

“A DEMONIC FORCE:” DOMINION JUST GAVE JACK SMITH USEFUL EVIDENCE

As you read through Dominion’s motion for summary judgment against Fox News – and trust me, you should read it! – keep in mind not just how it proves Fox to be nothing but a propaganda platform aiming to help the Republican Party, but also the evidence it makes available to Jack Smith as he considers charges against those who used false claims about voting fraud to gin up a coup attempt.

Just as one example, Sean Hannity has played a role in every Trump legal scandal – serving as a back channel to Trump for Paul Manafort, participating in Rudy Giuliani’s attempts to gin up dirt on Hunter Biden as the first impeachment unfolded, and helping White House officials stave off the resignations of Trump’s White House Counsels in advance of January 6. But in each case, investigators only got his communications via other subjects of the investigation, as when DOJ found Manafort’s WhatsApp texts to Hannity saved in Manafort’s iCloud account or when the January 6 Committee got Signal texts Hannity exchanged with Mark Meadows from the former Chief of Staff’s production. Republicans chose not to call Hannity as a pro-Trump witness in the Ukraine impeachment.

With its filing, Dominion has given a snapshot of the ways and whys in which Fox News helped magnify false voter fraud claims, especially (though not exclusively) those of Sidney Powell.

It all takes place against the backdrop of a huge backlash against Fox after it called AZ for Joe Biden. When Fox presented the truth about the election, viewers started fleeing to Newsmax, with Trump’s encouragement. The filing

describes the panic that ensued.

[0]n November 9, the impact of Fox's Arizona call became more evident to Fox executives. Carlson told [Fox News CEO Suzanne] Scott directly: "I've never seen a reaction like this, to any media company. Kills me to watch it." Ex.211. Scott immediately relayed the email to Lachlan Murdoch. Ex.212 . She told Briganti that Sammon "did not understand the impact to the brand and the arrogance in calling AZ," which she found "astonishing" given that as a "top executive" it was Sammon's job "to protect the brand." Ex.213. And on that day—"day one," as Scott termed it, Fox executives made an explicit decision to push narratives to entice their audience back. Ex.214 at FoxCorp00056542. Scott and Lachlan Murdoch exchanged texts about the plan going forward: "Viewers going through the 5 stages of grief. It's a question of trust the AZ [call] was damaging but we will highlight our stars and plant flags letting the viewers know we hear them and respect them . at FoxCorp00056541 . Murdoch: "Yes. But needs constant rebuilding without any missteps. Id. Scott Yes today is day one and it's a process." [Dominion's emphasis removed]

Hannity described how much reporting the truth (and Chris Wallace serving as a competent moderator for a Presidential debate) had undermined Fox's brand.

Hannity told Carlson and Ingraham on November 12: "In one week and one debate they destroyed a brand that took 25 years to build and the damage is incalculable."

The response to Jacqui Heinrich's fact check of a Trump tweet is particularly stunning, as

Carlson immediately called to have her fired for uttering the truth.

Meanwhile, later that night of November 12, Ingraham was still texting with Hannity and Carlson. In their group text thread, Carlson pointed Hannity to a tweet by Fox reporter Jacqui Heinrich. Ex.230 at FNN035_03890511 . Heinrich was “fact checking” a tweet by Trump that mentioned Dominion—and specifically mentioned Hannity’s and Dobbs’ broadcasts that evening discussing Dominion. Ex.232; Ex.231. Heinrich correctly fact-checked the tweet, pointing out that top election infrastructure officials said that, “‘There is no evidence that any voting system deleted or lost votes ,changed votes ,or was in any way compromised’” Id Ex.232.

Carlson told Hannity: Please get her fired. Seriously What the fuck? I’m actually shocked...It needs to stop immediately, like tonight. It’s measurably hurting the company. The stock price is down. Not a joke.” Ex.230 at FNN035_03890511. Tucker added: “I just went crazy on Meade over it.” Id. at FNN035_03890512 . Hannity said he had “already sent to Suzanne with a really?” He then added: “I’m 3 strikes . Wallace shit debate [] Election night a disaster [.] Now this BS? Nope. Not gonna fly. Did I mention Cavuto?”

The filing describes how after Hannity “dropped a bomb” about Heinrich’s fact check with Scott, Heinrich deleted her tweet.

Hannity indeed had discussed with Scott. Hannity texted his team: “I just dropped a bomb.” Ex.292 at FNN055_04455643. Suzanne Scott received the message. She told Jay Wallace and Fox News SVP for Corporate Communications Irena Briganti:

“Sean texted me—he’s standing down on responding but not happy about this and doesn’t understand how this is allowed to happen from anyone in news. She [Heinrich] has serious nerve doing this and if this gets picked up, viewers are going to be further disgusted.” Ex.233 . By the next morning, Heinrich had deleted her fact-checking tweet. Ex.283.

For over two years, the right wing has squealed about a media outlet prohibiting the dissemination of dodgy claims from a Murdoch outlet. It turns out that Murdoch was, in that same time period, “censoring” true facts about Trump’s dodgy claims.

I wait with bated breath for James Comer to scheduled a hearing on the “censorship.”

Tucker Carlson, especially, recognized Trump’s role in this. He warned that Trump “could easily destroy us if we play it wrong.

“What [Trump]’s good at is destroying things. He’s the undisputed world champion of that. He could easily destroy us if we play it wrong.”

After January 6, Tucker called Trump, “a demonic force, a destroyer.”

Fox appears to have perceived that they had to play along with Trump’s false claims or risk permanent damage to their brand.

As noted, this lawsuit focuses closely, though not exclusively, on Sidney Powell’s false claims, from which even Trump publicly dissociated on and off. As such, much of this evidence may be more useful to DOJ in any ongoing investigation (if there still is one) of Powell’s monetization of claims she knew to be false. But even there, the evidence is key for Smith’s lawyer inquiry into Trump’s lies.

In an effort to rebut any Fox claim that it was simply reporting on lawsuits, Dominion lays out

how the lawsuits filed served only as a vehicle to make false claims publicly.

In fact, none of the accused statements even meets the basic requirement that it report on a pending proceeding. As the Court recognized in its prior ruling, any statement made in a broadcast that occurred before November 25, 2020 could not possibly satisfy the “of ... proceedings” requirement because the lawsuits filed by Sidney Powell—the only Fox guest who actually filed a lawsuit containing the defamatory allegations about Dominion—had not been filed by that date. See FNN MTD Order, p.46. And even after that date, the broadcasts in question hardly mentioned the existence of legal proceedings concerning Dominion, let alone purported to be a substantially accurate report of those proceedings. “[A]t no point did Dobbs or Powell attribute the statements ... to an official investigation or a judicial proceeding. A reasonable observer would have no grounds to believe that her statements constituted a report of an official proceeding.” Khalil, 2022 WL 4467622 at 6.

Fox wasn't covering lawsuits. It was magnifying false claims, and doing so because it knew that's what its viewers, and Trump, demanded.

One accused false claim is of particular import, given the bases Powell and others used to pursue outrageous actions: A December 10 Lou Dobbs broadcast on which Sidney Powell claimed there had been a Cyber Pearl Harbor.

Nonetheless, on the next day, December 10, Dobbs had Powell on again, where she repeated the false (and repeatedly debunked) story about the Smartmatic and Dominion machines being designed to flip votes to rig elections for Hugo Chavez, and allowing people to login and

manipulate votes . See ¶179(q);Appendix D. But rather than questioning Powell’s claims, Dobbs attacked Attorney General Barr for saying he’d seen no sign of any significant fraud that would overturn the election and told Powell “We will gladly put forward your evidence that supports your claim that this was a Cyber Pearl Harbor,” noting “we have tremendous evidence already,” id. which he now admits was not true. See Ex.111,Dobbs 46:25-47:10,86:20-24 . Dobbs had seen no evidence from Powell, nor has he since. Id.

Powell had sent her claims about a “Cyber Pearl Harbor” to Dobbs (who forwarded to his team) in advance of the show. Ex.450;Ex.451. Prior to the show, Dobbs published a tweet to the @loudobbs Twitter account with the claim that “The 2020 Election is a cyber Pearl Harbor,” and embedding the very document Powell had sent to him just hours before which stated that Dominion was one off our entities that had “executed an electoral 9-11 against the United States” and “a cyber Pearl Harbor,” that “there is an embedded controller in every Dominion machine,” and that they had “contracts ,program details, incriminating information ,and history” proving these claims.¶179(p); Appendix D.

Later the same day, after Powell appeared on the 5pm broadcast and before the 7pm unedited rebroadcast of the show, Dobbs again tweeted “Cyber Pearl Harbor @SidneyPowell reveals groundbreaking new evidence indicating our Presidential election came under massive cyber-attack orchestrated with the help of Dominion, Smartmatic, and foreign adversaries.” ¶179(r); Appendix D. Dobbs conceded at his deposition that this tweet was false Powell had not presented any such evidence on his

program that day. Ex.111,Dobbs 269
:2-271:5.

People have long used Trump's favored Fox programs to lobby Trump (for example, Roger Stone did so spectacularly well to get a pardon). And this story appeared on one of Trump's favorite shows just over a week before Powell and Patrick Byrne would use the Solar Winds hack (which would be exposed in the interim week, starting on December 14) as their excuse to get Trump to use a claim of foreign election interference to seize the voting machines. In other words, this was the national security excuse Powell and Byrne were seeking to give Trump an excuse to assert Executive authority to seize the voting machines.

Worse still, as Dominion notes, Fox did all this not just knowing that it would harm Dominion. They did this knowing the intent was to harm the United States.

On November 10, Steve Bannon told Maria Bartiromo, straight out, that THE PLAN was to delegitimize Joe Biden.

"71 million voters will never accept Biden. This process is to destroy his presidency before it even starts; IF it even starts ... We either close on Trumps victory or del[e]gitimize Biden ... THE PLAN." Steve Bannon to Maria Bartiromo, November 10, 2020 (Ex. 157)

Carlson, too, knew what he was doing.

On November 18, [Tucker producer Alex] Pfeiffer texted Carlson that powerful election fraud allegations like Powell's "need to be backed up" and could lead to undermining an elected president if Biden's confirmed, to which Carlson responded, "Yep. It's bad."

"It's bad," Tucker recognized from the start.

But that didn't stop him from participating in efforts to undermining the duly elected President.

We've long known that Fox was better understood as a wing of the Republican party than as a news organization (indeed, the filing describes Rupert Murdoch looking for ways to "help[] any way we can" in Georgia).

But this filing makes it clear that in a bid to cater to viewers who were fed false claims by Trump, Fox played right along with the false claims that would lead to insurrection. Jack Smith is already examining multiple parts of this effort. This filing makes evidence that would otherwise be unavailable accessible to prosecutors.

Fox News knew their platforming of Trump's false claims was doing damage to the country. And they did it anyway.

Update: Corrected that Tucker, not Hannity, is the one who immediately said Heinrich should be fired for speaking the truth.