

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

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United States of America,	)	Criminal Action
	)	No. 1:21-cr-00035-RC-7
Plaintiff,	)	
	)	<b><u>Sentencing</u></b>
vs.	)	
	)	
Ronald Colton McAbee,	)	Washington, D.C.
	)	<b>February 29, 2024</b>
Defendant.	)	Time: 9:30 a.m.

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**Transcript of Sentencing**

Held Before  
The Honorable Rudolph Contreras  
United States District Judge

A P P E A R A N C E S

For the Government:	<p><b>Benet J. Kearney</b> <b>Alexandra F. Foster</b> UNITED STATES ATTORNEY'S OFFICE FOR THE DISTRICT OF COLUMBIA 601 D Street, Northwest Washington, D.C. 20579</p>
For the Defendant:	<p><b>Benjamin M. Schiffelbein</b> FEDERAL PUBLIC DEFENDER 210 First Street, Southwest, Suite 400 Roanoke, Virginia 24011</p>
Also Present:	Crystal Lustig, U.S. Probation Officer

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Stenographic Official Court Reporter:	<p>Nancy J. Meyer Registered Diplomate Reporter Certified Realtime Reporter 333 Constitution Avenue, Northwest Washington, D.C. 20001 202-354-3118</p>
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Proceedings recorded by mechanical stenography. Transcript produced by computer-aided transcription.

P R O C E E D I N G S

1  
2 THE COURTROOM DEPUTY: This is Criminal Action 21-35,  
3 United States v. Ronald Colton McAbee.

4 Counsel, please approach the podium and state your  
5 appearance for the record.

6 MS. KEARNEY: Good morning, Your Honor. Benet  
7 Kearney and Alexandra Foster for the United States.

8 THE COURT: Good morning.

9 MS. FOSTER: Good morning.

10 MR. SCHIFFELBEIN: Good morning, Your Honor.  
11 Benjamin Schiffelbein for Mr. McAbee, who is present.

12 THE COURT: Good morning.

13 Good morning, Mr. McAbee.

14 THE DEFENDANT: Good morning, sir.

15 THE COURT: All right. Mr. Schiffelbein, I think we  
16 have the -- you've set a record for the most contested  
17 guidelines issue ever in a sentencing. So settle in. This is  
18 going to take a bit of time.

19 MR. SCHIFFELBEIN: Glad I could help, Your Honor.

20 THE COURT: All right. Mr. McAbee and defense  
21 counsel, have you reviewed the presentence report as revised  
22 following the defense and the government's submissions?

23 MR. SCHIFFELBEIN: We have, Your Honor.

24 THE COURT: Any additional objections, other than  
25 those previously stated?

1           MR. SCHIFFELBEIN: There is one additional objection.  
2           And I -- I understand I probably should have filed it earlier.  
3           Just to the information in paragraph 34, there's a recitation  
4           of reports from the D.C. Jail, which we haven't received, and  
5           there's no witness testimony, nor was there any finding with  
6           respect to that incident. So we would object to that language.

7           THE COURT: All right. I'll duly note that  
8           objection.

9           Any from the government?

10          MS. KEARNEY: No, Your Honor, other than what we've  
11          laid out in our submission.

12          THE COURT: Okay. So under Federal Rule of Criminal  
13          Procedure 32(i)(3)(A), the Court will accept the presentence  
14          report as its findings of fact on issues not in dispute.

15          This case falls within the Sentencing Reform Act of 1984  
16          under which Congress created the United States Sentencing  
17          Commission, which has issued detailed guidelines for judges  
18          such as myself to consider in determining the sentence in a  
19          criminal case like this. The commission has set sentencing  
20          ranges for specific offenses, and those ranges are contained in  
21          a *Guidelines Manual*.

22          However, in light of the Supreme Court's decision in  
23          *Booker*, the guidelines are not mandatory. They're advisory,  
24          but must be consulted by the Court in determining the  
25          appropriate sentence in a case. Therefore, I will assess and

1 determine the proper sentence in this case by reference to and  
2 in consideration of the guidelines, in the first instance. But  
3 the guidelines will be treated as advisory and not mandatory.  
4 And there's no presumption that the guideline sentence is the  
5 correct sentence. The guidelines will be considered, along  
6 with all the other relevant factors, under the sentencing  
7 statute found at 18 U.S.C. 3553.

8 Defendant has pleaded guilty to two counts of the third  
9 superseding indictment: Count 12, which is assaulting,  
10 resisting, or impeding certain officers in violation of  
11 18 U.S.C. § 111(a) (1).

12 And Count 24, act of physical violence in the Capitol  
13 Grounds or Buildings in violation of 40 U.S.C. § 5104(e) (2) (F).

14 And found guilty by a jury for Count 9, inflicting  
15 bodily injury on certain officers and aiding and abetting in  
16 violation of 18 U.S.C. §§ 111(a) (1) and (b) and 2.

17 Count 14, civil disorder in violation of  
18 18 U.S.C. § 231(a) (3).

19 Count 18, entering and remaining in a restricted  
20 building or grounds with a deadly or dangerous weapon in  
21 violation of 18 U.S.C. § 1752(a) (1) and (b) (1) (A).

22 Count 19, disorderly and disruptive conduct in a  
23 restricted building or grounds with a deadly or dangerous  
24 weapon in violation of 18 U.S.C. § 1752(a) (2) and (b) (1) (A).

25 And Count 20, engaging in physical violence in a

1 restricted building or grounds with a deadly or dangerous  
2 weapon in violation of 18 U.S.C. § 1752(a)(4) and (b)(1)(A).

3 There are several -- as I indicated earlier, there's  
4 several disputes concerning the appropriate guidelines  
5 calculation, and I'll go through them one by one.

6 So, first, there's a dispute between the defendant and  
7 the government and probation concerning whether 2 levels should  
8 be added for obstruction of justice because the defendant  
9 provided false testimony. A 2-level upward adjustment may be  
10 given for obstructing or impeding the administration of justice  
11 where the Court finds that the defendant willfully obstructed  
12 or impeded or attempted to obstruct or impede the  
13 administration of justice with respect to the investigation,  
14 prosecution, or sentencing of the instant offense of conviction  
15 and the obstructive conduct related to the defendant's offense  
16 of conviction and any relevant conduct. That's Sentencing  
17 Guidelines § 3C1.1.

18 The provision is not intended to punish a defendant for  
19 the exercise of a constitutional right, including the right to  
20 testify on his own behalf at trial. A defendant's denial of  
21 guilt, other than a denial of guilt under oath that constitutes  
22 perjury, is not a basis for application of the section. Not  
23 all inaccurate testimony or statements necessarily reflect a  
24 willful attempt to obstruct justice. Perjury for purposes of  
25 section 3C1.1 is the same as perjury under the federal perjury

1 statute, 18 U.S.C. 1621, as found in *United States v. Dunnigan*.

2 It occurs where a witness testifying under oath or  
3 affirmation gives false testimony concerning a material  
4 matter with the willful intent to provide false testimony  
5 rather than as a result of confusion, mistake, or faulty  
6 memory.

7 The government and probation's position is that the  
8 defendant repeatedly perjured himself at trial, and certainly  
9 much of Mr. McAbee's testimony at trial was not credible. In  
10 particular, his testimony of motives concerning his physical  
11 actions towards Officer A.W. -- that he intended to reposition  
12 him and that he had no idea that the Capitol Grounds were off  
13 limits -- that testimony was not credible.

14 But despite the contradictory video evidence, the Court  
15 does not find that the lack of credibility of Mr. McAbee's  
16 testimony is sufficient to warrant the upward adjustment for  
17 obstruction under a preponderance of evidence standard.  
18 Mr. McAbee's testimony, in particular those parts that the  
19 government alleges were untrue, were based on -- were not based  
20 on objective verifiable facts directly contradicted by  
21 documentary evidence or other witnesses. Rather, they centered  
22 on his state of mind, his intent, and his willfulness.

23 While the jury, obviously, found the willfulness and  
24 specific intent required to convict Mr. McAbee of all the  
25 charges, the Court is reluctant to enhance Mr. McAbee's offense

1 level in such subjective areas as motives and perception, as  
2 opposed to an objective fact -- fact, such as whether the  
3 defendant gives a plainly false alibi in his testimony or  
4 attempts to place the blame for the crime on another person who  
5 cannot possibly have committed the crime.

6 Thus, the Court will not apply the 2-point enhancement  
7 following Judge Friedman's analysis in *Safavian*.

8 Second, defendant argues that he should not receive a  
9 3-level enhancement for bodily injury. I have previously found  
10 that Officer A.W. suffered serious bodily injury, but the  
11 Co-Defendant Mullins only earned a 3-level enhancement for  
12 bodily injury because, in part, it was clear that A.W.'s head  
13 laceration appears to have occurred prior to his encounter with  
14 either Mullins or McAbee.

15 But defendant's position that no enhancement should  
16 apply is clearly wrong because A.W.'s credible testimony showed  
17 by a preponderance of the evidence that he received blows while  
18 he was being confronted by defendant at the top of the stairs,  
19 while he was brought down the steps, and while pinned at the  
20 bottom of the stairs. At the very least, his gas mask was  
21 pulled off while he was pinned under defendant, and he was  
22 sprayed by something that caused an intense burning sensation  
23 and made it difficult to breathe.

24 The scrapes and bruises he sustained while he received  
25 these blows and the intense pain and difficulty breathing he

1 experienced while pinned down qualify as physical injury caused  
2 by defendant's actions; therefore, I will apply that 3-level  
3 enhancement for bodily injury.

4 Third, although defendant acknowledges that the  
5 enhancement for a conviction under 111(b) clearly applies, he  
6 objects that its application results in at least a partial  
7 double-counting. The Court acknowledges this possibility, but  
8 that issue will be assessed in the context of considering a  
9 variance, not in whether or not to apply a clearly applicable  
10 guideline.

11 Fourth, defense counsel argues that defendant does not  
12 merit the 6-point enhancement for a government victim --  
13 government officer victim who was attacked because of that  
14 status. The Court notes that numerous January 6th defendants  
15 in similar cases have had this enhancement applied to their  
16 cases, and it is merited here too.

17 Here it is clear that the defendant knew both  
18 Officers Moore and A.W. were law enforcement officers, as their  
19 dress and equipment made that fact obvious, and that was  
20 certainly the reason defendant attacked them. He did not  
21 attack any of the other rioters, only the officers.

22 And defendant's actions striking Officer Moore's head  
23 and pulling Officer A.W. towards the violent crowd down the  
24 stairs and pinning him down created a substantial risk of  
25 serious bodily injury. Thus, the 6-point enhancement clearly



1 applies.

2 Fifth, the government argues and probation accepts that  
3 a 2-point enhancement applies because of restraint of victim.  
4 The guideline definition of physically restrained means the  
5 forcible restraint of the victim, such as being tied up, bound,  
6 or locked up.

7 Obviously, A.W. was not tied, bound, or locked up. And  
8 although application of the enhancement does not require one of  
9 these exact scenarios, these scenarios should provide  
10 meaningful guideposts. So it does require a bit of a stretch  
11 to make the enhancement applicable and the facts -- to the  
12 facts of this case.

13 That is not to say that a good argument can't be made  
14 that the enhancement could apply here. In particular, in this  
15 case, amongst the other co-defendants for which the government  
16 sought this enhancement, the enhancement would be most  
17 applicable here given that A.W. was pinned down under the  
18 defendant for about 25 seconds or so.

19 But even in this case, in the context of an enhancement  
20 that could significantly further restrain defendant's liberty,  
21 a certain amount of lenity is in order. And the facts of this  
22 case still do not fall in the heartland of cases in which the  
23 enhancement has been applied, especially when defendant's  
24 involvement in dragging A.W. was so brief. Although A.W. was  
25 pinned under the defendant for a brief period, it is not clear

1 that was defendant's specific intent. Thus, A.W.'s restraint  
2 did not seem to be the defendant's focus.

3 Six, defendant argues that the 4-level body-armor  
4 enhancement does not apply because he did not use the body  
5 armor as part of the offense and simply donning the body armor  
6 does not qualify his use. But as Judge Mehta concluded in  
7 *Webster*, 21-cr-208, although use means active employment in a  
8 manner to protect the person from gunfire but does not mean  
9 mere possession. Because defendant wore his body armor during  
10 his attacks on Officers Moore and A.W., a trained law  
11 enforcement officer, such as defendant, would have known the  
12 officers guarding the Capitol had guns and that attacking them  
13 could have resulted in gunfire.

14 Thus, it is reasonable to infer that wearing the body  
15 armor contributed to the offense in the sense that it would  
16 have emboldened McAbee to aggressively behave the way he did.  
17 Thus, I will apply the 4-level body-armor enhancement.

18 Seventh, defendant argues that the 4-level  
19 dangerous-weapon enhancement should not apply to his striking  
20 of Officer Moore with his gloves because those gloves do not  
21 qualify as dangerous weapons and that the quick strikes were  
22 not likely to cause any injury to Moore. This position seems  
23 contrary to the jury's necessary findings beyond a reasonable  
24 doubt.

25 Regardless, I find by a preponderance of the evidence

1 that the gloves qualify due to their reinforced knuckles,  
2 regardless of whether they were reinforced by plastic or brass,  
3 and their raised plastic ridges and that defendant intended to  
4 use and, in fact, did use them in a manner that was likely to  
5 cause bodily injury by striking Officer Moore with a closed  
6 fist at least once.

7 Eighth, defendant argues that he did not commit an  
8 aggravated assault. The Court wonders whether the defendant  
9 and his counsel watched the same videos that the jury and the  
10 Court watched. The videos depict an enraged, violent man  
11 wearing body armor and reinforced gloves spewing expletives as  
12 he attacked Officer Moore and worked to pull Officer A.W. away  
13 from the protection of the tunnel and his colleagues into the  
14 crowd of rioters.

15 His testimony concerning his efforts to reposition A.W.  
16 are not credible and are rejected by the Court.

17 Defendant's position that his attacks on the officers  
18 were minimal compared to most assaults is absurd. It was an  
19 aggravated assault in every sense of that term.

20 Finally, although the government disagrees with  
21 probation's grouping analysis, the Court will rely on  
22 probation's analysis because, in the end, the Court's  
23 bottom-line sentence will depend primarily on the comparator  
24 sentences rather than the very high guidelines ranges.

25 So making those -- accepting those things and rejecting

1 those things that I just stated, my calculations, using the  
2 2023 *Guidelines Manual*, for the Count 9 offense level is a base  
3 offense level of 14; an additional 3 levels for  
4 victim-sustained bodily injury, which were the bruising,  
5 abrasions, and extreme pain after the gas mask was removed; the  
6 2-level increase for the 111(b) conviction; 6-level increase  
7 for victim government officer and the offense motivated by such  
8 status; 4-level increase for the use of the body armor, which  
9 results in an adjusted offense level of 29. As indicated, I  
10 did not add the restraint or the obstruction.

11 That results in a total offense level of 29.

12 There's no acceptance adjustment for acceptance of  
13 responsibility.

14 With respect to the Count Group 1 offenses, the base  
15 level is 14. There's an additional 4 levels for the use of a  
16 dangerous weapon and an additional 6-level increase because the  
17 victim government officer -- the victim was a government  
18 officer and the offense was motivated by that status.

19 That results in an adjusted offense level of 24.

20 There's no adjustment for acceptance of responsibility.

21 So Count 9 results in one unit. Count Group 1 results  
22 in a half unit. So one and a half units, add 1 level to the  
23 highest, which is 29, for a total offense level of 30.

24 Like many of the January 6th defendants, defendant has  
25 no criminal history. Thus, no points. And the criminal

1 history category is I.

2 The guidelines range for imprisonment based on a total  
3 offense level of 30 and a criminal history category of I is  
4 97 to 121 months.

5 All right. As I've said under *Booker*, the guidelines  
6 are advisory in this case but will be considered fully by the  
7 Court in determining the proper sentence, along with all the  
8 other relevant factors.

9 Would the government like to address the Court?

10 MS. KEARNEY: I just had a question before we get to  
11 the 3553(a) factors, Your Honor. The Court's grouping analysis  
12 is that Counts 9, 12, and 14 group?

13 THE COURT: I just followed what's in the PSR. I  
14 don't remember that off the top of my head.

15 MS. KEARNEY: So the PSR, I believe, groups the  
16 assault of Moore, which is 12, the civil disorder and the three  
17 1752 charges together; and then groups Count 9, which is the  
18 assault of Wayte separately.

19 So I wanted to make sure that was the analysis the Court  
20 was doing.

21 THE COURT: Yes.

22 MS. KEARNEY: Okay. Thank you.

23 THE COURT: You're welcome.

24 All right. I assume you have more of a presentation  
25 than just that.

1 MS. KEARNEY: I think so. Thank you, Your Honor.

2 Thank you, Your Honor.

3 I know Your Honor has sat through this trial. I know  
4 you have trials from other defendants who were in the area, and  
5 I know that you've done several sentencings of co-defendants,  
6 so there's -- unless there's something specific in the videos  
7 you'd like to see, I don't intend to play them.

8 THE COURT: No. And I watched all of them again  
9 yesterday.

10 MS. KEARNEY: Thank you.

11 THE COURT: And, you know, I watched them very  
12 recently in the Coffee trial as well, so.

13 MS. KEARNEY: Understood, Your Honor.

14 On January 6th, Ronald Colton McAbee was a law  
15 enforcement officer. He wore that status proudly. He  
16 displayed it in a patch on the bulletproof vest that he donned.  
17 And on that day he did not uphold the law, and he did not  
18 protect people.

19 He came to D.C. expecting and eager for violence. And  
20 when he was presented with that opportunity, he chose to break  
21 the law, and he chose to assault officers who were doing their  
22 duty to protect the Capitol and those inside. He didn't start  
23 the assault, but he certainly did nothing to put a stop to it.

24 It's clear from the video and from the Court's rulings  
25 that Mr. McAbee did not enter the fray to help. I know the

1 Court has not applied the obstruction enhancements, but I  
2 think it's clear from the evidence presented at trial that is  
3 an after-the-fact rationalization. And I'll outline some of  
4 the ways in which I think that assertion is supported in a  
5 minute.

6 But, first, the defendant goes straight to  
7 Officer Wayte. That officer is lying on his back. He is  
8 bleeding, and he is helpless. He has just seen Officer B.M.  
9 get pulled out headfirst into the crowd, and he does nothing  
10 to help that officer. And he pushes Officer Moore, who's  
11 trying to get to Officer Wayte, out of his way as he crosses  
12 the arch.

13 His focus is on the officers. He grabs hold of Wayte's  
14 thigh, and he drags the officer's body away from the line  
15 towards the violent mob. And now Mr. McAbee has been in that  
16 mob for about half an hour. He knows what it's like in there.  
17 He said it was crowded. He said it was chaotic. Members of  
18 that crowd are armed, and they are angry.

19 And so I want to address the assertion that he was just  
20 trying to get to Ms. Boyland, the woman on the other side of  
21 the arch. But Officer Wayte's body was just an obstacle to  
22 him. And I want to think about what that means for the  
23 calculation that Mr. McAbee made at that moment in time.

24 He didn't leave Officer Wayte alone. He didn't step  
25 over him. He didn't look at the other officers around him and

1 say, they're helping him. I'll go around.

2 He interfered with those officers. He moved  
3 Officer Wayte closer to danger. And so to him, Officer Wayte  
4 had no value. He was something that had to be tossed out of  
5 the way. And I'd say with no regard for the consequences, but  
6 Mr. McAbee knew what those consequences were. Again, because  
7 he had been in that mob.

8 But his actions show he wasn't just trying to get to  
9 Ms. Boyland. He maintains his focus on Officer Wayte. And  
10 when Officer Moore took steps to push him off of Officer Wayte,  
11 he struck him. He lashed out. He punched him, and this is an  
12 example of Mr. McAbee's explanations not matching what  
13 happened.

14 He said at trial that he wanted to create a separation  
15 between himself and Officer Moore. So he struck his face.  
16 That's not how you create separation. You push someone. You  
17 shove them. You don't hit their face.

18 But after he does that, he turns back to Officer Wayte.  
19 He doesn't turn back to the woman at the other side of the  
20 arch. He picks up Officer Wayte by his vest, and you can hear  
21 Officer Wayte's moan, for lack of a better word, when he does  
22 so. He doesn't take advantage of the separation he created to  
23 get to Ms. Boyland. He takes advantage of it to go back to  
24 assaulting the officer.

25 And this is another example of how Mr. McAbee's



1 explanations don't line up with what happened. He says  
2 he was trying to pull him up by his vest, to help him up.  
3 Officer Powell told the Court, it's not how you help  
4 someone up. You give them a hand. You don't drag them by  
5 their vest.

6 So they slide down the stairs. And as the Court noted,  
7 the defendant is over Officer Wayte for about 20 seconds. He's  
8 pushing down on him, and he's hand-fighting with him; right?  
9 This is yet another way in that he is not protecting the  
10 officer as he asserted at trial. Officer Wayte is trying to  
11 get free. He is trying to help himself, and Mr. McAbee is  
12 preventing him. This is not someone trying to help.

13 Now, maybe Mr. McAbee had second thoughts while he was  
14 pinning Officer Wayte down, and maybe that's how Officer Wayte  
15 got up. We don't know. But I haven't heard any regret from  
16 Mr. McAbee. He may be sorry for what he did and for the  
17 ramifications that those actions have on his life, but I've  
18 heard no acknowledgment of the pain and the fear and the trauma  
19 that those officers experienced and that he caused.

20 And I want to direct the Court to Officer Wayte's  
21 statement at Mr. Jersey's sentencing, which is the first  
22 sentencing in these cases. And what he said -- what he told  
23 the Court was that the videos don't capture the essence of the  
24 fear that he had, of the uncertainty of what was going to  
25 happen next. And as he testified at trial, that uncertainty

1 was that he thought he was going to die. And that's because of  
2 this defendant.

3 And while that is happening, Officer Wayte is staring up  
4 at that sheriff's patch. And imagine -- imagine what it must  
5 have felt like for those officers in the tunnel, for  
6 Officer Wayte to see someone who should have been their  
7 colleague, who should have been their backup, who should have  
8 been their support, not only do nothing to stop the rioters,  
9 not only join the rioters, but to lash out violently at the MPD  
10 officers.

11 I want to talk a little bit about the guidelines here,  
12 and I know that the Court has calculated it lower than the  
13 government's calculation. But I think there are grounds for an  
14 upward variance here. And here's why. Those guidelines in how  
15 they are grouped don't reflect the full situation of two  
16 assaults on officers using a dangerous weapon and resulting in  
17 bodily injury on January 6th.

18 There's a 1-level enhancement, which I believe accounts  
19 for Officer Moore's assault, but what it doesn't take into  
20 context because -- the 1752 counts -- the interference with  
21 congressional business counts -- doesn't reflect what was  
22 happening that day. It doesn't reflect that this riot, these  
23 assaults, this violence was happening in the context of an  
24 assault on Congress.

25 And so were this a different context, were this -- I

1 hesitate to say a normal riot, but another sort of melee, those  
2 calculations would be the same, and it doesn't reflect the  
3 context of what happened here.

4 Your Honor, Mr. McAbee's status as a law enforcement  
5 officer, which is where I started, makes these crimes all the  
6 more serious. As we pointed out in our memo, the defendant is  
7 someone who wields his power when it benefits him. He wears  
8 his sheriff's patch. He's talked about how he's trained to  
9 render aid, to help, and uses his status, as we saw at the arch  
10 several minutes after the assault of Wayte and Moore, to help  
11 himself out when he is injured.

12 But he rejects others' authority when it doesn't work  
13 for him. He lashes out. He assigns blame. That's what we saw  
14 with Officer Moore and Officer Moore's efforts to protect  
15 Officer Wayte from Mr. McAbee. That's what we saw in his  
16 reaction to hearing that officers had died and were complaining  
17 about the use of weapons at the Capitol. He says it was the  
18 rioters who were attacked, who were defending themselves. And  
19 that's rich, Your Honor, especially considering what Mr. McAbee  
20 himself saw where he was positioned.

21 And he said at trial that the police could have done a  
22 better job de-escalating the situation. I think that evidence  
23 is a complete lack of recognition of what it is that he  
24 participated in on January 6th. And, you know, I'll note since  
25 he's been incarcerated, he's also been in an altercation about

1 not wanting to follow rules that he disagrees with.

2 These crimes are serious. I think the Court has  
3 underscored that on many occasions. They have serious  
4 consequences for the officers, for our system of government.  
5 And the fact that this defendant was himself at the time a law  
6 enforcement officer makes it all the more scary. This is one  
7 who is supposed to be upholding our laws, who we're supposed to  
8 turn to for help, who we're supposed to be able to rely on, and  
9 instead he is working violently to undermine that.

10 And so, Your Honor, I think the government stands by its  
11 initial request, but will revise that to a request for an  
12 upward variance.

13 THE COURT: Okay. I gather that we're not going to  
14 hear anything from A.W. or Moore; is that right?

15 MS. KEARNEY: No, sir.

16 THE COURT: Okay. Let me see if I have any other  
17 questions.

18 All right. Thank you.

19 MS. KEARNEY: Thank you.

20 THE COURT: Mr. Schiffelbein.

21 MR. SCHIFFELBEIN: The government has well described  
22 the aggravating aspects of this assault, particularly that it  
23 occurred on January 6th. But January 6th also has several  
24 mitigating aspects in regards to Mr. McAbee's culpability that  
25 the government has not recognized.

1           First, obviously, January 6th was an event that was  
2 largely created as a result of several of our national leaders  
3 directly calling for people to come to the Capitol. The  
4 sitting President himself and numerous members of Congress were  
5 responsible for gathering people to January 6th -- to the  
6 Capitol on January 6th.

7           And Mr. McAbee did not come to Washington with the  
8 intent to disrupt Congress. There's not evidence of that that  
9 does occur in several other January 6th cases. In fact, it's  
10 not even clear that he would have come to the Capitol at all  
11 but for the fact that the President directed the crowd to go  
12 and he largely followed.

13           This was Mr. McAbee's first and his last political  
14 rally. He's never been to one before, and he does not intend  
15 to go to one again, but he went in response to national  
16 discourse that had been repeatedly spouted; that there were  
17 several irregularities in the election, and that's why he went.  
18 Not to disrupt Congress, not to attack the Capitol, and not to  
19 attack police officers. He went because protesting and  
20 assembling is how Americans demonstrate their patriotism.

21           Now, there were 8 senators and 139 representatives who  
22 objected to the 2020 certification following January 6th. The  
23 January 6th riot itself delayed Congress's ability to certify  
24 the election for about six hours, from about 2 o'clock until  
25 shortly after 8 o'clock. Congress took more than seven hours

1 to certify the election because of baseless objections,  
2 parroting claims made by the then-sitting President, as well as  
3 voiced by many people in the mob that had just attacked the  
4 Capitol.

5 And I'm not sure which is more damaging to democracy:  
6 the fact that thousands of people followed a call to protest  
7 and did engage in violent actions or that 147 members of  
8 Congress still chose to object to that election, even after the  
9 mob was quelled.

10 Now, it did become abundantly clear -- and Mr. McAbee  
11 does not contest -- that he very -- he should have left  
12 January 6th long before he did. But he did choose to leave, to  
13 his credit, before the police were able to regain control. He  
14 left shortly after his convicted criminal acts in this case.  
15 He left about 30 minutes too late. If he had left at 2:00,  
16 instead of shortly closer to 3:00, he probably would not be  
17 here today.

18 And were it not for the reasons behind the rally, the  
19 obvious signs from law enforcement to leave, the fact that they  
20 were using tear gas, they were deploying an LRAD, and that  
21 numerous people had been hit by less lethal ammunitions, that  
22 would have been a good reason to leave. Everybody knows when  
23 police are doing that, that's not a place you should be. And  
24 it's easy for us to say that now.

25 But this country's history of excessive police violence,

1 particularly toward crowds, has made that -- I think that  
2 argument holds less sway when people are assembled for reasons  
3 that are central to what it means to be an American. And I'm  
4 not equating January 6th with any civil rights protests at  
5 all. The two are distinct in myriad ways, almost entirely  
6 separate, but people assembled on January 6th because they had  
7 inherent beliefs about what it means to be an American and how  
8 to vote.

9 And police deployed tear gas and violence against them.  
10 Police also deployed tear gas and violence against people in  
11 Ferguson in 2014. And the fact that police were deploying  
12 those violence -- that violence and tear gas against protesters  
13 doesn't necessarily mean that that's where the protesters  
14 should not have been. Sometimes in America the fact that  
15 police are using violence against you means that is exactly  
16 where you should be, and it is not entirely clear or obvious at  
17 the time whether history will be kind to those views.

18 There is nothing at all similar about January 6th  
19 and Bloody Sunday in 1965, but there 600 marchers were  
20 encountered by police officers who engaged in incredibly  
21 violent action against them. And the fact that police were  
22 using their authority did not mean that they should have left.  
23 In fact, it means they were doing exactly what it meant to be  
24 American.

25 Now, I'm not saying that January 6th was at all like

1 Bloody Sunday. I'm simply arguing that the fact that police  
2 used their authority in this country does not necessarily mean  
3 that people should turn around and leave.

4           What's also mitigating about Mr. McAbee's conduct here  
5 is that it occurred in the context of a mob. He went to the  
6 Capitol following the crowd, not of his own volition, and he  
7 engaged in activity while he was enraptured by mob mentality.  
8 And mob mentality is dangerous because it prevents us from  
9 acting like we normally would. It inhibits our ability to  
10 exercise judgment. It means that it is less -- that a lengthy  
11 prison sentence is not needed or not as necessary when people  
12 are not otherwise engaging in criminal behavior when they are  
13 calm, cool, collected, and are well thinking it out.

14           How do we stop a mob? The government's approach largely  
15 has been to request sentences within the sentencing guidelines,  
16 but courts have routinely in January 6th cases sentenced  
17 defendants to well below the guidelines. Harsh sentences,  
18 though, don't deter mobs. Harsh sentences ignore the  
19 motivations that cause people to become a member of a mob in  
20 the first place.

21           And I want to digress for a moment with an example of  
22 how to stop the mob. The celebrated author Harper Lee  
23 demonstrated an effective way to do that in *To Kill a*  
24 *Mockingbird*. There, a lynch mob assembled to attack and kill  
25 Tom Robinson, a Black criminal defendant. And Atticus Finch,



1 his attorney, went alone to the jail to try to stop them with a  
2 shotgun and also with argument and reason, and the reason and  
3 the argument did not stop the mob. What stopped the mob was  
4 Scout, recognizing the humanity of one of the people in the mob  
5 and telling him, talking to him, about his humanity. Once that  
6 occurred, the mob dissipated.

7 Recognizing the humanity of Mr. McAbee and recognizing  
8 the humanity of people who attended the January 6th  
9 insurrection is the way to deter it in the future.  
10 Mr. McAbee's humanity has been demonstrated by his lifelong  
11 good character.

12 The government's argued that his status as a law  
13 enforcement officer is aggravating, and it is, in some  
14 respects. It is less aggravating, though, because Mr. McAbee,  
15 unlike some law enforcement officers, did not attend  
16 January 6th with the goal of otherwise committing a crime. He  
17 engaged in behavior that he was found to have committed a crime  
18 while he was otherwise surrounded by a mob in an impossible  
19 situation. Yes, he should have left. But he did not choose to  
20 engage in a criminal act because he was a law enforcement  
21 officer, and he did not use his law enforcement training to  
22 help further commit crimes.

23 But the fact that he has spent much of his life in law  
24 enforcement is mitigating, and so is the way in which he  
25 decided to pursue law enforcement. Mr. McAbee did not choose

1 to become a patrol officer or a beat cop or to make arrests or  
2 to follow the adrenaline-fueled aspects of that job, which are  
3 often thought to be more prestigious. He largely worked in  
4 jails or courthouses, and he did so because he enjoys  
5 protecting other people.

6 And that is what he has spent most of his life doing.  
7 He has that desire, largely because of his upbringing, where we  
8 detail in our sentencing memo -- and I think the presentence  
9 report, as well as several of the letters demonstrate it as  
10 well -- Mr. McAbee did not have the best chance in life, but he  
11 overcame some difficult circumstances. He chose to protect his  
12 siblings from an abusive father. He chose to pursue his own  
13 education and pay for it. And he chose to find a career in law  
14 enforcement where he could find happiness.

15 The people in -- the people who have written numerous  
16 character letters for Mr. McAbee demonstrate and expound his  
17 good character. And that good character means a lengthy  
18 sentence of incarceration is not necessary to accomplish the  
19 purposes of punishment. A lengthy sentence of incarceration is  
20 not necessary to specifically deter Mr. McAbee who has  
21 otherwise not engaged in any criminal activity and is otherwise  
22 not expounding the fact of his participation in January 6th as  
23 a good thing.

24 There are some criminal defendants in January 6th cases  
25 who celebrated their behavior on January 6th, and that is not

1 Mr. McAbee. And, in fact, unlike many people who went to  
2 trial, Mr. McAbee pled guilty to offenses that he agrees he  
3 committed, and but for just various aspect of plea  
4 negotiations, he might not have gone to trial.

5 A lengthy sentence of incarceration is also not  
6 necessary given that Mr. McAbee has already served 31 months  
7 in pretrial confinement. As the Court well knows, pretrial  
8 confinement is a much more difficult situation than living in  
9 prison. People have much less access to materials. They  
10 usually cannot go outside, and they are confined more securely  
11 than in prisons. Mr. McAbee has spent, depending on his  
12 sentence, a significant portion of it in pretrial confinement.  
13 And that does mitigate, slightly, against a lengthier prison  
14 sentence.

15 Now, I don't want to rehash the details of his  
16 convictions because the Court has made specific findings on  
17 them, and Mr. McAbee is not necessarily contesting those. The  
18 nature of the charges that the government filed means that a  
19 variety of conduct could be responsible for the jury's  
20 convictions of him.

21 But Mr. McAbee's conduct on January 6th was, compared to  
22 others, either average or slightly more minor. Mr. McAbee  
23 did -- he was convicted of assaulting two police officers.  
24 Those assaults were relatively brief. The first assault was  
25 entirely reactive. This is not excusing his conduct. This is

1 not saying he acted in self-defense. We do not assert that  
2 with respect to Officer Moore.

3 But Mr. McAbee was first struck by Officer Moore and  
4 then responded. He responded with two quick blows. The Court  
5 has found that one of those occurred with a closed fist.  
6 Regardless, Mr. McAbee did not after that continue to  
7 assault Moore. He did shout at him. He did engage in  
8 behavior that he admitted on the stand that he was ashamed of.

9 But that assault is relatively minor compared to others  
10 because it did not involve, for instance, any weapons that were  
11 found strewn about the ground. In fact, Mr. McAbee right  
12 before that had dropped a -- a baton that he had picked up. He  
13 did not use that baton, and I think we'd be in a much different  
14 circumstance if he had used a metal police baton against an  
15 officer. He did not otherwise pick up pepper spray and spray  
16 it at police. He did not throw objects at the police.

17 For about two and a half minutes when he was at the  
18 front, he was engaged in activity for which he was found to  
19 have committed several crimes. But that was relatively  
20 short-lived. He did not attempt to enter the Capitol. He did  
21 not otherwise damage or destroy any property on the Capitol.

22 And after he assisted to bring Ms. Boyland to the police  
23 line, he left. And he left while stand- -- actually after  
24 standing there for about 10 minutes with Officer Sajumon,  
25 enduring the blows that the police were enduring as well.

1           And then he recognized the -- the remorse that the  
2 government is looking for, that they claim he has not  
3 demonstrated. He demonstrated then his words that day. "I  
4 can't go back that way. Have you seen" -- and he gestured to  
5 the crowd. He knew how violent it was. And he does have  
6 remorse and regret for his actions that day.

7           The events of January 6th and Mr. McAbee's conduct also  
8 demonstrated that it was difficult to leave. I think,  
9 obviously, the Court probably wants to know why didn't he turn  
10 around and leave. And that's an answer that Mr. McAbee can't  
11 really give because he spent the past 31 months thinking about  
12 it.

13           Why did he not, after being on the lower west-front  
14 terrace, just turn around and leave? Why did he approach the  
15 tunnel? But it was difficult to leave that day. The videos  
16 show that it took about 30 minutes for him to go up the steps  
17 because he was surrounded on all sides.

18           Those aspects of what happened that day mitigate  
19 Mr. McAbee's case and demonstrate that a sentence similar to  
20 his co-defendants, who are also convicted of assaulting  
21 Officer Wayte, is the most appropriate sentence in this case.

22           The Court also should consider the fact that Mr. McAbee  
23 did try to save somebody's life that day; that he did engage in  
24 lifesaving efforts; that though they were unsuccessful, helps  
25 to demonstrate that he is not somebody who is deserving of a

1 significant prison sentence or that such a prison sentence is  
2 necessary with respect to him.

3 Just yesterday, Judge Chutkan sentenced a defendant to  
4 40 months, well below the recommended guidelines, Michael Foy,  
5 who was convicted of using a metal pole and striking officers  
6 with it, as well as a hockey stick, both clear weapons against  
7 police, and his sentence was 40 months.

8 Look to Mr. McAbee's co-defendants that the Court has  
9 already sentenced, for some of whom had engaged in much more  
10 serious behavior with respect to Officer Wayte. And those  
11 gentlemen have received sentences much lower than the  
12 government's request as well.

13 The police largely -- I think most people believe that  
14 the actions of the police on January 6th, including Mr. McAbee,  
15 were relatively restrained. It is a miracle that more people  
16 did not die and that firearms were not used or deployed. But  
17 we also know about what happens in this mob, is that some of  
18 the officers very well may have engaged in behavior that  
19 otherwise might be an assault.

20 There are officers who sprayed pepper spray at people  
21 who weren't necessarily deserving of pepper spray, other than  
22 the fact that they were there. And we don't punish those  
23 officers for doing that because, one, they were justified uses  
24 of force, but we also understand that when there is chaos, it  
25 is much more difficult to make a rational decision.

1           The fact that Mr. McAbee's conduct occurred amidst chaos  
2           is mitigating and demonstrates that a lengthy sentence, such as  
3           what the government is asking for, what the guidelines call  
4           for, is not otherwise necessary.

5           With respect to the government's argument that the 1752  
6           count is not otherwise taken into account with the Court's  
7           guideline calculations given grouping, while the 1752 count  
8           otherwise would reference the Court to 2B2.3, which has a much  
9           lower guideline sentence for trespass, the only reason that his  
10          guideline sentence -- or his recommended guidelines for that  
11          crime are higher is because of the cross-reference which  
12          specifically calls the Court back to the conduct for  
13          Officer Wayte.

14          And so if the Court were looking at the guidelines for  
15          the 1752 count, not with respect to what happened to  
16          Officer Wayte, but just with respect to the civil disorder  
17          itself, the Court would not consider that because it would be  
18          much lower than the 29 level.

19          Now, obviously, Mr. McAbee did not plead guilty, and  
20          many people in January 6th cases have pled guilty. And  
21          though the guidelines recommend a reduction for people who  
22          accept responsibility, the law is clear that courts cannot  
23          impose higher sentences simply because a defendant has  
24          exercised his right to a trial. We reward acceptance of  
25          responsibility because it makes the criminal system -- not

1 because it makes the criminal system more efficient, but  
2 because it demonstrates that a lower sentence is sufficient but  
3 not greater than necessary to otherwise accomplish the purposes  
4 of punishment.

5 People who demonstrate insight and remorse for their  
6 actions generally need less time in prison because the specific  
7 deterrent effect of the process has already helped accomplish  
8 parts of the system -- or purposes of punishment. And  
9 Mr. McAbee's actions in this case demonstrate that some of the  
10 mitigating parts of acceptance of responsibility do apply with  
11 respect to him. He did not contest all of his charges at  
12 trial.

13 He admitted to assaulting Officer Moore. He contested  
14 assaulting Officer Wayte because, in his mind, he did not  
15 believe that that is what he was doing. But he did not deny  
16 that he otherwise engaged with him. And, frankly, Mr. McAbee's  
17 testimony could entirely be consistent with the jury's verdict  
18 just because -- even if he didn't assault Officer Moore -- or  
19 Officer Wayte, because him being there very well could have  
20 been the obstructive behavior that would have been -- allowed  
21 the jury to -- to find -- to make a conviction.

22 But Mr. McAbee's testimony and the fact that he admitted  
23 that he was ashamed of some of his actions that day and when  
24 the Court hears his allocution demonstrate that a lengthy  
25 sentence of imprisonment is not necessary.



1           Now, the guidelines, again, as the Court has indicated,  
2 do call for a significantly higher sentence. What is  
3 interesting in this case is that there are various aspects of  
4 Mr. McAbee's conduct that otherwise more than double his --  
5 what his recommended guideline sentence would be. For the  
6 assault itself, he would otherwise be looking at a sentence of  
7 30 to 37 months recommended by the guidelines.

8           But because he wore body armor and because he had  
9 motorcycle gloves, his sentence is significantly -- his  
10 recommended guideline range is significantly elevated. But  
11 those aspects of his case do not really make him more culpable.  
12 They don't really make his actions that day much more deserving  
13 of significant punishment.

14           Does the fact that he wore body armor -- when the Court  
15 is already considering the fact that he was a law enforcement  
16 officer, does that really deserve or call for a lengthier  
17 sentence? And although the Court has found that the 6-point  
18 enhancement should apply for the official victim, does that  
19 make this assault significantly more serious than most assaults  
20 and most cases where we're looking at assaults on law  
21 enforcement officers?

22           Especially in this case where Mr. McAbee's actions  
23 against the police were brief in time, and especially where it  
24 is clear that he otherwise does not harbor any ill will toward  
25 officers, toward Congress, or toward anybody that day -- and,

1 in fact, his allocution will demonstrate, again, that he  
2 apologizes for his behavior and the effect that it had not only  
3 on Officer Wayte and Moore, but everybody who was there that  
4 day. A sentence similar to his co-defendants is sufficient but  
5 not greater than necessary to otherwise accomplish the purposes  
6 of punishment.

7 And so that's what we would ask the Court to do, pending  
8 any questions.

9 THE COURT: I just have one technical question. Our  
10 circuit, in its wisdom, has required that we discuss what used  
11 to be the standard terms of supervision, and now they're no  
12 longer standard. We have to discuss them, as we do any other  
13 part of the sentencing.

14 Did you take a look at those, which they're set forth  
15 in --

16 MR. SCHIFFELBEIN: I did, Your Honor. And I believe  
17 I noted an objection just to the drug testing condition. He --  
18 it's not going to be an issue for him, but I don't think  
19 there's any evidence for the Court that it's needed. The  
20 standard, though, is that the Court has to find evidence that  
21 it's not needed. And I'm saying that there isn't evidence that  
22 it's needed. So I understand if the Court imposes it.

23 THE COURT: All right. I will impose it just  
24 because -- regardless of where things stand now, you know,  
25 it'll be some time before that kicks in.

1 MR. SCHIFFELBEIN: Right.

2 THE COURT: So it's hard to judge what Mr. McAbee  
3 will be at that point in time. So I will impose that.

4 Okay. If Mr. McAbee wants to address the Court, he  
5 can --

6 MR. SCHIFFELBEIN: He does. He does, Your Honor.

7 THE COURT: Okay. Go ahead.

8 THE DEFENDANT: Good morning, sir.

9 THE COURT: Good morning.

10 THE DEFENDANT: I'd like to start out thanking the  
11 Court for making this trial as fair as possible in a place  
12 where there's strong negative feelings about myself and  
13 January 6th. I want to thank the marshals for showing kindness  
14 and professionalism, to the officers on January 6th. Even  
15 though I don't agree with some of the tactics that day, I do  
16 understand your frame of mind, and you had a job to do that  
17 day.

18 It was never my intention to strike fear or be part of  
19 the chaos. I saw an officer down, I jumped into action, and,  
20 ultimately, was in the way. And I apologize.

21 Sir, I come from a very volatile family. And this is  
22 not an excuse for the broken-home theory. Since I was a child,  
23 I had to protect myself and my brothers from a physically,  
24 emotionally, and psychologically abusive father. During this  
25 time, I had only myself to rely on because my mother left for

1 the same reasons. She left us behind so I had to step up and  
2 make it my mission to protect my brothers.

3 When my father snatched my younger brother up off the  
4 couch by his hair, I jumped to protect him. He would call me  
5 things no parent should ever call a child, pinned me against  
6 the wall, or hit me. I was just glad it was me and not my  
7 brothers. I was often the outlet for his anger.

8 I dreaded being home so I threw myself into sports and  
9 other activities. Playing football, soccer, and cheerleading  
10 came natural to me. And I excelled at them because I played a  
11 protective role, protect the quarterback, protect the goal, and  
12 protect the girls. I took pride in my positions and was hard  
13 on myself when I failed.

14 In high school, I was in various clubs and president of  
15 HOSA, which is Health Occupation Students of America. In HOSA  
16 I learned how to treat wounds, CPR, and, overall, help people  
17 in disasters. In the Boy Scouts, I was taught to always be  
18 prepared. I took that to heart. I sometimes overprepare.

19 In the Police Explorers program, I learned that heroes  
20 were real and the meaning of 1 John 3:16, we know what love is  
21 because Jesus gave his life for us. As well, we must give our  
22 lives for each other.

23 Every day I suited up for work I was willing to risk my  
24 life for my brothers and sisters and my community. I didn't  
25 learn these things on my own, though. Many men and women

1 taught me how to be a great man, and I continued to learn  
2 daily.

3 My football coach taught me how to look someone in the  
4 eyes and the importance of a firm handshake. My scoutmaster  
5 taught me how to plan and honor duty and service. My soccer  
6 coach taught me what loyalty means and my father-in-law, Sam,  
7 taught me about sacrifice for your family and what's right.  
8 It's -- it's what's right. Not who's right.

9 Sam filled in where my father failed, and it's who I  
10 strive to be like and to make proud. My mother-in-law,  
11 Ms. Kim, filled in as my own mother long before I married into  
12 the family. I never asked her to, but she knew I needed a  
13 maternal figure. She taught me how to treat women's emotions,  
14 how to be a gentleman, and not everything a man does has to be  
15 like John Wayne, but sometimes you have to be Andy Taylor from  
16 Mayberry.

17 My beautiful wife, Sarah, taught me to trust in myself.  
18 And she's my rock. I've gone through so many things alongside  
19 her, and she keeps me grounded. She has never faltered, never  
20 ran from a challenge, and always pushes through. She has  
21 showed me what true loyalty and determination is. I never made  
22 it easy for her. But thank you for everything you do.

23 These are just some of the circumstances and people  
24 who help me form -- or helped form the man you see today. I'm  
25 so glad to finally have a lawyer who listened to me and

1 allowed me to accept responsibility for the assault on  
2 Officer Moore.

3 As for Officer Wayte, I was only trying to help. I  
4 would've taken responsibility if I believe I assaulted --  
5 assaulted him, as the prosecution alleges. My training kicked  
6 in, and I jumped to action. But I owe both of them an apology  
7 for the situation I put them in, and I wish they were here so I  
8 could tell them I'm sorry. They didn't ask for any of this,  
9 but they answered the call. Thank you.

10 For Officer Sajumon, thank you for protecting me.

11 January 6th should not have unfolded the way it did. I  
12 can't go back in the -- time and change things, but I can use  
13 it as a learning lesson and never forget the events that  
14 occurred.

15 Ashli Babbitt, Kevin Greeson, Benjamin Philips, and  
16 Rosanne Boyland all lost their lives on January 6th, 2021,  
17 Brian Sicknick on January 7th, and many other officers and  
18 citizens to suicide over the months and years. You will never  
19 be forgotten. I'm sorry for all families who lost someone.

20 The one that haunts me the most is of Ms. Boyland. I'm  
21 sorry I couldn't help your daughter. I'm sorry I couldn't  
22 bring her back. I'm sorry I failed her. The nightmares and  
23 thoughts of what I could have done different are a constant  
24 reminder. Mr. and Mrs. Boyland, please forgive me. I would  
25 trade places with any of them if it meant these families could

1 be whole.

2 Your Honor, sir, I would acknowledge that you have a  
3 very difficult job to do today. I do not envy you. I agree  
4 that I must be held accountable for my actions, and I ask you  
5 not to judge me here too hard for 20 minutes of my life when I  
6 spent many years building myself to be a man of servitude. I  
7 gave an approximate seven years of my life to my community as  
8 law enforcement and countless late-night calls from friends who  
9 needed a listening ear or for me to come over and just be there  
10 for them.

11 However much time you deem appropriate, being a felon is  
12 a life sentence. And being a Jan6 carries its own problems.  
13 Before trial and shortly after my arrest, I've lost everything  
14 except my wife and in-laws. I've lost a career I could fall  
15 back on, a business with my father-in-law. My bank dropped me.  
16 I've been called a domestic terrorist, extremist, and radical.  
17 I've been told that I was a part of the reason why cops  
18 committed suicide by a jail officer, and my family gets  
19 harassed almost daily.

20 I've been away from my support system for 31 months, and  
21 I'm not sure how I will be treated in prison due to my former  
22 occupation. I ask you to take these factors into  
23 consideration, sir. I'm ready to close out this chapter and  
24 put this behind me. I understand I've made mistakes. I  
25 understand you must punish me. I just ask that you please

1 reunite me with my family soon, sir.

2 Thank you.

3 THE COURT: Thank you.

4 MR. SCHIFFELBEIN: With respect to placement,  
5 Your Honor, I'd ask the Court to recommend FCI Englewood, only  
6 because it's a facility that typically houses either police  
7 officers or people who have other security threat issues.

8 THE COURT: What state is that?

9 MR. SCHIFFELBEIN: It's in Colorado. So it's far,  
10 but it's -- that's our request.

11 THE COURTROOM DEPUTY: You said Englewood?

12 MR. SCHIFFELBEIN: Englewood.

13 THE COURTROOM DEPUTY: A-n or E-n?

14 MR. SCHIFFELBEIN: E-n.

15 THE COURT: Okay. I'll make that recommendation.

16 All right. Thank you.

17 So we'll start with some of the financial issues. With  
18 respect to restitution, I'm going to order \$2,000 paid to the  
19 Clerk of the Court to be forwarded to the Architect of the  
20 Capitol; and \$30,165.65 to MPD to reimburse them for the  
21 treatment that Officer A.W. received and the lost work, and  
22 I'll explain those two -- my reasoning for that shortly. But  
23 the MPD portion will be joint and several with Jersey and  
24 Mullins.

25 With respect to fines, the maximum fine is 250,000 times



1 six and then an additional \$5,000 for the one count. The  
2 guidelines range is 35,000 to 250,000. Probation indicates in  
3 the PSR that the defendant is able to pay a fine and recommends  
4 a fine of 10,000.

5 The defendant has been detained for quite some time and,  
6 thus, unable to work and support his family. Although his  
7 family has raised a modest amount through social media  
8 platforms, defendant also had prior retained counsel before  
9 being represented by the current public defender. Therefore, I  
10 do not find that amount raised to be a basis to impose a fine.  
11 Accordingly, I do not intend to impose a fine.

12 The Court is to impose a sentence sufficient but not  
13 greater than necessary to comply with the purposes set forth in  
14 the subsection. I'm to consider the nature and circumstances  
15 of the offense, the history and characteristics of the  
16 defendant, and impose a sentence that reflects the seriousness  
17 of the offense, promotes respect for the law, and provides just  
18 punishment for the offense.

19 Of course, the offense is extremely serious. A number  
20 of my colleagues have spoken eloquently about this. Defendant  
21 took part in a mob riot that took place at the Capitol on  
22 January 6th, 2021. Many of the rioters, including defendant,  
23 engaged in violence and some destroyed property. I have  
24 watched numerous videos of rioters who, like defendant, engaged  
25 in hand-to-hand combat with police officials.

1           It was not a peaceful event. More than a hundred law  
2 enforcement officers were injured on that day. Moreover, the  
3 Capitol sustained substantially over \$1.5 million in property  
4 damage.

5           Many of the rioters intended to block the certification  
6 of the votes for President Joe Biden, and although the rioters  
7 failed to block the certification, they delayed it for several  
8 hours. The security breach forced lawmakers to hide inside the  
9 House gallery until they could be evacuated to undisclosed  
10 locations. In short, the rioters' actions threatened the  
11 peaceful transfer of power, a direct attack on our nation's  
12 democracy.

13           And the defendant fits comfortably within the group of  
14 rioters that actually attacked law enforcement. He was part of  
15 some of the most violent clashes that day that took place at  
16 the archway tunnel at the lower west terrace.

17           Prior to traveling to D.C. for the January 6th rally,  
18 defendant's communications made clear that he envisioned some  
19 sort of fight was possible. He and his travel companion  
20 discussed the fight for their children and future generations.  
21 This characterization does not signify that they were thinking  
22 only of counterprotesters.

23           Accordingly, defendant came to D.C. with a bulletproof  
24 vest and gloves with reinforced knuckles and  
25 hard-plastic-raised ridges. After he attended the "Stop the

1 Steal" rally at the Ellipse, he made his way to the  
2 Capitol Grounds. Upon arrival, about 2:00 p.m., he saw metal  
3 barricades and police in riot gear using various methods to  
4 keep the growing crowds from the Capitol Building. In fact,  
5 defendant testified that he had been hit by a rubber bullet.

6 He later ended up on the lower west terrace about  
7 3:50 p.m. Although he was not initially close to the archway  
8 tunnel, over the course of the next half hour, he worked his  
9 way through the dense crowd towards the archway and positioned  
10 himself directly south of it. From this position, he was in a  
11 position to see the chaos up close as the police officers  
12 forming the police line attempted to expel the rioters from the  
13 tunnel.

14 Officer A.W. was at the front of that police line at the  
15 mouth of the tunnel. Outside of the tunnel, a co-defendant  
16 grabbed Officer A.W.'s face and knocked him to the ground.  
17 While A.W. lay on the ground, another co-defendant grabbed his  
18 baton and ripped it away from him.

19 Another defendant grabbed Officer B.M.'s helmet and neck  
20 of his vest and dragged him over Officer A.W. and down the  
21 steps into the crowd of the rioters. Defendant was right there  
22 in a position to see these attacks close up, and the Court  
23 finds by a preponderance of the evidence that he did see these  
24 events and knew exactly what was going on there.

25 Defendant then moved towards Officer A.W. while he was

1 still on the ground and another officer was trying to pull him  
2 back into the relative safety of the police line and tunnel.  
3 Co-Defendant Mullins leaned over the railing and grabbed A.W.'s  
4 leg, violently tugging on it, and pulling him towards the crowd  
5 as the officer tried to pull him back to safety. Defendant  
6 McAbee grabbed another one of A.W.'s legs.

7 And at one point, as reflected in the video, it seems  
8 like Mullins, the officer, and Defendant McAbee are pulling  
9 A.W. in different directions in a violent game of tug-of-war  
10 with A.W.'s defenseless body serving as the rope. Mullins and  
11 McAbee pulled A.W. towards the crowd, away from the police line  
12 and tunnel.

13 Officer Moore stepped off the police line to help  
14 Officer A.W. and used his baton to push defendant away. But  
15 defendant stood upright, yelled obscenities at Officer Moore,  
16 then hit him twice with the reinforced gloves; at least once,  
17 as Officer Moore testified, with a closed fist.

18 After attacking Officer Moore, defendant, again, turned  
19 his attention to Officer A.W., grabbing his torso and lifting  
20 him. The two of them slid down the steps together with  
21 defendant on top of Officer A.W. When they reached the bottom  
22 of the stairs, defendant's body pinned Officer A.W. down for  
23 approximately 25 seconds.

24 Although Officer A.W. tried to push defendant off of  
25 him, he was struck by rioters, and a rioter pulled off his

1 gas mask, after which he was hit with chemical spray, causing  
2 him extreme pain and difficulty breathing. Finally, unaided by  
3 defendant, Officer A.W. was able to roll over and make his way  
4 back to the police line. A.W.'s injuries required that he be  
5 off duty until May 2021 and only limited duty until  
6 approximately July 2021.

7 To defendant's credit, after his encounter with  
8 Officer A.W., defendant attempted to assist a fallen rioter,  
9 Ms. Boyland, who needed medical attention. Defendant helped  
10 administer CPR and to pass the lifeless body back into the  
11 tunnel, where she was passed back in through to the tunnel to  
12 unsuccessfully receive medical attention.

13 Notably, none of the other rioters who assisted in  
14 this effort to save Ms. Boyland needed to attack law  
15 enforcement to do so. To the contrary, the attacks on the  
16 law enforcement officers and the police line hindered their  
17 ability to attend to anything else but holding the line and  
18 defending themselves.

19 Initially, defendant was quite proud of his January 6th  
20 exploits. On the day following the event, he posed with his  
21 travel partner holding up a newspaper with the headline  
22 "INSURRECTION," in capital letters, and texted that photo to  
23 another contact. He also sent pictures of the injuries he  
24 alleged to have sustained that day, celebrating the blood he  
25 claims to have shed for his country, stating that he would shed

1 more in the days to come, and exclaiming liberty or death.  
2 Notably, he did not mention anything about Ms. Boyland or  
3 attempting to help her.

4           However, other than immediately after January 6th, it  
5 appears he did not trumpet his actions from that day any  
6 further.

7           Defendant is a 30-year-old man with an associate's  
8 degree and a long history of working in corrections and law  
9 enforcement. He worked as a deputy sheriff in Franklin,  
10 Tennessee; a deputy sheriff in Canton, Georgia; a  
11 deputy sheriff in Knoxville, Tennessee; and a corrections  
12 officer in Morgan County, Tennessee. He has been gainfully  
13 employed his entire adult life, also working part-time as a  
14 regional salesman for his father-in-law's leather holster  
15 company.

16           He has no criminal history.

17           Defendant's upbringing was not ideal, to say the least.  
18 Although his parents were married, they separated when he was  
19 12 and divorced a couple years later. The defendant resided  
20 with his father thereafter and only had minimal contact with  
21 his mother.

22           Defendant reports that there was constant fighting in  
23 the household and that the children were subjected to physical  
24 and mental abuse by their father. He reports that the abuse  
25 ramped up after the divorce. His mother moved to another town

1 after the divorce, and defendant reports that she was absent  
2 during his formative years, partying and doing other stuff.

3 Defendant has maintained his own residence since he was  
4 22 years old.

5 Fortunately, defendant met his now wife while in high  
6 school. They have been married since 2016, and her family has  
7 fully embraced him. Thus, he will have a stable environment in  
8 which to rehabilitate himself upon release.

9 As previously stated, defendant has devoted his  
10 professional career to public service, serving in both  
11 corrections and law enforcement. He has also performed a  
12 number of good works in the community. In particular, he's  
13 reported to have assisted a number of different injured  
14 individuals during different points in his life and claims to  
15 have saved two lives in the process. Thus, the acts of  
16 violence committed in the instant offense as reported by the  
17 numerous individuals that wrote letters on defendant's behalf  
18 appear to be out of character for him.

19 The Court is to impose a sentence that affords adequate  
20 deterrence to criminal conduct, protects the public from  
21 further crimes of the defendant.

22 The events of January 6th involved a rather  
23 unprecedented confluence of events spurred by then-President  
24 Trump and a number of his prominent allies who bear much  
25 responsibility for what occurred on that day.

1           Defendant has been detained since his arrest so he has  
2 not had a chance to comply with the requirements while on  
3 release status, but the presentence report does report a  
4 trouble incident of resistance to the correction's authorities  
5 at the jail. Moreover, an individual who has directly and  
6 brazenly attacked law enforcement officers is inherently  
7 dangerous to the public because one who does not hesitate to  
8 attack a law enforcement officer would not hesitate to attack  
9 any member of the population who angers him.

10           Due to defendant's violence against law enforcement, the  
11 Court is concerned that Mr. McAbee will reoffend, will be  
12 emotionally swept up in irrational actions, and will be an  
13 ongoing risk to the public. In fact, immediately after  
14 January 6th, defendant promised to shed more blood in support  
15 of his misguided views.

16           With respect to general deterrence, the Court believes  
17 that incarceration is necessary to deter other potentially  
18 violent protesters from resolving their political disputes  
19 through the use of violence rather than peaceful demonstration.

20           The Court is to provide a sentence that provides the  
21 defendant with needed educational or vocational training,  
22 medical care, or other correctional treatment in the most  
23 effective manner.

24           As reflected in the presentence report, the Court  
25 intends to impose as a special condition of his supervision the



1 financial disclosure requirements to facilitate the monitoring  
2 of the restitution payments.

3 Moreover, and while in BOP custody, consistent with the  
4 PSR, the Court will recommend participation in the following  
5 programs: The Federal Prison Industries and the Bureau of  
6 Rehabilitation and Values Enhancement program.

7 The Court is to consider the kinds of sentences  
8 available. Given the nature of the crime and the defendant's  
9 history of violence against law enforcement, the Court is only  
10 considering further incarceration.

11 The Court is to consider the kinds of sentence and  
12 sentencing range established for the applicable category of  
13 offense committed by the applicable category of defendant as  
14 set forth in the guidelines. The Court has considered the  
15 applicable guidelines. The Court is also cognizant that  
16 although the government seeks a sentence at the bottom of the  
17 guidelines range it calculated, I have disagreed with a number  
18 of its proposed guidelines enhancements and arrived at lower  
19 guidelines range.

20 The Court is also cognizant that probation has  
21 recommended a significant variance, and I think some of the  
22 enhancements may overstate the severity of the offense. I'll  
23 deal with those shortly.

24 I'm to consider any pertinent policy statements issued  
25 by the Sentencing Commission. Defendant argues that he should

1 be granted a downward departure under section 5K2.20 for  
2 aberrant behavior, but the Court concludes that this policy  
3 statement does not apply because the offenses involved more  
4 than a single attack -- and as reflected by the fact that they  
5 are grouped separately because of separate victims -- and  
6 defendant utilized a dangerous weapon in the process as well.

7 The Court is to impose a sentence that avoids  
8 unwarranted sentence disparities among defendants with similar  
9 records who have been found guilty of similar conduct. The  
10 government has provided a chart that lists a number of  
11 January 6th defendant sentencings. I have previously closely  
12 analyzed the other January 6th defendants who were convicted  
13 under 18 U.S.C. 111 by researching the dockets in those cases,  
14 including the applicable guidelines ranges.

15 The Court makes that the observation -- makes the  
16 observation that no matter how one analyzes the 111 cases,  
17 whether it be all of them, just those that involve 111(a) and  
18 (b) or some subset that eliminates high or low outliers, or  
19 just those cases with guidelines similar to defendant, the  
20 result is that the average sentences cluster around the low  
21 end of the guidelines. But the Court recognizes that although  
22 the government recommends a low-end guideline sentence based on  
23 its calculation, I have arrived at a much lower applicable  
24 range.

25 Obviously, the clearest comparators are the

1 co-defendants that I have already sentenced: Barnhart, Stager,  
2 Courson, Jersey, and Mullins. Jersey received a low end of his  
3 guidelines range; as did Mullins, minus a couple months due to  
4 pretrial restrictions on his liberty; Barnhart also received a  
5 few months below the low end of his guidelines range because he  
6 had a significant period of restricted liberties pretrial, for  
7 which I gave him some credit, and the GPS ankle bracelet he  
8 wore during that period credibly resulted in long-term damage  
9 to his leg.

10 The low end of defendant's guidelines range is much  
11 higher than his co-defendants due in some part to the fact he  
12 attacked more than one officer and he did not get credit for  
13 acceptance of responsibility. These disparities make sense,  
14 but he also has a significant enhancement for the use of the  
15 body armor that did not significantly impact the harm caused by  
16 his attacks and the deadly weapon used here. The reinforced  
17 gloves also may not be amongst the deadliest weapons used on  
18 January 6th, such as the batons, and, thus, may also overstate  
19 the severity of the offense here.

20 And as previously stated, the enhancement for a 111(b)  
21 conviction also may overstate the gravity of the offense by  
22 partially double-counting.

23 Three comparators stand out in my mind. One, Stager  
24 had a guidelines range based on an Offense Level 26 and  
25 Criminal History Category I of 63 to 78 months. I gave him

1 a sentence of 52 months, which was 82.5 percent of the low  
2 end. If you back out the acceptance of responsibility 3  
3 levels, his range would have been 29 and criminal history of I,  
4 resulting in 87 to 108 months. 82.5 percent of that is about  
5 72 months.

6 The second notable comparator is Jersey. He had a  
7 guidelines range of 24 with a criminal history category of I,  
8 which resulted in a range of 51 to 63 months. And I gave him  
9 the low end of the 51 months. Similarly, if you back out the  
10 acceptance of responsibility 3 levels, the low end would be  
11 70 months.

12 Third, this case shares similarities with another  
13 defendant I sentenced, Kyle Fitzsimons, who also fought in the  
14 tunnel, attacked more than one officer, caused injury, and used  
15 a dangerous weapon. His guidelines range was 32 and Criminal  
16 History Category I, resulting in a range of 121 to 151 months.  
17 And I gave him 87 months, which was 71.9 percent of the low  
18 end.

19 If you apply 71.9 percent of the low end to the  
20 guidelines I'm applying to this defendant, it also amounts to  
21 about 70 months.

22 Finally, if I cut in half the enhancements for 111(b)  
23 conviction, body armor, and dangerous weapons, the factors that  
24 I think may overstate the severity of the offense, you end up  
25 with a guidelines range of 70 to 87 months.

1           As reflected in the PSR, probation was unable to  
2 provide any statistical information for similar defendants who  
3 share the same primary guideline for conviction and the same  
4 criminal history and offense level because a lack of an apt  
5 comparator.

6           With respect to restitution, I'm to provide restitution  
7 to any victims of the offense. As I indicated, I'm going to  
8 impose \$2,000 to be ordered to be paid to the Architect of the  
9 Capitol. Defendant takes issue with this amount, arguing that  
10 he did not destroy property, but this misses the point. The  
11 fact that the money is being funneled through the Architect of  
12 the Capitol doesn't reflect that the money is only for damage  
13 to property.

14           The Court is persuaded by the child porn cases involving  
15 this sort of diffuse harm caused by many and hard to apportion  
16 amongst the many who collectively cause such harm. Those are  
17 the cases *Paroline*, P-a-r-o-l-i-n-e, and *Monzel*, M-o-n-z-e-l.

18           Defendant was part of the mob, and the mob was the  
19 proximate cause of the diffuse harm, resulting in millions of  
20 losses. Moreover, defendant incorrectly focuses solely on  
21 damage to property, but the mob caused significant other  
22 expenditures, including overtime hours to officers and -- that  
23 otherwise would not have to have been there but for the mob.  
24 And that includes the Capitol Police officers, the MPD  
25 officers, and the Virginia State Police officers that were

1 finally called in to turn the tide, and the equipment and  
2 supplies that were expended due to the riot that had to be  
3 replenished.

4 In fact, defendant indicates that he was hit by a rubber  
5 bullet. And clearly when he was at the mouth of the tunnel,  
6 there was a lot of chemical spray being expended, all of which  
7 had to be replenished. So there is direct evidence of him  
8 causing financial harm to the government at large on that day.  
9 Thus, the small \$2,000 amount of restitution is appropriate for  
10 his portion of the harm.

11 Additionally, restitution to MPD to reimburse it for  
12 medical treatment and time off provided to Officer A.W. will be  
13 awarded in the amount of \$30,165.65, joint and -- that amount  
14 will be joint and several with co-defendants Jersey and  
15 Mullins. Defendant argues that MPD should not be reimbursed  
16 for this time off, which I note is -- the time off is only part  
17 of the expenditure. There was part of it for direct medical  
18 attention.

19 But as the government aptly notes, the statute  
20 specifically covers this type of recompense received from  
21 insurance or another source and as reflected in the case of  
22 *United States v. Lewis* in the Seventh Circuit.

23 Defendant further argues that even if awarded, the  
24 amount should be allocated amongst the three co-defendants and  
25 not joint and several, but there's no practical way to allocate

1 the amount amongst the three. And much of the harm -- in  
2 particular, the emotional harm -- is equally attributed to all  
3 three, if not actually more so to defendant who Officer A.W.  
4 testified stood out amongst the rioters in his mind.

5 Thus, the full amount requested of restitution will be  
6 awarded and will be joint and several.

7 I will now indicate the sentence to be imposed, but  
8 counsel will have one more opportunity to make any legal  
9 objections on the factors I've considered.

10 Mr. Schiffelbein?

11 MR. SCHIFFELBEIN: Nothing additional, Your Honor.

12 THE COURT: Okay. Government?

13 MS. KEARNEY: Nothing additional. Thank you.

14 THE COURT: Okay. Mr. McAbee, if you can come to the  
15 podium.

16 It is the judgment of the Court that you, Ronald Colton  
17 McAbee, are hereby committed to the custody of the Bureau of  
18 Prisons for a term of 70 months on Counts 9, 12, 18, 19, and  
19 20; and 60 months for Count 14; and 6 months for Count 24. All  
20 counts to run concurrently.

21 You're further sentenced to serve a 36-month term of  
22 supervised release as to Counts 9, 12, 14, 18, 19, and 20, all  
23 to run concurrently.

24 You are further ordered to pay a special assessment of  
25 \$610 as required by statute.

1           The Court finds that you do not have the ability to pay  
2           a fine and, therefore, declines to impose one. You are ordered  
3           to make restitution through the clerk's office to the Architect  
4           of the Capitol in the amount of \$2,000 and to MPD in the amount  
5           of \$30,165.65. These financial obligations shall be paid at a  
6           rate of no less than \$350 per month commencing 30 days after  
7           your release from incarceration. The special assessment and  
8           restitution are payable to the Clerk of the Court for the  
9           U.S. District Court, District of Columbia, that will be  
10          forwarded to the victims.

11           Within 30 days of any change of address, you shall  
12          notify the Clerk of the Court of the change until such time as  
13          the financial obligation is paid in full.

14           While on supervision, you shall submit to collection of  
15          DNA; you shall not possess a firearm or other dangerous weapon,  
16          you shall not use or possess an illegal controlled substance  
17          and submit to one drug test within 15 days of placement on  
18          supervision and at least 2 periodic drug tests thereafter; and  
19          you shall not commit another federal, state, or local crime.

20           You shall also abide by the general conditions of  
21          supervision adopted by the U.S. Probation Office, only one of  
22          which your counsel objected to, which I overruled, as well as  
23          the following special conditions: As I indicated earlier, the  
24          financial information disclosure.

25           Counsel, any reasons other than those previously argued



1 and stated why the sentence should not be imposed as stated?

2 MR. SCHIFFELBEIN: No, Your Honor.

3 THE COURT: Okay. I will impose the sentence as  
4 stated.

5 Given that the defendant was convicted of all the  
6 counts, I gather there's nothing to be dismissed; is that  
7 right?

8 MS. KEARNEY: That's correct. But in the abundance  
9 of caution, the government dismisses the outstanding counts.

10 THE COURT: Okay. In the original indictment.

11 And so I failed to note about the credit for time  
12 served. The defendant has been in continuous custody since  
13 August 17th, 2021, a little over 2 years and 7 months, all of  
14 which time he will receive credit for.

15 Mr. Schiffelbein, does your client want transfer of the  
16 jurisdiction of supervision to the Middle District of  
17 Tennessee?

18 MR. SCHIFFELBEIN: He would.

19 THE COURT: Okay. And the government is going to  
20 make its standard objection?

21 MS. KEARNEY: Yes, Your Honor, we do and offer,  
22 perhaps, a proposal that will satisfy everybody; is that, you  
23 know, upon Mr. McAbee's release, the Court convene a conference  
24 and we discuss the transfer of jurisdiction.

25 THE COURT: I'm going to go ahead and just transfer

1 jurisdiction to the -- both supervision and jurisdiction to  
2 the Middle District of Tennessee. And I know the defendant  
3 moved. It's still the Middle District of Tennessee, do you  
4 know?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: It is. Okay.

7 All right. Mr. McAbee, you were convicted by a plea of  
8 guilty on two counts and by a jury verdict of guilty on all the  
9 other others. You can appeal your conviction and/or the  
10 sentence, if you wish.

11 You have the right to apply for leave in forma pauperis.  
12 That means without the payment of costs. And if you request  
13 and qualify, the Clerk of the Court will prepare and file a  
14 notice of appeal on your behalf, although I note you're  
15 represented by very able counsel that can assist you in that  
16 process.

17 With few exceptions, any notice of appeal must be filed  
18 within 14 days of the entry of the judgment. This is a lengthy  
19 judgment and commitment order. So it's going to take a few  
20 days to prepare it and get it on the docket, but -- so probably  
21 sometime next week. Fourteen days from that point, if you wish  
22 to appeal.

23 Anything else we need to cover today?

24 MR. SCHIFFELBEIN: I don't believe so, Your Honor.

25 MS. KEARNEY: No, Your Honor.

1 THE COURT: All right. Mr. McAbee, cognitive  
2 dissonance is a very powerful thing. It must be extremely  
3 difficult for you given your life in law enforcement to  
4 watch those videos and must be somewhat of an out-of-body  
5 experience.

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Obviously, I and the jury see things a  
8 little different than how you recall them. But, you know,  
9 you're going to have a little bit more time to think about it.  
10 And I don't expect that you will be part of the criminal  
11 justice system again, and I hope that's the case and that  
12 you're -- you had a tough upbringing. You lost your cool that  
13 day, you know, perhaps due to the abuse you experienced as a  
14 child. But I take attacks on law enforcement very, very  
15 seriously, which I expect you did too until that date.

16 So good luck to you.

17 THE DEFENDANT: Thank you, sir.

18 THE COURT: You're excused.

19 (Proceedings were concluded at 11:03 a.m.)  
20  
21  
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24  
25

1                   CERTIFICATE OF STENOGRAPHIC OFFICIAL COURT REPORTER

2

3                   I, Nancy J. Meyer, Registered Diplomate Reporter,  
4                   Certified Realtime Reporter, do hereby certify that the above  
5                   and foregoing constitutes a true and accurate transcript of my  
6                   stenograph notes and is a full, true, and complete transcript  
7                   of the proceedings to the best of my ability.

8

9                   Dated this 7th day of April, 2024.

10

11                   /s/ Nancy J. Meyer  
12                   Nancy J. Meyer  
13                   Official Court Reporter  
14                   Registered Diplomate Reporter  
15                   Certified Realtime Reporter  
16                   333 Constitution Avenue Northwest  
17                   Washington, D.C. 20001

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