

How Sorry Are They? Not Enough to Accept Biden as President

With the January 6th Committee scheduling new public hearings in the coming weeks, many are asking: With the passage of time and experience of prosecution, have those who stormed the Capitol and posed the most severe domestic challenge to America's democracy in modern history had a change of heart? Do the insurrectionists now recognize that they not only broke laws, but challenged the foundations of democracy? Have they, upon reflection, come to reject the anti-democratic goals driving the attack on Congress on January 6?

These questions are important, not just for holding individuals accountable for their behavior in the past, but also for what the answers say about the insurrectionist movement going forward. To be clear, the January 6th attack on the Capitol was not merely criminal behavior or violent entry into a public building. It was violent action meant to stop the peaceful transfer of presidential power and so violated the core idea of democracy that the people as a whole – rather than a self-appointed minority – should decide who governs.

Over the past six months, I have led a research team at the University of Chicago Project on Security and threats seeking to answer these questions. We examined thousands of courts documents, media reports, and social media posts related to the nearly 900 individuals charged with offenses for breaking into the Capitol on January 6th, 2021. We focused especially on the 217 defendants who completed the legal process through sentencing as of July 15, 2022, because these individuals would have the most opportunity to show remorse for breaking laws and harming people as well as repudiate and reject the anti-democratic goals of the insurrection, particularly stopping the peaceful transfer of power according to the rules in the US constitution and election law.

Based on what we can tell from the January 6th defendants' public statements of remorse, the answer to whether they reject the anti-democratic goals of the insurrection is no.

Remorse for breaking the law and harming people is common among the January 6th defendants. Indeed, almost every person who has been sentenced has expressed some degree of remorse. Of the 217 who completed the legal process through sentencing in our study, 83% have some public statement, either in their court documents or in media coverage, that articulates some degree of remorse or apology for their actions that broke the law or harmed people on January 6th.

However, as legal scholars have long pointed out, this kind of expression of remorse is not always sincere. Contrition is a factor considered by judges in determining length of sentences and other penalties. Accordingly, defendants have significant incentives to make these statements even if not sincere.¹

Given the unreliability of statements of contrition, we also look at statements of *repudiation*: statements which go beyond remorse for breaking the law and where a defendant specifically denounces one of the principle political motives for the event of January 6th. These statements also bare the most directly whether the defendants have had a change of heart on the most important issues for our country. Indeed, they are examples of what scholars call "costly signals" of intent, since these

¹ Griffen, "Exploring Remorse Behaviors" (U Alabama PHD dissertation, 2011) pp. 10-11; R. Slovenko, R. (2006). *Remorse*. The Journal of Psychiatry & Law, 34, 397-432. Ward, B. (2006). *Sentencing without remorse*. Loyola University Chicago Law Journal, 38, 131-166. Weisman, R. (2004). Showing remorse: Reflections on the gap between expression and attribution in cases of wrongful conviction. *Canadian Journal of Criminology and Criminal Justice*, 46, 121-138. Wood, L. A., & MacMartin, C. (2007). Constructing remorse: Judges' sentencing decisions in child sexual assault cases. *Journal of Language and Social Psychology*, 26, 343-362.

statements go beyond the contrition valuable to gain lower sentences and risk angering supporters of the January 6th movement and the former president Donald Trump himself. In this sense, therefore, repudiation statements are a reasonable, if crude, indicator that the person rejects the anti-democratic goals of January 6th.

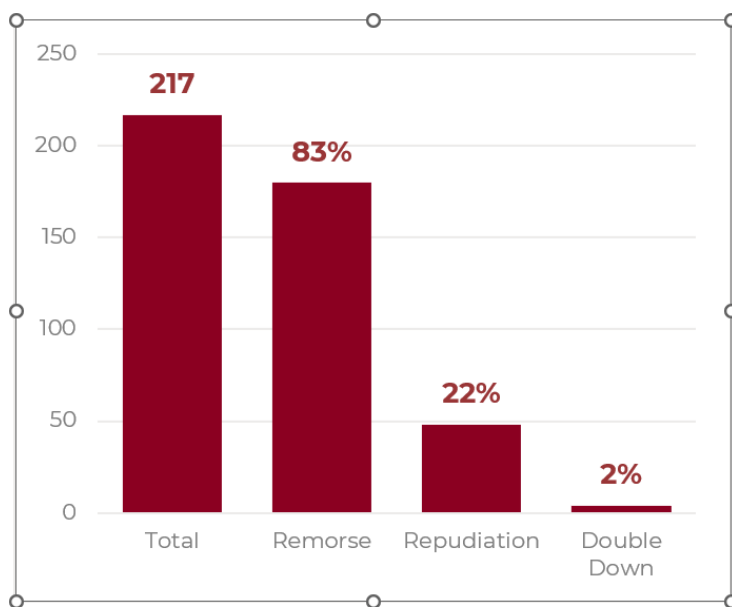
Specifically, to count as repudiation, we searched for direct statements by defendants that say either (1) the 2020 election was not stolen, (2) they support U.S. institutions, (3) the actions taken on January 6th were not patriotic, (4) that their rights are not actually under threat, or (5) that they acknowledged that Donald Trump lied to them about the election.

The findings on repudiation are troubling. While almost every defendant expresses remorse, repudiation is much rarer: only a quarter – 48 of 217 or 22% -- offer such a statement and only 8 repudiated more than one motive (the maximum observed is repudiating three goals). The most repudiated motive was that January 6th was a “patriotic” act, with 35 defendants stated in one form or another than actions taken on January 6th had not been patriotic and had harmed or shamed the United States. Only 3, about 1% of the total, repudiated Trump.

Most importantly, however, only a total of 10 of the 217 defendants acknowledged that Joe Biden is the president of the United States. In other words, **95 percent of the January 6th defendants still have not publicly accepted Biden’s legitimacy.**

Although rare, four defendants who have been sentenced made “double-down” statements *reinforcing* their commitment and enthusiasm for the political goals of the January 6th attack without some later statement of repudiation. For instance, at his sentencing hearing, John Lolos insisted that he saw voter fraud on television during the 2020 election, David Ticas asserted that all the violence at the Capitol was the product of U.S. government provocateurs, and Jenny Cudd wished that the 2020 election had never been certified.

FIGURE 1. DISTRIBUTION OF REMORSE, REPUDIATION, AND DOUBLE-DOWNS



To be sure, the repudiation statements are embarrassing for the insurrectionist movement and those so loyal to former President Trump that they would use force again for his purposes. Indeed, some of the most powerful indictments of the January 6th insurrection come from those convicted for offenses on that day. For instance, at their sentencing hearings or in memoranda to the court, the following said:

Abram Markofski: "My actions put me on the other side of the line from my brothers in the Army. The wrong side. Had I lived in the area, I would have been called up to defend the Capitol and restore order. That's what I took an oath to do, but my actions put my oath into question. My actions brought dishonor to my beloved U.S. Army National Guard."

Robert Palmer: "...I realize that we, meaning Trump supporters, were lied to by those that at the time had great power, meaning the then sitting President, as well as those acting on his behalf. They kept spitting out the false narrative about a stolen election and how it was "our duty" to stand up to tyrants. Little did I realize that they were the tyrannical ones desperate to hold onto power..."

Nicholas Reimler: "I'm sorry for the United States Capitol police officers who should have never had to defend lawmakers and their staff in the fashion they had to. ...And I'm sorry to the people of this country for threatening the democracy that makes this country so great."

Greg Rubenacker: "I also want to extend my apologies to the entire Country. I went there because I believed the lies that were told by members of the media and our own political figures. Lies about a corrupt and stolen election. Lies that gave me a significant false understanding that by coming to Washington, we could do something about it. ...I went with the belief that I was protesting an issue that deeply concerned me for the Country, an issue I now understand was fabricated."

William Michael Sywak: "I'm ashamed that I was involved in all of this. I believe I was misled by the President about the election...."

Still, the words of a few should not cause us to overlook the lack of similar words by so many of the January 6th defendants. The attack on the Capitol – where thousands took the outcome of the 2020 presidential election into their own hands -- stands as a remarkable challenge to the idea that the people of the United States should choose their leaders through the process identified in its Constitution and elections laws. That so few of the attackers are now willing to stand with – rather than against – the precious idea of democracy embodied in our Constitution should give us all pause.

Robert A. Pape is professor of political science and director of the University of Chicago Project on Security and Threats. He would like to acknowledge the important contributions made by Keven Ruby, Kyle Larson, and the team of researchers involved in the data collection and analysis.