

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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THE UNITED STATES OF AMERICA,

Plaintiff,

v.

CINDY YOUNG,

Defendant.

- - - - - x

Criminal Action No.
1:23-cr-00241-TSC-GMH-1
Friday, July 12, 2024
10:50 a.m.

TRANSCRIPT OF PRETRIAL CONFERENCE
HELD BEFORE THE HONORABLE MICHAEL G. HARVEY
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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P R O C E E D I N G S

THE COURTROOM DEPUTY: Good morning, Your Honor.
This is Criminal Case 23-cr-241, *The United States of
America v. Cindy Young*. This matter is set for a pretrial
conference.

Parties, please introduce yourselves for the
record starting with the government.

MS. LEDERER: Good morning, Your Honor; Rebekah
Lederer and Paralegal Specialist Brittany Sheff on behalf of
the government.

THE COURT: Good morning.

MR. GROSS: Good morning, Your Honor; Jonathan
Gross representing Cindy Young.

THE COURT: Good morning.

I see she's present as well. Good morning,
Ms. Young.

THE DEFENDANT: Good morning, Your Honor.

THE COURT: Everyone give me one moment. I'm
trying to get my computer up and running here.

(Pause)

THE COURT: Okay. We're here for the pretrial
conference in the case of *United States v. Young*, 23-cr-241.
The trial in this case is scheduled for August the 5th.
There have been multiple motions in limine and objections to
witnesses and evidence. I'm going to try to resolve as many

1 of those issues as I can today. It may be that we won't be
2 able to get it all done today either because we'll run out
3 of time or I'll need additional information from the parties
4 or additional time to consider the issues presented
5 following any argument here today, but I certainly intend,
6 prior to trial, to resolve as many of these issues as I can.
7 It may be that some issues I can't resolve until trial.

8 But I felt in terms of the structure today that I
9 want to address the motions in limine first, all but the
10 motion in limine with respect to the video. This is ECF No.
11 35. I think I'll deal with that as the last motion in
12 limine.

13 So I'm going to deal with the nonvideo motions in
14 limine first. Then I want to hear from the parties with
15 respect to what I've called sort of the timeline. You can,
16 each side, lay out for me where you believe Ms. Young was
17 because I think that will then impact any decision I may
18 make with respect to that one video, which is part of a
19 motion in limine, but also some of the objections to both
20 the witness -- the exhibits, that is, the other videos in
21 the case.

22 So first, the nonvideo motions in limine; then
23 I'll hear background argument -- I mean, sorry, timeline
24 argument; then we'll talk about the video, the exhibits; and
25 then we'll talk about voir dire.

1 You should have received my at least initial
2 thinking with respect to what voir dire may look like in
3 this case based on both the parties' proposals and what I
4 know judges have done in other cases. I certainly want to
5 hear argument on that as well.

6 So that's a lot. We may be here all day. I hope
7 no one else has anything else scheduled for the day.

8 I'd like to break around noon for lunch.

9 MS. LEDERER: Your Honor, if I may?

10 THE COURT: Uh-huh.

11 MS. LEDERER: I don't know if it would help the
12 Court at all, but counsel and I have been continuously
13 talking in an effort to resolve as much as possible. We did
14 have a chance, which we appreciate, to talk before we
15 started today. We could tell Your Honor, if you would like,
16 what we're in agreement in so far, but if you wanted to put
17 specific findings on the record, we obviously respect that
18 as well.

19 THE COURT: Well, we're going to go through
20 everything, but I'm happy if you want to just list these
21 agreements. But still, just for purposes of organization,
22 we're still going to go through them in the order that I
23 want just because we'll miss something if I don't.

24 MS. LEDERER: No, absolutely, and the government
25 thinks that that is a perfect order to go through.

1 THE COURT: Right.

2 MS. LEDERER: But we just wanted to let you know,
3 looking at the government's motions in limine which then
4 kind of umbrella some of the defense's motions in limine,
5 Mr. Gross is in agreement that he's not going to discuss the
6 exact camera locations, which then moots out his motion,
7 which is ECF 36, about using the exact camera maps. He will
8 rely on the camera maps that have been provided or just the
9 standard floor plan.

10 He also will not be asking questions as to the
11 specific location and procedures of the Secret Service as it
12 goes to the vice president, which is Section A2 of ECF 44.

13 He will also not be making any legal arguments
14 that law enforcement or the former president had the
15 authority to give permission to go into the building that
16 day. However, the government recognizes that the defense
17 can argue that Ms. Young did not have the requisite intent,
18 knowledge, or willfulness based off of observations that she
19 may or may not have made. So that kind of moots out
20 Sections B1 and B2.

21 There's also been agreement that defense will not
22 make any arguments as to First Amendment defenses.

23 Both of the parties also are going to stay within
24 the facts when closing to the jury, so we're not going to
25 make jury nullification type arguments.

1 THE COURT: I'm sorry, what did you say? Both
2 parties are not going to --

3 MS. LEDERER: We're not going to engage in jury
4 nullification.

5 THE COURT: Okay. Well, let's explore what that
6 means, okay.

7 MS. LEDERER: Defense has agreed that a character
8 witness cannot get into specific good acts, if a character
9 witness is called.

10 Defense has agreed not to make any culpability
11 comparisons, which then plays into ECF 39, which I believe
12 defense will be withdrawing today.

13 MR. GROSS: Yes.

14 MS. LEDERER: And as for defense using defendant's
15 own statements, I think that's something that we're really
16 going to have to wait until trial to see if defense is going
17 to use some type of exception to get the defendant's
18 statements in.

19 THE COURT: Okay.

20 MS. LEDERER: Thank you, Your Honor.

21 THE COURT: Thank you.

22 Is that correct, what she's just stated, Counsel?

23 MR. GROSS: May I approach?

24 THE COURT: Please. Yes. Always. You don't have
25 to ask. Just come. But I do want you to come to the

1 podium.

2 MR. GROSS: Yes. I think that Your Honor's going
3 to be pleased that we have worked very closely together to
4 come to a lot of agreements on a lot of the issues that are
5 before you today.

6 Regarding the CCTV camera, which I believe is ECF
7 36, defense's intention was only to show the map. We didn't
8 need the locations. The government provided the map without
9 the camera numbers, so we are okay with that.

10 We do withdraw the motion in limine that was filed
11 under ECF 39. We have been able to come to resolution on
12 that.

13 And as we proceed, we'll see other agreements will
14 come forth.

15 THE COURT: Sure. I just think -- thank you, and
16 I'm glad you both made the record of this, and I do
17 appreciate your efforts to try to come to agreement. I hope
18 that continues between now and the day of the trial as
19 issues come up and even as this proceeding goes forward
20 today.

21 I still think let's go through in my order just so
22 we know that we'll cover everything, if we do it in that
23 way.

24 So turning first to the motions in limine. I want
25 to address first, if the parties have not already agreed to

1 it -- it looks like you may have -- the defendant's motion
2 in limine to admit the CCTV maps. This is ECF No. 36.

3 It does appear now, based on both what happened
4 prior to today and the representations of counsel, that the
5 defendant is withdrawing what it had proposed to use, which
6 was Defendant's Exhibits 201 and 202, which were the subject
7 of the motion in limine.

8 The defendant is no longer seeking to show two
9 maps of the United States Capitol with the specific
10 locations of the CCTV cameras designated by identification
11 numbers, which were provided by the government under
12 protective order.

13 Is that correct, Mr. Gross?

14 MR. GROSS: That is correct.

15 THE COURT: And so is it also correct that the
16 government has provided a map that does not have those CCTV
17 locations, and that's the map that you intend to use, sir?

18 MR. GROSS: I intend to use the government's maps
19 that are the same as the ones I provided with the numbers.
20 Theirs is provided without the numbers.

21 THE COURT: So to be clear, is the defendant at
22 trial going to be seeking to elicit any -- I know you're not
23 going to elicit any information about the specific locations
24 of the cameras. They're in the corner of, you know -- I was
25 going to say the Rotunda. That doesn't make sense because

1 it's a circle.

2 You're not going to do that, right?

3 MR. GROSS: Correct.

4 THE COURT: Okay. Are you going to be having any
5 sort of testimony concerning I assume what the cameras show
6 and don't show? The general direction they're facing?

7 MR. GROSS: No, Your Honor.

8 THE COURT: Okay.

9 MR. GROSS: To be clear, the use of the maps will
10 only be to show the direction of the defendant and the
11 location of the defendant in the Capitol so that the jury
12 has clarity.

13 THE COURT: Okay. I mean, I don't think it would
14 be inappropriate to say that, "As you can see, you know, the
15 camera is pointed in the direction that it's pointed, but
16 you have no idea what's happening to the left or right or
17 behind the camera," just the obvious point of that, which I
18 don't consider, you know, as focused on the location of the
19 camera in the way that the government's concerned about.

20 So I'm just letting you know that. I would not
21 think that would be inappropriate.

22 MR. GROSS: Thank you, Your Honor.

23 THE COURT: All right, then. So I think that
24 resolves that motion in limine with respect to the CCTV maps
25 that's ECF No. 36.

1 You know, I do plan on, after today, issuing a
2 brief order which will reflect the decisions that are made
3 today but will largely just say, "For the reasons stated on
4 the record, this is the ultimate conclusion of the Court,"
5 so everyone will be able to use that document as a guideline
6 going forward as to what's allowed and what's not allowed at
7 trial.

8 Moving now to the next motion in limine that's on
9 my list, which is ECF No. 38. This one addresses -- it's a
10 motion in limine to preclude mention of the death or injury
11 of any police officers related to January 6th.

12 Is that motion still live? Are we going to be
13 arguing about it now?

14 MS. LEDERER: Your Honor, I do apologize. I meant
15 to mention that during my recap when I first started.

16 As outlined in the government's response -- which,
17 I apologize, I don't have the number right in front of me --

18 THE COURT: It's 38. The motion is 38. I don't
19 know what the response was.

20 MS. LEDERER: The response was 53.

21 THE COURT: Okay.

22 MS. LEDERER: As we outlined in our response, the
23 issue is mainly moot. The government isn't going to
24 affirmatively discuss any injury or death of officers.
25 However, we wanted to highlight that sometimes discussion of

1 injury or death does come up, especially on cross-
2 examination, when, for example, a defense attorney might ask
3 an officer, "Well, you just stood there silently," and the
4 officer's response might be something akin to, "Well, I was
5 whacked over the head with a metal pole," or "I was pepper-
6 sprayed multiple times, so I was taking a moment to catch my
7 breath," or they might say, "I saw another officer get
8 assaulted," or "I saw other officers go through this," so in
9 that moment there's nothing I can do.

10 So the topic does become relevant, but depending
11 on questioning.

12 But the government's not going to affirmatively,
13 on direct or in an opening statement, talk about death or
14 injury.

15 THE COURT: Say that five officers ultimately
16 passed away as a result of this event, 140 were injured.

17 MS. LEDERER: The government's not going to make
18 any of those statements unless they become relevant somehow.
19 But not in opening, we're not going to say those specific
20 numbers.

21 And unless there is a question from either the
22 government -- which the government's not going to say how
23 many officers died, how many officers were injured. But if
24 the witness needs to answer a government's question of why
25 did you move in that direction, "Well, I saw something

1 coming towards me, and I had been assaulted before so that's
2 why I ducked," then it might come up, injury or -- I don't
3 foresee death coming up with our Capitol Police officer
4 witness, but we wanted to highlight that there could be a
5 potential that either a witness answers a direct examination
6 question or that the defense attorney walks into an answer
7 from a witness that needs to talk about injury or
8 potentially death.

9 So I don't think it's ripe yet.

10 THE COURT: Okay. Mr. Gross, what would you like
11 to say on that?

12 MR. GROSS: I would only say that regarding
13 bifurcating it to death and injury. So my understanding is
14 that no officers died that day, and the ones that died
15 subsequently were subject to suicide based on trauma.

16 So they only have a narrative officer witness.
17 Their witness list only includes two FBI agents, the Secret
18 Service, and Officer Lloyd, so he can't say I saw so-and-so
19 officer become traumatized that led to his suicide
20 obviously. So I think death should be off the table.

21 Then, as far as injury is concerned, I don't think
22 that that's relevant in this case at all because, once
23 again -- same reason -- there's no officer other than a
24 narrative witness. So the narrative witness can talk about
25 what occurred around Cindy Young, but she was not where this

1 narrative witness was. He was on the western front. She
2 wasn't -- they were separated by the scaffolding.

3 So I think that we could deal with these things as
4 they come up, but I do also think that it's just appropriate
5 to note that I think it's very unlikely it would come up.

6 THE COURT: Okay. Well, that appears to mean -- I
7 hear you on the death issue. But it's hard to come up with
8 a witness, at least one, that has personal knowledge who
9 could testify as to how those individuals died and the
10 circumstances of their death and what led to it. I also
11 just don't see how that would be triggered by any statement
12 made by a witness in this case.

13 Yes, Counsel?

14 MS. LEDERER: Your Honor -- thank you -- I just
15 wanted to quickly add on to something that Mr. Gross just
16 said to make it clear. Deputy Chief Officer Lloyd is both
17 what we call an overview witness, so a narrative witness who
18 discusses the layout of the Capitol and January 6th in
19 general, but he's also a fact witness. In addition to being
20 on the West Front where Ms. Young was, he also was inside
21 the building, including the House main doors, and can be
22 seen in a significant amount of the open source.

23 So he's not just on the West Front with the
24 defendant. He's also inside the building with the
25 defendant. So he will be testifying to his factual

1 experiences as well inside the building.

2 THE COURT: Well, again, this doesn't seem like an
3 issue I'm going to be able to resolve here today. We'll
4 just have to see how it comes up.

5 I hear counsel for the government that to the
6 extent there is some need to explain why an officer, you
7 know, did not observe something or his direction was
8 otherwise distracted and that's because he was being
9 assaulted or she was being assaulted or someone else was
10 being assaulted, that might just -- it would be appropriate
11 for them to provide such testimony.

12 But for me there's another issue. It's the
13 extent to which the government is going to be arguing that
14 Ms. Young herself was present or had the ability to observe
15 violence against officers. And so if that is what the
16 government is going to be saying, then, well, there could
17 well be testimony about violence and potential injury of
18 officers that she either was in the presence of, did
19 observe, or within reason could have observed.

20 Is the government going to be presenting such
21 evidence?

22 MS. LEDERER: Yes, Your Honor, the government's
23 going to be presenting evidence that Ms. Young was in the
24 presence of violence. However, knowing the witnesses that
25 the government is going to call, I can't say that any of the

1 MPD officers that cut through the west side of the Capitol,
2 who were assaulted in front of Ms. Young starting around
3 1:58/1:59 p.m., I can't say that any of them were injured
4 by -- well, I can say that two of them were injured, but
5 that's based off of knowledge of another case.

6 But Deputy Chief Lloyd, I would not be able to
7 elicit any type of death or injury-type questions from that
8 specific chunk. The West Front in general, obviously Deputy
9 Chief Lloyd will testify about the violence that he observed
10 on the West Front.

11 The government at this point in time isn't going
12 to specifically elicit testimony about specific injuries;
13 however, Deputy Chief Lloyd will discuss the fact that
14 officers were overrun. They were being assaulted, and they
15 had to essentially fall back multiple times all the way to
16 the House main door. So that might go into his answer of
17 saying why they were falling back.

18 You know, the government's not going to say: Did
19 you see an officer get bonked over the head?

20 Yes, I did, and he sustained a concussion.

21 The question would say: Why did you have to leave
22 the West Plaza and move back to the scaffolding and up to
23 the Upper West Terrace?

24 Well, we were overrun. There were significant
25 assaults occurring against officers. Officers were being

1 pepper-sprayed. Officers were being bear-sprayed. We were
2 losing manpower due to injuries so then we had to go inside
3 and then we had to fall back and fall back and fall back due
4 to X, Y, and Z.

5 THE COURT: Okay. Mr. Gross, your client did, in
6 one of her statements -- I don't know if it's coming in, but
7 she described it as a war zone, so I just want to make sure
8 you know what may be coming. I think I'll have to decide it
9 in the moment, but it would seem, as the government just
10 described it, that that might be an appropriate part of the
11 officer's testimony.

12 It's not an actual listing of injuries or death
13 caused, but assaults going on in and around your client may
14 well be free game.

15 MR. GROSS: Well, the evidence will show what the
16 evidence shows, and my concern, when I filed the motion in
17 limine, was opening and closing statements where they talk
18 about how this is worse than 9/11 and things like that.

19 THE COURT: Right, yeah.

20 MR. GROSS: So as long as the evidence is cabined
21 to what is shown and what can be testified to and not
22 speculation and opinion, then we have no objection.

23 THE COURT: All right. Understood. Well, then,
24 for that motion I will deny it in light of the government's
25 assertion that it will not elicit such testimony. It's not

1 going to be stated in opening or closings some overarching
2 description of this event focused on the number of officers
3 who were injured or those whose death was believed to be
4 caused by trauma that day.

5 And I will just wait until trial with respect to
6 any other testimony the government may seek to introduce
7 concerning violence against officers, assaultive conduct
8 against officers, that may have occurred in and around where
9 Ms. Young was purported to be on that date. We'll just have
10 to see how that comes out, and I will address any objection
11 as it arises.

12 But I think with that understanding, that what the
13 government is not seeking to do -- what the defendant
14 principally was concerned about -- is listing off the dead
15 and injured in opening and closing or as part of some
16 question during trial, I'm going to deny that motion in
17 light of that assertion. This is the defendant's motion in
18 limine. So that is No. 38.

19 ECF No. 39 is defendant's motion in limine to
20 discuss during opening and closing argument with respect to
21 statutes that the defendant has not been accused of
22 violating. I think there might be agreement on that one at
23 this time.

24 Government?

25 MS. LEDERER: Yes, Your Honor, that is my

1 understanding, that defense will be withdrawing that motion
2 and won't make commentary on comparative culpability as it
3 goes to statutes or actions of other rioters.

4 THE COURT: Okay. Mr. Gross?

5 MR. GROSS: Only one note, that I will mention to
6 the jury that the evidence will show that she was not
7 engaged in any violence or vandalism, meaning acts, but not
8 the specific statutes themselves.

9 THE COURT: Okay. Government, any objection to
10 that?

11 MS. LEDERER: Not at this time, Your Honor. If
12 it's phrased in a certain way that the government finds
13 objectionable, we'll obviously lodge that objection, but
14 defense is fair to point out what actions are seen.

15 But I think it really depends on how it is said
16 and how it is presented, which I don't think we'll know
17 until we're in it.

18 THE COURT: Okay. Well, as I read the motion,
19 it's specifically focused on the mention of certain
20 statutes, which I agree are not relevant to this case
21 through the government, so -- but I don't hear the defendant
22 at this time as seeking to make that specific argument,
23 listing out all of these different and much more serious
24 crimes that this defendant has not been charged with.

25 So I'm going to deny the motion on that basis. It

1 was the government's -- sorry, the defendant's request to
2 make such an argument, and I'm going to deny that, but I
3 don't hear him as even wanting to make that argument at this
4 time. So that motion it denied.

5 Let's move now to the government's motion in
6 limine. This is ECF No. 44. There are a lot of different
7 arguments in there, and we'll take them one by one.

8 A portion of that motion in limine is to limit
9 testimony and the location of surveillance cameras. That
10 motion is granted because, as I've already discussed and as
11 the parties have indicated, the defendant has withdrawn his
12 request or her request to introduce maps of the Capitol with
13 locations of CCTV cameras or to otherwise elicit testimony
14 which specifically asks the witness to locate where a camera
15 was. So on that basis, I will grant the government's
16 request to preclude testimony concerning the location of
17 surveillance cameras in the Capitol from trial in this case.

18 Another portion of the government's motion in
19 limine addresses or requests that any examination regarding
20 Secret Service protocols be limited, including protocols
21 related to the locations where protectees or their
22 motorcades are taken at the Capitol or other government
23 buildings when emergencies occur and details about the
24 nature of Secret Service protective protocols such as the
25 number and type of agents that the Secret Service assigns to

1 protectees.

2 Let me hear, Government, do we have an agreement
3 on that?

4 MS. LEDERER: Yes, Your Honor. Defense indicated
5 that he would not be asking any specific questions as it
6 goes to either the final security location that the vice
7 president was brought to or Secret-Service-type-related
8 questions which the government would take that he's not
9 going to get into how the vice president was specifically
10 evacuated to that end location as well.

11 But -- and I can proffer to Your Honor right
12 now -- what Secret Service normally testifies to is the
13 general schedule that was supposed to be followed on January
14 6th; the vice president's arrival, how he followed that
15 schedule for a certain portion of the day until the breach
16 of the Capitol building, which then changed that intended
17 schedule. And then Secret Service talks generally about the
18 evacuation, CCTV, which, I apologize, I don't have my list
19 right in front of me so I can't tell you the exact exhibit
20 number, but in the 200 series we do publicly play that CCTV
21 footage of the vice president being evacuated from his
22 office down the steps.

23 From there on, that's all national security. The
24 Secret Service testifies generally that he's brought to a
25 secure location and generally that that location is still

1 within the restricted perimeter.

2 THE COURT: I did see -- I have not seen the
3 video, but I saw the list and the evidence and somewhere a
4 notation from the government suggesting that the video shows
5 the vice president being moved from one area of the Capitol
6 towards another area. So that video will be shown?

7 MS. LEDERER: Yes, Your Honor. It's CCTV footage
8 from the second floor of the Capitol from outside the vice
9 president's office. That video has been played I don't want
10 to say every single trial, but every single trial that I've
11 at least presented, and I know in the majority of the trials
12 it's been presented because it does show that the vice
13 president is still inside the building while the breach is
14 actively going on. It gives the finder of fact or, if it's
15 a bench trial, it gives everyone the idea of when,
16 specifically, the vice president was moved.

17 But after he goes down those steps, that's where
18 national security really kicks in, and that evacuation route
19 and end location are protected by the Secret Service.

20 THE COURT: Okay. Mr. Gross, I don't know if
21 you're opposing any of this.

22 MR. GROSS: No. Only one note is that -- I do not
23 oppose any of this, and the evidence is, once again, what
24 the evidence is.

25 That said -- and the FBI agent that is testifying

1 has done this many, many times before, I'm sure. She knows
2 her testimony well.

3 But I just don't want to close the door in the
4 event that she opens it that if she says something that
5 opens the door to indicate that somehow Vice President Pence
6 was taken off the location at the time. Obviously I don't
7 want to preclude myself from being able to go down that path
8 because that underlies the 1752 charges.

9 But I don't anticipate that happening.

10 THE COURT: Okay. Well, let me be just clear on
11 that. And this is my first Capitol trial. So, I mean, what
12 is the government's evidence in that regard; meaning he was
13 moved to a safe location, but he remained at the Capitol?

14 MS. LEDERER: Yes, Your Honor, within that
15 restricted perimeter. And I'll answer this twofold.

16 First is that he is also within the restricted
17 perimeter. However, also, if you read 1752, it is "visiting
18 or will be visiting," so even though he does stay within the
19 restricted perimeter the entire time, the specific location
20 doesn't matter because he also then returns to the Capitol
21 to finish the certification, which means he also will be
22 visiting again.

23 THE COURT: Okay. But you do -- I mean, you're
24 going to elicit just that general testimony that, yeah,
25 whatever, the video shows him walking down the hallway. Are

1 you going to say "And he remained at the Capitol, yes or no,
2 between now and between Time X and Time Y? He was there the
3 entire time that Ms. Young was in the Capitol."

4 I mean, how are you going to deal with that?

5 MS. LEDERER: Your Honor, that witness is going to
6 be AUSA Krishnamurthy's witness so I don't want to
7 specifically speak for him, how he's going to ask the
8 questions.

9 How it has come in has been twofold. Either: Was
10 the vice president evacuated to a secure location? Yes.

11 Did he remain there? Yes.

12 Some people do ask: Is that within the restricted
13 perimeter? Yes.

14 Or some people, because we don't want to get into
15 national security, ask: And then did he also return to
16 finish the certification?

17 So that way it covers both was visiting, stayed,
18 and will be visiting. So it's been done twofold.

19 THE COURT: Okay. Mr. Gross, anything you want to
20 say with respect to that? I don't know how any of that
21 would trigger the sort of specific information that the
22 government is seeking to preclude which they say is
23 protected from disclosure and raises national security
24 issues. Do you have any problem with that?

25 MR. GROSS: I think we're talking academically.

1 We've never had a problem proving that Vice President Pence
2 was there before. I just don't want to shut the door. I'm
3 leaving the options open --

4 THE COURT: If they open it.

5 MR. GROSS: -- if they open the door --

6 THE COURT: If they're foolish enough to open it,
7 yes.

8 MR. GROSS: -- that somehow -- and I do want to
9 say that she's making a legal argument now in terms of he
10 will be coming back. I mean, people from Secret Service
11 always will be coming to the Capitol so --

12 THE COURT: Right. There's got to be some limit
13 to that.

14 MR. GROSS: Yes, there's got to be some limit. So
15 I don't think we need to brief that now.

16 THE COURT: Okay. So with respect to that portion
17 of the government's motion in limine, ECF No. 44, I will
18 grant it for the -- because it appears to me that defendant
19 does not oppose the motion with respect to specific
20 information, at least in its case; that it's going to seek
21 to elicit -- or even from a government witness, unless the
22 door has been opened -- specific information concerning
23 Secret Service protocols with respect to their protectees
24 and motorcades to and from the Capitol and details about the
25 number and type of agents of Secret Service assigned to

1 protectees, et cetera.

2 I would note that I have a long list of cases here
3 where other judges of this Court have entered similar
4 orders: in the *Easterday* case; the *Bru* case, B-R-U; *Gunby*,
5 G-U-N-B-Y; *Baez*, B-A-E-Z, to name just a few.

6 The next portion in the government's motion in
7 limine is that which addresses or seeks to preclude any
8 entrapment by estoppel or public authority defense. The
9 government argues that it should be -- the defendant should
10 be precluded from raising such defenses based on the theory
11 either that former President Trump's statements on January
12 6th urging his supporters towards the Capitol or any act or
13 omission by law enforcement to act rendered her conduct
14 legal.

15 I would note that several courts -- several judges
16 of this Court have precluded such defenses in January 6th
17 cases.

18 I understand the defendant asserts that she will
19 not attempt to raise either of those defenses, but that
20 statements made by former President Trump in a speech on
21 January 6th and evidence that the inaction of law
22 enforcement on that day may well be relevant to her state of
23 mind, specifically if she knowingly entered or remained in a
24 restricted building or ground is required for violation of
25 1752(a) (1). Such evidence then will be relevant to her

1 state of mind assuming that there's some showing that she
2 heard the statement from President Trump or saw the inaction
3 of law enforcement.

4 That's my understanding where the parties are on
5 this issue.

6 Government, anything you want to say on that?

7 MS. LEDERER: No, Your Honor. I think that
8 summarizes where we are perfectly.

9 THE COURT: Mr. Gross, is that correct?

10 MR. GROSS: It is correct, but I would note that
11 the defendant has not decided whether or not she will
12 testify or not. I believe that the fact that President
13 Trump gave a speech in front of lots and lots of people that
14 she came to hear is enough evidence to suggest that she did
15 hear him say that he would be going down to the Capitol.

16 THE COURT: Okay. That's a statement.

17 MR. GROSS: Okay. That is my statement.

18 THE COURT: I'm not going to -- I don't hear you
19 as saying that you're going to raise either of those
20 defenses.

21 I don't know. I just interpreted -- I think the
22 point you're making is you're going to be trying to make
23 arguments based on statements that the president made I
24 guess because you believe, even without her taking the stand
25 or someone else taking the stand and saying that she heard

1 that specific statement, there will be some evidence that
2 she attended the speech; so you can use whatever statement
3 he made to make whatever argument you want to make as to
4 what may have been in her mind or anyone else's mind who
5 heard that statement as it went to her state of mind.

6 MR. GROSS: Correct.

7 THE COURT: You're not going to be, however,
8 arguing that the president said she could be there --

9 MR. GROSS: Correct.

10 THE COURT: -- therefore there is this official
11 defense of entrapment by estoppel or that he has given her
12 authority, blessed her conduct. You're not going to be
13 making that sort of defense.

14 MR. GROSS: Correct.

15 THE COURT: Okay. All right.

16 Government, with that understanding?

17 MS. LEDERER: Yes, Your Honor, that's the
18 government's understanding.

19 THE COURT: Okay. Well, then I'm going to grant
20 the motion based on that understanding and say that the
21 defendant is precluded from raising either of the entrapment
22 by estoppel or public authority defenses. They just
23 indicated they have no intent to do so.

24 However, the defendant is not precluded from
25 presenting evidence of statements of former President Trump

1 or police action or inaction as long, I believe, as she can
2 establish or a reasonable inference can be drawn that she
3 was aware of such conduct and that the evidence is probative
4 of her state of mind, and we'll just have to decide that as
5 the evidence comes in.

6 I do ask the parties, and the defendant in
7 particular since we're dealing with the government's motion
8 in limine, that, you know, if you come close to these lines,
9 you should ask to approach, say that this is what I am
10 intending to elicit, and I do not believe this is in
11 violation of the Court's rulings on the motions in limine.
12 So I'm making some good faith proffer outside the presence
13 of the jury and providing the Court with some other evidence
14 the defendant was nearby, reasonably nearby, the alleged
15 inaction at or around the time of the alleged inaction that
16 is going to be presented sufficient for her to have
17 perceived or a reasonable inference to be made that she
18 could have perceived whatever it is that you're trying to
19 show.

20 All right, Mr. Gross?

21 MR. GROSS: Could you repeat that?

22 THE COURT: I am just saying that the -- you know,
23 I am allowing you to present evidence with respect to
24 statements of President Trump or police action or inaction
25 but only to the extent there's been some showing that she

1 was aware of that conduct and that the evidence is probative
2 of her state of mind. So it just depends on how it comes
3 out.

4 I'm just letting you know that -- and maybe we
5 pause before cross-examination and you can approach. Maybe
6 we take a break. Because I would like to get whatever your
7 proffer is outside the presence of the jury or using some
8 other evidence to show that the defendant was, I don't know,
9 adequately nearby -- we'll have more discussion about this
10 when we're talking about the videos, so perhaps it will
11 become clearer -- adequately nearby this alleged inaction at
12 the correct time or at or around the time such that you
13 could draw the inference, at least, that she perceived it.
14 It's -- yes.

15 You know, that's not without -- you've just
16 indicated that -- I think what you were saying is that
17 there's going to be some evidence that she heard the
18 president's speech, so you believe that those portions of
19 the president's speech you can use to show her state of mind
20 when she was headed towards the Capitol. Isn't that
21 correct?

22 MR. GROSS: That is correct.

23 THE COURT: Okay. I hear you on that.

24 Government, do you have any objections to that?

25 MS. LEDERER: Unfortunately I don't have a yes or

1 no for you. At the end of the day the government's not
2 going to object to Mr. Gross presenting evidence of the
3 former president's speech. I think that would come under a
4 hearsay exception for public record, that he made this
5 public speech, even though there's probably argument that
6 that wasn't an official speech. But I still think that it
7 would categorically fall within a public record's exception
8 for hearsay.

9 Also, the government has used that speech in other
10 trials. There have been stipulations to when exactly I
11 think the portion that Mr. Gross wants to present, what time
12 that was said and where that was said.

13 The government has -- mainly through Ms. Young's
14 own words, we do know that Ms. Young went to the rally that
15 day. We do not know how long she stayed so if she actually
16 did hear those words -- she may have; she might not have --
17 and then she walked at some point down to the Capitol.

18 THE COURT: Well, you're going to have to work
19 that out with the defense; and if you are going to have some
20 objection, then you're going to have to let me know that.

21 He wants to use some words of his speech, and I
22 agree. It would seem to me that the speech may not be
23 hearsay; it may be hearsay. You'll need to make those
24 arguments, if you think it is.

25 I don't hear you as making that argument. I hear

1 you as saying how strong is the evidence that she heard the
2 speech. You think there's some evidence that she did.

3 So I don't know if you're going to press it or
4 not, but he wants to use the speech.

5 MS. LEDERER: I'm going to throw the ball back
6 into his court. There is evidence that she went to the
7 rally. I do not know how long she stayed at that rally. I
8 don't know if she heard the speech.

9 So if she was there at the time that the speech
10 was being made, I understand how that would go to a defense,
11 and it would -- I would not be able to object to it,
12 especially since it would potentially come in as a public
13 record. And if it had -- if there was viability for a
14 defense there, the government would not object. I just
15 can't say if she was there or not.

16 So I think it's how he presents it and how it's
17 going to come in.

18 THE COURT: Okay. Mr. Gross, just focusing on --
19 I want to get this speech thing sort of -- and then I want
20 to talk about all the other events. This is truly what I
21 was talking about when I was trying to say I need you to
22 make a proffer before, yes, focusing on the president's
23 speech.

24 MR. GROSS: Yes, and that's what I would like to
25 focus on as well.

1 The government has, in the information, the
2 original information, a picture of Ms. Young on January 5th
3 boarding a bus with a sign that says "Trump." I think that
4 we can infer from that reasonably that when she got to
5 Washington, D.C., and President Trump was speaking, that she
6 went to hear him speak.

7 I think that we don't -- the fact that I don't
8 have CCTV evidence to show her in the crowd of hundreds of
9 thousands of people who were there at the speech I think is
10 a burden too high. I don't have facial recognition
11 technology or things like that to be able to identify it.

12 I think that there's enough circumstantial
13 evidence to place her at President Trump's speech, which
14 was -- could be inferred that was her purpose for traveling
15 to Washington, D.C., based on the sign that she held and the
16 flag that she held.

17 The government says it's -- that it's my burden,
18 but I think that the -- correct me if I'm wrong. I don't
19 believe that there was a motion in limine about President
20 Trump's speech. If I'm wrong on that, I stand corrected.

21 Was there a -- by the government?

22 THE COURT: Well, it's just this -- public
23 authority and entrapment by estoppel is when it comes up,
24 saying that the president's statements during his speech,
25 you know, would be the basis for such a legal defense. So

1 that's how it comes up.

2 And you just said, well, we're not trying to do
3 that, but if it goes to her state of mind, inaction of law
4 enforcement, which we're still going to come to, but also
5 the president's speech you want to use. So that's how this
6 has happened.

7 So I think it is raised --

8 MR. GROSS: Okay.

9 THE COURT: -- in the motion in limine, so that's
10 why we're talking about this.

11 MR. GROSS: And I understand that, and for the
12 speech specifically, I would argue that there are hearsay
13 exceptions for the effect --

14 THE COURT: I don't think the government's really
15 fighting on that.

16 MR. GROSS: Yeah, so --

17 THE COURT: The issue is did she hear his speech?
18 What evidence is there that she heard the speech? And
19 you've made a few points.

20 MR. GROSS: The only evidence I could bring, other
21 than camera and testimony, which is the circumstantial
22 evidence, which I think is strong --

23 THE COURT: And that is she's holding a Trump
24 sign.

25 MR. GROSS: And she traveled --

1 THE COURT: Isn't there some evidence that she
2 traveled?

3 MR. GROSS: Yes. The government has presented
4 evidence that she took a bus from New Hampshire to get to
5 Washington, D.C.

6 THE COURT: Is there any other evidence, other
7 than her statement about who was on that bus, the group?
8 What they were doing? What their intent was?

9 MR. GROSS: I mean, as I stand here today I could
10 go through, you know, the 8.18 million files of every person
11 who was on that bus and say that there's a lot of text
12 messages going back and forth even within some of the ones
13 that the government provided that I can't submit because
14 they're hearsay and they are the defendant's own statements,
15 but that President Trump's name certainly is bandied about,
16 and that was part of the reason they were going down to
17 Washington, D.C.

18 There's --

19 THE COURT: I would think it's the primary reason
20 they were going to Washington, D.C., to hear the president
21 speak.

22 MR. GROSS: So you're asking if there's the
23 primary --

24 THE COURT: I think that's helpful to you.

25 MR. GROSS: Yes, I agree.

1 THE COURT: I mean, what she went to -- I don't
2 know if she went to Washington, D.C., to do what ultimately
3 happened. I mean, that's what the trial's going to be
4 about.

5 Did she go to Washington, D.C., at least to hear
6 him speak? I would think so.

7 MR. GROSS: I would agree with that.

8 THE COURT: Government, you have in your own
9 timeline "Defendant Young attended the rally for an
10 undetermined amount of time. Former President Trump
11 addressed the crowd."

12 MS. LEDERER: Yes, Your Honor, because I knew that
13 was going to come up today. Also we wanted to give you a
14 general January 6th timeline.

15 The main concern with the motion in limine was to
16 preclude the defendant from saying "Legally you are
17 obligated to find my client not guilty because Trump gave
18 her permission to go down and law enforcement gave her
19 permission to go in," or because law enforcement didn't do
20 enough that it is an affirmative defense versus if the
21 evidence is established to say, "You can find my client" --
22 "You have to find my client not guilty because let's look at
23 everything."

24 She heard the former president speak. She heard
25 the former president --

1 THE COURT: You've got to put her -- I mean,
2 you're going to put her statement in.

3 MS. LEDERER: Yes, Your Honor.

4 THE COURT: Are you not going to be submitting her
5 statement --

6 MS. LEDERER: Yes, Your Honor.

7 THE COURT: -- which includes that she went to
8 hear the president, and she did hear the president?

9 MS. LEDERER: Yes, Your Honor.

10 THE COURT: So what are we arguing about? Maybe
11 I'm making this up.

12 MS. LEDERER: I think we're honestly --

13 THE COURT: I think I'm making this harder than it
14 needs to be.

15 MS. LEDERER: I think we might be splitting hairs
16 a little bit because the government -- you know, that's why
17 we said we're not going to object that it's hearsay or
18 whatnot if there's some establishment that she stayed long
19 enough to hear him say, "Go on down to the Capitol." You
20 know, it's really --

21 THE COURT: No, it sounds like there's going to be
22 plenty enough for that.

23 MS. LEDERER: Which is also why the government's
24 not fighting that.

25 THE COURT: Right.

1 MS. LEDERER: The defense can say she didn't have
2 the requisite intent or knowledge, or she didn't act with
3 this willfulness, because obviously the defense can build up
4 at the rally certain things were said; certain officers, you
5 know, did not say, "Hey, don't go in there."

6 And then the government can obviously respond
7 with, "Well, there's no evidence that she specifically heard
8 that. Even if she did, she continued to ignore X, Y, and
9 Z."

10 THE COURT: All right. So anyway, we'll see how
11 it plays out. It does seem to me that there's going to be
12 sufficient evidence at trial to say that this defendant
13 heard, or very likely heard, the speech, and you can make
14 whatever arguments you want to make from the speech with
15 respect to her state of mind, not to these other two
16 specific defenses, entrapment by estoppel or public
17 authority.

18 Now I want to focus on other inaction by law
19 enforcement. It's any such inaction -- and, again, this is
20 as much as I can say about it now, and perhaps we'll have
21 more -- I'll have more to say about it when we start talking
22 about some of these specific videos. But to the extent it's
23 not covered today, you know, I'm going to want to get from
24 the defense some proffer as to your client's ability to see,
25 observe, hear whatever it is you were seeking to elicit with

1 respect to inaction by law enforcement. So that's all it
2 is.

3 And I'm just saying make -- approach and make a
4 proffer to me before you do so. Okay? It's the best I can
5 do to clarify that issue now, but maybe you have a more
6 specific question.

7 MR. GROSS: Thank you, Your Honor. I wanted to
8 first reiterate and thank the government for I guess
9 clarifying the entrapment versus state of mind. One of the
10 elements is knowingly.

11 THE COURT: Yes.

12 MR. GROSS: So --

13 THE COURT: I get it.

14 MR. GROSS: Excellent. So as far as the inaction
15 of law enforcement and the proffer of what she did or did
16 not see, what I'm specifically referring to, and I think
17 that it's -- the government has -- and this was alluded to
18 in the proffer that I sent to the Court by email, is that
19 the government makes a claim in all January 6th cases that
20 there's this red line picture that they show, and I think
21 that that opens the door for the defense to say -- to
22 impeach the government's witness essentially and say that,
23 well, that's not true.

24 And that's what I mean in terms of showing the
25 inaction of police; that they have this claim that there is

1 this very clearly demarcated line, and I would like to show
2 evidence that it is not so clear where the demarcations
3 were, and I would like to show that to the jury for the
4 purposes of impeaching the government's witness testimony.

5 THE COURT: All right. Well, let's address that
6 issue when we come to that --

7 MR. GROSS: Okay.

8 THE COURT: -- series of exhibits. I hear you on
9 that. Okay?

10 MR. GROSS: Okay. So the question before you
11 right now is we are not going to make the -- the arguments
12 would be very clear as to what the defendant perceived that
13 could be shown on video. We're not going to be making
14 general arguments other than to impeach the government's
15 testimony.

16 THE COURT: Okay. All right.

17 Well, then, with that understanding the
18 government's motion is granted. That, again, is the motion
19 specifically to preclude an entrapment by estoppel or public
20 authority defense or arguments seeking to assert that
21 defense before the jury.

22 Moving now --

23 MR. GROSS: Your Honor, if I may, just on that
24 point to clarify?

25 So do you then agree that there is no need for a

1 further proffer at this point? You asked for a proffer.

2 THE COURT: No, I'm not agreeing to that. I think
3 we will approach that issue again here in this hearing when
4 we start talking about the red line and 400 series exhibits.

5 MR. GROSS: I understand. Okay.

6 THE COURT: But no, I'm not seeking to preclude
7 the presentation of evidence of statements with respect to
8 former President Trump or police inaction as long as the
9 plaintiff can establish that she -- that she was aware of
10 such conduct and the evidence is probative of her state of
11 mind.

12 With respect to that portion of the defendant's --
13 sorry, the government's motion in limine seeking to preclude
14 a First Amendment defense, the government seeks to preclude
15 the defendant from arguing or eliciting evidence that on
16 January 6, 2021, she enjoyed a First Amendment right to
17 protest inside the restricted area around the Capitol or
18 inside the Capitol building itself.

19 As I understand it, the defendant does not appear
20 to oppose this motion, so let me start with you, Mr. Gross.

21 MR. GROSS: No objection to their motion. We are
22 not going to make a First Amendment defense.

23 THE COURT: Are you going to argue that she was
24 there to protest or make her voice heard?

25 MR. GROSS: Only if the government opens the door

1 to that.

2 But those statements are her statements. They're
3 hearsay, so we can't bring those in.

4 THE COURT: Okay. Government, anything you want
5 to say on that motion or that portion of that motion?

6 MS. LEDERER: Not much more to say, Your Honor.
7 It just kind of ties in to the two subsections above that --
8 just to give you a little bit of background, there has been
9 a repeated pattern of defense attorneys in these cases
10 making affirmative defenses saying that because the First
11 Amendment exists and it is supposed to protect speech and
12 protest that you have to find my client not guilty; but,
13 however, the First Amendment has its limitations, which
14 obviously were pushed and then shattered on January 6th.

15 So the main concern was that defense would get up
16 in opening and just say, "Because Trump and law enforcement
17 and the First Amendment you have to find her not guilty"
18 versus couching everything as "You will see my client did
19 not form the requisite intent or did not have the requisite
20 knowledge because of the evidence that officers didn't say
21 anything to her or Trump told her to go down or this was her
22 goal."

23 THE COURT: Okay. Well, I mean, I am going to
24 grant the government's motion. I don't want to hear
25 anything about the First Amendment. Certainly we're not

1 going to have arguments about exceptions to the First
2 Amendment and whether or not, you know, what she did fell
3 within an exception to the First Amendment. So I don't want
4 to hear anything at trial about the First Amendment.

5 I mean, that said, one of the charges was she was
6 parading and demonstrating, so I think if there was
7 testimony that she was there to protest, that that would be
8 appropriate. The defendant can figure out an appropriate
9 way to introduce that evidence. If it wanted to, it could
10 do that as well.

11 What the defendant would be prohibited from doing
12 is then saying, "Yes, she was there for the protest. She
13 had an absolute right under the First Amendment to do so."

14 So I don't want to hear anything about the First
15 Amendment. I don't want to hear those words at trial.

16 That she was there to protest; if that comes out,
17 then that comes out. Arguably it's part of what the
18 government needs to prove with respect to one of the
19 charges.

20 Yes, Mr. Gross?

21 MR. GROSS: I would agree that as long as I hope
22 that it applies to the government as well because we just
23 heard her talking about how it was shattered on January 6th,
24 and that's the kind of --

25 THE COURT: Well, we're going to come to that.

1 We're going to come to that side of it. How can the
2 government describe what happened that day? We'll come to
3 that.

4 But the government's motion with respect to the
5 First Amendment -- asserting the First Amendment defense is
6 granted. Again, I don't want to hear the words "First
7 Amendment" at trial.

8 The next portion of the government's motion in
9 limine is to preclude encouragement of jury nullification.
10 The government argues that the defendant should be precluded
11 from arguing or introducing evidence that encourages
12 nullification whether during jury selection or at trial,
13 specifically an argument or evidence that she may, quote,
14 face a prison sentence if she's found guilty in this case or
15 about the hardships of prison or the potential effect of
16 incarceration on her family or employment prospects. It
17 asserts that it is settled law that the jury should not
18 consider such penalties in reaching its verdict.

19 As I understand the government's response --
20 sorry, the defendant requests that, with respect to any
21 ruling on this part of the motion, the Court remind the
22 prosecution that they are also prohibited from engaging in
23 arguments that encourage jury nullification, including
24 emphasizing to the jury that January 6th was an attack on
25 democracy, mentioning that officers were injured, or

1 mentioning the damage caused to the Capitol given that the
2 defendant is not accused or charged with either attempting
3 or obstructing the proceedings, violently engaging officers,
4 or causing any damage.

5 Further, the defendant asserts that strict
6 guardrails must be imposed on the government to ensure that
7 they only seek -- only speak of the broader context of
8 January 6th as much as is necessary to prove its case and
9 not to overemphasize the event in order to inflame the
10 passions of the jury and encourage jury nullification.

11 Let's deal first with the government's side of it,
12 and then we'll talk about your side of it, sir.

13 So the government wants to preclude arguments
14 about jury nullification made by the defendant specifically
15 with respect to potential penalties or hardships of prison
16 or the impact that this prosecution or incarceration has had
17 on her family or employment prospects.

18 That, for me, is pretty straightforward, that such
19 arguments would be precluded in any trial. I don't
20 understand you as saying that you're going to make such
21 arguments. Is that correct, Mr. Gross?

22 MR. GROSS: That is absolutely correct.

23 THE COURT: All right. Well, then I will grant
24 that portion of the government's motion, then, with respect
25 to its concerns, the government's concerns, of jury

1 nullification based on potential penalties or impact that a
2 conviction or incarceration or the possibility of
3 incarceration for these crimes could have on the defendant.

4 The defendant counters, then, with these requests
5 that the Court put guardrails on the government so that it
6 does not inflame the passions of the jury when it describes
7 what happened that day.

8 So, Government, let me hear from you on that.
9 This cannot be the first time this issue's come up.

10 MS. LEDERER: No, Your Honor.

11 Your Honor, the government certainly isn't going
12 to open using potentially inflammatory language. What the
13 government sticks to in opening --

14 THE COURT: Well, I can't wait until closing.
15 We're going to come to that.

16 MS. LEDERER: We will, and not to spoil it, but to
17 get ahead, I think a lot of this might actually be addressed
18 going into closing. It may not be ripe yet.

19 But in opening -- obviously with the PowerPoint
20 presentations that we give in a lot of these cases, we
21 always let defense see them first, but you always choose
22 exhibits that you know are going to be admitted and you
23 don't say words that are going to get objected to mid-
24 opening.

25 But what we do talk about in opening is straight

1 facts; that for the first time in this nation's, you know --
2 I used to know the number off the top of my head -- 249-year
3 history it's the first time that the democratic process was
4 interrupted.

5 We don't say that it was an attack on democracy.
6 Some people might, though, especially when there is a 1512
7 charge; but dealing with the misdemeanors, normally you talk
8 about the straight facts that occurred.

9 However, during trial, especially if defense
10 continues with this theme of it was peaceful, it was
11 peaceful, then language, colorful language -- I won't say
12 it's inflammatory because the facts are the facts. If this
13 colorful language of if this was so peaceful comes up, then
14 the government can respond either in its closing or, where
15 it normally happens, in rebuttal talking about the cold hard
16 facts of the violence of that day; not only the violence to
17 people on the ground but the violence to democracy.

18 I don't have a closing written. I don't have a
19 rebuttal written. But I think a lot of this would have to
20 come at the close of evidence to discuss how colorful either
21 side is going to be versus the opening where obviously we
22 all play it safe.

23 THE COURT: Mr. Gross.

24 MR. GROSS: I think that the government's blind
25 spot is apparent even just now, that she thinks there's

1 nothing wrong with saying in Cindy Young's case that this is
2 the first time of anything. It doesn't really have anything
3 to do, I think, with Cindy Young how many other times this
4 has occurred. And it's that kind of language that I think
5 I'm fearful of.

6 And I think that the defense in January 6th cases
7 in D.C. -- especially when it happened just nearby; many of
8 the jury are obviously local to it -- is we should be more
9 concerned, I think, with the government in terms of jury
10 nullification in that regard and that kind of language.

11 So with regard to the language of peaceful, I have
12 I don't think ever -- and I stand corrected if I have made
13 the statement that January 6th was peaceful. But even if I
14 did at trial, I certainly will not make that.

15 I'm only going to speak about my client's conduct
16 on January 6th, her state of mind, and the events that we
17 can see in the camera that we have and to respond to
18 whatever the government has. But I have no intention of any
19 kind of jury nullification, and I just want the government
20 to also really be mindful of their responsibility also to
21 focus on the issue at hand and not to put it into historical
22 context.

23 THE COURT: How many of these trials have you
24 done?

25 MR. GROSS: This is my first alone. I've attended

1 others, and I was third chair in one.

2 THE COURT: So you've seen other openings by the
3 government in these cases?

4 MR. GROSS: Yes.

5 THE COURT: So, I mean, what specifically are you
6 concerned about given what you've seen and what counsel has
7 just said?

8 They seem, at least with respect to openings, to
9 be sensitive to these issues and try to avoid objections and
10 inflaming the jury. It sounds like we need to have another
11 discussion before closing, certainly rebuttal.

12 MR. GROSS: Even in her proposed opening, "the
13 first time in history," I have an objection to that.

14 THE COURT: The first time in history what?

15 MR. GROSS: That something like this has occurred.
16 That's what she said.

17 THE COURT: Is that inaccurate?

18 MR. GROSS: Is that relevant though? And I think
19 that it's prejudicial, and it's not relevant to what Cindy
20 Young did.

21 Let's say another January 6th had happened the
22 previous year. I don't think that that would change
23 anything regarding her culpability.

24 THE COURT: How can the government describe what
25 happened that day in opening? Can they talk about the mob?

1 Can they say it was a riot?

2 MR. GROSS: They can say there was a riot. They
3 can say -- I do not like the word "mob." I think that that
4 is a prejudicial word that's not necessary. It implies that
5 every single person without exception was guilty of somehow
6 violent activity I think right away off the bat.

7 THE COURT: "Riot" is okay?

8 MR. GROSS: That there was a riot? Yes, that is
9 okay. It was declared a riot legally; that's correct.

10 THE COURT: What about "an insurrection"?

11 MR. GROSS: That is obviously not okay.

12 THE COURT: A coup?

13 MR. GROSS: I don't think that's okay.

14 THE COURT: Government?

15 I agree "insurrection," "coup," you're not going
16 to be saying that, right?

17 MS. LEDERER: Your Honor, at this time the
18 government has no plans. If, for whatever reason, we walk
19 into that realm of "insurrection" or "coup" because
20 something comes up, we will come to you first.

21 I don't believe -- I have to go back and check my
22 openings and closings. I'm not sure I've ever used those
23 words. But just to the point where counsel said that
24 discussing in our 249-year history this is the first time an
25 election was ever interrupted -- or a certification of an

1 election was ever interrupted, that goes to knowledge. If
2 you know that nothing like this has ever happened, you're
3 going to know that you can't just walk into the Capitol
4 through an emergency exit door and enter the House floor.

5 So it goes to knowledge at the end of the day.
6 And it's factual; so it wouldn't inflame the jury in any way
7 when we're just discussing facts.

8 THE COURT: What about "riot"?

9 MS. LEDERER: Your Honor, "riot" has been used in
10 numerous cases, dozens of these cases, based off of the
11 testimony of the way that the crowd was behaving that day.

12 THE COURT: In opening, right?

13 MS. LEDERER: I believe in opening "riot" has been
14 used before.

15 THE COURT: What about "mob"?

16 MS. LEDERER: I can't tell you specifically if
17 "mob" has been used in opening. I know that some Courts
18 have limited the use of "riot." I can't speak --

19 THE COURT: Riot? They've limited the use of
20 "riot"?

21 MS. LEDERER: I believe so. I'd have to double-
22 check and let Your Honor know that, but I think the majority
23 of Courts, well, judges in this district, have allowed
24 "riot" to be used based off of it's factual.

25 THE COURT: What about "assault on democracy"?

1 MS. LEDERER: Again, I cannot say specifically --

2 THE COURT: I want to know what you're going to
3 do.

4 MS. LEDERER: Again, I don't have an opening or a
5 closing written yet. I have used words before that are
6 similar to something like that.

7 Again, I think those were more in a 1512 context
8 versus a misdemeanor context, which is why I said I think a
9 lot of this might have to be addressed before closing or
10 rebuttal.

11 THE COURT: What about "assault on the Capitol"?

12 MS. LEDERER: Again, I cannot say specifically if
13 those direct words have been used, but I know that this type
14 of language has been used in cases before, including myself
15 but in other trials.

16 THE COURT: Okay. Well, my view is, at least with
17 respect to openings, that, you know, I would permit the
18 government to describe it as a riot, but I don't think there
19 should be any mention of an insurrection, a coup, a mob. I
20 even find the word "mob" to be unnecessary, at least in
21 opening.

22 You can describe it as a riot.

23 MS. LEDERER: Understood, Your Honor. I
24 especially understood for opening.

25 I do want to point out that in her statements, or

1 at least one of her statements, Ms. Young did use the word
2 "mob" herself.

3 THE COURT: If she used the word "mob," then she
4 used the word "mob." That's why we'll retalk about it again
5 at closings. I don't see the need for the government to
6 describe this as an assault on democracy or even an assault
7 on the Capitol in opening.

8 I think, as I understand what the government's
9 saying, that this is the first time in our nation's history
10 that this proceeding has been interfered with as a result of
11 this riot. I'll hear from you, Counsel, but I don't know
12 why that is not -- should not be something they should be
13 permitted to say given what they have to prove in this case.
14 And it does go to intent. It does go to state of mind.

15 MR. GROSS: I don't see how it goes to her state
16 of mind, but once again, from what I hear from the
17 government, this is the first time that this has ever
18 happened.

19 So you want to cabin it, is what my understanding
20 is right now, to saying that this is the first time that the
21 certification has ever been disrupted?

22 THE COURT: That's what I hear her saying.

23 MR. GROSS: If she's saying that this is the first
24 time that --

25 THE COURT: She's not saying this is the first

1 time our democracy has been assaulted in this way, even the
2 first time this has been an assault on the Capitol. There
3 actually was a prior assault on the Capitol, but it's been
4 some time. I don't hear her saying that.

5 I've heard her as saying that this is the first
6 time in our nation's history that this proceeding was
7 obstructed, and in this case it was obstructed by a riot
8 that this defendant was part of, and we're going to prove
9 that at trial.

10 I don't know that any of that is a problem.

11 MR. GROSS: Only to say that, once again, it
12 emphasizes this uniqueness to it that I don't think is
13 relevant to Ms. Young in that -- and this is what goes to my
14 previous motion in limine, which I'm willing to concede
15 specifically but not in principle, is that ultimately she
16 was not charged with obstructing official proceedings. She
17 was not charged with obstructing law enforcement. She was
18 not charged with assaulting law enforcement.

19 She was only charged with the misdemeanors, and
20 that's after an extensive investigation into her social
21 media and into all these different things. So for them to
22 then use the obstruction of the proceeding as a way to, in
23 my mind, inflame the passions of the jury to my --

24 THE COURT: Well, here's the issue. I mean, it's
25 1752(a)(2). They've got to show the defendant engaged in

1 disorderly or disruptive conduct in proximity to any
2 restricted building or ground. It would be great for you if
3 that's where it stopped, but that's not where it stops.

4 It also says that the defendant did so knowingly
5 and with the intent to impede or disrupt the orderly conduct
6 of government business or official functions. The
7 defendant's conduct occurred when or so that his conduct, in
8 fact, impeded or disrupted the orderly conduct of the
9 government business or official functions.

10 MR. GROSS: And I have no issue with that. My
11 issue is "first time that's" --

12 THE COURT: Well, again, it's, I think --

13 MR. GROSS: But I can live with it.

14 THE COURT: The government can make a reasonable
15 argument that one fact they should consider when considering
16 the state of mind of this defendant is the extraordinary,
17 unusual nature of what was occurring and how they describe
18 what was occurring to avoid overly inflammatory language.

19 I'm not going to permit them to call it an
20 insurrection, a coup, an assault on democracy, or a mob
21 even. But to say that it's the first time that this
22 certification has ever been obstructed in this way, and it
23 was done as a result of a riot that she was a member of, I
24 don't have a problem with that.

25 MR. GROSS: And that's fine.

1 THE COURT: You don't have to -- you don't have to
2 agree with me. I'm not saying that therefore you've now
3 conceded it just because from the judge you're not winning
4 on that point.

5 MR. GROSS: That's fine.

6 THE COURT: You don't have to agree. Say "Your
7 Honor, I still disagree."

8 MR. GROSS: Actually, Your Honor, I actually don't
9 have a problem. I'm not going to die on the hill of the
10 "first time." My point was actually to express my
11 appreciation that you are imposing these guardrails on the
12 government because that was my intention. That's the
13 principal point, and I think that you understand that, and I
14 appreciate that.

15 THE COURT: Okay. But I do think we should have
16 another conversation outside the presence of the jury before
17 closing.

18 Okay. In any event, that portion of the
19 government's motion is granted. Again, the portion, what it
20 was seeking to do was to preclude the sorts of jury
21 nullification arguments with respect to potential penalties,
22 sentences, the impact of this prosecution and incarceration
23 on her and her family. That portion is granted. The
24 government has noted my other directions I've given it with
25 respect to how it should characterize the events that day.

1 The next portion of the government's motion in
2 limine goes to trying to preclude evidence of the
3 defendant's good character or conduct. The government
4 argues that introducing reputation or pending evidence that
5 she's generous or charitable or family-oriented or religious
6 or a community participant would be a violation of
7 404(a)(2)(A), which allows evidence that the defendant
8 possesses a favorable trait only when that trait is
9 pertinent to the offense, and the government asserts that
10 none of those traits are pertinent to the offenses in this
11 case and that such evidence, therefore, should be excluded.

12 As I understand, the defendant contends that
13 evidence of the character trait of law abidingness is
14 pertinent to almost all criminal offenses and would be
15 relevant here as all four counts hinge on whether the
16 actions of which the defendant is accused were done
17 knowingly and, in some senses, willingly, both of which
18 require a state of mind that -- well, "willingly" requires
19 at a minimum a state of mind whereby the defendant acted
20 with the knowledge that her actions were a violation of the
21 law.

22 "Knowingly," I mean, with respect to these charges
23 requires a state of mind that the area that she entered or
24 remained in was restricted and whether her actions were
25 disorderly or disruptive.

1 Let's start with you, Mr. Gross, just so that I
2 can understand what it is that you are attempting to do and
3 what you're not attempting to do.

4 It does not appear that you dispute that your
5 client is precluded, under the Federal Rules of Evidence,
6 from introducing evidence of the reputation for being
7 generous or charitable or family-oriented or religious or a
8 community participant; is that correct?

9 MR. GROSS: That is correct.

10 THE COURT: But are you -- it does appear that you
11 may be seeking to introduce evidence of the character trait
12 of law abidingness; is that correct?

13 MR. GROSS: It is correct that I proposed a
14 witness that would testify to that, but to just inform Your
15 Honor that, in discussions with the government and with the
16 defendant, it's unlikely that we will bring that witness.

17 THE COURT: Who is that witness?

18 MR. GROSS: Noreen Powers.

19 THE COURT: Powers, Ms. Powers, all right.

20 Government, where are you with respect to this
21 motion based on your more recent conversations with defense
22 counsel?

23 MS. LEDERER: Yes, Your Honor.

24 Based on our most recent conversations, obviously
25 a lot of the government's section of motion in limine as to

1 specific instances is kind of moot. Again, we do this to
2 put up, to use Mr. Gross's terms, safeguards for defense
3 because we've seen a lot of liberties taken in these cases,
4 so we try to front them.

5 If a character witness is, in fact, called --
6 Mr. Gross and I discussed it -- he will stick to that very
7 formulaic line of questioning that is appropriate for
8 character witnesses, and that this character witness would
9 be called for the only pertinent trait here, which would be
10 law abidingness.

11 THE COURT: Okay. But as for specific
12 instances -- I mean, I've seen all sorts of -- I mean, I
13 think the defendant has listed a bunch of exhibits, some of
14 which it probably will not ultimately use, but there was a
15 lot in there. It looks like record searches that were done.

16 She doesn't have a criminal record. There's some
17 contacts with law enforcement, animal complaints or
18 something or another; minor -- extremely minor stuff.

19 I don't know if there's going to be some attempt
20 to use that to show her law abidingness, and that, to me,
21 strikes me as a specific instance that you would be
22 precluded from using in any event.

23 MS. LEDERER: Yes, Your Honor, which is in part
24 why we put those on our objections list. I don't think I
25 articulated specifically that my concern would be that

1 defense would say, look, she's never had a parking ticket or
2 never had a criminal arrest.

3 We are only asking that if a character witness is
4 presented, that that character witness is presented within
5 the very black-and-white confines of character witness
6 testimony, which is the Have you talked to anyone in the
7 community? Yes.

8 Do you yourself know the defendant? Yes.

9 For how long? Ten years.

10 And after talking to the community and getting to
11 know the defendant, do you have an opinion as to the
12 reputation of Ms. Young's law abidingness?

13 THE COURT: Yes. And what is that? She's law
14 abiding.

15 MS. LEDERER: Yes.

16 THE COURT: Done. Got it.

17 Mr. Gross, so, again, that is the typical standard
18 way you put it out there, and sometimes it happens, and I
19 would not have a problem with that if you were to choose to
20 do it.

21 But specific instances would be a problem in my
22 book. That would include the records -- more testimony like
23 the records indicating that, you know, I think she's had a
24 few speeding tickets. You know, she's got a clean record.

25 MR. GROSS: Correct. And the intention always

1 was -- if we were going to bring the character witness, it
2 would be just to -- you know, if we decided the defendant
3 wasn't going to testify, just have a human face and to ask
4 her exactly the formulaic questions that the government just
5 mentioned.

6 THE COURT: Sure.

7 MR. GROSS: I do want to say, though, that when
8 we -- in terms of the exhibit lists, I mean, you know, we
9 always try to just put as many as we can.

10 THE COURT: Sure.

11 MR. GROSS: Apologies to the clerks and everybody
12 who has to go through it.

13 But that said, when the FBI agents did their
14 investigations and they went to the police, I think that we
15 could ask into their findings. Not even specific findings,
16 but just the absence of a finding of a criminal record, I
17 think, would be appropriate.

18 THE COURT: Well, let me ask for the government.
19 That's really my concern.

20 Government?

21 MS. LEDERER: Your Honor, that's not appropriate,
22 that -- a specific instance of a good act. I know there was
23 also an article that Ms. Young had either volunteered or did
24 something. You know, anything that's a specific good act is
25 impermissible to come in.

1 The government wasn't even going to discuss the
2 agents went to those officers, because either way there
3 could be a negative inference or positive inference, either
4 of which were not appropriate. That obviously was just
5 handed over because it was Ms. Young's discovery, and
6 defense was entitled to it.

7 MR. GROSS: Your Honor --

8 THE COURT: Mr. Gross?

9 MR. GROSS: -- I just feel that if the agent, as
10 part of his investigation into the crimes that Ms. Young is
11 being accused of -- as part of that investigation he found
12 it necessary to check on her criminal record, and then he
13 found an absence of a criminal record, I think that that
14 goes to part of the investigation.

15 And he found it relevant. He thought that that
16 was necessary. And had he found something, certainly that
17 would have been, I think, possibly introduced or at least
18 attempted to be introduced.

19 So I don't think we should get into the specific
20 acts of the animals and whatever else was in the incident,
21 but I do think the fact that it was somewhat significant to
22 the officer that he put it in his report.

23 THE COURT: Yes, Government?

24 So you're not going to even ask about that part of
25 their investigation?

1 MS. LEDERER: No, Your Honor. Just so it's clear
2 for Ms. Young and Mr. Gross, the reason that her record was
3 run is because that's standard investigative practices.

4 THE COURT: Right. And that's why it was put in
5 the report, is because you need to put every step of your
6 investigation in the report, which would include inquiring
7 into addresses, employment, and criminal records and whether
8 or not someone has one.

9 MR. GROSS: If I may? One more --

10 THE COURT: Okay.

11 MR. GROSS: -- to that argument. They ran her
12 initial criminal report, but then subsequently, a year
13 later, the agents made, not one but two, visits to two
14 separate police offices. And once again, I think that goes
15 to what the government tries to say about January 6th, about
16 it being something much larger than just a regular riot that
17 would have been for BLM or whatever, that it was necessary
18 as part of the investigation to see if this was part of some
19 greater scheme.

20 And certainly, had they found something, that
21 would have been at trial. So I think that the absence of
22 that in the context of the investigation -- it's just one
23 question or one line of questioning: Did you go to the
24 police? Did you find anything? And if the answer was no, I
25 think it is fair because if they did find something we'd be

1 in a different place.

2 THE COURT: Okay. We'll break for lunch at this
3 time, and we'll come back and I'll rule on that, and then
4 we'll keep moving.

5 So let's come back at 1:00.

6 (Lunch recess taken)

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A F T E R N O O N S E S S I O N

THE COURT: So when we broke for lunch we were addressing that portion of the government's motion in limine which sought to preclude certain kinds of character evidence. I don't think there is any -- I think the defendant agrees that they're not seeking to introduce character or reputation evidence for her being a generous, charitable, family-oriented, religious or community participant, so I would grant the motions on that basis.

The defendant will be permitted, however, to introduce evidence that she has a general character trait of law abidingness, although specific instances illustrating that trait will be precluded.

There is a way to introduce such evidence, as was outlined by the government, but I will permit a character witness, if the defendant chooses to have one testify, but they will need to follow the traditional script for doing so. I will not permit specific instances of the defendant's character from that witness or any other or through other evidence in the case.

The specific instances of particular character trait are only admissible in cases where the parties have made character an ultimate issue in the case including where character or a character trait is an operative fact, which, under the substantive law, determines legal rights of the

1 parties. The relevant question is whether or not proof or
2 failure of proof of the character trait by itself would
3 satisfy an element of the claimed charge or defense. If
4 not, then the character is not an essential element, and
5 evidence should be limited to just merely character or
6 reputation. I don't find that in this case any of the
7 charged offenses would fall into that category, so I will,
8 again, preclude evidence of -- specific evidence of law
9 abidingness.

10 The question then arose, prior to the break,
11 whether or not the defendant would be able to assert, either
12 through records or through cross-examination of any agent or
13 other government witness in this case, the defendant's lack
14 of a prior record or limited record of citizen complaints.

15 The Third Circuit United States Court of Appeals
16 has said that testimony as to the lack of prior bad acts is,
17 in essence, testimony as to multiple instances of good
18 conduct, and its admission would violate Rule 405(a). And
19 that would be including as well testimony about a lack of
20 criminal record.

21 The Third Circuit observed the testimony regarding
22 the lack of prior bad acts is generally less probative of
23 good character than general reputation or opinion evidence
24 for one's good reputation and presumably reflects not only
25 the absence of specific bad acts but also one's good acts

1 and general public conduct. Indeed, testimony that one has
2 never been arrested is especially weak character evidence.
3 A criminal, after all, may never be caught.

4 That is a quote from the Third Circuit's case in
5 *Government of the Virgin Islands v. Grant*, 775 F.2d 508 and
6 512. It's a Third Circuit case from 1985.

7 So I do believe that the probative evidence of any
8 evidence of lack of a criminal record or lack of citizen
9 complaints against the defendant would also be substantially
10 outweighed by the likelihood that such evidence would
11 confuse the issues in this case, mislead the jury, and
12 constitute a waste of time under Federal Rule of Evidence
13 403.

14 The way in which this defendant has interacted
15 with the criminal justice system or with respect to other
16 potential citizen complaints is not at issue. With respect
17 to her and evidence that she has never had any such
18 complaints filed against her or any such criminal charges or
19 prior convictions would have little, if any, probative value
20 with respect to any issue in this case.

21 So there are multiple cases that have agreed with
22 the Third Circuit as well: *United States v. Warren*, which
23 is an Eastern District of Louisiana case from November 2010.
24 That's at 2010 Westlaw 4668345.

25 *United States v. Morgan*, an Eastern District of

1 Pennsylvania case from 2020 -- sorry, from 2000. That's
2 2000 Westlaw -- or WL -- 1622748.

3 *United States v. Barko*, a 2010 case from the
4 Eastern District of North Carolina. It's found at 2010
5 Westlaw 11692321.

6 And *United States v. Leveille*. That's L-E-V-E-I-
7 L-L-E. It's a District of New Mexico case from 2023 found
8 at 2023 Westlaw 5984384.

9 So that is a long way of saying that I will not be
10 permitting questioning or submission of evidence showing
11 that this defendant has no prior criminal record, no prior
12 citizens complaints, or when there were citizen complaints
13 there was some finding that she was -- had not engaged in
14 any unlawful conduct.

15 I will permit her, however, if she chooses, to
16 present such evidence to provide a witness to testify as to
17 her general character, her reputation for law abidingness.

18 I'm going to move now on to the government's
19 motion in limine, or that portion of it, which requests that
20 the defendant be precluded from comparing her culpability
21 relative to other rioters.

22 The government notes in its motion the defendant
23 has suggested, through motions practice and ongoing
24 discussions in this litigation, that she intends to compare
25 her conduct, or lack thereof, to other suspects or

1 defendants. The government argues that none of those
2 comparisons, even ignoring whether they are factually
3 accurate, bear any fruit in exculpating this defendant's own
4 conduct and addressing whether the government has
5 established beyond a reasonable doubt the elements of each
6 offense that she's actually charged with.

7 In part, this portion of the government's motion
8 is informed by the prior ruling with respect to the
9 government seeking to prohibit the defendant from providing
10 evidence or cross-examination related to what other January
11 6th defendants had been charged different from this
12 defendant, which I know defense counsel has indicated that
13 he's not willing to do.

14 But I do want to hear from the defense because it
15 does sound like -- I remember him saying, even when he was
16 saying he was not going to be listing all of the offenses,
17 all of the statutes that this defendant has not been charged
18 with, that he may make the sort of comparison that the
19 government is concerned about by saying that -- I don't
20 know; I'm not going to put words in your mouth -- there were
21 worse defendants out there that day who did worse things.
22 My client didn't do any of that.

23 So I want to hear you on this, because, as I
24 understand it, the government wants to prohibit you from
25 making those arguments as well.

1 Mr. Gross.

2 MR. GROSS: We have no intention of making those
3 arguments.

4 THE COURT: Okay. How about this, Mr. Gross? I
5 would agree. I do think it would be inappropriate for you
6 to compare her conduct to the more offensive, more criminal
7 conduct of others. Others who have been accused of
8 felonies, et cetera.

9 But do you anticipate eliciting evidence about
10 what she didn't do? For example, you know, you see no
11 evidence or asking the case agent, is there any evidence
12 that she assaulted any police officer? Is there any
13 evidence that she broke any window or stole any property, et
14 cetera?

15 MR. GROSS: Yes, I definitely intend to do that.

16 THE COURT: Okay. Government, do you have any
17 objection to that?

18 MS. LEDERER: Again, this is one of those things
19 that I wish I could say yes or no. I think it depends on
20 how it's asked.

21 But I completely understand that defense would be
22 able to make an argument at the end of the day that she,
23 again, lacked the knowledge, the intent, or she didn't do
24 this willingly because she didn't kick a door in or she
25 didn't assault an officer.

1 So we're not looking to cut the defense off at
2 their knees. We're just asking that they present a case
3 within the confines of what is relevant and what is
4 allowable.

5 THE COURT: Okay. Well, again, I don't think the
6 defendant -- and it would most likely be made in opening or
7 closing -- should be making those sorts of comparisons
8 between this defendant and other defendants who were out
9 there that day who engaged in more serious criminal conduct
10 than this defendant is alleged to have engaged in.

11 But I don't think it would be inappropriate for
12 you to ask the questions that you've just indicated both for
13 the reasons stated by the government, but also just in terms
14 of disruptive, disorderly conduct.

15 You know, there's a wide range of it, and for you
16 to cut off that which might be most obviously disruptive and
17 disorderly, leaving you with, I don't know, whatever's left,
18 whatever the government can prove, I don't have a problem
19 with that either. To say, you know, you didn't hear her
20 doing any of these things in the context of arguing whether
21 it's state of mind or one of these elements is disruptive
22 and disorderly conduct; you didn't hear any evidence of her
23 doing that.

24 So let's just set all of that to the side. Maybe
25 all you're left with is her standing on the side of a crowd

1 who is chanting, you know, and then you can argue about
2 that.

3 So I don't think that that would be inappropriate.
4 Do you understand, Counsel?

5 MR. GROSS: Very well.

6 THE COURT: All right. But with that
7 understanding, I'm going to grant the government's motion
8 specifically with respect to, you know, any comparison
9 between this defendant's alleged conduct and the conduct of
10 other defendants in service, again, I think are of an
11 argument which would ask for some sort of jury nullification
12 here.

13 But I don't hear that is the kind of arguments
14 that you wish to make. But if you were to attempt to do so,
15 that would be in violation of this ruling. You should not
16 be comparing her culpability relative to other rioters.

17 Let's move now to the government's motion to
18 preclude the defendant's introduction of her own out-of-
19 court statements.

20 I'm not sure, Government, what I can do with this
21 one at this point. I'll hear you, but this may be some --
22 one of these areas where a blanket ruling is impossible at
23 this point.

24 MS. LEDERER: Yes, Your Honor. The government
25 certainly agrees with that.

1 The main concern, which is why we put it in the
2 motion in limine, is not necessarily the case here, but
3 sometimes the government elects not to introduce a
4 defendant's statement, and then, in case-in-chief for the
5 defense or through cross-examination of the agent, the
6 defense attorney tries to move in an entire statement to
7 circumvent the defendant testifying, or sometimes, you know,
8 if they say, "Well, my client said this to you, correct?"
9 just to kind of plant a seed in the juror's mind whether or
10 not the defendant actually said that statement. Sometimes
11 those questions happen, so we are just putting in a broad
12 umbrella safeguard.

13 But at the end of the day, depending on what
14 defense tries to elicit, it might either be to impeach the
15 agent -- there can be numerous avenues of why her statement
16 might come in through the defense.

17 THE COURT: Well, let's start with what the
18 government's plan is now. Obviously it can change. But
19 I've read her statements. I assume you're going to try to
20 admit those statements through your agent.

21 MS. LEDERER: Yes, Your Honor. Right now we're
22 not going to admit the actual paper statements because --

23 THE COURT: Right, the 302s.

24 MR. LEDERER: -- they're 302 summaries, but the
25 contents of the statement at this time -- we'll let everyone

1 know if that changes -- those statements will be coming in.

2 THE COURT: You're going to be asking the agent
3 what did she say?

4 MS. LEDERER: Yes.

5 THE COURT: And he's going through, him or her,
6 his recollection of what she said. And to the extent his
7 recollection may need to be refreshed, he may have to look
8 at his 302, but you -- that's how you're going to put the
9 statement in.

10 MS. LEDERER: Yes, Your Honor.

11 THE COURT: Okay. Now, obviously if you do that,
12 then to the extent, and perhaps not on purpose, you miss
13 some portion that they think is important and they seek to
14 admit that, there's not going to be objection to that, is
15 there?

16 MS. LEDERER: No, Your Honor, because I believe
17 that would fall under the rule of completeness.

18 THE COURT: I think it would, too.

19 MS. LEDERER: Or if there was something that was
20 potentially misstated by the agent --

21 THE COURT: Then it would be an inconsistent
22 statement.

23 MS. LEDERER: -- then it could be an impeachment,
24 yes.

25 THE COURT: Okay.

1 All right. So with that, Mr. Gross, I mean, maybe
2 you know of other statements that are out there, if you're
3 trying to figure out how to get it in, but it does sound
4 like, if it's within the context of the two statements that
5 I'm aware of that she gave to law enforcement, that -- but
6 at the end of the trial, that's all going to be in front of
7 the jury. You're going to get in whatever you want.
8 They're going to get in what they want, and it's all going
9 to be in there.

10 Do you have some other concern or anything else
11 you want to raise now that we can resolve?

12 MR. GROSS: No, Your Honor.

13 THE COURT: Okay. I will say this. There was a
14 comment in one of the examples given by the government. And
15 she wasn't directing it at you, Counsel, just what she's
16 seen in other trials. But to the extent that you seek to
17 say that the defendant said something that's not reflected
18 in her statement, I mean, you need to have, as I know you're
19 aware, a good faith basis for any of your cross-examination
20 before you make a suggestion like that to the jury, that she
21 may have said something not reflected in the evidence in
22 this case.

23 Do you understand?

24 MR. GROSS: Not exactly. Can you repeat that?

25 THE COURT: Again, you know, the suggestion was

1 made that sometimes defense attorneys suggest that a
2 statement was made during the interview of the defendant
3 that is not reflected in the 302. I mean, again, she's not
4 saying that you would do this, but some counsel, I don't
5 know, perhaps, they think that they can suggest whatever
6 they want to suggest when cross-examining a defendant, an
7 FBI agent, about the defendant's statement.

8 You have to have a good faith basis for anything
9 you're suggesting to the jury in cross-examination that your
10 client said. So you cannot suggest that she said something
11 in her statement to the FBI that you actually believe she
12 didn't say, but just let's suggest it to the jury. That
13 would be improper.

14 MR. GROSS: Of course it would.

15 THE COURT: All right.

16 MR. GROSS: Yes, I understand that.

17 THE COURT: All right. Let's move on to -- so for
18 that one, I'm going to just deny the motion, because I don't
19 believe I can make a blanket ruling at this time prohibiting
20 the defendant from attempting to admit her prior statements
21 in a vacuum. This is a situation where it's best to defer
22 such rulings to trial to see how it plays out.

23 With respect to the government's motion to
24 preclude the defendant from eliciting irrelevant testimony,
25 as I understand this portion of ECF 44 really what the

1 government is concerned about is some of the witnesses that
2 they believe have no relevant testimony in this case. I'm
3 just going to put off discussion of that portion of its
4 motion in limine until we deal with the list of witnesses
5 here in a few minutes.

6 So the government also is seeking a motion with
7 respect to authentication. The government appears to ask
8 for a ruling allowing it to authenticate photographs and
9 video at trial by testimony, by a witness with knowledge of
10 the events depicted, by reference to any other already
11 authenticated exhibits depicting the same time and place,
12 and by describing the process of system and showing that it
13 produces an accurate result, all which would be consistent
14 with Federal Rule of Evidence 901. It appears the
15 government will revert to these techniques only if the
16 parties cannot agree to stipulate as to the authenticity of
17 the evidence.

18 I don't think the defendant opposes the request,
19 which seems to me just the government's going to follow the
20 rules of evidence if they can't reach a stipulation with
21 respect to authenticity.

22 Mr. Gross, is that correct?

23 MR. GROSS: That is correct.

24 THE COURT: Government, do you have anything
25 further you want to say on that? I don't know what I can

1 say other than follow the rules of evidence.

2 MS. LEDERER: No, Your Honor.

3 THE COURT: I do encourage the parties to try to
4 resolve these authenticity issues before trial. I'm not
5 putting pressure on either side, but juries find that stuff
6 very boring. So I encourage you to try to reach
7 stipulations.

8 All right. Let's now talk about the government's
9 objections to the defendant's witnesses, which I mentioned
10 just a moment ago. There was a longer set of witnesses, and
11 I feel like this is a moving target a little bit.

12 I have Mr. Chansley, William Watson, Ivan Raiklin,
13 David Sumrall, Bao Kelley, Noreen Powers, Kirstyn Niemela,
14 but now -- that was an original witness list, I think, but
15 now it may just be Sumrall, Powers, and the defendant or
16 maybe NT as well, this NT individual.

17 So let me hear from you, Mr. Gross. Where are we
18 in terms of your list of witnesses? Who do we need to talk
19 about today?

20 MR. GROSS: I think we've dealt with Noreen
21 Powers, and that's the character witness who, if she comes
22 at all, will be just formulaic character testimony.

23 THE COURT: Okay, yes.

24 MR. GROSS: Then the defendant obviously can
25 testify, if she chooses.

1 THE COURT: Right. If she so chooses, sure.

2 MR. GROSS: And so David Sumrall I'll begin with.

3 THE COURT: Okay. And is there -- I want to say
4 NT, is that portion -- is that sealed? Are we talking -- do
5 parts of this need to be sealed today?

6 MS. LEDERER: Your Honor, I think it depends on
7 how far we go. Mr. Gross and I have agreed to refer to that
8 person as a law enforcement person --

9 THE COURT: Okay.

10 MS. LEDERER: -- which I believe is similar to how
11 Judge Lamberth handled discussing the broader context of
12 everything in open court.

13 If Your Honor wants to dive more in depth at any
14 point, we may have to at least go under the hushers. I'll
15 defer to you to make sure that we're following --

16 THE COURT: Even for today? Even for right now?

17 I mean, we are in open court. There's no one here
18 but...

19 MS. LEDERER: There is, but I notice that
20 Ms. Young has been looking at someone and maybe even talking
21 to someone. I don't know who is listening on her end.
22 Obviously that "open court" applies to where she is as well
23 even though she's at home.

24 But if we're discussing something, I don't know
25 who's listening. That would be my main concern right now.

1 Or if someone walked in. I know there's --

2 THE COURT: Okay. Well, we all know who we're
3 talking about when we come to that law enforcement witness.

4 MS. LEDERER: Yes.

5 THE COURT: The government will just have to get
6 up and give me further guidance at the time. I'm not
7 particularly certain of what the sensitivity is there at
8 this point and what the outer bounds of it are.

9 But let's start with Sumrall, who we don't have
10 any of those issues. Go right ahead, Counsel.

11 MR. GROSS: Yes, so David Sumrall appears in one
12 of the evidence -- one of the exhibits that the government
13 provided, specifically 404. He's very easily identified
14 there from the government's objections even because they
15 noted that he is the founder of an organization called
16 StopHate.org, and he's wearing a Stop Hate sweatshirt. And
17 he has a very distinctive voice. If he testifies, you'll
18 see. And it's clearly him.

19 So he was added to the list of people who could
20 give a narrative testimony, a short narrative testimony,
21 that would help the jury understand a little bit what the
22 mindset of someone who was similarly situated to the
23 defendant could have reasonably thought. She was standing
24 right next to him; I mean, directly next to him there.

25 THE COURT: The defendant was?

1 MR. GROSS: The defendant is standing right next
2 to him.

3 THE COURT: When?

4 MR. GROSS: At an important time. At the Peace
5 Circle.

6 THE COURT: Okay.

7 MR. GROSS: Right when she crosses into the red
8 line.

9 THE COURT: Okay.

10 MR. GROSS: So his perception, I think, could be
11 inferred was her perception.

12 But also, more generally, the government is
13 bringing a narrative witness in the form of Officer Lloyd,
14 and I think that it's fair -- and I know that other J6
15 trials have had this -- for the defense to have a narrative
16 witness as well, but they wouldn't have to cross-examine,
17 but they can direct examine for, let's say, a counter
18 narrative to the things that the government's narrative
19 witness says. So somebody, just as Officer Lloyd, who did
20 not personally witness things, but he would be testifying
21 based on video that he saw; then somebody can look at the
22 video that he saw and give a counter narrative.

23 I don't know what that would specifically be at
24 this point, but I think that it's fair for the defendant to
25 have a -- if the government has a narrative witness who does

1 not have personal knowledge of Ms. Young, which Mr. Lloyd --
2 which Officer Lloyd does not, for her to be able to present
3 a narrative witness. Because otherwise she's essentially
4 backed into a corner and has to testify, and obviously we
5 want to be able to have options.

6 THE COURT: So tell me, and then I'll hear from
7 the government. This -- you said there's an Officer Lloyd.

8 MR. GROSS: Yes, that's on the government's
9 witness list.

10 THE COURT: It sounds like you're aware of the
11 kind of testimony that he gives.

12 MR. GROSS: Yes.

13 THE COURT: What is that testimony? Describe it
14 to me from your perspective.

15 MR. GROSS: Sure. So Officer Lloyd is a
16 Metropolitan Police -- with the Metropolitan Police
17 Department. He was on the western front, and then I believe
18 he entered the building at some point.

19 To my knowledge -- I haven't seen any video where
20 he encountered Ms. Young. In fact, I think he was still on
21 the western front at 2:23 when she entered the building, and
22 she walked right past where he would have been, and they
23 never interacted.

24 The government can correct me if I am wrong.

25 But more generally, he is, I think, going to

1 testify as to what was going on not just on the western
2 front. I think that they mentioned that he's going to give
3 more general testimony in terms of what was going on that
4 day on January 6th.

5 And for me to elicit, let's say, any type of
6 counter narrative on him would not only be more difficult,
7 as they would have an advantage because they're eliciting it
8 from a friendly witness on direct examination, but also, I
9 think, just burdensome because then I have to show him
10 video -- I don't know in advance what he's going to be
11 testifying to -- and then if I want to maybe impeach him
12 with something that happened.

13 And I would much rather just allow him to give his
14 narrative testimony, and if there's some point that I think
15 the jury should be aware of that directly counters something
16 that he said, I should be able to bring that out on direct
17 examination with somebody who has already seen the video,
18 and David Sumrall is such a person.

19 THE COURT: Okay. But give me an example. What
20 might that counter narrative be countering Officer Lloyd?

21 MR. GROSS: Yes. For instance -- I'm making this
22 up hypothetically.

23 THE COURT: Sure.

24 MR. GROSS: But for instance, if Ms. Young is
25 standing at 2:00, and I know for a fact at that time let's

1 say she was on one side of the scaffolding, and he was on
2 the other side of the scaffolding, and there's no possible
3 way that he could have seen her, and he --

4 THE COURT: That Lloyd could have seen her.

5 MR. GROSS: That Lloyd could have seen her.

6 THE COURT: Got it.

7 MR. GROSS: So no personal knowledge, and he's
8 testifying from video or his own knowledge, recollection, of
9 the day, that they -- I don't know, that a mob descended on
10 a police officer right where Ms. Young was standing and
11 started beating him to a pulp or whatever.

12 THE COURT: Right. You should have been able to
13 see that and know that that is not a place she should have
14 been.

15 MR. GROSS: Right, exactly.

16 THE COURT: Something like that, something that
17 would feed into that.

18 MR. GROSS: Correct, exactly. And I know for a
19 fact that what he's saying is not true, and I have video
20 evidence.

21 So for me to have to, in advance, predict what
22 he's going to say and have 8.1 million videos or whatever on
23 hand at random access is obviously impracticable. But I do
24 have a general knowledge of the video around Ms. Young and
25 things like that.

1 And I have a narrative witness who was there that
2 day who didn't personally see it, but neither did Officer
3 Lloyd. And I could, rather than have to show the defendant
4 and box me into a corner where I have to put her on the
5 stand, have a friendly narrative witness where I can elicit
6 on direct examination and I can say to him: Do you see
7 this video? Do you see a mob of people descending? Do you
8 not -- and that way, as opposed to having to do it to a
9 hostile witness on cross-examination where he can just say
10 no, I don't see that, or I disagree, or whatever.

11 If they have a narrative witness, I should be able
12 to have a narrative witness. That's really all it is.

13 And the only purpose I would bring the narrative
14 witness for is not to writ large give a whole narrative
15 about January 6th. I maybe wouldn't even bring him. The
16 idea is just to have him standing there so I can have
17 somebody that I can counteract any inaccuracies and correct
18 the record.

19 THE COURT: All right. But I'm hearing you say
20 two things, at least two things, of what this witness might
21 say.

22 One is literally what the witness observed, which
23 was near, reasonably near and reasonably near in time, to
24 what Ms. Young observed, meaning he was standing near --
25 he's a he, right? He?

1 MR. GROSS: Yes.

2 THE COURT: He was standing near her at or around
3 the same time, so use his eyes. He's not going to take the
4 stand in this hypothetical. Let's use his eyes to describe
5 this, and if I find it's close enough, then, why not? I get
6 that part.

7 But now you're proposing as well, well, he was out
8 there. He's seen a lot of video. He understands sort of I
9 guess the set-up, you know, of the Capitol or the
10 scaffolding or anything else.

11 But what gives me pause is if he is testifying to
12 something that he doesn't -- he didn't actually observe that
13 day, he doesn't have personal knowledge of. And we can
14 argue about what that means when he may not have seen that,
15 but he saw a lot and understands the layout of the Capitol.
16 You're suggesting that that's what Officer Lloyd does as
17 well.

18 I'm surprised at that. I'm not sure if I would
19 approve either of them.

20 But anyway, let me hear from the government. Just
21 let me hear what she has to say.

22 Is that so?

23 MS. LEDERER: I'm going to take a few steps back.

24 It's Deputy Chief Lloyd, and he's with the Capitol
25 Police Department.

1 THE COURT: Okay.

2 MS. LEDERER: And as I explained before lunch,
3 Deputy Chief Lloyd is going to serve two purposes.

4 First being the overview witness to -- because of
5 his intimate knowledge being employed with the Capitol
6 Police. He knows the Capitol grounds. He knows the Capitol
7 building. And he knows the set-up going into January 6th.

8 And that blends into him being a factual witness.
9 He was present on January 6th. He was present on the West
10 Front. He then goes into the building, I believe, around
11 2 -- sometime after 2:12 p.m. he starts to respond to the
12 East Front.

13 Now, Deputy Chief Lloyd has testified in numerous
14 cases, so his transcripts have made it out there to the
15 defense bar. If counsel needs to order any, he'd be able --

16 THE COURT: She's on the West Front.

17 MS. LEDERER: So he's on the East Front -- excuse
18 me, strike that. He is on the West Front.

19 THE COURT: Ah.

20 MS. LEDERER: He observes the crowd coming in. He
21 has knowledge of the fact that, through radio chatter, the
22 crowd is descending. We actually see him -- I think it's
23 Exhibit 114 and potentially even in 101 -- on the West
24 Front. You can see him because he has a captain's type hat
25 on, so he's very identifiable in all of these exhibits. You

1 actually see him on the West Front. You can see him taking
2 everything in.

3 He's called to respond to the East Front around --
4 I'd say around 2:12 p.m. because the East Front is falling.
5 While he's responding, the building is breached at 2:12 p.m.

6 He comes upon -- Your Honor probably knows the
7 very famous photograph of Officer Goodman stopping rioters
8 as they tried to access the Senate when the Senate was
9 evacuating. He gets to the tail end of that while he's
10 responding to the East Front.

11 He never makes it to the East Front because he
12 then assists Officer Goodman -- this is all in 101. It's
13 called the Ohio Clock area hallway. He assists that
14 officer.

15 Then he responds to the House main doors because
16 there's concerns that rioters will eventually reach the
17 House main doors, which they do, including the defendant.
18 And you can actually see him in Exhibit 421A. Again, he's
19 got the hat on so very distinguishable.

20 He remains at that location outside the House main
21 doors for some time. And then after assessing how volatile
22 the crowd is and based off of his knowledge and what he
23 viewed on the West Front, he understands that there's going
24 to be nothing to stop the crowd out front.

25 He goes around the back starting to evacuate the

1 House floor.

2 THE COURT: Around the back of the House?

3 MS. LEDERER: Yes, he goes --

4 THE COURT: Toward the Speaker's lobby.

5 MS. LEDERER: He goes towards the Speaker's lobby.

6 He actually goes the opposite direction of where the crowd
7 eventually goes, so as he's effectuating the evacuation of
8 the House floor, after the crowd, including the defendant,
9 split and go the opposite direction. And he is there when
10 the crowd descends on the Speaker's lobby and can see them
11 through the lobby. So he can testify factually to all of
12 that.

13 So that's Part 1, is just laying what the --

14 THE COURT: Everything you've just said would seem
15 to be within his personal knowledge, whether it's the
16 general layout of the Capitol and intimate knowledge of all
17 these spaces and what's in relationship to what. That's all
18 within his personal knowledge. And everything you've just
19 described would also appear to be within his personal
20 knowledge.

21 MS. LEDERER: Yes, so then moving into the second
22 part, which is the main concern of whether the government
23 would ask him to essentially opine on certain things that
24 are on camera that he maybe did not necessarily see.

25 So on the West Front, he would be able to testify

1 that he had knowledge that the Capitol Police had to call in
2 back-up, which would be the Metropolitan Police Department.
3 He would have knowledge that Metropolitan Police Department
4 often wear yellow with their uniform so he'd be able to
5 identify that it would be the Metropolitan Police Department
6 coming up the north lawn. He can also --

7 THE COURT: Because of what they're dressed in.

8 MS. LEDERER: Yes, and based off of his knowledge
9 of the grounds, he can describe the direction of where
10 they're coming.

11 THE COURT: I still think that's all within his
12 knowledge.

13 MS. LEDERER: Yes. So when those officers are --
14 you can see on the body cam, 601 through 605, mainly the
15 condensed versions, they are assaulted -- we're not going to
16 ask the witness to say -- okay, sometimes we do ask like
17 what happened. Oh, there seemed to be a confrontation or
18 something like that.

19 We're not going to opine that there was an assault
20 and that Ms. Young saw it. That's speculation.

21 What we would do is pause it. Maybe ask to
22 describe what happened. Oh, it seemed like there was a
23 back-and-forth between people. But mainly what we would do
24 is we would be pausing it, circling the jacket, say, Do you
25 see this red jacket with an Aztec patterning on it? Yes.

1 What time does the body camera say? And that really just
2 establishes a timeline.

3 THE COURT: That would be her.

4 MS. LEDERER: Yes.

5 THE COURT: Ms. Young.

6 MS. LEDERER: Ms. Young. Anything else, all those
7 other inferences, that she saw an assault and then walked
8 away and continued, those would really come through opening
9 and closing argument.

10 So what defense is looking to do is, as opposed to
11 taking the difficult route, which would be to impeach Deputy
12 Chief Lloyd because he probably wouldn't like the answers
13 that Deputy Chief Lloyd would correct him on, he's looking
14 to bring in a witness which in other trials has kind of laid
15 out to have a certain bias towards January 6th, and then ask
16 him to opine on video.

17 But I also understand that defense is kind of
18 keeping him in the background to see if he needs to call
19 that witness, so this is all hypothetical. But it kind of
20 sounds like he's asking to bring in a witness who did not --
21 like Your Honor said, did not view certain things, and then
22 to opine on the video, no, that doesn't -- that's not what
23 it shows, it actually shows this, so...

24 THE COURT: And has that happened? Have other
25 judges allowed this Mr. Sumrall to do that?

1 MS. LEDERER: We did put that -- the government
2 did indicate which trials Mr. Sumrall has testified in. I
3 can't remember off the top of my head if he was able to
4 provide opinion testimony on what something showed, which I
5 don't think would have happened because that's not the law.

6 But I believe he's been called to testify as to
7 his experiences on January 6th, which then defense attorneys
8 can use to argue, well, he said he didn't see bike racks,
9 and my client was five feet away, there's no way she saw
10 bike racks.

11 THE COURT: Well, what about that? What if he
12 attempts to do that; "he" defense counsel? I mean, what's
13 wrong with that? I mean, assuming it's at or around where
14 she was, why not?

15 MS. LEDERER: No, that would be relevant
16 testimony. I will point out, though, that counsel did point
17 out that Mr. Sumrall, which the government did not know of
18 originally -- when defense threw him on the list, his
19 witness list, we didn't know that Mr. Sumrall was in
20 Exhibit 404.

21 After that, they could go completely different
22 directions. I'm not sure where Mr. Sumrall is where he's
23 viewing something, and I don't know if the two of them are
24 ever viewing the same thing again.

25 Mr. Sumrall can obviously explain that he was in

1 those locations --

2 THE COURT: Hold on. Sumrall and the law
3 enforcement witness? Who are you just talking about?

4 MS. LEDERER: No, I apologize. Ms. Young and
5 David Sumrall are in Exhibit 404, which is --

6 THE COURT: I thought 404 was this law enforcement
7 witness stuff.

8 MS. LEDERER: Excuse me.

9 THE COURT: The 400 series.

10 MS. LEDERER: Government Exhibit 404.

11 THE COURT: Ah, okay.

12 MS. LEDERER: Yes, I apologize.

13 Government Exhibit 404 shows Ms. Young in her red
14 jacket.

15 THE COURT: Yes.

16 MS. LEDERER: And Mr. Sumrall that defense has
17 identified wearing a Stop the Hate sweatshirt --

18 THE COURT: Yeah.

19 MS. LEDERER: -- he's beckoning everyone
20 forward --

21 THE COURT: Got it.

22 MS. LEDERER: -- which, again, I don't even think
23 this is a good witness period for the defense because he's
24 beckoning everyone forward. He might backfire spectacularly
25 in general, but --

1 THE COURT: But, I mean, he's there. She's there.

2 MS. LEDERER: He's there so --

3 THE COURT: So that's fair game.

4 MS. LEDERER: He'd be able to testify to what he
5 viewed at that area.

6 THE COURT: Sure.

7 MS. LEDERER: I'm just saying I don't know where
8 they -- "they" being Sumrall and Young -- we don't have any
9 evidence that they walked up together or saw the same things
10 together. So obviously his testimony would have to be
11 curtailed to what he experienced, if that foundation is laid
12 that it's relevant to where Ms. Young was at the same time.

13 THE COURT: Okay.

14 Mr. Gross.

15 MR. GROSS: Thank you, Your Honor.

16 First, just to give context, as the government
17 said, David Sumrall is somebody who has testified before at
18 trials, and he's brought typically because he has an
19 encyclopedic knowledge of the video that he's seen. And
20 that's why he's been brought by other defendants as well,
21 and that's why we intended to bring him.

22 And then it was really an act of God that the
23 government handed us a video that we were not aware of in
24 Exhibit 404 where they're standing right next to each other,
25 like literally face-to-face, at the most critical point that

1 I want to elicit testimony, and I think that we're in
2 agreement that that is relevant testimony. So I think we
3 can put that aside.

4 THE COURT: Uh-huh. I would agree with that.

5 MR. GROSS: Yes. So in terms of the narrative
6 testimony, first I want to point out that what she said --
7 what the government said was that ultimately Deputy --

8 MS. LEDERER: Deputy chief.

9 MR. GROSS: -- Deputy Chief Lloyd witnessed stuff
10 on January 6th. A lot of it because he was there and he was
11 an officer.

12 And then she said, and then he can look at someone
13 else's body cam footage and see the red Aztec jacket and say
14 Is that the defendant?

15 So that's exactly what I would bring David Sumrall
16 for, is that he was somebody who was there who has personal
17 knowledge of being around in general on January 6th. And if
18 they want, we can lay a broader foundation of what he
19 actually saw, but I don't intend to do that. What I would
20 just like to do is be able to show him body cam footage.

21 And as the government said, it's true that he has
22 a bias that is in favor of the defendant. That is exactly
23 why it would be a lot easier for me to elicit whatever I
24 need from the body cam, from the police body cam, from him
25 than from Deputy Chief Lloyd, who obviously has a different

1 bias as to what happened on January 6th.

2 So if I would bring David Sumrall for anything, it
3 would not be any opinion. It would be to show him a body
4 cam or a CCTV and say, What do you see in that image? Have
5 you seen that image before? Yes.

6 What is it? It's CCTV.

7 What are you looking at? There's a lady.

8 What she's wearing? A red Aztec jacket.

9 Something of that nature so that I can, if I'm trying to --
10 and it's impossible for me to now predict why I would need
11 to do this --

12 THE COURT: Sure.

13 MR. GROSS: -- but I just -- she said herself that
14 I guess if Deputy Chief Lloyd did not himself have a body
15 cam, I think she just said that, and I don't -- she can
16 correct me if I'm wrong -- he did not interact at any time
17 with Ms. Young. Even if he had a body cam, it wouldn't be
18 on it.

19 So he is caught on CCTV. He is caught on body
20 cam footage. If he testifies that I was in here, and I
21 saw Ms. Young, or whatever he may testify to, I can bring
22 Mr. Sumrall on and he knows that, no, you know, Deputy Chief
23 Lloyd was not there when he said he was there, and here's
24 the video to prove it.

25 I think that would be extremely relevant testimony

1 and certainly admissible.

2 THE COURT: Okay. Well, two things. As I
3 understand the government's testimony that it's going to
4 seek to elicit from Deputy Chief Lloyd, he's going to be
5 testifying based on his personal knowledge working with the
6 Capitol Police with respect to the Capitol, its layout, its
7 layout on that day, where is one thing in relationship to
8 another thing; and then testify based on what he actually
9 observed that day; and then further testify, based on it
10 sounds like other videos which he was not involved in but he
11 does not appear in, but in those videos, he can, based on
12 his experience, make identifications -- that is a Capitol
13 Police officer/that is not a Capitol Police officer -- which
14 would be certainly well within his personal knowledge.

15 It sounds like he might even be called on to do an
16 identification of the defendant, which I put in a different
17 category.

18 MS. LEDERER: Your Honor, if I may? I apologize
19 to interrupt. I just want to make it clear that he's not
20 going to specifically identify the defendant. However, what
21 I have done before with any overview witness is pause and
22 then identify the distinct --

23 THE COURT: Sure, just call the attention. Yes,
24 that's right.

25 So, you know, I don't have a problem with any of

1 that provided that it is relevant and probative to this
2 witness; so the government will have to lay that foundation,
3 too.

4 We're going to come to the timeline here in a few
5 minutes. Everything the government has to put in has to be
6 relevant and probative, just as the same rule applies to the
7 defense.

8 And then we go to the defense side of it.
9 Mr. Sumrall, it does sound, at least, in one moment he was
10 there with the defendant. I don't think there's any
11 objection about his testimony about video that shows that
12 and some context leading up to it and after it, some leeway
13 there.

14 Beyond that, I don't know. The same rule that
15 would apply to the government would apply to him. You know,
16 I would permit him to testify, you know, as to, you know, a
17 fact witness based on what he saw that day to the extent
18 it's relevant to the issues in this case involving this
19 defendant at places and times that are relevant in this
20 trial.

21 So I will permit him to be a -- you know, if he is
22 percipient witness testimony about the events that occurred,
23 you may include things like, if it's relevant, signage/lack
24 of signage that he observed, that he was present for, and
25 we'll just have to see how that comes up.

1 I don't hear either side as asking the other for
2 their witness to provide opinions. It's what they observe,
3 what they did observe. And I think that that's allowable
4 provided that it's relevant and probative.

5 I guess there's this last category of, well, what
6 about just using him to help you as you're going through
7 video to point out the things in the video that are obvious
8 just as the government wants to use Deputy Chief Lloyd to do
9 the same?

10 Do you see the woman in the Aztec jacket? Yes, I
11 do.

12 Can you point her out? Well, here it is.

13 Just to highlight things to the jury, things that
14 would be obvious to them, but highlighting them as both
15 sides like to do in front of a jury.

16 I don't know if that would be a problem. It
17 depends on the question. It depends on if he's able to do
18 what counsel's asking him to do within his own personal
19 knowledge. I guess we'll have to just see as the questions
20 are asked.

21 But asking him, you know, do you see any lady in
22 an Aztec jacket in this video? No. I don't have a problem
23 with that. To a certain extent, if it's cumulative, if it's
24 getting us nowhere how much video we're going to have to sit
25 here and have him narrate; but as I'm sitting here now, I

1 don't have a basis to say that he can't do that across the
2 board. So I think we'll just have to deal with that as it
3 arises.

4 Overall, again, I will permit him to testify about
5 those things that he observed on January 6th when he was
6 with the defendant, proximity to the defendant, as well as
7 other events that he observed if the defense can show that
8 either the defendant was aware of those events or it's
9 somehow relevant to some other issue in this case. I think
10 it will also just permit him to act as a pointer for
11 counsel, if that's all it is.

12 But to the extent it requires him -- you know,
13 some knowledge that is just outside of his knowledge, we'll
14 be fighting over those questions at trial, no doubt.

15 All right. So that's the best I can do with
16 respect to Mr. Sumrall.

17 Mr. Powers or Ms. Powers?

18 MR. GROSS: Ms.

19 THE COURT: Ms. Powers we've already talked about.
20 You know what the rules are going to be if she decides to
21 testify.

22 So I now want to move to the exhibits. And I
23 think, before doing that, I want to hear from the parties
24 with respect to the timeline. I'm going to take a three-
25 minute break, and then we'll do that. All right?

1 (Recess taken)

2 THE COURT: Okay. Government, go right ahead. I
3 was hoping to deal with your timeline first.

4 I'll tell you what started this. It was this
5 back-and-forth in the papers about the one video that's also
6 a motion -- the subject of I guess what would be the
7 plaintiff's motion in limine to prohibit you from -- it's
8 The Resistance video, and you gave an excerpt. It seems you
9 want to put the excerpt and not the 44-minute one.

10 But for me the question was, you know, to what
11 extent did this -- was this defendant outside of the front
12 door to the House and then around to the Speaker's lobby,
13 which obviously that was the location where the woman was
14 shot, which I did see in the longer video. It doesn't
15 appear that your shorter version would include that. It
16 stops just moments before the shooting happened.

17 But then on the other side, as I read it -- and I
18 don't know if this conflict exists now, but, as I read it,
19 there seems to be some suggestion that Ms. Young was not
20 outside the Speaker's lobby; that she went left, and that
21 was right. And so I'm like where was she.

22 But that -- at the core, that was one that I was
23 worried -- concerned about.

24 But then more broadly, if we're going to have
25 arguments both over what the government can present in its

1 overview of what happened that day in relationship to the
2 defendant and arguments about what the defendant may present
3 about what happened that day in relationship to her, then I
4 need a better understanding of what the evidence is going to
5 show as to where she was at and was she there.

6 So that's what this is all about.

7 MS. LEDERER: It's completely understandable, Your
8 Honor, and I think this is actually a great idea because it
9 straightens it out for all of us and really forces us ahead
10 of time to make sure that the Is are dotted and Ts are
11 crossed.

12 I can just run through my outline for the record,
13 if you would like. I also did the best that I could turn
14 around. I threw a bunch of still shots on a PowerPoint that
15 I could fire up.

16 THE COURT: I would love to see it. I mean, I
17 want to know what you got.

18 MS. LEDERER: I think the only issue at this point
19 would be how much Ms. Young can see. She has all of these
20 exhibits, but --

21 THE COURT: What do you mean? She can't see it,
22 or -- she physically can't see it?

23 MS. LEDERER: I don't know if right now, where I'm
24 standing, or if I plug in the HDMI if at any time point
25 she'll be able to see.

1 THE COURT: Could we put it up on her screen?

2 MS. LEDERER: I could potentially log in and share
3 my screen, but then the quality of what you see might be
4 harmed.

5 THE COURT: Madam Clerk, is there any idea what we
6 can do here?

7 All right. I can see the PowerPoint. You're
8 saying -- Ms. Young, can you see that PowerPoint?

9 THE DEFENDANT: No, Your Honor.

10 MS. LEDERER: I think what I can try to do, and I
11 apologize --

12 THE COURT: Can you just send her the PowerPoint?
13 Can you email it? Can you email it to counsel?

14 MS. LEDERER: I will try. Unfortunately, you
15 probably know from having a government email address they
16 like to prohibit how large files are that are sent over it.

17 What I can do is upload it to USAFX. That might
18 take some time because I'm remote.

19 What I can also do is log on to the Zoom and share
20 my screen, but as I said before, there's a potential that it
21 affects the quality that we see here in the courtroom. But
22 if that is the case, at least Ms. Young could see it; I
23 could unplug and then show it to you.

24 THE COURT: Well, why don't we try that because --
25 I'm happy to try that. I'd like her to see it.

1 Ms. Young, do you have something you want to say?

2 THE DEFENDANT: I would -- in the effort to
3 expedite the Court in this process, I'm comfortable with my
4 attorney being able to see the PowerPoint.

5 THE COURT: All right. Thank you. And we can get
6 you a copy of it after the hearing.

7 MS. LEDERER: Absolutely. And thank you,
8 Ms. Young.

9 Your Honor, what I did with the timeline was
10 attempt to put as much evidence as possible into both -- I
11 have both exhibits that I'm relying on in the timeline, but
12 also I put some additional ones both together. I think I
13 might have been remiss to miss it might have been 425A or B,
14 but I did include that in the PowerPoint.

15 But I just wanted to say that this is not an
16 exhaustive timeline, nor is the PowerPoint. I tried my best
17 to include what I thought was the big ticket items, and like
18 I stated in the footnotes of the timeline, this isn't going
19 to be boiled down to just what we might show. We might show
20 video that's outside on either ends of the timestamps that
21 were provided.

22 But basically what we know about this case -- and
23 I can either start with the timeline itself, or kind of talk
24 about big picture how we present January 6th cases which
25 might play in later down the road.

1 THE COURT: Whatever you want to do. This is my
2 first case.

3 MS. LEDERER: Basically big picture of how January
4 6th cases are presented is basically the most popular
5 charges that are out there that -- no matter if you're
6 charged with a felony or just misdemeanors, what most people
7 are charged with across the board are the two 1752 counts as
8 well as the 5104.

9 So to establish what the 1752 counts require,
10 which is the restricted perimeter, the government calls two
11 witnesses: a United States Capitol Police officer and
12 Secret Service. These two witnesses are called at the end
13 of the day to boil down the fact that there was a restricted
14 perimeter.

15 Why? Well, both witnesses can give that there was
16 a certification process that day. Both witnesses can give
17 that the vice president was going to go to certify the 2020
18 election. And both witnesses can give that because the vice
19 president was attending, that certain security measures are
20 taken in place because a protectee of the United States
21 government requires a restricted perimeter.

22 So Capitol Police can say that based off the fact
23 the vice president was coming and that we got notification
24 from the Secret Service, we established the perimeter, which
25 is Exhibit 102. That is basically a demonstrative that

1 Capitol Police say, yes, this red line is consistent with
2 barriers that were established on January 6th.

3 There was additional barriers put up the lawn.
4 It's not just the one singular line. There's additional
5 snow fencing and barricades that were positioned up the West
6 Lawn and potentially even on the East Front, but relative
7 for this case is the West Front.

8 And beyond the fact that Secret Service and the
9 Capitol Police together established the fact that there was
10 a restricted perimeter, Capitol Police also give us the
11 overview of January 6th, as well as their all-boots-on-the-
12 ground view.

13 So what we would receive from a Capitol Police
14 officer, they'd be able to establish that this is the West
15 Front of the Capitol. This is the inaugural stage that was
16 constructed for the inauguration that was to occur a few
17 weeks later. And what we know from the timeline is that
18 Ms. Young traveled from New England on a bus down to
19 Washington, D.C.; that she went to the rally; and that she
20 stayed at the rally for some point in time before she came
21 down to the Capitol.

22 We don't know what exact time she crossed into the
23 restricted perimeter, but we do know, from Government
24 Exhibit 404, that she went on from the west side, and we do
25 know from other exhibits that she at some point positions

1 herself on the northwest side.

2 Through the timeline that's been established
3 through multiple videos, we know that the lower -- these are
4 the northwest steps right here that I'm pointing to. The
5 northwest staircase, the lower portion, was breached by
6 rioters at approximately 1:48 p.m.

7 As I included in the timeline outline, the
8 government will be adding an exhibit, which is Government
9 Exhibit 319 -- that's CCTV -- that covers --

10 THE COURT: Let me go back. So you say Defendant
11 Young enters the Capitol ground's west restricted perimeter
12 at an undetermined time.

13 You cite to Exhibit 404. What does 404 show?

14 MS. LEDERER: 404 is the video that counsel was
15 describing earlier where David Sumrall is on a megaphone
16 beckoning people forward. The defendant is standing with
17 two flags in her hand looking forward directly at the
18 Capitol. It then cuts off.

19 THE COURT: And you don't know what time that is?

20 MS. LEDERER: I do not know what time that is,
21 Your Honor, no.

22 THE COURT: Defense doesn't know either.

23 You know generally.

24 MS. LEDERER: Unless he has some specific
25 information that the government's not aware of, he knows --

1 we know generally that she arrived sometime before --
2 hopefully once we get the CCTV we'll know what time she was
3 up on the northwest steps, but we know she was up on the
4 northwest steps by 1:40-something. She had to arrive on
5 Capitol grounds before 1:40 approximately.

6 THE COURT: Okay.

7 MS. LEDERER: We don't know how long it took her
8 to go up the northwest lawn. We don't know how long it took
9 her to walk from the Capitol -- or from the Ellipse down to
10 the Capitol. We also don't know what time she left the
11 rally.

12 THE COURT: Okay.

13 MS. LEDERER: And to let Your Honor know, which we
14 won't get this much into the background, but Exhibit 101 is
15 the montage that establishes when the perimeter was first
16 breached by rioters and then certain main timeline events
17 that occur from I think it was like 12:58 on.

18 Now, some people arrived before the breach
19 happened, which you might know from the Proud Boys trials.
20 A bunch of Proud Boys walked down very early, before I think
21 even the former president started speaking. They were down
22 there before there was the precipitation to press forward.
23 There's no evidence that Ms. Young was down there that
24 early.

25 We're not going to get into how early people first

1 arrived, but through 101 we'll establish the timeline of
2 January 6th in big, broad picture strokes of when those
3 barricades were first breached, how the crowd went up from
4 there, how the West Plaza slowly was taken over, the Capitol
5 was breached, yada, yada, yada.

6 THE COURT: Okay. We're back to 1:48.

7 MS. LEDERER: Yes, and as soon as the government
8 gets the CCTV from Capitol Police that shows the official
9 timestamps, we'll --

10 THE COURT: I'm lost. You don't have the
11 official? What does that mean? You don't have that?

12 MS. LEDERER: Your Honor, we have -- both counsel
13 and the government have access to CCTV from the Capitol.
14 However, the Capitol Police, when we request with the
15 timestamps, they have to approve clips with the timestamps
16 on it, send it to the government, who can then provide it.
17 But both the government and the counsel do not have access
18 to CCTV with timestamps on it.

19 THE COURT: But you will before trial.

20 MS. LEDERER: Yes. And what we have --

21 THE COURT: When did you make the request?

22 MS. LEDERER: Yesterday.

23 THE COURT: Okay.

24 MS. LEDERER: I found --

25 THE COURT: This was in January of 2021.

1 MS. LEDERER: Yes, Your Honor, I found her on the
2 steps yesterday in a certain angle. I alerted defense to
3 it. I tried to upload the clip without the CCTV, but I ran
4 out of storage on USAFX. He has access on Evidence.com, so
5 I provided as much information so that he can watch it.

6 I brought it today if anyone else wants to watch
7 it. I also have the still shot from the CCTV that shows her
8 on the lower portion.

9 THE COURT: Right, but -- you don't know the time,
10 but you will.

11 MS. LEDERER: Yes.

12 THE COURT: You know approximately the time.

13 MS. LEDERER: I know generally from January 6th
14 cases that the lower portion of the northwest steps was
15 breached around 1:48 p.m. I will let Your Honor know that
16 the camera angle that shows that lower portion is kind of
17 like a pole cam. It's moveable, so it might not focus in
18 until after that breach was made, but we'll at least know
19 when CCTV captures her up there.

20 THE COURT: Okay.

21 MS. LEDERER: We also know from open source --
22 this is a still from Government Exhibit 406, 12 seconds in
23 -- that the defendant climbs and is assisted in scaling the
24 northwest steps lower ledge.

25 THE COURT: Okay.

1 MS. LEDERER: And up here there's police presence,
2 and we know that that crowd grows.

3 This is from Government's Exhibit 407, 37 seconds
4 in. She's still up there, and up here is Capitol Police
5 pointing pepper --

6 THE COURT: I see her there.

7 MS. LEDERER: She's circled right here. You can
8 see the flag, and then her sunglasses and her hat are right
9 here.

10 THE COURT: Oh, I see, okay. I assume this is all
11 moving pictures, right? So you'll be able to -- you're
12 going to show them the video.

13 MS. LEDERER: Yes, Your Honor.

14 THE COURT: So you'll see her moving.

15 MS. LEDERER: Yes, Your Honor.

16 THE COURT: Okay.

17 MS. LEDERER: This is from CCTV again. We don't
18 know the official timestamp, but you can see her hat. And
19 as it moves, you can see the distinctive print that is
20 visible on the camera and in all of the other open source.

21 Again, I don't have the official timestamp, but we
22 know that somewhere between 1:48 and 1:59 p.m., when MPD go
23 by her, that she climbs back down off of this ledge, and you
24 can see her right here with the hat --

25 THE COURT: Now she's going down.

1 MS. LEDERER: Now she's going down.

2 And, Your Honor, I will point out kind of how we
3 corroborate timeline-wise.

4 You'll see that there's this gentleman right here
5 in a New Balance sweatshirt, in a hoodie, and a mask. Here
6 in Exhibit 414, which is also video -- this is timed or
7 paused as six seconds in -- you can see the same gentleman
8 here. This ties into Exhibit 405 because 405 is filmed by
9 someone on the ground which shows this individual scaled on
10 the lamppost, and then it catches Ms. Young, who climbs down
11 and is stationed in this area off to the left when
12 Metropolitan Police come by.

13 And we know that this specific civil disturbance
14 unit from the Metropolitan Police, from their body cam, we
15 know that they arrive at around 1:55 p.m. They park on the
16 northwest side. They pass the barricades that counsel's so
17 interested in saying that didn't exist; they pass those
18 barricades and begin to cut through the Northwest Lawn
19 where, in Exhibits 601 through 605, which we had played the
20 condensed versions which are subexhibits labeled with A, we
21 show that these officers begin to be assaulted as they close
22 in on Ms. Young.

23 Right here -- this still is 602A, which is from
24 Officer Curtis. He's right behind Officer Mastony. That is
25 right in front, and then you can see Ms. Young and her flag

1 right off to the right in Exhibit 605A.

2 Officers again are assaulted by the crowd, at
3 which point -- this is just a still from 605A at time mark
4 1:05, which is -- the actual stamp is 2:01 and 48 seconds
5 p.m.

6 As those officers are confronted by the crowd,
7 Ms. Young leaves her position that she was standing in
8 before on Officer Curtis's and Mastony's body cam, and she
9 walks forward back towards the direction of the northwest
10 steps away from the commotion that's occurring, which picks
11 up 405 that I was discussing about earlier.

12 You can see Metropolitan Police Department helmets
13 here circled in blue. Ms. Young is here after she moves
14 away from them, which the video captures in 405. Them
15 continuously confronted by the crowd. Ms. Young moves over
16 here.

17 THE COURT: Does this audio have -- does this
18 video have audio?

19 MS. LEDERER: Yes, this video has audio in which
20 you can hear Ms. Young saying, "Tell the truth, our house."
21 And that is around 1:59 into the video.

22 MR. GROSS: What video is this?

23 MS. LEDERER: This is Exhibit 405, or 405A, which
24 is our -- the subexhibit. So its 1:59 into 405A.

25 THE COURT: Not all these videos have sound, or do

1 all of them have sound?

2 MS. LEDERER: All have sound except for CCTV.
3 CCTV does not capture sound, which is why it's imperative to
4 also show open source because it gives life to what is
5 occurring in the CCTV.

6 But while looking at the CCTV, which we'll get to
7 in a second, you can see Ms. Young's mouth moving often in a
8 form that appears to be "USA." And then when you play
9 corresponding open source, you can hear the crowd actively
10 chanting "USA, USA, USA."

11 THE COURT: Okay.

12 MS. LEDERER: We know from CCTV that at
13 approximately 2:09 p.m. -- the northwest kind of midpoint of
14 the stairs -- the crowd is able to walk up from the lower
15 ledge. They're able to encroach onto officers, and they
16 overrun officers kind of at the midpoint section.

17 At 2:09 p.m., forcing officers back up the steps
18 to the Upper West Terrace. The crowd is so large that the
19 officers have to scatter from there.

20 And the building is initially breached at 2:12
21 p.m. at the Senate Wing emergency exit doors, which is shown
22 in Exhibit 101.

23 I haven't been able to find Ms. Young yet in CCTV
24 pointing at the staircase, so I don't know at what point she
25 starts moving up those northwest staircases, but we know

1 it's somewhere between 2:09 p.m. and 2:22 p.m. when she
2 actually enters the building.

3 Here she is in Exhibit 419 on the northwest steps.
4 Again, you can see --

5 THE COURT: Is this just a still?

6 MS. LEDERER: This is just a still --

7 THE COURT: Is this just a photo?

8 MS. LEDERER: -- but 419 is a video.

9 THE COURT: Okay. But you don't know -- you don't
10 know the time because 4:19 is just public video. It's not
11 CCTV.

12 MS. LEDERER: No, this is open source video
13 sourced from another January 6th defendant. I do not know
14 the exact time. I've been trying to find her in the sea of
15 people on the CCTV so I can give an actual timestamp. If
16 that happens, everyone will know.

17 Right now we just know it's from the time frame of
18 2:09 where those stairs officially fall and knowing other
19 distinctive people like this guy in the white hat or with
20 the T-shirt around his head. He's not visible in CCTV when
21 the line officially falls, so it can't be at 2:09. It could
22 be anywhere from five to ten minutes later that she walks
23 up, but we also know she gets in the building at 4:22 p.m.
24 [sic].

25 THE COURT: You're doing all this? You don't have

1 an agent who does this?

2 MS. LEDERER: The agents do a phenomenal job in
3 their investigations, but when it comes to piecing this all
4 together, because of, you know, their lack of the intimate
5 knowledge of the Capitol, yes, we are doing all of this.

6 THE COURT: Interesting. Okay.

7 MS. LEDERER: After she comes up the northwest
8 steps -- and I apologize to flip back, but I just want to
9 let Your Honor know the location that we're dealing with.
10 Ms. Young would come up here, and in 419 you can actually
11 see other barricades that were pushed over by the rioters
12 descending on the final police line that was up here on the
13 Upper West Terrace. Defendant Young comes up the steps and
14 walks over the Upper West Terrace into this little nook
15 area.

16 THE COURT: Uh-huh.

17 MS. LEDERER: And that, I believe, is either 418
18 or 419. It's the same defendant who is filming going up the
19 steps which captures Ms. Young in the background. He's also
20 filming.

21 There are officers that are stationed right
22 outside the parliamentary doors. They're Capitol Police
23 CDU. Defendant Young looks in a window over here before
24 traveling in through the Senate Wing doors.

25 THE COURT: And that's at 2:22.

1 MS. LEDERER: That's at approximately 2:22 p.m.,
2 Your Honor. If you give me one second, I can pull up the
3 CCTV with the exact time. Yes, 2:22:56 p.m.

4 Circled here is Ms. Young, and you can tell that
5 her mouth is open, and on CCTV it appears that she is
6 chanting as she enters the Capitol building "USA, USA."

7 THE COURT: How many minutes after the doors are
8 breached is she entering?

9 MS. LEDERER: This would be approximately 12
10 minutes after.

11 THE COURT: Okay.

12 MS. LEDERER: And as the government --

13 THE COURT: But she just walks in an open door.

14 MS. LEDERER: Yes, Your Honor, and she is -- so
15 you can tell over here to the -- looking at the screen,
16 which would probably be your left in real life, individuals
17 are climbing through the windows. There is glass smashed
18 out on the floor.

19 On the other side of her, that window is also
20 smashed out that people are climbing through, and there's
21 glass on the floor.

22 You can also either tell from either 418 or 419
23 that this person is coming in either directly right before
24 or right after Ms. Young, but you can also tell, in 425 and
25 421, those two individuals entered at different times, like

1 a five-minute cushion. There's an alarm that's absolutely
2 blaring the entire time.

3 THE COURT: You have an alarm audio?

4 MS. LEDERER: Yes.

5 THE COURT: This doesn't have it, right?

6 MS. LEDERER: The CCTV doesn't, but either
7 Exhibit 418 or 419, the individual that goes up the steps
8 with Ms. Young captures her on the Upper West Terrace. He
9 doesn't necessarily capture her going in, but we know they
10 go in at around the same time. The alarm is blaring at that
11 point in time.

12 THE COURT: Okay.

13 MS. LEDERER: And this would be on the blueprint
14 exhibit that the government and defense is going to be
15 using.

16 This little arrow that I put here, this is
17 obviously not on the exhibit. I just did it for Your Honor.
18 This would be the area where Ms. Young entered through that
19 emergency exit door.

20 She then hooks a right and goes down towards the
21 Crypt area. We don't have evidence that she actually goes
22 to the Crypt.

23 THE COURT: You don't have it.

24 MS. LEDERER: There's no evidence that she went
25 into the Crypt. What purports to happen from the CCTV is

1 that she goes up the Supreme Court steps before the Crypt.

2 THE COURT: Where are those? Can you go back to
3 the map. Where are the Supreme Court steps?

4 MS. LEDERER: Yes. And at the end of the day I'm
5 going to defer to Deputy Chief Lloyd, when he testifies, but
6 I believe the Supreme Court steps are right about here where
7 this arrow is.

8 THE COURT: Okay.

9 MS. LEDERER: And because that's near the Supreme
10 Court --

11 THE COURT: But you have this on CCTV?

12 MS. LEDERER: Yes. And that would be --

13 THE COURT: There it is.

14 MS. LEDERER: Yes. And she breaches those steps
15 at 2:24:33 p.m. --

16 THE COURT: Okay.

17 MS. LEDERER: -- which I know it's in my timeline
18 what --

19 THE COURT: It is.

20 MS. LEDERER: -- exhibit it is so I don't have to
21 belabor this.

22 THE COURT: 302, 302.

23 MS. LEDERER: Yes, thank you.

24 So this staircase takes her from the first floor
25 to the second floor, and just for our reference -- which

1 would mean she would come out somewhere around here.

2 I apologize; I didn't put the arrows here. That's
3 why I have -- I don't know if you can see it -- the
4 squirrely spiral of the staircase and the chamber again,
5 and at which point she enters into the Rotunda.

6 THE COURT: What's this chamber? What do you
7 mean, "the chamber again"? What is that?

8 MS. LEDERER: I believe that's the old Supreme
9 Court chamber.

10 THE COURT: Ah.

11 MS. LEDERER: And, again, I will defer to Deputy
12 Chief Lloyd. He knows all of this like the back of his
13 hand.

14 THE COURT: Yes.

15 MS. LEDERER: But because the staircase is called
16 the Supreme Court chamber, and the knowledge that I've
17 gleaned thus far in my tour of the Capitol is there was a
18 Supreme Court chamber at some point at the Capitol.

19 THE COURT: Interesting.

20 MS. LEDERER: We have her on two different CCTV
21 exhibits. One from the North End; one from the South End.
22 This one specifically is Exhibit -- Government's Exhibit
23 304, and this is at 2:26:07 p.m. We have her circled here
24 in the Rotunda, and she appears to be filming.

25 She then crosses back into the velvet rope area

1 and carries on towards Statuary Hall.

2 In Exhibit 303, as she gets closer to Statuary
3 Hall, again, you can see her mouth moving and forming what
4 appears to be "USA, USA."

5 And also, just to let Your Honor know, I think
6 defense and I have worked pretty hard to -- you know, we
7 both understand the authenticity of all of the video, but
8 just so you know there's an individual right here who's
9 filming. That is the person who filmed what is Exhibit 421.

10 MR. GROSS: That's Montoya?

11 MS. LEDERER: No, that is -- 421 is John Sullivan.

12 THE COURT: That's not The Resistance.

13 MS. LEDERER: That's not The Resistance, no.

14 MR. GROSS: That's not.

15 THE COURT: All right.

16 MS. LEDERER: And at a nearly simultaneous point
17 in time you'll see Mr. Sullivan in this C-SPAN video, but
18 this is just a still. You also see him on CCTV. So he's
19 filming proactively at the same time that Ms. Young is in
20 the Rotunda and this Statuary Hall and at the House main
21 doors and at the Speaker's lobby.

22 THE COURT: You don't have Ms. Young's video?

23 MS. LEDERER: No, Your Honor.

24 THE COURT: Okay.

25 MS. LEDERER: Looking at the statements that she

1 gave to agents, she showed agents photographs from the
2 rally. They, unfortunately, deemed it not relevant evidence
3 so they did not retain those photographs.

4 She also stated that she tried to film but,
5 paraphrasing here, that she couldn't film. However it
6 appears on multiple angles from CCTV she was actively
7 filming, at least from the Rotunda --

8 MR. GROSS: Objection.

9 THE COURT: Keep going. You can go ahead,
10 Counsel.

11 MS. LEDERER: So here we see that either she's
12 filming or her flashlight is on. That happens to a lot of
13 us sometimes. We leave our flashlights on.

14 And as she's walking -- this is Exhibit 420. This
15 still was from about 2:32 into 420. As she crosses over the
16 C-SPAN -- or over this camera, the C-SPAN camera -- this is
17 also captured in 421 -- you can hear her say something to
18 the effect of this place needs a good saging and something
19 about this -- something about sage, and then this place
20 needs a good saging.

21 The woman right here with the white hair starts
22 talking about the Capitol and saying something about we own
23 it, to which Ms. Young responds, "That's right, we own it,
24 we own you," as she crosses from Statuary Hall into the Will
25 Rogers Hallway.

1 THE COURT: What is the Will Rogers Hallway?

2 MS. LEDERER: The Will Rogers Hallway comes right
3 after Statuary Hall.

4 THE COURT: Okay.

5 MS. LEDERER: So how we have her is coming
6 through the Rotunda -- and this is one of our exhibits.
7 This is a -- showing the left side of I think Exhibit 108,
8 which shows the second floor. This is kind of a
9 demonstrative that helps the jury understand the House main
10 door versus the Speaker's lobby.

11 So Ms. Young comes across the Rotunda, comes
12 across Statuary Hall into the Will Rogers Hallway where, for
13 eight minutes right at this line here, the crowd is stopped
14 by Capitol Police officers, including Deputy Chief Lloyd.

15 THE COURT: One moment. Before -- go back to the
16 last one.

17 So I have seen the video, The Resistance video,
18 the five- or six-minute portion. And as defendant admits,
19 there is a moment in that video when you can see her
20 standing against the wall.

21 Can you just put your cursor where she was
22 standing? I think it's right, like, there or around the
23 corner a little bit, like right --

24 MS. LEDERER: Your Honor, it would be kind of
25 where this -- not necessarily where the green arrow is, but

1 you can kind of see right before the green arrow there is
2 kind of an enclave here.

3 THE COURT: Uh-huh.

4 MS. LEDERER: Those are the House main doors. So
5 where she would be standing in 425A would be right off to
6 the side of that enclave.

7 THE COURT: Uh-huh.

8 MS. LEDERER: Which I think I have some stills
9 that kind of give Your Honor --

10 THE COURT: Okay.

11 MS. LEDERER: -- a gist, and just to let Your
12 Honor know, which Deputy Chief Lloyd will testify to, the
13 crowd starts to form at 4:28 p.m. This angle's looking back
14 towards Statuary Hall.

15 THE COURT: 2:28 p.m.

16 MS. LEDERER: Yes. Thank you. Sorry.

17 The police line forms here. If you were to look
18 behind this officer's hat, that's where the House main doors
19 are.

20 When the crowd arrives, you can tell from
21 Exhibit 421 the doors are still closed. The House main
22 doors are actually set up of three doors, and those doors
23 are where the vice president ceremoniously walks through,
24 and behind him is the box being carried with the ballots.
25 All three of those doors are closed.

1 When this line is eventually overrun, the crowd
2 pushes through two sets of the doors coming to the final set
3 of doors, which would lead directly to the House floor.

4 So we see her arriving at 4:28 and 18 seconds p.m.
5 She positions herself kind of right up at the front of the
6 crowd, and as she arrives, again, it appears that she is
7 chanting "USA, USA."

8 The crowd remains here. And to be clear, we have
9 evidence of other people, and you can see it on 421A. It's
10 kind of like a bartering system is going on for quite some
11 time trying to get past officers. They're physically
12 overrun at about 3:35 p.m. again.

13 This still specifically is from Exhibit 308, and
14 the still shot is 2:35:57 p.m., and I circled --

15 THE COURT: You mean 2:35 p.m.

16 MS. LEDERER: I apologize. What am I saying? At
17 2:35 and 57 seconds p.m. And I have circled her pompom of
18 her hat.

19 THE COURT: Okay.

20 MS. LEDERER: After the line of officers fall,
21 which is in this -- this is a still from Exhibit 309 at 1:05
22 p.m. You can see officers being pushed back.

23 Ms. Young drops her flag. You can see it on CCTV.
24 Someone helps her pick the flag back up, and she joins back
25 in the crowd, which is evidenced by both CCTV -- you can see

1 her walk back into the crowd -- but also by Exhibit 425B.
2 In 425B -- as I was discussing, this is kind of like the
3 enclave -- this is the three sets of doors. This would be
4 the first door.

5 She positions herself back in the crowd after the
6 line falls and after she collects her flag. The entire
7 crowd remains here for four minutes.

8 At this specific still in 425B -- this is at 27
9 seconds in -- the crowd is chanting "Stop the Steal," and it
10 appears that Ms. Young is also engaging in that chant.

11 Also around this time an officer fights his way
12 back out of the crowd because I believe either two or three
13 of the officers got pushed all the way to that final door.
14 One officer is able to fight his way out the crowd past
15 Ms. Young. She decides to go back into the crowd after he
16 fights his way out.

17 The person who filmed this is also captured on
18 CCTV. I don't think that counsel's going to object to the
19 authenticity, if it is admitted, but the government is
20 prepared to identify who that person is in CCTV, which I
21 think actually I have him right off to the side, if it comes
22 to that.

23 THE COURT: What's this angle? Can you go back to
24 like the schematic?

25 MS. LEDERER: Yes. So this angle --

1 THE COURT: I'm looking up -- yes.

2 MS. LEDERER: This angle would be looking --

3 THE COURT: Looking up there, right. Got it.

4 MS. LEDERER: Or looking down. Or looking up.

5 THE COURT: Is there a little police line?

6 MS. LEDERER: There was the police line right
7 here --

8 THE COURT: Right.

9 MS. LEDERER: -- which is the Will Rogers.

10 THE COURT: And it gets pushed back.

11 MS. LEDERER: It gets pushed back.

12 THE COURT: And then where is it? There?

13 MS. LEDERER: So the line at that point
14 dissipates.

15 Before the line even falls, a few minutes before,
16 Deputy Chief Lloyd goes right and goes around and starts the
17 evacuation, because actually the House is in session still
18 at 4:28 p.m. [sic]. They do recess, but then they're still
19 kind of remaining there until the evacuation starts. So
20 some officers are kind of recongregating to both the left
21 and right.

22 But at some point officers start to then travel
23 down to the Speaker's lobby, and three officers specifically
24 set up a line at the Speaker's lobby.

25 But once that line falls right outside the House

1 main doors, there's no specific line from the House main
2 doors to the Speaker's lobby. It's just kind of triage at
3 that point.

4 THE COURT: Right, okay.

5 MS. LEDERER: This is a still from Exhibit 426,
6 which this still itself doesn't show, but I know that
7 counsel had issue with 426.

8 426 is shot from the crowd at the House main door
9 into the House floor showing the officers' response to the
10 danger that the --

11 THE COURT: With guns drawn.

12 MS. LEDERER: Yes.

13 THE COURT: I've seen that. But like -- okay, I
14 get it.

15 So are you saying that she is part of the group
16 that is outside of that door; if not immediately outside
17 that door, maybe ten rows back?

18 MS. LEDERER: Yes, Your Honor, creating a danger
19 and an absolute emergency situation inside.

20 THE COURT: Well, you can see the reaction of the
21 officers.

22 MS. LEDERER: Yes.

23 THE COURT: They've got their guns pulled out;
24 that's how concerned they are.

25 MS. LEDERER: It's beyond disorderly conduct at

1 this point. It's a complete national security breach.

2 THE COURT: But can you place this video in time?

3 MS. LEDERER: Yes, Your Honor. Based off of 421A,
4 you have the filmer stating, "There's officers at the door.
5 There's officers at the door."

6 We don't have the CCTV -- the CCTV we have clipped
7 is from 2:44 p.m. showing them with their guns drawn, but
8 officers were at that door for the remainder of the time
9 that people were at the House main door because they're
10 actually chanting, "break it down, break it down," as
11 members are being evacuated from the floor -- from the first
12 floor.

13 The gallery on the second floor is not able to be
14 evacuated until I believe after -- sometime after the
15 shooting. So there is always members and staff and media
16 on -- in or on the floor from the initial -- 2:28 through
17 2:44.

18 THE COURT: Okay.

19 MS. LEDERER: Oh, actually I did include the
20 video.

21 THE COURT: Does it have audio, too?

22 MS. LEDERER: It does. I don't -- I probably have
23 to play with the settings.

24 THE COURT: I don't need to hear it. I just want
25 to know. Okay.

1 MS. LEDERER: So at some point a rioter sees two
2 of the three officers -- this is what I'm assuming because
3 it kind of looks like it on the CCTV. One of the rioters
4 sees two of the officers, two of the three that end up at
5 the Speaker's lobby door hustling around the backside to
6 provide protection from that area, and a few people follow.

7 Then one individual starts waving. You can
8 actually hear the whistle, I believe, in 425B. There's
9 a whistle. Everyone looks -- including, I believe,
10 Ms. Young -- and starts hustling down towards the Speaker's
11 lobby.

12 THE COURT: Which -- just show me on this map.
13 Which way is that?

14 MS. LEDERER: That would be --

15 THE COURT: This way. That way.

16 MS. LEDERER: -- down to the south.

17 THE COURT: But Chief Deputy Lloyd went the other
18 way.

19 MS. LEDERER: Yes.

20 THE COURT: He looped around, all the way around,
21 and into the Speaker's lobby.

22 MS. LEDERER: Yes. He goes to the north --

23 THE COURT: Uh-huh.

24 MS. LEDERER: -- and does the mirrored path --

25 THE COURT: Right.

1 MS. LEDERER: -- to the Speaker's lobby to the
2 floor, started evacuating anyone on the floor, so then when
3 the crowd goes down the south side, turns in, they go past
4 the -- which I think I actually have a series of maps.

5 I wanted to do this so you can see each point so
6 I'll move on.

7 THE COURT: Sure. Go ahead.

8 MS. LEDERER: So the crowd comes down south, which
9 includes --

10 THE COURT: That's her moving south?

11 MS. LEDERER: Yes.

12 THE COURT: This is CCTV?

13 MS. LEDERER: This is CCTV, but also 421 and 424,
14 both of those -- I'm going to discuss A -- can tour her
15 moving as well. They capture the whistle, her moving. And
16 CCTV captures it as well, which puts her moving down towards
17 the Speaker's lobby.

18 THE COURT: You're going to do all this through
19 Chief Deputy Lloyd --

20 MS. LEDERER: Yes.

21 THE COURT: -- is that right? So he's going to
22 say I know the cameras. I know the layout. I know where
23 these people are.

24 MS. LEDERER: Yes.

25 THE COURT: And I can always see this woman in the

1 Aztec jacket.

2 MS. LEDERER: Yes.

3 THE COURT: All right. Okay.

4 MS. LEDERER: And then that's tied together -- I
5 mean, beyond the fact that she identifies herself, the
6 agents will also -- how I do that, I condense that. Instead
7 of playing this all again with agents, I just ask: You've
8 seen a lot of video today. The person in the Aztec jacket,
9 who is that? That's the defendant.

10 THE COURT: Sure. Okay.

11 MS. LEDERER: And right behind her, playing into
12 ECF 35, the concern of whether or not it was authentic.
13 Right here at 2:42 p.m. is Montoya circled in red, so he's
14 right behind her.

15 THE COURT: Is that The Resistance --

16 MS. LEDERER: The Resistance video, yes.

17 THE COURT: Interesting. Okay.

18 Another question.

19 Oh, are you going to just do -- you're going to
20 play the video, or you're going to show the stills?

21 MS. LEDERER: No, we're going to play the video.
22 I just wanted to --

23 THE COURT: No, I don't need to see it. For the
24 jury.

25 MS. LEDERER: Yes. No, the jury will actually see

1 the videos.

2 THE COURT: Okay. So this is going to take a
3 while.

4 MS. LEDERER: Yes and no. I have directed Deputy
5 Chief Lloyd about three times now, so I kind of somewhat
6 have it down to a science, and if there's really -- if I
7 don't have to lay the individual foundation with "the
8 individual in the hat," "now let's move it back," there's a
9 way to just move through it very quickly.

10 THE COURT: Okay.

11 MS. LEDERER: As quickly as you can when dealing
12 with this much video, I will say.

13 THE COURT: Okay.

14 MS. LEDERER: So as everyone kind of hooks that
15 right, the crowd would be coming around here and passing
16 what are called the east stairs, which is what I'm hovering
17 over, and you can see that from Exhibit -- I believe this is
18 410. And you can see Ms. Young turning the corner.

19 And then right here, kind of where this individual
20 with the hoodie on is, he can kind of see the columns. That
21 would be the east stairs.

22 THE COURT: Okay. And she's turning the corner.

23 MS. LEDERER: Now from the east stairs, you then
24 have to pass the upper House doors, which is this alcove
25 here, and that's covered in Exhibit 311.

1 And, Your Honor, I want to take the opportunity at
2 this point to point out that I had made an error in my
3 initial timeline to you. I had said that at 2:42:17 p.m.
4 that -- I believe I put Exhibit 310. That should read 311.
5 The timestamps are correct as evidenced by what's now on my
6 screen. This is Exhibit 311.

7 THE COURT: Uh-huh.

8 MS. LEDERER: She passes the upper House doors at
9 2:42 and 22 seconds p.m. And what is key from this video
10 that ties in for 24A, The Resistance video, there is an
11 individual you can see using a flag to hit on the door. You
12 can see that in CCTV. That is shown in 421A, which is the
13 John Sullivan video. The very tail end of that is captured
14 in 424, The Resistance.

15 And then an individual that is also captured in
16 421A, John Sullivan's video, then kicks a door or it's just
17 maybe even the wall. That is then picked up in 424A. So
18 that's how we know what is being shown on the video has not
19 been manipulated, and that it's running simultaneously with
20 when Ms. Young is in this area.

21 THE COURT: Okay.

22 MS. LEDERER: After passing the House main doors,
23 the crowd then turns right here. You can kind of see an
24 opening. And they are met by three officers and three sets
25 of doors, and that is the Speaker's lobby.

1 Ms. Young doesn't make it as far in as the rest of
2 the crowd, but we know from 421A and from 424A, she's
3 captured right at this hook turnaround facing directly
4 towards the Speaker's lobby.

5 THE COURT: So The Resistance video is
6 obviously -- that individual was much deeper into that
7 hallway. He appears to be right in front of the doors
8 blocking the Speaker's lobby, and that's where, in a few
9 minutes, the shooting occurs.

10 MS. LEDERER: Yes, Your Honor. Both --

11 THE COURT: I never see her in that video, at that
12 part of the video. But you're saying she's behind him, but
13 not far behind him.

14 MS. LEDERER: Yes, Your Honor. I can't put a
15 number on how far behind, but you see in both 421A, which is
16 Sullivan, and 424A, which is Montoya, the two of them
17 eclipse her at kind of like that turnaround point in
18 Montoya's video, which I have a still of, I believe. You
19 see her directly facing forward into that crowd.

20 Also in Montoya's video, at some point he turns --
21 I believe it's either Montoya's video or maybe the
22 Exhibit RMG video, a person turns around -- and I have it.
23 I'll show it to you -- I'll show you it in a second. The
24 camera person turns around, and you see a sign, a Please Be
25 Quiet sign, being passed up, and you see a chair being

1 passed up.

2 Ms. Young, in one of her statements to FBI agents,
3 discusses that furniture was being passed up. So that's
4 how, again, we can corroborate the fact that she's in the
5 hallway at the time of the shooting, and also CCTV then
6 captures her walking back across those House main door areas
7 at 4:45 p.m., which would be after the shooting.

8 THE COURT: All right. Well, take me through that
9 then.

10 MS. LEDERER: So this is from 421A, and this shows
11 the person smashing the flag on to either a wall or a door,
12 which is corroborated with 311. And then this also shows
13 that path of travel.

14 We're passing the east stairs, the House main
15 doors, and then hitting the hallway where you have to turn
16 right into the Speaker's lobby.

17 (Video playing)

18 MS. LEDERER: So you can see the person kicking.

19 THE COURT: Yes.

20 (Video playing)

21 MS. LEDERER: You can see Ms. Young heading down
22 towards the end of that hallway.

23 THE COURT: So this is not The Resistance video.

24 MS. LEDERER: This is 421A, which is from a
25 defendant named John Sullivan.

1 THE COURT: Right, but not The Resistance video.

2 MS. LEDERER: No.

3 THE COURT: But I see in The Resistance video that
4 person kicking the door.

5 MS. LEDERER: Yes. I can skip on to it, but I
6 also --

7 THE COURT: Yes. Well, here it is. You were
8 about to show me.

9 MS. LEDERER: Yes, I'm about to show it. But why
10 also this video's important is eventually Mr. Sullivan cuts
11 all the way up through the crowd. As he's cutting up, you
12 can hear everyone screaming "they're leaving, they're
13 leaving."

14 I included this in here --

15 THE COURT: I want to see it.

16 MS. LEDERER: -- because defense has an objection
17 to Exhibit 417, which is the close-up of the actual members
18 evacuating.

19 THE COURT: Okay. Keep going.

20 (Video playing)

21 MS. LEDERER: So you can see her turning towards
22 that hallway. We lose sight of her for the rest of the way
23 from 421A.

24 I know there's no sound because I'm plugged in,
25 and I don't have the sound setting correct. I can fix that,

1 if you'd like.

2 But at this point you can hear people start to
3 scream "they're leaving, they're leaving." You can see an
4 individual with their middle fingers up. And this right
5 here, that's a bathroom. But when it pans back around,
6 that's the Speaker's lobby, which you can see from the
7 signage above. And these are the three officers that I
8 mentioned earlier that end up at the Speaker's lobby door,
9 and there's furniture piled up behind.

10 This individual in the fur hat, he is responsible
11 for smashing all of these windows, which I think a portion
12 of that is shown in the RMG exhibit. So that ties in
13 Exhibit 417 as well as establishing the fact that Ms. Young
14 does hit that final stretch.

15 But, again, I never know how far she makes it in.

16 Now, this is The Resistance video, which is 424A,
17 and there's that red jacket man. I don't think I clipped
18 this properly, but I believe you do catch the very last
19 portion of him kicking.

20 And through the crowd, if I can pause this, you
21 see her glasses and her hair, which, again -- and this is
22 John Sullivan here. She's turning that corner to the
23 Speaker's lobby.

24 THE COURT: Okay.

25 MR. GROSS: I'm sorry, where is Cindy at that

1 moment?

2 MS. LEDERER: I'm playing it again. I will pause
3 it.

4 I missed it, but I can give you the actual
5 timestamp for the exhibit, Mr. Gross.

6 THE COURT: I thought I just saw it a moment ago.

7 MS. LEDERER: Unfortunately it's making me play it
8 all over again. But she is --

9 THE COURT: I thought I saw her right in there.

10 MS. LEDERER: She is. Give me one second.

11 And there's the man that was kicking the door.

12 There, paused right here. And I can give you the
13 exact timestamp.

14 THE COURT: There she is.

15 MS. LEDERER: But here, on the laser pointer, you
16 can see her glasses and her hair. She appears to lose her
17 hat when the line of officers is overrun at the House main
18 doors. From that time on she does not have a hat on, but
19 the glasses are visible.

20 MR. GROSS: And then she goes in there?

21 MS. LEDERER: She walks in the direction, but both
22 the filmer of 421A, which is right here, John Sullivan, and
23 Montoya eclipse her. But as I stated before, which is
24 evidence -- and this is 422B, a still from one minute and 14
25 seconds into that -- you can see a sign being passed up

1 towards the door and a chair, which Ms. Young tells agents
2 she saw people passing up furniture.

3 Now, what occurs simultaneously, just right after
4 this, as well, this chair and item is not used; however, the
5 individual in the fur hat is given a helmet. That
6 individual uses the helmet to smash out all three of those
7 windows.

8 Right before that, officers -- this won't be
9 testified to, but just for Your Honor's knowledge, a CERT
10 team, which I wish I could remember the acronym, responds
11 from staircases that are right off to the right of the
12 crowd.

13 THE COURT: I saw that.

14 MS. LEDERER: Officers who are guarding the door
15 move out of the way thinking that the CERT team is going to
16 have time to slide in. They don't.

17 The individual with the fur hat smashes out each
18 one of those windows giving way for the rioter to jump up,
19 and she's then shot because there are still -- the
20 evacuation is still ongoing. There were members in the
21 gallery, which is --

22 THE COURT: You're going to stop it before she's
23 shot.

24 MS. LEDERER: Yes, absolutely.

25 THE COURT: Are you going to elicit that a person

1 was shot?

2 MS. LEDERER: Yes, based off of the presence of
3 the crowd, and Deputy Chief Lloyd has knowledge of that.
4 He's evacuating, but he knows what happens at the Speaker's
5 lobby.

6 THE COURT: Sure, okay.

7 MS. LEDERER: We're not going to belabor the
8 point. We're not going to say that Ms. Young directly was
9 responsible for this, but talking about the danger of the
10 crowd period; again, that this is beyond just disorderly.

11 THE COURT: Sure.

12 MS. LEDERER: This is a -- you know, it proves
13 disorderly conduct. But, yes, this is a different ball
14 game.

15 THE COURT: Okay.

16 MS. LEDERER: And then Exhibit 429 shows why there
17 was such a danger. 429 is footage from the gallery of the
18 House main doors.

19 Here are those officer -- I don't know if they are
20 the exact same officers. I don't know if they switched out
21 at any point. But this right here is the House main door.
22 So the video initially is showing the House main door, which
23 also CCTV Exhibit 318 points down towards the House main
24 doors.

25 In 318, at 2:44:42 p.m., you see officers whip

1 their heads around towards the Speaker's lobby. That's
2 consistent with Deputy Chief Lloyd knowing when the shooting
3 occurred, which happened at approximately 2:44 p.m.

4 THE COURT: This is not the Speaker's lobby. This
5 is the doors where you previously had shown the video with
6 the glass broken out, and you can see the officers with
7 their guns out.

8 MS. LEDERER: Yes, Your Honor.

9 THE COURT: Not the Speaker's lobby.

10 It's interesting, though, that the woman who is
11 shot in the -- I mean, is this just me? My interpretation
12 of what I've seen before was that it was one of these people
13 who shot the woman out of these doors, and it wasn't.

14 MS. LEDERER: No. Yes, which is -- that's
15 often -- I think that's kind of all of our initial idea
16 because, for the most part, you know, there has been care
17 not to show someone dying.

18 THE COURT: Yes.

19 MS. LEDERER: So I think when a lot of people saw
20 this angle, especially that CCTV angle, on the news or just
21 in these cases, we all had the same -- I had the same
22 thought. Oh, that's it.

23 THE COURT: But it's not it.

24 MS. LEDERER: That's why we have all the maps and
25 whatnot to reorient that.

1 No, the Speaker's lobby actually is behind them.
2 That's why you see them whip their heads.

3 318 moves towards the Speaker's lobby, and I think
4 this video, too, also pans towards that area as well. But
5 that area is not covered in CCTV, which is why we rely on
6 the open source.

7 What 429 does show, not only does it capture the
8 sound, but it shows people still in the gallery.

9 Now, at 4 -- excuse me.

10 THE COURT: 2.

11 MS. LEDERER: At 2:45 and 33 seconds p.m., back
12 across Exhibit 311 you can see Ms. Young walking back
13 towards the east steps.

14 THE COURT: This is after you know the shots are
15 fired?

16 MS. LEDERER: Yes.

17 THE COURT: And they would have been fired -- I
18 don't know. Where is this at? Is she looking towards the
19 Speaker's lobby right now?

20 MS. LEDERER: No, she's actually going back
21 towards the House main doors.

22 THE COURT: Okay.

23 MS. LEDERER: So she's exiting the area.

24 The Speaker's lobby would be to where I'm drawing.
25 Me looking at this, I don't know if it would be the same

1 angle. It's back. We saw her at, I think, 2:42 p.m. moving
2 towards the Speaker's lobby, and now at 2:45 p.m. she's
3 moving back towards the House main doors.

4 Excuse me. She comes across the east stairs,
5 turns the corner back towards the House main doors --

6 THE COURT: Sees the smoke.

7 MS. LEDERER: -- sees the smoke.

8 THE COURT: What's the smoke?

9 MS. LEDERER: I don't know specifically if this --
10 I'm assuming it was set off by officers. I do not know for
11 sure.

12 It also -- I know that Deputy Chief Lloyd has
13 testified before, because he's not at this specific area at
14 this time, he either thinks it might have been smoke from
15 Capitol Police, but it also could have been a fire
16 extinguisher that either Capitol Police used to disperse the
17 area, or it could have come from a rioter.

18 You actually see on CCTV, when those two officers
19 are responding to the Speaker's lobby, one of those
20 officers, who is now an agent but his name is Yetter, he's
21 covered in a white dust. It's because when he was
22 protecting the Memorial Doors, a rioter sprays him in the
23 face with a fire extinguisher.

24 Fire extinguishers were used definitely by rioters
25 that day, but also it could have been Capitol Police, not

1 having anything on them, using a fire extinguisher to clear
2 out that area.

3 Ms. Young turns back around, engages, I think,
4 with officers right before this and right after this,
5 appearing to look for directions.

6 They point her in this direction. She sees this,
7 makes a U-turn, goes back. Again, talks with the officers,
8 who point her down the stairs.

9 She goes down the stairs, back down to the first
10 floor, and then exits around 2:48 p.m.

11 THE COURT: Okay.

12 MS. LEDERER: So that is a complete walk-through.

13 THE COURT: Thank you.

14 MS. LEDERER: As complete as possible.

15 THE COURT: All right. We're going to take a ten-
16 minute break, and then I'll hear from the defendant.

17 (Recess taken)

18 THE COURT: Okay. Mr. Gross, it has to be the
19 most recorded event, criminal event, in human history.

20 MR. GROSS: I agree with that. I refer to it
21 generally as Ground Hog Day.

22 THE COURT: So anyways, you have your timeline. I
23 don't know if you disagree with anything that the government
24 has said or if you want to point out anything to me.

25 MR. GROSS: Yes, I would like to make a few

1 points.

2 First of all, now you see why these cases are so
3 challenging for the defense, I'm sure.

4 THE COURT: Yes.

5 MR. GROSS: And I want to point out that within
6 this case -- and this is just for the record, but that I did
7 present a motion to allow me and the defendant to be able to
8 travel, and you granted it, and we appreciated that. But
9 when we got here, we took an official tour. We were only
10 able to see the Crypt and the Rotunda and Statuary Hall, and
11 that was it.

12 And then I pushed a little bit harder, and they
13 did organize two tours, which were made on very short notice
14 on a Sunday, which I couldn't attend, but I had somebody
15 else attend it, and also many of these areas were not
16 accessible. And it's kind of a big disadvantage for a
17 January 6th defendant that Deputy Chief Lloyd is going to be
18 able to testify with all this knowledge of this area and
19 everything, and we weren't given access to see it.

20 So I just want to put that on the record. Thank
21 you.

22 So the -- when it comes to Deputy Chief Lloyd --

23 THE COURT: I just want to make sure. Is your
24 client connected? Is she hearing all of this? I just don't
25 have her on the screen.

1 THE COURTROOM DEPUTY: Sorry.

2 THE COURT: Okay. She's right there. She can
3 hear. All right, keep going.

4 Hi.

5 MR. GROSS: So there's one thing that I had a
6 question for the government about. In about 1,500
7 informations and indictments and statements of facts, the
8 government says that the House members, the representatives
9 of the House of Representatives, were instructed and did
10 evacuate at 2:20. That's in Ms. Young's information.

11 THE COURT: Okay.

12 MR. GROSS: So Ms. Young entered the building at
13 2:23 roughly, at 2:22 and 57 seconds. So if that's the
14 case, and if it was Deputy Chief Lloyd who was involved in
15 instructing the House of Representatives at 2:20 to
16 evacuate, then the timing is just a little off because I
17 think that they were saying that he was around the outside
18 of the House Chamber at 2:28 or so.

19 So I'm just confused on that part based on the
20 government's statement, so I'd like to hear clarity from
21 them at some point.

22 Another point I'd like to make it that I am very
23 much against bringing in -- and I urge the Court also to
24 agree that we should not bring the shooting of Ashli Babbitt
25 into this trial.

1 First of all, I think it can be established here
2 today that Ms. Young did not see or have knowledge of the
3 shooting, and the way that I would suggest that is, if you
4 look at the demeanor of the people who did witness the
5 shooting versus Ms. Young and a lot of the other people who
6 were around, including law enforcement, they're very
7 different.

8 And, in fact, you can see Ms. Young at about 2:45
9 in the video that the government showed. She's asking
10 directions from one of the officers. One of the officers
11 gives her directions how to leave. I think it's clear that
12 she and the officer and all the people that were around at
13 that time at 2:45 in that area, there's a long hallway that
14 they were not down. I don't think Ms. Young traveled down
15 that hallway in one minute. I think she was not there, and
16 I think that officer and she and all those other people
17 didn't know.

18 And the reason that I think it's so important is,
19 once again, this is just a misdemeanor case, and the
20 government is suggesting that the shooting of Ashli Babbitt
21 somehow relates to Ms. Young's disorderly conduct, whether
22 she was disorderly or not. And does that open the door to
23 litigate whether the shooting of Ashli Babbitt was justified
24 or not?

25 I mean, I don't want to ask that question. I

1 don't want to get into that. This is a misdemeanor case. I
2 don't want to litigate a police shooting.

3 I think that they have enough that they can go on,
4 and I think that it's prejudicial, and it fails the 403
5 balancing test.

6 So that's something for the Court to consider.

7 THE COURT: Okay. What else? Anything else?

8 Anything specific to your timeline? Anything that
9 you dispute about their timeline or you want me to focus on
10 your timeline?

11 MR. GROSS: Yes.

12 THE COURT: Again, my -- I mean, certainly part of
13 any response I would have, especially to the concern you
14 just raised, is the extent to which Ms. Young was in the
15 area where that shooting occurred, and I -- in the
16 government's presentation, I would say she was in that area
17 at the time the shooting occurred. I had the impression,
18 and perhaps it was the misimpression on my part, that, no,
19 she made a left. She was way over in some other place, you
20 know.

21 And, again, you might have -- it might have all
22 just come together for government and for you in this past
23 week because everyone's now focused on this in getting ready
24 for today. But it does appear to me that she was in that
25 area.

1 If you want to say factually that's not correct,
2 then here's your time to do it. I don't know what basis you
3 would --

4 MR. GROSS: And I would say factually is the video
5 at 2:45 where she exits the hallway and asks the police for
6 directions -- and I can bring that up on the screen -- if
7 you watch that video. Now, once again, I -- you'll have to
8 forgive me for anything that I might have written in the
9 past or my perceptions in the past. I don't have the
10 resources that the government has.

11 THE COURT: Sure.

12 MR. GROSS: I don't have the perspective of a
13 thousand cases behind me, so I'm doing the best that I can.

14 THE COURT: Understood.

15 MR. GROSS: And what I will say is that that video
16 at -- I don't know how long that hallway is, the one where
17 Ashli Babbitt is at the end of the hallway, all the way at
18 the end, at the window. And then there's steps, and then
19 there's a lot of people. And then there's -- and there were
20 a lot of people there to navigate through.

21 But we see -- at 2:45, we see Ms. Young asking for
22 directions outside of that hallway. So she goes into the
23 hallway at 2:42, and we don't know what she sees or what
24 happens or at what point, you know, where she is in that
25 hallway. We see -- she's on John Sullivan's video, but, as

1 she says, she's eclipsed, which means that John Sullivan
2 travels ahead of her. It is Montoya who takes The
3 Resistance video.

4 So she's behind. So we don't know where she is
5 there, but we do know that she is outside of the hallway at
6 2:45.

7 So my suggestion is that Your Honor can decide
8 today that based on the demeanor of everybody who saw it
9 versus the demeanor of her, that that's enough to suggest
10 that she did not see or have knowledge of the shooting,
11 because that happened at the end of a narrow hallway with a
12 lot of confusion in between Ms. Young and the incident.

13 THE COURT: Do you have that video to play for me?

14 MR. GROSS: Yes.

15 THE COURT: I'd like to see it. I think I have
16 seen it. I feel like I didn't appreciate where it was or
17 when it was, but I remember her speaking to a police officer
18 or some sort of officer. I don't know who it was.

19 MR. GROSS: Is there a way to hide my screen?

20 Thanks.

21 THE COURTROOM DEPUTY: Okay, let me know.

22 MR. GROSS: I will.

23 (Pause)

24 MR. GROSS: Okay. I'm going to play the video
25 now.

1 THE COURTROOM DEPUTY: Okay.

2 MR. GROSS: I believe we're going to have to watch
3 about one minute and 30 seconds of the video. The Court's
4 indulgence, if you'll allow it to go.

5 THE COURT: Do you know the angle of this? Do you
6 know where on the schematic I'm looking at?

7 MR. GROSS: Yes, I can show you that.

8 MS. LEDERER: Your Honor, I also have the official
9 CCTV. This does not have the timestamp. I can pull up the
10 timestamp. It's also on the government's timeline just
11 because I think that will help you conceptualize better than
12 having video that does not show the timestamp.

13 THE COURT: Well, if you could pull that up for
14 counsel's assistance, that would be great. I'd also like
15 you to show me, Government --

16 MR. GROSS: I'll let the government do that then.

17 THE COURT: -- where on the -- where in the
18 schematic. What angle am I looking at?

19 MS. LEDERER: Your Honor, the government has
20 pulled up 310A.

21 So if you remember, we have the House main doors.
22 The crowd cuts -- I'm the crowd. I'm looking at the House
23 main doors. The crowd cuts left, which is the opposite area
24 that Deputy Chief Lloyd goes in.

25 After the crowd turns left, they walk down the

1 hallway, which is that long shot that we saw.

2 THE COURT: They make a right.

3 MS. LEDERER: And then they make a right. This is
4 the angle as if you took a right.

5 Once you take that right --

6 THE COURT: The stairs to the left.

7 MS. LEDERER: -- the steps are to the left. Once
8 you pass the steps, then it's the House main doors, and you
9 hit the end of the hallway, and you have to turn a left into
10 the Speaker's lobby.

11 THE COURT: A right.

12 MS. LEDERER: Yes, thank you, you have to turn a
13 right into the Speaker's lobby, so it's basically like a
14 rectangle essentially almost.

15 THE COURT: Yes, okay.

16 MS. LEDERER: After the shooting at 2:44, almost
17 2:45, Ms. Young is then captured at 2:45, almost 2:46,
18 crossing back across the House main doors.

19 She then has to cross back across the steps, and
20 then comes back out to that hallway that leads back down to
21 the House main doors.

22 She comes back out at 2:46 and ten seconds p.m.
23 So this is 310A, and we see her and her scarf right here.

24 THE COURT: I don't see anything right now.

25 MS. LEDERER: Am I not plugged in? I must have

1 messed with the settings. I'm going to unplug real quick.

2 (Pause)

3 MS. LEDERER: Thank you so much. There we go. A
4 little roulette there. Thank you so much.

5 So here on the screen is 310A. I can see and I
6 can press "Play." This is also in the government's
7 timeline.

8 (Video playing)

9 MR. GROSS: Can we rewind to 2:44?

10 MS. LEDERER: 2:44 p.m. or 2:44 in the timestamp?

11 MR. GROSS: Yes, 2:44 p.m.

12 MS. LEDERER: Let me bring up 310. It might be on
13 310.

14 MR. GROSS: Can you pause here.

15 So, Your Honor, my point is unless they have video
16 in there that actually shows her at the far end of the
17 hallway, it looks to me that there is a hallway that --
18 because I haven't had access to the Capitol, I have no idea
19 how long that is, but it looks like you can fit at least,
20 you know, maybe ten people deep, and then there's a door,
21 and then there's another room. And then at the end of that
22 room and hallway there's another door, and that's the door
23 where Ashli Babbitt was shot.

24 And it seems to me that there's just a lot of
25 space there and a lot of confusion going on and a lot of

1 people. And unless they can determine and show me that --
2 or show us, I should say, that Ashli Babbitt is in that
3 second room -- excuse me, the defendant is in that second
4 room, and she is looking at the shooting, then I suggest
5 that there's enough to say that she wasn't in that room, and
6 we could avoid this issue.

7 THE COURT: Well, I guess I didn't understand that
8 that was your point. I thought your point was this is post-
9 shooting, and she's not reacting in a way that someone would
10 react who has just heard or seen a shooting. She seems
11 calm, cool, and collected, and the people in The Resistance
12 video do not because they are on top of a woman who has just
13 been shot. I thought that was your point.

14 MR. GROSS: That --

15 THE COURT: That is perhaps a better point. We
16 can come to that, but what you've just suggested is that
17 this video shows that she's not close enough.

18 Now, I mean, what I saw through the government's
19 prior presentation -- and it was not relying upon this video
20 or just this video. It had a whole series of videos that
21 had her, I think fairly said, walking down, you know, the
22 hallway, turning a right, walking past where the steps were,
23 walking down to the hallway where she did appear. And that
24 was the key video where you're like Where did you see her?
25 Did you see her glasses or not?

1 She has turned, and she's looking -- at least
2 looking up the hallway to where the Speaker's lobby is. And
3 then at least one of those videographers, if not two of
4 them, go up into the hallway now with Ms. Young to their
5 back, and then the shooting occurs.

6 I'm happy to hear from the government, but it does
7 not appear to me, from my recollection of the videos that I
8 have seen, that the -- that part of the hallway that goes up
9 to the Speaker's lobby door is particularly long. I don't
10 believe it is, and they've got Ms. Young, who is in the
11 mouth of it at the very least, looking up into it. And then
12 they don't have her leaving that area until after the
13 shooting has occurred.

14 So I do believe that she is, you know, there at
15 least at a time where she can hear, see, or, even more
16 importantly, that she's part of the crowd that has led to
17 this response when it's the government's obligation to show,
18 as part of this disturbance and disorderly conduct, that
19 there is -- that her, and frankly whatever word you want to
20 use, crowd, protest, is creating a disturbance, a danger,
21 yes.

22 Is that something from which a jury can watch and
23 is evidence of what the government has to show? I think it
24 is.

25 The fact that the government is willing to say,

1 you know what, we're not going to show the actual shooting,
2 we're just going to have the officer say that, you know,
3 seconds after that video ended, that person who you saw in
4 the video was shot -- that's what happened. It does appear
5 that the jury could conclude from the government's evidence
6 that your client was there, was part of that crowd.

7 I think it comes in.

8 Now, I will -- you know, your -- I would like to
9 see, and I thought you were going to show me -- and please,
10 show me if there is something at 2:44/2:45 where you see her
11 acting in a way that she -- you wouldn't expect someone who
12 has just seen a shooting to make.

13 I haven't seen that yet. You haven't shown it to
14 me.

15 MR. GROSS: I'll show it to you.

16 THE COURT: But the idea that somehow it was all
17 way down there and who says she was down there, I think
18 they've got her down there.

19 THE COURTROOM DEPUTY: Let me know when you're
20 ready.

21 MR. GROSS: I'm ready.

22 (Video playing)

23 MR. GROSS: And here she comes.

24 (Video playing)

25 MR. GROSS: And that's it.

1 THE COURT: All right. Well, I mean, okay. And
2 what's your argument? That that -- what does that show?

3 MR. GROSS: My argument is that I think that there
4 were two different kinds of reactions. There were the
5 people who were there and we see their reactions, and
6 they're putting their hands on their face and they're doing
7 all kinds of things that show distress and shock and awe and
8 horror.

9 And I think we see her just walking around and
10 looking for the officers and talking to them, asking for
11 directions, and that's her reaction.

12 THE COURT: All right. Well, I think you can make
13 all of those arguments to the jury to include, you know, at
14 the very least she wanted out of there. That's not what she
15 wanted any part of. That wasn't part of her plan. But you
16 can make those arguments to the jury.

17 I want to focus -- and I do appreciate -- I would
18 like to get the answer because I thought this was
19 interesting. He said that multiple affidavits for years
20 have said 2:20, and you've suggested the House wasn't
21 evacuated until ten minutes later.

22 MS. LEDERER: So I can read you the exact
23 language, and I can understand why it is confusing because
24 it discusses both the House and the Senate.

25 So the fact language is, "Shortly thereafter" --

1 and this is on Page 1 of the affidavit at the very bottom.

2 "Shortly thereafter, at approximately 2:20 p.m., members of
3 the United States House of Representatives and the United
4 States Senate, including the president of the Senate, Vice
5 President Mike Pence, were instructed to and did evacuate
6 the chambers." So that covers the Senate, which does --
7 these aren't exhibits at trial unless defense tries to make
8 an issue, but he has access to what we call the 1512-type
9 evidence, which shows a montage video of the certification
10 process, and the House is still on the floor at 2:28 p.m.

11 If my recollection serves me correctly, I think
12 the way they were instructed, both houses -- or both the
13 Senate and the House were instructed to evacuate at 2:20,
14 and only the Senate listened.

15 But corroborated by the montage video that is
16 shown in the 1512 cases, the House is -- and by the
17 congressional record, the House is still -- I think they
18 might take a recess. They then go back into session, and
19 then they recess again when the crowd is outside the door.

20 And, Your Honor, I just wanted to take the
21 opportunity to put on the record that Mr. Gross was invited
22 to tour the Capitol with over a month's notice. I
23 understand that that was on a Sunday, but he was making
24 representations that certain areas of the Capitol were off
25 limits.

1 I was on the government tour, but my understanding
2 is that both the defense and government tour were going to
3 be the same. And, yes, certain areas were still off limits
4 to even the agents and the government attorneys, but we all
5 had the same access to the Capitol and access -- there was a
6 quick drive-by of the Speaker's lobby.

7 THE COURT: Oh, you think there was a quick walk-
8 by?

9 MS. LEDERER: There was. I mean, it was on the
10 government's tour because I have actually prosecuted both
11 John Sullivan and the individual who smashed in the windows,
12 so I was actually shocked with how tiny that space is
13 compared to how big it looks on the video. So I remember
14 distinctly that we got access to the Speaker's lobby. My
15 understanding -- not inside. That was all off limits. But
16 that door itself. We kind of did like a -- they only
17 brought us within a certain feet, and my understanding is
18 that defense had the same tour.

19 So I just want it to be very clear for the record
20 that defense has been given the same exact opportunity to
21 tour the same areas as the government.

22 THE COURT: But the distance between the mouth of
23 that Speaker's lobby hallway and the doors blocking it,
24 you're saying it's not a long distance.

25 MS. LEDERER: It's not. I just remember being

1 shocked at how close the hallway was, the confined space of
2 the hallway.

3 Also, there's stairs off to the right of everyone
4 staring at the doors, and I was shocked that no one ended up
5 falling down --

6 THE COURT: Yes, I saw that, too.

7 MS. LEDERER: -- those stairs. The video -- maybe
8 it's just my perception -- it seems like there's a great
9 deal of space. But in actuality, I'm completely blown away
10 that none of the members of the House stepped back --

11 THE COURT: It was packed with people.

12 MS. LEDERER: -- and down the steps.

13 THE COURT: Right, right, okay.

14 So I do want to focus, then, on that portion of
15 the motion in limine that is talking about this. We'll call
16 it The Resistance video. You know, it's -- again, as
17 happens, the facts keep changing on the ground.

18 The defense wants to exclude the 44-minute video.
19 It appears that the government only wants to submit about a
20 five-minute-and-change video of that.

21 I've heard you with respect to the end of the
22 video leading up to the shooting, unfortunate shooting. I
23 do think it's probative, and I think the probative value is
24 certainly not outweighed by the prejudicial effect, if there
25 is any, with respect to a discussion of that shooting in the

1 way that the government has proposed; that is, to not show
2 the shooting but to acknowledge that it happened moments
3 after the video ends.

4 I'll do that based on the government's proffer and
5 showing to me today that the defendant does appear. At
6 least a jury could reasonably conclude that the defendant
7 was in that area, in the area where the shooting occurred,
8 and if she didn't see it, she very likely heard it.

9 You can cross-examine and ask whatever questions
10 you want to with respect to the video. In the government's
11 argument here, there's no assertion that she was directly
12 involved in that shooting, but nevertheless it does appear
13 that she was part of the crowd which was outside the
14 Speaker's lobby when the shooting occurred.

15 The government does have to show a disturbance,
16 disorderly conduct, and part of that is -- can be showing a
17 disturbance of the peace and the fact that the conduct of
18 the crowd was endangering individuals within the building.
19 So I think it's all relevant to that.

20 That said, the question is, maybe you have
21 specific additional objections to the use of that video. I
22 know that you mentioned the banner, The Resistance. You
23 were not happy with that.

24 I have -- I do wonder when the video should begin,
25 especially given everything you've just shown me, which you

1 can trace her all the way through what she actually did. I
2 do wonder the value of the beginning of the video. And it
3 does appear to me that perhaps that person is following a
4 slightly different path than Ms. Young, so why wouldn't you
5 begin the video where she appears, which is in the corner,
6 to the side? It's actually about 30 seconds before you
7 first see her standing.

8 There's a moment where the camera passes by her
9 over there on the side. But when that camera -- The
10 Resistance camera operator joins the crowd that clearly
11 Ms. Young is part of, I wonder why the video doesn't start
12 there, especially given that the government has everything
13 it needs with respect to where she actually was prior to
14 that point.

15 Why are we starting the video so early?

16 MS. LEDERER: Your Honor, we're not going to. As
17 defense counsel stated earlier, since our exhibit lists were
18 due quite early, a lot of times you cast a wide net and then
19 you get to pare it down.

20 In part why the government included that much, it
21 was in case there was an issue of establishing where this
22 person was, how they traveled to the Capitol, and, you know,
23 whether or not this was a House main door. We put a good
24 cushion on there.

25 However, the government is, for 424A, right now

1 going to start at the House main doors because at that point
2 in time they'll have been enough established, and we know
3 that Your Honor will, at some point, probably be concerned
4 with duplicative or cumulative evidence.

5 THE COURT: Yes.

6 MS. LEDERER: And, you know, also we don't want to
7 risk boring a jury either, so we obviously always aim to
8 show the full picture, but to do that with enough expedience
9 where it's possible.

10 THE COURT: All right.

11 MS. LEDERER: So --

12 THE COURT: I do see her in that video about 20
13 seconds or so before you see her standing against the wall.
14 You just pass -- he passes over her for just a moment. So
15 anyway.

16 Whenever you first see her outside of that, is --
17 or, you know, the moments he's approaching that crowd, I
18 think that's when the video should begin. And I think that
19 cuts out all the extraneous material that he and others are
20 saying as he's first entering the Rotunda, et cetera.

21 MS. LEDERER: And just to let Your Honor and
22 Mr. Gross know, generally how I have presented these cases
23 is, if it's a longer video -- you know that the CCTV footage
24 outside the House main doors, they're there for eight
25 minutes. 421A from John Sullivan, that's eight minutes

1 worth of video.

2 What I tend to do is skip forward to the more
3 relevant portions. If there's certain chanting or just
4 sometimes I skip five minutes ahead and say, Okay, at this
5 time is this person still here? Yes.

6 I'm going to jump four more minutes head. Is this
7 person still here? Yes.

8 And then what I also try to do is to tee up the
9 CCTV to show a very specific moment where I can just switch
10 right to open source and pick up a boots-on-the-ground POV
11 of the person doing the same thing that we just saw on the
12 CCTV, so that we're not having to establish as much of a
13 foundation, and we skip a lot of questions.

14 And then I even do that switching between open
15 sources. I try to time those as well.

16 THE COURT: Okay. Well, that's good to hear
17 because you will lose a jury just by showing too much.

18 So that leaves, in my mind, Counsel, just the
19 banner. It says "The Resistance." I mean --

20 MR. GROSS: May I?

21 THE COURT: Yes.

22 MR. GROSS: Perhaps I missed it. The idea that
23 other people are chanting, I just -- is that somehow to
24 implicate her in disorderly conduct? That's my question for
25 the government.

1 Whereas I cannot compare her based on what she's
2 not doing, but somehow, if she is not doing something, the
3 government can implicitly say that is what she is doing.

4 I just want to be clear on the rules, because my
5 suggestion in the motion in limine was to cut out the sound
6 of the video, especially in the light of the fact that in
7 The Resistance video her mouth is seen closed.

8 THE COURT: Okay. Government.

9 MS. LEDERER: Your Honor, first, that was an
10 example, but, I mean, this is going to happen in this case,
11 that people are chanting. First we have on CCTV --

12 THE COURT: So you do have other non-CCTV video,
13 some of which I've seen stills from. We're focused on The
14 Resistance video. I don't know why, but we are. But I
15 imagine the same arguments that he's making now are
16 applicable to the non-CCTV video, and you do right now
17 believe you're going to be playing that video, including
18 what it shows. Not only her in it, but what's going on
19 around her, sounds as well, including sounds she does not
20 make.

21 Why should you be permitted to do that?

22 MS. LEDERER: First off, she's on CCTV and in open
23 source engaging in some of those chants. She's saying
24 "USA," "Stop the Steal," but also other chants go ultimately
25 at the end of the day to her knowledge, her intent, and her

1 willfulness. If you're hearing "break it down" while you're
2 standing outside the House of Representatives where inside
3 members of the House are supposed to be certifying the 2020
4 election, and you don't leave, it's because you want to be
5 there. So at the end of the day, hearing those chants and
6 not leaving until someone's shot goes to the intent and the
7 knowledge and the willfulness.

8 THE COURT: Okay. Well, I agree with that. I'm
9 going to permit the government to share -- to have that
10 audio with the defendant in the locations where the
11 defendant was. Even if she's not making the chants, I do
12 believe the government can make a fair argument to the jury
13 that her presence in that crowd, especially in connection to
14 other video, which they have, which shows her engaging in
15 chants, her presence in the crowd where other video -- other
16 chants are being made that she may not be engaging in, she's
17 still there. And she's there willingly because she's
18 supporting that crowd. So I think the jury can infer that.

19 Of course, that doesn't prohibit the defense from
20 asking whomever, "You don't see her moving her mouth. She's
21 not chanting." You can ask that question and make what
22 argument you can from that. But I'm not going to have them
23 turn off the video. I think context is important here, as
24 other courts have found, with respect to this event, the
25 disturbance, the disorderly conduct, the parading, and her

1 not withdrawing from that group apparently until the very
2 end.

3 Okay. So I am going to permit the government's
4 use of 428 in the way that I've indicated.

5 That leaves the banner. They say they can't
6 remove the banner. I think we can address the banner
7 through some instruction to the jury.

8 Or do you want to? I mean, they're not going to
9 be able to remove the banner.

10 No one is saying that she made the video, that
11 she's part of a resistance, whatever that means, and that
12 the jury should ignore that.

13 MR. GROSS: Respectfully, I think they can remove
14 the banner. You can black it out. They can redact it.

15 THE COURT: Can you remove the banner?

16 MS. LEDERER: I honestly don't know if that is
17 possible. I don't know if there could be a -- first off, I
18 don't know if you can redact the banner like that, and then
19 I also don't know, with the movement, if you can just slap
20 -- if "The Resistance" moves at all. I really don't know if
21 my tech can do that.

22 THE COURT: Well, find out. I mean, if it's not a
23 heavy lift, then just yes, blur out the banner.

24 I was under the impression that you couldn't.

25 MS. LEDERER: I'm under the impression we cannot.

1 THE COURT: Well, let me know.

2 MS. LEDERER: And as we pointed out in our
3 response, this video has come in in its entirety.

4 THE COURT: Maybe because you know you can't
5 remove the banner, and you're going to find out that you
6 can't.

7 MS. LEDERER: And we don't comment on it. Just
8 like we don't blur out -- you know, some of the videos say
9 "RMG," and where we can, we do like to play the raw footage
10 because it's always, more often than not, a clearer image.
11 Like the John Sullivan video. He posted a video with his
12 watermark on YouTube. It turns out his raw footage was
13 better, so we provided that.

14 So where we can, we do, but I --

15 THE COURT: Reach out to the Court. Let me know
16 if you can remove the banner. If not, then I have to rule.

17 Unfortunately I have two calls at 4:00, so we're
18 going to have to continue this on another day. We have now
19 finished the motion in limine. We finished -- well, the
20 motions in limine. We're finished with respect to all the
21 defendants -- I mean, I'm sorry, the witnesses, but then we
22 have just a heap of objections to exhibits.

23 We also have to talk about the voir dire. I have
24 sent out proposed voir dire to counsel. Let's take that up
25 on the next day.

1 I don't know to what extent the parties can
2 continue to work together given the rulings I've had so far,
3 and just, as your preparation for trial advances, if you
4 could continue to meet to find out if you're going to
5 continue to want to use various exhibits, and if one side or
6 the other wants to use the exhibit, and the other side still
7 wants to object. I'd like you to continue to work on that.
8 And you can tell me whatever you agree to -- have agreed to
9 at the beginning of the next session.

10 I'm ready to discuss all the exhibits. I'm not
11 going to spend any more time on this case between now and
12 our next date, but you can start right at the beginning and
13 say that the following exhibits we've worked out is where
14 they're not going to use them, we've spliced them down, or
15 we've addressed the objection in some other way.

16 So I'm going to direct you to continue to meet and
17 confer between now and the next date. Let's pick a next
18 date.

19 I'm out next week so I propose when we get
20 together, unfortunately then I'm on criminal duty, which
21 means my time is very limited.

22 July 29th or July 31st?

23 29th I could do.

24 MR. GROSS: I have a pretrial conference in
25 another case in this, and then -- in fact, that trial I'm

1 second chair so -- and it's -- it starts the 29th. It's a
2 bench trial, and we anticipate it's only going to be a
3 two-day trial. So the 31st maybe I could sneak away from my
4 other case and the first chair will take over.

5 THE COURT: The trial's on the 31st.

6 MR. GROSS: The trial is on the -- pretrial
7 conference is on the 29th. We anticipate -- it's a bench
8 trial. It's supposed to be a two-day trial, so it should go
9 the 30th and the 31st, but we could -- the pretrial
10 conference is very limited. It's not obviously going to be
11 as extensive as this one, so we anticipate to start on the
12 29th.

13 So I can do the 31st in the afternoon.

14 THE COURT: Do you think the trial will be over by
15 then?

16 MR. GROSS: There's a chance it will not be, but
17 I'm second chair so if I needed to leave the trial, the
18 first chair -- I'm assisting in that trial. I'm not the
19 lead attorney.

20 MS. LEDERER: Your Honor, I'll be moving.

21 I'm just going to hop in here, and I'd just say
22 I'm moving on the 31st. I'm already off from work.
23 Unfortunately I have to meet movers and facilitate that. I
24 don't know if I'll be done by the afternoon.

25 THE COURT: What about the 1st?

1 MS. LEDERER: That, I believe, is wide open from
2 the government.

3 MR. GROSS: And it's wide open for me.

4 Oh, and Cindy is, I think, trying to talk.

5 THE DEFENDANT: I was planning on traveling to the
6 area on that date, but I could delay that for a day, if
7 necessary.

8 THE COURT: Okay. Well, let's set it for the 1st.
9 We can begin at 9:00 a.m. I mean, the trial starts the
10 following Monday.

11 So one last thing. You know, obviously, there's
12 going to be a lot of video exhibits. I don't know, is there
13 a -- do we have a program? I mean, how do we get all this
14 stuff to the jury? I've got some -- I don't know if this
15 courtroom has been set up to do it, but how do we, if I --
16 you know, we've got 200 exhibits, 100 pieces of video and
17 clips of video. How does this work?

18 MS. LEDERER: What the government does is we have
19 a heavy duty hard drive essentially that can fit all of the
20 government exhibits, but also we work with defense to put
21 the defense exhibits on that hard drive. It is -- it has a
22 keypad so we provide the instructions to the jury, and I
23 believe we either provide a laptop or some of the SmartTVs
24 in the back have a USB plug which I know prior juries have
25 just plugged in the USB and sometimes I think the Court also

1 might provide a laptop. And that's how it --

2 PARALEGAL SHEFF: Just for the thumb drive, that's
3 it.

4 MS. LEDERER: Okay. We just provide the thumb
5 drive, and I think there is -- the jury's provided a laptop
6 or they can plug into the smart TV that's back there.

7 THE COURT: Okay. Well, you need to work -- I'm
8 going to step off. You can work with my CRD and find out
9 what we need, what tech we need, so we've got to make sure
10 we've got that squared away, too.

11 So it's just a thumb drive. It's not a hard
12 drive. It's a thumb drive.

13 MS. LEDERER: I believe I accidentally used thumb
14 drive. It's a hard drive. It's the size of my palm, and it
15 comes with a little keypad, and we give the instructions --

16 THE COURT: And you're going to help Mr. Gross,
17 and he'll have his exhibits on there, too?

18 MS. LEDERER: Yes. And because we have all of
19 Mr. Gross's exhibits, normally beyond him sitting there
20 double-checking that his exhibits -- you know, he really
21 doesn't have to do much besides say yes, those are all of my
22 exhibits.

23 THE COURT: And it will have all the software you
24 need to make sure the videos run?

25 MS. LEDERER: Yes, Your Honor.

1 THE COURT: It's not just hooking into USFX, which
2 I struggled with.

3 MS. LEDERER: It's not perfect. I wish it was,
4 but it's not.

5 THE COURT: Is that what it is? Is it hooking
6 into USFX, or is it --

7 MS. LEDERER: No. The nice thing is it's just --
8 ideally we could provide the Court with thumb drives, but
9 there's just not --

10 THE COURT: No, no, I don't care about me.

11 MS. LEDERER: No, I'm just explaining background.
12 Like ideally we can just give you a thumb drive. That way
13 you don't have to worry about downloading it -- it downloads
14 in some weird MP format or whatever. Everything will be in
15 a PDF format or I believe an MP4 or whatever that it should
16 just be able to be played on any laptop.

17 THE COURT: Okay. Well, again, that's a
18 conversation that's going to happen with you and my CRD, so
19 we've got to make sure we have what we need to make these
20 things play.

21 All right. I'll see everyone back here at 9:00 on
22 -- what did we say?

23 MS. LEDERER: The 1st.

24 And just so Your Honor knows, I believe we both
25 are fine with the voir dire, so that should move quickly on

1 that end.

2 THE COURT: Okay. Good, good.

3 But please, resolve some of this stuff. It just
4 doesn't seem we need to have objections to hundreds of
5 exhibits. Thank you.

6 (Whereupon the hearing was
7 adjourned at 4:26 p.m.)

8
9 **CERTIFICATE OF OFFICIAL COURT REPORTER**

10
11 I, LISA A. MOREIRA, RDR, CRR, do hereby
12 certify that the above and foregoing constitutes a true and
13 accurate transcript of my stenographic notes and is a full,
14 true and complete transcript of the proceedings to the best
15 of my ability.

16 Dated this 27th day of October, 2025.

17
18
19 /s/Lisa A. Moreira, RDR, CRR
20 Official Court Reporter
21 United States Courthouse
22 Room 6718
23 333 Constitution Avenue, NW
24 Washington, DC 20001
25

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