

AMID PLEA DISCUSSIONS, OWEN SHROYER SUBMITS A HALF-HEARTED FIRST AMENDMENT CHALLENGE

I came in just a few minutes late to the Owen Shroyer status hearing, and missed the better part of it, it went that quickly! That said, according to Shroyer lawyer Norm Pattis, things are quite chummy with prosecutors and they expect they might come to some kind of plea deal.

That makes the flimsiness of a motion to dismiss he submitted the other day far more interesting. He's supposed to be arguing that because he's a "journalist" who was covering the riot he was cheering, he shouldn't be prosecuted. Most of his 1A argument, however, would apply to the hundreds of other people charged with trespassing that day, and doesn't address the non-prosecution agreement that specifically prohibited Shroyer from being a loud asshole at the Capitol, uniquely among the thousands of rioters. Shroyer repeats false claims about trying to rein in the mob that Tim Kelly already rejected. He makes one half-hearted bid to press freedom:

News reporters and broadcasters often put themselves into harm's way to cover political demonstrations. Robust public discourse requires free and unrestrained media. In *New York Times v. Sullivan*, 403 U.S. 713, 717 (1971), Justice Black opined

In the First Amendment the Founding Fathers gave the free press the protection it must have to fulfill its essential role in our

democracy. The press was to serve the governed, not the governors. The Government's power to censor the press was abolished so that the press would remain forever free to censure the Government. The press was protected so that it could bare the secrets of government and inform the people. Only a free and unrestrained press can effectively expose deception in government.

(Black, J. concurring.)

Yet he provides virtually no evidence *that* he was reporting.

That's what makes Shroyer's declaration, which he could be held to (though it is labeled as a draft), all the more interesting. In addition to claiming that he intended, "in substantial part, to report on my observations to our millions of listeners and viewers worldwide," and repeating the already rejected claims that he attempted to calm the crowd, he included these details about his expectations of the Former President.

While in Washington D.C. on January 6, I accompanied Mr. Jones to the podium at which President Trump was speaking. It was my understanding that we were to follow Mr. Trump from there to the Capitol.

Mr. Jones and I were accompanied by a security detail comprised of fellow Infowars employees and off-duty police officers. We traveled together as a group, with Mr. Jones and I walking within a perimeter established by our security team.

When Mr. Trump did not appear to lead our group, I followed Mr. Jones and the security detail from the podium traveling in the direction of the Capitol building.

At no point as we walked this route did I see impediments or barriers of any kind [sic] suggestion [sic] that we were not free to enter the grounds.

None of this addresses the general details of his trespass or his specific prohibition on being a loud asshole at the Capitol. Indeed, his claim that he didn't see any barriers as he "walked this route" "in the direction of the Capitol building" (even assuming it is a factual claim, and the Sedition Hunters say it is not), is largely true only because the march itself was unpermitted.

He's describing thinking that President Trump was going to lead an unpermitted march to the Capitol, and then leading it himself (following along behind Alex Jones like thousands of others), right down Pennsylvania Avenue which had no barriers because there was no march planned.

This doesn't help him, even ignoring the presence of Ali Alexander, who is not an Infowars employee.

Whatever else this declaration is (and it's not the kind of declaration that would win a 1A motion to dismiss), it doesn't protect Donald Trump.

Meanwhile, the status hearing of the *other* Infowars employee who was supposed to have a status hearing today, videographer Sam Montoya, was continued so he, too, can continue to discuss a plea deal.