

**Hearing Before the United States House of Representatives
Committee on Oversight and Reform**

May 12, 2021

Testimony of Jeffrey A. Rosen

Former Acting United States Attorney General and Deputy Attorney General

Chairwoman Maloney, Ranking Member Comer, and Members of the Committee, good morning and thank you for the opportunity to join this hearing today. Because this is my first appearance before this Committee since June of 2005, please allow me to introduce myself again. I am Jeff Rosen, and from December 24, 2020 to January 20, 2021, I had the honor and privilege of serving as the Acting Attorney General of the United States. Since graduating from law school in 1982, I have lived and worked in our nation's capital region, including more than nine years of public service at three different federal agencies. My first position was as General Counsel of the Department of Transportation under Secretary Norman Mineta, followed by service as General Counsel and Senior Advisor at the Office of Management & Budget under then-Director, now-Senator Rob Portman. After several years back in private practice, I was Deputy Secretary of Transportation under Secretary Elaine Chao, and after that I became Deputy Attorney General at the Department of Justice ("DOJ") under William Barr. After Attorney General Barr's departure in December 2020, I became the Acting Attorney General, leading the Department until the end of the Trump Administration. My testimony today relates to my time as Acting Attorney General, and I appreciate this opportunity to discuss the actions taken by DOJ on January 6, 2021, to help restore order at the Capitol and enable the completion of Congress' certification of the 2020 Electoral College vote.

Introduction

The events of January 6 were a national travesty and an intolerable attack on our representative democracy. To those who risked their safety to protect everyone at the Capitol: I honor your bravery. To the families of the Capitol Police officers who were injured that day or died in the wake of the attack: I extend my deepest sympathy. And to all of you and your staff who lived through that day: I share the justified anger at what the violent mob of attackers put you through.

Although the storming of the Capitol was a tragic episode in our nation's history, I take some comfort in the resilience of our institutions in the face of such an attack, as demonstrated by Congress's ability to reconvene and fulfill its constitutional duties just hours after the breach. I am also proud of the efforts of DOJ, which urgently deployed more than 500 agents and officers from the Federal Bureau of Investigation ("FBI"); the Bureau of Alcohol, Tobacco, and Firearms ("ATF"); and the US Marshals Service ("USMS") to assist in restoring order at the Capitol. These outstanding men and women moved with urgency to assist the Capitol Police and others in the midst of an unprecedented security breach, and helped to clear and secure the hallowed epicenter of representative government.

I am also proud of the swift action taken thereafter by DOJ personnel in the FBI and the DC US Attorney's Office to investigate and work to hold accountable those responsible for the disgraceful attack on the Capitol. As I said publicly on January 7, 2021: "Yesterday, our Nation watched in disbelief as a mob breached the Capitol Building and required federal and local law enforcement to help restore order. The Department of Justice is committed to ensuring that those responsible for this attack on our Government and the rule of law face the full consequences of their actions under the law. Our criminal prosecutors have been working throughout the night with special agents and investigators from the U.S. Capitol Police, FBI, ATF, Metropolitan Police Department and the public to gather the evidence, identify perpetrators,

and charge federal crimes where warranted. Some participants in yesterday's violence will be charged today, and we will continue to methodically assess evidence, charge crimes and make arrests in the coming days and weeks to ensure that those responsible are held accountable under the law." (attached as Ex. A).

I appreciate the importance of today's oversight hearing, and I welcome the opportunity to share with you what I know about the January 6 events in light of my prior roles at the DOJ. The Justice Department plays a special role in our government, and must be guided by our Constitution and the rule of law. I can tell you that is what guided me. My focus was consistently on following the rule of law and enabling the orderly transition of power in the manner contemplated in our Constitution and laws. Upon learning of the events at the Capitol on January 6, my priorities were threefold: securing the Capitol following the breach, supporting the Congress as it sought to fulfill its duty to certify the Electoral College vote, and beginning the critical work of holding accountable those who committed wrongful acts at the Capitol.

I want to note as a threshold matter that there are some unavoidable limitations on the testimony I can provide today. For one, my access to information is limited because I am no longer with DOJ. Further, while the events of that day will be with me forever, my memory is unlikely to be perfect, as some aspects are seared in memory and others have become a blur. Moreover, I have only been authorized by DOJ to testify on certain topics, as I am bound to maintain certain information in confidence and must avoid making any statements that could interfere with the numerous ongoing investigations and prosecutions of individuals involved in the events of January 6. I appreciate your patience and understanding as to those, as I do my best to answer your questions.

I. DOJ Actions Prior to January 6

On December 24, 2020, with the departure of William Barr, I became Acting Attorney General. During my tenure, DOJ maintained the position publicly announced previously that the Department had been presented with no evidence of widespread voter fraud at a scale sufficient to change the outcome of the 2020 election, that it would not participate in any campaign's or political party's legal challenges to the certification of the Electoral College votes, and that there would be an orderly and peaceful transfer of power under the Constitution. During my tenure, no special prosecutors were appointed, whether for election fraud or otherwise; no public statements were made questioning the election; no letters were sent to State officials seeking to overturn the election results; no DOJ court actions or filings were submitted seeking to overturn election results, and the only time DOJ did file a brief it was to seek a dismissal of Representative Gohmert's lawsuit aiming to decertify the electoral count—and that lawsuit was dismissed, as DOJ had urged.

In the days and weeks leading up to Congress's January 6 vote to certify the results of the Electoral College, DOJ, FBI, and other law enforcement agencies learned that there would likely be rallies and protests in Washington D.C. on that day, including near the Ellipse and the US Capitol, among other possible locations. By itself, that was not unusual: the National Capital Region periodically and with some regularity hosts protests, rallies, and other demonstrations that can pose safety or security threats. The District of Columbia Metropolitan Police Department ("MPD"), Park Police, and Capitol Police are all experienced at dealing with such events. For example, they had dealt with protest disturbances related to the election results as recently as November and December 2020, and the Capitol Police (which are a part of the Legislative Branch) handled days of protests pledging to "flood the Capitol" during the nomination hearing of now-Justice Kavanaugh in October 2018.

As you know, the police departments are not a part of DOJ, and DOJ does not have authority to control their activities. But as an investigative and prosecutorial agency, DOJ—primarily through the FBI—would normally focus on gathering intelligence about potential threats of violence and sharing information with police and federal partner agencies about those threats, while the Department of Homeland Security (“DHS”) Office of Intelligence and Analysis and the police were likewise gathering available intelligence as well.

From a leadership standpoint, my role was to ensure that the DOJ organization was appropriately fulfilling its functions. I fulfilled that obligation. Formal information coordination activities among DOJ, various police departments—including the Capitol Police and MPD—and various federal agencies accelerated during the week of December 28. MPD initiated a Joint Operations Command Center. The FBI's Washington Field Office (“WFO”) set up a regular command post to share information among the FBI, ATF, DHS, and each of the various police organizations in the District (including the Capitol Police who are part of the Legislative Branch and report to Congress). And the District of Columbia US Attorney’s Office arranged a number of conference calls to coordinate among local and federal law enforcement. On January 5, the FBI took the added step of setting up a national coordination center at its Strategic Information and Operations Center (“SIOC”). Located at FBI headquarters, the SIOC was geared toward facilitating better coordination and sharing of information, among the federal agencies, including DHS, the Department of the Interior (“DOI”), and the Department of Defense (“DOD”). Each of these federal agencies supplied personnel to staff the SIOC 24/7 beginning on January 5 and 6, and continuing for a period thereafter. It was my understanding that the SIOC also coordinated closely with the WFO post, and thus the partners located there as well.

I am aware that FBI Director Wray and Assistant Director Sanborn have testified publicly about the FBI’s work regarding the events of January 6, and the work the FBI did, along with others, to gather intelligence about the planned events and the risk of violence. Based on the updates I received, I was confident that very substantial efforts were undertaken by DOJ personnel in advance of January 6 to understand and prepare for the potential threats, and share that information with law enforcement partners. During the week of December 28, I received reports that MPD and others estimated that between 10,000 and 30,000 people would be coming for the rallies or protests on January 6—a sizable, but not unprecedented number. Crowd size remained a continuing topic of conversation during the ensuing week, but, based on what was reported to me, projections did not materially change.

As is generally the case with large protests or demonstrations in the National Capital Region, it was expected that experienced police departments like the Capitol Police, the Park Police, and MPD would bear responsibility for crowd control and security in their respective jurisdictions.¹ The Department of Defense, which includes the Army National Guard, provided 340 personnel to assist MPD and placed others on standby. On January 4, MPD arrested the leader of the Proud Boys militia group for prior violent acts, and prosecutors obtained a judicial order barring him from the city on January 6. District of Columbia Mayor Muriel Bowser wrote to Acting Defense Secretary Miller and me that MPD “is prepared for this week’s First Amendment Activities,” and that other than the logistical support of unarmed members of the DC National Guard, DC “has not requested personnel from any other federal law enforcement agencies.” (attached as Ex. B.)

¹ In these types of situations, DOJ performs intelligence-gathering, information-sharing, and after-the-fact investigation and prosecution where warranted.

Nonetheless, although not specifically requested by MPD, Capitol Police, or any other agencies, my office directed various DOJ entities to take cautionary steps to alert or pre-position tactical teams if needed for support on January 6. For example, the FBI's Hostage Rescue team and Render Safe teams were activated; an additional FBI SWAT team from Baltimore was repositioned to Washington, D.C.; ATF Special Response Teams were pre-positioned in Virginia for activation if needed; and USMS Special Operations Group personnel were also pre-positioned in Virginia for deployment if needed.²

I believe that DOJ reasonably prepared for contingencies ahead of January 6, understanding that there was considerable uncertainty as to how many people would arrive, who those people would be, and precisely what purposes they would pursue. Unlike the police, DOJ had no frontline role with respect to crowd control. The FBI, ATF, DEA, and U.S. Attorneys' offices, as investigative and prosecuting agencies, are generally not equipped for crowd control. But DOJ took appropriate precautions to have tactical support available if contingencies led to them being called upon.

II. DOJ's Actions on January 6

The demonstrations and protests expected for January 6 had been a significant focus of attention for DOJ and FBI leadership in the week prior, and they continued to be so on the day of the events. On the morning of January 6, Principal Associate Deputy Attorney General Richard Donoghue³ and I met with FBI leadership for the latest updates and preparation. I continued to talk to Principal Associate Deputy Attorney General Donoghue and FBI Deputy Director David Bowdich throughout the day and their proactive engagement and decision-making were simply invaluable.

In the early afternoon, as President Trump was speaking to an audience at the Ellipse, I contacted the Acting US Attorney for the District of Columbia, Michael Sherwin, in part to inquire if the crowd size there was consistent with or larger than the forecasts. He was personally in the vicinity of the event and reported that the size of the crowd was on the lower side of the forecast and conceivably might have been below the lower end of the range. He also indicated that the crowd at the Ellipse did not appear to be violent or unruly.

Reports after that conversation were more negative. ATF was notified of potential explosive devices having been placed at the Republican and Democratic National Committee offices. ATF promptly sent a team of experts to deal with the explosive devices, in coordination with the Capitol Police and MPD. Subsequently, I observed on television the events as the crowd moved from the Ellipse, up Constitution Avenue, and then to the US Capitol. During that time, I recall receiving updates from Acting US Attorney Sherwin and others.

Sometime around 2:00 p.m., I was horrified and dismayed as I saw on television the crowd breaching the Capitol. I soon learned that ATF and FBI, among others, had just received requests for assistance from the Capitol Police and were beginning to respond. My office asked ATF, FBI, and the USMS to provide as much help as possible as quickly as possible, including deploying the pre-positioned resources. I also recall receiving phone calls from White House staff requesting that DOJ provide as much

² Additionally, as it was conceivable that some protesters might be unhappy with DOJ's not having filed court actions regarding the election outcome, DOJ arranged for tactical support from Bureau of Prisons personnel to supplement existing security at its own RFK Building.

³ During this time, Principal Associate Deputy Attorney General Donoghue was performing the functions of the Deputy Attorney General, due to my taking the position of Acting Attorney General.

help as we could; I reported to them that we were doing so. I also received calls from multiple Members of Congress and staff, including members of leadership in both the House and Senate. I informed them that DOJ was sending help as quickly as possible. As I monitored the continuing events, I spoke multiple times with DOJ personnel who were onsite and coordinated with my counterparts across the federal government.

My understanding is that ATF had some personnel arrive to the Capitol very quickly, with sizable numbers following by 2:40 p.m. FBI personnel, including from the Hostage Rescue and SWAT teams, and personnel from the USMS Special Operations Group also deployed urgently to the Capitol. In total, more than 500 DOJ personnel surged to the Capitol to help clear the building and secure it so that the Congress could resume its business. It is my understanding that DHS likewise sent personnel from the Federal Protective Service and from Immigration and Customs Enforcement and that MPD and other local police departments also sent officers to assist the Capitol Police that afternoon.

My original plan had been to go to the FBI SIOC for the afternoon, which was at the FBI headquarters just across the street from my office, but the urgency of the phone discussions and the need to coordinate with my DOJ staff in responding to the attack on the Capitol complex prevented my doing so. Instead, Principal Associate Deputy Attorney General Donoghue went to the SIOC and provided me with ongoing updates. As the attack continued, he and FBI Deputy Director Bowdich personally went to the Capitol building, to the Rotunda, and continued to provide me with situation reports from inside the building as efforts to restore order remained underway. I shared information with others and sometimes facilitated others talking directly with Principal Associate Deputy Attorney General Donoghue and Deputy Director Bowdich. I also took steps to let the public know where DOJ stood with respect to the attacks: I directed my staff to begin drafting a statement condemning the attacks. After internal review at DOJ, this statement was released later that same afternoon (attached as Ex. B).

It is my understanding that by approximately 5:00 to 5:30 p.m., the efforts at the Capitol to clear out the attackers had largely succeeded in doing so with the help of the more than 500 DOJ agents and officers who had deployed, but work remained, as those DOJ personnel were then working with the Capitol Police and others to check for explosives and to otherwise secure the offices and chambers in the Capitol building, so that Congress could return that same day and complete the electoral count.

At 7:00 p.m., I, Principal Associate Deputy Attorney General Donoghue, and others from DOJ participated in a conference call that included Congressional leaders and representatives from DHS and DOD, as well as others. Principal Associate Deputy Attorney General Donoghue provided a situation report, and Congressional leaders wanted to know if it would be feasible for the Congress to return and complete its business that evening. Principal Associate Deputy Attorney General Donoghue told them he expected Congress could return by 8:00 p.m., which is what happened, with Vice President Pence reconvening the Senate at 8:06 p.m.

Accordingly, Congress returned and completed its constitutional role in certifying the votes of the Electoral College that evening. With the achievement of the twin objectives of restoring order at the Capitol and enabling Congress to fulfill its electoral count obligation under the Constitution, I was and remain extremely appreciative for the work done that afternoon and into the night by the women and men of the FBI, ATF, and USMS, as well as others at the DC US Attorney's Office and elsewhere in DOJ. They, and all the others from DHS, DOD, DOI, and the various police departments who went to that Capitol that afternoon to help restore order, accomplished a vital feat for our country, and we owe them our deepest gratitude.

III. DOJ's Actions After January 6

DOJ also immediately began work to ensure that those responsible for the attack on the Capitol would face the full consequences of their actions under the law. Acting US Attorney Sherwin and his team, along with the FBI and police counterparts, began charging participants in the violence as early as January 7. Within the first week after the attack, more than 70 individuals had been criminally charged, and DOJ had opened more than 170 investigations and gathered over 100,000 digital tips.

DOJ also sent the clear message that further violence would not be tolerated in the lead up to President-Elect Biden's inauguration. In a January 13 video message, I expressed DOJ's support for the exercise of constitutional rights but also strongly warned that "I want to send a clear message to anyone contemplating violence, threats of violence, or other criminal conduct: We will have no tolerance whatsoever for any attempts to disrupt the peaceful transfer of power on January 20th that our Constitution calls for ... [t]he Department of Justice will seek to hold any violators accountable to the fullest extent of the law."

The work of investigating and prosecuting those who attacked the Capitol on January 6 continues to this day and is now in the capable hands of my former DOJ colleagues and the new DOJ leadership team. To avoid interfering in these ongoing matters, I must leave it to others to answer any questions regarding them as they deem appropriate.

IV. Conclusion

January 6 was a dark and harrowing day for America. And though I remain saddened by the events of that day, I am nonetheless grateful that physical harm to members of Congress was avoided and that, because of the prompt work that was done to clear and secure the Capitol, Congress was able to complete its work that same evening. I am also proud of the role DOJ played in helping to restore order and all we were able to accomplish alongside our partners from various police forces, federal departments and law enforcement agencies, and the National Guard.


What the attackers did that day was terrible in its violence, the loss of life, and injuries suffered. But it was also terrible because it constituted an assault on a building that is a fundamental symbol of our democracy, on the institution of Congress itself, and on an electoral process required by our Constitution. As a society, we need to restore greater respect and appreciation for our Constitution, our representative democracy, and the rule of law. As I have said before, violence and senseless criminal conduct are not the right way to resolve differences or promote change in our country. And they will not carry the day.

In closing, I would like to publicly thank my former DOJ colleagues and everyone who played a role in bringing order to chaos on January 6. I will leave it to others to assess why the security at the Capitol was not sufficient to protect the building that afternoon in the first instance, but the assistance that was provided after the breach occurred is something that deserves appreciation. I will also leave it to appropriate authorities to assess responsibility for what happened and determine any precipitating causes.

Finally, if any valuable lesson could come out of the disturbing events from the Capitol riots, perhaps it might be that Americans of all backgrounds and political affiliations could agree that we cannot

have anything like that happen again. Our Constitution, our traditions, and our ideals as a nation must be respected and revered. I know that all of you share that wish as well.

EXHIBIT A

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Department of Justice

Office of Public Affairs

FOR IMMEDIATE RELEASE

Thursday, January 7, 2021

Statement of Acting Attorney General Jeffrey A. Rosen

“Yesterday, our Nation watched in disbelief as a mob breached the Capitol Building and required federal and local law enforcement to help restore order. The Department of Justice is committed to ensuring that those responsible for this attack on our Government and the rule of law face the full consequences of their actions under the law. Our criminal prosecutors have been working throughout the night with special agents and investigators from the U.S. Capitol Police, FBI, ATF, Metropolitan Police Department and the public to gather the evidence, identify perpetrators, and charge federal crimes where warranted. Some participants in yesterday’s violence will be charged today, and we will continue to methodically assess evidence, charge crimes and make arrests in the coming days and weeks to ensure that those responsible are held accountable under the law.”

Component(s):

Office of the Attorney General

Press Release Number:

21-13

Updated January 7, 2021

EXHIBIT B



MURIEL BOWSER
MAYOR

January 5, 2021

The Honorable Jeffery Rosen
Acting United States Attorney General
950 Pennsylvania Ave, NW
Washington, DC 20530

The Honorable Ryan D. McCarthy
Secretary of the Army
101 Army Pentagon
Washington, DC 20310

The Honorable Chris Miller
Acting Secretary of Defense
1000 Defense Pentagon
Washington, DC 20301

Dear Acting Attorney General Rosen, Secretary McCarthy, and Acting Secretary Miller:

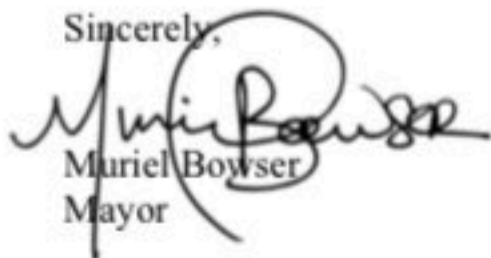
As the law enforcement agency charged with protecting residents and visitors throughout the District of Columbia, the Metropolitan Police Department (MPD) is prepared for this week's First Amendment activities. MPD has coordinated with its federal partners, namely the US Park Police, US Capitol Police and the US Secret Service—all of whom regularly have uniformed personnel protecting federal assets in the District of Columbia. This week, MPD has additional logistical support of unarmed members of the DC National Guard, who will work under the direction of, and in coordination with, MPD.

The District of Columbia Government has not requested personnel from any other federal law enforcement agencies. To avoid confusion, we ask that any request for additional assistance be coordinated using the same process and procedures.

We are mindful that in 2020, MPD was expected to perform the demanding tasks of policing large crowds while working around unidentifiable personnel deployed in the District of Columbia without proper coordination. Unidentifiable personnel—in many cases, armed—caused confusion among residents and visitors and could become a national security threat with no way for MPD and federal law enforcement to decipher armed groups.

To be clear, the District of Columbia is not requesting other federal law enforcement personnel and discourages any additional deployment without immediate notification to, and consultation with, MPD if such plans are underway. The protection of persons and property is our utmost concern and responsibility. MPD is well trained and prepared to lead the law enforcement, coordination and response to allow for the peaceful demonstration of First Amendment rights in the District of Columbia.


Sincerely,



Muriel Bowser
Mayor

Cc: Congresswoman Eleanor Holmes Norton

EXHIBIT C

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Department of Justice

Office of Public Affairs

FOR IMMEDIATE RELEASE

Wednesday, January 6, 2021

Acting Attorney General Jeffrey A. Rosen Regarding the Overrunning of the U.S. Capitol Building

Acting Attorney General Jeffrey A. Rosen issued the following statement:

"The violence at our Nation's Capitol Building is an intolerable attack on a fundamental institution of our democracy. From the outset, the Department of Justice has been working in close coordination with the Capitol Police and federal partners from the Interior Department, the Department of Homeland Security, and the National Guard, as well as the Metropolitan Police and other local authorities. Earlier this afternoon, the Department of Justice sent hundreds of federal law enforcement officers and agents from the FBI, ATF, and the U.S. Marshals Service to assist the Capitol Police in addressing this unacceptable situation, and we intend to enforce the laws of our land."

Component(s):

Office of the Attorney General

Press Release Number:

21-12

Updated January 6, 2021