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Whiteness as Ideology

Gregory S. Parks

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WHITENESS AS IDEOLOGY

Gregory S. Parks[†]

“I could stand in the middle of Fifth Avenue and shoot somebody, and I wouldn’t lose any voters, okay.”

—Donald Trump¹

“I want you so bad I’ll go back on the things I believe.”

—John Mayer²

“You can’t be pro-insurrection and pro-cop. You can’t be pro-insurrection and pro-democracy. You can’t be pro-insurrection and pro-American.”

—Joe Biden³

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[†] Professor of Law, Wake Forest University School of Law. I thank my Wake Forest colleagues for their feedback on the early conceptualization of this project. Thank you to Kendall Carter and Clare Magee for their excellent research assistance.

1. CNN, *Trump: I Could Shoot Somebody and Not Lose Voters*, YOUTUBE (Jan. 23, 2016), <https://www.youtube.com/watch?v=iTACH1eVIAA> [<https://perma.cc/QJ6A-385R>].
2. JOHN MAYER, *Edge of Desire*, on BATTLE STUDIES, at 01:29 (Sony Music Ent. 2009).
3. President Joseph Biden (@JoeBiden), TWITTER (July 26, 2022, 2:10 PM), <https://twitter.com/JoeBiden/status/1551993265473323010> [<https://perma.cc/9W8W-YRBH>].

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INTRODUCTION

In 1993, Cheryl Harris published her pathbreaking article “Whiteness as Property” in the *Harvard Law Review*.⁴ In it, she explored the interrelations between whiteness, a socially constructed form of racial identity, and property. As highlighted in her abstract:

Following the period of slavery and conquest, whiteness became the basis of racialized privilege—a type of status in which white racial identity provided the basis for allocating societal benefits both private and public in character. These arrangements were ratified and legitimated in law as a type of status property. Even as legal segregation was overturned, whiteness as property continued to serve as a barrier to effective change as the system of racial classification operated to protect entrenched power.⁵

4. See Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707 (1993).
5. *Id.* at 1709.

Three years after Harris’s publication, Ian Haney López offered additional nuance and texture to the idea that race is a social construct. Such construction refers to the “historically contingent social systems of meaning that attach to elements of morphology and ancestry” and is comprised of “three interrelated levels[:] the physical, the social, and the material.”⁶ Physically, “skin color, ethnic origin, and other physical features become markers of race . . . ‘because society has invested [them] with racial meanings.’”⁷ Socially, “because the meanings given to certain features and ancestries denote race, it is the social processes of ascribing racialized meanings to faces and forbearers that lie at the heart of racial fabrication.”⁸ Materially, “racial meanings . . . ‘gain force as they are reproduced in the material conditions of society’ through ‘[t]he distribution of wealth and poverty’”⁹ and power.¹⁰ It is this material meaning that depends on “actors who have accepted ideas of race.”¹¹ In short, skin color, in and of “itself, does not mean that [an] individual belongs to a particular race. Rather, it is society, not biology, which gives meaning to that skin color . . . [;] that meaning is then ascribed to a racial identity.”¹² In turn, that racial identity manifests and perpetuates itself through various economic, legal, and other institutions to allocate power and resources to some—and not other—“racial” groups. In the United States, some whites use race as a social construct to support a racial hierarchy or caste system.¹³

Political ideology reflects the interrelated attitudes and values that people have about society’s proper goals and how to achieve them. It influences people’s beliefs, emotions, thoughts, and actions. The conservative-to-liberal spectrum provides a continuum along which one can assess these components. It is a “yardstick” by which one can

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6. IAN HANEY LÓPEZ, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE* 10 (10th ann. ed. 2006).
 7. Romtin Parvaresh, *Prayer for Relief: Anti-Muslim Discrimination as Racial Discrimination*, 87 S. CAL. L. REV. 1287, 1298 (2014) (quoting IAN HANEY LÓPEZ, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE* 14 (1996)).
 8. *Id.*
 9. *Id.*
 10. Nancy B. Collins & Andrea Hall, *Nuclear Waste in Indian Country: A Paradoxical Trade*, 12 LAW & INEQ. 267, 311–12, 312 n.286, 314 (1994); see Carrie L. Rosenbaum, *Crimmigration: Structural Tools of Settler Colonialism*, 16 OHIO STATE J. CRIM. L. 9, 47 (2018).
 11. LÓPEZ, *supra* note 6, at 10.
 12. Parvaresh, *supra* note 7, at 1298.
 13. ISABEL WILKERSON, *CASTE: THE ORIGINS OF OUR DISCONTENTS* 327–28, 382 (2020) (showing how caste is rigid but membership in dominant and subordinate groups “shape shifts” as needed to uphold caste hierarchy); IBRAM X. KENDI, *HOW TO BE AN ANTIRACIST* 39–41 (2019) (describing the historical development of race as a social construct).

identify parties, political leaders, laws, and policy.¹⁴ Political ideology is predictive of the extent to which individuals are discriminating or inclusive,¹⁵ status quo or change oriented,¹⁶ past or future oriented,¹⁷ and obedient or challenging of authority.¹⁸ In this Article, I argue that whiteness is the ideology of a sizable portion of American citizens, largely on the political Right, more specifically among President Donald Trump's supporters. For them, whiteness—and the historical power, value, and control of resources associated with it—has become all-consuming, the driving force behind their ideology. It is why the values that have traditionally been associated with conservatism have been cast aside by those on the political Right in exchange for Trumpism. Nothing more clearly highlights this phenomenon than many Republicans' rejection of the rule of law/law and order and support for law enforcement in light of the January 6, 2021, insurrection.

In Part I, I argue first that President Trump spread repeated lies that the 2020 presidential election was stolen, despite being aware that he had lost. This influenced his supporters to believe that the election was a fraud. When Trump was informed that his message could result in acts of violence, he persisted in his argument that the election had been stolen from him. Second, I argue that Trump sought to obstruct Congress's January 6 joint session. He attempted to pressure Vice President Mike Pence into unilaterally selecting him as the next President. Additionally, Trump attempted to pressure state legislators to reverse the results of the election in their states. He also tried to recruit the Department of Justice (DOJ) to aid in overturning the election results, which included efforts to install loyalists to do his bidding. Third, Trump had a scheme to overturn the election by pressuring public officials to state that the vote had been compromised by fraud and they should throw out the votes. He directly participated in coordinating and furthering the plot to substitute fake electors for legitimate Biden electors by casting and submitting votes through fake certificates. When public servants and elected officials would not do Trump's bidding, he "worked to ensure they faced the consequences: threats to people's livelihood and lives."¹⁹

14. Gregory S. Parks & Matthew P. Hooker, *Organizational Ideology and Institutional Problem-Solving: Hazing Within Black Fraternities*, 44 *LAW & PSYCH. REV.* 91, 137 (2020).

15. *See id.* at 150–52.

16. *Id.* at 155–57.

17. *Id.* at 157–58.

18. *Id.* at 158–59.

19. Philip Bump, *The Defense of Democracy Depends on the Power of Honorable Individuals*, *WASH. POST* (June 21, 2022, 4:47 PM), <https://www.washingtonpost.com/politics/2022/06/21/defense-democracy-depends-power-honorable-individuals/> [<https://perma.cc/Z9LE-R7QS>]

Considering these facts, data show that political conservatives have more positive views about “law and order,” as a concept, than do liberals. Despite conservatives’ staunch support for the rule of law/law and order, most—laypeople and elected officials alike—have either kept their heads in the proverbial sand, blamed left-leaning groups like Antifa and Black Lives Matter (BLM), continued to applaud the so-called “stop the steal” efforts of January 6, or attacked Republican leaders who sought to hold Trump accountable.²⁰ Arguably, what explains this paradox is that both “law” and “order” have been racialized—the perceived object of them has been, and is still, Black and Brown people.

In Part II, I argue that Trump and members of his senior team were well aware of the fact that their efforts on January 6 would likely lead to violence. Law enforcement officers testified about their experiences responding to the January 6 insurrection. Their narrative accounts provide insight into the racism, racist threats, and physical violence experienced by officers working at the U.S. Capitol on January 6. Another officer also offered insights about the racist threats he received after January 6 for shooting and killing a rioter. One officer died because of injuries sustained while fending off rioters at the U.S. Capitol that day. Two other officers who defended the Capitol that day later committed suicide. And members of Vice President Pence’s Secret Service on January 6 believed that rioters were going to kill them.

Considering these facts, data show that political conservatives—especially Trump supporters—have had more positive views about law enforcement than liberals. Despite conservatives’ staunch support for law enforcement, they have remained relatively silent about the January 6 attacks on law enforcement.

In Part III, I argue that racism and white supremacy lie at the heart of Trumpism. It is evident by how he has aligned with groups like the Ku Klux Klan, neo-Nazis, Proud Boys, and white nationalists who marched in Charlottesville, Virginia during the 2017 “Unite the Right”

(quoting *Here’s Every Word of the Fourth Jan. 6 Committee Hearing on Its Investigation*, NPR (June 21, 2022, 8:47 PM), <https://www.npr.org/2022/06/16/1105683634/transcript-jan-6-committee> [<https://perma.cc/4PT7-9VGB>] [hereinafter *Fourth Jan. 6 Committee Hearing*] (transcription of statement of Rep. Bennie Thompson)).

20. See Jared Sharpe, *Republicans Blame Democrats, Antifa and U.S. Capital Police for Jan. 6 Mayhem, According to New UMass Amherst/WCVA Poll*, U. MASS. AMHERST (Apr. 27, 2021), <https://www.umass.edu/news/article/republicans-blame-democrats-antifa-and-us> [<https://perma.cc/VV6R-AR5H>]; see also Tucker Higgins, *GOP Senators Who Voted to Convict Trump Are Now Facing Backlash in Their Home States*, CNBC (Feb. 14, 2022, 4:56 PM), <https://www.cnbc.com/2021/02/14/gop-senators-who-voted-to-impeach-trump-facing-heat-at-home.html> [<https://perma.cc/K59K-AEW7>].

rally.²¹ These groups are only different in degree and not kind from the political Right's long-standing approach to race—that is, maintaining harsher and less tolerant attitudes toward racial minorities than the political Left. Even still, Republicans find it difficult to own this fact. They engage in psychological gyrations to not look in the proverbial mirror and see that Trumpism's supplanting of republicanism is because it more fully reflects the appeal of white supremacy. Hence, whiteness has become the central ideology of much of the political Right—certainly the Make America Great Again (MAGA) movement, which consists largely of whites “who have felt a loss of status as other [racial] groups have become more empowered,”²² a status that they are willing to die and kill for.

I. THE JANUARY 6 INSURRECTION AND THE MYTH OF THE RULE OF LAW

In politics, “law and order,” historically known as the War on Crime, is the approach that focuses on harsher enforcement and penalties as ways to reduce crime.²³ Law and order arose as an American political concept during the late 1960s. In 1966, California gubernatorial candidate Ronald Reagan (Republican),²⁴ and in 1968, presidential candidates Richard Nixon (Republican) and George Wallace (independent) employed the law and order narrative as part of their campaigns.²⁵ Since the 1970s, the term has largely been associated with the political Right. That is because political parties maintain a relative reputation regarding issues, and candidates have advantages

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21. John Haltiwanger, *Trump Has Repeatedly Been Endorsed by White Supremacist Groups and Other Far-Right Extremists, and They've Looked to Him as a Source of Encouragement*, BUS. INSIDER (Sept. 30, 2020, 3:59 PM), <https://www.businessinsider.com/trumps-history-of-support-from-white-supremacist-far-right-groups-2020-9> [https://perma.cc/E9YB-D6QU].
 22. Marissa Melton, *Is 'Make America Great Again' Racist?*, VOICE OF AM. (Aug. 31, 2017, 11:04 AM), <https://www.voanews.com/a/is-make-america-great-racist/4009714.html> [https://perma.cc/HH2S-LGZM]; Nicholas Goldberg, *Trump Has Come Up with the Worst Campaign Slogan Ever*, L.A. TIMES (May 14, 2020, 11:41 AM), <https://www.latimes.com/opinion/story/2020-05-14/trump-transition-to-greatness-worst-slogan> [https://perma.cc/2BW2-ZEU7] (“[MAGA] was vague enough to appeal to optimists generally, while leaving plenty of room for bitter and resentful voters to conclude that we were finally going back to the days when they ran the world.”).
 23. See Michael C. Campbell, *Politics, Prisons, and Law Enforcement: An Examination of the Emergence of “Law and Order” Politics in Texas*, 45 LAW & SOC'Y REV. 631, 642, 645 (2011).
 24. GERALD HORNE, *THE FIRE THIS TIME: THE WATTS UPRISING AND THE 1960S*, at 281 (1995).
 25. MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 46 (rev. ed. 2011).

when their party is attributed to the issues that voters are taking into consideration on Election Day. While Republicans are associated with national defense and law and order, Democrats tend to be associated with civil rights and social welfare. Given the political rhetoric of Republican candidates for elected office, as one study demonstrated, from 1978 onwards, American adults rate Democrats higher on education, jobs, social security, the environment, and health care, while they rate Republicans higher on law and order, taxes, foreign policy, and the deficit.²⁶ Not surprisingly, law and order was adopted in the 1988 Republican Party platform.²⁷

In the wake of the 2020 presidential election, Trump took steps to undermine the election results. While some of that had occurred even prior to Election Day,²⁸ Trump's—and his surrogates'—efforts were most pronounced in the days and weeks after. These efforts culminated in Trump's supporters attacking the U.S. Capitol in an effort to halt the certification of the election results. Consequently, the Select Committee to Investigate the January 6th Attack on the United States Capitol was formed by Congress:

Whereas January 6, 2021, was one of the darkest days of our democracy, during which insurrectionists attempted to impede Congress's Constitutional mandate to validate the presidential election and launched an assault on the United States Capitol Complex that resulted in multiple deaths, physical harm to over 140 members of law enforcement, and terror and trauma among staff, institutional employees, press, and Members;

Whereas, on January 27, 2021, the Department of Homeland Security issued a National Terrorism Advisory System Bulletin that due to the “heightened threat environment across the United States,” in which “[S]ome ideologically-motivated violent extremists with objections to the exercise of governmental authority and the presidential transition, as well as other perceived grievances fueled by false narratives, could continue to mobilize to incite or commit violence.” . . .

. . . .

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26. Jeremy C. Pope & Jonathan Woon, *Measuring Changes in American Party Reputations, 1939-2004*, 62 POL. RSCH. Q. 653, 655–57 (2009).
27. Sharon Casey & Philip Mohr, *Law-and-Order Politics, Public-Opinion Polls and the Media*, 12 PSYCHIATRY, PSYCH. & L. 141, 142 (2005).
28. Sam Levine, *Trump Admits He Is Undermining USPS to Make It Harder to Vote by Mail*, THE GUARDIAN (Aug. 13, 2020, 12:25 PM), <https://www.theguardian.com/us-news/2020/aug/13/donald-trump-usps-post-office-election-funding> [<https://perma.cc/6GAL-Q2ZL>].

There is hereby established the Select Committee to Investigate the January 6th Attack on the United States Capitol²⁹

The committee convened on June 13, 16, 21, and 23, as well as July 21, to highlight the ways in which Trump and his supporters sought to undermine the rule of law.³⁰ These findings have been in striking contrast to political conservatives' long-standing belief in law and order. Furthermore, and paradoxically, most Republicans have been supportive of or agnostic about the January 6 insurrection.

A. June 13 Hearing

The June 13 hearing highlighted how Trump spread baseless claims that the 2020 presidential election was stolen despite being aware that he had lost.³¹ Trump's continual pursuit of these claims led citizens to believe that the election had been conducted fraudulently.³² When he was informed that his message could result in acts of violence, he did not stop insisting that the election had been stolen from him.³³ Below is a recap of what was gleaned from those hearings, including the June 21 testimony of Bill Stepien, who was supposed to testify on June 13.³⁴

1. Election Night

Tuesday evening, former Fox News political editor Chris Stirewalt called Arizona for Joe Biden.³⁵ Fox News would be the first major network to call the Grand Canyon State. While it was a controversial call, the Fox News team had conducted extensive research and gathered enough data to be able to call Arizona accurately. They knew that this would be a consequential call because Arizona was one of five states (along with Georgia, Pennsylvania, Wisconsin, and Michigan) that

29. *About: Select Committee to Investigate the Jan. 6th Attack on the U.S. Capitol*, U.S. HOUSE OF REPRESENTATIVES, <https://january6th.house.gov/about> [https://perma.cc/HJV8-PRY7].

30. *See Hearings: Select Committee to Investigate the Jan. 6th Attack on the U.S. Capitol*, U.S. HOUSE OF REPRESENTATIVES, <https://january6th.house.gov/legislation/hearings> [https://perma.cc/L9XW-PRJM].

31. *Here's Every Word of the Second Jan. 6 Committee Hearing on Its Investigation*, NPR (June 13, 2022, 6:16 PM), <https://www.npr.org/2022/06/13/1104690690/heres-every-word-of-the-second-jan-6-committee-hearing-on-its-investigation> [https://perma.cc/6RJV-XY5X] [hereinafter *Second Jan. 6 Committee Hearing*] (transcription of statement of Rep. Bennie Thompson).

32. *Id.* (transcription of live testimony of Rep. Elizabeth Cheney).

33. *See id.* (transcription of statement of Rep. Zoe Lofgren).

34. *Id.*

35. *Id.*

truly mattered in the election.³⁶ Their team had worked together for an extended period and unanimously agreed that Arizona's votes were going in the way they predicted. They saw Trump's chances of winning Arizona decreasing. Stirewalt also concluded that after losing Arizona, Trump's chances of winning the election were small.³⁷

Back in the White House, what had been an upbeat mood was dampened. Jason Miller, senior adviser to the Trump campaign, testified that the environment in the White House on election night was a "self-select more positive environment," which is typical of such a gathering on election night.³⁸ Miller noted that the entire atmosphere shifted after Fox News called Arizona for Biden. Miller explained that there was an overall mix of anger directed toward Fox News for calling Arizona so early and disappointment that the campaign lost Arizona.³⁹ He also indicated that this anger and disappointment was also rooted in concern that the campaign team's data might not have been accurate.⁴⁰ Bill Stepien, Trump's former campaign manager, also noted the surprise in the room when Fox News called Arizona for Biden.⁴¹

Stirewalt told the committee that in every election, you expect to see a Republican lead initially.⁴² However, that does not reflect a true lead because Democrats prefer to vote by mail or early or absentee compared to Republicans. When counting votes, it does not truly matter which votes are counted first because the result will end up the same.⁴³ It does not matter in theory because no candidate has ever tried to claim victory before all votes are counted. However, the Trump campaign "made it clear that they were going to try to exploit this anomaly" in the vote-counting process.⁴⁴ They had sown distrust in mail-in ballots among his supporters, against the advice of Stepien and House Minority Leader Kevin McCarthy, all but guaranteeing that there would be a late-night avalanche of Democratic votes in key states.⁴⁵ Therefore, it was imperative for the individuals at Fox News

36. *Id.* (transcription of live testimony of Chris Stirewalt, former political editor, Fox News).

37. *Id.*

38. *Id.* (transcription of video testimony of Jason Miller, former Senior Advisor to the Trump campaign).

39. *Id.*

40. *Id.*

41. *Id.* (transcription of video testimony of Bill Stepien, former White House Director of Political Affairs).

42. *Id.* (transcription of live testimony of Chris Stirewalt).

43. *Id.*

44. *Id.*

45. *Id.* (transcription of statement of Rep. Zoe Lofgren and video testimony of Bill Stepien).

to “inform[] viewers that this was going to happen.”⁴⁶ Additionally, the number of early and absentee votes increased because of the pandemic, so it was known that it would take longer for the votes to be counted and that the Republican lead would initially appear larger. The initial numbers were less relevant because they only reflected a small portion of votes.⁴⁷

Back in Washington, Trump advisers were split over whether to declare victory. Stepien testified that he remembered that Trump attorney Rudy Giuliani wanted to speak with the President.⁴⁸ Giuliani, per Jason Miller’s testimony, wanted Trump to declare victory.⁴⁹ Stepien believed that “it was far too early to be making any” such declaration.⁵⁰ Ballots were still being counted, and they would “be counted for days.”⁵¹ Stepien believed that Trump could tell the nation that votes were still being counted and it was too early to call the race. He suggested that the President mention his pride in the race that they ran and that they felt like they were in a good position.⁵² Stepien testified that Trump disagreed with his suggestion and said he was going to take another direction when making a statement.⁵³ As Bennie Thompson noted, “Stepien also testified that . . . Trump had no basis for declaring victory at that point.”⁵⁴ He was always honest with the President and had indicated that he thought election night was going to be a long one, just as it was in 2016.⁵⁵

Jason Miller was also a part of the conversation regarding a declaration of victory. When asked about the conversation, Miller commented that Giuliani appeared to be intoxicated.⁵⁶ However, he was unaware of Giuliani’s level of intoxication. Miller expressed that he also felt it was too early to declare victory, since they did not yet have “a better sense of the numbers.” Giuliani disagreed and stated that the Trump campaign won, and the Biden campaign was attempting to steal the election from them.⁵⁷ The testimony of Miller and Stepien

46. *Id.* (transcription of live testimony of Chris Stirewalt).

47. *Id.*

48. *Id.* (transcription of video testimony of Bill Stepien).

49. *Id.* (transcription of video testimony of Jason Miller).

50. *Id.* (transcription of video testimony of Bill Stepien).

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.* (transcription of statement of Rep. Bennie Thompson).

55. *Id.*

56. *Id.* (transcription of video testimony of Jason Miller).

57. *Id.*

demonstrated that the Trump campaign attempted to spread false information about the state of the race on election night.⁵⁸

2. November 4–January 2

Attorney General William Barr was not surprised when Trump declared victory on election night, nor was he surprised that the President made allegations of fraud. However, he noted that these claims seemed to occur before there was any actual evidence of fraud.⁵⁹ Barr believed that these claims were mostly “based on the dynamic that . . . at the end of the evening” there was an influx of Democratic votes that Barr said “changed the vote counts in certain states.”⁶⁰ In the weeks after the election, Trump would pressure Barr to investigate the alleged fraud and help him overturn the election.⁶¹

Barr explained that on November 23, he went to meet with the President since they had not spoken since roughly mid-October.⁶² According to Barr, the President expressed that “there had been major fraud and that as soon as” his claims had been litigated, the election would be overturned.⁶³ Then on November 29, the President publicly stated that he thought “the [D]epartment [of Justice] was missing in action.”⁶⁴ Barr responded by making a statement that there had not been any “fraud on a scale that could have [altered] a different outcome in the election.”⁶⁵

On December 4, 2020, U.S. Attorney for the Northern District of Georgia Bjay Pak spoke to Barr and had a conversation about an unrelated case.⁶⁶ Pak testified that “at the end of that conversation, Mr. Barr had asked [him] if [he] had seen a certain videotape that was being reported in the news.”⁶⁷ This videotape, allegedly showing ballot-

58. *See id.* (explaining that Rudy Giuliani suggested telling the public that Trump had won the election outright); *see also* Amy B. Wang, John Wagner, Eugene Scott & Mariana Alfaro, *Trump Pushed ‘Big Lie’ Despite Being Told Election Fraud Claims Were False, Aides Testify*, WASH. POST (June 13, 2022, 1:46 PM), <https://www.washingtonpost.com/national-security/2022/06/13/jan-6-committee-hearings-live/> [<https://perma.cc/WXC6-ZY7E>].

59. *Second Jan. 6 Committee Hearing*, *supra* note 31 (transcript of video testimony of William Barr, former Att’y Gen. of the United States).

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.* (transcript of live testimony of Bjay Pak, former U.S. Attorney for the Northern District of Georgia).

67. *Id.*

stuffing in Atlanta’s State Farm Arena, was shown by Giuliani in a Senate subcommittee hearing.⁶⁸ Since Barr had publicly stated “that he had not seen any widespread election fraud that would question the outcome of the election,” he requested that Pak investigate the video so that when he went to the White House for a meeting, if this issue came up, he would be able to substantiate or deny the allegation.⁶⁹ Upon investigation, the supposed suitcase of ballots was a lockbox designed to keep ballots safe. Only specific clips of the video were played to convey “a smoking gun of fraud.”⁷⁰ Interviews were conducted, and it was “determined that nothing irregular happened in the counting.”⁷¹ Thus, “the allegations made by Mr. Giuliani were false.”⁷² Pak affirmatively stated that he did not believe the evidence pointed to expansive fraud sufficient to undermine anyone’s confidence about the election results in Georgia.⁷³ His testimony only further proved that individuals within the Trump campaign tried to project false narratives to overturn the results of the election.

On December 14, Trump showed Barr a report that would supposedly grant the President a second term. As Barr looked through this report, he did not find it impressive or see any real evidence within it.⁷⁴ Throughout his testimony on June 13, Barr expressed that Trump attempted to get the results of the presidential election overturned without any substantial evidence.⁷⁵ In the meantime, Trump’s campaign lawyers continued to sow doubt about the 2020 election results wherever they could. Trump campaign lawyer Matt Morgan testified that most members of Trump’s team “were not comfortable [with] the arguments that Rudy Giuliani was making publicly.”⁷⁶ Barr testified that he did not agree that the election was stolen. He explained that he did not want to be a part of this message, and that the messaging eventually spurred his resignation.⁷⁷ Barr also testified that he believed Trump’s grip on reality was slipping.⁷⁸ When additional portions of Barr’s testimony were played, it was shown that when the

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.* (transcription of video testimony of William Barr).

75. *Id.*

76. *Id.* (transcription of video testimony of Matt Morgan, former Trump campaign General Counsel).

77. *Id.* (transcription of video testimony of William Barr).

78. *Id.*

department “received specific and credible allegations of fraud,” they made a serious effort to investigate these claims.⁷⁹ He explained that “there was an avalanche of all these allegations of fraud that built up over a number of days.”⁸⁰

While the DOJ was absent from Trump’s crusade against the election results, his campaign lawyers took the mantle, filing several lawsuits. The committee called legal expert Benjamin Ginsberg to testify about these lawsuits.⁸¹ Ginsberg’s whole career involved representing Republicans in litigation related to elections, and he served on the National Council on Republican Presidential Campaigns in 2000, 2004, and 2012.⁸² Additionally, he served as the co-chair of the Presidential Commission on Election Administration. He analyzed the Trump campaign’s litigation thoroughly.⁸³ Ginsberg noted that the normal course of any campaign involves “analyz[ing] precinct results to look for [any] abnormalities in the results.”⁸⁴ Additionally, all campaigns have poll watchers working to observe polling places. The Trump campaign, in the run-up to the election, boasted that they had 50,000 poll workers.⁸⁵ However, Ginsberg noted that the Trump campaign did have “a couple of basic problems,” namely that the “election was not close.”⁸⁶ As such, the Trump campaign brought cases without any actual evidence. In fact, there was never an instance where the claims were credible.⁸⁷ Ginsberg also stated that the Trump campaign was given its time in court.⁸⁸ There was no sufficient evidence of these claims however, so most of them were dismissed. Again, the courts in no instances found that charges of fraud were valid. Ginsberg also noted that while many state and local officials were labeled by the Trump team as perpetuating fraud, all allegations were investigated fairly and there was no substantial evidence of election fraud found.⁸⁹

Former Philadelphia City Commissioner Al Schmidt also testified before the committee.⁹⁰ Congresswoman Zoe Lofgren spoke with Al

79. *Id.*

80. *Id.*

81. *Id.* (transcription of live testimony of Benjamin Ginsberg, legal expert).

82. *Id.* (transcription of statement of Rep. Zoe Lofgren).

83. *Id.*

84. *Id.* (transcription of live testimony of Benjamin Ginsberg).

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.* (transcription of live testimony of Al Schmidt, former Comm’r for the City of Philadelphia).

Schmidt regarding what he knew about Philadelphia’s election process since at the time of the 2020 election, he was the only Republican member of the three-person city commission. He understood that there were claims “that 8,000 dead people voted in Pennsylvania.”⁹¹ Al Schmidt concluded that “[n]ot only was there not evidence of 8,000 dead voters voting in Pennsylvania,” but there was also no evidence of even eight dead voters.⁹² Schmidt also indicated that he received threats prior to a direct tweet from Trump.⁹³ Trump tweeted, “A guy named Al Schmidt, a Philadelphia commissioner and so-called Republican or RINO [(Republican in Name Only)], is being used big time by the fake news media to explain how honest things were with respect to the election in Philadelphia.”⁹⁴ Trump also expressed, “[Schmidt] refuses to look at a mountain of corruption dishonesty. We win.”⁹⁵ Schmidt noted the impact that this tweet had on him and his family because after the tweet, the threats became much more intense, graphic, and serious. The threats were also expanded to include his family members and his home.⁹⁶ Schmidt also emphasized that there were many allegations of corruption and dishonesty throughout the 2020 election. However, they were all investigated, and no credible evidence was found to determine that corruption occurred. They investigated every voter’s age, voter registration, and felon status to ensure a fair election.⁹⁷

Finally, Morgan testified that on January 2, Trump’s own campaign team admitted to the President that they did not have sufficient evidence of fraud. The President continued pushing that narrative anyway.⁹⁸ Relatedly, Pence aide Alex Cannon testified that many on the Vice President’s staff believed that there was no evidence of fraud.⁹⁹

B. June 16 Hearing

The June 16 hearing highlighted that Trump sought to obstruct the joint session of Congress on January 6 and that he attempted to pressure Vice President Mike Pence into unilaterally selecting him as the next President of the United States. Throughout the entirety of their pressure campaign, Trump’s lawyers—Giuliani and John

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.* (transcription of statement of Rep. Zoe Lofgren).

95. *Id.*

96. *Id.* (transcription of live testimony of Al Schmidt).

97. *Id.*

98. *Id.* (transcription of video testimony of Matt Morgan).

99. *Id.* (transcription of video testimony of Alex Cannon, former aide to Vice President Michael Pence).

Eastman—knew that their plot was illegal and would lose in court. Additionally, Trump “tried to pressure state legislatures to reverse the results of the election in their states, but they refused.”¹⁰⁰ Trump also “tried to enlist the [DOJ] in his efforts to overturn election results, but [DOJ] officials . . . refused to comply.”¹⁰¹

1. The Run-up to January 6

After Trump’s losses in court, electors met in all fifty states in mid-December to cast their votes for President. Three hundred and six electors cast their vote for Biden, and 232 electors cast their votes for Trump.¹⁰² With the Electoral College vote completed, the attention of the Trump team shifted to the certification of the vote by Congress on January 6, 2021.¹⁰³ In Trump’s circles, there were debates over whether Pence had the authority to declare electoral votes invalid. Trump attorney John Eastman was one of the chief proponents of the theory that the Twelfth Amendment gave the Vice President the authority to refuse electors.¹⁰⁴ However, Greg Jacob, counsel to Pence, testified that Eastman knew that his proposal violated the Electoral Count Act.¹⁰⁵

Greg Jacob recalled that he first spoke with Pence about the Twelfth Amendment and the Electoral Count Act in early December.¹⁰⁶ Jacob testified that Pence called him into his office and suggested that he, the Vice President, “had a significant role to play on January 6.”¹⁰⁷ Jacob testified that Pence then asked him if he knew the rules that governed a joint session, to which Jacob responded that there were no rules that governed the joint session, but there was a provision in the Constitution and an Electoral Count Act that had to be followed. Jacob told Pence that he would put together a memo for him.¹⁰⁸ After Jacob assembled the memo, Jacob and Pence concluded that it was highly improbable that one “person[,] who had a direct interest in the outcome

100. *Here’s Every Word of the Third Jan. 6 Committee Hearing on Its Investigation*, NPR (June 16, 2022, 8:25 PM), <https://www.npr.org/2022/06/16/1105683634/transcript-jan-6-committee> [<https://perma.cc/864S-G496>] [hereinafter *Third Jan. 6 Committee Hearing*] (transcription of statement of Rep. Bennie Thompson).

101. *Id.*

102. *Id.* (transcription of video testimony of Mike Pence, former Vice President).

103. *Id.* (transcription of live testimony of Greg Jacob, former Counsel to Vice President Michael Pence).

104. *Id.* (transcription of live testimony of Liz Cheney).

105. *Id.* (transcription of video testimony of Greg Jacob); 3 U.S.C. § 15.

106. *Third Jan. 6 Committee Hearing*, *supra* note 100.

107. *Id.*

108. *Id.*

of the election,” would be able “to have [a] decisive impact on the outcome” of said election.¹⁰⁹

Pence’s Chief of Staff, Marc Short, testified that the Vice President had always understood his role on January 6 to be one of ceremony, not power.¹¹⁰ However, Trump sent out false statements to make it appear as if Pence agreed with him despite his previous conflicting statements. Short expressed frustration that Pence’s perspective was misrepresented without him ever having been consulted.¹¹¹ Short also wanted Pence guarded on January 6, as he was fearful that Trump would lash out.¹¹²

Eastman persisted in pressuring Pence to overturn the election. Jacob testified that on January 4, Eastman discussed what he thought were two legally viable actions for Pence to take on January 6.¹¹³ One of the options was for Pence to reject electoral votes outright, which, after discussion, Eastman admitted would be less politically plausible. “The other was that [Pence] could use his capacity as presiding officer to suspend the proceedings and declare . . . a 10-day recess during which” the disputed states could “reexamine the election and declare who had won each of those states.”¹¹⁴ Jacob testified that he pushed back on Eastman’s claims, saying they violated the Electoral Count Act, to which Eastman responded that the Electoral Count Act was unconstitutional and that the courts would not stop Pence.¹¹⁵ Pence, for his part, did not budge and refused to take either approach.¹¹⁶

On January 5, Eastman admitted to Jacob that they would lose 9–0 at the Supreme Court if Pence tried to invalidate the election.¹¹⁷ However, later that day, Eastman advised Pence to take the route of rejecting electoral votes outright, despite his claim a day earlier about its political infeasibility. While Jacob testified that he was able to talk Eastman down from the plan to reject electors, Eastman still wanted Pence to send the decision back to the states.¹¹⁸ Later that evening, Jacob, the Vice President, Eastman, and others were on a group call

109. *Id.*

110. *Id.* (transcription of video testimony of Marc Short, former Chief of Staff to Vice President Michael Pence).

111. *Id.*

112. *Id.*

113. *Id.* (transcription of live testimony of Greg Jacob).

114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.*

with the President, in which Trump implicitly encouraged Pence to suspend the proceedings.¹¹⁹

Former U.S. Court of Appeals Judge Michael Luttig, one of the nation's foremost conservative legal minds, provided critical advice to Pence throughout this time.¹²⁰ Luttig released a statement prior to testifying that “had the Vice President of the United States obeyed the President of the United States[,] America would immediately have been plunged into what would have been tantamount to a revolution within a paralyzing constitutional crisis.”¹²¹ When asked to elaborate, he explained that the foundational truth of the United States of America is the rule of law. Luttig testified that if the Vice President had declared Trump to be the President, the country would have experienced its “first constitutional crisis since the founding of the republic.”¹²² Luttig also described the efforts to overturn the election as “[t]he most reckless, insidious, and calamitous failures in both legal and political judgment in American history.”¹²³

2. The Day of the Attack

Three of Pence's advisers—Marc Short, Devin O'Malley, and Chris Hodgson—all convened at the Vice President's house on the morning of January 6. Jacob testified that they were in the middle of finalizing a statement when the Vice President left the room to take a phone call from the President.¹²⁴ When Pence came back into the room, Jacob described him as being “steely, determined, [and] grim.”¹²⁵ White House attorney Eric Herschmann, who was in the room with Trump during the call, said that while the conversation started calmly, things gradually became more heated.¹²⁶ Ivanka Trump, who was also in the room, testified that Trump used “a different tone” than he had ever taken with the Vice President.¹²⁷ Trump and his allies then spent the rest of the morning attacking the Vice President. Press Secretary Sarah Matthews testified that she and Ben Williamson from the Chief of

119. *Id.*

120. *Id.* (transcription of statement by Rep. Bennie Thompson).

121. *Id.* (transcription of statement of Rep. Elizabeth Cheney reading J. Michael Luttig's statement).

122. *Id.* (transcription of live testimony of J. Luttig).

123. *Id.* (transcription of statement of Rep. Peter Aguilar reading J. Luttig's statement).

124. *Id.* (transcription of live testimony of Greg Jacob).

125. *Id.*

126. *Id.* (transcription of video testimony of Eric Herschmann, former Senior Advisor to President Trump).

127. *Id.* (transcription of video testimony of Ivanka Trump, daughter of and former Senior Advisor to President Trump).

Staff's office agreed that the President needed to tweet something. However, they were not expecting the President to tweet an attack on Pence. Matthews testified that she believed Trump's tweet "pour[ed] gasoline on the fire."¹²⁸

Eastman declared that if Pence allowed the legislators to investigate the alleged election fraud, the American people could be confident that they had control over the direction of the government. On another occasion, Eastman stated that the situation relied on the "courage and spine of the individuals involved," with the individual in question being Pence.¹²⁹ During Eastman's deposition, he asserted his Fifth Amendment right to every question.¹³⁰ Giuliani told the crowd that the plan to overturn the election through Pence would be perfectly legal, stating that because the Electoral Count Act was unconstitutional, Pence could cast it aside. This would allow Pence either to reject the electors from contested states or to send them back to the states.¹³¹ Following the rally, a mob descended on the Capitol. When they reached the building, some, nooses in hand, were chanting "hang Mike Pence."¹³²

Jacob was with Pence during the Capitol riots. Jacob recalls hearing "the din of . . . rioters in the building," but he was not aware of how close they were.¹³³ The Secret Service was able to direct Pence and his team to secure cars that would leave the Capitol. Most members of the Vice President's staff entered the secure cars, including Jacob. However, Pence refused to enter the car because he wanted to "complete the work that [he] had set out to do that day."¹³⁴ Jacob recalls that Pence was frustrated that Trump did not check on his safety during the riot.¹³⁵ Once the riot had subsided and the joint session was able to reconvene, Eastman emailed Jacob alleging that the nation violated the Electoral Count Act since the debate about Arizona had not ended within two hours.¹³⁶ Jacob stated that they could not be completed in two hours because "there was an intervening riot of several

128. *Id.* (transcription of video testimony of Sarah Matthews, former White House Deputy Press Secretary).

129. *Id.* (transcription of video of John Eastman's January 6 speech at the Ellipse, played during hearing).

130. *Id.* (transcription of statement of Rep. Peter Aguilar).

131. *Id.* (transcription of video of the speech given by Rudy Giuliani, personal lawyer to Donald Trump, on January 6).

132. *Id.* (transcription of statement of Rep. Peter Aguilar).

133. *Id.* (transcription of live testimony of Greg Jacob).

134. *Id.*

135. *Id.*

136. *Id.*

hours.”¹³⁷ After reading Eastman’s email, Pence called it “rubber room stuff,” which Jacob interpreted to mean crazy.¹³⁸

3. After January 6

Herschmann noted that on January 7, he received a phone call from Eastman.¹³⁹ Eastman brought up that there was something that needed to be done with Georgia and preserving it to potentially appeal. Herschmann was shocked by this statement. He expressed that the only two words that should be coming from Eastman’s mouth were “orderly transition.”¹⁴⁰ He informed him that he was going to need a great criminal defense lawyer, and he proceeded to hang up the phone.¹⁴¹

C. June 21 Hearing

The June 21 hearings highlighted that Trump had a “scheme to overturn the election” that included “pressuring public servants” to betray “their oath.”¹⁴² He sought to pressure “officials at the local and state level to say the vote was tainted by widespread fraud.”¹⁴³ His goal was to get them to throw out the results, even though the committee determined that there was not any voter fraud. Additionally, Trump was “directly involved in advancing and coordinating the plot to replace legitimate Biden electors with fake electors . . . to cast and submit their votes through fake certificates.”¹⁴⁴ When public servants and elected officials would not embrace the allegations and “substitute the will of the voters with . . . Trump’s will to remain in power, [he] worked to ensure they’d face the consequences.”¹⁴⁵ There were “threats to people’s livelihood and lives, threats of violence that Donald Trump knew about and amplified.”¹⁴⁶

1. Fake Electors

The Trump campaign organized slates of fake electors that were submitted to Pence and the National Archives. This was so that Pence

137. *Id.*

138. *Id.*

139. *Id.* (transcription of video testimony of Eric Herschmann).

140. *Id.*

141. *Id.*

142. *Fourth Jan. 6 Committee Hearing, supra* note 19 (transcription of statement of Rep. Bennie Thompson).

143. *Id.*

144. *Id.* (transcription of statement of Rep. Adam Schiff).

145. *Id.*

146. *Id.* (transcription of statement of Rep. Bennie Thompson).

could declare the Trump electors legitimate and overturn the election results.¹⁴⁷ Select Committee investigator Casey Lucier testified that

[o]n November 18, a lawyer working with the Trump campaign, named Kenneth Chesebro, wrote a memo arguing that the Trump campaign should organize its own electors in the swing states that President Trump had lost. The Select Committee received testimony that those close to President Trump began planning to organize fake electors for Trump in states that Biden won¹⁴⁸

Lucier testified that “[a]t [Trump’s] direct request, the [Republican National Committee (RNC)] assisted the campaign in coordinating [the] effort” to have alternative electors meet.¹⁴⁹ “[T]hese fake electors [would] cast and submit their votes through fake certificates”¹⁵⁰ Ronna Romney McDaniel, chairwoman of the RNC, testified that Eastman discussed the importance of the RNC’s help in gathering contingent electors, just in case the campaign’s litigation proved successful.¹⁵¹ It is to McDaniel’s understanding that it was the RNC’s job to reach out and assemble the elector slates; however, McDaniel affirmed that “the campaign did take the lead” and the RNC was only “helping them . . . in that role.”¹⁵²

Lucier testified that the electors in several states were given instructions on how “they needed to cast their ballots in complete secrecy.”¹⁵³ Lucier noted that “[i]n one state, the fake electors even asked for . . . the campaign [to] pay their legal fees if they got sued or charged with a crime.”¹⁵⁴

Ultimately, fake electors did meet on December 14th, 2020 in Arizona, Georgia, Michigan, Pennsylvania, New Mexico, Nevada, and Wisconsin. At the request of the Trump campaign, the electors from these battleground states signed documents falsely asserting that they were the quote, “duly elected electors,” from

147. *Id.* (transcription of statement of Rep. Adam Schiff).

148. *Id.* (transcription of video testimony of Casey Lucier, Investigative Couns., H. Select Comm. to Investigate the January 6th Attack on the U.S. Capitol).

149. *Id.*

150. *Id.* (transcription of statement of Rep. Adam Schiff).

151. *Id.* (transcription of video testimony of Ronna Romney McDaniel, Chairperson, RNC).

152. *Id.*

153. *Id.* (transcription of video statement of Casey Lucier).

154. *Id.*

their state and submitted them to the National Archives and to Vice President Pence in his capacity as President of the Senate.¹⁵⁵

Lucier explained that some campaign lawyers, like Justin Clark and Matt Morgan, were convinced that it “was no longer appropriate” to “conven[e] electors in states that Trump lost.”¹⁵⁶ Morgan recalled having Josh Finley email Chesebro to take him off the task to assume zero responsibility.¹⁵⁷

2. State Officials Pressured

The Trump team, and Trump himself, also pressured state officials to act against the so-called fraudulent election results. Select Committee investigator Josh Roselman testified that the Trump campaign circulated a memo to the White House, Giuliani, and state legislatures that Eastman had drafted claiming the election was fraudulent.¹⁵⁸ However, Republican officials in several states, such as Georgia Governor Brian Kemp, “released public statements recognizing that . . . Trump’s proposal was unlawful.”¹⁵⁹ Roselman specified that the “pressure campaign to get state legislators to go along with the scheme intensified when . . . Trump invited delegations from Michigan and Pennsylvania to the White House”; however, Georgia was a significant target for the campaign as well.¹⁶⁰

Michigan Senate Majority Leader Mike Shirkey was one of the legislators invited to the White House. Shirkey testified that during his visit, he told Trump that he would not do anything to violate Michigan law.¹⁶¹ The next day, “Trump disclosed Mike Shirkey’s personal phone number to his millions of followers.”¹⁶² Shirkey recalled receiving “just shy of 4,000 text messages over a short period of time”¹⁶³ He noted that the text messages had a “loud consistent cadence of . . . Trump folks . . . asking for changes in the electors”¹⁶⁴

155. *Id.*

156. *Id.*

157. *Id.* (transcription of video testimony of Matt Morgan).

158. *Id.* (transcription of video statement of Josh Roselman, Investigative Couns., H. Select Comm. to Investigate the January 6th Attack on the U.S. Capitol).

159. *Id.*

160. *Id.*

161. *Id.* (transcription of video testimony of Mike Shirkey, Majority Leader of the Michigan Senate).

162. *Id.*

163. *Id.*

164. *Id.*

In some cases, Trump and his team targeted the homes of state officials. Michigan Secretary of State Jocelyn Benson testified that she heard noises outside of her home after the former President's false allegations of fraud.¹⁶⁵ Benson remembered the feeling of her stomach sinking. Benson was most scared about the uncertainty of the situation, testifying that she didn't know if they had guns, were going to attack her house, or hurt her child.¹⁶⁶ Similarly,

[a]nother legislator, Pennsylvania House Speaker Bryan Cutler, received daily voicemails from Trump's lawyers in the last week of November.

. . . .

Cutler felt that the outreach was inappropriate and asked his lawyers to tell Rudy Giuliani to stop calling. But Giuliani continued to reach out.

. . . .

On December 30th Trump ally Steve Bannon announced a protest at Cutler's home.¹⁶⁷

Bannon said that they were "getting on the road and we're going down to Cutler."¹⁶⁸ It was Bannon's goal to go to the homes and offices of officials to let them know what he thought about the election being stolen.¹⁶⁹

Cutler testified that he did not remember the exact number of protests; however, he does know multiple took place either outside of his district office or home. During the first protest, Cutler's "15 year old son was home by himself . . ."¹⁷⁰ Cutler said his personal information, including his email and home and cell phone numbers, was doxed online.¹⁷¹ His family disconnected the home phone for three days due to the constant ringing and pileup with threatening messages. On one message, an unknown Trump ally is heard saying, "Bryan Cutler, we are outside."¹⁷²

165. *Id.* (transcription of video testimony of Jocelyn Benson, Michigan Secretary of State).

166. *Id.*

167. *Id.* (transcription of video testimony of Josh Roselman).

168. *Id.* (transcription of video testimony of Steve Bannon).

169. *Id.*

170. *Id.* (transcription of video testimony of Bryan Cutler, Speaker of the Pennsylvania House of Representatives).

171. *Id.*

172. *Id.* (transcription of anonymous video testimony).

Arizona House Speaker Rusty Bowers's testimony was extremely similar. He also received multiple calls from and met multiple times with Trump's attorneys.¹⁷³ During these meetings, Bowers asked to see evidence, which the attorneys could not produce. On January 4, 2021, Bowers received a call from John Eastman asking him to decertify Arizona's electors. Bowers told Eastman this would be unconstitutional. On the morning of January 6, U.S. Representative Andy Biggs called Bowers and asked him if he "would support the decertification of the electors." Bowers said that he would not.¹⁷⁴ Bowers testified that after he stood in defense of the 2020 election, his family was subjected to protests and terrible threats. Bowers disclosed that his offices received "in excess of 20,000 emails" and "tens of thousands of voicemails and texts."¹⁷⁵ Bowers claimed that various groups had driven by his house and threatened his family as well as his neighbors.¹⁷⁶

While the Trump campaign and its allies pressured state officials in Michigan, Pennsylvania, and Arizona, it put the most pressure on Georgia. Trump made phone calls to officials in Georgia and other states to support his stolen-election allegations. Many of these allegations centered around the video where ballots were allegedly carted in suitcases into the State Farm Arena in Atlanta, Georgia.¹⁷⁷ In one of these calls, Attorney General Richard Donoghue told Trump that despite the hundreds of interviews and dozens of investigations, the evidence did not support the allegations from the State Farm Arena video.¹⁷⁸ Trump's advisors told him he had no bases for his claim that the election was stolen. Within one phone call, Donoghue noted that the President's team zeroed in on a suitcase they thought contained fraudulent ballots. Donoghue told Trump that there was no suitcase and that his claims were false.¹⁷⁹

Nonetheless, Rudy Giuliani went to the Georgia state senate with surveillance footage from the State Farm Arena. During this hearing, Giuliani claimed the video displayed illegitimate votes being cast. He believed the video was a "powerful smoking gun."¹⁸⁰ A week later, during his second hearing before the Georgia State Legislature, Giuliani stated that Fulton County election officials Shaye Moss and Ruby

173. *Id.* (statement of Rusty Bowers, Speaker of the Arizona House of Representatives).

174. *Id.*

175. *Id.*

176. *Id.*

177. *Id.* (transcription of video testimony of Rep. Adam Schiff).

178. *Id.* (transcription of video testimony of Richard Donoghue, former Deputy Att'y Gen. of the United States).

179. *Id.*

180. *Id.* (transcription of video testimony of Rudy Giuliani).

Freeman, along with another man, were passing around USB drives like they were “vials of heroin.”¹⁸¹ Giuliani claimed that not only should these individuals have been questioned, but their workplaces and residences should have been searched for evidence of election fraud.¹⁸²

After the hearing, Moss testified that she received horrible messages through her social media accounts.¹⁸³ These messages included death threats and racist comments. During her ten years as an election worker, Ms. Moss stated that she had never experienced threats as she had received during the 2020 election. Ruby Freeman expressed that her sense of security was taken because of the President’s false claims. She did not feel comfortable introducing herself by her own name, nor did she feel comfortable in her own home.¹⁸⁴ Around the week of January 6, Ruby Freeman was informed by the FBI that she needed to leave her home for her own protection, resulting in her staying away from her house for nearly two months. The removal from her home was fast-tracked when Trump supporters forcefully entered her residence, claiming that they were making a “citizen’s arrest.”¹⁸⁵

While Trump and his team spread lies about the Georgia vote, two Georgia officials were devoted to correcting the record. One, Georgia Secretary of State Brad Raffensperger, was at the center of Trump’s second impeachment trial. In his testimony, Raffensperger denied all allegations of fraud and confirmed that Biden won Georgia.¹⁸⁶ The other Georgia official correcting the record was Gabriel Sterling, the statewide voting systems implementation manager in Georgia for the 2020 election. In a December 1 press conference, Sterling directly addressed his concerns with Donald Trump. Sterling stated that it was within the President’s right to go to the courts; however, it was not in his right to inspire citizens to potentially commit acts of violence.¹⁸⁷ Sterling was prompted to make these remarks after being informed that a young contractor received threats after QAnon supporters posted a video. Additionally, Sterling was told that a twenty-year-old tech in Gwinnett County had received death threats for “treason.”¹⁸⁸ Sterling later testified that Trump failed to urge his supporters to avoid violence.

181. *Id.*

182. *Id.*

183. *Id.* (transcription of live testimony of Shaye Moss, former employee, Fulton County, Georgia, Department of Registration and Elections).

184. *Id.*

185. *Id.*

186. *Id.* (transcription of live testimony of Brad Raffensperger, Georgia Secretary of State).

187. *Id.* (transcription of video testimony of Gabriel Sterling, Chief Operating Officer, Office of the Georgia Secretary of State).

188. *Id.*

Sterling further expressed that, although he did make efforts to combat the misinformation, it was frustrating competing with Trump's platform and social media megaphone.¹⁸⁹

D. June 23 Hearing

The fifth hearing regarding the January 6 attack occurred on June 23, 2022. It focused on Trump's attempts to harness the powers of the DOJ to remain in office. Testimony from three former DOJ officials, including Jeff Rosen and Richard Donoghue, proved how Trump attempted to place an ally within the DOJ to reverse the election results of key swing states.¹⁹⁰ Trump aggressively pushed to install Jeffrey Clark as Acting Attorney General because he was prepared to take actions to reverse the election results. At the center of this plan was a letter drafted by Clark and other Trump loyalists who hoped to send it to state officials in Georgia. This letter falsely claimed that the DOJ found evidence of election fraud and that the results needed to be rethought. Trump would not give up on his claims of fraud even though there was not any evidence to support them.¹⁹¹

1. Attempts to Use the Justice Department to Push Fraud Theories

Attorney General Barr testified again on June 23 to provide evidence that Trump pressured the DOJ to overturn the election. When asked why he investigated the fraud at all, Barr said that he felt it was responsible to put the DOJ in a position to speak on the accuracy of Trump's claims.¹⁹² Barr testified that the DOJ's ability to deny the allegations facilitated the peaceful transition of power. Barr said it frightened him to think what might have happened if the DOJ had waited until Biden was in office to conduct these investigations, even insinuating that there may not have been a transition of power at all.¹⁹³ However, Barr did draw the line at appointing a special counsel. Neither Barr nor Acting Attorney General Rosen thought that a special counsel was necessary.¹⁹⁴ However, given the situation, Barr conferred with the DOJ's counsel, Steven Engel, about the legality of appointing

189. *Id.*

190. *Here's Every Word from the Fifth Jan. 6 Committee Hearing on Its Investigation*, NPR (June 23, 2022, 7:31 PM), <https://www.npr.org/2022/06/23/1106700800/jan-6-committee-hearing-transcript> [<https://perma.cc/T8XN-R88R>] [hereinafter *Fifth Jan. 6 Committee Hearing*] (statement of Rep. Bennie Thompson).

191. *Id.* (transcription of statement of Rep. Elizabeth Cheney).

192. *Id.* (transcription of video testimony of William Barr).

193. *Id.*

194. *Id.* (transcription of live testimony of Steven Engel, former Assistant Att'y Gen. for the Office of Legal Counsel).

Louisiana's attorney general as special counsel, which Engel said was illegal.¹⁹⁵

After Barr's resignation, Rosen became the Acting Attorney General. Rosen testified that Trump met with him almost every day to push allegations of election fraud.¹⁹⁶ His most common concern was Trump's expression of dissatisfaction with the DOJ. In his view, the department had not gone far enough in investigating potential election fraud.¹⁹⁷ Based on the facts and the law, DOJ officials declined all of Trump's requests as inappropriate.¹⁹⁸ They informed Trump that the reviews conducted by the DOJ did not indicate the fraud that the President had alleged existed. Trump felt as though the election had been stolen, and he wanted to continue to meet with the DOJ to ensure that they were doing what he deemed was enough to solve these issues.¹⁹⁹

Trump continued to get more desperate in his attempts to hold on to power. The President summoned both Rosen and U.S. Attorney Richard Donoghue to the White House on December 15, a day after Barr announced his resignation.²⁰⁰ At this meeting, the conversation focused on a report about Antrim County, Michigan, that had been recently released. There had been recent reports that the voting machines allegedly had a 68 percent error rate. Adamant that the report had to be accurate, Trump said the report was proof that he won the election. Trump said the DOJ should employ the report to inform the American public that the election results could not be trusted. Rosen testified that Trump suggested seizing voting machines that he claimed were faulty.²⁰¹ However, the DOJ refused, citing a lack of evidence. Rosen emphasized how important it was that the DOJ adhere to the facts and the law, and multiple DOJ officials, including Engel and Donoghue, had Rosen's back.²⁰²

Donoghue noted that, as conversations went on throughout December, the President more urgently expressed that he felt the DOJ was not doing its job.²⁰³ He had many allegations that he was relying on to overturn the election. Donoghue needed to make it clear to the President that DOJ's conclusion had not changed—based on real

195. *Id.*

196. *Id.* (transcription of live testimony of Jeffrey Rosen, former Acting Att'y Gen. of the United States).

197. *Id.*

198. *Id.*

199. *Id.*

200. *Id.* (transcription of live testimony of Richard Donoghue).

201. *Id.*

202. *Id.* (transcription of live testimony of Jeffrey Rosen).

203. *Id.* (transcription of live testimony of Richard Donoghue).

investigations, witness interviews, and document review, the allegations were meritless.²⁰⁴ Donoghue testified that one Assistant Attorney General, Jeffrey Clark, told the President that he was ready, willing, and able to overturn the election if he was named Acting Attorney General.²⁰⁵ Clark prepared a draft letter to Georgia officials asking them to declare Trump the winner of its sixteen electoral votes.²⁰⁶ Trump lawyer Eric Herschmann testified that Clark's plans would violate Rule 6(e) and be felonious; however, Engel and Donoghue testified that Trump seriously considered replacing Rosen with Clark.²⁰⁷ Engel told the President that he would resign if he did so.²⁰⁸ Cassidy Hutchinson, a top aide to Mark Meadows, testified that Representative Scott Perry also pushed for Jeffrey Clark to take over the DOJ.²⁰⁹

The underlying theme was that Trump and his allies attempted to use the DOJ to subvert the rule of law. However, the pushback of multiple officials ultimately prevented a nightmare scenario from happening.

2. Pardon Requests

Following the January 6 attack, multiple lawmakers asked the White House for pardons of potential criminal activity. According to Herschmann's and Hutchinson's testimony, Representatives Matt Gaetz and Mo Brooks each requested blanket pardons.²¹⁰ Hutchinson testified that Representatives Louie Gohmert and Scott Perry also asked her to facilitate a presidential pardon.²¹¹ She also testified that Representatives Jim Jordan and Andy Biggs also discussed pardons, but they never asked for one.²¹²

E. July 21 Hearing

The July 21 hearing focused on the period between, roughly, 1:49 and 4:17 p.m. on January 6, 2021, the time between when a riot was declared at the Capitol and when Trump went to the Rose Garden to

204. *Id.*

205. *Id.*

206. *Id.*

207. *Id.* (transcription of video testimony of Eric Herschmann and transcription of live testimony of Jeffrey Rosen); FED. R. CRIM. P. 6(e).

208. *Fifth Jan. 6 Committee Hearing*, *supra* note 190 (transcription of live testimony of Richard Donoghue).

209. *Id.* (transcription of video testimony of Cassidy Hutchinson, former aide to White House Chief of Staff Mark Meadows).

210. *Id.* (transcription of video testimony of Eric Herschmann and transcription of video testimony of Cassidy Hutchinson).

211. *Id.* (transcription of video testimony of Cassidy Hutchinson).

212. *Id.*

film a message to his supporters.²¹³ The committee, through interviews with several witnesses, presented the argument that Trump “did not fail to act . . . [h]e chose not to act.”²¹⁴ The committee also presented evidence that while Trump refused to act, Vice President Mike Pence stepped up.²¹⁵

1. Trump Could Have Made a Statement at Any Time

As fictional White House Chief of Staff Leo McGarry tells President Bartlett in *The West Wing*, there is no “shortage of cameras or microphones” in the White House.²¹⁶ In fact, President Theodore Roosevelt called the presidency a “bully pulpit,” which was especially true on January 6, 2021, when virtually every tweet from Trump’s Twitter account became a news story.²¹⁷ As the Select Committee pointed out, Trump’s refusal to act was because he did not want to.²¹⁸

White House Deputy Press Secretary Sarah Matthews testified that Trump was about sixty seconds from the Press Briefing Room at all times during the January 6 attack.²¹⁹ By the time the violence appeared on American televisions, at around 2:10 p.m., many White House staffers told Chief of Staff Mark Meadows that Trump needed to make a statement.²²⁰ At 2:24 p.m., Trump tweeted the following: “Mike Pence

213. *Here’s Every Word from the 8th Jan. 6 Committee on Its Investigation*, NPR (July 22, 2022, 6:27 PM), <https://www.npr.org/2022/07/22/1112138665/jan-6-committee-hearing-transcript> [<https://perma.cc/Z5MK-BXH6>] (transcription of statement of Rep. Elaine Luria) [hereinafter *Eighth Jan. 6 Committee Hearing*]; Scott MacFarlane & Cassidy McDonald, *January 6 Timeline: Key Moments from the Attack on the Capitol*, CBS NEWS, <https://www.cbsnews.com/live-updates/jan-6-capitol-riot-timeline-key-moments/> [<https://perma.cc/D76D-YCWW>] (Jan. 6, 2023, 11:10 AM).

214. *Eighth Jan. 6 Committee Hearing*, *supra* note 213 (transcription of testimony of Rep. Adam Kinzinger).

215. *Id.*

216. *The West Wing: Let Bartlet Be Bartlet*, at 37:57 (NBC television broadcast Apr. 26, 2000).

217. Kate Shaw, *Can Anything Be Done to Rein In the President’s Speech?*, THE ATLANTIC (Aug. 2, 2020), <https://www.theatlantic.com/ideas/archive/2020/08/how-counter-bully-pulpit/614728/> [<https://perma.cc/GQ5L-YP76>]; see also Hannah Miao, *Trump Tweets amid Violent Capitol Hill Insurrection as Leaders Beg Him to Address the Nation*, CNBC (Jan. 6, 2021, 5:21 PM), <https://www.cnbc.com/2021/01/06/trump-tweets-as-political-leaders-beg-him-to-intervene-in-violent-capitol-hill-insurrection.html> [<https://perma.cc/4XMV-K25Z>].

218. *Eighth Jan. 6 Committee Hearing*, *supra* note 213 (transcription of statements of Rep. Adam Kinzinger and Rep. Elaine Luria).

219. *Id.* (transcription of live testimony of Sarah Matthews).

220. *Id.*

didn't have the courage to do what should have been done to protect our Country and our Constitution"²²¹

Multiple witnesses included the 2:24 p.m. tweet in their testimony. Matthews said she was deeply disappointed in the tweet, calling it the "last thing" the President should have done.²²² White House Counsel Pat Cipollone said that he believed the tweet was "terrible."²²³ Deputy Press Secretary Judd Deere was concerned that the tweet would make the situation worse.²²⁴ Deere also pushed Press Secretary Kayleigh McEnany to make the President put out a statement.²²⁵

The 2:24 p.m. tweet is significant because it is one of the only official records of Trump's activities between his exit from the Ellipse at 1:21 p.m. and his Rose Garden speech. Two other tweets, at 2:38 and 3:13 p.m., respectively, urged his supporters to remain peaceful to Capitol Police (though, as Congressman Adam Kinzinger pointed out, the mob had already turned violent).²²⁶ A video of the Oath Keepers showed that the hate group took that 2:38 p.m. tweet to mean they could harm congresspeople but not the police.²²⁷

According to Cipollone's testimony, Trump made no calls to the Attorney General, the Secretary of Defense, or the Secretary of Homeland Security.²²⁸ Cipollone also testified that Mark Meadows, Eric Herschmann, Ivanka Trump, Pat Philbin, and others were all pushing for the President to condemn the violence.²²⁹ The committee obtained text messages from Laura Ingraham and Donald Trump Jr. imploring Meadows to get Trump Sr. in front of a camera to condemn the violence.²³⁰ Trump Sr. refused to do so. Further testimony revealed that as Trump refused to condemn the violence, he was calling senators to ensure they would support delaying the counting of electoral votes.²³¹

221. Donald J. Trump, *Tweets of January 6, 2021*, Tweet no. 21, AM. PRESIDENCY PROJECT (Gerhard Peters & John T. Woolley, eds.), <https://www.presidency.ucsb.edu/node/348380> [<https://perma.cc/A99Y-2K8N>].

222. *Eighth Jan. 6 Committee Hearing*, *supra* note 213 (transcription of live testimony of Sarah Matthews).

223. *Id.* (transcription of video testimony of Pat Cipollone, former White House Counsel).

224. *Id.* (transcription of video testimony of Judd Deere, former Deputy Press Secretary).

225. *Id.*

226. *Id.* (transcription of statement of Rep. Adam Kinzinger).

227. *Id.* (transcription of video testimony of an unknown person).

228. *Id.* (transcription of video testimony of Pat Cipollone).

229. *Id.*

230. *Id.* (transcription of statement of Rep. Adam Kinzinger).

231. *Id.* (transcription of statement of Rep. Elaine Luria).

In a deposition, Senator Tommy Tuberville of Alabama testified that Trump called him during the early stages of the evacuation.²³²

Aides also believed that while better, Trump's Rose Garden address was unsatisfactory.²³³ Matthews noted her surprise that Trump continued the lie even after the violence at the Capitol.²³⁴ She was also "disturb[ed]" that Trump did not differentiate between the rioters and the peaceful protesters when he said, "[Y]ou're very special."²³⁵ However, those at the Capitol, like Stephen Ayres, noted that once the President said to go home, the rioters obeyed.²³⁶ A videotape played of an unknown voice telling the mob that the President had given them an "order" to go home.²³⁷

2. Who Was Giving Orders?

Testimony from July 21 also insinuated that Pence, and not Trump, was giving orders to the National Guard on January 6.²³⁸ According to Chairman of the Joint Chiefs of Staff Mark Milley, Pence told the chairman to make it seem like the President was still giving orders.²³⁹ Pence may have been spurred to a decision by the fear his Secret Service detail had for his life (and their lives, as well).²⁴⁰ The mob repeatedly voiced their desire to hang the Vice President for treason, and a videotape played by the committee revealed that Secret Service members were making calls to loved ones to say goodbye.²⁴¹

II. THE JANUARY 6 INSURRECTION AND THE MYTH THAT BLUE LIVES MATTER

Polls that examined partisan attitudes toward police and law enforcement emerged in the 1990s and increased in size and scope throughout the first two decades of the twenty-first century. In 2015, a Gallup poll found that between 1993 and 2015, the percentage of respondents with "a great deal or quite a lot of" confidence in the police

232. *Id.* (transcription of video testimony of Sen. Tommy Tuberville).

233. *Id.* (transcription of live testimony of Sarah Matthews and of video testimony of Judd Deere).

234. *Id.* (transcription of live testimony of Sarah Matthews).

235. *Id.*

236. *Id.* (transcription of video testimony of Stephen Ayres, January 6 rioter).

237. *Id.* (transcription of video of unknown person).

238. *Id.* (transcription of video testimony of Mark Milley, Chairman of the Joint Chiefs of Staff).

239. *Id.*

240. *Id.* (transcription of video testimony of anonymous security professional).

241. *Id.* (transcription of video testimony of Pat Cipollone and of anonymous security professional).

never fell below 50 percent.²⁴² The lowest points of confidence were in 1993 and 2015 (52 percent) with the highest point being in 2004 (at 64 percent).²⁴³ However, the poll also highlighted partisan differences on the issue. Democrats' confidence in the police dropped thirteen percentage points from 2013 to 2015 compared to 2012 to 2013, a larger shift than for any other subgroup. Over the same time, both independents' and Republicans' confidence in the police did not change. As a result, it appears Democrats (42 percent) have less confidence in the police than independents (51 percent) and remain much less confident than Republicans (69 percent).²⁴⁴

The Cato Institute's 2016 Criminal Justice Survey found "Republicans (81%) are far more favorable toward the police than independents (59%) and Democrats (59%)." ²⁴⁵ Similarly, a 2016 Pew Research Center poll found that "Republicans and Democrats have vastly different opinions about how well police do their jobs and the realities of policing today—views that are likely linked to clear partisan splits on opinions of the Black Lives Matter movement and highly publicized fatal encounters between blacks and police in recent years." ²⁴⁶ Thirty-one percent of Democrats and 33 percent of independents saw police as "enforcers" and not "protectors;" only 17 percent of Republicans agree. ²⁴⁷ Not surprisingly, "Republicans are almost twice as likely as Democrats to say they have a lot of confidence in their community's police department (51% vs. 29%)." ²⁴⁸ These findings stand in stark contrast to the experiences of law enforcement on January 6 and Republicans' responses to what those officers experienced.

The testimony of Cassidy Hutchinson, principal aide to White House Chief of Staff Mark Meadows from 2020 to 2021, offered context as to Trump's efforts to use violence the overturn the 2020 presidential election results. Five law enforcement officers—Sergeant Aquilino Gonell and Officers Harry Dunn, Caroline Edwards, Michael Farnone,

242. Jeffrey M. Jones, *In U.S., Confidence in Police Lowest in 22 Years*, GALLUP (June 19, 2015), <https://news.gallup.com/poll/183704/confidence-police-lowest-years.aspx> [<https://perma.cc/YKG2-96MS>].

243. *Id.*

244. *Id.*

245. Emily Ekins, *Policing in America: Understanding Public Attitudes Toward the Police. Results from a National Survey*, CATO INST. (Dec. 7, 2016), <https://www.cato.org/survey-reports/policing-america-understanding-public-attitudes-toward-police-results-national> [<https://perma.cc/6H4S-PADA>].

246. Anna Brown, *Republicans More Likely Than Democrats to Have Confidence in Police*, PEW RSCH. CTR. (Jan. 13, 2017), <https://www.pewresearch.org/fact-tank/2017/01/13/republicans-more-likely-than-democrats-to-have-confidence-in-police/> [<https://perma.cc/33SH-Q7SJ>].

247. *Id.*

248. *Id.*

and Daniel Hodges—delivered testimony to the House Select Committee about their experience in responding to the deadly January 6 insurrection at the U.S. Capitol. Their narrative accounts provide insight into the racism, racist threats, and physical violence experienced by officers working at the U.S. Capitol on January 6. Lieutenant Michael Byrd also came forward with additional insights.

The January 6 insurrection injured more than 150 police officers and left four insurrectionists dead. One police officer died of a stroke after the riots had ended, and several others committed suicide in the weeks that followed. Some 135 officers resigned or retired from their posts in the year after January 6, and the Capitol Police force considered itself understaffed by as many as 400 officers as of January 2022. Many of the officers who were on duty during the riots continue to suffer from the ongoing effects of trauma.²⁴⁹ Officer Brian Sicknick died of a stroke that occurred “while physically engaging with protestors.”²⁵⁰ Officers Jeffrey Smith and Howard Liebengood confronted rioters in the Capitol building and took their lives days later.²⁵¹

Even more, during the insurrection, the Vice President’s Secret Service agents were fearful for their lives.²⁵² A National Security Council staff member revealed they were terrified they were going to die. When asked about a note they took during the riot, they stated “that Secret Service agents at the Capitol ‘did not sound good right now.’”²⁵³ They then stated that they meant that “members of the VP detail at this time were starting to fear for their own lives. There was a lot of . . .

249. See Kyle Cheney, *Could Jan. 6 Happen Again?*, POLITICO (Jan. 3, 2022, 4:30 AM), <https://www.politico.com/news/2022/01/03/could-january-6th-happen-again-526167> [<https://perma.cc/3Y38-F9EZ>]; see also Shaila Dewan, Neil MacFarquhar, Zolan Kanno-Youngs & Ali Watkins, *Police Failures Spur Resignations and Complaints of Double Standard*, N.Y. TIMES (Apr. 2, 2021), <https://www.nytimes.com/2021/01/07/us/Capitol-cops-police.html> [<https://perma.cc/7QQP-BNS7>]; Richard Cowan, *U.S. Capitol Police Investigating Role of 35 Officers During January 6 Riot*, REUTERS (Feb. 19, 2021, 12:37 PM), <https://www.reuters.com/article/us-usa-trump-capitol-police-idUSKBN2AJ243> [<https://perma.cc/3KY2-YPF7>].

250. *Officer Brian Sicknick Died of Natural Causes After Defending the Capitol on January 6, Medical Examiner Says*, CBS NEWS (Apr. 20, 2021), <https://www.cbsnews.com/news/brian-sicknick-capitol-riot-died-natural-causes/> [<https://perma.cc/5CAN-Z2ZW>].

251. Peter Hermann, *Two Officers Who Helped Fight the Capitol Mob Died by Suicide. Many More Are Hurting.*, WASH. POST (Feb. 12, 2021, 2:56 PM), https://www.washingtonpost.com/local/public-safety/police-officer-suicides-capitol-riot/2021/02/11/94804ee2-665c-11eb-886d-5264d4ceb46d_story.html [<https://perma.cc/ZP93-HTD7>].

252. *Eighth Jan. 6 Committee Hearing*, *supra* note 213 (transcription of video testimony of anonymous security professional).

253. *Id.*

yelling, . . . a lot of very personal calls over the radio . . . it was disturbing. . . . But . . . there were calls to say goodbye to family members.”²⁵⁴ They explained that the Secret Service came very close to having to employ lethal options or worse.²⁵⁵ The Secret Service was concerned that the Vice President had been compromised as the mob chanted “Hang Mike Pence.”²⁵⁶ At this time, Trump tweeted that Pence “didn’t have the courage to do what should have been done”²⁵⁷— meaning that Pence should have declared Trump the winner of the presidential election despite the fact that he did not have the authority to do so.

A. Cassidy Hutchinson June 28 Testimony

During her tenure in the Trump administration, Hutchinson was a trusted member of Mark Meadows’s staff and frequently worked with members of the Secret Service, members of Congress, and senior members of the Trump administration.²⁵⁸ Hutchinson first recognized the organization of events for January 6 four days prior to the insurrection, when she met with two senior Trump administration members, Meadows and Trump’s lead lawyer, Rudy Giuliani.²⁵⁹ That night, Hutchinson and Giuliani had a conversation where he insinuated that on January 6, they were “going to the Capitol.”²⁶⁰ Giuliani also went into detail about how joyous this day would be for showcasing Trump’s power.²⁶¹ After this conversation, Ms. Hutchinson went to Meadows’s office, where the Chief of Staff told her that “things might get real, real bad on January 6th.”²⁶²

On January 6, Hutchinson met with Deputy Chief of Staff Tony Ornato and Meadows about the armed rally attendees.²⁶³ Specifically, it was stated that many attendees carried weapons and other items (such as pepper spray, knives, gas masks, and blunt weapons) that were

254. *Id.*

255. *Id.*

256. *Id.* (transcription of video testimony of Pat Cipollone and an anonymous security professional).

257. Trump, *supra* note 221.

258. *Here’s Every Word from the Sixth Jan. 6 Committee Hearing on Its Investigation*, NPR (June 28, 2022, 6:23 PM), <https://www.npr.org/2022/06/28/1108396692/jan-6-committee-hearing-transcript> [<https://perma.cc/XR9Z-6G8G>] (transcription of statement of Rep. Elizabeth Cheney).

259. *Id.* (transcription of live testimony of Cassidy Hutchinson).

260. *Id.*

261. *Id.*

262. *Id.*

263. *Id.* (transcription of video testimony of Cassidy Hutchinson).

confiscated when entering Trump's rally at the Ellipse.²⁶⁴ However, many people watched the rally from outside the venue, where they could keep their weapons, including AR15s, since they did not have to pass through a metal detector.²⁶⁵ Hutchinson said that during Ornato's briefing about the extent of violence that could occur, Meadows was not paying close attention and asked only if the President was informed, which he was.²⁶⁶ Hutchinson then stated that Meadows failed to act on the concerns of the potential for violence in the days leading up to the riots and on the day of.²⁶⁷

Hutchinson said that Trump was "furious" in the minutes leading up to his rally that the area inside the metal detectors was not filled.²⁶⁸ Hutchinson also stated that Trump was angry that the Secret Service did not let armed people through the metal detectors and stated that he "[didn't] effing care that they [had] weapons" since they were "not [there] to hurt [him]."²⁶⁹ Trump also reportedly said, "Let my people in. They can march to the Capitol from here."²⁷⁰ When Hutchinson was informed during the rally that there was not sufficient security at the Capitol to fight against the rioters, she attempted to tell Meadows but was turned away twice.²⁷¹ When Hutchinson finally relayed the message to Meadows, he did not have a reaction and merely changed the subject.²⁷²

Hutchinson also agreed that Meadows's claims that Trump was "speaking metaphorically" about going to the Capitol on January 6 were false.²⁷³ Hutchinson indicated that in the days leading up to January 6, Trump informed multiple aides about his planned trip and had the Secret Service devise potential driving routes.²⁷⁴ In response to this, the White House Counsel strongly advised against Trump's trip to the Capitol due to legal ramifications, including potential obstruction of Congress.²⁷⁵ When Hutchinson returned to the White House after the rally, she was informed by Ornato that Trump was so angry that he could not go to the Capitol due to safety concerns that he attempted

264. *Id.* (transcription of statement of Rep. Elizabeth Cheney).

265. *Id.*

266. *Id.* (transcription of live testimony of Cassidy Hutchinson).

267. *Id.* (transcription of video testimony of Cassidy Hutchinson).

268. *Id.* (transcription of live testimony of Cassidy Hutchinson).

269. *Id.* (transcription of video testimony of Cassidy Hutchinson).

270. *Id.*

271. *Id.* (transcription of live testimony of Cassidy Hutchinson).

272. *Id.*

273. *Id.* (transcription of statement of Rep. Elizabeth Cheney).

274. *Id.*

275. *Id.* (transcription of live testimony of Cassidy Hutchinson).

to take the steering wheel from his driver after his speech and drive himself there.²⁷⁶

When the rioters finally reached the Capitol, White House Counsel Pat Cipollone went to Meadows's office and said that immediate action needed to be taken.²⁷⁷ Meadows responded by saying that "[Trump] doesn't want to do anything."²⁷⁸ When the counsel said how serious this situation was and that "people are going to die," the pair went to speak to Trump.²⁷⁹ During this meeting, they were informed of the "hang Mike Pence chants," and Meadows told Hutchinson that Trump thought that "they[] [weren't] doing anything wrong" and that "Mike deserve[d] it."²⁸⁰ Instead of condemning the rioters, Trump defended them, which explains why he did not ask the rioters to leave the Capitol for multiple hours.²⁸¹

While the White House Counsel's Office wanted immediate and swift action to condemn the rioters, Hutchinson stated that Meadows was leaning toward deflecting the blame toward particular groups of people, such as Antifa.²⁸² Despite this, many people in Trump's inner circle, including two of his children, urged him to condemn the rioters as soon as possible.²⁸³ Other Republican politicians, such as House Minority Leader Kevin McCarthy and Representative Mike Gallagher, also called on Trump to call off the attack.²⁸⁴

Hutchinson testified that Trump was resistant to any type of follow-up speech being given in the aftermath of the insurrection.²⁸⁵ Despite many Republicans' reaching out to him about the ramifications of his lack of action, such as impeachment or invoking the Twenty-Fifth Amendment, Trump did not want to condemn the rioters.²⁸⁶ Trump ultimately gave the speech on January 7 and wanted to state that he pardoned all rioters, although that did not make it into the

276. *Id.*

277. *Id.* (transcription of video testimony of Cassidy Hutchinson).

278. *Id.*

279. *Id.*

280. *Id.*

281. *Id.* (transcription of statement of Rep. Elizabeth Cheney).

282. *Id.* (transcription of live and video testimony of Cassidy Hutchinson).

283. *Id.* (transcription of video testimony of Cassidy Hutchinson and of statement of Rep. Elizabeth Cheney).

284. *Id.* (transcription of video testimonies of Rep. Kevin McCarthy and Rep. Mike Gallagher).

285. *Id.* (transcription of video testimony of Cassidy Hutchinson).

286. *Id.* (transcription of statement of Rep. Elizabeth Cheney).

final draft of the speech. Hutchinson concluded her testimony by stating that Meadows sought a pardon for the events relating to January 6.²⁸⁷

B. Officer Caroline Edwards June 9 Testimony

According to Bennie Thompson,

Officer [Caroline] Edwards has been with the United States Capitol Police since 2017. On January 6th, Officer Edwards was assigned to the first responder unit which serves as the first line of defense at the Capitol complex. She also served as a member of the Civil Disturbance Unit, a special subset of the uniformed division trained to respond to mass demonstration events.²⁸⁸

On January 6, she and approximately five other officers were guarding bike racks at the peace circle.²⁸⁹ A crowd led by Joseph Biggs—a member of the Proud Boys who was indicted by federal prosecutors and charged with participating in planning, preparing, and carrying out the insurrection—stormed the circle.²⁹⁰ Among the crowd were individuals wearing military fatigues and bulletproof vests. Another group of Proud Boys approached chanting “F-U-C-K Antifa.”²⁹¹ Once the various groups began to merge, Biggs began asking questions such as, “You didn’t miss a paycheck during the pandemic[?]” and discussing the officers’ pay scale.²⁹²

Given that Edwards has worked hundreds of civil disturbance events, she is well aware when antagonists attempt to turn her into a villain. When it became apparent this was happening on January 6, she said to her Sergeant, “Sarge, I think we’re going to need a few more people down here.”²⁹³ Edwards noticed Ryan Samsel, one of the

287. *Id.* (transcription of live testimony of Cassidy Hutchinson and of statement of Rep. Elizabeth Cheney).

288. *Here’s Every Word of the First Jan. 6 Committee Hearing on Its Investigation*, NPR (June 10, 2022, 1:27 PM), <https://www.npr.org/2022/06/10/1104156949/jan-6-committee-hearing-transcript> [<https://perma.cc/7TCX-HEJS>] [hereinafter *First Jan. 6 Committee Hearing*] (transcription of statement of Rep. Bennie Thompson).

289. *Id.* (transcription of testimony of Caroline Edwards, Officer, U.S. Capitol Police).

290. *Id.*; Alan Feuer, *A Leader of the Proud Boys Was Arrested over His Role at the Capitol Riot*, N.Y. TIMES (Jan. 20, 2021), <https://www.nytimes.com/2021/01/20/us/proud-boys-arrest-joseph-biggs.html> [<https://perma.cc/K8WW-HXLR>].

291. *First Jan. 6 Committee Hearing*, *supra* note 288 (transcription of testimony of Officer Edwards).

292. *Id.*

293. *Id.*

insurrectionists, put his arm around Biggs and conferred with him.²⁹⁴ Then they started to approach the first barricade, ripping it down and progressing to the bike racks.²⁹⁵ As they pulled the bike racks, one hit Officer Edwards in the head.²⁹⁶ She was pushed back by the impact, her foot catching the stair behind her and her chin hitting the handrail. As a result, she was knocked unconscious. When Officer Edwards came to, she went back to the line on the House side of the Lower West Terrace.²⁹⁷ There were not many officers in that area, and Officer Sicknick was behind her for most of the thirty to forty-five minutes that she was there.²⁹⁸ She remembered noticing Officer Sicknick to the left of her, holding his head in his hands. She thought he was ghostly pale; she assumed that he had been sprayed.²⁹⁹

As she reflected on that day, Edwards's most vivid memory was of her breath catching in her throat as she observed what seemed like a war scene out of a movie.³⁰⁰ She could not believe her eyes. She saw officers on the ground bleeding, vomiting. She noted, "[I]t was carnage. It was chaos."³⁰¹ She went on:

I can't even describe what I saw. Never in my wildest dreams did I think that, as a police officer, as a law enforcement officer, I would find myself in the middle of a battle. You know, I—I'm trained to detain, you know, a couple of subjects and—and handle—you know, handle a crowd, but I—I'm not combat trained. And that day, it was just hours of hand-to-hand combat, hours of dealing with things that were way beyond any—any law enforcement officer has ever trained for. And I just remember—I just remember that moment of stepping behind the line and just seeing the absolute war zone that the west front had become.³⁰²

She recounted how, despite her efforts to do her job and preserve democracy, on January 6 and in the following days, she was called "Nancy Pelosi's dog," "incompetent," and "a traitor to [her] country, [her] oath, and [her] constitution."³⁰³

294. *Id.*

295. *Id.*

296. *Id.*

297. *Id.*

298. *Id.*

299. *Id.*

300. *Id.*

301. *Id.*

302. *Id.*

303. *Id.*

C. Sergeant Aquilino Gonell Testimony

Sergeant Aquilino Gonell was serving as Sergeant in the U.S. Capitol Police on January 6. During his testimony, Gonell recalled his immigration to the United States from the Dominican Republic. Gonell, having served in Iraq for Operation Iraqi Freedom, felt more afraid during the raid of the Capitol than during his deployment to Iraq.³⁰⁴ Gonell recounted the verbal attacks as well as the physical violence he and other officers endured on that day. Rioters called Gonell a “traitor” and a “disgrace” and said he should be “executed” for defending the Capitol.³⁰⁵ When rioters saw the color of Gonell’s skin, they said that he was “not even American.”³⁰⁶ Gonell and his fellow officers were “punched, pushed, kicked, shoved, sprayed with chemical irritants, and even blinded with eye-damaging lasers”³⁰⁷ He described the rioters as “vicious and relentless” during their attacks.³⁰⁸ The next day, Gonell went back to the Capitol where he continued to work until the inauguration, for fifteen consecutive days. He was still suffering from his injury six months later.³⁰⁹

304. Luke Broadwater & Nicholas Fandos, ‘A Hit Man Sent Them.’ *Police at the Capitol Recount the Horrors of Jan. 6 as the Inquiry Begins*, N.Y. TIMES, www.nytimes.com/2021/07/27/us/jan-6-inquiry.html [https://perma.cc/K7N8-MRRQ] (Aug. 26, 2021); Luis R. Sepúlveda, *Senator Luis Sepúlveda and the New York State Senate Honor Hero Staff Sergeant Aquilino Gonell with Resolution J247*, N.Y. STATE SENATE (Feb. 15, 2023), <https://www.nysenate.gov/newsroom/press-releases/luis-r-sepulveda/senator-luis-sepulveda-and-new-york-state-senate-honor-hero> [https://perma.cc/S6M7-MD3U].

305. Stefano Kotsonis & Meghna Chakrabarti, *Capitol Officer Aquilino Gonell Reflects on the Jan. 6 Insurrection*, WBUR (Aug. 5, 2021), <https://www.wbur.org/onpoint/2021/08/05/capitol-officer-aquilino-gonell-reflects-on-the-capitol-insurrection> [https://perma.cc/26FC-B7EV]; Suzanne Gamboa, *Latino Officer Tearfully Describes Devotion to Defending Capitol During Jan. 6 Attack*, NBCNEWS, <https://www.nbcnews.com/news/latino/latino-officer-tearfully-describes-devotion-defending-capitol-jan-6-at-rcna1527> [https://perma.cc/DX45-3D6Q] (July 27, 2021, 3:53 PM).

306. Adrienne Vogt, *Rioters Called Police Sergeant and Veteran “Not Even American” Because of His Race, He Says*, CNN (July 27, 2021, 12:31 PM), <https://www.cnn.com/politics/live-news/jan-6-house-select-committee-hearing-07-27-21> [https://perma.cc/8QW7-AGM4].

307. Barbara Sprunt, ‘This Is How I’m Going to Die’: *Police Sergeant Recalls the Terror of Jan. 6*, NPR (July 27, 2021, 12:51 PM), <https://www.npr.org/2021/07/27/1021161550/this-is-how-im-going-to-die-police-sergeant-recalls-the-terror-of-jan-6> [https://perma.cc/K2A2-XQBN].

308. *The Law Enforcement Experience on January 6th: Hearing Before the House Select Committee to Investigate the January 6th Attack on the United States Capitol*, 117th Cong. 2 (2021) (statement of Aquilino A. Gonell, Police Sergeant, U.S. Capitol Police).

309. *Id.* at 3.

D. Officer Michael Fanone Testimony

Officer Michael Fanone is an officer with the Metropolitan Police Department (MPD) in Washington, D.C.³¹⁰ His career in law enforcement began shortly after the September 11 attacks, when he felt called to serve his nation. During Fanone's testimony, he initially asserted his pride in serving the American institution and those who uphold democracy.³¹¹ Though his career has been filled with numerous "dicey situations," Fanone claimed that the January 6 insurrection was beyond anything he had seen or could have anticipated.³¹²

On January 6, Fanone was "a plainclothes officer assigned to the First District Crime Suppression Team," but Fanone and his partner, Jimmy Albright, were unable to "ignore the numerous calls." They chose to help when they did not have to; Fanone claimed that there was no way he could have "ignore[d] what was happening."³¹³ Upon approaching the Lower West Terrace Tunnel, in what Fanone now calls a "turning point" in his career, he and Albright watched Ramey Kyle of the MPD serve as commander.³¹⁴ "Commander Kyle remained cool, calm, and collected" while directing his officers to "[h]old the line"—"the seat of our American government." Fanone claimed Kyle's leadership on that day "was the most inspirational moment of [his] life."³¹⁵

As they approached the Lower West Tunnel, Fanone joined thirty other officers standing shoulder to shoulder, using their bodies as human shields against attackers.³¹⁶ These officers were worn down, beaten, and bleeding, but kept holding the line. When Albright asked the line of officers if anyone wanted to take a break, no one volunteered.³¹⁷ They stood there, a small force against thousands of protesters that pushed against them. Fanone recalls being dragged into a crowd, where his badge was torn from his uniform, his ammunition was taken, and he was beaten with fists and metal objects. He was

310. *The Law Enforcement Experience on January 6th: Hearing Before the House Select Committee to Investigate the January 6th Attack on the United States Capitol*, 117th Cong. 1 (2021) (statement of Michael Fanone, Officer, Metropolitan Police Department) [hereinafter Statement of Officer Fanone].

311. *Id.*

312. *Id.* at 1–2; PBS NewsHour, *Officer Michael Fanone Testifies on What Happened in the Jan. 6 Attack*, YOUTUBE (July 27, 2021), <https://www.youtube.com/watch?v=cJGe4C3QqNQ> [<https://perma.cc/JU5J-7PB7>].

313. Statement of Officer Fanone, *supra* note 310, at 2.

314. PBS NewsHour, *supra* note 312.

315. Statement of Officer Fanone, *supra* note 310, at 3.

316. *Id.*

317. *Id.* at 2–3.

electrocuted continuously with a taser, and as he screamed, Fanone claimed he could not hear his own voice.³¹⁸

Thus, Fanone claimed that in these moments, he faced death—pleading for mercy and crying to his attackers—and by virtue of what was perhaps luck, someone from the crowd stepped in to help him. To this day, it is painful for Fanone to watch the videos of his attack, yet he wants everyone to know what happened that day.³¹⁹ He was overwhelmingly grateful no members of Congress had to go through similar tortures. At the hospital, he was told he had suffered a heart attack, internal bleeding, and a brain injury and was suffering from post-traumatic stress disorder.³²⁰

Fanone described his continuing psychological trauma and the effects on his family.³²¹ His personal pain was immensely difficult; however, for Fanone, it was far more difficult to fathom that the very citizens and legislative members he defended denied the events of that day. He “went to Hell and back” protecting the people in the chamber, only for those same individuals to say that hell either does not exist or is not “all *that* bad.”³²²

While the occupation of a police officer is inherently risky, Fanone claimed the “indifference” toward his colleagues was “disgraceful.” He never expected law-abiding citizens to turn against the very system that supports them. Fanone believed that in denying the events of January 6, members of the government betrayed their oath of office.³²³ Their responses were shameful and laced with political affiliations, and such perspectives should not be dependent on political party.

When Fanone and his partner willingly “suited up on January 6,” their intentions held no relation to politics, regardless of who sat as President. They never cared about who was in office. They merely wanted to do their job: protecting the public. Fanone called for the American people to acknowledge those who responded that day, the officers who remain unrecognized for their “acts of bravery and selflessness.”³²⁴

318. *Id.* at 2, 4.

319. *Id.*

320. *Id.*; PBS NewsHour, *supra* note 312.

321. Statement of Officer Fanone, *supra* note 310, at 5.

322. *Id.*

323. PBS NewsHour, *supra* note 312.

324. Statement of Officer Fanone, *supra* note 310, at 6; *see also* Kris Van Cleave & Melissa Quinn, *D.C. Police Officer Michael Fanone Gets Vulgar, Threatening Voicemail During January 6 Testimony*, CBS NEWS (July 28, 2021, 12:11 PM), <https://www.cbsnews.com/news/Michael-fanone-dc-police-officer-vulgar-voicemail-january-6-select-committee/> [<https://perma.cc/NZ2D-NYKX>].

E. Officer Daniel Hodges Testimony

Officer Daniel Hodges was “a member of Civil Disturbance Unit 42 and worked in that capacity” on January 6, 2021. His initial task that morning was to “maintain high visibility” on Constitution Avenue toward the location of President Trump’s gathering.³²⁵ Hodges recalled a significant number of men at the gathering wore “ballistic vests, helmets, goggles, military face masks, [and] backpacks,” devoid of identifiable law enforcement or military insignia.³²⁶ He said that a group of white men in good shape wearing “battle dress uniform pants, tactical boots, black sunglasses,” and “load-bearing vests equipped with [Modular Lightweight Load-carrying Equipment (MOLLE)] pouches” approached two of his colleagues. Throughout the day, Hodges “monitored the crowd and the radio,” where he saw the Gun Recovery Unit working constantly, monitoring crowds, and arresting and seizing weapons from those “suspected [to be] carrying firearms.”³²⁷ In the early afternoon, he came across a confrontation between a white man wearing a Trump mask and a Black man—a counterprotester—backing away. Hodges and his colleagues separated the men, but a crowd of Trump supporters gathered and “attempted to bait the counterprotester” to continue the dispute.³²⁸

Around 1:30 p.m., the commander leading the defense efforts at the Capitol gave rapid response platoons permission “to deploy their hard gear and respond” to the protesters, as their “peaceful assembly” transitioned into acts of terrorism. Before departing for the Capitol, Hodges “remember[s] hearing over the air confirmation that [an] [e]xplosive [o]rdinance . . . team” discovered something: the MPD had discovered a bomb near the Capitol.³²⁹

As Hodges and his platoon moved toward the Capitol, he recalls the initial verbal resistance turned increasingly aggressive as they neared the building.³³⁰ They had to march in single file, grabbing each other’s shoulders in order to remain a unit. As they approached the terrace, their line was divided and they were attacked. Hodges recalled protesters continuously attempting to rip the baton from his hands,

325. *The Law Enforcement Experience on January 6th Before the House Select Committee to Investigate the January 6th Attack on the United States Capitol*, 117th Cong. 1 (2021) (statement of Daniel Hodges, Officer, Metropolitan Police Department) [hereinafter Statement of Officer Hodges].

326. *Id.*

327. *Id.*

328. *Id.* at 1–2; ABC News, *Officer Daniel Hodges Testifies on Jan. 6 Insurrection*, YOUTUBE (July 27, 2021), <https://www.youtube.com/watch?v=RrVLi6FyJBo> [<https://perma.cc/K5UZ-GVHV>].

329. Statement of Officer Hodges, *supra* note 325.

330. *Id.*

being told he was on the wrong team and that he would die on his knees.³³¹ In ripping protesters off his team members, Hodges was struck in the head by an object thrown by a protester who had scaled the Capitol's scaffolding. He believed this was the initial cause of his head trauma that day.³³² As he continued to fight, the crowd chanted "U-S-A."³³³

In recalling the scene, Hodges depicted the wide variety of flags that punctuated the seas of people.³³⁴ Most were variations of American flags or Trump flags. He claims that "the terrorists perceived themselves to be Christians"; one flag read "Jesus is my Savior, Trump is my President."³³⁵ He saw a "Thin Blue Line flag, a symbol of support for law enforcement," that the terrorists carried even while ignoring police commands and continuing to assault the officers. Tear gas and pepper spray clouded the air and terrorists threw stolen tear gas canisters back at the officers. Hodges later discovered the officers had been sprayed "in the face with wasp spray."³³⁶

According to Hodges, the scene around the Capitol building was a labyrinth of combat, "a battle of inches" with both sides pushing and fighting to retain their ground.³³⁷ Hodges and his colleagues were unaware that the terrorists had already gained entrance into the building, so they fought with the belief that they were "the last line of defense" for elected representatives.³³⁸ Just as Hodges gained ground to the front line, he lost it. A man with a stolen shield trapped Hodges; another seized upon his vulnerable state, grabbed his mask, slammed his head against the door, and finally stripped Hodges of his gas mask, exposing him to tear gas. He recalled his attacker "foam[ed] at the mouth" and later placed his phone in his mouth in order to make both hands available. Hodges "screamed for help" and was rescued. He fell back to the building, drank water, "decontaminated" his face, and got back up and returned to the front line. He believed "every able body made a difference."³³⁹

331. *Id.*

332. *Id.*

333. *Id.*

334. *Id.*

335. *Id.*

336. *Id.*; Libby Cathey & Benjamin Siegel, *Key Takeaways from Jan. 6 Hearing: Powerful Testimony Counters Revisionist History*, ABC NEWS (July 27, 2021, 4:17 PM), <https://abcnews.go.com/Politics/key-takeaways-jan-hearing-powerful-testimony-counters-revisionist/story?id=79093697> [<https://perma.cc/VB6E-8T7K>].

337. Statement of Officer Hodges, *supra* note 325.

338. *Id.*

339. *Id.*

As the day wore on, additional resources arrived at the Capitol to drive away the terrorists. Hodges and other members of Civil Disturbance Unit 42 gathered in the Capitol Crypt, checking on one another, grateful to have survived. But the city was not secure enough for them to sign off until 1:00 a.m. the next day.³⁴⁰

F. Officer Harry Dunn Testimony

During the January 6 insurrection, Officer Harry Dunn, a Black man, was serving on the U.S. Capitol Police force. Dunn's account mainly focused on the racial epithets he received after he responded, "Well, I voted for Biden . . . Does my vote not count?" to an insurrectionist who claimed that nobody voted for Joe Biden.³⁴¹ After Dunn's response, a woman yelled, "You hear that, guys, this n— voted for Joe Biden!"³⁴² Then, a crowd of twenty insurrectionists yelled at Dunn, "Boo! F— n—!"³⁴³ After the insurrection, Dunn spoke with fellow Black officers who shared similar stories of the racial abuse they experienced January 6. One insurrectionist told another Black officer, "Put your gun down, and we'll show you what kind of n— you really are!"³⁴⁴ Many of these Black officers had never been called the N-word before, including Dunn. The situation and the blatant display of racism made Dunn break down in tears later that day.³⁴⁵ He is still dealing with the emotional trauma that January 6 inflicted upon him as he continues to attend private counseling therapy and peer support programs.

G. Lieutenant Michael Byrd Testimony

Lieutenant Michael Byrd was serving as a lieutenant for the U.S. Capitol Police, the commander for the House chambers section, on January 6. Byrd chronologically recounts his perspective on the riot and the information he received throughout the insurrection.³⁴⁶ While the protest escalated to a riot, Byrd was informed of the chemical

340. *Id.*

341. Domenico Montanaro, *Capitol Police Officer Testifies to the Racism He Faced During the Jan. 6 Riot*, NPR, <https://www.npr.org/2021/07/27/1021197474/capitol-police-officer-testifies-to-the-racism-he-faced-during-the-jan-6-riot> [https://perma.cc/72S4-PDJZ] (July 27, 2021, 1:32 PM).

342. *Id.*

343. *Id.*

344. *Id.*

345. *Id.*; see also *Capitol Police Officer Harry Dunn Recounts Emotional January 6 Testimony and What Took Him to a "Low Place,"* CBS NEWS (July 30, 2021, 9:14 AM), <https://www.cbsnews.com/news/capitol-police-officer-harry-dunn-january-6-attack/> [https://perma.cc/ZMN8-2KAM].

346. NBC News, *Capitol Police Lt. Michael Byrd Speaks Out*, YOUTUBE (Aug. 28, 2021), <https://www.youtube.com/watch?v=2fscQ8PYS-A> [https://perma.cc/D39R-2PMP].

agents and weapons used to assault his fellow officers. The barricade that Byrd created, which protected chambers in which members of Congress were located, began to be destroyed by rioters.³⁴⁷

Byrd recounted that as the barricade was brought down, he was screaming at rioters to “get back” with a weapon drawn.³⁴⁸ He claimed his training encouraged taking a tactical plan; however, he was forced to draw his weapon, killing a protester named Ashli Babbitt. While Babbitt’s lawyer contended there was no warning prior to the shooting, video evidence released later conveyed one of the protesters yelling to other participants that officers had their weapons drawn and to stand back.³⁴⁹ As such, Byrd claimed he was following policy in giving as much warning as he could and yelling to his greatest capacity. He reiterated that he yelled so loudly he felt pain in his throat and soreness in subsequent days following the attack.³⁵⁰

Byrd spent countless years training and preparing for a moment like that of January 6, though he sincerely hoped it would never arrive.³⁵¹ As the riots escalated, he prepared himself to do the job that was required of him. He knew he saved countless lives that day, as members of Congress and other members of staff were in danger. Byrd said he enjoyed serving as a law enforcement officer, and he greatly admired those he protects.³⁵² He testified that when he pulled the trigger, shooting and killing Ashli Babbitt, he did so out of last resort. Prior, he had prayed no one would be able to walk through the doors, but in Babbitt’s failure to comply, he had to fire to save his people. He only later found out Babbitt did not carry a weapon; however, he could not see her hands or the contents of her bag, and he had no way of knowing her intentions.³⁵³ He stuck with what he knew: the violent intentions that had led up to that very moment. Thus, he claimed that according to law, it does not matter that Babbitt was unarmed and based on his training, his actions were appropriate.³⁵⁴ After he fired his

347. *Id.*

348. *Id.*

349. Jon Swaine, Dalton Bennett, Joyce Sohyun Lee & Meg Kelly, *Video Shows Fatal Shooting of Ashli Babbitt in the Capitol*, WASH. POST, <https://www.washingtonpost.com/investigations/2021/01/08/ashli-babbitt-shooting-video-capitol/> [<https://perma.cc/3B7A-VULK>] (Jan. 15, 2021).

350. Frank Figliuzzi, *Capitol Police Lt. Michael Byrd Targeted by Hypocritical Far-Right Backlash*, MSNBC (Aug. 31, 2021, 5:32 AM), <https://www.msnbc.com/opinion/capitol-police-lt-michael-byrd-targeted-hypocritical-far-right-backlash-n1278070> [<https://perma.cc/L7MB-JXJC>]; *see also* NBC News, *supra* note 346.

351. NBC News, *supra* note 346.

352. *Id.*

353. *Id.*

354. *Id.*

gun, the threat subsided; no other protesters attempted to enter. Byrd shared that he did not stay with the subject. Instead, he stuck with his responsibility and attended to the safety of members of Congress and provide them a safe exit route.³⁵⁵

In the months following the insurrection, some Americans have elevated Ashli Babbitt's status to a martyr. When asked to comment on this, Byrd stated that many were injured that day, several passed away, and his heart goes out to everyone who was injured or died, and their loved ones who feel the suffering of their losses.³⁵⁶ Though many other officers did not take the same actions as Byrd, Byrd described that his circumstance is terrifying for any person in his position, but ultimately, he can only attest to his reaction, his training, and his expertise—he cannot speak for those who did not shoot, why they did or did not, or whether they should have.³⁵⁷

As Byrd's name circulated the media, Trump claimed Babbitt was murdered, and Byrd claimed that hearing Trump's statement was "disheartening."³⁵⁸ Byrd had "spent countless hours, days, months doing threat analysis, evaluations, attending briefings, walkthroughs, escorts, [and] coordinating with [the] secret service" to protect Trump. Still, despite Trump's backlash, Byrd said he would take the same level of action to protect Trump. "It's my job," Byrd asserted.³⁵⁹ Byrd stated that from his perspective, if Trump is a leader of the country, he deserves the same protection as Congress, the Speaker, staffers, current Presidents, or reporters, reiterating that it is his job to provide safety and security.

Byrd told the committee that life following January 6 had been turbulent, and he teared up when accounting the various ways his livelihood has changed.³⁶⁰ In his opinion, his current state of life "is not appropriate for [a person] who risked [their own] life to save" those who "make the laws and rules" of his country.³⁶¹ In recent months, he has been working with multiple counselors, and he admits to extreme emotional outbursts and psychological distress. He was faced with an impossible decision under unfortunate circumstances, and in his opinion, he had the courage and mental fortitude to follow through with his training. In the face of accusations and political motives, Byrd

355. See Figliuzzi, *supra* note 350.

356. NBC News, *supra* note 346.

357. See Figliuzzi, *supra* note 350.

358. NBC News, *supra* note 346.

359. *Id.*

360. *Id.*

361. *Id.*

commented he does his job for anyone—Democrats, Republicans, Black, white, red, or blue—he has no political affiliation in his occupation.³⁶²

Byrd said that even after taking time off, he experienced distress returning to work and immense sadness in losing many “colleagues to death by suicide.”³⁶³ For many years, he saw himself to be a “proud, dedicated, . . . and loyal employee” of the U.S. Capitol Police. He previously looked forward to his job and felt “blessed” to be a part of any form of history on the chamber floor. Byrd now admits his fear. He recognizes those who disagree with his actions but wants them to understand he did his job: there were immense and “imminent threats and danger to the members of Congress.”³⁶⁴ He “want[s] the truth to be told,” as he believes there is “a lot of misrepresentation[]” in what people want to say versus what they do not understand.³⁶⁵

III. TRUMP AND THE DEATH THROES OF WHITE SUPREMACY

Republicans show strong support for law and order and law enforcement as well as opposition to individuals they believe pose a threat to the United States—foreign and domestic. However, they have largely tended to reject those sentiments with respect to the January 6 insurrection. In a poll conducted by YouGov US of 1,448 registered voters, including 1,397 who knew about the events at the Capitol, 93 percent of Democrats perceived the January 6 insurrection as a threat to democracy, and 55 percent of independents agreed. However, among Republicans, only 27 percent saw the insurrection as a threat to democracy, with 68 percent saying the opposite.³⁶⁶ In fact, while 43 percent of Republicans expressed opposition to the insurrectionists’ actions, 45 percent of Republicans still actively supported their actions.³⁶⁷ “While 59% of voters who [were] aware of the events at the Capitol [saw] them as . . . more violent than more peaceful [], the opposite is true of Republicans.” Most Republicans saw the activities at the Capitol “as more peaceful [(58 percent)] than more violent [(22 percent)].”³⁶⁸

With respect to who was to blame for what took place at the Capitol on January 6, “[a] majority (55%) sa[id] that President Trump

362. Figliuzzi, *supra* note 350.

363. NBC News, *supra* note 346.

364. *Id.*

365. *Id.*

366. Linley Sanders, Matthew Smith & Jamie Ballard, *Most Voters Say the Events at the US Capitol Are a Threat to Democracy*, YOUGov US (Jan. 6, 2021, 7:20 PM), <https://today.yougov.com/topics/politics/articles-reports/2021/01/06/US-capitol-trump-poll> [<https://perma.cc/J9Q7-TPNU>].

367. *Id.*

368. *Id.*

is ‘a great deal to blame[,]’ . . . with another 11% saying he is ‘somewhat to blame.’³⁶⁹ Forty-two percent were also reported as believing that “[c]ongressional Republicans who said . . . they would vote against [certification of] the election results [were] ‘a great deal to blame,’” while 20 percent thought they were only “somewhat to blame.”³⁷⁰ And while few believed then President-elect Biden was to blame a great deal (17 percent) or somewhat to blame (9 percent), Republicans saw Biden as “the biggest culprit” at 52 percent—compared to Donald Trump (28 percent) and congressional Republicans who did not want to certify the election results (26 percent).³⁷¹ Though 50 percent of voters believed that Vice President Pence should have invoked the Twenty-Fifth Amendment and removed Trump from office, 42 percent believed that this would have been “inappropriate.” “Republicans (85%) [were] especially likely to say . . . [removal of Trump from office] would be inappropriate.”³⁷² When it came to labels, Democrats were more likely to use the labels “[e]xtremist” (74 percent compared to 26 percent for Republicans), “[d]omestic terrorists” (78 percent compared to 17 percent for Republicans), “[c]riminals” (63 percent compared to 16 percent for Republicans), “[a]nti-democratic” (65 percent compared to 12 percent for Republicans), and “[l]ooters” (25 percent compared to 6 percent for Republicans). Republicans were more likely to use the labels “[p]rotectors” (50 percent compared to 28 percent for Democrats) and “[p]atriots” (30 percent compared to 2 percent for Democrats).³⁷³

In this Part, I argue that despite Trump’s efforts to flout the rule of law and his disregard for law enforcement, many Republicans still embrace him. They do so because of racial attitudes and sentiments—some about who they perceive as individuals who constitute true threats to America and some because of what Trump symbolizes vis-à-vis white power/supremacy. And lastly, given Trump’s racialized meaning to them, many are willing to kill and die to protect and defend him.

A. Trump: Deception and Yet Devotion

While there are a variety of types of Trump supporters, the great majority are devoted to him. I offer the January 6 hearing testimony of Stephen Ayres to highlight this commitment. Next, I offer some insight into the psychology of why Trump supporters believe whatever they need to believe to remain loyal to him.

369. *Id.*

370. *Id.*

371. *Id.*

372. *Id.*

373. *Id.*

1. A Typology of Trump Supporters

There is no one type of Trump supporter, however. Dr. Emily Ekins of the Cato Institute completed a thorough study on the types of Trump supporters, crumbling the opinion that there is just one group that gives him their vote. The five different groups, from largest to smallest, include: “Staunch Conservatives” (31 percent), “Free Marketeers” (25 percent), “American Preservationists” (20 percent), “Anti-Elites” (19 percent), and “The Disengaged” (5 percent).³⁷⁴

“Staunch Conservatives” are fiscal conservatives, morally traditional, and politically well educated.³⁷⁵ They “embrace moral traditionalism, and have a moderately nativist conception of American identity and approach to immigration.”³⁷⁶ Staunch Conservatives tend to believe “that discrimination against white[s] . . . is a major problem.”³⁷⁷ On economic issues, Staunch Conservatives oppose business regulation, tax increases for the wealthy, and government-provided health care. They trust the system and do not believe it is “rigged.” Staunch Conservatives also have traditional conservative perspectives “on the environment and [other] cultural issues like same-sex marriage.”³⁷⁸

“Free Marketeers” are fiscal conservatives in favor of small government; they believe in free trade and tend to have positions on immigration and race ranging from moderate to liberal.³⁷⁹ They tended to vote against Hillary Clinton in 2016 as opposed to voting for Trump. “Although they are [] loyal Republican vot[ers] . . . , Free Marketeers are the [group] most skeptical of Trump.” They tend to be male and middle-aged, and more likely to possess the trappings of financial security (such as working full time jobs, owning homes, and having private health insurance). They are a “more cosmopolitan” group and are the most likely to know members of the LGBT community. Being the most educated of the groups, Free Marketeers are among the most informed and politically engaged groups of voters.³⁸⁰

“American Preservationists” are typically “economically progressive, believe [that] economic and political systems are rigged,” and harbor nativist views on immigration and “ethnocultural

374. EMILY EKINS, THE FIVE TYPES OF TRUMP VOTERS: WHO THEY ARE AND WHAT THEY BELIEVE, DEMOCRACY FUND VOTER STUDY GRP. 1, at 4 (2017), <https://www.voterstudygroup.org/publication/the-five-types-trump-voters> [<https://perma.cc/75HQ-ZPTB>].

375. *Id.* at 5.

376. *Id.*

377. *Id.*

378. *Id.*

379. *Id.* at 5–6.

380. *Id.* at 5.

[understandings] of American identity.”³⁸¹ American Preservationists have “the lowest incomes of [all] the Trump groups.” Additionally, they have lower levels of formal education and are the least politically informed. They seem to want to associate with people who share “similar backgrounds and cultural experiences” as their own. American Preservationists tend to have a strong sense of their racial and religious identity (white and Christian, respectively). “They take the most restricti[ve] approach to immigration” among the Trump groups and “staunchly” oppose both legal and illegal immigration—especially of Muslims. American Preservationists register “the greatest amount of angst [about] race relations,” believing in a pervasiveness of antiwhite discrimination, and they have fairly negative attitudes toward ethnic, racial, and religious minorities.³⁸²

Like American Preservationists, “Anti-Elites” tend to be economically progressive and believe the political and economic systems are rigged, but they take “more moderate positions on immigration, race, and American identity than American Preservationists.”³⁸³ Anti-Elites have “relatively cooler” attitudes toward Trump, with “nearly half [having] favorable opinions of Clinton in 2012.” But this group had the most dramatic shift against Clinton by the 2016 presidential election. They are “middle-class voters [who have obtained] moderate levels of education,” and they tend to be marginally younger than members of the other Trump groups. Anti-Elites are the least likely of the groups to own a gun, attend church, or be politically informed. They think that political elites and those with money use the system to take advantage of ordinary Americans, so they support tax hikes on the wealthy. They tend to have more moderate positions on the environment, American identity, immigration, and religious traditionalism (such as attitudes about gay marriage) than American Preservationists.³⁸⁴

“The Disengaged” are uneducated about politics and “feel detached from institutions.”³⁸⁵ This group skews younger, is more female, and lacks religious affiliations. The Disengaged believe they cannot “influence political and economic institutions and believe the system is biased against them.”³⁸⁶ Trump supporters, on average, do not see themselves as having racist views. When asked whether it is important to be of European descent to be “truly American,” 47 percent of American Preservationists, 25 percent of Staunch Conservatives,

381. *Id.* at 6.

382. *Id.*

383. *Id.* at 7.

384. *Id.*

385. *Id.*

386. *Id.*

14 percent of Anti-Elites, 2 percent of Free Marketeers, and 1 percent of The Disengaged agreed.³⁸⁷ When asked whether it was important to accept people of different religious and racial backgrounds in order to be truly American, 88 percent of Free Marketeers, 86 percent of Anti-Elites, 69 percent of American Preservationists and Staunch Conservatives, and 46 percent of The Disengaged agreed that it was important.³⁸⁸

2. MAGA World's Undying Loyalty to Trump

Due to Trump's two impeachment trials, the actions surrounding the events of January 6, and the hostile transfer of power to Biden, many question why Trump supporters continue to stand by him and hope he will run for President in 2024. Scholars recognize that Trump's straightforward opinions, compelling narrative to "Make America Great Again," and declaration that he is the leader America needs to reestablish the "land of the free" and "home of the brave's" prominent reputation draw his supporters in and keep them close.³⁸⁹

Trump declared himself a leader from the beginning of his political career; he named himself a "genius" who would turn Washington around.³⁹⁰ He dove into politics stating his plan to save the common person, and many heard and accepted this promise, proving psychologists' findings that people support those who listen to them and promise to fight for them.³⁹¹ A small-business owner from the Midwest declared his stance with Trump stating that he sees Trump fight for the common person every day, unlike any other Republican politician.³⁹² Republicans want someone in office who will push against the Democrats and fight for the "American" person, as many believe Trump proved to do during his four years in office. His supporters see him as a leader who does not succumb to the political institution they believe has abandoned them in the past.

387. *Id.* at 13–14.

388. *Id.* at 14.

389. See Edward Lempinen, *Despite Drift Toward Authoritarianism, Trump Voters Stay Loyal. Why?*, BERKELEY NEWS (Dec. 7, 2020), <https://news.berkeley.edu/2020/12/07/despite-drift-toward-authoritarianism-trump-voters-stay-loyal-why/> [<https://perma.cc/ML9J-ABEM>].

390. *Id.*

391. Anthony Zurcher, *Who Are Donald Trump's Loyal Supporters?*, BBC NEWS (Dec. 10, 2015), <https://www.bbc.com/news/world-us-canada-35047233> [<https://perma.cc/29BM-ZKBP>]; see also Lempinen, *supra* note 389.

392. Susan Page & Sarah Elbeshbishi, *Exclusive: Defeated and Impeached, Trump Still Commands the Loyalty of the GOP's Voters*, USA TODAY, <https://www.usatoday.com/story/news/politics/2021/02/21/exclusive-trump-party-he-still-holds-loyalty-gop-voters/6765406002/> [<https://perma.cc/V9A9-YHHR>] (Feb. 22, 2021, 9:44 AM).

Trump publicizes his goal to “Make America Great Again” and turn the government around; hence, Americans who disapprove of the activity within the institution will likely hand their vote to Trump.³⁹³ Additionally, scholars refer to the social identity theory, stating that people are loyal to “arbitrary groups,” to explain his immense support.³⁹⁴ Thus, people will find leaders they can identify with and will continue to support the leader throughout their career.³⁹⁵ Trump speaks directly to individuals’ “values and insecurities” to draw them in.³⁹⁶ Additionally, psychologists analyzing Trump explain his supporters by describing how people like others who can talk an extensive narrative and make their problems seem simple to solve.³⁹⁷ Even if the stories and guarantees made by Trump never transpire, they are still appealing to the voters; thus, he receives the votes.³⁹⁸

During his many rallies across the country, Trump becomes a performer. He is theatrical and brings the large crowds in with chants such as “Let’s Go Brandon,” “MAGA,” and “Go Trump.”³⁹⁹ The rallies bring in thousands nationwide, some so desperate to ensure their spot they camp outside days in advance.⁴⁰⁰ Countless people view Trump as their savior, “sent by God to save this country.”⁴⁰¹ Furthermore, 56 percent of Republicans agree that part of the QAnon conspiracies are true, and Trump shows his alliance by retweeting the QAnon communications.⁴⁰² Trump supporters enjoy his rallies, where they feel surrounded by those who share similar characteristics (proving the

393. Lempinen, *supra* note 389.

394. George Cassidy Payne, *What Explains the Loyalty of Trump Supporters?*, KRWG (Oct. 29, 2019, 12:43 PM), <https://www.krwg.org/local-viewpoints/2019-10-29/what-explains-the-loyalty-of-trump-supporters> [<https://perma.cc/Q25B-C2N3>].

395. *Id.*

396. Lempinen, *supra* note 389.

397. Zurcher, *supra* note 391.

398. Lempinen, *supra* note 389.

399. *See, e.g.*, Sydnie Henry, *Trump Greeted with Cheers at Montgomery County Rally*, TEX. SCORECARD (Jan. 29, 2022), <https://texasscorecard.com/state/trump-greeted-with-cheers-in-montgomery-county/> [<https://perma.cc/32LT-LKZ4>].

400. *See* Chantal Da Silva, *Were There Really ‘Thousands’ of Trump Supporters Lined Up Days in Advance for President’s Orlando Rally?*, NEWSWEEK (June 18, 2019, 6:07 AM), <https://www.newsweek.com/donald-trump-rally-orlando-florida-supporters-amway-center-1444510> [<https://perma.cc/84LA-NEVX>].

401. Shane Goldmacher, *Trump’s Grip on G.O.P. Faces New Strains*, N.Y. TIMES (Jan. 31, 2022), <https://www.nytimes.com/2022/01/31/us/politics/trump-grip-republicans-polls.html> [<https://perma.cc/58AQ-B6PJ>].

402. Lempinen, *supra* note 389.

social identity theory), and those who believe in the QAnon conspiracy theory stand alongside Trump as they see him as their savior.

Trump is notorious for his lack of filter. While many believe he should learn to control himself (Twitter showed this when banning Trump from his account), his supporters find comfort in knowing they are getting Trump's true self. He is not afraid to share his opinions, and his voters feel they are getting a genuine person who shares his true beliefs. Social media amplifies his unfiltered voice, allowing him to share his thoughts at any moment rather than solely at press conferences or other publicized events. While this has proved to push people away from Trump, his supporters find comfort in feeling they receive constant communication from him, even if it what was communicated may not have been correct or necessary to say.⁴⁰³

During Trump's presidency and to the present day, many have resented his actions and policies; however, groups continue to prove their loyalty. In a survey of a thousand individuals who voted for Trump in the 2020 election, 54 percent stated they have more loyalty to Trump than the Republican Party.⁴⁰⁴ Furthermore, in a Suffolk University and *USA Today* poll, 85 percent of Trump's supporters indicated they would vote for him if he were the GOP nominee.⁴⁰⁵ Trump continues to be one of the most powerful political candidates; polls show he will likely be a frontrunner in the 2024 presidential election. His campaign team has announced that they have raised \$122 million for 2022.⁴⁰⁶

3. Blind Followers: The Case of Stephen Ayres

Stephen Ayres, a former Trump supporter, was present in the mob on January 6.⁴⁰⁷ He listened to Trump encourage his supporters to march to the Capitol and did the same. In January 2023, he pleaded guilty to disorderly and disruptive conduct for his actions at the Capitol. In his testimony, he claimed he was a "family man and working man" and an "ordinary American citizen."⁴⁰⁸ He stated that he decided

403. Zurcher, *supra* note 391.

404. *Suffolk Poll Shows Trump Voters Would Favor New Trump Party More Than GOP*, SUFFOLK UNIV. (Feb. 21, 2021), <https://www.suffolk.edu/news-features/news/2021/02/22/01/51/suffolk-poll-shows-trump-voters-would-favor-new-trump-party-more-than-gop> [<https://perma.cc/N6QH-A5L9>].

405. *Id.*

406. Goldmacher, *supra* note 401.

407. *Here's Every Word from the Seventh Jan. 6 Committee Hearing on Its Investigation*, NPR (July 12, 2022, 6:32 PM), <https://www.npr.org/2022/07/12/1111123258/jan-6-committee-hearing-transcript> [<https://perma.cc/JGJ9-YPSQ>] [hereinafter *Seventh Jan. 6 Committee Hearing*] (transcription of live testimony of Stephen Ayres).

408. *Id.*

to come to the Capitol on January 6 because he was very active on social media. He believed that Trump’s message on social media told him to come to the rally and be involved in the activities of the day.⁴⁰⁹ At the time, he believed the election had been stolen, as that is what he saw online from Trump. Now, he has done his own research and stepped away from social media.⁴¹⁰ He realized it would not be possible to steal an election of this size. He stated that had he known Trump had “no evidence of widespread fraud,” he would have acted differently.⁴¹¹

Ayres stated that he was not planning on going to the Capitol the morning of the sixth, he just planned to attend the Stop the Steal Rally.⁴¹² At the Stop the Steal Rally, Trump “got everybody riled up and told everybody to head on down [to the Capitol].”⁴¹³ The rally had made Ayres angry and had worked up most people in the crowd. Ayres also believed that Trump would be marching with him. He stated that, “[The President] said it in his speech, you know, kind of like he’s going to be there with us.”⁴¹⁴ Ayres did not leave the Capitol mob until Trump put his tweet out at 4:17 p.m. When asked when he left, Ayres replied, “We literally left right after [the tweet] come out. You know, to me if he would have done this earlier in the day, 1:30 . . . maybe we wouldn’t be in this bad of a situation.”⁴¹⁵ The tweet dispersed the crowd a lot. Ayres highlighted that the key reason he left, as well as why others left, was Trump telling people to go home.

Ayres lost everything due to the rally on January 6. He lost his job and his house.⁴¹⁶ It changed his life for the worse. At the time of the hearing, he was angry that Trump still promoted lies about the election. He believed it could cause the next election to have similar violent events. He warned Americans to “take the[ir] blinders off” before it is too late and do their own research.⁴¹⁷ This testimony provides evidence that Donald Trump’s December 19 tweet summoned both extremist groups and average supporters of Trump to Washington, D.C., on January 6,⁴¹⁸ including average Americans like Ayres. It also shows that had Trump condoned the violence earlier, it is likely the devastation

409. *Id.*

410. *Id.*

411. *Id.*

412. *Id.*

413. *Id.*

414. *Id.*

415. *Id.*

416. *Id.*

417. *Id.*

418. *See id.* (describing the statement of Rep. Jamie Raskin).

would have been much more limited. It also implies that even today, Trump is spreading false accusations that many Americans still believe.

4. MAGA World and Trump's Lies

Disinformation is a chief factor in Trump supporters' inability to appreciate his efforts in undermining the 2020 presidential election. The "continued influence effect" explains that disinformation can continue to influence one's memory and reasoning even after being corrected.⁴¹⁹ More significant is Trump supporters' clinging to lies and rejecting or ignoring truths that might augment their perceptions on Trump's role in undermining our democracy. "Motivated cognition" also explains this phenomenon. Motivated cognition is when an individual ties their values and emotions to information such that the way that information is processed can be affected.⁴²⁰ Biased and exaggerated attention is given to "belief-congruent information" because it helps protect one's identity, while information counter to a person's beliefs is likely to be disregarded.⁴²¹ For example, in a climate of increasing polarization, members of American political parties have increasingly interlaced their identity with their party.⁴²² In the 2020 presidential election, this resulted in Republicans feeling connected to Trump's claims of election fraud because their party, and similarly their identity, was being threatened. As a result, truths collected from data presented by the media and Democrats were ignored by Republicans because they countered the emotional misinformation they processed and connected to their identity.

Additionally, evidence that Trump lied about his election fraud claims may have pushed Republicans to form stronger beliefs in Trump's election lies. According to a concept called the "world-view backfire effect," after receiving information that discredits their ideologies, individuals feel the need to "defend their belief system[s]" and may end up forming a "stronger belief in their original misconceptions."⁴²³ For example, many Republicans consider media outlets reporting on the falsehoods of Trump's lies as further proof of election fraud. Therefore, while it may appear that Republicans are ignoring the truth that Trump was undermining the 2020 election and making false claims about it, they may be taking it as proof of election

419. Briony Swire, Adam J. Berinsky, Stephan Lewandowsky & Ullrich K. H. Ecker, *Processing Political Misinformation: Comprehending the Trump Phenomenon*, ROYAL SOC'Y OPEN SCI., Mar. 2017, at 1, 2.

420. *Id.*

421. *Id.*

422. Jeremy Adam Smith, *How the Science of "Blue Lies" May Explain Trump's Support*, SCI. AM. (Mar. 24, 2017), <https://blogs.scientificamerican.com/guest-blog/how-the-science-of-blue-lies-may-explain-trumps-support/> [<https://perma.cc/KPZ9-V7G9>].

423. Swire et al., *supra* note 419, at 2–3.

fraud. Consider that people often turn to news sources that support their thoughts. Due to this, one will often lack the knowledge from the opposing opinion, never gaining the ability to counter their own opinion. Similarly, Trump supporters turn to news sources that also support Trump, undermining their ability to contradict their own opinion. A survey taken in 2016 found that 58 percent of Trump voters turn to Fox News, a Republican and Trump-supporting network, as their most trusted news source.⁴²⁴

While the way misinformation is processed can help explain why Republicans have ignored Trump's efforts to undermine the 2020 election and his lies, the science behind lying and rhetoric also helps answer this question. In 2016, Maurice Schweitzer and Jeremy Yip conducted a study where they evoked different emotions in participants and had them engage in a series of games in which they were given opportunities to lie for their advantage.⁴²⁵ Their study revealed that participants who were provoked to feel angry were more likely to lie in the games.⁴²⁶ This indicated that people experiencing anger pay particular attention to their self-interest.⁴²⁷ In the aftermath of the 2020 election, Republicans were angered by the election's outcome. Trump fueled this anger with violent language, falsely suggesting the election was stolen and that major institutions were out to get them. To Trump and the political Right, these lies were a valuable tool to defend their party against their enemy, the political left, and a way to regain presidential power and further their agenda. So, although Republicans were aware of the truth behind Trump's false claims, their anger drove them to act in their self-interest and support his lies regardless of whether they believed them accurate.⁴²⁸

B. MAGA, Ideology, and Race

An individual's personal ideology correlates with many aspects of their life—personality, personal beliefs, and family history and background. It is no surprise that how a person thinks, and the factors that directly impact that, can serve as predictors of actions and mindset. Specifically, political attitudes, implicit and explicit biases,

424. Page & Elbeshbishi, *supra* note 392.

425. Jeremy Adam Smith, *Can the Science of Lying Explain Trump's Support?*, GREATER GOOD MAG. (Mar. 29, 2017), https://greatergood.berkeley.edu/article/item/can_the_science_of_lying_explain_trumps_support/success [<https://perma.cc/W3L6-QHXK>].

426. *Id.*

427. *Id.*

428. *Id.*

and racial ideologies all can be impacted by cognitive factors.⁴²⁹ This is important when studying prejudices and focusing on how they are formed and are continued through generations. Certain mindsets have been found to be correlated with racial prejudice, bias, and closed-mindedness.

For example, one study found that “the effects of dominance and authoritarianism on modern racism attitudes . . . [were moderated by individuals’] color-blind racial attitudes.”⁴³⁰ These results demonstrate how ideologies can influence individuals’ beliefs about race. This then influences and can help predict individual levels of “modern racism”—“a contemporary form of [racial] prejudice . . . that is expressed indirectly and covertly, typically by condemning the cultural values of the outgroup or by experiencing aversive emotions when interacting with its members but not acting on those negative emotions.”⁴³¹ In particular, color-blind racial beliefs also affect “modern racism attitudes among white individuals,” as they work alongside social dominance orientation (SDO) and right-wing authoritarianism (RWA).⁴³² Specifically, individuals’ scores on SDO and RWA are mediators for prejudice and conservatism. The single most important determinant of authoritarian-based conservatism and racism is a preference for predictability and order.⁴³³ Notably, RWA is related to cultural conservatism,⁴³⁴ as well as blatant and subtle prejudice.⁴³⁵ On the other hand, SDO is associated with only blatant prejudice. Moreover, RWA helps predict which form an individual’s racism would take.⁴³⁶

Not surprisingly, the 2016 election saw a dramatic polarization between educated and uneducated white voters. This gap was primarily

429. See Gordon Hodson & Michael A. Busseri, *Bright Minds and Dark Attitudes: Lower Cognitive Ability Predicts Greater Prejudice Through Right-Wing Ideology and Low Intergroup Contact*, 23 J. PSYCH. SCI. 187, 192 (2012).

430. See V. Paul Poteat & Lisa B. Spanierman, *Modern Racism Attitudes Among White Students: The Role of Dominance and Authoritarianism and the Mediating Effects of Racial Color-Blindness*, 152 J. SOC. PSYCH. 758, 767 (2012).

431. *APA Dictionary of Psychology, Modern Racism*, AM. PSYCH. ASS’N, <https://dictionary.apa.org/modern-racism> [<https://perma.cc/WX45-LJNK>] (last visited Feb. 26, 2023).

432. Poteat & Spanierman, *supra* note 430, at 759.

433. See Ilse Cornelis & Alain Van Hiel, *The Impact of Cognitive Styles on Authoritarianism Based Conservatism and Racism*, 28 BASIC APPLIED SOC. PSYCH. 37, 45 (2006).

434. *Id.* at 45–46, 48.

435. Alain Van Hiel & Ivan Mervielde, *Authoritarianism and Social Dominance Orientation: Relationships with Various Forms of Racism*, 35 J. APPLIED SOC. PSYCH. 2323, 2334–35 (2005).

436. *Id.* at 2327–28, 32.

a result of sexist and racist ideology, rather than of economic dissatisfaction.⁴³⁷ Another study examined trends in national and local levels of reported hate crimes from 1992 to 2017 and found that Trump's election led to a statistically significant rise in the number of reported hate crimes across the United States. This study controlled for other possible explanations, including an increase in terrorism after the rise in hate crimes following the September 11 attacks. The authors concluded that not only were hate crimes galvanized by Trump's inflammatory political rhetoric throughout his campaign, but they were also motivated by the perceived validation of that rhetoric once he was elected to office. This validation was key to incentivizing an increase in bias and the resulting bias-based offenses.⁴³⁸ The American Defamation League found that counties that hosted a Trump rally during the 2016 election saw a resulting 26 percent increase in hate crimes in the subsequent months.⁴³⁹ A 2020 Pew Research Center study found that during the 2020 election cycle, differences in political views between parties were worse than they were in 2016. Race and gender are the two categories where these divisions were the widest.⁴⁴⁰

As it relates to the intersection of the rule of law/law and order and policing, when the United States has come under attack, Republicans, more so than Democrats, have tended to develop harsher attitudes toward individuals of different races or religions and perceive them as a threat. Between 2002 and 2003, following the September 11, 2001 terrorist attacks, attitudes toward Muslim Americans became less favorable than they had been and more partisan.⁴⁴¹ In 2011, ten years after the September 11 attacks, 63 percent of Republicans believed that the values of Islam did not align with American values, while 55 percent

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437. Brian F. Schaffner, Matthew Macwilliams & Tatishe Nteta, *Understanding White Polarization in the 2016 Vote for President: The Sobering Role of Racism and Sexism*, 133 POL. SCI. Q. 9, 28–30 (2018).
438. Griffin Edwards & Stephen Rushin, *The Effect of President Trump's Election on Hate Crimes* (Jan. 14th, 2018) (unpublished paper at 3, 11, 19) (available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3102652 [<https://perma.cc/63VM-6FR3>]).
439. Ayal Feinberg, Regina Branton & Valerie Martinez-Ebers, *Counties that Hosted a 2016 Trump Rally Saw a 226 Percent Increase in Hate Crimes*, WASH. POST (Mar. 22, 2019, 7:45 AM), <https://www.washingtonpost.com/politics/2019/03/22/trumps-rhetoric-does-inspire-more-hate-crimes/> [<https://perma.cc/A89N-9JAT>].
440. *Voters' Attitudes About Race and Gender Are Even More Divided Than in 2016*, PEW RSCH. CTR. (Sept. 10, 2020), <https://www.pewresearch.org/politics/2020/09/10/voters-attitudes-about-race-and-gender-are-even-more-divided-than-in-2016/> [<https://perma.cc/L3KY-WS5P>].
441. Christopher Smith, *Anti-Islamic Sentiment and Media Framing During the 9/11 Decade*, 15 CREIGHTON J. RELIGION & SOC'Y 1, 5–6 (2013).

of Democrats disagreed.⁴⁴² Today, 72 percent of Republicans believe Islam is more likely to encourage violence among its members than any other religion, compared to 32 percent of Democrats.⁴⁴³

Even when the perceived threat is internal to the United States, Republicans have tended to develop harsher attitudes to those perceived as a threat compared to Democrats. In light of George Floyd's murder at the hands of Minneapolis police, protests erupted all over the world.⁴⁴⁴ The protests created a wave of support among Americans for the BLM movement but almost entirely among Democrats.⁴⁴⁵ And while most white Democrats (92 percent) expressed support for BLM in a June 2020 Pew Research Center poll, only 37 percent of white Republicans did.⁴⁴⁶ In fact, most Republicans (82 percent) thought that some people were taking advantage of Mr. Floyd's murder "to engage in criminal behavior" whereas only 39 percent of Democrats believed the same.⁴⁴⁷ Polled individuals held this viewpoint despite the fact that the protests were overwhelmingly peaceful with few arrests.⁴⁴⁸

Race has long played a central role in how "law and order" and policing have been viewed in the United States, especially on the political Right. Law and order and policing have been embraced by the political Right when the perceived, or conjured, threat has been people of color. President Nixon used coded appeals like "law and order" as

442. Daniel Cox, E.J. Dionne Jr., Robert P. Jones & William A. Galston, *What It Means to Be American: Attitudes Towards Increasing Diversity in America Ten Years After 9/11*, PRRI (Sept. 6, 2011), <https://www.prii.org/research/what-it-means-to-be-american/> [https://perma.cc/73T4-WAEL].

443. See Hannah Hartig & Carroll Doherty, *Two Decades Later, the Enduring Legacy of 9/11*, PEW RSCH. CTR. (Sept. 2, 2021), <https://www.pewresearch.org/politics/2021/09/02/two-decades-later-the-enduring-legacy-of-9-11/> [https://perma.cc/6KVJ-KM3T].

444. Gregory S. Parks, "When They See Us": *The Great White Awakening to Black Humanity*, 21 U. MD. L.J. RACE, RELIGION, GENDER & CLASS 1, 19–20 (2021).

445. *Id.* at 20.

446. Kim Parker, Juliana Menasce Horowitz & Monica Anderson, *Amid Protests, Majorities Across Racial and Ethnic Groups Express Support for the Black Lives Matter Movement*, PEW RSCH. CTR. (June 12, 2020), <https://www.pewresearch.org/social-trends/2020/06/12/amid-protests-majorities-across-racial-and-ethnic-groups-express-support-for-the-black-lives-matter-movement/> [https://perma.cc/JX3Y-4BTJ].

447. *Id.*

448. Erica Chenoweth & Jeremy Pressman, *Black Lives Matter Protesters Were Overwhelmingly Peaceful, Our Research Finds*, SPOKESMAN-REVIEW (Oct. 20, 2020), <https://www.spokesman.com/stories/2020/oct/20/erica-chenoweth-and-jeremy-pressman-black-lives-ma/> [https://perma.cc/3DVK-GCDT].

the centerpiece of his Southern Strategy.⁴⁴⁹ “[A]n internal memo from [President] Nixon’s 1968 campaign, later made public by his presidential library, suggests an intent to harness racial division.”⁴⁵⁰ According to campaign strategist Kevin Phillips, Nixon’s campaign knew that “[d]rawing conservative Democrats to the GOP ticket would turn on ‘the law and order/Negro socio-economic revolution syndrome,’” so he argued that “Nixon ‘should continue to emphasize crime, decentralization of federal social programming, and law and order.’”⁴⁵¹ Lee Atwater, an advisor to Nixon and President George H.W. Bush, explained how covert racial appeals were used during his time as a member of President Reagan’s White House staff:

You start in 1954 by saying “N[—], n[—], n[—].” By 1968 you can’t say “N[—].” That hurts you. It backfires. So you say stuff like forced busing, states rights and all that stuff and you get so abstract. Now you talk about cutting taxes and these things you’re talking about are totally economic things and a byproduct of them is, blacks get hurt worse than whites. And subconsciously maybe that’s part of it. I’m not saying that. But I’m saying that if it is getting that abstract and that coded, we are doing away with the racial problem one way or the other. Obviously sitting around saying we want to cut taxes and we want this, is a lot more abstract than even the busing thing and a hell of a lot more abstract than n[—] n[—]. So anyway you look at it, race is coming on the back burner.⁴⁵²

Not surprisingly, if many politically conservative whites associate crime with people of color, “[a]nti-black attitudes reflected in traditional prejudice and racial resentment [correlate with] white support for police use of force and perception of police misconduct.”⁴⁵³ In the context of Trump’s actions in and around January 6, what this means is that Republicans, especially those who are white, believe in law and order

449. Leland Ware & David C. Wilson, *Jim Crow on the “Down Low”: Subtle Racial Appeals in Presidential Campaigns*, 24 ST. JOHNS J. LEGAL COMMENT. 299, 309–10, 341 (2009).

450. Russ Bynum, *At RNC, GOP Echoes Racial Code of Nixon’s 1968 Campaign*, AP NEWS (Aug. 27, 2020), <https://apnews.com/article/virus-outbreak-election-2020-race-and-ethnicity-politics-ga-state-wire-f09ab43bd4232894b0e041f1a5d97f53> [<https://perma.cc/R55U-BPDC>].

451. *Id.*

452. Andrew Rosenthal, *Lee Atwater’s ‘Southern Strategy’ Interview*, N.Y. TIMES (Nov. 14, 2012, 2:31 PM), <https://archive.nytimes.com/takingnote.blogs.nytimes.com/2012/11/14/lee-atwaters-southern-strategy-interview/> [<https://perma.cc/GV8D-VU24>] (emphasis added).

453. R. C. Morris & Ryan Jerome LeCount, *The Value of Social Control: Racial Resentment, Punitiveness, and White Support for Spending on Law Enforcement*, 63 SOCIO. PERSPS. 697, 699 (2020).

and support police when the former is applied to Black bodies and when the latter are policing those bodies. But when threats to the rule of law and law enforcement are white people, the same type of outrage is not evoked among white political conservatives.

*C. Political Violence, January 6, and the Ends Justifying the Means*⁴⁵⁴

After the January 6 insurrection, the issue of political violence rose to the forefront of the modern political landscape. It became clear to media observers that violence in the name of political goals was more likely than ever to be seen as necessary for the accomplishment of those goals. Much of this support has come from the Republican Party, especially when compared to independents and Democrats. In the vein of “protect[ing] America” via the power of the people to act in place of their elected leaders, 39 percent of Republicans found themselves agreeing with the belief, although not necessarily the “disposition,” of using violence in these situations.⁴⁵⁵ White evangelicals, a strong base of support for the Republican Party and specifically Trump, stood out for their belief that violence may be necessary to resolve many of these political problems.⁴⁵⁶ Senses of patriotism and nationalism also motivate one’s propensity for accepting violence; the Public Religion Research Institute found that 30 percent of Republicans believe that “because things have gotten so far off track, true American patriots may have to resort to violence in order to save our country.”⁴⁵⁷ This is almost three times as large as the proportion of Democrats who agree with the statement (11 percent).⁴⁵⁸

Much of this propensity for violence that pollsters are encountering comes from the rhetoric of Republican Party congresspeople and leaders. While shortly after January 6, Republican leadership uniformly condemned the actions of the protesters who stormed the Capitol, “some leading Republicans have been backsliding” and have since excused the violence or attested that the level of violence was overstated

454. This Subpart builds on the author’s previous scholarship on political violence. *See generally* Gregory S. Parks, *When CRT Meets 2A*, DUKE CTR. FIREARMS L. (Jan. 11, 2022), <https://firearmslaw.duke.edu/2022/01/when-crt-meets-2a/> [<https://perma.cc/CM9X-FXFZ>].

455. Tom Gjelten, *A ‘Scary’ Survey Finding: 4 in 10 Republicans Say Political Violence May Be Necessary*, NPR (Feb. 11, 2021, 6:00 AM), <https://www.npr.org/2021/02/11/966498544/a-scary-survey-finding-4-in-10-republicans-say-political-violence-may-be-necessa> [<https://perma.cc/NH2E-8PJV>].

456. *Id.*

457. Adam Gabbatt, *Almost One in Three of Republicans Say Violence May Be Necessary to ‘Save’ US*, THE GUARDIAN (Nov. 1, 2021, 9:41 AM), <https://www.theguardian.com/us-news/2021/nov/01/republicans-violence-save-us-poll> [<https://perma.cc/EK6B-5UP7>].

458. *Id.*

in the media.⁴⁵⁹ Trump's own rhetoric has encouraged the protesters to use violence, with words like "liberate" and phrases like "if you don't fight like hell you're not going to have a country anymore" that seem to encourage violence in the political sphere to accomplish goals like preserving the traditional American way of life.⁴⁶⁰ The GOP, therefore, "can't risk alienating loyal supporters, even if they embrace violence," putting them in a tough situation as a party seeking to utilize Trump's fervent support while simultaneously questioning their actions and ethics at the Capitol.⁴⁶¹ Furthermore, the Republican Party has elevated the positions of those with more radically conservative views on the 2020 election winner over those who reject such perspectives and belong to more moderate, and therefore less violent, factions.⁴⁶²

During the January 6 hearings, texts between former campaign manager Brad Parscale and former Trump adviser Katrina Pierson revealed Parscale calling Trump's actions at the rally "a sitting president asking for a civil war."⁴⁶³ Following the attack, other members of the GOP made statements about the beginning of a civil war, including a Facebook post by Phil Reynolds, a member of the central GOP committee in Santa Clara, which read, "The war has begun. Citizens take arms! Drumroll please . . . Civil War or No Civil War?"⁴⁶⁴ Georgia Representative Marjorie Taylor-Greene (Republican) has advocated for Republicans to use the freedoms granted by the Second Amendment to protect themselves against the Democratic government, while also suggesting a "national divorce" similar to the secession culminating in the U.S. Civil War in 1860.⁴⁶⁵

459. Doyle McManus, *Why Republicans Are Suddenly Reluctant to Condemn Political Violence*, L.A. TIMES (June 20, 2021, 4:00 AM), <https://www.latimes.com/politics/story/2021-06-20/some-republicans-now-see-violence-as-a-necessary-means-to-an-end> [<https://perma.cc/X9A5-XSRT>].

460. *Id.*

461. *Id.*

462. *Id.*

463. Eric Lutz, "A Sitting President Asking for Civil War": January 6 Committee Details Role of Extremist Groups in Trump Insurrection, VANITY FAIR (July 12, 2022), <https://www.vanityfair.com/news/2022/07/january-6-committee-hearing-oath-keepers-civil-war> [<https://perma.cc/Z7TE-PMXC>].

464. Jay Reeves & Julie Carr Smyth, *Some in the GOP Parrot Far-Right Talk of a Coming Civil War*, PBS NEWS (Jan. 16, 2021, 6:04 PM), <https://www.pbs.org/newshour/politics/some-in-the-gop-parrot-far-right-talk-of-a-coming-civil-war> [<https://perma.cc/ES5S-Z2KU>].

465. Igor Derysh, *Marjorie Taylor Greene Suggests Using "Second Amendment Rights" Against Democrats*, SALON (Jan. 12, 2022, 12:53 PM), <https://www.salon.com/2022/01/12/marjorie-taylor-greene-suggests-using-second-amendment-rights-against-democrats/> [<https://perma.cc/M89V-K3PU>].

According to 2021 survey data, 46 percent of Americans believe a future U.S. civil war is likely.⁴⁶⁶ Another survey found that about one in three Republicans believe it may be necessary for U.S. citizens to take up arms against their government.⁴⁶⁷ Researchers point to several factors in the current sociopolitical climate that may explain the belief in an impending conflict. Factors include the multitude of “hot-button” cultural issues, such as gun control, abortion, election legitimacy, climate change, the pandemic, and racial inequality, which induce high levels of polarization and hostility toward opposing groups.⁴⁶⁸ Other factors include America’s winner-take-all electoral system, which may encourage individuals to look beyond democratic methods to achieve political goals.⁴⁶⁹ Such was the case with the January 6 attack on the Capitol, motivated by outrage at the results of the 2020 election.⁴⁷⁰ With high levels of polarization come high levels of distrust for members of the opposing party and a lack of faith in the current political system.⁴⁷¹ Researchers from the University of Chicago found that 73 percent of Republicans view Democrats as “bullies” who force their political beliefs on everyone.⁴⁷² Approximately 66 percent of Republicans “believe that the government is . . . ‘corrupt’ against people like them.”⁴⁷³

1. White Supremacist Groups and Trump

Talk of the impending civil war is common among far-Right groups, including the large number of private militias that exist throughout the country. These militias are often comprised of white, Republican men, particularly those who have been radicalized by far-Right rhetoric.⁴⁷⁴

466. William G. Gale & Darrell M. West, *Is the US Headed for Another Civil War?*, BROOKINGS (Sept. 16, 2021), <https://www.brookings.edu/blog/fixgov/2021/09/16/is-the-us-headed-for-another-civil-war/> [<https://perma.cc/DFS8-UJ3C>].

467. Chauncey DeVega, *Doomsday? Nearly Half of “Strong Republicans” Believe It’s Almost Time for Armed Violence*, SALON (July 27, 2022, 6:30 AM), <https://www.salon.com/2022/07/27/doomsday-nearly-half-of-strong-republicans-believe-its-almost-time-for-armed-violence/> [<https://perma.cc/NRS2-CAZ7>].

468. Gale & West, *supra* note 466.

469. *Id.*

470. David Weigel, *On the Campaign Trail, Many Republicans Talk of Violence*, WASH. POST (July 23, 2022, 7:53 PM), <https://www.washingtonpost.com/politics/2022/07/24/republicans-civil-war-midterms/> [<https://perma.cc/LX7G-J76X>].

471. Gale & West, *supra* note 466.

472. DeVega, *supra* note 467.

473. *Id.*

474. Gale & West, *supra* note 466.

Militias are trained for violent confrontation and their members often own firearms.⁴⁷⁵ In addition to high numbers of private militias, the United States also has a uniquely high number of privately owned firearms, and Republicans are more than twice as likely to own a gun as Democrats.⁴⁷⁶

Trump and his supporters have a long history of being associated with white supremacy. Trump's "America First" slogan conspicuously matches the old KKK phrase "America First. One God. One Country. One Flag."⁴⁷⁷ Given that Trump's platform is built upon similar beliefs to the KKK, it is not surprising that the KKK's paper endorsed Trump for president. The former leader of the KKK, David Duke, has also personally vouched for Trump. Duke claimed that Trump shares his "ideas of preserving this country and the heritage of this country."⁴⁷⁸ While Trump has since rejected Duke's and the KKK's support, he did not immediately disavow them when asked point blank by a reporter "[w]ould you just say unequivocally you condemn them and don't want their support?" Instead, Trump said he would "have to look at the group," claiming he was not familiar with it.⁴⁷⁹

During his presidency, 56 percent of Americans felt that Trump did not do enough to distance himself from white nationalists.⁴⁸⁰ A lot of events have led to this entanglement of Trump and white supremacist groups. Nearly seven months after Trump's inauguration, violence at the hands of white supremacists had hit a peak in the United States. On August 12, 2017, in Charlottesville, Virginia, "hundreds of white nationalists, neo-Nazis, [and] militia groups" came together to protest the city's plans to remove a statue of Robert E. Lee in what became

475. *Id.*

476. Kim Parker, Juliana Menasce Horowitz, Ruth Igielnik, J. Baxter Oliphant & Anna Brown, *The Demographics of Gun Ownership*, PEW RSCH. CTR. (June 22, 2017), <https://www.pewresearch.org/social-trends/2017/06/22/the-demographics-of-gun-ownership/> [<https://perma.cc/SFK6-M46E>].

477. Adam Forgie, *Utah Candidate Claims Trump's 'America First' Slogan Is 'Code for White Supremacists'*, KUTV (Mar. 1, 2021, 8:47 PM), <https://kutv.com/news/utah-legislature-2021/utah-candidate-trumps-america-first-slogan-is-kkk-code-for-white-supremacists> [<https://perma.cc/G27Z-FBBB>].

478. Scott Detrow, *KKK Paper Endorses Trump; Campaign Calls Outlet 'Repulsive'*, NPR (Nov. 2, 2016, 10:05 AM), <https://www.npr.org/2016/11/02/500352353/kkk-paper-endorses-trump-campaign-calls-outlet-repulsive> [<https://perma.cc/JJR3-MYDS>].

479. *Id.*

480. *Majority Says Trump Has Done 'Too Little' to Distance Himself from White Nationalists*, PEW RSCH. CTR. (Mar. 28, 2019), <https://www.pewresearch.org/politics/2019/03/28/majority-says-trump-has-done-too-little-to-distance-himself-from-white-nationalists/> [<https://perma.cc/4RE7-SCGK>].

known as the Unite the Right Rally.⁴⁸¹ At the rally, Heather Heyer, a local paralegal and activist, was murdered when she was intentionally hit by a car.⁴⁸² Rather than speaking out against the actions of various white supremacist groups in attendance, Trump said that there were some “very fine people”⁴⁸³ at the event. The organizer of the original Unite the Right Rally, Jason Kessler, has been named in a variety of lawsuits since the original event. However, Kessler has faced no serious legal consequences.⁴⁸⁴ Later on, President Biden said that he was encouraged to run for President due to the actions that took place in Charlottesville.⁴⁸⁵

As Trump was running for reelection, he continued spreading white supremacist sentiments. During a presidential debate, Trump refused to denounce a large white supremacist group. Instead of speaking out against the actions of the far-Right hate group, Trump told the members to “stand back and stand by.”⁴⁸⁶ This quote was interpreted as praise for the group instead of admonishment. The group viewed Trump’s quote as “historic” and used it to increase membership.⁴⁸⁷

2. Nick Quested June 9 Testimony

Nick Quested, an award-winning documentary filmmaker and producer, offered testimony based on his insights from being embedded with the Proud Boys, a far-Right organization involved in the January 6 attack.⁴⁸⁸ The Proud Boys are a far-Right terror organization that is known for their involvement in different violent political

481. Jason Kessler, S. POVERTY L. CTR., <https://www.splcenter.org/fighting-hate/extremist-files/individual/jason-kessler> [https://perma.cc/N7Z6-GPZU] (last visited Mar. 22, 2023).

482. *Charlottesville: Who Was Victim Heather Heyer?*, BBC NEWS (Aug. 14, 2017), <https://www.bbc.com/news/world-us-canada-40924922> [https://perma.cc/D56C-MWVD].

483. *Full Text: Trump’s Comments on White Supremacists, ‘Alt-Left’ in Charlottesville*, POLITICO (Aug. 15, 2017, 6:16 PM), <https://www.politico.com/story/2017/08/15/full-text-trump-comments-white-supremacists-alt-left-transcript-241662> [https://perma.cc/2YSS-C4UR].

484. Jason Kessler, *supra* note 481.

485. Sarah McCammon, *From Debate Stage, Trump Declines to Denounce White Supremacy*, NPR (Sept. 30, 2020, 12:37 AM), <https://www.npr.org/2020/09/30/918483794/from-debate-stage-trump-declines-to-denounce-white-supremacy> [https://perma.cc/8FK3-BPFZ].

486. *Id.*

487. Sheera Frenkel & Annie Karni, *Proud Boys Celebrate Trump’s ‘Stand By’ Remark About Them at the Debate*, N.Y. TIMES (Jan. 20, 2021), <https://www.nytimes.com/2020/09/29/us/trump-proud-boys-biden.html> [https://perma.cc/9FC3-VZQB].

488. *First Jan. 6 Committee Hearing*, *supra* note 288 (transcription of testimony of Nick Quested, documentary filmmaker).

incidents.⁴⁸⁹ On January 6, 2021, members of this terror group forcefully broke into the Capitol building. Their main goal was to stop a joint session of Congress that would count the 2020 election electoral votes and confirm Joe Biden as the next President of the United States. They were joined by another extremist group known as the Oath Keepers. The DOJ deemed the Proud Boys responsible for violently breaking into the Capitol and wreaking havoc on January 6. Some members of both the Proud Boys and the Oath Keepers have already pleaded guilty to charges regarding their role in the January 6 attack.⁴⁹⁰

According to Quesada's footage, the Proud Boys felt they were called to action by President Donald Trump when he said in a debate that they should "stand back and stand by."⁴⁹¹ After this comment, the then chairman of the Proud Boys put on a social media platform, Parler, that they were "standing by, sir."⁴⁹² After the Proud Boys were called to action by Trump, their membership tripled.⁴⁹³ In a later tweet by Trump, he asked his supporters to be in Washington, D.C., on January 6 for something wild. The Proud Boys understood this tweet to be instructions for them and started planning for January 6. They created a chat called the "Ministry of Self-defense Leadership Chat," in which they made a leadership hierarchy for their upcoming trip to D.C.⁴⁹⁴ At some point during planning for the insurrection, the current chairman of the Proud Boys, Enrique Tarrío, came to possess a document called the 1776 Returns, which detailed where high-ranking people were located throughout the U.S. Capitol.⁴⁹⁵

On January 5, Tarrío was bailed out from jail, where he had been booked for burning a BLM flag from a church and carrying gun magazines. After he left the jail, he met up with a top member of the Oath Keepers. Since all the hotels were full in D.C., Tarrío ended up going to a hotel in Virginia. At this point, Tarrío was interviewed by Nick Quesada about the Proud Boys. The next day, at 10:30 a.m., a group of around 300 Proud Boys led by Joseph Biggs started to go down the Mall and head toward the Capitol. As they were walking,

489. *Id.* (transcription of statement of Rep. Bennie Thompson).

490. *Id.* (transcription of statement of Rep. Elizabeth Cheney).

491. *Id.* (transcription of videotape provided by Nick Quesada).

492. *Id.* (transcription of videotape provided by Nick Quesada).

493. Deepa Shivaram, *Proud Boy Says Far-Right Group's Membership Increased 'Exponentially' After Trump Comment*, NPR (June 9, 2022, 9:57 PM), <https://www.npr.org/live-updates/capitol-insurrection-hearing-2022-06-09> [<https://perma.cc/8TCT-S5XS>].

494. Alan Feuer, *Proud Boys Ignored Orders Given at Pre-Jan. 6 Meeting*, N.Y. TIMES (June 26, 2022), <https://www.nytimes.com/2022/06/26/us/politics/proud-boys-jan-6.html> [<https://perma.cc/L25Y-WBCM>].

495. *First Jan. 6 Committee Hearing*, *supra* note 288 (transcription of video testimony of Marcus Childress).

they yelled, “USA,” “Whose streets? Our streets,” and “Something’s going to happen.”⁴⁹⁶ They did not encounter many Capitol Police during their walk down the Mall. Instead, they only saw “one sole police officer at the barriers” and “a tactical unit preparing.”⁴⁹⁷ With the officers they did run into, the Proud Boys told them that they were on their side, but that they were willing to act against them if they needed to. Due to the Proud Boys charging toward the Capitol, the Capitol Police gave a riot warning.⁴⁹⁸

At around 1:00 p.m., the Proud Boys started to enter the Capitol building. The Proud Boys attack was carefully timed to begin right after President Donald Trump’s speech and right as Congress began their joint session. At some point during the march toward the Capitol and making it to the building, a group of Proud Boys from Arizona joined the group. They were wearing orange hats and armbands. When the group of Proud Boys from Arizona joined, the chants changed to “F-U-C-K Antifa” and directed-question chants meant to vilify the Capitol Police.⁴⁹⁹ Biggs was using a microphone or megaphone to amplify his voice. The attack took a violent turn when they neared the peace circle and reached the bike racks barricading the Capitol building. Ryan Samsel started speaking to Joseph Biggs. After they spoke, the two men approached the barricades and started attempting to remove them. At one point, they caused a barricade to hit a Capitol Police member, Officer Edwards, and caused her to “black[] out.”⁵⁰⁰ A little while after this point, other rioters had gathered at the Lower West Terrace, where they sprayed officers in the eyes to try and get into the Capitol building.⁵⁰¹ Ultimately, the Proud Boys felt that their actions were justified, given that they were “invited by the President.”⁵⁰² Afterward, they felt disappointed that Trump did not join them during the insurrection.⁵⁰³

3. Jason Van Tatenhove July 12 Testimony

Jason Van Tatenhove is a former spokesman of the Oath Keepers as well as a former close associate of Elmer Stewart Rhodes, the founder and president of the Oath Keepers.⁵⁰⁴ The Oath Keepers are “extremists

496. *Id.* (video presentation of the January 6 violence).

497. *Id.* (transcription of testimony of Nick Qusted).

498. *Id.* (video presentation of the January 6 violence).

499. *Id.* (transcription of testimony of Officer Edwards).

500. *Id.*

501. *Id.*

502. *Id.* (videotape provided by Nick Qusted).

503. *Id.*

504. *Seventh Jan. 6 Committee Hearing, supra* note 407 (transcription of testimony of Rep. Bennie Thompson).

who promote a wide range of conspiracy theories” and tried “to act as a private paramilitary force for Donald Trump.”⁵⁰⁵ The DOJ has charged Rhodes with seditious conspiracy to overthrow the government of the United States during the mob on January 6. Trump’s December 19 tweet motivated this extremist group, and his presence overall on social media riled up the members of this group. Recently, Tatenhove has cut ties with the Oath Keepers and since then has spoken out against the violent group.⁵⁰⁶

Tatenhove testified about his time with the Oath Keepers.⁵⁰⁷ It began at Bundy Ranch, where he went to cover the group as an independent journalist. He then covered two more standoffs and was later offered a job as a national media director and associate editor for the Oath Keepers’ web page. He became very close with Rhodes and gained a lot of insider knowledge about the organization. When asked to explain who the Oath Keepers are, Tatenhove explained that while the group does not call themselves a militia, he believes they are a violent militia. He references the stacked military formation they used while going up the stairs of the Capitol on January 6. He believes they are “a very dangerous organization.”⁵⁰⁸ During his time with the Oath Keepers, the member base and Rhodes drifted further and further Right into white nationalism. When asked what the Oath Keepers’ vision is for America, Tatenhove replied that it includes violence and trying to get their way through any means necessary.⁵⁰⁹ Tatenhove also described his reasoning for leaving the organization. His breaking point came when he walked into grocery store in Eureka, Montana. A group of core members of the Oath Keepers and some associates were having a conversation about how the Holocaust was not real, and that was something Tatenhove could not stand for. He went home to his wife and kids and told them he was going to walk away at that point.⁵¹⁰

Elmer Stewart Rhodes publicly implored Trump to invoke the Insurrection Act,⁵¹¹ the 1807 law that allows the President to call up militias to put down rebellions against the United States. When Tatenhove was asked why Stewart Rhodes was so fixated on it, he answered that it gave Rhodes a sense of legitimacy. Tatenhove believed the mob was going to be an “armed revolution.”⁵¹² He referenced the

505. *Id.* (transcription of statement of Rep. Jamie Raskin).

506. *Id.* (transcription of live testimony of Jason Van Tatenhove, January 6 rioter).

507. *Id.*

508. *Id.*

509. *Id.*

510. *Id.*

511. 10 U.S.C. §§ 251–255.

512. *Seventh Jan. 6 Committee Hearing, supra* note 407.

number of deaths on January 6 and the gallows set up in front of the Capitol. He believed it could have sparked a new civil war. Tatenhove believes Rhodes just wanted to wrap up the violent act in a legitimate way. Instead of being called a militia, Rhodes wanted to be known as a “Community Preparedness Team.”⁵¹³

When asked if Rhodes ever discussed committing violence against elected political leaders, Tatenhove described one of his first graphic art projects in which he designed a deck of cards with different politicians and judges that implied key players Rhodes wanted to take out. He also described the push for military training and courses in the community that went over explosives training. Tatenhove said, “[W]e’ve gotten exceedingly lucky that more bloodshed did not happen, because the potential has been there from the start.”⁵¹⁴ He also fears the next election cycle for the violence it might bring.⁵¹⁵

CODA

During the 2022 midterm elections, some GOP candidates included talk of violence and a possible civil war in the United States in campaign advertisements and speeches.⁵¹⁶ Candidates Michael Peroutka and Dan Cox, both Republicans running in Maryland, warned supporters that the United States is headed toward war as liberals and current political leaders are destroying the country.⁵¹⁷ GOP ads included explicit references to violence, including footage of “Antifa” and BLM protesters running from tear gas and candidates handling semiautomatic firearms.⁵¹⁸ Other candidates promoted “RINO hunting.”⁵¹⁹ Following the January 6 riot at the U.S. Capitol, chairman of the St. Croix County Republican Party John Kraft implored followers to “prepare for war” in an online post.⁵²⁰

Since the investigation of Trump and the search on his Mar-a-Lago residence in Florida, he and his supporters have attacked and denounced government agencies including the FBI, the National Archives and Records Administration, and federal judges. On August 11, 2022, just two days after the FBI search of Trump’s Florida home, an armed man attempted to breach the FBI office in Cincinnati, Ohio. The suspect, Ricky Shiffer, had posted 374 messages on Trump’s

513. *Id.*

514. *Id.*

515. *Id.*

516. Weigel, *supra* note 470.

517. *Id.*

518. *Id.*

519. *Id.*

520. Reeves & Smyth, *supra* note 464.

social network, Truth Social, within the eight days leading up to his attempted attack. Some of his messages included, “If you don’t hear from me, it is true I tried attacking the F.B.I.” and “Be ready to kill the enemy.”⁵²¹ Shiffer tried to break into the FBI field office’s visitor-screening area before he fled and was shot and killed by police. Although his account on Truth Social has been taken down, the trending topics online the following day were “#FBIcorruption” and “DefundTheFBI.”⁵²²

While this has been the only physical violent attempt to attack a government agency, staff of the National Archives faced dangerous threats online. Extremists, like Shiffer, erupted online, outraged and calling for civil war.⁵²³ These ideas were ignited by Trump and his allied Republican lawmakers in their response to the investigation against him. In addition, one person in particular became a target, U.S. Magistrate Judge Bruce Reinhart. Judge Reinhart received numerous death threats for approving the search warrant of Trump’s home.⁵²⁴

521. Drew Harwell & Meryl Kornfield, *FBI Attacker Was Prolific Contributor to Trump’s Truth Social Website*, WASH. POST (Aug. 12, 2022, 12:24 PM), <https://www.washingtonpost.com/technology/2022/08/12/shiffer-trump-truth-social-fan/> [<https://perma.cc/7QFP-NDCE>].

522. *Id.*

523. *Id.*

524. Gary Fields & Nicholas Riccardi, *Trump Supporters’ Threats to Judge Spur Democracy Concerns*, AP NEWS (Aug. 17, 2022), <https://apnews.com/article/donald-trump-mar-a-lago-democracy-congress-government-and-politics-3e957660956399da07b59808bd9c8a71> [<https://perma.cc/5MKP-4VLP>].