

ASSAULT ON THE CAPITOL ESSAYS

By

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COP? TERRORIST? BOTH?

As America polarizes, some police officers leap into the arms of “Q”

For Police Issues by Julius (Jay) Wachtel. Here’s an extract from the [probable cause](#) for the arrest of two of the participants in [the storming of the Capitol](#) on January 6th:

...Thomas Robertson and Jacob Fracker were photographed in the Capitol Building making an obscene statement [middle finger] in front of a statue of John Stark [American Revolutionary hero]...In social media posts, Defendant Robertson is quoted as saying, “CNN and the Left are just mad because we actually attacked the government who is the problem and not some random small business” ...A now-deleted Facebook post by Defendant Fracker [says] “...Sorry I hate freedom...Not like I did anything illegal...y’all do what you feel you need to...”



Robertson and Fracker were charged with illegally entering a Federally-restricted building or grounds ([18 U.S.C. 1752\[a\]](#)) and being “violent and disorderly” on Capitol grounds ([40 U.S.C. 5104\[e\]\[2\]](#)). Both are misdemeanors.

What’s unusual, or might have once been unusual, is that both are cops. Their employer, the Rocky Mount (Va.) Police Department, [reportedly placed the duo](#) (they’re out on bond) on “paid administrative leave.” In [a joint statement](#), police and township leaders decried the assault on the Capitol and affirmed their opposition to “illegal or unethical behavior by anyone, including our officers and staff.”

Alas, Sergeant Robertson and Officer Fracker aren’t the only cops whose behavior at the Capitol struck a sour note. Former Houston police officer Tam Pham – the eighteen-year veteran resigned under pressure a week after the storming – said that all he did [was observe and “take pictures.”](#) And while former officer Pham insists he regrets having been there, his chief, Art Acevedo, [was hardly in a forgiving mood.](#) After all, officer Pham didn’t just attend the pro-Trump rally: he “penetrated” the Capitol:

There is no excuse for criminal activity, especially from a police officer. I can’t tell you the anger I feel at the thought of a police officer and other police officers thinking they get to storm the Capitol....

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Tam also faces Federal misdemeanors.

According to the *Washington Post*, which kept tab on [Federal prosecutions relating to the incursion](#), “[at least thirteen](#)” off-duty cops participated in the storming. Even more disturbing, “[more than a dozen](#)” Capitol cops are being investigated. “Several,” according to their acting chief, have been suspended. One posed with an insurgent for a “selfie”; another was pictured in a “MAGA” hat while leading rioters outside.

NPR [estimated that](#) “nearly 30 sworn police officers from a dozen departments” were at the rally. Actually, for some, being there – and *only* there – is their best defense. Consider, for example, Bexar County, Texas Sheriff’s Lt. Roxanne Mathai, who called January 6th. “[one of the best days](#)” of her life. Now under both “criminal” and “administrative” investigation (her boss wishes she “not...ever return to work”) Lt. Mathai insists that she only went for the rally, and that social media photos depicting her on the Capitol’s steps were taken after those despicable rioters cleared out.

There’s no doubt that Canadian County (Okla.) Sheriff Chris West [was at the rally](#). But that doesn’t mean he participated in the assault. No way. That was an “egregious” crime: “I rebuke all of that, every bit of it.” Still there’s little question but where his heart lies. Here’s the sheriff’s since-deleted Facebook post:

If they’re okay rigging an election and foreign help to steal the white house and control of WeThePeople, then I’m okay with using whatever means necessary to preserve America and save FREEDOM & LIBERTY. [caps his]

Likewise, [Philadelphia police detective](#) Jennifer Gugger. She reportedly followed up her attendance at the rally with a tweet accusing Vice-President Pence, who refused to anoint Trump as the victor, of being a “traitor and a cabal operative and pedophile.” And of “the deadly sin of greed.” And of selling his soul to the devil. That’s consistent with the *Inquirer’s* finding that detective Gugger used another name while [endorsing Q-Anon online](#).

Peacefully (even loudly) calling for an election’s reversal is no crime. Forcibly breaching the Capitol’s walls is something else. While he insists that “I do not want to limit anyone’s ability to lawfully participate in First Amendment activities,” Seattle Police Chief Adrian Diaz [placed two unnamed cops](#) who were at the pro-Trump rally on “administrative leave” while he investigates whether they went further:

The large number of people who forced their way into the Capitol, connected to the earlier political rally, presented too much of an unknown about whether any of our employees had potentially violated federal law. That is why I had to act.

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Same goes for the [seven Philadelphia Transit Police cops](#) who were supposedly at the rally. Did they breach “any area where a police line was established prohibiting entry”? Chief Thomas Nestel is “very concerned”:

It’s pretty clear that a riot occurred and that there was an attempt to overthrow our government and we want to make sure our members weren’t a part of that.

Well, maybe “overthrow” is an exaggeration. Still, even if all a cop did was attend the rally, examining their motives might be a wise move. But as for those who got truly weird: were they *always* Q-Anon material? Or did something drive them goofy?

Cops undoubtedly find these times challenging. Three days after a Wisconsin officer [shot and crippled Jacob Blake](#), Mick McHale, [the Florida cop who leads](#) the National Assn. of Police Organizations, [explained why](#) the nation’s police unions had unanimously aligned with Trump:

The violence and bloodshed we are seeing in these and other cities isn’t happening by chance. It’s the direct result of refusing to allow law enforcement to protect our communities...The differences between Trump/Pence and Biden/Harris are crystal clear. Your choices are the most pro-law-enforcement president we have ever had or the most radical anti-police ticket in our history.

For NAPO, which twice endorsed the Obama/Biden ticket, that may seem a bit odd. But in a campaign speech delivered a few days after the death of George Floyd, Biden [promised that as President](#) he would promptly launch a “national police oversight commission” and outlaw the use of chokeholds. But Joe was mum about the sharp increase in gunplay and murder that beset America’s cities, and the risk this unfortunate state of affairs poses to cops and citizens each day. As *Politico* suggested, the influence of progressives may have led a traditional supporter of law enforcement to change his tune.

Police may have found Biden’s apparent change of heart troubling. Sure, cops traditionally trend conservative. Even so, there might be empirically-sound reasons for their dissatisfaction. Here are some comparisons between 2019 and 2020:

- Chicago: [762 murders](#) as of 12/27/20 (55% increase from 491 in 2019)
- Los Angeles: [343 murders](#) as of 12/26/20 (33% increase from 257 in 2019)
- New York City: [447 murders](#) as of 12/27/20 (41% increase from 317 in 2019)

As a recent *L.A. Times* headline [breathlessly announced](#), 2020 had truly been “a year like no other.” Rapes and robberies went down. But murder increased dramatically,

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while shootings surged “nearly forty percent.” According to Chief Michel Moore, the mayhem was most pronounced in minority-majority areas:

Nearly all of the loss of life and shooting victims are centered in the Black and brown communities. The lack of jobs and supportive services, a sense of hopelessness, easy access to firearms and ineffective parts of the criminal justice system have created a perfect storm to undermine public safety gains built over the last decade.

Many predominantly minority communities – say, [South Los Angeles](#) – are chronically beset by violence. Recent years, though, had brought some relief. Alas, the mayhem’s apparently returned. Here’s the chief’s [January 16 tweet](#):

Continued surge gun violence South LA first 2 weeks of the year. 59 shooting victims compared to 7 last year. Officers have made 105 arrests of individuals with firearms. 130 firearms taken from street. Gang intervention trying, but we need our community and elected officials.

Chief Moore was upstaged by one of his own. According to the LAPD Captain who runs the Compstat program, arrests and police stops during 2020 plunged by 25 percent. Calls for service, though, only receded five percent. In his opinion the increased gunplay was due to a diminished fear of being caught with a gun, an effect he attributed to the defanging of the agency’s [stop-and-frisk program](#). That move, which [Chief Moore took in October 2019](#), was prompted by complaints from citizens and civil libertarians that LAPD officers were using pretexts to justify stopping Black drivers and pedestrians. And in fact, [some were](#).

But then came COVID. And in March, [the killing of Breonna Taylor](#) by Louisville police. And in May, [the death of George Floyd](#) at the hands of a Minneapolis cop. And in June, [the shooting death of Rayshard Brooks](#) by an Atlanta cop. And in August, [the crippling of Jacob Blake](#) by an officer in Kenosha. Fallout from these and other tragic police-citizen encounters propelled moves to “defund” police and shift key functions to civilian teams. Burdened by anti-police sentiments and the pandemic, cities across the U.S. redirected sizeable chunks of their police budgets to other uses. [LAPD sustained a \\$150 million cut](#), reducing its sworn force by 358 positions. Minneapolis, where the City Council voted to do away with police altogether, ultimately kept its cops but [trimmed their budget](#) by \$8 million.

Bottom line: “hot spots” policing, which even some academics [had come to favor](#), seems dead in the water. Proactive strategies often lead cops to areas predominantly populated by minorities. Blunders and misconduct, though, are no longer so easily

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overlooked. An easing of criminal sanctions, partly brought on by the pandemic, has been accompanied by a tougher approach to officer discipline. Illinois, for example, [seems about to pass](#) a broad package of criminal justice reforms, from eliminating cash bail to making it easier to decertify cops (click [here](#) for the bill's text.) Police-friendly prosecutors are giving way to more socially attuned sorts. George Gascon, L.A. County's new, progressive D.A. has directed that his assistants [only ask that bail be imposed](#) in cases of violent crime. He's forbidden seeking enhanced sentences except in extreme cases, and promises to vigorously prosecute officers who use excessive force.

That last message certainly didn't get lost on the cops. During a recent coroner's inquest into the June 2020 shooting death of an 18-year old by a Los Angeles sheriff's deputy, [the hearing officer was met with silence](#) by the officer who fired the fatal shots and, as well, by the two Sheriff's detectives who investigated the encounter. All three took the Fifth.

Back to square one. [In a recent piece](#) about the storming of the Capitol, *NPR* asked "an officer in the Midwest" where police sympathies really lie. Here's a brief extract from the cop's response:

There is a siege mentality in police-land. It says the left is just going to keep pushing until we get rid of cops.

There's a lot more, but the message seems crystal clear. Officers feel under the gun. While the overwhelming majority undoubtedly remain true to their calling, some have forged alliances with the Devil. Joe Biden might not be everyone's cup of tea (if you *must* know, we voted for "Howie"), but hopefully he'll find a way to steer *all* Americans – cops included – to a common high ground. It's the least one could ask.

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CHAOS IN D.C.

Rioters overrun the Capitol. Are police to blame?



For Police Issues by Julius (Jay) Wachtel. On January 6, 2121 hordes of protesters inflamed by President Trump's defeat and exhorted by him and his son to convey their message to legislators stormed the U.S. Capitol, overwhelming police. While none visibly carried firearms, some had or got hold of pipes and other objects. Once inside, rioters fought with several officers, and [Capitol police officer Brian Sicknick](#) was repeatedly struck with a fire extinguisher, sustaining ultimately fatal injuries. (Click [here](#) for the video of a rioter spraying officers with a fire extinguisher.) A military veteran and avid supporter of the President, officer Sicknick had served with the Capitol force since 2008.

Most Capitol cops left their guns holstered. However, as intruders smashed through a window on the door that led from their corridor to the Speaker's Lobby, a plainclothes officer on the other side [drew his pistol](#). As Ashli Babbitt, 35 climbed through the opening the officer fired. She was quickly attended to but her wound proved fatal. [Here's an excerpt](#) from a statement by Capitol police chief Steven Sund:

As protesters were forcing their way toward the House Chamber where Members of Congress were sheltering in place, a sworn USCP employee discharged their service weapon, striking an adult female. Medical assistance was rendered immediately, and the female was transported to the hospital where she later succumbed to her injuries.

Ms. Babbitt was reportedly unarmed. [Her husband and family](#) said that she was a patriot and a U.S. Air Force veteran. Her social media account displayed fervent support for the President and endorsed far-right positions on a host of issues.



Three other protesters died from unspecified “medical emergencies” suffered during the siege (one reportedly fell to his death while climbing.) More than fifty officers sustained non-fatal injuries, a few considered serious.

None of the intruders openly flaunted firearms and most let members of the media carry on with their work. No reporters were apparently hurt, although at least a couple were observably pushed around. Yet as one pores through the profusion of news accounts about the melee (this clip is from the L.A. Times print edition) the unmistakable tenor is that the intruder’s aggressive behavior gave Capitol staff and legislators abundant reason to fear physical harm. Here’s an outtake from [“Inside the assault on the Capitol: Evacuating the Senate”](#) by the *Washington Post’s* Paul Kane:

It was 2:15 p.m. Wednesday and the U.S. Capitol was under assault, the most brazen attack on Congress since terrorists hijacked an airplane and attempted to slam it into the building more than 19 years ago. On Wednesday, a pro-Trump mob crashed into the building in a historic first that sent Washington into lockdown and prompted the type of evacuation that congressional security officials have been planning since 9/11 but had never had to execute.

How did the rioters get in? Check out [Google Earth’s satellite image](#) of the Capitol. It’s a vast place with a cornucopia of entry points. Controlling access would require miles of fencing (think “border wall”) and an immense, continuous police presence. Until D.C. police showed up, Capitol police were vastly outnumbered and officers guarding the exterior were quickly overrun. That, of course, is exactly what the rioters had counted on.

Let’s personalize this. You’re a Capitol cop. Say that a dozen flag-waving but visibly unarmed anarchists approach a bashed-in entryway. In a few moments they’ll be in a supposedly “secure” area, rubbing shoulders with legislators. *Do* you shoot them? Legally, *can* you?

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Probably not. According to the *Code of Federal Regulations* ([10 CFR 1047.7](#)) Federal officers can only use lethal force to protect themselves or others from “imminent danger of death or serious bodily harm” or when trying to keep someone who poses such threats from fleeing. Here, for example, is the [FBI’s plain-language rule](#):

FBI special agents may use deadly force only when necessary — when the agent has a reasonable belief that the subject of such force poses an imminent danger of death or serious physical injury to the agent or another person. If feasible, a verbal warning to submit to the authority of the special agent is given prior to the use of deadly force.

Federal law ([18 USC Sec. 1752](#)) makes it a misdemeanor to illegally enter or engage in disruption in a restricted Federal zone, such as the Capitol and its grounds. Violations become felonies when someone carries a dangerous weapon or firearm or their acts cause “significant bodily injury.” Simply trying to arrest an unarmed someone – even for a felony – is by itself insufficient for using lethal force. That requires a threat of “death or serious bodily harm.”

Visuals-rich pieces in the *New York Times* (click [here](#) and [here](#)) aptly depict what took place. Rioters easily pushed through and circumvented a depleted Capital police force that remained outside. And here a bit of explanation is called for. Capitol cops’ core function – their *raison d’être* – is to protect legislators, staff and authorized visitors. Realizing what was up, most scrambled inside to do just that. *This was not the time* to tie up critical resources by making petty arrests.

Natch, the rabble took advantage. Storming the building, they climbed walls, broke windows and gained mass entry by breaking through exterior doors to the Rotunda. Videos posted by *NBC News* show [what happened inside](#). As a few officers use pepper spray and such to slow the horde down, their colleagues frantically [shepherd legislators and staff](#) into the Senate and House chambers and pile furniture against the doors to block access. One photo depicts plainclothes officers [pointing their sidearms](#) at a protester who is peering into one of the galleries where legislators had hunkered down. Another portrays officers outside a chamber as they [watch over several arrestees](#).

Five persons lost their lives: Officer Brian Sicknick, Ms. Ashli Babbitt, [and three intruders](#) who died from unspecified “medical emergencies” during the siege (one supposedly fell to his death while climbing.) D.C. Police Chief Robert Contee reported that “valiant fighting” left fifty-six officers injured. Several were seriously hurt, including one who was “snatched into a crowd” then beaten and tased.

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In its initial wave of prosecutions, the Department of Justice [accused fourteen rioters](#) of committing Federal crimes. Nine face charges of misdemeanor illegal entry. Among these is Arkansas man [Richard Barnett](#), the smug fellow who was photographed with his feet on a desk in the office of the Speaker of the House. Allegations against the other five are more serious, including alleged threats, assault, possession of loaded handguns, and, for one defendant, possession of explosives.

D.C. police officers arrived in force during the melee to help clear intruders from the interior. Again, taking persons into custody can tie up multiple cops, so not everyone could be arrested. In the end, D.C. police [made sixty-eight arrests](#). Federal agencies are now poring through photos and videos to identify additional interlopers who are deemed worthy of being charged. Those who broke windows and doors and carried away artifacts are first in line. (Click [here](#) for a *New York Times* list of “notable arrests” as of January 10.)

So far, the most serious unprosecuted offenses relate to the deaths of officer Sicknick and Ms. Babbitt. Officer Sicknick’s assailants are yet to be named. Ms. Babbitt, an intruder, was killed by a Capitol police officer, who has been placed on leave. His status is in the air. Did her actions and demeanor pose a reasonable fear that she might hurt someone? We’ll update both cases as developments occur.

Was the mob “storming” foreseen? Pointing to “violent clashes, stabbings and acts of destruction” that happened during a similar rally in December, D.C. Mayor Muriel Bowser, who was very critical of the response, [had warned of impending violence](#) for weeks. And while the *New York Times* [discovered no “broadly organized plan to take action,”](#) its reporting suggested that something big might happen. “Storm the Capitol” [had come up online 100,000 times](#) during the preceding month. Far-right forums [bulged with posts “threatening violence”](#) over the fraud that supposedly cost their hero the election, and user comments were replete with goodies such as “pack a crowbar” and “does anyone know if the windows on the second floor are reinforced?” Here’s what a former Secretary of Homeland Security recently said:

You didn’t need intelligence. You just needed to read the newspaper...They were advertising, ‘Let’s go wild. Bring your guns.’ You don’t need to have an FBI investigation. You just need to be able to be able to read.

On the other hand, Representative Tim Ryan (D-Ohio), whose committee funds the Capitol police, denied there was any advance intelligence of a “storming.” Ditto Capitol police chief Steven Sund, [who is resigning over the debacle](#) along with the Masters-at-Arms of both Houses. [Chief Sund called the episode](#) completely unanticipated and

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“unlike any I have ever experienced in my 30 years in law enforcement here in Washington, D.C.”:

Maintaining public safety in an open environment – specifically for First Amendment activities – has long been a challenge. The USCP had a robust plan established to address anticipated First Amendment activities. But make no mistake – these mass riots were not First Amendment activities; they were criminal riotous behavior.

Unfortunately, the President’s stirring of the pot helped make the “unanticipated” inevitable. On December 19 he tweeted “Big protest in D.C. on January 6th. Be there, will be wild!” [His final call to duty](#) (with a Twitter link, no less) came on Tuesday, January 5th:

I will be speaking at the SAVE AMERICA RALLY tomorrow on the Ellipse at 11AM Eastern. Arrive early — doors open at 7AM Eastern. BIG CROWDS!
pic.twitter.com/k4bIXEScoc

That evening [thousands gathered at a pre-rally event](#) south of the White House to hear “speaker after angry speaker” denounce the stolen election and identify the “Democrats and weak Republicans, Communists and Satanists” who deserved blame. There were sizeable delegations from far-right groups including the “[Oath Keepers](#),” the “[Proud Boys](#)” and “[Q-Anon](#),” which promote conspiracy theories and point to Biden’s election as evidence that America is being subverted from within. And while tactical gear wasn’t the common mode of dress, some in the audience carried pepper spray and clubs and wore helmets and flak jackets.

They returned in force early the next morning [to hear their main man](#). According to *NBC News*, park authorities originally permitted the event for ten-thousand, but the President’s exhortations had likely driven up attendance, and the crowd wound up about three times that size. And they got what they came for. Here’s an excerpt from [Eric Trump’s warm-up remarks](#):

Have some backbone. Show some fight. Learn from Donald Trump. And we need to march on the Capitol today. And we need to stand up for this country. And we need to stand up for what’s right.

Here’s an outtake from [his father’s closing words](#):

...nobody until I came along had any idea how corrupt our elections were...but I said something is wrong here, something is really wrong, can't have happened

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and we fight, we fight like hell, and if you don't fight like hell you're not going to have a country anymore...So we are going to--we are going to walk down Pennsylvania Avenue...and we are going to the Capitol, and we are going to try and give--the Democrats are hopeless, they are never voting for anything, not even one vote but we are going to try--give our Republicans, the weak ones because the strong ones don't need any of our help, we're try--going to try and give them the kind of pride and boldness that they need to take back our country. So let's walk down Pennsylvania Avenue.

And thousands did (natch, *sans* the Donald). While most either kept on walking or paused to demonstrate – legally – on the Capitol’s vast greenspace, a rabid contingent several-hundred strong split off. Inciting each other through word and deed, they high-tailed it for the building. And ran smack-dab into officers whose leadership hadn’t prepared them for the storm. Or the potentially threatening nature of the “stormers.” While there is no proof at present that their activities were coordinated, the mob bristled with members of far-right groups. It also included personalities such as [Nick Fuentes](#), a star of the far-right Internet media, and [Q-Anon booster Jake Angeli](#), the fellow in a fur coat and horns.

As media accounts make clear, enforcement-wise things quickly turned desperate, and D.C. police and other law enforcement agencies were summoned. But the delay in battening down the hatches enabled the violent breach of an American treasure, leading to vandalism, injuries and deaths. A cascade of blame has followed. Given all the warnings, why did police fail to prepare for the seemingly inevitable? Here’s what [former Senate sergeant-at-arms Frank Larkin](#) thinks:

The police should have defined a hard line and there should have been consequences for crossing it. The fight should have been outside. Not inside. To have that confrontation at the door, that was a losing formula.

Ditto the head of the Capitol police union, which called on the chief and his top commanders to promptly resign: “This lack of planning led to the greatest breach of the U.S. Capitol since the War of 1812” (that’s when the Brits set the Capitol on fire.)

Still, former Capitol cop Jose Cervino, who planned security for protests and events, wasn’t sure that the President’s anticipated comments [left a realistic strategy available](#):

No one expected the president to say, ‘Hey guys, let’s all go down to the Capitol and show them who’s boss.’ That is a completely different thing that no one’s ever planned or prepared for. How could you?

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And once the impossible happened, officers couldn't turn to the one measure that would bring the episode to an end:

We have the members and we have the leadership secured. Is it correct to start shooting people? I can't imagine that I would be happier today if we found out we kept the crowd out, but wound up shooting 40 people.

There was another concern. Feds and D.C. police [are still smarting from heated criticism](#) about their enthusiastic crackdown on June racial protests near the White House. Their purpose, it's said, was in part to keep hostile crowds away from the fence-enclosed, supremely distanced and heavily guarded residence of the President. Six months later, officials in charge of Capitol security worried that hardening the "people's house" [would lead to similar complaints](#).

Of course, the Capitol is no White House. It's a wholly different venue, supposedly welcoming to all sides of the spectrum. There are even visitor galleries! But in our current, deeply polarized atmosphere, some politicians (and their lawyers) seem determined to encourage their followers to exercise their worst qualities. Regretfully, deaths and injuries happened. Yet as short-staffed as they were, police were able to keep legislators and staff from harm. Yet some of what happened off-site raises alarm. We've heard about the pipe bombs that were found and disarmed near the Republican and Democratic party offices. [Now consider these episodes](#):

- A 70-year old Alabama grandfather showed up in a pickup stuffed-full with "an M4 assault rifle, loaded magazines, three handguns and 11 Mason jars filled with homemade napalm [i.e. Molotov cocktails.]" He carried a pistol in his pockets.
- A Georgia man and fervent Trump booster texted a profusion of inflammatory, threatening comments, i.e., that he was taking a "s-ton" of 5.56 mm ammunition and was "thinking about heading over to Pelosi C—'s speech and putting a bullet in her noggin on Live TV." FBI agents tracked him to a hotel. They seized an assault rifle, a pistol, ammunition and drugs.

Effectively "securing" the Capitol against a repeat intrusion – and the air is thick with warnings about Inauguration Day – might require measures that would in effect remove a national treasure from the public sphere. (Fencing is being installed as we write.) That may not be what we want, but unless our dueling tribes come together as the Americans they ostensibly are, and exercise some common sense in how they go about their business and communicate with their supporters, it's what we're surely going to get.