

ON TRUMP'S SUBPOENA AND MARC SHORT'S TESTIMONY

The January 6 Committee conducted what may be the last of their hearings (barring new disclosures from witnesses they intend to recall, including, implicitly, Tony Ornato and Robert Engel) by voting to subpoena Trump, for both documents and testimony. The subpoena was proposed by Liz Cheney, who learned a thing or two about bureaucratic genius from her father.

I think the most likely outcome of that will be the expiration of the subpoena with the next Congress. With the likelihood Republicans will take the House, it will not be renewed. It will, however, give the Committee opportunity to package up their findings against Trump in something that's not a referral.

And the full House may have to vote on the subpoena before the expiration of this Congress.

The subpoena is more interesting, in my opinion, for the way it might intersect with other investigations. For example, a subpoena to Trump for January 6 documents might cover some of the documents initially seized on August 8. As I have noted, there appear to be documents in both the materials already returned to Trump and those currently under dispute before Raymond Dearie that pertain to Trump's big lies pertaining to Georgia.

There are documents in both Category A and Category B that may be responsive to subpoenas from the January 6, the DOJ investigation, and Fani Willis' Georgia investigation.

The December 31, 2020 email from Kurt Hilbert pertaining to Fulton County lawsuits is likely the one investigators turned over to the filter team on September 26 (which Trump's lawyers

claim is privileged).

17	Printed email dated 12/31/2020 from Kurt Hilbert to White House email account regarding signed verifications for Fulton County lawsuit and federal complaint and three verifications	FILTER-A-056 to FILTER-A-060
18	Printed email dated 12/31/2020 from Kurt Hilbert to White House email account sharing 10 files regarding federal lawsuit	FILTER-A-061 to FILTER-A-064

For some unknown reason (probably that it was sent to the White House, which DOJ considers a waiver of privilege), DOJ put it in Category A.

There are several uninteresting Georgia-related documents included among Category B documents – the Civil Complaint in Trump v. Kemp, retainer agreements pertaining to various Fulton County lawsuits, a retention agreement with Veen, O’Neill, Hartshorn, and Levin, along with another folder with retention agreements pertaining to Fulton County. But this file, including a letter to Kurt Hilbert with a post-it note from Cleeta Mitchell, might be more interesting.

08	First page of letter from Balch & Bingham to Kurt Hilbert; post-it note “from Cleeta Mitchell”	FILTER-B-078
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There’s also a document pertaining to Joe DiGenova regarding appointing a Special Counsel (as well as might be an effort to get Pat Cipollone to complain about Saturday Night Live’s taunts of Trump).

04	Pat Cipollone business card with “LIC Sat Night Live” written on it; post-it note “Joe Digernova Appoint Special Council [sic]”	FILTER-B-069
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The DiGenova document might pertain to any number of topics, but like Cleeta Mitchell, he has been named in DOJ subpoenas on election fraud.

A subpoena for these documents may change the legal status of them – and Trump’s hoarding of them at his beach resort. It may also make them easier for others to obtain.

As it happens, though, the subpoena news also

came on the same day that Marc Short testified to a grand jury about topics he (and his Executive Authority maximalist lawyer Emmet Flood) originally declined to answer.

A former top aide to Vice President Mike Pence returned before a grand jury Thursday to testify in a criminal probe of efforts to overturn the 2020 election after federal courts overruled President Donald Trump's objections to the testimony, according to people familiar with the matter.

In a sealed decision that could clear the way for other top Trump White House officials to answer questions before a grand jury, Chief U.S. District Judge Beryl A. Howell ruled that former Pence chief of staff Marc Short probably possessed information important to the Justice Department's criminal investigation of the Jan. 6, 2021, attack on the Capitol that was not available from other sources, one of those people said.

[snip]

According to people familiar with the matter, Short had appeared before a grand jury in downtown Washington in July, but declined to answer certain questions after Flood argued the communications of top White House advisers are protected – and presented written documentation from Trump's lawyers that they were asserting executive privilege.

The Justice Department asked the court to intervene, urging Howell to override Trump's claim and to compel Short to answer questions about his communications with Trump, one person said. After arguments Sept. 22, Howell granted the government's motion, the people said, but because the

investigation and an appeal are ongoing, it is unclear if or when a redacted opinion will become public.

Short and Windom were spotted at court again on Thursday, as was former Trump national security and defense aide Kash Patel.

SCOTUS has already ruled against Trump's Executive Privilege claims before the January 6 Committee. If they were able to obtain his testimony – or if DOJ took his 14-page conspiratorial rant authored by former OAN hostess as a false statement to Congress – then it would create interesting tension between these two investigations.

As DOJ gets testimony from Short and, after him, others who invoked Executive Privilege, this subpoena to Trump will be in the background, a (very distant) possibility that Trump would be required to testify – as a witness, as opposed to the subject Trump is in the DOJ investigation – to the very same topics that his top aides are now testifying to.

It's one more moving part that may get increasingly difficult to juggle.