

THE ACCIDENTAL EXPOSURE OF DOJ'S MISDEMEANOR PLEA DEALS

I've written a fair amount about the way DOJ is using misdemeanor cooperation deals with the January 6 defendants. The vast majority of misdemeanor plea deals, most often for parading, require the defendant to share their social media and sit down for an interview with the FBI. To the extent such interviews get described in sentencing documents, some result in the defendant lying more (DOJ has yet to charge anyone for doing so), some seem to provide the FBI a deeper sense of the organizing networks that contributed to convincing people to travel to DC and participate in a riot, and some seem to provide insight about what transpired in offices or other locations that weren't well-surveilled. Every defendant was also a firsthand witness, and so some of these interviews appear to have been really important for a larger understanding of the event.

There's another kind of misdemeanor plea offered to key defendants who *could* be charged with a felony (usually obstruction or civil disorder), but who instead get charged with one of the misdemeanor charges, often after a long delay. The understanding is that such defendants offer some cooperation *on the front end*, effectively working their way into a misdemeanor plea. There are two people who we can say, with high confidence, have received one: Brandon Straka and Anthime "Baked Alaska" Gionet. Some Proud Boys appear to have either received one or be working on them, with Zach Rehl co-traveler Jeff Finley the most prominent. I've got suspicions that maybe ten other defendants got such pleas. But beyond that, it is virtually impossible to distinguish someone who benefitted from really good lawyering from someone who got such a plea.

I'm sure the government loves that part of such plea deals: it accords their investigation extra secrecy and may provide cooperation sooner rather than later.

However, particularly given that there are just a handful of people tracking the cases who have a sense of the relative importance of some of these defendants, such plea deals likely add to the distrust of DOJ's investigation. To those who know about important movement operatives getting misdemeanors, it looks like conspirators in a larger plot aren't getting charged; to those who have no clue that movement operatives were arrested for their role in the attack, it feeds the mistaken belief that DOJ isn't investigating anyone but trespassers. Plus, it's not entirely clear whether such pleas will backfire down the road, given that prosecutors have little ongoing means to ensure cooperation, as they would with felony cooperators hoping to benefit from 5K letters supporting leniency at sentencing.

That's why I'm interested in what transpired with Brandon Straka's cooperation in recent weeks.

Straka, as I've covered in the past, was a key player in the Stop the Steal movement, most famously in his role riling up the crowd outside the Wayne County vote count in Michigan. He was a speaker at one the January 5 events, got stripped of his January 6 speaking spot as Katrina Pierson tried to cut out the crazies, and then watched Trump's speech from his VIP seat right next to Mike Flynn. Straka stopped off at the Willard Hotel on his way to what he claims to have believed was another speaking slot on the East side of the Capitol, where he joined in the mob. He was originally charged with civil disorder for his role in encouraging others to steal a shield. But by the time he was first formally charged in September, he was charged just with the less serious parading count. His plea agreement – the standard misdemeanor one – lacked the standard

cooperation paragraph (which has at times reflected such an interview already took place), though that in no way confirmed that his was a cooperation misdemeanor. It wasn't until December, with a joint motion to continue the sentencing citing new information provided by Straka, that it was clear something more was going on.

On December 8, 2021, the defendant provided counsel for the government with information that may impact the government's sentencing recommendation. Additionally, the government is requesting additional time to investigate information provided in the Final PreSentence Report.

That was the first mistake; a recently unsealed filing revealed a belated request to put the filing under seal. After Judge Dabney Friedrich denied that request, the government tried again, citing contacts Straka had gotten in response to reports of his cooperation and concerns about his safety.

The government respectfully requests sealing because the motion to continue referenced the fact that the government was requesting a continuance of the sentence to evaluate newly discovered information provided by the defendant. Since the filing of the joint motion to continue, the defendant has been contacted by individuals who believe that he is cooperating with the government. Additionally, media outlets have also reported that the defendant is indeed cooperating with the government. The government has attached exhibits that have been provided to the government by defense counsel.

The United States respectfully submits that filing this pleading under seal is necessary because it references sensitive information related to

sentencing. The request for sealing is based on the government's desire to maintain the integrity of this investigation and protect the safety of the defendant.

The court filings associated with the delayed sentencing, in January, similarly requested sealing. The government's public sentencing memo described three cooperative interviews – with the initial ones on February 17 and March 25, 2021 – and cited a sealed cooperation memo.

Straka was arrested on January 25, 2021. Straka voluntarily agreed to be interviewed by FBI. Straka's initial interview occurred on February 17, 2021. Straka recounted what occurred on January 6. Straka denied seeing any police officers as he walked to the U.S. Capitol. He also denied seeing any barriers or signage indicating that the U.S. Capitol was closed. Straka denied removing the posts out of fear of getting arrested. Instead, he explained that he removed the videos because he felt "ashamed." He denied knowing that people were "attacking, hurting, and killing people."

Straka described seeing people "clustered" and "packed in" near the entrance to the U.S. Capitol. He admitted to video recording the event and later posting and removing the videos from Twitter. He also admitted knowing that the rioters were entering the U.S. Capitol without authorization and with the intent to interfere with Congress. Straka provided additional information to the FBI regarding the events leading up to and during January 6.

After this initial interview, the FBI met with Straka a second time on March 25, 2021 with follow-up questions.

Straka was cooperative during the interviews.

On January 5, 2022, Straka met with prosecutors from the United States Attorney's Office and the FBI a third time. The purpose of the interview was for the government to ask Straka followup questions. Consistent with his previous interviews, Straka was cooperative. The interviews were conducted in anticipation of the plea agreement that defendant would later enter.⁷

⁷ The government will supplement this filing with a sealed addendum that will provide this Court with information related to Brandon Straka's interviews.

At the time, it looked like a shitty deal by the government, and multiple researchers I know grumbled that the government simply didn't know what a central role Straka had when they interviewed him just weeks after the riot.

On July 26, the press coalition that does these things moved to have Straka's sentencing records unsealed. That day, Judge Friedrich issued an order to unseal the motions to seal, but (we subsequently learned) an error in the clerk's office led Straka's memo supporting substantial cooperation to be filed briefly in unsealed form.

At first, Judge Friedrich set a hearing to further unseal the docket, but what must be further sealed filings informed her the parties need to further delay any unsealing – the kind of thing that reflects ongoing cooperation or upcoming charges. At a hearing on Wednesday, Judge Friedrich (having already ceded to the request to delay further discussions of unsealing) worked out that the Straka filing had been released accidentally, then she basically blamed all parties – the government, Straka, herself, the clerks – for not taking better care of sensitive records describing cooperation.

She did, however, read Straka the riot act for comments he continues to make publicly that directly conflict with his comments to her at sentencing; she ordered semiannual reports from the Probation office on whether Straka continues to say things that might merit a False Statements charge.

In short, even a judge who presided over one of the most obvious of these pleas was pretty oblivious to the difference between the normal misdemeanor cooperation and this “substantial cooperation” one. And all the people complaining that DOJ wasn’t investigating organizers – they would know, the TV lawyers said – had absolutely no idea that FBI was getting information on key organizers with advance knowledge of Trump’s plans within weeks of the riot.

The one person who caught and wrote about the accidentally unsealed cooperation memo, Jordan Fischer, described what it said here (wayback version for those behind the GDPR wall).

In the memo, Dornan said Straka provided “significant information” to federal investigators over three interviews with the FBI following his arrest. In one interview on March 5, 2021, Straka, according to Dornan, provided information about “individuals who were inside of Nancy Pelosi’s office; individuals who were inciters at the Capitol; and organizers of the Stop the Steal movement.” He also listed the names of individuals Straka spoke to the FBI about. Those names include rally organizers Amy and Kylie Kremer, Cindy Chafian and Ali Alexander – who Dornan described as the “preeminent leader of the Stop the Steal movement.”

[snip]

Straka also gave contact information and other details about members of a “Stop the Steal” text thread that included, according to Dornan’s memo, Alexander

and other right-wing personalities with large social media followings. As well, Dornan said, Straka provided unspecified information about Tea Party Patriots co-founder Jenny Beth Martin and anti-vax Dr. Simone Gold, who are both affiliated with America's Frontline Doctors. Gold, like Straka, was charged in connection with the riot and pleaded guilty to a misdemeanor count of entering and remaining in a restricted building. She was sentenced in June to 60 days in jail and a \$9,500 fine. Martin posted a picture of herself on social media in the audience of the "Save America March" on Jan. 6 and public video shows her using a megaphone on the west lawn of the Capitol later in the day urging protestors not to climb on scaffolding. She has not been charged in connection with the riot.

As Fischer noted, the Kremers, Alexander, and Chafian were the key organizers for the parts of the rally that fostered violence; the January 6 Committee has quoted especially the Kremers for their foreknowledge of Trump's plans to march to the Capitol.

In short, Straka's attorneys at least claimed that he offered details – *in March 2021* – about precisely the Stop the Steal and rally organizers and other influencers whom virtually all TV commentators claim DOJ hadn't been investigating.

While we know that Baked Alaska got one of these deals because he blathered his mouth, from the outside, these deals are presumably supposed to look like just another trespasser plea.

One more comment about this: Perhaps a quarter of the overt cooperating plea deals came with witness protection language. The concerns about Straka's safety are not hypothetical. The riot was created by people who *already* had threatened violence, including the militias Roger Stone

cooperated with and QAnoners like the Mike Flynn fan who threatened DC judges presiding over earlier Trump-related cases.

Consider, Randy Credico's first contact with the FBI in 2018, before he was interviewed by agents, was a Duty to Warn contact because they had learned the militias associated with Roger Stone – the same ones that have both been charged with seditious conspiracy in relation to January 6 – were discussing action against him.

Here, someone closely networked into the same crowd like Straka threatened to expose the literal overlap between those militias and some of the most powerful people in the country.

I'm still not sure whether Straka is a liar who provided limited cooperation to avoid prison time or whether his information was as useful as the government claimed at sentencing.

What I am sure is that my assertions that such misdemeanor plea deals exist has been confirmed, even if the government has learned how costly sealing mistakes can be for the secrecy of such cooperation.

Update: As Sandwichman suggests, there are reports that Straka is doing a performance of being a Jan6er in jail. This feels a lot like Jerome Corsi's apparently successful efforts during the Mueller investigation to make his testimony useless.