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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

OLIVER LOUIS SARKO,

Defendant.

- - - - - x

Criminal Action No.  
1:21-cr-00591-CKK  
Friday, April 29, 2022  
10:01 a.m.

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TRANSCRIPT OF SENTENCING HEARING  
HELD BEFORE THE HONORABLE CHRISTOPHER R. COOPER  
UNITED STATES DISTRICT JUDGE

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APPEARANCES:

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P R O C E E D I N G S

THE COURTROOM DEPUTY: Criminal Case 21-591, *The United States vs. Oliver Sarko.*

Counsel, would you please identify yourself for the record starting with the government.

MS. REED: Good morning, Your Honor; AUSA Brittany Reed on behalf of the United States.

THE COURT: Good morning.

MR. ROLLINS: Good morning, Your Honor; Mark Rollins for Oliver Sarko.

THE COURT: Okay. Good morning, sir.

THE PROBATION OFFICER: Sherry Baker, on behalf of the probation office, Your Honor.

THE COURT: All right. Good morning.

And I see Mr. Sarko. Good morning, Mr. Sarko.

THE DEFENDANT: Good morning, Your Honor.

THE COURT: All right. Let me start.

We're here for a sentencing. Let me ask if you're willing to proceed by video?

THE DEFENDANT: Yes, I am, Your Honor.

THE COURT: All right. Mr. Sarko pled to Count 1, parading, demonstrating, or picketing in a Capitol building. The statutory maximums are six months in jail, maximum fine of \$5,000, five years maximum probation. There's no supervised release. The advisory sentencing guidelines do

1 not apply.

2 I have a presentence report, the government's  
3 memorandum in aid of sentencing, and the defendant's  
4 sentencing memorandum.

5 I have the Pretrial Services report, which  
6 indicates that he's in compliance.

7 There were -- in terms of objections, I think this  
8 was related to information regarding a West Virginia -- it's  
9 not a driver's license, as I understand it, but it's a West  
10 Virginia criminal record number in the NCIC database. So I  
11 understand he doesn't have a driver's license, but it's a  
12 different -- the number is different, so I don't think you  
13 need to change it.

14 Mr. Rollins, are you still objecting?

15 MR. ROLLINS: No, Your Honor.

16 THE COURT: Okay. So those parts of the  
17 presentence report are undisputed.

18 Findings of fact. Pursuant to Federal Rule of  
19 Criminal Procedure 32(i)3(A) are my findings of fact. There  
20 appear, at this point, no disputes with the presentence  
21 report so I'll adopt the report as written.

22 At this point I will -- since we don't have  
23 advisory sentencing guidelines, I've already indicated what  
24 the maximum statutory proceedings are and the fact that  
25 there's no advisory sentencing guidelines to discuss. I

1 will say that there's no supervised release.

2           There is a controversy, to some degree, in terms  
3 of differing opinions as to whether you can do a split  
4 sentence, which would be a period of jail time and then a  
5 separate sentence of probation; so it would not be a  
6 condition of the probation -- of jail time, but two separate  
7 sentences. Different judges have -- it's an issue that is  
8 still being litigated at this point.

9           And so let me hear from the government, defense  
10 counsel, and the defendant, if Mr. Sarko wishes to address  
11 the Court.

12           So let me start with the government.

13           It wasn't clear to me -- according to Mr. Rollins,  
14 it sounded like you might have been changing your position,  
15 but I did receive the additional memorandum, which I asked  
16 for, which related to the issue of whether you could or  
17 could not do split sentences, which I did -- so I have that  
18 material.

19           So it wasn't clear to me whether you were still --  
20 whether you were asking for -- changing it to home  
21 confinement or you were still asking for a split sentence.  
22 So if you could address that, among other things, Ms. Reed.

23           MS. REED: Yes. Good morning, Your Honor.

24           So yes, Your Honor, the government is requesting  
25 that a split sentence be imposed in this case with

1 incarceration. I had spoken to Mr. Rollins and had  
2 apologized about some confusion from a previous  
3 recommendation that was made in-house that I had made to my  
4 office forgetting that we had, after evaluating the case  
5 further, decided that we were not going to be making a  
6 recommendation for home detention. I corrected that  
7 information with Mr. Rollins in a separate email to inform  
8 him that the government was, indeed, asking for a sentence  
9 of incarceration and a split sentence in this case.

10 So my apologies, Your Honor, if that confused the  
11 Court as well as Mr. Rollins and Mr. Sarko. My apologies  
12 for that.

13 Your Honor, we are here this morning asking for a  
14 sentence of 30 days incarceration followed by a term of  
15 probation. Given the nature and circumstances of the  
16 offense, largely what happened on January 6th, Your Honor,  
17 we know, is larger than Mr. Sarko. And when I say that, I  
18 want to be clear in the fact that Mr. Sarko is not alleged  
19 to have assaulted any police officers on January 6th. He is  
20 not alleged to have committed any damage.

21 As this Court knows, he was in two sensitive areas  
22 inside of the Capitol, that being Officer -- I'm sorry --  
23 Senator Merkley's office as well as the Spouses' Lounge at  
24 the Capitol. But to be clear, the government is not  
25 alleging that Mr. Sarko committed any damage.

1           By my own account and my own conversations with  
2           Mr. Sarko, I do believe that he has expressed remorse. He  
3           has been cooperative with the government to the extent that  
4           we requested to meet with him. He did voluntarily meet with  
5           us and shared information with us beyond, I think, what the  
6           agents knew when they initially arrested him, and that was  
7           specifically as it related to his own culpability. So we do  
8           believe that he is genuinely remorseful and expressed  
9           contrition in this case.

10           But, Your Honor, going back to the conduct that  
11           happened on January 6th, it is important for this Court to  
12           consider, when we're asking for a split sentence, why we  
13           think that this is a case that does merit incarceration.

14           And, you know, when I initially took a look at  
15           this case and in my conversations with Mr. Rollins, I have  
16           to admit that I had not had the opportunity to listen to and  
17           observe the video that had been posted by Senator Merkley as  
18           it related to what happened inside of his office. And I did  
19           think that that was a changing point for myself even though,  
20           again, Mr. Sarko was not a participant in any of the damage  
21           that happened inside of Senator Merkley's office.

22           But I think that that points to a larger aspect of  
23           what happened and just the severity of the acts that  
24           happened on January 6th, and it's impossible to exclude  
25           Mr. Sarko's conduct from that.

1           Your Honor, as I outlined in the government's  
2 memorandum, Mr. Sarko saw one of the initial breaches. He  
3 would have been very close in time to the Senate Wing door  
4 when that initial breach happened. He was not in the first  
5 round of individuals who entered, to be clear; however, he  
6 was close enough with the individuals who did enter to -- by  
7 the time he entered to have heard the alarms blaring inside  
8 of the building, to have seen the police officers overcome,  
9 and instead he decided to walk in.

10           At no point did he decide to turn around, despite  
11 seeing the mob of rioters who were entering inside of the  
12 Capitol. And unique to Mr. Sarko, along with some of the  
13 other individuals who I mentioned in my sentencing memo, he  
14 did enter into two sensitive areas inside of the Capitol.

15           Now, I know that Mr. Sarko may not have known  
16 initially that when he entered Senator Merkley's office  
17 that it was, in fact, Senator Merkley's office. I don't  
18 think that was his plan when he went into the Capitol on  
19 that day. However, when he entered in that office he should  
20 have seen -- it should have been reasonable to know -- that  
21 that was an office building of someone. Particularly there  
22 were personal mementos of the senator in that office. There  
23 was office furniture. There were sensitive materials. And,  
24 again, not saying that Mr. Sarko did anything to disturb  
25 those, but certainly, Your Honor, this was a protected

1 space. This was someone's work space where they go every  
2 day, and they intend that that space is going to be  
3 sensitive and private. And that was disrupted on that day,  
4 and Mr. Sarko played a role in that.

5 Other cases where individuals have gone into the  
6 senator's office and have gone into other individuals'  
7 offices, those individuals have received a term of  
8 incarceration, albeit there were two individuals, I believe  
9 in the *Edwards* case and *Marquez* case, where this Court did  
10 not impose a sentence of incarceration, but those  
11 individuals, I think, can be distinguished for the reasons  
12 that the government pointed out in its sentencing  
13 memorandum.

14 In addition, Your Honor, going into the two  
15 sensitive areas that the government is highlighting, it is  
16 very troublesome to hear some of the rhetoric that Mr. Sarko  
17 did speak on that day.

18 Obviously, Your Honor, the government understands  
19 that individuals have the right to certainly espouse their  
20 personal views, Your Honor, and certainly we are not trying  
21 or in any way asking for a period of incarceration to, I  
22 guess, penalize Mr. Sarko for his political stance. But  
23 when that stance does include entering into the Capitol and  
24 certainly, before entering, advocating for -- asking "Where  
25 is Pelosi?" in a reference to Speaker Pelosi, that is very



1       damaging rhetoric. We certainly believe that it added to  
2       the heightened situation of that day and the seriousness of  
3       the situation. And so all of those factors, Your Honor, are  
4       why the government is asking for a period of incarceration.

5               In addition, Your Honor, I think that it is also  
6       worth pointing out that Mr. Sarko does have a criminal  
7       history that has been highlighted in the PSR, and I want to  
8       be clear that I know that some of those are misdemeanor  
9       offenses. And I stand to be corrected -- I did cite in my  
10      sentencing memo that one of them may have been a felony, and  
11      I was referencing the weapon in a school zone, but I may  
12      stand corrected on that by probation, if it is not.

13             Nonetheless, Your Honor, looking at his criminal  
14      history, which includes a shoplifting conviction in 2014,  
15      and the weapons in a school zone and obstructing an official  
16      business, the government does have concerns about specific  
17      deterrence and whether Mr. Sarko is going to be someone --  
18      in the next political campaign where things may or may not  
19      go his way, that he may not exhibit some of the same conduct  
20      again.

21             But I will end by saying, again, that Mr. Sarko  
22      has been, I think, very remorseful. He has certainly  
23      expressed that to myself as a prosecutor in this case, and I  
24      did want to highlight that for the Court as well.

25             But, Your Honor, we do believe that a split

1 sentence is appropriate in this case. I certainly know that  
2 from a legal standpoint Your Honor takes a different  
3 position on that. Obviously we --

4 THE COURT: Well, I did in a specific case. It  
5 depends on the briefing.

6 MS. REED: Okay. So, Your Honor, just to point  
7 out, however, though, that there is a Fourth Circuit case,  
8 which I know Your Honor is familiar with, that does allow  
9 for the imposition of a split sentence for petty offenses.  
10 And so, Your Honor --

11 THE COURT: It was related just -- of the two,  
12 Judge Lamberth has far more elaborate analysis than the  
13 Fourth Circuit one did, frankly.

14 MS. REED: That is correct, Your Honor.

15 THE COURT: So Judge Lamberth has taken the same  
16 position as the Fourth Circuit but with a good deal more  
17 analysis.

18 MS. REED: That is correct, Your Honor. And so  
19 not to recite everything that is in my sentencing memo  
20 because I know that it was very long, I will just say once  
21 again, Your Honor, that the government believes that this is  
22 a case where incarceration should be imposed followed by a  
23 period of probation so that this Court can have supervision  
24 over Mr. Sarko for a period of time to ensure that he is  
25 compliant.

1 Thank you, Your Honor.

2 THE COURT: All right. Mr. Rollins.

3 MR. ROLLINS: Yes. Thank you, Your Honor.

4 So looking at this case -- and I'm just kind of  
5 going through the factors. And the first factor is the  
6 nature and circumstances of the case.

7 This is a case in which Mr. Sarko entered the  
8 northwest side of the Capitol. He entered that section, I  
9 believe, at 2:35. The first breach of that section occurred  
10 at 2:12 in the afternoon, so we have 2:12. At the time that  
11 he entered that section -- and I'm not making light of what  
12 was happening there. Obviously Mr. Sarko and everyone else  
13 agrees that this is wrongful conduct. At the time there  
14 were no police officers within -- on that section when he's  
15 going up the steps.

16 But he enters the Capitol knowing that -- you can  
17 see the broken windows. You can see the broken windows.  
18 You can see the areas, and, Madam Prosecutor is correct, you  
19 can actually hear the alarm sounds going off when he goes in  
20 at 2:35.

21 He's in the building for less than 20 minutes, and  
22 while he's in that building, yes, there is no engagement  
23 with the police officers. There's no engagement with  
24 violence. No engagement with destruction of property.

25 And so we have a young man, 27 years of age,

1 who -- and I think Madam Probation Officer is correct, these  
2 are all -- he has two priors that are misdemeanors from  
3 different jurisdictions.

4 Notably are the history and characteristics of  
5 him. He's been employed almost all of his life. The minor  
6 misdemeanor offenses that he incurred in the past, I mean,  
7 they all occurred -- the Court is well aware there's  
8 statistical data regarding individuals -- that's not to say  
9 Mr. Sarko is actually old. I mean, he's not that much older  
10 now, but I think the data indicates that individuals -- the  
11 impulsivity of people making decisions when they're younger,  
12 that's clearly -- his two prior misdemeanors were  
13 substantially when he was younger.

14 And even this case, when we really look at the  
15 background of this case, what Mr. Sarko was doing -- the  
16 traveling to Washington, D.C., the impulsivity of the  
17 decisions that are made that day, going into the Capitol  
18 when you're seeing the broken windows -- that's all kind of  
19 this immature kind of behavior that is kind of still in the  
20 realm of Mr. Sarko's juvenile kind of behavior.

21 But the biggest issue I have with these cases --  
22 and I think this is my fourth case dealing with the January  
23 6th cases -- is the U.S. Attorney's Office/Department of  
24 Justice distinguishing between what qualifies as a felony,  
25 what qualifies as jail time, what qualifies as to what the

1 appropriate punishment is. We have across the board -- and  
2 I think the Court is well aware of all the individuals now  
3 who have been sentenced under this. But we also have  
4 individuals who were charged with felony offenses for doing  
5 the exact same thing as well. And what is the criteria  
6 that's being used to make the determination of whether  
7 someone goes to jail on these cases?

8 Looking at what Mr. Sarko's behavior was on this  
9 case, if we really just look at what his behavior was, he  
10 literally trespassed on the Capitol. Absent doing that,  
11 there was no other activity, no other behavior that he did  
12 other than he was trespassing. He should not have been on  
13 that property at the time. It was a restricted area. Mr.  
14 Sarko realizes that. He knows that he shouldn't have been  
15 on the Capitol at that time.

16 But, again, when we look at what his direct  
17 actions were on that day, given the fact that there was no  
18 violence and there was nothing that he broke -- and yes, he  
19 said some things on social media that, in retrospect, he  
20 knows that's completely inappropriate.

21 Mr. Sarko now looks back on this time in his life,  
22 and he's embarrassed by it. And I think most people now,  
23 when they look back on it, not realizing at the time that  
24 they were engaged in it, that he was literally in this mob  
25 mentality.

1           When he looks back on it now, he's just -- he's  
2           baffled by his behavior, and I think Madam Prosecutor's  
3           correct that he is significantly remorseful now. He  
4           understands that what he did was wrong.

5           And he met with the FBI. He sat down. He did  
6           every briefing. He did everything he was required to do  
7           after he realized the mistakes that he made. This is not a  
8           case in which -- Mr. Sarko took the first available plea.  
9           He wasn't trying to fight this. He knew that his actions  
10          were wrong.

11          The only thing I think the Court -- which the  
12          Court is left with is trying to distinguish between how we  
13          separate each one of the individuals that was charged here.  
14          What is the appropriate sentence given the conduct? And you  
15          have some history with other individuals who have been  
16          sentenced.

17          The rationale, why we're requesting a probationary  
18          sentence, is twofold.

19          One is that I think the Court gets more of the  
20          bang for its buck by placing individuals on a lengthy period  
21          of probation, and that way there's monitoring.

22          In a case like Mr. Sarko, where he is such a young  
23          man, I think the Court would benefit and society benefits  
24          from the ability to supervise him well into the future to  
25          make sure that -- we're going to have more elections. This

1 country is still -- we still have this diverse political  
2 environment. And so I think it's necessary for the Court to  
3 continue to supervise and make sure that individuals are  
4 abiding and doing what they're supposed to do and that  
5 there's some benefit to that.

6 The second is that -- the second reason why we're  
7 asking for a probationary sentence is what do we get out of  
8 placing Mr. Sarko in jail for 30 days other than the  
9 straight punishment? The straight punishment, which the  
10 Court can impose, as we indicated in our presentence report,  
11 in our memorandum, is that this Court could impose a lengthy  
12 period of community service where Mr. Sarko gives back to  
13 the community.

14 He's a young man. He's clearly -- he's  
15 intelligent. He has the ability -- he's worked all of his  
16 life. So the mere fact that he can give back and he can  
17 continue -- and it's no small feat if this Court imposes  
18 somewhere in the range of 100 to 120 hours of community  
19 service over the next three years. That's no small feat.  
20 And he would be giving back to the community rather than  
21 taking by placing him for 30 days in jail.

22 So we think that that should be significant  
23 punishment, the punishment of being on this Court's  
24 probationary period for a lengthy period of time with that  
25 community service where Mr. Sarko has given back to the

1 community and recognized what he's done is wrong.

2 So I would implore this Court to reject the  
3 government's position that a 30-day -- and I think they  
4 weren't even -- initially I think they were just asking for  
5 a 30-day straight sentence. I understand now they're asking  
6 to continue on with probation after that, but I think  
7 initially I think she indicated that they just wanted 30  
8 days.

9 But I think that would be -- I still would implore  
10 this Court to impose a probationary sentence with the  
11 punishment of community service as the punishment here, and  
12 that's our recommendation.

13 THE COURT: All right. Mr. Sarko, you can address  
14 the Court as well.

15 THE DEFENDANT: Okay.

16 Your Honor, I just want to repeat, again, that I  
17 truly am sorry about this, and I -- I know I've embarrassed  
18 myself and my family. I've lost friends because of it.  
19 It's been one of the hardest years of my life just  
20 struggling with the anxiety of this.

21 I'm sorry, my phone is going a little --

22 THE COURT: Whoops. There we go.

23 THE DEFENDANT: And I just want to apologize to  
24 Senator Merkley. I genuinely did not know that it was --  
25 what kind of office or anything. I don't even think I went



1 fully in. I just poked my head in. And I don't know -- it  
2 obviously wasn't on purpose. I don't even know if he's a  
3 Republican or Democrat. I've never heard of him, but...

4 And in regards to -- sorry -- Ms. Reed or the  
5 prosecutor, how she mentioned that I would have seen police  
6 being overcome by the crowd, I did not see any -- I did not  
7 see that. I remember seeing a few police officers, and they  
8 were kind of just standing there and not arresting people.  
9 That's -- if I would have seen them arresting someone, I  
10 would have been too scared to go in because I -- when I went  
11 in I wasn't thinking that I could get arrested or anything.  
12 I thought that, you know, since all these other people were,  
13 I could get out.

14 But I know that kind of sounds like I'm making an  
15 excuse, and I don't want to do that. I know that I was  
16 wrong to go in, and I just -- I'm sorry. I'm really  
17 nervous.

18 But I just want to make it clear that I really am  
19 sorry about this, and I, in the future -- I've already taken  
20 a step back from worrying about politics, and I don't get  
21 into it anymore as much because, you know, I don't want to  
22 try to get riled up about things that I can't control  
23 anymore. I've been focusing more on my faith and my  
24 religion and just putting it in God's hands and stuff than  
25 worrying about things like that.

1 Yes, that's all that I can think of.

2 THE COURT: All right.

3 Why don't you give me five minutes. Let me just,  
4 you know, look for a couple of minutes.

5 Please stay. Don't disappear on me because it's  
6 hard to get this back. I'm just going to stop the video for  
7 a second. I want to check on something, and then I'll come  
8 back.

9 So it's 25 after 10:00. At 10:30 I'll be back,  
10 and I'll go forward with the sentencing. So you can either  
11 sit there or, you know, stop the video, but please don't get  
12 out of the Zoom since it's -- I don't want to have a problem  
13 of getting everybody back again, okay?

14 THE DEFENDANT: Okay, Your Honor.

15 (Recess taken)

16 THE COURT: All right. I'm back. Let's see if we  
17 can get others back.

18 All right. I believe we have everybody, including  
19 the court reporter. Lisa, are you there?

20 THE COURT REPORTER: I am here, Judge. I'm sorry.

21 THE COURT: Okay. No problem. I know you have  
22 been muted. I just wanted to make sure there was no  
23 problem.

24 So let me proceed.

25 The Court considers the pleadings, the arguments,

1 the record in this case, in addition to the following  
2 information in determining a fair, appropriate, and  
3 reasonable sentence in conformance with the factors set out  
4 by statute in 18 USC 3553(a) and subsequent sections except  
5 for (e).

6 Mr. Sarko is 27 years old.

7 In terms of a criminal history, in 2014 a  
8 shoplifting. He received a fine and restitution. He paid  
9 restitution and court costs.

10 There was an incident at a school, attempted  
11 conveyance or possession of a deadly weapon in a school  
12 safety zone and obstructing official business. Again, he  
13 received a fine and court costs.

14 There's an arrest for driving while impaired in  
15 terms of alcohol, and he was put in -- there was, I guess,  
16 an informal sentencing. It's not quite clear to me whether  
17 it was a prejudgment or whatever, but at any rate he needed  
18 to complete an alcohol program, which he did, and the case  
19 was dismissed.

20 Also was dismissed was the driving while his  
21 license was suspended, and I think it was a result of the  
22 earlier arrest in terms of driving while impaired. But  
23 those are -- both those cases have been dismissed.

24 In terms of education, he's a high school graduate  
25 and a National Merit Scholar. I have to say, Mr. Sarko,

1 that's really very special. You're obviously smart. You  
2 know, National Merit Scholars are not a dime a dozen. There  
3 are very few people that reach that. You should be proud  
4 that you were able to do that.

5 You attended Miami University in Oxford, Ohio, and  
6 then Ohio State University. You were two classes away from  
7 a bachelor of science degree. You discontinued your degree  
8 after you got a job in 2017.

9 You should consider going back. You may not need  
10 it specifically for your job, but just for your own sake.  
11 You're obviously smart. You're very close to ending it. At  
12 some later point in time you may want to do something  
13 different as a job, and it is easier to go back and finish  
14 your college now, when you're young, than it is to do it  
15 later. So I would do it.

16 Employment history. 2002 and presently employed  
17 for Deepwell Services. You're what's called a floor hand.  
18 You evidently work 90 hours a week for four weeks, and then  
19 you're off for two weeks, and that routine starts all over  
20 again. So this was 2022 that you're doing this.

21 In 2019 and 2021 you were a floor hand at another  
22 drilling company that was terminated based on or at least  
23 what they claim was no safety harness used. It's your view  
24 that was based on this offense, but in any rate, your job  
25 was terminated, but you did get another one.

1           2018 to 2019, you were a derrickhand with another  
2 drilling company, and then in 2019 you were laid off.

3           And in college you did work at a store warehouse,  
4 and you do have -- you do have a work history.

5           Finances, you have a mobile home and a utility  
6 vehicle, and frankly, in addition to the restitution, you're  
7 going to need to pay a fine. There's no financial ability  
8 to pay a fine in addition.

9           Physical condition. No issues that I can see.  
10 You have had COVID. You're not vaccinated.

11           Mental health, emotional, there's no issues.

12           Substance abuse. You finished the alcohol program  
13 earlier from that arrest, and I understand you're not  
14 drinking now so that's not an issue at all.

15           On a personal basis, you were brought into an  
16 intact union. Your father is a colonel in the U.S. Marine  
17 Corps Reserve. He works at a real estate firm. Your mother  
18 is a counselor at a women's care center. You have five  
19 siblings. Two have jobs; one is in the Marine Corps; one in  
20 college; and one in high school still. You evidently have a  
21 supportive family. You're not married, and you have no  
22 children.

23           You lived with your parents in Columbus, Ohio, in  
24 February 2021, so you would have been there at the time.

25           Then you moved to Marietta, Ohio, and you're now living by

1 yourself, as I understand, in a mobile home.

2 You did have four firearms when you were arrested.

3 Your parents evidently are taking care of that.

4 In terms of the statement of the offense, I'm  
5 going to go over it in the context of what you actually  
6 agreed to as opposed to trying to do summaries. So I'm  
7 going to put it in context in terms of discussing the attack  
8 on the Capitol because otherwise the actions don't make any  
9 sense.

10 So on January 6, 2021, at the U.S. Capitol there  
11 were permanent and temporary security barriers, and U.S.  
12 Capitol Police were out there in order to only allow  
13 authorized people with appropriate identification into the  
14 U.S. Capitol. And the exterior plaza was closed to members  
15 of the public.

16 There was a joint session of the U.S. Congress  
17 convened at the Capitol. During this joint session elected  
18 members of the House of Representatives and Senate were  
19 meeting in separate chambers to certify the vote of the  
20 Electoral College of the 2020 Presidential Election, which  
21 had taken place on November 3, 2020. The joint session  
22 began at approximately 1:00 p.m.

23 Shortly, at around 1:30, the House and the Senate  
24 adjourned to separate chambers to resolve a particular  
25 objection that they had. Vice President Mike Pence was

1 president and presiding first in the joint session and then  
2 he went to the Senate Chambers.

3 As the proceedings continued in both the House and  
4 Senate, Vice President Pence, present and presiding over the  
5 Senate, a large crowd gathered outside the Capitol.  
6 Temporary and permanent barricades were in place around the  
7 exterior. Capitol Police were present and attempting to  
8 keep the crowd away from the Capitol building and the  
9 proceedings.

10 At approximately 2:00 p.m., certain individuals in  
11 the crowd forced their way through, up, and over the  
12 barricades and past the officers -- the U.S. Capitol Police,  
13 and they advanced through the exterior facade of the  
14 building.

15 The crowd was unlawfully authorized to enter or  
16 remain in the building. Prior to entering the building, no  
17 members of the crowd submitted to security screenings or  
18 weapons checks by the Capitol Police or other authorized  
19 security officials.

20 The certification proceedings were still underway.  
21 The exterior doors and windows of the Capitol were locked or  
22 otherwise secured. Capitol Police attempted to maintain  
23 order, keep the crowd from entering the actual Capitol  
24 building; however, shortly after 2:00 p.m. individuals in  
25 the crowd forced their way into the U.S. Capitol. Windows

1 were broken, which was quite obvious. Certain members of  
2 the law enforcement were assaulted as others in the crowd --  
3 some assaulted and others encouraged or assisted in those  
4 acts.

5 The riot resulted in substantial damage to the  
6 Capitol requiring the expenditure of more than \$1.4 million  
7 for repairs, and you are contributing \$500. Obviously  
8 that's -- all of the amount of money is not going to be  
9 paid. It's going to be taxpayer money that is in the  
10 process of fixing it now.

11 At approximately 2:20, members of the House of  
12 Representatives and the Senate, including the president of  
13 the Senate, Vice President Pence, were instructed and did  
14 evacuate the chambers. So at that point the joint session  
15 was effectively suspended and did not resume until after  
16 8:00 p.m. that day. In light of the dangerous circumstances  
17 caused by the unlawful entry, including the danger posed by  
18 individuals who had entered without any security screening  
19 or weapons check, the proceedings could not proceed, and it  
20 was not until after every unauthorized occupant had left the  
21 U.S. Capitol and the building had been confirmed secured  
22 that matters resumed at 8:00 p.m.

23 Vice President Pence remained in the Capitol from  
24 the time he was evacuated from the Senate Chamber until the  
25 session resumed.



1           So we'll get into Mr. Sarko's particular --  
2           against that background.

3           So on or about January 6th he came from Ohio. He  
4           traveled to Washington, D.C., to hear then Former President  
5           Donald Trump speak.

6           After he attended the rally, he walked to the  
7           Capitol building with others. While walking to the Capitol,  
8           Mr. Sarko utilized his phone to live-stream footage of  
9           himself walking to the Capitol building, all of which we  
10          have.

11          Upon approaching the Capitol building, Mr. Sarko  
12          made multiple statements -- I believe mostly on Snapchat --  
13          quote, We are storming the Capitol out here, unquote. Where  
14          are the traitors? Quote and unquote. Bring out Pelosi;  
15          quote and unquote. We won't let you steal this country;  
16          quote and unquote. Quote, We're actually breaking in right  
17          now, unquote, and Fight for Trump.

18          After remaining outside of the Capitol building,  
19          he then entered the building without authorization. He  
20          entered the northwest side of the Capitol building through  
21          the Senate Wing door.

22          While walking through the building, he entered  
23          room S140, which is a Senate office, which was dedicated, as  
24          we've indicated, to a particular U.S. senator. So this was  
25          his private office at the Senate. And Mr. Sarko knew at the

1 time he entered the U.S. Capitol, when he was walking  
2 around, that he didn't have permission to either enter the  
3 Capitol or parade, demonstrate, or, you know, picket inside  
4 of the building.

5 There were some additional statements, but this is  
6 the statement that he agreed to. I think, from discovery,  
7 there is -- there are some additional statements that he  
8 made.

9 So having gone to Former President Trump's  
10 rally -- which was perfectly fine and appropriate. And when  
11 he went to the Capitol, he recorded himself, and we have  
12 these -- so this isn't like witnesses; we have his words --  
13 "We're storming the Capitol. Where are the traitors? Bring  
14 out Pelosi. We won't let you steal this country. We're  
15 actually breaking in right now." He also smelled tear gas,  
16 which certainly put him on notice that he -- you know, that  
17 he shouldn't have been in there.

18 The Capitol was breached at 2:13 p.m. He entered  
19 at 2:35, so it wasn't that much later. He stayed about 12  
20 minutes in the senator's office -- we have this so you can  
21 tell what the timing is -- there with others. Others  
22 vandalized the office. He did not, but he certainly could  
23 see them either vandalizing it or that it had been.

24 And these were sensitive areas, these private  
25 offices. These never would be open to the public such as

1 perhaps the chambers. Although they were damaged by others,  
2 he certainly was in there. He was there for 12 minutes. He  
3 was, in total, in the Capitol for about 20 minutes.

4 He also went into the Spouses' Lounge, and, again,  
5 this would not be space that the public would ordinarily be  
6 allowed into.

7 Now, on Snapchat he evidently live streamed his  
8 video. He called it, quote, Storming the Capitol. He  
9 called out, "Find traitors." He could see the damage to the  
10 outside of the building, certainly the windows at the point  
11 that he went in, and that law enforcement was outnumbered.  
12 And he said, quote, People are storming in there through the  
13 windows, and cops can't do anything. Too many of us,  
14 unquote.

15 So he certainly was aware that the police  
16 officers, the law enforcement, Capitol Police and others at  
17 that point -- the MPD showed up -- you know, were not able  
18 to contain the crowd, and he noted this in his statement.

19 He stayed. He didn't leave. He went into the  
20 building. As opposed to staying outside, he went into the  
21 building.

22 He didn't involve himself, to his credit, in any  
23 violent or destructive acts. Most of this was his presence  
24 and his rhetoric. He saw damage done, windows smashed,  
25 which he, you know, walked through.

1           He pled guilty. He did not equivocate or lessen  
2           in any way his culpability, to his credit. He did not  
3           destroy property, nor did he engage in any assaultive  
4           behavior. All to his credit.

5           Post his guilty plea, he was interviewed. And  
6           like some, he was very honest about his own actions that  
7           day, didn't conceal, you know, any evidence, and has shown  
8           remorse. The prosecutor has indicated that and also to the  
9           Court.

10           In terms of considering the factors, this is a  
11           serious offense. The goal of this insurrection was to stop  
12           the certification of a presidential election and the  
13           peaceful transfer of power as guaranteed in our  
14           Constitution, and that's the bedrock of our democracy.

15           Your comments on video, Snapchat, state your  
16           intent and, frankly, your mindset on that particular day.  
17           You may have second thoughts now, but it certainly reflects  
18           what you were thinking at the time.

19           You came all the way from Ohio to D.C. Going to  
20           the rally was not a problem, but then, with others, you then  
21           followed them. You had time to think through whether this  
22           was a good idea, and, as I said, you're an intelligent  
23           person, and you went with others to storm the Capitol to  
24           stop the certification.

25           You did not stop outside, you know, and decide not

1 to go in. You went in, and you stayed in there for, you  
2 know, 20 minutes. I've had people who have gone in and  
3 stayed, you know, eight minutes and left. So your presence  
4 in the mob, even though you may not have assaulted anybody,  
5 and you may not have destroyed any property, did help create  
6 a momentum for violence and destruction of property by  
7 others. You're there. You're an encouragement by just  
8 being there.

9 Having a large number of people, including you,  
10 participating in this insurrection provided safety for the  
11 violent actors and the violent acts of others because you  
12 were overwhelming, certainly, the law enforcement in a  
13 large-enough move that it would have been hard to control  
14 those who were actually damaging property or, you know,  
15 committing these violent acts.

16 And violence is an unacceptable way to resolve  
17 potential differences politically. There are lawful means  
18 available in a democracy to change or challenge actions you  
19 disagree with, which don't include a violent insurrection.  
20 Your presence and actions by joining other insurrectionists  
21 was an inexcusable attack on our democracy and peaceful  
22 transfer of power, according to the Constitution, and a  
23 disrespect for the rule of law which governs civilized  
24 societies.

25 As I said, you're obviously intelligent. You're a

1 National Merit Scholar. That's quite something to be proud  
2 of. And you're close to getting a college degree, so  
3 obviously, you know, you're a good student.

4 You also come from a very supportive family  
5 considering you have two people in the military who pledged  
6 allegiance to the Constitution and to uphold our government.  
7 They have been supportive of you.

8 You should appreciate what an extraordinary  
9 country you live in with a vibrant democracy, and I hope you  
10 can come to appreciate how lucky you are to live in a  
11 democracy as opposed to some other country ruled by an  
12 authoritarian or some dictator. There's certainly enough  
13 other examples.

14 It's my hope that my sentence sends a message to  
15 you to deter you and others from ever engaging in this type  
16 of destructive behavior in the future recognizing that you  
17 live in a country with incomparable freedoms which are  
18 protected by the rule of law. When you eliminate the rule  
19 of law, then you jeopardize those freedoms.

20 I would also say to you that although you may wish  
21 to -- you've indicated a wish to disengage from politics, I  
22 wouldn't do that. I'm not suggesting with this sentence  
23 that you do that. You're a citizen of this country. You  
24 should participate, and you most certainly should vote. But  
25 you need to do it lawfully. There are ways of lawfully

1 participating in our democracy and expressing differing  
2 views that don't involve violence and an insurrection.

3 Now, in terms of parity, we have charts that the  
4 government has done. The court has done them -- court writ  
5 large, not just me -- in terms of different sentences. It  
6 gives you some sense of what it is. It's not fully, because  
7 they don't include all of the different factors you might  
8 consider.

9 I've been doing my own chart because I've done  
10 some sentences. Obviously whether there's destruction or  
11 any kind of injuries to law enforcement is one issue; the  
12 length of time that people have been in there, the comments  
13 that have been made along the way or other actions within  
14 the Capitol, looking at any kind of criminal history.

15 Obviously, you know, you're going to look at  
16 remorse and whether somebody has pled guilty, has not  
17 equivocated. Those kinds of things, I think, are things  
18 that the Court would take a look at, and I've done my own  
19 chart, frankly, with those that I have sentenced in terms of  
20 making distinctions.

21 So far my sentences have all involved, like your  
22 case, petty offenses. I have not -- I have felonies and I  
23 have felony pleas, but the sentences have not taken place,  
24 so I'm looking at sentences that I have looked at within my  
25 own. I realize the government has come up with their own

1 way of looking at it, but I've come up with my way of  
2 reviewing it and what I consider.

3 Now, in one of the cases, in the first case that I  
4 sentenced -- supervised release is obviously not allowed.  
5 The issue that has been out there is whether you can do a  
6 split sentence, which would be a period of incarceration and  
7 then probation. It's not clear to me whether you can do it  
8 as a condition of probation, but the case -- the two  
9 specific cases where there's been any writing about it have  
10 been the Fourth Circuit and Judge Lamberth. Other judges  
11 have done split sentences -- in other words, a period of  
12 incarceration and probation -- but have not written anything  
13 so it's not clear precisely what their thinking is.

14 I know that there's been at least one sentence  
15 with an intermittent -- and you can do up to 14 days with an  
16 intermittent sentence and then probation, and that nobody  
17 seems to be disputing.

18 So although I did do one case early on in terms of  
19 a sentence of 90 days and did a probation, I did it as a  
20 condition of probation. It was based frankly on the --  
21 although I thought the Fourth Circuit's analysis was not  
22 very thorough, I did ask for briefing on it. It was fairly  
23 limited in terms of the review of it, so I made the decision  
24 that I did. It was after the sentence had been imposed  
25 going back.



1           Since then we have Judge Lamberth, who has done an  
2           excellent job, frankly, of parsing the statutes at issue and  
3           going through them very carefully. The Fourth Circuit is  
4           out there as well, although I view them as -- it's obviously  
5           not binding, for one thing. Neither is Judge Lamberth's.  
6           But there's certainly -- Judge Lamberth I view as frankly  
7           being more persuasive in the fact that he really did a very  
8           detailed analysis of the statutes in terms of whether or not  
9           you can do split sentences where you would have a period of  
10          incarceration and then impose probation.

11          It's obviously somewhat of a contested issue. At  
12          this point I don't think there are any Court of Appeals  
13          decisions that have -- nor any appeals, frankly, sitting up  
14          there. The one appeal from my original sentence they didn't  
15          pursue. So we're not going to get, any time in the near  
16          future, a Court of Appeals opinion that's going to resolve  
17          this, so we're sort of left, as judges, making our own  
18          decisions.

19          So I've looked at this very carefully. I am going  
20          to issue a legal opinion. Trying to do this orally doesn't  
21          make any sense, and it does involve parsing carefully the  
22          statutes that are at issue.

23          So my decision that comes out is that you can do a  
24          split sentence with a period of incarceration and probation  
25          in terms of doing it that way, and you can do it more than

1 just for the intermittent period. I'm going to issue that  
2 at the time that I'm going to be doing this.

3 So in terms of looking at how I'm going to  
4 sentence Mr. Sarko -- and obviously the issues are  
5 serious -- I focused on the seriousness of the offense,  
6 which I have gone over in great length. I've also looked at  
7 what would be considered a just punishment and parity, as  
8 I've indicated, in terms of looking at things.

9 Deterrence is a big issue, I think, in this  
10 particular case, both to him and certainly to others. We  
11 have elections coming up that -- you know, in the future,  
12 and I think that the seriousness of the conduct merits  
13 taking a careful look and paying attention to deterrence to  
14 individuals but equally, and perhaps more importantly,  
15 deterrence to others in terms of people taking it seriously  
16 and thinking through whether this is the way you proceed in  
17 a democracy and this is the way you deal with the rule of  
18 law.

19 So pursuant to the Sentencing Reform Act of 1984  
20 and the provisions of 18 USC 3553, it's the judgment of the  
21 Court, that you, Oliver Sarko, are hereby committed to the  
22 custody of the Bureau of Prisons for a term of 30 days on  
23 Count 1. You're further sentenced to serve a term of 36  
24 months -- three years -- of probation on Count 1. In  
25 addition, you're ordered to pay a special assessment of \$10

1 in accordance with 18 USC Section 3013.

2 While on supervision, you shall abide by the  
3 following mandatory conditions as well as the standard  
4 conditions of supervision, which are imposed to establish  
5 the basic expectations for your conduct while on  
6 supervision. The mandatory conditions include:

7 You must not commit another federal, state, or  
8 local crime. You must not unlawfully possess a controlled  
9 substance. You must refrain from any unlawful use of a  
10 controlled substance and submit to one drug test within 15  
11 days of placement on supervision and at least two periodic  
12 drug tests thereafter.

13 You must make restitution in accordance with 18  
14 USC Section 3663 and 3663A or other statutes, and the  
15 restitution is in the amount of \$500.

16 I'm not going to -- as I said, I gave  
17 consideration to community service, but I've decided not to  
18 do that since I've given you the 30 days.

19 I find that you do not have the ability to pay a  
20 fine and, therefore, waive imposition of a fine in this  
21 case.

22 You're ordered to make restitution to the  
23 Architect of the Capitol in the amount of \$500. You don't  
24 have the ability to pay interest, and so I'm waiving any  
25 interest or penalties that may accrue on the balance. And

1 I'll talk to you in a moment about how that might be done.

2 Restitution and payments shall be made -- you'll  
3 pay it to the Clerk of the Court at the district court here  
4 in D.C. It's then disbursed to the Architect of the  
5 Capitol, and there is an address where it goes, which the  
6 Clerk of the Court will take care of.

7 The financial obligations, which would be the  
8 restitution and the \$10, are immediately payable to the  
9 Clerk of the Court for the U.S. District Court and the  
10 address. Within 30 days of any change of address you'll  
11 notify the Clerk of the Court of the change until such time  
12 as the financial obligation is paid in full.

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

18 I would have you first report to the probation  
19 office here in D.C. and then indicate to them where you plan  
20 on living, and then the probation can be transferred. But I  
21 want to make sure that you're connected to probation and you  
22 know what your conditions are before, and you can make a  
23 decision about where it is that you wish to live.

24 Before I get into the notice of appeal and some of  
25 the other things, I do want to indicate that I'm going to

1 let you voluntarily surrender. I will set a period of --  
2 you are not to be -- you will receive a notice -- and  
3 probation will talk to you -- from the Bureau of Prisons  
4 about where to go. I'm not sure where they will send you.

5 You do not have to report prior to July [sic] 13th  
6 of 2022, so you'll have a six-week period within which to get  
7 your affairs in order.

8 I will be issuing this legal opinion regarding the  
9 split sentence.

10 Is there a particular place you wish to recommend,  
11 Mr. Rollins? I will put a recommendation in. I don't  
12 believe he has any credit for -- you know, for time served  
13 so there's nothing to put in that.

14 MR. ROLLINS: Could I submit that to chambers in  
15 the next 24 hours?

16 THE COURT: Okay.

17 The other question that I have is does Mr. Sarko  
18 have the \$500? If he doesn't, or if he needs time within  
19 which to pay it, I will set out a time -- a schedule for him  
20 or a time period. Usually it's due immediately. I don't  
21 know whether he's got that kind of funding or whether it  
22 needs to be set out in a schedule during the probationary  
23 period where he'd pay a certain amount each month.

24 Mr. Rollins?

25 MR. ROLLINS: Mr. Sarko can address that issue. I

1 don't have -- Mr. Sarko, do you have the \$500 today?

2 THE COURT: Mr. Sarko?

3 THE DEFENDANT: Yes, I can pay it.

4 THE COURT: You can pay it?

5 THE DEFENDANT: Yes.

6 THE COURT: Okay. Do you want to have a specific  
7 date by which to pay it? I can give you time to get your  
8 money together, I mean, in terms of paying it.

9 THE DEFENDANT: No, it doesn't -- I can pay it any  
10 time. It's okay.

11 THE COURT: All right. Then, when you talk to  
12 probation relating to what notice you'll receive about  
13 reporting to the Bureau of Prisons, you should talk to her  
14 about the restitution so that that gets taken care of and  
15 you know how to do it since you're not in the District of  
16 Columbia at this point in terms of being able to do it. But  
17 if you can pay it up front, then I would go ahead and do so,  
18 and then you don't have that hanging over you.

19 Pursuant to 18 USC Section 3742, you have a right  
20 to appeal the sentence imposed by the Court if it's longer  
21 than the statutory maximum. It's not. If you choose to  
22 appeal, you must file any appeal within 14 days after the  
23 Court enters judgment.

24 You're going to have a discussion with your  
25 counsel as to whether you wish or do not wish to appeal and

1 under what circumstances you could potentially do it.

2 As defined in 28 USC 2255, you also have the right  
3 to challenge the conviction or sentence if new and currently  
4 unavailable information becomes available to you or on a  
5 claim that you received ineffective assistance of counsel in  
6 entering the plea or in connection with the sentencing.

7 Again, if you're unable to afford the cost of an appeal, you  
8 can request to file it without cost to you, and you can also  
9 ask to have counsel appointed to assist you.

10 Pursuant to a decision that came down in 2016, are  
11 there any specific objections or things that you wish to  
12 bring up that have not already been discussed? And as I  
13 said, I will put out a legal opinion that from my  
14 perspective supports the split sentence, which I will do  
15 right after the sentencing so that you can take a look at it  
16 and make whatever decisions you and Mr. Sarko wish to make  
17 about it.

18 So anything -- let me just start with Ms. Baker.  
19 Anything we need clarified?

20 THE PROBATION OFFICER: No, Your Honor.

21 THE COURT: All right. Ms. Reed, anything you  
22 want to bring up?

23 MS. REED: No, Your Honor.

24 THE COURT: Mr. Rollins, anything you wish to  
25 bring up?

1 MR. ROLLINS: No, Your Honor.

2 THE COURT: Okay. If you'll let us know where you  
3 want -- I don't know what they've been doing with the  
4 shorter sentences.

5 I don't know, Ms. Baker, whether you know in terms  
6 of the -- with some of these misdemeanors, they've been  
7 shorter. So I'm assuming that they have not been doing it  
8 at the D.C. Jail but at facilities around where people have  
9 lived or the Bureau of Prisons. Am I correct?

10 THE PROBATION OFFICER: Yes, Your Honor. Some of  
11 these cases, BOP, with the shorter sentences, are actually  
12 having them serve a sentence in some cases at a local jail  
13 to where they reside at. I've seen that happen in some  
14 cases.

15 THE COURT: Okay. So I don't -- Mr. Rollins, what  
16 you can do is there is -- you probably know this, but I'll  
17 just remind you. There is an office that the Bureau of  
18 Prisons -- and Ms. Baker can tell you where it -- you know,  
19 how to get in touch with them. They make a decision about  
20 where the person should go; so, I mean, I'll make a  
21 recommendation, if you tell me what it is.

22 And you have a choice of a Bureau of Prisons  
23 facility or, if there's a local jail that he'd prefer to do,  
24 I can make that recommendation. The sentence is short  
25 enough that they may very well just do a local facility as



1       opposed to, you know, a Bureau of Prisons facility, but you  
2       can find out from them where they're planning on sending  
3       him.

4               So I would go ahead and check once this -- you  
5       know, once this goes through. He'll have six weeks in here,  
6       so it won't be any earlier. I don't know how quickly  
7       they're moving. That has been a work in progress.

8               So I'm not sure how quickly they'll designate a  
9       place, but it won't be any earlier than June 13th. So -- it  
10       might be later, but it won't be any earlier than June 13th,  
11       so he's got a six-week period in here. All right.

12              MR. ROLLINS: Thank you.

13              THE COURT: So talk to your client in terms of --  
14       he knows where he lives, as to what -- you know, if he has a  
15       choice, I'm happy to make that recommendation.

16              Mr. Sarko, I'm hoping that, based on what you said  
17       today and you thought of, I'm not going to see you back here  
18       during these three years of probation. Take it seriously.  
19       You're smart enough. Finish college. Have that under your  
20       belt. No matter what you do at some later point, you may  
21       want it. It's easier to do it now, and think it through.

22              But don't disengage from participating as a  
23       citizen in this country. I'm not meant to discourage you.  
24       I'm just asking you to do it lawfully. It's important that  
25       everybody participate. If the democracy is going to work,

1 we all have to. Just do it lawfully. All right?

2 Good luck. Hopefully I won't see you back except  
3 under good circumstances, and if there's nothing else --  
4 Dorothy, anything else from you?

5 THE COURTROOM DEPUTY: No, Judge. You didn't  
6 impose any supervised release; is that correct?

7 THE COURT: No. Legally you cannot do supervised  
8 release so it's strictly 30 days and probation.

9 THE COURTROOM DEPUTY: Okay. Thank you.

10 THE COURT: And 30 days is not a condition of  
11 probation. It's separate.

12 THE COURTROOM DEPUTY: Okay.

13 THE COURT: All right. Take care, everyone. Be  
14 safe.

15 MS. REED: Thank you, Your Honor.

16 (Whereupon the hearing was  
17 concluded at 11:07 a.m.)

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**CERTIFICATE OF OFFICIAL COURT REPORTER**

I, LISA A. MOREIRA, RDR, CRR, do hereby certify that the above and foregoing constitutes a true and accurate transcript of my stenographic notes and is a full, true and complete transcript of the proceedings to the best of my ability.

**NOTE:** This hearing was held remotely by Zoom or some other virtual platform and is subject to the technological limitations of court reporting remotely.

Dated this 13th day of June, 2022.

/s/Lisa A. Moreira, RDR, CRR  
Official Court Reporter  
United States Courthouse  
Room 6718  
333 Constitution Avenue, NW  
Washington, DC 20001