



Missing the big picture: The Senate’s January 6, 2021 ‘Intelligence Failure’ Report

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In late June, the Democratic majority on the Senate Homeland and Government Affairs Committee (HSGAC) released a 106-page report reiterating, in essence, what the House January 6 Select Committee claimed previously: that the FBI and Department of Homeland Security failed to predict the attempted coup mounted by outgoing President Donald Trump and roughly 2000 of his most fanatical supporters.

Mainstream media outlets uncritically parroted the majority’s claims (see for example NPR, AP, the Washington Post, New York Times, and Reuters, among others). But an actual reading of the document shows that Senate Homeland Security and Governmental Affairs Chairman Gary Peters (D-Mich.) and his staff missed the real reasons for what happened between the 2020 general election and the violent uprising against the certification of its results.

Throughout the report, the HSGAC majority staff cites multiple anonymous internet, social media, or encrypted chat postings in which the authors either talk about “eliminating people” or encourage people to “march into the Capitol on January 6” or say “don’t be surprised if we take the #capital [sic] building.” What the committee failed to do was link any of the posts they cited with any of the 1,000-plus people thus far charged or sentenced for violent or otherwise illegal acts during the capitol breach.

I’ve not been able to find a source citing the total number of such posts generated between Nov. 3, 2020, and the day of the attack, but based on past experience with social media content moderation policies I’m betting the number is in the hundreds of thousands or even in the millions. Six months before the 2020 election, Forbes reported that the number of hate-related posts taken down by Facebook in just the first three months of 2020 was nearly 10 million.

It’s simply unrealistic to expect analysts and agents at the FBI and DHS to be able to wade through such a volume of noise and then predict who is going to transition from violent speech to violent action. What’s required is specific, credible information of a credible plot to commit a crime in order to preempt it.

The HSGAC report surfaced no such specific intelligence overlooked by FBI or DHS, as was the case with the House January 6 Select Committee investigation. Suggesting, as the HSGAC majority does, that more aggressive monitoring of social media posts would somehow surface such specific, credible intelligence is refuted by our experience with counterterrorism investigations to date.

Indeed, a previously classified 2012 FBI survey of prior terrorist perpetrators obtained by The Cato Institute via the Freedom of Information Act (FOIA) found that “radicalization is an individualized, internalized process in which a variety of personal, group, community, sociopolitical, and ideological factors can play an aggravating or mitigating role.” The reality is that just because hotheads pop off on Twitter or Truth Social does not automatically mean they are on the path to becoming the next Timothy McVeigh or Stewart Rhodes. Violent rhetoric has been a feature of American political life since the Revolution, a fact the Supreme Court recognized in its 1969 landmark decision in Brandenburg v. Ohio.

In that case, the court struck down an Ohio statute that had been used to target Ku Klux Klan leader Clarence Brandenburg for his racist rhetoric, which was viewed as a harbinger of violent action against the local Black community. The Court established a two-part test, requiring law enforcement officials to determine whether the speech at issue is “directed to inciting or producing imminent lawless action,” and it is “likely to incite or produce such action.”

As we saw on Jan. 6, 2021, that transition from fiery speech to violent action can happen quickly, particularly when a mob is incited by their leader—in this case, defeated presidential incumbent Donald Trump—to “march to the Capitol.”

As the HSGAC report notes, in the roughly 72 hours before the attack on the Capitol some social media and other posts mentioned searches for maps of the underground tunnels that link the House office buildings with the Capitol. But again, the committee failed to link those posts to anyone thus far charged in the assault on Jan. 6, 2021.

In reality, the real threat came from outside—spearheaded by the Proud Boys and Oath Keeper elements who provided the critical muscle and know-how to breach the barricades and ultimately the doors to the building itself. And they were motivated and set in motion by one man—Donald Trump, a fact the committee barely acknowledged in its report.

The FBI is a law enforcement organization whose agents are trained to focus on uncovering and stopping federal crimes. DHS’s ostensible mission is the protection of America’s borders, ports of entry, and critical infrastructure. Neither is designed to detect and thwart coups orchestrated by elected and/or appointed officials in the executive branch.

I appreciate what Chairman Peters and his staff have done to at least keep the events of Jan. 6, 2021 from fading from public view. And anyone who has followed my work uncovering wrongdoing by the FBI and DHS components knows I’m not a cheerleader for either of those government entities. However, a commitment to basic fairness demands that we all recognize that DHS and FBI agents and analysts had no way of knowing the origins of Jan. 6. No previous president had ever refused to leave office peacefully, much less attempted to use a “flash mob” to

storm the Capitol. Jan. 6 was not an intelligence failure, but a total breakdown of political and social norms built up over nearly 250 years. That's a problem that can only be solved by political means, not more surveillance or investigative powers for the FBI and DHS.

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