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Truth and Tradition

With Untested Cases Challenging Trump, Legal Experts Weigh In

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Former President Donald Trump currently faces four lawsuits and investigations with potential criminal liabilities.

As the leading Republican presidential candidate for 2024, Trump has characterized these legal challenges as part of a political “witch hunt” and attempts to hurt his candidacy. Across the aisle, Trump’s critics describe the investigations as the proper application of the rule of law.

The former president’s legal troubles—those potentially carrying criminal liabilities—include a potential indictment on money Trump allegedly paid to adult entertainment actress Stormy Daniels; potential charges related to election interference in Georgia; a probe into Trump’s handling of classified documents at his Mar-a-Lago property; and an investigation into Trump’s alleged interference with the transfer of power after the last presidential election.

The Epoch Times asked legal experts to evaluate Trump’s potential vulnerabilities as prosecutors signaled they would employ legal strategies in their cases against him that had never been used before.

Alleged Hush Money

After Trump announced what he claimed would be his imminent arrest on Saturday, March 18, a probe launched by Manhattan DA Alvin Bragg into an alleged payment from Trump to Daniels quickly flooded headlines in the news cycle.

Though charges have yet to be announced, Bragg is considering charges on an alleged payment from Trump to Daniels to ensure her silence over an alleged affair in 2006. The prosecutor's criminal case appears to be centered on whether Trump documented that payment as false business records in the Trump Organization—thereby committing a state offense—with the intention to cover up or commit violations of federal campaign finance laws.

According to Alan Dershowitz, Professor Emeritus at Harvard Law School, a requirement for Bragg to bring his case is to elevate the misdemeanor-level charge of falsifying records to a felony by combining it with the federal campaign finance violation charge.

“I taught criminal law for 50 years at Harvard, and the one rule was, ‘no creativity is permitted by prosecutors’—the law has to be clear,” Dershowitz told The Epoch Times in an interview on March 18. The scholar characterized Bragg's approach as high-risk, and said an appellate court would overturn Trump's indictment if the case ever got that far.

Before a court decides on the merit of this case, however, Bragg faces another legal hurdle with the statute of limitations on the charge he would bring, trial attorney John O'Connor told The Epoch Times.

The felony charge carries a statute of limitation of five years according to New York law, and would have expired under normal circumstances—given that the alleged payment was made in 2016, or about seven years ago. O'Connor said Bragg may attempt to use a provision that says the statute of limitations clock is stopped when “the defendant was continuously outside” of New York.

The issue here therefore hinges on the court's interpretation of “continuously,” O'Connor said, taking into consideration the fact that Trump lived in Washington D.C. and Florida for most of the time since the alleged felony's time of commission.

Notwithstanding the spotlight on the case, Dershowitz, O'Connor, and Senior Vice President for Legal Studies at the Cato Institute, Clark Neily, agree that Bragg's

case stands on a shaky legal foundation, and is likely the weakest among the four criminal cases Trump currently faces.

“When you go after somebody who’s running for president, you better have a slam dunk—and this one isn’t even close,” Dershowitz said.

Jan. 6 Probe

After Trump announced his presidential bid in November, Department of Justice (DOJ) head Merrick Garland appointed Special Counsel Jack Smith to lead a probe into Trump’s alleged criminal conduct after the 2020 election.

Smith, who pledged an expeditious investigation as special counsel, is operating in a nominally independent manner from the DOJ to avoid a perceived conflict of interest. He can choose to recommend charges after his investigation.

Past DOJ-appointed special counsels have recommended charges that led to the indictment of Scooter Libby, a former top aide to then-Vice President Dick Cheney, and the impeachment of former president Bill Clinton.

Recent DOJ-appointed special counsels include Robert Mueller, whose work led to the guilty plea of former national security adviser Michael Flynn in 2017, and John Durham, who probed the origin of the FBI’s investigation into alleged collusion between Trump and Russian entities during the 2016 elections.

In Trump’s case, Smith has been looking into “whether any person or entity unlawfully interfered with the transfer of power following the 2020 presidential election, or with the certification of the Electoral College vote held on or about January 6, 2021,” according to a DOJ statement published in November 2022.

One aspect of Smith’s case would include a potential incitement charge against Trump, Carter said.

Trump told his supporters at the “Save America” rally near the Capitol on January 6, 2021, to “peacefully and patriotically make your voices heard” in challenging the result of the 2020 election that Trump said he had won by a landslide. He also said, “we fight like hell, and if you don’t fight like hell, you’re not going to have a country anymore.”

According to Carter, the incitement charge would be difficult for Smith to bring because of the First Amendment’s broad protection of speech.

“One exception to the First Amendment protection of speech is for incitement, and there’s a very specific test that the courts use in determining whether something constitutes incitement,” Carter said, in reference to the Brandenburg Test, which allows states to forbid actions that are directed to inciting or producing imminent lawless action and is likely to incite or produce such action.

“That’s a high burden for the government to meet—and, I think, rightfully so—we want robust political speech,” Carter said. “We don’t want politicians to self-censor.

“The upshot is: courts are generally going to be reticent to criminalize speech,” the professor added. “So, I think from a pure First Amendment perspective, an incitement charge for the speech on Jan. 6 is going to be a difficult case for a prosecutor to bring.”

O’Connor echoed Carter’s view, adding that a “strong line” of First Amendment precedent cases exists that would make it difficult for the government to demonstrate that Trump “intended the Capitol be ransacked in the places where it was.” He believes the case would likely be ruled in Trump’s favor if it gets to the Supreme Court.

“Fiery speech has always been considered within the ambit of the First Amendment,” O’Connor said.



President Donald Trump speaks at the “Stop the Steal” rally in Washington on Jan. 6, 2021. (Jenny Jing/The Epoch Times)

Andrew Gould, a former judge at the Arizona Supreme Court, told The Epoch Times that another piece of the puzzle that prosecutors may consider is Section Three of the Fourteenth Amendment, an obscure provision that bars officials who have “engaged in insurrection or rebellion” from holding office. Congress introduced the passage in the 19th century to bar members of the Confederacy in the American Civil War from holding office.

The question of whether Trump’s speech on Jan. 6, 2021, can be characterized as engaging in insurrection and rebellion is a question that would have to be determined in the courts—should Smith bring forward a charge on this ground.

Even if Smith secures an indictment related to this provision, many legal questions remain that have not been tested in the courts, Gould said.

“Is an indictment of former President Trump for what happened on January 6 sufficient to bar him from holding office again, or does it require conviction? So that’s one issue,” the former judge said.

“Would [the provision] apply to the President? And then what’s required to trigger that? Does it require a conviction? Does it require having been impeached for it?” the former justice asked, noting that any prosecution of Trump along this line would be “untested.”

“I think that’s an issue that could well go all the way to the United States Supreme Court if the January 6 prosecution goes forward,” Gould said.

Notwithstanding the novel nature of the legal theory in this case, however, Dershowitz believes that the odds are in Trump’s favor.

“The only way he can be disqualified is if they can prove that he actually fought in the Civil War for the South,” the legal scholar said.

An additional scope of Smith’s investigation could include Trump’s alleged efforts to seek an alternate slate of electors during the certification process of the 2020 election.

According to O’Connor, this conduct was within the bounds of democracy, and thus this case would not give rise to “one of Mr. Smith’s stronger potential charges against Trump.”

“I do not think that trying to put forth an alternate slate is criminal,” O’Connor said. “This is an exercise in democracy, no matter how incorrect some may say it is.

“In my opinion, this is a very weak case, especially since the prosecution must prove beyond a reasonable doubt that Trump intended to act illegally,” the expert said.

Classified Documents Probe

On February 9, 2021, the National Archives and Records Administration (NARA) made a referral ([pdf](#)) to the DOJ that led the federal agency to launch a criminal investigation into the former president’s handling of classified documents.

That investigation spawned the [FBI raid](#) at Trump’s Mar-a-Lago resort last August, followed by the court’s publication of the FBI’s [search warrant](#), giving clues as to what charges may arise from the former president’s alleged mishandling of classified documents.

They include 18 U.S.C. §793—mishandling defense information, §1519—record alteration or destruction with the intention to obstruct an investigation, and §2071—alteration or destruction of public records.



An aerial view of Donald Trump’s Mar-a-Lago resort in Florida. (Steve Helber/AP Photo)

In an August 30, 2021, court filing ([pdf](#)) following the raid, the DOJ said it sought the classified documents by issuing a grand jury subpoena in May 2021. The department alleged that after the subpoena was issued, Trump “concealed and removed” government records, and that “efforts were likely taken to obstruct the government’s investigation,” leading to the department’s application for a raid.

Trump, in statements made on Truth Social, defended his conduct by saying that the documents were protected by executive privilege, or the inherent presidential privilege to withhold information from the public; the presidential authority to declassify documents; and attorney-client privilege.

Smith took over this investigation when he was appointed DOJ special counsel in November 2022.

Declassification questions aside, while a technical charge of mishandling records is possible, O’Connor said, he believes that Smith would shape the case around a charge involving the obstruction of justice, which would require proving Trump’s

intention to knowingly affect the availability or quality of evidence during an official investigation.

“If the government can prove that Trump took efforts to hide documents from the government, in order that the government does not seize them, then there is a potential obstruction of justice, and false statements charge against Trump,” O’Connor said.

“So, the proof in that pudding would have to be some statement by an underling that Trump told him or her to move documents in order to hide them from authorities,” he added. “And if any of them say, ‘yes, Trump told me that he didn’t want this or that classified record seized, and he wanted me to bring it to another room or put it in a separate box,’ or something like that—I think you’ve got a cross.

“If I were Jack Smith, that’s where I would go on this,” O’Connor said. “I would talk to the underlings, a lot of whom, apparently, are talking.”

The consequences of this case could vary drastically, Neily told The Epoch Times, and could range from a low-level mishandling of documents charge with no prison time to a conspiracy charge relating to national security—which could carry 10 to 20 years in prison.

Neily added that the case is too early to call, considering that the strengths of Smith’s factual case, including witnesses and documentary evidence, and his legal case—the ability to infer the elements of the offenses from the available evidence—are all as yet unclear.

Meanwhile, Dershowitz pointed to another dynamic that may play into Smith’s case: the DOJ is conducting a parallel investigation after finding classified records at President Joe Biden’s home and the Penn-Biden Center in Washington.

“They will never dream of indicting Trump unless they are also willing to indict Biden,” Dershowitz told The Epoch Times. “The public will not stand for two people, both Presidents engaged in comparable conduct—one gets prosecuted, and the other doesn’t—it would never happen.”

But according to O’Connor, the investigation against Biden may not play in Trump’s favor after all, considering the political leanings of DOJ prosecutors.

“I suspect that there will be a soft-ball handling of [the Biden] documents case, even though to me, it seems pretty clear that he had the motive to keep the very

important documents he kept, which were presidential briefing,” the attorney said. “They’re the best and juiciest classified documents one can get.

“I’m convinced that his greatest vulnerability is at the Mar-a-Lago situation,” O’Connor said of Trump.

Georgia Election Interference Probe

In 2021, Fulton County DA Fani Willis launched and led a special-purpose grand jury investigation into a phone call between Trump and his legal team and Georgia’s Secretary of State Brad Raffensperger and his team, in which Trump allegedly tried to pressure the official to investigate widespread allegations of voter fraud.

“All I want to do is this. I just want to find 11,780 votes, which is one more than we have because we won the state,” Trump allegedly told Raffensperger during the phone call on Jan. 2, 2021, a transcript of which was released by media organizations.

Willis characterized Trump’s wording (pdf) during the call as evidence of “criminal disruption” of the 2020 election, and has based her case on charges around that allegation. The grand jury heard testimony from Trump’s former associates, including Rudy Giuliani and former National Security Advisor Michael Flynn. Emily Kohrs, the foreperson of the jury, told media outlets in February 2023 that the group recommended indictments.



APRIL 21: Michael Flynn, former U.S. National Security advisor to former President Trump, speaks at a campaign event for U.S. Senate candidate Josh Mandel on April 21, 2022 at Mapleside Farms in Brunswick, Ohio. (Photo by Dustin Franz/Getty Images) A February 10, 2021, letter that Willis sent to Georgia Governor Brian Kemp shone a light on the charges she may pursue, which include soliciting election fraud, lying to state officials, and conspiring to interfere with the 2020 election.

According to Dershowitz, Willis’s charges would not hold up considering the face value of Trump’s wording during the call with Raffensperger.

“Because what he said is, ‘we have to find’—not invent, not concoct—’find.’ Find means that it’s there—just a question of finding them—so that’s not a crime,” Dershowitz said.

O’Connor agreed with Dershowitz’s view, adding that the case is undercut by a demonstrable belief on Trump’s part that there was significant fraud in the 2020 election.

“That charge will never make it,” O’Connor said. “It was very clear that Trump felt that there were voters who had wrongfully voted, and he was asking the Secretary

of State to find which voters had been wrongfully voting, that's all. So, I don't think there's anything to that."

Unique Cases

Jared Carter, a Professor at Vermont Law school, told The Epoch Times that the legal cases carrying criminal liabilities in at least three jurisdictions—New York, Washington D.C., and Georgia—carry an inherent risk for the former president.

"If I was the former president's lawyer, I'd certainly be advising my client to be quiet, to stay out of the public eye—and let's deal with these legal issues," Carter told The Epoch Times.

That's certainly not Trump's style. The former president has posted avidly on Truth Social, his social media platform, following major developments in the four cases—and denied wrongdoing in any of them.

This showiness may nonetheless work in Trump's favor, as he may soon navigate uncharted waters where a former U.S. president is facing criminal charges, Neily told The Epoch Times in an interview.

This has to do with Trump's immunity to coercion from prosecutors, Neily said.

When a federal prosecutor has a strong motivation to convict a defendant, he explained, the strength of the prosecutor's case, including the strength of the legal theory and evidence, has little import on the equation.

"Because nearly everybody can be coerced into pleading guilty in our system," Neily said. "The amount of pressure that prosecutors can bring to bear on ordinary defendants to plead guilty is beyond anything, I think, that ordinary people can imagine and that even includes threatening to indict a defendant's family members simply to exert plea leverage on the defendant.

"I don't think that will work with Donald Trump, because I think they're unwilling to put on public display such nakedly thuggish tactics," Neily said. "I don't think Donald Trump can be induced to plead guilty, because I think he's got the resources and the platform and the mindset to resist those efforts."



Former US President Donald Trump departs a polling station after casting his ballot in the US midterm elections at Morton and Barbara Mandel Recreation Center in Palm Beach, Florida, on November 8, 2022. (Photo by EVA MARIE UZCATEGUI/AFP via Getty Images)

Another facet of Trump’s case is that prosecutors would be required to weigh the odds of getting a jury to convict Trump, something they rarely have to do nowadays, Neily said, noting that 98.3 percent of all federal criminal convictions came from guilty pleas last year, rather than from a jury verdict.

“That is a calculus that prosecutors have grown increasingly maladept at performing because they have so little experience in actually performing it,” the expert said. “They just don’t get that opportunity very often, because they are so adept at inducing people to plead guilty—and that will not work in this case, in my estimation.”

‘Get Trump’

According to Dershowitz, the legal cases against Trump are a display of “targeted prosecution,” in which prosecutors have used never-seen-before approaches to get Trump.

“There seem to be two systems of justice in America—one for the rest of us, and the other for Trump—and that’s the thesis of my book, ‘Get Trump,’” Dershowitz said. “There’s is a special system of targeted injustice against Trump, and this is coming from a liberal Democrat who voted against him twice.

“Nobody’s ever been prosecuted for these things, and you can’t go after a man running for president under rules and statutes that have never been previously used,” Dershowitz said of the four cases.

“They’re just rummaging through the law books and doing everything they can to get him, but I don’t think they’ve succeeded,” he added.

Dershowitz dismissed the idea that these cases would exert a material impact on Trump’s candidacy.

“He’s not going to get prison. Nonetheless, he can run as a convicted defendant,” Dershowitz said, referring to the 2024 election. “He can run from prison.”