

THE WAPO SHOWS THERE SHOULD BE MORE SCRUTINY OF STEVE D'ANTUONO

The WaPo has a story that many Merrick Garland attackers claim confirms their fears about the DOJ investigation. Except the story has really important gaps, most importantly in its portrayal of the fake electors investigation, which is the damning part of the story about Garland or Lisa Monaco's direct decisions (as opposed to those of FBI).

Moreover, the one thing it proves definitively is that former FBI Washington Field Office head Steve D'Antuono repeatedly shot down investigative prongs of this investigation, just like he did the stolen documents investigation. That the head of the WFO was running interference for Trump raises key questions about FBI missteps with people like Brandon Straka, someone arrested early who had direct ties to the scheme in the Willard, to say nothing about WFO's ineptitude in advance of the attack.

Here are the main disclosures.

Steve D'Antuono shot down an effort by JP Cooney early

The story describes that – after such time as Brandon Straka was being treated as a cooperative witness – JP Cooney pitched an idea to get to Stone through the Oath Keepers, not the Proud Boys.

But a group of prosecutors led by J.P. Cooney, the head of the fraud and public corruption section at the U.S. attorney's office, argued that the

existing structure of the probe overlooked a key investigative angle. They sought to open a new front, based partly on publicly available evidence, including from social media, that linked some extremists involved in the riot to people in Trump's orbit – including Roger Stone, Trump's longest-serving political adviser; Ali Alexander, an organizer of the "Stop the Steal" rally that preceded the riot; and Alex Jones, the Infowars host.

[snip]

According to three people who either viewed or were briefed on Cooney's plan, it called for a task force to embark on a wide-ranging effort, including seeking phone records for Stone as well as Alexander. Cooney wanted investigators to follow the money – to trace who had financed the false claims of a stolen election and paid for the travel of rallygoers-turned-rioters. He was urging investigators to probe the connection between Stone and members of the Oath Keepers, who were photographed together outside the Willard hotel in downtown Washington on the morning of Jan. 6.

[snip]

D'Antuono called Sherwin. The two agreed Cooney did not provide evidence that Stone had likely committed a crime – the standard they considered appropriate for looking at a political figure. Investigating Stone simply because he spent time with Oath Keepers could expose the department to accusations that it had politicized the probe, they told colleagues.

D'Antuono took the matter to Abbate, Wray's newly named deputy director. Abbate agreed the plan was premature.

It's genuinely hard to believe this was the plan. To be sure, FBI *did* investigate Stone's ties to the Oath Keepers, starting no later than March 2021. But that wasn't the obvious route to get to Trump.

The route to get there, importantly, was via a route that Bill Barr had affirmatively dismissed in advance of the attack: through the Proud Boys, not the Oath Keepers. Stone's ties to the Oath Keepers was not obviously criminal; it still may not be. His ties to the Proud Boys are central.

In any case, Steve D'Antuono – who stalled the stolen documents case investigation last summer – shot down this angle of the investigation early on.

The initial decision to exclude Trump came from a guy who had presided over a politicized DOJ

Michael Sherwin – who as US Attorney played a role in killing investigations into Trump's people in summer 2020 – did not include Trump in his summary of the investigation in March 2021.

[A]ccording to a copy of the briefing document, absent from Sherwin's 11-page presentation to Garland on March 11, 2021, was any reference to Trump or his advisers – those who did not go to the Capitol riot but orchestrated events that led to it.

[snip]

Sherwin, senior Justice Department officials and Paul Abbate, the top deputy to FBI Director Christopher A. Wray, quashed a plan by prosecutors in the U.S. attorney's office to directly investigate Trump associates for any links to the riot, deeming it premature,

according to five individuals familiar with the decision. Instead, they insisted on a methodical approach – focusing first on rioters and going up the ladder.

The strategy was embraced by Garland, Monaco and Wray.

This may or may not have been the right decision – but WaPo only mentions Sherwin’s role in Barr’s sabotage of ongoing Trump cases in passing.

Whether certain FBI decisions came from Steve D’Antuono or Chris Wray is unclear

Chris Wray absolutely comes off as gun-shy in this story, which is perfectly consistent with the way he threw his own agents under the bus in the wake of the DOJ IG Report on Carter Page.

Wray and his team sought to avoid even an appearance of top-down influence by having local field offices run investigations and make day-to-day decisions. In fact, when it came to the Jan. 6 investigation, agents noticed that Wray did not travel the five blocks from FBI headquarters to the bureau’s Washington field office running the investigation for more than 21 months after the attack. In that time, people familiar with the investigation said, he had never received a detailed briefing on the topic directly from the assistant director in charge of the office, Steven D’Antuono.

[snip]

D’Antuono, who was interacting with lawmakers and reporters, told

colleagues: “Everybody keeps asking, ‘Where the hell is the FBI?’”

The answer they heard did not instill confidence. Top FBI aides told D’Antuono and Sherwin that Wray wanted to stay on as Biden’s FBI director. They said they would not put the top boss “out there” – in the public eye – because they feared any public comments might spur Trump to unceremoniously fire him.

I’m more concerned about Wray’s later actions – but the later timidity is described to have come from Steve D’Antuono, not Wray (and on the stolen documents investigation, Wray pushed for a more aggressive investigation, whereas D’Antuono pushed the slow it).

D’Antuono shot down an effort to pursue the Willard

In November 2021, when Thomas Windom asked to pursue the plotting in the Willard in November 2021, D’Antuono refused, and tried to get Windom to pursue militia ties instead.

At a meeting in November 2021, Windom asked D’Antuono to assist in a grand jury investigation, which would include subpoenaing the Willard hotel for billing information from the time when Trump lawyer Rudy Giuliani was working with Stephen K. Bannon, Boris Epshteyn and other Trump associates in their “war room.” Stone was staying there around Jan. 6 as well, in a different suite.

D’Antuono was skeptical. The investigative track sounded eerily similar to the Cooney proposal that had been shot down in February, he later confided to colleagues.

"I'm not serving subpoenas on the friggin' Willard," D'Antuono told Windom, according to a person familiar with their discussions. "You don't have enough to issue subpoenas."

This was absolutely the wrong decision, but it is yet another case where D'Antuono was thwarting the investigation. His refusal to investigate the Willard also should focus more attention on the treatment of Brandon Straka and others, because if the FBI hadn't been so credulous months earlier, they would have had more evidence on the Willard.

800 words of this story pertain to Michael Sherwin's firing

Sherwin's firing for trying to force sedition charges is a distraction. Yet 800 words of this story focus on it.

While the story does show that under Chandler Phillips, there was uncertainty about direction of the investigation (Lisa Monaco's office was micro-managing at that point, partly in an attempt to enforce consistency across hundreds of defendants, partly to ensure that more deliberate rioters were charged with felonies). But it does seem that the delay in getting Matthew Graves in place did delay a renewed focus on Trump. That's Joe Biden's fault.

The focus on Stewart Rhodes is a distraction

Similarly, the focus on Stewart Rhodes, as opposed to Enrique Tarrio, is a distraction.

The outstanding issue of whether to charge Rhodes and other militia leaders with seditious conspiracy quickly rose to the top of to-do lists for the two

new appointees. It had been eight months since Sherwin directed his deputies to raise the idea in a memo to the office of the deputy attorney general.

A long story in which the Proud Boys investigation is treated as “other militia leaders” is a long story that doesn’t understand the most basic things about January 6.

Details about the decision not to pursue the fake electors are vague and at times inaccurate

The WaPo described that the original decision not to pursue the fake electors plot happened “about the same time,” as D’Antuono’s decision to shoot down Cooney’s Stone investigation without presenting a date.

About the same time, attorneys at Main Justice declined another proposal that would have squarely focused prosecutors on documents that Trump used to pressure Pence not to certify the election for Biden, The Post found.

Officials at the National Archives had discovered similarities in fraudulent slates of electors for Trump that his Republican allies had submitted to Congress and the Archives. The National Archives inspector general’s office asked the Justice Department’s election crimes branch to consider investigating the seemingly coordinated effort in swing states. Citing its prosecutors’ discretion, the department told the Archives it would not pursue the topic, according to two people with knowledge of the decision.

If that decision happened before Garland came in (as it appears to have), then the story is about how Garland chose to revisit and reopen the fake electors decision, not why he chose not to pursue it.

The story describes that when Lisa Monaco did publicly confirm DOJ was pursuing fake electors in January 2022, people were surprised to hear that.

Law enforcement officers, including some who would be called upon to join the investigation in ensuing months, were taken aback by Monaco's comments because they had not been told work was beginning, and it was extremely rare for Justice Department officials to comment on ongoing investigations.

Behind the scenes, federal prosecutors in Michigan who received Nessel's referral were waiting to hear from Monaco's office about how Main Justice wanted to proceed. National Archives officials were dumbstruck; the Justice Department was suddenly interested in the fake electors evidence it had declined to pursue a year earlier.

One person directly familiar with the department's new interest in the case said it felt as though the department was reacting to the House committee's work as well as heightened media coverage and commentary. "Only after they were embarrassed did they start looking," the person said.

In the weeks and days before Monaco's announcement, DOJ had finalized exploiting Rudy's phone (as I note below, the WaPo story doesn't focus on Rudy). The DOJ pursuit of the fake electors plot included aspects and subjects the January 6 Committee never pursued. So it is virtually certain that Rudy's phone, not just J6C, drove at least part of the renewed focus on

this.

It took two months after this for the FBI – for D’Antuono and Wray – to open the investigation, and they did not open the investigation against Trump at first.

In April 2022, more than 15 months after the attack, Wray signed off on the authorization opening a criminal investigation into the fake electors plot.

Still, the FBI was tentative: Internally, some of the ex-president’s advisers and his reelection campaign were identified as the focus of the bureau’s probe, but not Trump.

Note, this is still two months before Cassidy Hutchinson’s public testimony, which had publicly been viewed as the first focus on Trump.

WaPo suggests that the first subpoenas in the fake elector plot went out on June 21, 2022 (which in any case would still be proof DOJ acted before the public hearing).

On June 21, 2022, the House select committee held a nationally televised hearing on fake electors – a topic the committee had, in contrast to the Justice Department, identified early on as a major target for investigation. Testimony revealed what the committee had learned in nine months: The Trump campaign had requested that fake elector documents be flown to D.C. in time to help pressure Pence.

[snip]

That day, FBI agents delivered subpoenas about electors for Trump to state lawmakers in Arizona. The next day, agents served subpoenas to people who signed documents claiming to be Trump electors in Georgia and Michigan.

But as I note below, the first fake electors subpoenas went out a month earlier, by May 25. This part of the narrative is misleading at best.

WaPo suggests there was an inordinate delay in interviewing fake electors.

In several cases, before the special counsel's office got in touch, witnesses in the fake electors scheme hadn't heard from the FBI in almost a year and thought the case was dead. Similarly, firsthand witnesses to Trump's Jan. 2, 2021, call to Georgia Secretary of State Brad Raffensperger – in which Trump asked him to “find” enough votes to win that state – were not interviewed by the Justice Department until this year, after Smith's team contacted them.

It's not clear whether this is true at all. It has persistently taken 6 months or more to exploit cell phones. The Boris Epshteyn interviews in April took place on that schedule, even with complications of claiming work product with Rudy.

This is, rather, consistent with much of the January 6 investigation, or any investigation. All the more so given increasing signs that the January 6 and stolen documents case is intersecting at Trump's PAC, which is not discussed in the article.

The most damning part of this story for DOJ leaves out the Rudy phones and the May subpoena. Including those two things, though, really undermines the narrative about that prong of the investigation.

The gaps in the WaPo story

There are many things not mentioned in this story, which betray real blind spots in the

sourcing. Those include:

- **The failure by WFO under Steve D'Antuono to prevent January 6.** D'Antuono is good at playing the press, and some quotes in here suggest that he was pushing for more aggressive investigation and Wray was resisting. Tellingly, then, this story doesn't even mention – much less attempt to explain – why the FBI under D'Antuono failed to act on intelligence predicting January 6 (and indeed, kept Proud Boys on as informants targeting “Antifa” even as they were planning to come to DC for January 6). That's where this story begins, yet it's not included here.
- **Brandon Straka and similarly other well-connected VIPs.** Brandon Straka got credit for cooperating in February and March 2021 interviews; he was in a position (and did) provide evidence about ties to the Stop the Steel investigation and the Willard. But the FBI – led by Steve D'Antuono, who also obstructed the investigation into the stolen documents – proved remarkably credulous

with Straka and similar witnesses. A different treatment of Straka may well have led to far different results. Yet Straka is not mentioned here.

- **The Proud Boys' history of teaming with Roger Stone to sow violence.** According to the story, Michael Sherwin set his sights on the Oath Keepers and that initiative led to the sedition conviction of Stewart Rhodes and others. At sentencing, the sedition conviction proved important only for Rhodes and Kelly Meggs; everyone else was treated similarly as obstruction defendants, even with terrorist enhancements. But the more obvious starting point to understand Trump's ties to January 6 – and an absolutely critical one given how bodies led by Alex Jones made the attack successful – is the Proud Boys. Given DC USAO's treatment of the threats Stone made with Enrique Tarrio against Amy Berman Jackson in 2019, the focus on the Oath Keepers as distinct from the Proud Boys is inexcusable.

- **Rudy Giuliani's phone.** In September 2021, DOJ made a decision to do a privilege review on Rudy Giuliani's phone that would access all information on his phones, not just the Ukraine-related topics the warrants to obtain the phones targeted in April 2021. Rudy has since confirmed that this included all the January 6 related material he admits to have had in his possession when the phones were seized in Lisa Monaco's first week. It is absolutely certain that this should have produced information on the fake elector plot, starting in November 2021, yet WaPo doesn't mention it.
- **The May 2022 Fake Electors subpoenas.** The story implies DOJ first sent out subpoenas in the fake elector plot in June 2022. That's false: the first subpoenas went out in May 2022. Importantly, there were names on those subpoenas that weren't the focus of J6C's public investigation (and in any case, preceded the public hearings). [Update: As Kyle Cheney noted, DOJ also obtained the email accounts

of John Eastman and others, three of four lawyers.] That suggests that some of this investigation came from DOJ's own work, not J6C's.

- **Sidney Powell.** The investigation into Sidney Powell, started no later than September 2021, is not mentioned in this piece. It's unclear what became of that investigation, but DOJ did pursue it as a prong of the investigation at a time when, the story suggests, DOJ was not pursuing any Public Integrity prong of the investigation.

- **January 6 Committee's delayed sharing.** Some of this story is told from the perspective of the January 6 Committee. Yet it doesn't mention that the committee's decision to delay sharing of its transcripts did real and predictable damage to the Proud Boys case, and withheld tools from DOJ they could have used to flip witnesses six months earlier than they did.

Ultimately, this is a story first and foremost about Steve D'Antuono, who left the FBI in November. And I suspect it is just scratching the surface on the story about him.