

FBI AND DHS AREN'T USING THE FREE EXPERTISE ON RIGHT WING TERRORISM WHILE LOOKING TO PAY FOR IT

There was a remarkable moment in the Homeland Security/Rules hearing on January 6 the other day. Krysten Sinema asked whether FBI knew of the conversations on social media where people were openly planning for insurrection. FBI's Assistant Director for Counterterrorism, Jill Sanborn, explained they did not know of them because the Bureau couldn't collect on the social media of Americans without a predicated investigation.

Krysten Sinema: Was the FBI aware of these specific conversations on social media?

Jill Sanborn: To my knowledge, no ma'am, and I'll just sort of articulate why that is. So under our authorities, because, being mindful of the First Amendment and our dual-hatted mission to uphold the Constitution, we cannot collect First Amendment protected activities without, sort of the next step, which is the intent, and so we'd have to have an already-predicated investigation that allowed us access to those comms and/or a lead or a tip or a report from a community citizen or a fellow law enforcement partner for us to gather that information.

Sinema: So the FBI does not monitor publicly-available social media conversations?

Sanborn: Correct, ma'am, it's not within our authorities.

For what it's worth, Sanborn's first comment was about *collecting* on social media. Sinema then treated that as a limitation on *monitoring* it (and Sanborn didn't correct her). Still, Sanborn explained away FBI's failure to see the insurrection many of the rest of us were seeing develop in real time by saying that discovering it would have required tracking Americans' protected speech.

A more revealing moment came elsewhere, when Sanborn revealed that just one person who has been arrested in the wake of the attack had already been under investigation. That means, in spite of the Proud Boys' threat, with Roger Stone, against Amy Berman Jackson two years ago, the FBI didn't have an enterprise investigation into them (or the Oath Keepers or a range of other extremist organizations involved in the attack). So, because the FBI was not investigating the Proud Boys, the Proud Boys were able to plan an insurrection in plain sight.

That has changed, of course.

Later in the hearing, Mark Warner – citing all the FBI's warnings in recent years about what a lethal threat white supremacist terrorism is – asked both Sanborn and the woman currently running DHS' Office of Intelligence and Analysis, Melissa Smislova, what they're doing to improve things and whether they're using any of the open source experts out there.

Sanborn talked about working with “partners” (which I took to mean social media companies) and Fusion centers. Smislova revealed that DHS is looking to *contract* with experts on the topic, rather than read what those experts produce on a regular basis.

Mark Warner: I appreciate Ms. Sanborn's appropriate response that they not arbitrarily collect off of American citizens if there's not some nexus, but I do think it's important, I think others have mentioned this that Domestic

Violent Extremists didn't start with January 6. They didn't start with Donald Trump. They're not going to end with January 6. They're not going to end with Donald Trump. In my state we saw, a few year's back, the Unite the Right rally at Charlottesville where many of these same groups and affiliations came together in another violent effort where one protestor was killed, we unfortunately lost a couple members of our State Police. Director Wray has repeatedly said in testimony before the Intelligence Committee, the Worldwide Threat Assessment, that Domestic Violent Extremists are a major national security threat to this country. I personally believe that that message was downplayed during the previous Administration because they didn't want to hear it. I want to start with Ms. Smislova and Assistant Director Sanborn – Director Sanborn it's great to see you again – is that, recognizing the constraints that are placed upon you in terms of collections, and also acknowledging that this threat has been around for some time. The FBI in particular has acknowledged that it is an extraordinary major severe threat, what have you both been able to do in engaging in open source intelligence and independent research communities to better identify these DVEs. I know in the run-up to the January 6 insurrection there was research done by Harvard's John Donovan and Elon University's Megan Squire as well as other researchers that pointed to the fact that these DVEs and affiliated groups, oftentimes groups that are working in conjunction with groups in Europe, were planning this effort. So how are you both, DHS and FBI, utilizing these independent researchers, these open source activities, and making sure we've got a

better handle on it, recognizing your appropriate constraints on what you can do directly?

Melissa Smislova: Yes, Senator, thank you for the question. We just last week met as, as inside I&A, to discuss contracting with some of those experts outside. We are aware that we need to invest more in our understanding of Domestic Terror, we understand as well that it will require a different approach than a traditional Intelligence Community approach, we must use different sources to understand this threat, we are looking to get outside experts, invest more in-house, we are secondly looking at how to better understand the social media world, so we can better focus on where we might find specific and insightful information about what the adversary is thinking about. We are additionally looking to partner more with our state and local colleagues who we know have a different perspective on this threat and have more information, in some cases, than we do, and we are also, again, partnering more across the department and with our federal partners, increasing our relationships with FBI.

Warner: Ms. Sanborn?

Jill Sanborn: Thank you Senator, nice to see you again as well. I'd sort of say what we're trying to do, and I'll put it in three buckets, really, for you. Increasing our private sector is 100%, I have a section just inside my division that does nothing but partner engagement. We have found that the better we educate them on the threat we're facing and painting a picture for them of what those threats we are, they're better able to pay attention and collect and refer information to us and

that is helpful and that's when we talk about the fact that 50% of our tips and leads to our cases, or predication for our cases come from that relationship and that education. We're also, same as my colleague said, using the state and local partners, so we leverage the Fusion centers a lot and their ability and their expertise – and the Orange County Fusion Center is a great example of leading, sort of, the analytics of social media and leveraging their expertise to predicate cases and they were actually behind the predication of the case, The Base, that we disrupted. And then last, I'd say, challenging ourselves for better collection inside, right, trying to point our sources and our collection to be in the right places to collect the intelligence that we need and that *is* what led to the Norfolk SIR, that *is* us pointing our collection in a space that gathered that information.

Warner: I have to tell you, respectfully, I'm pretty disappointed with both of your answers. This is not a new threat, we've seen since 2016 election how foreign adversaries manipulate social media, hear repeatedly from DHS and FBI that we're going to get better at collecting. We saw the Unite the Right rally in Charlottesville. We heard people say we're gonna get better at collecting information and better partnering, neither one of your referenced – there's literally a host of experts at academia, at organizations like Graphika, and others that are monitoring the DVEs and their activities, oftentimes in their connections to anti-government groups in Europe, again, oftentimes amplified by nations like Russia, and I guess we're always going to get ready and we're somehow surprised when we see the kind of chaos that took place on January 6th.

Mark Warner proceeded to chew out both FBI and DHS's witnesses given that, even after he raised open source expertise available, neither mentioned relying on it.

I hope Warner is paying attention to Huffington Post's recent reporting. On February 26, relying on the work of some anti-fascist researchers, HuffPo identified Danny Rodriguez as the likely culprit behind the tasing of DC cop Michael Fanone, which led him to suffer a mild heart attack. HuffPo also reported that the FBI had gotten tips IDing Rodriguez in January, but had done nothing to call those who submitted the tips until HuffPo called the Bureau for comment.

The man in the red "MAKE AMERICA GREAT AGAIN" hat seemed to think he was untouchable. He joined the mob as they yelled "HEAVE! HO!" and tried to force their way through a police line into the Capitol building. Once inside, he used a pole to ram against a window, trying to shatter it and bring more people into the Capitol. In the most disturbing footage of all, he was caught on camera appearing to shock D.C. Metropolitan Police Officer Mike Fanone with a stun gun. As rioters push Fanone down the stairs and away from other cops, video shows the man in the red cap pressing a small black device against the officer's neck. Fanone instantly drops to the ground, swallowed by the mob.

[snip]

His assailant in the red MAGA hat, who has been at large since the insurrection, is 38-year-old Daniel Joseph Rodriguez from Fontana, California, HuffPost can confirm.

Rodriguez, who goes by "Danny" and "DJ," is well known among Trump supporters in the Los Angeles area as a superfan of the former president. Multiple news outlets have featured him in their

coverage of the local pro-Trump movement in recent years, in articles that included his name and photo. He regularly attended the weekly Trump rallies in Beverly Hills last year. He was recognizable there by his dark-rimmed glasses and the many distinctive pins on his hat, which has a big GOP elephant symbol on the brim.

[snip]

Two separate anti-fascist activists – as well as a third witness who supported Trump and called himself a former friend of Rodriguez – reviewed footage of the man at the Capitol and told HuffPost they recognized Rodriguez from the California rallies.

The FBI received tips about Rodriguez last month, including one from a man he assaulted on video at a Los Angeles-area rally. But it wasn't until hours after a HuffPost inquiry to the bureau for this story that the tipster heard from an FBI special agent with questions specifically about a man named "Danny Rodriguez."

Then, yesterday, HuffPo revealed another case where a researcher sent in a tip only to have no visible response from the FBI. Shortly after January 20, SeditioHunter "Amy" identified Robert Scott Palmer as the guy in an American flag jacket who sprayed a fire extinguisher at cops.

With bright red and white stripes across his body and stars down his sleeves, the man in the American flag jacket and "FLORIDA FOR TRUMP" hat wielded a fire extinguisher while charging the U.S. Capitol on the afternoon of Jan. 6. He shoved his way through the crowd of rioters to the police line, then sprayed officers at close range before chucking

the emptied canister at them. By nightfall he himself had been lightly harmed, apparently by a police crowd control munition. He held up his shirt to show off his bruised gut during an interview with a female journalist filming him live as cops pushed the mob back from Capitol grounds. Then he looked straight into her livestreaming device and identified himself as Robert Palmer from Clearwater, Florida.

[snip]

Palmer is now publicly on the FBI's radar, though not by name. Three photos of him are featured on the bureau's Capitol violence page, where he's listed only as "#246 – AFO [Assault on Federal Officer]." But the images didn't appear there until nearly a month after Amy had already tipped off the FBI about his identity.

#FloridaFlagJacket was used as a hashtag on Twitter less than a week after the Capitol attack, when Trump was still in office. Amy sent in a tip naming Palmer not long after President Joe Biden was inaugurated. His photos were finally added to the FBI database in late February.

It's not just online researchers whose tips the FBI isn't moving on quickly. On January 11, someone who knew Peter Schwartz as a felon who had gotten released from prison due to COVID, alerted the FBI that Schwartz had skipped out on his halfway house to attend the rally (the tipster was friends with Schwartz but Schwartz owed him money). The FBI subsequently identified Schwartz as the person who maced some cops.

On January 11, 2021, the FBI National Threat Operations Center (NTOC) received a tip from an individual (hereinafter W-1) who is personally acquainted with

SCHWARTZ. In the tip, W-1 reported that "Pete SCHWARTZ" was involved in the Capitol riots. W-1 stated SCHWARTZ is a felon and was released from prison due to COVID-19. W-1 also stated that SCHWARTZ is employed as a traveling welder. According to W-1, SCHWARTZ was supposed to be at a rehabilitation facility in Owensboro, Kentucky on January 6, 2021. However, W-1 saw a picture of SCHWARTZ on the Capitol Building steps that appeared to have been taken on January 6, 2021. As part of the tip, W-1 also provided the Facebook URL for what he claimed was SCHWARTZ's Facebook page. W-1 did not provide any other photographs, however. Due to the volume of tips provided to the FBI since January 6, 2021 – which stands at over 150,000 as of January 26, 2021 – the FBI was not able to immediately contact W-1 regarding the information that W-1 provided and did not immediately link SCHWARTZ to the individual who repeatedly maced officers at the Capitol.

Schwartz wasn't arrested until February 4.

Still, that's less time than these other tips.

The FBI, perhaps justifiably given the flood of data they're dealing with, seems to value tips from suspects' direct associates rather than online tipsters. The vast majority of tips they have acted on do come from people who know a suspect directly, often their family or friends or high school classmates.

But many of these researchers have been doing what FBI claims it cannot do (or could not before an insurrection gave them the predicated investigation permitting them to do so): connect the dots from public social media.

Instead, DHS is looking to pay people for the assistance people are trying to give the FBI for

free.