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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

United States of America,)	Criminal Action
)	No. 23-cr-321
Plaintiff,)	
)	SENTENCING HEARING
vs.)	
)	Washington, DC
James Ray Epps,)	January 9, 2024
)	Time: 10:00 a.m.
Defendant.)	

TRANSCRIPT OF SENTENCING HEARING
HELD BEFORE
THE HONORABLE JUDGE JAMES EMANUEL BOASBERG
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S

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1 * * * * * P R O C E E D I N G S * * * * *

2 THE COURTROOM DEPUTY: Good morning, everyone. We're
3 here today for a sentencing in criminal matter 23-321, the
4 *United States of America versus James Ray Epps, Sr.*

5 Beginning with counsel for the government, please
6 approach the lectern and state your name for the record.

7 MR. GORDON: Good morning, Your Honor. Mike Gordon
8 for the United States.

9 THE COURT: Good morning.

10 THE COURTROOM DEPUTY: And defense.

11 MR. UNGVARSKY: Good morning. Edward Ungvarsky on
12 behalf of Mr. Epps. Mr. Epps and I are both present by video.

13 THE COURT: Good morning. Mr. Epps, can you see and
14 hear me okay?

15 THE DEFENDANT: Yes, sir.

16 MR. UNGVARSKY: Judge, the one thing is, I mean, we
17 have a shot of the entire courtroom. So, I mean, I can see a
18 person at the bench in a black robe.

19 THE COURT: It's me.

20 MR. UNGVARSKY: That's much better.

21 THE COURT: I can assure you, it's me.

22 MR. UNGVARSKY: Understand. We can't really see you,
23 such as -- can't see your face, your expressions and all that.

24 Now I can.

25 THE COURT: Okay.

1 THE COURTROOM DEPUTY: I can Zoom on everyone, or I
2 can slowly Zoom in on the judge, whichever you prefer, Counsel.

3 MR. UNGVARSKY: I think the judge.

4 THE COURTROOM DEPUTY: Okay.

5 THE COURT: The volume is a little high.

6 THE COURTROOM DEPUTY: Yes. It's loud because we
7 have a hearing-impaired person in the courtroom.

8 THE COURT: Fine.

9 THE COURTROOM DEPUTY: Can I give him headphones?

10 THE COURT: Fine.

11 Okay. We're here today for sentencing. I've
12 reviewed the -- I'm sorry, the presentence report author, let
13 me have you enter your appearance.

14 THE PROBATION OFFICER: Good morning, Your Honor.
15 Aidee Gavito. I'm covering for the officer who authored the
16 presentence report, she is an officer out of California.

17 THE COURT: Thank you so much for being here.

18 I've reviewed the presentence report and
19 recommendation. I've reviewed the memorandum submitted by the
20 government. I've reviewed the memorandum and the exhibits
21 submitted by the defense. I reviewed the exhibits, also, the
22 video exhibits submitted by the defense.

23 Anything else preliminary before we proceed,
24 Mr. Gordon?

25 MR. GORDON: No, Your Honor. Thank you.

1 THE COURT: Mr. Ungvarsky?

2 MR. UNGVARSKY: Your Honor, did you review the
3 defense response to the government's memo?

4 THE COURT: I'm sorry, I should have mentioned that.
5 Yes, I did. Thank you.

6 MR. UNGVARSKY: Thank you. Nothing else, Your Honor.

7 THE COURT: Okay. I'll hear from the government.

8 MR. GORDON: Thank you, Your Honor. You want us to
9 move straight to allocution?

10 THE COURT: Yes.

11 MR. GORDON: Okay. I have a PowerPoint presentation
12 that one of my paralegals, Elizabeth Hayman -- she's on the
13 Zoom. What it contains is --

14 THE COURT: Sorry. Just one second.

15 (Pause.)

16 THE COURT: I'm sorry, Mr. Gordon. Go ahead.

17 MR. GORDON: The PowerPoint presentation includes
18 some videos referenced in the government's sentencing
19 memorandum. Actually, the videos themselves, you can view
20 them. One in particular has been treated with highlights and
21 circles so it's easier to track the defendant. So when it
22 comes time to get to the, sort of, real substance of what the
23 defendant did, I would like to play those for Your Honor. It's
24 going to take -- just to give you sort of an expectation of
25 where we're going. Going through all of those will probably

1 take about 20 minutes, when I get to that.

2 THE COURT: Okay.

3 MR. GORDON: We hope that will work. I have Zoom, so
4 everybody can see them.

5 Your Honor, Ray Epps has been unfairly scapegoated,
6 but he is not a victim. He was not a secret agent of the
7 government on January 6th, trying to trick unwitting Trump
8 supporters into committing federal crimes. That's not what
9 happened. But he is not innocent, either.

10 Make no mistake, Ray Epps did not start the riot or
11 cause it, but he did make it much worse. He committed multiple
12 crimes on that day. He's only pled to one because that's the
13 plea offer we made with him. But he committed multiple crimes
14 that day. He was convinced that the election had been stolen
15 and that the steal needed to be stopped.

16 He wanted a mass of people to descend on the Capitol,
17 to go inside the Capitol, and in their presence, intimidate
18 congress into not certifying the election. And he did
19 everything he did to make that happen the night before. On
20 January 5th he went down to a rally and he tried to persuade
21 people that tomorrow we need to go into the Capitol, and even
22 though he said, "I'll probably get arrested for saying this."

23 The next day, along with many members of the Proud
24 Boys, he left the Ellipse, long before President Trump had
25 finished speaking, and began that march on the Capitol. He was

1 determined to be at the front of the mob. When others broke
2 down the very first police barricade, he eagerly ran through it
3 and raced to stay at the front. When others broke down the
4 second barricade, injuring an officer in the process, he
5 eagerly ran through again to stay at the front. He contributed
6 to multiple instances of violence against police officers.

7 He does not deserve the attention and threats he has
8 received. Those are mitigating. But he does deserve to go to
9 jail for what he did on January 6th.

10 This is unquestionably a unique and complicated case.
11 And I want Your Honor to know up front that I am not -- that I
12 am asking you for the sentence that I believe is the
13 appropriate one, not trying to ask high and hope you'll go
14 lower.

15 He didn't start the riot; he made it worse. Beyond
16 the mitigation of the conspiracy theory he's been victimized
17 by, he is on video on at least five occasions directly trying
18 to tamp down other instances of violence, trying to assert
19 himself between rioters who were getting aggressive with police
20 officers and those police. He's on video multiple times
21 telling rioters, "Hey, they're just trying to do their job.
22 We've made our point. Nobody needs to get hurt." I'm not
23 aware of any other case where we have a defendant doing that.
24 That's mitigating.

25 Just two days after the riot he called the FBI

1 himself and identified himself as the person in photograph No.
2 16 on the FBI's information wanted poster and then he gave a
3 20-minute voluntary interview in which he confessed. That's
4 mitigating.

5 He also voluntarily cooperated with Congress's
6 investigation, so that -- you know, engaging in both a
7 preliminary interview and a lengthy transcribed one to members
8 of Congress. And his life has been destroyed by conspiracy
9 theorists eager to blame the government for the violence that
10 happened on January 6th.

11 So all of that goes into the stew that Your Honor has
12 to consider to arrive at the appropriate sentence. I
13 understand the defense has asked for probation. But generally
14 in these cases probation has been reserved for the most
15 minimally culpable people; those who have a misdemeanor
16 parading plea and if they entered the Capitol and did so for an
17 extraordinarily brief period of time and have no other
18 aggravators. That's not Mr. Epps.

19 His behavior generally consists of six -- or, his key
20 behavior, his relevant conduct consists of six key incidents.
21 I want to go through the video and the photographs of each of
22 those now, using the PowerPoint that we have here.

23 So I'm going to begin with, Elizabeth, if you can
24 pull up slide No. 3.

25 So this, that we're going to play in just a moment,

1 the first instance I want to talk about is the attempts
2 Mr. Epps made to build the size of the mob deliberately in
3 advance. So the video you're about to see is live-streamed
4 video recorded by another January 6th defendant named Anthime
5 Gionet, or "Baked Alaska" is the name he uses online, on the
6 left side of the screen, which you'll see scrolling are real
7 time comments written by unknown other people. I don't think
8 you need to read any of those.

9 Mr. Gionet recorded himself going down to Black Lives
10 Matter Plaza on the night of January 5th as this group aired
11 their grievances to each other. And different people in that
12 group had different arguments. At the beginning of this clip
13 in the video, what you're going to see is a group of
14 Metropolitan Police officers start to have some sort of
15 confrontation with another person in the crowd. It's unclear
16 what exactly it is. And then the crowds are turning its
17 attention on the MPD officers and that's when Mr. Epps steps in
18 to talk to the rest of the crowd, and that's what you're going
19 to see. It's about a two-minute video in total.

20 So, Elizabeth, if you could play that now.

21 (Video played.)

22 So what I'm noticing is that the audio is clear. The
23 video is jumpy when played through the Zoom application so we
24 can view it. So with Mr. Ungvarsky's consent, when we get to
25 later videos where we've done the treatment where the

1 highlighting is on Mr. Epps, I'm going to ask to play those
2 directly from here. And Mr. Ungvarsky has copies of them
3 himself for clarity.

4 So the key here is that Mr. Epps is saying, "Tomorrow
5 we need to go into the Capitol." And he preferences with it,
6 "I don't want to say it," or, "I don't like to say it because
7 I'll get arrested." So it's an acknowledgment that he already
8 understands or believes that what he's about to advocate for is
9 illegal. Whether it's right or wrong is a different question.

10 But he knows the wrongness of this and he's
11 advocating for it. And the person talking to him says, "Well,
12 then don't say it." And Epps' response is, "Well, I'll say
13 it." He leaps into that breach himself. And adding
14 "peacefully" on to the end of his urgings doesn't cure that.
15 He viewed this as a 1776 moment. Only Congress or the bridge.
16 And he and his fellow agitators, they were the Revolutionary
17 War heroes and they were headed to the Capitol to stop that
18 tyranny.

19 And then the next day, at the rally, he does similar
20 things. There are many instances on video. I'm only going to
21 play one, where Mr. Epps is talking to anyone who will listen
22 and saying, "After this we've got to go to the Capitol."

23 So, Elizabeth, if you can play slide No. 4, please.

24 (Video played.)

25 Just one example. But, look, this is still First

1 Amendment protected speech at this point. This is not rising
2 to the level of incitement. I'm not suggesting that it does.
3 But he is trying to build up what became a mob of thousands.
4 He knew that in advance. I'm not saying he didn't. That's a
5 contributing, aggravating factor, even though it's not criminal
6 itself.

7 Moving on to the first breach.

8 Elizabeth, if you can pull up slide No. 6, but don't
9 play it yet, please.

10 So this is the scene just before the first breach.
11 This mob has arrived at the outer perimeter of a restricted
12 area, where there's some bike rack barricades at the end of
13 this Pennsylvania Avenue approach. That first level of
14 barricades, or first layer of barricades is unguarded by
15 police. There's no person there.

16 Just behind it, call it 50 feet away, you can see the
17 second layer of barricades with officers standing behind that.
18 There's about five officers in total. You see three on the
19 screen at the moment, but there's about five officers standing
20 there. This crowd only reached this point about three minutes
21 earlier. So they've been sort of stymied at this first layer
22 of barricades for about three minutes. And you can see
23 Mr. Epps is right at the front.

24 The key here, at this moment, is any arguments that
25 he thought they were allowed to be in the Capitol on January

1 6th has to be out the window at this moment. He has gotten
2 there, there are barricades, people are stopped, nobody is
3 walking through it, and he can see, just behind it, uniformed
4 police officers standing in a higher plain with clear Area
5 Closed signs. At this point it is abundantly obvious no
6 further progress is lawful.

7 However, this is what happens: Mr. Epps works his
8 way to the front the crowd, is there for a couple minutes and
9 then other people -- not him, he doesn't touch a barricade --
10 but other people bust through that first layer of barricades
11 and they run up to the second layer. So he didn't touch
12 anything himself, but he was all too eager to take advantage of
13 those who did.

14 So, Elizabeth, if you can play this slide, please.

15 (Video played.)

16 Mr. Epps doesn't turn back at this point, he surges
17 forward.

18 Elizabeth if you can go to slide 8, please.

19 Because of how jumpy this video was, you didn't see
20 the first person to reach the second layer of barricades was
21 the man in the backwards Make-America-Great-Again hat, centered
22 in the photograph. That's Government Exhibit 4. That man is a
23 man named Ryan Samsel. And this image, captured from another
24 rioter's video, is the one, essentially, that made Mr. Epps
25 famous. This is him whispering to Ryan Samsel, just before

1 Ryan Samsel and others broke down that second layer of
2 barricades.

3 For this video I would like to play it from the
4 podium. Ms. Bell Norwood, if I can.

5 THE COURTROOM DEPUTY: Sure.

6 MR. GORDON: The group is at this second barricade
7 for seconds. Again, Mr. Epps doesn't touch the barricade
8 himself, but rushes forward as soon as possible. He has worked
9 his way to the very front.

10 When you watch the video I'm about to show, you'll
11 see that there are approximately five officers. And on our
12 right side -- would have been the police's left -- is a female
13 officer, United States Capitol Police Officer Caroline Edwards.
14 You'll see that when the crowd -- that's right there, rushes
15 through the barricade, they knock her back and she hits her
16 head on the stairs behind her. She sustained a concussion.

17 She also sustained injuries -- I have pictures you'll
18 see -- to her eye and to the back of her leg from that fall.
19 Caroline Edwards got up and kept defending the Capitol that
20 day. But this breach that Epps was at the front of in fact
21 injured an officer at that moment.

22 But more importantly, this is when the floodgates
23 opened. This is when a riot could have been something small,
24 that maybe the assembled police could have dealt with, became a
25 flood of thousands they could not. And here, while Epps does

1 not break down that barricade himself, the fact that he was in
2 front, the fact that he ran forward, the fact that he projects
3 authority, that he is a man who is 6-foot-4 -- and while he may
4 205 now, he weighed more than that then. He's a large man.
5 He's wearing desert camouflage sleeves. He's a man who looks
6 like, to others, as a man of action, someone to follow. He is
7 up front, busting through and running through that. So any
8 cues other people might have taken from their surroundings, he
9 was providing loud and clear.

10 Ryan Samsel has been charged with multiple crimes.
11 He went over to Carol Edwards and tried to render some aid to
12 her. Mr. Epps, he ran forward. So for all talk about being
13 concerned about violence of other officers, as soon as the
14 breach of the manned barricade happened, he made a beeline
15 towards the Capitol.

16 He raced forward, others followed.

17 (Video played.)

18 MR. UNGVARSKY: I don't know if there was a video
19 playing. I heard sound.

20 MR. GORDON: Mr. Ungvarsky, I don't think you're
21 going to be able to see. It's a video of the breach, but it's
22 playing on the Zoom screens. I don't believe it's viewable.

23 THE COURTROOM DEPUTY: I tried to do -- do you see
24 anything at all? Do you see the four screens?

25 MR. UNGVARSKY: I mean, I see four screens.

1 THE COURTROOM DEPUTY: Do you see a lady with a
2 backpack, a peach backpack? That's the video. Do you see it?

3 MR. UNGVARSKY: I don't see it.

4 THE COURTROOM DEPUTY: If I take it out of the four
5 screens --

6 MR. UNGVARSKY: Just to be clear, when I can't see
7 it, it means Mr. Epps wouldn't be able to see it.

8 THE COURT: You can leave it in the four screens.

9 Okay. Go ahead, Mr. Gordon.

10 (Video played.)

11 MR. GORDON: Ms. Bell Norwood, can we switch back to
12 Ms. Hayman's presentation?

13 Your Honor, that video doesn't show Mr. Epps because
14 he's just off screen, to the right. There were photographs
15 that were in the government's sentencing memo.

16 And, Ms. Hayman, if you show -- the next slides
17 capture where Mr. Epps was right when those barricades went
18 down, the crowd surged forward. So, Ms. Hayman, if you show
19 10, then 11.

20 This is 10, at the moment when the barricades are
21 going down. You can see Mr. Epps is right at the very front,
22 feet away, watching this happen. If he thought what happened
23 going forward was lawful or okay or a peaceful protest or he
24 was going to somehow be able to keep it peaceful, which is
25 something he's expressed on other occasions, that I wanted to

1 be at the front because I thought I could stop it from being
2 violent. Again, that has to be out the window. At this point
3 he is making a conscious decision to be part of a violent mob
4 that is assaulting and overrunning police, and to lead the way
5 for others to follow behind him.

6 We move to the next photograph, please.

7 This shows, second later, as the crowd goes surging
8 over, climbing over those barricades.

9 If we could move to Government's Slide 13. That
10 brings us to the next major incident of the story of Mr. Epps'
11 day on January 6. That's what I'm referring to as the sign
12 push. It's been called other things by other people. This
13 sign, it's enormous. You can tell by this photograph. One
14 person -- probably looks like it's 10 to 15 people standing
15 shoulder to shoulder wide. The sign itself is made of fabric,
16 but the frame is heavy and it's metal.

17 There's four casters on it, four heavy metal wheels,
18 each one described as being about the sides of a person's head.
19 This had been wheeled all the way from the Ellipse, down either
20 Constitution or Independence Avenue, then brought to the crowd,
21 hoisted overhead and kind of crowd surfed, passed overhead from
22 the south end of the west plaza towards the scaffolding in the
23 center, which is where Mr. Epps was.

24 When it got to Mr. Epps, he put his hands up and as
25 the sign is being turned towards the police officers, he is

1 reaching for it. And he is reaching for it even after it
2 passes over his head and beyond his grasp. Now, reasonable
3 people can look at the video of this sign at the moment when
4 Mr. Epps' hands are up and disagree about whether his hands are
5 on the sign, inches from it, whether one hand is touching it,
6 whether both hands are. Reasonable people can and have looked
7 at that and disagreed about exactly whether he's touching it or
8 not.

9 What cannot be disputed, however, is not only that he
10 is reaching for it, but the suggestion that he's only reaching
11 for it to protect his own head is undermined by the fact that
12 after it passes, sort of, his head space, you can see that he
13 is continuing to reach for it. And there is a crucial
14 distinction -- it doesn't happen for long, it's a second -- but
15 if all you're doing is trying to protect yourself, there would
16 be no reason to want to touch it once you can't.

17 But it's moving toward the police. Mr. Epps is still
18 reaching forward. And when it goes beyond his grasp, he points
19 forward, twice. And now in the still shot, you can argue he's
20 pointed up, and the defense has argued that. But in the slow
21 motion treatment of the video I'm about to show you now, he's
22 pointing forward, in the direction of the police.

23 Is it possible he's saying, "Don't push it that way,
24 there are police there"? Sure. We don't know. We don't have
25 audio. I don't know what he's saying. But circumstantially,

1 taking that together, reaching out for it, continuing to reach
2 for it, and all these other times when he has been eager to
3 take advantage of others doing, sort of, the aggressive work of
4 breaking down the barricade or breaching the police line, with
5 him eagerly following, he contributed to that sign being pushed
6 into the police.

7 So, Ms. Bell Norwood, I'm going to show three videos,
8 this time from the government's podium.

9 Basically what we have, Your Honor, is two angles
10 that I'm going to play for you and then a composite that sort
11 of links them up together so that you can see that.

12 Ms. Bell Norwood, can we switch to the podium,
13 please.

14 (Video played.)

15 I'm sorry, Your Honor. I did the composite one
16 first, which I did not mean to do.

17 (Video played.)

18 You saw all the things I described in my video, as
19 well as that -- what I've described as a rugby scrum push that
20 happened afterward, in the wake of the sign and the police.

21 That would be the officer in the white, sort of,
22 commander or superior shirt, pulls out a large canister of
23 pepper spray, starts spraying the crowd. That's when that
24 rugby scrum breaks up, Mr. Epps moves away, He approaches the
25 line. This is one of Mr. Ungvarsky exhibits. And then

1 Mr. Epps has the conversation with the officer. There's no
2 mystery what he says, it's recorded in the body-worn camera of
3 that officer from the other angle.

4 Mr. Epps essentially tries to negotiate, "Hey, can we
5 stand here, but not here? If we're below these steps, is that
6 okay, if we maintain some space?" The officers don't
7 necessarily say, "Sure, that's fine," but it's, like, that's
8 better than charging us. And that's when Mr. Epps turns around
9 and directs the crowd, try to step back.

10 The next video is -- the one I just showed you is the
11 best angle, the best video we have of this incident. Limited
12 by the evidence that exists, that's the evidence that exists.

13 The next one is a composite that includes two other
14 angles that provides some context, particularly the timing of
15 just how soon after Mr. Epps' reach or touch of the sign occurs
16 to when it actually hits the police. And it's very short in
17 time.

18 This is another one of when Mr. Epps' hands are on
19 the sign or reaching toward it.

20 THE COURTROOM DEPUTY: It's not coming up.

21 THE COURT: I don't have it yet, Mr. Gordon.

22 MR. GORDON: You don't have it?

23 THE COURTROOM DEPUTY: I can't seem to keep it up at
24 the same time as everybody else.

25 Counsel, can you see the video?

1 MR. UNGVARSKY: I can see the video.

2 THE COURTROOM DEPUTY: Judge, can you see?

3 THE COURT: It's not on my screen.

4 THE COURTROOM DEPUTY: It's not on your screen
5 either?

6 (Pause.)

7 THE COURTROOM DEPUTY: Press play, Counsel.

8 MR. GORDON: Sure.

9 THE COURTROOM DEPUTY: Nothing yet, Judge?

10 THE COURT: No.

11 I think you can just play it. Mr. Ungvarsky has seen
12 it, I'm sure, numerous times. I think he's pretty well
13 acquainted with it. If it works by just showing it to me.

14 (Video played.)

15 MR. GORDON: And you've seen the rest from there,
16 Your Honor. The, sort of, weight of the sign and the force
17 which it was thrust is hard to appreciate from that aerial
18 view. So this last video is very brief, it just shows the
19 moment of impact with the officers.

20 (Video played.)

21 You can see that the officers struggled to deal with
22 the sign. You can see the impact it had on them. You can see
23 the size of it. You can see the fighting that took place in
24 its wake and the crowd surge forward afterwards, only to be
25 repelled when the officers used pepper spray.

1 If we can go back to Ms. Hayman's presentation.

2 And, Ms. Hayman, if we can go to slide No. 19.

3 That's a photograph you've seen in the sentencing
4 memorandum of Mr. Epps in the middle of that scrum afterwards.

5 From there, Mr. Epps walks the line on that west
6 front for about a half hour, engaging in those instances of
7 deescalation that I had described previously. After that, he
8 leaves, goes back towards his hotel, and does have an impromptu
9 interview with another person. I can't call him a journalist,
10 but another person who is filming and recording people's words.

11 Mr. Epps gave that interview. It's about seven
12 minutes long. I'm only going to play the first five minutes.

13 THE COURT: He never went beyond -- he never went
14 further toward the Capitol than he's seen in these videos?

15 MR. GORDON: That's correct, Your Honor. He never --
16 if you think of those three steps that separate the lowest
17 level of the west plaza from the next, he never went up those
18 three steps, other than a brief period of time. If he's to be
19 credited -- but, we can't corroborate -- but where he says that
20 he had to render aid to somebody who had suffered from a
21 medical incident.

22 So after that he goes back to this pizza place across
23 from his hotel and talked to the other person and described his
24 own motivation and why he did what he did. Describes his
25 actions. Whole thing is about seven minutes. I'm going to

1 pull the first five minutes for Your Honor and then we're going
2 to talk about, sort of, how this all comes together.

3 This is the last piece of video or evidence that I
4 want to show you about Mr. Epps' conduct.

5 Ms. Bell Norwood, if we can go back to me.

6 I don't have sound for some reason.

7 Let me try it with Ms. Hayman's instead. There may
8 be an issue showing it with sound to Mr. Ungvarsky.

9 Ms. Hayman, this is going to be slide 21. If we can
10 play that video.

11 (Video played.)

12 Stop there. Ms. Hayman, can you stop there.

13 THE COURT: Why don't we just interrupt for one
14 second.

15 So, the sentencing that's set for 11, we're running a
16 little bit late. So we'll shoot for 11:30. But we won't do it
17 before then. Okay. Thanks.

18 MR. GORDON: I'm very close to being done, Your
19 Honor.

20 THE COURT: Okay. Thanks.

21 MR. GORDON: The two key points he makes in this
22 statement, the first is, well, it was Antifa who were the
23 violent ones. How did he know they were antifa? Oh, he didn't
24 know, but we're not violent, so it must have been antifa.

25 In this Mr. Epps is doing the exact same thing, the

1 exact same thing that he, himself, has been the victim of this
2 conspiracy theory. He made this point in his video on January
3 6, he made it to the FBI when he called in on January 8th. He
4 made it to Congress a year later when he was interviewed on
5 January 21st, 2022. Antifa is responsible. How do you know
6 they were Antifa? Well, I didn't know, it must have been them
7 because they're the only ones that would do this. And the same
8 with the others who are eager to point the finger at the
9 government for January 6th, he is eager to point the finger at
10 others. He may have changed his tune today, but that is, you
11 know, an aggravating factor.

12 The second point that matters here is what he said at
13 the end, "They needed to know." "They" being Congress. "They
14 needed to know how angry we were." And not by being, you know,
15 at the Ellipse. He knew about that. That wasn't sufficient
16 for Mr. Epps. Congress needed to know because he and thousands
17 of others needed to go into the Capitol, into the Rotunda, and
18 tell them, essentially face-to-face, en masse. He's explaining
19 exactly what he did.

20 So reasonable people can look at all this evidence
21 and disagree about whether it merits a misdemeanor or a felony
22 charge. If a felony, whether it raises to a 1512 or doesn't,
23 whether the barricade break and the sign push resonate or meet
24 the elements of 231. Reasonable people can disagree whether
25 the right result is a felony with a relatively light sentence

1 for a felony, or a misdemeanor with a relatively stiff sentence
2 for a misdemeanor.

3 Whenever I do presentations to the high school
4 students, I always emphasize -- this sounds corny, but I always
5 emphasize that we are the Department of Justice, not the
6 Department of Convictions. And so as the Department --

7 MR. UNGVARSKY: I'm sorry, Mr. Gordon. I really am
8 sorry. Can the exhibit be taken down so I can see you?

9 MR. GORDON: Of course. I'm sorry.

10 MR. UNGVARSKY: I'm sorry, Mr. Gordon. I apologize.

11 MR. GORDON: And as the Department of Justice, that
12 means that we have to do what we think is right. And sometimes
13 we come across a unique and complicated case like this one
14 where that answer may not be obvious. But here we used our
15 prosecutorial discretion and arrived at the conclusion that the
16 best result in this case was a misdemeanor plea with a
17 relatively stiff sentence for a misdemeanor.

18 This is aggravated conduct in the realm of
19 misdemeanors in January 6 cases and it deserves an appropriate
20 sentence commensurate with that.

21 All that being said, I expect there's a lot that
22 Mr. Ungvarsky is about to say that I'm going to agree with
23 about the mitigating factors in Mr. Epps' favor, particularly
24 his efforts to de-escalate the conflict on multiple occasions,
25 and the fact that he was the victim of this widespread

1 conspiracy theory that is both false and continuing to be
2 promoted by many.

3 So, the last thing I want to say Your Honor is this:
4 He has already received a substantial benefit for all that
5 mitigating conduct. The government already weighed all that,
6 we already factored that in to give him the significant break
7 of a misdemeanor plea offer, when it's entirely possible that a
8 grand jury could have indicted him on a felony.

9 So if Your Honor then goes and again uses that same
10 mitigation to ratchet his sentence on a misdemeanor far down
11 from what it might otherwise be, it's essentially double
12 counting that benefit. So the same way I asked --
13 Mr. Ungvarsky is going to ask Your Honor to consider the
14 mitigation factors, I'm going to ask Your Honor to consider the
15 degree to which the government has already incorporated it in
16 the result of this case.

17 In the end, six months is the right sentence for
18 this. I don't envy the position you're in.

19 THE COURT: Okay. Thanks so much, Mr. Gordon.

20 Mr. Ungvarsky.

21 MR. UNGVARSKY: Your Honor, thank you very much. I
22 probably -- I will be shorter than Mr. Gordon, but I don't know
23 if we'll be done by 11:30.

24 Your Honor, Ray Epps was in the middle of a crowd, a
25 mob, on January 6th outside the Capitol. And persons in that

1 situation get stuck with joining the actions of the mob, a
2 group think, a mob mentality. It can be impossible to break
3 away. But Ray Epps did break away from the mob mentality. He
4 was present, yes. He engaged in disorderly and disruptive
5 conduct, yes. He admitted that. But his words and his actions
6 were to try to de-escalate others, to suppress violence.

7 Nobody listened to him. None of the people there
8 listened to what he said. But nothing that he did was to cause
9 physical pain -- was to cause physical harm, to add to any
10 violence, his plan was never that and his actions were never
11 that. It takes character, principle, and integrity to break
12 from the mob. We saw so many people that day and mobs on other
13 days who failed to do so.

14 But Mr. Epps displayed his character, principle, and
15 integrity when he broke from the mob on January 6th. He had
16 gone through the early two barriers. He told others to stop
17 their actions, their violent actions, their threatening
18 actions, their endangering actions, follow the will of the law
19 enforcement officers outside the Capitol.

20 Your Honor already noted that unlike those people who
21 surged there, Mr. Epps didn't. He didn't go past those steps.
22 He used his -- you know, the government wants to punish him for
23 his voice and his size, but he used his -- and as a large man
24 myself, I wish that weren't a characteristic that would be used
25 against us -- but he used his voice and size to tell others not

1 to confront the officers. He acted to support the officers.

2 He turned away. He didn't press forward to the
3 Capitol. He didn't enter the Capitol. He left. And I
4 think -- I have seen video of him providing -- sort of
5 escorting somebody out, providing medical aid to someone. I
6 think it's on the exhibit that I provided to Your Honor. I
7 think it's Exhibit 102B maybe.

8 But in any event, he rendered medical aid on his way
9 out, and he left. And he displayed his character, principle,
10 and integrity when he called the FBI on January 8th to record
11 himself. And he displayed his character, principle, and
12 integrity when he agreed to speak twice with the House Select
13 Committee, including publicly.

14 Now, when you've been a member of a group, when
15 you've been lied to and long believed one thing, it can be
16 really impossible to break away, your mindset to change. And
17 especially those of us who are older, like Mr. Epps and I,
18 start to think one thing and we think that's how things are.
19 And, you know, we really couldn't imagine that people who are
20 like him, supporters of the President, could be so angry and
21 violent.

22 But as he and his wife were threatened, especially as
23 those threats escalated around the time of his congressional
24 cooperation, and he really came to a crossroads. And those
25 threats -- I'm not going to go into it in great detail, it's in

1 the materials. I mean, people -- you know, there was firearms,
2 you know, brandished at them at their home. There was spent
3 shell casings in line sight to their home and their bedroom.
4 There were people who pretended to set up visits to potentially
5 use the wedding and special event site that they had, and then
6 they would be along with Mrs. Epps and cause her threat and
7 fear.

8 You know, he really -- he and his wife, in a way,
9 they're almost like (crosses fingers). They came to a
10 crossroads. And what he did -- I think this is so admirable,
11 so many people can't do it -- is he broke yet again from group
12 think. He broke, he concluded that it was -- the Trump
13 supporters, like him, who instigated and were there that day on
14 January 6th -- gosh, he had wished it was someone else, he had
15 wished it was antifa, or whatever, you know, they believed that
16 phrase means. But he realized it was people who supported the
17 President, like he did, people that had been told the election
18 was stolen, like he had been told.

19 Mr. Epps concluded that the people there violated the
20 Constitution by engaging in violence outside the Capitol and
21 inside. He concluded that President Trump had lost the
22 election and that President Biden had won the election. The
23 election was not stolen. He had been wrong.

24 And he identified -- and you see this in his letter
25 to the Court, and you read this, "The blame of the insurrection

1 is not on the FBI. It is on those who were at the Capitol,
2 engaged in insurrectionist activities, and those who misled
3 Americans, like myself, into believing that the election had
4 been stolen."

5 You know, when he wrote that letter -- he's a very
6 independent man, with very independent thoughts and desires of
7 expression. He used the word "of the insurrection," because
8 that's how he sees it. He talked about violence that was there
9 because that's what he saw. He recognizes and saw that there
10 was violence and that people engaged in that insurrection
11 against a lawful, correct election result. He accepted
12 responsibility for his offense, and he feels remorse for his
13 actions that day that contributed to that mob.

14 Now, on the other hand, he's also proud that while he
15 was there, while his presence contributed to that, he tried to
16 de-escalate. He tried to stop it. And I don't -- you know,
17 you don't have his experience, I don't think, Your Honor,
18 because you're a judge and people listen to you. But, you
19 know, you saw that people were not listening to him. He was
20 called a "boomer." I don't know whether he's a boomer or not.
21 But I know people don't listen to me anymore. And I've learned
22 to keep my mouth shut when around my kids and their friends.

23 And Baked Alaska and that group of people on January
24 5th, they didn't listen to him. And that wasn't a large mob he
25 was talking to, it was a group. And he said there, that day,

1 peaceful, peaceful, peaceful, peaceful because that's what he
2 wanted. He didn't talk about violence, he didn't talk about
3 storming, he didn't talk about intimidating Congress, as the
4 government said, to certify the election. He didn't say any of
5 that at all. He just said they should go down to the Capitol
6 and express their view.

7 He wasn't listened to by Ryan Samsel when he said,
8 "Calm down. Stop. They're doing their job, hold back." They
9 didn't listen to him. Those people didn't listen to him. And
10 the people, when they got to the Capitol steps, didn't listen
11 to him. Nobody listened to him as he tried to de-escalate.
12 But that's what he did try to do.

13 I really -- as I listened to the government talk
14 about the quote/unquote offense conduct, and as I talk about it
15 here, I think it's an expansion over the statement of the
16 offense. I think it's important that he never talked about
17 intimidating Congress. In fact, even in that post video
18 interview by the citizen journalist, if you will, he talked
19 about -- the word he used was it is symbolic. The presence
20 outside the Capitol was symbolic. Not designed to intimidate.
21 It had symbolic value. And as thought that day, the election
22 had been stolen and what happened was wrong. It was an
23 amplification of a voice from the President's Stop the Steal
24 rally and an amplification of what is from prior events.
25 Symbolic amplification of voice.

1 He didn't contribute to multiple instances of
2 violence against police officers. There's no indication that
3 he knew that an officer had fallen to the ground when Ryan
4 Samsel and the others went through there. There's no
5 indication of that, or that his -- his hands weren't on the
6 gate. He wasn't the one who pushed through. He was trying to
7 have people not do that. He was behind all that.

8 If he contributed, it's contributing in the sense
9 that he was physically there. His hands -- they talked about
10 building the size of the mob. We already talked, nobody
11 listened to him on January 5th. And he didn't say anything at
12 all on January 5th. And it wasn't in his mindset that this day
13 was about 1776. He's never talked that day about 1776.
14 Somebody else said that, not Mr. Epps. He didn't agree with
15 it.

16 By the way, unlike so many of these cases, there's
17 no, you know, prior social media or even private text messages
18 or anything by Mr. Epps talking about wanting -- you know,
19 prevent the certification of the election, overturn the
20 election. Just speak out about the result, but not overturn
21 it, attack it. Certify it. There's nothing about violence.
22 And we see that in so many other cases.

23 And there's nothing afterward because that wasn't his
24 mindset. And what he said on the street was protected speech.
25 And there were a lot of people going to the Capitol to register

1 their voice. I'll be honest, I was in D.C. that day and there
2 wasn't a moment's thought in my mind I would go anywhere near
3 that Capitol that day. But he was there, as were others, to
4 register a voice.

5 Samsel, we already talked about how there's no
6 indication that person listened to him. He's not leading the
7 way to others to follow him. Others led the way and he
8 followed. Should he have followed? No. Did he think that,
9 like, he would be like able to calm people down? That's what
10 he said and there's no indication that what he has said isn't
11 true.

12 You know, like a lot of people of my generation, a
13 slightly older generation, we think people will listen to us
14 and we think things can be the way we think it should be. But
15 it's not necessarily going to be that way.

16 With the Trump sign, it did go over his head --

17 THE COURT: Maybe I should interrupt, Mr. Ungvarsky.
18 I think there's arguments in the defense memo regarding his
19 belief that the Capitol would be open on January 6th and
20 statements, therefore, he didn't -- wasn't doing anything
21 illegal. But if that's still your contention, then why would
22 he be saying, "I will probably going to jail for that." So can
23 you square that for me?

24 MR. UNGVARSKY: The way I'd square it, Your Honor, is
25 that I think that some people who are supporters of President

1 Trump thought that they would be targets by, you know -- that
2 their viewpoint wasn't supported by those in authority and that
3 they ran some risk.

4 THE COURT: Okay.

5 MR. UNGVARSKY: I think that he thought on, January
6 5th, that it would be open. I think he knew by January 6th,
7 when he was -- that it was not.

8 THE COURT: Okay. Thanks. I agree that the sign and
9 the push seem somewhat equivocal of the evidence. I think the
10 video is somewhat equivocal on that, as you pointed out. But,
11 I think that's where you were going next.

12 MR. UNGVARSKY: Thank you, Your Honor. I may have
13 misunderstood the government's position in its filing. So what
14 I see here, it seems to me that the government has conceded
15 that. You know, when they say that reasonable people can look
16 at the video as to whether Mr. Epps' hands were actually on it
17 or not on it or this or that, to me that's sort of a concession
18 because it really undercuts the contention that he physically
19 caused that sign -- he physically pushed that sign to go in any
20 certain direction.

21 I think the same with the scrum that was happening.
22 I see it more as a scrum. If you look at the video, he was in
23 the midst of a large, tight crowd. I mean, I haven't been at
24 one of those since -- well, I haven't been in such a large,
25 tight crowd since I saw Phish when I was in my late 20s. I --

1 I know, no one else in this courtroom would have gone to see
2 Phish, certainly not Mr. Epps. But when we -- when you're in
3 that large, tight crowd -- you can see in that video, he's
4 being pushed from behind. He's not pushing, like a rugby
5 person. And then you can see in the video that we sent, he
6 tries to maneuver to try to get himself out of there. And he
7 tries to walk upstream and he has a hard time getting upstream.
8 And I think, because of his size, ultimately he's able to.

9 I don't think he contributed to that sign being, you
10 know, pushed to the police. I think that's -- I think that's
11 argument. And maybe it's fair argument by the government, but
12 I think it's excessive.

13 And so -- and he talked about his motivations. So --
14 and I -- and it's very important, on January 6th, that there's
15 no -- that in that interview, he wasn't talking about going
16 into the Capitol in that interview after the events, he was
17 talking about being outside the Capitol. And I think the
18 reason why I'm saying that's important, I think the government
19 blurs, they blur what he says on the 5th about going inside
20 with what they say on -- with what he says on the 6th, which is
21 about all the people were there on the outside.

22 But he doesn't -- like, we don't have a situation
23 here where he's telling people no, you should break in, you
24 should force in, you should breach, you know, or whatever the
25 words are.

1 And, so, you know, that's -- so I think his offense
2 conduct, I think it makes out the offense, which is why he pled
3 guilty to this offense. And this is the offense he's before
4 the Court for and I -- gosh, I haven't had this since I did
5 Capitol murder cases, where the government somehow said we've
6 been, like, already generous in giving a plea, when you
7 wouldn't have accepted -- you would have gone to trial on
8 anything else, so you don't get any sentencing mitigation for
9 all the good -- all the good that we see in you and all the
10 pain that you -- that you -- that was incurred by you for what
11 you did.

12 I mean, I -- I'm actually kind -- I'm bothered by the
13 government's argument that somehow or another their plea offer
14 is what he -- is good enough. This is -- this is what they
15 agreed to.

16 And so now it takes me to my request for the
17 sentence, which is a sentence of probation. And I acknowledge
18 that the government tends not to recommend probation unless
19 it's, like, a parading case. And as the government said
20 earlier today, but courts give probation on the misdemeanors,
21 including not just a parading cases. And we gave four examples
22 in our sentencing memo. And I think then the government gave
23 yet a fifth example in its sentencing memo. And I think
24 that --

25 (Mr. Ungvarsky's video froze.)

1 MR. UNGVARSKY: So we do ask for probation. Mr. Epps
2 is -- I'm going to make this very clear to Your Honor: He and
3 his wife feel threatened. They feel that as their address,
4 their home becomes known, that they are in danger. They feel
5 that way because of messages that they continue to receive.
6 They feel that way because they've been told by the FBI that
7 there were threats on their lives.

8 And while they're trying to live in a trailer in
9 hiding in the woods, there's been, you know, there's been some
10 identification of their location. And so as a man who's owned
11 a gun for his whole life, he would like to have a gun in the
12 house as protection. He would like that.

13 On the other hand, he recognizes the countervailing
14 concerns about someone who is on community supervision having a
15 firearm. And he fully consents to a gun restriction in this
16 case.

17 He does ask, in terms of travel, that if the Court is
18 going to limit his travel -- that he be permitted to travel.
19 But most definitely he needs to be able to travel to the
20 District of Delaware, Federal District of Delaware, because he
21 has a pending civil case there where he's a party. So we ask
22 that.

23 If the Court is inclined to include, for part of the
24 period of probation, a period of home confinement -- which I
25 don't think is necessary, I think it's more than -- than

1 required by the statute. I ask that, instead, what the Court
2 do is have him on the GPS with a curfew of 10 p.m. to 5 a.m.
3 His wife is -- his wife -- you know, he and his wife are what
4 some people would say are elderly. He has physical concerns,
5 he has emotional and mental concerns.

6 You know, he wants to be able to go and not, you
7 know -- you know, there's snow where he is, and there's a lot
8 of snow where he is, and it's hard to get out from where they
9 are. And he doesn't want her to be the one who has to go do
10 the grocery shopping and the medical appointments without him.
11 And the propane. And he wants to be able to help. And we've
12 seen during pretrial that he has followed all the conditions of
13 pretrial, 100 percent.

14 Now, Mr. Epps, Your Honor, in support of his
15 probationary sentence, he has no criminal record at the age of
16 62. In 2021 the government viewed videos, they viewed other
17 evidence, and they decided not to charge him for any offense at
18 all. Now, nobody knew that, other than the government, until I
19 saw it, you know, buried amidst of discovery. But then came
20 the, you know, the misdemeanor and he agreed, because he did
21 commit this misdemeanor.

22 He helped law enforcement on multiple occasions that
23 day. He's a person who -- and I know you've heard this so many
24 times, but I think he thoroughly -- he demonstrated it, his
25 great respect for law enforcement.

1 I thought telling of the government was this line:
2 The government's not aware of any other case of a defendant, a
3 January 6 defendant, who took such actions trying to tamp down
4 the energy and the actions of the crowd. They couldn't think
5 of any other case.

6 I also can't think of any other case of which I'm
7 aware in which the government formally said -- or, internally
8 at least -- that they weren't going to charge somebody and then
9 later -- later came with charges.

10 THE COURT: I think there are certainly cases where
11 the government has found other video or other evidence that has
12 given them a reason to charge. So that, to me, is less
13 convincing.

14 MR. UNGVARSKY: All right. He's willing to help law
15 enforcement because I think by nature he's a helper. You see
16 that -- we've talked about his relations with his wife, and you
17 see that in the letters. You see that as someone who would
18 go -- would go find homeless people, and not one or two, but
19 scores of them in November and December when they were living
20 in Arizona, in Mesa, Arizona. He would go to Pioneer Park to
21 invite people to his home for Christmas, to give them Christmas
22 breakfast -- or lunch, I forget what it is -- and for gifts.
23 For years, almost ten years he did that.

24 What I found so telling about that was in 1993, '94,
25 I think at around the same time, I was living right by Mesa,

1 Arizona and I was going to Pioneer Park and I was interacting
2 with the people who were unhoused at that time. So I find it
3 interesting, he and I had this overlap, you know. But you know
4 what I didn't do? I didn't invite anybody into my home. You
5 know, I did -- you know, I was sort of arms length in my care
6 and concern for those people in need. And he brought them into
7 his home.

8 You see how he helps travelers. You know, if someone
9 is broken down on the side of the road, you know, someone
10 needed -- you know, someone's kids -- they're impoverished and
11 their kids -- they didn't have money, somebody needed a ride
12 for hours to another state. You know, he just dropped
13 everything and he volunteered. And, you know, for neighbors,
14 you know, he's a -- for neighbors he would help make home
15 repairs, roofing and other home repairs.

16 As the Court fashions a sentence that reflects the
17 seriousness of the offense and promotes respect for the law --
18 well, first of all, I'll just do deterrence. I think a
19 sentence of probation satisfies deterrence. You're never going
20 to see Mr. Epps commit a crime again. I think you know that
21 and the government knows that. And you're going to -- I think
22 you also have general deterrence from the fact that, you know,
23 notwithstanding all the vitriol (sic) that he speaks and
24 notwithstanding his attempts to tamp down the crowd, the
25 government has still charged -- a message has been sent by the

1 government, by the charge, by the conviction. And a
2 probationary sentence will reflect the seriousness of the
3 offense and promote respect for the law, and I ask the Court to
4 so impose.

5 THE COURT: Thank you very much, Mr. Ungvarsky.

6 Mr. Epps, I've read your letter. I am happy to hear
7 anything else you would like to say.

8 THE DEFENDANT: Thank you, Your Honor. Good morning,
9 Your Honor.

10 It is a privilege to be a citizen of the
11 United States of America. I love our Constitution and this
12 beautiful country in which we live. Trusted elected officials
13 and Fox News led to my guilt -- gullibility in believing the
14 election was stolen. This resulted in my trip to D.C. to be
15 with my son for the January 6th protest -- excuse me, Your
16 Honor. I'm a little nervous.

17 THE COURT: Take your time.

18 THE DEFENDANT: And in going from President Trump's
19 rally to the Capitol. I regret both those decisions. I was
20 wrong when I knowingly trespassed and engaged in disorderly
21 conduct on the restricted grounds of the United States Capitol.
22 I shouldn't have been there. In hindsight, I realize that's
23 not what a constitutional-loving America should have done.

24 What I witnessed the night before and that day was
25 rage in a vulgarian level that I have never seen before. The

1 crowd and its energy and the violence were not generated by the
2 FBI or antifa. It was generated by people like me, who
3 supported President Trump and listened to his lies and the lies
4 of others that the election was stolen.

5 The election was not stolen. President Joe Biden won
6 the election. Robin and I have come to realize that.
7 Unfortunately, my wife and I continue to experience that rage
8 and vulgarity shown on January 6 from those that still refuse
9 to accept the truth.

10 When I realized what I thought would be a peaceful
11 protest turned violent, I did my best to help law enforcement
12 and calm others. After, when I got home, I continued to try to
13 do the right thing. When Fox News and the Trump cult turned on
14 me and my wife for a convenient shift of blame, it was life
15 changing, it was a life-changing reality check. My wife and I
16 were forced to look elsewhere for the truth.

17 I have learned that truth is not always found in the
18 places I used to trust, but in God, my faith in God, in our
19 Constitution and those who abide by it, like the police
20 officers who were there that day, the judges of this court and
21 my lawyer.

22 I always choose God, our Constitution and truth over
23 politics or a politician. I ask for this Court's mercy. I
24 want to use the rest of my life to inspire others to recognize
25 and learn the truth of election results and obey the laws of

1 our great country, even if they may not agree with them. Thank
2 you, Your Honor.

3 THE COURT: All right. Thank you very much,
4 Mr. Epps.

5 As Mr. Gordon said in the beginning of his
6 presentation, this certainly is a difficult sentencing. And
7 the lawyers have very articulately and cleanly argued their
8 cases and brought each positive inference for each side out of
9 it. I also appreciate the fact that the government has been
10 balanced in its presentation, explaining and conceding the
11 mitigating factors where appropriate. Certainly I don't -- the
12 defense's job isn't to do that. The defense's job is to
13 advocate for the defendant, and Mr. Ungvarsky has certainly
14 done that ably and fairly, and I appreciate that as well.

15 I don't think there's any dispute on the guidelines,
16 which were zero to six months. There is a dispute about 4C1.1.
17 But whether that's applied or not does not affect my sentence
18 in this case.

19 I'm very familiar with the 3553(a) factors. So as we
20 look at the defendant's behavior on that day, as I said
21 earlier, I do find the evidence regarding the sign and the
22 scrum somewhat equivocal. And Mr. Gordon, I think, has argued
23 the best inferences against defendant, and Mr. Ungvarsky for
24 the most favorable ones. I think anyone for whom a heavy sign
25 passes is likely to raise their hands to protect themselves.

1 The sign is also moving laterally, parallel to the police line,
2 rather than in front of the police -- rather than towards the
3 police line when Mr. Epps initially has his hands up. It's
4 awful hard to say whether his pointing is an instruction to
5 push the sign towards the officers or not.

6 Similarly, the scrum, it's unclear whether he's
7 caught in that scrum -- which he unequivocally disengages from
8 rapidly -- or whether he has any intent to join in pushing
9 forward. So I think those both are really too weak to dictate
10 the appropriate sentence here.

11 So what we're left with is still certainly concerning
12 behavior. Whether Mr. Ungvarsky is right that people were
13 listening to Mr. Epps or not, the question is what statements
14 did he make and what was he intending to influence people. I
15 think on January 5th, that he is saying that we will go into
16 the Capitol, and he mentions that he's probably going to jail.
17 And so either that means he realizes it's unlawful then, which
18 is I think the most natural position, or Mr. Ungvarsky's
19 interpretation I think is possible, but perhaps less likely.
20 Again, if he thought the Capitol was open, why would he go to
21 jail for entering it?

22 But it's certainly true that to say he was a leader
23 on January 5th and inspiring lots of people is a vast
24 overstatement, that there are only a few people around him,
25 they certainly seem to be discounting what he's saying. There

1 are lots of people saying lots of things out there. And so I
2 think that it is an indication of his mindset, but it's
3 certainly not a basis to conclude that he's some ringleader.

4 The most damning activities he takes are on January
5 6th; that he's early at the Peace Circle, and at that point he
6 can certainly see that the Capitol is not open, that people are
7 not welcome there. I think this is a point Mr. Gordon
8 stressed, that, Mr. Epps, you certainly knew at that point that
9 to go further would be to break the law. And you did not lead
10 that group, you did not push over any bike racks or barricades.

11 But as the government says, you willingly went
12 forward once those barricades were broken down. And you were
13 one of the earliest members of that group to go forward. And
14 that is serious, as the government points out. The mob only
15 achieves its goals because it's able to proceed further toward
16 and then into the Capitol.

17 So the first barricade was down, but you did not turn
18 back, but went on to the next. And the next barricade, again,
19 seeing where the police line was thicker, was more reinforced,
20 you were closer to the Capitol, but once again, you didn't say,
21 "We shouldn't be here. This is wrong. I've made my point, I'm
22 leaving." You remained there and engaged with others. You
23 were near the front now, once that line is breached. You do
24 not enter. And, in fact, then you do turn back.

25 And, so, for the conduct that I've just mentioned, to

1 me some jail is appropriate. And whether it's what the
2 government asks for or less is an interesting question.

3 So, stacked against that is your mitigating conduct.
4 And even the government notes that that conduct was mitigating
5 on January 5th and 6th. You did emphasize "peacefully" on
6 January 5th. There was no social media posting beforehand
7 about tearing this House down or hanging Mike Pence or Congress
8 being traitors. And then on January 6th you did deescalate the
9 situation, at least five times according to them, and even on
10 the video we see you telling people to come up and no farther.
11 So that's certainly mitigating behavior.

12 I think, more important, was what happened after
13 January 6th, that you turned yourself in on January 6th -- on
14 January 8th, willingly and voluntarily, and you then gave
15 voluntary and consensual interviews to law enforcement and the
16 January 6th Committee, in which you testified and cooperated
17 truthfully.

18 And for your cooperation and conduct, you have been
19 vilified and threatened in a way unique to January 6
20 defendants. You were hounded out of your home, you were
21 hounded out of your town, and you've had to live like a
22 fugitive because of lies that others spread. There are plenty
23 of January 6 defendants who suffered scorn and disdain in their
24 communities for what they did that day.

25 But you seem to me, so far, the only one to have

1 suffered, and to a much greater degree, for what you didn't do.
2 In other words, there are plenty of conspiracy theorists still
3 who refuse to believe that this was an insurrection by
4 supporters of the former President and not some violent act
5 instigated by antifa or the FBI.

6 So, there have been more than 700 people convicted so
7 far in this courthouse of crimes related to January 6th. Not
8 one is a member of antifa or an FBI agent. So what you've been
9 through because of lies is truly unfortunate.

10 I've also read all of the letters in support, your
11 own statements. I believe you are truly remorseful for your
12 conduct. And not remorseful because you were caught, but
13 remorseful starting early on in this process.

14 I also believe that you've led a very positive life
15 of service in your community. Mr. Ungvarsky touches upon a few
16 of them, but the letters, which are lengthy and numerous, speak
17 in great detail of the service you've rendered. And, really,
18 none talk about your service in the Marine Corps, but your
19 contributions to your family, your community, and your town
20 with many good works over a long period of time.

21 Given all of that mitigation, I ultimately believe --
22 and it's a difficult decision -- that prison is not warranted
23 in this case and that a probationary sentence is appropriate.
24 Again, as I've said, everything the government said and
25 everything it requested were reasonable. This is not an easy

1 sentencing, and I believe this is the appropriate one.

2 I will not enforce a travel restriction or home
3 confinement because I just don't think those serve any purpose
4 at this point. But I will impose a gun restriction, as I've
5 imposed on all supervisees from January 6. And I know that
6 there are reasons that Mr. Ungvarsky has stated that I should
7 permit it, here but I will not.

8 So I sentence the defendant to a term of 12 months of
9 probation on Count 1 and a special assessment of \$25. I will
10 not impose any travel restriction. There will be a gun
11 restriction.

12 I'm also going to require 100 hours of community
13 service, Mr. Epps, along the lines that you, yourself, have
14 just proposed in your allocution.

15 You shall abide by the following mandatory
16 conditions, as well as all discretionary conditions recommended
17 by the probation office in Part D of the presentence report,
18 including not committing federal, state, and local crimes. I
19 will not impose any drug testing requirement.

20 I will order \$500 in restitution, and that will be
21 due within 60 days.

22 You may appeal this conviction if you believe your
23 guilty plea was somehow unlawful or involuntary, if there was
24 some other defect in your plea agreement. You also may seek
25 relief from the Court if you believe you've been rendered

1 ineffective assistance of counsel in relation to the plea or
2 sentencing and if new -- I'm sorry, or if new or currently
3 unavailable information became available to you. You must file
4 such appeal within 14 days after the entry of judgment. If you
5 are unable to afford the cost of appeal, you may request
6 permission from the Court to file without cost and you may also
7 seek court-appointed counsel.

8 Do you understand all of that, Mr. Epps?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Are there any objections to the sentence
11 imposed not already noted on the record, Mr. Gordon?

12 MR. GORDON: No, Your Honor. Thank you.

13 THE COURT: Mr. Ungvarsky?

14 MR. UNGVARSKY: No, Your Honor.

15 THE COURT: All right. Again, Mr. Epps, good luck to
16 you. I hope that you are able to continue your contributions
17 to your community without continued threat of violence.

18 Thank you very much.

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CERTIFICATE OF OFFICIAL COURT REPORTER

I, JANICE DICKMAN, do hereby certify that the above and foregoing constitutes a true and accurate transcript of my stenographic notes and is a full, true and complete transcript of the proceedings to the best of my ability.

Dated this 19th day of January, 2024

Janice E. Dickman, CRR, CMR, CCR
Official Court Reporter
Room 6523
333 Constitution Avenue, N.W.
Washington, D.C. 20001