

WHINGER VERBS: TO INVESTIGATE ... TO PROSECUTE ... TO INDICT

Because Alvin Bragg chose not to prosecute Donald Trump, the whingers are out again complaining about Merrick Garland, who last I checked was an entirely different person.

I've copied the "Key January 6 posts" from my post showing what reporting on the January 6 investigation – rather than simply fear-mongering to rile up CNN viewers or your Patreon readers – really looks like below.

But for now I'd like to talk about the language the whingers – those complaining that Merrick Garland hasn't shown people who aren't looking what DOJ is doing. It's telling.

Take this post from David Atkins that opines, accurately, that "Refusing to Prosecute Trump Is a Political Act," but which stumbles in its sub-head – "The evidence is clear. It's time to prosecute the former president, and Merrick Garland shouldn't wait." – and then completely collapses when it asserts that there are just two possible reasons why Merrick Garland has not "prosecuted" Trump.

But there is a deeper question as to why Attorney General Merrick Garland and the DOJ have not prosecuted Trump. No one at the department is talking on the record, but there are only two possible answers—neither of which is satisfactory.

It is *possible* that prosecutors do not believe there is enough evidence against Trump to convince a jury of his guilt. I'm not a lawyer, but this seems somewhat difficult to believe.

[snip]

The second possibility is that the

Department of Justice hasn't prosecuted Trump because of political pressure. Again, this is speculation. But if Garland is succumbing to either internal or external pressure to avoid charging Trump out of fears of civil conflict, or the *appearance* of political motivation, that would be a grave error—not prosecutorial discretion but prosecutorial dereliction. Allowing fears of violent reprisals to derail a prosecution would be a grave injustice.

Atkins is wrong about the reasons. I wrote here about why the ten acts of obstruction Mueller identified are almost universally misrepresented by whingers, in part because Billy Barr did real damage to those charges (as he did to other ongoing investigations), and in part because the ten acts that existed in March 2019 are not the acts of obstruction that exist today.

We know part of why Trump hasn't been charged for political crimes: because Trump ensured the FEC remained dysfunctional and Republicans have voted not to pursue them (something that whingers might more productively spend their time pursuing).

It seems nutty to suggest that Trump should be "prosecuted" already for taking classified documents to Mar-a-Lago when that was referred just weeks ago. It's also worth considering whether it would be easier to prosecute Trump for obstruction for these actions, tied to one of his other malfeasance, and then consider where investigations related to that malfeasance already exist.

Bizarrely, Atkins doesn't consider it a possibility that it would take Merrick Garland's DOJ more than 380 days to prosecute the former President. It took months to just wade through Stewart Rhodes' Signal texts. It has taken 11 months, so far, to conduct a privilege review of Rudy's phones (for which DOJ obtained a warrant on Lisa Monaco's first day on the job). DOJ has

six known cooperators in the Oath Keeper case (at least four with direct ties to Roger Stone) and one known cooperator in the Proud Boys case (and likely a bunch more we don't know about). Particularly in the Oath Keeper investigation, DOJ has been rolling people up serially. But that process has taken longer because of COVID, discovery challenges, and the novelty of the crime.

But that goes to Atkins' curious choice of the word "prosecute" here. I generally use the verb to refer to what happens after an indictment – the years long process of rebuffing frivolous legal challenges, but for an organized crime network, "prosecute" might also mean working your way up from people like militia members guarding your rat-fucker to the militia leaders planning with your rat-fucker to the rat-fucker to the crime boss.

I think what Atkins actually means, though, is "indict," or "charge." But his entire post betrays a fantasy where one can simply arrest a white collar criminal in the act after he has committed the act.

What whingers often say, though, is they want Garland to "investigate" Trump. Then they list a bunch of things – like cooperating witnesses or grand jury leaks or raids or indictments – that we've already seen, and insist we would see those things if there were an investigation but take from that that there's not an investigation even though we see the things that they say we would see if there were an investigation.

Whinger brain confuses me sometimes.

The point, though, is that the language whingers use to describe what they imagine is Garland's inaction or cowardice (none of these people have done the work to figure out whether that's really the case), is designed to be impossible. That makes it *necessarily* an expression of helplessness, because their demand is actually that Trump be disappeared from the political scene tomorrow, and that's hasn't happened with

multiple investigations implicating him, it sure as hell won't happen if and when he is indicted, and it wouldn't happen during a hypothetical extended period during which Trump is prosecuted.

Indeed, I've lost count of the number of people who tell me Bannon hasn't been indicted, even though Bannon has been indicted. It's just that he's entitled to due process and in many ways being indicted provides him a way to play the victim.

There are multiple investigations implicating close Trump associates and the January 6 investigation is absolutely designed to incorporate Trump, if DOJ manages to continue building from the crime scene backwards. But that's not actually what people want. None of these verbs – to investigate, to indict, to prosecute – are the ones that whingers are really hoping to see.

And the verbs they're hoping to see – perhaps “neutralize” or “disappear” – are not ones that happen as part of due process.

And none of the due process verbs – “investigate,” “indict,” “prosecute” – are likely to work unless people at the same time think of things like “discredit.”

Key January 6 posts

The Structure of the January 6 Assault: “I will settle with seeing [normies] smash some pigs to dust”

DOJ Is Treating January 6 as an Act of Terrorism, But Not All January 6 Defendants Are Terrorists

While TV Lawyers Wailed Impotently, DOJ Was Acquiring the Communications of Sidney Powell, Rudy Giuliani, and (Probably) Mark Meadows

Why to Delay a Mark Meadows Indictment: Bannon Is Using His Contempt Prosecution to Monitor the Ongoing January 6 Investigation

The Eight Trump Associates Whom DOJ Is Investigating

January 6 Is Unknowable

"I'm Just There to Open the Envelopes:" The Select Committee and DOJ Investigations Converge at Mike Pence

Why It Would Be Counterproductive To Appoint a Special Counsel to Investigate January 6

DOJ's Approximate January 6 Conspiracies

Easy Cases: Why Austin Sarat's Argument That Trump Should Not Be Prosecuted Is Wrong

How a Trump Prosecution for January 6 Would Work

Judge Mehta's Ruling that Donald Trump May Have Aided and Abetted Assaults on Cops Is More Important Than His Conspiracy Decision

"Fill the Silence:" On Obstruction, Listen to DOJ and Merrick Garland