UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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UNITED STATES OF AMERICA,	)	Criminal Action
	)	No. 21-204-04
vs.	)	
	)	
JACK JESSE GRIFFITH,	)	October 28, 2021
	)	11:10 a.m.
Defendant.	)	Washington, D.C.

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

APPEARANCES:

FOR THE GOVERNMENT: JAMIE CARTER
555 4th Street, NW
Washington, DC 20530
(202) 252-6741
Email: jamie.carter@usdoj.gov

JAMES PEARCE
U.S. DEPARTMENT OF JUSTICE
950 Pennsylvania Ave NW
Washington, DC 20530
(202) 532-4991
Email: james.pearce@usdoj.gov

MITRA JAFARY-HARIRI
DOJ-USAO
211 W. Fort Street
Detroit, MI 48226
(313) 226-9632
Email: mitra.jafary-hariri@usdoj.gov

FOR THE DEFENDANT: H. HEATHER SHANER
1702 S Street, NW
Washington, DC 20009
(202) 265-8210
Email: hhsesq@aol.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

THE COURTROOM DEPUTY: Matter before the Court, Criminal Case No. 21-204-04, United States of America versus Jack Jesse Griffith.

Counsel and probation officer, please come forward and state your names for the record.

MS. CARTER: I apologize, Your Honor.

Do I come to the podium? Or what do you prefer?

THE COURT: Yes. You may step forward to the podium. I'm sorry. I just finished a trial this week so it's, sort of, set up for trial.

MS. CARTER: Good morning to the Court.

Jamie Carter on behalf of the United States. I am joined by James Pearce and Mitra Jafari-Hariri as well.

THE COURT: All right. And what was the gentleman's name?

MS. CARTER: James Pearce.

THE COURT: James Pearce.

MS. CARTER: Yes, Your Honor.

THE COURT: Okay. I think -- did Mr. Pearce enter an appearance in the case?

MS. CARTER: He did, Your Honor.

THE COURT: All right. Good. Thank you.

Good morning.

MS. CARTER: Good morning.

THE COURT: Ms. Shaner, you can keep your mask on, please.

MS. SHANER: Good morning, Your Honor.

Heather Shaner on behalf of Jack Jesse Griffith. He is before the Court. His mother, Michele Olson, is also in court should the Court --

THE COURT: Can that person stand, please, so I can see. There are a number of people in the back.

All right. Thank you.

All right. Yes.

MR. WALTERS: Good morning, Your Honor.

Robert Walters for probation.

THE COURT: All right. Thank you for being here, Mr. Walters.

All right. We're here this morning for the sentencing of Jack Jesse Griffith. This sentencing hearing is being held in person; but I do want to let you-all know that the public access line is being made available for persons to listen to the proceedings remotely.

Anyone listening to the sentencing hearing over the public teleconference line is reminded that, under my Standing Order 20-20, recording and rebroadcasting of court proceedings, including those held by videoconference, is strictly prohibited. Violation of these prohibitions may result in sanctions, including removal of court-issued media

credentials, restricted or denial of entry to future hearings, and any other sanctions deemed necessary by the presiding judge.

All right. So let me begin, as I do every sentencing hearing, by reviewing the materials that I have looked at in connection with sentencing.

Ms. Shaner.

MS. SHANER: Your Honor, due to my hearing and the masking, I am requesting that I have a headset so I can understand everything.

THE COURT: You may.

Testing, testing.

Ms. Shaner, is that better for you?

MS. SHANER: Very good. Very well. Perfect.

THE COURT: I rarely have people tell me I don't speak loudly enough.

MS. SHANER: It's only the mask, Your Honor.

THE COURT: It's interesting, Ms. Shaner, because I always take a vote of, you know, prospective jurors, whether they prefer me to wear the see-through mask or this mask. And sometimes they want me to wear this one (indicating) because they're able to follow my lips more easily. The last time I held a vote, they wanted me to keep on my dark mask; so I don't know. It's interesting.

In any event, let me go back to what I normally do

at sentencing hearings, which is review all of the papers that I have looked at because I want to make sure that both sides in the case have -- are all reading the same documents I am, and that I haven't missed anything.

So, in connection with Mr. Griffith's sentencing, I have received the presentence investigation report, and the probation office's sentencing recommendation that were docketed at ECF 89 and 90.

I have also reviewed the sentencing memorandum from the government, docketed at ECF 92; and the government's supplemental memorandum, docketed at ECF 109 and ECF 117; and, also, the 14 videos that are listed in the government's report of video evidence, docketed at ECF 67; as well as the government's notice of filing of items incompatible with E-filing as to defendant's docketing at ECF 93.

I have also reviewed the sentencing memoranda submitted on behalf of the defendant, docketed at ECF 94; the supplemental sentencing information regarding Mr. Griffith, submitted under seal at ECF 100; the responses by codefendant Eric Torrens to the government's sentencing memorandum in his case, docketed at ECF 104, 110, 113, and 125, which was filed at around midnight last night, which this defendant has adopted with the Court's permission at ECF 106, 111, 114, and 126. And I have also read two

letters from the defendant, docketed at 94-1 and 94-2.

So does the government have all of those documents?

MS. CARTER: The government does.

Thank you, Your Honor.

THE COURT: And does the defense have all of those documents?

MS. SHANER: The defense does, Your Honor.

I have one additional attachment to the under seal motion that I have given to the government this morning that I would pass up to the Court.

THE COURT: Okay. Thank you, Ms. Shaner.

And will you docket that also so the record is complete?

MS. SHANER: Yes, I will.

THE COURT: Thank you.

All right. So, Mr. Griffith, let me just begin by explaining to you how this sentencing hearing will proceed. Please stand where you are.

Every judge does a sentencing hearing in a different way. The way I conduct my sentencing hearings is I -- there will be three stages to this sentencing hearing.

The first step is to determine whether the government or you, through your counsel, have any objections to the factual or any other portions of the presentence

investigation report that the probation office has prepared that you and your counsel have had an opportunity to review -- but I will put that on the record shortly; and the government has had an opportunity to review it as well. If there are any objections, I will resolve them at that point.

The second step of the hearing is to hear from, first, the government, and then from your counsel, and then lastly from you, if you wish to address me directly.

The last step requires the Court to explain the reasons for the sentence I am about to impose and to impose sentence. So, by contrast to most cases in federal court, there is usually a fourth stage where I have to decide how the sentencing guidelines apply and what the sentencing range is that is recommended under those guidelines in a case like yours; but this is a petty offense, so the sentencing guidelines do not apply.

You may be seated.

THE DEFENDANT: Yes, Your Honor.

THE COURT: And do you have any questions about how the sentencing hearing will proceed?

THE DEFENDANT: No, Your Honor.

THE COURT: All right. Okay. So it's step one.

I understand, Ms. Carter, that the government has no objection to any of the factual or other determinations set out in the presentence investigation report; is that

correct?

MS. CARTER: Yes, Your Honor.

THE COURT: All right. Thank you.

Ms. Shaner, have you and your client read and discussed the presentence investigation report?

MS. SHANER: Yes, we have, Your Honor.

THE COURT: And does Mr. Griffith have any objection to any of the factual statements or other determinations set out in the PSR?

MS. SHANER: He does not.

There has been one change, and that's a change in his employment. He is no longer working as a --

THE COURT: And which paragraph of the PSR are you referring to?

MS. SHANER: Page 11, Your Honor, paragraph 53.

He has gotten a new job so he is no longer working 80 hours a week; he is working between 40 and 60 hours a week. He is, I believe, 13 an hour -- he is now being paid $13 an hour.

THE COURT: And where is that?

THE DEFENDANT: 16. 16 an hour.

THE COURT: He's making $16 per hour, Ms. Shaner?

THE DEFENDANT: Yes, Your Honor.

Yapp automotive.

MS. SHANER: It's Yapp automotive in Gallatin,

Tennessee.

THE COURT: Okay.

MS. SHANER: And that's the only correction, Your Honor.

THE COURT: Okay. Well, I don't think -- I think at the time the PSR was done, this was correct information. I think just updating it, it's not necessary to change the presentence investigation report --

MS. SHANER: I agree, Your Honor.

THE COURT: -- for my information. Thank you.

Unless you see it otherwise, Ms. Shaner?

MS. SHANER: No, I agree with the Court.

THE COURT: All right. So, Mr. Griffith, please stand.

Are you fully satisfied with your attorney in this case?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And do you feel that you have had enough time to talk to Ms. Shaner about the evidence in your case, the documents submitted in connection with your sentencing?

THE DEFENDANT: Yes, ma'am. Thank you, Your Honor.

THE COURT: All right. You may be seated.

All right. Hearing no objection from either side,

the Court will accept the presentence investigation report and the factual portions of it as undisputed and as my findings of fact at sentencing, although, of course, I have also looked at the video evidence submitted in the case.

I will now turn to the next part of the hearing where I will hear from the parties as to how they would like to supplement, if at all, their presentations in writing in connection with all of their briefs, starting with the government.

MS. CARTER: Your Honor, we have briefed fairly extensively in this case. I know the Court has reviewed all of the briefings, and I don't want to go back through them.

I would simply acknowledge the unprecedented nature, again, of this circumstance, of this crime, and where we find ourselves, and then inquire of the Court whether or not the Court has any questions regarding the factual section of our filings with regards to the restitution specifically, as well as the statutory debate over probation.

Mr. Pearce did most, if not all, of that briefing, so he is available to the Court if the Court has questions on that.

THE COURT: Okay. Well, I do have a few questions for the government in this case. So this is -- and I have taken a number of pleas. I've had any number of status

conferences in connection with defendants arrested and charged in connection with the Capitol attack on January 6th.

This is my first sentencing, so this is the first time I have had the opportunity to delve into some of these legal issues and to see the government's sentencing memos in connection with the sentencings of defendants arising from what happened on January 6th.

So you-all are the lucky government team to help me sort through what I am seeing.

I have to say, I did read, you know, the government's briefing, and it uses very strong language. And I am just going to quote some excerpts from the government's brief saying that: What happened an January 6th was a chaotic and dangerous attack; it was an attack on democracy; it was a criminal offense unparalleled in American history; it represented a grave threat to our democratic norms; it was one of the only times in our history when the Capitol Building was literally occupied by hostile participants.

It was an attack on the rule of law that showed -- and I quote again: A blatant and appalling disregard for our institutions of government and the orderly administration of the democratic process.

This is very strong language about the seriousness

of the criminal conduct that occurred on January 6th for a defendant who pleaded guilty to a petty offense, misdemeanor. It's -- and the government, despite all this language, isn't even asking for the maximum sentence here, but half that, of three months.

So how am I supposed to reconcile this extraordinarily strong rhetoric with a petty offense charge?

MS. CARTER: Yes, Your Honor.

THE COURT: I mean, it just strikes me as somewhat of a -- you know, it seems like a bit of a disconnect, isn't there? That it's a grave threat to our democratic norms, a criminal offense unparalleled in American history; but I am facing sentencing on a petty offense.

MS. CARTER: Yes, Your Honor.

So I will say there is a wide range of defendants. There is a wide range of participation in the riot. The riot itself, which I believe that language is referencing, absolutely was unprecedented; absolutely was an attack on our democracy; an attack on a constitutionally-mandated process, the transfer of power, which is fundamental to how our country runs. Full stop on that.

That said, when we're approaching individual criminal defendants who participated in a larger event like this, we have to look at each person's characteristics and weigh their participation, their characteristics, when we're

making these recommendations.

And when we were looking at Mr. Griffith in particular, we tried to lay out each of the arguments that we had on -- I believe it's our nine -- nine points that we have tried to use to divide these cases up --

THE COURT: I have seen that. And let me just say that there the -- there seems to be some -- the government's brief is almost schizophrenic in some ways because, after all that scorching rhetoric about what happened on January 6th, the government goes on to describe the rioters who got through the police lines and into the Capitol Building as -- and I quote, "those who trespassed," at page 22.

And the government goes on to say that for those, quote, trespassers, punishment should be distinguished between those trespassers who engaged in aggravating factors or less serious aggravating factors.

So is it the government's view that the members of the mob that engaged in the Capitol attack on January 6th were simply trespassers in the Capitol Building that paraded, picketed, and demonstrated with some acting more disorderly than others? Is that how the government is viewing that despite its rhetoric that I excerpted at the beginning?

MS. CARTER: I believe it's a recognition that

certain members of the riot were not leading the riot; they were not violent in the riot. They were not doing the destruction of property portion of the riot.

And while I am not trying to downplay the seriousness of their participation and its effect on others, and its effect on the ability to actually accomplish the goals of the riot as a whole by overwhelming the police, by distracting resources, by encouraging others with their presence, they are nonetheless -- their actual behavior is to enter the building, which is absolutely unacceptable -- I am not arguing that it is --

THE COURT: Well, you call it trespassing in the memo --

MS. CARTER: That's true.

THE COURT: -- in the sentencing memo. Is that how the government views it, as just mere trespassing?

MS. CARTER: It is trespassing. I don't know that I would call it "mere trespassing" due to the larger context of the riot in which it's occurring. I wouldn't call it "mere trespassing." It is trespassing.

THE COURT: All right. So in one of the sentencing memos for one of defendant's codefendants, docketed at ECF 104, which has been adopted by Mr. Griffith here, that memo indicates that the petty offense charge here of parading, demonstrating, or picketing in a Capitol

Building in violation of 40 U.S.C. Section 5104(e)(2)(G), the petty Class B misdemeanor, is an offense often brought for nonviolent protesters who stand up in a congressional hearing to interrupt a hearing before they're escorted out of the hearing room, and that the offenders usually get a $50 ticket; isn't that correct?

MS. CARTER: As far as my personal interaction with protests in the Capitol, it has been in Superior Court with a different charge, the equivalent of that in the D.C. Code.

And I am familiar with some of those protesters, which is a very different -- there were no protesters in the Capitol during the riot. I don't want my language to be confused. The protesters in prior incidents, which I have been involved in, some of them have received diversion, essentially, on the front end with that sort of a ticket.

THE COURT: Well, I mean, I think he cites, you know, examples of people actually charged with the parading, demonstrating or picketing in a Capitol Building in violation of 40 U.S.C. Section 5104(e)(2)(G), and gives examples that they were basically charged -- for whatever reason, the U.S. Attorney's Office decided to bring them federally, with this federal charge, as opposed to in Superior Court; and they basically got a $50 ticket.

So you are not disputing that, right?

MS. CARTER: I am not disputing that has occurred, no.

THE COURT: All right.

All right. So the government's sentencing memo also spent some time talking about deterrence, general deterrence, specific deterrence. And, of course, deterrence is really one of the major purposes of sentencing and, therefore, is of significant concern to every sentencing judge. And deterrence of others is, in fact, required to be considered in sentencing under 18 U.S.C. Section 3553(a)(2).

And the government urges the Court to consider general deterrence here as the most compelling reason to impose a sentence of incarceration, stressing the importance of conveying -- and I quote from the government's memo at page 21: To future rioters and would-be mob participants, especially those who intend to improperly influence the democratic process, that their actions will have consequences.

So is the government totally comfortable that general deterrence is going to be served by letting rioters who broke into the Capitol, overran the police, tore away barriers, broke in the building through windows and doors, are going to -- and now they're going to be able to resolve their criminal liability with petty offense plea s; do you believe that that is sufficient for general deterrence

giving them, basically, the most minimal of federal criminal charges, a Class B misdemeanor, petty offense?

MS. CARTER: So in a situation in which there has been property damage done by a defendant or where they have attacked an officer, assault on a federal officer, where they are involved in varying, higher levels of behavior within the riot in general, I believe those rioters are going to be facing felony charges not misdemeanor charges.

Mr. Griffith did not attack an officer. He was in a position to see others do so. He benefited from those people doing so by them essentially clearing his way. He is not at that part of the crowd that's actually actively attacking a police line. He is not one of the people who broke a window, broke a door, harmed a statue, whatever the case may be. He is not one of the people in the riot that did those things.

So for him, in particular, I believe that the sentence that we have recommended of three months is the correct sentence.

THE COURT: And nonetheless, you're recommending for his codefendant, who is in a lot of the same videotapes, two weeks.

MS. CARTER: Yes, Your Honor.

THE COURT: How do you explain that?

MS. CARTER: The difference between Mr. Griffith

and Mr. Torrens, and the difference between our ultimate recommendations, lies in Mr. Griffith's attempt to use his crime as a means to self-promote, to promote his video game that he's developing, to promote his online presence --

THE COURT: So he has entrepreneurial tendencies. Why does that make him -- why does that -- because of his trying to be entrepreneurial, why does that mean he gets three months -- a three-month recommended sentence rather than two weeks?

MS. CARTER: So in doing so --

THE COURT: I'm trying to make sense of the government's own position here, starting with the charge, starting with the -- then the recommendations for what the appropriate sentence is. So, you know, I am really trying to give you an opportunity to explain the government's position so I can understand it.

MS. CARTER: It speaks to lack of remorse, lack of taking seriously the actions that he participated in; lack of recommendation of the consequences for the riot and his attempt to use it. It's not an objection to a, sort of, larger entrepreneurial sentence.

It's an objection to using a crime. And it also goes to his, as I said, lack of remorse and continued posting up and until -- I believe it was just after his plea when he was posting on the TikTok videos; and some of those

posts included, again, inflammatory language such as the citation to 1776, and: We're going to take our country back -- words to that effect.

THE COURT: All right. So the government in lots of other cases has recommended probation where the defendant did not personally physically harm any police officer; did not engage in any damage to the Capitol Building; did not bring any dangerous weapon, broadly defined, to the Capitol; did not engage in preplanning to engage in violence at the Capitol. The government's only recommended probation.

And the government has a footnote in its sentencing memorandum that it repeats in its supplemental filing, docketed at ECF 109, and I have seen in lots -- several other sentencing memos for January 6 defendants at this point. And the footnote says that -- acknowledges that it's agreed in a number of plea agreements to recommend probation, in these kinds of cases with the factors I have just listed; but that a probationary sentence should not become the default.

And I have to say, I have found this footnote a bit of a puzzle to understand. In particular, the government refers to a fast-track program; and it cites to a Ninth Circuit case from 2015, *United States v. Rosales-Gonzalez*, for its fast-track reference. And a fast-track program is typically a formal program that allows

downward departures under the guideline, at 5K3.1, pursuant to an early disposition program authorized by the Attorney General of the United States and the United States Attorney for the district in which the court resides. See the guideline at 5K3.1.

With this citation, and all of this briefing by the government to this Ninth Circuit *Rosales-Gonzalez* case to fast-track programs, I just want to be clear, has an early disposition fast-track program been authorized by the Attorney General and the U.S. Attorney for D.C. for January 6 defendants who take early plea agreements?

MS. CARTER: Your Honor, I am not aware of the specifics of how our plea agreements have been run up the chain. I know they have been. If the Court wants a specific answer, I would have to inquire of a supervisor to provide that.

THE COURT: All right. So you are not aware of a formal fast-track program?

MS. CARTER: No, Your Honor; but I wouldn't have been involved necessarily.

This is my first sentencing and plea in one of these cases. And as with regards -- I believe it cites to three particular cases, Ms. Morgan-Lloyd, Ms. Ehrke, and Ms. Bissey; I was not involved, and I don't know.

THE COURT: Okay. Well, part of the purpose, I

guess, of this footnote 4 is to basically acknowledge that the government has recommended probation in January 6-related cases where the defendants have pled early and they didn't, you know, personally, physically engage in any assault on a police officer or damage the Capitol Building; and it just seems to me that -- it is almost suggesting that the government did this in some early pleas, but it may not be doing that anymore.

But how am I supposed to understood that footnote 4? I think I started off by saying I really don't understand what the point of footnote 4 is. Explain the point to that.

MS. CARTER: Yes, Your Honor.

So acknowledging there were -- these specific three pleas, I think, are specifically referenced inside the footnote; that they received benefit of having pled, essentially, the most early in the plea process, I believe, was what we were attempting to get across to -- through that footnote.

As far as whether or not they will --

THE COURT: If I can just interrupt you.

I mean, pleading -- there are cases, of course, where the defendant pled early in the plea negotiation process. And to my mind, you know, as I look at the docket in this case, Mr. Torrens was -- well, you know, in the

Torrens' briefing it explains that Mr. Torrens was offered a plea on July 14th, 2021, and accepted it on July 28th, 2021; so it took him two weeks from plea offer to acceptance of the plea offer.

And then -- and this same footnote is in the government's sentencing memo in the Torrens sentencing, which I have tomorrow, but it's all been adopted in this case.

And I think Mr. Griffith accepted his plea offer also within two weeks; so it's both the same for Mr. Torrens and the same for Mr. Griffith. It took them two weeks from plea offer to say, yes, we're taking the deal; and yet the government is asking for two weeks for Mr. Torrens, three months for Mr. Griffith.

And when I look back at the other cases mentioned in your footnote 4, as the sample of why probation was recommended there by the government because those defendants in those cases took early pleas -- let's start with Morgan-Lloyd, who took from March 19th, the date on the plea agreement, to May 27th to accept the plea; that was over two months.

Bissey took from March 19th, the date on the plea agreement, until June 14th to accept, or almost three months.

Ehrke took from May 28th, the date on the plea

agreement, until June 21, three weeks to accept.

So each of those defendants in footnote 4, where the government recommended probation, took more time to accept the plea offers than either Mr. Torrens or Mr. Griffith in this case who only took two weeks.

So I don't understand how that fits into the government's fast-track early-plea suggestion as the reason why they recommended probation in those cases and they're recommending jail time for Mr. Griffith and Mr. Torrens.

So, as I said, I am puzzled by that footnote.

MS. CARTER: So I don't necessarily think the footnote is meant to say that that's the reason why we are asking for jail time in these two cases, today's case and tomorrow's, but rather to acknowledge that we're not prevented from asking for jail time because we asked for a different sentence in those other very early cases.

And by "early," I believe they mean within the calendar -- the overarching calendar, not specific to when the plea offer was offered and accepted, but earlier than other pleas that have since taken place in the larger sense of the riot cases in general.

THE COURT: Well, you know, 18 U.S.C. Section 3553(a)(6) does require sentencing judge s to consider the need for unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar

conduct. And I think this means that I have to be concerned about differences in the government's recommendations for probation for similarly-situated defendants, and then this evolving -- and what appears to me to be, sort of, an evolving, changing position for defendants sentenced under -- for petty offense Class B misdemeanor with, essentially, similar conduct on January 6th where the government now seems to be recommending jail time.

I mean, I -- and just saying that certain defendants were offered a plea earlier in the government's investigation, is that a reason for saying that they're not similarly situated?

MS. CARTER: I think the "similarly situated" is a larger analysis than the actual timing of the plea in and of itself.

As the Court is aware, we go into a great deal of depth in reports that are -- the presentence investigation, as well as our briefing; and we're considering individuals at a level of depth that I don't think is necessarily represented just on that one factor. That is certainly one factor, but it is one of many, many factors.

Of those three that Your Honor mentioned, when we were looking -- when I was looking back at the varying, kind of, factual differences -- for example, one of the things that I would highlight with these defendants that wasn't

necessarily present in some of those cases would be actually having evidence that they saw the line of officers being attacked.

We have the video which was provided to the Court showing them underneath the northwest scaffolding on the set of stairs. You can actually audibly hear the tear gas going off. You can see a line of officers being attacked to their left as they're facing down that stairwell.

THE COURT: You're talking about both Mr. Torrens and Mr. Griffith's case?

MS. CARTER: Correct.

THE COURT: And in the case of the other defendants, you know, Anna Morgan-Lloyd and the other defendants, they didn't see all of that?

Is that what you are saying?

MS. CARTER: I am saying that in my review of the facts, not -- I will say this, I was not the prosecutor on any of those cases. And so the prosecutors individually may have more knowledge of facts that I am aware of.

Based on our -- my overarching review, when Your Honor asked us to very quickly put together the information, I am not aware of them having specific video evidence, having a specific interview, in the case of Mr. Torrens, in which he admitted to having seen that, where we had specific evidence that they saw and then benefited from that.

Do I think that a larger portion of the group probably did and we just don't have the ability to show the Court: Here is this actually happening, it is on video. Here is this statement, it has been recorded. I think that may be so.

But, in this particular instance, I think that that's important, and it's one of the reasons that we made our decision. Not the reason, but one of the reasons that we made our decision.

THE COURT: All right. Let me turn to the restitution issue. And I appreciate that the government has provided an explanation that -- for the restitution amount authorized in the case and making it clear that sentencing judges, in these petty offenses arising out of January 6th, have no authority to impose restitution beyond what the government has worked out with the defendant.

And just to go through the reasoning of that, the government acknowledges that there are these two general restitution statutes that provide courts with the authority to order criminal defendants to pay restitution to victims of their criminal conduct; and I think the government agrees that the government can be considered a "victim" of criminal conduct eligible for restitution. Is that correct?

MS. CARTER: Yes, Your Honor. I would ask to change places with my colleague now, since we're getting

into --

THE COURT: All right. Mr. Pearce, step on up.

MR. PEARCE: Yes, Your Honor. That's correct.

We do acknowledge that the government, for restitution purposes, can be a "victim."

THE COURT: And I also understand that the government acknowledges that: Where there is an identifiable victim, like here, the Capitol Building, Congress perhaps, whatever you define who the "victim" is here -- it's identifiable from January 6 events -- you'd agree that the restitution amount can include the property damage to the Capitol Building, right?

MR. PEARCE: Correct.

THE COURT: It could also include the costs associated with the deployment of additional law enforcement units to the Capitol, right?

MR. PEARCE: That's somewhat less clear. And then there is at least the *Wilfong* case out of the Tenth Circuit that holds that. There is not a whole lot of other additional case law that addresses that, but there is at least one case for that -- for that proposition.

THE COURT: Okay. Certainly the cost of broke or damaged law enforcement equipment that occurred that day?

MR. PEARCE: I think that's right, yes.

THE COURT: The cost of stolen property?

MR. PEARCE: Of stolen property, yeah, I think that's correct as well.

THE COURT: The costs associated with bodily injuries --

MR. PEARCE: Certainly, that's --

THE COURT: -- sustained by law enforcement officers that day?

MR. PEARCE: That's right.

THE COURT: But these two general restitution statutes, which are called the Victim and Witness Protection Act of 1982 and the Mandatory Victims Restitution Act of -- which was issued later, do not apply to petty offenses under 40 U.S.C. Section 5104(e)(2)(6), except to the extent agreed to by the parties; is that right?

MR. PEARCE: That's correct. And that's 3663(a)(3) that allows the parties to reach an agreement outside of -- otherwise covered Title 18, and some other offenses.

THE COURT: So every other offense with which Mr. Griffith was charged in the indictment pending in this case, except the one that the government agreed to let him plead to, would have allowed for the Court to estimate the restitution amount and order restitution; is that correct?

MR. PEARCE: I am not sure that's correct because I believe he was charged with one other Title 40 offense.

But I -- if that's not correct, then I can say -- he may have been charged with (e)(2)(D), as in Delta --

THE COURT: You are right.

I think he was charged with one other Title 40. But he was also charged with Title 18, Section 1752(a)(1) and 18 U.S.C. Section 1752(a)(2), which are -- I think other -- they're Class A misdemeanors. And so he would have been -- the Court would have had the authority, had he entered a plea to those, to calculate or estimate the amount of restitution to be paid; is that right?

MR. PEARCE: So certainly, yes.

THE COURT: Right.

MR. PEARCE: Title 18 falls under the coverage of the Victim and Witness Protection Act. Still, the parties could have joined a plea agreement under Section (a)(3) of that statute and reached an agreement; but that would have at least fallen under the scope of the victim and witness protection --

THE COURT: Right. So just to be absolutely clear, my hands are tied in terms of the restitution amount. I can't do anything other than what's in the plea agreement.

MR. PEARCE: That is correct.

The statute of conviction provides the basis for restitution. The statute of conviction does not provide for it as a matter, statutorily speaking; but, of course, we

have the statutory authority, under the plea agreements, to provide for the $500 that the parties agreed to. So, yes, the Court's hands are tied in this case.

THE COURT: Right.

So the government says that the $500 restitution amount -- and I quote: Fairly reflects the defendant's role in the offense, the damages resulting from his conduct. And that this $500 amount -- and I quote from the government's brief: Considers the various legal and factual issues associated with calculating the actual losses for property damage and incurred by law enforcement agencies, additional costs for security personnel and bodily injury sustained by law enforcement personal.

And I am just privy to what is published in news reports about what those costs may be. And I have to say, based on what I am understanding from news reports, I do find the government's explanation somewhat baffling. So I just want to understand how this fairly reflects the cost.

MR. PEARCE: Certainly.

THE COURT: And I'm looking, first, at what Congress has publicly identified in appropriating money in the Emergency Security Supplemental Appropriations Act of 2021, which was signed into law July 30th, 2021, to include $520 million to compensate the National Guard for having to protect the Capitol after the attack; two, $33 million to

the Capitol Police for its response during the attack, and necessary increase in protection to the Capitol after the attack; three, $9 million appropriated to reimburse the Capitol Police's local law enforcement partners for mutual aid provided in response to the attack.

Those costs alone come to about $562 million, and that's not even dealing with the medical costs to over a hundred law enforcement officers that had to respond to the January 6th attack.

So as I do the math, let's say there are about 600 defendants arrested in connection with January 6th, and each of them are charged the $500 in restitution that the government says fairly reflects the restitution amount owed -- it comes to a total of about $300,000 in restitution which -- compared to the $562 million in the Emergency Security Supplemental -- Emergency Security Supplemental Appropriations Act -- that's barely a drop in the bucket.

So how does the government explain that the $500 restitution amount fairly reflects the restitution loss here?

MR. PEARCE: Certainly. And I think the most helpful way that I can answer for the Court is to address both, sort of, the $500 million figure, approximate, that the Court gave, and then also talk for a moment about restitution in each of these individual cases. And I will

start with the first group.

We are continuing to investigate the extent to which costs associated with what happened on January 6th would fall within the scope of restitution.

The Court posed this question earlier about the costs of additional personnel called to the scene; that poses both the factual question of what precisely that cost was; a number of the costs that you just listed as part of the congressional bill that was passed, involved things for post-January 6th protection of the Capitol. That is clearly going to fall outside of the scope of what is restitutionary -- right?

I mean, if you're calling people to protect something after an event, that's not caused by the event itself.

THE COURT: Oh, I think that I have heard the government argue in other cases involving restitution amounts that the -- what a victim was required to do to remedy the situation, even going to court to testify and losing loss of income, happening after the date of the offense conduct can be subject to restitution.

MR. PEARCE: So there is a specific statutory provision that provides for somebody having to go to court and to testify. There is no such statutory provision that says: For general protection of an area following some kind

of attack on the Capitol or otherwise that, therefore, that comes within the scope of restitution.

I mentioned the *Wilfong* case earlier. To my knowledge, that's the only case that really, in detail, raises the possibility of seeking restitution for the deployment of resources. I believe that was a bomb threat case where the defendant calls in a bomb threat, and then there are people who need to evacuate, and there is restitution for the lost wages associated with that.

Other than that, it's somewhat unchartered territory. And so, you know, I think we're exploring legally whether that is something that's possible to press for. But some of those costs associated, again, with post-January 6 protection is not, I think, consistent with what courts have done as a matter of restitution law.

Now, to be clear, we are continuing to try to identify costs. The number that was quoted in Mr. Griffith's plea agreement, the approximately $1.5 million, was a damage estimate given by the Architect of the Capitol in mid-May. We continue to be working very closely with the Architect of the Capitol with another -- a number of other components within the Capitol Building. It's not only the Architect of the Capitol, but very other, sort of, subcomponents that have their own restitutionary costs. We're trying to assemble that; that number may look

different moving forward. I don't think it is likely to get to the $500 million mark that Your Honor quoted. Possibly for the reasons, like I said, you know, the protection post-January 6th; it's not likely to fall within the fold.

But this is not meant to be the, sort of -- necessarily the final figure. The restitution, you know, although there is the provision for a Court to estimate -- and certainly we have done an estimation early on -- ultimately, it's about making victims whole. And so we need to collect all of this information and ensure that victims are made whole.

And I think that's a segue to, kind of, the second part of the question, which is: How does $500 for 600 defendants possibly get close to it?

THE COURT: Because it doesn't even get close to the 1.5 million.

MR. PEARCE: Absolutely correct. That's absolutely correct. And it's not that every single Capitol riot defendant is facing a $500 restitution.

We're going about this in a couple of different ways. First of all --

THE COURT: Has the government in a plea agreement required more than a $500 restitution amount, or is that the maximum restitution amount that the government has asked for in a plea agreement to date?

MR. PEARCE: To date, the government has asked for $2,000 in Mr. Fairlamb -- I can't remember his first name -- plea agreement. He pleaded guilty to obstruction under 1512 and a violation of Section 111, sort of, the assaulting -- the assault statute; and so he is being held accountable for $2,000 of restitution.

And that is, essentially, the approach that we are using that is, sort of, the first phase of the restitution question, which is basically this: To the best of our information, we've figured out how many individuals we believe were unlawfully inside of the Capitol Building. We then had, at that point, the $1.5 million approximate number. And we then -- we -- and it was somewhere between 2,000 to 2,500 people, we believe, were unlawfully present. And I am not going to go, for investigative reasons, into, sort of, how we figured that out. That math equaled about $700 per individual going into the building.

We then decided -- as a matter of trying to approximate as best as possible -- that for those individuals who ultimately are convicted of a misdemeanor, that they are subject to a $500 -- just as a matter of their participation in the events of January 6th -- restitutionary amount.

For individuals convicted of a felony, they are required, under plea agreements, to pay a $2,000 restitution

amount that -- reflective of the language Your Honor quoted earlier -- generally reflects their culpability in the events of that day. That is step one.

If we have specific evidence that a given defendant damaged property, stole property, caused injury to an officer, right, that's a separate restitution amount for that specific conduct; and that is in addition to the $500 or $2,000.

Now, there is no evidence that Mr. Griffith -- that we are aware of -- that he stole property, that he damaged property, that he was responsible for injury to a law enforcement officer, in which case he is not being held separately accountable under either the Mandatory Victims Restitution Act, if it's a crime of violence or if it's property damage, or under the other VWPA for just causing bodily injury of some sort of assault or otherwise.

But, in those cases, those defendants are going to be held accountable for that amount specific to officers, specific to property, et cetera.

THE COURT: All right. Usually, when a defendant is ordered to pay restitution or perform community service as part of a sentence -- and that has been -- you know, a number of my colleagues have ordered community service, compliance with those sentencing terms is generally supervised by the probation office; but the defendant has to

be sentenced to a term of probation or supervised release for the probation office to exercise that supervision authority.

And, in this case, the government is recommending a term of incarceration of three months, payment of $500 in restitution, and is not recommending any probationary period to -- which could be used with the probation office supervising a schedule of payments.

Why is that?

MR. PEARCE: So I suppose the legal answer and then the, sort of, recommendation answer, legally -- and I think we put this in one of our supplemental filings -- the Court can still, of course, order a restitution payment without there necessarily being some form of supervision in place, be it either probation or supervised released; but supervised release is not available here.

Of course, the payment of restitution is a regular condition, both a mandatory and potentially discretionary condition of probation, and it is a way to ensure that restitution --

THE COURT: But the government is not recommending any probationary term here.

MR. PEARCE: It is true. And I think that the basis for that is the belief that incarceration is the appropriate sentence for the reasons that are set out in our

sentencing memorandum.

THE COURT: I have to tell you, every single criminal case I have, whether it's a criminal fine imposed or there is restitution imposed, the government asks for probation or supervised release, and they ask for a length of time for supervision and probation to -- enough time for the probation office to make sure the restitution or fine is paid, hopefully in full.

This is the first time I have ever had the government ask for a restitution payment and not ask for a term of probation because supervised release, of course, is not allowed to be imposed here because it is a petty offense --

MR. PEARCE: That's right.

THE COURT: -- without -- where the government doesn't ask for probation to be involved in ensuring compliance with that term of the sentence; and I am really -- none of the papers submitted by the government has explained why that is here.

MR. PEARCE: Well -- and to be clear, this is not the approach we're necessarily taking in every single one of these cases; in some of the cases we are. I mean, I do think that --

THE COURT: Has the government in any case arising out of January 6th where it has recommended a term of

incarceration also recommended a term of probation?

MR. PEARCE: I do not believe so, no. And I --

THE COURT: Is that because the government is concerned about the legality of a split sentence for a petty offense despite what you said in your position -- position papers?

MR. PEARCE: No. I mean, the position that we have taken is the position that we believe is correct, is consistent with the plain language of 3561(a)(3), is the position that the Fourth Circuit adopted in the unpublished *Posley* opinion; but, no, it is a close question.

I mean, I think the briefing on the other side is not bad. We think we are right.

We think the clearer way to do it, although my understanding is as a practical or logistical matter this is not happening very often, is that ordering intermittent confinement as a special condition of probation -- and I am not saying -- we haven't made this recommendation in this case. I am just identifying what I think is clearer legally is --

THE COURT: And how long do you think an appropriate legal term of intermittent confinement would be?

MR. PEARCE: I mean, I think in our supplemental --

THE COURT: Three months?

MR. PEARCE: I'm sorry?

THE COURT: Do you think three months is a legally acceptable term of intermittent confinement?

MR. PEARCE: Probably not.

THE COURT: No, it's not.

MR. PEARCE: Yeah, I agree. I mean, that --

THE COURT: Do you think two weeks would be a legally acceptable term of intermittent confinement?

MR. PEARCE: I do. I think that's consistent with the legislative history; and I think that that is -- I mean, the case law on this is quite sparse, but I think 30 days plus is too much. I think clearly a night, a weekend, or one to two weeks would be consistent with what Congress was trying to do and would qualify as intermittent.

THE COURT: And an intermittent confinement is, typically, two weeks now, then two weeks in a month, so it's going in and out of jail; that's what intermittent confinement is typically considered for short intervals.

And during a time where, in the criminal justice system, we're all concerned about keeping our jails and facilities protected from transmission of the COVID virus, do you think intermittent confinement with people going in and out of jail is a -- is a -- from a safety perspective preferable to a term of continuous confinement?

MR. PEARCE: As a practical logistical matter, no,

I don't think so. And that's why I wanted to distinguish between, sort of, the legal position and the practical one.

I mean, frankly, the probation office -- or the probation officer here, I believe, has reached out to colleagues in the Middle District of Tennessee and informed the parties just before the sentencing hearing that, sort of, the question of is there -- is intermittent confinement a possibility there; and I think the answer is it's somewhat unclear, but they are -- like my understanding in this district -- not doing it not for a legal reason, but for the kinds of practical health concerns, which I think are fully legitimate that -- the same reasons that it's not happening here.

THE COURT: Well, let me just say -- when I was considering what are my sentencing options here for a Class B misdemeanor, I don't think it's any secret to say that federal judges rarely deal with Class B petty offense misdemeanors; this is not our normal diet of criminal conduct, offense conduct.

So, I mean, the first question I asked is: What are my options for sentencing under a Class B petty offense misdemeanor? And -- because it was very peculiar to me, to be honest, Mr. Pearce, that the government was requiring, as part of the plea agreement, a $500 restitution, was recommending jail time, but nothing -- no probation -- no

probationary period.

And let me just ask you right off, have you -- has the government presented its position that a split sentence, meaning -- a split sentence, Mr. Griffith, for those of you who are not legal -- don't have JD degrees like the rest of us do -- a split sentence is a shorthand way of describing a sentence that's part prison and part probation, sort of, a combination of the two.

So has the government presented its position, that it has done for me, that even though a split sentence is prohibited for felonies in Class A misdemeanors, that a split sentence is permissible for petty offenses?

Has the government presented that position to any of my colleagues on this court?

MR. PEARCE: No. We would've -- the government defended it in *Posley*, but we have not presented it to any of your colleagues.

THE COURT: And that might help explain why none of my colleagues has imposed a split sentence in one of these Class B petty offense misdemeanor cases, or perhaps they have looked at the issue and decided it's legally questionable.

MR. PEARCE: I think those are both perfectly plausible potential explanations.

THE COURT: And you would agree with me that it's

a -- given the briefing that has been adopted in this case and has been filed in connection with the codefendant, Mr. Torrens' case, that this is a case -- this is a question of first impression in this circuit.

MR. PEARCE: I believe that's correct, yes.

THE COURT: So is the -- did the government plan, when it was offering all of these petty offense Class B misdemeanor to Title 40 offenses, that it wanted to make new law in this circuit on whether a split offense was acceptable here?

MR. PEARCE: No. No, we didn't. And that probably explains why we haven't recommended it.

I mean, of course, we have laid out this position in response to Your Honor's request that we brief it, and we've looked at it. We've done what the government does; and we have presented to the Court what we think, legally, is the best argument, which is that it is a permissible sentence.

I think it's fair to say that -- it's an open question in this Circuit given the unpublished Fourth Circuit case -- it's probably an open question everywhere as a matter of -- and so there is a lot of unprecedented things in connection with January 6th. It's an unprecedented event. But we are not typically looking to press forward and take positions that are going to take on potential

litigation.

THE COURT: Well, that's how you look at it. From where I sit, my hands are tied with respect to restitution.

The government in its plea agreement and by its choice to have a plea agreement with a petty Class B misdemeanor has tied my hands when it comes to restitution, as you would agree, right?

MR. PEARCE: That's correct.

THE COURT: And then when it comes to my sentencing options for a petty offense Class B misdemeanor, you have plunged us into a situation where the full panoply of sentencing options with a period of incarceration and a period of supervision -- it wouldn't be called "supervised release," it would be called "probation" -- to ensure, in the normal course, where the probation office ensures that there is compliance with the terms of payment of restitution, as required as part of the sentence, there is a big legal question. There is a dark cloud whether I even have that sentencing option, right?

MR. PEARCE: Yes, with the caveat that incarceration, as a term of probation, I think is a clean way to do it; acknowledging that for reasons over which we exert no control, COVID and health concerns, that that poses its own logistical and practical problems.

THE COURT: Right.

So -- but -- not to jump ahead to tomorrow; but in Mr. Torrens' case, the government is recommending a two-week period of incarceration, $500 in restitution, and no probationary period either. So even in situations where the government's recommended incarceration period is -- could qualify for intermittent confinement as a condition of probation, the government still is not recommending probation, right?

MR. PEARCE: We did not in that case. That's correct.

THE COURT: So let's look at the arguments that have been raised in Document 125, which was the brief filed around midnight last night, and has been adopted by Mr. Griffith, arguing against a split sentence as being allowable for Class B misdemeanors. And that brief argues that the phrase "that is not a petty offense," which is the -- you know, a phrase used in Section 3561(a)(3), only modifies a different offense because of the use of that determiner word "a" in the preceding phrase.

And according to this brief, this argument, and I quote, "The insertion of the determiner 'A' cuts off the reach of the post-positive modifier under the post-positive modifier canon."

So the government hasn't addressed that argument. So what is the government's response to that argument?

MR. PEARCE: I mean, it's the same argument that we made in the reply brief, which is the reading of the phrase -- and I don't have the specific language in front of me -- but it's something like the same or a different offense. There is really no way to read that other than as one full unit. Because if you were to say "the same," that is not a petty offense, it's just --

THE COURT: Couldn't it easily say "a same or different offense that is not a petty offense," and then it would be clear that same or different offense that is not a petty offense means you could have a split sentence so long as you weren't dealing with an offense that was a petty offense?

But here they did -- there is that insertion of the determiner "a" which does change the meaning somewhat; and that's the argument in terms of, you know, statutory construction.

MR. PEARCE: I understand.

And, still, I just don't think you can -- I mean, so I guess two responses; one is the one that I just started to articulate. It is not possible, unlike the other examples that are referred to in the brief, to read the phrase other than as a whole, "the same or a different offense," because there is no "the same offense or a different offense" -- right?

Then you might have an argument that you apply the rule of the last antecedent -- right? -- it just modifies a different offense. And the kinds of cases where that --

THE COURT: And that's the defense's argument?

MR. PEARCE: That's the defense's argument.

And the kinds of cases where that is applied are typically things where you've got maybe a series of different things and then, at the end, you have got something that is identifiably different.

I mean, I think that is what's going on -- and this is, sort of, the second argument -- in the *Pritchett* case that is cited on the next page of the Scalia and Garner's book, the D.C. Circuit case where you are modi- -- having it attached to just the end of a list of things of, like, wardens and guards, and something, and then all of the --

THE COURT: And then it inserts the determiner "to" as opposed to the determiner "a" but --

MR. PEARCE: Well, it's comma, right?

I think the comma is -- you know, I think we have a much harder argument where we have got a comma, where we've got something -- I mean, here we have got a phrase that is not understandable without reading it all together.

You don't have "the same offense, or other offense that is not a petty offense." That, I think, we lose.

That, I think -- that is the rule of the last antecedent.

It's clear that Congress has intended to just have "that is not a petty offense" applied to a different offense -- right? -- but that's not the statute that is there.

The statute that is there is the same or different -- how do you break that apart? I think that the natural way to read that would be to say "that is not a petty offense" modifies the entire phrase.

And, for whatever it's worth, albeit not with a ton of analysis, that is what the only Court of Appeals to have considered this issue has decided, the *Posley* case. It just -- and I believe it's unquestionably -- as a matter of statutory authority, this is permissible.

All of the other cases that the defendant cites -- not in the filing last night, but earlier on -- that address that, it either states the general rule, which we all acknowledge, or it deals with the question that we were talking about earlier, which is how much time is too much to count as intermittent?

You know, that raises its own question; but that's fully distinct from whether on a continuous sentence and a probationary -- excuse me -- a sentence of continuous incarceration and probation are permissible for a petty offense.

THE COURT: Right. Well -- okay. So it still

makes me somewhat concerned that even though the government is politely responding -- although maybe it has no choice but -- to my request for analysis on this issue, I just wonder how fulsome the government's support is for the position it's articulating to the Court when -- in zero cases has the government proposed, where it is proposing or recommending a sentence of imprisonment, a period of probation for these petty offenses. You appreciate my puzzlement and concern about that?

MR. PEARCE: I think that's a fair question.

I mean -- and I think it circles back to something that we discussed earlier, which is this is an open question in this circuit and elsewhere. And so I think getting behind and fulsomely adopting something where there is admittedly some question -- I mean, we are not looking to take on challenging questions across the board. I think this is the right -- we think this is the right analysis; but, you know, we haven't recommended that here.

Again --

THE COURT: And so I just want to be clear that, even though in every single other criminal case where the government has asked for restitution and restitution has been awarded, where the government has also asked for a period of probation or supervision to ensure compliance with restitution payments, the government here is not making an

exception for January 6 defendants because you think these defendants are more trustworthy than every other criminal defendant where you have asked for a period of supervision or probation to ensure payment with restitution?

MR. PEARCE: No, absolutely not. It has nothing to do with an assessment of the trustworthiness or non-trustworthiness of the defendants.

I think it is probably fair to say that the amount of restitution perhaps comes into play when a defendant, like Mr. Griffith, is being held to a $500 restitution amount. I think that looks a lot different than a defendant who is being held to many multiples of that.

THE COURT: How about $2,000?

MR. PEARCE: $2,000, or it could go upwards --

THE COURT: But for $2,000 you are going to be in --

MR. PEARCE: You will be on supervised release, right?

THE COURT: -- you're going to be in -- excuse me. Don't interrupt me.

MR. PEARCE: I'm sorry.

THE COURT: -- you are going to be in a situation for felonies where you're asking for $2,000 where supervised release can be imposed?

MR. PEARCE: Correct.

THE COURT: Right.

All right. Well, this is an interesting sentencing situation where I have the government articulating a position that it is not recommending to be adopted on what the options are for penalties. And I have the defendant much more consistently arguing that only probation here is appropriate, while the government is insisting that a period of incarceration is required, and briefing up until midnight the night before the sentencing; when there is some lack of clarity, certainly in how much the government really supports the position it has articulated that a split sentence is allowable for a petty offense Class B misdemeanor.

I -- in all my years on the bench, I have never been in this position before. And it's all due to the government, despite calling this the crime of the century, resolving it with a Class B petty offense.

Is there anything else you want to add, Mr. Pearce?

MR. PEARCE: No, Your Honor.

THE COURT: Did the government's position on a split sentence being allowable for petty offenses -- was that developed prior to the offer of -- plea offers to Class B misdemeanors in the January 6th cases or was that a position that was developed in response to my request?

MR. PEARCE: As I mentioned, the government defended that position in *Posley* over a decade ago; but I am not aware of the government having taken that position elsewhere, either in this court or elsewhere.

THE COURT: And so if a split sentence is imposed in any of these cases, is the government going to stick to its position before the D.C. Circuit?

MR. PEARCE: I would expect so, Your Honor. We defend government positions.

If we were to lose at the D.C. Circuit, that would obviously involve, as Your Honor probably knows, internal deliberation as to whether to seek any further review; but this is the government's position, and we would defend it.

THE COURT: All right.

MR. PEARCE: Thank you.

THE COURT: Thank you.

Ms. Shaner.

MS. SHANER: Good afternoon, Your Honor.

THE COURT: Good afternoon.

Oh, my goodness. It has gotten -- time speeds along.

MS. SHANER: I am going to speak very briefly.

We are requesting that the Court grant United States' sentencing recommendation for a period of probation.

The defendant exhibited remorse immediately after he returned to his hotel after he watched the events; and he posted: Yes, we went in. We just made things worse.

Mr. Griffith is not a political activist. Mr. Griffith was not registered to vote in November, and, in fact, he did not vote for or support Trump. His demeanor on some of the videos, his exuberance, is, in part, based on his impulsivity, which is a result of his ADHD. His internet addiction, throughout his teen years and now, is also partially based on his ADHD.

According to the FBI reports on Mr. Griffith's internet use, he never, before January 6th or after, was on any political platform. According to the FBI, he was on Twitter, Facebook, Instagram, YouTube, Snapchat, and Pinterest; they were all canceled after he entered a plea.

He did post on TikTok, which is a creative social outlet. His post had minimal political content; and, in fact, in his trying to sell his game, he calls Trump "the Cheeto Mussolini."

Mr. Griffith was cooperative with --

THE COURT: Ms. Shaner, tell me about that game.

MS. SHANER: I'm sorry?

THE COURT: I said tell me about that game.

I mean, I have read some articles that the defendant has promoted that game, and that it involves

violence against democrats. I don't know. What is this game about?

MS. SHANER: It's not any different than any of the horrible internet video games that exist; the only difference is the monsters are Antifa or those considered left wing, and the superhero is Trump. And it was something that was developed years ago and is not completed.

And Jack tried, in July, to advertise it a little because the people who had invested were not getting any money back, and he just wanted to try to pay them back because he owed them money. And it was an impulsive act to post in July, which he called me about and was upset that he had done it afterwards. He was having a low period, and that's when he posted.

If the Court listens to the chatter, you hear him saying -- they're talking about Trump's voice and how cool it is. And he says -- refers to Trump as "the Cheeto Mussolini."

Mr. Griffith was arrested ten days after January 6th. He was cooperative with the FBI; he gave them his phone. He gave them the codes to get into the phone. He admitted, in his initial statement to the FBI, exactly what he had done. He said his actions, though they were nonviolent -- and he personally did not participate in any vandalism -- that his going in and his staying in there,

even though it was just for a couple of minutes, was stupid and wrong.

THE COURT: And what was the total number of minutes he was in the building?

MS. SHANER: I'm sorry, Your Honor. I didn't hear you.

THE COURT: What was the total number of minutes he was in the building?

MS. SHANER: I believe he was in there for under ten minutes; and he was just in the crypt area.

If the Court were to grant the recommendation of U.S. Probation and sentence him to probation with community service -- Mr. Griffith and I have been discussing what would be of greatest benefit for his community. He has worked in many food service places and restaurants; and he worked for years at Walmart, which is the biggest grocery distributor in Gallatin, Tennessee. He would like, if permitted by the Court and probation, to create a food bank in Gallatin where he could use his experiences in food service and in restaurants to help distribute food to individuals who are not getting enough food at this time.

He also indicated that there is limited access to libraries in Gallatin; and that he would be interested in putting together a collection and book redistribution for the teenagers in Gallatin.

His mother has come from Texas and is available to answer any questions the Court might have about the information I filed under seal, and Mr. Griffith is also prepared to come up and answer any questions or concerns of the Court.

THE COURT: Well, Ms. Shaner, let me just say, I mean, you wrote quite eloquently about all of the excuses for Mr. --

MS. SHANER: I'm sorry. I am not... okay.

THE COURT: You wrote quite eloquently about all the excuses for Mr. Griffith's conduct on January 6th. You call it "simply impulsive behavior," which you've repeated here.

You have talked about defendants you have represented for their conduct on January 6th and say that: None are informed intentional political actors and, on balance, they're vulnerable politically unsophisticated individuals. And you, sort of, suggest that, oh, my goodness, now with your reports that he is considering community service efforts he might undertake, you know, that he is a person who wants to give back to his community as opposed to attack the Capitol Building as part of a mob.

I -- I have to say this defendant, after he was arrested, made a number of comments that only confirmed his mindset when he came to D.C. on January 6th.

This is not a person who strikes me as somebody who was so uneducated or unsophisticated. I mean, he's got his high school degree. He went on to higher education. He intentionally made his way from Tennessee to D.C. on January 6th; and he described his action as: The calvary is coming. He said he wanted to storm the Capitol, which he then did.

So it was not impulsive conduct; and so it's hard for me to accept your description that this was "impulsive" as opposed to totally consistent with his plan, his intentional travel, and what he did when he got here.

And he evidenced the same mindset even after his arrest, in talking about a stolen presidential election in November 2020. So that mindset that motivated his conduct on January 6th is what has prompted the government to say that not just general deterrence, but specific deterrence for this defendant is required in this case.

So I -- you know, I have a hard time accepting that his conduct on January 6th was simply "impulsive" or "uninformed."

And I have to say, you know, there have been other January 6th defendants who, at the time of sentencing, have expressed remorse, that they have gained some civic literacy by reading books; and then, as soon as they're sentenced to a probationary period, they downplay their criminal conduct

on January 6th. Because, you know what, judges are just human; we can get played.

MS. SHANER: Your Honor --

THE COURT: But no one likes that.

MS. SHANER: I don't blame you.

I assume you are referring to Anna Lloyd who went on Laura Ingraham.

THE COURT: That is precisely what I am talking about.

MS. SHANER: The day she did that she contacted counsel and sent a letter to counsel to give to Judge Lamberth. She was played by Laura Ingraham.

Laura Ingraham asked her all of the questions that Judge Lamberth had asked her about what she saw and what she personally did.

Laura Ingraham asked her 40, 50 questions. She was able to say no, she didn't see any specific act of violence; but then she learned about it. She didn't see any specific acts of vandalism, but then she learned about it. She also talked about counsel and what I had advised her. She also talked about the books she read. She also talked about her genuine remorse and why she cried in front of Judge Lamberth.

Laura Ingraham, on air, then asked her four questions without any follow-ups. Did you participate in

any acts of violence? No.

Did you break anything? No.

Did you personally see any vandalism? Not at the time.

Did you personally commit -- see any acts of violence? Not at the time.

Then she asked her about books. And when she started to say that the books were good and educational, she cut her off and ended the interview.

It wasn't a lack of remorse; it was her stupidity to go on that forum. And if the Court wants, I can send the Court the letter that she wrote immediately after she was played by Laura Ingraham.

Many forums have asked her to go on and explain that; she was just so overwhelmed by what happened and with the social media feeding on her that she did not want to be interviewed.

I can tell you that during that time period I was getting lots of hostile telephone calls from the far right for brainwashing my clients.

I also got a telephone call from a librarian, in Florida who wanted to give me additional books to give my clients. That librarian reached out to Ms. Lloyd and sent her a packet of ten books, which Ms. Lloyd did not open initially because she was afraid it contained a bomb because

she was getting a lot of hate mail.

When she verified that it was from a librarian she opened it, and she has formed a relationship with that librarian in Florida. She has read the books.

She also completed her 120 hours of community service within a month. She also paid her restitution within a month. She was played. And the only reason I did not -- she didn't want to go back on the air and correct what happened to her on air.

I have spoken to Mr. Feuer at the *New York Times*, and he wants to interview her; but it's all too raw for her right now, and she does not want to be interviewed.

Several of my clients who have expressed remorse have been interviewed by the FBI and are being interviewed by the house committee. Ms. Lloyd at this time does not want to because it's too upsetting to her.

My other clients are; Mr. Griffith would make himself available.

I believed Ms. Lloyd was generally remorseful. I was shocked when the government sent me the video on FOX. I was angry. I felt humiliated. I felt betrayed. And then, after I talked to her, I realized that it is very difficult for an individual to appear on FOX News or even on the other networks where they are really less interested in the truth than they are interested in creating sensation and

entertainment.

All of the media reached out to me to be on there. And it's -- unless you can control what happens to you when you go on social media, and especially on TV, it's not a good idea, even for someone who is very smart and thinks they know what they're doing. And, certainly, for Anna Lloyd it was a stupid, horrible idea.

So that's what happened.

THE COURT: Thank you.

If you don't mind, I will send these pages of the transcript to Judge Lamberth.

MS. SHANER: That's fine. And I can also send Judge Lamberth her letter; I just haven't because he never questioned it since it occurred.

THE COURT: All right. Is there anything further?

MS. SHANER: No, Your Honor. Thank you.

THE COURT: Okay. Mr. Griffith, this is your opportunity to speak directly to me if you wish, and you can stand up at the podium.

THE DEFENDANT: Yes, Your Honor. Thank you.

I would like just to, if I may, read some of this letter I wrote because I think it's a good outline and, if you would, ask me some questions or anything like that.

Your Honor, I write this letter as a response to the government request for incarceration.

I recognize truly that many of the points the prosecutor made are fair and valid, and the perception that I was not remorseful --

THE COURT: Can you just slow down just a little bit, Mr. Griffith, because I have a court reporter --

THE DEFENDANT: Okay. I'm sorry about that.

THE COURT: -- who needs to take down everything that you say.

THE DEFENDANT: Yes, ma'am. Okay.

I honestly never planned on doing anything extreme or even of entering the building.

As ridiculous as it may sound, it was more of a celebration because the people were thinking that maybe one member of Congress and one member of the Senate would get together and they would object to a stay (sic), and would go into four hours of debate.

Our actions on that day flew in the face of the entire plan, and I do accept responsibility for entering that building. I should have never been in there. I should have never entered that building. But I did not plan on ever going inside of, illegally, any government building. I did not go to D.C. to participate in any violence or vandalism --

THE COURT: Slow down.

THE DEFENDANT: Yes, ma'am. Sorry.

THE COURT: That's all right.

THE DEFENDANT: -- and I disavow 100 percent, in the strongest degree, all those people who committed any acts of violence.

I want to distinguish myself from them; and every time I speak out publicly, I do, and I do not think it's okay. And I won't go on any news station that interviews me -- if they do -- if I go anywhere, I will not be misquoted because I will be clear and direct in my complete disavowment (sic) of all of those violent actions, and even in going inside the building. And I know it was a mistake, and I will never do anything like that again.

I'm sorry. Let me get back to this.

I did not realize just how scared and in danger the Capitol Police were that day. While I was inside the building, the Capitol Police seemed very friendly. And I was under the impression that our presence was only a minor inconvenience which was, of course, wrong. Looking back on the day, I realize that they were, in fact, crippled by fear and wildly outnumbered and probably just acting like that to appease us.

I realize that my behavior on January 6th was incredibly impulsive and completely inappropriate, and wrong. Although I may not have personally participated in any violence or vandalism, the fact that I can be smiling

and gleeful and cheering on as our republic is under attack is truly disgraceful.

I am ashamed of the way that I acted, Your Honor; the behavior was unbecoming, and totally unacceptable from someone who is known as being such a positive person in my community.

I should have never been there that day; and as time passed, the gravity of the situation sunk in. I realize that I needed to take a huge step from politics. After months of working constant overtime just to make ends meet after losing my job, I finally got a job that I really like. It also pays a lot more per hour, so I no longer have to work so much just to pay rent. I just beat my eviction, thank God.

Things are starting to look up in my life. I now have time to think and reflect. I only eat healthy foods; I run at least six miles daily. I am much more focused on improving myself, my personal goals, instead of being so obsessed with politics.

My mind used to be muddied, cluttered by extremist politics. I feel free now, more free to focus on my own hopes and dreams as a musician and entertainer, a game developer, et cetera.

With some mercy from the Court, I hope to keep my newfound freedom. On top of that, I found someone who I

believe to be the love of my life. Although our bond is new, we have been there for each other through a lot of difficulties. I can't say I have ever felt this way about someone else. I know that's digressing, but she inspires me. She keeps me grounded, and she is not that into politics; so I kind of needed that safe space.

I know that due to my demeanor and my upbeat personality that it seems as though I don't take things as seriously as I should, but I truly do. I have always been known as being the most positive person in the room, someone that will do anything to make someone else smile. I was also always the peacemaker in my family.

And I would just like to say that I beg mercy from the Court, and I do accept responsibility for my actions; and I have learned my lessons, I truly have.

Even from the beginning, I will admit that maybe I was acting a little bit arrogant in the beginning; I will concede that. And it took a lot to learn just, like, from the beginning. My ex, she said goodbye because she didn't want to deal with that behavior; and I can't say that I blame her.

And without my presence and the presence of thousands of others, I know that there would not have been an attempted coup; and I know I added on to that, and I apologize for doing so. I know that people were watching

around the world in terror as it happened.

Not only have I learned my lessons, but I am grateful to have learned these lessons, Your Honor. And I am ashamed, in part, that my personal growth has come at the expense of others and had partly put our country in danger. But I am glad that I have learned my lessons. I have grown and matured as a person.

THE COURT: But Mr. Griffith, let me interrupt you for a second. You say you have learned some lessons.

So, tell me, what are the lessons you have learned from this experience? Because I will tell you, your post-arrest statements continuing to talk about this great lie that the 2020 presidential election was stolen suggests that you still believe that conspiracy theory. So what are the lessons, actually, that you have learned?

THE DEFENDANT: Your Honor, I have not been posting anything similar to that in a while. And I will say that regardless of what anybody did or doesn't believe, it is never, in any situation, appropriate to act in the way that I behaved. Regardless of how you personally feel about the situation; and violence is never appropriate in political discourse, and I completely disavow (sic) that.

And even for some of the people that still believe in that, it doesn't matter what you believe because those actions were not appropriate on that day. And I know, Your

Honor, that I should have never been there; and I know I should have not entered that building.

And I did not truly realize the ramifications of everything because, when I was inside the building, the police officers were close to us, they're talking with us; they were giving people directions back to the place.

So, Your Honor, when I got back to my Airbnb in Washington, D.C., I put my own pictures up on my own social media, on my Facebook. I had no idea what -- the full level of everything that happened. And then the next day I woke up and I found out that people died, people got killed, people got hurt.

Your Honor, I had no idea it was that deep. I saw tear gas; I heard alarms blaring. But I did not know the level of violence that was there; I did not. Had I known, I would never have put my pictures up because I would have never wanted to be associated with such chaotic behavior.

THE COURT: All right. You may continue.

THE DEFENDANT: Thank you, Your Honor.

I am not a violent person, Your Honor; and I do not feel like I am a danger to society. I will never do anything remotely -- of course -- to my actions on January 6th, and I do not think that those actions were okay.

And to someone who has just finally started to get

their life together, I beg to be spared from the cold lonely nights in a prison cell.

THE COURT: All right.

THE DEFENDANT: Thank you, Your Honor.

THE COURT: Thank you, Mr. Griffith. It's not always easy for defendants who are not accustomed to public speaking to stand up in court and talk.

THE DEFENDANT: Yes, ma'am. I usually like public speaking; but this is really hard, so...

THE COURT: All right. So, Ms. Shaner, do you want to stand up with your client?

All right. I am going to explain the sentence I am about to impose, and then impose sentence in this case.

After considering the voluminous sentencing memoranda, the presentence investigation report, the probation department's sentencing recommendation, hearing argument, I must now consider the relevant factors set out by Congress in 18 U.S.C. Section 3553(a) to ensure that I impose a sentence sufficient, but not greater than necessary, to comply with the purposes of sentencing.

These purposes include the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense. The sentence should also deter criminal conduct, protect the public from future crimes by you,

Mr. Griffith, and promote rehabilitation.

Pursuant to 18 U.S.C. Section 3553(a), I must consider specifically the nature and circumstances of the offense; your history and characteristics, Mr. Griffith; the types of sentences available; and the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct, and the need to provide restitution to any victims of the offense.

I will begin with the restitution amount owed by this defendant. As we have discussed with the government during the course of this hearing, given that the statute of conviction is not covered by the two general restitution statutes codified at 18 U.S.C. Sections 3663 and 3663(a), the Court has no authority to determine any restitution amount, and is limited by what the government has agreed to in the plea agreement.

As I discussed earlier, the plea agreement provides for a restitution judgment of $500, which this Court will order pursuant to 18 U.S.C. Section 3663(a)(3).

Regarding the nature and circumstances of the offense, I want to begin by correcting the view expressed in codefendant Torrens' sentencing memo which this defendant has adopted with the Court's permission.

In the codefendant's memo it states that, quote:

The courts sentence the offender, not the offense. Ms. Shaner, I don't know if you actually agree with every sentence in the motions you have adopted, but let me just make clear that that statement makes a clever quip but is fundamentally flawed.

While sentencing must be particularized to each defendant, Congress has mandated that the court must consider the nature and circumstances of the offense, as well as ensure that the sentence imposed sufficiently reflects the seriousness of the offense, promotes respect for the law, and provides just punishment for the offense.

Among other relevant factors under Section 3553(a), these statutory directives make it a must that a sentencing court consider far more than just the specific history and characteristics of the individual defendant standing before the Court.

At sentencing, the seriousness of the offense conduct and the harm it caused must be considered. Which brings me to the statute of conviction here, the Class B petty offense misdemeanor of parading, demonstrating, or picketing in a Capitol Building, in violation of 40 U.S.C. Section 5104(e)(2)(G).

As the government has conceded during our questions, this is an offense that is more typically charged against nonviolent protesters who may attempt to interrupt a

congressional hearing, who get off with a $50 ticket, never -- some of them never even appearing in court; but this is the charge the government chose to resolve this case. But though this offense is classified as a "petty offense," the nature and circumstances of the offense conduct on January 6th are far more serious than its petty offense status would suggest.

Among the consequences of the government's choice to resolve this case with a Class B misdemeanor petty offense is that the government has essentially tied the sentencing judge's hands on restitution, has essentially tied the judge's hands on clear sentencing options that are normally available to the Court in dealing with federal felony offenses or even Class A misdemeanors.

So what does the government say about the offense conduct in this case? I have already repeated -- I won't repeat entirely all of the scorching language the government uses to describe the Capitol attack on January 6th: Chaotic, dangerous, attack on democracy, criminal offense unparalleled in American history, representing a grave threat to our democratic norms; frankly -- truthfully, one of the only times in our history when the Capitol Building was literally occupied by hostile participants; blatant, appalling disregard for our institutions of government; orderly administration of the democratic process; and then,

as I pointed out in the questioning, the government goes on in its sentencing memo to call the defendant and others in the mob who entered -- not just went through the security perimeter outside the Capitol Building, but went further. They went into the Capitol Building as trespassers engaged in picketing, parading, and demonstrating in the Capitol that turned disorderly.

This is a muddled approach by the government. And no wonder, in the same sentencing memo that the government has presented in this case and in many others, that it calls people who entered the Capitol trespassers at the same time it's using this scorching strong language to describe what happened -- no wonder parts of the public in the United States are confused about whether what happened on January 6th at the Capitol was simply a petty offense of trespassing with some disorderliness or shocking criminal conduct that represented a grave threat to our democratic norms. No wonder.

Having watched every video submitted by the government in connection with charges brought against multiple defendants, in connection with January 6th, and all of the cases presented to me, let me make my view clear.

The rioters attacking the Capitol on January 6th were not mere trespassers engaging in protected First Amendment conduct or protest; they were not merely

disorderly. As countless videos show, the mob that attacked the Capitol was violent. Everyone participating in the mob contributed to that violence. To his credit, Mr. Griffith appears to recognize that fact.

Isn't that right, Mr. Griffith?

THE DEFENDANT: Yes, Your Honor.

THE COURT: By their sheer numbers, their intentional focus on getting inside the Capitol Building -- Mr. Griffith didn't, but others used physical force, chemical sprays, any type of object they could get their hands on or brought, to push past police lines, through smashed doors and windows, with alarms blaring in the background; tear gas being circulated both by the mob and by law enforcement trying to defend the Capitol.

And the results were pretty dire for the people inside -- I mean, the Vice President, members of Congress being evacuated, staffers hiding under desks behind locked doors -- because they were terrorized.

This caused significant damage to our faith that no matter our political party or views about what is best for this country that we, as Americans, believe in the constitutional process of a peaceful transition of power after an election. The damage to the reputation of our democracy which is usually held up around the world -- but that reputation suffered because of January 6th.

But I go back to this defendant's own words; he posted them on Facebook on January 12th, after January 6th, where he said he helped storm the Capitol; he proudly said that. He tried to "stop the steal" by forcing lawmakers to do the right thing, in his view. And then, even after he was arrested in July 2021, Mr. Griffith posted a video on TikTok in which he stated: We know they stole the election, but we are going to take our country back. Those are beginning to be fighting words that's chilling to those of us who watched unfold the Capitol attack on January 6th.

This was plainly this defendant's mindset on January 6th when he stormed the Capitol to interfere with the democratic process and prevent the peaceful transition of power on that day. In his own words, he said: It felt like a giant party.

Mr. Griffith says he grew up as a military brat which gave him the privilege of traveling around the world, and he says this experience showed him that the freedoms he has here do not exist everywhere in the world; and he also says that he has an abiding love for this country.

Well, Mr. Griffith, I am an army brat too. And I have to say it has been a privilege living on military bases around the world; and I do find your words so difficult to reconcile with your actions on January 6th. I mean, it's just inconceivable to me that an army brat would participate

in that.

You approached the Capitol as part of a mob. You saw the crowd attacking law enforcement. You entered the Capitol through a door that had been broken in; there was broken glass; there were alarms blaring; and then you celebrated those actions. You smiled. You took videos. You screamed in excitement with your codefendant. There are photos of you showing your fist raised while inside the Capitol and waving an American flag. You did take advantage that the opportunity the mob presented to overwhelm the police lines and enter the Capitol -- this is no mere trespass. This is no mere peaceful or disorderly protest. This facilitated a riot that did end up disrupting the electoral count vote.

The circumstances and the nature of this offense conduct and the need for the sentence to reflect the seriousness of this offense conduct and promote respect for the law is -- makes the government's recommendation of a custodial sentence not unreasonable; but there are other factors I have to consider too.

Regarding your history and your characteristics, you have no criminal history. You have earned your high school diploma, as I have mentioned before. You have taken college courses. You have a steady history of employment; and you have a good job, it sounds like, now.

So it's hard to reconcile that also with enjoying the fruits of life in America and to our democracy with an embrace of specious theories that are being used to delegitimize our country's democratic elections; and it's those theories which led to your actions and the others -- members of the mob -- on January 6th.

And I just want to be clear, as Mr. Griffith said actually quite articulately, this has nothing to do with your own political beliefs or even if you still believe -- despite all of the evidence to the contrary -- that the 2020 presidential election was somehow stolen, to quote you.

You can believe what you want; you can say what you believe. But what you say, in the context of the conduct on January 6th, also provides a window into your mindset that day. And given the fact that that mindset led you to engage in criminal conduct on January 6th, it also provides important clues to this Court as to the need for general and specific deterrence to stop such criminal conduct from occurring again. And, for that, I do look at everything that you have said to give me a clue as to your mindset, starting with your comments on January 12th, two weeks after the Capitol attack, lamenting the failure of the mob to stop the peaceful transfer of power.

Even now, you know, in your letter to the Court you say you stood on the steps outside the Capitol doors

thinking that you were participating in a peaceful protest and you claim you didn't witness any serious violence or injuries or any destruction; but the statement of facts, in connection with the plea, indicates that you observed members of the crowd attacking law enforcement repeatedly as they tried to keep the crowd away from the building.

You entered the door that was broken, with glass on the floor; you heard alarms blaring. This is not an impulsive act; you knew you were not supposed to be there.

You were chanting in one video, Exhibit 2, with you and your codefendants milling around the Capitol stairs and chanting while the cops deployed tear gas in the background.

Another video I have already mentioned, Exhibit 3, showing you smiling and waving as someone yells: Help break the doors.

Another video shows you entering the Capitol Building through this door with the splintered and broken glass.

You were not a good guy or a patriot on January 6th. I think -- what you have indicated in your statement to me here today and in your letter to the Court -- you recognize now that what you did was engage in criminal conduct.

I was concerned when you posted a video blaming

the media for your actions, saying: If it wasn't for the fake media, mainstream media, denying all the evidence, gaslighting us, people would not have even felt the need to go down there, with myself included; suggesting -- that was in a video, Exhibit 11 -- trying to blame somebody else, other people, the media, for your actions on January 6th.

You are not a lemming, Mr. Griffith; you can think for yourself. You don't -- I mean, you have to be accountable and take responsibility for your own actions. Don't blame the media.

THE DEFENDANT: I do, Your Honor.

THE COURT: Some of these clues and windows into the mindset of Mr. Griffith do raise a red flag about the need for deterrence.

The defendant's sentencing memo paints him as someone who was manipulated by others, particularly by content on social media, saying he was a pawn. One of the vulnerable individuals identified and persuaded through the internet that it was their patriotic duty to come to Washington to support former President Trump; and the defendant has clearly had a problem getting caught up in conspiracy theories and extremist conduct. But to call him a "pawn," to my mind, minimizes the intentionality of his conduct on January 6th and after January 6th where he was -- minimized his culpability and seemed to be proud of what had

happened or in his role in it on January 6th, and regretful that it had not been more successful. God forbid if it had been more successful.

It is clear -- I think as the defendant says he now understands -- that it is not a minor inconvenience to law enforcement tasked with protecting the Capitol Building to have a mob persist in jumping over barriers, removing barriers, climbing, breaking doors to get in.

It's not a minor inconvenience for police officers inside the Capitol Building to try and funnel the mob, angry as it was, shouting -- not this defendant, but others -- treason. Where are the members of Congress? Where is the Vice President? It's not a minor inconvenience for the Capitol Police to try and manage that mob and get them away from members of Congress, the Vice President, and members of the staff. None of that was a minor inconvenience.

The need for the sentence imposed to deter criminal behavior and protect the public from further crimes of the defendant are critical considerations for every sentencing judge. And the seriousness of the criminal conduct we witnessed on January 6th only highlights the need for deterrence in the form of a sufficient sentence to deter the defendant and others from engaging in this kind of conduct in the future. And it's hard to tell, Mr. Griffith, whether your remorse expressed today is going to stick or

whether it is a serious moment because you are awaiting sentencing.

THE DEFENDANT: Your Honor, may I say something?

THE COURT: Yes.

THE DEFENDANT: I just wanted to say that I never wanted it to be successful in that way. I never wanted it -- on that day -- even that day, what I thought was going to happen was when one member of Congress and one member of the Senate gets together and goes to four hours of debate; that's what I thought was going to happen on that day.

I never even wanted anything violent to happen. I just wanted to say I never wanted that to be successful. I don't believe in that; that was not the right thing to do.

THE COURT: But you understand that deterrence is something that this Court has to be concerned about?

THE DEFENDANT: I do, Your Honor.

THE COURT: Deterrence that other people won't think that every time the person they voted for in any election, presidential or school board, doesn't win, that they have recourse to gather in a mob to try and change the course of that election.

Deterrence is so much more critically important here because the peaceful transition of power, in every election we have, is part of our social contract set up in the structure of our Constitution, allowing for free and

fair elections; that's how we give elected officials a legitimate mandate to exercise their authority over the rest of us.

The January 6th mob, of which you were a part, demanded a transfer of authority by force basically, even if you personally didn't participate in force.

It is each branch's coequal responsibility to safeguard the rights and liberties promised in our Constitution. And when determining what sentence to impose here, the importance of deterring future malcontents from attacking the legitimate structures and proceedings this country has set up to protect those rights and liberties, weighs heavily in this Court's considerations.

Regarding the types of sentences available, under a petty offense Class B misdemeanor, you are subject to a maximum term of imprisonment of six months. There is no supervised release available for petty offenses which are defined in 18 U.S.C. Section 19, pursuant to 18 U.S.C. Section 3583(b)(3); but you are subject to 5 years' probation for a Class B misdemeanor, pursuant to 18 U.S.C. Section 3561(c)(2).

The real question here that the government has expressed its position to this Court on is that this Court has available to it, under 18 U.S.C. Section 3561(a)(3), the option of both a term of probation and a term of

incarceration.

But, as the government says, it hasn't offered that position to any other judge on this Court; it hasn't taken that position anywhere else in the country apparently, other than in a Fourth Circuit case from a decade ago; and it certainly hasn't taken that position in practice in all of the Class B misdemeanor cases in this court where it has offered -- recommended -- when it has recommended a prison term; only the prison term, and no probationary period. Quite an abnormal occurrence in a case where the government is also seeking restitution; and it is the probation office that normally, during a probationary supervised release period, is responsible for monitoring compliance with that. I am not sure how this Court would do that because I am not a probation officer; I don't do what they do.

Nevertheless, the government has recommended a term of three months' incarceration here for a defendant who didn't physically harm anybody, who didn't physically damage anything in the building, who was in the Capitol Building about ten minutes --

Is that right, Mr. Griffith?

THE DEFENDANT: Yes, ma'am. It was a little bit under --

THE COURT: About ten minutes.

-- and when the government has, in other contexts,

only recommended a period of probation.

It is an important factor, in Section 3553(a)(6), that the Court consider the need to avoid unwarranted sentencing disparities. And the government, while recommending 3 months' incarceration here, says that there are some differences in this case that make it different from those cases where it has recommended a period of probation, mostly because the defendant made statements after January 6th.

I do think that the message should be clear, that defendants who join a mob to aggressively breach police lines and barriers to break into the Capitol, to stop the Vice President and a joint session of Congress from doing their constitutionally mandated duty of certifying a presidential election, are not trespassers; they are criminals. But as with any criminal defendant, whether jail time is warranted turns on a consideration of all of the factors set out in Section 3553(a); and I do agree with the government that a probationary sentence should not become the default. But at the same time, given the government's prior recommendations of probation in circumstances with defendants similarly situated, I am going to impose a probationary sentence here.

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

Pursuant to the Sentencing Reform Act of 1984, and in consideration of the provisions of 18 U.S.C. Section 3553, it is the judgment of the Court that you, Jack Jesse Griffith, are hereby sentenced to a term of 36 months, which is 3 years, of probation as to Count 5 of the indictment.

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

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

The mandatory conditions include: One, you must not commit another federal, state, or local crime; two, you must not unlawfully possess a controlled substance; three, you must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of placement on supervision, and at least two periodic drug tests thereafter as determined by the Court. Four, you must make restitution in accordance with your plea agreement in 18 U.S.C. Section 3663.

The Court authorities supervision and jurisdiction of this case to be transferred to the U.S. District Court for the Middle District of Tennessee.

You shall comply with the following special

conditions: You are ordered to make restitution to the Architect of the Capitol in the amount of $500. The Court determines you do not have the ability to pay interest and, therefore, waives any interest or penalties that may accrue on the balance. You must pay the balance of any restitution owed at a rate of no less than $25 each month.

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

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows: Payment in equal monthly installments of $25 over a period of 20 months to commence after the date of this judgment, with payments suspended for the period that defendant is in the custody of the Bureau of Prisons.

You must provide the probation officer access to any requested financial information, and authorize the release of any financial information until the restitution obligation is paid in full. The probation office may share financial information with the U.S. Attorney's Office. You must not incur new credit charges or open additional lines of credit without the approval of the probation officer.

You must submit your computers, as defined in

18 U.S.C. Section 1030(e)(1), or other electronic communication or data storage devices or media, to a search. You must warn any other people who use these computers or devices capable of accessing the internet that the devices may be subject to searches pursuant to this condition. A probation officer may conduct a search pursuant to this condition only when reasonable suspicion exists that there is a violation of a condition of supervision, and that the computer or device contains evidence of this violation. Any search will be conducted at a reasonable time and in a reasonable manner.

You must allow the probation officer to install computer monitoring software on any computer, as defined in 18 U.S.C. Section 1030(e)(1), you use. And to ensure compliance with the computer monitoring condition, you must allow the probation officer to conduct initial and periodic unannounced searches of any computers, as defined in 18 U.S.C. Section 1030(e)(1), subject to computer monitoring.

These searches shall be conducted to determine whether the computer contains any prohibited data prior to installation of the monitoring software, whether the monitoring software is functioning effectively after its installation, and whether there have been attempts to circumvent the monitoring software after its installation.

You must warn any other people who use these computers that the computers may be subject to searches pursuant to this condition.

You should not access, view, or use any online social media, chat services, blogs, instant messages, SMS, MMS, digital photos, video sharing websites, emails, or other interactive online or electronic communication applications or sites without the approval of the probation officer.

Restitution -- I am just looking for something here.

Restitution payments shall be made to the Clerk of the Court for the United States District Court, District of Columbia, for disbursement to the following victim: Victim name, Architect of the Capitol; amount of the loss, $500. Send it to the Office of the Chief Financial Officer; attention Kathy Sherrill, CPA --

I need to find something.

-- Ford House Office Building, Room H2-205B, Washington, D.C. 20515.

The Court finds you do not have the ability to pay a fine and, therefore, waives imposition of a fine in this case.

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

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

The probation office shall release the presentence investigation report to all appropriate agencies, which includes the U.S. Probation Office in the approved district of residence in order to execute the sentence of the Court. Treatment agencies shall return the presentence report to the probation office upon the defendant's completion or termination from treatment.

The defendant shall also be subject, as a special condition of probation, to 90 days of home detention. Under all of the terms that are normally applicable to home detention, he shall only leave his home -- I am trying to find that document -- he shall only leave his home for purposes of work, religious services, or medical services.

Pursuant to 18 U.S.C. Section 3742, you have a right to appeal the sentence imposed by this Court if the period of imprisonment is longer than the statutory maximum or the sentence departs upward from the applicable sentencing guideline range. If you choose to appeal, you must file any appeal within 14 days after the Court enters judgment.

As defined in 28 U.S.C. Section 2255, you also have the right to challenge the conviction entered or

sentence imposed if new and currently unavailable information becomes available to you or on a claim that you received ineffective assistance of counsel in entering a plea of guilty to the offense of conviction, or in connection with sentencing. If you are unable to afford the cost of an appeal, you may request permission from the Court to file an appeal without cost to you.

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

MS. CARTER: No, Your Honor.

THE COURT: And for the defense?

MS. SHANER: No, Your Honor.

THE COURT: Okay. You may be seated.

Does the government have a motion to dismiss open counts of the indictment against this defendant?

MS. CARTER: Yes, Your Honor.

With regard to counts -- I believe it's 2, 3, and 4, with regards to Mr. -- may I?

Court's indulgence.

THE COURT: It is 2, 3, and 4.

MS. CARTER: Yes, Your Honor.

With regards to Mr. Griffith, the government moves to dismiss those --

THE COURT: Okay. That motion is granted.

All right. Anything further today from the government?

MS. CARTER: No, Your Honor. Thank you.

THE COURT: Anything further? Yes.

I know I did not use your formal language for the location monitoring. What would you like to correct? Because I can't -- I couldn't find that document.

MR. WALTERS: Typically, in a location monitoring case, we would usually put the equipment on them directly here immediately. Because he is going to be going back to Tennessee, I would just ask your permission to allow a little leeway for them -- for him to get settled, to get his officer there in Tennessee before the equipment is put on --

THE COURT: Yes.

MR. WALTERS: -- so it would probably be the first of next week.

THE COURT: Yes. I am going to sign off on the transfer order today, and so they'll take care of doing that.

MR. WALTERS: Thank you. Yes, ma'am.

THE COURT: All right. Thank you.

If there is nothing further, you are all excused.

(Whereupon, the proceeding concludes, 1:29 p.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 30th day of October, 2021.

/s/ Elizabeth Saint-Loth, RPR, FCRR

Official Court Reporter

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