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BEFORE THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	.	
	.	Case Number 21-cr-579
Plaintiff,	.	
	.	
vs.	.	
	.	
BRANDON STRAKA,	.	January 24, 2022
	.	11:10 a.m.
Defendant.	.	

TRANSCRIPT OF SENTENCING HEARING
BEFORE THE HONORABLE DABNEY L. FRIEDRICH
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the United States:	BRITTANY REED, AUSA United States Attorney's Office 650 Poydras Street, Suite 1600 New Orleans, Louisiana 70130
For the Defendant:	BILAL ESSAYLI, ESQ. Essayli & Brown LLP 18191 Von Karman Avenue, Suite 100 Irvine, California 92612
	STUART J. DORNAN, ESQ. Dornan, Troia, Howard, Breikreutz, Conway & Dahlquist, PC 1403 Farnam Street, Suite 232 Omaha, Nebraska 68102
Official Court Reporter:	SARA A. WICK, RPR, CRR United States District Court for the District of Columbia 333 Constitution Avenue Northwest Room 4704-B Washington, D.C. 20001 202-354-3284

Proceedings recorded by stenotype shorthand.
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P R O C E E D I N G S

(All participants present via video conference.)

COURTROOM DEPUTY: Your Honor, we are in Criminal Action 21-579, United States of America versus Brandon Straka.

If I can have the parties identify themselves for the record, beginning with the United States.

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

MR. DORNAN: Good morning, Your Honor. Stuart Dornan on behalf of Mr. Straka, who voluntarily appears by video conference.

MR. ESSAYLI: Good morning, Your Honor. Bilal Essayli on behalf of Mr. Straka.

PROBATION OFFICER: Good morning, Your Honor. Jessica Reichler on behalf of the Probation Office.

THE COURT: We are here for sentencing. And while I don't need to make a finding under the CARES Act, I do want to confirm with Mr. Straka himself that he does wish to appear today by video conference rather than wait until a time that he can appear in person before me in the courtroom for sentencing.

Mr. Straka, your attorney has indicated that you would like to proceed by way of video conference, before he has indicated because of COVID and your desire to get this case resolved. I just want to confirm with you before we proceed that that's correct and you don't want to wait until you can appear in

1 court.

2 THE DEFENDANT: Yes, Your Honor.

3 COURTROOM DEPUTY: Your Honor, we're having trouble
4 hearing you.

5 THE COURT: Okay. Just one moment.

6 All right. Is that better?

7 COURTROOM DEPUTY: Yes, Your Honor.

8 THE COURT: Let me know if the sound trails off.

9 I was asking, who will be speaking for the defense? Is
10 that Mr. Dornan, or is that Mr. Essayli?

11 MR. ESSAYLI: I will be speaking for the defense
12 today, Your Honor.

13 THE COURT: So Mr. Essayli, I just want to make sure
14 that you or Mr. Dornan have reviewed the presentence report with
15 Mr. Straka?

16 MR. ESSAYLI: Yes, Your Honor.

17 MR. DORNAN: That's correct, Your Honor.

18 THE COURT: And Mr. Straka, have you had adequate time
19 to review the report and discuss it with your attorney?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Have you had a chance to correct any
22 errors in the report?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Are you satisfied with your attorneys'
25 services in this case?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: And have you also had a chance to review
3 all of the filings in this case, including all the memoranda
4 that have been submitted to the Court and the exhibits in
5 connection with the sentencing?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Mr. Essayli, are there any unresolved
8 objections or factual inaccuracies to the presentence report?

9 MR. ESSAYLI: Not to the facts, Your Honor. If we get
10 to a sentence that includes probation, I would like to be heard
11 on the conditions proposed, but no factual objections to the
12 sentence at this point -- or to the presentence report, rather.

13 THE COURT: Does the government have any objections to
14 the report? You're on mute.

15 MS. REED: I'm sorry. No objections, Your Honor.

16 THE COURT: All right. I will accept the presentence
17 report as my findings of fact pursuant to Rule 32 of the Federal
18 Rules of Criminal Procedure. Consistent with Section 1B1.9 of
19 the guidelines, the guidelines do not apply to this petty
20 offense which is a Class B misdemeanor. So I will consider the
21 factors set forth in Title 18 United States Code Section 3553(a)
22 in deciding the appropriate sentence in this case.

23 Ms. Reed, I will begin with you and give you a chance to
24 allocute on behalf of the United States.

25 MS. REED: Thank you, Your Honor. I think I'm off

1 mute this time.

2 THE COURT: Yes.

3 MS. REED: Your Honor, the government has had an
4 opportunity to view all of the evidence in this case, and that
5 does include the mitigation evidence that has been offered by
6 Mr. Straka as well. And while preparing for this hearing today,
7 I was going back through the presentence report, and one thing
8 struck me that I think is important for this Court to consider
9 when this Court is fashioning a sentence for Mr. Straka.

10 So on page 7, Your Honor, paragraph 23 of the presentence
11 report, Mr. Straka notes that he feels the consequences of his
12 actions thus far have been quite extreme, given the fact that
13 this is a misdemeanor.

14 Now, I do want to put that in proper context, because prior
15 to that, on the previous page, it does state that Mr. Straka did
16 express remorse. In fact, he stated that this was something
17 that was one of the stupidest and most tragic decisions of his
18 life. So I don't want to diminish the fact that he has, the
19 government believes, expressed remorse.

20 However, to say the least, the fact that this is a
21 misdemeanor does not by any means project that what happened on
22 January 6 in the larger context, of which Mr. Straka was
23 obviously a part, a significant part of that, was insignificant,
24 but it also should not -- should not subject that because the
25 government has charged Mr. Straka with a misdemeanor, that his

1 own conduct on that day was insignificant.

2 As the Court knows from what has been offered, Mr. Straka
3 did not enter the Capitol. We don't dispute that. We don't
4 dispute that he did not physically engage with a police officer,
5 although we do believe that the record shows that he, obviously,
6 observed the police officer struggle to maintain his physical
7 shield while rioters were attempting to take that away from him.
8 We don't deny the fact that Mr. Straka did not participate in
9 any of the physical damage to the Capitol on that day.

10 But nonetheless, the conduct that he demonstrated on that
11 day was significant. And we've highlighted that in our
12 aggravating factors for why we have asked for a sentence of home
13 detention as well as probation.

14 And so Your Honor, I believe that if the Court were to take
15 all of that into totality, the Court will find that the
16 government's request in this case is certainly reasonable.

17 Starting before Mr. Straka even arrived at the Capitol on
18 January 6, he predicted that this was going to happen. Not only
19 did he predict it, he encouraged it, and he incited it by the
20 words that he used going back to December of 2020.

21 At that time Mr. Straka mentions the fact that a -- that
22 the time was coming for a civil war, that there was a revolution
23 that was at play. Mr. Straka indicated days before,
24 specifically the day before, that if the election results
25 weren't going to be certified in the way that he and others had

1 hoped, that there was going to be a consequence for that.

2 And we saw that consequence tied specifically to
3 Mr. Straka's conduct, and we saw that tied to the conduct of the
4 other rioters who went to the Capitol on January 6.

5 And I'm not going to belabor this point. I know Your Honor
6 has heard a number of cases about the overall violence that
7 happened that day. You've also seen the video evidence that the
8 government has presented. But Mr. Straka's attempt to minimize
9 his conduct on that day is certainly not appropriate, given what
10 happened.

11 Yes, he arrived at the east front of the Capitol and may
12 not have witnessed the overwhelming violence that was happening
13 at the west side of the Capitol. But this is what we do know:
14 When he got there, someone who has hundreds of thousands, I
15 believe he may have mentioned millions, of followers in his
16 Twitter account because of his association and affiliation with
17 the #WalkAway Foundation, Mr. Straka took that opportunity once
18 he hit those steps of the Capitol to encourage people to enter
19 by yelling "go, go, go," or saying "go, go, go" if he did not
20 yell it, to people who were attempting to enter Capitol, to say
21 we are going into the Capitol. He cannot dissociate himself
22 from the individuals who did go inside because he encouraged
23 them to do so.

24 Not only did he encourage them to do so, as he was video
25 recording this that he would later post to all of his viewers

1 and his followers, he sees an officer who was struggling to
2 maintain his shield. Mr. Straka then at that time said "take
3 it, take it" as the rioters are attempting to take the shield
4 away from the officer, and after they're successful in doing
5 that, they're yelling and chanting "USA."

6 Mr. Straka not at that time decides to leave the Capitol.
7 What does he do? He decides to press forward to the doors of
8 the east rotunda. He presses forward so close enough that he is
9 within 10 to 20 feet of what is happening inside of that
10 building. And while there is no dispute that he did not go
11 inside, the government submits that the only reason he did not
12 go inside was because of the tear gas that met him as he got
13 closer to those steps and closer to the door.

14 But certainly by that time, Mr. Straka did witness the
15 violence that happened with that police officer whose shield was
16 attempted to be taken away from him, and he certainly also would
17 have heard the alarms inside of the Capitol that would have been
18 suggesting to people that they did not belong, that they
19 shouldn't have been there, that they should not have entered,
20 that they should no longer enter. And he would have witnessed
21 the violence that was going on inside as relates to other police
22 officers who are now attempting to have other individuals not
23 enter the Capitol.

24 And at that time what does Mr. Straka do? He continues to
25 record this. And he leaves the Capitol that day having now an

1 appreciation of the seriousness of what happened. No, maybe he
2 didn't know that people had lost their lives. No, maybe he
3 didn't know all of the destruction that was going on that day.
4 But something should have registered inside Mr. Straka that what
5 he observed in and of itself was serious enough for him to not
6 condone it but to dismiss it, to use his platform to do that.

7 And what did he do? After leaving the Capitol, while
8 police officers are still attempting to rid people inside of the
9 Capitol off of the Capitol grounds, Mr. Straka sends out a plea
10 telling individuals to hold the line.

11 THE COURT: That tweet was sent at 5:33 p.m.?

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

13 THE COURT: And what time do you think he left the
14 Capitol? Around 2:30 or 3:00?

15 MS. REED: Our estimation is that he left some time
16 after 3:00 p.m. So we don't believe that he was at the Capitol
17 when he tweeted "hold the line," which is even more, you know,
18 egregious in some instances because Mr. Straka states that at
19 that point he goes back to his hotel room. I'm not exactly sure
20 when he decides to turn on the television and watch the news and
21 get the full scope of what's going on, but certainly, what he
22 saw in and of itself was sufficient for him to know that he
23 should not have tweeted out something like "hold the line." And
24 then following that tweet, he continued to be supportive of the
25 conduct that happened on January 6.

1 So Your Honor, we have pointed out the fact that
2 Mr. Straka's tweets prior to, during, and after January 6 should
3 be considered by this Court as aggravating factors, in addition
4 to his conduct that he did on that day.

5 So Your Honor, I just go back to that statement to say that
6 the government does appreciate the fact that we have charged him
7 with a misdemeanor. However, Mr. Straka's conduct on that day
8 was serious. And we believe -- I'm sorry, Your Honor.

9 THE COURT: No, go ahead.

10 MS. REED: And we believe that a home confinement
11 sentence with probation is something that is important not only
12 because it reflects the seriousness of the offense, but also
13 because it does point to general deterrence, as well as specific
14 deterrence. Much has been made by defense counsel of the fact
15 that they believe very erroneously that the government is
16 attempting to criminalize or penalize Mr. Straka simply because
17 he was exercising his First Amendment rights.

18 That simply is not the case here. Mr. Straka's words were
19 specifically tied to his actions on that day. That illicit
20 conduct was what happened here, but that is something that the
21 Court can consider, his words and his actions, for sentencing
22 purposes.

23 And so Your Honor, again, I know this case is a lot larger
24 than that one statement in the PSR, but I did think that was a
25 good starting point for this Court to be able to appreciate the

1 fact that the government does see this as a very serious case,
2 never mind the fact that Mr. Straka did not enter, and we would
3 hope that he would do the same. And I would like to believe
4 that perhaps he does now have a full appreciation of his conduct
5 on that day, being that he has taken steps since his conduct on
6 January 6 to try to right that wrong.

7 He has, obviously, accepted responsibility early in this
8 case, which we have noted as a mitigating factor. He has been
9 interviewed by the FBI and has given full allocution of his
10 conduct on that day. We do find that to be significant as well.
11 We do also find a number of the other factors, such as the fact
12 that he has made an effort to give back, if you will, to the
13 community by assisting police officers in fundraising for police
14 officers.

15 So I don't want to minimize the fact that he has made
16 efforts to mitigate his conduct on that day, but certainly, Your
17 Honor, we think the fact that Mr. Straka's conduct on that day
18 was egregious, we believe that there is the possibility that he
19 could in the future continue to use his platform to further
20 incite and encourage violence should a situation like this
21 happen in the future. We do believe that a term of probation is
22 justified in this case because of that.

23 And so, Your Honor, that supports the government's request
24 for a period of four months of home detention followed by
25 probation in this case, in addition to other consequences that

1 the Court may impose.

2 THE COURT: Ms. Reed, a couple of questions.

3 MS. REED: Yes, Your Honor.

4 THE COURT: Regarding the debriefings you mentioned,
5 is it the government's position that Mr. Straka was truthful,
6 complete, and helpful?

7 MS. REED: Yes, Your Honor.

8 THE COURT: All right. And the government's position,
9 I understand it, in these January 6 misdemeanor cases is to not
10 file 5K1.1 motions; is that right?

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

12 THE COURT: Okay. Given his resources, I don't
13 understand why the government is not recommending that the Court
14 impose a fine in this case.

15 MS. REED: Well, Your Honor, the government has not
16 made that recommendation in this case, and certainly in other
17 cases, we have not as well. However, we do understand that it
18 is the discretion of this Court that if the Court finds it
19 appropriate to do so, that a fine can be instituted.

20 Certainly, Your Honor, we do -- we have noted the
21 information that is in the PSR. So we do believe that
22 Mr. Straka does have the financial means to pay a fine if this
23 Court were to impose a fine.

24 So while we have not requested that, Your Honor, we
25 certainly understand that is in the Court's discretion to impose

1 a fine.

2 THE COURT: To the extent you have any views on the
3 proposed conditions if the Court were to follow your
4 recommendation, what is your view on the recommended conditions
5 that Probation has suggested?

6 MS. REED: Your Honor, we stand with Probation in the
7 recommendations that have been requested.

8 THE COURT: Including the computer monitoring and
9 search conditions?

10 MS. REED: Yes, Your Honor, and we believe that that
11 is particularly important in this instance because of
12 Mr. Straka's role as a social media influencer. Obviously, he
13 uses that platform in the manner that he does, to speak freely,
14 which again he has the right to do so, of his political beliefs.
15 But obviously, in this case we believe that he exaggerated the
16 confines of that by inciting and encouraging violence. So we do
17 believe that it would be appropriate to have that monitoring.

18 THE COURT: Ms. Reed, looking at some of the other
19 cases in which judges have imposed this condition in connection
20 with the January 6 cases, comparing what Mr. Straka posted on
21 his platform with what was posted in those cases, it does seem
22 that his posts are not specifically advocating violence in the
23 same way. I mean, some of the comments that were made in other
24 cases were very direct in advocating violence, and I'm just
25 concerned about the line and where that should be drawn. It

1 seems like in those cases there were real specific comments
2 about engaging in violence.

3 MS. REED: And so that is correct, Your Honor, but the
4 one thing that I would like the Court to consider is the
5 evidence that was submitted in Government Exhibit E. It's on
6 page 11 of the government's sentencing memorandum, and I can
7 read it for you.

8 So Your Honor, after Mr. Straka left the Capitol on
9 January 6, he posted a number of tweets. One of those tweets
10 states, "I'm completely confused. For six to eight weeks,
11 everybody on the right has been saying 1776 and that if Congress
12 moves forward it will mean a revolution. So Congress moves
13 forward. Patriots storm the Capitol. And now everybody is
14 virtual signaling their embarrassment that this happened."

15 So Your Honor, I point specifically to this communication,
16 because if you go back, the six to eight weeks that Mr. Straka
17 is talking about falls directly in line with some of his tweets
18 beginning on December 20 -- I'm sorry, December 2 where he
19 starts communicating, I believe and the government believes,
20 what is going to happen on January 6.

21 So I understand that he does not expressly, as in some of
22 those other cases, advocate for violence, but we certainly
23 believe that it is implicit in his communications about what is
24 going to happen. And we specifically point to this time frame
25 because that seems to go back to the communications that he

1 starts on December 20 -- I'm sorry, I don't know why I keep say
2 December 20, December 2 in which he does, we believe, imply that
3 there is the possibility for violence. But we do understand
4 that it's not as express as some of those other cases.

5 THE COURT: Anything else you would like to say,
6 Ms. Reed?

7 MS. REED: Not at this time, Your Honor.

8 MR. ESSAYLI: Thank you, Your Honor. I would like to
9 respond to the comments the government just made, as well as
10 address our points.

11 THE COURT: Can you start first with this condition,
12 if the Court were to impose probation, your view on the computer
13 monitoring conditions.

14 MR. ESSAYLI: We do not believe computer monitoring is
15 appropriate, Your Honor. A computer was not used to commit the
16 offense here. We strongly disagree with and dispute the
17 government's characterizations of his use of his social media
18 accounts before, during, and after the event. So there's no --
19 in our viewpoint, there's no correlation or connection between
20 the offense conduct and the proposed conditions on there.

21 Your Honor, we also don't believe drug testing terms is
22 appropriate. This is not a drug offense. There is no issue
23 here with him using drugs.

24 Those are the two conditions I wanted to address, Your
25 Honor.

1 THE COURT: I did not see the drug -- oh, that's a
2 standard condition. You mean the submitting to a drug test
3 within 15 days of placement on supervision and at least two
4 periodic drug tests?

5 MR. ESSAYLI: Yes, Your Honor. And if it's standard,
6 that's fine --

7 THE COURT: Those are mandatory conditions that are
8 imposed in these cases. There's not a separate suggested drug
9 treatment or testing condition specifically proposed by
10 Probation in this case. That's just a mandatory condition
11 that's included in all of these cases.

12 MR. ESSAYLI: Well, in that case, Your Honor, our
13 objection is to the computer monitoring and search conditions.
14 We just do not think there's a nexus between that and what he
15 has actually been charged with and pled to in this case.

16 THE COURT: You have no objection to the remainder
17 other than that and the computer monitoring provision?

18 MR. ESSAYLI: Correct, Your Honor.

19 THE COURT: Go ahead, Mr. Essayli.

20 MR. ESSAYLI: Yes, Your Honor.

21 It's important to start, Your Honor, and note that we have
22 never tried to argue that this was not a significant offense,
23 Your Honor. Mr. Straka understands the magnitude of the
24 offense. He does appreciate the seriousness, and he accepts
25 full responsibility for his conduct.

1 However, this does not mean the government can have it both
2 ways in this case, Your Honor. They cannot plead him out to a
3 simple petty offense misdemeanor for disorderly conduct and then
4 try to bootstrap and bring in really inflammatory allegations of
5 inciting violence and suggesting that he is somehow responsible
6 for the overall violence that occurred that day against the
7 Capitol police officers. That is just not appropriate, and it's
8 not accurate in our viewpoint.

9 And I think it's really dangerous to have the government
10 going down in what we view is the criminalization of political
11 activities. If you look at his tweets or comments prior to
12 January 6, that is all protected political speech. The
13 government makes no comments about the First Amendment. It
14 makes no analysis of *Brandenburg*. The Supreme Court has
15 painstakingly explained that the First Amendment is highly
16 protective of political speech. Even speech that the government
17 may find offensive or the government may find that goes up to
18 the line, it's protected.

19 In order for it to be punishable by the government, it must
20 be both specific as to articulate acts of violence, and it must
21 be imminent. You need both components in order to punish the
22 speech. We do not believe any of the comments the government
23 has cited or attributed to Mr. Straka fall into the category of
24 either specific or imminent. And as the Court pointed out,
25 there are no calls out for violence.

1 And I think it's really dangerous and scary when the
2 government says things like, well, it's implied. Who decides
3 it's implied? That's the viewpoint of the reader or the
4 listener. And you cannot punish the speaker based on the
5 viewpoint of the listener. You must look at his intent and his
6 conduct.

7 And Your Honor, this was not premeditated. He did not --
8 Mr. Straka did not show up on January 6 expecting to be caught
9 up in anything like this or intending to commit any acts of
10 violence. He was there, yes, to engage in a very, you know,
11 vocal, forceful protest. That's a part of America. That's what
12 we do. They were there specifically to support the objection to
13 the Electoral College vote. This is not something that's rogue.
14 It's not something that's illegal or unconstitutional.

15 THE COURT: Mr. Essayli, correct me if I'm wrong, but
16 didn't Mr. Straka know -- when he was on his way on the Metro,
17 didn't he know that the Capitol had been breached?

18 MR. ESSAYLI: It wasn't clear to me, Your Honor,
19 specifically when he learned the Capitol was breached.

20 THE COURT: I thought he said in his statement to me
21 that he got word that the Capitol had been breached. I read
22 that somewhere, and I think it was in his statement.

23 MR. ESSAYLI: Yes, Your Honor, that is correct. I
24 just don't know when he specifically learned that. I think it
25 was right when he got off the Metro or before. But he did learn

1 it was breached.

2 Now, this is what I want to say about that, Your Honor,
3 because I do think we have to put this into perspective.

4 Obviously --

5 THE COURT: So let me read what he said. "On the way
6 to the Capitol, I began getting text messages from people I knew
7 who were at home watching the news on television indicating that
8 people were going inside the Capitol building."

9 I have to say, I just don't find it credible, despite the
10 fact that Mr. Straka approached from the east side, that he had
11 no idea about what was going on in and around other parts of the
12 Capitol. That just doesn't ring true, given his contact with
13 people and his -- you know, the fact that realtime he didn't
14 have a better sense, an hour and a half after the Capitol had
15 been breached, what was going on.

16 That does not ring true, particularly when he says that he
17 left the Capitol and didn't realize what had happened until he
18 watched the news from his hotel room. And then as the
19 government's pointed out here, he's sending, you know, tweets at
20 5:30 p.m., "Patriots at the Capitol, hold the line," and he
21 wants to go on a news show that night and say the same thing,
22 and they won't take him. And the next day, he says in response
23 to that how disappointed he was and how frustrated he was by
24 those who went on TV that night and said that this was an
25 embarrassment and shameful.

1 So given all of that, it's very hard to accept what
2 Mr. Straka wants me to believe about what he knew and about his
3 view of what was happening at the Capitol.

4 MR. ESSAYLI: Your Honor, I would like to address
5 that. And the way I want to start with that, Your Honor, is to
6 put this in perspective. When we on TV -- when we saw what
7 happened on TV, listening and hearing the Capitol's been
8 breached or we're going in the Capitol is very different than
9 what was actually happening on there, with the confrontations
10 with police, the breaking and smashing of windows, the fights
11 that were occurring out there, people scaling walls.

12 THE COURT: Let me share another comment he made in
13 the statement to the Court. He said he was receiving text
14 messages from people watching news footage of January 6 at home
15 that sounded unlike anything he had ever seen at a right wing
16 rally before.

17 MR. ESSAYLI: Anything, yes. I think, Your Honor,
18 what Mr. Straka -- what happened is he got caught up in the
19 moment. He believed this was a moment where the protesters were
20 being heard, they were going to go inside the Capitol. At no
21 point did he know that there was actual violence being committed
22 or occurring at that point, and that's not --

23 THE COURT: How can you say that when he watched a
24 police officer's shield be taken away from him and chimed
25 in "take it, take it"?

1 MR. ESSAYLI: Your Honor, our viewpoint on that, and
2 the Court has the video --

3 THE COURT: I've watched it; I've watched it. That
4 shield was really close to him.

5 MR. ESSAYLI: Yes, Your Honor. Our viewpoint is he
6 was in the back of the crowd. He was filming it; he was
7 documenting it. He does understand that that was really
8 abhorrent conduct. He did tweet, you know, after the event that
9 he denounces any form of violence, that's not who this movement
10 is. And that was before he was arrested. It's not --

11 THE COURT: And that didn't come for several days, did
12 it not?

13 MR. ESSAYLI: I think once he appreciated the
14 magnitude of what happened, Your Honor, and understanding that
15 this was not appropriate, he did express remorse before he was
16 charged.

17 THE COURT: Why didn't he appreciate the magnitude of
18 what happened when he watched the news clips that night from his
19 hotel room?

20 MR. ESSAYLI: Because, Your Honor, I believe what's
21 happening is the media and the government was trying to lump all
22 the protestors into one category, and they wanted everyone
23 present there on January 6 to be characterized and attributed to
24 the violence that was occurring.

25 And I think what you heard from Mr. Straka was a pushback

1 to that. There were a lot of people there who were not
2 committing violence, who were there for a legitimate reason, and
3 were caught up in something bigger.

4 And Your Honor, I'm not excusing his conduct; we do not
5 excuse his conduct.

6 THE COURT: What does he mean by "patriots, hold the
7 line"? What does he mean by that comment? At that point he
8 thinks they're inside the Capitol, they've breached the Capitol.

9 MR. ESSAYLI: No, Your Honor, he does not.

10 THE COURT: He is not distinguishing between
11 nonviolent and violent patriots. He's saying, "Patriots, hold
12 the line." What did he mean by that?

13 MR. ESSAYLI: Your Honor, what he meant by that is --
14 at that point he had left the Capitol. He turned around and
15 said we're not going in. And you saw that on the video. He
16 turns around, and he sees the crowd that are staged in front of
17 the Capitol outside protesting, waiting --

18 THE COURT: After the tear gas.

19 MR. ESSAYLI: After the tear gas, yes, they were still
20 outside protesting. His point of "hold the line" was stay in
21 your place, continue the message, continue your political
22 speech. It was not --

23 THE COURT: The next day in his video, he talked about
24 it being no big deal that people went inside the Capitol. I
25 mean, he seemed to think that that was a valid way to contest

1 the election, even the day after.

2 MR. ESSAYLI: Your Honor, he accepts responsibility,
3 and he does acknowledge that is not appropriate behavior, it is
4 wrong, they should not have gone in the Capitol. We do not
5 dispute that. Mr. Straka has acknowledged that, and I believe
6 he will acknowledge it again today.

7 And our request to Your Honor is that you punish him for
8 his conduct that day, including the conduct in entering the
9 restricted space and knowing -- after knowing it was breached.
10 We do not want the Court to punish him, though, for a lot of the
11 other stuff the government --

12 THE COURT: I'm not going to punish him for his
13 statements. He has a First Amendment right to say what he
14 wants, not to incite violence, but I hear your point about the
15 way in which that's interpreted by the Court.

16 But to be sure, his statements at the time and immediately
17 after the Capitol event do inform his actions on that day.

18 MR. ESSAYLI: Yes, Your Honor.

19 THE COURT: That's how I'm viewing his statements, in
20 assessing what he did that day. And he wants me to believe that
21 he was there completely oblivious to anything else that was
22 going on around him and he was just, you know, a peaceful
23 protestor there and he wasn't encouraging anything else.

24 And it's very hard to draw that conclusion looking at the
25 video footage and particularly his comments at the time and

1 immediately thereafter.

2 MR. ESSAYLI: Your Honor, the comments, I think, have
3 to be perceived in a political way. He was taking a lot of heat
4 and was being attacked in the media, and what he wanted to
5 explain or rebut was that not everyone there was engaged in
6 violence, there was a legitimate purpose for being there, and he
7 did not want to delegitimize the cause that he was involved in.

8 Again, he has pled guilty to disorderly conduct. He should
9 not have been on the Capitol ground. He accepts responsibility.
10 And this was -- Your Honor, I think we can appreciate that in
11 our time in our country, people get very emotionally caught up
12 in politics on both sides.

13 And Mr. Straka got caught up that day and I do not think
14 fully appreciated his actions. It probably took him a few days
15 to come to terms with and understand the full magnitude of what
16 occurred.

17 THE COURT: Even in your filings, even in his
18 statements to Probation, there still seems to be an effort to
19 minimize what he did and what he was a part of that day. And --

20 MR. ESSAYLI: It's not -- I apologize. I didn't mean
21 to interrupt.

22 It's not to minimize. It's to rebut, I think, a very
23 extreme and strong narrative that's being advanced by the
24 government suggesting that this conduct was somehow
25 premeditated, that it was organized, that it was done in

1 concert, that it was something larger than what it was and that
2 Mr. Straka -- Your Honor, I was, frankly, a former prosecutor.
3 To read the line in the government papers saying but for
4 Mr. Straka's conduct the riot would not have been successful,
5 that's a very extreme statement, a but-for causation between
6 Mr. Straka's conduct and the riot, when there's so many other
7 factors that went into this, including the lack of appropriate
8 security on the Capitol --

9 THE COURT: The defense emphasizing the level of
10 security and mistakes that had been made on that front are
11 completely irrelevant to what Mr. Straka did that day.

12 MR. ESSAYLI: I agree they're relevant, Your Honor,
13 but they're relevant to the --

14 THE COURT: Irrelevant.

15 MR. ESSAYLI: I agree they're irrelevant to
16 Mr. Straka. We only brought those arguments because of the but-
17 for argument the government made saying but for Mr. Straka's
18 conduct the riot would not have happened or would not have been
19 successful.

20 THE COURT: Your papers also suggest that the
21 barricades were down and somehow he thought he was standing in
22 the right place. And nonetheless, he got within, as he admits
23 the next day, 10 feet or so of the door where an alarm is
24 blaring and can be heard throughout the video and tear gas is
25 coming out, and somehow he still persists in thinking that what

1 he did was okay. It took him a while to come around and say
2 that's not okay.

3 And even now, he's distancing himself from the larger --
4 you know, the larger attack on the Capitol, which he condoned,
5 wanted to condone on national TV that night. He wasn't allowed
6 to go on because the people filming the show didn't want someone
7 on there saying that. But he wanted to do that, and he was
8 frustrated that others went on there that night and didn't say
9 what he wanted to say.

10 MR. ESSAYLI: Your Honor, he's never condoned
11 violence, and his intent wasn't to condone violence. He was
12 trying to explain why he and the others were there.

13 Your Honor, he accepts responsibility. He should not have
14 been there. We agree. He does acknowledge that now. It may
15 have taken him a day or two to fully appreciate it, but he has
16 appreciated it, Your Honor.

17 And I just want to note, going back to the sentencing
18 factors here, Mr. Straka has no criminal history. I think
19 objectively we can look at this and say that this conduct was an
20 aberration. This is not something that Mr. Straka has ever
21 engaged in before and is not likely to ever engage in again.

22 He has had no issues while on supervision with Pretrial
23 Services, and there was a report filed, I believe, on Friday
24 confirming that he has been, I guess, a star pupil when it comes
25 to supervision there.

1 And I do think that the disproportionate impact that
2 this -- that these charges have had on him should be considered
3 by the Court, Your Honor. He's not a typical, you know, person.
4 He is more high profile, and he has suffered a lot of
5 consequences, not to say that some of them were not, you know,
6 justified. But we're just saying that he is suffering
7 consequences far and above what other defendants in these
8 similar cases would be suffering.

9 And then also as far as sentencing disparity, Your Honor, I
10 know just last week Your Honor sentenced Mr. John Walden to 30
11 days' home confinement and three years' probation for parading
12 in the Capitol. And we would argue that his conduct was
13 obviously more egregious, going into the Capitol, parading. I
14 believe he scaled a wall, entered a broken window, and he
15 climbed in.

16 So what we're arguing here, Your Honor, is that, number 1,
17 Mr. Straka has already served two days in jail. He was arrested
18 in the middle of a blizzard. It took him two days to get to a
19 magistrate judge. That was a very, I'll be honest with you,
20 traumatic experience for Mr. Straka. He's never been in jail
21 before. It gave him the opportunity to reflect and appreciate
22 even more the seriousness and magnitude of the matter. So he
23 has already spent two days in jail.

24 And if the Court deems that he needs additional punishment,
25 we would -- we do suggest that a minimal period of home

1 confinement of 30 days would be appropriate or sufficient but
2 not greater than necessary.

3 But we don't think probation is needed here. One, we think
4 it is a waste of resources. Mr. Straka is never going to do
5 anything like this again. He's already demonstrated over the
6 last year that he is not engaged in any kind of similar conduct
7 or behavior and will never engage in it again. And I think
8 giving him probation on top of the maximum fine and the other
9 conditions would create a disparity here when you look at the
10 aggravating factors.

11 So for that reason, Your Honor, that's the reason we gave
12 the recommendation that we did.

13 THE COURT: Since you've raised the Walden case, I
14 will respond to that. I do view this case as more egregious
15 than that case even though that defendant went inside the
16 Capitol. Based on the evidence I've seen and Mr. Straka's
17 comments on the video, at the time he was standing within feet
18 of the door, he said, "We're going in." And he gets close to
19 the door, and he gets pushed back with the tear gas. And at the
20 time someone comes out and says, "They've left. Our job is
21 done."

22 So number 1, I'm not so sure he wouldn't have gone in if
23 the timing had been different. And number 2, unlike the other
24 defendants I've sentenced, he was encouraging others. He was
25 playing a very different role. He wasn't just acting

1 unilaterally. He was acting and encouraging and condoning and
2 all of that in realtime that I saw on the video.

3 So that is an aggravating factor that sets him apart from
4 the average January 6 defendant, even though I do acknowledge he
5 didn't engage in any assaults and he didn't engage in any
6 property damage. But nonetheless, his case I view as an
7 aggravated case.

8 MR. ESSAYLI: And having the Court watch the video,
9 you have had the benefit of seeing it yourself. What I would
10 argue on that, Your Honor, is that when you look at the video,
11 you listen to the video more importantly, his comments are not
12 yelled, they're not said in a way to encourage others. To me,
13 when I watch it --

14 THE COURT: He's speaking into a video that he is then
15 going to post --

16 MR. ESSAYLI: It, Your Honor, was not live. It wasn't
17 being streamed. He was documenting it. And I do think this is
18 important. Yes, he posted the video after the event was
19 concluded. So that wouldn't have encouraged others to come and
20 join in. It was over at that point. But more importantly, he
21 took it down in less than 24 hours.

22 And I think that does show, Your Honor, some consciousness
23 on his part that something wasn't right about this, this wasn't
24 appropriate, and he voluntarily took that down on his own. He
25 wasn't forced to or told to. He just stepped back and said, "I

1 don't want to appear to be encouraging violence, and so I'm
2 going to take this down." And I do think the Court should
3 consider that as a part of his accepting the magnitude of what
4 happened and showing some remorse.

5 THE COURT: But I have to consider it in connection
6 with the statements he made the day after when he did in that
7 video as well condemn violence, but he still persists in this
8 idea that it is okay to storm the Capitol to contest an
9 election. And that's not what we do in this country.

10 MR. ESSAYLI: We agree with that, Your Honor. That is
11 not what we do in this country.

12 THE COURT: People who do that are not patriots, to
13 storm the U.S. Capitol.

14 MR. ESSAYLI: But not everyone there entered the
15 restricted space, and not everyone entered the Capitol.

16 THE COURT: He did.

17 MR. ESSAYLI: He did, correct, but his comments aren't
18 directed at just those folks that were in the restricted space.
19 He was talking to a larger audience.

20 THE COURT: There's nothing that he said on those
21 tapes that drew that line. He talked about patriots generally.
22 He did say, "I don't condone violence." He did say that.

23 MR. ESSAYLI: He did say he did not condone violence.

24 THE COURT: He did, but he also -- I think it's a fair
25 read of that video to come away with it believing that he's

1 telling his million-plus followers that it's okay to go into the
2 Capitol to demand, as he put it, an audit. He thinks that's
3 okay, and he has a large following. And he's --

4 MR. ESSAYLI: He took it down, Your Honor; he took it
5 down. And the comments that were read by the government and
6 cited in the papers were all made, I believe, on January 6.

7 THE COURT: I watched the video. Correct me if I'm
8 wrong, anybody, but I think it's January 7, the day after. It's
9 a 55-minute video when he's back home. He talked about being
10 exhausted. And he does draw the distinction between the
11 violence and the rest.

12 MR. ESSAYLI: Yes.

13 MS. REED: That's correct, Your Honor.

14 THE COURT: But he is persisting in this notion that
15 it's okay to contest an election by going in the Capitol, by
16 trespassing, and that's just not -- that's not consistent with
17 the rule of law in our country.

18 MR. ESSAYLI: We agree with that, Your Honor, and I
19 believe Mr. Straka also agrees with that. I do want to give him
20 the opportunity to allocute directly to the Court. He does have
21 a statement he would like to make to you, Your Honor.

22 Again, I just want to emphasize, he does accept
23 responsibility. We do appreciate the seriousness of it. And I
24 do sincerely appreciate the Court saying that you are only going
25 to sentence him based on his conduct and not for anything viewed

1 as protected political speech. That's important to us.

2 So if it's appropriate now, I would invite Mr. Straka to
3 make -- or when the Court deems appropriate for him to make a
4 statement.

5 THE COURT: All right. Are you done, Mr. Essayli?

6 MR. ESSAYLI: I believe I've covered -- I will just
7 confirm. I think I've covered a lot of points, Your Honor. And
8 I do appreciate the Court's questions. You, obviously, know the
9 case well and the --

10 THE COURT: The thing that's hard to understand, and
11 perhaps Mr. Straka is going to address this, but he started this
12 movement, the #WalkAway movement, which as I've read about it --
13 I wasn't familiar with it before reading all of the letters that
14 I received. But the mission was to bring together people from
15 all walks of life to have civil discourse and to listen to one
16 another and to not be violent. Again, his actions that day are
17 so inconsistent with that.

18 MR. ESSAYLI: And that's why we think it's an
19 aberration, Your Honor, and I think Mr. Straka will address
20 that. And I think that's one of the messages that he wants to
21 come across. The 30-page memo by the government does not
22 reflect who he is as a person, his character, his life's work.

23 And people make mistakes, Your Honor, and they should not
24 have everything they've done be thrown away or everything good
25 they've done good be thrown away over -- this was a 15-minute

1 instance that I'm sure --

2 THE COURT: It's more than 15 minutes.

3 MR. ESSAYLI: The time that he --

4 THE COURT: The comments leading up and the comments
5 afterwards suggest he was very much committed to this protest,
6 and maybe not the full extent of the violence and destruction
7 that was associated with it, but nonetheless, he seemed to buy
8 into this notion that it's okay to storm the Capitol.

9 MR. ESSAYLI: The storm the Capitol thing, Your Honor,
10 didn't come up until January 6. No one discussed and he didn't
11 discuss storming the Capitol. Everything leading up to
12 January 6 was in the mind-set and intention of a peaceful
13 protest, and that's why I think he got caught up in that.

14 But I don't think any of his comments prior to January 6
15 could be viewed as encouraging or planning to storm the Capitol.
16 I don't think that's accurate, Your Honor.

17 THE COURT: Anything further, Mr. Essayli?

18 MR. ESSAYLI: Not at this time, Your Honor.

19 THE COURT: Mr. Straka, I've read your statement to
20 the Court. This is your time to make any additional statement,
21 if you choose to do so.

22 THE DEFENDANT: Yes, Your Honor.

23 I prepared a written statement just because -- I normally
24 like to kind of speak from the heart and off the cuff, but
25 there's just so many details and so many things to this case

1 that I wanted to make sure that I kept my thoughts as straight
2 as possible.

3 And to be honest with you, given some of the things I've
4 heard in this hearing today, I don't -- I'm just going to stick
5 with what I wrote. I hope that you will hear where I'm coming
6 from with an open mind and an open heart.

7 And what I have to say is that I'm holding here a 30-page
8 document from the prosecution which tells the story of a person
9 who couldn't be more dissimilar than who I am. The person
10 described in the document is reckless, thoughtless, dangerous,
11 flagrantly irresponsible, and apparently proud and celebratory
12 of all these traits.

13 This document suggests that this person is significantly
14 responsible for the actions of others on January 6, including
15 those who engaged in unacceptable acts of violence, vandalism,
16 theft, and destruction which took place outside of my view and
17 occurring at times when I wasn't even on Capitol grounds.

18 I don't know this person, and I don't identify with his
19 purported thoughts, motivations, or the narrative presented
20 about his character.

21 It would be impossible to tell you exactly who I am in a
22 matter of minutes, but here are a few things I would like you to
23 know.

24 I grew up in a small town in rural Nebraska, born into a
25 family of generations of farmers and ranchers. And truth be

1 told, I mostly hated the work when I was growing up, but I
2 learned at a young age that if I put my mind, heart, and drive
3 into working as hard as I could at something I really wanted,
4 nothing in the world could hold me back, not even lack of
5 financial privilege or opportunity.

6 Throughout my 20s and 30s, I developed a problem with
7 cocaine and alcohol. Tragically, this type of problem is not
8 unusual for many of us in the LGBT community. Many LGBT people
9 turn to self-medication in response to lack of love and
10 understanding and societal mistreatment.

11 My dream in life was to make a living as a performer. I
12 sing and act and spent many years of my adult life doing
13 theater, usually musicals, and a small amount of work in film
14 and television.

15 I started to see that my life had become a black hole of
16 emptiness caused by more poor choices to keep returning to
17 self-soothing through intoxication. On January 18, 2015, I made
18 a choice entirely of my own volition to join a 12-step program
19 and get clean and sober. That was the day I took my last drink,
20 and I have been 100 percent clean from drugs and alcohol ever
21 since. Six days ago marked seven years of sobriety for me.

22 One of the most devastating aspects of my case has been the
23 assertion that I was encouraging violence against police and
24 that I was encouraging violence with my followers.

25 Your Honor, my followers don't condone violence, and all of

1 them stand up to back the blue in this country. They would
2 never support me if my message was one of violence. I want to
3 say here and now that I back America's law enforcement officers,
4 and I always have, and I always will.

5 Every year during the holidays, one of my organizations,
6 the #WalkAway Foundation, engages in a community-building
7 initiative to encourage goodwill and bring people together to
8 give in a way that makes the world a better place.

9 To be honest, I chose this year's holiday initiative in a
10 way to make a point. I created an initiative called "REfund the
11 Police," raising funds in the month of December that would go as
12 charitable contributions to police departments in this country
13 that were defunded during the past year's political antipolice
14 movement. I raised nearly \$30,000 for this drive. If I had not
15 been in a position to be unable to speak publicly and do media
16 appearances about this initiative, that number would have easily
17 been \$100,000. This was the amount I was able to raise by
18 sending e-mails and putting out a scattering of posts on a few
19 social media sites.

20 The point is, my followers would never tolerate me
21 advocating violence. It's not who they are, and it's not who I
22 am, which is why they love our movement. My followers are the
23 type of people who give their hard-earned money in the midst of
24 a pandemic and economic uncertainty to an initiative that seeks
25 to put equipment and resources back into the hands of America's

1 law enforcement.

2 My relationship with my fans and followers is not just
3 about politics. It's about love. That was echoed in every
4 character letter I received on my behalf. I didn't get to hear
5 or read many positive things about myself for an entire year,
6 which took an enormous toll on my mental, spiritual, and
7 emotional health.

8 The sense of pride I had developed from the truly positive
9 and uplifting work I had done to help unite this divided country
10 and bringing people together has been shrouded by the relentless
11 cruel narratives about my character and my intention. Some will
12 say hey, that's politics, this is what you signed up for. But I
13 say no, it does not have to be this way. We Americans can do
14 better than this.

15 I received around 500 character letters from my supporters,
16 many of them handwritten. And in reading these letters, I got
17 to learn really for the first time how I'm seen by those who
18 appreciate and respect me. And the thing that struck me the
19 most was that nearly every person talked about how what drew
20 them to me and my movement was it was the only one that focuses
21 on love.

22 Your Honor, the costs of my choice to go to Washington,
23 D.C., on January 6 are monumentally devastating, are so
24 monumentally devastating that I couldn't even begin to tell you
25 what this past year of my life has been like. Life-long

1 friendships and family relationships are gone forever. My work
2 has had to come to an absolute standstill. And undoubtedly,
3 there are many opportunities that will be lost to me forever.

4 But now is the time for me to remember that throughout
5 everything I've remained sober, and I'm still the same guy who
6 took my broken life and turned things around.

7 I would like to conclude my statement today by once again
8 stating what I said in my written statement to you. I am
9 sincerely sorry to all of the people of America, even the ones
10 who absolutely hate my guts and hated me long before January 6.
11 I'm sorry that I was present in any way at an event that led
12 anybody to feel afraid, that caused shame and embarrassment on
13 our country, and that served absolutely no purpose other than to
14 further tear away at the already heart-breaking divide in this
15 country.

16 I want to apologize to all members of the Capitol Police
17 whose safety was put in danger by the unruly mob, in particular
18 the police officer whose shield can be seen in my video being
19 grabbed by members of the crowd. No protest should ever get out
20 of hand to the point of becoming a riot, and no police officer
21 should ever have to feel that their life or their safety is in
22 jeopardy while trying to keep the peace at a public
23 demonstration.

24 And I want to apologize to every member of Congress,
25 regardless of political affiliation or background. I'm deeply

1 sorry and shameful for being present at an event that sent
2 members of Congress running in fear to evacuate a building. I
3 can sincerely say I would never intend for such a thing to
4 happen, but nonetheless, it did, and I was there, and I am truly
5 sorry for that. It is my intention to do better and be better
6 going forward in my life.

7 Thank you, Your Honor.

8 THE COURT: Thank you, Mr. Straka, for your comments.
9 I appreciate them. You talk about in your statement to me
10 finding the win in every situation, and I hope that you have
11 learned a lesson from this experience and that in the future you
12 will go back to the work of using your social media presence in
13 a positive way to unify the country.

14 Is there any reason why I should not proceed now to give my
15 reasons for the sentence and to impose sentence? Mr. Essayli?

16 MR. ESSAYLI: No, Your Honor.

17 THE COURT: Ms. Reed?

18 MS. REED: No, Your Honor.

19 THE COURT: In deciding, as I've stated, what the
20 appropriate sentence is in this case, I have considered all of
21 the factors under Title 18 United States Code Section 3553(a).
22 I'm familiar with them all, even if I don't state each one of
23 them here. I have considered each of them.

24 I do agree with the defense that Mr. Straka played a unique
25 role on January 6 of 2021. He did not himself personally

1 assault any police officers, and he did not cause any property
2 damage. He also did not enter the U.S. Capitol.

3 Even so, he clearly violated the law. As he admitted at
4 the time of his plea, he knowingly and unlawfully entered the
5 restricted grounds of the U.S. Capitol, and he engaged in
6 disruptive conduct by encouraging others to enter the Capitol
7 and to take a Capitol police officer's shield who was trying to
8 defend the Capitol.

9 Mr. Straka knew at the time he entered the Capitol grounds
10 that he did not have permission to do so, and he did so, and he
11 engaged in disruptive conduct all with the intent to impede
12 Congress from certifying the electoral vote count for the 2020
13 presidential election.

14 Though Mr. Straka has since condemned the violence and
15 property damage that occurred on January 6, as I've explained
16 and discussed here, his statements on and around that day reveal
17 that he viewed his actions and those of the larger crowd as
18 appropriate and justified.

19 I want to be very clear about what I'm saying here about
20 Mr. Straka's comments. He, as well as others who were at the
21 U.S. Capitol on January 6, have a First Amendment right to say
22 and to think whatever they believe. Mr. Straka also has a First
23 Amendment right to share his views with others.

24 But trespassing on restricted grounds is not covered by the
25 First Amendment, nor is engaging in disruptive conduct by

1 encouraging others to enter the Capitol or to take a shield from
2 a police officer. None of the criminal conduct to which
3 Mr. Straka has admitted is protected by the First Amendment, and
4 that is why he is before the Court today. He is not being
5 prosecuted or sentenced based on his political views or his
6 personal beliefs.

7 I find it deeply troubling that Mr. Straka used his social
8 media platform to encourage and defend the unlawful acts that
9 occurred on January 6. Mr. Straka says his #WalkAway platform
10 has over a million followers. He also represents that he
11 started the #WalkAway movement to bring people together for
12 respectful dialogue in a peaceful way.

13 But his actions on January 6 were anything but. They did
14 not further the stated mission of his organization. Instead,
15 they served to undermine democracy and the rule of law.
16 Election challenges are fought in the courts, not by storming
17 the Capitol.

18 Turning next to Mr. Straka's history and characteristics,
19 he has no prior criminal record, and he's been steadily employed
20 throughout his life. The Court has received numerous letters
21 from Mr. Straka's family, friends, and followers. As these
22 letters attest, Mr. Straka has a large number of committed
23 supporters from all different backgrounds. They suggest that
24 he's shown a high level of compassion and concern for his
25 community, for his friends and his family. These letters also

1 say that he has inspired a large number of people across the
2 country to bridge the political divide in our country. His
3 followers admire him for the national movement he has led to
4 bring people together in a peaceful way.

5 Mr. Straka has also engaged in good work following his
6 arrest in this case. He started an initiative to support police
7 organizations, and he claims to have raised nearly \$18,000 in
8 support of law enforcement.

9 I'm crediting those efforts. I'm also crediting that
10 Mr. Straka pled guilty early in this case. He also provided law
11 enforcement agents with passwords to his electronics that were
12 seized, and he agreed to be debriefed by law enforcement agents
13 on three occasions.

14 The government has represented that he has provided full,
15 truthful, and complete information that has been helpful to the
16 government. Again, under Section 3553(a), I am taking his
17 efforts into account in deciding what sentence to impose.

18 Mr. Straka also has expressed remorse, though it has been
19 slow in coming. I also appreciate that Mr. Straka has faced a
20 number of collateral consequences as a result of his prosecution
21 that other January 6 defendants have not. But these
22 consequences are, in large part, due to his public profile and
23 his widespread media presence.

24 I also note that through Mr. Straka's openness about his
25 own personal struggles he has inspired others who have faced

1 similar struggles. A number of years ago, he had an issue with
2 drug and alcohol abuse, but he has overcome these challenges,
3 and he has been supportive of others who try to do the same.

4 Looking at other January 6 cases, I recognize that this
5 case is different than most others. As I've noted, Mr. Straka
6 did not engage in violence or property damage. He did not enter
7 the Capitol building. Nonetheless, he did join rioters after he
8 learned about the Capitol breach, and once he arrived, he not
9 only trespassed on restricted grounds, he also engaged in
10 disruptive conduct, as I've said, by encouraging others to enter
11 the Capitol and by encouraging others to take a shield from a
12 police officer who was defending the Capitol.

13 He videoed these events. He posted this footage online for
14 his followers to see. And he later encouraged rioters who
15 remained at the Capitol to hold the line. And that was even
16 after he left the Capitol that day.

17 As I've explained, his statements and his actions in and
18 around January 6 suggest that he not only participated in the
19 events of that day, he also defended and celebrated them to a
20 degree.

21 The government has permitted Mr. Straka to plead guilty to
22 a Class B misdemeanor. That offense has a maximum period of
23 incarceration of six months. Though I do view Mr. Straka's
24 criminal conduct as very serious, as I've noted, it's been
25 mitigated somewhat by his early plea and by his willingness to

1 assist the government by providing complete and truthful
2 information. And this is one reason why I do not believe that a
3 period of incarceration is necessary to achieve the purposes of
4 sentencing.

5 As I've explained previously in an earlier January 6 case,
6 I do not believe that in sentencing a Class B misdemeanor
7 offense that the Court has the statutory authority to impose
8 both a period of imprisonment and a term of supervision, either
9 supervised release or probation. And therefore, in cases like
10 the present one where deterrence is so important, particularly
11 specific deterrence, I have imposed a period of probation for
12 three years.

13 For that period of time, defendants are under the continued
14 supervision of the Court. Whereas, with a short period of
15 imprisonment, the defendant would complete his or her sentence
16 once the term of imprisonment is served. The longer period of
17 supervision serves to ensure that defendants and others have an
18 incentive not to violate the law during the term of supervision.

19 I believe here that a three-year period of probation
20 coupled with a three-month period of home detention, a community
21 service requirement, and a fine is sufficient but not greater
22 than necessary to achieve the purposes of sentencing.

23 In addition to achieving both specific and general
24 deterrence, I believe this sentence will also promote respect
25 for the law, ensure adequate punishment, as well as

1 rehabilitation.

2 I will impose the maximum fine available, which is \$5,000,
3 because I believe based on the financial information provided by
4 the Probation Office that Mr. Straka has adequate means to pay
5 both a fine and the \$500 restitution payment. I will also
6 impose a financial monitoring condition while these payments are
7 outstanding.

8 I will not impose electronic monitoring -- computer
9 monitoring condition because I do believe that the nature of
10 what Mr. Straka posted online is distinguishable in content from
11 those cases where defendants have expressly advocated specific
12 acts of violence.

13 I will impose a mental health condition.

14 And I will now read the formal sentence of the Court and
15 give both parties and Probation the opportunity to object before
16 I impose sentence.

17 Pursuant to the Sentencing Reform Act of 1984 and in
18 consideration of the provisions of Title 18 United States Code
19 Section 3553(a), it is the judgment of the Court that you,
20 Brandon Straka, are hereby sentenced to a term of 36 months'
21 probation as to Count 1. In addition, you are ordered to pay a
22 special assessment of \$10.

23 While on supervision, you shall abide by the following
24 mandatory conditions, as well as the standard conditions of
25 supervision. The mandatory conditions include not committing

1 another federal, state, or local crime, not unlawfully
2 possessing a control substance, refraining from any unlawful use
3 of a controlled substance, submitting to one drug test within 15
4 days of placement on supervision, and at least two periodic drug
5 tests thereafter as determined by Probation.

6 You must make restitution. You are ordered to make
7 restitution to the Architect of the Capitol in the amount of
8 \$500.

9 The Court will authorize supervision of this case to be
10 transferred to the United States District Court for the Middle
11 District of Nebraska, but the Court will retain jurisdiction of
12 this case.

13 In addition, Mr. Straka, you shall comply with the
14 following special conditions. You must pay the balance of any
15 restitution owed at a rate of no less than \$100 each month. You
16 must provide the probation officer access to any requested
17 financial information and authorize the release of any financial
18 information. The Probation Office may share that information
19 with the U.S. Attorney's Office.

20 You must also participate in a mental health treatment
21 program and follow the rules and regulations of that program.

22 You will be monitored by a form of location monitoring
23 technology for a period of 90 days, or three months. You must
24 follow the rules and regulations of the program. Location
25 monitoring technology will be at the discretion of the probation

1 officer. You must also pay for the cost of the program. You
2 will be restricted to your residence at all times except for
3 employment; education; religious services; medical, substance
4 abuse, or mental health treatment; attorney visits; court
5 appearances; court-ordered obligations; or other activities as
6 approved by the probation officer.

7 So this is a form, to be clear, of home detention.

8 You are also ordered to pay a fine in the amount of \$5,000.
9 Restitution payments shall be made to the Clerk of Court for the
10 United States District Court and, as I've stated, in the amount
11 of \$500 to the Architect of the Capitol. The financial
12 obligations are immediately payable to the Clerk of Court.
13 Within 30 days of any change of address, you shall notify the
14 Clerk of Court of the change until such time as the financial
15 obligation is paid in full.

16 The Probation Office shall release the presentence
17 investigation report to all agencies, and those agencies shall
18 return the report.

19 All right. Is there any objection -- I will inform
20 Mr. Straka of his right to appeal, but before I do so,
21 Mr. Essayli, is there any objection to the sentence that the
22 Court has yet to impose?

23 MR. ESSAYLI: Your Honor, is the financial disclosure
24 term a standard --

25 THE COURT: These are standard whenever fines or

1 restitution is included.

2 MR. ESSAYLI: Okay. Because Mr. Straka, obviously,
3 can pay the fine. I don't know that there's a need to provide
4 ongoing financial information.

5 THE COURT: I am going to include it for now, and that
6 can be modified in the future if there's no need to continue to
7 have it.

8 MR. ESSAYLI: Thank you, Your Honor. That's the only
9 thing.

10 THE COURT: Anything else, Mr. Essayli?

11 MR. ESSAYLI: No, Your Honor.

12 THE COURT: Ms. Reed?

13 MS. REED: No objection, Your Honor.

14 THE COURT: Ms. Reichler?

15 PROBATION OFFICER: Nothing at this time, Your Honor.
16 I just ask that Mr. Straka stay on the line after so I can relay
17 the conditions and give him pertinent instructions.

18 THE COURT: That is the sentence of the Court. What
19 I've just mentioned is imposed.

20 Mr. Straka, you do have the right to appeal your conviction
21 and your sentence except to whatever extent you may have validly
22 waived that right as a part of your plea agreement. If you do
23 choose to appeal, the notice of appeal must be filed within 14
24 days of the judgment of conviction.

25 Is there a need to dismiss any other counts, Ms. Reed?

1 MS. REED: There is, Your Honor. Specifically,
2 Mr. Straka was initially charged by information and has
3 subsequently pled to a superseding information. So at this
4 time, Your Honor, the government would respectfully request to
5 dismiss the information.

6 THE COURT: All right. The motion is granted.

7 MS. REED: Thank you.

8 THE COURT: Anything else from the government or the
9 defense?

10 MS. REED: Nothing from the government, Your Honor.

11 MR. ESSAYLI: No, Your Honor. Thank you.

12 THE COURT: All right. Thank you all.

13 (Proceedings adjourned at 12:18 p.m.)
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CERTIFICATE OF OFFICIAL COURT REPORTER

I, Sara A. Wick, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Please Note: This hearing occurred during the COVID-19 pandemic and is, therefore, subject to the technological limitations of court reporting remotely.

/s/ Sara A. Wick

February 23, 2022

SIGNATURE OF COURT REPORTER

DATE