



## UNITED STATES CAPITOL POLICE

OFFICE OF THE CHIEF  
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WASHINGTON, DC 20510-7218

March 21, 2024

COP 240420

The Honorable Barry Loudermilk  
Chairman  
Subcommittee on Oversight  
Committee on House Administration  
United States House of Representatives  
1309 Longworth House Office Building  
Washington, D.C. 20515-6157

Dear Chairman Loudermilk:

The Department is in receipt of your letter dated March 1, 2024 regarding Special Agent David Lazarus.

As you know, Special Agent Lazarus has been the subject of speculation in the media regarding his testimony in a January 6<sup>th</sup>-related prosecution, *United States versus Stuart Rhodes* (aka the Oathkeepers trial). As a result of this reporting and due to an internal complaint the Department received related to his testimony, in November of 2023 I requested that our Office of Professional Responsibility (OPR) investigate whether Special Agent Lazarus' testimony in that trial was perjurious. Specifically, the allegation was that Special Agent Lazarus perjured himself when he said he witnessed Officer Harry Dunn confronting several Oathkeepers inside of the Capitol. OPR investigated this allegation and was unable to sustain the allegation based on the evidence that Special Agent Lazarus perjured himself during his testimony. (In order to sustain an allegation, OPR must be able to prove that an allegation is more likely than not to be true.)

OPR interviewed Special Agent Lazarus, reviewed a transcript of his trial testimony (including both the direct and cross examination of Special Agent Lazarus and the testimony of a defense witness) and reviewed information provided by one of the prosecutors in the trial. As you noted in your letter, "Special Agent Lazarus never testified that he was in a certain place at a certain time....Special Agent Lazarus [also] testified he did not know what time he passed by Officer Dunn." Notably, when asked about the individuals in a particular clip, Special Agent Lazarus responded that those were the individuals he saw interacting with Officer Dunn, not that he saw any particular exchange. (Transcript at 5661-5662.)

Additionally, while not a consideration in the OPR investigation, I think it is noteworthy that Special Agent Lazarus' testimony on this point was a very small part of his overall testimony, less than 3 1/2 pages of a 21 page transcript and the bulk of his testimony was not related to encounters with Officer Dunn at all. I am told by my legal counsel that in order for

statements to rise to the level of perjury they must be material, that is, have "a natural tendency to influence, or is capable of influencing, the decision of the decision-making body to which it was addressed." *Kungys v. United States*, 485 U.S. 759, 770 (1988). Given that the statements related to Officer Dunn were a very small part of his overall testimony, it is highly unlikely they were the basis for the jury's conviction of all defendants in a multi-week trial. Tellingly, defense counsel asked only two questions related to this testimony during her cross-examination of Special Agent Lazarus. (Transcript at 5665.)

I also believe that it is worth noting that neither the prosecutor nor the judge in this matter has ever indicated any concerns with Special Agent Lazarus' testimony. Both the prosecutor and the judge certainly had an opportunity to evaluate Special Agent Lazarus' testimony for perjury since the defense called an investigator who tried to prove Special Agent Lazarus' testimony regarding seeing Officer Dunn and the Oathkeepers was untrue. The defense expert gave extensive, albeit confusing, testimony about viewing video footage of Special Agent Lazarus, Officer Dunn and various defendants interacting. Despite this exhaustive testimony (26 transcript pages), neither the prosecutor nor the judge ever made any claim that Special Agent Lazarus perjured himself. (Indeed, the judge thanked Special Agent Lazarus for his heroism on January 6th during the sentencing of several Oathkeepers including Mr. Rhodes. <https://www.cnn.com/2023/05/24/politics/oath-keepers-hearing/index.html>)

Moreover, the government, on cross examination of the defense expert, pointed out that there were interactions between Officer Dunn and certain Oathkeepers that were not captured on U.S. Capitol Police CCTV and occurred on the floor above where Special Agent Lazarus testified he was. (Transcript at 9659.) This is wholly consistent with Special Agent Lazarus' testimony that he was looking up at Officer Dunn when he witnessed the interactions. (Transcript at 5656: "And as I'm coming up, I could see Dunn above me as I'm coming up the stairs.")

Therefore, I concur with the OPR's determination that there is insufficient evidence that Special Agent Lazarus perjured himself during this trial. Nonetheless, on March 6th I asked our Inspector General to review this matter so that an independent investigation can be undertaken, and I will share those results with you when they are concluded.

Finally, I want to discuss the 2016 disciplinary allegations against Special Agent Lazarus. Before doing so, however I must explain the role of the Office of the General Counsel (OGC) in disciplinary investigations. Disciplinary investigations are conducted by the OPR, which produces a Report of Investigation (ROI) about the allegations. If an allegation is sustained, the ROI is sent to the OGC where a Disciplinary Review Officer (DRO) (an attorney) reviews the allegations, determines whether there is sufficient evidence to sustain the allegations, and if so, drafts a penalty recommendation for the employee's Bureau Commander who has the ultimate say on the penalty issued to an employee. The review by the DRO is critical because, if the sustained allegations or penalty is challenged by the employee, and they often are, the Department must be able to prove that there is sufficient evidence to sustain the allegations and the penalty.

In 2016, the OPR initially sustained an allegation against Special Agent Lazarus for a violation of the Department's alcohol policy which prohibits DPD special agents from

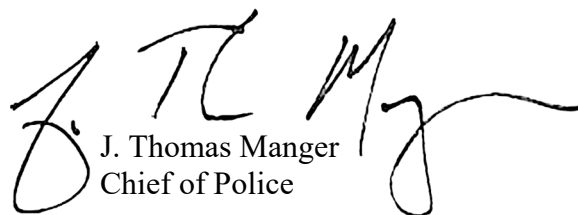
consuming alcohol less than 12 hours before a CODEL officially begins.<sup>1</sup> However, upon further review, the DRO ultimately concluded the Department could not defend the sustained finding because of several significant issues which undercut the investigation's findings. For example, the DRO identified the following issues with the investigation:

- Special Agent Lazarus never admitted to having alcoholic drinks. He consistently denied doing so, including the next day to his supervisor, who confirmed that Special Agent Lazarus told him he had “mixed drinks.” Special Agent Lazarus clarified that by “mixed drinks,” he meant a cranberry and soda;
- No independent evidence supported that Special Agent Lazarus was drinking alcohol. The supervisor who reported the incident said he did not know what Special Agent Lazarus was drinking and there were no credit card receipts, video footage, or other evidence to support that the drink was an alcoholic beverage; and
- While one witness alleged that Special Agent Lazarus appeared intoxicated, this testimony was not corroborated (and indeed contradicted) by several witnesses who stated that Special Agent Lazarus did not appear intoxicated. The two Members of Congress who were with or saw Special Agent Lazarus that night were never interviewed.

In May of 2016, the DRO and DRO Supervisor met with the Commander and Deputy Commander of the OPR, explained their concerns and issues with the investigation. The commanders agreed that the charges should not be sustained. If this allegation had been challenged by the employee, the Department would likely have not been able to demonstrate that its decision was supported by tangible evidence, thus damaging the credibility of its disciplinary process.

I have included a copy of the Department's Discipline and Accountability Directive. I trust this answers the questions you have about these matters.

Very Respectfully,



J. Thomas Manger  
Chief of Police

cc: The Honorable Bryan Steil, Chairman, Committee on House Administration  
The Honorable Joe Morelle, Ranking Member, Committee on House Administration  
The Honorable William McFarland, Sergeant at Arms

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<sup>1</sup> The allegations at issue here concern alleged drinking on a Friday night at 10:10 p.m. for a CODEL scheduled to begin at 10:00 am the next day, so a time period of just under the prohibited 12 hour “no drinking” period.