

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

MARK JEFFERSON LEFFINGWELL,

Defendant.

Case No. 21-cr-5 (ABJ)

**GOVERNMENT'S NOTICE RELATED TO PUBLIC RELEASE
OF PROPOSED EXHIBITS**

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully submits its position as to the Application for Access to Video Exhibits by Press Coalition, ECF 34, per the Court's February 3, 2022 Minute Order. Pursuant to the procedure outlined in Standing Order 21-28 (BAH) in *In re Press Coalition's Motion for Access to Video Exhibits and to Set Aside Standing Order No. 21-28*, Case No. 21-mc-87, the government agrees that the videos submitted to this Court can be released. *See* Standing Order 21-28 (BAH), at 5-6.

The petitioner's filing seeks three video exhibits submitted by the government to this Court and opposing counsel in preparation for the sentencing hearing currently scheduled for February 10, 2022. In the government's Notice of Filing of Items Incompatible with CM/ECF Filing, ECF 32, it gave notice of its submission of the exhibits and stated that it did not object to the public release of the proposed exhibits.

The D.C. Circuit has consistently employed the six-factor “Hubbard test”¹ when determining whether the common-law right of access to judicial records requires those records to be made available to the public for copying and inspection. Applied in the general context of video exhibits admitted into evidence in court hearings involving defendants charged with criminal offenses related to the January 6, 2021 breach of the U.S. Capitol, and absent order of the court, that test generally weighs in favor of allowing public access to these exhibits. Therefore, because the videos will be used by this Court in reaching Defendant Leffingwell’s final sentence, and there is no specific court order to the contrary, the government does not object to their disclosure.

Respectfully submitted,

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¹ The *Hubbard* test balances the following factors: “(1) the need for public access to the documents at issue; (2) the extent of previous public access to the documents; (3) the fact that someone has objected to disclosure, and the identity of that person; (4) the strength of any property and privacy interests asserted; (5) the possibility of prejudice to those opposing disclosure; and (6) the purposes for which the documents were introduced during the judicial proceedings.” *Leopold v. v. United States*, 964 F.3d 1121, 1131 (D.C. Cir. 2020) (quoting *MetLife, Inc. v. Fin. Stability Oversight Council*, 865 F.3d 661, 665 (D.C. Cir. 2017)).