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9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION
12

13 UNITED STATES OF AMERICA

14 Plaintiff,

15 v.

16 DAVID WAYNE DEPAPE,

17 Defendant.
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Case No.: CR 22-426 JSC

**STATUS REPORT RE: SFPD
INTERVIEW EXCERPTS**

20 On October 26, 2023, the Court held a pretrial conference in the above-captioned matter. In its
21 ruling as to the government’s motion in limine #4, the Court ordered the parties to “meet and confer
22 regarding any specific statements or excerpts Defendant contends should be admitted to avoid
23 misleading the jury.” Dkt. No. 134 at 2. In advance of the hearing on this issue scheduled for November
24 1, 2023, the defense submits this status report.

25 After having met and conferred, the parties have agreed to the following modification:
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- 1 • The government’s fourth excerpt, originally planned to begin at 36:5¹ of the transcript, will
2 start instead at 35:25.

3 The defense also requested that the following portions be included as well to avoid
4 misleading the jury. The government will not agree to include them. The defense requests that
5 the Court order that these two excerpts be admitted pursuant to the Rule of Completeness:

- 6 • 6:2–8:3: This portion of the interview falls between the government’s first two
7 excerpts. It comprises Mr. DePape’s full answer to Sgt. Hurley’s question at the end
8 of the government’s first excerpt about whether the Pelosis have done something to
9 him (5:18–22). As excerpted by the government, it suggests that Mr. Depape’s full
10 answer to this question was that what the Pelosis did to the American people was just
11 “lies” with Nancy Pelosi “as the leader of the pack.” In fact, he went on to explain
12 that it originated with Hillary [Clinton] and the DNC, and included spying on and
13 spreading lies about a rival campaign. Without the full answer, the jury will instead
14 be left with the incorrect impression that Mr. DePape was upset about Nancy Pelosi
15 lying in only a vague, undefined sense, which is an incomplete presentation of his
16 motivations as he expressed them to Sgt. Hurley. Moreover, it is a conversational
17 quirk that is being used to unreasonably limit the excerpts. Sgt. Hurley merely stating
18 “Right” or “Okay” or “Yeah” in this section is being used to break up the full answer
19 when it was merely a tool to acknowledge her listening to the full conversation. They
20 add nothing to the conversation and, when reviewed in the transcript, unreasonably
21 and unfairly break up the continuous answer that is the entire section from 5:18-8:3.
- 22 • 16:12–18:19: This portion of the interview falls between the government’s second
23 and third excerpts. In it, Mr. DePape describes what happened between when Paul
24 Pelosi called 911 and when he saw flashing lights at the front door. Excluding this
25 part of the narrative is misleading in that it makes it seem as if Mr. DePape and Mr.
26 Pelosi went straight from the bathroom where the 911 call was made to the front door

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28 ¹ Citations to the transcript will be formatted as [page #]:[line #], and refer to the transcript with
the government’s highlights of proposed excerpts that was previously filed at Dkt. No. 99-1.

1 where they saw flashing lights, when in fact, there were events, conversations, and
2 movements that occurred in the eight minutes between those two moments.
3 Moreover, like above, Sgt. Hurley's interjections are similar to a head nod to allow
4 the response to continue on with occasional requests for an explanation, an
5 explanation without which the jury would have an inaccurate and misleading
6 impression of the admitted excerpts.

7 The defense additionally may introduce other portions of and/or statements made during
8 the interview for non-hearsay purposes at the appropriate time at trial.

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12 Dated: October 31, 2023

Respectfully submitted,

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15 JODI LINKER
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