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D.C. prosecutor accused of misconduct at trials of anti-Trump protesters

A police detective is also named in charging documents as helping the prosecutor selectively edit videos to support c

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By Peter Hermann

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A federal prosecutor who oversaw sweeping arrests of anti-Trump demonstrators in the nation's capital manipulated evidence alongside a D.C. police detective in an apparent attempt to strengthen the case, according to an office that investigates misconduct complaints against attorneys in the District.

Jennifer Kerkhoff Muyskens, who has since left the U.S. attorney's office for D.C., worked with a detective, Gregory Pemberton, to edit video of people planning protests of the president's 2017 inauguration, and later falsely told the court about it, the D.C.'s Office of Disciplinary Counsel alleges.

The administrative charges filed July 15 — which could lead to a range of sanctions for Muyskens that include disbarment — mark the latest troubled turn in the mass arrest of more than 200 people that day, in rioting that authorities estimate caused about \$100,000 in property damage across 16 blocks downtown. The cases fell apart. Just 21 defendants pleaded guilty before trial. And the D.C. government agreed to pay \$1.6 million to settle two lawsuits stemming from the treatment of protesters.

The disciplinary counsel alleges that Pemberton and Muyskens altered evidence that was central to the government's case against the demonstrators. The pair excised portions of a protest planning meeting discussing nonviolence to bolster claims of conspiracy, thereby depriving defendants of evidence to counter the charges, the complaint states. The documents also allege Muyskens and Pemberton initially hid the video's origins. The material came from Project Veritas, a conservative activist group that uses secret recordings to target the mainstream news media and left-leaning groups.



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Attorneys for Muyskens, now a federal prosecutor in Utah, did not respond to a request for comment on the charges, which include allegations she violated the rules of professional conduct, knowingly made false statements, obstructed defense attorneys' access to evidence, and concealed or altered evidence.

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(The Washington Post)

Spokespeople for the U.S. attorney's office in Utah and D.C. also declined to comment. Pemberton also did not respond to an inquiry. A D.C. police spokesman declined to comment on the allegations and would not say whether the department has opened an investigation of Pemberton, who now chairs the police labor union.

Political tensions are again high following the attempted assassination of Trump, who is on the ballot in November. Authorities say privately they are concerned about the coming months given the [Jan. 6, 2021](#), insurrection that occurred at the Capitol the last time Trump lost.

The allegations raised by the disciplinary counsel come seven years after protests against the inauguration of Trump on Jan. 20, 2017, which were largely lawful but at times interspersed with violence. Some people that day broke windows of businesses and vehicles and set a limo on fire. Police said a group used "black bloc" tactics most commonly linked to an international [anarchist movement](#). They dressed in dark colors and ski masks to blend in with peaceful demonstrators, and were armed with crowbars and hammers.

The American Civil Liberties Union of D.C., which in 2021 settled the two lawsuits against the District alleging demonstrators were unlawfully detained, said the new accusations against the prosecutor and police detective are concerning.

"Prosecutors' power to enforce the law makes it particularly important that they abide by it themselves," Michael Perloff, the organization's interim legal director, said in a statement. "Jennifer Kerkhoff Muyskens failed that duty and subjected Inauguration Day protesters to serious hardship and a risk of unjustified incarceration. She should be held accountable for her conduct."

Perloff also said the ACLU is disappointed in prosecutors and D.C. police "for allowing such an incident to occur. As we watch another election season unfold, we expect [D.C. police and the U.S. attorney's office] to better uphold their constitutional obligations."

Shortly after the 2017 inauguration riot, the ACLU compared the police tactics to mass arrests during the World Bank protests in Pershing Park in 2002. D.C. police then used a “trap and detain” strategy that led to more than \$13 million in legal settlements, \$11 million of it paid by the District.

Police arrested 234 people that day in 2017, but only a handful went to trial, resulting in acquittals or hung juries. Prosecutors dropped the vast majority of cases, including charges against 188 defendants at a single court hearing. Defense attorneys argued their clients were exercising their constitutional rights and being blamed for the actions of a small group of vandals. The disciplinary counsel said Muyskens “decided to charge all the arrested participants — even individuals who were nonviolent — on the theory that everyone took part in a conspiracy.”

Allegations of police and prosecutorial misconduct in the cases first arose in early court hearings when discrepancies in testimony and evidence arose, in one case over whether a particular demonstrator had attended a meeting to discuss protest tactics. At a 2019 court hearing, Assistant U.S. Attorney David Goodhand told a judge that false information had been given to a grand jury.

An internal investigation by the U.S. attorney’s office found that Muyskens had misrepresented information about one of the defendants, Goodhand said then. A prosecutor who spoke to The Washington Post on the condition of anonymity then to discuss an ongoing investigation said it appeared the omissions were unintentional due to an overwhelming caseload.

Defense attorneys at the time objected to prosecutors’ use of Project Veritas materials to bolster their charges of a vast conspiracy. Two judges ruled that Muyskens failed to either supply all of the Project Veritas videos to defense attorneys before trial or edited the videos and failed to disclose all of the edits to attorneys.

In November 2018, a Superior Court judge found that Muyskens intentionally withheld evidence but did not do so maliciously, according to the disciplinary counsel’s charging document.

The new allegations brought by the Office of Disciplinary Counsel state that Muyskens and Pemberton knew Project Veritas “had a reputation for editing videos in a misleading way,” and that Muyskens planned to use an undercover D.C. police officer who had infiltrated the DisruptJ20 meetings to testify that the secret Project Veritas videos were an accurate representation of the events to avoid disclosing the video’s origin.

The documents allege Muyskens and Pemberton omitted three segments of one video by cutting footage, omitting material that “consistently showed that protesters were trained and instructed to expect a nonviolent protest.”

“The edited Planning Meeting Video was central to the government’s alleged conspiracy and aiding-and-abetting theories of liability,” the charging document from the disciplinary counsel alleges. “It was the only video of planning that [Muyskens] relied on at trial. ... The video was the government’s primary evidence that there was a conspiracy to riot using black bloc tactics at the anti-capitalist march.”

The disciplinary counsel wrote that Muyskens “assured the court” that she and Pemberton had reviewed the planning video and “confirmed it ‘was provided in what appears to be complete, unredacted form.’” Muyskens “falsely told the court that she had provided defense counsel with ‘the full entirety of those videos from that day,’” the charging documents allege.

Muyskens’s attorneys in case filings requested they be given until Aug. 26 to file a formal answer to the complaint. A hearing will then be scheduled.

Keith L. Alexander contributed to this report.