

“THANKS TO YOUR BULLSHIT WE’RE NOW UNDER SIEGE”

As numerous outlets have reported, a January 6 Committee challenge to John Eastman’s attempt to shroud his communications regarding the attempted coup under a privilege claim laid out three crimes they want the judge to use to consider crime-fraud exceptions to the claims. Two of the crimes they say they’ve got solid evidence Trump committed are the ones I said Trump would be prosecuted for back in August.

A. Obstruction of an Official Proceeding

The evidence detailed above provides, at minimum, a good-faith basis for concluding that President Trump has violated section 18 U.S.C. § 1512(c)(2). The elements of the offense under 1512(c)(2) are: (1) the defendant obstructed, influenced or impeded, or attempted to obstruct, influence or impede, (2) an official proceeding of the United States, and (3) that the defendant did so corruptly. *Id.* (emphasis added). To date, six judges from the United States District Court for the District of Columbia have addressed the applicability of section 1512(c) to defendants criminally charged in connection with the January 6th attack on the Capitol. Each has concluded that Congress’s proceeding to count the electoral votes on January 6th was an “official proceeding” for purposes of this section, and each has refused to dismiss charges against defendants under that section.⁷⁵

[snip]

B. Conspiracy to Defraud the United States

The Select Committee also has a good-faith basis for concluding that the President and members of his Campaign engaged in a criminal conspiracy to defraud the United States in violation of 18 U.S.C. § 371.

An individual “defrauds” the government for purposes of Section 371 if he “interfere[s] with or obstruct[s] one of its lawful governmental functions by deceit, craft or trickery, or at least by means that are dishonest.”

Hammerschmidt v. United States, 265 U.S. 182, 188 (1924). The conspiracy need not aim to deprive the government of property. See *Haas v. Henkel*, 216 U.S. 462, 479 (1910). It need not involve any detrimental reliance by the government. See *Dennis v. United States*, 384 U.S. 855, 861

In spite of the fact I laid this all out in August, TV lawyers continue to assume I don’t know what I’m talking about with respect to this prosecution.

I’m starting my read of the filing with the exhibits – most notably some emails exchanged between John Eastman and Mike Pence’s Counsel, Greg Jacob, the day before and day of the insurrection. While it’s not always clear what time zone these are, I’ve tried to place these times in ET.

What they show is how even after the riot had kicked off, Eastman was badgering Pence (through Jacob) to violate the Electoral College Act. Twice, Jacob noted that Eastman’s shitty advice had led to the “siege,” emphasizing that his wife and kids were panicked about his own safety. *As rioters were breaking in*, Eastman badgered Jacob saying that he was wrong that Pence could not adjourn.

And then, as we know, Pence had to adjourn, so he could be rushed to safety, which Jacob

reiterated was caused by Trump, “whipping large numbers of people into a frenzy over something with no chance of ever attaining legal force through actual process of law, has led us to where we are.”

Then, after Congress had reconvened, Eastman seemingly pointed to the delay caused by the mob Trump sent as proof that the ECA is not sacrosanct, and asked Pence outright to violate the ECA some more.

There’s abundant evidence that Trump used the mob in utilitarian fashion to intimidate Pence and others and – as I have laid out – equally abundant evidence that it was the intent of many of the rioters to maximize the degree to which they would intimidate him, if not to kill him.

But this suggests another utilitarian motive: that Eastman, at least, figured that by forcing the Congress to adjourn, they would effectively force Pence into breaking the ECA, which Eastman shamelessly used to demand Pence further violate the law.

Update: Fixed the typos, I think. Thanks for the help!

January 5, 9:29PM: Eastman emails Jacob referencing a “good talk earlier tonight,” attaching a commitment from PA state senators to “recertify” their vote if Pence “implements the plan we discussed” (which Jacob’s testimony makes clear was a request to throw out the certificates).

January 6, 10:44AM: Jacob responds to the email from the night before saying, “Will call,” with some legal questions.

January 6, 1:33PM: Eastman respond “this is small minded” and claims Jacob is “sticking with minor procedural statutes while the Constitution is being shredded.” He cites a law George W Bush ignored during the Iraq War.

January 6, 2:14PM: Jacob responds and notes that

no Justice or Circuit Judge would approve Eastman's plan and explains that the role for States ends as soon as they certify their vote. He ends by saying,

I respect your heart here. I share your concerns about what Democrats will do once in power. I want election integrity fixed. But I have run down every legal trail placed before me to its conclusion, and I respectfully conclude that as a legal framework, it is a results oriented position that you would never support if attempted by the opposition, and essentially entirely made up.

And thanks to your bullshit, we are now under siege.

January 6, 2:25PM: Eastman responds saying,

My "bullshit" – seriously? You think you can't adjourn the session because ECA says no adjournment, while the compelling evidence that the election was stolen continues to build and is already overwhelming. The "siege" is because YOU and your boss did not do what was necessary to allow this to be aired in a public way so the American people can see for themselves what happened.

January 6, 3:05PM: Jacob responds to Eastman's complaint about bullshit by pointing out he's being moved to a secure location.

I do apologize for that particular language, which was unbecoming of me, and reflective of a man whose wife and three young children are currently glued to news reports as I am moved about to locations where we will be safe from people, "mostly peaceful" as CNN might say, who believed with all their hearts the theory they were sold about the

powers that could legitimately be exercised at the Capitol on this day. Please forgive me for that.

But the advice provided has, whether intended to or not, functioned as a serpent in the ear of the President of the United States, the most powerful office in the entire world. And here we are.

For the record, we were in the middle of an open, widely televised debate that was airing every single point that you gave members of Congress to make when all of this went down and we had to suspend.

[snip]

Respectfully, it was gravely, gravely irresponsible of you to entice the President of with an academic theory that had no legal viability, and that you well know we would lose before any judge who heard and decided the case. And if the courts declined to hear it, I suppose it could only be decided in the streets. The knowing amplification of that theory through numerous surrogates, whipping large numbers of people into a frenzy over something with no chance of ever attaining legal force through actual process of law, has led us to where we are.

January 6, 6:09PM: Eastman claims that Pence only addressed the most outlandish option and didn't address a more moderate one.

January 6, 6:29PM: Jacob asks Eastman whether he advised Trump that "the Vice President DOES NOT have the power to decide things unilaterally."

January 6, 6:45PM: Eastman claims Jacob was on the call when he did provide that advice, but then declines to,

discuss other conversations that I may or may not have had privately on that score with someone who is a client. But you know him – once he gets something in his head, it is hard to get him to change course.

January 6, 11:44PM: Eastman responds to the most recent Jacob email stating that because the House and Senate had “debated the Arizona objections for more than 2 hours” (which may account for the time Congress had been hiding from the mob) and observed that that and other things were violations of the Electoral Count Act. He then asks that, “now that the precedent has been set that the Electoral Count Act is not quite so sacrosanct as was previously claimed,” he should adjourn the vote for 10 days “to allow the legislatures to finish their investigations.”