

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
	:	
v.	:	Criminal Case No.
	:	
TIMOTHY ALLEN HART,	:	1:21-cr-00540 (PLF)
	:	
Defendant	:	
	:	

OBJECTIONS TO PRESENTENCE INVESTIGATION REPORT

I. INTRODUCTION

Defendant TIMOTHY ALLEN HART (“Hart”), through the undersigned counsel, John M. Pierce, Esq. hereby responds to and objects to the Government’s Pre-Sentence Investigation Report (“PSR” below) prepared by the U.S. Probation Office dated June 21, 2023.

Hart pled guilty to one count of violating only 18 U.S.C. § 231(a)(3), which prohibits *(formatting modified for analysis)*:

18 U.S. Code § 231 - Civil disorders

* * *

(a)(3) Whoever commits or attempts to commit

any act

to obstruct, impede, or interfere with any fireman or law enforcement officer

lawfully engaged in the lawful performance of his official duties

incident to and during the commission of a civil disorder

which in any way or degree obstructs, delays, or adversely affects commerce or the movement of any article or commodity in commerce

or the conduct or performance of any federally protected function

— Shall be fined under this title or imprisoned not more than five years, or both.

This is defined as:

18 U.S. Code § 232 - Definitions

For purposes of this chapter:

- (1) The term “**civil disorder**” means any public disturbance involving acts of violence by assemblages of three or more persons, which causes an immediate danger of or results in damage or injury to the property or person of any other individual.

* * *

Said plea agreement with the United States is posted on the Court’s electronic records at ECF Dkt. # 59, on April 21, 2023. The Government prepared a “Statement of Offense” which has been posted as ECF Dkt. # 60 filed on April 26, 2023. The plea agreement includes stipulating to the Statement of Offense.

Defendant Hart does not intend to pick upon the PSR or its recommendations to any unreasonable extent nor to raise any significant difficulty in completing the plea agreement. The Government and Defendant have stipulated to the Statement of Offense even if there are parts that perhaps each side would prefer to see a little different. Sentencing now is in fact guided by the Plea Agreement and the Statement of Offense incorporated within it.

Defendant Hart does not fundamentally object to the U.S. Probation Office’s analysis or recommendations, but addresses the topics that could come to be in controversy from the prosecution in the sentencing analysis due to areas left open-ended in the PSR. The PSR’s

conclusions are so far in line with what was expected in the plea agreement and discussions.

Nevertheless, the Government from time to time argues on sentencing factual assertions beyond what has been established or stipulated to. Furthermore, argument on sentencing can implicate interpretation, spin, or gloss as to the facts in the Statement of Offense.

In short, the Government lays out its best case and so does the Defendant, even where the parties are in fact quite close in the likely result and have relatively little to disagree over here.

The Pre-Sentence Investigation Report reminds us as does Defendant that the Court has currently scheduled the sentencing hearing on July 27, 2023, at 9:30 AM.

II. SUMMARY OF RECOMMENDATIONS

The U.S. Probation Office explains and supports in detail the following key results which that office recommends:

- Assigning a base offense level of 10 points for the count to which within the framework of the U.S. Sentencing Guidelines pursuant to §2X5.1 of the Sentencing Guidelines, analogizing the offense pled to under §2A2.4 of the Sentencing Guidelines to Obstructing Or Impeding Officers. (Paragraph 36)
- For Acceptance of Responsibility, the PSR recommends a decrease of 2 points pursuant to §3E1.1(a). (Paragraph 43.)
- No Specific Offense Characteristics were recommended. (Paragraph 37.)
- No adjustment for role in the offense was recommended. (Paragraph 39.) The Probation Officer correctly analyzes and applies the Sentencing Guidelines in determining whether Hart “exercised managerial authority over any other participant.” In many January 6 cases, the analysis is wrong.

Whether a Defendant planned *himself* or *herself* is often confused with planning *the crime* overall. Planning to wake up and have breakfast and get dressed does not qualify for the enhancement of extensive planning such as under USSG §§ 3B1.1 or 3B1.2. One must be extensively involved in planning *the crime* and/or *the group committing the crime* to be considered for the enhancement. Merely planning what clothes to wear (actually cited in some cases by prosecutors) or what roads to drive or where to stop for lunch for oneself is an incorrect view.

Here, the PSR gets this right. Planning a trip is not planning *the crime* of which

he has pled guilty. Planning one's own day, for example, could not be playing a leadership role in the crime. Similarly, planning, preparation, or actions that would be normal for someone not planning any crime could not be considered.

- No adjustment for obstruction of justice was recommended. (Paragraph 40.)
- Therefore, the total offense level recommended is 8. (Paragraph 44.)
- Assigning a criminal history category of I and adding 1 point for past criminal history.
- Based on the circumstances of this case, the Probation Office advises that a sentence of zero months to six months is proper and recommends the same range. (Paragraph 104.)
- The PSR advises that the maximum term of imprisonment possible is five years.
- The Probation Office further advises that no sentence of imprisonment is required. (Paragraph 105.)
- The Office asserts that under §5E1.2(a) the Court "shall" impose a fine in all cases unless the Defendant establishes that "he is unable to pay and is not likely to become able to pay at any time," which presumably includes by reference to the amount of a proposed fine not merely all or nothing.
- The PSR advises that the maximum fine that may be imposed is \$250,000. Under 18 U.S.C. 3571(b)(3).
- The PSR advises that the guideline amount of the fine should be in the range of \$2,000 to \$20,000 under USSG. §5E1.2(c)(3).
- Naturally, however, Defendant Hart like the average person would prefer even an onerous fine over incarceration.
- That Office further recommends that Defendant Hart pay restitution of an additional \$2,000 to the Architect of the Capitol toward the estimated \$2,881,360.20 of damages to the United States Capitol claimed.
- Supervised release of up to five years is possible that Office advises. The term of release shall be no more than three years if the offense level is five or less.
- The Probation Office recommends supervised release of one year, which the PSR identifies as the minimum amount required.
- The Court may impose all or a combination of the additional conditions of (a) payment of restitution, (b) financial disclosure, (c) community service in lieu of a fine, (d) no possession of or access to firearms and/or dangerous weapons during

supervision, (e) monitoring technology for a period of 90 days, (f) following the rules and regulations of the location monitoring program, and (g) substance abuse testing to ensure continued abstinence from illicit substances.

- Drug testing which the Probation Office believes to be mandatory.
- A special assessment of paying \$100 is mandatory that Office believes.

III. KEY ACTUAL DISAGREEMENTS

Counsel for Defendant attempts to identify up front for the Court where there are some small disagreements.

A. AVOIDING DISPARITIES IN SENTENCING BY CONSIDERING ONLY CERTAIN SIMILAR CRIMES BUT NOT OTHERS

In pursuit of the U.S. Sentencing Guidelines' primary purpose of minimizing disparities in sentencing, the PSR's paragraph 131 makes reference to the Government's error of considering only January 6 cases. The Court must minimize disparities among all cases from the same charge, not merely among January 6 prosecutions. That would produce the opposite result of the U.S. Sentencing Guidelines' very purpose.

The Probation Office, DoJ, USAO, and the Court must compare every January 6 sentencing not merely to other January 6 cases but to all cases under which a Defendant is sentenced for the same criminal charge, here 18 U.S.C. 231(a)(3) – present in all of the examples cited. The relevant comparison is not a self-referential loop of only January 6 cases. Sentencing consistent only with January 6 cases but highly discordant of other cases would not fulfill the purposes of the U.S. Sentencing Reform Act of 1984.

In 2011, rioters entered and physically occupied the Wisconsin State legislature, followed by months of disruptive protests mostly outside but also

inside the Capitol building of Wisconsin.¹ Those who sought to obstruct official proceedings to prevent the passage of legislation they disapproved of were mostly not arrested or given minor fines or probation. As in every such non-January 6 case, there is no dispute about the goals or organizing which were proudly and openly admitted.

In 2023, State legislatures in Florida, Montana, Tennessee were physically disrupted by protestors against Republican legislation, but the DOJ has taken no action to defend these official proceedings.

In September 2018, opponents of Judge Brett Kavanaugh's nomination to the U.S. Supreme Court openly and publicly organized and advertised their plans to obstruct an official proceeding in violation of 18 U.S.C. 1512(c)(2) by shutting down the U.S. Senate Judiciary Committee's hearings and confirmation of Kavanaugh to become a Supreme Court Justice. Where the Department of Justice merely suspects and speculates about January 6 Defendants, anti-Kavanaugh rioters openly admitted it. Protestors celebrated on line occupying and taking over the Hart Senate Office Building. The 2018 demonstrators proudly admitted their conspiracy to obstruct congressional proceedings:²

¹ "Thousands storm Capitol as GOP takes action," Wisconsin State Journal, March 10, 2011, updated February 19, 2015, ("Thousands of protesters rushed to the state Capitol Wednesday night, forcing their way through doors, crawling through windows and jamming corridors"), accessible at: https://madison.com/wsj/news/local/govt-and-politics/thousands-storm-capitol-as-gop-takes-action/article_260247e0-4ac4-11e0-bfa9-001cc4c03286.html

² Note that the statute of limitations will not expire until September 26, 2023, and the USAO could prosecute these rioters using a consistent standard as to January 6, 2021.

“It’s sort of a coordinated dance, **but the performers are an organized group of protesters** and a dozen or so uniformed Capitol Police officers. And the stage is this week’s Senate confirmation hearings for Supreme Court nominee Brett Kavanaugh.” One by one, the protesters, many wearing T-shirts reading ‘I am what’s at stake,’ interrupt the proceedings by shouting slogans like ‘You’re making a mockery of democracy!’ or ‘Senators: Do your jobs and stop this hearing!’ The police then warn that further disruption will result in arrests. Minutes later, the person shouts again and is hustled out a side door...**the protesters are part of a nationwide campaign to disrupt the confirmation process.**”

Id. (Emphasis added).

The few of those Left-wing insurrectionists arrested³ were released on a \$35 to \$50 bail after 5 hours which became their sole punishment in most cases after their cases were dropped.⁴

See, <https://twitter.com/womensmarch/status/104793535667343769>

7 (hear the extreme noise of the alarms and crowd disrupting the Hart Building in the video). See

<https://www.facebook.com/watch/?v=2314502548791821>

³ Emily Birnbaum, "Over 200 protesters arrested during Kavanaugh hearings," The Hill, September 6, 2018, accessible at: <https://thehill.com/homenews/senate/405500-212-protesters-total-arrested-during-kavanaugh-hearings>;

⁴ Ashraf Khalil, "Protesters continue to interrupt Kavanaugh hearings," Associated Press, 09/06/2018, accessible at: <https://apnews.com/article/3f4ddaec0ee946fe817329b065af3408>; **accessed Nov 6, 2021**; *emphasis added*.



Erin Franczak and Katherine Tully-McManus, “I See You, Senators’: Kavanaugh Protesters Pour Into the Capitol: Supporters of Christine Blasey Ford sing, raise fists, invoke regression analysis,” Roll Call, September 27, 2018, accessible at: <https://rollcall.com/2018/09/27/i-see-you-senators-kavanaugh-protesters-pour-into-the-capitol/> And: Sophie Tatum, "More than 300 protesters arrested as Kavanaugh demonstrations pack Capitol Hill," October 5, 2018, accessible at: <https://www.cnn.com/2018/10/04/politics/kavanaugh-protests-us-capitol>



← Thread



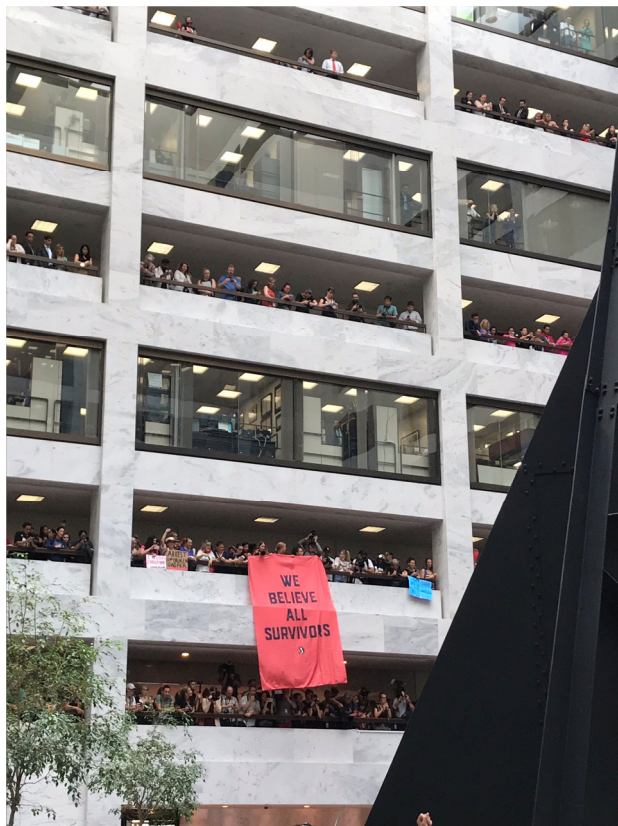
Women's March
@womensmarch



We were planning to shut down the Capitol Building but the authorities were so scared of this [#WomensWave](#) that they shut it down for us.

1000+ women, survivors, and allies have gathered in the Hart Senate Building.
Every hallway. Every floor.

[#CancelKavanaugh](#) [#BelieveSurvivors](#)



During that riot, Sen. Schumer led a crowd at the closed doors of the U.S. Supreme Court at which rioters banged on the doors of the U.S. Supreme Court. Sen. Chuck Schumer openly threatened Justices of the U.S. Supreme Court,

“I want to tell you Gorsuch, I want to tell you Kavanaugh - you have released the whirlwind, and you will pay the price. You won’t know what hit you if you go forward with these awful decisions,’

Schumer told the cheering crowd. Senator Schumer’s public threats against the U.S. Supreme Court drew a rare public rebuke from U.S. Supreme Court Chief Justice John Roberts.”⁵

⁵ <https://www.reuters.com/article/us-usa-court-abortion-scene/u-s-chief-justice-slams-schumer-for-dangerous-comment-on-justices-in-abortion-case-idUSKBN20R2KX>

In May to June 2020, rioters and insurrectionists attacked the White House from their rallying point at Lafayette Square.⁶ America's international enemies and friends watched as the U.S. Government and its worldwide military power were paralyzed by anarchist rioters. These rioters obstructed official proceedings in violation of 18 U.S.C. 1512(c)(2) interfering with and impeding the world-wide military chain of command of the U.S. Government. Not only were charges dropped against those arrested but rioters sued the District of Columbia and won millions of dollars.⁷

In January 2017, rioters burned police cars, limousines, stores, and the like professing their plans to prevent President Donald Trump from assuming the office of the President. Hundreds were arrested but then released with most charges dropped.

⁶ Melissa Barnhart, , "Historic St. John's Church near White House torched by rioters," Christian Post, June 1, 2020, accessible at: <https://www.christianpost.com/news/historic-st-johns-episcopal-church-set-on-fire.html>

⁷ *See*: Aila Slisco, "Government Settles Civil Cases With Protesters Injured at Lafayette Square," NEWSWEEK, April 13, 2022, accessible at: <https://www.newsweek.com/government-settles-civil-cases-protesters-injured-lafayette-square-1697820>

More Than 200 Arrested in D.C. Protests on Inauguration Day

217 people were arrested and six police officers suffered minor injuries after some protesters set fires and smashed windows in the nation's capital.



— Police and demonstrators clash in downtown Washington, D.C. after a limo was set on fire following the inauguration of President Donald Trump on Jan. 20. Spencer Platt / Getty Images

Washington (CNN) — Six police officers were injured and 217 protesters arrested Friday after a morning of peaceful protests and coordinated disruptions of Donald Trump's inauguration ceremony *gave way to ugly street clashes in downtown Washington.*

At least two DC police officers and one other person were taken to the hospital after run-ins with protesters, DC Fire Spokesman Vito Maggiolo told CNN. Acting DC Police Chief Peter Newsham said the officers' injuries were considered minor and not life threatening.

Bursts of chaos erupted on 12th and K streets as black-clad "antifascist" protesters *smashed storefronts and bus stops, hammered out the windows of a limousine and eventually launched rocks at a phalanx of police lined up in an eastbound crosswalk.* Officers responded by launching smoke and flash-bang devices, which could be heard from blocks away, into the street to disperse the crowds.

Gregory Krieg, "Police injured, more than 200 arrested at Trump inauguration protests in DC," CNN, Updated January 21, 2017, accessible at: <https://www.cnn.com/2017/01/19/politics/trump-inauguration-protests-womens-march> (*Emphases added.*)



Also see Phil McCausland, Emmanuelle Saliba, Euronews, Erik Ortiz and Corky Siemaszko, "More Than 200 Arrested in D.C. Protests on Inauguration Day: 217 people were arrested and six police officers suffered minor injuries after some protesters set fires and smashed windows in the nation's capital," NBC News, January 21, 2017, accessible at: <https://www.nbcnews.com/storyline/inauguration-2017/washington-faces-more-anti-trump-protests-after-day-rage-n709946>

But then: "**GOVERNMENT DROPS CHARGES AGAINST ALL INAUGURATION PROTESTERS**," NBC News, July 6, 2018, accessible at: <https://www.nbcnews.com/news/us-news/government-drops-charges-against-all-inauguration-protesters-n889531>

Therefore, it is an error now for the U.S. Probation Office, Department of Justice, and/or U.S. Attorney's Office to compare the sentencing of January 6 Defendants only to other January 6 cases. This arbitrary analysis is precisely in conflict with the U.S. Sentencing Guidelines' reason for existing. Picking only other January 6 cases as the framework undermines the goal of minimizing disparity.

B. INCLUSION OF TIME-BARRED OR TOPIC-BARRED CRIMINAL HISTORY EVEN WITHOUT ADDITION OF POINTS

While the PSR does not assign points to items of criminal history that are time-barred or barred by topic, nevertheless the Probation Office includes items that should not be reported. The Government argues that the Court may consider and the PSR may report criminal history items which are barred from consideration under the U.S. Sentencing Guidelines. This is a self-contradiction beyond cure.

§4A1.2, *et seq.*, defines how to calculate and treat past criminal history. Items which are barred by being stale or barred by category or which did not result in a conviction cannot be considered. The attempted distinction between the assignment of points versus the sentencing judge nevertheless considering ineligible items is not tenable, even if some precedents have made this mistake. Any arrest or charge which did not result in conviction or a sentence of imprisonment outside of the time period which may be considered or a category of charge and conviction which may not be considered for points clearly cannot be considered by the sentencing judge either.

For example, the PSR reports in paragraph 48 an October 9, 2007, imposition of a \$20 fine for failure to file a sales tax form. Because this cannot support the imposition of points, it should not be included either. Reporting it only confuses and/or prejudices the sentencing process.

The PSR reports in paragraph 46 the imposition of a \$48 fine on May 30, 1996 for disorderly conduct. Both as to category and staleness, this may not be considered. Therefore, it should not be introduced into the sentencing process to delay and burden the proceedings nor to prejudice or confuse them.

Similarly, paragraphs 52 through 55 report traffic infractions between 1995 and

2010. Because these cannot be included in the assignment of points, neither should they be considered nor should the process be delayed or burdened with them.

C. GOVERNMENT’S INADVISIBLE INTEREST IN DONATION ACCOUNTS

While reciting what financial information the Probation Office was able to obtain and evaluating ability to pay a fine, that office repeats a recent but disturbing trend of attention to donation services such as GiveSendGo.

In paragraph 98, the PSR reports that Defendant Hart raised \$12,000 which he had intended to use for expenses (lodging) that would not have been necessary “but for” the criminal prosecution, but ended up instead using \$11,500 to retain a lawyer. Hart suspended his GiveSendGo page when he accepted a plea deal. However, this law firm’s legal bills since presented and to be presented will significantly exceed the donations Hart has raised. Even clothing for court, travel to and from court, lodging in order to attend court, are legal expenses that would not have existed “but for” the Government charging the Defendant. Expenses even before paying attorneys can be crucial to an effective legal defense, such as process servers for witnesses, etc., etc.

Direct or indirect actions or intimidation which have the effect of depriving a criminal Defendant of the right to counsel rise to a very serious concern under the Sixth Amendment to the U.S. Constitution. There has been a hostility by the U.S. Attorney’s Office toward the very few attorneys willing to step forward and provide a defense to January 6 Defendants often with little or no hope of ever being paid for their work. Most of these Defendants were of limited means to start with, lost their jobs from negative publicity, are now unavailable to work while facing prosecution or under technical limits on their employment. Many are being sued or are likely to be

made part of on-going civil lawsuits. The chance of ever paying their legal bills is slim.⁸

Unless or until a very high burden is met of some actual, legitimate reason, the Government should not be impinging directly or indirectly or even only in terms of worry or anxiety upon the right to counsel.

D. RESTITUTION

Like most people whom the Government suggests paying restriction, the Defendant has not been charged with any damage to property. The Government asserts that the Capitol suffered \$2,881,360.20 of damages of all kinds from the actions of everyone present on January 6, 2021 (about 10,000 people,⁹ for an average of about \$288 per demonstrator in attendance).

As mentioned, any rational person would prefer even an onerous fine to being sentenced to imprisonment, and Defendant recognizes and welcomes the Court's ability to impose a mixture of community service, fines, restitution, probation, and imprisonment in the hope that incarceration might be thereby reduced.

Hart would rather pay a larger fine whether characterized as a fine or restitution

⁸ In *United States v. Krysten Niemela*, the Court ordered payment of \$1,000 out of Ms. Niemela's roughly \$3,500 raised at that point on GiveSendGo because the prosecution didn't know whether or not the \$3,500 would be strictly limited to paying her attorneys, the under-signed law firm. The prosecution did not claim that any of the \$3,500 would be used for anything other than legal costs, only that they didn't know. One problem is that such off-the-shelf donation services make it appear that all funds ever raised are still on deposit unspent. Thus, the Government is viewing donations as a pot of money still available.

⁹ In a statement by Acting Chief of the U.S. Capitol Police, found at <https://twitter.com/MikevWUSA/status/135410495553067010/photo/1>, Yogananda D. Pittman documents during a topic otherwise *not* relevant to this motion nor adopted by the Accused that the U.S. Capitol Police estimated that "tens of thousands" of demonstrators were at the U.S. Capitol. Elsewhere Pittman estimates the crowd at 10,000.

and a lesser term of imprisonment as any normal person would.

Nevertheless, it would seem more correct to characterize any payment as a fine rather than as restitution. A record of Hart paying restitution might imply to distant observers or to his family in years to come that Hart had in fact damaged the Capitol, which he would dispute. Paying the same amount as a fine would avoid the implied idea that Hart damaged any property or person at the Capitol on January 6, 2021.

The statute used to authorize restitution explicitly enables an order of restitution of (a) actual damage (b) from the offense. However, the Government seeks to treat all 10,000 demonstrators at the Capitol in a collectivist mentality with a hive mind.

That which is not damage is not within the restitution statute. Damage caused by someone else is not part of the restitution statute.

Here, the Government's photographs made public and news photographs show a disturbing and highly extensive amount of debris in and around the Capitol following the January 6, 2021, events. These photographs are hard to look at. Yet removing trash even in large quantities is not really the same thing as damage.

In the Proud Boys trial *United States v. Enrique Tarrío, et al.*, a representative of the Architect of the Capitol¹⁰ testified that each side, left half and right half, of a very large, full size window (not a door window) cost about \$770 on each side to replace including all manpower and overhead costs. Thus replacing an entire broken window would be unlikely to exceed \$1,500 to \$2,000. If there were 10 such windows that needed to be replaced, based on the Architect Office's testimony, the total cost of

¹⁰ Where a typical architect may be involved only in designing a building and then no longer be involved the Office of the Architect of the U.S. Capitol is a permanent office responsible for all manner of building maintenance and upkeep.

replacing even 10 large windows would be unlikely to exceed \$25,000 to \$30,000, including all labor and administrative overhead. As with everything else, the prosecutors have not specified.

In short, it might be more correct to think in terms of a fine than restitution.

E. DEFENDANT MUST BE SENTENCED ONLY ON WHAT HE DID – NOT WHAT OTHER PEOPLE DID

Defendant objects to as improper and a violation of his individual Due Process rights the extensive recitation of what other people or unidentified crowds did. The Defendant Timothy Allen Hart is being sentenced, not crowds, co-Defendants, other persons, or unidentified random people. The Court must not consider and the PSR should not mention what other people are alleged to have done.

F. DEFENDANT OBJECTS TO CRIMINALIZATION OF HIS POLITICAL SPEECH AND VIEWS

In paragraphs 22, 26, and 93 through 95, the Government continues its tendency to present political opinions or protected speech as evidence that the Defendant is a criminal. The Government passes this off as tangentially related to proving the elements of a crime, but spills over quite extensively into pure free speech issues.

Despite what might be hypothetically true in some other case, the accusations of Hart's expression of free speech here are simply not – in fact – necessary to nor supportive of finding guilt of any non-speech crime. They are mentioned as being part of proof of the crime, but Defendant responds that they are actually not.

IV. OBJECTIONS

A. BIOGRAPHICAL INFORMATION

Defendant agrees with biographical information about Hart.

B. CURRENT STATUS AND PROCEDURAL HISTORY

These January 6 cases present difficult cross currents. On the one hand, choices made by Congressional leaders to put the “look” in political terms ahead of security do not excuse misconduct by those of the 10,000 people present who transgressed certain rules. Yet, on the other hand, the Government seeks to inflame and exaggerate in order to justify punishment far more severe than for the street gangs and thugs fighting a civil war on our nation’s streets from 2014 (really since 1999) through 2020, burning areas of Washington, D.C. to at least symbolically oppose the inauguration of President Donald Trump, attacking the White House, and seeking to prevent the confirmation of Brett Kavanaugh to the

Therefore, the Government’s narrative leaves us no choice but to evaluate what context or punishment should be considered. Being careful, detailed, and precise and carefully calibrating appropriate sentencing becomes more important than ever. This is not to deny the offense of which the Defendant has pleaded guilty but to not indulge in embellishment either.

Defendant agrees with the summary of the Offense and Release Status and lack of Detainers specified, and PART A THE OFFENSE under “Charge(s) and Conviction(s)” paragraphs 1, 2, 3, 4, 5, 6, 7, 10, 11, 12, 13, and 14, and 16.

Defendant must point out that paragraphs 14-15 of PART A THE OFFENSE under “Charge(s) and Conviction(s)” is largely inaccurate.

In this courthouse, the public and journalists are free to enter the E. Barrett Prettyman courthouse without telling the security guards where they want to go and can enter any courtroom that is not in closed session and listen to the conduct of the Court’s business. They do not need an appointment or authorization to observe the District Court in action. Members of the public, including from foreign countries, are free to listen to court hearings or trials not

closed without having any business or connection to the case.

Likewise, the U.S. Capitol is *guarded* 24 hours a day much as the Smithsonian Institution, Library of Congress, or National Air and Space Museum are guarded. But the Capitol is presumptively open to the public. No authorization of any kind is required for a person to enter the U.S. Capitol. An architecture student from, say, Indonesia, would be free to enter the Capitol and admire its art and construction. No appointment is necessary with any Congressional office. No approval or agreement is required. A visitor is not required to tell anyone why they are there.¹¹ One can enter simply to try to get in line into a Congressional hearing. There are no permanent security barriers, or at least there were not prior to 2021.

The U.S. Capitol has viewing galleries physically built in to the building to allow the public to watch their elected representatives conducting their business.¹² Those balcony galleries involve no physical separation with the House or Senate floor. No authorization is required to sit in the galleries except that the large quantity of interested citizens has required rationing of available seats for short periods of time.

Despite paragraph 15, it is not clear what the Government means by “the exterior plaza.” The Capitol Grounds are 58.8 acres,¹³ set within 270 acres of the larger Capitol campus.¹⁴ Earlier in the day, the U.S. Capitol Police (“USCP”) had affixed to easily-movable bike racks paper signs printed on photocopiers and laminated on 11 inch by 14 inch paper, which were no

¹¹ Like this courthouse, the U.S. Capitol is marbled with both public and non-public areas, of course, which are more inter-mingled than this courthouse. Small, portable, wooden signs are placed in certain hallways designating them as “Authorized personnel only.”

¹² See: Large Public Galleries in New Legislative Chambers, Library of Congress exhibit, <https://www.loc.gov/exhibits/uscapitol/s5.html> : Thomas U. Walter. "Details of Gallery in Hall of Representatives," 1856. Ink and water color on paper. Architect of the Capitol (204)

¹³ <https://www.aoc.gov/explore-capitol-campus/buildings-grounds/capitol-building/capitol-grounds>

¹⁴ <https://www.aoc.gov/explore-capitol-campus/buildings-grounds>

longer present when most of the demonstrators like this Defendant arrived. It is of course not the USCP's fault that Congress has not spent the money to provide them with needed tools.

Not only are the exterior grounds a national park open to the public, but the U.S. Capitol Police issued six (6) different permits in December 2020 for political rallies and demonstrations scheduled on the U.S. Capitol Grounds for the afternoon of January 6, 2021. The public was invited and given "lawful authority" to walk to and from and among permitted demonstrations.

Contrary to paragraphs 18-20, for example, the USCP never closed the shutters that are part of the building to secure windows. Why does this matter? The USCP did not seem to feel the situation called for closing up the windows. Again, this is not to fault the USCP, but to avoid engaging in extremes. Viewed from the moment, there did not seem to be a reason to secure the windows to the extent already provided for in the physical structure of the Capitol building.

Hart has pled guilty to his conduct. However, the Government will now argue this context in deciding how to punish the Count he has pleaded to.

The USCP never closed, for example, the 10 ton, solid bronze, 17 foot high Columbus Doors which would have prevented entrance into the East central entrance of the U.S. Capitol. The USCP issued six (6) different permits in December 2020 for demonstrations.

In paragraph 20, the timeline is inaccurate. According to the testimony by then Parliamentarian of the House of Representatives Thomas Wickham delivered on October 19, 2022, *United States v. Stewart Rhodes, et al.*, Case No. 1:22-cr-00028, that the USCP began removing Speaker of the House Nancy Pelosi at 2:13 PM. The gavel was handed to Representative McGovern who then communicated the order to evacuate the House Chamber.

However, the PSR recites in paragraph 30 that Hart entered the Capitol at 2:44 PM.

As in paragraph 20, the Government has offered no evidence but pure unsupported

opinion that “Congressional proceedings could not resume until after every unauthorized occupant had left the U.S. Capitol.” The Government has never identified when it thinks every unauthorized occupant had left nor identified what was involved in securing the building. This becomes important because the Defendant arrived after 2:13 PM, after the Joint Session had already recessed, and left voluntarily hours before Congress resumed.

Therefore, Hart had no impact on the Congressional proceeding. If “Congressional proceedings could not resume until after every unauthorized occupant had left the U.S. Capitol,” this is clearly not relevant to Defendant Hart, who voluntarily left the Capitol hours earlier.

C. PARTIES’ AGREEMENT

The U.S. Probation Office seems to be proposing what the parties might agree to from this draft PSR. In some cases, the statements of the PSR do not seem to be what the parties agreed to as opposed to what the Probation Office is proposing that the parties would like to agree to.

Dated: July 9, 2023

RESPECTFULLY SUBMITTED
TIMOTHY ALLEN HART, *By Counsel*

_____/s/_____
John M. Pierce, Esq.
John Pierce Law Firm
21550 Oxnard Street
3rd Floor, PMB #172
Woodland Hills, CA 91367
Tel: (213) 400-0725
Email: jpierce@johnpiercelaw.com
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that this document is being filed on this July 9, 2023, with the Clerk of the Court by using the U.S. District Court for the District of Columbia’s CM/ECF system, which will send an electronic copy of to the following CM/ECF participants. From my review of the PACER account for this case the following attorneys are enrolled to receive notice and a copy through the ECF system.

MATTHEW M. GRAVES
United States Attorney

Joseph H. Huynh, Esq.
United States Attorney's Office
For the District of Columbia
601 D. Street, NW
Washington, DC 20530
Telephone: (202) 252-7215

_____/s/_____
John M. Pierce, Esq.