

THE “ESCALATING,” “AGGRESSIVE,” “INTENSIFYING” STEP OF SUBPOENAING KEY WITNESS MARK MEADOWS

CNN and WSJ have reported, using all the typical hype words (see this thread for a collection of similar bullshit language), that Jack Smith’s team has subpoenaed Mark Meadows. But neither has included the most important information about the subpoena: what they’re really looking for.

They report only that Smith wants documents and testimony pertaining to January 6.

Special counsel Jack Smith’s office is seeking documents and testimony related to January 6, and Meadows received the subpoena sometime in January, the source said.

Neither Meadows’ attorney, the very good George Terwilliger, nor DOJ commented on this news, meaning it almost certainly came from one of the Trump lawyers who feeds all these stories, possibly even with the inflammatory adjectives.

It is not “aggressive” to subpoena one of the centrally important witnesses. It was not “aggressive” for the January 6 Committee to subpoena Meadows among their first investigative steps. It was not “aggressive” for Fani Willis to subpoena Meadows.

What is unusual is subpoenaing someone who is likely a key subject if not a target of the investigation, two years into the investigation, especially after he spent at least nine months trying to retroactively comply with the Presidential Records Act by providing the

Archives communications he should have preserved in the first place, after which prosecutors obtained the communications from the Archives directly.

Indeed, DOJ's Justice Manual requires specific approvals before subpoenaing someone if the person is a target.

If a voluntary appearance cannot be obtained, the target should be subpoenaed only after the United States Attorney or the responsible Assistant Attorney General have approved the subpoena. In determining whether to approve a subpoena for a "target," careful attention will be paid to the following considerations:

- *The importance to the successful conduct of the grand jury's investigation of the testimony or other information sought;*
- *Whether the substance of the testimony or other information sought could be provided by other witnesses; and*
- *Whether the questions the prosecutor and the grand jurors intend to ask or the other information sought would be protected by a valid claim of privilege.*

Mind you, DOJ's investigation, going back long before Smith joined it, has had to reach this

bar on the testimony or legal process covering others by dint of various privileges, including attorney-client, executive, and speech and debate. But thus far, DOJ has *usually* used warrants, not subpoenas, with people who might be subjects or targets of the investigation.

There's one known exception, of a person at the center of suspected crimes who nevertheless received a subpoena: Rudy Giuliani, in November (the CNN report on the subpoena emphasized the request for documents, but Reuters' coverage said the subpoena asked for testimony as well). Notably, though, given how centrally involved Rudy was in suspected crimes leading up to the coup attempt, that subpoena asked for documents pertaining to the potential criminal behavior – the misspending of money raised by Save America PAC – *of others*. Indeed, DOJ seems to be treating subpoenas about discreet topics individually, meaning a witness who might have a good deal of exposure in one area may nevertheless be asked to testify about another area.

Something similar could be true here.

Trump's PAC gave Meadows' NGO, Conservative Partnership Institute, \$1 million long after January 6, and CPI received the bulk of the money spent by the PAC.

Trump's Save America PAC on July 26 gave \$1 million to the Conservative Partnership Institute, the group where Meadows is a senior partner.

The donation came less than four weeks after the House voted to establish a select committee to investigate the January 6, 2021, insurrection at the US Capitol. In December, the House voted to recommend that the Department of Justice pursue criminal charges against Meadows for refusing to cooperate with the committee's probe.

Trump's political organization has amassed \$122 million in cash reserves,

his team announced Monday.

The \$1 million to Meadows' non-profit made up most of the \$1.35 million in donations that Trump's PAC disbursed to political organizations and candidates in the second half of 2021.

Since then, the organization has been described as the "insurrectionists's clubhouse," the key player in efforts to push the Republican Party even further right, including during Kevin McCarthy's fight to be Speaker. The policies pursued by Meadows' organization are not, on their face at least, criminal; they would be protected by the First Amendment. But Trump's decision to fund it using funds raised promising the money would be used for something else might be.

Who knows? Maybe the subpoena seeks information more central to the events leading up to January 6. Perhaps it's an effort to obtain Signal texts that Meadows didn't otherwise turn over to the Archives. Perhaps Terwilliger is just *that good*, and Meadows is out of legal danger for his role in stoking a coup attempt.

But the most interesting detail of this subpoena is not that DOJ sent it, but that someone so obviously exposed himself would get one.

Update: Roger Sollenberger, one of the best campaign finance reporters, has a long discussion of how Trump laundered money from the Save America PAC through other entities, including CPI.