



## An Increasingly Ominous Response to the January 6 Riot

Ted Galen Carpenter

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Earlier this month, the country marked the one-year anniversary of the storming of the Capitol by supporters of President Donald Trump. For one faction in America's increasingly polarized political system, however, it was not enough to castigate the rioters for their disgraceful, indefensible conduct. It was not even enough to urge the Justice Department to continue prosecuting the individuals involved for trespass, assault, and the other crimes they committed. Instead, the campaign that began the previous year to brand the episode as an outright "insurrection" acquired new fervor. That mentality has now led to measures that threaten important constitutional rights and could herald a new era of harassment and repression reminiscent of the era when Sen. Joseph McCarthy's influence was at its zenith.

Considering the January 6 events an insurrection constitutes a wild stretch of the concept. There were no tanks in the streets, armed assaults on multiple governmental institutions, or efforts to either seize or shut down the news media – the cardinal features of a true insurrection. A recent public opinion survey confirms that a majority of Americans rightly reject the use of that term regarding the riot at the Capitol.

However, Joe Biden's administration is adopting multiple policies that assume that the inflammatory allegation is indisputable. The pace of that ominous process is accelerating and the scope of intolerance is widening. Indeed, far too many players in the executive branch, Congress, and the news media smear as an "insurrectionist" anyone who participated in the much larger peaceful rally on the Mall that preceded the breach of the Capitol, or who merely continues to argue that vote fraud occurred during the 2020 election.

It would be bad enough if such an intolerant attitude just took the form of nasty ideological smears, but it is manifesting itself in worrisome policies. During a period of little more than one week in January, the administration and its congressional allies took three especially menacing actions.

One was the announcement that the Justice Department would create a new unit focused on the alleged threat of domestic terrorism. Given the ravages already done to First Amendment and Fourth Amendment rights under the Patriot Act and other measures adopted in response to the 9-11 attacks and the frequently inflated foreign terrorist threat, this latest development is more than a little worrisome. The Justice Department under Attorney General Merrick Garland already has shown that it embraces an extremely vague definition of what constitutes domestic terrorism. In

response to a letter from the National School Boards Association (actually just two rogue bureaucrats in that organization) in October 2021, Garland authorized the FBI to investigate parents who engaged in confrontational behavior at local school board meetings. It is a safe bet that not even the biggest advocates of the Patriot Act in 2001 envisioned that application of the law.

The potential for a Justice Department domestic terrorism unit to have a chilling effect on freedom of expression is extensive. Indeed, the move evokes memories of the FBI's infamous COINTELPRO initiative during the Cold War. Under J. Edgar Hoover's direction, that program infiltrated and harassed antiwar and civil rights organizations. Informants and undercover agents repeatedly sought to manipulate those movements into engaging in violence and other conduct that would discredit their causes with the general public. We must guard against a repetition of such sleazy behavior by a government agency, but the establishment of this new unit creates precisely that danger.

The second troubling development that occurred this month was the government's decision to charge members of the Oath Keepers organization with "sedition conspiracy" regarding the January 6 incident. One can regard that group as repellent for numerous valid reasons and still be uneasy about the Justice Department's action. Dusting off dangerously vague conspiracy statutes is an extremely ominous move. From the 1798 Alien and Sedition Acts to the 1918 amendments to the Espionage Act of 1917 (typically referred to as the Sedition Act), to sedition prosecutions directed against accused communist figures during the Cold War, such laws have led to notorious abuses. It is not comforting that several of the Oath Keepers defendants apparently were not even in the Capitol on January 6, and the specific acts they are accused of committing are exceedingly vague. Given the nation's history, we should never want to venture again down the path of using conspiracy and sedition laws (much less the combination) to prosecute unpopular dissidents. Yet that is clearly what the government has in mind.

A third troubling development that took place in the past two weeks is the announcement that social media executives will again be hauled before a congressional committee to explain why they haven't done more to squelch "disinformation" on their platforms. Congress has engaged in such grandstanding attempts at intimidation on several occasions previously, but this time the explicit rationale for the subpoenas that the House Select Committee issued is that the alleged failure to prevent the spread of "falsehoods, misinformation and violent extremism" directly contributed to the January 6 "insurrection." The earlier hearings confirmed that when some members of Congress refer to misinformation, it means any viewpoint on any issue that differs with their perspective on that issue.

Facebook, Twitter, YouTube and the other social media giants already have amassed a troubling record of acceding to the wishes of powerful political figures who want dissenting views suppressed. The track record of those organizations in stifling debate on such topics as the possibility that the COVID-19 pandemic originated with a leak from the Wuhan virology lab in China, and the issues surrounding potentially incriminating documents found on Hunter Biden's laptop is alarming. The prospect of renewed congressional pressure for those organizations to fall into line and suppress views challenging the narrative that the January 6 events constituted a full-fledged insurrection is even more alarming, but that is the clear intent of holding high-profile hearings on that issue.

There is a growing danger that the January 6 riot is becoming a pretext for an array of new governmental measures to suppress dissent. That pattern has occurred before on multiple occasions throughout America's history, most recently with the cynical exploitation of the 9-11 attacks to push through the Patriot Act and other repressive measures. It is imperative for the American people to reject the current campaign of threat inflation and the latest bid for measures that would further erode important constitutional freedoms.

*Ted Galen Carpenter, a senior fellow at the Cato Institute, is the author of 12 books and more than 950 articles on defense, foreign policy, and civil liberties issues. His latest book is Unreliable Watchdog: The News Media and U.S. Foreign Policy (forthcoming, June 2022).*