

“LEAVE THE REST TO ME AND THE R CONGRESSMEN:” TRUMP’S BIG LIE AND THE ACTUAL HARM OF JANUARY 6 OBSTRUCTION

As I noted, yesterday lawyers for January 6 defendant Brady Knowlton argued before Judge Randolph Moss that Congress’ certification of the vote count is not an official proceeding covered by the obstruction statute Knowlton was charged under. Knowlton’s argument was going as well as could be expected, in my opinion, until his attorney, Brent Mayr, argued that the vote certification was not an official proceeding because no one faced actual harm based on the outcome of the proceeding. Unbelievably, Mayr seems to have given zero consideration to the harm that the lawfully elected President, Joe Biden, might suffer if Congress failed to certify his win, to say nothing of the 81 million voters who voted for him.

The argument happened even as notes and other documents coming out of the House Oversight Committee make it how clear how real that risk was.

Before the notes that have been released start, Trump had already tweeted out an announcement for the January 6 “protest” on December 19.

Trump tweets: “Statistically impossible to have lost the 2020 Election” and “Big protest in DC on January 6th. Be there, will be wild!”

On December 27, Acting Deputy Attorney General Richard Donoghue took notes from a call where

Trump laid out the alleged fraud that merited DOJ involvement. Donoghue noted Trump saying, "You guys may not be following the Internet the way I do." Donoghue recorded multiple times that DOJ officials told Trump his election claims were wrong, detailing the investigations that DOJ had already done into the allegations. He recorded Trump's intimation that he might start replacing people with Jeffrey Bossert Clark if they didn't back his claims of fraud.

At one point, Trump demanded, "Just say the election was corrupt and leave the rest to me and the Republican Congressmen."

*Just, just say that the election was
was corrupt + leave the rest to me and
the R. Congressmen."*

That day, Trump tweeted about the January 6 riot again.

December 27, 2020: Trump tweets, "See you in Washington, DC, on January 6th. Don't miss it. Information to follow."

The next day, Clark wrote a draft letter to Georgia instructing them to run another election. Donoghue responded, "There is no chance I would sign this letter or anything remotely like it."

Days later, on January 1, Trump pitched the January 6 protest again, branding it an attempt to "stop the steal."

Trump himself tweets, "The BIG Protest Rally in Washington, D.C. will take place at 11:00 A.M. on January 6th. Locational details to follow. StopTheSteal!"

On January 2, Acting Attorney General Jeffrey Rosen reiterated, "I confirmed again today that I am not prepared to sign such a letter," calling on Georgia to send alternate votes to

Congress.

On January 3, Trump attempted to make good on the threat he made on December 27, to replace Rosen with someone who would help him steal the election, Clark. *Because* he didn't want to distract from his efforts to overturn the election, Trump backed down.

[Clark] informed Mr. Rosen midday on [January 3] that the president intended to replace him with Mr. Clark, who could then try to stop Congress from certifying the Electoral College results. He said that Mr. Rosen could stay on as his deputy attorney general, leaving Mr. Rosen speechless.

Unwilling to step down without a fight, Mr. Rosen said that he needed to hear straight from Mr. Trump and worked with the White House counsel, Pat A. Cipollone, to convene a meeting for early that evening.

[snip]

Around 6 p.m., Mr. Rosen, Mr. Donoghue and Mr. Clark met at the White House with Mr. Trump, Mr. Cipollone, his deputy Patrick Philbin and other lawyers. Mr. Trump had Mr. Rosen and Mr. Clark present their arguments to him.

Mr. Cipollone advised the president not to fire Mr. Rosen and he reiterated, as he had for days, that he did not recommend sending the letter to Georgia lawmakers. Mr. Engel advised Mr. Trump that he and the department's remaining top officials would resign if he fired Mr. Rosen, leaving Mr. Clark alone at the department.

Mr. Trump seemed somewhat swayed by the idea that firing Mr. Rosen would trigger not only chaos at the Justice Department, but also congressional investigations and possibly

recriminations from other Republicans and distract attention from his efforts to overturn the election results.

After nearly three hours, Mr. Trump ultimately decided that Mr. Clark's plan would fail, and he allowed Mr. Rosen to stay.

Mr. Rosen and his deputies concluded they had weathered the turmoil. Once Congress certified Mr. Biden's victory, there would be little for them to do until they left along with Mr. Trump in two weeks. [my emphasis]

On the same day Trump tried to replace Rosen with Clark, January 3, he instructed his Acting Secretary of Defense to make sure the National Guard protected his supporters.

The following day, January 4, Trump made DOJ the lead agency for incident response on January 6 (Update: see comments—this happened on January 3). But the people who had almost just been replaced claim that didn't happen. Whatever the reality, however, DOJ's inaction is what led to DOD's delayed response during the insurrection on January 6.

According to Mr. McCarthy, on January 4, the White House designated DOJ as the lead federal agency for January 6: "Sunday evening, after Acting Secretary Miller and General Milley met with the President, they got the lead [f]ederal agency established, all of the pieces started coming together."⁵⁵⁹ Mr. Miller also recalled that DOJ was designated as the lead federal agency at some point prior to January 6, but he did not know what role the White House played in the decision.⁵⁶⁰

Although DOD understood that DOJ was designated as the lead federal agency, there appears to have been no clearly established point of contact within the

department, according to Mr. McCarthy, which he found “concerning.”⁵⁶¹ Prior to January 6, Mr. McCarthy sent a letter to Acting Attorney General Jeffrey Rosen outlining the Army’s operational plan in support of the Mayor’s request and reached out informally to David Bowdich, FBI Deputy Director, because the two had worked together previously.⁵⁶² But Mr. McCarthy claimed, even during the attack, he was never provided an official point of contact at DOJ and had no contact with DOJ or FBI officials until approximately 4:00 p.m. ⁵⁶³ General McConville also stated that DOJ was designated as the lead federal agency; however, he noted that DOJ did not conduct any interagency rehearsals or have an integrated security plan, as DOJ did during the summer 2020 protests when it had also been designated as the lead federal agency.⁵⁶⁴ General McConville stressed the importance of integrated security plans and acknowledged that had there been one on January 6, DOD’s response time would have been quicker.⁵⁶⁵

In contrast, Mr. Miller stated Richard Donoghue, Acting Deputy Assistant Attorney General, served as DOJ’s operational lead on January 6.⁵⁶⁶ Notably, however, Mr. Miller acknowledged that, during the attack, he convened calls with Cabinet members to share information and ensure everyone was on the same page.⁵⁶⁷ When asked why he convened the calls, as opposed to the lead federal agency, Mr. Miller responded, “somebody needed to do it.”⁵⁶⁸ Mr. Miller was not familiar with any actions DOJ took to coordinate the federal response on January 6.⁵⁶⁹

On May 12, 2021, Jeffrey Rosen, the Acting Attorney General on January 6, testified at a House Oversight hearing

that it was “not accurate” that DOJ was the lead federal agency for security preparations on January 6. 570 He stated that DOJ’s responsibilities were specific to intelligence coordinating and information sharing.571 DOJ has not acknowledged that it was designated the lead federal agency for January 6 and has yet to fully comply with the Committees’ requests for information. 572

These are the events that led up to Brady Knowlton breaching Congress with hundreds and thousands of other people. This is the back story to what led Knowlton to tell a cop that his vote – for the losing candidate of the election – didn’t count, and so he had shown up in the Senate Gallery to make his voice heard.

And according to the President who had set off this attack on another branch of government, all he needed was the claim the election was corrupt. Leave the rest to Trump and the Republican members of Congress, he instructed.

Brady Knowlton’s presence in the Senate Gallery was instrumental to that plan. Knowlton was what Trump had in mind when he said, “leave the rest to me.” And Knowlton helped to intimidate Republican members of Congress to help Trump steal the vote.

Both Brady Knowlton and the then-President seem to have understood that storming Congress was a way to inflict an egregious harm on Joe Biden. And yet Knowlton’s lawyer claims no one would face an injustice if such a harm resulted.