

NO INSURRECTION: THE U.S. CAPITOL RIOT IN RETROSPECT

Posted on January 6, 2022



President Trump is no longer considered guilty of having caused the storming of the Capitol. He is now being accused of not having stopped it. This is not a shift in the nuance of the narrative regarding his role: it is a substantial retreat.

Category: [COMMENTARY](#)

Tags: [democracy](#), [Donald J. Trump](#), [politics](#), [Sven R. Larson](#), [U.S.](#), [U.S. Capitol](#)

On January 6, 2021, hundreds of people forced their way into the U.S. Capitol. They disrupted the legislative proceedings of Congress and caused an evacuation of lawmakers and their staffers. Five people died [in relation to the events](#). Two people suffered heart attacks and one, a police officer, had a stroke. A fourth victim was first said to have been trampled to death but was later found to have died of an accidental drug overdose.

The fifth victim, Ashli Babbitt, died after having been shot by a police officer inside the Capitol building. The police officer who shot Babbitt has been cleared of charges of wrongdoing.

The illegal storming of the Capitol followed a speech by President Trump at a rally nearby. This led many to accuse Trump of having incited the storming. The mob entering the capital was quickly labeled an "insurrection" by, among others, [Republican Congresswoman Liz Cheney](#). According to Cornell University Law Information Institute, 'insurrection' is defined as the incitement, assisting or engaging in rebellion 'against the authority of the United States or the laws thereof.' Cheney has [accused Trump](#) of incitement, allegedly with the motive to disrupt the count of the presidential electoral votes that was taking place at the time.

The 'January 6' events, as they've come to be known, have come to dominate the public discourse regarding Trump's legacy. His many significant accomplishments, from [the Abraham Accords in the Middle East](#) to a growth-generating tax reform, dwell humbly in the shadows of the events of that day.

Congress responds: the January 6 committee

The House of Representatives has had a committee working for a year trying to find

evidence that Trump engaged in criminal activity on January 6. Despite the fact that Trump was [acquitted in the impeachment vote](#) after the January 6 events, the January 6 committee has been hard at work for a year now.

So far, they do not seem to have found any evidence of crimes that Trump allegedly committed. While many of the people who unlawfully entered the Capitol [have been charged](#), no evidence has been presented against the former president. This is important for the legitimacy and integrity of the committee.

On the one hand, the establishment of a committee was warranted, given the serious events of January 6. In the past, state capitols have been occupied in, e.g., [California](#), [Michigan](#) and [Wisconsin](#), but nothing like this has ever happened to the U.S. Capitol. One way to make sure it never happens again is for this committee to establish facts without bias.

On the other hand, the committee has a legitimacy problem. It is not irreparable, but in order to secure the highest standard of reliability in its work to uncover the truth about the events on January 6, the committee needs to, so to speak, clean up its own act.

According to [its website](#), the committee was formed in response to the actions by "insurrectionists" who committed a "domestic terror attack" on the U.S. Capitol. In other words, the committee has already from the outset operated on the very assumption that the people who unlawfully entered the Capitol were doing so as part of a deliberate attack, driven by a conspired, terroristic motive. This gives the impression that the committee is assuming its own conclusions.

This impression is not helped by the fact that Representative Liz Cheney, one of two Republicans among the nine committee members, has called the illegal entries into the Capitol an "insurrection." By blaming Trump for inciting the Capitol invasion without due evidence, she assumes that the former president actively sought to disrupt the electoral vote count for the 2020 presidential election.

Since the January 6 committee is still working, it is possible that they may eventually find such evidence. However, until they do, the old principle of presumption of innocence supersedes the accusations. The fact that the committee boldly assumes that the Capitol invasion was an insurrection explicates a presumption of guilt and reduces the activities of the committee to a quest to find corroborating evidence.

Unwarranted accusations

The legitimacy of its work is not helped either by the fact that [it has admitted to doctoring evidence](#). As part of their investigation into the role of the former president in the January 6 events, the committee has subpoenaed communications records from former Trump White House officials. One of them was former White House Chief of Staff Mark Meadows.

In a text exchange with Congressman Jim Jordan (R-OH), Meadows discusses the electoral vote count which, at the time, was taking place in Congress. According to [the Epoch Times](#), the January 6 committee altered at least one message. The committee made it say that Meadows wanted a disruption of the electoral vote count. In reality, Meadows and Jordan were simply discussing established legal precedence on how a vote count would proceed.

While it is essential to investigate the full nature of the events on January 6 and identify legal measures, if any, that can reduce the likelihood of a repetition of these events, it is also important to keep in mind that new laws may not deter people who are convinced that the law is wrong. History is full of examples where moral convictions of citizens have clashed with existing laws.

As important as its work on possible legal measures is the ethical standards of the committee itself. For the sake of its own credibility, it must secure that its own investigations are held to the utmost standard of integrity and impartiality. If the committee feels it necessary to tamper with evidence collected, it has unnecessarily

tarnished its own integrity.

Another problem for the January 6 committee comes from law enforcement. On August 20, [*Reuters* reported](#) that the FBI had found "scant" evidence of any conspiracy behind the January 6 attacks. The agency "believes that the violence was not centrally coordinated by far-right groups" or by any "prominent supporters" of President Trump. *Reuters* also quotes a former law enforcement officer with knowledge of the investigation who explains that "there was no grand scheme" to storm the U.S. Capitol.

Without new evidence, this conclusion by the FBI seems to invalidate the January 6 committee's very premise, prominently displayed on its own website, that the storming of the Capitol was an insurrection. It may be time for the committee to revise its statement of purpose.

Furthermore, there is no evidence of President Trump inciting the riots on that day: when speaking at his rally, Trump never called on the participants to violently storm and enter the Capitol. One of the legal experts who have examined his speech is Rachel Alexander, former Assistant Attorney General (deputy minister of justice) of the state of Arizona. In a detailed analysis [for Townhall.com](#), she concludes that President Trump did not incite insurrection. On the contrary, she explains, he tried to urge calm and peace among those of the participants in the rally who intended to go up and protest outside the Capitol.

At no point [in his speech](#) did Trump encourage the participants in his rally to disrupt the proceedings in Congress, nor did he incite them to enter the Capitol itself.

The committee retreats

There are indications that the members of the January 6 committee have come to the same conclusion. Representative [Cheney now limits her claims](#) to accusing President Trump of "dereliction of duty" for not taking active measures to stop the invasion of the Capitol. As

evidence, Cheney refers to Ivanka Trump, the former president's daughter, who allegedly testified before the committee that she asked her father "at least twice" to "please stop" the events at the Capitol.

In other words, President Trump is no longer considered guilty of having caused the storming of the Capitol. He is now being accused of not having stopped it. This is not a shift in the nuance of the narrative regarding his role: it is a substantial retreat.

It is definitely possible, perhaps even likely, that President Trump was inactive and purposely chose not to try to stop the Capitol invasion. However, such accusations require evidence of both deliberate inaction and an explicit alternative; Representative Cheney herself is vague on what she thinks the former president should have done. He could, she says, "have told them to go home."

Again, if he had effective measures at his disposal and did not use them, there is merit in her accusing the former president of inaction. The problem lies in the term "dereliction of duty." According to uscourts.gov, a website maintained by the Administrative Office of the U.S. Courts, the term is unique to military justice. If it were to apply to Trump, the office of the President of the United States would have to be part of the military chain of command. That is not the case: the president is above the military, so as to subordinate the military to the civilian government.

Furthermore, Article I, Section 2, Clause 5 of the Constitution of the United States, which gives Congress the power to impeach the president, does not specify dereliction of duty as an impeachable offense.

Given the questionable legal status of the term "dereliction of duty," it is essential to ask whether or not any accusations thereof are simply political statements by the January 6 committee. It may be the case that Trump did indeed choose not to intervene when he could have, but even if the committee can establish such neglect, they need to go out of their way to make certain their conclusions are not politically stained.

At the same time, it is questionable to what degree the committee would be adding any substance beyond a mere opinion on Trump's presidency. The term "dereliction of duty" has been generously employed by Trump critics over the past several years, with varying degrees of integrity.

In March 2017, two months after Trump took office, [a Huffington Post article suggested](#) that he was already guilty of "dereliction of duty" for having "reversed the work of his predecessor" on so-called climate change. In [February 2018](#), former national-security adviser H.R. McMaster claimed that there was Russian interference to secure a Trump victory in the 2016 election. Those accusations [have since been thoroughly debunked](#) as lies, but McMaster did not pass up on the opportunity to accuse Trump of dereliction of duty.

In September 2020, [CNN writer Stephen Collinson](#) reviewed a book by *Washington Post* reporter Bob Woodward, where yet more accusations of "dereliction of duty" were presented. This time, the term is used to allege that Trump failed to take appropriate action against the coronavirus pandemic.

On [January 19th last year](#), *The Bulwark* suggested that the 2021 impeachment trial of Trump should have included accusations of dereliction of duty. They gave no explanation of the constitutional basis of such accusations.

The January 6 committee is now adding its own to this fauna of qualitatively diverse accusations. Unless they exercise exceptional caution, their only contribution may be to charge the term "dereliction of duty" with yet more partisan politics.

Integrity or partisan politics

Last but not least, the January 6 committee needs to clarify its own respect for the Constitution. According to [a story from RealClearPolitics](#) on December 2nd, Committee

Chair Representative Bennie Thompson lacks respect for the Fifth Amendment rights of committee witnesses. If people called to testify before the committee invoke their right to remain silent under the Fifth Amendment, the committee will, Thompson explains, regard that as an admission that they do have something to hide.

The right to remain silent is an essential component of the mechanisms in the U.S. Constitution that guarantee a person's presumed innocence in the face of legal charges. Another of those is the president's right to exercise so-called executive privilege. This privilege, which also applies to former presidents, allows a president to protect confidential information.

According to [British newspaper *The Independent*](#), the January 6 committee has subpoenaed communications records from Steve Bannon, a former advisor to President Trump. Bannon refused to turn over the records, referring to the former president's executive privilege. Based on that, and on the fact that Trump asserted the privilege himself, Representative Cheney drew the conclusion that "President Trump was personally involved in the planning and execution of January 6th."

America needs an impartial, unbiased report on the findings by the January 6 committee. If such a report does find that the former president committed illegal actions, then hopefully the committee will share its report with the Department of Justice. If, however, no illegal actions are found, the committee should have the integrity to admit as much and refrain from further acts of partisanship, let alone blatant political attacks on Trump.