

Minneapolis Star Tribune January 16, 2021

LOCAL

## Violent words in St. Paul: When does free speech become terroristic threat?

By Stephen Montemayor (<https://www.startribune.com/stephen-montemayor/6370444/>) and Mark Vancleave (<https://www.startribune.com/mark-vancleave/6370575/>) Star Tribune

JANUARY 16, 2021 — 4:01PM

Alley Waterbury cheered on the violent insurrection in Washington as she warned Gov. Tim Walz that there would be consequences if he did not meet with her and other protesters at the Minnesota Capitol. Within hours, she was outside the governor's residence shouting through a bullhorn.

"Do not underestimate us, because we will cross the line!" the Woodbury activist yelled across the front gate.

State officials probing this month's Storm the Capitol rally in St. Paul are confronting a legal challenge that has divided scholars and jurists alike for decades: What is protected speech, and what words should be treated as criminal threats?

The state Bureau of Criminal Apprehension is investigating whether speakers and organizers at the Jan. 6 rally outside the Minnesota State Capitol and Walz's residence committed acts of terroristic threats or other crimes. They are moving with a sense of urgency as state and federal officials are bracing for possible violent protests in Minnesota and other states in the days leading up to Wednesday's presidential inauguration.

"We are very cognizant of the fact that folks have that First Amendment right to protest and to speak," Public Safety Commissioner John Harrington said in an interview last week. "There is a line that has to be drawn legally that says when that First Amendment protest right ... goes into terroristic threats and criminal behavior."

More than two hours of video and audio footage captured by the Star Tribune from this month's rally document how activists spoke in increasingly dark and apocalyptic terms about the need to pressure Walz to end his emergency COVID-19 orders and for federal lawmakers to overturn the results of the 2020 election.

Raul Estrada, who said he had friends in the Proud Boys extremist group, talked of civil war. Liberals, he said, are "weeds" choking off society.

"We cannot grow if we have weeds choking us off," Estrada said. "We need to grow. We need to pull the weeds."

Waterbury, a local Republican Party leader who helped organize and emcee the event, gleefully provided updates to the crowd as a mob of President Donald Trump's supporters waged its insurrection, which ultimately left five dead, including a police

Video (03:01) : Video by Mark Vancleave.  
The state Bureau of Criminal Apprehension is investigating whether speakers and organizers



officer. At one point, while looking at her phone, she told the crowd that her updates from Washington were coming from "our very own Stacy and Jonathan," who she later said had made it inside the Capitol building. She said they stopped texting after shots were fired inside the building.

#### ADVERTISEMENT

Waterbury could not be reached for comment.

At one point during the Jan. 6 rally, she took the microphone and implored Walz to come speak to the crowd.

"Please take time to meet with us. One on one," she said, looking into a Star Tribune photojournalist's camera. "Because if you don't, you're going to make us do things that we don't want to do. We will come for you."

Soon after, a man who did not identify himself took the microphone to say that the "time for talk is over. ... Our brothers and sisters in Washington are doing it right now."

Of the State Capitol grounds, he told the audience, "you're behind enemy territory."

"I've been there several times," he said. "It's going to get exciting. ... Let's all pray that our politicians have a change of heart in the very last second and let's also let them know that if they don't, we'll fix it for them."

When Waterbury returned, she pointed out that her demand to speak with Walz had gone unanswered. It was time to go to Walz's residence, she said.

"It's time to fight, everybody!" a rallygoer responded.

"All right, Walz. I guess we're coming for ya," Waterbury said.

Around that time, state troopers whisked the governor's teenage son to safety in what Walz described this week as an unprecedented intervention. The actions of Jan. 6, taken together with an escalating rate of threats on public officials, are prompting a dramatic review of State Capitol security measures at the beginning of the new legislative session.

The participation of six GOP state lawmakers at the Storm the Capitol rally is being scrutinized by DFL legislative leaders. State Reps. Susan Akland, Steve Drazkowski, Mary Franson, Glenn Gruenhagen, Eric Lucero and Jeremy Munson each appeared to speak before news of the U.S. Capitol insurrection became known. Some singled out judges and other public officials for sharp criticism and suggested impeachment.

House Speaker Melissa Hortman, DFL-Brooklyn Park, has raised the prospect of ethics complaints but said last week that she was more concerned about what other speakers said.

None of the six House members who participated in the rally said that they had been contacted by law enforcement investigating the event.

"There is nothing different in what we as elected officials presented in our political speech at what was a peaceful rally than what we have done at similarly peaceful rallies that we have spoken at," Drazkowski said.

Munson, the event's first speaker, pointed out in his speech that "even though this is called 'Storm the Capitol' we are not storming this fence today."

In an e-mail, Munson said members "adamantly defend their right to talk about whether there is electoral fraud in Minnesota" and that a "full discussion of the issue does not constitute incitement to violence."

Washington County Attorney Pete Orput's office has recent experience parsing protest speech for possible criminal evidence. He eventually declined to charge DFL activist and now state Rep. John Thompson for remarks made outside the Hugo home of Bob Kroll, the soon-to-be-retiring Minneapolis Police Federation president. Thompson was recorded saying, "You think we give a [expletive] about burning Hugo down?"

"There's a big difference between 'I don't care if it happens' and 'I urge you to do it,'" Orput said. "We have to prove that he or she intended to incite a riot or a public disturbance by their words — and words can ring the bell" for meeting charging requirements.

Orput said context will be key in proving that anyone's words crossed a criminal threshold.

"These are the cases that end up before the United States Supreme Court," said Jim Fleming, chief public defender in Ramsey County.

Heidi Kitrosser, a University of Minnesota law professor, said the law can be difficult to apply.

"The test is whether someone, in their speech, intended to incite and was likely to incite and likely to incite criminal activity," Kitrosser said. "Perhaps the most difficult part is you have to show imminence."

Since the Storm the Capitol rally, Waterbury has urged followers on Facebook not to go to the State Capitol this weekend for safety reasons and instead suggested waving flags from highway overpasses.

It is a departure from what she told her fellow protesters outside Walz's residence earlier this month.

"When you lay your head on the pillow at night, ask yourself, like your servicemen, are you willing to give your life?" she said. "Because I am."

Stephen Montemayor • 612-673-1755

Twitter: @smontemayor

---

**Stephen Montemayor** covers politics and government in Minnesota. He previously reported on federal courts and law enforcement for the Star Tribune.

stephen.montemayor@startribune.com    612-673-1755    smontemayor

**Mark Vancleave** is a photojournalist and video producer covering investigative projects, craft cocktails and everything in-between.

mark.vancleave@startribune.com    612-655-2362    mvnclv

③