

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	.	
	.	
Plaintiff,	.	CR No. 21-0054 (TSC)
	.	
v.	.	
	.	
MATTHEW CARL MAZZOCCO,	.	Washington, D.C.
	.	Monday, October 4, 2021
Defendant.	.	10:05 a.m.
.	

TRANSCRIPT OF SENTENCING
BEFORE THE HONORABLE TANYA S. CHUTKAN
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government:	KIMBERLEY C. NIELSEN, AUSA U.S. Attorney's Office 555 Fourth Street NW Washington, DC 20530 (202) 252-7566
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For the Defendant:	ROBBIE L. WARD, ESQ. 530 Lexington Avenue San Antonio, TX 78215 (210) 758-2200
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Court Reporter:	BRYAN A. WAYNE, RPR, CRR U.S. Courthouse, Room 4704-A 333 Constitution Avenue NW Washington, DC 20001 (202) 354-3186
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Proceedings reported by stenotype shorthand.
Transcript produced by computer-aided transcription

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P R O C E E D I N G S

(Via Videoconference)

THE DEPUTY CLERK: Your Honor, we have Criminal Action 21-54, United States of America versus Matthew Mazzocco. We have Ms. Kimberley Nielsen representing the government, we have Ms. Robbie Ward representing Mr. Mazzocco, we have Mr. John Copes representing Pretrial Services appearing by telephone, and we also have Ms. Kelli Willett representing Probation appearing by video. In other words, all parties are appearing by video with the exception of the Pretrial Services officer.

THE COURT: All right. Good morning, everyone.

Mr. Mazzocco, can you hear me, and Ms. Ward?

THE DEFENDANT: Yes, Your Honor.

MS. WARD: Yes, Your Honor.

THE COURT: All right. And, Mr. Copes, thank you for being here. I didn't get a Pretrial Services report, but I assume the defendant is in compliance with his release?

PRETRIAL OFFICER: Yes, Your Honor.

THE COURT: Mr. Copes, I know you're very, very busy, so if you need to get off, I won't require you to stay for the remainder of this hearing unless you want to. But thank you for being on this call this morning.

PRETRIAL OFFICER: Thank you, Your Honor.

THE COURT: Before we go any further, let me just

1 ask the parties if they have any objection to proceeding by
2 videoconference pursuant to the CARES Act given the current
3 global pandemic. Ms. Ward?

4 MS. WARD: No objection, Your Honor.

5 THE COURT: Ms. Nielsen?

6 MS. NIELSEN: No objection, Your Honor.

7 THE COURT: All right. So we are here this morning
8 for the sentencing of the defendant, Matthew Carl Mazzocco,
9 who has pleaded guilty to Parading, Demonstrating, or Picketing
10 in a Capitol Building, in violation of Title 40 § 5104(e)(2)(G)
11 of United States Code.

12 Ms. Ward, am I pronouncing your client's name right?
13 Is it Mazzocco?

14 THE DEFENDANT: Yes.

15 MS. WARD: Yes, Your Honor.

16 THE COURT: All right. Just a reminder to anyone
17 who is participating or calling in to this hearing, it is
18 strictly prohibited by federal and local court rules to record
19 any portion of the proceeding or to take screenshots or any
20 other photographs of the proceedings. So no recording, no
21 photographs. There's a transcript. You can order the
22 transcript if you need.

23 All right. So in preparation for the sentencing today,
24 I've received and reviewed the presentence report and sentencing
25 recommendation from the probation department and the following

1 documents that were submitted by counsel in advance of
2 the hearing: I've reviewed the plea agreement signed by
3 Mr. Mazzocco -- Oh. One question. I noticed in the defendant's
4 memorandum in aid of sentencing, why was that filed under seal?

5 MS. WARD: Your Honor, we attached several letters.
6 And throughout the course of this, although -- like you just
7 mentioned, nothing should be recorded and all of that, during
8 his initial appearance, unfortunately, the media did not listen
9 and took a picture of him.

10 THE COURT: Was the photograph taken during a hearing?

11 MS. WARD: Yes. During his federal initial appearance
12 in front of a magistrate.

13 THE COURT: Did you report that to the magistrate
14 judge?

15 MS. WARD: I did, and he contacted that reporter.
16 But, unfortunately, someone else picked it up, and someone
17 else picked it up. And now if you -- you can still find it
18 online, frankly.

19 THE COURT: Well, Ms. Ward, you didn't file a motion
20 to file these documents under seal. There's a presumption that
21 all documents filed on the public court docket are public, and
22 there has to be a motion to file a document under seal. I don't
23 recall receiving a motion.

24 MS. WARD: We did get permission. We talked to Mr.
25 -- my assistant, I think, to Mr. Bradley, and he said we had

1 to get -- maybe we thought that it was with Ms. Nielsen.

2 THE COURT: Okay. Mr. Bradley's sitting here shaking
3 his head. Mr. Bradley can't give permission. Documents are
4 filed under seal only after I grant permission for them to be
5 filed under seal. The government did not file its sentencing
6 memorandum under seal. These cases are a public record.

7 There may be information in the letters that is sensitive
8 and confidential or pertains to matters of a health nature, but
9 you can't seal documents without the permission of the Court and
10 without showing good reason to have them sealed. There's a
11 presumption of documents being open to the public. They're
12 on public record.

13 And not only did you file under seal the supporting
14 letters, you filed under seal your own sentencing memorandum,
15 and I'm going to unseal those documents and order you, if you
16 want to file them under seal, to file a motion. I won't unseal
17 the letters.

18 MS. WARD: Okay.

19 THE COURT: I'm unsealing the sentencing memorandum,
20 and if you want anything in that memorandum redacted, or if you
21 want -- and I'm going to give you a week to file a motion to
22 file those supporting letters under seal and provide me with
23 redacted versions of the letters that can go on the public
24 docket. There's a way we do things. If you file a motion, file
25 it under seal, you have to file on the public record redacted

1 versions of the document. None of that has been done.

2 But I'm not placing your entire sentencing package
3 under seal. The public has a right to access these documents,
4 especially in these cases. The government's sentencing
5 memorandum is not filed under seal, and there's nothing in
6 your sentencing memorandum that warrants sealing under the
7 criteria that I apply for sealing. So I'm going to unseal
8 that sentencing memorandum.

9 MS. WARD: And I'll file the redacted one, Your Honor.

10 THE COURT: Well, and you have to file a motion
11 for whatever you're seeking to seal, and you have to get the
12 government -- you know, you have to say whether that motion is
13 opposed or unopposed. So you need to meet and confer with the
14 government to see if they have any objection, and you need to
15 provide me with a redacted version of whatever document you seek
16 to seal that can go on the public record. That is how we do
17 things here. And it has to be with permission of the Court.

18 All right. So I've reviewed and received the following
19 documents: the plea agreement signed by Mr. Mazzocco, the
20 statement of offense signed by Mr. Mazzocco, the government's
21 sentencing memorandum, Mr. Mazzocco's sentencing memorandum,
22 and appended to his sentencing memorandum a number of letters
23 of support for Mr. Mazzocco including from his family members
24 and friends, community members, clergy and so on.

25 I'm not going to give the names of all of those individuals,

1 because Ms. Ward indicates she may be filing a motion to seal,
2 but suffice it to say that a large number of Mr. Mazzocco's
3 friends and family members and neighbors and clergy have written
4 letters in support of him, and I've read them all.

5 So let me first begin with the presentence report. The
6 final presentence report and sentencing recommendation were
7 filed -- I'm sorry.

8 (Deputy Clerk conferring with the Court.)

9 We're having a problem with the public line, so we need to
10 reconnect it. Just give me a moment.

11 (Pause.)

12 THE COURT: Okay. All right. We are back on the
13 record, and it seems that our technological problems have been
14 dealt with. So let me first begin with the presentence report.
15 The final presentence report and sentencing recommendation were
16 filed on September 20 of this year. I looked at the report, and
17 it doesn't appear that there are any objections, but just let me
18 ask you for the record, Ms. Nielsen, does the government have
19 any objection to any of the factual determinations set forth
20 in the presentence report?

21 MS. NIELSEN: We do not, Your Honor. No.

22 THE COURT: And I assume you are not expecting
23 an evidentiary hearing or any witnesses today; right?

24 MS. NIELSEN: That is correct, Your Honor.

25 THE COURT: Okay. Mr. Mazzocco, are you fully

1 satisfied with the services of your attorney, Ms. Ward, in
2 this case?

3 THE DEFENDANT: Yes.

4 THE COURT: Do you feel that you've had enough time
5 to talk to her about the probation department's presentence
6 report and the papers that were filed by the government in
7 connection with the sentencing?

8 THE DEFENDANT: Yes.

9 THE COURT: Ms. Ward, have you and Mr. Mazzocco read
10 and discussed this presentence report?

11 MS. WARD: We have, Your Honor.

12 THE COURT: Are there any disputed issues of fact;
13 that is, does Mr. Mazzocco have any objection to any of the
14 factual allegations set forth in the presentence report?

15 MS. WARD: No, Your Honor.

16 THE COURT: All right. Hearing no objections from
17 either side, I will accept the factual recitations in the
18 presentence report regarding the circumstances of this offense;
19 and, therefore, the facts as stated in the report will be my
20 findings of fact for the purposes of this sentencing.

21 All right. Now, Mr. Mazzocco, because you've pleaded
22 guilty to a misdemeanor offense, the United States Sentencing
23 Guidelines do not apply to your case. The presentence report
24 lays out the probation office's calculation of the appropriate
25 sentencing range that applies in this case based upon the

1 relevant statutory factors.

2 Based on the sentencing factors under 18 U.S.C. § 3553(a)
3 which I must consider, which we all must consider in every
4 sentencing, the presentence report recommends a sentence of
5 18 months' probation, \$500 of restitution, and a \$10 special
6 assessment.

7 Now, Section 3553 does require me to consider a variety
8 of factors including the applicable penal statutes. The charge
9 of Parading, Demonstrating, or Picketing in a Capitol Building,
10 in violation of 40 U.S.C. § 5104(e) (2) (G), carries a statutory
11 maximum penalty of six months' imprisonment.

12 Because Mr. Mazzocco has pled guilty to a petty offense,
13 the statutes do not authorize a term of supervised release.
14 The statute of conviction sets a maximum fine of up to \$5,000,
15 a special assessment of \$10 is mandatory, and the statutory
16 restitution provisions are applicable because there is an
17 identified victim.

18 Pursuant to 18 U.S.C. § 3663(a) and the plea agreement,
19 Mr. Mazzocco has agreed to pay \$500 in restitution to the Clerk
20 of the Court for disbursement to the Architect of the Capitol.

21 Counsel, have I stated accurately the statutory framework
22 under which we're operating here? Ms. Ward?

23 MS. WARD: Yes, Your Honor.

24 THE COURT: Ms. Nielsen.

25 MS. NIELSEN: Yes, Your Honor.

1 THE COURT: And I've already notified the parties
2 of the particular sentence that the probation officer has
3 recommended, which is 18 months in prison [sic], \$500 in
4 restitution, and a special assessment of \$10.

5 The recommendation of the probation office is not based on
6 any facts or circumstances that have not already been revealed
7 to the parties in the presentence report.

8 MS. NIELSEN: I'm sorry, Your Honor, to interrupt.
9 But the presentence report actually recommended 18 months of
10 probation, not --

11 THE COURT: I'm sorry. I thought I said that.
12 sorry. Eighteen months of probation. Yes. All right.
13 Give me one moment, please.

14 Okay. At this point I'd like to give the parties an
15 opportunity to address the Court.

16 Ms. Nielsen, it's my understanding that the government
17 is recommending three months of home detention. This is your
18 opportunity to allocute on behalf of the government.

19 MS. NIELSEN: Thank you, Your Honor. Yes. That's
20 correct. The government is asking the Court to sentence
21 Mr. Mazzocco to three months of home confinement, three years
22 of probation, no less than 60 hours of community service, and
23 the agreed-upon \$500 in restitution payable to the Architect of
24 the Capitol for the damage that was done to the building as a
25 result of January 6.

1 As this Court has noted, the factors the Court should
2 consider are under 18 U.S.C. 3553, and as we noted in our memo,
3 these factors in our opinion, and we would submit to the Court,
4 provide mixed guidance with respect to Mr. Mazzocco. We would
5 argue that some favor incarceration; others require or indicate
6 a more lenient sentence is appropriate.

7 I want to start first with the first factor, the
8 seriousness of this offense, the need to promote respect for
9 the law, and to provide for just punishment in this case.
10 And frankly, Your Honor, I would argue to the Court that in
11 any case associated with the January 6th riot, incarceration
12 is appropriate.

13 This defendant did plead guilty to misdemeanor statute,
14 and that statute is usually reserved to prosecute single
15 protesters or small groups who briefly disrupt Congress, like
16 holding up signs or shouting during a session from the gallery,
17 and then those individuals are removed from the proceeding.

18 This is not that case. The January 6th riots were not a
19 minor crime, and they were not a single incident. As the Court
20 knows, this conduct here from January 6 is not just a difference
21 in the numbers of people that were there on January 6, but also
22 a difference in the intent that was there and the kind of
23 conduct that occurred.

24 Your Honor, I would submit to the Court, it is difficult
25 to fathom a more serious offense to this community, to the

1 District of Columbia, to the country, and to the very fabric
2 of American democracy than the one that was posed by those who
3 knowingly and eagerly engaged in an insurrection and occupied
4 the United States Capitol in order to abort certification of a
5 lawful and fair election.

6 Every person who was present without authority in the
7 Capitol on January 6 contributed to the chaos of that day
8 and the danger posed to law enforcement, the United States
9 Vice President, members of Congress, and generally the peaceful
10 transfer of power in our country. No rioter acted in a vacuum.
11 The collective action of each and every rioter contributed to
12 the property damage, the injury, the destruction, and the fear
13 that law enforcement, members Congress and their staff
14 experienced that day.

15 Each person who entered the Capitol building made it that
16 much harder for police to regain control of different parts of
17 the building, to keep members of Congress and their staffs safe,
18 and ultimately, Your Honor, to regain control of the exterior
19 of the Capitol, which, as Your Honor knows, was subject to an
20 incredible level of violence that day.

21 For these reasons, it is our position that probation as a
22 default, as the norm, even for these misdemeanor cases, runs
23 the risk of undervaluing the seriousness of the offenses. And
24 rather than underscoring the need to promote respect for the
25 law and our constitutional protections, if probation becomes

1 the norm, we risk projecting the idea that what happened on
2 January 6 was not that big of a deal, that the rioters really
3 were just unruly tourists, and to that extent, punitive
4 measures, including incarceration, for these rioters is
5 necessary to promote the goals of this sentencing factor.

6 The second factor, general deterrence. We would argue
7 that the second factor, general deterrence, punitive measures
8 also apply to that factor. Of course, Your Honor, we don't
9 want to deter true protest. We're not talking about deterring
10 individuals from picketing or marching or any other First
11 Amendment-protected activity. We're talking about deterring
12 the next discontented group from violently descending onto the
13 Capitol, en masse, the next time that the Congress, for example,
14 meets to certify the results of our next election.

15 Punitive measures are also important for general deterrence
16 where you have a crime like this one that was not just public;
17 it was globally observed. This was a crime that literally
18 played out before the eyes of the world. And it was not just
19 because of the presence of the news media who broadcast the
20 events of January 6 into our homes. It was the rioters
21 themselves. They took pictures of themselves, of others
22 breaching the Capitol, live-recording the events and uploading
23 those crimes in real time, or shortly thereafter, to the
24 internet and social media.

25 I would also note, importantly, for the idea of

1 general deterrence, Your Honor, that for the vast majority
2 of the people on January 6, they were able to walk away from
3 their crimes that day and go home. The idea of punitive
4 measures for general deterrence is important here. To make
5 sure that everyone does recognize that there are consequences
6 of the actions of January 6, it's vital to deter this kind
7 of conduct in the future.

8 As we mentioned in our memo, several judges on this
9 court have stated that probation should not be the default
10 in these misdemeanor cases. And in light of the factors that
11 I've just laid out, I would submit that it is important for
12 the general public to know that probation is not the default
13 for January 6 cases, and I would encourage this Court to
14 adopt that same view of these cases.

15 Turning to the third factor, which is the nature and
16 circumstances of this particular offense, Your Honor, and
17 that's a more nuanced question in the government's position.
18 Mr. Mazzocco was in the Capitol for only 12 minutes, and he
19 did tell others, don't take or break anything, noting that
20 they would probably get in trouble for what they did. And
21 that is certainly a positive for Mr. Mazzocco.

22 However, our investigation also shows that he took
23 the time to walk around the outside of that Capitol building
24 before he entered. He observed and documented, photographing
25 the rioters scaling the walls of our building, an image which

1 has become something that has been shown world over and is kind
2 of emblematic of what we saw that day. He documented rioters
3 forcing their way into the building through that famous East
4 Rotunda door and took a selfie in front of it, and then he still
5 chose to enter the building.

6 Once inside, he would have seen the damage to the windows
7 next to the doors that he entered. He would have seen other
8 rioters climbing through those windows. He would have seen the
9 hallways where he entered overrun with a sea of people, and he
10 would have heard comments about people being on the senate
11 floor. And yet he still did not leave. And then after that,
12 finally, when he did take time to walk out of the Capitol, he
13 posted a photo of himself in front of the building with the
14 caption "The capital is ours!"

15 I would will submit, Your Honor, that comment could only
16 mean one thing: The defendant knew exactly what he was doing
17 when he was in that Capitol. He knew the vast majority of
18 people in there were to overrun the police, that those numbers
19 were there to take the Capitol under their control and to stop
20 the certification of the election, to stop our democracy.

21 Likewise, comments that he made to others after the fact,
22 giving false information about whether or not there was violence
23 and who caused that violence, those comments, ironically, belie
24 his public celebration that "The capital is ours!"

25 And then we also note that the defendant wore a body-worn

1 camera while he was in that building, and he --

2 THE COURT: Ms. Nielsen, let me interrupt you for a
3 moment. I have a question: Has that camera footage ever been
4 found?

5 MS. NIELSEN: No.

6 THE COURT: Okay.

7 MS. NIELSEN: It's never been found, Your Honor.

8 As I said, it appears that he was filming. The way he holds --
9 in some of the footage from the surveillance video from the
10 Capitol, the way Mr. Mazzocco was holding the camera up, the
11 way he's angling it in certain directions. Also, there are
12 times when you can see him from the back, and you can see that
13 viewfinder screen is lit up as if it's recording.

14 And, no, it has never been found. Eleven days after this
15 incident, he was arrested. The agents asked him where it was.
16 He said he didn't know. And pursuant to the execution of the
17 search warrant on his home, it was never found, and the footage
18 has never been seen.

19 And I would note, Your Honor, that all of these things,
20 these factors, they all support a heightened need for specific
21 deterrence for Mr. Mazzocco specifically.

22 Finally , though, Your Honor, I would turn to factors
23 that do in fact weigh in his favor, and that's the history and
24 characteristics of Mr. Mazzocco personally. He has no criminal
25 history to speak of. He appears to be consistently and reliably

1 employed, supporting his family, and he has extended family
2 support.

3 And in making our sentencing recommendation, Your Honor,
4 we place substantial weight on his early acceptance of
5 responsibility. Within days of his arrest, Ms. Ward was
6 contacting me and letting me know that he wanted to resolve
7 the matter.

8 I would note, he was one of the first 10 to accept
9 responsibility, first 10 of the Capitol January 6th defendants
10 to accept responsibility. And we hope, we hope, that this early
11 acceptance of responsibility shows a desire not to engage in
12 further criminal conduct and to in fact rehabilitate himself.
13 And we think that these factors allow the Court to tailor a
14 sentence that is not as punitive for purposes of deterring this
15 specific defendant.

16 We also acknowledge, of course, that this early acceptance
17 of responsibility saves the government vast resources, which
18 the United States Sentencing Guidelines specifically note as
19 important when giving credit for early acceptance of
20 responsibility.

21 And as this Court is aware, the January 6 case -- in this
22 case and the January 6 cases themselves, that is no small
23 matter. We have stated now in multiple pleadings the
24 investigation and prosecution of these offenses arising from
25 the Capitol riot is one of the most involved, complex, and

1 resource-intensive investigations and prosecutions in American
2 history.

3 The early resolution of this case and acceptance of
4 responsibility speaks well to Mr. Mazzocco, and we believe
5 that suggests a more lenient sentence is appropriate. And for
6 those reasons, we are asking the Court to sentence Mr. Mazzocco
7 to three months of home confinement, three years of probation,
8 at least 60 hours of community services, and \$500 restitution.

9 And unless the Court has any other questions for the
10 government?

11 THE COURT: No. Thank you, Ms. Nielsen.

12 MS. NIELSEN: Thank you.

13 THE COURT: Ms. Ward?

14 MS. WARD: Your Honor, Mr. Mazzocco is extremely
15 nervous. He did write a letter that he asked me to read to
16 the Court on his behalf because he felt like it would be
17 overwhelming for him to speak to you today.

18 He wrote: "First, I need to apologize to the Court, to
19 the United States government, to my family, and the people of
20 Washington, D.C. I never in my wildest dreams thought that I
21 would find myself writing this type of letter. I'm writing you
22 this letter as I'm certain that I will be very nervous on my
23 sentencing date, and I want to correctly articulate my thoughts
24 and feelings to you.

25 "My decision to enter into the Capitol was one of the most

1 foolish and impulsive decisions I've made in my life. It was
2 out of curiosity, and I had no intentions of harming anyone by
3 doing so. After my return and arrest, I watched the videos of
4 the violence that occurred towards the police that day, and I
5 was horrified.

6 "I support the police [indiscernible] a couple of officers
7 inside. Since that day, I've lived with a feeling of shame,
8 sorrow, and remorse, not because I'm going through legal
9 troubles, but because I'm seeing the country that I love so
10 dearly divided like never before, and I took part in something
11 that has certainly played a humongous role in contributing to
12 that.

13 "Additionally, I've caused my family and dear friends
14 worry and brought shame into my home and to my family's name.
15 I've received countless death threats, threatening phone calls,
16 harassing phone calls, and letters mailed to my home. It's
17 taken a huge toll on my wife and my children. If I could go
18 back in time, I certainly would not have even considered
19 traveling to D.C.

20 "I am truly sorry for my actions and understand the
21 significance of the choice that I made. I can assure you that
22 you will not see me getting into trouble again in the future.
23 I've learned a lot during the course of the last nine months and
24 have focused my efforts on becoming a better father, husband,
25 and professional.

1 "I pray as a nation we can heal and move forward and that
2 I can contribute to that by continuing to be a productive member
3 of society and allowing my choices of the past to forge a better
4 version of myself. I hope that you find it in your heart to
5 offer leniency in your sentencing. Thank you for taking the
6 time to listen to my letter."

7 In applying the factors that the Court must consider,
8 Mr. Mazzocco is more remorseful than any person I think I've
9 ever represented, and this is a Class B misdemeanor. I don't
10 say that lightly or mean to impress upon the Court that this
11 is not a significant case. This is, frankly, the most important
12 case that I think I've handled this year in terms of what
13 happens to the people who have been charged. But each person
14 should be sentenced according to the individual.

15 And Mr. Mazzocco is an individual who had no ill intent
16 in his heart and, frankly, told people that "the House is ours"
17 was before -- I believe the photo was before he went in.
18 The government was -- so it wasn't when he came out. That was
19 before he went in, right or wrong, but it was not meant to
20 indicate he came out, oh, yes, we did it. That was not correct.

21 Then the government says that he posted pictures of himself
22 while he was inside. That's not part of the statement of facts
23 in our plea agreement.

24 THE COURT: Well, let me stop you. The statement
25 of facts simply sets forth the legal basis for the charges,

1 the factual basis for the legal charges against him.

2 It's not all-encompassing. It's not meant to be exhaustive.

3 Are you disputing that he took those photographs?

4 MS. WARD: No. I'm not disputing that he took
5 photographs. I'm not disputing that he was in the Capitol.
6 He's never disputed that. I'm saying he didn't post pictures
7 of himself while inside. That's the only distinction. He
8 did post a picture of himself outside the Capitol, not inside.
9 Inside the video is not taken from him that you hear him telling
10 people, don't steal, don't trash anything, you need to treat
11 this -- act like you're in your own home, is what he says.

12 It wasn't at all that he's not taking responsibility.
13 He has done so, and I think that his early acceptance --
14 Ms. Nielsen is correct; he's had -- unfortunately, his house
15 was pictured on the news, and so he did fall into the category
16 of people who got all of -- letters and calls and pretty
17 frightening information, posts under the news stories about,
18 "We should storm this person's house. It looks pretty nice."

19 And so he lost his job. He is working on gaining
20 employment again. But the fallout was massive for him, as
21 well it should be for everyone who acted with such disregard
22 for democracy that day. But Mr. Mazzocco is a defendant who,
23 unlike a lot of people who had ill intent and had broken,
24 stolen, assaulted, does not fall into that category.

25 And I appreciate the government acknowledging that

1 about him. And he doesn't have any criminal history. I
2 appreciate that they do place him apart from certain other
3 individuals and groups of people that were there that day.

4 I just think that Probation's recommendation of 18 months
5 and the government's recommendation of 60 hours of community
6 service, that combination for Mr. Mazzocco provides adequate
7 deterrence, respect for the law, and indicates to people who
8 in cases like this get a fine or -- well, frankly, a fine and
9 move along. But we've had him on nine months of pretrial
10 supervision that he's had no violations of, he's followed all
11 of the rules, done everything the Court has asked him to do,
12 and he will continue to do that.

13 It was 12 minutes in a lifetime of a million minutes,
14 millions of minutes, in which he has been a good father, a
15 good husband, son, worker. He's taken just loads and loads
16 and loads of supplies to Houston when there's hurricanes,
17 voluntarily. So that really defines the kind of man he is,
18 Your Honor, and he wants to continue to be able to be a good
19 role model.

20 THE COURT: All right.

21 Did you have anything else, Ms. Ward?

22 MS. WARD: No, Your Honor.

23 THE COURT: Thank you.

24 Mr. Mazzocco, I listened to the letter that you wrote
25 that your lawyer read. Is there anything you wish to say

1 at this time before I sentence you? You don't have to, but
2 this is your opportunity if you wish to say something.

3 THE DEFENDANT: I know that oftentimes, when people
4 find themselves in trouble, they'll say whatever they can to try
5 to get themselves out of trouble. And I would just like you to
6 know that the letter that I wrote you was sincere. It was from
7 the bottom of my heart.

8 And I am truly sorry for my actions that day, and it has
9 really taken a toll on me. And I'm not saying that because I
10 want to get off. I know that I made a big mistake and I cannot
11 undo that, and I just would like to apologize to the country,
12 to you, and to everyone that's been affected by this, the police
13 officers that day. I just -- I'm very sorry.

14 THE COURT: Thank you, Mr. Mazzocco.

15 Sentencing is difficult for this Court, and I think
16 I speak for many of my colleagues, as a general matter.
17 The Court tries always to balance all the factors that it must
18 consider in sentencing, bearing in mind the admonition that the
19 sentence imposed should be sufficient but not greater than
20 necessary to comply with the purposes of sentencing.

21 These purposes include the need for the sentence to reflect
22 the seriousness of the offense, to promote respect for the law,
23 and to provide for just punishment. The sentence should also
24 deter criminal conduct, protect the public from future crimes
25 by the defendant, and promote rehabilitation.

1 In addition to the guidelines and policy statements,
2 I must also consider the nature and circumstances of the
3 offense, the history and characteristics of the defendant,
4 the types of sentences available, the need to avoid sentence
5 disparity, and the need to or provide restitution. And I've
6 considered all these factors at length in preparation for this
7 sentencing.

8 These cases arising out of the riots of the Capitol on
9 January 6 are particularly difficult because, although many of
10 the defendants like Mr. Mazzocco were charged with and pleaded
11 guilty to misdemeanors, the Court, like many others in this
12 district, does not view the crimes that were committed on that
13 day as anything petty.

14 Many of my colleagues have spoken eloquently -- and
15 now I'm going to talk about the nature and circumstances of
16 the offense. Many of my fellow judges have spoken out about
17 the gravity of the violent riot that took place on January 6.
18 I add my voice to theirs.

19 What happened on that day was nothing less than the
20 attempt of a violent mob to prevent the orderly and peaceful
21 certification of an election as part of the transition of power
22 from one administration to the next, something that has happened
23 with regularity over the history of this country. That mob was
24 trying to overthrow the government.

25 They erected hangman's scaffolding. They broke down doors

1 and barriers. They destroyed property in Congress. They fought
2 law enforcement, who were outnumbered that day, resulting in the
3 injury and death of police officers. They broke down doors and
4 barriers. They paced the hallways, calling out and searching
5 for the Speaker of the House and the Vice President, and one
6 can only surmise what they were going to do with them had they
7 found them. They soiled and defaced the halls of the Capitol
8 and showed their contempt for the rule of law.

9 That was no mere protest. And even though Mr. Mazzocco
10 was not fighting with the officers, even though he was telling
11 people not to steal stuff, he was inside and his presence was
12 part of the mob. A mob isn't a mob without the numbers. The
13 people who were committing those violent acts did so because
14 they had the safety of numbers, one of whom was Mr. Mazzocco.

15 Now, there are some people who have compared the riots
16 of January 6 with other protests that took place throughout
17 the country over the past year and who have suggested that the
18 Capitol rioters are somehow being treated unfairly. I flatly
19 disagree.

20 People gathered all over the country last year to protest
21 the violent murder by the police of an unarmed man. Some of
22 those protesters became violent. But to compare the actions
23 of people protesting, mostly peacefully, for civil rights, to
24 those of a violent mob seeking to overthrow the lawfully elected
25 government is a false equivalency and ignores a very real danger

1 that the January 6 riot posed to the foundation of our
2 democracy.

3 The actions that took place on January 6 were watched
4 with horror, not just by citizens of the District of Columbia,
5 who were terrified, but citizens of the United States, people
6 living in this country, and people all over the world who look
7 to this country as an example of the rule of law.

8 In this Court's opinion, the treatment has been far more
9 lenient than other defendants who regularly appear in our
10 courts. To start with, the majority of the rioters, including
11 Mr. Mazzocco, were allowed to leave the scene of their crime,
12 unarrested and unharmed, and return to their homes, where,
13 once they realized the trouble they were in, they immediately
14 commenced -- he immediately commenced to conceal, destroy, or
15 minimize his participation in his wrongdoing.

16 Then Mr. Mazzocco, like hundreds of others who participated
17 in the riots, was charged with petty misdemeanors, despite his
18 deliberate, premeditated decision to come to the District to
19 try and stop the transfer of power.

20 And once he was charged, Mr. Mazzocco was released and
21 allowed to remain in his home, to be with his family, to
22 continue to work or look for work, and go about his daily life
23 because of the COVID pandemic. He has never even had to come to
24 this court to answer for his crimes. And, finally, although he
25 was charged with four counts, Mr. Mazzocco was allowed to plead

1 to one count and now stands before this Court seeking probation.

2 Now, this Court -- courts play no role in charging
3 decisions or in plea negotiations, and we shouldn't. That's
4 not our role. That is the role of the government, of the
5 prosecutors; and they have done their job in this case, and
6 they continue to work to investigate and prosecute the people
7 involved in those riots. They decide what charges to bring
8 and what plea offers to make, and they've done so in this case.
9 But it is my responsibility now to fashion what I believe to
10 be a just sentence, taking into account, as I must in every
11 case, all the purposes of sentencing.

12 I've already spoken about how serious a crime this was,
13 that Mr. Mazzocco did not break down any doors or attack law
14 enforcement. That in fact he warned others not to steal or
15 break anything does not mean his actions weren't serious.
16 I received letters in support of Mr. Mazzocco in which they
17 said he acted on impulse and went into the Capitol out of
18 curiosity and to stand up for our country. Ms. Ward said
19 that today - impulsive actions and out of curiosity - and
20 I took note of that.

21 But that was not the case, in this Court's opinion.
22 Mr. Mazzocco was not walking by the Capitol and saw the
23 hubbub and wandered inside to see what was going on. That's
24 impulsive. That's curiosity. That's not what he did.
25 He learned about the protests, he bought an airplane ticket

1 from Texas, he paid for a ticket, he got on a plane with the
2 intent of coming to Washington to interfere with the transition
3 of power, to interfere with the certification of the election,
4 and that is what he did.

5 He got to the Capitol, and seeing the disorder and the
6 chaos and people scaling the walls of the Capitol and breaking
7 down barriers, having seen that, he then decides to go inside.
8 And maybe he didn't break a window to get inside, and maybe he
9 didn't injure any law enforcement in making his way inside, but
10 he made a conscious decision to go inside the Capitol, to wander
11 around, take pictures of himself -- grinning, as if the chaos
12 that was swirling around him was entertainment -- to stay in
13 the Capitol, and then finally to leave.

14 And once he got home, he didn't immediately realize the
15 wrongfulness of his actions. He bragged about it. When he
16 was at the Capitol, he said, "The capital is ours!" Not
17 "The Capitol is the People's." "The capital is ours!"

18 Mr. Mazzocco did not go to the United States Capitol
19 out of any love or support for our country. He went there to
20 support one man who he viewed had the election taken from him.
21 In total disregard of a lawfully conducted election, he went
22 to the Capitol in support of one man, not in support of our
23 country or in support of democracy.

24 He stayed in the Capitol for 12 minutes, and granted, he
25 did not destroy any property, and he admonished people not to.

1 But he didn't have to go inside. He didn't have to stay inside.
2 He didn't have to take those pictures. And when he got home,
3 he was proud of what he had done.

4 It wasn't until the consequences of Mr. Mazzocco's
5 actions became apparent to him that he started to walk it back.
6 He deleted his social media accounts. He told people that
7 there wasn't really a riot, that the violence was caused by
8 antifa -- a flat-out attempt to deflect blame onto individuals
9 and organizations that weren't even there -- and to diminish
10 the seriousness of his actions.

11 The evidence indicates that he was wearing a body-worn
12 camera, and yet he told law enforcement that he didn't know
13 where that camera footage was. And it's never been found.
14 That camera footage would have shown exactly where Mr. Mazzocco
15 went and what he did, but we don't have that footage which was
16 in Mr. Mazzocco's possession when he left Washington, D.C. That
17 was a coverup, or at least a partial coverup, of his actions.

18 And I take into account the government's statement and
19 Ms. Ward's statement that he accepted early responsibility.
20 But Mr. Mazzocco's remorse -- and I believe his remorse is
21 sincere -- Mr. Mazzocco's remorse didn't come when he left
22 that Capitol. It didn't come when he went home. It came when
23 he realized he was in trouble.

24 It came when he realized that large numbers of Americans
25 and people worldwide were horrified at what happened that day.

1 It came when he realized that he could go to jail for what
2 he did. And that is when he felt remorse, and that is when
3 he took responsibility for his actions.

4 Ms. Nielsen spoke about deterrence, and so did Ms. Ward.
5 And that weighs heavily on this Court, because the country is
6 watching to see what the consequences are for something that
7 has not ever happened in the history of this country before,
8 for actions and crimes that threaten to undermine the rule of
9 law and our democracy. And Mr. Mazzocco is far less culpable
10 than many other people who took part in those riots, but he is
11 culpable. He went inside. He stayed inside. He was proud
12 of what he did.

13 I understand that Mr. Mazzocco is a beloved family member,
14 and I'm discussing now the characteristics of the defendant.
15 He is a much-loved father, son, brother, family member, member
16 of the community, friend. I've received letters from many
17 members of this community, clergy.

18 He's a devoted member of his church, and he has taken
19 lots of actions to help in his community. And that speaks well
20 to him. I commend him for being that person, and I believe he
21 will continue to be that person. The numerous letters that
22 I received attest to that, and those letters indicate the
23 esteem in which he's held by many, and he's to be commended.

24 But I'm a former public defender, and I am well aware
25 that people are complicated. Good people can do bad things.

1 I've had many defendants charged with crimes just as serious
2 as this violent crime, crimes that would horrify us all, who
3 were loved sons, brothers, fathers, and members of the community.
4 Many of them did not have the benefit of the strong family
5 background and the resources that Mr. Mazzocco had.

6 It is to Mr. Mazzocco's credit that so many people
7 hold him in such high esteem. But the fact is that none of
8 that made any difference to his decision to come the District
9 of Columbia on January 6 and support a mob who was intent on
10 violence.

11 With regard to the types of sentences available, I do
12 have a recommendation for home confinement from the government,
13 a request for probation, and an option to sentence Mr. Mazzocco
14 to up to six months in prison. I have to find a balance in
15 those options. I also have to consider the need to provide
16 restitution to the victims of the offense, and Mr. Mazzocco
17 has agreed to pay a \$500 of restitution as part of his plea
18 agreement.

19 In terms of sentence disparities, it is difficult to
20 compare sentences, because the January 6 riots are unique.
21 And certainly in terms of -- this is not, as I said before, the
22 average petty misdemeanor, and I'm aware of what my colleagues
23 have been giving as sentences. But I am aware, as Ms. Ward
24 said, that each defendant is an individual and their actions
25 are theirs, and different defendants took different actions and

1 have been sentenced accordingly. So the factor of avoiding
2 unwarranted sentence disparities is neutral in this Court's
3 estimation.

4 It is this Court's belief that a sentence of probation does
5 not reflect the seriousness of the crime, promote respect for
6 the law or provide for just punishment in this case, nor would
7 it afford adequate deterrence to protect the public from future
8 crimes. If Mr. Mazzocco walks away with probation and a slap on
9 the wrist, that's not going to deter anyone from trying what he
10 did again. It does not, in this Court's opinion, indicate the
11 severity, the gravity, of the offenses that he committed on
12 January 6.

13 And Mr. Mazzocco does not appear to be in need of
14 educational or vocational treatment or medical care.

15 I cannot see how a sentence of probation would comport
16 with the factors that I must consider, nor do I agree with the
17 government that confining him to his home where he can be with
18 his family for three months would be appropriate, and that is
19 basically what he's been doing since his arrest.

20 And I commend him for complying with his conditions of
21 release, but there have to be consequences. There have to be
22 consequences for participating in an attempted violent overthrow
23 of the government beyond sitting at home, and in this case,
24 I believe a brief sentence of incarceration is warranted in
25 light of all the sentencing factors.

1 Having considered all of these factors, the Court
2 believes a sentence of 45 days of incarceration and 60 months
3 of community service, with a \$500 restitution payment, is the
4 appropriate sentence in this case, and it is sufficient but not
5 greater than necessary to reflect the seriousness of the instant
6 offense, to promote deterrence, to protect the public from
7 future crimes that may be committed by the defendant, and to
8 avoid unwarranted disparity.

9 Therefore, based on my consideration of all the § 3553(a)
10 factors, I'll now state the sentence to be imposed:

11 It is the judgment of this Court that you, Matthew Carl
12 Mazzocco, are hereby sentenced to serve 45 days' incarceration
13 and, after that incarceration is complete, to perform 60 hours
14 of community service, to pay a \$10 special assessment, and
15 \$500 in restitution.

16 Given the restitution payment and the fact that
17 Mr. Mazzocco has lost his job, the Court will not impose a
18 fine. The special assessment is immediately payable to the
19 Clerk of the Court for the U.S. District Court of the District
20 of Columbia. Within 30 days of any change of address, you
21 shall notify the Clerk of the Court of the change until such
22 time as the financial obligation is paid in full.

23 You must complete 60 hours of community service.
24 The probation office will supervise your participation in the
25 program by approving the program. You must provide written

1 verification of completed hours to the probation office.

2 Ms. Ward, Mr. Mazzocco will be allowed to turn himself
3 in for his sentence of incarceration as coordinated by the
4 probation office, which will inform him of when he needs to
5 report.

6 Mr. Mazzocco, pursuant to 18 U.S.C. § 3742, you have a
7 right to appeal the sentence imposed by this Court subject to
8 certain rights of appeal that you waived as part of your plea
9 agreement. If you choose to appeal, you must file an appeal
10 within 14 days after the Court enters judgment. If you are
11 unable to afford the cost of an appeal, you may request
12 permission from the Court to file an appeal without cost to you.

13 As set forth in the plea agreement, the government moved
14 to dismiss the remaining counts against Mr. Mazzocco.

15 Ms. Nielsen, does the government wish to do so now?

16 MS. NIELSEN: Yes, Your Honor. At this time we would
17 move this Court to dismiss counts 1, 2, and 3 of the
18 information.

19 THE COURT: That motion will be granted.

20 Are there any objections to the sentence not already on
21 the record or anything else that we should address today?

22 MS. NIELSEN: Nothing from the government, Your Honor.

23 PROBATION OFFICER: Your Honor, Kelli Willett on
24 behalf of the probation office.

25 THE COURT: Yes.

1 PROBATION OFFICER: I do have a clarification for
2 Your Honor. Your Honor did not impose a term of probation
3 that I heard. Is that correct?

4 THE COURT: No, I did not.

5 PROBATION OFFICER: Okay.

6 THE COURT: Frankly, you know, Mr. Mazzocco I believe
7 has learned his lesson. I believe the sentence of incarceration
8 I've given him is sufficiently severe to punish him for what he
9 did, and I don't think it is a good use of our resources, which
10 are taxed to the maximum, to have him under further probationary
11 supervision.

12 PROBATION OFFICER: I agree, Your Honor.

13 THE COURT: So I'm not going to do that.

14 PROBATION OFFICER: But my question is that the
15 Court asked the probation office to monitor his community
16 service terms.

17 THE COURT: Oh, that's right. And he can only do
18 that if he's under the supervision of Probation. All right.

19 I'm imposing the 60 hours of community service, and,
20 Mr. Mazzocco, you should provide verification of that completion
21 of community service to your lawyer, who will file it with the
22 Court.

23 PROBATION OFFICER: Thank you, Your Honor.

24 THE COURT: You're welcome. Thank you for pointing
25 that out, Ms. Willett.

1 Mr. Mazzocco, I say this frequently when I sentence
2 individuals, and I mean it, and I mean it in your case.
3 A very thoughtful man, Bryan Stevenson, who wrote a book called
4 *Just Mercy* that I highly recommend, said that we are not the
5 worst thing we have ever been done. And I believe it, and I
6 believe it in your case.

7 You have lived an exemplary life in many respects. You
8 are admired and looked up to and loved. A lot of people who
9 come before me don't have the family love and resources and
10 support to fall back on which you do. This is a part of your
11 life, but you have the rest of your life to show your children
12 and to show your family that people can do wrong things; they
13 can I make mistakes.

14 It is what they do afterwards. It's how you fix those
15 mistakes. It's how you conduct your life after those mistakes
16 that show character and show what you've made of. And I believe
17 you have the ability, and I believe you're committed to making
18 right what you did and to living a productive life; and I hope
19 you do, and I wish you good luck in those future endeavors.

20 Is there anything further? All right. We're adjourned.

21 (Proceedings adjourned at 11:04 a.m.)
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24
25

CERTIFICATE *

I, BRYAN A. WAYNE, Official Court Reporter, certify that the foregoing pages are a correct transcript from the record of proceedings in the above-entitled matter.

BRYAN A. WAYNE

* PLEASE NOTE:

This hearing was taken via videoconference in compliance with U.S. District Court Standing Order(s) during the COVID-19 pandemic. Transcript accuracy may be affected by limitations associated with use of electronic technology including but not limited to signal strength, background noise, or any other sound distortions.