

TABLES FLIPPED: WITH COOPERATION AGREEMENT, OATH KEEPER JON SCHAFFER WILL GET PROTECTION FROM US MARSHALS

As I've been suggesting might happen for some time, heavy metal musician Jon Schaffer just pled guilty, the first of any January 6 defendants to plead guilty. While many of the documents pertaining to his plea have not been released yet, his information has. He pled guilty to Obstruction of an Official Proceeding and Entering a Restricted Area with a Deadly Weapon (for the bear spray he sprayed at police). On the Obstruction charge, Schaffer is facing serious enhancements for the bear spray. But with the plea, Schaffer will avoid what was surely going to be an assault charge, as well as inclusion in the Oath Keeper conspiracy. And all that's before the cooperation he has agreed to provide prosecutors, which should help him cut his criminal exposure significantly, especially as the very first January 6 defendant to plead guilty.

From the sounds of things – prosecutor Ahmed Baset described Schaffer as the “tip of the mob” breaching the building and said he entered at 2:40 – ~~Schaffer will be implicated in the breach of the east entrance to the Capitol, meaning his testimony may implicate everyone who went in with him (likely including all the currently charged Oath Keepers, Joe Biggs, and several other Proud Boys).~~ [Update: Schaffer went in the west door, not the east one, but the timing is still of acute interest, as it means the door Schaffer went in was breached at the same time as the east door.] DOJ might be thinking of naming Schaffer an unindicted co-conspirator on the Oath Keeper conspiracy, which would put all

of them on the hook for Schaffer's violent actions, dramatically increasing their criminal exposure.

In addition, Schaffer's plea sets an important precedent on several legal issues that will be contested by other defendants, Oath Keeper or not. Those include:

- Whether bear spray is a deadly weapon (which will affect the men accused of attacking Brian Sicknick and others – like Roberto Minuta – who brought bear spray into the Capitol)
- Whether the vote count and Mike Pence's presence in the Capitol made the building a "restricted building" for the purpose of 1752
- Whether obstruction – normally used for criminal prosecutions – applies to the vote count (this is particularly critical, as it is how DOJ has made participation in the insurrection a felony for the more serious defendants)
- Whether two enhancements – for violence and significant interference – apply to the obstruction charge

As Judge Amit Mehta noted, this doesn't preclude litigation in other cases, but both sides agreed that this legal stance applies to the January 6 riot.

Schaffer will be released from jail, meaning he

can return to touring as a musician (which was likely one of the big inducements for him to plead).

But the most remarkable thing about this plea agreement comes with the public nature of it. Mehta had thought that DOJ would want to do this in sealed fashion, but Baset was quite clear that DOJ wanted this to be public. That means everyone will know that Schaffer is a key witness against a highly trained militia.

And one of the things Mehta seems to have raised in a closed part of the hearing is that that puts Schaffer at great risk.

So DOJ agreed that Schaffer – who on January 5 was among the Oath Keepers purportedly providing “security” for Roger Stone – will be provided security by US Marshals under DOJ’s witness protection program.

A member of Roger Stone’s “security” detail will for the foreseeable future, then, be provided with “security” by the US government.

Update: Here’s his plea. He signed it Wednesday, which means it’s likely he had a grand jury appearance Friday morning before he allocuted before Judge Mehta. [Fixed my day of the week problems.]

Update: They’ve calculated Schaffer’s base offense level, before reductions for pleading, to be 25, which would represent a sentence of 57-71 months in the sentencing table. If they add Schaffer as an unindicted co-conspirator to the Oath Keeper conspiracy, it would put them on the hook for his violence, even before the conspiracy charge.

Update: I was being a bit loose with my reference to Stone. The Oath Keepers, in which Schaffer has pled to be a member, provides security for Stone. While Schaffer associates with some of the people who did provide security, there’s no evidence he personally did.