

9. Reasonable Doubt, Redbook 2.108
10. Direct and Circumstantial Evidence, Redbook 2.109
11. Nature of Charges Not to Be Considered, Redbook 2.110
12. Number of Witnesses, Redbook 2.111
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14. Credibility of Witnesses, Redbook 2.200
15. Police Officer's Testimony, Redbook 2.207
16. Right of Defendant Not to Testify, Redbook 2.208 *or* Defendant as Witness, Redbook 2.209, *as applicable*
17. Statements of the Defendant – Substantive Evidence, Redbook 2.305
18. Transcripts of Tape Recordings, Redbook 2.310
19. Count One: Entering or Remaining in a Restricted Building, 18 U.S.C. § 1752(a)(1) [see proposal below]
20. Count Two: Disorderly or Disruptive Conduct in a Restricted Building, 18 U.S.C. § 1752(a)(1) [see proposal below]
21. Count Three: Violent Entry or Disorderly Conduct in a Capitol Building, 40 U.S.C. § 5104(e)(2)(D) [see proposal below]
22. Count Four: Parading, Demonstrating, or Picketing in a Capitol Building, 40 U.S.C. § 5104(e)(2)(G) [see proposal below]
23. Proof of State of Mind, Redbook 3.101
24. Multiple Counts – One Defendant, Redbook 2.402
25. Unanimity—General, Redbook 2.405
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27. Redacted Exhibits, Redbook 2.500
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30. Possible Punishment Not Relevant, Redbook 2.505
31. Cautionary Instruction on Publicity, Communication, and Research, Redbook 2.508
32. Communication Between Court and Jury During Jury's Deliberations, Redbook 2.509
33. Attitude and Conduct of Jurors in Deliberations, Redbook 2.510
34. Excusing Alternate Jurors, Redbook 2.511

B. Government's Additional Proposed Jury Instructions

- G-1. Aiding and Abetting, Redbook 3.200. The defendant objects to this instruction based on the anticipated lack of evidence at trial to support the instruction.

C. Defendant's Additional Proposed Jury Instructions

The defense does not request any additional instructions at this time.

Proposed Instruction No. 19

ENTERING OR REMAINING IN A RESTRICTED BUILDING¹

18 U.S.C. § 1752(a)(1)

Count One of the Information charges the defendant with entering or remaining in a restricted building, which is a violation of federal law.

In order to find the defendant guilty of this offense, you must find that the government proved each of the following elements beyond a reasonable doubt:

1. First, that the defendant entered or remained in a restricted building without lawful authority to do so.
2. Second, that the defendant did so knowingly.

The term “restricted building” means any posted, cordoned off, or otherwise restricted area of a building where a person protected by the Secret Service is or will be temporarily visiting.

The term “person protected by the Secret Service” includes the Vice President and the immediate family of the Vice President.

A person acts “knowingly” if he realizes what he is doing and is aware of the nature of his conduct, and does not act through ignorance, mistake, or accident. In deciding whether the defendant knowingly entered or remained in a restricted building, you may consider all of the evidence, including what the defendant did or said.²

A person who enters a restricted building with a good faith belief that he is entering with lawful authority is not guilty of this offense. Thus, you cannot find the Defendant guilty of Count

¹ 18 U.S.C. §§ 1752, 3056; *United States v. Jabr*, 4 F.4th 97, 101 (D.C. Cir. 2021).

² *See* Seventh Circuit Pattern Criminal Jury Instructions; *see also Arthur Andersen LLP v. United States*, 544 U.S. 696, 705 (2005).

One unless you are convinced beyond a reasonable doubt that he did not have a good faith belief of his lawful authority to enter or remain in the restricted building.

Proposed Instruction No. 20

DISORDERLY OR DISRUPTIVE CONDUCT IN A RESTRICTED BUILDING³

18 U.S.C. § 1752(a)(2)

Count Two of the Information charges the defendant with disorderly or disruptive conduct in a restricted building, which is a violation of federal law.

In order to find the defendant guilty of this offense, you must find that the government proved each of the following elements beyond a reasonable doubt:

1. First, that the defendant engaged in disorderly or disruptive conduct in, or in proximity to, any restricted building.
2. Second, that the defendant did so knowingly, and with the intent to impede or disrupt the orderly conduct of Government business or official functions.
3. Third, that the defendant's conduct occurred when, or so that, his conduct in fact impeded or disrupted the orderly conduct of Government business or official functions.

“Disorderly conduct” occurs when a person is unreasonably loud and disruptive under the circumstances, or interferes with another person by jostling against or unnecessarily crowding that person.

“Disruptive conduct” is a disturbance that interrupts an event, activity, or the normal course of a process.⁴

The terms “restricted building” and “knowingly” have the same meanings described in the instructions for Count One.

³ 18 U.S.C. § 1752.

⁴ Redbook 6.643.

Proposed Instruction No. 21

VIOLENT ENTRY OR DISORDERLY CONDUCT IN A CAPITOL BUILDING

40 U.S.C. § 5104(e)(2)(D)

Count Three of the Information charges the defendant with violent entry and disorderly and disruptive conduct in a Capitol Building, which is a violation of federal law.

In order to find the defendant guilty of this offense, you must find that the government proved each of the following elements beyond a reasonable doubt:

1. First, that the defendant engaged in disorderly or disruptive conduct in any of the United States Capitol Buildings.
2. Second, that the defendant did so with the intent to impede, disrupt, or disturb the orderly conduct of a session of Congress or either House of Congress.
3. Third, that the defendant acted willfully and knowingly.

The term “United States Capitol Buildings” includes the United States Capitol located at First Street, Southeast, in Washington, D.C.⁵

The term “disorderly or disruptive conduct” has the same meaning described in the instructions for Count Two defining “disorderly conduct” and “disruptive conduct.”

A person acts “willfully” if he acts with the intent to do something that the law forbids, that is, to disobey or disregard the law. “Willfully” does not, however, require proof that the defendant be aware of the specific law or rule that his conduct may be violating.⁶

The term “knowingly” has the same meaning described in the instructions for Count One.

⁵ 40 U.S.C. § 5101

⁶ *See United States v. Bryan*, 524 U.S. 184, 190 (1998).

Proposed Instruction No. 22

PARADING, DEMONSTRATING, OR PICKETING IN A CAPITOL BUILDING

40 U.S.C. § 5104(e)(2)(G)

Count Four of the Information charges the defendant with parading, demonstrating, or picketing in a Capitol Building, which is a violation of federal law.

In order to find the defendant guilty of this offense, you must find that the government proved each of the following elements beyond a reasonable doubt:

1. First, that the defendant paraded, demonstrated, or picketed in any of the United States Capitol Buildings.
2. Second, that the defendant acted willfully and knowingly.

The terms “parade” and “picket” have their ordinary meanings. The term “demonstrate” refers to conduct that would disrupt the orderly business of Congress by, for example, impeding or obstructing passageways, hearings, or meetings, but does not include activities such as quiet praying.⁷

The terms “United States Capitol Buildings,” “knowingly,” and “willfully” have the same meanings described in the instructions for Counts One and Three.

⁷ *Bynum v. United States Capitol Police Board*, 93 F. Supp. 2d 50, 58 (D.D.C. 2000).