



December 1, 2022

The Honorable Bennie G. Thompson, Chairman
The Honorable Liz Cheney, Vice Chair
The Select Committee to Investigate the January 6th Attack on the U.S. Capitol
Longworth House Office Building
Washington, D.C. 20515
VIA EMAIL

Re: Referrals of Attorney Misconduct to State Bar Disciplinary Authorities

Dear Chairman Thompson and Vice Chair Cheney:

The States United Democracy Center is a nonpartisan organization advancing free, fair, and secure elections. We focus on connecting state and local officials, public-safety leaders, and pro-democracy partners across America with the tools and expertise they need to safeguard our democracy. Our work centers on making sure every election is safe, every vote is counted, and every voice is heard. Critical to our mission is helping to ensure that democracy violators are held accountable, including those in the legal profession who betray their professional responsibilities to uphold the rule of law.

We write to provide information concerning the role that the Select Committee can play in referring to state bar disciplinary authorities information concerning attorneys whose conduct may have run afoul of the rules of professional conduct governing attorneys. The Select Committee has made clear—in its public hearings, in litigation, and in certain investigatory measures that have been made public—that its investigation has focused in part on the role that a number of attorneys played in efforts to disrupt the peaceful transfer of power following the 2020 presidential election. Most recently, for example, in the Select Committee’s subpoena to former President Trump, the Select Committee sought communications involving a number of people including nine attorneys: Jeffrey Clark, John Eastman, Rudolph Giuliani, Jenna Ellis, Sidney Powell, Kenneth Chesebro, Boris Epshteyn, Christina Bobb, and Cleta Mitchell.¹ As detailed below, almost all of these nine attorneys have been the subject of publicly known disciplinary complaints. Because the Select Committee has obtained substantial non-public information concerning attorneys who may have engaged in professional misconduct while

¹ Subpoena Request from the H. Select Comm. to Investigate the January 6th Attack on the U.S. Capitol to President Donald J. Trump (Oct. 21, 2022), <https://january6th.house.gov/sites/democrats.january6th.house.gov/files/20221021%20J6%20Cmte%20Subpeona%20to%20Donald%20Trump.pdf>.

undermining democracy, the Select Committee is uniquely positioned to assist disciplinary authorities in their investigations of potential attorney misconduct.

Accordingly, this letter addresses (1) how the Select Committee is especially well suited to refer information relevant to attorney misconduct to state bars, (2) some background on existing disciplinary actions or investigations of the nine attorneys listed in the Select Committee's subpoena to former President Trump, (3) the authority of the Select Committee to make bar referrals, and (4) some options that the Committee may consider in making referrals should it choose to do so.

We understand from public reporting that among the possible referrals the Committee is considering are referrals for criminal misconduct. Some of the attorneys discussed below have also been the focus of criminal investigations, and our discussion of bar referrals should not detract but instead should be parallel to any criminal referrals of attorneys the Committee makes. Additionally, should the Committee be considering any other form of referral, such as for civil investigation by state authorities, that should be supplemented, and not replaced, by the bar disciplinary referrals we discuss here.

I. The Select Committee is Uniquely Positioned to Make Bar Referrals

The Select Committee is uniquely positioned to refer information concerning attorney misconduct to disciplinary authorities for several reasons. *First*, by virtue of the Select Committee's thorough investigation, it has amassed non-public evidence, much of which may document attorney misconduct, that would assist disciplinary authorities in ongoing proceedings or enable them to open new investigations into misconduct. *Second*, because some disciplinary authorities maintain that they are only obligated to act on complaints based on non-public information, the Select Committee could surmount this hurdle by virtue of the as-of-yet non-public evidence in its possession.

The Select Committee, as you of course are aware, has conducted a wide-ranging inquiry that has resulted in the accumulation of vast quantities of non-public information. As the Select Committee began hearings, members repeatedly acknowledged the tremendous amount of information they received, noting that the Select Committee "continue[s] to receive new information every day" and "continue[s] to hear from witnesses."² Even as of the summer of 2022, the Select Committee had issued over 100 subpoenas, interviewed more than 1,000 people, and obtained tens of thousands of pages of records.³ Some of that evidence concerns attorneys

² Press Release, Select Comm. to Investigate the January 6th Attack on the U.S. Capitol, *Thompson, Cheney, Luria, & Kinzinger Opening Statements at Select Committee Hearing* (Jul. 21, 2022), <https://january6th.house.gov/news/press-releases/thompson-cheney-luria-kinzinger-opening-statements-select-committee-hearing>.

³ See Jacqueline Alemany & Tom Hamburger, *The Jan. 6 Committee: What it has Done and Where it is Headed*, Wash. Post (Jan. 4, 2022), <https://www.washingtonpost.com/politics/2022/01/04/january-6-committee-explainer/> (noting that, up to that point, the Select Committee obtained more than 35,000 pages of records); Mary C. Jalonick, *Jan. 6 Panel's 1,000 Witnesses: From Trump Aides to Rioters*, Associated Press (June 9, 2022), <https://apnews.com/article/jan-6-hearing-targets-interviews-029d6a76146b4735b9e05bb70f41916f> (more than 1,000 witness interviews); Zach Schonfeld, *Here's a List of the People Who have been Subpoenaed by the Jan. 6*

who may have committed professional misconduct in the course of efforts to undermine the results of the 2020 presidential election. As just one example, as a result of its litigation in the Central District of California, the Select Committee has obtained hundreds of emails from attorney John Eastman.⁴ Indeed, the Select Committee has separately subpoenaed all nine of the attorneys listed in the subpoena to former President Trump.⁵ In sum, the Select Committee has access to a significant volume of evidence that could be of use to the disciplinary authorities where these attorneys are licensed.

Furthermore, some disciplinary authorities have either closed or refused to docket complaints against such attorneys on the basis that the complaints were based solely on public information. We disagree that the rules of these jurisdictions require that a complaint contain non-public information to be valid.⁶ Regardless, a referral from the Select Committee would overcome this asserted hurdle by sharing non-public information about these nine attorneys.

Notably, the District of Columbia, where a number of these attorneys are licensed to practice law, refuses to docket complaints based solely on publicly available information. For example, the D.C. Office of Disciplinary Counsel (“ODC”) declined to docket a complaint filed against Jeffrey Clark, stating that “[o]ur Office does not docket complaints that are based only on public information, such as news reports or court proceedings, where the complainant has no personal knowledge of the matter.”⁷ The ODC eventually filed disciplinary charges against Clark, however, after receiving a majority staff report of the Senate Judiciary Committee that included “a detailed report and actual evidence” including “lengthy witness interviews.”⁸ Similarly, the ODC refused to docket a complaint filed against John Eastman,⁹ responding with a letter providing essentially the same reasons as in the letter sent to private complainants in the Clark matter, namely the lack of non-public information.¹⁰

Committee, The Hill (June 7, 2022), <https://thehill.com/homenews/house/3514712-heres-a-list-of-the-people-who-have-been-subpoenaed-by-the-jan-6-committee/> (more than 100 subpoenas).

⁴ See, e.g., *Eastman v. Thompson*, 2022 WL 894256, at *27 (C.D. Cal. Mar. 28, 2022); *Eastman v. Thompson*, 8:22-cv-99, Doc. No. 356, at 26 (C.D. Cal. June 7, 2022); *Eastman v. Thompson*, 2022 WL 11030550, at *11 (C.D. Cal. Oct. 19, 2022).

⁵ See Zach Schonfeld, *Here’s a List of the People who have been Subpoenaed by the Jan. 6 Committee*, The Hill (June 7, 2022), <https://thehill.com/homenews/house/3514712-heres-a-list-of-the-people-who-have-been-subpoenaed-by-the-jan-6-committee/>.

⁶ For example, after the State Bar of California closed our complaint against John Eastman on this purported procedural basis, we appealed and argued that the closure violated the State Bar Act. See Stephen Bundy & States United Democracy Center, *Appeal of Closing of Complaint re: John Eastman, Case Number 21-O-12451* (Feb. 16, 2022), https://statesuniteddemocracy.org/wp-content/uploads/2022/02/2.16.22_Case-Number-21-O-12451_Appeal_Final2.pdf.

⁷ Office of Disciplinary Counsel, *Letter re: Clark/Edelman, Undocketed No. 2021-U791* (Oct. 18, 2021), <https://drive.google.com/file/d/1MmMpQo853R6jRRNNqBE-48HtiRoSFilM/view>.

⁸ See *Clark v. D.C. Board*, 1:22-mc-96, Doc. 5, at 9 (D.D.C. Oct. 21, 2022).

⁹ See States United Democracy Center and Lawyers Defending American Democracy, *Re: Request for Investigation of John Charles Eastman* (Aug. 11, 2022), https://statesuniteddemocracy.org/wp-content/uploads/2022/08/08.11.22_States-United-LDAD_Complaint-to-DC-ODC-re-John-Eastman_Final.pdf.

¹⁰ The State Bar of California also appears to favor complaints based on non-public information. As discussed elsewhere, the State Bar closed States United’s complaint against Eastman, noting in its closing letter that the complaint appeared to be based “entirely on information compiled from publicly available media reports.” State Bar of California, *Letter re: Case No. 21-O-12451, John Eastman* (Nov. 22, 2021) (on file with author).

In sum, the non-public information that the Select Committee possesses could be of great value to disciplinary authorities. And because much of its evidence is non-public, the Select Committee is in a unique position to spur disciplinary authorities to action by sharing that information.

II. The Select Committee Has Investigated Attorney Conduct that May Warrant Referral

The Select Committee's work has highlighted the role of attorneys in the efforts to subvert the results of the 2020 election. For example, in the Select Committee's October 13, 2022, hearing, Vice Chair Cheney detailed John Eastman's conduct, stating that Eastman "fraudulently instruct[ed] tens of thousands of angry protesters that the Vice President could change the election outcome on January 6th."¹¹ Rep. Adam Kinzinger noted that the Trump campaign, together with its attorneys, filed over 60 election lawsuits unsupported by sufficient evidence of fraud or irregularities, resulting in court-imposed sanctions against some attorneys.¹² More recently, and as previously noted, in the Select Committee's subpoena to former President Trump, the Select Committee requested information concerning a list of people including nine attorneys.¹³

We do not know the full extent of misconduct allegations against these nine attorneys, because bar complaints are not always made public. But we do know that pro-democracy organizations (including States United) and various individuals have filed bar complaints against a number of attorneys on account of their conduct during and after the 2020 election. Indeed, bar complaints or disciplinary charges have been filed against at least eight of the nine attorneys listed in the subpoena to former President Trump. These complaints and charges have concerned potential violations of an array of rules of professional conduct, including rules covering competence, frivolous claims, candor to the tribunal, other dishonest conduct, counseling or assisting a client's unlawful conduct, and engaging in criminal conduct. Most of the rules alleged to have been violated do not require that the misconduct have been criminal. Accordingly, the Select Committee's decision about bar referrals need not be dependent on any decision whether to make criminal referrals to law enforcement agencies.

What follows is an overview of publicly known disciplinary complaints, investigations, or charges against the nine attorneys listed in the Trump subpoena. This letter does not adopt these allegations but rather summarizes the basis of existing publicly known disciplinary complaints and charges. The attorneys are discussed in the order listed in the subpoena.

¹¹ *Here's Every Word From the 9th Jan. 6 Committee Hearing on its Investigation*, NPR (Oct. 13, 2022), <https://www.npr.org/2022/10/13/1125331584/jan-6-committee-hearing-transcript>.

¹² *Id.*

¹³ Subpoena Request from the H. Select Comm. to Investigate the January 6th Attack on the U.S. Capitol to President Donald J. Trump (Oct. 21, 2022), <https://january6th.house.gov/sites/democrats.january6th.house.gov/files/20221021%20J6%20Cmte%20Subpeona%20to%20Donald%20Trump.pdf>.

Jeffrey Clark

There are pending legal ethics charges against Jeffrey Clark, a former Justice Department lawyer under President Trump.¹⁴ The D.C. Office of Disciplinary Counsel has alleged that Clark engaged in dishonest conduct and attempted to seriously interfere with the administration of justice in violation of D.C. Rules of Professional Conduct 8.4(a), (c), and (d) through his actions surrounding the 2020 election.¹⁵ The charges allege that despite being aware that there was no evidence of widespread election fraud or foreign interference, Clark drafted and advocated for the Justice Department to send a “Proof of Concept” letter to Georgia state election officials. The letter stated, among other misleading statements and falsehoods, that the Department of Justice had concluded that the Governor ought to convene a special session of the Georgia Legislature to consider purported alternate slates of electors. The charges also describe efforts to appoint Clark as Acting Attorney General for the purpose of sending the “Proof of Concept” letter—efforts in which Clark participated but which ultimately failed.

John Eastman

Several individuals and organizations, including States United, have submitted legal ethics complaints with the State Bar of California against John Eastman for his efforts to discredit and overturn the 2020 presidential election results.¹⁶ Through those actions, Eastman is alleged to have violated several rules of professional conduct, including California Rules of Professional Conduct concerning dishonesty and deception (Rules 3.3, 4.1, and 8.4(c)); knowingly counseling or assisting a client’s criminal, fraudulent, or unlawful conduct (Rule 1.2.1); frivolous claims and contentions (Rule 3.1); competence (Rule 1.1); professional independence (Rule 2.1); and criminal conduct (Rule 8.4(b)). As outlined in the complaint and filings by States United and others, Eastman assisted President Trump’s efforts to pressure Vice President Pence to violate his statutory and constitutional duties by either refusing to count or delaying the count of electoral votes from certain states. Eastman also made false and misleading claims about the election on other occasions, including in his speech at the “Stop the Steal” rally on the National Mall on January 6th, and advanced false and frivolous claims in a lawsuit asking the U.S. Supreme Court to nullify slates of electors in four states. Although the State Bar has closed States United’s complaint on the ground that it was based solely on publicly available

¹⁴ Norman Eisen, co-founder and executive chair of States United, was a co-signer on the complaint filed by Lawyers Defending American Democracy against Jeffrey Clark. See Lawyers Defending American Democracy, *Ethics Complaint Against Jeffrey B. Clark* (Oct. 5, 2021), <https://ldad.org/wp-content/uploads/2021/10/DC-Ethics-Complaint-Against-Jeffrey-Clark.pdf>.

¹⁵ *In the Matter of Jeffrey B. Clark*, No. 2021-D193 (D.C. July 19, 2022), <https://www.judiciary.senate.gov/imo/media/doc/Spec.%20Jeffrey%20B.%20Clark.pdf>.

¹⁶ See, e.g., See States United Democracy Center, *Re: Request for Investigation of John C. Eastman, California State Bar No. 193726* (Oct. 4, 2021), <https://statesuniteddemocracy.org/wp-content/uploads/2021/10/10.4.21-FINAL-Eastman-Cover-Letter-Memorandum.pdf>; Lawyers Defending American Democracy, *Re: Request for Investigation of John C. Eastman, California Bar Number 193726*, December 16, 2021, <https://ldad.org/wp-content/uploads/2021/12/Eastman-Complaint-121621.pdf>.

information, the Bar subsequently opened its own investigation into Eastman’s conduct relating to the November 2020 presidential election—an investigation we believe is still pending.¹⁷

States United, jointly with Lawyers Defending American Democracy, has also filed an ethics complaint against Eastman with the District of Columbia’s Office of Disciplinary Counsel.¹⁸ The ODC responded that it would not docket the complaint because it “does not docket complaints that are based only on public information.”¹⁹

Rudy Giuliani

In June 2021, the New York court with jurisdiction over attorney discipline suspended Rudy Giuliani’s New York law license after concluding that there was “uncontroverted evidence that [Giuliani] communicated demonstrably false and misleading statements to courts, lawmakers and the public at large in his capacity as lawyer for former President Trump and the Trump campaign in connection with Trump’s failed effort at reelection in 2020.”²⁰ In addition, the New York court found that Giuliani’s misconduct presented an “immediate threat to the public, justifying [his] interim suspension.”²¹ The court explained that there was “evidence of continuing misconduct, the underlying offense is incredibly serious, and the uncontroverted misconduct in itself will likely result in substantial permanent sanctions at the conclusion of these disciplinary proceedings.”²² The court’s order was based on findings that Giuliani had violated New York Rules of Professional Conduct concerning false statements to a tribunal (Rule 3.3(a)), other dishonest conduct (Rules 4.1 and 8.4(c)), and conduct adversely reflecting on fitness as a lawyer (8.4(h)). Pursuant to the order, the suspension remains in place pending further disciplinary proceedings before the state’s Attorney Grievance Committee.

Following the suspension of Giuliani’s New York license, a D.C. court suspended Giuliani’s D.C. law license pending further proceedings.²³ D.C.’s Office of Disciplinary Counsel subsequently filed charges against Giuliani, and those proceedings are ongoing.²⁴

¹⁷ See Press Release, State Bar of California, State Bar Announces John Eastman Ethics Investigation (Mar. 1, 2022), <https://www.calbar.ca.gov/About-Us/News/News-Releases/state-bar-announces-john-eastman-ethics-investigation>; see also Stephen Bundy & States United Democracy Center, *Appeal of Closing of Complaint re: John Eastman, Case Number 21-O-12451*, States United Democracy Center (Feb. 16, 2022), https://statesuniteddemocracy.org/wp-content/uploads/2022/02/2.16.22_Case-Number-21-O-12451_Appeal_Final2.pdf.

¹⁸ States United Democracy Center and Lawyers Defending American Democracy, *Re: Request for Investigation of John Charles Eastman*, August 11, 2022, https://statesuniteddemocracy.org/wp-content/uploads/2022/08/08.11.22_States-United-LDAD_Complaint-to-DC-ODC-re-John-Eastman_Final.pdf.

¹⁹ Office of Disciplinary Counsel, *Letter re: Eastman/Eisen, Scherzer, Undocketed No. 2022-U482* (Aug. 26, 2022) (on file with author).

²⁰ *In re Giuliani*, 197 A.D.3d 1, 4 (N.Y. App. Div., 1st Dep’t 2021).

²¹ *Id.* at 22.

²² *Id.*

²³ *In re Giuliani*, No. 21-BG-423 (D.C. Ct. App. Jul. 7, 2021), <https://www.democracymocket.com/wp-content/uploads/2021/07/Order-Sua-Sponte-Staying-Appeal-1.pdf>.

²⁴ See Zoe Tillman, *Discipline Cases Against Rudy Giuliani, Jeff Clark Advance*, Bloomberg (Sept. 14, 2022), <https://www.bloomberg.com/news/articles/2022-09-14/legal-discipline-cases-against-rudy-giuliani-jeff-clark-advance>; Office of Disciplinary Counsel, Cases of Public Interest, *In re Rudolph W. Giuliani*, Board Docket No. 22-

Jenna Ellis

At least two entities have filed ethics complaints against Jenna Ellis with Colorado’s Office of Attorney Regulation Counsel.²⁵ In May 2022, States United filed a complaint alleging that Ellis, as “senior legal adviser” to President Trump, assisted in President Trump’s scheme to undermine and overturn the 2020 presidential election. The complaint detailed how Ellis joined Rudy Giuliani to urge state legislatures to intervene in the election by certifying alternate slates of electors for President Trump based on false factual and legal assertions; how Ellis authored memoranda based on false legal and factual premises purporting to provide a legal rationale for Vice President Pence to upend the electoral count on January 6th; and how Ellis otherwise made public misrepresentations concerning fraud in the election. States United urged an investigation into whether Ellis’s conduct violated Colorado Rules of Professional Conduct relating to competence (Rule 1.1), assisting a crime or fraud (Rule 1.2(d)), professional judgment (Rule 2.1), dishonest conduct (Rules 4.1 and 8.4(c)), responsibilities of a supervisory lawyer (Rule 5.1), assisting another lawyer to violate Rules of Professional Conduct (Rule 8.4(a)), and conduct adversely reflecting on fitness to practice law (Rule 8.4(h)).²⁶

We believe that an investigation is ongoing.

Sidney Powell

In March 2022, the Commission for Lawyer Discipline of the State Bar of Texas filed disciplinary charges against Sidney Powell alleging professional misconduct concerning the 2020 presidential election. The petition alleges that Powell filed multiple frivolous lawsuits asserting that election fraud had occurred in the election, took positions that resulted in unreasonable delays and increased the burdens of the cases, and filed an altered item of evidence in court and then made a false statement to the court about that evidence. The complaint alleges that Powell violated Texas Disciplinary Rules of Professional Conduct involving frivolous claims (Rule 3.01), unreasonable delay or increase of burdens (Rule 3.02), candor to a tribunal (Rule 3.03(a)(1)), use of false evidence (Rule 3.03(a)(5)) and dishonest conduct (Rule 8.04(a)(3)).²⁷

BD-027,

<https://districtofcolumbiabar.sharepoint.com/sites/BPRCaseManager/Shared%20Documents/Forms/AllItems.aspx?ga=1&id=%2Fsites%2FBPRCaseManager%2FShared%20Documents%2FCases%20of%20Public%20Interest%2FIn%20re%20Rudolph%20W%2E%20Giuliani%2C%20Board%20Docket%20No%2E%2022%20DBD%20D027&viewid=5ee3a11b%2Dd3d1%2D4c4d%2D86cf%2D695ef1f9747b>.

²⁵ States United Democracy Center, *Re: Request for Investigation of Jenna L. Ellis (also known as Jenna Lynn Rives)*, Colorado Registration Number 44026 (May 4, 2022), <https://statesuniteddemocracy.org/wp-content/uploads/2022/05/2022.05.04-Jenna-Ellis-complaint-cover-letter.pdf>; The 65 Project, *Ethics Complaint Against Jenna Ellis* (July 7, 2022), <https://the65project.com/ethics-complaint-against-trump-attorney-jenna-ellis/>.

²⁶ States United Democracy Center, *Re: Request for Investigation of Jenna L. Ellis (also known as Jenna Lynn Rives)*, Colorado Registration Number 44026, (May 4, 2022), <https://statesuniteddemocracy.org/wp-content/uploads/2022/05/2022.05.04-Jenna-Ellis-complaint-cover-letter.pdf>.

²⁷ Original Disciplinary Petition, *Comm’n for Law. Discipline v. Sidney Powell*, No. DC-22-20562 (116th Judicial District, Mar. 1, 2022), https://courtsportal.dallascounty.org/DALLASPROD/DocumentViewer/Embedded/ye0-5n-ZNL7oyR1i6dndFnGQjA9qBJlrva-IvUlu1xeuIp-m_RTyMkwd1O6ghQITaElOonF8oaAAp0Sfe3OCw2?p=0.

Powell had previously been sanctioned in federal district court in Michigan under Federal Rule of Civil Procedure 11 because Powell and other attorneys filed a lawsuit alleging voter fraud claims not backed by law or evidence, a lawsuit that the court described as a “historic and profound abuse of the judicial process.”²⁸ In addition to imposing sanctions, the court referred Powell to disciplinary authorities in Texas “for investigation and possible suspension or disbarment.”²⁹

The disciplinary proceedings against Powell in Texas are ongoing.³⁰

Kenneth Chesebro

At least two complaints against Kenneth Chesebro were filed with New York’s Attorney Grievance Committee.³¹ One complaint, for example, alleges that Chesebro wrote the earliest known memorandum proposing to submit false slates of Trump-Pence electors.³² According to Chesebro and his collaborator at the time, John Eastman, this would allow the Vice President, in violation of the Electoral Count Act, to reject the legitimate electors and declare Trump to have been reelected. Chesebro’s conduct, the complaint alleges, violated New York Rules of Professional Conduct relating to dishonest conduct (Rule 8.4(c)) and conduct adversely reflecting on fitness to practice law (Rule 8.4(h)).

Boris Epshteyn

In May 2022, a bar complaint was filed against Boris Epshteyn with New York’s Attorney Grievance Committee, alleging that Epshteyn, as a part of President Trump’s legal team, made false claims regarding “evidence” of voter fraud and “lost” votes.³³ The complaint further alleges that, with Rudy Giuliani, Epshteyn called potential false electors in critical states and sought to persuade them to participate in the scheme to submit slates of false electors to Vice President Pence in his role as President of the Senate. Such conduct, the complaint alleges, violates New York Rules of Professional Conduct relating to candor to a tribunal (Rule 3.3(a)), other dishonest conduct (Rules 4.1 and 8.4(b) and (c)), assisting another attorney to violate the Rules of Professional Conduct (Rule 8.4(a)), and conduct adversely reflecting on fitness to practice law (Rule 8.4(h)).

²⁸ *King v. Whitmer*, 556 F. Supp. 3d 680, 688-89 (E.D. Mich. 2021).

²⁹ *Id.* at 735.

³⁰ See *Comm. for Lawyer Discipline v. Powell*, DC-22-02562 (District Court of Texas, 116th Judicial District, Dallas County, Oct. 11, 2022), https://courtsportal.dallascounty.org/DALLASPROD/DocumentViewer/Embedded/7ZMji4fUwTkpOeKRGGyh86sf84BA9bECNlpI9UPXzIIOXtvJOQqkag04WtNe1dQhUtqQpLuToG3GjXZwe_PMQ2?p=0.

³¹ See Lawyers Defending American Democracy, *Re: Professional Responsibility Investigation of Kenneth John Chesebro* (Oct. 12, 2022), <https://ldad.org/wp-content/uploads/2022/10/Ethics-Complaint-against-Kenneth-Chesebro.pdf> (alleging Chesebro’s conduct violated Rules 8.4(c) and (h)); see also The 65 Project, *Ethics Complaint Against Kenneth Chesebro* (July 20, 2022), [https://the65project.com/ethics-complaint-against-kenneth-chesebro/\(alleging-Chesebro’s-conduct-additionally-violated-Rules-3.1,1.2,-and-8.4\(a\)-and-\(b\)\)](https://the65project.com/ethics-complaint-against-kenneth-chesebro/(alleging-Chesebro’s-conduct-additionally-violated-Rules-3.1,1.2,-and-8.4(a)-and-(b))).

³² Lawyers Defending American Democracy, *Re: Professional Responsibility Investigation of Kenneth John Chesebro* (Oct. 12, 2022), <https://ldad.org/wp-content/uploads/2022/10/Ethics-Complaint-against-Kenneth-Chesebro.pdf>.

³³ The 65 Project, *Ethics Complaint Against Boris Epshteyn* (Mar. 7, 2022), <https://the65project.com/ethics-complaint-against-trump-attorney-boris-epshteyn/>.

Christina Bobb

As the Select Committee has already identified in its subpoena to Christina Bobb, there is credible evidence that Bobb promoted false claims that the November 2020 election was stolen and that she participated in attempts to deny or delay the certification of the results on January 6th.³⁴ She reportedly also helped in the efforts to draft an executive order for President Trump directing federal agencies to seize voting machines in several states.³⁵ We are not aware of any bar complaint against Bobb, though one or more may exist which have not been made public. Such conduct, if confirmed, may have violated multiple California Rules of Professional Conduct, such as rules concerning dishonest conduct (Rules 4.1 and 8.4(c)), assisting a client in unlawful conduct (Rule 1.2.1(a)), and competence (Rule 1.1). Bobb is licensed as an attorney in California.³⁶

Cleta Mitchell

At least one bar complaint has been filed against Cleta Mitchell with the District of Columbia's Office of Disciplinary Counsel.³⁷ The complaint alleges that Mitchell participated in President Trump's phone call with Georgia's Secretary of State, in which she and President Trump made false statements in an attempt to convince Secretary Raffensperger to "find" enough votes for Trump to win the state. This conduct, the complaint alleges, violated D.C. Rules of Professional Conduct concerning engaging in or assisting a client with criminal conduct (Rules 3.3(a) and 8.4(b)), dishonest conduct (Rules 4.1 and 8.4(c)), assisting another attorney to violate the Rules of Professional Conduct (Rule 8.4(a)), and threatening criminal charges to gain an advantage in a civil matter (Rule 8.4(g)).

In sum, the non-public information about the conduct of these attorneys that the Select Committee has gathered is likely to be relevant to ongoing and potential investigations by state bar disciplinary committees.

III. The Select Committee Has Inherent Authority to Refer Information to Disciplinary Authorities

The Select Committee has authority to refer attorney misconduct to the appropriate state bar authorities as an inherent element of its investigatory powers. There is substantial precedent of congressional committees, as part of their investigatory and oversight responsibilities, referring relevant findings and evidence to law enforcement or other disciplinary authorities. Recent examples include:

³⁴ Subpoena Request from the H. Select Comm. to Investigate the January 6th Attack on the U.S. Capitol to Christina Bobb (Mar. 1, 2022), https://january6th.house.gov/sites/democrats.january6th.house.gov/files/2022-3-1.BGT%20Letter%20to%20Bobb%20-%20Cover%20Letter%20and%20Schedule_Redacted.pdf.

³⁵ *Id.*

³⁶ State Bar of California, *Christina Gabrielle Bobb Attorney Profile*, <https://apps.calbar.ca.gov/attorney/Licensee/Detail/259430>.

³⁷ The 65 Project, *Ethics Complaint Against Cleta Mitchell* (Mar. 7, 2022), <https://the65project.com/ethics-complaint-against-trump-attorney-cleta-mitchell/>.

- Following an October 2021 majority staff report, Senate Judiciary Committee Chairman Richard Durbin (D-IL) submitted a formal complaint against attorney Jeffrey Clark to the District of Columbia Bar’s Office of Disciplinary Counsel based on the Judiciary Committee’s investigation into Clark’s role in President Trump’s alleged efforts to enlist the Department of Justice in an election subversion scheme.³⁸
- The House Ways and Means Committee referred an IRS employee to Attorney General Eric Holder in April 2014 to investigate possible criminal violations.³⁹
- The House Committee on Oversight and Reform referred alleged financial misconduct of a football team and its executives to the Federal Trade Commission in April 2022 to investigate potential legal violations.⁴⁰

In addition to committee referrals, members of Congress, in their individual capacities, have similarly urged both criminal and disciplinary investigations.⁴¹

As seen in these examples, congressional committees and their leaders have made criminal and disciplinary referrals when the underlying facts indicated potential violations of law or professional ethics rules. While certain committees, such as the Senate Permanent

³⁸ See Senate Judiciary Committee (@JudiciaryDems), Twitter (Oct. 7, 2021, 10:21 AM), <https://twitter.com/JudiciaryDems/status/1446118538763116545>; see also Majority Staff of S. Comm. on the Judiciary, 117th Cong., *Subverting Justice: How the Former President and His Allies Pressured DOJ to Overturn the 2020 Election* 47 (Comm. Print 2021).

<https://www.judiciary.senate.gov/imo/media/doc/Interim%20Staff%20Report%20FINAL.pdf>. Although the majority staff report stated that “the Committee is concurrently submitting a formal complaint to the District of Columbia Bar based on the findings of our report,” this committee referral was made by the majority members. *Id.*

³⁹ Press Release, House Comm. on Ways and Means, *Ways and Means Committee Refers Lois Lerner to Department of Justice for Criminal Prosecution* (Apr. 9, 2014), <https://gop-waysandmeans.house.gov/ways-and-means-committee-refers-lois-lerner-to-department-of-justice-for-criminal-prosecution/>.

⁴⁰ Letter from House Oversight Comm., 117th Congress, to Fed. Trade Comm’n (Apr. 12, 2022), <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2022-04-12.CBM%20RK%20to%20Khan-FTC%20re%20Washington%20Commanders.pdf>.

⁴¹ See, e.g., Press Release, Ted Lieu, Congressman, House of Representatives, *Reps Lieu and Jones Call for Giuliani to be Disbarred* (Jan. 9, 2021), <https://lieu.house.gov/media-center/press-releases/rep-lieu-and-jones-call-giuliani-be-disbarred> (calling for the New York State Bar Association to investigate an attorney for his role in January 6th); Press Release, Mazie Hirono, Senator, *United States Senate, Hirono, 11 Senators Call for DOJ Inspector General and Office of Professional Responsibility to Investigate Attorney General Barr’s Handling of the Mueller Report* (Apr. 30, 2019), <https://www.hirono.senate.gov/news/press-releases/hirono-11-senators-call-for-doj-inspector-general-and-office-of-professional-responsibility-to-investigate-attorney-general-barrs-handling-of-the-mueller-report> (calling for the Department of Justice’s Inspector General and Office of Professional Responsibility to investigate the Attorney General’s handling of the Mueller report); Rep. Ron DeSantis et al., *Letter to Attorney General Jeff Sessions* (Apr. 18, 2018), available at https://web.archive.org/web/20180418153843/https://desantis.house.gov/cache/files/8/0/8002ca75-52fc-4995-b87e-43584da268db/472EBC7D8F55C0F9E830D37CF96376A2_final-criminal-referral.pdf (calling for the Justice Department to investigate several current and former federal officials and employees).

Subcommittee on Investigations⁴² and the House and Senate ethics committees,⁴³ make referrals and conduct oversight under a comprehensive set of rules, other committees exercise that authority through means established by general committee practice and precedent. The Select Committee has been exercising its inherent authority to refer relevant information to investigative authorities by sharing evidence with the Department of Justice⁴⁴ and by determining whether to make criminal or civil referrals.⁴⁵

Furthermore, exercising that authority to refer information potentially evidencing attorney misconduct to state bars aligns with the Select Committee's mission. One of the purposes of the Select Committee, as described in the resolution creating it, is to "investigate and report upon the facts, circumstances, and causes" relating both to the January 6th attack on the Capitol and to "the interference with the peaceful transfer of power."⁴⁶ The Select Committee's reporting in its public hearings on the role attorneys played in subverting the peaceful transfer of power have been consistent with that mission.⁴⁷ So too would referring information to state disciplinary authorities.

Indeed, some of the most high-profile instances of state bars holding attorneys accountable resulted from federal investigations. President Clinton's Arkansas law license was suspended for five years as a part of an agreement with Robert Ray, the Whitewater independent counsel, in exchange for Ray's promise not to prosecute President Clinton when he left office.⁴⁸ A New York court disbarred President Nixon following the Watergate scandal, with the charges brought by the Association of the Bar of the City of New York resembling the language of the Articles of Impeachment drafted by the House Judiciary Committee two years prior to President

⁴² S. PRT. NO. 117-8, at 18-19 (2021) (authorizing the chair and ranking member to report by letter a suspected violation of law to proper state, local and/or federal authorities).

⁴³ See House Rule XI(3)(a)(3) ("The committee may report to the appropriate Federal or State authorities, either with the approval of the House or by an affirmative vote of two-thirds of the members of the committee, any substantial evidence of a violation by a Member, Delegate, Resident Commissioner, officer, or employee of the House, of a law applicable to the performance of the duties or the discharge of the responsibilities of such individual that may have been disclosed in a committee investigation."); see also S. Res. 338, 88th Cong. Subpart A, § 2(a)(6) (1964) ("It shall be the duty of the Select Committee to...by a majority vote of the full committee, report violations of any law, including the provision of false information to the Select Committee, to the proper Federal and State authorities."). The comprehensive nature of the ethics committees' respective due process schemes likely reflects the committees' interest in regulating the misconduct of its own congressional members.

⁴⁴ Kyle Cheney & Nicholas Wu, *Jan. 6 Panel Weighs New DOJ Cooperation after Trump World Subpoenas*, POLITICO (Sept. 13, 2022), <https://www.politico.com/news/2022/09/13/jan-6-panel-testimony-transcripts-justice-department-00056459>.

⁴⁵ Hugo Lowell, *January 6 Subcommittee to Examine Criminal Referrals it Might Make to DoJ*, THE GUARDIAN (Nov. 17, 2022), <https://www.theguardian.com/us-news/2022/nov/17/january-6-subcommittee-capitol-attack-criminal-referrals>.

⁴⁶ See H.R. Res. 503, 117th Cong. § 3(1).

⁴⁷ See, e.g., *Here's Every Word of the Third Jan. 6 Committee Hearing on its Investigation*, NPR (June 16, 2022), <https://www.npr.org/2022/06/16/1105683634/transcript-jan-6-committee> (concerning, among other things, John Eastman's assistance to President Trump in efforts to pressure Vice President Pence to violate his statutory and constitutional duties by not counting electoral votes on January 6).

⁴⁸ John F. Harris & Bill Miller, *In a Deal, Clinton Avoids Indictment*, Wash. Post (Jan. 20, 2021), <https://www.washingtonpost.com/archive/politics/2001/01/20/in-a-deal-clinton-avoids-indictment/bb80cc4c-e72c-40c1-bb72-55b2b81c3065/>.

Nixon's disbarment.⁴⁹ As the Select Committee pursues its mission of reporting on facts relating to interference with the peaceful transfer of power, bar referrals—as with criminal and civil referrals—can play a valuable role in holding attorneys accountable if they violated professional ethics rules.

IV. The Select Committee Has Several Available Options for Transmitting Bar Referrals or Information

Should it decide to do so, the Select Committee has several options for transmitting referrals or information to state bar disciplinary authorities. What follows is some discussion of relevant considerations, including whether to include information concerning potential attorney misconduct in the Select Committee's final report or transmit it directly to state bars, how much analysis the Select Committee provides in addition to the underlying evidence, and whether the Select Committee formally requests that particular disciplinary authorities open investigations.

Certainly, the Select Committee could, as it may already be planning to do, include evidence and analysis of potential attorney misconduct in its final report.⁵⁰ In addition, the Select Committee could transmit its evidence and analysis directly to the disciplinary authorities where the relevant attorneys are licensed. This could take the form of a complaint against the attorney, or the Select Committee could share evidence for the disciplinary authority to consider in an ongoing investigation or to prompt a new investigation. Transmitting information directly to disciplinary authorities may be more likely to prompt disciplinary authorities to avail themselves of the relevant evidence and take action.

As the Select Committee is well aware, regardless of whether evidence concerning attorney misconduct is included in a final report or sent directly to disciplinary authorities, the Select Committee has options as to the extent of the analysis accompanying the evidence. On one end of the spectrum, the Select Committee could simply make its evidence concerning attorney misconduct available to relevant disciplinary authorities, which would be valuable. But given the voluminous evidence collected by the Select Committee, and the limited bandwidth of some state disciplinary authorities, those disciplinary authorities might also benefit from analysis that flags and puts into context the most important evidence concerning each attorney. If the Committee is considering that route, that analysis could be modeled after the Watergate Road Map, which detailed nearly every instance of wrongdoing, along with the supporting evidence, that the Watergate investigation uncovered.⁵¹

Lastly, the Select Committee can augment any of these options by specifically recommending, based on its analysis, that a disciplinary authority investigate the potential

⁴⁹ Tom Goldstein, *New York Court Disbars Nixon for Watergate Acts*, N.Y. Times (July 9, 1976), <https://www.nytimes.com/1976/07/09/archives/new-york-court-disbars-nixon-for-watergate-acts-nixon-disbarred-by.html>.

⁵⁰ See H.R. Res. 503 § 4(a)(3) (authorizing the Committee to issue a final report to the House containing the findings and recommendations of the Committee's investigation).

⁵¹ See Watergate Road Map, National Archives, <https://www.archives.gov/research/investigations/watergate/roadmap>; see also Norman Eisen et al., *The Jan. 6 Hearings Are Over. These 3 Things Must Happen Now.*, N.Y. Times (Oct. 14, 2022), <https://www.nytimes.com/2022/10/14/opinion/january-6-committee-trump.html>.

misconduct at issue. Given the stature of the Select Committee and its familiarity with the relevant evidence, such recommendations may carry great weight with the state bars.

V. Conclusion

It is clear from the work of the Select Committee and others that attorneys, using their law licenses, played a central role in efforts to discredit and overturn the 2020 presidential election. Evidence from the Select Committee’s investigation has shed light on how Eastman and other attorneys attempted, in violation of their ethical duties, to use our legal system to subvert our elections and the rule of law. As Vice Chair Cheney stated in the Select Committee’s first hearing, if “Dr. Eastman and President Trump’s plan had worked, it would have permanently ended the peaceful transition of power, undermining American democracy and the Constitution.”⁵²

In addition to any appropriate criminal referrals, the Select Committee should consider making available to state bar disciplinary authorities the evidence it has gathered about the actions of attorneys discussed in this letter: Jeffrey Clark, John Eastman, Rudolph Giuliani, Jenna Ellis, Sidney Powell, Kenneth Chesebro, Boris Epshteyn, Christina Bobb, and Cleta Mitchell. Lawyers, particularly those who represent elected and appointed officials, have a solemn duty to the public to advise their clients within the four corners of the law, and to ensure that they do not allow themselves to become the tools by which those officials seek to undermine democratic governance. We have no doubt that the information that the Select Committee has will greatly assist state bar disciplinary authorities in protecting the rule of law by holding accountable those who are sworn to defend it.

Very truly yours,

STATES UNITED DEMOCRACY CENTER

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⁵² *Here's Every Word of the First Jan. 6 Committee Hearing on its Investigation*, NPR (June 10, 2022), <https://www.npr.org/2022/06/10/1104156949/jan-6-committee-hearing-transcript>.