

UNITED STATES DISTRICT AND BANKRUPTCY COURTS
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	Case No. 21-CR-00035
v.	Washington, D.C.
JEFFREY SABOL,	April 8, 2021
Defendant.	11:00 a.m.

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TRANSCRIPT OF BOND HEARING
BEFORE THE HONORABLE EMMET G. SULLIVAN
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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P R O C E E D I N G S

THE CLERK: Your Honor, this is Criminal Case 21-035, United States of America versus Jeffrey Sabol. Will parties on the line please identify yourselves for the record? And we'll start with government counsel, please.

MS. KUKOWSKI: Good morning, Your Honor. AUSA Colleen Kukowski for the United States.

THE COURT: Good morning, counsel.

MR. NORRIS: And good morning, Your Honor. Attorney John Norris on behalf of Mr. Jeffrey Sabol.

THE COURT: Good morning, counsel. Mr. Sabol, how are you this morning, sir?

THE DEFENDANT: Hello, sir. I'm okay, sir. Thank you.

THE COURT: I have one question before we start. We're hearing all sorts of let me just say information that residents at the jail are being locked down 23 hours a day. Does that apply to your client, Mr. Norris?

MR. NORRIS: It does, Your Honor. Yes.

THE COURT: Has he been given a reason for that?

MR. NORRIS: He has not. I've heard rumors about other things completely unrelated to Mr. Sabol or his case. But I have not heard any specific reasons either in his case or outside his case.

1 THE COURT: All right. Thank you. I am meeting
2 tomorrow with the director of the Department of
3 Corrections to get more information because, you know,
4 like everything else, we got to separate fact from
5 fiction, but I just thought I'd ask you that question. I
6 figured you would know. So thank you very much.

7 I've read everything that's pending. I do have
8 a minor conflict at around ten minutes to 12. I'm going
9 to have to take about a 15-minute recess. But I don't
10 want to lose our place in the queue, Mark. So what do we
11 do? I don't want to send everyone to a breakout room and
12 then, you know, D.O.C. has put someone else in our place.
13 So I'm not sure what to do, Mark.

14 THE CLERK: Okay. Let me double check to see
15 what's -- I think I put a two-hour limit on this hearing,
16 Your Honor. So let me double check.

17 THE COURT: All right. I don't think we'll need
18 two hours. But I just want to be fair to everyone. I'm
19 going to give each side an opportunity to very succinctly
20 tell me their reasons pro and con for release or not.
21 Again, I've read everything. I think it's always great to
22 be up front with people. My inclination is to keep your
23 client detained, Mr. Norris, but I want to be fair about
24 that. Maybe there is some new information since your
25 motion was filed. I don't know.

1 MR. NORRIS: I think there is, Your Honor. So
2 thank you for the opportunity. Yes.

3 THE COURT: Sure. And the other issue is this.
4 That in the event the Court does detain your client,
5 Mr. Norris, and the Court will have to wrestle with the
6 issue of speedy trial, any exclusions, et cetera, et
7 cetera. But any way, why don't I give you a few minutes?
8 But I'm going to periodically look at my watch. It's
9 around ten after now. But it's a hard break at around ten
10 minutes to 12. I may just ask everyone just to, you know,
11 stay where you are and just, you know, mute yourself on
12 audio and video. I may just do that because I don't want
13 to lose anyone.

14 All right. Why don't I -- this is your motion,
15 Mr. Norris. Why don't you just summarize -- give me your
16 best reasons for release into the community.

17 MR. NORRIS: Thank you, Your Honor. I
18 appreciate the opportunity and we have a number of
19 reasons. First off, this is a bond review as the Court
20 knows from the magistrate judge's determination from New
21 York State and the Court has the ability to do this review
22 de novo.

23 THE COURT: Right.

24 MR. NORRIS: We're starting over fresh. And
25 I've looked at the statutes on this, Your Honor. And

1 while detention is permissible in this case, it is not
2 required. And in fact there is no rebuttable presumption
3 that the government can rely upon for dangerousness in
4 this case like there are in so many other cases for a
5 number of reasons. One because Mr. Sabol does not have a
6 criminal record or the most diminutive of criminal
7 records. He has one misdemeanor matter that was diverted
8 out I believe more than five years ago and --

9 THE COURT: People have spoken very highly about
10 him. It's like, you know, you are reading two books.

11 MR. NORRIS: Well, yes.

12 THE COURT: And he's got some very glowing
13 recommendations from people who have known him for years
14 and essentially, the conclusion that many have reached is
15 this is totally out of character for him to be involved in
16 this type of incident.

17 MR. NORRIS: Your Honor, I think the Court is
18 right and the Court has focused on the crux of the matter
19 here. I have never seen this quantity or quality of
20 character letters on behalf of any of my clients in
21 federal court previously. And from what I know about
22 Mr. --

23 THE COURT: Notwithstanding your best efforts to
24 get those letters I'm sure.

25 MR. NORRIS: Well, that's true, that's true in

1 many cases. But in this case, they simply came to me. I
2 didn't make a request. You know, people heard that Jeff
3 had been arrested and was detained and people wrote these
4 letters from all walks of his life with all these
5 different experiences with him because of his character
6 and who he is.

7 And, Your Honor, I think what's important for
8 the Court to focus on when it looks at dangerousness and
9 risk of flight because we're going to talk about both of
10 those today is that the conduct, the criminal conduct for
11 which Mr. Sabol is before the Court really took place by
12 him over a matter of seconds.

13 Now I understand he made some bad decisions and
14 he understands that. I'm going to explain that to the
15 Court as well. He shouldn't have come to D.C. He
16 shouldn't have been part of the rally. And as part of the
17 rally, he shouldn't have gone up those steps.

18 But the actual criminal conduct that he's
19 charged with, Your Honor, the assault on the police
20 officer, he did not come to this incident with any weapons
21 or armed. He became armed because he disarmed a police
22 officer. He took a baton away from a police officer. He
23 grabbed the baton. He held onto it. The officer let go.
24 Mr. Sabol got it in the tug of war. But he did not use
25 the baton as a weapon. He didn't hurt anyone with it. He

1 didn't hit anyone. He didn't poke anyone. He didn't do
2 any of that.

3 THE COURT: Let me stop you for a second. Don't
4 the videos show a different scenario?

5 MR. NORRIS: No, they do not, Your Honor. If
6 the Court looks at the videos and we actually have two
7 clips we can play for the Court. Now the videos show a
8 violent mob. There's a lot of angry things going on. But
9 the video that we want the Court to focus on shows
10 Mr. Sabol doing the opposite. He's waving his hands in
11 the type of position like a referee might, you know,
12 parallel to the ground saying no, don't hurt the officer,
13 don't hurt the cop, don't hurt the cop. And so, yes, he
14 is in the group, the group is violent, they are struggling
15 with police, but he did not hurt or harm anyone.

16 And his criminal conduct is literally less than
17 ten seconds, Your Honor. Seven to nine seconds of
18 struggling with police officers, which he should not have
19 done. And I think it's important for the Court to realize
20 what he did do, taking the baton from the officer and what
21 he didn't do. He did not use that baton as a weapon to
22 hurt anyone. And I think that's extremely important.

23 I also think it affects the rest of his actions,
24 not only that day, but in the coming week or so
25 afterwards, Your Honor. Jeffrey Sabol having lived his

1 life as a good community minded person who thinks of
2 himself as someone who does good in the world -- and I'll
3 be honest with you, judge. He came to D.C. for reasons
4 that he thought were good reasons at the time.

5 He since realizes he was misguided, he was wrong
6 he had been lied to about the election being stolen and
7 stopping the steal and those types of things. But because
8 of what happened that day and because of the frenzy and
9 the things that were said to the crowd by people like
10 Roger Stone and Rudy Giuliani and the President himself.
11 The President of the United States of America was telling
12 citizens something evil has happened and you all have to
13 go fix it. He got caught up inappropriately in the
14 moment. And for one day in his life, he made some really
15 bad decisions. And those bad decisions impacted him so
16 heavily, Your Honor, that they affected what he did after
17 January 6th.

18 They affect the fact that -- well, first off, he
19 tried to take his own life which I think shows the level
20 of cognitive dissonance that this person had, a good
21 person who realizes he's made a mistake and he's done bad
22 things. He realized the shame he was going to bring to
23 his family. And I understand a big part that this case
24 has in the media and elsewhere in the government's
25 presentation is the fact that he tried to flee the country

1 to Switzerland.

2 Let's talk about that for just a minute, Your
3 Honor. Yes, that is something he did. He purchased an
4 airline ticket to go from his home in Colorado through
5 Boston to Switzerland. The reason he did that was not to
6 escape the United States or prosecution permanently and
7 avoid prosecution. But in his mind, he believed he was
8 doing good that day in terms of trying to help officers
9 who were injured or tripped or wounded down the steps and
10 that he was seeing videos of himself on the news that put
11 him in a bad light.

12 He believed there would exist videos out there
13 that show him in a better light and there are. Some of
14 the videos that we've found, you know, look better than
15 the clips that are shown by the FBI, Your Honor. And he
16 wanted to go somewhere where he could sit and not be
17 arrested and do the research. But he bought a return
18 trip. His ticket to Switzerland returned to the United
19 States on the 22nd. Now all of that was of no matter
20 because he never got on the plane and it was his decision
21 not to get on the plane --

22 THE COURT: I'm going to walk away from the
23 screen for just a second, but I can hear you. I just need
24 to lock a door. I just need to lock a door here. But I
25 can hear you.

1 MR. NORRIS: Yes, sir. Thank you, Your Honor.

2 THE COURT: Sure. Go right ahead, counsel.

3 MR. NORRIS: So a lot's been made about his
4 going to Switzerland, but it was not to escape
5 prosecution. In his mind, it was really to give him time
6 so that he was not arrested before he could find the video
7 that helped him out.

8 Now was he thinking clearly? No, he was not
9 thinking clearly. This was the cognitive dissonance.
10 This is someone who was not in a good mental state because
11 of sort of the trauma that they were in.

12 And the Court might be asking how did he get to
13 a position like that. This is someone who is stable.
14 What he does for a living, Your Honor, is he is an
15 ordnance expert that goes into military installations
16 around the world and he goes into energy and mining
17 installations around the world where there's explosive
18 ordnance and he's the guy that locates and diffuses and
19 removes explosives to protect other people and he's done
20 this for 25 years. He's highly intelligent. He's highly
21 methodical. He's a brilliant gentleman. And he works in
22 an environment where there are a lot of people in the
23 military that are conservative. He himself is not
24 particularly political up until the recent events where
25 the stopping the steal became politicized.

1 Now I think he reached a point in his life a few
2 years ago when his eldest brother passed away that was
3 very traumatic for him and he kind of lost one of the
4 anchors in his life and he started listening to more
5 politics than he had in the past. And I think that
6 explains why he was motivated enough to come to
7 Washington, D.C. in December and come to D.C. in January
8 and get involved in this rally. But he did not come with
9 the intent of hurting anyone. He didn't come with the
10 intent of actually stopping democracy from going forward,
11 Your Honor.

12 And I think it's important for the Court to
13 realize what he did and did not bring with him to the
14 District of Columbia and some of the reasons why. Yes,
15 you know, he was wearing a bicycle-style helmet and he was
16 wearing boots and this is because I understand, you know,
17 he was told by people that there could be, you know,
18 violent protests with Antifa and people on the left could
19 be clashing. It was not in order to fight with police or
20 fight with members of the government.

21 And then it's also important what he brought
22 with him in his backpack. The government made a big part
23 about how he had zip ties in his backpack and he had
24 two-way radios in his backpack. And I'd like to talk
25 about both of those things. When you and I -- and I mean

1 that collectively, not individually. But when those of us
2 read in the media about certain people on January 6th
3 having zip ties at the Capitol, someone was referred to,
4 another individual as "zip tie guy" and the Court might
5 remember photographs of this individual. And he had those
6 big white, nylon plastic, double-sided figure 8 or letter
7 B shaped zip ties that law enforcement carry. The type
8 that you could use as handcuffs they are so scary. Okay.
9 To me, that's a really scary factor.

10 Jeffrey Sabol did not have those. Jeffrey Sabol
11 is an engineer and in his backpack, he had little wire
12 cable ties that he carries with him everywhere he goes in
13 his backpack and in his computer bag and in his car. It's
14 the same type of wire ties that I keep in the tool box in
15 my pickup truck, Your Honor. They are not used to
16 restrain people. They are used if you ever need to
17 connect two things. And he literally as an engineer does
18 not leave home without those.

19 Now he did also have a type of two-way radio
20 like a Radio Shack type radio that had an ear plug so that
21 he could communicate with the two people he came from
22 Colorado with. It didn't work. The radios didn't work
23 more than 20, 30 feet apart from each other. The reason
24 they brought those is because they heard there was going
25 to be -- you know, these numbers of marches get

1 exaggerated -- but they heard there was going to be a
2 million people at the Capitol that day and that cell
3 phones wouldn't be working. So they were traveling
4 together. They brought these radios together. But he
5 didn't use them in any coordinated way on January 6th.

6 The zip ties, there was nothing. There was no
7 weapons that he had other than that one baton which he
8 took from the officer and he did not use that baton as a
9 weapon. He did not hurt or injure the officer.

10 If the Court looks closely at the statement of
11 facts in this case, the agents really seem to qualify what
12 they say happened in different places. It appears this
13 individual may have been tugging on the police officer
14 down the steps. But we now know there was a co-defendant
15 who was charged with doing that. We know from other
16 videos there's a co-defendant that pulled the officers
17 down the steps.

18 Jeffrey Sabol was up there. He was -- and I
19 almost hate to use this term, but as a former rugby player
20 he was in a scrum with these other people. But most of
21 what he was trying to do was say don't hurt the cops, Your
22 Honor.

23 So I don't want to oversell this. He made
24 mistakes. He broke the law. He shouldn't have been
25 there. He clearly interfered with the officers in a way

1 that was assaultive in conduct. And what occurred on
2 January 6th in a group, a huge group of people, hundreds
3 of people was incredibly serious that day. But he's not
4 the one that was committing the most violent acts.

5 And so if the Court looks at dangerousness, we
6 think all of this can be addressed by what I'm proposing
7 which is this, Your Honor. I have spoken with his family
8 members. His parents are 78 and 82 years old
9 respectively, his mother and father and they have a home
10 in Waterville, New York. Next door to their home in
11 Waterville, New York, Mr. Sabol's girlfriend, Michelle
12 Waufle, owns a home. That's how Mr. Sabol first met his
13 girlfriend of nine years because they were neighbors with
14 his mother and her home is available.

15 Rather than him going home to Colorado, Your
16 Honor, I'm going to suggest that if the Court sees fit to
17 release him on house arrest to the address, 231 Osborne
18 Avenue in Waterville, New York, I have spoken with a
19 senior probation officer out of the Northern District of
20 New York which is the jurisdiction that would supervise
21 someone in Oneida County, New York if they were on
22 pretrial release by yourself, by any federal judge in the
23 country, this office would be willing to do electronic GPS
24 house arrest style home monitoring. They are available to
25 do that.

1 Now Mr. Sabol no longer has a passport because
2 the FBI has his passport. He never had a duplicate. If
3 he had any such document, he would be willing to turn it
4 over. He's not a risk of flight in terms of leaving the
5 country. We don't believe he is a risk of harming himself
6 any further now that sort of the acute crisis stage that
7 he was in back in January has passed. He's really come to
8 terms with the mistakes that he's made and he understands
9 that he's made mistakes. He understands that his mindset
10 on January 6th was completely wrong, that he had been lied
11 to and that he took actions that were inappropriate
12 because he had this inappropriate mindset.

13 And I think at this stage of his life, if the
14 Court had him on house arrest, supervised by federal
15 probation, living next door to his elderly parents where
16 he could assist in taking care of them with his
17 girlfriend, he also has through his girlfriend's family
18 employment opportunities that are available to him in
19 Waterville, New York. Once the Court thinks that's
20 appropriate if the Court was to see fit to move him from
21 house arrest to say a curfew, he could have full time
22 employment as well. And, of course, the Court knows
23 Pretrial Services out of the federal court in New York
24 could provide some mental health services as well.

25 So that, Your Honor, is the most concise

1 summations of arguments. Jeffrey Sabol has lived his
2 entire life as a good man. He is not someone who is going
3 to disappoint this Court or do anything to be a danger to
4 the community or a risk of flight.

5 THE COURT: Mr. Norris, thank you very much.
6 Ms. Kukowski?

7 MS. KUKOWSKI: Thank you, Your Honor. I think
8 it's fair to say the defense and I just categorically
9 disagree about much of the evidence and what the evidence
10 shows. I do want to start with there is one thing we do
11 agree with. Mr. Norris stated that the defendant is
12 highly intelligent and methodical. I have no reason to
13 doubt that and I would actually submit to the Court that
14 the evidence that was proffered in the government's
15 detention memo and what is even just frankly visible from
16 watching the videos of itself would support that and I
17 think you see his intelligence and his methodical approach
18 of things starting from the very beginning leading up to
19 the assaults. The defense submitted that he was caught up
20 inappropriately in a moment and I think that's just not
21 consistent with the evidence that we have and I would
22 submit that he was methodical and prepared for that.

23 One does not wear a helmet, steel-toed boots,
24 carry a radio and carry zip ties in a backpack even if one
25 is an engineer to go to what one perceives just a peaceful

1 protest. There was planning here and coordination with
2 folks that he was with, folks he intended on communicating
3 with with the radios. I think the fact that the radios
4 may or may not have worked that day is kind of beside the
5 point. The point is that he was preparing for this moment
6 and as he put it, he saw that there was a battle that was
7 occurring. He was going in prepared to apparently fight
8 what he perceived to be Antifa and then as the events of
9 the day unfolded, he himself considered himself as a
10 patriot warrior that needed to respond to the front line.
11 A battle and a warrior inherently contemplates using force
12 and engaging in violence. That's the very definition of
13 what a battle is and that's what he went in to do.

14 The Court has seen the videos and I can play
15 them again because if the Court is willing, there's just a
16 couple of segments that I do want to play to help
17 emphasize some of the points, Your Honor.

18 THE COURT: I'm sorry. I was on mute. Sure.
19 You can go ahead and play them again, which raises another
20 question also. What portion if any of the videos should
21 be uploaded somewhere? I'm not suggesting the court's
22 website because my understanding is that if all the judges
23 with these cases start uploading videos, that's probably
24 going to impact the web services provided to the courts
25 throughout the country and it would just be overwhelming.

1 So you don't have to answer that now. But at some point,
2 I need to know -- and I meant to ask Mr. Norris that as
3 well, whether he had objections to uploading videos that
4 he relies on or objections to videos that the government
5 relies on. But you don't have to respond now, but I would
6 like to have your best thoughts.

7 I think that whatever the judges do, they should
8 be consistent and not overload the system. It may well be
9 that none of the videos should be uploaded. I just don't
10 know. The videos are evidence.

11 I mean I recall in the past I think that some
12 years ago, I presided over the Ted Stevens case. There
13 were a ton of videos in that case and I directed the
14 government to upload videos and other evidence on the
15 government's website and I felt comfortable about that
16 decision for about ten minutes. Then I reversed it.

17 Again, I don't know what the correct answer is.
18 I mean we all have different experiences with the web and
19 with the Internet. But you can let me know what your best
20 thoughts are. But no, go right ahead, counsel. If you
21 wish to rely upon and show again the video that you rely
22 upon for cogent reasons, please proceed.

23 MS. KUKOWSKI: Thank you, Your Honor. So what I
24 am going to share on my screen first is actually not a
25 video, but it is going to be a photograph that was

1 disseminated across social media and it's very much what
2 kicked off this investigation. Can the Court see the
3 photograph that's up now? This was originally in our
4 detention memo.

5 THE COURT: Yes, I can. Yes, I can. Thank you.

6 MS. KUKOWSKI: So this was originally in the
7 detention memo as Government's Exhibit 4 and I'll note
8 that the defendant did identify himself in it. So to
9 orient the Court as to what you see here, this is Officer
10 B.M. laying in a prone position down -- as he's being
11 dragged down by the steps.

12 AS Mr. Norris indicated, this is an
13 investigation. Mr. Sabol was among the first ever
14 arrested and it's a continuing investigation and several
15 additional co-defendants have been added to the case. So
16 what the Court can see here as I circle Officer B.M. is
17 the defendant to the right with the helmet, the tan jacket
18 and teal backpack and Officer A.W.'s baton to the back of
19 Officer B.M.'s neck. The Court can see also this first
20 co-defendant, Jeffrey Stager -- I'm sorry -- Peter Francis
21 Stager here holding an American flag with a jacket and
22 long hair, a third co-defendant, Co-Defendant Clayton
23 Mullins and then a U.S. co-defendant Jack Wade Whitton
24 here who was involved in pulling the defendant out as
25 well. There's a fifth co-defendant who is not pictured

1 and would have been up against the archway at this point.

2 THE COURT: And I'm sorry. Can you circle whom
3 the government contends is Mr. Sabol?

4 MS. KUKOWSKI: Certainly. It's this individual
5 here, Your Honor.

6 THE COURT: I see. All right. What appears to
7 be a brown jacket and a helmet?

8 MS. KUKOWSKI: Brown jacket, helmet and a teal
9 backpack.

10 THE COURT: Right. And a baton and an extended
11 right hand it appears to be.

12 MS. KUKOWSKI: Yes, Your Honor.

13 THE COURT: All right. Okay.

14 MS. KUKOWSKI: So that's what began the
15 investigation. What I want to show is --

16 THE COURT: Why don't we have that marked as
17 Government's Exhibit Number 1 for identification just so
18 the record is clear?

19 MS. KUKOWSKI: Certainly. I don't know if just
20 for consistency what the filing, Your Honor. In the court
21 filings, it was marked within our pleading as Exhibit 4.

22 THE COURT: Let's leave it -- I don't want to
23 mess up things. Let's just leave it as Exhibit Number 4,
24 Mark.

25 MS. KUKOWSKI: I think that will help so that

1 the public can also --

2 THE COURT: Yes.

3 MS. KUKOWSKI: -- back to the pleadings. So
4 what I want to show now, Your Honor, is Government's
5 Exhibit 2. It's the video of the body worn camera, a clip
6 of the body worn camera from Officer A.W. Court's
7 indulgence while I set this up here.

8 THE COURT: Sure.

9 MS. KUKOWSKI: And I'm going to start it just
10 for brevity sake since the court has had the clip at
11 approximately a 30-second marker here.

12 THE COURT: That's fine.

13 MS. KUKOWSKI: And what I want the Court to
14 watch here is how and when the defendant choose to disable
15 Officer A.W. and snatch his baton from him. I think
16 defense referred it to a bit of a tug of war and that the
17 officer let go. I think it's important to know that this
18 officer had been knocked to the ground and was being
19 assaulted by multiple individuals at this point. And the
20 baton that he was tugging on to was his main mechanism for
21 self-defense in protecting himself as he was being
22 viciously assaulted and as his colleagues were unable to
23 come and help him because they, too, were being assaulted.
24 And the reason why I want to play this clip and harken
25 back to what I said at the very beginning where we

1 acknowledged the defendant's intelligence and his
2 methodical approach to things is this to me shows the
3 defendant's premeditation here. He is choosing to arm
4 himself and he's choosing in that process not only to arm
5 himself, but to disarm another individual, an officer who
6 is standing there tasked with protecting the Capitol and
7 those inside of it. So with that said, I'm going to
8 replay or restart the government's -- it's Government's
9 Exhibit 2. Let me share my screen. And I apologize.
10 This is just a few seconds ahead.

11 So for the record, I've got it paused at the
12 19-second mark and the Court can hear various expletives
13 and the Court can see -- at this point you see Officer
14 A.W.'s arm here in the bottom right hand corner. He's
15 wearing a reflective jacket that distinguishes him from
16 several of his colleagues there and you see his baton in
17 his hand. This individual that I'll submit to the Court
18 you can see on the bottom portion of the screen here is
19 one of the individuals that initially attacked Officer
20 A.W. and threw him or caused him to fall to the ground.

21 What I'm going to do because it does happen
22 quickly here is I'm going to so the Court can see this, I
23 am going to play it at a slightly slower speed setting.
24 About half speed. And I'm going to restart for the record
25 at the 19-second mark. And so I've got it paused here at

1 24 seconds. I'll submit as you see once again Officer
2 A.W., you see his two outstretched arms in the reflective
3 M.P.D. jacket and you see the defendant, this tan jacket,
4 you see the very periphery of his backpack there and his
5 helmet and you see the defendant's hands on that officer's
6 baton. I'll restart it at the 24-second mark.

7 So I've got it paused at the 29-second mark
8 here. And so the Court sees the immediate aftermath of
9 Officer A.W. being stripped of his baton by the defendant.
10 He's rendered without any form of self-defense. The Court
11 sees Mr. Sabol's co-defendant here, co-defendant Whitton
12 kicking out at the officer who is now on the ground and is
13 indeed without any means to protect him. And as we
14 subsequently see in the video footage here, after
15 Defendant Sabol is involved and dragging Officer B.M. out
16 into the crowd, this officer, Officer A.W. is also dragged
17 out into the crowd.

18 So I'll restart it at 29-second mark and I'll
19 pause it at 38 seconds. So at this point the defendant
20 has brought Officer B.M. out in the crowd and he's off
21 camera. And then the Court has seen the entirety of this
22 video. I don't think it's necessary to play. For the
23 purposes of brevity here, Officer A.W. is then
24 subsequently dragged out from the crowd.

25 THE COURT: No. You take whatever time you

1 need, counsel.

2 MS. KUKOWSKI: well, I think given the briefness
3 of the video, I will return it to the normal speed though,
4 full speed here. And so restarting at the 38-second mark.

5 (Video played.)

6 MS. KUKOWSKI: So that's the end of Government's
7 Exhibit 2. And what I would submit here is that again
8 this officer who during the course of this assault endured
9 a laceration to the back of his head that required staples
10 to close. A key contributing factor to his injuries is
11 that him being pulled out in the crowd was the fact that
12 he was stripped of one of his very, very few means of
13 self-defense and to protect himself during the course of
14 this multi-layered violent assault. So that's
15 Government's Exhibit 2.

16 What I want to show next is just a very brief
17 clip. It was submitted to the Court after the filing.
18 It's Government's Exhibit 6 from a fellow officer --
19 Court's indulgence, let me just restart it -- from a
20 fellow officer who was standing behind Officer A.W. and it
21 shows the defendant's actions a little bit more clearly in
22 terms of how he went about snatching Officer A.W.'s baton.
23 So let me just share the screen again. And I'll restart
24 this from the very beginning. It's a short clip.

25 THE COURT: And for the record this is exhibit

1 number?

2 MS. KUKOWSKI: This will be Exhibit 6.

3 THE COURT: Thank you.

4 MS. KUKOWSKI: Restarting Exhibit 6 from the
5 beginning here. I'm just going to back it up a couple of
6 frames. And so what the Court sees here is the defendant
7 as he's approaching Officer A.W. Officer A.W. is on the
8 ground here. And I'm going to now play it at a slow speed
9 to help the Court.

10 (Video played.)

11 MS. KUKOWSKI: And so what the Court saw there
12 was the tug of war between Officer A.W. on the ground and
13 the defendant who because of the amount of force he was
14 using to snatch that baton out of Officer A.W.'s hands
15 ends up once he actually does get the baton falling down
16 the stairs himself.

17 And I want to emphasize that. He ended up
18 several flights or several steps away from the arch and
19 from where the focal point of the attacks and assaults
20 were. I talked earlier about how the fact that he stole
21 the baton as part of his premeditation here. He chose to
22 arm himself because as the Court can see, I don't think
23 zip ties would have been a sufficient weapon in this
24 scenario. He chose to as he put it go to the front line
25 of the battle. When he found himself without a weapon, he

1 decided to arm himself by taking that weapon and taking
2 that baton from an officer and then he's briefly -- what
3 the Court will see when the Court watches the next two
4 clips, the first is a publicly available video that's on
5 YouTube and then the second is from Officer C.M., another
6 officer who was standing in that front line. The Court
7 sees the defendant stand on those steps and then choose to
8 re-engage and choose to run back up the stairs when
9 Officer B.M. is being assaulted and then participate in
10 dragging him back down and I would submit that shows his
11 deliberation. Going back to what I said in the very
12 beginning, he's highly intelligent and he is methodical in
13 his approach and you can see that as these acts and these
14 assaults play out.

15 I'll stop sharing Government's Exhibit 6 and I'm
16 going to show Government's Exhibit 3. This is a publicly
17 available clip that was posted onto YouTube.

18 Actually, before I start playing this video,
19 Your Honor, I'm just cognizant of what you said earlier
20 about your timing. I do note it's 11:43.

21 THE COURT: You know, again I'm not going to
22 deprive anyone of any time now. So what's your
23 recommendation?

24 MS. KUKOWSKI: If I recall briefly, Your Honor
25 said the Court was going to have to take a break at some

1 point.

2 THE COURT: At 11:50. I probably have some
3 flexibility. Probably 11:55.

4 MS. KUKOWSKI: Okay.

5 THE COURT: I won't be gone for any more than
6 ten minutes.

7 MS. KUKOWSKI: Okay.

8 THE COURT: But I couldn't remove something else
9 on the calendar. But go ahead and proceed as you would
10 like to counsel. If you want to show it now -- I don't
11 know how long this takes. But if you want to show it now,
12 that's fine. If you want to wait, that's fine.

13 MS. KUKOWSKI: Yes, Your Honor. I'm going to go
14 ahead and show it now. It should be able to be finished
15 by the time the Court does need to take a break.

16 THE COURT: All right.

17 MS. KUKOWSKI: So I'm going to start with what's
18 been marked as Government's Exhibit 3 which was a video
19 that was posted to YouTube and I'm going to start it from
20 the very beginning here.

21 THE COURT: Let me stop for one second. It's
22 shocking what these videos depict. It's shocking. That
23 this is a battle scene at the United States Capitol, the
24 heart of democracy in Washington, D.C. I had to look at
25 these a couple of times before it really sunk in what I

1 was watching and it's hard to describe. It's hard to
2 believe. I mean I was born in this city, been here all my
3 life. And it's hard to believe that this type of conduct
4 is taking place at the seat of our democracy. Anyway, go
5 ahead. I'm sorry. Every time I look at these videos, it
6 just chokes me up.

7 MS. KUKOWSKI: And just for further context to
8 the point, this is the archway that is used in this lower
9 western terrace that we are talking about here is where
10 the presidential inauguration took place several weeks
11 later on January 20th.

12 So I've got for the record what's been marked as
13 Government's Exhibit 3 and it is paused at the four-second
14 mark. So to help the Court orient itself, what you see
15 here is a co-defendant, co-defendant Whitton, who is about
16 to go over a railing that was set up there and then start
17 attacking Officer B.M. with a crutch.

18 THE COURT: Now is this the -- not to make light
19 of the moment at all, but does this depict the entranceway
20 for Lady Gaga? Is that -- I'm just trying to determine
21 what we are looking at here.

22 MS. KUKOWSKI: Yes, Your Honor.

23 THE COURT: She walked through there. All
24 right. I got it. I see it now. All right.

25 MS. KUKOWSKI: And I am fairly certain. I'm

1 basing that just upon my own recollection from watching --

2 THE COURT: All right.

3 MS. KUKOWSKI: -- the inauguration and watching
4 Lady Gaga's National Anthem.

5 THE COURT: Right.

6 MR. NORRIS: I think the parties would stipulate
7 to that, Your Honor.

8 THE COURT: All right. Okay.

9 MS. KUKOWSKI: So I'm just going to back it up a
10 little bit here. We start at the four-second mark. I'll
11 start it from the beginning. So I've got it paused at two
12 seconds. And if the Court can see my cursor, I'm going to
13 highlight the defendant here. You can see the teal
14 backpack, the tan jacket and the helmet. And I'm going to
15 ask the Court to watch the defendant's movements. He's
16 not always going to be visible because there is quite a
17 number of people there. But you are going to see him rush
18 up towards the steps. You'll see him appear to engage
19 with what we now know is Officer A.W. when he takes
20 Officer A.W.'s baton, fall back down the steps and then
21 re-engage again. So re-starting at the two-second mark.

22 (Video played.)

23 MS. KUKOWSKI: I've got it paused at the
24 five-second mark and here you see his co-defendant,
25 co-defendant whitton going over the railing and you see

1 Defendant Sabol here with his hands on yet another railing
2 going up the steps at some point.

3 THE COURT: Yes. I see that.

4 MS. KUKOWSKI: Restarting at the five-second
5 mark.

6 (Video played.)

7 MS. KUKOWSKI: I got it paused at the ten-second
8 mark. That's after he has then fallen down or the force
9 of his taking of Officer A.W.'s baton has led him to
10 stumble down the stairs. And as I emphasized before, this
11 is all part of his deliberation. You are going to watch
12 him make a decision to run up and join that battle and
13 take part in dragging Officer B.M. out of the archway.

14 So I'm going to restart it at the ten-second
15 mark.

16 (Video played.)

17 MS. KUKOWSKI: I'm going to pause it here at 29
18 seconds. For the record, I think it is -- I am not sure
19 if it's my computer connection or the system, but this
20 does appear to be buffering and playing a little bit
21 slower than at full speed here. But it is paused at the
22 29-second mark and what you see here is the defendant has
23 succeeded in pulling Officer B.M. down the steps aided by
24 the baton they stole from Officer A.W. at this point. You
25 see Defendant Mullins starting to grab onto Officer A.W.'s

1 legs and pull him out. I'll restart it at the 29-second
2 mark.

3 THE COURT: All right.

4 (Video played.)

5 MS. KUKOWSKI: I'll stop it here at the
6 45-second mark. At that point Officer A.W. had been
7 dragged down the steps as well.

8 And finally, just to show the government's final
9 exhibit, which is marked as Exhibit 5-A. This is Officer
10 C.M.'s body worn camera. Officer C.M. was standing
11 directly behind Officer B.M. when Officer B.M. was first
12 assaulted with a crutch by Defendant Whitton and then
13 pulled out into the crowd by Defendant Whitton and then
14 joined in -- who was then joined in by Defendant Sabol and
15 you can very clearly see Defendant Sabol using the baton
16 up against the neck of -- and the back of Officer B.M. to
17 help drag him into the crowd in a prone position. Court's
18 indulgence while I switch --

19 THE COURT: Sure.

20 MS. KUKOWSKI: I will start with Government's
21 Exhibit 5-A from the very beginning.

22 THE COURT: All right.

23 MS. KUKOWSKI: All right. So for the record
24 I've got Exhibit 5-A paused at the 33-second mark. What
25 you see here is Defendant Whitton with his hands on

1 officer B.M.'s head. Reorienting the Court, this
2 reflective jacket. You see that this is Officer A.W. down
3 on the ground. And what the Court sees just over the left
4 arm is the defendant, Defendant Sabol, and he is watching
5 what is happening. And what the Court sees here are the
6 outstretched arms of law enforcement trying to bring their
7 colleague back to safety. What the defendant then chooses
8 to do is to drag Officer B.M. down the stairs away from
9 safety and away from those colleagues who are trying
10 desperately to keep him back at the police line and
11 protect him while they are simultaneously trying to
12 protect the Capitol that is very much under siege at this
13 point.

14 I'll restart it at the 33-second mark. Back it
15 up. And so again here, Your Honor, at the 33-second mark
16 just a few frames further, we see the defendant watching.
17 And at this point I am going to put it back on slow motion
18 so that the Court can fully see how the defendant watches
19 and chooses to participate in this assault.

20 THE COURT: All right.

21 (Video played.)

22 MS. KUKOWSKI: I got it paused at the 39-second
23 mark. The Court saw how the defendant wielded the baton
24 and dragging Officer B.M. out and down the stairs and at
25 this point, the officers here are just desperately trying

1 to protect and help Officer A.W. who the Court can see has
2 had his helmet knocked off. He's been deprived of his
3 baton, his principal source of self-defense and protection
4 at this point by the defendant.

5 And I would submit to the Court if the Court
6 looks at Officer A.W.'s jacket here, the reflective yellow
7 jacket and you see red there and I'd submit to the Court
8 that I cannot at this point actually say that the jacket's
9 been tested or anything along those lines, but I would
10 submit that would be consistent with blood and that he did
11 indeed receive a laceration to the back of his head that
12 had to be closed with staples.

13 THE COURT: All right.

14 MS. KUKOWSKI: I'll restart it at the 39-second
15 mark.

16 (Video played.)

17 MS. KUKOWSKI: So pausing it to one-minute
18 second. So what you saw there was the defendant or a
19 co-defendant assaulting Officer C.M., knocking Officer
20 C.M.'s body worn camera to the ground. And for the
21 record, paused at the one-minute mark.

22 THE COURT: All right.

23 MS. KUKOWSKI: And now I'm just going to back up
24 a few frames. So as the body worn camera is tumbling to
25 the ground, the Court is going to see again a mark of red

1 there. That's close nearby where Officer A.W.'s head is
2 and I'll let the Court draw inferences that it wants to
3 choose from that red mark that's on the white marble
4 there. And that's the conclusion at the one-minute mark
5 here. We can conclude with Government's Exhibit 5-A.

6 THE COURT: Now that last scene, does that
7 depict Mr. Sabol as well as it appears that he's standing
8 with his hand extended or maybe I'm wrong. I don't want
9 to be incorrect about that.

10 MS. KUKOWSKI: No, Your Honor. I don't
11 believe -- I will put this back up here for the Court. At
12 this point, in Government's Exhibit 5-A, the time stamp at
13 the top is 16:27:58, 4:27 p.m. I don't believe that the
14 Court sees the defendant in this frame here. The
15 defendant has already dragged Officer B.M. down the steps.
16 This is that second wave of attacks against Officer A.W.
17 as he is about to be dragged down the stairs.

18 THE COURT: I see.

19 MS. KUKOWSKI: And then the attacks on Officer
20 C.M.

21 THE COURT: Thank you.

22 MS. KUKOWSKI: And so, Your Honor, I would
23 submit that those videos in many ways speak for itself and
24 alone provide ample reason as to why the defendant should
25 be detained. But his actions subsequent to this also not

1 only give the Court reason to detain him for risk of
2 flight, but also I would even submit for obstruction of
3 justice. By his own accounts, he left the scene, went
4 home and he microwaved his electronics.

5 Again going back to the defendant as a highly
6 intelligent and methodical man, this is destruction of
7 evidence here. He flies to Boston in an attempt to go to
8 Switzerland. Defense counsel portrays this as he had a
9 return trip planned. But the defendant also acknowledged
10 to law enforcement when he spoke with them afterwards that
11 he was going to Switzerland because it's a country where
12 he couldn't be extradited and he could blend in and he
13 could ski for a few days. That's not consistent with
14 someone who is preparing to accept responsibility. That's
15 going to a country where you can't be brought back
16 regardless of whether or not a return ticket was
17 purchased. I'd submit to the Court even further that
18 given his intelligence, purchasing a return ticket would
19 actually be part of a ruse and help fit with his narrative
20 that he was going there just to ski for a few days.

21 When he's unable to flee the country, he takes
22 another step and destroys more evidence in that he
23 disposes and disregards his phone. He instructed other
24 individuals who he sent messages to that day to destroy or
25 to delete, sorry, specifically video files that he had

1 sent them. This is a savvy individual who not only poses
2 a danger to the community and is a flight risk, but also
3 here has shown that he has the foresight to destroy
4 evidence that was related to the events and his criminal
5 conduct.

6 And I would submit for all these reasons, Your
7 Honor, the defendant should continue to be -- he is a
8 danger to the community. He is a flight risk and he's
9 shown that he's obstructing these proceedings by choosing
10 to destroy evidence.

11 THE COURT: All right. Thank you, Ms. Kukowski.
12 It's -- according to my cell phone, it's 11:59. I'm going
13 to have to take that hard break for 15 minutes. And I'm
14 going to return. I'm going to give Mr. Norris the time he
15 needs within which to respond as appropriate.

16 MR. NORRIS: Thank you, Your Honor.

17 THE COURT: So just bear with me, everyone.
18 Sorry about this. But it was just something important I
19 couldn't move from the calendar. I mightily tried to do
20 it, but I just couldn't do it.

21 So my best advice, Mark, unless you have a
22 better suggestion -- you probably do -- is just for people
23 just to remain where they are and mute the video and mute
24 the audio I guess. That's what I'm going to do. And I
25 will return at 12:15. Thank you, everyone. I apologize

1 for that. Thank you.

2 MR. NORRIS: 12:15. Thank you, Your Honor.

3 (Recess.)

4 THE COURT: Mr. Norris, go right ahead.

5 MR. NORRIS: Thank you, Your Honor. And thank
6 you for the opportunity to respond.

7 THE COURT: Sure.

8 MR. NORRIS: Your Honor, government counsel says
9 that the videos speak for themselves and she then goes on
10 to talk to the Court about what's in my client's mind and
11 what his intentions are, that he was unarmed and he felt
12 like he needed a weapon and so he went and he took a
13 weapon intending to take it from an officer. I'm going to
14 submit to the Court, Your Honor, that the videos do not
15 speak for themselves in quite the way that Ms. Kukowski is
16 saying that they do.

17 For example, the government showed the Court
18 Government's Exhibit Number 4, the still photograph that
19 the Court remembers it shows my client in the tan jacket,
20 the green backpack, teal backpack and in my client's right
21 hand is the police officer's baton. The officer is down
22 on the steps. And my client has the baton in his right
23 hand and his hand appears to be on the back of the
24 officer. That photograph came from Syracuse, New York
25 newspaper that listed it as a still from an FBI video. I

1 have been requesting such a video from the government and
2 scouring the Internet for that video and I have not been
3 able to locate it, Your Honor. But I think it's crucially
4 important because without the video, the still photograph
5 does not give us context. It's a snapshot. It's not what
6 my client is doing with the baton.

7 The government uses things -- language saying he
8 uses the baton against the officer. He's wielding the
9 baton. He never hit the officer with the baton. He never
10 poked or used the baton as a weapon against Officer A.W.
11 or against Officer B.M. or against anyone else. There is
12 absolutely no video that shows him doing that because he
13 didn't do that, Your Honor.

14 And the government talks about how he violently
15 drags the officers down the steps away from safety. It
16 does not show him dragging the officers down the steps.
17 Yes, it does show Mr. Sabol falling backwards down the
18 steps and going back up towards the officer. But it's
19 hard to say whether or not he's dragging the officer down
20 or trying to lift the officer up as the officer and Mr.
21 Sabol go down the steps. And that's a huge important
22 distinction, Your Honor, because I think the Court in
23 order to determine dangerousness really does need to think
24 about what's in Mr. Sabol's mind a little bit. And
25 towards that end, there are two video clips that I'm going

1 to ask my assistant to hit play on for the Court to
2 review. I'm just going to number them Video 1 and Video
3 2.

4 THE COURT: All right.

5 MR. NORRIS: Court's indulgence.

6 THE COURT: Sure.

7 MR. NORRIS: Now in this first video clip, Your
8 Honor, we'll do it with sound. Yes. Once, it starts
9 playing, you'll be able to hear Jeffrey Sabol say don't
10 hurt the cop. And I have a civilian witness, a military
11 witness who will say he's known Mr. Sabol for 20 years and
12 recognizes his image and his voice.

13 (Video played.)

14 MR. NORRIS: Your Honor, if I could narrate that
15 again, what I would say is that in that clip, Video Clip
16 1, I have a civilian witness who is a former army officer
17 who's known Jeffrey Sabol for 20 years review that video
18 and say he recognizes Jeffrey Sabol in the tan coat with
19 the teal backpack and the helmet on making the arm motions
20 almost like a referee saying don't hurt the cop, don't
21 hurt the cop.

22 So we have a witness at trial that will identify
23 both that video and Jeffrey Sabol as the one saying don't
24 hurt the cop and that's just moments before either Officer
25 A.W. or B.M. are injured.

1 And with my assistant's help, I would like to
2 play the second video clip for the Court.

3 THE COURT: All right.

4 (Video played.)

5 MR. NORRIS: Your Honor, this video clip I'm
6 playing without sound, but it shows Jeffrey Sabol in the
7 same group and it shows him making that similar type of
8 hand motion, I'm going to say like a referee, the
9 horizontal motion with his hands consistent with don't
10 hurt the police. We'll play that one more time so the
11 Court can see it because it's a very short clip.

12 THE COURT: I'm not sure I saw anything.

13 MR. NORRIS: Okay. Thank you.

14 (Video played.)

15 MR. NORRIS: He's in the middle. Thank you for
16 bearing with me.

17 THE COURT: Sure.

18 MR. NORRIS: He's in the middle of the screen
19 with the tan jacket and teal back pack on.

20 THE COURT: I see him.

21 MR. NORRIS: What you can see is a right hand
22 moving horizontally --

23 THE COURT: Yes.

24 MR. NORRIS: -- in like a safe at home type
25 of --

1 THE COURT: Thank you.

2 MR. NORRIS: Thank you, Your Honor. Those are
3 two minor clips. But they are clips that I think show the
4 intentions that Mr. Sabol had in his mind which was not to
5 harm any police officers. Yes, he was there. He was in
6 the crowd. The crowd was violent. But not every single
7 individual in the crowd had exactly the same intent in
8 order to hurt police officers. And I think it's clear
9 that he was saying don't hurt the police both from his
10 actions and from his words.

11 And so, Your Honor, I think if the Court
12 considers that for his state of mind and the Court
13 realizes that there is no rebuttable presumption at play
14 here in this case, but even if there was, Jeffrey Sabol is
15 the rare individual that can overcome that rebuttable
16 presumption.

17 Yes, participating in the acts that day caused
18 him great shame and fear and paranoia and he acted
19 irrationally when he destroyed evidence. He acted
20 irrationally when he tried to flee the country and yes, he
21 acted irrationally when he slit his wrists and his thighs
22 in an attempt to take his own life because he realized he
23 had brought sort of shame and dishonor on his family's
24 name, Your Honor. He believed he was going to be charged
25 with sedition. And this is someone who has always seen

1 himself as a person who believes in the United States and
2 this country and wants to do the right thing.

3 So right now in front of the Court is a
4 difficult decision based on dangerousness and risk of
5 flight. And I'm going to submit to the Court, Your Honor,
6 that with 30 character letters, each one piling up
7 cumulatively on top of the reference of the letter before
8 it, people who've known him for years, his entire life,
9 his neighbors, people that knew him from work, people that
10 knew him as someone who would disarm munitions for the
11 military for a living, people that know him as a neighbor
12 who helps the elderly and helps young children, people who
13 know him as a volunteer with the Westernaires, Your Honor.

14 He needs the support of his family at this time.
15 We can take him out of Colorado where he was and place him
16 back home in New York in a home owned by his girlfriend
17 where she will be there, his elderly parents will be
18 nearby and he can feel worthwhile and youthful helping his
19 parents, taking care of himself, Your Honor, and not
20 engaging in any politics or any such issues. This is not
21 someone who is going to repeat this behavior. What he did
22 that day is not something that is going to occur under any
23 other possible circumstances than that day. He's willing
24 to stay home and house arrest, be a good citizen and prove
25 to the Court, Your Honor, that he made a mistake and he

1 wants to accept responsibility and make amends for what
2 he's done.

3 THE COURT: All right. Thank you, Mr. Norris.
4 Let me just inquire. You made reference earlier to a
5 senior probation officer in New York, someone you've known
6 for a period of time who has indicated his willingness to
7 supervise your client's activities if released to reside
8 in New York. Is that correct?

9 MR. NORRIS: Yes, sir. Now I don't --

10 THE COURT: I just want to be clear. I don't
11 think that that was mentioned in your papers. I may be
12 wrong. But am I correct, it was not mentioned?

13 MR. NORRIS: It was not in the pleadings.

14 THE COURT: That's what I thought.

15 MR. NORRIS: This is someone that I reached out
16 to and spoke with before the last hearing which the Court
17 remembers had to be rescheduled --

18 THE COURT: Right.

19 MR. NORRIS: -- and I don't want the Court under
20 the impression that I have a relationship with this
21 individual because I --

22 THE COURT: No. I understand.

23 MR. NORRIS: But what I did was I called up to
24 the probation department at the Northern District of New
25 York which is the district that covers Oneida County, New

1 York. And I spoke with a senior probation officer whose
2 name is Bill Parker and I have his direct office phone
3 number and I asked Mr. Parker, I said if I had a client in
4 federal court in Washington, D.C. and the federal judge
5 saw fit to release him with conditions such as electronic
6 home monitoring or GPS monitoring or house arrest, is that
7 something your office can supervise and he said yes, it is
8 something that we can supervise, that we would supervise,
9 that we do supervise and he says I'm the person, myself,
10 Mr. Parker, who would be responsible to go out and verify
11 the address and then supervise him under such conditions.
12 And so I have a name and direct number that I can share
13 both with the Court and with government counsel.

14 THE COURT: All right. I just wanted to be
15 clear about that. You know, we're so used to how things
16 are handled in Washington that we forget sometimes that
17 every other circuit in the country has a
18 probation/pretrial services division that's consolidated.
19 We don't have that.

20 MR. NORRIS: Yes.

21 THE COURT: We have a local -- so I just wanted
22 to be clear. So it would be handled in the normal course
23 of events then.

24 MR. NORRIS: Yes, sir. It would be by a
25 probation officer --

1 THE COURT: Right.

2 MR. NORRIS: -- acting in their capacity
3 supervising someone in a pretrial release status.

4 THE COURT: No. I understand. That's the way
5 it normally is handled if we release people in other parts
6 of the country.

7 MR. NORRIS: Yes.

8 THE COURT: Because as you know, as we all know
9 and you know better than I do because of your prior
10 position many years ago with PDS.

11 MR. NORRIS: Yes, sir.

12 THE COURT: All right. I just need to --
13 because I didn't recall that and I'm glad I asked that
14 question. So that's something that's new that wasn't
15 referred to. Thank you very much, Mr. Norris.

16 Ms. Kukowski, what about that last point? I
17 mean it's not unusual what Mr. Norris said. I mean if I
18 released Mr. Sabol or anyone else for that matter who is
19 residing in another part of the country, it would be the
20 probation/pretrial services agency that would supervise
21 the activities of the person released. I assume your
22 argument is that's insufficient in light of the other
23 arguments you've made. But I'll let you speak for
24 yourself.

25 MS. KUKOWSKI: Yes, Your Honor. And the ability

1 to supervise someone there was contingent upon the judge
2 seeing fit to release him.

3 THE COURT: Right.

4 MS. KUKOWSKI: It wasn't actually opining that
5 he should be released and that's what I want to emphasize
6 there.

7 THE COURT: Right.

8 MS. KUKOWSKI: I do want to clarify just two
9 quick things based upon some statements that Mr. Norris
10 made. First, Mr. Norris did ask me about the origins of
11 that still photograph. There is no indication -- I
12 understand it may have been represented such as in media,
13 but there's no indication that's from a video that the FBI
14 has in its files. I have watched countless videos. I
15 have not seen anything that shows that still shot that's
16 Government's Exhibit 4.

17 And just to be clear so the record is clear,
18 we've provided the videos that we have, particularly the
19 body worn camera videos. The Court has seen the clips.
20 But they haven't been provided in their entirety to
21 defense counsel. So that defense counsel understands the
22 video that's provided there.

23 So just so the Court knows, we're not
24 purposefully by any stretch of the imagination depriving
25 defense of a video. I just don't know where that photo

1 originates from.

2 THE COURT: All right. That would be a critical
3 issue at trial though, would it not, vis-a-vis
4 authenticity and should the Court address that issue now?

5 MS. KUKOWSKI: Well, I think, Your Honor,
6 authenticity can be in terms of authenticating that still
7 shot to put it into evidence, one can be accomplished
8 through a number of means. It can be accomplished through
9 an individual who took the photograph itself, but it could
10 also be accomplished from someone who is in the photograph
11 and says yes, that's me, I see myself there and that
12 photograph is an accurate and true depiction of the events
13 that happened. I would submit that actually the defendant
14 has already done that --

15 THE COURT: That's what I thought. That's what
16 I thought. All right.

17 MS. KUKOWSKI: And then the other quick point I
18 do want to note is the two video clips that were shown by
19 defense counsel, those took place approximately an hour
20 earlier at around 3:15, 3:10 p.m. and occurred during the
21 context of two other officers being dragged out in the
22 crowd and Officer M.F. with Metropolitan Police Department
23 and then a Capitol police officer whose initials I cannot
24 currently recall.

25 And the Court can see if the Court compares the

1 videos and the individuals are in the videos particularly
2 if the Court looks at the archway and sees what individual
3 is standing at the archway, that they are two distinct
4 time periods. And based upon the review, I can proffer to
5 the Court of the government's evidence that we have seen a
6 video footage not just from this case, but from other
7 cases that occurred at the lower western terrace that day,
8 the defendant was present and captured in video footage
9 surrounding the assaults of Officer M.F. in particular.
10 He was not involved in it. There's no allegations that he
11 was involved in that assault. But he was present there
12 and that's what the Court saw there in those videos.

13 THE COURT: Thank you very much. All right.
14 This has been very -- I'm sorry. I cut you off.

15 MS. KUKOWSKI: No. I apologize, Your Honor. I
16 interrupted. But one last thing I do want to comment on
17 because the opinion came down only recently.

18 THE COURT: I read it.

19 MS. KUKOWSKI: The Munchel --

20 THE COURT: The Judge Lamberth opinion?

21 MS. KUKOWSKI: This is the circuit court opinion
22 in Munchel, Your Honor --

23 THE COURT: Yes. Yes.

24 MS. KUKOWSKI: -- that just came down a couple
25 of days ago. And I will just note that here the defendant

1 is very distinguishable from the defendants in those cases
2 and the court specifically state in that case that in
3 their views those who actually assaulted police officers
4 broke through windows, doors and barricades and those who
5 aided conspired with planning -- planned and coordinated
6 such actions are in a different category of dangerousness
7 than those who cheered on the violence and entered the
8 Capitol after others cleared the way.

9 THE COURT: I'm aware of that. Is that the
10 Judge Wilkins' opinion? Robert Wilkins --

11 MS. KUKOWSKI: Yes, Your Honor.

12 THE COURT: I've read it. The media described
13 the opinion to be Chief Judge Howell's. It's not. It's
14 Judge Lamberth's. I'm familiar with it, counsel.

15 I just have a couple of other questions. What
16 about the discovery? Is discovery completed?

17 MS. KUKOWSKI: No, Your Honor. A protective
18 order has been put in place and actually, I can submit to
19 the Court I was in the process of having discovery
20 conferences with the agents in this case. We are
21 preparing an actual set of documents to send over to
22 counsel. They're in the process of being redacted and
23 Bate stamped and all that. The discovery that has been
24 provided thus far are the public videos that the
25 government has located regarding this incident as well as

1 the body worn camera footage and then I provided Mr.
2 Norris with copies of all the 302's regarding the
3 defendant's statements in this case.

4 THE COURT: Great. Thank you. So let me
5 just -- again I like to be up front with everyone. I'm
6 going to issue a written opinion. I can tell you that.
7 It doesn't mean I'm going to drag this out. I'm not. I
8 mean this is a bond hearing and the Court will treat this
9 with priority.

10 But I do want to know the parties' positions
11 assuming a couple of scenarios. One being that the
12 likelihood that the Court will detain Mr. Sabol, I need to
13 know what the position of Mr. Sabol is with respect to
14 speedy trial rights.

15 And I guess the other question is whether or not
16 the Court needs to require supplemental materials to the
17 motion. Actually, it's not the government's motion.
18 Whether or not the Court should afford the government an
19 opportunity to address speedy trial in a written
20 submission. And I just raise those for your responses.
21 Ms. Kukowski?

22 MS. KUKOWSKI: Yes, Your Honor. And I believe
23 speedy trial has already been tolled for some of his
24 co-defendants in this matter.

25 THE COURT: Yes. That's correct.

1 MS. KUKOWSKI: And this is the first time that
2 the defendant is before Your Honor. We would ask for it
3 to continue to be tolled while we attempt to pull together
4 all the discovery, not just from -- for this specific
5 case, but as the Court just got a glimpse of from related
6 cases. For instance, in this matter there were -- there
7 is sustained violence and assault on officers that
8 happened at that lower western terrace archway from a
9 little after 2 p.m. to about 5 p.m. that day. That
10 information while it may not be directly material to this
11 case, it's all information that should be provided to
12 defense counsel. I'm in the process of compiling all that
13 and turning it over.

14 So that's part of the reason why I would say
15 that move in the interest of justice for the speedy trial
16 act to be tolled. I've had preliminary discussions with
17 counsel about a formal tolling agreement that we would
18 submit in writing whether it be opposed or unopposed and
19 we'll continue discussions and file them for the Court now
20 that we have actually also a bulk of the defendants in
21 this case because for a period of time this case
22 specifically was in a little bit of limbo where there was
23 an initial indictment with three defendants and then
24 subsequently additional defendants have been joined in.
25 It's now only just recently been unsealed now that they've

1 all been arrested.

2 THE COURT: All right. I know we're all -- the
3 judges are all independent. We're probably doing
4 different things vis-a-vis bases for excluding time from
5 the speedy trial clock calculations. I think there may be
6 colleagues who have approached the complex nature of the
7 case and there are others and I'm one of the others who
8 has dealt with speedy trial by excluding time because it's
9 consistent with the fair administration of justice and the
10 voluminous discovery, not indefinitely, but for a finite
11 period of time. We can't have a blanket rule and we
12 should not have a blanket rule --

13 MR. NORRIS: Your Honor --

14 THE COURT: Mr. Norris?

15 MR. NORRIS: I apologize for interrupting, Your
16 Honor.

17 THE COURT: No. That's all right.

18 MR. NORRIS: I do apologize. I just want the
19 Court to be aware, my client at this point has been
20 detained for approximately 76 days before even having
21 today's hearing. I don't believe he is ready to address
22 the speedy trial issue today. I understand the concern
23 the Court has. I'd be happy to put something in writing.

24 THE COURT: All right. Do you anticipate
25 filing -- well, let me just -- what does the government

1 anticipate filing then, a motion to exclude time, Ms.
2 Kukowski?

3 MS. KUKOWSKI: Yes, Your Honor.

4 THE COURT: All right. Should that -- and again
5 I don't want to intentionally delay these proceedings at
6 all. The Court does recognize that the bond motion has
7 tolled speedy trial clock and I'm not going to use that to
8 abuse Mr. Sabol's rights. But it seems to me I've
9 indicated that my inclination is to deny the motion. But
10 I haven't finally decided. I've got two brilliant lawyers
11 on the line who've been helping me, you know, get my
12 thoughts together regarding the issue of detention.

13 So it may well be more appropriate to leave the
14 motion in place, give the government a short period of
15 time to file its motion to exclude time, give Mr. Norris
16 whatever time Mr. Norris wants to respond and then just
17 deal with the issue of detention as well as exclusion at
18 the same time.

19 And again I'm not going to drag this out, Mr.
20 Norris. You know me. I've been around for a long time.

21 MR. NORRIS: Yes, sir.

22 THE COURT: Probably longer than the combined
23 age of everyone else on the line here. So that's one
24 thought I have.

25 And I defer to Ms. Kukowski. How much time

1 would you need to prepare and file your motion, counsel?

2 MS. KUKOWSKI: Court's indulgence while I just
3 look at a calendar, Your Honor.

4 THE COURT: Sure. Take your time. I want to be
5 fair about it to everyone. But I'm mindful that Mr. Sabol
6 is incarcerated, too.

7 MS. KUKOWSKI: Would Tuesday of next week be
8 permissible, Your Honor?

9 THE COURT: Oh, absolutely. Sure, sure. And,
10 Mr. Norris, for a response?

11 MR. NORRIS: If I could have 48 hours after
12 that?

13 THE COURT: You sure?

14 MR. NORRIS: Yes, sir.

15 THE COURT: Be kind to yourself now. Okay. So
16 that would be Thursday. And then I'm probably going to
17 tighten it a little bit, Ms. Kukowski. Can you file a
18 reply -- the Court finds replies in just about every case
19 very helpful. Could you file a reply by that Friday? And
20 I recognize this is not the only case you have.

21 MS. KUKOWSKI: Yes.

22 THE COURT: That Friday. Let's say at 4:00.
23 How is that?

24 MS. KUKOWSKI: Certainly.

25 THE COURT: Okay.

1 MR. NORRIS: Thank you, Your Honor.

2 THE COURT: All right. Sure. You know, out of
3 an abundance of caution, maybe the Court should at this
4 point schedule another hearing because I want Mr. Sabol to
5 know that we're on top of these issues.

6 So, Mark, looking at --

7 THE CLERK: Judge Sullivan?

8 THE COURT: Yes.

9 THE CLERK: We have a hearing on May 5th at 2:30
10 p.m. with the co-defendants in this case.

11 THE COURT: All right. Well, maybe it's time
12 for all these cases to be joined, Ms. Kukowski.

13 MS. KUKOWSKI: Your Honor, they are currently
14 joined through the superseding indictment. I would agree.
15 I would like to have all the --

16 THE COURT: I'm sorry. When I meant "join" was
17 to have one hearing. I don't think the other gentlemen
18 have appeared before me I don't believe.

19 MS. KUKOWSKI: No, Your Honor. They're in
20 various stages of transport.

21 THE COURT: All right. Okay. That's a
22 laborious process for the marshals. Hope springs eternal
23 that they will be here by that day. But unless that's a
24 bad date, Mr. Norris, let's just have that -- let's just
25 schedule another status hearing for that day as well.

1 MR. NORRIS: I'm available. Yes, sir.

2 THE COURT: All right. Okay. And what time is
3 that, Mark? Thanks, Mark, for the information.

4 THE CLERK: It's at 2:00 p.m., Your Honor.

5 THE COURT: All right. That's fine. All right.
6 I think I've run out of questions to ask.

7 Here's what I want to do though. If I was in
8 court now, I would probably take a short recess and speak
9 to the brilliant lawyers who are helping me, my law
10 clerks. I'm going to step away from the computer and mute
11 out the video and audio and just ask that they give me a
12 call because I don't want to leave this proceeding and
13 then all of a sudden someone say why didn't you ask this
14 question and that invariably happens to all of us. So I
15 believe -- I won't be 30 minutes. I won't do that to you
16 again. But I'm just going to ask them to give me a call.
17 They know how to reach me. And it will be no more than
18 ten minutes, ten minutes at best. I think we're about to
19 lose our time in the queue anyway, Mark, aren't we?

20 THE CLERK: No, Your Honor. The hearing that
21 was scheduled after us is actually canceled.

22 THE COURT: Oh, okay. All right. But I'm not
23 going to take advantage of that and keep people waiting.
24 So I'm just going to mute out the video and the audio,
25 walk away and we'll talk again in ten minutes. All right.

1 Thank you, everyone. Did anyone else have anything else
2 to say before I take a very short recess?

3 MR. NORRIS: Not at this time, Your Honor. No.
4 Thank you.

5 THE COURT: Ms. Kukowski?

6 MS. KUKOWSKI: Nothing further from the
7 government.

8 (Recess.)

9 THE COURT: I think this would be a good
10 opportunity, Ms. Kukowski, to get the views of the
11 attorneys for the remaining co-defendants vis-a-vis speedy
12 trial when you file your motion. So I guess the motion
13 would have to be filed in those cases as well and that's
14 probably an issue I can resolve on the next hearing date.

15 I guess the other question I have and I think I
16 know the answer, but every time I say that, I think I'm
17 wrong. But my understanding is that the filing of that
18 motion would toll speedy trial for all purposes because
19 it's filed in good faith. Is that correct?

20 MS. KUKOWSKI: Yes, Your Honor.

21 THE COURT: That's what I thought. All right.
22 So I'm going to go ahead and proceed. I'm going to keep
23 Mr. Sabol detained. Everyone will get a very lengthy
24 opinion shortly that hopefully will be of some benefit to
25 everyone as well as my colleagues who are wrestling with

1 all these cases and addresses the I'll call it the Judge
2 Wilkins' opinion as well. So I've run out of questions
3 now. Mr. Norris, anything further from you, sir?

4 MR. NORRIS: No, Your Honor.

5 THE COURT: All right. And, Ms. Kukowski,
6 anything further?

7 MS. KUKOWSKI: No, Your Honor.

8 THE COURT: Okay. All right. This has been
9 very helpful. Sorry to keep you waiting for that 30
10 minutes or so earlier. I did the best I could, but I just
11 could not get it off the calendar. I had to deal with it.
12 So we'll talk again then on -- and that date is May the
13 5th, Mark? Is that correct?

14 THE CLERK: That's correct, Your Honor.

15 THE COURT: All right. We'll talk again on May
16 the 5th then and everyone be safe and healthy.

17 And, Mr. Sabol, I don't know what's going on in
18 the Department of Corrections. A couple of my colleagues
19 and I are speaking with the director of Department of
20 Corrections just trying to get some information, fact from
21 fiction about what's going on over there. And maybe I'll
22 have some information to report at the next hearing. I
23 just don't know.

24 THE DEFENDANT: If I could ask --

25 THE COURT: Let me just ask -- you know, I don't

1 want you to talk, Mr. Sabol, because that always drives
2 defense attorneys nuts because they don't know what their
3 client is going to say and Mr. Norris can't reach out to
4 you and say don't say anything.

5 So I'm going to direct the question to Mr.
6 Norris. If you can just let me know either today or at
7 the next hearing whether what I'm saying is correct or
8 not, but my understanding is that all of the Capitol and
9 I'm going to call them the Capitol defendants as a group
10 are detained in separate housing facilities at the jail.
11 Is that right, Mr. Norris? And if so, do you know the
12 reason for that?

13 MR. NORRIS: Your Honor, they were detained in
14 several different units. I don't know. Are you saying
15 that they're all detained together in a segregated unit?

16 THE COURT: I don't know that for a fact.

17 MR. NORRIS: Okay.

18 THE COURT: We hear things from different people
19 and that's why we're meeting, a couple of the judges, a
20 couple of my colleagues and I are meeting with Eric Glover
21 tomorrow and Michelle Williams just to figure out what the
22 facts are, what the fiction is because we're hearing all
23 sorts of stories. But that was one. That all of the
24 Capitol Hill defendants are in the same housing unit at
25 the jail.

1 MR. NORRIS: I know several of them are. I
2 don't have information about the totality of them.

3 THE COURT: All right. Okay. I think Mr. Sabol
4 was nodding his head no. So okay. All right. I just
5 wanted to know. All right. That's fine. All right.
6 Anything else we need to talk about today, Mr. Norris?

7 MR. NORRIS: No, Your Honor.

8 THE COURT: Okay. Ms. Kukowski, anything else?

9 MS. KUKOWSKI: Nothing further, Your Honor.

10 THE COURT: Okay. Fine. Everyone be safe and
11 healthy and we'll talk again soon. All right. Take care
12 and thank you again. This has been very helpful. Thank
13 you again. Have a nice day. Mr. Sabol, you take care of
14 yourself, sir. We'll talk again very soon. Bye-bye.

15 MR. NORRIS: Take care.

16 (Proceedings concluded.)
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CERTIFICATE OF REPORTER

I, Lisa K. Bankins, an Official Court Reporter for the United States District Court for the District of Columbia, do hereby certify that I reported, by machine shorthand, in my official capacity, the proceedings had and testimony adduced upon the bond hearing in the case of the United States of America versus Jeffrey Sabol, Criminal Case 21-CV-00035, in said court on the 8th day of April, 2021.

I further certify that the foregoing 60 pages constitute the official transcript of said proceedings, as taken from my machine shorthand notes, together with the backup tape of said proceedings to the best of my ability.

In witness whereof, I have hereto subscribed my name, this 13th day of April, 2021.

Lisa K. Bankins

Lisa K. Bankins
Official Court Reporter

MR. NORRIS: [52] 2/10 2/20 2/22 4/1 4/17 4/24 5/11 5/17 5/25 7/5 10/1 10/3 29/6 36/16 37/2 37/5 37/8 39/5 39/7 39/14 40/5 40/13 40/15 40/18 40/21 40/24 41/2 43/9 43/13 43/15 43/19 43/23 44/20 44/24 45/2 45/7 45/11 52/13 52/15 52/18 53/21 54/11 54/14 55/1 56/1 57/3 58/4 59/13 59/17 60/1 60/7 60/15 MS. KUKOWSKI: [66] THE CLERK: [7] 2/2 3/14 55/7 55/9 56/4 56/20 58/14 THE COURT: [117] THE DEFENDANT: [2] 2/14 58/24	48 [1] 54/11 4:00 [1] 54/22 4:27 [1] 34/13	affect [1] 8/18 affected [1] 8/16 affects [1] 7/23 afford [1] 50/18 after [9] 4/9 8/16 23/14 24/17 30/8 49/8 51/9 54/11 56/21 aftermath [1] 23/8 afterwards [2] 7/25 35/10 again [25] 3/21 17/15 17/19 18/17 18/21 23/1 24/7 24/23 26/21 29/21 32/15 33/25 35/5 39/15 50/5 53/4 53/19 56/16 56/25 58/12 58/15 60/11 60/12 60/13 60/14 against [7] 20/1 31/16 34/16 38/8 38/10 38/11 38/11 age [1] 53/23 agency [1] 45/20 agents [2] 13/11 49/20 ago [5] 5/8 11/2 18/12 45/10 48/25 agree [2] 16/11 55/14 agreement [1] 51/17 ahead [9] 10/2 17/19 18/20 22/10 27/9 27/14 28/5 37/4 57/22 aided [2] 30/23 49/5 airline [1] 9/4 all [78] allegations [1] 48/10 almost [2] 13/19 39/20 alone [1] 34/24 along [1] 33/9 already [3] 34/15 47/14 50/23 also [14] 7/23 11/21 12/19 15/17 17/20 19/19 21/1 23/16 34/25 35/2 35/9 36/2 47/10 51/20 always [4] 3/21 29/16 41/25 59/1 am [7] 3/1 18/24 22/23 28/25 30/18 32/17 43/12 amends [1] 43/1 AMERICA [4] 1/3 2/3 8/11 61/8 American [1] 19/21 among [1] 19/13 amount [1] 25/13 ample [1] 34/24 anchors [1] 11/4 angry [1] 7/8 another [9] 12/4 17/19 22/5 26/5 30/1 35/22 45/19 55/4 55/25 answer [3] 18/1 18/17 57/16 Anthem [1] 29/4 anticipate [2] 52/24 53/1 Antifa [2] 11/18 17/8 any [20] 2/24 4/6 4/7 5/20 6/20 7/2 13/5 14/22 15/3 15/6 17/20 23/10 23/13 26/22 27/5 41/5 42/20 42/20 42/22 46/24 anyone [11] 4/13 6/25 7/1 7/1 7/15 7/22 11/9 26/22 38/11 45/18 57/1 anything [10] 16/3 33/9 40/12 46/15 57/1 58/3 58/6 59/4 60/6 60/8 anyway [2] 28/4 56/19 apart [1] 12/23 apologize [5] 22/9 36/25 48/15 52/15 52/18 apparently [1] 17/7 appear [2] 29/18 30/20 APPEARANCES [1] 1/10 appeared [1] 55/18 appears [5] 13/12 20/6 20/11 34/7 37/23 apply [1] 2/19 appreciate [1] 4/18
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