IF THE FORMER PRESIDENT GETS TOP BILLING IN A SEDITION TRIAL BUT YOU DIDN'T BOTHER TO NOTICE …

There's a weird passage in a column that Charlie Pierce published today, announcing that,

> [M]y patience with Attorney General Merrick Garland and his dilatory pursuit of the former president* and the various thieves and yahoos under his employ is now exhausted.

… Because Garland has …

> let the investigation into the crimes of Donald Trump go on long enough that the forces of public reaction could gather sufficient strength to muddy the evidence and deaden the outrage.

It's this passage: Charlie claims that the "announcement" of a subpoena, which he attributes to Jack Smith, got lost amid the news of the investigation into the classified documents found in President Biden's possession.

> This was a distressing week, a week in which it seemed that a lot of criminal consequence was slipping away. Again. That's probably unfair, considering Jack Smith, the special counsel Garland put in charge of the investigations into the previous administration*, unloaded a blast of canister fire, dropping subpoenas on people associated with almost every dubious enterprise conducted between 2017 and 2020, even the post-election grift in which the former president* fleeced the rubes for his purported probe into "voting

> irregularities," an enterprise with the credibility of OJ Simpson's search for the real killers. That's genuine momentum—except that the announcement was lost in the hurly-burly of the Biden documents.

There was no announcement.

What Charlie treats as an "announcement" is a WaPo story, on which Mar-a-Lago Court Reporter Josh Dawsey is the first byline and Devlin Barrett is the second, describing a subpoena sent out on December 9, just three weeks and a Thanksgiving holiday after Jack Smith was appointed and over a month before the story itself. Charlie considers the subpoena "a blast of canister fire," and hails the "genuine momentum," but complains that "the announcement was lost in the hurly-burly of the Biden documents."

Charlie doesn't consider that this paragraph is itself an admission *on his part* that stuff can go on – stuff that he considers really impressive – and he might not find out about it for over a month. He says that about a story that describes that, "the Jan. 6 grand jury had accelerated its activities in recent weeks, bringing in a rapid-fire series of witnesses, both high and low level," but doesn't describe who those witnesses are (and whose testimony, with the exception of about seven people – Rudy Giuliani, Stephen Miller, Dan Scavino, William Russell, Beau Harrison, and the two Pats, Philbin and Cipollone, has not otherwise been reported). He says that of a story that linked an earlier WaPo story, dated September 16 and so describing developments that preceded Jack Smith's arrival by two months, that described dozens of subpoenas requesting communications with more than 100 people.

> Dozens of subpoenas issued last week show that the Justice Department is seeking vast amounts of information, and communications with more than 100

> people, as part of its sprawling inquiry into the origins, fundraising and motives of the effort to block Joe Biden from being certified as president in early 2021.

That's the investigation, still under Garland, that Charlie calls "dilatory."

And Charlie says that the same week that a third January 6 sedition trial kicked off by showing Donald Trump's call on the men standing trial for sedition to "Stand Back and Stand By."

As Charlie's statement admits, his is partly a complaint about the press, which was focused on Biden's legal discomforts rather than more important things, like Trump's attempted coup.

Of course, Charlie is part of the press.

And Charlie, part of the press, made no mention of Trump's prominence in DOJ's Proud Boys opening argument. Charlie wants a compelling trial the likes of the Nuremberg Trials, yet the most important January 6 trial to date tied Trump's actions directly to the overt acts in this alleged sedition conspiracy, and Charlie made no mention of the fact that Trump's comments were presented as evidence in a sedition trial.

A huge part of Charlie's complaint is about the evidence *that he can see*.

> [Nuremburg Prosecutor Robert Jackson] wanted the rule of law to do more than simply demonstrate its strength. He wanted that strength used, firmly and relentlessly, in the pursuit of justice. Garland may be doing the same thing, but there's damn little evidence of it, and this week, everything seemed to be running in the opposite direction.

It's not actually clear whether Charlie even knows that Trump's incitement of the Proud Boys

played a central role in the opening argument of a sedition trial, though dozens of reporters covered it, a number in real time. Many of those reporters are exhausted, though exhausted not so much about their perceptions of Garland, but because they've given up evenings and weekends for two years to make sure these events get covered.

If the former President gets top billing in a sedition trial but you didn't bother to notice, does it count as evidence about DOJ investigations?

My January 6 anniversary post last year was about how unknowable January 6 is, particularly for anyone not working full time to know it.

> To have something that poses such an obvious risk to American democracy remain so unknowable, so mysterious — to not be able to make sense of the mob that threatens democracy — makes it far more terrifying.

In recent weeks, those of us doing that full time have learned still more about how vast it all is — and how many tools the January 6 Committee withheld from prosecutors six months after the prosecutors had urgent need of them.

In those same recent weeks, two years into this thing, I've come to new realizations about how complex this is: it's not just an investigation into a former President protected by Executive Privilege and at least six people protected by the Speech and Debate clause, but it's also an investigation in which at least 26 key witnesses or subjects are lawyers protected by Attorney-Client Privilege. I've developed new theories about how DOJ — the same AUSAs who've been working 24/7 on this case for two years, before and after Jack Smith got involved — aspires to chisel away at those unprecedented protections. I've also increasingly seen gaps, both in PACER dockets and subpoenas, where investigative subjects used to be, gaps which sometimes

suggest progress that DOJ needs to protect, progress that even those of us following full time might only confirm four months after the fact and only if we happen to be listening in real time when a lawyer blurts something out he shouldn't have.

Charlie says this was a distressing week.

> This was a distressing week, a week in which it seemed that a lot of criminal consequence was slipping away.

It was a distressing week for me, too, in part for the same reasons as it was for everyone else: watching the members of Congress who participated in an insurrection launch their efforts to muddle the truth again, watching the same insurrectionists encourage a coup attempt in Brazil, losing sleep over whether American democracy can be saved.

But it was distressing for another reason: because so many really smart people I respect — and I include Charlie among them — have responded to the unknowability of January 6 not by attempting to grab ahold of something to ensure *their own* meanderings remain grounded in evidence, but instead by making authoritative assertions about evidence that are, instead, confessions that great swaths of this investigation are proceeding without them noticing.

One major reason we're all so distressed is because truth is under assault — because Jim Jordan intends to spend the next two years turning Trump's crimes into victimhood, just as he spent the entirety of Trump's presidency doing.

But making authoritative claims about evidence without knowledge of the evidence only makes his job easier, in part because it stoops to his level, in part because it magnifies the anxiety.

You don't respond to an assault on truth by permitting yourself to fill the vacuum created

by the unknowability of January 6 with claims that themselves do not present the truth, that ignore key pieces of evidence that — while public — may have gone unnoticed.

Charlie Pierce wants trials the likes of the Nuremberg Trials, which were so powerful because the architects of an authoritarian conspiracy were tied to the events that took place at the crime scenes. And DOJ took a key step in doing that week — a key step in an effort that has been obviously in the works for 18 months, an effort that started on January 4, 2021, when Enrique Tarrio's phone was seized (his phone, which ties the Proud Boys to other organizers, took over a year to exploit), and took another step on January 7, 2021, when the first Proud Boy who would plead guilty to obstruction was arrested.

And yet Charlie Pierce has seen no evidence of that.

Update: I've fixed the January 7 detail: that was a reference to Nicholas Ochs, who was arrested when he arrived back in Hawaii. He and Nicholas DeCarlo were charged with conspiring with each other to obstruct January 6, and they did plan together. But both pled to obstruction, not conspiracy. They were both sentenced to 4 years in prison.