

No Secrets Allowed: Congress's Treatment and Mistreatment of the Attorney-Client Privilege and the Work-Product Protection in Congressional Investigations and Contempt Proceedings

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I. INTRODUCTION AND BACKGROUND

The attorney-client privilege is one of the oldest and most sacred privileges recognized by law. In 1577, almost two hundred years before the signing of the Declaration of Independence, the British Chancery Court acknowledged the privilege as a legal right under English common law in *Berd v. Lovelace*. Since the early 1880s, the decisions of American courts have solidified the attorney-client privilege as a substantive right. By contrast, the work-product protection is a relatively recent doctrine developed by the Supreme Court of the United States to shield from discovery documents created by counsel in anticipation of litigation and to provide strict protection to counsel's mental impressions. Congress codified the common law protections for work product in Rule 26(b)(3) of the Federal Rules of Civil Procedure. Together, the attorney-client privilege and work-product protection help to ensure that parties receive adequate representation by counsel and a fair trial by facilitating the free flow of information between lawyer and client and by shielding the lawyer's mental impressions from an adversary, respectively.