

**Answers to Questions for the Record
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***“Examining the ‘Metastasizing’ Domestic Terrorism Threat
After the Buffalo Attack”***

**United States Senate
Committee on the Judiciary**

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- 1. During the hearing, allegations were made by members and at least one witness that Fox News in some way contributes to extremism. Do you have a comment on this allegation?**

At the outset, I should note that I am a contributor with Fox News. Over the past 30 years, I have worked as a legal analyst for NBC, CBS, BBC, and Fox. Before my most recent contract, I worked as a legal analyst for both CBS and BBC. As noted in my testimony, I do not speak in this capacity as a representative for any news organization that employs me as a commentator or a columnist.

There have been efforts to weaponize tragedies, including mass shootings, to attack media outlets. The attack on Fox News has included [congressional members pressing carriers](#) on the morality of continuing to allow access to the channel, despite its status as the most popular cable news outlet including [more democratic viewers](#) than competitors like CNN. That is not to say that there are not reasonable objections to coverage on any of the main news outlets. The use of these tragedies to demonize a news organization with opposing views is a dangerous practice for any nation committed to free speech and the free press.

The premise of this attack is also strikingly selective in its underlying cause-and-effect logic. These same critics rarely make the same cause-and-effect claims regarding violence on the left. As noted in my testimony, massacres and rioting also have been carried out by radical left figures. For example, when [James T. Hodgkinson, a Bernie Sanders supporter, gunned down Republican members](#) on a baseball field, no one in their right mind would have suggested that Senator Sanders, let alone MSNBC or CNN, were causing such lethal attacks. Likewise, while some of us criticized the rhetoric of Democratic members attacking Supreme Court justices and even encouraging protests at their homes, we also stated that these members should not be blamed for acts like the attempted murder of Justice Brett Kavanaugh by a man irate over the recent Dobbs decision. The fact is that

political violence is becoming more embedded in mainstream society and, [according to recent research](#), it is not confined to either the left or the right. Attacks on news outlets for such violence is a common tool used in other countries for justifying censorship or crackdowns on critics. Massacres like Uvalde and Highland Park show consistent and obvious common elements. It is not media exposure, but mental illness. If we are serious about combatting such violence in the future, we need to improve our system of treating the mentally ill.

2. One of the majority witnesses in the hearing indicated that millions of Americans that hold an idea may become violent. Is an idea extremist in and of itself? Does holding any particular idea make a person a domestic terrorist?

As noted in my prior written testimony, the effort to use an ideology as the basis for terrorism investigations is extremely dangerous for a host of rights, including freedom of speech, association, and the press. The sweeping rhetoric noted in the question shows precisely why courts have focused on conduct rather than ideology in reviewing the basis for investigations or prosecutions. The effort to force the Justice Department to prioritize certain groups due to their ideology not only undermines anti-terrorism efforts but raises serious constitutional concerns. The hearing reflected the dangerous slippery slope created by such efforts. There were references to people who question the election as examples of potential domestic terrorists. Some 74 million people voted for Donald Trump and many still question the election. [Forty percent of the population](#) does not believe that President Biden was legitimately elected, while [seventy percent of Republicans](#) still hold that view. That would mean that most of the Republican party, and a huge overall percentage of Americans, would fall into categories of possible domestic terrorists. Those who rioted on January 6th were legitimately prosecuted for *their actions* not for their values or views.

3. There are certainly ideas that are reprehensible, like racism and animosity toward police. How do we combat these ideas? Is it through the criminal justice system, or in the public square?

The effort to use ideology as a basis for criminal investigation raises the specter of government crackdowns on critics that we saw with the Sedition Act by President John Adams. There was a rigorous debate by the rivaling groups led by Adams and Thomas Jefferson. Adams, however, wanted to stop that debate through criminal prosecutions. *See generally* Jonathan Turley, *Harm and Hegemony: The Decline of Free Speech in the United States*, 45 Harv. J.L. & Pub. Pol'y (2022).

The alternative is to keep faith with free speech and allow good ideas to overcome bad ideas in the marketplace of ideas. Racist, sexist, anti-police and other extreme sentiments are not shared by most people. It is far more effective for the public to reject such ideas than for the government to dictate what is permissible or prohibited viewpoints. The government has never succeeded in killing an idea in any country, despite some of the most draconian and abusive measures. Governments have, however, forced dangerous groups underground or allowed them to assume the mantle of martyrs. That is a terrible mistake. Racist and extremist ideologies die from their own weight and wickedness. The government should confine its role to prosecuting those who take criminal action based on such vile views. The rest should be left to the public and the winnowing process afforded by free speech.