

# WHAT IS SEDITIONARY CONSPIRACY?



More than 2,000 people breached the U.S. Capitol on January 6, 2021, many of whom vandalized and looted the building in an effort to interrupt Congress's certification of the 2020 presidential election results. Some have been accused of the crime of seditious conspiracy.

In January 2022, the U.S. Department of Justice announced that 11 people who had participated in the January 6, 2021, attack on the U.S. Capitol had been indicted (formally charged) by a federal grand jury with a variety of criminal offenses, including seditious conspiracy. Those charged included Elmer Stuart Rhodes III, founder and leader of the Oath Keepers, a loosely organized far-right, anti-government group.

On March 2, 2022, co-defendant Joshua James pleaded guilty to seditious conspiracy and agreed to cooperate with prosecutors in the charges against the others. (Co-defendants are multiple people facing charges in one criminal case.) As of this writing, James is the only defendant who has pleaded guilty. Because conspiracy charges require an agreement made among more than one person, his guilty plea could make the defense of the other alleged co-conspirators more difficult at trial.

## What Does the Law Say?

Federal laws are those passed by the U.S. Congress that apply to the entire nation; they do not vary from state to state. The crime of seditious conspiracy combines two other offenses that are against federal law: sedition and conspiracy.

**Sedition** refers to any act that incites (stirs up) rebellion against the government. Since the Supreme Court's 1969 decision in the case of *Brandenburg v. Ohio*, such an act could even include speech if the speaker intends to incite "imminent lawless action," and if that lawless action is likely to take place. An *imminent*

action is one that will occur without delay. In the 1973 case of *Hess v. Indiana*, the Supreme Court also made clear that mere advocacy of rebellion against the government is not the same thing as speech that incites imminent lawless action. In that case, the court held that speech is protected by the First Amendment if it merely advocates an illegal action at an "indefinite future time" and if it is "not directed to any person or group in particular."

**Conspiracy** occurs when two or more people agree to commit a crime in the future, and when one or more of the conspirators takes an "overt act" to carry out the planned crime. An overt act could itself be legal. For example, if conspirators plan to rob a bank, the legal act of buying a car would count as an overt act if they intended to use that car to drive to the bank.

So **seditious conspiracy** is a crime in which two or more people agree to stir up imminent rebellion against the government and take at least one overt act toward that rebellion. People convicted of this crime can be fined and can be sentenced to up to 20 years in prison.

The federal law defining seditious conspiracy makes clear many ways alleged conspirators could plan to stir up rebellion. It is illegal for people to:

conspire to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, or to oppose by force the authority thereof, or by force to prevent, hinder, or delay the execution of any law of the United States, or by force to seize, take, or possess any property of the United States contrary to the authority thereof.

## ELEMENTS OF A CRIME

Every crime is made up of elements, or necessary parts that prosecutors must prove, whether under state law or federal law. At trial, prosecutors have the burden to prove each and every element of a crime in order for a jury to find defendants guilty. And prosecutors must prove those elements beyond a reasonable doubt, which means they leave no doubt in jurors' minds that the defendants committed each element of the crime.

Reread the definition of seditious conspiracy in the article. What are the elements that you see?

On January 6, 2021, both houses of Congress were meeting jointly to certify the Electoral College votes from the presidential election of November 2020, which reflected that Joe Biden won the election against President Donald Trump. According to the Justice Department's 2022 indictment, Rhodes and his co-conspirators coordinated plans to travel to Washington, D.C., on or around January 6 and to bring weapons with them to prevent Congress from having the procedural vote in time for Inauguration Day on January 20.

The indictment also alleges that they traveled from around the country to Washington, D.C., in early January. They allegedly organized combat trainings and brought combat gear and weapons (including knives, batons, and camouflaged uniforms) to the U.S. Capitol on January 6. Several of them are accused of breaching (illegally entering) the Capitol building and trying to take control of it, including by using force against law enforcement officers there. Rhodes himself is not alleged to have breached the Capitol building.

### Other Cases of Seditious Conspiracy in U.S. History

Federal law defined the crime of seditious conspiracy in 1861, in the early days of the Civil War. But, especially since World War II, the charge has been very difficult for prosecutors to prove. In key cases where people have been charged with the crime, they have not been convicted. But in two prominent cases they have.

In 1954, four members of the Puerto Rican Nationalist Party opened fire in the House of Representatives, wounding five members of Congress. The party had been calling for Puerto Rican independence from the United States for over thirty years. A young woman named Lolita Lebrón led the shootings. She and her three co-defendants were charged with and convicted of several crimes, including seditious conspiracy.

The last time defendants were found guilty of seditious conspiracy was in 1995. In this case, Sheikh Omar Abdel-Rahman (an extremist Egyptian cleric living in the United States) and nine others were convicted of seditious conspiracy and other charges in planning a series of bombing attacks on New York-area sites and landmarks, including the UN and FBI buildings. Recordings of Abdel-Rahman's discussions about attacking military targets were used as evidence against him. He tried and failed to convince the court that his discussions were protected by the First Amendment.

### WRITING & DISCUSSION

1. Do you think the actions of the Oath Keepers leading up to and on January 6, 2021, amount to seditious conspiracy? Why or why not?
2. Why do you think it has traditionally been difficult for prosecutors to prove charges of seditious conspiracy? Why might Joshua James's guilty plea make it easier for prosecutors to prove seditious conspiracy in the Oath Keepers' case?
3. What makes mere advocacy of rebellion different than the crime of sedition or seditious conspiracy?
4. What questions do you still have about seditious conspiracy?

This lesson is part of CRF's Civics On Call ongoing series, which presents short readings on contemporary topics for classroom discussion and writing. Visit Civics On Call for more lessons drawn from CRF's library of social studies resources.

[www.crf-usa.org/civics-on-call](http://www.crf-usa.org/civics-on-call)

The screenshot shows the Civics On Call website interface. At the top, there is a navigation bar with links for HOME, ABOUT US, PROGRAMS, SUBSTITUTION MATERIALS, CALENDAR, NEWS, and SUPPORT US. Below the navigation bar, there is a search bar and a list of social media icons. The main content area features a lesson titled "Background on Modern Russia, Ukraine, and Eastern Europe". The lesson includes a map of the region and a list of topics for discussion, such as "Background on Modern Russia, Ukraine, and Eastern Europe", "Police Violence after the Death of George Floyd", and "What is Nationalism?".



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## Standards Addressed

### *Yugoslavia: A Divided Land*

California History Social Science Standard 10.7: Students analyze the rise of totalitarian governments after World War I.

California History Social Science Standard 10.9: Students analyze the international developments in the post-World War II world.

California History-Social Science Framework: Chapter 15, p. 374: Global movements of refugees and global economic forces also challenge the stability achieved by the European Union.

California History-Social Science Framework: Chapter 17, p. 453: Students should also examine international efforts to protect human rights (e.g., the Universal Declaration of Human Rights, jurisdiction of the World Court and International Criminal Court) and current relevant issues such as protection of civilian populations during wartime, oppression of minority groups, and forced removal or genocide.

National World History Standard 43: Understands how post-World War II reconstruction occurred, new international power relations took shape, and colonial empires broke up. High School Benchmark 1: Understands political shifts in Europe and Asia following World War II . . . .

Common Core State Standards: SL.9-10.1, SL.9-10.3, RH.9-10.1, RH.9-10.2, RH.9-10.10, WHST.9-10.10.

### *Mother Jones: ‘The Most Dangerous Woman in America’*

California History Social Science Standard 8.12: Students analyze the transformation of the American economy and the changing social and political conditions in the United States in response to the Industrial Revolution. (6) Discuss child labor, working conditions, and laissez-faire policies toward big business and examine the labor movement, including its leaders (e.g., Samuel Gompers), its demand for collective bargaining and its strikes and protests over labor conditions.

California History Social Science Standard 11.2: *Students analyze the relationship among the rise of industrialization, large-scale rural-to-urban migration, and massive immigration from Southern and Eastern Europe.* (1) Know the effects of industrialization on living and working conditions. . . .

California History Social Science Standard 11.5: *Students analyze the major political, social, economic, technological, and cultural developments of the 1920s.* (4) Analyze the passage of the Nineteenth Amendment and the changing role of women in society.

California History-Social Science Framework: Chapter 16, p. 391: Students consider this question as they learn about the movements of the 1920s: Why were the 1920s filled with political, social, and economic extremes?

National U.S. History Standard 20: Understands how Progressives and others addressed problems of industrial capitalism, urbanization, and political corruption.

Common Core State Standards: SL.11-12.1, SL.11-12.3, RH.11-12.1, RH.11-12.2, RH.11-12.10, WHST.11-12.10.

### *What Is Seditious Conspiracy?*

California History-Social Science Framework: 12.5: Students summarize landmark U.S. Supreme Court interpretations of the Constitution and its amendments. (1) Understand the changing interpretations of the Bill of Rights over time, including interpretations of the basic freedoms (religion, speech, press, petition, and assembly) articulated in the First Amendment and the due process and equal-protection-of-the-law clauses of the Fourteenth Amendment.

California History-Social Science Framework: 12.10: Students formulate questions about and defend their analyses of tensions within our constitutional democracy and the importance of maintaining a balance between the following concepts: majority rule and individual rights; liberty and equality; state and national authority in a federal system; civil disobedience and the rule of law; freedom of the press and the right to a fair trial; the relationship of religion and government.

California History-Social Science Framework: Chapter 17, p. 451: [Students] can also explore the importance of the rule of law and the unique role of an independent judiciary in a democracy . . . .

National Civics Standard 18 : Understands the role and importance of law in the American constitutional system and issues regarding the judicial protection of individual rights. High School Benchmark 1: Understands how the rule of law makes possible a system of ordered liberty that protects the basic rights of citizens.

Common Core State Standards: SL.11-12.1, SL.11-12.3, RH.11-12.1, RH.11-12.3, WHST.11-12.10.

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## **People v. Cobey** Murder and Manslaughter

Featuring a pretrial argument on the Fourth Amendment Grades 6-12

*People v. Cobey* is the trial of Jamie Cobey, a horticulturist living in a semi-rural town in the high desert. Cobey is charged with the homicide of Cobey's landlord and next-door neighbor, Erik Smith. The prosecution will argue that Cobey should be convicted of first-degree murder or the lesser-included offense of voluntary manslaughter.

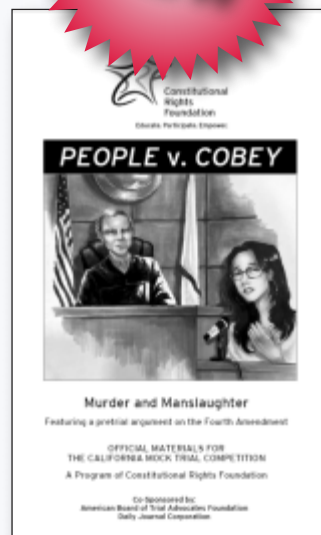
The relationship between Cobey and Smith had deteriorated in recent years with both engaging in unneighborly behavior. The tension between the two intensified once the pandemic eviction moratorium went into effect, and Smith wanted to evict Cobey and Cobey's elderly mother for non-payment of rent. After Smith shut off the power to Cobey's home, Cobey's mother died on April 22. In the early afternoon of April 29, Erik Smith opened his mailbox and was bitten by a Mojave rattlesnake that was within the mailbox.

The prosecution alleges that on the morning of April 29, Jamie Cobey intentionally placed the rattlesnake with its rattle removed in Smith's mailbox so that the snake would fatally bite Smith. Prosecution witnesses include a line worker who witnessed Cobey standing close to Smith's mailbox on that morning while Cobey held a small metal-wire cage. A neighbor will testify to seeing Cobey enraged at Smith at the funeral of Cobey's mother the day before Smith's death, as well as overhearing Cobey yell "I'm going to kill him!" later that evening in Cobey's own garden. The medical examiner will testify to the severe lethality of the snake's venom and the unlikelihood that the snake crawled by itself into the mailbox through a mail slot. The sheriff's deputy will testify to finding several snake-handling items and books about desert snakes in Cobey's home, as well as fingerprints of Cobey, Smith, and one other neighbor on Smith's mailbox.

The defense argues that Jamie Cobey lacked the specific intent for first-degree murder, the sudden quarrel or heat of passion needed for voluntary manslaughter, and the act of placing the rattlesnake inside the mailbox. Defense witnesses include a herpetologist who will testify that other circumstances superseded the causal link between the bite and Smith's death, especially Smith's willful refusal to seek medical attention. The herpetologist will also testify that the snake more than likely squeezed itself into the mailbox. Another tenant of Smith will testify to Cobey's even-tempered character and lack of hostility toward Smith before Smith's death. A different neighbor and friend of Cobey will testify to Cobey's habit of "cooling off" after outrageous actions by Smith, as well as the common knowledge about rattlesnakes crawling into mailboxes. Finally, Jamie Cobey will deny placing the snake in the mailbox and will testify that the items found by the sheriff's deputy were everyday items for desert horticulturalists.

The pretrial argument centers on the Fourth Amendment protection against unreasonable search and seizure. The question is whether Erik Smith's use of a smart camera provided by law enforcement to capture an image of snake-feeding tongs on the property of Jamie Cobey constituted a search under the Fourth Amendment and therefore required a search warrant, or whether it fell outside the warrant requirement.

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## **People v. Meadows** A Mock Trial Designed for the Classroom Grades 6-12

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