you recall specifically when Cliven Bundy was giving his
13 speeches that there were individuals standing in front of the
14 stage that were wearing camouflage clothing?

15 **A.** Yes.

16 **Q.** Do you recall that they had firearms on them?

17 **A.** Yes.

18 **Q.** When the sheriff gave his speech, you were there, correct?

19 **A.** Yes.

20 **Q.** And he said the BLM was going to leave, correct?

21 **A.** Yes.

22 **Q.** But he did not tell the crowd to go to the BLM impoundment
23 site, did he?

24 **A.** No.

25 **Q.** He did nothing to encourage anyone from that stage area to

1 go to the BLM impoundment site, correct?

2 **A.** No. Correct.

3 **Q.** Now, when Cliven Bundy spoke the second time, he actually
4 told everyone in the crowd to go to the Toquop Wash, right?

5 **A.** Yes.

6 **Q.** And when he told you to do that, that's what you did,
7 correct?

8 **A.** Yes. Correct.

9 **Q.** And he told the cowboys to go get 'er done, correct?

10 **A.** Yes.

11 **Q.** Meaning go get his cattle back from the BLM?

12 **A.** Yes.

13 **Q.** Now, when you got to the wash, you saw that the BLM was
14 still there, correct?

15 **A.** Yes.

16 **Q.** And so you wanted to stay to see it through. Is that
17 correct?

18 **A.** Yes. Correct.

19 **Q.** Meaning to make sure the BLM left?

20 **A.** Yes.

21 **Q.** And you stayed in that wash, correct?

22 **A.** Correct.

23 **Q.** And there were other people in that wash. Isn't that right?

24 **A.** That's correct.

25 **Q.** There were some people on foot?

1 **A.** Yes.

2 **Q.** There were people on horseback?

3 **A.** Yes.

4 **Q.** There were men?

5 **A.** Yes.

6 **Q.** Women?

7 **A.** Yes.

8 **Q.** Children?

9 **A.** Yes.

10 **Q.** There were people with weapons?

11 **A.** Yes.

12 **Q.** And there were people who took up positions not just in the
13 wash, but on the sides of those ramps underneath the bridge,
14 correct?

15 **A.** Yes.

16 **Q.** And some of those people had weapons?

17 **A.** Yes.

18 **Q.** And there were people on the bridges above the wash,
19 correct?

20 **A.** Yes.

21 **Q.** And did you know that those people had firearms?

22 **A.** No, I did not at that time.

23 **Q.** When you were in the wash, did you know -- did you ever
24 observe anything that was going on on the bridge that was the
25 northbound bridge, the one further away from the BLM?

1 **A.** No.

2 **Q.** Did you see anything that was going on up there?

3 **A.** Just the ones focused on the other side, just people
4 standing up there.

5 **Q.** Now, you could hear the BLM speaking over a loudspeaker,
6 correct -- or over a bullhorn?

7 **A.** Correct.

8 **Q.** I think you said bullhorn. I'm sorry.

9 **A.** Yes.

10 **Q.** And they were giving orders to the crowd?

11 **A.** Yes.

12 **Q.** To the effect of cease and desist?

13 **A.** Yes.

14 **Q.** They were asking the people to leave, correct?

15 **A.** Correct.

16 **Q.** But the people did not leave, correct?

17 **A.** Correct.

18 **Q.** In fact, the people moved from the further-away bridge
19 closer to that gate that the BLM had set up. Isn't that right?

20 **A.** Yes, some did.

21 **Q.** Including some of the people on horseback, correct?

22 **A.** Correct.

23 **Q.** And while this is happening, you did not know what was
24 happening on the northbound bridge. Isn't that right?

25 **A.** That's correct.

1 Q. Now, the BLM were saying things to the effect of, Court
2 order. Do you recall that, something about a court order?

3 A. Yes.

4 Q. I'm sorry. I spoke over you.

5 A. Yeah.

6 Q. So you did hear the court order?

7 A. I -- yeah, I'm pretty sure. I think so, yeah.

8 Q. And they were asking the crowd again -- they were asking the
9 crowd to disperse, right?

10 A. Correct. Correct.

11 Q. And the people in the crowd were shouting things back to the
12 BLM. Isn't that right?

13 A. Yes, there were a few. Yes.

14 Q. Weren't there some chants about the BLM, that they needed to
15 leave, people chanting that?

16 A. That, I don't remember.

17 Q. Now, the BLM officers never came into the wash from behind
18 that gate, did they?

19 A. No.

20 Q. They never attempted to arrest anybody?

21 A. No.

22 Q. In fact, they didn't lay hands on anyone in that wash, did
23 they?

24 A. No.

25 Q. And while you were in the wash, the BLM actually moved

1 backward from the front position that they had. Isn't that
2 right?

3 **A.** Correct.

4 **Q.** And eventually they left the wash?

5 **A.** Yes.

6 MS. AHMED: Nothing further, Your Honor. I'll pass the
7 witness.

8 THE COURT: All right. Any other witness?

9 MR. TANASI: Nothing further.

10 We have Derrel Spencer, Your Honor, same idea. He
11 might need a moment just to call him.

12 THE COURT: Is he in the same place -- same home?

13 MR. TANASI: No. Same last name, different location.

14 THE COURT: Okay. Sorry, I assumed.

15 MR. TANASI: I thought the same thing last night.

16 Ms. Spencer, can you hear me okay?

17 THE WITNESS: Yes.

18 MR. TANASI: I think we're all set, so thank you for
19 your time.

20 THE WITNESS: Okay. Thank you.

21 MR. TANASI: All right.

22 (Defense conferring.)

23 MR. TANASI: Derrel?

24 THE WITNESS: Can you hear me now?

25 MR. TANASI: Yes, sir. Can you hear us?

1 THE WITNESS: Yes.

2 THE COURT: Go ahead.

3 Aaron, do you want to go ahead and swear him in.

4 COURTROOM ADMINISTRATOR: Yes, Your Honor.

5 Good afternoon, sir. Please raise your right hand.

6 Mr. Spencer? Thank you, sir.

7 DERREL SPENCER, having duly been sworn, was examined

8 and testified as follows:

9 COURTROOM ADMINISTRATOR: Thank you. Please state your
10 full name for the record and spell your last name.

11 THE WITNESS: Derrel Lyman Spencer. Last name is

12 S-P-E-N-C-E-R.

13 MR. TANASI: May I proceed, Your Honor?

14 THE COURT: I'm not sure. Are you able to pick that

15 up?

16 (Court reporter interruption.)

17 MR. TANASI: Derrel, if you could speak into the phone,

18 please, instead of Skype? There we go.

19 THE WITNESS: Is this better?

20 MR. TANASI: Yes, sir.

21 THE COURT: Thank you.

22 MR. TANASI: May I proceed, Your Honor?

23 THE COURT: Yes, now you may. Thank you.

24 MR. TANASI: Thank you.

25

1 DIRECT EXAMINATION

2 BY MR. TANASI:

3 Q. Okay, Mr. Spencer. Where do you currently live?

4 A. I live 18 miles south of Bryce Canyon in Utah.

5 Q. Okay. Utah? What town in Utah?

6 A. Garfield.

7 Q. What do you do for a living?

8 A. I manage a ranch, cattle ranch.

9 Q. Were you managing a ranch and living in Utah in April of
10 2014?

11 A. Yes.

12 Q. Okay. I want to turn your attention to April 12th, 2014,
13 Bunkerville. Are you with me?

14 A. Okay.

15 Q. Okay. Do you recall going to Bunkerville in April of 2014?

16 A. Yes.

17 Q. Okay. Why did you go?

18 A. I went because I felt there was a great injustice being
19 done, and I wanted to help.

20 Q. All right. And did you ultimately go to Bunkerville?

21 A. Say that again.

22 Q. Did you ultimately get to Bunkerville at some time on
23 April 12th, 2014?

24 A. I'm sorry. I can't quite understand that question.

25 Q. Sure. So you went to Bunkerville April 12th, 2014, fair?

1 **A.** Yes.

2 **Q.** All right. I want to take you to the wash in Bunkerville.

3 Are you with me?

4 **A.** Yes.

5 **Q.** All right. What time, roughly, did you get to the wash?

6 **A.** I don't know, but I would imagine it was 11 o'clock,
7 somewhere around there, noon.

8 **Q.** And when I say "the wash," just so we're clear, are we
9 talking about the area in between the north and the southbound
10 bridge?

11 **A.** Yes.

12 **Q.** Okay. Can you describe for me what you saw when you were in
13 the wash.

14 **A.** Yes. So when I dropped down into the wash, I could see a
15 fence under the far bridge, and trucks behind the fence with the
16 doors of the trucks open, and people standing behind them with
17 rifles trained right at us.

18 **Q.** How did that make you feel, sir?

19 **A.** Scared, nervous.

20 **Q.** All right. While you were in the wash, was there anybody
21 who spoke with you?

22 **A.** Yes.

23 **Q.** Okay. Can you describe who you spoke with when you were in
24 the wash, please?

25 **A.** Okay. So three men came down in front of us. I don't know

1 them by name. One of them was fairly close to being in front of
2 me, and he was armed. He was not pointing a weapon, but he
3 says, If the shooting -- If they start shooting, they'll kill us
4 first because we are armed. That'll give you guys a chance to
5 run or hide or get away, whatever you want to do.

6 Q. And were you armed?

7 A. Pardon?

8 Q. Were you armed?

9 A. No.

10 MR. TANASI: Thank you, sir. Nothing further. I'll
11 pass the witness.

12 THE COURT: Cross?

13 CROSS-EXAMINATION

14 BY MS. CREEGAN:

15 Q. Mr. Spencer, my name is Erin Creegan and I represent the
16 United States in this case.

17 A. Okay.

18 Q. Will you answer some questions of mine as well?

19 A. Yes.

20 Q. And will you tell me if you can't hear me?

21 A. Yes.

22 Q. Now, sir, your last name is Spencer. Do you know a person
23 named Wendy Spencer?

24 A. I do.

25 Q. Is she a relative or friend of yours?

- 1 **A.** I do have an aunt named Wendy.
- 2 **Q.** Where does she live?
- 3 **A.** I believe she lives in Mesquite.
- 4 **Q.** Do you have a relative named Lily Spencer?
- 5 **A.** Yes.
- 6 **Q.** What relation is she to you?
- 7 **A.** She is married to my cousin.
- 8 **Q.** And is it correct that Lily Spencer is related to Cliven
9 Bundy?
- 10 **A.** Yes.
- 11 **Q.** What's her relationship to Cliven Bundy?
- 12 **A.** Sister.
- 13 **Q.** Now, Mr. Spencer, I want to take you through some of the
14 events of that day. Were you at a rally that occurred in the
15 morning somewhere between 9 and 11 o'clock?
- 16 **A.** Yes.
- 17 **Q.** And did you hear the sheriff of Clark County speak at that
18 rally?
- 19 **A.** Yes, I heard some of it.
- 20 **Q.** Did you hear him say that the BLM was going to be leaving?
- 21 **A.** Yes.
- 22 **Q.** Did you hear him say that he wanted to keep an emotional
23 issue safe?
- 24 **A.** No.
- 25 **Q.** Did you hear him say that the cattle are where they have

1 been?

2 **A.** No.

3 **Q.** Did you hear him say that he needed to talk to Mr. Bundy
4 about the cattle?

5 **A.** Well, I don't recall.

6 **Q.** Did you hear Mr. Bundy say that the sheriff needed to disarm
7 the BLM or the Park Service?

8 **A.** Can you repeat that one more time, please?

9 **Q.** Certainly. Did you hear Mr. Cliven Bundy say that the
10 sheriff needed to disarm either the BLM or the Park Service?

11 **A.** Yes.

12 **Q.** You did hear him say that?

13 **A.** Yes.

14 **Q.** Did the sheriff disarm the BLM or the Park Service?

15 **A.** I don't know. They -- they ceased and left. So, I don't
16 know what the definition of disarmed is.

17 **Q.** Did he ever bring weapons back to the stage area?

18 **A.** Not that I saw.

19 **Q.** Did Cliven Bundy tell the crowd to go get his cattle at some
20 point?

21 **A.** I don't recall.

22 **Q.** Did Cliven Bundy tell people that they needed to block the
23 freeway?

24 **A.** I never heard that.

25 **Q.** Now, Mr. Spencer, you mentioned that you went to the wash

1 around 11 a.m. Are you sure of the exact time?

2 **A.** No.

3 **Q.** When you got down to the wash, were there other people
4 there?

5 **A.** Yes.

6 **Q.** About how many people were already there when you got there?

7 **A.** Well, there was people on the freeway. People, you know,
8 were stopped and watching. I don't remember really anybody in
9 front of us down in the wash, but there was a lot of people up
10 on the freeway bridges.

11 **Q.** Okay. Did you see that there were people on the northbound
12 bridge?

13 **A.** Yes.

14 **Q.** And that's the bridge that's farther away from the BLM?

15 **A.** Yes.

16 **Q.** Did you see that there were armed people on the northbound
17 bridge?

18 **A.** No.

19 **Q.** You never saw anybody with a long gun on the northbound
20 bridge?

21 **A.** No.

22 **Q.** When you went down into the wash, did you go with -- alone
23 or with other people?

24 **A.** I'm sorry. Say that again. When I went down into the wash?

25 **Q.** Did you go by yourself or were you walking with other

1 people?

2 **A.** I was with other people.

3 **Q.** About how many other people were you with?

4 **A.** I would guess there was 40 of us on horses.

5 **Q.** Were you on a horse?

6 **A.** Yes.

7 **Q.** Did you have a weapon on you at any time?

8 **A.** No.

9 **Q.** Did some of the people who were riding horses have sidearms?

10 **A.** I'm sorry. I didn't hear that.

11 **Q.** Were some of the people with horses carrying sidearms, which
12 is a pistol on their hip?

13 **A.** Yes.

14 **Q.** Did you see whether any people riding horses had a long gun?

15 **A.** Not that I'm aware of.

16 **Q.** Now, when the horses came under the bridge -- did you ride
17 your horse under the northbound bridge toward the gate where the
18 BLM was?

19 **A.** Yes.

20 **Q.** Did you see that there were people on foot as well?

21 **A.** Yes.

22 **Q.** Did you see that some of those people had weapons?

23 **A.** No. All I was focused on was the weapons pointing at us.

24 **Q.** So you just don't know whether people around you had
25 weapons?

1 **A.** I saw no other weapons up there.

2 **Q.** So you said you talked to some individuals who were armed
3 who said, They're going to shoot at us first.

4 **A.** I didn't say that.

5 **Q.** Well, let me ask you then, who was it that said, They're
6 going to shoot at us first?

7 **A.** Nobody. I never said that.

8 **Q.** So you did not talk to anybody in the wash on April 12,
9 2014, that said, They're going to shoot at us first and you can
10 run?

11 **A.** No, they -- let me be clear. So the three armed men that
12 walked in front of us said, If the shooting starts, the BLM will
13 shoot us first because we are armed and that will give you guys
14 a chance to run, hide, get away, whatever you want to do.

15 **Q.** So there were three armed people walking in front of you?

16 **A.** Yes.

17 **Q.** Did you observe whether there were people up on the cement
18 embankment over the BLM's position?

19 **A.** I don't recall any over the division, no.

20 **Q.** You don't recall seeing three people in camo with firearms
21 over on the right-hand side?

22 **A.** No, ma'am.

23 **Q.** Did you hear what the BLM was saying, if anything?

24 **A.** I could hear parts, but it was so loud and so distorted that
25 it was hard to make out what they were saying.

- 1 Q. Could you hear the words "court order"?
- 2 A. I did hear something about an order.
- 3 Q. Did you hear the word "disperse"?
- 4 A. I don't recall hearing that word.
- 5 Q. Did you hear anything about leaving or leave the area or go
6 away or back up?
- 7 A. I heard something to the effect that, Back up or stand down
8 or you will be shot.
- 9 Q. Did you back up or stand down?
- 10 A. I did not.
- 11 Q. So you didn't follow the instruction of the law enforcement
12 officer?
- 13 A. Well, I don't know. It was so hard to hear. I could just
14 hear parts of it.
- 15 Q. But you did hear them say, Back up or stand down?
- 16 A. I heard parts of that, yes.
- 17 Q. And you didn't do it?
- 18 A. No.
- 19 Q. In fact, you moved forward with your horse?
- 20 A. Yes.
- 21 Q. With other horsemen?
- 22 A. Yes.
- 23 Q. Some of them armed?
- 24 A. Yes.
- 25 Q. Were you shot?

- 1 **A.** Thankfully not because of the --
- 2 **Q.** Was anyone shot?
- 3 **A.** Pardon?
- 4 **Q.** Was anyone shot?
- 5 **A.** Not that I'm aware of.
- 6 **Q.** Was anyone physically touched by a law enforcement officer?
- 7 **A.** Not that I know of.
- 8 **Q.** Was anyone arrested?
- 9 **A.** Not that I know of.
- 10 **Q.** How many people altogether were there in the wash at its
11 highest point?
- 12 **A.** I -- I don't know. I would just be guessing.
- 13 **Q.** Was it in the hundreds?
- 14 **A.** Possibly.
- 15 **Q.** How many law enforcement officers were there on the other
16 side of the gate?
- 17 **A.** I -- I couldn't tell you for sure. I could see two trucks.
18 Doors open on both sides. Men standing behind the doors with
19 rifles trained on us. There was more back in there farther, but
20 I was just focused on those trucks with the guns pointed at us.
- 21 **Q.** Is that a dozen or more than a dozen?
- 22 **A.** I'm sorry. I didn't hear that.
- 23 **Q.** How many law enforcement officers do you think you saw?
- 24 **A.** I would guess six or eight that were right there pointing
25 guns at us. I could see more, but they were in the background.

1 Q. So a few hundred versus six or eight?

2 A. No.

3 Q. No?

4 A. I said possibly 100. And there was a lot more than six or
5 eight. Most of them were just in the background.

6 Q. So 100 versus a dozen? More than a dozen?

7 A. Well, when they left there, I counted 87 trucks with armed
8 men leaving there. So I don't know how many was in each truck,
9 but I would say a couple were in there.

10 Q. So you looked into every single one of the 87 trucks?

11 A. No, but I watched them drive by.

12 Q. And when you say "armed men," you're referring to law
13 enforcement officers?

14 A. Yes. Well, I assume they were law enforcement.

15 Q. You assume that because they were wearing uniforms and they
16 were beside patrol vehicles?

17 A. No, because they were on the other side of the fence. I
18 really don't know who they were.

19 Q. So you knew they were law enforcement officers?

20 A. No, I just assumed they might be.

21 Q. You just assumed they might be because why?

22 A. Because they were on the other side of the fence.

23 Q. Did you observe that they were wearing uniforms?

24 A. Yes.

25 Q. Did you observe that they were behind marked patrol

1 vehicles?

2 **A.** No.

3 **Q.** You did not observe that they were behind marked patrol
4 vehicles?

5 **A.** No.

6 **Q.** How close did you get to the fence?

7 **A.** Oh, 100 feet. I don't know. I'm just guessing, but I'd say
8 100 feet.

9 **Q.** You didn't go all the way up to the fence?

10 **A.** Not till later when the sheriff came to take the fence down
11 and let us in there, then I did.

12 **Q.** Did you observe that other people went all the way up to the
13 fence before the sheriff arrived?

14 **A.** Yes, other people went up to the fence.

15 **Q.** So you weren't in a good position to observe what was
16 happening on the other side of the fence?

17 **A.** The same thing, they were just standing there pointing guns
18 at us. I saw some of the guys right at the fence calling some
19 of the guys to come and try to settle this.

20 **Q.** Did you see people pointing guns at the BLM?

21 **A.** No.

22 **Q.** Did you ever --

23 **A.** Never.

24 **Q.** Did you ever look back at the northbound bridge to see what
25 was happening there?

1 **A.** No.

2 **Q.** Mr. Spencer, you mentioned that you work in some way in
3 ranching. Is that correct?

4 **A.** Yes.

5 **Q.** Would it be fair to say that you're sympathetic to the Bundy
6 family?

7 **A.** It would be fair to say that I understand that situation
8 more than most.

9 **Q.** You said you went there to fight injustice?

10 **A.** Yes.

11 **Q.** Were you aware --

12 **A.** Not to fight, but I went there to help with an injustice.

13 **Q.** Were you aware that the BLM had tried to litigate in court
14 for 20 years with Cliven Bundy the removal of his cattle from
15 trespass?

16 **A.** Yes, I was. And I was aware that he had also won in court,
17 and it didn't matter. They still tried to take it from him and
18 kick him off.

19 **Q.** Would it surprise you to learn that he actually lost in
20 court and it was ordered that his cattle had to be removed?

21 **A.** Say that again.

22 **Q.** Would it surprise you to learn that he actually lost in
23 court and it was ordered that his cattle had to be removed from
24 the public lands?

25 **A.** Yes.

1 Q. So if there was a valid court order, would you comply with
2 that and allow cattle to be removed from the public lands?

3 **A.** If it's valid.

4 Q. You would?

5 **A.** But I assume -- I guess it depends on the situation, but
6 yes.

7 Q. So there's some situations under which you would not follow
8 a court order?

9 **A.** I don't know.

10 Q. And in this situation you didn't follow the commands of law
11 enforcement officers?

12 **A.** Well, they weren't clear.

13 Q. They weren't clear, but you heard, Back up or stand down?

14 **A.** Yeah, but in between every word you'd hear, you'd hear about
15 five seconds of just muffled, loud, deafening sound.

16 Q. But you knew they were saying --

17 **A.** It was hard.

18 Q. -- Back up?

19 Mr. Spencer, you knew they were saying, Back up?

20 **A.** Something to that effect.

21 Q. You did not back up?

22 **A.** No.

23 MS. CREEGAN: Thank you. No further questions.

24 MR. TANASI: No redirect, Your Honor.

25 THE COURT: All right. Is there one more or is he the

1 last one?

2 MR. TANASI: He's the last one for today, Your Honor.

3 THE COURT: Oh, okay.

4 MR. TANASI: Sir, thank you for your time. You can go
5 ahead and hang up the phone and Skype.

6 THE WITNESS: Okay. Thank you.

7 MR. TANASI: So, Your Honor, finding out here as I'm
8 texting, that I could -- Mr. Bushman, Shannon Bushman, and
9 William Sudweeks could both be available tomorrow in court at
10 9 a.m.

11 MS. CREEGAN: Your Honor, Government opposes recalling
12 Shannon Bushman simply just to get the same testimony that he
13 gave in trial. We think that's not an efficient use of the
14 Court's time. This day was set aside to handle this issue. If
15 the defendants can't produce their witnesses timely, we don't
16 think it's appropriate to waste more jury time by delaying trial
17 tomorrow.

18 MR. LEVENTHAL: Your Honor, I brought a copy of
19 Mr. Bushman's testimony at the first trial. And if the Court
20 does not want to hear from Mr. Bushman, then I'd like to make
21 that part of the record.

22 THE COURT: So what portion of Bushman's testimony
23 would you be seeking to proffer? I mean, obviously, all of it
24 you want to make part of the record, and that's fine. I don't
25 have any problem with that. But which part of it specifically

1 do you want me to consider?

2 MR. LEVENTHAL: Like the other witnesses, I believe
3 Mr. Bushman was also at the rally. So it would be along the
4 same lines as Lynch. Mr. Bushman went to the wash. He took
5 pictures. So it would be along the same lines. He was in fear
6 for his safety and he thought that he was going to be shot that
7 day as well. He testified to that at the first hearing.

8 There's a number of pages, but it would fall in line
9 with the other witnesses that we had proffer today in terms of
10 whether or not they were at the rally or at the wash. Shannon
11 Bushman would indicate that he was at both and he thought that
12 the cows were just being released and the BLM was standing down.

13 MR. MARCHESE: That's correct, Your Honor. And just to
14 elaborate a little bit more, Mr. Leventhal said --
15 specifically I remember his testimony was something to the
16 effect of he was somewhere in the vicinity of the upper
17 embankment on the southbound bridge. He was not in the wash.
18 He was unarmed. He had his camera, obviously. We saw numerous
19 pictures in which he took on the date in question.

20 And I believe his testimony was that on three separate
21 occasions, in his subjective thought process, he thought that
22 the BLM was pointing weapons at him. I believe he also
23 testified something to the effect of that he came up with some
24 sort of an escape plan, so to speak, meaning there was some sort
25 of concrete embankment or barrier that he thought in his mind if

1 they started shooting he was going to jump over onto the other
2 side.

3 THE COURT: All right. Any other witness besides
4 Mr. Bushman?

5 MR. TANASI: Mr. Sudweeks, Your Honor.

6 THE COURT: Spell the name, please.

7 MR. TANASI: S-U-D-W-E-E-K-S. First name William.

8 THE COURT: All right. And what is your proffer as to
9 Mr. William Sudweeks?

10 MR. TANASI: Mr. Sudweeks is also in line, Your Honor,
11 with the witnesses from today in that he's attending the rally,
12 understands that the Gold Butte was reopened, went to the wash
13 to watch the cows come home, and he also indicates that weapons
14 were pointed at him. So he's also a self-defense witness as
15 well.

16 THE COURT: Anyone else other than those people? And I
17 think you said there was the investigator and then the two Three
18 Percenters?

19 MR. TANASI: That's correct, Your Honor. And I think
20 the Defense has decided, I think at this point, that we're not
21 going to be calling the Three Percenters. So it would just be
22 those witnesses.

23 THE COURT: All right. So what's the Government's
24 position? You can either take them one at a time or all
25 together. We have Mr. Ken Rhoades, Mr. Michael Lynch, Wendy

1 Spencer, Derrel Spencer, Shannon Bushman, and Willie Sudweeks.

2 MS. CREEGAN: Your Honor, I have to admit that I'm not
3 clear on what -- how these witnesses support a self-defense
4 theory. So maybe it would be helpful to have an articulation
5 from the Defense of how they see this making out a cognizable
6 defense theory; because the witnesses aren't consistent with one
7 another and it's not clear to me what they're arguing the facts
8 are.

9 THE COURT: Well, it's clear from cross that none of
10 them say that they believed the individuals were not law
11 enforcement, and none of them say that they thought there was
12 excessive force being used, other than pointing weapons at them
13 and being afraid of the law enforcement officers who were
14 standing their ground and not coming over.

15 So it sounds to me like -- is the Defense proffer,
16 then, for the purposes of preserving any issue as to whether the
17 law regarding self-defense can be challenged as being other than
18 what its current state is today? That's kind of what I'm
19 assuming at this point; because what we're -- I don't want to
20 say stuck with. That sounds like -- but what the current state
21 of the law is, is again for -- that there is no -- that the law
22 does not recognize self-defense as a defense that can be used
23 when the victim is a law enforcement officer.

24 So we've got defenses here of mere presence. Other
25 types of defenses would be like, oh, an alibi defense. There's

1 a number of different kinds of defenses that the law recognizes.
2 Self-defense can be used to rebut the elements of a charge when
3 it's a civilian, but when we have what we have here, law
4 enforcement officers as the named victims in the superseding
5 indictment, then the law only recognizes two forms of
6 self-defense which go above and beyond the regular self-defense
7 that we're all used to seeing with civilians. And, instead, it
8 requires either under the U.S. v. Feola case, which is a U.S.
9 Supreme Court case, ignorance of the official status of the
10 person assaulted, which comes up when someone is in plain
11 clothes, say in the middle of the night serving a search warrant
12 on the wrong house. Those kinds of things.

13 Or, number two, is under the Span case, if there is an
14 excessive force defense. So not a force defense, but an
15 excessive force defense.

16 And it's clear that a law enforcement officer is
17 permitted to be in uniform, to take a position during an
18 operation, and to have a weapon. The pointing of the weapon
19 when people are not cooperating and obeying legitimate orders
20 and directions to leave the area, to move back, and so forth,
21 that could not be excessive force. As was pointed out by the
22 cross numerous times with every one of these individuals, that
23 there was no arrests. There was no shooting. There was not
24 even any law enforcement officer putting hands on any of the
25 individuals, no attempts, no attempts to arrest, no batons used,

1 no violence, no -- so the Court can't find that it's
2 subjectively reasonable to define the force used as being
3 excessive or that there's any evidence that the jury could
4 reasonably find that there was excessive force.

5 Numerous witnesses said that they knew that it was BLM,
6 or at least that they assumed that it was law enforcement. Or
7 they might not have known which agency specifically, whether it
8 was BLM or the sheriff or Metro or Park Police, but that they
9 were aware that it was law enforcement, whether or not they were
10 dressed in uniform or military or such.

11 So that was my understanding, is that we're just
12 preserving the record in case Feola and Span are overturned.
13 Feola's from 1975 so it's an older case, which could go either
14 way. I suppose you could say it's a long-standing rule or
15 things have changed and maybe that's not the case anymore. But
16 I can't ignore them, but I'm certainly permitting you to put
17 your evidence on the record so that it can be available for you
18 on appeal.

19 MR. MARCHESE: Sure. Did you want us to respond,
20 Your Honor?

21 THE COURT: Well, yeah. So the Government was asking
22 were you trying to lay a foundation for a Feola or a Span
23 situation?

24 MR. MARCHESE: Correct. It's an and/or. Obviously,
25 Your Honor has laid out the elements of both particular

1 defenses. Feola's, you know, if you don't know it's an officer.
2 Span is you do know it's an officer.

3 It's our belief -- it's our position that we would meet
4 both. Feola's obviously the standard one that you don't know if
5 it's law enforcement. I think there has -- I would agree that
6 the record is -- there is a little bit of both. Some are saying
7 they're not. And then, obviously, we also have Mr. Parker's
8 testimony, which the Court is well aware he was on the stand for
9 about a day and a half last time. There was some testimony in
10 reference to that.

11 But in reference to the Span that they know it's law
12 enforcement and it's their belief that there is excessive force
13 being used, and then they use only enough force that's necessary
14 under the circumstances. Now, obviously, the Government did
15 their cross, and they laid out that there was in fact no one
16 touched or anything along those lines. The only force that you
17 could argue was used would have been the pointing of the
18 weapons, but there's also the subjective belief of many
19 witnesses, including my client, which would be that they heard
20 that there was going to be shooting, that they were authorized
21 to use lethal force.

22 So based upon that, at that particular time, and the
23 totality of the circumstances, that is when Mr. Parker got down
24 in his prone position with his rifle. Didn't ever fire,
25 obviously. Never had his finger on the trigger, is the -- I

1 believe the evidence in this case.

2 So based upon that, I believe that we've shown a
3 threshold showing that all these unarmed people, some armed, but
4 many unarmed people in the wash inching forward, hear lethal
5 force. It's what Mr. Parker hears. Seeing these weapons.
6 Seeing snipers on the ridge. Seeing helicopters, aeriels, all
7 of these sorts of things, just the environment in general, based
8 upon that as the crowd is going forward, as he's hearing these
9 particular orders being given, and seeing what he sees, that's
10 when he gets down and applies, for lack of a better term, that
11 minimal force that was given.

12 So we believe that we've met that threshold, at least
13 just to get the self-defense instruction. Obviously, the
14 Government will have every opportunity to rebut that in
15 cross-examination, closing argument, whatever the case may be,
16 to say that, No, you haven't met that burden. And it's
17 obviously our burden. We need to -- we need to meet that burden
18 for the jury to find it.

19 So that's our position. And we've obviously got the
20 other witnesses, too. So I think, you know, it's not just one
21 witness. It's the aggregate. It's all of them together, just
22 building blocks up to get to that threshold. And we believe we
23 can meet it.

24 MS. CREEGAN: Well, the Government's position is that
25 uniformed officers with firearms standing in their position by

1 patrol vehicles aren't a part in any way of an excessive force
2 defense. They can't be cited as evidence of something that
3 allows somebody else to attack them. So they're saying the
4 situation, there were helicopters, none of those things is a use
5 of force. So none of those things count at all to that defense.

6 We have a crowd. All of the witnesses admitted it was
7 a large crowd. All admitted the crowd moved forward. As a
8 matter of law, self-defense is not available to an aggressor.
9 And when someone is acting in defense of others, they stand in
10 the shoes of the person that they're claiming to defend. You
11 cannot watch a crowd of hundreds advance on officers, ignoring
12 their orders, and say, I'm going to defend them as they aggress
13 on these officers.

14 Mr. Parker admitted in his testimony that he saw the
15 crowd move forward. Almost every witness has said -- I think
16 every witness has said there were armed people in the crowd.
17 They're asking a small group of law enforcement officers to be
18 overrun or be shot. Under these circumstances there -- even the
19 Span analysis, you don't even get there because you cannot have
20 self-defense for an aggressor. And every witness supported that
21 these people were the aggressors.

22 THE COURT: All right. Well, the Court agrees that
23 there is not sufficient testimony and evidence that's been
24 provided in these proffers to meet the requirement, the
25 essential elements, in Feola or in Span.

1 So, as I said it in my order in this case, 2138, on
2 page 4, any evidence related to those incomplete defenses would
3 then only serve to provide evidence of a nullification argument.

4 There is still the mere presence defense, and I agree
5 that that's still available. Let's see. We've got ...

6 So, we've got the test of whether a jury could
7 rationally find, and that's -- I know it refers to the jury.
8 It's for the Court's determination. So it's the Court's
9 determination that there is not sufficient to meet the standard
10 for the current state of the law under either Feola or Span.
11 But if that should change, you've got your record on appeal.
12 That's an interesting issue.

13 All right. So if we start back up at 10 a.m. -- no.
14 9 a.m., Aaron?

15 COURTROOM ADMINISTRATOR: 9 a.m.

16 THE COURT: Okay. 9 a.m. tomorrow morning, then the
17 Government is going to rest in front of the jury. And then it
18 will be up to the Defense if you want to exercise your right to
19 make an opening statement since it was earlier waived, and then
20 call any witnesses.

21 So would your investigator be available to begin at
22 9 a.m.? I think you said there was some measurements.

23 MR. TANASI: Mr. Preusch will be available.

24 THE COURT: 9:30?

25 MR. TANASI: 9:30, yes.

1 Your Honor, and just for the record, I just want to
2 make sure the Court also ruled against using those witnesses for
3 the res gestae arguments that we made yesterday, in addition to
4 the self-defense arguments.

5 THE COURT: How would they apply to res gestae?

6 MR. TANASI: Again, to tell the complete story and
7 rebut the Government's burden shifting of putting the crowd at
8 issue in the case and advancing the theory, from the
9 Government's perspective, that the crowd was this large
10 conspiracy where everybody involved in the crowd had the same
11 plan, the same purpose.

12 The witnesses that testified today, again, support the
13 notion that they hear the speech, they go to the wash, and at
14 some level they believe that the cows are going to be released.
15 And that's what they're going to watch. And so, again, that's
16 the same argument that our clients have in this case and their
17 purpose for being there.

18 And under that res gestae theory that I had argued
19 yesterday, the complete story of the case now needs to be told
20 in that the crowd's at issue and the crowd's purpose. And by
21 our clients simply being members of that crowd, now they're part
22 of a conspiracy; when all of the crowd, in fact, didn't believe
23 or think the same thing.

24 MS. CREEGAN: Your Honor, the Government's
25 understanding of res gestae is that it involves a fact which is

1 inextricably intertwined with the facts of the case and can't be
2 artificially exercised from the case and, therefore, there has
3 to be reference to it or else the story is told in a strange
4 way. But the story of what these defendants did on April 12 can
5 be told without reference to what Wendy Spencer experienced.

6 So we don't believe that is actually *res gestae*. It
7 appears to simply be irrelevant arguments of other people's
8 motives and intents, which cannot stand in as a proxy for what
9 these defendants' motives and intents were.

10 THE COURT: The Court agrees. It doesn't see how this
11 is *res gestae*. It's not inextricably intertwined.

12 So tomorrow, Thursday, we'll start at 9.

13 Will you have all of your witnesses ready and
14 available?

15 MR. MARCHESE: We will definitely be ready, Your Honor.
16 I did have one question. You know, obviously, I'm very mindful
17 of the Court's orders and I'm doing -- I want to do everything
18 that I can not to violate them.

19 Obviously, there's -- there's some -- the Government
20 filed the nullification motion referencing the pre-April 12th
21 events. I'm just finding myself in a little bit of a quandary
22 here in representing Mr. Parker in reference to that because
23 it's my position that some of these events go directly to some
24 of the elements of the crime, meaning the Government is alleging
25 that Mr. Parker and his codefendants traveled in interstate

1 commerce in aid of extortion. Basically, they're saying they
2 came from Idaho to Bunkerville to get cattle back.

3 Now, if -- hypothetically speaking, if I put Mr. Parker
4 on the stand, I'll ask him that. Did you go to get cattle? The
5 answer's going to be, No. But at that point I can't expand on
6 that, and I just see that it's very problematic for the jury
7 because we're not giving them the full picture.

8 I understand the Court's ruling, but then, also, we've
9 had numerous Facebook posts and things along that nature from
10 Mr. Parker talking about, When is the shooting going to start,
11 and all of these other things. And I can't ask him, What did
12 you mean by that, because we had numerous newspaper articles
13 which he's referencing along with these texts that are admitted
14 against him. So now when I put him on the stand and say, Did
15 you see exhibit whatever, I can't ask him about it because he's
16 going to start referencing these pre-4/12 incidents.

17 So, I don't know if the Court can give me any guidance
18 on that, I mean, because I just -- I don't want to violate the
19 Court's order, but I just -- I don't see how I'm able to defend
20 Mr. Parker without being able to comment on the Government's
21 evidence that they've put into evidence against him.

22 THE COURT: Okay. So the events prior to 4/12 that
23 you're referring to were not put into evidence by the
24 Government.

25 MR. MARCHESE: Well, right, but it's -- when they're

1 using his Facebook posts and they have articles, and to put them
2 into context, you know, Where are you going to be when the
3 shooting starts, or whatever that exact post was, that's a
4 problem because I can't ask him, Well, what did you mean by
5 that. And then he's going to get into all of this stuff that
6 the Court said, No, you can't get into.

7 But even more importantly, I think when we look
8 directly at some of the elements of the offenses such as
9 conspiracy, such as traveling in interstate commerce in aid of
10 extortion, that's a direct element, what his intent was when he
11 came here.

12 So that's my problem. I mean, it's almost as if I have
13 to stipulate, or all of us have to stipulate to that -- to those
14 charges, or at least that element of the charge.

15 THE COURT: Well, I can't give you advice on how to ask
16 the question or how to get his state of mind regarding each of
17 his posts.

18 MR. MARCHESE: Okay. I'll do what I can to --

19 THE COURT: If there's something that you want to
20 address outside the presence of the jury if you think that it's
21 going to call too many objections and you want to get a more
22 clear ruling with, you know, more specificity of what questions
23 you're going to ask or what the answers are; but, otherwise, I
24 think it's just too vague. I can't give you a ruling other than
25 I think the limit you already know. So I'm not sure what else

1 more I could actually --

2 MR. MARCHESE: Right. And I understand where the
3 Court's going --

4 THE COURT: -- say that can be helpful.

5 MR. MARCHESE: I apologize for cutting you off.

6 I understand where the Court's going in reference to
7 the exhibits. I probably should have specific exhibits and we
8 could address it. But just in reference to the general charges
9 themselves, I mean, that is an element. An element is, why did
10 you come, what was your intent, was your intent to come here to
11 extort, was your intent to come here to enter a conspiracy, all
12 of these different things. And I would argue that these events
13 are specifically and directly relevant and related to the actual
14 elements of some of the charges. So I just don't see how I can
15 defend this man fully without telling the full story.

16 I mean, I just feel that I'm -- I have to literally
17 overlook elements of the offense because I cannot explain what
18 his intent was.

19 THE COURT: Fine. So your point is noted for the
20 record.

21 I understand what you're saying about the full story,
22 but I'm not sure that -- I have some cases, but I'm not going to
23 get into any details at this point. But there's a difference
24 between telling the full story and what the law permits as
25 relevant evidence. And it has to be probative to an element.

1 So, for example, the intent to extort means the intent to take
2 something of value, property, that doesn't -- that there's no
3 right to have. So telling the entire story, what I was wearing,
4 what I read, when I read it, what I saw, may or may not address
5 that.

6 So to the extent that it addresses it, it would be
7 permissible, but if it doesn't rebut that intent element -- and
8 there's a lot of different offenses here, right, so a lot of
9 different intents, but -- so the Supreme Court has made clear
10 that the right to present evidence is not the right to present
11 any evidence at any time about anything. It has to be probative
12 and relevant.

13 So I think that's where the quandary is, wanting to
14 tell the complete story, but if parts of that story are not
15 relevant and probative, that's why they're not admissible.

16 All right. So, it looks like we've made as much
17 progress as we can today. We'll be back here then at 9 a.m.
18 tomorrow morning.

19 Hopefully Mr. Lovelein will be available to join us,
20 Mr. Perez?

21 MR. PEREZ: He will be.

22 THE COURT: You'll have an opportunity to speak with
23 him, I hope, and --

24 MR. PEREZ: Yes, Your Honor.

25 THE COURT: -- see if there's anything that we can do

1 to help him out so that he may attend tomorrow.

2 All right. So we're off record. Thank you for your
3 patience.

4 MR. TANASI: Thank you.

5 (Whereupon proceedings concluded at 4:20 p.m.)

6 --oOo--

7 COURT REPORTER'S CERTIFICATE

8
9 I, PATRICIA L. GANCI, Official Court Reporter, United
10 States District Court, District of Nevada, Las Vegas, Nevada,
11 certify that the foregoing is a correct transcript from the
12 record of proceedings in the above-entitled matter.

13

14 Date: August 12, 2017.

15

/s/ Patricia L. Ganci

16

Patricia L. Ganci, RMR, CRR

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CCR #937

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,)	
	)	Case No. 2:16-cr-00046-GMN-PAL
Plaintiff,)	
	)	Las Vegas, Nevada
vs.	)	August 10, 2017
	)	9:31 a.m.
ERIC J. PARKER (11), O.)	
SCOTT DREXLER(12), RICHARD)	
LOVELIEN (13), and STEVEN A.))	
STEWART (14),)	
)	
Defendants.	)	Day 19

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE GLORIA M. NAVARRO
UNITED STATES DISTRICT COURT CHIEF JUDGE, AND A JURY

APPEARANCES:

For the Government:

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ERIN M. CREEGAN, SAUSA
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Appearances continued on next page.

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Proceedings reported by machine shorthand, transcript produced
by computer-aided transcription.

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17 Also present:

18 Sharon Gavin, Special Agent FBI
19 Joel Willis, Special Agent FBI
Chris Allen, Bureau of Land Management
20 Mike Abercrombi, FBI
Mamie Ott
21 Nona Dodson
Tori Bakken
22 Brian Glynn

23

24

25

1 (Thursday, August 10, 2017, 9:31 a.m.)

2 --oOo--

3 P R O C E E D I N G S

4 (Jury out.)

5 THE COURT: You may be seated.

6 COURTROOM ADMINISTRATOR: This is the time set for
7 Jury Trial, Day 19, in Case No. 2:16-cr-046-GMN-PAL, United
8 States of America versus Eric Parker, O. Scott Drexler, Ricky
9 Lovelien and Steven Stewart.

10 THE COURT: Now, before we get started and bring in
11 the jury, let me remind everyone about the expectations
12 regarding the conduct of everyone in the courtroom.

13 Please do remember that this is a courtroom. It is
14 not a sporting event. So, it is never appropriate to show any
15 display of your reactions or feelings regarding anything that
16 you see or hear, no matter how much you agree or disagree with
17 what is being said.

18 There should be no audible expressions, no body
19 expressions, or any disruptive conduct of any kind. The
20 marshals are authorized to remove anyone who does exhibit such
21 inappropriate conduct. Likewise, the defendants are aware that
22 we do have a room right next door, a holding room with a
23 speaker system set up, so that they may continue to listen to
24 the trial if they are not able to stay in the courtroom and
25 waive their right to be present in the courtroom through the

1 display of inappropriate conduct.

2 We also have a rule about electronic devices. There
3 are no electronic devices permitted in the courtroom, so please
4 take a moment to check and make sure that you do not have any
5 kind of electronic devices, whether they be phones, laptops,
6 even if they are on the -- turned off, or private mode, or
7 vibrate mode settings, they are not permitted in the courtroom.
8 There is no recording permitted in any of the federal courts,
9 no audio recording and no video recording.

10 The attorneys are permitted to have electronic
11 devices. They do use them to review their notes, discovery,
12 present evidence and so forth. So, they are permitted to have
13 those. Likewise, the security officers in the courtroom also
14 are permitted to have electronic devices for communication
15 purposes.

16 So, anything we need to address before we bring in
17 the jury?

18 MR. MARCHESE: Your Honor, I do have one housekeeping
19 matter. I still have my opening statement, which I reserved.
20 And I plan on giving a very brief one.

21 After that, I plan on calling Mr. Parker. I don't
22 know how the Court wants to work it with his chains. If I give
23 a brief opening statement, and we just take a break, it might
24 be a little odd. But I just wanted to bring that to the Court
25 and the marshals.

1 THE COURT: All right. So, that will be your first
2 witness?

3 MR. MARCHESE: Correct.

4 THE COURT: All right.

5 Mr. Leventhal?

6 MR. LEVENTHAL: And -- yes. And we are not going to
7 be calling our investigator or any of the other witnesses that
8 we indicated we would, which kind of throws a wrinkle in my
9 preparation with Mr. Drexler.

10 Last weekend, we all went to go see them at their
11 housing unit. And because of my foot, I had to leave early. I
12 didn't get a chance. So, I know that we are going to spend a
13 majority of the day with Mr. Parker today. I would have that I
14 be given the chance to discuss with Mr. Drexler his right to
15 testify, as well as Mr. Stewart, and go thoroughly through
16 that.

17 And, obviously, we talked about it, but now that the
18 case is where it's at, if there's anything that he wants to,
19 you know, fill in, not fill in, and so I haven't had that
20 conversation with him. So, I would be requesting that Monday
21 morning, that if he decides that he wants to testify, that
22 that's when he does that, just so I can have a few days in
23 preparation.

24 We went there last weekend to do it, but I had to
25 leave early because of my medical problem. But that's all that

1 we ask for. But we have no other witnesses, then based on
2 yesterday's testimony of the four witnesses that we have.
3 There's nobody else.

4 THE COURT: All right. Mr. Tanasi?

5 MR. TANASI: Yes. Your Honor, at this time, my
6 client actually is not going to be testifying.

7 THE COURT: And Mr. Perez.

8 MR. PEREZ: Mr. Lovelien will not be testifying
9 either, Your Honor.

10 THE COURT: All right.

11 MR. TANASI: But I can also attest to Mr. Leventhal's
12 representations to the Court that we were all there last week,
13 and his foot was killing him, and he wasn't there for the
14 entirety of the meeting as well.

15 THE COURT: All right. Thank you.

16 And welcome back to Mr. Lovelien. I do sympathize
17 for your loss, and I'm glad that you are able to join us this
18 morning.

19 All right. So, I will have the marshals please
20 remove Mr. Parker's leg shackles, so that he may be able to be
21 called to testify this morning without needing to take another
22 break.

23 MR. MARCHESE: Thank you.

24 THE COURT: Thank you.

25 So, Aaron, do you want to go ahead and go fetch the

1 jury?

2 COURTROOM ADMINISTRATOR: Yes, Your Honor.

3 THE COURT: Thank you.

4 (Jury in.)

5 THE COURT: The jury may go ahead and be seated.

6 Good morning and welcome back.

7 All right. So, we are resuming today.

8 Does the government have another witness to call?

9 MR. MYHRE: No, Your Honor. The government rests.

10 THE COURT: All right. Well, before we proceed, we
11 should have the attorneys make their presence on the record in
12 front of the jury. So, let's go ahead and do that.

13 Mr. Myhre.

14 MR. MYHRE: Good morning, Your Honor. Good morning
15 ladies and gentlemen of the jury. Steven Myhre, Erin Creegan,
16 Nadia Ahmed on behalf of the United States.

17 THE COURT: Good morning.

18 MR. TANASI: Thank you. Good morning, folks.
19 Richard Tanasi, Steven Stewart. Also with us at counsel table
20 is Tori Bakken and Brian Glynn. Thank you.

21 THE COURT: Good morning.

22 MR. MARCHESE: Good morning, Your Honor. Good
23 morning, ladies and gentlemen. Jess Marchese on behalf of Eric
24 Parker.

25 MR. LEVENTHAL: Good morning, everyone. Todd

1 Leventhal on behalf of Scott Drexler.

2 THE COURT: Good morning.

3 MR. PEREZ: Good morning everyone. Shawn Perez on
4 behalf of Ricky Lovelien.

5 THE COURT: All right. We had some openings made by
6 the defendants at the beginning of trial, but there was a
7 reservation of an opening made by Mr. Marchese on behalf of his
8 client, Mr. Parker.

9 So, would you like to invoke that right to present
10 your opening statement now?

11 MR. MARCHESE: I would, Your Honor. Thank you very
12 much.

13 THE COURT: Let's go ahead and do that. Do we need
14 to move the podium?

15 MR. MARCHESE: Nah, I got it here.

16 DEFENDANT PARKER'S OPENING STATEMENT

17 Good morning, everyone. If you just forgot between
18 the last minute, I'm Jess Marchese, and I represent this
19 gentleman in the blue plaid shirt right there. His name is
20 Eric Parker.

21 As Her Honor pointed out to you a short while ago, I
22 reserved my right to give an opening statement. And basically
23 what an opening statement is, what I believe the evidence will
24 show throughout the case.

25 Now, obviously, you've heard the government put on

Defendant Parker's Opening Statement

1 their case in chief for the past month or so, and now it's our
2 opportunity for us to put on a case and show you what we
3 believe the evidence will show.

4 But I'm not going to do that in my opening argument,
5 just for the simple fact that very, very shortly, as soon as
6 I'm done here, Eric Parker is going to get on the stand, and
7 he's just going to tell what you the evidence is. Because what
8 I tell you is not evidence. It's just my belief; what I think
9 the evidence is going to show.

10 But what Eric Parker tells you is actually evidence.
11 And what he's going to tell you is that in April of 2014, he
12 was living up in Idaho. And he starts looking on the Internet,
13 and he hears and sees all these things. They are occurring in
14 Bunkerville, Nevada. All -- many of the things that we've
15 heard about for the last month or so.

16 He doesn't know any of these individuals. He's never
17 heard of a Cliven Bundy. He's never heard of an Ammon Bundy.
18 None of those things. And he starts seeing all these things on
19 the Internet and all this chatter. And as a result, he decides
20 that he's going to come to Bunkerville, Nevada. Not for cows.

21 Ladies and gentlemen, you're going to hear that Eric
22 Parker -- he's an electrician. He's not a rancher. He has no
23 dog in the fight, so to speak, that Mr. Bundy was having with
24 the federal government and the BLM.

25 No, that's not the reason that he came. So, at that

Defendant Parker's Opening Statement

1 point, as the evidence will show, he talked to a couple of his
2 buddies; Steven Stewart, who he's known for a long time, since,
3 I believe, they went to elementary school together, and another
4 friend of his, Mr. Scott Drexler.

5 And they got into Eric's truck, and they went down to
6 Bunkerville. And when they went down to Bunkerville, he didn't
7 know anyone. He didn't know Ricky Lovelien. He didn't know
8 Ryan Payne or any of the Bundys, none of those people. The
9 only people that they knew were the three of them, the three
10 boys from Idaho, so to speak.

11 And they got there, and they stayed overnight. And
12 at some point in time, as you heard earlier in the case, they
13 heard a speech. A couple people gave speeches. Ammon Bundy,
14 Cliven Bundy's son, gave a short prologue to that speech. Then
15 the Sheriff, Sheriff Doug Gillespie spoke. And then lastly,
16 Cliven Bundy spoke.

17 And based upon that, you'll hear Eric testify that it
18 was his belief that the cows were going to be released, and
19 that the Gold Butte area or allotment was now reopened to the
20 public. He didn't really know too much about the Gold Butte
21 allotment. He had never been there. Never even been to
22 Bunkerville before in his life the evidence will show.

23 So, he stood around. He waited. And you heard the
24 speeches, and you will hear them again. And then at that
25 point, Cliven Bundy got up on the stage. And after he had

Defendant Parker's Opening Statement

1 previously made some demands to the sheriff, that you will hear
2 that Eric thought were, quite frankly, ridiculous, he gave a
3 second speech. And Eric will tell you what he thought, and
4 what was going through his mind, and why he went to the wash.

5 And correct -- the government is correct in that Eric
6 went in the truck of Mr. Ricky Lovelien, who he had just met
7 that morning. He had no contact, no communication, no ties
8 whatsoever with Mr. Lovelien except that morning.

9 And he went over to the wash. And he gets there, and
10 he gets out of the truck with his friends. And at that point,
11 he starts to hear some commotion, and he starts looking at his
12 environment.

13 And you are going to hear why he went from the
14 parking area to the bridge, the northbound bridge. And you are
15 going to hear what he saw, what he did, and why he did what he
16 did when he was on the bridge.

17 And, yes, he will admit -- he will get on the stand
18 and concede that all those pictures that we've seen for the
19 last month of him laying down on the bridge, yes, that's him.
20 But he's going to explain why he did what he did. He will
21 explain that it was not to assault federal officers. It was
22 not to threaten federal officers. He didn't do it to extort
23 cattle. There was nothing about that, ladies and gentlemen.

24 This case is not about cattle for Mr. Parker. It
25 might be for some other people, but our case in chief is going

Defendant Parker's Opening Statement

1 to show that for Mr. Parker, this case was, in fact, about many
2 other things. And that at some point in time, he obviously got
3 up, and he gave that interview that you saw on the bridge where
4 Mr. Stewart and Mr. Drexler were kind of in the background, and
5 Mr. Stewart was talking to the young ladies.

6 And he's going to explain that. Because that's
7 really -- I think the whole speech is approximately 90 seconds
8 or so. But he's going to explain exactly what he said. He's
9 going to exactly -- he is going to explain what it means. Why
10 he said "Get on a bridge and show force."

11 He's going to explain his Facebook posts about why he
12 said "Get the cattle back by any means," or something along
13 those lines. And then the evidence will show that after he was
14 on that bridge, he left Bunkerville very, very shortly
15 thereafter.

16 He didn't hang around for -- I believe there was some
17 sort of a speech the government showed in their -- in their
18 case in chief. He didn't hang around for that. Him, Steven,
19 and Scott got back into Eric's truck and went back to Idaho,
20 and they never returned again.

21 So, ladies and gentlemen, that's just a quick
22 snapshot, a quick summary of what we believe our case in chief
23 and our evidence is going to show. And with that, I will ask
24 you to keep everything in mind, keep an open mind, do not make
25 a decision yet until you hear all the evidence.

Eric Parker - Direct

1 But we are confident that once you hear all the
2 evidence, we believe that you are going to return not guilty
3 verdicts for Mr. Parker. Thank you for your time. And with
4 that, we will call our first witness, who, as I said, is
5 Mr. Parker.

6 THE COURT: You may go ahead and take the witness
7 stand.

8 ERIC PARKER,
9 having been duly sworn, was examined and testified as follows:

10 COURTROOM ADMINISTRATOR: State your full name and
11 spell it for the record.

12 THE WITNESS: Eric Parker, P-A-R-K-E-R.

13 THE COURT: You may go ahead.

14 MR. MARCHESE: Thank you, Your Honor.

15 DIRECT EXAMINATION

16 BY MR. MARCHESE:

17 Q. Eric, turning your attention to April of 2014, where were
18 you living?

19 A. Hailey, Idaho.

20 Q. How long have you lived there for?

21 A. A little under 10 years.

22 Q. Okay. What were you doing for a living at that time?

23 A. I'm an electrician.

24 Q. Do you have any background in ranching?

25 A. No.

Eric Parker - Direct

1 Q. Who were you living in Idaho with at the time?

2 A. My wife and my two kids.

3 Q. Okay. Now, I want to focus your attention on the
4 gentleman in the white shirt and the black tie there, Steven
5 Stewart. Do you know him?

6 A. I do.

7 Q. How do you know him?

8 A. We've been friends for a long time, since -- since we were
9 kids.

10 Q. Okay. And you kept in contact with him the whole time?

11 A. Yeah. Yeah, more or less. We didn't always live in the
12 same town, but he ended up moving to Hailey as well from
13 Northern Nevada.

14 Q. All right.

15 A. Where we grew up.

16 Q. Now, in April of 2014, would you have considered him a
17 friend?

18 A. Yeah, absolutely.

19 Q. Okay. Now, I want to talk about the gentleman with the
20 white shirt, Mr. Scott Drexler. Did you know him back then?

21 A. Yeah. We knew each other less than Scott -- Steve and I.
22 We mostly talked on the Internet. He lived in the county north
23 of me in Idaho.

24 Q. Okay. What's the name of that county?

25 A. Custer County.

Eric Parker - Direct

1 Q. And how long had you known Mr. Drexler?

2 A. Maybe about a year.

3 Q. Now, turning your attention to the same time period, April
4 of 2014, generally speaking, had you heard or seen or come to
5 know of anything in reference to what was going on with
6 Mr. Cliven Bundy?

7 A. I'm sorry. At what point?

8 Q. In April of 2014.

9 A. Yeah, it was, you know, probably around the 8th to the
10 10th that I first heard about it.

11 Q. Okay.

12 A. Saw stuff about it.

13 Q. And just without getting exactly into what you heard and
14 saw yet, how did you find out?

15 A. Just across the Facebook feed, stories started popping up
16 about what was going on down there.

17 Q. Now, this Cliven Bundy individual, did you know Mr. Cliven
18 Bundy at the time?

19 A. No.

20 Q. Okay. Did you know any of the Bundy family members at
21 that time?

22 A. No.

23 Q. And Brian, if we can go to Exhibit 88, please.

24 Okay. Eric, do you see this Facebook post here in
25 the middle?

Eric Parker - Direct

1 A. Yeah, the -- yes, I do.

2 Q. Okay. Is -- is that your Facebook?

3 A. As far as I'm -- I understand, it's the -- the warrant
4 return, so it doesn't like look Facebook, but, yeah.

5 Q. Okay. But you don't dispute that's you?

6 A. No, I do not.

7 Q. Okay. And this particular post, when is it made?

8 A. The 9th. 9th of April.

9 Q. All right. Now, we had a lot of testimony about Facebook.
10 Just right now I want to focus on the text. See that portion
11 right there?

12 A. I do.

13 Q. Okay. So, on April 9th, 2014, the text, is that something
14 that you wrote?

15 A. It is.

16 Q. Okay. Explain to the jury what you meant when you typed
17 that post?

18 A. So, I came to learn that, in this situation with the
19 Bundys, there was snipers above their ranch house.

20 MR. MYHRE: Objection, Your Honor.

21 THE COURT: Sustained.

22 BY MR. MARCHESE:

23 Q. Now, let me -- let me ask you about this. So, there is
24 this Elko Light Foot Militia; correct?

25 A. Yes.

Eric Parker - Direct

1 Q. And that's part of your post; correct?

2 A. Yeah, technically. It's where I saw the -- the article,
3 interview.

4 Q. Okay. You said an article/interview?

5 A. I don't know for sure exactly -- I shared a lot of them.
6 And in this format, I don't really -- it doesn't help me
7 remember exactly which one it was I was sharing right there.

8 Q. When you say a lot of them, approximately how many
9 articles did you share?

10 A. Did I share?

11 Q. If you know.

12 A. Less than 10. I saw more than that though.

13 Q. Okay. And when you say articles that you shared, what
14 were those articles referring to?

15 A. The -- the situation in Southern Nevada, the things that
16 were going on down there. The -- the escalation that was
17 occurring down there.

18 Q. Okay. And Brian, if we can now bring up Exhibit 89.

19 Okay. So, this is another post that you admit that
20 you made; correct?

21 A. Yes, sir.

22 Q. Okay. And this is April 10th, so this is one day after
23 the one that we've seen prior; correct?

24 A. Yes, sir.

25 Q. All right. Now, on this particular post, we have had some

Eric Parker - Direct

1 testimony about this particular article right here. Do you see
2 that? The militia's mobilizing article?

3 A. Yes.

4 Q. Okay. Is that an article that you personally viewed?

5 A. Yes.

6 Q. Okay. There was some testimony previously about the video
7 regarding Ryan Payne. Do you remember that?

8 A. I remember the testimony, yes, sir.

9 Q. Okay. On April 10th of 2014, did you know Mr. Payne?

10 A. No.

11 Q. This article from the Review Journal -- I mean, the --
12 excuse me -- the video from the Review Journal, did you view a
13 video from the Las Vegas Review Journal on April 10, 2014, that
14 was linked to a Ryan Payne video?

15 A. I -- I really don't think I did. I don't remember
16 watching any video with Ryan Payne in it. I remember from the
17 article -- the key things I remembered from the article were
18 the First Amendment zone --

19 MR. MYHRE: Objection, Your Honor.

20 THE COURT: Sustained.

21 BY MR. MARCHESE:

22 Q. We'll get into those items shortly, Eric.

23 And if we could switch to Exhibit 91, please, Brian.

24 Okay. If we can go to the bottom.

25 Eric, this is another post that you made, actually,

Eric Parker - Direct

1 April 11th. Do you see that up there?

2 A. Yes.

3 Q. And it says April 12th, but based on your recollection,
4 would that have been made the day before?

5 A. As I understand it, yeah.

6 Q. And why do you say as you understand it?

7 A. The UTC time and stuff like that.

8 Q. Now, this particular article, this was another article
9 that you shared; correct?

10 A. Yes.

11 Q. Is it an article that you personally viewed?

12 A. Yes.

13 Q. Okay. Now, based on this article, was this something
14 that -- well, let me ask you this.

15 At some point in time, you made the decision to go to
16 Bunkerville; correct?

17 A. I made the decision to --

18 Q. To go to Bunkerville; correct?

19 A. Yes, sir.

20 Q. All right. Was this article something that aided your
21 decision to do so?

22 A. This and the other ones, yes.

23 Q. That was my next question. So, you said you looked at or
24 shared approximately somewhere from 5 to 10? Is that fair to
25 say?

Eric Parker - Direct

1 A. Safe assumption, yeah.

2 Q. Okay. And those articles that you viewed -- personally
3 viewed and some of them which you shared on your Facebook
4 profile, those were articles that aided in your decision to go
5 to Bunkerville; correct?

6 A. Yeah. It wasn't just the articles though. It was the
7 videos I had seen, too.

8 MR. MYHRE: Objection, Your Honor.

9 THE COURT: Do we need a sidebar?

10 MR. MYHRE: Yes, Your Honor.

11 (Sidebar.)

12 THE COURT: Mr. Myhre, your objection.

13 MR. MYHRE: Your Honor, he's about to go into videos
14 that he viewed, which would be the videos of the Bunkerville,
15 the tasing of the -- the David Bundy arrest, all of those
16 things that we have already addressed in the order.

17 He's already twice now has attempted to talk about
18 First Amendment zones; attempted to talk about snipers on the
19 ridge. It's clear he's going up there to violate the Court's
20 order.

21 Mr. Marchese's statement, I applaud him for not going
22 into those areas, but it's clear from his statement that the
23 testimony he's going to be adducing, his reasons for being on
24 that bridge, as we've already heard from his prior testimony in
25 the previous trial, go to all these issues, the 6th, the 9th,

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1 the tasing, the First Amendment zones, snipers, helicopters,
2 drones, snipers on the ridge, BLM shooting people in the wash,
3 all those things, Your Honor, that go to jury nullification
4 that the Court has already precluded in its order.

5 MR. MARCHESE: Well, a few things. I specifically
6 was very vague and general in my opening statement, because I
7 needed to lay the proper foundation before I even attempted to
8 get into that.

9 And when I would ask him questions, I would say
10 things like, generally, did this aid your decision to come and
11 things like that. So, I was very -- walking that tight line,
12 that tightrope in order to not violate the Court's order.

13 But it's my position, at this point, that we should
14 be allowed to get into it for many reasons. First of all,
15 these are exhibits that the government has entered into
16 evidence against Mr. Parker. I believe he has the right to
17 explain them.

18 I mean, basically, we're just left with what the
19 posts say. Some of the titles of these arguments -- or these
20 articles are somewhat inflammatory. I believe he needs to be
21 able to explain that.

22 Further, I believe the government has already opened
23 the door to a lot of them. We had some posts that were entered
24 in in reference to protesters getting arrested. Clearly, I
25 think that a good argument can be made that that references the

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1 David Bundy arrest.

2 Further, the government entered in a video. I think
3 it was through Agent Sully of when he went undercover at
4 that -- one of the earlier speeches. If you look on the
5 backdrop at that speech, there's a picture of David Bundy's
6 face. There's also pictures of the snipers on the ridge. So,
7 I think basically, by that, I think the government has opened
8 the door to that.

9 The article from the Las Vegas Review Journal, which
10 they've -- you know, they say is the Ryan Payne video, and it's
11 the Ammon Bundy tasing. It was taken down. I'm not saying it
12 was never the Ryan Payne video, but it was taken down. I have
13 it written down. It was on -- it was updated on April 9th,
14 2014, at 10:44 p.m. It's still up, if the Court wants to view
15 it. And it's the Ammon Bundy tasing.

16 So, I think Mr. Parker has the right to defend
17 himself and say, "No, that's not the video I saw," and show the
18 video that he actually saw. Because it's -- it goes clearly to
19 the things that I got into yesterday, that we have elements of
20 the crime, which are him traveling in interstate commerce,
21 to -- in aid of extortion. We have conspiracy. We have all
22 these other things.

23 And if he's there for the First Amendment zones, if
24 he's there because of David Bundy, if he's there because of
25 Ammon Bundy, if he's there because of Margaret, it's our

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1 contention that that nullifies -- maybe poor choice of words --
2 but that vitiates that element to the crime.

3 Otherwise, I'm just -- the only thing I can ask him
4 is "Did you go there to get the cattle?"

5 "No."

6 "Why did you go there?"

7 "Objection." I mean, I can't properly defend my
8 client based upon this. I do not intend upon getting into the
9 Sandoval statements. I read the Court's order. I tried to
10 figure out a way legally in which I could get it in, and I hate
11 to say I agree with Mr. Myhre on that.

12 But the other things, I think, are fair game at this
13 point, which is just simply; A, commenting on the evidence; B
14 rebutting the evidence, some of which the government has
15 already opened the door to; and, C, defending Mr. Parker in
16 reference to essential elements of the crime.

17 THE COURT: So, how would that evidence -- the
18 evidence that you're attempting to elicit, how would that rebut
19 the charges?

20 MR. MARCHESE: Well, the government's theory of the
21 case, or a lot of their theories of the case, is that there was
22 a call to arms. And the call to arms is brought out, and all
23 these different people, including Mr. Parker, came to
24 Bunkerville in order to aid Mr. Cliven Bundy in getting his
25 cattle back.

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1 Based upon that, I think we have the right to say:
2 "No, that's not why he went to Bunkerville. He went to
3 Bunkerville for all these other reasons and not for cows." The
4 reason I asked him, "Do you have any -- do you know the Bundys?
5 Do you have anything to do with ranching?"

6 THE COURT: So, how do those other reasons, that you
7 call them -- how do they rebut the charges?

8 MR. MARCHESE: It shows he did not travel in
9 interstate commerce in aid of extortion.

10 THE COURT: How does it show that?

11 MR. MARCHESE: Because he had other reasons. There
12 has to be a reason that he went. I mean, it wasn't as if he
13 just decided, "Oh, I am going to Bunkerville on vacation."

14 I mean, he had never been there before. He had no
15 ties whatsoever. The reason that he went there was for the
16 reasons that I've previously proffered. It had nothing to do
17 with cattle. It had everything to do with these other issues.

18 THE COURT: But it's still in response to the call
19 for arms by the Bundy family.

20 MR. MARCHESE: Well, I disagree with that, that
21 that's the reason he went. I mean, it's our assertion, and
22 it's always been our assertion, and it's always been Eric's
23 statement consistently he went because of First Amendment zone;
24 he went because people were getting hurt.

25 THE COURT: As represented by the Bundy family in

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1 their request for assistance, because that's -- the problem I
2 am having is I am not seeing how it would rebut, other than
3 give an alternative defense that the law does not recognize.

4 So, I'm not seeing how -- well, I will let the
5 government speak, but I think I still have questions.

6 MR. MYHRE: Yes, Your Honor. Well, as to the issue
7 of Mr. Parker presenting a defense, Mr. Parker has the right to
8 present a defense. He doesn't have a right to introduce
9 inadmissible evidence. Nor does the fact that admissible
10 evidence, such as the exhibits we've admitted and the Court has
11 admitted -- nor does that open the door to inadmissible
12 evidence.

13 The -- Mr. Marchese's mixing motive and intent. He's
14 trying to say his client or is trying to advance proof that his
15 client had a good motive to commit a crime. That he was doing
16 all these things for good reasons.

17 That's no different than the cases we've cited in our
18 brief, where you can't say, "Oh, my defense to burning down the
19 abortion clinic was because I oppose abortion, for all these
20 reasons. Look at all the horrible things."

21 THE COURT: And all the videos that I've seen on the
22 Internet about what they do at the clinics. Right.

23 MR. MYHRE: The horrible things that are -- the
24 photographs that we've seen and so forth. It's the same thing
25 here.

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1 And to introduce -- the case law is clear. The
2 reasons aren't admissible to show a good motive. It just
3 isn't. And when we go down this slope, the probative value is
4 zero, as the Court has already pointed out. It doesn't point
5 it out. It doesn't rebut any element of the offenses.

6 All it does is show an alternative motive. It has
7 zero probative value, and the prejudice is extremely high given
8 the -- you know, they are basically blaming the victim, and
9 these are the horrible things the victim has done. And that --
10 that is very prejudicial to the government's case.

11 THE COURT: So, I think what your -- what the defense
12 is trying to target is the intent during the travel before
13 arriving in Nevada. So, this is probably not a great example.

14 But, for example, say his grandmother lived here, and
15 she was sick, and he was on his way to Nevada because she's
16 sick. And after he gets to Nevada, he finds out about
17 something and decides to join. Then perhaps that would go to
18 his intent, right, while he's traveling if he doesn't form
19 intent until he's here. That sort of a situation.

20 But what we've got here still seems to be an
21 explanation that he's trying to provide that isn't actually a
22 legal rebutting. It doesn't rebut the intent element.

23 So, I am counting. We have got three objections so
24 far. The first one is when he tried to talk about snipers
25 being at the Bundy Ranch. The second one was when he tried to

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1 talk about the First Amendment. And then this third one is
2 talking about or attempting to talk about the video tasing.

3 And that's in less than 10 minutes he's already tried
4 to get three different things, three different areas that we've
5 specifically -- the Court has specifically admonished him, and
6 I believe Mr. Marchese probably has, too, because you are an
7 honorable officer of the Court. And I think that was --

8 MR. MARCHESE: And if I could be clear.

9 THE COURT: -- something I was just assuming. But do
10 we need to take a break for you to admonish him that if he
11 keeps trying to answer the questions by referring to evidence
12 that we've already ruled is not admissible, that he's going to
13 waive his right to testify or look really bad in front of the
14 jury, one or the other or maybe both? But --

15 MR. MARCHESE: We have all -- Mr. Tanasi, and
16 Mr. Leventhal, and myself, one of the reasons for our meeting
17 on Saturday was they were all furnished a copy of the Court
18 order, which they are already aware of, but we just gave them
19 one physically so they have it.

20 My instructions to Mr. Parker, as we were -- in
21 reference to him testifying, was until I ask you specific
22 questions, just be general, just be vague, and then if the
23 objections get lodged, we can sort it out as need be.

24 So, that was my -- those were my instructions to him.
25 I understand the Court's ruling in reference to the elements of

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1 the defense, but at the same time, is he allowed to comment on
2 the evidence?

3 I mean, we have these Facebook posts. I can't ask
4 him what they say, or what they do, or why did you post them?
5 That's the issue. The government, in my opinion, has opened
6 the door.

7 MR. MYHRE: Again, Your Honor, it goes -- the -- the
8 Facebook postings themselves do not explain all of these issues
9 that we've just talked about. And so now we're going behind
10 the Facebook posting to inadmissible evidence. And I -- I fail
11 to see the argument that somehow that is prejudicing the
12 defendant.

13 He can talk about the Facebook posts, that's there.
14 That he did it, or didn't do it, or somebody else did it. But
15 going into the reasons for it, again, is -- is going to this
16 improper showing of "I've got a good motive to commit this
17 offense."

18 So, I guess I'm just not seeing the connection here
19 between the Facebook postings and then going -- looking behind
20 the Facebook postings and saying, "Oh, here is my whole host of
21 reasons why I did that."

22 How that's any different than what we just talked
23 about in terms of why I burned down the abortion clinic, I just
24 don't --

25 MR. MARCHESE: I understand that, and I agree and

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1 respect the Court's ruling. And I have made my record, and it
2 is what it is. If we lose, then, you know, we made a record
3 for appeal.

4 But at the same time, I would just say, by the
5 government introducing those exhibits, we have every right to
6 comment on them.

7 THE COURT: Not every right. I mean, the law is
8 clear that the right to present evidence doesn't mean that you
9 can elicit anything. It still has to be relevant and
10 probative.

11 MR. MARCHESE: I agree with that.

12 THE COURT: So --

13 MR. MARCHESE: But when the government opens the door
14 by admitting these Facebook posts with links to articles, I
15 would argue that we have every right to now explain them. But
16 the Court's been clear.

17 MR. MYHRE: And our position remains the same. The
18 motive behind posting a Facebook posting is not relevant,
19 especially when the motive is what we've all talked about.

20 THE COURT: And the defense is not prevented from
21 going -- from addressing the posts. You just can't go into
22 collateral evidence. You can't go into collateral matters.
23 You can ask whether he posted it. What it was that day,
24 whether or not he read it, things of that nature, but -- you
25 know, to test the credibility of the government's witnesses who

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1 have discussed the Facebook post.

2 MR. MARCHESE: I disagree. I think it's -- the
3 government -- I mean, he can't explain why he posted it? I
4 can't ask that. All I can say is "Did you post it?" And
5 that's it.

6 THE COURT: Well, to be clear, the government did not
7 admit the actual articles.

8 MR. MARCHESE: Correct.

9 THE COURT: So, the subject matter of the articles
10 has not been introduced into evidence and is not before the
11 jury.

12 What is introduced is the business records that
13 provide a summary of the Facebook postings, and some include
14 links, and text, and titles of the links, not even in their
15 entirety. Sometimes it's just dot, dot, dot, in quotation
16 marks. So it doesn't even seem like it's the entire title of
17 the article, let alone the entire article is not included.

18 MR. MARCHESE: Correct. But some of them don't even
19 include the text from Mr. Parker. It's just the article.

20 THE COURT: And the -- and the evidence that the
21 government proffered was that he posted the article. So, I
22 mean, if he didn't post it, you can certainly elicit that. If
23 he posted it without reading it, you can certainly elicit that.

24 MR. MARCHESE: But they are talking about militias.
25 The articles talk about the standoff in Nevada. They talk

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1 about militia mobilizing, all these things. I can't ask him
2 anything about that.

3 And they got into it collaterally, too, with the Ryan
4 Payne video. That was not the video that was up when
5 Mr. Parker, at least, shared it.

6 MR. MYHRE: And he's already testified he didn't see
7 the Ryan Payne video, so he's addressed it.

8 THE COURT: The Court agrees. Do you need to take a
9 break to admonish him?

10 MR. MARCHESE: Well, I am just going to -- I will
11 move on. I mean, I can't -- it's basically -- I will just
12 say -- I guess I will just skip --

13 THE COURT: I know you are in a difficult position.

14 MR. LEVENTHAL: And I am listening, because I'm
15 trying to find out --

16 THE COURT: I think we all --

17 MR. LEVENTHAL: I'm sorry. I'm trying to figure out
18 what I'm going to do.

19 THE COURT: I think we all sympathize with the
20 situation. But, unfortunately, that's the parameters that the
21 law requires. And that's why I keep saying if we need a break
22 for you to admonish the client, because I don't want him to
23 forfeit his right to testify, but if he keeps trying to elicit
24 or trying to testify in violation of the Court order --

25 MR. MARCHESE: I think, at this point, maybe it would

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1 be best if Your Honor could do it.

2 THE COURT: He is tying my hands. I don't want to
3 tell him he can't testify anymore, but --

4 MR. LEVENTHAL: It's tying our hands, too, because
5 I'm at a loss of what I'm going to consult with Mr. Drexler
6 this weekend on, and given thus far and then getting into -- I
7 mean, is he allowed to say "I saw BLM officers pointing weapons
8 at me" or --

9 MS. CREEGAN: No.

10 MR. LEVENTHAL: I mean, how far is this going? Is he
11 allowed to say "I thought I saw, you know, drones above me when
12 I was on the bridge." I mean, if that's what he saw and that's
13 what he heard --

14 THE COURT: If you want to ask a question, and you
15 are not sure whether or not you should ask that question, you
16 could either ask for a sidebar or you can ask the question.
17 And if there's an objection and you expect an objection, then
18 you should be prepared to provide a legal response for why you
19 think that that question is relevant and proper and not in
20 violation of the Court order. But I can't give you legal
21 advice. I can't give you a script.

22 MR. LEVENTHAL: No, I understand.

23 MR. MARCHESE: Well --

24 MR. LEVENTHAL: I have done this. I have just never
25 done this. I'm sorry.

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1 MR. MYHRE: Do you have an offer of proof of what
2 he's going to say when you get to the bridge?

3 MR. MARCHESE: You know what he's going to say.

4 MR. MYHRE: Could you put it on the record?

5 MR. MARCHESE: At this point, based upon what the
6 government's position is, I can't ask him what he saw and what
7 he heard. I guess I can only ask him what he did.

8 I mean, I'm not allowed to say that they said -- he
9 thought they were going to use lethal force. You are going to
10 object to that; correct?

11 MR. MYHRE: Yes.

12 MR. MARCHESE: You are going to object that there
13 were snipers on the ridge; correct?

14 MR. MYHRE: That he's going to testify that there
15 were snipers on ridge, yes.

16 MR. MARCHESE: You will object to any gun pointing,
17 just generally speaking; correct?

18 MR. MYHRE: Yes.

19 MR. MARCHESE: Even the stuff that you entered into
20 evidence?

21 MR. MYHRE: I'm sorry?

22 MR. MARCHESE: Even the stuff you entered into
23 evidence? Can he comment on that?

24 MR. MYHRE: Well, if it's entered into evidence, you
25 can -- that's -- I would think you can ask him about that, but

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1 you can't ask him about whether or not he --

2 MR. MARCHESE: Saw people pointing weapons at him.

3 MR. MYHRE: At him. Actually, hold on.

4 If your purpose in doing that is to raise a
5 self-defense, which is not cognizable, then, yes. I would
6 object. It goes to BLM conduct.

7 MR. MARCHESE: It goes to his intent. It goes --
8 there's a big difference if there's a kindergarten playground,
9 and he's pointing his gun at the kindergarteners as opposed to
10 there's BLM agents pointing guns at him.

11 MR. MYHRE: No, it's -- it doesn't rise to the level
12 of self-defense. So, it's basically BLM conduct. Again, it's
13 the --

14 MR. MARCHESE: So, I can't ask what he saw. Just
15 talk about what he did.

16 THE COURT: No, I think he can testify as to what he
17 saw. He just can't testify about whether that put fear.
18 Whether that -- whether that was the reason why he -- you know,
19 the intent. That is the problem, because it doesn't --

20 MR. MARCHESE: Every crime, there's two things.
21 There's an act, and there's an intent.

22 THE COURT: The self-defense, if it was available,
23 would be to negate the intent. Because it's not available,
24 then he can't solicit the intent of self-defense. But what he
25 saw is fair game.

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1 MR. MARCHESE: But if he meant to assault agents, if
2 he meant to threaten agents, if he meant to extort cattle and
3 all those things, his actions -- there has to be an intent in
4 every crime or almost every crime.

5 There has to be an intent to back up the action.
6 That's why he would testify to those specific things. The
7 government can say, just as they did in the last trial,
8 Mr. Parker has no self-defense right. There is no instruction
9 for that, so that is not to be considered.

10 MR. MYHRE: The issue there is that now it's before
11 the jury. And his -- if he's going to say "I was there because
12 I intended to protect people in the wash," or "I intended to
13 fight snipers," or "I intended to back" -- you know, "make sure
14 the BLM didn't shoot anybody," that's intent to commit the
15 crime.

16 He's basically testifying that I committed the crime.
17 I don't have a self-defense. I raised guns at an officer,
18 because I thought all these things in my alternative reality.
19 He doesn't get to explain his alternative view of reality, get
20 that before the jury, in order to talk about things that don't
21 go to his intent.

22 The things that you intend to offer go directly to
23 his intent to commit the crime as in he intended to commit the
24 crime. It's a crime to raise a gun at a federal officer when
25 there's no self-defense.

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1 MR. MARCHESE: I understand that, and you will argue
2 that.

3 THE COURT: What it comes down to is he's trying to
4 elicit a defense that the law doesn't recognize. And then by
5 eliciting that defense anyway, when the law does not recognize
6 it, that is a jury nullification argument which is not
7 permissible.

8 So, that's why the intent didn't come in. He can
9 testify about what he saw. He can't testify about what he
10 felt.

11 MR. MARCHESE: Okay.

12 THE COURT: But he can testify what he saw. He saw
13 the -- the BLM with the gun. He didn't see them with the gun.
14 He did see them pointing. He didn't see them pointing. They
15 were dressed like this. They were dressed like that. That's
16 permissible, but not that next step of that's why he did what
17 he did or that justifies what he did. That's not legally
18 recognized.

19 MR. LEVENTHAL: And that goes for the other ones.
20 And I don't mean to keep beating a dead horse, but I'm going
21 back to the interstate travel.

22 If he saw something, and he didn't come down for
23 the -- if he saw a video, and he didn't come down for the, you
24 know, extortion, to get cattle, then we're not asking for a
25 self-defense -- a defense. We're asking to -- a defense of

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1 that's not why I came down.

2 It's their burden to prove that that's what his
3 intent to come down to extort, and he's -- should be allowed to
4 give some explanation other than what the government thinks he
5 came down, for which is "I saw these videos" or "I saw these
6 things."

7 I understand the Court's ruling. I'm just -- want to
8 put a record on that if he saw it, and that's what motivated --
9 that's what he came down to for, not -- not because he came to
10 extort. If he saw somebody who -- they said, "Hey, we've
11 got -- they've got cows. Come and help us get our cows." I
12 haven't seen anything of that, "Come help us get our cows."

13 THE COURT: He's pointing weapons at abortion clinic
14 staff, because he saw a video on the newspaper with, you know,
15 unborn fetuses being shredded in a shredding machine. That
16 would be grotesque, but it wouldn't be a legal defense. And so
17 that's the problem. So, I sympathize that that's --

18 MR. LEVENTHAL: And that would go to an assault or a
19 threat.

20 THE COURT: -- where you are, but that's a fact and
21 not a legal argument that you are making.

22 MR. LEVENTHAL: Right.

23 THE COURT: So, we keep having this discussion, and
24 it never changes.

25 MR. LEVENTHAL: No, no.

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1 THE COURT: Because you are just arguing the facts
2 that we're all familiar with, but not giving me a legal
3 justification for ruling in your favor.

4 So, that's why we're stuck, and we're just going to
5 keep talking about it --

6 MR. LEVENTHAL: We don't have a self-defense --

7 THE COURT: -- and talking about it --

8 MR. LEVENTHAL: We don't have a self-defense for
9 traveling interstate, and there's the charge of traveling
10 interstate for extortion. There is no self-defense for that.
11 So, there's other recognizable defenses, like, I didn't -- I'm
12 sorry. I didn't do that.

13 You are going to the assault, pointing a gun at the
14 assault and the threatening. I agree. I've got a self-defense
15 for that. But the traveling in interstate commerce for
16 purposes of extortion does not have or even amount to a
17 self-defense or defense of the others, and so there is defenses
18 for that.

19 And so the defenses would be, "No, I did not come
20 down to extort. I came down because I saw these things, and
21 that's why I came down," which negates the element that they
22 must prove. It negates that.

23 I'm going to that one specific count on why it's
24 relevant on seeing those videos. It's not a self-defense.
25 It's a negate of what the government is trying to proof beyond

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1 a reasonable doubt. And he's saying, "No, that's not why I did
2 it."

3 So, I've made my record, but I just think that we're
4 talking about two different counts that have two different
5 defenses. We can't just lump them all in one. I agree with
6 Your Honor. You can't point a gun because of abortion. But if
7 you travel in interstate commerce, not knowing what was going
8 on, that's a completely different defense.

9 MR. MYHRE: And that's -- we have already made our
10 record on this, but that is precisely what the order addresses.
11 Because you can't go to the motive of why someone came. You
12 can't -- to show -- motive doesn't prove intent. All you're
13 doing is introducing -- attempting to introduce the reasons why
14 someone came to Bunkerville.

15 The evidence -- okay -- of that, that you seek to
16 introduce, is all nullifying evidence. Because you're talking
17 about things that don't go to any defense. You're talking
18 about the victim deserved it. You're talking about the victim
19 did all these horrible things.

20 You're not -- you're going well beyond what was in
21 the individual's -- you know, what the decision was. You're
22 going for all the reasons for the decision, and we've already
23 talked about that.

24 MR. LEVENTHAL: Well, the travel in interstate
25 commerce, you can change it with the intent or with the motive

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1 to -- to extort --

2 THE COURT: No, it's not --

3 MR. MYHRE: Motive is not intent.

4 MR. LEVENTHAL: I understand that. But it's not --
5 motive intent, that's not why he came. And he should be able
6 to negate or explain why he came.

7 THE COURT: If he came to Las Vegas to gamble, and
8 while he was here, he found out about the Bundy event.

9 MR. LEVENTHAL: Right.

10 THE COURT: Now you get rid of the interstate
11 commerce.

12 MR. LEVENTHAL: Right.

13 THE COURT: But if you already know about the Bundy
14 event before you got here --

15 MR. LEVENTHAL: Right.

16 THE COURT: -- and you're calling ahead and saying
17 that you're coming. Can you come and stay at their ranch, so
18 you don't actually have that factual defense either.

19 But, I think that there's no changing of the ruling
20 at this point. We will just go forward --

21 MR. MYHRE: Your Honor --

22 THE COURT: -- as best as we can with Mr. Parker.

23 MR. MYHRE: I'm sorry. Before -- and I know we've
24 been back here a long time, but I wanted to go back to one
25 aspect that the Court discussed with Mr. Marchese. And that is

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1 he can testify as to what he saw.

2 Well, he's going to say like "I saw snipers. I saw
3 BLM trying to shoot people." It's those conclusions that we
4 anticipate the testimony is going to go well beyond "I saw
5 people with guns. I saw people up on a hill."

6 He's going to project, in that testimony, his
7 conclusions as to what these people were doing, what their
8 intent was; and, therefore, to try to explain what he was
9 doing.

10 So, that's where, I think, the danger is going to lie
11 in terms of going down that road in terms of what he's going to
12 talk about what he saw.

13 THE COURT: I think he can talk about what he saw.
14 He just can't talk about --

15 MR. MARCHESE: Just don't bring up --

16 THE COURT: -- the next step up, how that made him
17 feel or what he thought about that.

18 MR. MARCHESE: So, do not try to elicit anything in
19 reference to his subjective thought process at this time.

20 THE COURT: (Nods head.)

21 MR. MARCHESE: Based upon that --

22 THE COURT: In relation to --

23 MR. MARCHESE: What he saw.

24 THE COURT: Right. What -- in relation to a
25 self-defense.

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1 MR. MARCHESE: Okay. I can -- I can certainly move
2 on from First Amendment zones. That's easy enough. I will
3 just move on to the next line of questioning. But I believe I
4 am going to need a sidebar, or a break, or something in order
5 to admonish him in reference to when we get to the bridge.

6 THE COURT: Okay. I mean, if he saw the cows, and it
7 made him feel happy, that's fine. So, those kind of feelings,
8 those are fine. If it goes to self-defense, the fear, that's
9 the part that --

10 MR. MARCHESE: Yeah.

11 THE COURT: -- is going to be objectionable.

12 MR. MARCHESE: I need to admonish him in reference to
13 the 40 or so minutes he's on the bridge.

14 THE COURT: I think that's the best I can do, is just
15 let him tell about what he saw and not get into how it made him
16 feel or what his assumption was based on what he saw.

17 MR. MARCHESE: Okay.

18 MR. LEVENTHAL: We are trying. It's not easy.

19 MR. TANASI: Stewart joins in all the defense
20 positions and objections here today. Thank you.

21 (End of sidebar.)

22 THE COURT: So, we are going to go ahead and take a
23 little break, so that we can hopefully get things back on
24 track.

25 During this break, I do admonish the jury to remember

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1 that you are not to discuss this case with anyone nor permit
2 anyone to discuss it with you. You may talk to your fellow
3 jurors about other things, but not about this case.

4 Please do not attempt to perform any research, or any
5 independent investigation, nor read, or view, or listen to
6 anything that touches upon this case in any way. Remember, if
7 you do have questions, please, we ask that you just write them
8 down, so that both parties have an opportunity to address and
9 respond to those questions.

10 Rather than going off and looking for something that
11 may or may not be correct that then counsel has no idea that
12 you've, you know, put something in your head that is not
13 appropriate that they don't have an opportunity to comment
14 upon.

15 And finally, please do not reach any opinions or form
16 any opinions yet. We do have more testimony, and you'll be
17 provided evidence, and then the jury instructions of law.
18 After that, you will hear closing arguments. And once closing
19 arguments are over, then you will be excused to begin the
20 deliberation process.

21 So, we will go ahead and stand for the jury. It's
22 10:30. We will take 15? Okay. We will take a 15-minute break
23 until 10:45, and then we will welcome them back.

24 So, the jury is excused. And Mr. Parker, after the
25 jury exits the courtroom, then you may also take your bathroom

Eric Parker - Direct

1 break.

2 THE WITNESS: Thank you, Your Honor.

3 THE COURT: And we will resume back here at 10:45.

4 (Recess 10:28 a.m. Resumed 10:44 a.m. Jury out.)

5 THE COURT: All right. Mr. Leventhal is back, so
6 let's go ahead and go back on the record.

7 We are on the record outside the presence of the
8 jury, because the Court needs to admonish the defendant,
9 Mr. Parker, who is on the witness stand, and to elicit some
10 information also from Mr. Parker.

11 So, Mr. Parker, I need to make sure that you
12 understand that it is your decision whether or not to testify.
13 Your attorney can counsel you and suggest to you and recommend
14 to you whether he thinks you should testify or whether he
15 thinks you should not testify. But ultimately, it is entirely
16 up to you to make that decision. Do you understand that?

17 THE WITNESS: I do.

18 THE COURT: And when you make that decision, it's
19 important to me that it is an informed decision, which means
20 that you understand the effects of the decision.

21 There is a Court order that explains and clarifies
22 the information that is -- has been shown to be relevant and
23 admissible under the law.

24 My understanding is that your attorney has provided
25 you a copy of that order and discussed it with you.

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1 Unfortunately, in less than the first 10 minutes of your
2 testimony, on three separate occasions, you tried to testify as
3 to areas that you're specifically not permitted to do.

4 So, the first one was as to the snipers, the second
5 one was as to the First Amendment, and the third one was as to
6 videos regarding tasing and other collateral incidents.

7 So, that's why I recommended we take a break in case
8 you need to talk to Mr. Marchese some more, if you need to
9 clarify, because if you are intentionally violating the Court
10 orders, then I cannot permit you to testify. And I do not want
11 to have to make that finding that you are not permitted to
12 testify because you are in violation of Court order.

13 So, I'm admonishing you and explaining that to you
14 now, but I also want to give you the opportunity, if you want
15 to take a little more time to talk to Mr. Marchese about, so,
16 what can I say or what can I not say and so forth, if there is
17 that confusion still that's lingering in your mind.

18 So, I'm giving you the benefit of the doubt,
19 essentially, is what I'm saying. Even though I think it's
20 likely that you are intentionally violating the Court order,
21 I'm willing to give you the benefit of the doubt and give you
22 some time to speak to Mr. Marchese to help you to be able to
23 testify.

24 So, do you want to take a little bit longer break to
25 talk to Mr. Marchese?

Eric Parker - Direct

1 THE WITNESS: Sure.

2 THE COURT: Okay. Go ahead and do that. And then,
3 Mr. Marchese, when you let us know that you're ready, if you
4 want to --

5 MR. MARCHESE: Thank you, Your Honor.

6 MR. MYHRE: Your Honor. Excuse me, Your Honor.
7 If -- before Mr. Marchese leaves, is it possible for to us
8 discuss that one matter that we wanted to make a further record
9 in the Court, and this is with respect to what he can testify
10 to as to what he observed on the bridge.

11 THE COURT: All right. Go ahead.

12 MR. MYHRE: The record should reflect that
13 Mr. Parker's returned with Mr. Marchese.

14 THE COURT: Yeah, they never left. They just got as
15 far as the door but didn't walk outside.

16 MR. MYHRE: Thank you, Your Honor.

17 Your Honor, it's the government's position that what
18 Mr. Parker may have seen in the wash or what he was -- intends
19 to testify to as what he saw, does not go to any cognizable
20 defense and is, in fact, jury nullification.

21 So, if he says "I saw BLM officers raise weapons,"
22 that's not relevant to anything, because there's no
23 self-defense that is cognizable in this case.

24 And all it is is saying "I was -- they are provoking
25 me to do something." Provocation is not a defense, and

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1 provocation is irrelevant.

2 And, so, therefore, if -- if his intent is to testify
3 as I saw BLM officers pointing guns; therefore, I raised my gun
4 or I put -- I got down prone, or whatever it is he intends to
5 testify, we believe that is similarly irrelevant and in
6 nullification territory, because it does not go to a defense.
7 It goes to his claim of provocation. "I was provoked to doing
8 it."

9 And it's -- to use -- to go back to sort of the --
10 some of the analogies we've used, it's no different than if --
11 if this were a case of arson in an abortion clinic, and the
12 arsonist wants to testify, "Well, I did it for all these
13 reasons." Now the arsonist says, "When I got to the clinic, lo
14 and behold, they were doing abortions there."

15 That would be the same type of nullification
16 information that it's not relevant to anything. It just -- all
17 it does, it puts seeds into the juror's mind that there's
18 something there about BLM conduct. There's something there
19 about the conduct of what's going on that justifies the actions
20 of the defendant.

21 And once we start down that slippery slope, it's --
22 it's really -- it's really hard to stop it. And we just
23 believe we are into nullifying or mistrial territory if we go
24 into what he observed in the wash.

25 The fact that the defendant may or may not have

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1 anything relevant to say is not -- not the government's, you
2 know, fault. It's whether there's a legal defense or a legal
3 claim that can be made, not whether the defendant can testify
4 about anything under the sun. So, that's -- that's our
5 position, Your Honor.

6 THE COURT: All right. And the Court disagrees. The
7 Court believes that the defendant can testify about what he saw
8 and what he heard.

9 He cannot -- it cannot be offered to show his intent
10 and whether or not he was afraid or acting in defense of others
11 or in defense of himself, merely because the law does not
12 recognize that defense.

13 But he can testify about what he saw, and what he
14 heard, and even what he felt, if it's unrelated to the
15 self-defense or a defense of others, so long as it's still
16 relevant. It could be offered for other reasons. If it's to
17 impeach the credibility of a different witness, who said that
18 they saw, you know, someone dressed in all red. And, you know,
19 Mr. Parker says, "There was no person dressed in all red. I
20 never saw the person dressed in all red" or so forth.

21 He can provide testimony about what he saw, so long
22 as it's not for the purpose of -- only relevant to a
23 self-defense or a defense of others, which is not available.
24 But he can testify about what he saw and what he heard.

25 He can also testify -- testify about what he felt, so

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1 long as it was not offered for a self-defense to show a
2 self-defense or defense of others. That's not available,
3 because that would be a jury nullification argument, and so the
4 Court cannot permit that.

5 However, he can testify about how he felt, for
6 example, as I said, when the cows are released. If he wants to
7 testify about how that made him happy, or how it didn't really
8 matter to him, or those kinds of feelings, that's -- if it's
9 relevant to something else, that's appropriate.

10 So, he just can't talk about whether or not he was
11 afraid, afraid of being shot himself, or afraid that other
12 people were going to be shot, because the relevance of that
13 would only be in regards to a defense that's not available;
14 and, therefore, would only be a nullification argument.

15 MR. MYHRE: Your Honor -- and thank you, Your Honor.
16 And I appreciate you allowing me to make a record on that.

17 I just -- so, for clarification purposes, Your Honor,
18 then, for example, we anticipate his testimony would be "I
19 heard, when I was at the assembly area, that people were going
20 to be shot in the wash."

21 That again would go to, you know, his -- his
22 self-defense claim, his imperfect self-defense claim that is
23 not cognizable. And so we believe that would be highly
24 prejudicial, because now the government's put in a position of,
25 you know, trying to demonstrate that no one was going to be

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1 shot in the wash. And it's not -- and that is irrelevant.

2 Similarly, we anticipate his testimony to be that "I
3 saw," quote, unquote "snipers on the mesa," or "I saw
4 militarized people in the wash." These are all his
5 characterizations, his conclusions, you know, which again go to
6 nullification, because now it plants in the juror's mind that
7 there are snipers or that there are military people in the
8 wash.

9 So, we would seek clarification that he not be
10 allowed to characterize, and especially with respect to what he
11 heard about people being shot in the wash, because it's just --
12 you know, it's -- again, that's very highly prejudicial.

13 MR. MARCHESE: Your Honor, if I may.

14 THE COURT: It comes down to the same thing. It
15 needs to be legally probative. It can't be probative of a
16 defense that's not available. It needs to be relevant and
17 probative of something that is recognizable.

18 MR. MARCHESE: And the problem is what the government
19 is failing to elicit is the fact that they have brought a lot
20 of this testimony out already. They have brought in pictures
21 and testimony of Agent Swanson pointing his weapon.

22 They brought in the four-man stack through a Flynn
23 video. They brought in Todd Engel telling Sergeant Serena they
24 are pointing weapons at them down in the wash. So, much of
25 this evidence -- and also to the Shilaikis videos. If you

Eric Parker - Direct

1 focus in on certain areas, it shows pictures or video footage
2 of agents pointing weapons.

3 So, a lot of this evidence has already been elicited.
4 So, we just simply would be commenting on the evidence that the
5 government has already brought into evidence. They can't have
6 it both ways, Your Honor.

7 MR. MYHRE: I believe the Court has already ruled
8 that he --

9 THE COURT: The Court's made its ruling. If the
10 evidence is probative and relevant of something that is legally
11 cognizable, then, of course, it's permitted.

12 If it's only relevant or only provided for the
13 purpose of justifying a defense that's not available, then it
14 is essentially only being provided for nullification, which the
15 Court is not permitted to allow.

16 All right. Let's go ahead and take your break. I
17 don't want to limit your time, so that he's clear, and we don't
18 have any more objections.

19 (Recess 10:55 a.m. Resumed 11:03 a.m. Jury out.)

20 THE COURT: Mr. Marchese, anything you want to put on
21 the record?

22 MR. MARCHESE: No, Your Honor. I have spoken with
23 Mr. Parker. I think we're -- we will be fine.

24 THE COURT: All right. So, Mr. Parker, do you feel
25 you had sufficient time to discuss the issues with your

Eric Parker - Direct

1 attorney, Mr. Marchese?

2 THE WITNESS: Yes, Your Honor.

3 THE COURT: And have you come to a decision as to
4 whether you want to continue to testifying or not?

5 THE WITNESS: I absolutely want to continue to
6 testify for the Court.

7 THE COURT: Okay. Thank you. So, we'll go ahead and
8 call back in the jury then.

9 (Jury in.)

10 THE COURT: All right. The jury may go ahead and be
11 seated. Everyone else may be seated as well afterwards.

12 All right. So, let's go ahead and continue with
13 direct examination.

14 MR. MARCHESE: Thank you, Your Honor.

15 Q. Eric, when we left off, I believe we were speaking about
16 you were looking at some different items on the Internet;
17 correct?

18 A. Yes, sir.

19 Q. Okay. So, at some point in time, you made the decision to
20 go to Bunkerville; is that right?

21 A. Yes, sir.

22 Q. And approximately when was that?

23 A. You know, it was three years ago, but I would say on the
24 10th.

25 Q. Could we get up Exhibit 92, please, Brian?

Eric Parker - Direct

1 Okay. Now, this is a post that you made sometime --
2 looks like on the 11th. Does that sound correct?

3 A. Yes.

4 Q. Okay. And that's based on that UTC time that we've had a
5 lot of testimony about; right?

6 A. Yes.

7 Q. Did you make that post?

8 A. Yes, I did.

9 Q. All right. And who did you reach out to?

10 A. I'm not sure who runs the "Support Cliven Bundy" page, but
11 I assumed it was somebody that was -- was there at the -- at
12 the ranch area.

13 Q. Okay. Now, based on this post, you obviously made the
14 decision. You say "we" in this post. Who is we?

15 A. Scott Drexler, Steven Stewart, and myself.

16 Q. Now, when you made the decision to go, had you heard
17 anything about Cliven Bundy's issue with the cattle?

18 A. Yes.

19 Q. Okay. And generally speaking, what did you hear about the
20 cattle and his issue with the BLM?

21 A. I want to make sure I am staying within the parameter.
22 The -- I knew there was a Court order. I knew that they had
23 been arguing about the -- the grazing fees, they being the BLM
24 and Mr. Bundy. I knew that he had the water rights, and that
25 that made him feel like he --

Eric Parker - Direct

1 MR. MYHRE: Objection, Your Honor. That's a legal
2 conclusion.

3 THE COURT: Sustained.

4 THE WITNESS: Okay.

5 BY MR. MARCHESE:

6 Q. Yeah, don't talk about what Mr. Bundy felt. Just talk
7 about what you knew, if anything, about Mr. Bundy's issue with
8 the BLM.

9 A. I knew they were rounding up the cattle, and that was
10 causing protests.

11 Q. Okay. Now, did you -- were you aware of specifically a
12 Court order?

13 A. As far as aware, I had heard there was a Court order.
14 Yes. I never read the Court order or saw the Court order.

15 Q. Okay. Did you do any research in reference to the Court
16 order?

17 A. To the Court order specifically, no, sir.

18 Q. Okay. Now, when you made the decision to go, was the
19 decision based upon going to Bunkerville to get the cattle
20 back?

21 A. No.

22 Q. Okay. Now, when you went there, you drove in your truck;
23 correct?

24 A. Yes.

25 Q. You drove with Steven Stewart and Scott Drexler; correct?

Eric Parker - Direct

- 1 A. Yes.
- 2 Q. What did you bring with you?
- 3 A. Quite a bit of stuff. Camping gear for a couple days,
4 food, a tent, that kind of stuff. And then my -- my body armor
5 and my rifle.
- 6 Q. Why did you bring your rifle?
- 7 A. To protect myself.
- 8 Q. And why would you bring body armor?
- 9 A. Also to protect myself.
- 10 Q. Did you bring a knife?
- 11 A. Yeah, I always -- a knife is part of camping gear, I would
12 say, yeah.
- 13 Q. Can you speak up? I'm sorry.
- 14 A. The knife, yes. Yes, I did.
- 15 Q. Okay.
- 16 A. Part of the camping gear.
- 17 Q. When you left with Mr. Drexler and Mr. Stewart, when was
18 that approximately?
- 19 A. I want to say before noon on the 11th.
- 20 Q. What was your plan when you left?
- 21 A. To go protest.
- 22 Q. Now, in the government's case in chief, they mentioned the
23 Euclid Stockyard. Are you familiar with that?
- 24 A. Yes.
- 25 Q. Did you ever call the Euclid Stockyard?

Eric Parker - Direct

1 A. I did.

2 Q. Why?

3 A. The posts, I remember, if I am remembering correctly, said
4 that they were going to sell the cattle. And I didn't
5 understand that to be part of what was going on, so I was
6 curious.

7 I was going to call and ask if -- what that was
8 about, that they were buying the cattle? I thought that they
9 were just going to be rounding it up; getting it off of what
10 they called the public lands.

11 Q. Okay. And did you call?

12 A. I did. Nobody answered, so --

13 Q. Did you ever call back?

14 A. No. I lost the urge.

15 Q. Now, approximately -- I know you said this already.
16 Approximately when did you arrive at the -- in Bunkerville?

17 A. I think it was about 2:00, 2:00 a.m., 1:00 a.m.

18 Q. Okay. When you got there, what happened?

19 A. We pulled up and saw the stage area. And there was a
20 couple of people standing out there still welcoming people
21 showing up.

22 Q. Did you know those people?

23 A. No.

24 Q. Okay. And after you met the people that you didn't know,
25 what happened then?

Eric Parker - Direct

1 A. They asked where we wanted to camp. There looked like
2 there was kind of a party going on at one of the campgrounds,
3 and they said that the militia was camping on the other side of
4 the river.

5 Q. Which camp had the "party," quote, unquote "going on"?

6 A. Just the one that was right there by the stage, sir.

7 Q. And which -- did you -- did you go to one of the camps?

8 A. Yeah, I did. I went -- I chose to go over to the other
9 side. I was curious, and I had a lot of questions, and I
10 figured that would be where I could get most of my answers.

11 Q. Okay. And when you went there, what happened next?

12 A. We -- we pulled up, and there was a man standing at the
13 entrance to where the -- the private property camping area was.

14 Q. Did you know that man?

15 A. No. He asked who we were and where we were from, and we
16 told him. And he showed us where we could camp. Where we
17 could set up our tent.

18 Q. All right. And where did you set up your tent, if you
19 remember?

20 A. Just back along the ditch right there. It was -- I don't
21 have a picture, so I can't show you guys. But, yeah. Just in
22 that camping area.

23 Q. All right. So, you went to sleep at some point; right?

24 A. Yeah. But not before I -- as we were setting up our --
25 our tent, a guy walked through the campground. He was visibly

Eric Parker - Direct

1 frustrated, and he said that --

2 MR. MYHRE: Objection, Your Honor. Hearsay.

3 THE COURT: Sustained.

4 BY MR. MARCHESE:

5 Q. So, you are at the campground. Some individual you come
6 into contact with. Did you know that individual?

7 A. No, sir.

8 Q. Okay. And after you came into contact with that
9 individual, without saying what he said, what did you do next?

10 A. We -- we watched -- we took the next watch on the entrance
11 gate to the camp.

12 Q. Okay. What do you mean by watch?

13 A. Basically, it was what that -- like I said, the guy that
14 was standing there when we pulled up, asked us who we were, and
15 showed us where we could camp, we did that for about two hours.

16 Q. Okay. So, you stood there and showed people where to
17 camp?

18 A. Yeah. Nobody came. It was like 2:00 to 4:00 in the
19 morning.

20 Q. Okay. So, after you told people where to camp, what did
21 you do then?

22 A. Went to bed.

23 Q. All right. And I assume, at some point, you woke up?

24 A. Yes.

25 Q. When was that?

Eric Parker - Direct

1 A. I would say later than 6:00 and before 8:00.

2 Q. All right. Now, at some point in time, did you go to the
3 staging area?

4 A. Yes.

5 Q. Okay. And approximately what time was that?

6 A. You know, I don't recall the exact time. It was probably
7 around 9:00.

8 Q. And when you went to the staging area, what did you see?

9 A. A lot of people. Just a lot of people gathering, really,
10 at first.

11 Q. Other -- were Steve and Scott with you?

12 A. Yes.

13 Q. Other than Steve and Scott, did you know anyone at the
14 staging area?

15 A. No.

16 Q. When you went to the staging area, did you -- was there
17 any plan as to how the day was going to progress?

18 A. The only plan I had heard was that the sheriff was on his
19 way to update the crowd, to talk to the crowd, to talk to
20 Cliven, family. Other than that, there was no plan that I was
21 aware of.

22 Q. Okay. So, your plan was to listen to the sheriff and that
23 was pretty much it?

24 A. Yes.

25 Q. Okay. Brian, could we get Exhibit 21, please?

Eric Parker - Direct

1 And before we start playing, Eric, do you know this
2 individual?

3 A. I do now.

4 Q. Okay. And when was this video taken to your knowledge?

5 A. The morning of the 12th.

6 Q. Okay. And on April 12th, 2014, did you know this
7 individual?

8 A. No.

9 Q. Okay. Were you present for this speech?

10 A. Yeah, most of it.

11 Q. Okay. Now, where were you in relation to the stage?
12 Obviously, this is probably taken somewhat in the center.
13 Where were you located?

14 A. Back and to the right for most of the speech.

15 Q. Now, when you say back and to the right, if you're
16 Mr. Bundy, is that what you're saying? You're away from him to
17 his right?

18 A. No, it would be to the crowd's right.

19 Q. Okay. Now, when you say back, approximately how far back
20 were you?

21 A. Hard to say exactly. More than 10 feet. More than
22 15 feet.

23 Q. Further than from you to me right now?

24 A. Yes.

25 Q. Okay. And Brian, if we could press play, please.

Eric Parker - Direct

1 (Exhibit 21 being played.)

2 Q. Now, you were present for that you testified; correct?

3 A. Yes.

4 Q. And you heard that portion of the speech; correct?

5 A. Yes.

6 Q. At this point, what is going through your mind in
7 reference to any plan, if there is one?

8 A. Just to hear what the sheriff had to say.

9 Q. Okay.

10 A. There was a lot of talk in the crowd of --

11 MR. MYHRE: Objection. Hearsay.

12 THE COURT: Sustained.

13 BY MR. MARCHESE:

14 Q. Did you know Sheriff Gillespie at the time?

15 A. No.

16 Q. Okay. Did you -- obviously, you don't know him
17 personally, but did you know of him?

18 A. I knew Clark County had a sheriff.

19 Q. Okay. But you didn't even know his name?

20 A. No, sir.

21 Q. Okay. Brian, press play.

22 (Exhibit 21 being played.)

23 Q. The sheriff obviously just mentioned some sort of a press
24 release. At this juncture, when you are standing in the crowd
25 at this date and time and location, were you aware of any press

Eric Parker - Direct

1 release?

2 A. Just rumor of it.

3 Q. And when you say rumor, what was your knowledge of the
4 rumor?

5 A. That they were -- that the BLM were putting out a -- had
6 put out a press release saying that they were --

7 MR. MYHRE: Objection. Hearsay, Your Honor, as to
8 the rumor.

9 THE COURT: Sustained.

10 MR. MARCHESE: I think it goes to the effect on the
11 hearer, Your Honor.

12 MR. MYHRE: Same objection, Your Honor. There is no
13 relevance to the effect on the hearer of a rumor.

14 THE COURT: Sustained.

15 BY MR. MARCHESE:

16 Q. Did you do any personal research in reference to the press
17 release?

18 A. Not until later.

19 Q. Okay. So, at this date and time, you had only heard
20 things, without getting into what they were. But you had only
21 heard things in reference to the press release; correct?

22 A. Correct. I -- I ended up looking -- looking for it later,
23 when -- when we were at the bridge.

24 Q. Okay. And we'll get into that.

25 Brian, please press play.

Eric Parker - Direct

1 (Exhibit 21 being played.)

2 Q. Okay. You heard a little bit in reference to what the
3 sheriff had to say. Not talking about rumors about press
4 releases, talking about what Sheriff Gillespie said in
5 reference to press releases. You were there. You were
6 present. You heard him say that; correct?

7 A. Yes.

8 Q. Based upon what you heard the sheriff say about press
9 releases, what was your thought process at the time?

10 A. So, he said a couple different things there. I -- I
11 definitely thought that they were finishing their -- that they
12 were done with their impoundment.

13 The crowd asks, "What about the cows?" And then he
14 says, "We have to discuss how that's handled in a safe manner,"
15 and how they would further discuss that.

16 Q. He mentioned the Gold Butte allotment. Did you know where
17 the Gold Butte allotment was at that time?

18 A. No.

19 Q. Did you know what the Gold Butte allotment was at that
20 time?

21 A. I -- I assumed it was the whole area that they lived in.

22 Q. He mentioned, the sheriff that is, that the Gold Butte
23 allotment would be open to the public. Were you aware, at this
24 time, this date, this location, that the Gold Butte allotment
25 was closed to the public?

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1 MR. MYHRE: Objection, Your Honor. Facts not in
2 evidence.

3 MR. MARCHESE: Your Honor.

4 THE COURT: Do you want to rephrase the question?

5 BY MR. MARCHESE:

6 Q. Based upon -- you heard the sheriff say that the Gold
7 Butte allotment was closed to the public; correct?

8 A. Yeah, I heard him say that it was open.

9 Q. It was open to the public. I'm sorry. What did that mean
10 to you?

11 A. That the area was --

12 MR. MYHRE: Objection. It's still eliciting facts
13 not in evidence.

14 MR. MARCHESE: Your Honor, he's commenting on the
15 video that is in evidence, that they entered into evidence.

16 MR. MYHRE: We object to the pointing by counsel at
17 opposing counsel.

18 THE COURT: Please refrain. The objection is
19 sustained.

20 MR. MARCHESE: So, he cannot comment on what the
21 sheriff just said?

22 THE COURT: He can comment on what the sheriff just
23 said.

24 BY MR. MARCHESE:

25 Q. Okay. You heard what the sheriff just said.

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1 THE COURT: On his --

2 MR. MARCHESE: I'm sorry.

3 THE COURT: Consistent with the Court order of his
4 intentions. Need to be relevant and probative.

5 BY MR. MARCHESE:

6 Q. Okay. In reference to what the sheriff just said in
7 reference to the Gold Butte allotment, do you remember that
8 portion of the video?

9 A. I do.

10 Q. Okay. When you were standing there on that date, that
11 time, that location, what did that mean to you?

12 A. I thought that it was all being opened. That it was all
13 open. They were done, leaving, and they needed to talk about
14 how the cows were going to be safely released.

15 Q. Did you know personally, at that time, whether it was open
16 or closed?

17 A. Only by the word of the sheriff.

18 Q. Okay. Now, at the end of the video, right before we
19 stopped it, you heard some people yelling out in the crowd
20 "What about the cattle?" Did you hear that?

21 A. Yeah. The second time they start yelling about the cows?

22 Q. Yes. "What about the cows?" Or "What about the cattle?"
23 Something along those lines. Do you remember that?

24 A. Yes.

25 Q. Did you hear anyone saying that?

Eric Parker - Direct

1 A. I heard it two times. I hear -- I heard it in the
2 beginning, when the guy first says it in the crowd. I was -- I
3 remember being closer to the -- the guy in the crowd. He says
4 it the first time.

5 And then the sheriff says, "We need to talk about how
6 that's going to be safely handled," something along those
7 lines. I'm paraphrasing. And -- and then they -- they start
8 to continue to ask about the cows, where they are, and --

9 Q. Okay. Now, when -- you were present, and you heard that;
10 correct?

11 A. Yes.

12 Q. Okay. When you heard that, not talking about what other
13 people were saying or doing. When you personally heard that,
14 what were you thinking?

15 A. I thought that the cows were going to be released.

16 Q. Why?

17 A. Because that -- that was my perception of what had just
18 occurred, is the crowd asked about the cows. He said, "We need
19 to talk about how that's going to be safely -- safely
20 accomplished."

21 I figured they needed to talk about the logistics,
22 whether the cowboys were going to go get them, or trucks, or I
23 didn't know where they were. I didn't know -- so, but I
24 thought they were being released, yes.

25 Q. Now, when you thought that they were going to be released,

Eric Parker - Direct

1 did you, in your mind, have any belief that you were going to
2 be a part of that?

3 A. No, not yet. Not at that point.

4 Q. Okay. And Brian, if you can play the rest of it.

5 (Exhibit 21 being played.)

6 Q. Stop it for a moment.

7 So, you hear the crowd. At this point, they are
8 cheering?

9 A. Yes.

10 Q. What are you doing?

11 A. Just listening. I -- he had just said that he was not
12 there to negotiate with the sheriff. I didn't really know what
13 that meant. The sheriff kind of just told him what they needed
14 to talk about.

15 I -- this is the first time I ever really saw Cliven
16 Bundy or heard him, so I was kind of taking in Cliven Bundy.
17 My perception was that he had an audience and was -- had some
18 pent-up stuff to -- to talk about.

19 Q. Now, you heard him talk about a plan in that little
20 segment there?

21 A. I did.

22 Q. Okay. Now, at this point, you previously testified that
23 you didn't really have a plan. But at this point of the
24 speech, did you have any sort of plan in place?

25 A. Me? No. No.

Eric Parker - Direct

- 1 Q. Okay. And Brian, if you can continue to play.
2 (Exhibit 21 being played.)
- 3 Q. Stop it there, please.
- 4 Now, you were present for this; correct?
- 5 A. Yes, sir.
- 6 Q. You heard what Mr. Bundy told the sheriff; correct?
- 7 A. I did.
- 8 Q. Okay. Were you in agreement with that?
- 9 A. Well, there was a lot there. I don't know.
- 10 Q. Well, let me take it piece by piece. He talked about
11 disarming the park service.
- 12 A. Uh-huh.
- 13 Q. You heard that part?
- 14 A. Yes, I did.
- 15 Q. Okay. Were you in agreement with that?
- 16 A. I'd like to say yes, but I'd like to explain myself. Yes.
- 17 Q. Okay. In reference to the --
- 18 A. Did I think it was going to happen? No. No.
- 19 Q. Okay. In reference to the bulldozing the fences or
20 something along those lines, you heard that portion?
- 21 A. Yes.
- 22 Q. Okay. Were you in agreement with that?
- 23 A. No.
- 24 Q. Okay. Brian, continue to play.
25 (Exhibit 21 being played.)

Eric Parker - Direct

1 Q. Brian, can you stop for a moment?

2 You saw some individuals in camouflage in front of
3 the stage?

4 A. Can I clarify something real quick?

5 Q. We'll get back to that. You saw the individuals in
6 camouflage in front of the stage?

7 A. Yes.

8 Q. Okay. Did you know any of those individuals?

9 A. No. I knew them to be the Arizona State Militia just from
10 their patches.

11 Q. Okay. When did you learn to know that?

12 A. A little earlier in the day.

13 Q. Okay. So, it was that day?

14 A. Yeah, that day, yes.

15 Q. You see some of them have some kind of radio
16 communications or something along those lines. Did you see
17 that or do we need to back it up?

18 A. No, I have seen it. I know they had radios, yeah.

19 Q. Okay. Did you have any sort of earpiece?

20 A. No.

21 Q. Did -- to your knowledge, did Mr. Stewart or Mr. Drexler
22 have any sort of earpiece?

23 A. No.

24 Q. Okay. Were you in any sort of radio communications at any
25 point in time on the 12th with anyone?

Eric Parker - Direct

- 1 A. No.
- 2 Q. Or even earpiece communication, if that's any different?
- 3 A. It's not, and no.
- 4 Q. Okay. All right. Now, you also heard Mr. Bundy speaking,
5 something in reference to taking all the weapons and bringing
6 them to We the People. Did you hear that portion?
- 7 A. Yeah.
- 8 Q. Okay. Did you -- did you agree with that?
- 9 A. No, no.
- 10 Q. To your knowledge, did Sheriff Gillespie even have the
11 power to do so?
- 12 A. To my knowledge, no.
- 13 Q. Okay. Continue to play, Brian.
14 (Exhibit 21 being played.)
- 15 Q. You heard Mr. Bundy saying to go watch the -- everything
16 be torn down or something along those lines. You heard that?
- 17 A. Yeah, to report back or whatever.
- 18 Q. Okay. And this is basically the entire speech; correct?
- 19 A. Yes.
- 20 Q. Okay. Did you -- where did you go, if anywhere, after
21 this speech concluded?
- 22 A. Hung out. Watched the crowd. I think went back and got
23 some water from the camp or the truck. I'm not sure.
- 24 Q. So, you heard him give the sheriff one hour; correct?
- 25 A. Yes.

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1 Q. All right. Were you waiting for that hour to pass?

2 A. Yeah. Yeah.

3 Q. And at that time, while you were waiting, what was going
4 through your mind as to what was going to transpire, if
5 anything?

6 A. Well, I -- I thought that they were going to talk about
7 how the cows were going to be safely released. I wasn't
8 sure -- you know, after Cliven said the other stuff that he
9 said, I wasn't really sure what was going to happen. I -- I
10 did not think they were going to return with all the BLM's
11 weapons in a truck or whatever he said.

12 Q. So, at some point in time, Mr. Bundy got back on the
13 stage; correct?

14 A. Yes.

15 Q. Were you present for that?

16 A. I was.

17 Q. Okay. And what did you hear, to your recollection, from
18 Mr. Bundy?

19 A. He said, you know, "It's been an hour." He asked if he
20 had heard from the media. And then he said, "Well" --
21 something about the sheriff hasn't gotten back -- come back.

22 And then he said, "If the cows are still there,
23 to" -- he was talking to the cowboys up on the hill and the
24 cowboys that were down -- there was some up on the mountain,
25 and then there was some down. He was talking to the cowboys to

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1 go get the cows, if they were still there.

2 Q. Now, you heard that speech; correct?

3 A. Uh-huh.

4 Q. At this point, you hear him tell the cowboys "Go get'er
5 done," or something along those lines; correct?

6 A. Yeah.

7 Q. Where did you go or what did you do based upon that, if
8 anything?

9 A. The crowd was going to watch the cows come home. Be
10 released. Be picked up, however it was going to be. The fact
11 that the sheriff didn't come back, so there was -- this is the
12 start of some confusion for myself.

13 The fact that the sheriff didn't come back, we
14 weren't -- I wasn't sure if they were -- you know, what they
15 were doing. So, there was talk of more protesting, if the
16 sheriff was -- was over there. And there was a lot of what ifs
17 at that point.

18 And I just -- there was talk of more protesting,
19 waiting. Waiting. Maybe there needed to be more time before
20 the cows would release. So, it was -- this is the start of a
21 lot of confusion for me.

22 Q. At some point in time, you made a decision to go to the
23 wash; correct?

24 A. To go to the wash?

25 Q. Yes.

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1 A. Yeah. Later on, yes.

2 Q. Okay. Brian, can we get up Exhibit 93, please? And
3 Brian, if you can go down to the middle.

4 Okay. Let's focus on this particular post. Do you
5 remember this post, Eric?

6 A. I do.

7 Q. All right. You made this post?

8 A. Yes.

9 Q. All right. So, this is made sometime after Mr. Bundy
10 gives his second speech; is that accurate?

11 A. Yes.

12 Q. Okay. You made this post. Tell the jury what you meant
13 by this post?

14 A. I meant a couple different things. I was in a hurry on my
15 phone posting it. Probably should have clarified a little bit
16 more. I was trying to just give an explanation of what I had
17 seen so far and what I thought.

18 Bundy gave the sheriff one hour to disarm the BLM.
19 He didn't reply. That's -- you know, he didn't come back, and
20 they didn't talk about it. He didn't reply on the stage. "We
21 are now going to free the cattle by any means."

22 Q. What did you mean "by any means"?

23 A. By any means, like I said, like I alluded to earlier, it
24 was I wasn't really sure what was happening at that point. So,
25 if it took more protesting, if it took -- you know, I was

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1 prepared to stay with the protesters.

2 If they were going to protest on the side of the
3 highway for a week, then I was going to stay with the
4 protesters. If they needed to get trucks in there to safely --
5 like the sheriff had said -- safely, safe. If they needed to
6 get trucks in there, I was willing to help raise money to get
7 the trucks. If -- whatever needed to be done, I was going to
8 go help them.

9 Q. Okay. So, if anything, whatever needed to be done, does
10 that mean violence?

11 A. No. No. At this point, it didn't cross my mind at all.

12 Q. You also said "Do it or else, Mr. Bundy said." What did
13 you mean by that?

14 A. I was kind of trying to explain his -- his demeanor on the
15 stage, I guess. His -- you know -- just he was saying, you
16 know, that -- how do I explain it?

17 He was -- he was saying that they were going to
18 continue the protest, in my mind. That they weren't going to
19 be placated and stop just because they put out a press release
20 that said that they were stopping.

21 Q. You also said you would not be lied to. What did you mean
22 by that?

23 A. That was more of, you know, him not -- the sheriff not
24 coming back, the placated thing. We kind of -- I -- I guess I
25 kind of felt like it was just giving lip service to the crowd

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1 and then disappearing. So, we went over to see and continue
2 the protest.

3 Q. Now, just to back up slightly, you saw the sheriff speak
4 earlier, obviously. We had the exhibit of that.

5 A. Uh-huh.

6 Q. Did you ever see him again?

7 A. Gillespie?

8 Q. That day, yes.

9 A. No, sir.

10 Q. And Brian, if we can go to Exhibit 182, slide two.

11 Okay. So, you see this exhibit that was entered into
12 evidence?

13 A. Yes, I do.

14 Q. Okay. You see the back of yourself there; correct?

15 A. Yes, I do.

16 Q. Okay. And you see this individual to your left; correct?

17 A. Yes.

18 Q. Okay. On April 12th, 2014, did you know this individual?
19 This Ricky Ray Lovelien prior to that day?

20 A. Prior to that day, no.

21 Q. Okay. Just briefly explain how you came into contact with
22 him?

23 A. He was camping next to us, and he asked us -- as we were
24 getting ready to go over to the stage, he said that the
25 parking -- he had obviously been there a day or so. And he

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1 said that the parking was going to be limited and asked if we
2 wanted a ride over to the stage.

3 Q. Okay. And then you obviously went over to the stage at
4 some point; right?

5 A. Yes.

6 Q. Okay. Now, when you were at the stage, were you with him
7 at the staging area?

8 A. For a second. I don't necessarily -- this picture
9 actually kind of surprised me, because I don't -- I don't
10 really remember being with him like that. But we definitely
11 were talking a little bit, you know.

12 Q. Okay. And you mentioned that you made the decision to go
13 to the wash; correct?

14 A. Correct.

15 Q. And when you made the decision to go to the wash, how did
16 you get there?

17 A. So, it's kind of hectic. Everybody was just jumping into
18 vehicles and stuff. And I asked Ricky -- I didn't know his
19 name at that time. I asked him if -- if he was going over
20 there as well. If he was going to follow the protesters as
21 well. And he said "Yes." And I said, "Can we get a ride?"

22 Q. And prior to hearing Cliven Bundy speak the second time,
23 was there any plan to go over to the wash?

24 A. No. No.

25 Q. Was there any plan to meet up with Ricky Ray Lovelien at

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1 that point at any time?

2 A. No. I assumed I would see him again. He was camped next
3 to us, but there was no plan to meet up with Ricky, no.

4 Q. To your knowledge, was Mr. Lovelien camping with anyone
5 else?

6 A. No, not that I saw.

7 Q. Now, when you went over to the wash, what, if anything,
8 did you take with you?

9 A. What I had on me, and my rifle was in Ricky's truck. I
10 didn't want to leave my rifle at the camp in my tent or
11 anything. So, my rifle was in the truck.

12 Q. Okay. So, if we can go to 182-14. You've seen this dash
13 cam video; correct?

14 A. I have.

15 Q. And just generally, what does it depict?

16 A. Interstate 15 Northbound. The whole video or just the
17 picture?

18 Q. Just the picture.

19 A. That's a picture of the back of Ricky's truck. I'm in the
20 front seat. We were -- it's kind of like a parade going over
21 there. There was a lot of vehicles. Guys with flags kind of
22 thing. And the -- we were driving over to -- to the parking
23 area, I guess, is what you would call it. It's not really a
24 parking lot.

25 Q. Were you driving?

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- 1 A. No.
- 2 Q. Had you ever been there before?
- 3 A. No.
- 4 Q. Who is with you?
- 5 A. Steve and Scott are in the back of the truck, and I'm in
6 the front seat, and Ricky is driving.
- 7 Q. Okay. Do you have your rifle with you?
- 8 A. Yes.
- 9 Q. Okay. And where is that?
- 10 A. In its rifle case in the front seat.
- 11 Q. Now, did you arrive to the parking area?
- 12 A. Yes, we did.
- 13 Q. Okay. And Brian, if we can go to 182-1, please.
- 14 Okay. You've seen this particular video, and this is
15 a screenshot of the video; correct?
- 16 A. Correct.
- 17 Q. All right. And, obviously, there's some yellow bars
18 indicating you and Mr. Drexler on there; correct?
- 19 A. Yes.
- 20 Q. Okay. So, generally speaking, where is this video to your
21 knowledge?
- 22 A. The parking area on I-15 -- off of I-15.
- 23 Q. Okay. So, obviously, you are out of the vehicle at this
24 point; correct?
- 25 A. Yeah, a lot of time's actually passed.

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1 Q. And it appears you -- both you and Mr. Drexler are walking
2 in a particular direction; is that right?

3 A. Yes.

4 Q. And based upon what you see there, where are you going?

5 A. Going to the bridge area. I didn't know it was a bridge
6 at that time. I just heard that there was protesters in the
7 wash, and I was walking in that direction. I ended up on a
8 bridge.

9 Q. Okay. Now, to your knowledge, where is Steven Stewart at
10 this juncture?

11 A. Steven? I believe he was behind us.

12 Q. Okay. How about Ricky Lovelien?

13 A. I don't know.

14 Q. When was the last time you had seen Ricky Lovelien when
15 you were in his truck and you got out?

16 A. That was it, when I got out of the truck.

17 Q. Brian, can we go to Exhibit 196, please?

18 Okay. Eric, do you remember this particular photo?

19 A. I do.

20 Q. Okay. And generally speaking, where is -- is this?

21 A. That's where the crowd had gathered right at the parking
22 area off of I-15.

23 Q. Okay. And what's going on, at this point, to your
24 recollection?

25 A. As far as I recall, the Metro had been talking with

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1 somebody. I later found out it's David Bundy. But at the
2 time, I didn't know. They were talking with somebody, and then
3 getting ready to cross back over into the median where -- where
4 all their vehicles and the rest of Metro were. I -- I asked
5 Metro what was with the guys up on the hill.

6 Q. Now, on this picture, you have your rifle with you;
7 correct?

8 A. Yes.

9 Q. Okay. Why did you take your rifle with you?

10 A. I went and got it after I saw the guys up on the hill.

11 MR. MYHRE: Objection, Your Honor.

12 THE WITNESS: There was, like -- sorry.

13 MR. MYHRE: Objection, Your Honor.

14 THE COURT: Sustained.

15 BY MR. MARCHESE:

16 Q. If we can go to Exhibit 117, please.

17 Now, this is the Facebook post from Mr. Steven
18 Stewart. Do you see that?

19 A. Yes.

20 Q. Okay. Now, obviously, you are not Steven Stewart. You
21 didn't make this post; correct?

22 A. No, but I was -- I was there and standing with him when --
23 when he was talking about what he's talking about. What he's
24 trying to talk about there.

25 Q. Okay. Now, referencing -- he references a really

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1 high-powered scope. Do you see this right there?

2 A. I do.

3 Q. And you said that you're personally aware of what he was
4 referring to at that point?

5 A. I am.

6 MR. MYHRE: Objection. Hearsay, Your Honor.

7 THE COURT: Sustained.

8 MR. MARCHESE: I'm not asking for hearsay, Your
9 Honor. I am just asking his personal knowledge of what
10 Mr. Stewart is referring to with the scope.

11 MR. MYHRE: It's based on hearsay, Your Honor.

12 THE COURT: Yeah, it's hearsay to what someone else
13 believes or thinks.

14 MR. MARCHESE: Okay.

15 THE COURT: You can ask him whether he saw a really
16 high-powered scope.

17 BY MR. MARCHESE:

18 Q. At some point in time, you were with Mr. Stewart; correct?

19 A. I was.

20 Q. And was there any point in time when you and Mr. Stewart
21 came into contact with a really high-powered scope?

22 A. There was.

23 Q. When was that?

24 A. It was on the side of the road. There was a woman who had
25 a -- is it call telescoping? Like a pirate's telescope. And

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1 she gave it to Steve first. I was standing there. But then
2 she gave it to me afterwards. We were -- we were looking up on
3 the mountain at the people up on the mountain.

4 MR. MYHRE: Objection, Your Honor.

5 THE COURT: Sustained.

6 BY MR. MARCHESE:

7 Q. And Brian, can you publish to only Court and counsel
8 Exhibit 5017, please.

9 And Eric, do you recognize this?

10 A. I do.

11 MR. MYHRE: Objection, Your Honor. We need a
12 sidebar.

13 THE COURT: Let's go to sidebar.

14 (Sidebar.)

15 THE COURT: All right. Mr. Myhre, go ahead.

16 MR. MYHRE: Thank you, Your Honor. The government's
17 objection again is relevance. This doesn't go to -- to
18 undercut any testimony or rebut any testimony that was
19 presented in the government's case in chief. It goes, again,
20 to the nullification issue of, you know, what the BLM conduct
21 was.

22 THE COURT: So, why can't he testify that he saw
23 people on a hill, so long as he doesn't testify he thought they
24 were snipers? Why can't he say he was just using a telescope
25 to look at people on a hill, so long as he doesn't say that he

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1 thought they were snipers?

2 MR. MYHRE: Because the only reason he would say that
3 is because they're sniper. He would say that they're snipers.
4 That's the reason why he would elicit it. Otherwise, it's not
5 relevant to anything. The fact there were people on a hill
6 doesn't mean anything unless he makes a connection that they're
7 snipers, and he's going to make that connection.

8 THE COURT: Isn't it relevant to show why they are
9 discussing, in the Facebook post, a high-powered scope to rebut
10 the inference that the scope is being used against the BLM for
11 some relevant reason?

12 MR. MYHRE: He's already testified about the
13 high-powered scope. This -- this image that is drawn up now is
14 not from the high-powered scope. He's already testified he got
15 a high-powered scope. He was looking up. And this is -- image
16 is not from the high-powered scope.

17 THE COURT: I'm assuming the question is going to be
18 is this what you were looking at with the scope? Trying to
19 look at with the scope?

20 MR. MARCHESE: It also goes to the picture of Eric
21 like this, because that's what he was talking about. That's
22 why he did that. When he got shot in that particular position,
23 that's what he was referring to.

24 THE COURT: By "shot" you mean photographed.

25 MR. MARCHESE: Well, yeah. I'm just killing it with

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1 the horrible -- between nullification and shot, I mean, Mr. Bad
2 Pun over here. Bad Shakespeare play.

3 MR. MYHRE: Then again, Your Honor, that's not
4 relevant to anything, unless he makes the connection that
5 that's why I got my rifle. That's why I went to the wash, is
6 because these guys on the hill.

7 And that, again, goes to the inference that, "Oh,
8 there's snipers. They are doing something wrong. There's
9 something bad going on."

10 MR. MARCHESE: The problem is, is that it rebuts why
11 he -- you know, the government's theory of the case is that he
12 went over there to forcefully take the cattle back.

13 Now I am stuck. He's not able to answer this
14 question. Now I'm stuck with he just has a rifle in his hand.
15 We don't know why.

16 MR. MYHRE: Well, he's stuck, because he put
17 irrelevant evidence on to begin with. And so, if -- you know,
18 you can't make your own situation and then say you're stuck in
19 it, and say "Now I'm allowed to introduce inadmissible evidence
20 to get myself out."

21 MR. MARCHESE: Well, I mean, we can just go about it
22 this way. I can go to Exhibit 17 and just show the
23 government's aerial shots of the snipers.

24 MR. MYHRE: They are not snipers.

25 THE COURT: So, is the defense response to the

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1 objection that the intent for which this next portion of the
2 testimony is offered is to demonstrate why Mr. Parker had a
3 rifle? That it was related to people on a -- that he saw on a
4 hill?

5 MR. MARCHESE: And that's part of it, and then the
6 other part is that --

7 THE COURT: How does that rebut anything?

8 MR. MARCHESE: Well, it also explains the evidence
9 that's been brought in by the government against all these
10 defendants.

11 THE COURT: He doesn't have the rifle to aim them at
12 the BLM in the wash. He has it to aim at the BLM on the hill?

13 MR. MARCHESE: No, because he's concerned about
14 himself. All the things that he can't get into about reference
15 to people getting hurt.

16 THE COURT: He's concerned about himself, which is
17 self-defense, which is not permissible. So, the objection is
18 sustained.

19 MR. MARCHESE: But I can't comment -- okay.

20 (End of sidebar.)

21 THE COURT: All right. So, I do have a jury note. I
22 have Jury Note No. 129, which asks: "Can the witness please
23 speak into the microphone?"

24 So you can pull the microphone closer to you, if you
25 need to. There's actually two of them, so I don't know if you

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1 want to set them up the way I have mine. That seems to help
2 when you turn your head to look at the screen, and it's away
3 from the microphone, so by using the second microphone by the
4 screen, that could help.

5 And then the second part of Jury Note 129 asks:
6 "What does the word probative mean?" And so that's a legal
7 word. It just means more probable than not that it's relevant,
8 not collateral. So, it's something that's related to the case
9 as opposed to something that's not related and goes off on a
10 tangent.

11 So, it's a legal term, and it's a ruling that the
12 Court makes, and you don't need to make any finding about
13 whether or not something is probative for purposes of testimony
14 here; for whether or not it -- we can keep going in that
15 direction or a different direction. So, don't worry about
16 that, but I appreciate the question.

17 All right. So --

18 MR. MARCHESE: All right. Do you want me to
19 continue? I've got my little list here, and I'm about halfway
20 done, so --

21 THE COURT: All right. Well, the last objection was
22 sustained, so you just pick up right after that.

23 MR. MARCHESE: Well, I just noticed it was noon. I
24 can keep going if Your Honor wants.

25 THE COURT: The objection was sustained.

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1 MR. MARCHESE: Correct. I was just referring to the
2 break, Your Honor. If you wanted to take the break now,
3 because I said I am about halfway done.

4 THE COURT: Okay. So, by keep going, you mean not
5 keep going with what I ruled on? You mean keep going as --

6 MR. MARCHESE: Well, I want to keep going but --

7 THE COURT: -- during the lunch hour.

8 MR. MARCHESE: -- I know where the Court is with
9 that.

10 THE COURT: All right. Well, so you are telling me
11 it's going to be after the lunch hour?

12 MR. MARCHESE: I have a list, and I'm about halfway
13 done.

14 THE COURT: Okay. So, let's go ahead then and take
15 our lunch break, assuming, Mike, we have lunch ready for them.
16 Because if it hadn't arrived, we would just keep go.

17 So, my understanding is the lunch has arrived, so we
18 will go ahead and excuse the jury so they can have their lunch.

19 It is 12:20 now. Let's plan to be back here by 1:00.

20 During the lunch break, again, remember you may speak
21 to your fellow jurors about other things, but not about this
22 case or anything that touches upon the case. You may not read,
23 or listen to, or view anything that touches upon the case nor
24 attempt to perform any independent research or investigation.

25 If you have a question, write it down and please do

Eric Parker - Direct

1 not form any opinion.

2 We'll go ahead and stand for the jury. And after
3 they exit, then, Mr. Parker, you can take your lunch break as
4 well, and then we'll all meet back up here at 1:00.

5 (Jury out.)

6 THE COURT: Off record.

7 (Recess, 12:03 p.m. Resumed 1:28 p.m. Jury out.)

8 THE COURT: Thank you. You may be seated. Go ahead
9 and bring in the jury.

10 (Jury in.)

11 THE COURT: The jury may go ahead and be seated, and
12 everyone else may be seated afterwards.

13 All right. So, we are back from the lunch break, and
14 everyone is here. We'll go ahead and resume with direct
15 examination of Mr. Parker.

16 MR. MARCHESE: Thank you, Your Honor.

17 Q. Good afternoon, Eric. I believe where we left off, you
18 were somewhere in the staging area. Do you remember that?

19 A. Yes, sir.

20 Q. Okay. At some point in time, did you move to the
21 northbound bridge?

22 A. I did, sir.

23 Q. Okay. And Brian, can we bring up Exhibit 182, slide 22,
24 please?

25 Okay. Now, this was an exhibit that was entered into

Eric Parker - Direct

1 evidence against you. This is actually a still photo of a
2 video. Are you familiar with that video?

3 A. I am, sir.

4 Q. Okay. So, on here it says it's approximately 11:56 a.m.
5 Do you remember that?

6 A. I didn't know the exact time. But, yes, I remember the
7 point in time when I walked on the bridge, sir.

8 Q. All right. Now, from the staging area to where you are
9 right now, approximately how far is that?

10 A. From the parking lot to that area right there?

11 Q. Correct.

12 A. I would say easily a couple hundred yards.

13 Q. Okay. Was there any particular reason that you went to
14 the northbound bridge? Yes or no?

15 A. Yes, there was. I --

16 MR. MYHRE: Objection, Your Honor. It was
17 nonresponsive at this point. He just asked whether there was,
18 but we have an objection to the --

19 BY MR. MARCHESE:

20 Q. That's fine. Don't get into the reason. Okay. We will
21 just move on.

22 MR. MYHRE: Thank you.

23 BY MR. MARCHESE:

24 Q. So, you see this individual here? It looks like maybe he
25 has a camera or some kind of a phone in his hand. Do you see

Eric Parker - Direct

1 that?

2 A. Yes, I see it in the picture.

3 Q. Okay.

4 A. I don't remember him at that time.

5 Q. On April 12, 2014, did you know that individual?

6 A. No, I did not.

7 Q. Okay. When you walked by him, at this juncture, did you
8 have any communication with that individual?

9 A. No, I did not.

10 Q. And at any point in time, on April 12th, 2014, to your
11 recollection, did you have any communication with that
12 individual?

13 A. I did not.

14 Q. So, now you got onto the bridge. You are in this
15 particular area. Where did you go from there?

16 A. I went out to about the center of the bridge.

17 Q. Okay. And are Steven and Scott with you at this time to
18 your knowledge?

19 A. I believe Scott was. Steven was not.

20 Q. Okay. And you got out to the middle of the bridge, you
21 just testified to. And did you go directly from this area that
22 you were in or did you stop?

23 A. Directly in the area in the picture?

24 Q. Yes.

25 A. Yes. Yes, sir, I did.

Eric Parker - Direct

1 Q. All right. And then when you got there, what did you do?

2 A. I took in the situation. I looked down into the wash. I
3 saw a small group of protesters underneath the bridge I was
4 standing on, the northbound bridge. They had flags and
5 whatnot.

6 And then I started to take in the greater situation,
7 the larger situation. I saw the fence, and I saw the men at
8 the trucks in the combat gear, and I saw the guys up on the
9 hill.

10 MR. MYHRE: Objection, Your Honor.

11 THE COURT: Sustained.

12 BY MR. MARCHESE:

13 Q. And Brian, if you can bring up Government's Exhibit 10,
14 please.

15 MR. MYHRE: And move to strike that last response,
16 Your Honor.

17 THE COURT: The jury will disregard that last answer.

18 BY MR. MARCHESE:

19 Q. And, Brian, if you can start it at approximately 2:20 and
20 play for about -- well, I will tell you when to stop. Okay.
21 Push play.

22 (Exhibit 10 being played.)

23 Q. And Brian, you can stop there.

24 And is that generally what you saw when you walked
25 out to the center of the northbound bridge?

Eric Parker - Direct

1 A. Yeah. I was handed a pair of binoculars, and I was
2 looking at this vehicle, and the back of this vehicle, and
3 these vehicles right here, and mostly those three areas right
4 there.

5 Q. Okay. Whose binoculars were those?

6 A. I'm not sure. There was a lot of people on the bridge.
7 They all were -- were doing different things. Some people had
8 cameras. Some people had binoculars, and there was one person
9 with a pair of binoculars looking that way. They said a few
10 things to me and handed me the binoculars, because I wanted to
11 see for myself.

12 Q. How long did you have those binoculars for approximately?

13 A. A minute and a half at the most.

14 Q. Then you gave them back, I assume?

15 A. Yeah.

16 Q. Now, Brian, can we get up Government's Exhibit 210,
17 please?

18 All right. Now, you've seen this exhibit previously
19 through Agent Willis, I believe it was?

20 A. I have.

21 Q. Okay. So, if you could just maybe put a little X as to
22 your -- actually, can we make this just slightly bigger, Brian?
23 Perfect. Thank you.

24 If you can just put maybe a little X as to generally
25 where you were at the point in time when you had the

Eric Parker - Direct

1 binoculars?

2 A. About right there.

3 Q. And can you put another X as to the area in which you came
4 from initially?

5 A. About right there.

6 Q. Okay. So, other than the northbound bridge, was there any
7 other area on this map which you traveled to prior to going to
8 the center portion of the northbound bridge?

9 A. No. No, sir. I went directly in this direction along
10 here and then crossed over and then to about right here.

11 Q. You say crossed over. What do you mean by crossed over?

12 A. Crossed the street. Crossed the highway.

13 Q. Okay.

14 A. Interstate 15.

15 Q. Now, you just testified that you were -- and correct me if
16 I'm wrong. You were focusing on this general area?

17 A. Specifically this truck, the men there, and this vehicle
18 right here where there were men with --

19 MR. MYHRE: Objection, Your Honor.

20 THE WITNESS: -- plain clothes.

21 BY MR. MYHRE:

22 Q. Going into this area of -- that we discussed earlier --

23 THE COURT: Do you want to redirect your witness,
24 please.

25 MR. MARCHESE: Can he say what he saw?

Eric Parker - Direct

1 MR. MYHRE: Objection. Relevance, Your Honor.

2 THE COURT: You know the parameters of the order,
3 Mr. Marchese.

4 MR. MARCHESE: Okay.

5 THE COURT: We are not going to waste any more time
6 at sidebar.

7 BY MR. MARCHESE:

8 Q. Without saying what you saw, was there ever a point in
9 time when you looked in this vicinity over here?

10 A. No. I -- I don't remember even being able to see over
11 there. There was a hill here, when I was over here, and -- and
12 when I got over here to the bridge, my -- my concern was other
13 things.

14 Q. Now, when you say other things, would it be accurate to
15 say that you were always looking forward?

16 A. Or up and to the right.

17 MR. MYHRE: Objection, Your Honor. Sidebar, please.

18 THE COURT: All right.

19 (Sidebar.)

20 THE COURT: All right. You wanted sidebar, so it
21 sounds like Mr. Parker is done testifying. He doesn't want to
22 testifying anymore? Is that what it is?

23 He's been saying it over and over again, trying to
24 communicate to the jury that there's something else. That he's
25 looking at the people up on the hill regardless of the order.

Eric Parker - Direct

1 MR. MARCHESE: I was under the impression that he was
2 allowed to say what he saw, but he was not allowed to testify
3 of how it made him feel. That's number one.

4 Number two, my questions were pointed. I am trying
5 to just keep him focused in the wash and looking forward. I --
6 I mean, I was under the assumption -- and Mr. Tanasi and I
7 spoke at lunch -- that he could testify to what he saw, just
8 not that it made him feel fear or anything along those lines.

9 If I am wrong, then I apologize, but that was my
10 understanding on what the Court's order was.

11 THE COURT: Mr. Myhre.

12 MR. MYHRE: Thank you, Your Honor. We would move
13 that Mr. Parker be sanctioned by taking him down and moving to
14 strike his direct.

15 This clearly is intentional. We already had an
16 objection as to the very same about the mesa, who's up there,
17 which was sustained.

18 We've hit it now at least two times since then, and
19 what's happening now is that we're getting these dribs and
20 drabs in front of the jury that there's something out there.
21 And it's virtually impossible to -- to erase it from their
22 minds now at this point.

23 We have gone -- Mr. Marchese, in his direct, hit it
24 at least three times just since the -- we got back from our
25 break.

Eric Parker - Direct

1 MR. MARCHESE: That's not true, you know.

2 MR. MYHRE: And he was -- he said, "Did you see this
3 up here on the right? Oh, you went back here. Well, when you
4 went down here, what did you see?"

5 "Well, I looked up on the right, and looked back at
6 this truck twice. Looked back at the truck twice. Looked up
7 at the mesa."

8 Especially in light of the Judge's -- the Court's
9 prior ruling with respect to this specific issue about the
10 mesa, we see no alternative at this point, Your Honor.

11 THE COURT: Well, Mr. Marchese, is there any innocent
12 reason why he keeps wanting to tell the jury that he was
13 looking up at the mesa?

14 MR. MARCHESE: Absolutely. And the reason being, is
15 that I'm going to get to it, is we had a ranger come in who
16 testified that he pointed his weapon at her. And I'm just
17 trying to get out that he always looked forward, and he was
18 never looking to the left in her direction. That's what I'm
19 trying to elicit.

20 THE COURT: But that's not what the testimony is.
21 His testimony is that he's looking up is what he just stated.

22 MR. MARCHESE: Correct.

23 MR. LEVENTHAL: Up to the left. This is on the
24 right.

25 MR. MARCHESE: I thought he said -- no, she -- she's

Eric Parker - Direct

1 in with Shilaikis. I'm trying to get him focused that he's
2 only looking in the wash.

3 THE COURT: But that's not what his answer was. His
4 answer was that he is looking up at the hill. So, is there any
5 reason why testimony about him looking up in the hill would
6 be --

7 MR. MARCHESE: I thought -- the hill that he was
8 referring to was the one that he marked by Post 1. Is that
9 what you were referring to?

10 MR. LEVENTHAL: He said it was a hill.

11 MR. MARCHESE: Right. He said "I couldn't see over
12 there." I think that's what he testified to.

13 MR. MYHRE: He said "I looked up to the right."

14 MR. MARCHESE: Right. But I'm trying to focus him to
15 say he never looked to the left. But getting back to the
16 Court's original order, am I incorrect in saying that he's not
17 allowed to testify what he saw?

18 THE COURT: The problem is that your witness has been
19 admonished and told not to discuss, and he keeps on saying it.

20 The objection is made. The objection is sustained.
21 The jury is told to disregard the statement, and then he does
22 not answer your question without trying to sneak in information
23 that is in violation of the Court order.

24 MR. MARCHESE: But I understand we can't talk about
25 the pre-12th. I understand that. And I understand --

Eric Parker - Direct

1 THE COURT: In the last sidebar, you told me that the
2 reason that you wanted to elicit testimony about what he saw up
3 on the hill was in order to explain why he had gotten the
4 firearm, which is directly related to a defense that is not
5 appropriate.

6 MR. MARCHESE: But I was -- I am under the impression
7 that he could testify to what he saw, but just not the way he
8 made it -- it made him feel. Am I incorrect? If I am, I
9 apologize. But that was Mr. Tanasi's understanding, too.

10 MR. TANASI: That's -- that's my understanding, too,
11 Your Honor.

12 THE COURT: As long as there is a relevant purpose to
13 it. For example, we talked about, you know, when the cows were
14 released and so forth. He could talk about how that made him
15 feel, because it doesn't go into self-defense.

16 But if the only reason you are going to ask questions
17 about what he sees up on the hill is in order to set up a
18 self-defense, defense of others, jury nullification, then how
19 is -- then it's not relevant or probative.

20 MR. MARCHESE: But it's relative and probative not --
21 where he's looking, because he never looked to the left.
22 That's what I am trying to have him testify to.

23 THE COURT: And you asked him, "Did you look straight
24 ahead?" And he said, "And up on the hill." So, he keeps on
25 wanting to get into the people on the hill, even after numerous

Eric Parker - Direct

1 times it's been explained that that's not appropriate.

2 MR. MYHRE: And he also volunteered, I would point
3 out, about when he looked at the trucks, that they were in
4 combat gear.

5 MR. MARCHESE: Well, I mean, the government's own
6 exhibit, I think, bears that out. It's very difficult --

7 THE COURT: But what is the purpose of pointing that
8 out? It doesn't go to impeach the credibility of someone else.
9 The only reason to bring it up --

10 MR. MARCHESE: I'm just trying to say what happened.
11 I mean, it's just --

12 THE COURT: No.

13 MR. MARCHESE: -- it's very difficult, because we are
14 stuck.

15 THE COURT: You can't just say what happened if it's
16 not relevant, probative, or legally recognizable.

17 MR. MARCHESE: It's the crime. That's what he did.
18 We have 40 pictures of Eric prone on the bridge, and I can't --
19 I can't explain how he got there, or why he did what he did, or
20 what he saw.

21 THE COURT: The government's motion is granted.

22 (End of sidebar.)

23 THE COURT: All right. The government's motion is
24 granted.

25 So, Mr. Parker, you can go back and take your seat.

Eric Parker - Direct

1 And defense may call its next witness. Do you have another
2 witness that's ready?

3 MR. MARCHESE: Eric, come on down.

4 MR. LEVENTHAL: No, Your Honor.

5 THE COURT: Not for today?

6 MR. LEVENTHAL: No, Your Honor.

7 THE COURT: All right. We'll go ahead then and
8 excuse the jury a little bit earlier today, and welcome you
9 back on Monday morning at 9:00 a.m. Yes, 9:00 a.m. for Monday
10 morning.

11 During this overnight break, please remember that you
12 are not to speak about this case or discuss it with anyone.
13 You may, of course, let your employers know or your family and
14 friends know that, yes, you still do have jury duty, so that
15 they can make plans, and you can make those kind of plans.

16 But please do not discuss any of the issues about the
17 case or anything else related to the case except for the time
18 line. And also do not read, or listen to, or view anything
19 that touches upon this case in any way, and do not attempt to
20 perform any research or any independent investigation.

21 You will be provided with testimony, exhibits. I
22 will provide to you the jury instructions, so that you can
23 apply the facts as you find them to those jury instructions,
24 and then you will hear closing arguments. After that, you will
25 be excused, so you may begin your deliberation process. So,

Eric Parker - Direct

1 until then, please do not form any opinions.

2 So, we'll go ahead and stand for the jury so they may
3 be excused, and we will welcome you back at 9:00 a.m.

4 (Jury out.)

5 THE COURT: All right. So, Court's in recess until
6 9:00 a.m. Monday morning.

7 (Recess, 1:49 p.m.)

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Eric Parker - Direct

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INDEX OF EXAMINATIONS

For the Plaintiff:

Witness Name	Direct	Cross	RD	RX	Voir Dire
Eric Parker	13				

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COURT REPORTER'S CERTIFICATE

I, KATHERINE EISMANN, Official Court Reporter, United States District Court, District of Nevada, Las Vegas, Nevada, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Date: August 11, 2017.

/s/ Katherine Eismann

Katherine Eismann, CSR CRR RDR

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,)	
	)	Case No. 2:16-cr-00046-GMN-PAL
Plaintiff,)	
	)	Las Vegas, Nevada
vs.	)	August 15, 2017
	)	9:13 a.m.
ERIC J. PARKER (11), O.)	
SCOTT DREXLER(12), RICHARD)	
LOVELIEN (13), and STEVEN A.))	
STEWART (14),)	
)	
Defendants.	)	Day 21

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE GLORIA M. NAVARRO
UNITED STATES DISTRICT COURT CHIEF JUDGE, AND A JURY

APPEARANCES:

For the Government:

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NADIA JANJUA AHMED, AUSA
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Appearances continued on next page.

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Proceedings reported by machine shorthand, transcript produced
by computer-aided transcription.

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17 Also present:

18 Sharon Gavin, Special Agent FBI
19 Joel Willis, Special Agent FBI
Chris Allen, Bureau of Land Management
20 Mike Abercrombi, FBI
Mamie Ott
21 Nona Dodson
Brian Glynn
22

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1 (Tuesday, August 15, 2017, 9:13 a.m.)

2 --oOo--

3 P R O C E E D I N G S

4 (Jury out. Steven Myhre and Nadia Ahmed not present.)

5 THE COURT: All right. Thank you. You may be
6 seated.

7 COURTROOM ADMINISTRATOR: This is the time set for
8 Jury Trial, Day 21, in Case No. 2:16-cr-046-GMN-PAL, United
9 States of America versus Eric Parker, O. Scott Drexler, Ricky
10 Lovelien and Steven Stewart.

11 Counsel, please make your appearances for the record.

12 MS. CREEGAN: Good morning, Your Honor. Erin Creegan
13 on behalf of the United States.

14 THE COURT: Good morning, Miss Creegan.

15 MR. TANASI: Good morning, Your Honor. Rich Tanasi
16 for Steven Stewart. Also with us at counsel table is Brian
17 Glynn. No longer Tori Bakken. She's back at school.

18 THE COURT: Okay. Good morning.

19 MR. MARCHESE: Good morning, Your Honor. Jess
20 Marchese on behalf of Eric Parker.

21 THE COURT: Good morning.

22 MR. LEVENTHAL: Good morning, Your Honor. Todd
23 Leventhal on behalf of Scott Drexler.

24 THE COURT: Good morning.

25 MR. PEREZ: Good morning, Your Honor. Shawn Perez on

1 behalf of Ricky Lovelien.

2 THE COURT: Good morning.

3 All right. Before we begin, just a few comments to
4 remind everyone about the conduct that is expected in the
5 courtroom. Please do remember that it is a courtroom and not a
6 sporting event; therefore, no indications of your opinions, no
7 matter how much you may agree or disagree with what is being
8 said, is permitted, meaning no verbal outbursts, no body
9 language, or distracting language, or other disrespectful
10 conduct is appropriate. The marshals do have the authority to
11 remove anyone that displays such conduct.

12 And as for the defendants, we do have a holding room
13 right next door in the hallway there that does have a speaker
14 system set up, so that if they cannot comply with the
15 requirements in the courtroom, then they can sit in the holding
16 room and still be able to hear what is going on in court even
17 if they cannot be physically present.

18 We also have a policy of no electronic devices, so,
19 this means iPads, iPhone, laptops cannot be in the courtroom.
20 Even if they are turned off or in the vibrate mode or privacy
21 mode, they still cannot be in the courtroom, so please take a
22 moment and double check and take them outside if you did
23 accidentally bring one in.

24 We do not have any audio recording or video recording
25 in any of the federal courts; and, therefore, the electronic

1 devices are not permitted. The attorneys are permitted to have
2 electronic devices so that they can review their notes, present
3 evidence and so forth. And the US Marshals and court security
4 officers are permitted to have electronic devices for the
5 purposes of communicating with each other to make sure we can
6 keep everything peaceful and orderly today.

7 All right. So, let's go ahead and get started with
8 some of the questions that I have for you regarding the jury
9 instructions and verdict form, and then you tell me your
10 thoughts as well.

11 Last time we had the superseding indictment redacted
12 and provided to the jury in the redacted form. So, I was
13 assuming, and I shouldn't assume anything, so I should probably
14 ask. Is it still the case that the parties prefer to have the
15 redacted superseding indictment provided or the entire
16 superseding indictment?

17 MR. TANASI: Redacted, Your Honor.

18 THE COURT: And --

19 MR. MARCHESE: Parker joins.

20 THE COURT: Mr. Leventhal, you agree?

21 MR. LEVENTHAL: Yes, Your Honor.

22 THE COURT: Mr. Perez?

23 MR. PEREZ: Yes, Your Honor.

24 THE COURT: All right. So, we can use the same one
25 that we used last time.

1 Then on Jury Instruction No. 24, Drexler's name was
2 added.

3 On Jury Instruction 30, the stipulation doesn't
4 specify, and I wasn't sure if you wanted to specify by exhibit
5 number or any other language which tattoos belong to whom or
6 which firearms belong to whom, because that was the nature of
7 the stipulation, but I don't have a written stipulation. It
8 was just spoken into the record. So, if you wanted me to add
9 that, I need to know.

10 MR. TANASI: Which one what was that, Your Honor? I
11 apologize.

12 THE COURT: Number 30 is the stipulation.

13 MS. CREEGAN: That's correct, Your Honor. It's
14 No. 30. And from the government's perspective, it's not
15 necessary to lay it out. We will point it out in our closing.
16 I think that the -- just alerting the jury how to consider a
17 stipulation is sufficient.

18 THE COURT: All right. Does defense agree or
19 disagree?

20 MR. TANASI: Your Honor, I think that's sufficient.

21 MR. MARCHESE: Yeah, no objection from Parker.

22 MR. LEVENTHAL: No objection.

23 MR. MARCHESE: I think the pictures speak for
24 themselves.

25 MR. PEREZ: And no objection.

1 THE COURT: And then Jury Instruction No. 33 isn't a
2 verbatim from the model jury instructions, but the commentary
3 to the instructions say that that particular instruction has
4 been provided and written in that format to avoid the term
5 "expert" in the body of the instruction.

6 Now, the model jury instruction is entitled "Opinion
7 Testimony, Expert Witness," but I didn't know then if you
8 wanted to keep the term expert witness or just title it
9 "Opinion Testimony," or are we overthinking it.

10 Or I just wanted to give you the opportunity to be
11 aware that that was the commentary for that particular
12 instruction. But the instruction -- the body of the
13 instruction is written to avoid using the word expert, but then
14 the title includes the word expert.

15 So, if you have an objection to using the word
16 expert, we could just title it opinion testimony, if you think
17 it would be more helpful for the jury to figure out who
18 would -- you know, and have the term expert witness at the top,
19 I'm fine with that, too, but I wanted to give you the options.

20 MR. TANASI: Your Honor, I think the instruction as
21 written is fine. I think the language kind of flushes out the
22 difference that we were aiming for yesterday.

23 THE COURT: All right.

24 MR. MARCHESE: Parker concurs.

25 MR. LEVENTHAL: Drexler joins.

1 MR. PEREZ: Lovelien joins.

2 MS. CREEGAN: No objection from the government.

3 THE COURT: All right. And then I did find --
4 actually, I didn't. Staff member. I'll give them credit.
5 Found a typo on page 3 of the verdict form on line 8. It
6 says -- all right. So, page 3, line 8, where it says Count
7 One, it should say Count Two.

8 Were there any other typos that you all found?

9 MS. CREEGAN: Not from the government.

10 MR. TANASI: Not from the defense, Your Honor.

11 THE COURT: All right. And any other additions or
12 deletions that you want to bring to the Court's attention
13 before we finalize these?

14 MR. TANASI: None from the defense, Your Honor.

15 MS. CREEGAN: And not from the government.

16 THE COURT: All right. That sounds like we are ready
17 to go with just those changes, just the typo that's been fixed.
18 We're keeping the title. We can use the redacted superseding
19 indictment from before. And we added in the instructions that
20 were requested yesterday.

21 All right. So then we'll bring the jury in at 10:00.
22 We do have the breakfasts there, so as they come in and gather,
23 they can get a quick breakfast. And then we'll begin with the
24 government's closing.

25 Do you think that you'll be done before the noon

1 break?

2 MS. CREEGAN: I think it depends how long jury
3 instructions take.

4 THE COURT: Yeah.

5 MS. CREEGAN: Our estimated time is a little under
6 two hours.

7 THE COURT: Okay. All right. So then we'll take our
8 lunch break as soon as the government's done with its closing,
9 take an hour, and then the defense can begin with its closing.

10 Are you going in any particular order?

11 MR. TANASI: I think we're still sorting that out,
12 Your Honor.

13 THE COURT: Okay.

14 MR. TANASI: Depending kind of on how the
15 government's closing goes.

16 THE COURT: All right. And then the other question I
17 had was as to Friday and whether or not the jurors would be
18 deliberating on Friday.

19 And my common practice always is to leave it up to
20 the jury to decide whether or not they want to stay. Sometimes
21 if they think they're close, they just want to get it done.
22 But other times they've already made plans.

23 In our schedule that they've -- that we've provided
24 to them and in the promise that I've made to them in court that
25 you've heard is that they will not ever be required to be in

1 service -- in jury service for longer or for more days than
2 what is represented in the calendar that we provide to them,
3 with the caveat that sometimes they'll be here less than what's
4 in the calendar, but that way they could set up their schedule
5 with their family and work and so forth.

6 So, it's reasonable if they already have plans on
7 Friday and don't want to come in on Friday to deliberate, but
8 the room is available and I'm here, and there's no reason for
9 them not to if they decide that they want to.

10 So, remind me if I forget at some point to ask them
11 about that, so that they know if they need to be here or not,
12 so that you know if you need to wear a suit that day or not.
13 And so just make sure again that Aaron has all of your contact
14 information, so that if we do have jury questions or a verdict,
15 that we can contact you right away, and also so that we can
16 tell you when the jury arrives and when the jury leaves, so
17 that you know when you're on call and when you're not on call.

18 Anything else? Any other questions that you have for
19 me before we break and then come back at 10:00 for jury
20 instructions?

21 MR. TANASI: That covers it, Your Honor, I think.

22 MR. MARCHESE: No, Your Honor.

23 MS. CREEGAN: I'm sorry. Nothing from the United
24 States.

25 THE COURT: Okay. All right. Then we'll take our

1 break and start back up at 1:00 a.m.

2 MR. TANASI: Thank you.

3 (Recess, 9:23 a.m. Resumed 10:07 a.m. Jury out.)

4 THE COURT: Thank you. You may be seated. We are
5 back on the record. Can we bring the jury in?

6 MR. MYHRE: Yes, Your Honor.

7 THE COURT: All right.

8 MR. TANASI: Your Honor, actually, I apologize. We
9 had one issue that came up with respect to the jury
10 instructions that we were trying to kind of narrow down here,
11 and I apologize for it being so late in the game.

12 But with respect to Jury Instruction 13.1, I'm just
13 not -- collectively, we're just not seeing the model
14 instruction that that comes from. And we think it goes a
15 little bit further than the model instruction with respect to
16 assault on a federal officer. It's almost like a
17 anti-self-defense when self-defense has been ruled
18 impermissible.

19 MS. CREEGAN: Your Honor, that's correct. That's not
20 from the model instruction. This was a stipulated instruction
21 both from the first trial and stipulated before.

22 The paragraph incorporates case law. That
23 instruction comes directly from *Span*, and there's many, many
24 cases that an unloaded firearm is a dangerous weapon, including
25 a cell phone in a pocket pretending to be a firearm. So it is

1 a correct statement of law.

2 MR. TANASI: And again, Your Honor has ruled that
3 *Span* doesn't applied in this case *Feola* doesn't apply in this
4 case. There is no self-defense in this case. And this
5 instruction again would kind of rebut the self-defense that
6 Your Honor has ruled is impermissible.

7 So, it seems like it goes kind of further than is
8 necessary for the scope of the evidence.

9 THE COURT: I don't know what you mean by *Span*
10 doesn't apply in this case. That's what we are applying is
11 *Span*, and that *Span* requires the extra proffer that wasn't met.
12 That's exactly what we're using is *Span*.

13 MR. TANASI: And I understand that, Your Honor. But,
14 again, this seems to refute -- if there were a self-defense
15 argument that were in the jury instructions, this would seem to
16 be a refute to that or a rebut to that.

17 THE COURT: *Span* is a correct statement of the law.
18 The Court is bound to follow *Span*, and this jury instruction is
19 based on the information in *Span* and the law provided by the
20 circuit.

21 MR. TANASI: Understood, Your Honor. I just want to
22 object for the record.

23 THE COURT: All right.

24 MR. MARCHESE: Parker joins.

25 MR. LEVENTHAL: Drexler joins.

1 MR. PEREZ: Lovelien joins.

2 THE COURT: Anything else?

3 MR. MARCHESE: No, Your Honor.

4 MR. TANASI: No, Your Honor. Thank you.

5 THE COURT: Okay. Let's go ahead and call in the
6 jury.

7 (Jury in.)

8 THE COURT: The jury may be seated.

9 All right. Welcome back, ladies and gentlemen of the
10 jury. We are going to go ahead first and have the counsel go
11 ahead and stand up and make appearances for the record, and
12 then I will read to you the jury instructions.

13 MR. MYHRE: Good morning, Your Honor. Good morning
14 ladies and gentlemen. Steven Myhre, Erin Creegan, Nadia Ahmed
15 on behalf of the United States.

16 THE COURT: Good morning.

17 MR. TANASI: Good morning, Your Honor. Thank you.

18 Good morning, folks. Rich Tanasi for Steven Stewart.
19 Also with us at counsel table is Brian Glynn. No long with us
20 is Tori Bakken. She's off to school.

21 MR. MARCHESE: Good morning, Your Honor. Good
22 morning, ladies and gentlemen of the jury. Jess Marchese on
23 behalf of Eric Parker.

24 MR. LEVENTHAL: Good morning, everyone. Todd
25 Leventhal on behalf of Scott Drexler.

1 MR. PEREZ: Good morning, everyone. Shawn Perez on
2 behalf of Ricky Lovelien.

3 THE COURT: Good morning.

4 All right. So, these are the jury instructions in
5 United States of America, Plaintiffs, versus O. Scott Drexler,
6 Ricky Lovelien, Eric J. Parker, Steven A. Stewart, Defendants,
7 in Case No. 2:16-cr-046-GMN-PAL.

8 This is the index. I'm not going to go through and
9 read it, but you'll see here that each of the jury instructions
10 is titled and has a jury number which is listed, and the number
11 will be on the top right-hand corner of the jury instruction.

12 Jury Instruction No. 1.

13 Duties of Jury to Find Facts and Follow Law.

14 Members of the jury, now that you have heard all the
15 evidence, it is my duty to instruct you on the law that applies
16 to this case. A copy of these instructions will be available
17 in the jury room for you to consult.

18 It is your duty to weigh and evaluate all the
19 evidence received in the case and, in that process, to decide
20 the facts. It is also your duty to apply the law as I give it
21 to you to the facts as you find them, whether you agree with
22 the law or not. You must decide the case solely on the
23 evidence and the law and must not be influenced by any personal
24 likes or dislikes, opinions, prejudices, or sympathy. You will
25 recall that you took an oath promising to do so at the

1 beginning of the case.

2 You must follow all these instructions and not single
3 out some and ignore others. They are all important. Please do
4 not read into these instructions or into anything that I may
5 have said or done any suggestion as to what your verdict --
6 what verdict you should return. That is a matter entirely up
7 to you. You cannot substitute your sense of justice, whatever
8 that means, for your duty to follow the law, whether you agree
9 with it or not. It is not for you to determine whether the law
10 is just or whether the law is unjust. This cannot be your
11 task.

12 Instruction No. 2.

13 Charge Against Defendant Not Evidence. Presumption
14 of Innocence. Burden of Proof.

15 The superseding indictment is not evidence. The
16 defendants have pleaded not guilty to the charges. The
17 defendants are presumed to be innocent unless and until the
18 government proves the defendants guilty beyond a reasonable
19 doubt. In addition, the defendants do not have to testify or
20 present any evidence to prove innocence. The government has
21 the burden of proving every element of the charges beyond a
22 reasonable doubt.

23 Instruction No. 3.

24 Reasonable Doubt Defined.

25 Proof beyond a reasonable doubt is proof that leaves

1 you firmly convinced that the defendant is guilty. It is not
2 required that the government prove guilt beyond all possible
3 doubt.

4 A reasonable doubt is a doubt based on reason and
5 common sense and is not based purely on speculation. It may
6 arise from a careful and impartial consideration of all the
7 evidence or from lack of evidence.

8 If, after a careful and impartial consideration of
9 all the evidence, you are not convinced beyond a reasonable
10 doubt that the defendant is guilty, it is your duty to find the
11 defendant not guilty. On the other hand, if, after a careful
12 and impartial consideration of all the evidence, you are
13 convinced beyond a reasonable doubt that the defendant is
14 guilty, it is your duty to find the defendant guilty.

15 Instruction No. 4.

16 Separate Consideration for Each Defendant.

17 Although the defendants are being tried together, you
18 must give separate consideration to each defendant. In doing
19 so, you must determine which evidence in the case applies to
20 each defendant, disregarding any evidence admitted solely
21 against some other defendants. The fact that you may have --
22 the fact that you may find one of the defendants guilty or not
23 guilty should not control your verdict as to any other
24 defendants.

25 Instruction No. 5.

1 Separate Consideration of Multiple Counts and
2 Multiple Defendants.

3 A separate crime is charged against one or more of
4 the defendants in each count. The charges have been joined for
5 trial. You must decide the case of each defendant on each
6 crime charged against that defendant separately. Your verdict
7 on any count as to any defendant should not control your
8 verdict on any other count as to any other defendant.

9 Jury Instruction No. 6.

10 On or About Explained.

11 The superseding indictment charges that the offenses
12 alleged were committed on or about certain dates.

13 Although it is necessary for the government to prove
14 beyond a reasonable doubt that the offenses were committed on a
15 date reasonably near the dates alleged in the superseding
16 indictment, it is not necessary for the government to prove the
17 offenses were committed precisely on the dates charged.

18 Instruction No. 7.

19 Count One - Conspiracy to Commit an Offense -
20 Elements.

21 The defendants are charged in Count One of the
22 superseding indictment with conspiring to commit an offense
23 against the United States, in violation of Section 371 of Title
24 18 of the US Code. In order for a defendant to be found guilty
25 of that charge, the government must prove each of the following

1 elements beyond a reasonable doubt.

2 First, beginning on or about March 28 of 2014, and
3 ending on or about March 2nd of 2016, there was an agreement
4 between two or more persons to commit at least one of the
5 following crimes charged in the indictment.

6 Number 1 is assault on a federal officer in violation
7 of Title 18 of the United States Code Section 111(a)(1) and
8 Section (b);

9 Number 2 is threatening a federal law enforcement
10 officer in violation of United States Code, Section 115(a)(1)
11 and (b);

12 Number 3 is use and carry of a firearm in relation to
13 a crime of violence in violation of Title 18 of the United
14 States Code, Section 924(c);

15 Number 4 is obstruction of the due administration of
16 justice, in violation of Title 18 of the United States Code,
17 Section 1503;

18 Number 5 is interference with interstate commerce by
19 extortion, in violation of Title 18 of the United States Code,
20 Section 1951;

21 And Number 6 is interstate -- I should say; or

22 Number 6, interstate travel in aid of extortion, in
23 violation of Title 18 of the United States Code, Section 1952.

24 Instruction No. 7.1.

25 The Second Elements.

1 Second, the defendant became a member of the
2 conspiracy knowing of at least one of its objects and intending
3 to help accomplish it; and

4 Third, one of the members of the conspiracy performed
5 at least one overt act for the purpose of carrying out the
6 conspiracy.

7 A conspiracy is a kind of criminal partnership - an
8 agreement of two or more persons to commit one or more crimes.
9 The crime of conspiracy is the agreement to do something
10 unlawful; it does not matter whether the crime agreed upon was
11 committed.

12 For a conspiracy to have existed, it is not necessary
13 that the conspirators made a formal agreement or that they
14 agreed on every detail of the conspiracy. It is enough -- it
15 is not enough, however, that they simply met, discussed matters
16 of common interest, acted in similar ways, or perhaps helped
17 one another. You must find that there was a plan to commit at
18 least one of the crimes as I just listed as the object of the
19 conspiracy with all of you agreeing as to the particular crime
20 which the conspirators agreed to commit.

21 One becomes a member of a conspiracy by willfully
22 participating in an unlawful plan with the intent to advance or
23 further some object or purpose of the conspiracy, even though
24 the person does not have full knowledge of all the details of
25 the conspiracy. Furthermore, one who willfully joins an

1 existing conspiracy is as responsible for it as the
2 originators. On the other hand, one who has no knowledge of a
3 conspiracy, but happens to act in a way which further some
4 object or purpose of the conspiracy, does not there therefore
5 become a conspirator. Similarly, a person does not become a
6 conspirator merely by associating with one or more persons who
7 are conspirators nor merely by knowing that a conspiracy
8 exists.

9 An overt act does not itself have to be unlawful. A
10 lawful act may be an element of a conspiracy if it was done for
11 the purpose of carrying out the conspiracy. The government is
12 not required to prove that the defendant personally did one of
13 the overt acts.

14 Jury Instruction No. 8.

15 Count Two - Conspiracy to Impede or Injure a Federal
16 Officer - Elements.

17 The defendants are charged in Count Two of the
18 superseding indictment with conspiracy to prevent by force,
19 intimidation, or threats of violence federal law enforcement
20 officers from discharging the duties of their office under the
21 United States, and to induce by force, intimidation, and
22 threats federal law enforcement officers to leave the place
23 where their duties were required to be performed, in violation
24 of Section 372 of Title 18 of the United States Code. In order
25 for a defendant to be found guilty of that charge, the

1 government must prove each of the following elements beyond a
2 reasonable doubt.

3 First, beginning on or about March 28th of 2014, and
4 ending on or about March 2nd of 2016, there was an agreement
5 between two or more persons to do one of the following:

6 Number 1. To prevent by force, intimidation, or
7 threats, federal law enforcement officers from discharging the
8 duties of their office under the United States; or

9 Number 2. To induce by force, intimidation, or
10 threats any federal law enforcement officer of the United
11 States to leave the place where their duties were required to
12 be performed; and

13 Second, the defendant became a member of the
14 conspiracy knowing of at least one of its objects and intending
15 to help accomplish it.

16 Instruction No. 8.1.

17 Unlike Count One, the government does not have to
18 prove that one of the members of the conspiracy performed at
19 least one overt act for the purpose of carrying out the
20 conspiracy.

21 For a conspiracy to have existed, like in Count One,
22 it is not necessary that the conspirators made a formal
23 agreement or that they agreed on every detail of the
24 conspiracy. It is not enough, however, that they simply met,
25 discussed matters of common interest, acted in similar ways, or

1 perhaps helped one another. You must find that there was a
2 plan to commit at least one of the alleged acts of the
3 conspiracy, with all of you agreeing as to the particular
4 object which the conspirators agreed to commit.

5 One becomes a member of a conspiracy by willfully
6 participating in the unlawful plan with the intent to advance
7 or further some object or purpose of the conspiracy, even
8 though the person does not have full knowledge of all the
9 details of the conspiracy. Furthermore, one who willfully
10 joins an existing conspiracy is as responsible for it as the
11 originators. On the other hand, one who has no knowledge of a
12 conspiracy but happens to act in a way which furthers some
13 object or purpose of the conspiracy, does not thereby become a
14 conspirator. Similarly, a person does not become a conspirator
15 merely by associating with one or more persons who are
16 conspirators nor merely by knowing that a conspiracy exists.

17 Instruction No. 9.

18 Conspiracy - Knowledge of and Association with Other
19 Conspirators.

20 A conspiracy may continue for a long period of time
21 and may include the performance of many transactions. It is
22 not necessary that all members of the conspiracy join it at the
23 same time, and one may become a member of a conspiracy without
24 full knowledge of all the details of the unlawful scheme or the
25 names, identities, or locations of all of the other members.

1 Even though a defendant did not directly conspire
2 with other conspirators in the overall scheme, the defendant
3 has, in effect, agreed to participate in the conspiracy if the
4 government proves each of the following beyond a reasonable
5 doubt that:

6 Number 1. The defendant directly conspired with one
7 or more of the coconspirators to carry out at least one of the
8 objects of the conspiracy;

9 Number 2. That defendant knew or had reason to know
10 that other conspirators were involved with those with whom the
11 defendant directly conspired; and

12 Number 3. The defendant had reason to believe that
13 whatever benefits the defendant might get from the conspiracy
14 were probably dependent upon the success of the entire venture.

15 It is not a defense that a person's participation in
16 a conspiracy was minor or for a short period of time.

17 Instruction No. 10.

18 Knowingly - Defined.

19 An act is done knowingly if a defendant is aware of
20 the act and does not act through ignorance, mistake, or
21 accident. The government is not required to prove that any one
22 of the defendants knew that his acts or omissions were
23 unlawful. You may consider evidence of the defendant's words,
24 acts, or omissions, along with the other evidence, in deciding
25 whether each defendant acted knowingly.

1 Instruction No. 11.

2 Proof of Intent or Knowledge.

3 The intent of the person or the knowledge that a
4 person possesses at any given time, may not ordinarily be
5 proved directly, because there's no way of directly
6 scrutinizing the workings of the human mind. In determining
7 the issue of what a person knew or what a person intended at a
8 particular time, you may consider any statements made or acts
9 by that person and all other facts and circumstances received
10 in evidence which may aid in your determination of that
11 person's knowledge or intent.

12 You may infer, but you are certainly not required to
13 infer, that a person intends the natural and probable
14 consequences of acts knowingly done or knowingly omitted. It
15 is entirely up to you, however, to decide what facts to find
16 from the evidence received during this trial.

17 Instruction No. 12.

18 Mere Presence.

19 Mere presence at the scene of a crime or mere
20 knowledge that a crime is being committed is not sufficient to
21 establish that the defendant committed the crime of conspiracy.
22 The defendant must be a participant and not merely a knowing
23 spectator. The defendant's presence may be considered by the
24 jury along with other evidence in the case.

25 Instruction No. 13.

1 Count Five - Assault on Federal Officer or Employee
2 with a Deadly or Dangerous Weapon - Elements.

3 The defendants are charged in Count Five of the
4 superseding indictment with assault on a federal officer in
5 violation of Section 111(b) of Title 18 of the United States
6 Code. In order for the defendant to be found guilty of that
7 charge, the government must prove each of the following
8 elements beyond a reasonable doubt:

9 First, the defendant forcibly assaulted a federal
10 officer or employee;

11 Second, the defendant did so while the federal
12 officer or employee was engaged in or on account of his or her
13 official duties; and

14 Third, the defendant used a deadly or dangerous
15 weapon.

16 There is a forcible assault when one person
17 intentionally threatens another coupled with an apparent
18 ability to inflict injury on another which causes a reasonable
19 apprehension of immediate bodily harm.

20 A reasonable apprehension of immediate bodily harm is
21 determined with reference to a reasonable person aware of the
22 circumstances known to the victim. Circumstances unknown to
23 the victim are not included.

24 The government is not required to prove that the
25 defendant knew the victim was a federal officer. The

1 government is also not required to prove that the defendant
2 intended to cause bodily injury.

3 Instruction No. 13.1.

4 A firearm, loaded or unloaded, is a dangerous weapon.
5 Federal officers acting in the good faith performance of their
6 duties may not be forcibly resisted by another.

7 Instruction No. 14.

8 Count Eight - Threatening a Federal Law Enforcement
9 officer - Elements.

10 The defendants are charged in Count Eight of
11 superseding indictment with threatening to assault a federal
12 officer in violation of Section 115 of Title 18 of the United
13 States Code.

14 In order for the defendants to be found guilty of
15 that charge, the government must prove each of the following
16 elements beyond a reasonable doubt;

17 First, the defendants made a statement or did an act
18 that constituted a threat to assault a federal law enforcement
19 officer;

20 Second, the defendant intended the statement or act
21 to be a threat or made the statement or did the act knowing the
22 words or actions would be viewed as a threat;

23 Third, that a reasonable person making the statement
24 or doing the act would foresee that the statement or act would
25 be interpreted by those to whom the maker communicated the

1 statement or act as a serious threat; and

2 Fourth, that the threat was made with the intent to
3 impede, intimidate, or interfere with the federal law
4 enforcement officer or to retaliate for the performance of his
5 or her official duties.

6 A threat is a serious statement expressing an
7 intention to inflict bodily injury at once or the future, as
8 distinguished from idle or careless talk, exaggeration, or
9 something said in a joking manner.

10 Instruction No. 14.1.

11 To determine whether or not statements or acts
12 constitute a threat, you should consider the circumstances
13 under which the alleged threat was made, including its context
14 with respect to surrounding events, the reactions of those who
15 heard the statements or saw the acts, the physical and mental
16 condition of the defendant, and whether the statements or acts
17 were conditional.

18 It is not necessary that the government prove that
19 the defendant intended to carry out the threat or that he had
20 the present ability to carry out the threat. It is not
21 necessary that the government prove the exact words or actions
22 that constitute the threat.

23 The defendant need not communicate the threat
24 directly to the intended target.

25 The government must prove beyond a reasonable doubt

1 that the victim was a federal law enforcement officer at the
2 time the threat was made, but the government does not have to
3 prove the defendant knew that he or she was a federal law
4 enforcement officer.

5 A federal law enforcement officer is any officer,
6 agent, or other employee of the United States government who is
7 authorized by law or by a government agency to engage in or
8 supervise the prevention, detection, investigation, or
9 prosecution of any violation of federal criminal law.

10 "Impede" means to stop the progress, obstruct, or
11 hinder. "Intimidate" means to make timid or fearful, to
12 inspire or affect with fear, to frighten or to deter. And
13 "interfere with" means to come in to collision with, to
14 intermeddle, to hinder, to interpose, or to intervene. To
15 "retaliate" means to return for like, to act in reprisal for
16 some past act.

17 Instruction No. 15.

18 Count Twelve - Obstruction of Justice - Elements.

19 The defendants are charged in Count Twelve of the
20 superseding indictment with obstruction of justice in violation
21 of Section 1503 of Title 18 of the United States Code. In
22 order for a defendant to be found guilty of that charge, the
23 government must prove each of the following elements beyond a
24 reasonable doubt:

25 First, the defendant influenced, obstructed, or

1 impeded, or tried to influence, obstruct, or impede the due
2 administration of justice; and

3 Second, the defendant acted corruptly, or by threats
4 or force, or by any threatening communication with the intent
5 to obstruct justice.

6 The government need not prove that the defendant's
7 sole or even primary intent was to obstruct justice, so long as
8 the government proves beyond a reasonable doubt that one of the
9 defendant's intentions was to obstruct justice. The
10 defendant's intention to obstruct justice must be substantial.

11 The word "corruptly" as used in this instruction
12 means that the act must be done with the purpose of obstructing
13 justice.

14 Instruction No. 16.

15 Count Fourteen - Hobbs Act Extortion - Elements.

16 The defendants are charged in Count Fourteen of the
17 superseding indictment with extortion by force, violence, or
18 fear in violation of Section 1951 of Title 18 of the United
19 States Code. In order for a defendant to be found guilty of
20 that charge, the government must prove each of the following
21 elements beyond a reasonable doubt:

22 First, the defendant induced someone to part with
23 property by the wrongful use of actual or threatened force,
24 violence, or fear;

25 Second, the defendant acted with the intent to obtain

1 property;

2 Third, commerce from one state to another was
3 affected in some way.

4 A defendant's claim of right to the property is not a
5 defense.

6 The word "fear" as used in this instruction means an
7 apprehension, concern, or anxiety about physical violence or
8 harm that is reasonable under the circumstances.

9 Conduct affects interstate commerce if it in any way
10 interferes with, changes, or alters the movement or
11 transportation or flow of goods, merchandise, money, or other
12 property in commerce between or among the states. The effect
13 can be minimal. It is not necessary to prove that the
14 defendant intended to obstruct, delay, or interfere with
15 interstate commerce or that the purpose of the alleged crime
16 was to affect interstate commerce. Further, you do not have to
17 decide whether the effect on interstate commerce was to be
18 harmful or beneficial to a particular business or to commerce
19 in general. You do not even have to find that there was an
20 actual effect on commerce.

21 Instruction No. 16.1.

22 All that is necessary to prove this element is that
23 the natural consequences of the offense potentially caused an
24 effect on interstate commerce to any degree, however minimal or
25 slight.

1 Instruction No. 17.

2 Count Sixteen - Interstate or Foreign Travel in Aid
3 of Extortion - Elements.

4 The defendants are charged in Count Sixteen of the
5 superseding indictment with violating Section 1952(a)(2) of
6 Title 18 of the United States Code. In order for the defendant
7 to be found guilty of that charge, the government must prove
8 each of the following elements beyond a reasonable doubt:

9 First, that the defendant traveled in interstate
10 commerce or used a facility in interstate commerce, namely the
11 Internet or World Wide Web, with the intent to commit a crime
12 of violence in furtherance of an unlawful activity, namely
13 extortion in violation of Nevada law;

14 Second, after doing so, the defendant committed or
15 attempted to commit the violent crime in furtherance of the
16 unlawful activity.

17 Nevada Revised Statute Section 205.320, concerning
18 extortion, provides in pertinent part, that a person who, with
19 the intent to extort or gain any money or other property . . .
20 or to do or abet or procure any illegal or wrongful act,
21 whether or not the purpose is accomplished, threatens, directly
22 or indirectly, to injure a person or property, has committed
23 the offense of extortion.

24 You are instructed that assault on a federal officer,
25 Count Five, and threatening a federal officer, Count Eight, are

1 crimes of violence. It is for you to determine whether the
2 defendant traveled in interstate commerce or used a facility in
3 interstate commerce with intent to commit a crime of violence
4 in furtherance of the unlawful activity.

5 Instruction No. 18.

6 Counts Six, Nine and Fifteen - Using, Carrying or
7 Brandishing a Firearm During and in Relation to a Crime of
8 Violence - Elements.

9 The defendants are charged in Counts Six, Nine, and
10 Fifteen of the superseding indictment with using, carrying, and
11 brandishing a firearm during and in relation to three different
12 crimes of violence in violation of Section 924(c) of Title 18
13 of the United States Code. The crimes of violence are:

14 Count Five, assault on a federal officer, which is
15 the underlying crime for Count Six.

16 Count Eight, threatening a federal officer, which is
17 the underlying crime for Count Nine, and

18 Count Fourteen, interference with interstate commerce
19 by extortion, which is the underlying crime for Count Fifteen.

20 In order for a defendant to be found guilty of any
21 one of these charges, the government must prove each of the
22 following elements beyond a reasonable doubt;

23 First, the defendant committed the underlying crime
24 as charged in Counts Five, Eight, or Fourteen of the
25 superseding indictment, all of which I instruct you are crimes

1 of violence; and

2 Second, that the defendant knowingly used or carried
3 a firearm during and in relation to that crime.

4 Instruction No. 18.1.

5 A defendant used a firearm if he actively employed
6 the firearm during and in relation to the crime of violence.

7 A defendant carried a firearm if he knowingly
8 possessed it and held, moved, conveyed, or transported it in
9 some manner on his person or in a vehicle.

10 A defendant used or carried a firearm during and in
11 relation to the crime of firearm -- let me start that again.

12 A defendant used or carried a firearm during and in
13 relation to the crime if the firearm facilitated or played a
14 role in the crime as charged in that particular count of the
15 superseding indictment.

16 If you find a defendant guilty of using or carrying a
17 firearm during and in relation to a crime of violence in
18 violation of Section 924(c) of Title 18 of the United States
19 Code, as charged in Counts Six, Nine, or Fifteen of the
20 superseding indictment, you will be asked to find if the
21 government proved beyond a reasonable doubt that the defendant
22 brandished the firearm during and in relation to the crime of
23 violence.

24 A defendant brandished a firearm if he displayed all
25 or part of the firearm, or otherwise made the presence of the

1 firearm known to another person, in order to intimidate that
2 person, regardless of whether the firearm was directly visible
3 to that person.

4 Instruction No. 19.

5 The term "firearm" means any weapon which will or is
6 designed to or may be readily converted to expel a projectile
7 by the action of an explosive, or the frame or receiver of any
8 such weapon. The government is not required to prove that a
9 firearm was loaded or operable.

10 Instruction No. 20.

11 Liability for Substantive Offense Committed by
12 Coconspirator.

13 Each member of the conspiracy is responsible for the
14 actions of the other conspirators performed during the course
15 and in furtherance of the conspiracy. If one member of a
16 conspiracy commits a crime in furtherance of the conspiracy,
17 the other members have also, under the law, committed that
18 crime.

19 Therefore, you may find the defendant guilty of the
20 crimes as charged in Counts Five, Six, Eight, Nine, Twelve,
21 Fourteen, Fifteen, or Sixteen of the superseding indictment if
22 the government has proved each of the following elements beyond
23 a reasonable doubt:

24 First, that a person committed the crimes as alleged
25 in Counts Five, Six, Eight, Nine, Twelve, Fourteen, Fifteen or

1 Sixteen of the superseding indictment;

2 Second, the person was a member of the conspiracy
3 charged in Counts One or Two or both; and

4 Third, the person committed the crime in furtherance
5 of the conspiracy charged in Counts One or Two or both.

6 Instruction No. 20.1.

7 The Fourth Element.

8 Fourth, the defendant was a member of the same
9 conspiracy at the time the offense charged in Counts Five, Six,
10 Eight, Nine, Twelve, Fourteen, Fifteen, or Sixteen were
11 committed; and

12 Fifth, the offense fell within the scope of the
13 unlawful agreement and could reasonably have been foreseen to
14 be a necessary or natural consequence of the unlawful
15 agreement.

16 Instruction No. 21.

17 Aiding and Abetting.

18 A defendant may be found guilty of the crimes charged
19 in Counts Five, Six, Eight, Nine, Twelve, Fourteen, Fifteen, or
20 Sixteen of the superseding indictment even if the defendant
21 personally did not commit the act or acts constituting the
22 crime but aided and abetted in its commission. To prove a
23 defendant guilty of a crime by aiding and abetting, the
24 government must prove each of the following beyond a reasonable
25 doubt:

1 First, the crime was committed by someone;

2 Second, the defendant aided, counseled, commanded,
3 induced, or procured that person with respect to at least one
4 element of the crime; and

5 Third, the defendant acted with the intent to
6 facilitate the crime; and

7 Fourth, the defendant acted before the crime was
8 completed.

9 It is not enough that the defendant merely associated
10 with the person committing the crime, or unknowingly or
11 intentionally did things that were helpful to the person, or
12 was present at the scene of the crime. The evidence must show
13 beyond a reasonable doubt that the defendant acted with the
14 knowledge and intention of helping that person commit the
15 crime.

16 Instruction No. 21.1.

17 A defendant acts with the intent to facilitate the
18 crime when the defendant actively participates in a criminal
19 venture with advanced knowledge of the crime and having
20 acquired that knowledge when the defendant still had a
21 realistic opportunity to withdraw from the crime.

22 The government is not required to prove precisely
23 which defendant actually committed the crime and which
24 defendant aided and abetted.

25 Instruction No. 22.

1 Conduct of Law Enforcement Officers.

2 The conduct, in other words, actions of the law
3 enforcement officers in this case is not at issue. Under the
4 law, the conduct of the law enforcement officers in this case
5 cannot justify or excuse an assault, a threat, or an extortion
6 by force by another. In your deliberations, you are not to
7 discuss or consider whether you agree or disagree with any
8 Court orders authorizing the impoundment operations, any
9 impoundment operations conducted by the Bureau of Land
10 Management, BLM, and National Park Service, NPS, or any actions
11 or inactions taken by BLM or NPS officers on April 12th of
12 2014.

13 Instruction No. 23.

14 Defendant's Decision Not to Testify.

15 A defendant in a criminal case has a constitutional
16 right not to testify. You may not draw any inference of any
17 kind from the fact that the defendant did not testify.

18 Instruction No. 24.

19 Defendant's Decision to Testify.

20 One of the defendants, Mr. Drexler, has testified.
21 You should treat this testimony just as you would the testimony
22 of any other witness.

23 Instruction No. 25.

24 What is Evidence?

25 The evidence you are to consider in deciding what the

1 facts are consists of:

2 Number 1. The sworn testimony of any witness; and

3 Number 2. The exhibits received in evidence; and

4 Number 3. Any facts to which the parties have
5 agreed.

6 Instruction No. 26.

7 What is Not Evidence?

8 In reaching your verdict, you may consider only the
9 testimony and exhibits received in evidence. The following
10 things are not evidence and you may not consider them in
11 deciding what the facts are:

12 Number 1. Questions, statements, objections, and
13 arguments by the lawyers are not evidence. The lawyers are not
14 witnesses. Although you may consider a lawyer's questions to
15 understand the answer of a witness, the lawyer's questions are
16 not evidence. Similarly, what the lawyers have said in their
17 opening statement, or will say in their closing statements and
18 at other times, is intended to help you interpret the evidence,
19 but it is not evidence. If the fact as you remember them
20 differ from the way the lawyers state them, your memory of them
21 controls;

22 Number 2. Any testimony that I have excluded,
23 stricken, or instructed you to disregard is not evidence. In
24 addition, some evidence was received only for a limited
25 purpose; when I have instructed you to consider certain

1 evidence in a limited way, you must do so; and

2 Number 3. Anything you may have seen or heard when
3 the Court was not the session is not evidence. You are to
4 decide the case solely on the evidence received at the trial.

5 Instruction No. 27.

6 Direct and Circumstantial Evidence.

7 Evidence may be direct or circumstantial. Direct
8 evidence is direct proof of a fact, such as testimony by a
9 witness about what that witness personally saw or heard or did.
10 Circumstantial evidence is indirect evidence, that is, it is
11 proof of one or more facts from which you can find another
12 fact.

13 You are to consider both direct and circumstantial
14 evidence. Either can be used to prove any fact. The law makes
15 no distinction between the weight to be given to either direct
16 or circumstantial evidence. It is for you to decide how much
17 weight to give to any evidence.

18 Instruction No. 28.

19 Charts and Summaries in Evidence.

20 Certain charts and summaries have been admitted in
21 evidence. Charts and summaries are only as good as the
22 underlying supporting material. You should, therefore, give
23 them only such weight as you think the underlying material
24 deserves.

25 Instruction No. 29.

1 Evidence for a Limited Purpose.

2 During trial, you were advised that Exhibit 102, one
3 of the Facebook posts by Mr. Parker, was admitted only for the
4 limited purpose of intent, absence of mistake, or motive. Also
5 during trial you were advised that Exhibit 129, page 5,
6 Mr. Parker's forearm tattoo, was admitted only as to
7 Mr. Parker, and that Exhibit 131, page 4, Mr. Drexler's forearm
8 tattoo, was admitted only as to Mr. Drexler. So, you must
9 consider that -- this evidence only limited as to that purpose
10 and for that defendant.

11 Instruction No. 30.

12 Stipulations of Fact.

13 The parties have agreed to certain facts that have
14 been stated to you. You should therefore treat these facts as
15 having been proved.

16 Instruction No. 31.

17 Jury Consideration of Punishment.

18 The punishment provided by law for this crime is for
19 the Court to decide, and you may not consider punishment in
20 deciding whether the government has proved its case against the
21 defendant beyond a reasonable doubt.

22 Instruction No. 32.

23 Credibility Of witnesses.

24 In deciding the facts in this case, you may have to
25 decide which testimony to believe and which testimony not to

1 believe. You may believe everything a witness says, or part of
2 it, or none of it.

3 In considering the testimony of any witness, you may
4 take into account:

5 Number 1. The witness's opportunity and ability to
6 see, or hear, or know the things testified to;

7 Number 2. The witness's memory;

8 Number 3. The witness's manner while testifying;

9 Number 4. The witness's interest in the outcome of
10 the case, if any;

11 Number 5. The witness's bias or prejudice, if any;

12 Number 6. Whether other evidence contradicted the
13 witness's testimony;

14 Number 7. The reasonableness of the witness's
15 testimony in light of all the evidence; and

16 Number 8. Any other factors that bear on
17 believability.

18 The weight of the evidence as to a fact does not
19 necessarily depend on the number of witnesses who testify.
20 What is important is how believable the witnesses were and how
21 much weight you think their testimony deserves.

22 Instruction No. 33.

23 Opinion Testimony - Expert Witness.

24 You have heard testimony from Erich Smith who
25 testified to opinions and the reasons for his opinions. The

1 opinion testimony is allowed because of the education or
2 experience of this witness. Such opinion testimony should be
3 judged like any other testimony. You may accept it or reject
4 it and give it as much weight as you think it deserves,
5 considering the witness's education, and experience, the
6 reasons given for the opinion, and all the other evidence in
7 this case.

8 Instruction No. 34.

9 Statements by a Defendant.

10 You have heard testimony that a defendant made a
11 statement. It is for you to decide:

12 Number 1. Whether a defendant made the statement,
13 and

14 Number 2. If so, how much weight to give to it.

15 In making those decisions, you should consider all
16 the evidence about the statement, including the circumstances
17 under which a defendant may have said it.

18 Instruction No. 35.

19 Witness Pretrial Preparation.

20 It is proper for an attorney to interview any witness
21 in preparation for trial.

22 Of course, in the process of trial preparation, a
23 party may not suggest that the witness depart from the truth.

24 You have also heard testimony that a witness read or
25 reviewed certain materials pertaining to the case before the

1 witness testified at trial. The law permits a witness to do
2 so.

3 Instruction No. 36.

4 Government's Use of Undercover Agents.

5 You have heard testimony from an undercover agent who
6 was involved in the government's investigation in this case.
7 Law enforcement officials may engage in stealth and deception,
8 such as the use of undercover agents, in order to investigate
9 criminal activities. Undercover agents may use false names and
10 appearances.

11 Instruction No. 37.

12 When you begin your deliberations, elect one member
13 of the jury as your presiding juror who will preside over the
14 deliberations and speak for you here in court.

15 You will then decide -- discuss the case with your
16 fellow jurors to reach agreement if you can do so. Your
17 verdict, whether guilty or not guilty, must be unanimous.

18 Each of you must decide the case for yourself, but
19 you should do so only after you have considered all the
20 evidence, discussed it fully with the other jurors, and
21 listened to the views of your fellow jurors.

22 Do not be afraid to change your opinion if the
23 discussion persuades you that you should. But do not come to a
24 decision simply because others think it is right.

25 It is important that you attempt to reach a unanimous

1 verdict but, of course, only if each of you can do so after
2 having made your own conscientious decision. Do not change an
3 honest belief about the weight and effect of the evidence
4 simply to reach a verdict.

5 Instruction No. 38.

6 Consideration of Evidence - Conduct of the Jury.

7 Because you must base your verdict only on the
8 evidence received in the case and on these instructions, I
9 remind you that you must not be exposed to any other
10 information about the case or to the issues it involves.
11 Except for discussing the case with your fellow jurors during
12 your deliberations:

13 Do not communicate with anyone in any way and do not
14 let anyone else communicate with you in any way about the
15 merits of the case or anything to do with it. This includes
16 discussing the case in person, in writing, by phone, or
17 electronic means, via email, text messaging, or any Internet
18 chat room, blog, website, or other feature. This applies to
19 communicating with your family member, your employer, the media
20 or press, and the people involved in the trial. If you are
21 asked or approached in any way about your jury service or
22 anything about this case, you must respond that you have been
23 ordered not to discuss the matter and to report the contact to
24 the Court.

25 Do not read, watch, or listen to any news or media

1 accounts or commentary about the case or anything to do with
2 it. Do not do any research, such as consulting dictionaries,
3 searching the Internet, or using other reference materials, and
4 do not make any investigation or in any other way try to learn
5 about the case on your own.

6 Instruction No. 38.1.

7 The law requires these restrictions to ensure the
8 parties have a fair trial based on the same evidence and that
9 each party has an opportunity to address -- has had an
10 opportunity to address. A juror who violates these
11 restrictions jeopardizes the fairness of these proceedings, and
12 a mistrial could result that would require the entire
13 process -- trial process to start over. If any juror is
14 exposed any outside information, please notify the Court
15 immediately.

16 Instruction No. 39.

17 Use of Notes.

18 Some of you have taken notes during the trial.
19 Whether or not you took notes, you should rely on your own
20 memory of what was said. Notes are only to assist your memory.
21 You should not be overly influenced by your notes or those of
22 your fellow jurors.

23 Instruction No. 40.

24 Communication with Court.

25 If it becomes necessary during your deliberations to

1 communicate with me, you may send a note through the court
2 security officer, signed by any one or more of you. No member
3 of the jury should ever attempt to communicate with me except
4 by a signed writing, and I will respond to the jury concerning
5 the case only in writing or here in open court. If you send
6 out a question, I will consult with the lawyers before
7 answering the it, which may take some time. You may continue
8 your deliberations while waiting for the answer to any
9 question. Remember that you are not to tell anyone --
10 including me -- how the jury stands numerically or otherwise on
11 any question submitted to you, including the question of the
12 guilt of any defendant, until after you have reached a
13 unanimous verdict or have been discharged.

14 Instruction No. 41.

15 Verdict Form.

16 A verdict form has been prepared for you, and after
17 you have reached unanimous agreement on a verdict, your
18 presiding juror should complete the verdict form according to
19 your deliberations, sign it, and date it, and advise the court
20 security officer that you are ready to return to the courtroom.

21 This is the verdict form.

22 Verdict.

23 We, the jury, in the above-entitled case, upon our
24 oaths, do say:

25 Count One.

1 As to Count One of the superseding indictment
2 charging conspiracy to commit an offense against the United
3 States, we, the jury, unanimously find as to:

4 O. Scott Drexler, not guilty or guilty.

5 Ricky R. Lovelien, not guilty or guilty, and

6 Eric J. Parker, not guilty or guilty, and

7 Steven A Stewart, not guilty or guilty.

8 If you find any of the defendants guilty of Count
9 One, you must also indicate which particular object the
10 conspirators agreed to commit, and you may choose all that
11 apply.

12 Number 1 is assault on a federal officer in violation
13 of Title 18, United States Code, Section 111(a)(1) and (b).

14 Number 2 is threatening a federal law enforcement
15 officer, in violation of Title 18, United States Code, Section
16 115(a)(1)(B).

17 Three is use and carry of a firearm in relation to a
18 crime of violence in violation of Title 18, United States Code,
19 Section 924(c).

20 Number 4 is obstruction of the due administration of
21 justice in violation of Title 18 of the United States Code
22 Section 1503.

23 Number 5 is interference with interstate commerce by
24 extortion, in violation of Title 18, United States Code,
25 Section 1951.

1 And 6 is interstate travel in aid of extortion, in
2 violation of Title 18 of the United States Code, Section 1952.

3 Count Two.

4 As to Count Two of the superseding indictment
5 charging conspiracy to impede or injure a federal officer, we,
6 the jury, unanimously find, as to:

7 O. Scott Drexler, not guilty or guilty.

8 Ricky R. Lovelien, not guilty or guilty.

9 Eric J. Parker, not guilty or guilty.

10 And Steven A. Stewart, not guilty or guilty.

11 If you find any of the defendants guilty of Count --
12 that should be Count Two.

13 If you find any of the defendants guilty of Count
14 Two, you must also indicate which particular object the
15 conspirators agreed to commit, and you may choose all that
16 apply.

17 So, Number 1. To prevent, by force, intimidation, or
18 threats, federal law enforcement officers from discharging the
19 duties of their office under the United States; or

20 Number 2. To influence by force, intimidation, or
21 threats, any federal law enforcement officer of the United
22 States to leave the place where their duties were required to
23 be performed.

24 Count Five.

25 As to Count Five of the superseding indictment

1 charging that the defendants committed or aided and abetted the
2 commission of assault on a federal officer, we, the jury,
3 unanimously find the Defendant:

4 O. Scott Drexler, not guilty or guilty.

5 Ricky R. Lovelien, not guilty or guilty.

6 Eric J. Parker, not guilty or guilty.

7 And Steven A. Stewart, not guilty or guilty.

8 Count Six.

9 As to Count Six of the superseding indictment
10 charging the defendants committed or aided and abetted the
11 commission of use and carry of a firearm during and in relation
12 to a crime of violence, which relates to Count Five, assault on
13 a federal officer, we, the jury, unanimously find as to:

14 O. Scott Drexler, not guilty or guilty.

15 If the jury finds the defendant guilty of Count Six
16 of the superseding indictment, the jury must also answer the
17 following question:

18 We, the jury, unanimously find the firearm was
19 brandished. No or yes.

20 Ricky R. Lovelien, not guilty or guilty.

21 If the jury finds the defendant guilty of Count Six
22 of the superseding indictment, the jury must also answer the
23 following question:

24 We, the jury, unanimously find the firearm was
25 brandished. No or yes.

1 Eric J. Parker, not guilty or guilty.

2 If the jury finds the defendant guilty of Count Six
3 of the superseding indictment, the jury must also answer the
4 following question:

5 We, the jury, unanimously find the firearm was
6 brandished. No or yes.

7 And Steven A. Stewart, not guilty or guilty.

8 If the jury finds the defendant guilty of Count Six
9 of the superseding indictment, the jury must also answer the
10 following question:

11 We, the jury, unanimously find the firearm was
12 brandished. No or yes.

13 Count Eight.

14 As to Count Eight of the superseding indictment
15 charging the defendant committed or aided and abetted the
16 commission of threatening a federal law enforcement officer,
17 we, the jury, unanimously find the defendant:

18 O. Scott Drexler, not guilty or guilty.

19 Ricky R. Lovelien, not guilty or guilty.

20 Eric J. Parker, not guilty or guilty.

21 And Steven A. Stewart, not guilty or guilty.

22 Count Nine.

23 As to Count Nine of the superseding indictment
24 charging the defendant committed or aided and abetted the
25 commission of use and carry of a firearm during and in relation

1 to a crime of violence, and this refers to Count Eight,
2 threatening a federal law enforcement officer, we, the jury,
3 unanimously find as to:

4 O. Scott Drexler, not guilty or guilty.

5 If the jury finds the defendant guilty of Count Nine
6 of the superseding indictment, the jury must also answer the
7 following question:

8 We, the jury, unanimously find the firearm was
9 brandished. No, or yes.

10 Ricky R. Lovelien, not guilty or guilty.

11 If the jury finds the defendant guilty of Count Nine
12 of the superseding indictment, the jury must also answer the
13 following question:

14 We, the jury, unanimously find the firearm was
15 brandished. No or yes.

16 Eric J. Parker, not guilty or guilty.

17 If the jury finds the defendant guilty of Count Nine
18 of the superseding indictment, the jury must also answer the
19 following question:

20 We, the jury, unanimously find the firearm was
21 brandished. No or yes.

22 And Steven A. Stewart, not guilty or guilty.

23 If the jury finds the defendant guilty of Count Nine
24 of the superseding indictment, the jury must also answer the
25 following questions:

1 We, the jury, unanimously find the firearm was
2 brandished. No or yes.

3 Count Twelve.

4 As to Count Twelve of the superseding indictment
5 charging that the defendants committed, or aided and abetted,
6 the commission of obstruction of the due administration of
7 justice, we, the jury, unanimously find the Defendant:

8 O. Scott Drexler, not guilty or guilty.

9 Ricky R. Lovelien, not guilty or guilty.

10 Eric J. Parker, not guilty or guilty.

11 And Steven A. Stewart, not guilty or guilty.

12 Count Fourteen.

13 As to Count Fourteen of the superseding indictment
14 charging that the defendant committed, or aided and abetted,
15 the commission of interference with interstate commerce by
16 extortion, we, the jury, unanimously find the defendant:

17 O. Scott Drexler, not guilty or guilty.

18 Ricky R. Lovelien, not guilty or guilty.

19 Eric J. Parker, not guilty or guilty.

20 And Steven A. Stewart, not guilty or guilty.

21 Count Fifteen.

22 As to Count Fifteen of the superseding indictment
23 charging that the defendant committed, or aided and abetted,
24 the commission of use and carry of a firearm during and in
25 relation to a crime of violence -- the crime of violence

1 related to this count is Count Fourteen, interference with
2 interstate commerce by extortion -- we, the jury, unanimously
3 find as to:

4 O. Scott Drexler, not guilty or guilty.

5 And if the jury finds the defendant guilty of Count
6 Fifteen of the superseding indictment, the jury must also
7 answer the following question:

8 We, the jury, find unanimously that the firearm was
9 brandished. No or yes.

10 Ricky R. Lovelien, not guilty or guilty.

11 If the jury finds the defendant guilty of Count
12 Fifteen of the superseding indictment, the jury must also
13 answer the follow question:

14 We, the jury, unanimously find that the firearm was
15 brandished. No, or yes.

16 Eric J. Parker, not guilty or guilty.

17 If the jury finds the defendant guilty of Count
18 Fifteen of the superseding indictment, the jury must also
19 answer the following question:

20 We, the jury, unanimously find the firearm was
21 brandished. No, or yes.

22 And Steven A. Stewart, not guilty or guilty.

23 If the jury finds the defendant guilty of Count
24 Fifteen of the superseding indictment, the jury must also
25 answer the following question:

1 We, the jury, unanimously find the firearm was
2 brandished. No or yes.

3 Count Sixteen.

4 As to Count Sixteen of the superseding indictment
5 charging that the defendants committed, or aided and abetted,
6 the commission of interstate travel in aid of extortion, we,
7 the jury, unanimously find the Defendant:

8 O. Scott Drexler, not guilty or guilty.

9 Ricky R. Lovelien, not guilty or guilty.

10 Eric J. Parker, not guilty or guilty.

11 And Steven A. Stewart, not guilty or guilty.

12 So say we all. Dated this blank day of blank, 2017,
13 and signed by the jury person.

14 All right. So, those are the jury instructions and
15 the verdict form, and you will be provided a copy of those
16 along with the superseding indictment, all the evidence that's
17 been admitted, and an index of the evidence that's been
18 admitted.

19 So, we'll go ahead and start with the government's
20 closing argument.

21 Does anybody need a bathroom break or a stretch break
22 or anything yet? It's okay if you do.

23 All right. Then we'll go ahead and proceed.

24 GOVERNMENT'S CLOSING ARGUMENT

25 MS. AHMED: Thank you, Your Honor. Good morning,

Government's Closing Argument

1 ladies and gentlemen.

2 Thank you on behalf of the United States, Mr. Myhre,
3 Miss Creegan, and myself. We want to say thank you first for
4 the time that you've spent over the past month and a half
5 listening to this case. It is not an easy thing to set aside
6 your own lives to consider the facts and evidence that we've
7 presented. But in addition to that, we've seen how attentive,
8 inquisitive, and open you've been to the evidence, and we want
9 to let you know that we really appreciate that.

10 Now, we also know that it's not an easy thing to be a
11 juror; to have the task of sitting in judgment of another human
12 being. But the truth is today, your task is not to judge
13 another person.

14 Your Honor, may we publish our PowerPoint?

15 THE COURT: Yes, you may.

16 MS. AHMED: Thank you.

17 THE COURT: Aaron, can you turn that on, please?

18 MS. AHMED: Thank you.

19 Your task is not to sit in judgment of another human
20 being. Your task is to judge the evidence that's been
21 presented and apply the law to that evidence in determining the
22 defendants' guilt, whether they're guilty or not.

23 Now, as humans, of course, we have our own life
24 experiences that we bring with us anywhere we go. And so I
25 present this jury instruction that Her Honor just read to you

Government's Closing Argument

1 just to highlight one important part.

2 That in deciding this case, again, you look to the
3 evidence and the law, and you must not let yourself be
4 influenced by personal likes or dislikes, sympathies, world
5 views, political views, views of the attorneys, or anything
6 else.

7 You must look at what was presented and you must
8 apply it to the law. And in doing so, you must honor the duty
9 that you committed to doing when you accepted your position as
10 a juror in this case.

11 Now, Her Honor's just read many jury instructions to
12 you, so what I want to do this morning with you is talk about
13 what we've charged, the evidence that we've presented, and how
14 it clearly establishes beyond a reasonable doubt that Defendant
15 Parker, Defendant Drexler, Defendant Stewart, and Defendant
16 Lovelien are guilty of the crimes that they have been charged
17 with.

18 So, first, what are those crimes?

19 Count One charges conspiracy to commit an offense.

20 Count Two charges conspiracy to impede or injure a
21 federal officer.

22 Count Five, assault on a federal officer.

23 Count Eight, threatening federal law enforcement
24 officers.

25 Count Twelve, obstruction of the due administration

Government's Closing Argument

1 of justice.

2 Count Fourteen, extortion.

3 Count Sixteen, interstate travel in aid of extortion.

4 And Counts Six, Nine and Fifteen charge using,
5 carrying, brandishing firearms during and in relation to a
6 crime of violence.

7 And finally, all of the counts, except for the two
8 conspiracy counts, charge aiding and abetting.

9 And basically, what these counts mean, an easy way to
10 understand them, is that they break down into three different
11 ways in which you can find and will find that these defendants
12 are guilty.

13 First, they did it. They committed the assault.
14 They themselves committed the threatening. They committed the
15 obstruction of justice. They extorted. They traveled in
16 interstate in aid of extortion, and they used, carried or
17 brandished a firearm during or in relation to the assault,
18 threats, or the extortion.

19 The second way you can find them guilty is that they
20 helped each other do it. That's the aiding and abetting.

21 And finally, the third way is that they agreed with
22 each other to do it.

23 There was a conspiracy to commit the offense, as
24 outlined in Count One. There was a conspiracy to intimidate --
25 to impede or interfere or injure. And finally, under

Government's Closing Argument

1 conspiracy, if you find that they joined the conspiracy, they
2 are also liable because in joining that conspiracy, they are
3 responsible for their coconspirator's actions.

4 So, I want to take each of these three different
5 routes to guilt one by one and walk you through the evidence. But
6 before I do that, I want to just establish the base framework
7 of the story as we know it, beginning with four court orders.

8 Four court orders directing Cliven Bundy to remove
9 cattle from public lands. These are Exhibits 1, 2, and 3 and
10 4. Exhibits 1 and 2, issued in 1998 and 1999, permanently
11 enjoined Mr. Bundy from grazing his cattle on public lands.

12 July -- in July 2013, there was that third order
13 issued by Judge Lloyd George, in which he stated that the BLM,
14 if Cliven Bundy didn't do so, was authorized to remove, to
15 impound, the trespass cattle.

16 Now, on October 2013, there was the fourth order that
17 what -- that repeated the previous orders but went another step
18 further. And it was issued by Judge Hicks of this Court. And
19 Judge Hicks said, in furtherance of that order, that Cliven
20 Bundy shall not physically interfere with any seizure or
21 impoundment operation authorized by that order.

22 What we also know, of course, that in April of 2014,
23 the BLM did, in fact, begin to impound the trespass cattle that
24 had not been removed by Mr. Bundy.

25 Here you see Exhibit 134, and you heard witness Guss

Government's Closing Argument

1 Warr talk about the impoundment of these cattle, the processes
2 that they took with cattle, and how the cattle once impounded
3 became the possession of the United States Government.

4 You also learned that the Bundys took steps to stop
5 the impoundment. Specifically, they joined forces with a man
6 named Ryan Payne, co-founder of Operation Mutual Aid.

7 You saw then that Bundy and Payne began to recruit
8 not just protesters, but other people, specific people,
9 militia, 3 Percenters, individual freedom fighters. They were
10 recruiting them to their cause, which was to stop the BLM
11 impoundment.

12 You also know, of course, that on April 12, 2014,
13 Cliven Bundy and his family held a rally at their staging area
14 both with protesters and militia present. And at that rally,
15 the sheriff spoke, Cliven Bundy spoke, and then he spoke again.
16 And in that second speech, he told the people that were
17 present, the militia, the individual freedom fighters, and the
18 protesters to go to the BLM's impoundment site, to shut down
19 the freeway, to go specifically to Toquop Wash, and to get his
20 cattle.

21 We've also seen evidence that the defendants -- seen
22 and heard evidence that the defendants, traveling in Defendant
23 Lovelien's vehicle, did, in fact, make that 5-mile journey,
24 from the staging area near Bundy's ranch, to the BLM
25 impoundment site.

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1 And you also, of course, know, having sat through
2 this trial for the past six weeks, that these defendants then
3 took positions on the Interstate 15 northbound lanes and on the
4 bridge where they were positioned with firearms.

5 You also know that the officers that were present,
6 holding their post, which was the BLM impoundment site, were
7 down in a wash or up at Post 1, and that they could see that
8 their positions were surrounded.

9 We know that in light of the situation and in fear of
10 violence, the BLM withdrew. And that after they withdrew, our
11 four defendants remained. And eventually, the cattle were
12 released that had been impounded and were the property of the
13 United States Government.

14 So, this is the general framework of the events.
15 This isn't a case where you have to figure out what happened in
16 terms of the central step-by-step process of the story. You
17 know what happened.

18 But the question is, are they guilty of the crimes
19 with which they have been charged? So, let's start with they
20 did it. So, I want to walk through these specific offenses and
21 how these individuals themselves committed them.

22 I want to start with the threatening federal law
23 enforcement officer which is Count Eight. Now, as Her Honor
24 read to you, there are four elements which you have to find to
25 find these defendants guilty.

Government's Closing Argument

1 First, the defendant made a statement or did an act
2 that constituted a threat to assault a federal law enforcement
3 officer;

4 Second, that the defendant intended that statement or
5 act to be a threat or made the statement or did the act knowing
6 the words or actions would be viewed as a threat.

7 Third, that a reasonable person making the statement
8 or doing the act would foresee that the statement would be
9 interpreted -- or act would be interpreted by those to whom the
10 maker communicated the statement as a threat.

11 And fourth, that the threat was made with the intent
12 to impede, intimidate, or interfere with federal law
13 enforcement officers, or in retaliation for the performance of
14 their duties.

15 Now, it is important to remember, in looking at the
16 evidence, that a threat, of course, is distinguished from idle
17 or careless talk, exaggeration, or something done in a joking
18 manner. It is expressing an intention to inflict bodily injury
19 at that time or at some point in the future.

20 So, here it's also important to know what you don't
21 have to find in determining that there was a threat. First,
22 there doesn't need to be any kind of verbal communication.
23 These defendants didn't have to tell the officers that they
24 intended to harm them. It can be an action. And the
25 government's not required to prove the exact action that is the

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1 threat.

2 It is also important to know that it does not need to
3 be observed by the recipient of the threat. So, here, it isn't
4 necessary that you find that the BLM officers, who were down in
5 wash, or the park service officers that were there, that they
6 observed a threat to themselves. A third party, another
7 person, other witnesses could have seen the defendants' conduct
8 and understood their actions to be a threat to those officers.

9 Now, in turning to the individual elements, I submit,
10 of course, a small sample of the photographs and evidence that
11 you've seen. And I've tried to identify for you on the screen
12 the exhibits so that you know where to look during your
13 deliberations. Excuse me.

14 So here you see, of course, Defendant Parker as he's
15 prone with his rifle pointed between the gaps of the concrete
16 barrier. Looking at the image on the left, Exhibit 195, you
17 can see the individual that's pointing in the blue shirt, and
18 you know, from this case, that that is witness Trey Schillie,
19 who was driving through the area when he came upon the scene.

20 And you heard specifically from Mr. Schillie that
21 seeing this defendant's posture, seeing him with the rifle,
22 seeing where it was pointed, and seeing officers down in the
23 wash, he understood this to be a threat.

24 You also heard from the officers themselves who
25 observed this defendant, before he went down into this

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1 position, and, of course, Officer Martinez, who could see
2 movement behind the gap during -- when he was in this
3 position -- when Parker was in this position, and those
4 officers also, based on their training and experience, looking
5 at the demeanor, the tactical clothing, the tactical movements,
6 and the presence of an assault rifle, and understood the
7 superior position that Mr. Parker had taken over them, to be
8 communication of a threat to inflict physical injury to them
9 and their co-officers.

10 You have also seen evidence of the same from
11 Mr. Drexler. Mr. Drexler was also observed by officers with
12 the tactical vest, with an assault rifle, and taking tactical
13 position, an overhead position on the northbound bridge above
14 the officers, and doing sneak and peek moves, coordinated
15 tactical movements with Mr. Parker. And based on those
16 officers' training and experience, they understood his actions
17 to be a threat.

18 You have also seen evidence of Mr. Stewart's actions
19 on the bridge on April 12, 2014. That he was sometimes
20 standing, sometimes kneeling, moving his firearm, pointing his
21 firearm at the officers, and that the way that he moved and the
22 way that he had a long gun with him sent a message to those
23 officers as well that he intended to harm them, a threat.

24 And you also heard, of course, about Mr. Lovelien,
25 who dressed from head to toe in camouflage clothing, on the

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1 Interstate 15 freeway, stood in that tactically superior
2 position over those officers and over the other gunmen on the
3 bridge or near the bridge -- excuse me -- and appeared to be
4 commanding that area and patrolling that segment of the
5 northbound freeway.

6 And that they could see him from the wash, and that
7 they could see him from post -- that intermediate position
8 between Post 1 and Post 2. And specifically, you heard from
9 Ranger Burke who said that she saw him pointing his firearm
10 from the low ready position.

11 Now, the question then isn't if they committed an act
12 that could be perceived as a threat, because the evidence is
13 there. You've seen the pictures. And although we've, of
14 course, asked you to set aside your prejudices and your
15 potential political views or your sympathies, one thing you do
16 not have to set aside and you must not set aside, and the
17 reason we ask you to come and be jurors, is your common sense.

18 It's critical in looking at this evidence that you
19 rely on your reason and your sense of common sense. And in
20 doing so, in looking at those photographs, and the videos, and
21 the evidence, you'll see that that was a threatening action
22 that each one of those -- that they took several threatening
23 actions. That their presence on the bridge, their presence on
24 the northbound freeway, that those defendants were threatening
25 the officers. But the question, of course, then becomes what

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1 was their intent?

2 Now, you're instructed in a couple of places in the
3 jury instructions about how you are to determine intent.

4 Instruction No. 11 provides that the intent of a
5 person or the knowledge that a person possesses at any given
6 time may not ordinarily be proved directly, because there is no
7 way of directly scrutinizing the workings of the human mind.

8 And in this case, we have not gone into the mind of
9 each of these four defendants and presented to you their exact
10 admissions of guilt, but we've presented many things to allow
11 you to infer their intent.

12 We know that they committed a threat on a federal
13 officer. And how do we know they did it? Because you do have
14 some of their words. They told you in their words. They
15 showed you with their actions, and then they celebrated or
16 glorified or participated in subsequent operations or sought an
17 opportunity to do it again.

18 Now, in determining their intention, it's important
19 to start with the information that they had on April 12, 2014,
20 and prior to that, in some occasions. But looking here at the
21 screen before you, we know for sure that all four of these
22 defendants attended a rally on the morning of April 12, 2014,
23 where they were informed that the BLM was leaving, was going to
24 leave, and that the impoundment operations had been ceased.

25 And that is Sheriff Gillespie's speech which is

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1 Exhibit 21. Can we go ahead and play?

2 (Exhibit 21 played.)

3 MS. AHMED: Can we stop it there?

4 Now, you just heard the sheriff's speech, as these
5 defendants heard the sheriff's speech. He said he was there to
6 keep an emotional issue safe and that the BLM was going to stop
7 the impoundment. They were no longer going to gather cattle.
8 They were going to be removing their assets.

9 You have seen, through the course of this trial, that
10 those assets included, in addition to the cattle,
11 infrastructure, including trailers, and vehicles, and equipment
12 that had been brought in for this impoundment. And that they
13 needed to have time to remove all of that. But in any event,
14 the sheriff was there to tell these people that this
15 impoundment was done.

16 When he also referenced the assets, he said that they
17 needed to facilitate the removal of those assets in a safe way.
18 And then the sheriff was done, and the crowd, of course, as you
19 just saw, pressed him on the cows. And he said the cows were
20 where they have been the past few days, and that was what he
21 needed to talk to Cliven Bundy about, appearing to refer back
22 to the safe removal of the BLM assets.

23 So, you also, having heard the speech, that these
24 defendants speech [sic], you also, of course, know that Cliven
25 Bundy then responded to the sheriff. Can we continue to play?

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1 (Exhibit 21 played.)

2 MS. AHMED: Now, having seen both of those speeches,
3 it's apparent that whatever the demands that Cliven Bundy was
4 making of the sheriff, two things are clear from that speech.

5 One is that he had no interest in what the sheriff
6 had to say about the cattle. He clearly had his own plan about
7 the cattle.

8 And two, we know that having heard that speech, heard
9 the demands that the sheriff made -- excuse me -- that Cliven
10 Bundy made of the sheriff, these four defendants stayed. They
11 stayed where they were. They stayed with the Bundys.

12 So, they stay. They wait that hour. In that time,
13 although they did not have their firearms with them, while
14 doing security at that rally, they retrieved those firearms at
15 some point, but they are there when Cliven Bundy gives his
16 second speech. The speech that's directed to them, Exhibit 22.

17 Can you play?

18 (Exhibit 22 played.)

19 MS. AHMED: Now, again, this is a speech that the
20 evidence shows these four defendants heard, were present for.
21 And during this speech, Cliven Bundy didn't say that the BLM
22 were releasing the cattle. In fact, no one had said that.

23 Instead -- instead, what he told these defendants to
24 do was to go to the compound. That all they needed to do was
25 open the gates. But they need safety. So, they are going to

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1 block the freeway. He says, block the freeway, and then the
2 horses will meet in the Toquop Wash. And these defendants hear
3 the speech, and they get in Defendant Lovelien's vehicle, and
4 they go to the BLM's compound.

5 Now, again, you know from the evidence that they
6 drove the distance, approximately 5 miles, from the staging
7 area to the BLM ICP. You know from the testimony and from what
8 you've seen, that they do not go into the wash with, quote, the
9 protesters, to extent that there are protesters in that wash.
10 They stay on the northbound lane of the I-15, Defendant Parker,
11 Drexler, and Stewart, taking tactical positions on the bridge
12 over Post 2, and Defendant Lovelien taking a tactical position
13 on the 15 in between Post 1 and Post 2.

14 From the photos, you know that they don't have flags.
15 They don't have signs. They have firearms. And again, these
16 are firearms that they had not had with them, at that staging
17 area, during that speech, but they went to get before they went
18 to the BLM impoundment site.

19 And they used that position on the bridge and on the
20 freeway to do just what Cliven Bundy had told them to do; to
21 shut it down; to block the freeway. And then they proceed to
22 use the travelers, who are stuck there, and the people in the
23 wash, to prevent the officers from taking any law enforcement
24 action to eliminate them as a threat. They create the safety
25 to get the cattle back that Cliven Bundy had told them they

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1 needed.

2 Now, again, you know their intent from their
3 statements and from their evidence that we put in, really, to
4 Facebook posts and the like. So, with Defendant Lovelien, you
5 know that through his Facebook activity, he becomes friends
6 with Ryan Payne on Facebook.

7 On Facebook, he also likes the OMA page, and that he
8 uses social media to recruit other militia to help the Bundys.
9 You also know, and we'll get to this a little bit later, the
10 exhibits for this, but you know that he had received from OMA,
11 from Payne, the objectives for this operation, which included
12 obtaining the cattle, getting the cattle back, and getting the
13 BLM off of the public lands.

14 So, knowing those things, here are two examples of
15 how Defendant Lovelien viewed what he was doing on April 12,
16 2014. And again, from the evidence, you know that he refers to
17 himself as Captain Rick Lovelien, Regional Codefendant --
18 Codirector of the Montana State Defense Force.

19 And here, sharing information with the Montana State
20 Defense Force Facebook group, he says, "Pass this along.
21 Alert. This is not a drill. All Oath Keepers and militia in
22 proximity need to move into Def Con 1 mode." That's
23 Exhibit 74. To him, this is a military exercise that he's
24 going into on April 12, 2014.

25 And then again, when it's over, Exhibit 80, on

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1 April 14th, he says, "Just a heads up. I have just returned
2 home for the time being from the Bundy Ranch. I will update
3 what I can as I can. The operation is still ongoing in
4 Southeast Nevada. And although the federal agents have
5 surrendered their position and withdrew, the area is still
6 active and we still have boots on the ground. Security is our
7 top priority as always."

8 So you know from these kinds of statements that
9 Defendant Lovelien, what he's doing in Bunkerville, Nevada, on
10 April 12, 2014, had nothing to with the protesters and
11 everything to do with the military-style operation to help the
12 Bundys get their cattle. And how they are going to do that is
13 through a show of force.

14 You also know that on Facebook, in communicating with
15 somebody, another Facebook user after the event, at Exhibit 85,
16 someone asks him, "What you been doin'?" And Ricky Lovelien
17 says, "Chasing off federal agents in Nevada," and includes with
18 that message a photograph of federal agents -- excuse me -- a
19 federal agent standing next to a cattle trailer.

20 So again, you know from his statements that to him
21 what he's doing on the northbound freeway on April 12, 2014, is
22 about helping the Bundys get the cattle, and it's about chasing
23 off federal agents. And the way he's going to do that is
24 through communicating a threat to those officers.

25 You also know, from the steps he takes on April 12,

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1 2014, his intent. Exhibit 137, a photograph of Ricky Lovelien
2 at the rally on the morning of April 12, 2014. Juxtaposed to
3 the right with Exhibit 66, a photograph of Ricky Lovelien
4 wearing full military-style camouflage clothing, a tactical
5 vest, and carrying his assault rifle, on the northbound bridge,
6 standing with another individual wearing tactical clothing,
7 taking a tactical position with a firearm.

8 And you know from the officers that they could see
9 this. And you can infer from the steps he's taken from the
10 morning rally to the time he gets to that location, that he is
11 intending to show force, and that's the threat.

12 Now, we also have the dash camera from the NHP
13 officers. You heard from -- excuse me -- NHP Sergeant Serena,
14 who spoke about his observations about Defendant Lovelien. And
15 you yourself can see, from the dash cam, his moments and how
16 his movements are consistent with what the officers, Serena,
17 Ranger Burke, and Ranger Whitteaker, their observation that he
18 appeared to be patrolling or in command of that area on the
19 Northbound 15.

20 And if we could play this video, but moving forward
21 to 12:21 approximately. Right there.

22 (Exhibit 32A played.)

23 MS. AHMED: You can stop it there.

24 Again, this is Exhibit 32A, and it continues --
25 Mr. Lovelien's movements continue in that area into Exhibit 33.

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1 And for more than that 10-minute period and beyond that, he
2 continues to stand in that area, moving back and forth,
3 sitting, looking at the NHP officers, looking into the wash,
4 moving his position, but in command of that area.

5 And he goes straight up to the individual that you've
6 learned in this trial is coconspirator Todd Engel, where he's
7 talking to the NHP officers. And he steps, not just up to that
8 conversation dressed in full camouflage clothing with his
9 firearm hanging off his side, but he steps right into the
10 middle of it. And you heard from Sergeant Serena that it
11 appeared that that had a chilling effect on Todd Engel in terms
12 of his communication to the officer when Defendant Lovelien
13 came.

14 Now, you also know, again, the officers see him
15 pointing and carrying. And therefore, you can infer that he
16 was, in fact, pointing and carrying. You see him yourself
17 carrying his firearm. But you can infer and you can rely on
18 the credible testimony that Ranger Alexandra Burke gave when
19 she sat on the stand and spoke to you about this event.

20 And in that testimony, she said that she observed
21 Lovelien pointing his firearm in a low ready hold. And she saw
22 him moving with another individual, and she took a separate
23 picture of that individual, which is at Exhibit 155.

24 Here you see the picture she took of Defendant
25 Lovelien later, after she had had an opportunity to safely

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1 approach to take the picture. This is Exhibit 156. And so she
2 took pictures of individuals, when it was safe to do so, that
3 she had observed pointing firearms either in the direction of
4 the officers in the wash or in her -- her area, at the officers
5 in her area.

6 Now, it's really important that you understand, in
7 your deliberations, the value of the evidence regarding these
8 defendants pointing their firearm. As you've heard from the
9 instructions, we are not obligated to prove and you are not
10 obligated to find that these defendants pointed a firearm at
11 federal officers in order to find them guilty of the offenses
12 that they have been charged with.

13 The pointing helps you understand their intent, but
14 it is not something that you must conclude that they did in
15 order to find them guilty.

16 Here, there's evidence that Defendant Lovelien
17 pointed his firearm. And you've heard that, from these
18 officers, that based on their training and experience, and just
19 through use of firearms generally, that you don't aim at what
20 you are not prepared to shoot at. And so they saw his actions,
21 and they understood that to be a threat. And you can do so as
22 well.

23 THE COURT: All right. We're going to go ahead and
24 take our noon lunch break here.

25 Please remember, jury, that you are still to not

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1 discuss this case with anyone. We are close, but we are not
2 there yet. So, please do not talk about this at lunch with
3 your fellow jurors nor with anyone else, and please do not
4 read, or listen to, or view anything that touches upon this
5 case in any way, nor attempt to perform any research or
6 independent investigation. And please do not form an opinion
7 yet until after you have heard closing arguments in complete.

8 We will go ahead and stand for the jury so they may
9 be excused. We will welcome them back at 1:00.

10 (Jury out.)

11 THE COURT: All right. The jury has exited the room.

12 I'm sorry, Miss Ahmed, for interrupting you there,
13 but one of the jurors was giving me the time out, like sports
14 event time out sign with his hands. He really needed to have a
15 bathroom break.

16 So, we will go ahead and be back at 1:00, and then we
17 can resume.

18 MS. AHMED: Thank you, Your Honor.

19 (Recess, 11:55 a.m. Resumed 1:23 p.m.)

20 THE COURT: Thank you. You may be seated. Is
21 everyone back?

22 Let's go ahead and get the jury, please, Aaron.

23 COURTROOM ADMINISTRATOR: Yes, Your Honor.

24 THE COURT: Thank you.

25 (Jury in.)

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1 THE COURT: Jury may go ahead and take a seat.
2 Everyone else may be seated as well.

3 And Miss Ahmed, you may continue your closing
4 argument on behalf of the government.

5 MS. AHMED: Thank you, Your Honor.

6 Good afternoon, ladies and gentlemen. When we last
7 left off before the break, we were discussing how it is you
8 could tell that defendants' intent to commit a threat and the
9 other offenses, with which they are charged, on April 12, 2014.
10 And I submit to you that looking at their words and their
11 conduct, on April 12th and after, that intent is clear.

12 We discussed Defendant Lovelien, and now I'll turn to
13 Defendant Stewart. As you can see on the screen in front of
14 you, these are images you have seen before. Defendant Stewart
15 was on the northbound bridge on April 12th, 2014, overlooking
16 the officers in the wash.

17 You heard testimony from Agent Whitteaker about his
18 visibility and the fact that he was pointing his firearm toward
19 the officers, and you heard testimony from Ranger Martinez
20 about the way in which Defendant Stewart was moving his
21 firearm.

22 I submit to you that the descriptions that they
23 provided, that he was moving it up and down, that he was
24 fidgeting with his firearm is demonstrated in Exhibit 166B in
25 that very, very quick segment where you see him moving up and

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1 down and is consistent with the officers' description of how
2 they saw him with his firearm on April 12th.

3 Can you play it again?

4 (Exhibit 166B played.)

5 MS. AHMED: It's up and it's down. And you'll see
6 other images, as you can see in the image to the right of that,
7 where he himself is up kneeling and leaning over the barrier.
8 You also see him standing up, holding his firearm in the ready
9 position, consistent with Agent Whitteaker's description.

10 Excuse me. Ranger Whitteaker.

11 He described Defendant Stewart as Shotgun Guy based
12 on the appearance of his firearm. You heard from our expert,
13 Erich Smith, that this firearm could be mistaken for a shotgun
14 given its appearance. And again, you heard from Ranger
15 Martinez as well about how he was moving his firearm.

16 And I would submit that his movements on April 12th,
17 on that bridge and in that tactical position, were meant to
18 convey to the officers his ability to imminently injure them
19 and conveyed that threat.

20 You also have his words on April 12th, while on the
21 bridge at the ICP. He was also updating his Facebook page.
22 And Eric -- Steven Stewart said, "First they said they were
23 going to release everything and leave. Then they held the
24 gates to Gold Butte and threatened us with chemicals. Then we
25 pushed forward, and they had to back off. They are releasing

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1 the cows now. BLM is leaving."

2 It's clear from this post that Steven Stewart
3 understood himself to be a part of this effort to force the BLM
4 to leave. You also have the video that he posted to his
5 Facebook page in which he celebrates the departure of the BLM
6 and in which he comments on that NHP officer on the bridge.

7 (Exhibit 119B played.)

8 MS. AHMED: We also have Defendant Drexler on the
9 bridge on April 12th. And as with Defendant Lovelien, I would
10 juxtapose his attire and his equipment at the rally on the
11 morning of April 12th, as you can see on the left of your
12 screen, where he appears to only have his T-shirt and no rifle,
13 with how he's attired and positioned at the BLM ICP, in the
14 image on the right, wearing a tactical vest and with his
15 assault rifle in the low ready in his hands.

16 And as with the other -- as you'll see with Defendant
17 Parker and with the other defendants, here you can see that
18 Defendant Drexler's intent is also evident, not just because
19 we're showing you pictures of him with a rifle, but what the
20 sequence of those pictures shows on at the ICP on April 12th.

21 Like Eric Parker, he continued to improve his firing
22 position while he was on that bridge. And as you're
23 deliberating, I ask that you would turn to Exhibit 182, which
24 is a time line that we put into this case, and see the
25 development of their positions and see for yourselves how they

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1 improve upon their firing position. And here's just a small
2 sampling of that.

3 On the left, Exhibit 169D, you see Defendant Drexler
4 crouched behind the Jersey barrier overlooking the wash. Then
5 12:29, like Eric Parker, he goes over to the gap to Eric
6 Parker's right. And then at a later point than that -- the
7 time is cut off here, but you can see in Exhibit 182, he
8 acquires a blanket that stabilizes his position. All which --
9 all of which aid him in improving his firing position and in
10 being able to threaten those officers with force.

11 You also have Defendant Drexler's words about his
12 intent on April 12, 2014. He posts on Facebook, in response to
13 a comment by another user, "Careful. Bridges are choke
14 points," in reference to the picture that he put as his profile
15 picture of himself on the bridge holding a rifle. And
16 Defendant Drexler's explanation back was, "That's why we use
17 them to shut down the highway" -- excuse me -- "the freeway,"
18 which is precisely what Cliven Bundy told him to do.

19 And in Exhibit 124, on April 15th, days after the
20 standoff, Defendant Drexler posts an article discussing how the
21 government released the cattle and the family was claiming a
22 victory. And Defendant Drexler adds the comment, "But it looks
23 like we may have to go back."

24 This wasn't an accident that he ended up on the
25 bridge in the position that he ended up. He intentionally put

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1 himself there, and he was prepared to go back and make sure
2 that what they did on April 12th remained a success.

3 You also have Defendant Drexler's own testimony,
4 which you heard yourself yesterday. He came for a show of
5 force. He came with his firearm to impact the officer's
6 conduct. In his words, "To make them more civil." He brought
7 250 rounds of ammunition with him, and he told you that he went
8 prone with his rifle in the gap on the bridge so that the
9 officers would not see him as threat.

10 And what's implicit in that, is that he understood
11 perfectly well, that when he was on that bridge, attired the
12 way he was, moving the way he was, with the firearm that he
13 had, that those officers would see him, and based on their
14 training and experience, would know him for the threat that he
15 was.

16 He also told you that while he was at that gap, he
17 had a position of firing power over the officers the whole
18 time. And he also admitted that he previously said that when
19 the cows were released, he did what he had come to do. He had
20 achieved what he had come to do. Again, in his own words and
21 actions, you can see that the intent to threaten the officers
22 is clear.

23 And then you have Defendant Parker. As with the
24 other defendants, he comes to the bridge openly with his rifle,
25 in his tactical vest, and he's up, and he's down, up and down

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1 over the course of the time that he's on that bridge. And you
2 have heard from the officers that they observed him doing
3 exactly that.

4 And like Defendant Drexler, in the course of that
5 time period that he's at the ICP, he continues to make
6 decisions to put himself in a position to harm those officers,
7 and he continues to improve that position over the course of
8 time.

9 Again, this is just a sampling of that. You saw him
10 come to the bridge. First he was crouching or kneeling, and
11 then he goes prone behind that gap. And then while he's prone,
12 you can see that he's overlooking the officers. And then to
13 help himself, he turns his hat backward, which you heard from
14 Agent Swanson he observed that the hat was now backwards and
15 understood that to be done so that he could see better. And he
16 also acquired a backpack, which Steven Stewart brought for him,
17 so that he could stabilize his firing position.

18 And ladies and gentlemen, I also submit that he
19 improved his ability to threaten those officers by asking
20 Steven Stewart to serve as his spotter, which I will get to in
21 the aiding and abetting section.

22 You also heard from our expert, Mr. Smith, with what
23 he observed from photographs of Eric Parker's position on the
24 bridge on April 12th. And looking at these two photographs, he
25 was able to see to determine, based on his experience and

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1 expertise, that Defendant Parker's rifle was in -- the selector
2 switch was moved forward indicating it was in the firing
3 position. In other words, when he's in this position on the
4 bridge, all it takes is the pull of a trigger to fire on those
5 officers.

6 MR. MARCHESE: Objection. Misstates the witness's
7 testimony.

8 THE COURT: The jury's memory of the facts are what
9 they should use to make their determination.

10 MS. AHMED: Your Honor, may I proceed?

11 THE COURT: Yes, you may.

12 MS. AHMED: Thank you.

13 Now, you also have Defendant Parker's words in many
14 Facebook posts, which you've seen, which you'll also be able to
15 review in the jury room.

16 And here are two posts that I highlight for you that
17 go to help you understand his intent on April 12th. The first
18 is a conversation he had with another individual on that day on
19 Facebook. That person asked before the standoff, "Feds got
20 scared when you got there and backed off?" And Eric Parker
21 responds, after the standoff, with a thumbs up, and then says
22 "It took a standoff."

23 And then looking at Exhibit 110, over a year and a
24 half later, about a year and half later, in talking about BLM
25 and forest service officers, a question posed to him about

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1 them, Eric Parker says, "I reach out to as many of the LE
2 branches that I can, especially in my local area, shake their
3 hand, look them in the eye, let him know I don't want to kill
4 him. And I don't want him to kill me, hopefully -- and I don't
5 want him to kill me. Hopefully it will never have to get to
6 the point it did in Nevada ever again."

7 Ladies and gentlemen, I submit to you that
8 Exhibit 110, as with the other Facebook posts that we've put
9 into evidence in this case, clearly go to the intent that
10 Mr. Parker had on April 12th, when he was on the bridge, as he
11 himself references in this post talking about Nevada.

12 But you also have his words -- excuse me. You also
13 have his words that we put into evidence through Agent Seyler
14 from a previous hearing. And those also help you understand
15 that he intended to threaten those officers. He admitted that
16 he traveled to Bunkerville with Defendant Stewart and Defendant
17 Drexler, and that he took extra magazines and body armor. And
18 he brought the rifle that he brought, because "a Kalashnikov is
19 better in the dirt." And he took two extra magazines.

20 He stated he brought a firearm to match force with
21 the officers. He also stated he knew about the Court orders
22 before he went. He testified under oath that the morning of
23 April 12th, he attended a meeting with other leaders in where
24 the Arizona State Militia were present.

25 After that meeting, did he crowd control at the rally

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1 and specifically was told to find someone with an earpiece if
2 he saw an issue.

3 He testified that when the sheriff gave his speech
4 that the BLM was going home, that the impoundment was over, he
5 thought he had come a long way for nothing. He also testified
6 at that previous hearing that Lovelien was his -- Defendant
7 Lovelien was there, his neighbor at the militia camp where he
8 camped, and that the other defendant rode over with him to the
9 ICP.

10 He also testified at that hearing that he had
11 30-round magazines for his rifle with him on the bridge and
12 plates in his tactical vest. And he also testified that
13 Defendant Stewart went back to get Parker's backpack and water.

14 Now -- I apologize. He continued to post on Facebook
15 about the April 12th events for quite some time, and these
16 comments also, again, go to his intent on April 12th.

17 Going from left to right, Exhibit 115, in February of
18 2016, he posted an image of the officers in the wash at the
19 ICP, and he wrote with the words on the image "The reason
20 Nevada went so well, the dicks were there when we got there."
21 And if it isn't abundantly clear who the dicks are, well, all
22 the officers have been circled and the word "dick" has been
23 written over them.

24 And users commented on his post. "Yes, always let
25 your opponent take the field first. That's one of the arts of

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1 war." And Eric Parker responded, "Same idea. I just wrote
2 down a little different." Another user said, "I always thought
3 one would want to pick the ground they fight from." And Eric
4 Parker responds, "That's the hard part. Pick the battlefield,
5 but let them take it first."

6 And, of course, I know that you know, having sat in
7 this trial, that the BLM officers were there first. They were
8 at their ICP, which was their makeshift police station,
9 guarding their -- the civilians that worked there as well and
10 guarding the cattle. And Defendant Parker, Defendant Stewart,
11 Defendant Drexler, and Defendant Lovelien came to them.

12 Now, going to Exhibit 116, the middle image, again,
13 to Eric Parker, what happened on April 12, 2014, was not an
14 accident. He celebrated it for a long time to come. I mean,
15 there's T-shirts of his image from April 12th with the word
16 "Resist" superimposed or imposed behind that silhouette of him
17 pointing his rifle through the gap.

18 Finally, looking at Exhibit 101, he also shared a
19 photo of himself on the bridge on April 12th with the words
20 "You give peace a chance, and I'll cover you." There's no
21 mistake, there's no innocent reason for the position that he
22 took on April 12, 2014. He took it for the express purpose of
23 threatening those officers.

24 And again, not just in Facebook, but in an interview
25 from April 12th, 2014, he explains to you what he thought was

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1 achieved when he was on the bridge on April 12, 2014. And here
2 it is in his own words.

3 (Exhibit 14 played.)

4 MS. AHMED: He says "Get on a bridge. Show 'em
5 force," and he encourages other people to do the same. Again,
6 ladies and gentlemen, I would submit that his intent, when he's
7 in that position, the various positions that he's in on
8 April 12th on the bridge are for the express purpose of showing
9 those officers force, threatening them, in other words, with
10 force.

11 Now, in sum, for these defendants' intent, as I've
12 said with all of these defendants and these slides, the
13 purpose, the intent is to threaten. How? Through a show of
14 force. Why? Because they know the officers will have to
15 choose. Either they stand their ground, risk a firefight, risk
16 unarmed people getting hurt, or surrender their ground, back
17 down, and give up the cattle.

18 And again, how do you know? Because of their words,
19 their attire, their positions, and their decisions. And you
20 heard from Defendant Drexler himself yesterday on the stand.

21 Now, you also have a jury instruction, Instruction
22 No. 10, that also explains what knowledge means, knowledge of
23 the act done, which goes to intent. And an act is done
24 knowingly if the defendant is aware of the act and does not act
25 through ignorance, mistake, or accident.

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1 But one of the ways in which you can understand that
2 there was no mistake or action in ignorance or that this was an
3 accident is the evidence of their efforts to continue this,
4 what happened on April 12, 2014, or their efforts to do it
5 again.

6 Here you saw evidence that Defendants Parker and
7 Drexler participated in through their -- first joined the Idaho
8 3% militia group in Idaho, and then participated through their
9 membership in the 3% of Idaho in two additional operations,
10 Operation Gold Rush at the Sugar Pine Mine, which is depicted
11 in Exhibit 45A. And you can see Defendant Parker with his
12 assault rifle aloft.

13 And Operation Big Sky, which took place in Montana in
14 August of 2015, which is depicted on the top image on the
15 right-hand side where you see Defendant Drexler and Defendant
16 Parker both with their assault rifles and tactical gear.

17 And then you also see the image at the bottom of
18 Defendant Parker and Defendant Stewart conducting tactical
19 training in a field wearing what appear to be Idaho 3%
20 T-shirts. And all of these, as you all know, came from the
21 "Idaho 3%, an Overview" training video. Or, excuse me,
22 recruiting video.

23 The point is, is that as Agent Draper explained, that
24 these operations were done to show force to public lands
25 agencies, to BLM officers, to forest service officers who are

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1 trying to do their job and enforce those regulations. And they
2 show them force to make them stand down and stop what they are
3 doing just as they did on April 12, 2014.

4 MR. MARCHESE: Your Honor, I'm going to object. Once
5 again, it mischaracterizes the testimony.

6 THE COURT: The closing arguments are for arguments.
7 It's not evidence, and the jury and their memory is what they
8 should use and rely upon in determining what the facts were as
9 they find them.

10 MS. AHMED: And you also saw posts, Facebook posts
11 posted by these defendants where they continued to look for
12 other endeavors, similar endeavors. Defendant Drexler posted
13 to Facebook in December of 2014 about Utah, the state, planning
14 on taking land back from the federal government. And Defendant
15 Drexler wrote, "Looks like New Year's will be about time to go,
16 Eric," tagging Eric Parker.

17 Eric Parker and the Steven Stewart both respond. And
18 Mr. Stewart says, "Don't be trying to go without me." And
19 Mr. Parker responds, "Wouldn't dream of it."

20 And you also saw evidence of what exactly happened at
21 White Hope Mine when Defendant Drexler and Defendant Parker
22 went there in a brief video clip that depicted them on the
23 scene in Montana.

24 (Unidentified video exhibit played.)

25 MS. AHMED: And ladies and gentlemen, you know that

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1 what they did on April 12th was intentional, because the
2 evidence is that it's a part of their movement. Defendant
3 Lovelien, in a message to the OMA co-founder Jerry Bruckhart,
4 said, days after the April 12th standoff, "Hi, Jerry. I would
5 like to talk to you about taking a more active role in the
6 OMA," and he shared his phone number.

7 And I commend to your attention the mission statement
8 of OMA, which we've put into evidence, as well as other posts
9 about what OMA was about. And, of course, you know what OMA
10 achieved in April 12th of 2014. And so far from backing off of
11 what had happened in April of 2014, Defendant Lovelien wanted a
12 bigger piece of it.

13 Similarly, Eric Parker posted, in December of 2015,
14 about one of the April 12th participants, one of his
15 coconspirators, Schuyler Barbeau. He said that the FBI and US
16 Marshals had kidnapped him. And describing Mr. Barbeau,
17 Defendant Parker said, "He helped stand down the BLM at the
18 Bundy Ranch, the BLM at the mine in Oregon, the USFS at the
19 mine in Montana," all of which are operations that Defendant
20 Parker participated in.

21 Now, in sum, looking at the instructions that you
22 have been given about the intent and knowledge, looking at the
23 evidence that we've submitted to you those points, I would
24 submit to you all that the intention of these four defendants
25 is clear; that they intended to convey a threat to the

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1 officers, to -- a threat that they would physically harm them
2 imminently.

3 So, turning to Count Five, Assault with a Deadly or
4 Dangerous Weapon. Here the elements require that the defendant
5 was forcibly assaulted -- excuse me -- that defendant forcibly
6 assaulted a federal officer or employee.

7 Second, that the defendant did so while the federal
8 officer or employee as engaged in or on account of his or her
9 official duties.

10 Third, that the defendant used a deadly or dangerous
11 weapon.

12 And the jury instruction explains that there's a
13 forcible assault when one person intentionally threatens
14 another coupled with an apparent ability to inflict injury on
15 another, which causes a reasonable apprehension of immediate
16 bodily harm.

17 Well, again, ladies and gentlemen, I would submit
18 that the evidence is clear as to the threat. And so I would
19 also submit that the next instruction, continuing off of the
20 assault instruction, a firearm, loaded or unloaded, is a
21 dangerous weapon. Federal officers acting in the good faith
22 performance of their duties may not be forcibly resisted by
23 another.

24 Again, the law has been given to you, and your role
25 as jurors is to look at the evidence and understand if a crime

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1 has been committed. So, in these parameters, within the
2 parameters of the law that I have just read and which Her Honor
3 had already read to you, and which you will have during your
4 deliberations, I would submit that the evidence is clear as to
5 the threat.

6 The evidence is also clear that the officers observed
7 the defendants, which is necessary for an assault. Unlike a
8 threat where the threat does not have to be conveyed directly
9 to the victim, here, with an assault, it does need to be
10 conveyed to the defendants -- excuse me -- to the victims.

11 So, again, Exhibit 156 was Ranger Burke's photograph
12 that she took of Defendant Lovelien. She described what she
13 saw him doing, which included pointing a weapon. You can also
14 see, from Exhibit 32A, which there's a screenshot on the right,
15 that he's clearly visible with his tactical gear, his
16 camouflage clothing, and his firearm from waist up above the
17 barrier.

18 You can also see, from these photographs, that
19 Defendant Stewart, and from the others that we have shown you
20 before, was also visible to the officers in the wash at times
21 as was Eric Parker, even when he was kneeling, as was Defendant
22 Drexler.

23 And again, looking at the other individuals in this
24 video, both in the wash and behind these defendants, and
25 matching them up with the photographs that have been put into

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1 evidence, you can see that this -- at this point, what's
2 depicted in Exhibit 166C is happening while the officers are in
3 the wash. And this is what the officers could see, and this is
4 what they testified to in terms of how the defendants appeared
5 to them; how the defendants presented themselves to them.

6 Go ahead and play.

7 (Exhibit 166C played.)

8 MS. AHMED: Men, wearing tactical vests, holding
9 firearms slung in front in the low ready, in a tactically
10 superior position over the officers.

11 You heard from Ranger Burke, Officer Cox, Special
12 Agent Swanson, and Ranger Whitteaker. You heard from these
13 witnesses that Ranger Burke saw Defendant Lovelien pointing his
14 firearm, special Agent Swanson saw Defendant Parker pointing
15 his firearm, Ranger Whitteaker saw defendants Drexler and
16 Stewart pointing their firearms.

17 And again, the pointing goes to their intent. It's
18 evidence of the assault, but it's not something that you must
19 conclude that happened in order to find them guilty of the
20 assault.

21 Now, lastly, I put reasonable officer under those
22 circumstances, because you heard from these officers. They
23 were consistent. They were credible. They are corroborated by
24 what you see from the footage that you have on the screen,
25 but --

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1 MR. MARCHESE: Object. Bolstering.

2 MR. TANASI: Stewart joins, Your Honor.

3 MR. LEVENTHAL: Drexler joins.

4 MR. PEREZ: Lovelien joins.

5 THE COURT: Again, this is closing arguments, and
6 that's the purpose of the closing arguments is for the
7 attorneys to tell the jury how they believe that the testimony
8 that's been presented should be viewed and interpreted.

9 You may continue, Miss Ahmed.

10 MS. AHMED: But your duty is not necessarily to
11 decide that, yes, Ranger Burke was afraid for her life; or,
12 yes, Officer -- Special Agent Swanson was afraid for his life,
13 although they told you that they were based on what they saw
14 these defendants doing.

15 The question that you must decide, in your
16 deliberations, is whether a reasonable officer, under those
17 circumstances, would have been afraid, placed in immediate
18 apprehension for their physical safety, given the conduct of
19 these defendants. And I submit that the answer is yes.

20 Now, Count Twelve, Obstruction of the Due
21 Administration of Justice.

22 First, the defendant influenced, obstructed, or
23 impeded, or tried to influence, obstruct, or impede the due
24 administration of justice.

25 Second, the defendant acted corruptly or by threats

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1 of force -- threats or force. Excuse me. Or by any
2 threatening communication with the intent to obstruct justice.

3 Now, I would submit that having established the
4 threat, that it is clear also, from the evidence in this case,
5 first, that here you have Court orders. The impoundment thus
6 is done pursuant to the Court orders, and the Court orders are
7 the due administration of justice. So, that's how the Court
8 orders play into Count Twelve.

9 Here you have the defendants using threat of force in
10 order to obstruct and prevent and stop the officers from
11 keeping the impounded cattle -- excuse me -- and thereby
12 enforcing the Court orders. And you also have evidence that
13 the defendants knew or reasonably should have known of those
14 Court orders.

15 In Exhibit 121, just a couple of days or a few days
16 after the April 12th event, Defendant Stewart shared a post on
17 his Facebook page about Judge George, the July 2013 -- the
18 author of the July 2013 order.

19 There's also evidence in the case that the BLM
20 announced that there were Court orders repeatedly as they asked
21 the crowd to disburse and move back, and that others on the
22 bridge could hear these announcements. And, again, you have
23 Eric Parker's testimony from a previous hearing that he could
24 hear the announcement saying there were Court orders, and he
25 knew of the Court order before he came to Nevada.

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1 And here is one video, which is in evidence,
2 Exhibit 9A, where you can hear Court orders, and that you can
3 see that other individuals on the bridge could also hear Court
4 orders.

5 Sorry. What did I do? Did I do that?

6 Exhibit -- slide 64. Excuse me.

7 (Exhibit 9A played.)

8 MS. AHMED: And, of course, you can see that Eric
9 Parker was walking behind that individual on the bridge just as
10 he was screaming "Your Court orders don't apply."

11 Now, Count Fourteen charges the Hobbs Act, Extortion,
12 in which we must prove that, first, the defendant induced
13 someone to part with property, by the wrongful use of actual or
14 threatened force, which again here we have threatened force,
15 violence or fear.

16 Second, the defendant acted with the intent to obtain
17 property.

18 And third, commerce from one state to another was
19 affected in some way. And the defendant's claim of right to
20 the property is not a defense.

21 Well, these defendants, there's -- knew that this was
22 cattle that had been impounded by the federal government. And
23 you've heard testimony that it was thus property of the United
24 States Government.

25 And you also have seen evidence that they were there

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1 to help the Bundys get the cattle back, to thus extort the
2 federal officers who were protecting those cattle, pursuant to
3 the Court order, to extort them into giving up that cattle.

4 Exhibit 85, on the top left, is a post from Ricky
5 Lovelien to another Facebook user where the user asks, "What ya
6 been doing?" And Defendant Lovelien responds, "Chasing off
7 federal agents in Nevada." And he shares a photograph of a
8 federal officer standing next to a cattle trailer.

9 Exhibit 93, Eric Parker's Facebook page, when the
10 cows are released on April 12, 2014. "We have cows, happy
11 cows, free cows, American cows raised in an open range not a
12 cage," celebrating the release of the cattle.

13 Exhibit 120, Steven Stewart's Facebook where he's
14 talking to other people on Facebook and says, "Guys, I only
15 went for the weekend. We helped Cliven Bundy get his cattle
16 back. Straight there. Straight back. Two hours of sleep in
17 between."

18 And then you have Exhibit 124, Defendant Drexler's
19 Facebook post, where again, he's sharing that article talking
20 about how the federal government released the cattle after a
21 standoff with hundreds of armed protesters. And he says, "But
22 it looks like we may have to go back."

23 So, these defendants knew that the cattle were in the
24 custody of the federal officers, and their goal was to show
25 threatened force so that the officers would be extorted into

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1 giving up the cattle.

2 And you also heard, of course, testimony from
3 Mr. Warr, again, that these cattle were to be transported to
4 California for sale after their impoundment. And in extorting
5 these officers, they thus interfered in that interstate sale.

6 And then you have Count Sixteen, which is interstate
7 travel in aid of extortion. First, the defendant traveled in
8 interstate -- interstate commerce or used a facility in
9 interstate commerce -- here, namely, the Internet -- with the
10 intent to commit a crime of violence in furtherance of an
11 unlawful activity, namely, extortion, in violation of Nevada
12 law.

13 Second, after doing so, the defendant committed or
14 attempted to commit the violent crime in furtherance of the
15 unlawful activity.

16 Well, here there's evidence that all four of these
17 defendants traveled from other states to Nevada, that they
18 brought with them firearms, and that Defendant Lovelien,
19 Defendant Parker, Defendant Drexler brought with them tactical
20 vests. And that they did so in order to threaten force and
21 then with the express purpose of extorting the officers for the
22 cattle.

23 You also have evidence that Eric Parker and Ricky
24 Lovelien used the Internet, namely Facebook and social media
25 and email, to correspond and communicate with others to connect

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1 with militia, to recruit people in order to further this
2 extortion.

3 Now, you also have Six, Nine and Fifteen, which all
4 charge using, carrying, and brandishing a firearm during and in
5 relation to a crime of violence. And, of course, Her Honor has
6 read the instruction to you which explains what these various
7 terms mean.

8 Here, again, I would just emphasize that if you find
9 them guilty of the preceding count, then when you come to this
10 question, it isn't necessary for you to find that they pointed
11 their firearm at federal officers; but that they pointed -- the
12 evidence that they pointed at the officers goes to proving up
13 that, yes, they used, they carried, and they brandished
14 firearms during and in relation to a crime of violence. And
15 almost every picture you've seen of the defendants at the ICP
16 on April 12, 2014, shows them doing exactly that.

17 Now, we talked about how the defendants did it. They
18 themselves did it. But they are also guilty, because they
19 helped each other do it. Under Instruction 21, which is aiding
20 and abetting.

21 First to prove aiding and abetting, the crime was
22 committed by someone.

23 Second, the defendant aided, counseled, commanded,
24 induced, procured that person with respect to at least one
25 element of the crime.

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1 Third, the defendant acted with the intent to
2 facilitate the crime.

3 And fourth, the defendant acted before the crime was
4 completed.

5 Now, here there are various ways in which the
6 evidence shows that these defendants aided and abetted each
7 other. Defendant Lovelien acted as the equivalent of a getaway
8 driver, so to speak. Here he took them to the crime. No
9 different than the driver in a bank robbery. He takes them to
10 where they commit their crime.

11 There's also evidence that the Defendant Lovelien
12 acted as a lookout. Evidence suggests that he sat on those NHP
13 officers, that he maintained a presence near them, and that by
14 doing so, he distracted the officers from going further down
15 the bridge and seeing what Defendants Drexler and Parker and
16 Stewart were doing.

17 You can see from the left, Exhibit 32A, that at
18 12:21, he comes straight to those officers to the east of the
19 bridge -- excuse me -- to the west of the bridge. And that at
20 12:21, Defendant Parker is prone and Defendant Drexler is
21 crouched behind the Jersey barrier on the bridge.

22 You can see from this next slide, Exhibit 17, this
23 arrow -- aerial, that Defendant Lovelien kept the NHP officers
24 further away from the bridge at 12:31. He's there with them
25 away from the bridge. And at 12:30 -- excuse me -- at 12:29,

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1 it's the same, and he's watching those officers, as you can see
2 from his body language. And while he's doing so, Defendant
3 Drexler and Defendant Parker are prone on the bridge.

4 You also have evidence of Steven Stewart's guilt by
5 aiding and abetting, and that Stewart acted as Defendant
6 Parker's spotter at some point on April 12.

7 Exhibit 50, you see Defendant Parker prone with his
8 rifle through the gap, and then you see Defendant Stewart to
9 his right. Well, you also have their statements where
10 Defendant Parker posted on Facebook "That's what I kept saying
11 when people are calling me the Bundy sniper. My buddy, Steven
12 Stewart, had to relate to me what was going on through
13 binoculars. Not much good at that distance with open sights.
14 Now, Steven, he's got balls, head up above the concrete,
15 telling me exactly what they were doing after the snipers had
16 been greenlighted."

17 Steven Stewart also said, "It's been a long day.
18 What's up? Why I have a little earlier with a really
19 high-powered scope. Show me. Awesome."

20 Exhibit 32A, you have Steven Stewart acting as
21 Defendant Parker and Drexler's runner. You see from 32A, the
22 video, Steven Stewart dash across the highway away from the NHP
23 officers.

24 Then you see in Exhibit 143, that he's now provided
25 Defendant Parker with a backpack. Again, to help secure his

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1 position, to help him being more comfortable on that bridge,
2 the middle of the day on April 12th, to help him focus and aim
3 in on those officers. And in looking at Exhibit 32A, when you
4 watch that portion at 12:19 and you see the way Steven Stewart
5 avoids NHP officers, I would submit that's consciousness of
6 guilt that he avoids those officers.

7 Defendant Stewart, in procuring the backpack, also
8 provides Defendant Drexler with the red blanket. You can
9 adduce from the evidence and in doing so, again, helps
10 facilitate Defendant Drexler's firing position.

11 Now, you also have Defendant Parker and Drexler
12 coordinating cover, and improving each other's positions, and
13 the effect that they have on the bridge. You heard again from
14 the officers that they were going up and down. Defendant
15 Drexler's up when Defendant Parker's down. And then Defendant
16 Parker shows Defendant Drexler that, in fact, he should get his
17 own gap, and improve his cover, and also help improve Defendant
18 Parker's firing range, the effect that both of them have
19 together.

20 The gunmen on the bridge also aid and abet Bundy. By
21 being on the bridge in the position that they are in, they help
22 Bundy facilitate obtaining his cattle, because they distract
23 the officers from what's in front of them in the wash.

24 You also know that there's evidence that the gunmen
25 on the bridge helped Bundy, because they do exactly what he

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1 said to do. Again, coconspirator Todd Engel posts on Facebook,
2 after Cliven Bundy gives his speech, that he's headed out to
3 block the freeway and take back the cows. He also says,
4 "Leaving out to shut the freeway down by force of arms."

5 That bottom post, by Defendant Parker, says, "Bundy
6 gave the sheriff one hour to disarm the BLM. He did not reply.
7 We are now going to free the cattle by any means. The sheriff
8 claimed that the BLM is standing down but offered no proof.
9 This is when Mr. Bundy gave him the do it or else. We will not
10 be lied to. We will not be lied to."

11 And then, of course, you have Defendant Drexler again
12 saying "That's why we used the freeway" -- excuse me -- "the
13 bridge to shut down the freeway." Again, they are doing what
14 Defendant Bundy -- excuse me -- what Cliven Bundy asked him to
15 do. And in doing so, they are aiding and abetting him in
16 getting his cattle.

17 Now, you also have, of course, the third way in which
18 you can find them guilty, which is that they agreed to do these
19 offenses with others.

20 So, Count One, conspiracy to commit an offense, and
21 you can see that there's all the enumerated offenses that have
22 been charged; the assault, the threat, the use and carry of a
23 firearm in relation to a crime of violence, obstruction of the
24 due administration of justice, interference with interstate
25 commerce by extortion, and interstate travel in aid of

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1 extortion. So, the question is, did they agree to do this?

2 You also have Count Two, conspiracy to impede or
3 injure a federal officer. First, beginning on or about
4 March 28th and ending on or about March 22nd -- excuse me --
5 March 2nd, 2016, there's an agreement between two or more
6 persons to do one of the following: To prevent by force,
7 intimidation, or threats federal law enforcement officers from
8 discharging the duties of their office under the United States.

9 Or, 2, to induce by force, intimidation, or threats,
10 any federal law enforcement officer of the United States to
11 leave the place where their duties were required to be
12 performed.

13 And then second, the defendant became a member of the
14 conspiracy knowing of at least one of its objects and intending
15 to help accomplish it.

16 So, in Count One, you need to find that they joined
17 the conspiracy with at least one of the objects that's
18 identified. And we'll go over the verdict form where you have
19 to identify which object they agreed to.

20 In Count Two, you don't have to prove that one of the
21 members of the conspiracy performed an overt act, but you do
22 have to agree as to which of these two objects they agreed to.

23 Well here, we would submit that the evidence shows
24 that these defendants agreed to this conspiracy for both; to
25 prevent by force, intimidation, or threats the officers from

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1 discharging their duties. That is protecting the impounded
2 cattle. And also by using that same threats and force,
3 intimidation to force the officers to leave the place where
4 their duties were required to be performed.

5 Now, here the evidence of the conspiracy is
6 substantial. Again, Ryan Payne offered and explained the
7 services of OMA to Cliven Bundy. He arrives, and he becomes
8 the militia coordinator for the Bundy family. That's
9 Exhibit 53.

10 On Facebook, the Bundys announce that they are -- the
11 Operation Mutual Aid coordinator is here with us now, and then
12 they ask help from militia groups, including OMA, 3%ers,
13 Freedom Fighters, and others.

14 And what is the agreement? Well, we don't have to
15 prove that -- we don't have to present in evidence, for you to
16 find that there was an agreement, any written document. But
17 here there is a written document demonstrating the agreement,
18 which are the objectives circulated by Operation Mutual Aid.

19 They sent an email, which you can see to left, goes
20 to Captain Rick Lovelien. And then that email -- those
21 objectives are then circulated by Defendant Lovelien's sister
22 to the Montana State Defense Force Group. And those objectives
23 are: Secure the Bundy family from government incursion, which
24 includes protection of all personnel -- personnel responding in
25 support of the Bundys, i.e., protesters, extended family, and

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1 friends.

2 Two, return the confiscated Clark County Nevada
3 property currently blocked by federal personnel to its rightful
4 stewards, the people of Clark County Nevada.

5 Three, to secure and return to Mr. Bundy's ranch the
6 mounting number of cattle which have been confiscated by BLM
7 agents or private contractors. These objectives are in
8 cohesion with Cliven Bundy and the Bundy Ranch.

9 Now, how will they achieve these objectives? We know
10 from the evidence of Defendant Parker -- excuse me -- Ryan
11 Payne's messages, that have been put into evidence, that he
12 intends this to be achieved through violence.

13 Now, Exhibit 56, through an exchange with other
14 Facebook user -- another Facebook user, that user says, "How
15 much ammo will be needed?" And Ryan Payne says, "Can go with
16 two mags of 30 rounds. Bring what's needed to play.
17 Possibility of extended operations depending on aggression of
18 the other side."

19 And, of course, you know from the testimony that was
20 read into the record, that Defendant Parker did, in fact, bring
21 two mags of 30 rounds.

22 And in Exhibit 57, again, you see that they are
23 recruiting specific kinds of people; militia. They need
24 militia. They have protesters, but they need militia. And
25 Cliven Bundy says -- the person says, "What -- what the updated

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1 with the ranch? What's the update?" And Ryan Payne says,
2 "Needed every man willing at the request of Cliven Bundy. I am
3 on the ground. Have the family secured. Campsite secured on
4 private property. There's a patriot checkpoint to receive
5 direction." All consistent with the evidence you've heard
6 about what these defendants do, Parker, Drexler, and Stewart,
7 when they come. They check in at the patriot checkpoint, and
8 then they camp at the militia camps.

9 And finally, in that conversation, Ryan Payne says,
10 on the April 9th, "No militia yet. Protesters and close
11 friends and family. Many are in the process of mobilizing."

12 The point here is that there's two groups. There's
13 protesters, and there's militia. And they recognize it, and
14 the evidence shows it that this conspiracy depends on the
15 presence of both of those groups on April 12, 2014, at the ICP,
16 because the officers are prevented from taking action as to the
17 militia were showing force because of the presence of the
18 protesters. And the militia, thus, can capitalize on those
19 protesters in taking those tactical positions unchecked.

20 Now, we previously put into evidence Exhibit 189,
21 which walks through all of the exhibits, Facebook, and phone,
22 and some other exhibits to show you how this conspiracy comes
23 together over the course of April 7th to April 12th.

24 So you see on April 7th, the Parker, Stewart, Drexler
25 in Idaho. Lovelien, Payne in Montana. Cliven Bundy in Nevada.

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1 Now, the conspiracy begins, at least in terms of the
2 evidence that we have on this page. At 9:17 a.m., Ryan Payne
3 calls Cliven Bundy's home phone. And the phone records can be
4 found in Exhibit 185 for Payne and Bundy. 9:30, Ryan Payne
5 calls Cliven Bundy's cell phone. 12:11, Ryan Payne calls
6 Cliven Bundy's cell phone again. 12:15, Payne messages Rick
7 Lovelien to call him. 12:16, Defendant Lovelien calls Ryan
8 Payne.

9 12:30, on Facebook, Lovelien tells militia leaders
10 "Contact info to coordinate groups, Ryan Payne OMA." And he
11 provides Payne's phone number and then says, "They have made
12 live contact. Are setting up security ops."

13 8:50 p.m., Payne calls Cliven Bundy's cell phone.
14 9:57 p.m., on Facebook, Jerry Bruckhart co-founder of OMA
15 messages Carol Bundy that significant units will likely be
16 coming. And at 4:30 p.m., earlier that day, Lovelien had
17 communicated with Randy Eaton, Montana State Defense Force,
18 that he had been in contact with Ryan Payne re this --
19 regarding this operation.

20 Now, on April 8th, 2014, you see that Ryan Payne is
21 now moving toward Nevada. At 10:12 a.m., Facebook user James
22 Lardy messages Ricky Lovelien. He says he's going to Nevada
23 with Ryan Payne's West Mountain Rangers. He says, "Going to
24 fight with them and is off to war."

25 At 10:28 a.m., Rick Lovelien calls Ryan Payne. At

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1 10:40 a.m., on Facebook, Lovelien messages Ryan Payne, "Do we
2 have an exact location?" At 10:43 a.m., Ryan Payne calls
3 Cliven Bundy's cell phone. At 10:53 a.m., on Facebook,
4 Lovelien messages James Lardy. "We are coordinating our
5 efforts to get all units together when they get there."

6 And although I'm not saying them, you can see each of
7 these is from a specific exhibit, and the exhibit is identified
8 on the screen.

9 At 11:22 a.m., on Facebook, Ryan Payne messages
10 Lovelien the coordinates for the Bundy Ranch. At 2:01 p.m.,
11 Ryan Payne calls Cliven Bundy's home phone. At 2:26, Ryan
12 Payne calls Cliven Bundy's home phone again. At 8:37 p.m., OMA
13 emails mobilization alert to over 200 supporters providing
14 directions to the Bundy Ranch, and that email goes to Cheyenne
15 Miller, Ricky Lovelien's sister.

16 At 7:22 p.m., Eric Parker posts a link to the Nevada
17 militia page stating, "What are you going to do when the
18 shooting starts?" At 11:20 p.m., Payne tells another Facebook
19 user that he just got off the phone with Cliven. Cliven knows
20 we're coming. OMA is moving.

21 On April 9th, you see at 6:17 a.m., that Ryan Payne
22 calls Cliven Bundy's home phone. At 11:08 a.m., on Facebook,
23 Rick Lovelien searches for and liked Operation Mutual Aid's
24 Facebook page. And if you go to Exhibit 64 and Exhibit 65,
25 you'll see where he's liked that page. And then going to

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1 Exhibit 65, you can see what it is he would have seen on
2 Facebook of the Operation Mutual Aid page, including their
3 mission statement.

4 At 11:59 a.m., on Facebook, Payne messages Lovelien
5 to, "Give me a ring ASAP." At 11:59 a.m., Ricky Lovelien calls
6 Ryan Payne. At 12:18 p.m., on Facebook, Lovelien posts to MTFD
7 group, "We are now in direct contact with personnel at the
8 Bundy Ranch. I will be heading out shortly. There was a
9 direct request made by Mr. Bundy."

10 At 12:33 p.m., on Facebook, Carol Bundy issues public
11 status update. "The Bundy family has requested help from
12 militia groups, including Operation Mutual Aid, 3%ers Club, and
13 Freedom Fighters." At 12:34 p.m., on Facebook, Carol Bundy
14 issues a public status update. "The Operation Mutual Aid
15 coordinator is here with us now."

16 At 12:36 p.m., on Facebook, Lovelien messages Nic
17 Whiting to coordinate his travel down to Nevada. Late in the
18 afternoon on April 9th, the Las Vegas Review Journal releases
19 an article and a video interview of Ryan Payne. "Militias
20 Mobilizing to Support Embattled Clark County Rancher in Clash
21 with Federal Rangers." And that video is Exhibit 37.

22 At 7:30 p.m., Lovelien calls Nic Whiting from a
23 Missoula cell tower. You can see that Defendant Lovelien is on
24 the move from Montana to Nevada.

25 Now, earlier that day, at 1:53 p.m., Eric Parker

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1 posts on Facebook, "Does anyone know anybody in the Nevada
2 militia?"

3 Now, an April 10th, Ryan Payne and Rick Lovelien are
4 now both in Montana -- excuse me -- both in Nevada with Cliven
5 Bundy. Defendants Parker, Stewart, and Drexler are still in
6 Idaho. But at 1:55 a.m., OMA issues its objectives, which we
7 just saw. And he -- and the email reflects that those
8 objectives, again, are in cohesion with Cliven Bundy and that
9 they include the return to Mr. Bundy's ranch the mounting
10 number of cattle which have been confiscated by BLM agents.
11 Again, that's the agreement.

12 At 2:02 a.m., on Facebook, Rick Lovelien's sister,
13 Cheyenne Miller, posts the OMA objectives to the MTF group, and
14 we see that in Ryan Payne's email.

15 At 9:31 a.m., on Facebook, Eric Parker shares a
16 public link to the Las Vegas Review Journal article and the
17 video -- the link that takes you to that video of Ryan Payne
18 entitled "Militias Mobilizing to Support embattled Clark County
19 rancher in Clash with Federal Rangers."

20 At 9:48 a.m., now in Nevada, Ricky Lovelien calls
21 Ryan Payne. At 11:00 a.m., on Facebook, Cheyenne Miller posts
22 to MTF group Rick Lovelien as, "On-site at the Bundy Ranch."
23 At 12:24, on Facebook, Ryan Payne messages Texas militia
24 leader. "Montana has the most guys. Utah, Nevada unorganized.
25 Idaho. Many more en route. I'm designated liaison for militia

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1 via Cliven Bundy. All information disseminated is vetted by
2 him."

3 At approximately 3:30 p.m., the Bundy Ranch Facebook
4 posts, "Attention all militia groups. The Bundy family has a
5 militia coordinator. His name is Ryan Payne."

6 And this is Exhibit 37, that video that was shared --
7 the video that was linked to that Las Vegas Review Journal
8 article, the link to which Defendant Parker posted on his
9 Facebook page.

10 (Exhibit 37 played.)

11 MS. AHMED: Now, April 11, 2014, 10:22 a.m., on
12 Facebook, Defendant Lovelien's sister, Cheyenne Miller, tells
13 the MTRDF group, "Ricky Lovelien is running the security detail
14 at the protest site on the Bundy Ranch."

15 At 6:38 p.m., Mountain Time, on Facebook, Defendant
16 Parker publicly shares the article, "Armed Militias Head to
17 Nevada Ranch as Populous Showdown with Federal Government
18 Tears -- Teeters on the Brink of Violent -- Violence,
19 Bloodshed."

20 At 7:30 p.m., approximately, on Facebook, We Support
21 Cliven Bundy page posts "Bundy's cattle will be taken to Euclid
22 Stockyards," and gives contact phone number for that stockyard.

23 At 7:36 p.m., Eric Parker makes a telephone call to
24 the Euclid Stockyards. And his telephone, from the phone
25 records, which can be found at Exhibit 184, page 13, are using

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1 a Nevada cell tower. And as you can see, Eric Parker, Steven
2 Stewart, and Scott Drexler are now on their way from Idaho to
3 Nevada.

4 Now, that night, either 8:30 or 9:30 -- 8:30 that
5 night probably -- or, excuse me -- approximately, Eric Parker
6 sends message to the "Support Cliven Bundy Facebook page"
7 stating, "We are going to be showing up tonight. Is that okay?
8 At around 11:30 p.m." Excuse me. "At around 11:30." And, of
9 course, you know from the evidence that Eric Parker does travel
10 with Scott Drexler and Steven Stewart to Bunkerville, Nevada.

11 April 12th, Cliven Bundy is now joined in Nevada by
12 Ryan Payne, Ricky Lovelien, Eric Parker, Steven Stewart, and
13 Scott Drexler. At 7:32 a.m., on April 12th, Ryan Payne calls
14 Cliven Bundy's home telephone. At 9:40 a.m., approximately,
15 Cliven Bundy meets Sheriff Gillespie on the stage and tells him
16 to disarm federal agents at the compounds in one hour.

17 At approximately 11:00 a.m., Cliven Bundy speaks to
18 the crowd, including defendants -- including Ryan Payne, who
19 was on stage with him, and Defendants Lovelien, Parker, Stewart
20 and Drexler, about shutting down the freeway and going to get
21 the cattle.

22 At 11:24 a.m., on Facebook, Eric Parker posts the
23 status update. "Bundy gave the sheriff one hour to disarm the
24 BLM. He did not reply. We are now going to free the cattle by
25 any means. The sheriff claimed the BLM is standing down but

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1 offered no proof. This is when Mr. Bundy gave him the 'do it
2 or else.' We will not be lied to."

3 At 12:58 p.m., on Facebook, Steven Stewart posts a
4 status update. "It's been a really long day. What's up? Why
5 I have a little earlier with a really high-powered scope. Show
6 me F... awesome."

7 At 1:02 p.m., on Facebook, Steven Stewart posts a
8 status update. "First they said they were going to release
9 everything and leave. Then they held the gates to Gold Butte
10 and threatened us with chemicals. Then we pushed forward, and
11 they had to back up. They are releasing the cows now. BLM is
12 leaving."

13 At 2:59 p.m., on Facebook, Eric Parker posts status
14 update. "We have cows, happy cows, free cows, American cows
15 raised in an open range not a cage." At 4:07 p.m., Eric Parker
16 sends the Facebook message, "It took a stat off -- standoff,"
17 after being asked if the feds got scared when he got there and
18 backed off.

19 On April 17th, 2014, Scott Drexler's posts a message
20 on Facebook regarding a picture of him on the bridge on
21 April 12, 2014. And in a response to a comment that bridges
22 are choke points, he responds, "That's why we use them to shut
23 down the freeway."

24 You can see through the interaction of these Facebook
25 posts and phone calls and -- excuse me -- Facebook posts, and

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1 phone records, and the events that happen on April 12
2 themselves, how these defendants are tied in to each other, and
3 how they are tied in to Cliven Bundy and Ryan Payne in this
4 conspiracy.

5 And then you know again from the evidence in this
6 case, that on 4/12 of '14 -- excuse me -- on April 12, 2014,
7 they go to the staging area rally. Parker attends and meets --
8 attends a meeting and meets members of Arizona State Militia,
9 who are then in front of the stage when Cliven Bundy is giving
10 his speech. We know also that Defendant Lovelien drives the
11 other three defendants to that rally from the militia camp.

12 We know at the rally, that Defendant Lovelien, who,
13 according to his sister's posts, is doing the -- heading the
14 security at the staging area. He appears to continue to do
15 security and is pictured with an earpiece in his ear.
16 Defendant Parker is also doing security or crowd control, per
17 his previous testimony.

18 You also know, from both Parker and Drexler -- or,
19 excuse me -- from Defendant Drexler's testimony, that the
20 defendants left their firearms in Defendant Lovelien's truck.

21 Again, from the videos here this is a screenshot from
22 Exhibit 6A. You can see that those same people, that were at
23 the meeting in the morning, the Arizona State Militia, that
24 Eric Parker met, are now lined up in front of the stage where
25 Cliven Bundy is speaking.

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1 Again, you know what he says in his speech. And
2 after he gives that speech, Todd Engel posts this post that
3 you've already seen at Exhibit 122. "Headed out to block
4 freeway and take cows back." He also posts, in that same
5 exhibit, shortly thereafter, "Leaving now to shut the freeway
6 down by force of arms."

7 And again, consistent with Cliven Bundy's speech and
8 with these posts made by Todd Engel, Eric Parker -- this is his
9 post at Exhibit 93 -- says, "Bundy gave the sheriff one hour to
10 disarm the BLM. He did not reply. We are now going to free
11 the cattle by any means. The sheriff claimed that the BLM is
12 standing down but offered no proof. This is when Mr. Bundy
13 gave him the 'do it or else.' We will not be lied to."

14 You've seen, in Exhibit 182, as well as in
15 Exhibit 31A, the screenshot of Defendant Lovelien's truck in
16 which Steven Stewart is in the back heading to the BLM
17 impoundment. And you've seen, again in Exhibit 182, the
18 screenshot taken from Exhibit 8 of that same Todd Engel who
19 posted to those messages on Facebook "Arrives at the ICP," with
20 his tactical vest, his assault rifle as well.

21 Now, we also put into evidence Todd Engel's Facebook
22 messages from Exhibit 122, where he added a video. But more
23 importantly, he posted a message "Armed standoff."

24 And, of course, you know, from Exhibit 182 and the
25 images that have been put into -- and video that have been put

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1 into evidence, the tactical positions that these four
2 defendants take on the northbound bridge.

3 THE COURT: I think that was 162? I think I heard it
4 say 182 but it was 162?

5 MS. AHMED: So, this image is from Exhibit 162. Your
6 Honor is correct, but Exhibit 182 is that time line. So,
7 either one, you'll see this image, but 182 will walk you
8 through the events on the bridge -- excuse me -- at the ICP.

9 Now, again, Steven Stewart's post afterward
10 celebrating the events that had unfolded consistent with what
11 you know happened. And Ammon Bundy also made statements about
12 what happened on April 12th in referencing the plan that
13 occurred that day.

14 (Unidentified video exhibit played.)

15 MS. AHMED: Keep playing.

16 (Unidentified video exhibit played.)

17 MS. AHMED: Now, Ammon Bundy gave that speech or that
18 interview, rather, while standing in the wash at the BLM
19 impoundment site. And we know that after the BLM withdrew from
20 that area in Post 2, that the defendants stayed up on the
21 bridge as the "West has now been won sign" was hung over the
22 freeway.

23 And at Exhibit 122, Todd Engle also posts, "BLM lost
24 and has backed down due to overwhelming force of the people and
25 our arms. We win. Cattle being released as we speak. If they

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1 don't, trouble will start again. It was very, very close to an
2 exchange of gunfire. We rushed their barricades with armed
3 people and cowboys on horseback. Crazy."

4 And then the BLM, of course, withdrew, and Eric
5 Parker, Scott Drexler, and Steven Stewart were there to watch
6 them leave as was Defendant Lovelien. And then the cattle were
7 released. And all of these slides again come from Exhibit 182
8 which takes them from the source which is listed there.

9 Eric Parker posted on his Facebook post "Celebrating
10 the release of the cattle." And Defendant Lovelien returned to
11 the Bundy staging area to continue conducting security at that
12 site. And here you see him pictured at approximately 4:00 p.m.
13 on April 12th again with that earpiece in his ear.

14 Now, you also have Ammon Bundy, Cliven Bundy's son,
15 giving an interview that same day as well, commenting on --
16 here commenting on the plan.

17 (Unidentified video exhibit played.)

18 MS. AHMED: Now, ladies and gentlemen, of course you
19 have heard from Sheriff Lombardo who was the assistant sheriff
20 at the time, who testified on the stand that when he got to
21 ICP, it was clear that all they could do was work to order the
22 release of the cattle in order to prevent this from being a
23 violent event.

24 But what's significant, in this video, in Ammon
25 Bundy's comments, is his comment that they had militia and

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1 weapons, and the officers didn't know if they were going to be
2 fired upon, because that was the point. That was how the plan
3 worked on April 12th at that standoff. Because it was the
4 threat of violence, the potential for violence, the fatal
5 funnel, as Ranger Whitteaker described it, that the officers
6 were placed in that basically forced their hand and forced them
7 to retreat. And Ammon Bundy says as much when he makes that
8 comment in his video.

9 Now, in addition to generally conspiracy, joining in
10 the conspiracy and that there's an agreement, which we submit
11 the evidence shows that these four defendants did join in that
12 conspiracy and did agree to commit all of the offenses that are
13 listed in Count One.

14 Under conspiracy liability, you can also find the
15 defendant who joined into the agreement guilty of the actual
16 substantive offenses, meaning Eric Parker joined in the
17 agreement, and Scott Drexler assaulted those officers on
18 April 12th. Well, by joining in this agreement, this
19 conspiracy together, they become liable for each other's
20 reasonably foreseeable criminal actions.

21 And so Defendant Lovelien, even if you concluded,
22 against the evidence in this case, that he didn't himself
23 assault the officers on April 12th, by joining in the
24 agreement, in the conspiracy with these other defendants, he is
25 liable, under coconspirator -- coconspirator liability, for

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1 their conduct. He is thus liable. It's as if he did it
2 himself. When you join the agreement, you are all responsible
3 for each other's actions.

4 And, so, here again, once the defendant joins, he's
5 responsible for the other defendants' actions. That means
6 Lovelien is responsible for Parker, Drexler, and Stewart's
7 actions on the bridge. Stewart is responsible for Parker and
8 Drexler. They are responsible for each other. They are all
9 responsible for each other in joining in this conspiracy
10 together, because in joining the conspiracy to commit the
11 offenses that are listed in Count One, and to interfere with
12 and impede federal officers, it is reasonably foreseeable that
13 this conspiracy is going to be achieved through the use of
14 force, threats, assault, and violence.

15 And, so, because it's reasonably foreseeable that
16 that's going to happen, when they join this agreement together,
17 they are -- under the law, it is as if they committed the
18 offense themselves.

19 And, so, when you look at this verdict form, and if
20 you find these defendants guilty of Count One; and, in doing
21 so, identify what they agreed to commit, you should also find
22 them guilty of the substantive offense under that coconspirator
23 liability. Meaning if they are guilty of conspiring to commit
24 assault, then because it is reasonably foreseeable, in joining
25 that conspiracy, that the assault is going to happen, that it's

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1 as if they all committed the assault themselves, even if --
2 here we have evidence that they all did it themselves. But
3 even if you didn't believe that the evidence was there for one
4 of them, under that coconspirator liability, finding guilty for
5 them as to Count One means you would, for example, under the
6 assault also find them guilty of committing Count Five.

7 So, guilty as to Count One means you would go to
8 Count Five and also find them guilty there.

9 Separately, as we've already stated, for all of these
10 offenses, the Count Five, Six, Eight, et cetera, if you find
11 that they aided and abetted, they are also guilty and equally
12 liable as if they did it themselves.

13 So, in looking at this verdict form, the question is,
14 as to Count One -- let me go back to Count One. Did they --
15 did you -- Do you find that the evidence shows that they
16 conspired to commit? They agreed. There was an agreement to
17 assault federal officers. Which we submit that the evidence
18 shows that there was, then they're guilty, and you would check
19 number one.

20 You would again, under that coconspirator liability,
21 which I believe is actually Jury Instruction 21, you would then
22 go to Count Five, and you could find them guilty there.

23 So, in sum, ladies and gentlemen, the point is that
24 you can -- looking at this verdict form, thinking about the
25 evidence and the law that you have been given, these defendants

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1 are guilty of all the crimes with which they've been charged,
2 because they did it themselves, they helped each other do it,
3 and they agreed to do it.

4 Now, I know that is a lot of information that I've
5 just gone over in a very short amount of time, or probably what
6 seems like a very long amount of time, but the point here is
7 that the evidence and the law lead you inexorably to the
8 conclusion that these defendants are guilty as they are
9 charged.

10 Now, after I'm done speaking, of course, the defense
11 attorneys will have an opportunity to present their arguments
12 to you. And in addition to the tool that you have of common
13 sense and reason, in looking at the evidence and in listening
14 to their closing arguments, think about the evidence in terms
15 of credibility, corroboration, and consistency.

16 And ask yourselves if the arguments that are
17 presented to you are consistent with the evidence or ask you to
18 explain away the evidence. Use your common sense and your
19 reason to look at the law and the evidence, and apply the law
20 as the Judge has given it to you. And I will ask that you
21 listen to their arguments, with that framework, knowing also
22 that Mr. Myhre will have an opportunity to come back up here at
23 the end and address what they've said you to here again before
24 we are done.

25 But I would ask that basically, you think about the

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1 events of April 12, 2014. It's a date that we've heard said
2 hundreds of times over the past month and a half. And for us,
3 it's a moment in time. But for the officers who testified to
4 you about what they felt, you saw for yourselves the impact
5 that event had on them and the impact that these four
6 defendants had on them.

7 And it is clear from the evidence that they did it
8 with every intention of threatening, assaulting, extorting
9 those officers and getting that cattle. And they conspired to
10 do it, and they did do it, and they helped each other do it.

11 So, in light of that, ladies and gentlemen, we ask
12 that you ultimately, when you go back to your deliberations,
13 fill out that verdict form, that you find them all guilty on
14 all counts. Thank you.

15 THE COURT: All right. Let's go ahead and take our
16 afternoon bathroom break.

17 I do remind the jury again. Please do not discuss
18 this case with anyone, not even your fellow jurors, not yet.
19 Please do not permit anyone to discuss it with you. Do not
20 read, or listen to, or view anything that touches upon this
21 case, nor attempt to perform any research or any independent
22 investigation. And please do not yet form any opinions.

23 It's 3:00. We'll go ahead and take -- Aaron, 15?

24 COURTROOM ADMINISTRATOR: That should be plenty, Your
25 Honor.

1 THE COURT: All right. Let's go ahead and take a
2 15-minute break. So we will stand and excuse the jury and
3 welcome them back at 3:15.

4 (Jury out.)

5 THE COURT: All right. We are off record.

6 (Recess, 3:00 p.m. Resumed 3:29 p.m. Jury out.)

7 THE COURT: Thank you. You may be seated. You may
8 go ahead and be seated, or go ahead and call in the jury.

9 (Jury in.)

10 THE COURT: All right. The jury may go ahead and be
11 seated. Everyone else may be seated as well.

12 All right. So now defense may make its closing
13 argument. Who would like to go first?

14 MR. TANASI: Thank you, Your Honor. At this time,
15 Steven Stewart and I have no closing argument. Thank you.

16 THE COURT: All right. Mr. Marchese.

17 MR. TANASI: Yes, Your Honor. Thank you. At this
18 time, Eric Parker has no closing argument.

19 THE COURT: Mr. Leventhal.

20 MR. LEVENTHAL: On behalf of Mr. Drexler, we have no
21 closing argument.

22 THE COURT: And Mr. Perez.

23 MR. PEREZ: On behalf of Mr. Lovelien, we have no
24 closing argument.

25 THE COURT: Does the government wish to make a

1 rebuttal argument?

2 MR. MYHRE: May we have just a moment, Your Honor.

3 THE COURT: Yes, you may.

4 (Pause in the proceedings.)

5 MR. MYHRE: Well, Your Honor, in light of the fact
6 that they have made no closing, we have no rebuttal.

7 THE COURT: All right. Thank you.

8 So, at this time, we are going to go ahead and excuse
9 the jury, the 12 jurors to go begin their deliberations. The
10 alternate jurors are numbers 13, 14 and 15. So, we will be
11 separating you out.

12 The deliberating jurors will begin deliberations in a
13 different jury room than the one that you have been in. So,
14 we'll let you go and gather up your things and move into the
15 different jury room that is used for deliberations.

16 The alternate -- the three alternate jurors, you'll
17 be given instructions by Mike or Aaron as to -- because you are
18 going to be split up into two; so, actually, I didn't check to
19 see who gets which, but I think that Mike will have to get the
20 deliberation group, and Aaron will stay with the alternate
21 jurors, so that we can make sure we have everybody's contact
22 information and so forth.

23 So, at this time, I'll ask Aaron, please, if you are
24 sworn in. I know technically you were already sworn in before
25 at the beginning, but for deliberation purposes, we will go

1 ahead head and do that as well.

2 (Court Security Officer sworn.)

3 THE COURT: All right. So, we'll have Jurors No. 1
4 through 12, go ahead and stand up, and you can exit with Mike.
5 And then as soon as they have exited, then Aaron if you will
6 please take Jurors 13, 14 and 15.

7 COURTROOM ADMINISTRATOR: Yes, Your Honor.

8 THE COURT: And we will be in recess while they
9 deliberate.

10 (Jury out.)

11 THE COURT: All right. So, we are in recess. If you
12 didn't get a chance already to give Aaron your contact
13 information, please make sure that you do that, so that he can
14 give you a call and let you know what time the jury goes home
15 today. Because we've been having court till 5:00, that's what
16 I expect is that they will stay until 5:00.

17 And then we'll let you -- Aaron will also call you to
18 let you know if they are going to be starting right up again at
19 9:00 a.m. tomorrow morning, which I do expect that they would
20 be at least putting in 9:00 to 5:00, and also whether or not if
21 it's necessary to come back on Friday, if they choose to come
22 back on Friday. Or if they already had plans for Friday, they
23 may not want to come back on Friday, and not be able to, and
24 they might come back on Monday.

25 So, in other words, step by step we will keep you

1 abreast of what's going on, so that you know whether you need
2 to be at the ready with a suit on or not.

3 MR. TANASI: Thank you, Your Honor.

4 THE COURT: And also if we have a jury note, we'll
5 also call you right away to come back to court in your suits,
6 so that we can discuss that jury note as well.

7 MR. TANASI: Your Honor, may we make a record before
8 we recess?

9 THE COURT: You know, probably better if you just
10 file it. Do it that way instead.

11 MR. TANASI: Okay.

12 THE COURT: All right. We'll be in recess.

13 (Recess, 3:37 p.m. Resumed, 4:02 p.m. Jury out.)

14 THE COURT: All right. We are back on the record,
15 and go ahead and be seated. We are outside the presence of the
16 jury.

17 I did write down a few things that I noticed and
18 continued to try to look at to see whether I can corroborate
19 what I thought that I saw.

20 Juror No. 12, when she walked in, gave -- not 12. 2,
21 the top one. The one that wears the gray sweater up top.

22 Juror No. 2, when she walked in, she winked -- first
23 she smiled and then winked over at the defense table when she
24 walked in. Then she proceeded to look over to the right, and
25 make eye contact with somebody, and then was looking back over

1 at defense table. And when she smiled, she then quickly looked
2 at me, and we locked eyes. And then she quickly looked down.

3 And now I've also been told that other individuals in
4 the courtroom witnessed her blowing a kiss to defense table as
5 she was exiting the courtroom. So, I'm going to have her
6 brought in and ask her questions. And I want to give both
7 parties an opportunity to tell me what questions you would like
8 me to ask in determining whether there is good cause to excuse
9 her.

10 Demonstrated bias, by communicating with the
11 defendant, his family, or his attorneys, can constitute good
12 cause to dismiss the juror under *United States versus*
13 *Vartanian*, V-A-R-T-A-N-I-A-N.

14 And, so, that is my concern at this point, but I want
15 to give you the opportunity to tell me what questions, if any,
16 you want me to ask her or if you just agree. I don't know if
17 you've also seen the same.

18 MR. MYHRE: Your Honor, we did notice that -- and I
19 didn't -- I couldn't see, from my vantage point. But when
20 Defendant Parker was leaving the witness stand --

21 THE REPORTER: Please speak into the microphone.

22 MR. MYHRE: Oh, I'm sorry.

23 When Defendant Parker was leaving the witness stand,
24 it appeared, at least to some on our team, that he made eye
25 contact or made some sort of facial gesture and connected with

1 Juror No. 2.

2 I saw the turn, and I saw that he was making some
3 facial gesture. I didn't see -- and I saw her, but I didn't
4 see that their eyes necessarily locked. But I saw that she was
5 visibly emoting based on him leaving the witness stand on that
6 Thursday when that occurred last week.

7 THE COURT: And also, when she left today, after the
8 defense stated that they were not going to be making a closing,
9 she seemed visibly upset, and Juror No. 1 was comforting her.
10 But that didn't bother me as much as -- just to add to the
11 concern that had already been made.

12 So, was there anything else that you or your teams or
13 staff or other individuals saw, so we can make sure that we can
14 ask her about everything?

15 MR. MARCHESE: In reference to the things that may or
16 may not have been seen, personally, I haven't seen her make eye
17 contact with me or in our direction at any point in time.

18 I will say I did see what the Court saw when she was
19 leaving with the kiss. How I construed it was that it was to
20 the alternates, given the fact that they would now be split up.

21 I don't know who it was to, but it definitely was not
22 in our direction. It was more in the vicinity of alternates,
23 so that's how I viewed it. But I've never seen her -- locked
24 eyes with her or anything like that that I felt to be out of
25 the ordinary or odd.

1 I mean, it does periodically happen. You look up,
2 and you happen to be looking at a juror.

3 THE COURT: Yeah. Well, and no offense. I know that
4 it wasn't aimed at you, because you were always looking at your
5 laptop, because I was looking to see if I could figure out who
6 it was that she was locking eyes with. And I had narrowed it
7 down to Parker or Tanasi from my point of view.

8 But I had ruled it out, because you were never
9 looking back at her. You were looking down at your laptop, and
10 so I -- I believe you when you say you never saw her doing
11 anything else, because you weren't really looking in that
12 direction.

13 Anything else from the government?

14 MR. TANASI: Your Honor, I'm not making eye contact
15 with her. I would like to put that on the record as well. I
16 have this screen, which is the screen I look at. And, I mean,
17 maybe she's behind the screen. But I make a very good point
18 not to sit and stare or make eye contact.

19 Obviously, from time to time, you look over there.
20 You are looking at reactions. But for this very reason, I am
21 not going to sit there and look into her eyes and gaze at her.

22 Again, I feel like I'm kind of in the position of
23 arguing a negative right now, because it didn't happen.

24 THE COURT: And maybe I should clarify that I'm not
25 accusing any of the defense counsel of doing anything like

1 that. And I think you notice that you and I kept looking at
2 each other. Maybe you were wondering why does the judge keep
3 looking at me, because I was trying to figure out who it was
4 that she was looking at, and whether it was you or Mr. Parker.

5 And I -- from my vantage point, again I'm in between
6 both of you. I didn't think that it was any of the other
7 counsel back there either.

8 You wanted to say something?

9 MR. MYHRE: Your Honor, just I did have a report that
10 at one of our sidebars during Defendant Parker's testimony,
11 that No. 2 was smiling at Mr. Parker during -- while we were at
12 sidebar. So --

13 MR. TANASI: Your Honor, the only, I guess, response
14 that I would offer is why does that come up now? We have had
15 no sidebars today.

16 MR. MYHRE: I believe it was during the sidebar
17 during Defendant Parker's testimony.

18 THE COURT: All right. And any questions that you
19 want me to ask?

20 MR. MYHRE: Nothing further, Your Honor, from --

21 MR. TANASI: Your Honor, I guess what did you intend
22 to ask? Just essentially whether she did or didn't do it? I
23 don't have any specific questions. I guess we'll see how they
24 go.

25 THE COURT: Well, I don't feel I need to ask her

1 whether she did or didn't do it, because I saw her do it. So,
2 my concern is why she did it and whether there's an innocent
3 explanation for it that is convincing to me or not.

4 MR. TANASI: Okay.

5 MR. LEVENTHAL: What are we referring to why she did
6 what? The kiss to somebody on that side? What -- is that
7 what --

8 THE COURT: The smile, the wink, and the kiss.

9 MR. LEVENTHAL: Smile, on the same occasion or
10 different occasions?

11 THE COURT: Today.

12 MR. LEVENTHAL: Yeah, but at different times?

13 THE COURT: The smile and the wink were at the same
14 time when she walked in.

15 MR. LEVENTHAL: Oh, okay.

16 THE COURT: And the blowing the kiss with the hand
17 gesture was on the way out.

18 MR. LEVENTHAL: Okay.

19 MR. MARCHESE: So, it would have been when we were
20 making our appearances this morning with the smile, or wink, or
21 whatever?

22 THE COURT: It was actually coming in after lunch.

23 MR. MARCHESE: Okay.

24 MR. LEVENTHAL: Does the Court know where she was
25 focused when she did the smile and the wink?

1 THE COURT: Yes, defense area.

2 MR. LEVENTHAL: Oh, this area?

3 THE COURT: Oh, yes.

4 MR. LEVENTHAL: Okay. But the Court indicated that
5 you found -- or the Court indicated that you thought the kiss
6 was towards this area as well?

7 THE COURT: The kiss was definitely towards this
8 area, but the -- what caused me concern was the constant eye
9 contact that continued, and her looking over to the right, and
10 then looking over to the defense.

11 So, I'm going to ask her some questions, but I want
12 to give you an opportunity to ask questions as well.

13 MR. LEVENTHAL: I think, at this time, I don't have
14 any questions. Maybe there might be some follow-up questions,
15 if that's okay with the Court. I mean, at this point, I didn't
16 see it, so I don't know.

17 MR. MARCHESE: And one thing I would say, Your Honor,
18 and Mr. Parker brings up a good point to me today. Obviously,
19 the Court is configured a little bit differently due to the
20 closing arguments. And the way the podium is situated, she
21 can't see Mr. Parker from her vantage point.

22 THE COURT: All right. Anyone else in the courtroom
23 that saw anything?

24 MR. MYHRE: Yes, Your Honor. Just that it was
25 reported that one of the agents saw her actually lean to look

1 around the podium to see Mr. Parker at one point today.

2 MR. LEVENTHAL: That's not possible with the podium
3 where it's at. It hasn't moved, and the seat No. 2, there's no
4 way she can lean around and see Mr. Parker, if the Court
5 would --

6 MR. MYHRE: It's possible someone could lean in their
7 chair.

8 MR. LEVENTHAL: The way that I'm facing, which I'm
9 directly behind Mr. Parker right now, is that there is no way
10 that someone could lean around and see Mr. Parker from that
11 chair.

12 MR. MYHRE: I'm just reporting, Your Honor, that she
13 leaned and to look around the podium at Mr. Parker.

14 THE COURT: All right. And did the marshals also
15 receive reports from other individuals in the courtroom that
16 Juror No. 2 was exhibiting behavior that is not common?

17 MARSHAL: That is correct, Your Honor.

18 THE COURT: And what was the behavior that was
19 reported?

20 MARSHAL: The same behavior that you stated yourself.

21 THE COURT: All right. Well, let's go ahead then.
22 Thank you. We'll call her in.

23 (Juror No. 2 entered the courtroom.)

24 COURTROOM ADMINISTRATOR: All rise.

25 THE COURT: You can go ahead and have a seat. Juror

1 No. 2 is joining us now on the record outside the presence of
2 the rest of the jury.

3 I have a couple of questions for you. The first one
4 is to find out why it is that I have been seeing certain
5 behavior from you. First of all, when you came in, you were
6 smiling in the direction of the defense, and I saw you give
7 them a wink.

8 Can you explain what that was about?

9 JUROR NO. 2: For starters, I don't ever wink. If
10 anything, that was misread. I try to smile at whoever I make
11 eye contact with, and it is natural to look at the defense,
12 because they are directly across from me.

13 THE COURT: And then when you were leaving, you
14 seemed upset that the defense did not make a closing argument,
15 and Juror No. 1 was comforting you.

16 And then you turned over to the defense counsel table
17 again and blew them a kiss.

18 JUROR NO. 2: Oh, no. My fellow No. 14, 15 -- my
19 fellow juries is who I blew a kiss to. Verna has been the
20 sweetest lady, and it saddened me that I didn't think I'd get
21 to see her again.

22 THE COURT: During Government's closing, at various
23 points, it looked like you were making eye contact with defense
24 table specifically with Mr. Parker.

25 JUROR NO. 2: I do try to look at people in the face,

1 and, you know, it's a very interesting court case, like reading
2 facial expressions, looking at emotion. But I do the same
3 wherever I look. I'm sorry if it was misconstrued as some
4 signal, because it is not.

5 THE COURT: Have you been crying today?

6 JUROR NO. 2: No, but I do wear contacts, and I am
7 sleepy.

8 THE COURT: All right. Any follow-up questions?

9 MR. TANASI: No, Your Honor. Thank you.

10 MR. LEVENTHAL: No, Your Honor.

11 MR. MYHRE: No, thank you, Your Honor.

12 MR. MARCHESE: No, Your Honor.

13 THE COURT: All right. Thank you.

14 (Juror No. 2 left the courtroom.)

15 THE COURT: All right. So, does anybody wish to make
16 a motion?

17 MR. MYHRE: I'm conflicted, Your Honor, because I'm
18 not -- it sounds like you saw the wink, so I believe the Court
19 saw the wink, and then she denied the wink. So, I'm concerned
20 as to whether she's telling the truth or not. That's where I
21 am. And --

22 THE COURT: She did admit she blew the kiss.
23 Mr. Marchese saw her blow the kiss, and Juror No. 2 said that
24 she was blowing the kiss to one of the alternate jurors, which
25 was what Mr. Marchese believed he saw as well.

1 MR. MYHRE: So, I'm just conflicted, because she's
2 obviously sat through the whole -- the whole trial. Your
3 Honor, I didn't catch her last answer when you asked her
4 whether she was crying. Did she say she has problems with her
5 contacts?

6 THE COURT: She says she wears contacts, and she's
7 sleepy.

8 MR. MYHRE: Well, Your Honor, I think I'm going to
9 move to strike her, just because I'm concerned about her answer
10 in response to your question about the wink.

11 If she -- unless the eye -- that's my sole concern
12 here, is if she's not telling the truth about that. The Court
13 saw it. And I -- I didn't see it, but if -- if it's an eye
14 issue, if she had a problem with that, I -- you know, I am
15 willing to, you know, accept that. But if she's not telling
16 the truth about that, I have concerns.

17 THE COURT: All right. Anything else from the
18 defense that you want to --

19 MR. LEVENTHAL: I think she obviously told the truth.
20 It was corroborated by Mr. Marchese on the one answer. And if
21 she said she's sleepy, and she's got contacts, maybe she was
22 just blinking.

23 I didn't notice anything on this side. I'm right
24 behind Mr. Parker. You know, I look at the jurors once in a
25 while just like we all do. You indicated that it might have

1 been Mr. Tanasi, but he's not made any eye contact.

2 So, I think she's been very forthcoming with the
3 Court. She told you exactly who she blew the kiss to, and I
4 think that was the most -- probably the most flagrant thing.
5 If there's an eye issue, and she's sleepy, and she wears
6 contacts, there's a reasonable explanation. And I don't think
7 it's grounds to dismiss her, since she sat through this trial
8 for a month and a half now or almost.

9 I think we are all tired and sleepy. And I don't
10 wear contacts. If I do, then I might have some irritation
11 coming in in the morning. I don't think it's anything more
12 than that.

13 THE COURT: And Marshal, what was it that was
14 reported to you, so that I can see if it is consistent or not
15 with what I believe that I saw?

16 MARSHAL: The only things that were reported to me,
17 Your Honor, was the -- the blowing the kiss, staring to the
18 right all day today, and then -- and also the wink.

19 THE COURT: Okay.

20 MR. PEREZ: Your Honor, just to clarify, he said
21 staring to the right. Would that be to the prosecution?

22 THE COURT: Well, and that's why I wanted to look at
23 the case law, because the *Vartanian* case includes communication
24 with the defendant, his attorney, or his family.

25 And so that was my concern with whether she was

1 looking at any individuals that were family. I did look at
2 Mr. Parker's wife, and she was not making eye contact with
3 Mr. Parker's wife. At least to my satisfaction, I didn't think
4 that that was going on. And there were some other people that
5 I was trying to figure out if she was making contact with.

6 So, like I said, I had narrowed it down to where it
7 seemed that where she was always looking as to either
8 Mr. Tanasi or to Mr. Parker, and not to the people that I think
9 I know are Mr. Parker's family.

10 Obviously, I don't know who all of Mr. Parker's
11 family are, but the individuals that I've seen here over and
12 over again that I believe I think I know are his family, I
13 didn't think that -- that that was the case.

14 So, I'm not going to excuse her based on the
15 information that we have and her responses. That doesn't mean
16 I'm not concerned. I am still concerned, and so if there is
17 something else that comes up, I think that's probably going to
18 be more than enough. But, wow.

19 If we hear of anything else, I -- I know what I saw,
20 but I don't want to be the only one. And I appreciate that
21 people are reporting it also to the marshals, which is why I
22 wanted to bring it to everybody else's attention.

23 Her responses are that she did not wink. That she
24 just smiles at everyone that she looks at, and that -- which
25 wasn't true, because she's very frowny-faced during the

1 information today as well, but I don't want to consider that,
2 except maybe in evaluating her credibility.

3 But I think it's too thin to excuse her based on the
4 record we have now. Maybe it will prove out to be a mistake
5 later, but --

6 MR. MYHRE: Does the Court want to inquire of her
7 what she was looking at to the right, or is the Court satisfied
8 she wasn't making eye contact with family members?

9 THE COURT: She said she looks around and smiles at
10 everybody. Which is not necessarily what I saw, because she
11 didn't smile at everyone and look around at everybody. But --
12 yeah, nobody -- it's sort of the nature of this case, I
13 suppose, that nobody else wants to be identified as seeing what
14 they saw.

15 But, you know, feel comfortable reporting to it the
16 marshals, which obviously gets to my attention at some point.
17 And I had already spoken to my staff and had told them to look,
18 and my staff saw a couple of the things that we verified. But
19 if it's -- if the motion by the government is only based on
20 what I saw, and she's saying that she smiles at everyone, and
21 that the blowing of the kiss was to the alternate jurors and
22 not to Mr. Parker, or Mr. Tanasi, or whoever else it might have
23 been, if I misunderstood, but I know it was someone in that
24 direction.

25 If there's nothing else that anybody else saw, then I

1 think that's probably better just to leave her on.

2 All right. So did -- Aaron, did they indicate to
3 you, when you talked to them, whether they were going to be
4 leaving at 5:00, or are they leaving and just not even
5 starting, because sometimes they don't even want to start.

6 COURTROOM ADMINISTRATOR: They are still here, Your
7 Honor. I do not believe we have a time that they are quitting.
8 I would imagine 5:00.

9 THE COURT: Yeah.

10 COURTROOM ADMINISTRATOR: We have not talked about
11 it.

12 THE COURT: Okay. All right.

13 MR. LEVENTHAL: Your Honor, can we take a moment? I
14 know we all waived our closings, and I know Mr. Tanasi asked --
15 on a different note, Mr. Tanasi asked if we could just put
16 something on the record.

17 Could we have our clients, just on the record, say
18 that they waived -- they agreed to the waiving of the closing?
19 I believe that caselaw requires either written notice that we
20 do that or on the record. So --

21 THE COURT: That's why I think it's better that you
22 provide a written notice.

23 MR. LEVENTHAL: Okay. So, I'll provide a written
24 notice.

25 THE COURT: Okay.

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All right. So, with that, we'll be in recess.
(Recess, 4:28 p.m.)

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COURT REPORTER'S CERTIFICATE

I, KATHERINE EISMANN, Official Court Reporter, United States District Court, District of Nevada, Las Vegas, Nevada, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Date: August 21, 2017.

/s/ Katherine Eismann

Katherine Eismann, CSR CRR RDR

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,)	
	)	Case No. 2:16-cr-00046-GMN-PAL
Plaintiff,)	
	)	Las Vegas, Nevada
vs.	)	August 21, 2017
	)	1:50 p.m.
ERIC J. PARKER (11), O.)	
SCOTT DREXLER(12), RICHARD)	
LOVELIEN (13), and STEVEN A.))	
STEWART (14),)	
)	
Defendants.	)	Day 23

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE GLORIA M. NAVARRO
UNITED STATES DISTRICT COURT CHIEF JUDGE, AND A JURY

APPEARANCES:

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Appearances continued on next page.

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Proceedings reported by machine shorthand, transcript produced
by computer-aided transcription.

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18 Sharon Gavin, Special Agent FBI
19 Joel Willis, Special Agent FBI
Chris Allen, Bureau of Land Management
20 Mike Abercrombi, FBI
Mamie Ott
21 Nona Dodson
Brian Glynn
22
23
24
25

1 (Monday, August 21, 2017, 1:50 p.m.)

2 --oOo--

3 P R O C E E D I N G S

4 (Jury out.)

5 COURTROOM ADMINISTRATOR: All rise.

6 THE COURT: Thank you. You may be seated.

7 COURTROOM ADMINISTRATOR: This is the time set for
8 Jury Trial, Day 23, in Case No. 2:16-cr-046-GMN-PAL, United
9 States of America versus Eric Parker, Steven Stewart, O. Scott
10 Drexler, and Ricky Lovelien.

11 Counsel, please make your appearances for the record.

12 MR. MYHRE: Good morning, Your Honor. Steven Myhre,
13 Erin Creegan, and Nadia Ahmed on behalf of the United States.

14 THE COURT: Good afternoon.

15 MR. TANASI: Good afternoon, Your Honor. Rich Tanasi
16 with Steven Stewart who is present.

17 THE COURT: Good afternoon.

18 MR. MARCHESE: Good afternoon, Your Honor. Jess
19 Marchese on behalf of Eric Parker.

20 THE COURT: Good afternoon.

21 MR. LEVENTHAL: Good afternoon, Your Honor. Todd
22 Leventhal on behalf of Scott Drexler.

23 THE COURT: Good afternoon.

24 MR. PEREZ: Good afternoon. Shawn Perez on behalf of
25 Ricky Lovelien.

1 THE COURT: Good afternoon.

2 All right. Before we begin, just a quick reminder
3 that this is a courtroom and not a sporting event. So, we're
4 going to be conducting a hearing today, and we don't want any
5 distractions or any inappropriate language or body language
6 during the proceeding.

7 We do have security here authorized to remove anyone
8 who makes inappropriate remarks. The defendants are aware
9 there is a holding cell right outside the door there with a
10 speaker system set up, so that if any of the defendants cannot
11 comply with the behavior that is expected in a courtroom, then
12 they can still at least continue to hear the proceedings from
13 the cell if it is necessary to have them removed from the
14 courtroom.

15 Likewise, we are not permitted to have any electronic
16 devices in the courtroom. So, if you do have one, please take
17 a moment to step outside and drop it out there. No cell phones
18 are permitted, iPads, laptops, things of that nature. We do
19 not permit any audio or video recording in any of the federal
20 courts, and so that is why we can't have the devices.

21 We do have computer monitors and such, and the
22 attorneys and the security officers are permitted to have their
23 electronics so that they can review their notes and prepare
24 accordingly for today as well as communicate for security
25 reasons.

1 All right. So, I have received two jury notes that
2 were shared with counsel, and I'm prepared to hear argument or
3 suggestions as to what responses should be provided. I realize
4 I didn't number them for you, so I'll tell you now that the one
5 that starts off with the words "On Thursday," we'll refer to
6 that as Jury Note No. 143. So, if you want to write that on
7 the top of your copy.

8 And then the next one starts "We the jury," that one
9 will be numbered 144.

10 All right. So, does the government wish to suggest a
11 response to Note No. 143?

12 MR. MYHRE: Yes, Your Honor. The -- first of all, we
13 note our general concern that the Court's instruction requires
14 that any notes not only be in writing but be signed by a juror.
15 We note that none of these are -- either 143 or 144 appear to
16 be signed, and so we note that as well.

17 With respect to 143 in particular, we would just
18 suggest that the Court refer them back to Instructions 1 and 37
19 in terms of their duties to deliberate, but anything with
20 respect to -- what appears in 143 is that this is a juror who's
21 opining as to another juror's potential bias.

22 And they reference, apparently, a statement that was
23 made outside the deliberation room, but then it appears to be
24 going into this juror's opinion formed as a result of
25 deliberations.

1 We believe any questioning of this juror or of even
2 the juror that -- that this juror's alluding to would violate
3 the secrecy of the deliberations. And therefore, we -- we see
4 no further need to inquire into this, because it all goes to
5 the sacrosanct aspect of the jury deliberations and secrecy of
6 those jury deliberations. So, that's with respect to 143.

7 THE COURT: All right. Well, just let me back up
8 there. So, you said you think the response should be to refer
9 them to Jury Instruction No. -- did you say 1 and 37?

10 MR. MYHRE: 1 and 37. Just as the -- just their
11 duties to deliberate, Your Honor.

12 THE COURT: All right. And no further inquiry.

13 MR. MYHRE: And no further inquiry, yes, Your Honor.
14 And I'm prepared to address 144 as well, unless you want to
15 just do one at a time.

16 THE COURT: Well, let's do one at a time, so we
17 don't -- don't get confused.

18 So, Mr. Tanasi, do you wish to be heard on Juror Note
19 143, or Mr. Marchese, you are going to speak first or for
20 everyone?

21 MR. MARCHESE: It's fine, Your Honor. We've all
22 spoken. And, of course, Mr. Leventhal and Mr. Tanasi I'm sure
23 can fill in the blanks on anything that I leave out.

24 THE COURT: Okay.

25 MR. MARCHESE: The defense is very concerned about

1 No. 143, particularly based upon the questionnaires and the
2 voir dire process. This was not anything that was elicited
3 through the questionnaires or the voir dire process --

4 THE COURT: Yes, it was. She -- she told you. She
5 said that her husband was employed.

6 MR. MARCHESE: Oh, yes. That was. We are aware of
7 that.

8 THE COURT: Oh, okay.

9 MR. MARCHESE: That's not what we have the concern
10 with, however, Your Honor.

11 THE COURT: All right. So, what was not elicited
12 then?

13 MR. MARCHESE: The fact that this individual has had
14 a gun pointed at her in the past. This is very concerning to
15 us collectively, because that's basically the genesis of this
16 charge.

17 You know, we understand and we agree with the
18 prosecution that there should be secrecy in the deliberation
19 process, but we're very happy that this was brought to our
20 attention, because we need honest jurors as well.

21 And if this is not elicited and told to us, I mean,
22 we surely -- I know myself, I can't speak on behalf of the
23 everyone else, but we -- I surely would have moved to have this
24 juror stricken for cause based upon the fact that it's clear
25 that she cannot be fair and impartial based upon her past.

1 THE COURT: So, how would this information have been
2 elicited? Was there a question asked that would have elicited
3 this? Because I'm not --

4 MR. MARCHESE: The question was --

5 THE COURT: -- aware of one.

6 MR. MARCHESE: -- have you ever been the victim of a
7 crime? If you have a gun pointed at you, that's an assault.
8 So, based upon that --

9 THE COURT: I thought it wasn't. I thought that was
10 your argument is that it wasn't, but okay. So, you're saying
11 that she was a victim of a crime, and that that should have
12 been elicited in the questionnaire? Is that --

13 MR. MARCHESE: Well, she should have said, "Hey" -- I
14 don't know. You know, this is a very vague response. It's
15 something about having a gun pointed at her in the past, and
16 that this note indicates that this individual has gun issues,
17 and that she's personalizing the events. So, it's twofold.

18 I think it comes, number one, "Have you ever been the
19 victim of a crime?" but also, just the general question, which
20 is "Can you be fair and impartial?" So, based upon that, we
21 believe that she's been dishonest with the Court and to the
22 defense in particular in her responses.

23 So, that's -- it's just very troubling to us that
24 she's made it this far, and now she has corrupted the process.
25 We're three days into jury deliberations, and we don't know

1 what else has been said.

2 Obviously, there's some contention, at least with
3 this one juror and whoever wrote this note, and then the one
4 juror who we feel has not been forthcoming to the -- to the
5 Court. So, we -- we are very concerned that she's corrupted
6 the process. I mean, these men are -- have the right to a fair
7 and impartial jury, and we believe that this juror is anything
8 but.

9 THE COURT: All right. So, are you asking for a
10 mistrial then?

11 MR. MARCHESE: Yes, we --

12 MR. TANASI: That's correct, Your Honor.

13 MR. MARCHESE: We move for a mistrial, Your Honor,
14 based on this.

15 MR. TANASI: And just for the record, I would just
16 add with specificity that the question -- the questionnaire,
17 it's Question No. 30 on page 24 of 27. "Have you or anyone
18 closely associated with you been a victim of a crime involving
19 a firearm?"

20 "No" was the answer. And then I'd also add, just for
21 the record, in terms of authority, Your Honor, it's the *Warger*
22 *versus Shauers* case. I'm not sure if I'm pronouncing it
23 properly. The citation, Your Honor, is 135 -- it's a US
24 Supreme Court case, 135 Supreme Court case 521.

25 That case is -- the procedural posture is a little

1 bit different, but I think the notion carries through. If a
2 juror was dishonest during voir dire and an honest response
3 would have been provided -- would have provided a valid basis
4 to challenge that juror for cause, the verdict must be
5 invalidated. And that case goes on to cite another Supreme
6 Court case, *McDonough*, 464 US 556.

7 THE COURT: All right. Mr. Leventhal, did you want
8 to add anything else?

9 MR. LEVENTHAL: The only thing I would add is that on
10 Question No. 9 of the jury questionnaires asked if anybody was
11 afraid of firearms. And the answer was "No." And there was a
12 follow-up. "If yes, please explain." And on this particular
13 juror's questionnaire, "Are you afraid of firearms?" she put
14 "No."

15 And if she's saying that here, "Well, if you ever
16 knew what it was like to have a gun pointed at you, I've had a
17 gun pointed at me, and I don't know what I would do." So, it
18 went just beyond whether or not there was a crime, and it went
19 beyond whether or not someone in her family -- or it goes to
20 her personalization of having guns. And she answered in the
21 negative, which apparently she's talking outside of
22 deliberations, and that question should have been answered in
23 the affirmative.

24 THE COURT: Mr. Perez.

25 MR. PEREZ: Yes, Your Honor. We've all conferred,

1 and I concur with counsel here as well.

2 THE COURT: All right. And what's the government's
3 reply?

4 MR. MYHRE: The government's response is, Your Honor,
5 those answers are not inconsistent with what's been reported
6 here. What's been reported here is not that she was subject to
7 a crime, or was the victim of a crime, or that she's even
8 afraid of firearms or not afraid of firearms.

9 All that's reported here is a quote, which queries the
10 accuracy of the quote, but that until you've had a gun pointed
11 at you, you don't know what you're likely to do. None of those
12 are -- they are responsive.

13 In fact, it's a true -- it's true and accurately
14 recorded, which we don't know, is inconsistent or contradicts
15 or contravenes the answers given in the jury questionnaire.

16 So, there's no -- we -- we've skipped about five
17 steps of logic here to get to the point that this person said
18 this. Now we're at mistrial. They lied. There's a whole
19 bunch of intervening steps there.

20 Is, A, was it said, first of all. B, when it was
21 said, does it contradict the answers given in the
22 questionnaire? Based on this, it doesn't.

23 So, for those reasons, we don't think there's any
24 issue here that requires a mistrial. There is no evidence that
25 this juror was less than forthright during voir dire or during

1 answering the questioning -- answering the questionnaires that
2 were provided.

3 There would also have to be an issue based on cause,
4 which this -- that doesn't go to cause. It may be the basis
5 for a peremptory challenge, but it wouldn't be the basis for
6 requiring the juror to be excused for cause.

7 That is if that response -- if the response in the
8 questionnaire was "I had a gun pointed at me," that would not
9 be the basis for challenging the juror for cause. It may be
10 some other reason they want to exercise peremptory. But the
11 bottom line here is that there's no evidence that this juror
12 was less than forthright in his or her answers to the
13 questionnaire.

14 MR. MARCHESE: And, Your Honor, we can only go off of
15 what the information --

16 THE COURT: All right. Now, I understand. I'm going
17 to have jury -- Juror No. 6 come in so I can question her.

18 Let's talk about now Jury Note No. 144.

19 MR. MYHRE: Again, Your Honor, with respect to the
20 first part of that question of 144, we would suggest that the
21 Court respond that working within the court system or being
22 married to a court security officer does not create a conflict
23 of interest for a juror, to the extent that there's a response
24 required for number one.

25 For number two, again, we would refer the jurors

1 again to Nos. 1 and 37 of the jury instructions. To go beyond
2 that, as to which way a juror is voting or to explain the
3 position for voting, again, would reveal the deliberations and
4 would require the Court to -- to inquire into the juror
5 deliberations.

6 There's nothing wrong with a juror taking a position
7 during voting, and that is not to be revealed, especially
8 during the deliberation process. And also, the -- there's
9 nothing from question two that suggests that the juror has
10 either failed to deliberate or refuses to deliberate.

11 The question posed by number two here is whether or
12 not she needs to reveal the basis for her vote. Again, it's --
13 that's not -- that's not exclusive of deliberations and would
14 require the Court to actually delve into the juror
15 deliberations to go beyond what's represented here on the
16 second part of question 144.

17 THE COURT: All right. Mr. Leventhal, do you want to
18 go first?

19 MR. LEVENTHAL: Yes, Judge. I just would note that
20 sort of the semantics of this indicates the juror has stated
21 three times that she works within the court system. That's not
22 past tense. That's not she worked. It's she works.

23 And that becomes an issue based upon the
24 questionnaires. We asked all of the jurors if they've any
25 involvement, and I think we had Judge Koppe's clerk was here.

1 We asked everybody, "Have you" -- I know we had a city
2 attorney's wife here.

3 We asked everybody if they are working, and that
4 response would counter to what anyone else said. If she had
5 worked in the court system, that's a different answer. Or if
6 her husband did, I would agree with Mr. Myhre, but it says here
7 that she said three times that she works, meaning she's doing
8 it now.

9 And nowhere on any of our questionnaires did we get
10 that response. Because, obviously, that would go into if
11 you're working in the state court -- I mean, the three of us
12 appear in the state court routinely. I think that
13 Mr. Marchese, Mr. Tanasi, and myself, and Mr. Perez, we all
14 are -- we know the state court judges very well. And so that
15 would obviously be a question; if they work in the back; what
16 position they are in.

17 And, so, if there's -- that's my problem with it is
18 whether she works now currently or if this was in the past.
19 The rest of it, I agree with Mr. Myhre that I don't know one
20 way or another. This is -- it does not indicate which way or
21 doesn't have any indication on where she's at.

22 So, my only issue is if she's working within the
23 courts, what is her capacity, and why didn't she tell us what
24 her capacity within the court system is if she's currently
25 doing that. But to suggest that we're asking, you know, which

1 way she's leaning, that's not what we're asking for. The
2 second paragraph has no bearing on my analysis of -- for the
3 first paragraph.

4 THE COURT: Okay. Anyone else want to add?

5 MR. MARCHESE: No, Your Honor. I would concur with
6 what Mr. Leventhal just said.

7 MR. PEREZ: Your Honor, just --

8 MR. TANASI: I would join as well, Your Honor.

9 MR. PEREZ: -- one question with respect to "is not
10 open to any discussion." I'm wondering if that's just doesn't
11 want to deliberate, I mean, which would certainly be an issue.

12 THE COURT: All right. So, Jury Instruction No. 7
13 does state that each of you must decide the case yourself, but
14 you should do so only after you've considered all the evidence,
15 discussed it fully with the other jurors, and listened to the
16 views of your fellow jurors.

17 So, I agree that referencing that might be helpful to
18 just remind them. So, I agree that we should bring these two
19 jurors in to see if the person who sent us these jury notes --
20 as the government points out, whoever that may be, because we
21 don't know, because they are not signed, so we don't know if
22 someone's being truthful about what they have heard or whether
23 they are making trouble.

24 But, in any case, I think that it's necessary for the
25 record that we do question these two jurors to determine

1 whether or not these claims -- these allegations about them are
2 true or not.

3 So, Aaron, if you'll please ask Juror No. -- let's
4 see -- 6.

5 MR. LEVENTHAL: Your Honor, before we bring them
6 back, I just -- I'd like the Court to be aware that we've asked
7 the jurors to bring to the Court's attention anything that, you
8 know, may have happened outside of deliberations.

9 And obviously, the first question happened outside.
10 So, we just -- the Court has asked the jurors to go ahead, and
11 if anything happens or if anything's said or anyone reaches
12 out, that we ask them to do this.

13 So, I just remind the Court that that's what we ask
14 of the jurors to do this, to bring that to the Court's
15 attention one way or another. And so if something's being done
16 outside of deliberations or making statements, then that's --
17 that's what we ask of them. It's in the jury instructions to
18 do so.

19 MR. MYHRE: And we also ask them to identify who they
20 are by their signature. And just these random notes, I think,
21 are violative of those instructions.

22 But, Your Honor, with respect to the -- just so I --
23 I'm on -- I understand for 144 for Juror No. 9, I guess are we
24 just simply asking as to whether the person works in the court
25 system or not? Because I don't -- I don't recall that being

1 asked specifically during voir dire or even the jury
2 questionnaire, where someone, if they worked in the court
3 system or not. That's --

4 THE COURT: In the questionnaire, it did ask where
5 they were employed or how they were employed, where they were
6 employed. And then also, if they were retired, what was their
7 last employment. And likewise for the spouse, where was your
8 spouse -- where does your spouse work. And if your spouse is
9 retired, what was their last employment.

10 MR. MYHRE: So, I guess my question was, is that what
11 we're going to ask Juror No. 9?

12 THE COURT: Yeah, I was doing No. 6 first.

13 MR. MYHRE: Oh, I'm sorry.

14 THE COURT: But, yes. That would be -- we'll get to
15 that.

16 MR. MYHRE: I apologize, Your Honor.

17 THE COURT: Yes, that's what we want to know is
18 whether or not she works within the court system as represented
19 by the person who wrote this jury note.

20 So, it sounds like we might be putting the cart
21 before the horse. But sounds like what the government is
22 saying -- and you tell me if I'm understanding your position
23 correctly, because I think it's multifaceted here -- is that
24 first you want the juror who provided these notes to sign the
25 jury note; is that correct?

1 MR. MYHRE: Yes, Your Honor.

2 THE COURT: And I'm referring to Jury Instruction
3 No. 40, which is titled "Communication with Court." And says,
4 "If it becomes necessary during your deliberations to
5 communicate with me, you may send a note through the court
6 security officer signed by any one or more of you. No member
7 of the jury should ever attempt to communicate with me except
8 by a signed writing," and so forth.

9 So, that was the instruction that they are supposed
10 to sign it, and this was not signed. So, I guess to be clear,
11 what I'll do is have Aaron take these two notes back folded.
12 By the way, they were folded. So, take the two notes back
13 folded to our security officer who is guarding the door of the
14 deliberation room, and just ask him to provide it to them and
15 say, "If you want the judge to consider these notes, you need
16 to sign them consistent with Jury Instruction No. 40."

17 MR. MYHRE: Yes, Your Honor.

18 THE COURT: All right?

19 MR. LEVENTHAL: And again, if it was just one, then
20 I -- then I would understand it. But if it was more than one,
21 that's sort of what the jury -- the -- what the --

22 THE COURT: Well, there are two notes, but they are
23 both typed, and they have written in ink -- I guess it's ink --
24 the numbers of the jurors that they are referring to with the
25 same color pen and such. So, I was --

1 MR. LEVENTHAL: Well --

2 THE COURT: -- because of the formatting and the font
3 and all that, I was assuming they were more likely than not
4 written by the same person, even though there's two notes.
5 But, you know, we're just not going to know until we ask.
6 So --

7 MR. LEVENTHAL: Right. And so -- and I would note
8 that 144 starts out "We the jury. We the jury." So, if Aaron
9 goes back and says "Who wrote this," the --

10 THE COURT: That's not what he's going to say. He's
11 going to say, "If you want the judge to consider this, then it
12 needs to be signed consistent with Jury Instruction No. 40."

13 MR. LEVENTHAL: Okay.

14 THE COURT: Which, by the way, says "signed by any
15 one or more of you." And I'm not going to have him read it,
16 but they can read it themselves. And also, I don't want to put
17 him in the position of paraphrasing. You know, we want them to
18 actually read the instruction, so that they get word for word
19 what we agreed is the correct instruction.

20 MR. LEVENTHAL: Thank you.

21 THE COURT: So, we will do that.

22 (Pause in the proceedings.)

23 THE COURT: Thank you. All right. Do you want to go
24 ahead and show it to counsel? We'll make you a copy, but for
25 now so you can see.

1 (Pause in the proceedings.)

2 THE COURT: All right. Thanks.

3 Now, Aaron, you're going to get your exercise. Can
4 you please ask Juror No. 6 to join us. And if I could also
5 have you tell them that the judge says they need to pause their
6 deliberations while Juror No. 6 is gone.

7 COURTROOM ADMINISTRATOR: They are currently on a
8 break, Your Honor.

9 THE COURT: Great. Okay.

10 COURTROOM ADMINISTRATOR: All rise.

11 (Juror No. 6 entered the courtroom.)

12 THE COURT: All right. Everyone may be seated. We
13 are joined by Juror No. 6. Good afternoon.

14 I just have a couple of questions for you that have
15 come up. And I've discussed some things with the attorneys,
16 and we have some questions that we can't answer without asking
17 you.

18 So, we are not trying to embarrass you. We just need
19 to find out some information from you, so that we know what
20 action we can -- need to consider and whether or not to take
21 that.

22 So, my first question is, have you been a victim of a
23 crime?

24 JUROR NO. 6: Not directly. No.

25 THE COURT: All right. And are you afraid of

1 firearms?

2 JUROR NO. 6: No.

3 THE COURT: All right. So, when you say that you've
4 not been a victim of a crime, have you had a firearm pointed at
5 you?

6 JUROR NO. 6: As a child.

7 THE COURT: Okay.

8 JUROR NO. 6: But -- but right now, I mean, it's not
9 going to necessarily affect what my opinion would be at this
10 point. I think I just overstepped and misspoke when I should
11 have not said anything.

12 THE COURT: Okay. When you say that -- that when you
13 were a child, that there was a firearm pointed at you, was
14 anyone charged or any -- anything come of that?

15 JUROR NO. 6: No.

16 THE COURT: All right. I think that answers the
17 questions that we have. Thank you very much.

18 JUROR NO. 6: Okay. Like I said, I lost my temper,
19 and I didn't mean to, because it was a personal thing that
20 should not have ever have been.

21 THE COURT: All right. Thank you.

22 THE WITNESS: Uh-huh.

23 (Juror No. 6 left the courtroom.)

24 THE COURT: All right. Could we have you bring Juror
25 No. 9?

1 COURTROOM ADMINISTRATOR: Yes, Your Honor.

2 THE COURT: Thank you.

3 (Pause in the proceedings.)

4 COURTROOM ADMINISTRATOR: All rise.

5 (Juror No. 9 entered the courtroom.)

6 THE COURT: All right. Everyone may be seated.

7 Good afternoon to Juror No. 9. Back in your old seat
8 there. Okay. So, we've got a couple questions for you,
9 because some issues have come up, and I'm trying to decide what
10 to do. The attorneys and I have some questions.

11 So, we need to ask you regarding your current
12 employment. So, where do you currently work?

13 JUROR NO. 9: I'm retired.

14 THE COURT: Okay. And what was your last position?

15 JUROR NO. 9: I was a senior claims manager.

16 THE REPORTER: Hold the microphone like this.

17 JUROR NO. 9: I was a senior claims manager for a
18 large commercial insurance company.

19 THE COURT: All right. And have you ever worked in
20 the court system?

21 JUROR NO. 9: Yes, I was a worker's comp legal
22 secretary for a judge in California.

23 THE COURT: All right. So, would that be like an
24 administrative law judge or what kind of a judge?

25 JUROR NO. 9: Administrative law.

1 THE COURT: You said that was in California.

2 JUROR NO. 9: Yes.

3 THE COURT: California. How long ago was that?

4 JUROR NO. 9: Let's see. I left that job in the year
5 2000.

6 THE COURT: And how long did you hold that job?

7 JUROR NO. 9: 18 and half years.

8 THE COURT: Okay. I think that answers our question.
9 Thank you very much. You can go ahead and be excused, and the
10 jury may go ahead and continue its deliberation, Aaron.

11 (Juror No. 9 left the courtroom.)

12 THE COURT: All right. So, as to Juror Note No. 143,
13 does anyone have anything else you wanted to add?

14 MR. MYHRE: Just, Your Honor, that her responses in
15 the -- to the Court's inquiry, again, shows nothing
16 inconsistent with what she revealed on her jury questionnaire.
17 She's consistent, forthright, and does not form a basis for
18 either a mistrial or to relieve the juror for -- for cause.

19 THE COURT: Okay. Defense wish to be heard?

20 MR. TANASI: Your Honor, I think it -- it just
21 provides additional grounds for the defense original motion.
22 I -- again, I know she said that maybe it wasn't pointed
23 directly at her, but the question was "Have you or has anyone
24 closely associated with you been a victim of a crime involving
25 a firearm?"

1 You know, having a firearm pointed as you, as
2 Mr. Marchese pointed out, is a crime. That's what this case is
3 almost entirely premised on. So, had we known that and had we
4 had the chance to dig in deeper, we probably would have struck
5 her for cause. Strike that. We would have struck her for
6 cause or at least moved.

7 And with respect -- can we move on to number 144 yet,
8 Your Honor?

9 THE COURT: No, let's do one at a time.

10 MR. TANASI: Okay.

11 MR. MARCHESE: And if I may, just briefly, just chime
12 in. In reference to our thoughts, you know, I agree with
13 everything Mr. Tanasi said. But, in addition, clearly she's
14 personalizing it. She said "As a child." I don't know, you
15 know, at what age this event transpired. But, you know, she's
16 obviously a little bit older.

17 So, obviously, this event, whatever happened, however
18 many years ago, she is still holding it with her. So just the
19 fact that whether she says things out of emotion or whatnot, I
20 think that there's clearly still something there. She still
21 remembers it, and I believe that it impairs her ability to be a
22 fair and impartial juror.

23 MR. LEVENTHAL: And I would agree. I -- I don't know
24 if it would have gotten to the level of for cause, but
25 certainly we would have utilized one of our peremptory

1 challenges on her without a question.

2 MR. PEREZ: It concerns me, Your Honor, with respect
3 to her saying, you know, "I showed my anger." I mean, you
4 know, I'm sure that the debate can be pretty heated at times,
5 but to be angry for something for so -- you know, that she may
6 have been harboring for years is concerning to me.

7 THE COURT: All right. Well, the Court is satisfied
8 that Juror No. 6 has provided truthful answers. She explained
9 that she was not a victim of a crime, that there was no crime
10 charged, and she was young. That she is not afraid of
11 firearms. And therefore, the answers that she's previously
12 provided do not appear to be untruthful.

13 So, as to the response to Jury Note No. 143, the
14 question is whether there is a concern because of her husband's
15 job. And I'll note for the record that the juror who signed
16 the note mischaracterizes the position of the juror as being
17 the same as the jury security officer, which is not what she
18 said during voir dire. But it's a common mistake for someone
19 who is not involved in the court system to sort of lump
20 everyone together and think that everybody works for the
21 courts, and, therefore, is in the same position.

22 So, I think the appropriate response here would be to
23 say "The employment of jurors and their spouses were disclosed
24 during voir dire, was known by the parties, and no concerns
25 were raised," and just leave it at that, so that kind of covers

1 everybody.

2 And for the second part of the question about whether
3 or not there's the ability to draw on life experiences, the
4 commentary to the Ninth Circuit Model Jury Instruction 3.8
5 regarding direct and circumstantial evidence specifically says
6 that the Court should consider giving this language, which we
7 didn't give, and maybe, you know, would have been helpful, but
8 is not a required part of the language, which is that jurors
9 are to consider all the evidence in light of reason,
10 experience, and common sense.

11 So, I think that is the second part that I will add
12 to that response, is that in reference to Jury Instruction
13 No. 27, in our case, which is direct and circumstantial
14 evidence defined, the response would be that evidence may be
15 direct or circumstantial. Jurors must consider all the
16 evidence in light of reason, experience, and common sense, and
17 then have them refer to that Jury Instruction No. 27.

18 Another applicable jury instruction would be No. 32,
19 which states, "In deciding the credibility of witnesses, you
20 may take into account," and it lists several factors. And the
21 eighth factor says, "any other factors that bear on
22 believability." So, I'm going to include that in the reference
23 to Jury Instruction 32 being factor number eight.

24 All right. So then for Jury Note No. 144, what's the
25 government's position there? I think we stated already before

1 that the position of an employer or employment, but here the
2 question is someone who works within the court system. And the
3 juror stated that she did not work currently. I think -- I
4 don't remember if it was Mr. Leventhal or Mr. Perez who pointed
5 out that the way that the Jury Note No. 44 [sic] was styled
6 said -- claimed that Juror No. 9 had stated three times that
7 she works within the court system, grammatically indicating
8 current time period as opposed to in the past.

9 But Juror No. 9 has come into court and stated that
10 she does not currently work in the court system, and that
11 before this, she worked as a claims manager in an insurance
12 company. Senior -- senior claims manager in an insurance
13 company. And that she did work in the court system from
14 2000 -- the year 2000 -- well, that doesn't make sense, does
15 it?

16 She said from the year 2000 and for 18 and half
17 years, so that would mean 2018 and a half. This is 2017. So,
18 she might have been very nervous. But regardless, she worked
19 in the court system as a legal secretary for an administrative
20 law judge handling Workmen's Compensation cases in California.

21 And that was not a question that, you know, she was
22 required to disclose in the voir dire. The voir dire asked
23 "Where do you work now, and if you have been retired, what was
24 your last job?"

25 MR. MYHRE: Yes, Your Honor. And it's the

1 government's position that there's nothing, again, inconsistent
2 in her answers or contradicted by her answers in her
3 questionnaire. And with respect to, as the Court notes, this
4 juror questionnaire states that she -- that the juror stated
5 currently works in the court system. And as the juror
6 indicated, she's retired currently, and her last place of
7 employment had nothing to do with the court system. It was --
8 she had worked for an administrative law judge up to the year
9 2000, so it was 18 years ago, 17 and half years ago, whatever.

10 So, again, nothing false in her responses. Nothing
11 to indicate she's been less than completely forthright with the
12 Court.

13 MR. LEVENTHAL: We would -- we would agree with that,
14 that her answers were clear that it was 18 years ago. So, the
15 only suggestion that I think the defense would make is that --
16 I'm not sure which jury instruction it is, but it's duty to
17 deliberate would be addressing the second paragraph.

18 The first paragraph we are satisfied that she -- it
19 wouldn't have been a question. And I don't even think it would
20 have been something that had she even answered that, something
21 that would have fell on our radar to peremptory or -- so, we
22 have no problem with that given her answer.

23 THE COURT: All right. So, I agree that as to Jury
24 Note No. 144, my response will be to -- and it's numbered, you
25 know, number one and two -- two questions on Jury Note No. 144.

1 So, the first question on 144, I will respond with --
2 well, do you want me to point out the mistake in the assumption
3 by the juror that she doesn't currently work there, or do we
4 just -- do you want me to just say it's not a conflict of
5 interest merely because a juror currently works or may have
6 worked in the past in the court system?

7 MR. LEVENTHAL: I'm not sure even answering that
8 question is necessary other than just the duty to deliberate,
9 getting on to the second one, because clearly this person
10 either got it wrong or heard something or maybe she said it
11 and -- because it indicates -- it says it was said three times.

12 So, maybe she's saying it back there that -- that she
13 works, and it's done three times. So, I don't want to call
14 anybody out on it. So, maybe if we just -- I don't think it's
15 necessary to answer that question on whether or not she does or
16 she doesn't, because she said she doesn't. That's fine. And
17 just go on to the second question and just a duty to
18 deliberate. Because it's not just one time.

19 THE COURT: Well, the Court's concern is that if this
20 juror believes that Juror No. 9 has a conflict of interest,
21 they might use that as an excuse to not listen to her or, you
22 know, sort of dismiss her opinion instead of everybody, you
23 know, listening to everyone with an open mind, and either
24 agreeing or disagreeing based on whether it's a logical
25 argument or not, as opposed to just because they think that

1 someone has a conflict of interest when we all know they don't.

2 MR. LEVENTHAL: Right.

3 THE COURT: So, that was my reason for thinking we
4 probably should address it, so that it goes away, so that it
5 doesn't interfere with their ability to deliberate and have
6 a -- otherwise, if I don't address it, I'm afraid there's a
7 lingering question there whether or not there's a conflict of
8 interest.

9 MR. LEVENTHAL: That's --

10 THE COURT: Although maybe they would know that since
11 we didn't kick her off the jury, that there must not be a
12 conflict of interest? I guess it could go either way.

13 MR. MYHRE: And our inquiry is I -- I understood it
14 was different from what this juror's inquiry was. The inquiry
15 here is whether working in the court system creates a conflict
16 of interest, not whether the juror answered the question during
17 voir dire in an untruthful manner.

18 So, I -- I would go back to our original suggestion,
19 perhaps, Your Honor, saying either working within the court
20 system does not create a conflict of interest for a juror. And
21 that -- that answers the specific question there without
22 getting into the separate inquiry that the Court has made as to
23 whether there was something untoward during voir dire said.

24 THE COURT: All right. And so my thought was I could
25 have the same response as the other one. The employment of a

1 juror or a juror's spouse does not --

2 MR. LEVENTHAL: By itself does not create the
3 conflict.

4 THE COURT: A conflict of interest does not arise
5 merely because a juror or their spouse works in the court
6 system, or something to that effect. So I think that's what
7 I'll do.

8 And then for the second part of the question, asking
9 about whether or not jurors need to explain their position, I
10 think it's appropriate just to have them refer to Jury
11 Instruction No. 37, which specifically says, "Each of you must
12 decide the case for yourself, but you should do so only after
13 you have considered all the evidence, discussed it fully with
14 the other jurors and listened to the views of your fellow
15 jurors."

16 So, that's referring back to Mr. Perez and his
17 concern that there might be a question as to what the duty to
18 deliberate really means, and the -- the requirement that they
19 need to discuss and listen.

20 So, those will be the -- those are the answers that
21 I'll provide, and then counsel will have a copy of those
22 answers as well. And then we'll have you stay on call -- you
23 don't have to stay here, but I mean Aaron will let you know
24 what time they leave if they decide -- it's what, 2:30 now?
25 So, I think 4:00 is what they've been doing.

1 COURTROOM ADMINISTRATOR: Correct, Your Honor.

2 THE COURT: Okay. So --

3 MR. LEVENTHAL: 4:00?

4 THE COURT: If they leave before 4:00, Aaron will
5 call to let you know. Or if they decide to stay past 4:00,
6 we'll let you know, too. Okay?

7 MR. TANASI: Thank you.

8 MR. MARCHESE: Thank you.

9 MR. LEVENTHAL: Thank you.

10 (Recess, 2:36 p.m.)

11 --oOo--

12 COURT REPORTER'S CERTIFICATE

13

14 I, KATHERINE EISMANN, Official Court Reporter, United
15 States District Court, District of Nevada, Las Vegas, Nevada,
16 certify that the foregoing is a correct transcript from the
17 record of proceedings in the above-entitled matter.

18

19 Date: August 22, 2017.

20

/s/ Katherine Eismann

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Katherine Eismann, CSR CRR RDR

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,)	
	)	Case No. 2:16-cr-00046-GMN-PAL
Plaintiff,)	
	)	Las Vegas, Nevada
vs.	)	August 22, 2017
	)	2:20 p.m.
ERIC J. PARKER (11), O.)	
SCOTT DREXLER(12), RICHARD)	
LOVELIEN (13), and STEVEN A.))	
STEWART (14),)	
)	
Defendants.	)	Day 24
)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE GLORIA M. NAVARRO
UNITED STATES DISTRICT COURT CHIEF JUDGE, AND A JURY

APPEARANCES:

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Appearances continued on next page.

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Proceedings reported by machine shorthand, transcript produced
by computer-aided transcription.

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25 Also present:

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Joel Willis, Special Agent FBI
Chris Allen, Bureau of Land Management
Mike Abercrombi, FBI
Mamie Ott
Nona Dodson
Brian Glynn

1 (Tuesday, August 22, 2017, 2:20 p.m.)

2 --oOo--

3 P R O C E E D I N G S

4 (Jury out.)

5 COURTROOM ADMINISTRATOR: All rise.

6 THE COURT: Thank you. You may be seated.

7 COURTROOM ADMINISTRATOR: This is time set for jury
8 trial in Case No. 2:16-cr-046-GMN-PAL, United States of America
9 versus Eric Parker, O. Scott Drexler, Ricky Lovelien, and
10 Steven Stewart.

11 Counsel, please make your appearances.

12 MR. MYHRE: Good afternoon, Your Honor. Steven
13 Myhre, Erin Creegan, and Nadia Ahmed on behalf of the United
14 States.

15 THE COURT: Good morning. I'm sorry. Good
16 afternoon.

17 MR. TANASI: Good afternoon, Your Honor. Rich Tanasi
18 for Steven Stewart who is present.

19 THE COURT: Good afternoon.

20 MR. MARCHESE: Good afternoon, Your Honor. Jess
21 Marchese on behalf of the Eric Parker.

22 THE COURT: Good afternoon.

23 MR. LEVENTHAL: Good afternoon, Your Honor. Todd
24 Leventhal on behalf of Scott Drexler.

25 MR. PEREZ: Good afternoon, Your Honor. Shawn Perez

1 on behalf of Ricky Lovelien.

2 THE COURT: Good afternoon. All right. Well, we
3 have received a jury note. I believe, Aaron, this is No. 145.
4 Is that right?

5 COURTROOM ADMINISTRATOR: That's correct, Your Honor.

6 THE COURT: All right. So, this is Jury Note No.
7 145. It's not a question. It's a statement. So, I did want
8 to get together with the parties to find out if you think that
9 there's any need to respond.

10 Generally, we respond to jury notes, but generally
11 they are questions. This is not a question, but obviously they
12 wanted us to know this.

13 So, what is the government's position?

14 MR. MYHRE: Your Honor, our position is, is that it
15 would prompt further inquiry as to whether they are, in fact,
16 deadlocked, or whether they've reached partial verdicts as to
17 some defendants as to some counts.

18 THE COURT: And what's the defense position,
19 Mr. Tanasi or Mr. Marchese?

20 MR. TANASI: Court's indulgence, Your Honor.

21 THE COURT: Sure. Whoever wants to go first.

22 (Pause in the proceedings.)

23 MR. TANASI: Your Honor, I think, at this point, we
24 would ask for the *Allen* charge.

25 THE COURT: All right. So, you want me to ask -- you

1 want me to give an *Allen* charge before they say they are
2 deadlocked, or you want me to ask if they have deadlocked
3 and if they say "Yes," give them an *Allen* charge?

4 MR. TANASI: Yes, Your Honor.

5 MR. MARCHESE: Yes, Your Honor.

6 MR. TANASI: I jumped to the conclusion, and I
7 apologize. Yes.

8 THE COURT: I know what you are doing, and I think
9 that that's reasonable, in light of everything, of all of our
10 experiences, not just with this case but in many cases, that
11 the note seems to indicate that's the direction, but they don't
12 actually say that.

13 So, I'm trying to be careful in jumping too far ahead
14 without making sure why it is that they are sending us this
15 note. So, you know, they do have the right to know there's a
16 partial verdict. We don't usually include it in the -- in
17 the -- you know, the original set of instructions, because we
18 don't want to encourage them from trying to deliberate on all
19 counts.

20 But, Rule 31 is clear, and the law is clear that they
21 do have the right to be made aware of their options, and that a
22 partial verdict is an option. But they also need to be made
23 aware of what a partial verdict means, and that it's not just
24 something that they temporarily filled out, a placeholder,
25 tentatively, but rather that it is a real verdict, an

1 irrevocable verdict.

2 So, I think that would probably be the best way, you
3 know, baby steps. I think maybe if I called them in and just
4 make them aware of that option, and then let them know that
5 they should go back and continue discussions until they decide
6 that it's necessary to send another note. Because they are not
7 telling us that they do have a verdict. They are saying they
8 haven't been able -- they are not done yet.

9 Does that mean they want to go past 5:00? You know,
10 we could read a whole lot of things into this note. It's very,
11 very vague and scant.

12 So, is there anything else you want me to ask them
13 when they -- when we bring them in, so that they are aware that
14 we are not ignoring them, because that was also my concern is
15 if we don't respond -- don't want to be -- don't want to be
16 rude about it, but I don't want to put things into their head
17 either.

18 So, I think just -- that's what I'm inclined to do is
19 just let them know what their option is and leave it at that,
20 and let them figure it out. Or do you think that that's not
21 enough? That we need to -- they are not saying they are
22 deadlocked. They might be. They might not be. They are not
23 saying they are.

24 Do we want to give them that word or not?

25 MR. MYHRE: Your Honor, the government's position is

1 they wrote it for a reason.

2 THE COURT: Yeah.

3 MR. MYHRE: And, so, I think we don't know, based on
4 what this says here, what the precise and full meaning is about
5 what they wrote. So, I think the inquiry that the Court has
6 initially indicated, I think, would be appropriate at this
7 time.

8 I don't think -- if we are going to take it in
9 increments, that's fine. But I think we need to ask whether
10 this -- if they are telling us that they are deadlocked as to
11 all counts or if they -- if they intend to further deliberate.

12 THE COURT: All right. Well, the inference from this
13 jury note seems to be that they do have verdicts and have
14 reached unanimous decisions on something. I don't know if --
15 it doesn't say whether it's on just a particular count, or a
16 particular defendant, or a particular question that -- it
17 just -- so, other than just making the jury aware of their
18 option to return a partial verdict, is there anything else that
19 defense wants me to say or not say?

20 MR. TANASI: Your Honor, again, I -- I think it's
21 obviously a fine line here, and so I don't think anything more
22 than that. I would still go back to our original request which
23 would be just for the *Allen* charge at this point.

24 I understand the Court's ruling and wanting to go
25 that -- go the avenue of letting them know, essentially, that a

1 partial verdict is an option. But again, I think it's -- it
2 can be read a couple different ways, so that's the issue.

3 THE COURT: Well, and by -- by making the option
4 known to them, I'm certainly not saying that that rules out an
5 *Allen* charge. If -- if they do say that they want to return a
6 partial verdict, you know, in another note later, we can
7 certainly discuss what that -- you know, what we want to do
8 next.

9 So then we would ask them as to the other counts
10 where you didn't provide a verdict, are you helplessly
11 deadlocked? Is there anything we can do? Is there any
12 instruction we can clarify, and make sure that they are really
13 hopelessly deadlocked, and, you know, unanimously don't want to
14 continue the deliberation?

15 I guess the question is whether there's a reasonable
16 probability that the jury can reach a unanimous verdict if sent
17 back to the jury room for further deliberation.

18 So, if the foreman says there's nothing else, and
19 then I ask each of the jurors is there anything, and they all
20 say, "No, we are done," then I could go into the *Allen* charge.

21 So, we could discuss that after -- you know, while
22 they are continuing their discussion after I just make them
23 aware of the option, the Rule 31 option and sort of leave it at
24 that. Is that okay? Anything else?

25 MR. TANASI: Nothing from the defense, Your Honor.

1 THE COURT: All right. So, let's bring them in.
2 I'll make them aware, and then I'll let them retire back to the
3 room to continue discussions.

4 I think we all expect there will be another note, but
5 we are not going to tell them what we think they are thinking,
6 because we don't want to plant that seed. We want them to tell
7 us what they are thinking.

8 (Jury in.)

9 THE COURT: The jury may go ahead and be seated and
10 everyone else may be seated as well.

11 All right. We do have a jury note that we received.
12 This is Jury Note No. 145, and it is signed and dated. It is
13 not a question. It's a statement. So, I didn't provide a
14 response in writing, because, as I say, it's not a question.

15 So, I did meet with counsel. We discussed the jury
16 note. And I think it's an appropriate time to make the jury
17 aware of an option that you do have.

18 I want to make it clear that I am not encouraging you
19 nor discouraging you from using this option, but you can be
20 made aware that pursuant to Rule 31 of the Criminal Rules of
21 Civil -- of Criminal Procedure, the jury may return a partial
22 verdict.

23 If there are multiple defendants, the jury may return
24 a verdict at any time during its deliberations as to any
25 defendant about whom it has agreed; or, when there are multiple

1 counts, if the jury cannot agree as to all counts as to any
2 defendant, the jury may return a verdict on those counts in
3 which it has agreed or any combination thereof.

4 So, that is an option that you have. I'm going to
5 dismiss you and ask you to continue your deliberations and
6 discussions, and if you want to send out another note, you are
7 welcome to. But I think that's the extent of what we're going
8 to be addressing at this point.

9 All right? So, thank you for coming in. We'll go
10 ahead and excuse you.

11 (Jury out.)

12 THE COURT: All right. We are still on the record,
13 but the jury has left the courtroom. So, I noticed one of the
14 jurors did have the verdict envelope, the manila envelope that
15 says "verdict" on it, and then has a little -- it's like a
16 pocket, really. Well, it's like an envelope pocket.

17 One of the jurors carried that in, so maybe they
18 thought they were going to be rendering a verdict. But I think
19 it's safer this way for them to let us know if they have a
20 verdict. Because -- the Jury Note 145 doesn't say they have a
21 verdict. It certainly implies that, but they don't actually
22 say it.

23 So, in light of the fact that they did bring --
24 someone did bring out the envelope, I think it's appropriate
25 for us to consider whether or not we want to provide an *Allen*

1 charge, if they come back and say, "We're deadlocked." Either
2 all the way, they are deadlocked on everything, or deadlocked
3 on some things but have a partial verdict on another.

4 So, do you want to take some time to think about this
5 or do you want to discuss it now?

6 MR. TANASI: Court's indulgence, Your Honor.

7 THE COURT: Sure. The Deadlock Jury Instruction in
8 the Ninth Circuit Model Jury Instructions is number 7.7. If
9 you don't have it, I can read it. It's the same one that we
10 always use, and I don't modify it. I just give the model.

11 (Pause in the proceedings.)

12 THE COURT: All right. So, the CSO says that the
13 jury asked if they could have 15 minutes. They can have all
14 the time they want, you can tell them. I think we are all in
15 agreement with that. I think they weren't clear about how long
16 they are supposed to take, but they can have as much time as
17 they want.

18 (Recess 2:35 p.m. Resumed 3:05 p.m.)

19 COURTROOM ADMINISTRATOR: Another jury note.

20 THE COURT: 146.

21 COURTROOM ADMINISTRATOR: 146, yes, Your Honor.

22 THE COURT: All right. We do have another note.
23 It's No. 146. I'm going to go ahead and give to it Aaron so
24 that he can share it with counsel.

25 COURTROOM ADMINISTRATOR: I will run and make copies,

1 Your Honor.

2 THE COURT: All right.

3 (Pause in the proceedings.)

4 THE COURT: All right. So, we are on record, and we
5 have received a jury note that I have numbered 146
6 sequentially. And I believe that both counsel now have
7 received copies and all the defense counsel have received
8 copies. Is that right?

9 MR. TANASI: That's correct, Your Honor.

10 THE COURT: All right. So, the jury does wish to
11 render a partial verdict. Therefore, the next question that I
12 have for you is whether you agree or disagree or have another
13 suggestion as to how we should proceed.

14 I can ask them -- well, I can receive the -- the
15 special verdict, announce it, and then ask them, without
16 telling me how they stand numerically, whether there is
17 anything else that the Court can do to assist them in their
18 deliberation process.

19 Whether there's any clarification of an instruction
20 or a further instruction and so forth, and if -- these
21 questions are directed to the foreman and the foreperson, and
22 if the foreperson says that there's nothing else we can do, I
23 can ask, "Does that mean you are hopelessly deadlocked?" If
24 the foreperson says "Yes," I can ask, "Is there a reasonable
25 probability that the jury can reach a unanimous verdict if I

1 send you back to the jury room to deliberate?"

2 And if the foreman says, "No," then I can poll the
3 jurors individually to see if they feel that there is a
4 reasonable probability that the jury could reach a unanimous
5 verdict if they were given more time to deliberate.

6 And then if they say "No" -- obviously, if anyone
7 says "Yes, I think more time would be helpful," then we would
8 let them have more time. But if -- if nobody thinks more time
9 would be helpful, then I can either provide an *Allen* charge, or
10 I can balance the factors and determine whether a mistrial
11 should be ordered.

12 So, what are the parties' positions as to these
13 options or any other options you want to suggest?

14 MR. MYHRE: Your Honor, the government would concur
15 with the Court's option to take the partial and then determine
16 whether the -- as to the remaining charges, they are
17 deadlocked, and then give an *Allen* charge if they indicate that
18 they are deadlocked.

19 THE COURT: All right. And what's the defense
20 position?

21 MR. TANASI: Your Honor, I --

22 THE COURT: You each can have a different position.
23 You don't have to have the same position. I keep referring to
24 the defense and looking at Mr. Tanasi, because he's always
25 looking at me and ready to respond. But, obviously, you don't

1 have to respond with a unified voice. You can have different
2 ideas.

3 MR. TANASI: Your Honor, I think that the use of the
4 word "believe" would lend itself to maybe Your Honor asking if
5 they need more time; right?

6 Because I don't think they have even come in and said
7 conclusively, "We have a partial verdict, and we are ready to
8 give it." There's still we believe that's what we can do. So,
9 I think giving them more time short of giving them more
10 instruction is the way to go at this point.

11 THE COURT: Mr. Marchese, agree, disagree, or another
12 option?

13 MR. MARCHESE: No, I'd agree with that statement,
14 Your Honor.

15 THE COURT: And Mr. Leventhal?

16 MR. PEREZ: And I would as well, Your Honor.

17 THE COURT: Mr. Perez.

18 MR. LEVENTHAL: And I would as well. And just the
19 Court indicated that it would ask each of the jurors where they
20 were or if that, in fact, they were deadlocked, or not --

21 THE COURT: No. No. Just the opposite.

22 MR. LEVENTHAL: Not the word deadlocked.

23 THE COURT: That I would make sure that they not tell
24 me how they stand numerically on any count as to any -- no
25 numbers. Nothing like that. Just "Yes" or "No." Do you think

1 more time would be helpful, is essentially what I'm asking.

2 MR. LEVENTHAL: I misspoke. I apologize. But
3 then -- but then the Court indicated that after that, the Court
4 would then give them the *Allen* charge, which seems sort of
5 fruitless to me.

6 THE COURT: No, if they said more time would be
7 helpful, then I just let them go back and have as much time as
8 they want. If they say, "No, more time would not be
9 helpful" --

10 MR. LEVENTHAL: Then the Court would weigh --

11 THE COURT: -- meaning that they're deadlocked, then
12 I could either give an *Allen* charge, or I could determine
13 whether a mistrial should be ordered.

14 So, if nobody wants an *Allen* charge, I don't have to
15 give an *Allen* charge. If you want an *Allen* charge, I'm willing
16 to consider an *Allen* charge.

17 MR. TANASI: Mr. Stewart's not requesting an *Allen*
18 charge at this time, Your Honor.

19 MR. PEREZ: Mr. Lovelien neither.

20 THE COURT: Is or is not?

21 MR. PEREZ: Is not.

22 THE COURT: Okay.

23 MR. MARCHESE: Mr. Parker is not asking for an *Allen*
24 charge.

25 MR. LEVENTHAL: I would agree. We are not requesting

1 an *Allen* charge at this time.

2 THE COURT: Okay. And does the government still wish
3 to have an *Allen* charge in light of the fact that the defense
4 is no longer requesting an *Allen* charge?

5 I know Mr. Tanasi earlier said that he was, but they
6 are not asking for one now. So, does the government want an
7 *Allen* charge or not?

8 MR. MYHRE: Yes, Your Honor, we would. If the
9 Court's taking the partial verdict, as to the remainder of the
10 charges, we would still wish for an *Allen* charge.

11 THE COURT: All right. Well --

12 MR. LEVENTHAL: I see no point to take a partial
13 verdict if we are going to give an *Allen* charge. That's my
14 issue. If we are going to give them the *Allen* charge, then
15 give them the *Allen* charge, and tell them to go back there, and
16 read the language to them, which I believe is already
17 incorporated in the jury instructions at this point, but that's
18 either here nor there.

19 But if the Court's going to take a partial verdict
20 and then, after that, find out whether or not they are
21 hopelessly deadlocked on the -- on the rest, I don't see the
22 need to do an *Allen* charge at this point either.

23 So, I think there's two options there. I'm just not
24 sure which one the Court needs to follow or just becomes -- to
25 take a partial and then to give an *Allen* charge seems a waste

1 of time.

2 THE COURT: All right. Well, in reviewing all the
3 options that we think we have, the Court is not inclined to
4 give an *Allen* charge if the defense is not going to be
5 requesting it.

6 I'll let you know that I have written down -- I
7 doublechecked some facts here for you. If the verdicts that
8 they do have unanimously entered into the verdict form -- and,
9 of course, as always, I will first read the verdict form. Then
10 I will individually poll them -- if they are for an acquittal
11 as to one or any of the defendants on all charges, or if they
12 are for an acquittal on the defendants with no verdict on the
13 remaining charges -- in other words, no convictions -- then as
14 to the defendants, I am going to set a detention hearing,
15 assuming that the -- that the defense makes a motion pursuant
16 to Title 18 of the United States Code, Section 3142(f), for a
17 reopening of the detention hearing.

18 It does state -- I swore I had that -- in the very,
19 very last section -- very last sentence of paragraph (f) as in
20 Frank, "The hearing may be reopened" -- referring to the
21 detention hearing -- "before or after a determination by the
22 judicial officer at any time before trial if the judicial
23 officer finds that information exists that was not known to the
24 movant at the time of the hearing and that has a material
25 bearing on the issue whether there are conditions of release

1 that will reasonably assure the appearance of such person as
2 required and the safety of any other person and the community."

3 So, the determining factor there for me to even
4 entertain reopening the detention hearing would be the factor
5 in Section (g) of that same statute, 18, USC 3142. And one of
6 those factors is (g) (2), the weight of the evidence against the
7 person.

8 And obviously, I would hear argument about any of the
9 other factors as well, but that would be the reason why I would
10 go ahead and set the hearing. It could be as early as tomorrow
11 or at the defense convenience if you want to provide written
12 information.

13 So, if the jury does come back with a partial verdict
14 that does include convictions for any one or more of the
15 defendants, then we will set a sentencing date for any of the
16 convictions that are returned as guilty verdicts.

17 As for any verdicts that cannot be rendered, if they
18 are hopelessly deadlocked, which it appears is the case because
19 of the partial verdict that they wish to return -- if they
20 indicate that they could use more time in determining the
21 remaining counts, I will obviously let them do that.

22 If they say that they are deadlocked and they cannot
23 reach a verdict on the remaining counts, then the Court needs
24 to determine whether manifest necessity exists to terminate the
25 proceedings and order a mistrial, or do the ends of justice --

1 public justice, would they otherwise be defeated.

2 So, the considerations include the jurors' opinions
3 that they cannot agree. So, obviously, that's the first thing
4 is to ask them whether or not they think they need more time.

5 Also, the length of the deliberation. Up until now,
6 it has been a few hours on Tuesday, after closing, and then
7 three full days, with a weekend in the middle of there. So,
8 not counting that weekend, but three actual full days of
9 deliberation and then today half a day of deliberation, maybe a
10 little more considering it's already 3:00 p.m.

11 And I also have to consider the length of the trial,
12 which, in this case, has been 24 trial days. That does include
13 the two days of voir dire, so it's really more like 23. No one
14 was here for the full 24. They were all here for the 23,
15 because they either came in on day number one or day number two
16 but not both.

17 And the complexity of the issues presented to the
18 jury. With four defendants, 10 counts, there's a minimum of 40
19 different verdicts, minimum that they have to enter, because if
20 there's a guilty verdict on any of those, then there's other
21 questions that are asked.

22 And the Court is also considering the effects of
23 possible exhaustion or any coercive effect on the jurors to
24 continue the deliberation process. We have been in trial for
25 full days as opposed to half days, so it's been full days from

1 9:00 a.m. to 5:00 p.m., which is eight hours of trial time.
2 The jury is here also during lunch, which is brought in for
3 them, and, you know, those eight hours don't count traffic time
4 and travel time and such downtown.

5 So, that is a considerable amount of time to be in
6 trial all day long, more than 20 days, and to have almost four
7 full days of deliberation with a restful weekend in between.
8 It still is clear to the Court that there would exist manifest
9 necessity to terminate the trial and that the ends of justice
10 would be met by declaring a mistrial if the jury is deadlocked
11 on any remaining counts.

12 Now, if -- okay. So, those are the -- if we've got
13 some -- so, we'll set the 3142 hearing if there are some counts
14 for a defendant that are mistrialed, with either all of them
15 mistrialed or some mistrialed and some acquittal. If there's
16 any convictions, then we set a sentencing date.

17 If there are acquittals across the board, which means
18 that there's no remaining counts, so there would be no reason
19 to reset for a trial date, then I would vacate the detention
20 orders. And they are for Mr. Parker, the detention order from
21 Idaho is number 117 on the docket. I know there's over 2,000
22 documents on the docket.

23 So, for Mr. Parker, it's number 117. For
24 Mr. Drexler, it's number 585. For Mr. Lovelien, the detention
25 order from Oklahoma is number 100, and for Mr. Stewart, the

1 detention order is number 232.

2 So, obviously, you could make that motion if it's
3 appropriate, and I'll grant it, but I wanted to make sure
4 everybody was on the same page for what all the options appear
5 to be.

6 All right. Let's bring the jury in. I'll go ahead
7 and read their partial -- well, I will ask them -- I will ask
8 the foreperson when he wrote the word "believe" in that note,
9 does that mean that there is a verdict, a partial verdict that
10 they want me to accept, or did the word believe mean they want
11 more time.

12 MR. TANASI: That's my read of it, Your Honor, is
13 that they would need more time.

14 THE COURT: Okay. So, let's go ahead and ask them
15 that. And, obviously, if they say, "No, we don't need more
16 time. We want you to read it," then I will go ahead and read
17 it.

18 MR. TANASI: Okay. Thank you.

19 (Jury in.)

20 THE COURT: The jury may go ahead and be seated.
21 Everyone else may be seated as well.

22 All right. So, we're on the record in the presence
23 of the jury, and the jury has returned a note that we have
24 numbered numerically as No. 146. And it does state that they
25 have revisited the issues and believe that we wish to render a

1 partial verdict.

2 So, my question is to the foreman, which I think is
3 Juror No. 11? When you use the word "believe," that you
4 believe that we wish to render a partial verdict, remember.
5 You're talking to a bunch of lawyers; right?

6 FOREPERSON: Sorry.

7 THE COURT: So, we just want to make sure. Does that
8 mean you do want me to read and enter and accept a partial
9 verdict, or that you want to continue to consider the option of
10 a partial verdict?

11 FOREPERSON: We want you to read, render, and record
12 the verdict as we have it.

13 THE COURT: Okay. Thank you very much, sir, for the
14 clarification.

15 FOREPERSON: Sorry.

16 THE COURT: That's all right. So, we'll go ahead
17 then and have you pass up the partial verdict. I will read it
18 into the record.

19 After I read the verdict, I'm going to ask the
20 foreman if this is a correct reading of the verdict, and then I
21 will poll each of you -- do you have a microphone? I will poll
22 each of you to tell me whether or not this is your verdict.
23 And I'll just ask you by number, "Juror No. 1, is this your
24 verdict?" And you say "Yes" or "No."

25 All right. So, the verdict form in the case of

1 16-cr-46, United States of America versus O. Scott Drexler,
2 Ricky R. Lovelien, Eric J. Parker, and Steven A. Stewart.

3 "Verdict.

4 "We, the jury, in the above-entitled case, upon our
5 oaths, do say:

6 "As to Count One of the superseding indictment
7 charging conspiracy to commit an offense against the United
8 States, we, the jury, unanimously find as to:

9 "O. Scott Drexler, not guilty.

10 "As to Ricky R. Lovelien, not guilty.

11 "As to Eric J. Parker, not guilty.

12 "And as to Steven A. Stewart, not guilty.

13 "As to Count Two of the superseding indictment
14 charging conspiracy to impede or injure a federal officer, we,
15 the jury, unanimously find as to:

16 "O. Scott Drexler, not guilty.

17 "As to Ricky R. Lovelien, not guilty.

18 "As to Eric J. Parker, not guilty.

19 "And as to Steven A. Stewart, not guilty.

20 "And as to Count Five of the superseding indictment
21 charging that the defendants committed or aided and abetted the
22 commission of assault on a federal officer, we, the jury,
23 unanimously find the Defendant:

24 "O. Scott Drexler," and then it's blank on both of
25 the -- there's a line for guilty and not guilty, and both of

1 those are blank.

2 "For Ricky R. Lovelien, not guilty.

3 "For Eric J. Parker, no verdict.

4 "And for Steven A. Stewart, not guilty.

5 "As to Count Six of the superseding indictment
6 charging that the defendants committed or aided and abetted the
7 commission of use and carry of a firearm during and in relation
8 to a crime of violence, which is Count Five, assault on a
9 federal officer, we, the jury, unanimously find as to:

10 "O. Scott Drexler, no verdict.

11 "As to Ricky R. Lovelien, not guilty.

12 "As to Eric J. Parker, no verdict.

13 "And as to Steven A. Stewart, not guilty.

14 "As to Count Eight of the superseding indictment
15 charging that the defendants committed or aided and abetted the
16 commission of threatening a federal law enforcement officer,
17 we, the jury, unanimously find the defendant:

18 "O. Scott Drexler, not guilty.

19 "Ricky R. Lovelien, not guilty.

20 "Eric J. Parker, no verdict.

21 "And Steven A. Stewart, not guilty.

22 "Then as to Count Nine of the superseding indictment
23 charging that the defendants committed or aided and abetted the
24 commission of use and carry of a firearm during and in relation
25 to a crime of violence, Count Eight, threatening a federal law

1 enforcement officer, we, the jury, unanimously find as to:

2 "O. Scott Drexler, not guilty.

3 "As to Ricky R. Lovelien, not guilty.

4 "As to Eric J. Parker, no verdict.

5 "And as to Stewart A." -- I'm sorry. "Steven A.
6 Stewart, not guilty.

7 "Count Twelve. As to Count Twelve of the superseding
8 indictment charging that the defendants committed or aided and
9 abetted the commission of obstruction of the due administration
10 of justice, we, the jury, unanimously find the defendant:

11 "O. Scott Drexler, not guilty.

12 "Ricky R. Lovelien, not guilty.

13 "Eric J. Parker, not guilty.

14 "And Steven A. Stewart, not guilty.

15 "Count Fourteen of the superseding indictment
16 charging that the defendants committed or aided and abetted the
17 commission of interference with interstate commerce by
18 extortion, we, the jury, unanimously find the defendant:

19 "O. Scott Drexler, not guilty.

20 "Ricky R. Lovelien, not guilty.

21 "Eric J. Parker, not guilty.

22 "And Steven A. Stewart, not guilty.

23 "As to Count Fifteen of the superseding indictment
24 charging that the defendants committed or aided and abetted the
25 commission of use and carry of a firearm, during and in

1 relation to a crime of violence, Count Fourteen, interference
2 with interstate commerce by extortion, we, the jury,
3 unanimously find as to:

4 "O. Scott Drexler, not guilty.

5 "As to Ricky R. Lovelien, not guilty.

6 "As to Eric J. Parker, not guilty.

7 "And as to Steven A. Stewart, not guilty."

8 And last, "Count Sixteen. As to Count Sixteen of the
9 superseding indictment charging that the defendants committed
10 or aided and abetted the commission of interstate travel in aid
11 of extortion, we, the jury, unanimously find the defendants:

12 "O. Scott Drexler, not guilty.

13 "Ricky R. Lovelien, not guilty.

14 "Eric J. Parker, not guilty.

15 "And Steven A. Stewart, not guilty.

16 "So say we all. Dated this 22nd day of August 2017
17 and signed by the jury foreperson."

18 So, first of all, Mr. Foreperson, did I read that
19 correctly? Is this your verdict, sir?

20 FOREPERSON: You did, Your Honor.

21 THE COURT: All right. And now let's go ahead and
22 poll the jury starting with Juror No. 1.

23 All right. Juror No. 1, is this your verdict?

24 JUROR NO. 1: Yes, Your Honor.

25 THE COURT: Thank you. Juror No. 2, is this your

1 verdict?

2 JUROR NO. 2: Yes, Your Honor.

3 THE COURT: Juror No. 3, is this your verdict?

4 JUROR NO. 3: Yes, Your Honor.

5 THE COURT: Thank you. Juror No. 4, is this your

6 verdict?

7 JUROR NO. 4: Yes, Your Honor.

8 THE COURT: And Juror No. 5, is this your verdict?

9 JUROR NO. 5: Yes, Your Honor.

10 THE COURT: And Juror No. 6, is this your verdict?

11 JUROR NO. 6: Yes, Your Honor.

12 THE COURT: Juror No. 7, is this your verdict?

13 JUROR NO. 7: Yes, Your Honor.

14 THE COURT: Juror No. 8, is this your verdict?

15 JUROR NO. 8: Yes, Your Honor.

16 THE COURT: Bring it down to No. 9, please.

17 Juror No. 9, is this your verdict?

18 JUROR NO. 9: Yes, Your Honor.

19 THE COURT: Juror No. 10, is this your verdict?

20 JUROR NO. 10: Yes, Your Honor.

21 THE COURT: Juror No. 11, is this your verdict?

22 JUROR NO. 11: Yes, Your Honor.

23 THE COURT: And Juror No. 12, is this your verdict?

24 JUROR NO. 12: Yes, Your Honor.

25 THE COURT: All right. Thank you very much. We are

1 going to ask you to hold on for a minute. I do need to enter
2 an order here, and then you are invited to stay if you'd like
3 to. You don't have to. This would terminate your jury
4 service, and you're excused if you want to.

5 But if you do wish to stay, you are invited to stay
6 and meet with myself and the attorneys in the case, in the back
7 room, or one of those back rooms back there somewhere, so that
8 quietly you can ask us any questions you have. The attorneys
9 can ask you any questions you have -- they have.

10 If there's anything you do not want to discuss, you
11 don't have to. If there's anything you want to ask, you are
12 free now finally to discuss the case, not only amongst
13 yourselves, but with everyone.

14 Likewise, I will provide to you in the mail an
15 evaluation form with a different page for each attorney and a
16 page for the staff and a page for the facility. There will be
17 an envelope that is self-addressed with the postage on it, with
18 stamps on it.

19 All you need to do is fill it out, put it in the
20 envelope, and mail it. You don't need to give me your name if
21 you don't want to, and it just helps us to know how we're doing
22 with the facility, the food, my staff. The attorneys like the
23 feedback as well, constructive criticism, good or bad. Believe
24 me, they -- they appreciate it very much to know anything that
25 you want to share confidentially.

1 I only provide the one page to each attorney that
2 refers to them. So, the one page that asks about Mr. Tanasi
3 will only go to Mr. Tanasi. The one page that asks about
4 Miss Ahmed, will only go to Miss Ahmed. So, they will only
5 receive information about themselves. So, be honest is what
6 I'm saying. Feel free to be honest about anything you want to
7 say.

8 All right. So, Aaron, help me here, because I think
9 that Mr. Lovelien was all unanimously not guilty, but --

10 COURTROOM ADMINISTRATOR: That's correct, Your Honor.

11 THE COURT: -- I want to make sure I am right.

12 COURTROOM ADMINISTRATOR: That's correct, Your Honor,
13 as well Mr. Stewart.

14 THE COURT: All right. So, the Court does vacate
15 then Mr. Lovelien's detention order. Number 100 is vacated.
16 And as to Mr. Stewart, number 232 is also vacated.

17 And as previously discussed with counsel, I did find
18 a setting for a hearing that we can discuss in moment. So, I
19 do need to ask you about the remaining counts that were blank
20 where there's no verdict.

21 So, for Juror No. 11 -- does he have the microphone?
22 I'm sorry.

23 FOREPERSON: I probably have a loud enough voice,
24 Your Honor.

25 THE COURT: You probably do, but I don't think it

1 will be recorded, so let's just get you the microphone. There
2 you go.

3 FOREPERSON: Yes, ma'am.

4 THE COURT: All right. So, is there anything else
5 that the Court can do for you to assist the jury in
6 deliberations so that you may render a verdict on the remaining
7 counts?

8 FOREPERSON: I do not believe so, Your Honor.

9 THE COURT: And would an additional instruction
10 assist you in your deliberations?

11 FOREPERSON: I do not believe so, Your Honor.

12 THE COURT: And would additional clarification of a
13 preexisting instruction assist you?

14 FOREPERSON: I do not believe so, Your Honor.

15 THE COURT: And in your opinion, is the jury then
16 hopelessly deadlocked as to the remaining counts?

17 FOREPERSON: Yes, Your Honor.

18 THE COURT: And is there a reasonable probability
19 that the jury can reach a unanimous verdict if sent back to the
20 jury room for further deliberation?

21 FOREPERSON: There is not, Your Honor.

22 THE COURT: All right. Now, I do need to poll the
23 jurors individually again, and I'm not asking you for how you
24 stand numerically. Please do not tell me any other information
25 than "yes" or "no" in response to this.

1 All right. So, Juror No. 1, do you feel that there
2 is a reasonable probability that the jury can reach a unanimous
3 verdict if I sent you back to the jury room for further
4 deliberations?

5 JUROR NO. 1: No, I do not, Your Honor.

6 THE COURT: All right. Thank you.

7 Juror No. 2, do you feel there is a reasonable
8 probability that the jury can reach a unanimous verdict if I
9 permit you to continue deliberations?

10 JUROR NO. 2: No, Your Honor.

11 THE COURT: Thank you.

12 Juror No. 3, do you feel that there is a reasonable
13 probability that the jury may continue?

14 JUROR NO. 3: No, Your Honor.

15 THE COURT: Thank you. Juror No. 4, same question.

16 JUROR NO. 4: No, Your Honor.

17 THE COURT: All right.

18 Juror No. 5, same question?

19 JUROR NO. 5: No, Your Honor.

20 THE COURT: And Juror No. 6?

21 JUROR NO. 6: No, Your Honor.

22 THE COURT: Juror No. 7?

23 JUROR NO. 7: No, Your Honor.

24 THE COURT: Juror No. 8?

25 JUROR NO. 8: No.

1 THE COURT: Bring the microphone back down to No. 9.
2 Juror No. 9?

3 JUROR NO. 9: No, Your Honor.

4 THE COURT: Thank you.

5 Juror No. 10?

6 JUROR NO. 10: No, Your Honor.

7 THE COURT: Juror No. 11?

8 JUROR NO. 11: No, Your Honor.

9 THE COURT: And Juror No. 12?

10 JUROR NO. 12: No, Your Honor.

11 THE COURT: Thank you. So, as to Mr. Drexler, the
12 remaining Counts No. Five and Six, the Court does enter a
13 mistrial as to those counts.

14 And as for Mr. Parker, the remaining counts are Five,
15 Six, Eight, and Nine, and the Court does enter a mistrial as to
16 those remaining counts.

17 Aaron, do you have a date for me -- well, I guess I
18 should first ask as to Mr. Drexler and Mr. Parker, is there a
19 motion to be made?

20 MR. TANASI: Yes, Your Honor. As to Mr. Parker, we
21 would make a motion to reopen his detention hearing.

22 THE COURT: All right. And do you have a
23 suggested -- can we do it tomorrow morning or do you want to do
24 it today?

25 MR. MARCHESE: I would imagine, without asking him, I

1 think he would like it as soon as possible.

2 THE COURT: All right. And Mr. Leventhal?

3 MR. LEVENTHAL: Yes, Your Honor. The same on behalf
4 of Mr. Drexler. We would like to reopen his detention hearing,
5 and today would be great.

6 THE COURT: Is the government ready to proceed today
7 or tomorrow morning? What is your preference?

8 MR. MYHRE: Our preference would be tomorrow morning,
9 Your Honor.

10 THE COURT: All right. I'm going to go ahead and
11 reopen the detention hearing with a temporary order that
12 Mr. Drexler and Mr. Parker are to be released to the halfway
13 house until tomorrow morning.

14 So then tomorrow morning, we can have the detention
15 hearing. I don't think that it's necessary for them to be
16 taken back to Pahrump tonight, although they probably need to
17 go back and get their things, but I will let the attorneys
18 figure out the details, but we will have the detention hearing
19 first thing tomorrow morning.

20 Aaron, do you have a --

21 COURTROOM ADMINISTRATOR: Time for tomorrow, Your
22 Honor?

23 THE COURT: Yes. I do need to get a pretrial release
24 updated report, but I don't expect there will be anything
25 different, because they'll be in custody. I could set this for

1 the magistrate judge, but I don't see any point in doing that,
2 because I was here and not the magistrate judge.

3 So, I'm sorry. What time did you say? 9:00 a.m.?

4 COURTROOM ADMINISTRATOR: Tomorrow, Your Honor, we
5 can do 9:30 a.m. for Mr. Parker and 10:30 a.m. tomorrow for
6 Mr. Drexler.

7 THE COURT: All right. So 9:30 and 10:30.
8 Mr. Parker at 9:30 and Mr. Drexler at 10:30. And does that
9 date and time work for you, Mr. Leventhal?

10 MR. LEVENTHAL: Yes, Your Honor.

11 THE COURT: Mr. Marchese.

12 MR. MARCHESE: I will make it work.

13 MR. LEVENTHAL: I assume the Court doesn't need
14 anything in writing, since they have been in detention all this
15 time. Nothing is changed from the first detention; is that
16 correct?

17 THE COURT: I don't require anything in writing, but
18 I'm sure I'll need to hear some argument. But I am releasing
19 them to the halfway house until tomorrow morning, for them to
20 be brought into court, and then I'll consider, at that time,
21 what conditions or set of conditions could be fashioned for
22 them to be released to pretrial supervision.

23 As counsel is well aware, because these folks are
24 from out of town, they may not be eligible to leave first thing
25 tomorrow from the halfway house. There might need to be a home

1 visit conducted by the pretrial service in their home state and
2 so forth, and you know the way that that works.

3 But you can at least tonight start getting those
4 things in motion and contacting the pretrial office -- officer
5 who's assigned to this case, so that they can begin phone
6 calls, and checking on whatever they need to check on, and
7 contacting their counterpart in the other districts so that
8 that person can start checking on their background.

9 MR. LEVENTHAL: Very good. Thank you.

10 THE COURT: Okay. Is that clear enough? I mean, I
11 am not trying to be vague.

12 MR. MARCHESE: No, it's fine. I think it's something
13 we are probably just going to have to coordinate with the
14 marshals. We'll figure it out.

15 THE COURT: Well, I don't know how much you have to
16 coordinate with the marshals. I think you need to coordinate
17 with the pretrial office.

18 MR. MARCHESE: Well, that, too. I just meant getting
19 them to the halfway house.

20 THE COURT: The pretrial office is the one that has
21 the contract, though, for the beds, so that they would need to
22 make the arrangements and call and do that.

23 Right, Aaron? I mean, am I --

24 COURTROOM ADMINISTRATOR: That's correct, Your Honor.

25 THE COURT: Do you know offhand who is the pretrial

1 officer who is assigned?

2 COURTROOM ADMINISTRATOR: I don't. I'm trying to get
3 in touch with pretrial as we speak.

4 THE COURT: Yeah. All right. So that will be the
5 order. And obviously, it's a different situation for each
6 defendant, because it depends on where you are living and all
7 these other considerations. It's not always the same pretrial
8 officer either. So, we will try to get that information for
9 you as soon as possible.

10 All right. So, I think that that concludes our
11 hearing for today. Anything else that I forgot to mention?

12 I mean, obviously, a judgment of acquittal is entered
13 for Mr. Lovelien and for Mr. Stewart. Anything else?

14 Well, and a judgment of acquittal on the counts that
15 Mr. Drexler and Mr. Drexler were -- Parker and Drexler.
16 Anything else?

17 MR. MYHRE: Nothing from the government, Your Honor.

18 THE COURT: All right. So, we are going --

19 MR. TANASI: Your Honor.

20 THE COURT: I'm sorry. Yes.

21 MR. TANASI: Overabundance of caution.

22 THE COURT: Yes.

23 MR. TANASI: You did vacate 232; correct?

24 THE COURT: I did. 232, yes.

25 MR. TANASI: Thank you.

1 THE COURT: Okay. All right. So, we are going to go
2 ahead and recess. And I do invite the jury to stay if you want
3 to. Like I said, if you don't want to, you don't have to. But
4 we do appreciate it. You've provided us with a lot of time and
5 attention and patience, so don't feel obligated, but we would
6 really like it if you could stay.

7 And with that, we'll go ahead and recess. And
8 counsel, you do what you need to do, but if you can join us in
9 the back room, you are welcome to do that. It's just for
10 counsel.

11 COURTROOM ADMINISTRATOR: Your Honor, one last point.
12 The alternates are also excused; correct?

13 THE COURT: Oh, yes. So, Mike, I will order that the
14 alternates are excused and welcome to join us in the conference
15 room as well if they'd like to.

16 All right. Thank you everybody. And thank you to
17 the public. You showed a very respectful amount of patience,
18 and I appreciate it. I know it's an emotional case, but we
19 will -- I will leave it at that.

20 So, thank you to everyone, and we are off record.

21 (Recess, 3:46 p.m. Resumed 5:13 p.m. Sandra Bustos,
22 Pretrial Services, present.)

23 COURTROOM ADMINISTRATOR: All rise.

24 THE COURT: Thank you. You may be seated.

25 COURTROOM ADMINISTRATOR: This is the time set for

1 the hearing in Case No. 2:16-cr-046-GMN-PAL, United States of
2 America versus Eric Parker and O. Scott Drexler.

3 Counsel, please make your appearances for the record.

4 MR. MYHRE: Good afternoon, Your Honor. Steven
5 Myhre, Erin Creegan, and Nadia Ahmed on behalf of the United
6 States.

7 THE COURT: Good afternoon.

8 MR. MARCHESE: Good evening, Your Honor. Jess
9 Marchese on behalf of Eric Parker.

10 THE COURT: Good afternoon.

11 MR. LEVENTHAL: Good afternoon, Your Honor. Todd
12 Leventhal on behalf of Scott Drexler.

13 THE COURT: All right. So, I did order that the
14 defendant be released to the halfway house. I am told that the
15 halfway house bed is not yet available, but it will be
16 available. And when it is available, I need to say magic words
17 for it to be paid for by pretrial, so that it can be part of
18 the contract.

19 So, I am going to release both Mr. Parker and
20 Mr. Drexler on bond. They are to reside at the halfway house
21 on lockdown and be subject to pretrial supervision.

22 I'm not going to order any conditions at this time,
23 but we will still have the hearing on for tomorrow morning.

24 It was 9:30. Was it Parker first?

25 COURTROOM ADMINISTRATOR: Yes, Your Honor.

1 THE COURT: 9:30 for Parker. 10:30 for Mr. Drexler.
2 Obviously, if anybody has an alternative place to stay, that
3 would be something that you should consider bringing up
4 tomorrow. And please work with the pretrial office so that
5 they have an opportunity to have someone visit the location,
6 and make sure that it's adequate, and appropriate, and so
7 forth, and they can be a condition that would satisfy the
8 requirements.

9 All right. So, that is the order. Anything -- any
10 other magic words from the pretrial officer that I need to say
11 on the record?

12 PRETRIAL SERVICES OFFICER: No, Your Honor.

13 THE COURT: All right. So, that will be the order.
14 We will see you back here tomorrow morning. Thank you for your
15 patience.

16 MR. MARCHESE: Thank you, Your Honor.

17 (Recess, 5:15 p.m.)
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COURT REPORTER'S CERTIFICATE

I, KATHERINE EISMANN, Official Court Reporter, United States District Court, District of Nevada, Las Vegas, Nevada, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Date: August 23, 2017.

/s/ Katherine Eismann

Katherine Eismann, CSR CRR RDR