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BEFORE THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	.	
	.	Case Number 21-cr-116-2
Plaintiff,	.	
	.	
vs.	.	
	.	
VERDEN ANDREW NALLEY,	.	March 10, 2022
	.	12:39 p.m.
Defendant.	.	
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TRANSCRIPT OF SENTENCING HEARING  
BEFORE THE HONORABLE DABNEY L. FRIEDRICH  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the United States:	JENNIFER ROZZONI, AUSA United States Attorney's Office 201 3rd Street NW Suite 900 Albuquerque, New Mexico 87102
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For the Defendant:	THOMAS HAWKER, AFD Federal Public Defender's Office 101 Marietta Street NW Centennial Tower Suite 1500 Atlanta, Georgia 30303
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Official Court Reporter:	SARA A. WICK, RPR, CRR United States District Court for the District of Columbia 333 Constitution Avenue Northwest Room 4704-B Washington, D.C. 20001 202-354-3284
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Proceedings recorded by stenotype shorthand.  
Transcript produced by computer-aided transcription.

## P R O C E E D I N G S

(All participants present via video conference.)

COURTROOM DEPUTY: Your Honor, we are in Criminal Action 21-116-2, the United States of America versus Verden Nalley.

If I can have the parties identify themselves for the record, starting with the United States.

MS. ROZZONI: Good afternoon, Your Honor. Jennifer Rozzoni on behalf of the United States.

THE COURT: Good afternoon, Ms. Rozzoni.

MR. HAWKER: Good afternoon, Your Honor. This is Tom Hawker on behalf of Mr. Nalley. And with us today is Zelda Peppers, his significant other.

THE COURT: All right. Great. Good afternoon, Mr. Hawker and Mr. Nalley.

Mr. Hawker, as you know, I can proceed with the sentencing by video conference, but I need to make the appropriate finding under the CARES Act that this matter can't be continued further without serious harm to the interests of justice.

So can you articulate for me why we should proceed by video rather than wait until Mr. Nalley can appear in person in court.

MR. HAWKER: I've spoken with Mr. Nalley at length about his right to appear in person with everyone present, present in court, and he has agreed to appear by video under the CARES Act.

1           Cases are still out there and exist. Mr. Nalley has chosen  
2 not to be vaccinated as a result of -- just personal choice. So  
3 he is at higher risk than others because of the pandemic and the  
4 state of affairs to contract it, even though the numbers are on  
5 decline. So we felt it best to appear by video and not have to  
6 travel and be in a group setting.

7           THE COURT: Mr. Nalley, do you understand you have the  
8 right to appear before me in person in the courtroom, if you  
9 would like, for sentencing?

10           THE DEFENDANT: Yes, ma'am.

11           THE COURT: And I understand from what your attorney,  
12 Mr. Hawker, says is that your preference is to proceed now, in  
13 light of the pandemic, by video conference. Is that right?

14           THE DEFENDANT: Yes, ma'am.

15           THE COURT: All right. So I do believe it's  
16 appropriate to proceed by video conference for sentencing.

17           I have reviewed the final presentence report and the  
18 recommendation of the probation officer.

19           And good morning, Ms. Baker. Sorry I didn't say hello to  
20 you. Thank you for joining.

21           PROBATION OFFICER: Good morning, Your Honor.

22           THE COURT: All right. So I've reviewed her report  
23 and her recommendation. I have also reviewed the parties'  
24 sentencing memoranda, the letters submitted on behalf of  
25 Mr. Nalley, the video footage provided by the government, as

1 well as the chart of sentences imposed to date that was an  
2 exhibit to the government's sentencing memorandum.

3 Mr. Hawker, have you reviewed the presentence report with  
4 Mr. Nalley?

5 MR. HAWKER: Yes, Your Honor.

6 THE COURT: And Mr. Nalley, have you read the  
7 presentence report and had adequate time to talk to your  
8 attorney about it?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: And did you have a chance to correct any  
11 errors in the report?

12 THE DEFENDANT: Yes.

13 THE COURT: Are you satisfied with his services as  
14 your attorney in this case?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: All right. In addition to the presentence  
17 report, did you also have a chance to review the other  
18 sentencing memoranda filed by the government?

19 THE DEFENDANT: Yes.

20 THE COURT: And you had time to talk to Mr. Hawker  
21 about that as well?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: All right. Mr. Hawker, are there any  
24 unresolved objections to the -- or factual inaccuracies in the  
25 PSR?

1 MR. HAWKER: No, Your Honor.

2 THE COURT: All right. And none for the government?

3 MS. ROZZONI: No, Your Honor.

4 THE COURT: All right. I will accept the presentence  
5 report as my findings of fact pursuant to Rule 32 of the Federal  
6 Rules of Criminal Procedure.

7 Let me start with the guidelines. The parties agree that  
8 the guideline calculations set forth on pages 9 and 10 of the  
9 PSR are accurate for the offense to which Mr. Nalley entered a  
10 plea, entering and remaining in a restricted building or ground  
11 in violation of Section 1752(a)(1).

12 Is it just (a)(1), or is it two subsections, Ms. Rozzoni?

13 MS. ROZZONI: It's just (a)(1), Your Honor.

14 THE COURT: (A)(1), okay.

15 And under the guidelines, which I've independently  
16 calculated, I do agree with the Probation Office that the base  
17 offense level under Section 2B2.3 is a 4. A two-level upward  
18 adjustment applies because Mr. Nalley was in the U.S. Capitol  
19 building, and he's entitled to a two-level downward adjustment  
20 for acceptance of responsibility. That results in a total  
21 offense level of 4, and given that his criminal history category  
22 is I, his guideline range is zero to six months in prison.

23 Do the parties both agree? Ms. Rozzoni?

24 MS. ROZZONI: Yes, Your Honor.

25 THE COURT: Mr. Hawker?

1 MR. HAWKER: Yes, Your Honor.

2 THE COURT: All right. So, Ms. Rozzoni, I will start  
3 with you. I understand the government is seeking a 14-day  
4 sentence with one year of supervised release and 60 hours of  
5 community service.

6 Before you get into your allocution, I'm just curious,  
7 Ms. Rozzoni, can you tell me, Mr. Nalley's case seems very  
8 different than the other defendants I have before me who are  
9 charged with the 1512(c)(2) offense. As far as I can tell, he  
10 didn't engage in any assault, any property damage.

11 Can you tell me how the -- I'm just curious where the  
12 government is drawing the line in these cases with respect to  
13 that offense.

14 MS. ROZZONI: I will do my best, Your Honor.

15 With regard to the 1512, that is a part of the reason that  
16 we did agree to allow Mr. Nalley to plead to the misdemeanor as  
17 to 1752(a)(1) as opposed to 1512.

18 He was one of the very early defendants charged in this  
19 case, and at the very onset, I believe that the 1512 was charged  
20 a bit more -- a bit more, let's put it that way. And after  
21 approximately six to eight months had passed and more people had  
22 been charged and more activities and behavior had been looked  
23 at, I think there was a group of defendants that the government  
24 decided were more appropriately charged with 1752.

25 And so in this case, that is why Mr. Nalley was offered the

1 1752 and why the government has agreed to dismiss the 1512.

2 He did have rhetoric online that we have included in the  
3 sentencing memo, but the government decided that that -- well,  
4 it certainly still would have gone to trial on the 1512 in terms  
5 of his intent to obstruct. It felt that a better resolution of  
6 the case was to plead him to the 1752, and I believe that he  
7 agreed to that.

8 THE COURT: But do you have any evidence at all that  
9 he intended to act on those threats? Presumably, you're talking  
10 about the, you know, "we'll be back with guns in two weeks."  
11 Does the government have any evidence that he or Mr. Calhoun was  
12 intending to follow through with that?

13 MS. ROZZONI: Your Honor, I don't have any other  
14 information other than the fact that he posted these on social  
15 media. And one can only look at what he said in terms of, you  
16 know, he was there that day, he minimized what happened on  
17 January 6th in those postings, and then he said if things didn't  
18 get fixed, that they would be back with guns.

19 Whether we have -- I don't have anything additional to that  
20 except to say that --

21 THE COURT: When was he arrested?

22 MS. ROZZONI: He was arrested, I believe, on February,  
23 I want to say, 13 or 14 of 2021, Your Honor.

24 THE COURT: So well more than two weeks after  
25 January 6?

1 MS. ROZZONI: Yes.

2 THE COURT: But no action -- I mean, he didn't, to  
3 your knowledge, act on that threat in the two weeks following  
4 January 6?

5 MS. ROZZONI: He did not, Your Honor. And I can't  
6 dispute that, that he did not act on it, but he certainly made  
7 those statements, and those statements were very, very  
8 concerning and really are the primary aggravating factor here  
9 and is a large reason why we are asking for the 14 days.

10 THE COURT: It's just hard for judges to determine  
11 whether these are just rants that we've heard from a lot of  
12 defendants, that they like to stir people up on the Internet,  
13 and, you know -- he's not charged with any sort of threat.

14 So it's really hard to know what to make of that, if all  
15 you're telling me is that he posted that one statement. I  
16 don't --

17 MS. ROZZONI: I'm sorry. I didn't mean to interrupt  
18 you.

19 THE COURT: No, go ahead.

20 MS. ROZZONI: The fact that he was there on January 6  
21 is something, too. It's not that this was --

22 THE COURT: No, no, obviously, obviously. But you're  
23 drawing lines for these defendants. I take it he's pleading to  
24 a class A misdemeanor rather than a class B because he posted  
25 that statement.



1 MS. ROZZONI: Yes, that is a part of the reason. He  
2 was originally charged with a 1512. The government felt like it  
3 had that charge and could prove that charge at trial.  
4 Otherwise, it wouldn't have, obviously, charged it in the first  
5 place.

6 But after, again, looking at all -- a larger number, since  
7 he was one of the first people, obviously, charged, looking at  
8 behavior across the board, the government came back and decided  
9 that this plea was probably the more appropriate plea in his  
10 particular case.

11 And I will note, Your Honor, that we still are going  
12 forward on the 1512 of Mr. Calhoun, because there is a lot more  
13 information related to his behavior both before and after.

14 THE COURT: Beyond statements?

15 MS. ROZZONI: Beyond statements? No, actually not  
16 beyond statements, but the government does believe that those  
17 statements indicate a willingness and an --

18 THE COURT: Perhaps, perhaps. I mean, a jury will  
19 decide. But it's -- you heard his testimony in the detention  
20 hearing. I think these are hard cases.

21 MS. ROZZONI: I will not stand before you and tell you  
22 they are not, but it doesn't mean that they are cases that  
23 shouldn't be brought.

24 THE COURT: Okay. Well, I assume you're familiar with  
25 the jury instructions I gave in that case. You're going to need

1 to show an unlawful means or an unlawful purpose.

2 MS. ROZZONI: I am, Your Honor.

3 THE COURT: All right. Well, let's move on to this  
4 defendant.

5 So I have yet to sentence, Ms. Rozzoni, a defendant in a  
6 January 6 case, even the lowest -- the least culpable  
7 defendants, to less than two years' probation. You're asking  
8 that I impose a 14-day sentence, which would be 11 days because  
9 he would get credit for the three he's served already. So  
10 you're seeking an 11-day sentence and his only being under the  
11 Court's supervision for just a year.

12 You've probably heard, I don't buy the government's  
13 argument that I can impose both prison time and probation. I  
14 think it's either/or.

15 So I think in cases like Mr. Nalley's, I have been imposing  
16 two or three years' probation, because I do think if -- if the  
17 concerns are there, there's a need for more supervision.

18 So just help me understand why the government's pressing  
19 that sentence, given that it limits the Court to one year of  
20 supervision.

21 MS. ROZZONI: I understand, Your Honor, and I will  
22 absolutely answer your question in a moment. I just wanted to  
23 add one additional case, a 1752(a)(1) case to our list of cases  
24 so that you could consider that as a part of your decision.

25 Yesterday, Judge Sullivan sentenced James Bonet to 90 days'

1 imprisonment, Your Honor, and one year of supervised release and  
2 200 hours of community service. Mr. Bonet also had originally  
3 been charged with 1512(c). That was actually dropped, and he  
4 pled to the 1752(a)(1).

5 In Mr. Bonet's case, he was in the Capitol for, I believe  
6 it was, 17 to 18 minutes, but his aggravating factor was that he  
7 ended up, I believe, in a senator's office smoking marijuana.  
8 And so that was what was emphasized by the government in that  
9 case, and I do believe it is what impacted Judge Sullivan in his  
10 actually doubling what the government was requesting.

11 THE COURT: Okay. Well, the cases that you cite to  
12 support your argument that a sentence of imprisonment is  
13 appropriate are really not analogous to this case. Courtright,  
14 the defendant temporarily seized government property and  
15 attempted to break into locked doors. Ridge said he had broken  
16 down doors and sent electronic messages ahead of time stating  
17 his intent to block the proceedings. Tryon resisted law  
18 enforcement, that he was pepper sprayed and hit with a baton,  
19 that he intended to disrupt Congress. Schornak engaged in  
20 combative behavior, I assume with law enforcement, arrived in  
21 D.C. with tactical gear and a bull horn. Johnson tried to get  
22 into the Speaker's office, overwhelmed a line of police,  
23 destroyed evidence. Howell prepared and planned with others  
24 before the attack, acquired tear gas, destroyed evidence.

25 So I don't really view this case -- the one aggravating

1 factor that might distinguish this case from some of these other  
2 cases where I've sentenced defendants to two or three years'  
3 probation is this line you have in your brief about him pushing  
4 through a police line. But I've watched your video. That's not  
5 reflected in that. I've looked at the photographs. It's not  
6 apparent.

7 What is that exactly?

8 MS. ROZZONI: Your Honor, what that relates to is the  
9 first image in the sentencing memo where Mr. Calhoun and  
10 Mr. Nalley are coming up the -- I believe it's the stairs  
11 underneath the scaffolding. He enters through, as you know, the  
12 Senate doors. And so there was a police line there at the top  
13 of the stairs before it flattens out and you go into the Senate  
14 doors. There was a police line there at the top of the stairs  
15 where the scaffolding was.

16 THE COURT: So did he touch an officer?

17 MS. ROZZONI: We don't have any evidence that he  
18 touched an officer, Your Honor.

19 THE COURT: So where was the police line standing?  
20 How did he get through it without touching someone?

21 MS. ROZZONI: So the police line was at the top of the  
22 stairs where the scaffolding was, and he was not in the very,  
23 very first group of people who pushed through, but there was a  
24 large police presence there. And so he --

25 THE COURT: Well, I've watched the video of the west

1 side at length during this trial, and I saw the initial push.  
2 But he came six minutes later. So weren't those officers  
3 standing to the side by that point?

4 MS. ROZZONI: Your Honor, I would submit that he was  
5 the beneficiary of having and continued -- that entire crowd was  
6 a continuous group of people who walked through that line. That  
7 line couldn't have come back together.

8 But I understand what you're saying; I do understand what  
9 you're saying.

10 THE COURT: But how is that any different than anyone  
11 else who broke through six minutes after others did? It's -- I  
12 don't think that the broken line is -- I don't think it's fair  
13 to characterize that as pushing through a police line that's  
14 been broken six minutes earlier.

15 MS. ROZZONI: Well, the police line was unable to come  
16 back together because this large group of people continued to  
17 flow through that area. So it would be the government's  
18 position that had he not been -- the police line would have come  
19 back together had there not been this continuous flow of people.

20 THE COURT: But that's not pushing through a police  
21 line. That's preventing a police line from reforming.

22 MS. ROZZONI: That is -- I would agree with your  
23 statement, Your Honor, but the police could not come back  
24 together because there was this continuous flow of people that  
25 continued into the Capitol.

1 THE COURT: All right. Is it true there's no evidence  
2 he prepared ahead of time for this?

3 MS. ROZZONI: I don't have any evidence of that, Your  
4 Honor, but certainly, he prepared -- he agreed to go with his  
5 friend. Obviously, they had to travel to D.C. on January 5.

6 THE COURT: But do you have any evidence that he went  
7 to D.C. intending to go in the Capitol?

8 MS. ROZZONI: No. I mean -- no, there's nothing that  
9 says that.

10 THE COURT: And no evidence he was armed?

11 MS. ROZZONI: No.

12 THE COURT: No assault or confrontation with any law  
13 enforcement officer outside or inside the Capitol?

14 MS. ROZZONI: Not that we're aware of, Your Honor,  
15 although I will say that he was in the crypt. There was a  
16 police line -- and I apologize. I was thinking of the  
17 scaffolding because I originally -- that was his original entry.  
18 But he also was in the crypt area where there was a police line,  
19 and that police line was actually broken through as he was  
20 there. And there's a photograph, I believe, the image of him  
21 facing the camera. There's no circle on it. But that's just  
22 after that police line was broken.

23 So just to be clear, I don't have any evidence that he  
24 pushed or touched any officers, but he certainly was in the  
25 crypt area when that police line fell.

1 THE COURT: Okay. No property damage by him?

2 MS. ROZZONI: Not that we're aware of.

3 THE COURT: Didn't go in any private offices?

4 MS. ROZZONI: Not that we're aware of, Your Honor.

5 THE COURT: After his initial comments not accepting  
6 responsibility, he then accepted responsibility and cooperated  
7 with law enforcement?

8 MS. ROZZONI: He did, Your Honor, and I will say, he's  
9 remained compliant with his conditions.

10 THE COURT: And is he prepared to testify against  
11 Calhoun?

12 MS. ROZZONI: We have not engaged in those  
13 discussions, Your Honor.

14 THE COURT: All right. Okay. Go ahead. I've maybe  
15 taken the wind out of your sails, but --

16 MS. ROZZONI: You haven't taken the wind out of my  
17 sails, Your Honor, although I will say that -- let me just start  
18 by saying, we did submit Exhibit B in response to your filing on  
19 Tuesday. I actually hadn't submitted any video, but just so  
20 that you could see his initial entry into the Capitol building  
21 there at the Senate doors.

22 THE COURT: Yes.

23 MS. ROZZONI: And so I would ask that that be made a  
24 part of the record.

25 THE COURT: And is that something, I take it, that

1 you've uploaded so the public can see it as well?

2 MS. ROZZONI: I will be, Your Honor, as long as -- I  
3 just wanted to make sure it was a part of the record.

4 THE COURT: It is. All right. Thank you.

5 MS. ROZZONI: And then, of course, Your Honor, I would  
6 just say that -- and I know that you have dealt with these  
7 cases, and I know that you just have finished a trial where you  
8 are now intimately involved or aware of, you know, what happened  
9 on January 6 and the position of the government.

10 But to say that January 6 was unprecedented would really  
11 not do any justice to what happened that day. Thousands of  
12 people were brought to D.C. with a lie of a stolen election.  
13 They marched on the Capitol. They pushed over barricades. We  
14 see Mr. Nalley walking up those steps with that large group of  
15 people. He wasn't one of them, but numerous people attacked and  
16 assaulted police officers. Certainly, Mr. Nalley was not -- was  
17 witness to at least some of that. And then they breached the  
18 Capitol building.

19 It wasn't just an attack on the Capitol, Your Honor, or the  
20 people protecting it. It was actually an attack on democracy  
21 and the rule of law itself.

22 You know that the nature and circumstances of this offense  
23 are important for you to consider, and that is why the  
24 government is seeking the 14-day sentence here. Certainly, the  
25 primary aggravating factor that the government sees are the



1 post-January 6 postings about bringing guns back to the Capitol  
2 in two weeks, and we would continue to ask for 14 days, given  
3 those -- the fact that he was there, what he did, he was in the  
4 Capitol for 40 minutes, and then he made those statements after  
5 the fact.

6 I do acknowledge and understand that, you know, you  
7 certainly need to take into account Mr. Nalley's history and  
8 characteristics, and I know that his history does not exhibit  
9 any violent tendencies. But frankly, Your Honor, threatening to  
10 bring guns back to the Capitol do indicate some violence or at  
11 least a thought about violence and what he would do in the  
12 future if things weren't, quote, fixed with --

13 THE COURT: Is that, in your view, Ms. Rozzoni, a  
14 criminal act that you can charge?

15 MS. ROZZONI: It was not -- I'll just say, I haven't  
16 done the research, and it was not considered as a part of this  
17 case. I would --

18 THE COURT: But that is a key reason why you have  
19 charged him the way you have and why he's pleaded guilty to the  
20 offense he has. So I'm just curious. If that's not a criminal  
21 offense -- just this line, how do you know when folks are just  
22 doing this to spout off versus really intending to act on these  
23 outrageous things?

24 I'm not condoning, by any stretch, these statements.  
25 However, we all have First Amendment rights, and I'm curious

1 whether you know whether that could be charged.

2 MS. ROZZONI: Your Honor, I don't know the answer to  
3 that, because I haven't done the research to ensure that  
4 obviously that line would not be crossed. But I can tell you,  
5 those posts, in conjunction with the fact that he had been there  
6 on January 6 and the fact that he was minimizing what happened  
7 that day, they're highly concerning.

8 So that charge has not been charged here, but certainly,  
9 you are right, the reason he is pleading here is because it's  
10 all part and parcel of something bigger.

11 So where that line is, Your Honor, we are -- we have  
12 created that line in every case where we've charged people with  
13 varying statutory violations, and in this case, we went with the  
14 1752, and we think that that's the appropriate charge. And  
15 obviously, Mr. Nalley felt it was the appropriate charge because  
16 he pled guilty to it.

17 And then you can take into account all of the other  
18 behaviors as a part of your sentence. And our biggest concern  
19 here are those posts, understanding he absolutely has a First  
20 Amendment right to his points of view, to his opinions. But you  
21 also -- you know, he comes dangerously close, if not over, the  
22 line when you start talking about bringing guns back to the  
23 Capitol because you believe that an election has been stolen.

24 THE COURT: Understood. So, you know, the other thing  
25 I have to be careful of is trying to treat similarly situated

1 defendants similarly. And in my view, looking at the cases that  
2 I've sentenced, I view his case as less egregious than Dillon,  
3 who I sentenced to three years' probation and two months' home  
4 detention. She came prepared to attack the Capitol and  
5 physically engage with law enforcement on the very front line as  
6 the violent mob reached the Capitol. She was on, I think, the  
7 east side, but right in that first push, not six minutes later.

8 I'm also viewing it as less egregious than Kostolsky, who  
9 did not fully cooperate with law enforcement initially and  
10 deleted evidence, and Walden, who came prepared for the event  
11 with gear, I believe a gas mask.

12 I think the facts here are closer to McAlanis, Williams,  
13 Schwemmer, Harrison, and Wangler. But unlike all those  
14 defendants, Mr. Nalley did serve a few days in prison already,  
15 and therefore, I'm, you know, having a hard time distinguishing  
16 the sentences I imposed in those cases from what might be  
17 appropriate here.

18 So to the extent you have any thoughts on those cases,  
19 Ms. Rozzoni, and how his case is distinctive, aside from the  
20 remark, which again I'm not -- I think it shows incredible lack  
21 of judgment for him to post such an offensive statement,  
22 particularly after he breached the Capitol just days before.

23 But I don't know that absent some evidence that he intended  
24 to act on it in any way, that that alone justifies a  
25 dramatically different sentence than the other defendants I've

1 sentenced already.

2 MS. ROZZONI: And I understand that, Your Honor. I  
3 will say that in some of the cases that you're citing, the  
4 government did recommend more.

5 THE COURT: No, I know; I know. But I'm supposed to  
6 be consistent with what I've done, not what you recommend.

7 MS. ROZZONI: And similarly, I think we are trying to  
8 be consistent across the board in terms of what we recommend and  
9 the way we see the facts and how they shake out. So I  
10 appreciate your position on that.

11 THE COURT: Okay.

12 MS. ROZZONI: So I guess that's where we would come  
13 down --

14 THE COURT: All right.

15 MS. ROZZONI: -- is that we're trying to be as  
16 consistent as possible based upon what we see and the --

17 THE COURT: Understood. Okay. Mister -- oh, one more  
18 question, Ms. Rozzoni. Anything else beyond community service  
19 that you think would be appropriate conditions of supervision?

20 MS. ROZZONI: No, Your Honor. Again, trying to be  
21 consistent across the board, we are recommending 60 hours, which  
22 I think is our standard recommendation in cases such as this.

23 THE COURT: All right. Mr. Hawker?

24 MR. HAWKER: Yes, ma'am. You've covered a lot of what  
25 I was going to say. So I will just cut to the chase.

1           THE COURT: Sorry. These sentencings get shorter and  
2 shorter as we roll down different buckets of defendants.

3           MR. HAWKER: It helps to have that. So I won't go  
4 into the lack of X, Y, Z in terms of violence and threats at the  
5 event. I think you get it.

6           And his post-event, two days later, political rant is just  
7 that. I think he posted it on Facebook or Parlor, and it got  
8 reposted to MeWe and then somewhere else, and that's, I think,  
9 what's cited. And those things kind of reverberate, but that's  
10 all a part of sort of what was happening at the time, is that  
11 people were repeating things other people said. In fact, I  
12 think it was cited it was on MeWe, which he didn't put it there,  
13 and then reposted somewhere else.

14           But in any event, this was an echo chamber for the most  
15 part. And he was a part of it, and it was very bad judgment,  
16 and he had no intention of acting on any of that. He got caught  
17 up. And that was two days on the heels of it and very ill  
18 advised, very poor judgment, regretful, but it doesn't change  
19 the fact about what he did there.

20           And I get why the government sees that as a distinguishing  
21 feature, because they don't know whether he's going to act on it  
22 or not, and he wasn't. And the context of it was after the fact  
23 in his house, everybody just bouncing the echo chamber, and  
24 that's basically what that was.

25           THE COURT: Has he learned his lesson, Mr. Hawker?

1           MR. HAWKER: Oh, my goodness, in so many ways, I would  
2 say so. He and I have been together here in these conference  
3 rooms for some time now after the event. And it's been tough.  
4 I think that the process -- I don't want to say -- sometimes the  
5 process is the punishment. I know that's not necessarily always  
6 the case. This has sort of impacted him in that way because of  
7 what's happened, the publicity, kind of the -- he did not want  
8 that for himself, even though he posted stuff.

9           In addition, he's been on bond for a year and has had to be  
10 in pretty tight quarters for three months before he was just on  
11 curfew and has had to pay for a leg monitor for a year. So the  
12 consequences of this have been felt by him for more than a year  
13 now, both financially as well as being confined to his home for  
14 three months because he wasn't able to find work.

15           And Judge Weigle here was pretty strict in his conditions  
16 when we had the bond motion. He said you're not leaving,  
17 period, unless you can do an advanced schedule to your probation  
18 officer, Mr. Cochran here, and approve it in advance unless it's  
19 medical or otherwise.

20           So he basically was confined for three months to his house.  
21 That hit home pretty hard. And I know that it's prevented him,  
22 you know, from kind of going out and searching and doing the  
23 work that he wanted to do in other states. I know he had some  
24 opportunities in South Carolina. And so his bill payment has  
25 been impacted, not to mention the worry over the year of what's

1 going to happen being charged with a felony, never having had  
2 one, only one mark when he was 18 for a nolo misdemeanor,  
3 misdemeanor marijuana. He's not a person who is accustomed to  
4 the criminal justice system or contact with it. He certainly  
5 found out by going up there that day, and he knows that.

6 But the consequences have been real. They've been  
7 restriction on his freedom. They've been home confinement for  
8 three months. They've been three nights in a jail cell. He got  
9 arrested -- he went to meet the agents at the gas station on the  
10 16th in the evening, Judge, and they took him into custody, of  
11 February, which, you're right, was two weeks later, and then he  
12 was -- they spoke with him the first time on the 1st of  
13 February. They followed him there, and they interviewed him,  
14 and he was cooperative. He showed them his phone and told them  
15 why he was there and admitted he was in the Capitol. From the  
16 jump he was pretty candid with them.

17 And then he went back on the 16th, was arrested that  
18 evening, and spent the night in Gwinnett County Jail and then  
19 that morning got brought over to the Marshals Service, the 17th  
20 taken down to Lovejoy, which is Robert A. Deyton Detention  
21 Center, and spent the 17th and 18th there before he was released  
22 on the 19th.

23 So he has been in jail and been in home confinement for  
24 three months effectively. It may not have been the intention,  
25 but that's what it resulted in. It was the result of his bond

1 conditions and is having an impact financially, I think, of --  
2 there's the pandemic, obviously, and it might have happened  
3 otherwise. But it's been tough.

4 He's also had some difficulty, as I mentioned, at the  
5 airport, which I don't believe was random screening. So that's  
6 been tough for both of them, and it's a reminder of what  
7 happened, and it certainly is a deterrent moving forward.

8 I think the prosecutions themselves are a deterrent in  
9 these cases, which is why the government is doing what they are  
10 doing, which is identifying people, including those who just  
11 went in and came out without touching a police line or a police  
12 officer, not doing any damage to property, not going to  
13 chambers, to prosecute them, because that is the deterrent, for  
14 the most part, in these cases.

15 And so is, I think, the supervision, which is a very real  
16 consequence, and that will move forward with whether it's -- if  
17 there's more confinement, that's a consequence, but I believe  
18 just supervision would be appropriate, whether it's one year  
19 following the jail time he's done or even two years of  
20 probation, because it does restrict freedoms. It does.  
21 Reporting to the probation officer periodically, reporting  
22 contact with law enforcement, giving up your right not to be  
23 searched and your person and property under standard conditions,  
24 random drug tests, travel restrictions, work requirements. It's  
25 very real, the consequences to these folks on supervision, on



1 bond as well as post-offense.

2 So the consequences of this for him -- and I've seen the  
3 disappointment and fear and anxiety and remorse -- will  
4 reverberate for him probably one, two, three years into --  
5 post-event, which is significant for someone especially like  
6 Mr. Nalley who -- he's a very -- he's a simple guy, and I don't  
7 say that pejoratively. He's a guy who he got caught up in it  
8 with his band mate, Mr. Calhoun.

9 His real passion is playing music in bars and barns here in  
10 Georgia. He's a construction worker, contractor, and he's in a  
11 great relationship with Ms. Peppers for seven years, lives with  
12 her. She houses veterans and has three currently there with her  
13 who are in transition, whether it's medically from the VA or  
14 it's from military service to civilian life. She has three of  
15 them there that she's giving housing to now, and she works as a  
16 home health aide. But he lives with her there. They have a  
17 great life together there.

18 And I do believe it's impacted him, and I do believe he's  
19 felt the impact of it, will, and he's remorseful, Judge. I  
20 believe he's learned his lesson. The only time he went to D.C.  
21 in his life was this.

22 THE COURT: How did someone like Mr. Nalley, who has  
23 lived this clean record his whole life, get caught up in  
24 something like this?

25 MR. HAWKER: Well, I will tell you, it's -- my

1 personal opinion is I think it's largely a factor of who you're  
2 hanging out with, what you're listening to, and what the media  
3 is telling you, and I think it was a combination of all those  
4 things.

5 I think that -- I think probably Mr. Calhoun has strong  
6 opinions. He's a lawyer. He's kind of an individual that  
7 Vernon looked up to, I think, to some degree. He probably  
8 shared some political opinions with him, probably talked about  
9 things. And I'm not blaming him in any way. I'm just -- it  
10 kind of reinforces maybe some tendencies he may have had and  
11 some of his own political beliefs about the then administration  
12 prior to the change of administration. And the media, I think.

13 Of course, it's his own free will to make the decision to  
14 go up there for the speeches. And he did not plan on going to  
15 the Capitol. He did follow people from the speeches down and  
16 then went in. He didn't hesitate, it doesn't look like, but he  
17 went in and got caught up in it.

18 So it was kind of one of those swept-away moments for him,  
19 having never been up there. I don't know that he's overtly  
20 political necessarily, but he had strong views based on the  
21 moment in time, folks he was with, the media reports of it, the  
22 exhortations of the speeches and the whipped-up frenzy that that  
23 caused. And then this sort of grew, I think, with a lot of  
24 folks who were just kind of a part of the herd that followed  
25 folks down there.

1           THE COURT: Thinking they'd never get arrested because  
2 there's so many?

3           MR. HAWKER: I guarantee that's the case. I would  
4 imagine that is absolutely the case, that well, others are doing  
5 it, and it's the Capitol building, and we're going in, and the  
6 doors were open at the time, even though it was clearly not an  
7 authorized entry, that we won't get prosecuted, and I'm not  
8 doing any harm, so I'm just here, right, it's not something that  
9 I'm consciously thinking I did this necessarily, it's I'm with  
10 others who did it but I'm going to go in. And he was taking  
11 pictures. He had never been in there, actually, before and  
12 probably was curious.

13           And then afterwards, he was sort of a part of the group,  
14 echo chamber, as I call it, that sort of reinforced their  
15 beliefs about the cause, so to speak.

16           THE COURT: And the cause being the stolen election?  
17 Is that the cause?

18           MR. HAWKER: I would think so, right. And of course,  
19 that's what was being touted politically, publicly by officials  
20 who were elected and with the support of the administration.

21           And some people are more prone to believe that because it's  
22 said by folks who are elected, it's supported by others who are  
23 elected, and broadcast on national media, and he's one of them,  
24 frankly. And there are lots of them, and many of them were up  
25 there. It may have been the reason they went to the speeches.

1           And I don't think for him it was the reason -- he didn't  
2           prepare for going into the Capitol. He didn't bring stuff to go  
3           into the Capitol. He wasn't waving a flag or a banner. He  
4           didn't have a bull horn. He didn't have a cape on with a "Q" on  
5           it. There's none of that here. We don't have sort of the  
6           incidents of I'm with some sort of preplanned, premeditated  
7           group insurrection going to the Capitol to stir up trouble. He  
8           was there and participated and joined sort of the tidal wave  
9           that went in.

10           And that's all I can do really to explain why someone like  
11           him would get caught up in it and move forward. But he does  
12           regret it. I know that for a fact. And he's hopeful that  
13           whenever it's over it will actually be over for him, that he  
14           won't be subjected to random searches when he flies for the rest  
15           of his life. And that's, hopefully, not going to be the case.  
16           I think that he will successfully complete any supervision that  
17           he's given with the help of Ms. Peppers.

18           He's just had no contact with law enforcement, and that's  
19           why I think the guidelines in zone A and the Commission's  
20           commentary from 18 where they said, you know, if you're in the A  
21           or B and you're really effectively a nonviolent first  
22           offender -- and his conduct was nonviolent. I know the event  
23           was. I don't think it's splitting too fine a line to say he's a  
24           nonviolent first offender.

25           Even in zone B where it's ten to 18 months, they recommend

1 consideration of a noncustodial sentence in the commentary to  
2 the 5(c) application note 4, and that's zone B where it's ten to  
3 18 months. He's not even at the high end of zone A, which is 1  
4 to 8 offense level. He's at offense level 4. The guidelines  
5 and the commentary from the Sentencing Commission would suggest  
6 that -- a noncustodial sentence as a guideline sentence here.

7 And because I see it as there's not a sufficient  
8 aggravating factor to take it out of that context, I would agree  
9 that additional time is not necessary. He's even done time  
10 here. So not only does he have jail time, but he will have  
11 supervision of whatever form, whether it's supervision or  
12 probation, restitution.

13 Community service of 60 hours we're fully on board with or  
14 however many the Court wants to impose. He will complete them.  
15 And he'll do it fine. And then -- and he probably even has a  
16 mechanism to leverage into some community service with a  
17 veterans group, because of Ms. Peppers and her work.

18 So there are ways for him to serve and make amends in some  
19 way for this. Plus, he will also, you know, be subject to the  
20 conditions of reporting and whatnot.

21 THE COURT: Well, it sounds like absent this really  
22 offensive remark posted online two days after the event, that  
23 Mr. Nalley would have been in a different bucket from the  
24 outset. And so I hope that, as you say, he's learned his  
25 lesson, and he's going to be more independent and not influenced

1 by others moving forward, particularly even online, because  
2 that's -- you know, creates a threat that the government  
3 naturally needs to run to the ground and assume the worst.

4 MR. HAWKER: It does, Judge, and social media is no  
5 longer for Mr. Nalley. I don't believe -- and of course, my  
6 recommendation, I'm sort of anti social media personally.

7 THE COURT: Me too.

8 MR. HAWKER: I don't have a Facebook account, although  
9 I'm told by the experts that yes, you do, you just don't know  
10 it, that Facebook has you down as not having an account as a  
11 placeholder. But he doesn't have any more social media  
12 accounts, not active anyway. He certainly doesn't participate  
13 in them. You can go online and participate ad hoc in a chat or  
14 whatever, and you do have to be very, very careful because the  
15 government doesn't know and they have to investigate and run it  
16 to the ground. I agree 100 percent. It's tough to make those  
17 judgment calls.

18 THE COURT: Yeah, agreed.

19 All right. Mr. Nalley -- well, anything you would like to  
20 say in response, Ms. Rozzoni, before I give Mr. Nalley a chance  
21 to speak?

22 MS. ROZZONI: No, Your Honor.

23 THE COURT: So, Mr. Nalley, you have the right to make  
24 a statement if you would like to do so. You don't have to. But  
25 is there anything you would like to say to me before I give my

1 reasons for the sentence that I will impose?

2 THE DEFENDANT: I made a huge mistake, Your Honor, and  
3 I'm sorry to my family and the courts and you and the justice  
4 system. I made a mistake. I just want to move on.

5 THE COURT: I can understand that. It does sound like  
6 you're -- while you weren't remorseful immediately, you became  
7 remorseful soon after the immediate aftermath of January 6; is  
8 that a fair statement?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: All right. Okay. Is there any reason why  
11 sentence shouldn't be imposed at this time? Ms. Rozzoni?

12 MS. ROZZONI: No, Your Honor.

13 THE COURT: Mr. Hawker?

14 MR. HAWKER: No, Your Honor.

15 THE COURT: All right. So I'm required to consider  
16 not just the guidelines, but the various factors outlined in  
17 Title 18 United States Code Section 3553(a). I'm familiar with  
18 those factors, and I've considered them all here even if I don't  
19 mention each one.

20 Although the charge to which Mr. Nalley has pled guilty is  
21 a misdemeanor, a class A misdemeanor, his conduct on January 6  
22 was very serious. I agree with Ms. Rozzoni that he was a  
23 willing participant in a riot that undermined our democratic  
24 electoral process and threatened the rule of law.

25 I can understand that he's been permitted to plead guilty

1 to a misdemeanor because, as we've discussed already, there is  
2 no evidence that Mr. Nalley engaged in any preplanning before  
3 the event. It does seem that he was swept up in the events of  
4 that day. He did not come to Washington with gear or with  
5 firearms. He did not -- when he entered the Capitol, he did not  
6 assault any police officers, injure any officers, damage any  
7 property.

8 But certainly, his mere presence alone did subject the  
9 Capitol police officers to greater risk that day as they  
10 heroically tried to defend the Capitol and protect members of  
11 Congress.

12 I do credit Mr. Nalley's acceptance of responsibility.  
13 Though he was a bit slower to express his remorse than he should  
14 have been -- as I said, he made some terribly offensive remarks  
15 online which did show, at a very minimum, a tremendous lack of  
16 judgment, given what he had done just two days later -- I do  
17 believe he now recognizes the seriousness of his conduct, and he  
18 is on a different path.

19 He's been gainfully employed throughout his life. This  
20 really is an unusual event in his otherwise, you know, law-  
21 abiding record. He did have a marijuana conviction for which he  
22 was sentenced to probation at the age of 18, but since then,  
23 he's had no other convictions.

24 This misdemeanor offense has a maximum term of imprisonment  
25 of 12 months, a guideline range of zero to six months, and up to



1 five years' probation, a maximum fine of \$5,000 -- no, that's  
2 not right. What's the maximum fine here, Ms. Rozzoni? Anyway,  
3 I think the guideline range for the fine, I believe, is \$500 to  
4 \$9,500. He's eligible for a one-year term of supervised release  
5 if sentenced to imprisonment and subject to a special assessment  
6 as well.

7 Given Mr. Nalley's resources that are set forth in the PSR  
8 and his liabilities, I do not find that he has the ability to  
9 pay a fine in this case, but consistent with the plea agreement,  
10 I will impose restitution in the amount of \$500 to defray some  
11 of the costs associated with the damage to the Capitol on  
12 January 6.

13 As I've mentioned, I've considered similar cases in  
14 determining the appropriate sentence, and consistent with the  
15 sentences imposed in those cases, I believe a sentence of two  
16 years' probation coupled with 60 hours of community service and  
17 a \$500 restitution payment is sufficient but not greater than  
18 necessary to address the goals of sentencing. I believe it will  
19 protect the community and fulfill deterrence goals, both  
20 specific and general, as well as punish Mr. Nalley. I don't  
21 believe a sentence of imprisonment is necessary to provide  
22 specific deterrence or respect for the law or rehabilitation.

23 So I will now formally read the sentence and give both  
24 parties a chance to object before I actually impose the  
25 sentence.

1 Pursuant to the Sentencing Reform Act of 1984 and in  
2 consideration of the provisions of Title 18 United States Code  
3 Section 3553, it is the judgment of the Court that you, Vernon  
4 Nalley, are hereby sentenced to a term of two years' probation  
5 on Count 4. In addition, you are ordered to pay a special  
6 assessment of \$10.

7 While on supervision, you shall abide by the mandatory  
8 conditions as well as the standard conditions of supervision.  
9 The mandatory conditions include not committing another federal,  
10 state, or local crime; not unlawfully possessing a controlled  
11 substance; refraining from any unlawful use of a controlled  
12 substance; submitting to a drug test within 15 days of placement  
13 on supervision and at least two periodic drug tests thereafter  
14 as determined by the probation officer.

15 You must make restitution. You may make those payments to  
16 the Architect of the Capitol in the amount of \$500.

17 I will allow, for this case, the supervision to be  
18 transferred to the U.S. District Court for the Northern District  
19 of Georgia, but I will retain jurisdiction of the case.

20 In addition, you shall comply with the following special  
21 conditions: Complete 60 hours of community service within six  
22 months. The probation officer will supervise your  
23 participation. As I said, I don't find that you have the  
24 ability to pay a fine. Therefore, I waive imposition of a fine  
25 in this case. The financial obligations are immediately payable

1 to the Clerk of Court for the U.S. District Court.

2 Pursuant -- you do have, Mr. Nalley, the right to appeal  
3 the sentence imposed by the Court to the extent you have not  
4 validly waived that right to appeal. If you choose to appeal,  
5 you must file any appeal within 14 days after the Court enters  
6 judgment.

7 Are there any objections to the sentence I've announced,  
8 Ms. Rozzoni?

9 MS. ROZZONI: No, Your Honor.

10 To be clear for the record, the maximum potential fine was  
11 \$100,000, although I know you did not impose one here.

12 THE COURT: All right. Thank you.

13 And Mr. Hawker, any objection to the sentence imposed?

14 MR. HAWKER: No, Your Honor.

15 I do want to make sure that I understand. I think you  
16 might have mentioned as you were imposing sentence -- I think  
17 it's Count 1 of the information; right?

18 THE COURT: Oh, what did I say?

19 MR. HAWKER: I think you said Count 4. Was that the  
20 old indictment? I'm not sure.

21 THE COURT: I'm reading the script that I got from  
22 Probation. So that's an error.

23 So this is Count 1 of the information; is that right,  
24 Ms. Rozzoni?

25 MS. ROZZONI: That is right, Your Honor. Thank you.

1 MR. HAWKER: I thought I heard it wrong, but otherwise  
2 no objection.

3 THE COURT: Thank you for flagging that. That was an  
4 error. Beyond that, Mr. Hawker, any other objections?

5 MR. HAWKER: No, Your Honor.

6 THE COURT: Okay. Ms. Baker, anything from Probation?

7 PROBATION OFFICER: Your Honor, you may have said this  
8 and I just didn't hear it. The \$25 special assessment?

9 THE COURT: Oh, again, this said \$10, but again, I'm  
10 reading, I guess, from a script that you used in another case.  
11 So it's a \$25 special assessment; is that what you're saying,  
12 Ms. Baker?

13 PROBATION OFFICER: Yes, it is.

14 THE COURT: I guess you used a script from a petty  
15 offense.

16 PROBATION OFFICER: Oh, yes, I see exactly what you're  
17 saying, in that first paragraph, the Count 4 and the \$10. It  
18 should actually be \$25.

19 THE COURT: All right. With those two corrections,  
20 it's Count 1 of the information and \$25 for the special  
21 assessment, anything else, Ms. Baker?

22 PROBATION OFFICER: No, Your Honor.

23 THE COURT: Okay. All right. Mr. Nalley, I wish you  
24 all the best and hope not to see you.

25 COURTROOM DEPUTY: Your Honor, excuse me for

1 interrupting. We don't --

2 THE COURT: Is there a motion to dismiss the  
3 indictment?

4 MS. ROZZONI: Yes, Your Honor. Pursuant to the plea  
5 agreement, the United States would move to dismiss the  
6 indictment as to Mr. Nalley only.

7 THE COURT: All right. That motion is granted.

8 COURTROOM DEPUTY: Thank you, Your Honor.

9 THE COURT: All right. Mr. Nalley, so I'm not going  
10 to see you back; right?

11 THE DEFENDANT: No, ma'am.

12 THE COURT: All right. I wish you the best.

13 (Proceedings adjourned at 1:28 p.m.)

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CERTIFICATE OF OFFICIAL COURT REPORTER

I, Sara A. Wick, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Please Note: This hearing occurred during the COVID-19 pandemic and is, therefore, subject to the technological limitations of court reporting remotely.

/s/ Sara A. Wick

April 15, 2022

SIGNATURE OF COURT REPORTER

DATE