

The Indictment of Rhodes

by Paloma A. Capanna
Attorney & Policy Analyst
www.2AMPatriot.com

On January 12, 2022, Stewart Rhodes, founder and leader of the Oath Keepers, was indicted on multiple charges, the headline of which was “seditious conspiracy.” The charges relate to the events of January 6, 2021 at the U.S. Capitol and Rhodes’ role, if any. Considering that we’ve waited thirteen months for this document to reveal what the FBI and the DOJ learned during one of its largest scale criminal investigations of Americans, the Indictment fell far short of all of the media and congressional hype.

The essential story told by the DOJ through the “Indictment” is that Rhodes believed the 2020 election was stolen from President Trump and was influenced in his decision on what to do next by a nameless man in a video on Bitchute.com who laid out his rendition of the Serian peoples’ revolution in 2000 against Yugoslavian Dictator Milosevic. The “Indictment” describes Rhodes’ claims to have contacted the guy in the video, and that Rhodes republished the man’s step-by-step instructions on how to respond to the election results, here, in America.¹

Rhodes allegedly wrote on November 7, 2020: “[W]e must now do what the people of Serbia did when Milosevic stole their election. Refuse to accept it and march *en-mass* (*sic*) on the nation’s Capitol.” This statement of marching to the Capitol hardly constitutes illegal behavior. Neither does the first few instructions on the list: “peaceful protests,” “civil disobedience,” “connect with local police,” and “organize by neighborhoods to stay safe.” These top-line activities are protected free speech and freedom of assembly under the First Amendment of U.S. Constitution. Even Rhodes’ statement to “gather millions at the Capitol” is the definition of American civil rights.

¹ *N.B.*: the video is posted by “PhD” on a Bitchute.com channel created November 2019. There is no name or address associated with the channel. As of 01/16/2022, it posts 15 videos and 203 followers. It includes two claims of post-secondary degrees without naming schools or years of graduation. The only other thing on the “About” page is the sentence “Courageous enough to mop down the floor with quasi experts in 2020.” The page could just as easily have been created by the FBI as bait, particularly given the creation date. In the comments, there’s a link to a related website UnlearningCommunism.com with an address of “Texas, USA.” Website creation date 03/13/2021. Last blog date 04/11/2021. The book listed on the website was self-published August 21, 2021 and bears an invalid ISBN number, 9798460361977. The book lists authors Aleksandar Savic and Katarina Jovanovic.

Rhodes' "Call to Action!" was allegedly published to the Oath Keepers website on November 10, 2020, including the step that potentially put it beyond protected liberties: "There were no barricades strong enough to stop them, nor the police determined enough to stop them. Police and Military aligned with the people after few hours of fist-fight. We stormed the Parliament. And burned down fake state Television!" As a telling of Serbian history, it's fine. As a leader of an organization, recommending to membership to follow in its footsteps – I think we will share the same reaction.

But whether this was Rhodes' plan of action for January 6, 2021 is THE question that is not answered by the allegations of the "Indictment." The "Indictment" contains no allegations that Rhodes was behind a specific plan or that he trained or directed anyone to engage in physical altercation with officers with the objective of taking over control of operations at the Capitol. There is certainly no allegation that Rhodes intended to attempt to install President Trump as the true victor of the elections. There is no charge of "insurrection" levied against Rhodes, and this lack of a plan or what that plan would have been creates weakness to what amounts to a lesser "seditious conspiracy" charge. It may not be enough for that, either.

To achieve a conviction of Rhodes under 18 U.S.C. §2384, "Seditious conspiracy," the DOJ will have to prove that (i.) two or more persons (ii.) conspired (iii.) to prevent, hinder, or delay the execution of law (iv.) by force. There are a few choices for what I am labeling "iii," or the third element of the crime. I lay out here the one selected by the DOJ against Rhodes. In other words, the DOJ must now prove that (iii.) Rhodes intended to prevent, hinder, or delay the completion of the counting of the ballots of the Electoral College to certify Joseph Biden as the President of the United States and that (iv.) Rhodes intended to do so by force.

Let's take a moment to look at the "by force" element of the charge. While the DOJ makes allegations that Rhodes and others converged in Virginia ahead of January 6, 2021 with firearms, ammunition, and gear, the DOJ goes to lengths in the "Indictment" to describe how the firearms were left at a Virginia hotel under the supervision of a co-defendant.

- The DOJ does not allege these firearms to have been transported, used, or threatened to be used in Washington, D.C. There are no firearms charges.

- The DOJ does not allege that the inter-state transportation of one or more of these firearms was illegal. There are no firearms transportation charges.
- The DOJ does not allege that any firearm was purchased illegally. There are no unlawful firearms purchase charges.
- The DOJ does not allege that any individual firearm was illegal for individual (private) ownership. There are no charges that any firearm is, e.g., an unregistered NFA Class 3 fully automatic firearm.
- The DOJ does not provide an ammunition count or otherwise claim the quantity of ammunition was illegal. There are no ammunition charges.
- The DOJ does not allege any illegal ownership or possession of a handgun by a non-permit holder. There are no handgun charges or permit holder charges.

It is true that the DOJ uses storytelling narrative in the “Indictment” such as “The QRF teams were prepared to rapidly transport firearms and other weapons into Washington, D.C., in support of operations aimed at using force to stop the lawful transfer of presidential power,” but there are no supporting factual allegations. Speculation. Conclusion. Conjecture. Guesswork. Fanciful imaginings. Perfectly objectionable writing that does not belong in a charging document. This DOJ language serves no legal purpose.

And here comes your reasonable doubt. One can just as easily read that several men and women brought firearms to Virginia and were ready to have the same transported into the Capitol – in case fighting broke out that warranted self-defense.

Per the DOJ, Rhodes and his co-defendants went unarmed to the U.S. Capitol. on January 6, 2021.

The crime of “seditious conspiracy,” as charged by DOJ, requires “by force” and these defendants were unarmed. Unarmed when they went to the Capitol. Unarmed when they entered the grounds and some entered the building. Unarmed when they left, having caused no property damage and, with very little exception, having refrained from engaging with law enforcement.

It is true that the Indictment contains specific allegations about Rhodes buying firearms, ammunition, and accessories and gear ahead of January 6, 2021. Adding up the various

allegations, it amounts to \$40,000 spent in approximately two weeks, in two states, for two long guns, ammunition, accessories, and gear. Again, no crimes charged relating to these purchases, ownership, possession, or transportation of the purchased items.

Reasonable doubt, part deux, is that Rhodes was preparing for an upcoming fundraising dinner, including gun raffle and silent auction.

Looking at the “Indictment” more simplistically, we see that this document is as poorly drafted as have been the prior seven (7) indictments against twenty other defendants. The first indictment issued January 16, 2021 against three co-defendants. In these months, twenty defendants have been charged in a manner that frames them as being “members” of the Oath Keepers, even where an application is alleged to have been submitted as late as January 5 (the day before). One co-defendant is conceded not to have been a “member,” but has been reframed as a “coach on the sidelines.” Four of those defendants have already settled by plea deal, including a provision that they will serve as government informants. The term has no expiration date or limit to the immediate case.

Equally, his “Indictment” draws from the predecessor indictments, while tossing out various allegations previously made, and blending in new allegations. This mess of words that is the new “Indictment” is a nightmare for defense attorneys. I can well project that the currently scheduled trial date of April 19, 2022 will again be adjourned, through no fault of the defense.

Note also that the DOJ has failed as yet to provide defense counsel with fundamental *Brady* materials (the exculpatory stuff). Some items have been released under seal to defense counsel; much of it, has not. Almost none of it is available to the public. In a couple of non-Oath Keeper cases, motions have been made to release individual items, but none that I am aware of concerning the Oath Keeper defendants.

In some ways, for defense counsel, it is as if the entire past year of work, including lengthy motions to dismiss two particular charges, was for naught. Rhodes is the star of the media circus, headed up by his estranged wife. (She claims not to have spoken for four years, but see her now on MSNBC and beyond.) The co-defendants are no more than collateral damage, even though three have been in jail, pending trial, for nearly a year.