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Monterey, CA; Naval Postgraduate School

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**NAVAL  
POSTGRADUATE  
SCHOOL**

**MONTEREY, CALIFORNIA**

**THESIS**

**CONSIDERATIONS FOR A  
DOMESTIC TERRORISM STATUTE**

by

Brian P. Maguire

June 2022

Co-Advisors:

David W. Brannan (contractor)

Tristan J. Mabry

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**CONSIDERATIONS FOR A DOMESTIC TERRORISM STATUTE**

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Submitted in partial fulfillment of the  
requirements for the degree of

**MASTER OF ARTS IN SECURITY STUDIES  
(HOMELAND SECURITY AND DEFENSE)**

from the

**NAVAL POSTGRADUATE SCHOOL  
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## **ABSTRACT**

While the crime of international terrorism is clearly defined in U.S. law, the lack of a domestic terrorism charge has broad implications for the government's actual and perceived ability to respond to acts of domestic violent extremism. The creation of a federal domestic terrorism statute would codify the severity of the threat into enforceable law and allow the government to respond more effectively. Such a statute could directly impact the First Amendment rights of U.S. citizens, however, via the monitoring of free speech and association. What then are the potential costs, benefits, and consequences of a domestic terrorism statute in the United States, especially pertaining to First Amendment constitutional rights? A qualitative case study was conducted to focus on three cases of political violence that may be interpreted as domestic terrorism in the United States: the Capitol riot, the Charlottesville attack, and the Pittsburgh synagogue incident. The findings of this study indicate that a statute can also be instrumental in the investigation and prosecution of domestic terrorism incidents by protecting targeted racial groups, preventing abuse of power and authority, increasing penalties, and giving victims and their families the justice they deserve. The main challenge is the argument that a statute would infringe on civil liberties, which could be prevented by having specific provisions about the limits of these civil liberties and a benchmark for inciting terrorism.



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## EXECUTIVE SUMMARY

The current qualitative case study focused on three cases of political violence that could be interpreted as domestic terrorism in the United States: the Capitol riot, the Charlottesville attack, and the Pittsburgh synagogue incident. Data was collected from historical sources to answer the research question: What are the costs, consequences, and advantages of a federal domestic terrorism statute in the United States, especially pertaining to First Amendment constitutional rights? The four major themes explained in the literature review center on the definition of domestic terrorism, solutions for addressing domestic terrorism, the role of statutes in addressing domestic terrorism, and the role civil liberties play in domestic terror cases.

The major goals of this thesis were threefold: to explore the costs/disadvantages that are associated with developing a domestic terrorism statute in the United States, the consequences of such a statute, and any potential advantages. No data was collected from human participants. Instead, a variety of historical sources available online publicly were explored: government reports, legal documents, news articles, and academic journal articles. Each case is presented with relevant collected data via cited footnotes before an analysis of the stakeholders and a discussion of the advantages and disadvantages of a domestic terrorism policy.

The Capitol riot is the first case presented in this thesis, with a focus on describing the buildup to, action during, and aftermath of the riot through the lens of the role of social media by former President Trump. Following the narrative of the event, the challenges encountered after the investigation are presented and include the inability to apply terrorism laws, lack of clear offenses that can be charged, misinformation through social media, tension between extremists and law enforcement, the politicization of the event. Civil liberties have been revealed to be at the heart of many of the issues related to filing terrorism charges, namely the right to assemble peacefully and freedom of speech. The

freedom to protest is protected and the nature of what is required for it to be considered peaceful is legally ambiguous, so their actions are difficult to prosecute.<sup>1</sup>

The Charlottesville attack involved two competing groups who were rallying simultaneously. The Unite the Right rally was organized by Jason Keller, a white supremacist, protesting the removal of a statue of a Confederate general and occurred concurrently with counter-protesters. The perpetrator in this case ran his car into a crowd of counter-protesters, resulting in the death of one counter-protester and the injury of 33 other people.<sup>2</sup> For this case, challenges encountered during the investigation included the difficulty in using domestic terrorism as an offense, extensiveness of information warfare, and the lack of cooperation of the state police to provide documents and participate in interviews during the investigation. Civil liberties issues included the right to protest even while armed and free speech.<sup>3</sup>

The Pittsburgh synagogue incident also referred to as the Tree of Life synagogue attack, was a mass shooting that led to the death of eleven people and the injury of seven people.<sup>4</sup> This occurred during a rise of anti-Semitic rhetoric and vandalism.<sup>5</sup> In this case, civil liberties issues centered around the right to peaceably assemble in a place of worship without persecution, harassment, or attack. Politicization of this shooting occurred as President Trump's rhetoric shifted into focus as a major driver of the increase of these incidents.<sup>6</sup> Challenges during this investigation were reported to be the presence of social

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<sup>1</sup> Claudia Grisales, "'Planned, Coordinated Attack': Former Capitol Police Chief on the Insurrection," NPR, January 15, 2021, <https://www.npr.org/2021/01/15/957371206/planned-coordinated-attack-former-capitol-police-chief-on-the-insurrection>.

<sup>2</sup> Michael Capek and Duchess Harris, *The Charlottesville Protests* (Minneapolis: Essential Library, 2019).

<sup>3</sup> Nicholas A. Marricco, "Charlottesville, the First Amendment, the Second Amendment, and a Potential Constitutional Crisis: Can the Government Regulate Armed Protests?," *Albany Government Law Review* 1, no. 12 (2019).

<sup>4</sup> Michał Bilewicz and Wiktor Soral, "Hate Speech Epidemic: The Dynamic Effects of Derogatory Language on Intergroup Relations and Political Radicalization," *Political Psychology* 41, no. S1 (2020): 3–33, <https://doi.org/10.1111/pops.12670>.

<sup>5</sup> Bilewicz and Soral.

<sup>6</sup> Brock Bahler, "The Tree of Life: Wisdom Reflected in the Face of Domestic Terror," *Philosophy in the Contemporary World* 25, no. 1 (Spring 2019): 107–20, <https://doi.org/10.5840/pcw20192519>.

media as a driver or platform for hate speech, the use of the mental health/insanity defense for the perpetrator of the mass shooting, and the radicalization of lone wolves to commit domestic terrorism.

This thesis establishes is a need for more education for the public about what a domestic terrorism statute would mean and how it could help law enforcement and government work with the communities to address underground domestic terrorism. Without public support, lawmakers would ignore statutes, despite any potential benefits.<sup>7</sup> There is a need to create a better understanding of the boundary between civil liberties and inciting terrorism with concrete benchmarks.<sup>8</sup> In doing this, a better for comprehensive and specific definition of domestic terrorism can be established.<sup>9</sup>

Policy options reviewed found that a fear of infringement on civil liberties is a major barrier to creating a statute against domestic terrorism. There is research that supports that often civil rights are violated in the process of investigating domestic terrorism.<sup>10</sup> Often, freedom of speech and the prevention of domestic terrorism are seen as opposing actions.<sup>11</sup> Religious leaders have been surveilled, which might be a driver of radicalization and terrorism.<sup>12</sup> A clearer definition of hate speech, improved accounting and accountability, and self-regulation of private companies are primary recommendations.

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<sup>7</sup> Nichole Anderson, “Exploring the Viability of a Federal Domestic Terrorism Statute,” *Gonzaga Law Review* 55, no. 3 (2020): 475, <https://gonzagalawreview.com/article/12288-exploring-the-viability-of-a-federal-domestic-terrorism-statute>.

<sup>8</sup> Anderson.

<sup>9</sup> Jesse J. Norris, “When (and Where) Can Right-Wing Terrorists Be Charged with Terrorism?,” *Critical Studies on Terrorism* 13, no. 4 (October 2020): 519–44, <https://doi.org/10.1080/17539153.2020.1810991>.

<sup>10</sup> Eliza Bechtold, “Terrorism, the Internet, and the Threat to Freedom of Expression: The Regulation of Digital Intermediaries in Europe and the United States,” *Journal of Media Law* 12, no. 1 (2020): 13–46, <https://doi.org/10.1080/17577632.2020.1760474>.

<sup>11</sup> Lasse Skjoldager Eskildsen and Christian Bjørnskov, “Does Freedom of Expression Cause Less Terrorism?,” *Political Studies* 70, no. 1 (2022): 131–52, <https://doi.org/10.1177/0032321720950223>.

<sup>12</sup> Peter S. Henne, “Government Interference in Religious Institutions and Terrorism,” *Religion, State and Society* 47, no. 1 (2019): 67–86, <https://doi.org/10.1080/09637494.2018.1533691>.

A review of the stakeholders involved in prosecuting domestic terrorism reveals a patchwork of implementation procedures and varying departments try to work together.<sup>13</sup> Domestic terrorism is combated by all law enforcement agencies from the Coast Guard or state patrol to the Federal Bureau of Investigation, and as such there must be work done to improve the integration of their efforts in a consistent way that ensures the civil liberties of all parties are not infringed. Specifically, there is a need to reduce the room for interpretation in the existing laws and policies with attention to ensuring power abuse is mitigated.

This research is limited as it reflects three contemporary cases of domestic terrorism unique to the United States, and as a result the policy suggestions may not be appropriate in other contexts. Future research recommendations include a cross-country examination of the existence or absence of domestic terrorism laws, an exploration of the effects of having a domestic terrorism statute in the incidence of terrorist attacks via archival data, and an exploration of the impact of social media in cases that could be classified as domestic terrorism as well as its influence on the perceptions of the public regarding the need for a domestic terrorism statute. Previous research has shown a connection between media framing and the perceptions of the public.<sup>14</sup>

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<sup>13</sup> Francesca Laguardia, “Considering a Domestic Terrorism Statute and Its Alternatives,” *Northwestern University Law Review* 114, no. 4 (January 2021): 1061, <https://scholarlycommons.law.northwestern.edu/nulr/vol114/iss4/4>.

<sup>14</sup> Helen Taylor, “Domestic Terrorism and Hate Crimes: Legal Definitions and Media Framing of Mass Shootings in the United States,” *Journal of Policing, Intelligence and Counter Terrorism* 14, no. 3 (September 2019): 227–44, <https://doi.org/10.1080/18335330.2019.1667012>.

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*fidelis ad mortem*—faithful until death



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# I. INTRODUCTION

## A. PROBLEM STATEMENT

In this thesis, the definition of “domestic terrorism” is based on the U.S. Code at 18 U.S.C. § 2331(5) as activities involving acts dangerous to human life that are a violation of the criminal laws of the United States, or of any state, and appear to be intended: i) to intimidate or coerce a civilian population; ii) to influence the policy of a government by intimidation or coercion; or iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping. While the U.S. Code defined domestic terrorism, there is no federal law covering domestic terrorism. For example, on August 12, 2017, James Alex Fields Jr., a neo-Nazi white supremacist, killed Heather Heyer and injured 35 others when he drove his car into a crowd of protesters in the Unite the Right assembly in Charlottesville, Virginia. Fields was arrested and charged locally for a hit-and-run and vehicular homicide.<sup>1</sup> He also pleaded guilty to a federal hate crime charge. But then-Attorney General William Barr said that “hate crimes were ‘acts of domestic terrorism’ and that prosecuting them was a priority for his office.”<sup>2</sup>

In October 2020, six men—Adam Fox, Barry Croft, Ty Garbin, Kaleb Franks, Daniel Harris, and Brandon Caserta—were accused of planning to kidnap Michigan Governor Gretchen Whitmer and put her on trial for “tyranny” over COVID-19-related restrictions she had put in place.<sup>3</sup> Their plot included attacking the Michigan statehouse and carrying out attacks against the Michigan State Police. Two of the men were also among the protesters who entered the Michigan statehouse in 2020 while carrying long

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<sup>1</sup> James Pilcher, “Charlottesville Suspect’s Beliefs Were ‘Along the Party Lines of the Neo-Nazi Movement,’ Ex-Teacher Says,” *USA Today*, August 13, 2017, <https://www.usatoday.com/story/news/nation-now/2017/08/13/charlottesville-suspects-views-neo-nazi-ex-teacher/563199001/>.

<sup>2</sup> Karen Zraick and Julia Jacobs, “Charlottesville Attacker Pleads Guilty to Federal Hate Crime Charges,” *New York Times*, March 27, 2019, <https://www.nytimes.com/2019/03/27/us/james-alex-fields-charlottesville.html>.

<sup>3</sup> Nicholas Bogel-Burroughs, Shaila Dewan, and Kathleen Gray, “F.B.I. Says Michigan Anti-Government Group Plotted to Kidnap Gov. Gretchen Whitmer,” *New York Times*, October 8, 2020, <https://www.nytimes.com/2020/10/08/us/gretchen-whitmer-michigan-militia.html>.

guns and wearing camouflage.<sup>4</sup> These men were arrested and charged federally with conspiracy to kidnap Governor Whitmer because 18 U.S.C. § 1201(c) “makes it a felony to conspire to kidnap or abduct any person and hold that person for ransom, reward, or otherwise, where the kidnapper or the victim crosses a state boundary, or a means of interstate commerce (such as a cellular telephone or the internet) is used in committing, or in furtherance of, the offense.”<sup>5</sup> They were not charged with an act of terrorism.

According to the Center for Strategic and International Studies, a significant number of terroristic threats and attacks are carried out by domestic violent extremists.<sup>6</sup> The incidents above are only two of a growing number in the United States involving these extremists. For example, in 2019, two-thirds of the total terrorist attacks in the United States were committed by individuals who are considered domestic extremists.<sup>7</sup> According to its data analysis, the center predicted that in 2020, domestic violent extremism would continue to increase in frequency and severity.<sup>8</sup>

Even though domestic terrorism has arguably become more common, most legislation continues to be focused on international terrorism.<sup>9</sup> For instance, after the terrorist attacks of September 11, 2001, the U.S. Congress passed new legislation that clearly defined and addressed international terrorism laws. This new legislation required the U.S. State Department to create a list of designated foreign terrorist organizations. Anyone who provided material support to a designated foreign terrorist organization would be prosecuted under these newly enacted federal terrorism laws.<sup>10</sup>

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<sup>4</sup> “Six Arrested on Federal Charge of Conspiracy to Kidnap the Governor of Michigan,” Department of Justice, October 8, 2020, <https://www.justice.gov/opa/pr/six-arrested-federal-charge-conspiracy-kidnap-governor-michigan>.

<sup>5</sup> Department of Justice.

<sup>6</sup> Seth G. Jones, Catrina Doxsee, and Nicholas Harrington, *The Escalating Terrorism Problem in the United States* (Washington, DC: Center for Strategic and International Studies, 2020), <https://www.csis.org/analysis/escalating-terrorism-problem-united-states>.

<sup>7</sup> Jones, Doxsee, and Harrington.

<sup>8</sup> Jones, Doxsee, and Harrington.

<sup>9</sup> Jones, Doxsee, and Harrington.

<sup>10</sup> “Highlights of the USA PATRIOT Act,” Department of Justice, accessed July 17, 2021, <https://www.justice.gov/archive/ll/highlights.htm>.

Although domestic terrorism is clearly defined and almost identical to the international terrorism definition in the USA PATRIOT Act of 2001, no federal crime exists covering incidents of domestic terrorism. Incidents that could be considered domestic terrorism are often subsumed to the broader statute on international terrorism (if possible) or prosecuted as ordinary criminal offenses. Moreover, there are no designated domestic terrorist organizations. To be charged under the terrorism statute, one must be associated with a foreign terrorist organization.<sup>11</sup>

Many civil rights and civil liberties organizations, such as the Center for Constitutional Rights, oppose creating a domestic terrorism statute as a federal crime because they have First Amendment concerns.<sup>12</sup> Civil liberty protections make it hard for federal authorities to investigate and arrest a U.S. citizen without violating their First Amendment rights of speech and association.<sup>13</sup>

The lack of a federal domestic terrorism charge has broad implications for the U.S. government's actual and perceived ability to respond to acts of domestic violent extremism. The creation of a federal domestic terrorism statute would codify the severity of the threat into enforceable law and allow the government to respond more effectively. Such a statute could directly impact the First Amendment rights of U.S. citizens, however, via the monitoring of free speech and association. The impact of establishing such statutes has not been explored in depth in previous research, underscoring the need to explore the costs, consequences, and advantages of a domestic terrorism statute in the United States, especially as they pertain to First Amendment constitutional rights.

This current qualitative case study research will focus on three cases of political violence that may be interpreted as domestic terrorism in the United States: the Capitol riot, the Charlottesville attack, and the Pittsburgh synagogue incident. Even though there is continued debate whether these incidents are considered acts of domestic terrorism,

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<sup>11</sup> Department of Justice.

<sup>12</sup> Alex Emmons, "Capitol Hill Assault Revives Calls for Domestic Terrorism Law, but Civil Liberties Groups Are Wary," *Intercept*, January 10, 2021, <https://theintercept.com/2021/01/10/capitol-hill-riot-domestic-terrorism-legislation/>.

<sup>13</sup> Emmons.

many mainstream political analysts and legal experts have considered these three contemporary cases as domestic terrorism.<sup>14</sup> The Charlottesville attack was perpetrated by a lone wolf named James Alex Fields.<sup>15</sup> The perpetrators of the Capitol riot were U.S. citizens who primarily supported Donald Trump.<sup>16</sup> Finally, the Pittsburgh synagogue incident was also perpetrated by white supremacists in the United States.<sup>17</sup> These three incidents will provide the structure whereby the costs, consequences, and advantages of a domestic terrorism statute in the United States can be explored.

## **B. RESEARCH QUESTION**

What are the costs, consequences, and advantages of a federal domestic terrorism statute in the United States, especially pertaining to First Amendment constitutional rights?

## **C. LITERATURE REVIEW**

Four themes are manifest in the literature regarding domestic terrorism in the United States: the definition of domestic terrorism, solutions for addressing domestic terrorism, the role of statutes in addressing domestic terrorism, and civil liberties and domestic terrorism.

### **1. The Definition of Domestic Terrorism**

Domestic terrorism, for the Federal Bureau's Investigation (FBI)'s purposes, is referenced in U.S. Code at 18 U.S.C. § 2331(5), and is defined as activities, involving acts dangerous to human life that are a violation of the criminal laws of the United States or of any state, appearing to be intended to:

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<sup>14</sup> Emily Blout and Patrick Burkart, "White Supremacist Terrorism in Charlottesville: Reconstructing 'Unite the Right,'" *Studies in Conflict & Terrorism* (2021): 1–22, <https://doi.org/10.1080/1057610X.2020.1862850>; David C. Rapoport, "The Capitol Attack and the 5th Terrorism Wave," *Terrorism and Political Violence* 33, no. 5 (2021): 912–16, <https://doi.org/10.1080/09546553.2021.1932338>.

<sup>15</sup> Blout and Burkart, "White Supremacist Terrorism in Charlottesville."

<sup>16</sup> Sudha Setty, "The January 6, 2021 Capitol Riots: Resisting Calls for More Terrorism Laws," *Journal of National Security Law & Policy* 11 (2020): 1–3, ProQuest.

<sup>17</sup> Joshua David Bellin, "Thoreau in Pittsburgh: Reflections on Domestic Terrorism," *ESQ: Journal of Nineteenth-Century American Literature and Culture* 65, no. 3 (2019): 553–58, <https://doi.org/10.1353/esq.2019.0014>.

- Intimidate or coerce a civilian population;
- Influence the policy of government by intimidation or coercion; or
- Affect the conduct of a government by mass destruction, assassination, kidnapping; and
- Occurring primarily within the territorial jurisdiction of the United States.

The Department of Homeland Security’s definition of domestic terrorism was informed by how the Homeland Security Act of 2002 defined terrorism, 6 U.S.C. § 101(18), which is similar to, but not identical, to the 18 U.S.C. § 2331(5) definition. Under the Homeland Security Act, terrorism involves an act that:

Is dangerous to human life or potentially destructive of critical infrastructure or key resources; and

Is a violation of the criminal laws of the United States or any State or other subdivision of the United States, and

Appears to be intended to: Intimidate or coerce a civilian population, influence the policy of a government by intimidation or coercion; or affect the conduct of a government by mass destruction, assassination, or kidnapping.

These definitions of domestic terrorism, however, remain contentious. Politicians and other authorities use the term domestic terrorism sparingly even though certain acts, such as a mass shooting deliberately targeting minorities, meet all the specifications.<sup>18</sup> The term terrorism has not been used widely to describe these domestic violence incidents and homegrown attacks.<sup>19</sup>

There are numerous federal and state offenses that can be utilized to charge and prosecute domestic terrorism.<sup>20</sup> Federal charges that can be made include those related to

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<sup>18</sup> Helen Taylor, “Domestic Terrorism and Hate Crimes: Legal Definitions and Media Framing of Mass Shootings in the United States,” *Journal of Policing, Intelligence and Counter Terrorism* 14, no. 3 (September 2019): 227–44, <https://doi.org/10.1080/18335330.2019.1667012>.

<sup>19</sup> Taylor.

<sup>20</sup> Taylor, 230.

the possession and use of weapons, explosives, threats, attacks on federal officials or facilities, arson, hate crimes, violence against animal enterprises, and aiding and abetting terrorists. For example, the Department of Justice has prosecuted individuals who have been involved in the use of weapons or explosives, engaging in threats or hoaxes, and attacks/riots on federal officials or facilities.

Hate crimes charges can be sometimes used as a chargeable offense as opposed to terrorism when the attacks are motivated by racial, religious, or ethnic biases. However, not all hate crimes cases can be considered domestic terrorism. In some cases, drug trafficking charges have been used in place of domestic terrorism.

Since 2015, it has been reported that 267 plots from right-wing extremists led to 91 deaths. Conversely, 66 plots from left-wing extremists have been recorded that led to 19 deaths.<sup>21</sup> According to the Center for Strategic and International Studies, right-wing extremism is a significant problem in the United States. Over the next few years, the threat of terrorism in the United States could further worsen because of several factors, such as continued responses to the COVID-19 crisis. These factors contribute to a political climate that could fuel further extremism and homegrown terrorism in the United States.<sup>22</sup>

The internet has become a powerful tool in radicalizing citizens, posing a threat in terms of the proliferation of domestic terrorism in the United States.<sup>23</sup> The internet can be a massive source of misinformation or disinformation, which can lead to the radicalization

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<sup>21</sup> Robert O’Harrow Jr., Andrew Ba Tran, and Derek Hawkins, “The Rise of Domestic Extremism in America: Data Shows a Surge in Homegrown Incidents Not Seen in a Quarter-Century,” *Washington Post*, April 12, 2021, <https://www.washingtonpost.com/investigations/interactive/2021/domestic-terrorism-data/>.

<sup>22</sup> Jones, Doxsee, and Harrington, *The Escalating Terrorism Problem in the United States*.

<sup>23</sup> Lance Y. Hunter, Candace E. Griffith, and Thomas Warren, “Internet Connectivity and Domestic Terrorism in Democracies,” *International Journal of Sociology* 50, no. 3 (May 2020): 201–19, <https://doi.org/10.1080/00207659.2020.1757297>.

of some individuals.<sup>24</sup> The internet can also be used as a tool for recruiting new citizens to be part of ideologies or causes that are part of domestic terrorism.<sup>25</sup>

## **2. Solutions for Addressing Domestic Terrorism**

In the United States, efforts to counter domestic terrorism have been frequently and unfairly geared toward the Muslim population, with less emphasis given to the more common homegrown white supremacists who have been found to engage in domestic terrorism activities. Moreover, less media emphasis is usually given to domestic terrorism incidents compared to international terrorism.<sup>26</sup> This emphasis is reflected in the solutions that are geared toward terrorism in the United States, which primarily focuses on international terrorism.

Another solution that has been enacted in order to combat domestic terrorism focuses on the establishment of policing strategies that aim to prevent events that are related to terrorism. Policing strategies entail performing surveillance and conducting intelligence missions in order to detect potential cases of domestic terrorism. Many strategies also rely on community policing, which gives members of the larger community the responsibility to report to the authorities' suspicious behaviors observed from others.<sup>27</sup>

## **3. The Role of Statutes in Addressing Domestic Terrorism**

Statutes are used in the United States to have a more consistent and standardized method of handling specific crimes or offenses. For instance, statutes on international

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<sup>24</sup> James A. Piazza, "Fake News: The Effects of Social Media Disinformation on Domestic Terrorism," *Dynamics of Asymmetric Conflict* 15, no. 1 (2022): 55–77, <https://doi.org/10.1080/17467586.2021.1895263>.

<sup>25</sup> Nuriyeni Kartika Bintarsari and Arif Darmawan, "The Changing Landscape of Terrorism in the United States after 9/11: The Transnational Network of White Supremacist Extremist Movement," in *Navigating Global Society in the Disruptive Era: Proceeding of the First International Conference on Political, Social & Humanities Sciences*, ed. Slamet Rosyadi, Rozasman Hussin, and Thanawat Primoljinda (Central Java, Indonesia: Universitas Jenderal Soedirman Press, 2020), 268–73.

<sup>26</sup> Diana Zulli et al., "Media Coverage of the Unfolding Crisis of Domestic Terrorism in the United States, 1990–2020," *Public Relations Inquiry* 10, no. 3 (2021): 357–75, <https://doi.org/10.1177/2046147X21996015>.

<sup>27</sup> Enshen Li, "Can 'Nudge' Salvage Community Policing against Terrorism?," *Terrorism and Political Violence* 33 (March 2021): 1–21, <https://doi.org/10.1080/09546553.2021.1876035>.



terrorism are often well-defined and specific in scope, making the process for handling international terrorism cases more consistent and standardized.<sup>28</sup> The same specificity and scope present in international terrorism statutes is not present in domestic terrorism and there is no consistent framework in the United States on how domestic terrorism should be handled.<sup>29</sup> Statutes that specifically target how domestic terrorism should be investigated and prosecuted are conspicuously absent in the United States, serving as a hurdle for the legal prosecution of domestic terrorists in the country.<sup>30</sup> For instance, domestic terrorists who have been involved in mass killings cannot be charged with a terrorism offense in the United States, even though a relatively small involvement in foreign terrorism can be charged with terrorism.<sup>31</sup> This legal imbalance in the treatment of domestic and foreign terrorism has been found by political analysts and experts to be unique to the United States.<sup>32</sup>

The lack of statutes that are specifically geared toward domestic terrorism in the United States can be explained by the lack of recognition of right-wing and white supremacist domestic terrorists.<sup>33</sup> Domestic terrorism does not often receive the same level of focus and scrutiny from the authorities compared to international terrorism.<sup>34</sup> Moreover, there is an unequal treatment of white domestic terrorists and Muslim domestic terrorists, with Muslim domestic terrorists often treated as international terrorists even though they have no—or limited—foreign ties.<sup>35</sup>

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<sup>28</sup> Shirin Sinnar, “Separate and Unequal: The Law of ‘Domestic’ and ‘International’ Terrorism,” *Michigan Law Review* 117, no. 7 (January 2021): 1333–1404, <https://doi.org/10.36644/mlr.117.7.separate>.

<sup>29</sup> Michael Molstad, “Our Inner Demons: Prosecuting Domestic Terrorism,” *Boston College Law Review* 61, no. 1 (January 2020): 339–83, <https://lawdigitalcommons.bc.edu/bclr/vol61/iss1/8/>.

<sup>30</sup> Francesca Laguardia, “Considering a Domestic Terrorism Statute and Its Alternatives,” *Northwestern University Law Review* 114, no. 4 (January 2021): 1061–99, <https://scholarlycommons.law.northwestern.edu/nulr/vol114/iss4/4>.

<sup>31</sup> Jesse J. Norris, “When (and Where) Can Right-Wing Terrorists Be Charged with Terrorism?,” *Critical Studies on Terrorism* 13, no. 4 (October 2020): 519–44, <https://doi.org/10.1080/17539153.2020.1810991>.

<sup>32</sup> Norris.

<sup>33</sup> Laguardia, “Considering a Domestic Terrorism Statute and Its Alternatives.”

<sup>34</sup> Sinnar, “Separate and Unequal.”

<sup>35</sup> Sinnar.

Since the January 6, 2021, attack on the U.S. Capitol Building, there have been renewed calls for U.S. lawmakers to enact a domestic terrorism statute. In August of 2019 the head of the FBI Agents Association, Brian O’Hare, released a statement that supported a bipartisan domestic terrorism statute. O’Hare went on to state that FBI Agents and federal prosecutors would be in the best position to fight domestic terrorism when a domestic terrorism statute is in place.<sup>36</sup> However, the next section will focus on the role of civil liberties in *preventing* the creation of statutes that specifically target domestic terrorism in the United States.

#### **4. Civil Liberties and Domestic Terrorism**

Civil liberties play a critical role in the controversy regarding the creation of a domestic terrorism statute in the United States. In the United States, the threat of violence committed by domestic violent extremists is high. Right-wing and left-wing violent extremist groups continue to pose a threat to everyday citizens. After the 9/11 attacks, the U.S. government quickly enacted the PATRIOT Act to arm law enforcement with the tools to detect and prevent terrorism and protect the American people from international terrorism.<sup>37</sup> Several high-profile domestic incidents, which have been labeled by mainstream political analysts and legal experts domestic terrorist incidents, have also taken place within the United States, yet the U.S. government has taken no action to create a domestic terrorism statute that would enable it to investigate and prosecute those responsible for domestic terrorism incidents. This literature review examines peer-reviewed literature, congressional reports, other sources that either support or deny the statements made in the research question, and publications that address the concerns raised in the problem statement.

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<sup>36</sup> Masood Farivar, “Why Domestic Terrorism Is Not Specifically Designated a Crime in US,” Voice of America, February 10, 2021, <https://www.voanews.com/usa/why-domestic-terrorism-not-specifically-designated-crime-us>.

<sup>37</sup> Abdullah Alshrari, “Patriot Act, Section 206: Its Impact on Muslim Populations in the U.S. (with Special Reference to Roving Wiretap Policy),” *Public Policy and Administration Review* 7, no. 1 (2019): 15–21, <https://doi.org/10.15640/ppar.v7n1a3>.

U.S. citizens are guaranteed civil liberty protections under the U.S. Constitution, especially the First and Fourth Amendments. The First Amendment protects the basic freedoms of Americans—of religion, speech, press, and assembly and the right to petition the government. The Fourth Amendment protects citizens from unreasonable search and seizure by the government. Under Federal Bureau of Investigation (FBI) and Department of Homeland Security policy and federal law,

no investigative activity may be based solely on First Amendment activity, or the apparent or actual race, ethnicity, national origin, religion, gender, sexual orientation, or gender identity of the individual or group. The FBI does not investigate, collect, or maintain information on U.S. persons solely for the purpose of monitoring activities protected by the First Amendment or lawful exercise of rights secured by the Constitution of the United States.<sup>38</sup>

These civil liberties can be violated in terms of the practices of counterterrorism through surveillance, policing and racial/religious profiling, and torture during interrogation.<sup>39</sup> Each of these issues is discussed in the following subsections.

## 5. Surveillance

Counterterrorism efforts that involve surveillance have the potential to impinge on the civil liberties of individuals suspected of domestic terrorism. For instance, Alimahomed-Wilson found that surveillance involving the Muslim community is often motivated by racial stereotypes as opposed to actual suspicious behaviors.<sup>40</sup> More specifically, the FBI was found to engage in surveillance activities among the Muslim community based not on criminal suspicions but on behaviors that the bureau deemed unusual. As part of the surveillance strategy, members of the Muslim community have also

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<sup>38</sup> Federal Bureau of Investigation, *Strategic Intelligence Assessment and Data on Domestic Terrorism* (Washington, DC: Federal Bureau of Investigation, 2021), 4, <https://www.fbi.gov/file-repository/fbi-dhs-domestic-terrorism-strategic-report.pdf/view>.

<sup>39</sup> Amos N. Guiora and Chelsea Joliet, “Counter-Terrorism Policies and Challenges to Human Rights and Civil Liberties: A Case Study of the United States of America,” in *International Human Rights and Counter-Terrorism*, ed. Eran Shor and Stephen Hoadley (Singapore: Springer, 2019), 293–322, [https://doi.org/10.1007/978-981-10-4181-5\\_15](https://doi.org/10.1007/978-981-10-4181-5_15).

<sup>40</sup> Sabrina Alimahomed-Wilson, “When the FBI Knocks: Racialized State Surveillance of Muslims,” *Critical Sociology* 45, no. 6 (September 2019): 871–87, <https://doi.org/10.1177/0896920517750742>.

been used as spies against other members, which further encourages negative perceptions about being targeted.<sup>41</sup>

## 6. Profiling

Profiling is another aspect of counterterrorism policies that can impinge on the civil liberties of suspects. For instance, countering violent extremism initiatives, which intend to use the community to police suspected acts of domestic terrorism, often rely on racial profiling to identify individuals who could be involved in terrorism.<sup>42</sup> Gruenewald et al. found that the nationwide Suspicious Activity Reporting Initiative has also been criticized for propagating racial profiling, compromising the civil liberties of minorities and vulnerable communities.<sup>43</sup>

## 7. Torture

Interrogation and torture are other issues that can compromise the civil liberties of individuals because of counterterrorism policies. For instance, counterterrorism efforts in the United States have sometimes been found to resort to torture during interrogations of suspects or persons of interest, particularly in transnational terrorism.<sup>44</sup> However, a study by Conrad indicates that the military is less likely to resort to torture in domestic terrorism cases compared to international terrorism. In instances where torture was used, as Sinnar has found, domestic terrorism perpetrated by a member of the Muslim community is often treated as international terrorism—out of a biased insistence—rather than domestic terrorism, even if no foreign ties can be established.<sup>45</sup>

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<sup>41</sup> Sara Kamali, “Informants, Provocateurs, and Entrapment: Examining the Histories of the FBI’s PATCON and the NYPD’s Muslim Surveillance Program,” *Surveillance & Society* 15, no. 1 (February 2017): 68–78, <https://doi.org/10.24908/ss.v15i1.5254>.

<sup>42</sup> Nicole Nguyen, “‘The Eyes and Ears on Our Frontlines’: Policing without Police to Counter Violent Extremism,” *Surveillance & Society* 17, no. 3/4 (September 2019): 322–37, <https://doi.org/10.24908/ss.v17i3/4.8142>.

<sup>43</sup> Jeff Gruenewald et al., “Suspicious Preoperational Activities and Law Enforcement Interdiction of Terrorist Plots,” *Policing: An International Journal* 42, no. 1 (January 2018): 89–107, <https://doi.org/10.1108/PIJPSM-08-2018-0125>.

<sup>44</sup> Courtenay R. Conrad et al., “Who Tortures the Terrorists? Transnational Terrorism and Military Torture,” *Foreign Policy Analysis* 13, no. 4 (September 2014): 761–86, <https://doi.org/10.1111/fpa.12066>.

<sup>45</sup> Sinnar, “Separate and Unequal.”

In sum, the impingement of civil liberties can be a barrier in the development of domestic terrorism statutes. The impact of potential civil liberties issues needs to be further evaluated to understand the complexity of instituting a domestic terrorism statute in the United States.

#### **D. RESEARCH DESIGN**

The goals of this thesis are threefold. The research study will explore the costs/disadvantages that are associated with *developing* a domestic terrorism statute in the United States, especially as they pertain to First Amendment constitutional rights. Another goal is to explore the *consequences* of a domestic terrorism statute in terms of the civil liberties of Americans. Finally, this research aims to explore the *advantages* of a domestic terrorism statute in the United States, particularly regarding First Amendment constitutional rights.

The study will be a qualitative case study, utilizing historical sources such as government reports and peer-reviewed journal articles to answer the research question. Case study research is characterized by “the use of multiple sources of data in order to examine a bounded phenomenon in its natural context without resorting to research manipulation.”<sup>46</sup> For the current research study, the phenomenon is the institution of a domestic terrorism statute. In addition to government reports and peer-reviewed journal articles, other sources include academic books, legal documents, and news articles.

The format of the proposed research study will be a multiple-case study design, which means that the unit of analysis will be three cases of domestic terrorism in the United States. Multiple cases are studied to determine similarities and differences about a phenomenon, which is focused on the relevance of a domestic terrorism statute.<sup>47</sup> For the current research, these three cases are the Capitol riot, the Charlottesville attack, and the Pittsburgh synagogue incident.

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<sup>46</sup> Bedrettin Yazan, “Three Approaches to Case Study Methods in Education: Yin, Merriam, and Stake,” *Qualitative Report* 20, no. 2 (February 2015): 150, <https://doi.org/10.46743/2160-3715/2015.2102>.

<sup>47</sup> Robert K. Yin, *Case Study Research: Design and Methods*, 4th ed. (Los Angeles: SAGE Publications, 2008).

There will be no actual participants in this proposed study given that all data will come from previously published materials that are publicly available online through government reports, legal documents, news articles, and journal articles. The expected output of this thesis is a deeper understanding of domestic terrorism in the United States, particularly within the context of the institution of statute and its effect on the civil liberties of U.S. citizens.

## **E. CHAPTER OUTLINE**

The first chapter is the introduction. The purpose of this chapter is to provide an overview of the research problem based on the gap in the literature. The research question will be proposed. The problem will be expanded by reviewing extant literature on the nature of domestic terrorism in the United States, solutions that have been made to combat domestic terrorism, the current statutes relevant to domestic terrorism, and civil liberties and domestic terrorism.

The second chapter will present the three case studies of domestic terrorism. In the discussion, specific focus will be given to why these cases are considered domestic terrorism, the challenges that have been encountered in prosecuting the perpetrators, and the potential issues regarding civil liberties that have been encountered during the investigation.

The third chapter will discuss policy options regarding a domestic terrorism statute based on the results of the case studies. Focus will be given to how civil liberties can be protected in domestic terrorism investigations. The chapter will also include a discussion of the key stakeholders in the investigation of domestic terrorism, including the role of legislators, and policy options. The last chapter will present the conclusions of the study. The chapter will also include a plan for implementation, a review of limitations, and directions for future research.

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## II. CASE STUDIES OF DOMESTIC TERRORISM

The purpose of this chapter is to discuss three different cases of domestic political violence in the United States that have been designated by many observers to be cases of domestic terrorism, including: (a) the U.S. Capitol riot, (b) the Charlottesville attack, and the (c) Pittsburgh synagogue incident. In this discussion, specific focus will be given to why these cases are considered examples of domestic terrorism, the challenges that have been encountered in prosecuting the perpetrators of these acts, and the potential issues regarding civil liberties that can be encountered in the institution of developing domestic terrorism statutes. These three case studies will be instrumental in the development of the proposed policies that will be presented about the need for domestic terrorism statutes in the United States.

### A. CAPITOL RIOT

#### 1. Background on the Attack

##### *a. Before the Capitol Riot/Impetus*

There is a debate as to whether the Capitol incident should be called a riot, insurrection, or domestic terrorism, underscoring the lack of unified agreement about the event.<sup>48</sup> For this study, the incident will be referred to as the Capitol riot for consistency. The Capitol riot that occurred on January 6, 2021, has been interpreted as a failed coup attempt by supporters of President Trump to upend and challenge the democratic ideals and processes of the United States.<sup>49</sup> The rioters included different members of far-right extremist formal and informal groups, such as QAnon, Proud Boys, and Oath Keepers.<sup>50</sup>

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<sup>48</sup> William S. Parkin, Colleen E. Mills, and Jeff Gruenewald, “Far-Right Extremism’s Threat to Police Safety and the Organizational Legitimacy of Law Enforcement in the United States,” *Criminology, Criminal Justice, Law & Society* 22, no. 2 (2021): 1–24, <https://ccjls.scholasticahq.com/article/26321-far-right-extremism-s-threat-to-police-safety-and-the-organizational-legitimacy-of-law-enforcement-in-the-united-states>.

<sup>49</sup> Ryan T. Williams, “The Capitol Riot, Racism and the Future of American Democracy,” *American University National Security Law Brief* 11, no. 2 (2021): 38–67, <https://digitalcommons.wcl.american.edu/nslb/vol11/iss2/2>.

<sup>50</sup> Williams.



The goal of the mob that rioted in the Capitol Building was to overturn the results of the presidential election by disrupting the joint session of the Congress that would formalize the win of then-president-elect Joe Biden.

The impetus for the Capitol riot attributed by many to the rhetoric of President Trump in his Twitter account.<sup>51</sup> A few hours before the Capitol riot, President Trump tweeted inflammatory remarks insisting that the results of the elections were fraudulent and that his supporters needed to go to the Capitol in order to protest the election results.

***b. During the Capitol Riot***

Protesters and rioters stormed the Capitol Building. Images have shown that some were vandalizing the office of Speaker of the House Nancy Pelosi and that Adam Johnson, who was eventually charged with entering and remaining in a restricted building or grounds, was carrying her podium inside the Capitol.<sup>52</sup> Other images showed that some of the rioters were destroying windows in order to enter the building, whereas other images showed that many were on the House floor.<sup>53</sup> As a result, the lawmakers who were in in the Capitol Complex were evacuated. The rioters vandalized and destroyed government property for hours.

***c. After the Riot***

The tweets of President Trump that arguably incited the Capitol riot led to him being de-platformed on Twitter.<sup>54</sup> The Capitol riot were also instrumental in the second impeachment of President Trump. In connection during and after the riot, five people died and 138 police officers were injured.<sup>55</sup> Pipe bombs were later discovered within the premises of the Capitol and a plan to kidnap some U.S. Representatives was also

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<sup>51</sup> Jason B. McConnell and James Arvanitakis, “What Is the Harm in Misinformation? Shadows of COVID-19 in Public Discourse Online,” *Global Media Journal Australia* 15, no. 1 (July 2021): 1–22.

<sup>52</sup> Allison G. Knox, “Extended Commentary: The Capitol Insurrection, Emergency Management and Mutual Aid Agreements: What Questions Need to Be Answered?,” *International Social Science Review* 97, no. 1 (2021): 1–10, <https://digitalcommons.northgeorgia.edu/issr/vol97/iss1/19>.

<sup>53</sup> Knox.

<sup>54</sup> McConnell and Arvanitakis, “What Is the Harm in Misinformation?”

<sup>55</sup> McConnell and Arvanitakis.

uncovered.<sup>56</sup> It is also important to include that four police officers who responded to the Capitol riot later committed suicide within the period of seven months. During the assault, Capitol Police Officer Brian Sicknick was assaulted and sprayed with a chemical irritant, and later died.<sup>57</sup> However, the police officer's autopsy revealed that he died from natural causes, a stroke.<sup>58</sup> Security officers within the Capitol Building had to use deadly force when they shot and killed protester Ashli Babbitt as she tried to gain access to a secured area. Two others, identified as Kevin Greeson and Benjamin Phillips, died of heart attacks while at the Capitol Building. A fifth person, identified as Roseanne Boyland, died of acute amphetamine intoxication.<sup>59</sup> Besides these deaths, over 500 persons have been arrested, and hundreds more are expected to be arrested once identified.<sup>60</sup> Those arrested have been charged with crimes ranging from assault, to trespassing, to resisting arrest, to various weapons charges.

The Capitol riot continues to be investigated and analyzed by the media and the government in order to understand the scope and extent of the crimes that were committed that day. A congressional inquiry of the event was convened in order to further investigate the incident. Some of the key findings from the inquiry included evidence supporting Trump's role in attempting to overthrow the results of the election, obstruction of justice,

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<sup>56</sup> Claudia Grisales, "'Planned, Coordinated Attack': Former Capitol Police Chief on the Insurrection," NPR, January 15, 2021, <https://www.npr.org/2021/01/15/957371206/planned-coordinated-attack-former-capitol-police-chief-on-the-insurrection>.

<sup>57</sup> Sarah Lynch and Timothy Reid, "Homicide Investigation Opened into Death of Capitol Police Officer," Reuters, January 8, 2021, <https://www.reuters.com/article/us-usa-election-police-officer-idUSKBN29D2LI>.

<sup>58</sup> Clark McCauley, "Introduction to the Special Issue: Putting the Capitol Breach in Context," *Dynamics of Asymmetric Conflict* 14, no. 2 (May 2021): 94–109, <https://doi.org/10.1080/17467586.2021.1925136>.

<sup>59</sup> Jack Healy, "These Are the 5 People Who Died in the Capitol Riot," *New York Times*, January 11, 2021, <https://www.nytimes.com/2021/01/11/us/who-died-in-capitol-building-attack.html>.

<sup>60</sup> Claire Hymes, Cassidy McDonald, and Eleanor Watson, "More Than 535 Arrested So Far in Capitol Riot Case, While More Than 300 Suspects Remain Unidentified," CBS News, July 16, 2021, <https://www.cbsnews.com/news/capitol-riot-arrests-latest-2021-07-16/>.

and the collusion of some government officials and law enforcers.<sup>61</sup> The results of the investigation led to the second impeachment of President Trump.

## **2. Challenges Encountered during the Investigation**

There are several investigation challenges that were encountered during the Capitol riot. These challenges include the following: (a) inability of law enforcement to use and apply terrorism laws, (b) lack of clear offenses that can be charged to the rioters, (c) the conflict between extremists and law enforcement, (d) misinformation through social media, and the (e) politicization of the Capitol riot. Each of these challenges is discussed in this subsection.

### ***a. Inability to Apply Terrorism Laws***

One challenge that was encountered during the investigation of the Capitol riot was the inability to treat the violence that occurred in the Capitol as a form of domestic terrorism.<sup>62</sup> More specifically, even though many of the acts and violations that were committed during the Capitol riot can be considered forms of domestic terrorism, the perpetrators cannot be charged with domestic terrorism.

### ***b. Lack of Clear Offenses that can be Charged***

Another challenge in the investigation of the Capitol riot was the lack of a clear offense that can be charged to all the rioters because of the variety of possible crimes that have been committed during the riots.<sup>63</sup> As a result, the FBI had to charge many of the perpetrators based on the *underlying* offense that was committed, which broadly include charges such as entering restricted grounds, making interstate threats, disorderly conduct, assault of police officers, conspiracy, and illegal possession of firearms and ammunition.<sup>64</sup>

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<sup>61</sup> Jess Yarmosky and Meghna Chakrabarti, “What Congressional Investigations Are Revealing about the Capitol Insurrection,” WBUR, December 15, 2021, <https://www.wbur.org/onpoint/2021/12/15/insurrection-documents-latest-on-investigating-january-6th>.

<sup>62</sup> Setty, “Capitol Riots.”

<sup>63</sup> Setty.

<sup>64</sup> Setty.

Because domestic terrorism charges were not an option, the list of charges made by the FBI to the participants of the Capitol riot was very broad.

***c. Misinformation through Social Media***

Another challenge in the investigation of the Capitol riot is the expansive role of various platforms of social media in understanding the scope of the incident.<sup>65</sup> Political protests and other organized movements have been catalyzed and amplified via social media, which can also be platforms for misinformation, conspiracy theories, hate speech, and inflammatory rhetoric.<sup>66</sup> The different social medial platforms provide safe space for harmful language, including code words for in-group communication, which can be difficult to investigate.<sup>67</sup> Hence, the scope of the investigation that law enforcement needed to conduct in investigating the Capitol riot was very large, and in some ways uncharted territory.

***d. Tension between Extremists and Law Enforcement***

Another challenge that was encountered during the investigation of the day involves the conflict between the anti-government ideologies of far-right protesters of the Capitol riot and the law enforcement.<sup>68</sup> The conflict between far-right extremists and law enforcement has a long history, but this tension was put in the national spotlight during the Capitol riot.<sup>69</sup> This conflict was exacerbated by the mutual distrust between the protesters and the law enforcement, raising tensions.

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<sup>65</sup> Hitkul et al., “Capitol (Pat)Riots: A Comparative Study of Twitter and Parler,” arXiv, January 18, 2021, <https://doi.org/10.48550/arXiv.2101.06914>.

<sup>66</sup> Hitkul et al.

<sup>67</sup> Tatjana Scheffler, Veronika Solopova, and Mihaela Popa-Wyatt, “The Telegram Chronicles of Online Harm,” *Journal of Open Humanities Data* 7, no. 8 (2021): 1–15, <https://doi.org/10.5334/johd.31>.

<sup>68</sup> Parkin, Mills, and Gruenewald, “Far-Right Extremism’s Threat to Police Safety.”

<sup>69</sup> Parkin, Mills, and Gruenewald.

*e. Politicization of the Capitol Riot*

Another challenge was the politicization of the Capitol riot.<sup>70</sup> Competing news frames have been developed to present the event.<sup>71</sup> For instance, right-wing Fox media personalities such as Laura Ingraham, Sean Hannity, and Tucker Carlson have expressed sentiments that the Capitol rioters were Antifa and not the supporters of President Trump.<sup>72</sup> Mainstream media and legal experts, on the other hand, have generally characterized the Capitol riot as a right-wing insurrection to subvert the democratic process. The politicization of the Capitol riot highlights the challenge of investigating the event without being influenced by political bias.<sup>73</sup>

*f. Civil Liberties Issues*

The two key civil liberties that are relevant to the Capitol riot are the right to assemble peacefully and the freedom of speech. Another challenge is that civil liberties play an important role in understanding the controversies surrounding the Capitol riot and the ensuing investigations that occurred. Both of these civil liberties issues are discussed in this subsection.

(1) Freedom to Protest

Regardless of the politics of the individuals, Americans are legally allowed to hold peaceful assemblies and protests.<sup>74</sup> However, peace is an important component of this First

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<sup>70</sup> Celinet Duran, “Far-Left versus Far-Right Fatal Violence: An Empirical Assessment of the Prevalence of Ideologically Motivated Homicides in the United States,” *Criminology, Criminal Justice, Law & Society* 22, no. 2 (2021): 33–49, <https://ccjls.scholasticahq.com/article/26973-far-left-versus-far-right-fatal-violence-an-empirical-assessment-of-the-prevalence-of-ideologically-motivated-homicides-in-the-united-states>.

<sup>71</sup> Parkin, Mills, and Gruenewald, “Far-Right Extremism’s Threat to Police Safety.”

<sup>72</sup> George Michael, “Lockdowns, Riots, and a Contested Election—Could the 2020 Crises Reinvigorate the US Far Right?,” in *The New Authoritarianism*, ed. Alan Waring, *A Risk Analysis of the Corporate/Radical-Right Axis* (Stuttgart, Germany: Ibidem-Verlag, 2021), 3:347–78.

<sup>73</sup> Duran, “Far-Left versus Far-Right Fatal Violence.”

<sup>74</sup> Grisales, ““Planned, Coordinated Attack.””

Amendment right, which means that even though the freedom for assembly tends to be wide in scope, this right has limitations.<sup>75</sup>

The qualifier of “peaceful” in the right for assembly or protests is sometimes difficult to interpret and implement. However, the behaviors of the protesters in the Capitol riot have been interpreted by legal experts as clearly crossing the line in terms of the benchmark expected from a peaceful assembly or protest.<sup>76</sup> The inability to treat the Capitol riot as domestic terrorism, however, means that the people who were involved the attacks cannot be prosecuted as domestic terrorists.<sup>77</sup>

## (2) Freedom of Speech

Another relevant civil liberty that is central in understanding the implication of the Capitol riot was the right to free speech, which includes the right to express beliefs and opinions no matter how inflammatory and hateful the rhetoric may be.<sup>78</sup> However, as the ruling of the landmark *Schenck v. United States*, 249 U.S. 47, from 1919 indicated, the standard for freedom of speech is qualified by the standard of “clear and present danger.”<sup>79</sup> This ruling means that inflammatory rhetoric can be permissible legally until a point is reached when the said rhetoric can realistically lead to danger, harm, or illegal action.<sup>80</sup>

This distinction was put to the test with the Capitol riot, with many arguing that the incendiary tweets and rhetoric of President Trump were the impetus for the insurrection at the Capitol.<sup>81</sup> Even though the legal consequences of President Trump’s speech are yet

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<sup>75</sup> Grisales.

<sup>76</sup> Grisales.

<sup>77</sup> Setty, “Capitol Riots.”

<sup>78</sup> Dalia M. Hamed, “Trump’s January 6 Address: Hate Speech or Freedom of Speech? A Transdisciplinary Study,” *Journal of Humanities and Applied Social Sciences* (2021): 1–19, <https://doi.org/10.1108/JHASS-03-2021-0055>.

<sup>79</sup> Edward C. Brewer and Chrys Egan, “Clear and Present Danger Standard 100th Anniversary: Examining Donald J. Trump’s ‘Presidential’ Rhetoric as a Clear and Present Danger,” *First Amendment Studies* 55, no. 1 (2021): 44–58, <https://doi.org/10.1080/21689725.2021.1886967>.

<sup>80</sup> Brewer and Egan.

<sup>81</sup> Anthony J. Gaughan, “The Dynamics of Democratic Breakdown: A Case Study of the American Civil War,” *British Journal of American Legal Studies* 11, no. 1 (2022), <https://papers.ssrn.com/abstract=3815115>.

undetermined, some have categorized his language as hate speech, which is still largely protected by the First Amendment.<sup>82</sup> However, the fact that many conservatives and right-wing groups diminish the allegations against President Trump with regard to the incitement of violence that led to the Capitol riot suggest that determining the line between legal inflammatory rhetoric and illegal inflammatory rhetoric remains a challenge.<sup>83</sup> For instance, more than half of the Republican members of the House of Representatives continued to contest the results of the presidential election even after the Capitol riot had occurred.<sup>84</sup>

## **B. CHARLOTTESVILLE ATTACK**

### **1. Background on the Attack**

#### ***a. Before the Charlottesville Attack***

The backdrop of the Charlottesville attack in 2017 includes competing organized rallies by two groups. The Unite the Right rally was organized by a white supremacist, Jason Keller, who was protesting the proposed removal of a Confederate general statue in Charlottesville, Virginia.<sup>85</sup> Because of the publicity surrounding the Unite the Right rally, a counter rally was organized by opponents in order to support the removal of the monument.<sup>86</sup>

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<sup>82</sup> Hamed, “Trump’s January 6 Address.”

<sup>83</sup> Daniel Abankwa, “Populism: Utility of Its Approaches and the Prospects of the Phenomenon’s Resurgence in America,” *Journal of Social and Development Sciences* 12, no. S1 (2021): 36–47, [https://doi.org/10.22610/jsds.v12i1\(S\).3171](https://doi.org/10.22610/jsds.v12i1(S).3171).

<sup>84</sup> Jack M. Balkin, “Rot and Renewal: The 2020 Election in the Cycles of Constitutional Time,” *Northeastern University Law Review* 13, no. 2 (2021): 617–53, [https://nulawreview.org/s/Volume-13\\_Issue-2\\_Balkin.pdf](https://nulawreview.org/s/Volume-13_Issue-2_Balkin.pdf).

<sup>85</sup> Nicholas A. Marricco, “Charlottesville, the First Amendment, the Second Amendment, and a Potential Constitutional Crisis: Can the Government Regulate Armed Protests?,” *Albany Government Law Review Online* 1, no. 12 (2019): 1–25, <https://www.albanygovernmentlawreview.org/article/23764>.

<sup>86</sup> Gregory P. Magarian, “Conflicting Reports: When Gun Rights Threaten Free Speech,” *Law and Contemporary Problems* 83, no. 3 (2020): 169–94, <https://scholarship.law.duke.edu/lcp/vol83/iss3/10/>.

**b. *During the Charlottesville Attack***

The Charlottesville attack that occurred on August 12, 2017, in Virginia was perpetrated by a lone wolf named James Alex Fields Jr. The perpetrator drove his car into the counter-protesters of the Unite the Right rally.<sup>87</sup> The attacks led to the death of one counter-protester and the injury of 33 other people.<sup>88</sup> Two police officers also died as a result of responding to the armed protests and the counterprotests.<sup>89</sup> The perpetrator, who has espoused neo-Nazi and white supremacist beliefs, had driven from Ohio to Virginia to attend the rally.<sup>90</sup>

**c. *After the Incident/Aftermath***

After the attack, the organizer of the Unite the Right rally, Jason Kessler, held a press conference. Counter-protesters were also present in the conference, heckling the speaker about the group's role in the attacks.<sup>91</sup> In February 2018, three of these counter-protesters were found guilty of assaulting Kessler at the news conference; in addition, a counter-protester who spat on Kessler was also charged.

The perpetrator of the Charlottesville attack was convicted of multiple crimes.<sup>92</sup> These crimes included first-degree murder, eight counts of malicious wounding, and hit-and-run. Based on these convictions, James Fields was sentenced to multiple life sentences in prison. To avoid the death penalty, Fields also pled guilty to federal hate crime charges.

The police force of Charlottesville was also heavily criticized based on the results of an independent investigation indicating that they were not prepared to handle the protests.<sup>93</sup> The governor of Virginia, Terry McAuliffe, defended the police force,

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<sup>87</sup> Michael Capek and Duchess Harris, *The Charlottesville Protests* (Minneapolis: Essential Library, 2019).

<sup>88</sup> Capek and Harris.

<sup>89</sup> Kathryn Lafrenz Samuels, "Deliberate Heritage: Difference and Disagreement after Charlottesville," *Public Historian* 41, no. 1 (2019): 121–32, <https://doi.org/10.1525/tph.2019.41.1.121>.

<sup>90</sup> Samuels.

<sup>91</sup> Capek and Harris, *The Charlottesville Protests*.

<sup>92</sup> Capek and Harris.

<sup>93</sup> Magarian, "Conflicting Reports."



reasoning that many of the protesters were heavily armed, which meant that the police force was no match to the crowd. The protesters were found to be carrying semi-automatic rifles, which was perceived to overpower the strength of the state police to control the protests and the counter-protesters.

## **2. Challenges Encountered during the Investigation**

Several challenges emerged during the investigation of the Charlottesville attack. Examples of these challenges include the difficulty in using domestic terrorism as an offense, extensiveness of information warfare, and the lack of cooperation of the state police to provide documents and participate in interviews during the investigation. Each of these challenges is discussed in this subsection.

### ***a. Difficulty in Using Domestic Terrorism as a Formal Charge or Offense***

One challenge encountered during the investigation of the Charlottesville attack was the inability to apply domestic terrorism laws to charge and prosecute mass killings.<sup>94</sup> There are currently no mechanisms at the federal level to charge mass killings as domestic terrorists. Some have argued that violence perpetrated by white supremacists is often cultivated in the online environment, which is something that should be targeted by the authorities depending on the level of threat posed to the public.<sup>95</sup>

Within the context of the Charlottesville attack, even though the term domestic terrorism has been used by political commentators and some researchers to describe the incident, the attacks do not legally constitute terrorism in the current laws of the United States.<sup>96</sup> More specifically, the legal definition of terrorism does not fit with what occurred during the Charlottesville attack.<sup>97</sup>

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<sup>94</sup> Corynn Wilson, “Domestic Terrorism Should Be a Crime: Fighting White Supremacist Violence Like Congress Fought,” *Houston Law Review* 58, no. 3 (2021): 749–76, <https://houstonlawreview.org/article/19365>.

<sup>95</sup> Wilson.

<sup>96</sup> Nathan Carpenter, “The Ad Hoc Federal Crime of Terrorism: Why Congress Needs to Amend the Statute to Adequately Address Domestic Extremism,” *St. John’s Law Review* 92, no. 2 (Summer 2018): 393–418, <https://scholarship.law.stjohns.edu/lawreview/vol92/iss2/8/>.

<sup>97</sup> Carpenter.

***b. Extensiveness of Information Warfare***

Another challenge in the investigation of the Charlottesville incident was the scope of the information warfare that was used to disseminate propaganda, recruit more members, and terrorize the community.<sup>98</sup> This extensiveness of scope and influence has been described as “immersive terrorism,” which characterized the strength of the Unite the Right during the Charlottesville attack.<sup>99</sup> This means that a complex trail needed to be followed in order to understand the scope of the attacks, including the events that precipitated the attack.

The emergence of various social media platforms has facilitated the shift from how protests are developed and publicized to gain traction with the public.<sup>100</sup> More specifically, the traditional media’s influence has diminished, and it has been reduced to a complementary component to the influence of social media in driving protests. Traditional media and social media now complement each other in defining a protest movement.<sup>101</sup>

This was exemplified in the Charlottesville attack. For example, traditional media coverage played a role in amplifying the Unite the Right group and their protests, which contributed to the emergence of counterprotests.<sup>102</sup> Social media, on the other hand, was responsible for directly disseminating propaganda and ensuring that the messages of each camp remained in the public consciousness.

***c. Lack of Cooperation of the State Police to Provide Documents and Participate in Interviews during the Investigation***

Another challenge was the lack of cooperation of the state police to provide documents and participate in interviews during the investigation.<sup>103</sup> However, the results

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<sup>98</sup> Blout and Burkart, “White Supremacist Terrorism in Charlottesville.”

<sup>99</sup> Blout and Burkart, 1.

<sup>100</sup> Amani Ismail, Gayane Torosyan, and Melissa Tully, “Social Media, Legacy Media and Gatekeeping: The Protest Paradigm in News of Ferguson and Charlottesville,” *Communication Review* 22, no. 3 (2019): 169–95, <https://doi.org/10.1080/10714421.2019.1651153>.

<sup>101</sup> Blout and Burkart, “White Supremacist Terrorism in Charlottesville.”

<sup>102</sup> Blout and Burkart.

<sup>103</sup> Blout and Burkart.

of an independent report indicated that the local police were negligent in controlling the chaos that ensued during the Charlottesville attack.<sup>104</sup> The lack of preparedness of the police to handle the Charlottesville rally complicates the scope of the culpability of the Charlottesville attack.

**d. Lack of Accountability**

Another challenge was making the police accountable for the perceived negligence of some in protecting the people involved in the Charlottesville protest and counterprotests. Some of these allegations against the police include poor planning, the failure to quickly declare the assembly unlawful, and protection of white supremacists.<sup>105</sup> Despite these failures, some have also argued that the police deserve credit for having no firearms discharged and having no damage to the city of Charlottesville.<sup>106</sup>

**e. Civil Liberties Issues**

The Charlottesville attack pose several issues related to civil liberties. These civil liberties include the right for protests—even when armed—and free speech.

**(1) Right for Armed Protests**

One relevant civil liberty issue within the context of the Charlottesville attack was the regulation of armed protests, or the use of firearms during assemblies.<sup>107</sup> It has been argued that the right to bear arms and the right for peaceful assembly collide through the First and Second Amendments.<sup>108</sup> The coordination of these two U.S. constitutional amendment rights is delicate and difficult to balance in order to ensure that freedoms are

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<sup>104</sup> Blout and Burkart.

<sup>105</sup> David A. Graham, “Could Police Have Prevented Bloodshed in Charlottesville?,” *Atlantic*, August 14, 2017, <https://www.theatlantic.com/politics/archive/2017/08/could-the-police-have-prevented-bloodshed-in-charlottesville/536775/>.

<sup>106</sup> Graham.

<sup>107</sup> Marricco, “Can the Government Regulate Armed Protests?”

<sup>108</sup> David M. Shapiro, “Guns, Speech, Charlottesville: The Semiotics of Semiautomatics,” *Georgetown Law Journal Online* 106 (Fall 2017): 1–6, <https://www.law.georgetown.edu/georgetown-law-journal/glj-online/106-online/commentary-guns-speech-charlottesville/>.

being practiced without compromising peace and order.<sup>109</sup> In the state of Virginia, the open carrying of firearms is allowed, which meant that the Unite the Right protesters were encouraged by each other to carry firearms.<sup>110</sup>

The issue of armed protests is qualified by the need to maintain peace and having no explicit intent to instigate harm toward other people, which means that the legal definition of threat needs to be defined.<sup>111</sup> The Supreme Court has defined threat based on the following:

those statements where the speaker means to communicate serious expression of intent to commit act of unlawful violence to a particular individual or group of individuals. . . . The speaker need not actually intend to carry out the threat. Rather, a prohibition on true threats “protects individuals from fear of violence” and “from the disruption that fear engenders,” in addition to protecting people “from the possibility that the threatened violence will occur.”<sup>112</sup>

Based on these definitions of true threat, it was argued that an armed protester who engages in inflammatory remarks can be regulated.<sup>113</sup>

The regulation of armed protests, however, remains contentious. Proponents of the freedom for armed protests typically cite First and Second Amendment rights, arguing that these rights *complement* each other.<sup>114</sup> More specifically, supporters of armed protests argued that firearms allow protesters to protect their free speech during rallies. However, there has also been growing support for the regulation of armed protests since the Charlottesville attack, wherein protesters and counter-protesters were armed, in that supervising the crowd became extremely difficult for the police.<sup>115</sup> In addition to

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<sup>109</sup> Shapiro.

<sup>110</sup> Katlyn E. DeBoer, “Clash of the First and Second Amendments: Proposed Regulation of Armed Protests,” *Hastings Constitutional Law Quarterly* 45, no. 2 (2018): 333–72, [https://repository.uchastings.edu/hastings\\_constitutional\\_law\\_quarterly/vol45/iss2/5](https://repository.uchastings.edu/hastings_constitutional_law_quarterly/vol45/iss2/5).

<sup>111</sup> Marricco, “Can the Government Regulate Armed Protests?”

<sup>112</sup> *Virginia v. Black*, 538 U.S. 343 (2003).

<sup>113</sup> Marricco, “Can the Government Regulate Armed Protests?”

<sup>114</sup> Magarian, “Conflicting Reports.”

<sup>115</sup> DeBoer, “Clash of the First and Second Amendments.”

intensification of the possibility of enhancing danger and causing harm, the argument for the regulation of armed protests lies in the potential use of firearms to impede free speech.<sup>116</sup>

## (2) Free Speech

Another relevant civil liberty issue that can be examined within the context of the Charlottesville attack was free speech, which also protects hate speech and other inflammatory rhetoric.<sup>117</sup> Even though these types of hateful and inflammatory speech are generally protected by the First Amendment, the standard of “clear and present danger” indicates limitations to these rights.<sup>118</sup> This standard means that inflammatory rhetoric can be permissible legally until a point is reached when the said rhetoric can realistically lead to danger, harm, or illegal action.<sup>119</sup>

Within the context of the Charlottesville attack, the dichotomy of free speech within First Amendment rights was demonstrated.<sup>120</sup> The Charlottesville attack demonstrates the pervasiveness and absoluteness of free speech. However, the incident also demonstrates the precariousness of the scope of freedom of speech within First Amendment rights.

## C. PITTSBURGH SYNAGOGUE INCIDENT

### 1. Background on the Attack

#### a. *Before the Attack*

Mass shootings in places of worship have become more common in recent years.<sup>121</sup> The 2018 Pittsburgh synagogue incident, also referred to as the Tree of Life synagogue

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<sup>116</sup> Magarian, “Conflicting Reports.”

<sup>117</sup> Magarian.

<sup>118</sup> Brewer and Egan, “Clear and Present Danger.”

<sup>119</sup> Brewer and Egan.

<sup>120</sup> Christopher Ross, “The Alt-Right, the Christian Right, and Implications on Free Speech,” *Rutgers Journal of Law and Religion* 20 (2019): 47–98, <https://lawandreligion.com/volume-20>.

<sup>121</sup> Leila Nadya Sadat and Madaline George, “Gun Violence and Human Rights,” *Washington University Journal of Law & Policy* 60, no. 1 (2019): 1–90, [https://openscholarship.wustl.edu/law\\_journal\\_law\\_policy/vol60/iss1/7](https://openscholarship.wustl.edu/law_journal_law_policy/vol60/iss1/7).

attack, was a mass shooting that led to the death of 11 people and the injury of seven people.<sup>122</sup> The motivation of the perpetrator of the Pittsburgh synagogue incident was based on anti-immigrant and anti-Semitic sentiments; the shooter promulgated hate speech about how Jewish immigrants have been responsible for killing Americans. This 2018 mass shooting occurred during a time period when a spike of anti-Semitic speeches and rhetoric had been recorded, particularly in various social media platforms such as Twitter and Facebook.<sup>123</sup>

The sharp rise of anti-Semitic rhetoric in the period of 2018 was associated with the 2018 U.S. midterm elections, with the internet serving as a huge national platform for many right-wing extremists to spread hate speech at a wider scope.<sup>124</sup> Moreover, vandalism that targeted Jewish gravestones and properties had increased in some parts of the country and hate speech in universities had also become more common around this time period.

Locally, the Unite the Right rally in Pittsburgh, Pennsylvania, which was heavily publicized in the media starting in 2017, involved many protesters who displayed Nazi symbols and other explicitly racist and anti-Semitic symbols in their rallies and protests.<sup>125</sup> Conspiracy theories about the Jewish community had also proliferated online in various social media platforms, targeting different wealthy and popular members of the Jewish community.

***b. During the Attack***

The shooter was Robert Gregory Bowers. On the day of the shooting, three religious services were being conducted in the morning in the Tree of Life synagogue, with three

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<sup>122</sup> Michał Bilewicz and Wiktor Soral, "Hate Speech Epidemic: The Dynamic Effects of Derogatory Language on Intergroup Relations and Political Radicalization," *Political Psychology* 41, no. S1 (2020): 3–33, <https://doi.org/10.1111/pops.12670>.

<sup>123</sup> Bilewicz and Soral.

<sup>124</sup> Bilewicz and Soral.

<sup>125</sup> Bilewicz and Soral.

different congregations performing services simultaneously.<sup>126</sup> Armed with a semi-automatic rifle, the gunman entered the building during these services and opened fire, continuing for about 20 minutes.<sup>127</sup> The first two people shot were brothers, Cecil and David Rosenthal.<sup>128</sup> Despite the sustained firing of the gunman, there were people inside the building who were unaware of what was happening.

Eventually, the police received emergency calls at around 9:45 a.m. from the people inside the building. Other people who were shot included:

- Melvin Wax—leader of the New Light Services. He was immediately shot when the shooter found him hiding in a closet.
- Richard Gottfried and Daniel Stein—two members of New Light. Both were shot in the basement kitchen.
- Jerry Rabinowitz—a physician who was shot after checking in where the gunshots were coming from.<sup>129</sup>

The perpetrator killed seven more and wounded one in an upstairs chapel of the Tree of Life building.

When the police arrived at the Tree of Life building, reports indicated that the shooter was repeatedly shouting: “All Jews must die!”<sup>130</sup> The shooter fired at the police with the intent of departing the building, but because the police fired back, the gunman could not leave and was trapped inside the building. About half an hour after the police had arrived, some police entered the building and wounded the shooter. The shooter wounded

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<sup>126</sup> Reid McIlroy-Young and Ashton Anderson, “From ‘Welcome New Gabbers’ to the Pittsburgh Synagogue Shooting: The Evolution of Gab,” *Proceedings of the International AAAI Conference on Web and Social Media* 13, no. 1 (2019): 651–54, <https://ojs.aaai.org/index.php/ICWSM/article/view/3264>.

<sup>127</sup> McIlroy-Young and Anderson.

<sup>128</sup> David Jones, “Naming the Tree of Life,” *Comparative and Continental Philosophy* 10, no. 3 (2018): 201–202, <https://doi.org/10.1080/17570638.2018.1552143>.

<sup>129</sup> Jones.

<sup>130</sup> McIlroy-Young and Anderson, “The Evolution of Gab.”

two officers and two members of the SWAT teams, wherein one was critically wounded. After being shot multiple times, the shooter eventually surrendered to the police.

*c. After the Attack/Aftermath*

The shooter was charged with 29 counts of federal crimes by the U.S. Department of Justice.<sup>131</sup> He was indicted on 44 counts from various charges, which included hate crimes, obstruction of exercise of religious beliefs resulting in death, use of firearms to commit violence, and use of firearms to commit murder. The results of the trials remain currently pending because of the COVID-19 pandemic, but the prosecution is aiming for the death penalty.

Reactions in the United States have been empathetic of the Jewish community and the victims of the synagogue shooting.<sup>132</sup> However, some reactions were politicized: key individuals such as Cecilia Wang of the American Civil Liberties Union blamed Donald Trump's rhetoric for the spike in anti-Semitism in America.<sup>133</sup> When Trump visited the Tree of Life synagogue, there were protests consisting mainly of members of the Jewish community about Trump's rhetoric.

**2. Challenges Encountered during the Investigation**

In the investigation of the Pittsburgh synagogue incident, several challenges were encountered during the investigation and prosecution process. These challenges involved the use of social media as a platform for hate speech and incendiary rhetoric, mental illness or insanity defense of the perpetrator of the mass shooting, and the radicalization of lone wolves to commit domestic terrorism. These different challenges are discussed in the following subsections.

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<sup>131</sup> McIlroy-Young and Anderson.

<sup>132</sup> Brock Bahler, "The Tree of Life: Wisdom Reflected in the Face of Domestic Terror," *Philosophy in the Contemporary World* 25, no. 1 (Spring 2019): 107–20, <https://doi.org/10.5840/pcw20192519>.

<sup>133</sup> Bahler.



**a. Social Media as a Platform of Hate Speech**

Social media has become a powerful tool for activism, regardless of political leanings.<sup>134</sup> Moreover, social media has also become a powerful tool for the widespread and accelerated dissemination of hate speech.<sup>135</sup> One challenge in the investigation of the Pittsburgh synagogue incident was monitoring social media as a platform for the propagation of hate.<sup>136</sup> Before Bowers committed the shootings at a Pittsburgh synagogue, he had an account on the social media platform Gab where he spoke about his manifesto and hatred of the Jewish people.<sup>137</sup>

**b. Mental Illness Defense**

Another challenge encountered in the investigation of the Pittsburgh synagogue incident was the defense of mental illness or insanity.<sup>138</sup> The defense team of Bowers intended to use insanity as their defense for the synagogue shooting. There is some empirical evidence linking mental illness and mass shooting.<sup>139</sup> Even though not accounted for in many instances of mass shooting, these perpetrators often have diagnosed or undiagnosed mental illnesses. However, it is also important to note that the impetus for most individuals who threaten or perpetrate mass violence is not through psychiatric symptoms.<sup>140</sup>

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<sup>134</sup> Deen Freelon, Alice Marwick, and Daniel Kreiss, “False Equivalencies: Online Activism from Left to Right,” *Science* 369, no. 6508 (2020): 1197–1201, <https://doi.org/10.1126/science.abb2428>.

<sup>135</sup> Binny Mathew et al., “Spread of Hate Speech in Online Social Media,” in *Proceedings of the 10th ACM Conference on Web Science* (New York: Association for Computing Machinery, 2019), 173–82, <https://doi.org/10.1145/3292522.3326034>.

<sup>136</sup> Mathew et al.

<sup>137</sup> Mathew et al.

<sup>138</sup> Michael H. Becker, “When Extremists Become Violent: Examining the Association between Social Control, Social Learning, and Engagement in Violent Extremism,” *Studies in Conflict & Terrorism* 44, no. 12 (2021): 1104–24, <https://doi.org/10.1080/1057610X.2019.1626093>.

<sup>139</sup> Adam Lankford and Rebecca G. Cowan, “Has the Role of Mental Health Problems in Mass Shootings Been Significantly Underestimated?,” *Journal of Threat Assessment and Management* 7, no. 3–4 (2020): 135–56, <https://doi.org/10.1037/tam0000151>.

<sup>140</sup> Amy Barnhorst and John S. Rozel, “Evaluating Threats of Mass Shootings in the Psychiatric Setting,” *International Review of Psychiatry* 33, no. 7 (2021): 607–16, <https://doi.org/10.1080/09540261.2021.1947784>.

**c. Lone Wolves**

The online radicalization of individual white male extremists, also popularly known as lone wolves, has become more difficult to monitor and trace in the United States and in other parts of the world.<sup>141</sup> Because of the vast arena of social media, monitoring suspicious behaviors has become more difficult for law enforcement. Social media and message board platforms such as 4chan, 8chan, and Gab have become popular in disseminating and propagating hate speech. For instance, the Pittsburgh shooter posted his manifesto in Gab before the shooting, which received more than a million views after it was reported in the media.<sup>142</sup> The shooter was also not previously known to law enforcement because of his lack of association with formal terrorist groups.<sup>143</sup>

**d. Civil Liberties Issues**

The Pittsburgh synagogue incident posed various issues relating to civil liberties, including the freedom of speech and the freedom of religion.

(1) Freedom of Speech

One civil liberty issue that is particularly relevant in the Pittsburgh synagogue incident hinges on freedom of speech, specifically the proliferation of conspiracy theories and the easy dissemination of hate speech, which could lead to violence and disorder.<sup>144</sup> Through misinformation and disinformation, including conspiracy theories, democratic structures and ideals can be compromised.<sup>145</sup> For instance, the Pittsburgh shooter was

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<sup>141</sup> Sonia Fizek and Anne Dippel, “Gamification of Terror—Power Games as Liminal Spaces,” in *Games and Ethics: Theoretical and Empirical Approaches to Ethical Questions in Digital Game Cultures*, ed. Maike Groen et al. (Wiesbaden, Germany: Springer Fachmedien, 2020), 77–94, [https://doi.org/10.1007/978-3-658-28175-5\\_6](https://doi.org/10.1007/978-3-658-28175-5_6).

<sup>142</sup> Richard Rogers, “Deplatforming: Following Extreme Internet Celebrities to Telegram and Alternative Social Media,” *European Journal of Communication* 35, no. 3 (2020): 213–29, <https://doi.org/10.1177/0267323120922066>.

<sup>143</sup> Becker, “When Extremists Become Violent.”

<sup>144</sup> Mathew et al., “Spread of Hate Speech in Online Social Media.”

<sup>145</sup> Raul Rios, *Why Misery Loves Company: The Rise of Conspiracy Theories and Violent Extremism*, Policy Brief, Issue 2020/07 (Brussels: Institute for European Studies, 2020), <https://brussels-school.be/sites/default/files/IES-Policy-Brief-Raul-Rios.pdf>.

arguably radicalized to terrorize the Tree of House synagogue by hate speech from the internet.<sup>146</sup> Hate speech that incites violence is not protected by the First Amendment; however, the line between hate speech and hate speech that incites violence remains challenging to delineate with more specificity.<sup>147</sup>

Social media and the internet at large provide a powerful tool for both the left and the right to engage in activism and energize their respective constituents.<sup>148</sup> The deplatforming of individuals who have engaged in hate speech or highly inflammatory rhetoric has been contentious within the specific context of First Amendment rights.<sup>149</sup> The argument against this practice is that private corporations are given significant power to possibly censor speech that does not conform to their own political beliefs or interests.<sup>150</sup> Because this practice remains contentious and politicized, the issue of First Amendment rights is likely to remain relevant.<sup>151</sup>

## (2) Freedom of Religion

Within the specific context of the Pittsburgh synagogue incident, freedom of religion is particularly relevant because the victims were targeted based on their faith.<sup>152</sup> The congruence of freedom of speech and freedom of religion is sometimes incompatible because incendiary rhetoric can lead to the infringement of a group's freedom to practice religion.<sup>153</sup> This demonstrates that even though both freedom of speech and freedom of

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<sup>146</sup> Jerome A. Barron, "Internet Access, Hate Speech and the First Amendment," *First Amendment Law Review* 18, no. 1 (2019): 1–24, <https://ssrn.com/abstract=3726160>.

<sup>147</sup> Michael Rectenwald, "Fishing for the First Amendment," *Academic Questions* 33, no. 3 (September 2020): 506–10, <https://doi.org/10.1007/s12129-020-09894-7>.

<sup>148</sup> Freelon, Marwick, and Kreiss, "False Equivalencies."

<sup>149</sup> Rogers, "Deplatforming."

<sup>150</sup> Rogers.

<sup>151</sup> Rogers.

<sup>152</sup> Bilewicz and Soral, "Hate Speech Epidemic."

<sup>153</sup> Peter Prove, "Antisemitism, Definitions, and Future Cooperation," *Ecumenical Review* 71, no. 5 (2019): 665–73, <https://doi.org/10.1111/erev.12471>.

religion are protected, their legality is often stretched in order to accommodate some of the negative repercussions of these rights, such as violence.<sup>154</sup>

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<sup>154</sup> Ross, “The Alt-Right, the Christian Right, and Implications on Free Speech.”

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### III. POLICY OPTIONS

This chapter will evaluate several policy options for the implementation of a domestic terrorism statute based on the results of the case studies. Focus will be given on how pertinent civil liberties can be protected in domestic terrorism investigations. The chapter will also include a discussion of the key stakeholders in the investigation of domestic terrorism, including the role of legislators in the creation of a comprehensive domestic terrorism statute and the possible role of state and federal governments.

One of the main barriers for the creation of a comprehensive domestic terrorism statute is the argument that citizens' civil liberties are likely to be violated. In this section, the different civil liberties that may be infringed because of domestic terrorism statutes, will be discussed. The section will also include a discussion of the policies that can be developed to protect the civil liberties of citizens during domestic terrorism investigations.

#### A. CIVIL LIBERTIES THAT MIGHT BE VIOLATED WHEN INVESTIGATING DOMESTIC TERRORISM

In this subsection, several civil liberties that are relevant to domestic terrorism are discussed, including freedom of speech/expression, freedom of religion, and freedom of assembly.

##### 1. Freedom of Speech/Expression

Freedom of speech and the prevention of domestic terrorism are often taken as direct opposites of each other.<sup>155</sup> There is a persistent perception that fighting domestic terrorism would require some violation of citizens' civil liberties and that such domestic terrorism investigations impinge on First Amendment rights. Regulating free speech on the internet, particularly platforms that provide space for hate speech, remains a contentious

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<sup>155</sup> Lasse Skjoldager Eskildsen and Christian Bjørnskov, "Does Freedom of Expression Cause Less Terrorism?," *Political Studies* 70, no. 1 (2022): 131–52, <https://doi.org/10.1177/0032321720950223>.

issue that affects both domestic terrorism and free speech.<sup>156</sup> Some argue that regulating terrorist-related free speech on the internet is dangerous because it sets a precedent for the violation of any free speech.<sup>157</sup> However, others argue that terrorist-related speech is not covered by the First Amendment and that private companies can censor their own platforms.<sup>158</sup>

As in the cases of the Pittsburgh synagogue incident, the Charlottesville attack, and the Capitol riot, freedom of speech and expression are central civil liberties to consider.<sup>159</sup> All three cases included the use of social media to disseminate information, misinformation, and disinformation. For example, one challenge in the investigation of the Pittsburgh synagogue incident was monitoring social media as a platform for the propagation of hate.<sup>160</sup> In the case of the Capitol riot, social media also played a role in propagating the rhetoric that may have been instrumental in convincing right-wing supporters of Donald Trump to besiege the Capitol. Hence, the rights of people to freely express themselves through social media could be infringed without a clear definition of the limits of free speech.

## 2. Freedom of Religion

Freedom of religion is another civil liberty that can be violated as a result of domestic terrorism investigations or statutes. Many states have adopted policies that monitor clerics who were born outside the United States and monitor the sermon of religious institutions.<sup>161</sup> The justification for these surveillance and monitoring practices

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<sup>156</sup> Eliza Bechtold, “Terrorism, the Internet, and the Threat to Freedom of Expression: The Regulation of Digital Intermediaries in Europe and the United States,” *Journal of Media Law* 12, no. 1 (2020): 13–46, <https://doi.org/10.1080/17577632.2020.1760474>.

<sup>157</sup> Bechtold.

<sup>158</sup> David Lowe, “Far-Right Extremism: Is It Legitimate Freedom of Expression, Hate Crime, or Terrorism?,” *Terrorism and Political Violence* (2020): 1–21, <https://doi.org/10.1080/09546553.2020.1789111>.

<sup>159</sup> McIlroy-Young and Anderson, “The Evolution of Gab”; Blout and Burkart, “White Supremacist Terrorism in Charlottesville”; Grisales, “Planned, Coordinated Attack.”

<sup>160</sup> Mathew et al., “Spread of Hate Speech in Online Social Media.”

<sup>161</sup> Peter S. Henne, “Government Interference in Religious Institutions and Terrorism,” *Religion, State and Society* 47, no. 1 (2019): 67–86, <https://doi.org/10.1080/09637494.2018.1533691>.

was attributed to the need to limit religious-based strife and rhetoric, which could foster radicalization and terrorism.

Islam is the religion that is particularly impacted by domestic terrorism prevention and investigative practices in the United States, ranging from invasive surveillance, profiling, and harassment.<sup>162</sup> These practices have been argued as fundamentally violating the rights of many Muslims in the United States. The tendency of law enforcement agencies to focus on potential domestic terrorists who identify as Muslim intensifies the propagation of racial and religious discrimination.<sup>163</sup>

### **3. Freedom of Assembly**

The main issue regarding freedom of assembly is that there is continued debate on the interpretation of this civil liberty in terms of the intersectionality of right to protest peacefully.

The freedom to engage in peaceful protests is growing more contentious in the United States. Protests have become polarizing even though the freedom of assembly is still a protected right under the First Amendment; however, there are opponents who do not favor protests and primarily see these actions as destructive and violent.<sup>164</sup> In contrast, there are many who view protests as a fundamental right that should be exercised without harassment.

In the case of the Capitol riot, arguably the most relevant civil liberty that has been brought up during the discussion, analysis, and investigation of the event is the freedom of assembly. People who were part of the Capitol riot justified themselves using the civil liberty of freedom of assembly. Peaceful protests are protected by the Constitution; however, “peaceful protests” within the rights for assembly can be contentious to both

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<sup>162</sup> Kazeem Oluwaseun Dauda, “Islamophobia and Religious Intolerance: Threats to Global Peace and Harmonious Co-Existence,” *Qudus International Journal of Islamic Studies* 8, no. 2 (2020): 257–92, <https://doi.org/10.21043/qjjis.v8i2.6811>.

<sup>163</sup> Laguardia, “Considering a Domestic Terrorism Statute and Its Alternatives.”

<sup>164</sup> Amanda Murdie and Carolin Purser, “How Protest Affects Opinions of Peaceful Demonstration and Expression Rights,” *Journal of Human Rights* 16, no. 3 (2017): 351–69, <https://doi.org/10.1080/14754835.2016.1260441>.



interpret and implement.<sup>165</sup> Many have argued that the violence of the protesters in the Capitol riot clearly crossed the line in terms of the benchmark expected from a peaceful assembly or protest.<sup>166</sup> The inability to treat the Capitol riot as domestic terrorism, however, means that the people who were involved the attacks cannot be prosecuted as domestic terrorists.<sup>167</sup> The case of the Capitol riot exemplifies the possibility of violating the civil liberty for freedom of assembly when there are no clear guidelines about the limits of this right.

## **B. POLICIES THAT COULD BE DEVELOPED TO PROTECT CIVIL LIBERTIES DURING INVESTIGATIONS**

Counterterrorism laws in the United States are primarily expansions of existing laws, highlighting the continued absence of a comprehensive legislation that takes into consideration the nuances and developments of contemporary cases involving domestic terrorism.<sup>168</sup> Several policies have been proposed by experts and scholars that specifically address the various civil liberties that may be threatened by a domestic terrorism statute, including monitoring and investigation.

### **1. Clearer Definition of Hate Speech**

One important proposal that can be explored is the strengthening of state and federal legislatures in providing a clearer definition of hate speech.<sup>169</sup> Hate speech is often protected within the broader civil liberty of free speech. However, hate speech has limits, which can be contentious when interpreted to justify incidents that have led to violence.

In the case of the Capitol riot, the incendiary tweets and rhetoric of President Trump were arguably an impetus for the violence at the Capitol.<sup>170</sup> However, this type of speech

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<sup>165</sup> Grisales, “Planned, Coordinated Attack.”

<sup>166</sup> Grisales.

<sup>167</sup> Grisales.

<sup>168</sup> Haikun Huang, “Counter-Terrorism Offences: A Comparison of the Australian and US Approaches,” *Burgmann Journal*, no. 7 (2018): 39–56, <https://studentjournals.anu.edu.au/index.php/burgmann/article/view/421>.

<sup>169</sup> Lowe, “Far-Right Extremism.”

<sup>170</sup> Gaughan, “The Dynamics of Democratic Breakdown.”

is open to interpretation and cannot easily be categorized. A more specific provision regarding the limits of free speech within the context of a domestic terrorism statute can be instrumental in both protecting civil liberties and protecting the public from possible domestic terrorism, with some scholars and analysts proposing the expansion of the criminalization of hate speech in relation to domestic terrorism.<sup>171</sup>

## **2. Improved Accounting and Accountability**

Another policy involving domestic terrorism is improved accounting and accountability.<sup>172</sup> There is currently a lack of data and accounting of domestic terrorism cases in the United States. A domestic terrorism statute—or even a change in policy—could rectify this problem, which would facilitate better accounting of the cases of domestic terrorism in the country.<sup>173</sup> As noted above, in the cases of the Capitol riot, the Pittsburgh synagogue incident, and the Charlottesville attack, none of the incidents were officially considered domestic terrorism.

## **3. Self-regulation of Private Companies**

Another policy that can be explored is the legality of self-regulation of private companies in monitoring and censoring hate speech that could potentially incite violence and terrorism. The role of private companies, particularly social media platforms such as Twitter and Facebook, had been proposed by some scholars and legal analysts to be strengthened in terms of regulating hate speech.<sup>174</sup> These private companies have the legal right to regulate content such as hate speech because they are not public organizations. Even though these policies are already in place, a domestic terrorism statute can provide specific provisions that address the role and limits of social media within the context of monitoring and preventing domestic terrorism in the United States.

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<sup>171</sup> Gaughan.

<sup>172</sup> Nichole Anderson, “Exploring the Viability of a Federal Domestic Terrorism Statute,” *Gonzaga Law Review* 55, no. 3 (2020): 475–506, <https://gonzagalawreview.com/article/12288-exploring-the-viability-of-a-federal-domestic-terrorism-statute>.

<sup>173</sup> Anderson.

<sup>174</sup> Lowe, “Far-Right Extremism.”

## C. AUTHORITIES (STAKEHOLDERS)

This section focuses on the different actors and stakeholders who have the authority to develop and implement a domestic terrorism statute that not only protects citizens from violence but also preserves civil liberties.

### 1. Key Actors Involved in Domestic Terrorism Investigations

Law enforcement agencies such as the Department of Homeland Security play an important role in the prevention and investigation of incidents that may be interpreted as domestic terrorism in the United States.<sup>175</sup> However, the absence of a domestic terrorism statute gives law enforcement different ways to interpret and implement existing laws on terrorism. Instead of having a more clearcut way of implementing laws involving domestic terrorism, law enforcement agencies have the freedom to determine the direction of an investigation, which has been found to be different when handling international terrorism.<sup>176</sup>

### 2. Key Actors Involved in the Laws That Protect the Country from Domestic Terrorism

Some scholars and legal experts proposed that individual states could play an important role in the development and implementation of a comprehensive domestic terrorism statute that does not impinge on the civil liberties of citizens by being more specific on the different ways people can incite or facilitate domestic terrorism. At the state level, general laws on terrorism are based on international standards, which may not always be applicable to domestic cases of terrorism.<sup>177</sup> State governments can be advocates for the creation of a domestic terrorism statute to better protect their citizens.

The federal government and the Department of Justice could also play an important role in the development and implementation of a comprehensive domestic terrorism statute that does not impinge on the civil liberties of citizens. A domestic terrorism statute that is

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<sup>175</sup> Laguardia, "Considering a Domestic Terrorism Statute and Its Alternatives."

<sup>176</sup> Laguardia.

<sup>177</sup> Laguardia.

applicable to the entire country could be helpful in institutionally and symbolically strengthening local law enforcement and the importance given to the handling of domestic terrorism cases in the United States.<sup>178</sup>

#### **D. DOMESTIC TERRORISM STATUTES**

This section of the chapter focuses on the proposed policy for the creation of a domestic terrorism statute. Subsections include the different advantages/benefits of a domestic terrorism statute, the anticipated challenges of implementing a domestic terrorism statute, and the different ways that the government can gain the support of the public in the development of a domestic terrorism statute.

##### **1. Different Advantages/Benefits of Having a Domestic Terrorism Statute**

There are several potential benefits to the public and the legal process in the development and implementation of a domestic terrorism statute. These advantages include protecting the safety of the population from domestic terrorism, prevention of abuse of power of the authorities, specificity of laws, and expanded penalties for domestic terrorism.

##### **2. Protecting the Safety of the Population**

One benefit of having a domestic terrorism law is having safeguards to deter domestic terrorism. A domestic terrorism statute can be instrumental in preventing or minimizing the number of domestic terrorism cases in the United States because of the structures that will be in place could act as deterrents for future domestic terrorism cases.

##### **3. Preventing Abuse of Power**

Another potential benefit of a domestic terrorism statute is that abuses of power could be avoided by clarifying investigative powers given to the authorities. When there are clear procedures and definitions of domestic terrorism through a statute, religious or ethnic minorities who are often targeted for these types of investigations can be

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<sup>178</sup> Anderson, "Exploring the Viability of a Federal Domestic Terrorism Statute."

protected.<sup>179</sup> For instance, the lack of preparedness of the police to handle the rally complicates the scope of the culpability of the Charlottesville attack.<sup>180</sup>

Profiling is another aspect of counterterrorism policies that can impinge on the civil liberties of suspects. For instance, countering violent extremism initiatives, which intend to use the community to police suspected acts of terrorism, often rely on racial profiling to identify individuals who could be involved in terrorism.<sup>181</sup> Hence, the creation of domestic terrorism statute could lead to specific provisions that could limit discriminatory practices.

#### **4. Specificity and Limited Room for Interpretation**

Another benefit of creating a domestic terrorism statute is that the laws become more specific, as opposed to giving the government different ways to interpret existing laws about terrorism.<sup>182</sup> Most terrorism laws in the United States are not based on specific provisions addressing domestic terrorism.<sup>183</sup> Federal charges are often used to prosecute domestic terrorism cases, which include those related to weapons, explosives, threats, attacks on federal officials or facilities, hate crimes, arson, violence against animal enterprises, and material support to terrorists.<sup>184</sup>

As discussed in the Pittsburgh synagogue incident, the Capital riot, and the Charlottesville attack, charging the perpetrators with terrorism charges is difficult resulting in the use of non-terrorism charges during the investigation and prosecution. For instance, there was a lack of clear offense that can be charged to the rioters of the Capitol riot because of the variety of possible crimes that were committed.<sup>185</sup> Hence, the list of charges made by the FBI against the participants of the Capitol riot is broad and included various offenses

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<sup>179</sup> Rachael Hanna and Eric Halliday, “Discretion without Oversight: The Federal Government’s Powers to Investigate and Prosecute Domestic Terrorism,” *Loyola of Los Angeles Law Review* (forthcoming), <https://papers.ssrn.com/abstract=3872168>.

<sup>180</sup> Blout and Burkart, “White Supremacist Terrorism in Charlottesville.”

<sup>181</sup> Nguyen, “The Eyes and Ears on Our Frontlines.”

<sup>182</sup> Hanna and Halliday, “Discretion without Oversight.”

<sup>183</sup> Norris, “Can Right-Wing Terrorists Be Charged with Terrorism?”

<sup>184</sup> Taylor, “Domestic Terrorism and Hate Crimes.”

<sup>185</sup> Parkin, Mills, and Gruenewald, “Far-Right Extremism’s Threat to Police Safety.”

such as disorderly conduct, assault of police officers, conspiracy, and illegal possession of firearms and ammunition.<sup>186</sup> Hence, the specificity of a domestic terrorism statute on violations, method of investigation, and prosecution could make the process of charging and prosecuting domestic terrorists easier and more straightforward.

## **5. Expanded Penalties for Domestic Terrorism**

Another possible advantage in the creation of a domestic terrorism statute in the United States is expanded penalties that are comparable to penalties for international terrorism, thus acting as a greater deterrent and, arguably, delivering more justice.<sup>187</sup>

## **E. DIFFERENT CHALLENGES OF HAVING DOMESTIC TERRORISM STATUTE**

Even though there are several potential benefits to a domestic terrorism statute, there are several challenges that can impede its creation and implementation in the United States. These barriers and challenges include the protection of civil liberties, the lack of public support for domestic terrorism statutes, poor internal policies regarding domestic terrorism, the deep-seated biases of ‘othering,’ and the unnecessary need for additional laws that are exclusive to domestic terrorism incidents. These challenges and barriers are discussed in this subsection.

### **1. Protecting the Civil Liberties of Citizens**

There are arguments that the creation of a domestic statute could inadvertently impinge on the civil liberties of individuals to engage in free speech, assembly, and religious affiliation.<sup>188</sup> More specifically, expanded powers of the government to engage in heightened surveillance, investigation, and prosecution could further impinge on civil liberties. For example, labeling groups that engage in incendiary rhetoric as terrorist organizations has serious implications for those who are championing free speech.

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<sup>186</sup> Parkin, Mills, and Gruenewald.

<sup>187</sup> Anderson, “Exploring the Viability of a Federal Domestic Terrorism Statute.”

<sup>188</sup> Anderson.

There are also arguments that civil liberties are more important than the need for a domestic terrorism statute, which has the potential to be abused by the authorities.<sup>189</sup> As with the cases of the Capitol riot and the Charlottesville attack, arguments about the civil liberties of the protesters were used as justification for the assemblies that were involved in the incidents that led to violence. Hence, this argument about the primacy of civil liberties over domestic terrorism prevention could serve as a barrier for the creation of a domestic terrorism statute in the United States.

## **2. Lack of Public Support**

Another challenge is the lack of public support for the development of such a statute, whether from the left or from the right.<sup>190</sup> There is a public perception that a domestic terrorism statute is unnecessary and not needed because existing laws on terrorism can already address these problems, which could explain why the creation of such statute has never been seriously addressed.<sup>191</sup> Existing laws of non-terrorism offenses have been used to define and prosecute individuals who have committed acts of domestic terrorism in the United States; however, some argued that these existing laws are not sufficient to capture the complexities of domestic terrorism in the United States.<sup>192</sup>

## **3. Poor Internal Policies**

It has also been argued that the lack of a domestic terrorism statute is less of a problem than the poor internal policies of government agencies.<sup>193</sup> For instance, the failure of justice agencies in the United States to prosecute domestic terrorism as terrorism was argued to be a result of choice and not because of the lack of authority.<sup>194</sup> Hence, it appears that government prosecution of domestic terrorism is not a priority. This lack of proactive

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<sup>189</sup> Anderson.

<sup>190</sup> Anderson.

<sup>191</sup> Anderson.

<sup>192</sup> Hanna and Halliday, "Discretion without Oversight."

<sup>193</sup> Anderson, "Exploring the Viability of a Federal Domestic Terrorism Statute."

<sup>194</sup> Anderson.

efforts to prosecute domestic terrorism cases as terrorism is reflective of the general lack of significance given to the creation of a domestic terrorism statute in the United States.

#### **4. Practice of Othering**

The practice of “othering” also serves as a barrier for the creation of a domestic terrorism statute in the United because these deep-seated biases permeate policies and practices in many American institutions.<sup>195</sup> The practice of othering is reflected in the media framing of mass shootings and other forms of domestic terrorism acts by focusing on a particular aspect of the perpetrators’ background (e.g., mental illness, criminal record, religious extremism) in order to establish their status as an “outsider.”<sup>196</sup> For instance, the explanation on why domestic terrorism never receives the same amount of attention compared to international terrorism is that “othering” provides some justification to feel that the attacks will not happen again because the perpetrator has been established as an outcast of the society.<sup>197</sup>

#### **5. No Need for Domestic Terrorism Statute**

Another argument is that creating additional laws that are exclusive to domestic terrorism incidents is simply unnecessary.<sup>198</sup> Many existing laws have been used to prosecute cases that can be considered domestic terrorism, highlighting the lack of urgent need to create a separate domestic terrorism statute.

As with the case of the Capitol riot, many of the charges that were made against the perpetrators were based on existing offenses. This practice highlights the arguments of some that the existing laws can consider the various offenses related to domestic terrorism. This practice, however, fails to recognize domestic terrorism as a more serious offense than

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<sup>195</sup> Anderson.

<sup>196</sup> Easton Bush, “Media Framing in the Centennial Olympic Park Bombing: How Media Framing of Terrorism Shifts When a Suspect Is Revealed,” *University of Denver Undergraduate Research Journal* 2, no. 2 (2021): 1–4, <https://www.duurjportal.com/index.php/duurj/article/view/98>.

<sup>197</sup> Anderson, “Exploring the Viability of a Federal Domestic Terrorism Statute.”

<sup>198</sup> Anderson.



trespassing or any other offenses that have been used toward people who committed acts of terrorism.<sup>199</sup>

## **6. Gaining Public Support for a Domestic Terrorism Statute**

As stated earlier, support for a domestic terrorism law is not strong among the general public.<sup>200</sup> Hence, scholars and experts have argued that the public needs to have a better understanding of the benefits of a domestic terrorism statute in order to protect the safety of communities.<sup>201</sup> This understanding could be critical in the creation of a domestic terrorism statute that emphasizes existing laws are not sufficient in addressing the complexity and seriousness of prosecuting domestic terrorism cases in the United States. Gaining the support of the public is critical in advancing the effort to create a domestic terrorism statute in the United States. Without it, lawmakers are not likely to prioritize such a statute.

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<sup>199</sup> Anderson.

<sup>200</sup> Anderson.

<sup>201</sup> Anderson.

## IV. CONCLUSION

This chapter lays out the findings of the research and consider proposed policy options. The chapter will also include the limitations of this project and areas for future research.

### A. FINDINGS

Based on the case studies that were reviewed in this research and the extant literature on domestic terrorism, it is argued that a domestic terrorism statute could be beneficial in preventing the incidence and prevalence of domestic terrorism cases in the United States.<sup>202</sup> Prevention is the ultimate goal of a domestic terrorism statute.<sup>203</sup> However, a domestic terrorism statute can also be instrumental in the investigation and prosecution of domestic terrorism incidents by protecting targeted racial groups, preventing abuse of power and authority, increasing penalties, and giving victims and their families the justice that they deserve.<sup>204</sup>

However, as discussed earlier, the creation and implementation of a domestic terrorism statute in the United States faces obstacles. The main challenge is the argument that a statute would infringe upon civil liberties., which could be prevented by having very specific provisions about the limits of these civil liberties and the benchmark for inciting terrorism.<sup>205</sup> Other challenges include poor support from the public and political elites, the perception that these statutes are unnecessary, “othering,” and poor internal policies of government agencies.<sup>206</sup>

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<sup>202</sup> Anderson.

<sup>203</sup> Brandon Carmack, “My Brother’s Keeper: Using the Intelligence Toolbox on Domestic Terrorism,” *Mitchell Hamline Law Review* 46, no. 5 (2020): 1122–50, <https://open.mitchellhamline.edu/mhlr/vol46/iss5/4>.

<sup>204</sup> Anderson, “Exploring the Viability of a Federal Domestic Terrorism Statute.”

<sup>205</sup> Anderson.

<sup>206</sup> Anderson.

One policy recommendation is to focus on educating the public about how a domestic terrorism statute would be beneficial in terms of public safety. Taking into consideration the different challenges and issues that may be encountered in the creation of a domestic terrorism statute in the United States, gaining the support of the public is critical.<sup>207</sup> Mounting a significant information campaign by, for example, the white House and Congress could be instrumental in gaining traction regarding the need for the creation of a domestic terrorism statute in the United States. This information campaign could be costly and politically fraught but necessary to advance such a statute in the United States. Building bipartisan support for domestic terrorism education campaign could be difficult given that some members of the Congress still considered the Capitol riot is a legitimate form of political discourse.

Another policy recommendation is to strive for a more specific definition of domestic terrorism, the legal scope that is allowed when investigating domestic terrorism incidents, the penalties for domestic terrorism, and the legal process for investigating and prosecuting such cases. Most terrorism laws in the United States are broad and not based on specific provisions about domestic terrorism.<sup>208</sup> The proposed specificity in various aspects of domestic terrorism investigation and prosecution could be beneficial in minimizing the confusion, lack of accountability, and openness to interpretation about incidents that can be considered domestic terrorism.

## **B. LIMITATIONS**

The information and findings that have been generated in this research have several limitations. These limitations include generalization of the study outside the United States, the use of archival data from government records and the literature as source and basis for the policy recommendations that were proposed, and the limited number of case studies that were reviewed. These limitations are presented in this section.

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<sup>207</sup> Anderson.

<sup>208</sup> Norris, "Can Right-Wing Terrorists Be Charged with Terrorism?"

## **1. Limited Generalization outside the United States**

The current research study is based on the unique context and cases of three contemporary domestic terrorism incidents in the United States. Different countries have different laws about domestic terrorism, which means that the policy suggestions proposed in this research study may not always be pertinent to the existing legal structures of other countries. Moreover, the cases of domestic terrorism vary from different countries, which means that the utility of having a domestic terrorism statute may not always be applicable universally.

For example, domestic terrorism in other countries where white supremacy is not prevalent would probably not have the same challenges in terms of creating a domestic terrorism statute compared to the United States. Hence, the generalizability of the study is likely to be dependent on multiple factors such as the social and demographic composition of the population, the prevalence of domestic terrorism cases, and the overall political landscape of the country.

## **2. Limited Number of Case Studies**

Another potential limitation of this study is the narrow scope of the case studies that were selected. The case studies that were selected were confined to three incidents of political violence—arguably domestic terrorism—in the United States, which included the Capitol riot, the Charlottesville attack, and the Pittsburgh synagogue incident. There are other cases of domestic terrorism in the United States that were not represented in this study. Hence, the findings from this research study may not be representative of all the domestic terrorism cases in the United States. The policy recommendations that were proposed in this research study were based on the case studies that were selected and the extant literature on domestic terrorism statutes.

## **C. FUTURE RESEARCH**

One recommendation for future research is to conduct a cross-country examination of the existence or absence of domestic terrorism laws. One research study was found indicating that the vague terrorism statutes of the United States are considered an anomaly

compared to other countries where more specific statutes involving domestic terrorism are in place.<sup>209</sup> An in-depth examination of domestic terrorism statutes in different countries could provide important insights regarding the possible benefits and challenges that can be encountered in the creation and implementation of a domestic statute in the United States.

Another recommendation for future research is to examine the effects of having a domestic terrorism statute in the incidence of terrorist attacks. Using archival data or records, future researchers could examine if stringent and specific laws regarding domestic terrorism act as deterrents for these types of crimes. This type of research could be beneficial in establishing the empirical support for the creation of a domestic terrorism statute in the United States.

Another recommendation is to examine the impact of social media in the incidence of domestic terrorism in different countries. Social media played a role in the case studies that were reviewed in this research, particularly in terms of energizing groups to engage in hateful and violent protests that eventually led to felonies.<sup>210</sup> Another related recommendation for future research is to examine public support for domestic terrorism statutes with more depth and scope. A study that further examines why the public has low support for domestic terrorism statute could inform the policies or interventions that can be developed to enhance support for domestic terrorism statute.

The final recommendation for future research is to examine the role of media framing in influencing the perceptions of the public regarding the need for a domestic terrorism statute in the United States. Previous research has shown that media framing can influence the opinion of people regarding domestic terrorism.<sup>211</sup> Future researchers could examine if a favorable or unfavorable media framing regarding the creation of a domestic terrorism statute affects the perceptions of the public.

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<sup>209</sup> Norris.

<sup>210</sup> Hitkul et al., "Capitol (Pat)Riots."

<sup>211</sup> Taylor, "Domestic Terrorism and Hate Crimes."

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