

JOHN EASTMAN'S BLANK DOCUMENTS

I wrote about the substance of Judge David Carter's ruling that it was more likely than not that Trump obstructed the vote certification on January 6 here.

The opinion is as interesting for what it says about the documents John Eastman attempted to withhold from the January 6 Committee as his decision that Trump is more likely than not a criminal.

At issue were the 111 documents he had dated January 4 through 7 involving January 6 over which he claimed some kind of privilege. I've summarized Carter's decision making process in this table.

Carter's overall findings were that:

- None of John Eastman's attorney-client privilege claims were valid because there was a third party email sender involved; those documents were assessed only for a work privilege assertion
- Carter treated the documents Eastman claimed work privilege assertions over fall in the following categories:
 - Non-substantive (10 total)
 - Electoral Count Act plan (22 total)
 - State election related (19 total)

- Documents for Congress (17 total)
- Connecting third parties (20 total)
- News articles and press releases (9 total)
- Preparation by or for the client's representative (15 total)

Only the last category – documents prepared in anticipation of legislation – were really considered for a privilege claim. Of those, two were issued by a state court, so were excluded from Carter's review, and privilege over two had been waived (one was the Electoral Count Act plan Eastman had already published).

That left just 11 documents for review. Of those, nine actually were part of ongoing litigation, and one was sent during the riot (but not in furtherance of it). So while Judge Carter ruled that Eastman and Trump probably conspired to defraud the US, just one document was liberated by that decision. I'll return to that document.

What I'm most struck by is the frivolity of some of the other documents Eastman went to court (and included in a privilege log) to try to protect. One category – connecting third parties – included a number of resumes of people offering to help. Another consisted of news releases (two of which reflect comment on coverage of the riot). Much of the Electoral Count Act involved academic discussion.

It's this category, though, I'm most fascinated by:

To begin, the Court excludes ten of the 111 documents because they are entirely nonsubstantive.¹³⁰ Seven of these

documents are only images of logos attached to email signatures, including Facebook, LinkedIn, and Twitter.¹³¹ One document is a blank page¹³² and two are blank emails.¹³³ These ten documents do not contain any information protected by the work product doctrine and the Court ORDERS that they must be disclosed.¹³⁴

John Eastman took the January 6 Committee to court to withhold a blank page and two blank emails.

That might reflect the substance of his own scholarship.

Or it's possible Eastman was triggering others by sending nothing.