

JACK SMITH'S DELICATE TREATMENT OF BADGERPUNDIT KENNETH CHESEBRO

As I've said a few times, when I was hunting for Lee Chatfield, I found Kenneth Chesebro.

There is a transcript in the mostly sealed Appendix I to Jack Smith's immunity brief that must be Chesebro's. Several passages describing events in which Chesebro was involved cite a transcript, spanning from roughly GA 97 to GA 103, that appears between Lee Chatfield and probable Pat Cipollone transcripts (GA 55-56 is someone whose name appears alphabetically between Bowers and Cannon; this may be Trump campaign staffer Michael Brown).

On December 16, [Chesebro] traveled to Washington with a group of private attorneys who had done work for the defendant's Campaign in Wisconsin for a photo opportunity with the defendant in the Oval Office.³¹⁵

[snip]

Later that morning, [Chesebro] worked with another attorney for the defendant, who contacted a U.S. Senator to ask him to obtain the fraudulent Wisconsin and Michigan documents from the U.S. Representative's office and hand-deliver them to the Vice President.⁴⁰⁸

³¹⁵ Documentary evidence, Presidential Daily Diary, GA 100-101

⁴⁰⁸ Documentary evidence, GA 55-56, GA 102-103, Chris Hodgson [Compare to full transcript]

That would mean that this section, which suggests the co-conspirators deliberately lied

to fake electors, is sourced partly to Chesebro too (GA 517-518 is part of an at least 6-page section describing the fake elector involvement of someone whose name appears alphabetically between Raffensperger and Scavino, which hypothetically could be Mike Roman, but nothing marks it as necessarily him).

In practice, the fraudulent elector plan played out somewhat differently in each targeted state. In general, the co-conspirators deceived the defendant's elector nominees in the same way that the defendant and [Eastman] deceived [Ronna McDaniel] by falsely claiming that their electoral votes would be used only if ongoing litigation were resolved in the defendant's favor.²⁸²

²⁸² Documentary evidence, GA 97-98, GA 517-518.

It's not terribly surprising that Jack Smith got an interview with Chesebro. After all, Chesebro made a great show of cooperating in various state investigations – at a minimum, Georgia, Nevada, Wisconsin, and Michigan, as CNN laid out last December. But as CNN also reported, the veracity of his testimony came into question by February, when CNN caught Chesebro covering up a Twitter account he had.

So Jack Smith appears to have gotten an interview with Chesebro, but Chesebro may not be terribly reliable.

Perhaps for that reason, there are a great many things involving Chesebro that are not sourced to that transcript. Chesebro's plotting about the fake electors plot, for example, is always sourced to the documents themselves.

More interestingly, this passage – describing that Chesebro followed Trump's *public* instructions to go to DC, but also describing that he collected copies of the fake Michigan and Wisconsin elector certificates and handed them off to Congressman Mike Kelly – is sourced

entirely to documentary evidence.

Meanwhile, [Chesebro] who had traveled to Washington as directed by the defendant's public messages, obtained duplicate originals of the fraudulent certificates signed by the defendant's fraudulent electors in Michigan and Wisconsin, which they believed had not been delivered by mail to the President of the Senate or Archivist.³⁸⁹ [Chesebro] received these duplicates from Campaign staff and surrogates, who flew them to Washington at private expense.³⁹⁰ He then hand-delivered them to staffers for a U.S. Representative at the Capitol as part of a plan to deliver them to Pence for use in the certification proceeding.³⁹¹

Similarly, the description of Chesebro's participation in the mob is sourced exclusively to documentary evidence.

Among these was [Chesebro] who had attended the defendant's speech from the Washington Monument, marched with the crowd to the Capitol, and breached the restricted area surrounding the building.⁴⁴⁹

There's a problem with Chesebro's testimony on this point, of course: If he ferried fake elector certificates, then he wasn't responding to Trump's public tweeting about January 6. He was responding to the instructions of other plotters.

Which makes the way Smith sourced this passage, describing a December 16 meeting with Trump that Reince Priebus also attended, more interesting.

On December 16, [Chesebro] traveled to Washington with a group of private attorneys who had done work for the defendant's Campaign in Wisconsin for a photo opportunity with the defendant in

the Oval Office.³¹⁵ During the encounter, the defendant complained about Wisconsin Supreme Court Justice [Brian Hagedorn] who two days earlier had cast the deciding vote in rejecting the defendant's election challenge in the state.³¹⁶ As the group was leaving, the defendant spoke directly—and privately—to [Chesebro]. ³¹⁷ As late as early January, the conspirators attempted to keep the full nature of the fraudulent elector plan secret. On January 3, for instance, in a private text message exchange, [Boris Epshteyn] wrote to [Chesebro] "Careful with your texts on text groups. No reason to text things about electors to anyone but [Eastman] and me." [Chesebro] responded, "K," and followed up, "I'm probably a bit paranoid haha." [Epshteyn] wrote, "A valuable trait!"³¹⁸

³¹⁵ Documentary evidence plus Chesebro

³¹⁶ Probably Reince Priebus

³¹⁷ Probably Reince Priebus

³¹⁸ Documentary evidence

That is, Smith relies on Chesebro for the claim that this meeting was a photo op. But he doesn't include Chesebro's claims about what he said privately to Trump; he relies solely on what is likely Reince Priebus witnessing, but not participating in, that conversation.

Rather than describing what Chesebro claimed he and Trump said to each other, Smith relies on what Chesebro told another lawyer (likely Jim Troupis), afterwards. As soon as Chesebro saw Trump's tweet announcing the January 6 rally, he texted someone else and boasted that "we" had a "unique understanding" of Trump's December 19 Tweet calling people to DC.

The defendant first publicly turned his sights toward January 6 in the early

morning hours of December 19. At 1:42 a.m., the defendant posted on Twitter a copy of a report falsely alleging fraud and wrote, ““. . . Statistically impossible to have lost the 2020 Election. Big protest in D.C. on January 6th. Be there, will be wild!”³¹⁹ When [Chesebro] learned about the Tweet, he sent a link about it to another of the Wisconsin attorneys who had met with the defendant in the Oval Office on December 16 and wrote, “Wow. Based on 3 days ago, I think we have unique understanding of this.”³²⁰

³¹⁹ Trump tweet

³²⁰ Documentary evidence

Chesebro *has* testified about the December 16 meeting. TPM got his testimony to Michigan prosecutors. He described to them that he told Trump that the real deadline for certification was January 6.

Chesebro traveled to Washington to meet with Trump on Dec. 16 alongside a coterie of other Trump campaign attorneys.

Three years later, in the interview with Michigan prosecutors, Chesebro recalled the meeting with Trump: “The marching orders were, don’t say anything that would make [Trump] feel more positive than he did at the beginning of the meeting.”

He did not follow that advice. Chesebro told prosecutors that he began to speak with Trump after listening to the President talk on speakerphone with Newt Gingrich about something to do with Georgia voting machines. Then, the conversation turned to Trump’s chances in Arizona.

Chesebro did exactly what he had been

told not to do: give Trump a sense of hope. He recalled telling Trump that the “real deadline” was Jan. 6. He was later admonished by former White House chief of staff Reince Preibus because, as Chesebro put it later to prosecutors, “the vibe that I had given him was some ground for optimism.”

Chesebro himself compared the meeting to a widely reported and infamous late-night encounter, two days later on Dec. 18, between Trump, Sidney Powell, former Overstock CEO Patrick Byrne, and the White House counsel’s office, saying that it was “sort of unauthorized.”

If Chesebro reliably told Jack Smith the same thing, it might strengthen the obstruction case. As it is, Jack Smith argues that the riot happened, Trump did nothing to stop it, and then he opportunistically targeted Mike Pence as his mob was hunting him down. He stops well short of saying he summoned the mob to overrun Congress.

Chesebro’s apparent unreliability may be preventing Jack Smith from taking the next step, showing that Trump heard from Chesebro on December 16 that there was still one more step to certification on January 6, which led him – less than three days later – to summon his mob. But if Chesebro’s testimony were more reliable, then he would not simultaneously be explaining that he ferried a second set of fake Michigan and Wisconsin certificates to DC *but also* simply showed up on January 6 in response to Trump’s Tweets. And it might change the import of the way he shadowed Alex Jones.

Still, as it is, Chesebro is central to the continued viability of 18 USC 1512(c)(2) and (k) charges. Under Fischer, there must be an evidentiary component to the obstruction charge. And in Chesebro, you have the sole member of the conspiracy who joined the mob on January 6 having earlier ferried fake elector certificates to members of Congress in hopes that Mike Pence

would use the certificates to throw out Joe Biden's votes.

If this ever goes to trial, Chesebro's role – and possible testimony – may be key. But thus far, at least, it doesn't appear that his testimony is reliable enough to build the case on.