

Capitol Insurrection, Riot, or Domestic Terrorism?



On January 6, 2021, a throng of Donald Trump supporters attacked the US Capitol building. Their stated goal was to overturn the valid results of the 2020 presidential election by interrupting the US Congress's count of electoral votes that would certify the election. One year later, SIS professor Joe Young joins us on this episode of *Big World* to discuss the January 6 attack on the Capitol and domestic terrorism.

Young explains what differentiates domestic terrorism from other acts of violence (2:08) and states how he categorizes the events of January 6 (5:10). He also shares how he classifies the ideology and actions of those who took part (6:44) as well as what movements and groups have taken part in acts of domestic terrorism in the US over the past few years (8:44).

What does the radicalization of US domestic terrorists look like (13:03), and what part do misinformation and disinformation play in the radicalization pipeline (15:12)? Are there similarities between how US domestic terrorists and Islamist terrorists become radicalized and the tactics they use (17:17)? Young answers these questions and reveals whether or not there is a trend of extremist movements becoming transnational (18:44). Our episode ends with Young clarifying whether or not domestic terrorism is more prevalent now than at any other time in US history (19:51).

During our “Take Five” segment, which in this episode is a “Take Three,” Young shares three policies and practices he would institute to reform people who are radicalized (10:31).

Full Transcript

0:07 Kay Summers: From the School of International Service at American University in Washington, this is Big World where we talk about something in the world that truly matters. On January 6, 2021, a throng of Donald Trump supporters attacked the US Capitol building. Their stated goal was to overturn the valid results of the 2020 presidential election by interrupting the US Congress's count of electoral votes that would certify the election. Their actions included chaotic uncoordinated riot moves like scrambling up walls and aimlessly roaming halls combined with truly menacing and coordinated activities designed to threaten and harm police, members of Congress, and the vice president.

0:47 KS: The toll, when it was all over, was the deaths of five people, injuries to 138 police officers, and the deaths by suicide of four additional police officers in the aftermath. Was it a violent protest, or a riot, or insurrection, or was it domestic terrorism? Today, we're talking about the January 6 attack on the Capitol, and we're talking about domestic terrorism. I'm Kay Summers, and I'm joined by Joe Young. Joe is a professor in the School of International Service and the School of Public Affairs at American University. He researches and teaches on terrorism, counter-terrorism, and domestic political violence. He publishes prolifically and he's consulted on a department of defense initiative focusing on countering violent extremism. Joe, thanks for joining Big World.

1:33 Joe Young: Oh, thank you for having me, Kay.

1:34 KS: And you were with us a few years ago when we were just getting started back in 2017. So it's great to have you back. Always love a repeat guest. So, Joe, I listed off a bunch of labels for what happened on January 6th, and I believe that I heard all of those used in the news media at the time. So to start off, how is domestic terrorism defined in the US, and how does it differ from other criminal activity or violent domestic acts like those that might emerge spontaneously alongside a protest? How do you differentiate?

2:08 JY: So, scholars tend to think about terrorism as opposed to other forms of political violence or criminal violence by really differentiating the target of that violence from the audience for the violence. So if we're talking about crime, the target of the violence is generally whoever you're trying to rob or hurt or take something from or whatever. You generally don't

want an audience because you don't want to be caught. With terrorism, you're attacking a victim to send a message to an audience, usually to compel that audience to do something that they don't really want to do. So, really when we're talking about domestic, we're saying that's happening in the context of one political system. And when we're talking about transnational or international terrorism, we generally mean one nationality is using this tactic against another, or we're saying a state might be involved or another state might be involved in this activity against the nationality of another country. And then obviously within domestic, we're saying the perpetrators and the victims are all of the same nationality.

3:12 KS: So the January 6th, Capitol riots first anniversary is coming up this month. Was it a protest that turned violent because of mob dynamics, or was it an insurrection, or a riot, or domestic terrorism? Basically, what was January 6th, 2021, in your opinion?

3:30 JY: Well, I appreciate the question and it's a hotly debated question. And it was debated almost immediately, this was happening on Twitter, but as it was going down there were scholars and practitioners and just members of the public that were arguing this, "What's going on? What do we call this?" And I think ultimately it's a really tough call about—I mean, for one, there were a whole series of events that happened on that day. So calling it one thing is a bit of a challenge because there were lots of different things happening. But, I guess, I'm more certain what it wasn't than I am of what it was. And what I'm pretty confident in what it wasn't was terrorism.

4:09 JY: So, again, talking about the definitions we just discussed, the victims and the audience for this violence were the same. In this case, the U.S. government and state agents, police, Congress people, those types of things, those were the victims and they were the targets for the violence. And so, that kind of rules out terrorism as something we would call it. It certainly had the hallmark of a violent riot. It got out of control. It seemed really disorganized—purposeless at certain point. So I'm comfortable calling it a violent riot, but some scholars especially initially right after it happened and while was going on called it a coup.

4:51 JY: And I think it was close to that. And the folks who called it an attempted or failed dissident coup that seemed better than some people who are saying this was a military coup and it was no—when we think about a coup, we normally think about a military coup. And the military wasn't really involved in any organized way. They stood down really, aside from some low level soldiers that were involved in sporadic pieces of it. So I'm a little uncomfortable with the coup term especially when we're thinking about the military.

5:26 JY: Insurrection is a decent term because it says violence and an attempt to thwart the government. So, I'm okay with insurrection. The challenging thing to piece out of this as well is that, some of the folks in the larger insurrection had plans for bigger things. Some of the folks were just there almost like it was Lollapalooza, taking pictures and drinking beers on the Capitol floor. And so, trying to isolate it as one thing is a challenge, but I'm really confident that it wasn't terrorism.

5:57 KS: So, let's talk about some of those people, Joe, the people who stormed and ultimately breached the Capitol, included some, as you said, who had organized intent and then some who were basically a grab bag of memes. You had the shirtless guy with the horns, you had the guy with his feet on the desk in Speaker Pelosi's office suite, you had the Olympic swimmer Klete Keller. So in your opinion, were these people radicalized or misinformed? Were they intent on doing violence or just on taking pictures? And they are criminals for their actions that day, that's not in dispute, but are they also, it sounds like you wouldn't consider them terrorists. Would you consider them insurrectionists or people who are breaking and entering? How would you classify their ideology and their actions?

6:44 JY: Yeah, I would definitely agree with you that it's fair to call them criminals. They broke a whole lot of federal laws, and I wouldn't say that they were terrorists. But the bigger question is why were they moved to doing something violent? I mean, I think there are lots of factors. But certainly extreme polarization in the country is one really important one. The echo of belief chambers that we're seeing in social media and these other public spaces. And then also something we don't like to talk about a lot in our system, but our political system is a winner-take-all electoral system. And that has consequences, where losers feel like they've lost a ton.

7:24 JY: And so, this is in proportion or in contrast to other democracies that tend to have more consensual systems where opposing parties are still part of government. I think that's a factor that people don't have to talk about, but it's important. And so I feel like for these reasons, we could say these are factors that led people to get involved. I think there's this also more sociological explanation where people like to be part of something bigger than themselves. And there was this kind of excitement and joy in some of the people's faces who were taking part in this like in other protests that you might have seen in the US and around the capital, related to whether it's Black Lives Matter or the Women's March, or what have you, there's this feeling of togetherness and solidarity. And I don't think we can discount that that was a motivation for many people that were there.

8:20 KS: So moving into movements and groups that you would consider domestic terrorism, over the past few years what kinds of movements and groups have taken part in acts of US domestic terrorism? And what kind of ideologies catalyze these movements? We're hearing a lot about white supremacy these days. Is that in fact, the dominate ideology in US domestic terrorism right now, or is it not?

8:44 JY: Yeah, I mean, I would say it's fair to say that. Empirically, it's definitely fair to say that. I mean, there are lots of different extremists in our country. I mean, that's one of the joys of living in a big society with lots of different ideas, but the most prominent right now is certainly the far right. There are far left folks that are sporadically doing terrorist attacks and other types of ideologies, but certainly far right is the big one. I mean, after 9/11 and into the 2010s, there was much more Jihadi-inspired violence that we saw, and that's sort of trickled away.

9:19 JY: But after Obama's election things really shifted in the far right direction to the point where it's much more dominant. But yeah, so we have attacks that are ISIS-inspired. We have animal rights activists. We have a few other ideologies that have done violent acts, but the far right is definitely the dominant one. Now, one of the challenges with the far right though, is that there's a ton of diversity within that larger movement. Some of it's been antisemitic with the temple attacks and attacks on private citizens. Some of it's been anti-LGBTQ. There's also been larger conspiracies like pizzagate that have motivated people towards violence. So, when we say the far right, we're really saying a pretty big tent of disparate groups that have different interests and different targets.

10:12 KS: Joe Young, it's time to take five. This is when you, our guest today, get to change the world as you'd like it to be by single handedly instituting five policies or practices that would change the world for the better. What five policies and practices would you institute to reform people who are radicalized?

10:31 JY: Well, thanks for the question. And I'm going to be a bad student and say, I don't have five. I just have three. So we're going to call it take three. But, I mean, I think the first idea is something a lot of people, while it's pie-in-the-sky that I would ever be in charge of making a national policy that people would go along with, I think the first thing we should do and people could get behind is, require some kind of national service after high school. Whether that's AmeriCorps, Peace Corps, Teach for America, the military, all of these organizations can help us reduce the polarization that we're seeing in the United States right now, and help us feel more connected to other folks.

11:11 JY: So the second policy I think I would do, and this is a hard thing, because your question's about, what do we do once someone's radicalized? And the truth is, once someone's radicalized, it's really hard. They're already down a pathway. And so, I would want to try and intervene before folks are radicalized. And my colleague, Cynthia Miller-Idriss, who is working on lots of policies and programs related to this, has suggested that the best way to try and do this is actually inoculating people against misinformation and destructive ways of thinking.

11:42 JY: And we might inoculate people by making them better critical thinkers, giving them better civic education, and intervene before it actually is too late. It's like having a vaccine before actually getting treated for a disease. And then I think the third thing that I would want to do, and it's very much related to the first, which is, just have lots of experiences with the other. And right now, one of the worst things in our society is that, while we're divided and polarized, we're living in separate spaces. And lots of people who feel one way, let's say, on the far left are not interacting a lot with the far right and vice versa. I know ideological segregation, which is what we're having right now, that leads to hardened beliefs. And if we can interact with the people who disagree with us in really civil and constructive ways, I think that could be another way.

12:38 KS: Wonderful. Thank you. Joe. I remember when we talked a few years ago, we talked about how terrorists become radicalized. And we were talking mostly about in other countries and training camps in places in the Middle East and things like that. So tell me, what does radicalization of US domestic terrorists look like? How and where does this occur?

13:03 JY: So, you're asking lots of good questions and they're—this is a hot debate among scholars. And I think it's important to start with, most scholars don't agree on the definition of radicalization. But scholars do have a useful distinction in the literature, and that's between the behavioral radicalization and attitudinal radicalization. And so, by attitudinal, we mean that people have these extreme views and they're generally supportive of extreme/violent actions. But behavioral radicalization, we mean they're actually plotting something or intending to do something violent.

13:42 JY: So, obviously, the more immediate concern for us is the behavioral kind. But if we think it—and you've probably heard the term, it takes a village to make a good human. It also takes a village to generate a violent one as well. And so, we have a good sense of what might happen when someone becomes violent. What we don't quite understand is what's that link between our behavioral radicalization and our attitudinal radicalization. And we just honestly need a ton more research here.

14:14 JY: And part of the really unsatisfying answer here is that there doesn't seem to be a single pathway that gets us down this behavioral radicalization track. It isn't like we just go from step A, to step B, to step C, and then we see somebody violent. There are many roads to that same destination and folks sometimes can jump from one path to another, and we just aren't that good at predicting who's going to be violent and where. And there have not been a lot of great studies on this to be honest.

14:46 KS: And I think you could argue that in radicalizing anyone, there's a role that's played by misinformation or disinformation. But I think what's changed over the past, I don't know how many years, it's been a few, is the role that misinformation and disinformation on social media in particular are playing, or maybe that's my perception, maybe that's not new at all. But what part do misinformation and disinformation, especially on social media, play in this radicalization pipeline?

15:12 JY: I think what misinformation really does, it's not necessarily the direct cause of violence, but I think it's an ingredient. And I think it really helps harden beliefs. So it doesn't create people's desires to do those things, but it allows people to just, there's a term that psychologists like to use which is called confirmation bias. And that is, we just seek out information that reinforces our own belief systems. And I think misinformation helps us create this confirmation bias where we're only taking in information that supports our world view. And so, I don't think it actually creates people who want to do these things, but it really hardens people who are sort of on the fence and have these predispositions. But again, this is not something I think there's been enough really good research on, this is an area where we need more scholars working.

16:04 KS: And I asked this question knowing that it's a sensitive area. It's been noted that some white Americans are quick to label any violent activity by another ethnic or religious group as terrorism, but those same white Americans are notoriously hesitant to label political violence perpetrated by white men in the same way. So are there any similarities between US domestic terrorism, as you see it now, and Islamist terrorism, either in terms of how people become radicalized or in the tactics they're using?

16:35 JY: Yes, I would say so. I mean, there haven't been a lot of studies where people compare radicalization processes in one area over another. Most of the studies have been, let's look at far-right and how they get radicalized, and let's look at Jihadi types and we'll see how they get radicalized. There's been a lot less comparison in that space. However, we know that

extremists learn from each other. And one of the first groups to successfully use suicide attacks, for example, was the LTTE in Sri Lanka. And, Muslim extremists saw this and learned from it, and LTTE were Hindus.

17:12 JY: And we saw this tactic spread globally, even though the LTTE perfected it and started it. There was a spate of truck attacks more recently by Jihadi groups that you probably have seen in Toronto and other places around the world. And it's been copied by the far-right too. So there are these tactical learning mechanisms that we see between groups. But also, one real common thing between the far-right and the Jihadi groups, is they both have really intense antisemitic conspiracy theories. And that seems to really bind them in interesting ways and be like a common cause that's incredibly troubling.

17:57 KS: Joe, nationalism, unquestionably underscores a number of movements in the US that have committed acts of domestic terrorism. But there seem to be instances of transnationalism within a couple of these groups. And just from the little bit of reading I was doing, I saw some anecdotal things about maybe a group in the US goes over for almost like a camping out experience with some group in a country in Europe. And I don't know if this is a trend or if this really is just anecdotal. So I'm wondering, what are your thoughts on this? Does this represent a larger trend? Do you see nationalist groups in the US working with groups in other countries and they're becoming some sort of transnational white supremacist terrorist movement coming toward us?

18:44 JY: Yeah. Some of the extreme far-right groups like Jihadi groups are networked internationally. Yeah, that's true. Absolutely. And throughout the US, Canada, Europe, Ukraine, Australia, these groups connect with each other, learn different techniques from each other, raise money together. MMA is a way in the Ukraine, for example, that a lot of far-right activists get connected and there're connections between those folks and the US far-right. And most of these groups are, we're talking about these networked far-right groups, are wanting to preserve some mythical ethnic purity, and they see threats similarly and they see what their goals are somewhat connected. I'm not sure this is a new trend necessarily, because we saw this sort of networked terrorist connections many times throughout history. And so, I'm not even sure it's even more extensive than we saw, in say, the '60s and '70s.

19:39 KS: And that's my next question. Is domestic terrorism more prevalent now than at any other time in US history? Or does it just sometimes seem that way? Why or why not is it more or less prevalent now?

19:51 JY: Yeah. It's not really. The US has for better or worse, a really violent history and today seems bad, but it pales in comparison to the 1960s or '70s or even to the 1860s or even the 1760s. When the US started secretly bombing Cambodia, well, it was revealed in May of 1970, that led to an incredibly violent time in US history. I mean, there were lots peaceful protests across college campuses, but nearly 400 campuses were shut down. Even including American University, protesters occupied ward circle and the president's resident and were tear gassed, and the National Guard was called in. And this happened in hundreds of campuses. And that's not even to mention what the state did at Kent State and Jackson State killing students, 30 ROTC buildings were burned or looted at this time. Riots on dozens of other campuses. And we had terrorist attacks by radical leftists happening at the same time daily. So, I would definitely argue that right now is not worse. We've had times where it's been bad. But since the 1990s and thinking about a more proximate timeframe, it seems worse.

21:11 KS: And it's part of the 24/7 news cycle as well. Right? I mean, the times in the '60s and '70s that you're mentioning. It at least took 24 hours for that news to get to most places, or maybe 12 hours or whatever, whenever the evening news came on. But now it's instantaneous, and you have video that's taken on site by people who are in it and it's in real time and it just feels so immediate, and it almost can lead you to feel as though the country's under siege somehow. But I hear you saying that it's not worse. It's just not great.

21:53 JY: I don't know if that makes us feel any better necessarily because it does definitely—I hear you, that it feels a bit awful what's happening right now. But in contrast, it's not as bad as that.

22:05 KS: Joe Young, thank you for joining Big World to discuss domestic terrorism and the January 6th attack on the Capitol. It's been very informative to speak with you.

22:13 JY: Oh, thank you.

22:14 KS: Big World is a production of the School of International Service at American University. Our podcast is available on our website on iTunes, Spotify, or wherever else you listen to podcasts. If you leave us a good rating or review, it'll be like new year's resolutions that don't involve cutting out chocolate. Our theme music is, "It Was Just Cold," by Andrew Codeman. Until next time.

Episode Guest



Joseph Young ([/spa/faculty/jyoung.cfm](https://www.american.edu/spa/faculty/jyoung.cfm)),

Professor, SIS; Chair of the Department of Justice, Law, and Criminology in the School of Public Affairs (PA)



<https://www.twitter.com/JosephKYoung>)

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Lesson Plan FID-1

Name of Instructor: Adam Miller

Program Title: Public Health and Safety

Course Title: *FID 1: January 6, 2020 Civil Disorder Case Study*

Unit Title : **Law**

Enforcement Ethics

Lesson Title: *FID 1:*

January 6, 2020 Civil

Disorder Case Study

Lesson Performance Objective: *Given a written materials packet, students will be able to demonstrate critical thinking, objective analysis and an understanding of the defining components of terrorism (specifically, domestic terrorism.) An analysis that offers a constructive response to each question is the minimum performance objective.*

Students will complete a written analysis of the event which will answer the following questions:

- 1) Was this event an "Insurrection"*
- 2) How do you relate the US Constitution's 1st Amendment to the actions of the involved*
- 3) From the police officers' perspectives, discuss their potential justification for the use of force (to include consideration of the use of force continuum and the ultimate use of deadly force on one involved)*
- 4) From the perspective of those involved, discuss their use of force and any potential lawful justifications (IF ANY) for actions you either read in the material, or, observed (and can cite) for credible media sources*
- 5) A terminal analysis of whether the involved should be arrested, and tried, as "domestic terrorists"*

Time (length of lesson): *Reading and Response: ~2 hours*

Equipment and Materials needed: *Computer (or type writer, or handwritten response is accepted) and handout materials*

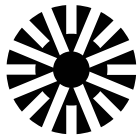
Academic Standard(s) and Anchor(s) and/or Common Core Standard addressed by this lesson: CC.3.6.9-10.A Write arguments focused on discipline-specific content., CC.3.6.9-10.C Produce clear and coherent writing in which the development, organization, and style are appropriate to task, purpose, and audience. , CC.3.6.9-10.F Conduct short as well as more sustained research projects to answer a question (including a self-generated question) or solve a problem; narrow or broaden the inquiry when appropriate; synthesize multiple sources on the subject, demonstrating understanding of the subject under investigation.

Technical Standard(s) or Competencies taught in this lesson:

NA



Read our research on: [Congress](#) | [Economy](#) | [Gender](#)



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JANUARY 4, 2022



A look back at Americans' reactions to the Jan. 6 riot at the U.S. Capitol

BY JOHN GRAMLICH



Trump supporters storm the U.S. Capitol on Jan. 6, 2021. (Samuel Corum/Getty Images)

The deadly riot that took place at the U.S. Capitol on Jan. 6, 2021, drew widespread attention and condemnation from the American public. But Democrats and Republicans

differed sharply over key aspects of it, both in its immediate aftermath and in the months that followed.

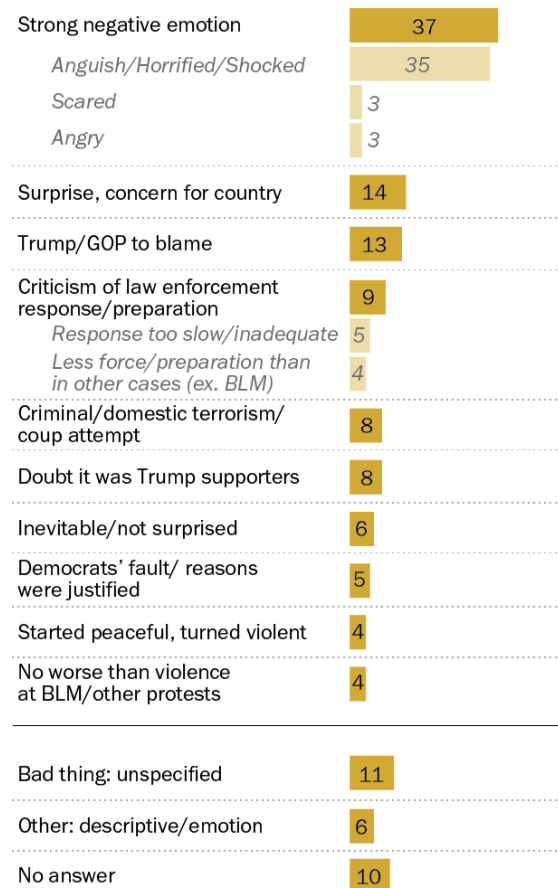
A year later, here's a look back at how Americans saw the events of Jan. 6 and how some partisan divisions grew wider over time. All findings in this analysis are based on Pew Research Center surveys conducted in [January](#), [March](#) and [September](#) of last year.

How we did this

1 Americans expressed shock, horror and anguish over the riot at the Capitol, but partisan divides were clear even in the first days after Jan. 6. In a [survey conducted from Jan. 8 to 12, 2021](#), around seven-in-ten U.S. adults (69%) said they had heard a lot about the riot, and another 28% said they had heard a little. In [volunteered, open-ended responses to the survey](#) from more than 2,600 adults, many Americans expressed strong negative emotions, such as shock and anger, as well as surprise and concern for the country.

Americans' reactions to the riot at the U.S. Capitol ran the gamut: Shock, horror and blame for Trump

Please describe, in just a few words, your reaction to the rioting at the U.S. Capitol (%) [OPEN END]



Notes: Open-ended question. Responses that were given by fewer than 3% of respondents not shown. See topline for full details. Numbers may exceed 100% due to multiple responses. Source: Survey of U.S. adults conducted Jan. 8-12, 2021.

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“A slap in the face to democracy, something you would expect to see in a third world nation,” said one man in his 60s. “Shocked, horrified and sad for our country,” said a woman in her 60s. “We were there a few years ago and were awestruck. How could fellow citizens violently enter federal buildings intending to destroy property and possibly harm our leaders?”

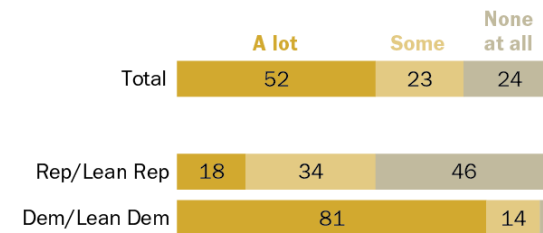
While negative reactions surfaced in both parties, Democrats and Democratic-leaning independents were much more likely than Republicans and GOP leaners to volunteer an emotion such as disappointment, disbelief or fear (48% vs. 27%). Republicans were more likely than Democrats to express doubts about who was behind the riot: Nearly one-in-five Republicans who volunteered a reaction (17%) said the destruction hadn't actually been

instigated by Trump supporters, instead saying it had been done by groups such as Antifa or Black Lives Matter.

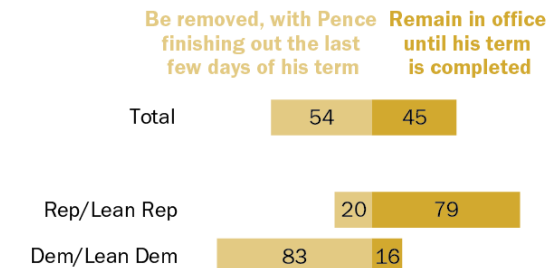
2 **Republicans were divided in the wake of Jan. 6 over whether then-President Donald Trump bore responsibility for the actions of some of his supporters that day.** Overall, 52% of U.S. adults said Trump bore [a lot of responsibility](#) for the violence and destruction at the Capitol, while 23% said he bore some responsibility and a similar share (24%) said he bore none at all.

In the days after Jan. 6, most Americans said Trump bore at least some responsibility for Capitol riot

% who say Trump bears ___ responsibility for the violence and destruction by some of his supporters at the U.S. Capitol



% who say it would be better for the country for Trump to ...



Note: No answer responses not shown.

Source: Survey of U.S. adults conducted Jan. 8-12, 2021.

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Around half of Republicans and GOP leaners said Trump either bore a lot (18%) or some responsibility (34%) for the riot. But nearly as many (46%) said he bore no responsibility at all.

An overwhelming majority of Democrats and Democratic leaners (95%) placed at least some blame for the riot on Trump, including around eight-in-ten (81%) who said he bore a lot of responsibility for it.

Americans were also deeply divided by party over whether it would be better for the country for Trump to be removed from office in the days after the riot. Around eight-in-ten

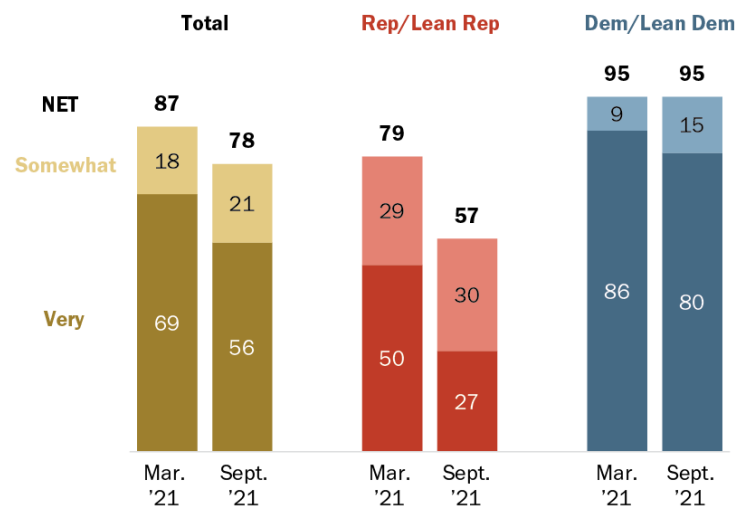
Democrats (83%) said it would be better for Trump to be removed and replaced by then-Vice President Mike Pence for the final days of his term. Nearly as many Republicans (79%) said it would be better for the country for Trump to finish out his term himself.

Overall, more than half of Americans (54%) said it would be better for the country for Trump to be removed and replaced by Pence, while 45% favored Trump remaining in office until the end of his term.

3 **Between March and September 2021, Americans became less likely to say it was important to find and prosecute the Capitol rioters, with all of the decline occurring among Republicans.** In a [survey conducted in early March](#), 87% of U.S. adults said it was very or somewhat important for federal law enforcement agents to find and prosecute those who broke into the Capitol on Jan. 6. [By September](#), that figure had slipped to 78%.

Between March and September 2021, Republicans became less likely to prioritize the prosecution of those who rioted at the U.S. Capitol

*% who say it is **very/somewhat important** that federal law enforcement agencies find and prosecute those who broke into and rioted at the U.S. Capitol on Jan. 6*



Source: Survey of U.S. adults conducted Sept. 13-19, 2021

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Around eight-in-ten Republicans (79%) said in the March survey that it was very or somewhat important to find and prosecute the Capitol rioters. By September, 57% expressed that view. Among Democrats, 95% said in both surveys that it was very or somewhat important to find and prosecute the rioters.

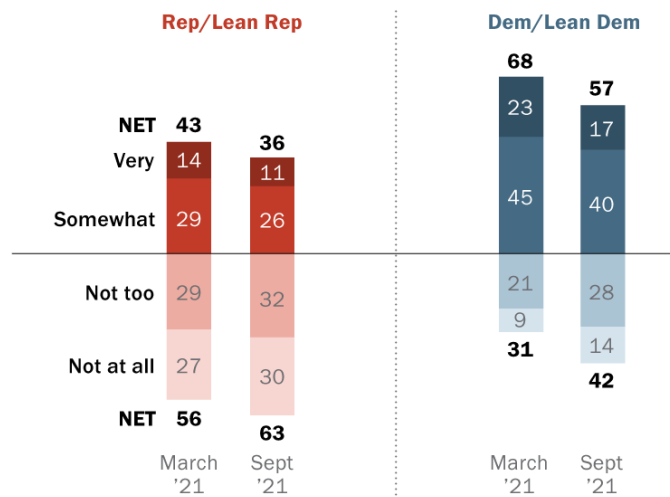
In both parties, there was a decline in the share of adults who said it was *very* important to identify and prosecute the rioters. But the decrease was much more pronounced among

Republicans (from 50% in March to 27% in September) than among Democrats (from 86% to 80%).

4 While some GOP elected officials publicly rebuked Trump in the wake of Jan. 6, Republicans in the U.S. became less open to intraparty criticism of the former president in the months after the riot. In mid-January 2021, [10 Republican representatives](#) joined all Democrats in a House vote to impeach Trump for his role in the violence at the Capitol. In February, [seven Senate Republicans](#) joined Democrats in a vote to convict him, though the effort still failed to reach the necessary two-thirds majority for approval.

63% of Republicans said in September 2021 that their party should not be accepting of GOP officials who openly criticize Trump, up from 56% in March

% of Rep/Lean Rep and Dem/Lean Dem who say their party should be ___ accepting of elected officials who openly criticize Donald Trump/Joe Biden



Notes: Republicans asked about criticism of Donald Trump, Democrats asked about criticism of Joe Biden. No answer responses not shown. Source: Survey of U.S. adults conducted Sept. 13-19, 2021.

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Nationally, the share of Republicans who said their party should be very or somewhat accepting of GOP elected officials who openly criticize Trump declined from 43% in March to [36% in September](#), according to the Center's surveys. The share of Republicans who said their party should be *not too* or *not at all* accepting of such officials rose from 56% to 63%.

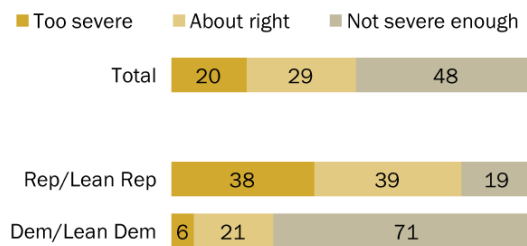
Democrats, too, became less likely to say their party should be accepting of Democratic elected officials who openly criticize President Joe Biden. Around two-thirds (68%) said in March that their party should be very or somewhat accepting of such officials, a figure that

declined to 57% by September. Still, majorities of Democrats said in both surveys that their party should be accepting of officials who openly criticize the current president.

5 As of September 2021, there were wide partisan differences over the severity of the criminal penalties imposed on the Jan. 6 rioters and whether the House's investigation of the riot would be fair or not. In the months after the riot – which led to multiple deaths, as well as injuries to [around 150 law enforcement officers](#) – the U.S. Justice Department [arrested and began to prosecute](#) hundreds of people who participated. A select committee of the U.S. House of Representatives [launched its own investigation](#).

Most Democrats said in September 2021 that criminal penalties for the Jan. 6 rioters were not severe enough

% who say the criminal penalties for those who broke into the U.S. Capitol and rioted on Jan. 6 have been ...



Note: No answer responses not shown.

Source: Survey of U.S. adults conducted Sept. 13-19, 2021.

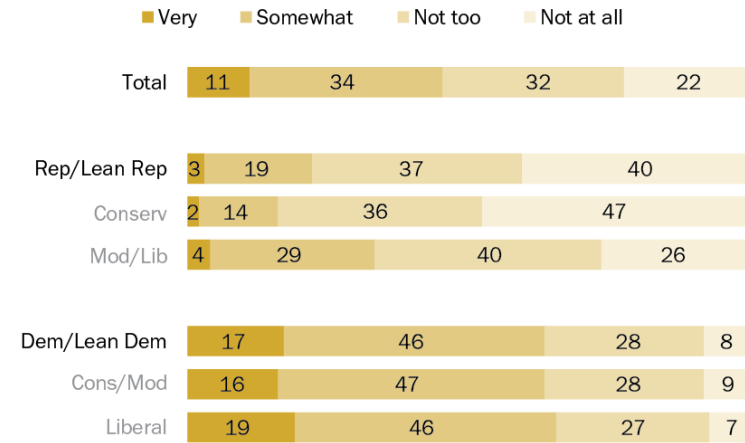
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In the Center's September survey, around half of U.S. adults (48%) said the criminal penalties that had been imposed on the rioters by that point had not been severe enough, while 29% said the penalties had been about right and 20% said they had been too severe.

Around seven-in-ten Democrats (71%) said the criminal penalties by that point had not been severe enough, while 21% said they had been about right and only 6% said they had been too severe. Among Republicans, similar shares said the penalties had been too severe (38%) and about right (39%), while 19% said they had not been severe enough.

In September 2021, wide partisan divide over whether Jan. 6 committee investigation would be fair

% who are ___ confident that the House committee's investigation into Jan. 6 riot will be fair and reasonable



Note: No answer responses not shown.
Source: Survey of U.S. adults conducted Sept. 13-19, 2021.

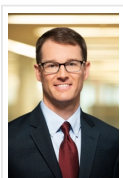
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In the same survey, a narrow majority of Americans (54%) said they were either not too or not at all confident that the House committee's investigation into the Jan. 6 riot would be fair and reasonable. Here, too, partisan differences were wide. Around eight-in-ten Republicans said they were either not too (37%) or not at all confident (40%) that the committee's investigation would be fair and reasonable, while 63% of Democrats said they were at least somewhat confident that it *would* be.

Topic [Election 2020](#)

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John Gramlich is an associate director at Pew Research Center.

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PLAYLIST



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POLITICS

A timeline of how the Jan. 6 attack unfolded — including who said what and when

Updated June 9, 2022 · 9:11 AM ET

By Kat Lonsdorf, Courtney Dorning, Amy Isackson, Mary Louise Kelly, Ailsa Chang

11-Minute Listen

PLAYLIST Download



Left to right: President Donald Trump speaks at the Stop the Steal rally. A member of a pro-Trump mob shatters a window with his fist from inside the U.S. Capitol building after breaking in. House Speaker Nancy Pelosi presides over a joint session of Congress to certify the 2020 Electoral College vote count.

Tasos Katopodis/Getty Images; Jon Cherry/Getty Images; Erin Schaff-Pool/Getty Images

January 6, 2021, was a Wednesday. A joint session of Congress was set to convene in the U.S. Capitol to certify Joe Biden's electoral vote win. Meanwhile, thousands of

Donald Trump supporters gathered near the White House to hear him speak at noon ET.

Tensions were high on Capitol Hill. Protesters swarmed lawmakers outside.

Sen. Todd Young, R-Ind., was exasperated as protesters surrounded him on the steps of the Russell Senate Office Building at around 11:30 a.m.

Rebecca Tan  
@rebtanhs · [Follow](#)

Republican senators are being swarmed by Trump protesters on the Hill. Here's an exasperated [@SenToddYoung](#) saying he won't vote against certifying the election.

"I took oath under God... does that still matter in this country?"

[Watch on Twitter](#)

11:24 AM · Jan 6, 2021 

 23.4K  Reply  Share this Tweet

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"When it comes to the law, our opinions don't matter. The law matters. ... I value your opinion. ... I share your conviction that President [Donald] Trump should remain president. I share that conviction. But the law matters. I took an oath. I took an oath

under God. Under God. Do we still take that seriously in this country?" he said, emphatically waving his arms in the air.

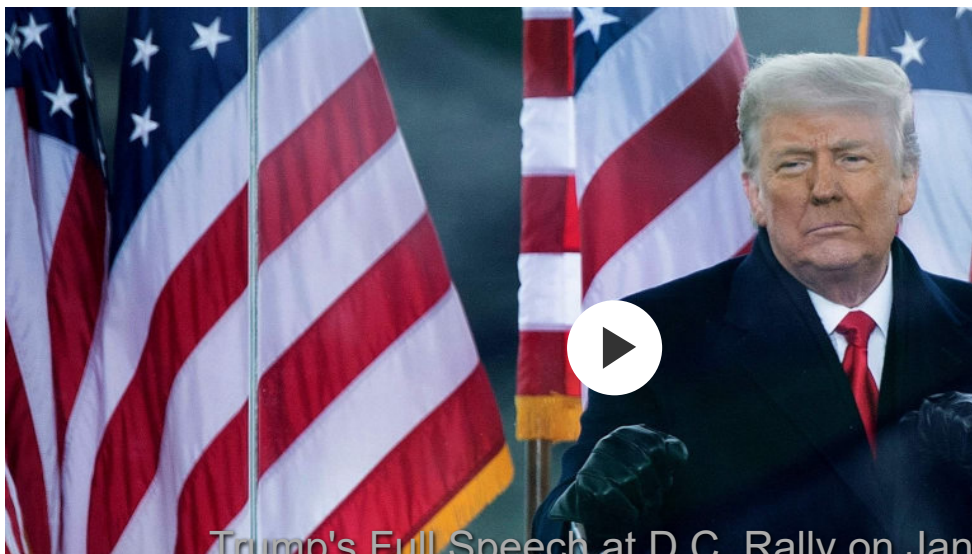
As the House select committee on January 6 holds its first hearing on Thursday, we revisit the events of that day — what happened when.

Here's how it unfolded.

12 p.m.

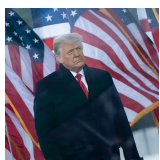
At noon, Trump begins speaking to his supporters at a rally near the White House.

"We will never give up. We will never concede," Trump tells the cheering crowd.



He calls on Vice President Mike Pence — as the president of the Senate — to reject Biden's win and send the votes back to the states.

"Mike Pence, I hope you're going to stand up for the good of our Constitution and for the good of our country," Trump says. "And if you're not, I'm going to be very disappointed in you."



POLITICS

Read Trump's Jan. 6 Speech, A Key Part Of Impeachment Trial

Meanwhile, Trump supporters head to both the Arkansas and Idaho state capitol buildings.

And even before Trump ends his speech, crowds from his rally start to gather outside the U.S. Capitol.

At about the same time, Pence releases a letter, calling his role in the certification of the electoral votes "largely ceremonial," essentially saying he will not act as Trump has asked.

"My oath to support and defend the Constitution constrains me from claiming unilateral authority to determine which electoral votes should be counted and which should not," Pence writes.



1 p.m.

An initial wave of protesters storms the outer police barrier around the Capitol.

Donie O'Sullivan  
@donie · [Follow](#)

Trump protesters have broken through barriers at the US Capitol

[Watch on Twitter](#)

1:08 PM · Jan 6, 2021 

[Read the full conversation on Twitter](#)

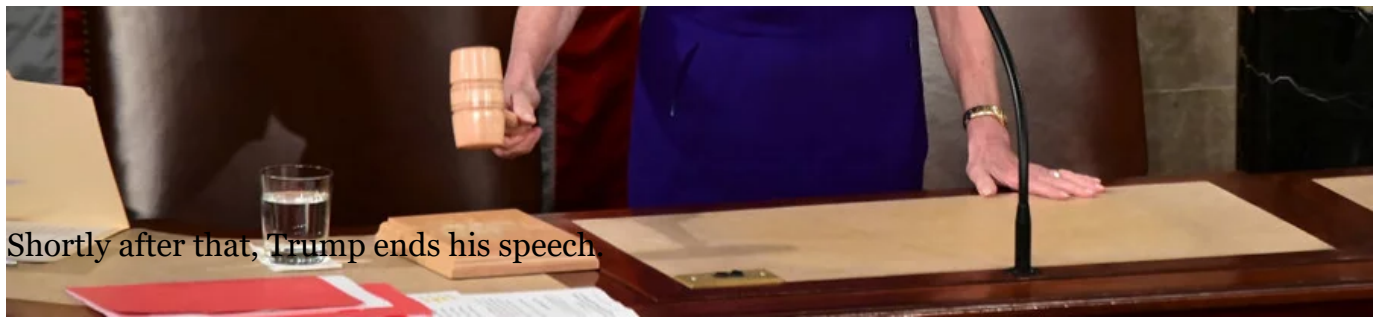
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1:05 p.m.

House Speaker Nancy Pelosi bangs the gavel to call the joint session of Congress to order.





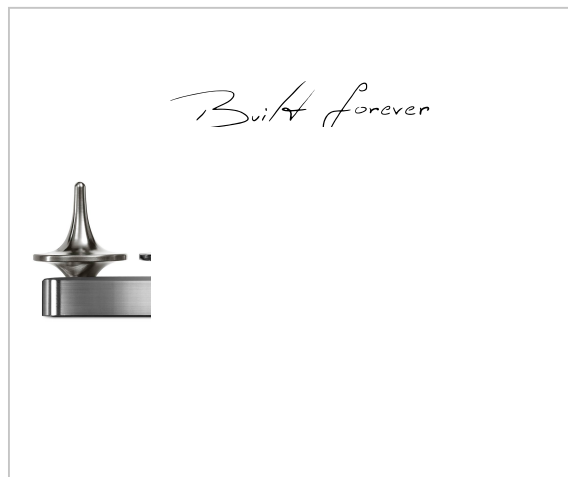
Shortly after that, Trump ends his speech.

"We're going to the Capitol," he says. "We're going to try and give them [Republicans] the kind of pride and boldness that they need to take back our country."

Trump returns to the White House. He does not go to the Capitol.

About two minutes later, in the House chambers, Rep. Paul Gosar, R-Ariz., rises to question the election results from his state.

Sponsor Message



"I rise for myself and 60 of my colleagues to object to the counting of the electoral ballots of Arizona," Gosar declares.

Sen. Ted Cruz, R-Texas, joins in Gosar's objection.

The House and Senate split to deliberate the objection in separate parts of the Capitol building.

At the same time, in Michigan, hundreds rally in front of the state capitol, which protesters stormed less than a year earlier to decry pandemic restrictions.



CORONAVIRUS LIVE UPDATES

Protesters Swarm Michigan Capitol Amid Showdown Over Governor's Emergency Powers

In Washington, D.C., a large portion of the crowd at Trump's speech marches toward the Capitol, shouting, "USA, USA, USA!"

1:30 p.m.

On the steps on the backside of the Capitol, protesters overcome the police, who run back into the building. Protesters watching from the sidelines cheer as a mob breaks through the final police barricades.

Inside the building, both the House and Senate proceed, with lawmakers seemingly unaware of the mayhem outside.

Senate Majority Leader Mitch McConnell takes the Senate floor.

"Voters, the courts and the states have all spoken — they've all spoken," he says. "If we overrule them, it would damage our republic forever."

Around this same time, suspicious packages are found at the Republican National Committee and Democratic National Committee headquarters in Washington, D.C., and nearby buildings are evacuated. The packages are later confirmed to be pipe bombs.

Shortly after 2 p.m.

Protesters break windows and climb into the Capitol. They open doors for others to follow.

Secret Service agents whisk Pence off the Senate floor.

A few minutes later, Pelosi is ushered off the House floor.

2:20 p.m.

The Senate is called to recess, and the House is called to recess shortly after.

The building goes into lockdown.

Around this same time, Capitol Police officer Eugene Goodman saves the Senate from a very close call, waving Sen. Mitt Romney, R-Utah, to safety and then diverting protesters who were steps from the Senate chamber.



Igor Bobic  · Jan 6, 2021 

@igorbobic · [Follow](#)

Replying to @igorbobic

Thanks for the tweets and texts, friends. I am safe and in hiding. 

Igor Bobic 

@igorbobic · [Follow](#)

Here's the scary moment when protesters initially got into the building from the first floor and made their way outside Senate chamber.

Watch on Twitter

3:09 PM · Jan 6, 2021 

 106.4K  Reply  Share this Tweet

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2:24 p.m.



Trump tweets: "Mike Pence didn't have the courage to do what should have been done to protect our Country and our Constitution."

He continues with more baseless claims about a fraudulent election.

2:38 p.m.


Trump tweets again, calling for support of the Capitol Police and law enforcement. He urges people to "stay peaceful."




But at that moment, inside the Capitol, the riot continues to unfold.

Senator Peter Welch  
@PeterWelch · [Follow](#)

Update: gas masks are being prepared

Watch on Twitter

2:39 PM · Jan 6, 2021 

 1.9K  Reply  Share this Tweet

[Read 174 replies](#)

Rep. Peter Welch, D-Vt., tweets a video from where he's sheltering in the House chamber. "We were just told that there has been tear gas in the rotunda, and we're being instructed to each of us get gas masks that are under our seats," he says.





Elsewhere in the country, protesters gather — at the Louisiana and Florida state capitols and the Ohio Statehouse. Several other state capitols are evacuated as a precaution.

Shortly before 3 p.m.

Rioters break into the Senate chamber. Many jump from the balcony to the floor below. They climb onto the podium and take photos and selfies, and they rifle through papers lawmakers left behind.



A protester supporting then-President Donald Trump jumps from the public gallery to the floor of the Senate chamber at the U.S. Capitol on Jan. 6, 2021.

Win McNamee/Getty Images

Many also march through the halls of the Capitol. They bang on doors, destroy property and eventually break into lawmakers' offices — most notably, that of Pelosi.



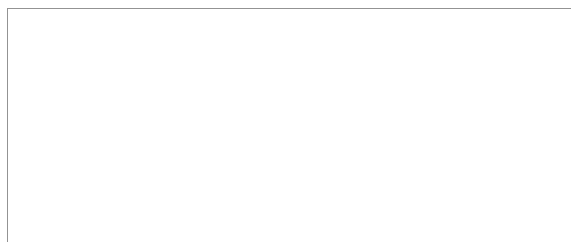
Richard Barnett, a supporter of then-President Donald Trump, holds a piece of mail as he sits in House Speaker Nancy Pelosi's office after protesters breached the Capitol on Jan. 6, 2021.

Saul Loeb/AFP via Getty Images

3:11 p.m.

Rep. Mike Gallagher, R-Wis., tweets a video while sheltering in his office, saying that this was the cost of telling people they could overturn the election.

Sponsor Message



"Mr. President, you have got to stop this. You are the only person who can call this off. Call it off," Gallagher implores. "The election is over. Call it off."

Rep. Gallagher Press Office  

@RepGallagher · [Follow](#)

We are witnessing absolute banana republic crap in the United States Capitol right now.

[@realdonaldtrump](#), you need to call this off.

[Watch on Twitter](#)

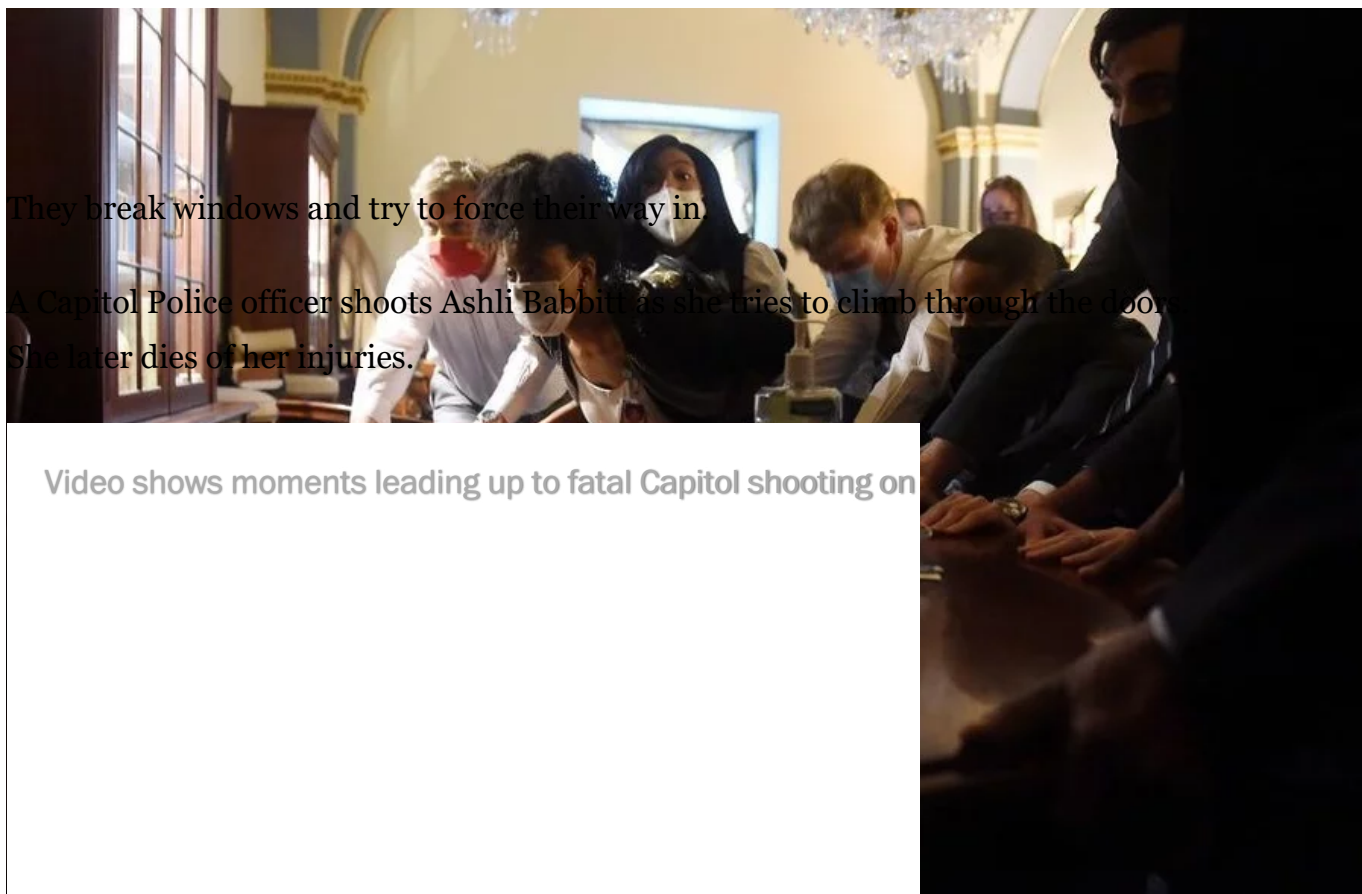
3:11 PM · Jan 6, 2021 

 **16.9K**  [Reply](#)  [Share this Tweet](#)

[Read 2.7K replies](#)

Around the same time, a swarm of rioters chanting, "Break it down! Break it down!" overwhelms Capitol Police officers guarding the Speaker's Lobby, where lawmakers are sheltered.





Simultaneously, Trump tweets again, asking everyone to remain peaceful. Notably, he does not recant any of his claims about election fraud.

3:36 p.m.

More than two hours after protesters first breached the Capitol grounds, White House press secretary Kayleigh McEnany tweets that Trump has ordered the National Guard to the Capitol.

Kayleigh McEnany 45 Archived 
@PressSec45 · [Follow](#)

At President [@realDonaldTrump](#)'s direction, the National Guard is on the way along with other federal protective services.

We reiterate President Trump's call against violence and to remain peaceful.

3:36 PM · Jan 6, 2021 

 **92.9K**  **Reply**  **Share this Tweet**

[Read 45.8K replies](#)

Meanwhile, Trump supporters begin to gather in Sacramento, Calif.; Austin, Texas; Denver and Minneapolis. Denver closes its city offices early, as does the Texas Capitol.

Shortly after 4 p.m.

Biden addresses the nation.



"I call on President Trump to go on national television now, to fulfill his oath and defend the Constitution and demand an end to this siege. This is not a protest — it is an insurrection," Biden says.

4:17 p.m.

Trump does not go on TV. Instead, he tweets a video talking to his supporters inside the Capitol.

"I know your pain. I know your hurt," he begins. "We love you. You're very special. You've seen what happens. You've seen the way others are treated. ... I know how you feel, but go home, and go home in peace."

Around the same time, Maryland and Virginia send National Guard and state troopers to the District of Columbia.

In the next hour, protesters in Arizona pound on the state capitol doors and break a window. A demonstration in Salem, Ore., turns violent.



Armed supporters of President Donald Trump chant during a protest on Jan. 6, 2021, in Salem, Ore. Trump supporters gathered at state capitols across the U.S. that day to protest the ratification of Joe Biden's Electoral College victory over Trump.

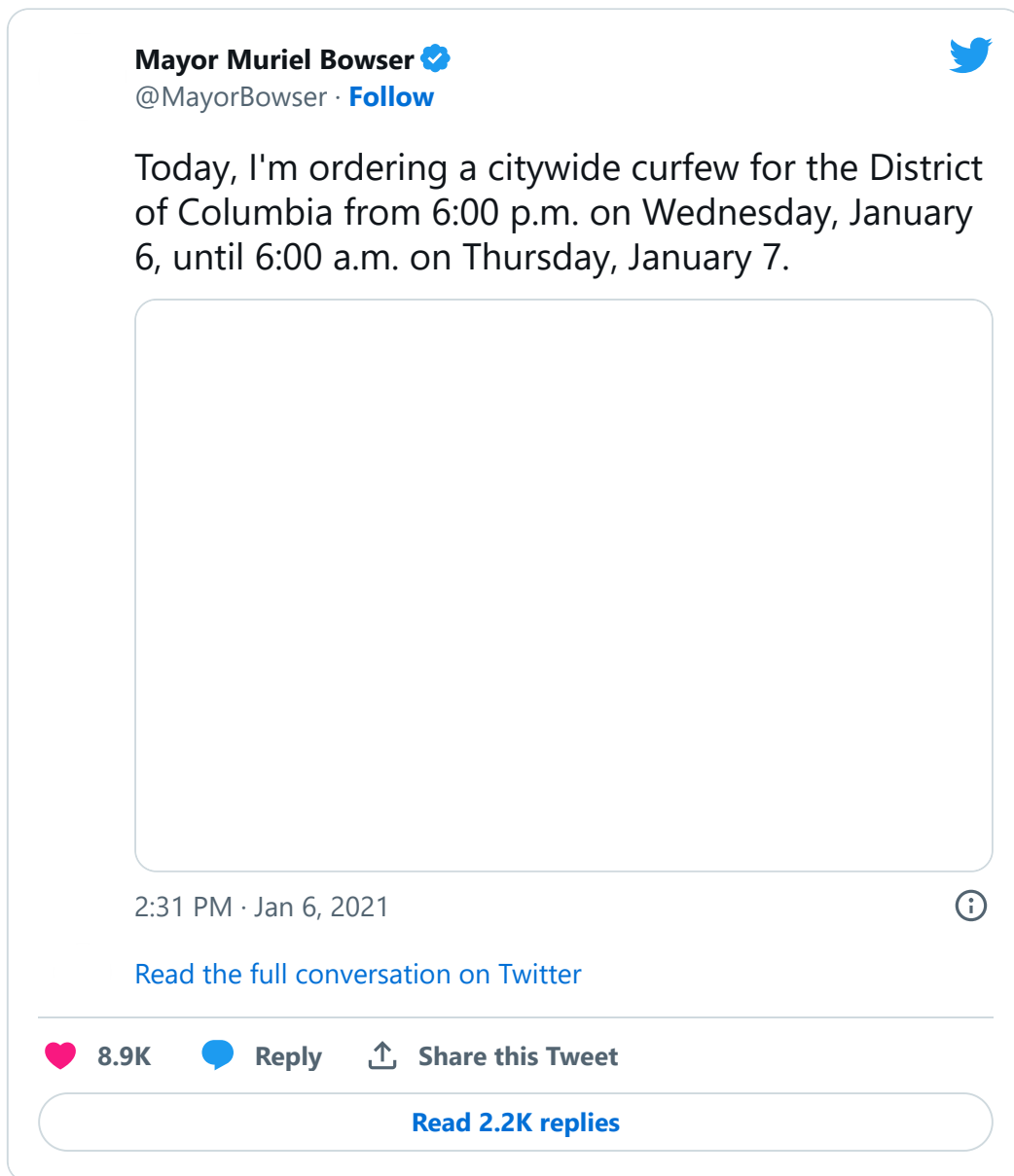
Nathan Howard/Getty Images

Shortly before 6 p.m.

Almost five hours after the rioting began, police start to clear the Capitol and eventually secure the interior.

6 p.m.

Muriel Bowser, the mayor of Washington, D.C., places the city under a 12-hour curfew.



6:01 p.m.

Trump tweets again.

"These are the things and events that happen when a sacred landslide election victory is so unceremoniously & viciously stripped away from great patriots who have been badly & unfairly treated for so long. Go home with love & in peace. Remember this day forever!"

7 p.m.

Facebook removes Trump's video and one other post from the day. In a statement, the company says, "We removed from Facebook and Instagram the recent video of

President Trump speaking about the protests and his subsequent post about the election results. We made the decision that on balance these posts contribute to, rather than diminish, the risk of ongoing violence."



TECHNOLOGY

Trump Suspended From Facebook For 2 Years

Facebook then bans Trump for 24 hours. He is currently under a two-year ban.

7:02 p.m.

Twitter removes Trump's tweets from the day and shuts down his account for 12 hours. His account is later suspended permanently.



TECHNOLOGY

Twitter Permanently Suspends Trump, Citing 'Risk Of Further Incitement Of Violence'

Account suspended

Twitter suspends accounts which violate th

7:54 p.m.

The Republican National Committee condemns the day's violence.



Just after 8 p.m.

Pence reopens the Senate.

"Today was a dark day in the history of the United States Capitol. ... Let's get back to work," he says to applause.

And McConnell makes a statement.

"The United States Senate will not be intimidated," he says. "We will not be kept out of this chamber by thugs, mobs or threats."

Subsequently, the relationship between McConnell and Trump has disintegrated during the last year. McConnell has urged Republicans to move beyond Trump and

has signaled his support for the Democratic-led House investigation into the Jan. 6 attack.

The debate over Arizona's ballots continues, more than six hours after it began.

Around 9 p.m.

Pelosi brings the House back into session.

"We always knew this would take well into the night, and we will stay as long as it takes. Our purpose will be accomplished," she says.

9:53 p.m.

In a blazing speech on the Senate floor, Sen. Lindsey Graham, R-S.C., says, "Count me out. Enough is enough." Graham says he hates to see his journey with Trump end this way. Subsequently, Graham has said repeatedly that Trump is essential to the Republican Party's future. Graham was one of Trump's most loyal allies in Congress during Trump's presidency.

5:42



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11:32 p.m.

The House and Senate come back together to resume the joint session, and the vote that began some 10 hours earlier continues.

3:42 a.m., Jan. 7

Pence calls a majority of the Electoral College votes for Biden.



Vice President Mike Pence presides over a joint session of Congress on Jan. 6, 2021.

Pool/Getty Images

"The announcement of the state of the vote by the president of the Senate shall be deemed a sufficient declaration of the persons elected president and vice president of the United States," Pence says, and officially affirms the election results certifying Biden as the 46th president.



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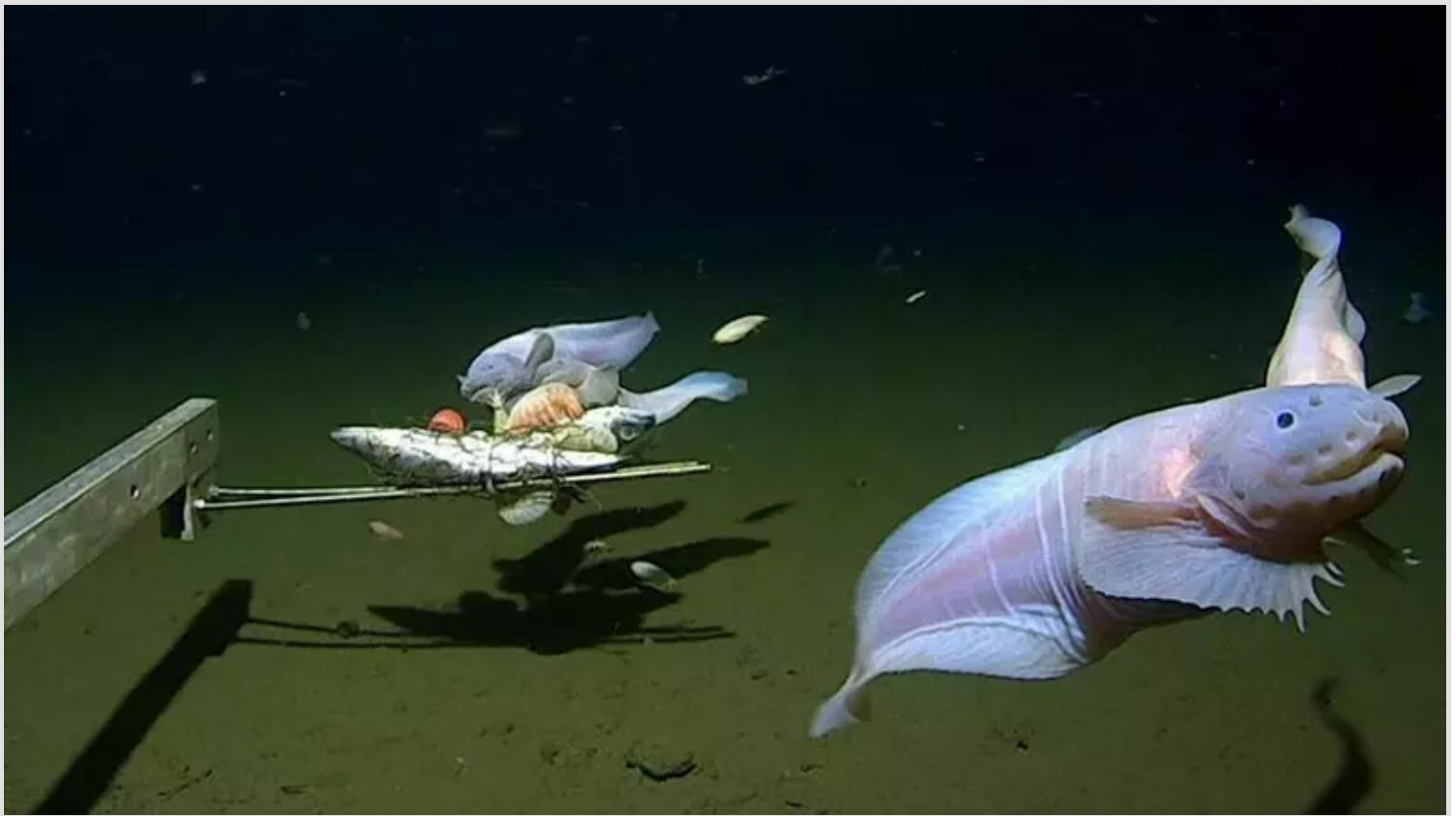
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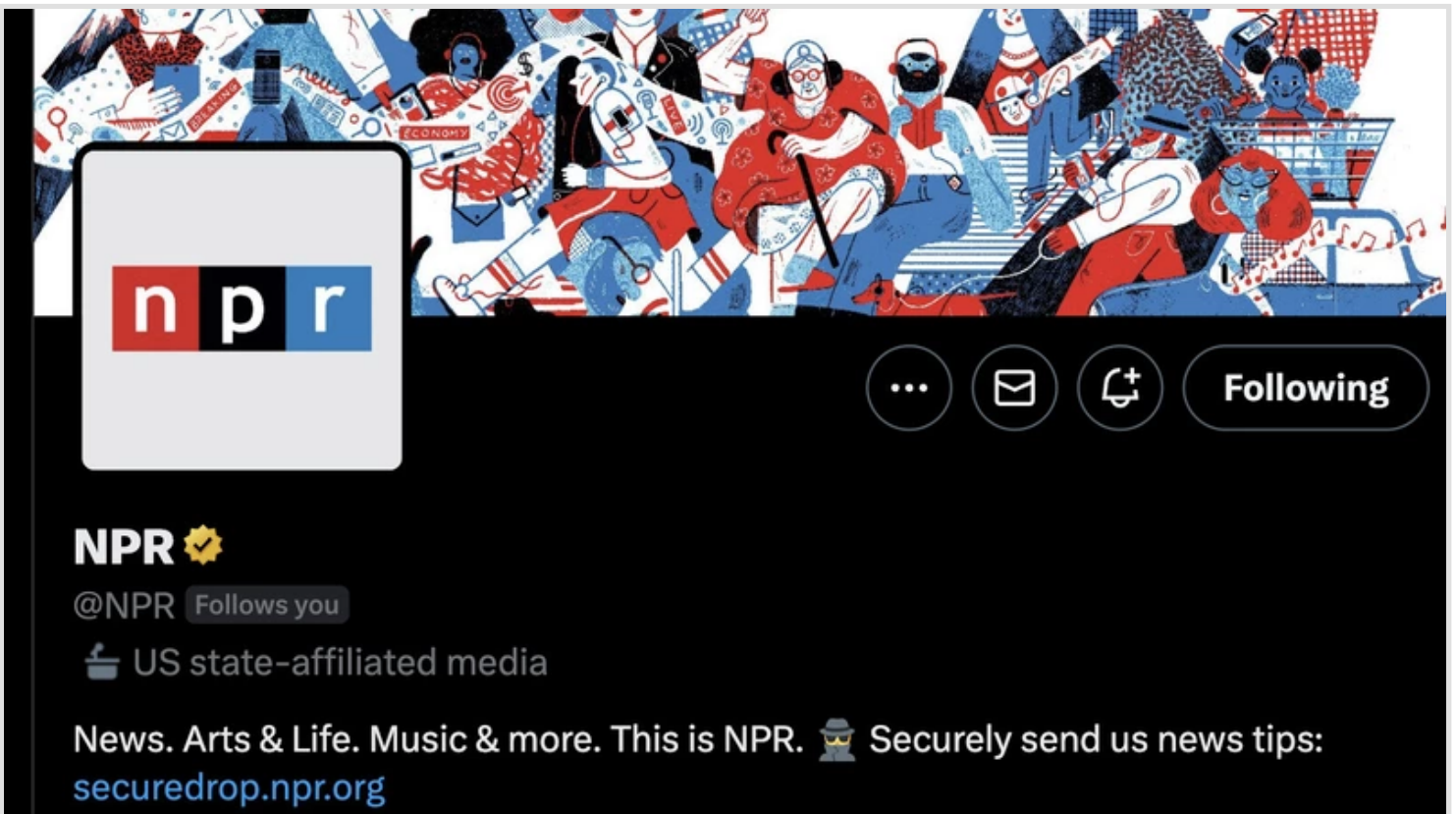
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WATCH: FBI chief Chris Wray calls Jan. 6 'domestic terrorism,' defends intel

Politics Updated on Mar 2, 2021 3:12 PM EDT – Published on Mar 2, 2021 9:43 AM EDT

WASHINGTON (AP) — FBI Director Chris Wray condemned the January riot at the U.S. Capitol as “domestic terrorism” Tuesday as he defended the bureau’s handling of intelligence indicating the prospect for violence. He told lawmakers the information was properly shared with other law enforcement agencies even though it was raw and unverified.

Watch the hearing in the video player above.

Wray’s comments before Congress, in a rare public appearance since the deadly Capitol attack two months ago, was the FBI’s most vigorous defense against the suggestion that it had not adequately communicated the distinct possibility of violence as lawmakers certified the results of the presidential election. He also described in stark terms the threat from domestic violent extremists and said that, contrary to some Republicans, there is no evidence that anti-Trump groups were involved in the riot.

WARNING: *This hearing includes footage of violence.*

Many of the senators’ questions Tuesday centered on the FBI’s handling of a Jan. 5 report from the Norfolk, Virginia, field office that warned of online posts foreshadowing a “war” in Washington the following day. Capitol Police leaders have said they were unaware of that report and had received no intelligence from the FBI that would have led them to expect the sort of violence that besieged them on the 6th. Five people died as a result of the riot, including a Capitol Police officer and a woman who was shot as she tried to enter the House chamber with lawmakers still inside.

Asked about the handling of the report, Wray told the Senate Judiciary Committee on Tuesday that it was disseminated through the FBI’s joint terrorism task force, discussed at a command post and posted on an internet portal available to other law enforcement agencies.

“We did communicate that information in a timely fashion to the Capitol Police and (Metropolitan Police Department) in not one, not two, but three different ways,” Wray said, though he added that the outcome was “unacceptable” and the FBI was looking into what if anything it could have done differently ahead of the insurrection.

Though the information was raw, unverified and appeared aspirational in nature, Wray said, it was specific and concerning enough that “the smartest thing to do, the most prudent thing to do, was just push it to the people who needed to get it.”

READ MORE: [How the U.S. Capitol attack highlights the challenges of thwarting online right-wing extremism](#)

In characterizing the events of Jan. 6 as an act of domestic terrorism, Wray highlighted the FBI’s growing concern about an increase in extremist violence in the U.S., including from militia groups, white supremacists and anarchists. The threat they pose is being treated with the same urgency as that from international terror groups like the Islamic State or al-Qaida.

“Jan. 6 was not an isolated event. The problem of domestic terrorism has been metastasizing across the country for a long time now and it’s not going away anytime soon,” Wray said.

The violence at the Capitol made clear that a law enforcement agency that remade itself after the Sept. 11, 2001, attacks to deal with international terrorism is now scrambling to address homegrown violence from white Americans. President Joe Biden's administration has tasked his national intelligence director to work with the FBI and Department of Homeland Security to assess the threat.

Wray said the number of domestic terrorism investigations has increased from around 1,000 since he became FBI director in 2017 to about 2,000 now. The number of white supremacist arrests has almost tripled, he said.

Wray has kept a notably low profile since the Capitol attack. Though he has briefed lawmakers privately and shared information with local law enforcement, Tuesday's oversight hearing marked his first public appearance before Congress since before November's presidential election.

By – Eric Tucker, Associated Press

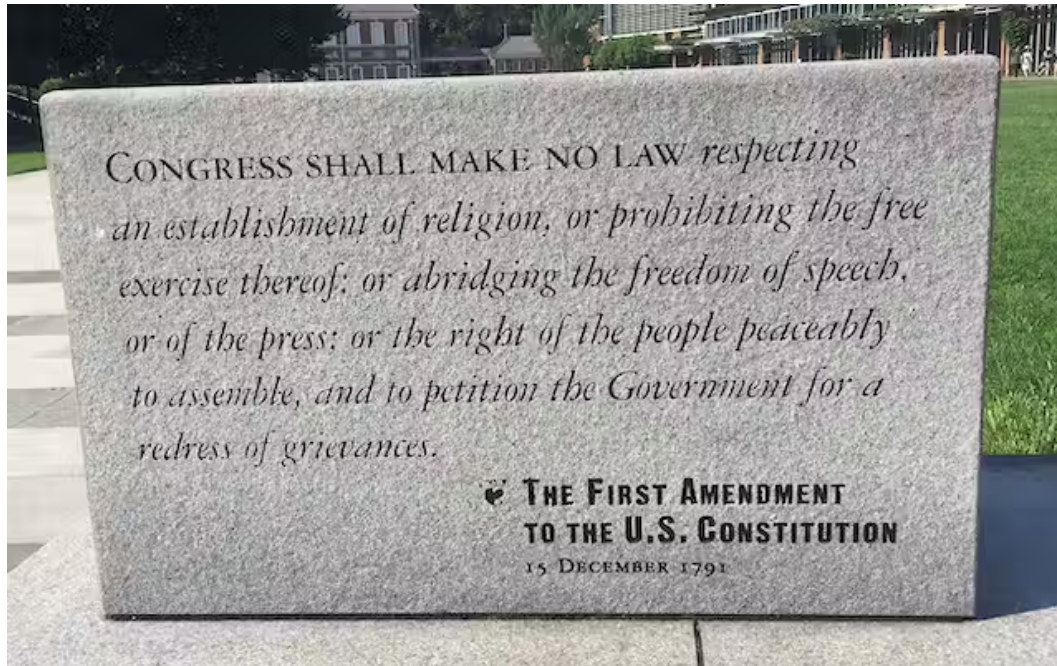
By – Mary Clare Jalonick, Associated Press

How online misinformation from local-level Republicans helped fuel the Capitol riot

Politics Feb 28

THE CONVERSATION

Academic rigor, journalistic flair



A protection that is, at least in this Philadelphia park, carved in stone. Zakarie Faibis via Wikimedia Commons, CC BY-SA

What the First Amendment really says – 4 basic principles of free speech in the US

Published: February 8, 2023 8.42am EST

Lynn Greenky

Associate Professor of Communication and Rhetorical Studies, Syracuse University

Elon Musk has claimed he believes in free speech no matter what. He calls it a bulwark against tyranny in America and promises to reconstruct Twitter, which he now owns, so that its policy on free expression “matches the law.” Yet his grasp of the First Amendment – the law that governs free speech in the U.S. – appears to be quite limited. And he’s not alone.

I am a lawyer and a professor who has taught constitutional concepts to undergraduate students for over 15 years and has written a book for the uninitiated about the freedom of speech; it strikes me that not many people educated in American schools, whether public or private – including lawyers, teachers, talking heads and school board members – appear to have a working knowledge about the right to free speech embedded in the First Amendment of the U.S. Constitution.

But that doesn’t have to be the case.

In short, the First Amendment enshrines the freedom to speak one’s mind. It’s not written in code and does not require an advanced degree to understand. It simply states: “Congress shall make no law ... abridging the freedom of speech.” The liberties embraced by that phrase belong to all of us who live in the United States, and we can all become knowledgeable about their breadth and limitations.

There are just four essential principles.

1. It's only about the government

The Bill of Rights – the other name for the first 10 amendments to the U.S. Constitution – like the Constitution itself and all the other amendments, sets limits only on the relationship between the U.S. government and its people.

It does not apply to interactions in other nations, nor interactions between people in the U.S. or companies. If the government is not involved, the First Amendment does not apply.

The First Amendment ensures that Twitter is, in fact, free of government restrictions against spreading misinformation and disinformation or virtually anything else. The company is similarly free to expel any users who offend Musk's personal sensibilities. They can be booted off Twitter and any charges of "Censorship!" don't apply.

2. For decades, speech has faced very few limits

Freedom of expression was understood by the nation's founders to be a natural, unalienable right that belongs to every human being.

Over the course of the first 120-plus years of the country's democratic experiment, judicial interpretation of that right slowly evolved from a limited to an expansive view. In the middle of the 20th century, the Supreme Court ultimately concluded that because the right to speak freely is so fundamental, it is subject to restriction only in limited circumstances.

It is now an accepted doctrine that tolerance for discord is built into the very fabric of the First Amendment. In the words of one of the most revered Supreme Court justices, Louis D. Brandeis, "it is hazardous to discourage thought, hope and imagination; ... fear breeds repression; ... repression breeds hate; ... hate menaces stable government."

Opinions, viewpoints and beliefs – which are sometimes based on provable fact, other times on hypothetical theories and occasionally on lies and conspiracies – all contribute to what constitutional scholars and lawyers refer to as the "marketplace of ideas." Similar to the commercial marketplace, the marketplace of ideas subjects all products to competition. The hope is that only the best will survive.

Therefore, members of the Westboro Baptist Church can picket the funerals of fallen soldiers with signs disparaging the LGBTQ+ community, Nazi hate groups can hold rallies and civil rights groups can participate in lunch-counter protests. The ideas expressed by each of these groups represent one perspective in the public debate about rights and privileges, government responsibility and religion. Other people and groups may disagree, but their perspectives are also protected from government censorship and repression.

Messages communicated by means other than speech or writing are generally protected by the First Amendment, too. A jean jacket bearing the Vietnam-era anti-war slogan “F*ck the Draft” is protected, as is the act of burning a United States flag in front of a crowd. These were potentially more emotionally powerful than politely worded statements opposing government policies.



It may be upsetting to see – but that’s part of the point of burning a flag, and a key reason it’s protected by the First Amendment. Michael Ciaglo/Getty Images

3. But not all speech is protected

The government does, in fact, have the power to regulate some speech. When the rights and liberties of others are in serious jeopardy, speakers who provoke others into violence, wrongfully and recklessly injure reputations or incite others to engage in illegal activity may be silenced or punished.

People whose words cause actual harm to others can be held liable for that damage. Right-wing commentator Alex Jones found that out when courts ordered him to pay more than US\$1 billion in damages for his statements about, and treatment of, parents of children who were killed in the 2012 Sandy Hook Elementary School shooting in Newtown, Connecticut.

So, abortion opponents can say what they wish but can’t threaten or terrorize abortion providers. And the white supremacists who rallied in Charlottesville, Virginia, in 2017 can shout to the rafters that Jews will not replace them, but they can be held liable for the intimidation, harassment and violence they used to amplify their words.

Rules about incitement to illegal action are part of the U.S. Department of Justice’s investigation into whether former President Donald Trump is at all responsible for the violence at the Capitol on Jan. 6, 2021. On that day, citing unproven, even disproved, events, Trump delivered a speech insisting the 2020 presidential election was rife with fraud.

However, the First Amendment doesn't protect only true statements. Trump has a constitutional right to advocate for his perspective. Even his references to violence might be considered shielded from criminal prosecution by the superpower of the First Amendment. That superpower would evaporate only if a court finds that, when he spoke the words that day, "And if you don't fight like hell, you're not going to have a country anymore," his intent was to incite the violence that followed.

4. What's legal isn't always morally correct

Finally, and perhaps most importantly: Moral boundaries to acceptable speech are different, and often much narrower, than constitutional boundaries. They should not be conflated or confused.

The First Amendment right to speak freely as an exercise of people's natural rights does not mean everything anyone says anywhere is morally acceptable. Constitutionally speaking, ignorant, demeaning and vitriolic speech – including hate speech – are all protected from government repression, even though they may be morally offensive to the majority.

Still, some people insist that malicious and emotionally hurtful speech adds no value to society. That is one reason used by people who seek to cancel or ban controversial speakers from college campuses.

Indeed, virulent speech may even weaken the democratic exchange of ideas, by discouraging some people from participating in public discussion and debate, to avoid potential harassment and scorn.

Nonetheless, that sort of speech remains firmly under the umbrella of First Amendment defenses. Each person must decide how their own humanity and morality allows them to speak for themselves.



INSURRECTION FALLOUT

Why DOJ is avoiding domestic terrorism sentences for Jan. 6 defendants

Some judges have debated whether the charges qualify as “crimes of terrorism,” but prosecutors have repeatedly pulled back by citing unspecified “facts and circumstances.”



About 45 Capitol riot defendants are charged with destruction or “depreddation” of federal property, which carries a maximum 10-year prison term. | Brent Stirton/Getty Images

By **JOSH GERSTEIN**

01/04/2022 04:30 AM EST



The storming of the Capitol on Jan. 6 has been denounced by the White House, the FBI and the Justice Department as an act of domestic terrorism, but one year after the insurrection, prosecutors have yet to ask judges to impose the harsher sentences federal law recommends for defendants motivated by politics.

Instead, even as some judges have publicly debated whether the charges against Jan. 6 defendants qualify as “crimes of terrorism,” prosecutors have repeatedly pulled back on tougher sentences, citing unspecified “facts and circumstances.”

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The so-called sentencing enhancement for terrorism crimes was created as a result of legislation Congress passed following the 1993 bombing in a parking garage at the World Trade Center. The provision initially applied only to crimes linked to international terrorism, but after the bombing of the Oklahoma City federal building in 1995, Congress moved to expand the enhancement to cover terrorism inspired purely by domestic causes.

The terrorism-related language now includes federal criminal offenses “calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct.”

In front of judges and in court filings, the Justice Department is engaged in a delicate rhetorical dance on the domestic terrorism issue. Seeking to satisfy a large swath of the public outraged by the Jan. 6 riot, prosecutors have declared that the event “certainly” qualifies as domestic terrorism. But they’ve kept their powder dry thus far on invoking the terrorism sentencing boost — potentially because its impact can be so severe.

It’s also one of the existing provisions legal experts have pointed to in the ongoing debate over whether Congress should pass a domestic-terrorism statute.

“It takes you from a couple of years [in prison] in the guidelines range all the way up to, like, 20,” said Doug Berman, an Ohio State law professor and one of the nation’s leading authorities on criminal sentencing.

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Invoking the terrorism enhancement typically adds about 15 years in prison to a defendant’s recommended sentence, sets the minimum calculation at 17 and

a half years, and also flips the person charged into the criminal-history category used for serial offenders.

While prosecutors have yet to actually call for the enhancement at a sentencing for a Capitol riot defendant, the terrorism-related provision is playing a significant role behind the scenes.

At pretrial hearings, defense attorneys have indicated that they were unwilling to consider plea deals for their clients because prosecutors would not agree to refrain from seeking the domestic terrorism charges. In other cases, prosecutors seem to have dropped the enhancement, in exchange for cooperation from particular defendants.

Critics say giving prosecutors the authority to pursue or not pursue the massive sentence booster in cases stemming from political protests gives too much power to prosecutors in the process of negotiating a plea.

“It’s just lying there as a cudgel if they want it,” said Karen Greenberg, director of Fordham University law school’s Center on National Security. “It can be used so many different ways.”

Indeed, the range of crimes that can trigger the sentencing enhancement is sprawling. Under current law, 57 offenses are on the list, including such crimes as hostage-taking, destroying an aircraft, using fire or explosives to destroy a building and computer hacking that creates a public health or safety threat or impacts national security systems. Some of the so-called predicate offenses are quite obscure, including producing smallpox virus or assaulting a Nuclear Regulatory Commission inspector.

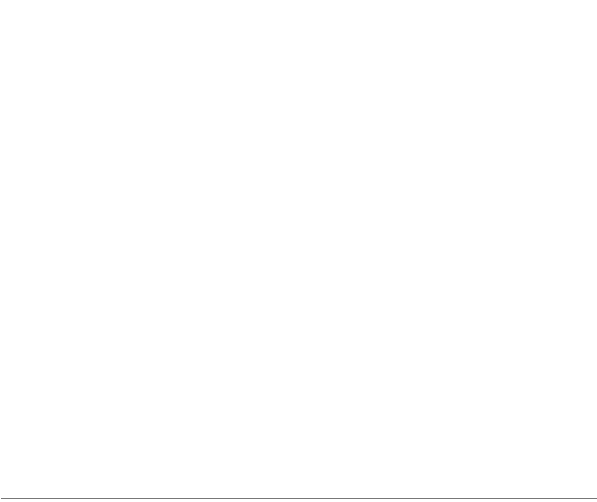
But many of the most frequently filed felony charges related to the Capitol riot don’t appear on the terrorism list. Assaulting a police officer with a dangerous weapon, a potential 20-year felony, isn’t on the list. Nor is obstruction of an

official proceeding, another 20-year felony, or interfering with police during civil disorder, a five-year felony.

About 45 Capitol riot defendants are charged with a crime that is on the terrorism list: destruction or “degradation” of federal property, which carries a maximum 10-year prison term.

The property-destruction charge has been leveled against at least seven alleged members of the right-wing Proud Boys group in connection with one of the highest-profile acts of Jan. 6: the smashing of a Capitol window, resulting in scores of protesters streaming into the building. Prosecutors have charged Dominic Pezzola of Rochester, N.Y., with the actual shattering of the window, but contend that many of Pezzola’s associates are criminally responsible for

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The issue became a point of contention at bail hearings earlier this year, where some defense lawyers scoffed at the idea that encouraging someone to break a window could amount to terrorism.

“There appears to be a good deal of distance between that allegation and a terrorism case,” defense attorney Nick Smith wrote on behalf of alleged Proud Boys leader Ethan Nordean. “Piquant photographs of Proud Boys do not bridge the gap.”

Can vandalism be terrorism?



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Indeed, the depredation-of-property offense is sometimes charged in connection with protests. In 2018, seven antiwar activists were hit with the charge for cutting through razor and concertina wire at a Georgia naval base used by nuclear submarines.

During the Black Lives Matter demonstrations that followed the murder of George Floyd by Minneapolis police in May 2020, prosecutors turned to the statute again to charge Micah Avery, a resident of Washington, D.C., for spray-painting an outcropping of the Lincoln Memorial with the words “Yall not tired yet?”

Avery, who has pleaded not guilty, is tentatively set to go on trial later this month.

The same charge was also used against five racial-justice protesters in Nevada who were accused of being part of a crowd that tossed paint onto a federal

courthouse, threw objects at its windows, kicked its doors and ripped letters off the building's sign.

All five people who were charged pleaded guilty to the felony offense, but prosecutors did not seek to apply the terrorism enhancement. Three defendants were given probation, although one later had it revoked and was sent to prison for four months. One defendant, who also sought to break into a pawn shop later that night, got 21 months. A fifth defendant awaits sentencing.



INSURRECTION FALLOUT

New Capitol Police document shows how unprepared they were for Jan. 6 riots

BY BETSY WOODRUFF SWAN AND DANIEL LIPPMAN

A California man, Kevin Weier, who moved a burning board from one spot to another outside the federal courthouse in Portland, Ore., during protests there in 2020, was also charged with depredation of federal property. After he pleaded guilty, prosecutors didn't invoke the terrorism enhancement and recommended just one year of probation. A judge gave him two.

It's a very different story in the New York City borough of Brooklyn, where federal prosecutors have signaled plans to press for the terrorism enhancement in a case against two lawyers who have admitted to working together to prepare and throw a Molotov cocktail fashioned from a beer bottle into a vacant New York Police Department cruiser during George Floyd-related protests.

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Plea discussions in the case against the lawyers, Colinford Mattis and Urooj Rahman, dragged out for almost a year and a half, in large part because of prosecutors' insistence on requesting the terrorism enhancement in the case.

Assistant U.S. Attorney Ian Richardson pointed to a string of ominous-sounding text messages Mattis and Rahman exchanged.

"Go burn down 1PP," Mattis wrote, referring to NYPD headquarters at One Police Plaza.

"Molotovs rollin'," Rahman added. "I hope they burn everything down. Need to burn all police stations down and probably the courts too."

At a hearing in October in which the attorneys pleaded guilty to possession of a destructive device, U.S. District Court Judge Brian Cogan said a central question at the sentencing — now set for March — would be whether to apply the major increase in prison time for a terrorist offense.

"Obviously, the terrorism enhancement is going to be a big issue," said Cogan, an appointee of President George W. Bush. "I have no idea where I'm coming out on that at this point."

Does the terror enhancement give prosecutors too much power?



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enhancement,” said Michael German, a former FBI agent and a fellow at the “Part of the problem with using a politically charged word like terror in our legal statutes is it is politicizing these determinations,” he said. “Law enforcement is always going to view protests against government policy as inherently dangerous. If somebody broke a window, they should be charged with breaking a window. If they had some political purpose for that, that shouldn’t be part of the decision.”

A former federal defender said the Justice Department might be more reluctant to seek the terrorism enhancement — and the harsh sentences it can bring — in the Jan. 6 cases because of a potential political backlash.

“A significant part of the population that has political clout may make noise and say that’s singling people out,” said Wadie Said, a University of South Carolina law professor. “We want to think that it operates in a vacuum, but of course it doesn’t.”

A spokesperson for the U.S. Attorney’s Office in Washington, which is overseeing the Capitol riot cases, declined to comment on prosecutors’ decisions in the Jan. 6 cases. However, an official confirmed that the sentencing enhancement for terrorism had not been pursued in any case thus far.

In court filings, prosecutors have been exceedingly vague about their decisions not to seek terrorism-level punishment in the handful of Jan. 6 felony cases that have gone to sentencing. Sentencing memorandums filed by prosecutors in at least five such cases use the same boilerplate language, stating that the government is not pursuing the enhancement “based on the facts and circumstances of” the case.

Attorney General Merrick Garland has also declined to get into detail about how prosecutors are handling Jan. 6 cases, but said recently that he knows some view the cases as overkill while others contend the Justice Department is being too lenient.

“I am quite aware that there are people who are criticizing us for not prosecuting sufficiently and others who are complaining that we are prosecuting too harshly,” Garland said in an October interview for the annual New Yorker festival. “This is, you know, part of the territory for any prosecutor in any case. I have great confidence in the prosecutors who are doing these cases.”

Of course, the ultimate sentences in the Jan. 6 cases and almost all others are determined by judges, not prosecutors.

While the sentencing guidelines were originally mandatory, as a result of a 2005 Supreme Court decision, they're now nonbinding. Judges have to calculate them precisely in proceedings that often take up much of a sentencing hearing. While judges are permitted to sentence outside the range, the punishment the guidelines propose carries enormous sway. Judges sometimes do sentence below the range, but often seem reluctant to give a sentence far

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“They have a significant gravitational force, even though they're advisory,” said Berman, the Ohio State professor. “The reality is that's become our metric.”

In addition, the people sentenced so far are not a representative sample of the more than 700 defendants facing charges in connection with the events of Jan. 6. All the sentences have stemmed from guilty pleas, with the first Capitol riot trial not expected until next month at the earliest.

The vast majority of the roughly 70 riot defendants sentenced thus far pleaded guilty to misdemeanor offenses to which the sentencing guidelines don't apply at all. A handful have gotten probation, while others received sentences of 30 or 60 days behind bars.

The most serious sentence handed down thus far is the [five-year-three-month prison term](#) for Florida resident Robert Palmer, who admitted to battling with police at the Capitol by swinging a pole and throwing both a fire extinguisher and a wooden plank.

Although [the plea agreement in Palmer's case](#) said prosecutors reserved the right to seek the terrorism enhancement, they did not mention the enhancement at his sentencing last month, nor did the judge raise it.

When another Florida man, Paul Hodgkins, was [sentenced in July to eight months in prison](#) for storming onto the Senate floor on Jan. 6 carrying a Trump flag, prosecutors minced no words about his actions.



INSURRECTION FALLOUT

Judge hands down first felony sentence tied to Capitol riot

BY JOSH GERSTEIN

“Jan. 6 was an act of domestic terrorism,” Assistant U.S. Attorney Mona Sedky said. “He was part and parcel of an act of domestic terrorism that was going on around him.”

Hodgkins’ defense attorney at the time, Patrick Leduc, warned against the use of such terms. “If we’re going to label this protest as domestic terrorism, then

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Despite Sedky’s strong words, prosecutors did not seek the sentencing enhancement for Hodgkins, the defense didn’t raise it and neither did the judge.

That’s likely because the assault and obstruction charges the defendants admitted to in those cases aren’t on the list of terrorism crimes Congress has

identified.

However, the terrorism enhancement provision is so expansive that it may cover even convictions on charges that are not on that already-long rundown of offenses.

Christopher Hasson, a Coast Guard officer and self-described white nationalist who lived in Silver Spring, Md., was arrested in 2019 after allegedly plotting to kill prominent Democratic politicians and media figures. He pleaded guilty later that year to a series of firearms and drug charges.

None of those charges are on the list of federal terrorism offenses, but U.S. District Court Judge George Hazel sentenced Hasson to more than 13 years in prison after applying the terrorism sentencing enhancement. Prosecutors argued for the enhancement (and a 25-year sentence), contending that the silencers and rifle scopes Hasson possessed were “intended to promote” a plot to kill members of Congress and two Supreme Court justices even though Hasson never pleaded guilty to such a plot.

Hasson is appealing his sentence to the Fourth U.S. Circuit Court of Appeals, noting that a congressional conference report on an antiterrorism law passed in 1996 described the enhancement as limited to “specifically listed” crimes of terrorism. The appeal was argued in March and the Richmond-based court has yet to rule.

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judge could conclude that the terrorism guidelines apply even in a case where

Last month, at sentencing for a QAnon follower who admitted to weapons charges and threatening to kill Speaker Nancy Pelosi, prosecutors told U.S. District Court Judge Amy Berman Jackson that they initially believed sentencing guidelines called for an 18- to 24-month prison term for the defendant, Cleveland Meredith Jr.

However, Jackson calculated the range at 37 to 46 months. No one raised the terrorism enhancement, but the judge concluded that the sentencing rules called for a different sentence for cases involving a person targeted because of their official duties.

“The fact that the government didn’t point to this before is odd,” said Jackson, an appointee of President Barack Obama. Meredith’s lawyer complained bitterly about the decision and warned that it would “reverberate.”

The case shook out in the way experts say they often do, with the guidelines appearing to drive up the sentence even when judges conclude they’re a bit too harsh to adhere to.

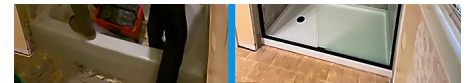
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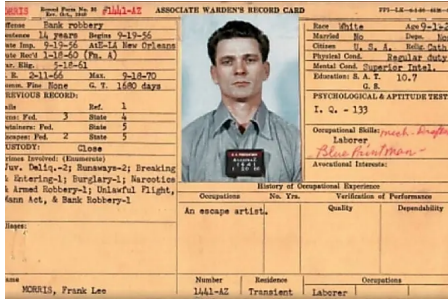
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