

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA :
 : **Case No. 1:21-cr-00096 (RC)**
 v. :
 :
 MICHAEL STEPAKOFF, :
 :
 Defendant. :

**GOVERNMENT’S RESPONSE TO DEFENDANT’S
SENTENCING MEMORANDUM**

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully submits this Response to Defendant Michael Stepakoff’s Sentencing Memorandum (Doc. 37). The Government intends to respond to the arguments raised in the Defendant’s Sentencing Memorandum at the sentencing hearing set for January 20, 2022. This response is provided only to submit additional evidence and factual context relevant to the Court’s deliberation.

In his Sentencing Memorandum, the defense argues at length that Stepakoff should only be held accountable for what he saw with his own two eyes. While it would be impossible to recreate precisely everything seen by Stepakoff as he crossed the Capitol grounds and entered the U.S. Capitol building on January 6, certain evidence can inform the Court. To begin, on January 5, barricades around the Capitol grounds were set up with signs that stated, “AREA CLOSED By order of the United States Capitol Police Board.” The following is a photograph of the West Plaza on the Capitol grounds on January 5:



Stepakoff would have been aware of this because he visited the Capitol on January 5 and narrated a video in this precise location, at what he called “ground zero”:

Government’s Exhibit 5



Not only was Stepakoff aware that the Capitol grounds were closed to the public the night before January 6, he personally saw downed barricades as he approached on the Capitol building on January 6. The following photo of a downed barricade with a sign reading, “AREA CLOSED By order of the United States Capitol Police Board,” was found on Stepakoff’s phone, with a metadata time stamp of 2:42 PM, *i.e.*, approximately 18 minutes before he entered the Capitol building:



Stepakoff must have found the downed barricade at least somewhat notable since he apparently stopped to take a photograph of it as he approached the Capitol building.

Although no video of Stepakoff entering the Capitol building through the Senate Wing Door was recovered from his phone, another rioter took a video at the entrance of the same door, showing the noticeably damaged condition of the door:



The above screenshots are from an open-source video and the sustained beep of a blaring alarm can be heard at the entrance of the building.¹ Based on other known defendants seen in this video, it is estimated to have been taken about 20-30 minutes after Stepakoff entered. Multiple other rioters at around the same time that Stepakoff entered the building can be heard in other videos remarking on the chemical spray in the air, and can be seen tending to watering eyes, both inside and outside.

Since the door that Stepakoff entered at 3:00 PM is on the West side of the Capitol building, it is likely that he approached the building by walking across the West plaza, the site of some of the most sustained and aggressive verbal and physical attacks on law enforcement. The following is a view of the West plaza area from Close Circuit Video at approximately 2:58 PM. People can be seen climbing the bleachers and temporary scaffolding.:



¹ The video is available at <https://www.youtube.com/watch?v=bm6dwqOJKZw>, and the screenshots was taken at minutes 6:30, 6:35, and 7:29, respectively. The first two screenshots capture the outside of the door and the third screenshot captures the inside of the door that rioters had to walk past to enter the building through that door.

As Stepakoff made his way into the Capitol building the following other events were among those happening at or around the same time both inside and outside the Capitol building:

- At 2:44 PM, as rioters attempted to break through the inner door of the Speaker's Lobby, Ashli Babbitt was shot.
- At approximately 2:48 PM, the Senate Wing Door was forcibly breached for the second time. *See* Doc. 36 at 7.
- At approximately 2:52 PM, the first FBI SWAT teams arrived at the Capitol.²
- At approximately 3:00 PM, as the Defendant was entering the Capitol building, Paul Hodgkins was entering the Senate Chamber.³
- At 3:00 PM, rioters were using force in a prolonged battle with law enforcement at the site of the Lower West Terrace tunnel in an attempt to gain entrance to the Capitol building.
- Shortly after 3:00 PM, Congressman Kevin McCarthy verbally approved a full mobilization of the DC National Guard.⁴

The Government does not claim that Stepakoff was aware of these specific events as they took place. Rather, this information is provided to help describe the tenor and tone of the Capitol grounds and building as Stepakoff made his approach with the crowd. Courts have expressly endorsed considering the broader context in which a crime takes places in determining the appropriate sentence under 18 U.S.C. § 3553(a). “Section 3553(a) in particular invite[s] the district court to consider, broadly, any reliable information relevant not only to the history and characteristics of the defendant but also to factors such as the seriousness of the offense, the need to afford adequate deterrence to criminal conduct, and the need to protect the public from further crimes of the defendant.” *United States v. Vilorio-Sepulveda*, 921 F.3d 5, 9 (1st Cir. 2019)

² <https://www.washingtonpost.com/politics/interactive/2021/what-happened-trump-jan-6-insurrection/>

³ *Id.*

⁴ *Id.*

(citations and quotations omitted) (finding it appropriate to consider “the problem of gun violence in Puerto Rico” in determining a defendant’s sentence for possession of an illegal machine gun).

As Stepakoff previously told the FBI, he claimed that did not see broken windows and damaged property that were right in front his face because he was “not paying attention.” This likely explains why Stepakoff also claims not to have seen the aggressive and violent conduct all around him that day. The credibility of Stepakoff’s claims must be called into question by the evidence of what was happening around him and in front of him that day. Of note, Stepakoff has been found to have committed acts of dishonestly in the past.⁵

Most troubling, even after having had more than ample opportunity to review and come to terms with the true events of which he was a part, the defense continues to characterize the events of January 6 as merely “a political riot that got out of hand.” Doc. 37 at 35. This would seem to illustrate that the problem is not what Stepakoff did or did not see on January 6; the problem is that both then and now, he continues to view those events through a distorted lens that blots out destruction and violence. Stepakoff must be sentenced for the role he played in the January 6 Capitol attack – his presence contributed to the outnumbering of law enforcement on the Capitol grounds as rioters pressed toward the Capitol building, and the House and Senate chambers. His presence contributed to the struggle law enforcement faced in trying to take back

⁵ While the defense claims in its Sentencing Memorandum, that “[o]f course, Mr. Stepakoff has no criminal record,” and that he left the practice of law to “dedicate[] himself to a religious life full-time in 2006,” Doc. 37 at 5, the defense neglects to address that Stepakoff left his legal career only after being suspended for six months from the practice of law in 2006 for, among other things, acts of dishonesty. In a Conditional Guilty Plea for Consent Judgment that Stepakoff entered, he admitted, among other things, that he suggested that his 94-year-old client invest \$30,000 in a real estate development company without disclosing that he was part owner and co-founder of the company. *See* Exhibit 5 at 3.

the Capitol building, and to the protracted delay of the peaceful and democratic transition of power of our nation. A sentence of incarceration followed by probation is needed to send a message about the seriousness of what Stepakoff took part in, a message that has otherwise not penetrated.

Respectfully submitted,

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