

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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UNITED STATES OF AMERICA,)	Criminal Action
)	No. 21-456
vs.)	
)	
BRIAN E. STENZ,)	February 17, 2022
)	9:28 a.m.
Defendant.)	Washington, D.C.

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

APPEARANCES:

FOR THE UNITED STATES:

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FOR THE DEFENDANT:

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ALSO PRESENT:

CRYSTAL LUSTIG, Probation Officer

 CHRISTINE SCHUCK, Pretrial Agent,
 Appearing via Zoom and/or telephonically

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. 21-456. United States of America versus
4 Brian E. Stenz.

5 Your Honor, for the record, Probation Officer
6 Crystal Lustig and Pretrial Agent Christine Schuck are
7 appearing via Zoom.

8 THE COURT: Thank you.

9 THE COURTROOM DEPUTY: Counsel, please come
10 forward and state your names for the record, starting with
11 the government.

12 MS. ALBINSON: Good morning, Your Honor.
13 Grace Albinson for the United States. And here with me is
14 James Pearce; he is working on the appellate cases.

15 THE COURT: Yes.

16 MS. ALBINSON: Do you know him?

17 THE COURT: Yes. Good morning, Mr. Pearce and
18 Ms. Albinson.

19 MR. MARRONE: Good morning, Judge.
20 Joseph Marrone, on behalf of the defendant, Mr. Brian Stenz.

21 THE COURT: All right. Good morning, Mr. Marrone.
22 Good morning, Mr. Stenz.

23 THE DEFENDANT: Good morning, Your Honor.

24 THE COURT: All right. We're here this morning
25 for the sentencing of the defendant, Brian Stenz, who

1 pleaded guilty to the petty offense in Count 4 of the
2 information against him, for parading, picketing, and
3 demonstrating in the Capitol Building.

4 For the record, this sentencing hearing is being
5 held in person but the public access line is being made
6 available for persons to listen to these proceedings
7 remotely. We still have the pandemic ongoing, and this is a
8 high transmission area; so the public access line will
9 enable people to listen without having to physically be here
10 in the courthouse, and it helps to keep the numbers of
11 people down here.

12 I do want to remind anybody listening on the
13 public access line to this sentencing hearing that, under my
14 standing order 20-20, recording and rebroadcasting of court
15 proceedings, including those held by videoconference, is
16 strictly prohibited. Violation of these prohibitions may
17 result in sanctions, including removal of court-issued media
18 credentials, restricted or denial of entry to future
19 hearings, or other sanctions deemed necessary by the
20 presiding judge.

21 All right. I am going to begin this sentencing
22 hearing as I do all such hearings, by reviewing all of the
23 materials that I have reviewed in connection with the
24 hearing, to make sure that all sides -- both parties -- are
25 working from the same set of documents that I am.

1 So I have received, in advance of the hearing, the
2 sentencing memoranda submitted by the government, docketed
3 at ECF 32 and on behalf of the defendant docketed at ECF 31.

4 I have also received the three videos listed in
5 the government's report and position regarding public
6 release of video evidence re Brian E. Stenz's sentencing
7 that was docketed at ECF 33. And I have reviewed all of
8 those videos, and they have been made publicly accessible.

9 I have also reviewed a total of about ten letters
10 submitted by Mr. Stenz's family, one letter from his current
11 employer, and letters from friends.

12 Does the government have all of those documents?

13 MS. ALBINSON: Yes, Your Honor.

14 THE COURT: I know the plexiglass is set up, so --

15 MS. ALBINSON: It's hard to see.

16 THE COURT: You know, I think what government
17 counsel has been doing -- because of the setup of the
18 plexiglass in my courtroom -- is they have been sitting on
19 the other side of the table which --

20 MS. ALBINSON: Okay. We can do that.

21 THE COURT: It has a mic. Yes. And we put a mic
22 on that side of the table because it makes it a little bit
23 easier for you and for me, so feel free to move.

24 MS. ALBINSON: Happy to.

25 THE COURT: All right. Isn't that better?

1 MS. ALBINSON: Yes.

2 THE COURT: Excellent. Okay.

3 I know we're all -- even after two years we're
4 still getting used to the configurations of the courtrooms
5 with the plexiglass, and working around it.

6 MS. ALBINSON: Yes.

7 THE COURT: All right. So Mr. Stenz -- and does
8 defense counsel have all of the documents that I have just
9 listed?

10 MR. MARRONE: Yes, Your Honor.

11 THE COURT: Okay. So, Mr. Stenz, why don't you
12 stand while I address you.

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: This proceeding will proceed in three
15 different steps. And I like to tell defendants who are
16 appearing in front of me -- and their families who may be
17 listening or present in the courtroom -- what's going to
18 happen next during the hearing, mostly so that you know at
19 what point in the hearing you will have the opportunity to
20 address me directly if you wish.

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: So there are three steps to this
23 hearing. The first step is to determine whether the
24 government or you have any objections to the factual or
25 other portions of the presentence investigation report

1 prepared by the probation office in your case; and if there
2 are any objections, I will resolve those.

3 The second step of the hearing is to hear from the
4 government first, then from your lawyer. And, then, lastly
5 from you, if you wish to be heard, about sentencing in this
6 case; and specifically addressing factors that I, as a
7 sentencing judge, am required to consider under 18 U.S.C.
8 Section 3553(a).

9 The last step requires me to explain the reasons
10 for the sentence I am about to impose and then to impose
11 sentence on you.

12 Do you have any questions about what is going to
13 be happening during this hearing?

14 THE DEFENDANT: No, Your Honor.

15 THE COURT: All right. You may be seated.

16 THE DEFENDANT: Thank you.

17 THE COURT: All right. So step one, presentence
18 investigation report, the final presentence report and the
19 sentencing recommendation, docketed at ECFs 29 and 30, were
20 filed on January 20th.

21 And I understand from the PSR that the government
22 has no objection to any portions of the presentence
23 investigation report; is that correct?

24 MS. ALBINSON: That's correct, Your Honor.

25 THE COURT: All right. Mr. Marrone, have you and

1 your client read and discussed the presentence investigation
2 report?

3 MR. MARRONE: Yes, we have, Your Honor.

4 THE COURT: And, Counsel, I know the mic is down,
5 but you can lift it. So when you are speaking to me, if you
6 could just rise.

7 MR. MARRONE: Sure. Yes, we have read it.

8 THE COURT: And just rise.

9 MR. MARRONE: I'm sorry.

10 THE COURT: And you have to turn your mic on.

11 MR. MARRONE: There we go.

12 THE COURT: All right. Okay.

13 And I understand, from the last page of the
14 presentence investigation report, that you didn't return the
15 response to the probation office indicating whether or not
16 you had any objections to any parts of the PSR. So
17 illuminate me.

18 Does the defendant have any objections to any of
19 the factual statements or other determinations set forth in
20 the PSR?

21 MR. MARRONE: He does not, Judge.

22 And he signed the form today. I apologize.

23 THE COURT: Okay. Thank you.

24 You may be seated, Mr. Marrone.

25 Mr. Stenz, please remain standing.

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Are you fully satisfied with your
3 lawyer in this case?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: And do you feel that you have had
6 enough time to talk to Mr. Marrone in preparation for this
7 sentencing hearing about the probation department's
8 presentence investigation report and its sentencing
9 recommendation in your case?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: All right. You may be seated.

12 THE DEFENDANT: Thank you, Your Honor.

13 THE COURT: Hearing no objection by either side,
14 the Court will accept the factual portions of the
15 presentence investigation report as undisputed and as my
16 findings of fact at sentencing as supplemented with my own
17 review of the video exhibits in this case.

18 All right. So we're now at the second step of the
19 hearing where I will hear the parties. So I will turn first
20 to the government; and you can step forward to the podium in
21 front of me.

22 And based on the papers that have been submitted,
23 the government has recommended 14 days of imprisonment to be
24 followed by a period of 36 months' probation; and that is
25 compared to the recommendation from the probation office and

1 the defendant for a period of probation of no more than 24
2 months with no period of incarceration.

3 So I will hear you on why it is that you believe a
4 period of incarceration is warranted in this case.

5 MS. ALBINSON: Yes, Your Honor. Thank you.

6 The government understands that a split sentence
7 requesting 14 days imprisonment is a significant sentence
8 for a misdemeanor case; but this was not a normal crime and
9 it doesn't merit a normal sentence.

10 The crime that Mr. Stenz committed, along with the
11 crimes of thousands of other rioters on January 6th, were
12 unique and significant to our country's history.

13 January 6 was not merely an attack --

14 THE COURT: But the government is not asking
15 for -- I mean, the government is not asking for a period of
16 incarceration for every single person who put his or her big
17 toe inside the Capitol Building, right?

18 MS. ALBINSON: Yes, Your Honor. That's correct.

19 THE COURT: So as I understand it, you know, from
20 the government's papers, putting aside the significance of
21 what happened in the Capitol attack on January 6th; and
22 understanding the fact that the government is not asking for
23 a period of incarceration for every single one of those
24 participants in that mob attack, I understand that the
25 government is asking for a period of incarceration in this

1 case, in part, because of the defendant's five prior
2 convictions. Is that correct?

3 MS. ALBINSON: That's correct, Your Honor.

4 THE COURT: It's his criminal history that you
5 have been focusing on?

6 MS. ALBINSON: That is correct. I would say that
7 that is the most significant aggravating factor in this case
8 specific to this defendant, is the fact that he did have
9 five prior arrests on his record at the time that he chose
10 to enter the Capitol Building --

11 THE COURT: Well, I am not concerned about
12 arrests. You are talking about the five misdemeanor
13 convictions; is that correct?

14 MS. ALBINSON: I'm sorry. I apologize.
15 I misspoke, Your Honor.

16 -- five misdemeanor convictions on his record, for
17 which he had been sentenced to probation on each of those
18 occasions.

19 I do not believe this defendant has served any
20 jail time, and that's one of the reasons why we're
21 requesting it, Your Honor. Because it doesn't appear, from
22 a reading of the defendant's record, that probation has been
23 a sufficient deterrent for this defendant.

24 THE COURT: Well, let me just pause you on that
25 because the probation office has indicated, in its

1 sentencing recommendation, that Mr. Stenz was sentenced to
2 one period of imprisonment and placed on community
3 supervision on multiple occasions. And I do believe that
4 for his possession of marijuana conviction he was actually
5 sentenced to a short period of imprisonment.

6 Are you reading the presentence report differently
7 than that?

8 MS. ALBINSON: I apologize, Your Honor. I must
9 have overlooked that.

10 THE COURT: Well, let's just look and get that
11 cleared up right now, why don't we.

12 MS. ALBINSON: Okay.

13 THE COURT: Because if you look at paragraph 27 of
14 the PSR --

15 MS. ALBINSON: Yes.

16 THE COURT: -- under "penalty" it says 3 months --
17 he was convicted of possession of marijuana, false report to
18 law enforcement, all in Montgomery County, PA; and he was
19 sentenced to 3 months' probation for the possession of
20 marijuana.

21 But it reads to me as if he were sentenced to one
22 year in imprisonment for the false report to law
23 enforcement.

24 MS. ALBINSON: Your Honor, you are correct.

25 I apologize. I must have overlooked that part.

1 I do believe that makes the argument for
2 imprisonment even stronger because if he has already served
3 a year in prison, that didn't dissuade him from committing
4 another crime.

5 He did have an outstanding criminal case in
6 Pennsylvania at the time that he chose -- made the conscious
7 choice to enter the Capitol Building. He did admit to law
8 enforcement that he knew that it was a crime when he
9 entered. He knew he was doing something wrong, and he chose
10 to do it anyway. So --

11 THE COURT: So it's his combination of his
12 criminal history that he has had five misdemeanor
13 convictions previously, served one period of imprisonment
14 quite some time ago, in 1999; and he was awaiting resolution
15 of charges against him at the time he committed this instant
16 offense on January 6, 2021.

17 So it's that combination of criminal history
18 factors that is part of what's underlying the government's
19 recommendation for 2 weeks' imprisonment?

20 MS. ALBINSON: That is correct, Your Honor. Along
21 with the other aggravating factors that the government laid
22 out in its sentencing memorandum which -- I don't know if
23 you want me to go into those right now, but they are -- but
24 the defendant observed people breaking windows outside the
25 Capitol; and that's significant because it's not a situation

1 that we have with many other January 6th defendants where
2 they simply observed the windows already broken.

3 He observed the destruction himself, and he went
4 in anyway. He would have heard alarms going off at his
5 entry or before. He said to law enforcement that he saw
6 blood in a fountain, and that's, you know, a very dramatic
7 image; but it shows that he saw evidence of extreme violence
8 before he went in, someone had bled; and he saw it, and he
9 went in anyway.

10 Additionally, he entered an extremely sensitive
11 area of the Capitol; he entered Senator Jeff Merkley's
12 office along with multiple other January 6th defendants.

13 The government is not sure the state of the office
14 when he entered into it. I don't know if there was a large
15 amount of destruction that Mr. Stenz would have saw -- would
16 have seen when he entered in, but he would have seen the
17 door was torn off the hinges.

18 THE COURT: And I understand that a computer was
19 stolen from Senator Merkley's office during that invasion by
20 the mob.

21 MS. ALBINSON: Yes, that's correct.

22 THE COURT: Has that computer ever been recovered?

23 MS. ALBINSON: Your Honor, I do not know. I can
24 try to get that answer for you.

25 THE COURT: That's okay. That's okay. It's not

1 relevant because there is no evidence that this particular
2 defendant -- despite going into Senator Merkley's office --
3 actually stole anything, including a computer from the
4 office; is that correct?

5 MS. ALBINSON: That is correct. He did take a
6 picture, a photograph, when he was inside the office.

7 Additionally, he sent text messages to friends and
8 acquaintances that included the photographs that he took
9 while he was at the Capitol, and he later deleted those
10 photographs.

11 He did provide them to law enforcement when he --
12 when his attorney reached out and set up an interview. The
13 government acknowledges that the defendant did come in early
14 on this case. Nonetheless, he did --

15 THE COURT: Let me ask you about that interview.
16 Because one of the things that struck me is that, when
17 Mr. Stenz spoke to the FBI, he said he traveled to D.C. with
18 a friend from his neighborhood. He drove in the car with
19 this person from Pennsylvania to a train station outside of
20 Baltimore. He took the train with this friend; he went to
21 the Trump rally with this friend. He went into the Capitol
22 with this friend; and then he traveled back home with this
23 friend. And Mr. Stenz told the FBI that he knew this
24 friend's first name only.

25 Has the government learned the full name of the

1 friend who spent all day with Mr. Stenz on January 6?

2 MS. ALBINSON: The government has, yes, Your
3 Honor.

4 THE COURT: And did the government learn that name
5 from Mr. Stenz?

6 MS. ALBINSON: No, Your Honor.

7 THE COURT: So does the government believe the
8 defendant when he told the FBI he didn't know the full name
9 of the person he traveled with and spent all day with on
10 January 6th during this historic moment in our country's
11 history?

12 Do you believe he didn't know the full name of the
13 friend?

14 MS. ALBINSON: I think it's unlikely that he
15 didn't know the full name, but I don't know for sure.

16 THE COURT: Well, it was just interesting to me
17 that in one of the aggravating factors that the government
18 didn't list was the fact that he was not forthcoming during
19 his interview with the FBI about who he was accompanied by
20 on January 6th.

21 Doesn't this defendant in his plea agreement have
22 a cooperation provision?

23 MS. ALBINSON: He does, Your Honor. He does.

24 THE COURT: And would you find failing to provide
25 the full name of the friend or dissembling in an FBI

1 interview is fully compliant with the cooperation provision
2 in the plea agreement?

3 MS. ALBINSON: Not if he knew the full name, Your
4 Honor. I would agree with you that it's not fully compliant
5 if he knew his friend's full name. I don't know --

6 THE COURT: But the government doesn't believe
7 that that dissembling to the FBI during an FBI interview is
8 an aggravating factor? It's not mentioned in your briefing.
9 I was curious about that omission, if it was an omission.

10 MS. ALBINSON: Your Honor, I don't know what he
11 knew. I think it's unlikely that he didn't know his
12 friend's last name or he couldn't have found out; but I
13 don't know for sure.

14 I would point out that Mr. Stenz -- we did cite in
15 our sentencing memorandum, I believe, that he was in the
16 Capitol for eight minutes. He told the FBI that he was only
17 there for three minutes; and he did omit the fact that he
18 was in a senator's office. He said he was in what looked
19 like a bookshop; that I think it's safe to say is not being
20 fully honest. It's unlikely that someone would mistake a
21 bookshop for a senator's office; and I do believe the
22 government did point that out in its sentencing memorandum.
23 But I don't know for sure if this defendant actually knew
24 the last name of the individual who was with him.

25 The government has --

1 THE COURT: So let me -- go ahead. I'm sorry to
2 interrupt you.

3 MS. ALBINSON: I was going to say the government
4 has identified that person.

5 THE COURT: And has that person been charged?

6 MS. ALBINSON: Not at this point, but we are
7 working towards that.

8 THE COURT: Without any help from Mr. Stenz?

9 MS. ALBINSON: Correct.

10 THE COURT: All right. So the government makes a
11 point of stating in its memo that the gravity of these
12 offenses demands deterrence; this was not a protest.

13 And I do think it bears repeating that what
14 happened on January 6th was not a protest; and it bears
15 repeating, in part, because a major political party has
16 described what happened on January 6th as legitimate
17 political discourse, so I think it bears repeating again and
18 again. This was not legitimate political discourse; this
19 was not a protest.

20 And yet, at the same time, the government has
21 allowed this defendant and a number of other defendants
22 charged in connection with January 6 to plead to a charge of
23 parading, demonstrating, and picketing in the Capitol
24 Building which suggests that all they were doing was
25 parading, demonstrating, or picketing, but just in the wrong

1 place.

2 So does the government accept some responsibility,
3 in its charging and plea offer decisions, in all of these
4 cases arising out of January 6th for helping to foster some
5 confusion about whether what occurred on January 6th was a
6 protest or legitimate political discourse?

7 MS. ALBINSON: Your Honor, I certainly don't
8 believe that what occurred on January 6th was a protest or
9 legitimate political discourse; it was, in many senses,
10 terrorism.

11 But we did charge Mr. Stenz with more severe
12 crimes. He did come in early; we recognized that with
13 allowing him to plead guilty to this petty offense --

14 THE COURT: Well, there were other petty offenses
15 that would not have helped foster this public confusion
16 about whether the defendants were merely engaging in
17 demonstrating, picketing, and parading.

18 I mean, he was -- Count 3 of the information in
19 this case charged him with: Willfully and knowingly
20 engaging and disorderly conduct in the Capitol Building with
21 intent to impede, disrupt, or disturb the orderly conduct of
22 Congress; that's in violation of 40 U.S.C. Section
23 5104(e)(2)(D), another subsection of the same statute with
24 the parading, demonstrating, and picketing charge; it's
25 another petty offense, he would have faced the same

1 penalties. And yet the government has opted -- it's chosen
2 in all of these cases -- to charge the parading,
3 demonstrating, or picketing charge.

4 I just -- look, I understand it's not my role as a
5 judge to make charging or plea offer decisions; it's not my
6 role. But I have to say, I have been curious throughout the
7 last year why it is, when there are other petty offenses
8 with the same penalties, clearly appropriately applied to
9 the conduct on January 6th and, in fact, charged in the
10 information in this case -- that the government is choosing
11 to offer pleas to "parading, demonstrating, or picketing"
12 when it had other options available to it; and I wanted to
13 give the government an opportunity to explain that choice,
14 if you want to take the opportunity to explain it.

15 MS. ALBINSON: Your Honor, I think that that
16 question, sort of, gets to the policy decisions of
17 management who are clearly not myself.

18 So I understand your frustration and I understand
19 your argument and your point; but I don't feel like I am the
20 person to address it. And I apologize, that's not a
21 satisfactory answer.

22 THE COURT: No, no, no. I get that.

23 Mr. Pearce, are you the person to address that
24 since you are at the Department of Justice and -- you are in
25 criminal appeals; is that right?

1 MR. PEARCE: I am.

2 Do you want me to come up to the lectern, Your
3 Honor?

4 THE COURT: Of course.

5 Ms. Albinson, I am going to want you back, so
6 don't get too comfortable.

7 MS. ALBINSON: Okay. I won't.

8 THE COURT: And I don't mean to put you in a
9 uncomfortable position either.

10 I am very curious, particularly as in the public
11 discourse there continues to be a theme that what happened
12 on January 6th was a protest gone wrong by some people. And
13 so I want to give the government an opportunity to explain
14 its choice. I am not second-guessing it.

15 I am questioning and wondering whether there is an
16 acknowledgment that that choice has helped confuse the
17 issue.

18 MR. PEARCE: So --

19 THE COURT: And, Mr. Pearce, this may not be your
20 decision either.

21 MR. PEARCE: So that was going to be where I was --

22 THE COURT: I think you are probably brought in
23 here to talk about a split sentence, as you have in the past
24 in my courtroom.

25 MR. PEARCE: I am certainly available to talk

1 about that.

2 But the role that I play in this investigation is,
3 sort of, as an appellate advisor for many of these cases to
4 address appellate legal issues. And so, as Your Honor just
5 indicated, this is a policy-level determination. So, again,
6 I don't think I am necessarily the best person.

7 I do think I can offer a couple of responses and,
8 beyond that, it may not satisfy the Court's curiosity.

9 THE COURT: As I said, I want to give the
10 government an opportunity to offer any explanations for its
11 choice -- not just in this case, but more broadly in lots of
12 other cases where the plea offer has been to the petty
13 offense of parading, demonstrating, or picketing, rather
14 than an alternative -- alternative petty offense that would
15 clearly apply, has been charged in these cases regularly,
16 and would not foster the same confusion among the public
17 about what occurred on January 6th.

18 MR. PEARCE: So I think that it may or may not be.

19 I mean, it's obviously an empirical question
20 whether the government's charging decisions -- and
21 ultimately not so much charging decisions, but decisions in
22 terms of what to permit or offer in plea negotiations with
23 defendants, what to accept.

24 I don't think it is the government's role to be
25 engaged with, sort of, the political conversation about the

1 political significance of January 6th. What we are doing is
2 ensuring criminal responsibility for what happened on
3 January 6th.

4 Now, it may be that certain individuals take a
5 look at the name of 5104(e) (2) (G) and say: Oh, it looks
6 like this is just -- as I think you basically described --
7 sort of a protest gone awry; and that is all that the --

8 THE COURT: Yes. But even in the elements that
9 the government is proffering for the charge to parading,
10 demonstrating, and picketing, the government is saying that
11 it is not at all required in the elements that there be any
12 disruption to Congress. It's just basically saying: You
13 are parading, demonstrating, or picketing in the Capitol
14 Building, and you did that knowingly. It's basically --
15 they're not even in the elements that they're saying are
16 sufficient for that charge saying that it required any
17 disruption of Congress's proceedings.

18 MR. PEARCE: That's true. And I mean, I think, as
19 the Court is well aware, it is not unusual in any criminal
20 matter for the government to bring a number of charges and
21 ultimately, in the back and forth of plea negotiation, to
22 agree to a plea that does not encompass the full panoply of
23 the defendant's criminal conduct.

24 And then, when we get to this point, sentencing,
25 it's certainly fully before the Court under 3553 to take all

1 of that into account. It's certainly the government's
2 obligation to bring to the Court's attention all of those
3 factors -- in Mr. Stenz's case, you know, things unrelated
4 to January 6th, like his background; and then also things
5 related to January 6th, like the specifics of fact of where
6 he went in the Capitol, the actions that he took, what he
7 observed, things like that.

8 That -- in some respects, the way that the
9 government has proceeded with January 6th is really no
10 different than how we have proceeded with criminal
11 investigations and prosecutions generally.

12 Again, we have charged what we believe we can
13 prove beyond a reasonable doubt and, in case-specific
14 reasons, have it read --

15 THE COURT: Well, what strikes me, Mr. Pearce, is
16 that the demonstrating, picketing, and parading charge is
17 often the ticket given to people who stand up in the middle
18 of a hearing and yell or disrupt a hearing in some way and
19 does -- you know, that's -- it's a typical charge in those
20 kinds of cases. It's not -- I was surprised to see them
21 brought in the January 6th cases.

22 And I take it from what you are saying is that the
23 government does not acknowledge any responsibility in the
24 confusion in some parts of the public about whether it was
25 just a protest on January 6th that may be due, in part, to

1 the fact that its primary petty offense charge that it's
2 offering its pleas to dispose of these cases is the
3 parading, picketing, and demonstrating charge; that's the
4 bottom line, is that right?

5 MR. PEARCE: Well, I can say that that was
6 certainly not our intention.

7 The empirical question of whether it, in fact, has
8 fostered confusion I am agnostic on; I just don't know.

9 It is possible -- as Your Honor has suggested, it
10 is possible that no one has really paid much attention to
11 whether the specific charges underlie or, at least, can, in
12 some ways, be seen to support a view that what happened on
13 January 6th was legitimate political discourse.

14 I can say affirmatively and strongly that, as we
15 have consistently said -- the way the government speaks in
16 court and through its filings -- we do not believe that what
17 happened was a protest. We do not believe it was legitimate
18 political discourse; it was a criminal event. It was, in
19 many respects, an act of domestic terrorism. Not everyone
20 was engaged in domestic terrorism, but that is something
21 that we have said in court and I will say again here.

22 Whether those --

23 THE COURT: I would say that there is probably no
24 question that there were people who were legitimately inside
25 the Capitol Building who were terrorized.

1 MR. PEARCE: I think that's absolutely correct and
2 certainly have said that before Congress and publicly.

3 So to the extent our charges may have created any
4 confusion, I can apologize because I can, with full
5 confidence, say that was -- certainly was not and continues
6 not to be our intention; whether it has, I don't know. But
7 that is certainly not something that we have intended
8 through any of our charging or prosecuting decisions.

9 THE COURT: All right. So, Mr. Pearce, while I
10 have you up here, let's talk about split sentences.

11 MR. PEARCE: Okay.

12 THE COURT: We have had this conversation before.

13 MR. PEARCE: We have.

14 THE COURT: And the only written opinion from one
15 of my colleagues in this case on the split sentence was
16 Judge Colleen Kollar-Kotelly's decision that it wasn't --
17 that split sentences for -- the split sentence bar applies
18 to petty offenses just as much as it applies to Class A
19 misdemeanors and felonies.

20 Have I missed any other decisions by my colleagues
21 adopting the government's position that a split -- the split
22 sentence bar does not apply to petty offenses?

23 MR. PEARCE: So, to my knowledge, that is the only
24 written decision.

25 And, no, none of your colleagues have imposed a

1 split sentence. Some have asked for additional briefing or,
2 more specifically, we have put something similar to what we
3 put in the sentencing memo before Your Honor in this case;
4 and some of your colleagues have asked for additional
5 briefing from defendants. But that is the only written
6 opinion of which I am aware on the split sentence issue.

7 THE COURT: All right. And although the
8 government is inviting me, again, to make a decision that
9 the split sentence bar does not apply to petty offenses in
10 this case, I don't have to resolve that question here; isn't
11 that right?

12 Because I can also -- if I thought 2 weeks'
13 incarceration as recommended by the government was
14 appropriate in this case, I can simply do it as a special
15 condition of probation, under 18 U.S.C. Section 3563(b)(10).

16 Do you agree with that?

17 MR. PEARCE: I do.

18 THE COURT: All right. That's all I want to say
19 about split sentences.

20 MR. PEARCE: Thank you, Your Honor.

21 THE COURT: Thank you.

22 Ms. Albinson, I want to give you an opportunity to
23 conclude any things that you want to say about sentencing in
24 this case before I turn to Mr. Marrone.

25 MS. ALBINSON: Thank you, Your Honor.

1 I believe that I actually said everything that I
2 wanted to say before. Thank you very much.

3 THE COURT: Okay. Thank you.

4 Mr. Marrone.

5 MR. MARRONE: Your Honor, would the Court grant a
6 brief recess so I can run to the restroom.

7 THE COURT: Yes. I will give you five minutes.

8 MR. MARRONE: A few minutes; it doesn't have to be
9 long.

10 THE COURT: Okay. Mr. Stenz, if you want to use
11 the restroom also, you may do so.

12 THE DEFENDANT: No. Thank you, Your Honor.

13 (Whereupon, a recess was taken.)

14 THE COURT: All right. Mr. Marrone, you can step
15 forward to the podium.

16 MR. MARRONE: Good morning, Your Honor.

17 THE COURT: Good morning.

18 MR. MARRONE: So I am here this morning on behalf
19 of Mr. Stenz not to make excuses for what has happened or
20 what he did; obviously, he has taken full responsibility.

21 But to clarify factually what has happened and how
22 we got here today --

23 THE COURT: Well, perhaps you can start with one
24 of the aggravating circumstances that the government has
25 pointed out, which is that when Mr. Stenz engaged in the

1 criminal conduct on January 6, 2021, he had criminal charges
2 pending against him in Pennsylvania for falsifying records
3 related to the purchase of a firearm and that he chose to
4 enter the Capitol anyway; and, in fact, within weeks of the
5 January 6th attack on the Capitol, he pled guilty in that
6 case in Pennsylvania. He was sentenced to a period of
7 probation; and he just got off of probation in that case.

8 Clearly, sentencing judges in every court in this
9 country, state or federal, in assessing the risk of
10 recidivating, take seriously how extensive a defendant's
11 criminal record is, whether the defendant is going to be
12 law-abiding in the future. And defendants who commit new
13 offenses while under investigation or pending charges in
14 another case are a big red flag.

15 So shouldn't I be concerned about Mr. Stenz
16 committing -- facing criminal charges in Pennsylvania for
17 trying to purchase a gun with false information about his
18 criminal record, and then engaging in this Capitol
19 offense --

20 MR. MARRONE: Your Honor --

21 THE COURT: -- I don't want to say "Capitol" --
22 engaging in an offense at the Capitol --

23 MR. MARRONE: Judge --

24 THE COURT: -- while he was still facing those
25 charges?

1 MR. MARRONE: -- in laymen's terms, it's not a
2 good look.

3 THE COURT: It's not a good look.

4 MR. MARRONE: Exactly.

5 But that being said, the origin of this specific
6 charge that he had which, in his mind -- and it's a mind
7 sometimes of stupidity -- he was trying to purchase a gun.
8 And there are facts in there that his daughter was held at
9 gunpoint at some point, and she wanted to learn how to
10 shoot, so he wanted to purchase a gun.

11 He fills out an application believing misdemeanors
12 are not the same as felonies. That's not accurate, we know
13 that. That's somewhat stupid. The question was: Were you
14 ever charged with a crime? He fills it out; he falsifies
15 the document, and he gets charged. That's the underlying
16 reason of this crime. It doesn't make an excuse for it; it
17 doesn't make it okay, but that's what this was.

18 The fact that -- and by the way, through all of
19 the information we submitted, it's clear that Mr. Stenz is
20 not a political man; that he got caught up, maybe, in the
21 hoopla and the interest of going down to a rally. And by
22 the way, he went with one of his children's friends --

23 THE COURT: Well, let me just say, I know that
24 there are friends and family members who submitted letters
25 saying he was not a political man. But somebody who

1 travels -- you know, makes arrangements with a friend who he
2 only knows by his first name apparently -- travels down
3 here, goes to a rally, then follows a mob to the Capitol, I
4 mean, that's --

5 MR. MARRONE: Judge, not --

6 THE COURT: -- it's hard for me to accept that
7 characterization.

8 MR. MARRONE: -- there is no question of what this
9 ultimately became and what the underlying premeditated ideas
10 were with some of the people there.

11 But on a national level, what was happening that
12 day and what this President created from an intrigue
13 standpoint, going down to a rally if you had the free time
14 and you want to do that and participate -- and there is no
15 other evidence presented to the Court that he had any other
16 ideas. And he openly admits he went down with a friend -- a
17 person from the neighborhood; it wasn't his friend, it was
18 one of his daughter's friends. And what ensued after that
19 is what it is. It's something he shouldn't have done. And
20 I think it, kind of -- he was honest about what had
21 happened, which takes me to --

22 THE COURT: So let's talk about the friend.

23 MR. MARRONE: Sure.

24 THE COURT: And please keep your mask on, covering
25 your nose and your mouth, please. I am very, very serious

1 about the safety of the staff, including my courtroom
2 deputy, my court reporter -- everybody else in this
3 courtroom.

4 MR. MARRONE: I understand.

5 THE COURT: Keep your mask on.

6 All right. Let's talk about this friend.

7 I am very skeptical that Mr. Stenz told the truth
8 to the FBI when he said he only knew this friend's name --
9 first name and not his full name.

10 Do you want to address that?

11 MR. MARRONE: That's absolutely -- yes, I will
12 address that.

13 When -- and I have to preface it this way. When
14 he realized -- after he left, when he got home, and he knew
15 this was something bad, and no one was knocking on his
16 door -- he talked to his family who are involved in the
17 community, have jobs -- and he said, Listen, I have to come
18 forward. And he contacted an attorney, which was me.

19 Nobody called me. I sought out law enforcement.
20 I called down to Washington. I looked for someone. They
21 didn't get back to me for weeks until they finally reached
22 out to an agent in the Eastern District to call me and set
23 up a meeting which we wanted to do. We wanted to come
24 forward and speak about what happened, whatever his
25 involvement was, et cetera.

1 They finally came to my office. And he came to my
2 office with his wife, his cell phone, and any information he
3 had. And we spent well over an hour and a half in my
4 conference room, two hours, providing all of the information
5 he knew; gave them everything. He had absolutely no reason
6 to mislead or give false information.

7 In fact, he wanted to tell the government
8 everything he knew. He wanted to admit to what he did, and
9 he wanted to come forward; and that's what he did. That's
10 exactly what happened; that's how we got here today.

11 So as far as this person he was with, he only knew
12 the person's first name; it was one of his children's
13 friends. He could -- if you ask him today what that
14 person's last name is, he still can't tell you; and, Your
15 Honor, I am sure at some point he will speak. That is the
16 truth. Now whether Your Honor wants to believe that, all we
17 can do is tell you the truth.

18 So that's how we got here today. So just so the
19 Court understands the evolution of how Mr. Stenz got to this
20 case, that's exactly what happened; we sought government
21 out.

22 THE COURT: All right. So let's turn to his
23 conduct while he has been on pretrial release here.

24 He submitted a tampered with or diluted urine
25 sample on June 24th, 2021, to pretrial services; and, at

1 that point, he admitted to using THC daily when he was not
2 supposed to as a condition of his pretrial release. And to
3 his credit, he stopped, apparently. He had clean urines
4 after that discovery by pretrial services. And they told
5 him he was not allowed to use THC while on pretrial release.

6 But this wasn't just a situation where he was
7 caught using THC when he wasn't supposed to on pretrial
8 release. He actually took steps to subterfuge -- to dilute
9 his urine -- to try and mask the fact that he was violating
10 his conditions of supervised release.

11 What am I supposed to make of that?

12 MR. MARRONE: Well, he has a medical card; and he
13 was using it before this happened. And I think he -- and it
14 does help with his anxiety; he was under a lot of anxiety.
15 And he was trying to get himself off of it and comply, and
16 that was the best that he could do. He did actually finally
17 get himself off of it, even though it was a need that he
18 had. That's -- you know, he doesn't -- he then took the
19 test; he tested negative. He doesn't use it in compliance
20 with pretrial services and he --

21 THE COURT: But he was using THC daily through
22 vaping; and he is seen clearly on the video evidence in this
23 case vaping --

24 MR. MARRONE: Sure.

25 THE COURT: -- walking into the Capitol Building

1 taking puffs.

2 Was Mr. Stenz high on January 6th when he went
3 into the Capitol Building?

4 MR. MARRONE: I think you are going to have to ask
5 him. But I don't -- was he relaxed? Is that something that
6 he needs with his anxiety; the answer is probably yes.

7 Whether he was at the Capitol Building or he was
8 home or he was at an event, he did that on a regular basis;
9 it was something that gave him relief. And I think that's
10 relatively common in society today, so I don't think that
11 should be held against him.

12 THE COURT: All right. Well you've focused a lot
13 in your sentencing memo on the fact that he was only in the
14 Capitol Building for eight minutes.

15 MR. MARRONE: That is correct.

16 THE COURT: And you are right, that's not a
17 terribly long period of time.

18 But what is more probative in some ways of
19 evaluating culpability for conduct on January 6th with so
20 many people inside the building, some of whom were there for
21 a short period of time was: What were they doing when they
22 were inside?

23 So we have this defendant vaping -- probably THC,
24 because that's what he admits he was using daily. And one
25 of the factors that the government points out as being

1 aggravating is that he didn't just stay in the public
2 hallways of the Capitol. He went into a private office of a
3 senator which -- from the video that Senator Merkley took of
4 that office; it was trashed. There were papers all over the
5 place; a computer was stolen. There was detritus of people
6 smoking and leaving their cigarettes butts on tables, on the
7 floor. It was totally disrespectful conduct by the mob that
8 went in there; and this defendant was part of that mob that
9 went into Senator Merkley's office.

10 Isn't that an aggravating circumstance here, as
11 the government points out?

12 MR. MARRONE: Your Honor, I think it's clear in
13 the memo that there is no evidence whatsoever that he
14 contributed to any destruction of property. They have
15 video; they have film.

16 He obviously admits to being in there for eight
17 minutes, to walking around, to walking into an office -- he
18 didn't know whose office it was. I think he even admitted
19 he touched a book when he had the interview. So, I mean,
20 all he can do is tell the truth at that point. I think it's
21 clear that he had no intent nor did he do anything damaging
22 or destructive.

23 I think what he did was he went into a building he
24 was not permitted to go into and probably knew that and had
25 seen what was going on.

1 THE COURT: Well, did Mr. Stenz see anybody steal
2 the laptop from Senator Merkley's office?

3 MR. MARRONE: To my knowledge, no.

4 Obviously, Your Honor -- again, we reached out to
5 the FBI with the intent to be open, clear, and give all of
6 the information we knew. He spent a long time in my office
7 talking to them; he had no reason to withhold any
8 information at that point in time; he gained nothing from
9 it.

10 THE COURT: All right. So the government does
11 give him some credit for turning himself in about two weeks
12 after the Capitol attack; but says that two days before
13 that, the FBI had already received a tip about his identity
14 and that he was inside the building on January 6th.

15 MR. MARRONE: But that's --

16 THE COURT: Was the defendant aware --

17 Don't interrupt me.

18 MR. MARRONE: I'm sorry, Your Honor.

19 THE COURT: This may be okay in courts you usually
20 practice in, it is not okay in my courtroom.

21 MR. MARRONE: I apologize, Judge.

22 THE COURT: And just to alert you, when you speak
23 over me, my court reporter takes down what I say so your
24 words are lost forever.

25 MR. MARRONE: I apologize.

1 THE COURT: So let me finish my question.

2 Was the defendant aware that law enforcement was
3 closing in on him before he turned himself in?

4 MR. MARRONE: No, Judge.

5 THE COURT: All right. Mr. Stenz told the FBI
6 that he supported former President Trump and felt that the
7 election had been stolen from him -- this is what he said,
8 despite the fact that you say he is not political; but he
9 certainly was political enough then.

10 So the former President and other of his followers
11 are still saying that the 2020 presidential election was
12 stolen, despite all evidence to the contrary. So does the
13 defendant, who was inspired by these beliefs, engaged in
14 this political mob attack on the Capitol on January 6,
15 2021 -- does he still believe that the 2020 election was
16 stolen?

17 MR. MARRONE: Well, Your Honor, I think that's
18 something you maybe have to ask him. But I --

19 THE COURT: But in assessing his risk of engaging
20 in other mob violence, political violence -- politically
21 motivated --

22 MR. MARRONE: No, Your Honor.

23 THE COURT: I mean, it is relevant as to -- what
24 motivated him before was -- what he admits was that he
25 followed former President Trump; he felt the election had

1 been stolen.

2 So in assessing his risk of repeat conduct, is
3 that still his belief?

4 MR. MARRONE: In fact, it's to the contrary, Your
5 Honor. If you would ask the defendant, he would tell you
6 that not only is he not a political person historically, he
7 has not involved himself with -- to any level the way he did
8 here with any previous elections. And subsequent to this,
9 he has -- kind of detached him [sic] from the political
10 process. He doesn't find himself engaged whether watching
11 CNN, Fox, or any of those shows; he does not do that any
12 longer.

13 He has focused his complete efforts in taking
14 interest in supporting his family, working, and doing the
15 things that he has done his whole life.

16 THE COURT: All right. So the defendant says he
17 still just knows the first name of the fellow he spent all
18 day with on January 6th and traveled with on January 6th.

19 But if you look at Government's Exhibit 2 -- that
20 video closely -- he's actually seen, when he enters the
21 Capitol, walking over to another man, giving that man a fist
22 bump; chatting with that person. It appeared like he knew
23 not just the fellow he traveled with, but somebody else
24 inside the Capitol Building.

25 Did he see other people he knew when he was inside

1 the Capitol Building --

2 MR. MARRONE: No, Your Honor.

3 THE COURT: -- including that person he had a fist
4 bump with and chatted with?

5 MR. MARRONE: No, Your Honor.

6 Your Honor, that day -- it was a spur of the
7 moment. In his neighborhood there happened to be a young
8 person, friends with his children, that had an interest in
9 the Trump rally. He was off that day; they got on a train.
10 They went down to the rally strictly to support the whole
11 process.

12 What had happened subsequently, obviously, he is
13 not proud of and he has no defense to, but he has been
14 apologetic. And he has come forward and provided all of the
15 information he knows truthfully and accurately.

16 THE COURT: All right. Is there anything else you
17 want to add before I hear from Mr. Stenz?

18 MR. MARRONE: Yes. We would just ask the Court to
19 consider his family history; all of the letters submitted
20 which we think are significant; his long-standing
21 relationship with his wife; his three children; his
22 employer's support.

23 Again, he is a hard-working man, he supports his
24 family, his friends. And also support from -- he is also in
25 a prayer group, which shows that he is also a Christian man;

1 that this is not a man that is a terrorist or anything of
2 that nature that we think the Court may view him in.

3 As far as his criminal history --

4 THE COURT: Well, you would agree, though, that
5 people who are legitimately working inside that Capitol
6 Building, the Vice President, the members of Congress, their
7 staff, the media -- children who were there watching this
8 historic event -- who were evacuated, hid under tables,
9 behind locked doors -- you would admit they were terrorized,
10 right?

11 MR. MARRONE: No question, Judge. No question.

12 And he is embarrassed by that and he feels
13 horrible about it; and it's something he didn't want to be
14 part of. That's why -- from a short period of time when he
15 got home -- he reached out to an attorney to reach out to
16 the government to come forward; that's a fact of what
17 happened.

18 So we would hope the Court would at least take
19 that into consideration to show you at least what type of
20 man Mr. Stenz is in comparison to the other people that were
21 there.

22 Just in conclusion, Judge, I know the government
23 has spoke a lot about his criminal history; something,
24 again, that he is not proud of; he accepts responsibility.

25 There are five previous charges; one is a DUI --

1 THE COURT: It's not just charges, they are
2 convictions.

3 MR. MARRONE: Convictions, misdemeanor
4 convictions.

5 One was a DUI conviction; another one was driving
6 in a vehicle with marijuana. The other one, which,
7 ultimately, was --

8 THE COURT: And the marijuana possession got him
9 3 months' probation; but it was the other charge associated
10 with that offense conduct -- somehow falsifying information
11 to law enforcement -- that got him -- I think, as I
12 understand the PSR correctly -- that got him a year in
13 prison; is that right?

14 MR. MARRONE: No. One week, Judge.

15 THE COURT: It was just one week?

16 MR. MARRONE: Yes, Your Honor.

17 THE COURT: So why does the -- so is that a
18 correction to the PSR --

19 MR. MARRONE: I believe so.

20 THE COURT: -- where it says one year?

21 MR. MARRONE: Yes. He explained that to me a
22 couple of minutes ago.

23 THE COURT: I'm sorry. I can't understand you.

24 MR. MARRONE: I just found that out. It's one
25 week, Judge, to be clear. Because I know the government

1 said it was a year.

2 THE COURT: Well, it's not the government that
3 said that. I was reading the paragraph in the presentence
4 investigation report, at paragraph 27, that says -- on
5 Count 1, which is the marijuana possession, he was sentenced
6 to 3 months' probation. For Count 3, which was the false
7 report to law enforcement, he was sentenced to one year
8 imprisonment, and an \$813.10 fine, and \$462.82 costs.

9 So you are saying that that was not one year, that
10 was a one-week imprisonment?

11 MR. MARRONE: Yes, Judge. Yes, Your Honor.

12 THE COURT: Okay. Well, while you are here, for
13 clarification, is the probation officer on? Ms. Lustig?

14 She was on before.

15 MS. LUSTIG: Yes, Your Honor.

16 THE COURT: Yes. Ms. Lustig, can you shed any
17 light on this?

18 MS. LUSTIG: Your Honor, that is the information
19 that we received from the Pennsylvania probation -- the USPO
20 in Pennsylvania that did the collateral record check for us;
21 that is the information we received from them.

22 THE COURT: I see. And you saw a certified
23 judgment and conviction order or judgment and commitment
24 order from Pennsylvania that reflects a 1-year imprisonment?

25 MS. LUSTIG: I am looking through the criminal

1 records now, Your Honor.

2 THE COURT: All right. I don't have time to take
3 more time with this, Ms. Lustig. But I take it you feel
4 confident in the documentation that you have about the term
5 of imprisonment imposed?

6 MS. LUSTIG: Yes, Your Honor.

7 I didn't have any reason to question it when I was
8 completing the presentence report. If it had been an
9 issue -- if defense counsel had brought it to my attention
10 previously, then I would have been able to look into it and
11 have a definitive answer. But as of right now, I am
12 looking -- all I can do is look through the documentation
13 that they sent me, which is a little voluminous, and try to
14 get any --

15 THE COURT: Right. Okay. Thank you very much,
16 Ms. Lustig.

17 This is the reason, Mr. Marrone, that it's very
18 important to let us know if there are any objections to any
19 part of the presentence report so we can resolve it before
20 taking time at the sentencing hearing.

21 All right. Is there anything further before I
22 hear from Mr. Stenz?

23 MR. MARRONE: No, Your Honor.

24 THE COURT: Mr. Stenz, please step forward.

25 THE DEFENDANT: Good morning, Your Honor.

1 THE COURT: Good morning.

2 THE DEFENDANT: I would just like to say I am
3 sorry to the Court, D.C.

4 I only spent five days in jail in 1999; and I got
5 a year's probation after that for the false reports. I was
6 in jail because I couldn't call home collect. My wife
7 reported me missing; that's what happened in that incident.

8 I have never gotten really -- the other charges --
9 I have been in trouble most of my life -- had all probation;
10 never violated.

11 I am kind of embarrassed to be here today and
12 waste everybody's time -- not only for myself, but for
13 everybody, for the state of D.C.; the whole situation was
14 bad.

15 I was in Key West with my son about a week after
16 the January 6th thing, and I realized then it was just
17 really a horrible moment in history; and that's when I
18 reached out to Mr. Marrone when I got home.

19 As far as the kid, Carson -- I don't know his last
20 name -- 'til this day. He's just from our neighborhood, a
21 young kid; he's got Trump stuff on his lawn, and all.

22 After I talked to the FBI, I was told not to have
23 no contact with the kid; and I have not had contact with him
24 since -- by the judge's orders and my attorney, they just
25 told me no contact.

1 I am sure if I could ask my daughters they
2 probably know his name, but I don't know the kid's name. He
3 is maybe 20-something years old. He is just a big Trump
4 guy. We went down to the rally. I ended up in the Capitol
5 Building. I didn't know anybody else there except for
6 this -- my friend.

7 I was not vaping marijuana in the building. I was
8 into vaping cigarettes. I do smoke marijuana. I just got
9 my medical card in May. I had to pee clean for the pretrial
10 lady. I got my medical card through the guys at work
11 because I have a CDL.

12 The next time I went down and seen Tara [sic],
13 that's when I had a dirty urine. And they told me next time
14 I come back, it better be clean because the feds don't see
15 [sic] the Pennsylvania medical card. So I thought I was
16 doing the right thing. I had to pee clean the first time
17 because through my work I have a CDL; and they have me go
18 out for randoms occasionally because I drive equipment.

19 And that's about where I am standing today, Your
20 Honor. I'm sorry to waste the Court's time on my matter.

21 THE COURT: Well, you did, after January 6th, send
22 a bunch of photographs that were taken --

23 THE DEFENDANT: I was -- yes.

24 THE COURT: -- to a group of friends, right?

25 THE DEFENDANT: Yes, ma'am. Yes, Your Honor.

1 THE COURT: And did you send all of those photos
2 to your friends because you were proud of what was going on,
3 and your participation in January 6?

4 THE DEFENDANT: Your Honor, when I first left D.C.
5 that day, I left the Capitol Building -- I wanted to get out
6 of here as fast as I could. I felt a little wound up for
7 the first day or two, maybe three. Even my wife said I was,
8 like, wound up. I felt like I was part of something. After
9 about a week later, I felt ashamed.

10 I was in Florida with my son, just watching the
11 regular news and, you know, I just didn't want to be part of
12 it. I reached out to Mr. Marrone. And he said: Oh, well,
13 maybe we'll wait until they come and arrest you. I said,
14 no, I really -- I seen on TV, they said turn yourself in; do
15 the right thing. It's the FBI, the federal government.

16 This is, like, one of the darkest days probably
17 our country has seen in a long time -- maybe forever. And I
18 just wanted to dissociate myself from it.

19 There is no excuse for what I did when I went in
20 there. I knew I was crossing the line after I seen
21 everything get opened up by the guys standing next to me,
22 and it's on YouTube, and stuff like. After about 10, 15
23 minutes, I went in -- it seemed like 3 minutes, but I guess
24 it was 8. I didn't stay in there long. I just seen
25 everybody trashing the place, and I just wanted to get out.

1 THE COURT: In terms of you seeing people trashing
2 the place, did you see people trashing Senator Merkley's
3 office?

4 THE DEFENDANT: I was in that office. Guys were
5 telling me to have a seat when I was in that office.

6 I did not know -- I thought maybe it was a library
7 or a bookstore. I don't know where I was at. I have never
8 taken a school trip to D.C. I don't know if I went in the
9 front or the back of the Capitol Building until this day.

10 I don't know which entrance -- I went in that door
11 about ten minutes after it opened up, and everybody else was
12 streaming in and out. And I, kind of, took a look around,
13 and I -- kind of, like, ashamed of what everybody was doing.
14 Everybody telling me to have a seat. Come on, man, this is
15 our house, stuff like that. That's when I got out of there.

16 It's true, when it first happened, I felt like I
17 was part of something; but after a while, I felt ashamed of
18 it. It's not really a proud moment in my life.

19 THE COURT: So one of your friends wrote to me on
20 your behalf and said that you went to D.C. on January 6th
21 because you -- and I quote your friend: Simply wanted to
22 witness a historic and disputed certification of electoral
23 votes and intending to exercise your First Amendment right
24 to protest; that's from a person named Dr. Carey Walsh [sic].

25 Do you understand that what happened on

1 January 6th was not a protest?

2 THE DEFENDANT: At the Trump -- at the Ellipse was
3 a protest.

4 What happened at the Capitol Building was far
5 beyond the protest. It was really horrible. I don't know
6 how I got through that crowd to get up to the top. I don't
7 know how it happened. It's just -- I slid right through the
8 crowd. I don't know how I got --

9 THE COURT: So what happened to change your
10 understanding that what you were doing at the Capitol on
11 January 6th was not a protest?

12 THE DEFENDANT: I completely agree.

13 I mean, the ways the guy were hanging off the
14 scaffolding, climbing the walls -- it was kind of, like,
15 mayhem; and it just drew me in. I don't know if it's the --

16 THE COURT: But what you -- what changed your
17 mind --

18 THE DEFENDANT: I know -- I believe in God. I
19 know that's not what I should have done. You know, I got,
20 kind of, lured into something; I didn't understand what was
21 going on.

22 THE COURT: Right. So, Mr. Stenz, you have told
23 me that when you were there --

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: -- you were -- you know, you felt like

1 you were a part of something. Afterwards, you shared the
2 photographs; you were wound up; you still felt part of
3 something.

4 And at this point, you feel ashamed and you
5 understand it was not a protest. What -- what --

6 THE DEFENDANT: Within days, Your Honor --

7 THE COURT: -- how do you explain your change of
8 perspective on what happened on January 6th?

9 THE DEFENDANT: Within less a week, when I was in
10 Key West with my son, I realized it was really a bad
11 situation I got caught up in -- not even a week later.

12 THE COURT: All right. Is there anything further,
13 Mr. Stenz?

14 THE DEFENDANT: No, Your Honor. Sorry to waste
15 your time.

16 THE COURT: All right. You can stay right where
17 you are.

18 Mr. Marrone, you can stand with your client.

19 We are now at the final part of the sentencing
20 hearing. I am going to explain the sentence I am about to
21 impose, and then I am going to impose sentence, Mr. Stenz.

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: So after considering the sentencing
24 memorandum that has been -- well, I should -- I am skipping
25 Ms. Albinson.

1 Do you have anything that you want to say,
2 Ms. Albinson?

3 MS. ALBINSON: No, Your Honor. Thank you.

4 THE COURT: All right. Thank you.

5 So I have considered the sentencing memoranda that
6 have been submitted by the government and on your behalf. I
7 have looked at all of the letters that have been submitted
8 on your behalf, Mr. Stenz. I have reviewed the presentence
9 investigation report and the sentencing recommendation from
10 the probation office.

11 So I now have to discuss my consideration of the
12 factors that Congress has said that sentencing judges should
13 address under 18 U.S.C. Section 3553(a) and ensure that I
14 impose a sentence that's sufficient but not greater than
15 necessary to comply with the purposes of sentencing.

16 And it's worth reminding you what the purposes of
17 sentencing are. Those purposes include the need for the
18 sentence imposed to reflect the seriousness of the offense;
19 to promote respect for the law; provide just punishment for
20 the offense; to deter criminal conduct; protect the public
21 from further crimes by you, Mr. Stenz; and promote
22 rehabilitation.

23 So I have to -- pursuant to 18 U.S.C. Section
24 3553(a) -- consider the nature and circumstances of the
25 offense; your history and characteristics, Mr. Stenz; the

1 types of sentences available; the need to avoid unwarranted
2 sentence disparities among defendants with similar records
3 found guilty of similar conduct; and the need to provide
4 restitution to any victims of the offense.

5 I am going to begin with the restitution amount
6 here. Given that the statute of conviction is a petty
7 offense, it's not covered by the two general restitution
8 statutes codified at 18 U.S.C. Sections 3663 and 3663(a); so
9 I have no authority to determine any restitution amount.
10 It's limited to what you and the government agreed to in
11 your plea agreement; and the plea agreement provides for a
12 restitution payment of \$500 which this Court will order
13 pursuant to 18 U.S.C. Section 3663(a)(3).

14 So regarding the nature and circumstances of the
15 offense, you have been convicted of parading, demonstrating,
16 and picketing in a Capitol Building, in violation of 40
17 U.S.C. Sections 5104(e)(2)(G), which is a petty offense
18 Class B misdemeanor which has some repercussions for the
19 kinds of sentences that are available -- kinds of sentences
20 that are available for the Court to impose.

21 And as I have made clear before, though this
22 defendant pleaded guilty to a criminal statute titled:
23 Parading, demonstrating, or picketing in a Capitol Building,
24 what happened on January 6, at the U.S. Capitol, was not
25 protected First Amendment speech; it was not First Amendment

1 protected parading, demonstrating, picketing, or protesting.

2 The defendant's criminal conduct helped facilitate
3 a riot that overwhelmed law enforcement and succeeded in
4 disrupting the proceedings of Congress to certify the 2020
5 presidential election, at least for a period of time.

6 This defendant traveled from Pennsylvania, joined
7 the mob intentionally, knew following the crowd into the
8 Capitol was unlawful. As he said, it crossed the line; it
9 certainly did.

10 As he approached the Capitol Building, he saw all
11 sorts of angry people climbing scaffolding -- being "crazy,"
12 I think is the word you used; breaking windows; being
13 disruptive; disorderly; rioting.

14 But despite witnessing this mayhem while still
15 outside the Capitol, Mr. Stenz deliberately and
16 intentionally decided to enter the building anyway, through
17 the same entrance that had been breached earlier by members
18 of the mob; and then he saw people trashing the place. He
19 told the FBI he saw people urinating on the floor. This is
20 not a protest.

21 Defendant immediately joined this trashing of the
22 place. He took puffs from a vaping device, smoking inside
23 the Capitol Building.

24 Just seconds after entering the Capitol through
25 the Senate wing door -- it's clearly shown on Government

1 Exhibit 2, on the video -- he is seen smiling in the CCTV
2 footage, apparently not alarmed or preoccupied by the
3 trashing and the craziness of the mob around him. He looked
4 very calm; like it was part of the party inside the Capitol
5 that day, from the videos.

6 After making his way through the Senate wing door
7 lobby, he entered Senate Office S140, which is the office of
8 Jeff Merkley of Oregon. And while inside this office, he
9 took a photo which he later shared with others via text
10 message. He said he only stayed inside the office for about
11 four minutes; and there is no evidence that he contributed
12 to the damage inside Senator Merkley's office. But his
13 entry in such a sensitive space -- private space in the
14 building -- is significant. And he was sufficiently pleased
15 with himself that he took a photo while he was inside
16 Senator Merkley's office. This senator's office was
17 trashed.

18 There is an exhibit that Senator Merkley took of
19 the trashing of his office with the door broken; items are
20 torn off the wall. As I already said, there is smoking --
21 butts and ash and stuff on the floor and on the table, and a
22 computer was stolen.

23 This defendant's entry into the senator's personal
24 office, however brief, sets his conduct apart from those of
25 other defendants who only marched through public corridors

1 or other public spaces within the Capitol.

2 This defendant also made his way to the crypt
3 inside the Capitol where he posed for a selfie, along with
4 the friend with whom he traveled from Pennsylvania. And he
5 is seen exiting the Capitol about 3:15, after spending
6 approximately eight minutes inside the building.

7 He then shared with his acquaintances photos he
8 took inside the Capitol, including photos that showed some
9 of the chaos, and, certainly, some of the destruction caused
10 by his fellow rioters inside the Capitol.

11 According to the defendant, he did not travel to
12 D.C. with criminal intent; he went to protest. And when
13 other participants grew in hostility, he retreated from the
14 scene and went home. But his deliberate, unlawful entry
15 into the Capitol Building, after seeing the chaos, the
16 destruction -- it went far beyond a protest, and clearly was
17 engaging in criminal conduct.

18 The nature and circumstances of the offense and
19 the need for the sentence to reflect the seriousness of the
20 offense and promote respect for the law and our democratic
21 norms would generally favor a custodial sentence. He knew
22 he was not permitted in the Capitol Building when he went
23 there. And even though his conduct was not physically
24 engaging in violence, either against law enforcement
25 officers there or destruction of parts of the building, put

1 him in a less troublesome category than some other
2 aggressive members of the mob that day who actually did
3 engage in more aggressive conduct both towards law
4 enforcement and destructive conduct towards the building
5 itself.

6 I do take into account that he turned himself in;
7 and he now admits that he was ashamed of being part of
8 January 6th.

9 Yet three aspects of Mr. Stenz's conduct and the
10 circumstances of his offense conduct are more troubling and
11 aggravating, as the government has said, than other
12 defendants facing this petty offense charge.

13 First, he says he is remorseful and understands
14 the gravity of what happened. He says he doesn't remember
15 the full name of the person he traveled with. I find that
16 very hard to believe.

17 THE DEFENDANT: I still don't, Your Honor.

18 THE COURT: Second, he went into the private
19 office -- this is very troubling. He went into the private
20 office of a senator not just for a split second, not just to
21 glance in. He went inside that office for four minutes; he
22 rummaged about. He took a picture; looked at books -- and
23 that office was trashed.

24 Even if this defendant didn't do the actual
25 trashing, he certainly contributed with his presence to the

1 anything-goes atmosphere of this mob on January 6 inside the
2 Capitol.

3 Third -- and also very troubling -- is he chose to
4 engage in the unlawful conduct while facing state charges in
5 Pennsylvania for attempting to buy a firearm with false
6 statements on the documentation he submitted to buy that
7 firearm and lied about his prior criminal history.

8 In sum, his decision to join the mob and
9 unlawfully enter the Capitol as he faced unresolved criminal
10 charges in another jurisdiction and his entry into a
11 senator's office while inside the Capitol distinguish
12 this -- his conduct as more serious, even if still
13 nonviolent, than other defendants convicted of this petty
14 offense due to their criminal actions on January 6th.

15 Regarding his history and characteristics, he has
16 five prior misdemeanor convictions extending for almost
17 three decades, beginning in 1990 when he was 19 years old,
18 until his most recent conviction just last year, on
19 January 21, 2021, shortly after his conduct on January 6th,
20 here in Washington, D.C.

21 His other convictions stem from guilty pleas to
22 misdemeanor violations, as we've already discussed during
23 the course of this hearing: A DUI; possession of marijuana;
24 some kind of falsification or filing a false report with law
25 enforcement; stalking and harassment; and obstruction of

1 emergency services; and, in all of those prior convictions,
2 he received probation sentences except for one where there
3 is some discrepancy in the record where the defendant says
4 he only was -- served one week in prison; the documentation
5 indicates that he served one year. But whether it's one
6 year or one week, I would credit the defendant understanding
7 how long he spent in prison before, so I would credit that
8 over some documentation.

9 He was given probationary terms that apparently
10 didn't make sufficient impact to make him pause when he
11 opted -- to quote him -- to cross the line again on
12 January 6th.

13 All of these interactions with the criminal
14 justice system that he has already had -- when a sentencing
15 judge looks at them, thinks that the penalty needs to be
16 stiffer than he has received in the past to ensure that he
17 understands the lesson this time around.

18 He certainly has been in a stable relationship.
19 He has had a long-term marriage; he has raised three
20 children who all seem successful. He has had a substance
21 abuse problem in the past. He admitted to vaping THC daily
22 and says that he was not high on January 6th; although the
23 video shows him vaping -- but says that he was smoking
24 cigarettes that day.

25 He has received his GED. He has successfully

1 completed his commercial driver's license. And he has been
2 employed full-time as a driver and laborer for a paving
3 company in Pennsylvania; that's all to his credit.

4 In addition, unlike other January 6th defendants,
5 he didn't post pictures of his time in the Capitol Building
6 on social media. He doesn't appear to have boasted about
7 his criminal conduct on social media or in the news to
8 incite others to engage in similar kinds of political
9 violence. And he has, after that faithful day, not
10 advocated for the overturning of the legitimate democratic
11 electoral process in this country.

12 The various letters submitted on his behalf show
13 that he has the support of his family, his friends, his
14 current employer, and that's also to his credit.

15 It is -- they say that he was devoted -- is a
16 devoted and caring member of his family; they speak of his
17 generosity and his caring personality. And it is very
18 unfortunate that those were not behaviors at the forefront
19 on January 6th.

20 So the need for the sentence imposed to deter
21 criminal behavior and protect the public from further crimes
22 of the defendant are critical considerations for every
23 sentencing judge. As to this factor, the seriousness of the
24 criminal conduct highlights the need for deterrence of both
25 others who might consider engaging in this kind of conduct,

1 and also to deter the defendant for numerous individuals
2 like Mr. Stenz who say they got caught up in the fervor of
3 the crowd.

4 It's necessary for this Court to make clear that
5 lack of forethought, getting caught up in the moment,
6 following a crowd, does not create absolution for criminal
7 activity, especially when this kind of participation in a
8 mob facilitates and amplifies the blatant and egregious
9 criminal conduct of others.

10 When determining what sentence to impose, the
11 importance of deterring future malcontents from disrupting
12 the peaceful transition of power after an election weighs
13 heavily in the Court's considerations.

14 There are consequences to going along with a crowd
15 when the crowd is engaging in clear and obvious chaotic
16 criminal activity that is designed, intended to disrupt the
17 peaceful transition of power after an election.

18 Specific deterrence is a real concern in this case
19 in light of the defendant's criminal history for prior
20 criminal conduct for which he generally received
21 probationary sentences; but nonetheless he got involved in
22 criminal conduct again on January 6th even while he was
23 facing criminal charges in another jurisdiction.

24 Without serious consequences for his actions here,
25 he has every reason to believe he will continue to act first

1 and regret later once he is caught and forced to face the
2 consequences. Consideration of this factor favors
3 imposition of a brief period of incarceration to promote
4 respect for the law and deter the defendant from additional
5 criminal activity.

6 Regarding the types of sentences available,
7 Mr. Stenz was convicted of a petty offense, a Class B
8 misdemeanor, that is subject to a maximum term of
9 imprisonment of 6 months and up to 5 years' probation,
10 pursuant to 18 U.S.C. Section 3561(c) (2).

11 The government has argued that both a term of
12 probation and a term of imprisonment may be imposed for a
13 petty offense based on the government's statutory
14 construction of 18 U.S.C. Section 3561(a) (3). The defense
15 counsel has not addressed at all -- is silent in his
16 sentencing memo -- about the propriety of a split sentence
17 for a petty offense.

18 As an alternative to a split sentence, the
19 government requests the Court impose incarceration for a
20 brief interval as a condition of probation and notes that a
21 sentence of up to 2 weeks' imprisonment served in one
22 continuous term, followed by a period of probation, is
23 permissible; and that is what the Court intends to do.

24 As I have already said in my conversation with
25 Mr. Pearce from the Department of Justice, it is unnecessary

1 to decide the permissibility of a split sentence in this
2 case since a special condition of probation can be set.

3 Regarding the need to avoid unwarranted sentencing
4 disparities, the defendant requests only a probationary
5 period, arguing that he is not as culpable as the more
6 nefarious participants who had actually led a violent siege
7 on the U.S. Capitol, including the defense memorandum at
8 page 4; and that, sort of, suggests that a custodial
9 sentence here would be an unwarranted sentencing disparity.

10 I certainly recognize that a range of sentences,
11 both probationary and custodial, have been imposed on
12 January 6th defendants convicted of the same petty offense
13 misdemeanor. And given the specific offense conduct of
14 Mr. Stenz, including the circumstances of his criminal
15 history, I do find that a lengthy period of probation would
16 be appropriate to ensure he is subject to supervision for a
17 period of at least 3 years, taking us through the next two
18 election cycles, so he does not again engage in political
19 violence that occurred on January 6th. And due to the
20 aggravating factors of his offense conduct already noted,
21 his entry into a senator's office while inside the Capitol,
22 his criminal history, his decision to engage in criminal
23 conduct on January 6th while awaiting judgment on criminal
24 charges pending in Pennsylvania, I do believe that special
25 conditions of -- with a short period of -- a 14-day period

1 of confinement in the custody of the Bureau of Prisons as an
2 alternative to a sentence of imprisonment is necessary here.

3 So based on my consideration of these and other
4 factors, I will now state the sentence to be imposed.

5 Pursuant to the Sentencing Reform Act of 1984 and
6 in consideration of the provisions of 18 U.S.C. Section
7 3553(a), it is the judgment of the Court that you, Brian E.
8 Stenz, are hereby sentenced to a term of 36 months, 3 years
9 of probation, on Count 4 of the information, with special
10 conditions of 14 days' confinement, and 2 months of home
11 detention.

12 In addition, you are ordered to pay a special
13 assessment of \$10, in accordance with 18 U.S.C. Section
14 3013.

15 The Court authorizes supervision and jurisdiction
16 of this case to be transferred to the U.S. District Court
17 for the Eastern District of Pennsylvania.

18 While on supervision, you shall abide by the
19 following mandatory conditions, as well as the standard
20 conditions of supervision, which are imposed to establish
21 the basic expectations for your conduct while on
22 supervision.

23 The mandatory conditions include: One, you must
24 not commit another federal, state, or local crime. Two, you
25 must not unlawfully possess a controlled substance. Three,

1 you must refrain from any unlawful use of a controlled
2 substance; you must submit to one drug test within 15 days
3 of placement on supervision, and at least two periodic drug
4 tests thereafter as determined by the Court. Four, you must
5 make restitution in accordance with your plea agreement in
6 accordance with 18 U.S.C. Section 30 -- 3663, or any other
7 statute authorizing a sentence of restitution.

8 You are ordered to make restitution to the
9 Architect of the Capitol in the amount of \$500. The Court
10 determines that you do not have the ability to pay interest
11 and, therefore, waives any interest or penalties that may
12 accrue on the balance.

13 You shall comply with the following special
14 conditions as to intermittent confinement. Pursuant to
15 18 U.S.C. Section 3563(b)(10), you must serve a total of
16 14 days of intermittent confinement. The intermittent
17 confinement shall be served for 14 consecutive days at a
18 facility designated by the Bureau of Prisons. You must
19 follow the rules and regulations of the facility in which
20 you are designated.

21 You must also submit to home detention for a
22 period of two months, as soon as practicable, and comply
23 with the location monitoring program requirement as directed
24 by the U.S. Probation Office. You will be restricted to
25 your residence at all times except for: employment;

1 education; religious services; medical; substance abuse; and
2 mental health treatment; court-ordered obligations, and any
3 other -- and any other kind specifically authorized by the
4 U.S. Probation Office.

5 The location monitoring technology is at the
6 discretion of the U.S. Probation Office; you must pay the
7 cost of monitoring.

8 You must submit to substance abuse testing to
9 determine if you have used a prohibited substance. You must
10 not attempt to obstruct or tamper with the testing methods.

11 You must provide the probation officer access to
12 any requested financial information and authorize the
13 release of any financial information. The probation office
14 may share financial information with the U.S. Attorney's
15 Office.

16 Having assessed the defendant's ability to pay,
17 payment of the total criminal monetary penalty is due;
18 payment in equal installments of \$100 to commence 30 days
19 after the date of this judgment.

20 You are also ordered to pay a fine in the amount
21 of \$2500. The Court determined you do not have the ability
22 to pay interest and, therefore, waives any interest or
23 penalties that may accrue on the balance.

24 Restitution payments shall be made to the Clerk of
25 the Court of the U.S. District Court for the District of

1 Columbia for disbursement to the following victims:
2 Architect of the Capitol, Office of the Chief Financial
3 Officer, attention Kathy Sherrill, CPA, Ford House Office
4 Building, Room H2-205B, Washington, D.C. 20515, in the
5 restitution amount of \$500.

6 The financial obligations are immediately payable
7 to the Clerk of the Court for the U.S. District Court, 333
8 Constitution Avenue, Northwest, Washington, D.C. 20001.

9 Within 30 days of any change of address, you shall
10 notify the Clerk of the Court of the change until such time
11 as the financial obligation is paid in full.

12 The probation office shall release the presentence
13 investigation report to all appropriate agencies which
14 includes the U.S. Probation Office in the approved district
15 of residence in order to execute the sentence of the Court.

16 Pursuant to 18 U.S.C. Section 3742, you have a
17 right to appeal the sentence imposed by the Court if the
18 period of imprisonment is longer than the statutory maximum.
19 If you choose to appeal, you must file any appeal within 14
20 days after the Court enters judgment.

21 As defined in 28 U.S.C. Section 2255, you also
22 have the right to challenge the conviction entered or
23 sentence imposed if new and currently unavailable
24 information becomes available to you or on a claim you
25 received ineffective assistance of counsel in entering a

1 plea of guilty to the offense of conviction or in connection
2 with sentencing. If you are unable to afford the cost of an
3 appeal, you may request permission from the Court to file an
4 appeal without cost to you.

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

7 MS. ALBINSON: No, Your Honor.

8 THE COURT: And, Mr. Marrone?

9 MR. MARRONE: No, Your Honor.

10 THE COURT: You may be seated.

11 THE DEFENDANT: Thank you, Your Honor.

12 THE COURT: Does the government have a motion to
13 dismiss to the open counts in the information, 1 through 3?

14 MS. ALBINSON: Yes, Your Honor. We would move to
15 dismiss those counts at this time.

16 THE COURT: All right. That motion is granted;
17 those open counts are dismissed.

18 Is there anything further from the government
19 today?

20 MS. ALBINSON: No, Your Honor. Thank you.

21 THE COURT: Mr. Marrone?

22 MR. MARRONE: No, Your Honor.

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

24 THE DEFENDANT: Thank you, Your Honor.

25 THE COURT: Thank you, Mr. Stenz.
(Whereupon, the proceeding concludes, 10:58 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 21st day of February, 2022

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