

## Ep. 118 Should Congress Make Domestic Terror a Crime?

**Judith Kelley** [00:00:00] January 27, 20, 21, at 11 a.m., the acting secretary of Homeland Security for the first time ever, issued a national terrorism advisory system bulletin based on a fear of a threat of domestic terrorism, noting that information suggests that this threat, which is fueled by, quote, perceived grievances that are fueled by a false narrative, could continue to mobilize and incite violence. And they have this bulletin and notification in place until the end of April. And they warn specifically that they're concerned about threats of violence against critical infrastructure, including the electric, telecommunication and health care sectors and that the Department of Homeland Security is encouraging state, local, tribal and territorial homeland security partners to continue prioritizing physical security measures, particularly around government facilities to protect people and critical infrastructure. In an op ed in the Tampa Bay Times, my guest today said that January 16th demonstrated to all Americans what many observers have been warning about for years. We have a serious domestic terrorism threat in our hands. Today, we talk about just how we might go about reducing that threat. Welcome to Policy 360. I'm Judith Kelly, Dean of the Sanford School of Public Policy at Duke University and David Schanzer is a professor of public policy here and he is also the director of the Triangle Center on Terrorism and Homeland Security. So, David, thank you for joining me.

**David Schanzer** [00:01:53] Well, thanks for having me as your guest.

**Judith Kelley** [00:01:56] So January sixth, of course, was the the day of the insurrection against the capital. You follow white supremacist groups closely. And so I wonder, while many of us sort of were shocked, what was your reaction watching the attack on the Capitol in real time?

**David Schanzer** [00:02:15] Certainly the breadth of a giant mob rioting at a public building was something that we had not seen. But the idea that there would be large scale violence that was motivated by various forms of right wing extremism, some of which are properly labeled white supremacy, others that have underlying ideas of white supremacy but have other aspects to them as well. That did not come as a surprise, because matter of fact, I think I've been on your show previously when we've discussed back in 2015, even, we did a study that the survey of police chiefs around the United States and back in twenty fifteen, they were identifying right wing extremism as being a greater threat in their jurisdictions than extremism inspired by al-Qaida and ISIS. So we've known this was out there for a long time. A lot of things have happened over the last four years, four, five and a half years, really, the emergence of Donald Trump to galvanize this movement and it's been mobilized, I think as the advisory suggests, by the idea of a of a fall of a fraudulent election, the lie of a fraudulent election, and essentially a steal of power from from these people. And that's a real motivator for the violence that we saw at the capital and is motivating this possible threat alert.

**Judith Kelley** [00:04:01] So really something that experts have been aware of for a long, long time. And the fuse was lit here by the coming together of multiple of multiple events. David, you your article is uses the the term domestic terrorism and I just want to talk a little bit about that, because I know that, generally in the past when we talk about terrorism, we often think about foreigners one and we think about people who are literally shouting anti anti-American slogans while they commit this terrorism. And so we've come to associate terrorism with something that is both foreign and anti American and why we may have used the word terrorism. I can't even recall around people like Timothy McVeigh or what others in the past. What's really different here is not just that these folks were domestic,

but that they were shouting USA, USA, they are they they are framing themselves as patriots. And so I noticed that in this bulletin that was issued by the Department of Homeland Security does not call them domestic terrorists, but calls them domestic violent extremists. Can you talk a little bit about the use of the term domestic terrorism? And and and does it does it resonate that to me it's sort of almost feels a little bit like an oxymoron?

**David Schanzer** [00:05:35] Well, you've laid out a lot of issues are our terminology in our lexicon is basically a mess, and this question really points that out. Let me try to parse out the different strands of it. The term terrorism, to my mind, means violence undertaken for a political purpose, and it's usually violence against civilian populations, civilian institutions to try to distinguish it from warfare, which is armies that fight against each other. I think there's a feeling that the word terrorism has become so politicized over the years, really, really to almost become a term that means violence being used by people you don't like. So, you know, dictators like Putin would call protesters for democracy, terrorists and indeed, some people use that terminology to refer to Black Lives Matter and violence that might have sprouted up, looting, connection with a protest. Though I think the government many people wanted to try to find another term for dealing with that that didn't seem as politicized. And they fell on to violent extremism, which also helped to characterize what we were talking about. We're talking about the use of violence, which is to distinguish that from from forms of political protests that are lawful and peaceful. So we use the term violence specifically and then we call it extremism to kind of show that it's about it is about political ideas, but political ideas that are far out of the mainstream. And it's OK to have those ideas. It's OK to be an extremist so long as you don't engage in violence to perpetrate, or, those ideas. So it's a combination of those two things that makes it problematic. And I think it's helpful. Let me also now talk about the domestic versus the international.

**Judith Kelley** [00:07:47] Sure.

**David Schanzer** [00:07:48] International terrorism, certainly. Or international violent extremism. We certainly referring to issues relating to attacks like like 9/11 perpetrated by foreigners against the United States, the organization that was foreign, and people who entered the United States, foreigners who entered the United States illegally. And so we try to use things like the term domestic domestic violent extremism to refer to to groups and entities that are within the US. And I think where that got really messy was really in the period between 9/11 and, you know, even up to today, but a lot less strongly where we had U.S. citizens or resident aliens who identified with the al-Qaida ideology. So they were really domestic people, but they linked to a foreign ideology. And we continue to call that international terrorism. Sometimes we call it homegrown terrorism. But to me, it was a form of domestic terrorism as well. And so that's where it really gets confusing and messy. But the FBI has always used the term domestic terrorism to refer to these kind of groups and individuals who, you know, their ideas formed from the American experience. They're part of the American political spectrum and they're here inside our borders.

**Judith Kelley** [00:09:24] It reminds me also of the parallel when, you know, the concerted effort to refer to Muslim extremists, violent Muslim extremists, just to really distinguish the fringe and and and normalize views that are indeed normal, the religions that are indeed normal and peaceful and really distinguish by the attachment of the of the violent and the extremist. So that's really helpful. David, in your article, you talk about indeed, the title is "Congress Should Make Domestic Terrorism a Crime." So is it not a crime today?

**David Schanzer** [00:10:01] Well, many of the things that domestic terrorists do, like carry illegal weapons or break into a building like the capital or develop explosives. Those are all federal, usually federal and state crimes, but they're all federal crimes. There's never been a problem finding charges to bring against people like Dylan Roof or Timothy McVeigh. Yet there's been a odd disjunction in our law where there's actually a crime that is about committing political violence outside of our borders for conduct transcending our borders. It's called international terrorism. There's a separate crime for that activity and there is no parallel. Now, interestingly, the evolution of that of that disjunction was actually back in the response to the Timothy McVeigh incident. Congress considered counter anti-terrorism legislation and the initial proposals were to create a crime relating to specifically international terrorism and one for domestic terrorism. And it left there's a definition of what is domestic terrorism, what is international terrorism? And they were exactly the same. But one was about things that happened inside our borders and one was saying some things about things that happen outside our borders. And there were elements in Congress, frankly, you know, conservatives who didn't like the idea of kind of targeting these domestic groups. And they framed in a civil liberties context that people have a right to have extremist views. And the idea of the domestic terrorism crime essentially got eliminated from the law. And so the definition remained as what is domestic terrorism? But the the crime was taken out. So we have this strange disjunction. But I think it's more important than just kind of an oddity. As I said, we always find things to prosecute people for if they're engaged in violence. It's not difficult. But I think to have a solution to this problem, we need to empower law enforcement to do more to go after violent groups. Individuals are bad who engage in violent extremism, the El Paso shooting and so on. Lots of people got killed. But in terms of a national problem, it's having groups and infrastructure, communications, fundraising and so on. And and to get at the root of those problems, I think we need some more authorities that both make it a crime to engage in political violence, to provide support, money and other forms of support to specific acts of political violence, and will also help us with our surveillance and empower greater surveillance of these groups and entities if we had that crime. So that's my logic for advocating for that.

**Judith Kelley** [00:13:14] So it's interesting because it reminds me David of human trafficking in the early 2000s when when we started to really target this issue, we sort of woke up to the fact that it was not a crime, there was no crime. You could not be convicted for being a human trafficker or for having committed the crime of human trafficking. You had to use all these other laws like kidnaping or transporting goods across state borders, et cetera, et cetera, to to really get at this crime that seems so heinous and obvious.

**David Schanzer** [00:13:51] That's that's exactly a parallel here, I agree with you.

**Judith Kelley** [00:13:55] Yeah. So you say some attacks by white supremacists previously were not prosecuted to the fullest extent of the law, is that right?

**David Schanzer** [00:14:04] No, I think what I was saying is that I wanted to make sure that the capitol, the crimes of the domestic terrorism took place at the capitol were prosecuted to the fullest extent of the law. I feel like, you know, if you saw some of the reactions of people that were getting arrested, they literally made excuses like, well, the president told us that this was OK. You know, to me, it was an extension of kind of the idea of white privilege is that, you know, to to protect our power and and our status in society. You know, we had some sort of privileged right to damage and enter a building illegally and disrupt political proceedings.

**Judith Kelley** [00:14:49] Right.

**David Schanzer** [00:14:49] And I think that would be a very dangerous idea to allow out there. I think there's even some discussion, and I think it's it's legitimate. The FBI saying there's so many people we can't charge them all. And, you know, I agree for thousands of people who were basically doing nothing but milling outside, it's impractical. But I think if you entered the building, I think it's important that that everybody who is involved in this attack on democracy, this use of violence to foment a political movement, I think we have to draw the line and make very clear that that is protest is, of course, a democratic right. But violence to pursue a political end is very dangerous to a democratic society. And therefore, you know, we need to have prosecutions. And the second point is, you know, I wanted to make the argument that to the extent that people planned and plotted, not just what they did is breaking and entering and harming police officers. Of course, that goes without saying. But if they planned and plotted and if there are people who help them and raise money for these activities and they knew that they were planning and plotting violence, that we needed to dig deep and the investigations needed to go deep and try to build conspiracy cases and so on, which come with very stiff penalties, then that might extend even to people who weren't there but who were involved beforehand. I don't know how how widespread that those activities were, but I'm hoping that the investigations would try to uncover that. So that was my point.

**Judith Kelley** [00:16:31] I see, is there a risk that as we prosecute and hold accountable some of these perpetrators, that we are essentially creating martyrs in the process and more specifically by going after Trump himself in an impeachment trial, that that he becomes more of a hero in that process? What do you think about that?

**David Schanzer** [00:16:54] Well, you certainly all always bear the risk of that when you essentially try to enforce the law, but I think in a country where the idea of rule of law is paramount, that that's a that's a risk we have to bear. I think a lot of people said, oh, you know, we shouldn't try terrorists in our in our courtrooms and give them a mouthpiece to espouse their vile and their hatred. And I think what we found is usually that those kinds of forums actually, you know, they reveal the kind of corruption and emptiness of their ideology. Yeah, they they spout a lot of vile, but they actually make the case against themselves quite strongly when they're put in a forum like a courtroom where the truth and the rule of law are paramount because you can get away with saying a lot of things on the Internet. But when you're under cross-examination and there's a judge, your ideas are shown to be, you know, empty. So I'm very much in favor of this process of accountability. And I think those values outweigh any sort of risk of that. We're going to glorify these folks. I don't think we are.

**Judith Kelley** [00:18:18] Hmm. So are you worried about the link at all to international terrorists that groups such as ISIS, who've been much less active in the U.S. in the past few years, might be emboldened by the domestic acts of terrorism and the turmoil that its caused?

**David Schanzer** [00:18:39] I don't see those kinds of direct linkages. However, there are these right wing groups and movements abroad, and I'm going to mess up on the name, so I won't say it. But I believe that even during the Trump administration, we've had a right wing domestic group I'm sorry, right wing international group placed on the list of international terrorist organizations, which comes with a whole series of possible criminal penalties for providing any support to them or assisting them in any way. And I think it's very worrisome. And something we have to take a look at is the linkages between these

international groups that are larger have a greater capacity to raise money and train and activities inside the U.S. So that's that's where I would be looking in terms of international. I see these ideas as being in terms of the Islamist groups like ISIS and and al-Qaida. I think they've got their own dynamics and their own problems on their hands. And I don't see a linkage between that and the problems we're experiencing this month and for years here in the U.S.

**Judith Kelley** [00:19:55] Well that's at least a relief. But I'm wondering, turning back to the threat, the threats that we are facing here at home, that this bulletin has been issued about what are we really looking at in terms of the prevalence of some of these things? I know it's hard to assess because by nature, some of this is is underground. But do you have an idea about how what how many people are we really talking about? And do these groups tend to blossom in certain areas? Are they more, do they thrive more in rural areas? Do they thrive more in some states? Do we understand that?

**David Schanzer** [00:20:37] Well, the Southern Poverty Leadership Center has been puts out a hate map every year of hate groups, and it's actually become quite controversial because some people and some organizations have resisted the idea that they're being listed. So there is some controversy around that. But they've certainly tracked a growth in these numbers of hate groups really since early in the Obama administration. And, of course, the election of Barack Obama was a huge watershed moment. And a threat to these extremists and hate groups, and they are prevalent really around the entire country. I think we do see a little bit more concentration in the south and and the west, some of the Western states. But I think those I think we see a prevalence really all over the country. Now how, you know, again, there's the problem of these idea, these hate groups, these extremism, the the dialog that's taking place online, the vitriol, the it's very, you know, toxic to our society in general. When it becomes a huge problem is when there's violence and how many people are, you know, motivated to engage in violence and which means not only hurting others, but most likely throwing your own life away because these folks are pretty much always get caught. Some of them kill themselves in the process. That's much harder to say. You know, even last 10 years, let's say we were seeing, you know, individuals like the Pittsburgh shooting and the other synagogue shootings, they were, you know, becoming dozens or four dozen, you know, violent events per year. So that's a lot of violence. And that's but that's not a threat, overall threat to society that would prompt this kind of national security alert. But I think what was significant about the the capitol incident was that this was a mass mobilization event. There were many fellow travelers who didn't come to Washington, but ideological soul mates of the people who were, who stayed home. So if you had a riot of two or three thousand people and there's a hundred others who would have liked to have come for everyone that did, you know, that's that's potentially a lot of people. And I think what's disturbing and is concerning in terms of a large scale threat is if this idea of the "steal" of the election, of a fraudulent election that took Trump out of power, that's an idea that has galvanized many different strands of this movement to act together. And that's dangerous. Second, if Trump decides he wants to continue to be the charismatic ideological leader of that movement, that is something that can motivate more people to violence. And it is really part and parcel of the grievance that drives this group. The whole idea of white supremacy and fear is that they believe that white people are essentially losing power in America to a kind of a coalition of elites, educated, highly educated people, coastal elites and minorities. And that is the whole this idea of the stolen election just goes right at that very deep grievance. So for all those reasons, I think there's this potential. I'm not saying it's going to happen, but there's potential for, you know, a movement that only inspired, you know, a couple dozen people

to engage in violence in any given year to become a much more mass mobilization movement if it's not checked and if certain actors decide they want to go in that direction.

**Judith Kelley** [00:24:44] On the other hand, we are seeing groups like the Proud boys, for example, which one of the groups that is more inclined to to use violence, you know, distance itself from from the former president. And and so do they become leaderless and how does that affect their movement?

**David Schanzer** [00:25:03] Well, I would reserve judgment on on proud boys, it's kind of in their interest for everybody to say, well, we weren't part of this capital thing. Some of the I'm going to wait for the investigations to unfold and that that takes time. So let's see about that. I think the distancing is as a more of a matter of convenience at this point.

**Judith Kelley** [00:25:31] I see.

**David Schanzer** [00:25:32] But that's what we want. We want these groups to go in different directions and they'll be less powerful if they do. So, that's OK.

**Judith Kelley** [00:25:39] So for, for our listeners who are sitting at home and wondering, well, you know, they want to see what they can do to not help glorify these people or, you know what, what can a normal citizen do in the face of a bulletin like this?

**David Schanzer** [00:25:55] Well, you know, the normal, which is very rare for for many of our listeners, you know, the concept of see something, say something, you know, applies to all forms of, you know, violence and crime. I think in general, for the average citizen, what they should be thinking about really is helping us return to a culture where the truth is paramount and matters, and so the idea of calling out lies, of debunking conspiracy theories, of not supporting corporations or organizations that are willing to, you know, support others who continue to to essentially espouse those things in our culture. Those are the things I think that long term, you know, the inability of Americans to distinguish truth from fact and the willingness of media outlets and other entities to, you know, base campaigns and so on, on mistruths. I'm all for harsh political debate about, you know, what our policy should be. And there's nothing wrong with that. Matter of fact it's very American. We have a long tradition of that, you know, going back to before the founding. But I think what's corrosive in modern day America is the, the misinformation and the willingness to indulge in outright lies and conspiracy theories and use that as a basis for making decisions and and how to vote and so on. So I think having all citizens rededicate themselves to upholding the truth is something that everybody can can think about.

**Judith Kelley** [00:27:46] Well, that's certainly something we can we can all aspire to. And I thank you for for those words, David, and thank you for joining me today.

**David Schanzer** [00:27:55] Well, thanks for asking me all those hard questions Judith, and it's a pleasure to be able to talk to all of your listeners.

**Judith Kelley** [00:28:01] David Chancer is a professor at the Sanford School of Public Policy at Duke University, where he directs the Triangle Center on Terrorism and Homeland Security. We wish everybody a good day. I'm Judith Kelly. We'll be back soon with another edition of Policy 360.