

Los Angeles Lawyer

OCTOBER 2023

On the Cover

Inside the January 6th Committee

Washington, D.C. lawyers Soumya Dayananda and Timothy J. Heaphy present the committee's foundational legal principles and procedures as well as findings and recommendations

page 18



PLUS

SCOTUS
Rules Warhol
Depiction
of Prince
Not Fair Use
page 24

Attorney
Fee Motions
page 10

Restricting
Campaign
Contributions
page 13

BY SOUMYA DAYANANDA AND TIMOTHY J. HEAPHY



INSIDE THE JANUARY 6TH COMMITTEE

The goal of the “roadmap to justice” provided by the investigating team’s vast array of evidence concerning a conspiracy against the very foundations of American democracy is to ensure such an attack will not occur again



ON JANUARY 6, 2021, a violent mob stormed the United States Capitol and interrupted the joint session of Congress convened to certify the results of the 2020 presidential election. The rioters engaged in ruthless acts of violence, fueled by their misguided belief that the election had been infected by widespread voter fraud and was hence illegitimate. The attack caused substantial damage to the Capitol complex, hundreds of injuries to police officers, and five deaths. More broadly, the events of January 6 threatened to interrupt the peaceful transfer of power, a bedrock principle of American democracy.

Soumya Dayananda is a partner in the Washington, D.C. office of Willkie Farr & Gallagher LLP where she is a member of the Investigations & Enforcement Practice. Timothy J. Heaphy is a partner in Willkie’s Litigation Department in Washington, D.C. where he is co-chair of the Investigations & Enforcement Practice. Dayananda and Heaphy served, respectively, as a senior investigative counsel and the chief investigative counsel for the U.S. House of Representatives’ Select Committee to Investigate The January 6th Attack on the United States Capitol.



Approximately six months after the attack on the Capitol, the U.S. House of Representatives formed a committee to investigate the events of January 6. On June 30, 2021, the House passed Resolution 503, creating the Select Committee to Investigate the January 6th Attack on the United States Capitol (Committee). The enabling legislation empowered the Committee to investigate the relevant facts and circumstances relating to the attack on the Capitol and recommend “changes in law, policy, procedures, rules, or regulations that could be taken...to strengthen the security of the United States and American democratic institutions against violence, domestic terrorism, and domestic violent extremism.”¹ House Resolution 503 provided for bipartisan representation on the Committee and directed it to issue a report before its expiration at the end of the 117th Congress on January 3, 2023.

Composition and Work Product

Speaker Nancy Pelosi named Representative Bennie Thompson (Democrat-Mississippi) to chair the Committee and democratic representatives Jamie Raskin (Maryland), Adam Schiff (California), Zo Lofgren (California), Pete Aguilar (California), Elaine Luria (Virginia) and Stephanie Murphy (Florida) as members of the Committee. The Speaker subsequently named two additional members—both Republican; Vice Chairwoman Liz Cheney (Wyoming) and Representative Adam Kinzinger (Illinois) joined the Committee soon after its inception and completed the list of nine total members. The presence of both Republicans and Democrats on the Committee and the members’ shared commitment to conducting a thorough, balanced investigation ensured that its work was bipartisan—an uncommon occurrence in today’s Washington.

Over the course of its roughly 18-month tenure, the Committee interviewed more than 1,000 witnesses—over half in transcribed interviews or formal depositions. The Committee issued over 100 subpoenas, reviewed more than a million documents, and reviewed hours and hours of video footage of the attack on the Capitol. The Committee was forced to engage in substantial and time-consuming litigation over the course of its work, much of which involved assertions of privilege by individuals from whom the Committee sought information.

The Committee presented its factual findings and recommendations to the American people during the course of the investigation. The Committee held 11 public hearings from July of 2021 through

December of 2022, each of which presented evidence regarding the facts and circumstances surrounding the attack on the Capitol. The Committee’s work culminated in the issuance of an 845-page final report (hereinafter referred to as the “Report”), which outlined its findings and recommendations.² In its final hearing and Report, the Committee specifically outlined evidence of the violation of federal crim-

In contrast to the criminal grand jury process, congressional committees are forced to pursue relief via civil litigation—a process that is neither expeditious nor efficient.

inal statutes by former President Donald J. Trump and a number of co-conspirators and referred those findings to the U.S. Department of Justice (DoJ).

Eight months after the Select Committee completed its work, the DoJ followed the recommendation of the Committee and brought criminal charges against former President Trump. On August 1, 2023, Special Counsel Jack Smith announced the return of a four-count federal indictment charging Trump with conspiring to interfere with an official proceeding, disrupt the lawful function of government, and deprive Americans of their voting rights, all of which related to his efforts to overturn the 2020 election.³ Several weeks later, Fulton County Georgia District Attorney Fani Willis announced similar charges against Trump and 18 co-defendants for their broad sweeping efforts in Georgia to overturn the election.⁴ The evidence described in both indictments reflects the investigative findings of the Committee, and the charges themselves are consistent with the Committee’s criminal referrals.

In his Foreword to the Committee’s final Report, Chairman Bennie Thompson observed as follows:

The Committee believes a good starting point is the set of recommendations we set forth in our report, pursuant to House Resolution 503. Driven by our investigative findings,

these recommendations will help strengthen the guardrails of our democracy.

Beyond what we recommend, in my view and as I said during our hearings, the best way to prevent another January 6th is to ensure accountability for January 6th. Accountability at all levels.

I have confidence in our institutions at the state and local level to ensure accountability under the law. As this report is released, we see those processes moving forward.⁵

The House Select Committee investigating the January 6th Attack on the United States Capitol was the most consequential congressional investigation since the Watergate Committee in the 1970s. The Committee succeeded in two distinctly important ways. First, the investigation educated the nation on the role of the former president and his allies to overthrow the 2020 presidential election. The committee was able to gather significant information and present that information to the public in unique public proceedings. Second, the Committee’s findings laid a foundation for criminal investigations by the Department of Justice Special Counsel’s Office and the Fulton County District Attorney’s Office. The subsequent indictments build upon that foundation and provide an opportunity of accountability.

Committee’s Bipartisan Staff

The raw investigative material generated and presented by the Committee was largely the work of its diverse, bipartisan staff. Unlike the typical congressional committee which has a majority and minority staff, the Select Committee had a single staff aligned in the Committee’s purpose and unified in informing its conclusions. The Committee’s staff came from diverse backgrounds and included lawyers—some of whom were former federal prosecutors, subject matter experts, and other professionals. The nine members of the Committee were actively involved, participating in interviews and shaping the direction of the investigation throughout the 18 months of the Committee’s work.

The investigative work was divided among five separate color-coded internal teams. Each team focused on one aspect of the investigation: 1) Blue—law enforcement and military preparation and response, 2) Red—organization and planning of the attack, 3) Gold—political efforts regarding allegations of election fraud and pressure on decision makers, 4) Purple—the broad emergence of domestic violent

extremism and role of social media in the growth of extremist groups and events, and 5) Green—funding streams for the rallies and fundraising efforts related to the fraudulent election message. Each team was led by a senior investigative counsel and staffed with approximately five attorneys or subject matter experts. The teams worked closely together, ensuring common understanding of facts and thorough consideration of all information gathered. The investigative teams conducted the interviews and reviewed the documents and other material described above, culling that information for salient points and laying the factual foundation for the Committee’s findings.

Driven by the reality that it would lapse at the end of the 117th congressional term on January 3, 2023, the Committee functioned at a relentless pace. At its inception, the Committee requested documents from numerous government agencies and served preservation requests for records to telecom and social media companies. On September 23, 2022, the Committee issued its first subpoenas to former White House adviser Steve Bannon, former White House Chief of Staff Mark Meadows, former White House Deputy Chief of Staff for Communications Dan Scavino, and former Department of Defense Chief of Staff Kash Patel. These first subpoenas set the tone of the investigation, conveying the Committee’s intent to use all available tools to obtain relevant information. The Committee would go on to issue over 100 subpoenas and conduct hundreds of consensual interviews and depositions over the course of its investigation—following through on that aggressive initial approach.

Successful Litigation

Not all Committee subpoenas were honored, which forced the Committee to file or defend numerous lawsuits involving privilege claims raised by the former president and officials of his administration. The general counsel of the House of Representatives managed the Committee’s litigation, working with numerous lawyers. Their filings in these privilege matters urged courts to act within the time period given the seriousness of the investigation into events that directly impacted democracy. Several courts responded to the urgency of the timeline and ordered the opposing parties to respond to the Committee’s request for documents, leading to a number of significant decisions. While not all cases were successful or were able to be resolved before the Committee’s expiration, the Committee did obtain

two significant victories that materially advanced the investigation.

First, the former president attempted to block the Committee’s requests to obtain 750 documents from the National Archives.⁶ Former President Trump argued that he had blanket executive privilege over the documents and filed suit in federal court in Washington seeking to quash the Committee’s subpoena to the National Archives for these documents. The Committee argued that the need for congressional oversight of the January 6th attack on the Capitol overcame any claim of executive privilege, specifically arguing in its brief that “[t]he urgency of the work cannot be overstated. The threat that brought the attack on January 6 is ongoing. Those who falsely claimed the election was stolen (including Mr. Trump) continue to do so.”⁷ The Committee also cited the fact that President Joe Biden waived executive privilege over the subject documents, which precedent suggested should weigh heavily in evaluating the former president’s privilege claim.

Judge Tanya Chutkan, the same district court judge who will oversee Trump’s criminal trial in March of 2024, issued a 39-page opinion on November 9, 2021, denying the former president’s executive privilege claim. Judge Chutkan specifically noted that “Presidents are not kings, and Plaintiff is not President. He retains the right to assert that his records are privileged, but the incumbent President ‘is not constitutionally obliged to honor’ that.”⁸ Upon the former president’s appeal, the District of Columbia Circuit Court of Appeals unanimously agreed with Judge Chutkan that Trump could not assert executive privilege. On January 16, 2022, the Supreme Court denied the former president’s petition for certiorari, which resulted in the release to the Committee of draft speeches, handwritten notes, call records, daily diaries, photographs and other critical documents that provided deeper insight into the activity of Trump and other White House officials in the days leading up to and on January 6.

In a second victory, soon after the Supreme Court’s ruling in January 2022, the Committee served a subpoena on Chapman University, seeking documents generated and possessed by John Eastman, an attorney who served as dean of Chapman’s law school. Eastman attempted to block the request by filing a claim in federal court, arguing that the emails were protected from disclosure to the Committee on the basis of the attorney-client and work product privileges.⁹ In that case,

District Court Judge David O. Carter of the Central District of California issued a 44-page opinion on March 28, 2022, that rejected Eastman’s claims. Judge Carter relied upon the crime-fraud exception to the attorney-client privilege in ruling that the Committee was entitled to the subpoenaed documents, finding specifically that it was “more likely than not that President Trump corruptly attempted to obstruct the Joint Session of Congress on January 6, 2021.”¹⁰ Judge Carter summarized the roles of the co-conspirators as follows:

Dr. Eastman and President Trump launched a campaign to overturn a democratic election, an action unprecedented in American history. Their campaign was not confined to the ivory tower—it was a coup in search of a legal theory. The plan spurred violent attacks on the seat of our nation’s government, led to the deaths of several law enforcement officers, and deepened public distrust in our political process.¹¹

In addition to prompting the release of additional significant documents, Judge Carter’s ruling laid a foundation for subsequent criminal referrals that the Committee would issue months later. His opinion was notably the first time a court acknowledged evidence of criminal activity. The Committee would later cite Judge Carter’s opinion in its ultimate conclusion that the former president and co-conspirators engaged in criminal conduct.

Hearings and Challenges

Rather than wait until the conclusion of its work, the Committee began presenting its findings to the American people in a series of hearings in the summer of 2022. These hearings were unlike any congressional proceedings that had been seen before. In addition to live witnesses who provided first-hand accounts of relevant events, the Committee presented additional material in videotaped presentations. As part of the preparation, staff identified key portions of videotaped interviews and key exhibits and worked closely with a dedicated production team to script each hearing. The result was each hearing provided a compelling visual narrative combined with gripping facts that educated the public for the first time on the role of the former President and his co-conspirators.

The summer hearings began with a primetime hearing on June 9, 2021, in which Vice Chairwoman Cheney methodically outlined the former president’s multi-prong effort to overturn the election. Each

subsequent hearing was led by one or two members of the committee and featured an aspect of the multi-part plan, including hearings that focused on rebutting false claims of election fraud, the former president's pressure of Vice President Michael R. Pence, his outreach to state officials in Georgia, Arizona, and Pennsylvania—efforts to change leadership at the DoJ—as well as his inaction during the attack on the Capitol on January 6. The hearings were tremendously popular with television viewers and attracted audiences far broader than the typical congressional proceeding. They set a new standard for congressional proceedings and may impact the ways in which committees present information in the future.

The investigation faced a number of substantial challenges that made the Committee's work difficult. Unlike criminal prosecutors, congressional investigators lack viable subpoena enforcement mechanisms or any feasible legal process for prompt resolution of privilege disputes. While courts have consistently recognized the power of the Congress to conduct oversight and investigations, they have drawn a clear distinction between the broad power of the executive to compel information and the more limited authority of the Congress. In a seminal 1957 decision, the Supreme Court found that Congress is not "a law enforcement or trial agency."¹² While acknowledging that it is "unquestionably the duty of all citizens to cooperate with the Congress in its efforts to obtain the facts needed for intelligent legislative action," the Court remarked that such power "is not unlimited" and must be "related to and in furtherance of a legitimate task of Congress."¹³ Multiple witnesses invoked the "legislative purpose" objection to the Committee's subpoenas, in negotiations with the Committee over the appropriate reach of subpoenas and ultimately in litigation.

When an individual defies a congressional subpoena, the House of Representatives may refer a witness's noncompliance with a validly issued subpoena to the DoJ for consideration of criminal contempt charges.¹⁴ The Committee initiated contempt proceedings against four individuals—Steve Bannon, Peter Navarro, Dan Scavino, and Mark Meadows. The process began by a vote taken by the Committee, followed by a vote by the full House of Representatives and then a referral to the DoJ. Of the four referrals, the DoJ initiated proceedings for criminal contempt for Steve Bannon, who had served as the chief strategist and counselor

to the president, and Peter Navarro, former director of the White House Office of Trade and Manufacturing Policy in President Trump's administration. Both were convicted on two counts of contempt of Congress by the U.S. District Court for the District of Columbia. Bannon was sentenced to four months of imprisonment and ordered to pay a fine.¹⁵ Navarro is scheduled to be sentenced on January 12, 2024.

Another challenge faced by the Committee were the more than 30 witnesses who invoked their Fifth Amendment privilege against self-incrimination, including Jenna Ellis, John Eastman, Phil Waldron, Michael Flynn, Mark Meadows, Jeffrey Clark, Roger Stone, Kenneth Chesebro, Mike Roman, Nick Fuentes, and Stewart Rhodes.¹⁶ Invoking the Fifth Amendment guarantee against self-incrimination in criminal cases requires that a witness reasonably believes that answering the question posed would adduce evidence that could be used in a criminal proceeding against the witness and where the testimony would not only support conviction in and of itself but also where it would furnish a link in the chain of evidence needed to prosecute.¹⁷ Other witnesses invoked executive privilege, including White House Counsel Pasquale Anthony "Pat" Cipollone, President's Chief of Staff Mark Meadows, Steve Bannon, Director of the White House Office of Trade and Manufacturing Policy Peter Navarro, White House Attorney Eric Herschmann, and Assistant Attorney General Jeff Clark. Executive privilege is a qualified privilege derived from the constitutional provision of separation of powers, giving the president power to withhold documents or information, which right is intended to advance goals of giving presidents confidentiality and ensuring their advisors' candor.¹⁸

Congress lacks efficient, timely processes to adjudicate these privilege claims by witnesses, however meritless they may be. In a criminal grand jury investigation, the DoJ has a mechanism to question the legality of the assertion of any privilege and obtain an immediate resolution. Prosecutors can ask the chief judge supervising the grand jury for a prompt ruling on a witness's privilege claim. If the judge rules in favor of the prosecutor, the court of appeals immediately considers the matter by evaluating a motion to stay. Moreover, the DoJ can provide immunity to a witness who has critical information. None of these procedural paths toward resolution of privilege claims is available to congressional

committees. In contrast to the criminal grand jury process, congressional committees are forced to pursue relief via civil litigation—a process that is neither expeditious nor efficient. In the case of the Committee, civil adjudication of privilege claims by numerous witnesses extended beyond the Committee's anticipated duration. This cumbersome, time-consuming process handicaps Congress's ability to adjudicate meritless privilege claims and obtain relevant information.

Criminal Proceedings

In December 2022, the Committee issued its final 845-page Report that detailed the multi-part effort by former President Trump and his allies to overturn the 2020 presidential election.¹⁹ At its final hearing on December 19, 2022, the Committee made criminal referrals to the DoJ, which included: obstruction of an official proceeding,²⁰ conspiracy to defraud the United States,²¹ conspiracy to make a false statement,²² and aiding an insurrection.²³ At the conclusion of the Committee's work, it released all interview transcripts and documents gathered to the public and to the special counsel at the DoJ, in support of the Committee's criminal referrals.

This "roadmap to justice," as described by Chairman Bennie Thompson, was largely followed by the DoJ and the Fulton County District Attorney's office. Both the federal and state Georgia indictments mirror the facts in the hearings and the Report. The federal indictment, issued on August 1, 2023, charged four counts against former President Trump charging him with 1) conspiracy to defraud the United States,²⁴ 2) conspiracy to obstruct an official proceeding,²⁵ 3) obstruction of and attempt to obstruct an official proceeding,²⁶ and 4) conspiracy against rights.²⁷ Out of these four counts, evidence for all but one, Section 241 of Title 18 of the U.S. Code, was discussed in detail in the Report.

Additionally, the actions of each of the unnamed co-conspirators described in the federal criminal indictment were detailed in the Report. For example, Rudy Giuliani, Co-Conspirator No. 1, was interviewed by the Committee concerning his months-long effort promoting the baseless theory that the election had been stolen, particularly in key battleground states. John Eastman, Co-Conspirator No. 2, was featured in a summer hearing and in the Report as the architect of the memos setting forth the theory that Vice President Pence can unilaterally reject slates of electors and that he can accept unofficial slates of electors, if there are concerns regarding elec-

tion fraud. A June hearing that focused on Trump's efforts to pressure the DoJ to declare there was widespread fraud featured the role of Co-Conspirator No. 4, Jeffrey Clark, who drafted a letter advocating for the Georgia General Assembly to reconvene to certify the vote based on the false ongoing DoJ election fraud investigation.²⁸

On August 14, 2023, a grand jury in the Fulton County Superior Court charged former President Trump and eighteen other defendants on a total of 41 counts. Again, much of the evidence outlined in the indictment had been previously publicly revealed during the Committee's hearings and in the Report. For instance, the Georgia indictment found that the defendants falsely accused Ruby Freeman, a Fulton County election worker, of committing election crimes in Fulton County, Georgia.²⁹ The Report discusses how former President Trump and his team were fixated on Freeman and that President Trump and Giuliani harassed and intimidated her by mentioning her name repeatedly in various meetings with state legislators and in public rallies, peddling the false claim that she traded USB drives to affect votes.³⁰ Yet another instance of overlap is where the Georgia indictment identifies Jeffrey Clark as knowingly and willfully making a false representation in a letter to the Georgia General Assembly, saying that the DoJ had identified evidence that "may have impacted the outcome of the election in multiple States, including the State of Georgia."³¹

In the upcoming criminal trials, the defendants will have the opportunity to challenge the evidence gathered by the Committee and augmented by the criminal prosecutors who have pursued indictments. While the former president and his co-defendants are presumed innocent, their public statements suggest they will present some sort of affirmative defense to the pending charges. The former president and other defendants may assert a number of potential defenses including 1) an assertion that he lacked specific intent to disrupt the joint session due to a sincere belief that he won the election, 2) he was exercising his right to free speech to challenge the election results, and 3) he relied at all times on the advice of counsel.

Evidence developed by the Select Committee will undoubtedly be used to rebut these potential defenses. For example, an argument that the former president believed he won the election will be belied by the testimony of all those who told him that in fact he had lost, including William

(Bill) Barr, Pat Cippolone, Gene Scalia, Jason Miller, Matt Oczkowski, William Stepien, and Mike Shirkey. Further evidence undermining this argument is his own acknowledgement that indeed he lost; the Report records the following exchange between President Trump and Meadows: "I don't want people to know we lost, Mark. This is embarrassing. Figure it out. We need to figure it out. I don't want people to know that we lost."³² Moreover, there is Trump's comment to General Mark Milley, Joint Chief of Staff, "Yeah, you're right, it's too late for us,.... We're going to give that to the next guy," which was included in the indictment.

Similarly, any defense centered on his right to free speech will easily be challenged by evidence regarding the former President's conduct. The Select Committee developed evidence that the former President took specific steps to interfere with the joint session, extending well beyond mere public statements expressing lack of faith in the election results. Actions like frequent outreach to state officials, including crucial conversations with Vice President Pence, Brad Raffensperger, and other state and local officials, extend well beyond protected speech.

Finally, to assert an affirmative defense of reliance on counsel depends on Trump's demonstrating that any violation of the law was unintentional; a defendant who reasonably relies on the advice of counsel may "not be convicted of a crime which involves willful and unlawful intent."³³ Advice of counsel is not a separate and distinct defense but rather is a circumstance indicating good faith, which the trier of fact is entitled to consider on the issue of intent. The Select Committee developed evidence showing that then-President Trump ignored the counsel of numerous lawyers, including the former Attorney General Bill Barr, who explicitly told him there was no path to victory.

The January 6 attack on the United States Capitol was an unprecedented event. The response to that awful day was similarly unprecedented—a bipartisan fact-finding process that furthered our common understanding of events and laid a foundation for accountability. As Chairman Thompson indicated, the Committee's ultimate goal was to provide information that will make any subsequent attack on democracy less likely. History will judge whether that goal was or was not achieved. ■

¹ H.R. 503, 117th Cong. § 4(c) (2021), available at www.congress.gov/bill/117th-congress/house

-resolution/503/text/ih (last visited Sept. 25, 2023).

² FINAL REPORT OF THE SELECT COMMITTEE TO INVESTIGATE THE JANUARY 6TH ATTACK ON THE UNITED STATES CAPITOL, (2022), available at <https://www.govinfo.gov/content/pkg/GPO-J6-REPORT/pdf/GPO-J6-REPORT.pdf> (last visited Sept. 25, 2023) [hereinafter REPORT].

³ United States v. Trump, No. 1:23-cr-00257-TSC (D. D.C. Aug. 1, 2023), available at https://www.justice.gov/storage/US_v_Trump_23_cr_257.pdf.

⁴ Georgia v. Trump et al., No. 23-SC-188997 (Aug. 14, 2023), available at <https://int.nyt.com/data/documenttools/georgia-indictment-trump/daed97d37562a76f/full.pdf>.

⁵ REPORT, *supra* note 2, at xii.

⁶ Trump v. Thompson, 573 F. Supp. 3d 1, 20 (D. D.C.), *aff'd*, 20 F. 4th 10 (D.C. Cir. 2021), *cert. denied*, 142 S. Ct. 1350, 212 L. Ed. 2d 55 (2022).

⁷ Trump v. Thompson et al., No. 21A272, Cong. Defs.' Opp'n Pls.' Mot. Prelim. Inj. 46.

⁸ Thompson, 573 F. Supp. 3d 1, 16 (D. D.C.), *aff'd*, 20 F. 4th 10 (D.C. Cir. 2021), *cert. denied*, 142 S. Ct. 1350, 212 L. Ed. 2d 55 (2022) (citations omitted).

⁹ Eastman v. Thompson et al., No. 8:22-cv-00099 (C.D. Cal.).

¹⁰ Eastman v. Thompson, 594 F. Supp. 3d 1156, 1193 (C.D. Cal. 2022).

¹¹ *Id.* at 1198.

¹² Watkins v. United States, 354 U.S. 178 (1957).

¹³ *Id.* at 187.

¹⁴ As described above, Congress may also pursue civil litigation against a noncompliant individual. Congress also has the power to hold a witness in inherent contempt, though Congress has not exercised its inherent contempt power since the 1930s. See CONGRESSIONAL QUARTERLY'S GUIDE TO CONGRESS 163 (3rd ed. 1982).

¹⁵ Press Release, U.S. Dep't Justice, U.S. Att'y's Of. D.C., Stephen K. Bannon Sentenced to Four Months in Prison on Two Counts of Contempt of Congress, (Oct. 21, 2022), available at <https://www.justice.gov/usao-dc/pr/stephen-k-bannon-sentenced-four-months-prison-two-counts-contempt-congress>.

¹⁶ REPORT, *supra* note 2, at 7.

¹⁷ Hoffman v. United States, 341 U.S. 479 (1951).

¹⁸ EMILY BERMAN, EXECUTIVE PRIVILEGE: A LEGISLATIVE REMEDY (2009), available at https://www.brennancenter.org/sites/default/files/2019-08/Report_Executive-Privilege-A-Legislative-Remedy.pdf.

¹⁹ REPORT, *supra* note 2, at 4-5.

²⁰ 18 U.S.C. §1512(c).

²¹ 18 U.S.C. §371.

²² 18 U.S.C. §§ 371, 100.

²³ 18 U.S.C. §241.

²⁴ 18 U.S.C. §371.

²⁵ 18 U.S.C. §1512(k).

²⁶ 18 U.S.C. §§1512(c)(2), 2.

²⁷ United States v. Trump, No. 1:23-cr-00257-TSC (D. D.C. Aug. 1, 2023), available at https://www.justice.gov/storage/US_v_Trump_23_cr_257.pdf.

²⁸ The Committee's Report recommended that relevant courts and bar disciplinary bodies evaluate the conduct of attorneys described in the Report, saying "[a]ttorneys should not have the discretion to use their law licenses to undermine the constitutional and statutory process for peacefully transferring power in our government." REPORT, *supra* note 2, at 689.

²⁹ Georgia v. Trump et al., No. 23-SC-188997, 17 (Aug. 14, 2023), available at <https://int.nyt.com/data/documenttools/georgia-indictment-trump/daed97d37562a76f/full.pdf>.

³⁰ REPORT, *supra* note 2, at 45.

³¹ Trump et al., No. 23-SC-188997, 45.

³² REPORT, *supra* note 2, at 20.

³³ Williamson v. United States, 207 U.S. 425, 453 (1908).