

Special Counsel Report Says Trump Would Have Been Convicted in Election Case

The report, which said the special counsel's office stood "fully behind" the merits of the prosecution, amounted to an extraordinary rebuke of the president-elect.

By Alan Feuer and Charlie Savage
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Jack Smith, the special counsel who indicted President-elect Donald J. Trump on charges of illegally seeking to cling to power after losing the 2020 election, said in a final report released early Tuesday that the evidence would have been sufficient to convict Mr. Trump in a trial, had his 2024 election victory not made it impossible for the prosecution to continue.

"The department's view that the Constitution prohibits the continued indictment and prosecution of a president is categorical and does not turn on the gravity of the crimes charged, the strength of the government's proof or the merits of the prosecution, which the office stands fully behind," Mr. Smith wrote.

He continued: "Indeed, but for Mr. Trump's election and imminent return to the presidency, the office assessed that the admissible evidence was sufficient to obtain and sustain a conviction at trial."

The Justice Department delivered [the 137-page volume](#) — representing half of Mr. Smith's overall final report, with the volume about Mr. Trump's other federal case, accusing him of mishandling classified documents, still confidential — to Congress just after midnight on Tuesday.

The report amounted to an extraordinary rebuke of a president-elect, capping a momentous legal saga that saw the man now poised to regain the powers of the nation's highest office charged with crimes that struck at the heart of American democracy. And although Mr. Smith resigned as special counsel late last week, his recounting of the case also served as a reminder of the vast array of evidence and detailed accounting of Mr. Trump's actions that he had marshaled.

In his report, Mr. Smith took Mr. Trump to task not only for his efforts to reverse the results of a free and fair election, but also for consistently encouraging "violence against his perceived opponents" throughout the chaotic weeks between Election Day and Jan. 6, 2021, when a mob of Trump supporters stormed the Capitol, injuring more than 140 police officers.

Mr. Smith laid the attack on the Capitol squarely at Mr. Trump's feet, quoting from the evidence in several criminal cases of people charged with taking part in the riot who made clear that they believed they were acting on Mr. Trump's behalf.

In several lengthy footnotes, Mr. Smith explored the trauma experienced by Capitol Police officers who were attacked during the riot, including "shell-shock" and the inability to move. He quoted one officer who described the effort to keep rioters from getting to congressional staff members inside the Capitol; the officer said that for them, that could have meant "possible death. People are getting killed, maimed."

Another officer recalled rioters trying to beat up the police "with such ferocity" and wondering: "What are they going to do to somebody else that's in here, that's maybe a staff or a congressman or somebody with the press? How are — what are they going to do to them? You know, like, we can take the beating. And I don't know if these other people can take the beating, too."

The report's description of this violence was all the more remarkable given that Mr. Trump has repeatedly vowed to pardon many Jan. 6 defendants, possibly including ones who assaulted police officers on that day.

The report also gave a sense of the scope of Mr. Smith's inquiry, noting that his team had interviewed more than 250 people and obtained grand jury testimony from more than 55 witnesses. Mr. Smith said the work of the House committee that examined the Capitol attack and predated his investigation was only "a small part of the office's investigative record."

The report contained an extensive justification for pursuing the prosecution, given what Mr. Smith called Mr. Trump's "unprecedented criminal effort to overturn the legitimate results of the election in order to retain power."

It detailed numerous challenges that the investigation faced, from legal fights over executive privilege and presidential immunity to Mr. Trump's "ability and willingness to use his influence and following on social media to target witnesses, courts and department employees, which required the office to engage in time-consuming litigation to protect witnesses from threats and harassment."

One of the most serious obstacles prosecutors faced, Mr. Smith wrote, was that the attempts to hold Mr. Trump accountable both for mishandling classified documents and for trying to subvert the 2020 election took place while he was seeking the White House again.

"Mr. Trump's announcement of his candidacy for president while two federal criminal investigations were ongoing presented an unprecedented challenge for the Department of Justice and the courts," Mr. Smith wrote. "Given the timing and circumstances of the special counsel's appointment and the office's work, it was unavoidable that the regular processes of the criminal law and the judicial system would run parallel to the election campaign."

The report contained little information about Mr. Trump's actions that had not already been made public through his indictment, filed in Federal District Court in Washington in August 2023, or in a [lengthy evidentiary memo](#) that Mr. Smith filed in October, part of the fallout from the Supreme Court's ruling that Mr. Trump enjoyed presumptive immunity for his official acts as president.

While there had been some speculation that Mr. Smith's report would provide new details about several unindicted co-conspirators described in the indictment — like Jeffrey Clark, a former Justice Department official, and Rudolph W. Giuliani, Mr. Trump's personal lawyer — the report turned out to say little new about them.

Without naming any particular people, Mr. Smith wrote briefly that his team “had made a preliminary determination that the admissible evidence could justify seeking charges against certain co-conspirators” and had started to evaluate whether any such new case should be joined with Mr. Trump's or brought separately.

“Because the office reached no final conclusions and did not seek indictments against anyone other than Mr. Trump — the head of the criminal conspiracies and their intended beneficiary — this report does not elaborate further on the investigation and preliminary assessment of uncharged individuals,” it said. “This report should not be read to allege that any particular person other than Mr. Trump committed a crime, nor should it be read to exonerate any particular person.”

The release of this single volume of the report came less than a day after the judge in Florida who oversaw Mr. Trump's other federal case, the one about the classified documents, issued a ruling allowing it to be made public.

But the judge, Aileen M. Cannon, who was appointed by Mr. Trump, also barred the Justice Department from immediately releasing — even to Congress — the second volume of Mr. Smith's report, which is about the documents case. Judge Cannon has scheduled a hearing on Friday in her home courthouse in Fort Pierce, Fla., to discuss how to handle that particular volume.

For more than a week, Mr. Trump's lawyers — who were shown a draft copy of Mr. Smith's report before its release — denounced it as little more than an “attempted political hit job which sole purpose is to disrupt the presidential transition.” The lawyers fought the release of the report up to the last minute, but were ultimately unable to stop the volume on the election case from coming out.

In a social media post shortly before 2 a.m. Tuesday, Mr. Trump reacted with anger to the report's release, calling Mr. Smith “deranged” and insisting that the prosecution was political.

“Jack is a lamebrain prosecutor who was unable to get his case tried before the Election, which I won in a landslide,” Mr. Trump said. “THE VOTERS HAVE SPOKEN!!!”

The election charges Mr. Smith brought against Mr. Trump accused him of engaging in three intersecting conspiracies to overturn his loss to President Biden. Mr. Smith also filed a separate indictment in Florida, charging Mr. Trump with illegally holding on to classified documents after he left office and conspiring with two co-defendants to obstruct the government's repeated efforts to retrieve them.

After Mr. Trump won the 2024 election, Mr. Smith dropped the cases because of a Justice Department policy that prohibits the prosecution of sitting presidents. Under a separate department regulation, he was compelled to document the decisions he made in both cases and turn in a final report about them — one volume on each prosecution — to Attorney General Merrick B. Garland.

Last week, the Justice Department said Mr. Garland planned to hold off on issuing the volume about the classified documents case until all legal proceedings related to Mr. Trump's two co-defendants were completed.

Lawyers for the co-defendants, Walt Nauta and Carlos De Oliveira, fought the release by obtaining an initial injunction last week from Judge Cannon, who had [dismissed the classified documents case](#) last summer.