

JOHN ROBERTS' SORDID LEGACY: 14 PAGES OF MEAN TWEETS

"One of the ways Trump" disseminated false claims of election fraud, Jack Smith's immunity briefing describes, "was by Tweet, day in and day out."

I'm still wading through Jack Smith's immunity briefing. Later today, I plan to explain how we got here and how Trump's lawyers will try to bury it. Then I'll show the substance of their argument, how prosecutors plan to convict Donald Trump for attempting to steal an election without using any evidence that Chief Justice John Roberts has deemed official and therefore immune.

But first I want to talk about an utterly remarkable passage in the filing: 14 pages examining Trump's mean tweets.

As I'll explain in more detail later, the filing first lays out, in Part I, what evidence prosecutors plan to rely on, then sets up a legal framework to conduct this analysis, and then explains, in Part III, why the evidence laid out in the first part is not immune.

In Part III, prosecutors go both by type of evidence (for example, conversations with Republican state officials and politicians) to explain why such conduct is not immune. The section looks like this:

- Trump's interactions with Pence
 - Trump's interactions with Pence were official, but presumption of immunity is overcome
 - Trump's interactions

with Pence as a running mate were unofficial

- Trump's interactions with officials from swing states
 - The interactions were unofficial (followed by five instances)
 - Even if they were official, the government can rebut the presumption of immunity
- Trump's efforts to organize fake electors
 - The effort was unofficial
 - Even if it was official, the government can rebut the presumption of immunity
- Trump's public speeches and tweets as a candidate
 - The statements were unofficial
 - Speeches (with analysis of the two prosecutors want to use, one in Georgia and the January 6 one)
 - Tweets
 - Other public statements
 - Parts of Trump's

statements that are official can be excised

- Trump's interactions with White House staff (including Eric Herschmann, Dan Scavino, Molly Michaels, and two others)
 - The interactions were unofficial
 - The government could rebut any presumption of immunity
- Other evidence of knowledge and intent
 - The evidence was unofficial
 - Federal officials (including Bill Barr and Chris Krebs)
 - Evidence about Trump's use of Twitter
 - Trump's post-Administration statements
 - Even if it were official, the government could rebut any presumption of immunity

This section takes up 75 pages of the brief.

Of that, 18 pages are dedicated to analysis about Trump's Tweets (not including the

additional pages describing how they plan to explain Trump's Twitter habits). Fourteen of those pages go through Trump's manic Tweets from the period, each time explaining why such Tweets should not be viewed as the official acts of the President of the United States.

The section describes six ways Trump's Twitter habit served his coup attempt:

- Casting doubt on election integrity
- Making false claims of election fraud
- Attacking Republicans who speak the truth about the election
 - Al Schmidt
 - Chris Krebs
 - Rusty Bowers and four Pennsylvania State GOP legislators
 - Wisconsin Supreme Court Justice Brian Hagedorn
 - Chris Carr
 - Governor Doug Ducey, Governor Brian Kemp, and Secretary of State Brad Raffensperger
- Exhorting people to come to January 6
- Pressuring Mike Pence
- Almost getting Mike Pence killed

Prosecutors don't include all the attacks Trump made on Twitter – for example, while Section I describes his attacks on Shaye Moss and Ruby Freeman, prosecutors don't include them in the immunity analysis. The immunity analysis instead

focuses only on the people with whom, Trump might argue, he was engaged in official business by ginning up death threats against them.

John Roberts not only rewrote the Constitution to protect Donald Trump. He forced prosecutors to spend 14 pages arguing that it is not among the job duties of the President of the United States to attack Republicans who've crossed him on Twitter.

This is what the Chief Justice wants to protect. This is the all-powerful President John Roberts wants to have. Someone who can sit in his dining room siccing mobs on fellow Republicans.

Who knows whether it will work? Who knows whether these right wing Justices will go that far – to argue that even the President's mean Tweets targeting members of his own party must be protected from any accountability?

But prosecutors personalized it.

As noted above, the 14 pages analyzing mean Tweets follows the analysis of two rally speeches, in which prosecutors first show the January 4 Georgia speech was a campaign event, and then (among other things) lay out the similarity between that speech and Trump's January 6 one.

Among the things Trump included in both speeches was an attack on the Supreme Court:

The defendant, who in his capacity as a candidate had suffered personal legal defeats in his private, election-related litigation at the Supreme Court, attacked it (Dalton at GA 1095; "I'm not happy with the Supreme Court. They are not stepping up to the plate. They're not stepping up." Ellipse at GA 1125: "I'm not happy with the Supreme Court. They love to rule against me.").

Of course, the Justices *can't* view that as an official act. It would be anathema to the very principles of separation of powers the Justices

claim to be guarding. Plus (as noted here and elsewhere), Trump had specifically labeled his intervention in Ken Paxton's lawsuit as done in his personal capacity. But building off how obviously unofficial this attack on John Roberts and his buddies is, it makes it all the more obvious that Donald Trump's mean Tweets aren't official acts either.

Though the inclusion of Trump's attacks on them also might get these partisan hacks to think more seriously about the nearly identical exhortations Trump made on Truth Social before they decided to rewrite the Constitution in his favor.

Update: Fixed where I said that Trump intervened in Ken Paxton's lawsuit in his official capacity—he specifically said he did so in his personal capacity as a candidate.