

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MICAJAH JOEL JACKSON,

Defendant.

Criminal Action
No. 1:21-cr-484

Washington, DC
March 10, 2022

11:05 a.m.

TRANSCRIPT OF VIDEO SENTENCING HEARING
BEFORE THE HONORABLE RANDOLPH D. MOSS
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government:

SEAN MURPHY

U.S. Attorney's Office for the
District of Puerto Rico
Torre Chardon, Suite 1201
350 Carlos Chardon Avenue
San Juan, PR 00918

For the Defendant:

MARIA JACOB

Federal Public Defender's Office
625 Indiana Ave, N.W.
Washington, DC 20004

Court Reporter:

JEFF M. HOOK

Official Court Reporter
U.S. District & Bankruptcy Courts
333 Constitution Avenue, NW
Room 4700-C
Washington, DC 20001

P R O C E E D I N G S

DEPUTY CLERK: This is criminal action 21-484, the United States of America v. Micajah Joel Jackson. The defendant is appearing by video. Also by video for the Government, Sean Murphy; for defendant, Maria Jacob; and from probation, Crystal Lustig.

THE COURT: Good morning everybody. My apologies for keeping you all waiting. We're here this morning for the sentencing in United States vs. Jackson, which is 21-cr-484. Let me ask at the outset, Ms. Jacob, whether Mr. Jackson wants to proceed by video instead of doing this in person. And I'm just going to take a look at the plea here to see if there's anything in that that provides consent to proceed by video.

MS. JACOB: Your Honor, to answer the latter question, I believe there is a provision where Mr. Jackson does consent. And I can represent now that I have discussed this with Mr. Jackson, and he does consent to proceed by video today.

THE COURT: You're right, there is language in the plea agreement that does consent to proceeding by video.

Mr. Jackson, where are you located right now?
You're in Arizona?

THE DEFENDANT: Yes, sir. I live in Phoenix, Arizona, sir.

1 **THE COURT:** And is it your preference to proceed
2 today by video?

3 **THE DEFENDANT:** Yes, sir.

4 **THE COURT:** Well, in light of the pandemic and the
5 distance the defendant is away from D.C., and that he'd have
6 to travel here by plane presumably, the Court concludes that
7 it is appropriate for us to proceed by video today. I do
8 conclude that it would be contrary to the interests of
9 justice to delay this proceeding as well. And I also make
10 the finding under Rule 43(b)(2) that it's appropriate, with
11 the defendant's written consent, to conduct today's
12 sentencing by video.

13 So I have received and reviewed the presentence
14 report and sentencing recommendation from the probation
15 office as well as the materials submitted by the parties,
16 including the letters submitted and the briefing on the
17 split sentence question. I do want to say at the outset
18 that I think the split sentence question is a difficult
19 question. I know that that question is still being briefed
20 I believe in the case in front of Judge Friedman.

21 The defense here submitted to me the amicus brief
22 that was submitted in front of Judge Friedman, but I don't
23 think it's been fully briefed in front of Judge Friedman. I
24 know there's an opinion by Judge Kollar-Kotelly on the
25 question, and there's a Fourth Circuit opinion on that. I

1 say that all by way of introduction because it's possible,
2 depending on where we are when we get to the end of this
3 process, that I'm going to decide that I need to wait or
4 that it would be prudent for me to wait on the briefing to
5 be completed in front of Judge Friedman, and for me to have
6 a chance to study those materials before finally imposing
7 sentence here. But I think we should get going, and we'll
8 see where we stand.

9 Let me ask -- well, before I get into it, let me
10 get just a little bit of background. So Mr. Jackson,
11 today's proceeding is going to go through a number of steps,
12 some of which may seem a bit mechanical or formal to you. I
13 know you just want to get to the bottom line here, but it's
14 important that we go through this. And if there are areas
15 of dispute, I need to know what those areas of dispute are
16 so I can resolve those issues before I make my decision with
17 respect to the sentence to impose. I obviously want to make
18 sure that I've heard from everybody -- I've heard from you
19 if you'd like to speak to the Court, and I've heard from
20 anyone you want me to hear from. And that I also make sure
21 that I understand the factual basis for my decision. So
22 we'll go through all of that today.

23 And then as part of my last step, I'm required to
24 fashion a just and fair sentence in light of the factors
25 that Congress has specified in a statute which is at 18

1 U.S.C. section 3553(a). And as part of that last step, I'll
2 impose the sentence, subject to that one reservation I
3 mentioned in the beginning about split sentences.

4 The final presentence report and sentencing
5 recommendation were filed in this case on February 25th,
6 2022. Does the Government, Mr. Murphy, have any objection
7 to any of the factual material set forth in the presentence
8 report?

9 **MR. MURPHY:** No, Your Honor, we do not.

10 **THE COURT:** And Ms. Jacob, does the defense have
11 any objection to any of the factual materials set forth in
12 the presentence report?

13 **MS. JACOB:** Your Honor, not that's already...

14 **THE COURT:** I'm sorry, I lost you for a second
15 there.

16 **MS. JACOB:** Can the Court hear me now?

17 **THE COURT:** Yes.

18 **MS. JACOB:** Okay. Other than what's already been
19 noted as an objection in the final presentence report, there
20 are no further objections. So the only thing in dispute
21 that wasn't changed by probation based on our letter to them
22 after the draft presentence report is in paragraph 36, a
23 mention of something about his past that he self-reported,
24 but that there's no record that supports it, and was
25 basically objected to during the questioning. During the

1 presentence interview, I stopped the conversation. And so
2 my request was just to remove any mention of it in an
3 abundance of caution, because Mr. Jackson may have not had
4 the accurate details, as oftentimes happens. And so that
5 would be my final request. But other than that, Your Honor,
6 there are no objections.

7 **THE COURT:** Mr. Murphy, what is your view with
8 respect to paragraph 36?

9 **MR. MURPHY:** Your Honor, I believe that it should
10 be included in the presentence investigation report for the
11 reasons outlined by the probation officer. Specifically,
12 that it was information that was self-reported by the
13 defendant before his counsel asked him to stop. However, I
14 mean, to use a trial term which is perhaps not entirely
15 applicable here, that it goes more towards the weight, not
16 the admissibility. And Your Honor is, of course, free to
17 consider it in light of counsel's representations.

18 **THE COURT:** Well, I actually think that's a
19 reasonable way for me to address this. I think that the
20 presentence report is accurate in that it notes what was
21 said, which I take it is not disputed here. But then it
22 notes in a footnote that upon advice of counsel, the
23 defendant did not comment further on this event -- or
24 status. And then there's some reference to the defendant's
25 mother. So I think it's appropriate to stay in the sentence

1 report, but I can say that it's not going to have any
2 bearing on my sentence in this case. I have no reason to
3 think that those events from that time or under those
4 circumstances would have any bearing on my sentence.

5 Anything else, Ms. Jacob, you want to raise with
6 respect to the facts contained in the presentence report?

7 **MS. JACOB:** No, Your Honor.

8 **THE COURT:** And Mr. Jackson, do you feel that
9 you've had enough time to talk with Ms. Jacob about the
10 probation office's presentence report as well as the papers
11 the Government filed in connection with sentencing?

12 **THE DEFENDANT:** Yes, sir.

13 **THE COURT:** Are you fully satisfied with the
14 representation of your counsel in this case?

15 **THE DEFENDANT:** Yes, sir.

16 **THE COURT:** Well, I'm going to then accept the
17 facts as set forth in the presentence report as my findings
18 of fact for purposes of sentencing. I will note, however,
19 that I do not intend to rely on the particular fact that we
20 were just discussing set forth in paragraph 36.

21 So Mr. Jackson has pleaded guilty to a class B
22 misdemeanor, and thus the U.S. sentencing guidelines don't
23 apply in this case. But I do want to discuss the statutory
24 sentencing factors. Mr. Jackson has pleaded guilty to count
25 four of the information, which charges him with parading,

1 demonstrating or picketing in a Capitol building in
2 violation of 40 U.S.C. section 5104(e)(2)(G). And that
3 offense carries a maximum of six months imprisonment and/or
4 a fine of \$5,000. The probation office has not recommended
5 incarceration or home confinement, and has instead
6 recommended a term of two years probation, a fine of \$1,000
7 and \$500 in restitution. And that recommendation is based
8 solely on the facts and circumstances set forth in the
9 presentence report.

10 I need to now consider the factors that Congress
11 has specified in 18 U.S.C. section 3553(a). I have to
12 ensure that the Court imposes a sentence that is sufficient,
13 but not greater than necessary, to comply with the purposes
14 of sentencing. Those purposes include the need for the
15 sentence imposed to reflect the seriousness of the offense,
16 to promote respect for the law and to provide a just
17 punishment for the offense. The sentence should also afford
18 adequate deterrence to criminal conduct, protect the public
19 from future crimes of the defendant and promote
20 rehabilitation. In addition to the guidelines and policy
21 statements, I must consider the nature and circumstances of
22 the offense; the history and characteristics of the
23 defendant; the need for the sentence imposed; the guidelines
24 range; the need to avoid unwarranted sentence disparities
25 among defendants with similar records who have been found

1 guilty of similar crimes; and the types of sentences
2 available.

3 The Government has helpfully attached to its
4 sentencing memorandum a list of sentences imposed in other
5 cases from January 6th, and I've reviewed that.

6 Mr. Murphy, would the Government like to be heard
7 with respect to the 3553(a) factors?

8 **MR. MURPHY:** Yes, Your Honor. If I may proceed?

9 **THE COURT:** Please.

10 **MR. MURPHY:** So as Your Honor is aware, and
11 pursuant to our sentencing memorandum, we do believe that a
12 sentence in this case that would be sufficient, but not
13 greater than necessary, is a sentence of 60 days
14 incarceration, 36 months probation to include mental health
15 treatment and compliance requirements, and \$500 restitution
16 as agreed upon in the plea agreement.

17 This is, as Your Honor recognized, what would be
18 referred to as a split sentence. For the reasons outlined
19 in the Government's sentencing memorandum, we do believe
20 that a split sentence is authorized under statute. I won't
21 elaborate more on that at this time, but I'm happy to
22 attempt to answer any questions should Your Honor have any
23 at a future time.

24 I'll briefly go over --

25 **THE COURT:** Let me ask you a question about that,

1 Mr. Murphy. In your memorandum, you first argue that a
2 split sentence is available because this is a petty offense.
3 And then you argue in the alternative that the Court could
4 impose some minimal period of incarceration or interim
5 periods of incarceration simply as a term of probation, and
6 that would not raise the question I posed with respect to
7 split sentences, is that right?

8 **MR. MURPHY:** That's correct, Your Honor. I know
9 Chief Judge Howell recently imposed a sentence which
10 involved these intermittent terms of incarceration.

11 **THE COURT:** What did she do?

12 **MR. MURPHY:** It was a very recent case, but she --
13 instead of imposing a term of incarceration followed by a
14 term of probation, imposed a term of intermittent
15 incarceration followed by a term of probation. And I'll see
16 if I can find that case. I'm sorry, the number of
17 sentencings has just grown, so it may take me a moment.

18 **MS. LUSTIG:** Your Honor, if I may? Crystal Lustig
19 from the probation office.

20 **THE COURT:** Yes.

21 **MS. LUSTIG:** I recently had a case before Judge
22 Howell. And other judges have imposed an intermittent term
23 confinement on defendants as a special condition of
24 probation. However, it's not an option for Mr. Jackson,
25 because Arizona does not have the capability to do

1 intermittent confinement.

2 **THE COURT:** I see, okay. Well, that's helpful.
3 Thank you, Ms. Lustig.

4 My apologies for interrupting, Mr. Murphy, you can
5 continue.

6 **MR. MURPHY:** Not at a problem at all, Your Honor.
7 Again, I apologize I don't have that cite on the tip of my
8 tongue, but I'm happy to supplement --

9 **THE COURT:** I think Ms. Lustig has indicated
10 that's really not an option here.

11 **MS. LUSTIG:** It's U.S. v. Brian Stenz, S-T-E-N-Z.
12 That was the last case that Chief Judge Howell imposed that
13 sentence.

14 **MR. MURPHY:** Thank you, Ms. Lustig. Insofar as
15 that inability to do so is due to the ongoing pandemic, I'd
16 be curious to know if that has changed at all given the
17 recent changes in -- and I see Ms. Lustig shaking her head,
18 and I have no other information to proceed, so I suppose
19 I'll leave it at that.

20 **THE COURT:** Okay.

21 **MR. MURPHY:** However, a period of 14 days
22 incarceration followed by a term of probation would be --
23 would not raise the concerns that are discussed in the
24 brief. So not an intermittent period, but a period no
25 longer than 14 days followed by a term of probation would

1 not raise those concerns, which is, again, not
2 necessarily --

3 **THE COURT:** Let me ask -- just to interrupt you
4 just for a moment, let me ask Ms. Lustig if she agrees and
5 if that would be workable a sentence, assuming that I
6 thought it was appropriate?

7 **MS. LUSTIG:** Your Honor, a sentence of 14 days of
8 imprisonment followed by probation is a split sentence. So
9 the probation office --

10 **THE COURT:** But couldn't I impose a sentence of
11 probation in which 14 days of incarceration is a special
12 condition?

13 **MS. LUSTIG:** The phrasing for the special
14 condition is intermittent, which means nights and weekends.
15 That is the language in the special condition. I've been
16 told -- I just checked with the Arizona -- the U.S.
17 Probation Office in the District of Arizona before I filed
18 the -- my recommendation in this case, and they told me that
19 they do not have the capability to -- they do not have any
20 facilities that would do intermittent confinement.

21 So -- and actually, I was contacted by the
22 office -- the probation office in the case that I referenced
23 before Chief Judge Howell, Mr. Stenz. That was
24 Pennsylvania, the Eastern District of Pennsylvania. They
25 contacted me after the sentencing and told me that they also

1 do not have the capability to do that, and were going to ask
2 for modification. So that is one of the reasons why I
3 recommended a period of halfway house placement. They do --
4 Arizona does have the capability to place him in a halfway
5 house for a period of time.

6 **THE COURT:** And could that be done as a condition
7 of probation, then?

8 **MS. LUSTIG:** Yes, it has to be done as a condition
9 of probation. You have the option --

10 **THE COURT:** And how long a period of time could
11 that be with the halfway house placement?

12 **MS. LUSTIG:** For as long as you would like.

13 **THE COURT:** Okay, I see. And in the halfway
14 house -- I apologize I'm taking this all a little bit out of
15 turn here, but this is helpful for me. In a halfway house
16 placement, would that generally work -- operate in a way in
17 which if I chose that as an option, Mr. Jackson would be
18 free during the day to go to classes if he was in school,
19 attend medical appointments, but then he'd come back in the
20 evenings and weekends to the halfway house?

21 **MS. LUSTIG:** That is correct.

22 **THE COURT:** And so it would be treated like --
23 would it be treated like a home incarceration or a home
24 confinement condition?

25 **MS. LUSTIG:** It would be treated as a home

1 detention condition except for he would not be at home, he
2 would have to spend the evenings at the halfway house.

3 **THE COURT:** All right, thank you. Mr. Murphy.

4 **MR. MURPHY:** Yes, Your Honor. And again, if
5 additional briefing is required on this topic, I'm happy to
6 submit it. But at this point in time, it's my understanding
7 that even if the language used in 18 United States Code
8 section 3563(b)(10) does use the phrase -- it authorizes the
9 defendant to remain in the custody of Bureau of Prisons
10 during nights, weekends or other intervals of time. That
11 one of the phrases that can be used in the -- or as shown in
12 the Senate report number 225, as cited in the Government's
13 sentencing memorandum, is that a sentencing court can impose
14 a brief period of confinement such as for a week or two.

15 So even if we want to call it an interval of time,
16 and that interval of time is just 14 days, I believe that
17 that is something that -- and the Government stands behind
18 the contention that that is something that the Court could
19 consider in crafting a sentence for this defendant or any
20 defendant who's facing a so-called petty offense.

21 **THE COURT:** All right, thank you.

22 **MR. MURPHY:** I do want to emphasize that
23 especially in the case of Mr. Jackson, because of the
24 reasons that he has been quite vocal publicly about and as
25 contained in sealed portions of the memo, specifically the

1 defendant's mental health, that the Court not consider a
2 period of just incarceration followed by no further period
3 of probation. I don't think that would be helpful in this
4 case.

5 I'd just like to backtrack. First of all, I do
6 believe that Mr. Jackson is unique amongst January 6th
7 defendants in the sheer prolific nature of his public
8 exposure. In her memorandum in reply to the Government's
9 sentencing memorandum -- and that's ECF No. 30, defense
10 counsel says -- and this is on page five, "The defendant is
11 not claiming to have always said the right things, and that
12 is unfortunately the problem with social media, is that
13 one's words, no matter how rashly said, are forever
14 memorialized for all to see. If he had the chance to do it
15 again, he would have refrained from making many public
16 comments."

17 And I just cannot agree with that in any way.
18 Since the Government filed its sentencing memorandum, the
19 number of posts on the defendant's Twitter account has gone
20 up by nearly 2,000. That's only in a matter of couple of
21 weeks it's gone from 28.1 thousand tweets to 29.9 thousand
22 tweets. He does not seem concerned about what -- how many
23 things, as defense counsel puts it, he's putting out into
24 the realm of social media.

25 As further evidence of that, while we were in the

1 brief interim between the originally scheduled time and now,
2 I was able to find a video that dropped March 8th on a
3 website known as -- and I hate to give public voice to them,
4 because unfortunately sometimes this just ends up drawing
5 more people to it, but redvoicemedia.com where defendant
6 gave a 43-minute interview with another January 6th
7 defendant, Alex Shepherd, where -- and unfortunately, since
8 it's a 43-minute video, I didn't have time to watch the
9 whole thing. But he appears to go line by line through the
10 Government's sentencing memorandum and talk about why he's
11 being politically persecuted, why this was a psy-ops, why
12 the FBI is out to get him.

13 And as I hope Your Honor was able to tell from the
14 Government's sentencing memorandum, the sheer volume of what
15 the defendant said and continues to say on a near daily
16 basis is absolutely overwhelming. This has become his
17 brand. This has become his platform. This has become his
18 springboard to notoriety. And I honestly don't know what his
19 end game is here, but so long as anyone's hoping to give him
20 any kind of air time or attention, he's more than happy to
21 go through what really amount to the same talking points
22 over and over and over again in interviews that range from a
23 few minutes to well over an hour.

24 The defendant had a social media presence before
25 January 6th, and it was trolling in nature. The Government

1 did include a photograph in its sentencing memorandum --
2 that's specifically image 21, which is undated but known to
3 be before January 6th, 2021 which shows the defendant
4 wearing a USA hat, what appear to be boxer shorts with AK
5 style rifles on them while pointing what appears to be a
6 firearm or a replica of a firearm at the mirror while taking
7 a mirror style selfie. But it's only after this January 6th
8 notoriety that he's been able to build that brand of false
9 flag conspiracy theories, and grow it based on his claims
10 and contentions.

11 The most notable of his pre-January 6th posts is
12 one in which he screenshot a post from then President Donald
13 Trump. And it's in the statement of facts as provided by
14 the Government -- in the original statement of facts in
15 support of the criminal complaint -- where he responds to
16 that post by then President Donald Trump and says, "You tell
17 us when. We will not concede."

18 On January 6th, his actions are worth reiteration.
19 He first took another selfie style photograph in the -- what
20 appears to be a hotel mirror with what appears to be a
21 carefully curated outfit. He has the bright yellow gloves,
22 yellow of course being one of the colors of the Proud Boys.
23 He has his flag. The next photograph that we're able to see
24 of Mr. Jackson is -- appears to be at the Washington
25 Monument where he is wearing that same outfit, but now he

1 has a bright orange armband on his arm, and he's holding up
2 his flag in front of the Washington Monument. The next
3 photograph is him marching with many self identified Proud
4 Boys in front of the Washington Monument. And then there's
5 another photograph of him marching with many recognizable
6 members of the Proud Boys towards the Capitol, one of whom
7 had a megaphone and was shouting through it, "Whose
8 streets?" And then all those marching with Mr. Jackson
9 would respond, "Our streets." Now, the defendant has
10 repeatedly disclaimed any membership or association with the
11 Proud Boys, but those photos and videos were of enough
12 concern to the Government and to the Court that they ordered
13 him to stay away from the Proud Boys.

14 Perhaps I'm jumping ahead a little bit, but one of
15 the things that the Court should consider is how likely is
16 the defendant to comply with any conditions of probation.
17 And that can be seen, at least in part, by the fact that in
18 I believe it's September of last year, he spoke at a rally
19 in which there were Proud Boys present. Now, he wasn't
20 violated on the terms of his release for that, nor did the
21 Government ask for that. But it is significant to show
22 that -- and I believe one Twitter video shows an Arizona
23 state representative saying that, "I believe there are Proud
24 Boys here." And the camera pans and shows many individuals
25 dressed in their distinctive black and yellow. And he talks

1 for a moment about the Proud Boys. The camera pans back,
2 and shows the defendant standing there in what has become
3 somewhat of his uniform of wearing a white shirt, tie and a
4 red cap. He didn't seek to leave, he didn't seek to do
5 anything, nor necessarily would he have been required to.
6 But it shows that willingness to walk the line very -- he's
7 not being very careful in abiding by the conditions of
8 release that were set by the Court.

9 And that also, I have to clarify, was the reason
10 that I included the post about his travel. He did have
11 authorization to travel to his grandfather's funeral. But
12 what's of concern to the Government is the fact that he used
13 the opportunity to travel to his grandfather's funeral to
14 stop at a politically hot location and make a detailed post
15 about it. So again, that can be given the weight that Your
16 Honor considers appropriate. But it is of concern to the
17 Government that Mr. Jackson will tow the line.

18 Returning briefly to January 6th. After marching
19 with the Proud Boys, the next time we see Micajah Jackson is
20 on the front line of the rioters who are in the west plaza
21 of the United States Capitol. As shown by the New York
22 Times video referenced by the Government, he's up there with
23 his cell phone yelling in the faces of law enforcement,
24 "Oath breakers, oath breakers." He wasn't back in the
25 crowd, he was up there in the front with the alleged leaders

1 of the group known as the Proud Boys in the face of law
2 enforcement at a very critical and volatile and vulnerable
3 moment of the events of January 6th. At one point in time,
4 he can be seen running backwards and saying, "They're
5 spraying." So he knew that there were individuals trying to
6 keep them -- him and other rioters away from the Capitol.

7 There's a video referenced in the original
8 statement of facts about an explosion device of unknown
9 provenance. But after that goes off, the crowd reacts, and
10 the defendant can be seen pointing towards the Capitol and
11 then proceeding towards the Capitol. The explosion device
12 goes off in front of him, not behind him. Once he's inside,
13 as outlined by the Government in the sentencing memorandum,
14 he saw the mayhem of the crypt. Even if -- there were
15 alarms blaring at the Senate wing door, which was his point
16 of entrance. He didn't go in too long after the first
17 rioters had breached there. But there were alarms blaring,
18 he made his way to the crypt. The line hadn't been breached
19 in the crypt yet. There was a moment between the breach of
20 the Senate wing door and the fall of the police line in the
21 crypt, which I've read are referenced in another sentencing
22 as the falling of that police line led to the -- what's
23 essentially the infestation of the Capitol by the rioters on
24 that day.

25 He was present during that mayhem, but he didn't

1 seek an exit, he continued onward. And not only did he
2 continue onward, he went upstairs with other -- with the
3 other rioters. Once he went upstairs, he proceeded down the
4 Statuary Hall, and once again the mob stopped, they were
5 blocked by a line of law enforcement. He can be seen in the
6 surveillance video joining in the chants of the mob. The
7 surveillance, of course, has no sound, so I suppose it would
8 be more accurate to say that he appears to be joining in or
9 making vocalizations. Once that police line falls, he
10 continues forward. And he stays with the mob as they
11 attacked the entrance to the House chamber, which has led to
12 that now memorable photograph of the window being broken and
13 law enforcement inside the House chamber pointing a gun at
14 rioters who are directly outside that window.

15 Now, I have to clarify, Defendant Jackson doesn't
16 appear to be engaging in any of the violence of that, but he
17 stayed with that group and only left when a chemical
18 irritant was dispersed, at which point he backtracked
19 through Statuary Hall, back to the rotunda and out the east
20 rotunda doors. At the time he left, the defendant did not
21 have his flag with him, which was stapled to what appeared
22 to be a wooden dowel. It's interesting, because he's not
23 the only defendant who went into the Capitol with a flag
24 stapled or attached to a metal rod or wooden dowel that then
25 did not leave with it. It's just an interesting choice

1 about why they would have brought that flag into the Capitol
2 in the first place.

3 Now, most notably, however, in terms of the
4 crafting of a sentence is what did the defendant do after
5 January 6th, how has he reacted. Like I previously stated,
6 he's used it as a springboard to build his brand of false
7 flags of conspiracy theories and of talking any chance he
8 gets about how he's a political prisoner and being
9 persecuted, speaking at several rallies, events as well as
10 giving interviews online.

11 There is severe danger in misinformation. The
12 term going viral is not one that happened as a result of the
13 pandemic, it was -- it existed long before the pandemic.
14 But misinformation often does go viral with very dangerous
15 effects, none of which the defendant seems to be considering
16 when he opens his mouth and spreads these statements. Judge
17 Walton recognized the danger of continued misinformation in
18 his February 25th sentencing of Adam Johnson. In the case
19 of Defendant Russell Peterson, Judge Berman Jackson, she
20 cited in part of her reasoning for giving 30 days
21 incarceration one of the defendant's comments on social
22 media where they talked about going into the Capitol and
23 then put an LOL after that.

24 In the case of the Defendant Bissey, B-I-S-S-E-Y,
25 before Judge Chutkan, Judge Chutkan cited in part of her

1 decision to give 14 days incarceration the celebrating tone
2 that that defendant took on social media afterwards. And
3 that's significant, because in most of those cases, the
4 defendants only had one or two or maybe a few posts on
5 social media that could the Court reference. Here, again,
6 there are literally hours worth of videos and volumes of
7 posts that this Court could reference in seeing. As pointed
8 out in the Government's sentencing memorandum, specifically
9 the interview with -- the most recent interview that the
10 defendant -- well, the most recent interview at the time the
11 Government filed its sentencing memorandum. I do apologize.
12 The interview he gave to an individual by the name of Vicky
13 Richter, or who represents herself or himself as Vicky
14 Richter, in which he goes to great lengths and appears to
15 have turned over videos and photographs to support his
16 positions and his theories claiming that this was a psy-ops,
17 and that they were victims. Nothing about what he said has
18 seemed humble or apologetic.

19 And that's part of the most troubling things
20 about the letter that he wrote to the Court, is the near
21 about-face nature of how he presented himself to the Court
22 in his letter, and how he immediately continued to engage in
23 social media on the same day that he sent that letter to the
24 Court. Including the fact that when the Government pointed
25 out this apparent discrepancy and filed its memorandum to

1 the public docket pursuant to the prescribed and public
2 procedures, he immediately claimed that it had been leaked.
3 And he has continued posting, re-posting and re-sharing
4 articles from various conservative media outlets accusing
5 the Department of Justice of leaking its memorandum to the
6 press. And even an example as innocuous as that is one that
7 he took, he ran with and it continues to spread and grow.
8 And I'm sure my comments right now won't help that, to be
9 frank.

10 However, in terms of the 3553(a) factors, I do
11 believe that in order to promote respect for the law and
12 reflect the seriousness of the offense, the Government's
13 requested sentence of a 60-day term of incarceration
14 followed by 36 months of probation is sufficient, but not
15 greater than necessary. In terms of general deterrence, as
16 Your Honor is aware because these are your words used in the
17 case in the sentencing of defendant Paul Hodgkins,
18 "Democracy requires the cooperation of the governed. When a
19 mob is prepared to attack the Capitol to prevent our elected
20 officials from both parties from performing their
21 constitutional statutory duty, democracy is in trouble.
22 Damage that the defendant and others caused that day goes
23 way beyond the several-hour delay in certification. That is
24 a damage that will persist in this country for decades."
25 And Micajah Jackson in particular has done nothing to back

1 down or attempt to heal that damage that he caused on that
2 day. Indeed, he seems insistent on digging his fingers into
3 the wound and continuing to rip it apart.

4 In terms of specific deterrence, the Government
5 cited to the case of Jenna Ryan in its sentencing memorandum
6 who recently it appears was released from serving her 60-day
7 term of incarceration, and has gone immediately back to
8 social media. It's unsure when someone who has as deeply
9 held beliefs as Mr. Jackson, and who has been so prolific in
10 them, what kind of effect this will have as to specific
11 deterrence. But we do believe that 60 days is sufficient
12 therein. I'm happy to address any questions the Court may
13 have about sentencing disparities. However, that is just
14 one of the many factors to be considered. And for the cases
15 that I've just cited to -- or because of the cases I've just
16 cited to on the record, and those included in the sentencing
17 memorandum, we do believe that there is no sentencing
18 disparity between our recommended sentence of 60 days
19 incarceration followed by a 36-month term of probation, and
20 ask the Court to so impose. Thank you.

21 **THE COURT:** All right, thank you. Ms. Jacob.

22 **MS. JACOB:** Yes, Your Honor. I think this is a
23 tough case. I think the Government tries to balance a
24 really fine line between protected free speech post -- I'm
25 talking about post January 6th, and the display of lack of

1 remorse -- which I recognize is very difficult in this
2 setting. But unfortunately, I think at times they crossed
3 the line. Mr. Jackson, he acknowledges that he has made
4 errors in judgment with speaking to the media and posting
5 certain things on Twitter, and recognizes that some of what
6 he said is relevant to acceptance of responsibility.
7 However, the majority of his comments do not have any
8 bearing on his conduct on January 6th or his acceptance of
9 responsibility in this case.

10 And I just want to give one example. In the
11 Government's sentencing memorandum, it points out that
12 Mr. Jackson made false and misleading statements about the
13 2020 election. But I'm just failing to understand the
14 relevance of that belief with regards to an appropriate
15 punishment here.

16 **THE COURT:** Put that aside. I mean, I grant you
17 that, and I think you're right that political speech and
18 political commentary is not a basis for imposing a sentence.
19 But there still is some really striking inconsistencies
20 between what Mr. Jackson says to me in his letter to the
21 Court about his regret, and that he knows that was a
22 terrible day, what happened, and that he just got carried
23 along with the crowd that was there. In retrospect, he
24 regrets very much that he was there and that he played any
25 role in it. And I did listen to the video from just

1 February 11th, 2022 -- so not very long ago, in which
2 Mr. Jackson is out there sort of suggesting that the police
3 were waving people in, giving them high fives; that it was
4 all just -- nothing was done wrong, and that this is all
5 just made up stuff, and that this is some type of political
6 vendetta against him and others. It's very hard to
7 reconcile those. Quite frankly, the Court is left with this
8 thinking that Mr. Jackson is not sincere in what he says in
9 his letter to the Court with respect to his remorse, which
10 is a significant factor in sentencing.

11 And when you look at what was going on, even
12 around where Mr. Jackson was during the events, there's just
13 no way that a rational human being could think it was fine
14 to be there and that you were welcomed in. There is video
15 of police officers who engaged in combat with people with
16 Mr. Jackson -- not himself engaging in any physical contact
17 with the police, but he sees what's going on. He himself
18 runs saying they're spraying with some chemical that was
19 used to try and disperse the crowd. He knew that he
20 shouldn't be there and that he was in the middle of a riot,
21 and that that riot was designed to interfere with our
22 democratic institutions in one of our most profound moments
23 of democracy.

24 So it's very hard to reconcile what happened there
25 with what he says in his letter to the Court, with what he's

1 going out and saying to the world now. It's oftentimes --
2 not often, occasionally judges will have this experience
3 where someone will be very sincere, and the judge will
4 impose a lower sentence saying, you know, I really do
5 believe this person is contrite, they've made a mistake.
6 And then a couple of weeks later, the judge hears something
7 that the defendant has said that makes the judge say well, I
8 guess I was fooled there. And this is not something
9 happening after the fact, it's happening in realtime, where
10 the defendant is saying things that contradict what he's
11 telling the Court.

12 **MS. JACOB:** I understand why the Court thinks
13 that, and I -- Mr. Jackson also understands. And I think
14 the problem here, Your Honor, is that I think Mr. Jackson is
15 still in conflict himself. I think that's why he needs the
16 help of the Court in supervision. I think specifically what
17 I'm referring to is that I do think that Mr. Jackson, based
18 on conversations we've had, based on the letter he wrote to
19 the Court -- which he worked very hard on, I do believe he
20 sincerely regrets his conduct on January 6th. I think
21 that -- and in none of the statements he's made on social
22 media does he ever say the violence there was okay. He
23 himself did not act aggressively. He has never subscribed
24 to the ideologies of the Proud Boys.

25 So I think the conflict here from my honest

1 assessment is that a lot of people involved who have had
2 these beliefs, that they're entitled to have, that the
3 election was stolen, and these young men who have sort of
4 formed a community that has been encouraged by mainstream
5 news outlets. I mean, we're not talking about, you know,
6 random outlets, we're talking about mainstream outlets that
7 have also kind of encouraged these beliefs. And so there's
8 this conflict that Mr. Jackson has, and pressure I should
9 say, to continue with these beliefs.

10 **THE COURT:** I apologize for interrupting, but it's
11 not at all clear to me that it is in fact a legitimately
12 held belief that the election was stolen. Because
13 Mr. Jackson himself said, I think in his letter to me, that
14 he knew that the election results were not going to change.
15 And maybe that means that he just didn't think it wasn't
16 going to make any difference. But it also may mean that he,
17 like a lot of other people out there, may have wished the
18 results were different. But they knew perfectly well that
19 Donald Trump had lost the election. And there's a
20 difference between wishful thinking and lying to yourself
21 and the public and saying that the election was stolen from
22 actually legitimately believing that.

23 I guess I'm not persuaded that Mr. Jackson
24 legitimately believed that the election was stolen. I think
25 he was very, very disappointed with the results, but that's

1 a very different thing.

2 MS. JACOB: Understood, Your Honor. I guess I'm
3 saying what I'm saying to explain why I think Mr. Jackson
4 has continued his presence on social media, and why I still
5 believe, despite all of that, that he does regret his
6 conduct regardless of who he believes or who he's been
7 saying has been the instigator of the violence on
8 January 6th. He was not part of it, and I think that is the
9 main thing I wanted to emphasize.

10 So in light of that, I just -- I don't think the
11 Government has -- they've still not identified why his
12 actions on January 6th warrant a 60-day jail sentence. I
13 mean, that is a significant sentence. I don't think it's
14 supported by past cases, past sentences that have been
15 imposed. There are a lot of individuals who have received
16 probationary sentences, also saw the mayhem. They saw the
17 spraying, they saw the -- you know, and that's why they've
18 been criminally charged, because they trespassed, they
19 knew -- there were signs everywhere that they shouldn't have
20 entered, and they did. Those were the signs that there was
21 resistance from the police. So that's why they've been
22 criminally charged, that's why we're here. And that's why
23 Mr. Jackson is not asking for a slap on the wrist, he is
24 asking for two months of home detention -- which is
25 significant, and a significant period of supervision, which

1 is a huge restriction on his liberty. He recognizes, Your
2 Honor, that he was not -- you know, that there are
3 aggravating factors in this case. Those are the same
4 aggravating factors that the Government has pointed out.
5 But I just don't see how a 60-day sentence would serve the
6 goals of sentencing here.

7 Probation agrees that he's not a danger to the
8 community in their recommendation, and notes that he has
9 been compliant with his pretrial release conditions. So if
10 probation thought that he violated or came close or was
11 towing the line, as the Government pointed out, to violating
12 his conditions of release, then they would have said so. He
13 has been going to counseling. He's been pursuing education,
14 and participating in his own rehabilitation. And so if the
15 goal is deterrence here, then a probationary sentence, I
16 think, will be far more effective than jail time as it is
17 still a continuous restriction on liberty while helping him
18 to get the rehabilitation he needs.

19 You know, I just want to note that -- just respond
20 to something the Government said with regards to his towing
21 the line. He did speak at a rally, Your Honor. He had no
22 idea that the Proud Boys were going to be there. He didn't
23 invite them. He is not responsible for their attendance or
24 lack of attendance. There's nothing, nothing that happened
25 that indicated that he was somehow subscribing to their

1 ideologies or associating with them. He's so -- he is vocal
2 on social media, and so if he did subscribe to their
3 ideologies, that would be out there for everyone to see.
4 And it's not. So I just don't think that that argument
5 should be credited. He has been compliant as probation has
6 noted, and so that is a clear indication that he will be
7 compliant in the future.

8 Probation's recommendation of 30 days in a
9 residential reentry center, I understand the thinking on
10 that, Your Honor. But I also -- I don't know, I think home
11 detention serves the same purpose. Because he would be --
12 he's already shown he's been compliant, so he's not going to
13 flee, he's not a flight risk. So if he's only allowed out
14 of his home for education purposes, medical purposes, mental
15 health purposes, then it serves the same thought as being in
16 a halfway house where he would then leave to do all those
17 things and then come back and sleep at night. It's just
18 basically where he's sleeping. He can still get the
19 services that he needs to rehabilitate while on home
20 detention. I think residential reentry centers are more
21 geared towards helping people reenter, which I don't see.
22 So that's why I think home detention would serve the same
23 purpose.

24 Your Honor, if Mr. Jackson -- another
25 consideration for the Court is that if Mr. Jackson is

1 sentenced to more than 30 days, he will lose his VA
2 benefits. I think that type of collateral consequence makes
3 the severity of the sentence much more severe than
4 originally contemplated, and would be more than necessary to
5 accomplish the goals of sentencing.

6 **THE COURT:** So I've had that come up before.
7 Quite frankly, I can't remember what the result was, whether
8 they were lost permanently. I think he may have to reapply
9 again after this. I can't remember exactly how that works.

10 **MS. JACOB:** I believe he'd have to reapply. I
11 don't know that it would be permanent, but it's a very long
12 and arduous process, as Mr. Jackson can attest to. I don't
13 think they're lost permanently, but I think that they -- you
14 know, I mean, it's something he needs. And by losing that,
15 even for a period of a month, it would be detrimental to his
16 mental health I think.

17 **THE COURT:** Would that be a risk with respect to a
18 probationary sentence with a period of confinement to a
19 residential reentry center?

20 **MS. JACOB:** That's something I don't know, Your
21 Honor. I think that it would run the risk of them
22 considering that to be some sort of confinement. But I
23 don't -- I really don't know the answer to that question.
24 Like I said, I think that home detention would serve the
25 same purpose.

1 **THE COURT:** Even if it was home detention in
2 excess of 30 days, would that apply, would there be a risk
3 there?

4 **MS. JACOB:** I don't think so, Your Honor. I think
5 they would not view that as a period of incarceration. Your
6 Honor, unless the Court has any questions, I would like to
7 rely on the briefing that -- the eloquent briefing that has
8 already been done by an expert in our office with regards to
9 the split sentence question. I don't think there's anything
10 more that I can add. They spent a lot of time on it, and
11 that's why I attached it as an exhibit. Unless the Court
12 has any questions for me about it, I can try to answer them.

13 Lastly, Your Honor, Mr. Jackson, he did write a
14 letter to the Court. I know that the Court has its
15 questions about it, but he is very nervous today. He does
16 suffer from social anxiety, so he wishes for the Court to
17 accept that as his allocution today.

18 **THE COURT:** So Mr. Jackson, I just want to make
19 sure you understand you have a right to address the Court.
20 But it's your decision, okay?

21 **THE DEFENDANT:** Yes, sir.

22 **THE COURT:** So if you don't want to, that's fine,
23 it's your choice, okay?

24 **THE DEFENDANT:** Yes, sir. I would just like to
25 say my letter was sincere. I took -- I sat down for a few

1 hours to write it, you know. I'm a very religious man. I
2 am remorseful. It was a dark day that day. That letter --
3 I just wanted -- the letter is what I mean, sir. That's
4 what I'd like to say, sir.

5 **THE COURT:** All right, I appreciate that. So --

6 **MR. MURPHY:** Your Honor?

7 **THE COURT:** Yes.

8 **MR. MURPHY:** I'm very sorry to interrupt. I do
9 just want to respond very briefly to one thing that
10 Ms. Jacob said.

11 **THE COURT:** Okay.

12 **MR. MURPHY:** Insofar as she mentioned protected
13 speech. It's well established Supreme Court precedent,
14 specifically the case of Wisconsin v. Mitchell, 508 U.S.
15 476, that was from 1993. And I quote, "The First Amendment,
16 moreover, does not prohibit the evidentiary use of speech to
17 establish the elements of a crime or to prove motive or
18 intent." That Supreme Court case has been cited in multiple
19 decisions, including in the D.C. Circuit, that allows a
20 court to consider both in the realm of sentencing or in
21 pretrial detention what may otherwise be categorized as
22 protected speech in sussing out the defendant's motive or
23 intent. And that is the only purpose for which the
24 Government offers the quotes and the social media statements
25 that it has included in the briefings, and otherwise

1 included on the record. Insofar as this Court does not
2 believe that it establishes -- as the Government's belief,
3 that it shows his motive or intent, the Government asks the
4 Court not to consider it.

5 **THE COURT:** Okay. So this is what I was getting
6 ready to say -- and I appreciate that, is I want to go
7 through and summarize my consideration of the sentencing
8 factors. But to jump ahead a little bit, I think that
9 there's a significant likelihood that I'm going to conclude
10 that either a period of more than 30 days at a residential
11 reentry center is appropriate here or that I might want to
12 wrestle a little bit further with the split sentence
13 question. My inclination today might well be just to follow
14 the outlines of the recommendation from the probation
15 office, but perhaps maybe give a longer period of
16 incarceration.

17 But before I get to that decision, Ms. Jacob, I do
18 want to make sure I understand and know that you answered
19 the question of whether that would deprive Mr. Jackson of
20 his veteran benefits. And given the fact that the briefing
21 is still going on in front of Judge Friedman on the split
22 sentence issue, and that I do think the consequences for
23 Mr. Jackson's veteran benefits are a significant issue, I'd
24 like to give you a little bit of time to submit something to
25 me on that question. It will also give me a little bit more

1 time to think about the split sentence question. Maybe we
2 can schedule a time -- from my perspective, a week would be
3 plenty, to come back and actually for me to explain the
4 reasons for my decision and to impose sentence. But I don't
5 want to do something where I may -- the consequences of it
6 may have unintended collateral consequences. I think we all
7 agree that the care that Mr. Jackson is getting from the VA
8 is important.

9 **MS. JACOB:** Thank you, Your Honor, I appreciate
10 that.

11 **THE COURT:** My question for you is how much time
12 do you want to be able to look at that and get back to me on
13 that question?

14 **MS. JACOB:** Thank you, Your Honor. I would
15 respectfully ask for two weeks, just because my next week is
16 extraordinarily -- is busier than normal.

17 **THE COURT:** I know that feeling. So let me ask
18 Kristin if she can find a time for us to reconvene in a
19 couple of weeks.

20 **DEPUTY CLERK:** Sure, Your Honor, please stand by.

21 **THE COURT:** It looks like we may have to do it on
22 the 25th.

23 **DEPUTY CLERK:** I was going to suggest the 17th.
24 You'll just be doing imposition of sentence, correct?

25 **THE COURT:** Right, although I just want to make

1 sure I'm giving Ms. Jacob enough time to research this
2 question on the VA benefits.

3 **DEPUTY CLERK:** Oh, I'm sorry, I was looking at one
4 week instead of two. You're right, Your Honor. The 25th I
5 think is going to be a little tight. Let me double check.
6 You can do the 24th at 2:00.

7 **THE COURT:** Does that work for everyone,
8 Ms. Jacob?

9 **MS. JACOB:** Yes, Your Honor.

10 **THE COURT:** Mr. Murphy?

11 **MR. MURPHY:** Yes, Your Honor. Thank you.

12 **THE COURT:** So let's put it down for 2:00 o'clock
13 on the 24th. I'll give you until the 22nd, then, Ms. Jacob
14 to file something. That will give Mr. Murphy time -- not a
15 lot of time, but a day or two if there's anything he wants
16 to say in reply to whatever you file in reply to the
17 benefits.

18 So thank you all, this was helpful to me. We will
19 reconvene soon. Anything else before we adjourn,
20 Mr. Murphy?

21 **MR. MURPHY:** No, Your Honor. Thank you.

22 **THE COURT:** Ms. Jacob?

23 **MS. JACOB:** Nothing from the defense. Thank you,
24 Your Honor.

25 **THE COURT:** And Ms. Lustig, anything else you

1 wanted to add before we adjourn?

2 **MS. LUSTIG:** No, Your Honor. Thank you.

3 **THE COURT:** All right. Thank you all. Take care.

4 (Proceedings adjourned at 12:08 p.m.)

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C E R T I F I C A T E

I, Jeff Hook, Official Court Reporter,
certify that the foregoing is a true and correct transcript
of the remotely reported 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.

March 22, 2022

DATE



Jeff M. Hook

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