

25-3=22: DIMINISHING REPRESENTATIONS

Less than a day after Sidney Powell pleaded guilty in Georgia, but before he made his curious comments that she would be conflicted from representing him, Trump responded to DOJ's bid to require him to reveal any advice of counsel defense by mid-December, when trial exhibits are due.

In the DOJ motion, they claimed that Trump knew what had been withheld from DOJ under privilege claims.

[T]he defendant knows what information the Government has—and does not have—that might support or undermine the defense. The Government produced in discovery the privilege logs for each witness who withheld material on the basis of a claim of privilege on behalf of the defendant or his campaign, and in some cases the defendant's campaign was directly involved in discussions regarding privilege during the course of the investigation. In other instances, the Government produced court orders requiring the production of material claimed to be privileged. Compelling the defendant to provide notice, and thereby discovery, would be reciprocal of what the Government already has produced. For example, defense counsel publicly identified one attorney on whose advice the defense intends to rely at trial, and the Government has produced in discovery substantial evidence regarding that attorney and his advice, including relevant search warrant returns.⁸ Any material relevant to that attorney's advice that remains shielded by the attorney-client privilege should be produced to the Government at the earliest date to avoid disruption of the trial schedule.

8 That same attorney asserted an attorney-client privilege with the defendant and his campaign to shield material from disclosure to Congress. See *Eastman v. Thompson*, Case No. 8:22-cv-00099 (C.D. Cal.), ECF No. 260 at 15 (“The evidence clearly supports an attorney-client relationship between President Trump, his campaign, and [plaintiff] during January 4-7, 2021.”).

Trump appears to disagree with DOJ’s claim that he knows the universe of materials withheld on privilege grounds. He wants DOJ to share with him everything that DOJ knows about over which a privilege claim has been made.

He even suggests that some of these 25 people, potentially including Powell, were not claiming *his* was the privilege they were protecting.

The prosecution claims that 25 witnesses have invoked privilege. Presumably, the prosecution also received privilege logs or other privilege invocations in response to document requests. The prosecution should be required to disclose these 25 witnesses, along with all of the logs in which the prosecution is interested. At this time, defense counsel has not been able to fully review the voluminous discovery in this matter, which is indeed impossible within the schedule set by the Court.

At a minimum, the prosecution should (1) identify all materials within their discovery production that they assert are attorney-client privileged information, work product, or are otherwise protected; (2) describe the basis for the assertion that the materials are protected and who holds the privilege with respect to those materials; (3) identify the 25 witnesses referenced in the motion, or any other witnesses, that have asserted the

attorney-client privilege or who the prosecution believes possess attorney-client privileged information; and (4) identify all materials not within their discovery production that they believe the defense would be required to produce regarding an advice of counsel defense, including the source of the materials.

His filing even made an obscure comment, taunting that DOJ would need to turn over “what it recovers” from previously privileged witnesses and records.

6 The prosecution does not seem to recognize that if the defense produces privileged discovery, the prosecution then has an obligation to produce what it recovers from its investigation of the previously privileged witnesses and records.

That was Friday. Also on Friday, Kenneth Chesebro pled guilty in Georgia. And Jenna Ellis has (unsurprisingly, given that Trump refused to pay for her defense) also pled guilty.

Just for reference, here are the privilege logs that Rudy and Bernie Kerik submitted in the Ruby Freeman case; between the two of them, Jenna appears over 150 times, including on a bunch of Dominion-related communications.

There were clearly 25 lawyers in the know. But Trump seems to have some doubts whether he knows who those lawyers were representing.

As more of them plead guilty, he may have more urgency in wanting to learn the full details of their privilege claims.

Update: Folks are disputing how useful Jenna will be as a cooperating witness. I agree with NYT: she’s more valuable than Ken Chesebro, and possibly even than Sidney Powell.

Here are the people that she at first tried to claim privilege over with the January 6

Committee, only to invoke the Fifth Amendment:

- Mark Meadows, with whom she exchanged 350 texts
- Steve Bannon
- Someone who is probably Ali Alexander
- Doug Mastriano
- Eric Trump
- Jay Sekulow
- Eric Herschmann
- Boris Epshteyn
- Alex Bruesewitz
- Andrew Giuliani, Peter Navarro, and Navarro aide Joanna Miller
- Christina Bobb
- Phil Waldron
- Sean Hannity producer Linda McLaughlin
- Jeanine Pirro