

House Select Committee: Trump potentially guilty of at least two crimes connected with January 6 attack

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A document released Wednesday night by the House Select Committee investigating the January 6, 2021 attack on Capitol Hill gives its first detailed account of the efforts by Donald Trump to overturn the result of the 2020 election. The document suggests that Trump engaged in several criminal actions to stay in office, even before the violent attack on Congress by his supporters.

The 221-page legal brief was filed in a California federal district court as part of a comparatively minor legal squabble—the refusal of law Professor John Eastman, a top adviser to Trump in the months-long post-election struggle, to turn over thousands of pages of emails to the committee, citing lawyer-client privilege.

The committee sought to invoke the “crime/fraud exception,” which provides that a lawyer who conspires with a client to commit a crime cannot then invoke lawyer-client privilege to cloak their discussions. This meant demonstrating that Eastman and Trump were discussing a crime: overturning an election that Trump knew he had lost.

Eastman was a purported expert on constitutional law who espoused a theory—universally rejected by the legal establishment and unsupported by any court precedent—that Vice President Mike Pence had the power to block the certification of electoral votes when they were counted at the joint session of Congress held on January 6, 2021.

In support of that claim, Trump put extreme pressure on Pence to reject the electoral votes of closely contested battleground states like Georgia, Pennsylvania and Arizona. The aim was to send the issue back to the Republican-controlled state

legislatures, which would then pick slates of Trump electors, overturning the decision of their own state’s voters.

According to the court filing, Pence told Trump several days prior to January 6 that he had no such power, but Trump continued to pretend otherwise. He summoned his followers to a rally at the White House on January 6, to be followed by a march to the Capitol, to continue to press for a delay in certifying the results of the Electoral College, which would give Biden victory by a margin of 306 to 232.

Spearheaded by fascist militia groups like the Proud Boys and Oath Keepers, the Trump supporters smashed their way into the Capitol, some building a gallows and chanting, “Hang Mike Pence,” and blocked certification for hours as congressmen, senators and the vice president hid in underground bunkers.

One passage in the lengthy brief reads: “The evidence supports an inference that President Trump and members of his campaign knew he had not won enough legitimate state electoral votes to be declared the winner of the 2020 Presidential election during the January 6 Joint Session of Congress, but the President nevertheless sought to use the Vice President to manipulate the results in his favor...

“The Select Committee also has a good-faith basis for concluding that the President and members of his Campaign engaged in a criminal conspiracy to defraud the United States ...”

Committee Chair Bennie Thompson (Democrat, Mississippi) and Vice Chair Liz Cheney (Republican, Wyoming) issued a joint statement declaring: “The facts we’ve gathered strongly suggest that Dr. Eastman’s emails may show that he helped Donald

Trump advance a corrupt scheme to obstruct the counting of electoral college ballots and a conspiracy to impede the transfer of power.”

The brief gives a devastating portrait of Trump’s campaign of lies and manipulation aimed at overturning the election:

“As the courts were overwhelmingly ruling against President Trump’s claims of election misconduct, he and his associates began to plan extra-judicial efforts to overturn the results of the election and prevent the President-elect from assuming office...

“At the heart of these efforts was an aggressive public misinformation campaign to persuade millions of Americans that the election had in fact been stolen. The President and his associates persisted in making ‘stolen election’ claims even after the President’s own appointees at the Department of Justice and the Department of Homeland Security, along with his own campaign staff, had informed the President that his claims were wrong.”

The two main crimes allegedly discussed between Eastman and Trump were obstruction of an official proceeding—the certification of the election by Congress—on the date set by law, January 6; and conspiracy to defraud the United States by interfering with lawful government functions through “deceit, craft or trickery, or at least by means that are dishonest.”

Their crimes led up to the actual events of January 6, when Trump engaged in even greater crimes, inciting his supporters to carry out the violent assault on the Capitol which then ensued, as well as his as yet undisclosed role in blocking or delaying the police-military response to the rioters.

Significantly, the House Select Committee made reference to the 112-page legal opinion issued last month by Judge Amit Mehta of the Federal District Court for Washington D.C. who allowed civil suits against Trump over his actions on the day of the coup attempt to go ahead. Judge Mehta found that it was “plausible to believe that the president entered into a conspiracy with the rioters on Jan. 6, 2021.

“In addition to the legal effort to delay the certification, there is also evidence that the conspiracy extended to the rioters engaged in acts of violence at the Capitol,” the House Committee brief continued.

The court brief included the first publicly released transcriptions of depositions taken from top aides to

Trump and Pence about the events leading up to January 6 and on that day. These recount conversation after conversation in which they told Trump he had lost the election and that his continued assertions of fraud and election theft had no evidence to support them.

The 221-page brief has been treated in the media as something of a shot across the bow for Trump and the other January 6 conspirators, a foretaste of what will come to light when the House Select Committee begins public hearings as soon as April, according to some press accounts.

The Committee cannot actually charge Trump with a crime, but it is expected to refer its evidence to the Department of Justice, where Attorney General Merrick Garland would make the final decision on whether to bring criminal charges against the former president or any of his co-conspirators.

The DOJ has already filed criminal conspiracy charges against a number of those arrested and prosecuted for their actions on January 6. Up to now, nearly all the indictments related to January 6 have been of individuals who actually entered the Capitol and disrupted the certification, damaged property or fought with police.

The most high-profile indictment was of Stewart Rhodes, leader of the Oath Keepers, who did not enter the Capitol but allegedly directed the mob and helped arm and equip it. But no charges have been brought against anyone higher up in the conspiracy, let alone figures in the White House and among congressional Republicans.

On Wednesday, the first guilty plea to a conspiracy charge was filed by Joshua James, 34, a military veteran and member of the Oath Keepers. In a 15-page “statement of offense,” he describes how the Oath Keepers prepared for violence on January 6, including instructions by Rhodes to prepare to use “lethal force” to defend the White House, including fighting the National Guard or “other government actors who might be sent to remove President Trump as a result of the Presidential Election.”



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