

WHY THAT PETER NAVARRO INTERVIEW ISN'T ENOUGH TO CHARGE HIM WITH SEDITION

A slew of people have asserted as fact that an interview that Peter Navarro did on his book offers adequate proof to charge him with sedition. The interview (and I assume the book) lays out a plan called the Green Bay Sweep that, Navarro hoped, would result in Trump remaining in power. It entailed:

- Recruiting “over 100 congressmen, including some senators” to raise objections to the vote count, setting off 24-hours of news coverage on false claims about the election
- Increasing public pressure – unrelated to threats of violence – to lead Mike Pence to send the electoral vote back in six swing states
- Using that delay, getting those states to change their vote results

Navarro’s role was to invent the false claims members of Congress would use to fill up 24-hours of “debate.”

Navarro’s part in this ploy was to provide the raw materials, he said in an interview on Thursday. That came in the form of a three-part White House report

he put together during his final weeks in the Trump administration with volume titles like, “The Immaculate Deception” and “The Art of the Steal.”

“My role was to provide the receipts for the 100 congressmen or so who would make their cases... who could rely in part on the body of evidence I’d collected,” he told The Daily Beast. “To lay the legal predicate for the actions to be taken.” (Ultimately, states have not found any evidence of electoral fraud above the norm, which is exceedingly small.)

I’d like to talk about why this book and interview are not enough to charge Navarro with sedition, and in fact the current media frenzy into it is actually counterproductive to the legal investigation.

A book and an interview are not evidence

The most important reason why this book and Navarro’s interviews on it are not enough to charge him is that books are probably not admissible evidence.

This is retroactive telling about what, Navarro claims, he and Steve Bannon and others planned to do. While the book might be part of a conspiracy to cover up what Navarro and Bannon planned, in and of itself, it’s not clear it would be admissible at trial (though it could be useful at trial for other reasons, such as challenging any testimony Navarro gave).

Instead, you’d need to get all the texts and memos Navarro says documents this effort, the former of which may require seizing his phone with a probable cause warrant.

Although the bipartisan House committee investigating the violence on Jan. 6 has demanded testimony and records

from dozens of Trump allies and rally organizers believed to be involved in the attack on the nation's democracy, Navarro said he hasn't heard from them yet. The committee did not respond to our questions about whether it intends to dig into Navarro's activities.

And while he has text messages, phone calls, and memos that could show how closely an active White House official was involved in the effort to keep Trump in power, he says investigators won't find anything that shows the Green Bay Sweep plan involved violence.

You'd likely need cooperating witnesses that were willing to tell *this story*, perhaps Navarro himself and Steven Bannon (the same guy refusing to testify to the Jan6 Committee right now).

As such, this interview is at most an investigative blueprint that, months down the road, might lead to evidence that could be used to prosecute Navarro.

Much of this is not illegal

Another reason why this interview and book are not a smoking gun is that, as Navarro describes it, much of it is not illegal.

It is not illegal to invent false claims about an election, as Navarro said he did. It might be sanctionable for a lawyer to make those same false claims to a court (as it finally became for Sidney Powell). I might be illegal to raise money off promises of electoral changes you knew to be false, which seems to be one of several premises for the investigation of Sidney Powell. But it's not illegal to lie.

It's also not illegal for members of Congress to raise objections on the floor, which was a central part of this plan. As Republicans never

tire of reminding, Jamie Raskin did so himself in 2017.

Unlike Raskin's challenge, the plan here was to base electoral challenges off bullshit. But even if you could prove that members of Congress knew it was all bullshit (and you would need to prove that), it's also not illegal for members of Congress to push bullshit in Congress. Indeed, that is pretty aggressively protected under Speech and Debate. To criminalize this behavior you'd have to distinguish it from what lobbyists do all the time when they push members of Congress to adopt storylines that are factually false.

All this only becomes illegal in the context of a plan to violate the law. DOJ has been using 18 USC 1512(c)(2) to charge deliberate efforts to prevent the certification, but at least as stated, Navarro *didn't want to obstruct* the proceeding in question, he wanted that process to occur, albeit stretched over 24 hours according to the very rules that judges have pointed to to affirm that it is an official proceeding. So if you were to charge it, you'd need to charge something else, perhaps trying to get Pence to violate his duty.

Much of this is probably a lie

Crazier still, people claiming that this book and interview are the smoking gun in a prosecution are treating it as a truthful description, which it would need to be to serve as admissible evidence for any crime itself (which is why it would have limited evidentiary value short of getting a whole lot of texts and testimony).

Peter Navarro is a noted liar and Steve Bannon is an even more accomplished one. And we know – because BuzzFeed fought to liberate Mueller materials – that Bannon is all too happy to tell serially false stories to protect himself from

criminal exposure. At a very similar time in the Mueller investigation, Roger Stone got the press to chase his false claims like six year olds chasing a soccer ball, and to this day, the overwhelming majority of the press believe his claims about why he was prosecuted are actually why he was (though prosecutors used that to their advantage, too).

We should assume this story is of the same ilk, a cover story, which has successfully led the press to grasp onto it as a smoking gun rather than a distraction. If it is a cover story, it serves to:

- Claim that “‘Stephen K. Bannon, myself, and President Donald John Trump’ were ‘the last three people on God’s good Earth who want to see violence erupt on Capitol Hill,’” as it would disrupt their plans. This claim is crucially important with regards the pressure campaign focused on Pence, as I’ll return to. And it is undoubtedly bullshit.
- Claim that Navarro “felt fortunate that someone cancelled his scheduled appearance to speak to Trump supporters that morning at the Ellipse, “because “It was better for me to spend that morning ... Just checking to see that everything was in line, that congressmen were on board.” This adopts the same strategy that Stone

has, blaming those who organized the Ellipse rally rather than those orchestrating events at the Hill. And in this telling, Navarro was just talking to members of Congress, not communicating to any of the people who would go on to attack the Capitol.

- Distance himself from Sidney Powell's equally outlandish claims. In his telling, this is a plan that arose from the failures of Sidney Powell's false claims, not a continuation of them. This treats Navarro's efforts as an alternative to Powell's false claims, not a continuation of them.

[Navarro] said it started taking shape as Trump's "Stop the Steal" legal challenges to election results in Arizona, Georgia, Pennsylvania, and Wisconsin fizzled out. Courts wouldn't side with Trump, thanks to what Navarro describes in his book as "the highly counterproductive antics" of Sydney Powell and her Kraken lawsuits.

- Focus on January 6 rather than January 5. Navarro emphasizes that he spoke to Bannon first thing in the morning on January 6. Given what we know about the way the riot was finalized on

January 5, I'm more interested in whom he spoke with before he went to bed.

In my experience, you learn far more in mapping out what liars are trying to cover up than you do chasing their claims as if they are the truth. And the same is probably true here.

But at the very least, Navarro's tale attempts to dissociate himself with several contributors to January 6 that might be more obviously tied to crimes than the lies he packaged up for members of Congress to tell.

The takeaway from this book and interview ought to be that Navarro has admitted his goal was to bring maximal pressure on Mike Pence. As such, it means he shares a stated goal of a number of January 6 defendants who have already pled guilty.