

THERE ARE 5,000 MORE LIKE RICKY SHIFFER

In the last week, the serial revelations that DOJ had interviewed high level Trump associates, served at least two overt subpoenas, and searched the former President's golf resort have demonstrated that the army of TV lawyers insisting that "we would know" if Merrick Garland's DOJ was aggressively investigating Trump were utterly wrong, and wrong for reasons that every single one of them is competent to have known.

Even with your garden-variety alleged white collar criminal (like former Congressman TJ Cox, who was indicted yesterday), DOJ prefers to conduct its investigations secretly, because such investigations are more likely to succeed.

All the more so for a guy with an army of heavily-armed supporters and a history of witness tampering. As the motion to continue sealing the Trump search warrant affidavit states explicitly, many Trump associates will only cooperate so long as they can avoid the backlash and real physical peril that testifying overtly will bring.

[I]nformation about witnesses is particularly sensitive given the high-profile nature of this matter and the risk that the revelation of witness identities would impact their willingness to cooperate with the investigation. ⁵ Disclosure of the government's affidavit at this stage would also likely chill future cooperation by witnesses whose assistance may be sought as this investigation progresses, as well as in other high-profile investigations.

⁵ This is not merely a hypothetical concern, given the widely reported threats made against

law enforcement personnel in the wake of the August 8 search. See, e.g., Alan Feuer et al., “Armed Man Is Killed After Trying to Breach FBI’s Cincinnati Office,” N.Y. Times (Aug. 11, 2022), available at <https://www.nytimes.com/live/2022/08/11/us/fbi-cincinnati-shootingnews>; Josh Margolin, “Authorities Monitoring Online Threats Following FBI’s Mar-a-Lago Raid,” ABC News (Aug. 11, 2022), available at <https://abcnews.go.com/US/authoritiesmonitoring-online-threats-fbis-mar-lago-raid/story?id=88199587>.

The risk of political violence in response to investigations of Trump has come to a head in the last week. In the Kyle Fitzsimons bench trial yesterday, for example, witnesses leaving the DC courtroom were harassed by supporters of even this low profile assault defendant. And, as the government noted in their motion to oppose unsealing, last week an armed Trump supporter responded to Trump’s incitement by attempting to breach the Cincinnati FBI office, before being killed in a confrontation with cops later that day.

The guy who tried to breach the FBI office was not just any Trump supporter. He’s a Navy veteran who was at the Capitol on January 6.

A man identified by two law enforcement sources as Ricky Shiffer, who died in a confrontation with police after he fired a nail gun at a Cincinnati FBI building, appeared to post online in recent days about his desire to kill FBI agents shortly after former President Donald Trump’s Mar-a-Lago residence was searched.

Two law enforcement officials confirmed Shiffer’s name. Shiffer was at the Capitol riot on Jan. 6, 2021, according

to three people aiding law enforcement who saw him in photos taken from the day of the attack; however, it's unclear whether he went inside the building. Shiffer frequently posted about his attendance at the Capitol on social media.

On Truth Social, a social media platform founded by Trump's media company, Trump Media & Technology Group, Shiffer appeared to have posted a message detailing his failed attempt to gain entry to the FBI building.

"Well, I thought I had a way through bullet proof glass, and I didn't. If you don't hear from me, it is true I tried attacking the F.B.I., and it'll mean either I was taken off the internet, the F.B.I. got me, or they sent the regular cops while," the account @RickyWShifferJr wrote at 9:29 a.m. ET, shortly after police allege the shooting occurred.

In fact, the FBI was already investigating him before he launched his attack.

The officials said federal investigators had been looking into whether the man, Ricky Shiffer, 42, of Columbus, had been involved in the Jan. 6 attack on the U.S. Capitol. They also said the F.B.I. had received a tip about Mr. Shiffer in May that was unrelated to Jan. 6, and agents opened a separate inquiry that included conducting interviews in Florida and Ohio.

The F.B.I. acknowledged in a statement that it had received information about Mr. Shiffer before Thursday, but said that the information "did not contain a specific and credible threat." The bureau said agents from multiple offices had tried to find and interview him, but

had not been successful. A neighbor at an apartment complex in Columbus where Mr. Shiffer lived, who declined to give his name, said federal agents had visited the property a few weeks ago and had asked him questions about Mr. Shiffer, including what time he left home most days and when he returned.

Law enforcement officials separately said they were investigating whether Mr. Shiffer appeared in a video posted on Facebook on Jan. 5, 2021, showing him attending a pro-Trump rally at Black Lives Matter Plaza in Washington the night before the Capitol was stormed.

This time around, as people start to ask, “if they FBI knew about this guy why didn’t they do something?” the FBI could (and should, but won’t) simply respond, “because everyone, from Trump opponents, law and order judges, Republicans in Congress, to TV lawyers told us to stop pursuing January 6 trespassers.” While Trevor McFadden and GOP Congresspeople have told DOJ to stop pursuing January 6 trespassers for different reasons, purportedly to protect political speech, Trump’s critics have said, explicitly, repeatedly, ignorantly, that suspected January 6 trespassers like Shiffer are low-level foot soldiers of little import to the country or to holding Trump accountable.

At this point (and, seemingly, for quite some time), DOJ really doesn’t seem to be arresting random trespassers. While the reasons for FBI’s heightened interest in a particular trespasser isn’t always clear (sometimes it is), most misdemeanor arrests these days seem to fit one or another investigative priority. In response to a recent claim DOJ was wasting its time with ongoing arrests of those who breached the Capitol, for example, I noted that recent arrests consisted of:

- Someone described to have

stripped a cop of his baton and used a megaphone to rile up other rioters

- The guy with the most striking set of tattoos caught in any January 6 footage which unsurprisingly comes with a felony record
- A woman who wore a pretty red coat and wielded a stick with metal attached
- A Proud Boy who used bear spray and damaged his ear
- A QAnoner with blue hair and a handful of aliases long known to anti-fascist researchers for her extremist views

Compared to those arrests, Shiffer probably looked to the FBI just like another rabid Trump supporters whose uncertain movements around January 6 and transient recent history made him especially difficult to arrest, but whose military background and that recent tip generated active investigative interest. Yes, he was a rabid Trump supporter who, any moment, could turn – could be turned – into an imminent threat.

But at least given what we know thus far, the FBI likely had few clues that he was going to be the one whose online calls for war would turn to action.

That's because there are 5,000 more like him out there.

I don't mean, there's a shit-ton of Trump supporters who could go postal at any moment. There are far more than 5,000 of them.

I mean, there are 5,000 people who participated

in January 6 that the FBI might have predicated investigative interest in, but has not yet arrested.

That's a fairly conservative number. In recent days, DOJ passed the 850 arrest mark for January 6 defendants. There are probably 1,500 to 2,000 more people who entered the Capitol on January 6 whose arrest would be comparatively easy (because their trespass is fairly easy to prove) who have not yet been arrested. There are probably 250 identified suspected assailants still at large (over 530 people, including those who've been arrested, are listed on the FBI site). And there were probably 10,000 people who breached the external barricades but did not enter the building that DOJ would only arrest if there were something extra – the political profile of Ryan Kelley or Couy Griffin, the pre-existing Deferred Prosecution Agreement of Owen Shroyer, conspiracy ties like Stewart Rhodes – to justify the arrest. Sure, the people who attended the January 5 rally, as Shiffer did, were more likely to participate in more radicalized online networks; those people weren't in DC just to hear the loser of an election speak.

But at every moment that DOJ has been investigating the leaders that orchestrated January 6 (which provably started within weeks of the attack) and at every moment that DOJ has been investigating Trump's other criminal acts, DOJ and FBI have been trying to deal with the growth of political violence that Trump has deliberately fostered. DOJ spent the weeks after January 6 doing triage, trying to arrest enough people to get visibility on the very real plans for follow-on attacks before or at the Inauguration. DOJ spent the year after January 6 trying to incapacitate the militia networks that served as an organizing structure for the attack. And DOJ has spent the last six months, as it turned more overtly to investigate several sets of crimes by the former President, trying to anticipate which of those 5,000 veterans of January 6 would, alone or in concert, attempt to

reignite a civil war.

I hope that, given the Shiffer example, impatient people who've never bothered to understand the crime scene itself will remember that everyone they've dismissed for a year as low-level January 6 trespassers may be the next Ricky Shiffer. It's easy to imagine that if you just arrest Trump all that political violence will dissipate. But that wouldn't even have been true in 2019, if Mueller had indicted, and it sure as hell isn't true now. And every step DOJ takes to get closer to arresting Trump, or even just hold the butchers like Fitzsimons who took up arms on January 6 accountable, the mob of people that Trump radicalized on January 6 remains an urgent threat.