

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	)	
<i>Plaintiff,</i>	)	
	)	
	)	
<b>v.</b>	)	
	)	
	)	Docket No.: 0090 1:21-cr-00494-001
WILLIAM MICHAEL SYWAK,	)	
<i>Defendants.</i>	)	
	)	

**WILLIAM MICHAEL SYWAK SENTENCE MEMORANDUM AND LETTERS IN AID  
OF SENTENCING**

DATED: Buffalo, New York  
May 24, 2022

Respectfully submitted,

/s/Herbert L. Greenman

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## **PRELIMINARY STATEMENT**

On February 2, 2022 defendant William Michael Sywak appeared before United States District Judge Rudolph Contreras and pled guilty to the Fourth Count of an Information previously filed against him. Pursuant to a written Plea Agreement it was the understanding of Mr. Sywak and the government that the United States Sentencing Guidelines do not apply to a Class B Misdemeanor and, as a consequence, sentencing will be determined by the United States District Judge relative to the factors set forth in 18 USC §3553(a). The parties agreed that the maximum sentence permissible is 6 months imprisonment, a term of probation not to exceed 5 years and a fine of not more than \$5,000.00. The parties also acknowledged the potential of a period of supervised release of not more than 1 year and an obligation to pay applicable interest on penalties, fines and restitution if they are not paid in a timely fashion. Mr. Sywak also agreed to pay a special assessment of \$10.00.

Moreover, Mr. Sywak agreed to permit law enforcement officers to review any social media accounts relating to his possession and postings which took place in or about January 6, 2021. Finally, Mr. Sywak agreed to pay restitution to the Architect of the Capitol in the amount of \$500.00. He remains prepared to pay the restitution upon an Order by the Court.

## **MR. SYWAK'S CRIME OF CONVICTION**

The presentence report from paragraph's 14 through 27 generally outline Mr. Sywak's involvement in the January 6, 2021 crime at the United States Capitol grounds. As Mr. Sywak has previously indicated to the probation department, On January 6, 2021 he drove to Washington, DC with his son William in order to hear the then President's speech. Initially, he

had no intention of going to the Capitol grounds. However, when the Sywak's arrived, the President had completed his speech and most of the crowd had dispersed, moving toward the Capitol. Out of curiosity, the Sywak's walked over to the Capitol grounds. They walked up the steps as the crowd was moving toward the entrance and they went into the Capitol. As indicated, they had not intended to enter into the building itself. They did not anticipate what was to ensue.

Unfortunately, instead of immediately leaving, Mr. Sywak remained inside the Capitol building. For the most part, he stayed in one place. We believe that the evidence shows that he was not marching through the Capitol, nor was he chanting in any way. He was not responsible for any destruction. Within a relatively short time, he observed that armed guards were entering into the area where he was standing and, as a consequence, he went to the closest door and asked the guard at the door to allow him to leave. While the guard was hesitant because the number of people outside, he did allow Mr. Sywak to leave.

Mr. Sywak did not know where his son was nor did he recall where their car was parked. He meandered in the area. His cell phone had died and he continued to look for his car. He was able to go into a local store and have his cell charged. He was eventually able to reconnect with his son and they met at their car. They left Washington, DC shortly thereafter.

Paragraph 32 of the presentence report which echoed Mr. Sywak's written statement outlines the factors that we have set forth herein. In no way is the defense attempting to minimize the seriousness of Mr. Sywak's entrance into the Capitol building. The above is only meant to indicate what actually did take place. As the probation officers recommendation indicated, "Mr. Sywak's culpability appears to be minimal in contrast with rioters who destroyed or stole government property and assaulted or threatened the law enforcement officers on that date." Mr.

Sywak remained inside the building for approximately 20 minutes and left.

While Mr. Sywak, at a later time, denied his participation at the Capitol grounds, he fully has admitted what he did and the fact that his conduct was unacceptable.

#### **THE PROBATION DEPARTMENT'S RECOMMENDATION**

The Probation Officer has recommended a sentence of 30 days imprisonment based upon Mr. Sywak's "involvement in the instant offense, and his prior criminal history," in addition to the nature of the offense. While we fully agree that the nature of the offense is an issue which the Court should take into account, we respectfully do not believe that a period of incarceration is necessary.

Since his release, Mr. Sywak's conduct has been exemplary. He has faithfully attended counseling and he has benefited from what he has learned. While most of his prior criminal history was related to his then alcoholism and drug abuse, he has continued to be treated and has done extremely well. There seems to be little doubt but that Mr. Sywak will now be able to take his place in society as a law-abiding productive member.

#### **MR. SYWAK'S CURRENT CIRCUMSTANCES**

As indicated in the report, Mr. Sywak was injured in a work-related accident causing serious injuries. He has been unemployed but he is hoping through vocational training that he will be able to enter into the workforce once his back surgery is completed. He has faithfully followed his counseling procedures. Shortly after his arrest, he entered into treatment at Horizon Health Human Services in Buffalo, New York. As indicated, he attends group and individual counseling and has undergone random drug and alcohol testing which has consistently been negative.

Moreover, Mr. Sywak sees a psychologist every 2 weeks and medication has been prescribed for his depression. Because of his addiction, the counseling he receives is a combination of mental health as well as drug/alcohol counseling. To say the least, he is doing well at this point. Mr. Sywak looks at the after-effects of his arrest in a positive light. He is getting the help that he needs and, once and for all, it appears that he will adapt to the norms of society.

During the presentence report's interview, Mr. Sywak broke down in tears. What happened on January 6th was, perhaps, a culmination of a path that he had been taking which took him in the wrong direction. As he has indicated:

Thinking back, I'm ashamed that I was involved in all of this. I believe I was misled by the President about the election and wanted to hear and see him speak. I feel terrible that I went and especially that I went into the Capitol. When I saw what was happening, I should have turned around and left. But I didn't and I regret what I did every day. I know I can't change what happened or my own participation and I wish I could. I feel terrible that I got involved at all.

That date changed who I am and what I believe in. I'm terribly sorry that I went into the Capitol building. I had no right to do so. I think back and tell myself constantly that I should have been smarter. I know I committed a crime by entering. I don't have the right to ask for forgiveness. I fully accept responsibility for my actions that day and will forever regret them.

As he told the probation officer, Mr. Sywak has indicated that "he needs to think for himself and not follow others and must take responsibility for himself." He is looking forward, not backward, in terms of his life and what he must do to make things right. He has a positive relationship with his child who needs his guidance every day.

To say the least, Mr. Sywak's arrest has triggered a lot of good things in his life. As a

child he was abandoned by his father which triggered some aberrant behavior on his part. He became involved with drugs and alcohol which almost ruined his life as well as the lives of others. But all that has now changed. He has dedicated himself to his family and just as important to a completely sober lifestyle. We believe that under the circumstances a sentence of a period of incarceration, while no doubt available to the Court, is not necessary under the circumstances to meet all of the goals of Title 18 USC §3553(a). As a result of his arrest, he is receiving the counseling that he so desperately needed and he has shown that he can be successful. He is taking his medication faithfully and is better able to cope with his day-to-day life. He is no longer a drunk or drug addict. He has finally found that he can live his life clean and sober, and away from all of the influences that drugs and alcohol present.

A review of the presentence report is revealing. Mr. Sywak grew up without a father and his mother was no doubt abusive. He left home at an early age and wound up without the supervision that was necessary. He became a hardened alcoholic and drug abuser. All of his prior criminal history came as a result of his drug and alcohol use.

Life has been difficult for him but, no doubt, he has been his own worst enemy. Today, however, he is a changed person. He recently commented that he feels that out of something bad came something good. He is ashamed not only by the fact that he entered into the Capitol but that his son William Jason Sywak accompanied him on the trip to Washington. He finds it hard to live with the fact that he is solely responsible for what took place. Reviewing the presentence report and the conversations the probation officer had with others, Mr. Sywak has related his own feelings for his crime of conviction. Simply put, he has fully accepted responsibility, has shown remorse and just as important has moved forward with his life for the first time in many

years. As a consequence of his arrest he is receiving mental health treatment at Horizon Human Services located Orchard Park, New York. He has indicated that the counseling has helped him grow and assists him in remaining drug and alcohol free.

Additionally, Mr. Sywak is randomly tested for drugs and alcohol. For a lengthy period of time he has tested negative. He has also moved forward in terms of his family in an effort to mend the fences which have been torn down for so many years. Today, Mr. Sywak is a different person. His thinking is clear and he knows what he must do to be productive. To put it bluntly, he is trying his hardest. Through all of this time, Mr. Sywak has been seriously affected by his physical condition. His final surgery was never successful and he lives in pain on a regular basis. But he understands that abusing drugs and alcohol is not going to help his circumstances. We have attached hereto a number of medical records which, in a way, may help the Court understand how he is living day-to-day with the pain in his spine and back.

Talking with Mr. Sywak about the events of January 6, 2021, he has learned a very significant newly discovered perspective. While previously time he supported the former President, he no longer feels that he can do so. He feels that he was misled and he understands what took place. But more important is the fact that he has expressed tremendous contrition for what he did. While, no doubt, he was not an organizer of the event nor did he chant, steal or break anything inside the Capitol, he is equally ashamed that he drove his son to Washington. What started off as an attempt to bond with his son blew up. He expresses the fact that he lives with guilt every single day for what he has done. It is hard to imagine anyone showing any more remorse than Mr. Sywak has. His statements to the probation officer and his written correspondence contained in the presentence report no doubt express his own personal remorse.

But he understands that he cannot change what happened in the past. He has learned from his choices and knows that his future must be arrest, drug and alcohol free. It appears that he is on his way to doing the right thing.

With due respect to the probation officer's recommendation that Mr. Sywak should serve a period of incarceration of 30 days, while no one could argue that such a sentence is oppressive, we believe that under the circumstances Mr. Sywak does not need to be incarcerated any further. In fact, his time can be better spent continuing in the counseling programs set for him by the probation department so that he can continue to work on his mental health and his relationship with his family. We respectfully believe that a sentence of probation without the need for incarceration that would include continued supervision is sufficient but not greater than necessary to meet the goals of 18 USC §3553(a).

### **OVERVIEW**

We believe under the circumstances that Mr. Sywak's life has changed dramatically. While he no doubt had no right to enter into the Capitol grounds or the Capitol building, he did so without thinking of the consequences at that time. Once inside, he realized he should not have entered and within a very short period of time exited the building. He did not march inside the building, he did not make any chants nor did he cause any damage. As indicated, for the most part, he stayed in one area and left when he fully understood that he had no right to be where he was. He left the Capitol, eventually met his son and went back to Buffalo, New York. He did not make any social media posts about the event. In a word, he was ashamed of what he had done.

The letters attached hereto tell a decent side of Mr. Sywak. We ask the Court to consider all of the foregoing in imposing a sentence which is fair, just and reasonable. We believe that a

period of incarceration is not necessary to fulfill all the goals of the Court's sentence mission. Simply put, Mr. Sywak, when compared with others who entered into the Capitol and already have been sentenced, some without incarceration, stands a better chance remaining under supervision and continuing to do the right thing. We ask the Court to give him one last chance to prove himself.

For all of the foregoing reasons, we ask that the Court sentence Mr. Sywak accordingly.

DATED: May 24, 2022  
Buffalo, New York

Respectfully submitted,

/s/Herbert L. Greenman

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