

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

\* \* \* \* \*

UNITED STATES OF AMERICA,	)	Criminal Action
	)	No. 21-391
vs.	)	
	)	
LEONARD GRUPPO,	)	October 29, 2021
	)	9:59 a.m.
Defendant.	)	Washington, D.C.
	)	
	)	

\* \* \* \* \*

**TRANSCRIPT OF SENTENCING  
BEFORE THE HONORABLE BERYL A. HOWELL,  
UNITED STATES DISTRICT COURT JUDGE**

**APPEARANCES:**

FOR THE GOVERNMENT: HAVA MIRELL  
U.S. Attorney's Office  
312 N. Spring St.  
Los Angeles, CA 90012  
(213) 894-0717  
Email: hava.mirell@usdoj.gov

FOR THE DEFENDANT: DANIEL R. LINDSEY  
920 Mitchell Street  
Clovis, NM 88101  
(575) 763-8900  
Email: danlindsey@suddenlink.net

CAMILLE WAGNER  
1629 K Street  
Washington, DC 20006  
(202) 630-8812  
Email: law@myattorneywagner.com

ALSO PRESENT, ROBERT WALTERS, U.S. Probation

Court Reporter: Elizabeth Saint-Loth, RPR, FCRR  
Official Court Reporter

Proceedings reported by machine shorthand, transcript  
produced by computer-aided transcription.

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

1  
2 THE COURTROOM DEPUTY: Matter before the Court,  
3 Criminal Case No. 21-391, United States of America versus  
4 Leonard Gruppo.

5 Counsel, probation officer, and pretrial agent,  
6 please come forward and state your names for the record.

7 MS. MIRELL: Good morning, Your Honor.  
8 Hava Mirell on behalf of the United States.

9 THE COURT: Yes. Good morning, Ms. Mirell.

10 MR. LINDSEY: Good morning.  
11 Daniel Lindsey for Mr. Gruppo, pro hac vice, and Camille  
12 Wagner.

13 MS. WAGNER: Good morning, Your Honor.  
14 Camille Wagner.

15 THE COURT: Okay. Good morning to all of you.  
16 And good morning, Mr. Gruppo.

17 PROBATION OFFICER: Good morning, Your Honor.  
18 Robert Walters with probation.

19 THE COURT: All right.

20 THE DEFENDANT: Good morning, Your Honor.

21 THE COURT: Good morning.

22 Okay. You may all be seated.

23 All right. So this sentencing hearing for Leonard  
24 Gruppo is being held in person this morning; but the public  
25 access line is being made available for persons to listen to

1 these proceedings remotely, rather than being present in the  
2 courthouse. I like to alert everybody in the courtroom that  
3 there is a public access line that's open to the world, just  
4 for your own information.

5 Anyone listening to the sentencing hearing over  
6 the public teleconference line is reminded that, under my  
7 Standing Order 20-20, recording and rebroadcasting of court  
8 proceedings, including those held by videoconference, is  
9 strictly prohibited. Violation of these prohibitions may  
10 result in sanctions, including removal of court-issued media  
11 credentials, restricted or denial of entry to future  
12 hearings, or any other sanctions deemed necessary by the  
13 presiding judge.

14 All right. So I am going to begin this sentencing  
15 hearing the way I do all of my sentencing hearings, by  
16 reviewing all of the documents that I have looked at and  
17 materials that I have looked at, to make sure we're all  
18 working off the same set of records and materials.

19 So, of course, I have received the presentence  
20 investigation report, docketed at ECF 25; and the sentencing  
21 recommendation, docketed at ECF 26, from the probation  
22 department.

23 I have also received the following documents  
24 submitted by counsel in advance of this hearing: The  
25 sentencing memorandum from the government, docketed at

1 ECF 25; as well as the sentencing memorandum submitted on  
2 behalf of the defendant, Mr. Gruppo, docketed at ECF 28; an  
3 exhibit describing Mr. Gruppo's military service; and a  
4 letter from the defendant, docketed at ECFs 28-1, and 2.

5 Does the government have all of these records?

6 MS. MIRELL: Yes, Your Honor.

7 THE COURT: And does the defense?

8 MR. LINDSEY: Yes, Judge.

9 THE COURT: All right. And am I missing anything?

10 MS. MIRELL: No, Your Honor.

11 MR. LINDSEY: No. No, Your Honor.

12 THE COURT: Okay. Excellent.

13 All right. Mr. Gruppo, just stand where you are,  
14 please.

15 I just -- I like to tell defendants, in each of my  
16 sentencing hearings, how the sentencing hearing will  
17 proceed. Some people have appeared in court a number of  
18 times because they have prior records, and they realize that  
19 judges do sentencings differently from courtroom to  
20 courtroom. Other defendants, like you, have never appeared  
21 at a sentencing hearing before, so you don't know what's  
22 really going to happen other than what your counsel has told  
23 you.

24 So my sentencing hearings, and your hearing this  
25 morning, will have three different steps to it. At the

1 first step, I will determine whether the government and you,  
2 with your counsel, have any objections to any of the factual  
3 or other portions of the presentence investigation report  
4 that's been filed in your case. If there are objections, I  
5 will resolve those.

6 The second step is where I hear from the lawyers  
7 and then from you. So if you want to know: When is it  
8 during this hearing that I have an opportunity to speak  
9 directly to the judge, it's at the second step of the  
10 hearing. I will hear first from the government, then I will  
11 hear from your counsel; and then I will give you the  
12 opportunity to speak to me directly, so that's when that  
13 will happen.

14 The last step requires the Court to explain the  
15 reasons for the sentence imposed upon consideration of all  
16 of the factors I am required to look at, under 18 U.S.C.  
17 Section 3553(a), and then I will impose sentence.

18 By contrast to most sentencing hearings in front  
19 of Article III judges, in this and every other court in the  
20 country, I do not have to determine how the sentencing  
21 guidelines apply in your case because it's a petty offense,  
22 Class B misdemeanor, and so the sentencing guidelines don't  
23 bother; and they don't apply to your case. So whereas most  
24 sentencing hearings have four steps where I have to go  
25 through the guideline determination, that is not the case in

1 yours.

2 All right. Do you have any questions about what  
3 is going to be happening during the hearing this morning?

4 THE DEFENDANT: No, Your Honor.

5 THE COURT: Okay. Thank you. You may be seated.

6 THE DEFENDANT: Thank you.

7 THE COURT: All right. Step one. The final  
8 presentence investigation report and sentencing  
9 recommendation were filed in this matter on October 15th.

10 And I understand, from page 19 of the presentence  
11 investigation report, that the government has no objection  
12 to any of the factual or other determinations set out in the  
13 PSR; is that correct?

14 MS. MIRELL: That's correct, Your Honor.

15 THE COURT: All right. So then, Mr. Lindsey, have  
16 you and your client read and discussed the presentence  
17 investigation report?

18 MR. LINDSEY: Yes, Judge. We have.

19 THE COURT: And do you have any objections to any  
20 of the factual statements or other determinations set out in  
21 the PSR?

22 MR. LINDSEY: I do not.

23 THE COURT: Thank you. You may be seated.

24 Mr. Gruppo, could you just stand right where you  
25 are.

1           Are you fully satisfied with your attorney in this  
2 case?

3           THE DEFENDANT: Yes, ma'am.

4           THE COURT: And do you feel that you have had  
5 enough time to talk to Mr. Lindsey about the probation  
6 department's presentence investigation report, the  
7 sentencing recommendation in this case, and all of the other  
8 papers submitted in connection with your case?

9           THE DEFENDANT: Yes, Your Honor.

10          THE COURT: Okay. Thank you. You may be seated.

11          Hearing no objection from either side, the Court  
12 will accept the factual portions of the presentence  
13 investigation report as undisputed and as my findings of  
14 fact at sentencing.

15          We're now at step three. I will hear from the  
16 government first about application of the factors under  
17 3553(a).

18          MS. MIRELL: Yes. Good morning, Your Honor.

19          I want to begin by saying that I listened to the  
20 Court's sentencing yesterday, and I understand this Court's  
21 position.

22          So to aid the Court in understanding the  
23 government's position in this case, I want to focus on the  
24 factors that led us to recommend a 30-day term of  
25 imprisonment for Mr. Gruppo.

1           In so doing, I also intend to address some of the  
2           concerns that the Court expressed yesterday over the  
3           government's charging and plea bargaining decisions in these  
4           Capitol riot cases.

5           There are three factors --

6           THE COURT: That's all I am looking for, an  
7           explanation.

8           MS. MIRELL: There are three factors that  
9           distinguish Mr. Gruppo from other rioters facing misdemeanor  
10          charges in these cases. First is Mr. Gruppo's outright  
11          disregard of law enforcement's instructions during the riot  
12          on January 6th as evidenced most prominently by his failure  
13          to exit the Senate wing door, after being instructed no less  
14          than three times by U.S. Capitol police officers.

15          His disregard for law enforcement is rendered more  
16          egregious by the second distinguishing factor, which is his  
17          prior military service.

18          As this Court recognized during yesterday's  
19          hearing, it is, quote, inconceivable that someone of  
20          Mr. Gruppo's background who swore an oath to support and  
21          defend the Constitution could participate in a riot that  
22          would cause such damage to our global reputation as a  
23          democracy. The last factor is that Mr. Gruppo destroyed  
24          evidence of his participation in the riot.

25          Of the misdemeanor defendants who engaged in

1 evidence destruction, five have received recommendations for  
2 custodial sentences; and one received a recommendation of  
3 home confinement, but was nevertheless sentenced to 45 days'  
4 incarceration. None have received a probation-only  
5 sentence.

6 THE COURT: All right. So let me just -- let me  
7 just back up because I want to go into detail about the  
8 reasons that the government has made its recommendation for  
9 a period of incarceration --

10 MS. MIRELL: Yes, Your Honor.

11 THE COURT: -- for Mr. Gruppo; and I appreciate  
12 how the government is using his prior military service.

13 And I do -- I do think that it's somewhat  
14 ironic -- I don't know how else to put it -- I think  
15 Mr. Lindsey put in his papers that it's something --  
16 commenting about how his military service is being used  
17 against him when, in fact, someone who served in the  
18 military for 28 years -- served in four combat zones -- as a  
19 physician's assistant saving lives in, really, under the  
20 most dire circumstances, that I am not sure most of the  
21 people sitting at the government's table would ever be able  
22 to survive, quite frankly; and that having done that  
23 service -- that instead of expressions of respect for that  
24 service, the government is holding it against him. I am a  
25 little bit puzzled that that is, like, the government's

1 second factor for why you are thinking he deserves jail  
2 time.

3 MS. MIRELL: Well, Your Honor, I do not -- and the  
4 government does not intend to express --

5 THE COURT: And it's not just because I grew up on  
6 military bases around the world and count, among close  
7 friends, my own parent's service in the army who -- my  
8 father also parachuted, and so on. I mean, I just don't --  
9 it surprises me that the government is holding that service  
10 that, I think, most Americans would have enormous respect  
11 for, against this man.

12 MS. MIRELL: I want to state in no uncertain terms  
13 that I do have tremendous respect -- and the government has  
14 tremendous respect for all of those who save and who risk  
15 their lives for our country, and especially Mr. Gruppo who  
16 goes out into combat zones and provides much needed medical  
17 services to injured soldiers; that's commendable. And he  
18 should deserve recognition for that.

19 THE COURT: Beyond -- beyond "commendable"; it's  
20 pretty heroic, and that's why he has so many honors.

21 MS. MIRELL: Agreed, Your Honor.

22 The purpose of bringing this up as a factor --

23 THE COURT: Let -- can I -- let me just go back to  
24 how I am looking at the facts --

25 MS. MIRELL: Sure.

1 THE COURT: -- and just -- because, as I looked at  
2 the government's recommendation for 30 days' incarceration  
3 in this case, these are some of the factors I look at,  
4 because -- at the same time that the government is citing  
5 some factors for a 30-day period of incarceration, the  
6 government, as I understand it -- and this is what I want to  
7 check; that the government is acknowledging that Mr. Gruppo  
8 was in the Capitol Building for about seven minutes or less,  
9 is that right?

10 MS. MIRELL: Yes, Your Honor.

11 THE COURT: And he didn't physically attack any  
12 police officer or other person, correct?

13 MS. MIRELL: That is correct.

14 THE COURT: And he didn't personally damage any  
15 property inside the Capitol, correct?

16 MS. MIRELL: That is correct.

17 THE COURT: And he didn't engage in any chanting  
18 or any other verbal statement or even carrying signs to  
19 incite others to follow him into the Capitol; is that  
20 correct?

21 MS. MIRELL: With respect to the signs, we didn't  
22 see any evidence of signs. But we don't have audio footage,  
23 so I can't make a representation as to whether he was  
24 shouting.

25 THE COURT: Okay. But the video that you have

1 seen -- you haven't seen any evidence of that? I haven't.

2 MS. MIRELL: That's correct. Of the evidence we  
3 have, correct.

4 THE COURT: He voluntarily turned himself in to  
5 the FBI?

6 MS. MIRELL: Yes, eventually.

7 THE COURT: Okay. And he fully cooperated at the  
8 outset, when he turned himself in to the FBI, by turning  
9 over to law enforcement all of his devices, his passwords to  
10 devices, and all of his social media accounts; is that  
11 right?

12 MS. MIRELL: That's correct.

13 THE COURT: And he had no inflammatory language on  
14 social media before, during, or after January 6th, let alone  
15 any calls for political violence?

16 MS. MIRELL: We were not able to identify any  
17 social media associated with Mr. Gruppo, and we did not  
18 identify any evidence of such.

19 THE COURT: Okay. And he promptly agreed to enter  
20 a plea agreement after an offer was extended by the  
21 government and accept responsibility?

22 MS. MIRELL: That's correct, Your Honor.

23 THE COURT: And you don't have any evidence of any  
24 preplanning by him or carrying any weapon into the Capitol  
25 Building, or even wearing any defensive gear as if he were

1 anticipating to be engaged in any kind of violent  
2 confrontation that day; is that correct?

3 MS. MIRELL: That's correct.

4 THE COURT: Okay. So I look at all of those basic  
5 facts.

6 And absent what the government views as -- absent  
7 his military service, if he weren't somebody who served in  
8 the military, in four combat zones for 28 years saving  
9 lives, would that make a difference to the government?

10 Would that make a difference to the government in  
11 terms of its recommendation of 30 days' incarceration here?

12 MS. MIRELL: I think it would, Your Honor.

13 THE COURT: And the government would then -- if he  
14 had not done that service, the government would not be  
15 recommending 30 days' incarceration here?

16 MS. MIRELL: If he wasn't trained to recognize the  
17 danger that was evident on January 6th; if he wasn't trained  
18 to assist, rather than to harm; if he wasn't -- he hadn't  
19 been trained for 28 years to actually care for law  
20 enforcement and recognize exactly the circumstances that his  
21 and many others conduct caused, that would affect the  
22 government's decision. But the fact that he did receive  
23 that training, and the fact that he overlooked -- and  
24 intentionally overlooked his oath, to commit one of the most  
25 destructive acts against our Constitution and our democracy,

1 that does affect the government's view of his conduct.

2 THE COURT: All right. Well, I will just be  
3 honest; I don't view his military service that way. I just  
4 can't bring myself to do that.

5 I think people's -- we look at people's criminal  
6 history as an indication of whether or not they need  
7 specific deterrence, which is an important factor in  
8 sentencing, and this is a man who has no prior criminal  
9 history; to the contrary, he has a heroic professional  
10 career behind him. So I don't view his prior military  
11 service the way -- the same way the government does in this  
12 case; so that's number one.

13 So let's look at the other reasons.

14 I think you -- the other circumstances -- putting  
15 off the table, just a disagreement between the Court and the  
16 government and how heroic military service is viewed in  
17 connection with sentencing, the other reasons -- as I  
18 understand it, from the government's papers and oral  
19 presentation here -- is that there were three other  
20 circumstances that prompted the government to make a  
21 recommendation of 30 days' incarceration: Not leaving the  
22 door he entered the Capitol by, after being told to do so by  
23 a police officer; two, a purported delay in turning himself  
24 into law enforcement after his friend, Kenneth Kelly, had  
25 been arrested; and three, what the government calls his

1 obstructive conduct -- and you used the word "obstruction,"  
2 and, let me tell you, judges pay attention to that --  
3 obstructive conduct of deleting January 6th related photos  
4 and videos from his phone; and I think there was also  
5 something about growing his hair after January 6th.

6 So absent those three reasons: Not leaving by the  
7 door he entered the Capitol, after being told to do so by  
8 the police officer; a purported delay in turning himself  
9 into to law enforcement after Kenneth Kelly, his friend, who  
10 he was with that day had been arrested; and three, alleged  
11 obstructive conduct -- absent those three circumstances,  
12 would the government be recommending probation in this case  
13 with no prison term or, because of the military service, you  
14 still would?

15 MS. MIRELL: Well, Your Honor, I think there's two  
16 additional factors that I would note.

17 THE COURT: Okay.

18 MS. MIRELL: First is scaling the walls of the  
19 Capitol.

20 THE COURT: Scaling the walls.

21 MS. MIRELL: Scaling the walls.

22 The defendant acknowledges in his memorandum that  
23 he did have to actually climb up a bannister that was his  
24 height in order to get onto the Capitol, and what that  
25 evinces about his intent and what he knew about how wrongful

1 his conduct was; that's a factor that weighed on the  
2 government.

3 I think what the defendant witnessed at the upper  
4 West Terrace, with police officers establishing a perimeter  
5 and very visibly trying to push rioters away from the area,  
6 and his decision at that moment to then enter the Capitol as  
7 he saw officers trying to push people away; that weighed on  
8 the government's decision as well.

9 I believe the government would not offer any  
10 probation-only recommendation for this defendant based on  
11 the factors -- even taking away the military service --  
12 based on the factors we see today, we would consider,  
13 obviously, home confinement with probation, as we have in  
14 several other cases; but probation only, I don't think we  
15 would be extending that.

16 I know Your Honor expressed some concerns  
17 yesterday about the probation-only recommendation in the  
18 government's early cases in, namely, the Morgan-Lloyd case,  
19 the Bissey case, and the Ehrke case.

20 First, we think those cases are distinguishable  
21 based on the factors I have already outlined, some of which  
22 the Court might agree with, some of which the Court may not;  
23 but they did not involve deliberate decisions to ignore law  
24 enforcement authorities; they did not involve destruction of  
25 evidence; and background and characteristics were different,

1 although we respect the Court's different opinion there.

2 But we also want to help the Court understand what  
3 an anomaly those cases were, and what those recommendations  
4 were; and I want to provide a few statistics.

5 The government has extended 268 pleas in these  
6 Capitol riot cases. Of those 268 pleas, 5 included  
7 probation-only recommendations; that is less than 2 percent  
8 of cases. And so suffice it to say that the probation-only  
9 recommendation is the exception and not the norm and should  
10 not, as this Court and many other courts in this district  
11 have recognized, become the default in most of these cases.

12 Had Anna Morgan-Lloyd come to the government and  
13 asked for a plea from the government today, taking into  
14 account her post-plea conduct, we would not offer her a  
15 probation-only recommendation.

16 As the Court is aware, the government's  
17 investigation is constantly evolving. And we continue to  
18 analyze factors based on our current understanding of what  
19 happened on January 6th; and we have come to appreciate that  
20 a probation-only recommendation likely will not be  
21 appropriate in most of these cases.

22 THE COURT: All right. Well, let's go into the  
23 factors that you have noted here. Not leaving by the door  
24 he entered the Capitol after being told to do so by a police  
25 officer, I mean, I guess -- and the CCTV footage shows that

1 he did speak to police officers. That's -- I don't think  
2 the government disputes that corroborates his explanation  
3 that he was actually -- once he got inside the building, was  
4 asking police officers how to get out?

5 MS. MIRELL: Correct.

6 THE COURT: Right. So, I mean, his explanation,  
7 for what it's worth, is that he didn't want to go out the  
8 same door because it was crowded with the mob trying to get  
9 in, so he walked the path of least resistance to get out; it  
10 took him about seven minutes to do that, and he was in and  
11 out.

12 So is that -- I mean, is it because he followed  
13 the police officer's direction to leave the building but he  
14 didn't take the same door that he came in?

15 To me, it's like the police officers told him to  
16 get out; he was looking for a way out. He left. He didn't  
17 take the nearest door. His excuse is there were tons of  
18 people coming in. Based on what I have seen on videotapes,  
19 there was a huge mass of people, thousands of people trying  
20 to get in. Perhaps -- does the government think he could  
21 have gotten out easily that way?

22 MS. MIRELL: Well, I think -- yes. I think, Your  
23 Honor, the evidence actually tends to belie Mr. Gruppo's  
24 explanation for why he didn't --

25 THE COURT: It tends to belie?

1 MS. MIRELL: My apologies.

2 It actually tends to undermine or casts doubt on  
3 Mr. Gruppo's explanation because the full video footage --  
4 first of all, Mr. Gruppo entered about 45 minutes after the  
5 breach of that Senate wing door, which is when we saw the  
6 large masses of people come in. There was tons of traffic.  
7 And perhaps, at that time, it would have been very difficult  
8 for a rioter to leave the door (sic).

9 But by the time that Mr. Gruppo had entered, it  
10 had become more of a trickle through the door. And we know  
11 that because other rioters left through that door at around  
12 the same time that Mr. Gruppo entered; so it wasn't  
13 impossible to leave.

14 I anticipate that Mr. Gruppo is going to say he  
15 felt unsafe because a perimeter was being established and he  
16 saw clashes between law enforcement officers and rioters,  
17 and he just wanted to avoid that perimeter.

18 Law enforcement officers were pushing the rioters  
19 north. There is another way to exit the Capitol grounds  
20 aside from entering the building -- and that would have been  
21 to walk in the direction that law enforcement officers were  
22 encouraging rioters to walk.

23 I understand that Mr. Gruppo did not understand or  
24 comprehend law enforcement's thinking and why it was trying  
25 to establish a perimeter and where, but that shouldn't have

1 prevented him from obeying their orders.

2 So I would also note, with respect to the amount  
3 of time and his entry and whether he was able to leave or  
4 not -- you know, they're comparing him -- putting him on the  
5 spectrum of other rioters; there were people who walked in  
6 and out, and that's it. Once they heard from law  
7 enforcement go back out that door, they did; but Mr. Gruppo  
8 didn't do that.

9 You know, I recognize he did walk directly  
10 through; didn't engage with officers along the way as far as  
11 we know, but there was an opportunity for him to leave.

12 THE COURT: All right. Let's go to the next one,  
13 which is a delay in surrender.

14 The defense counsel has said that any delay in  
15 this matter was solely due to Mr. Gruppo's counsel's busy  
16 schedule and not any fault of Mr. Gruppo.

17 I mean, Mr. Lindsey is a busy lawyer. We got all  
18 of the details of his very busy schedule in his briefing  
19 laying out exactly what he was doing every single day, in  
20 trying to figure out who was the right person to call within  
21 the U.S. Attorney's Office within days of Mr. Gruppo  
22 figuring out that Kenneth Kelly had been arrested. He tried  
23 to find counsel; he found a counsel. He had never been  
24 involved in the criminal justice system before; it wasn't  
25 like he had a criminal lawyer on retainer, he had to find

1 one. He found one; told the lawyer: I want to turn myself  
2 in. And then it took his lawyer a little bit of time to  
3 figure out who to call; find time to do that.

4 Does the government have any reason to dispute the  
5 outline of this delay in turning himself in?

6 MS. MIRELL: Your Honor, we do not dispute that  
7 outline.

8 THE COURT: And so I -- is that a reason, this  
9 purported delay -- and let me just also confirm. At the  
10 time that Kenneth Kelly was arrested and Mr. Gruppo then  
11 started to find a lawyer to figure out how to turn himself  
12 in, was there a criminal complaint outstanding at that time  
13 for Mr. Gruppo?

14 MS. MIRELL: There was not a criminal complaint.

15 THE COURT: So it's not like he was a fugitive  
16 from an arrest warrant?

17 MS. MIRELL: No. No, Your Honor.

18 You will notice, in my presentation this morning,  
19 that I actually didn't touch upon the delay and  
20 self-surrender.

21 THE COURT: Okay. Perfect. Then no more --  
22 because you have now backed off of that particular reason  
23 set forth in your papers for why there was a 30-day  
24 incarceration period recommendation.

25 Okay. Now let's get to the obstruction reason.

1 MS. MIRELL: Sure.

2 THE COURT: And I guess, as I understand the  
3 obstruction reason, the government claims the defendant -- a  
4 very serious allegation -- the defendant obstructed the  
5 government's investigation by deleting all potential  
6 evidence from his phone within days of seeing the negative  
7 portrayal of the January 6th attack in the media; that's  
8 from the government's memorandum at page 17.

9 And, in fact, the defendant says that he deleted  
10 the photographs after he got back to his home in New Mexico  
11 because he saw what had happened in the days following  
12 January 6th. So this is certainly before Kenneth Kelly had  
13 been arrested, right?

14 MS. MIRELL: Yes, Your Honor.

15 THE COURT: And it was certainly before Mr. Gruppo  
16 was aware that law enforcement might be looking for him; is  
17 that right?

18 MS. MIRELL: I don't believe so.

19 Your Honor, I think that it's fair to say that  
20 most Capitol rioters were on notice in the hours -- in the  
21 days after January 6th that law enforcement was looking for  
22 them and that they were being investigated, and that we were  
23 prosecuting these cases.

24 THE COURT: So Mr. Gruppo says that he deleted the  
25 photos -- photos from the phone, if I recall correctly,

1 because he was ashamed and embarrassed at what he had done,  
2 and he -- which is a far cry from wanting to hide evidence  
3 that could be used against him in a criminal prosecution;  
4 that's what you need for obstruction.

5 So what is the government's evidence that the  
6 deletion of the material from his phone was warranted,  
7 calling it obstructive behavior, because he evidenced some  
8 intent to hide evidence that could be used against him?

9 MS. MIRELL: Based on just the defendant's  
10 awareness that, in the days after January 6th, law  
11 enforcement was investigating this Capitol riot case.

12 Now, of course, the defendant is not charged with  
13 obstruction, and the government did not have evidence  
14 sufficient to prove obstruction prior to Mr. Gruppo's  
15 proffer with the government; but he admitted to seeing the  
16 coverage of January 6th, to knowing that there was interest  
17 in prosecuting these cases, and then -- to then deleting  
18 this.

19 Now, of course, he can delete for both reasons;  
20 one, he does feel ashamed; but he might also feel ashamed  
21 because law enforcement is investigating this, and coming  
22 home and realizing that the majority of America actually  
23 frowned upon and was horrified by the conduct is not -- is  
24 not mutually exclusive from recognizing that I am at risk of  
25 prosecution here.

1           And, you know, in addition, we did have tipsters,  
2           uncorroborated -- but tipsters who have said: Word of mouth  
3           is that he has changed his appearance; so that's also  
4           another factor. But, again, that's not beyond a reasonable  
5           doubt, and that's why we haven't charged obstruction here.

6           THE COURT: Well, the government did get his  
7           phone; so the government could have done a forensic review  
8           of that phone and could have pulled off anything it wanted,  
9           right?

10          MS. MIRELL: Yes, Your Honor.

11          My understanding, based on the conversations with  
12          the agent, was the technological capacities of the  
13          investigating agency in Texas did not have the technology to  
14          be able to establish whether items had been affirmatively  
15          deleted, or where -- sometimes the government can receive  
16          reports in which the reports indicate certain media have  
17          been deleted and recover that --

18          THE COURT: A Cellebrite report.

19          MS. MIRELL: Exactly.

20          -- and, you know, we can see the recovered media;  
21          we didn't have that here, so we couldn't establish it.

22          THE COURT: They did not have access to Cellebrite  
23          software to generate a Cellebrite extraction?

24          MS. MIRELL: The technological --

25          THE COURT: I thought every law enforcement agency

1 in the country has that.

2 MS. MIRELL: Well, Your Honor, I think had --

3 THE COURT: The FBI in Texas doesn't?

4 MS. MIRELL: Had this case proceeded to trial, I  
5 think they would have sent it off for further forensic  
6 review, but by the time --

7 THE COURT: New Mexico. Sorry. Sorry.

8 MS. MIRELL: Well, it was investigated in Texas;  
9 so you are correct, Your Honor.

10 We would have sent it off for further review, you  
11 know, had we wanted to try to prove obstruction. But here  
12 they saw nothing from January 6, and the defendant entered a  
13 guilty plea.

14 THE COURT: Well, he deleted all this media so he  
15 didn't post pictures on social media to drum up support for  
16 some conspiracy theory about the 2020 presidential election  
17 or to incite political violence anywhere else, right?

18 MS. MIRELL: Correct. We don't have evidence of  
19 that.

20 THE COURT: All right. So your other reasons,  
21 that he climbed -- scaled the walls of the Capitol. I had  
22 understood that he got on a ledge and went up a ledge -- you  
23 know, a ledge on the side of the Capitol steps that's a very  
24 wide ledge. I wouldn't do that; but I guess he did that.

25 And you call that "scaling"? Is that what you are

1 calling "scaling"?

2 MS. MIRELL: Of course, Your Honor, there is a  
3 spectrum, as there always is in these cases. Some people  
4 were scaling 20-, 30-foot walls, but the defendant --

5 THE COURT: And climbing scaffolding.

6 MS. MIRELL: Correct.

7 Again, there is a spectrum. But he had to exert  
8 some energy to get up a wall that was his height; that's not  
9 easy to do for a physically fit -- for anyone --

10 THE COURT: So that's why he was probably the only  
11 person being able to do that, and it was a clear path to the  
12 Capitol; wouldn't you say?

13 MS. MIRELL: He wasn't the only person doing that.  
14 But that -- when you're at the juncture where you're  
15 deciding: Hey, am I going to pull myself up on a bannister,  
16 on the Capitol, to get into a -- it was packed like  
17 sardines, this staircase, as Your Honor has seen in the  
18 footage. And to join that fray and to position myself up on  
19 the upper West Terrace and confront -- and seeing this  
20 confrontation between law enforcement officers -- that was a  
21 red flag; and he deliberately overlooked that red flag.

22 THE COURT: Right. Well, I am just looking  
23 through a number of the other cases, some of which you have  
24 mentioned. You know, I am just looking because there are so  
25 many of these. Judges are not going to be able to do this,

1 like -- you know, compare this guy, this guy, this guy.

2           You know, but -- you know, some of the things that  
3 we have -- some of these other defendants for whom the  
4 government recommended a probationary period, some with  
5 detention, some without; but, generally, no incarcerative  
6 period, certainly not an incarcerative period of 30 days --  
7 you know, where people who, like, went through broken  
8 windows, stayed inside for, like, 24 minutes, holding signs:  
9 The storm is here. After January 6th -- writing proudly  
10 about it. CCTV footage showing chanting and yelling near an  
11 officer -- that's Daniel Doyle, and the government  
12 recommended probation with some home confinement.

13           I just think that there are other people who saw  
14 what was going on, actually were chanting and encouraging  
15 what was going on, for whom the government recommended  
16 probationary periods; some not just probation only, but some  
17 with home detention. And from what I have seen of  
18 Mr. Gruppo's offense conduct, he didn't do any of that  
19 cheering on.

20           I mean, all of them saw the behavior. And I don't  
21 think the government is recommending 30 days' incarceration  
22 for everybody who was there who saw what was going on.

23           MS. MIRELL: No, Your Honor, we are not. But I --

24           THE COURT: So -- all right. Is there anything  
25 else you want to add?

1 MS. MIRELL: Nothing further, unless the Court has  
2 any further questions.

3 THE COURT: No. Mr. Lindsey.

4 MR. LINDSEY: May it please the Court.

5 Chief Judge Howell, I live in a small military  
6 community in eastern New Mexico.

7 THE COURT: I'm sorry. I can't hear you,  
8 Mr. Lindsey.

9 MR. LINDSEY: I live in a small military town in  
10 eastern new Mexico; and I got there because my dad served in  
11 the military. And he had a lot in common with Mr. Gruppo;  
12 he got his jump wings at Fort Benning, Georgia, like my  
13 brother did in the 82nd Airborne, and we ended up in this  
14 military town.

15 And when Mr. Gruppo came to talk to me about this,  
16 he wanted to turn himself in immediately. He was  
17 humiliated, devastated. He was UM1 in those photographs;  
18 and he wanted me to make arrangements to turn him in  
19 immediately. We did everything we could. I bear  
20 responsibility for any delay there.

21 I did not know at the time the extent of  
22 Mr. Gruppo's military career; and we tried to keep it quiet.  
23 And he wanted to keep it quiet because he felt like he  
24 dishonored that military service for 27 years; and we tried  
25 to do that.

1 THE COURT: And he did. You know, let's not mince  
2 words.

3 MR. LINDSEY: And I asked him -- he gave me his  
4 story. Everything he told me was the truth. This man is  
5 honorable. It has been an honor for me to represent him;  
6 for him to cooperate with law enforcement and the Select  
7 Committee investigating this of Congress, to give up those  
8 crucial Fifth Amendment rights and give statements and  
9 cooperate as much as he can.

10 The bottom line here is that Mr. Gruppo made a  
11 mistake. And anyone who has been in this business for over  
12 30 years as I have, sees that good people make mistakes.  
13 Mr. Gruppo made a serious mistake; he knows it; he has taken  
14 full responsibility for it. He has cooperated in any way,  
15 shape, or form that he can. He turned over his devices.

16 We're well aware that the Court is an expert in  
17 forensics, digital forensics; and we gave them the  
18 passwords. Our little sheriff's office has a Cellebrite  
19 program that they can pull off everything on someone's  
20 phone, pictures, everything -- except Snapchats; but they  
21 get those from California through a subpoena. So the  
22 government has had his devices. They had a 5-terabyte hard  
23 drive; his iMac Pro, his phone -- everything.

24 This man did not destroy any evidence in this  
25 case. He has been honest; he has been truthful; and he is

1 very remorseful. He has -- there will be an asterisk, as he  
2 told me, on his military career. Everything that he did,  
3 all the good things that he did -- there is going to be an  
4 asterisk there because he followed the recommendations of a  
5 President who was amoral and cannot tell the truth -- a  
6 former President; and he's paying the price for it. And he  
7 is here in this courtroom to accept any punishment that you  
8 have for him.

9 I understand the Griffith case yesterday; I spoke  
10 to counsel regarding that, and regarding that -- the split  
11 type of sentence that she had in that case; she gave us some  
12 good advice. But in this case -- Judge, we think a  
13 probationary period is appropriate in this case, whatever  
14 the amount is that you choose.

15 I am pretty saddened that the government would try  
16 to use his government service against him; but I understand  
17 what they're saying because they take an oath to defend this  
18 country from all enemies, foreign and domestic. And this  
19 was a riot.

20 He doesn't -- when he got back to his hotel and  
21 started seeing the news reports, he was devastated and  
22 sickened. So he will accept any punishment that you have,  
23 Judge; and if it's probation, we appreciate probation. He  
24 will comply with every single thing that you ask him to do.  
25 He is an honorable man, and it has been a pleasure for me to

1 work with him. Thank you.

2 THE COURT: Thank you, Mr. Lindsey.

3 Mr. Gruppo, this is now your opportunity to speak  
4 to me.

5 THE DEFENDANT: Thank you, Your Honor.

6 THE COURT: Mr. Gruppo, let me just begin.

7 Take a breath -- because you do medical work; you  
8 don't necessarily stand up in a public courtroom and speak;  
9 and I know it can be hard on some people to do that. But I  
10 have to say you write well. I thought your letter to the  
11 Court was very eloquently put, and moving.

12 And, in fact, if you wanted to read portions of  
13 your letter to the Court -- if that would be easier for you,  
14 because I can tell this is a very emotional time for you, I  
15 invite you to do that.

16 THE DEFENDANT: Thank you, Your Honor. I think I  
17 can summarize the gist of the letter that I was trying to  
18 convey to you.

19 I am ashamed. I am very sorrowful -- I have been.

20 As soon as I got back to my hotel, I couldn't  
21 believe the reports I saw. I shouldn't have been there. I  
22 shouldn't even have went to the Capitol; it was a huge  
23 mistake.

24 I have let down so many people because of this.  
25 Everybody -- the Capitol Police, my congressional leaders,

1 the President -- both Presidents, my family, my friends, my  
2 employers. It's been -- I don't know what to say except I'm  
3 sorry.

4 I shouldn't have done it. I take full  
5 responsibility. Whatever you decide, I accept without  
6 complaint, Your Honor. That's all I have.

7 THE COURT: All right. Well, I will explain the  
8 sentence I am about to impose, and then impose sentence.

9 Mr. Lindsey, you can stand with your client.

10 So after considering the sentencing memoranda that  
11 have been submitted by both the government and by  
12 Mr. Gruppo's counsel, reviewing the probation office's  
13 presentence investigation report and the sentencing  
14 recommendation, hearing argument here today, I must now  
15 consider the relevant factors, under 18 U.S.C. Section  
16 3553(a), and ensure that I impose a sentence that is  
17 sufficient, but not greater than necessary to comply with  
18 the purposes of sentencing.

19 And let me just review what those purposes of  
20 sentencing are. They're set out in the statute; and those  
21 purposes include: The need for the sentence imposed to  
22 reflect the seriousness of the offense; to promote respect  
23 for the law; provide just punishment for the offense; deter  
24 criminal conduct generally and, also, specific deterrence to  
25 protect the public from further crimes or in future crimes

1 by this defendant, Mr. Gruppo, and promote rehabilitation.

2 So, in connection with fashioning a sentence that  
3 addresses all of those purposes, I must, under 18 U.S.C.  
4 Section 3553(a), consider the nature and circumstances of  
5 the offense; the history and characteristics of the  
6 defendant, Mr. Gruppo; the types of sentences that are  
7 available; the need to avoid unwarranted sentencing  
8 disparities among defendants with similar records found  
9 guilty of similar conduct; and the need to provide  
10 restitution to any victims of the offense.

11 And I am going to begin with the restitution  
12 amount owed by Mr. Gruppo given that the statute of  
13 conviction is not covered by the two general restitution  
14 statutes codified at 18 U.S.C. Sections 3663 and 3663(a);  
15 the Court has no authority to determine any restitution  
16 amount, and is limited by what the government has agreed to  
17 in the plea agreement. And the plea agreement provides for  
18 a restitution judgment of \$500 which is the amount the Court  
19 will order, pursuant to 18 U.S.C. Section 3663(a)(3).

20 So regarding the nature and circumstances of the  
21 offense, Mr. Gruppo has been convicted of parading,  
22 demonstrating, or picketing in a Capitol Building, in  
23 violation of 40 U.S.C. Section 5104(e)(2)(G), which is a  
24 petty offense, Class B misdemeanor.

25 I am not going to go into detail describing the

1 nature and circumstances of the offense conduct on  
2 January 6th, 2021, other than to say what I have said  
3 before; that the rioters attacking the U.S. Capitol on  
4 January 6th, as part of a large mob, were not mere  
5 trespassers engaging in protected First Amendment protests;  
6 they were certainly not tourists. And I say that again and  
7 again because there still seems, in some areas, to be a  
8 debate about that issue.

9 As countless videos show, the mob that attacked  
10 the Capitol was violent, and everyone participating in that  
11 mob contributed to that violence by their sheer numbers and  
12 their intentional focus on getting inside the Capitol  
13 Building; some using force, chemical sprays, many types of  
14 objects to push past police lines, through smashed doors and  
15 windows, with alarms blaring, tear gas flowing from both  
16 sides -- the police towards the rioters, the rioters towards  
17 the police.

18 The mob that the defendant was part of in the  
19 attack on the Capitol, on January 6th, forced Congress and  
20 the Vice President to evacuate, staffers to hide behind  
21 locked doors and desks, delayed certification of our  
22 presidential election while the world was watching; caused  
23 significant damage domestically to our faith that: No  
24 matter what our political parties or views are, as  
25 Americans, we believe in the peaceful transition of power

1 after an election.

2 Mr. Gruppo, you did help facilitate that riot just  
3 by being there, adding to the numbers that overwhelmed law  
4 enforcement and disrupting the proceedings of Congress.

5 And the government is absolutely right when it  
6 says that you had many off ramps that you chose to ignore  
7 before entering the U.S. Capitol Building. You saw puffs of  
8 smoke rising from the northern staircase; deafening sounds  
9 of rioters clashing with law enforcement; rioters scaling  
10 the outer walls of the Capitol Building; the presence of  
11 officers trying to clear a perimeter on the upper West  
12 Terrace; shattered glass at the entrance to the Senate wing  
13 door. But you did plow on to get into that building by  
14 climbing on this stairwell ledge -- climbing up.

15 You stayed inside around seven minutes, spending  
16 some of that time talking to police officers asking about  
17 the best exit. You didn't follow the police direction to  
18 exit through a door where the mob had been coming in.

19 The government contends that, at that point, it  
20 was just a trickle, you should have been able to find your  
21 way out. I am going to give you, in some ways, the benefit  
22 of the doubt on that. I saw pictures of that mob; it looked  
23 like a zoo, densely packed. A person trying to find a quick  
24 and easy safe way out would likely have found another way  
25 out than that door; I understand that.

1           You admit you should have known better, but  
2           somehow that day you didn't. And you say that you headed to  
3           the Capitol Building not with any intent to obstruct and  
4           impede congressional proceedings; but because the  
5           then-President, Trump, told protesters at the "stop the  
6           steal" rally -- and I quote: After this, we're going to  
7           walk down; and I will be there with you. We're going to  
8           walk down. We're going to walk down. I know that everyone  
9           here will soon be marching over to the Capitol Building to  
10          peacefully and patriotically make your voices heard.

11           And you say that you wanted to show your support  
12          for and join then-President Trump as he said he would be  
13          marching to the Capitol; but, of course, didn't.

14           So, with that factual set of offense conduct  
15          circumstances, I look at some of the following pertinent  
16          factors in assessing your role in that overall mob activity  
17          that had devastating consequences.

18           First, you were in the Capitol Building for about  
19          seven minutes or less; two, you did not physically attack  
20          any police officer or any other person; three, you did not  
21          personally damage any property inside the Capitol; three  
22          (sic) -- you did not engage in chanting or slogans, carry  
23          posters, signs, or brandish a weapon of any kind to incite  
24          others to follow you into the Capitol; you voluntarily  
25          turned yourself into the FBI; six, you fully cooperated at

1 the outset, by turning over to law enforcement your devices,  
2 your passwords to devices and social media accounts; seven,  
3 you had no inflammatory language on social media before,  
4 during, or after January 6th, let alone any calls for  
5 political violence; eight, you promptly agreed to enter a  
6 plea agreement after an offer was extended by the government  
7 to accept responsibility in this case; nine, you had no  
8 preplanning for this event; it wasn't something that you  
9 came to Washington, D.C. -- to break into the Capitol and  
10 join the mob, delay the certification of the presidential  
11 vote. You didn't bring any dangerous weapons with you; you  
12 didn't even bring any defensive gear to -- as if you were  
13 planning for some kind of violent confrontation.

14 You did acknowledge that you knew you shouldn't  
15 have entered the Capitol Building. But the evidence, as I  
16 see it, points to a conclusion that this was a defendant who  
17 didn't deliberately intend or support the violence and  
18 destruction that has left such a dark stain on our  
19 democracy.

20 In sum, although the nature of the offense and the  
21 need for the sentence to reflect the seriousness of the  
22 offense and promote respect for the law would generally  
23 favor a custodial sentence, the particular circumstances of  
24 this defendant's conduct put him in a less troublesome  
25 category than many of the more aggressive rioters that day.

1           Regarding your history and characteristics, you  
2           have no criminal history; and you have had a professional  
3           life that, to my mind, should and does merit respect.

4           You are an army veteran who has served in combat  
5           zones in four wars; as a medical professional, you helped  
6           save lives.

7           You acknowledge that you are a well-educated  
8           veteran with a distinguished career in the military; and you  
9           should have known better. Your lawyer says that you know  
10          that you are going to have an asterisk next to your military  
11          service and all of your many, many awards; and you will.

12          Perhaps the government, in seeking an  
13          incarcerative period here wants to use you as an example to  
14          other people in the military with the specialized training  
15          you get to focus outside this country but not on Americans  
16          that that specialized training, when turned on Americans and  
17          at the heart of our democracy, has got to be punished with  
18          jail time; and I get that.

19          But for the individual standing here before me  
20          today who has recognized that his conduct contributed -- and  
21          I quote from his defense memo: Contributed to an  
22          insurrection and the peaceful transfer of power, two  
23          democratic tenets that you repeatedly risked your life for  
24          over 28 years to defend -- I think you recognize that this  
25          was a grave mistake and are doing your work now,

1 particularly by talking to members of Congress on the Select  
2 Committee to help deter other people with the specialized  
3 training you received in the military not to turn it against  
4 their fellow Americans.

5 I have to say that it does strike me that your  
6 better judgment seemed to have returned to you almost  
7 immediately after January 6th because, in the days that  
8 followed, you did voluntarily surrender to law enforcement.  
9 You initiated discussions almost immediately after your  
10 friend was arrested with no prompting from friends or  
11 family, it appears, to figure out how to surrender on your  
12 own.

13 You have shown sincere remorse in your letters to  
14 the Court. You have cooperated extensively with law  
15 enforcement by turning over your phone, your computer, your  
16 hard drive with all relevant passwords. And although the  
17 government calls it obstruction that you did delete photos  
18 from your phone that you took on January 6th, I credit that  
19 you did so in response to feelings of being ashamed by what  
20 had happened and that you were there to participate in the  
21 actions of the mob.

22 Far from shying away from what Mr. Gruppo himself  
23 has called a life-altering mistake, you have been very  
24 blunt, up front, about your own embarrassment and  
25 humiliation and your shame about your criminal conduct which

1 you have detailed, it seems, quite honestly.

2 Unlike other January 6th defendants, you didn't  
3 boast about your presence at the Capitol Building on social  
4 media or in the news. You haven't advocated as others who  
5 the government has recommended probationary sentences for;  
6 you haven't recommended that there be some overturning of  
7 the legitimate electoral process.

8 You have expressed -- and I appreciate this -- you  
9 have expressed -- one of the few defendants that I have seen  
10 in these cases -- an apology to your countrymen, to  
11 President Biden, President Trump, Vice President Pence,  
12 Vice President Harris, Speaker Pelosi, and our other  
13 congressional leaders for your actions on January 6th -- and  
14 they do deserve an apology.

15 One of the things that struck me in your letter is  
16 that you say that one thing you have done as a result of  
17 this experience is to renew your commitment to the basic  
18 teachings from your Catholic school education, including the  
19 biblical command that you shall love your neighbor as  
20 yourself. And it did strike me that, in these politically  
21 divisive times, that maybe we should all take time to  
22 remember we are all Americans and we should avoid demonizing  
23 people with different political views.

24 As to the need for the sentence imposed to deter  
25 criminal behavior and protect the public from further crimes

1 of the defendant, these are very critical considerations for  
2 a sentencing judge. The seriousness of the criminal conduct  
3 we witnessed on January 6th only highlights the need for  
4 deterrence in the form of a sufficient sentence to deter the  
5 defendant and others from engaging in this kind of conduct  
6 in the future.

7 I do not find, however, the need for specific  
8 deterrence for this defendant in light of his lack of any  
9 criminal history, his lack of any violent conduct, or any,  
10 even, property damage caused by him during the offense  
11 conduct; the lack of any promotion of his criminal activity;  
12 the lack of any planning to engage in any violent activity  
13 on January 6th; as well as his early acceptance of  
14 responsibility, his extensive cooperation, and the  
15 financial, professional, and social consequences that have  
16 already befallen him due to his actions on January 6th.

17 Regarding the types of sentences available, the  
18 defendant is now convicted of a petty offense, Class B  
19 misdemeanor, so he faces a maximum term of imprisonment of  
20 six months, and up to five years' probation.

21 Regarding the need to avoid unwarranted sentencing  
22 disparity, the defendant has raised the fact that other  
23 January 6th defendants charged with petty offense  
24 misdemeanors have received probationary sentences, and  
25 suggests that a custodial sentence here would be an

1 unwarranted sentencing disparity; I do agree.

2 I do recognize that a range of sentences, both  
3 probationary and custodial, have been imposed on January 6th  
4 defendants convicted of this petty offense misdemeanor; but  
5 given the specific offense conduct of Mr. Gruppo, the Court  
6 finds that a sentence of probation with home detention would  
7 be appropriate here.

8 Based on my consideration of these and other  
9 factors, I will now state the sentence to be imposed.

10 Pursuant to the Sentencing Reform Act of 1984, and  
11 in consideration of the provisions of 18 U.S.C. Section  
12 3553, it is the judgment of the Court that you, Leonard  
13 Gruppo, are hereby sentenced to a term of 24 months, two  
14 years of probation, as to Count 4 of the indictment.

15 In addition, you are ordered to pay a special  
16 assessment of \$10, in accordance with 18 U.S.C.  
17 Section 3013.

18 The Court authorizes that supervision and  
19 jurisdiction of this case be transferred to the United  
20 States District Court for the Northern District of Texas.  
21 While on supervision, you shall abide by the following  
22 mandatory conditions, as well as the standard conditions of  
23 supervision which are imposed to establish the basic  
24 expectations for your conduct while on supervision.

25 The mandatory conditions include: One, you must

1 not commit another federal, state, or local crime; two, you  
2 must not unlawfully possess a controlled substance; three,  
3 the mandatory drug testing condition is suspended based on  
4 the Court's determination that you pose a low risk of future  
5 substance abuse. Four, you must make restitution in  
6 accordance with 18 U.S.C. Section 3663, or any other statute  
7 authorizing a sentence of restitution.

8 You shall comply with the following special  
9 conditions: You are ordered to make restitution to the  
10 Architect of the Capitol in the amount of \$500. The Court  
11 determines you do not have the ability to pay interest and,  
12 therefore, waives any interest or penalties that may accrue  
13 on the balance. You must pay the balance of any restitution  
14 owed at a rate of no less than \$100 each month.

15 You are ordered, also, to pay a fine in the amount  
16 of \$3,000. The Court determines you do not have the ability  
17 to pay interest and, therefore, waives any interest or  
18 penalties that may accrue on the balance.

19 You must pay the financial penalty in accordance  
20 with the schedule of payments sheet of the judgment. You  
21 must also notify the Court of any changes in economic  
22 circumstances that might affect the ability to pay this  
23 financial penalty.

24 Having assessed the defendant's ability to pay,  
25 payment of the total criminal monitoring penalties is due as

1 follows: Payment in equal monthly installments of \$125 over  
2 a period of 24 months to commence after the date of this  
3 judgment. You must provide the probation officer access to  
4 any requested financial information and authorize the  
5 release of any financial information until the restitution  
6 obligation is paid in full. The probation office may share  
7 financial information with the U.S. Attorney's Office.

8 You must not incur any credit charges or open  
9 additional lines of credit without the approval of the  
10 probation officer.

11 Restitution payments shall be made to the Clerk of  
12 the Court for the U.S. District Court, District of Columbia,  
13 for disbursement to the following victim, in the amount of  
14 \$500, Architect of the Capitol, Office of the Chief  
15 Financial Officer, attention Kathy Sherill, CPA, Ford House  
16 Office Building, Room H2-205B, Washington, D.C. 20515.

17 The financial obligations are immediately payable  
18 to the Clerk of the Court for the U.S. District Court, 333  
19 Constitution Avenue, NW, Washington, D.C. 20001. Within 30  
20 days of any change of address, you shall notify the Clerk of  
21 the Court of the change until such time as the financial  
22 obligation is paid in full.

23 The probation office shall release the presentence  
24 investigation report to all appropriate agencies, which  
25 includes the U.S. Probation Office in the approved district

1 of residence in order to execute the sentence of the Court.

2 Treatment agencies shall return the presentence  
3 report to the probation office upon the defendant's  
4 completion or termination from treatment.

5 Pursuant to 18 U.S.C. Section 3742, you have a  
6 right to appeal the sentence imposed by the Court if the  
7 period of imprisonment is longer than the statutory maximum  
8 or the sentence departs upward from the applicable  
9 sentencing guideline range -- which there is no range here.  
10 If you choose to appeal, you must file any appeal within 14  
11 days after the Court enters judgment.

12 As defined in 28 U.S.C. Section 2255, you also  
13 have the right to challenge the convictions entered or  
14 sentence imposed if new and currently unavailable  
15 information becomes available to you or on a claim you  
16 received ineffective assistance of counsel in entering a  
17 plea of guilty to the offense of conviction or in connection  
18 with sentencing. If you are unable to afford the cost of an  
19 appeal, you may request permission from the Court to file an  
20 appeal without cost to you.

21 Are there any objections to the sentence imposed  
22 not already noted on the record from the government?

23 MS. MIRELL: No.

24 Your Honor, I just wanted to -- you did not -- I  
25 believe I heard you say probation with home detention, but I

1 haven't heard any home detention condition. But if the --

2 THE COURT: You are right in that. There is.

3 Thank you.

4 Location monitoring. You will be monitored by a  
5 form of location monitoring technology indicated here for a  
6 period of 90 days, and you must follow the rules and  
7 regulations of the location monitoring program. The cost of  
8 the program is waived.

9 Location monitoring technology is at the  
10 discretion of the probation officer, including radio  
11 frequency monitoring, GPS monitoring, including hybrid GPS,  
12 Smartlink, or voice recognition.

13 This form of location monitoring technology will  
14 be used to monitor the following restrictions on your  
15 movement in the community. You are restricted to your  
16 residence at all times, except for employment, education,  
17 religious services, medical, substance abuse, or mental  
18 health treatment, attorney visits, court appearances,  
19 court-ordered obligations, or other activities as  
20 preapproved by the officer. Home detention.

21 Thank you.

22 MR. LINDSEY: How long was that, Judge?

23 THE COURT: 90 days. All right.

24 And they will -- I am going to transfer  
25 jurisdiction to --

1 MR. LINDSEY: Actually, he resides in Dallas; he's  
2 working at a clinic there.

3 THE COURT: Yes. The probation office has already  
4 arranged for transfer of jurisdiction to Dallas, Texas; and  
5 so they will take care of the location monitoring technology  
6 for the 90 days of home detention.

7 All right. You may be seated.

8 Does the government have any motion to dismiss  
9 open counts in the indictment or the information?

10 MS. MIRELL: Yes, Your Honor.

11 At this time, the government moves to dismiss  
12 Counts 1 through 3 of the information.

13 THE COURT: That motion is granted.

14 Anything else to consider today from the  
15 government?

16 MS. MIRELL: Nothing further, Your Honor.

17 THE COURT: And from the defense?

18 MR. LINDSEY: No, Judge. Thank you.

19 THE COURT: All right. You are all excused.

20 PROBATION OFFICER: Your Honor, just like with  
21 yesterday, it's okay to put him on the bracelet -- I just  
22 want your permission to give him a few days to get settled.

23 THE COURT: Yes. I will do that.

24 And I am going to sign the transfer of  
25 jurisdiction right now.

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THE DEFENDANT: Thank you, Your Honor.

THE COURT: Thank you.

MR. LINDSEY: Just to be clear, he is going to work while he is on the --

THE COURT: Correct.

MR. LINDSEY: Okay. Thank you.

(Whereupon, the proceeding concludes, 11:07 a.m.)

\* \* \* \* \*

**CERTIFICATE**

I, ELIZABETH SAINT-LOTH, RPR, FCRR, do hereby certify that the foregoing constitutes a true and accurate transcript of my stenographic notes, and is a full, true, and complete transcript of the proceedings to the best of my ability.

This certificate shall be considered null and void if the transcript is disassembled and/or photocopied in any manner by any party without authorization of the signatory below.

Dated this 2nd day of November, 2021.

/s/ Elizabeth Saint-Loth, RPR, FCRR  
Official Court Reporter