

1 STATE OF OHIO, )  
COUNTY OF CUYAHOGA, ) SS: PATTON, C.L., J.  
2 CITY OF CLEVELAND. )

3  
4 IN THE MUNICIPAL COURT

5 - - -

6 CITY OF CLEVELAND, )  
7 Plaintiff, )

8 vs. )

Case Numbers:

9 SALOME ARTEMIS ARRANT, ) 2016-CRB-013733  
LISA CASTONON, ) 2016-CRB-013730  
10 DIYA CRUZ, ) 2016-CRB-013736  
EDWARD DIAZ, ) 2016-CRB-013739  
11 COURTNEY DONELSON, ) 2016-CRB-013734  
STEVEN FRIDLEY, ) 2016-CRB-013744  
12 LINDA DAITSMAN, ) 2016-CRB-013737  
ERNESTINE HAMILTON, ) 2016-CRB-013746  
13 VICTORIA INGUANTA, ) 2016-CRB-013735  
GREGORY JOHNSON, ) 2016-CRB-013728  
14 RICHARD NEWBERGER, ) 2016-CRB-013732  
ZULLAY PICHARDO, ) 2016-CRB-013741  
15 RAFAEL SCHILLER-LADEN, ) 2016-CRB-013742  
JULIE LEROY, ) 2016-CRB-013705

16 Defendants. )

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18  
19 Transcript of digitally recorded proceedings had  
20 Before the Honorable Judge Charles L. Patton on  
21 Thursday, January 26, 2017, in Courtroom 13-D.  
22

23 - - -

24  
25 Demetrius D. Longmire

EXHIBIT 2

1 APPEARANCES:

2 On behalf of the plaintiff:

3 Kimberly Barnett-Mills, Chief Police  
Prosecutor  
4 By: James L. Hewitt, III, 1st Assistant,  
Police Prosecutor

5 On behalf of defendant **Salome Artemis Arrant:**

6 Jerome Emoff, Esq.  
7 James Pasch, Esq.

8 On behalf of defendant **Diya Cruz:**

9 Gordon Friedman, Esq.

10 On behalf of defendant **Edward Diaz:**

11 Sarah Gelsomino, Esq.

12 On behalf of defendant **Courtney Donelson:**

13 James Alexander, Esq.  
14 James Hardiman, Esq.

15 On behalf of defendant **Steven Fridley:**

16 Donna Taylor Kolis, Esq.

17 On behalf of defendant **Linda Daitzman:**

18 Christian Grostic, Esq.

19 On behalf of defendant **Ernestine Hamilton:**

20 Jacqueline C. Greene, Esq.  
Sean C. Buchanan, Esq.

21 On behalf of defendant **Victoria Inguanta:**

22 Michael Murray, Esq.  
23 Reem Subei, Esq.

24 On behalf of defendant **Richard Newberger:**

25 Kevin J. Kovach, Esq.  
Mark R. DeVan, Esq.

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On behalf of defendant **Zullay Pichardo:**

Rufus Sims, Esq.  
Marty Gelfand, Esq.

On behalf of defendant **Rafael Schiller-Laden:**

Steven D. Shafron, Esq.

On behalf of defendant **Julie Leroy:**

Judith Lipton, Esq.

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Demetrius D. Longmire

P R O C E E D I N G S

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THE BAILIFF: Good morning, your Honor.

THE COURT: Good morning, everybody.

MR. MURRAY: Good morning, your Honor.

THE COURT: Nice to see you all. Welcome to Cleveland Municipal Court. I'm Judge Patton. We're here for a Motion Hearing. Motion to Dismiss. Hopefully, the attorneys have advised all their clients of their constitutional rights so I will not go over them this morning.

It's rather warm in here already. I'm going to ask my officers to open the doors so we can get some air circulating. If anybody wants to get up and leave because you're uncomfortable, please feel free to do so.

We are recording this event today. Therefore, it's kind of important that you keep the noise level down so the speakers work properly. So we're going to ask that people not talk, even the attorneys. Hopefully, if you have some comments to make,

1           you will direct those comments to the  
2           appropriate spokesperson and we will proceed  
3           from there.

4           Before we get started, opening  
5           statements may be in order.

6           Counsel.

7           MR. MURRAY:                   Thank you, your Honor.

8           Your Honor, first thing I'd like to do  
9           is move for separation of witnesses.

10          THE COURT:                   Granted.

11          Mr. Prosecutor, just two?

12          MR. HEWITT:                  The Chief -- well, the  
13          Chief is not -- I'd like him to stay.

14          THE COURT:                   Yeah.

15          MR. HEWITT:                  Lieutenant can sit in  
16          the hallway.

17          THE COURT:                  Okay. Thank you very  
18          much. All right.

19          Lieutenant, would you mind waiting in  
20          the hallway for a moment, please?

21          LT. GAERTNER:                Absolutely.

22          THE COURT:                  Thank you. Did you  
23          put the caption on the --

24          THE BAILIFF:                 On the?

25          THE COURT:                  -- record?

1 THE BAILIFF: Yes.

2 THE COURT: Okay. Mr. Murray.

3 MR. MURRAY: Thank you, your Honor.

4 THE COURT: Let me ask.

5 Mr. Prosecutor, are there any other

6 preliminary matters we need to take care of?

7 MR. HEWITT: I don't think so, your

8 Honor.

9 THE COURT: Thank you very much.

10 Would you put your name on the record,

11 please?

12 MR. HEWITT: James H. Hewitt, III,

13 First Assistant Prosecutor City of Cleveland.

14 THE COURT: Thank you.

15 MR. MURRAY: Your Honor, would you

16 like all the defense lawyers to first, at

17 least, identify themselves for the record and

18 who they represent?

19 THE COURT: Mr. Murray, thank you

20 very much and we will do that.

21 MR. MURRAY: My name is Michael

22 Murray and I represent the defendant Victoria

23 Inguanta.

24 MR. SHAFRON: Steven Shafron on

25 behalf of Rafael Schiller-Laden.

1 MS. GREENE: Jacqueline Green on  
2 behalf of Ernestine Hamilton.  
3 MS. GELSOMINO: Sarah Gelsimino on  
4 behalf of Edward Diaz.  
5 MR FRIEDMAN: Gordon Friedman on  
6 behalf of Diya Cruz.  
7 MR. DeVAN: Mark DeVan on behalf  
8 of defendant Richard Newberger.  
9 MR. KOVACH: Kevin Kovach also on  
10 behalf of Richard Newberger.  
11 MR. ALEXANDER: James Alexander on  
12 behalf of Courtney Donelson.  
13 MR. HARDIMAN: James Hardiman also on  
14 behalf of Courtney Donelson.  
15 MS. KOLIS: Donna Kolis on behalf  
16 of Steven Fridley.  
17 MS. SUBEI: Reem Subei on behalf  
18 of Victoria Inguanta.  
19 MR. GROSTIC: Christian Grostic on  
20 behalf of Linda Daitsman.  
21 MS. LIPTON: Judith Lipton on  
22 behalf of Julie Leroy with our certified  
23 legal interns who are the highest  
24 (inaudible).  
25 MR. EMOFF: Jerome Emoff on behalf

1 of Artemis Arrant.

2 MR. PASCH: James Pasch also on  
3 behalf of Artemis Arrant.

4 THE COURT: Thank you.

5 MR. DELFAND: Marty Delfand on  
6 behalf of Zullay Pichardo.

7 MR. BUCHANAN: Sean Buchanan on  
8 behalf of Ernestine Hamilton.

9 MR. SIMS: Rufus Sims on behalf  
10 of Zullay Pichardo.

11 THE COURT: Thank you.

12 Mr. Murray.

13 MR. MURRAY: Thank you, your Honor.

14 We appreciate your time and attention.  
15 We know you've read the briefs and so you  
16 know something about the issues in this case.  
17 But this is a 1st Amendment case.

18 This is a case involving freedom of  
19 speech, freedom of expression, the right to  
20 assemble peaceably, to ask government for  
21 redress of grievances during a time when it  
22 was most appropriate to express all types of  
23 viewpoints, mainly during the course of the  
24 Republican National Convention, which was  
25 held here in Cleveland, as we all know, in



1 July of 2016. All of the defendants here who  
2 are charged with various offenses, including  
3 Disorderly Conduct and Obstructing Official  
4 Business, were engaged in  
5 constitutionally-protected, peaceful protest  
6 activities as was their right under the 1st  
7 Amendment to the Constitution of the United  
8 States and under Articles 3 and 11. I'm  
9 sorry, Article 1 Section 3 and 11 of the Ohio  
10 Constitution. These individuals have  
11 strongly held views about society and about  
12 the Republican National Convention and about  
13 the things that are wrong with the  
14 governmental system as they see it and they  
15 came to Cleveland recently to express those  
16 views. And they did so under circumstances  
17 in which they had a right to do so.

18 On July the 20th of 2016, at about  
19 4:00 p.m., this group assembled on a public  
20 street which had been specifically designated  
21 for expressive activities by the City of  
22 Cleveland and the other law enforcement  
23 agencies that were involved in the security  
24 for the RNC. This was exactly where the City  
25 said you could engage in

1           constitutionally-protected expressive  
2           activities. It was at the corner of East 4th  
3           and Prospect. Vehicular traffic was  
4           prohibited during that time precisely because  
5           that was going to be a place where expressive  
6           activities could occur. This group, they had  
7           announced in advance, put out a press release  
8           that they were going to assemble at 4:00 p.m.  
9           at that place and that as part of their  
10          constitutionally-protected protest they were  
11          going to burn an American flag, which is  
12          their right. It was going to be burned by a  
13          gentlemen by the name of Gregory Joey  
14          Johnson.

15                 That's a name that's of some  
16          significance because in 1984, Mr. Johnson  
17          burned an American flag at the Republican  
18          National Convention there in Dallas, Texas  
19          and he was arrested for desecrating the flag  
20          and his case went all the way up to the  
21          United States Supreme Court and the US  
22          Supreme Court in Texas v. Johnson affirmed  
23          that he had an absolute 1st Amendment right  
24          to burn the flag as part of a protest that he  
25          was engaged in against the status quo that he

1 was protesting against. That happened in --  
2 we're talking 1989, I believe, was the final  
3 decision in that case. And so, it's been the  
4 law for all those many years that flag  
5 burning as a means of protest is  
6 constitutionally-protected and the City knew  
7 that or should have known that because it's  
8 been on the books for that many years.

9 So, on that day and at that time, this  
10 group assembled with that protest in mind and  
11 they donned shirts at that juncture which  
12 expressed viewpoints as well, and they all  
13 assembled there and they began -- they formed  
14 a circle; and the reason they formed a circle  
15 was so that there would be a safe space  
16 within the circle in which to engage in the  
17 flag burning.

18 And they began to give a speech --  
19 Mr. Johnson began to give a speech and they  
20 began to chant and he began his chant, it was  
21 "1-2-3-4, slavery, genocide and war.  
22 5-6-7-8, America was never great." And then  
23 he explained the viewpoint that the group who  
24 had assembled was espousing in support of  
25 that chant. And then as the events unfolded,

1           there was a circle, what we call a safety  
2           circle and in the middle of the circle, where  
3           it could be done peacefully and safely,  
4           Mr. Johnson and one of the other members of  
5           the group lit an American flag as part of the  
6           protest which he then was going to hold up  
7           and explain that as part of the protest, that  
8           is what this group views should be done with  
9           the American flag.

10           At that moment, even before it would  
11           appear from the video the actual lighting of  
12           the flag occurred, but certainly immediately  
13           upon the lighting of the flag, without any  
14           justification, law enforcement immediately  
15           broke into that circle and extinguished the  
16           flames on the American flag; before there was  
17           any emergency or any other justification for  
18           that to be done. It was done in order to  
19           prevent the flag burning from being completed  
20           and the protest from being completed. A halt  
21           was put to constitutionally-protected  
22           expression at the most important time in the  
23           nation, at least at that juncture, in July of  
24           2016, when the Republicans were meeting to  
25           nominate Donald Trump as President.

1           That represented a prior restraint  
2           because a halt was put to peaceful,  
3           constitutionally-protected speech. And the  
4           justifications that ultimately were offered  
5           do not withstand scrutiny under the Supreme  
6           Court decisions.

7           The case law is clear. Public safety is  
8           not an excuse to interfere with  
9           constitutionally-protected speech. The fact  
10          that there may be others in the crowd who are  
11          so opposed and hostile to the message being  
12          communicated does not give law enforcement  
13          the right or power to interfere with the  
14          Constitutionally-protected speech. On the  
15          contrary, they're duty according to the US  
16          Supreme Court is to protect the protesters  
17          from a hostile crowd. So this notion that  
18          they were -- this was going to incite  
19          violence or that there was a danger presented  
20          by the fact that there was a crowd there that  
21          was watching this is not an excuse for  
22          interfering with their  
23          constitutionally-protected expression. But  
24          that's what happened.

25                 And ultimately, all of the defendants

1           who are assembled here in this courtroom in  
2           this case, who's been identified by their  
3           counsel who entered their appearances, were  
4           ultimately arrested. They all participated  
5           in this protest. They were all chanting.  
6           They were all part of the flag burning  
7           incident that was designed to communicate an  
8           extremely important message that they wanted  
9           the world to see and they were arrested on  
10          charges of Disorderly Conduct and Obstructing  
11          Official Business.

12                   And the Supreme Court has made it clear  
13          that you can't use statutes or ordinances  
14          like that as a means to stifle expression and  
15          that prosecutions brought under broad  
16          ordinances or statutes like those, that are  
17          predicated upon constitutionally-protected  
18          expression cannot stand, and a Court then has  
19          a duty, before a case ever gets to trial, to  
20          hold that those statutes in their application  
21          are unconstitutional under the State and  
22          Federal Constitutions and to also hold that  
23          the events that occurred represented a prior  
24          restraint that cannot be tolerated.

25                   And under those circumstances, we

1 respectfully submit that after your Honor  
2 hears the evidence and views the visual  
3 evidence that we will present, we will have  
4 demonstrated that we are entitled to an order  
5 from this Court dismissing all the charges  
6 here.

7 Thank you, your Honor.

8 THE COURT: Thank you very much.

9 Mr. Hewitt.

10 MR. HEWITT: Thank you.

11 May it please the Court.

12 The RNC convention was in Cleveland  
13 July 18th through the 20th here in Cleveland.  
14 The City of Cleveland was certainly prepared  
15 to meet this challenge and of course, East  
16 4th Street was considered a hot spot for many  
17 restaurants, media outlets and live  
18 broadcasts. East 4th Street was also the  
19 delegate entrance to the Q Arena where most  
20 of the people would funnel into the Q. Flag  
21 burning itself is permissible under the US  
22 and the Ohio Constitution as a free form of  
23 expression.

24 Your Honor, this flag burning was not  
25 done in a safe environment. Police learned

1           that at least two individuals and others had  
2           been burned. The protesters were blocking  
3           the secured access to the Q Arena and the  
4           secured gates had to be locked. The actual  
5           flag burning itself had been concluded,  
6           therefore, the police did not shutdown any  
7           free speech. The police needed to assess the  
8           situation and when the individuals failed to  
9           disperse, was -- arrests were carried out.  
10          Police acted in the interest of public safety  
11          to protect the public and they did not know  
12          beforehand, thus there's no restraint on  
13          prior -- on free speech.

14                 The testimony will be established  
15                 through the police Chief regarding the orders  
16                 to disperse and then the testimony of a  
17                 police supervisor who has reviewed the  
18                 incident reports regarding three of those  
19                 protesters and in fact, he was also involved  
20                 with attempting to -- when the flag burners  
21                 themselves caught fire and he was attempting  
22                 to stop the flames that had gotten rapidly  
23                 out of control.

24                 Once you hear this testimony, we're  
25                 convinced that the Court will deny the Motion



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to Dismiss. Thank you.

THE COURT: Thank you very much.

Mr. Murray, who would you like to call  
as your first witness?

MR. MURRAY: Your Honor, at this  
time, the defendants will call Chief Calvin  
Williams.

THE COURT: Chief Williams, will  
you take the stand, please?

CHIEF WILLIAMS: Yes, your Honor.

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CALVIN WILLIAMS,

having been first duly sworn, was examined  
and testified as follows:

THE COURT: Good morning, Chief.

CHIEF WILLIAMS: Good morning, your  
Honor.

THE COURT: You may proceed.

MR. MURRAY: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. MURRAY:

Q For the record, please state your name and  
business address.

A Calvin Daniel Williams, address is 1300 Ontario,  
Room 929. Cleveland, Ohio.

Q And you are the Chief of Police for the City of  
Cleveland; is that correct?

A Yes, I am.

Q When did you assume those duties?

A February 10th of 2014.

Q Just generally, describe what the duties of the  
Chief of Police encompass?

A Generally, the Chief of Police is responsible for  
the efficient operations of the entire Division  
of Police and all of its personnel.

Q And approximately how many police officers and

1 other employees are there in the City of  
2 Cleveland?

3 A There are approximately 1500 sworn law  
4 enforcement officers and about 300 civilian  
5 employees.

6 Q And to whom do you report?

7 A My direct support is the Director of Public  
8 Safety for the City of Cleveland.

9 Q And that is whom?

10 A Michael McGrath.

11 Q Now, I want to call your attention to July of  
12 2016, the Republican National Convention was here  
13 in the City of Cleveland. Correct?

14 A Yes.

15 Q And as the Chief of Police, you were involved in  
16 extensive planning for that convention. Correct?

17 A Correct.

18 Q And you coordinated with numerous other law  
19 enforcement agencies?

20 A Yes.

21 Q That would include the FBI?

22 A Yes.

23 Q That would include the Secret Service?

24 A Yes.

25 Q That would include the Highway Patrol, the State

1 Highway Patrol?

2 A Yes.

3 Q That would include the Sheriff's Department?

4 A Yes.

5 Q And many other law enforcements from places  
6 across the country who came to assist you and the  
7 other law enforcement officials during that week.  
8 Correct?

9 A That's correct.

10 Q Now, turning your attention to July 20, 2016,  
11 which is the date that brings us together today.  
12 There were a number of arrests in the City of  
13 Cleveland in connection with the Republican  
14 National Convention. Correct?

15 A That's correct.

16 Q And the arrests included the arrest of numerous  
17 protesters. Correct?

18 A Those were the only arrests concerning the  
19 convention, yes.

20 Q And those are the -- among others, all the  
21 defendants who are here today, were among those  
22 protesters who were arrested on July the 20,  
23 2016. Correct?

24 A 17 protesters, correct.

25 Q That includes the defendants who's been

1 identified today. Correct?

2 A Correct.

3 Q Okay. Now -- and this was all arising out of  
4 events occurring in connection with a protest  
5 that involved burning an American flag. Correct?

6 A That's the way it started, yes.

7 Q And you would agree, Chief, that burning the  
8 American flag as a form of protest is protected  
9 by the 1st Amendment to the United States  
10 Constitution and by the Ohio Constitution as  
11 well. Correct?

12 A Correct.

13 Q And this event occurred at the corner of Prospect  
14 and East 4th Street. Correct?

15 A Yes.

16 Q And that, in fact, was an area specifically set  
17 aside for expressive activities; was it not?

18 A That general area, yes.

19 Q I want to show you what has been marked --

20 MR. MURRAY: May I approach, your  
21 Honor?

22 THE COURT: You may.

23 MR. MURRAY: And just for the  
24 record, I've supplied copies all of our  
25 exhibits to the prosecution and I have copies

1           for your Honor, too, to follow along as well,  
2           which I'll be glad to hand up.

3           THE COURT:                           Thank you.

4 Q       Chief, I've handed you what has been marked for  
5       identification as Defendant's Exhibit 1. Can you  
6       identify that as a press release that was put out  
7       identifying a number of issues involving security  
8       for the Republican National Convention?

9 A       Yes, it is. Specifically, traffic restrictions.

10 Q       Okay. And if you would turn to page seven of  
11       Defendant's Exhibit 1, please. Do you have that?

12 A       Yes.

13 Q       There's a -- there's a section entitled public  
14       viewing area, Republic National Convention  
15       Complex towards the bottom of that page.  
16       Correct?

17 A       Yes.

18 Q       It says that starting at 8:00 a.m. on Monday,  
19       July 18th through 2:00 a.m. on Friday, July 22nd,  
20       the below locations are gathering spaces  
21       available to the public for expressive  
22       activities, as well as for sightseeing. Correct?

23 A       Yes.

24 Q       And if you go down to the third bullet point, one  
25       of the areas available to the public for

1           expressive activities and sightseeing was on  
2           Prospect Avenue, the segment that is closed to  
3           vehicle traffic between Ontario Street and East  
4           9th Street. Correct?

5   A       Yes.

6   Q       So, Prospect Avenue at around East 4th Street  
7           would be included in the area that was set aside  
8           for expressive activities?

9   A       Yes.

10   Q       And, in fact, vehicular traffic was prohibited at  
11           that juncture precisely among other reasons so  
12           that expressive activities could occur on those  
13           streets. Correct?

14   A       Among other reasons, yes.

15   Q       Now, I want to show you what now has been marked  
16           as Defendant's Exhibit 2.

17                   MR. MURRAY:                   I'll provide a copy  
18                   for your Honor.

19                   THE COURT:                   Thank you.

20   Q       And Chief Williams, can you identify what  
21           Plaintiff's -- Defendant's Exhibit 2 is?

22   A       Yes. It's the General Police Order for the  
23           Division of Police and the subject is crowd  
24           management and the protection of constitutional  
25           rights.

1 Q And this was an order issued June 13, 2016.

2 Correct?

3 A Correct.

4 Q And it identifies you as the Chief of Police.

5 Correct?

6 A Yes. I issued the order.

7 Q This is an order that you had reviewed and  
8 ultimately approved and issued under your name.

9 Correct?

10 A Correct.

11 Q And the purpose of this order was to provide  
12 information about crowd management and the  
13 protection of constitutional rights particularly  
14 as it pertained to the upcoming Republican  
15 National Convention. Correct?

16 A Yes.

17 Q Okay. And you identify in this document the  
18 purpose, do you not, in the first paragraph?

19 A The first three paragraphs, correct.

20 Q Okay. And you say the purpose is to provide  
21 guidance on safely and effectively managing  
22 crowds that assemble for the purposes of carrying  
23 out constitutionally-protected activities of free  
24 speech and assembly. Correct?

25 A Yes.



1 Q The Cleveland Division of Police Division  
2 recognizes the right of free speech and assembly  
3 and shall actively protect people in the exercise  
4 of those rights.

5 A Yes.

6 Q Correct? That was the policy of the City of --  
7 of the police. Correct?

8 A That still is the policy, yes.

9 Q During marches, demonstrations, protests or  
10 rallies, the priorities of the Division are to  
11 preserve the peace, protect life and property and  
12 uphold the rights of those assembled. Correct?

13 A Yes.

14 Q At the very bottom of that page you have a  
15 section entitled "Definitions". Correct?

16 A Correct.

17 Q And one of the definitions that you promulgated  
18 in this order was the definition of a peaceful  
19 protest. Correct?

20 A Yes.

21 Q And you defined that as the act of expressing  
22 disapproval with a statement or action without  
23 the use of violence, also known as non-violent  
24 resistance or non-violent action. Correct?

25 A Correct.

1 Q Then you wrote, it is the policy of the Cleveland  
2 Division of Police to support and facilitate  
3 peaceful protests. Correct?

4 A Correct.

5 Q Now, if you turn to page four of Defendant's  
6 Exhibit 2, please. After identifying the purpose  
7 and providing certain definitions, you actually  
8 then promulgated the policy that was in effect  
9 then and would have been in effect at the  
10 Republican National Convention. Correct?

11 A Correct. That's still in effect.

12 Q And still in effect?

13 A Yes.

14 Q And -- by the way, did this policy replace a  
15 previous policy or is this a new policy?

16 A This is a new policy.

17 Q So the policy begins, does it not, as it pertains  
18 to crowd management and to protection of  
19 constitutional rights, it is the policy of the  
20 Cleveland Division of Police. Correct?

21 A Yes.

22 Q And then there's a number of bullet points.  
23 Correct?

24 A Yes.

25 Q Now the first bullet point says, it is your

1 policy to insure that all citizens are afforded  
2 their constitutional 1st, 4th and 14th Amendment  
3 rights?

4 A Yes.

5 Q You go on to say in brief, these protections  
6 involve citizens right to freedom of speech,  
7 peaceable assembly, freedom from unreasonable  
8 search and seizure, as well as protections  
9 against the deprivation of a citizen's life,  
10 liberty or property without due process of law  
11 and equal protection thereof. Correct?

12 A Yes.

13 Q You then, in the second bullet point, state that  
14 individuals in groups are guaranteed a right to  
15 organize and participate in peaceful 1st  
16 Amendment assemblies on the streets, sidewalks  
17 and other public ways and spaces of the City of  
18 Cleveland. Correct?

19 A Yes.

20 Q Then you say, and to engage in 1st Amendment  
21 assembly near to the object of their protest so  
22 they may be seen and heard.

23 A Yes.

24 Q Correct?

25 A Yes.

1 Q So your policy recognizes the right of protesters  
2 to choose the place where they're going to carry  
3 out their protest where in their opinion their  
4 message will reach the audience that they intend  
5 to reach. Correct?

6 A To a certain extent, yes.

7 Q Okay. But you do recognize that in part, the  
8 policy that you're trying to promulgate  
9 recognizes that where protesters choose to  
10 protest can be a very important part of their  
11 protest?

12 A It can be, yes.

13 Q Now, if you go to page five of Defendant's  
14 Exhibit 2, there's a bullet point at the top.  
15 Correct?

16 A Yes.

17 Q And that has to do with training?

18 A Yes.

19 Q And there's a number of issues that are described  
20 in that paragraph as to what kind of training  
21 will be provided to the officers under your  
22 charge. Correct?

23 A Correct.

24 Q And if you go towards the bottom of that page,  
25 that bullet point, one of the things you say is

1 additional training in crowd management, civil  
2 disturbances and 1st Amendment Rights shall be  
3 provided as necessary and in advance of planned  
4 events. Correct?

5 A Correct.

6 Q And you say, the Division shall ensure that all  
7 officers adhere to the policies, procedures, and  
8 training as they relate to use of force, crowd  
9 management, handling of civil disturbances and  
10 1st Amendment protections. Correct?

11 A Yes.

12 Q And so, did you provide that training to your  
13 officers in advance of the Republican National  
14 Convention?

15 A Yes, extensively.

16 Q I'm sorry?

17 A Extensively.

18 Q What form did that training take?

19 A That training was in the form of both written  
20 documents, classroom participation, classroom  
21 documents and also as crowd management, actual  
22 physical exercises.

23 Q And were all the officers under your charge  
24 provided with a copy of this General Police Order  
25 of June 13, 2016?

1 A All officers of the Cleveland Division of Police  
2 as well as all officers that were assembled and  
3 came to Cleveland to assist for the Republican  
4 National Convention, yes.

5 Q And so you expected all of those officers to read  
6 this, familiarize themselves with it, and when  
7 they were out in the field, to follow it?

8 A Yes.

9 Q I want to show you what has been marked as  
10 Defendant's Exhibit 3, Chief. And I'll ask you  
11 if you can please identify that for the record.

12 A Yes. This is the Crowd Management Protection of  
13 constitutional rights Training Manual.

14 Q And is this -- this is like a PowerPoint  
15 presentation?

16 A Yes, it is.

17 Q So, you would have officers in a classroom  
18 setting and someone would speak and go through  
19 this in a PowerPoint?

20 A That's correct.

21 Q And who would you have as instructors?

22 A Our training section, certified officers from our  
23 training section.

24 Q Okay. And so, if you will go to --  
25 unfortunately, these are not necessarily

1 paginated. But if you go to, 1, 2, 3 -- the 7th  
2 page that actually has an illustration and is  
3 entitled "Policy".

4 A Yes.

5 Q And so, if you go to the next page, there's a  
6 heading of policy and it says as it pertains to  
7 crowd management and the protection of  
8 constitutional rights, it is the policy of the  
9 Cleveland Division of Police. Correct?

10 A Yes.

11 Q And then the next page has some bullet points.  
12 Correct?

13 A That's correct.

14 Q And it provides that it's the policy of the  
15 Division of Police to ensure that all citizens  
16 are afforded their constitutional 1st, 4th and  
17 14th Amendment rights. Correct?

18 A That's correct.

19 Q And it goes on to say in brief, these protections  
20 involve citizens right to freedom of speech?

21 A Yes.

22 Q Correct? Peaceable assembly. Correct?

23 A Yes.

24 Q Freedom from unreasonable search and seizure.  
25 Correct?

1 A Yes.

2 Q Then if you go to the next page, you identify the  
3 policy as it continues onto that next page.  
4 Correct?

5 A Yes. This document follows along with the  
6 General Police Order.

7 Q Yes?

8 A Yes.

9 Q And this one says that individuals and groups are  
10 guaranteed a right to organize and participate in  
11 peaceful 1st Amendment assemblies on the streets,  
12 sidewalks and other public ways and spaces of the  
13 City of Cleveland and to engage in 1st Amendment  
14 assembly near to the object of their protest so  
15 they may be seen and heard. Correct?

16 A Again, this training document mirrors the General  
17 Police Order it pertains to crowd management and  
18 protects the constitutional rights.

19 Q And that's what it contains, correct?

20 A Yes.

21 Q And again, the people that were given this and  
22 were provided with this PowerPoint, the officers,  
23 were told that one of the rights that the  
24 citizens have is to engage in 1st Amendment  
25 assembly near to the object of their protest so



1           that they may be seen and heard. Correct?

2 A       Again, it follows the General Police Order as it  
3       pertains to those policies and procedures. Yes.

4 Q       But that is one of the policies. Correct?

5 A       Yes, it is.

6 Q       Now, Chief, I want to show you what has been  
7       marked as Defendant's Exhibit 4. I'll ask you to  
8       please identify that document, please.

9 A       Yes. This is a City of Cleveland's safety  
10       preparedness update in preparation for the  
11       Republican National Convention.

12 Q       And this is something that you reviewed and  
13       approved. Correct?

14 A       No. I did not approve this. This is a document  
15       issued by the City of Cleveland, not by the  
16       Division of Police.

17 Q       Okay. Well, did you in some way disprove of it?

18 A       No, I didn't.

19 Q       Were you -- did you review its contents?

20 A       Yes, I reviewed it.

21 Q       Did you find anything in it that was  
22       objectionable?

23 A       No, not that I can recall at this time.

24 Q       Okay. Now, I would ask you to turn to page 12 of  
25       Defendant's Exhibit 4, please. And you see

1           that's a page entitled Law Enforcement  
2           Coordination Overview, Division of Police.

3   A       Correct.

4   Q       And you reviewed that page.  Correct?

5   A       Yes.

6   Q       And is that page something that you would affirm?

7   A       Yes.

8   Q       And one of the things that that page says is that  
9           in the third bullet point, anyone wishing to  
10          exercise their 1st Amendment rights will be able  
11          to do so and the City of Cleveland will assist  
12          them to ensure a safe environment.  Correct?

13   A       Yes.

14   Q       Now -- then if you would go to page 39 of that  
15          document.  That is a page entitled Public Safety  
16          Training and Preparation for RNC, Division of  
17          Police.  Correct?

18   A       Correct.

19   Q       Again, it is affirmed there that the Division of  
20          Police and employees training includes at the  
21          bottom the bullet point reads 1st Amendment, free  
22          speech, freedom of assembly and over to the next  
23          page, 4th Amendment right to privacy, reasonable  
24          search and seizure of person, place or thing.  14  
25          Amendment, due process.  Equal protection.

1 Correct?

2 A That's correct.

3 Q So, the Division of Police had a policy that the  
4 Division will assist people to insure a safe  
5 environment for them to stage their protests and  
6 other 1st Amendment protected activity. Correct?

7 A The Division of Police has always had that policy  
8 prior to including the convention and after the  
9 convention, yes.

10 Q So, the document says that the police officers  
11 will be trained on 1st Amendment rights. What  
12 training was given to them on 1st Amendment  
13 rights?

14 A I would have to go back through the lesson plan  
15 for the specific training. But as you can see,  
16 some of the training is listed here in this  
17 document. Other training is listed in our  
18 training documents from our Training Academy.  
19 But all officers were given specific 1st  
20 Amendment training as it pertains to the  
21 convention or any other protest activities in the  
22 city.

23 Q Now, there were a number of protests during the  
24 Republican National Convention. Correct?

25 A Yes, there were.

1 Q And some of the protesters, putting our protest  
2 aside, were expressing what some might regard to  
3 be controversial viewpoints. Correct?

4 A Yes.

5 Q And your department insured that, putting our  
6 protest aside, that those other protests could be  
7 carried out in a way that other people didn't  
8 physically interfere with those protests.  
9 Correct?

10 A To the best of our ability, yes.

11 Q I mean, for example, there was a protest by the  
12 West Bureau Baptist Church during the convention.  
13 Correct?

14 A Yes.

15 Q And that is a -- an organization that often  
16 pickets the funerals of service men who -- or  
17 women who have died as a form of protest against  
18 gay rights and gay people. Correct?

19 A Yes.

20 Q And so, you knew that that organization would be  
21 protesting in a way that might cause hostile  
22 crowds to gather in opposition --

23 MR. HEWITT: Objection, your Honor.

24 How would he know what in the mind of --

25 THE COURT: I'll overrule the

1 objection. He can answer it if he knows.

2 Q You knew that a protest like that might cause  
3 other people who disagree with them to be on the  
4 scene. Correct?

5 A Well, we knew that all potential protests in the  
6 city during that time period could draw counter  
7 protesters.

8 Q Right. Whenever you were aware that that  
9 situation might arise, your officers would do  
10 your best to make sure that the counter  
11 protesters didn't prevent the protesters  
12 themselves from carrying out their protest.  
13 Correct?

14 A When we were aware of those demonstrations, yes.

15 Q So, in other words, you would protect the right  
16 of say, the West Bureau Baptist Church to protest  
17 free of being physically interfered with by those  
18 who disagreed with their message?

19 A That is our policy, yes.

20 Q Because that's one of the things that these  
21 documents say, is that you're going to assist  
22 people in the exercise of their 1st Amendment  
23 rights to make sure that they can carry out those  
24 rights without inappropriate interference by  
25 others?

1 A That is the policy of the Cleveland Division of  
2 Police.

3 Q Now you also had to concern yourself with the  
4 people who were expressing a Second Amendment  
5 viewpoint by open carry. Correct?

6 A That's correct.

7 Q And so, you did your best to make sure that their  
8 rights to open carry were protected and that they  
9 did so in a peaceful manner?

10 A That's correct.

11 Q The protest that brings us together today was a  
12 flag burning protest; is that correct?

13 A That's what I'm told, yes.

14 Q Well, that's what you learned, isn't it?

15 A After the fact, yes.

16 Q And that you understood to be a constitutional  
17 right. Correct?

18 A That's correct.

19 Q And under your policy then, it would have been  
20 the Police Department's obligation to insure that  
21 they could carry out that protest safely, without  
22 others who might disagree with that protest,  
23 interfering with -- physically interfering with  
24 that protest. Correct?

25 A If we're aware of that type of protest, yes.

1 Q Well, in fact --

2 MR. MURRAY: May I approach, your  
3 Honor?

4 THE COURT: You may. Thank you.

5 Q I want to show you what has been marked as  
6 Defendant's Exhibit 12. Have you seen that  
7 before, Chief?

8 A I honestly can't say whether I saw this or not.  
9 We saw probably thousands of documents before the  
10 convention, during the convention and after.

11 Q There was -- your officers did become aware  
12 however, that a flag burning protest was being  
13 planned before it actually occurred?

14 A Yes, we did.

15 Q Okay. And that's what this flier indicates; does  
16 it not?

17 A That's what this particular flier indicates. I  
18 don't see the date that this was actually issued.  
19 I see the date, time -- the date, time, location  
20 of the actual protest, but there were, to my  
21 knowledge, a couple different groups that were  
22 planning to burn a flag on that particular day.

23 Q Okay. And your officers were made aware of those  
24 plans, correct, to the extent that they were able  
25 to be told?

1 A Well, they were specifically made aware of the  
2 plan that was not this plan, for one single  
3 individual that was going to burn a flag at 4th  
4 and Prospect, yes.

5 Q Okay. Did you become aware of that as well?

6 A Yes.

7 Q And did you instruct your officers to make sure  
8 that they insured that the person who was going  
9 to burn the flag could do so without physically  
10 being interfered with?

11 A That particular gentlemen was identified and,  
12 yes, his constitutional rights were protected.

13 Q And was there a flag burning?

14 A No, there was not.

15 Q Okay. So, that was at East 4th and Prospect as  
16 well --

17 A Yes.

18 Q -- where that was to be carried out?

19 A Yes.

20 Q Now, did you train your officers as part of this  
21 1st Amendment training that flag burning is  
22 protected by the 1st Amendment?

23 A Yes.

24 Q How long have you known that to be the case,  
25 yourself?



1 A I can't give you an exact date, but for some time  
2 now.

3 Q Long before the Republic National Convention came  
4 to Cleveland?

5 A Yes.

6 Q So your officers should have known -- your  
7 officers on the street should have known that  
8 flag burning as a form of protest is  
9 constitutionally-protected?

10 A Yes, and they did know, yes.

11 Q All right. You have -- we've been provided with  
12 some audio clips from the radio, the messages  
13 that were going back and forth. You have a  
14 system of radio communication that can be copied  
15 and sent to us in Discovery. Correct?

16 A Yes.

17 Q I'd like to play -- Defendant's Exhibit 5 is such  
18 an audio clip and I'd like to play it for you and  
19 then I'll ask you the question.

20 A Okay.

21 - - -

22 (Audio playing)

23 - - -

24 MR. MURRAY: Can we get the sound  
25 up?

1 UNIDENTIFIED MAN: That's as high as it  
2 goes, I believe.

3 THE COURT: Put the microphone  
4 next to it.

5 Q Did you hear that, Chief?

6 A No. I heard the end of something.

7 Q Can you go back and play that section? I  
8 believe, if you listen carefully, you'll hear an  
9 officer asking if it's legal to burn a flag and  
10 the answer comes back, no.

11 - - -

12 (Audio playing)

13 - - -

14 Q Did you hear that?

15 A (Inaudible).

16 Q All right. Did you hear that, Chief?

17 A Yeah, I heard that communication, but we have  
18 three different officers talking there. So, I  
19 don't know what question he was actually  
20 answering.

21 Q Well, let's assume for a moment. We heard the  
22 question. We heard the question, is it  
23 prohibitive to burn the flag?

24 A Right. Then I heard other communication about an  
25 entirely different incident then I heard a

1 response after that. I don't know to which  
2 incident.

3 Q Correct. But, the only question that you heard  
4 was, is it prohibitive to burn a flag. Correct?

5 A Yes.

6 Q And the only answer that you heard was, yes it is  
7 prohibitive per law or something to that effect?

8 A Yes, I did hear that.

9 Q If that answer was to the question of whether it  
10 was prohibitive to burn a flag, that would have  
11 been an incorrect answer. Correct?

12 A Correct.

13 Q I want to show you what has been marked as  
14 Defendant's Exhibit 11. One of the defendant's  
15 in this case in this courtroom is of a woman by  
16 the name of Julie Leroy and do you see her  
17 picture there with one of your officers?

18 A Yes, I do.

19 Q And do you see that there's a whiteboard that has  
20 certain information on it?

21 A Yes.

22 Q And then there's a vehicle behind that?

23 A Yes.

24 Q What is that whiteboard used for?

25 A It's a whiteboard for information about the

1 arrested person.

2 Q That would have been done at the scene?

3 A Yes. Or somewhere close to the scene.

4 Q Okay. Do you see then in the case of this  
5 defendant Julie Leroy, one of the charges for  
6 which she allegedly was going to be arrested was  
7 desecration of flag?

8 A I see that, but that person was not charged with  
9 that. There's no charge for that.

10 Q But someone thought -- one of your officers  
11 thought that she could be charged with  
12 desecration of a flag because he/she wrote it on  
13 the whiteboard. Correct?

14 A I don't know exactly who wrote it on the  
15 whiteboard, but they were incorrect. As I look  
16 at this picture, this is from Ontario and  
17 Prospect. I can see the walkway through the  
18 Casino background, so this had nothing to do --  
19 this did not have anything to do with the East  
20 4th and Prospect incident.

21 Q Right. But, there was -- but Miss Leroy was  
22 engaged in another protest involving a flag  
23 burning at the other location; isn't that true?

24 A That's what I've been told, yes.

25 Q And that's where she got arrested. Correct?

1 A Correct.

2 Q And the officer who arrested her held up a  
3 whiteboard that said the charges included  
4 desecration of flag. Correct?

5 MR. HEWITT: Speaks for itself,  
6 your Honor.

7 THE COURT: Thank you, Mr. Hewitt.  
8 Chief, if you could answer the question.

9 CHIEF WILLIAMS: Sure, your Honor. I  
10 think I already answered it. That's what's  
11 written on the board, but that person, Miss  
12 Leroy, was not charged with that offense.

13 THE COURT: Thank you.

14 Q Now I want to show you -- does the Cleveland  
15 Police Department in this day and age have a  
16 Twitter account?

17 A Yes, we do.

18 Q Do you tweet from time to time?

19 A I don't tweet, but officers from the Division do.

20 Q The Department does?

21 A Yes.

22 Q I want to show you what has been marked as  
23 Defendant's Exhibits 6 and 7. Defendant's  
24 Exhibit 6, in fact, is a tweet posted by the  
25 Cleveland Police Department on July 20th.

1 Correct?

2 A Yes.

3 Q And, in fact, there's a photograph that shows  
4 Flannery's Pub. Correct?

5 A Yes.

6 Q That is, in fact, a restaurant that is located  
7 near the intersection of East 4th and Prospect;  
8 is it not?

9 A Yes.

10 Q And the tweet says, does it not, demonstration at  
11 East 4th and Prospect may be flag burning.  
12 Cleveland fire on scene to take care of it. Is  
13 that correct?

14 A Yes.

15 Q That was put out by the Police Department?

16 A Yes.

17 Q Then if you look at Defendant's Exhibit 7, you  
18 have another tweet published by the Police  
19 Department on July 20th; is that correct?

20 A Yes.

21 Q And that one says, fire fighters extinguished and  
22 took the flag that protesters attempted to  
23 destroy. Correct?

24 A Yes.

25 Q Well, of course, the protestor would have a

1 constitutional right to burn and destroy a flag  
2 as part of their protest. Correct?

3 A From this picture, I see that they actually did  
4 that. I don't see much of a flag here.

5 Q And from the picture on Exhibit 6, it says -- the  
6 tweet says that there's a demonstration that  
7 there may be flag burning. Cleveland Fire on  
8 scene to take care of it. Correct?

9 A Yes.

10 Q Well, assuming that they had a constitutional  
11 right to burn a flag safely and peacefully, there  
12 would be nothing for the Cleveland Fire  
13 Department to take care of? Correct. In that  
14 event; isn't that true?

15 A Well, you kind of uttered the two key words,  
16 safely and peacefully.

17 Q And there would have been nothing for the  
18 Cleveland Fire Department to do by the way of  
19 taking care of that, under that circumstance  
20 peaceful protest involving flag burning.  
21 Correct?

22 A Had it been conducted safely and peacefully,  
23 you're right.

24 Q Now, what, if anything, did you know about the  
25 Rev.com club back in July of 2016?

1 A The only thing I personally knew about the  
2 Rev.com club I assume they were one in the same  
3 that they try to agitate people in their  
4 demonstrations.

5 Q And how did you learn that?

6 A By personally being there.

7 Q Okay. Before July of 2016 or --

8 A Long before July of 2016.

9 Q How long before?

10 A Starting at the end of 2014, 2015, 2016.

11 Q You were aware that persons associated with the  
12 Rev.com club had protested numerous times before  
13 the RNC?

14 A Yes.

15 Q Okay. Now, in your coordination with the FBI and  
16 the Secret Service, was there is a discussion  
17 about that group?

18 A With the FBI and Secret Service?

19 Q With the -- or any one of them?

20 A There was discussion about any potential protest  
21 groups, any particular visitors, anybody that's  
22 visiting the convention that we need to be aware  
23 of, concerned about, and that we need to provide  
24 protection of their 1st Amendment, 2nd Amendment  
25 right, 4th Amendment rights, of course. Yes.



1 Q But was the Rev.com club one of the groups  
2 specifically discussed with the FBI or Secret  
3 Service?

4 A I can't say if we specifically discussed them  
5 with the FBI and Secret Service, but I know  
6 internally with the Division of Police, yes, we  
7 did.

8 Q And as part of your monitoring of that group, did  
9 someone -- did the police from time to time  
10 access the internet to see any posting put out by  
11 that group so that you would be on notice of any  
12 upcoming protests?

13 A There was no monitoring of any particular group.  
14 If things were brought to our attention and we  
15 took a look to see exactly what they were to look  
16 at dates, times, locations and that was about it.  
17 We don't monitor groups.

18 Q How would a -- for example, the flier that we've  
19 put in front of you. Assuming that that came to  
20 the attention of someone in your department, how  
21 would that happen ordinarily?

22 A Someone would send it to us. Our officers would  
23 take a look at it.

24 Q You mean like a citizen?

25 A I don't know how you got this or I don't even

1 know if we have this. That was my question.

2 When was it sent out and to whom?

3 Q Right. Well, you've reviewed all the reports in  
4 this case; have you not?

5 A I'm sorry?

6 Q Did you review the reports of Lieutenant  
7 Gaertner?

8 A I'm sure I did, but I haven't reviewed them  
9 lately.

10 Q Okay. Do you recall him saying that there was an  
11 open source indication that there was going to be  
12 a flag burning or there was going to be a protest  
13 by this group at East 4th and Prospect? You  
14 recall seeing that in his report?

15 A No, I don't.

16 Q Okay. We'll ask him about that when he gets on  
17 the stand. The points is, is that these kinds of  
18 postings on the internet can come to the  
19 attention of your department in any number of  
20 ways?

21 A Yes. Sure, yes.

22 Q But you're saying that you would not have been  
23 proactive during the Republic National Convention  
24 and being on the internet looking for postings  
25 about what protesters were planning on doing?

1 A I'm saying that we monitor activities. We don't  
2 monitor organizations or individuals.

3 Q But you did want to learn in advance for purposes  
4 of deploying your police officers to the extent  
5 that you could pro -- protests were going to take  
6 place, when and where during the RNC. Correct?

7 A Well, according to this document that you gave to  
8 me, they actually sent it out themselves to  
9 everybody.

10 Q Yes. Correct. My only question is this, though,  
11 Chief.

12 One of the things that you wanted to do in  
13 connection with your duties at the RNC was to  
14 learn in advance when protest groups were going  
15 to engage in protests and where, so that you  
16 could have the proper resources devoted to it;  
17 isn't that true?

18 A Sometimes, yes.

19 Q And in fact, in some cases I think one of your  
20 policies said that in the event that you have  
21 advance information, you may even coordinate with  
22 the leaders of that group to make sure that their  
23 needs are satisfied and that your officers are  
24 able to carry out their duties. Correct?

25 A In the past and even during the convention, we

1           have been contacted directly by protest groups  
2           and really sat down with them to see what their  
3           activities were and we assist in their 1st  
4           Amendment rights. Yes.

5 Q       Now, you -- on July 20, 2016, you gave a press  
6       conference; did you not?

7 A       Yes.

8 Q       And you also gave a press conference on July 21,  
9       2016; did you not?

10 A       I gave a press conference every day of the  
11       convention, twice a day.

12 Q       And during those press conferences on the 20th  
13       and 21st, there was discussion by you of the  
14       arrests that occurred at the protest involving  
15       the burning of the flag. Correct?

16 A       Yes.

17 Q       Okay. Now, did you learn in connection with  
18       that, that officers of your department were  
19       actually following them, following this group to  
20       East 4th and Prospect where the flag burning was  
21       to occur?

22 A       I don't recall that, but I could have. I just  
23       don't recall that.

24 Q       Well, do you know how your officers would have  
25       recognized it?

1 A I'm sorry?

2 Q Do you know how your officers would have  
3 recognize that --

4 A What do you mean?

5 Q -- apart from anyone else?

6 A I don't know. You tell me.

7 Q So you don't know the answer to that question?

8 A No, I don't.

9 Q You don't know whether your officers had advance  
10 warning and followed the Rev Com group or these  
11 protesters as they walked up to East 4th and  
12 Prospect?

13 A Of this particular group, no.

14 Q Yes?

15 A As I stated earlier, we had information that  
16 there would be a 1st Amendment flag burning at  
17 4th and Prospect by a single gentleman. We were  
18 able to identify that gentleman by him walking  
19 through the crowd with the flag and basically  
20 saying he's going to do this. At that time, we  
21 assembled the appropriate number of officers to  
22 insure his 1st Amendment rights and protect the  
23 public and we assembled, basically, followed the  
24 gentleman from, I think, around public square  
25 southbound on East 4th Street to East 4th and

1 Prospect and put a protective cording around that  
2 gentleman, as he continued to do what he wanted  
3 to do. In the end, the gentleman basically  
4 walked away and said he's not doing anything.

5 At that time, we redirected our forces. I  
6 was there myself and I walked back to public  
7 square and before I could get back to public  
8 square, I think I was somewhere in the area of  
9 the casino is when I got a call from Lieutenant  
10 Gaertner saying they needed assistance; that they  
11 had crowd management issues and that he was being  
12 attacked. Officers ran back to 4th and Prospect.

13 Q Well, isn't it true that at the press conference  
14 you gave on July 20th, when they were discussing  
15 the arrests that day in the flag burning  
16 incident, you said there was a question, were you  
17 made aware of any ramping up of protests tomorrow  
18 on the final day or preparing for any ramping up  
19 of protesters, one of the things you said is, no,  
20 no, and if I did, I really couldn't tell you guys  
21 here but I mean, we're out there. We're on top  
22 of everything. Our officers are actually  
23 following this group before they did what they  
24 did. We didn't know exactly what they were going  
25 to do, and so once they started that and once

1 things started to ramp up, they called people in  
2 and we dealt with it. Isn't that what you said  
3 about what happened at this flag burning?

4 A Yes.

5 Q So you -- you, at that juncture, had information  
6 that your officers had been following this group,  
7 but you're not sure how they identified them?

8 A Well, there are -- anybody that was at the  
9 convention knows that of the dozens of groups  
10 that came to protest and exercise their 1st  
11 Amendment rights, of course, our officers were in  
12 close proximity to dozens of those groups.

13 And at the time this incident happened, I  
14 wasn't aware that they were actually with this  
15 group, as they were moving because as I stated  
16 before, we thought the flag burning was going to  
17 happen prior to that and had assembled forces and  
18 officers at that location to make sure that we  
19 could keep everybody safe and it didn't happen.  
20 And we removed all those officers.

21 So, you know, there are a lot of groups in a  
22 lot different locations in the city that day and,  
23 of course, our officers were trying to keep up  
24 with all those groups to make sure that we could  
25 provide protection for them.

1           So, the officers that were -- had identified  
2           this group, however they identified them, it  
3           could have been one officer, it could have been  
4           two. It could have been 20. I don't know, but  
5           from the information I got, there was only a  
6           couple officers that actually saw this starting  
7           to happen, was trying to get that information out  
8           there.

9   Q       Okay. So, the officer -- at least one officer  
10       gets some idea that this group is heading to East  
11       4th and Prospect for a protest that might involve  
12       burning the flag as you understood it, after the  
13       fact?

14   A       They -- from what you're saying and from what I  
15       can recall from that day itself, the officers had  
16       information of a protest group. Of that  
17       activity, they didn't have that information.  
18       They just knew a group was going in that  
19       direction and they were trying to get that  
20       information out so we would have adequate  
21       officers there to protect everybody.

22           The activities of that group, I don't think  
23       were known by anybody until they actually started  
24       to happen, unless one of the participants in that  
25       group actually told the officers what they were



1           about to do and I don't know if that happened or  
2           not.

3   Q       I want to show you what has been marked for  
4           identification as Defendant's Exhibit 13. I'm  
5           not going to ask about the entire contents, but  
6           can you just generally describe what type of  
7           document this is?

8   A       This is a Divisional Office Report, basically.

9   Q       So --

10   A       It's a report of an arrest or an activity in the  
11           city.

12   Q       Okay. So, obviously your officers have developed  
13           protocols when somebody gets arrested, there's  
14           paperwork and everything. Correct?

15   A       Correct.

16   Q       And this is the type of paperwork that gets  
17           filled out when an arrest is made. Correct?

18   A       That's correct.

19   Q       Okay. Now, I want you to go to the very last  
20           page of this exhibit and do you see there's a  
21           supplemental report by Lieutenant Gaertner?

22   A       Yes.

23   Q       And do you see that the supplemental report is  
24           designed to change the title of the offenses that  
25           were being charged?

1 A Yes.

2 Q Okay. It says the following information is  
3 offered as a supplemental report for the arrest  
4 that took place on July 20, 2016, on East 4th and  
5 Prospect by law enforcement members assigned to  
6 the RNC. Correct?

7 A Yes.

8 Q He then says, open source information was  
9 forwarded to officers working the crowd  
10 management detail warning that members of the  
11 group that identified themselves as Rev.com were  
12 advertising a flag burning to take place at East  
13 4th and Prospect at 1600 hours?

14 MR. HEWITT: Your Honor, Lieutenant  
15 Gaertner is here. He's going to testify, so  
16 that question may be more appropriate to him.

17 MR. MURRAY: And I'm going to cover  
18 it with him as well, your Honor, but it's  
19 relevant to something that the Chief said.

20 THE COURT: Okay. I will allow  
21 this to continue, but I understand  
22 (inaudible) Lieutenant Gaertner. You may  
23 proceed.

24 Chief, did you understand the question?

25 CHIEF WILLIAMS: No. Can you repeat

1 the question?

2 Q Yeah. He indicates that he had information that  
3 was forwarded warning the members of a group that  
4 identified themselves as Rev.com, were  
5 advertising a flag burning to take place at East  
6 4th and Prospect at 1600 hours. Copies of this  
7 were printed from the internet and available for  
8 prosecution. You see that?

9 A Yes.

10 Q Okay. Well, that's consistent, though -- the  
11 point is, when you gave your press conference,  
12 you had information that I think you shared with  
13 the press that there had been some advance notion  
14 that this was going to take place, and wouldn't  
15 Lieutenant Gaertner have been the source of your  
16 information for that comment, probably?

17 A Again, when I gave the press conference, I did  
18 not have this particular information.

19 Q Okay. So, but you had some information that as  
20 we just went over that the officers were actually  
21 following that group?

22 A Yes.

23 Q Okay. We'll ask Lieutenant Gaertner about that  
24 when we call him next. Okay. So, the group gets  
25 to East 4th and Prospect and they plan on, as

1 part of their protest, burning an American flag.

2 Correct?

3 A Yes. I assume, yes.

4 Q And in fact, there would be no justification for  
5 your officers to prevent that from happening if  
6 it were being done safely and peacefully.

7 Correct?

8 A Correct.

9 Q And there would be no justification for your  
10 officers to stop the burning of that flag if it  
11 was done peacefully and safely. Correct?

12 A That's correct.

13 Q Okay. And there would have been no justification  
14 for your officers to immediately attempt to  
15 extinguish a burning flag if at that juncture  
16 there was no immediate safety concern. Correct?

17 A That's correct.

18 Q You've indicated you were not personally present  
19 at the scene when the flag burning occurred.

20 Correct?

21 A That's correct.

22 Q You were at Ontario and East Roadway by the  
23 casino?

24 A Yes.

25 Q And so when you arrived at the scene, the flag

1 had already been extinguished by presumably the  
2 officers. Correct?

3 A I'm assuming so. I didn't see a flag burning when  
4 I got there.

5 Q Okay. So, you didn't personally observe how  
6 quickly your officers intervened to stop the flag  
7 burning; did you?

8 A No. I didn't observe any of the flag burning at  
9 the scene, no.

10 Q So, you don't know from personal knowledge  
11 whether or not there was any justification at  
12 this juncture for the officers to break-in and  
13 extinguish that flag. Correct?

14 A Not from personal knowledge, no.

15 Q You had to rely upon the reports of your officers  
16 to draw whatever conclusions you came to about  
17 that particular part of the event?

18 A Yes.

19 Q So -- but you do arrive there shortly thereafter?

20 A Yes.

21 Q You're notified by radio that what, that this  
22 event is occurring and where it is?

23 A That there was an out of control crowd and that  
24 officers were being assaulted and they were  
25 calling for assistance.

1 Q Okay. So, you went down to East 4th and  
2 Prospect?

3 A That's correct.

4 Q And you remember approximately what time you  
5 arrived?

6 A No, I don't.

7 Q There was a fair number of people there.  
8 Correct?

9 A A few hundred, yes.

10 Q And many others besides the protesters. Correct?

11 A Exactly, yes.

12 Q And at some point, you declared this was an  
13 unlawful assembly and that people should  
14 disperse. Correct?

15 A Yes.

16 Q And at some point you ordered that certain people  
17 be arrested. Correct?

18 A At some point, yes.

19 Q But the only people among that crowd that got  
20 arrested were members in the protest?

21 A That's correct, yes.

22 Q There were still other people in the area at the  
23 time that the protesters were being arrested,  
24 correct?

25 A Yes.

1 Q But none of those other people, even though they  
2 were still in the area, were arrested, were they?

3 A No, because they were following orders to leave  
4 the area.

5 Q Were they still there -- were there people still  
6 there when some of the protesters were being  
7 arrested?

8 A Yes, they were.

9 Q But you didn't arrest any of them. Correct?

10 A They were not -- they were not conducting what we  
11 deemed to be violent activities. They were not  
12 physically blocking the only emergency exit on  
13 that side from the Q and they were following  
14 orders to egress from that area.

15 Q When the arrests were completed of the  
16 protesters, were there still people in that area?

17 A Mostly reporters, yes.

18 Q Were there others who were not reporters still in  
19 that area?

20 A I don't know. I'd have to go back and look at  
21 the video. But yes, there were people in the  
22 area and there were people that were not blocking  
23 the entrance and they were people just standing  
24 by not being violent or trying to incite violence  
25 in the crowd.

1 Q Okay. So, are you saying that our clients were  
2 arrested because they were trying to incite  
3 violence now? Is that your testimony?

4 A I'm saying your clients were arrested for failure  
5 to disperse.

6 Q Well, you just said a moment ago that they were  
7 trying to incite violence. Is that what you  
8 said?

9 A I'm saying that their actions on that day,  
10 incited people that wanted to really get at them  
11 for their activities on that day.

12 Q Well, you were --

13 A And in our efforts to separate everybody, we  
14 moved the people away that they were kind of  
15 trying to get at them and then we tried to move  
16 them from blocking that emergency exit and they  
17 refused to move and that's when they were  
18 arrested.

19 Q You understood that they had a right to say  
20 things that would be offensive to other members  
21 of the crowd?

22 A Yes, they did.

23 Q And that your job would be to protect their right  
24 to say those things from a hostile crowd that was  
25 trying to physically interfere with them.



1 Correct?

2 A Yes.

3 MR. MURRAY: May I have a moment,  
4 your Honor?

5 THE COURT: You may.

6 MR. MURRAY: Your Honor, I've no  
7 further questions, but I would offer into  
8 evidence Defendant's Exhibits 1, 2, 3, 4, 5,  
9 6, 7, 11, and 12.

10 MR. HEWITT: No objection, your  
11 Honor.

12 THE COURT: Thank you. Thank you,  
13 Mr. Prosecutor.

14 I believe -- I think you offered into  
15 evidence Defendant's Exhibit 1, 2, 3, 4, 5,  
16 6, 7, 11, and 12.

17 Is that correct?

18 MR. MURRAY: Yes, I think that is  
19 correct, your Honor.

20 THE COURT: Thank you. No  
21 objection?

22 MR. HEWITT: No, your Honor.

23 THE COURT: Thank you.

24 Mr. Hewitt.

25 MR. HEWITT: Thank you.

DIRECT EXAMINATION

1  
2 BY MR. HEWITT:

3 Q Chief, I'm going to call your attention to  
4 Exhibit 2, please. This concerns crowd  
5 management, protection of constitutional rights.  
6 Correct?

7 A Yes.

8 Q There was questioning by counsel regarding page  
9 four. Correct?

10 A Yes.

11 Q And I think he read to you the second bullet, the  
12 first half of it and I would now ask you to read  
13 into the record the second half starting with  
14 these rights?

15 A Yes. These rights may be subject to reasonable  
16 restrictions designed to protect public safety,  
17 persons and property and to accommodate the  
18 interest of persons not participating in these  
19 assemblies to the use of sidewalks -- I'm sorry--  
20 to the use of streets, sidewalks, and other  
21 public ways to travel to their intended  
22 destination and use public spaces for  
23 recreational purposes.

24 Q Okay. Thank you.

25 THE COURT: Mr. Hewitt, what

1 exhibit was that?

2 MR. HEWITT: That's Exhibit 2, your  
3 Honor.

4 THE COURT: Exhibit 2.

5 MR. HEWITT: It's page 4 of 28.

6 THE COURT: Thank you.

7 MR. HEWITT: All right.

8 Q Exhibit 12, please, Chief.

9 A Yes.

10 Q This is a notice that Joey Johnson, notorious  
11 flag burner, revolutionary communist to display  
12 the flag. You see that?

13 A Yes.

14 Q All right. Did you see where this flag burning  
15 was scheduled to take place? What, when and  
16 where. Could you identify the when and where,  
17 please?

18 A The when is July 20, 4:00 p.m., change from  
19 3:00 p.m. where? East 4th and Prospect Avenue  
20 Cleveland, Ohio. Change from Perk Plaza.

21 Q So at one point in time, it was advertised that  
22 these would take -- this flag burning would take  
23 place at another location. Correct?

24 A According to this document, yes.

25 Q All right. Even the time was changed. Correct?

1 A Yes.

2 Q All right. Exhibit 11, please.

3 A Yes.

4 Q That's the whiteboard with the officer?

5 A Yes.

6 Q And you see charges there. Correct?

7 A Yes.

8 Q Who determines charges that are to be brought  
9 against a particular defendant, please?

10 A Prosecutor's Office.

11 Q So, if -- the information that's indicated on  
12 this whiteboard, the ultimate decision would be  
13 made by whom?

14 A By the City Prosecutor's Office.

15 Q All right. This flag burning took place at East  
16 4th and Prospect. Correct?

17 A Correct.

18 Q You had arrived after the burning -- flag burning  
19 itself had taken place. Correct?

20 A Correct.

21 Q In your opinion, sir, was this done in a safe  
22 environment?

23 A No.

24 MR. MURRAY: Objection, your Honor.

25 He wasn't there he said at the time. Plus,

1           that's a matter of expert testimony, not lay  
2           testimony.

3           THE COURT:                   He can answer the  
4           question if you want.  If you know, you can  
5           answer the question.

6           MR. HEWITT:                   Your Honor, I'll  
7           ask--

8  A        I'll answer the question this way.  When I  
9           arrived on the scene, it was not a safe  
10          environment.

11  Q        And why?

12  A        Because it was total chaos.  There were not  
13          enough officers there to control all the  
14          demonstrations itself; the crowd ensued, a long  
15          with the media push and others trying to get a  
16          look at what was going on; and it was total  
17          chaos.

18  Q        There were anti-protesters present also, correct?

19  A        Yes.

20  Q        So then you had the Rev.com group were -- did  
21          burn an American flag, right?

22  A        From what I observed after it was all over --  
23          said done, the flag was basically 99 percent  
24          burned.  There was nothing left.

25  Q        So at that point, it was -- you had learned that

1 individuals had gotten injured. Correct?

2 A Yes.

3 Q How many people?

4 MR. MURRAY: I couldn't hear the  
5 question.

6 THE COURT: Would you repeat the  
7 question?

8 MR. HEWITT: How many people had  
9 been injured?

10 CHIEF WILLIAMS: At that point --

11 MR. MURRAY: Objection, your Honor.  
12 He has no personal knowledge of that.

13 THE COURT: He's asking a question  
14 if he has knowledge of it. You can answer.

15 A After we got things fairly calmed down, I was  
16 told that two people were actually --

17 MR. MURRAY: Objection. That's  
18 hearsay, your Honor.

19 THE COURT: You have to testify as  
20 to what you know, what you saw.

21 CHIEF WILLIAMS: Yes, your Honor.

22 THE COURT: Thank you.

23 Mr. Hewitt, can you please repeat the  
24 question again just so I'm clear on what  
25 you're asking.

1 MR. HEWITT: Were you aware that  
2 others had been injured as was part of the  
3 flag burning?

4 MR. MURRAY Objection, your Honor.

5 THE COURT: And your basis for the  
6 objection?

7 MR. MURRAY: He needs to establish  
8 personal knowledge as a predicate rather than  
9 letting him -- was he aware based on what  
10 somebody else told him. He can't testify to  
11 that fact until he establishes that he has  
12 personal knowledge of it.

13 THE COURT: Well, he established  
14 he was there, so he can testify as to what he  
15 saw and what he knows from his observation.

16 You may answer the question if you can.

17 A Through my personal observation, I did not  
18 witness injuries, but through the reports, it was  
19 reported in our Divisional Police Reporting  
20 Procedures that persons were injured. Yes.

21 Q All right. So it was a need to disperse the  
22 situation. Correct?

23 A Right. That was not about flag burning. This  
24 was about a violent situation that we had to  
25 disperse a crowd, period. The flag burning was

1 done.

2 Q And so the protesters were there. You asked each  
3 of them to leave. Correct?

4 A That's correct.

5 Q You personally did that, correct?

6 A Personally. Face-to-face.

7 Q You pleaded with those protesters to leave the  
8 area, correct?

9 A Yes.

10 Q And when they did not leave the area, you then  
11 ordered them arrested. Correct?

12 A Correct.

13 Q And the charges that were brought were Failure to  
14 Disperse. Correct?

15 A Correct.

16 Q Things turned chaotic, correct, your Honor?

17 A Things were chaotic from the beginning, yes.

18 Q Safety was an issue. Correct?

19 A Safety was a paramount concern.

20 Q Police needed to restore order?

21 MR. MURRAY: Your Honor, I'm going  
22 to object to these leading questions. Some  
23 leeway is appropriate, but --

24 THE COURT: Thank you. Objection  
25 sustained.



1 Q The protesters continued to chant their message;  
2 did they not?

3 A When I arrived, the protesters were locked arm in  
4 arm in front of the emergency exit for the Q for  
5 people participating in the convention itself.  
6 There was an awning that was set up to get people  
7 out of the weather in case it rained. That was  
8 completely destroyed and they were refusing to  
9 move from in front of that entrance or do any  
10 other -- refused any command from police officers  
11 or law enforcement.

12 Q So then you ordered them arrested and the order  
13 to disperse included everybody. Correct?

14 A Yes.

15 Q Members of the press?

16 A Yes.

17 Q Even curious onlookers?

18 A Yes, they were all pushed from the area.

19 Q And there was no specific reasons to target any  
20 of the defendants, were there?

21 A They weren't targeted, but for the fact that they  
22 were the only people locked arm in arm blocking  
23 the entrance and that they were really the only  
24 people that were at that point out of control.

25 MR. HEWITT: I've no further

1 questions.

2 THE COURT: Thank you, counsel.

3 RECROSS-EXAMINATION

4 BY MR. MURRAY:

5 Q They weren't the only people that were still  
6 there, though, were they?

7 A When do you mean?

8 Q Still present in that area?

9 A There were a ton of police officers there, yes.

10 Q There was media still there?

11 A That we had pushed farther away, yes.

12 Q There were other citizens still in that area.  
13 Correct?

14 A Our only request for the people that were  
15 arrested was to leave the immediate area which  
16 they refused to do and other people that we told  
17 to leave that area followed that direction.

18 Q Were there other people present still after you  
19 arrested our clients?

20 A Police officers and media, yes.

21 Q And citizens?

22 A I can't testify to -- there were -- I can't tell  
23 you that no, there were no citizens in that  
24 immediate area because everybody out there had a  
25 camera, had a phone, had a microphone. Everybody

1           professed to be media, a blogger, an internet  
2           person with a radio show. So, we did our best to  
3           move everybody out of that area including the  
4           media.

5 Q       Now, you said that when you arrived, I think the  
6           phrase was, it was total chaos. You recall  
7           giving that testimony?

8 A       That's correct.

9 Q       What you don't know however, since you didn't  
10          personally observe it, is to what extent the  
11          chaos that you observed was the product of police  
12          officers rushing in and extinguishing the flag  
13          from burning in the middle of the protest. You  
14          don't know to what extent that caused the chaos,  
15          do you?

16               MR. HEWITT:                   He was not present,  
17               your Honor, so I'm not sure if he can testify  
18               to that.

19 A       Well, I don't think anybody knows, except the  
20          people that were there.

21               THE COURT:                   Hold on a minute.  
22               Restate the question, please.

23               MR. MURRAY:                   You do not know to  
24               what extent the chaos that you observed was  
25               actually the product of your officers rushing

1           in an intervening to stop the flag burning;  
2           isn't that true?

3           THE COURT:                    On the objection, I'll  
4           overrule it and allow you to answer it.

5 A       I don't think anybody knows, except the people  
6       that were there.

7           MR. MURRAY:                   May I have one moment,  
8           your Honor?

9 Q       I want to make sure I understand where your  
10       officers -- well, the location of the flag  
11       burning protest was at the corner of East 4th and  
12       Prospect. Correct?

13 A       I don't know if it was at a corner. It was my  
14       understanding by seeing the flag itself on the  
15       ground, it was right in the middle of the  
16       intersection.

17 Q       Okay. Well, in the middle of street around that  
18       intersection. Correct?

19 A       Right. Closer to the entrance side, closer to  
20       the south side of Prospect Avenue.

21 Q       Okay. But, when the police officers intervened  
22       before you got there, they, in fact, moved some  
23       of the protesters a way from and towards the  
24       security area; isn't that true?

25 A       I'm not aware of that, no.

1 Q So you don't know whether or not the protesters  
2 that you arrested were -- where they were because  
3 they had been moved there in the aftermath of the  
4 police action. You don't know that, do you?

5 A I don't know that, but I do know that they were  
6 given the opportunity to leave, whether they were  
7 moved there or not, and they refused to leave.

8 MR. MURRAY: One more moment, your  
9 Honor. That's all I have. Thank you, your  
10 Honor.

11 THE COURT: Thank you very much.  
12 Mr. Prosecutor.

13 MR. HEWITT: No further questions.

14 THE COURT: Thank you very much.  
15 Next witness.

16 MR. MURRAY: Yes, your Honor.  
17 Would be Lieutenant Gaertner.

18 THE COURT: Thank you, Chief.  
19 Somebody ask Lieutenant Gaertner,  
20 please -- Lieutenant, come up.

21 Good morning, Lieutenant.

22 LT. GAERTNER: Good morning, Judge.

23 THE COURT: Mr. Murray.

24 MR. MURRAY: Thank you, your Honor.

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TIMOTHY GAERTNER,

having been first duly sworn, was examined  
and testified as follows:

CROSS-EXAMINATION

BY MR. MURRAY:

Q Please state your name and business address for  
the record.

A Lieutenant Timothy Gaertner. G-A-E-R-T-N-E-R,  
badge number 8409. Lieutenant, Cleveland Police,  
4th District, 9333 Kinsman Avenue.

Q How long have you occupied that rank?

A I've been a Lieutenant since 2000.

Q What are your duties, generally speaking, as a  
Lieutenant?

A I'm in charge of day shift out in the 4th  
District.

Q Now, you were assigned to duties during the  
Republican National Convention, in July 2016, as  
well; were you not?

A Yes, sir, I was.

Q What general duties were you assigned during that  
week that the Republicans met?

A I was assigned as a Field Force Squad Leader.

Q And what did that entail?

A I was in charge of four squads down at -- in the

1           general area of the convention.

2   Q       Okay.  What was the purpose of the squad?

3   A       For any -- any -- anything.  For protesters, for  
4           any type of violence, anything.  Any type of  
5           crimes committed in the downtown area.

6   Q       Now, are you familiar with -- there should -- is  
7           Exhibit 2 -- are there some exhibits in front of  
8           you?  Yes.  Would you find what has been marked  
9           as Defendant's Exhibit 2?  I'll help you.  I'll  
10          give you this.  Do you see Exhibit 2?

11          Defendant's Exhibit 2, Lieutenant?

12   A       Yes, sir.

13   Q       That's the June 13, 2016, police order issued by  
14           Chief Williams concerning crowd management and  
15           protection of constitutional rights?

16   A       Yes, sir.

17   Q       And is that something that you reviewed before  
18           the Republican National Convention?

19   A       Yes, sir.

20   Q       That is something that you understood you had a  
21           duty to comply with?

22   A       Yes, sir.

23   Q       Now, I also want to ask you about Defendant's  
24           Exhibit 3.  There should be another document that  
25           has a three on it?

1 A Yes, sir. I see it.

2 Q I would ask you to just peruse it and let me know  
3 whether you're familiar with that document as  
4 well.

5 A Okay. I perused it, sir.

6 Q Are you familiar with that document?

7 A Yes, I am.

8 Q Did you receive the training that that document  
9 provides?

10 A Yes, I did.

11 Q How did you receive it, in a classroom setting?

12 A Classroom setting.

13 Q And was it before the Republican National  
14 Convention that you received that training?

15 A Yes, sir.

16 Q And do you remember who provided the training?

17 A Not off the top of my head, no.

18 Q Now, it is true, is it not, that you were  
19 involved in arresting certain protesters in  
20 connection with a flag burning incident that  
21 occurred on July 20th at East 4th and Prospect at  
22 around 4:00 p.m. on -- yeah, at around 4:00 p.m.?

23 A Yes, sir. I was there.

24 Q Now I want to show you what has been marked as  
25 Defendant's Exhibit 13.



1 MR. MURRAY: I think I gave you a  
2 copy, your Honor, already.

3 THE COURT: I do have a copy.

4 Q Lieutenant, I'm about to hand it to you.

5 A Okay.

6 Q You were involved in the arrest of Gregory Joey  
7 Johnson; were you not?

8 A Not directly, no.

9 Q All right. Exhibit 13 is police paperwork  
10 associated with an arrest; isn't that correct?  
11 Generally speaking. I'm not asking about the  
12 contents. Isn't that the type of documents?

13 A It appears so, yes, sir.

14 Q Okay. And if you turn on the last page, it is  
15 true, is it not, that you contributed to  
16 Defendant's Exhibit 13 at least on that last  
17 page?

18 A Yes, I did. I offered a supplemental report to  
19 the original arrest.

20 Q Okay. And in fact, if you go -- before we get  
21 there, if you would go to page 15. There are  
22 numbers at the bottom. You authored that page,  
23 as well, did you not, page 15?

24 A That's my signature on the bottom, yes, it is.

25 Q Is it your handwriting, though, on the report or

1 did someone else fill that out then you approved  
2 it?

3 A Someone else filled it out and I assisted them  
4 with it.

5 Q Okay. All right. But then let's go to the last  
6 page, which is your report, correct, your  
7 supplemental report?

8 A Yes, sir.

9 Q And it indicates the purpose of the supplemental  
10 report is for a new title to read Aggravated  
11 Arson, inciting violence, Resting Arrest, police  
12 intervention/arrest. Correct?

13 A Yes, sir.

14 Q Then you indicate the following information is  
15 offered as a supplemental report for the arrest  
16 that took place on 7/20/2016 on East 4th and  
17 Prospect by law enforcement members assigned to  
18 the RNC. Correct?

19 A Yes.

20 Q You then say open source information was  
21 forwarded to officers working the crowd  
22 management detail. Let me stop right there.  
23 What is meant by open sources information? What  
24 do you mean by that?

25 A The internet, public -- social media.

1 Q I see. So, did you have some kind of electronic  
2 tablet with you?

3 A No. That was relayed to me in person.

4 Q And by in person, meaning orally or --

5 A On the radio. I believe it was broadcast over  
6 the radio.

7 Q I got you. Okay. So open source information  
8 forwarded to officers warning that members of a  
9 group that identified themselves as quote  
10 "Rev.com" were advertising a flag burning to take  
11 place at East 4th and Prospect at 1600 hours.  
12 You see that?

13 A Yes, I do see that.

14 Q So you were warned about that at the time over  
15 the radio?

16 A Correct.

17 Q Okay. You go on to say, copies of this were  
18 printed from the internet and are available for  
19 prosecution. Is this something you did later?

20 A I believe so, yes.

21 Q Okay. And before we go any further on that  
22 exhibit, I want to draw your attention to what's  
23 been marked as Defendant's Exhibit 12 and ask you  
24 what that is. The information that you were able  
25 to get after the fact on the internet to provide

1 for prosecution?

2 A I'm not totally sure, sir.

3 Q Okay. But something a long those lines is what  
4 you were able to get?

5 A That's correct.

6 Q Okay. So then you say -- in your next paragraph  
7 you say, when members of this group arrived on  
8 East 4th and began walking from Euclid to  
9 Prospect, Cleveland Police immediately began to  
10 follow them. You see that?

11 A Yes, I see that.

12 Q How did you identify that they were part of the  
13 group that you were being warned about?

14 A I was advised by undercover officers.

15 Q Okay. So, they pointed -- in other words, they  
16 pointed out to you certain people?

17 A Yes.

18 Q Okay. And were these undercover officers of the  
19 Cleveland Police Department or some other agency?

20 A Cleveland Police Department mostly.

21 Q Well, what about the others?

22 A There were all kinds of other -- there were so  
23 many police agencies involved, but I remember  
24 hearing it from a CPD officer.

25 Q Did the FBI have undercover officers there as far

1 as you know?

2 A I can't speak for them, sir.

3 Q What about Secret Service?

4 A I did not deal with the Secret Service.

5 Q Okay. So anyway, a Cleveland Police Department  
6 undercover officer was able to identify the  
7 people; is that correct?

8 A That's correct.

9 Q How many of them were there?

10 A I don't recall how many, sir.

11 Q It wasn't like a hundred?

12 A I don't recall. I believe it was in the area of  
13 25 to 50.

14 Q Okay. All right. So then it says that police  
15 immediately began to follow them; is that  
16 correct?

17 A That's correct.

18 Q And you were among the police that did that,  
19 correct?

20 A Yes, sir.

21 Q Okay. And your purpose in following them was to  
22 monitor their activities. Correct?

23 A That's correct.

24 Q Okay. So you then say in the next paragraph,  
25 open flames and burning of any sort were deemed

1 prohibited by the City of Cleveland in the RNC  
2 event zone. Correct?

3 A Yes, sir.

4 Q You say this fact along with a list of several  
5 other prohibited items was published and  
6 announced by the City via several media outlets  
7 to the general public. Correct?

8 A Yes, sir.

9 Q So, you were warned by the radio that they were  
10 advertising a flag burning to take place.  
11 Correct?

12 A Correct.

13 Q And you made note of the fact that open flames  
14 and burning of any sort were prohibited.  
15 Correct?

16 A Correct.

17 Q So, at that juncture, your conclusion was that  
18 what they contemplated doing would be prohibited  
19 by that policy of open flames and burning of any  
20 sort being deemed prohibited. Correct?

21 A That's correct.

22 Q Now -- okay. So you then say the group formed a  
23 circle at East 4th and Prospect. Correct?

24 A Yes. That's correct, sir.

25 Q And then you say Johnson and Castanon, those are

1 two of the individuals who were ultimately  
2 arrested, correct?

3 A That's correct.

4 Q Were in the center of the group, correct?

5 A Yes, sir.

6 Q And then you say, as soon as they began to light  
7 an American flag on fire, Lieutenant Gaertner and  
8 Sergeant William Stanton used cold fire to  
9 extinguish the flame. Correct?

10 A Yes, sir.

11 Q And that was true, correct?

12 A Yes.

13 Q As soon as they lit the fire, you and Sergeant  
14 Stanton used the cold fire to extinguish it,  
15 correct?

16 A Yes, sir.

17 Q You also make note in your last paragraph that  
18 Johnson and Castanon were continuously before,  
19 during and after, calling for the -- I think you  
20 meant overthrow not other throw, probably. Is  
21 that a typo?

22 A Yes, sir.

23 Q Okay. Johnson and Castanon were continuously  
24 before, during and after calling for the  
25 overthrow of the government during their arrest

1 inciting the crowd to commit other acts of  
2 violence. Correct?

3 A Yes, sir.

4 Q By saying those things. Correct?

5 A Yes, sir.

6 Q Now --

7 MR. MURRAY: May I have one moment,  
8 your Honor?

9 THE COURT: You may.

10 MR. MURRAY: Your Honor, that's all  
11 I have of this witness, but I do want to make  
12 sure that I offered into evidence -- I've  
13 offered, 1, 2 --

14 THE COURT: Give me one second.  
15 One second. All right.

16 What do you think you offered into  
17 evidence?

18 MR. MURRAY: I think I offered 1,  
19 2, 3, 4, 6, 7, 11 and now I want to make sure  
20 that I offer Defendant's Exhibit 5, which is  
21 an audio. We have a -- burned a disk of an  
22 audio tape that was played.

23 THE COURT: Okay.

24 MR. MURRAY: And I want to make  
25 sure I offer Defendant's Exhibit 12, which is



1           the flier; and then finally, I want to offer  
2           into evidence -- I want to offer into  
3           evidence as 13 -- Defendant's Exhibit 13,  
4           just the last page of that exhibit because  
5           that's the page that the Lieutenant wrote.  
6           I'm not offering the rest of that exhibit,  
7           which he did not create. Just the last page  
8           that I questioned him about.

9           And then if I can have one further  
10          moment, your Honor. There's one other  
11          exhibit.

12          THE COURT:                    You may.

13          MR. MURRAY:                 Your Honor, would this  
14          be -- there's one other thing that I would  
15          discuss -- I want to discuss with co-counsel  
16          before I release this witness. I'm wondering  
17          if we can take our lunch break now so that we  
18          wouldn't -- so that we could spend some time  
19          discussing that among counsel.

20          THE COURT:                    Okay. Now, before we  
21          do that, let me just make sure I have your  
22          exhibits correct. 1, 2, 3, 4, 6, 7, 11, 5,  
23          12, 13, the last page.

24                 Mr. Hewitt, do you have any objection?

25          MR. HEWITT:                 No objection.

1 THE COURT: Thank you very much.  
2 Now with regard to 13, you made a  
3 typographical correction. Do you want that  
4 noted in the record?

5 MR. MURRAY: I think it was  
6 sufficient that he noted it, your Honor.

7 THE COURT: Very good. Thank you.  
8 As noted, Number 13 will be included.

9 After 12 o'clock, I was -- Mr. Hewitt,  
10 do you -- is this a convenient time?

11 MR. HEWITT: Well, your Honor, I'm  
12 aware that there may be some other  
13 commitments, but I would like to keep going,  
14 but I don't have a lot of questions for this  
15 witness.

16 THE COURT: What time can we  
17 reconvene? It's 12:15 now.

18 MR. MURRAY: 1:00 o'clock would be  
19 fine. 1:15 would be fine with us, your  
20 Honor.

21 THE COURT: Is 1:15 is a good time  
22 to reconvene?

23 MR. HEWITT: That's fine.

24 THE COURT: All right. We'll  
25 recess now until 1:15.

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Thank you very much everybody.

MR. MURRAY: Thank you.

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(Thereupon, a recess was had.)

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AFTERNOON SESSION

THE BAILIFF: All rise. The court is now back in order.

Your Honor, good afternoon.

THE COURT: Good afternoon, everybody.

MR. MURRAY: Your Honor.

THE COURT: Are we ready to resume, counsel?

MR. MURRAY: Yes, we are.

THE COURT: Okay. Thank you very much.

I'll remind you, you're still under oath.

LT. GAERTNER: Yes, your Honor.

CONTINUED CROSS-EXAMINATION OF LT. GAERTNER

BY MR. MURRAY:

Q Lieutenant, at this time, I'm going to introduce by way of a disk and a showing, Plaintiff's -- Defendant's Exhibit 8 and I'd ask you to look at it so that you can then confirm that it depicts the events that you observed on July 20, 2016, at 4:00 p.m. at this protest that involved flag burning.

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(DVD playing)

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(DVD stopped).

- - -

Q Lieutenant, you've seen the video.

A That was the first time I saw that particular video, yes.

Q But that video is a depiction of the events on July 20th about which you've testified?

A Yes, sir.

MR. MURRAY: Your Honor, I would offer into evidence Defendant's Exhibit 8, which is the disk.

THE COURT: Okay.

MR. HEWITT: No objection.

THE COURT: No objection. Thank you.

MR. MURRAY: And I have no further questions of the Lieutenant.

THE COURT: Thank you.

Mr. Hewitt, give me one second.

MR. HEWITT: Okay.

THE COURT: Mr. Hewitt, you may proceed.

MR. HEWITT: Thank you, your Honor.

DIRECT EXAMINATION

1  
2 BY MR. HEWITT:

3 Q Lieutenant, you first learned of the flag burning  
4 on East 4th and Prospect, correct?

5 A Yes.

6 Q Okay. Of course, we saw the video just the  
7 moment ago, right?

8 A That's correct.

9 Q And you saw Mr. Johnson chanting, correct?  
10 Defendant Johnson.

11 A Yes, we heard him chanting.

12 Q And there was another lady by the name of Lisa  
13 Castanon was standing right next to her, correct?  
14 Him. Correct?

15 A That's correct.

16 Q All right. And police were telling the crowd to  
17 get back. You heard that?

18 A Absolutely. Yes, sir.

19 Q And they really -- what evolved in that response?  
20 Did they respond?

21 A No, we did not. The pocket collapsed on the  
22 protesters and forced everything on top of them.  
23 Mostly the media, no offense. But, there was a  
24 lot of people there with cameras and  
25 anti-protesters of the protesters, and they did

1 start off with a decent area, but then that --  
2 like I guess you could say in football, the  
3 pocket -- it collapsed. It collapsed quickly.

4 Q So, you saw defendant Constonon light the  
5 American flag, correct?

6 A Yes.

7 Q Then you observed Mr. Johnson -- defendant  
8 Johnson --

9 MR. MURRAY: Excuse me, your Honor.  
10 Just for the record, she's no longer a  
11 defendant.

12 MR. HEWITT: Well --

13 THE COURT: Thank you.

14 MR. HEWITT: Miss Johnson.

15 THE COURT: Miss Johnson.

16 Q And Miss Castonon -- Miss Castonon lit the  
17 American flag, correct?

18 A Correct.

19 Q And Mr. Johnson then caught fire. Correct?

20 A I believe it was her. She looked -- it appeared  
21 in her hands, but I was only concerned about the  
22 close proximity to all the other people's. All  
23 the other people, excuse me, that were there.

24 Q All right. You had cold fire with you, fire  
25 extinguisher with you. Correct?

1 A Yes, did I.

2 Q Did it come a time that you articulated the  
3 words, "You are on fire, stupid"?

4 A Yes, that was me.

5 Q And whom was that directed to?

6 A Well, what had happened was, there was two --  
7 there was two protesters, the fire extended to  
8 them. And at which point, I had first started to  
9 extinguish the main source of the fire, which was  
10 the flag. But then I was more concerned because  
11 two people -- it was a male and a female, they  
12 were burning. Their clothes had caught fire. So  
13 I blasted -- I sprayed. Blasted. Okay. I said  
14 that. I blasted -- hit them with a blast and he  
15 said, Dude, what are you doing? I said, you're  
16 on fire and he said, you know -- he was, like  
17 whatever. Dude, something of that effect, and I  
18 blasted him again and I said, you're on fire,  
19 stupid with the intent of shocking him. I wanted  
20 him -- to get him to stop, drop and roll because  
21 I wasn't sure if he was totally out. At that --  
22 right after that happened, then I got grabbed by  
23 somebody and ended up on the ground.

24 Q And your testimony is that at least two other  
25 people received burns. Correct?



1 A It was two other protesters with that group that  
2 their clothes caught on fire. I was never able  
3 to locate them. They did not stick around.

4 Q There was counter-protesters present also,  
5 correct?

6 A Yes, sir.

7 Q Did you spray anyone else with this cold fire  
8 extinguisher?

9 A Not that -- one person was kicking me while I was  
10 on the ground and I did spray that person just to  
11 get -- it was an elderly female -- just to get  
12 that person to stop kicking me while I was  
13 wrestling with the male that had punched me.

14 Q All right. Turn to page 13 of Defendant's  
15 Exhibits, please.

16 A Of Exhibit 3? Oh.

17 THE COURT: What's the exhibit  
18 number, counselor?

19 LT. GAERTNER: Yeah. What's the  
20 exhibit number?

21 MR. HEWITT: 13.

22 THE COURT: Exhibit number 13. Is  
23 that the one we did the one page?

24 MR. MURRAY: Yes.

25 THE COURT: So it's just the last

1 page of that exhibit that was admitted.

2 A Okay. I think this is it right here.

3 Q Yes.

4 A I have it now, sir.

5 Q Okay. You offered that text on that page.

6 Correct?

7 A Yes, sir.

8 Q And the fifth paragraph talks about you and  
9 Sergeant Stanton using cold fire to extinguish  
10 the flame. Correct?

11 A That's correct.

12 Q The sole reason you used cold fire was because  
13 people were on fire, correct?

14 MR. MURRAY: Objection, your Honor.  
15 He's testifying, isn't he?

16 THE COURT: Counsel, would you  
17 rephrase?

18 MR. HEWITT: Okay.

19 Q Why were you using the cold fire, sir?

20 A Because I witnessed two people have their clothes  
21 caught fire and the flag -- the way it was being  
22 waved around, it was a threat to other people,  
23 too.

24 MR. HEWITT: I've no further  
25 questions.

1 THE COURT: Thank you.

2 If I can make an inquiry. The Exhibit  
3 Number 13, the 1 page supplemental. What  
4 date was it done?

5 LT. GAERTNER: I believe it was the  
6 next day, afternoon, sir. You're right.  
7 That does not have a date on there.

8 THE COURT: Thank you.

9 Any questions based on what I just  
10 asked? You may proceed.

11 MR. MURRAY: Thank you, your  
12 Honor.

13 RE-CROSS EXAMINATION

14 BY MR. MURRAY:

15 Q Lieutenant, you still have Defendant's Exhibit 13  
16 in front of you?

17 A Yes, I do, sir.

18 Q So you prepared that report the next day?

19 A Yes, I did.

20 Q Okay. At a time when you had an opportunity to  
21 reflect upon what had happened?

22 A Yes, sir.

23 Q And it was important for you to record accurately  
24 what had occurred, correct?

25 A Yes, sir.

1 Q And this was going to become part an official  
2 police report. Correct?

3 A That's correct, sir.

4 Q Okay. If you look at the 1, 2, 3, 4, the 5th  
5 paragraph that begins with, the group formed a  
6 circle. Do you see that paragraph?

7 A Yes, sir.

8 Q The third sentence reads as follows, does it not,  
9 as soon as they began to light an American flag  
10 on fire, Lieutenant Gaertner and Sergeant William  
11 Stanton used cold fire to extinguish the flame.  
12 Isn't that what you wrote?

13 A Yes, sir.

14 Q And that was true, wasn't it?

15 A Absolutely.

16 Q Okay.

17 MR. MURRAY: May I have one moment,  
18 your Honor?

19 THE COURT: You may.

20 MR. MURRAY: That's all I have.  
21 Thank you, your Honor.

22 THE COURT: Thank you.

23 Anything else, Mr. Hewitt?

24 - - -

25

REDIRECT EXAMINATION

1  
2 BY MR. HEWITT:

3 Q Well, the flag was lit. Correct?

4 A Yes, sir.

5 Q Flames were flying, correct?

6 A Yes, sir.

7 Q And you noticed the flames coming in contact with  
8 other people. Correct.

9 MR. MURRAY: Objection, your  
10 Honor. Again, he's testifying.

11 THE COURT: Mr. Hewitt, you can't  
12 lead. You can't lead --

13 MR. HEWITT: Okay. Okay.

14 THE COURT: -- the witness.  
15 Objection sustained.

16 MR. HEWITT: All right. That's  
17 fine.

18 Q Why did you use your cold fire extinguisher,  
19 Lieutenant?

20 A Like I had already testified and like you saw in  
21 the video, the only way I could describe it is it  
22 was a pocket. If they would have had a big open  
23 space, there wouldn't have been a problem, but  
24 the pocket, it collapsed. People were pushing  
25 them in. Reporters, counter-protesters, their

1 protesters, and it became too close quarters and  
2 that's why I did that. In my opinion, it was a  
3 matter of safety.

4 MR. HEWITT: That's it. Thank you.

5 THE COURT: You're excused. Thank  
6 you very much.

7 LT. GAERTNER: Okay. Thank you, your  
8 Honor.

9 THE COURT: Counsel.

10 MR. MURRAY: Your Honor, the  
11 defendant's have no further evidence. Oh,  
12 I'm sorry. That's not true. One moment,  
13 your Honor.

14 THE COURT: Sure.

15 MR. MURRAY: Your Honor, yes. We  
16 will -- at this time, we're going to call as  
17 a witness Gregory Joey Johnson.

18 THE COURT: Thank you.

19 MR. HEWITT: Your Honor, the  
20 prosecution didn't get notice of any -- of  
21 this witness.

22 THE COURT: So noted. Thank you.  
23 Was there a witness list exchanged between  
24 the parties?

25 MR. MURRAY: No.

1 MR. HEWITT: No.

2 THE COURT: All right. Thank you.

3 Sir, would you mind taking the witness  
4 stand, please?

5 GREGORY JOEY JOHNSON,  
6 having been first duly sworn, was examined  
7 and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. MURRAY:

10 Q Would you please state your name and city of  
11 residence?

12 A Gregory Johnson. My nickname's Joey. San  
13 Francisco, California.

14 Q Mr. Johnson, I'm just going to ask you a few  
15 questions about what happened on July 20, 2016.  
16 Were you here during the Republican National  
17 Convention in Cleveland, Ohio?

18 A Yes, I was.

19 Q Did you participate in a protest that involved  
20 burning a flag?

21 A Yes, I did.

22 Q Did -- where did -- did that occur on Prospect  
23 Avenue at around East 4th Street?

24 A That's right.

25 Q Now, we saw a video. Did you use a bullhorn to

1 give a speech?

2 A Yes, I did.

3 Q And we saw a circle being formed. Can you  
4 explain was a circle?

5 A Yes. It was a circle of approximately 20 or so  
6 Revolution club members or volunteers that had  
7 come here to protest at the Republican National  
8 Convention and we had enter-locked arms in the  
9 circle. The purpose of it was so that we could  
10 carry out the protest, carry out the flag burning  
11 and do it in a way that was safe for everyone in  
12 the vicinity.

13 Q And at the time, that -- did you, in fact -- did  
14 someone, in fact, light the flag that you were  
15 carrying while you were in the middle of that  
16 circle?

17 A Yes.

18 Q And at the time that it was lit, was it your  
19 observation that it could be safely done at that  
20 juncture?

21 A Yes.

22 Q Okay. Then what happened as soon as the flag was  
23 lit?

24 A As soon as the flag was lit, the police were  
25 coming through the circle, through the safety



1 circle and one of the police was spraying a fire  
2 extinguisher towards the flag and I turned my  
3 back to try to prevent the stream of the fire  
4 extinguisher from hitting the burning flag; and  
5 as I turned, I was being grabbed from the rear  
6 and pulled back by police and then put in a choke  
7 hold and dragged to the ground.

8 Q Now did your -- were your -- did you sustain any  
9 burns yourself?

10 A No.

11 Q Was any part of your clothing on fire?

12 A No.

13 Q Now did you observe any of the other protesters  
14 being burned or on fire?

15 A No.

16 MR. MURRAY: May I have one moment,  
17 your Honor? That's all I have. Thank you.

18 THE COURT: Thank you.

19 Mr. Hewitt.

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CROSS-EXAMINATION

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BY MR. HEWITT:

Q Mr. Johnson, you were at the flag burning. Were you aware that other people had suffered injuries as part of this flag burning?

A No.

Q Okay. Mr. Biggs. Are you familiar with that person?

A I am now.

Q What about Mr. Sulkin?

A I am now.

Q Were you aware that both of these individuals received burns?

A I'm aware that they alleged that they were burned.

Q And you don't know if they received medical treatment for those burnings?

A I'm aware that they allege that they received medical treatment.

Q Okay.

MR. HEWITT: That's all I have.

THE COURT: Thank you.

MR. MURRAY: I have nothing further.

THE COURT: Thank you.

1 Thank you for your testimony very much,  
2 Mr. Johnson.

3 No further witnesses?

4 MR. MURRAY: No. That's all. The  
5 defense have no further testimony or evidence  
6 to present, your Honor.

7 THE COURT: Thank you.  
8 Mr. Hewitt.

9 MR. HEWITT: The defense has no  
10 further testimony to present.

11 THE COURT: Thank you very much.

12 This hearing will be concluded today.  
13 I'll allow you to make closing arguments, if  
14 you wish.

15 MR. MURRAY: Your Honor, I was  
16 going to suggest -- I would ask the Court to  
17 be permitted to get the transcript of today's  
18 hearing and permit us to file a post hearing  
19 brief.

20 THE COURT: We can order the  
21 transcript, so that would be --

22 MR. HEWITT: Your Honor --

23 THE COURT: -- an easy request  
24 to --

25 MR. HEWITT: Well, you've heard the

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testimony. I'm prepared to argue the merits right now. So, I -- I'm offering that as an observation.

THE COURT: Thank you very much.

Do you have a closing argument at this time?

MR. MURRAY: I can do that as well, your Honor, but I would like the opportunity, in addition to that, to file a post-hearing brief once we get a transcript. But, yes.

THE COURT: I'll hear what you have to say after he gets done. Okay? Thank you. Put on your closing.

You may proceed.

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CLOSING ARGUMENTS ON BEHALF OF DEFENDANT

MR. MURRAY: Thank you, your Honor. May it please the Court.

You've heard all the testimony. You've seen all the exhibits; and I think one thing that has emerged and that is perfectly clear is what I said in my opening statement. This was a constitutionally-protected protest. It was done in the precise place that the city had set aside for this precise type of activity. It was done in a way that was designed to get their message across to the audience that they wanted to reach.

And you will recall that the City of Cleveland's Division of Police touted the fact that that was one of the most important parts of a 1st Amendment right and they codified it in their Division of Police directive and policy that it was important to protect the right to assemble and to speak and to protest and to do it near the place where you want your message to be heard. So, this group of citizens who had traveled to Cleveland in order to protest and express a viewpoint that they felt very strongly about

1 and that they believed in and wanted a  
2 message to get out. They did everything  
3 correctly.

4 They assembled. They put out a press  
5 release indicating where they would be at  
6 what time and why they were going to exercise  
7 their right to protest. They proceeded to  
8 the free speech zone, which the City had set  
9 aside and they proceeded to form a circle for  
10 the precise purpose of making sure that they  
11 could safely carry out their protest, which  
12 involved burning an American flag, which for  
13 many, many years has been held to be a  
14 constitutional-protected activity. And so  
15 they locked arms and Mr. Johnson gave his  
16 speech and they proceeded to begin to light  
17 the flag.

18 So what happens then? Well, we know  
19 that what happens then is nobody had been  
20 burned at that juncture. Nobody had been  
21 injured at that juncture. No one was in  
22 danger of being burned or injured and, in  
23 fact, what the Lieutenant did was, he  
24 immediately -- and his report is clear, as  
25 soon as they began to light the flag, not

1 after someone was in danger, not after  
2 someone was burned or about to be burned, but  
3 as soon as they began to light the flag, he  
4 decided that he and Sergeant Stanton would  
5 stop that protest in its tracks, burn -- put  
6 out the fire that had been lit, the American  
7 flag; and you saw what happened after that.  
8 What happened after that was caused by what  
9 Lieutenant Gaertner and Sergeant Stanton  
10 decided to do. Anything that happened after  
11 that was because they interfered with a  
12 peaceful, lawful, protest involving burning  
13 the American flag.

14 Now, some of the things that are  
15 significant is that Chief Williams testified  
16 that, yes, they had a right to burn that  
17 American flag and if they could do it safely  
18 and peacefully, there was and would be no  
19 justification for the police to interfere  
20 with that protest. And he admitted that that  
21 would have been an interference with their  
22 constitutional rights.

23 I think what happened and what clearly  
24 is shown by the record and the whole thing is  
25 set forth in Lieutenant Gaertner's

1 supplemental report. We heard the audio tape  
2 where one police officer asks is it legal to  
3 burn a flag and he eventually gets the answer  
4 that says, no, it's prohibited by code. We  
5 have a picture of Julie Leroy being arrested;  
6 and what is the charge according to the  
7 whiteboard, desecration of the flag.

8 We have Lieutenant Gaertner's  
9 supplemental report, which I think tells the  
10 entire tale and he admitted it when I cross-  
11 examined him. They got a warning that there  
12 was going to be a flag burning protest at  
13 East 4th and Prospect. And so, undercover  
14 officers pointed out who were going to be in  
15 the protest and he and other officers  
16 followed them down Euclid Avenue until they  
17 got to East 4th and then they went over to  
18 Prospect. I'm not sure exactly what the  
19 route was, but they followed them and he  
20 observed that they formed a circle.

21 And there was a key part of his report  
22 and you'll recall what it is. It had to do  
23 with the fact that he said that burning of  
24 any object was completely prohibited totally  
25 in that zone. And that it had been put out



1 in a press release that it was prohibited.  
2 So I asked him. Went to the next sentence.  
3 As soon as they began to light the flag, he  
4 rushed in and you saw it. I mean, you saw it  
5 with your own eyes. It was instantaneous.  
6 It wasn't waiting for somebody to get hurt  
7 and he extinguished the flag. And I asked  
8 him and that was because of the fact that  
9 burning that flag was prohibited. A  
10 prohibited item. That's what he was doing  
11 and he admitted it on cross-examination.

12 And so the Chief who testified at least  
13 that the officers should have known that  
14 burning a flag was  
15 constitutionally-protected, apparently,  
16 Lieutenant Gaertner didn't understand that;  
17 and so he put a stop to what was a lawful,  
18 peaceful, important  
19 constitutionally-protected protest and flag  
20 burning, imposed a prior restraint and put a  
21 halt to our clients rights to express  
22 themselves.

23 If they had been left alone, the protest  
24 would have ended with the speech, the flag  
25 burning would have ended and nothing would

1 have happened.

2 And you can't excuse it on the theory  
3 that there was a hostile crowd there. The  
4 Court's have made it clear that it's the duty  
5 of the City police to protect the protesters  
6 from the hecklers and from the other crowd.

7 There was a statement that -- made by  
8 Lieutenant Gaertner that they kept chanting  
9 after he extinguished the flames and they  
10 kept saying they want to overthrow the  
11 government and that was inciting the crowd to  
12 violence. Now I asked him. You mean just by  
13 saying that and he said yes. Just the mere  
14 speech of expressing that opinion he said was  
15 inciting the crowd to violence.

16 We live in an age and a climate it seems  
17 to me, where the right of freedom of speech  
18 has never been more important than it is  
19 today. And the protest that occurred in July  
20 in the City of Cleveland by these defendants  
21 to express their disapproval of what the RNC  
22 was about to do is among the most important  
23 political speech that any citizen can  
24 express. Maybe those -- and there are some  
25 who disagree agree with that message, but

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political speech and assembly is entitled to the highest protection of the 1st Amendment.

The 1st Amendment is at its zenith when you're talking about political speech. No type of speech or assembly enjoys greater protection than political speech. That's what this was about. That's what happened. And that political speech was stopped, halted in its tracks.

Instead of the 1st Amendment being vindicated, these defendants were hauled off to jail where they languished for some 36 hours because they were there to exercise their right and it's wrong; and we therefore, ask you to grant our Motion and dismiss these charges.

Thank you.

THE COURT: Thank you.  
Mr. Hewitt.

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1 CLOSING ARGUMENT ON BEHALF OF THE PLAINTIFF

2 MR. HEWITT: Your Honor, flag  
3 burning is certainly permissible under the  
4 United States and Ohio Constitution. It's a  
5 form of free expression.

6 This flag burning, unfortunately was not  
7 carried out in a safe environment. You know,  
8 of course, the police had learned that at  
9 least two individuals had been burned. There  
10 was a concern for public safety and a very  
11 crowded area. People were pressing in on the  
12 protesters. Protesters for and against some  
13 people want to stop the flag burning, other  
14 people were trying to keep the flag burners  
15 away.

16 An individual -- individuals caught fire  
17 and we believe defendant Johnson did, but  
18 listening to his testimony was that he did  
19 not and at that point, the police sprang into  
20 action used their fire extinguisher in order  
21 to extinguish those flames.

22 This flag burning was not done in a safe  
23 environment. In fact, it was advertised  
24 originally to take place at Perk Park and it  
25 was -- it later was changed to take place at

1 4:00 o'clock right at 4th and Prospect. That  
2 information wasn't distributed to the Command  
3 and, you know, therefore -- you know -- so,  
4 at this point, you know, your Honor, we  
5 believe that there's authority, of course,  
6 for these circumstances.

7 The Ohio Supreme Court case of Cleveland  
8 v. Bellecourt, which is involved protesters  
9 burning an effigy of Chief Wahoo! Designed  
10 to protest the name of the Cleveland Indians  
11 baseball team. The effigy is burned and  
12 flames got out of control. This case made  
13 its way all the way to the Ohio Supreme  
14 Court, which held that the police action in  
15 those instances was proper.

16 You know, we understand that the  
17 protesters have a right to protest and indeed  
18 the protesters have a right to expect  
19 protection. The Bible believers case versus  
20 Wayne County, was a 6th Circuit decision,  
21 which held that you have a duty to protect  
22 those hecklers; and Cleveland indeed has  
23 learned a valuable lesson.

24 A similar demonstration took place on  
25 October 10, 2016, at the Browns Patriots

1 game, when, at the fire fighter Memorial  
2 First Energy Stadium, protesters were  
3 present. They spread out an American flag  
4 and police present -- created a human shield  
5 around them in order to protect them. Of  
6 course, they were getting heckled by both  
7 Browns and Patriot fans. Police had a duty  
8 to maintain order.

9 Indeed, the defendants, when they were  
10 here at a pretrial in December, were on the  
11 steps of the Justice Center. They burned  
12 several flags then. No action at all was  
13 taken by the police and, you know, it was  
14 done in a somewhat safe environment, but  
15 police action wasn't necessary. Of course,  
16 McCardle, the Cleveland occupied case, says  
17 that governmental regulations seeking a  
18 curfew are proper and constitutional.

19 In sum, your Honor, the defendants  
20 created an urgent dangerous public safety  
21 situation, which required police action to  
22 protect the safety of others from this  
23 reckless fire.

24 We ask that you rule that these  
25 ordinances in which they have been charged

1           are constitutional, the citations were  
2           properly issued based on unlawful conduct.

3           Thank you.

4           THE COURT:                   Thank you very much.

5           Mr. Murray, we will advise your office  
6           as soon as transcripts are available. You  
7           can pick them up -- enough time in which to  
8           respond after you've read the transcripts.  
9           How much time, 10, 15 days?

10          MR. MURRAY:                Your Honor, could we  
11          have 21 days?

12          THE COURT:                The City will have the  
13          same amount of time to respond after you've  
14          had 21 days.

15          MR. MURRAY:                Thank you.

16          THE COURT:                Take care of this  
17          before that. 21 days after you receive it.  
18          If you'll check with my bailiff on Monday, I  
19          suspect it might be ready.

20          MR. MURRAY:                Great. Thank you so  
21          much, your Honor.

22          THE COURT:                If there's nothing  
23          else, this matter is adjourned.

24                   Thank you everybody for your  
25                   cooperation.

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C E R T I F I C A T E

State of Ohio, )  
County of Cuyahoga, ) SS:  
City of Cleveland. )

City of Cleveland, )  
vs. )

Salome Artemis Arrant, )  
Lisa Castanon, )  
Diya Cruz, )  
Edward Diaz, )  
Courtney Donelson, )  
Steven Fridley, )  
Linda Daitsman, )  
Ernestine Hamilton, )  
Victoria Inguanta, )  
Gregory Johnson, )  
Richard Newberger, )  
Zullay Pichardo, )  
Rafael Schiller-Laden, )  
Julie Leroy. )

I, Demetrius D. Longmire, court reporter, do hereby certify that as a reporter employed by the Cleveland Municipal Court, I took down in stenotype all of the digitally recorded proceedings had in said Cleveland Municipal Court in the above-entitled case on the date set forth; that I have transcribed my said stenotype notes into typewritten form as appears in the foregoing transcript of the digitally recorded proceedings; that said transcript is a complete record of the proceedings had in the hearing of said



1 case and constitutes a true and correct transcript of  
2 the digitally recorded proceedings had therein.

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Dated this 2nd day of February, 2017.

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Demetrius D. Longmire