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CHAOS IN D.C.

Rioters overrun the Capitol. Are police to blame?



For Police Issues by Julius (Jay) Wachtel. On January 6, 2121 hordes of protesters inflamed by President Trump's defeat and exhorted by him and his son to convey their message to legislators stormed the U.S. Capitol, overwhelming police. While none visibly carried firearms, some had or got hold of pipes and other objects. Once inside, rioters fought with several officers, and [Capitol police officer Brian Sicknick](#) was repeatedly struck with a fire extinguisher, sustaining ultimately fatal injuries. (Click [here](#) for the video of a rioter spraying officers with a fire extinguisher.) A military veteran and avid supporter of the President, officer Sicknick had served with the Capitol force since 2008.

Most Capitol cops left their guns holstered. However, as intruders smashed through a window on the door that led from their corridor to the Speaker's Lobby, a plainclothes officer on the other side [drew his pistol](#). As Ashli Babbitt, 35 climbed through the opening the officer fired. She was quickly attended to but her wound proved fatal. [Here's an excerpt](#) from a statement by Capitol police chief Steven Sund:

As protesters were forcing their way toward the House Chamber where Members of Congress were sheltering in place, a sworn USCP employee discharged their service weapon, striking an adult female. Medical assistance was rendered immediately, and the female was transported to the hospital where she later succumbed to her injuries.

Ms. Babbitt was reportedly unarmed. [Her husband and family](#) said that she was a patriot and a U.S. Air Force veteran. Her social media account displayed fervent support for the President and endorsed far-right positions on a host of issues.



Three other protesters died from unspecified “medical emergencies” suffered during the siege (one reportedly fell to his death while climbing.) More than fifty officers sustained non-fatal injuries, a few considered serious.

None of the intruders openly flaunted firearms and most let members of the media carry on with their work. No reporters were apparently hurt, although at least a couple were observably pushed around. Yet as one pores through the profusion of news accounts about the melee (this clip is from the L.A. Times print edition) the unmistakable tenor is that the intruder’s aggressive behavior gave Capitol staff and legislators abundant reason to fear physical harm. Here’s an outtake from [“Inside the assault on the Capitol: Evacuating the Senate”](#) by the *Washington Post’s* Paul Kane:

It was 2:15 p.m. Wednesday and the U.S. Capitol was under assault, the most brazen attack on Congress since terrorists hijacked an airplane and attempted to slam it into the building more than 19 years ago. On Wednesday, a pro-Trump mob crashed into the building in a historic first that sent Washington into lockdown and prompted the type of evacuation that congressional security officials have been planning since 9/11 but had never had to execute.

How did the rioters get in? Check out [Google Earth’s satellite image](#) of the Capitol. It’s a vast place with a cornucopia of entry points. Controlling access would require miles of fencing (think “border wall”) and an immense, continuous police presence. Until D.C. police showed up, Capitol police were vastly outnumbered and officers guarding the exterior were quickly overrun. That, of course, is exactly what the rioters had counted on.

Let’s personalize this. You’re a Capitol cop. Say that a dozen flag-waving but visibly unarmed anarchists approach a bashed-in entryway. In a few moments they’ll be in a supposedly “secure” area, rubbing shoulders with legislators. *Do* you shoot them? Legally, *can* you?

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Probably not. According to the *Code of Federal Regulations* ([10 CFR 1047.7](#)) Federal officers can only use lethal force to protect themselves or others from “imminent danger of death or serious bodily harm” or when trying to keep someone who poses such threats from fleeing. Here, for example, is the [FBI’s plain-language rule](#):

FBI special agents may use deadly force only when necessary — when the agent has a reasonable belief that the subject of such force poses an imminent danger of death or serious physical injury to the agent or another person. If feasible, a verbal warning to submit to the authority of the special agent is given prior to the use of deadly force.

Federal law ([18 USC Sec. 1752](#)) makes it a misdemeanor to illegally enter or engage in disruption in a restricted Federal zone, such as the Capitol and its grounds. Violations become felonies when someone carries a dangerous weapon or firearm or their acts cause “significant bodily injury.” Simply trying to arrest an unarmed someone – even for a felony – is by itself insufficient for using lethal force. That requires a threat of “death or serious bodily harm.”

Visuals-rich pieces in the *New York Times* (click [here](#) and [here](#)) aptly depict what took place. Rioters easily pushed through and circumvented a depleted Capital police force that remained outside. And here a bit of explanation is called for. Capitol cops’ core function – their *raison d’être* – is to protect legislators, staff and authorized visitors. Realizing what was up, most scrambled inside to do just that. *This was not the time* to tie up critical resources by making petty arrests.

Natch, the rabble took advantage. Storming the building, they climbed walls, broke windows and gained mass entry by breaking through exterior doors to the Rotunda. Videos posted by *NBC News* show [what happened inside](#). As a few officers use pepper spray and such to slow the horde down, their colleagues frantically [shepherd legislators and staff](#) into the Senate and House chambers and pile furniture against the doors to block access. One photo depicts plainclothes officers [pointing their sidearms](#) at a protester who is peering into one of the galleries where legislators had hunkered down. Another portrays officers outside a chamber as they [watch over several arrestees](#).

Five persons lost their lives: Officer Brian Sicknick, Ms. Ashli Babbitt, [and three intruders](#) who died from unspecified “medical emergencies” during the siege (one supposedly fell to his death while climbing.) D.C. Police Chief Robert Contee reported that “valiant fighting” left fifty-six officers injured. Several were seriously hurt, including one who was “snatched into a crowd” then beaten and tased.

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In its initial wave of prosecutions, the Department of Justice [accused fourteen rioters](#) of committing Federal crimes. Nine face charges of misdemeanor illegal entry. Among these is Arkansas man [Richard Barnett](#), the smug fellow who was photographed with his feet on a desk in the office of the Speaker of the House. Allegations against the other five are more serious, including alleged threats, assault, possession of loaded handguns, and, for one defendant, possession of explosives.

D.C. police officers arrived in force during the melee to help clear intruders from the interior. Again, taking persons into custody can tie up multiple cops, so not everyone could be arrested. In the end, D.C. police [made sixty-eight arrests](#). Federal agencies are now poring through photos and videos to identify additional interlopers who are deemed worthy of being charged. Those who broke windows and doors and carried away artifacts are first in line. (Click [here](#) for a *New York Times* list of “notable arrests” as of January 10.)

So far, the most serious unprosecuted offenses relate to the deaths of officer Sicknick and Ms. Babbitt. Officer Sicknick’s assailants are yet to be named. Ms. Babbitt, an intruder, was killed by a Capitol police officer, who has been placed on leave. His status is in the air. Did her actions and demeanor pose a reasonable fear that she might hurt someone? We’ll update both cases as developments occur.

Was the mob “storming” foreseen? Pointing to “violent clashes, stabbings and acts of destruction” that happened during a similar rally in December, D.C. Mayor Muriel Bowser, who was very critical of the response, [had warned of impending violence](#) for weeks. And while the *New York Times* [discovered no “broadly organized plan to take action,”](#) its reporting suggested that something big might happen. “Storm the Capitol” [had come up online 100,000 times](#) during the preceding month. Far-right forums [bulged with posts “threatening violence”](#) over the fraud that supposedly cost their hero the election, and user comments were replete with goodies such as “pack a crowbar” and “does anyone know if the windows on the second floor are reinforced?” Here’s what a former Secretary of Homeland Security recently said:

You didn’t need intelligence. You just needed to read the newspaper...They were advertising, ‘Let’s go wild. Bring your guns.’ You don’t need to have an FBI investigation. You just need to be able to be able to read.

On the other hand, Representative Tim Ryan (D-Ohio), whose committee funds the Capitol police, denied there was any advance intelligence of a “storming.” Ditto Capitol police chief Steven Sund, [who is resigning over the debacle](#) along with the Masters-at-Arms of both Houses. [Chief Sund called the episode](#) completely unanticipated and

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“unlike any I have ever experienced in my 30 years in law enforcement here in Washington, D.C.”:

Maintaining public safety in an open environment – specifically for First Amendment activities – has long been a challenge. The USCP had a robust plan established to address anticipated First Amendment activities. But make no mistake – these mass riots were not First Amendment activities; they were criminal riotous behavior.

Unfortunately, the President’s stirring of the pot helped make the “unanticipated” inevitable. On December 19 he tweeted “Big protest in D.C. on January 6th. Be there, will be wild!” [His final call to duty](#) (with a Twitter link, no less) came on Tuesday, January 5th:

I will be speaking at the SAVE AMERICA RALLY tomorrow on the Ellipse at 11AM Eastern. Arrive early – doors open at 7AM Eastern. BIG CROWDS!
pic.twitter.com/k4bIXEScoc

That evening [thousands gathered at a pre-rally event](#) south of the White House to hear “speaker after angry speaker” denounce the stolen election and identify the “Democrats and weak Republicans, Communists and Satanists” who deserved blame. There were sizeable delegations from far-right groups including the “[Oath Keepers](#),” the “[Proud Boys](#)” and “[Q-Anon](#),” which promote conspiracy theories and point to Biden’s election as evidence that America is being subverted from within. And while tactical gear wasn’t the common mode of dress, some in the audience carried pepper spray and clubs and wore helmets and flak jackets.

They returned in force early the next morning [to hear their main man](#). According to *NBC News*, park authorities originally permitted the event for ten-thousand, but the President’s exhortations had likely driven up attendance, and the crowd wound up about three times that size. And they got what they came for. Here’s an excerpt from [Eric Trump’s warm-up remarks](#):

Have some backbone. Show some fight. Learn from Donald Trump. And we need to march on the Capitol today. And we need to stand up for this country. And we need to stand up for what’s right.

Here’s an outtake from [his father’s closing words](#):

...nobody until I came along had any idea how corrupt our elections were...but I said something is wrong here, something is really wrong, can't have happened

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and we fight, we fight like hell, and if you don't fight like hell you're not going to have a country anymore...So we are going to--we are going to walk down Pennsylvania Avenue...and we are going to the Capitol, and we are going to try and give--the Democrats are hopeless, they are never voting for anything, not even one vote but we are going to try--give our Republicans, the weak ones because the strong ones don't need any of our help, we're try--going to try and give them the kind of pride and boldness that they need to take back our country. So let's walk down Pennsylvania Avenue.

And thousands did (natch, *sans* the Donald). While most either kept on walking or paused to demonstrate – legally – on the Capitol’s vast greenspace, a rabid contingent several-hundred strong split off. Inciting each other through word and deed, they high-tailed it for the building. And ran smack-dab into officers whose leadership hadn’t prepared them for the storm. Or the potentially threatening nature of the “stormers.” While there is no proof at present that their activities were coordinated, the mob bristled with members of far-right groups. It also included personalities such as [Nick Fuentes](#), a star of the far-right Internet media, and [Q-Anon booster Jake Angeli](#), the fellow in a fur coat and horns.

As media accounts make clear, enforcement-wise things quickly turned desperate, and D.C. police and other law enforcement agencies were summoned. But the delay in battening down the hatches enabled the violent breach of an American treasure, leading to vandalism, injuries and deaths. A cascade of blame has followed. Given all the warnings, why did police fail to prepare for the seemingly inevitable? Here’s what [former Senate sergeant-at-arms](#) Frank Larkin thinks:

The police should have defined a hard line and there should have been consequences for crossing it. The fight should have been outside. Not inside. To have that confrontation at the door, that was a losing formula.

Ditto the head of the Capitol police union, which called on the chief and his top commanders to promptly resign: “This lack of planning led to the greatest breach of the U.S. Capitol since the War of 1812” (that’s when the Brits set the Capitol on fire.)

Still, former Capitol cop Jose Cervino, who planned security for protests and events, wasn’t sure that the President’s anticipated comments [left a realistic strategy available](#):

No one expected the president to say, ‘Hey guys, let’s all go down to the Capitol and show them who’s boss.’ That is a completely different thing that no one’s ever planned or prepared for. How could you?

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And once the impossible happened, officers couldn't turn to the one measure that would bring the episode to an end:

We have the members and we have the leadership secured. Is it correct to start shooting people? I can't imagine that I would be happier today if we found out we kept the crowd out, but wound up shooting 40 people.

There was another concern. Feds and D.C. police [are still smarting from heated criticism](#) about their enthusiastic crackdown on June racial protests near the White House. Their purpose, it's said, was in part to keep hostile crowds away from the fence-enclosed, supremely distanced and heavily guarded residence of the President. Six months later, officials in charge of Capitol security worried that hardening the "people's house" [would lead to similar complaints](#).

Of course, the Capitol is no White House. It's a wholly different venue, supposedly welcoming to all sides of the spectrum. There are even visitor galleries! But in our current, deeply polarized atmosphere, some politicians (and their lawyers) seem determined to encourage their followers to exercise their worst qualities. Regretfully, deaths and injuries happened. Yet as short-staffed as they were, police were able to keep legislators and staff from harm. Yet some of what happened off-site raises alarm. We've heard about the pipe bombs that were found and disarmed near the Republican and Democratic party offices. [Now consider these episodes](#):

- A 70-year old Alabama grandfather showed up in a pickup stuffed-full with "an M4 assault rifle, loaded magazines, three handguns and 11 Mason jars filled with homemade napalm [i.e. Molotov cocktails.]" He carried a pistol in his pockets.
- A Georgia man and fervent Trump booster texted a profusion of inflammatory, threatening comments, i.e., that he was taking a "s-ton" of 5.56 mm ammunition and was "thinking about heading over to Pelosi C—'s speech and putting a bullet in her noggin on Live TV." FBI agents tracked him to a hotel. They seized an assault rifle, a pistol, ammunition and drugs.

Effectively "securing" the Capitol against a repeat intrusion – and the air is thick with warnings about Inauguration Day – might require measures that would in effect remove a national treasure from the public sphere. (Fencing is being installed as we write.) That may not be what we want, but unless our dueling tribes come together as the Americans they ostensibly are, and exercise some common sense in how they go about their business and communicate with their supporters, it's what we're surely going to get.