

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

UNITED STATES OF AMERICA,)	CRIMINAL ACTION NO.
)	
Plaintiff,)	1:21-CR-00032-DLF
)	
v.)	
)	
GUY WESLEY REFFITT,)	
)	
Defendant.)	
_____)	

**REPLY TO GOVERNMENT’S SENTENCING MEMORANDUM and
SUPPLEMENTAL SENTENCING MEMORANDUM**

I. REPLY TO GOVERNMENT’S SENTENCING MEMORANDUM

In its second sentence discussing the “factual background” of the January 6, 2021 attack on the Capitol, the government’s Sentencing Memorandum observes:

Many rioters attacked and injured law enforcement officers, sometimes with dangerous weapons; they terrified congressional staff and others on the scene that day, many of whom fled for their safety, and they ransacked this historic building- vandalizing, damaging, and stealing art work, furniture and other property.

Gov’t Sentencing Memorandum at 3. Of course, as even the government must admit, Mr. Reffitt did *none* of these things. Yet, despite the fact that “many rioters” did one or more of these things and Mr. Reffitt did none of those things, the government asks this Court to impose a sentence on Mr. Reffitt that is **three times greater** than the

highest sentence imposed to date.¹

The government purports to justify this unprecedented sentencing recommendation by claiming that Mr. Reffitt “enabled rioters” and made the many assaults on the police officers and the entry into the Capitol by others on January 6, 2021 “possible.” *See* Gov’t Sentencing Memorandum at 3. Nevertheless, this claim is as hyperbolic as many of Mr. Reffitt’s blusterings.

Indeed, Mr. Reffitt is not seen on the Capitol staircase until approximately 1:47 p.m. with OC spray being used on him at approximately 1:50 p.m. Long prior² the following took place:

12:54 Police lines on the West Side of the Capitol were first breached

¹This was the 63 month sentence imposed in *United States v. Palmer*, 1:21-CR-0328-TSC involving the following facts:

- Palmer was on the steps leading to the LWT tunnel and, having acquired a wooden plank, he threw the plank like a spear at police officers.
- He picked up a fire extinguisher and sprayed police with its contents. Then, once it was empty, he threw it at police officers.
- He then “cast around for additional items with which he could assault the police.” He took hold of a long piece of scaffolding wrapped in canvas and pushed it at the legs of the police.
- He then picked up the fire extinguisher he previously used to assault police and again threw it at police.
- Also, at some point, he picked up an orange traffic barrier and threw it towards the police.

²*See* Defendant’s Sentencing Exhibit 1 at 11-14 (to be submitted under seal)

by thousands of rioters overwhelming police prior to Mr. Reffitt entering the prohibited area.

1:04 Declaration of Emergency requested for National Guard support

1:08 Capitol Police deploy OC spray on the Upper West Terrace (*i.e.* approximately 42 minutes prior to deploying OC spray toward Mr. Reffitt)

1:23 Two rioters arrested for unlawful conduct at the Upper West Terrace (*i.e.* approximately 24 minutes prior to Mr. Reffitt being seen on the staircase).

1:25 An additional rioter arrested for unlawful conduct at the Upper West Terrace (*i.e.* approximately 22 minutes prior to Mr. Reffitt being seen on the staircase).³

Moreover, video clearly shows hundreds of rioters attempting to ascent the staircase at issue and several breaching the scaffolding at issue long prior to 1:47. Thus, while the government may feel it necessary to claim that Mr. Reffitt “enabled rioters to reach the West Front of the Capitol Grounds” and that his actions made assaults and the entry to the Capitol Building “possible” in order to justify its sentencing

³Additional activity prior to Mr. Reffitt’s arrival is also reported in the news media:

1:15 “On west side of Capitol Building MPDC uses pepper spray and tasers in response to violent rioters.”

1:16 Rioter used bear mace against police on West Side of the Capitol

<https://nsarchive.gwu.edu/news/foia/2022-01-06/capitol-riot-chronology>

recommendation in this case, its exaggerated claims are demonstrably false. Thus, there must be more afoot.

In the end, and although the government rightly condemns the “grave threat to our democratic norms”⁴ that the January 6 attack on the Capitol represents, it fails to recognize the threat to the Sixth Amendment’s right to trial that its sentencing recommendation in this case represents. The government’s Sentencing Memorandum speaks of “deterrence.” Nevertheless, in asking this Court to sentence Mr. Reffitt to at least a decade more in prison than defendants who assaulted police officers (with items including fists, batons, and chemicals), what the government is really seeking is to *deter* others from exercising their Sixth Amendment right to trial. In short, the government is asking this Court to impose a draconian “trial penalty”⁵ of a decade or more. There is simply no other way to explain the government’s sentencing recommendation in this case.⁶

⁴Gov’t Sentencing Memorandum at 45

⁵“Vindictive sentencing doctrine protects a defendant from egregious instances of the “trial penalty”—when a defendant receives a harsher sentence because she goes to trial, rejecting a plea offer. Penalties for pressing trial rights have been discussed by courts and academics, with both acknowledging that modern criminal adjudication is “ ‘a system of pleas, not a system of trials.’ ” *Garcia v. Herbert*, 2018 WL 6272778, *4 (E.D. N.Y. Nov. 30, 2018), *citing*, *Lafler v. Cooper*, 566 U.S. 156, 170 (2012).

⁶The government’s Sentencing Memorandum also repeatedly claims that Mr. Reffitt “recruited” Rocky Hardie, perhaps in an attempt to secure a leadership enhancement under the Sentencing Guidelines. *See* Gov’t Sentencing Memorandum at 6, 39. Nevertheless, the government is obviously aware that Hardie testified at trial that he had already planned to travel

II. SUPPLEMENTAL SENTENCING MEMORANDUM

In addition to the ten cases set forth in Mr. Reffitt's initial sentencing memorandum, Undersigned Counsel has located three additional cases in which a January 6 defendant received 24 months or more imprisonment, thereby bringing the total to 13 January 6 defendants sentenced to 24 months or more imprisonment to date.⁷ Again, Undersigned Counsel obtained the following facts from the government's sentencing memorandums in the three additional cases, and each of the cases involved actual assaults on police officers.

(11) *United States v. Rubenakcer*, No. 1:21-cr-00193-BAH 41 months

- One of the first people to breach the Capitol, entering the Senate Wing Doors within 60 seconds of the initial breach of the building.
- After entering, he and others chased United States Capitol Police Officer Eugene Goodman through part of the Capitol to near the entrance to the Senate Chamber while the crowd was yelling "where to they count the votes."

to Washington, D.C. for January 6 prior to him having any contact with Mr. Reffitt and that he made contact with Mr. Reffitt and not the other way around. *See* Trial Tr. at 1107-08.

The government also suggests that it was Mr. Reffitt who told Mr. Hardie that Mr. Hardie needed to bring a firearm to Washington, (*see* Gov't Sentencing Memorandum at 39) knowing that Mr. Hardie previously told prosecutors that he did not remember whether it was he or Mr. Reffitt that first suggested bringing guns to Washington, D.C. *See* Attachment A-1 to Defendant's Sentencing Memorandum.

⁷One of the cases was inadvertently left off the list in the original Sentencing Memorandum and the other two (defendants who were indicted jointly) occurred after the submission of the original Sentencing Memorandum.

- After finally being ushered out of the Capitol by law enforcement, he nevertheless reentered the Capitol and headed toward the Senate Chamber.
- Assaulted police officers by throwing liquids at them and swinging a bottle at one of them hitting the officer's head.
- Spent approximately an hour inside the Capitol building and, at times, smoking marijuana in the building. While in the building, he interacted with Senator Romney.

(12) *United States v. Mault*, No. 1:21-cr-00657-BAH **44 months**

- Traveled from New York to Washington with his co-defendant with batons, pepper spray, “ass kicking boots,” a helmet and eye protection.
- “Led the mob that penetrated the police line in the West Plaza, forcing officers to retreat to the Lower West Terrace. Later, with great personal effort, Mault made his way to the mouth of the Lower West Terrace tunnel and used chemical spray against the police officers who refused to yield to Mault and his confederates. Mault then obtained another canister of pepper spray that he gave to another rioter who used it to attack officers in the tunnel. The officers already had endured more than an hour of violent attacks before Mault assaulted them and helped others assault them.”
- “After committing these offenses, Mault lied to FBI agents, minimized and denied his unlawful conduct, parroted baseless conspiracy theories, and, incredibly, portrayed himself as a victim of the events of January 6.”

(12) *United States v. Mattice*, No. 1:21-cr-00657-BAH **44 months**

- Traveled from New York to Washington with co-defendant Mault and engaged in the same behaviors as Mault including personally using chemical spray to assault police officers

In addition, because the government focused a great deal of its Sentencing Memorandum on Mr. Reffitt's hyperbolic threats against government officials and

mainstream institutions, it is also helpful to examine the July 21, 2022 sentencing in *United States v. Bancroft*. There, according to the Government's Sentencing Memorandum in the case, Bancroft illegally entered the Capitol twice. Significantly, she stated to others that she entered the Capitol because she was "looking for Nancy to shoot her in the frickin' brain." As explained in the government's Sentencing Memorandum in the case:

Her exclamation—that she had been looking for Nancy Pelosi to shoot her in the frickin' *brain*—*is among the most graphic statements uttered by any rioter on Capitol grounds that day*, including the more cryptic note left by Jacob Chansley in the Senate chamber ("It's only a matter of time, justice is coming"). (emphasis added)

Judge Sullivan ultimately sentenced Bancroft to **60 days imprisonment**.⁸

Respectfully submitted,

/s/ F. Clinton Broden

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⁸Attached hereto as Attachment A is an additional letter of support for Mr. Reffitt

CERTIFICATE OF SERVICE

I, F. Clinton Broden, certify that on July 25, 2022, I caused a copy of the above document to be served via electronic filing on all counsel of record:

/s/ F. Clinton Broden
F. Clinton Broden