

# DOJ HAS SPENT FIVE MONTHS TRYING TO ACCESS SCOTT PERRY'S PHONE

Earlier this month, I noted the difficulty created by the fact that 25 of the known witnesses or investigative subjects in the January 6 investigation were attorneys. Days later, I reiterated the difficulty presented by the six or so key participants in Trump's suspected crimes who are members of Congress.

An important scoop from Politico demonstrates how difficult that is. It confirmed that a still-sealed appeal of a Beryl Howell decision pertains to DOJ's efforts to get into Scott Perry's phone.

The existence of the legal fight – a setback for DOJ reported here for the first time – is itself intended to be shielded from public scrutiny, part of the strict secrecy that governs ongoing grand jury matters. The long-running clash was described to POLITICO by two people familiar with the proceedings, who spoke candidly on the condition of anonymity.

The fight has intensified in recent weeks and drawn the House, newly led by Speaker Kevin McCarthy, into the fray. On Friday, the chamber moved to intervene in the back-and-forth over letting DOJ access the phone of Perry, the House Freedom Caucus chair, reflecting the case's potential to result in precedent-setting rulings about the extent to which lawmakers can be shielded from scrutiny in criminal investigations.

The House's decision to intervene in legal cases is governed by the

“Bipartisan Legal Advisory Group,” a five-member panel that includes McCarthy, his Democratic counterpart Hakeem Jeffries, and other members of House leadership. The panel voted unanimously to support the House’s intervention in the matter, seeking to protect the chamber’s prerogatives, according to one of the two people familiar with the proceedings.

[snip]

More than four months after the government obtained Perry’s phone, Howell sided with DOJ. While Howell’s rulings in the dispute remain under seal, along with any rationale that appeals court judges may have offered for their actions, some spare details about the fight appear in that court’s public docket.

Remember: When DOJ was trying to breach the privilege claims of lawyers Jeffrey Clark and Ken Klukowski, they appeared to do so, in part, by prioritizing Perry’s contacts, emails that could not be privileged given the clients that Clark and Klukowski should have been representing – for a significant period for both, US taxpayers. Yet for most of the time since then, DOJ has been blocked from getting the non-lawyer’s contacts, even though he played a central role in attacking the peaceful transfer of power.

I have not yet been proven correct in my speculation that one reason Merrick Garland appointed a Special Counsel was because the Republican majority in the House made it more difficult to investigate those members of Congress, starting with Perry, who participated in Trump’s coup attempt. But Jack Smith’s background in investigating former members of Congress sure will help this investigation.