Insurrection in America

An analysis of political violence in 2020 & 2021

Security Studies Group

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Insurrection in America
An Analysis of Political Violence in 2020 and 2021

Purpose

An analysis of the civil unrest during 2020 and 2021 to determine whether any events or organizations meet the criteria for Insurrection, Domestic Terrorism or Conspiracy Against Rights.

Introduction

There has been a significant amount of political and policy-related violence over the past several years. While not unprecedented, it bears examination as many inflammatory terms have been used to describe it. We cannot expect to mitigate the danger without a proper understanding and classification of the different types of criminal activity and organizations conducting it.

The incident on January 6th, 2021, at the U.S. Capitol has been turned into a political circus by the American Left. Democrats and their allies in media have regularly referred to it as an insurrection. They also have branded those who were in attendance and those who supported an investigation and audits of the 2020 election as terrorists.

The preceding year of almost continuous violence by Black Lives Matter (BLM) and Antifa was exponentially more violent and widespread but has received no similar scrutiny. The politicization of coverage and discussion of these two different instances of civil unrest has limited the ability to judge them objectively.

It is unhelpful to allow mischaracterizations and misconceptions to dominate the discussion of important events, especially dangerous ones. This can lead to an acceptance of potential remedies that do not fit the crimes, or a failure to properly bring justice to those who deserve it.

This paper will examine and properly label the actions conducted and the groups involved. It will not examine the grievances or rationales offered by any organization for their actions or evaluate their validity.
Executive Summary

One of the biggest dangers our Founders tried to avoid was the ability of the state to criminalize dissent and political speech and activities. That is why the First Amendment is first. We must ensure that protected speech is not punished but also that actual violent activity does not enjoy unwarranted protection. The reactions to the recent politically-motivated violence has shown we are in danger of failing on both of those counts.

There have appeared to be two different standards applied to the violent acts of the political Right and Left in the 2020/2021 time frame. All Americans must be able to count on the guarantee of equal protection under the law and there is a growing impression that is not the case. This analysis will not take the political leanings or causes of the groups and actions evaluated into account, except to identify when those cause unwarranted disparate treatment.

The potential damage of the tremendous power of our security apparatus being used in the service of partisan political efforts is incalculable. If the citizenry no longer believe they will be fairly treated, the integrity of the Republic is at risk.

Insurrection, Domestic Terrorism, and Conspiracy Against Rights

First, we must get the proper definitions in play.

Insurrection

The actual crime under 18 U.S. Code Chapter 115, §2383 Rebellion or insurrection:

If two or more persons in any State or Territory, or in any place subject to the jurisdiction of the United States, conspire to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, or to oppose by force the authority thereof, or by force to prevent, hinder, or delay the execution of any law of the United States, or by force to seize, take, or possess any property of the United States contrary to the authority thereof, they shall each be fined under this title or imprisoned not more than twenty years, or both.

Domestic Terrorism

Domestic terrorism’s definition is derived from the Patriot Act, and is as follows:

“[A]ctivities that involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State; appear to be intended to intimidate or coerce a civilian population, to influence the policy of a government by intimidation or coercion, or to affect the conduct of a government by mass destruction, assassination, or kidnapping; and occur primarily within the territorial jurisdiction of the United States.”
Our analysis is that the Patriot Act provisions are ripe for abuse because of the political advantage of being able to define political opponents as “terrorists.” There is no specific crime of domestic terrorism defined. The main purpose of the definition’s inclusion in the Act was to allow additional investigatory and surveillance techniques. Any indictments must be based on existing underlying crimes.

We propose that any terrorist designations under the Patriot Act include all of the following:

- A conspiracy of two or more
- Specific communicated intent to influence or intimidate civilians or government
- Violent felony acts directly connected to the first two requirements

This is not currently included in the language of the Patriot Act and consequently it is too readily available for use against individuals and groups who are disfavored by whatever party is currently in power. This is a dangerous concession of power and should be rectified by amending the Act.

Prosecuting Americans as domestic terrorists for crimes related to political activity heightens the danger that the United States government will lose the consent of the governed and come to be seen as an illegitimate entity. This is especially true if prosecutions on this score appear to be handled on a partisan basis.

**Conspiracy Against Rights**

This is a crime defined by 18 U.S. Code § 241 - Conspiracy against rights.

> If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

> If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—

> They shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, they shall be fined under this title or imprisoned for any term of years or for life, or both, or may be sentenced to death.

This statute was designed to allow prosecutions of civil rights violations where intimidation or violence was used to stop full participation of some groups in Constitutionally-protected rights. It has been successfully used when violence stops use of public accommodations which could include roads and highways.
Conclusions

January 6th Riot — This stemmed from a political rally that was clearly protected speech. The violent actions that followed were not planned and consequently should be treated as simple crimes. Those who committed violent acts should be charged under relevant criminal statutes. The numerous charges of impeding an official proceeding are unwarranted and should be amended to trespassing.

This does not meet the criteria for: Insurrection, Domestic Terrorism, or Conspiracy Against Rights.

Black Lives Matter and Antifa (George Floyd Riots) — These began as clearly protected political speech that led to violence that spread quickly. Had this been a one-time event it would not have met the criteria for any of the three designations. However, when the protests continued and the violence was essentially incorporated into them this changed matters.

BLM/Antifa used the violence and threats of violence to extract concessions and changes of policy from numerous governments. They also intimidated civilians across the United States. Just because the majority of the protests were not violent does not change the fact that planners of events in major cities included those who conducted violent attacks.

In addition, BLM/Antifa specifically planned and executed events designed to block roadways and highways and threaten and intimidate persons exercising rights guaranteed them under law. They also injured numerous persons during these actions.

These factors meet the criteria for: Domestic Terrorism and Conspiracy Against Rights.

Black Lives Matter and Antifa (CHAZ/CHOP Occupation) — During the 2020 riots there was a violent seizure of a six-block area of Seattle where a government building was taken by force. The combined BLM/Antifa militants declared it free of U.S jurisdiction and they created a quasi-government for several weeks. They called this the Capitol Hill Autonomous Zone (CHAZ) or the Capitol Hill Organized Protest (CHOP).

They opposed by force the authority of the United States, state and local government and by force prevented, hindered, and delayed the execution of the laws of the United States.

These factors meet the criteria for: Insurrection and Conspiracy Against Rights.

Unequal Treatment — The charges including Conspiracy against participants in the Jan. 6th Riot are significantly more severe than those for the 2020 BLM/Antifa Riots. Even the FBI now admits it has “scant evidence” of any conspiracy to commit violence on January 6th at all. This appears to show a biased and unequal application of prosecutorial discretion based on the political persuasion of the groups and individuals involved.
Full Analysis of 2020 and 2021 Political Violence

The Domestic Political Battlefield

None of the civil unrest of the past several years should be either minimized or blown out of proportion. It is important that the American public and our political leaders understand the proper classification of these events and organizations. This allows both to accurately determine what has already occurred with an eye toward both just punishment and whether changes to our current systems and laws are needed.

Maintaining a proper balance between protected speech and activities and the safety and security of our citizens is vital. A certain amount of civil disobedience has always been a spur to difficult changes. But that is not a license to use widespread violence and destruction to achieve a political or policy goal. And in all cases there can be no bias applied in how judgments about what is acceptable and what is punishable are made.

The contrast between downplaying and blowing-out-of-proportion in the press could not be starker between the Black Lives Matter/Antifa riots that occurred continually throughout the Summer of 2020 versus the single afternoon of violence on January 6th, 2021. The scale of the BLM/Antifa violence both in length and damage to lives and property greatly surpasses the three-hour riot at the Capitol. The media coverage regularly downplayed the 2020 violence leading to comical images such as this reporter in front of a burning building as the chyron reads “mostly peaceful protests”.

There was also a major difference in the treatment of both by law enforcement, government, and media. The George Floyd-related protests were treated with an almost hands-off approach in many jurisdictions as law enforcement agencies were often told to stand down and simply let the violence by BLM/Antifa to occur.
According to a report by the Major Cities Chiefs Association (MCCA), the violence of the riots caused $2B in property damage and a tremendous amount of attacks causing injuries to police. This included hundreds of instances of attacks on government buildings.

Overall, there seemed to be a concerted attempt to minimize both the scope of the damage and any arrests to avoid inflaming the mobs perpetrating the attacks. This even included active efforts by many prominent celebrities and politicians including current Vice President Kamala Harris to collect and post bail for violent offenders. Many of those who were actually arrested ended up having the charges dropped.

Compare that to the immediate branding by the Left of the events of January 6th as an insurrection. This talking point was spread quickly by the media and Democrat politicians leading to a narrative believed by a large segment of the population. FBI Director Wray and others called it domestic terrorism and tied it to a rise in White supremacist extremism.
There was also the task force and nationwide dragnet employed by the FBI and disproportionate severity of charges for anyone involved in the Jan 6th riot. There are people who have been held in solitary confinement for more than six months and anyone the FBI can place inside the Capitol itself is being charged with a crushing array of charges. This is despite the fact that once the perimeter had been breached, Capitol police were actively waving people into the building.

The comparison appears to show unequal treatment under the law based on the political affiliation of the participants. The BLM/Antifa riots were considered a part of the politically popular George Floyd protests. The Jan 6th events have been seized upon by the elements in the unelected security bureaucracy as well as the new Administration as a way to punish political opponents. It has also become the pretext for a whole of government crackdown as evidenced in the Biden Administration’s National Strategy for Countering Domestic Terrorism.

This plan uses all elements of state power against what it considers the greatest danger:

> Among that wide range of animating ideologies, racially or ethnically motivated violent extremists (principally those who promote the superiority of the white race) and militia violent extremists are assessed as presenting the most persistent and lethal threats.

There is not a single reference to Black Lives Matter, Antifa or the 2020 riots at all. This strategy has a dangerously unbalanced focus on threats it perceives to come from the political Right.

**Classifying the Crimes**

There has been considerable discussion of both sets of events and many terms have been used to describe them. It is essential to define the meanings of these terms, primarily Insurrection, Domestic Terrorism, and Conspiracy Against Rights, as we did in the opening of this paper.

All three require other underlying crimes that combine to elevate them to the higher-level offense. Whether the collection of these lesser crimes including the intent of the perpetrators elevates them to the higher level was covered in depth in *Winning the Second Civil War: Without Firing a Shot* by Jim Hanson. An excerpt from Chapter 6 - The Current Insurrections states:

> “WHEN DOES PEACEFUL PROTEST and petitioning the government for redress of grievances become insurrection? Are the violent acts committed in the current conflict domestic terrorism or an internal insurgency? Those are complicated concepts that unfortunately we are watching play out on the streets of this country.”
We examined the legal and operational aspects of both events and have drawn the following conclusions.

**January 6th Riot:** The events at the Capitol on January 6th, 2021, do not meet the criteria of Insurrection, Domestic Terrorism or Conspiracy Against Rights.

The main groups named in charging documents and indictments for the Capitol Riot are Stop the Steal, which organized the lawful rally, the Proud Boys, the Oath Keepers, and Three Percenters who attended it. There are numerous other groups involved but for the purposes of this analysis, we used the actions and planning conducted by those four.

None of these groups planned to use violence to attack, threaten or intimidate either government officials or civilians. All available evidence presented in court to date shows the only violence even contemplated was defensive in nature. It was related to the expected possibility that Antifa would attack the event as they had other events involving these groups.

The violence at the Capitol occurred when a political rally escalated into a riot. Those individuals who attacked and injured Capitol Police should be charged for those crimes. The attempt to brand the events of that day as an insurrection may have gained traction in the media and among Democrat politicians, but it did not meet the requirements as:

There was no plan to “overthrow, put down, or to destroy by force the Government of the United States”. Nor was there any plan “by force to seize, take, or possess any property of the United States.”

This means the seizure of actual real estate and buildings. Stealing Nancy Pelosi’s lectern while trespassing does not meet the standard.

The Capitol Riot also fails to meet the criteria for domestic terrorism as the violence that occurred was not planned for and had never occurred at similar events. This is supported by the Capitol Police assessments that the threat of violence was low. When it did occur, it was spontaneous and largely performative once inside the Capitol.

If similar events had been held before or after and violence broke out at them, it would make a stronger case for domestic terrorism. But there is simply no evidence that violent intimidation or action was planned on January 6th.
**Black Lives Matter and Antifa (CHAZ/CHOP)** — The seizure of a government building and a six square block area in Downtown Seattle from June 8th to July 1st by BLM and Antifa meets the criteria of Insurrection.

As part of the larger wave of protests, a group consisting of BLM and Antifa extremists violently seized an approximately six block area in Downtown Seattle from June 8 - July 1, 2020. They called it the Capitol Hill Autonomous Zone (CHAZ) and later the Capitol Hill Organized Protest (CHOP). The area included a Seattle Police station which was taken by force as the police were forced by the city government to retreat.

The area was effectively ceded by the city government to a collection of BLM and Antifa who claimed it as sovereign territory. It was bounded by signs saying, "You Are Entering Free Capitol Hill" and "You are now leaving the USA". There were ad hoc attempts to form some type of internal governance, but the situation eventually devolved into chaos, violence, and criminal activity. Multiple groups claimed to be armed “security” for the area, but this simply meant they enforced their own will.

After several murders, rapes, and shootings the Seattle city government decided to take back the CHAZ/CHOP area and ran the activists out on July 1, 2020.

This was an armed seizure of government and private property that claimed to create a new state that absolved itself of any connection to the United States. There was a similar event in Portland that was not as large or lengthy. There were also thousands of instances where state and federal buildings were attacked and burned as part of the BLM riots. Thousands of injuries to police and law enforcement personnel occurred nationwide trying to defend against this.

The CHAZ/CHOP incident was indisputably an act of insurrection and the ongoing attacks on government buildings were specifically aimed to “prevent, hinder, or delay the execution of any law of the United States, or by force to seize, take, or possess any property of the United States.”

This shows that both BLM and Antifa conducted an ongoing insurrection for a considerable part of 2020. The continued violent acts by Antifa in Portland have not ceased, nor has their goal of stopping the government from operating its lawful activities.
Black Lives Matter and Antifa — Both of these groups, often in concert with each other, have conspired to injure, oppress, threaten, or intimidate others in the free exercise or enjoyment of rights and privileges secured by the Constitution and laws. This meets the criteria of Conspiracy Against Rights.

Antifa has repeatedly used intimidation and violence to prevent people from engaging in the free exercise of their rights of assembly, redress of grievances, use of public accommodations and other basic rights. This includes attacks on the free exercise of religion, as when on the 7th of August 2021 they assaulted a peaceful prayer assembly in Portland, Oregon. Antifa groups regularly prevent people from their right to photograph or record public activity and respond to protests by political opponent with assaults and violence.

Antifa as well as BLM have regularly employed the tactic of massing on public highways to prevent people from traveling on lawful business. Although masks have sometimes been used for reasons of coronavirus mitigation, Antifa has employed masks as disguises long before the coronavirus situation.

They are clearly used to disguise individual participants in the conspiracy against rights, as is laid out in doctrinal theory by those aligned with Antifa who perform what they call “black blocs.” These are intentional disguises to frustrate arrest or prosecution for law-breaking violence, and are exactly what the Conspiracy Against Rights law intends to forbid and punish.

Note that this is a capital crime in cases where blocking traffic or violating rights results in death. The death penalty targets the conspirator to violate rights, and regardless of whether the death was caused by the one blocking the traffic or someone attempting to escape, and regardless of whether the death is caused by the one inflicting illegal intimidation and violence or someone engaged in lawful self-defense.

Capital crimes are the most serious offenses, usually because they are violations of the very natural rights whose defense is the purpose of the United States government according to its Declaration of Independence. Yet no one from BLM, Antifa, or allied organizations has been prosecuted for these clear and repeated conspiracies against the rights of American citizens.
**Black Lives Matter (George Floyd Protests)** — Black Lives Matter’s violent activities intended to intimidate and influence civilians and governments over a months long period in 2020 meet the criteria for Domestic Terrorism.

The death of George Floyd in May of 2020 escalated protests by activist groups Black Lives Matter and Antifa into a nationwide spree of burning, looting, assaults, and deaths that cause more than $2B in damage.

The media and activist Left worked feverishly to portray the protests about his death as focused solely on institutionalized racism and police violence and promoted the BLM/Antifa riots as peaceful, but the amount of violence conducted tells another story.

They conducted a sustained campaign of protests and a large array of violent acts throughout the Summer of 2020. There were unprecedented numbers of peaceful protesters at these events and there were also unprecedented numbers of violent actors at them, as well. The clear purpose of the violence was to coerce American citizens to effect a political agenda.

After several days of riots, it was obvious that violence was an intrinsic element of the protests. Violence could be relied on to ensure the TV cameras and media coverage were there. It could also be relied on to intimidate and threaten the governments in cities where the protests occurred.

This allowed BLM to gain concessions and change policies around policing and other issues in ways they would not have absent the violence. They operated with these violent elements embedded in their organizations and events.

**Black Lives Matter**

While it is possible to trace the founding of Black Lives Matter to a trio of Marxist agitators, the organization has become much more diffuse over time. From *Winning the Second Civil War*:

The original group is definitely in the revolutionary camp of the BLM world. Even though they started the name, it soon turned into a franchise-style operation and anyone willing to fight for the cause could start a chant and take up the flag.
The protests that swept the country were not centrally organized or managed, but they tended to sweep up the usual Leftist activists in a particular city and then all of them would use Black Lives Matter as the theme. There was usually a BLM group in the major cities that was a nexus for local operations.

As the protests gained steam the theme of Defund the Police emerged as a preferred policy solution for many. It transcended previous efforts to investigate police violence and was supposed to put an end to the claimed systemic racism.

In evaluating the hundreds of BLM protests, riots, and violence the question is whether they rose to the level of insurrection, sedition or domestic terror. The proper way to evaluate that is to look at the combination of intent and actions.

From the beginning of the George Floyd protests, it became apparent violence would be part of their events. The destruction went largely unopposed in the early stages in Minneapolis and the rioters even ran the police out of one of their own stations and burnt it down. The rioters were emboldened as the civil leaders told the Minneapolis police to stand down. This was the first of many instances where BLM rioters learned that violence was effective weapon in their arsenal.

As the protests spread, the associated violence did as well. There is an often-cited statistic that 93% of the Floyd and related protests were peaceful. The study identifies protests at 2400 locations over the course of the Summer of 2020 and says there was only violence at 220 of them.

Using the percentage can minimize the actual scale of the riots. 93% peaceful seems good, but a headline reading “220 violent protests during the Summer of 2020” would have raised many eyebrows. This is approximately 2.5 violent riots a day for the entire Summer. The number of peaceful protests is a subversive deflection aimed at shifting the focus away from the reality that the 2200 other protests all had the potential for and the implied threat of similar violence.

These protests and riots had the goal of changing the policy of governments about policing by violent action. After the first several days, they all had the threat of violence accompanying them. This tactic proved very successful in getting concessions from governments. It had the added benefit of massive financial donations.

Since it was readily apparent that violence could occur at a protest in any major city, BLM cannot escape responsibility by claiming they did not plan or request such activity. The participants in the violence included members of their group and they directly benefitted financially and by policy changes from those actions.
Antifa— The entire mission and activities of Antifa is based on using violence to intimidate and influence civilians and governments. This meets the criteria for Domestic Terrorism and Conspiracy Against Rights.

They conducted a sustained campaign of violent attacks on government buildings, public property, law enforcement officials, and civilians. Their intent was to threaten and intimidate government and civilians to achieve their goals.

Antifa exists as an organization despite claims by then presidential candidate Biden and FBI Director Wray that it is just an idea or ideology. It is a cell-based activist network that exists in the same way numerous terrorist groups do around the globe. It does have an ideology that is largely anarchist, anti-capitalist, and anti-state. They want to destroy modern society and replace it with some flavor of far Leftist construct.

From Winning the Second Civil War:

Antifa is short for anti-fascist but their goals are much broader than that. In reality, they exist to break things, in this case the entire system of western civilization. The name is derived from Antifaschistische Aktion, a group of Communists in 1930s Weimar Germany. They formed to oppose basically everyone to their political right which included not just the Nazis but also the governing Social Democrats...

The Antifa Black Bloc presence at protests is a seed for escalation. When large groups of people gather for a common cause, emotions start to run high and bad behavior often follows. Antifa knows that inhibitions against violence drop once a few violent acts occur. They often precipitate a larger degree of destruction by breaking the first glass or literally lighting the fire.

Antifa outright states their goal is destruction of the state and has conspired to commit and conducted a massive amount of violence in that cause. They have done this on their own and as part of most of the major, violent protests during 2020. They were an integral part of the CHAZ/CHOP insurrection and their own version in Portland. This greatly simplifies the calculus as to whether their organization fits the bill for our three main categories.

The answer is unequivocally yes. They are domestic terrorists. They are engaged in a long-running insurrection and they conspire to deny others the free exercise of their rights.
The Danger of Criminalizing Political Speech

There has been a glaring difference in how the BLM/Antifa violence and the January 6th Riot have been treated by law enforcement. The half-day event at the Capitol prompted one of the largest criminal probes in U.S. history. The months-long spree of violence and mayhem during 2020 by BLM/Antifa created minimal federal activity. This despite $2 billion in damages, hundreds of federal, state and local government buildings being attacked and thousands of police officers injured.

The organizations involved in the recent violence were examined and we made determinations about the proper classifications for their actions. But those determinations do not match the actions by local, state and federal authorities and there is cause to believe that disparity is political in nature.

Crushing Dissent

The most basic freedom enjoyed by all Americans is the right to free speech. It is enshrined in the First Amendment which prohibits the government from abridging it and continues to guarantee:

“...the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

The Constitution is a grant of power from “We the People” to government as outlined in the document. But only such powers as granted and only subject to the restrictions in the main text and Bill of Rights. Every action of government is open to question and challenge by the citizenry. The fear that a central government would use its power to silence dissent was a major factor on the design and limitations on government.

The 2020 BLM/Antifa protests and the January 6th protest both fell largely within the protection for protected political speech. They both also contained elements that failed to abide by the requirement to “peaceably assemble”. Criminal violence was conducted by persons involved in these actions.

Those violations must be handled with one set of rules applied consistently.
Abuse of State Power:
The unequal treatment of these two examples of civil unrest creates an unjust and therefore intolerable situation. The implementation of state power, especially our national security and justice agencies, must be completely unbiased. It has become increasingly apparent this is not the case and strong action is called for.

The increasing use of state power against political opponents is codified in the Biden Administration’s National Strategy for Countering Domestic Terrorism. The targeting of mainly groups on the Right is exacerbated by an announced partnership between the Administration and the social media and tech companies. They will collaborate to determine what they consider offensive speech and then the tech firms will censor it at the behest of government.

This is a flagrant attempt to avoid the First Amendment infringement by outsourcing the abridgment of free speech. It should be challenged using the precedent of Norwood v. Harrison (1973) which says the government “may not induce, encourage, or promote private persons to accomplish what it is constitutionally forbidden to accomplish.”

Incitement of an Insurrection?

There were two main attempts to create an insurrection narrative. The first relates to the speech and organizing efforts of President Trump and supporters to obtain a full reckoning of the election results. The claim was made that the combined result of these activities up to and especially the Stop the Steal rally where Trump spoke constitute incitement of the activities on Jan 6th which then are referred to as an insurrection.

This effort led to the second impeachment of President Trump on the charge of “Incitement of Insurrection”. Impeachment is a purely political exercise not dependent on any codified law. The “high crimes and misdemeanors” which trigger it are entirely up to a vote of the House of Representatives.

Therefore, the impeachment article they passed for incitement of insurrection is not an actual charge for that crime. But this supported the narrative being pushed by Democrat politicians and the media and that was unhelpful to an accurate understanding by the public.
There were many flaws in the attempt and it failed to lead to a conviction in the Senate. Although seven Republicans did vote to convict, it seems likely most would not have done so if their votes would have actually led to that outcome. President Trump’s defense team quite adequately addressed and debunked the charges, exposing the entire affair as the purely political theater it was.

There was no evidence presented during this process or since or in any other forum showing a conspiracy to incite violent insurrection. The main attempts to claim this all rely on speech by the President and his allies that is clearly protected by the First Amendment. Their attempts to gain judicial review and then to obtain a vote in the House delaying certification of the Electoral College results was perfectly legal. There have been instances of Democrats who voted to refuse to certify the results multiple times in recent elections.

The idea that political speech is an example of incitement ignores the test for incitement contained in Brandenburg v. Ohio:

1. The speech is “directed to inciting or producing imminent lawless action,” AND
2. The speech is “likely to incite or produce such action.”

It also ignores the common sense understanding that political speech is hyperbole including the use of metaphors and analogies. Terms like “fight” and “battle” and calls to crush the other side are not literal. It is bad faith to pretend they are to use them as supposed calls for incitement.

No case that President Trump and his allies conducting a seditious conspiracy to incite an insurrection was made. Use of the terms was again purely political in nature.

The “Conspiracy”

There are more than 500 people charged with crimes relating to January 6th. To this date, none of them involve terrorism or insurrection. According to the Department of Justice:

- Nearly 235 defendants have been charged with corruptly obstructing, influencing, or impeding an official proceeding, or attempting to do so.
- Approximately 40 defendants have been charged with conspiracy, either: (a) conspiracy to obstruct a congressional proceeding, (b) conspiracy to obstruct law enforcement during a civil disorder, (c) conspiracy to injure an officer, or (d) some combination of the three.

These charges do not even approach the level of an actual rebellion. They simply amount to creating a disturbance in the vicinity of Congress. There are numerous instances where large numbers of protestors did the same thing with no charges at all filed. The confirmation hearings for Justice Kavanaugh included multiple instances of Senate buildings being occupied and even the chamber doors themselves being mobbed with protestors beating on them.
There have been several indictments that involve charges of conspiracy but none of them are a conspiracy to overthrow the government, attack the Capitol or even conduct violence there. The conspiracy charges do not relate to any of these activities at all.

“The government had to present their case to prove there was an insurrection planned for January 6th. Once this indictment saw the light of day, however, it was immediately apparent there was no insurrection and no conspiracy to commit illegal acts of any kind. In fact, the indictment has numerous instances of the so-called conspirators, members of a group known and the Oath Keepers and their associates, discussing the legality of certain actions, then specifically choosing to avoid violating the laws...

The indictment claims, “The purpose of the conspiracy was to stop, delay, and hinder the Certification of the Electoral College vote.” Yet it offers no evidence that this was the purpose of the Oath Keepers and actually presents evidence that shows their purpose was to join the rally and be prepared if any violence was begun by others...

One of the claims is that there was tactical training conducted which, if the purpose was to practice or prepare for a seizure of the Capitol, would be direct proof of this alleged conspiracy “to stop, delay, and hinder the Certification of the Electoral College vote.” However, instead of being aimed at stopping the certification, the training was specifically for the likely possibility that Antifa would attack the rally as they had on numerous other occasions. Captured communications from Oath Keepers show they were planning for the possibility of a confrontation with Antifa not to somehow storm the Capitol and disrupt the Electoral College certification. Oath Keepers leaders mentioned an alliance with a group called the Proud Boys for this purpose.

“The Proud Boys “always have a big group” and could act as a “force multiplier,” he added, according to the memo from prosecutors. The discussion centered not on invading the Capitol but on defending against left-wing “Antifa” supporters.”

The purpose of the vast majority of those who attended the Stop the Steal rally was to legally influence the certification of the Electoral College results and conduct an investigation prior to a final vote. That is an iron clad example of “peaceably assembling to petition the government for a redress of grievances”. Again, there is no evidence that any planning to assault or violently disrupt the activities inside the Capitol was done.
Conclusion

The facts regarding the two recent bouts of civil unrest, the BLM Antifa riots of 2020 and the Capitol Riot of January 6th, show that our justice system, government, and the media have them exactly backwards.

BLM and Antifa conducted an insurrection and arguably operated as Domestic Terrorists, though we oppose the use of terrorism designations against American citizens for political activity. They also conducted numerous actions that constitute a Conspiracy Against Right. None of the groups or individuals involved in the actions on January 6, 2021, at the Capitol meet any of those designations.

There is a ludicrous yet concerted effort by Democrat politicians, elements of the permanent government bureaucracy, and the mainstream media to brand the BLM/Antifa riots as peaceful protests and January 6th as an insurrection. These falsehoods should be countered with all available effort. It is a disservice to the American people to allow such major misconceptions to flourish.

In addition, the Biden Administration is increasingly using the false narrative about January 6th to justify abuse of state power against political opponents. Their National Strategy for Countering Domestic Terrorism is a blueprint for an attempt to marginalize more conservative organizations and individuals by falsely labeling them as extremists.

If allowed to continue unchecked, they will have carved out the ability to classify ideas and speech as extremist based on a partisan political determination of threats. The Administration already encourages their social media partners in Silicon Valley to marginalize and even ban conservative communications.

Press Secretary Jen Psaki admitted from the podium that the Administration tells Facebook what posts it wants censored. It is not hyperbole to say if they succeed, this is the path to a police state. This is a flagrant attempt to avoid openly violating the First Amendment by outsourcing the abridgment of free speech. It should be challenged using the precedent of Norwood v. Harrison (1973) which says the government “may not induce, encourage, or promote private persons to accomplish what it is constitutionally forbidden to accomplish.”

The FBI is already asking citizens to spy and inform on their family and friends. There is every reason to believe they will continue to use the false claims of an insurrection to justify more invasive acts.

These abuses must be reined in and Constitutional rights and norms reasserted and protected or we risk losing the Republic.