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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

* * * * *)	
UNITED STATES OF AMERICA,)	Criminal Action
)	No. 21-00225
Plaintiff,)	
)	
vs.)	
)	
TRENISS JEWELL EVANS, III,)	Washington, D.C.
)	November 21, 2022
Defendant.)	1:17 p.m.
)	
* * * * *)	

SEALED SENTENCING HEARING
BEFORE THE HONORABLE DABNEY L. FRIEDRICH,
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE GOVERNMENT:	FRANCESCO VALENTINI, ESQ. U.S. DEPARTMENT OF JUSTICE CRIMINAL DIVISION, APPELLATE SECTION 950 Pennsylvania Avenue, Northwest Washington, D.C. 20530
FOR THE DEFENDANT:	STEVEN A. METCALF, II, ESQ. METCALF & METCALF, P.C. 99 Park Avenue Sixth Floor New York, New York 10016
FOR U.S. PROBATION:	AIDEE GAVITO
REPORTED BY:	LISA EDWARDS, RDR, CRR Official Court Reporter United States District Court for the District of Columbia 333 Constitution Avenue, Northwest Room 6706 Washington, D.C. 20001 (202) 354-3269

1 THE COURTROOM DEPUTY: Your Honor, we're in
2 Criminal Action 21-225, the United States of America versus
3 Treniss Evans, III.

4 If I can have the parties identify themselves for
5 the record, starting with the United States.

6 MR. VALENTINI: Good afternoon. My name is
7 Francesco Valentini and I represent the United States.

8 THE COURT: Good afternoon, Mr. Valentini.

9 MR. METCALF: Steven Metcalf on behalf of Treniss
10 Evans -- last name M-E-T-C-A-L-F. And Treniss Evans. Good
11 afternoon, your Honor. Good afternoon, everyone.

12 THE COURT: Good afternoon.

13 All right. So, Mr. Valentini, you've requested a
14 brief sealed hearing to discuss -- all I want to talk about
15 in here is cooperation.

16 MR. VALENTINI: Yes.

17 THE COURT: Anything else can be on the public
18 record. In fact, I'm going to ask you all to review the
19 prior transcript -- and I'll do this on the record -- and
20 propose redactions because, having reviewed that, much of
21 that could have been on the public record as well. So I'll
22 ask you to do the same with this as well.

23 So let's keep it tight.

24 MR. VALENTINI: Absolutely, your Honor. I will be
25 very brief.

1 In recent weeks Mr. Evans has been making
2 allegations of prosecutorial misconduct on social media, has
3 been alleging some sort of collusion between the prosecution
4 and the U.S. Marshal and withholding evidence. Although
5 Mr. Evans's allegations are unclear and may not even refer
6 to this case, we always take such allegations very
7 seriously.

8 For that reason, we gave Mr. Evans an opportunity
9 to substantiate his accusation by reaching out to defense
10 counsel on October 24th, 2022, and Mr. Evans and defense
11 counsel elected not to follow up.

12 Let me just make a very brief record, that
13 Mr. Evans has received, through defense counsel in
14 discovery, all relevant records, including all relevant
15 records we have received from the U.S. Marshal. And just to
16 be clear, the U.S. Attorney's Office learned of Mr. Evans's
17 involvement in a fugitive's apprehension on or about
18 October 28th, 2021, when the assigned AUSA at the time
19 received a telephone call from a deputy U.S. marshal in
20 San Antonio, Texas, who advised that he was instructed to
21 call to share information about Mr. Evans's assistance in
22 locating a fugitive.

23 That's all I have for the sealed part of the
24 proceeding, your Honor.

25 THE COURT: Okay.

1 MR. METCALF: May I, your Honor?

2 THE COURT: Briefly.

3 MR. METCALF: Your Honor, what you just heard is
4 for the first time the Government actually saying that they
5 knew for over a year -- a year -- October 28th, 2021 -- that
6 what he's been saying about Mrs. Martinez is actually true.
7 Now --

8 THE COURT: Okay. Let me stop all this. I have
9 already said that I am crediting him for the information he
10 provided. If you all want to bring some separate proceeding
11 about what the Government did, have at it. That's not
12 relevant here. I'm crediting him for his cooperation. Full
13 stop. There's no point in arguing about this anymore.

14 You can bring a separate proceeding for whatever,
15 defamation, whatever else you want. The reason his
16 cooperation was made public is because the prior defense
17 attorney made a mistake in a filing. And that's what
18 started all of this. But the fact of his cooperation has
19 been public.

20 MR. METCALF: Your Honor, it's way, way, beyond
21 that.

22 Number one, the Government in a filing first said
23 it. And then his --

24 THE COURT: Okay. All right.

25 MR. METCALF: -- prior attorney messed up in --

1 THE COURT: We -- we went through all of this in
2 multiple hearings, Mr. Metcalf. I find at this point no
3 Government bad faith such that it would impact this
4 prosecution at all.

5 So I want to move on from this.

6 MR. METCALF: Your Honor, I can't move on. I
7 can't move on, and --

8 THE COURT: Yes, you will move on.

9 MR. METCALF: -- here's why.

10 THE COURT: This is sentencing.

11 MR. METCALF: Okay. Your Honor --

12 THE COURT: We're here for sentencing --

13 MR. METCALF: Your Honor --

14 THE COURT: -- and Mr. Evans will be sentenced
15 today.

16 MR. METCALF: If I may, this has led to such a
17 scenario that has spiraled out of control where Mr. Evans
18 may not want to proceed with me any longer. Mr. Evans now
19 wants to consider whether or not he wants to vacate his
20 plea. So this has spiraled into a scenario where, yes, your
21 Honor has said that you have given him credit. But to what
22 extent? To what extent has it not -- has this proceeding --

23 THE COURT: We're talking zero to six months.

24 MR. METCALF: Yes.

25 THE COURT: Zero to six months. I can give him --

1 I can sentence him anywhere in the range. This is not going
2 to have any impact on what credit I give him for his
3 cooperation.

4 None, Mr. Evans.

5 So let me hear from Mr. Evans. You may have a
6 seat.

7 MR. METCALF: Your Honor --

8 THE COURT: No. Have a seat.

9 MR. METCALF: Your Honor --

10 THE COURT: Have a seat, Mr. Metcalf.

11 Mr. Evans.

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Is it true that you don't want to
14 proceed with Mr. Metcalf as your attorney?

15 THE DEFENDANT: I've been -- well, there's been --
16 we've had an ongoing argument about this scenario that's
17 been going on here. And I'm very frustrated. And, your
18 Honor, would you -- may I say a couple of sentences about
19 that specific scenario?

20 THE COURT: No. I just want to know, are you
21 satisfied with your counsel?

22 THE DEFENDANT: Well, I'm not very satisfied with
23 the situation because I've been pointing this out and saying
24 that this absolutely happened, and it's been, like, almost
25 like in this mystical realm: Did it really or did it not?

1 THE COURT: Did what happen?

2 THE DEFENDANT: Your Honor, in my understanding,
3 in the Brady situation, that anything that has -- a matter
4 variable to my sentencing, or could be variable to my
5 sentencing -- and if the Government would have come to you
6 and said, Mr. Evans helped us in a downward departure
7 scenario, I think this would have gone in a very different
8 light as the opposed to: Okay. Look. I'm not really sure
9 what happened here. This doesn't look good. And I
10 appreciate your Honor giving me the credit for that and
11 recognizing --

12 THE COURT: So what -- do you want to withdraw
13 your plea? Is that what you're saying?

14 THE DEFENDANT: Your Honor, I will tell you that
15 I'm very burdened at this point with the decision-making
16 here.

17 Mr. Metcalf has been rather unavailable, dealing
18 with the other cases that he has going on, and I've been
19 emailing -- we've been discussing, and we haven't had a lot
20 of conversation about this as to whether or not this would
21 put me in a position.

22 I want to say, I committed a crime and I
23 understand that. And I just want to be sentenced --

24 THE COURT: Okay. Look, all of this is going to
25 be reviewed and redacted and released. Because -- all I

1 want to know in the sealed proceeding is anything about
2 cooperation and anything about your relationship with your
3 attorney. All right? I don't want you to start arguing
4 about the impact it's had on your family and all of that.
5 That's not sealed-worthy.

6 THE DEFENDANT: It had a very big impact on --
7 they're bringing to light -- Mr. Valentini brought -- the
8 Government brought to light my social media posts. My
9 social media posts --

10 THE COURT: Mr. Evans, how clear do I need to be?
11 I want to hear about cooperation. I want to hear about your
12 relationship with your attorney. The rest of this can be
13 handled in public.

14 THE DEFENDANT: Okay.

15 THE COURT: So what about your relationship with
16 your attorney? Do you want to get a new attorney? Is that
17 what you're saying?

18 THE DEFENDANT: I've not been happy with that.
19 I've actually been seeking assistance elsewhere. And I
20 mean, I think Mr. Metcalf is a good attorney. I just don't
21 think he has the time to deal with this case, or maybe the
22 patience. I don't know what the situation is, but we are
23 definitely at --

24 THE COURT: Why am I waiting until now, the day of
25 sentencing, again, that I continued for your benefit, to

1 hear this at this point?

2 THE DEFENDANT: Your Honor, I urged for this to
3 happen six weeks ago.

4 THE COURT: You urged what to happen?

5 THE DEFENDANT: I wanted to address these matters
6 six weeks -- more than six weeks ago.

7 THE COURT: Did you bring this to Mr. Hopkins's
8 attention?

9 THE DEFENDANT: I thought I'm not allowed to
10 contact the court directly.

11 THE COURT: Your attorney wouldn't contact
12 Mr. Hopkins to address a change-of-counsel issue?

13 THE DEFENDANT: Mr. Metcalf had the belief that
14 this would go very differently, that you would hear his side
15 of this and understand what we're trying to explain.

16 THE COURT: I don't --

17 THE DEFENDANT: So I --

18 THE COURT: I do not understand how this impacts
19 sentencing. The fact -- let's assume for a moment there's a
20 *Brady* violation. Let's assume that.

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Is it material such that you would not
23 enter a plea? Is that what you're telling me?

24 MR. METCALF: Your Honor, may I?

25 THE COURT: No. I want to hear whether he would

1 not enter his plea.

2 Is that what you're saying?

3 THE DEFENDANT: Well, your Honor, when I entered
4 my plea, it was based on all of the information we had. My
5 original counsel told me: Look, Mr. Evans, you have -- you
6 were helping the police inside the building. There's no
7 question about that, what you were doing. That information
8 is all there and impactful.

9 And then, on top of that, she said you have -- you
10 captured a federal fugitive, and they're talking about a
11 downward departure --

12 THE COURT: That will not be part of your trial,
13 the fact that you captured a federal fugitive. All right?
14 So tell me what has come out that would be part of your
15 trial that would make you change your plea of guilt.

16 THE DEFENDANT: Your Honor, I don't -- I mean, I
17 don't know enough about the court system in that respect as
18 to what happens in trials. I don't know. So you're
19 explaining something --

20 THE COURT: You're talking about the crime you're
21 charged with.

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: What have they not turned over that's
24 relevant to the crime you're charged with, not your
25 cooperation, that would change your mind about your plea?

1 THE DEFENDANT: I'll --

2 (Defendant confers privately with counsel.)

3 THE DEFENDANT: The cell phone videos recording of
4 me, I was always told that there was no way for me to
5 receive that.

6 And then when they changed in recent light -- in
7 October, the Government has changed the rules on how you can
8 view the evidence and who can view it and whenever it's
9 supervised or unsupervised viewing of that. And I was able
10 to review the Senate wing door footage where I'm leaving the
11 building and, as I'm leaving the building, I speak with an
12 officer. And then I begin assisting again with the crowd
13 control and telling people to leave the building.

14 THE COURT: Okay. You've already come in the
15 building and trespassed.

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: And what is the charge here?

18 THE DEFENDANT: Knowingly entering and remaining
19 in a restricted building, your Honor.

20 THE COURT: Does that change your plea of guilt to
21 that simply because, on the way out, you were helping an
22 officer?

23 THE DEFENDANT: No, your Honor. But I think it's
24 a mitigating factor for sentencing.

25 THE COURT: Fine. You can present it today.

1 THE DEFENDANT: Okay. I would be happy with that,
2 your Honor. Just -- I guess I would feel better if I had
3 any assurance in going forward that you would receive this,
4 what we've now -- what the Government has now admitted that
5 they've had in their possession, whether it was by mistake
6 or not -- I understand the rules of professional conduct;
7 I've read quite a bit about that.

8 And what I'm asking, your Honor, is: Am I
9 receiving the same credit as if the Government would have
10 come to you and said, We're looking at downward departure
11 here because Mr. Evans did this?

12 THE COURT: I overruled the Government's, you
13 know, resistance to giving you any credit. And I said I'm
14 considering it. I'm not going to tell you now what sentence
15 I'm giving you. But I've considered it fully, regardless of
16 whether they've supported it or not.

17 I said, I think, quite clearly on the record I
18 think bringing a fugitive in -- and they say that you were
19 responsible for that -- is substantial assistance. And I'm
20 crediting you that.

21 THE DEFENDANT: Okay. I didn't understand it to
22 be considered a substantial assistance in the last
23 proceeding, your Honor. But I appreciate that. And
24 providing -- well --

25 THE COURT: I mean, I wouldn't give you a

1 departure under 5K2.0, but there's no departure to give
2 because the guideline range is zero to six months. So I
3 said I'm taking it into account in considering where I
4 sentence you in the guideline range, which is zero to six
5 months in prison. I'm taking it into account.

6 THE DEFENDANT: Yes.

7 THE COURT: And I'm taking a lot of other things
8 into account, too.

9 THE DEFENDANT: Yes, your Honor. Okay.

10 THE COURT: So back to the original question: Do
11 you want to proceed today? Are you firing your counsel?
12 What's happening? Do you want to withdraw your plea? I
13 haven't heard a reason yet that would justify that, but I'm
14 not going to say you can't brief that if that's the way you
15 want to go.

16 (Defendant confers privately with counsel.)

17 THE DEFENDANT: There's another matter under seal
18 that I would like the Court to consider. That would be a
19 matter under seal because it involves my minor child.

20 Recently, we received information from the school
21 that my son has been -- there's been improper contact with
22 my child at the school. And the teacher --

23 THE COURT: By whom?

24 THE DEFENDANT: By the teacher. And the teacher
25 is in jail currently -- or without bond. Well, actually, I

1 think she just got a \$50,000 bond in the last couple of
2 days.

3 This just came to light in the last couple of
4 weeks. And the Comal County Sheriff's Office is prosecuting
5 that case. So we've had a lot going on in our family right
6 now, so that's been a little bit of a distraction where I
7 haven't been as available. And it's not -- like I said, I'm
8 not trying to only to say that Mr. Metcalf has been
9 unavailable. I've had this scenario going on as well at my
10 home right at this moment.

11 THE COURT: So there's improper contact. Are you
12 saying that the teacher was prosecuted -- is cooperating
13 with the Government and had contact with your child as a
14 cooperator?

15 THE DEFENDANT: No, your Honor. She was
16 attempting to molest my son.

17 THE COURT: Oh, I'm sorry. I didn't follow that.

18 THE DEFENDANT: And so we're -- I'm sorry. It's
19 an ongoing --

20 THE COURT: I thought you meant improper contact
21 based on a January 6th prosecution. All right. I wasn't
22 following that.

23 THE DEFENDANT: No, your Honor.

24 THE COURT: All right. So --

25 THE DEFENDANT: May I say something, your Honor?

1 Providing that -- look, I don't want to -- there's
2 a big part of me that thinks that due to the light of what's
3 come out from the House committee here recently and the
4 information, allegations -- with all the other
5 allegations -- and this doesn't even need to be under seal,
6 so I can wait. I'll be happy to wait for that --

7 THE COURT: Okay. Wait for that.

8 THE DEFENDANT: But I would like to --

9 THE COURT: Anything else that needs to be under
10 seal?

11 MR. METCALF: Your Honor, yes. Can I be heard?

12 THE COURT: Yes. And Mr. Metcalf --

13 MR. METCALF: Yes.

14 THE COURT: -- don't talk over me in this public
15 hearing.

16 MR. METCALF: Absolutely. I just asked if I could
17 be heard, your Honor.

18 THE COURT: I know. But when I'm talking, you
19 stop. She can't report us both, and she's going to report
20 me over you every time, and so don't interrupt. Wait until
21 I finish speaking until you start speaking.

22 MR. METCALF: Absolutely, your Honor. If I may.

23 THE COURT: Yes.

24 MR. METCALF: Your Honor, this is where the
25 communication has kind of just been disrupted and ultimately

1 led to a complete halt.

2 Friday is when we got this information. So I took
3 on a case that was supposed to be very simple. It was
4 supposed to be kind of a straight line scenario. We got an
5 A misdemeanor, we got guidelines, we got a fugitive, we
6 got -- he talked about Javino and he talked about laptops.

7 Any other day, I could wrap this up in a couple of
8 hours and sit down with my client and handle every one of
9 his needs without a problem.

10 Now we have a scenario where it's making it
11 difficult for me to do my job. I --

12 THE COURT: What specifically is making it
13 difficult?

14 MR. METCALF: The word *Brady* has been put in this
15 man's mind because of three different things: Number one,
16 the Javino scenario coming out on the record -- won't go
17 back through the family -- that still going-on scenario.
18 That's number one that I've had to deal with since I came on
19 this case.

20 THE COURT: Okay. That was months ago.

21 MR. METCALF: Yes. Still ongoing to a point where
22 every single conversation reverts back to that.

23 THE COURT: Okay.

24 MR. METCALF: And on top of that, what we learned
25 on Friday.

1 So to clarify something, six weeks ago, what
2 Mr. Evans is speaking about is he wanted to file a huge
3 massive motion addressing every single thing in this case.

4 After I --

5 THE COURT: What kind of motion?

6 MR. METCALF: A motion addressing everything.

7 THE COURT: What's the name of the motion?

8 MR. METCALF: It would have been a supplemental
9 sentencing memo which is --

10 THE COURT: On a motion?

11 MR. METCALF: Yes. And this is where --

12 THE COURT: I don't understand. What motion do
13 you file post-plea?

14 MR. METCALF: I don't either, your Honor. This is
15 why this is becoming an issue --

16 THE COURT: Well, it's your job --

17 MR. METCALF: -- in communication --

18 THE COURT: -- as his attorney to explain the
19 process to him.

20 MR. METCALF: And that's what I have done for
21 hours.

22 THE COURT: All right.

23 MR. METCALF: And yet we are here. And then, on
24 Friday, we get notification that the Government knew about
25 this a year ago.

1 Now, your Honor --

2 THE COURT: Knew about what a year ago?

3 MR. METCALF: Martinez. The U.S. Marshal notified
4 the other AUSA on October 28th, 2021. That is what counsel
5 just told your Honor today.

6 THE COURT: And that --

7 MR. METCALF: Now --

8 THE COURT: Let me try to get to the bottom of
9 this. This matters because the Government hasn't joined the
10 5K motion?

11 MR. METCALF: No. This matters because we believe
12 that your mind is tainted based on the Government's --

13 THE COURT: No. It's not --

14 MR. METCALF: -- representation.

15 THE COURT: -- tainted. If anything, it's tainted
16 by a bunch of irrelevant stuff coming into this sentencing.

17 I want to sentence Mr. Evans based on
18 January 6th --

19 MR. METCALF: Understood.

20 THE COURT: -- not what the committee did in
21 Congress and all of this stuff that you all keep throwing my
22 way.

23 MR. METCALF: Your Honor, that does have to go --
24 so let's think about suppression. If that could be -- if
25 that could be -- being suppressed -- that was information

1 that was suppressed. They argued that they didn't know.

2 They believe Mr. Evans to be a liar.

3 THE COURT: All right. Mr. Valentini, quit making
4 faces.

5 MR. METCALF: They insinuated to your Honor that
6 Mr. Evans was a liar. That is unquestionable. Everyone
7 who's read the documents, with Javino and with Martinez,
8 Mr. Evans is a liar.

9 THE COURT: I don't know how to say it any more
10 clearly than I took your client's side when it comes to
11 cooperation.

12 MR. METCALF: I understand that, your Honor. And
13 I'm telling you where the breakdown is coming from.

14 THE COURT: Right. But if there's a need to
15 accuse them of prosecutorial misconduct or go after their
16 bar license, whatever the case may be, you can pursue that.

17 In terms of what he gets, in terms of 5K, that
18 is -- their behavior here has no impact on the credit I'm
19 giving him for that.

20 MR. METCALF: So then, your Honor, yes, that's
21 what we're asking for. We're asking for a finding of *Brady*.
22 Two or three different scenarios: Number one, Javino, what
23 happened with Javino. Now that we -- now that we -- this is
24 where the conversations go, your Honor.

25 THE COURT: Okay. Why --

1 MR. METCALF: And that --

2 THE COURT: -- why can't I assume for purposes of
3 sentencing that there's been a Brady violation and sentence
4 him, and then you can continue to file whatever you want
5 with regard to --

6 MR. METCALF: Because we're asking for an actual
7 finding on the record that there was a Brady violation, and
8 then we're asking for it to be remedied because of the
9 prejudice --

10 THE COURT: What -- what remedy are you asking
11 for?

12 MR. METCALF: I'm asking for there to be
13 essentially -- that's a good question. Now what remedies
14 are there? Because procedurally, this is where I'm having
15 issues. He wants an outright dismissal. We're at a plea.
16 We're awaiting sentencing. Obviously, procedurally, that
17 can't be done.

18 THE COURT: Okay.

19 MR. METCALF: Now --

20 THE COURT: I don't understand why any of this is
21 under seal, guys.

22 MR. METCALF: Because it has to do with Javino
23 Martinez, and that's under seal. And then recently what he
24 just told you about his child.

25 This is what's been going on in the last month, is

1 Brady being discussed nonstop about withholding evidence and
2 about -- your Honor, their actual theory was that he's a
3 vigilante and that this basically didn't happen and that
4 he's just making this stuff up and he's going out there
5 seeking justice on his own to try to lighten his sentence.

6 So this is a problem. If it's now coming to light
7 at the last hour, hey, they're just saying now -- I'm sorry,
8 your Honor.

9 THE COURT: Why is it a problem if I've given him
10 full credit? You think that it's going to be such egregious
11 Government misconduct that I'm going to dismiss the whole
12 prosecution because it's that egregious?

13 MR. METCALF: I don't, your Honor. I don't think
14 it's to that level. I think it's to a level where your
15 Honor could at least understand that this is unusual, that
16 it's creating -- it actually is creating a wedge in between
17 Mr. Evans and his family. It's creating a wedge in between
18 Mr. Evans and now his third counsel, who spends hours and
19 hours going over this with him.

20 THE COURT: Does he need a new attorney?

21 MR. METCALF: I don't know, your Honor. I don't
22 believe that he does. I do believe that he is going through
23 a very serious situation with his son. His son is 15 years
24 old and his son basically was targeted by one of these
25 teachers and there was a whole bunch of different text

1 messages going back and forth. She was trying to force him
2 into certain sexual things --

3 THE COURT: Okay. Again --

4 MR. METCALF: -- not to mention that --

5 THE COURT: -- I'm sorry to hear all that. It --

6 MR. METCALF: But that's --

7 THE COURT: -- has nothing to do with this
8 proceeding.

9 MR. METCALF: It does, your Honor, because it goes
10 to my communication and my ability to communicate with my
11 client.

12 THE COURT: So you all want a continuance? Is
13 that what you're asking for?

14 MR. METCALF: Your Honor, at this time I think
15 that that would be best, because --

16 THE COURT: All right. You all -- I can't help
17 but feel like you are dragging your feet at every instance.

18 MR. METCALF: Your Honor, I submitted to you a
19 25-page memorandum, sentencing memo, with a whole bunch of
20 exhibits that took me hours and hours and hours to put
21 together. I'm fully ready to discuss everything that we
22 ever have to do. This is a misdemeanor case. I'm not
23 dragging my feet on anything.

24 This is a scenario where I need to be able to talk
25 to my client after how you spoke to him today and reassure

1 him that he is going to get credit as opposed to him
2 believing that he's going into a situation where the
3 Government painted such a bad picture about him that your
4 Honor is inclined to do nothing but sentence --

5 THE COURT: I'm not.

6 MR. METCALF: -- him to jail.

7 THE COURT: I'm not. They didn't paint a bad
8 picture of him --

9 MR. METCALF: Yeah.

10 THE COURT: -- in my mind.

11 MR. METCALF: Are you kidding me? They talked
12 about him being a vigilante --

13 THE COURT: You can't tell me what I'm thinking of
14 your client based on what I've heard in this proceeding.
15 All right? Don't -- don't --

16 MR. METCALF: I know -- I'm not -- I'm saying from
17 our perspective and our communications, it's -- your Honor
18 was -- first off, every single time I've worked with the
19 Government and my client has worked with the Government, the
20 Government has come in and said favorable things, which
21 signals to the judge we've been working together for how
22 long, and that he's done the right thing.

23 However, he makes a very good point here. When he
24 took his plea, there was talk about the Government helping
25 him try to get a downward departure, whatever that may be.

1 Now I've gone through that with him. Nothing was in
2 writing. He understands that. He took their word.

3 All of a sudden, we get to sentencing with another
4 AUSA, and it's he lied about Javino -- and the New York
5 field office contacted him twice about Javino; there's a
6 whole different scenario now that's coming out when there's
7 one withdrawal; he's now wondering, was Javino targeting him
8 and trying to entrap him? Was he trying to do that at the
9 force of the Government?

10 There's so many different issues that now come up
11 with Javino, with the Government coming clean and saying
12 we've known this information for a year.

13 So then we get to Martinez. And Martinez -- the
14 Government is saying now: Oh, yeah, your Honor; after our
15 whole presentation, a sentencing memo that's publicly made,
16 where everyone sees it, the press sees it and everything,
17 the presentation that's made, the slides that were made,
18 after all that and the underlying theory that he's basically
19 a liar to your Honor -- this is the communication I have to
20 start with. That's the foundation of every single
21 conversation I enter into with Mr. Evans.

22 So I'm eventually able to get over that. But then
23 it always comes back.

24 And Friday was the sealing scenario where, in his
25 mind, he knew that they would tell that information and now

1 come clean. You don't see how that creates a big problem?

2 And, your Honor, it may not seem that crazy, zero
3 to six months. You've got a wife at home with two kids.
4 One kid is now going through counseling because he didn't
5 want to actually engage in sexual conduct for the first time
6 in his life with a teacher whose husband is the gym teacher
7 who he has to approach every single day. So they're going
8 through that as a family unit. One month means everything
9 to this family.

10 Dragging my feet? No. Looking out for Mr. Evans
11 and what's appropriate and this being the right time
12 psychologically for him is what I'm looking out for. He
13 remains on pretrial supervision every single day. If it
14 goes on an extra --

15 THE COURT: Do you want a delay?

16 MR. METCALF: -- month, it's still there.

17 THE COURT: Let's just cut to the chase. Do you
18 want to delay the sentencing hearing?

19 MR. METCALF: No. I want to extend the sentencing
20 so I can continue to talk to Mr. Evans --

21 THE COURT: That's a continuance.

22 MR. METCALF: You said delay, your Honor. I'm not
23 trying to delay.

24 THE COURT: It is a delay.

25 MR. METCALF: Okay. Call it whatever you want.

1 Yes, I want to delay the sentencing.

2 THE COURT: Okay. All right.

3 Mr. Valentini, anything you want to say?

4 MR. VALENTINI: Your Honor, there's a lot to
5 unpack there. Let me just touch on the two more outrageous
6 accusations that have been made here, and that has to do
7 with the *Brady* violations with respect to the Javino matter
8 and with respect to the cooperation.

9 With respect to the cooperation, as your Honor
10 will remember, they raised the issue in their sentencing
11 memorandum. Your Honor held a sealed hearing to hear the
12 Government's position. Because their sentencing memorandum
13 was filed only a few days before the sentencing hearing, we
14 did not have an opportunity to check the facts that were in
15 the sentencing memorandum.

16 At that time, we decided to concede that, as you
17 may recall, that as a factual matter it is true that
18 Mr. Evans lent assistance to the U.S. Marshal in
19 apprehending a fugitive. So that matter was not factually
20 contested.

21 I don't know what they're referring to about *Brady*
22 or lying to the Court or any sort of misconduct. There was
23 not, your Honor.

24 As you recall, and as you just reminded us today,
25 the matter was not -- the fact of the cooperation was just

1 not contested. What we did argue is, as a matter of
2 argument, we thought that the weight that should be accorded
3 to that cooperation was diminished by the fact that the
4 cooperation was initiated by the Defendant. But that was
5 the -- so that was the extent of our argument. That's all
6 there is to it.

7 As to the other accusations that I've been
8 hearing, to be honest, your Honor, I don't even understand
9 factually what they're saying.

10 THE COURT: I don't either. And if I'm going to
11 continue this matter, it's for no more than ten days or two
12 weeks. So you need to file whatever motion or whatever, and
13 you'll come back here again and we will resolve whatever
14 issue you brief at that time. We're not continuing this
15 more than ten days.

16 MR. METCALF: Understood, your Honor. And so now
17 we have leave to file additional material?

18 THE COURT: You have two days to file. The
19 Government has two days to file a response. Actually,
20 that's Thanksgiving. The Government has until Monday. And
21 then I'll address the sentencing on the 30th.

22 MR. VALENTINI: The --

23 MR. METCALF: Your Honor --

24 THE COURT: Just a minute.

25 MR. VALENTINI: Your Honor, this is a little

1 difficult to handle for me timewise because I'm in trial
2 prep for a bench trial that is scheduled for December 12. I
3 don't mean to be difficult. We of course can make anything
4 work. However, it's difficult to predict how much time this
5 might take depending on what they say.

6 So your Honor, I would request the sentencing
7 proceed -- the defense has had ample opportunity to make
8 whatever case they wanted about whatever issue they wanted.
9 As I mentioned before, on October 24th, just based on the
10 social postings of the Defendant, we reached out to them and
11 we asked them: What are you talking about? Is this
12 something that has to do with this particular case?

13 MR. METCALF: Your Honor, I can --

14 THE COURT: Stop. You're not at the podium.

15 MR. VALENTINI: Let us know. We take these
16 accusations, as your Honor is aware, extremely seriously.
17 We didn't hear anything.

18 THE COURT: So when were you made aware of this
19 allegation?

20 MR. VALENTINI: I -- we learned in -- I think this
21 started surfacing on social media -- I believe it was
22 mid-October to late October. I know I reached out to
23 defense counsel in -- I believe on October 24th. They've
24 had opportunity.

25 Your Honor, it seems to me --

1 THE COURT: This is -- yeah. That is September.
2 So you reached out -- the Government reached out to counsel
3 on October --

4 MR. VALENTINI: Let me see. Yes, your Honor. The
5 Government emailed defense counsel on Monday, October 24th,
6 asking for clarifications about these accusations and
7 cutting and pasting the -- you know, portions of the social
8 media postings of the Defendant. Precisely -- because we
9 take these accusations always very seriously, as your Honor
10 is aware.

11 THE COURT: So you reach out on October 24th. And
12 then what?

13 MR. VALENTINI: Then I have not heard.

14 THE COURT: Nothing.

15 What is this claim about this Friday?

16 MR. VALENTINI: I advised defense counsel that I
17 was planning to request a sealed hearing at which I will
18 make the record that I just made. And I don't understand
19 what part of this was new to defense counsel.

20 THE COURT: He acts like there's some new
21 discovery.

22 MR. VALENTINI: I don't know what he means. If he
23 refers to -- perhaps he's referring to the fact of the
24 timing of when we learned from the U.S. Marshal in Texas of
25 the assistance. And if that is what he's referring to, the

1 cooperation was -- we were informed of that -- my
2 predecessor was informed of that by telephone in October of
3 2021.

4 And again, we have not pushed back on the fact of
5 his assistance to the U.S. Marshal. Your Honor credited it.
6 We did not oppose it as a factual matter. We had a healthy
7 disagreement about the weight to attach to that, given the
8 circumstances.

9 THE COURT: Yes.

10 MR. VALENTINI: But there is no factual
11 disagreement. There's no -- I'm struggling to even
12 understand what the theory of this misconduct is. It's
13 difficult to understand.

14 THE COURT: Okay. Thank you.

15 MR. METCALF: Your Honor, can I have a minute with
16 my client, please?

17 THE COURT: Yes, you may. I'm going to take a
18 quick break and I'll give you a minute to talk. All right?

19 MR. METCALF: Thank you.

20 (Thereupon a recess was taken, after which the
21 following proceedings were had:)

22 THE COURT: Mr. Metcalf, I have to admit, like
23 Mr. Valentini, I'm confused about what it is that you would
24 want to file if I gave you leave to file something else.

25 MR. METCALF: Your Honor --

1 THE COURT: What exactly?

2 MR. METCALF: Okay. So that is what has been part
3 of the communication and the distinction -- or the breakdown
4 that we've been experiencing lately.

5 THE COURT: Okay. Well, tell me what you would
6 seek leave to file.

7 MR. METCALF: I just spoke with Mr. Evans, and he
8 is comfortable going forward with sentencing at this point,
9 because I have been explaining that we don't need to file
10 additional material.

11 THE COURT: Okay.

12 MR. METCALF: Mr. Evans, however, does have a
13 PowerPoint presentation that he wishes to be able to utilize
14 in addressing the Court.

15 THE COURT: What is this Power -- wait. Wait.
16 Before we move on to that, I just want to step by step cover
17 this.

18 MR. METCALF: Okay. So --

19 THE COURT: So there's --

20 MR. METCALF: -- your Honor --

21 THE COURT: -- there's no need to file anything
22 additional.

23 MR. METCALF: Not at this time, your Honor.

24 THE COURT: I've assured Mr. Evans, I hope, that I
25 have taken his cooperation into account fully in deciding

1 his sentence. I have not been influenced by anything that
2 the Government has said that has been negative about the way
3 in which you tried to cooperate. All right? So I want the
4 record to be clear on that.

5 THE DEFENDANT: Thank you, your Honor.

6 MR. METCALF: Your Honor, we want the record to be
7 a little bit clearer about the Government's position
8 throughout this course with regards to specifically
9 Martinez. So when I came in this case --

10 THE COURT: Okay. I'm not going to today be
11 making a finding. Are you asking leave to file something?

12 MR. METCALF: No. I'm asking for a finding --

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

14 MR. METCALF: Okay. Well, your Honor, I want your
15 Honor to understand --

16 THE COURT: That requires an evidentiary hearing.
17 That requires briefing. I can't even follow what you're
18 saying.

19 MR. METCALF: It's very simple. They withheld
20 information about his cooperation and they actually denied
21 it, and then did a whole dog and pony show and said, Oh,
22 well, we don't know, while they had this information for a
23 year, and then made a theory about it at sentencing.

24 THE COURT: All right. Again, Mr. Metcalf, I've
25 been very clear: I'm crediting his cooperation fully.

1 MR. METCALF: Okay, your Honor.

2 THE COURT: If you want to file a complaint with
3 the Bar about the AUSA, you may do so. But I don't see how
4 any of this impacts now, given what I've said, Mr. Evans's
5 sentence here. I've credited fully his cooperation. I'm
6 not holding anything against him that the Government has
7 said with regard to cooperation.

8 MR. METCALF: Okay. Your Honor, we still take the
9 position that this did taint the hearing a little bit --

10 THE COURT: I understand.

11 MR. METCALF: -- and the procedure --

12 THE COURT: I understand.

13 MR. METCALF: -- because that's the way it should
14 have went down.

15 But this is where it --

16 THE COURT: That's what?

17 MR. METCALF: That is not -- the way sentencing
18 has proceeded so far is not the way it should have been.
19 Their attitude and actually giving him credit should have
20 been completely different --

21 THE COURT: Okay.

22 MR. METCALF: -- and we believe that would have
23 changed everything. It would have changed the tone; it
24 would have changed every single thing about sentencing.

25 THE COURT: Mr. Metcalf, again, I'm giving him

1 full credit.

2 Mr. Evans, quit raising your hand. You'll have a
3 chance to talk to your attorney.

4 THE DEFENDANT: Okay.

5 THE COURT: I'm giving him full credit for
6 cooperation.

7 MR. METCALF: Okay, your Honor. So then we wish
8 to proceed, then, instead of filing.

9 THE COURT: You wish to proceed.

10 MR. METCALF: Yes.

11 THE COURT: All right. There's no problem with
12 counsel?

13 MR. METCALF: Not to my understanding. We are --

14 THE COURT: Okay. Do you want --

15 MR. METCALF: It has been difficult. We would
16 just ask your Honor to take that into consideration.

17 THE COURT: Well, I don't know what that means.

18 MR. METCALF: Communication has been difficult.

19 THE COURT: Okay. Either you're -- either he's
20 satisfied with your services or he's not. It's not a, like,
21 "Lower his sentence because he's not satisfied."

22 MR. METCALF: Understood. But that's a question
23 that he has to answer.

24 THE COURT: I understand.

25 I'm just asking you, from your perspective, you

1 understand he's prepared to go forward. I'm going to hear
2 from him directly.

3 MR. METCALF: Yes, your Honor.

4 THE COURT: Okay. Why don't you talk to him
5 briefly and then I'll hear from him.

6 (Defendant confers privately with counsel.)

7 THE COURT: All right. Mr. Evans?

8 THE DEFENDANT: Okay, your Honor.

9 Your Honor, I'd like to make two brief points.
10 Point one is that -- well, I'm not going to get into the
11 details of social media, other than to say that what I'm
12 saying was, one, free speech; two, true; and three is a
13 response to the Government's withholding the information or
14 not giving credit to me as it should have been.

15 THE COURT: Okay. Mr. Evans, all I want to hear
16 from you right now: Are you or are you not satisfied with
17 your counsel?

18 MR. METCALF: Yes -- well, your Honor --

19 THE COURT: Yes or no? Do you want new counsel or
20 do you want to -- this is a simple yes or no: Are you
21 satisfied with his services?

22 MR. METCALF: Your Honor, would you grant me the
23 leave -- I don't want to adjourn. I want to finish today.
24 I want to be sentenced today and put this matter to rest,
25 but I'm not satisfied with what Mr. Metcalf is doing in some

1 respects. There's information that I'm asking that the
2 Court is not understanding what I'm saying, and
3 Mr. Metcalf --

4 THE COURT: And what information does that relate
5 to?

6 MR. METCALF: To Javino.

7 THE COURT: Okay. I have credited you full
8 cooperation.

9 MR. METCALF: No.

10 THE DEFENDANT: I am sorry, your Honor. You did
11 not credit me for Javino. You credited me for the other
12 matter. I'm telling you -- my point is this, is that they
13 didn't give us the information on Martinez. And I'm telling
14 you there was three matters. And then now they don't give
15 us the information on these other two matters.

16 I'm -- I've stood here and been 100 percent
17 honest. I understand perjury and I understand the rules of
18 the court. I've stood here and been 100 percent honest in
19 everything I've presented. And rather than be disingenuous
20 or dishonest or whatever the case may be, I can't speak to
21 that on the other side, but what I do know is my information
22 has checked out and been factually correct from the
23 beginning.

24 THE COURT: So you're saying you've only received
25 credit for information provided on one target?

1 THE DEFENDANT: Of three matters.

2 THE COURT: And you're saying you should get
3 credit for all three?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Okay. And why have you not been given
6 credit for the other two? Say it succinctly. What did the
7 Government say that --

8 THE DEFENDANT: The Government --

9 THE COURT: -- conflicts with the evidence you
10 have now?

11 THE DEFENDANT: It doesn't conflict, your Honor.
12 What they said is that they did not open [indiscernible] or
13 were unable to substantiate any of the claims.

14 THE COURT REPORTER: I'm sorry. Didn't open...?

15 THE DEFENDANT: Did not open -- yes, ma'am. The
16 Government said that they did not -- were unable to open or
17 substantiate an investigation. I'd have to remember what
18 they released under -- from what was -- from the proffer
19 back in March to the open record, which I still contend
20 creates one of two things: Either Mr. Javino is a dangerous
21 man, which, having been to prison for fire bombing someone's
22 home, that creates an issue. Right? So that's part of the
23 situation.

24 So either he is the dangerous man that I say he
25 is, as the record shows, and they did investigate this

1 person, or take a look -- surely a man that's asking you to
2 drive arms across the country, or ammunition across the
3 country to go to Michigan with certainly seems rather
4 suspect.

5 But furthermore, I question: Why was this person
6 attempting to get me to do that and what does the Government
7 know about Mr. Javino? Were they trying to entrap me into a
8 situation and that's why we haven't advanced an
9 investigation?

10 THE COURT: I don't understand. That whole
11 situation you're saying was a setup to entrap you?

12 THE DEFENDANT: I don't know the answer to that.
13 But I know that what they were trying to get --

14 THE COURT: But I -- look --

15 THE DEFENDANT: I can't answer that, your Honor.

16 THE COURT: -- I have found your cooperation is
17 substantial.

18 THE DEFENDANT: Thank you, your Honor.

19 THE COURT: All right?

20 THE DEFENDANT: Yes.

21 THE COURT: And you made efforts in a number of
22 different ways.

23 THE DEFENDANT: Thank you, your Honor.

24 THE COURT: So in light of that --

25 THE DEFENDANT: I just want to close with the idea

1 that if I'm telling you three things happened, only one of
2 us has stood here and been accurate. For whatever reason,
3 I've been the accurate party on one of those. There's been
4 a denial of all three. I was the accurate party on one, and
5 I'm telling you that I was accurate on the other two, your
6 Honor.

7 And that's all I have for you.

8 THE COURT: Okay. All right. But I've given you
9 substantial assistance, and I recognize, I think, even -- I
10 haven't had a chance to review the transcript, but my memory
11 is that the Government argued this wasn't substantial, that
12 you shouldn't be given credit for it. I made the point that
13 I thought it was, and I said it really doesn't matter
14 whether we call it substantial assistance or not because
15 we're still within zero to six months.

16 So unlike some situations where you have a
17 mandatory minimum penalty and you have to break the man min
18 or you go down in the guidelines -- this isn't that case,
19 Mr. Evans, because, without any cooperation, I could give
20 you zero time. Right? I could give you probation.

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: So to the extent I minimized the
23 credit I'm giving you, it was in that context. All right?
24 I acknowledge you tried to cooperate. Whether all of it was
25 deemed or none of it was deemed substantial by the

1 Government, I deemed it substantial. I'm giving you credit.

2 THE DEFENDANT: Thank you, your Honor.

3 THE COURT: So in light of all that, are you
4 prepared to go forward with sentencing today?

5 THE DEFENDANT: Yes, your Honor. I would like --

6 THE COURT: And are you satisfied with your
7 counsel?

8 THE DEFENDANT: I think I -- we left this
9 situation last time with me -- I think we were wrapping up.
10 I believe both parties had been heard and I was speaking to
11 the Court. Is that -- am I correct in my thinking?

12 THE COURT: You mean at the last sentencing
13 hearing?

14 THE DEFENDANT: Yes. On September 13th, your
15 Honor.

16 THE COURT: I don't -- I'm going to start at the
17 beginning again because I can't -- I want to make sure the
18 record is clear.

19 But are you prepared to go forward with sentencing
20 today?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: And you're satisfied with your
23 counsel?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Okay. So anything else I think we can

1 address in public.

2 Mr. Valentini?

3 MR. VALENTINI: May I just offer a couple of
4 brief -- I just wanted to offer two very brief
5 clarifications.

6 I believe Mr. Evans just said that at a prior
7 hearing the Government said that we didn't start an
8 investigation, or we didn't look into what Mr. Evans -- what
9 information Mr. Evans provided.

10 That is not accurate. That is not what we said.
11 What we said is that the information they provided, we
12 looked at it; we took it into account. It just did not lead
13 to a prosecution. And that it was not actionable. Those
14 are two different things, as I'm sure your Honor
15 understands.

16 Mr. Evans also said that we denied all three
17 matters, and now he has discussed two of them. Let me be
18 absolutely clear: We did not deny Mr. Evans' involvement
19 and assistance in the apprehension of a fugitive. We did
20 not deny it. We disagreed about how much weight to attach
21 to that. We did not deny that he provided information about
22 this individual, Dale Javino. Again, it's a question of
23 where that led. We did not deny any of this -- any of this
24 information as a factual matter.

25 As for the third matter that Mr. Evans just

1 referenced, I don't think he got into identifying it, so I
2 don't know if there's a disagreement as to whether we denied
3 that matter or not because I just don't know what that
4 matter would be.

5 Thank you very much.

6 THE COURT: All right. Are we prepared to bring
7 in the public now?

8 MR. METCALF: Yes, your Honor.

9 THE COURT: All right. Mr. Hopkins?

10 I will ask you all to review the transcripts and
11 propose redactions.

12 MR. VALENTINI: May I ask one very brief question?

13 THE COURT: Just one minute, sir. Sorry.

14 MR. METCALF: Your Honor, I don't have those
15 transcripts without being redacted.

16 THE COURT: We'll address this afterwards.

17 MR. VALENTINI: Your Honor mentioned that you plan
18 to start the sentencing over. If that's agreeable --

19 THE COURT: I mean, just -- I'm going to run
20 through what I think I've done.

21 MR. VALENTINI: Okay. Perfect. We were planning
22 to rest on our presentation from the previous sentencing if
23 that's --

24 THE COURT: So you don't want to say anything more
25 today; is that what you're saying?

1 MR. VALENTINI: I don't want to add to what we
2 said because that's already part of the record, if that's --

3 THE COURT: You don't want to add?

4 MR. VALENTINI: We don't need to add any -- any
5 presentation.

6 THE COURT: How can you say that when you don't
7 even know what's been said here today?

8 MR. VALENTINI: I'm sorry. Add to our affirmative
9 presentation at the beginning of sentencing.

10 THE COURT: Okay. No, no, no. I don't mean that.
11 I'm just going to run through the PSR, all that stuff.
12 Okay?

13 MR. VALENTINI: I'm sorry about the confusion.

14 THE COURT: Okay. Go ahead.

15 (Whereupon, the courtroom was duly unsealed.)

16 THE COURTROOM DEPUTY: Your Honor, we're in
17 Criminal Action 21-225, the United States of America versus
18 Treniss Evans, III.

19 If I can have counsel approach the podium and
20 state your name for the record, starting with the United
21 States.

22 MR. VALENTINI: Good afternoon. My name is
23 Francesco Valentini and I represent the United States.

24 THE COURT: Good afternoon, Mr. Valentini.

25 MR. METCALF: Steven Metcalf on behalf of Treniss

1 Evans. Good afternoon, your Honor. Good afternoon,
2 everyone.

3 THE COURT: All right. Good afternoon.

4 So we're here for a continuation of the
5 September 13th sentencing hearing that was continued to
6 allow the defense to submit a video that they had not timely
7 filed.

8 Just -- before we pick up where we left off, I
9 just want to review that, during the last hearing, I did
10 review the final presentence report and recommendations, the
11 parties' sentencing memoranda, the exhibits and the videos
12 provided by the Government. Since then, I've also reviewed
13 the video provided by the defense as well as the
14 Government's response to the Defendant's video submission.

15 To confirm, Mr. Metcalf, I think last time you did
16 indicate that you reviewed the presentence report with
17 Mr. Evans. Correct?

18 MR. METCALF: That is correct, your Honor.

19 THE COURT: And, Mr. Evans, you read the PSR and
20 have had an adequate time to talk to your attorney about it.
21 Correct?

22 THE DEFENDANT: Yes, ma'am. That is correct. We
23 made mention of the inaccuracies that were originally
24 reported in the submission from the PSR -- from Probation or
25 what have you, that the -- there were some inaccuracies, and

1 they filed their report on those inaccuracies in their
2 recommendation prior to those matters being resolved.

3 THE COURT: Okay. And remind me, Mr. Evans, what
4 the matters were that were inaccurate.

5 THE DEFENDANT: There was one matter that's from
6 under seal that they were unaware of to be able to make the
7 report, and then the second matter was the inaccuracy on the
8 financial statements, your Honor.

9 THE COURT: All right. Can you all pick up the
10 phone? I'm not remembering the under-seal issue.

11 We don't have it?

12 THE COURTROOM DEPUTY: We don't have phones.

13 THE COURT: Can you point out the paragraph of the
14 PSR?

15 MR. METCALF: Your Honor, I don't have the PSR
16 with me.

17 (Counsel confers with the Defendant privately.)

18 MR. METCALF: Your Honor, the paragraph that I
19 believe he's referring to has to do with the overall
20 recommendation based on the knowledge they had, and they had
21 that knowledge without the sealed material.

22 THE COURT: Well, that's not -- you mean with
23 debriefings and the like? Is that what you're talking
24 about?

25 MR. METCALF: Yes.

1 THE COURT: Okay.

2 MR. METCALF: It's not, like I said --

3 THE COURT: That's not --

4 MR. METCALF: -- just a paragraph that we --

5 THE COURT REPORTER: I'm sorry. Please don't
6 speak over each other. Thank you.

7 THE COURT: All right. Information Probation
8 didn't have about any debriefings is not reflected, to my
9 knowledge, anywhere in this presentence report. So I don't
10 think that's an inaccuracy with the report.

11 MR. METCALF: Yes, your Honor.

12 THE COURT: Do you disagree?

13 MR. METCALF: No. I think it's an argument. I
14 don't think --

15 THE COURT: It's not an objection on the facts or
16 the law or the report.

17 MR. METCALF: That's correct.

18 THE COURT: Okay. All right. That's all I wanted
19 to know.

20 MR. METCALF: But there was the objections and the
21 corrections with regards to his financial situation.

22 THE COURT: And remind me what that was.

23 MR. METCALF: Your Honor, I was not involved in
24 that process. I don't have that information with me right
25 now. I didn't plan on addressing that.

1 THE COURT: All right. Well, Mr. Metcalf, this is
2 sentencing. I don't know if you've ever been in a
3 sentencing in federal court, but you need to be prepared for
4 every issue that can arise in the PSR.

5 MR. METCALF: Your Honor, I don't -- I understand
6 what you just said and what you just said in front of the
7 public. That -- I came here today from New York, and I
8 explained to Mr. Hopkins that I left my briefcase in my
9 hotel room and, instead of leaving, I stayed here --

10 THE COURT: Okay.

11 MR. METCALF: -- to be able to address the Court,
12 and I was here early. So I do not have my briefcase with
13 me.

14 THE COURT: Okay. Understood.

15 MR. METCALF: Asking me to say if I've ever been
16 in a sentencing before, I just --

17 THE COURT: Well, you have demonstrated throughout
18 the time you've represented Mr. Evans a lack of knowledge
19 about how judges tend to want things ahead of time and be
20 prepared for sentencing. So that's where my remark came
21 from, not the fact that you left your briefcase today.

22 MR. METCALF: Okay. Thank you, your Honor.

23 THE COURT: Does Probation recall what the issue
24 was with the financial situation?

25 THE PROBATION OFFICER: Good afternoon, your

1 Honor. Aidee Gavito with Probation.

2 As stated in the addendum, Paragraphs 63 and 65 of
3 the presentence report were objections or inaccuracies, and
4 they were resolved. Information was included to resolve
5 those.

6 THE COURT: In the final report?

7 THE PROBATION OFFICER: Yes, your Honor.

8 THE COURT: So the final report is accurate as far
9 as Probation knows?

10 THE PROBATION OFFICER: As far as the objections
11 or inaccuracies that they represented, they were resolved.

12 THE COURT: So they provided information to you
13 and you corrected it?

14 THE PROBATION OFFICER: Yes, your Honor.

15 Also, defense provided additional information that
16 was added to Paragraph 30. And a new paragraph, 53-A, was
17 also included to include information that was provided, and
18 that was all included in the final report to the Court.

19 THE COURT: Okay. Thank you.

20 THE PROBATION OFFICER: Thank you, Judge.

21 (Tenders document to the Defendant.)

22 THE DEFENDANT: Your Honor, did she say Page 30?

23 THE PROBATION OFFICER: No. Paragraph 30.

24 THE DEFENDANT: Paragraph 30. Thank you.

25 Your Honor, it was the same issue I raised the

1 last time.

2 THE COURT: Can you speak into the microphone,
3 sir?

4 THE DEFENDANT: I'm sorry. Your Honor, this is
5 the same issue that was raised the last time. I believe it
6 was resolved the last time. And unless we're going
7 somewhere new, I just wanted to make the point that I made
8 this point prior, at the prior proceeding.

9 THE COURT: So as I understand it, the final
10 presentence report took into account the defense's objection
11 with regard to your finances, and those have been remedied.
12 Correct?

13 THE DEFENDANT: Yes, your Honor. That is correct.

14 THE COURT: Okay. All right. And, Mr. Valentini,
15 the Government indicated the Government didn't have any
16 objections to the report previously. Right?

17 MR. VALENTINI: That's correct.

18 THE COURT: All right. So again, I am accepting
19 the presentence report as my findings of fact pursuant to
20 Rule 32 of the Federal Rules of Criminal Procedure.

21 At the last hearing, the parties agreed that the
22 guideline calculations set forth principally on Page 8 are
23 accurate, and that leaves Mr. Evans with a guideline range
24 of zero to six months in prison. Correct, Mr. Valentini?

25 MR. VALENTINI: That's correct, your Honor.

1 THE COURT: Mr. Metcalf?

2 MR. METCALF: That's correct, your Honor.

3 THE COURT: All right. So, Mr. Metcalf, you asked
4 for a continuance of the hearing to submit the videos, the
5 compilation of videos. You can come up to the podium.

6 That -- no. This is your attorney. Do you want
7 to add anything based on videos or the Government's response
8 to your videos?

9 MR. METCALF: Yes, your Honor. It's more -- it's
10 more in the -- or with regards to the overall sentencing
11 and, in particular, the cases that were cited to at the last
12 proceeding. So --

13 THE COURT: I want to focus on the video. Is
14 there anything you'd like to add in response to the
15 Government's response to Mr. Evans's video submission?

16 MR. METCALF: It's pretty simple. The videos that
17 we submitted -- we did them in context and we did the clips
18 as long as possible without being too long. And the
19 Government's response ultimately cuts out certain sentences
20 in a specific place that makes it read a little bit
21 differently. But the videos speak for themselves.

22 THE COURT: Is the Government cutting things out?
23 Do you want to point out what they've cut out?

24 MR. METCALF: Each quote to the video ends with a
25 dot-dot-dot, meaning it stops mid-sentence or before the

1 sentence is over.

2 THE COURT: Well, I think the Government was
3 making the point that you cut stuff out and they were
4 responding with additional information.

5 MR. METCALF: I didn't see anything in their
6 response that was additional in those videos. Those videos
7 were essentially -- each part was relevant to exactly what
8 we were talking about, and that was acceptance of
9 responsibility; that was Mr. Evans advocating that he did
10 not -- he did not condone or -- condone violence and did not
11 want others to be violent.

12 So with regards to the context that we all spoke
13 about in Mr. Evans's statements, we gave those clips as
14 fully and as completely as possible without giving the
15 entire -- without giving the entire statement or the
16 entire -- the entire clip, which would have just been
17 voluminous and ridiculous at that point.

18 But with regards to context and missing from the
19 video, all relevant portions were in those videos.

20 THE COURT: Am I correct that Mr. Evans said in
21 the video that he stood outside the Capitol for 40 minutes
22 or so before he entered?

23 MR. METCALF: Well, he was outside -- so Mr. Evans
24 entered the Capitol at approximately 3:00 p.m. Now, that's
25 relevant because it goes to what was seen coming in.

1 THE COURT: And was he standing outside for 40
2 minutes ahead of time? That's what he said on one of the
3 videos.

4 MR. METCALF: That's not -- my understanding was
5 he entered at 3:00. He had to have been outside, and he was
6 in the vicinity of the Capitol but not particularly --

7 THE COURT: On the west side?

8 MR. METCALF: -- on the Capitol grounds.

9 THE COURT: Oh, he wasn't on the Capitol grounds?

10 MR. METCALF: For 40 minutes? That's not my
11 understanding, your Honor.

12 THE COURT: Where was he for 40 minutes before
13 when he said, "I was outside 40 minutes"?

14 MR. METCALF: It would have been him traveling and
15 conversing with others to get to the point that he got to
16 outside --

17 THE COURT: So as soon as he arrived at the
18 Capitol, he went in? There wasn't any period at which he
19 stayed --

20 MR. METCALF: That is --

21 THE COURT: -- in front of the Capitol?

22 MR. METCALF: That is my understanding. He kind
23 of just -- he entered and kind of went through. I mean,
24 that's something that Mr. Evans is more than willing to deal
25 with.

1 But my timeline of events with Mr. Evans is once
2 he kind of got to the west side, he went straight through
3 and did not see all the things that were happening around
4 2:10 or 2:00, 2:10, the barriers getting thrown, particular
5 violence over by the tunnel. He didn't see that.

6 THE COURT: So he literally walked, what, from the
7 Washington Monument straight into the Capitol? He didn't
8 linger out in front of the Capitol at all?

9 MR. METCALF: I've seen Mr. Evans in public.
10 Okay? He talks to everybody. He makes friends with someone
11 on the corner. They talk for 20 minutes. They're hugging
12 at the end of the 20 minutes. This is -- every time I've
13 walked down the street with Mr. Evans, no matter what time
14 of day it is, night and day. I'm sure Mr. Evans's trip from
15 the moment over there included him talking to 20, 30
16 different people.

17 THE COURT: So again, he just walked from the
18 monument straight into the Capitol without lingering at all
19 in front of the Capitol before he entered?

20 MR. METCALF: Your Honor, I'm sure he lingered,
21 but he was probably talking to somebody. That's what I'm
22 trying to say.

23 THE COURT: How long did he linger?

24 MR. METCALF: I don't -- I can't answer that
25 question. I don't know. I don't think that --

1 THE COURT: The 40 minutes -- the 40 minutes he
2 talked about on the video was not out front of the Capitol?

3 MR. METCALF: Your Honor, I do not believe that he
4 was outside the Capitol for 40 minutes.

5 THE COURT: Do you know how long he was outside
6 the Capitol?

7 MR. METCALF: No, I do not. I know that he
8 traveled from the monument over to the Capitol and, in doing
9 so, he met a bunch of people and was speaking to a bunch of
10 people. And then he would continue to proceed in whichever
11 route he was going based on the last conversation he had.

12 Your Honor, can I step back one second just to get
13 a bottle of water?

14 THE COURT: Sure.

15 (Counsel confers with the Defendant privately.)

16 MR. METCALF: Your Honor, if I could clarify: I
17 think that the 40-minute reference has to do with the entire
18 amount of time that he was on the Capitol grounds all
19 together, which would include the 13 minutes he was alleged
20 to have been in the building.

21 THE COURT: Okay. So 40 minus 13 -- he was on the
22 Capitol grounds for 27 minutes before he entered?

23 MR. METCALF: Potentially, yes; and speaking to
24 people throughout the course of that time.

25 THE COURT: But on Capitol grounds for 27 minutes

1 before he entered?

2 MR. METCALF: It could have been before and after.
3 So 40 minutes --

4 THE COURT: I thought you had said -- he said on
5 the video he was outside before he entered 40 minutes.
6 You're saying that included the time in the Capitol, too.
7 So I'm doing the math. 27 minutes outside waiting to go in,
8 talking to people, whatever he was doing. He was outside 27
9 minutes before he went in?

10 MR. METCALF: Your Honor, I could be wrong about
11 this. But I'm saying he was outside, went in; then, when he
12 left the building, he was still outside on the Capitol
13 grounds speaking to people.

14 THE COURT: So that 40 minutes he talked about on
15 the video was before and after?

16 MR. METCALF: That's my belief. Yes.

17 THE COURT: That's not what he said on the video,
18 I don't think.

19 MR. METCALF: Okay. But that's my understanding.
20 40 minutes.

21 THE COURT: Okay. How much was before and how
22 much was after?

23 MR. METCALF: I don't know the answer to that.
24 Mr. Evans is more than willing to answer that question.

25 THE COURT: Okay.

1 MR. METCALF: I don't know the answer to that.

2 THE COURT: All right. But he was outside for
3 some period of time before he entered on the grounds on the
4 west side of the Capitol?

5 MR. METCALF: Yes, your Honor. And I ask you to
6 take into consideration the affidavit that we submitted
7 where his statements had another individual leave the
8 Capitol grounds. So after the fact, after he left the
9 building, his mentality completely changed. His thought
10 process changed. His intent changed.

11 He went in there to demonstrate. He walked out of
12 there -- and actually, while he was in there, everything
13 changed up and he was now supporting the police and he was
14 now supporting "Do not do damage." And that's what he's
15 being heard saying on camera numerous times.

16 THE COURT: As he's leaving the building?

17 MR. METCALF: Yes. As he's -- while inside the
18 building, he's saying: "We do not loot. We do not
19 destroy."

20 THE COURT: And that's because he saw people
21 looting and destroying inside the building?

22 MR. METCALF: Potentially, yes. There had to have
23 been something that --

24 THE COURT: You keep saying "potentially." Yes or
25 no? Did he see people --

1 MR. METCALF: I don't know. I don't know what
2 Mr. Evans saw in particular. I have gone through with him
3 his experience, but I don't know what exactly he saw. Yes,
4 he saw some things in there that he did not like and that
5 made him say: "We do not destroy our property. We do not
6 destroy any property. We're not BLM. We don't do that."

7 And he started speaking with the police, and in
8 speaking with the police, he then started speaking out on
9 how everybody needs to back the blue.

10 And then he left and was telling others to leave.
11 And he was also telling others the same exact thing: Do not
12 destroy. And let's leave the building. Or let's leave the
13 grounds.

14 THE COURT: Okay.

15 MR. METCALF: And that ultimately goes to what I
16 ask your Honor to consider: While in the building, he can
17 be heard saying these things. He has spoken out about this
18 numerous times since then, and that's what that exhibit we
19 hope established.

20 And in doing so, we ask your Honor to consider him
21 changing his intentions that day. Again, he entered with
22 one state of mind. While he was in there -- he has taken
23 responsibility for entering and remaining. And while he was
24 in there, something changed in Mr. Evans. His entire intent
25 changed. And he spoke about that verbally. And he was able

1 to do so in a way that actually encouraged others. Others
2 started leaving as a result of it. Others started -- or
3 potentially stopped doing what they were doing in regards to
4 destruction.

5 So there are no allegations that Mr. Evans
6 destroyed anything, did any property damage. The evidence
7 that we're submitting to your Honor is to the contrary, that
8 he was actually speaking out about not doing these things,
9 and about supporting and backing law enforcement.

10 THE COURT: Okay. Anything else you'd like to
11 add?

12 MR. METCALF: Yes, your Honor. I'd like to add
13 that in conjunction to the cases that your Honor cited for
14 review -- and I ask that I be able to look at my cell phone,
15 because that's the only equipment that I have right now that
16 has my notes. Is that okay, your Honor?

17 THE COURT: Yes.

18 MR. METCALF: Your Honor, *Erik Rau*, R-A-U. Your
19 Honor went through a list of factors beginning at Page 42 in
20 the transcripts of the last proceeding. Oh, wait.
21 That's -- *Courtright* is Page 42.

22 After *Courtright*, I believe your Honor went
23 through *Rau*. And these factors I ask your Honor to consider
24 with regards to applying that case and whether or not that
25 case is analogous to this case.

1 That Defendant had a prior record of assault. He
2 brought another individual with him. He deleted evidence
3 from his phone. He did not assist the police inside or
4 outside of the Capitol. He actually encouraged the opposite
5 behavior.

6 He did not actively discourage any violence to any
7 side on that day. And the individual he went with brought a
8 gas mask with him and was using that gas mask while they
9 went inside the building -- or while they were on Capitol
10 grounds.

11 The next case is *Howell*, H-O-W-E-L-L. Howell --
12 the factors that we did not consider is that she acquired
13 teargas while on the Capitol, or there was plans for her to
14 acquire teargas included in her case. She contacted the
15 Proud Boys in advance to offer them to try to acquire
16 teargas from them -- or for them. She blamed the violence
17 on law enforcement officers vocally during the protest and
18 on social media after.

19 She uploaded a video where she could be heard
20 chanting: White House, our house.

21 She bragged on social media about making that
22 video while she was inside. And she also -- there's
23 indication that she deleted evidence from her social media
24 accounts. That was determined while she was -- stood forth
25 for sentencing.

1 The next case is *Courtright*, C-O-U-R-T-R-I-G-H-T.

2 Going back to *Erik Rau*, R-A-U -- I'm sorry. I did
3 not see this note. Erik was actually present and
4 celebrating when the crowd broke through the police lines.

5 Moving on to Defendant *Courtright*, my notes
6 indicate that *Courtright* entered through a door at 2:42, and
7 that was 20 seconds after that door was breached. She's
8 wearing the Members Only clothing. And she went into the
9 Senate conference room chanting: Whose house? Our house.

10 She was insulting to police officers. And there's
11 an indication that she witnessed people damaging property
12 and breaking in the door that she entered from.

13 THE COURT: What specifically?

14 MR. METCALF: I have here that it's the
15 parliamentary door. I don't know what door that is, and
16 I've been to the Capitol. I've done the tour. But I'm not
17 certain what door that is. But that's what -- that's all
18 I'm able to ascertain with regard to that particular door.
19 And that it was at 2:42 that that door was breached, and she
20 entered that door within 20 seconds of it being breached.

21 The next case is *Andrew Ericson*, E-R-I-C-S-O-N.
22 He videotaped people scaling the wall on the west side of
23 the building. He witnessed the individual being removed
24 from -- on a stretcher. And actually, in saying that he
25 witnessed it, he videotaped these two occurrences.

1 He's heard yelling: They broke through, and
2 cheering to those to enter the building. He livestreamed
3 his actions inside the Capitol to Snapchat. He was putting
4 his feet on the conference table of -- the conference table
5 known as H230. He was putting his feet on that conference
6 room table and taking selfies.

7 And he actually stole a Corona Light out of the
8 mini-fridge of that conference room. He's also -- and
9 there's also indications in his case that he deleted content
10 from his Facebook and Snapchat accounts.

11 Your Honor, the point of this is zero to six
12 months, the guidelines that we're talking about here,
13 typically not a big deal in the grand scheme of what we do.
14 It's the lightest sentence that there is according to the
15 guidelines. There is nothing lower than zero to six months.

16 But to Mr. Evans, that zero to six months means
17 everything. We've highlighted to your Honor his family and
18 what his family means to him. He's actually a good father,
19 a man who I look up to in raising my three children, a man
20 who I speak to on the weekends and we talk about parenting
21 skills. That's the type of conversations I have with
22 Mr. Evans.

23 And throughout the course of this time, I've
24 actually grown to know him, respect him for various
25 different reasons way outside of the events that took place

1 on January 6th or what his political views are. I hope the
2 Court can see just a little bit of what I see in Mr. Evans
3 and the person who he truly is.

4 Let's recap a little bit. You've got a guy who
5 has performed CPR, I think he mentioned, three times. I
6 don't know anybody who has actually -- other than him -- who
7 has actually had to perform CPR, even if they took the
8 trainings and were lifeguards and they knew this and they
9 knew that. That shows Mr. Evans.

10 He ends up in -- or he finds himself in some of
11 the most peculiar, odd situations. The matters that we went
12 through under seal, I mean, the chances of that, I don't
13 know what the odds are on that. It's just one incident
14 after another.

15 And what I've seen is a man who handles it and
16 handles it with integrity and does everything he possibly
17 can to help other people.

18 Mr. Evans has a lot to say to your Honor, so I'm
19 going to let him talk. And he's going to talk about the
20 things that he does -- or what he's done since January 6th.

21 So again, your Honor, if you're looking to
22 determine who Mr. Evans is going forward, judge him based on
23 what he's done since January 6th. He knows he made a
24 mistake. He knows that. He's admitted that. He stands
25 everywhere he possibly can and tells people he made a

1 mistake. When you make a mistake, you own up to it.

2 But what's right here? What's just? And that's
3 why this case has become so difficult and there's so many
4 different moving parts, is because Mr. Evans, unlike these
5 other cases, actually changed his mind while he was in there
6 and actually said, "You know what?" I can't say whether or
7 not he was seeing damage being done, but you can see what's
8 going on and what's -- the remnants are on the floor and in
9 the rooms and so on and so forth, and what people are
10 talking about, and come to the conclusion about what
11 happened prior to being there. And that changed him. And
12 he spoke out about it.

13 And when Mr. Evans speaks, he actually is very
14 persuasive to others. And he started getting people out of
15 the building. That's why we had to submit an affidavit to
16 your Honor, that an individual felt strong enough to
17 actually say Mr. Evans's words is what got me out. I didn't
18 know him from a hole in the wall, but he got me out of the
19 building by saying that.

20 I ask your Honor to take into consideration the
21 life he's led before this, and this being the first
22 encounter with the justice system. And it's not going to
23 happen again. His age, his family -- we can get any
24 recidivism chart out there that will show the probability of
25 that is highly unlikely, if not basically nonexistent. Take

1 that into consideration.

2 There's no allegations that he deleted anything.
3 This guy -- when the FBI came, he was an open book and did
4 exactly whatever he had to do while protecting his own
5 rights as well.

6 So each one of those cases I cited to, your Honor,
7 that your Honor referenced, if you're going to make them
8 analogous, look at their actions in comparison to Mr. Evans
9 after January 6th. There's no withholding. It's: I'm
10 taking responsibility for what I did wrong. But when I take
11 responsibility, what is just here?

12 So I ask your Honor to take into consideration
13 that video, not about the 40 minutes that he was there
14 entirely on the grounds, but as of what he's done while he
15 was in there, changing his mind, while he left there,
16 telling everyone, Back the blue, don't destroy, and what
17 he's done since then, which is the same sentiment and him
18 taking responsibility, Do not destroy, do not loot, that is
19 not what we do, getting and persuading others to think that
20 same way and to back our officers.

21 I ask your Honor to take that into serious
22 consideration and distinguish that key component from each
23 of these other January 6th cases. I also ask your Honor to
24 take into consideration this man is a father and what he's
25 done for his kids, being coaches, basically raising them

1 every single day, coaching soccer when he doesn't know
2 soccer, figuring it out because that's what you do for your
3 kids, and how much his kids need him right now in the
4 extreme circumstances that we have highlighted to your Honor
5 about his family.

6 And I ask your Honor to find it in you that jail
7 is not appropriate under these circumstances.

8 I thank you.

9 THE COURT: Mr. Valentini, I know I want to hear
10 from Mr. Evans, but do you want to say anything in response?

11 MR. VALENTINI: Very briefly, your Honor.

12 The Government has a different view of this theory
13 that Mr. Evans changed his mind while he was in the
14 building. I think that Mr. Evans's approach to political
15 violence has, if anything, at a minimum, stayed the same
16 since then.

17 THE COURT: Sorry? I didn't --

18 MR. VALENTINI: Has not improved, has not -- he
19 doesn't seem to have abandoned that world view. And that --

20 THE COURT: Well, be more specific. You're
21 talking about based on the videos he submitted to the Court?

22 MR. VALENTINI: Based on the videos that he has
23 submitted to the Court, as well as based on some of the
24 social media presence that we have submitted in support of
25 our sentencing memorandum, we think that there is -- there

1 have been postings there that don't seem to reflect the
2 change of mind that opposing counsel --

3 THE COURT: And what in particular are you
4 highlighting?

5 MR. VALENTINI: If I can move back to the
6 Government's sentencing memorandum.

7 THE COURT: Sure.

8 MR. VALENTINI: For example, on -- at least on
9 Page 12 of our sentencing memorandum, on December 31st,
10 2021, Mr. Evans reposted an image originally posted by
11 another user with the comment: I feel this coming. I hope
12 it is done peacefully. But the image is one that says:
13 2022, we the people taking back -- taking America back, come
14 hell or high water, against the backdrop of a nuclear
15 mushroom cloud.

16 He has also made other statements including, on
17 January 6th, 2022, he said: Today marks -- makes one year
18 since my protest inside the United States Capitol, the
19 fateful day where lives of patriots were needlessly lost in
20 defense of our sacred elections. Those inside the building
21 were fearful and many in defense of the Capitol were
22 injured. The sick, evil and duplicitous government has
23 subverted the blame and remorse they should share. The
24 ruling class placed all blame on the heads of those who
25 protested their dereliction of duty and failure to represent

1 their citizens.

2 THE COURT: And that posting was dated when?

3 MR. VALENTINI: I have it on the sentencing
4 memorandum that it was dated January 6th, 2022. It was the
5 one-year anniversary.

6 My point is that there is plenty of incendiary
7 content in those social media postings. Of course, that's
8 absolutely not what he's being prosecuted for, but they do
9 seem to contradict the notion that there's been a change of
10 mind since his participation in the January 6th attack.

11 And the last point I would make is of course we've
12 heard some points of distinction with particular cases in
13 which other sentences were imposed. Of course, each case is
14 a little bit different, but we do think that those cases,
15 which are the ones that we cite in our sentencing
16 memorandum, are instructive, and especially the *Howell* case
17 that we cite in our sentencing memorandum appears to have
18 several points of continuity with this case.

19 THE COURT: Okay. All right. Thank you.

20 MR. VALENTINI: Thank you.

21 THE COURT: Mr. Evans, would you like to address
22 the Court again?

23 THE DEFENDANT: Yes, your Honor.

24 Mr. Valentini, may I borrow your memorandum?

25 THE COURT: Can you get up to the podium.

1 THE DEFENDANT: May I borrow your sentencing
2 memorandum? Thank you, sir.

3 THE COURT: Which one? He has two.

4 THE DEFENDANT: The one he was just reading from,
5 your Honor.

6 MR. VALENTINI: And just for the record, this is
7 the sentencing memorandum dated May 16th, 2022.

8 THE DEFENDANT: Thank you, sir. Can you point me
9 to the page where you were? Would you mind?

10 MR. VALENTINI: Which?

11 THE DEFENDANT: Which page you were just on there.

12 MR. METCALF: The quote that you just gave on the
13 record.

14 MR. VALENTINI: (Indicates.)

15 THE DEFENDANT: Thank you, sir. Thank you,
16 Mr. Valentini.

17 Your Honor, I have a lot to say, and I appreciate
18 you allowing me to have that time. But I think it's
19 interesting to point out that we took a picture of a
20 mushroom cloud painted in red hue and said that this is
21 somehow -- I said: I feel this is coming. I hope it is
22 done peacefully.

23 I always advocate for peace, just like I've done
24 at the Capitol on January 6th. Nowhere do you hear me
25 saying: Hang them, destroy people, hurt people, harm

1 people, beat them up. Never. You hear about me saying: We
2 must be peaceful.

3 You hear a demonstrator, with the universal sign
4 of the demonstrator, the megaphone, saying: Let's be
5 peaceful.

6 And again, I'm sorry, but I believe that the
7 Government tries to manipulate or befuddle or somehow create
8 the idea that a social media posting with a mushroom
9 cloud -- I don't own -- I mean, are we accusing me now of
10 making atom bombs? It's absurd.

11 Anyway, moving on from there -- I'll move on in
12 the interest of time. We have other social media postings
13 in here that are shared thousands and thousands of times.

14 First of all, social media is my place for free
15 speech. It's the modern town square. I never once --
16 there's not a post in here where I'm advocating for someone
17 to be violent, someone to bring harm, someone to destroy
18 something or damage anything. I advocate many times over
19 for peaceful, lawful demonstration. I ask people to stand
20 up. Standing up is nothing more than what elected officials
21 and leaders do all the time.

22 I don't condone violent behavior. I have never
23 condoned violent behavior. And I want to be very clear. We
24 got somehow sucked into this court -- in this court -- some
25 interest that I had in joining the Proud Boys, which I have

1 admitted to having that interest. And I support a group of
2 men that stand against political violence.

3 Standing against political violence, standing
4 against those that want to beat someone up by the political
5 headwear or shirt that they wear is not -- I'm sorry; I
6 heard something beeping -- is not in any way being a part of
7 political violence.

8 Just as I mentioned before, we don't say that if
9 somebody walks out here and they're beating someone up in
10 the parking lot and somebody steps in to stop that action,
11 that that person now has taken part in violence, whether it
12 be with fisticuffs or whether it be by calling the police or
13 whether it be by whatever situation.

14 The Proud Boys were of known -- now, again,
15 interestingly enough, we're still sucked into this
16 situation. I'm not going to spend much time here in the
17 interest of the time for the Court.

18 We're sucked into this, the idea -- where is the
19 allegation of me having anything to do at all whatsoever at
20 any time -- any time while in D.C. in January? Asking
21 someone to get together with them? And not having any idea
22 of what they're doing, a plan, not a plan, whatever it may
23 be is in no way relevant to what I did on January 6th. And
24 that's not what we're here for today.

25 And I've been honest. I've never lied to this

1 Court, and I wouldn't lie to the Court.

2 This all started when I was asked to sign an
3 original plea deal and I refused to say some words. And we
4 were able to negotiate through those things.

5 So if you will, your Honor, I'll move on, but I
6 want to be very clear: The intent to join a group -- and no
7 one has shown me where they've been categorized as a violent
8 political action group. That's not -- that's not a fact.
9 That doesn't exist. It only exists in theory or in the mind
10 of the AUSA or the United States Government in some respect,
11 but it's yet to be adjudicated, it's yet to be seen, and
12 it's yet to find any light in any court.

13 So what are we talking about? And what -- again,
14 what does that have to do with the matter that we're here
15 for? That's what I ask you to consider in that.

16 Furthermore, I drove over 1500 miles on
17 January 5th to come here. I stopped at an event after I was
18 done canvassing over in Georgia, stopped at another event to
19 go to another Trump rally. Not one Trump rally or event
20 that I ever went to, or Stop the Steal Rally, was there any
21 violence.

22 Well, there was. There was two T-shirt vendors
23 that once argued over something, and we listened to that
24 nonsense and watched them push each other around till the
25 Trump supporters got involved and stopped it. So -- anyway,

1 that was the only violence I ever witnessed at a Trump rally
2 or an event in history.

3 Until nightfall, when Antifa and BLM came into the
4 streets and attacked people leaving their hotels or going
5 back to their hotels at other events. And that's what I
6 wanted to stand against, and that's what I supported. And
7 when I saw heavily armed BLM people getting off of buses,
8 heavily cladden [sic] in gear, and I thought: This is
9 absurd for guys in T-shirts and kilts -- somebody has got to
10 level the playing field. That's crazy. These guys are
11 getting their teeth kicked in by these guys that are
12 well-trained and armed. This is ridiculous.

13 And I didn't offer to buy arms. I didn't offer to
14 outfit them with gear that would bring pain. I offered them
15 to provide them shielding information because of what I saw
16 them, shielding the public. And that was my interest, your
17 Honor, in having something to do with the Proud Boys, good
18 men that stood in the gap that were in communication with
19 the police about where they were going and what they were
20 doing. That was what I wanted to be a part of: people that
21 would do the right thing and stand up for that.

22 I honestly, your Honor -- I respect and hope that
23 you believe what I'm saying. I could really give a -- I
24 don't know where I'm going. I'm at a loss for the word
25 here. I don't care what anyone else thinks about that

1 because I know the truth, just like I have been truthful
2 here the whole time. And that was my interest. I would
3 stand up for people that are being harmed against someone
4 that brings political violence, not join in going and
5 delivering harm for political violence. So that's not the
6 goal of what I wanted to do.

7 So I drive 1500 hours -- or miles. Sorry. I
8 arrive here in Washington, D.C., my nation's capital, the
9 night before. Don't hook up with the Proud Boys, don't hook
10 up with a group. That's not what I'm here doing. I go to
11 dinner. I go to have dinner. I go back to my room. And I
12 stay and then I go in the morning to Ellipse. And I stand
13 in the freezing cold. I then march my butt over to Freedom
14 Plaza, Freedom Plaza where I was staying. And I go in there
15 and I get more granola bars, waters, beef jerky, and, yes,
16 some Fireball whiskey.

17 I then go down to the Capitol. No concept of what
18 has come before me, because I don't arrive at the grounds
19 until well after 2:00. Don't even arrive. So I was a
20 little frustrated Mr. Metcalf doesn't know the details of
21 this as intimately as I do, because I lived it.

22 So I believe the Government's documents provide
23 that I arrived at the grounds at 2:00-something in the
24 afternoon, roughly 2:20 I think they said, 2:20-something in
25 the afternoon, arrived at the outer grounds.

1 I was on the balcony. I don't know exactly how
2 long. I've always said I don't know, because I didn't want
3 to say I wasn't there for this, but I know that the
4 Government says -- and I believe them when they say this,
5 because I believe it to be accurate -- that the window was
6 broken 47 minutes before I arrived there.

7 THE COURT: I thought it was seven minutes.

8 THE DEFENDANT: No. It says four to seven minutes
9 in the transcript, inaccurately, your Honor. I had noted
10 that in our transcript for correction.

11 THE COURT: What is it, Mr. Valentini?

12 MR. VALENTINI: If I am tracking here, what we
13 said is that Mr. Evans entered -- participated --
14 breached -- entered the Capitol building 47 minutes after it
15 was originally breached the first time -- after the Senate
16 wing door was first breached for the first time, because, as
17 your Honor I'm sure is aware, that particular entry point
18 was breached twice on January 6th. That is the extent of
19 what we say in our sentencing memorandum, your Honor.

20 THE COURT: How long after the window was broken?

21 MR. VALENTINI: I don't think we made a
22 representation as to that. I don't think we have the
23 information to know when the particular window that the
24 Defendant walked through was broken.

25 THE DEFENDANT: For clarity, your Honor,

1 Mr. Valentini, the window was broken --

2 THE COURT: You need to come up.

3 THE DEFENDANT: Oh, I'm sorry.

4 The window was broken before the door was broken.

5 THE COURT: How do you know that?

6 THE DEFENDANT: I've watched the video. I've
7 investigated January 6th for 19 months of my life, your
8 Honor.

9 THE COURT: So how long were --

10 THE DEFENDANT: It's --

11 THE COURT: -- you on --

12 THE DEFENDANT: -- an open-source video.

13 THE COURT REPORTER: I'm sorry. Sir, please don't
14 interrupt the judge. I'm trying to make a record.

15 THE DEFENDANT: I'm sorry, ma'am.

16 THE COURT: How long were you outside the west
17 side of the Capitol before you walked in?

18 THE DEFENDANT: I don't know the exact answer to
19 that, your Honor, but I think it was 47 minutes, as they
20 said, I'm standing out on the balcony. They said I -- they
21 said I arrived -- I'm sorry. The Government says I came --

22 THE COURT: You said 40 minutes on the tape that I
23 watched, the 41-minute tape you submitted for me to review.

24 MR. METCALF: Yes, your Honor.

25 THE COURT: Because one of those videos -- correct

1 me if I'm wrong -- in one of those videos I think you said
2 you were outside for 40 minutes before you entered, give or
3 take. I think it was 40, flat. Is that not true?

4 THE DEFENDANT: I don't think so, your Honor. And
5 I didn't make that video. When I made those statements,
6 those were not prepared for the Court.

7 THE COURT: Understood. But I want to know which
8 one is true.

9 THE DEFENDANT: I believe that I was on the
10 balcony for around 20 minutes, your Honor.

11 THE COURT: That's after you went inside the
12 building, right?

13 THE DEFENDANT: No, your Honor.

14 THE COURT: The balcony where you sang the
15 national anthem?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: That's after you were inside. Right?

18 THE DEFENDANT: No -- so, your Honor, I was on the
19 balcony after -- before I went into the building, before I
20 went illegally through the window, I was there on that
21 balcony. And then I was on that balcony a short time
22 thereafter.

23 And if --

24 THE COURT: While you were in the conference room?
25 You go out the same balcony? Or is that a different --

1 THE DEFENDANT: Yes. That is correct, your Honor.

2 THE COURT: -- balcony?

3 The same balcony?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: So you're on the balcony before you go
6 in the Capitol?

7 THE DEFENDANT: (Nods head in the affirmative.)

8 THE COURT: And then you're on the balcony later?

9 THE COURT REPORTER: Sir, can you --

10 THE COURT: You have to answer audibly.

11 THE DEFENDANT: I'm sorry. Yes, that is correct.

12 I'm sorry. I was trying not to speak over your Honor.

13 Sorry.

14 THE COURT: So you were on the balcony before you
15 entered the Capitol through the broken window?

16 THE DEFENDANT: That is correct.

17 THE COURT: For 20 minutes?

18 THE DEFENDANT: I'm not certain of the amount of
19 time.

20 THE COURT: Roughly.

21 THE DEFENDANT: You know, I originally knew all
22 this, and I literally haven't spent the last year of my life
23 focused on this. I've had much more pressing issues than
24 how long I was on the balcony, your Honor.

25 THE COURT: Okay. But I just want to make sure I

1 understand. You were standing on the balcony looking down
2 at this large crowd for 20 minutes before you entered the
3 Capitol?

4 THE DEFENDANT: Yes. That is correct, your Honor.

5 THE COURT: Okay. And --

6 THE DEFENDANT: Mostly I was looking at the
7 building and the officers there.

8 THE COURT: Okay.

9 THE DEFENDANT: Having conversations, your Honor.

10 THE COURT: You were up high looking all around
11 for 20 minutes?

12 THE DEFENDANT: Correct.

13 THE COURT: Okay.

14 THE DEFENDANT: And there was no violence, your
15 Honor.

16 THE COURT: And then you went in through the
17 broken window and you --

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: -- made your way to the Crypt and
20 eventually to the conference room?

21 THE DEFENDANT: Right, which is about 70 paces
22 from there, from the front -- from there, as best I can
23 tell, by going back and watching the video from when I come
24 in. So I know that it's a minute and a half to sing the
25 national anthem, roughly. And I was already singing the

1 anthem and arrived in the Crypt while still singing the
2 national anthem, your Honor.

3 THE COURT: So you --

4 THE DEFENDANT: A short jaunt, if you will. A
5 very short walk.

6 THE COURT: You sang the national anthem before
7 and while entering the building?

8 THE DEFENDANT: I actually sang the national
9 anthem multiple times that day, your Honor, probably five or
10 seven that day, to include being at the Ellipse.

11 THE COURT: Okay. Several times in and around the
12 Capitol?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Okay. And then you went back out on
15 the balcony again?

16 THE DEFENDANT: So -- yes.

17 THE COURT: After you made your way to the
18 conference room?

19 THE DEFENDANT: Correct, your Honor. Yes. And I
20 would like to explain that. It's a very short explanation
21 for 13 minutes -- explaining that scenario of what happened
22 in that 13 minutes.

23 THE COURT: Okay.

24 THE DEFENDANT: Thank you, your Honor.

25 So the point I was making is I had driven 1500 --

1 1500 miles standing in the freezing cold and demonstrate. I
2 went to the Capitol. I came with the intent to demonstrate.
3 And I was damned intent on demonstrating. I agree with
4 that, your Honor. Never denied that. Not trying to. I
5 went there with a megaphone, the universal symbol of the
6 demonstrator. And I went there to demonstrate.

7 After seeing people going in and out of the
8 building for over whatever period of time that was --
9 without mentioning what I had seen in the moment there -- I
10 witnessed that, I walked up, I saw inside there. I did see
11 an officer that looked nervous or agitated at one end, kind
12 of by himself, and then I saw a whole line of police
13 officers shaking hands as seen in the video, that people are
14 giving hugs to them and they're taking selfies with those
15 officers.

16 THE COURT: Okay. But to be clear, before you
17 encountered the officers, you went through a window of
18 broken glass?

19 THE DEFENDANT: You could see the officers there
20 through the window, your Honor.

21 THE COURT: You climbed through a window with
22 broken glass?

23 THE DEFENDANT: Yes, your Honor. I broke the law
24 in that way and entered that building illegally, and I
25 regret it.

1 THE COURT: So you knew -- you know, at a minimum,
2 that someone had broken that window to get in the Capitol?

3 THE DEFENDANT: Yes, your Honor. I've always
4 taken responsibility for that. That was part of the purpose
5 of the videos that I sent you is to say that I've always
6 owned -- I really screwed up that day. It was --

7 THE COURT: No. More than that. You knew
8 violence was used to enter the Capitol that day.

9 THE DEFENDANT: Your Honor, I wasn't thinking of
10 the idea of being -- violence and a broken window. I didn't
11 put violence and a broken window --

12 THE COURT: Violence to property, destruction of
13 property.

14 THE DEFENDANT: Destruction of --

15 THE COURT: Fair enough. You knew --

16 THE DEFENDANT: -- property, yes, your Honor.

17 THE COURT: -- destruction had happened to let
18 people in the Capitol that day?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Okay.

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: I just want to be clear on that.

23 THE DEFENDANT: I did not think about it in that
24 moment, but I certainly did know it happened, your Honor.

25 Yes.

1 THE COURT: And after that --

2 THE DEFENDANT: Even later.

3 THE COURT: -- moment, after that moment, knowing
4 all that you know now about what happened in the Capitol,
5 you continued to say things publicly and repeatedly about
6 the, you know, heroic folks who stormed the Capitol that
7 day.

8 THE DEFENDANT: No, your Honor. We're commingling
9 statements here in that, your Honor. That's not accurate.

10 What I'm saying -- and this is what I'm saying --
11 is that the Government continues to prejudice my statements
12 and make it believe as though that one --

13 THE COURT: I'm going off your statements,
14 Mr. Evans. I've watched all 41 minutes of your, you know,
15 documentary you created for me.

16 THE DEFENDANT: Okay.

17 THE COURT: I've watched it all. I've watched all
18 those statements. And frankly, based on what I saw in those
19 videos and what I know you know now, I find it hard to
20 understand how you can make the statements you made.

21 THE DEFENDANT: Which statement, your Honor?

22 THE COURT: Just -- multiple. The whole tenor of
23 the video is: There's some small group who did this thing;
24 I didn't see any violence; I was just there as a peaceful
25 protester.

1 That just doesn't ring true for someone who stood
2 on the balcony on the west side of the Capitol for 20
3 minutes and spent time in the Capitol, that you saw no
4 property destruction, no violence to people or property.

5 THE DEFENDANT: Your Honor, the window was
6 destroyed before I got there. People were going through the
7 door nearby as well. People were communicating with the
8 police in a peaceful manner. I --

9 THE COURT: But you knew the window had been
10 broken.

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: You didn't think that was an accident,
13 did you?

14 THE DEFENDANT: Your Honor, I'm not disputing
15 that. I take responsibility for going through that broken
16 window as the dumbest action I've ever done as far as the
17 law goes in my life.

18 THE COURT: And when you went through that broken
19 window, you saw a long line of police officers --

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: -- lined up in riot gear.

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Okay.

24 THE DEFENDANT: And there's -- that long line of
25 police officers was casually communicating with people,

1 giving hugs and taking selfies with the crowd, your Honor.

2 No one was saying: Stop, don't go here, don't advance.

3 It seemed as though they didn't want you to go

4 away, just like if you look at -- out on the balcony -- and

5 again, I'm not trying to justify my actions. I'm trying to

6 bring to light the facts of the matter and the truth and

7 what one would simply derive from what they had experienced

8 there.

9 I was there, your Honor, and I never -- I wasn't

10 looking over the balcony. I was looking at the Capitol.

11 I'm sitting there talking to people. You hear me say: This

12 is a peaceful protest. I'm bragging on our people. You

13 hear other people agreeing and cheering about peaceful

14 protest. It's in the video.

15 There was not any violence anywhere near where I

16 was. The only violence that I saw was an officer stepped

17 forward and whacked a guy in the leg and I yelled: Don't

18 abuse a U.S. citizen for exercising his constitutional

19 rights.

20 That was it. I didn't see any of what happened

21 at --

22 THE COURT: To exercise his constitutional right

23 inside the Capitol?

24 THE DEFENDANT: No, your Honor. Outside. He

25 was --

1 THE COURT: Okay. But on restricted Capitol
2 grounds?

3 THE DEFENDANT: Your Honor, no one -- well, I
4 can't say no one. I didn't and many people -- how would we
5 have known that it was restricted, your Honor?

6 THE COURT: There were barriers all over the
7 place.

8 THE DEFENDANT: No, your Honor.

9 THE COURT: There were alarms blaring, alarms
10 blaring.

11 THE DEFENDANT: Not --

12 THE COURT: Were there not?

13 THE DEFENDANT: Not outside, your Honor.

14 THE COURT: You didn't hear any alarms when you
15 went into the Capitol Building?

16 THE DEFENDANT: Inside, your Honor, yes. But
17 we're talking about a matter outside that I was discussing,
18 your Honor.

19 THE COURT: All right. But you did hear alarms
20 blaring that day?

21 THE DEFENDANT: Yes, I did.

22 THE COURT: And you continued to go in the
23 building with alarms blaring?

24 THE DEFENDANT: There was a -- your Honor, I'm not
25 trying to justify my action. I just want to paint the

1 clarity of -- there was a fire alarm going off. There was
2 people standing there -- not one person, nor the police,
3 anyone seemed to give any care or interest in this alarm.

4 When the police are taking selfies and giving hugs
5 to people and people are having casual conversations, it
6 doesn't -- they're not urging anyone to leave. And I'm
7 not -- again, I'm not trying to justify being there. I just
8 want you to have a full and realistic understanding of what
9 it was like to be there in that moment, as I can explain.

10 THE COURT: But the problem, Mr. Evans, with your
11 position is, watching those videos -- and I watched every
12 one of them -- your level of remorse is not what one would
13 think it should be in light of what you know -- we all know
14 you know now. Describing folks as victims of the criminal
15 justice system, that's hard to understand in light of what
16 you know now, regardless of what you knew then.

17 THE DEFENDANT: Your Honor, Judge McFadden has
18 said that there's a two-tiered justice system at play on the
19 record. Other judges. Mr. Gomert, Mr. -- numerous
20 congressmen have pointed out this fact.

21 I'm not saying -- as, again, I always say -- that
22 I didn't break the law and shouldn't be held accountable.
23 The absurdity that a SWAT team comes through your home and
24 you're facing 23 years in prison and painted as the worst
25 terrorist and domestic violent extremist and all these

1 things is the problem that the people have with this matter.
2 All they had to do is say: Mr. Evans, show up. Just, like,
3 why did the FBI come and talk to me on January 17th and then
4 sent a SWAT team back on March 4th? Based on what purpose?

5 A peaceful guy says, yes, sir, I'll cooperate;
6 anything you need from me, I have video, I was there, I
7 admit to it. And you send a SWAT team on March 4th?

8 Congressmen have spoken out about this. And the
9 newly found House report that's 1,050 pages discusses
10 specifically the FBI corruption that's going on --

11 THE COURT: Okay. I don't want to hear any more
12 about the congressional hearings. All I want to hear about
13 is that day. All right? That's irrelevant to your
14 sentencing.

15 THE DEFENDANT: No -- I agree with that, your
16 Honor. I'm not talking about the congressional hearings.
17 That's not what I was talking about.

18 THE COURT: Well, anything after the fact. All
19 right?

20 THE DEFENDANT: I'm talking --

21 THE COURT: I want to know about that day, what
22 you can tell me about that day. That's what's relevant
23 here.

24 THE DEFENDANT: Yes, your Honor. I agree.

25 THE COURT: And the other stuff you've put before

1 me, all your subsequent statements.

2 THE DEFENDANT: Correct. Yes, your Honor.

3 So, again, I entered the building with the intent
4 to demonstrate, devoid of any real logic or reasoning,
5 obviously, in that moment. I would agree with your Honor in
6 that. Not making good sense, not making good choices.
7 Terrible selection of ideas made.

8 Then I went down a single hallway singing the
9 national anthem. When I got into the very first room that
10 that hallway opened to, there were people walking around in
11 the room, and there were some things that were said.

12 At one point, and as you can see, Mr. -- well, in
13 this PowerPoint, Mr. Marquez is another Defendant that had
14 recorded this statement. There was someone saying: Burn it
15 down.

16 I immediately thought about this. I saw people.
17 I saw people carrying items that I didn't believe they
18 brought with them that day. It didn't seem logical that
19 that was something you brought with you to go demonstrate
20 outside.

21 When I saw that, I immediately stopped what I was
22 doing. I abandoned the intent that drove me 1500 miles.
23 And the police heard me saying: We back the blue and we
24 support the police. Do not burn. Do not damage. Do not
25 destroy. This is a peaceful protest. Do not harm the

1 police. Do not damage the building. This is your house.

2 It's your property.

3 All of these things are available on the video.

4 So I didn't go there 1500 miles and go in there to

5 demonstrate and then -- when did I demonstrate after that?

6 After the national anthem, I abandoned the demonstration,

7 the point that I was there to yell. I was there to yell --

8 honestly, your Honor, I was there to yell, "Stop the steal"

9 at the top of my darned lungs. 100 percent.

10 And when I got there, and I saw things had gotten

11 way out past where I was okay and anything I wanted to be a

12 part of, I stood on behalf of the police and turned the

13 megaphone into a voice of reason. There's no question about

14 that. It's indisputable.

15 Then I recognize I have that conversation with

16 that officer. And I'm honest, realizing what I had seen

17 previously. And I have a conversation with that Capitol

18 Police officer standing in the middle. And he says to me:

19 What can we do about getting some people out of here?

20 Et cetera.

21 And I said: There's more coming.

22 He says, expletive, et cetera.

23 You've seen that video, I'm sure.

24 Then I recognized that I could do more. One,

25 being leaving. So I go through more of the same: Do not

1 harm police, back the police, support the police, et cetera,
2 et cetera.

3 I immediately leave, headed back the way I came.

4 I saw a window, and I can see all those people. And I was,
5 like, holy cow. I had no idea what that -- there was a
6 video there.

7 I went over there and I took -- I went to take a
8 picture out the window. People were waving. I ended up
9 getting caught and waving back. Caught up in the moment,
10 waving back to them. And I drank a shot of whiskey that
11 someone else pulled out of their backpack. And then I drank
12 a shot of my own whiskey, your Honor, regretfully. I
13 understand that that was not conduct that needed to happen
14 there that day. And it's rather disrespectful to be doing
15 that. I get that point.

16 The point that I'm making is, then I leave there,
17 and then at the Senate wing doors you can again see me in
18 the video -- and there's the evidence that the Government
19 has provided. The police stop me, recognizing me from, I
20 believe, inside the Crypt, best I can tell. I don't know,
21 because I can't ever figure out how to get the 302s. I've
22 always wanted to have the statements from the officers,
23 because I believe those officers would say, yes, this guy
24 helped us out, I'm glad you did that, thank you for that.

25 Even though I went in there wrong, I came out

1 right. And that's where I think that you have to see that
2 there was a change.

3 I agree with your Honor and I agree with the
4 Government that I illegally entered the building -- I
5 illegally entered the building and I did so with not the
6 greatest of intent. My intent to demonstrate, not to harm
7 anyone, not to destroy anything. It's obvious that I turned
8 against any of those ideas.

9 Then I'm at the Senate wing door exiting. And the
10 police speak with me. I immediately go to the megaphone.
11 I'm nodding in approval. It's all happening there. I'm
12 helping clear the building. No one had to ask me to leave
13 inside the building. I left on my own. I got other people
14 to leave.

15 And then I walked back out onto the balcony. A
16 man asked to use my megaphone, and I asked him what his
17 message was. This was all part of the proffer. It's there.

18 A man asked to use my megaphone. I asked him what
19 he wanted to say, because I wanted to make sure it was
20 consistent with what I believed, that it wasn't going to be
21 any about violence or et cetera.

22 He tells me: I'm a veteran, da-da-da-da. I am
23 going to tell people to make sense, et cetera.

24 Great.

25 Then I lose track of the megaphone. I saw this --

1 somebody took it and went inside with my megaphone. And I
2 went, huh-uh -- well, it's not worth it. I'll buy a new
3 one. I'm not going back in there.

4 I'd like your Honor to recognize that I did take a
5 walk around the balcony to see if maybe this guy pops out on
6 the other side before I left. Because I had made the
7 decision to leave the grounds. I just wanted to find my
8 megaphone and go.

9 When I get around to the other side, I saw people
10 kicking windows and I saw things that were very different,
11 and it was dark, and I was not happy with what I was seeing
12 there.

13 That said, megaphone or no megaphone, I'm out of
14 here. We're done. This is not something I want to a part
15 of or I'm going to be around. This is not consistent with
16 my views and my beliefs.

17 I started heading down the stairs where I see a
18 man with my megaphone. He's over there talking about a
19 letter. I go and tell him: That's mine, I need it back,
20 I'm out of here, pass it over.

21 When I take that megaphone back, and then I'm
22 going down the steps, a man comes to me and says: You've
23 got to see this. You have a megaphone. You've got to tell
24 these people what's happening.

25 And they're reading President Trump's order to

1 disperse. I took the time to read through this and agreed
2 that it was something that's consistent, because it said
3 back the blue and support law enforcement, no violence, go
4 home now, et cetera, which I was already leaving on my own
5 accord.

6 At that point, I began reading that statement
7 over -- from the Capitol steps, urging people to turn
8 around, leave, go home, as is there in the video evidence as
9 well.

10 There is -- we have the affidavit from Mr. Clark
11 that says he and his friends opted not to go up and go into
12 the building, which is where they were headed, if you notice
13 the affidavit that's a part of my evidence, because of what
14 I was doing.

15 I then left the grounds before the Capitol Police
16 attempted to clear the grounds. No one had to tell me to
17 leave. I knew better at that point. I had finally wised up
18 and woke up to, like, holy crap, you just went in a building
19 that's been broken into.

20 I didn't see it in the beginning. And that's not
21 an excuse, your Honor. It's an admission that I didn't
22 recognize and didn't make a good decision.

23 What I did recognize I made a terrible decision
24 about, and what I didn't recognize was an awful lapse of
25 judgment. So those two things to your point.

1 Yes, a horrible miscalculation, a horrible
2 mistake, and I did break the law, and I have always said I
3 would stand here to be sentenced for that.

4 But the idea of some of this other madness is what
5 I've spoken about, your Honor, as I tie this back to your
6 question. When I talked about that there -- you asked
7 earlier, in the original proceeding, if there were heroes
8 present that day, or made the statement that only Capitol
9 Police.

10 And I disagreed with that statement emphatically
11 because there is evidence in those videos that the Oath
12 Keepers came to the aid of Capitol Police that day, as we've
13 seen in video evidence, that they were helping the Capitol
14 Police, as has -- now we've seen the testimony from -- in
15 the *Stewart Rhodes* case, in the Oath Keepers case now.

16 Additionally, we've also seen that more of the
17 Oath Keepers did things. I showed you that video, where
18 these people were Oath Keepers and they went to rescue some
19 police.

20 Your Honor, I'm telling you -- I can't make you
21 believe me, but I can tell you, and I stand here, that I did
22 not see people committing acts of violence or I would have
23 been yelling at them. The thought of violence or the very
24 idea that someone is going to be violent, and I'm chastising
25 them for it -- it makes sense that somehow I witnessed some

1 mass amount of violence and then chose to plow forward? It
2 makes no sense. It makes absolutely no sense.

3 So I'm not disputing you, your Honor. I'm asking
4 you to look at the facts and say: Doesn't this make more
5 sense that a man that didn't see violence, got there, things
6 were turned into something else, I made an error, and then I
7 spoke against violence and destruction and property damage
8 and looting when I, again, did it down on the steps -- and
9 it was my very last words: I don't support looting. I
10 don't support violence. I support a peaceful protest to put
11 them on notice that we, the people, demand justice.

12 It doesn't -- I mean, I think that's what protests
13 are. Someone is demanding something. And you can do that
14 peacefully and legally. I understand that I was illegally
15 entering the building, but my last word is that's the only
16 thing I was in support of, a peaceful protest, and I didn't
17 support looting and I didn't support violence.

18 So I'm going to take this on -- and we don't need
19 to go -- the video evidence -- I'm going to move on. We've
20 already covered this ground, your Honor. Excuse me.

21 I would like you to notice that in that video also
22 in the Crypt, the one piece there that I forgot to mention,
23 I am not a fan of the mask. I'm a fan of your choice to
24 wear it. I'm not a fan of mask mandates and rules and what
25 have you, as I've made very clear evidently out there in the

1 world.

2 When an officer approached me in the Capitol, not
3 to conceal my identity, but out of respect for the officer,
4 I raised my mask when he raised his mask.

5 So I would just like you to consider the idea
6 that, once again, I respect the law and order and I respect
7 police officers and I'm not going to do anything outside of
8 that. And I apologize again to the Court for entering the
9 building in the manner that I did. I apologize for drinking
10 a shot of whiskey. I apologize for waving out a window.

11 But I've said all along, in the 13 or so minutes
12 that I spent in the Capitol, if we go back and look at that,
13 more than half of the time, or around half of the time,
14 depending on which side of the footage you get to of how
15 long I was there, I spent in assistance to the police and
16 statements that I would be proud for my mother, this Court
17 or anyone else or my children to hear me say that day.

18 I think that's fair to ask that we look at that,
19 that half of the time, that's what I spent doing. I sure as
20 heck didn't drive across the country to say, Back the blue
21 and support the police. That's a given in my world.

22 I regret that I did not do more to help round up
23 people and get them going at the first request of that.
24 There was obviously a request for assistance to do more, and
25 I regret that I didn't. I don't know why I didn't. It's

1 inconsistent --

2 THE COURT: What do you mean?

3 THE DEFENDANT: Well, when the officer came to me
4 and said: What do you think we can do about getting some of
5 these people out of here? And then I said -- my answer to
6 him: There's more coming.

7 And then he says to me, expletive, et cetera, and
8 then says: Well, we just don't want anybody harming
9 anything.

10 And I immediately answered: Well, I don't see
11 anyone doing that. You know, and if you harm them, you'd be
12 violating the Constitution.

13 THE COURT: And this is at the end or the
14 beginning when you came in?

15 THE DEFENDANT: No. That's in the middle, your
16 Honor, in the Crypt. That conversation occurred in the
17 Crypt, and it's on the video evidence.

18 THE COURT: Because you also use your bullhorn to
19 bring people in.

20 THE DEFENDANT: Yes, in the beginning. And if you
21 notice, it's the most halfhearted thing I said all day.
22 Everything I said --

23 THE COURT: But you said it.

24 THE DEFENDANT: But I did say it, yes, your Honor.

25 THE COURT: With your bullhorn?

1 THE DEFENDANT: Yes, your Honor. That is correct.
2 I did say: Bring them in.

3 I originally didn't even know it when I sat down
4 with -- the original sit-down with the FBI. I had to see
5 the video. I couldn't believe I had done it. So that is
6 another point.

7 I agree. I stand accountable for telling people
8 to come in. But I did a whole lot more good in getting
9 people out than I did in telling people to come in, because
10 who could have heard me there? I mean, as you said, there's
11 an alarm and et cetera, et cetera. Right? So I mean,
12 there's a lot of noise. And there was. It's a roar like a
13 freight train when you're in a crowd that loud. It's very
14 loud. So -- because there's so many different ideas going
15 on, your Honor.

16 So I do -- that's been one of the frustrating
17 points for me, is that I have never been able to get the
18 video that I've asked for there, your Honor, showing me
19 helping clear the building at the end of the day, as shown
20 from the Senate wing doors. You can clearly see me there,
21 the officers obviously in support of what I'm saying after
22 the short communication. And it was just more of the same,
23 and then that assistance, your Honor.

24 I would like -- all right. I would like your
25 Honor to consider -- and this Court to consider the idea

1 that more than half the time there was spent assisting law
2 enforcement and making statements that would be recognized
3 as assistive -- as a positive manner in that building. I
4 would like you to understand that.

5 And I don't think that, when you look at these
6 cases -- we're citing specific cases -- none of these people
7 have video evidence of them on a megaphone -- many of them
8 are telling people to come in, celebrating stuff. They saw
9 violence and chased it right on in the door. None of these
10 people have -- were helping the police and stopped what they
11 were doing, abandoned their protest and the cheering and
12 what have you to do -- to assist the police. No.

13 As far as evidence, I did not destroy evidence and
14 I handed over all items requested to law enforcement, to
15 include passwords and all evidence intact.

16 Additionally, my social media accounts were
17 preserved and handed over as well to counsel and to the
18 Government.

19 The -- my -- I was in full cooperation. I think
20 we can agree that I've done everything in my power to
21 cooperate with law enforcement involving this investigation
22 and my engagement.

23 I have zero criminal history. I was respectful to
24 the Capitol and the police that day, with the absence of my
25 mistake of entering the building and breaking the law and

1 that criminality involved in that, your Honor. Everything
2 else I believe that I did -- I think as far as being on the
3 megaphone -- we would find it to be respectful and helpful.
4 Again, attempting to clear the grounds before the police
5 were attempting to clear the grounds.

6 I take responsibility -- the point of that, your
7 Honor, is that I did not want to remove my political opinion
8 or remove my opinion based on the facts of the events as I
9 see them, when I shared those videos with you, and to be
10 honest with you, not to cherry-pick, as has been mentioned,
11 but I gave you more so that you could see that I stand
12 behind so many of my convictions and what I believe happened
13 there that day.

14 And I would rather say, no disrespect to the
15 Court, but I spent 18 months of my life investigating that,
16 and there's not a person or persons that stand in this room
17 today that know more about the events of January 6th as they
18 happened from video evidence in this courtroom than myself,
19 your Honor.

20 Therefore, I am telling you that there are many
21 things that happened there that you -- will come to light in
22 the future months, and I ask you to consider adjudicating
23 that further -- as you are going to see, there are going to
24 be cases where there was evidence suppressed. There are
25 people sitting in jail right now.

1 And those statements are backed in fact -- and I
2 am prepared -- if your Honor wanted to postpone the
3 sentencing, I would be more than prepared -- I have the
4 video ready to go. It's 30-some-odd minutes and it shows
5 some evidence of some of the information there, body-cam
6 footage and so forth, that I think your Honor would be very
7 interested in seeing, and why -- and you may very well
8 yourself ask the question as to why some of these men sit
9 indefinitely detained when the body-cam footage clearly
10 shows them trying to --

11 THE COURT: This has nothing to do with your case.

12 THE DEFENDANT: But your Honor, you're saying --
13 you made the statement, your Honor, that I am supporting
14 people in some of their actions. And this is what I'm
15 talking about.

16 THE COURT: Oh, no, no. I'm not -- Oath Keepers
17 or Proud Boys or whatever. Yes.

18 THE DEFENDANT: Your Honor, and I'm not trying to
19 say that there's heroics on behalf of people that stormed
20 the Capitol.

21 What I'm saying is there were people present that
22 day that were heroes. I think people trying to save a life
23 and making a makeshift stretcher can constitute hero.
24 That's why I showed you that the video. I think people that
25 stood up in the sense of saying, Hey, stop, law enforcement

1 officers, that said, you're acting outside of your lane,
2 you're doing this wrong, this is inconsistent with what
3 you're allowed to do -- those people would be considered to
4 be heroes.

5 THE COURT: But the tenor, Mr. Evans, of a lot of
6 your videos that you provided to the Court suggests, like,
7 you know, on balance, you thought a lot of this was
8 appropriate. And that's very troubling to a Court that has
9 to look at deterrence as one of the purposes of sentencing.

10 THE DEFENDANT: Yeah.

11 THE COURT: And knowing what you know now about
12 everything that happened that day, to repeatedly say in that
13 national news, whatever, those various places where you
14 appeared, that this was -- that you approve of this --

15 THE DEFENDANT: No, your Honor. I don't approve
16 of what happened on January 6th. I'm disapproving of what
17 has happened since and how -- sorry -- I'm -- what has
18 happened since.

19 THE COURT: But what -- but you don't disavow what
20 happened on January 6th.

21 THE DEFENDANT: Which part, your Honor?

22 THE COURT: Just the events, the trespassing, the
23 violence, the destruction as a whole that day.

24 THE DEFENDANT: Your Honor --

25 THE COURT: In these videos you repeatedly say:

1 Well, there were people who were violent, and I don't -- you
2 know, I don't approve of that, but there are a whole bunch
3 of people who were just peacefully protesting.

4 THE DEFENDANT: That's true, your Honor. There
5 were a lot of people there peacefully demonstrating that
6 didn't intend to inflict violence or damage.

7 You know, your Honor, I think I'd like to point --
8 just real quick since we're on this subject, you know, when
9 they stormed the Michigan State Capitol in 2011, and they
10 held that building for weeks in the Occupy movement --

11 THE COURT: You're going to talk about what has or
12 hasn't been prosecuted.

13 THE DEFENDANT: No. Well, I think it's a fair
14 statement that those people were considered to be heroes,
15 and Nancy Pelosi herself, she -- Nancy Pelosi herself called
16 them heroes.

17 THE COURT: Okay. Let me ask you this: Do you
18 condemn what happened on January 6th?

19 THE DEFENDANT: Yes, your Honor. I've condemned
20 my own actions. How would I not condemn the actions of
21 others? And I wasn't violent or destructive.

22 THE COURT: The day as a whole, you condemn what
23 happened?

24 THE DEFENDANT: What should have happened there
25 was a peaceful demonstration. It should have happened

1 within the boundaries that were provided, and people should
2 have been able to voice themselves peacefully.

3 THE COURT: Correct. Not in restricted -- not in
4 restricted grounds.

5 THE DEFENDANT: Correct again, your Honor. But
6 where did the people that arrived after the T-posts and the
7 fencing were taken down, how would they have known that they
8 have entered?

9 THE COURT: You went through a broken window. All
10 right?

11 THE DEFENDANT: I know.

12 THE COURT: You breached a broken window. You
13 can't plausibly argue that you didn't know you didn't have
14 the right to be in the Capitol.

15 THE DEFENDANT: Your Honor, I'm not arguing that
16 I'm not there. I'm saying -- when I talked about that
17 and -- we're talking about, again, two different things.
18 Going in the window -- breaking -- going through a window,
19 through a broken window, again, was the stupidest thing I've
20 ever done in my life as far as the law goes.

21 What I'm pointing out is that entering the Capitol
22 grounds, people did not know because there were no barriers;
23 they had been torn down. They didn't know. It's an
24 invisible barrier that they didn't know existed because it
25 wasn't there.

1 THE COURT: But you agree no one should have gone
2 in the Capitol Building?

3 THE DEFENDANT: I agree with you. Yes, your
4 Honor. I'm not justifying going into the Capitol. What I'm
5 justifying, or trying to say, is that just -- there was no
6 way for those people to know.

7 So I think it's absurdity that the Federal
8 Government charges people for walking onto the grass --
9 they're actually going after some of these people. That's
10 what I'm talking about. There is a disparity between the
11 actions of other events and this event. And, you know, the
12 courts have agreed to this in some respect.

13 I am not condoning violence. I'm not condoning
14 destruction, looting, theft, arson, vandalism or any of
15 those things. I speak --

16 THE COURT: Well, and trespassing.

17 THE DEFENDANT: Trespassing, too, yes, your Honor.
18 Correct. You know, all of these things are something that I
19 agree.

20 But again, I don't -- I'm -- I don't like that
21 there seems to be a confusion about whether or not I'm
22 condoning the actions of some people at the Capitol or that
23 I'm not -- what I'm saying is there's a 60-year-old grandma
24 that walked inside, didn't know what was going on and goes
25 to jail -- I think this is a little absurd -- we send her to

1 jail for 60 days -- in my mind.

2 THE COURT: Well, I'll just tell you, having
3 watched the 41-minute video that you submitted, there's a
4 lot of ambiguous statements you make on the video. So it's
5 helpful for me to hear --

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: -- from you things that you didn't
8 state as clearly in those videos. And I don't know why you
9 didn't state it as clearly.

10 THE DEFENDANT: Your Honor, I was told that I
11 needed to keep cutting it and cutting it. Look, your Honor,
12 if it was up to me --

13 THE COURT: You mean other parts of the videos
14 would say all of this?

15 THE DEFENDANT: Yes, your Honor. Look, I tried to
16 send you what you might view as the worst, because the
17 Government tries to paint this in a light -- they try and
18 paint this in a light all the time, as -- that everyone was
19 part of a violent riot or intended to be part of a violent
20 riot.

21 That's not a fact. There's not one shred of
22 evidence that puts me in the light of attempting to be a
23 part of a violent riot. It doesn't exist.

24 The evidence is to the contrary.

25 THE COURT: You're only charged with the

1 trespassing offense.

2 THE DEFENDANT: That is correct, your Honor.

3 THE COURT: Not the obstruction.

4 THE DEFENDANT: I was originally charged with
5 obstruction, your Honor. And they finally came to -- what I
6 believe came to their senses. Because we wouldn't be here
7 at a plea sentencing. We would have been at a trial, your
8 Honor. So I'm not happy with that situation, but I can't
9 change that.

10 You know, my child goes to school every day and
11 some children say, There's the kid that -- his dad is a
12 terrorist, thanks to the media and what has been spun out of
13 control on this.

14 Not everybody is the same and not everybody is
15 guilty of the same action, nor does everybody get the same
16 credit that some people should get for what they've done.
17 And I think that's a -- that's how, when these things are
18 adjudicated, I hope that the Government, your Honor, is able
19 to find that and say that weighting matters. That's what I
20 would ask.

21 As far as association, again, I'm very disturbed
22 at the idea that something that has no relevance to the
23 matter that we're in in this court is being adjudicated --
24 or being attempted to be thrown into the mix, if you will.
25 I don't care if I wanted to join the Republic of New Africa,

1 which is known to be a violent hate group watched by the
2 FBI, such as Bennie Thompson was a member of, any of those
3 things. Right?

4 And on that, I'd like to say -- I know you don't
5 want me to talk about the Select Committee, and that's not
6 what this is about. What this is about, your Honor, is that
7 I have taken a very active political engagement since this.
8 I recognized it's, I think, something that needs to be done.
9 I know that it's a contentious issue, but I believe my 2020
10 elections were stolen. And I don't think stomping around
11 with a megaphone solves anything. It sure as hell doesn't
12 help me to go trespass and get myself in trouble. I don't
13 want anything to do with that. I don't even want to be at
14 those events.

15 What I want to do is stand on stages and get
16 involved and be a part of my political process. And that's
17 what I have done, and it's very obvious by that.

18 I can prove that, your Honor. I'm not asking you
19 to say that, yes, I didn't break a law. But I'm saying I
20 want you to recognize that deterrent -- there's no need for
21 a deterrent for me. If you so feel that way, obviously,
22 that's the way it's going to go. But I don't need to be
23 deterred from future violent acts or whatever that I didn't
24 commit or take part of in the first place.

25 Other people were violent. I spoke against that.

1 Be very clear there. Destruction of property happened. I
2 didn't like that. Stupid to go through the window. Agreed.
3 Case in point.

4 I'll say it a billion times, if that's what
5 satisfies the Court, and I don't say it for lip service, as
6 has been alleged.

7 I've owned this to my children and sat in my
8 living room and explained to them where I screwed up that
9 day and what I did wrong. I've said it to every stage at
10 2,000, 5,000, 100 people, or the sewing circle that will
11 listen, that this is where I screwed up and I wish I
12 wouldn't have, because I would think I would have a much
13 better stance on what happened and they might more so
14 respect my opinion had I not broken the law that day, and
15 maybe I would be standing here as a character witness or a
16 material witness or some other expert on the situation, as I
17 may be in some of these trials to come.

18 But then again, we might not be here in this light
19 because I wouldn't have broken the law in the manner that I
20 did.

21 So the merely ambiguous language of wishing to
22 join or back or resist is not something that possesses any
23 criminality ever. And there's no criminal action cited to
24 anything I've done. It doesn't matter what group I want to
25 join. Freedom of association. I wouldn't take part in

1 anyone's violence.

2 The minute I saw someone being violent or taking
3 on actions that I don't support, I think that's where I'm
4 going to become an *ex parte* member of the group and move on.

5 Right? That is obviously consistent with what I say and do.

6 So I'll move on from there.

7 This Court has seen throughout this case a theme
8 of reluctance from the Government to admit certain factors
9 that I'm not going to go down.

10 I would say that you have seen that I have been
11 forthright and candid and sent you videos that even draw
12 question, because I am candid and honest, and I think that's
13 what's fair. My political opinion doesn't align with most
14 of the -- seemingly of what -- some other matter -- people
15 that we're dealing with here. They're entitled to theirs;
16 I'm entitled to mine.

17 Your neighborhood argument or discussion or
18 healthy debate that's nonviolent should be the part that
19 matters, and that's where we should stand as a country. We
20 should be able to iron out our differences, and I support
21 that.

22 Because I have a political view and I believe
23 something does not mean there's an intent to be violent.
24 And social media, it's an absolute absurdity that my social
25 media posts mean that I am going to be violent when there's

1 never any one shred of conduct from my -- that shows that
2 action or ever supports it publicly. Twisting the things
3 around.

4 And that's what I'd like to point to. In the
5 Government's sentencing memorandum, nine pages, there's a
6 statement there about what I thought. Let me be very clear:
7 Just because I want to say that I think people will be held
8 accountable, I think that there's federal corruption that's
9 happened, I think the FBI investigations and many of what's
10 happened in these cases are going to be tainted. You're
11 going to see that.

12 And this is not a Select Committee report. This
13 is a totally different matter coming out of the judiciary
14 that has been released recently. I don't know if you have
15 seen it. It's 1,050 pages on FBI corruption.

16 THE COURT: Mr. Evans, let's stick to the --

17 THE DEFENDANT: Okay. Yeah. So I've referred to
18 it.

19 THE COURT REPORTER: If you could slow down for
20 me, sir.

21 THE DEFENDANT: I'm very sorry.

22 The point that I'm making there, your Honor, is
23 that that's the things I'm talking about when I say that if
24 you did this or you were a part of this and you'll be held
25 accountable, and if you did so knowingly, that you should be

1 held accountable. I'm not asking for vigilante justice.
2 I'm not suggesting an individual did it.

3 And when they talk about the fact that I used the
4 word -- terms like Nazis and Nuremberg trials in making that
5 relationship, are those not fair courts of law accepted by
6 the entire world, what happened there? They were courts of
7 law. This wasn't vigilante justice. People didn't take
8 these actions on themselves. These were courts of law.

9 Just because they don't like what I say doesn't
10 mean I can't say it and doesn't mean I shouldn't say it.
11 That is what this country is based on. It's the absolute
12 foundation.

13 I'm not advocating for violence. I'm not
14 advocating for destruction. I'm advocating for courts.
15 Whether they like it or not, it's still a court.

16 THE COURT: You're advocating for courts?

17 THE DEFENDANT: The Nazis?

18 THE COURT: No, not the -- I'm not -- I'm
19 wondering, your view with regard to our courts --

20 THE DEFENDANT: Yes.

21 THE COURT: -- is a little ambiguous as well.

22 THE DEFENDANT: Yes. I have -- because I believe
23 there's certain matters at play here. I've absolutely
24 developed matters.

25 THE COURT: Well, do you respect the rule of law

1 or do you think, when a court rules a way you don't like,
2 this sort of behavior is appropriate?

3 THE DEFENDANT: No. I think, your Honor -- let me
4 point this out: So I broke the law. I should go through
5 the criminal justice system, as I've said. How the Court
6 rules, I don't have to like it. It's just what has to
7 happen.

8 THE COURT: No. I don't mean -- you've talked
9 about the election. You don't agree with the results.
10 Well, the way to challenge that is through court cases.

11 THE DEFENDANT: Yeah, and I think the courts
12 failed the people. I think Congress failed the people. I
13 think many things. But that's -- okay. So be it. That's
14 what happened. I haven't --

15 THE COURT: And that doesn't justify an attack on
16 the Capitol.

17 THE DEFENDANT: Absolutely not.

18 THE COURT: All right.

19 THE DEFENDANT: No.

20 THE COURT: Glad to hear you say that. That was
21 not clear to me.

22 THE DEFENDANT: I'm sorry, your Honor. I'm sorry
23 that there was a misunderstanding in that matter.

24 Nothing justifies an attack on the Capitol.

25 That's -- let me point my position out. All right? Let me

1 just help you in the sense that you're never going to see me
2 again. To be very clear --

3 THE COURT: I hope not.

4 THE DEFENDANT: Yeah. Well, I -- well -- well, I
5 can't discuss what I intend to do politically right now.
6 It's not matter for this Court, I don't think. But I think
7 we -- I might be back here in this area again.

8 THE COURT: Well, I hope, if you have a political
9 future, you use it to be a leader --

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: -- who respects the rule of law.

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: That's what we need.

14 THE DEFENDANT: I agree with that, your Honor.

15 So if I may, when you talk about the courts,
16 whether or not I respect them, I respect courts that operate
17 with accuracy. I respect courts that uphold and maintain
18 the law.

19 And when you hear me talk about these things, I
20 know it's not a popular decision. I'm aware that it's a --
21 you know, a knee-jerk -- it's a reaction that comes from my
22 social media posts that the Government takes them and sent
23 them to your sentencing memorandum. I'm not a stupid man.
24 I'm very well aware of that. And they're more than welcome
25 to continue doing that, and I'll continue saying what I say

1 and I'll continue by advocating for peace.

2 But when I say that a judge should be impeached,
3 or investigated and impeached, and I'm calling on my
4 congressman -- you have to understand that I've been to
5 visit with my congressman, and I've been to visit with many
6 congressmen. I've dealt with these judicial committees.
7 I've dealt with the Senate and the House judiciary
8 committees, and the ethics committees regarding some of
9 what's going on. And to be very frank, your Honor, it has
10 nothing to do with this case. And I in no way am trying
11 to --

12 THE COURT: All right. Well, let's move on.

13 THE DEFENDANT: Well -- I will. Okay.

14 So as I pointed -- okay. I will move on from
15 that.

16 So pointing out that I do believe, as long as the
17 courts uphold the law and do what it says in the law, then
18 there's no complaint. It's when the judges put themselves
19 above the law and don't do what's right or suppress evidence
20 or information to serve a political interest, that's wrong.
21 Or -- well, we could get into details about Mr. Sullivan
22 and -- Judge Sullivan and Simone Gold and --

23 THE COURT: All right.

24 THE DEFENDANT: -- but I don't want to get into --

25 THE COURT: Mr. Evans, this is not --

1 THE DEFENDANT: All right. Moving back to my own
2 issue, your Honor.

3 I need no deterrent to prevent further actions. I
4 operate in my life --

5 THE COURT REPORTER: I'm sorry. Please slow down.

6 THE COURT: I'm sorry.

7 THE COURT REPORTER: I'm trying to make an
8 accurate record of what you're saying.

9 THE DEFENDANT: Yes, ma'am. I'm sorry. I get
10 excited. I've never done this before, at least not in a
11 court.

12 I need no deterrent, your Honor. I've operated my
13 life all these years, 48 years, without breaking the law and
14 being in front of a judge for anything. I want you to
15 understand that when I came here to tell you that today that
16 I understood I broke the law, and that -- what my actions
17 have been since then.

18 I formed a legal advocacy group. We are a legal,
19 lawful LLC in the state of Texas. I have attorneys. I have
20 paralegals. I have advocates. I have many different people
21 that volunteer. I work in coordination with numerous
22 organizations that are representing people in the matters of
23 January 6th.

24 And we uphold those interests and help those
25 people. So we continue pairing individuals and paralegals,

1 investigators, legal counsel, use-of-force experts and more
2 for January 6th and the events.

3 We -- members of our cooperative have uncovered
4 more truths about January 6th than any other resources
5 combined to date, to include the truth about the death of
6 Benjamin Phillips, Kevin Greeson, Rosanne Boyland, Brian
7 Sicknick and Ashli Babbitt -- all come from the collective
8 works of that cooperative. All of those facts, your Honor,
9 came from that group.

10 So -- I have made these services free when
11 possible and raised money through donations to keep this
12 nonprofit effort going. I do not make money from this, as
13 alleged by the Government. I will say that only the Federal
14 Government could operate with the absurdity that someone
15 spent around -- over \$100,000 and brought in \$13,000 worth
16 of donations is operating in a profitable venture.

17 So -- we are working on a change of venue matter
18 that's said to be a case of first impressions, and it's new
19 and unique, your Honor, on data. And we're very excited
20 about that, and we hope to see that the opportunity exists
21 there.

22 And it's not that I believe that necessarily the
23 judges are the problem, more so that I don't think that you
24 have the size and/or ability, and a jury pool here, because
25 it's alleged to be around 680,000 people, and I've whittled

1 that down to -- eligible jurors to be about 280,000, and
2 there are some issues there. So -- beyond that.

3 Additionally, I regularly take calls from
4 Defendants, their families, who are in need of guidance, and
5 contact one of our attorneys to consult and work with them
6 during ongoing investigations. We are at for -- over 40
7 people that we have assisted to date that needed J6 legal
8 defense and they weren't happy where they are, or they
9 needed some element of their help done. And we have made a
10 difference in some cases, your Honor, and I am very proud to
11 be a part of that cooperative with people that needed that,
12 because I believe in justice. If you did bad things, you
13 get bad consequences. So be it. I get it.

14 I have taken calls from over 300 Defendants at
15 this point, many in trouble and had lost hope and simply
16 needed someone to listen. And other times they wanted to
17 roll up their sleeves and get involved, and we've provided
18 that opportunity so that frustration can work in a
19 constructive light and be put into something other than just
20 being mad at the government or mad at themselves or mad
21 overall, that we've given them an opportunity to be
22 constructive with their energy and -- hey, you want to
23 investigate? Get involved in your case. We're teaching
24 people to be a part of their case and get involved.

25 I myself was weighing very carefully the idea of

1 going *pro se*. But other than not having experience in the
2 court, I thought it would be a good time for me to sit and
3 learn and have this to draw on, because I think it more so
4 benefited people, not because Mr. Metcalf has an astounding
5 knowledge of my case, as we don't agree on many of the
6 issues, but I do respect him as an attorney, a guidant
7 and -- for his guidance and his friendship that has come.

8 Our disagreements and issues there, as were
9 discussed earlier, stem more so from -- I would rather be a
10 little more bombastic and go a little further, and
11 Mr. Metcalf is a little more interested in preserving his
12 license, probably.

13 THE COURT: I'm glad to hear that.

14 THE DEFENDANT: That's interesting.

15 Anyway, so -- although I think Mr. Metcalf also
16 has done a good job in guidance, and probably kept me out of
17 some hot water in some respect with your Honor. Okay?
18 So -- I may have gotten myself in some messes. So it's a --
19 call a learning experience that I won't revisit.

20 So I would like to point out that -- some of my
21 frustrations in this case that led to the social media posts
22 that I know that your Honor finds some frustration with, or
23 some question there about. And I appreciate that you have
24 those questions and I think they're more than reasonable.

25 There have been situations, as I will call them,

1 in this case that have led me to my finding and my beliefs
2 and have led me to my frustration, not only in my case, but
3 many other cases, your Honor. And I do assure you -- and I
4 wish there was some way that I could somehow balance and
5 promise that what I say is true is coming, because I think
6 you've known me not to be a liar in this court, that what
7 I'm telling you is coming is coming.

8 And I ask that your Honor please consider these
9 matters, that there are cases out there that there's some
10 significant injustices, and that is specifically what I am
11 speaking about. And all parties, including a president, a
12 speaker of the house, a judge -- no one is above the law.
13 Everybody is accountable to the law, including Treniss
14 Evans. That I understand.

15 I'm going to skip that slide in the interest of
16 time. I'm going to skip that as well.

17 I am frustrated, your Honor -- one of the things
18 that I say here is the application of the law must be equal
19 in cases, be it D.C. or any other federal district. I found
20 it interesting, as I started researching this, about the
21 law, that the federal Supreme Court has etched in stone the
22 words "Equal justice under the law." It doesn't say equal
23 justice under the law in this district or in that district;
24 it says equal justice under the law.

25 People have taken part -- and been a part of

1 violent riots in matters throughout history, and I
2 acknowledge and accept that some of those -- that that is a
3 characteristic that was present on January 6th. What I
4 don't acknowledge and accept is the idea that the Court
5 should relegate this only to the matters in adjudicating
6 cases as they've happened only in this district at this
7 event. I think that all matters should be in there.

8 But again, that's an opinion. If I don't like
9 those things, then I either better become a judge and get on
10 those committees or become -- be a member of Congress and
11 advocate for change. And that's kind of -- I guess that's
12 the way it goes.

13 But I do agree, after reading a lot from -- quote:
14 I firmly believe in the rule of law as the foundation for
15 all our basic rights. Justice Sonia Sotomayor.

16 I thought it was very interesting how many of
17 justices have ruled over time that many of these things --
18 the way things are adjudicated, that there's a law -- and I
19 think one of the famous statements I heard is there's a law
20 library full of people that were wrong. Every page
21 represents somebody that was wrong in an argument. And I
22 may be wrong in an argument, but that remains to be seen.

23 So what I would like to point out there also is
24 have alleged rioters not rioted at any federal building at
25 any time in living memory and do we selectively remember or

1 adjudicate these matters differently?

2 And I'm not asking that this Court -- I'm saying
3 as a whole, as a country, as a people, as a court system,
4 are we selectively adjudicating these cases differently of
5 January 6th as if nothing like this has ever happened in our
6 country, which is not true?

7 And what I would ask of the Court is to recognize
8 that throughout history, we've had many events -- and in
9 particular in the last five years. Yet we don't see those
10 cases here. We saw the events of January 20, 2017. I
11 watched them on TV. I was appalled and shocked, as I'm sure
12 the American people were, seeing my events at the Capitol.
13 Yet they're not here. Those cases were never adjudicated.

14 Furthermore, they got to sue the Federal
15 Government. They got \$5 million -- \$4.8 million in
16 settlements because they were treated wrong by the MPD who
17 is now so -- we're so certain that they acted 100 percent
18 correctly that day in all matters that everybody needs to go
19 to prison.

20 Is it possible that the same organization that has
21 a history of violating the rights of demonstrators,
22 committing and starting acts of violence and operating with
23 munitions outside of the directive, is it not possible that
24 these things might have happened in some aspect somewhere in
25 the event of January 6th that could have affected some

1 person?

2 And I'm not saying that they're wrong. I agree.

3 Many people heroically stood up for the Capitol. I get

4 that. I want to make very clear to the Court that the Court

5 understands I am sorry for anyone that died that day.

6 Honorable Brian Sicknick -- I took the time to look into it.

7 He served both honorably in our United States military and

8 in the Capitol Police, as many people don't know.

9 But he was not bludgeoned to death, as was told to

10 me on my front porch on March the 4th, when men with guns

11 were pointing them at my family, by a fire extinguisher.

12 That was a false narrative that was portrayed. He did not

13 die from being gassed. Mr. Sicknick had a stroke. And I

14 recognize that stress creates strokes. And I understand

15 that. I've always been very forthright with that.

16 But why not just tell the truth? It's bad enough

17 that a man died potentially from the stress. Maybe it was a

18 coincidence; maybe it wasn't. But I would give it the

19 potential -- very stressful situation, caught in the midst

20 of that. I get it.

21 But the people that tried to render aid to him

22 were January 6th Defendants. They're currently Defendants.

23 And they attempted to render aid to Mr. Sicknick. I think

24 those things should be recognized. And I think that as many

25 people -- it's not fair to say everyone, all did something.

1 That's not consistent. What happened here -- and that's why
2 we don't adjudicate this as a 3,000-person case. We
3 adjudicate Mr. Evans differently, obviously, than we
4 adjudicate this person.

5 When you talked about and cited cases -- I went
6 back and looked at those cases. I was very thankful that we
7 had that intermission, if you will, adjournment. When I
8 looked into those cases, three of those four people stole
9 property from the Capitol. Three or four -- three of the
10 four. The Members Only jacket that Mr. Metcalf referenced
11 earlier was a Members Only sign that the police asked for
12 Ms. Courtright to return.

13 I do understand that it's not fair to expect that
14 Mr. Metcalf could have the intimate knowledge of my case and
15 the January 6th cases -- or any attorney for that matter,
16 after someone spent 18 months of their life digesting the
17 matter.

18 So therefore --

19 THE COURT: So with Mr. Ericson, you're talking
20 about the beer taken from the mini-freeze?

21 THE DEFENDANT: That is one of those instances,
22 your Honor. And the -- Courtright was walking around -- and
23 as well as -- if you notice that all of those people were in
24 sensitive areas, some of them more than one, and they were
25 sitting, they took time, and they were there for some period

1 of time. I walked in; I walked out. I'm not trying to
2 justify that going into a sensitive area makes it okay. I'm
3 just pointing out that there is a difference in our conduct
4 that day, and I would just like the conduct recognized in
5 this court, your Honor.

6 Furthermore, I'm glad to have it on the record so
7 that the public can recognize that, yes, I stand here and
8 say I did this, I broke this law, and I agree I should be
9 held accountable.

10 Going to jail? You want to talk -- you want to
11 talk about deterrence? Okay. I'm for deterrence. I get
12 it. And I can tell you right now I could walk out of here
13 with zero jail time, zero probation, and you'd still never
14 see me, and I'll still never be back. And that's it.

15 Now, if you gave me ten years' worth of jail, I'm
16 not going to change my political opinion. I'm not going to
17 change how I post on social media. I'm not going to change
18 what I say in the town square. But I'd certainly change the
19 time, place and manner in which I say it and to whom I say
20 it. I think that's fair enough to ask, and respecting that.
21 That's all that I ask you to respect on that matter.

22 Now, the application of the law that I was
23 discussing: Murder is murder and jaywalking is jaywalking.
24 I don't care if you did it in Portland, Oregon; St. Louis,
25 Missouri; or Washington --

1 THE COURT REPORTER: Slow down, sir, please.

2 THE DEFENDANT: I'm very sorry.

3 THE COURT REPORTER: For the sake of your record,
4 please slow down.

5 THE DEFENDANT: Yes, ma'am. I'm sorry. I
6 apologize.

7 THE COURT: Let me ask the court reporter. Do you
8 need a break?

9 THE COURT REPORTER: I'm okay, Judge.

10 THE COURT: Let me know.

11 Slow it down. How much longer are you going to
12 go?

13 THE DEFENDANT: Your Honor, I have -- I can move
14 quickly -- I can move quickly through those.

15 THE COURT: Well, we don't want you to speak
16 quickly. I'm just wondering how much --

17 THE DEFENDANT: Material-wise, I have six slides.
18 We've been through 30.

19 THE COURT: Okay.

20 THE DEFENDANT: Fair enough? Thank you, your
21 Honor. I appreciate the leeway.

22 Federal law should be applied evenly to parties
23 throughout the country, to include all federal jurisdictions
24 and all persons of all political affiliations, races,
25 creeds, sex and, therefore, without prejudice.

1 THE COURT: All right. You've made -- let's not
2 make the same points again.

3 THE DEFENDANT: Okay.

4 THE COURT: You've made that point already.

5 THE DEFENDANT: Okay. I'll move on from that,
6 then, your Honor.

7 If I believe something to be wrong or unjust or
8 corrupt, I will fight. Saying that I will fight doesn't
9 mean that I mean weapons of destruction. It doesn't mean
10 I'm taking up arms, and it doesn't mean I intend to inflict
11 bodily injury.

12 The word "fight" has long been accepted. I don't
13 think that we have to get through that in this court. I
14 think we can accept that politicians, political matters --
15 many of the social media posts that I pointed out earlier --
16 as I'll get into this, and I'll move quickly through this --
17 again, you're going to be hard pressed to find anyone
18 that -- where I -- any of those posts aren't echoed or first
19 stated by political officials, even -- i.e., Congress,
20 Senate, et cetera, et cetera.

21 I believe and support those people that say we've
22 got to fight, we've got to make changes. And that's what we
23 do in elections. Elections have to be sacred and we have to
24 uphold what needs to be.

25 So I want to fight for American -- and our values,

1 not in our streets, but in the belly of the beast where the
2 sickest, most unnoticed corruption exists, the building
3 where more crimes against the people originate than any
4 building on Earth, the United States Capitol. I want to
5 take that political interest and do the right thing, your
6 Honor.

7 And I intend to be there one day, one way or
8 another, involved legally, invited, and hopefully through an
9 election. But I don't want to get into that.

10 I'm not a violent man. I have no violent history.
11 I've never destroyed anything or anyone.

12 Many people in our government were born of the
13 fire of activism. I think -- they were not prosecuted or
14 held accountable maybe for an action, or maybe they were,
15 but it drove something. It made something come alive in
16 them and a spirit, a renewed spirit of America, recognizing
17 something, taking part in the process and getting involved.

18 Just for the record, I wanted to go turn myself
19 in. As a matter of fact, I was calling an attorney on the
20 morning of January 7th, an attorney that I had for another
21 matter, not for a criminal matter, some years ago and
22 suggesting that I wanted to go and set the record straight
23 and say, Hey, wait a minute, I didn't do that, I wasn't an
24 insurrectionist, I wasn't a seditionist, I wasn't there to
25 overthrow the government.

1 And I got the advice not to do that. So you guys
2 actually only know of three attorneys. I fired three before
3 I got to -- while we were in court, just so you know,
4 because I disagreed and I wanted to go forward and I wanted
5 to say I was there. I wanted to turn myself in, and I was
6 told no. They said it was a bad idea and they said: Look,
7 they've got so much to deal with with this, so many violent
8 people, they're not interested in some guy that walked
9 around protesting. They're not going to come after you.
10 Did you -- they asked me: Did you destroy something? Did
11 you hurt anyone?

12 And I said no.

13 And they said: Okay. They're not going to be
14 interested in you.

15 Little did I know.

16 So -- anyway, rather -- should have -- the -- I
17 would like to point out that, in Portland, the U.S. Attorney
18 Billy J. Williams announced that a Portland, Oregon,
19 resident has been charged with jumping onto the back of a
20 police officer who was arresting someone as the officer was
21 engaged in a lawful dispersal --

22 THE COURT: All right. Mr. Evans, you've made
23 your point about --

24 THE DEFENDANT: Okay. I'll move --

25 THE COURT: -- the West Coast --

1 THE DEFENDANT: -- on, your Honor.

2 THE COURT: -- events of 2020 not being handled,
3 you think, consistently with the way the Capitol January 6th
4 events were.

5 THE DEFENDANT: May I allow these last two, then?

6 THE COURT: Assuming it's not repetitive, sure.

7 THE DEFENDANT: No, your Honor. It's not
8 repetitive.

9 The United States Attorney's Office provides
10 disingenuous statements, in my opinion, while I provide
11 truth, in my opinion.

12 The remedy for speech that is false is speech that
13 is true. This is the ordinary course in a free society.
14 The response to the unreasoned is the rational; to the
15 uninformed, the enlightened; to the straight-out lie, the
16 simple truth. Anthony Kennedy.

17 Final one, your Honor: I want to be very clear
18 that, absent for the effort to defend myself where I have
19 another situation that I brought to this Court's attention
20 that I'm dealing with in a specific matter -- and I ask the
21 Court to look at that and be reflective of that matter.

22 Thank you for that.

23 I will tell you that myself, along with many
24 900-plus January 6th Defendants, have experienced what we
25 can only call social terrorism at this point, I believe. I

1 don't think it meets the reasonable constructs of a good
2 community policing of people doing wrong. I don't think
3 that people should lose their job for walking into a
4 building taking video.

5 If you beat a police officer, you need to go a lot
6 further. Okay? Great. You know, if you did something
7 horrible, great. Okay. I can't find an instance where
8 that's justified unless you're trying to save a life. I
9 think that you can try and get -- intervene between
10 something saving a life.

11 And I think that some of the events around Rosanne
12 Boyland should be looked at very closely, your Honor,
13 because I believe it is undisputed by the Government that a
14 life was lost there that day, and by the manner in which it
15 was lost may very well create -- give cause to some people
16 to be involved in engaging with the police.

17 I do not support violence and I do not support
18 people being violent with the police, as I've said very
19 clearly. A separate issue.

20 People's marriages have suffered, not [sic] to
21 include my own. My son has suffered, my older son has
22 suffered, my mother, my family. People have suffered this
23 because it's been pointed out -- made to be the greatest
24 crime in the history of the world.

25 This is not the greatest crime in the history of

1 the world, your Honor. This is not the case.

2 A crime, yes. Many criminal actions, yes. The
3 largest investigation, sure. But it's also -- there are
4 going to be two sides of the story, and I urge you to
5 consider that in January, when there's a new Congress, we're
6 going to have different types of investigation. I don't
7 want to go down that road.

8 I will tell you that the majority of America, when
9 I'm outside of D.C. and I'm speaking and I'm traveling at
10 these events and talking to people, they've had enough of
11 this. This isn't accurate and this isn't what should be
12 happening to these -- so many of these Americans in some
13 respects.

14 Hold people accountable on reasonable charges that
15 are accurate and fit and quit coming after people with five,
16 six, seven, eight ridiculous charges, only to plead to a
17 single misdemeanor. That's not the way we do things in this
18 United States. That's not consistent with what our justice
19 system is about. It's not consistent with what the
20 Department of Justice should stand for. And SWAT teams for
21 peaceful people is certainly something that I wish that
22 somebody would tell these people enough is enough.

23 I see you're almost out of coffee and I don't want
24 to keep you --

25 THE COURT: I'm out of --

1 THE DEFENDANT: Your Honor, I know that I can be
2 dull and boring and somewhat lengthy, but what I have to say
3 is important, your Honor.

4 The Federal Government and police are seeing no
5 punishment for the crimes and abomination that have occurred
6 in these matters. I contend that there's been wrongdoing
7 that have occurred in many courts, possibly even in my case.
8 Yet who will be punished? Who is affected? What damage is
9 done by what's happened throughout the history of my case
10 that your Honor is aware of?

11 Again, I'm not going to get into these details.
12 What is the damage from that? How do we weigh that on the
13 scales of justice? Not just the criminal justice system,
14 but where do we weigh it on the scales of justice, moral
15 justice?

16 Here I stand, guilty, pleading guilty, honestly
17 coming before this Court to say I committed the misdemeanor
18 offense, the Class A misdemeanor of knowingly entering and
19 remaining in a restricted building. Will there be long-term
20 harm for anyone from that event? Have I brought damage to
21 someone? Do they lay awake in bed at night wondering when a
22 light flashes on their window if that's somebody coming to
23 answer some of the problems? Does that happen? I don't
24 think so. What happens at my house -- it happens at my
25 house all the time. ●

1 THE COURT: Mr. Evans, there are a lot of
2 traumatized officers who defended the Capitol that day.

3 THE DEFENDANT: Oh, yes, your Honor.

4 THE COURT: And every individual who was part of
5 the mob contributed to that trauma.

6 THE DEFENDANT: I know that there is a -- I've
7 seen the *mens rea* defense. I've seen a lot of different
8 defenses and I've learned a lot about the law since then.
9 And I'm not disputing your Honor.

10 What I am saying is I -- I've recognized that
11 already earlier in my statement, that that's happening.
12 What I'm talking about is the members standing in this
13 courtroom, your Honor. And I'm saying in this courtroom and
14 for the Government.

15 I think that -- at this point, I think that the
16 damage that's inflicted in this case to me -- I think
17 there's certainly some sort of a semblance of some balance
18 in that issue as to what I've experienced and what was undue
19 burden placed on me and brought forward in this case that
20 was not necessary and should have never created a fear of
21 safety, harm or issue.

22 So therefore, with that, your Honor, I close and
23 tell you that I respectfully come before you -- I was humbly
24 here to tell you my side of the story. I'm glad that we
25 finally got to do that today and we can adjudicate this

1 case.

2 Thank you again.

3 THE COURT: Thank you, Mr. Evans.

4 Mr. Valentini, very briefly.

5 MR. VALENTINI: Yes, your Honor.

6 THE COURT: And I'll give the defense the last
7 word if you want to add anything, Mr. Metcalf.

8 MR. VALENTINI: Yes, your Honor. I will be very
9 brief. I just wanted to make a quick record.

10 I believe I heard the Defendant mention that there
11 is some video that he had wanted to acquire that he's not
12 had access to.

13 THE COURT: Helping a police officer.

14 MR. VALENTINI: Sorry? Yes. That's the one that
15 he referenced.

16 I have not ever received a request from defense
17 counsel for any video. I do not know which video in
18 particular this is in reference to.

19 What I do know is that, as part of the discovery
20 process in all these January 6th cases, we make videos
21 available to Defendants on a rolling basis as they become
22 available and as they get processed. And if this is a video
23 that is on -- from one of those sources -- I don't know if
24 it's already been produced --

25 THE COURT: I don't know if he knows whether it

1 exists. I think he's saying he would assume there's such a
2 video because there's a video of everything.

3 No? You know it exists?

4 THE DEFENDANT: I do know it exists, your Honor.

5 THE COURT: Okay.

6 MR. VALENTINI: Then my --

7 THE COURT: Is it not part of the global database?

8 MR. VALENTINI: Not knowing which video he's
9 referring to and whether they've looked for this video, it
10 is difficult for me to know. What I can say is that I've
11 not received a request from defense counsel trying to
12 identify it --

13 THE COURT: Is this something you've brought to my
14 attention, Mr. Evans or Mr. Metcalf?

15 MR. METCALF: It's not, your Honor. We just found
16 this in the matter of Martinez and his sentencing memo. And
17 he was videotaping, and there's pictures of that in his
18 sentencing memo that clearly have a picture of Mr. Evans
19 behind him.

20 THE COURT: Okay. When are you waiting to
21 make the Court aware of this?

22 MR. METCALF: Your Honor, I found out about this
23 yesterday.

24 THE COURT: We've had a -- how long has this
25 sentencing hearing been?

1 MR. METCALF: Well, that's what Mr. Evans --

2 THE COURT: We've been in here since 1:00 p.m. and
3 this is the first that I've heard of -- if you've got the
4 video, get it to me and let me see it.

5 MR. METCALF: I don't have the video.

6 THE COURT: Well, have you showed him that so he
7 can try to track it down?

8 MR. METCALF: No, your Honor.

9 THE COURT: Okay. Let's do that, because what I
10 don't want is this to come out later, after sentencing, and
11 have to go through a whole bunch of post-sentencing
12 litigation. All right? So you all have a photograph of a
13 video you know that exists. Give him that photograph, ask
14 him to find it, and we'll adjourn this until you have it and
15 I can review it.

16 MR. METCALF: So then, your Honor, if that's going
17 to be the scenario, then we ask for all -- because it goes
18 to a very simple point. The point is --

19 THE COURT: But why are you not making me aware of
20 this? I don't understand.

21 MR. METCALF: Your Honor, I have told you every
22 single time I've spoke before this Court with regard to
23 sentencing that our position is that while he was in the
24 Capitol, he was advocating for no violence and to back the
25 blue, while still in the building.

1 THE COURT: Right. And he said that on his video
2 that he was taping.

3 MR. METCALF: Yes. Now --

4 THE COURT: So this is more of the same?

5 MR. METCALF: Now we found an individual who is
6 recording himself, and Mr. Evans is in the background. We
7 believe that this is the same exact time that Mr. Evans was
8 advocating -- because it's during the five-minute period
9 when he's getting ready to leave and is actually leaving.

10 One second, your Honor.

11 THE COURT: All right. Mr. Evans clearly knows
12 what he did --

13 THE DEFENDANT: Yes.

14 THE COURT: -- so he can make clear perfectly to
15 me what he said and did. I think he's done that already.

16 Is there any need to --

17 MR. METCALF: Can I have one second, your Honor?

18 THE COURT: Yes.

19 (Counsel confers with the Defendant privately.)

20 MR. METCALF: Can I have a word with
21 Mr. Valentini?

22 THE COURT: I'm going to take a brief recess and
23 get some water.

24 MR. METCALF: Thank you, your Honor.

25 THE COURT: I'll be back in ten minutes.

1 (Thereupon a recess was taken, after which the
2 following proceedings were had:)

3 THE COURT: All right. Where do we stand with the
4 video?

5 MR. METCALF: Your Honor, I -- may I approach?

6 THE COURT: Isn't this more of the same? I mean,
7 I saw him on the tape say: No property damage, no violence.

8 MR. METCALF: While inside the Capitol?

9 THE COURT: Yes.

10 MR. METCALF: Then that's kind of where this point
11 goes to.

12 THE COURT: Okay. So it's more. It's cumulative?

13 MR. METCALF: It is cumulative. And you could ask
14 Mr. Evans himself. My conversation with him during the
15 break was: Where do we go from here?

16 I believe that the thought of coming back during
17 the holidays, the thought of him having to book another
18 flight, so on and so forth, also peace of mind.

19 THE COURT: Yes. Well, does the Government
20 dispute that this happened? I mean, he proffers that he
21 told the police --

22 What is it exactly you say he said?

23 MR. METCALF: So it was specifically -- I don't
24 know whose documents these are.

25 Are these yours, Mr. Valentini? The indictment

1 and --

2 MR. VALENTINI: Yes. They're mine.

3 MR. METCALF: Specifically out the Senate window,
4 the same window Mr. Evans went in, when he's leaving,
5 there's a video of him interacting with the police. When he
6 inter- -- and you can't hear it, from my understanding. But
7 when he interacts with the --

8 THE COURT REPORTER: Can or can't?

9 MR. METCALF: Cannot hear it. And then he --

10 THE COURT: Turn towards the microphone.

11 MR. METCALF: Then he uses the microphone -- or
12 his megaphone to say, in sum and substance -- I haven't seen
13 this, but this is what I'm -- this is the theory and what
14 I'm pursuing -- Mr. Evans could tell exactly what he said
15 better -- but in sum and substance: Let's leave the
16 building and don't destroy, and back the police.

17 THE COURT: Okay.

18 MR. METCALF: Those three things: Leave; don't
19 destroy; and -- don't harm; and back the police.

20 That's what video we would be looking for. And
21 that's what Mr. Evans and I have searched for and I've not
22 been able to find while inside the Capitol.

23 Now, we've raised this issue to your Honor. I've
24 addressed it. Mr. Evans has addressed it. I think your
25 Honor understands where we're going with this. We basically

1 have everything except for that cumulative evidence that
2 this video does exist and/or the Government not disputing
3 it.

4 So with that, I think, moving forward can outweigh
5 having to come back and adjourn, based on everything that
6 we've already gone through. But I would like to know the
7 Government's position.

8 THE COURT: Well, you don't know one way or the
9 other?

10 MR. VALENTINI: No, your Honor. The statement
11 that was just described is consistent with other statements
12 that the Defendant did make while inside the Capitol. But
13 without having reviewed the video, we can't say whether that
14 will confirm it --

15 THE COURT: Understood.

16 MR. VALENTINI: -- or it's cumulative.

17 THE COURT: Understood.

18 All right. Well, as I've said, I did see video
19 from the Government in which Mr. Evans said: Be peaceful.
20 This is a peaceful protest. Don't destroy anything. Don't
21 be violent. Words to that effect. Right?

22 MR. VALENTINI: Yes. Absolutely. That's one of
23 our sentencing exhibits.

24 THE COURT: So this seems more of the same.

25 Is there anything different, Mr. Evans?

1 MR. METCALF: Your Honor, in the interest of time
2 and economy, I think that Mr. Evans will agree to -- let's
3 move forward.

4 MR. VALENTINI: Your Honor, I just want to make
5 sure this is not just in the interest of time. It's that
6 they actually agree with that.

7 THE COURT: Yes. Do you want to adjourn this
8 until a later date?

9 THE DEFENDANT: (Shakes head in the negative.)

10 THE COURT: No? Okay.

11 THE COURT REPORTER: Can I get something verbal?

12 THE DEFENDANT: No, your Honor, I do not want to
13 adjourn. I apologize.

14 THE COURT: All right. Is there anything else?
15 Can I give reasons for my sentence? Is there any reason
16 why --

17 MR. VALENTINI: Not from the Government.

18 THE COURT: From the defense?

19 MR. METCALF: Your Honor -- we have nothing
20 further, your Honor. Thank you.

21 THE COURT: All right. I know last time we
22 discussed the firearm restriction that is a recommended
23 conditions of release by Probation.

24 Mr. Valentini, my understanding is he doesn't have
25 such a restriction on him now. Is that right?

1 MR. VALENTINI: Yes, your Honor. If I may address
2 the Court very briefly about that.

3 THE COURT: Yes. Briefly.

4 MR. VALENTINI: My understanding is that -- well,
5 he does not currently have that restriction. That
6 restriction was not put in place, as I understand --

7 THE COURT: Understood. But he has been out on
8 conditions of release without the restriction. The
9 Government didn't move to modify the conditions. The
10 Government has taken no action to change his conditions of
11 release to forbid him from having firearms. And now the
12 Government wants me to do it at sentencing?

13 MR. VALENTINI: What we will say is that the
14 probation office did recommend that a restriction be --

15 THE COURT: Understood. I want to know your
16 position.

17 MR. VALENTINI: To the extent -- we think that if
18 the probation officer who will be in charge of Mr. Evans's
19 supervision plans to have a different type of protocol where
20 they do need to go into the residence or they do home
21 visits, that could change the need for the restriction
22 compared to the time when the restriction was not put in
23 place in April of 2021 when it is my understanding -- I may
24 be incorrect about this -- but in many jurisdictions there
25 were no home visits for a certain type of --

1 THE COURT: Okay. Can I hear from Probation on
2 this? I can't recall exactly what we discussed last time.
3 I know there was a discussion about this. I'm reluctant to
4 add a condition now that hasn't been on him to date. Is
5 this something that, as a matter of course, is being
6 recommended in every one of these misdemeanor cases?

7 THE PROBATION OFFICER: Yes, it is, your Honor.

8 THE COURT: And are courts in this district
9 imposing them without any history of firearms or violent
10 criminal history?

11 THE PROBATION OFFICER: I can't say as to every
12 court in every case.

13 THE COURT: Because I don't recall having this in
14 other misdemeanor cases. I -- I really don't recall.

15 THE PROBATION OFFICER: I can't say that every
16 single case has the firearm restriction been imposed. The
17 probation office has recommended it as to each case because
18 if there is -- if there is supervision imposed as part of
19 the sentence, the probation office is required to conduct
20 home visits. And for the officer's safety, we ask that for
21 the term of the supervision the firearm is removed from the
22 residence.

23 And we recommend --

24 THE COURT: The firearm is removed?

25 THE PROBATION OFFICER: Right. Yes.

1 THE COURT: And this is for safety visits?

2 THE PROBATION OFFICER: Yes, your Honor. For the
3 officer's safety who will be conducting home visits as part
4 of the supervision.

5 THE COURT: Now, I'm wondering -- maybe I haven't
6 had this because --

7 THE PROBATION OFFICER: This was a standard
8 condition that was always imposed as part of the standard
9 conditions -- the 13 conditions that were imposed or
10 recommended by the probation office.

11 THE COURT: In these cases or every case?

12 THE PROBATION OFFICER: In every case, your Honor.

13 THE COURT: And that's still the case now?

14 THE PROBATION OFFICER: No, your Honor. After the
15 *Mathis* case law came out, firearm condition -- the 13
16 standard conditions, as the Court is aware, are
17 discretionary. The firearm condition is one of those.

18 However, the probation office is making a point to
19 ask the Court to continue to impose the firearm restriction.

20 THE COURT: So until recently, it was a standard
21 condition?

22 THE PROBATION OFFICER: Yes, your Honor. It was
23 part of what was known as a standard condition.

24 THE COURT: I see. So that's why it wasn't
25 listed.

1 THE PROBATION OFFICER: Yes, your Honor.

2 THE COURT: So now we're going to start seeing
3 these as listed?

4 THE PROBATION OFFICER: Yes, your Honor. This one
5 in particular, in consideration of the officer's safety when
6 they have to conduct home visits, if supervision is imposed
7 as a term of the -- is imposed as a -- in the sentencing.

8 THE COURT: Okay. And that's regardless of
9 whether the Defendant has any history of violence or firearm
10 offenses? That's just --

11 THE PROBATION OFFICER: That's correct.

12 THE COURT: -- a standard -- not a standard --
13 officially a standard condition, but one in practice the
14 probation office will recommend in every case?

15 THE PROBATION OFFICER: Yes, your Honor.

16 THE COURT: And that's for officer safety for --
17 will you be doing unannounced visits in this case if he's on
18 supervision?

19 THE PROBATION OFFICER: That is a possibility.
20 Yes, your Honor.

21 THE COURT: Okay. Mr. Metcalf, in light of what
22 Probation said here, for officer safety, is this really an
23 issue of contention with Mr. Evans?

24 MR. METCALF: Yes, it is, your Honor. And I ask
25 that you look at January 6th Defendant Jenny Cudd. Jenny

1 Cudd moved to alter the judgment against her denying her
2 right to possess a firearm. She contended that in a
3 nonviolent misdemeanor, the firearm restriction was not
4 reasonably related to her conviction, and that was ordered
5 to be held true -- or it was actually affirmed in her
6 matter.

7 THE COURT: You mean on appeal or before the
8 district court?

9 MR. METCALF: I don't have the cite here. I'm
10 sorry. I have notes. But it looks like it was ordered that
11 her motion to alter judgment is granted. And the cite would
12 allow me to see if it was on appeal. I don't know if she
13 moved back to the district court with --

14 THE COURT: All right.

15 MR. METCALF: -- this application. But Jenny Cudd
16 did make this --

17 THE COURT: What's the date of this case? Is this
18 a January 6th Defendant?

19 MR. METCALF: Yes. And it cites to the District
20 of C-O-L-W-N [sic] v. Heller, H-E-L-L-E-R. That's a United
21 States Supreme Court case with the -- 554 U.S. --

22 THE COURT: I know *Heller*. But I'm wondering what
23 that case is that you're citing. You don't know?

24 MR. METCALF: *Cudd*, C U-D-D. I don't know. I
25 know that --

1 THE COURT: All right. Well, here's my thinking
2 on this, Mr. Valentini: This is not a case like a drug case
3 where Probation is doing unannounced searches. The only
4 other conditions are financial disclosure conditions. I
5 mean, based on Mr. Evans's history, I don't see Probation
6 doing -- needing to do unannounced visits in order to
7 effectuate the sentence of this Court.

8 So I'm a little reluctant to impose it here unless
9 you can articulate an argument that I'm missing. In terms
10 of the nature of the offense, in terms of his history, in
11 terms of --

12 MR. VALENTINI: No. We wouldn't make any argument
13 in that respect.

14 Our position reflected the position of the
15 probation office and the interest of officer safety.

16 THE COURT: Okay. So my very capable law clerk
17 here just put forth the *Jenny Cudd* order. It's 21-68. This
18 is a McFadden case. She moved to alter the Court's judgment
19 denying the right to possess a firearm.

20 Judge McFadden noted that this is a discretionary
21 condition of probation and that the condition can only be
22 imposed by the Court to the extent that such conditions are
23 reasonably related to the factors set forth in 3553(a)(1)
24 and (a)(2) and to the extent that such conditions involve
25 only such deprivations of liberty or property as are

1 reasonably necessary for the purposes indicated in
2 Section 3553(a) (2).

3 So the Government opposed the motion, described
4 Cudd as courting violence. She wore a bulletproof
5 sweatshirt to the Capitol. And the Government argued it
6 could be a danger -- she could be a danger to probation
7 officers overseeing her supervision. She had no prior
8 criminal history.

9 So Judge McFadden did not limit the right in this
10 case involving a nonviolent misdemeanor who credibly feared
11 for her safety.

12 So I'm wondering, what is Mr. Evans's need for the
13 firearm in his home?

14 MR. METCALF: He lives in Texas, Judge.

15 THE COURT: I mean, I assume it's what we've
16 discussed in the sealed hearing.

17 MR. METCALF: That and other things, your Honor.
18 I mean, it's never been a condition before, so why make it
19 one now? No history of violence, no violence on
20 January 6th. Not reasonably related.

21 THE COURT: But he's also expressed concerns in
22 earlier hearings about threats and the like at his home. So
23 given all of that --

24 MR. METCALF: That is true.

25 THE COURT: -- Mr. Valentini, I'm not inclined to

1 impose it.

2 MR. VALENTINI: Yes, your Honor.

3 THE COURT: Do you want to be heard any further?

4 MR. VALENTINI: No further, your Honor.

5 THE COURT: Okay. All right. And the rest of the
6 conditions would be financial related.

7 Okay. All right. I'm just briefly going to
8 summarize my sentence here. It's been a long day. We've
9 discussed a number of these issues in the sentencing
10 hearing, so I'm just going to summarize how I'm looking at
11 this case.

12 The Court fully recognizes that there's no
13 evidence that Mr. Evans engaged in any violence or any
14 property damage on January 6th of 2021, and yet I think we
15 all agree here, Mr. Evans included, that he committed a
16 serious offense. He entered the U.S. Capitol on January 6th
17 of 2021 without permission through a broken window while
18 alarms were blaring. And once he was inside the Capitol, he
19 used a megaphone to encourage others to enter the Capitol
20 with him.

21 As I stated in this hearing, his mere presence,
22 coupled with his act of encouraging others to enter the
23 Capitol, presented a safety risk to those inside of the
24 building, including the uniformed officers who defended the
25 Capitol that day, and he, in fact, encountered a line of

1 officers in riot gear when he entered.

2 I understand what he said about some of those
3 officers' actions that day. Still, I don't think there was
4 any question that Mr. Evans didn't have a right to be in the
5 Capitol and that he was joining a large mob inside the
6 Capitol, and that presented a safety risk to the officers;
7 it presented a safety risk to those inside the Capitol. It
8 also demonstrated a great lack of respect to not only the
9 law enforcement officers, but members of Congress as well,
10 particularly on this day of all days when Congress was
11 fulfilling its constitutional duty to certify the results of
12 the election.

13 Based on the time and the location where Mr. Evans
14 was that day, given the fact that he spent some amount --
15 decent amount of time on the balcony on the west Senate side
16 of the Capitol Building before entering the Capitol, I find
17 it inconceivable that Mr. Evans did not know that at least
18 some members of the crowd were violent -- it was a
19 boisterous crowd -- and that they presented a safety risk to
20 individuals and to property in and around the Capitol.

21 As I said, the mob outside was boisterous. He
22 climbed through a broken window. There was broken glass all
23 around his point of entry. Alarms blared. The line of
24 police officers were in riot gear. All of those factors
25 lead me to believe that he understood that there was a risk

1 to the officers' safety and members of Congress.

2 As an aside, but not necessary to my finding, I
3 note that this conclusion is further supported by the
4 countless videos of the west side of the Capitol that I've
5 seen in other cases over the course of the past year plus
6 beyond the ones that I viewed for this case.

7 But regardless of whether Mr. Evans knew about the
8 violence that day, the property destruction that day, there
9 certainly can be no question now that he is aware of the
10 extent of physical violence and property damage that
11 occurred on January 6th.

12 Even so, since January 6th, he's made a number of
13 public statements in which he appears to the Court to
14 celebrate and minimize the attack on the Capitol. I'm
15 pointing to social media posts; I'm pointing to videos he
16 provided to the Court. I've listened to him, not only today
17 at this hearing, but at the sentencing hearing several weeks
18 ago.

19 I do not believe that, although he used the word
20 today, I think, for the first time that he condemned the
21 attacks, that he shows full and genuine remorse about what
22 happened on January 6th.

23 And so, in fashioning the appropriate sentence
24 here, the Court does place weight on what it views as a lack
25 of full and complete remorse, as many other Defendants who

1 have appeared before me have shown who did actions similar
2 to Mr. Evans, but the words they used after January 6th are
3 very different than what I've heard here.

4 I want to be very clear that the Court is not
5 sentencing Mr. Evans based on his associations, based on his
6 statements or based on his views. He has every right -- he
7 is absolutely correct: He has every right under our
8 Constitution to join whatever lawful group he seeks to
9 associate with. He also has a right to hold and express
10 whatever views he wants to, however misguided, and that's
11 true for the 2020 presidential election, that's true for
12 members of Congress, the Department of Justice, the FBI and
13 even the Courts.

14 What he did not have a right to do is enter the
15 Capitol on January 6th without permission to do so and
16 encourage others to do so. And that's what he is being
17 punished for here, as well as, again, what I view as his
18 lack of full, genuine remorse.

19 Mr. Evans qualifies for a two-level reduction in
20 his guideline offense level because he has accepted
21 responsibility by admitting to the elements of the criminal
22 offense to which he pled guilty.

23 That's different, of course, than expressing full
24 remorse. The Court notes that, with the exception of his
25 less-than-full remorse, his personal history and his

1 characteristics generally weigh in his favor. Mr. Evans has
2 been steadily employed and he currently is a sales manager.
3 He lives with his family, a wife and two children in Texas.
4 He's completed his GED and two years of community college.

5 He reports that he's not struggled with any
6 addictions or mental health issues. His only criminal
7 history is a traffic citation that occurred nearly 25 years
8 ago.

9 The Court has received and reviewed a number of
10 letters, including from his brother, his mother and his
11 wife. All attest to his acts of kindness and the support he
12 has given his family and members of the community.

13 I'm also taking into account here, in deciding
14 where to sentence Mr. Evans, the family issues he's raised
15 under seal. And in assessing where to sentence Mr. Evans,
16 again, I'm taking into account the information he has
17 provided to law enforcement as part of his debriefings, as I
18 noted on September 13th and earlier today. I'm also taking
19 into account his performance on pretrial supervision as well
20 as his plea of guilty which has saved the Government and the
21 Court considerable resources.

22 I have carefully considered analogous cases in
23 this district. No two cases are exactly the same, as both
24 sides have pointed out here. But I have considered in
25 particular the cases of *U.S. v. Howell*, *U.S. v. Rau*, *U.S. v.*

1 *Courtright* and *U.S. v. Ericson*, as well as other cases cited
2 in the Government's memorandum, and cases that this Court
3 has handled. So I have considered sentences I've imposed in
4 other cases, January 6th cases.

5 As I've explained on multiple occasions, in
6 January 6th cases involving misdemeanors, I do not believe
7 that I have the authority, the statutory authority, to
8 impose both a period of imprisonment and a period of
9 probation. And as I've said in other cases, I think a
10 longer period of supervision is appropriate in cases like
11 this because deterrence is very important to the Court, and
12 Mr. Evans has made clear that I won't see him again, and I
13 hope and trust that he's correct.

14 Still, I want to have supervision in a case
15 involving the kind of conduct that's at issue here and,
16 therefore, I will impose a sentence of probation of three
17 years. I cannot impose a sentence of imprisonment of the
18 same length -- I cannot impose a sentence of imprisonment
19 with a term of supervised release of the same length. So if
20 I want to impose three years of supervision, then I think I
21 need to look at intermittent confinement, which is what I'm
22 considering here. And I think the case law suggests that
23 too long a period of intermittent confinement is not
24 appropriate either.

25 And so, balancing all those factors, balancing the

1 need to avoid unwarranted sentencing disparities,
2 considering all the other 3553(a) factors, the guideline
3 range and all the other factors we've discussed under seal,
4 I do believe that a sentence of three years' probation
5 coupled with 20 days of intermittent confinement as a
6 condition of probation is sufficient but not greater than
7 necessary to achieve the purposes of sentencing.

8 So I will now -- if I can find the script -- read
9 the formal sentence of the Court. And I will give both
10 sides an opportunity to object before I actually impose the
11 sentence.

12 I will also impose -- the Government hasn't sought
13 a fine. Correct?

14 MR. VALENTINI: That's correct.

15 THE COURT: Probation has suggested a \$2,000 fine.
16 I will impose a \$5,000 fine. I think Mr. Evans clearly has
17 the means to afford such a fine.

18 Mr. Hopkins -- never mind. Here it is.

19 All right. So pursuant to the Sentencing Reform
20 Act of 1984, and in consideration of the provisions of
21 Title 18 of the United States Code, Section 3553, as well as
22 the advisory sentencing guidelines, it is the judgment of
23 the Court that you, Treniss Jewell Evans, III, are hereby
24 sentenced to a term of probation of 36 months on Count 2.

25 You are further sentenced to serve, as a condition

1 of that probation, a sentence of -- an intermittent sentence
2 of incarceration of 20 days, a total sentence of 20 days'
3 imprisonment. In addition, you are ordered to pay a special
4 assessment of \$25.

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

9 I think, Mr. Metcalf, we reviewed these last time.
10 Is there a need -- I think we might have even read the
11 standard and the discretionary conditions?

12 MR. METCALF: And that's where we spoke about the
13 firearm condition --

14 THE COURT: Yes. So there's not a need to review
15 those again?

16 MR. METCALF: No, your Honor.

17 THE COURT: All right. So, Mr. Evans, you must
18 not commit another federal, state or local crime; you must
19 not unlawfully possess a controlled substance; you must
20 refrain from any unlawful use of a controlled substance.
21 You must submit to one drug test within 15 days of placement
22 on supervision and at least two periodic drug tests
23 thereafter.

24 Let me ask the Government: Does the Government
25 have any objection to the Court waiving the drug testing?

1 Is there any history of drug abuse with Mr. Evans?

2 MR. VALENTINI: No, there is no history that we
3 know of.

4 THE COURT: All right. Probation is not aware of
5 any? I'm going to waive. I think those are waivable
6 conditions, are they not?

7 THE PROBATION OFFICER: Yes, your Honor.

8 THE COURT: Okay. So I'll waive the drug testing.
9 But you cannot unlawfully possess a controlled substance,
10 Mr. Evans.

11 You must make restitution and, consistent with the
12 plea agreement, you are ordered to pay \$500 to the Architect
13 of the Capitol. You shall pay the balance of any
14 restitution owed at a rate of no less than \$100 each month
15 and provide verification to the probation office.

16 In addition, in terms of special conditions, you
17 shall provide the probation office with your income tax
18 returns, authorization for release of credit information,
19 information about any business or finances in which you have
20 control or interest until all restitution is satisfied.

21 And you must not incur new credit charges or open
22 additional lines of credit without the approval of the
23 probation officer, which I assume is until the financial
24 obligations are satisfied.

25 Is that right?

1 THE PROBATION OFFICER: Yes, your Honor. Once the
2 fine, the restitution and the special assessment are paid in
3 full.

4 THE COURT: Do you understand, Mr. Evans? There
5 should be -- if you pay the restitution and you pay the
6 fine, then there won't be a need for these special
7 conditions. If you don't, then those would be -- they're
8 imposed, but you won't need to comply with them so long as
9 you've paid the money due and owing in terms of fine and
10 restitution.

11 Do you understand?

12 THE DEFENDANT: Yes, your Honor. I understand.

13 THE COURT: All right. Mr. Evans, to the extent
14 you have not validly waived your right to appeal as part of
15 your plea agreement, you do have the right to appeal. To do
16 so, you must file any appeal within 14 days of the date that
17 the Court enters judgment. If you are unable to afford the
18 cost of an appeal, you can request permission from the Court
19 to file an appeal without cost to you.

20 Before I actually impose the sentence as
21 announced, does Probation have any concerns with the way the
22 Court has articulated the sentence?

23 THE PROBATION OFFICER: For clarification
24 purposes, your Honor, the Court did not impose the firearm
25 restriction?

1 THE COURT: I did not. Did I state that? I did?

2 THE COURTROOM DEPUTY: You stated that you did not
3 impose it.

4 THE COURT: Okay. All right. No. The only
5 special conditions I imposed are the financial-related
6 conditions which will only become necessary if Mr. Evans
7 doesn't pay the fine and special assessment and restitution.
8 Correct?

9 THE PROBATION OFFICER: Yes, your Honor.

10 THE COURT: Okay. But in terms of how I've stated
11 the intermittent confinement, is that clear to Probation?
12 The 20 days -- it's not all at once. It can be
13 intermittent.

14 THE PROBATION OFFICER: Yes. The probation office
15 understands that, your Honor.

16 We will -- the probation office has had -- in
17 prior experiences with dealing with intermittent
18 confinement, the Bureau of Prisons has come back with --
19 sometimes they are okay with intermittent confinement and
20 sometimes they are not, depending on where the Defendant is
21 going to serve. And in this case, it's Texas. I would need
22 to hear back from them to see if they --

23 THE COURT: And if they say they cannot effectuate
24 the sentence, then you come back and I do a resentencing?

25 THE PROBATION OFFICER: Yes, your Honor. We

1 would -- the probation office would then petition to modify
2 the sentence.

3 THE COURT: You don't know, based on all of the
4 cases, whether Texas is a jurisdiction that can handle
5 intermittent confinement?

6 Do you know, Mr. Valentini?

7 MR. VALENTINI: No, your Honor. I do not.

8 THE PROBATION OFFICER: This is something that I
9 would need to get back to your Honor. The Western District
10 of Texas -- and I'm not sure. It used to be that it was
11 based on CDC recommendations due to COVID.

12 THE COURT: All right.

13 THE PROBATION OFFICER: But since the CDC
14 recommendations have now changed, I don't know how the
15 Bureau of Prisons is handling it.

16 THE COURT: All right. Well, I'll have to
17 reassess that if there's a need. But part of the length of
18 sentence is driven by the fact that I don't think that the
19 Court can do an extensive period of incarceration with
20 probation. So I'm trying to follow the guidelines and the
21 case law. And I think that that means that the sentence
22 needs to be no more than three weeks or less of intermittent
23 confinement. That's how I read the case law.

24 THE PROBATION OFFICER: I understand, your Honor.

25 THE COURT: All right. Any objection,

1 Mr. Valentini?

2 MR. VALENTINI: Your Honor, no objection. Just
3 one point of clarification. Is the Court imposing a
4 community service requirement or not?

5 THE COURT: No. You didn't ask for that, did you?

6 MR. VALENTINI: I believe we did in the sentencing
7 memorandum.

8 THE COURT: You did? I don't -- I mean, I think
9 the fine is sufficient.

10 MR. VALENTINI: Understood.

11 THE COURT: The firearm is a discretionary
12 condition now. Correct?

13 THE PROBATION OFFICER: Yes.

14 THE COURT: Okay. Anything else?

15 THE PROBATION OFFICER: I'm not sure, your Honor,
16 if the Court is going to address this, but with regards to
17 jurisdiction of the matter, is the Court --

18 THE COURT: Oh. I will transfer supervision but
19 not jurisdiction of the case. I'm going to maintain
20 jurisdiction.

21 THE PROBATION OFFICER: Thank you, Judge.

22 THE COURT: All right.

23 THE COURTROOM DEPUTY: The Western District of
24 Texas?

25 THE PROBATION OFFICER: And this is -- transfer

1 supervision to the Western District of Texas.

2 THE COURT: Okay.

3 THE PROBATION OFFICER: But the jurisdiction is to
4 remain with --

5 THE COURT: Correct.

6 THE PROBATION OFFICER: -- D.C.?

7 THE COURT: Yes.

8 THE PROBATION OFFICER: Thank you, Judge.

9 THE COURT: All right. Mr. Metcalf, do you have
10 any objections to the sentence as announced?

11 MR. METCALF: No, your Honor.

12 THE COURT: If there is a problem with the
13 sentence and I have to redo this, I'm wondering whether --
14 for a modification of the sentence -- whether Mr. Evans
15 would have to be back before the Court. I think -- I would
16 be surprised if it couldn't be handled on the papers with
17 his consent. But that's something I'd need you all to look
18 into. I didn't anticipate that there could be a problem
19 with intermittent confinement. I'd be surprised if there
20 is. But if there is and it's lawful for the Court to modify
21 the sentence without Mr. Evans present, I don't expect him
22 to come back here.

23 MR. METCALF: What about virtually as well?

24 THE COURT: Well, same. But we have the same
25 CARES Act restriction that's been lifted.

1 MR. METCALF: Sure.

2 THE COURT: I don't know that this would be deemed
3 a true resentencing as opposed to modification and whether
4 that's acceptable to do virtually. If so, I'm happy to
5 handle it that way. I just don't know the answer to that.

6 Do you know?

7 THE PROBATION OFFICER: If there were to be a
8 problem that comes up with the Bureau of Prisons having an
9 issue with intermittent confinement, I believe that the
10 probation office can have Mr. Evans sign a waiver for a
11 hearing and just ask that the -- that the sentence be
12 modified with regards to the intermittent confinement, your
13 Honor.

14 THE COURT: Okay. All right. Well, again, I'm
15 open to that.

16 And in terms of the intermittent confinement, this
17 is something Probation will work out with him and with BOP.

18 THE PROBATION OFFICER: So once -- yes. Once he
19 reports -- once the assignment is made in Texas and he
20 reports to his supervision officer, they will have a better
21 understanding as to when he should be reporting --

22 THE COURT: Okay.

23 THE PROBATION OFFICER: -- to the Bureau of
24 Prisons facility that he's assigned to.

25 THE COURT: All right. Because I would expect

1 that -- oftentimes defendants are able to continue their job
2 and report on the weekends. In this case, it would be ten
3 weekends.

4 THE PROBATION OFFICER: Yes, your Honor. That is
5 my understanding of how some of them handle it. In a
6 separate case, in the Middle District of Florida, that
7 wasn't the case. They -- and that was due to COVID
8 restrictions. Now, I don't know if the same will apply in
9 Texas and how the Bureau of Prisons is handling things in
10 the Western District of Texas.

11 THE COURT: All right. Okay. Mr. Evans, do you
12 have any questions?

13 THE DEFENDANT: Your Honor, the -- I guess the
14 day -- you mentioned weekends. Is this restricted to
15 being -- this is -- I think -- I guess it's my
16 understanding --

17 MR. METCALF: The issue is he's worried about
18 doing weekends alone. And I'm trying to explain to him that
19 we could deal with Probation and the Department of Prisons
20 where it doesn't necessarily have to be a weekend; it could
21 be for a brief --

22 THE COURT: I leave that up to Probation and BOP.
23 But I would think that weekends are preferable. No? For
24 work?

25 MR. METCALF: His wife is not home. She works

1 during that time and that's when the children --

2 THE COURT: Okay. All right. Well, obviously, if
3 there are childcare issues, I'm sure Probation would work
4 with you.

5 MR. METCALF: That's my understanding as well.
6 Thank you, Judge.

7 THE PROBATION OFFICER: Your Honor, if I may.

8 THE COURT: Yes.

9 THE PROBATION OFFICER: Just to clarify, you know,
10 that it is not entirely up to the probation office to
11 determine when the Bureau of Prisons --

12 THE COURT: No, I understand.

13 THE PROBATION OFFICER: Okay.

14 THE COURT: And you don't necessary have
15 flexibility. But to the extent you do, you will try to work
16 with Mr. Evans. But this is really not -- BOP is the one
17 who makes the determination.

18 THE PROBATION OFFICER: Yes, your Honor. And I
19 would -- I would anticipate that the Western District of
20 Texas, the probation officer who will be supervising him,
21 would be flexible if there is an issue with, like,
22 childcare. And if it would mean that there would be a minor
23 left at home alone, I would anticipate that the supervision
24 officer in the Western District of Texas would understand
25 that. But, of course, that again is not up to the probation

1 department.

2 THE COURT: Right.

3 THE PROBATION OFFICER: It's up to the Bureau of
4 Prisons.

5 THE COURT: Understood.

6 And you understand that, Mr. Evans? Obviously, if
7 there's an issue like childcare, you know, that's --

8 THE PROBATION OFFICER: The probation office will
9 understand, but we can't enforce that on the Bureau of
10 Prisons.

11 THE COURT: Understood. All right. Well, to the
12 extent you can work with them, work with them.

13 Okay. Anything else?

14 MR. VALENTINI: No, your Honor.

15 THE COURT: Okay. Is there a motion to dismiss
16 remaining counts?

17 MR. VALENTINI: Yes.

18 THE COURT: Any objection?

19 MR. METCALF: No objection to that.

20 THE COURT: Okay. The motion is granted.

21 MR. VALENTINI: That will be Count 1, 3, 4 and 5.

22 THE COURT: Okay. All right. Thank you.

23 MR. VALENTINI: Thank you.

24 THE COURT: All right, then. Mr. Evans, I wish
25 you luck. I hope you will be a leader for our country if

1 you choose to pursue a career in public service.

2 THE DEFENDANT: Thank you.

3 (Proceedings concluded.)

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CERTIFICATE

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2
3 I, LISA EDWARDS, RDR, CRR, do hereby
4 certify that the foregoing constitutes a true and accurate
5 transcript of my stenographic notes, and is a full, true,
6 and complete transcript of the proceedings produced to the
7 best of my ability.
8
9

10 Dated this 1st day of December, 2022.
11

12 /s/ Lisa Edwards, RDR, CRR
13 Official Court Reporter
14 United States District Court for the
15 District of Columbia
16 333 Constitution Avenue, Northwest
17 Washington, D.C. 20001
18 (202) 354-3269
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