

DOJ FINALLY GETS AROUND TO SHARING DISCOVERY WITH OATH KEEPERS MARK GRODS AND CALEB BERRY

As background for some other things, I'd like to lay out some of the information sharing DOJ has been doing since charging some of the the Oath Keepers with sedition on January 12.

After mistakenly asking to share information with defendants in the previously charged caption (US v. Caldwell) on January 13, on January 14, DOJ asked to share grand jury material with Jon Schaffer and also asked to share sealed material from the Schaffer case with the defendants in the Rhodes, Crawl, and Walden cases, the newly spun out captions after the sedition charges (I describe how those cases got spun out here). Judge Amit Mehta approved that sharing request on January 14.

Prosecutors got a protective order with Schaffer in April, just days before he pled guilty.

This seems to confirm *that* Schaffer's cooperation was regarding some aspect of the Oath Keeper's actions, which is consistent with a discovery letter DOJ sent in April (at that time, defendants included the Stack, plus Joshua James and Roberto Minuta) saying that defendants had been informed, "about whether Mr. Schaffer has had communications with your clients." But there still seems to be some aspect of his cooperation that is hidden. A November status update on Schaffer's cooperation explained that,

Multiple defendants charged in the case in which the Defendant is cooperating have been presented before the Court; several are in the process of exploring case resolutions and a trial date has yet to be set.

At the time, there were trial dates set for the main Oath Keepers case and several people charged in it had already flipped, suggesting Schaffer's cooperation didn't pertain directly to the main Oath Keeper conspiracy. One possible explanation is that the description is just inaccurate. Another is that Schaffer is directly cooperating against *different* Oath Keepers who were charged sometime before November 12 under seal, or someone like Jeremy Brown, not charged in the January 6 conspiracies, but potentially facing new weapons charges in Florida.

On January 21, *for the first time*, DOJ asked for a protective order and permission to share grand jury materials with Caleb Berry. Mehta approved those requests on January 24.

On January 25, also for the first time, DOJ asked for a protective order and permission to share grand jury materials with Mark Grods. Mehta approved those requests the next day, January 26.

(The other two known Oath Keeper cooperators, Graydon Young and Jason Dolan, would be covered by existing protective and grand jury sharing orders, so we wouldn't know if they were newly seeing existing discovery.)

This seems to suggest that, for the entirety of the time Berry and Grods have been cooperating with DOJ, seven months, they've only been shown information that they themselves brought to the table. There would have been real limits on what was available, too, because both Berry and Grods admitted to deleting evidence about Oath Keeper organizing leading up to and on January 6. So for the first time since they deleted this evidence more than a year ago, they may be shown the specific comments not otherwise included in public charging documents from those organizing chats.

Perhaps prosecutors are just moving towards follow-up interviews in preparation for April and July trials.

But there are details about both men's

cooperation – notably, what Berry knew of Roger Stone’s ties with the Oath Keepers and the Oath Keepers coordination with the Proud Boys from Florida, what Berry witnessed of Kelly Meggs’ intentions as they walked down a hallway hunting Nancy Pelosi, what Grods knew of the disposition of his and Joshua James’ weapons, and what Grods witnessed at the Willard Hotel the morning of the insurrection – about which prosecutors were especially coy in the new set of indictments.

That suggests those topics – topics directly implicating Roger Stone – remain an active part of the investigation, one that cooperating Oath Keepers may get new questions about now that DOJ has obtained all the other assistance necessary to wrap up their more obvious co-conspirators in a sedition conspiracy.

In the recent round of indictments, DOJ purposely hid what they’ve learned about Roger Stone from witnesses whose testimony they needed to finalize the sedition conspiracy. And for the first time, overt cooperators may get more questions about that.