

establish “the depths of their belief that the 2020 election was stolen.” (*Id.* at 8). The government discusses Lunyk’s attendance at an earlier rally and his group’s “interest in travel ... for other rallies.” (*Id.*) It discusses the group’s “interest” in certain organized groups and “beliefs in conspiracy theories beyond the 2020 election being fraudulent.” (*Id.*)

Attending other *peaceful* rallies, expressing an interest in associating with certain groups, and even harboring erroneous beliefs is Constitutionally protected activity that should play no role in the defendant’s sentencing. People at the highest levels of government promoted false information that wound up influencing ordinary people like Mr. Lunyk. The remedy for such disinformation is true information in our system, or to hold the promoters of the false information accountable to the extent they have violated the law. It is surely not to impose extra punishment on ordinary people who are persuaded by falsehoods. Indeed, to whatever extent Mr. Lunyk’s beliefs are relevant at sentence, would not his conduct be worse if he did not harbor mistaken ideas?

The focus on discussions of violence in his messages is similarly unwarranted. The defendant’s messages were sent privately and not widely disseminated and thus did not contribute to the mayhem. (*Id.* at 14.) A defendant’s words are relevant at sentencing where intent is somehow in doubt, such as where a scheme is thwarted by law enforcement and the Court needs to assess the scope of the defendant’s plans in assessing culpability. In this case the Court knows exactly what Mr. Lunyk and his friends did: they entered the Capitol building for 10 minutes illegally and then left. Their tough talk was plainly just talk, sadly typical of the hyperbole of our time. Had the group intended to engage in violence, there was ample opportunity to do so. As the Court well knows, many others did engage in violence and property

damage. Mr. Lunyk did not. The government's attempt to blur this distinction by focusing on his words should be rejected.

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