THE PARED DOWN SUPERSEDING INDICTMENT FOR JANUARY 6

As I predicted in this post, Jack Smith did not wait around for a dispute before Tanya Chutkan to talk about which allegations in the January 6 indictment against Trump are and are not official acts. He superseded the existing indictment.

But Smith took the "pared down" approach NYT's Alan Feuer imagined: The indictment takes out all reference to Jeffrey Clark. It emphasizes throughout that Trump worked with private individuals to try to steal the election.

That said, it does keep the Mike Pence allegations in the indictment, emphasizing that those actions were exclusively about remaining in power.

Update: In his notice regarding this superseding indictment, Smith emphasized that he used an entirely new grand jury. He would have had to do that anyway – the one he had used previously expired last summer, probably over a year ago.

> Today, a federal grand jury in the District of Columbia returned a superseding indictment, ECF No. 226, charging the defendant with the same criminal offenses that were charged in the original indictment. The superseding indictment, which was presented to a new grand jury that had not previously heard evidence in this case, reflects the Government's efforts to respect and implement the Supreme Court's holdings and remand instructions in Trump v. United States, 144 S. Ct. 2312 (2024). The Government does not oppose waiver of the defendant's appearance for arraignment on the superseding

> indictment. See Fed. R. Crim. P. 10(b). As this Court directed, ECF No. 197, the Government will confer with the defense and make a joint proposal, to the extent possible, regarding pretrial litigation in the status report due Friday.

But the mention of "pretrial litigation" suggests he wants to pick up where he left off.

Update: Here are the parts of my post from Saturday explaining what the logic here would be.

> Now, as I suggested, even if you were doing nothing more than removing the Jeffrey Clark references, doing so would be smart in any case. Not only could Smith excise all the Jeffrey Clark materials, thereby giving Trump less surface area to attack the indictment, but he could tweak what is already there to address some of the other concerns raised by SCOTUS, for example, to clarify how candidate Trump's reliance on fake elector certificates do not threaten Executive authorities. But minor tweaks, even the excision of the Jeffrey Clark stuff, would not require consultation with DOJ, and if Jack Smith were just excising the Jeffrey Clark stuff, he could have done that before DOJ's election prohibition on indictments kicks in on roughly September 1.
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> So let's talk about what would require consultation with DOJ, consultation requiring two full months from the immunity ruling, because it raises ways that Smith might supersede the indictment that would be a lot more interesting than simply excising the Clark stuff:
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> - *Consultation with the Solicitor General's*

> *office regarding edge cases on official acts*
> - *Consultation with DC USAO on how to apply obstruction more generally*
>
> [snip]
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> **Consultation with the Solicitor General's office regarding edge cases on official acts:** First, and least controversially, DOJ would consult with the Solicitor General's office regarding any more difficult issues regarding official acts. Perhaps the most obvious of these – and one squarely raised in SCOTUS' ruling – is the status of Mike Pence in conversations about certifying the electoral certificates. If Pence was acting exclusively in his role as President of the Senate, then Trump's relationship to him would be as a candidate, and so under Blassingame, an unofficial act. But the Republicans on SCOTUS want to argue that some of these conversations were official acts, making Pence's testimony inadmissible under their order. If DOJ is superseding an indictment to excise the things that need to be excised, DOJ would want the Solicitor General involved in such decisions not just because they'll have to defend whatever stance Jack Smith adopts, but also so as to protect the equities of the Executive Branch, which DOJ traditionally guards jealously.
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> **Consultation with DC USAO on how to apply obstruction more generally:** More interestingly (and as I focused on here), if Jack Smith were to supersede the indictment against Trump, he would undoubtedly tweak the language on the two obstruction charges to squarely comply with the Fischer decision

> limiting it to evidentiary issues.
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> Since Smith got his extension, DOJ has started weighing in on a handful of crime scene cases where (unlike around 60 others) it thinks it can sustain obstruction charges under a theory that the defendant knew the import of the electoral certifications themselves and took steps to obstruct the actual counting of them.
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> [snip]
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> DOJ is making the effort of trying to sustain the obstruction charges for defendants who can't be charged with one of several other felonies (obstructing the cops or rioting), but whose conduct – DOJ believes – should still be a felony. They're going to have to do this with some members of the two militia conspiracies, the felony convictions on which are often the primary felonies (though DOJ used the obstruction of cops with them too).
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> It's fairly easy to see how this effort has to harmonize with however Smith revamps the obstruction charges against Trump. And given the evidence that Smith was moving to include the Proud Boys in Trump's case, that harmonization may be key to sustaining obstruction charges against the Proud Boys.

The other parts – on if Smith decided to *add* new charges – aren't relevant here.