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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MATTHEW RYAN MILLER,

Defendant.

Criminal Action
No. 1:21-cr-0075

Washington, DC
May 23, 2022

2:16 p.m.

TRANSCRIPT OF SENTENCING
BEFORE THE HONORABLE RANDOLPH D. MOSS
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government:

JACQUELINE SCHESNOL

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P R O C E E D I N G S

1
2 **DEPUTY CLERK:** This is criminal action 21-75, the
3 United States of America v. Matthew Ryan Miller. The
4 defendant is present and in the courtroom. Counsel,
5 starting with the Government, followed by defendant and
6 followed by probation, please approach the podium and
7 identify yourself for the record.

8 **MS. SCHESNOL:** Good afternoon, Your Honor. Good
9 to see you in person. Jacqueline Schesnol representing the
10 United States. For the record, with me at counsel table is
11 Assistant United States Attorney Troy Edwards, and FBI
12 Special Agent Tang.

13 **THE COURT:** Welcome.

14 **MR. BALAREZO:** Good morning, Your Honor. Eduardo
15 Balarezo on behalf of Matthew Miller.

16 **THE COURT:** Good afternoon.

17 **MS. MOSES-GREGORY:** Good afternoon, Your Honor.
18 Renee Moses-Gregory on behalf of probation.

19 **THE COURT:** Thank you for being here. So we're
20 here for the sentencing this afternoon of Matthew Ryan
21 Miller who has pleaded guilty to count two of the
22 superseding indictment, obstruction of an official
23 proceeding and aiding and abetting in violation of 18 U.S.C.
24 section 1512(c)(2) and 2; and the lesser included offense of
25 count three of the superseding indictment, which is

1 assaulting, resisting or impeding certain officers during --
2 using a dangerous weapon in violation of 18 U.S.C. section
3 111(a)(1).

4 I have received and reviewed the presentence
5 report and the sentencing recommendation from the probation
6 office; the sentencing memoranda from -- memorandum from the
7 Government; the sentencing memorandum from the defendant;
8 the various letters submitted on the defendant's behalf; the
9 exhibits submitted by the Government. I've reviewed all of
10 the videos and looked at each of the still photographs that
11 were submitted.

12 Let me start by asking whether the Government has
13 any other documents or materials they would request that I
14 consider today?

15 **MS. SCHESNOL:** Your Honor, when the Government
16 orally make its sentencing recommendation, I do have 14
17 exhibits. They are from the sentencing memorandum that you
18 have indicated you've already reviewed. I will be very
19 brief with those so they are not additional. But I will be
20 using those in court with Your Honor's permission.

21 **THE COURT:** That's fine, you're welcome to do
22 that.

23 **MS. SCHESNOL:** Thank you.

24 **THE COURT:** And Mr. Balarezo, anything further
25 that you're going to ask me to review today?

1 **MR. BALAREZO:** Your Honor, beyond what we included
2 in the sentencing memorandum, there will be no further
3 exhibits. However, I wanted to ask the Court's indulgence
4 for a brief bench conference electronically before we get
5 started.

6 **THE COURT:** Okay.

7 (Sidebar bench conference placed under separate cover)

8 **THE COURT:** Mr. Balarezo, anything other than what
9 we just discussed that you would want to present?

10 **MR. BALAREZO:** No, Your Honor.

11 **THE COURT:** So Mr. Miller, the sentencing
12 proceeding today is going to proceed in four steps. I know
13 you're anxious just to get to the bottom line, but it's
14 important that we get -- we go through this process, because
15 I need to make sure that we have agreement about everything.
16 And if there's not agreement, I need to know where there's
17 disagreement so I can resolve those disagreements before I
18 actually impose the sentence today.

19 So the first step for today's hearing is for me to
20 determine whether you've reviewed the presentence report,
21 and resolve any objections that may exist with respect to
22 the presentence report. The second step is to determine the
23 guidelines that are applicable in your case based on your
24 criminal history, and considering any mitigating or
25 aggravating factors. The third step is for me to hear from

1 the Government, to hear from your counsel, to hear from you,
2 if you'd like to address the Court, and to hear from anyone
3 else you want me to hear from. And then the final step is
4 for the Court to fashion a just and fair sentence in light
5 of the factors Congress has specified in a statute, which is
6 18 U.S.C. section 3553(a). And as part of that last step,
7 the Court will actually impose the sentence along with any
8 other required consequences.

9 So let's start with the presentence report. I
10 received the final presentence report and sentencing
11 recommendation from the probation office in this matter on
12 July 6th, 2022 (sic).

13 Ms. Schesnol, does the Government have any
14 objections to any of the factual materials set forth in the
15 presentence report?

16 **MS. SCHESNOL:** No.

17 **THE COURT:** I know there's an issue with respect
18 to the guidelines, but anything with respect to the factual
19 material?

20 **MS. SCHESNOL:** Nothing with respect to the factual
21 basis.

22 **THE COURT:** Mr. Balarezo, does the defense have
23 any objections with respect to any of the factual materials
24 set forth in the presentence report?

25 **MR. BALAREZO:** Your Honor, not factual. We did

1 have --

2 **THE COURT:** You can come to the podium.

3 **MR. BALAREZO:** I apologize. Your Honor, we had an
4 objection to the final presentence report when there was an
5 indication of Mr. Miller's affiliation with the Proud Boys.
6 As the presentence report itself indicates, there's no
7 evidence that -- the Government doesn't have any evidence
8 that Mr. Miller engaged in the activities that he did on
9 January 6th, 2021 as part of the Proud Boys. And therefore,
10 we don't even believe it's part of the relevant conduct and
11 should not be included in the presentence report.

12 **THE COURT:** Do you dispute the factual accuracy of
13 the assertion?

14 **MR. BALAREZO:** We do not.

15 **THE COURT:** So it strikes me as something that
16 doesn't need to be stricken from the presentence report if
17 you're not challenging the factual accuracy of it. I'm
18 happy to hear from you or the Government with respect to
19 whether it's anything that I should consider in sentencing.
20 I don't believe the Government has featured it or mentioned
21 it at all.

22 **MR. BALAREZO:** That's correct, the Government has
23 not. The reason we would like it to be removed from the
24 presentence report is that it may affect his classification
25 once he gets to the BOP, if he is alleged to have been a --

1 I don't want to say a gang, but a member of some kind of
2 organization that is involved in nefarious activities.
3 That's the reason why. And especially since it has nothing
4 to do with his conduct on the day in question.

5 **THE COURT:** But isn't that in fact the sort of
6 thing that is not inappropriate for the Bureau of Prisons to
7 know? And I'm not saying that I have a view that it should
8 affect his security classification. But it may be that it's
9 valuable information, and that they might not want to
10 incarcerate him somewhere where there may be people who are
11 antagonistic to the Proud Boys in ways that could lead to
12 conflicts.

13 **MR. BALAREZO:** Your Honor, Mr. Miller's
14 association was limited and tangential. And as I said, the
15 issue that we have is the relevance of it to his sentencing
16 today. We understand that the Court may not take it into
17 account, because even the Government agrees that it's not
18 part of his conduct. But we're just concerned, again, that
19 it may increase a classification level for him.

20 **THE COURT:** I don't think it's part of his
21 conduct, but I guess I'm wondering -- and I'd like to hear
22 from the Government about it. I'm not sure I would reach
23 the conclusion that it's utterly irrelevant. And the reason
24 I say that is that -- and I don't think this is going to
25 happen, but if Mr. Miller were to stand up in front of me

1 today and say: Look, I was just a curious 21-year-old who
2 just wanted to go downtown and observe the events that were
3 going on. I just got swept up by a crowd, when I had never
4 participated in anything like that in my life, and had no
5 views, anything like that. Basically, I was a tourist who
6 was downtown. And as a tourist who was downtown, I got -- I
7 was overcome by what happened down there in a way that was
8 completely spur of the moment and had nothing to do with who
9 I am.

10 It strikes me as having attended Proud Boys events
11 in the past is not hugely relevant to that perhaps, but it
12 may not be utterly irrelevant to that.

13 **MR. BALAREZO:** Very well.

14 **THE COURT:** What's the Government's view with
15 respect to whether the Court should strike that from the
16 presentence report?

17 **MS. SCHESNOL:** As Your Honor noted, while the
18 Government is not making a point of it being relevant
19 conduct, it's not totally irrelevant. And certainly, BOP
20 should be able to consider it in the classification.
21 Mr. Miller did have several images on his phone of other
22 Proud Boys. He was near other Proud Boys the night before
23 the -- before January 6th. He attended other Proud Boys
24 rallies in the past in November and December of 2020. Other
25 Proud Boys were certainly near him during some of his

1 conduct at the Capitol.

2 Because the Government has no evidence, such as
3 text messages or phone exchanges or other things like that,
4 showing any kind of coordination, we did not feel it
5 appropriate to suggest that it was part of some pre-planned
6 conduct. But as Your Honor noted, it's not entirely
7 irrelevant.

8 **THE COURT:** All right, thank you. So I'm going to
9 deny the request to strike that from the presentence report.
10 As I said, it's not something that I am likely to place much
11 weight on for purposes of sentencing. But I don't think
12 it's utterly irrelevant, and I also don't think it's
13 inaccurate.

14 Mr. Balarezo, is there anything else that you
15 object to in the presentence report, in the factual aspects
16 of it?

17 **MR. BALAREZO:** No, Your Honor.

18 **THE COURT:** Mr. Miller, are you fully satisfied
19 with the assistance of your lawyer in this case? You can
20 pull the microphone towards you if you like.

21 **THE DEFENDANT:** Yes, Your Honor, I am.

22 **THE COURT:** Have you had enough time to review the
23 presentence report with him?

24 **THE DEFENDANT:** Yes, Your Honor.

25 **THE COURT:** Did you have enough time to talk with

1 him about it?

2 **THE DEFENDANT:** Yes, Your Honor.

3 **THE COURT:** So I'm going to then accept the facts
4 as stated in the presentence report as my findings of fact
5 for purposes of the sentencing today. The presentence
6 report lays out the probation office's calculation of the
7 advisory guidelines range that applies in this case. I'll
8 summarize what's there. I know there is one issue that I do
9 need to resolve.

10 The Court first separately calculates the offense
11 levels corresponding to each count to which Mr. Miller has
12 pleaded guilty. With respect to count two, before turning
13 to the guidelines, Congress has imposed a statutory maximum
14 sentence for obstruction of an official proceeding in
15 violation of 18 U.S.C. section 1512(c)(2), and that maximum
16 is 20 years imprisonment. As part of Mr. Miller's plea
17 agreement, the parties have agreed that under section
18 2J1.2A, the base offense level for obstruction of an
19 official proceeding in violation of 18 U.S.C. section
20 1512(c)(2) is 14. And the PSR also indicates that the base
21 offense level is 14. The parties agree that the offense
22 involved causing, or threatening to cause, physical injury
23 to a person or property in order to obstruct the
24 administration of justice, and that an eight-level
25 enhancement is appropriate for that reason.

1 And then there's a dispute with respect to whether
2 the enhancement should apply, because Mr. Miller has pleaded
3 guilty to an offense that resulted in substantial
4 interference with the administration of justice which would
5 lead to a three-level increase under section 2J1.2B2 of the
6 guidelines. And according to the presentence report, the
7 probation office did not apply that three-level enhancement
8 because the record lacks justification as to how the
9 defendant's personal conduct caused a premature or improper
10 termination of a felony investigation, an indictment,
11 verdict or any judicial recommendation based upon perjury,
12 false testimony or other false evidence, or the unnecessary
13 expenditure of substantial governmental or court resources.

14 Mr. Miller argues in his sentencing memorandum
15 that that enhancement ought not apply. The Government
16 argues in its sentencing memorandum that the enhancement
17 should apply. And I note that the plea agreement includes
18 the enhancement, and the parties agreed to including that
19 term in the plea agreement itself. So if the Government is
20 right on this one, the total adjusted offense level for
21 count two is 25. And if the defense is right, then the
22 adjusted offense level is 22.

23 Both parties agree that Mr. Miller is entitled to
24 a two-level reduction for acceptance of responsibility, and
25 an additional one-level reduction for timely notifying the

1 authorities of his intention to plead guilty. So if the
2 Government is right, then the total offense level is 22,
3 which would include the enhancement for substantial
4 interference. And if the defense is right, then the total
5 offense level is 19 without that enhancement. The parties
6 agree that Mr. Miller has no applicable criminal history
7 points, and so he is in criminal history category one. That
8 all means that if the Government is right, that the offense
9 level is 22 and the guidelines range is between 41 and 51
10 months. And if the defense is right, the total offense
11 level is 19, and the guidelines range is between 30 and 37
12 months.

13 I'm happy to hear from the parties now, so why
14 don't we go ahead and start with Ms. Schesnol.

15 **MS. SCHESNOL:** Thank you, Your Honor. To begin --
16 and I will apologize in advance to Mr. Balarezo if I
17 misspeak on his behalf. But it is my understanding that the
18 parties do not have a dispute as to whether or not the
19 three-level enhancement applies. I believe in his
20 sentencing memorandum, Mr. Balarezo lays out the guidelines
21 as calculated by the probation officer. And because the
22 parties did agree in the plea agreement to those guidelines,
23 if that is not the agreement, then the Government would
24 consider that a breach of the plea agreement.

25 So it is the Government's position that the

1 parties have no dispute, it is the calculation as done by
2 the probation office. And the Government does believe that
3 the three-level enhancement pursuant to 2J1.2B2 does apply.
4 While the probation officer certainly has a very difficult
5 job, especially in these cases, the likes of which we have
6 not seen before, the lack of the three-level enhancement
7 recommendation is inconsistent with the position that the
8 probation department has taken in similarly situated cases.

9 As pointed out in both my objection as well as my
10 sentencing memorandum, the probation department recommended
11 the three-level enhancement pursuant to 2J1.2B2 in the
12 Rubenacker case, Fairlamb, Chansley, Wilson and Hodgkins.
13 And the citations to all of those are in my sentencing
14 memorandum. And the Court applied the three-level
15 enhancement in every one of those cases with the exception
16 of Mr. Rubenacker, only because Mr. Rubenacker has not yet
17 been sentenced. He's due to be sentenced this Thursday,
18 May 26th.

19 **THE COURT:** Although was this question argued in
20 any of those cases or addressed? I didn't address it in
21 Hodgkins because no one presented the issue to me.

22 **MS. SCHESNOL:** Correct, I was going to point out
23 that Your Honor did find that it applied in Hodgkins. I do
24 not believe it was argued in any of those cases, because the
25 parties had agreed to it and the probation department had

1 recommended it. So there was nothing to recommend -- to
2 argue in those instances.

3 Furthermore, the Government submits that for the
4 probation department to recommend the eight-level
5 enhancement pursuant to 2J1.2B1B, but not the three-level
6 enhancement, defies logic.

7 **THE COURT:** It's inconsistent, I understand that.

8 **MS. SCHESNOL:** We believe it is inconsistent.

9 Namely, because B1B has the extra requirement of causing, or
10 threatening to cause, physical injury to a person or
11 property. So we could see an instance, such as in Hodgkins,
12 where the three-level enhancement applied but the
13 eight-level enhancement did not apply. It is the
14 Government's position that the three-level enhancement is
15 essentially subsumed by the eight-level enhancement if, if
16 pursuant to application note one -- which defines
17 substantial interference with the administration of justice,
18 there is an unnecessary expenditure of substantial
19 government or court resources.

20 And it is the Government's position -- and again,
21 we believe it's the defense's position, that there was an
22 unnecessary expenditure of substantial government resources.
23 Namely, the certification of the electoral college votes was
24 delayed approximately six hours, and to date, the damage to
25 the Capitol is in excess of \$2.7 million.

1 So for all those reasons -- and I can answer any
2 questions if Your Honor has any, the Government does believe
3 that the three-level enhancement under 2J1.2B2 does apply.
4 And again, I apologize if I am misstating the defense's
5 position, but I believe that is the defense's position as
6 well.

7 **THE COURT:** All right. Let me hear from
8 Mr. Balarezo, then.

9 **MR. BALAREZO:** Your Honor, I hate to say that the
10 Government is right, but in this situation, because of the
11 plea agreement where Mr. Miller agreed that the enhancement
12 applied, we're in a position where we could only submit on
13 what the probation office has calculated and rely on their
14 expertise for the calculation.

15 **THE COURT:** All right, thank you. I don't know if
16 the probation office wants to be heard or if probation has
17 said everything it has to say on the issue in its
18 submission.

19 **MS. MOSES-GREGORY:** Your Honor, we will rely on
20 our response to the objection.

21 **THE COURT:** All right, thank you.

22 **MS. MOSES-GREGORY:** Thank you.

23 **THE COURT:** So I've given this question some
24 thought. First off, I accept the parties' representations
25 that this is a term of the plea agreement. And to the

1 extent that it's a close question, I think that it's the
2 sort of thing that the parties can stipulate to in a plea
3 agreement. I accept the parties' representations in the
4 plea agreement, but I do have an independent responsibility
5 to determine the proper guidelines calculation.

6 My view is, although a close question, that the
7 enhancement does apply. The question is really less of what
8 the commentary note -- or application note one says than
9 just what the meaning of the phrase administration of
10 justice is. If one is -- if you're reading the guidelines
11 perhaps in the way that one would read a statute, you might
12 say that there is some uncertainty as to what the -- whether
13 the term administration of justice applies to the Congress'
14 certification of the election results.

15 If one looks at Webster's Third New International
16 Dictionary, administration in this sense means to mete out,
17 and justice means fair treatment. And you can argue it
18 either way, I think, with respect to whether what Congress
19 was doing was meting out fair treatment. One could say that
20 the Congress was sitting in an adjudicative role, and that
21 it was adjudicating in some very, very limited sense,
22 subject to very substantial constraints, the results of the
23 election.

24 My opinion in the Montgomery case does include
25 some language and discussion of how the proceedings before

1 the Congress are analogous to the administration of justice.
2 In that way, Judge Friedrich I think reached the same
3 conclusion in one of her cases. As well, I believe Judge
4 Bates has said the same thing.

5 Black's Law Dictionary refers to administration as
6 the proper functioning and integrity of a court or other
7 tribunal in proceedings before it in accordance with the
8 rights guaranteed to the parties. And, again, there I think
9 it's not entirely clear how that fits in this context.
10 Although, as I said, I think that a portion of my analysis
11 in Montgomery supports the view that what was occurring
12 before the Congress and that was obstructed falls within
13 that definition.

14 But I also think that one can't quite read the
15 guidelines precisely the way one would read a statute, with
16 parsing words with that same level of detail. Because this
17 entire part of the guidelines, part J, is offenses involving
18 the administration of justice. The sentencing commission
19 decided to include in part J -- which applies to offenses
20 involving the administration of justice, obstruction of
21 Congress. And given the fact that the sentencing commission
22 concluded that that provision appropriately fell within part
23 J, I think it's fair to read the phrase administration of
24 justice for purposes of the enhancement broadly enough to
25 cover the statutory provision that the sentencing commission

1 decided to include in part J.

2 Which then just leaves the question of whether the
3 interference was substantial or not. And there, the
4 application note says that substantial interference with the
5 administration of justice includes a premature or improper
6 termination of a felony investigation, not present here; an
7 indictment, verdict or any judicial determination based upon
8 perjury, false testimony or other false evidence, not
9 present here; or the unnecessary expenditure of substantial
10 governmental or court resources. And I'm not sure that I
11 would be prepared to categorize any damage to -- or all the
12 damage to the Capitol complex on that day as necessarily
13 falling within that context. Because I think there does
14 need to be a nexus between the expenditure and the
15 interference with the administration of justice.

16 But I think the fact that the proceedings
17 certifying the presidential election were delayed by several
18 hours; and that the entire United States Congress sat until
19 after midnight -- and I believe it was 1:00 o'clock in the
20 morning, proceeding; and all the attendant costs that come
21 with the entire Congress sitting in this extraordinary
22 session, along with the enormous law enforcement presence
23 that was required to allow them to do that, I think amply
24 supports the finding that the interference here was
25 substantial. So that is my finding.

1 I guess the other thing I just would add is I do
2 agree with the Government's comment that if one were to
3 conclude that the interference here was not with the
4 administration of justice for purposes of the B2
5 enhancement, then I think the same reasoning would apply
6 with respect to the B1B enhancement, which is that
7 eight-point enhancement which no one has raised as an issue.
8 So I do conclude that the enhancement applies here. It's
9 not to say that the Court would not, and will not, consider
10 a variance for various reasons in this case. But I do
11 conclude the enhancement applies. Therefore, it's the
12 Court's conclusion that the total offense level is 22, and
13 that the guidelines applicable here are between 41 and 51
14 months.

15 Under 18 U.S.C. section 3583, the Court may also
16 impose a term of supervised release of up to three years.
17 And under section 5D1.2A2 of the guidelines, the recommended
18 term of supervised release is between one and three years.
19 Under 18 U.S.C. section 3561(c)(1), the defendant is
20 eligible for one to five years of probation because count
21 two is a class C felony, and count three is a class D
22 felony.

23 I should say, I skipped fairly quickly over the
24 guidelines calculation with respect to count three. And I
25 did so simply because of the way the grouping provisions

1 work under the guidelines, that the Court takes the higher
2 guidelines range. And that's the one that applies with
3 respect to count two.

4 Under section B -- 5B1.1 of the guidelines,
5 Mr. Miller is not eligible for probation. But of course,
6 that is an advisory provision, it's not binding on the
7 Court. The maximum fine for each offense is \$250,000. The
8 guidelines recommend a fine of between \$15,000 and \$150,000.
9 As part of the plea agreement, Mr. Miller has agreed to pay
10 restitution to the Architect of the Capitol in the amount of
11 \$2,000. There's also a mandatory special assessment of \$100
12 for each count.

13 Ms. Schesnol, anything else you want me to add or
14 to clarify with respect to the criteria?

15 **MS. SCHESNOL:** No, Your Honor.

16 **THE COURT:** Mr. Balarezo?

17 **MR. BALAREZO:** No, Your Honor.

18 **THE COURT:** So before I discuss the particular
19 sentencing factors in this case, I just want to put on the
20 record that the probation office has recommended a sentence
21 of 12 months and a day imprisonment, two years of supervised
22 release, no fine, \$2,000 in restitution and \$100 special
23 assessment for each count. That recommendation is based
24 solely on the information that is set forth in the
25 presentence report, and it does propose a downward variance.

1 That variance, though, I should note, is from the guidelines
2 range that was as the probation office calculated it, which
3 would have been a range of between 30 and 37 months.

4 Although it's still a fairly substantial variance that the
5 probation office is recommending.

6 I now must consider the factors that Congress has
7 set forth in 18 U.S.C. section 3553(a). And I have to
8 ensure that the Court imposes a sentence that's sufficient,
9 but not greater than necessary, to comply with the purposes
10 of sentencing. Those purposes include the need for the
11 sentence imposed to reflect the seriousness of the offense,
12 to promote respect for the law and to provide just
13 punishment for the offense. The sentence should also afford
14 adequate deterrence to criminal conduct, protect the public
15 from future crimes of the defendant and promote
16 rehabilitation. In addition to the guidelines and policy
17 statements, I must consider the nature and circumstances of
18 the offense; the history and characteristics of the
19 defendant; the need for the sentence imposed; the guidelines
20 range; the need to avoid unwarranted sentence disparities
21 among defendants with similar records who have been found
22 guilty of similar conduct; and the types of sentences
23 available.

24 So would the Government like to be heard with
25 respect to the section 3553(a) factors, and more generally

1 with respect to sentencing?

2 **MS. SCHESNOL:** Yes, Your Honor. So if the Court
3 will bear with me while I get my technology up and running,
4 the Government does have 14 exhibits. As I mentioned
5 earlier, all of these exhibits have already been provided to
6 the Court and defense counsel previously. And it is my
7 understanding that the defense has no objection to the
8 administration of these exhibits. So with the Court's
9 permission, I will proceed.

10 On January 6th, 2021, as brave members of the
11 Metropolitan and Capitol Police, just steps from where we
12 sit here today, protected the Capitol, what did Mr. Miller
13 do? While already on restricted grounds, he encouraged
14 others to get closer to the Capitol building. This is a
15 video, and it does have sound. I apologize, we practiced
16 this twice, Your Honor.

17 **THE COURT:** No worries.

18 **MS. SCHESNOL:** I do apologize, Your Honor, we
19 tested this twice.

20 **THE COURT:** It's okay.

21 (Video played)

22 **MS. SCHESNOL:** So as you can see, Your Honor --
23 and that was Exhibit 6 from the Government's sentencing
24 memo, while on restricted grounds, Mr. Miller is standing on
25 a wall waving his arms saying, "Come on," over and over.

1 And as police began their hand-to-hand combat, what did
2 Mr. Miller do? He hurled a full beer can approximately
3 30 yards in the direction of police.

4 (Video played)

5 **MS. SCHESNOL:** As police continued to shield the
6 building that housed our lawmakers and their staff, what did
7 Mr. Miller do? He used a barrier that was intended to keep
8 people away from the Capitol building, and he used that as a
9 ladder to climb up and get ever closer to the Capitol
10 building.

11 (Video played)

12 **THE COURT:** Do you have any idea what that plank
13 that they passed up was used for?

14 **MS. SCHESNOL:** I do not know, Your Honor. And
15 then Mr. Miller was able to actually get himself onto the
16 Lower West Terrace. As Your Honor can see here, there's a
17 yellow square around Mr. Miller. And that's the Lower West
18 Terrace of the Capitol building.

19 And as the day wore on and police, who were vastly
20 outnumbered by rioters, were being crushed in the Lower West
21 Terrace tunnel, what did Mr. Miller do?

22 (Video played)

23 **MS. SCHESNOL:** Inside that tunnel is where law
24 enforcement, police officers were protecting the doors into
25 the Capitol. And Mr. Miller, for at least two minutes, was

1 encouraging people, putting up his hand in the air, "One,
2 two, three, push." The crowd began to chant heave-ho.
3 They're literally pushing against the police officers trying
4 to protect that entrance of the Capitol. The Court can see
5 Mr. Miller is circled in blue, how close he is to the
6 threshold of the Lower West Terrace tunnel.

7 And what else did Mr. Miller do as the day went
8 on? He decided to throw batteries into the tunnel at police
9 officers. And then from his very closest point to the
10 tunnel where the medieval battery had been raging for hours
11 at that point, he unleashed the contents of a fire
12 extinguisher directly onto the police in the Lower West
13 Terrace tunnel.

14 (Video played)

15 **MS. SCHESNOL:** I'm going to back that up and play
16 it again, Your Honor.

17 (Video played)

18 **MS. SCHESNOL:** And as Your Honor noted, you've
19 watched that video in full, and I will make a reference to
20 it again later without playing it. Here's a still frame
21 shot showing Mr. Miller unleashing the contents of that fire
22 extinguisher directly onto the police guarding the tunnel.
23 As Your Honor can see, moments before the fire extinguisher
24 is unleashed, Your Honor can see the police in the Lower
25 West Terrace tunnel before the fire extinguisher is

1 deployed, and then the plume of fire extinguisher chemical
2 that washes over the police guarding the Capitol. Officers
3 who were in the Lower West Terrace tunnel described the
4 attack as, quote, nothing short of brutal. This is in the
5 Government's sentencing memorandum at page 11, quotes from
6 Officers Gonell, Fanone, Dunn and Hodges. Many officers
7 were injured, bleeding and fatigued, but they continued to
8 hold the line.

9 Today we deal with a crime of violence and a crime
10 against law enforcement officers and the democracy they
11 risked their lives to protect on January 6th. A crime of
12 this magnitude demands an equally serious sentence for
13 Defendant Miller, and the Government submits there is no
14 reason to vary outside of the applicable guidelines. A
15 sentence of 51 months reflects the nature of the offense,
16 the characteristics of the defendant, the seriousness of the
17 offense and promotes respect for law. The sentence will
18 provide both specific as well as general deterrence, and
19 will avoid unwarranted sentencing disparities.

20 With regard to the nature of the offense, the
21 events of January 6th are unprecedented, barely imaginable,
22 the likes of which we would expect to see in a third world
23 banana republic. We watched our TVs in dismay as thousands
24 descended onto the Capitol. And we watched in great horror
25 as we learned of the brutality that hundreds and hundreds of

1 police officers endured that day. Defendant Miller was in
2 the thick of it all working his way closer and closer to the
3 Capitol, growing increasingly more violent as the day went
4 on, and agitating others to do the same. And the
5 defendant's attacks were not made in isolation. He
6 assaulted officers along with other rioters attacking from
7 all sides. And every one of the defendant's attacks made it
8 harder for officers to defend themselves, and increased the
9 chance that one of the other rioters' attacks would succeed.

10 Also as described in the sentencing memo provided
11 by the Government on page 14, Sergeant Gonell describes,
12 quote, the officers were subjected to a medieval battle
13 fighting hand-to-hand, inch-by-inch to prevent an invasion
14 of the Capitol. Even though Defendant Miller didn't go
15 inside the Capitol, his attack on the officers in the Lower
16 West Terrace tunnel deprived those officers the ability to
17 go inside the Capitol to help stop the rioters who did get
18 inside the building, who went onto the Senate floor, into
19 Speaker Pelosi's office and others. Because those officers
20 were fighting outside at the Lower West Terrace tunnel door
21 to keep Miller and others in the mob from getting in, they
22 could not go inside and help.

23 As Your Honor noted when sentencing Defendant
24 Hodgkins, quote, because of the defendant's actions and
25 others that day, the members of the United States Congress

1 were forced to flee their respective chambers, an
2 extraordinary event under any circumstances. The mob's
3 objective to was to stop the constitutional and statutory
4 duty to declare the person elected president. They, the
5 mob, were prepared to break the law to prevent Congress from
6 performing its constitutional duty. As Your Honor went on
7 to state, democracy requires cooperation of the governed.
8 The damage caused by the defendant and others goes way
9 beyond the several-hour delay of the certification. It is
10 damage that will persist in this country for decades. The
11 gravity of this offense, of Mr. Miller's conduct, should be
12 met with the imposition of a 51-month sentence.

13 To discuss the characteristics of the defendant,
14 Defendant Miller positions himself in his sentencing memo as
15 a young man whose, quote, prefrontal cortex of his brain was
16 not fully formed on January 6th, 2021. It was noted in the
17 presentence report that Mr. Miller was 21 at the time of
18 offense. I believe he was 22. If they noted his birthday
19 correct, being born in November 1998, he would have been 22
20 in November of 2020. So he was approximately six weeks into
21 being the age of 22.

22 And 22 is not a child. As a society, we have
23 collectively decided that 22 is old enough to drive a car;
24 it's old enough to rent a hotel room, as Mr. Miller did the
25 night of January 5th. It's old enough to be treated as an

1 adult in our criminal justice system. Twenty-two is old
2 enough to serve on jury duty. It's old enough to hold local
3 public office. In many states, 22 is old enough to buy a
4 gun. Twenty-two is certainly old enough to vote. And 22 is
5 old enough to lay down one's life in military service. In
6 our --

7 **THE COURT:** All of that is true, but there is a
8 difference between a 22-year-old and a 30-year-old or a
9 40-year-old committing a crime. And there is some truth to
10 the materials that the defense points to with respect to the
11 development of the frontal cortex and the development of
12 judgment. And I think we've all known 22 year olds, we've
13 all been -- or most of us have been 22. I think probably
14 everyone in this courtroom has been 22 at some point in
15 time. And people's judgment is just not as good at 22 as it
16 is at 30 years of age.

17 The defense also says that Mr. Miller was quite
18 drunk. And I realize that's not a grounds for a departure
19 under the guidelines, and it's not an excuse that would
20 absolve one of criminal liability. But I do wonder in my
21 mind, as I think about this case, how I compare a drunk
22 22-year-old to some of these other folks who were stone
23 sober, in their 40s, who knew perhaps a lot better than
24 Mr. Miller did; and were perhaps less impressionable, less
25 likely to be moved by a crowd, less likely to be moved by

1 inflammatory and false rhetoric of the president of the
2 United States.

3 So I do wonder whether Mr. Miller's young age and
4 perhaps drunkenness at the time are factors that I should at
5 least consider in sentencing.

6 **MS. SCHESNOL:** Certainly Your Honor can consider
7 anything deemed appropriate. May I submit that many of us
8 in this courtroom at the age of 22 were going off to law
9 school, joining the FBI academy, engaging in their
10 profession.

11 **THE COURT:** No, no, I understand that. I also
12 understand that we have 22-year-olds who are laying their
13 life on the line to protect our nation, and all of the other
14 things that you referred to. But just the truth of the
15 matter, though, is that somebody who is 22 is more capable
16 of doing something that is just -- I'm trying to choose my
17 words carefully here, but dumb and highly regrettable; and
18 just really doing something that they, one would hope, will
19 look back on later in their life and say that was one of the
20 stupidest things I've ever done. Whereas it's harder to say
21 that of somebody who is 40.

22 And I'm not saying that it absolves Mr. Miller of
23 responsibility for his actions that day, because he was an
24 adult and he was responsible for his actions. I'm just
25 saying and asking you to respond -- because this is

1 something that's on my mind, I just want to be transparent
2 with you, that I'm dealing with somebody here who is younger
3 than most of the defendants in these cases; was more perhaps
4 impressionable; was more prone to get carried away by
5 rhetoric, false statements, the emotions of a crowd who was
6 around him, and too many cans of beer beforehand.

7 I'm interested in your reaction, because it does
8 strike me that that is something that is relevant to my
9 thinking about the sentencing. Quite frankly, if Mr. Miller
10 was older and perhaps had not been drinking -- although the
11 age is more important to my mind I think, the numbers that
12 come to my mind would be higher under those circumstances.

13 **MS. SCHESNOL:** Sure. I appreciate the Court's
14 candidness and allowing me a chance to respond. As the
15 Court noted, while Mr. Miller was younger than many of the
16 people who were at the Capitol on January 6th, all those
17 people engaged in the same conduct as well. And again, our
18 criminal justice system has made the determination that we
19 treat people who are 22 at the time of their crime as an
20 adult.

21 Furthermore, the Government submits that
22 Mr. Miller wasn't so much getting swept up in the crowd as
23 that he was -- he was one of the agitators in the crowd on
24 two occasions. One on that low wall where he was
25 encouraging everyone to come over, and then second when he

1 was up on the Lower West Terrace encouraging everyone to
2 push. So the Government submits that he was having other
3 people caught up in his rhetoric as opposed to the other way
4 around.

5 The other thing I will note for the Court is that
6 when we had the opportunity to chat with Mr. Miller last
7 week in preparation for sentencing, as agreed to in the plea
8 agreement, it was noted that Mr. Miller did not go to the
9 rally on the Ellipse. So I don't know how much Mr. Miller
10 was caught up in statements made by elected officials.

11 **THE COURT:** So I was confused by that, I'm glad
12 you brought that up. I'll be interested to hear what
13 Mr. Balarezo has to say about this. I thought there were
14 conflicting things said about that in the various sentencing
15 memoranda. There were some statements that said he did go
16 to the rally, and some statements I think that suggested
17 that he did not. So I would be interested in knowing
18 whether he attended the rally or not.

19 But also, I'm not talking about just the rhetoric
20 at the rally, I'm talking about the rhetoric that took place
21 for weeks in advance of the rally as well.

22 **MS. SCHESNOL:** Sure. The Government finds the
23 rhetoric that went on for months very problematic, indeed.
24 That being said, there were tens of thousands of people who
25 did go to the rally. Again, we thought Mr. Miller had, but

1 based on our discussions with him, it appears he didn't.
2 And of those tens of thousands of people who went to the
3 rally on the Ellipse, they didn't all go to the Capitol.
4 And of the thousands that did go to the Capitol, they did
5 not all engage in violence.

6 So while that -- the rhetoric was out there for
7 all of the public for months and months and months, not
8 everyone was susceptible to it. And with --

9 **THE COURT:** And I'm not disagreeing with you at
10 all about that. Mr. Miller has already gone to jail, he's
11 going to jail. The question really is just how long he
12 should go to jail considering all the factors that Congress
13 has specified and the balancing the Court has to engage in.
14 It does just strike me -- and I'll hear from the defense,
15 and I'll give you a chance to come back if you'd like to.
16 But it does strike me that his relatively young age compared
17 to the others involved in this is one factor that I need to
18 take into consideration that may suggest to me that there
19 may be reasons why the guidelines -- or why a variance would
20 be appropriate in his case because of his age and perhaps
21 because of the drinking.

22 And another thing I guess, just for the sake of
23 transparency in putting this out there so you can respond to
24 all of this, is Mr. Miller's conduct while on pretrial
25 release was exemplary as far as I can tell. He did

1 everything that he should do. He went to work, he worked
2 hard, he contributed and got very glowing reviews from those
3 who he was working for in a way in which it was a valuable
4 opportunity for him to be on pretrial release. Because he
5 could then show to the Court that he's someone who is
6 capable of being a contributing member of society.

7 **MS. SCESNOL:** And again, I do appreciate your
8 candidness. I actually have plans to address all of that.

9 **THE COURT:** Great.

10 **MS. SCESNOL:** Of course, Your Honor will sentence
11 Mr. Miller as Your Honor deems appropriate after hearing and
12 considering everything. Even taking everything into
13 consideration Your Honor has stated, the Government does
14 still believe that 51 months is appropriate. I will
15 continue to do my best to attempt to convince you.

16 **THE COURT:** Please do. And I should say -- I
17 don't mean to cut you off, and also, I don't mean to suggest
18 in any way that any of the conduct that occurred that day is
19 in any way excusable, that it was anything short of
20 repugnant. And when I watched those videos and saw those
21 law enforcement officers who were in that tunnel, fighting
22 for their lives I suspect is what they thought -- and they
23 may well have been fighting for their lives. And when I saw
24 the crowds outside doing the heave-ho against those law
25 enforcement officers -- who were doing their best to protect

1 the Capitol of the United States from attack, and saw the
2 heave-ho and saw Mr. Miller leading in that heave-ho to
3 press this massive crowd against these law enforcement
4 officers who were putting their lives on the line to protect
5 their nation, to protect the Capitol, to protect the members
6 of Congress, it was deeply, deeply disturbing.

7 So I'm not -- in raising this, I'm not suggesting
8 at all that I don't think that this was horrific, what
9 happened that day. And I've spoken before about the assault
10 on democracy that occurred that day, and how utterly mind
11 blowing it is what happened that day. I'm just trying to
12 put this all in a balance.

13 And as you know, and as the Government knows
14 because it's been making a lot of these judgments itself,
15 there's a very large continuum from people who wandered onto
16 Capitol grounds and did nothing wrong and went home to
17 people who committed ghastly crimes that day. And I just
18 have to figure out, using my best judgment, where Mr. Miller
19 falls on that continuum. And I think that his age and
20 perhaps drunkenness may weigh somewhat in that balance.

21 **MS. SCHESNOL:** And again, I do appreciate your
22 transparency. I will do -- I will go on to do my best to
23 convince you why the Government's position is the
24 appropriate one. I'll get back to his age for a moment. So
25 as Your Honor pointed out, as Mr. Miller points out, he has

1 all the support from family and friends. That's great. And
2 he said in his sentencing memo that his parents instilled
3 traditional values in him, such as treating others with
4 respect and giving to those in need. It's the Government's
5 position that because of that support, because he was taught
6 those values, he knew better. He knew better than to do
7 what he did on January 6th. And then he did go on to engage
8 in extraordinarily serious and ghastly crimes on January
9 6th, the likes of which we have never seen.

10 On January 6th, he knew better than to go on
11 restricted grounds of the Capitol, but he did it anyway.
12 And he knew better than to throw projectiles at police, but
13 he did it anyway. And he knew better than to encourage and
14 lead others into violence, but he did that anyway, at least
15 twice. He for sure knew better than to spray a fire
16 extinguisher directly on to brutally battled police doing
17 their job -- as the Court noted, protecting the Capitol, the
18 center of our government and democracy. But he did choose
19 to do those actions even though he had been taught better.

20 To address Mr. Miller's point in his sentencing
21 memo that he has no prior criminal history. Certainly he
22 doesn't, and that has been accounted for with a criminal
23 history category of one. He points out that he didn't plan
24 his crimes in advance. That has also been accounted for in
25 the crimes with which he was charged. Other people have

1 been charged with conspiracy, and Mr. Miller has not. So
2 that has already been taken into account by his criminal
3 history and where he ends up in terms of the charges against
4 him and the final offense guidelines.

5 Some supporters of Mr. Miller describe him as,
6 quote, a caring and understanding person, as someone who
7 treats everyone with dignity and respect. And he wants
8 credit for being that type of person. But the Government
9 submits that then he can't have it both ways. He can't say
10 that I'm this wonderful person who treats everyone with
11 dignity and respect at the tender age of 22, yet 22 is so
12 young and easily impressionable and things like that. The
13 Government submits it's one or the other. If he is going to
14 get credit for all his good character traits at the tender
15 age of 22, then he does need to also be held responsible for
16 the very egregious conduct and crimes in which he engaged.

17 And I'd like to point out, we've all been doing
18 this long enough that we have seen people in our courtrooms
19 all across the country who essentially never stood a chance;
20 who didn't have good role models; who didn't have people to
21 teach them good values; who didn't have the opportunity for
22 an education and employment. But Mr. Miller had all those
23 things and yet still chose to repeatedly batter police and
24 attack our democracy. I don't know what Mr. Miller will
25 come before you and say today. I presume he will express

1 remorse and regret. But the Government submits to you that
2 actions actually speak louder than words.

3 What are his actions? Some people turned
4 themselves in after January 6th. Mr. Miller did not. While
5 he did eventually plead guilty and take responsibility --
6 and he is being given credit for that, he didn't plead
7 guilty immediately. We have seen many other guilty pleas
8 entered prior to Mr. Miller's. He did not cooperate with
9 the Government pre-plea agreement, as some people did. And
10 as Your Honor pointed out, he did what was required of him
11 on pretrial release, and he did perform exemplary. But the
12 Government submits that served to keep him out of custody
13 pretrial.

14 Ultimately, he's trying to minimize his conduct,
15 saying that other people in the crowd were agitators, when
16 he was the agitator. And he does try to minimize his
17 conduct, blaming it on beer and marijuana. That's not
18 taking responsibility. That's not demonstrating real
19 remorse. That's deflecting responsibility.

20 With regard to the seriousness of the offense and
21 promoting respect for the law, everything about Defendant
22 Miller's actions defied respect for the law on January 6th,
23 2021. Only a sentence that reflects the gravity of his
24 actions will ultimately promote respect for the law. While
25 he's been described as a good person and hard working, he

1 didn't demonstrate any of that on January 6th. Who
2 demonstrated those qualities on January 6th and more? The
3 lawmakers and their staff who hid for hours as the riot
4 ensued, and yet still had the bravery and courage to
5 reconvene at approximately 8:00 p.m. and work until 3:00 in
6 the morning the next day to count the electoral college
7 vote.

8 Who demonstrated a benefit to the community? The
9 janitorial staff who cleaned up the mess that the rioters
10 made, and the members of the Architect of the Capitol who
11 worked for the next two weeks to make sure that the Capitol
12 building was ready for the inauguration on January 20th.

13 Who demonstrated a benefit to the community? The hundreds
14 and hundreds of police officers who were immeasurably
15 outnumbered by the mob that day when they fought for hours
16 on end in a medieval type battle to protect and serve.
17 Those people demonstrated generosity, work ethic, willing to
18 lend a hand in their commitment to the community.

19 As set forth in the sentencing memo, Officer
20 Fanone described MPD Commander Kyle: "Despite the confusion
21 and stress of the situation, observing the commander's
22 leadership, protecting a place I cared so much about, was
23 the most inspirational moment of my life. The bravery he
24 and others showed that day are the best examples of duty,
25 honor and service." In his sentencing memo, Defendant

1 Miller said fortunately he didn't hurt anyone. First, that
2 certainly wasn't for lack of trying. And second, it's not
3 entirely accurate.

4 Officers who were in the tunnel at the time that
5 Defendant Miller sprayed the fire extinguishers were all
6 interviewed, and they described that chemical from the fire
7 extinguisher as burning their skin or eyes, and needing to
8 use water to rinse themselves off which took them away from
9 being able to protect the Capitol at the lower west tunnel.
10 And in our sentencing memo we submitted an exhibit, No. 15,
11 that shows one of the Capitol police officer's helmet to
12 show how it was covered in the chemicals. Mr. Miller's
13 conduct caused the police to let their guard down allowing
14 others to beat and brutalize them. And we cannot even begin
15 to imagine the psychological trauma inflicted on the
16 workers, both inside and outside the Capitol.

17 I spoke with an MPD officer who was in the tunnel
18 at about 4:10 to 4:15. I don't believe he was in the tunnel
19 at the time of the fire extinguisher. But just to give you
20 an idea of what the officers went through, when I was
21 talking to that officer, I said: "How did you go on? I
22 mean, physically how did you have the strength to fight for
23 hours on end?" And his response to me was: "What choice
24 did we have?"

25 Your Honor, we believe a 51-month sentence

1 promotes respect for the law, and it also will provide both
2 specific and general deterrence. If Defendant Miller is not
3 sentenced commensurate with the gravity of his crimes, then
4 what message will that send? What message will that send to
5 Mr. Miller in particular and the public generally? The
6 message will be that if you have the benefit of a good
7 upbringing and every advantage to succeed, then when you
8 commit serious acts of violence you will only suffer mild
9 consequences.

10 As Your Honor stated when sentencing Defendant
11 Hodgkins, when you quoted President Reagan: "In the eyes of
12 many in the world, this every four-year ceremony we accept
13 as normal is nothing less than a miracle." Without a
14 sentence to deter Miller and others, that miracle will be
15 harder and harder to achieve. That miracle will become more
16 and more tarnished. As Your Honor said, we are now all
17 fearful about the next attack in a way we never were, and it
18 makes us question whether our democracy is less secure than
19 we had previously believed. Let's ensure that Mr. Miller,
20 and others like him, are deterred from committing this type
21 of brutality and attack on the democracy we saw January 6th
22 by imposing a 51-month sentence.

23 This sentence would also avoid an unwarranted
24 sentencing disparity. As I mentioned, tens of thousands of
25 people came into Washington, D.C. on January 6th, but they

1 did not all go to the Capitol. And for the thousands that
2 did go to the Capitol, they did not all engage in violence.
3 Defendant was wasn't agitated by others, he was the
4 agitator; he sought out the violence. He encouraged others
5 to do the same. He watched officers being assaulted in the
6 tunnel, and instead of being horrified and turning away, he
7 chose to draw himself closer. He tries to draw a
8 distinction between himself and some others who were
9 sentenced along the lines of what the Government asked for
10 here, specifically citing Thompson and Creek. He says the
11 difference is he didn't enter the Lower West Terrace tunnel
12 or engage in hand-to-hand combat. Your Honor, what is being
13 called a tunnel is essentially an entrance with an arched
14 ceiling approximately 15 feet long. To say that he didn't
15 enter the tunnel is essentially a distinction without a
16 difference.

17 As you could see in the exhibits, Mr. Miller was
18 just feet from the threshold, and he threw objects at the
19 police. He counted one, two, three, push in the heave-ho
20 effort, and ultimately sprayed a fire extinguisher directly
21 into that tunnel. That's essentially hand-to-hand combat,
22 maybe even worse because of the weapons that he used. And
23 it allowed other rioters to assault police when the police's
24 defenses were compromised.

25 In the Thompson case, as pointed out in the

1 Government's sentencing memo, Mr. Thompson was sentenced to
2 46 months. And as noted, that was largely because
3 Mr. Thompson turned himself in, which Mr. Miller did not.
4 And Mr. Thompson provided information at multiple debriefs
5 prior to entering into a plea agreement, which is another
6 thing Mr. Miller did not do. So it is the Government's
7 position that Mr. Miller's sentence should be greater than
8 Defendant Thompson's. Also, with regard to Creek, that can
9 also be distinguished from Defendant Miller, because Creek
10 did not use a deadly or dangerous weapon as Mr. Miller did.
11 And Creek was not charged with the 1512 obstruction of an
12 official proceeding.

13 **THE COURT:** Although Creek did punch an officer,
14 at least on more than one occasion, knocked the officer to
15 the ground where the officer then was kicked as he tried to
16 get up off the ground. That was pretty disturbing conduct
17 there as well.

18 **MS. SCHESNOL:** Agreed. Your Honor, the Government
19 does not suggest that any of the conduct of the people who
20 are charged with crimes was anything less than abhorrent.
21 And while --

22 **THE COURT:** I guess I have to say, I don't know
23 the answer to whether, if I were a law enforcement officer,
24 I would feel more or less threatened with someone shooting a
25 fire extinguisher and throwing some batteries at me or

1 punching me and knocking me to the ground where I'm then
2 kicked on the ground by a mob. But that was a 27-month
3 sentence, so I'm trying to get in my mind how one balances
4 these and figures out where Mr. Miller fits on the
5 continuum.

6 **MS. SCHESNOL:** Yes, and while punching and kicking
7 an officer is never acceptable, is certainly not okay,
8 ghastly indeed, Mr. Miller did use a dangerous or deadly
9 weapon with the fire extinguisher. So for that reason, we
10 do believe that a greater sentence is warranted.

11 **THE COURT:** It's probably fair to call it a
12 dangerous weapon than a deadly weapon. I suppose if you
13 like put it directly in someone's face and they couldn't
14 breathe, maybe it could kill them. But as used in this
15 fashion, it wasn't a deadly weapon, it was a dangerous
16 weapon.

17 **MS. SCHESNOL:** Fair enough, Your Honor, yes. So
18 the Government asked the Court to look to similarly situated
19 defendants, Wilson and Palmer. Defendant Wilson was
20 sentenced to 51 months for the exact same charges that
21 Mr. Miller has pled to. Defendant Palmer -- and as Your
22 Honor noted, you watched all the videos in their entirety,
23 Mr. Palmer can be seen in the video picking up the very fire
24 extinguisher that Defendant Miller puts down just seconds
25 later, emptying the contents of that fire extinguisher and

1 then throwing it into the tunnel. Defendant Palmer --
2 that's Exhibit 13 in full. Defendant Palmer pled to 111(b),
3 which Mr. Miller was charged with and he was able to plead
4 to the 111(a). Mr. Palmer was sentenced to 63 months. I
5 will note that is because he did not get the three levels of
6 acceptance of responsibility. So we are not suggesting that
7 63 months is appropriate. The Government's recommendation
8 of 51 months is a guideline sentence. And while it is at --

9 **THE COURT:** Although Palmer got the bottom end of
10 the guidelines, and you're suggesting the high end of the
11 guidelines, right? Palmer's guidelines was range was 63 to
12 78 months.

13 **MS. SCHESNOL:** Because he did not get acceptance
14 of responsibility. If he had, then his guidelines --
15 Defendant Palmer's guidelines would have been 46 to 57
16 months for the 111(a), which is the midrange of that
17 guideline. And so that is where the Government comes up
18 with the 51-month sentence. So while it's the high end of
19 the guidelines, here it would be a midrange under a 111(b).
20 And of course, Your Honor is able to consider the relevant
21 conduct of using the dangerous instrument. So that is how
22 the Government got to its recommendation.

23 So I will wrap up finally, I will conclude. On
24 January 6th, 2021, Mr. Miller, a 22-year-old man, made a
25 series of choices -- not one choice, a series. And at any

1 time he could have stopped his criminal conduct, he could
2 have turned away. And in each of these choices, he brought
3 himself closer to the Capitol and increasingly violent.
4 Instead of being turned off by what he saw, he chose to
5 purposefully move closer and closer to the chaos. Instead
6 of leaving, he made the deliberate choice to engage in the
7 medieval battle taking place. And in the thick of the
8 combat, he made the choice to encourage others to join in
9 the brutality. He made the deliberate choice to participate
10 in the attack by assaulting police -- most egregiously,
11 ghastly and dangerously assaultive conduct, by picking up a
12 fire extinguisher and spraying the contents from very close
13 range directly into the Lower West Terrace tunnel onto the
14 police officers guarding the Capitol, the police trying to
15 protect the men and woman who work inside the Capitol, and
16 the police defending our democracy.

17 And for those reasons, the Government submits that
18 the appropriate sentence for his -- for Defendant Miller's
19 multiple crimes is 51 months incarceration, three years of
20 supervised release, \$2,000 in restitution and the required
21 special assessment. Thank you for your time and attention.

22 **THE COURT:** All right, thank you. Mr. Balarezo.

23 **MR. BALAREZO:** Thank you, Your Honor. Matthew
24 Miller completely repudiates his conduct of January 6th,
25 2021. Prior to that time, within months, he had been

1 following the news. He had been following the lies that had
2 been coming from President Trump at that time and others and
3 his followers regarding a stolen election. He had gone down
4 a path where he was associating with some unsavory
5 characters. He was going down a path where he as alienating
6 himself from family that had always been there for him.

7 On January 6th, he thought it would be cool to be
8 part of history, and he went down there to protest. He
9 initially did go down towards the rally that was happening
10 on the Ellipse. However, he did not enter the rally because
11 it was too crowded, and he hovered around the fringes where
12 he could still hear the rhetoric and the lies that were
13 being spewed. Unfortunately, he also went down to the
14 Ellipse to the Mall high on marijuana and drunk on alcohol.
15 With his judgment distorted, he did follow the crowd. He
16 was not just a tourist --

17 **THE COURT:** How much marijuana did he smoke and
18 how many beers did he consume?

19 **MR. BALAREZO:** Your Honor, we included a picture
20 in the sentencing --

21 **THE COURT:** I saw there was a case of beer he was
22 carrying, but I have no idea how many beers he gave to other
23 people to drink, how many he threw at the police and how
24 many he actually consumed himself.

25 **MR. BALAREZO:** My understanding is that he

1 consumed the great amount of that case of beer that he
2 was --

3 **THE COURT:** Can you tell me how many beers he
4 consumed? That makes a difference to me.

5 **MR. BALAREZO:** I could ask him specifically.

6 **THE COURT:** Yeah, I would like to know how many
7 beers and how much marijuana he consumed.

8 **MR. BALAREZO:** Sure, if the Court will give me a
9 moment.

10 **THE COURT:** Yes, thank you.

11 (Mr. Balarezo confers with Defendant Miller)

12 **MR. BALAREZO:** Your Honor, as I noted, Mr. Miller
13 had been carrying an 18-pack of beer. He indicates that he
14 drank at least 10 of the beers, had smoked from a joint that
15 was being passed around. And also, he said that there was
16 liquor and other alcohol that was being passed around
17 amongst the crowd. So he participated in all of those
18 activities.

19 **THE COURT:** Okay.

20 **MR. BALAREZO:** Now, with respect to his conduct on
21 that date, he does not recall throwing the batteries. And
22 he told the Government that when we met with them a couple
23 weeks ago. He barely recalled throwing the beer can at the
24 police. He does recall the fire extinguisher. However,
25 what he does recall specifically about that is when he set

1 it off, something in him clicked. Something said to him
2 you've crossed the line, you've committed a crime, you're
3 injuring people, and he did put the fire extinguisher down.
4 Which, as the Government has indicated, was subsequently
5 picked up by Mr. Palmer, fully discharged at the officers,
6 and then he used it to assault them by throwing it at them.

7 Your Honor, Matthew Miller is anything but the
8 person who appeared on January 6th. He admits that the
9 events of January 6th were unparalleled in American history,
10 as the Government has said, and that they were horrific for
11 what it meant as an attack on the very foundations of our
12 system of government. He is horrified by the videos that he
13 saw here today. He has seen them before, but seeing them in
14 a courtroom where he's facing prison time has really
15 horrified him. I spoke with him as the Government was
16 showing these videos, and he described that to me.

17 Now, Matthew Miller is not the Matthew Miller that
18 was seen on January 6th. With respect to the factors that
19 the Court needs to consider, his history and characteristics
20 I think are the most important here. He is the second son
21 of Michelle and Kenneth Miller, who instilled in him the
22 traditional values of treating others with respect and
23 giving to those in need. He should have heeded those
24 teachings on January 6th. However, because, as I mentioned,
25 he had been going down the wrong path associating with

1 various individuals that he shouldn't have, drinking,
2 smoking, doing things he shouldn't have, he started to stray
3 from those beliefs. He started to follow the lies on TV.
4 He started to follow the lies of Donald Trump saying that
5 the election was stolen.

6 **THE COURT:** How do I know that these are his
7 views? I mean, he hasn't done anything that sort of
8 demonstrates to me that he's seen the light here in some way
9 and realizes that he was led astray. I understand it's your
10 job as counsel to present the case to me in the light most
11 favorable to your client. But what evidence do I have to
12 support what you're saying to me, and that he realizes now
13 that he was hanging out with the wrong people, and the
14 alcohol had taken a grip on him, and that he was unduly
15 influenced by watching television and hearing lies on
16 television? How do I know that that really is how he feels
17 today?

18 I mean, I've certainly had sentencings where
19 people are sincere about that. I've had sentencings where
20 people go out and say something -- they tell me that, I
21 believe it, and then I read in the newspaper the next day
22 they're saying something that's just the opposite in the
23 newspaper.

24 How do I know in Mr. Miller's case that he really
25 believes what you're telling me?

1 **MR. BALAREZO:** Well, Your Honor, first of all, you
2 will hear from Mr. Miller himself. And I think you will
3 take his words to heart about how he feels today after
4 January 6th. Additionally, as the Court already indicated,
5 while he was on supervised release -- excuse me, on pretrial
6 release when the Court allowed him to -- or gave him the
7 benefit of leaving the D.C. jail and being free again, he
8 immediately went back to the Matthew Miller that he was
9 before. He got a job. He worked hard. He stayed home. He
10 stayed out of trouble. He stopped drinking. He stopped
11 smoking marijuana. That's the evidence that the Court has.
12 I mean, I understand that it's just the words that I'm
13 offering. But as an officer of the court, and from my
14 conversations with Mr. Miller, I can tell you that that's
15 what he decided to do. And the reason he decided to do it
16 was because the Matthew Miller of January 6th is not the
17 Matthew Miller who stands before the Court today.

18 Now, as the letters that we have submitted with
19 the Court indicate, Mr. Miller is a good man. He is a hard
20 worker. He's there for everyone. He has always supported
21 other people. He's always been there lending a helping
22 hand. The Government indicated that this is not a case
23 where -- cases that normally come before the Court where
24 individuals do not have the benefits that Mr. Miller did and
25 committed crimes. But again, I think that serves to

1 demonstrate that what happened on January 6th was an
2 aberration in Mr. Miller's life. He has never been in
3 trouble with the law before, except for one speeding ticket
4 that he received.

5 So notwithstanding the fact that he had the
6 benefits of a good family, of good familial support, the
7 Court can see that what happened there was just a one-off.
8 It's not something that Mr. Miller would repeat. He has
9 learned his lesson. He has been sitting in jail now for
10 over four months. He sits there every night wondering and
11 asking himself why did I act that way, why did I do what I
12 did, why did I throw the batteries, why did I discharge the
13 fire extinguisher. And perhaps he still has to answer that
14 to himself, but he will -- he is on the road to completely
15 repudiate what he did on January 6th.

16 **THE COURT:** And I have to say, in the same way I
17 was trying to be as transparent as I could with government
18 counsel, I want to do the same with you. I think almost as
19 equally troubling to me as the fire extinguisher -- which is
20 pretty troubling when you see those law enforcement officers
21 in that tunnel being gassed as they were stuck in that
22 tunnel, the heave-ho is really troubling to me. I mean, he
23 was leading a mob of people pushing back and forth to crush
24 these officers who were in this tunnel. You know, it was
25 not heave-ho against a chain link fence with nobody on the

1 other side of it, it was a heave-ho of a mass of humanity
2 that he was leading that was pressing up against a handful
3 of officers who were protecting the Capitol. That, to my
4 mind, is almost frankly as troubling as the fire
5 extinguisher.

6 I mean, I try and put myself in everyone's
7 position as a sentencing judge. And when I try and put
8 myself in the position of those officers against that, I can
9 only imagine that they feared for their lives hearing this
10 crowd going heave-ho. And they were the only barrier
11 between this mass of people, who were inflamed beyond
12 belief, and the United States Capitol and the members,
13 including members who were a couple dozen feet away inside
14 the Capitol building. And so that is also deeply, deeply
15 troubling to me.

16 **MR. BALAREZO:** Your Honor, and it should be. His
17 conduct overall that day for those specific scenes of him,
18 as the Court said, leading the crowd are completely uncalled
19 for. I don't even know what the word would be for a
20 situation like that. But Mr. Miller himself feels even
21 worse, because he was raised to care about law enforcement,
22 to respect law enforcement, to look for them in a time of
23 trouble. Not to attack them, not to assault them. So
24 again, his behavior on that day comes as a complete
25 aberration to his regular law abiding life. I would

1 hesitate to call him a leader. He was definitely one of the
2 individuals who was stirring up the crowd, at least in that
3 particular video that the Court saw.

4 **THE COURT:** I think that's fair. I didn't mean to
5 suggest that he was a leader, but he certainly was coaching
6 the crowd on in the process and doing the one, two, three,
7 heave-ho -- maybe not as the captain of the team, but as an
8 active member who was coordinating the shoving back and
9 forth against the police officers.

10 **MR. BALAREZO:** I guess you could call him a
11 cheerleader, Your Honor, at that point; not the captain of
12 the team, but as a cheerleader trying to get the crowd to do
13 what he was doing himself.

14 **THE COURT:** Right.

15 **MR. BALAREZO:** We would accept that. We have
16 indicated in our sentencing memorandum that Mr. Miller never
17 set out to act in the way that he did. He went there merely
18 for the protest. He did not prepare, as some other
19 defendants did, with knives and with mace and pepper spray
20 and things of that nature. He went -- based on his
21 inebriated state, his high condition, he acted as he did and
22 followed the crowd. That does not excuse him in any way.
23 But as the Court is aware of, there have been studies on mob
24 mentality where the crowd starts acting and people just join
25 in because they don't want to be left out, they want to be

1 part of the action. And that's what happened in this
2 particular case, Your Honor.

3 The family members who have written to the Court
4 almost unanimously note that Matthew is a good person who
5 cares about others. The Court can see, again, from the
6 number of people here -- his parents are here, friends,
7 family to support him. They are here to show the Court that
8 Matthew Miller has a support system; that they will do
9 everything in their ability to make sure that he does not
10 repeat his conduct of January 6th. Matthew Miller has
11 suffered already. That's not to say that he shouldn't be
12 incarcerated for a period of time. But he lost his job,
13 which was probably the least of it. He's lost his
14 reputation. And more importantly, now he's losing his
15 freedom.

16 **THE COURT:** With respect to the question of
17 unwarranted sentencing disparity, I understand there are
18 differences between Mr. Miller and some of the others. And
19 as I've telegraphed already, I think his age is a big part
20 of it, and perhaps his inebriated state. Although I still
21 don't know over what period of time he was drinking the
22 beers and don't entirely understand that. But even
23 accepting that, and even accepting, okay, I should consider
24 Mr. Miller's age, and the fact that he doesn't have any
25 significant interaction with the law otherwise, and is hard

1 working, the sentences in these other cases are way higher.
2 It's not just a little bit higher than what you're asking me
3 to impose here. You're asking me for a year and a day
4 which, with good time, ends up being about 10 months. With
5 the time that your client has already served, it ends up
6 being maybe another five months.

7 But when you compare that sentence to the
8 sentences in the other cases, I think the lowest sentence in
9 a potentially similar case was the case in Judge
10 Friedrich -- in front of Judge Friedrich which was at 27
11 months. But it was still a guidelines sentence, and it was
12 actually in the middle of the guidelines. The Palmer case
13 was 63 months. I understand that case had some factors that
14 make it worse than this case. In the Languerand case in
15 front of Judge Bates, he actually varied downward, but he
16 varied downward from 46 months to 44 months. And then there
17 are a number of cases in front of Judge Lamberth which were
18 in the 40 plus month range.

19 So I guess I'm interested in hearing your thoughts
20 on how, even considering the type of mitigation that you're
21 talking about, I get from similar sentences that are in the
22 40-month range down to a year and a day in this case.

23 **MR. BALAREZO:** Your Honor, the majority of the
24 cases that the Government cited in their disparity argument,
25 again, involved cases where the individuals acted in a way

1 that I would say is much more -- much worse than Mr. Miller.
2 They actually engaged the police in hand-to-hand combat, as
3 the Court indicated in the Creek case, where he punched the
4 police officer in the face I believe and kicked him while he
5 was down. And all the other individuals also acted in that
6 particular way. That's not to minimize in any way
7 Mr. Miller's conduct here with the batteries and the beer
8 can and the fire extinguisher.

9 But in this case, as the Court noted, Mr. Miller
10 is a young man who, perhaps not the most mature at the time
11 in question, made decisions that a normal older individual
12 with more life experience would not have made. And in his
13 situation, by incarcerating him for a period of 51 months as
14 the Government recommends, it would be a sentence that's
15 much greater than necessary under the guidelines -- or under
16 the sentencing statute. It would not serve Mr. Miller in
17 any way -- will not make him a better person. He has
18 already learned his lesson, as you will hear from him
19 directly. It will not make him not do these things again,
20 because he's already learned.

21 He's indicated to the Court that he's amenable to
22 following the Court's instructions, as he did during his
23 release. He did everything that was expected of him. He
24 demonstrates his respect for the law. And he has not
25 engaged in any conduct that led him to being where he was on

1 January 6th. So for that reason, I think that the Court can
2 vary downward to a sentence of 12 months and a day.

3 Now, Your Honor, with respect to the seriousness
4 of the offense, there's no doubt that what happened on
5 January 6th was a serious event. But the Court should
6 consider Mr. Miller's individual actions and not the mob as
7 a whole. As a whole, the mob acted in a way that was
8 detrimental to our system of government. It shook the very
9 foundations of government. Mr. Miller played but a very
10 small part in that. His respect for the law has been
11 demonstrated -- again, I hate to repeat myself, by his
12 behavior during his release before sentencing, before he
13 pled guilty.

14 Matthew has never been in trouble with the law
15 before, Your Honor. There's nothing in his past that would
16 indicate that he will repeat his behavior of January 6th. A
17 federal conviction is always going to follow him. He's
18 going to have trouble when he applies for jobs. He's going
19 to have trouble when he applies to school. He's not going
20 to be able to own any weapons. He understands that the
21 consequences of his actions have already had a severe impact
22 on him. Further incarcerating him is just going to be
23 warehousing him without serving any purpose.

24 He also understands that his actions have
25 consequences, and he's been reminded every day while he's

1 been over in Alexandria that his actions were not
2 appropriate. And he promises the Court -- and I am anxious
3 for the Court to hear him, because he did share with me what
4 he wrote for the Court. And I think for a 22-year-old man,
5 it is a very well-written letter. As the PSR noted, Your
6 Honor, there is no perceived benefit to either the defendant
7 or to society to be derived from an extensively punitive
8 sentence. And that's what we're aiming at: A long prison
9 sentence for Mr. Miller would not serve any purpose in this
10 particular case. It's not going to rehabilitate him,
11 because he doesn't need rehabilitation. What he needs is
12 treatment for his drug addiction and for his alcohol
13 addiction. And I think if the Court were to address those
14 two particular issues --

15 **THE COURT:** Does he really have a drug addiction?
16 I think you've told me for the past year or more he hasn't
17 used marijuana. So does he really have a drug addiction?

18 **MR. BALAREZO:** Well, Your Honor, I think if he
19 gets treatment, it would make sure that he does not go back
20 to it. He hasn't, from what I understand, partaken in
21 marijuana, and he stopped drinking as he had been before.
22 So I think if those two issues were addressed while he was
23 in the BOP, that that would be a solution to his problem.
24 Because that's -- again, without making excuses, the fact
25 that he was high and drunk on January 6th was a big part of

1 why he acted the way he did.

2 And with respect to the sentencing disparities,
3 again, Your Honor, we'd just indicate that those individuals
4 acted in ways that were much more culpable than Mr. Miller.
5 There are degrees of assault, if you will. But being in
6 there in the medieval battle, as the Government called it,
7 hand-to-hand with police officers, you can see where those
8 individuals merit a higher sentence. Mr. Miller's acts
9 amount to minutes, and his life should not be defined by
10 those particular minutes where he acted that way, Your
11 Honor. For those reasons, we think a sentence of a year and
12 a day is sufficient, but not greater than necessary.

13 **THE COURT:** So with respect to the disparity
14 issue, I'm looking at -- I actually went and pulled the
15 sentencing memoranda in several of the cases, and I'm
16 looking at the case involving Mr. Palmer. The description
17 of Mr. Palmer's actual conduct is he cheered on the
18 violence, at one point raising his arm up in the air in
19 support, as rioters shoved a flagpole into the tunnel.
20 Mr. Palmer was still at the railing watching as one MPD
21 officer was pulled out of the tunnel. He didn't do it
22 himself, though.

23 **MR. BALAREZO:** Your Honor --

24 **THE COURT:** He threw a plank like a spear, and it
25 landed on top of the riot police shields. Then he sprayed

1 the fire extinguisher that Mr. Miller had dropped. He then
2 threw the fire extinguisher at the shields that the police
3 officers were holding in front of them. He was still
4 holding a long piece of scaffolding wrapped in canvas, and
5 shoved it at the legs of the police officers. So this was
6 underneath the door or underneath the shields he shoved this
7 plank in. And he was sentenced to 63 months I think.

8 **MR. BALAREZO:** I believe that's correct, Your
9 Honor.

10 **THE COURT:** So I may see some slight differences
11 there, but I'm not sure I see huge differences between his
12 conduct and Mr. Miller's conduct.

13 **MR. BALAREZO:** Your Honor, again, that's an
14 individual who was much older than Mr. Miller. He, quite
15 frankly, should have known better. And he also engaged in
16 much more violent conduct with the police. As I inserted
17 into our sentencing memorandum, he not only threw a wooden
18 plank at the officers, he sprayed the fire extinguisher; he
19 threw the fire extinguisher at the officers; he pepper
20 sprayed -- he was pepper sprayed; and eventually he was shot
21 by probably a rubber bullet, which would indicate the danger
22 with which the police officers found him, that they had to
23 take a shot at him. He found a 4- to 5-foot pole with which
24 he assaulted a second group of police officers. So his
25 conduct we do believe is different from Mr. Miller's. I

1 think the degree to which these individuals who engaged in
2 the hand-to-hand combat is much greater than an individual
3 like Mr. Miller who stood back and fired the extinguisher,
4 not to minimize --

5 **THE COURT:** That may be right, but the question is
6 whether it's five times worse.

7 **MR. BALAREZO:** We believe it is some degree more
8 worse than Mr. Miller's, and therefore his sentence should
9 be commensurate with that particular thought in mind, Your
10 Honor.

11 **THE COURT:** Okay, thank you.

12 **MR. BALAREZO:** So for those reasons, we ask for
13 the sentence as recommended in the sentencing memorandum,
14 Your Honor.

15 **THE COURT:** So who would you like me to hear from
16 now? Would you like me to hear from Mr. Miller? Are there
17 others you'd like me to hear from?

18 **MR. BALAREZO:** Well, there are others, but we had
19 that conversation at the bench. I don't know if the Court
20 has decided.

21 **THE COURT:** So what I'm inclined to do is let me
22 hear from Mr. Miller. If there's anything else you all want
23 to raise, I'm happy to hear that. I'm then going to take a
24 break to think about this. And maybe I'll ask that everyone
25 step out of the courtroom when we take the break, I'll come

1 back and I can hear from the couple of individuals you'd
2 like me to hear from. And then I'll invite everyone back in
3 and I can impose sentence.

4 **MR. BALAREZO:** Thank you, Your Honor.

5 **THE DEFENDANT:** Good afternoon Your Honor. As you
6 surely know, every case has various viewpoints and
7 narratives, and mine is no different in that regard. I
8 stand before you today because for a time, I was weak and
9 terribly misguided. I was at a point in my life where I was
10 falling down the wrong path and making the wrong decisions.
11 I was drifting away from my family and friends, hanging out
12 with the wrong crowd, and failing due to my own addictions
13 and indulgences. I'm ashamed to have been so swayed by my
14 shortcomings, beliefs and naivety.

15 Since that day, I've felt an overwhelming sense of
16 guilt. I put our first responders lives' in danger, and it
17 truly weighs on me. Being the curious and explorative
18 person I've always been, I found myself near the front line
19 that day. Sadly, I partook in some idiotic actions that
20 have changed my life forever. Seeing pictures and videos of
21 my inebriated behaviors that day sends shivers down my
22 spine, and reminds me of the precious lives I put in harm's
23 way on that gloomy January day. It is not fair for me to
24 blame my actions on drugs, alcohol or the momentum of the
25 crowd. I have nobody to blame but myself. My intentions

1 that day were to wear a wild outfit, drink some beers and
2 have a good time. I never thought things would go the way
3 that they did.

4 I would also like to clarify the flags that I wore
5 that day were meant to be seen as a symbol for states'
6 rights, and protection of the people from government
7 overreach, without any racial connotation. For anyone that
8 interpreted them as otherwise, I truly apologize as that was
9 not my intentions. I feel like I will spend the rest of my
10 life striving to make amends with my family, friends and my
11 community.

12 Despite the usual heartaches of incarceration,
13 I've come to realize it as an opportunity to reexamine
14 myself, formulate my goals and find my way back to God.
15 Over the past year, up until my recent re-incarceration, I
16 was constantly working to fix my life and get back on the
17 right path. I gained control over my past habits. I've
18 rekindled relationships; complied with my house arrest
19 terms; found a woman to love; and created plans for my
20 future success and responsibilities as a contributing member
21 of society. Throughout these three months, I've continued
22 to prepare as well. Whether I am writing notes for a
23 business plan, cooking dinner for my peers at night or
24 helping my bilingual friend study for his GED test, I know
25 that I am back on the track I was meant to be on. I've had

1 the opportunity to be stripped of everything that I've
2 thought defined me. I've come to realize I'm not defined by
3 political ideologies or my mistakes, but by the most
4 important things in my life, the friends and family that I
5 love.

6 In hindsight, my political affiliation was
7 shortsighted and baseless. Finding myself in the position
8 of being a convicted felon, I lost important rights and some
9 great job opportunities. With this in mind, it has only
10 motivated me to pursue my entrepreneurial dreams and
11 overcome the tragic situation that I've brought upon myself.
12 Upon release, I plan to create my own business, reeducate
13 myself and continue to chase the dreams of my childhood.

14 This experience will continue to shape and guide
15 my life forever. Whether it is the thoughts and images of
16 the officers' lives I put in danger or the tears that I saw
17 streaming down my mother's face as federal agents took me
18 away, they will at least keep me from making such a mistake
19 ever again. With these events and consequences in mind, and
20 my parents' constant reminder to do the right thing, I will
21 reestablish my purpose in life and society. I know God is
22 putting me where I need to be. All I can do is apologize to
23 my family and my community, and ask for your mercy today.
24 Thank you, Your Honor.

25 **THE COURT:** Thank you. Anything else,

1 Mr. Balarezo?

2 **MR. BALAREZO:** No, Your Honor.

3 **THE COURT:** Can I ask counsel to go to the phones,
4 please.

5 (Sidebar bench conference placed under separate cover)

6 **THE COURT:** Okay, we're going to take a break now.

7 (Off the record at 4:04 p.m.)

8 (Back on the record at 4:37 p.m.)

9 **THE COURT:** Mr. Balarezo, was there anyone else
10 who you wanted to address the Court?

11 **MR. BALAREZO:** No, Your Honor.

12 **THE COURT:** Anything else from anyone further?

13 **MS. SCHESNOL:** Your Honor, I have a few comments,
14 if you'd be willing to hear them?

15 **THE COURT:** Yes, you're welcome to.

16 **MS. SCHESNOL:** Okay, thank you. I'll do my best
17 to be brief. With regard to the cheerleader analogy that
18 was made, cheerleaders don't go onto the field, they cheer
19 from the sidelines. And Defendant Miller, he was on the
20 field. With regard to the defendant who punched and kicked
21 an officer, definitely terrible, but that's one officer.
22 Defendant Miller unleashing that fire extinguisher affected
23 many officers. Engaging in the heave-ho affected many
24 officers.

25 With regard to the intoxication, Mr. Miller wasn't

1 so intoxicated that he couldn't throw a beer can 30 yards.
2 He wasn't so intoxicated that he couldn't use a barrier as a
3 ladder and climb up it. He wasn't too intoxicated to say
4 one, two, three, push over and over. And he wasn't too
5 intoxicated to press the lever on the fire extinguisher.
6 The Government feels that at 22 years of age, there are many
7 22-year-olds out there who are going to see and hear what
8 sentences are imposed in these cases. And this should be --
9 the sentence imposed here should serve as a deterrence to
10 those other 22-year-olds.

11 And finally, the Government believes that the
12 guidelines are terribly important, because a sentence
13 shouldn't really rely on whether a defendant is in
14 Washington, D.C. or Phoenix, Arizona or is before a judge in
15 Courtroom 8 or a judge in Courtroom 10. And for all those
16 reasons, we are asking for the guidelines sentence that we
17 have set forth. Thank you.

18 **THE COURT:** Mr. Balarezo, anything further?

19 **MR. BALAREZO:** No, Your Honor.

20 **THE COURT:** So I've assessed the particular facts
21 of this case in light of the relevant 3553(a) factors,
22 including the sentencing guidelines, and I want to provide
23 some remarks for the record and for you, Mr. Miller, about
24 my consideration with regard to the proper sentence in this
25 case, and the nature of the offense and your history and

1 characteristics.

2 Let me start with my consideration regarding the
3 nature of the offense. This was a singular and
4 extraordinarily disturbing event in U.S. history. And it's
5 not so often in a sentencing when a court talks about the
6 history of the nation in describing a crime. And I
7 understand that a felony conviction here is something that
8 will be on Mr. Miller's record for the rest of his life.
9 But it's also true that the events that occurred at the
10 Capitol on January 6th will be in the history books that our
11 children read, our children's children read and their
12 children's children read. It's part of the history of this
13 nation, and it's a stain on the history of this nation.

14 It was not just an assault on law enforcement
15 officers who were there protecting others. It wasn't just
16 an assault on law enforcement officers who were protecting
17 the United States Capitol. It was an assault on democracy
18 itself. It was an assault that was viewed around the world
19 by millions and millions of people who were astounded that
20 in a country that is founded on principles of democracy,
21 that is founded on the notions of peaceful transfer of
22 power, that a mob could engage in the type of conduct that
23 occurred that day. And so when I say it's a singular event
24 in U.S. history, that is not hyperbole in any respect.

25 Every time I think about the events of that day, I

1 feel sickened by what happened that day. I listened to the
2 videos that the Government both presented to the Court in
3 advance and played in court today -- and I don't think I
4 heard Mr. Miller doing this, but perhaps he did, but I
5 didn't hear him doing it. But the crowd was shouting "USA,
6 USA" as they were attacking the United States. And the word
7 ironic doesn't do enough to capture what that represents.
8 This mob -- and when you look at these pictures, it was a
9 mob that went on and on and on attacking the United States
10 Capitol, attacking democracy, attacking the peaceful
11 transition of power in this country, attacking everything
12 this country stands for. And they had the nerve to be
13 shouting "USA, USA" as though they were cheering the country
14 on at the moment they were attacking the country. And it is
15 just shattering that that could occur in this nation.

16 And I understand Mr. Miller's argument to the
17 Court that he was misled by lies that were told to the
18 public about that election. But lies like that require not
19 only someone who's willing to lie to the American public
20 about something like that, but people who are anxious and
21 willing to hear that lie, because it was so evidently
22 untrue. And it took people who were so desperate or so
23 wanted to hear that as their answer, that they were willing
24 to put that aside. And so it's not simply that lies were
25 told to the people who were there that day, but it's that

1 there were people who were hungry for that lie to feed their
2 desires; to put aside, quite frankly, a love of country, a
3 love of democracy in favor of political affiliation and the
4 vote they cast which they thought should have trumped the
5 vote of the majority of the American public.

6 And I was struck by one thing Mr. Miller said in,
7 quite frankly, his moving statement to the Court. And he
8 said that he no longer regards himself to be defined by
9 political affiliation. And that is an important point in
10 that I would hope that we all see ourselves defined as
11 Americans first, and not on one team or the other in this
12 country; and that our allegiance is to our nation and to the
13 institutions that make this country so strong.

14 So that's all to say that the nature of the
15 offense here was one of singular damage to our nation. And
16 although Mr. Miller was not a leader in the sense that he
17 organized others or that he was involved in advanced
18 planning, but he was front and center in that assault. And
19 I don't think there was any portion of the assault on the
20 Capitol that was as dangerous as the assault that took place
21 on the tunnel on the Lower West Terrace, with the law
22 enforcement officers in that space trying to protect the
23 Capitol from attack.

24 And Mr. Miller, in firing the extinguisher in
25 there, I think as Ms. Schesnol just said a moment ago,

1 didn't attack a single officer, but attacked all the
2 officers who were in there. And I watched the video, and
3 they were coughing and wheezing and running back and giving
4 up their positions guarding the Capitol because they were
5 attacked. And you could hear the crowd cheer as Mr. Miller
6 did this with their approval that he had launched his own
7 separate assault on the officers. And although he did put
8 the extinguisher down at some point, he fired it for a not
9 insignificant period of time. And he created the example:
10 Someone else then picked it up and fired it, and then threw
11 it at the officers.

12 As I said earlier as well, I'm also perhaps
13 equally disturbed by the heave-ho, and Mr. Miller counting
14 "one, two, three, heave-ho, heave-ho" to press this huge
15 crowd up against these officers, who were doing nothing more
16 than their jobs in trying to protect the Capitol, trying to
17 protect the people who were in the Capitol, trying to
18 protect democracy. There was also the throwing the
19 batteries, the throwing the beer can, all of which was
20 deeply disturbing.

21 And I understand that Mr. Miller may have been
22 intoxicated. I do think that it's the defense's burden to
23 prove to me exactly how intoxicated he was. And I believe
24 that he had some beers to drink. I'm not sure I'm convinced
25 that he was so intoxicated that he couldn't exercise

1 independent judgment as to what he was doing that day.
2 Undoubtedly it perhaps reduced some of his inhibitions in
3 his behavior, but the intoxication didn't seem to rise to
4 the level of preventing him from actually exercising any
5 form of judgment.

6 Turning to the characteristics of Mr. Miller, much
7 of this weighs in the other direction in this case.
8 Sentencing is never easy, and this is a very, very difficult
9 case to my mind. As you've probably gathered by my
10 comments, I am moved by Mr. Miller's age. I accept the
11 defense's argument that he was barely 22 at the time, and
12 that his judgment was still developing. I would hope and
13 expect that today he has better judgment than he had that
14 day. He was also somewhat intoxicated that day, which may
15 provide not an excuse, but a partial explanation for his
16 behavior.

17 As I indicated before, I do think that
18 Mr. Miller's exemplary behavior while on pretrial release
19 weighs in his favor. And this is not just a case in which
20 he abided by the rules. He went above and beyond abiding by
21 the rules, and he showed himself to be somebody who is
22 looking for the opportunity to put his life back together,
23 and to be a contributing member of society. And so that
24 weighs in his favor as well. I'm also impressed by the fact
25 that he's had no other significant interaction with the law.

1 And that is another factor that I think weighs in his favor.
2 The comments from his employers I think are significant.

3 With respect to the types of sentences available,
4 as I've indicated, I agree that the guidelines range in this
5 case is between 41 and 51 months. The probation office has
6 recommended a sentence of a year and a day, and the defense
7 urges the Court to do the same. I've spent a lot of time
8 thinking about other cases involving similar conduct. And
9 of course each and every one of these cases is different,
10 and each and every one has to be weighed on its own merits.

11 But I do think it's also extremely important to
12 public confidence in the Judiciary and to the sentencing
13 process that the courts avoid unwarranted sentencing
14 disparities. I actually think when one looks at the
15 sentencing decisions that have been made by this Court
16 across many judges, it's remarkable how consistent the
17 sentencing has been; and how, where I see differences, I'm
18 able to go back and look at it, and look at the records in
19 the case and understand the bases for these differences.
20 And as I said, I've gone back and actually read the
21 sentencing memoranda in several of the cases that were
22 cited.

23 I do think that one thing that makes this case
24 different than a number of those is Mr. Miller's age.
25 Although the one thing I will say is that in the Languerand

1 case, which was in front of Judge Bates, he did vary
2 downward a little bit in that case. And I believe the
3 defendant in that case was 25 years old, so not a lot older,
4 but a little bit older in that case.

5 I do think I also have to think about the victims
6 in the case. And it's not just the American public that no
7 longer can have the same confidence that tomorrow we will
8 live in a purely democratic society that we had -- that the
9 public had before the events, but it's also the officers who
10 were in that tunnel and who were traumatized by the events
11 that occurred that day. Their skin was burned, their eyes
12 were burned by the firing of the fire extinguisher. They
13 were undoubtedly unnerved, if not terrified, by the crowd
14 outside surging at them, and by Mr. Miller's participation
15 in that crowd with the heave-ho and pushing back against
16 them in every way.

17 So I need to take all of these matters into
18 consideration and strike what, to my mind, is a very tough
19 balance between Mr. Miller's young age, lack of judgment at
20 that age, intoxication, otherwise exemplary behavior -- and
21 I do believe the true remorse about his behavior that day.
22 But I also have to consider the magnitude of the events that
23 occurred that day.

24 So what I'm going to do is I'm going to -- in
25 light of Mr. Miller's age, barely 22 at the time of this,

1 intoxication, exemplary record, I am going to vary downward
2 somewhat. I'm going to vary downward by two levels from a
3 level 22 to a level 20, and I'm going to impose a term of
4 incarceration of 33 months.

5 Pursuant to the Sentencing Reform Act of 1984, and
6 in consideration of the provisions of 18 U.S.C. section
7 3553, as well as the advisory sentencing guidelines, it's
8 the judgment of the Court that you, Matthew Miller, are
9 hereby sentenced to the custody of the Bureau of Prisons for
10 a term of 33 months on counts two and three. You are
11 further sentenced to serve concurrent terms of 24 months of
12 supervised release on counts two and three. In addition,
13 you're ordered to pay a special assessment of \$200 in
14 accordance with 18 U.S.C. section 3013.

15 While on supervision, you shall abide by the
16 following mandatory conditions, as well as the standard
17 conditions of supervision which are imposed to establish the
18 basic expectations of your conduct while on supervision.
19 The mandatory conditions include you must not commit another
20 federal, state or local crime. You must not unlawfully
21 possess a controlled substance. You must refrain from any
22 unlawful use of a controlled substance. You must submit to
23 one drug test within 15 days of placement on supervision,
24 and at least two periodic drug tests thereafter as
25 determined by the Court. You must cooperate in the

1 collection of DNA as directed by the probation officer.

2 You must make restitution in accordance with 18
3 U.S.C. sections 3663 and 3663A, and any other statute
4 authorizing a sentence of restitution. You are ordered to
5 make restitution in the amount of \$2,000 to the Architect of
6 the Capitol. The Court has determined that you don't have
7 the ability to pay interest, and therefore, waives any
8 interest or penalties that may accrue on the balance.

9 Restitution payments shall be made to the Clerk of
10 the Court for the United States District Court, District of
11 Columbia, for disbursement to the following victim:
12 Architect of the Capitol, Office of the Chief Officer,
13 Attention Kathy Sherrill, CPA, Ford House Office Building,
14 Room 52-205B, Washington, D.C. 20515 in the amount of
15 \$2,000.

16 You shall also comply with the following special
17 conditions of supervision. You must pay the balance of any
18 restitution order at a rate of not less than \$100 each
19 month. You must submit to substance abuse testing to
20 determine if you have used a prohibited substance. You must
21 not attempt to obstruct or tamper with the testing methods.
22 You must complete a hundred hours of community service
23 within 18 months of supervision. The probation officer will
24 supervise your participation in the program by approving the
25 program. You must provide written verification of completed

1 hours to the probation officer. You must provide the
2 probation officer access to any requested financial
3 information, and authorize the release of any financial
4 information. The probation officer may share financial
5 information with the United States Attorney's Office. You
6 must not incur new credit charges or open additional lines
7 of credit without the approval of the probation officer.

8 Within 60 days of your release from incarceration
9 or placement on supervision, you'll appear before the Court
10 for a reentry progress hearing. Prior to the hearing, the
11 probation officer will submit a report summarizing your
12 status and compliance with release conditions. If you're
13 supervised by a district outside of the Washington, D.C.
14 metropolitan area, the United States Probation Office in
15 that district will submit a progress report to the Court
16 within 60 days of the commencement of supervision. Upon
17 receipt of the progress report, the Court will determine if
18 your appearance is required.

19 The probation office shall release the presentence
20 investigation report to all appropriate agencies, which
21 include the United States probation office in the approved
22 district of residence, in order to execute the sentence of
23 the Court. Treatment agencies shall return the presentence
24 report to the probation office upon the defendant's
25 completion or termination from treatment.

1 The Court finds you do not have the ability to pay
2 a fine, and therefore, waives imposition of a fine in this
3 case. The financial obligations are immediately payable to
4 the Clerk of the Court for the United States District Court
5 at 333 Constitution Avenue, NW, Washington, D.C. 20001.
6 Within 30 days of any change of address, you shall notify
7 the Clerk of the Court of the change until such time as the
8 financial obligation is paid in full.

9 Pursuant to 18 U.S.C. section 3742, you have a
10 right to appeal the sentence imposed by the Court if the
11 period of imprisonment is longer than the statutory maximum
12 or the sentence departs upward from the applicable
13 sentencing guidelines range. If you choose to appeal, you
14 must file an appeal within 14 days after the Court enters
15 judgment.

16 As defined in 28 U.S.C. section 2255, you also
17 have a right to challenge the conviction entered or sentence
18 imposed if new and currently unavailable information becomes
19 available to you or on a claim that you received ineffective
20 assistance of counsel in entering a plea of guilty to the
21 offense of conviction or in connection with sentencing. If
22 you're unable to afford the cost of any appeal, you may
23 request permission from the Court to file an appeal without
24 cost to you.

25 Mr. Balarezo, there were two prisons you

1 recommended that I recommend?

2 **MR. BALAREZO:** Yes, Your Honor, Cumberland or Fort
3 Dix.

4 **THE COURT:** Any objection from the Government?

5 **MS. SCHESNOL:** No, Your Honor.

6 **THE COURT:** So the Court will include a
7 recommendation. It will be up to the Bureau of Prisons, but
8 I will recommend that Mr. Miller be incarcerated at
9 Cumberland or Fort Dix. I also will recommend that the
10 defendant, while incarcerated, participate in -- I'm sorry,
11 give me one moment here, the Federal Prison Industries'
12 program and the drug abuse education program.

13 Are there any other conditions the Government
14 would request?

15 **MS. SCHESNOL:** No, Your Honor.

16 **THE COURT:** Anything else from probation that you
17 would request or other conditions you would recommend?

18 **MS. MOSES-GREGORY:** No, Your Honor.

19 **THE COURT:** Anything else from the defense?

20 **MR. BALAREZO:** No, Your Honor.

21 **THE COURT:** Okay. So pursuant to the D.C.
22 Circuit's decision in United States vs. Hunter, I need to
23 ask whether there are any objections to the sentence imposed
24 that have not already been noted for the record,
25 Mr. Balarezo?

1 **MR. BALAREZO:** No, Your Honor.

2 **THE COURT:** Okay. Government?

3 **MS. SCHESNOL:** No, Your Honor.

4 **THE COURT:** Anything else you want to raise today?

5 **MS. SCHESNOL:** Your Honor, the Government moves to
6 dismiss the outstanding counts of the indictment.

7 **THE COURT:** That motion is granted.

8 Mr. Balarezo, anything else you want to raise?

9 **MR. BALAREZO:** Nothing further, Your Honor.

10 **THE COURT:** Mr. Miller, I know that -- I'm sorry.

11 (Discussion off the record)

12 **THE COURT:** Yes, the term of incarceration is
13 concurrent on both counts. Thank you. Yes, to be clear
14 about that, it is concurrent.

15 Mr. Miller, I know that this is tough medicine. I
16 do wish you well. I actually feel as though you are
17 somebody who will make a good contribution to society, and
18 will, when you get out, go out there and work hard and serve
19 your community and serve your family and friends. This was
20 a rough day for you -- January 6th was a rough day for the
21 nation, today is a rough day for you. I do hope that you
22 are able to move forward and have a successful life. So I
23 wish you and your family the best, thank you.

24 (Proceedings adjourned at 5:02 p.m.)

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C E R T I F I C A T E

I, Jeff M. Hook, Official Court Reporter,
certify that the foregoing is a true and correct transcript
of the record of proceedings in the above-entitled matter.

May 27, 2022

DATE



Jeff M. Hook

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