

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
(SOUTHERN DIVISION - SANTA ANA)

| | | |
|-----------------------------|---|--------------------------------|
| JOHN C. EASTMAN, |) | CASE NO: 8:22-CV-00099-DOC-DFM |
| |) | |
| Plaintiff, |) | CIVIL |
| |) | |
| vs. |) | Santa Ana, California |
| |) | |
| BENNIE G. THOMPSON, ET AL., |) | Monday, January 24, 2022 |
| |) | (2:22 p.m. to 3:35 p.m.) |
| Defendants. |) | (4:00 p.m. to 4:18 p.m.) |
| |) | (4:32 p.m. to 4:40 p.m.) |
| |) | (4:56 p.m. to 5:12 p.m.) |

HEARING RE:

PLAINTIFF DR. JOHN EASTMAN'S APPLICATION FOR TEMPORARY
RESTRAINING ORDER AS TO SUBPOENA [DKT.NO.2];

PRODUCTION AND PRIVILEGE LOG

BEFORE THE HONORABLE DAVID O. CARTER,
UNITED STATES DISTRICT JUDGE

APPEARANCES: SEE PAGE 2

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Also present:

JANINE DUMONTELLE
PHILLIP LYLE

1 Santa Ana, California; Monday, January 24, 2022; 2:22 p.m.

2 (Remote and courtroom appearances)

3 Call to Order

4 **THE COURT:** First of all, good -- well, good
5 afternoon.

6 **MR. BURNHAM:** Good afternoon, Judge.

7 **THE COURT:** And we're on the record in Case Number
8 22-00099, Titled, *John Eastman versus Bernie [sic] Thompson*.

9 And if I could start slowly on behalf of the
10 plaintiffs or petitioners in this matter.

11 **MR. BURNHAM:** Good afternoon again, Your Honor.

12 **THE COURT:** With your identification. You just can
13 remain seated, please.

14 **MR. BURNHAM:** Good afternoon again, Your Honor.
15 Charles Burnham here on behalf of Dr. John Eastman.

16 **THE COURT:** All right. And?

17 **MR. CASO:** And Anthony Caso, Your Honor.

18 **THE COURT:** Anthony Caso. And you are John Eastman,
19 obviously, and you're present in court today.

20 **MR. BURNHAM:** Good to see, Judge.

21 **THE COURT:** All right. Thank you.

22 And then on behalf of the responding party.

23 **MR. PLEVIN:** Good afternoon, Your Honor. Fred Plevin
24 representing Chapman University.

25 **THE COURT:** All right.

1 **MR. PLEVIN:** I also wanted to note for the Court that
2 on Zoom, but not on the panel, are Chapman's vice president and
3 general counsel, and an assistant vice president of information
4 technology in case the Court has a need to hear anything from
5 them.

6 **THE COURT:** All right. And their names, please, for
7 the record.

8 **MR. PLEVIN:** Janine DuMontelle is the vice president
9 and general counsel, and Phillip Lyle is the assistant vice
10 president for information technology. They're both together
11 identified on the Zoom as Janine DuMontelle.

12 **THE COURT:** All right. Thank you so much. And then
13 on behalf of the Select Committee?

14 **MR. LETTER:** Good afternoon, Your Honor. This is
15 Douglas Letter. I'm the general counsel of the United States
16 House of Representatives appearing on behalf of the Committee
17 and the Chairman.

18 And Your Honor, I'm sorry. I might not have heard
19 properly. I thought maybe you said "Bernie" Thompson; its
20 Bennie Thompson --

21 **THE COURT:** Oh, I see.

22 **MR. LETTER:** -- obviously, the name of the Chairman.

23 **THE COURT:** My apologies.

24 First, I received Dr. Eastman's application for a
25 temporary restraining order Thursday, a few days ago, on

1 January 20th, about 5:30 p.m., and I want to express the
2 Court's appreciation to all counsel for working the nights and
3 throughout the weekend on this matter.

4 And I'd like to begin by giving 10 minutes to each
5 party for your oral argument, and then I may take a brief
6 recess if I have questions and follow up questions.

7 So, counsel. You can remain seated if you'd like to.

8 **MR. BURNHAM:** Thank you, Your Honor. I'll start -- I
9 submitted a brief to readdress the factors for temporary
10 restraining order. I won't repeat that, but I'll expand a
11 little bit on what I see as the most critical issues.

12 Starting with the likelihood of success, we raised a
13 number of issues in our complaint, but I think the most salient
14 and the one we focused most on the briefs at the TRO stage is
15 the attorney-client privilege, which is also the most urgent in
16 our view.

17 And so somewhat surprisingly to us anyway, the
18 Government, in a --

19 **THE COURT:** Just a little slower.

20 **MR. BURNHAM:** All right. I'm trying to get it all in
21 in 10 minutes. I'll go slower.

22 The Government, in a way, seems to be contesting
23 either the very existence of attorney-client privilege
24 information in the responsive documents and materials to the
25 subpoena, or the fact that we've identified enough -- with

1 enough particularity, whatever privileged information might be
2 in there.

3 So, I'll address that to begin with. And I think it
4 should be an obvious fact from multiple sources that there's
5 privileged information responsive to the subpoena.

6 **THE COURT:** Now you've dropped your voice. I can see
7 real time, and we didn't get that. Please repeat that.

8 **MR. BURNHAM:** I think it should be obvious from a
9 number of sources that there is a great deal of attorney-
10 privilege and work product information that's potentially
11 responsive to the subpoena, and we know that from a number of
12 sources.

13 Dr. John Eastman has long been an activist law
14 professor. He was never an ivory tower-type professor. That's
15 the very reason the Committee is interested in him in their
16 investigation, because he was representing the President of the
17 United States in a number of matters.

18 The Chapman website continues to advertise his legal
19 work. His briefs are all over Pacer, they're all over the
20 Internet. Even the Government itself talks about his work as a
21 lawyer while at Chapman, so it shouldn't be a subject of great
22 dispute here today that the subpoena does seek --

23 **THE CLERK:** Slow down for us.

24 **MR. BURNHAM:** -- I'm sorry?

25 **THE CLERK:** Slow down.

1 **MR. BURNHAM:** That the subpoena does seek privilege
2 materials.

3 Now, turning from there to the Government's claim
4 that we didn't respond with enough specificity in identifying
5 privilege materials, that's sort of the whole point of this
6 case is we didn't have an opportunity to do so because of the
7 timeline of the Government's service of the subpoena with such
8 a short window to respond to it, and the fact that neither
9 Chapman nor the Select Committee was willing to give us access
10 to the documents.

11 So, we think that claim fails as well and, in fact,
12 that's not the only claim the congressional defendants make.
13 They --

14 **THE COURT:** Okay. During your opening, I'd like to
15 hear what that timeframe was.

16 I have your briefing, but I want to make certain I
17 understand the claim that the subpoena first issued last
18 Tuesday, January 18th, with a timeline of Friday, January 21st
19 at 7:00 a.m. Pacific time; is that correct?

20 **MR. BURNHAM:** That's right. That's right.

21 **THE COURT:** All right. Please continue.

22 **MR. BURNHAM:** And the subpoena was emailed to me, I
23 think, in the early evening of the 18th itself. I didn't see
24 it until the next morning. It was some, you know, 9:00 or
25 10:00 o'clock the next morning, I realized the subpoena was

1 there.

2 To the extent the Court considers it relevant, I'm
3 more than happy to go into sort of the preliminary discussions
4 prior to the subpoena about the subject that the briefs allude
5 to. I don't think that's relevant, but I'm ready to address it
6 should the Court have any questions. But the timeline, yes,
7 was as Your Honor stated it.

8 So, even if we -- even if we had had access to the
9 potentially responsive materials, which apparently consist of
10 some 20,000 responsive documents, there was no way we were
11 going to be able to come up with any kind of a detailed
12 privilege claim in that timeframe. But the more important fact
13 is we simply didn't even have access to the materials, and we
14 don't to this day.

15 The congressional defendants also argue that even if
16 there is attorney-client privilege as we contend, that any
17 privilege has been waived. And they make two basic arguments,
18 two basic waiver arguments; one having to do with the Chapman
19 University email system --

20 **THE COURT:** Just a moment. Yeah. Do you have it?

21 **THE CLERK:** No.

22 **THE COURT:** It's just a little too quick, counsel.

23 So, if you want a good record, please.

24 **MR. BURNHAM:** Sure.

25 **THE COURT:** One has to do with Chapman's email

1 system.

2 **MR. BURNHAM:** Email system. And the second waiver
3 argument from the congressional defendants relates to public
4 statements by Dr. Eastman. So, I'll address them one at a
5 time.

6 The congressional defendants' argument that the
7 privilege was waived based on the Chapman University email
8 policies that the briefs address is based on a collection of
9 cases, all of which usually involve an employee who themselves
10 retain a lawyer and email that lawyer at their work email
11 address, and perhaps they waived the privilege by doing so.
12 Not in every case, but in some of the cases, that Government or
13 private employee has been found to waive their privilege with
14 their attorney by using their work email, and the analysis
15 turns on the particularities of the email system involved.

16 Those cases are inapplicable to the current scenario
17 for many reasons, two of which I'll focus on here. The first
18 is, in each of the cases relied upon by the congressional
19 defendants, the privilege was waived not by the attorney, but
20 by the client through using their work email. The attorney-
21 client privilege belongs to the client, and so it was the
22 client's actions that waived the privilege.

23 None of the cases relied upon by the congressional
24 defendants deal with the situation we have here where the
25 argument is that the lawyer waives the privilege.

1 In addition to that, and I think more importantly,
2 none of the waiver cases relied upon by the congressional
3 defendants, and of course, by "congressional defendants", I
4 mean the Committee itself and Chairman Thompson, none of those
5 cases come from the context we have here, which is a law
6 school. That's a completely unique context, and it's not the
7 same as an undergraduate college apart from a law school, or
8 the U.S. Government, or a private employer.

9 There's very much a reasonable expectation that law
10 professors practicing law, and taking clients under the
11 auspices of their law schools, do so with a reasonable
12 expectation on the part of themselves and their clients that
13 those communications are subject to privilege.

14 That's reinforced by many decades of historical
15 practice where activists law professors have played such an
16 important role in developing the law, which continues to this
17 day. That's reinforced by public statements on the website of
18 Chapman University, which runs something like eight clinics to
19 this day, several of which use ".edu" email addresses.

20 The Elder Law Clinic, for example, this is publicly
21 accessible, says to potential clients, it says, "Please" -- I'm
22 quoting here. "Please email us", and then the email is
23 elderlaw@chapman.edu. One of the most prominent members of
24 this Committee, Rep. Raskin, who happens to be my congressman,
25 practiced law for decades as a professor at American.

1 **THE COURT:** All right, just one moment.

2 **MR. BURNHAM:** Uh-huh.

3 **THE COURT:** Allow the court reporter to catch up.

4 **MR. BURNHAM:** All right. I hope I've tried to slow
5 down.

6 **THE COURT:** Yeah. And if you need to go to
7 CourtSmart.

8 **THE CLERK:** I did.

9 **THE COURT:** Did you?

10 **THE CLERK:** Yeah, it's recording.

11 **THE COURT:** Okay. All right, counsel, please.

12 **MR. BURNHAM:** My final point was that on the subject
13 of why it's reasonable to expect that the law school context
14 confers a reasonable expectation of privacy was, even a member
15 of the Select Committee practiced law for many years under the
16 auspices of the law school where he taught; that's Rep. Raskin.

17 So, for all of those reasons, we disagree with the
18 congressional defendants' assertion completely that any use of
19 a law school email system waived not the client's reasonable
20 expectation of privilege with respect to their communications
21 with Dr. Eastman.

22 The second waiver argument advanced by the
23 congressional defendants is that certain public statements by
24 Dr. Eastman on TV shows and such about his representation of
25 the former President constitute a waiver of the privilege.

1 And as an initial matter, that would only apply to
2 Donald Trump, not any of the other clients that Dr. Eastman
3 would have handled during the subpoena period. But even with
4 respect to President Trump, by no means do any of the
5 statements made by Dr. Eastman constitute a waiver.

6 Whenever you have an attorney representing a high-
7 profile client, and it doesn't get any more high-profile than
8 the President, it's only natural that part of that attorney's
9 role will be to speak as appropriate to the press, and this
10 happens many times where you talk to the client and decide
11 certain information we'll talk about to the press, certain
12 items of information we don't. That happens all the time, and
13 we're looking at nothing more than that here.

14 And I go into detail in the briefs about why the
15 various quotes from podcasts and stuff don't come anywhere
16 close to constituting a waiver even with respect to the one
17 client.

18 So, in sum, Your Honor, as to the attorney-client
19 privilege issues, I think the likelihood of success is quite
20 clear. And the same goes for requirement number two,
21 irreparable harm.

22 And here, as I understand the congressional
23 defendants' arguments as to this factor are very much the same
24 as their arguments with the first factor, likelihood of
25 success. They don't think we're dealing with a privilege claim

1 here at all, which is understandable because when you're
2 dealing with a privilege issue, the irreparable harm, and the
3 cases bear this out, is the disclosure of the attorney-client
4 information itself. We bear no burden to prove that Client A
5 would be harmed by his information being disclosed because of
6 his circumstances; that's not how the cases have analyzed this
7 at all.

8 Violating the sacred attorney-client privilege itself
9 is irreparable harm. The bell cannot be unrung, and that's
10 what we're seeking to prevent here. That's the second factor.

11 The third and fourth factors, the balance of the
12 equities and the public interest can, to a certain extent, be
13 treated together, and that's how I'll treat them here for
14 efficiency.

15 So, what interest have the congressional defendants
16 offered to Your Honor to justify why they need this information
17 so badly? They rely in their briefs largely on the claimed
18 importance of the January 6 investigation itself, writ large.

19 The proper subject of analysis for this Court though
20 is not the investigation writ large, but the particular items
21 of evidence at issue here. Why does the January 6 committee
22 have such a great interest in the emails from a year ago or two
23 years ago from Dr. Eastman on his University email address?

24 The only thing the defendants offer in support of
25 that question are highly conclusory statements offering no

1 specifics, and that's important because as Trump versus
2 Thompson from the D.C. Circuit reminded us, the purpose of
3 congressional investigations is not to assist in educating the
4 public or write history, or certainly not to do anything
5 partisan.

6 The purpose of this whole exercise is to give the
7 members of Congress the information they need to write laws,
8 write better laws. And what the defendants have not identified
9 is why Dr. Eastman's emails will help them impose more criminal
10 penalties on individuals who misbehave on federal property, or
11 revise the Electoral Count Act, or any of the legislative
12 purposes at issue in the *Trump versus Thompson* case.

13 They don't show why Dr. Eastman's emails and other
14 materials are so important to that, which is particularly
15 salient because Dr. Eastman's role in the 2020 election is
16 quite well-known, as the defendants themselves emphasize. He's
17 not alleged to have entered the Capital or planned to enter the
18 Capital; he was counsel to the President.

19 He's spoken at length in multiple fora in print, on
20 Internet, on TV, about what he did. It's enough to give me
21 even more gray hairs than I have now, because there's a lot of
22 fodder out there for the defendants to pick out statements that
23 are useful to them as they did in this case.

24 But based on all the information we know, Dr. Eastman
25 was simply counsel to the President. Some people liked his

1 legal advice; the Committee didn't particularly care for it,
2 but they've offered no particular reason why they need further
3 information on his legal advice to continue their
4 investigation.

5 So, the interest of the defendants, we would submit,
6 is weak. That has to be weighed against, in these third and
7 fourth factor analyses, the important concerns weighing in the
8 other direction. Now, what are those?

9 We submit there's significant concerns here of, I'll
10 just say, abuse of the congressional subpoena process. And I
11 say that not based on my own authority submitted. I think the
12 best authority for that is the Budowich case relied on so
13 heavily by the defendants in their own briefing. The
14 transcript for that was submitted just this morning.

15 And what happened in that case was, the Select
16 Committee served a subpoena. It was on a bank in that case
17 seeking financial records. It had a pretty short timeline,
18 although many times longer than our subpoena. It was a week or
19 two, and it was extended, and then there was a deadline on
20 Christmas Eve or something.

21 And long story short, the defendants received the
22 documents before the plaintiff could get into court and ask for
23 a TRO. The judge in that case saw the problem, and asked --
24 the defendants' position was once we have the documents, that's
25 the end of the case. That was what Mr. Letter argued in that

1 case. And the judge very reasonably said, "Doesn't this create
2 an incentive for congressional committees to totally evade any
3 judicial oversight of their subpoenas by including unreasonably
4 short timelines"? And in that case, it was about two weeks.

5 And the response from counsel for the House of
6 Representatives was, "No, that's not a concern; the Court
7 doesn't need to be worried about that. It's going to be fine".

8 And now, here we are maybe a month later, and Your
9 Honor is presented with a subpoena to the former attorney to
10 the President of the United States, of all people, with about a
11 three-day turnaround time.

12 So, we would submit that the *Budowich* case, legally
13 correct though it may have been, set a troubling precedent that
14 the January 6 Committee is even now pushing to extremes far
15 beyond anything confronted in the *Budowich* case. And that's an
16 important consideration here.

17 Secondly, I'll add just as an addendum to that, I
18 think it's totally legitimate for Your Honor to consider the
19 effect enforcement of this subpoena will have on the current
20 and future presidents' decisions to hire private counsel.
21 Presidents throughout history have turned to the professoriate
22 for help in legal advice beyond their inhouse lawyers, and if
23 this subpoena is enforced, that's absolutely a matter of public
24 concern cognizable by this Court what effect that will have on
25 future presidents and President Biden.

1 And finally, it's a highly relevant consideration
2 what effect this will have on the legal academy writ large. We
3 rely heavily in our pleadings on a law review article written
4 some 10 years ago called -- about a ticking time bomb. And we
5 cite it several times.

6 And that's an article by a far-thinking professor who
7 realized that one day a litigant was going to come into court
8 armed with a collection of cases relied on by the congressional
9 defendants where employees waived their privileges by emailing
10 their lawyers on the job, and try to invade the attorney-client
11 privilege in the law school setting. That's why the article is
12 called a "Ticking Time Bomb", because that problem that Your
13 Honor is faced with today was foreseen.

14 And the bomb is about to go off right here in this
15 courtroom, and the January 6 Committee are the ones lighting
16 the fuse. And so, we ask Your Honor simply to defuse the bomb,
17 and grant our application for the temporary restraining order.

18 Thank you.

19 **THE COURT:** All right, counsel. Thank you. Would --
20 Mr. Plevin, would you like to respond first on behalf of
21 Chapman, or Mr. Letter, would you like to respond on behalf of
22 the Select Committee first?

23 **MR. LETTER:** Your Honor -- Your Honor, this is
24 Douglas Letter. I'm happy to respond now if that's okay with
25 Your Honor.

1 **THE COURT:** Please. Thank you.

2 **MR. LETTER:** Thank you, Your Honor.

3 **THE COURT:** Would you identify yourself, I certainly
4 know, who you are and who you represent once again for the
5 record?

6 **MR. LETTER:** Thank you. This is Douglas Letter. I'm
7 the general counsel of the United States House of
8 Representatives.

9 Your Honor, I will assume that you or the court
10 reporter will let me know if I am speaking too quickly.

11 Your Honor, first, let me just say, we immensely
12 appreciate the speed with which you are taking this up. So,
13 you know, you mentioned -- you thanked us for getting our
14 briefs done quickly; we thank you for jumping right on this
15 because time really is of the essence here.

16 And I'm sure it won't surprise you to know that,
17 frankly, I don't recognize the case that my friend,
18 Mr. Burnham, is talking about. It's certainly -- it's very
19 different from the case that we understand.

20 So, first, there was an argument made, I think it's
21 initially in the brief, that Your Honor should find that the
22 Speaker of the House doesn't know House procedures and House
23 rules, and they want you to tell her, to instruct her on how
24 the House runs. They're saying the Committee, the Select
25 Committee was not validly appointed, it's not run properly, et

1 cetera. And again, that the Speaker doesn't really know how to
2 manage the House.

3 This was one of the arguments that Judge Boasberg
4 rejected in the *Budowich* case in large part, not surprisingly,
5 because the rules clause of the Constitution provides that each
6 Chamber sets its own rules, and many courts have recognized
7 that it really is largely not the role of judges to tell the
8 House and Senate how to operate themselves.

9 And that was what Judge Boasberg here in D.C.
10 concluded, and we thought Your Honor would be interested in
11 that.

12 I'm not going to spend a whole lot of time on it
13 because, frankly, it seems like a quite silly argument, and I
14 think that's probably why Mr. Burnham skipped over it.

15 Next, we have, they argue that there's no valid
16 legislative purpose here. I think I heard my friend,
17 Mr. Burnham, concede that the D.C. Circuit swatted that aside
18 very quickly and easily, and the Supreme Court recently
19 declined the plea by Professor Eastman's client, Mr. Trump, to
20 review that; the Supreme Court refused to, and left that in
21 place.

22 So, I think Mr. Burnham's argument is well,
23 obviously, there's a valid legislative purpose for the
24 Committee, and I don't think anybody with a straight face could
25 possibly argue otherwise. So, what they're saying is, well,

1 there's no valid legislative purpose with regard to
2 Mr. Eastman's records, Professor Eastman's records.

3 Well, let's remember who Professor Eastman was or
4 purported to be sort of the architect of the strategy to
5 overturn the 2020 election providing these legal memos, as we
6 understand it, they've been described at length, to overturn
7 the presidential election.

8 And, you know, he's not just an attorney here. He
9 was a very public speaker on January 6 itself, the day of the
10 attack on the Capital. Professor Eastman spoke at one of those
11 rallies, making extremely inflammatory statements.

12 So, this isn't just, you know, somebody who is a
13 bystander or a lawyer in an ivory tower, as Mr. Burnham said
14 Professor Eastman is not.

15 Professor Eastman is extremely relevant to the (audio
16 glitch) by the Committee, the Select Committee. In fact, he's
17 so relevant that we first, starting on November 8th, sought to
18 get material from him. And I think Mr. Burnham mentioned this,
19 but largely it was set aside. He made it sound like this was
20 some crazy rushed effort to try to get material before anybody
21 could reply, which is absolutely not an accurate picture here.

22 We engaged with Professor Eastman and said that we,
23 the Committee, wanted these materials, that they were highly
24 relevant, and Professor Eastman -- and the Committee attempted
25 to engage in accommodation with Professor Eastman. We're not

1 stupid. We knew that there were possibly issues of attorney-
2 client, et cetera, so we said, let's see if we can work out a
3 way that we can do this. Professor Eastman refused to engage.
4 He just said no.

5 And then, Professor Eastman really lowered the boom
6 when he said, "I can't release anything to you"; 146 times he
7 asserted the Fifth Amendment, privilege against self-
8 incrimination.

9 So, we tried. We tried over an extended period to
10 work with Professor Eastman to get this material. It was so
11 important, and is so central, and in fact, that he's been on
12 mass media talking about, saying that his client, President
13 Trump, wants him to talk about it. It's so important that
14 President Trump, former President Trump, wants him to talk
15 about it.

16 And by the way, one other thing to note, Your Honor,
17 is the subpoena itself is very limited. It asks for materials
18 from a period of from the election to Inauguration Day when
19 President Trump left office. So, we tried hard to narrow this.
20 We also provided Chapman University with search terms to help
21 narrow it, but Professor Eastman refused to engage with us. So
22 what did we do? We went to Chapman University where Professor
23 Eastman did much of his work was our understanding.

24 And Mr. Burnham says basically that if you don't give
25 relief here we're going to destroy the law clinics at law

1 schools. That's completely wrong. One of the ways we know
2 that is Professor Sisk (phonetic), who just is a person on the
3 side who used to work for me at the Justice Department,
4 Professor Sisk described what's out there in the way of law
5 schools and he indicated that the system that Chapman
6 University has is a small minority of the schools.

7 With Your Honor's permission, I would just like to
8 describe to you briefly -- and this is at page 18 and 19 of our
9 brief, just describe briefly to you what Professor Chapman knew
10 about his work at Chapman -- I'm sorry -- Professor Eastman
11 knew about his work at Chapman University.

12 So one, Chapman has a policy that is publicly
13 available. It says, (quote):

14 "The right to retrieve the contents of
15 university-owned computers and email messages for
16 (audio glitch) reasons is reserved to the
17 university."

18 Here's another quote.

19 "As such, users should not expect privacy in the
20 contents of university-owned computers or email
21 messages," (end/quote).

22 Next, we're very pleased that Chapman University
23 recognizes its public duties and it says that it may disclose
24 information accounts, (quote), "if required to do so to comply
25 with law or legal process," (unquote), including in response to

1 subpoenas.

2 Then it said, (quote):

3 "University-owned resource and business tool to be
4 used only by authorized persons for educational
5 purposes or to carry out the legitimate business of
6 the university," (end/quote).

7 And then when Professor Eastman signed on, he was
8 told, (quote):

9 "Use of this computer system constitutes your consent
10 that your activities on or information you store in
11 any part of the system is subject to monitoring and
12 recording by Chapman University or its agents,
13 consistent with the Computer and Acceptable Use
14 Policy without further notice."

15 And that use policy -- by the -- (end/quote).

16 That use policy I mentioned, that's the one that says
17 that users should not expect privacy.

18 And then last, the President of Chapman University
19 was clearly quite disturbed when he found out what was
20 happening with Professor Eastman's use of Chapman facility --
21 computer facilities and he said that the university, (quote):

22 "Has clear policies in place regarding outside
23 activity. In fact, when acting privately, Chapman
24 faculty and staff are not free to use Chapman
25 University's email address, physical address, or

1 telephone number, in connection with the support of a
2 political candidate."

3 I don't need to quote anymore. Professor Eastman
4 obviously either knew -- he's a professor there for many years.
5 I think he was a dean of the law school. I think we can all
6 assume that he knew very well all of this.

7 So no, this is not going to bring down university law
8 school clinics. Again, I rely on my friend, Professor Sisk,
9 saying that this is a small minority. That's in the article
10 that my friend, Mr. Burnham, heavily relies on.

11 Let's also focus on a very very important fact here.

12 Excuse me, Your Honor, while I just get a sip of
13 water.

14 **(Pause)**

15 Chapman University -- which this is their computer
16 system, these are their computer records -- they want to comply
17 with the subpoena. They were attempting to comply with the
18 subpoena. Professor Eastman then rushed to court to stop it
19 because remember, Professor Eastman refused to do what so many
20 other witnesses have patriotically done. Those people have
21 cooperated with the Committee because of the astonishing
22 importance of what the Committee is doing.

23 I don't think anybody can reasonably dispute that it
24 is not absolutely essential to find out why there was an
25 attempt to coup against the United States Government and our

1 democratic foundations, how it happened, what happened with the
2 attack on the Capitol, what brought it about? What statements
3 were out there? What was getting Americans so worked up about
4 all of these patently false claims about the election being
5 stolen? What was behind all that? Where did that come from?
6 And then, how did the attack happen, how can it all be
7 prevented in the future? This is absolutely essential that the
8 Committee be able to get to the bottom of this. And the way it
9 can do that is primarily by people cooperating with the
10 Committee as so many other officials are doing, former
11 officials.

12 And we need this material in part, for example, not
13 just for what is in the documents, the materials, but also so
14 that we can question other witnesses who we've got coming up
15 quickly. That's one of the reasons why we need this material
16 and we need it now.

17 And so what's on the other side? The other side is
18 that Professor Eastman can claim executive privilege but
19 there's a burden on him. He's supposed to do it, he's supposed
20 to show -- I'm sorry, if I said "executive privilege" I meant
21 attorney-client privilege. He's supposed to show that
22 attorney-client privilege will be violated here. And again,
23 we gave him ample opportunity to do that and we met with a
24 stone wall.

25 So he's supposed to identify and put together a

1 privilege log. Mr. Trump, his client, what -- what materials,
2 what conversations, et cetera, are privileged? Why?

3 Was -- I'm not certain. I had the sense that maybe
4 we were being told that Vice President Pence was Professor
5 Eastman's client. I'm not sure of that; that'll be interesting
6 since then on mass media I believe Professor Eastman called the
7 vice president spineless because he refused to overturn the
8 2020 presidential election.

9 We're not sure. Who are these other clients? When
10 Professor Eastman says, "Well, their clients of the clinic,"
11 remember, we're talking about a very short period when
12 Professor Eastman was at Chapman. And I'm sorry, I have to
13 stop myself and say actually, he was on leave of absence during
14 that period from Chapman. So what clinic clients' materials,
15 private, confidential attorney client materials are we talking
16 about? Who are these clients? And if we're talking about
17 President Trump, (audio glitch) say Professor Eastman's been
18 all over mass media saying that President Trump wants him to
19 talk.

20 So under these circumstances, all put together, we
21 think that this is actually a very narrow case with very
22 special circumstances, very special facts. You're not going to
23 have many situations like this with attorneys claiming
24 attorney-client privilege but not identifying -- not doing a
25 privilege log, not cooperating with the Committee at all to try

1 to figure this out, stonewalling us; and instead, we then go to
2 Chapman University that has been totally willing to comply with
3 the subpoena.

4 I'm happy to answer, obviously, any questions that
5 Your Honor has. Let me just emphasize again, the Committee is
6 working at great X speed. I suspect that you are well aware of
7 that from the courts in the media. We tried to get stuff done
8 and we're trying to do it fast and we're trying to talk to as
9 many witnesses as we can to get to the bottom of this in order
10 to protect our democracy.

11 Thank you, Your Honor.

12 **THE COURT:** Thank you. And let me turn to -- I'm
13 sorry. Thank you, Mr. Letter.

14 Let me turn to Mr. Plevin representing Chapman.

15 **MR. PLEVIN:** Thank you, Your Honor. I'll be brief.

16 As I have noted in our brief we filed, this dispute
17 really is not between Chapman and anybody, it's between the
18 congressional defendants and Dr. Eastman. Chapman's interest
19 is in complying with its legal obligations as defined by this
20 Court to provide information in response to the subpoena.
21 However, I think there are a few factual issues that Chapman
22 can clarify which may be of assistance to the Court.

23 First, as Mr. Letter noted, during the period of time
24 covered by the subpoena, Professor Eastman was on a leave of
25 absence from Chapman. He was a visiting professor at the

1 University of Colorado.

2 Second, the only client that has ever been identified
3 that Professor Eastman was representing during this period of
4 time in question was the former president. The former
5 president obviously was a candidate for elective office and any
6 use of university resources to support a political campaign or
7 a candidate for elective office is incompatible with Chapman's
8 501(c)(3) status.

9 So the next fact I would want to say is Mr. Eastman's
10 representation of the former president was not authorized by
11 Chapman University. He didn't ask for authorization to
12 represent former president and had he asked for such
13 authorization, it would have been denied on the basis of the
14 IRS rules.

15 There has been some reference to other potential
16 clients for whom there may be an attorney-client privilege in
17 the subpoenaed materials. No such clients have ever been
18 identified. Chapman asked Professor Eastman's lawyer to
19 identify any such other clients but no such clients have been
20 identified.

21 The issue of the law school clinics is I think a bit
22 of a red herring, Your Honor. Sure, Chapman University has law
23 school clinics and clients are represented through those
24 clinics, and there are emails sent and received on the system
25 for those legitimate clinic representations that are authorized

1 and permitted and encouraged at Chapman. The former president
2 was not a clinic client, nor would he have been eligible to be
3 a clinic client of Chapman. And so from Chapman's point of
4 view, whatever Professor Eastman was doing in representing the
5 former president was improper, unauthorized; and in a sense, I
6 liken it to having contraband on our system. It's not --
7 information is not something that we have any interest. The
8 university has no interest in expending its resources to
9 identify or protect. It simply does not have an interest in
10 doing anything other than complying with its subpoena as its
11 obligations are defined by the Court.

12 The last thing I just want to note is when Professor
13 Eastman departed from Chapman University in January of 2021, he
14 was given an opportunity to remove any alleged attorney-client
15 privilege information from Chapman's system and that did not
16 occur. And so whatever is left on the system is still there.

17 That's all the factual information I wanted to
18 convey, Your Honor. I'm happy to answer any questions if you
19 have any.

20 **THE COURT:** All right.

21 First of all, I want to thank all of the parties once
22 again for their hard work over the weekend and the briefings
23 submitted to the Court this weekend.

24 I want to start with the negotiations so I have a
25 clear record because the briefing caused some confusion, either

1 through information that was not initially conveyed or
2 responsive briefing that leaves me with an unclear record. So
3 I have a few questions regarding the timeline details of these
4 negotiations.

5 So first, Mr. Letter, to you I'm going to be asking
6 you four questions in just a moment and then I'm going to turn
7 minimally to Dr. Eastman and Counsel to respond to
8 approximately four more questions.

9 Let me propose those four questions to you first of
10 all, Mr. Letter, to mull for just a moment before I ask them
11 individually.

12 The first is, is it true that the House Select
13 Committee issued the subpoena last Tuesday, January 18th, with
14 a deadline of Friday, January 21st at 7:00 a.m. Pacific Time.
15 And don't respond for just a moment but I want absolute clarity
16 concerning that.

17 The second, is it true that Chapman University was to
18 produce approximately 19,000 of Dr. Eastman's emails within a
19 three-day period?

20 The third question goes to both you as the counsel
21 for the Select Committee and to Mr. Plevin for Chapman and that
22 is, at what point was Dr. Eastman made aware that there were
23 approximately 19,000 documents to be disclosed?

24 The fourth question, Mr. Letter, is it true that
25 Dr. Eastman was not given the opportunity to look at those

1 emails over the course of those three days? And I understand
2 your present position and your response in your papers that he
3 was given the opportunity at an earlier time and you can
4 respond at your leisure.

5 So let me start with the first very simple question.

6 Was the subpoena issued in fact last Tuesday, January
7 18th, with a deadline of Friday, January 21st at 7:00 a.m.
8 Pacific Time?

9 **MR. LETTER:** Yes, Your Honor.

10 **THE COURT:** All right. Thank you, sir.

11 Was Chapman University asked or expected to produce
12 the representation by all counsel of approximately 19,000 to
13 20,000 of Dr. Eastman's email within that three-day period?

14 Mr. Letter?

15 **MR. LETTER:** Your Honor, I believe you said
16 represented by all counsel. I -- we are relying entirely --
17 Chapman is the one who came up with that figure. To my
18 knowledge, we have absolutely no idea whether that figure is --

19 **THE COURT:** All right. Let me turn then to Mr. --

20 **MR. LETTER:** -- accurate or not. We have no reason
21 to think it isn't.

22 **THE COURT:** Okay, let me turn to Mr. Plevin.

23 **MR. LETTER:** But I just wanted --

24 **THE COURT:** Mr. Plevin, just to make my record when I
25 write the factual situation, it wasn't -- the Court was not

1 aware of the volume of this material until the opposition by
2 the Select Committee and by Chapman.

3 Are there approximately 19,000 to 20,000 emails?

4 **MR. PLEVIN:** You're addressing your question to me,
5 Your Honor?

6 **THE COURT:** Yes. Mr. Letter referred that over to
7 you so let me ask you.

8 **MR. PLEVIN:** Okay. So as Mr. Letter noted, at some
9 point during the negotiations --

10 **THE COURT:** I'm sorry, my question is very --

11 **MR. PLEVIN:** -- his office --

12 **THE COURT:** I don't mean -- my question is very
13 simple.

14 Are there approximately 19,000 to 20,000 pieces of
15 email?

16 **MR. PLEVIN:** Yes --

17 **THE COURT:** Okay, thank you.

18 **MR. PLEVIN:** -- that is what is in the production
19 (audio glitch). It's just short of 19,000, Your Honor.

20 **THE COURT:** Okay.

21 **MR. LETTER:** And Your Honor --

22 **THE COURT:** Just a moment, Counsel. My questions are
23 very succinct. I'm going to give all of you argument in just a
24 moment on this.

25 But I want to be certain then -- and back to the

1 Select Committee -- whether you knew the volume or not?
2 Nineteen thousand. Or the emails. Whatever that volume you
3 were aware of, expected to be produced in these three days?

4 Mr. Letter?

5 **MR. LETTER:** Your Honor, this is my understanding.

6 I believe we did not know when the subpoena was
7 issued how many documents. I am asking my colleagues to inform
8 me while this hearing is going on.

9 The reason for the three days, Your Honor, was we had
10 been in constant communication with Chapman and Chapman
11 University told us that they needed three days to respond.

12 **THE COURT:** I see.

13 **MR. LETTER:** So it was -- three days was because
14 that's what Chapman told us that it needed.

15 **THE COURT:** So then I've absorbed the following
16 information; and that is, in your discussion with Chapman, you
17 weren't aware of the volume of these emails and you relied upon
18 Chapman for this three days. And from that I might assume that
19 your time period might have been different depending upon
20 whether it was a hundred emails or 19,000 emails.

21 **MR. LETTER:** Again, Your Honor, I am -- my colleagues
22 are listening and I think I will very shortly have an answer.
23 I believe we did not know the number.

24 **THE COURT:** All right.

25 **MR. LETTER:** I don't think Chapman had told us

1 until --

2 **THE COURT:** Why don't you check before you make a
3 statement just to be certain, okay, as a courtesy.

4 **MR. LETTER:** I am doing that, Your Honor.

5 **THE COURT:** Is it correct that Mr. Eastman was not
6 given the opportunity to look at those emails over the course
7 of those three days? And so I can turn to Mr. Plevin or to
8 Mr. Letter, either one.

9 Mr. Plevin?

10 **MR. LETTER:** I think it would be useful for
11 Mr. Plevin to start and then me after that, I believe.

12 **THE COURT:** Mr. Plevin?

13 **MR. PLEVIN:** I believe, Your Honor, that Chapman made
14 Professor Eastman's lawyers aware of the subpoena and that it
15 intended to comply.

16 **THE COURT:** I'm sorry. I don't mean to cut you off
17 but my questions are very concise now.

18 My question is, was Dr. Eastman given the opportunity
19 to look at those emails over the course of those three days?

20 **MR. PLEVIN:** So over the course of those three days I
21 believe the answer is no.

22 **THE COURT:** Okay. And do you need to check with
23 anybody? Because the word "I believe," I want to make certain
24 I write an accurate factual situation for both parties. And if
25 you need to make a phone call, I'm not affronted at all.

1 **MR. PLEVIN:** I am -- I am just checking with my
2 client now to confirm that.

3 **THE COURT:** Okay. All right. And if you wish to
4 change your answer, I'm not affronted by that, just both of you
5 be on the phone so I have accuracy in writing a fact situation.

6 Then in the briefing, Mr. Letter, on your portion --
7 and as you've argued today -- Dr. Eastman learned -- when I
8 received your briefing -- that the House Select Committee would
9 be requesting Chapman University emails in early December 2021.
10 And since then, it appears that there have been at least six
11 weeks to voluntarily to disclose these Chapman emails.

12 So counsel on behalf of Dr. Eastman, did you send a
13 letter, as represented in the opposition briefing, to the
14 Select Committee refusing to produce these Chapman University
15 emails?

16 **MR. BURNHAM:** We sent a letter that did not
17 specifically reference the Chapman University emails but it
18 could be fairly read to cover those emails to the extent they
19 were proven to exist. We asserted an Act of Production Fifth
20 Amendment privilege.

21 **THE COURT:** And where would I see that email because
22 -- or that letter? That was not attached to any briefing over
23 the weekend.

24 **MR. BURNHAM:** It was not. I'd be happy to submit it,
25 either as a filing to chambers and it's also on the Internet.

1 **THE COURT:** Thank you, Counsel.

2 Mr. Letter, do you have any objection to the Court
3 looking at the actual document? Because when I write a factual
4 history of this, I want to be absolutely accurate. And
5 apparently there is an email now, that the Court's aware of,
6 that was sent and -- to the Select Committee with, allegedly,
7 Mr. Eastman refusing to produce Chapman University emails.

8 Do you have that letter?

9 **MR. LETTER:** Yes, Your Honor. I may be wrong; I'll
10 wait till Mr. Burnham is done because my --

11 **THE COURT:** Well why don't all of you consult
12 because --

13 **MR. LETTER:** I believe Mr. Burnham --

14 **THE COURT:** I'm sorry, Mr. Letter.

15 **MR. LETTER:** I'm sorry, Your Honor. I believe
16 Mr. Burnham attached -- oh, no, I'm sorry. This letter was
17 printed. It's publicly available, if I recall --

18 **THE COURT:** I'm not looking at a public document, I'm
19 depending upon each of you for these answers now so --

20 **MR. BURNHAM:** Can I add something, Your Honor, to
21 my --

22 **THE COURT:** No, you may not. I'm asking a very
23 succinct question now. Answer my question.

24 Where can I see this letter? Because I don't want
25 you both interpreting it; I'd like to look at it.

1 **MR. BURNHAM:** I said I'd be happy to email it or if
2 the Court would just Google John Eastman Fifth Amendment
3 Letter, I'm sure it'll be in the top few results, it's on the
4 Internet.

5 **THE COURT:** Would that be acceptable, Mr. Letter, if
6 I Googled that then?

7 **MR. LETTER:** Yes, Your Honor. I believe we made it
8 easy for you. If I'm not mistaken, if you look at page 5 --

9 **THE COURT:** Thank you.

10 **MR. LETTER:** -- of our brief.

11 **THE COURT:** Just a moment.

12 So this would -- for all your edification, this would
13 be Document 21, I believe, filed with the Court. And on Page
14 5?

15 **MR. LETTER:** I have 23-1, Your Honor.

16 **THE COURT:** At Page 5, what line please?

17 **MR. LETTER:** Page 5, Footnote 4.

18 **THE COURT:** Available at https? Is that correct?

19 **MR. LETTER:** That is exactly right, Your Honor.

20 **THE COURT:** All right. Counsel, could I have your
21 stipulation then that I can pull that off the Internet without
22 a formal submission to the Court?

23 **MR. BURNHAM:** Your Honor, I actually just tried it
24 myself and I got a message saying we're sorry but that page
25 cannot be found.

1 **(Laughter)**

2 **THE COURT:** Let me help both of you. I'm ordering
3 you to produce that letter. Would that help each of you?

4 **MR. BURNHAM:** My pleasure, Your Honor.

5 **THE COURT:** All right, thank you very much. And I
6 want that, Counsel, within the hours now. All right.

7 **MR. BURNHAM:** Certainly.

8 **THE COURT:** I want to ask Dr. Eastman and I'm asking
9 you, Counsel, to respond, did your client assert, did
10 Dr. Eastman assert the Fifth Amendment right against self-
11 incrimination with respect to producing these documents?

12 **MR. BURNHAM:** Not by name, he didn't. If I could
13 elaborate. Dr. Eastman received a subpoena himself before the
14 Chapman subpoena to testify and produce documents. It did not
15 mention Chapman by name but perhaps some of the items in the
16 subpoena, depending on who you talk to, could have been
17 interpreted to apply to that. And he asserted his Fifth
18 Amendment right in response to that subpoena by the letter
19 we've recently been discussing.

20 **THE COURT:** Typically the party whose communications
21 are being sought has an opportunity to specify which
22 communications are privileged and therefore protected from
23 disclosure. And that of course is subject to review.

24 On behalf of Dr. Eastman, Counsel, did your client
25 ever produce such a privilege log of his communications?

1 **MR. BURNHAM:** We did not. We did not and the reason
2 for that was there's case law with respect to the Fifth
3 Amendment active production case privilege stating that
4 producing a privilege log and acknowledging that certain
5 documents exist can be a waiver of the Fifth Amendment active
6 production privilege, and so for that reason we didn't. We put
7 that in our letter to the Government. They knew that was our
8 position. We tried to make it very clear.

9 **THE COURT:** So therefore I think you've responded to
10 my next question, and that is what efforts did you make to
11 produce the privilege log in that time period, and that was
12 none subject to your argument.

13 **MR. BURNHAM:** Correct.

14 **THE COURT:** Did your client, did Dr. Eastman assert
15 the Fifth Amendment right against self-incrimination with
16 respect to creating a privilege log for these documents?

17 **MR. BURNHAM:** Among others, yes, Your Honor.

18 **THE COURT:** Okay.

19 **MR. BURNHAM:** And not -- again not specifically
20 naming these documents, but --

21 **THE COURT:** Counsel, you'll find that that question
22 is based upon the Opposition, Mr. Letter, at Page 5 that you
23 filed.

24 The House Select Committee offered to apparently
25 connect Dr. Eastman with Chapman's General Counsel,

1 Ms. DuMontelle, to review the documents and produce a privilege
2 log. And that's found at the Opposition submitted on behalf of
3 the House Select Committee at Page 5. And it states that
4 Dr. Eastman did not respond to this offer. I need a clear
5 record of what occurred here.

6 So first to Mr. Letter on behalf of the House Select
7 Committee, when was that offer made?

8 **MR. LETTER:** Your Honor -- and by the way, Your
9 Honor, I have an answer to your earlier question to me --

10 **THE COURT:** No, let's stay with this question --

11 **MR. LETTER:** -- whenever you want that.

12 **THE COURT:** -- and come back to it. When was that
13 offer made?

14 **MR. LETTER:** On this one I mentioned, Your Honor, I
15 believe again that the folks with that exact information are on
16 the line and I believe they will be emailing me shortly with
17 the specific answer to your question.

18 **THE COURT:** Well I'll take a recess in just a moment,
19 and I appreciate the answer.

20 And if that occurred my next question is obvious, and
21 that is why did you, on behalf of counsel representing
22 Mr. Eastman, why did you not respond to that offer?

23 Now that's assuming that the offer was made. I don't
24 have a clear record of that yet. Somebody is on the phone
25 gathering that information. But assuming that that offer was

1 made, why didn't you respond?

2 **MR. BURNHAM:** I did respond. I didn't accept the
3 offer. But there's an email chain I'm looking at now with one
4 of the staff for the Committee where that subject was
5 discussed, and I think it starts around, I'm looking at
6 November 8th, and then maybe there's another email November the
7 23rd, so it came up a couple times on email. And the reason
8 why we didn't accept that offer was because, just to be totally
9 frank with the Court, we at that point intended and later did
10 assert the Fifth Amendment active production privilege. My
11 research is that's a very fragile, very easily waivable
12 privilege. Both the Select Committee and Congress throughout
13 history have been extraordinarily aggressive with waiver
14 arguments --

15 **THE COURT:** All right, thank you.

16 **MR. BURNHAM:** -- and both parties, on both parties,
17 and that was the reason.

18 **THE COURT:** Thank you.

19 Mr. Letter, did the House Select Committee --

20 **MR. LETTER:** Well, Your Honor --

21 **THE COURT:** -- provide Dr. Eastman with any other
22 opportunity to conduct a privilege review?

23 **MR. LETTER:** Your Honor, the information I've been
24 given is by email on November 24th is when we raised this and
25 offered it. In addition, the staff attorney who did that

1 believes that it was offered earlier by telephone as well but
2 at least there would be a written record in the email on
3 November 24th.

4 My understanding is that -- is that the offer was
5 flatly rejected, along with --

6 **THE COURT:** All right.

7 **MR. LETTER:** -- anything else.

8 **THE COURT:** Do either counsel have any objection, so
9 that I have an accurate record, of those emails being submitted
10 to the Court?

11 **MR. BURNHAM:** Can I have a moment, Your Honor?

12 **THE COURT:** Certainly.

13 In other words, when I'm writing the factual basis
14 I'd like to be as accurate as possible, and a lot of things are
15 now getting filled in from the briefing and I don't want a
16 summation of what each counsel thinks that these emails are
17 about, I'd like to see the actual emails.

18 **MR. BURNHAM:** Just to clarify, would these be --

19 **MR. LETTER:** Your Honor --

20 **MR. BURNHAM:** -- submitted in camera or shared
21 with --

22 **THE COURT:** I want complete transparency.

23 **MR. BURNHAM:** There's a long chain of emails. I'd
24 have to sort of take out what's privileged, speaking of
25 privilege. I could try and take -- because I forward emails to

1 my client and so I would have to kind of clean it up, but I
2 could certainly do that.

3 Your Honor, I think can take out the relevant emails
4 one by one and take out the parts of the chain that are
5 privileged and put something together for the Court.

6 And it actually may be easier for the Defendants to
7 do it because they have the whole chain as well and they don't
8 have -- I mean they may have forwarded it to other people as
9 well, but they could produce it.

10 **MR. LETTER:** May I be heard, Your Honor, or should I
11 wait?

12 **THE COURT:** Please, Mr. Letter.

13 **MR. LETTER:** Your Honor, let me first say that we
14 deeply appreciate your willingness and desire to get to the
15 bottom of this right away. So when you were saying before you
16 hoped it was okay, or whatever, it's more than okay from our
17 perspective. I will speak to the author of these emails, et
18 cetera, I might hear from him by email shortly. I believe that
19 he will have absolutely no objection to sharing any of this
20 with Your Honor.

21 **THE COURT:** All right. Mr. Letter, was a taint team
22 ever considered? And I think we're all aware of what a taint
23 team is. Was a taint team ever considered by the House Select
24 Committee?

25 **MR. LETTER:** Your Honor, I do not know if we raised

1 that possibility with Mr. Burnham. As far as the things that
2 we internally, various possibilities that we talked about and
3 considered internally, Your Honor, that's not something that I
4 can share publicly. The internal operations of the House of
5 Representatives are protected.

6 **THE COURT:** Last week Dr. Eastman asked the House
7 Select Committee if he could conduct a privilege review of the
8 Chapman documents and in the Reply at Page 4 the House Select
9 Committee declined this request. I'd like from counsel
10 representing Dr. Eastman when this request was made.

11 **MR. BURNHAM:** I'm speaking from memory. I'll verify
12 it in a moment.

13 **THE COURT:** Well then take a moment and verify it
14 now.

15 **(Pause)**

16 **MR. BURNHAM:** Okay, Your Honor. I'm looking here at
17 an email with Ms. DuMontelle on Wednesday, January 19th, at
18 7:00 o'clock Eastern time.

19 **THE COURT:** DC time or telephone?

20 **MR. BURNHAM:** That's DC time.

21 **THE COURT:** Thank you.

22 **MR. BURNHAM:** And if nobody objects to my simply
23 quoting a sentence or two, she's responding to me and says,
24 "I have checked with the lawyers who are coordinating
25 the subpoena and asked about us giving the production

1 to you and relieving us of the subpoena. They have
2 responded that they wish to leave it as is with the
3 existing deadline."

4 End quote.

5 **THE COURT:** Mr. Letter, can you verify that that's
6 correct or not?

7 **MR. LETTER:** I believe it is, Your Honor, and the
8 reason was, quite simply, we had made this offer before and I
9 think we now understood it was flatly rejected, at this point
10 we were under the impression we're getting absolutely nothing
11 from Professor Eastman and therefore we wanted to obtain the
12 materials from Chapman University ASAP.

13 Your Honor, I do want to say if this is considered
14 something that is important to do now, we would certainly
15 entertain it. We would want -- we think it would be essential
16 that if the material is provided to Professor Eastman now there
17 be a very quick schedule on a rolling basis for him to produce
18 a privilege log. But I have to admit I don't -- I don't
19 believe --

20 **THE COURT:** Let's stop at that point for a moment
21 because I want to repeat back what I heard, and that is you
22 would be willing at the present time to submit these materials
23 to Dr. Eastman with the expectation that this would be a short
24 turnaround time he could review these. Is that correct?

25 **MR. LETTER:** Yes, Your Honor --

1 **THE COURT:** Okay.

2 **MR. LETTER:** -- on a rolling basis, so --

3 **THE COURT:** Just a moment.

4 **MR. LETTER:** -- we're talking about --

5 **THE COURT:** I'm sorry. What does rolling basis mean?

6 Because to my perception this would be a continuing basis,

7 including weekends.

8 **MR. LETTER:** Yes, Your Honor, and maybe we're using

9 the same term --

10 **THE COURT:** Okay.

11 **MR. LETTER:** -- meaning the same thing.

12 **THE COURT:** Twenty-four/seven, right?

13 **MR. LETTER:** That Professor Eastman --

14 **THE COURT:** Twenty-four/seven?

15 **MR. LETTER:** Yes.

16 **THE COURT:** Okay, good.

17 **MR. LETTER:** And that Professor Eastman would --

18 **THE COURT:** Now, Mr. Eastman and Counsel, are you

19 accepting this offer from the Government?

20 **MR. BURNHAM:** I don't have authority to accept it as

21 I'm sitting right --

22 **THE COURT:** Well talk to your client. He's right

23 next to you.

24 **(Counsel confers with Plaintiff)**

25 **MR. BURNHAM:** We're not accepting it right now.

1 There's issues I could go into --

2 **THE COURT:** No, just a moment. When are you willing
3 to accept the Government's offer?

4 **MR. BURNHAM:** I could talk to Dr. Eastman and --

5 **THE COURT:** Good, talk to your client.

6 **(Counsel confers with Plaintiff)**

7 **MR. BURNHAM:** The most obvious is in our Complaint we
8 raise claims beyond attorney-client privilege --

9 **THE COURT:** I'm sorry, I apologize. When are you
10 willing to accept this offer?

11 **MR. BURNHAM:** I don't have a specific time to --

12 **THE COURT:** Talk to your client.

13 **(Counsel confers with Plaintiff)**

14 **MR. BURNHAM:** So we're not willing to accept it then
15 is the answer.

16 **THE COURT:** All right, thank you.

17 **MR. LETTER:** Your Honor, may I be heard very quickly?

18 **THE COURT:** Please.

19 **MR. LETTER:** On this -- I did want to end with this
20 speedy review, but -- and part of it would be if there aren't
21 claims made as to certain material, that Chapman University
22 would produce that material immediately.

23 **THE COURT:** Dr. Eastman and Counsel, you previously
24 it appears declined to produce a privilege log because of your
25 Fifth Amendment right, but at present you're currently

1 requesting the opportunity to do so. I don't understand.

2 **MR. BURNHAM:** I just have to be open with. If these
3 documents --

4 **THE COURT:** I can't hear you.

5 **MR. BURNHAM:** If these documents are delivered to the
6 Government there is a argument that I think has some force to
7 it that the active production privilege is waived by that
8 production. So at that point once they're subject to a
9 subpoena then that defeats the -- arguably could defeat the
10 previous assertion of privilege and for reasons I could get
11 into I think we were totally within our rights to wait till we
12 were obliged by subpoena to --

13 **THE COURT:** I'll let you conclude your argument in
14 just a moment. I have some specific questions for both of
15 you --

16 **MR. BURNHAM:** Okay.

17 **THE COURT:** -- so I appreciate brevity.

18 I'm going to take a 10-minute recess, so all of you
19 can take a 10-minute recess for a moment. And the next brief
20 category is going to concern Dr. Eastman's work at Chapman.
21 And to preview that, Dr. Eastman, as I understand, was a
22 professor at Chapman University during the time of the
23 subpoena, but today for the first time I've heard that he was
24 on leave and I'd like to make certain that I have a clear
25 record concerning his status when we come back, from both of

1 you, and you have a comfort level in your statement to the
2 Court.

3 And in addition to his academic work at Chapman,
4 Dr. Eastman represented several clients. So to prepare you so
5 you can discuss this during the recess, the House Select
6 Committee has argued that Dr. Eastman's representation of
7 clients was unauthorized because it supported a political
8 activity which was barred by IRS rules for nonprofit
9 universities. And according to Dr. Eastman's contract with
10 Chapman University, Dr. Eastman was authorized to direct the
11 Center for Constitutional Litigation, a program jointly
12 sponsored by Chapman University and the Claremont Institute,
13 and you'll find that at the Reply, Exhibit 1, Docket 31-1, and
14 through the Center Dr. Eastman and the students represented a
15 number of different clients.

16 So Counsel, so you can discuss with your client, two
17 questions I will initially have to Dr. Eastman is did you
18 conduct all your work for the Center for Constitutional
19 Litigation using your Chapman University email account and
20 which clients did you represent through the Center between
21 November of 2020 and January of 2021, which I assume would be
22 the date of the election through the date of the inauguration.

23 And from the briefing Dr. Eastman also potentially
24 represented clients outside the Center for Constitutional
25 Litigation, so another question is did you retain pro bono

1 clients outside of the Center between November of 2020 and
2 January of 2021, or the subpoena dates, and who were they.

3 And the next questions would be did you retain
4 private clients outside of the Center between November of 2020
5 and January of 2021 and approximately how many clients did
6 Dr. Eastman represent between November of 2020 and January of
7 2021. And for any clients represented outside the Center for
8 Constitutional Litigation, did you receive explicit
9 authorization for that work from Chapman University.

10 Once again I'm going to ask was Dr. Eastman's
11 representation to President Trump through the Center for
12 Constitutional Litigation, through a private retainer
13 agreement, or through another arrangement.

14 And then Mr. Plevin, I'm going to turn back to you
15 with a question so you can be prepared as you ably are, and
16 that is did you, meaning Chapman University, authorize
17 Dr. Eastman's representation of President Trump between
18 November of 2020 and January of 2021. Because the briefing is
19 a little bit hazy and Dr. Eastman's come back and made the
20 argument that Chapman not only well knew about this but was a
21 champion and therefore impliedly approved of this.

22 Dr. Eastman worked as an expert witness for the
23 Florida Legislature's Select Joint Committee on the election
24 involving President Bush and Candidate Al Gore and was retained
25 by the Florida Legislature to advise it on a resolution on

1 electoral votes. You'll find that at Exhibit 2, Docket 31-2.
2 So you can prepare, to Chapman University, did Chapman
3 authorize this work and was this work in violation of the IRS
4 policies for nonprofit universities, and I think you've
5 previously answered that but I'd like to hear that one more
6 time, and was that work completed using the Chapman University
7 email.

8 I'm going to stop there for a moment. Counsel, why
9 don't we take a 10-minute recess so you're comfortable. In
10 fact, let's say 15 just to be sure.

11 Thank you very much.

12 **(Court in recess from 3:35 p.m. to 4:00 p.m.)**

13 **THE COURT:** We're back on the record then. Deb, are
14 we on the record?

15 **THE CLERK:** Yes, we are.

16 **THE COURT:** All right. And I see -- Mr. Letter,
17 thank you. And, Mr. Plevin, thank you. And we're back on the
18 record with Mr. Eastman and Counsel and Court.

19 I'd like to follow up on the earlier discussion
20 concerning these privilege logs to make certain I understand
21 your respective positions about Dr. Eastman producing a
22 privilege log.

23 Mr. Letter, you've stated that the House Select
24 Committee is amenable to Dr. Eastman being given the documents,
25 producing a privilege log and then Chapman producing

1 unprivileged documents on a rolling basis which to me means a
2 continuing basis. And I take that to mean almost immediately.

3 So, Dr. Eastman or Counsel, earlier it sounded like
4 you were saying that you could not agree to make a privilege
5 log at this point given your other legal arguments against the
6 subpoena as a whole. I'm understanding that you mean your
7 arguments about the Select Committee's formation and purpose,
8 second, Dr. Eastman's First Amendment rights and Dr. Eastman's
9 Fourth Amendment rights; is that correct?

10 **MR. BURNHAM:** That's correct.

11 **THE COURT:** All right. If the Court were to
12 tentatively rule against you with respect to those three
13 arguments leaving only the privilege argument, would
14 Dr. Eastman accept the offer of making a privilege log?

15 **MR. BURNHAM:** And whose -- was the term "tentatively"
16 rule against us?

17 **THE COURT:** Yes.

18 **MR. BURNHAM:** The Court's indulgence.

19 **(Counsel confer)**

20 In the terms Your Honor put it, yes, we would accept
21 that with the small proviso that there might be issues we would
22 have to work out about the particulars of the privilege log but
23 in theory, yes, that would be the next best resolution to
24 prevailing on all of our claims.

25 **THE COURT:** Okay. These will be quick questions,

1 quick answers. They'll be somewhat repetitive but let me
2 remind all of us that during the time of the subpoena when
3 Dr. Eastman was a professor at the university, this is the
4 first time I've heard that he was on a leave of absence.

5 Mr. Plevin, on behalf of the university, was
6 Dr. Eastman on leave of absence from Chapman University from
7 the time of the election to the time of the inauguration?

8 **MR. PLEVIN:** Yes, he was.

9 **THE COURT:** All right, thank you.

10 Counsel, do you agree or disagree with the statement
11 by counsel for Chapman?

12 **MR. BURNHAM:** I disagree that it was a complete leave
13 of absence and what I mean by that is Dr. Eastman was teaching
14 at Colorado but he remained -- he was still paid a stipend to
15 continue running the clinic that we've been discussing. So he
16 was on a leave of absence but he was still getting paid to work
17 for Chapman. So that's the answer.

18 **THE COURT:** Then I'd like to understand which clients
19 Dr. Eastman represented between -- I'm going to say November
20 2020 which constantly repeating the date of the election and
21 the date of the inauguration in January 2021 and if those
22 clients were authorized by Chapman University and whether
23 Dr. Eastman used Chapman email for work.

24 So can you confirm, Dr. Eastman, through your counsel
25 that you were not working as a Chapman professor in that time

1 period or is your statement, Counsel, that he was on stipend of
2 some kind?

3 **MR. BURNHAM:** He was on a stipend to continue to run
4 the clinic.

5 **THE COURT:** Okay.

6 **MR. BURNHAM:** He was not teaching classes at that
7 time.

8 **THE COURT:** Mr. Plevin, on behalf of Chapman, what
9 are the policies for professors on leaves of absence? Are they
10 still able to use the Chapman emails? Is their work authorized
11 by Chapman or within Chapman's purview at all?

12 **MR. PLEVIN:** Yes, I believe they -- I believe that to
13 be true as stated, Your Honor.

14 **THE COURT:** And true as to what, so I'm certain for
15 my record?

16 **MR. PLEVIN:** I believe that a Chapman professor on a
17 leave of absence still has access to --

18 **THE COURT:** Okay.

19 **MR. PLEVIN:** -- the Chapman email network and is
20 authorized to use that email network for legitimate authorized
21 purposes --

22 **THE COURT:** Okay.

23 **MR. PLEVIN:** -- consistent with the university rules.

24 **THE COURT:** So to either, you, Dr. Eastman, or to
25 you, Mr. Plevin, on behalf of Chapman, how many clients did

1 Dr. Eastman represent between November 2020 and January 2021?

2 **MR. PLEVIN:** Chapman does not know the answer to that
3 question. We actually asked for that information from
4 Professor Eastman's lawyer during the course of these
5 discussions about a potential privilege issue and no client
6 names were ever provided.

7 **THE COURT:** But you've gone through these records.
8 Do you know which were authorized by Chapman University, if
9 any?

10 **MR. PLEVIN:** No. The records were -- I don't. I can
11 explain if you like. The answer is "No."

12 **THE COURT:** Okay. On November 8th, 2021, the Select
13 Committee, Mr. Letter, issued a subpoena to Dr. Eastman with an
14 accompanying letter from Chairman Thompson dated November 8th,
15 2021. It's the Select Committee cover letter to Eastman at 1.
16 And I take judicial notice of the Chairman's letter. It's now
17 a publicly available Government document which was cited in the
18 House Select Committee's briefing in this case.

19 So I'd like to walk through the events cited in that
20 letter and ask the following questions. Dr. Eastman reportedly
21 "wrote two memorandum offering several scenarios for the Vice
22 President to potentially change the outcome of the 2020
23 Presidential election." That's in your Select Committee cover
24 letter at 1 citing a CNN article. Mr. Plevin, on behalf of
25 Chapman, did Chapman University authorize this work?

1 **MR. PLEVIN:** No, Your Honor.

2 **THE COURT:** Did Dr. Eastman or through his counsel,
3 was that work conducted through an attorney-client relationship
4 and if so, which clients? And was any aspect of that work
5 conducted using Chapman University email?

6 **MR. BURNHAM:** The representation of President Trump
7 was not conducted using Chapman University email. Was there
8 another part to the question?

9 **THE COURT:** Well, was any aspect of that work
10 conducted using Chapman University email?

11 **MR. BURNHAM:** Court's indulgence.

12 **(Counsel confer)**

13 Substantially, no. We can't rule out some
14 inadvertent use of Chapman email with respect to the former
15 President.

16 **THE COURT:** Okay. And was that work conducted
17 through an attorney-client relationship? And if so, which
18 clients?

19 **MR. BURNHAM:** An attorney-client relationship existed
20 with the President.

21 **THE COURT:** Okay. On December 3rd of 2021,
22 Dr. Eastman reportedly testified to the Georgia State Senators
23 on alleged voter fraud and shared a paper arguing that the
24 State Legislature could reject the results and directly appoint
25 electors themselves. Once again, it came to the Court through

1 the Select Committee cover letter at 2 citing a *Washington Post*
2 article.

3 The same question. Mr. Plevin, did Chapman
4 University authorize this work?

5 **MR. PLEVIN:** I can't answer that explicitly. I
6 believe the answer to be "No" but I cannot answer it with the
7 same accuracy.

8 **THE COURT:** Then I don't understand your answer.

9 **MR. PLEVIN:** I'm sorry?

10 **THE COURT:** I don't understand your answer.

11 **MR. PLEVIN:** I don't have the information to say -- I
12 believe the answer to be "No." I don't have enough information
13 to make that representation to the Court.

14 **THE COURT:** Well, let me stop you for a moment. "I
15 believe" is a big word. How would you obtain that information
16 to make a concise answer to the Court?

17 **MR. PLEVIN:** I've been informed by both -- through
18 the president's office and through the law school dean at the
19 time that Dr. Eastman was not authorized to engage in any
20 activity on behalf of the political campaign or in support of a
21 candidate for elective office. And if he had asked to be
22 authorized to do that, the answer would have been "No."

23 **THE COURT:** Okay, thank you.

24 Dr. Eastman or Counsel, was that work conducted
25 through an attorney-client relationship and if so, once again,

1 which clients?

2 **MR. BURNHAM:** The Court's indulgence.

3 **(Counsel confer)**

4 The answer to Your Honor's question is "No" with the
5 proviso that dealings with perspective clients, privilege can
6 attach to those as well. So I would make that clarification.

7 **THE COURT:** On January 2nd, 2021, Dr. Eastman
8 reportedly participated in briefing for nearly 300 State
9 Legislatures from several states regarding purported election
10 fraud during which Dr. Eastman told the group that it was the
11 duty of the Legislatures to fix this -- this egregious conduct
12 and make sure that "we're not putting in the White House some
13 guy that didn't get elected." from the Select Committee cover
14 letter submitted to the Court at 2 citing a *PR Newswire*
15 article.

16 Once again, Mr. Plevin, on behalf of Chapman
17 University, did the university authorize this work?

18 **MR. PLEVIN:** I'd answer the same way as before, Your
19 Honor. I don't have a specific answer for that specific
20 activity but he was not authorized to engage in any activity on
21 behalf of a political campaign or elective office nor would he
22 have been authorized if he had asked.

23 **THE COURT:** And, Dr. Eastman, through your counsel,
24 was that work conducted, once again, through an attorney-client
25 relationship? If so, which clients? And was any aspect of

1 that work conducted using your Chapman University email?

2 **MR. BURNHAM:** I'm sorry. I was trying to listen to
3 two folks at once.

4 **THE COURT:** Oh.

5 **MR. BURNHAM:** Can you repeat the question?

6 **THE COURT:** Was the work conducted through an
7 attorney-client relationship and if so, which clients? Let's
8 take that question first.

9 **(Counsel confer)**

10 **MR. BURNHAM:** That work was done pursuant to
11 representation of the President and if -- begging the Court's
12 indulgence for ten seconds, I want to make clear on the record
13 that we're attempting to give narrow answers here to aid Your
14 Honor making this narrow decision on the temporary restraining
15 order. This should not be taken as any intent to waive the
16 previously asserted Fifth Amendment privilege which we
17 absolutely maintain. I have to have that on the record. Thank
18 you.

19 **THE COURT:** Was any aspect of the work conducted
20 using Chapman University email?

21 **(Counsel confer)**

22 **MR. BURNHAM:** It's possible. We haven't seen all the
23 emails. It's possible that some of it could have been.

24 **THE COURT:** Okay. On January 3rd, Dr. Eastman
25 allegedly met with President Trump and Vice President Pence to

1 explain his theory that the Vice President had authority to
2 decide the results of the election. That came to the Court in
3 Select Committee cover letter at 2, I believe, on Saturday
4 citing *New York Times* article. So once again, Mr. Plevin, did
5 Chapman University authorize this work?

6 **MR. PLEVIN:** No, it did not.

7 **THE COURT:** To Dr. Eastman through his counsel, was
8 that work conducted through an attorney-client relationship and
9 if so, which client or clients?

10 **MR. BURNHAM:** President Trump.

11 **THE COURT:** All right. Was any aspect of that work
12 conducted using Chapman University email?

13 **(Counsel confer)**

14 **MR. BURNHAM:** Same answer, it's possible.

15 **THE COURT:** On the days leading up to January 6th,
16 "Dr. Eastman was in the Willard Hotel 'war room' with Steve
17 Bannon and others where the focus was on delaying or blocking
18 the certification of the election" that came to the Court on
19 Saturday and the briefing on Select Committee cover letter at 2
20 citing *The Washington Post* article.

21 Once again, Mr. Plevin, on behalf of Chapman
22 University, did Chapman University authorize this work?

23 Mr. Plevin?

24 **MR. PLEVIN:** I'm sorry. I thought I said, "No."
25 Maybe I was muted. I apologize.

1 **THE COURT:** I didn't hear that. Is the answer "No"?

2 **MR. PLEVIN:** The answer is "No."

3 **THE COURT:** All right. Thank you.

4 To Dr. Eastman through his counsel, was that work
5 conducted through an attorney-client relationship and if so,
6 for which client or clients?

7 **MR. BURNHAM:** President Trump.

8 **THE COURT:** And was any aspect of that work conducted
9 using Chapman University email?

10 **MR. BURNHAM:** We can't rule it out.

11 **THE COURT:** On January 6, 2000 -- or January 6th,
12 2000 -- well, '21, Dr. Eastman spoke at a rally at the White
13 House Ellipse that led to the attack on the Capitol and
14 Dr. Eastman reportedly emailed Vice President Pence's counsel
15 saying that the -- "The siege is because Vice President and his
16 boss did not do what was necessary." And following the attack,
17 Dr. Eastman reportedly told the Vice President's counsel that
18 "Pence should still not certify the results."

19 So once again to Chapman University, Mr. Plevin, did
20 Chapman University authorize this work?

21 **MR. PLEVIN:** The answer is "No," Your Honor.

22 **THE COURT:** And to Dr. Eastman through his counsel,
23 was that work conducted through an attorney-client relationship
24 and if so, which clients?

25 **MR. BURNHAM:** Court's indulgence.

1 **(Counsel confer)**

2 Your Honor, we don't necessarily agree with the
3 factual description in the letter but Dr. Eastman was at that
4 time period representing President Trump.

5 **THE COURT:** All right. Can you help me with a
6 general question? How many clients did Mr. Eastman -- or Dr.
7 -- I'm sorry -- Dr. Eastman have between November 2020 and
8 January 2021 and who were those clients?

9 **MR. BURNHAM:** Putting aside potential clients who I
10 don't understand to be responsive to Your Honor's question but
11 to whom privilege would apply, I believe what I -- there's --
12 that I can talk about my name, I'm aware of four. There's a
13 certain category of clients for whom the identity of the client
14 can be privileged and so I have to operate within that
15 constraint but there's four that I'm aware of and can talk
16 about.

17 **THE COURT:** To Chapman University -- and then I'd
18 like to take another brief recess -- are clinical professors,
19 Mr. Plevin, at Chapman University given an alternative email
20 account to use for their clients' work?

21 **MR. PLEVIN:** I don't know for sure. I can find out.
22 I believe the answer is "No" but I don't -- I'll need to check
23 on that, Your Honor.

24 **THE COURT:** And do you -- and by "you," I mean
25 Chapman University, of course -- educate clinical professors on

1 any confidentiality concerns regarding using their Chapman
2 email for client work?

3 **MR. PLEVIN:** Once again, Your Honor, it's something I
4 would need to check with the right folks on and get back to
5 you.

6 **THE COURT:** Do any trainings or warnings they receive
7 include a discussion of the attorney -- or waiving the
8 attorney-client privilege by using Chapman email accounts?

9 **MR. PLEVIN:** I'd have to give you the same response,
10 Your Honor.

11 **THE COURT:** Do Chapman's clinical professors waive
12 all attorney-client privilege when they use their Chapman email
13 accounts to provide legal advice to clinic clients?

14 **MR. PLEVIN:** I don't believe Chapman has ever taken
15 that position, Your Honor.

16 **THE COURT:** Okay. I know you just had a recess. I'd
17 like about ten minutes. I'm sorry it took so long but we were
18 getting some of the letters that you submitted to the Court.
19 This time it will be ten minutes and we'll be right back with
20 you. I've just got a very short period of questions for you
21 and then I'll give you a chance to summarize in whatever area
22 you choose to. Thank you for your courtesy.

23 **(A recess is taken from 4:18 p.m. to 4:32 p.m.)**

24 **THE COURT:** All right. Karlen, if you'd be so kind,
25 at your convenience, would you plug everybody in?

1 **THE CLERK:** Okay.

2 **THE COURT:** Okay. Well, we're back on the record and
3 I can -- Mr. Letter, I can see you. Mr. Plevin, thank you.
4 And Mr. Eastman and counsel are in court.

5 Dr. Eastman, through counsel, you stated that
6 Dr. Eastman had four clients whose communications would be
7 responsive to the subpoena. Who were those clients?

8 **MR. BURNHAM:** Donald Trump is one.

9 **THE CLERK:** Your microphone is off.

10 **MR. BURNHAM:** I'm sorry. Is my microphone --

11 **THE COURT:** Thank you.

12 **MR. BURNHAM:** Donald Trump is one. The Pasadena
13 Republican Club is another.

14 **THE COURT:** Okay, thank you.

15 **MR. BURNHAM:** The Claremont Center for Jurisprudence
16 -- I'm sorry -- Center for Constitutional Jurisprudence --

17 **THE COURT:** Thank you.

18 **MR. BURNHAM:** -- is another and then the final one
19 was a case involving the emoluments clause whose -- the name of
20 which I'll come to in a second. Professor Hamerman.

21 **THE COURT:** Thank you.

22 **MR. BURNHAM:** Hamermesh, I'm sorry. Professor
23 Hamermesh and I have the name here in my notes. Lawrence
24 Hamermesh, *Trump versus Citizens for Responsive Government*.
25 Trump was a named party. Dr. Eastman was not representing

1 President Trump in that but that was a case involving the
2 emoluments clause.

3 **THE COURT:** Why would some of -- why would some
4 clients' identities be privileged?

5 **MR. BURNHAM:** The law is clear, Your Honor, that in
6 general the identity of a client is not privilege but if there
7 are specific circumstances that would make it prejudicial to
8 the clients or reveal it such as in a highly charged political
9 atmosphere with multiple investigations hovering around, we
10 would contend, would be the type of circumstances where that
11 exception to the normal rule would very much apply.

12 **THE COURT:** Which of those clients were through the
13 Chapman clinic?

14 **MR. BURNHAM:** All except for the President.

15 **THE COURT:** Okay, just a moment.

16 **MR. BURNHAM:** Court's indulgence.

17 **(Counsel confer)**

18 Mr. Letter, if the House Select Committee's purpose
19 involves investigating sedition, which is a Federal crime, why
20 is the Committee not raising the crime-fraud exception which
21 would independently destroy the attorney-client privilege?

22 **MR. LETTER:** Your Honor, one of the points that I was
23 possibly going to raise with you today was that it might very
24 well be that we would at some point raise that -- the crime-
25 fraud exception.

1 At the moment, it just wasn't clear to us yet whether
2 that --

3 **THE COURT:** All right.

4 **MR. LETTER:** -- was something that would reasonably
5 be applied to Professor Eastman. In a rush to get everything
6 done, we, therefore, did not include that but, yes, Your Honor,
7 that is something that if there were further proceedings in
8 this case, we would certainly look very closely at.

9 **THE COURT:** I anticipate handing down a ruling for
10 the edification of both counsel -- or all counsel sometime
11 tomorrow ruling against Dr. Eastman on the Select Committee's
12 authority, the First and the Fourth Amendment. And I choose to
13 write on that so it's not simply an oral record for appellate
14 purposes.

15 And given the parties' representations about your
16 willingness to work on a privilege log, if the Court rules
17 against Dr. Eastman on the other three claims, I would prepare
18 to order that the parties begin work on the production and
19 creating a privilege log immediately. And this Court would
20 expect that the parties will work together with the urgency
21 that this case requires.

22 And, therefore, I'm prepared to order that a joint
23 status report be to this Court on Wednesday, January 26th and
24 Friday, January 28th at 2:00 p.m. Pacific Time. And that
25 report should summarize the progress made in any disputes that

1 the parties are facing. I've then set a status conference for
2 next Monday, January 31st at 2:00 p.m.

3 And in doing so, I'm going to ask the parties who you
4 want to decide any contested assertions of privilege. Will it
5 be this Court or do you want a taint team established and what
6 is a reasonable time for getting through all of those
7 documents? And I would expect that we're going to be working
8 on Saturday and so for church purposes, et cetera, half a day
9 Sunday.

10 Now, if you want to have a private discussion
11 concerning that by phone with one another as a courtesy -- but
12 I'm prepared to hand down those orders in just a moment.

13 Do you want to have a private conversation,
14 Mr. Letter, with Dr. Eastman and his counsel in that regard?
15 In other words, you're going to have to get somebody out here
16 in that location which seemed to be most appropriate at Chapman
17 because that's where the records are located.

18 **MR. LETTER:** Your Honor --

19 **THE COURT:** Now, I don't want to have a long
20 discussion about this. I think the two of you can communicate
21 by phone concerning this but I'm happy to entertain any
22 thoughts.

23 So let me begin with Mr. Plevin.

24 **MR. PLEVIN:** Yes, this is on behalf of Chapman. So
25 what we have right now is -- I believe it's a PST file. It's

1 an email file. That is a digital file that can be transferred
2 to somewhere. I don't believe there's any need for Dr. Eastman
3 or anyone else to come to Chapman to review it.

4 **THE COURT:** Well, there is if there's a dispute. So
5 it really passes the question and that is whether it's a taint
6 team of this court. I want to resolve or have those disputes
7 resolved forthwith. And so, therefore, it would seem to me
8 that you have these files. Dr. Eastman is here. And it would
9 seem to me it would be much more efficient and much quicker if
10 you can't travel, Mr. Letter, that a designee travel forthwith
11 and that we get started on this.

12 I'm going to suggest this. I'm going to leave the
13 bench. Place some calls to each other privately outside my
14 presence. Come up with a solution. Otherwise, I'll simply
15 hand down my solution. So I want courtesy between all of you
16 but now we're in continuous session concerning this matter.

17 So I'll be back in about ten minutes or when you tell
18 Karlen that you've had the time, Mr. Letter, to talk to
19 Mr. Eastman's counsel along with Mr. Plevin. If you can work
20 out a better methodology, so be it. We're in recess. Thank
21 you.

22 **MR. SPEAKER:** Can I get a phone number for --

23 **THE COURT:** Will you give him your phone number?

24 **MR. BURNHAM:** I have Mr. Letter's phone number. I
25 can call him now.

1 **THE COURT:** Text it. You don't want that public.

2 **MR. BURNHAM:** I can text Mr. Letter and email
3 Mr. Plevin my phone number.

4 **THE COURT:** Call me as soon as you have the courtesy
5 of a time.

6 **(A recess is taken from 4:40 p.m. to 4:56 p.m.)**

7 **THE COURT:** Well, then are we unmuted, Karlen? Thank
8 you so much.

9 Then we're back on the record. The record should
10 reflect all counsel are present or by Zoom.

11 So, Counsel, your thoughts?

12 **MR. BURNHAM:** I can start. We had a -- I don't know
13 which counsel Your Honor was addressing.

14 **THE COURT:** Well, I'm looking between Zoom and then
15 court counsel, so whoever would like to start. Mr. Letter,
16 Mr. Plevin or counsel Mr. Burnham.

17 **MR. BURNHAM:** We agreed -- I think all parties agreed
18 based on the discussion just now on the phone that Chapman
19 would produce in the very, very near future the documents to
20 our side to begin a privilege log.

21 **THE COURT:** Let me stop. The near future -- when?

22 **MR. BURNHAM:** Well, it sounded like it was -- we
23 didn't have a specific. It sounded like it probably could
24 happen today.

25 **THE COURT:** Just a moment. We will. When?

1 **MR. PLEVIN:** Your Honor, I think -- I'm waiting for
2 my tech people to confirm but I'm -- with good certainty, I can
3 say it will be done by noon Pacific tomorrow.

4 **THE COURT:** All right, just a moment. By noon
5 tomorrow. Thank you, Mr. Plevin.

6 All right. Please continue, Counsel.

7 **MR. BURNHAM:** And then Mr. Letter can speak for
8 himself but my understanding is he has to consult with the
9 Committee members about what their position would be on the
10 proper party to resolve disputes. He'll get his position on
11 that and we'll have further discussions before providing a
12 concrete proposal.

13 **THE COURT:** No, no. Just a moment.

14 I respect the fact, Mr. Letter, that you'll consult
15 with the Committee. Please do so. But I expect an immediate
16 answer concerning that. I expect us to start tomorrow at noon.
17 Is that understood?

18 **MR. LETTER:** Yes, Your Honor. I need to make sure
19 there's --

20 **THE COURT:** Now, the question will simply be then,
21 who would be the deciding party? The Court's quite prepared to
22 take on these contested assertions of privilege or you can form
23 a taint committee but I do not want further delay or bickering
24 over what that taint committee would be or who they'd be
25 composed of. So I'm concerned about that.

1 And, Mr. Letter, you want speed? Then move.

2 Understood?

3 **MR. LETTER:** Yes, Your Honor. The only delay on my
4 part --

5 **THE COURT:** Thank you very much.

6 Now, how will we resolve that? Because I want an
7 answer to that and I assume that the Committee is not in
8 session at 8:00 o'clock and you don't have the ability to reach
9 out to the chairman; is that correct?

10 **MR. LETTER:** That is correct, Your Honor.

11 **THE COURT:** Okay.

12 **MR. LETTER:** As soon as the call is over, I will
13 initiate this. The -- only the chairman in consultation with
14 the vice-chairman can make this decision.

15 **THE COURT:** Okay.

16 **MR. LETTER:** But they will -- I suspect they've
17 already been informed on what's happening but I just need to,
18 as I say --

19 **THE COURT:** All right. And you both understand that
20 my concern is that -- and I would welcome a taint committee.
21 That's fine. But then we get into the composition of the taint
22 committee which then, Mr. Letter, works against your request
23 for a speedy resolution. And I represent to both of you that
24 if you can't reach that agreement, the Court's quite prepared
25 but I do expect that we'll be working -- if it's with this

1 Court, that you'll be working this weekend. Is that understood
2 by all parties?

3 Now, how do we resolve this, Mr. Letter, so that you
4 have time to consult the chairperson out of courtesy?

5 **MR. LETTER:** Your Honor, I'll be totally honest with
6 you. I do not know how fast I can reach the chairman. It's
7 usually fast but I don't think -- he may be traveling, et
8 cetera. I don't know and I cannot --

9 **THE COURT:** Could we take a moment and find out
10 through his offices?

11 **MR. LETTER:** I can try to reach the staff but I'm
12 sure the chairman won't --

13 **THE COURT:** All right. So perhaps this is the answer
14 for all of this and that is, we can certainly start the process
15 as of 12:00 noon tomorrow. How those disputes are resolved,
16 whether it's a taint committee or this Court, can probably be
17 delayed out of courtesy to all the parties certainly until
18 Thursday because those assertions will start coming up, if they
19 do, and I can start as early as Thursday giving you 24 to 48
20 hours to start the process. Would that be fair to both
21 parties?

22 **MR. BURNHAM:** Court's indulgence. Yes, Your Honor.

23 **THE COURT:** All right.

24 **MR. SPEAKER:** Yes, Your Honor.

25 **THE COURT:** Then is there anything further this

1 evening other than thanking all of you folks in Washington
2 D.C.? It's a little bit late there. And, Counsel, thank you
3 for your presence here in court today. Is there anything
4 further?

5 **MR. BURNHAM:** Court's indulgence. Can I have about
6 five minutes, Your Honor, to put some other things on the
7 record? The Court had mentioned a brief closing.

8 **THE COURT:** Please.

9 **MR. BURNHAM:** I'd like to avail myself of that.

10 **THE COURT:** Please. So you can make a record --

11 **MR. BURNHAM:** Okay.

12 **THE COURT:** -- and I'll afford the same courtesy,
13 Mr. Letter, to you and Mr. Plevin.

14 **MR. BURNHAM:** Thank you, Your Honor. And I'm going
15 to go through my list from the argument in, hopefully, some
16 kind of a logical order but perhaps not.

17 I think an important point is the Government
18 represented this subpoena to be narrow and perhaps by its terms
19 you could characterize it that way but I think the terms of the
20 subpoena itself have to be considered in conjunction with the
21 list of suggested search terms that were apparently
22 communicated along with the subpoena and that neither Your
23 Honor or us, the Plaintiffs, have seen.

24 We don't know what those search terms were and,
25 perhaps, depending on the exact terms in which they were

1 communicated, if it was more than just a mere suggestion, they
2 could modify the scope of the subpoena. So we think that's
3 important.

4 The use of law school email systems has to be
5 considered within the practice of the legal community going
6 back since emails started being a thing. For example, I was a
7 public defender and used dot gov emails. They were not my
8 property but the prosecution couldn't subpoena them. And
9 that's sort of the standard of practice among -- we all operate
10 when it comes to government emails or law school emails.

11 Your Honor asked a series of questions to counsel for
12 Chapman about, was Dr. Eastman authorized for this? Was he
13 authorized for that? We'd like to make our position on that
14 clear.

15 Our position is, first, that there was no mechanism
16 in place to request such authorization nor was that a common
17 practice either for Dr. Eastman himself or for the various
18 other law professors at Chapman who took clients. It was -- it
19 just wasn't something that was done.

20 Dr. Eastman relied on his practice of 20 years there
21 where he could take what clients he wanted in pursuit of his
22 teaching and scholarship. He was rewarded for that and, in
23 fact, he filed periodic reports -- "faculty reports," I think
24 was the term, with the university detailing his representations
25 of this person and that person testifying and so forth.

1 And the understanding was if there was ever anything
2 there that the university deemed improper, a violation or
3 political activity or something like that, it could be
4 addressed in the proper context. And there was never any
5 objection raised to his clients either within the auspices of
6 the clinic or not, either pro bono or retained. It never came
7 up. We're happy to submit those faculty reports. We have
8 them. They go back years. We'll share them with whoever wants
9 to see them. So that's about the authorization.

10 The subject of whether Dr. Eastman was engaged in
11 improper political activity came up several times. Our
12 position is very much that under IRS rules, university policy,
13 whatever other applicable restrictions governed, representation
14 of a client as a lawyer who happens to be running for a
15 political office is not the same thing as political activity or
16 electioneering or any of these terms that were thrown around.

17 Dr. Eastman was Donald Trump's lawyer. He was not
18 his campaign manager which gets him very much within the rules
19 of the IRS, the university's tax status, the university's
20 policy and so forth. And, in fact, we proffer there's been a
21 lot of facts just simply proffered to the Court and so I'll
22 proffer that Dr. Eastman discussed his representation of Donald
23 Trump with the Dean of Chapman Law School so that it was well
24 aware that that was a client of his and the only response to
25 him sharing that was to take the Chapman name off of

1 correspondence but still use the Chapman address.

2 Apparently up and to that point, for outside
3 representations, letters and briefs could say, John Eastman,
4 care of Chapman and that would be how mail was sent and
5 received. And the decision was, because Donald Trump during
6 the election was such a controversial representation, the
7 Chapman name would be removed from the paperwork but the
8 Chapman address could be -- remain. So the idea that he was
9 somehow going rogue against the wishes of the university in
10 representing the President, absolutely not the case.

11 And, finally, there were some statements that, oh,
12 well, Dr. Eastman was given the chance to take off his
13 privileged information from the servers when he left. We
14 dispute that as well. The fact was he was given the
15 opportunity to delete what he wanted to delete from the
16 servers, was not told that regardless of the extent to which he
17 took advantage of that opportunity, which he did in certain
18 ways, Chapman would nonetheless retain an archived copy of
19 everything.

20 That was not communicated to him. He didn't know it.
21 We didn't find out that everything he had was still in
22 Chapman's possession until we received the subpoena.

23 **THE COURT:** Counsel, thank you.

24 **MR. BURNHAM:** Thank you, Your Honor.

25 **THE COURT:** Let me turn to either Mr. Plevin or

1 Mr. Letter for any further comments.

2 **MR. PLEVIN:** Thank you, Your Honor. Just briefly in
3 response to the factual representations just made by
4 Mr. Burnham, Chapman does view the representation of a
5 candidate for political office as a violation of its rules and
6 the IRS rules. There was -- I'm informed that the dean
7 expressly told Professor Eastman that if he was going to be
8 representing President Trump that he shouldn't be using
9 university resources for that.

10 And in the past, whether there was approval or not
11 approval is not the issue. The issue here has to do with the
12 political bar on 501(c)(3)s.

13 The only thing I want to ask Your Honor if in your
14 order you're considering directing the parties on the
15 production of the documents. On behalf of Chapman, I would
16 request that Chapman be removed from the process and that if we
17 produce the documents to Mr. Burnham's office, as we will, that
18 any further production to the House be handled between the
19 House and Dr. Eastman. There's no reason that Chapman be in
20 the middle of that.

21 **THE COURT:** Let me help you with that. I'm going to
22 decline that at the present time until I have, let's say, more
23 confidence in the process. Chapman was originally apparently
24 designated to go through these emails and you were put in the
25 position or you took the position of deciding what emails would

1 be forthcoming. So I'd like to delay that decision at the
2 present time. I'm going to decline that invitation.

3 **MR. PLEVIN:** Yes. Your Honor, just a brief
4 correction. I think Chapman ran search terms that were
5 provided by the Committee and we didn't really have any
6 decision-making process. We just ran the terms and the --

7 **THE COURT:** All right, thank you.

8 **MR. PLEVIN:** -- result of that search is what it is.

9 **THE COURT:** I'll take that up again with you but not
10 at the present time, Counsel. I'll let you conclude your
11 argument --

12 **MR. PLEVIN:** Thank you.

13 **THE COURT:** -- and your thoughts.

14 **MR. PLEVIN:** Yes, that's all I have. Thank you, Your
15 Honor.

16 **THE COURT:** Thank you for your courtesy.

17 Mr. Letter?

18 **MR. LETTER:** Yes, Your Honor. I'll be very brief.
19 First of all, I just got an answer from the Committee. The
20 Committee would like to take the -- Your Honor up on your offer
21 that if there are disputes about the privilege claims, we
22 believe it's most appropriate for Your Honor to make those
23 determinations.

24 **THE COURT:** All right. Is that acceptable also to
25 Chapman?

1 **MR. PLEVIN:** Yes, Your Honor.

2 **THE COURT:** All right. That's been resolved. And I
3 want to thank both of you for getting back to me quickly on
4 that matter.

5 **MR. LETTER:** Thank you. And then I just want to say
6 several very quick things just, again, so they're on the
7 record.

8 First, Your Honor, we raised the possible question
9 that if Chapman is the entity that actually makes the
10 disclosures, would that alleviate any Fifth Amendment concerns
11 by Professor Eastman because Chapman would be making the
12 production, not Mr. -- not Professor Eastman.

13 Second, I have more accurate information on two
14 questions you asked me and so I just wanted them to be in
15 record. The -- on Wednesday, January 12th, Chapman's general
16 counsel told us there were over 11,000 emails within the date
17 range. She, the general counsel, requested search terms from
18 us to narrow the set. We responded the same day with the
19 search terms. The next day, Chapman University then emailed to
20 us, said there had been a mistake. The actual number of emails
21 were more like 30,000. After running the search terms, the
22 population was 19,620.

23 We spoke to Chapman general counsel on January 14th
24 to discuss ways to narrow the universe and Chapman general
25 counsel determined she would review only what implicated

1 Chapman's own privilege and produce the rest. She was not
2 interested in us providing any revised search terms. The
3 subpoena was then issued on Tuesday, January 18.

4 As far as the -- so we heard the -- oh, I'm sorry.
5 As far as the question of -- earlier whether to -- Professor
6 Chapman could -- Professor Eastman could get from Chapman the
7 records earlier and do a privilege log, that offer was made.
8 The last time it was made was orally in the -- at the December
9 9th deposition. And then -- but we never got an answer.

10 And then we just stopped raising it because on
11 December 14 is when Professor Chapman sued us in D.C. over the
12 subpoena to him. So, obviously, we stopped making the offer at
13 that point.

14 I don't have anything further, Your Honor.

15 **THE COURT:** And, Counsel, is there anything further?

16 **MR. BURNHAM:** Just briefly. We're not raising a
17 Fifth Amendment objection to complying with Your Honor's order,
18 just in the terms that the Court has telegraphed to us but
19 other than that, we absolutely maintain our Fifth Amendment
20 objections as previously stated to their fullest extent.

21 **THE COURT:** All right, thank you. Any further --
22 Mr. Plevin?

23 **MR. PLEVIN:** Nothing further, Your Honor.

24 **THE COURT:** And Mr. Letter?

25 **MR. LETTER:** Nothing further, Your Honor.

1 **THE COURT:** By the way, I want to thank all of you
2 for your courtesy. Please stay healthy. Please stay well.
3 Good night.

4 **MR. BURNHAM:** Than you, Your Honor.

5 **THE CLERK:** Good-bye.

6 **(Proceeding adjourned at 5:12 p.m.)**

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.



January 26, 2022

Signed

Dated

TONI HUDSON, TRANSCRIBER