

Volume 2

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE WILLIAM H. ALSUP

CLARK SULLIVAN, ADAM BREDENBERG)	
AND BENJAMIN ROYER,)	
)	
Plaintiffs,)	
vs.)	No. C 17-06051 WHA
)	
CITY OF BERKELEY,)	
)	San Francisco, California
Defendant.)	Tuesday
)	May 21, 2019
)	7:30 a.m.

TRANSCRIPT OF JURY TRIAL PROCEEDINGS

APPEARANCES:

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BY: DAN SIEGEL, ESQ.
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For Defendant: BERKELEY CITY ATTORNEY'S OFFICE
2180 Milvia Street
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Berkeley, California 94704
BY: LYNNE SARAH BOURGAULT, ESQ.
FARIMAH BROWN, ESQ.

Also Present: Dee Williams-Ridley
Deputy City Manager - City of Berkeley.

Reported By: Debra L. Pas, CSR 11916, CRR
Ana Dub, CSR 7445, CRR

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1 **MS. JOHNS:** Thank you, Your Honor. We'd like to call
2 Clark Sullivan.

3 **THE COURT:** All right. Now, Mr. Sullivan, do you
4 need -- can you get up there, or do you want to use your chair?

5 **THE WITNESS:** I can make it.

6 **THE COURT:** H'm?

7 **THE WITNESS:** I can make it.

8 **THE COURT:** All right. Let's give it try. I'll let
9 you sit in your chair if you --

10 **THE WITNESS:** No. I can make it.

11 **THE COURT:** Okay. Be careful getting up there. And
12 you can have a seat, and then we'll swear you in after you're
13 seated.

14 Okay. Now raise your right hand, please.

15 CLARK SULLIVAN,
16 called as a witness for the Plaintiffs, having been duly sworn,
17 testified as follows:

18 **THE WITNESS:** I do.

19 **THE CLERK:** Okay. Please state your name for the
20 record.

21 **THE WITNESS:** Clark Sullivan, C-l-a-r-k
22 S-u-l-l-i-v-a-n.

23 **THE COURT:** Welcome.

24 Please go ahead, Counsel.

25 **MS. JOHNS:** Thank you.

DIRECT EXAMINATION

1
2 **BY MS. JOHNS:**

3 **Q.** Mr. Sullivan, how old are you?

4 **A.** 58.

5 **Q.** Where were you born?

6 **A.** Furth, Germany.

7 **THE COURT:** How about pulling the mic about 3 inches
8 closer to your voice.

9 **THE WITNESS:** Furth, Germany.

10 **THE COURT:** That's great. Good.

11 **BY MS. JOHNS:**

12 **Q.** Thank you.

13 And how is it that you came to be born in Germany?

14 **A.** My father was in the military.

15 **Q.** Would you please describe your educational background?

16 **A.** Yeah. I've got a master of science in pharmacology, Johns
17 Hopkins University.

18 **Q.** Have you worked since you finished your education?

19 **A.** Not in my field, no.

20 **Q.** Did you do other kinds of work?

21 **A.** Yes.

22 **Q.** What kinds of work did you do?

23 **A.** I did a lot of social justice work, taking care of
24 homeless people. I ran the day-to-day operations of a soup
25 kitchen. And then I went into IT work.

1 Q. Is IT "information technology"?

2 A. Yeah. Information technology, yes.

3 Q. Are you currently working?

4 A. No.

5 Q. Why not?

6 A. Because of my health.

7 Q. Can you please describe what the current state of your
8 health is.

9 A. I have multiple things wrong. I have COPD primarily. I
10 have adult diabetes. I shattered my leg a few years back,
11 which is why I have difficulty with my mobility. And I'm
12 forced to use a wheelchair to get around.

13 Q. Where do you currently reside?

14 A. Right now I am at the encampment at Adeline and Alcatraz.

15 Q. And what kind of --

16 **THE COURT:** Now, this would be a good opportunity to
17 point that out on the map. Let's use the map and show the
18 jury. So we'll put this map to use.

19 Is it one of those squares already?

20 **MS. JOHNS:** I believe that we did mark it with a
21 square. It's the southernmost square that's there.

22 Is that correct?

23 **MR. SIEGEL:** Yes.

24 **MS. JOHNS:** Yes.

25 **THE COURT:** Okay. So, Mr. Siegel, you're standing in

1 the jury's way. So why don't you point it out. Point to it.

2 Okay. That's the map of Berkeley. And so that's Adeline
3 and Alcatraz; right?

4 Okay. Excellent. Continue on.

5 **MS. JOHNS:** Thank you, Your Honor.

6 **BY MS. JOHNS:**

7 **Q.** And what kind of structure do you reside in?

8 **A.** I have a tent.

9 **Q.** Are you currently homeless?

10 **A.** Yes.

11 **Q.** How long have you been homeless?

12 **A.** Since late October in 2016.

13 **Q.** How did you become homeless?

14 **A.** I had a roommate who was psychotic. He wasn't taking his
15 medication. And he started physically abusing me, and he was
16 taking my property and just tossing it out the window and kept
17 threatening me. I called the police. They never came. So I
18 decided to move out because I couldn't live with being
19 threatened in my -- where I was living.

20 **THE COURT:** Was that in Berkeley?

21 **THE WITNESS:** No. That was in Fruitvale.

22 **THE COURT:** All right. Okay.

23 **BY MS. JOHNS:**

24 **Q.** Where is --

25 **A.** Which is --

1 Q. -- Fruitvale?

2 A. It's about two and a half miles from Berkeley; maybe
3 3 miles.

4 Q. Is that in the city of Oakland?

5 A. Yes. In Oakland. I'm sorry.

6 Q. What did you do to find a place after you left that
7 abusive situation?

8 A. I did the standard way a lot of people do it, is online
9 and through -- also through the network of people that I knew,
10 because I knew quite a few people in Berkeley.

11 And I was unsuccessful in finding a place because prices
12 had risen dramatically since the time I had rented an apartment
13 in Fruitvale, because I'd been living there for three years.
14 And I -- you know, I just quickly -- after a few months of
15 searching and not having any success, I just stopped.

16 Q. Where did you go to live after you left that situation in
17 October of 2016?

18 A. I started living at the encampment with First They Came
19 for the Homeless.

20 Q. Had you experienced homelessness before?

21 A. Yes, briefly.

22 Q. And where was that?

23 A. In San Francisco.

24 Q. During this most recent time that you've been homeless, do
25 you have any sources of financial support?

1 **A.** Yes. I get \$913 a month from Social Security.

2 **Q.** Do you receive any other forms of financial support?

3 **A.** No.

4 **Q.** How have you utilized those funds that you receive from
5 Social Security?

6 **A.** I use it to -- for my meals, transportation, clothing, my
7 phone bill, and other small -- my mailbox bill so I can get
8 mail. Just basic stuff. I'm not too -- I don't live too
9 extravagantly with \$913.

10 **Q.** Have you had sufficient funds to find a place to rent
11 since you've become homeless?

12 **A.** \$913 won't even get you a room, basically, by yourself in
13 the Bay Area. So I kind of gave up. That's why I'm saying I
14 couldn't find a place for that much, and so I stopped.

15 I -- you know, I threw myself into the Hub and gave them
16 the information that I had, and that's been pretty much it.
17 It's a pretty bleak situation for me and housing.

18 **Q.** How did you come to learn about the encampment First They
19 Came for the Homeless?

20 **A.** Because I was -- I knew Mike since Occupy San Francisco,
21 and he said that he was organizing.

22 And at the time, I had no options available, and I didn't
23 have anyplace to go. And as somebody who's, you know, disabled
24 and mobility, I was terrified to go out into the streets. I
25 didn't want to go out into the street, but I didn't really have

1 any choice.

2 And having the choice of living with people that I know
3 who are my friends rather than as opposed to living alone, I
4 mean, you know, it's pretty much a done deal, in my opinion,
5 that I'd rather be with my friends and people I feel safe with
6 rather than to try to survive alone, being disabled.

7 **Q.** And did you understand First They Came for the Homeless as
8 a protest encampment?

9 **A.** Well, yes, because -- I knew that it was a protest, and I
10 knew that I wasn't going to participate unless we had rules to
11 go by, because I felt like our protests -- like, even though I
12 was homeless and stuff, I felt that my life was on public
13 display. And as a public display, as a member of the homeless,
14 that I needed to follow rules so that we could be a more
15 together protest.

16 **Q.** What were you hoping that the protest would accomplish?

17 **A.** That would -- like, Berkeley had been in this path of
18 continuous criminalization of poverty. Like, every time that
19 something happened, they would get together and pass another
20 law to make it even harder if you're homeless. You know, most
21 recently they passed a law where it was a 3-by-3 square, you
22 know, that you could keep your things on.

23 **MS. BOURGAULT:** Your Honor, this postdates the
24 relevant time frame. I object that it --

25 **THE WITNESS:** Well, maybe this is --

1 **MS. BOURGAULT:** -- is irrelevant.

2 **MS. JOHNS:** Mr. Sullivan, please let her put her
3 objection on the record and the judge to rule.

4 **THE COURT:** What is the time frame in our lawsuit?

5 **MS. JOHNS:** The protest was from October 2016 to
6 January 2017.

7 **THE COURT:** And is the witness now addressing
8 something after that?

9 **MS. JOHNS:** Yes. He's addressing something that was
10 started just the last few months.

11 **THE COURT:** Well, let's stick to the time period that
12 the jury's got to decide.

13 **THE WITNESS:** Actually, that law was before we started
14 our protest, if I'm not mistaken. But anyway, I'll go
15 whatever. You know more than I do about this.

16 So, basically, our goal was to stop the continued
17 criminalization of poverty, and you can't do that without
18 protest. We had been to many City Hall meetings and whatnot,
19 and basically, they just turn around and pass another law. And
20 nothing seems to get fixed. And there you go. I mean --

21 **BY MS. JOHNS:**

22 **Q.** You mentioned City Council meetings. Did you attend City
23 Council meetings?

24 **A.** Yes, I attended City Council meetings.

25 **Q.** Did you speak at City Council meetings?

1 A. No, I didn't speak.

2 Q. Did you attend with other individuals who did speak?

3 A. Yes. Yes.

4 Q. And when those individuals spoke, were they a part of
5 First They Came for the Homeless?

6 A. Some of them, yes.

7 Q. Did they identify themselves to the City Council as
8 members of First They Came for the Homeless when they spoke?

9 A. Yes, they did.

10 Q. Thank you.

11 And please do let me finish my entire question before you
12 begin to answer.

13 And what did you -- did you experience any removals -- did
14 you experience the police removing the encampment at any time?

15 A. Yes, I did.

16 Q. And what did you do during those encampment removals?

17 A. I was on hand to live stream and provide video
18 documentation about what was going on regarding police violence
19 and people's possessions, and just generally provide a way of
20 kind of humanizing what was going on, because all too often,
21 people that are homeless are dehumanized because their whole
22 entire existence is supposedly against the law. And we wanted
23 to show that homeless people are people too and that we have
24 rights and we are the same as anybody else.

25 Q. Have people in Berkeley generally been supportive of First

1 They Came for the Homeless?

2 **A.** Without the support of the people in Berkeley, we would
3 not exist. People in Berkeley were, like, extraordinarily
4 magnanimous with their gifts and food and clothing. And
5 occasionally, you know, we had people dumping off stuff that we
6 couldn't use, but it was all done with good spirit, and that
7 still continues today. And we enjoy immense public support.

8 **Q.** During the times that you were -- let me ask -- excuse me.
9 Do you recall when the first time, when you were with
10 First They Came for the Homeless, you were removed by police,
11 the date of that?

12 **A.** Now that I'm looking here, yes. It was at Civic Center.

13 **Q.** And are you refreshing your recollection with the document
14 that I had provided earlier to Mr. Zint, the document with the
15 image from a T-shirt?

16 **A.** Yes.

17 **Q.** And what date was that that you first experienced police
18 removing the encampment?

19 **A.** The 4th of November, 2016.

20 **Q.** That was when it was -- you were there for the removal of
21 that? That's your memory?

22 **A.** Yeah, that's what I was there for. That was the one that
23 was right across from the Berkeley High School, I believe,
24 wasn't it? It says here Milvia. Yeah, Civic Center, yeah.

25 **Q.** Okay. Is it possible that that date was November 7th,

1 2017, that you --

2 **A.** No. That was Milvia and Allston.

3 **Q.** Okay. And how -- how did you -- what was your experience
4 of the police's conduct on the first day that you were removed?

5 **A.** They were violent. They were pushy. They were violent.

6 If you didn't move fast enough, they were on you with a
7 nightstick. They started grabbing your stuff.

8 I mean, basically, you were lucky -- when they showed up,
9 you were lucky to get any of your stuff out of the way, out of
10 their way. The only way I was able to do it was because I had
11 some stuff that was prepacked already.

12 **Q.** Did you also have support from individuals in the
13 community?

14 **A.** Yes. Yes, we did. That's how we were able to get our
15 stuff out and why we didn't lose most of it was because of the
16 support we had from the community, people that were willing to
17 wake up at 4:30 in the morning to show up, which is really hard
18 for most people to do, and be there with us and help us
19 safeguard our belongings.

20 **Q.** On how many occasions between October 2016 and
21 January 2017 do you remember experiencing the police removing
22 the encampment?

23 **A.** Oh, I could go seven times, I guess.

24 **Q.** And on each of those times, were the police always violent
25 or pushy?

1 **A.** No. Over a period of time, the fact that they were on
2 live stream, which didn't really seem to make much of a
3 difference; but the fact that, with me, was, they could see
4 that my COPD was kicking in. I couldn't breathe.

5 And I finally requested the officers, I said, "If you want
6 me to move quicker, then you're going to have to help me move
7 my stuff."

8 And they did, right. And they helped me move my stuff.
9 So they got a little nicer towards the end.

10 **Q.** Did you lose any personal property in these police
11 actions?

12 **A.** Yes. I lost a purple suitcase and a couple of tents.

13 **Q.** And the purple suitcase, did that have any belongings in
14 it?

15 **A.** It had some clothing inside.

16 **Q.** And how do you know that the City took that purple
17 suitcase?

18 **A.** Because I saw them drive off with it in the back of the
19 truck. It was a pretty recognizable piece of luggage, the
20 purple; and you could see it, you know, from the back of the
21 truck. It was unmistakable.

22 **MS. JOHNS:** I'd like to play a video. Is there
23 anything I need to --

24 So I'd like to show you what's been marked as Exhibit 61A.

25 **THE CLERK:** Ms. Johns, is this supposed to be

1 projected to the jury?

2 **MS. JOHNS:** Well, I think -- I'm sorry. I want to
3 admit it into evidence, and so I'd like Mr. Sullivan to
4 authenticate the video first and then publish it again to the
5 jury.

6 **THE COURT:** Is there going to be any objection to 61A?

7 **MS. BOURGAULT:** Is that a City video or --

8 **MS. JOHNS:** It's one provided by the City. It's
9 clipped from December 21st, 2015.

10 **MS. BOURGAULT:** I don't believe Mr. Sullivan can
11 authenticate it, but I do believe that we don't object to its
12 admission.

13 **THE COURT:** Then I'm going to let it be placed in
14 evidence.

15 (Trial Exhibit 61A received in evidence.)

16 **THE COURT:** And it's in evidence now. You may show
17 it.

18 **MS. JOHNS:** Thank you.
19 Could you please play Video 61A.

20 **THE COURT:** How long is it?

21 **MS. JOHNS:** It's just a few seconds.

22 (Video was played but not reported.)

23 **BY MS. JOHNS:**

24 **Q.** And did you see your luggage --

25 **A.** Yes, I did.

1 Q. -- in that video?

2 Please let me ask the question before you answer.

3 So, I'm sorry. Did you see your luggage in that video?

4 A. Yes.

5 Q. And what was happening to your luggage?

6 A. It was being toted off.

7 Q. By whom?

8 A. A city worker. And put into the back of a truck.

9 Q. And is that where you saw it on that day?

10 A. Yes, it was.

11 Q. Okay. And where were you when you observed that?

12 A. I was coming up towards the scene there, after trying to
13 charge my phone so I could take more pictures.

14 Q. Do you recall what day that occurred?

15 A. That would be on, I think, the 18th.

16 Wait, wait. No. The 21st. The 21st of December.

17 Q. And will you tell me what happened about your day on
18 December 21st, 2016?

19 A. After they raided everything, yeah, we were trying to look
20 for another camp, but we didn't have very much success, as I
21 recall.

22 Q. Where were you that morning?

23 A. Oh, that morning I was at the coffee shop trying to charge
24 up my equipment.

25 Q. Sorry. Before the coffee shop, where were you? Where did

1 you wake up?

2 **A.** I woke up at the -- at the Civic Center.

3 **Q.** You were -- were you at the median? Were you at the
4 median that morning?

5 **A.** Oh, that's right. I'm sorry. I'm sorry.

6 There's a lot of protests that happened, a lot of events.
7 So sometimes I get a little mixed up.

8 We were at the Oregon, and we were right across from the
9 Berkeley Bowl. And that's when they came in the middle of the
10 night, and I lost a tent during that.

11 And then we left there and we were going to go regroup at
12 the old City Hall, and that's when the City was waiting for us.

13 **Q.** Okay. And so you had been -- how long had you been
14 staying at that median on Oregon and Adeline?

15 **A.** It seemed like we were there for about a week, two weeks.

16 **Q.** And you were removed by the police that morning?

17 **A.** Yes.

18 **Q.** And you said -- what time that morning were you removed by
19 police?

20 **A.** 4:30, 5 o'clock.

21 **Q.** And you went -- where did you go after that?

22 **A.** Then we went to old City Hall.

23 **Q.** And were you able to establish an encampment at old City
24 Hall?

25 **A.** No, we weren't.

1 Q. Why not?

2 A. Because cops were waiting there for us, and the City
3 manager was too.

4 Q. Had that ever happened to you before, that you had -- that
5 they were waiting for you at the location you were at?

6 A. No. That was the first time.

7 Q. And where did you go -- sorry. And you said you weren't
8 able to establish an encampment there.

9 A. No. No.

10 Q. Where did you go after that?

11 A. We went to University, where we had a one-night camp; and
12 then we ended up on -- we went to Safeway up in North Berkeley.

13 Q. Were you camping at the Safeway?

14 A. Across the street, yeah, the median strip.

15 Q. Was it the same kind of median strip you had been camping
16 on previously?

17 A. Yes.

18 Q. Wide median strips?

19 A. Yes.

20 Q. And the one night that you were -- that you stayed on
21 University, were you removed by the police?

22 A. No. We were there for -- oh, no, no. We left just
23 because the whole place was under water. It had rained that
24 night, and we needed to find a better place to set up shop
25 because that was an untenable situation, you know, because we

1 were floating -- our beds were floating in the water. So we
2 decided to move from there.

3 **Q.** Where did you move from the -- or, excuse me. Were you
4 allowed to stay on the median in front of the -- or across the
5 street from the Safeway?

6 **A.** For a little while. And then they -- you know, they came
7 out again. And then we moved to Adeline, back to Adeline
8 Street.

9 **Q.** And how did you feel about the frequent evictions and
10 police treatment?

11 **A.** I was resentful. I felt that we were being put upon. I
12 felt that a lot was being said about us that wasn't true.

13 I felt that the City of Berkeley was completely -- you
14 know, they never even bothered to talk to us about anything
15 other than leaving us notices. They never bothered to, like,
16 even try to negotiate anything with us to get us to stop. You
17 know, we were -- like, I felt that we were -- like, if it would
18 have been anybody else or any other political movement, that
19 they would have been given more leeway with the police.

20 And I felt that we were being continually harassed because
21 of the fact that we were doing political work, and we were
22 singled out as a lightning rod for most of the City's efforts
23 to get us to stop.

24 **MS. JOHNS:** I have no further questions.

25 Thank you.

1 **THE COURT:** All right. How long will the cross be?
2 Because I may take a break at this point.

3 **MS. BOURGAULT:** I believe that would be a good idea,
4 Your Honor.

5 **THE COURT:** We've been going not quite two hours, but
6 an hour and 45 minutes. So I'm going to give the jury a break.

7 We'll take a 15-minute recess. Remember the admonition.
8 No talking about the case, please. Except I do want you to
9 talk about whether you can stay 15 minutes longer today to make
10 up for the lost time.

11 Thank you.

12 (Proceedings were heard out of the presence of the jury.)

13 **THE COURT:** Mr. Sullivan, you may step down as well
14 and have a 15-minute break.

15 **THE WITNESS:** Thank you, Your Honor.

16 **THE COURT:** Can you make it? Do you need help?

17 **THE WITNESS:** Yeah, I got it.

18 **THE COURT:** You sure?

19 **THE WITNESS:** Yeah.

20 **THE COURT:** Be careful.

21 **THE WITNESS:** Will do.

22 (Recess taken at 10:38 a.m.)

23 (Proceedings resumed at 10:56 a.m.)

24 (Proceedings were heard in the presence of the jury.)

25 **THE COURT:** Everyone, please be seated.

1 Before we start the cross-examination, the jury informed
2 me they can go ten extra minutes today, and they would like to
3 have a shorter break next time we have a break today, which
4 will probably be in about an hour and a half. So we will do
5 that and try to make up for some of the lost time.

6 Okay. Cross-examination.

7 **MS. BOURGAULT:** Thank you, Your Honor.

8 **CROSS-EXAMINATION**

9 **BY MS. BOURGAULT:**

10 **Q.** Mr. Sullivan, before coming to Berkeley to live with the
11 First They Came for the Homeless encampment, you had only lived
12 in Berkeley for a very brief time in the early 2000s?

13 **A.** I have friends in -- I have a lot of friends in Berkeley.

14 **Q.** My question was whether you lived in Berkeley.

15 **A.** No.

16 **Q.** And when you first were kicked out of your apartment, you
17 did not immediately seek housing through the Hub; isn't that
18 right?

19 **A.** Right.

20 **Q.** And you waited until late December or early January 2017
21 to seek --

22 **A.** Yes.

23 **Q.** -- services?

24 **A.** Yes.

25 **Q.** And during this time frame, you had a place to go and live

1 in Washington, D.C., if you needed to?

2 **A.** Not -- that's not entirely correct, no.

3 **Q.** Well, isn't it correct that you told a reporter for
4 *Berkeleyside* that you had a house in Washington, D.C.?

5 **A.** A place I could go stay, yes.

6 **Q.** And you said that you had been only briefly homeless in
7 San Francisco, but isn't it true you lived in an RV in the
8 Bayview district of San Francisco for six years, on the streets
9 of San Francisco?

10 **A.** That's not entirely true either. Off and on.

11 **Q.** Off and on between 2004 and 2010?

12 **A.** Yep.

13 **Q.** And now, you video recorded and live streamed most of the
14 encampment removals that you were involved in; right?

15 **A.** Yes, I did.

16 **Q.** And live streaming essentially --

17 **THE COURT:** Please go a little closer to the
18 microphone so everyone can hear you.

19 **THE WITNESS:** No problem.

20 **THE COURT:** Good.

21 **BY MS. BOURGAULT:**

22 **Q.** I just want to ask you what it means to live stream
23 something. And is it correct that that means that as you're
24 video recording, somebody who's watching on the Internet can
25 see it in real time?

1 A. Yes.

2 Q. And the live streaming you did was on a website called
3 Ustream?

4 A. Yes.

5 Q. And that -- you had a site associated with that called
6 Free Man Sullivan?

7 A. Yes, I did.

8 Q. And do you have any information that anyone from the City
9 of Berkeley was ever aware of your live streams?

10 A. Not to my knowledge.

11 Q. And you said you never spoke at a Berkeley City Council
12 meeting?

13 A. No.

14 Q. And you never wrote any op eds?

15 A. No.

16 Q. So your primary form of protest while you were a member of
17 the encampment during this time was simply being a member of
18 the encampment; correct?

19 A. That was enough. I did a lot of public outreach, talking
20 to people that were coming by, people that were making
21 donations, and engendering more public support.

22 I don't feel like -- didn't feel like it was necessary for
23 me to be leader of the organization because we were a
24 collective, and we tried to make our decisions collectively.

25 So --

1 **MS. BOURGAULT:** Your Honor --

2 **THE WITNESS:** -- that's something else I was never --

3 **MS. BOURGAULT:** -- I think this answer was
4 non-responsive at the end, but I'll go ahead and ask another
5 question.

6 **BY MS. BOURGAULT:**

7 **Q.** Now, you believe that the City of Berkeley mistreats all
8 homeless people; right?

9 **A.** Not exactly.

10 **Q.** You don't -- you haven't -- you don't believe that
11 the City is fair -- unfair to all homeless, not just --

12 **A.** That's a pretty blanket statement.

13 I think that the City of Berkeley is doing their best to
14 criminalize poverty. Whether or not that is all homeless
15 people in Berkeley or whether it isn't is, you know, not -- is
16 relative, because, basically, the policies of the City of
17 Berkeley have not been very helpful towards homeless people.

18 **Q.** Now, on November 7th, 2016, when you were experiencing
19 your first encampment removal by the City, you'd only been with
20 the group a few days?

21 **A.** Right.

22 **Q.** And did you know anything about the Berkeley Hub, the
23 coordinated entry system for homeless services, before you
24 arrived?

25 **A.** No, I knew very little. And what I did know was from

1 secondhand information, all of which was bad.

2 Q. And so you, after leaving the location at the steps of
3 City Hall -- well, strike that.

4 You camped at the steps of City Hall; correct?

5 A. Correct.

6 Q. And you knew when you were doing that that that was the
7 building that the City used to conduct all of its business,
8 essentially?

9 A. Sure.

10 Q. And a member of the group named Tanis poured red paint all
11 over the steps, entry steps of the City Hall?

12 A. Yes.

13 Q. And the red paint was provided by your group?

14 A. Yes.

15 Q. And it was a group decision that the red paint be poured
16 all over the steps?

17 A. Yes.

18 Q. And the group also made the decision to paint the
19 sidewalks with paint?

20 A. That, not so much. The red paint, I'm dead certain about.
21 Sidewalk painting, I'm not so sure.

22 Q. You were aware that members of the group were extensively
23 drawing on the sidewalks and --

24 A. Yes.

25 Q. -- and chalking them?

1 You believe the pro-suicide messaging that was being
2 written on the sidewalks was inappropriate?

3 **A.** I -- I had no control over Tanis. We tried to ask him not
4 to. And we felt that maybe, in a way, that this was
5 detrimental to our protest. But we can't -- someone who is
6 suicidal, that's on that track, there's not a whole lot you're
7 going to be able to do to get them to stop. We tried
8 everything with him, and it didn't work. And we couldn't kick
9 him out of the group because he was mentally ill and unstable,
10 and basically, he would have died.

11 **Q.** Now, on the occasions when you were live streaming the
12 encampment removals, you frequently -- you frequently voiced on
13 your live streams things like "The police are being very nice
14 today"?

15 **A.** Right.

16 **Q.** And you said, "The police are being very polite today."

17 **THE COURT:** Well, wait. You can't testify.

18 Does the witness agree to that?

19 **THE WITNESS:** Yes.

20 **THE COURT:** All right.

21 **THE WITNESS:** I said it.

22 **THE COURT:** All right. So that's the evidence.

23 Next question.

24 **BY MS. BOURGAULT:**

25 **Q.** And the police had a requirement, eventually, that you be

1 actively packing your belongings?

2 **A.** Yes.

3 **Q.** And at times, the police helped you pack your tents and
4 belongings?

5 **A.** Well, they didn't pack it. I packed my own stuff. But I
6 had it ready. After that, I had it ready for them to help me,
7 because I was -- you know, you don't know what it's like having
8 COPD. You can't breathe, especially when you're in a situation
9 where there's a lot of stress. And there was no other way that
10 I was going to be able to move otherwise.

11 **Q.** And so you're acknowledging that the police helped you
12 move your --

13 **A.** When I --

14 **Q.** -- belongings?

15 **A.** -- asked them, yes.

16 **Q.** And you, at one point, relocated to a location off of
17 University Avenue on a bike path called the Ohlone Pathway?

18 **A.** Right.

19 **Q.** And you left that location voluntarily?

20 **A.** Yes.

21 **Q.** The City didn't require you to move?

22 **A.** No.

23 **Q.** Now, you would admit that street medians can be dangerous
24 places to camp because there's too much traffic?

25 **A.** Yes.

1 Q. And when you moved to the median on Shattuck in the
2 North Berkeley area near Rose and Vine, you got some blowback
3 from the community?

4 A. Well, yeah. We're starting --

5 THE COURT: Which community?

6 BY MS. BOURGAULT:

7 Q. You got blowback from people in the community who walked
8 by the encampment?

9 A. Not any more than what we would at any other location.

10 Q. So you acknowledge that at the various locations that your
11 group was at, you would get complaints from the community?

12 A. Sure. There's always going to be a NIMBY involved. You
13 can go anywhere in the world and there's probably going to be
14 somebody that's going to complain about you being there. A lot
15 of people don't like homeless people just because of one
16 prejudice or another.

17 That was the whole point of us setting up our protest, was
18 to give us a little humanity. So, sure, there's going to be
19 people -- you know, there's idiots that go by even today with
20 horns and beeping their horns just because --

21 THE COURT: Wait, wait. Mr. Sullivan, be fair.

22 Everybody's on a time clock here.

23 THE WITNESS: I'll stop.

24 THE COURT: And you're burning up her time with a
25 speech. She asked you a simple question, and that was whether

1 people in the community disapproved of your encampment.

2 **THE WITNESS:** Just the odd person.

3 **THE COURT:** Just what?

4 **THE WITNESS:** The odd person.

5 **THE COURT:** The odd person. All right.

6 Next question.

7 **BY MS. BOURGAULT:**

8 **Q.** And when you were camped in North Berkeley on the Shattuck
9 median, you would use the bathroom at the Safeway Store across
10 the street?

11 **A.** Well, sure. Yes.

12 **Q.** And were you aware of Safeway complaining to the City
13 about the fact that your encampment members were using their
14 bathroom?

15 **A.** No, I wasn't.

16 **THE COURT:** Now, this is a good example. I'm going to
17 interrupt. This is a good example. I'm not saying that the
18 lawyer did anything wrong.

19 But is that proof that the Safeway complained? No. It's
20 zero proof. She said "Were you aware?" Zero proof, because
21 the witness didn't say that he knew anything about that.

22 So they're going to have to bring in Safeway or somebody,
23 if that's important. But don't just take that question as
24 proof that Safeway complained.

25 Now, this is a principle that applies both ways, and I've

1 heard many questions along these lines, both -- this is a good
2 example to remind you that anything a lawyer says is not proof.
3 Zero. Z-e-r-o. Zero.

4 Okay. Go ahead.

5 **BY MS. BOURGAULT:**

6 **Q.** Now, Mr. Sullivan, when you -- during this time frame when
7 you were in the Safeway, did you ever see the City's code
8 enforcement supervisor, Gregory Daniel, in the Safeway talking
9 to the Safeway employees?

10 **A.** Yeah, I saw him in there one day.

11 **Q.** And you don't know what they were talking about?

12 **A.** I have no idea, no.

13 **Q.** Now, when you camped with the group, you kept a urinal in
14 your tent to urinate; correct?

15 **A.** Yeah.

16 **Q.** And what you would do with the urine, if you could, was
17 dump it in a toilet afterward?

18 **A.** Yes.

19 **Q.** And if you couldn't find a toilet to dump it in, you would
20 find a good spot?

21 **A.** Of course.

22 **Q.** And that means somewhere outside?

23 **A.** Yes.

24 **Q.** And you acknowledge that members of your encampment were
25 often forced to urinate and defecate on the streets because

1 they were -- there were no public bathrooms?

2 **A.** I would say that our group was as conscientious about
3 using the bathroom, even more so than the general public would
4 be, because we had to -- we were on site, you know.

5 **Q.** So your -- it's your testimony that the general public
6 defecates and urinates on the streets of Berkeley?

7 **A.** Sure, they do.

8 **Q.** And -- but you acknowledge that members of your encampment
9 did, in fact, use the outdoors as a restroom?

10 **A.** No. I would say, like I said before just recently, that
11 our group was more conscientious about their bathroom habits
12 than the general public.

13 **MS. BOURGAULT:** Your Honor, I'd like to read from
14 Mr. Sullivan's deposition, page 61, line 2.

15 **THE COURT:** All right. He's a party. It does not
16 have to impeach. So you can read it for, quote, any purpose.
17 Doesn't have to impeach. But give us the date of the
18 deposition.

19 **MS. BOURGAULT:** The deposition is May 29th, 2018,
20 Your Honor.

21 **THE COURT:** All right. Please read the portion you
22 want, but read the entire question, the entire answer.

23 **MS. BOURGAULT:**

24 **"QUESTION:** Did you hear your voice just now saying --

25 **"ANSWER:** Yeah, I said that, yeah.

1 **"MS. JOHNS:** Let her ask the question, please, so we can
2 put it on the record. Thank you.

3 **"QUESTION:** What you said is when you feel the call of
4 nature and you have to go, there's actually no place
5 to go in the night to use the bathroom, so you're
6 forced to urinate and defecate on the streets because
7 there's no bathrooms. You heard yourself say that?

8 **"ANSWER:** Yes."

9 **BY MS. BOURGAULT:**

10 **Q.** And isn't it true that you called "the dirty little secret
11 of urban camping that nobody likes to talk about" being the
12 fact that there's nowhere to go to the bathroom and you have to
13 go in a public place?

14 **A.** Sometimes, yes.

15 **Q.** Now, Barbara was a supporter who picked up some of the
16 encampment property from the City Storage on Second Street?

17 **A.** Yes.

18 **Q.** And you knew that to get your belongings back from
19 the City, if they had taken it as unattended property, that
20 someone had to travel out to Second Street?

21 **A.** Yes.

22 **Q.** And you knew the City had a storage area for homeless
23 belongings that they collected from encampments?

24 **A.** Yeah. I -- I --

25 **Q.** Now, when you lost your tent on November 17th, 2016 -- and

1 you lost one tent; right?

2 **A.** I lost two tents. Two different occasions.

3 **Q.** Okay. Well, you said that you lost a tent on
4 November 17th because you left it on the sidewalk and went to
5 go get a cup of coffee, and when you returned, it was gone. Is
6 that what happened?

7 **A.** No. No. The cops came that morning, and I was at Civic
8 Center. They tried to grab the tent. I had somebody else that
9 was trying to hold onto the tent for me. But they said the
10 cops grabbed it, and they, in the process, drug it through the
11 street to where it was unusable. And that was pretty much it.

12 **Q.** And so you didn't -- you didn't see the cops take your
13 tent? You heard from another party that the cops --

14 **A.** I had somebody else who was responsible because I was live
15 streaming.

16 **MS. BOURGAULT:** So, Your Honor, I'd like to strike
17 that answer as hearsay.

18 **THE COURT:** What answer?

19 **MS. BOURGAULT:** He's relying on hearsay to say that
20 the police took his tent. He didn't actually witness that.

21 **THE COURT:** Well, no. Here's what we're going to do,
22 though.

23 This is something that the jury can evaluate. The tent
24 was there at one point. The tent was gone at the next point.

25 One inference from that could be that the police took it

1 because the police were on the scene. It could also be that
2 somebody else took it, not the police. We don't know.

3 And the jury, though, it's well within their ability to
4 figure out and assess and assess the weight to be given to that
5 testimony.

6 So I'm not going to strike any of the prior answers.

7 **MS. BOURGAULT:** Thank you, Your --

8 **THE COURT:** Next question.

9 **MS. BOURGAULT:** Thank you, Your Honor.

10 **BY MS. BOURGAULT:**

11 **Q.** So when you lost your tent, you gave your tent to
12 somebody, part of your group, to move for you; right?

13 **A.** Right.

14 **Q.** And then -- and you can't remember who you gave it to?

15 **A.** Not anymore, no.

16 **THE COURT:** Is this the same event or a different
17 event?

18 **MS. BOURGAULT:** Same event, Your Honor.

19 **THE COURT:** All right. Help me out here. Is there a
20 date attached to this event?

21 **MS. BOURGAULT:** November 17th, 2016.

22 **THE COURT:** Is that right, Mr. Sullivan?

23 **THE WITNESS:** Yes.

24 **THE COURT:** Okay. So you lost a tent on that
25 occasion; right?

1 **THE WITNESS:** Yes, sir.

2 **THE COURT:** But you gave the tent to somebody; is that
3 true?

4 **THE WITNESS:** Right.

5 **THE COURT:** Who was it?

6 **THE WITNESS:** He was one of our campmates. I can't
7 remember his name at the moment.

8 **THE COURT:** All right. So then you gave it to him.
9 Then why didn't you see what happened to it?

10 **THE WITNESS:** Because I was busy trying to live stream
11 the police.

12 **THE COURT:** All right. So you were paying attention
13 to something else. And then what happened to your tent while
14 you were doing that?

15 **THE WITNESS:** They grabbed it from the guy.

16 **THE COURT:** Who?

17 **THE WITNESS:** The police grabbed it from the guy.

18 **THE COURT:** You saw that happen?

19 **THE WITNESS:** No. That's what he told me.

20 **THE COURT:** Okay. That part is hearsay, and the jury
21 ought to keep in mind that's hearsay.

22 **THE WITNESS:** But I never got the tent back.

23 **THE COURT:** Okay. All right.

24 Go ahead.

25

1 **BY MS. BOURGAULT:**

2 **Q.** Mr. Sullivan, you asked Barbara to get the tent back for
3 you because she had a truck; right?

4 **A.** No.

5 **MS. BOURGAULT:** Your Honor, I'd like to read from
6 Mr. Sullivan's deposition, page 73, 18 to 21.

7 **THE COURT:** Go ahead.

8 **MS. BOURGAULT:**

9 **"QUESTION:** What did you do to get your tent back?

10 **"ANSWER:** I asked Barbara because Barbara had the
11 truck.

12 **"QUESTION:** Did she get it back?

13 **"ANSWER:** No."

14 **BY MS. BOURGAULT:**

15 **Q.** So when the supporters packed up the community's gear in
16 their vehicles, they sometimes lost people's stuff; is that
17 correct?

18 **A.** Who? Excuse me.

19 **Q.** The supporters of the encampment sometimes lost people's
20 possessions?

21 **A.** I can't really say anything one way or the other about
22 that.

23 **MS. BOURGAULT:** Your Honor, I'd like to read from
24 page 104 of Mr. Sullivan's deposition, starting at line 20
25 through 23.

1 **"QUESTION:** So sometimes things just got -- they got
2 lost by the supporters who were supposed to be helping
3 you move the stuff?

4 **"ANSWER:** Yes."

5 **BY MS. BOURGAULT:**

6 **Q.** Now, Mr. Sullivan, on December 21st, 2016, you testified
7 you were at old City Hall. And we saw a clip of your purple
8 luggage going into a City truck; correct?

9 **A.** Correct.

10 **Q.** Now, earlier that morning, isn't it true that while you
11 were live streaming the event, you misplaced that purple piece
12 of luggage and didn't know where it went?

13 **A.** No. It wasn't misplaced at all.

14 **Q.** It turned out that the supporters had it and they had
15 brought it to old City Hall; right?

16 **A.** Right.

17 **Q.** But at the time --

18 **THE COURT:** You've got to say "yes" for the record.
19 Otherwise --

20 **THE WITNESS:** Yes.

21 **THE COURT:** You nodded.

22 All right. Okay. Go ahead.

23 **MS. BOURGAULT:** I apologize, Your Honor.

24 **BY MS. BOURGAULT:**

25 **Q.** At the time that you momentarily misplaced your purple

1 luggage earlier that morning, on that same date that you ended
2 up seeing it go off into a City truck, you didn't know where it
3 was, and during your live stream you said, "Well, it doesn't
4 matter. It's not that important." Right?

5 **A.** Vaguely. Maybe that's what I said, yes.

6 **Q.** And also you tasked Barbara with getting that piece of
7 luggage back from storage; right?

8 **A.** Yes.

9 **Q.** Eventually, she did get it back?

10 **A.** Yes, many months later.

11 **Q.** You don't know if she got it back from storage or if she
12 got it back from some other location?

13 **A.** I'm not sure, no.

14 **Q.** And eventually, you got everything back, the suitcase and
15 the contents?

16 **A.** Yes, but the contents were unusable. But we'll go from
17 there. Yes.

18 **Q.** All right. And now, were you present in North Berkeley on
19 the median when the sex offender was arrested by the police?

20 **A.** Yes.

21 **Q.** And he had a nickname of Grumpy?

22 **A.** Yeah.

23 **Q.** And that was what he wanted you to call him?

24 **A.** Right.

25 **Q.** Did he ever tell you his real name?

1 **A.** Not the one he was wanted for.

2 **Q.** And he camped with you for over a month; is that right?

3 **A.** I suppose. I guess. Couple of months, give or take a few
4 days.

5 **Q.** Now, you talked about laws that the City Council was
6 passing that upset you, and you said that it was during the
7 time that you were protesting with the group in the
8 October 2016 to January 2017 time frame. Is that what you
9 said?

10 **A.** Yes.

11 **Q.** What laws were those?

12 **A.** Just the ones -- basically, what they had in place
13 already -- right? -- that forced you to go to a shelter. If
14 you didn't go to a shelter, or you would get a ticket for
15 lodging.

16 Just the way that they approached it with the police.
17 Constantly the police were being used as social workers.

18 **Q.** I'm referring to laws, not behavior of the police.

19 What laws are you aware of that were passed by the City
20 Council?

21 **A.** I believe -- I'm not real sure, but I thought the 3-by-3
22 law was passed.

23 But up until that point, they had a record of passing
24 anti-homeless laws to make it illegal to be homeless.

25 **Q.** Well, isn't it true, Mr. Sullivan, that the laws that were

1 passed by the City Council in 2015 were a law that prohibited
2 public defecation and urination? Isn't that one of --

3 A. Well, how was that --

4 Q. -- the laws?

5 A. Yes, but --

6 Q. Doesn't --

7 A. -- I think --

8 Q. Oh, I'm sorry.

9 A. Go ahead.

10 Q. Wasn't another law that they passed in 2015 a law that
11 made it illegal to lay in the planters or store your belongings
12 in the planter boxes?

13 A. Yes.

14 Q. Now, isn't it true that at the encampment removals, the
15 police were, themselves, video recording those --

16 A. Yes.

17 Q. -- events?

18 And you testified that police officers were using
19 nightsticks against some of the encampment dwellers?

20 A. Yeah.

21 Q. You saw a police officer pull out a baton and use it
22 during --

23 A. He didn't hit anybody with it. But, you know, it's like
24 tapping it on the ground for emphasis. Right? And I just
25 didn't have that happen to me once. It happened to me a couple

1 of times. You know, you either move it on this side of the
2 line, with the nightstick out, or that side of the line.

3 Now, that's using a nightstick, yes.

4 Q. All right.

5 A. They beating somebody over the head with it is another,
6 something else.

7 Q. And you're saying you never saw anyone being struck with
8 a --

9 A. No, I never saw --

10 Q. -- baton?

11 A. -- the police strike anybody, no.

12 MS. BOURGAULT: Your Honor, I don't have any further
13 questions. I reserve my recross.

14 THE COURT: All right. Thank you.

15 Any redirect?

16 MS. JOHNS: Yes, Your Honor.

17 REDIRECT EXAMINATION

18 BY MS. JOHNS:

19 Q. Mr. Sullivan, would you mind explaining what COPD stands
20 for?

21 A. Chronic obstruction pulmonary disorder.

22 Q. Speaking about your live streams, while you were live
23 streaming, did you speak directly to any City employees, such
24 as the police or City workers who were there?

25 A. Tried to, yes.

1 Q. And did you speak your opinions to them?

2 A. Yes.

3 Q. About what the encampment removals --

4 A. Yeah.

5 Q. -- were like?

6 A. The way I felt about it and the political debate that goes
7 with it.

8 Q. Did your encampment itself use any signs or artwork to
9 indicate it was a protest?

10 A. Yes.

11 Q. I wanted to speak briefly about the urinal that you
12 described that you used in your tent. Is that a -- it was a
13 medical urinal?

14 A. Yeah. Yeah.

15 Q. One you would receive if you were in the hospital?

16 A. Right.

17 Q. Why did you rely on supporters to help you pack and move
18 your stuff?

19 A. Because I didn't have a car and I couldn't do it all by
20 myself. I couldn't just live stream and do what I was there to
21 do and then also keep my stuff -- and keep an eye on my stuff,
22 you know, because this was a very organized effort.

23 Q. If you weren't live streaming, would you have been able to
24 move your stuff yourself?

25 A. Yes, because at the end of the protest, like at the

1 Adeline and Russell one, I was able not only to make sure
2 nobody else -- I didn't lose my possessions, but I was also
3 able -- I made sure that other people didn't lose their
4 possessions either and that we were a little more together when
5 it came to moving around.

6 **Q.** What about possibly retrieving any property from the City?
7 Were you able to do that on your own without support?

8 **A.** No. I didn't feel that it was necessary for me to go down
9 there, because I don't drive and, you know, I have mobility
10 issues here. And we're talking about a place that's way on the
11 outskirts of town. At the time, I was in a manual wheelchair;
12 so getting around was really difficult.

13 And so we had civic members in our group that were way
14 more knowledgeable about dealing with this situation than I.
15 So rather than for me to waste my energy and do this when I
16 can -- you know, we have a trust in our group, and we have --
17 we've learned how to trust each other because of this. And so
18 I placed my trust in somebody else, and they were able to
19 eventually get my stuff back.

20 **Q.** When you got your purple suitcase back with the contents,
21 you said they were unusable.

22 **A.** Yeah. The stuff that was inside of it was mildewed.

23 **Q.** How long elapsed between when your property was taken and
24 when you received it?

25 **A.** Seven or eight months.

1 Q. And the laws about storage that you had mentioned, is it
2 your memory that the City Council was at least discussing the
3 way that homeless individuals were going to be able to store
4 their property, at the time that you were conducting your
5 protest?

6 A. Yeah, they were discussing it, but nothing ever really
7 came out of it. I mean, they tried. They said they were going
8 to start a program, but I never heard anything about it, you
9 know. And -- well, I don't want to elaborate any further.

10 MS. JOHNS: Those are all the questions that I have
11 for you on redirect, Mr. Sullivan.

12 THE COURT: All right. May Mr. Sullivan step down?

13 THE WITNESS: All right. Thank you.

14 MS. BOURGAULT: No further questions, Your Honor.
15 Thank you.

16 THE COURT: Do you need help to get down?

17 THE WITNESS: No, I got it.

18 THE COURT: Be careful. Take your time.

19 All right. Next witness, please.

20 (Witness excused.)

21 MS. JOHNS: We'd like to call Adam Bredenberg. Oh.

22 THE COURT: All right. Adam, your turn. Please raise
23 your right hand.

24

25