

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

<b>UNITED STATES OF AMERICA</b>	:	
	:	<b>Case No: 21-cr-38 (CRC)</b>
<b>v.</b>	:	
	:	
<b>RICHARD BARNETT</b>	:	
	:	
<b>Defendant.</b>	:	

**VERDICT FORM<sup>i</sup>**

We, the members of the jury, unanimously find:

**COUNT ONE**

- The Government proved beyond a reasonable doubt that a civil disorder existed at the time of the alleged violation.  
  
\_\_\_\_\_ Yes    \_\_\_\_\_ No
  
- The Government proved beyond a reasonable doubt that such civil disorder was resulting in interference with a federally protected function and obstructed, delayed, and adversely affected commerce and the movement of any article and commodity in commerce.  
  
\_\_\_\_\_ Yes    \_\_\_\_\_ No
  
- Th Government proved beyond a reasonable doubt that an actual, specific, identifiable officer from the Metropolitan Police Department was lawfully engaged in the lawful performance of his official duties incident to and during the commission of such civil disorder.  
  
\_\_\_\_\_ Yes    \_\_\_\_\_ No
  
- The Government proved beyond a reasonable doubt that the defendant committed or attempted to commit any act for the intended purpose of obstructing, impeding, and interfering, in a violent manner with such officer from the Metropolitan Police Department.  
  
\_\_\_\_\_ Yes    \_\_\_\_\_ No
  
- The Government proved beyond a reasonable doubt that such act or attempt to act was done willfully and knowingly.  
  
\_\_\_\_\_ Yes    \_\_\_\_\_ No

**If you find the defendant not guilty of Count One, then proceed to Count One (a). If you find the defendant guilty of Count One, then skip Count One (a) and proceed to Count Two.**

**Count One (a):**

- The Government proved beyond a reasonable doubt that the defendant must have intended to commit the underlying offense according to the elements of the offense.

\_\_\_\_\_ Yes    \_\_\_\_\_ No

- The Government proved beyond a reasonable doubt that the defendant must have taken some action that constitutes a substantial step towards the commission of that offense

\_\_\_\_\_ Yes    \_\_\_\_\_ No

**COUNT TWO**

- The Government proved beyond a reasonable doubt that Congress was engaged in the task of certification of the results of the 2020 presidential election at the time that the defendant committed the alleged conduct.

\_\_\_\_\_ Yes    \_\_\_\_\_ No

- The Government proved beyond a reasonable doubt the that charged conduct included the use of physical force, and not only speech.

\_\_\_\_\_ Yes    \_\_\_\_\_ No

- The Government proved beyond a reasonable doubt that the charged conduct was done with intent to obstruct, influence, and impede Congress's certification of the Electoral College vote.

\_\_\_\_\_ Yes    \_\_\_\_\_ No

- The Government proved beyond a reasonable doubt that the charged conduct had the natural and probable effect of obstructing, influencing, and impeding Congress's certification of the Electoral College vote.

\_\_\_\_\_ Yes    \_\_\_\_\_ No

**If you find the defendant not guilty of Count Two, then proceed to Count Two (a). If you find the defendant guilty of Count Two, then skip Count Two (a) and Count Two (b) and proceed to Count Three.**

**Count Two (a):**

- The Government proved beyond a reasonable doubt that the defendant must have intended to commit the underlying offense according to the elements of the offense.

\_\_\_\_\_ Yes    \_\_\_\_\_ No

- The Government proved beyond a reasonable doubt that the defendant must have taken some action that constitutes a substantial step towards the commission of that offense

\_\_\_\_\_ Yes    \_\_\_\_\_ No

**If you find the defendant not guilty of Count Two (a), then proceed to Count Two (b). If you find the defendant guilty of Count Two (a), then skip Count Two (b) and proceed to Count Three.**

**Count Two (b):**

- The Government proved beyond a reasonable doubt that another actual, specific, identifiable person committed the underlying offense by committing each of the elements of the offense.

\_\_\_\_\_ Yes    \_\_\_\_\_ No

- The Government proved beyond a reasonable doubt that the defendant was aware of an actual, specific, and identifiable other person whom his actions might aid, assist, solicit, facilitate, encourage, or abet into committing the offense.

\_\_\_\_\_ Yes    \_\_\_\_\_ No

- The Government proved beyond a reasonable doubt that the defendant performed an act that furthered the other actual, specific, and identifiable person's commission of the offense.

\_\_\_\_\_ Yes    \_\_\_\_\_ No

- The Government proved beyond a reasonable doubt that the defendant knowingly performed that act for the purpose of aiding, assisting, soliciting, facilitating, or encouraging others in committing the offense.

\_\_\_\_\_ Yes    \_\_\_\_\_ No

- The Government proved beyond a reasonable doubt that the defendant did that act or acts with the intent that others commit the offense.

\_\_\_\_\_ Yes    \_\_\_\_\_ No

**COUNT THREE**

- The Government proved beyond a reasonable doubt that the defendant entered and remained in a restricted building without lawful authority to do so.

\_\_\_\_\_ Yes    \_\_\_\_\_ No

- The Government proved beyond a reasonable doubt the defendant knew it was unlawful to enter and remain in the restricted building.

\_\_\_\_\_ Yes    \_\_\_\_\_ No

- The Government proved beyond a reasonable doubt that the defendant did so intentionally, and not by accident or mistake or against his will.

\_\_\_\_\_ Yes    \_\_\_\_\_ No

- The Government proved beyond a reasonable doubt that the defendant used or carried a Hike n’ Strike walking staff during and in relation to the offense.

\_\_\_\_\_ Yes    \_\_\_\_\_ No

- The Government proved beyond a reasonable doubt that the defendant’s Hike n’ Strike Walking staff was at the time of the offense capable of causing serious bodily injury or death to another person and the defendant intended that it be used in that manner.

\_\_\_\_\_ Yes    \_\_\_\_\_ No

- The defendant entered the restricted area with a good faith belief that he was entering with lawful authority.

\_\_\_\_\_ Yes    \_\_\_\_\_ No

**If you find the defendant not guilty of Count Three, then proceed to Count Three (a). If you find the defendant guilty of Count Three, then skip Count Three (a) and proceed to Count Four.**

**Count Three (a):**

- The Government proved beyond a reasonable doubt that the defendant entered and remained in a restricted building without lawful authority to do so.

\_\_\_\_\_ Yes    \_\_\_\_\_ No

- The Government proved beyond a reasonable doubt the defendant knew it was unlawful to enter and remain in the restricted building.

\_\_\_\_\_ Yes \_\_\_\_\_ No

- The Government proved beyond a reasonable doubt that the defendant did so intentionally, and not by accident or mistake or against his will.

\_\_\_\_\_ Yes \_\_\_\_\_ No

- The defendant entered the restricted area with a good faith belief that he was entering with lawful authority.

\_\_\_\_\_ Yes \_\_\_\_\_ No

**COUNT FOUR**

- The Government proved beyond a reasonable doubt that the defendant engaged in disorderly and disruptive conduct in, or in proximity to, any restricted building and in proximity to any Government business and official functions.

\_\_\_\_\_ Yes \_\_\_\_\_ No

- The Government proved beyond a reasonable doubt that the defendant did so knowingly, and with the intent to impede or disrupt the orderly conduct of Government business and official functions.

\_\_\_\_\_ Yes \_\_\_\_\_ No

- The Government proved beyond a reasonable doubt that the defendant's conduct in fact impeded and disrupted the orderly conduct of Government business and official functions.

\_\_\_\_\_ Yes \_\_\_\_\_ No

- The Government proved beyond a reasonable doubt that the defendant used and carried a deadly and dangerous weapon during and in relation to the offense.

\_\_\_\_\_ Yes \_\_\_\_\_ No

- The Government proved beyond a reasonable doubt that the defendant's Hike n' Strike Walking staff was at the time of the offense capable of causing serious bodily injury or death to another person and the defendant intended that it be used in that manner.

\_\_\_\_\_ Yes \_\_\_\_\_ No

**If you find the defendant not guilty of Count Four, then proceed to Count Four (a). If you find the defendant guilty of Count Four, then skip Count Four (a) and proceed to Count Five.**

**Count Four (a):**

- The Government proved beyond a reasonable doubt that the defendant engaged in disorderly and disruptive conduct in, or in proximity to, any restricted building and in proximity to any Government business and official functions.

\_\_\_\_\_ Yes    \_\_\_\_\_ No

- The Government proved beyond a reasonable doubt that the defendant did so knowingly, and with the intent to impede or disrupt the orderly conduct of Government business and official functions.

\_\_\_\_\_ Yes    \_\_\_\_\_ No

- The Government proved beyond a reasonable doubt that the defendant's conduct in fact impeded and disrupted the orderly conduct of Government business and official functions.

\_\_\_\_\_ Yes    \_\_\_\_\_ No

**COUNT FIVE**

- The Government proved beyond a reasonable doubt that the defendant entered and remained in any room in any of the United States Capitol buildings set aside and designated for the use of either House of Congress and a Member, committee, officer, and employee of Congress.

\_\_\_\_\_ Yes    \_\_\_\_\_ No

- The Government proved beyond a reasonable doubt that the defendant did so with the intent to disrupt the orderly conduct of official business.

\_\_\_\_\_ Yes    \_\_\_\_\_ No

- The Government proved beyond a reasonable doubt that the defendant acted willfully and knowingly.

\_\_\_\_\_ Yes    \_\_\_\_\_ No

**COUNT SIX**

- The Government proved beyond a reasonable doubt that the defendant engaged in disorderly and disruptive conduct in any of the United States Capitol buildings during a session of Congress and either House of Congress.

\_\_\_\_\_ Yes    \_\_\_\_\_ No

- The Government proved beyond a reasonable doubt that the defendant did so with the intent to impede, disrupt, and disturb the orderly conduct of a session of Congress and either House of Congress.

\_\_\_\_\_ Yes    \_\_\_\_\_ No

- The Government proved beyond a reasonable doubt that the defendant acted willfully and knowingly.

\_\_\_\_\_ Yes    \_\_\_\_\_ No

**COUNT SEVEN**

- The Government proved beyond a reasonable doubt that the defendant paraded, demonstrated, or picketed in any of the United States Capitol buildings.

\_\_\_\_\_ Yes    \_\_\_\_\_ No

- The Government proved beyond a reasonable doubt that the defendant acted willfully and knowingly.

\_\_\_\_\_ Yes    \_\_\_\_\_ No

**COUNT EIGHT**

- The Government proved beyond a reasonable doubt that the envelope described in the indictment was a thing of value belonging to the United States or any of its departments or agencies.

\_\_\_\_\_ Yes    \_\_\_\_\_ No

- The Government proved beyond a reasonable doubt that the defendant stole, embezzled, purloined, or knowingly converted to his own use that envelope.

\_\_\_\_\_ Yes    \_\_\_\_\_ No

- The Government proved beyond a reasonable doubt that the defendant intended to deprive, without right, the United States government of the use or benefit of the envelope.

\_\_\_\_\_ Yes    \_\_\_\_\_ No

SO SAY WE ALL.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Foreperson

\_\_\_\_\_  
<sup>i</sup> In this highly politicized case, jury nullification should be a serious concern for the Court. Accordingly, the Court should adopt a verdict form that mitigates the risk of jury nullification. In *U.S. v. Childress*, 746 F. Supp. 1122, 1140 (D.D.C. 1990), “The Court employed a verdict form which did not ask the jurors to indicate whether the defendants were “guilty” or “not guilty” of the crimes with which they were charged. Instead, the verdict form asked the jurors to indicate whether the government had proved beyond a reasonable doubt the elements of the crimes with which the defendants were charged by checking “yes” or “no” at the appropriate places on the verdict form.” The Court preferred this format because it “had the effect of foreclosing the jury from engaging in jury nullification.”

The Court has the responsibility to remind the jurors of their oath or affirmation to apply the law, as the Court gives it to them, to the facts because, as the United States Court of Appeals for the District of Columbia Circuit has held, verdicts based on jury nullification “are lawless, a denial of due process and constitute an exercise of erroneously seized power.” *Washington*, [705 F.2d at 494](#). “A jury has no more ‘right’ to find a ‘guilty’ defendant ‘not guilty’ than it has to find a ‘not guilty’ defendant ‘guilty,’ and the fact that the former cannot be corrected by a court, while the latter can be, does not create a right out of the power to misapply the law.” *Id.* (emphasis in original).

The verdict form employed by the Court was consistent with the Court's duty to remind the jury of its obligation to reach a verdict based on an application of the law to the evidence seen and heard in the courtroom during the trial and not based on extraneous influences. In fact, this type of verdict form makes it more likely that a jury will not wrongfully convict a defendant by overlooking an element of the charged offenses. Accordingly, the defendants' complaints about the verdict form are lacking in merit.

*U.S. v. Childress*, 746 F. Supp. 1122, 1140-41 (D.D.C. 1990).



Dated January 3, 20223

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I hereby certify on this 3rd day of January 2023, a copy of the foregoing was served upon all parties as forwarded through the Electronic Case Filing (ECF) System.

/s/ Jonathan Gross, Esq.  
Jonathan Gross, Esq.