

THE BROOKINGS INSTITUTION
WEBINAR

THE JANUARY 6 INSURRECTION: ONE YEAR LATER

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P R O C E E D I N G S

MR. WITTES: Hello, everybody. Welcome to the Brookings Institution webinar on January 6, one year later. My name is Benjamin Wittes. I'm a Senior Fellow at the Brookings Institution in the Governance Studies program. And I am here with Roger Parloff, Quinta Jurecic, Katie Benner and Seamus Hughes. I will introduce them all properly in a moment.

So we are here to talk about one year since the January 6th insurrection and the various efforts. Some more successful than others at accountability for that riot, uprising, insurrection, patriotic rally depending on your perspective. And those efforts have been diverse. They have ranged from an impeachment to numerous congressional hearings to -- of an oversight nature of an investigative and fact-finding nature of a legislative nature.

They have included efforts to establish a national commission which failed. They have also included the creation of the select committee whose work continues on a bipartisan if curiously bipartisan basis. And finally, and perhaps most dramatically they have included more than 700 criminal cases against individuals.

And so, we are here to chew over the incident itself as well as the efforts to account for it. And I can't imagine a better group of people to do it with. So I'm going to not spend a lot of time introducing people because, you know, that takes away from the time we have to talk with them.

But Katie Benner is a reporter for the New York Times who covers the Justice Department. And for present purposes and most importantly, I could talk all day about Katie and her contributions, but she covered in an intense way the investigation as it got started. As well as the concurrent uprising at the Justice Department that happened that a few days earlier that kind of nobody knew about until Katie reported it.

And so, we are also joined by Quinta Jurecic who is a Fellow at the Brookings Institution and a Senior Editor at Lawfare. Quinta has been writing about matters related to post-Trump reform particularly on the congressional side since the president left office.

Roger Parloff is also a Senior Editor at Lawfare. He is a longtime legal feature writer for a great many publications including Fortune and the American Lawyer and others. He has been doing a project for Lawfare diving deep in a variety of criminal cases arising out of 1/6 including having a major piece that we are releasing today on The Proud Boy and Oath Keepers Conspiracy indictments that will live on Lawfare later this morning.

And last but certainly not least, Seamus Hughes. Seamus is the Deputy Director of the George Washington University project on extremism. And for those of you who have not followed his work over the last year, he has been the unrivaled collector of data and documents related to the 1/6 prosecutions. There is nothing else like the project on extremism's database and document library that he has curated and maintained along with his team. I really commend it to you.

So with that as a very brief introduction, let's get started and let's start on January 7th. Katie, it's the day after or maybe the afternoon of the insurrection. Thousands of people have been inside the Capitol, breaking things, beating people and trying to obstruct the counting of electoral votes. And because of the oddities of the day and the way it unfolded, all of them have been allowed to leave, which is not what people like me would have predicted if you told me that this was going to happen.

And so, now the core officials of the Justice Department have thousands of potential criminal suspects spread out all over the country. How do you organize a criminal investigation under those circumstances? And what does the early phase of this investigation look like?

MS. BRENNER: Right off the bat even as the attack was unfolding, the acting Attorney General at the time Jeff Rosen, his deputies, the acting U.S. Attorney in Washington, D.C. and the head of the FY field office here, Steve D'Antuono, they all knew that this was going to be a huge job. They kind of anticipated that it would be a sprawling investigation and they anticipated that it would also be a massive manhunt.

So you saw inside of the U.S. Attorney's Office at the time it was run by a man named Michael Sherwin. He and his criminal division, John Crabb, and others, they scrambled to figure out is the best way to organize this massive manhunt? The FBI immediately started going through all the tapes,

all the footage. The attackers, many of them had uploaded a social media video of themselves on that day. There was a lot of immediate evidence to start sifting through, and it was a matter of organization.

The prosecutors felt strongly that it was important to focus on some of those high-profile people in the Capitol that day and try to immediately apprehend them in order to send a very strong signal. So that included Jacob Chansley, the QAnon Shaman, who was wearing the sort of horned helmet and the fur. And it included the man wearing the Camp Auschwitz sweatshirt. The man who was photographed sitting at Speaker Pelosi's desk with his feet on the desk.

The people who were carrying Confederate flags in the Capitol. These people were carrying this really powerful symbols to a lot of extremist groups. And I know that Seamus and Roger can both talk more about that. There were people who were becoming symbols of what was quickly being described as an insurrection by a lot of people. And so, the prosecutors and the FBI investigators thought to (inaudible) as it was important to really show as a show force to apprehend those people as soon as possible. To try to mute the idea that they could become symbols of, you know, the pro-Trump insurrection which is what they came to be known as. At least within the Justice Department amongst officials there.

So that was sort of the immediate push. The other thing we saw the Justice Department do which was really unusual, the DOJ very rarely talks about investigations. They started hosting a series of press conferences. It was for two reasons. One, they were trying to solicit information from the American people saying, do you know anybody who was at the Capitol that day? Do you recognize any of the people who are in this video footage? And if so, we really do need your help.

So they were trying to solicit information from the public. Again, I know Seamus has brought all these cases. A startling number of them for people who are tuned in by, you know, acquaintances, family members, ex's, et cetera.

And they were also trying to explain to the American people that this horrible thing that they just seen unfold on their television screens was being addressed by the federal government if there was immediate action. So again, which was also very unusual.

The third thing that happened that was unusual, in part because of questions from the public and the press, Michael Sherwin, the acting U.S. Attorney at the time specifically said, we are not ruling out anyone in this investigation. It was an important thing to say because there were already people raising questions including in Congress what role did the former president, Donald Trump, and his inner circle play asking people to come to the Capitol on January 6th? And encouraging them to “stop the steal.”

And is that something that the Justice Department should be looking at? It was clear that the U.S. Attorney at the time did not want to foreclose the idea that it could have been. It was a very dicey thing to say, but he said it. And it was another thing that sort of marked the investigation in those early days.

MR. WITTES: All right. So, Seamus, the investigation has now been going on for exactly a year. The Attorney General said yesterday that there have been 720 or so indictments.

What can we say about the group of people who this investigation has netted? What, you know, there have been a lot of analyses of the indicted community. What do you think is -- how would you describe the 720? Other than that they, you know, stormed the Capitol. What can we say about the 720 people who are facing charges?

MR. HUGHES: I think the first thing off the bat is they're pedestrian in nature. They're almost typically. So there are 705 cases that we've known have been unsealed and arrested.

The DOJ has talked about 725. So there's a little delay in terms of unsealing documents. The average age is 39, but they range from 18 to 81. They come from 45 different states in D.C. Florida, Pennsylvania, California, a bunch of other weight in terms of the number of cases, but that's not exclusively so. I mean they're kind of all over the map on this.

A good number of them have pled guilty. About 120, 172 as of this morning and they're still getting sentenced as we go there.

If you kind of dive into the members like the 700 plus cases. Like the Proud Boys and the Oath Keepers get a lot of coverage. Understandably so, right? They're wearing their camouflage.

They're going up in stack formation of the Capitol. They've got all of that happening. But what was also interesting is kind of the, again, the typically pedestrian nature in most of the cases.

You have construction workers, a realtor from Texas, they're kind of all over the map. They're not necessarily part of the organized groups when they went there. They were drawn to the online space. Many of them, as Katie mentioned, documented their crimes in real time. About 80 percent of them were arrested by the use of social media. So they didn't think they were doing anything wrong and they were livestreaming storming the Capitol because they thought they were -- they had a warped hero complex on these things. Most of them did not have ties to organized groups. I think that's the most interesting part about it.

The other thing is the pace hadn't stopped. So we're still averaging about two cases a day since January 6th. The Justice Department has talked about some 250 people they're still looking for on their "be on the lookout" website. So we may get to four digit numbers in arrests. The largest investigation in the FBI's history. They're moving agents off of ISIS and white-collar crime cases onto this.

Prosecutors are getting pulled from the field to D.C. to help out. Federal offender's office is completely overwhelmed with the number of cases they've got going on. The D.C. clerk system has never had -- the D.C. federal court has never had this number of cases. The discovery is huge. They've got, you know, 300,000 tips from the public, 14,000 hours of body cam video in cops. And all that information has got to get passed on to the defendants. That's going to be a messy process for a while.

And so, I think one of the big takeaways from this is we're not quite there in getting the full picture of what the prosecution looks like for January 6th. They're still in the early stages. And when E.G. Garland (phonetic) talked about yesterday. You know, he didn't use these terms, but he meant it. Now, they're clearing the decks. They're getting rid of the misdemeanor, low level cases so they can focus on the more complex cases that writers can focus on, the Oath Keepers and the Proud Boys and pleading out who they can get.

So if you look at the sentencing now, it tends to be shorter but that's a reflection of the

misdeemeanor cases and not felony cases. They tend to be probation, 30 days, 60 days. The occasional five years for assaulting a police officer. We're going to get to a longer sentencing at some point.

MR. WITTES: Roger, one of the points at which we will get to longer sentencing is when these Oath Keepers and Proud Boy cases that you wrote about today come to sentencing assuming they do. Seamus says these cases have garnet a lot of the attention though they're not typically.

So my question to you is what is it that's important about these cases? Or actually more than two. But two groups of cases? And how should we look at the Proud Boys and Oath Keeper cases in relation to the other 1/6? The hundreds of other, as Seamus says, more pedestrian 1/6 cases.

MR. PARLOFF: Well, the thing that drew me to them that made them interesting to me. There are only among these 705 federal cases that have been brought -- I mean brought in federal court - - there are only 40 individuals that have been charged with conspiracy, about 40.

And almost all of those about 35 of them are either Oath Keepers or Proud Boys. Conspiracy, this means that there's only 40 where the government felt it could prove beyond a reasonable doubt that these people coordinated with others and had advance planning to commit crimes on that day.

Others were either spontaneous or they wouldn't have gone knowing they wanted to commit a crime, but they weren't coordinating with anybody. So that made them interesting and important.

And it seemed also like, and still does to some extent, that it's these cases that might hold out the most prospect of sort of leading to evidence that would bridge the so-called -- well, what I would call the air gap between the pawns that, you know, the people that have been arrested that have actually entered the building. And perhaps people that weren't on the ground but that set the stage for this whole event, and the people that in lay terms incited it.

So I looked at these cases and it turns out that the Proud Boy cases are really quite different in a lot of ways from the Oath Keepers. There's a little evidence of some coordination. Not much that we've seen so far. But the Proud Boys' cases, and of course I'm going to rely entirely on

allegations, you know, nothing has been proven. They haven't gone to court so everybody could be innocent. But the Proud Boys, the government's theory and it's convincing, you know, on paper, is that they played a remarkable role in the event.

That they really seemed to have been at crucial points that were at the first barricades that were toppled. They played a role where the first police officers were engaged. Among the people that were first to go up the stairs under the inaugural scaffolding.

Dominic Pezzola, the first to break out a window. Six Proud Boys were among the first to enter the building. So they really seemed to have played -- and there's substantial evidence that they really went there planning to do this. That they didn't go to the ellipse.

They went to the Washington monument at 10:00 a.m. And then they moved to a spot east of the Capitol at 11:30. And then at 12:45, they moved to the Peace Monument, which is basically where Pennsylvania Avenue dead ends into the Capitol. And it's where the first barricade to the toppled was, which toppled at 12:53, eight minutes later. And there is evidence that the guy who toppled it spoke to a Proud Boy moments earlier and there's a dispute among them. The New York Times reporter, Alan Feuer, has reported that the man who toppled that first barricade, Ryan Samsel, says that Biggs' put him up to it, the Proud Boy Joe Biggs. Obviously, Biggs' lawyer denies that.

But the videotape is clear. In fact, there was a remarkable journal story that laid a lot of this out and the government has relied on the journal story to some extent. Laid a lot of this out on January 26th, which is remarkable reporting, 20 days after the event.

But, you know, yes there were obviously a couple of thousand people that came to the Capitol with anger that was white hot. That had been stirred to frenzy, but, you know, to take that first step. To topple a barricade, to spray police officers with bear spray, you need a few real thugs. And, you know, not everyone on the street is going to take that first step.

And the allegations of the government is that in a lot of places, the Proud Boys seem to have taken those first steps. So their role is very interesting, very important.

The Oath Keepers were really sort of a different phenomenon. I mean they were

remarkable on an emblematic level because they all -- the Proud Boys tried to blend in. They actually had instructions in advanced from -- I mean allegedly -- from the chairman, Tarrío, Enrique Tarrío. Don't today. Don't wear your colors. Try to blend in. We're going to go in in small teams. These were unusual instructions. They were trying to blend in and sort of rile up the normies.

The Oath Keepers were different. They went in uniform and that was the striking thing about them. It was a military operation. And it was disciplined and they were all wearing tactical gear, goggles and helmets and the striking emblem of walking up the steps in stacked formation, each one with their hand on the shoulder of the padre in front of him or her.

And yet, it's less obvious to me. I mean clearly, they went prepared for violence. They had an arsenal across the river at the Comfort Inn in Ballston. But what they seemed to have been waiting for was a signal from Trump. You know, a formal -- that he would "invoke the insurrection act" or he would call them up like a militia to essentially impose martial law. This is what they hoped.

At some point they seemed to get frustrated that he's not giving them that order. That the patriots are taking it in their own hands. But they're very conscious of when finally this first breach on the west side occurs. The one that has been spearheaded in effect by the Proud Boys. And it seems to be -- it's not clear to me that they would have breached it themselves until they realize, okay, this is happening. This is a go.

So they play different roles and that's my impression so far.

MR. WITTES: So, Quinta, so far we have talked about the criminal side of this, but there's also a political accountability side to the entire enterprise. A year of efforts to -- for the lack of a better term -- tell the story for political purposes. Assemble the narrative beyond that which can be proven in court including about people who would not be subject to criminal prosecution and probably shouldn't.

So where are we in that process? How do we assess the mostly congressional efforts to do that so far?

MS. JURECIC: So as you say then the main actor here is really the House Select

Committee on January 6th, which so far has only held one official public hearing in July of 2021 with a number of members of the Capitol police and the D.C. Metropolitan Police Department hearing testimony from those officers who were at the Capitol that day. Many of whom suffered pretty brutal physical and psychological trauma from what happened to them including one who was shoved in a door. One who -- or a number of whom experienced racist abuse.

And so, that was sort of their scene setting. Their way of establishing, you know, here we are. We're beginning this effort towards accountability.

Since then, they've received a little bit of criticism for operating a little more under the radar. That doesn't mean that they haven't been working. They have sent out a number of subpoenas. A number of information requests to individuals to social media companies. To telecommunication companies to get information about, you know, what kinds of conversations were happening, you know, in and around the White House that day and then advance of that.

And the committee has also said that in the new year, they're planning to begin a new phase of their work and take what they're doing more into the public eye. Representative Liz Cheney who is the leading Republican on the committee has said that they're planning to hold multiple weeks of public hearings. I think the phase she used was to bring what happened to the public in living color. Those were her words.

And there's been some reporting that the committee is also planning to release perhaps a series of reports. Initially, chairman of the committee, Bennie Thompson, had said that he was hoping to release a final report by the Spring of 2022, which I think, Ben, you and I among other people had suggested that perhaps that was a little overly ambitious in terms of the timeframe.

MR. WITTES: I think the timeframe is -- the technical term for that timeframe is delusional.

MS. JURECIC: Right. So they seem to have realized that. So they've now pushed things back. I think the Washington Post reported that their planning to release some kind of an interim report by the summer and then some kind of final report in advance of the November 2022 mid-term

elections.

So they've really been emphasizing that they've done an enormous amount of work so far just in sending out and collecting information. The Times had some interesting reporting on the different teams that are making up the committee's investigative works. So there's a green team which is following money. Donations that were then money that were used to promote Trump's assertion that he won the election falsely.

There's a gold team that's investigating Trump's coordination, possible coordination, with members of Congress, the Justice Department, other actors to try to overturn the election over ground. There is a purple team that's investigating extremist groups. So like Roger and Seamus spoke about the Proud Boys and the Oath Keepers. And then there is a red team that's looking at the people who actually planned the rallies on the ground that were meant to happen on January 6th and the stop to steal movement.

So those are a number of different threads. I think it will be interesting to see what direction the committee sort of moves in terms of how they tell the story. Of how those threads interact. And of course, there are a lot of different other things going on that we can also talk about.

So one issue that has been of great interest is the question of whether the committee will send out criminal referrals to the Justice Department which are -- don't have any weight in terms of forcing the Justice Department's hand, but are a sort of a nudge suggesting, you know, maybe you should look into criminal charges. Liz Cheney suggested notably that there might be criminal liability on Trump's part personally for obstructing Congress by refusing to call off the rioters. And therefore, delaying the certification block electoral vote on the 6th.

And then there has also been some really notable litigation which we have covered a great deal in Lawfare when it comes to the committee litigating to get it's (inaudible) crucial documents having to do with what Trump is saying, what people in the White House were saying in advance of January 6th. We're currently waiting on whether or not the Supreme Court will take up a cert petition by Trump appealing a ruling by the D.C. Circuit saying that the national archives could hand over material

about what was happening with Trump and the White House to the committee.

I think that that ruling by the D.C. Circuit if it stands maybe really helpful to the committee in getting information going on in the future both from witness testimony and documents insofar as it really gives the Courts kind of a stamp of approval to the committee's work and to the constitutional and legal basis for the committee's work.

So the long and the short of it is that they're very much in the middle of what they're doing. We should know a lot more very shortly about sort of how they're thinking about this and how they plan to prevent it. The clock is definitely ticking, but they've knocked some notable winds so far. I think most notably in the form of this D.C. Circuit opinion.

MR. WITTES: All right. So I want to -- there's a like medium that goes around with respect to both the Justice Department response and the congressional response.

And it's actually the same argument, which is they've been timid and insufficiently aggressive and, you know, they've gone after small fry people on the Justice Department side or issues on the congressional side and they haven't, you know, taken on the big things. So on the Justice Department side, this sounds like they've indicted a whole lot of small fry people who punched cops and none of the political leadership or the people who raised money.

And on the congressional side, it sounds like, okay, yeah, they have this select committee but that's a fall back from the national commission that they were going to set up. And by the way, it hasn't subpoenaed Trump. And it doesn't really have so much ability to compel testimony so people can stiff it. And so, I'm interested in everybody's sense of how effective these instruments have been?

So, Katie, get us started. And then Seamus and Roger like has the Justice Department performed about what you would -- like less well than you would have expected under the circumstances? More aggressively and more effectively? Or about as effectively as we could have expected about a year out? I don't believe in letter grids, but what does an assessment look like? Katie, Seamus and then Roger.

MS. BRENNER: Sure. So I think that first of all, Merrick Garland was responsive obliquely. But responsive to some of those criticisms in his speech yesterday. He said that, you know, keep in mind very large, complicated cases almost always begin with the easiest of charges, the lowest level charges, the misdemeanors, et cetera.

As investigators sift through the terabytes and terabytes of information that the Justice Department and FBI have received in order to see whether or not they can build bigger cases. Bigger cases take more time and he reemphasized that.

I am not surprised at the pace of the Justice Department investigation. They're going to be really deliberate. They don't want to lose any of these cases. This is really huge.

When Garland began, when he became Attorney General one of the first things he did was he met with the prosecutors in the U.S. Attorney's Office in D.C. He commended them for their incredible work for all of the charges that had already brought. So he basically quizzed them and said, can we talk about some of these cases? Why did we charge X. Why did we charge obstruction of Congress? Why did we charge this? And can we meet that at District Court and on appeal?

I mean that exercise in my reporting emphasized to prosecutors that this is a long game. There are no easy wins. Expect everything to be appealed and everything to be challenged. And so, when you think about it that way how do you build a case against people who are sort of higher level in the view of the public?

So people were members of the former president's inner circle. You know, people who organized rallies to "stop the steal" even though Trump had been told by his own former Attorney General that there was no stop the steal, but the election was valid and Joe Biden had won.

You know, how do you go after those people? I think one thing to think about is how different the congressional investigation that Quinta just described is from a typically Justice Department investigation. At the Justice Department, you cannot have a green team or I don't know which color team, but you can't have a team that just looks at everybody who planned a rally because there's nothing inherently illegal about planning a rally.

So you can't get process on people just because they planned a rally, just because they funded something. Roger and I, we could fund a big rally tomorrow. But if the thing went out of control and all the people who participated rioted and ripped off half of a city are we liable for that simply because we funded a rally? Right now, no. In the United States funding a rally, organizing a rally, these are not inherently illegal things.

So what you need to do if you're the Justice Department is you need to from these lower level charges, the things you have been able to thoroughly investigate. See whether the process you have there has led you up the chain, right? That the process of some of these misdemeanor or lower perhaps of the process on the 40 people who Roger has been talking about of Oath Keepers and Proud Boys. Did that yield you information that then allows you to go out and get a subpoena on somebody who organized a rally.

It is a completely different approach. It has to be from the bottom up for all sorts of legal reasons including as Garland noted yesterday protecting the civil liberties of Americans who right now are allowed to hold even beliefs that most of the public finds odious. That most of the public truly disagrees with, we can have this place in America. We can talk about those beliefs. We can promote those beliefs. So that is a really tricky thing for the Justice Department.

MR. WITTES: Can I just push you on that?

MS. BRENNER: Yeah, sure.

MR. WITTES: So you listened to the Attorney General's speech yesterday and he says, we've been super aggressive and, you know, we've got to be careful on these points. And people don't understand the way criminal investigations work, but we've actually -- I'm actually really proud of the work that we've done and we're not done. Do you buy that?

MS. BRENNER: I think moving aggressively for the Justice Department is different from moving aggressively from the court of public opinion. So first off.

Aggressively for the Justice Department is never going to satisfy people who are on Twitter who think that Donald Trump should be in jail. And that is always going to be a gap.

Now, in terms of the work that's not done. He was very careful to say, this investigation is going to take a long time and the work is not done. And I do believe that. I do believe they're trying very hard to, for example, look at the current conspiracy cases to see if anything more (inaudible).

We don't know if people cooperated. We don't really know what evidence they have. And are there other cases to be made? Not directly but related to January 6th that could come around issues like domestic extremism based on what happened at the Capitol that day? It was described as an enormous crime scene by Michael Sherwin when he was the U.S. Attorney and I think that is the correct way to see the attack. Sifting through a crime scene of that enormity is going to take a long time.

MR. WITTES: Seamus, what do you think? Is Garland overstating the magnitude of the Department's accomplishment? When you look back over a year of the Department and FBI's conduct in this do you see a record for them to be proud of? Do you see a work in progress? Do you see a collection of low-grade cases that amount to a collective disappointment?

MR. HUGHES: First of all, I would go to a rally that Katie and Roger put on. So whatever you guys want to do let me know.

The other thing is, you know, the --

MR. WITTES: Would you be one of the people who turned that rally violent? Or would you be peaceful --

MR. HUGHES: That's the (inaudible) that comes up most of the time. Like whatever I need to do is fine. That will mix it up a little bit.

So let's talk a little bit about, you know, the Attorney General is never going to give a speech in front of the OJs saying we're not doing a great job on our investigation so there's that, right? But I think it's also important to put in context.

You still have a pandemic and a COVID that is slowing down the processes in the courts. You still had an acting U.S. Attorney at the time who sometimes got a little bit farther in his skis on the way he talked about things, sedition charges, things like that. You have a finite number of U.S. Attorneys and EOUSAs who can work these cases and a finite number of FBI agents who are still working double

shifts and I think still are actually.

The largest investigation in its history and when I say a large investigation like they're getting contractors. They're contracting out to do discovery because they just have never done this amount of transfer of information in their history. Katie is absolutely right.

MR. WITTES: And by the way, Seamus' point here is really critical. You know, if you're working a case other than a 1/6 case and you get a phone and need it analyzed, there are big delays because the 1/6 cases are sucking up a lot of the resources. The forensic resources that the Department has available to it.

MR. HUGHES: And this is a separate conversation about whether it is sucking up resources for extremism not related to January 6th too. So if you've got your expert FBI agents working 1/6 cases, you know, the little boys can hang out.

And so, that's one thing that we should consider and be concerned about. So there's going to be a backlog. I think the wheels of justice go very slowly. Like look at yesterday, Bob Smith gets arrested for trespassing on the Capitol and urinating on a column there. And so, he pled guilty or he at least gave up his -- told the FBI he did something wrong on November 1st. Completely gave it up. Got criminally charged yesterday. So that's a two-month delay on a very, very, very simple case.

And so, you put that in context. It's going to be a while. And when I say -- when, you know, the Attorney General talks about, you know, we're doing these low-level cases so we can build a case for the more complex cases. There's truth in that but the real truth is we're doing these low-level cases so we can get them off the books and I don't have to do anymore motions on these things and I can really focus on what I want to focus on. Because right now I have to go back and forth in every filing motion.

So, you know, we'll get there. We're just not there yet. And I've got to be -- having watched the courts for the last 20 years. This is the fastest they have ever moved. And we may get to a point -- but one last point I would say is we actually make it to a point where some of these defendants get off on a technicality because of the slowness of discovery.

And this is because of the judge's patience it's okay right now. And they seem to be wanting to let the process go but ask them again in a year whether a speedy trial has been hit and you may get kind of the low-level cases where some of these folks get to walk.

MR. WITTES: All right. Before we go on, I want to say we're going to be taking audience questions. If you want to pose a question you can email it to events@brookings.edu or you can Tweet it to [@BrookingsGov](https://twitter.com/BrookingsGov) using [#January6](https://twitter.com/hashtag/January6). That's the number six. Don't try to put in a T-H or anything. Again, that's events@brookings.edu or Tweet [@BrookingsGov](https://twitter.com/BrookingsGov) with using [#January6](https://twitter.com/hashtag/January6).

Roger, how do you evaluate the Justice Department's performance so far?

MR. PARLOFF: Well, I agree with Katie and Seamus. I mean it's moved very quickly, you know, 700 cases given all of the uphill battle with COVID and everything else. And it's already obtained 20 percent of the cases have pleaded out.

But and I also agree with Katie that their hands are tied. To some extent they can't do the kind of free ranging investigation that the house select committee can. You know, you can't just begin looking into something because you have a hunch that it might be unsavory.

And so, I think they've been sort of waiting for the House select committee to find some stuff for them and then refer it. But I am beginning to get a little antsy about the -- I think that the House select committee has already -- the evidence is already pretty suspicious about Trump. The number of people begging him to intervene and his not doing it.

And now, this gets to a legal question. And I don't think anyone knows the answer. It has multiple obstacles. But whether this is obviously Representative Cheney's theory is that at some point that is becomes a crime. He's seeing this attack on democracy going on and for hours people are begging him to intervene. He's the president. These are his people and he won't call them off. And is that corruptly obstructing a congressional proceeding? Or is that aiding and abetting the corrupt obstruction of an official proceeding?

And I think it is. And I think it's enough evidence to begin looking. And I think that Grand Jury subpoenas get more respect than a select house committee subpoenas. And I don't think they have

infinite amount of time here. I think, you know, they're going to lose the House. I think that's a real possibility. And so, I'm beginning to get nervous.

MR. WITTES: All right. So before we --

MR. HUGHES: One moment.

MR. WITTES: Yeah, please.

MR. HUGHES: To get a sense of the pace of it while we were talking for the last 43 minutes, they've unsealed a new arrest, right? So there are things going on as we talk.

And the other thing I think we should probably touch on is that the Justice Department and the FBI has done some pretty novel investigative techniques in this too. So not only does the public but think of it like the Geofencing of phones across everyone that was in the Capitol that came against it or cell phone tower at the time.

Going through that data itself is --

MR. WITTES: So slow down, Seamus. And explain for the 90 percent of viewers who do not know what GO sensing is. What this is? And why this is novel and interesting in this context because I agree with you. This is a super important element of this investigation that is really reflects the size of the crowd.

MR. HUGHES: I think you minimize the intelligence of Geofencing in Brookings' viewers. But I think there's at least 80 percent there. So Geofencing is basically, you take a location, a set location. You use the Capitol. And you look at every phone that was turned on and pinged against another, a close cell tower and that could tell you everyone that was in that location.

Now, when you get that information, you then have to cross-reference it with every congressional staffer, senator or congressman to take them off the list. And then you have like a list of a 1,000 phone numbers because there were 2,000 people that were near there. And then you have to then interview them, see if they crossed the legal threshold and go back and forth.

Now, Geofence has been used in robbery cases, in arson cases around the country, but not at this level. Not at this kind of huge, massive investigation. And so, there's been some pushback by

defense attorneys on the use of Geofencing that hasn't been successful in terms of pushback, but if they get lucky on this. If defense attorneys get lucky on this that sets a precedent for future investigations. And the Justice Department gets able to get it through that also sets a precedent. So it has a lot of ramifications.

But what you see here is basically the FBI using the kind of clever tactics in how to do criminal complaints. A lot of the times they're studying public tips but, you know, the way I think Katie and Roger and the rest of us read it would be some level of parallel reconstruction or parallel investigations. They're using other law enforcement techniques and instead of kind of tipping their hand in the court, they're also just using the public tips to augment it.

MR. WITTES: Right. If you can we knew about Person X because his next door neighbor turned him in that's a much cleaner way to describe it to a court than if you have to litigate the question of that you actually already knew about him because of some more exotic investigative technique.

Quinta, is Congress taking a bum rap on its own efforts to ensure accountability here? If you were -- I guess there is no Merrick Garland of the Congress except I suppose Nancy Pelosi. But if you were, is there a defense of congressional performance to issue similar to the one that Garland gave in his speech yesterday with respect to the Justice Department?

MS. JURECIC: Very interesting question who the Merrick Garland of Congress might be. I think that it's a little harder to say when it comes to the committee precisely because of what I mentioned at the beginning of this event which is just that they haven't done so much in the public eye in terms of releasing, you know, what they're thinking is.

We have hints. I think that the team division is telling in terms of what they're focusing on. I do think that it is notable that they have been -- I would argue pretty aggressive in terms of going after information.

They don't seem to have pulled their punches particularly so they of course as viewers are probably aware pursued criminal contempt against Steve Bannon as sort of outside advisor of Trump

which the Justice Department is now prosecuting for Bannon's refusal to comply with information requested subpoenas from the committee.

They did the same with Trump's White House Chief of Staff Mark Meadows, which is a little more of a complicated case so the Justice Department is now considering -- just the other day, they requested information from Fox host, Sean Hannity, and released in that letter, in the information request some text messages that Hannity sent to folks in the White House including Mark Meadows essentially seeming to voice real trepidation about Trump's actions on the 6th and about Trump's refusal to backdown from his conspiracy theories about the election after January 6th.

And so, that speaks to me to a willingness to really go hard on, you know, investigating the people who were involved in this. And I think that Cheney's comment suggesting that Trump himself might be criminally copiable for the reasons that Roger sketched out in a little more depth. Also suggests to me that, you know, they're not planning to hold back particularly.

Of course, again, you know, it's hard to say without seeing how they're presenting this information publicly, but it didn't seem so far to me that they're taking, you know, a sort of (inaudible) test approach in trying to make people happy which I do think is actually one of the advantages of having a select committee over a nonpartisan commission as was originally proposed.

Where, you know, if you have a select committee where the vast majority of the Republican party just completely refuses to engage that paradoxically I think has kind of freed them to go in, you know, without fear or favor and look for the truth no matter whether or not it might make, say, House Minority Leader Kevin McCarthy happy or try to soft pedal their conclusions.

I don't want to completely ignore the concerns that some people have raised about, you know, how the committee is conducting investigations. So I think there has been some concern that they haven't been working in the public eye particularly. We'll see whether the work that they've been doing will sort of answer those concerns when they do begin issuing reports and hearings.

I think there's also been some frustration in the public with the pace of, for example, the criminal contempt proceedings against Bannon and Meadows that those haven't yet, you know, resulted

in any -- that Bannon hasn't yet, you know, faced real criminal copiability. That Meadows hasn't yet been charged. And to that I think the only thing to really say is just that Congress is sort of operating at a disadvantage here in terms of what tools it has at its disposal.

I mean we mentioned earlier that, you know, perhaps people take Grand Jury's subpoenas a little more seriously than subpoenas from Congress. I think that's representative of how Congress is operating after four years of an administration that really undercut its power to get information. It's power to get information speedily. And so, part of what the committee is doing here is sort of playing a hand where they seem to be working really hard to get to the truth and to present that truth but they just don't have the ability to move as quickly and aggressively as the Justice Department does just because of the tools that they have in the box.

We can talk about ways that they might think about addressing that and fixing those problems, but I think that, you know, some of those concerns that people are voicing may well be legitimate but speak more to the sort of imbalance when it comes to separation of powers and congressional ability to conduct investigations than it does to the particular way that the committee is choosing to conduct this investigation.

MR. WITTES: All right. So I want to zero in on the question that Roger raises of the intersection and interaction between the congressional, political investigation and the Justice Department criminal investigation because I think the anxiety that Roger describes is a pretty pervasive one that, hey, we're finding out these incredibly damning facts and we're learning them because Liz Cheney stands up in a committee business meeting and reads a bunch of text messages from, you know, Laura what's-her-name at Fox and from -- and, you know, I -- and when you put those facts all together and you read the text of statutes.

Boy, it sure sounds like you've got a prima facia at least rubbing up against the text of the obstruction statute, obstruction of congressional official proceedings. And you've got some very conspiracy like behavior. And yet, the Justice Department which presumably has, you know, is capable of reading Liz Cheney's speeches or listening to her. And may even have this material on its own

doesn't, you know, race to throw him cuffs around the former president or around other people of the political leadership.

So I'm interested, Seamus, I want start with you and just get everybody who is interested in this question thoughts on why the congressional investigation -- why the criminal investigation doesn't seem to be keeping pace with the facts emerging on the congressional side?

MR. HUGHES: Yeah, I mean I think first of all, it's because you've got a little more freedom as a congressional committee. You know, you don't have a judge who is going to say, you can't do that. Or a Grand Jury that says that doesn't smell right for it. And so, you know, you do have to go back and forth on some subpoenas, but not in the level of scrutiny that you're going to have as an Assistant U.S. Attorney.

Now, you know, Garland's speech yesterday was interesting. I think depending on where you sat is how you read it. And so, he talks about, you know, we're going to look at everyone who has been part of January 6th, but also some people that inspired it and looked at this. And so, you could say, okay, he's talking about -- he's giving a wink and a nod to look at politicians. That's one way to look at it.

The other way to look at it is he's doing a wink and a nod towards the Proud Boys and the Oath Keepers who were not there on January 6th who inspired their believers to do so. And so, that depending on how you read that speech, it goes in a thousand different directions.

MR. WITTES: He's a very clever man. And whoever wrote that speech is a very clever man or woman.

MR. HUGHES: Yeah.

MR. WITTES: He suggested a great deal while saying virtually nothing that isn't obvious.

MR. HUGHES: Yeah. And the other thing is if you're going to touch the third rail which this would be a third rail, right? This is going to set up a 1,000-hotcakes in a moment's notice and a lot of different lawyers jumping in.

You need to clear your bench and get your best EOUSAs off of the kind of misdemeanor lower-level cases and let them hang out in a room for months at a time. Because what they're going to do

is set a precedent and not only for the criminal justice system but also the Justice Department. You know, how they decide whether they want to do these cases.

I think it's really going to come down to prosecutorial discretion, right? Does Merrick Garland decide he wants to take this on all the way to its logical end? Or does he think he's not going to win it? Or does he kind of weigh the options of the pluses and minuses of what that will mean for not only the courts, for the OJ, but also future investigations for the Justice Department.

MR. WITTES: Katie?

MS. BRENNER: I would agree with what Seamus said. We have a lot of agreement in this panel. Though, I would agree with what Seamus said.

Also, I think -- taking a step back. You know, there have been a couple of statutes that have been thrown out. I think that the one you're talking about, I'm guessing is USC § 1512. I think that's the big one, instructing Congress, right?

MR. WITTES: So I actually think if you were going to realistically bring a case, it would be an 18 USC § 371, conspiracy to violate § 1512. I think that's the most plausible avenue --

MS. BRENNER: Yes, conspiracy to violate § 1512 because you could argue that if you look at Trump's behavior, he himself did not actually violate § 1512, but he could have conspired to it.

MR. WITTES: Exactly.

MS. BRENNER: So even before Liz Cheney made her public statements in the last few weeks about the evidence that committee gathered. And even before that committee existed, the EOUSAs in the D.C. U.S. Attorney's Office, were looking at these very statutes to try to figure out whether or not there's anybody who could have violated them and they could possibly bring a case.

So this is not new because Liz Cheney has said it. These are conversations they've been happening quietly within the Justice Department but in the U.S. Attorney's Office and within the Office of the Deputy Attorney General which is right now oversees the U.S. Attorney's Offices and within the Office of the Attorney General. And this was before this committee even existed.

To Seamus' point, you do not want to bring a case against somebody like Donald Trump

on anyone of these charges if you think there's any possible way for it to be defeated. And you know there is no possible way that a case against a former president, especially one as serious as this is not going to the Supreme Court particularly this Supreme Court as it exists now with the majority that exists and also the judicial temperament of the justices.

This is something to be thinking about as a very long game. And a long judicial game and there's probably nobody who is going to think about that as carefully as Merrick Garland who we know could have been sitting on that bench himself. He knows all the appeal judges here in D.C. better than anybody.

He knows that this is going to be something that people are scrutinizing not just as a case against Donald Trump, but they'll be scrutinizing as a case against the powers of the presidency and as a case about whether or not there's been overreach in the executive branch. I mean there are all sorts of things we're going to hang on such a case. This is not going to be something that happens quickly. It's not going to be something that happens -- and it might not be something that happens when like the public wants.

So there are two things that I'm really cautious about here. One is I would hate for this to become like a moral investigation too in which the public incumbents say, of course, Donald Trump is going to either go to jail or be removed because we saw with the outcome of the Mueller report that didn't happen.

And it was this huge like public let down that happened after a public build up that had nothing to do with anything that the prosecutors who were working on the investigation ever said or did. It was a creation of the public and we can all debate who had blamed there. And it was a letdown for the public.

But one thing that didn't happen is the Mueller team never participated in any of that. I'm going to say this is just a (inaudible) or something. I want to be just as silent. So what are we going to do publicly? I think it's a big question and I think part of what we should do is be really responsible and keep in mind that kind of consequence that sticks for a case this large.

Also, in terms of what's going on with Congress, the idea of a congressional referral that cuts both ways. It does help the Justice Department a lot of Congress finds something that they couldn't have found on their own. It can mean enormous help.

But as I said, you know, I spoke with Norman Eisen about this. If Congress refers something that's weak, it boxes the Justice Department in because Congress would look very publicly as they do everything because they want to keep their seats. They want to be reelected. There are all sorts of reasons they would be very public about the idea of a criminal referral. And then if the Justice Department says this doesn't hold up that is really, really difficult for the Justice Department. And then to Roger's --

MR. WITTES: Just one -- I want to stop at a point --

MS. BRENNER: Sure, sure.

MR. WITTES: -- that Katie made here about at the risk of having too much agreement about Garland's particular conservatism coming from his experience with judges. Knowing all of the judges who were going to hear these things and having -- knowing the District Judges, knowing the Circuit Judges with whom he served for, you know, 20 plus years.

And knowing also many of the -- all of the Supreme Court Justices, many of whom served with him on the D.C. Circuit. There's another really important Garland experience that goes on this and I think cuts in the same direction which is supervising the Oklahoma City investigation. So that was one of the biggest federal investigations ever before this. Not as big as 911, but one of the most complicated and far-ranging investigations.

And when the bomb went off in Oklahoma City, Attorney General Reno sent Merrick Garland on the ground in Oklahoma City to basically supervise the entire investigation. And the goal of that was to make sure that the prosecution, the investigation was conducted in a fashion and the prosecutions were conducted in a fashion that would be bullet proof against subsequent legal challenge or appeal. And that was a very significant counterterrorism accomplishment, but that in fact happened. And that the, you know, McVeigh and Nichols cases proceeded and were successful and were not

subject to significant appellate challenge.

And so, I think if you add that to the point that Katie made this is somebody with experience not just with the judicial side, but also with how do you do these cases in a way that makes sure they stand up over time. It is all going to lead to precisely the kind of conservatism on the political side. You will not see the Justice Department say or do anything until they have dotted every single I and crossed every single T. Quinta, your thoughts?

MS. JURECIC: I just wanted to circle back to the point you were making about Congress and the sort of the way of criminal charges.

I think it's important just to understand as a kind of point that under existing legal doctrine, the congressional committee actually can't conduct its investigation looking for particular criminal charges. They can address that if it comes up along the way, which it seems like they very much think it has. But under the current jurisprudence and especially after the Supreme Court's ruling in Trump v. Mazars is the case about congressional committee's effort to get Trump's financial documents under the Trump administration. They need to be acting with a legislative purpose in mind.

So essentially building some kind of record that will help the committee work towards, you know, by recommendation or perhaps some piece of legislation should be passed or reformed. And we see that in terms of reporting about how the committee as, for example, looking at whether the Electoral Count Act, which is the legislation that guides the certification of the electoral that should be reformed. Whether or not presidential emergency power should be reformed.

So I don't think that that doesn't change anything that we've been saying. And I'm definitely going to continue the very important trend of being in agreement with everything that everyone has already said. But I do think that as some useful context in just understanding why it is that the committee maybe conducting its investigation in this particular way and that it has both the freedom, as everyone has said, to investigate without having particular criminal charges in mind. But that's because of this sort of this other constraint, this other system of constraint under which it is operating.

MR. WITTES: All right. I'm going to start sprinkling in questions from the audience. And

some of these are obvious who they should be directed to. And some of them are less so. So to the extent that there is to the panelist to the extent that you want to jump in on one of these just do so.

So Casey Kulla, a county commissioner in Yamhill County, Oregon asks what does accountability look like to the panelists for organizers or cooperators especially among elected officials if there is no -- he says elliptically -- if there is no criminal accountability? Is there a path toward declaring some of the organizations in question, criminal organizations or illegal militias like Reese has done with Roden Don (phonetic)? Who wants to take that?

MS. BRENNER: Well on the elected official side, I think, you know, I probably Roger or Seamus can cover that militias in these groups.

But on the elected official side, I think this is one of the reasons why you saw Biden today talk a lot about voting rights and why you saw Garland yesterday speak about voting rights and what they see as this absolute need for all Americans to have the right to vote. Because we look at the constitution and the most immediate, powerful and effective check on an elected official is the voter.

And so, people are not voting if people don't have access to the ballot. If their voice in terms of what they think a good leadership looks like cannot be heard, suddenly even that check is gone. And so, what they're saying is we need robust voting rights and protections to the ballot because if, for example, there is no criminal indictment of members of Congress who people think have helped incite a riot or the former president.

And even if there are a criminal indictment, if it doesn't come for five years. But even if there's no criminal indictment, the most immediate consequence, the most immediate accountability comes from the ballot box.

MR. WITTES: Seamus, do you want to address the criminal organization side of the question?

MR. HUGHES: Yeah, the short answer is no there's not much of a redress for it. So if you look at the international commentaries aside, there's a designated list that the State Department could designate groups like ISIS, Al Qaeda, IRA that type of thing.

When it comes domestically, there's not that mechanism. And there has been some fits and starts on Congress about providing the U.S. government with that mechanism, but it's dead in the water right now. And so, barring kind of a major attack of real substance in the U.S., I don't see the question of designation of domestic groups rising to a level of that it's going to get through.

Now, that's separate then whether the FBI internally wants to designate groups as groups of concern, which they have the ability and have done in the past. We have seen a focus on the Oath Keepers and its membership post-January 6th that doesn't actually involve January 6th. So individuals who were communicating with them but not there. And so, there's going to be a focus on those groups themselves, but not a whole lot of legal mechanisms.

Now, what does that mean for the backend issues? So if you don't have -- for a lack of a better word -- a domestic terrorism statute what it ends up being is the FBI will charge someone with false statements to the FBI which is a five-year sentence, maybe eight years if you get a terrorism enhancement.

Or the state D.A. will go with a gun charge or a drug charge or things like that. And that's all well in good, but it doesn't give you a sense of the scope of the problem in terms of asking for resources from Congress and things like that because you're not collecting the numbers. It also has backend issues too.

When you put someone in jail for a gun charge when they're actually truly kind of a white supremacist as part of the Aryan Brotherhood, but no one has told the probation officer when he gets out that they need to be looking for kind of Aryan Brotherhood memorabilia when they go into their house, and they just need to look at the guns or drugs. That has second or third order effects on these things.

Now, the last point I would mention is we may be moving away from these kind of group models in general too. So if you look at the Oath Keepers and the Proud Boys, it's kind of an interesting dynamic and Roger would know this better than I. But the Oath Keepers had a larger -- probably larger member role, but does not appear to have the resiliency after a little bit of limelight from DOJ, all right?

The Proud Boys have kind of a more national model. Have largely moved back to their

original set up, which is a local state by state model. And they have had some pretty significant success in terms of its resiliency this year, 113 events, I think the news reported yesterday. And so, if you move more to this local model, you may have some more success as these groups go.

MR. WITTES: Roger, do you have thoughts on that? On the relative strength one year later of the Proud Boys and Oath Keepers?

MR. PARLOFF: Not well informed. They are being sued civilly both a lot of the individuals and the entities to the extent the entities exist. And by some -- those are some significant lawsuits. Some on behalf of injured police officers. Then the District of Columbia is suing.

So I don't know exactly how you enforce those judgments and how easy it is to dissolve those groups and start another. And I know that with some -- there's been some internal issues with the Proud Boys because it emerged that maybe 10 or 12 years ago, Enrique Tarrío has served as an informant and some people were angry to find that out and split. But I don't know a lot beyond that. I'm not an expert on that.

MR. HUGHES: But one other thing to look at is, you know, organized groups matter as Roger's report in terms of breaching the Capitol, but if you look at domestic extremism in this country, it is not as clearcut as one would hope it would be if you're a law enforcement officer.

So white supremacists that are Proud Boys. Proud Boys that are not white supremacists. QAnon that are in cells and cells that are not. It's just a mess of ideologies. And so, the groups matter less when you see what the FBI calls a salad bar approach, right? You're kind of picking and choosing what you want to see. And those blended ideologies are going to make it harder for the FBI, both agents and analysts to understand what they're looking for and when someone is going to pop up from rhetoric to violence unless -- and the importance of organizations is going to be less and less important as we go down.

MR. WITTES: I think this is an extremely important point and it absolutely bears importantly on Casey's question about criminalizing the organizations.

So there are serious constitutional prohibitions against criminalizing the organizations

and one of the reasons is that the individual members of those organizations as well as the organizations themselves have constitutional free expression and free speech rights.

And, you know, so these cases date back to the communist party cases in the '50s where the Supreme Court basically said, you cannot criminalize the communist party even, you know, because it is engaged in both legal and illegal activities and it implicates people's domestic First Amendment rights unlike a foreign organization like Al-Qaeda, you know.

You of a domestic organization, you know, that's engaged in legal and illegal activities. And the Proud Boys is engaged in all kinds of legal activities like marching and, you know, espousing white supremacy. These are -- you cannot criminalize the protected activities of these groups. That means functionally unless a group like as an organized crime group that has no legal function. You really cannot ban groups as such.

All right. Tom Jones asks a question that I think is on a lot of people's minds, which is when 1/6 happened there were a lot of videos that appeared to show Capitol police welcoming and waving and protesters allowing them inside the building and taking selfies with them. We later learned of a great deal of heroism on the part of Capitol police.

And so, what's the deal with that? Quinta, Seamus or whoever knows the answer to this. What's the deal with this? Was this a set of mis-reportings in the original reporting? Were this isolated members? Or was something else going on here?

MS. JURECIC: I'm happy to take this one. I think the answer is yes. So part of what you're seeing there is how incredibly confusing it was to see what was going on, you know, in the moment, right? Where everyone -- for the people who were there, there was just an incredible melee of -- for the people who like me were not there, it was just a lot of different clips of people, you know, running around and incredibly hard to figure out what happened.

And so, I think with the questioner is referring to is there were some instances where people -- there seems to be members of the Capitol police sort of welcoming in insurrectionists. You know, stepping aside to let them by. In some limited instances, it does seem that people -- that those

Capitol police officers were exercising -- what I can fairly describe as extremely poor judgment and allowing them to come in.

In one instance, an officer, I think took a selfie with a rioter. There is, I think the most extreme example one member of the Capitol police has been actually criminally charged for essentially reaching out to somebody who was in the Capitol after the fact and giving him tips and tricks for how to waive a criminal investigation and including encouraging him to delete evidence online.

So that is the extreme. The Capitol police has disciplined a handful of officers who were involved in some of those other incidents. Although, I do think it's important to note that I think the officer who took the selfie has said that he was essentially just trying to diffuse the situation and wasn't actually sympathetic to the insurrectionists.

But that instance, I think gets to a broader point which is that some of those instances that people saw online that seemed really, really concerning. I think one of the main ones was Capitol police officers kind of stepping back from a barrier made out of bike racks and kind of letting the insurrectionists through to the Capitol. It looked like they were essentially giving -- the officers giving insurrectionists free reign, but in context were sort of moments where the police realized that they were completely overpowered and couldn't do anything.

And that their option was kind of to step back or they need to do something like start shooting, which could have gotten really ugly, really, really quickly. So the Capitol police has, like I said, looked into these incidents. And in some instances, disciplined officers and other incidents that said, you know, like that incident as with the bike racks that nothing wrong was done. But this doesn't mean that, you know, everybody involved was above reproach. I'll channel our Brookings and (inaudible).

That Capitol police are really famously opaque institution and so I'm definitely not ruling out that, you know, more discipline might be required here, but I do think that that context is useful. And then is also useful to keep in mind that, you know, a lot of Capitol police officers as I mentioned with the initial hearing with the subcommittee obtained really brutal injuries that day.

MR. WITTES: More than a 100 were assaulted.

MS. JURECIC: Exactly.

MR. PARLOFF: More than 140. A hundred and forty, yeah.

MS. JURECIC: So the situation was incredibly violent. It could have gotten worse really, really quickly and I think that's an important context to understanding some of those videos.

MR. WITTES: All right.

MR. PARLOFF: And some of the officers haven't returned to, you know, they're still on disability. You know, it's serious injuries. It didn't all come out initially, but series injuries.

MS. JURECIC: Yeah. And I think -- but before you go on, I'll just put in there's really an incredible piece in the New York Times magazine that I would recommend everyone read about the lasting physical and psychological trauma that a lot of officers and Capitol police sustained that day, which is really, really worth a read.

MR. WITTES: So two related questions about the contingency of these investigative efforts on electoral politics. Tony Cava (phonetic) asks are there elements of justice's investigation that will go on independent of election results in 2022 or 2024? Or is the entire enterprise contingent on electoral politics?

And relatedly, Craig Croftstad (phonetic) asks, why wouldn't we expect Trump if reelected in 2024 to immediately pardon all convicted of January 6 crimes? And he might add all facing ongoing January 6? The pardon power does not need to waive until after conviction. And why wouldn't he command that all investigations, open investigations, be terminated? So Roger or Katie or Seamus get us started. How contingent is any or all of this on electoral outcomes?

MR. PARLOFF: Well, certainly if Trump were to come back in power, I think all of the federal investigations would be in periled. We don't know what -- that would be a political calculation. But sure, he could pardon everybody and there's a lot of anger among his people. I mean among the defendants that he hasn't.

But I don't know exactly what happens. I would defer to Quinta or others what happens if the Republicans take over the House in the midterms?

MR. WITTES: Yes. So, Quinta, let's separate here the fate of the congressional investigation from the fate of the Justice Department investigation because I think they are arguably both electorally contingent, though on different elections.

So how do you read the contingency of the -- the political contingency of the congressional efforts? And then, Katie, how do you read the political contingency of the Justice Department investigation?

MS. JURECIC: If the Republicans win the House in 2022, which it seems like the odds are that they will. I think it is almost a certainty, 99.999 percent that they will shut the committee down and that's why the committee has a really tight deadline.

And I should say, I think Katie may make it to this, but that's the important distinction between a congressional committee investigation and a Justice Department investigation. The nature of Congress is that when different parties come in, they have different priorities.

Now, I would definitely prefer if the Republicans consider January 6 a matter that was worthy of continued investigation, but there's no, you know, bar on them shutting it down other than that I would argue would be a moral failure.

Whereas, when it comes to the Justice Department, of course, there are a lot of norms involving, you know, independent law enforcement and the necessity in a democracy for law enforcement to be able to investigate these things free of presidential interference that I think would create a lot more conservation. And in Congress, it's really just going to be a matter of raw power and moral outrage.

MS. BRENNER: Yeah. And on the Justice Department side if in the hypothetical world Roger described where if Trump were to win in 2024.

First of all, the amount of time it would take to get a Senate confirmed head of the justice (inaudible) through, it would be rather lengthy. I do not think we would see a Senate confirmed Attorney General, you know, nominated by Donald Trump sail into the department in February, March, April or May, who knows?

And because the Justice Department is appointed, the investigations don't stop for

elections. They continue. And having lived through the first Trump administration, you can expect career prosecutors to be writing more than they have ever written before. More memos than they've ever written before basically chronicling where they are in the investigation, the evidence they found, where do they think it's going.

Basically, creating the most complete record you could have if everything that -- all the work that they have done so far in anticipation of interference from the White House. These are people who have now been battle hardened. They feel like they -- there have been questions inside. When I talk to career employees, they won't -- or if they could have done more or should have said more.

If everybody did what they needed to do to keep their heads down, keep their jobs, and held a place during the Trump administration to get the work done. These are going to be people who come in anticipating White House interference and they will want to create a very robust paper trail, a record of everything they've done should something happen that would interfere with their work. I mean this would be -- this would not be a group of people who have no idea what they're in for.

MR. WITTES: So I agree with that and also completely disagree with that. And so, the part I agree is I think that Katie has accurately described exactly how the career officials at Justice would behave. And there are two major intervening variables that I think would arguably prevent that from mattering all that much.

The first is that I think if Donald Trump were reelected, he would be reelected having campaigned on the idea that there is some grave injustice that happened on January 6th to all these innocent people. And he would have effectively already promised to make this go away. And he would have two great instruments to do that.

One is the person of the Attorney General. Let's assume Katie is correct that it would be very hard to confirm and that would occur type figure maybe even in a Congress that doesn't look very much like this one. He would be able to appoint an acting Attorney General. And the acting Attorney General as Matt Whitaker did could make some mischief. That's theory number one.

Theory number two is that the answer to the second question is that there is no

impediment to the pardon power being used to nuke all of this. And the famous example of that is Jimmy Carter pardoning in mass all the draft resisters. And so, you can imagine a single press release from the president saying, I hereby pardon everybody of all crimes associated with January 6 and that would be the end of any career prosecutor's aspiration to pursue, continue any case.

And so, I think Katie is describing exactly right what would happen the daytime for reelected in November. And people realize that at Justice and they would all document everything. They would all proceed according to their cases. And it would matter exactly as much as Donald Trump wanted it to matter the day he actually took office.

All right. I think we have time for one more question. And I'm going to give it to Maryanne McGrail (phonetic) who asks, do you think the recent jury verdict on civil conspiracy claims against those who instigated violence in Charlottesville under Virginia law will have any influence on the cases brought by DOJ against 1/6 participants?

So let me amend that question slightly and say that it won't affect DOJ at all, but it may very well affect some of the civil cases that Roger has talked about. So, Roger, what is the prospect of keeping in mind Seamus' point that groups themselves are going to be less and less important? What is the will of the civil litigation in any of this?

MR. PARLOFF: Well, it's important both in terms of discovery and the discovery process will bring to light independently a lot of additional information and possibly even leading to criminal discoveries. But then it's a powerful wallop, the financial power of these. You can inflict pain on the people that did this through the pocketbook. And skilled lawyers will go after them and bankrupt them. And it's a powerful tool.

MR. WITTES: We are going to leave it there on that hopeful civil liability powerful tool note. Katie Benner, Quinta Jurecic, Seamus Hughes, Roger Parloff, you are all great Americans and thank you so much for joining us. And thank you to our audience and for the excellent questions only a small number of which I was able to get to for which I apologize. Thank you all for joining us.

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