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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

United States of America,)	Criminal Action
)	No. 1:21-cr-00096-RC
Plaintiff,)	
)	Sentencing (via Zoom)
vs.)	
)	
Michael Stepakoff,)	Washington, D.C.
)	January 20, 2022
Defendant.)	Time: 11:00 a.m.

Transcript of **Sentencing** (via Zoom)
Held Before
The Honorable Rudolph Contreras (via Zoom)
United States District Judge

A P P E A R A N C E S

For the Government:	Alison Prout
(via Zoom)	UNITED STATES ATTORNEY'S OFFICE FOR THE NORTHERN DISTRICT OF GEORGIA Richard B. Russell Federal Building 75 Ted Turner Drive, Southwest Atlanta, Georgia 30303
For the Defendant:	Marina Medvin
(via Zoom)	MEDVIN LAW PLC 916 Prince Street, Suite 109 Alexandria, Virginia 22314
Also Present:	Sherry Baker, Probation Officer

Stenographic Official Court Reporter:	
(via Zoom)	Nancy J. Meyer Registered Diplomate Reporter Certified Realtime Reporter 333 Constitution Avenue, Northwest Washington, D.C. 20001 202-354-3118

P R O C E E D I N G S

1
2 (REPORTER'S NOTE: This hearing was held during the
3 COVID-19 pandemic restrictions and is subject to the
4 limitations of technology associated with the use of
5 technology, including but not limited to telephone and video
6 signal interference, static, signal interruptions, and other
7 restrictions and limitations associated with remote court
8 reporting via telephone, speakerphone, and/or
9 videoconferencing.)

10 THE COURTROOM DEPUTY: This is Criminal Action 21-96,
11 United States v. Michael Stepakoff.

12 For the United States, I have Alison Prout. For Michael
13 Stepakoff, I have Marina Medvin. Our probation officer today
14 is Sherry Baker, and also joining us today is Special Agent
15 Brandon Merriman. Our court reporter is Nancy Meyer.

16 All parties are present.

17 THE COURT: Good morning, everybody.

18 All right. Let's start with -- hold on one second.
19 Let's start with the colloquy for proceeding by
20 videoconferencing.

21 The Chief Judge in this district has authorized the use
22 of videoconference for sentencings because they cannot be
23 conducted in person without seriously jeopardizing public
24 health and safety. We're prepared to proceed by
25 videoconference for this hearing.

Ms. Medvin, do you believe that proceeding today via
videoconference rather than I mean, waiting until a hearing can
be safely held in person is in the interests of justice?

1 MS. MEDVIN: I do, Judge. Thank you.

2 THE COURT: Okay. And let's make just a short record
3 as to why it makes sense to proceed today rather than waiting
4 until who knows when, when COVID goes away.

5 MS. MEDVIN: Well, Judge, this case has been ongoing
6 for over a year now. My client has been on pretrial probation.
7 And, quite honestly, I think that -- considering the offense
8 that he's facing and the conduct at issue, his background, I
9 think at this point the Court should decide whether probation
10 at this point is even necessary. I don't want his pretrial
11 probation to be a higher sentence than an actual sentence
12 imposed, quite honestly.

13 THE COURT: Okay. I agree with all that.

14 Mr. Stepakoff, do you agree, after having consulted with
15 your counsel, to participate in today's sentencing hearing
16 using videoconference rather than --

17 THE DEFENDANT: Yes.

18 THE COURT: -- being physically present in the
19 courtroom?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Okay. Are you comfortable with the
22 videoconferencing equipment made available to you?

23 THE DEFENDANT: Yes, I am.

24 THE COURT: Do you have an ability to consult with
25 your counsel in private, if necessary, during this proceeding?

1 THE DEFENDANT: I do. I guess I would just text her,
2 if I needed to do that.

3 THE COURT: Okay. And the software, the Zoom
4 software, also has an ability for the courtroom deputy to put
5 you and Ms. Medvin in a separate room, so to speak, in which
6 the other parties are not part of. So if you want to have that
7 sort of conference during the proceeding, just ask, and we'll
8 go ahead and do that. And you'll be in a separate room where
9 you'll have privacy to consult with her. Do you understand?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: The Court finds that the use of VTC is
12 necessary because it is not practical to appear in person, and
13 proceeding by VTC today is justified because the interests of
14 justice will be harmed without a prompt hearing. And the
15 defendant, after consultation with counsel, has consented to
16 proceeding in that fashion.

17 Mr. Stepakoff and Ms. Medvin, have you reviewed the
18 presentence report as revised following the defense and the
19 government's submissions?

20 MS. MEDVIN: We have, Judge.

21 THE COURT: Okay. Are there any remaining disputes
22 other than those identified in the papers?

23 MS. MEDVIN: No. The ones that we submitted are the
24 ones that we dispute.

25 THE COURT: Same question for the government.

1 MS. PROUT: No, Your Honor. The government provided
2 a clarification, and it has been adequately, I think, noted and
3 addressed, and we have no objections.

4 THE COURT: Under Federal Rule of Criminal Procedure
5 32(i)(3)(A), the Court will accept the presentence report as
6 its findings of fact on issues not in dispute.

7 The defendant has pleaded guilty to a Class B
8 misdemeanor to which the sentencing guidelines do not apply.
9 Therefore, I will assess and determine the proper sentence in
10 this case by reference to and consideration of all the relevant
11 factors pursuant to the sentencing statute found at
12 18 U.S.C. 3553(a).

13 The defendant has pled guilty to Count 4 of the
14 information; that is parading, demonstrating, or picketing in a
15 Capitol Building in violation of 40 U.S.C. § 5104(e)(2)(G).

16 The defendant has no criminal history. The maximum term
17 of imprisonment for this offense is six months, and the maximum
18 fine is \$5,000.

19 Would the government like to address the Court regarding
20 sentencing?

21 MS. PROUT: Yes, Your Honor.

22 And -- and we would add as well that there is a maximum
23 term of probation of five years in this case.

24 Let me start by saying that I have reviewed the Court's
25 comments in its prior sentencing in the January 6th case, and

1 I'm familiar with some of the Court's questions in that case.
2 I will do my best to address those issues throughout my
3 presentation today.

4 As the Court notes, we are here today because the
5 defendant unlawfully paraded, demonstrated, or picketed inside
6 the U.S. Capitol Building on January 6th.

7 And the focus of this sentencing, as in every
8 sentencing, should be on this defendant and how the 3553(a)
9 factors apply to him. And that is what I'd like to concentrate
10 my presentation on. But before I get there, there are three
11 brief points I would like to address in response to issues
12 raised by the defense in its briefing for today.

13 The first is the defense's claim that it feels deceived
14 by the government's sentencing recommendation today. As the
15 defense is well aware, the parties' plea agreement expressly
16 states that there are no other agreements between the parties.
17 So there was never a guarantee that there would be a probation
18 recommendation in this case. And, in fact, the defendant -- or
19 defense actually asked the government to agree to a probation
20 recommendation in the plea agreement, and the request was
21 refused. So any claim that the defense was somehow tricked by
22 the government's recommendation is baseless in this case,
23 Your Honor.

24 The second point I'd like to address, as a preliminary
25 matter, is the claim that this is a political prosecution.

1 This defendant is not being prosecuted for his political
2 beliefs, period. Had he simply attended the rally at
3 The Ellipse on January 6th, he would not be here. Had he
4 simply recorded his views about this house being our house or
5 about making Congress think twice about what they are going to
6 do today, he would not be here.

7 He is here solely because of his decision to enter the
8 U.S. Capitol Building on January 6th and the consequences of
9 that action, plain and simple; and I will address those
10 consequences in detail in a moment.

11 But the third and final preliminary point I wanted to
12 make was to address the claims of selective prosecution or
13 disparate sentencing recommendations by the government when
14 compared to other protests, as noted by the defense.

15 So I'll address the issue of sentencing disparities as
16 part of my main presentation, but with regard to the defense's
17 attempt to compare this case to the Portland protests and the
18 Kavanaugh protests, as the Court may be aware, several other
19 defendants have raised similar arguments in court and, in fact,
20 have sought discovery regarding claims of selective
21 prosecution.

22 Both judges who reviewed those claims have rejected
23 them, Your Honor. In the David Lee Judd case, Judge McFadden
24 considered the claim that the Portland protest was being
25 handled differently than the January 6th protests, and

1 Judge McFadden rejected that claim and the defendant's attempt
2 to show that the Portland defendants were similarly situated to
3 the January 6th defendant.

4 Likewise, in the Garret Miller case, Judge Nichols heard
5 the same argument, or similar argument, and found that the
6 differences were, quote, obvious and that while the Portland
7 rioters' conduct was serious, it did not target peaceful
8 transition of power at issue in the January 6th case.

9 Now, likewise, attempts to compare January 6th to
10 protests related to the confirmation hearing of
11 Justice Kavanaugh failed. With regard to the Justice Kavanaugh
12 hearings, the Capitol was open to the public in 2018 when he
13 was being confirmed. It was not open to the public on
14 January 6th. The individuals in the Capitol Building during
15 the -- the protest that day stood in line for tickets to attend
16 the confirmation hearing and passed through security
17 screenings. There was no unlawful entry to the building.
18 There were no reports of property damage or reports of law
19 enforcement being assaulted. And, simply, the Kavanaugh
20 protesters were not part of a violent mob that laid siege to
21 the Capitol and shut down an official proceeding for hours.

22 As the Court is undoubtedly aware, multiple decisions
23 from this jurisdiction have called out the unique and
24 singularly chilling nature of the breach of the Capitol on
25 January 6th. And the truth is, the events of that day do defy

1 comparison; and for that reason, the government submits that
2 claims of selective prosecution or attempts to compare the
3 disposition of this case to the disposition of cases related to
4 those protests are unwarranted.

5 But now I'll turn to what I believe should be the true
6 focus of the Court's sentencing consideration today, which is
7 the 3553(a) factors. And I will highlight four of those
8 factors for the Court's consideration: the nature and
9 circumstances of the offense; the history and characteristics
10 of the defendant; the need for general and specific deterrence;
11 and the issue of sentencing disparities, that I know is one
12 that is on the Court's mind.

13 So to begin with regard to the nature and circumstance
14 of the offense, we understand that the defendant has repeatedly
15 called for in sentencing pleadings that the Court should focus
16 on what he saw and what he did that day. And to a large
17 extent, the government agrees with that.

18 So to talk about what the defendant did and what the
19 defendant saw, here's what we know: We know that the defendant
20 visited the Capitol grounds the night before January 6th and
21 that he saw that it was completely closed to the public. We
22 know that the defendant took a video that day that captured the
23 Capitol grounds, showing the fencing all around it with the
24 signs stating that it was closed to the public. We know that
25 the defendant commented about the certification of election

1 results and about the fact that former Vice President Pence
2 would be at the Capitol that day. And so we know that he
3 understood what was happening there that day.

4 We also know that as he approached the building on
5 January 6th, he saw a downed barricade, the barricade that
6 still bore the sign closed to the public, and we know that he
7 thought it was noteworthy enough to take a picture of it
8 because we found a picture of that downed barricade on his
9 phone.

10 We know that once on the grounds, the defendant watched
11 people scaling the walls of the Capitol. And, again, it was
12 something he thought noteworthy enough to video. And I would
13 add that the exhibit submitted to the Court reflecting that is
14 the complete video that was found on the defendant's phone.
15 Nothing was cut. So it's not clear -- you know, the defense
16 say once those rioters breached the top of the wall, they waved
17 flags. We don't have video either way of that. All we have is
18 what was submitted to the Court in that regard.

19 We also know that as the defendant approached the
20 building, he saw a line of officers guarding the outside of the
21 building. Again, that is a video that was submitted to the
22 Court in its entirety based on what was found from the
23 defendant's media. None of those officers greeted him. None
24 of those officers beckoned him in. They were standing guard
25 trying to protect the building and its lawful occupants that

1 day.

2 We also know that as he entered the building, he walked
3 through a door that had been severely damaged. There was glass
4 on the floor. And we know from a video, not taken by the
5 defendant but taken by somebody else, that after he was there,
6 about 20 to 30 minutes after, that there were -- that video
7 gave you a sense of the sounds that were present that day,
8 including a persistent blaring alarm that was going off in the
9 building, and particularly in the area of the Senate wing door
10 that he entered.

11 Now, I want to make clear, the government does not have
12 video with sound for the exact time that the defendant entered,
13 and so I cannot provide that to the Court. And I cannot
14 confirm with a hundred percent certainty that those are the
15 sounds that the defendant heard. But I can say that the
16 government has reviewed video from both before and after that
17 time period in which the alarm was, in fact, constantly
18 blaring, and so we believe it to have been the case when the
19 defendant entered.

20 We know as well that the defendant did not go through a
21 metal detector or any security checkpoint when he entered the
22 building. Now, in his sentencing memo, it states that while
23 Mr. Stepakoff was inside the Capitol hallway, there was no
24 sign -- or sorry -- there was no violence or destruction in his
25 purview. But he literally walked through a door that had been

1 forced open in which the panes of glass had been shattered.

2 As Your Honor has seen from the videos submitted of the
3 entire time that he was in the building, which was about 5 or
4 6 minutes, we know that he stood within 1 to 2 feet of a
5 knocked-down piece of furniture in the middle of that entryway.
6 We know that people were climbing through the windows on either
7 side of him. There were indications all around that the scene
8 was dangerous and that Mr. Stepakoff should not have been
9 there, but he went in anyway.

10 Moreover, others before him and after him have been
11 noted on other videos noting the smell of tear gas in the air,
12 both inside and outside of the building, and can be seen
13 flushing their eyes all throughout the west terrace area that
14 leads to the Senate wing door. So while it is correct that no
15 officers blocked his path to entry, there were clear signs of
16 violent entry.

17 And the government can find no support that the
18 defendant has claimed that officers welcomed him inside or
19 ushered him in. No officers shook his hand as he entered.
20 There was, indeed, an officer who was seen shaking several
21 people's hands in the video that was submitted, and I think
22 both the government and the defense submitted the same
23 5-minute video of the Capitol CCTV.

24 What you can see from that video is that the officer
25 appears to be trying to keep the peace and avoid escalation.

1 He is not approaching people to shake hands. But when people
2 approach him to shake hands, he is accepting that. And for the
3 most part, it appears that he's shaking hands as people are
4 walking out, which, of course, the Capitol Police were trying
5 to encourage. And we can see that Mr. Stepakoff shook the hand
6 of a Capitol police officer as he exited. So that couldn't
7 have been something that he relied on to believe that he was
8 allowed inside. That happened on the way out.

9 We also know that some of the things that the defendant
10 said about the riot afterward were not honest. And I'm not
11 talking about things that he didn't know at the time and
12 learned later. I'm talking about things that he did know. So,
13 for instance, the FBI interviewed one individual who the
14 defendant spoke to later that night. The defendant told that
15 person that the Capitol Police had opened the main doors for
16 him and others and that they welcomed them into the Capitol
17 Building. But the defendant did not enter through the
18 visitors' center or any other main door, and we have not
19 located any video showing law enforcement welcoming him inside.

20 The defendant also texted his mother-in-law that, quote,
21 things got out of hand when they brought in a busload of
22 Antifa. But later in his interview with the FBI, he
23 acknowledged that this was something he had actually just read
24 about on Twitter and other news outlets, not something he had
25 seen. So he perpetuated what he knew to be false narratives

1 about the Capitol Police opening the main door and welcoming
2 people in after the fact.

3 And I think this is all very important context,
4 particularly with regard to what the defendant has represented
5 about what he knew and what he understood that day. Of course,
6 we can't see through his eyes, and we can't know what's in his
7 head. All we can do is look for the evidence of what was
8 happening around him.

9 And the government agrees that every defendant should be
10 and is being looked at according to his or her own specific
11 facts and circumstances. This is part of what makes the
12 question of avoiding unwarranted sentencing disparities both
13 very important but also very challenging because not one of
14 these defendants is identical.

15 Here the defendant is not being charged with some of the
16 more serious conduct of other defendants who were there on
17 January 6th. He is only charged with misdemeanors, and that is
18 commensurate with his conduct. The sentence that the
19 government is seeking, 14 days in prison, plus probation, is
20 directly proportionate to the conduct of this defendant and the
21 circumstances in which he was there.

22 And so I'd like to turn to the defendant's history and
23 characteristics. It's absolutely correct that the defendant
24 has no criminal history, and it's to his credit that he has
25 been gainfully employed and appears to have helped provide for

1 his family for most or all of his adult life. The -- these are
2 positive attributes, without a doubt, and he should be
3 commended for these things, and the government has taken that
4 into consideration in its sentencing recommendation.

5 But a review of the defendant's history and
6 characteristics is not just about criminal history. As the
7 Court is aware, the defendant is a lawyer. Now, whether he can
8 be called a lawyer or former lawyer based on his current
9 status, frankly, I'm not clear and I don't want to misrepresent
10 that. What I can say is that Mr. Stepakoff absolutely
11 practiced law in the state of Florida for approximately
12 16 years, including 10 years of which as a criminal defense
13 lawyer.

14 And the point of this isn't to suggest that he would
15 have necessarily studied federal misdemeanor code to know what
16 statute we're here about today, but the point is that his
17 lawyers were called upon all the time to evaluate situations
18 based on our judgment and understanding of the legal framework
19 at large. Not to mention that as a lawyer, he's presumably
20 been in at least one or two courtrooms in other government
21 buildings since 9/11, and some form of security is essentially
22 always required to enter a government building, let alone the
23 U.S. Capitol Building on a day that the joint session of
24 Congress was meeting.

25 So the idea that the defendant believed that he could

1 enter that building without walking through a metal detector or
2 other security under the conditions around him that day, I
3 think, at the very least, shows some very poor judgment.

4 Now, I do want to address very briefly the issue of the
5 defendant's suspension from the practice of law. And I don't
6 want to belabor that point, but it is obvious that it is not
7 every day that you have a defendant who has admitted to acts of
8 dishonesty in a consent judgment, and that is what we have
9 here. And because so much of the defense's argument is based
10 on very specific assertions by the defendant about what he saw
11 and what he understood, his credibility is at issue here. And
12 I'll leave that there unless the Court has any further
13 questions about that matter.

14 The third factor that I'd like to focus on for 3553(a)
15 considerations is the need for deterrence, both general and
16 specific, and I think that both are important in this case.
17 With regard to general deterrence, what we are talking about is
18 deterring the next discontented group who's storming the
19 Capitol next time when, for example, we certify the results of
20 our next election or when Congress is making a decision that
21 certain people disagree with. We promote general deterrence by
22 imposing consequences. Consequences are essential. They
23 discourage future criminal behavior. And general deterrence is
24 especially important here where the crime is so public and so
25 widely known and closely followed, as the defense has pointed

1 out.

2 The defense makes a somewhat puzzling argument that the
3 government's, quote, unyielding prosecution of all defendants
4 is precisely what has a general deterrent effect in this case
5 but then argues that the defendant need only receive a \$50 fine
6 for his offense. This is a contradiction. General deterrence
7 and the unyielding prosecution of all defendants, we submit,
8 requires that the participants in the Capitol riot be held
9 fully accountable by having real consequences for their
10 actions.

11 With regard to specific deterrence, here I would focus
12 very carefully on the statements in the defense's sentencing
13 memorandum to get a window into how the defense views the
14 severity of the defendant's conduct. Throughout those filings,
15 the defense characterizes the defendant as a mere, quote,
16 peaceful protester. And he characterizes the Capitol breach by
17 saying that January 6th was, quote, a political rally that got
18 out of hand. Frankly, and with due respect, that is an insult
19 to the hundred law enforcement officers who were injured that
20 day in the line of duty defending the building and its
21 occupants.

22 And I think the fact that he continues to downplay the
23 seriousness of the events of January 6th -- and I mean the
24 events overall. I'm not talking about whether he personally
25 participated in violent conduct -- the events overall in the

1 mob of which he joined is a factor for the Court to consider in
2 specific deterrence.

3 Another point raised by the defense is that the
4 defendant cannot be reprimanded for something he did not see.
5 That's a bit of a platitude, and it's not really accurate when
6 it comes to how the law works. It's like saying that a
7 hit-and-run defendant can say it's not his fault because he
8 didn't see the person in front of him; or a drug mule can say
9 since he never looked in the bag, he can't be punished.

10 The defendant can and should be punished for his actions
11 and the consequences of those actions. And that is really why
12 specific deterrence is needed here, because it's not okay, in
13 his words, to just follow the crowd when the crowd is
14 committing a crime. And it's also not okay to just pay
15 attention to what's literally in front of your face -- or I'm
16 sorry -- to not pay attention to what's literally in front of
17 your face just because that's not what you're focused on. It's
18 remarkable that the defendant is able to call out handshakes by
19 officers that were happening at the opposite end of the room
20 from him but insists that he didn't see broken glass and broken
21 furniture.

22 It's because we have to hold people accountable for the
23 consequences of their choices and their actions that the
24 government submits that specific deterrence is very important
25 in this case. Every single person who was present without

1 authority in the Capitol on January 6th contributed to the
2 chaos of that day and to the danger posed to law enforcement
3 and to the civilians who were inside the building and to the
4 peaceful transfer of power.

5 And I know that the defense wants to break down step by
6 step the words, the steps, and the conduct of Mr. Stepakoff and
7 say surely one man didn't have that effect, one man didn't
8 contribute to the chaos, one man didn't contribute to the
9 danger. But if we carry that argument to its extension,
10 virtually everyone who was there that day could say that. Now,
11 obviously, the violent protesters who fought with law
12 enforcement are in a different category and have been charged
13 in a different category.

14 But the events of January 6th still, I believe, could
15 not have taken place the way they did without the nonviolent
16 protesters and the presence of people like Mr. Stepakoff
17 contributing to the crowd and the mob that day. And this, I
18 submit, is a fact that the defendant refuses to acknowledge to
19 this day; and that is why the government believes that a
20 sentence of incarceration is important, and that the government
21 does raise some questions about the degree of the defendant's
22 remorse for his actions.

23 The final factor that I'd like to discuss today is the
24 issue of sentencing disparities. The government will be the
25 first to acknowledge that sentencing is not an exact science

1 and that no defendant can be boiled down to a mathematical
2 formula. I will say, however, that the government has made a
3 great effort to analyze the specifics of each defendant's
4 actions and history and characteristics and other relevant
5 3553(a) factors in determining its recommendations and has been
6 commended by some other judges for its work to make consistent
7 recommendations.

8 But mathematical precision is not possible; and, at a
9 minimum, we know that different individuals, be they judges,
10 prosecutors, or the public, will give different weight to the
11 different 3553(a) factors. And it's also very difficult to
12 review some of those factors that go into an ultimate sentence
13 by reading a cold case for the record because, of course, the
14 genuineness or lack thereof of a defendant's address to the
15 Court may be lost on a transcript.

16 Likewise, the impact of the victim statement or of a
17 family's words who are present to speak on behalf of the
18 defendant may not fully come across. And for these reasons,
19 while we have attempted to review this case in the context of
20 others already sentenced, we continue to believe that the
21 primary focus for the Court should be on the conduct of this
22 defendant and the specifics of his case.

23 For comparison, the government did identify two
24 relatively similar cases that are discussed in the government's
25 sentencing memorandum, the *Mazzocco* case and the *Pham* case.

1 Those are both cases where the defendant had no criminal
2 history, records of gainful employment, and relatively brief
3 periods inside the Capitol, though longer than this defendant.
4 One was inside for 12 minutes. One was inside for 20 minutes.
5 They had some different nuances to their cases, which are
6 discussed in that sentencing memorandum, but the government
7 believes that the recommendation it makes today is well in line
8 with cases like those.

9 The defense has raised two cases that it submits for
10 comparison to the Court, and the government believes neither of
11 those is a good comparison. In the *Doyle* case, it is true that
12 the defendant climbed through the window instead of the door
13 and spent 24 minutes inside the building, but there are some
14 important distinctions in the *Doyle* case. Primarily, the
15 defendant claimed that she actually stopped another rioter from
16 damaging property. The government didn't have evidence of that
17 one way or the other, but if that's the case, that would be
18 viewed as a mitigating factor.

19 That defendant had no social media posts glorifying the
20 events of January 6th and, significantly, the Court noted a
21 very -- a very sincere showing of remorse and found the
22 defendant appeared to be truly sorry for her role in the
23 actions of January 6th. And Ms. Doyle, of course, was also not
24 a former attorney. All of those, we believe, are distinctions
25 that prevent that case from being a good comparator to the case

1 at hand.

2 The second case raised by the defense is the Rosa case.
3 That was a defendant who spent 15 minutes inside the building.
4 And, again, that defendant had no criminal history and was
5 gainfully employed. There's a very important distinction in
6 that case; and, that is, that on January 9th, three days after
7 the protest, that defendant made the voluntary decision to walk
8 into his local FBI office to confess and accept responsibility.
9 There had not been any arrest warrant obtained in his case.
10 Contacted the FBI on his own. And that is a dramatic
11 distinction from this case where we know that the FBI had
12 contacted an individual to begin its investigation of
13 Mr. Stepakoff, and that individual reached out on two occasions
14 to Mr. Stepakoff to let him know that the FBI was investigating
15 him. Mr. Stepakoff did not come forward at that time. He did
16 not speak to law enforcement at that time. He ultimately was
17 arrested by the FBI. And it was not until a negotiated
18 condition of his plea required that he speak to the FBI that he
19 did so.

20 And so to sum all of this up, I think Your Honor has
21 previously noted that the riot was successful in delaying the
22 certification in large part because of the number of
23 participants involved, which simply overwhelmed and outnumbered
24 the law enforcement present. So regardless of the defendant's
25 intentions, he contributed to those numbers and has to be held

1 accountable for his actions.

2 For those reasons, the government believes that a
3 sentence of 14 days of incarceration and 3 years of probation,
4 in addition to 60 hours of community service is warranted and
5 not more severe than necessary.

6 Thank you, Your Honor.

7 THE COURT: Okay. I have a couple questions for you.
8 One is, obviously, as you reference in your footnote about the
9 difference between consecutive incarceration and intermittent,
10 that COVID is a serious problem in -- in correctional
11 institutions these days. Why would it make any sense to send a
12 nonviolent defendant into a correctional institution in the
13 middle of this COVID emergency? You want to give me your
14 thoughts on that?

15 MS. PROUT: Yes, Your Honor. And I appreciate the
16 Court's concern about COVID.

17 What I would say to that is that of course federal
18 courts have continued to sentence defendants to custody
19 throughout the pandemic. Given the report time typically seen
20 for sentencings, we're likely to be several months out from
21 where we are, and certainly there are reports that the Omicron
22 surge is going to be substantially reduced by then. But I
23 think what's important is that now that vaccines are available,
24 the risk is greatly reduced from what it was. And at the same
25 time, the need for deterrence and a just sentence does remain

1 as high as ever. And so we do believe that the concerns about
2 the need for deterrence and/or just sentence outweigh the
3 concerns of the pandemic, Your Honor.

4 THE COURT: And the other question I have for you,
5 you indicated you read my questions in the other -- the one --
6 only the one other January 6th case which I have sentenced.
7 And, you know, one of the things I asked there was the
8 government has recommended home confinement in a number of
9 cases.

10 And, you know, your black-and-white chart doesn't make
11 it easy to compare and contrast in any substantive way. But
12 one of the things I asked that prosecutor was, you know, why
13 are you asking for incarceration. And what they said is, well,
14 one of the things we consider is what the person did while they
15 were in the Capitol. And this defendant -- meaning the
16 defendant in that case -- spent time in a private office of one
17 of the Congress people, and we considered that as an
18 aggravating factor.

19 Well, that's not present here. So I don't see any way
20 of distinguishing the cases in which the government has asked
21 for home confinement.

22 MS. PROUT: I understand the Court's question. And
23 because of the vast number of sentencings and cases that
24 we've -- that have come through the courts at this point, it is
25 very difficult to come up with a way to sort of encapsulate all

1 of that information.

2 What I would say is the government's approach here is to
3 look at each defendant very specifically from a lens of what
4 are mitigating factors and what are aggravating factors and
5 what falls somewhere in between. Mitigating factors, as I
6 mentioned, would be attempts to stop violence that day. A
7 mitigating factor could be, like, the case I mentioned of a
8 defendant who self-reports to law enforcement without being
9 under investigation or a defendant who expresses extraordinary
10 remorse. Those are some of the mitigating factors.

11 Aggravating factors, the government has outlined a
12 number of potential aggravating factors in its sentencing
13 memorandum, including things like the length of time in the
14 building, which, of course, in this case would not be
15 aggravating. Visiting sensitive spaces; again, not one of the
16 aggravating factors in this case. In this case what the
17 government sees as aggravating factors is really the
18 combination of the defendant's background as a lawyer, and
19 specifically a criminal lawyer, someone who absolutely should
20 have known better than to be there that day, combined with the
21 defendant's, in the government's view, very nuanced and shaded
22 expression of remorse.

23 The government has some real concerns about whether the
24 defendant is acknowledging the role that his presence played in
25 the Capitol that day. And those are the aggravating factors

1 that we believe take this into the category of incarceration.
2 And, of course, we are asking for essentially the very lowest
3 amount of incarceration, more or less, that would even qualify
4 as incarceration. But we believe that those aggravating
5 factors do tip the scale in favor of the government's request
6 for incarceration here.

7 THE COURT: All right. Thank you.

8 Ms. Medvin.

9 MS. MEDVIN: Yes, Judge.

10 I'll start with the government's oral argument in terms
11 of responses, and then I'll work -- I'll make my way towards
12 the arguments we've already laid out in the pleadings and just
13 elucidate some of the points.

14 First of all, the government -- I'll -- I'll start
15 actually towards the end. The government was making
16 comparisons between Mr. Stepakoff's case and that of Mr. Rosa,
17 for example. One of the issues with that case being compared
18 to other misdemeanor cases was brought up at the Rosa
19 sentencing. And the government at that sentencing told the
20 Court that the reason he was getting a lenient sentence and a
21 lenient plea offer is because he receives credit for coming to
22 the FBI. He was originally charged with a felony offense. And
23 that felony offense was then reduced to a misdemeanor.

24 And what the government explained to the judge in that
25 case was it was reduced to a misdemeanor because, in fact, in

1 that case the defendant came to the FBI. But then they still
2 requested incarceration. I believe it was 30 days in that
3 case. And so it's not accurate to say that the reason he
4 received a lenient sentence was because he went to the FBI.
5 They still requested a high sentence in that case. But in --
6 and that's -- that's because that case started out as a felony.

7 In this case, the main comparison would be to
8 Ms. Danielle Doyle. She started out with misdemeanors and so
9 did Mr. Stepakoff. And her final plea offer was the same type
10 as Mr. Stepakoff received, except the difference is she went
11 through a window, certainly not an entrance that's known to the
12 general public as an entrance. Mr. Stepakoff walked through
13 open doors. And this is an important point and why the defense
14 keeps deferring to the video of this case, the government
15 security footage, is because actually watching as opposed to
16 having the government explain, well, you know, something
17 happened to the left, something happened to the right,
18 something happened 20 minutes before, something happened
19 20 minutes after.

20 But putting on horse blinders and observing the moment
21 that Mr. Stepakoff observed when he walked in, from his
22 perspective, that's what's relevant here. And we would like to
23 play for the Court Government's/Defense Exhibit A, if we can do
24 so digitally. Or if the Court has seen it, we can submit on
25 that.

1 THE COURT: I have seen all the exhibits that --

2 MS. MEDVIN: Thank you, Judge.

3 THE COURT: -- both sides have submitted.

4 MS. MEDVIN: The video clearly shows two doors that
5 are wide open, and the entrance is wide enough for multiple
6 people to pass through at the same time. There's no one
7 blocking. There's no officer standing to the side of the
8 entrance. It's just a large crowd coming in and out. The
9 crowd is walking in slowly and peacefully. They're waving
10 flags. The individuals in the crowd are not committing
11 violence. The individuals around Mr. Stepakoff in that moment
12 when he walked in were peaceful individuals. They were
13 peaceful protesters.

14 Now, were they committing an offense while protesting?
15 Yes, that's a misdemeanor offense that they committed while
16 protesting by entering that building, by protesting inside the
17 Capitol. It's a locational violation. But in terms of their
18 conduct, they were, nonetheless, peaceful. They were not
19 harming anyone. And, indeed, on the video defense counsel is
20 able to count seven defendants who were -- seven individuals
21 inside the Capitol who shook hands with an officer. Some of
22 them were shaking as they were walking out. Others were to the
23 side of the video, to the right, which is inside the Capitol
24 hallway.

25 That officer wasn't standing initially near the door.

1 He was standing in the middle of the hallway before walking
2 towards him, shaking hands, speaking to him, and that is the
3 environment around. The officers weren't pushing anyone out.
4 No one was fighting. No one was toppling any statues. None of
5 that was taking place.

6 Mr. Stepakoff, for a good portion of the video, was
7 actually looking at his phone. He wasn't talking on his phone.
8 He was looking at his phone. And he was standing near the
9 entrance, and then he walked out after shaking hands with an
10 officer. And so from that perspective, what he observed in
11 that area in that moment he was in the building is not what the
12 government is describing.

13 And this is where the defense made a point. We make
14 this point a few times in our pleadings; where the government
15 is using evidence from other cases to create this exceptional
16 story of what Mr. Stepakoff would have been part of, but it
17 wasn't there. Now, after the fact, playing Monday morning
18 quarterback, and we're seeing a bird's-eye view -- because
19 that's one of the exhibits that the government has submitted --
20 a bird's-eye view of the event from above, seeing a very large
21 crowd and seeing in some other portions, there's violent acts
22 taking place.

23 That's not what Mr. Stepakoff saw that day. That's not
24 what he was exposed to. And the government says, okay, well,
25 there's people scaling a wall. And as we say, well, yes, and,

1 after the fact, they waved flags. The government says, well,
2 we didn't see that on Mr. Stepakoff's video.

3 Well, the government has the defendants who were waving
4 flags actually facing charges. And they have other videos of
5 it that they submitted to the defense in discovery. We have
6 all the discovery. We have videos of individuals, as they
7 call, scaling the wall, climbing up the wall, to wave flags as
8 they get up there. And so the government says, well, because
9 they scaled up a wall, then they waved flags, which they claim
10 they don't know the flags were waved, but they do because they
11 provided us with those videos. And surely they're exposed to
12 the same videos on YouTube that they provide in pleadings as
13 well that we can see.

14 But the individuals waving flags are not, quote/unquote,
15 dangerous to the point where the defendant should at this point
16 realize that he should not be going inside, or whatever the
17 government is trying to make an argument of. It just doesn't
18 quite make sense. It doesn't carry water.

19 The government is fully aware that individuals involved
20 in protests are surrounded by some individuals that will take
21 part in civil disobedience. That happens in every protest.
22 There's civil disobedience that the government knows full well
23 about that takes place in every known protest in
24 Washington, D.C. There's always police out for this reason;
25 that someone will disobey the law and someone will be arrested.

1 And that happened here. That happened in the Kavanaugh
2 hearings. People get arrested, and it's just a degree of
3 conduct.

4 In this particular case, with this defendant and what he
5 saw, he wasn't at this point thinking, oh, well, this is a
6 dangerous scenario because somebody's waving a flag at the top
7 of the Capitol Building. He's paying attention to what's
8 around here. And the Court has to take acknowledgment of the
9 fact that he's in a very loud crowd, and he's one individual in
10 a very loud crowd. He can only know so much of what's going
11 around him.

12 And, again, all the images that there -- the government
13 has taken from his phone that we have shown to the Court in our
14 pleadings as well show older individuals, families protesting.
15 They have Trump memorabilia. They don't have weapons. Their
16 faces aren't hidden.

17 One of the points we make to the Court is a man is not
18 covering his face and shaking hands with a police officer, this
19 is not a man who thinks he's committing an offense. He doesn't
20 have his face covered. He is not trying to run. He's not
21 wearing black clothing to match other individuals with whom he
22 walked in because they're trying to commit an offense and not
23 be identified. No. His face is wide open, and he's shaking
24 hands with officers because he doesn't realize that he is
25 committing an offense.

1 And the government says, well, he's a lawyer or was a
2 lawyer and for that reason he must have known that this is
3 unlawful. Mr. Stepakoff practiced criminal law 22 years ago
4 locally in Florida, defending indigent defendants under the
5 Florida code. He knows nothing about the Capitol Building or
6 its rules; and, quite honestly, as Mr. Stepakoff advised them,
7 he was not aware that it's unlawful to protest in the Capitol,
8 actually pointing at other instances when saw individuals
9 protesting in the Capitol. He didn't realize that going inside
10 the Capitol Building without doing anything was unlawful.

11 He knew, for example, a Senate proceeding interruption
12 would be unlawful, having walked inside and done what the
13 Kavanaugh protesters have done. As we mentioned in our
14 pleadings, those were in the Senate hearing. The Senate
15 proceedings were taking place. And in that chamber,
16 individuals stood up and disturbed the Senate proceedings.
17 That's when they were arrested. They actually disturbed the
18 proceedings.

19 Mr. Stepakoff was in a hallway which on other occasions
20 does open to the public. There are tourists at the Capitol.
21 Some of the images provided to the defense for global discovery
22 show defendants walking through red velvet ropes like tourists
23 would. The environment in that particular moment when the
24 defendant entered is a very different environment than the one
25 painted by the government because, yes, there are things going

1 around, but that's not what Mr. Stepakoff was taking part of or
2 seeing.

3 At the end of the day, he's still an individual who
4 didn't come with a group. He didn't come prepared. And this
5 is not an individual who's behaving as if he's attempting to
6 commit a crime or realizes even that he's committing a crime.
7 The government wants him to be more omniscient; he needs to
8 realize what's going on around him.

9 There were some individuals coming through windows. He
10 doesn't make eye contact with those individuals. And we can
11 see as he enters, he's not looking to his right, which is where
12 he would have seen the individuals entering, or to his left.
13 He didn't do that. He's kind of looking around, and he's
14 aloof, and he's incognizant. He's paying attention to his
15 phone. And he's slowly -- or, kind of, in his own world. This
16 is not a defendant that's highly aware of his surroundings.
17 Should he have been? Maybe. But that's not his personality.
18 At the end of the day, he is who he was born as, and that's his
19 personality. And he keeps to himself, and he's more aloof than
20 other people. And it is what it is.

21 The government wants him to be more aware. There's a
22 statue that was, apparently, knocked down. And, quite
23 honestly, it took counsel quite a bit of time to realize what
24 the government was talking about. But that statue that was
25 knocked down, they're saying, well, he walked past it. There

1 were other individuals between him and the statue as he walked
2 past. There was a line of other defendants walking past
3 between Mr. Stepakoff and the statue. It wasn't adjacent to
4 it. There was people in between him and that object, whatever
5 it was, on the ground.

6 And even still, I'm not sure that if we see a birds-eye
7 perspective, we see from above, in -- that camera, I don't know
8 what the perspective would have been of someone on the ground
9 at eye level with that object. I'm not sure that it would have
10 been visible. I just know that in the video that the
11 government is referencing, the object is visible from above.

12 As far as the government saying, well, we can't trust
13 the statements. It's a veracity issue. We can't trust it
14 because -- and they point to two things. Today they mentioned,
15 well, apparently, Mr. Stepakoff spoke to an individual -- who,
16 by the way, the government did not provide a full name to the
17 defense so we have no ability to actually cross-examine the
18 statement. The government says, well, a statement was
19 made [sic] to that individual. Well, that individual is not
20 here today for the ability of the defendant to cross-examine
21 the statement. So we can't rely on it.

22 The name of that individual was never provided to the
23 defense. They provided initials. And so that statement is
24 just simply an unreliable statement even under the rules of
25 sentencing. So even though we have lower standards for

1 admissibility, it's simply unreliable. We don't know who the
2 individual is. We don't know if he remembers correctly. We
3 don't know if he has any kind of incentives to fabricate or
4 change. We know nothing about this. We have the government
5 telling us someone said something and we're going to accept
6 that as truth, and that's just simply unreliable.

7 And the second issue is the defendant's veracity based
8 on a 20-year-old disciplinary issue. Now, we submit to the
9 Court that we have never seen the defense -- a career criminal
10 defense attorney, Judge -- over 10 years of practice, I've
11 never seen anything like this where the government will seek
12 out a defendant's 20-year-old bar disciplinary paperwork and
13 try to say that, well, because 20 years ago something happened
14 and we think we can be -- characterized as dishonest, because
15 that's one of the words in the title of his sentence, that
16 that -- or his suspension, that that means the defendant today
17 is unreliable, even though all of the video evidence
18 corroborates what he says. The video evidence simply
19 corroborates that.

20 We don't have any reason not to believe him. The
21 government decided that the state bar of Florida, which only
22 looks at the past ten years of disciplinary history, must be
23 wrong. And so the Florida state bar only looks at ten years
24 and says, well, it didn't happen in the past ten years. It's
25 not even important enough to notify the public. And so we

1 submitted to the Court imagery from the Florida state bar
2 public website what they show the public as far as practicing
3 attorneys and what the bar believes is relevant for the public
4 to know about practicing counsel who they can trust.

5 Mr. Stepakoff isn't even practicing law. Mr. Stepakoff
6 hasn't practiced law in 20 years -- or in 16 years at this
7 point. And he's -- he hasn't sought to renew his license, and
8 the reason why, as the government is fully aware, that's
9 because he is a practicing rabbi. Mr. Stepakoff has been a
10 rabbi for well over 20 years. He was initially doing both
11 rabbinical work and practicing law, and then he stopped
12 practicing law altogether in 2006.

13 And since that time, for 16 years, he's been doing
14 exclusively rabbinical work. That is all he has been doing.
15 He's a full-time rabbi. That is his calling. That is all he's
16 been doing. He has been a man of God for 16 years. The
17 government is fully aware of that.

18 But the government wants to ask for this excessive
19 sentence, and so they're bending over backwards to find
20 information on him. As we call -- this is an attempted
21 character assassination of Mr. Stepakoff, trying to find some
22 dirt on him, something to try and justify this absolutely
23 exceptional sentence that they're seeking in this case, and it
24 doesn't make any sense. And that's why we say the government
25 is bending over backwards to find this information.

1 You know, we cannot rely on 20-year-old bar disciplinary
2 records as a reason to believe or not believe someone when the
3 evidence in front of us clearly shows that we should believe
4 him; and certainly the evidence they're relying on is so old
5 that even the state bar of Florida is not relying on it. And
6 so we don't think the Court should consider that in its
7 veracity considerations.

8 But in this case, the video evidence -- the primary
9 video evidence of Mr. Stepakoff does not show a man who's aware
10 he's committing a crime. And I cannot state that enough. The
11 imagery from that video is fairly clear. He is an aloof man
12 who doesn't belong. He clearly -- he has no idea what is going
13 on or what he's doing, walking around pointlessly and walking
14 out.

15 And the government says, well, there's an Antifa sticker
16 or something -- anti-Antifa sticker on the door that they
17 submitted a photo of and there's a broken window. And they
18 say, well, it's not something Mr. Stepakoff may have or may not
19 have seen. We're just trying to show that that's what it would
20 have looked like. How is that relevant, Judge? This image was
21 taken 20 to 30 minutes after Mr. Stepakoff walked through a
22 door, and this is an image of a window. What does that have to
23 do with anything?

24 And this is where the government is reaching. They're
25 reaching to other people's cases to try and come up with

1 evidence to use against this defendant when, in fact, this
2 sentencing, this defendant's, is supposed to be limited to his
3 conduct, to what he knew, to what he saw, not to what everyone
4 else was doing. And the government says, well, the defense is
5 minimizing what everyone else was doing and that's why we're
6 adding this.

7 Well, the defense is responding to what the government
8 is doing. So the defense is trying to reel reality back in
9 because the government has made some outlandish claims in these
10 cases. They've stated that nothing worse has happened to the
11 Capitol; where indeed we know, well, yes, something did. We
12 had a bombing at the Capitol. We had double the value of
13 damage from that bomb. The bombing was a deadly weapon.

14 None of that is present here. These were individuals
15 who came in without weapons and who were protesting -- some
16 were fighting, but these were not individuals prepared for
17 attacking police officers or the Capitol -- individuals around
18 Mr. Stepakoff. That just didn't happen. They didn't have
19 weapons. They didn't throw bombs. They -- no one was shooting
20 anyone. None of that was taking place.

21 So the government says, well, just because some --
22 somewhere else something violent happened -- there may have
23 been a fire extinguisher. There may have been something else
24 that's violent. Police officers were injured from hand-to-hand
25 combat. Some people were using tools, et cetera. Again, that

1 wasn't happening around Mr. Stepakoff. What was happening is a
2 protest that got out of hand around Mr. Stepakoff. That's what
3 was happening there.

4 What happened elsewhere I'm not even going to comment on
5 as far as his case because it's not relevant to him. An
6 individual in a crowd, whatever happens with that, is still
7 responsible for his actions and what he would have known about
8 the crowd. So if an individual is taking part in a mob beating
9 because he's watching someone beat someone else up and he takes
10 part in that, that's different.

11 Here they were peacefully walking in and around. We see
12 the protesters around Mr. Stepakoff, and those protesters are
13 calm. Those protesters are nonviolent. And those protesters
14 are peaceful. And they're peacefully shaking hands. You see
15 some of the protesters patting the chests and the back of the
16 officers, in addition to shaking their hands. These are
17 individuals who are not out to harm anyone. That's the scene
18 around Mr. Stepakoff. That is a protest that got out of hand.
19 They shouldn't have gone inside, but that's where he was.
20 That's what the group around him was. That's what he was
21 seeing.

22 The government does note that he took a photo of a fence
23 that was taken down. We don't know the location of that, and
24 it wasn't -- it was quite a bit of time before he got to the
25 Capitol. So in terms of the relevance of that, to where he was

1 in -- there's no connection there, other than it's somewhere in
2 D.C.

3 The government made a comment today that in -- on
4 January the 5th Mr. Stepakoff knew that the Capitol was closed
5 off. Yes, on January the 5th, Mr. Stepakoff knew the Capitol
6 was closed off, but on January the 6th Mr. Capitol --
7 Mr. Stepakoff also went to President Trump's speech where
8 everyone was then told to go towards the Capitol. And he, like
9 everyone else, did. They all went towards the Capitol. And
10 then once they got there, they were all trying to have their
11 voices heard. You hear a lot of shouting and people screaming
12 and protest type of behavior. That was -- that was happening
13 in front of the Capitol where Mr. Stepakoff was. So none of
14 that was out of the ordinary in terms of what he was observing
15 prior to.

16 And then eventually the doors are open and the crowd
17 walks through, he follows them in. That, for purposes of this
18 case, we'll say, yes, that was out of the ordinary. Except for
19 Mr. Stepakoff, he's not used to protesting, certainly not in
20 D.C. This was not something he was aware of. Now he's very
21 much aware not to follow crowds. He's certainly learned his
22 lesson. He will not be following crowds.

23 I think that the government actually made a comment,
24 well, we don't know if we can trust Mr. Stepakoff now to make
25 this mistake again. The government actually asked

1 Mr. Stepakoff at his FBI interview, "Are you going to go to the
2 protest scheduled in D.C. for" -- it was September or October.
3 There was a protest in D.C. in front of the Capitol, and he
4 said, "Absolutely not." They said, "Would you recommend to
5 someone else to go to that protest?" And he said, "No, I would
6 recommend people don't go to those protests." That's what he
7 said. That was their conversation.

8 And so for the government to have the audacity to say
9 that, oh, well, we don't know if he's going to commit other
10 such acts in terms of when he's taking part in protests, it
11 doesn't make any sense. They literally tried to establish this
12 during his interview. They were testing his, I guess, danger
13 in terms of these protests. And he made it clear. He's not
14 going anywhere.

15 He's a normal man, a man who has four grown children.
16 His oldest just went off to college. I'm sorry. His youngest
17 just went off to college. This is a grown man who's being
18 arrested at age 56 who was -- has a search warrant executed on
19 his house for coming into the Capitol. The government thinks
20 that, oh, this is a danger, that he's going to repeat. Of
21 course not.

22 This is a man who had to take down posts because he was
23 so concerned about his congregation because he's a rabbi and he
24 leads people. He was so concerned about the congregation and
25 their -- the political divisiveness. That's why the posts were

1 taken off. And that was a conversation the FBI had with
2 Mr. Stepakoff as well. Why were these posts taken down? He
3 explained. I was told that it's really bad for the
4 congregation, people disagree politically, and I didn't want to
5 add to the division. And so I took down my political posts
6 because I didn't want there to be so much division. And they
7 have that conversation with Mr. Stepakoff. Why were those
8 things taken down?

9 And so today we hear a lot of -- and also in the
10 pleadings -- the government trying to paint Mr. Stepakoff as an
11 uncertainty or someone dangerous, and none of that is accurate.
12 And the government had complete access to Mr. Stepakoff. They
13 know everything they could possibly want to know. They
14 executed search warrants on his cellular device and on his
15 computers. Whatever it is that they wanted to find, they
16 looked for and they could not find.

17 So then they talked to him. Whatever they wanted to
18 ask, I gave them complete access to ask whatever they wanted of
19 Mr. Stepakoff. The government even started asking about future
20 protests, and normally I would have cut them off, but I let
21 them continue asking those questions because this man has
22 nothing to hide. This [sic] is not a danger to society or to
23 the FBI or anyone else.

24 And so, again, reeling the story back in to where we
25 are, at the end of the day, this is a protester who walked into

1 the Capitol, albeit unlawfully, who stayed there for a period
2 of 5 minutes. He looks on his phone. He shook hands with a
3 police officer. The people around him were peaceful. The
4 people around him shook hands with officers, patted them on the
5 chest, and then he walked out. And then he went back to his
6 hotel room.

7 And then when people were claiming, oh, well, there's
8 violence at the Capitol. I mean, I didn't -- I didn't believe
9 that. He didn't believe that it happened because that's not
10 what he saw. He wasn't trying to spread false information,
11 which, by the way, still doesn't justify a criminal sentence of
12 jail time, even if that was the case. But in this case, it was
13 clear he didn't see violence so he thought it was lies
14 perpetuated to make conservatives look bad. Because he thought
15 there was -- I believe the story relayed was buses of Antifa or
16 someone else trying to pose as Trump supporters, and those were
17 the individuals who were committing these acts.

18 It had to be, because certainly in front of him no one
19 was committing the acts that he was hearing about on the news.
20 That's not what he saw for himself. That's not spreading lies,
21 Judge. That's spreading what he thought was the truth and an
22 explanation for what others were saying. He's creating an
23 explanation for why it would have been the case.

24 In terms of the government's statement that, well, we're
25 comparing -- the defense is comparing the Kavanaugh protesters

1 and Portland protesters to Mr. Stepakoff and somehow that that
2 is a bad comparison, that's also inaccurate. It's actually a
3 very good comparison.

4 And the government actually brought out a decision that
5 is on the record from Judge McFadden. And the government made
6 it sound like, well, in that decision Judge McFadden said that
7 these are not a good comparison. I'd like to read from that
8 decision, Judge, because it actually is very relevant. The
9 judge writes, ". . . incredibly, the Government dismissed . . .
10 charges against all three Portland defendants," who, by the
11 way, Judge, were accused of violent acts against police
12 officers.

13 The judge writes, ". . . he" -- the defendant -- "still
14 faces greater charges than the Portland defendants, despite
15 [the] key difference[s]." And this is suspicious, he writes.
16 He writes suspicious. That's the word the judge used. The
17 judge wrote, "That is the kind of 'different treatment'"
18 quote/unquote "that might warrant discovery."

19 "The Government responds that it treated Judd and the
20 three Portland defendants equitably because it filed felony
21 charges against all of them. . . . The Government seems to
22 think that the initial charges are all that matter, [but]
23 not" --

24 THE COURT REPORTER: Ms. Medvin, you're going to have
25 to slow down if you're reading. "The Government seems to think

1 the initial charges are all that matter, but . . ."

2 MS. MEDVIN: "The Government seems to think that the
3 initial charges are all that matter. Not so. By that logic,
4 the Government could avoid discovery of a race-based selective
5 prosecution claim if it indicted similarly situated black and
6 white persons, dismissed the charges against the whites, and
7 prosecuted the black defendants to conviction or plea. The
8 'administration of a criminal law' is not limited to an initial
9 charging decision. Nor is it so easily circumvented."

10 Judge goes on to say, "More, the Government's logic
11 would allow it to charge similarly situated black defendants
12 with felonies and white defendants with misdemeanors. But
13 discriminatory effects include disparities in the 'crimes
14 charged.' The Government's argument is thus absurd and
15 untenable - that the Government originally indicted the
16 Portland defendants does not erase the potential for
17 discriminatory effect."

18 And later on, the judge concludes -- and we cited to
19 this decision in our sentencing memorandum. The judge notes
20 that none of the suggested -- none of the -- "None of this
21 suggests that the distinctions" -- and at this point the judge
22 is referencing the distinctions he's made between Portland
23 cases and these cases -- "Judd highlights are irrelevant for
24 all purposes." And he quotes another decision that he made in
25 another case, *United States v. Griffin*. He says, "Disparate

1 charging decisions in similar circumstances may be relevant at
2 sentencing."

3 And, Your Honor, we are bringing up the discrepancy at
4 sentencing. We did not file any other dismissal motions in
5 this case. We're bringing up the disparity, where it belongs,
6 at sentencing. Judge McFadden has stated twice on the record
7 that this belongs at sentencing, and that's where we brought
8 it, at sentencing. And this is the standard that we're asking
9 for the Court to consider, sentencing disparity, not charging
10 disparity. And that is why we put forward this argument. So
11 the government's argument as far as charging decisions, it's
12 simply irrelevant because that is not what we have raised.

13 As far as the Portland cases, those cases are
14 tremendously different, obviously, than Mr. Stepakoff's case.
15 We had individuals who were attacking officers violently.
16 Officers suffered injury, and the government dismissed charges
17 against those individuals. I believe more than half of the
18 individuals charged had their charges dismissed. The
19 government made claims, well, it's hard to ascertain their
20 identify because certainly they're wearing black, they were
21 wearing matching uniforms, and their faces were covered. And
22 so it's hard to ascertain identity.

23 But, of course, Judge McFadden pointed this out, as did
24 some defendants. That didn't stop the government from finding
25 who they were and arresting them; therefore, not having an

1 identity issue. So, indeed, someone with an identity that was
2 strong enough minimally for probable cause was arrested, and
3 then, of course, their charges were dismissed after the fact,
4 after they completed community service or some kind of other
5 dismissal program.

6 And a dismissal program, like that exists in the
7 District of Columbia, as the defense points out in our
8 pleadings, there is such a program of dismissal. And the cases
9 are supposed to be considered on an individual basis. But
10 Ms. Prout and other prosecutors have made it very clear that
11 the January 6th defendants shouldn't even worry about that,
12 that does not apply to them.

13 Their cases will not be considered individually even for
14 the dismissals program. That will never simply apply to anyone
15 involved in the January 6th prosecution, so contradicting their
16 online website claim that they treat cases individually.
17 Because these individuals are not being treated as individuals.
18 They're being treated as members of a group of people who came
19 to the Capitol on January the 6th. So irrespective of their
20 individual conduct, they need not apply for any kind of
21 dismissal disposition.

22 And we certainly submit to the Court that that is not
23 equitable and that that completely contradicts their policy
24 statement. The government is treating these defendants
25 differently for purposes of sentencing because this is for

1 purposes of disposing of the offense. It's a disposition
2 issue.

3 As far as the Kavanaugh protester that --
4 Ms. Steingraber that we've pointed to in our memorandum, her
5 conduct was significantly more serious than Mr. Stepakoff's.
6 She was inside the Senate Chamber, and she disrupted the
7 proceedings, which are also constitutionally mandated
8 proceedings in that case. Different types. But, nonetheless,
9 those were disrupted by her behavior. And after the fact, she
10 boasted about it on the internet.

11 And the government says, well, the fact that the
12 defendants in the January 6th cases boast about something on
13 the internet or promote some kind of political ideology, that
14 that should matter for sentencing. Well, it didn't matter that
15 this boasting was taking place in other cases. This isn't the
16 first time a defendant went into the Capitol politically and
17 then posted something on the internet. That happens all the
18 time. That's in the age of the internet what people do.

19 And at the end of the day, her conduct is more serious
20 than Mr. Stepakoff's. But her conduct was considered a type of
21 civil disobedience. She was charged under D.C. local code, and
22 it was a post-and-forfeiture disposition where she posted \$50
23 and the case gets dismissed. It's not even an adjudication of
24 guilt. So it's not even a criminal record for her.

25 With Mr. Stepakoff, and other defendants similarly

1 situated to Mr. Stepakoff, they were prosecuted by the federal
2 government; something that did not take place in any other kind
3 of Senate disruption scenario. They received supervised
4 pretrial probation. They were restricted from traveling.
5 Mr. Stepakoff's passport, for example, was taken from him.
6 They are restricted from possessing firearms, most of the
7 defendants in these cases. They're treated very differently
8 than someone who just pays \$50 and their case goes away without
9 a record.

10 Then, none of these cases were offered a dismissal
11 disposition. These cases were offered at the lowest -- the
12 offense that Mr. Stepakoff pled to, which is the parading in
13 the Capitol offense, and there is a mirror offense of this
14 nature in the District of Columbia code, as we pointed out as
15 well. That wasn't offered to the defendant. Plead guilty but
16 under the District code. No. It was under the federal code so
17 they could get a federal sentencing, because they have a
18 harsher sentencing here in the federal court. Because, as the
19 government noted, it's up to five years of probation as opposed
20 to dismissal with not even a criminal record.

21 And so here we are with very similar conduct. And the
22 government explains, well, the reason why is because it's part
23 of January 6th. Fine. At this point, Mr. Stepakoff has
24 already pled to the offense. He's already been on a year of
25 supervised probation pretrial. He's already pled guilty. So

1 he already has a criminal record. These are punishments. His
2 house was ransacked. That's a punishment.

3 He was publicly ridiculed on the government's website
4 where they posted to -- all his documents. They created a web
5 page with his name on it. They have an actual web page with
6 Mr. Stepakoff's name on it in their website pages. So he's --
7 their department may choose when to remove it, if ever. And so
8 this is what we called public tar and feathering at this point.
9 Because why do we have that in these cases; right? It's never
10 been done before.

11 So the government is treating them all very differently,
12 and they're causing severe societal implications. You know,
13 everything from the conviction to the one year of supervised
14 release, pretrial probation, to these -- these websites, to how
15 they discuss these cases, to going into a 20-year-old
16 disciplinary proceeding from the state bar in Florida. All of
17 this. How they're treating these cases is nowhere near how any
18 other protester would be treated.

19 And on top of all of this -- because this is not enough.
20 On top of all of this, he should also go to jail for 14 days
21 and have a constitutionally impermissible additional sentence
22 of three years of probation, which, as the defense pointed to
23 the Court's attention, simply cannot take place. And the
24 government even submitted in a supplemental authority
25 submission to the Court yesterday, there's another court here

1 in this jurisdiction that also found that, indeed, the -- you
2 cannot jointly have probation and incarceration.

3 But this is the government's position; that nothing is
4 enough. Nothing is enough, and we need to go above and beyond,
5 above and beyond. And at the end of the day, we're still back
6 to the original offense at hand. And it's more than
7 sufficient. And as we pointed out in terms of, you know,
8 societal deterrence, as we pointed out in our pleadings,
9 society has deterred. People aren't showing up at protests at
10 the front of the Capitol. They're scared. There were more
11 media and more police than protesters at the last protest in
12 front of the Capitol.

13 These people are genuinely frightened of protesting.
14 The American people are frightened of protesting. They're
15 frightened of the federal government. The American people are
16 frightened of the FBI. And we're seeing this play out in real
17 time in front of the Capitol, in front of the protests that are
18 scheduled. And to say that that is not enough, to say that
19 society is still not adequately deterred, well, Judge, I -- I
20 don't know what would be.

21 I don't see how putting everyone in jail and also
22 telling people they should be afraid of protesting is what
23 society needs as a deterrent. Because that's certainly not the
24 case. And it should never be that individuals feel that they
25 cannot protest. Because it wasn't the protest that is being

1 punished. It's a locational protest in this particular case or
2 violence that came from it in some of the other cases. It's
3 not the protest itself.

4 But when the government makes claims that, well,
5 Mr. Stepakoff isn't remorseful because he did not take back his
6 politics, now that is a problem. So that is something that
7 happened in this case where the defendant says to the
8 government, I wished I did not protest in the Capitol. I
9 wished I did not go in, because had I known that it was
10 unlawful, I would have turned around. He had this conversation
11 with them. He repeated this multiple times. He repeated it to
12 his pretrial probation officer. This was a constant issue.

13 And he's very remorseful this happened because he really
14 wishes he didn't break the law. But what he did not say --
15 what the government wanted him to say -- is that he wishes he
16 did not protest, period, or that he wishes he could reverse his
17 politics or something of that nature. That wasn't done in this
18 case.

19 And that's where the government all of a sudden is now
20 making claims, well, he's not sufficiently remorseful. But,
21 indeed, he is. He didn't know. He's not going to lie and say
22 he knew. He didn't know; because he will not lie, not even to
23 appease the federal government. He will not lie and say that
24 he knew that it was unlawful to enter the Capitol. He simply
25 will not say that. I will not allow him to say that, and he

1 doesn't want to say that because that's a lie. And we're not
2 going to do that to this Court. He didn't know.

3 If the government wants to say that, that's a bad thing
4 and he should be punished more severely than somebody who
5 knowingly violated multiple laws, that's something different.
6 But he didn't know. And -- nor do I think he should be
7 punished more severely for that, but that's a whole different
8 issue. But it didn't happen.

9 What the government wanted for him to say is that he
10 knew and he still went in and also he takes back his politics.
11 And that's simply not the case here. He didn't know, and the
12 politics isn't what caused for him to go inside the Capitol.
13 He wasn't motivated by any kind of political nature to go
14 inside. It was simply an extension of his already-there
15 protest. He wasn't specifically going inside to achieve any
16 kind of purpose. That's not alleged in the government's
17 statement of facts either.

18 He personally didn't have any kind of purpose, other
19 than following the crowd in and exiting, in his protest. It
20 wasn't to achieve any other political means other than to
21 continue his protest. It's just a locational issue for him.
22 The location where his protest took place, that is what was
23 unlawful. That is the evidence here.

24 In terms of the politics involved and the various
25 allegations being made against the government in a variety of

1 these cases, that they're prosecuting these more harshly; and
2 something we brought out as well compared to defendants with
3 other politics. That's simply present; that we're simply
4 seeing these prosecution disparities. And what are we supposed
5 to do with that? What are we supposed to do when we see that?
6 We have to highlight it for the Court, because the Court needs
7 to see that defendants who committed more serious offenses
8 inside the Senate chambers, those defendants are getting more
9 lenient deals.

10 At the end of the day, what Mr. Stepakoff did was walk
11 into a Capitol for 5 minutes unlawfully. He should not have
12 been there. He shook hands. He walked out. That is his
13 conduct. What he posted online afterwards doesn't lay claim to
14 anything different than what he told the FBI.

15 None of his politics were any -- kind of extraordinary
16 or dangerous. He wasn't claiming that anything violent should
17 happen. The government actually conceded and actually made a
18 point saying I don't believe the violence, but it might come to
19 it. And he's saying that based on what -- the idea of these
20 elections and whatnot. This is an individual who was present
21 on January 6th. And instead of saying it already has come to
22 it, he said one day it might come to violence. That is what he
23 said because -- and that is further proof that he did not see
24 on that day a level of violence. Because he thought all these
25 people protesting might one day evolve into violence. That is

1 what he thought, and that is what he was warning.

2 And he said, "I don't believe in violence. I don't
3 believe in violence." And why not? Because he's a rabbi, he's
4 a man of God, and he's talking to his congregation at the end
5 of the day. That's what these videos all were. He's
6 communicating with his congregation, his people.

7 And he committed an offense. It's a locational protest
8 offense. It was certainly on the wrong day; that we --
9 certainly wishes he wasn't there. He certainly wishes he
10 didn't go inside the Capitol. But in terms of taking back
11 politics or taking back any of that type of, you know,
12 emotional connection to it, it wasn't part of why he entered
13 the Capitol. And for that reason it's not something that he
14 should have to take back or anyone else.

15 The government, I think, should be very concerned about
16 society and the public. As we pointed out, too, in our
17 pleadings, they owe a duty not just to an incarcerated
18 defendant, but it's a duty to the people and also to the
19 defendant. And that's where, you know, a lot of due process
20 litigation comes from, a lot of *Brady* material. The
21 government, for example, has to turn over evidence to the
22 defense even if the defense doesn't ask for it. These are all
23 obligations the government has to the defendant.

24 Because at the end of the day, it's supposed to be an
25 equitable prosecution. It's not supposed to be a persecution.

1 It's not supposed to be disparate treatment. None of that is
2 supposed to be taking place. But, unfortunately, that's what
3 we've seen in a lot of these cases, especially with this one,
4 as far as the sentencing requests. That's quite a bit of what
5 we're seeing here. And so we did point that out to the Court
6 because we have to. It's our duty to make sure that the Court
7 is aware of what's been happening.

8 The government noted that the defendant should not feel
9 deceived by the negotiations because the plea agreement did not
10 have the sentence outline. We agree the plea agreement did not
11 have that sentence outline. We didn't claim it did. We put it
12 into a footnote what was taking place between the parties
13 because it was such an unusual situation; where the government
14 throughout their conversations with Mr. Stepakoff, two
15 prosecutors -- multiple prosecutors conveyed to the defense we
16 don't expect for the government to be seeking jail time in this
17 case. Because we were all in the same boat where
18 Mr. Stepakoff's conduct certainly isn't very serious compared
19 to other defendants.

20 We didn't expect jail time. And so we were reading
21 about it over and over again. There was no promises,
22 absolutely no promises made, but it was conversational. It was
23 an understanding of the case. Unless, the government said, we
24 find out something in his interview or something else comes up
25 that we did not know about, and, of course, that's

1 understandable.

2 But that's not what happened here. What happened here
3 is the government -- just hours before memoranda were due, the
4 government notified the defense that all of a sudden they're
5 requesting 14 days in jail, plus three years of probation. And
6 that was just shocking because that certainly wasn't anything
7 we discussed previously. And the factors that the government
8 pointed to, the fact that he's a lawyer -- and all that was
9 known to them. And the fact that he's a lawyer --

10 Another important point of consideration for the Court
11 is the *Clinesmith* case. That was a lawyer. That was an FBI
12 lawyer. That FBI lawyer committed an act of dishonesty while
13 employed for the FBI and with civilian victims. Based on that,
14 there's an additional lawsuit right now. Mr. Carter Page --
15 Dr. Carter Page is suing him right now.

16 And the government doesn't discuss that case. But in
17 that case, the sentence is relevant as well. Because even in
18 that case, where a lawyer lies in the course of the performance
19 of his duties for the federal government with a civilian
20 victim, he still did not receive jail time. He received
21 one-year probation and some community service and a fine, I
22 believe. I'm trying to recall the exact number of that. But
23 there wasn't even jail time in that case, and it was one year
24 of probation.

25 You know, certainly in terms of comparing the fact that

1 he's a lawyer wouldn't matter. It matters for sentencing
2 disparity purposes. But the government ignores that case and
3 says, well, no, Mr. Stepakoff is a lawyer. And he went into
4 the Capitol 22 years after practicing local Florida law, which
5 has absolutely nothing to do with the Capitol or federal law or
6 any of that, and he should go to jail because of that. That
7 doesn't make any sense. That's just completely outlandish.

8 And so the Court was saying, Mr. Stepakoff -- and I'll
9 have Mr. Stepakoff make a statement shortly. He does wish to
10 address the Court. We will have him address the Court.

11 But as we go back to our pleadings that we submitted to
12 the Court, I pointed out a variety of issues that are
13 problematic on the government's side. We also pointed out
14 to -- pointed to what the defendant actually did. And we're
15 saying, yes, the penalty here should be \$50 because that is
16 what the penalty was for other protesters who were similarly
17 situated -- Ms. Steingraber and others like her -- and other
18 individuals at the Capitol and those individuals who actually
19 had done worse because they had disrupted proceedings.

20 Mr. Stepakoff -- and we discussed the proceeding issue
21 tangentially here, but in terms of -- he was there at 3:00 p.m.
22 So he personally did not disrupt the initial proceedings from
23 ceasing. We also are not sure -- and I don't think the
24 government knows full well, which they have not provided to us
25 that information in any way, why the Senate and the House

1 recessed initially.

2 And it does appear from testimony from Congress that the
3 House was recessed because of the pipe bombs that were
4 discovered in the RNC and DNC buildings and there was concern
5 there might be something around the Capitol as well, and that
6 is why the House resumed proceedings later, technically resumed
7 in the middle of this crowd convening to interrupt based on the
8 government's timeline. Regardless, Mr. Stepakoff was there
9 after 3:00 p.m. And so at that point, again, what is his
10 conduct? And that's what we're trying to bring the Court's
11 attention back to.

12 And so I do think that a \$50 fine is appropriate. And
13 this is not his only penalty, because his penalty is also a
14 conviction, a criminal record, a permanent criminal record.
15 His penalty is also the one year of pretrial supervision that
16 he's been on and, of course, the public ridicule and the media
17 that's watching this hearing and all the other hearings and
18 writing about it.

19 I mean, this is all public shame, and this is all part
20 of the sentence, and this is all part of public deterrence,
21 both for him and for the public. It's more than sufficient.
22 It's more than sufficient. And I think that the \$50 penalty --
23 also considering that he's already paid the \$500 restitution,
24 just to show good faith, I think all of that really points to
25 the fact that Mr. Stepakoff's equitable penalty in this case is

1 \$50, and that's how we should conclude this case.

2 Thank you, Judge.

3 THE COURT: All right. I'll hear from Mr. Stepakoff,
4 but you put my court reporter through a Peloton-like workout.
5 I'm going to take a five-minute break, and we'll come back and
6 hear from Mr. Stepakoff.

7 (Recess taken.)

8 THE COURT: Back on now?

9 THE COURT REPORTER: (Nods head.)

10 THE COURT: All right. Mr. Stepakoff, you did
11 want --

12 MS. PROUT: Your Honor, I did want to request an
13 opportunity to very briefly respond to a couple of the points
14 made by the defense. I didn't know if you'd like the
15 government to do that before or after Mr. Stepakoff speaks.

16 THE COURT: Which points?

17 MS. PROUT: There were just a few factual
18 clarifications that the government wanted to make regarding
19 some of the evidence that the defense discussed. I can be very
20 brief.

21 THE COURT: Let me hear from Mr. Stepakoff first.

22 MS. PROUT: Thank you.

23 THE DEFENDANT: Thank you, Your Honor.

24 Entering the Capitol was a terrible mistake on my part.
25 I deeply regret it. I wish I could take it back, but I can't.

1 It was not done in defiance nor as an act of civil disobedience
2 or anything like that but simply because I failed to properly
3 appreciate the situation.

4 That day I went up Pennsylvania Avenue, along with
5 throngs of people, and I followed the crowd and entered through
6 an open door of the Capitol Building in the plain view of law
7 enforcement, both inside and outside of the Capitol. People
8 were being allowed to flow into the Capitol. No arrests were
9 being made. No warnings and no instructions were given to
10 leave the premises, which I would have done immediately. No
11 violence was taking place, and there was a lot of friendly
12 engagement between the protesters and law enforcement. All of
13 what I describe is clear to see in the CCTV video.

14 Although in hindsight I now know that I was clearly
15 mistaken, it did seem at the time that the protest, which I had
16 come to D.C. to be a part of, was continually -- was continuing
17 lawfully and without any objection from law enforcement inside
18 of that -- that lobby, which I now know is called the Senate
19 wing, which is where I entered.

20 I originally went to Washington to witness a historic
21 event and to let my voice be heard as part of it. And this
22 seemed like a pivotal and historical moment in our country.
23 And whatever the outcome, I just wanted to be a part of it and
24 witness it, be able to talk about it over livestream and with
25 friends back home. If the GOP candidate lost, so be it.

1 There's always another election two years and then four years
2 later. That's America.

3 I was horrified to learn of the chaos and violence that
4 broke out, which totally contradicted and undermined the whole
5 point of the gathering. I had no part in any of that, nor did
6 I witness it. If I had witnessed it, I would have made an
7 immediate U-turn and returned back to my hotel. I accept that
8 entering into the Capitol was not lawful, and I was wrong to
9 think that it was. I did not exercise good judgment, even
10 though I was only in there for a few minutes in one small area,
11 and all I did inside was lean up against a wall and take some
12 selfies. And even though -- I complimented the officers, I
13 said thank you for your service, we love you, God bless you,
14 and then I exited. Still, I had no right to be there, and I
15 accept that. And that's why I pled guilty to the unlawful
16 parading charge.

17 I do feel that I failed to properly assess and
18 understand the situation, and I deeply regret it. I've got
19 great remorse about it. There's a lot of things I have to live
20 with because of it, hurt that I've caused to myself and to
21 others, and I deeply regret it. I take full responsibility for
22 that failure.

23 Thank you.

24 THE COURT: I have a few questions for you. And, you
25 know, you and I are about the same age. In fact, I think we

1 overlapped for a year at Florida State. And you might recall
2 when we were kids we used to watch a cartoon named Mr. Magoo,
3 and that's essentially how your counsel has characterized you.
4 You just stumbled through the events with -- oblivious to all
5 the mayhem around you, which, you know, Magoo-like characters
6 generally don't get through college and go to law school.

7 So it's a little bit hard to square what you're saying
8 now and the arc of your life. You did not -- when you took
9 those photos in front of the fence with the signs that said
10 closed to the public, you did not understand that the Capitol
11 was closed?

12 THE DEFENDANT: I didn't because I was flowing with
13 the crowd. And I should have. I wish I had. I wish I had
14 understood it and -- and wouldn't be sitting here right now, I
15 guess. But I was flowing with the crowd. There were thousands
16 of people in that area, and nobody was clashing with police or
17 anything like that. So I just really didn't pay attention to
18 it the way I should have.

19 THE COURT: You didn't hear the alarms going off?

20 THE DEFENDANT: No, Your Honor. There definitely
21 were no alarms. I mean, that definitely wasn't happening.

22 And I -- I'll ask Your Honor to consider that I'm not a
23 person that would take lightly the idea that I might be
24 breaking the law. I mean, there's no way that I would take
25 that kind of risk with my life, my career, my family to just --

1 just in a flippant way just ignore the law and put myself at
2 risk of being arrested and going through everything I'm going
3 through now. I just did not assess it properly, and I just
4 didn't see it that way at the time. It was my mistake.

5 THE COURT: When you went through those doors, you
6 didn't see that the glass had been broken out?

7 THE DEFENDANT: No, sir, I did not see that.

8 THE COURT: How about chemical -- was there a
9 chemical smell in the air?

10 THE DEFENDANT: I didn't notice that, and I wasn't
11 wiping my eyes in the video or anything like that. I didn't
12 notice that. It seemed like a friendly environment.

13 I think, looking back on it, that what impressed me the
14 most was that -- the presence of law enforcement. Normally if
15 you commit a crime right in front of eight or ten police
16 officers, you're going to be arrested. And there wasn't any --
17 anybody being arrested. There wasn't -- and I don't mean to
18 sound like I'm blaming someone else because I'm not. Those
19 brave and noble officers deserve all the credit in the world.
20 That's why I thanked them.

21 But if somebody had stood there with a megaphone and
22 said: Warning. You are trespassing on government property.
23 Leave the premise immediately, I would have gotten out of there
24 in a heartbeat. It just -- it just seemed like it was being
25 allowed at the time. I never said that they opened the doors

1 and ushered people in. That didn't happen where I was, but it
2 just seemed like, at the time, that the protests that I had
3 come to be a part of -- which the President said, you know, now
4 we're going to peacefully and patriotically march to the
5 Capitol, it just seemed like it was carrying on there. And I
6 was wrong. I was mistaken, and -- and I regret it. And that
7 was my state of mind at the time, sir.

8 THE COURT: So in the video, you spend a lot of time
9 looking down at your phone. Were you following contemporaneous
10 reports of what was occurring?

11 THE DEFENDANT: No. I was -- I believe I was trying
12 to delete some pictures because the -- my phone had reached its
13 capacity. And I was trying to take a few more pictures. I
14 can't recall exactly. There were some cell -- cell phone
15 messages that may have come in, but I don't -- I don't remember
16 specifically. But I don't think I was getting good cell phone
17 coverage inside there, but my -- my main focus was to try to
18 take some pictures.

19 THE COURT: You didn't read any contemporaneous
20 accounts that characterized what happened as a breach of the
21 Capitol?

22 THE DEFENDANT: No, Your Honor.

23 THE COURT: All right. So let's start with the
24 financial issues. So the restitution has been agreed to by
25 the parties, and that's \$500, which I'm told has already been

1 paid.

2 With respect to a fine, the maximum fine is \$5,000.
3 Although probation indicated that the defendant has an ability
4 to pay, that given the expenses and income, they recommend only
5 a modest fine. I intend to impose a fine to compensate the
6 government for its supervision of defendant for the past year
7 and into the next, which combined with -- amount to \$742.

8 The Court is to impose a fine -- rather, is to impose a
9 sentence sufficient but not greater than necessary to comply
10 with the purposes set forth in the subsection. I'm to consider
11 the nature and circumstances of the offense and the history and
12 the characteristics of the defendant and impose a sentence that
13 reflects the seriousness of the events, promotes respect for
14 the law, and provides just punishment for the offense.

15 Of course, the offense is serious. A number of my
16 colleagues have spoken very eloquently about this. Defendant
17 took part in the mob riot that took place at the Capitol on
18 January 6th, 2021. Many of the rioters engaged in violence and
19 some destroyed property. I have watched numerous videos of
20 rioters engaging in hand-to-hand combat with police officials.

21 It was not a peaceful event. More than a hundred law
22 enforcement officers were injured on that day. Moreover, the
23 Capitol sustained almost \$1.5 million in property damage. Many
24 of the rioters intended to block the certification of the votes
25 for President Joe Biden, and although the rioters failed to

1 block the certification, they delayed it for several hours.

2 The security breach forced lawmakers to hide inside the
3 House gallery until they could be evacuated to undisclosed
4 locations. In short, the rioters' actions threatened the
5 peaceful transfer of power. That is a direct attack on our
6 nation's democracy.

7 With that said, no evidence has been presented that
8 shows the defendant assaulting law enforcement or destroying
9 property. After entering the Capitol Building through an
10 entrance at which law enforcement had been overwhelmed a short
11 time beforehand, in which clearly showed evidence of forced
12 entry, such as broken windows, defendant entered and lingered
13 for about 5 minutes. The riot was successful in delaying the
14 certification, in large part, because of the numbers of
15 participants involved, which simply overwhelmed the outnumbered
16 law enforcement officers present.

17 Regardless of the defendant's intentions, because he
18 contributed to these numbers, he must be held accountable for
19 his actions and the results to which his actions contributed.

20 Otherwise, defendant has no criminal history. He's a
21 56-year-old man with a bachelor's degree and a law degree. He
22 practiced law for a number of years and now serves as a rabbi.
23 In his sentencing memos and today, he attempts to diminish his
24 culpability by portraying himself as a Mr. Magoo-like character
25 that stumbled into and entered the Capitol oblivious to the

1 mayhem around him. The government has presented persuasive
2 evidence indicating that this characterization is highly
3 suspect. The defendant is a highly educated individual who the
4 Court finds is highly unlikely to have been so oblivious.

5 Otherwise, defendant's background is unremarkable. He
6 grew up in an intact and loving family. All of his needs were
7 provided for, and he received an advanced education. He has
8 always been gainfully employed and appears to have a strong
9 family support system in place.

10 The Court is to impose a sentence that affords adequate
11 deterrence to criminal conduct, protects the public from
12 further crimes of the defendant. The events of January 6th
13 involved a rather unprecedented confluence of events spread by
14 then President Trump and a number of his prominent allies who
15 bear much responsibility for what occurred on that day.

16 Since defendant's arrest, he seems to have done well on
17 release status, and the Court is confident that given his prior
18 lack of criminal history and lack of a violent past that he is
19 unlikely to reoffend, will not be emotionally swept up in
20 irrational actions, and will pose no risk to the public.

21 With respect to general deterrence, the Court does not
22 believe that incarceration is necessary to deter other
23 nonviolent protesters from crossing the line to law breaking.
24 The defendant's ordeal through the criminal justice system,
25 fines, restitution, community service, and probation with home

1 confinement should serve as an adequate deterrent to those that
2 can be deterred.

3 No one has brought any issues to my attention concerning
4 a need for education or vocational training, medical care, or
5 other correctional treatment in the most effective manner.

6 The Court is to consider the kinds of sentences
7 available. Given the nature of the crime and the defendant's
8 lack of criminal history, the Court is considering a period of
9 probation that contains restrictions and imposes home
10 confinement for a period of time. Even if the Court were
11 inclined to consider a short term of incarceration, it would
12 not be prudent to impose such during the COVID pandemic.

13 The Court is to consider the kinds of sentence and the
14 sentencing range established for the applicable category of
15 offense committed by the applicable category of defendant set
16 forth in the guidelines. As indicated and agreed to by all,
17 the guidelines do not apply in this case, and no pertinent
18 policy statements issued by the Sentencing Commission have been
19 brought to my attention.

20 The Court is to impose a sentence that avoids
21 unwarranted sentence disparities among defendants with similar
22 records who have been found guilty of similar conduct. The
23 government has provided a chart that lists a number of the
24 January 6th defendants' sentencings. But as I indicated
25 previously, there is not enough granular information to make

1 apt comparisons. However, the list does make it clear that the
2 government has recommended noncustodial home confinement
3 probation sentences in a number of these cases. And the Court
4 finds it hard to distinguish those cases from this case.

5 But the Court finds given the size, scope, and impact of
6 the January 6th mob riot presenting a direct challenge of this
7 country's bedrock democratic principles, the defendant's
8 attempt to compare and contrast the treatment of the
9 January 6th defendants to that of the defendants who attempted
10 to derail the Kavanaugh confirmation hearing falls flat, and
11 the Court doesn't find those defendants comparable to the
12 defendants in the January 6th cases.

13 We've already dealt with restitution. And I will now
14 indicate the sentence to be imposed, but counsel will have one
15 more opportunity to make any legal objections before the
16 sentence is actually imposed.

17 Ms. Medvin, do you have any objections to any of the
18 factors I'm considering?

19 MS. MEDVIN: I -- I believe the issue of home
20 confinement is still an incarceration. And so I -- I
21 understand -- with the Court's indulgence, I'll pull up the
22 code section to review it once more considering the judge's
23 consideration of home confinement. But my understanding of
24 that is while it can be ordered with probation to supervise,
25 nonetheless, it's a type of incarceration.

1 And for purposes of Class B misdemeanors, which are
2 petty offenses, I think it would amount to a higher penalty
3 than if he had been sentenced to a more serious offense. And
4 so it might be an issue specific to Class B misdemeanor, petty
5 offenses.

6 THE COURT: I disagree. It will be part of the
7 probation, but you can preserve that argument.

8 Ms. Prout, do you have any objections to any of the
9 factors I've considered?

10 MS. PROUT: I do not, Your Honor.

11 THE COURT: All right. Mr. Stepakoff, it is the
12 judgment of the Court that you are hereby sentenced to serve a
13 12-month term of probation on Count 4. This term of probation
14 shall include a 2-month term of home confinement with location
15 monitoring.

16 You are further ordered to pay a special assessment of
17 \$10 and a fine of \$742 as to Count 4. The special assessment
18 and fine are payable to the Clerk of the Court for the
19 U.S. District Court, District of Columbia, within 30 days. You
20 are ordered to make restitution to the Architect of the Capitol
21 in the amount of \$500, although I understand that that has
22 already occurred, but it will be in the judgment and commitment
23 order. Within 30 days of any change of address, you shall
24 notify the Clerk of the Court of that change until such time
25 that the financial obligations are paid in full.

1 While on supervision, you shall not use or possess an
2 illegal controlled substance; and you shall not commit another
3 federal, state, or local crime. The mandatory drug testing
4 condition is suspended based on the Court's determination that
5 you pose a low risk of future substance abuse.

6 You shall also abide by the general conditions of
7 supervision adopted by the U.S. Probation Office, which will be
8 set forth in the judgment and commitment order, as well as the
9 following special conditions: During your period of home
10 confinement, you will be subject to location monitoring in
11 order to enforce that requirement of home confinement, and you
12 shall be monitored by radiofrequency or GPS monitoring at the
13 discretion of the probation office supervising your probation,
14 and shall abide by all technology requirements for a period of
15 two months.

16 This form of location monitoring technology is ordered
17 to monitor the following restrictions on movement in the
18 community, as well as other court-imposed conditions of
19 release. You are restricted to your residence at all times
20 except for employment; education; religious services; medical,
21 substance abuse, or mental health treatment; attorney visits;
22 court appearances or court-ordered obligations, including
23 community service; or other activities as preapproved by the
24 probation office.

25 There will be a requirement of financial disclosure

1 until the financial obligations are paid and satisfied, and
2 those will be set forth in the judgment and commitment order.

3 You must complete 60 hours of community service within
4 6 months, and the probation office will supervise the
5 participation in the program by approving the program, and you
6 must provide written verification of the completed hours to the
7 probation office.

8 Counsel, any reasons other than those previously stated
9 and argued why the sentence should not be imposed as stated?

10 Ms. Medvin?

11 MS. MEDVIN: No, Judge.

12 THE COURT: Ms. Prout?

13 MS. PROUT: No, Your Honor.

14 THE COURT: The sentence is as stated.

15 I gather that charges in Counts 1, 2, and 3 need to be
16 dismissed as -- from the information; is that correct?

17 MS. PROUT: Yes, Your Honor. The government so moves
18 now.

19 THE COURT: (Inaudible) as well.

20 THE COURT REPORTER: Judge, we couldn't hear that
21 first part.

22 THE COURT: I understand that charges in Counts 1, 2,
23 and 3 of the information need to be dismissed, and we'll do
24 that as part of the judgment and commitment order.

25 So, Mr. Stepakoff, you were convicted by a plea of

1 guilty. You can appeal your conviction if you believe that
2 your guilty plea was somehow involuntary or if there's some
3 other fundamental defect in the proceedings that was not waived
4 by your guilty plea.

5 You also have a statutory right to appeal your sentence
6 under certain circumstances to the extent not waived by your
7 guilty plea, and your guilty plea has waived a number of
8 appellate rights. But if you're inclined to appeal, consult
9 with your attorney.

10 You have the right to apply for leave to appeal in forma
11 pauperis. That means without -- without cost, and if you
12 request and qualify, the Clerk of the Court will prepare and
13 file a notice of appeal on your behalf, although I note that
14 you're represented by very able counsel who can assist you in
15 that process.

16 Most importantly, with few exceptions, any notice of
17 appeal must be filed within 14 days of the entry of the
18 judgment, and I expect that the judgment will probably be
19 entered early next week. So 14 days from that point.

20 Probation has requested that the jurisdiction for the
21 supervision be transferred to the Middle District of Florida.
22 Does anyone have any objection to that?

23 MS. PROUT: No, Your Honor.

24 MS. MEDVIN: No, Judge.

25 THE COURT: I'll go ahead and submit the paperwork

1 for that once it's submitted to me from probation.

2 Anything else that we need to accomplish today,
3 Ms. Medvin?

4 MS. MEDVIN: Two things. I wanted to bring to the
5 Court's attention that my client's passport was taken in the
6 Middle District of Florida and, apparently, was sent to the
7 District of Columbia, and now there's a transactional problem
8 in terms of where to file to -- for the return of the passport.
9 And so we ask if the Court can somehow mention this -- the
10 release of his passport as part of his conditions. So that's
11 number one.

12 And number two, the issue of the release of the CCTV
13 footage that we relied on as evidence. It's under highly
14 sensitive designation under the protective order, and now that
15 it's been part of the proceedings, we'd ask that it be released
16 from the confines of that order.

17 THE COURT: Ms. Prout.

18 MS. PROUT: Your Honor, the government has no
19 objection.

20 And -- and on the same subject, the government does ask
21 to formally admit the government's exhibits that were submitted
22 in chambers as well.

23 THE COURT: I'll formally admit both parties'
24 exhibits, all of which I've reviewed prior to today's hearing.
25 And I will submit an order making the CCTV exhibit and all the

1 other exhibits I relied upon available as I've done in other
2 matters. Let me write that down.

3 Okay. If nothing further, you're excused.

4 Mr. Stepakoff, I don't expect to ever see you again,
5 except for perhaps at a Florida State alumni event. But good
6 luck to you, sir.

7 THE DEFENDANT: Thank you. You won't, Your Honor.

8 Can I ask one thing? How do I proceed from here?

9 Should I get in touch with Ms. Baker or someone --

10 THE COURT: Get in touch with your counsel.

11 She'll usher you through any issues you need.

12 All right. Thank you.

13 (Proceedings were concluded at 12:55 p.m.)

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CERTIFICATE OF OFFICIAL COURT REPORTER

I, Nancy J. Meyer, Registered Diplomate Reporter,
Certified Realtime Reporter, do hereby certify that the above
and foregoing constitutes a true and accurate transcript of my
stenograph notes and is a full, true, and complete transcript
of the proceedings to the best of my ability.

Dated this 27th day of January, 2022.

/s/ Nancy J. Meyer
Nancy J. Meyer
Official Court Reporter
Registered Diplomate Reporter
Certified Realtime Reporter
333 Constitution Avenue Northwest
Washington, D.C. 20001