



AN ANATOMY OF A POLITICAL PROSECUTION: THE MANHATTAN DISTRICT ATTORNEY'S OFFICE'S VENDETTA AGAINST PRESIDENT DONALD J. TRUMP

Interim Staff Report of the
Committee on the Judiciary
U.S. House of Representatives



April 25, 2024

EXECUTIVE SUMMARY

If the prosecutor is obliged to choose his cases, it follows that he can choose his defendants. Therein is the most dangerous power of the prosecutor: that he will pick people that he thinks he should get, rather than pick cases that need to be prosecuted.

– Attorney General Robert H. Jackson, April 1, 1940¹

The New York County District Attorney’s Office’s (DANY) multi-year investigation into former President Donald J. Trump is unprecedented. As revealed in former Special Assistant District Attorney Mark F. Pomerantz’s self-serving book, *People vs. Trump: An Insider’s Account*,² since at least 2018, the DANY has weaponized the criminal justice system, scouring every aspect of President Trump’s personal life and business affairs, going back decades, in the hopes of finding some legal basis—however far-fetched, novel, or convoluted—to bring charges against him. When one legal theory would not pan out, instead of discontinuing its politically motivated investigation, the DANY simply pivoted to a new theory, constantly searching for a crime—any crime—to prosecute President Trump.

The story behind the DANY’s investigation into President Trump and the people involved illustrate the clear partisan aim of this case. Pomerantz is a former federal prosecutor who eagerly volunteered to serve as a special assistant district attorney to solely work on the efforts to prosecute President Trump.³ Working under former District Attorney Cyrus Vance, Pomerantz assisted with “lead[ing] the effort” in developing a case against President Trump until he abruptly resigned in February 2022 shortly after District Attorney Alvin Bragg took office.⁴ Prior to his election, Bragg openly boasted about his experience suing the Trump Administration “more than 100 times” and campaigned on a platform of “holding [President Trump] accountable.”⁵ However, when Bragg did not move quickly enough to file charges against President Trump,⁶ Pomerantz opted to go public, writing a book and orchestrating a pressure campaign to force Bragg into action.⁷ And it worked.

Pomerantz’s book, described as a “300-page exercise in score-settling and scorn,”⁸ revealed the extent to which the DANY’s investigation of President Trump was politically motivated. Pomerantz described his eagerness to investigate President Trump, writing that he

¹ Robert H. Jackson, Atty Gen., U.S. Dep’t of Justice, Address at the Second Annual Conference of United States Attorneys: The Federal Prosecutor at 4 (Apr. 1, 1940) [hereinafter 1940 Attorney General Jackson Speech].

² MARK POMERANTZ, *PEOPLE VS. DONALD TRUMP: AN INSIDE ACCOUNT* (2023).

³ *Id.* at 7, 21.

⁴ Shayna Jacobs, *Ex-prosecutor’s book could hurt Trump investigation, district attorney worries*, WASH. POST (Jan. 18, 2023).

⁵ Maria Ramirez Uribe & Loreben Tuquero, *Here’s what Manhattan District Attorney Alvin Bragg said about Donald Trump during his DA campaign*, POLITIFACT (Apr. 12, 2023).

⁶ Jacobs, *supra* note 4.

⁷ Ruth Marcus, *Trump prosecutor Mark Pomerantz was wrong to litigate-and-tell*, WASH. POST (Feb. 8, 2023).

⁸ Lloyd Green, *People vs Donald Trump review: Mark Pomerantz pummels Manhattan DA*, THE GUARDIAN (Feb. 11, 2023).

was “delighted” to join an unpaid group of lawyers advising on the Trump investigation, and joking that salary negotiations had gone “great” because he would have paid to join the investigation.⁹ He baselessly compared President Trump to notorious mob boss John Gotti,¹⁰ and claimed that the District Attorney’s Office was “warranted in throwing the book” at President Trump because, in Pomerantz’s view, the “collective weight” of President Trump’s conduct over the years “left no doubt in [his] mind that [President] Trump deserved to be prosecuted.”¹¹ In other words, as a special assistant district attorney empowered by New York County, Pomerantz seemed, for reasons unrelated to the facts of this particular investigation, to have been searching for any basis on which to bring politically motivated criminal charges against President Trump.¹²

The DANY has been investigating President Trump since at least 2018, searching for any legal theory on which to bring charges.¹³ One legal theory pushed by Pomerantz suffered from serious deficiencies—notably the credibility of the star witness, convicted perjurer Michael Cohen—so much so that the case became known as the “zombie” case.¹⁴ On April 4, 2023, District Attorney Bragg succumbed to Pomerantz’s pressure campaign, charging President Trump with 34 felony counts for falsifying business records.¹⁵ These charges are normally misdemeanors subject to a two-year statute of limitations, but Bragg used a novel and untested legal theory—previously declined by federal prosecutors—to bootstrap the misdemeanor allegations as a felony, which extended the statute of limitations to five years, by alleging that records were falsified to conceal a second crime.¹⁶

The timing and basis for the DANY’s prosecution of President Trump provide a clear inference that Bragg is motivated by political calculations. The facts at the center of Bragg’s political prosecution have not changed since 2018 and no new witnesses emerged between then and the date on which Bragg filed the indictment.¹⁷ The Justice Department examined the facts in 2019 and chose not to prosecute the case. Even still, according to reporting, Bragg “convened a new grand jury in January [2023] to evaluate the issue.”¹⁸ Bragg ultimately settled on a novel legal theory untested anywhere in the country and one that federal authorities declined to pursue to resurrect the matter. The only intervening factor, it appears, was President Trump’s

⁹ POMERANTZ, *supra* note 2, at 6, 21–22.

¹⁰ *Id.* at 108–09.

¹¹ *Id.* at 112–13.

¹² See Rachel Maddow Show, *Watch Rachel Maddow Highlights: Feb. 6*, YOUTUBE (Feb. 6, 2023) (“[W]e were trying to work quickly. Bringing a racketeering case, particularly one that includes [other crimes], it’s such a big ball of wax that, ultimately, we decided, you know what, let’s focus on a smaller, more contained set of charges. That’s when we started to focus on the financial statements.”).

¹³ Andrew Feinberg, *New York prosecutors warn Trump of possible indictment, report says*, THE INDEPENDENT (Mar. 10, 2023).

¹⁴ POMERANTZ, *supra* note 2, at 36–38, 46.

¹⁵ See Indictment, *People v. Donald J. Trump* (N.Y. 2023).

¹⁶ See *id.*; Ben Protess, et al., *In Trump Case, Bragg Pursues a Common Charge With a Rarely Used Strategy*, N.Y. TIMES (May 7, 2023); Jonathan Turley, *Get ready for Manhattan DA’s made-for-TV Trump prosecution: high on ratings, but short on the law*, THE HILL (Mar. 18, 2023).

¹⁷ Mark Berman et al., *The prosecutor, the ex-president and the ‘zombie’ case that came back to life*, WASH. POST (Mar. 17, 2023).

¹⁸ *Id.*

announcement that he would be a candidate for President in 2024.¹⁹

Congress has a specific and manifestly important interest in preventing politically motivated prosecutions of current and former Presidents by elected state and local prosecutors, particularly in jurisdictions—like New York County—where the prosecutor is popularly elected and trial-level judges lack life tenure.²⁰ In response to Bragg’s decision to pursue a politically motivated prosecution—while adopting progressive criminal justice policies that allow career “criminals [to] run[] the streets” of Manhattan²¹—the Committee had an obligation to conduct oversight of Bragg’s unprecedented and shocking prosecutorial conduct. The Committee used its constitutional oversight responsibility to understand how public safety funds appropriated by Congress are implemented by local law-enforcement agencies. In addition, Bragg’s decision to pursue criminal charges against a former president and current declared candidate for that office required the Committee to consider potential legislative reforms to insulate current and former Presidents from such politically motivated state and local prosecutions.

To help inform the Committee’s oversight, the Committee sought testimony from Pomerantz about his work on the political prosecution of President Trump. Based on Pomerantz’s unique role as a special assistant district attorney leading the investigation into President Trump, he was uniquely situated to inform the Committee’s oversight and potential legislative reforms. Pomerantz’s public discussion of the investigation in his book and his media tour undercut any argument that he could not comply on the basis of confidentiality or privilege.²² Bragg sued to prevent the Committee from interviewing Pomerantz; however, the U.S. District Court for the Southern District of New York agreed with the Committee and ordered Pomerantz to appear for a deposition.²³ On May 12, 2023, after stonewalling by Pomerantz and the DANY—including a frivolous lawsuit—Pomerantz sat for a deposition.

When Pomerantz appeared before the Judiciary Committee to discuss his book and politically motivated investigation, he was unusually silent—refusing to answer even the most basic of questions. But Pomerantz’s own words, as detailed in his book, paint a startling picture of prosecutorial abuse. Pomerantz’s own words show how the Manhattan District Attorney’s Office, populated with partisans who openly bragged about their desire to get President Trump, used its immense power in the persecution of a person, not a crime.

¹⁹ Max Greenwood, *Trump announces 2024 run for president*, THE HILL (Nov. 15, 2022).

²⁰ See Letter from Rep. Jim Jordan, H. Comm. on the Judiciary, et al., to Alvin L. Bragg, Jr., Manhattan District Att’y (Mar. 25, 2023).

²¹ Alyssa Guzman, *Priorities, eh? Woke DA Alvin Bragg who’s set to indict Trump is one of America’s most controversial prosecutors after charging self-defense shopkeeper with murder and sending soft-on-crime memo*, DAILY MAIL (Mar. 18, 2023); Andrea Cavallier, *REVEALED: Woke Manhattan DA Alvin Bragg has downgraded over HALF of felony cases to misdemeanors as criminals are free to roam streets of the Big Apple*, DAILY MAIL (Nov. 27, 2022).

²² See Letter from Rep. Jim Jordan, H. Comm. on the Judiciary, to Mark F. Pomerantz, Former N.Y. Co. Special Assistant District Att’y (Apr. 6, 2023).

²³ See Opinion and Order Denying Temporary Restraining Order, *Bragg v. Jordan*, 1:23-cv-3032 (MKV) (S.D.N.Y. Apr. 19, 2023).

TABLE OF CONTENTS

EXECUTIVE SUMMARY..... 1

TABLE OF CONTENTS 4

I. INTRODUCTION..... 5

 A. Bragg’s Disregard for Rising Violent Crime in New York City 6

 B. The DANY’s Politicized Prosecution of President Trump Has Been an Ongoing Effort
 Led by Politically-Biased Prosecutors 9

 C. The Committee’s Oversight of the DANY’s Unprecedented and Politically Motivated
 Prosecution..... 11

 D. Federal Court Ordered Pomerantz to Cooperate with the Committee’s Oversight 12

 E. Pomerantz Appeared for His Deposition but Declined to Answer Most Questions..... 13

II. POMERANTZ WAS HIRED BY THE DISTRICT ATTORNEY FOR NEW YORK COUNTY SOLELY TO
DEVELOP A CASE AGAINST PRESIDENT TRUMP 16

III. POMERANTZ WAS FANATICAL ABOUT PROSECUTING PRESIDENT TRUMP 18

 A. Pomerantz Shifted Through Many Novel and Untested Legal Theories in Search of a
 Crime..... 18

 B. Pomerantz’s Politicized Reliance on Convicted Perjurer Michael Cohen..... 19

 C. Pomerantz’s Personal Animus Towards and Obsession with President Trump 24

IV. POMERANTZ RESIGNED AFTER BRAGG INITIALLY REFUSED TO AUTHORIZE THE PROSECUTION
OF PRESIDENT TRUMP 27

V. UNDER PUBLIC PRESSURE FROM POMERANTZ, DISTRICT ATTORNEY BRAGG RESURRECTED
THE “ZOMBIE” CASE AGAINST PRESIDENT TRUMP..... 30

VI. THE COMMITTEE’S PROPOSED LEGISLATIVE REFORMS TO ADDRESS POLITICIZED
PROSECUTIONS 32

VII. CONCLUSION 34

APPENDIX 35

I. INTRODUCTION

Since at least 2018, the DANY has been investigating President Trump, looking for any legal theory on which to bring charges. The facts surrounding DANY’s case against President Trump have “been known for years.”²⁴ Michael Cohen, President Trump’s disgraced former lawyer and convicted perjurer, pleaded guilty over five years ago to charges based on the same facts.²⁵ At the time, the Justice Department determined that no one else was responsible for the conduct.²⁶ Yet, in April 2023, Bragg indicted President Trump on the same facts.²⁷

There are special responsibilities and principles that come with being a prosecutor. As Attorney General Robert Jackson warned in 1940, “[t]herin is the most dangerous power of the prosecutor: that he [can] pick people that he thinks should [be prosecuted], rather than pick cases that need to be prosecuted.”²⁸ And because of this, a “prosecutor has more control over life, liberty, and reputation than any other person in America.”²⁹ A prosecutor—like Alvin Bragg or Mark Pomerantz—“can pick[] some person whom he dislikes . . . and then look[] for an offense”³⁰ And it is at this point where “the real crime becomes that of being unpopular with the predominant or governing group, being attached to the wrong political views”³¹

Because of the potential to abuse these powers, there are several core principles that all prosecutors must follow. Although each jurisdiction has its own standard, the American Bar Association (ABA) provides model standards that “are intended to provide guidance for the professional conduct and performance of prosecutors”³² The standards set forth ideals by which all prosecutors should abide. In particular, Standard 3-1.6, *Improper Bias Prohibited*, states in part:

A prosecutor should not use other improper considerations, such as partisan or political or personal considerations, in exercising prosecutorial discretion. A prosecutor should strive to eliminate implicit biases, and act to mitigate any improper bias or prejudice when credibly informed that it exists within the scope of the prosecutor’s authority.³³

²⁴ Berman, *supra* note 17.

²⁵ Shawna Chen, *Timeline: The probe into Trump’s alleged hush money payments to Stormy Daniels*, AXIOS (Mar. 18, 2023).

²⁶ Letter from Rep. Jim Jordan, H. Comm. on the Judiciary, to Mark F. Pomerantz, Former N.Y. Co. Special Assistant Dist. Att’y (Mar. 22, 2023).

²⁷ See Statement of Facts, *People v. Donald J. Trump* (N.Y. 2023).

²⁸ 1940 Attorney General Jackson Speech at 4-5.

²⁹ *Id.* at 1.

³⁰ *Id.* at 5.

³¹ *Id.*

³² ABA, STANDARDS FOR CRIMINAL JUSTICE, PROSECUTION FUNCTION, Standard 3-1.6(a) (AM. BAR. ASS’N 2017, 4th ed.).

³³ *Id.*

These principles are meant to protect against the risk of unfair prosecutions. A prosecutor must be objective. A prosecutor must prosecute a crime. A prosecutor must not pick a defendant and then go on a hunt to find a case or create a crime.

The DANY under Alvin Bragg and Mark Pomerantz has failed to uphold these principles. The Office has allowed violent crime in Manhattan to rise unabated and go unprosecuted while exploring every avenue and leaving no stone unturned when it comes to investigating and harassing President Trump.

A. Bragg's Disregard for Rising Violent Crime in New York City

Against the backdrop of District Attorney Bragg's decision to find any reason to prosecute President Trump are Bragg's actions to institute pro-crime, anti-victim policies that resulted in an increase in violent crime and created a dangerous community for New York City residents. Immediately upon taking office in January 2022, District Attorney Bragg issued a ten-page policy memorandum to the Manhattan District Attorney Office staff, which instituted progressive soft-on-crime, anti-victim policies.³⁴ This so-called "Day One" memo, dated January 3, 2022, directed his assistant district attorneys not to prosecute several crimes, including trespassing, resisting arrest, and engaging in prostitution.³⁵ The memorandum stated that armed robberies should not be prosecuted as felonies.³⁶ Instead, the new District Attorney directed armed robberies to be considered as misdemeanor larceny unless someone was shot during the course of the robbery.³⁷ Additionally, Bragg stated that his office will not seek prison sentences except for homicides and other particularly heinous crimes, such as domestic violence felonies, sex crimes, and public corruption.³⁸ The District Attorney also directed his prosecutors to no longer request prison sentences in excess of 20 years, absent "exceptional circumstances."³⁹

New York's law enforcement community immediately pushed back on the District Attorney's Day One memo. On January 7, 2022, New York City Police Commissioner Keechant Sewell sent an email to all 36,000 members of the New York City Police Department (NYPD), writing that she had "studied these [Day One memo] policies and I am very concerned about the implications to your safety as police officers, the safety of the public and justice for the victims."⁴⁰ Similarly, Patrick Lynch, President of the Police Benevolent Association, said that "police officers don't want to be sent out to enforce laws that the district attorneys won't

³⁴ Letter from Alvin L. Bragg, Manhattan Dist. Att'y, to Manhattan Dist. Att'y Staff (Jan. 3, 2022) [hereinafter Day One Memo].

³⁵ *Id.*

³⁶ *Id.*

³⁷ Nicole Gelinas, *Let's Break Down Exactly What Manhattan DA Alvin Bragg's Memo Says*, N.Y. POST (Jan. 11, 2022).

³⁸ Day One Memo.

³⁹ *Id.*

⁴⁰ Jonah E. Bromwich & William K. Rashbaum, *Conflict Quickly Emerges Between Top Prosecutor and Police Commissioner*, N.Y. TIMES (Jan. 10, 2022).

prosecute.”⁴¹ The heavy public backlash forced District Attorney Bragg to walk back some of the policies in his Day One memo.⁴²

In 2022, the DANY downgraded a significant number of felony cases to misdemeanors and failed to obtain convictions in the felony cases the office brought. For example, according to data from the District Attorney’s Office, prosecutors downgraded approximately 52 percent of felony charges to misdemeanors charges.⁴³ According to reports, between 2013 and 2020, under former District Attorney Cyrus Vance, the “percentage of cases the office downgraded had never exceeded 40 [percent].”⁴⁴ Furthermore, Bragg’s office secured a conviction on felony charges in just 51 percent of cases, which was “down from 68 [percent] in 2019, the last year before the pandemic disrupted the court system.”⁴⁵ Similarly, the Office’s misdemeanor conviction rate was 29 percent in 2022, down significantly from 68 percent in 2019.⁴⁶

Also in 2022, Bragg’s first year as Manhattan District Attorney, crime in New York City rose significantly when compared to the previous year. According to NYPD data, New York City saw a 23 percent surge in major crimes.⁴⁷ Further, according to reports:

- “[r]apes climbed 7% (1,591 from 1,481);
- felony assaults rose 13 percent (25,596 from 22,738); and
- robberies (17,138 from 13,592) spiked 26%.”⁴⁸

In New York City:

- burglaries went up 23 percent (15,481 from 12,568);
- grand larcenies were up 26 percent (50,698 from 40,166); and
- auto theft increased 32 percent (13,475 from 10,219).⁴⁹

⁴¹ Sonia Moghe, *Manhattan district attorney announces he won’t prosecute certain crimes*, CNN (Jan. 6, 2022).

⁴² Jonah E. Bromwich, *Manhattan D.A. Sharpens Crime Policies That Led to Weeks of Backlash*, N.Y. TIMES (Feb. 4, 2022).

⁴³ Melissa Klein, *NYC convictions plummet, downgraded charges surge under Manhattan DA Bragg*, N.Y. POST (Nov. 26, 2022).

⁴⁴ *Id.*

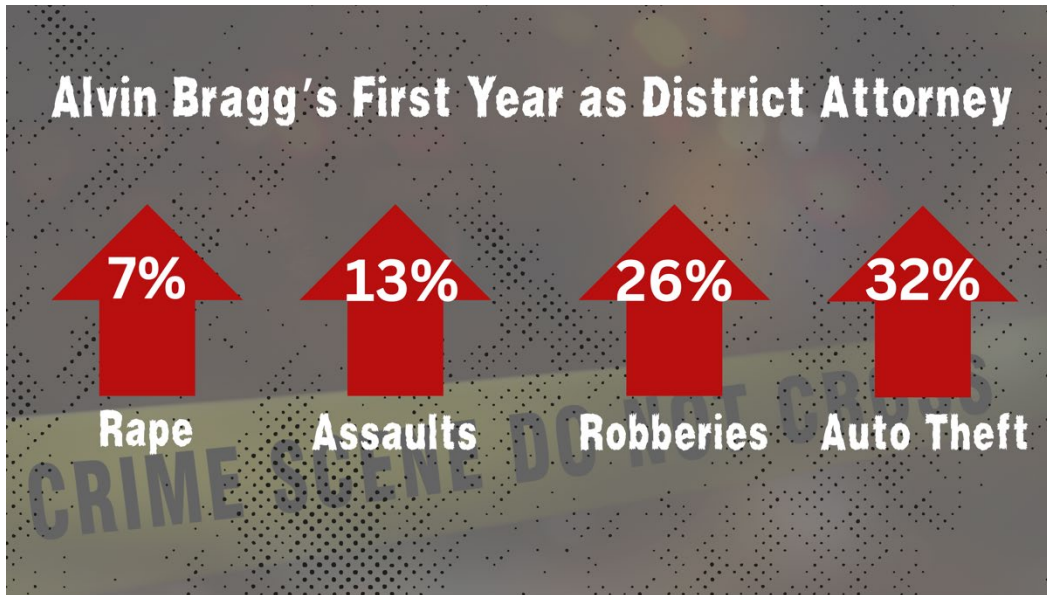
⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ See Dean Balsamini, *NYC murders down but major crimes surge as 2022 draws to a close*, N.Y. POST (Dec. 31, 2022).

⁴⁸ *Id.*

⁴⁹ *Id.*



Because of Bragg's disregard for rising crime in New York City, the Committee held a hearing in Manhattan to examine violent crime in Manhattan and how Bragg's left-wing policies harm the people he was elected to serve.⁵⁰ The Committee received testimony from a parent whose son was attacked "in the heart of Times Square . . . because he was Jewish and wearing a kippa."⁵¹ Bragg offered one of the attackers a "sweetheart slap-on-the-wrist deal."⁵² The parent said that Bragg's decision was "exemplary" of his "incompetence when it comes to carrying out justice."⁵³

The Committee also received testimony from Madeline Brame, whose son was murdered by four people in the streets of Harlem.⁵⁴ Bragg's predecessor, District Attorney Cyrus Vance, originally prosecuted the four suspects, but soon after Bragg took office, "[t]he case immediately began to fall apart with the complete dismissal of 1st degree gang assault [and] 2nd degree murder indictments against 2 of the defendants . . ."⁵⁵ Ms. Brame made clear that "DA Bragg ha[d] demonstrated over and over again that he has no regard or concern for human life or victims of crime . . ."⁵⁶ Yet, despite his decision to not prosecute such heinous crimes, Bragg has spent the DANY's resources to prosecute President Trump for his politics, not his criminal conduct.

⁵⁰ *Victims of Violent Crime in Manhattan: Hearing before the H. Comm. on the Judiciary*, 118th Cong. (2023).

⁵¹ *Id.* (testimony of Barry Borgen).

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.* (testimony of Madeline Brame).

⁵⁵ *Id.*

⁵⁶ *Id.*

B. The DANY's Politicized Prosecution of President Trump Has Been an Ongoing Effort Led by Politically-Biased Prosecutors

Instead of prosecuting violent crime, the Manhattan criminal justice authorities set their sights on investigating and prosecuting President Trump. Pomerantz's book underscores the nature of this political prosecution. In December of 2020, Carey Dunne, whom at the time served as "counsel to the office of Manhattan district attorney Cyrus ("Cy") Vance," asked Mark Pomerantz to join a group of outside advisors to Vance's team investigating President Trump, which Pomerantz accepted immediately.⁵⁷ On February 2, 2021, Pomerantz was sworn in as a special assistant district attorney.⁵⁸ Pomerantz wrote in his book that he was "enthusiastic about working on the case and happy to work without pay."⁵⁹

Throughout 2020 and 2021, the DANY's investigation of President Trump continued. In November 2021, shortly after Alvin Bragg won the election to be the next District Attorney, Pomerantz sent a memorandum to District Attorney Vance and Dunne expressing his desire to quickly decide whether to prosecute President Trump.⁶⁰ By the end of Vance's term, however, the DANY had not brought charges against President Trump.⁶¹

In January 2022, soon after Bragg took office, Bragg expressed doubts about the case that Pomerantz and Dunne had assembled using novel legal theories against President Trump and, ultimately, decided to suspend the investigation.⁶² This decision prompted Pomerantz and Dunne to resign in protest.⁶³ Pomerantz penned a scathing resignation letter, which was also leaked to the press,⁶⁴ urging Bragg to follow through with the charges against President Trump.⁶⁵

On November 15, 2022, President Trump formally announced that he was running for President in 2024.⁶⁶ A few months later, on February 7, 2023, Pomerantz published his book, *People v. Donald Trump: An Inside Account*, which excoriated Bragg for not aggressively prosecuting President Trump and laid bare the Office's internal deliberations about the

⁵⁷ POMERANTZ, *supra* note 2, at 4.

⁵⁸ *Id.* at 27.

⁵⁹ *Id.* at 22.

⁶⁰ *Id.* at 167, 172.

⁶¹ *See generally id.*

⁶² Shayna Jacobs et al., *Prosecutor who resigned over stalled Trump probe says ex-president committed felonies*, WASH. POST (Mar. 23, 2022).

⁶³ *Id.*; POMERANTZ, *supra* note 2, at 247, 252.

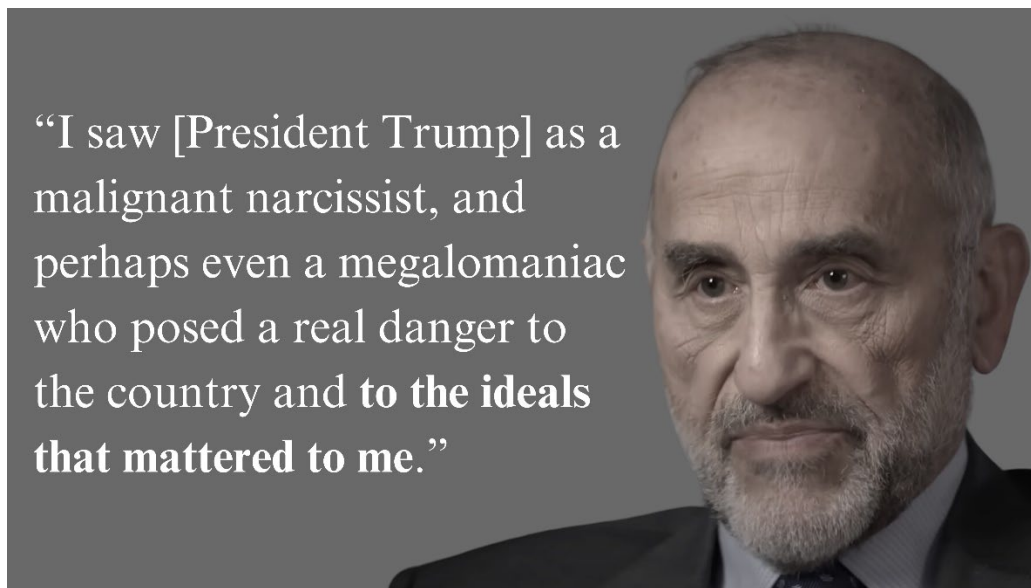
⁶⁴ *See* Ankush Khardori, *The Untold Story of the Lost Trump Investigation Thanks to Mark Pomerantz's fight with Alvin Bragg, we know more than ever*, N.Y. MAG. (Feb. 9, 2023) ("But last February, Pomerantz and a second lawyer, Carey Dunne, ignited a media firestorm when they resigned following Bragg's decision. Since then, senior officials in the DA's office had come to believe he selectively and misleadingly leaked information to the press, including his resignation letter, in order to damage the then newly elected DA. (Pomerantz writes that he 'never' spoke 'to the press at all during my tenure with the district attorney's office,' but he is conspicuously silent on whether he spoke to the press after he resigned, which he did.)").

⁶⁵ POMERANTZ, *supra* note 2, at 248–51.

⁶⁶ Greenwood, *supra* note 19.

investigation and political animus toward President Trump.⁶⁷ Pomerantz went on a media tour to promote his book and attack President Trump and Bragg.⁶⁸ Pomerantz did not hide his deep animosity toward President Trump in his memoir or his media tour. For example, he claimed:

- “[Trump’s] empire was built on lies.”⁶⁹
- Trump was “practiced in the art of intimidation.”⁷⁰
- Trump was “ruthless and avaricious,” “a bully,” and “cunning.”⁷¹
- Trump was “a malignant narcissist” and “a megalomaniac” who “posed a real danger to the country and to the ideals that mattered to me.”⁷²
- “His behavior made me angry, sad, and even disgusted.”⁷³



But Pomerantz was not the only DANY prosecutor who openly discussed his animosity towards President Trump. Throughout his campaign for district attorney, Bragg himself made

⁶⁷ See generally POMERANTZ, *supra* note 2.

⁶⁸ See, e.g., 60 Minutes, *Mark Pomerantz on investigating Donald Trump*, CBS NEWS (Feb. 5, 2023).

⁶⁹ *Id.*

⁷⁰ Morning Joe, *Attorney Mark Pomerantz confident Trump book not interfering with investigation*, MSNBC (Feb. 7, 2023).

⁷¹ POMERANTZ, *supra* note 2, at 109.

⁷² *Id.* at 176-177.

⁷³ *Id.* at 177.

clear that he, too, had animosity towards President Trump. Bragg made President Trump a focal point of his campaign.⁷⁴ For example, on December 13, 2020, Bragg stated:

Let's talk about what's waiting for the new DA. The docket. We know there's a Trump investigation. I have investigated Trump and his children and held them accountable for their misconduct with the Trump Foundation. I also sued the Trump administration more than 100 times for DACA, the travel ban, separation of children from their families at the border. So I know that work. I know how to follow the facts and hold people in power accountable.⁷⁵

On March 17, 2021, Bragg indicated that, if elected as district attorney, he “will hold [Trump] accountable”⁷⁶ Just a few days later, on March 23, 2021, he again bragged that he had “sued the Trump administration over 100 times”⁷⁷ In June 2021, Bragg doubled down, stating, “It is a fact that I have sued Trump more than a hundred times. I can't change that fact, nor would I. That was important work. That's separate from anything that the D.A.'s office may be looking at now.”⁷⁸ And on November 23, 2022, Bragg boasted, “I think I'm probably the only lawyer in the country who can say, we are right now, prosecuting a criminal case against the Trump organization.”⁷⁹ In other words, Bragg assumed office with seemingly one goal: to prosecute President Trump. But, as discussed below, after assuming office, something changed—Bragg realized the case was thin and no longer seemed interested in quickly prosecuting President Trump. This prompted Pomerantz to resign. And the case was not resurrected until Pomerantz went public, putting political pressure on Bragg to prosecute President Trump.

C. The Committee's Oversight of the DANY's Unprecedented and Politically Motivated Prosecution

After news broke that DANY would be indicting President Trump, the Committee was concerned about the unprecedented abuse of prosecutorial authority: the indictment of a former President of the United States and current declared candidate for that office. Because of this, the Committee launched an investigation to examine whether legislative reforms are necessary to insulate former and current Presidents from politically motivated prosecutions by state and local officials. Because Pomerantz had spoken publicly about his work in investigating President

⁷⁴ See, e.g., Uribe & Tuquero, *supra* note 5; Katelyn Caralle, *Meet the Dems competing to prosecute Trump: Manhattan DA candidate BRAGGED about suing Donald 'more than 100 times' – while his opponent interviewed to be federal judge but didn't get it*, DAILY MAIL (June 2, 2021).

⁷⁵ Uribe & Tuquero, *supra* note 5; Katelyn Caralle, *Meet the Dems competing to prosecute Trump: Manhattan DA candidate BRAGGED about suing Donald 'more than 100 times' – while his opponent interviewed to be federal judge but didn't get it*, DAILY MAIL (June 2, 2021).

⁷⁶ Uribe & Tuquero, *supra* note 5.

⁷⁷ Emily Ngo, *Why the Manhattan DA Candidates Say They're Ready to Take on the Trump Investigation*, SPECTRUM NEWS NY 1 (Mar. 23, 2023).

⁷⁸ Jonah E. Bromwich et al., *2 Leading Manhattan D.A. Candidates Face the Trump Question*, N.Y. Times (June 2, 2021).

⁷⁹ *Manhattan DA Alvin Bragg on Election Results and More, The Brian Lehrer Show*, WNYC (Nov. 23, 2022) (transcript available at <https://www.wnyc.org/story/manhattan-da-alvin-bragg-election-results-and-more/>).

Trump and the political animus that fueled his work, on March 22, 2023, the Committee asked Pomerantz to provide relevant documents and testimony about his role as a special assistant district attorney leading the investigation into President Trump.⁸⁰ On March 27, 2023, Pomerantz responded to the Committee and stated that, at the DANY’s instruction, he would not cooperate with the Committee’s oversight.⁸¹ In light of Pomerantz’s refusal to cooperate with the Committee, on April 6, 2023, the Committee issued a deposition subpoena to Pomerantz.⁸² In the subpoena’s cover letter, the Committee reiterated that Pomerantz had already discussed the issues the Committee sought information on in both his book and media appearances.⁸³

D. Federal Court Ordered Pomerantz to Cooperate with the Committee’s Oversight

Soon after, on April 11, 2023, District Attorney Bragg filed a lawsuit against the Committee to enjoin its enforcement of the deposition subpoena to Pomerantz, alleging, in part, that the Committee sought “highly sensitive and confidential local prosecutorial information”⁸⁴ On April 19, 2023, Judge Mary Kay Vyskocil eviscerated District Attorney Bragg’s arguments that sought to prevent Pomerantz from appearing before the Committee.⁸⁵ Judge Vyskocil wrote, in part:

The book referenced in [Chairman] Jordan’s letter is *People vs. Donald Trump: An Inside Account*, written by Pomerantz and published in early 2023. As its subtitle indicates, the book recounts Pomerantz’s insider insights, mental impressions, and his front row seat to the investigation and deliberative process leading up to the DANY case against former President and current presidential candidate Donald Trump.

* * *

Bragg cannot seriously claim that any information already published in Pomerantz’s book and discussed on prime-time television in front of millions of people is protected from disclosure as attorney work product (or otherwise).⁸⁶

⁸⁰ Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Mark F. Pomerantz, Former N.Y. Co. Special Assistant Dist. Att’y (Mar. 22, 2023).

⁸¹ Letter from Mark F. Pomerantz, Former N.Y. Co. Special Assistant Dist. Att’y, to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary (Mar. 27, 2023).

⁸² Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Mark F. Pomerantz, Former N.Y. Co. Special Assistant Dist. Att’y (Apr. 6, 2023).

⁸³ *Id.*

⁸⁴ Complaint, *Bragg v. Jordan*, 1:23-cv-3032 (MKV) (S.D.N.Y. Apr. 11, 2023).

⁸⁵ Opinion and Order Denying Temporary Restraining Order, *Bragg v. Jordan*, 1:23-cv-3032 (MKV) (SDNY Apr. 19, 2023).

⁸⁶ *Id.* at 2, 22–23 (internal citations omitted).

Judge Vyskocil concluded that the Committee’s “subpoena was issued with a ‘valid legislative purpose’ in connection with the ‘broad’ and ‘indispensable’ congressional power to ‘conduct investigations.’”⁸⁷ The Committee, she added, “identified several valid legislative purposes underlying the subpoena.”⁸⁸ Those legislative purposes includes “the use of federal forfeiture funds in connection with DANY’s investigation of President Trump” and “the possibility of legislative reforms to insulate current and former presidents from state prosecutions[.]”⁸⁹ Judge Vyskocil made clear that Congress has the authority to investigate these legislative reforms.⁹⁰

Bragg and Pomerantz appealed Judge Vyskocil’s ruling and the U.S. Court of Appeals for the Second Circuit granted a temporary administrative stay of the Committee’s deposition subpoena to Pomerantz.⁹¹ After negotiation with the Committee, Pomerantz agreed to sit for a deposition on May 12, 2023, so long as the District Attorney’s Office could have a representative present.⁹²

As a last-ditch effort to prevent Pomerantz from providing meaningful testimony, the DANY threatened to pursue legal charges against Pomerantz because he disclosed details in his book about a pending investigation. Prior to publishing his book, the DANY “warned [him] that [he] could face criminal liability if . . . [he] disclosed grand jury material or violated a provision of the New York City Charter dealing with the misuse of confidential information.”⁹³ Pomerantz heard nothing more from the DANY, however, and his book was released. More than two months after the release of his book, on April 19—after the Committee sought to speak with Pomerantz—the DANY indicated in court that Pomerantz’s book “exposed [him] to criminal liability.”⁹⁴ In other words, the DANY did not take any action or seemingly care about Pomerantz’s book or his media appearances until *after* the Committee expressed interest in speaking to him about it. At that point, the DANY threatened criminal liability to silence Pomerantz.

E. Pomerantz Appeared for His Deposition but Declined to Answer Most Questions

At the deposition on May 12, 2023, Pomerantz was accompanied by his lawyers and Leslie Dubeck, General Counsel for the New York County District Attorney’s Office.⁹⁵ At the outset of the deposition, during his opening statement, Pomerantz indicated that he would invoke

⁸⁷ *Id.* at 1.

⁸⁸ *Id.* at 12.

⁸⁹ *Id.*

⁹⁰ *Id.* at 12-13.

⁹¹ Jane Wester, *2nd Circuit Grants Last-Minute Stay of Pomerantz Deposition Before House Committee*, N.Y. LAW JOURNAL (Apr. 20, 2023).

⁹² Katherine Faulders & Aaron Katersky, *Manhattan DA Bragg, Jordan resolve dispute over deposition of former Trump prosecutor*, ABC NEWS (Apr. 21, 2023).

⁹³ Deposition of Mark F. Pomerantz, Former N.Y. Co. Special Assistant Dist. Att’y, at 10 (May 12, 2023).

⁹⁴ *Id.*

⁹⁵ *Id.* at 5.

three separate reasons to decline to answer certain questions. Pomerantz identified these bases as follows:

- The Manhattan District Attorney’s Office instructed Pomerantz that he should maintain the Office’s claims of privilege and confidentiality to “protect the integrity of the pending prosecution and continuing investigation of Donald Trump,” and thus would not answer questions to which the District Attorney’s Office objected.⁹⁶
- Pomerantz, if necessary, would invoke his rights under the Fifth Amendment to not answer questions that could be used against him in a criminal case.⁹⁷
- Pomerantz indicated that he would decline to answer questions that he independently determined were not related to Congress’s legislative function, or that sought information that was, according to his own analysis, protected by the First Amendment.⁹⁸

Pomerantz invoked these three excuses approximately 216 times.⁹⁹ He invoked the excuses to decline to answer questions unrelated to either investigation—the DANY’s investigation of President Trump or the DANY’s investigation into Pomerantz—such as:

- “Did you have your own desk [at the District Attorney’s Office]?”¹⁰⁰;
- “Since you’ve left the employ of the Manhattan D.A., do you use email as a method of communication?”¹⁰¹; and
- “How long have you known [former district attorney] Cy Vance?”¹⁰²

⁹⁶ *Id.* at 9.

⁹⁷ *Id.* at 9-10.

⁹⁸ *Id.* at 10.

⁹⁹ *Id.* at 12, 13, 14, 15, 16, 17, 18, 22, 23, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 46, 47, 49, 50, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 64, 65, 67, 68, 70, 71, 72, 73, 74, 87, 88, 89, 90, 91, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 106, 107, 108, 110, 111, 113, 114, 116, 117, 118, 122, 123, 125, 126, 127, 128, 129, 130, 131, 132, 133, 135, 136, 137, 138.

¹⁰⁰ *Id.* 107.

¹⁰¹ *Id.* at 90.

¹⁰² *Id.* at 36.

**Pomerantz refused to
answer approximately
216 questions.**



Although Pomerantz's stated rationale for refusing to answer questions related to the investigation into President Trump was largely due to the DANY's pending criminal investigation, Pomerantz also declined to answer any questions regarding communications he has had with the District Attorney's Office regarding its pending criminal investigation of Pomerantz.¹⁰³ However, in his opening statement, Pomerantz broadly stated that he is "certain [he] broke no laws."¹⁰⁴

Beyond acknowledging that he wrote the book, Pomerantz refused to answer questions regarding specific claims and statements made in his book. However, Pomerantz testified that his book is accurate, that there are no lies in the book, and that he stands fully behind it.¹⁰⁵

¹⁰³ *E.g., id.* at 113 ("Respectfully, I decline to answer your question about communications with the District Attorney's Office.").

¹⁰⁴ *Id.* at 10.

¹⁰⁵ *Id.* at 39.

II. POMERANTZ WAS HIRED BY THE DISTRICT ATTORNEY FOR NEW YORK COUNTY SOLELY TO DEVELOP A CASE AGAINST PRESIDENT TRUMP

Pomerantz’s book confirms that his decision to join the Manhattan District Attorney’s Office was driven by political animus. In December 2020, Carey Dunne, counsel to then-New York County District Attorney Cyrus Vance, recruited Pomerantz to “join[] a group of outside lawyers who would advise Cy Vance in connection with his pending investigation of Donald Trump.”¹⁰⁶ Pomerantz was “delighted”¹⁰⁷ to do so, as it “would allow [him] to peek through the window at whatever the district attorney was doing” in the investigation.”¹⁰⁸ He nonetheless acknowledged that “the concept of a public prosecutor’s office convening an advisory group of private lawyers to help with a pending investigation seemed a bit odd.”¹⁰⁹

It was through this advisory group that Pomerantz learned that the “DA’s investigation of [President] Trump was much broader” than just an alleged “hush money” payment, “and would grow to cover many aspects of his business operations.”¹¹⁰ During the advisory group’s first call, “[t]he main topic of the conversation, and the issue that seemed to have prompted the formation of the ‘outside advisors’ group,”¹¹¹ was alleged “fraud in connection with taxation of [President Trump’s] 40 Wall Street building by undervaluing his property.”¹¹² At that time, “presentation of felony charges to grand juries had come to a virtual standstill” due to New York City’s COVID-19 pandemic related closures.¹¹³ Dunne and Vance therefore asked the advisory group “to provide a reality check on whether” the DANY could or should file a felony complaint as opposed to the traditional method of empaneling a grand jury to secure an indictment.¹¹⁴

Pomerantz recalled that the felony complaint idea “never got off the ground,” however, because the “NYC’s Law Department advised DANY that ‘everybody’ submits lowball property valuations in the effort to lower property taxes on Manhattan office buildings.”¹¹⁵ The city explained that the “owner’s initial valuation figures are not taken seriously, and are regarded as simply the first step in a series of negotiations.”¹¹⁶ Despite the fact that “the city did not regard itself as having been defrauded,”¹¹⁷ Pomerantz believed that President Trump “would have been a good target for prosecution”¹¹⁸ because “there was the aggravating factor that . . . he had urged the public to trust in his integrity by running for the presidency.”¹¹⁹ The DANY nonetheless

¹⁰⁶ POMERANTZ, *supra* note 2, at 4.

¹⁰⁷ *Id.* at 6.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at 7.

¹¹⁰ *Id.* at 8.

¹¹¹ *Id.* at 8-9.

¹¹² *Id.* at 10.

¹¹³ *Id.* at 9-10.

¹¹⁴ *Id.* at 11.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.* at 12.

¹¹⁹ *Id.*

elected not to further pursue charges related to President Trump’s 40 Wall Street property at that time.¹²⁰

Although “the DANY investigative team . . . had identified several areas of inquiry into Trump’s activities,”¹²¹ Pomerantz was concerned that the DANY’s investigation was too sprawling, unfocused, and in need of a “narrator.”¹²² Pomerantz explained that white-collar cases often feature a “narrator” to explain the suspicious transactions, events, and circumstances to the jury.¹²³ Most of the time, this “narrator” is able to tell jurors about a defendant’s crimes because they played a part in committing them.¹²⁴

By mid-January, Pomerantz noted “[t]here was a long and unfocused laundry list of topics to investigate, no reliable cooperator other than Michael Cohen (a convicted perjurer), and DANY was still waiting to receive Trump’s tax and accounting materials.”¹²⁵ At that point, Pomerantz emphasized that he was merely an “outside advisor” who “did not have a big emotional investment in the investigation.”¹²⁶

A few days after President Trump left the White House in late-January 2021, Vance asked Pomerantz to “join the investigation as more than an outside advisor” and “be sworn in as a special assistant district attorney” to work exclusively on the investigation into President Trump.¹²⁷ Pomerantz replied that he “was ready, willing, and able to get started as soon as [he] could be sworn in.”¹²⁸ He even joked that salary negotiations had gone “great” because he and Vance had “reached agreement that [Pomerantz] would work on the case for nothing before [he] was even asked how much [Pomerantz] was willing to pay the DA’s office!”¹²⁹

Pomerantz’s discussion of this offer reveals his animus, both personally and politically, against President Trump and the thrill he felt in being given the opportunity to bring a criminal case against President Trump. Although Pomerantz asserted in his book that his “enthusiasm to work on the investigation had nothing to do with [his] views about Trump’s politics,” he simultaneously detailed the reasons he was “not a fan”¹³⁰ of and “had little regard”¹³¹ for President Trump.¹³²

¹²⁰ *Id.*

¹²¹ *Id.* at 13.

¹²² *Id.* at 15.

¹²³ *Id.*

¹²⁴ *Id.* at 79.

¹²⁵ *Id.* at 18.

¹²⁶ *Id.* at 18.

¹²⁷ *Id.* at 21.

¹²⁸ *Id.*

¹²⁹ *Id.* at 22.

¹³⁰ *Id.* at 23.

¹³¹ *Id.* at 22.

¹³² *Id.* at 23.

III. POMERANTZ WAS FANATICAL ABOUT PROSECUTING PRESIDENT TRUMP

Mark Pomerantz's book details his infatuation with investigating and prosecuting President Trump. Pomerantz's overzealousness to get President Trump led to him disregarding the fundamental tenets of a prosecutor's job. It resulted in Pomerantz sifting through several unprecedented and convoluted legal theories in search of a crime. It resulted in Pomerantz relying on a star witness, convicted perjurer Michael Cohen, with a history of lying and a clear animus against President Trump. Pomerantz's book plainly shows, in black and white, that the Manhattan District Attorney's prosecution of President Trump is a political hit job.

A. Pomerantz Shifted Through Many Novel and Untested Legal Theories in Search of a Crime

Throughout his book, Pomerantz explained that he considered many legal theories to prosecute President Trump. Pomerantz made clear that his goal was to prosecute President Trump, for any crime, and that it was just a matter of finding the crime to pin on him.¹³³ After he was sworn in, Pomerantz considered alleged "hush money" payments, which the DANY had been investigating since 2018.¹³⁴ By the end of 2019, however, Vance elected not to bring charges "against anyone in connection with the hush money paid to [Stephanie] Clifford or the phony invoicing scheme by which Michael Cohen had been reimbursed for the money he had laid out."¹³⁵ Pomerantz explained that although the alleged "hush money and phony invoicing scheme had generated false business records, . . . creating a false business record is only a misdemeanor under New York law"¹³⁶ with a maximum jail sentence of less than a year.¹³⁷

When President Trump left office, Pomerantz decided to "revisit"¹³⁸ "whether there were other felony charges that could be brought in connection with the payment that Cohen had made to Clifford and the ensuing coverup."¹³⁹ Pomerantz at this point concocted a "novel legal theory" under New York's money laundering statute, which he admitted was "neither intuitive nor obvious."¹⁴⁰ Money laundering, as he explained, is a series of financial transactions that are designed to "conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of criminal conduct."¹⁴¹ Pomerantz's money laundering theory was "novel" because the "proceeds" were based on Clifford's criminal conduct, i.e., her "extortion of Donald

¹³³ See generally POMERANTZ, *supra* note 2.

¹³⁴ *Id.* at 43-44.

¹³⁵ *Id.* at 41-42.

¹³⁶ *Id.* at 40.

¹³⁷ See N.Y. PENAL LAW § 175.05 ("Falsifying business records in the second degree is a class A misdemeanor."); N.Y. PENAL LAW § 70.15 ("A sentence of imprisonment for a class A misdemeanor shall be a definite sentence. When such a sentence is imposed the term shall be fixed by the court, and shall not exceed three hundred sixty-four days.").

¹³⁸ POMERANTZ, *supra* note 2 at 43.

¹³⁹ *Id.* at 44.

¹⁴⁰ *Id.* at 58.

¹⁴¹ *Id.* at 44; N.Y. PENAL LAW § 470.10.

Trump.”¹⁴² That legal theory fizzled out when Pomerantz realized that New York’s money laundering statute required the payments that Cohen allegedly agreed to be made on Trump’s behalf—or the “dirty money” to have been actually received by Clifford.¹⁴³

After realizing that there was no criminal case on the Clifford facts, Pomerantz began focusing on President Trump’s Statements of Financial Condition (SOFC), which he believed, based on the claims of Michael Cohen, must be criminal.¹⁴⁴ Pomerantz began examining multiple years’ worth of the financial statements made for multiple golf properties, Deutsche Bank, the Old Post Office Hotel, Doral Resort, Trump International Hotel & Tower in Chicago, Mar-A-Lago, Seven Springs, 40 Wall Street, the Triplex Apartment, and Trump Tower.¹⁴⁵

Pomerantz further explored the possibility of charging President Trump under New York’s Enterprise Corruption statute involving “pattern crimes.”¹⁴⁶ In effect, Pomerantz sought to amalgamate several unrelated and baseless allegations against President Trump into a crime. Pomerantz’s actions make clear that he prejudged the results of this case and had decided that President Trump would be prosecuted for some crime—any crime—but it was just a matter of finding the crime to pin on him.

Pomerantz had one serious issue, though: his colleagues did not entirely agree with him. In his book, Pomerantz made clear his contempt for his DANY colleagues. Pomerantz accused his fellow DANY lawyers and investigators of being “relentlessly negative, dwelling on all the difficulties and issues with the case, and refusing to acknowledge the positives” during an internal meeting on December 10, 2021, referring to his former colleagues as “conscientious objectors”¹⁴⁷ merely for opining that the case was “weak” and pointing to its “many fatal flaws.”¹⁴⁸ He ultimately dismissed their concerns about the investigation by suggesting that they were either too lazy to do the work, did not know the evidence, or were somehow afraid of bringing charges against President Trump.¹⁴⁹

B. Pomerantz’s Politicized Reliance on Convicted Perjurer Michael Cohen

One of the more bizarre aspects of Pomerantz’s book is his reverence for Michael Cohen, President Trump’s disgraced former lawyer. Cohen, a convicted felon who lied six times before

¹⁴² POMERANTZ, *supra* note 2, at 57.

¹⁴³ *Id.* at 60.

¹⁴⁴ *Id.* at 97-100.

¹⁴⁵ *Id.* at 64, 74, 99, 152, 165, 167, 185, 208.

¹⁴⁶ *Id.* at 105-106.

¹⁴⁷ Of his DANY team, Pomerantz states: “[I]t was frustrating to feel like we were about to march into battle, and were strapping on our guns and equipment, but when we looked around at the rest of the platoon we saw a lot of conscientious objectors.” *Id.* at 194.

¹⁴⁸ *Id.* at 191-92, 194.

¹⁴⁹ *Id.* at 160, 171-72.

Congress,¹⁵⁰ has a demonstrable prejudice against President Trump, which gives him a serious credibility problem.¹⁵¹

In August 2018, Cohen “pleaded guilty to five counts of willful tax evasion; one count of making false statements to a bank; one count of causing an unlawful campaign contribution; and one count of making an excessive campaign contribution.”¹⁵² Three months later, Cohen also pleaded guilty to lying to Congress.¹⁵³ Federal prosecutors in Manhattan described Cohen’s criminal conduct in that case as “knowing and calculated acts—acts Cohen executed in order to profit personally, build his own power, and enhance his level of influence.”¹⁵⁴ When sentencing Cohen in 2018, Judge William H. Pauley, III called his wrongdoing “extensive” and “a veritable smorgasbord of fraudulent conduct.”¹⁵⁵ Judge Pauley found that all of Cohen’s crimes “involved deception and each appears to have been motivated by personal greed and ambition.”¹⁵⁶

Even after he pleaded guilty of lying to Congress, Cohen lied to Congress again. On February 28, 2019, Republicans on the House Committee on Oversight and Reform referred Cohen to the Department of Justice for committing perjury and knowingly making false statements during his testimony before the Committee on February 27.¹⁵⁷ Cohen lied repeatedly in his testimony, making willfully and intentionally false statements that were contradicted by the record established by the Justice Department in *United States v. Cohen*.¹⁵⁸ Parts of Cohen’s testimony were in direct contradiction to assertions made by the U.S. Attorney’s Office for the Southern District of New York (SDNY) in its pleadings.¹⁵⁹ Other parts of Cohen’s testimony were immediately contradicted by witnesses with firsthand knowledge of the subject matter.¹⁶⁰ For example, Cohen denied committing various fraudulent acts, such as defrauding a bank,

¹⁵⁰ See, e.g., Letter from Rep. Jim Jordan, Ranking Member, H. Comm. on Oversight & Accountability, and Rep. Mark Meadows, Ranking Member, Subcomm. on Gov’t Operations, to Hon. William P. Barr, Att’y Gen., U.S. Dep’t of Justice (Feb. 28, 2019).

¹⁵¹ See, e.g., Nicholas Fandos & Maggie Haberman, *In Congressional Testimony, Cohen Plans to Call Trump a ‘Con Man’ and a ‘Cheat’*, N.Y. TIMES (Feb. 26, 2019); Berman, *supra* note 17.

¹⁵² Press Release, U.S. Attorney’s Office, Southern District of New York, Michael Cohen Pleads Guilty In Manhattan Federal Court To Eight Counts, Including Criminal Tax Evasion And Campaign Finance Violations (Aug. 21, 2018); Information, *United States v. Cohen*, No. 18-cr-602 (S.D.N.Y. Aug. 21, 2018).

¹⁵³ Information, *United States v. Cohen*, No. 18-cr-850 (S.D.N.Y. Nov. 29, 2018).

¹⁵⁴ The Government’s Sentencing Memorandum at 27-28, *United States v. Cohen*, No. 18-cr-602 (S.D.N.Y. Dec. 7, 2018).

¹⁵⁵ Statement of Judge William H. Pauley III, *United States v. Cohen*, Nos. 18-cr-602, 18-cr-850, at 31 (S.D.N.Y. Dec. 12, 2018) (sentencing hearing).

¹⁵⁶ *Id.*

¹⁵⁷ Letter from Rep. Jim Jordan & Rep. Mark Meadows to William Barr, Att’y Gen. (Feb. 28, 2019); *Hearing with Michael Cohen, Former attorney for President Donald Trump: Hearing before the H. Comm. on Oversight & Reform*, 116th Cong. (2019).

¹⁵⁸ 18-cr-602 (S.D.N.Y. Aug. 21, 2018); Letter from Rep. Jim Jordan & Rep. Mark Meadows to William Barr, Att’y Gen. (Feb. 28, 2019).

¹⁵⁹ *Id.*; The SDNY, in a court filing, scorched Cohen for his many lies, writing: “After cheating the IRS for years, lying to banks and to Congress, and seeking to criminally influence the Presidential election, Cohen’s decision to plead guilty – rather than seek a pardon for his manifold crimes – does not make him a hero.” The Government’s Sentencing Memorandum, *United States v. Cohen*, 18-cr-602 (S.D.N.Y. Sept. 7, 2018).

¹⁶⁰ *Id.*

despite pleading guilty the year before for making false statements to a banking institute.¹⁶¹ Cohen also “testified that he did not seek employment in the White House,” which was “in direct conflict with court filings made by the United States Attorney’s Office for the SDNY”¹⁶²

In 2023, Cohen, again, admitted to lying to Congress. Just last year, at a court hearing in the lawsuit brought by the New York Attorney General against President Trump, Cohen admitted to lying under oath again at his 2019 deposition before the House Permanent Select Committee on Intelligence.¹⁶³ Cohen was asked if he lied during the deposition when asked if he was directed to inflate certain financial numbers.¹⁶⁴ Cohen responded, “Yes.”¹⁶⁵ This prompted the Chairman of the House Permanent Select Committee on Intelligence, Congressman Mike Turner, to send a criminal referral to the Department of Justice demanding that the Department investigate Cohen for perjury and knowingly making false statements to Congress.¹⁶⁶

Cohen’s metamorphosis into a crusader against President Trump appears to have been orchestrated, in part, by Lanny Davis, a prominent Democrat activist and longtime Clinton-family confidant.¹⁶⁷ Just months before hiring Davis, Cohen admitted that he had no incriminating information about President Trump. Based on information made available to the Committee, in April 2018, when federal law enforcement investigated Cohen for his crimes, his attorney asked him if he had “any info on Trump,” to which Cohen replied that “he didn’t have anything on him, nothing.” Cohen also vowed, though, to never spend a day in jail, telling his attorney, “One thing I can tell you is that I am never going to spend one day in jail, never. I will do what I have to do, but I will never spend one day in jail.” In the following months, however, Cohen flipped, and Davis began to use Cohen to attack and undermine President Trump for political advantage.

Davis admitted that he orchestrated Cohen’s testimony to Congress, recalling how he “convinced [then Oversight Committee] Chairman Cummings to make Cohen the first announced witness of his chairmanship” and “Chairman Cummings agreed to [Davis’s] overtures”¹⁶⁸ Chairman Cummings, under the pressure of Davis, also “unilaterally and

¹⁶¹ Letter from Rep. Jim Jordan & Rep. Mark Meadows to William Barr, Att’y Gen. (Feb. 28, 2019).

¹⁶² *Id.*

¹⁶³ Letter from Rep. Michael Turner, Chairman, H. Permanent Select Comm. on Intelligence, and Elise Stefanik, Member of Congress, to Merrick Garland, Att’y Gen., U.S. Dep’t of Justice (Nov. 14, 2023) (citing Transcript of Record at 2407:24-2410:22, *People of the State of New York v. Donald J. Trump et al.*, No. 452564/2022, Part 37 (N.Y. Sup. Ct. Oct. 25, 2023)).

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ Letter from Rep. Michael Turner, Chairman, H. Permanent Select Comm. on Intelligence, and Elise Stefanik, Member of Congress, to Merrick Garland, Att’y Gen., U.S. Dep’t of Justice (Nov. 14, 2023).

¹⁶⁷ Darren Samuelsohn, *Michael Cohen hires Clinton scandal veteran Lanny Davis*, POLITICO (July 5, 2018).

¹⁶⁸ Letter from Rep. Jim Jordan, Ranking Member, H. Comm. on Oversight & Accountability, and Rep. Mark Meadows, Ranking Member, Subcomm. on Gov’t Operations, to Lanny Davis (Feb. 21, 2019).

unnecessarily attempted to limit the scope of Cohen’s testimony.”¹⁶⁹ Davis also bragged about how he was responsible for Bragg’s prosecution, explaining that he called the New York County District Attorney’s office, led at the time by Cyrus Vance, after “Michael was sent to prison” because “the evidence of financial fraud was on the record in the [congressional] hearings and that Vance’s office should interview Michael And that’s how it began.”¹⁷⁰



In their first meeting during Cohen’s home confinement, Pomerantz said Cohen impressed him as “smart but manipulative,” because he reminded Pomerantz of a cooperating drug dealer who testified for him in a trial forty years ago, and he thought Cohen was telling the truth.¹⁷¹ Blinded by the idea of using Cohen in a prosecution against President Trump, Pomerantz looked past the fact that Cohen had his “own agenda” and the likelihood that “jurors would know that Cohen was furious with Donald Trump, and wanted to see him convicted.”¹⁷² Specifically, Pomerantz recounted that Cohen “did not have to be pressured, cajoled, or coaxed into answering questions” because Cohen “wanted to make sure that Donald Trump was prosecuted and held accountable for his crimes.”¹⁷³

¹⁶⁹ *Id.*; Letter from Rep. Jim Jordan, Ranking Member, H. Comm. on Oversight & Accountability, and Rep. Mark Meadows, Ranking Member, Subcomm. on Gov’t Operations, to Rep. Elijah E. Cummings, Chairman, H. Comm. on Oversight & Accountability (Jan. 31, 2019) (“Davis exclusively picked our Committee for Cohen to testify in based on his longstanding friendship with you. Davis allowed he had to convince both you and Cohen to have the hearing According to Davis, you seemingly had your own reservations, but Davis told us after “one or two months” you finally came around[.]”).

¹⁷⁰ Politico Staff, *Porn Stars, felons, and spin doctors: Who will jurors believe in Trump’s case?*, POLITICO (Mar. 24, 2023).

¹⁷¹ POMERANTZ, *supra* note 2, at 49.

¹⁷² *Id.* at 51–52.

¹⁷³ *Id.*

DANY prosecutors raised red flags about Cohen’s participation in a case against President Trump. Pomerantz recounted in his book how DANY prosecutors reacted negatively when Pomerantz mentioned Cohen’s potential involvement in their litigation plans.¹⁷⁴ For example, during a meeting with Bragg’s new team, Pomerantz argued that Cohen’s testimony would be part of their proof against President Trump, and the team’s discussion “degenerated into chaos and confusion.”¹⁷⁵ Pomerantz’s defense for Cohen’s liabilities as a witness was “virtually all cooperators have liabilities,” and Pomerantz believed that “most” of the team agreed Cohen was eligible to testify.¹⁷⁶ Yet, Cohen continued to be a point of contention between Pomerantz and his DANY colleagues in further discussions about charging President Trump, resulting in Pomerantz frequently defending the convicted perjurer.¹⁷⁷

Pomerantz even continued to defend Cohen’s credibility when Cohen made enthusiastic public appearances after New York State Attorney General Letitia James filed a petition to compel President Trump and members of his family to give depositions in her civil investigation.¹⁷⁸ Even though Cohen’s “penchant for publicity, exaggeration, and grandiose statements played into the hands of people who distrusted him,” Pomerantz deflected this “self-aggrandizement,” explaining that he did not view Cohen as an “inveterate liar,” but merely a “complicated person.”¹⁷⁹ In the face of opposition from his DANY colleagues about the wisdom of relying on Cohen, Pomerantz wrote that he felt like he was “always arguing the reasons for prosecuting Trump until [he] was blue in the face.”¹⁸⁰

Pomerantz recounted a “mini-revolt” that occurred following an internal meeting on September 21, 2021, about the investigations into President Trump.¹⁸¹ He offered details about a disagreement between himself and the DANY’s Major Economic Crimes Bureau Chief, Julieta Lozano, about Michael Cohen’s credibility as a witness in the investigation.¹⁸² He also complained about concerns expressed by Chris Conroy, the DANY’s Investigative Division Chief, during a meeting on November 12, 2021.¹⁸³ According to Pomerantz, Conroy “spoke about his misgivings” about the Trump investigation, which stemmed from a case involving financial and accounting fraud charges that mirrored the charges that the DANY was considering pursuing against President Trump.¹⁸⁴ That case apparently ended poorly for the DANY.¹⁸⁵

Early on in District Attorney Bragg’s tenure, Pomerantz defended using Cohen as a witness against President Trump to Bragg. At one point during a team meeting, Bragg told

¹⁷⁴ See, e.g., *id.* at 159, 212-13.

¹⁷⁵ *Id.* at 213.

¹⁷⁶ *Id.* at 159.

¹⁷⁷ *Id.* at 208–09, 213, 227.

¹⁷⁸ *Id.* at 211.

¹⁷⁹ *Id.* at 226.

¹⁸⁰ *Id.* at 225.

¹⁸¹ *Id.* at 159.

¹⁸² *Id.*

¹⁸³ *Id.* at 171.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

Pomerantz “that he ‘could not see a world’ in which we would indict Trump and call Michael Cohen as a prosecution witness.”¹⁸⁶ But it seems, in less than a year, Bragg’s view of Cohen drastically changed. In addition to the novel and untested legal theory Bragg used in President Trump’s indictment, Michael Cohen has become Bragg’s star witness.¹⁸⁷ Bragg’s case relies heavily on the testimony of Michael Cohen, a perjurer with a demonstrable prejudice against President Trump.¹⁸⁸ Cohen has been vocal about his deeply personal animus toward President Trump.¹⁸⁹ Ultimately, the idea of utilizing Michael Cohen as a witness in *any* case against President Trump should be a red flag given Cohen’s obvious vendetta and numerous public attacks against President Trump.

C. Pomerantz’s Personal Animus Towards and Obsession with President Trump

Although Pomerantz contends that he only “wanted the Trump case brought because [he] thought a prosecution was necessary to serve the public interest,”¹⁹⁰ he makes little effort to hide his personal animus towards President Trump in his book. His *ad hominin* characterizations of President Trump include, among other things:

- An “unscrupulous wheeler-dealer”¹⁹¹ with a “narcissistic personality;”¹⁹²
- A “bully”¹⁹³ with an “affinity for lying;”¹⁹⁴
- A “master of breaking the law”¹⁹⁵ who is “incredibly cheap and completely dishonest;”¹⁹⁶
- A “malignant narcissist”¹⁹⁷ and “megalomaniac”¹⁹⁸ who “pos[ed] a real danger to the country and to the ideals that mattered . . . ;”¹⁹⁹
- A “ruthless and avaricious”²⁰⁰ businessman with “a dark side to his prosperity;”²⁰¹ and

¹⁸⁶ *Id.* at 208–09, 213, 227.

¹⁸⁷ Berman, *supra* note 17.

¹⁸⁸ Christopher Lopez, *Progressive DA Alvin Bragg’s case against Trump hinges on witnesses with ‘credibility problems’*: *Andy McCarthy*, FOX NEWS (Mar. 19, 2023); Marisa Schultz, *Jim Jordan, Mark Meadows ask Justice Department to probe Cohen for perjury*, N.Y. POST (Feb. 28, 2019).

¹⁸⁹ *See, e.g.*, Nicholas Fandos & Maggie Haberman, *supra* note 151.

¹⁹⁰ POMERANTZ, *supra* note 2, at 264.

¹⁹¹ *Id.* at 22.

¹⁹² *Id.* at 98.

¹⁹³ *Id.* at 109.

¹⁹⁴ *Id.* at 103.

¹⁹⁵ *Id.* at 112.

¹⁹⁶ *Id.* at 99.

¹⁹⁷ *Id.* at 176–77.

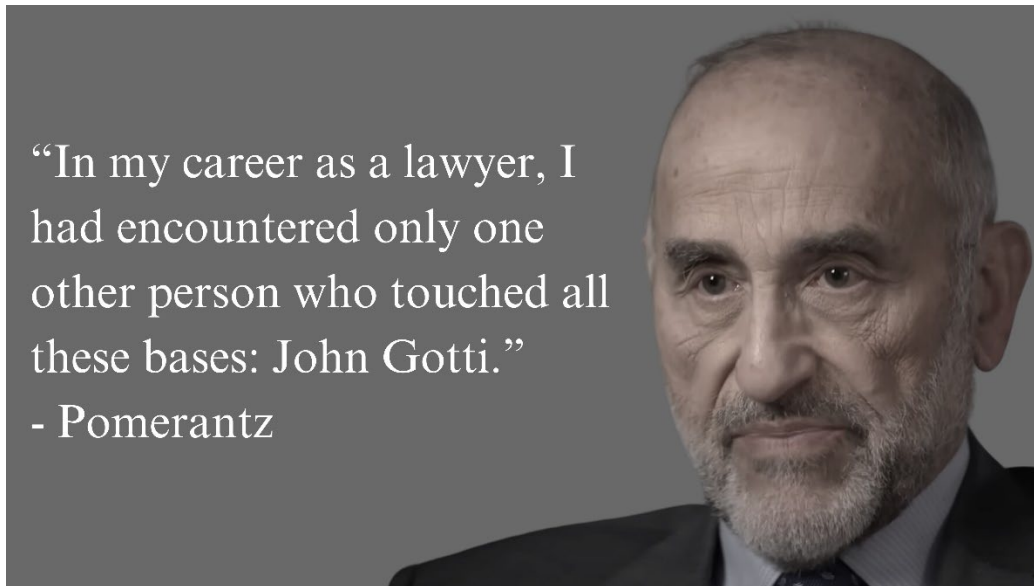
¹⁹⁸ *Id.* at 177.

¹⁹⁹ *Id.*

²⁰⁰ *Id.* at 109.

²⁰¹ *Id.*

- “[N]ot just a pathological liar, but a hapless, arrogant, and horrible liar”²⁰² who “could no longer process the difference between [expletive] and reality.”²⁰³



Pomerantz revealed his overwhelming contempt for President Trump when he likened him to convicted mob boss John Gotti, writing that “[i]n my career as a lawyer, I had encountered only one other person who touched all these bases: John Gotti.”²⁰⁴ While Pomerantz repeatedly denied that his political motive drove his investigation of President Trump, he admitted that he volunteered thousands of hours of his time, working day and night, pouring through hundreds of thousands of documents, and canceling vacations, all to try to figure out if some convoluted legal theory could be used to bring a criminal case against President Trump.²⁰⁵

The personal sacrifices that Pomerantz made in pursuit of his goal of prosecuting President Trump are not that of someone who “did not have a big emotional investment in the investigation.”²⁰⁶ For example, Pomerantz wrote, “[I] decided to plunge into the task of learning everything I could about Trump’s financial statements . . . I would work for a few hours, walk the dog to break up the monotony, come back to the statements and spreadsheets and work for a few more hours, and walk the dog again.”²⁰⁷ Pomerantz claimed that he “was completely submerged in the fact investigation, doing witness outlines and interviews, parsing documents, reading through testimony transcripts, and doing a million other things. By this point I was

²⁰² *Id.* at 103.

²⁰³ *Id.* at 187.

²⁰⁴ *Id.* at 109.

²⁰⁵ *See id.* at 119, 201.

²⁰⁶ *Id.* at 18.

²⁰⁷ *Id.* at 94.

working days, evenings, and weekends.”²⁰⁸ Pomerantz even admitted to spending “thousands of hours thinking about Donald Trump’s conduct . . .”²⁰⁹

For the investigation, Pomerantz accumulated “a small library” of books specifically for this investigation, including “Cohen’s book, *Disloyal*, and another fifteen or so Trump-related books I immersed myself in what had been written about Trump’s business empire and . . . began a detailed study of Trump’s yearly financial statements, thinking that they might become the fulcrum of a case against him . . .”²¹⁰

Even during a hurricane, Pomerantz prioritized President Trump over everything else. During Hurricane Ida in 2021, Pomerantz and his wife “watched with dismay as the water level rose around our home, and finally water began pouring into the house.”²¹¹ Rather than worrying about themselves or items of sentimental or personal value, Pomerantz and his wife “scurr[ie]d around [their] home office to rescue all of [his] Trump files from the flood and carry them upstairs to safety.”²¹² Pomerantz and his wife even went as far as “cancel[ing] [their] stay in Sonoma for most of the winter” even though it may have “meant forfeiting the large deposit [they] had paid to rent a house there. There was just too much to do to finalize the charges and get ready for the return of the Trump indictment.”²¹³

These are not actions of a prosecutor seeking to do justice. These are the actions of a rogue, overzealous prosecutor acting with political motivations. And that motivation infected the investigation from the start.

²⁰⁸ *Id.* at 158.

²⁰⁹ *Id.* at 285

²¹⁰ *Id.* at 91.

²¹¹ *Id.* at 156.

²¹² *Id.* at 156.

²¹³ *Id.* at 201.

IV. POMERANTZ RESIGNED AFTER BRAGG INITIALLY REFUSED TO AUTHORIZE THE PROSECUTION OF PRESIDENT TRUMP

On January 1, 2022, Alvin Bragg was sworn in as New York County’s District County.²¹⁴ Pomerantz noted that on that day, “things started to go south almost immediately.”²¹⁵ Pomerantz and Dunne had “growing unease” about the pace of the investigation into President Trump—even after meeting with Bragg and his team several times.²¹⁶ On January 8, 2022, Pomerantz met individually with Bragg. During the one-on-one, Pomerantz told Bragg that his case against President Trump “was ready to be charged.”²¹⁷ On January 11, 2022, Pomerantz and Dunne gave a presentation on former President Trump’s financial statements to Bragg and his team.²¹⁸ At this meeting, Bragg’s team expressed “considerable ‘angst’” about using Cohen as a witness and sought to pivot away from Pomerantz’s suggested fraud charges.²¹⁹

On January 24, 2022, according to Pomerantz, an investigative team meeting “quickly degenerated into a whirlwind of negativity” because other DANY officials rightly questioned the credibility of Pomerantz’s main witness, Michael Cohen.²²⁰ Pomerantz also took issue with the fact that Bragg seemed disinterested in the meeting—Bragg arrived late to the meeting, “spent much of the time looking at his phone, and then left early”²²¹ Two days later, Pomerantz and Dunne agreed that both would resign if Bragg did not move forward with an indictment and exchanged resignation letters for the other to review.²²² Prior to a scheduled surgery, which he had “delayed . . . because work had become so frenzied,” Pomerantz “prepared a resignation letter . . . [to] inform [Bragg] that [he] did not want to continue ‘in the absence of clarity about a decision to prosecute and without the ability to secure the resources that [he] believe[d] the case require[d].’”²²³ Pomerantz did not follow through with submitting this resignation letter and, instead, “in the wee hours of the morning” before the scheduled surgery, Pomerantz decided to write a “blunt” letter to Bragg indicating that he was “not happy” with how Bragg was handling the investigation.²²⁴

²¹⁴ Michael Gold & Jonah E. Bromwich, *Who Is Alvin Bragg, the D.A. Leading the Prosecution of Trump*, N.Y. TIMES (Apr. 13, 2023).

²¹⁵ POMERANTZ, *supra* note 2, at 201.

²¹⁶ *Id.* at 202, 203, 205–07, 207–08, 212–13.

²¹⁷ *Id.* at 205-07.

²¹⁸ *Id.* at 207-08.

²¹⁹ *Id.* at 208-209.

²²⁰ *Id.* at 212 (“As I started to detain Cohen’s potential testimony against Trump, Susan Hoffinger brought her phone out to play a recording of one of Cohen’s recent media appearances, in which he had taken credit as the person who had first spoken about he false financial statements and had crowed about his importance as a witness in the case. This was exactly opposite to the point I was making at the meeting”); *Id.* at 213 (“Although the new team knew nothing about the underlying facts, and nothing about how the Weisselberg case had been put together, they had read the defense motion papers attributing critical importance to Cohen, dumping all over him, and claiming that he had tainted the prosecution.”).

²²¹ *Id.* at 213.

²²² *Id.* at 217.

²²³ *Id.* at 217.

²²⁴ *Id.* at 217-220.

Throughout the first few weeks of February 2022, Pomerantz and Dunne held several conversations with Bragg and his team to explain their multi-faceted investigation into President Trump.²²⁵ After one of the sessions, Pomerantz indicated he felt that it was “us vs. them” with regards to Bragg’s team and how they viewed the investigation.²²⁶

On February 20, 2022, Bragg indicated that he would not authorize the prosecution based upon the facts that Pomerantz and Dunne had developed, prompting Pomerantz to formally resign on February 23, 2022.²²⁷ In his resignation letter, which was leaked to the *New York Times*, Pomerantz offered a scathing rebuke of Bragg, vowing to not be a “passive participant” to Bragg’s “grave failure of justice.”²²⁸ Pomerantz’s public resignation reportedly left Bragg “deeply stung,” and caused him to issue an “unusual” public statement, “emphasizing that the investigation into Trump and his business was far from over.”²²⁹

Notably, Pomerantz’s resignation letter had several misleading and inconsistent statements. In his resignation letter, Pomerantz wrote, “[t]he team that has been investigating Mr. Trump harbors no doubt about whether he committed crimes – he did.”²³⁰ Pomerantz’s book, however, told a different story. By his own admission, during a December 9, 2021 meeting with attorneys in the District Attorney’s Office, many of the lawyers were “relentlessly negative.”²³¹ Pomerantz noted that “one lawyer opined that it had ‘many fatal flaws.’”²³² Another lawyer “expressed a view that the case might be ‘way out there.’”²³³ Pomerantz later stated that “[i]t was common knowledge in the office that there had been ‘defectors’ from the Trump investigation.”²³⁴ Bragg also told Pomerantz that “the consensus among the group of prosecutors with whom he had been speaking was not to go forward.”²³⁵

Pomerantz also wrote in his resignation letter that “I and others have advised you that we have evidence sufficient to establish Mr. Trump’s guilt beyond a reasonable doubt, and we believe that the prosecution would prevail if charges were brought and the matter were tried to an impartial jury.”²³⁶ In his book, however, Pomerantz wrote, “I know that the case against Donald Trump is not an easy one, and there is a big risk that it will not end in a conviction. It is

²²⁵ *Id.* at 221-26, 228.

²²⁶ *Id.* at 228.

²²⁷ *Id.* at 243-252; Shayna Jacobs & Josh Dawsey, *Prosecutors in Trump probe quit after new DA seems to abandon plan to seek indictment of former president*, WASH. POST (Feb. 23, 2022).

²²⁸ *Read the Full Text of Mark Pomerantz’s Resignation Letter*, N.Y. TIMES (Mar. 23, 2022).

²²⁹ Mark Berman et al., *The prosecutor, the ex-president and the ‘zombie’ case that came back to life*, WASH. POST (Mar. 17, 2023).

²³⁰ POMERANTZ, *supra* note 2, at 249.

²³¹ *Id.* at 191-92.

²³² *Id.*

²³³ *Id.* at 192.

²³⁴ *Id.* at 209.

²³⁵ *Id.* at 230.

²³⁶ *Id.* at 250.

impossible to quantify that risk. I believe that the prosecution would prevail, but a lot of uncertainty is baked into the situation.”²³⁷

Finally, Pomerantz wrote in his resignation letter, “You have devoted significant time and energy to understanding the evidence we have accumulated with respect to the Trump financial statements, as well as the applicable law.”²³⁸ This assertion, too, is inconsistent with Pomerantz’s description of Bragg in his book. At the outset of his book, Pomerantz claimed Bragg “was responsible for a ‘grave failure of justice’” for not promptly indicting President Trump.²³⁹ Pomerantz went on to write that Bragg was “distracted” and “thought about Alvin’s relative youth and wondered if he was in over his head.”²⁴⁰ He accused Bragg of not “jump[ing] in to embrace the investigation or to learn the facts.”²⁴¹ Pomerantz also believed that it was better for Bragg to send his investigation to the U.S. Attorney’s Office “than simply ‘take a knee’ by keeping the case in the district attorney’s office to die a lingering death.”²⁴²

²³⁷ *Id.* at 235.

²³⁸ *Id.* at 249.

²³⁹ *Id.* at 1.

²⁴⁰ *Id.* at 218–19.

²⁴¹ *Id.* at 201.

²⁴² *Id.* at 243.

V. UNDER PUBLIC PRESSURE FROM POMERANTZ, DISTRICT ATTORNEY BRAGG RESURRECTED THE “ZOMBIE” CASE AGAINST PRESIDENT TRUMP

Though both the SDNY and DANY previously declined to further investigate the alleged hush money payments to Clifford,²⁴³ Bragg opted to revive the DANY’s investigation at a politically opportune moment. Shortly after President Trump announced his White House run, the DANY pivoted back to what Pomerantz frequently referred to as the “zombie” case that originated nearly five years ago.²⁴⁴ The case earned its zombie nickname due to a tendency it had to “[spring] back to life” as it did in 2019, 2021, and again in 2023.²⁴⁵ Nonetheless, Bragg’s decision to bring forth this case following Pomerantz’s public pressure campaign—and after essentially abandoning the DANY’s previous Trump investigations at the beginning of his tenure²⁴⁶—raises considerable suspicion as to whether political pressure played a role in his decision.

According to Pomerantz, the “zombie” case had multiple pitfalls, and notwithstanding possible “work-arounds,” Pomerantz wrote that none were appealing.²⁴⁷ Further, his DANY colleagues were “dubious about whether Trump had been ‘extorted’ in the first place.”²⁴⁸ However, Bragg may have decided to move forward on this matter purely for convenience and familiarity. Pomerantz noted that in October 2019, well before New York citizens elected Bragg, the DANY prosecutors and investigators “had done a lot of work developing the facts surrounding the [Clifford] hush money payment,” and “ramped up their efforts” once federal prosecutors said they were finished looking at this information.²⁴⁹

In the following months, Bragg and his team at the DANY likely noticed the acclaim that New York Attorney General Letitia James received from Democrats for bringing a civil action against President Trump, his children, and the Trump Organization.²⁵⁰ Bragg experienced bad press almost immediately at the start of his term because he announced in a memorandum that he would not prosecute certain “low-level crimes, all while promising to downgrade criminal charges and to decriminalize crimes such as resisting arrest.”²⁵¹ Subsequently, when Pomerantz and Dunne resigned, prominent voices on the left attacked Bragg, in part, for his inaction on

²⁴³ POMERANTZ, *supra* note 2, at 39, 61; *see also* Berman, *supra* note 17; Chen, *supra* note 25.

²⁴⁴ POMERANTZ *supra* note 2, at 46; *see also* William K. Rashbaum et al., *Manhattan prosecutors begin presenting Trump case to grand jury*, N.Y. TIMES (Jan. 30, 2023).

²⁴⁵ Rashbaum, *supra* note 244; *see also* POMERANTZ, *supra* note 2, at 39, 42, 46, 61.

²⁴⁶ POMERANTZ, *supra* note 2, at 249.

²⁴⁷ *Id.* at 61.

²⁴⁸ *Id.*

²⁴⁹ *Id.* at 39.

²⁵⁰ Tristan Snell (@TristanSnell) TWITTER (Aug. 10, 2022, 10:49 AM), <https://twitter.com/TristanSnell/status/1557378663615692801>; *see also* Jonah E. Bromwich et al., *Hyperbole or fraud? The question at the heart of Trump investigation*, N.Y. TIMES (Jan. 19, 2022).

²⁵¹ Carl Campanile, *Petition to oust Manhattan DA Alvin Bragg renews bid for recalls in NY*, N.Y. POST (Jan. 12, 2022).

President Trump.²⁵² In other words, as a popularly elected prosecutor, Bragg needed a political win by the end of his first year in office to enhance his public standing.

Bragg also had to consider his political future. During his race for District Attorney, Bragg made big promises to go after President Trump. Bragg frequently reminded voters that while working at the New York Attorney General’s office, he sued the Trump Administration “more than a hundred times.”²⁵³ A spokeswoman for Bragg’s primary opponent even noted that Bragg attacked President Trump “for political advantage every chance he gets.”²⁵⁴ Bragg’s eventual election and subsequent blunder with his Day One memorandum put additional pressure on his decision to resurrect the “zombie” case as a vehicle to deliver on his campaign promises. It is this improper political bias that fueled Bragg to reevaluate his prior decision, vowing instead that his investigation of President Trump was continuing as he noted in an interview the day that Pomerantz and Dunne resigned.²⁵⁵ In fact, Bragg noted that he hoped “driving down gun violence and the population at Rikers while pushing ahead on the Trump investigation . . . [would] ‘neutralize’ the noise around him.”²⁵⁶

Fast forward to March 2023, and Bragg seemed to have succumbed to that noise. Bragg opted to file charges, even though multiple years had passed since the DANY initiated its investigation and the facts of the “zombie” case had remained unchanged.²⁵⁷ The facts had not changed. The law had not changed. The credibility of Bragg’s star witness, Michael Cohen, had not improved. There was only one significant intervening factor between the DANY’s previous decision not to pursue charges and Bragg’s indictment: President Trump announced his candidacy for the 2024 presidential election.

²⁵² Jonah E. Bromwich, *Alvin Bragg says he’s not a politician. Is that the root of his trouble?* N.Y. TIMES (Apr. 9, 2022) (“Between the backlash to the [Day One] memo and the fallout from the Trump investigation, Bragg managed, in less than 12 weeks, an unlikely feat: He united the New York Post’s editorial board and the viewers of MSNBC in a posture of mutual disdain.”); *Id.* (Congressman Daniel Goldman, who was not in public office at the time, stated, “That transition has been bumpy for Alvin and I think that when you get off to a bad start, it’s very difficult to get back on the right track[.]”); Glenn Kirschner, *This New York prosecutor thinks Trump is guilty. Why won’t the DA charge him?*, MSNBC (Mar. 30, 2022).

²⁵³ Bromwich, *supra* note 78.

²⁵⁴ *Id.*

²⁵⁵ Bromwich, *supra* note 252.

²⁵⁶ *Id.*

²⁵⁷ See Statement of Facts, *People v. Donald J. Trump* (N.Y. 2023); Berman, *supra* note 17; Ian Millhiser, *The dubious legal theory at the heart of the Trump indictment, explained*, VOX (Apr. 4, 2023).

VI. THE COMMITTEE’S PROPOSED LEGISLATIVE REFORMS TO ADDRESS POLITICIZED PROSECUTIONS

Bragg’s indictment of President Trump is just the tip of the iceberg for politically motivated prosecutions, and the Committee intends to investigate the circumstances out of which this litigation was reborn. Contrary to Bragg’s assertion in defense of his unprecedented indictment,²⁵⁸ the indictment of a former President of the United States by an elected local prosecutor of the opposing political party (who faces the prospect of re-election to office, much like President Trump is seeking), implicates substantial *federal* interests. Bragg’s indictment of President Trump has led to copycat indictments by other politically motivated, popularly elected local prosecutors.

On August 14, 2023, Fulton County District Attorney Fani Willis brought a 41-count indictment against 19 defendants, including President Trump, alleging that they participated in a “criminal enterprise.”²⁵⁹ Like Bragg, the Committee has sought information from Willis about her use of federal grant funds,²⁶⁰ and the Justice Department has acknowledged there are “inconsistencies” in her actions.²⁶¹ If state or local prosecutors like Bragg and Willis are allowed to engage in politically motivated prosecutions of former or current U.S. Presidents for personal acts, this could have a profound impact on how Presidents choose to exercise their official duties while in office.

There are several pieces of legislation pending in Congress to address these politically motivated local prosecutions. Congressman Russell Fry introduced H.R. 2553, the No More Political Prosecutions Act, a bill that would provide former and current Presidents and Vice Presidents the option to remove their own civil or criminal cases from a state court to a federal court.²⁶² On September 28, 2023, the Committee approved H.R. 2553, reporting it to the floor for consideration by the full House.²⁶³ Congressman Andy Biggs has introduced two bills: (1) H.R. 2581, the Accountability for Lawless Violence In Our Neighborhoods Act, which would “prohibit[] federal funds from being awarded to the Manhattan District Attorney’s Office and

²⁵⁸ Letter from Leslie B. Dubeck, Gen. Counsel, N.Y. Co. District Att’y Off., to Rep. Jim Jordan, H. Comm. on the Judiciary, et al. (Mar. 23, 2023).

²⁵⁹ Indictment, *Georgia v. Donald John Trump et al.*, No. 23SC188947 (Aug. 14, 2023, Fulton Co. Sup. Ct.); The Committee remains engaged with both the Fulton County District Attorney’s office and the Department of Justice to obtain information regarding the federal grants received by the Fulton County DA’s office. The Committee has subpoenaed the Fulton County DA’s office to obtain relevant records and have received document productions pursuant to that subpoena. Though the Fulton County DA’s office produced some documents, its compliance with the Committee’s subpoena remains deficient. See Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Dist. Att’y Fani T. Willis, Fulton Cnty. Dist. Atty’s Office (Mar. 14, 2024).

²⁶⁰ See Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Dist. Att’y Fani T. Willis, Fulton Cnty. Dist. Att’y’s Office (Mar. 14, 2024).

²⁶¹ Andrew Kerr, *Justice Department Uncovers ‘Inconsistencies’ in Fani Willis’s Use of Federal Grant Funds*, WASH. FREE BEACON (Apr. 10, 2024).

²⁶² Press Release, *Congressman Russell Fry (SC-07) Introduces the No More Political Prosecutions Act* (Apr. 11, 2023).

²⁶³ No More Political Prosecutions Act of 2023, H.R. 2553, 118th Cong. (2023) (as reported by H. Comm. on the Judiciary, Sept. 28, 2023).

requires the Office to repay federal funds granted after January 1, 2022”; and (2) H.R. 2582, the No Federal Funds for Political Prosecutions Act, which would “prohibit[] state or local law enforcement agencies from using funds or property seized through asset forfeiture, to investigate or prosecute the President, Vice President, or a candidate for the office of President in a criminal case.”²⁶⁴ The Committee continues to examine areas in which it can legislate to ensure former or current Presidents are not subject to politically-motivated prosecutions like those undertaken by Bragg and Willis. There is no place for local, politically motivated prosecutors to weaponize the criminal justice system against former or current Presidents.

²⁶⁴ Accountability for Lawless Violence In our Neighborhoods Act, H.R. 2581, 118th Cong. (2023); No Federal Funds for Political Prosecutions Act, H.R. 2582. 118th Cong. (2023).

VII. CONCLUSION

Despite Pomerantz's refusal to answer questions throughout his deposition, his book makes one thing clear: from the start, the New York County District Attorney's investigation, and later indictment, of President Trump is a product of prosecutorial focus on one individual in search of a crime. Pomerantz, in his own words, confirms what Americans instinctively know. Pomerantz was a politically motivated prosecutor who sought to use the immense resources available to him to charge President Trump under a novel legal theory and suspect evidence—evidence on which federal prosecutors refused to bring charges. Like Pomerantz, Bragg's actions showed that he, too, was a politically motivated prosecutor. During his campaign, Bragg bragged about suing President Trump several times. The DANY allowed political motivations and animus to infect its prosecutorial discretion. As a result, the DANY now has a case that rests on questionable and untested legal grounds.²⁶⁵

The New York County District Attorney's indictment of President Trump opened a dangerous new possibility of politically motivated prosecutions or threatened prosecutions of political opponents, including presidents. This case establishes a dangerously low threshold for these investigations and prosecutions to commence. With this indictment, Bragg has opened the door for future prosecutions of a former president—or current candidate—that would be widely perceived as politically motivated. As we have already seen, other prosecutors have followed Bragg's lead and pursued politically motivated investigations and indictments of President Trump.

The fundamental mission of any prosecutor's office is to uphold the rule of law. And one of the hallmarks of this mission is to ensure that justice is blind—applied fairly and equally. Bragg's politically motivated indictment of President Trump threatens to destroy this notion of blind justice by using the criminal justice system to attack an individual he disagrees with politically, and, in turn, eroding the confidence of the American people.

²⁶⁵ See, e.g. Millhisser, *supra* note 257; Richard L. Hasen, *Donald Trump Probably Should Not Have Been Charged With (This) Felony*, SLATE (Apr. 4, 2023); Jonathan Turley, *Bragg's case is a legal mess – what is he even charging Trump with?*, N.Y. POST (Apr. 4, 2023).

APPENDIX

1. January 11, 2019: Letter from Rep. Jim Jordan, Ranking Member, H. Comm. on Oversight and Reform, to the Hon. Elijah E. Cummings, Chairman, H. Comm. on Oversight and Reform.
2. January 15, 2019: Letter from Rep. Jim Jordan, Ranking Member, H. Comm. on Oversight and Reform, to the Hon. Elijah E. Cummings, Chairman, H. Comm. on Oversight and Reform.
3. January 22, 2019: Letter from Rep. Jim Jordan, Ranking Member, H. Comm. on Oversight and Reform, and Rep. Mark Meadows, Ranking Member, Subcomm. on Gov't Operations, to Guy Petrillo.
4. January 31, 2019: Letter from Rep. Jim Jordan, Ranking Member, H. Comm. on Oversight and Reform, and Rep. Mark Meadows, Ranking Member, Subcomm. on Gov't Operations, to the Hon. Elijah E. Cummings, Chairman, H. Comm. on Oversight and Reform.
5. February 21, 2019: Letter from Rep. Jim Jordan, Ranking Member, H. Comm. on Oversight and Reform, and Rep. Mark Meadows, Ranking Member, Subcomm. on Gov't Operations, to Lanny Davis.
6. February 25, 2019: Letter from Rep. Jim Jordan, Ranking Member, H. Comm. on Oversight and Reform, and Rep. Mark Meadows, Ranking Member, Subcomm. on Gov't Operations, to the Hon. Elijah E. Cummings, Chairman, H. Comm. on Oversight and Reform.
7. February 28, 2019: Letter from Rep. Jim Jordan, Ranking Member, H. Comm. on Oversight and Reform, and Rep. Mark Meadows, Ranking Member, Subcomm. on Gov't Operations, to the Hon. William Barr, Atty Gen., U.S. Dep't of Justice.
8. March 8, 2019: Letter from Rep. Jim Jordan, Ranking Member, H. Comm. on Oversight and Reform, and Rep. Mark Meadows, Ranking Member, Subcomm. on Gov't Operations, to Michael D. Monico.
9. March 13, 2019: Letter from Rep. Jim Jordan, Ranking Member, H. Comm. on Oversight and Reform, and Rep. Mark Meadows, Ranking Member, Subcomm. on Gov't Operations, to the Hon. Elijah E. Cummings, Chairman, H. Comm. on Oversight and Reform.
10. June 7, 2019: Letter from Rep. Jim Jordan, Ranking Member, H. Comm. on Oversight and Reform, and Rep. Mark Meadows, Ranking Member, Subcomm. on Gov't Operations, to the Hon. Elijah E. Cummings, Chairman, H. Comm. on Oversight and Reform.

Reform.

11. March 20, 2023: Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, Rep. Bryan Steil, Chairman, H. Comm. on House Administration, and Rep. James Comer, Chairman, H. Comm. on Oversight and Accountability to Alvin L. Bragg Jr., Dist Atty., New York County.
12. March 22, 2023: Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Carey R. Dunne.
13. March 22, 2023: Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Mark F. Pomerantz.
14. March 23, 2023: Letter from Alvin L. Bragg Jr., Dist Atty., New York County, to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, Rep. Bryan Steil, Chairman, H. Comm. on House Administration, and Rep. James Comer, Chairman, H. Comm. on Oversight and Accountability
15. March 25, 2023: Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, Rep. Bryan Steil, Chairman, H. Comm. on House Administration, and Rep. James Comer, Chairman, H. Comm. on Oversight and Accountability, to Alvin L. Bragg Jr., Dist Atty., New York County.
16. March 27, 2023: Letter from Carey R. Dunne, to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary.
17. March 27, 2023: Letter from Mark F. Pomerantz, to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary.
18. April 6, 2023: Subpoena Cover Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Mark F. Pomerantz.
19. April 19, 2023: Opinion and Order Denying Temporary Restraining Order, Bragg v. Jordan, 1:23-cv-3032 (MKV) (SDNY Apr. 19, 2023).
20. May 12, 2023: Deposition of Mark F. Pomerantz



Congress of the United States
House of Representatives
Washington, DC 20515

January 11, 2019

The Honorable Elijah E. Cummings
Chairman
Committee on Oversight and Reform
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

It has now been twenty months since the inception of the Special Counsel Robert S. Mueller III probe.¹ During this period, the Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI) refused to allow Members of Congress to inquire about unsubstantiated allegations and admissions made by Michael D. Cohen, citing the Department's position of not discussing ongoing criminal investigations. Over the course of fifteen transcribed interviews before Congress, DOJ and FBI blocked witnesses from answering questions more than seventy times citing the need to prevent revealing information about the Special Counsel's ongoing investigation.

In contrast with your statement expressing, "no interest in inappropriately interfering with any ongoing criminal investigations," one of your first moves as Chairman was to announce a hearing to bring in Michael Cohen, a witness in two high-profile federal criminal investigations, one by the Special Counsel and the other by the U.S. Attorney's Office for the Southern District of New York.² According to your press release, you set this hearing without finishing consultations with the Special Counsel's office. You also did not consult with the minority Members of the Committee. I do understand from public reporting you have been working with Lanny J. Davis in producing the February 7, 2019, hearing.³

¹U.S. Department of Justice, Order Number 3915-2017 (May 17, 2017), <https://www.justice.gov/opa/pr/appointment-special-counsel>.

² Press Release, from Elijah E. Cummings, H. Comm. on Oversight & Reform, Chairman Cummings Announces Oversight Committee Hearing Schedule (Jan. 10, 2019), <https://oversight.house.gov/news/press-releases/chairman-cummings-announces-oversight-committee-hearing-schedule>.

³ See The Beat with Ari Miller, "Michael Cohen's Lawyer on How Cohen Will Expose Trump to Congress", MSNBC, Jan. 10, 2019, <http://www.msnbc.com/the-beat-with-ari-melber/watch/michael-cohen-s-lawyer-on-how-cohen-will-expose-trump-to-congress-1423816771546>; Dan Mangan and Brian Schwartz, "Trump's Ex-Lawyer Michael Cohen will testify Publicly to House Oversight Committee Before Entering Prison", CNBC, Jan. 10, 2019; <https://www.cnbc.com/2019/01/10/ex-trump-lawyer-michael-cohen-to-testify-to-house-oversight-committee.html>; Mark Hosenball, "Ex-Trump Lawyer Cohen to Testify Publicly Before Congress", Reuters, Jan. 10, 2019;

The Honorable Elijah E. Cummings

January 11, 2019

Page 2

This past July you urged the Committee to “protect the integrity of the Special Counsel’s ongoing criminal investigation.”⁴ Your colleagues have likewise emphasized the importance of not interfering with the Special Counsel. In July then-Judiciary Committee Ranking Member Jerrold Nadler asked then-Judiciary Chairman Bob Goodlatte, “Are we no longer going to wait until Special Counsel Mueller concludes his work, Mr. Chairman?”⁵ Democrats’ turnabout here is remarkable.

You indicated yesterday you are talking with the Cohen camp about the contours of his testimony. I ask you to include representatives of the minority in future discussions about Cohen’s testimony. Preventing the minority from participating deprives us of the ability to meaningfully prepare our Members for the hearing.⁶ I also understand your staff is now having private conversations with the staff from the Special Counsel’s office. Minority staff should be included in these deliberations as well.

To ensure that all Members of the Committee are prepared adequately for this hearing, I request you seek documents and testimony from DOJ and the FBI, and from Cohen. At minimum, the Committee should take a transcribed interview or depose Cohen before his public testimony. The following documents and information are necessary for the Committee to have a fact-based hearing—and avoid reckless speculation and conjecture at the hearing. Accordingly, I trust you will require the DOJ and the FBI to produce, in unredacted form, the following documents:

1. All FD-302 forms and any other investigative reports created by the DOJ or FBI in their investigations into Michael Cohen;
2. All FD-1023 forms that may have been created involving Michael Cohen;
3. All contact reports involving Michael Cohen and the FBI;
4. All cooperation agreements between Michael Cohen and DOJ;

<https://www.reuters.com/article/us-usa-trump-russia-cohen/former-trump-lawyer-cohen-to-testify-publicly-before-congress-idUSKCN1P42MQ>.

⁴ *Oversight of FBI and DOJ Actions Surrounding the 2016 Election: Hearing Before the H. Comm. on Oversight & Gov’t Reform and H. Comm. on Judiciary: Testimony by FBI Deputy Assistant Director Peter Strzok*, 115th Cong. (July 12, 2018) (statement of Ranking Member Elijah E. Cummings, H. Comm. on Oversight & Gov’t Reform), https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2471-Sharp%20Color%20Copier%40mail.house.gov_20180712_084701_0.pdf.

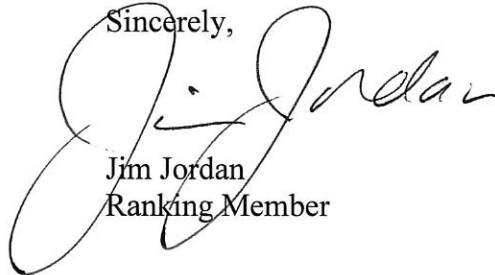
⁵ *Oversight of FBI and DOJ Actions Surrounding the 2016 Election: Hearing Before the H. Comm. on Oversight & Gov’t Reform and H. Comm. on Judiciary: Testimony by FBI Deputy Assistant Director Peter Strzok*, 115th Cong. (July 12, 2018) (statement of Ranking Member Jerrold Nadler, H. Comm. on Judiciary), <https://judiciary.house.gov/news/press-releases/statement-ranking-member-nadler-hearing-oversight-fbi-and-doj-actions>.

⁶ Maggie Haberman and Nicholas Fandos, *Former Trump Lawyer Michael Cohen Agrees to Testify to Congress*, N.Y. TIMES, Jan. 10, 2019, <https://www.nytimes.com/2019/01/10/us/politics/michael-cohen-trump-testimony.html>.

5. All sentencing memorandum prepared by DOJ involving Michael Cohen;
6. All notes taken by DOJ or FBI during their multiple interviews of Michael Cohen;
and
7. Documentation of all agreements Michael Cohen has with DOJ, the FBI, and any other foreign government's law enforcement agencies.

It is incumbent on our Committee to conduct our work thoroughly and responsibly. I hope you will work with me and the minority Members to avoid an unproductive and chaotic hearing. If you are going to provide a platform for this convicted felon and perjurer, we ought to ensure we have the necessary information to prepare to question him. I look forward to hearing back from you as the Committee prepares for this seminal hearing in your tenure.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Jordan". The signature is written in a cursive, flowing style with large loops and a long horizontal stroke at the end.

Jim Jordan
Ranking Member



Congress of the United States
House of Representatives
Washington, DC 20515

January 15, 2019

The Honorable Elijah E. Cummings
Chairman
Committee on Oversight and Reform
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

I am writing to request additional information about the Committee's hearing scheduled for February 7, 2019, at which you have invited Michael D. Cohen, a convicted felon sentenced to prison, to testify.¹ Cohen pleaded guilty to providing intentionally false testimony to a Congressional committee.² You invited Cohen to testify before finishing consultations with the Special Counsel's Office and without consulting the minority.³ As the Committee prepares for your first major hearing, there is still much we do not know about your plans for the hearing.

Shortly after you announced the hearing, Michael Avenatti, an attorney for Stephanie Clifford, who presents herself in the adult performance industry under the stage name *Stormy Daniels*, announced that he will attend the hearing with Ms. Clifford.⁴ Avenatti did not say whether you invited them to attend the hearing or whether they will testify. I hope you can clarify Mr. Avenatti's and Ms. Clifford's roles in the hearing.

¹ Press Release, H. Comm. on Oversight & Reform, Chairman Cummings Announces Oversight Committee Hearing Schedule, Jan. 10, 2019, <https://oversight.house.gov/news/press-releases/chairman-cummings-announces-oversight-committee-hearing-schedule>.

² See Plea Agreement, U.S. v. Michael Cohen, No. 1:18-cr-850 (S.D.N.Y. 2018), <https://www.justice.gov/file/1115566/download>; Indictment, U.S. v. Michael Cohen, No. 1:18-cr-850 (S.D.N.Y. 2018), <https://www.justice.gov/file/1115596/download>; Devlin Barrett et.al., *Michael Cohen, Trump's former lawyer, pleads guilty to lying to Congress about Moscow project*, Nov. 29, 2018, https://www.washingtonpost.com/politics/michael-cohen-trumps-former-lawyer-pleads-guilty-to-lying-to-congress/2018/11/29/5fac986a-f3e0-11e8-bc79-68604ed88993_story.html?utm_term=.657f859fc6c4.

³ Letter from Jim Jordan, Ranking Member, H. Comm. on Oversight & Reform, to Elijah E. Cummings, Chairman, H. Comm. on Oversight & Reform (Jan. 11, 2019).

⁴ Morgan Gstalter, *Avenatti says he and Stormy Daniels will attend Cohen's congressional hearing*, THE HILL, Jan. 14, 2019, <https://thehill.com/homenews/administration/425029-avenatti-says-he-and-stormy-daniels-will-attend-cohens-congressional>.

The Honorable Elijah E. Cummings

January 15, 2019

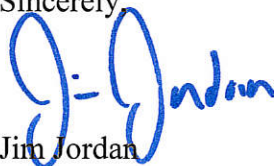
Page 2

According to news reports, the Committee's hearing would not be the first time Mr. Avenatti and Ms. Clifford have appeared at an official proceeding involving Mr. Cohen. Mr. Avenatti previously appeared at a procedural hearing in Mr. Cohen's criminal case in Federal District Court in the Southern District of New York.⁵ One report described Mr. Avenatti's interjection at Mr. Cohen's hearing and the hearing's "circus-like atmosphere."⁶ According to another report describing the court hearing, the appearance of Ms. Clifford and Mr. Avenatti turned the court's proceeding into a "three-ring circus."⁷ To avoid a public charade at a Congressional hearing—your seminal foray as Chairman—please provide answers to the following questions:

1. Have you, your staff, or any Democratic Member extended an invitation for either Michael Avenatti or Stephanie Clifford to attend the Committee's February 7, 2019, hearing?
2. Have you, your staff, or any Democratic Member arranged for reserved seats for either Michael Avenatti or Stephanie Clifford to attend the Committee's February 7, 2019, hearing? If so, is there a new Committee policy for reserving seats? If there is, is the minority permitted to reserve seats?
3. Is it your intention to call either Michael Avenatti or Stephanie Clifford as a witness at the February 7, 2019, hearing, or at any future Committee hearings?
4. Are there any other witnesses you intend to bring before the Committee at the February 7, 2019, hearing?

We should agree that the Committee's work is serious business that should not be discredited by publicity hounds and witnesses seeking to advance their own agenda. I look forward to hearing from you soon.

Sincerely,



Jim Jordan
Ranking Member

⁵ See Marcus Baram, *Inside a tense Michael Cohen court hearing: Stormy's lawyer and "taint team" concerns*, FAST COMPANY, April 13, 2018, <https://www.fastcompany.com/40558846/inside-a-tense-michael-cohen-court-hearing-stormys-lawyer-and-taint-team-concerns>.

⁶ *Id.*

⁷ See Kaja Whitehouse et. al., *How Cohen's day in court turned into the Stormy Daniels show*, April 16, 2018, NEW YORK POST, <https://nypost.com/2018/04/16/how-cohens-day-in-court-turned-into-the-stormy-daniels-show/>.

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January 22, 2019

Guy Petrillo, Esq.
Petrillo Klein & Boxer LLP
655 Third Avenue, 22d Floor
New York, NY 10017

Dear Mr. Petrillo:

We write concerning your client, Michael D. Cohen. Our staff recently met with Lanny J. Davis, who identified himself as Cohen's Washington, D.C. attorney and media advisor. Davis, a veteran Democrat political operative with expertise in public relations,¹ was unable to answer several questions about Cohen's appearance. He suggested you – as Cohen's criminal defense attorney – are best positioned to provide this assistance.

Scope of Cohen's testimony

Davis told us Cohen's testimony will exclude any matter "under investigation." The non-exhaustive list of issues that Cohen will refuse to address include matters involving the Attorney General for the State of New York, the United States Attorney's Office for the Southern District of New York, and the office of Special Counsel Robert S. Mueller III.

Of course, this is not an easy list of topics to sidestep at a Congressional hearing with such intense public interest. Our Members intend to ask Cohen whatever question they deem appropriate. Among other matters, we learned from Davis our Members will not receive answers to why Cohen defrauded the United States and the State of New York through his business dealings. He will not speak about representations and affirmations he made while seeking loans and other forms of credit from financial institutions. We will not be hearing testimony about why Cohen intentionally provided false and misleading testimony to the United States Congress in previous appearances. We will not be able to learn more about Cohen's role in federal campaign finance law violations. In fact, according to Davis, Cohen's testimony will be circumscribed to what *he* and you are comfortable with *him* addressing.

¹ According to publicity materials, Davis served as Special Counsel to President Clinton and was spokesman for the President and the Clinton White House on wide variety of matters. *Lanny J. Davis, About The Author*, Simon & Schuster, <https://www.simonandschuster.com/authors/Lanny-J-Davis/1446943> (last visited Jan. 18, 2019).

Origins of Cohen's appearance

According to Davis, he has been working with Chairman Elijah E. Cummings for “one or two months” on Cohen’s appearance before the Committee. After an unspecified number of meetings and communications, Davis indicated the Chairman finally “came around” to the idea of having a hearing.

Davis conceded Cohen did not want to testify—and in fact cannot testify about much due to the far-flung criminal investigations of which he is a target, subject or defendant—and Cohen is fearful for his family. Davis acknowledged, “I pushed him to do this,” explaining “this was my idea; nobody else’s.”

Davis confirmed he did not have any discussions with the Department of Justice or the Attorney General for the State of New York before offering Cohen’s appearance to the Committee. Davis is not asking permission, he told us. Instead, Davis stated, “I told them what our decision was.” “I picked this Committee,” Davis said, as the exclusive venue for Cohen to tell his own personal story. Davis indicated his longstanding personal relationship with Chairman Cummings was determinative. Davis stated Cohen does not plan to testify before any other congressional committees in open or closed session.

Purpose of Cohen's appearance

According to Davis, the sole purpose of Cohen’s appearance before the Committee is to allow Cohen to share his personal anecdotes about his time working for the then-private citizen Donald J. Trump, and his experiences after Mr. Trump became President. Pressed on how Cohen’s testimony is jurisdictionally related to the Committee’s role in overseeing the functioning, efficiency, and effectiveness of the federal government, Davis stated Cohen has “anecdotes about his time with the President.” He forewarned the hearing will likely be “unsatisfying” and “frustrating” for Members of the Committee.

Conflict of interest issues and compensation

Given Davis’s close association with former President Bill Clinton and 2016 Democratic nominee for President and former Secretary of State Hillary Rodham Clinton, we also have questions about how Cohen’s legal representatives resolve the conflict of interest Davis’s representation presents.² Davis’s role as consigliere for the Clintons and those close to them raises the specter his client loyalties may be divided. We seek clarification on whether any waivers have been executed.

We do know Cohen is not paying Davis. Davis told us his firm has a representation agreement with a fee. When asked directly whether Cohen is paying his fee, Davis cryptically

² The D.C. Bar Rules of Professional Conduct Rule 1.7 states: (b) . . . a lawyer shall not represent a client with respect to a matter if: . . . (4) The lawyer’s professional judgment on behalf of the client will be or reasonably may be adversely affected by the lawyer’s responsibilities to or interests in a third party or the lawyer’s own financial, business, property, or personal interests.

said he could not answer but if Cohen was paying his fee, “I would say yes.” If Davis is providing free media advisory or legal services, or if someone else is paying Davis’s fees, it adds to the perception Cohen’s appearance is a media stunt initiated, produced, and financed by career Democrat political operatives as a way of scoring political points against the President.

* * *

Several of our questions to Davis went unanswered. Davis, however, believed you were the person to whom we needed to speak.

One of the inherent challenges with the upcoming hearing Lanny Davis has arranged for Chairman Cummings is it will be occurring against the backdrop of news accounts published about the Special Counsel’s work that have proven untrue. Cohen is at the heart of two of these stories. On January 17, 2019, *BuzzFeed News* released a story titled, “President Trump Directed His Attorney Michael Cohen To Lie To Congress About The Moscow Tower Project,” reportedly citing evidence possessed by the Special Counsel’s office.³ Shortly after the publication, in an extremely rare public comment, the Special Counsel’s office released a statement, “BuzzFeed’s description of specific statements to the special counsel’s office, and characterization of documents and testimony obtained by this office, regarding Michael Cohen’s congressional testimony are not accurate.”⁴

The Buzzfeed story was not the first time a public report of this type had to be corrected. In August, Davis made inaccurate public statements about Cohen’s testimony to the Special Counsel about the June 2016 Trump Tower meeting.⁵ After Davis was forced to correct the record, the *Washington Post* reported, “[Davis] is backing away from confident assertions he made that Cohen has information to share with investigators that shows Trump knew in 2016 of Russian efforts to undermine Democratic nominee Hillary Clinton.”⁶ These stories represent some of the misinformation and confusion surrounding Cohen’s criminal cases. With this background, it is important for the Committee to receive accurate information to ensure a fact-based hearing.

³ Jason Leopold and Anthony Cormier, *President Trump Directed His Attorney Michael Cohen To Lie To Congress About The Moscow Tower Project*, BUZZFEED NEWS (Jan. 17, 2019), https://www.buzzfeednews.com/article/jasonleopold/trump-russia-cohen-moscow-tower-mueller-investigation?ref=hpsplash&bftw=&utm_term=4ldqfp#4ldqfp.

⁴ Statement of Peter Carr, U.S. Dep’t of Justice, Special Counsel’s Office (Jan. 18, 2019); Mary Clare Jalonick and Eric Tucker, *Mueller Disputes Accuracy of BuzzFeed Report on Trump*, AP (Jan. 18, 2019), <https://www.apnews.com/58e8eff8dabb4b5289e4db16435a2b02/>.

⁵ Tom Hamburger and Rosalind S. Helderman, *Attorney For Michael Cohen Backs Away From Confidence That Cohen Has Information About Trump’s Knowledge On Russian Efforts*, WASH. POST. (Aug. 26, 2018), https://www.washingtonpost.com/politics/attorney-for-michael-cohen-backs-away-from-confidence-that-cohen-has-information-about-trumps-knowledge-on-russian-efforts/2018/08/26/09d7f26e-a876-11e8-97ce-cc9042272f07_story.html?utm_term=.4ad53fcd6876 https://www.washingtonpost.com/politics/attorney-for-michael-cohen-backs-away-from-confidence-that-cohen-has-information-about-trumps-knowledge-on-russian-efforts/2018/08/26/09d7f26e-a876-11e8-97ce-cc9042272f07_story.html?utm_term=.4ad53fcd6876.

⁶ *Id.*

In preparation for the hearing, we have asked Chairman Cummings to require Cohen to participate in a transcribed interview, so we may better understand the matters on which he is and is not willing to speak. Davis told us, however, he will not allow this to happen. We also asked the Chairman to seek basic information from the Department of Justice or the Cohen legal team relating to the cases in which Cohen is a criminal defendant. Davis was able to provide some documents related to Cohen's sentencing hearing, but he referred us to you as someone well-positioned to be more responsive.

These are the information and materials we request:

1. Any FD-302 forms and any other investigative reports created by the DOJ or FBI in their investigations into Michael Cohen;
2. Any FD-1023 forms that may have been created involving Michael Cohen;
3. All cooperation agreements between Michael Cohen and DOJ;
4. Any notes taken by DOJ or FBI during their multiple interviews of Michael Cohen;
5. Documentation of all agreements Michael Cohen has with DOJ, the FBI, and any other foreign government's law enforcement agencies;
6. Any copies of waivers referring or relating to Cohen's client representations, whether related to attorney-client, conflict of interest, or otherwise;
7. Any copies of waivers referring or relating to Davis's representation of Cohen whether related to attorney-client, conflict of interest, or otherwise;
8. Identify the scope of Cohen's intended testimony before the Committee on February 7, 2019; and
9. Identify consultations the Cohen legal team has had with the Justice Department, the New York State Attorney General or other investigative or prosecutorial offices with an ongoing investigation of Cohen. For each consultation, identify the government official, the date, and the attendant or resulting testimonial scope limitation.

In summary, Davis made clear that Cohen's upcoming appearance before the Committee is entirely a result of Davis's orchestration. According to Davis, the hearing was Davis's idea and his alone. Cohen apparently did not want to testify—but Davis has persuaded Cohen to appear despite his concerns and fears. Davis picked our Committee as the exclusive venue for Cohen's appearance based on his long-standing personal friendship with Chairman Cummings,

Guy Petrillo, Esq.
January 22, 2019
Page 5

and it took Chairman Cummings one to two months to agree to Davis's plan for Cohen's appearance. Cohen will not testify to any matter "under investigation," and Davis predicted that this constraint will leave Members of the Committee "frustrated" and "unsatisfied." Cohen is apparently not paying Davis for Davis's considerable efforts in advance of this hearing.

As Cohen's February 7, 2019, appearance – the first major hearing for the Chairman – is quickly approaching, we hope you will provide the requested documents and other information no later than January 25, 2019. We look forward to hearing from you.

Sincerely,



Jim Jordan



Mark Meadows

cc: The Honorable Elijah E. Cummings, Chairman, Committee on Oversight and Reform
The Honorable Doug Collins, Committee on the Judiciary
The Honorable Devin Nunes, Permanent Select Committee on Intelligence
The Honorable Matthew Whitaker, Acting Attorney General, U.S. Dep't of Justice
The Honorable Robert S. Mueller III, Special Counsel, U.S. Dep't of Justice
The Honorable Geoffrey S. Berman, U.S. Attorney for the Southern District of New York
The Honorable Letitia James, New York State Attorney General
Lanny J. Davis, Esquire

Congress of the United States

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January 31, 2019

The Honorable Elijah E. Cummings
Chairman
Committee on Oversight and Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

We write with questions about the upcoming hearing with Michael Cohen. At least one news organization has reported you may schedule the hearing for next week.¹ Based on communications with our staff, Michael Cohen's attorney and media adviser, Lanny J. Davis, has notified you Cohen's testimony will be limited in scope. According to Davis, you have acceded to an unusual arrangement whereby Cohen will be permitted to appear voluntarily and be afforded the leeway to answer only those questions he so chooses. His testimony, Davis advised, will be extremely limited. All questions touching on possible ongoing investigations have been deemed off limits by Davis.

By letter dated January 11, 2019, we asked you to obtain a basic set of documents from the Department of Justice so our Members may meaningfully prepare for the Cohen hearing, the first major hearing of your Chairmanship.² We also sought to question Cohen at a transcribed interview so we could better-understand the scope limitations you have agreed to. Your decision not to do so raises the prospect you are leading us towards a circus of a hearing.

Our January 18, 2019, meeting with Davis yielded stunning information about the origins of the hearing. We learned:

- Cohen's public testimony will exclude all matters involving the United States Attorney's Office for the Southern District, the Attorney General for the State of New York, and the office of Special Counsel Robert S. Mueller III;

¹ Jeremy Herb & Kara Scannell, *Michael Cohen agrees to testify behind closed doors, House Intel chairman says*, CNN (January 28, 2019), <https://www.cnn.com/2019/01/28/politics/michael-cohen-agrees-to-testify-february-8-closed-doors/index.html> ("Cohen's Oversight Committee testimony is not yet finalized, but he's in discussions to appear on February 7...").

² Letter from Jim Jordan, Ranking Member, H. Comm on Oversight & Reform, to Elijah E. Cummings, Chairman, H. Comm on Oversight & Reform (Jan. 11, 2019), <https://republicans-oversight.house.gov/wp-content/uploads/2019/01/2019-01-11-JDJ-to-EEC-re-Cohen-Testimony.pdf>.

- *Davis* exclusively picked our Committee for Cohen to testify in based on his longstanding friendship with *you*. *Davis* allowed he had to convince both you and Cohen to have the hearing. Cohen did not want to testify—*Davis* said, “I pushed him to do this,” explaining, “this was my idea; nobody else’s.” According to *Davis*, you seemingly had your own reservations, but *Davis* told us after “one or two months” you finally “came around;”
- The sole purpose of Cohen’s appearance before the Committee is to allow Cohen to share his personal anecdotes about his time working for the then-private citizen Donald J. Trump, and his experiences after Mr. Trump became President. Pressed on how Cohen’s testimony is jurisdictionally related to our Committee’s role in overseeing the functioning, efficiency, and effectiveness of the federal government, *Davis* stated Cohen has “anecdotes about his time with the President.” He confessed the hearing will likely be “unsatisfying” and “frustrating” for Members of the Committee;
- *Davis* conceded Cohen has not been paying for his services. *Davis* told us his firm has a representation agreement with a fee. When asked directly whether Cohen is paying his fee, *Davis* cryptically said he could not answer but if Cohen was paying his fee, “I would say yes.”

We are perplexed by the authority you have ceded to *Davis* in producing this made-for-television hearing. Lanny *Davis* is a close associate of former President Bill Clinton and former 2016 Democratic presidential candidate, Hillary Rodham Clinton. His undisputed remarks to our staff on January 18, 2019, create the perception that Cohen’s appearance is a media stunt initiated and financed by career Democrat political operatives as a way of meting out retribution against the President. *Davis*’s representation of Cohen has not been error-free. For instance, *Davis* was forced to walk back unfounded accusations he made against the President. The *Washington Post* reported, “[*Davis*] is backing away from confident assertions he made that Cohen has information to share with investigators that shows Trump knew in 2016 of Russian efforts to undermine Democratic nominee Hillary Clinton.”³

We hope you share our mission in ensuring our Committee is serious minded in its pursuit of fact based oversight and investigative work.⁴ Although you have been unwilling to

³ Tom Hamburger and Rosalind S. Helderman, *Attorney For Michael Cohen Backs Away From Confidence That Cohen Has Information About Trump’s Knowledge On Russian Efforts*, WASH. POST. (Aug. 26, 2018), https://www.washingtonpost.com/politics/attorney-for-michael-cohen-backs-away-from-confidence-that-cohen-has-information-about-trumps-knowledge-on-russian-efforts/2018/08/26/09d7f26e-a876-11e8-97ce-cc9042272f07_story.html?utm_term=.4ad53fcd6876.

⁴ *Oversight of the FBI and DOJ Actions in Advance of the 2016 Election before the H. Comm. on Oversight & Gov’t Reform joint with the Judiciary*, 115th Cong. 147 (June 19, 2018) (statement of Elijah E. Cummings, Ranking Member, H. Comm. on Oversight & Gov’t Reform) (“You know, as I sit here and I think about life, you know, and I tell my constituents this, I tell them I wish there were not a Republican and a Democratic party. I wish I was not a, quote, ‘politician.’ You know why? Because I think that when people hear us a lot of time, or hear me, they just assume that I’m saying things based upon political expediency or trying to help a party. My party. But there are

The Honorable Elijah E. Cummings
January 31, 2019
Page 3


seek documents from the Justice Department or a transcribed interview with Cohen, we hope you will reflect on your decision and keep an open mind about reversing yourself.

We hope to obtain the requested information as soon as possible to thoroughly prepare for the hearing. We look forward to hearing from you.

Sincerely,



Jim Jordan
Ranking Member



Mark Meadows
Ranking Member
Subcommittee on Government Operations

certain things that are about -- are bigger than party, like country and being a human being. And I think that when we talk about -- you know, when I read your report and I looked at what you've done, it's the people like the ones that's sitting behind you that take an oath to do their very, very best and to be honest and to uphold the Constitution of our country. Those are the people that will keep our democracy together. And I say it with all of the sincerity I have in my heart.”).

Congress of the United States

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February 21, 2019

Mr. Lanny J. Davis
Davis Goldberg & Galper PLLC
1700 K Street NW, Suite 825
Washington, DC 20006

Dear Mr. Davis:

Your client, Michael Cohen, is scheduled to testify before our Committee on February 27, 2019. Cohen is expected to make accusations against President Trump, his former legal client. Cohen is a convicted criminal who has admitted to crimes of deception and lies for his personal greed and ambition. Our Members have a number of questions they intend to pose Cohen; however, Chairman Elijah Cummings has refused to request material necessary to prepare for Cohen's anticipated testimony. Therefore, we write to you to seek additional information about one facet of Cohen's work: the strategic consulting, lobbying, and foreign agent work he sought to undertake after he was denied a staff position in President Trump's White House.

As you boasted to our staff on January 18, 2019, you arranged for Cohen to testify before our Committee before he begins serving his prison sentence and you convinced Chairman Cummings to make Cohen the first announced witness of his chairmanship. Chairman Cummings agreed to your overtures, but he has unilaterally and unnecessarily attempted to limit the scope of Cohen's testimony. To be clear, and as our staff conveyed to you at the January meeting, our Members are not bound by the extremely narrow terms you have established with the Chairman. Our Members intend to pose questions they deem appropriate and they may ask your client about any of the following issues:

- The crimes of deception and lies to which Cohen pleaded guilty;
- Other criminal activity in which Cohen participated, but refused to disclose or cooperate with the U.S. Attorney's Office for the Southern District of New York (SDNY);
- Cohen's business dealings and international financial dealings, including those involving his relatives;
- Cohen's actions and boasts probative of his character, including his book deals, his desire to be a cable television personality, the fantastic claim he delivered his

Mr. Lanny J. Davis

February 21, 2019

Page 2

own baby, the delusional aim to be Mayor of the City of New York, and the fake *Women For Cohen* social media initiative he commissioned;¹ and

- Cohen's strategic consulting, lobbying, and foreign agent work.

Federal court records show how Cohen sought to use his association with President Trump for personal gain. According to the SDNY prosecutors, in January 2017, around the time of President Trump's inauguration, Cohen began offering lobbying and consulting services to a number of companies.² The prosecutors determined that Cohen "secured a substantial amount of consulting business for himself throughout 2017 by marketing to corporations what he claimed to be unique insights about and access to [President Trump]."³ Cohen's list of major domestic and foreign corporate clients included AT&T, Novartis, BTA Bank of Kazakhstan, Columbus Nova, and Korea Aerospace Industries. His efforts landed Cohen a number of lucrative consulting deals worth millions of dollars. For example:

- AT&T paid Cohen \$600,000 for insight on how the Administration would approach its controversial proposed merger with Time Warner.⁴
- Swiss pharmaceutical company Novartis paid Cohen \$1.2 million for promised access to the White House on health care policy.⁵
- Kazakhstan's BTA Bank, which Cohen has previous business ties to, paid Cohen a large sum under a consulting agreement.⁶
- Columbus Nova, a company whose biggest investor is owned by a Russian oligarch, paid Cohen \$500,000 for advice on "potential sources of capital and potential investments."⁷

¹ Letter from Jim Jordan, Ranking Member, H. Comm. on Oversight & Reform, to Elijah E. Cummings, Chairman, H. Comm. on Oversight & Reform (Feb. 19, 2019), <https://republicans-oversight.house.gov/wp-content/uploads/2019/02/2019-02-19-JDJ-MM-to-EEC-re-Cohen-Testimony.pdf>.

² The Government's Sentencing Memorandum at 3, United States v. Cohen, No. 18-cr-602 (S.D.N.Y. filed Dec. 7, 2018), <https://assets.documentcloud.org/documents/5453401/SDNY-Cohen-sentencing-memo.pdf>.

³ The Government's Sentencing Memorandum at 3, United States v. Cohen, No. 18-cr-602 (S.D.N.Y. filed Dec. 7, 2018), <https://assets.documentcloud.org/documents/5453401/SDNY-Cohen-sentencing-memo.pdf>.

⁴ Rosalind S. Helderman et al., *Cohen's \$600,000 Deal with AT&T Specified He Would Advise on Time Warner Merger, Internal Company Records Show*, WASHINGTON POST (May 10, 2018), https://www.washingtonpost.com/politics/cohens-600000-deal-with-atandt-specified-he-would-advise-on-time-warner-merger-internal-company-records-show/2018/05/10/cd541ae0-5468-11e8-a551-5b648abe29ef_story.html?utm_term=.917bf9be7834.

⁵ MJ Lee et al., *Inside Michael Cohen's Aggressive Pitch Promising Access to Trump*, CNN (May 10, 2018), <https://www.cnn.com/2018/05/09/politics/michael-cohen-trump-lobbying/index.html>.

⁶ See, e.g., Christopher Brennan, *Trump Associate Received More than \$21M in Kazakh Oligarchs' Alleged Money Laundering Scheme*, NY DAILY NEWS (Apr. 25, 2018), <https://www.nydailynews.com/news/national/trump-associate-received-21m-alleged-oligarch-scheme-article-1.3953189>; Adam Davidson, *Trump's Business of Corruption*, NEW YORKER (Aug. 21, 2017), <https://www.newyorker.com/magazine/2017/08/21/trumps-business-of-corruption>.

⁷ Bess Levin, *Michael Cohen Must Be The Most Gifted Consultant in America*, VANITY FAIR (May 9, 2018), <https://www.vanityfair.com/news/2018/05/michael-cohen-must-be-the-most-gifted-consultant-in-america>.

- South Korean company Korea Aerospace Industries paid Cohen \$150,000 for “legal consulting concerning accounting standards on production costs” related to part of a multi-billion dollar Pentagon contract the company was bidding on.⁸

Despite collecting a handsome windfall, Cohen apparently performed little to no work. According to the SDNY prosecutors, “while Cohen made millions of dollars for these consulting arrangements, his promises of insight and access proved essentially hollow.”⁹ Instead, it appears that Cohen leveraged his association with President Trump to attract and retain major corporate clients, produced no tangible results, and still walked away with millions of dollars.

Regardless of whether Cohen charged clients with no intention of doing the work, or whether he attempted but failed to deliver what he promised, he reportedly did not register his lobbying activities with the federal government. The *Wall Street Journal* reported that Cohen failed to register as a domestic lobbyist as required under the Lobbying Disclosure Act (LDA).¹⁰ Violators of the LDA can be fined up to \$200,000 per violation or face up to five years in prison.¹¹ Similar registration requirements in the Foreign Agents Registration Act (FARA) apply to an individual lobbying on behalf of a foreign principal if the activity is meant to influence the U.S. government (or any portion of the U.S. public) regarding U.S. policy toward a foreign place.¹² Violators of FARA can face criminal fines or up to five years in prison.¹³

Due to Cohen’s reported agreements with both domestic companies and foreign entities, our Members have questions about whether Cohen was required to register his lobbying activities with the federal government pursuant to either the LDA or FARA. Accordingly, we request that you provide the following documents and information on Cohen’s behalf:

1. All documents and communications related to Michael Cohen’s lobbying and/or consulting agreements, including agreements executed as or on behalf of Essential Consultants LLC;
2. All documents and communications related to all lobbying disclosures contemplated or filed with Congress as required by the LDA; and

⁸ Amanda Macias, *South Korean Defense Company That Paid Trump Lawyer Cohen \$150,000 is Poised to Win Part of a \$16 Billion Pentagon Deal*, CNBC (May 9, 2018), <https://www.cnbc.com/2018/05/09/south-korean-firm-that-paid-trump-lawyer-cohen-poised-to-win-pentagon-deal.html>.

⁹ The Government’s Sentencing Memorandum at 3-4, *United States v. Cohen*, No. 18-cr-602 (S.D.N.Y. filed Dec. 7, 2018), <https://assets.documentcloud.org/documents/5453401/SDNY-Cohen-sentencing-memo.pdf> (“Documents obtained by the Government and witness interviews revealed that Cohen performed minimal work, and many of the consulting contracts were ultimately terminated.”).

¹⁰ Nicole Hong et al., *Prosecutors Investigating Michael Cohen for Possible Illegal Lobbying*, WALL STREET JOURNAL (June 14, 2018), <https://www.wsj.com/articles/prosecutors-investigating-michael-cohen-for-possible-illegal-lobbying-1529012696>.

¹¹ *Lobbying Disclosure Act Guidance – Section 12: Penalties*, U.S. HOUSE OF REPRESENTATIVES (Jan. 31, 2017), https://lobbyingdisclosure.house.gov/amended_lda_guide.html#section12.

¹² 22 U.S.C. § 611 et seq. (2012).

¹³ *FARA Enforcement*, DEP’T OF JUSTICE (July 26, 2018), <https://www.justice.gov/nsd-fara/fara-enforcement>.

Mr. Lanny J. Davis

February 21, 2019

Page 4


3. All documents and communications related to lobbying disclosures contemplated or filed with the Attorney General as required by FARA.

Please provide these documents to the Committee as soon as possible, but no later than February 25, 2019. If you have any questions, please contact Committee staff at (202) 225-5074. Thank you for your prompt attention to this matter.

Sincerely,



Jim Jordan
Ranking Member



Mark Meadows
Ranking Member
Subcommittee on Government Operations

cc: The Honorable Elijah E. Cummings, Chairman, Comm. on Oversight and Reform
The Honorable Devin Nunes, Ranking Member, Permanent Select Comm. on Intelligence

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5051
MINORITY (202) 225-5074

<http://oversight.house.gov>

February 25, 2019

The Honorable Elijah E. Cummings
Chairman
Committee on Oversight and Reform
2157 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

We renew our request that you call Deputy Attorney General Rod Rosenstein to publicly testify before our Committee, and recommend he appears alongside Michael Cohen on Wednesday, February 27, 2019. Cohen has pleaded guilty to crimes of deception and lies, including lying to Congress.¹ In Cohen's sentencing proceeding, two Justice Department components—the U.S. Attorney's Office for the Southern District of New York and the Special Counsel's Office—provided information about the Department's views of Cohen's crimes and conduct. As the Deputy Attorney General, with direct supervision of these entities, only Rosenstein can speak to the views of both Department components.

Rosenstein's appearance would also allow the Committee to continue its ongoing oversight of the Department of Justice. During our joint investigation with the House Judiciary Committee, former FBI general counsel James Baker testified that between May 9 and May 17, 2017, Rosenstein organized a series of meetings with Department officials, including former FBI Deputy Director Andrew McCabe, to strategize methods to get back at the President for firing FBI Director James Comey.² Rosenstein and others contemplated a range of ideas, from Rosenstein wearing a wire to secretly record the President to Rosenstein recruiting cabinet

¹ Press Release, Dep't of Justice, Michael Cohen Sentenced to 3 Years in Prison (Dec. 12, 2018), <https://www.justice.gov/usao-sdny/pr/michael-cohen-sentenced-3-years-prison>.

² See Transcribed Interview of James Baker 7 Day 2, Oct. 18, 2018 (Mr. Baker. I believe there were a couple of different meetings, and they -- I believe there were a couple of different meetings, and each time, I think, it was the day after because I believe the meetings went late into the evening. That's to the best of my recollection. Mr. Jordan. Okay. And is it your understanding that there were multiple meetings that Mr. McCabe, Ms. Page, Mr. Rosenstein had about the potential of recording the President? Mr. Baker. I don't know. I know that they had multiple meetings with the Deputy Attorney General discussing a lot of things in the immediate aftermath of the firing, and I don't specifically remember how many times this was discussed. Mr. Jordan. So, just to be clear, the firing of Mr. Comey took place on May 9th, and then the hiring of the special counsel took place on May 17th. So these numerous meetings and the one you had with Mr. McCabe and Ms. Page took place between the 9th and the 17th? Mr. Baker. I believe that's correct."). *Id.* at 11 (Mr. Baker: "...And then there are these -- some number of conversations with the Deputy Attorney General about what to do next, what needs to be done, and my recollection is numerous topics were discussed, and these were among them. The wearing the wire and the 25th Amendment were one of a list, one or two of a list of things that we were going -- that people were going through to try to figure out what to do...").

The Honorable Elijah E. Cummings

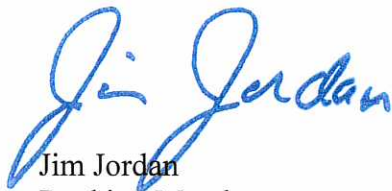
February 25, 2019

Page 2

members to invoke the 25th Amendment.³ McCabe, a participant in some of the Rosenstein meetings, is now relating these facts publicly to promote his book.⁴ Rosenstein has disputed McCabe's account.⁵

If you intend to proceed with Michael Cohen as the star witness of the Committee's first big hearing, Members should have an opportunity to assess his credibility. We have asked several times that you request information and documents from the Justice Department about Cohen and his crimes. You have refused to do so. The next best alternative, if the Committee is to have a fair and thorough hearing, is to have a Justice Department witness to speak to these matters. By virtue of his position, Rosenstein is the appropriate witness for this task. We therefore strongly urge you to invite Rosenstein to the Committee's hearing on February 27, 2019. We appreciate your consideration of this request and look forward to hearing from you.

Sincerely,



Jim Jordan
Ranking Member



Mark Meadows
Ranking Member
Subcommittee on Government Operations

³ Transcribed Interview of James Baker 137 Day 1, Oct. 3, 2018 (Baker: "...It was I believe to the best of my recollection it was some combination of them that they told me that there had been a conversation with the DAG about the idea of the DAG wearing a wire into a conversation or conversations with the President."); *Id.* at 143 (Baker: "...The 25th Amendment conversation, my understanding was that there was a conversation in which it was said I believe by the DAG that there were -- that there were two members of the cabinet who were willing to go down this road already..."); U.S. CONST. AMEND. XXV, § 4.

⁴ *McCabe Says He Ordered the Obstruction of Justice Probe of President Trump*, 60 MINUTES (Feb. 14, 2019), <https://www.cbsnews.com/news/andrew-mccabe-says-he-ordered-the-obstruction-of-justice-case-of-president-trump-60-minutes/>.

⁵ Daniel Chaitin, *DOJ Rebuffs Andrew McCabe: Claim that Rod Rosenstein Sought to Oust Trump 'Inaccurate and Factually Incorrect'*, WASH. EXAMINER (Feb. 14, 2019).

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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February 28, 2019

The Honorable William Barr
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, D.C. 20530

Dear Mr. Attorney General:

We write to refer significant evidence that Michael D. Cohen committed perjury and knowingly made false statements during his testimony before an Oversight and Reform Committee (Committee) hearing titled, "Hearing with Michael Cohen, Former attorney for President Donald Trump" on February 27, 2019.

While testifying under oath, Mr. Cohen made what appear to be numerous willfully and intentionally false statements of material fact contradicted by the record established by the Justice Department in *United States v. Cohen*, 18-cr-602 (S.D.N.Y.) (WHP). Mr. Cohen's testimony before the Committee at times was in direct contradiction to assertions contained in pleadings authored by the United States Attorney's Office for the Southern District of New York (SDNY). There are other instances in which Mr. Cohen's statements to the Committee were immediately contradicted by witnesses with firsthand knowledge of the subject matter.

Under 18 U.S.C. § 1621, a witness commits perjury if the witness "willfully" asserts "any material matter which he does not believe to be true" after "having taken an oath" to "testify . . . truly." Under 18 U.S.C. § 1001, a witness commits a crime if the witness "knowingly and willfully" makes "any material false, fictitious, or fraudulent statement or representation" with respect to "any investigation under review, conducted pursuant to the authority of any committee . . . of the Congress." Congress cannot perform its oversight function if witnesses who appear before its committees do not provide truthful testimony. Perjury and false statements before Congress are crimes that undermine the integrity of the Constitutional duty to conduct oversight and inquiries.

The points below support an investigation into whether Mr. Cohen committed perjury or made false statements at the Committee's hearing:

1. Several times during his testimony, Mr. Cohen denied committing various fraudulent acts that he has pleaded guilty to in federal court. Specifically, Mr. Cohen said "I never

defrauded any bank.”¹ These denials are intentionally false. Mr. Cohen pleaded guilty to five counts of income tax evasion, one count of making false statements to a banking institution, one count of causing an unlawful corporate contribution, one count of excessive campaign contribution, and one count of making false statements to Congress. In Mr. Cohen’s plea agreement with the United States Attorney’s Office for the Southern District of New York, prosecutors specifically referred to Mr. Cohen’s crimes of making false statements to financial institutions as “bank fraud.”² This point—Mr. Cohen’s culpability for bank fraud—materially affects the Committee’s assessment of his credibility.

2. Mr. Cohen repeatedly testified that he did not seek employment in the White House following President Trump’s election. This is demonstrably, materially, and intentionally false. This testimony is in direct conflict with court filings made by the United States Attorney’s Office for the SDNY, which state:

During and after the campaign, Cohen privately told friends and colleagues, including in seized text messages, that he expected to be given a prominent role and title in the new administration. When that did not materialize, Cohen found a way to monetize his relationship with and access to the President.³

When confronted at the hearing with the SDNY statement, Mr. Cohen testified that the above statement made by the United States Attorneys in the SDNY was “not accurate.” He testified:

MR. JORDAN: You wanted to work in the White House.

MR. COHEN: No, sir.

MR. ROY: You said clearly to Mr. Cloud and Mr. Jordan that the Southern District of New York lawyers were being untruthful in characterizing your desire to work in the administration. Do you say again that the lawyers of the Southern District of New York are being untruthful

¹ “Hearing with Michael Cohen, Former attorney for President Donald Trump”: Hearing before the H. Comm. on Oversight & Reform, 116th Cong. (2019) (statement of Michael D. Cohen) [hereinafter “Cohen hearing”].

² Plea Agreement at 3 n.2, United States v. Michael Cohen, 18-cr-602 (S.D.N.Y. Aug. 21, 2018).

³ The Government’s Sentencing Memorandum at 25, United States v. Cohen, 18-cr-602 (S.D.N.Y. Dec. 7, 2018).

in making that characterization, yes or no?

MR. COHEN: I'm saying that's not accurate.⁴

Shortly after Mr. Cohen's public statements, at 11:13 a.m., former New York City Police detective Bo Dietl tweeted, "Getting sick watching these hearings. I know Michael Cohen personally for many years and he told me several times that he was very angry and upset that he didn't get a post in the WH and that he 'would do what he has to do now to protect his family.'"⁵ At 3:44 p.m., Dr. Darrell Scott, Pastor, New Spirit Revival Center, and a Trump campaign faith-based outreach coordinator tweeted, "Michael Cohen asked ...no, BEGGED me REPEATEDLY, to ask the POTUS to give him a job in the Administration! He's STILL lying under oath!"⁶

Mr. Cohen's testimony is material to the Committee's assessment of Mr. Cohen's motive to monetize his former association with President Trump. It is essential that the Department of Justice investigate these remarkable contradictions between Mr. Cohen, the SDNY prosecutors, and the public accounts of witnesses with firsthand information. In addition, based on the SDNY's reference to having "seized text messages" proving Mr. Cohen's desire for a position in the Trump Administration, it appears that the SDNY may already be in possession of evidence bearing on Mr. Cohen's culpability.

3. Mr. Cohen testified he did not direct the commission of the Twitter account @WomenForCohen. Specifically, Mr. Cohen testified "I didn't actually set that up" and "it was done by a young lady that worked for [the IT firm] RedFinch."⁷ Mr. Cohen's statement in this respect may also be false. The owner of RedFinch, John Gauger, reportedly told *The Wall Street Journal* that RedFinch established the @WomenForCohen account at Mr. Cohen's direction. According to the *Journal*, "Mr. Cohen . . . asked Mr. Gauger to create the @WomenForCohen account, still active in 2019, to elevate his profile."⁸ Mr. Cohen's testimony here is material to the Committee's assessment of Mr. Cohen's character and credibility.
4. Mr. Cohen attested in his signed Truth in Testimony form, submitted as Attachment A to this letter, that he did not have any reportable contracts with foreign government entities.

⁴ Cohen hearing, *supra* note 1.

⁵ Bo Dietl (@BoDietl), TWITTER (Feb. 27, 2019, 11:13 AM), <https://twitter.com/BoDietl/status/1100790950203478018>.

⁶ Dr. Darrell Scott (@PastorDScott), TWITTER (Feb. 27, 2019, 3:44 PM), <https://twitter.com/PastorDScott/status/1100859134948315138>.

⁷ Cohen hearing, *supra* note 1.

⁸ Michael Rothfeld, et al., *Cohen Hired IT Firm to Rig Early CNBC, Drudge Polls to Favor Trump*, WALL ST. J. (Jan. 17, 2019), <https://www.wsj.com/articles/poll-rigging-for-trump-and-creating-womenforcohen-one-it-firms-work-order-11547722801>.

We believe this to be false. Mr. Cohen testified during the hearing that he had entered into contractual agreements during 2017 with at least two foreign entities owned in part by foreign governments – BTA Bank of Kazakhstan and Korea Aerospace Industries of South Korea.⁹ Mr. Cohen’s testimony here is material to the Committee’s assessment of Mr. Cohen’s character and credibility.

During the hearing, Representative Meadows referred Mr. Cohen to the Justice Department for investigation into whether any of Mr. Cohen’s lobbying or consulting activities were done in violation of the Foreign Agents Registration Act (FARA). At a minimum Mr. Cohen committed fraud against the companies he agreed to represent by accepting their payment and not performing his contractual obligations. We request the Department investigate Mr. Cohen’s potentially false statement on his Truth in Testimony form, the fraud carried out against the companies he agreed to represent, and his potential violation of FARA.

5. Mr. Cohen’s verbal testimony contradicted various aspects of his written statement submitted in advance of his appearance and appended as Attachment B to this letter. These contradictions between Mr. Cohen’s verbal testimony and his written statement materially affect the Committee’s assessment of Mr. Cohen’s credibility.
 - A. For instance, Mr. Cohen verbally testified that he was a good lawyer who understood the need to present his client with sound legal advice.¹⁰ Mr. Cohen contradicted his verbal testimony in his written statement by testifying that he made a payment to Stephanie Clifford “without bothering to consider whether that was improper, much less whether it was the right thing to do....”¹¹
 - B. Mr. Cohen also contradicted his written statement by verbally testifying that the President directed him and Trump Organization Chief Financial Officer Allen Weisselberg to “go back to his office and figure out how to [make the \$130,000 payment to Ms. Clifford.]”¹² In his written statement, however, Mr. Cohen testified that “Mr. Trump directed me to use my own personal funds from a [HELOC] to avoid any money being traced back to him that could negatively impact his campaign.”¹³

⁹ Cohen hearing, *supra* note 1.

¹⁰ *Id.*

¹¹ *Hearing with Michael Cohen, Former attorney for President Donald Trump*: Hearing before the H. Comm. on Oversight & Reform, 116th Cong. (2019) (written testimony of Michael D. Cohen) [hereinafter “Cohen written testimony”].

¹² Cohen hearing, *supra* note 1.

¹³ Cohen written testimony, *supra* note 11.

6. Mr. Cohen continued to assert that he committed his crimes out of “blind loyalty” to President Trump. In Mr. Cohen’s closing remarks, he testified: “My loyalty to Mr. Trump has cost me everything – my family’s happiness, friendships, my law license, my company, my livelihood, my honor, my reputation, and soon my freedom.”¹⁴ This too is a false statement. The SDNY prosecutors¹⁵, and Judge Pauley¹⁶, specifically found that Mr. Cohen’s conduct was not the result of “blind loyalty” but of Mr. Cohen’s personal greed and ambition. Mr. Cohen’s attribution of the motivation for his crimes materially affects the Committee’s assessment of his character and credibility.

In sum, Mr. Cohen’s testimony before the Committee on Oversight and Reform on February 27, 2019, was a spectacular and brazen attempt to knowingly and willfully testify falsely and fictitiously to numerous material facts. His testimony included intentionally false statements designed to make himself look better on a national stage. Mr. Cohen’s prior conviction for lying to Congress merits a heightened suspicion that he has yet again testified falsely before Congress. We therefore request that the Department investigate whether any of Mr. Cohen’s testimony warrants another charge for the violation of 18 U.S.C. §§ 1001 or 1621.

Thank you for your attention to this important matter.

Sincerely,



Jim Jordan
Ranking Member



Mark Meadows
Ranking Member
Subcommittee on Government Operations

cc: Robert S. Khuzami, Deputy United States Attorney, Southern District of New York
Robert Mueller, Special Counsel, Department of Justice
The Honorable Elijah E. Cummings, Chairman, Committee on Oversight and Reform
The Honorable Jerrold Nadler, Chairman, Committee on the Judiciary
The Honorable Doug Collins, Ranking Member, Committee on the Judiciary
The Honorable Devin Nunes, Ranking Member, Permanent Select Committee on Intelligence
The Honorable Lindsey Graham, Chairman, Senate Committee on the Judiciary

¹⁴ Cohen hearing, *supra* note 1.

¹⁵ See The Government’s Sentencing Memorandum, *United States v. Cohen*, 18-cr-602 (S.D.N.Y. Dec. 7, 2018).

¹⁶ Statement of Judge William H. Pauley III, *United States v. Cohen*, Nos. 18-cr-602, 18-cr-850, at 31 (S.D.N.Y. Dec. 12, 2018) (sentencing hearing).

The Honorable William Barr

February 28, 2019

Page 6

Enclosures: Attachment A: Michael Cohen's Truth in Testimony form (Feb. 27, 2019)
Attachment B: Michael Cohen's written testimony (Feb. 27, 2019)

Attachment A

Truth in Testimony Disclosure Form

In accordance with Rule XI, clause 2(g)(5)*, of the *Rules of the House of Representatives*, witnesses are asked to disclose the following information. Please complete this form electronically by filling in the provided blanks.

Committee: Committee on Oversight and Reform

Subcommittee: _____

Hearing Date: 2/27/19

Hearing Subject:

Hearing with Michael Cohen, former Attorney
to President Donald Trump

Witness Name: MICHAEL DEAN COHEN

Position/Title: _____

Witness Type: Governmental Non-governmental

Are you representing yourself or an organization? Self Organization

If you are representing an organization, please list what entity or entities you are representing:

If you are a non-governmental witness, please list any federal grants or contracts (including subgrants or subcontracts) related to the hearing's subject matter that you or the organization(s) you represent at this hearing received in the current calendar year and previous two calendar years. Include the source and amount of each grant or contract. *If necessary, attach additional sheet(s) to provide more information.*

N/A

If you are a non-governmental witness, please list any contracts or payments originating with a foreign government and related to the hearing's subject matter that you or the organization(s) you represent at this hearing received in the current year and previous two calendar years. Include the amount and country of origin of each contract or payment. *If necessary, attach additional sheet(s) to provide more information.*

N/A

False Statements Certification

Knowingly providing material false information to this committee/subcommittee, or knowingly concealing material information from this committee/subcommittee, is a crime (18 U.S.C. § 1001). This form will be made part of the hearing record.

Witness signature



Date

2/27/19

If you are a non-governmental witness, please ensure that you attach the following documents to this disclosure. Check both boxes to acknowledge that you have done so.

- Written statement of proposed testimony
- Curriculum vitae

*Rule XI, clause 2(g)(5), of the U.S. House of Representatives provides:

(5)(A) Each committee shall, to the greatest extent practicable, require witnesses who appear before it to submit in advance written statements of proposed testimony and to limit their initial presentations to the committee to brief summaries thereof.

(B) In the case of a witness appearing in a nongovernmental capacity, a written statement of proposed testimony shall include a curriculum vitae and a disclosure of any Federal grants or contracts, or contracts or payments originating with a foreign government, received during the current calendar year or either of the two previous calendar years by the witness or by an entity represented by the witness and related to the subject matter of the hearing.

(C) The disclosure referred to in subdivision (B) shall include—

- (i) the amount and source of each Federal grant (or subgrant thereof) or contract (or subcontract thereof) related to the subject matter of the hearing; and
- (ii) the amount and country of origin of any payment or contract related to the subject matter of the hearing originating with a foreign government.

(D) Such statements, with appropriate redactions to protect the privacy or security of the witness, shall be made publicly available in electronic form not later than one day after the witness appears.

Attachment B

**TESTIMONY OF MICHAEL D. COHEN
COMMITTEE ON OVERSIGHT AND REFORM
U.S. HOUSE OF REPRESENTATIVES**

FEBRUARY 27, 2019

Chairman Cummings, Ranking Member Jordan, and Members of the Committee, thank you for inviting me here today.

I have asked this Committee to ensure that my family be protected from Presidential threats, and that the Committee be sensitive to the questions pertaining to ongoing investigations. Thank you for your help and for your understanding.

I am here under oath to correct the record, to answer the Committee's questions truthfully, and to offer the American people what I know about President Trump.

I recognize that some of you may doubt and attack me on my credibility. It is for this reason that I have incorporated into this opening statement documents that are irrefutable, and demonstrate that the information you will hear is accurate and truthful.

Never in a million years did I imagine, when I accepted a job in 2007 to work for Donald Trump, that he would one day run for President, launch a

campaign on a platform of hate and intolerance, and actually win. I regret the day I said “yes” to Mr. Trump. I regret all the help and support I gave him along the way.

I am ashamed of my own failings, and I publicly accepted responsibility for them by pleading guilty in the Southern District of New York.

I am ashamed of my weakness and misplaced loyalty – of the things I did for Mr. Trump in an effort to protect and promote him.

I am ashamed that I chose to take part in concealing Mr. Trump’s illicit acts rather than listening to my own conscience.

I am ashamed because I know what Mr. Trump is.

He is a racist.

He is a conman.

He is a cheat.

He was a presidential candidate who knew that Roger Stone was talking with Julian Assange about a WikiLeaks drop of Democratic National Committee emails.

I will explain each in a few moments.

I am providing the Committee today with several documents. These include:

- A copy of a check Mr. Trump wrote from his personal bank account – after he became president - to reimburse me for the hush money payments I made to cover up his affair with an adult film star and prevent damage to his campaign;
- Copies of financial statements for 2011 – 2013 that he gave to such institutions as Deutsche Bank;
- A copy of an article with Mr. Trump’s handwriting on it that reported on the auction of a portrait of himself – he arranged for the bidder ahead of time and then reimbursed the bidder from the account of his non-profit charitable foundation, with the picture now hanging in one of his country clubs; and
- Copies of letters I wrote at Mr. Trump’s direction that threatened his high school, colleges, and the College Board not to release his grades or SAT scores.

I hope my appearance here today, my guilty plea, and my work with law enforcement agencies are steps along a path of redemption that will restore faith in me and help this country understand our president better.

Before going further, I want to apologize to each of you and to Congress as a whole.

The last time I appeared before Congress, I came to protect Mr. Trump. Today, I'm here to tell the truth about Mr. Trump.

I lied to Congress about when Mr. Trump stopped negotiating the Moscow Tower project in Russia. I stated that we stopped negotiating in January 2016. That was false – our negotiations continued for months later during the campaign.

Mr. Trump did not directly tell me to lie to Congress. That's not how he operates.

In conversations we had during the campaign, at the same time I was actively negotiating in Russia for him, he would look me in the eye and tell

me there's no business in Russia and then go out and lie to the American people by saying the same thing. In his way, he was telling me to lie.

There were at least a half-dozen times between the Iowa Caucus in January 2016 and the end of June when he would ask me "How's it going in Russia?" – referring to the Moscow Tower project.

You need to know that Mr. Trump's personal lawyers reviewed and edited my statement to Congress about the timing of the Moscow Tower negotiations before I gave it.

To be clear: Mr. Trump knew of and directed the Trump Moscow negotiations throughout the campaign and lied about it. He lied about it because he never expected to win the election. He also lied about it because he stood to make hundreds of millions of dollars on the Moscow real estate project.

And so I lied about it, too – because Mr. Trump had made clear to me, through his personal statements to me that we both knew were false and through his lies to the country, that he wanted me to lie. And he made it

clear to me because his personal attorneys reviewed my statement before I gave it to Congress.

Over the past two years, I have been smeared as “a rat” by the President of the United States. The truth is much different, and let me take a brief moment to introduce myself.

My name is Michael Dean Cohen.

I am a blessed husband of 24 years and a father to an incredible daughter and son. When I married my wife, I promised her that I would love her, cherish her, and protect her. As my father said countless times throughout my childhood, “you my wife, and you my children, are the air that I breathe.” To my Laura, my Sami, and my Jake, there is nothing I wouldn’t do to protect you.

I have always tried to live a life of loyalty, friendship, generosity, and compassion – qualities my parents ingrained in my siblings and me since childhood. My father survived the Holocaust thanks to the compassion and selfless acts of others. He was helped by many who put themselves in harm’s way to do what they knew was right.

That is why my first instinct has always been to help those in need. Mom and Dad...I am sorry that I let you down.

As many people that know me best would say, I am the person they would call at 3AM if they needed help. I proudly remember being the emergency contact for many of my children's friends when they were growing up because their parents knew that I would drop everything and care for them as if they were my own.

Yet, last fall I pled guilty in federal court to felonies for the benefit of, at the direction of, and in coordination with Individual #1.

For the record: Individual #1 is President Donald J. Trump.

It is painful to admit that I was motivated by ambition at times. It is even more painful to admit that many times I ignored my conscience and acted loyal to a man when I should not have. Sitting here today, it seems unbelievable that I was so mesmerized by Donald Trump that I was willing to do things for him that I knew were absolutely wrong.

For that reason, I have come here to apologize to my family, to the government, and to the American people.

Accordingly, let me now tell you about Mr. Trump.

I got to know him very well, working very closely with him for more than 10 years, as his Executive Vice President and Special Counsel and then personal attorney when he became President. When I first met Mr. Trump, he was a successful entrepreneur, a real estate giant, and an icon. Being around Mr. Trump was intoxicating. When you were in his presence, you felt like you were involved in something greater than yourself -- that you were somehow changing the world.

I wound up touting the Trump narrative for over a decade. That was my job. Always stay on message. Always defend. It monopolized my life. At first, I worked mostly on real estate developments and other business transactions. Shortly thereafter, Mr. Trump brought me into his personal life and private dealings. Over time, I saw his true character revealed.

Mr. Trump is an enigma. He is complicated, as am I. He has both good and bad, as do we all. But the bad far outweighs the good, and since taking office, he has become the worst version of himself. He is capable of behaving kindly, but he is not kind. He is capable of committing acts of generosity, but he is not generous. He is capable of being loyal, but he is fundamentally disloyal.

Donald Trump is a man who ran for office to make his brand great, not to make our country great. He had no desire or intention to lead this nation – only to market himself and to build his wealth and power. Mr. Trump would often say, this campaign was going to be the “greatest infomercial in political history.”

He never expected to win the primary. He never expected to win the general election. The campaign – for him – was always a marketing opportunity.

I knew early on in my work for Mr. Trump that he would direct me to lie to further his business interests. I am ashamed to say, that when it was for a real estate mogul in the private sector, I considered it trivial. As the President, I consider it significant and dangerous.

But in the mix, lying for Mr. Trump was normalized, and no one around him questioned it. In fairness, no one around him today questions it, either.

A lot of people have asked me about whether Mr. Trump knew about the release of the hacked Democratic National Committee emails ahead of time. The answer is yes.

As I earlier stated, Mr. Trump knew from Roger Stone in advance about the WikiLeaks drop of emails.

In July 2016, days before the Democratic convention, I was in Mr. Trump's office when his secretary announced that Roger Stone was on the phone. Mr. Trump put Mr. Stone on the speakerphone. Mr. Stone told Mr. Trump that he had just gotten off the phone with Julian Assange and that Mr. Assange told Mr. Stone that, within a couple of days, there would be a massive dump of emails that would damage Hillary Clinton's campaign. Mr. Trump responded by stating to the effect of "wouldn't that be great."

Mr. Trump is a racist. The country has seen Mr. Trump court white supremacists and bigots. You have heard him call poorer countries "shitholes."

In private, he is even worse.

He once asked me if I could name a country run by a black person that wasn't a "shithole." This was when Barack Obama was President of the United States.

While we were once driving through a struggling neighborhood in Chicago, he commented that only black people could live that way.

And, he told me that black people would never vote for him because they were too stupid.

And yet I continued to work for him.

Mr. Trump is a cheat.

As previously stated, I'm giving the Committee today three years of President Trump's financial statements, from 2011-2013, which he gave to Deutsche Bank to inquire about a loan to buy the Buffalo Bills and to Forbes. These are Exhibits 1a, 1b, and 1c to my testimony.

It was my experience that Mr. Trump inflated his total assets when it served his purposes, such as trying to be listed among the wealthiest people in Forbes, and deflated his assets to reduce his real estate taxes.

I am sharing with you two newspaper articles, side by side, that are examples of Mr. Trump inflating and deflating his assets, as I said, to suit his financial interests. These are Exhibit 2 to my testimony.

As I noted, I'm giving the Committee today an article he wrote on, and sent me, that reported on an auction of a portrait of Mr. Trump. This is Exhibit 3A to my testimony.

Mr. Trump directed me to find a straw bidder to purchase a portrait of him that was being auctioned at an Art Hamptons Event. The objective was to ensure that his portrait, which was going to be auctioned last, would go for the highest price of any portrait that afternoon. The portrait was purchased by the fake bidder for \$60,000. Mr. Trump directed the Trump Foundation, which is supposed to be a charitable organization, to repay the fake bidder, despite keeping the art for himself. Please see Exhibit 3B to my testimony.

And it should come as no surprise that one of my more common responsibilities was that Mr. Trump directed me to call business owners, many of whom were small businesses, that were owed money for their services and told them no payment or a reduced payment would be coming. When I advised Mr. Trump of my success, he actually reveled in it.

And yet, I continued to work for him.

Mr. Trump is a conman.

He asked me to pay off an adult film star with whom he had an affair, and to lie to his wife about it, which I did. Lying to the First Lady is one of my biggest regrets. She is a kind, good person. I respect her greatly – and she did not deserve that.

I am giving the Committee today a copy of the \$130,000 wire transfer from me to Ms. Clifford's attorney during the closing days of the presidential campaign that was demanded by Ms. Clifford to maintain her silence about her affair with Mr. Trump. This is Exhibit 4 to my testimony.

Mr. Trump directed me to use my own personal funds from a Home Equity Line of Credit to avoid any money being traced back to him that could negatively impact his campaign. I did that, too – without bothering to consider whether that was improper, much less whether it was the right thing to do or how it would impact me, my family, or the public.

I am going to jail in part because of my decision to help Mr. Trump hide that payment from the American people before they voted a few days later.

As Exhibit 5A to my testimony shows, I am providing a copy of a \$35,000 check that President Trump *personally* signed from his *personal* bank

account on August 1, 2017 – when he was President of the United States – pursuant to the cover-up, which was the basis of my guilty plea, to reimburse me – the word used by Mr. Trump’s TV lawyer -- for the illegal hush money I paid on his behalf. This \$35,000 check was one of 11 check installments that was paid throughout the year – while he was President. Other checks to reimburse me for the hush money payments were signed by Don Jr. and Allen Weisselberg. See, for example, Exhibit 5B.

The President of the United States thus wrote a personal check for the payment of hush money as part of a criminal scheme to violate campaign finance laws. You can find the details of that scheme, directed by Mr. Trump, in the pleadings in the U.S. District Court for the Southern District of New York.

So picture this scene – in February 2017, one month into his presidency, I’m visiting President Trump in the Oval Office for the first time. It’s truly awe-inspiring, he’s showing me around and pointing to different paintings, and he says to me something to the effect of...Don’t worry, Michael, your January and February reimbursement checks are coming. They were Fed-Exed from New York and it takes a while for that to get through the White

House system. As he promised, I received the first check for the reimbursement of \$70,000 not long thereafter.

When I say conman, I'm talking about a man who declares himself brilliant but directed me to threaten his high school, his colleges, and the College Board to never release his grades or SAT scores.

As I mentioned, I'm giving the Committee today copies of a letter I sent at Mr. Trump's direction threatening these schools with civil and criminal actions if Mr. Trump's grades or SAT scores were ever disclosed without his permission. These are Exhibit 6.

The irony wasn't lost on me at the time that Mr. Trump in 2011 had strongly criticized President Obama for not releasing his grades. As you can see in Exhibit 7, Mr. Trump declared "Let him show his records" after calling President Obama "a terrible student."

The sad fact is that I never heard Mr. Trump say anything in private that led me to believe he loved our nation or wanted to make it better. In fact, he did the opposite.

When telling me in 2008 that he was cutting employees' salaries in half – including mine – he showed me what he claimed was a \$10 million IRS tax

refund, and he said that he could not believe how stupid the government was for giving “someone like him” that much money back.

During the campaign, Mr. Trump said he did not consider Vietnam Veteran, and Prisoner of War, Senator John McCain to be “a hero” because he likes people who weren’t captured. At the same time, Mr. Trump tasked me to handle the negative press surrounding his medical deferment from the Vietnam draft.

Mr. Trump claimed it was because of a bone spur, but when I asked for medical records, he gave me none and said there was no surgery. He told me not to answer the specific questions by reporters but rather offer simply the fact that he received a medical deferment.

He finished the conversation with the following comment. “You think I’m stupid, I wasn’t going to Vietnam.”

I find it ironic, President Trump, that you are in Vietnam right now.

And yet, I continued to work for him.

Questions have been raised about whether I know of direct evidence that Mr. Trump or his campaign colluded with Russia. I do not. I want to be clear. But, I have my suspicions.

Sometime in the summer of 2017, I read all over the media that there had been a meeting in Trump Tower in June 2016 involving Don Jr. and others from the campaign with Russians, including a representative of the Russian government, and an email setting up the meeting with the subject line, “Dirt on Hillary Clinton.” Something clicked in my mind. I remember being in the room with Mr. Trump, probably in early June 2016, when something peculiar happened. Don Jr. came into the room and walked behind his father’s desk – which in itself was unusual. People didn’t just walk behind Mr. Trump’s desk to talk to him. I recalled Don Jr. leaning over to his father and speaking in a low voice, which I could clearly hear, and saying: “The meeting is all set.” I remember Mr. Trump saying, “Ok good...let me know.”

What struck me as I looked back and thought about that exchange between Don Jr. and his father was, first, that Mr. Trump had frequently told me and others that his son Don Jr. had the worst judgment of anyone in the world. And also, that Don Jr. would never set up any meeting of any significance alone – and certainly not without checking with his father.

I also knew that nothing went on in Trump world, especially the campaign, without Mr. Trump's knowledge and approval. So, I concluded that Don Jr. was referring to *that* June 2016 Trump Tower meeting about dirt on Hillary with the Russian representative when he walked behind his dad's desk that day -- *and* that Mr. Trump knew that was the meeting Don Jr. was talking about when he said, "That's good...let me know."

Over the past year or so, I have done some real soul searching. I see now that my ambition and the intoxication of Trump power had much to do with the bad decisions I made.

To you, Chairman Cummings, Ranking Member Jordan, the other members of this Committee, and the other members of the House and Senate, I am sorry for my lies and for lying to Congress.

To our nation, I am sorry for actively working to hide from you the truth about Mr. Trump when you needed it most.

For those who question my motives for being here today, I understand. I have lied, but I am not a liar. I have done bad things, but I am not a bad man. I have fixed things, but I am no longer your "fixer," Mr. Trump.

I am going to prison and have shattered the safety and security that I tried so hard to provide for my family. My testimony certainly does not diminish the pain I caused my family and friends – nothing can do that. And I have never asked for, nor would I accept, a pardon from President Trump.

And, by coming today, I have caused my family to be the target of personal, scurrilous attacks by the President and his lawyer – trying to intimidate me from appearing before this panel. Mr. Trump called me a “rat” for choosing to tell the truth – much like a mobster would do when one of his men decides to cooperate with the government.

As Exhibit 8 shows, I have provided the Committee with copies of Tweets that Mr. Trump posted, attacking me and my family – only someone burying his head in the sand would not recognize them for what they are: encouragement to someone to do harm to me and my family.

I never imagined that he would engage in vicious, false attacks on my family – and unleash his TV-lawyer to do the same. I hope this committee and all members of Congress on both sides of the aisle will make it clear: As a nation, we should not tolerate attempts to intimidate witnesses before congress and attacks on family are out of bounds and not acceptable.

I wish to especially thank Speaker Pelosi for her statements in Exhibit 9 to protect this institution and me, and the Chairman of the House Permanent Select Committee on Intelligence Adam Schiff and Chairman Cummings for likewise defending this institution and my family against the attacks by Mr. Trump, and also the many Republicans who have admonished the President as well.

I am not a perfect man. I have done things I am not proud of, and I will live with the consequences of my actions for the rest of my life.

But today, I get to decide the example I set for my children and how I attempt to change how history will remember me. I may not be able to change the past, but I can do right by the American people here today.

Thank you for your attention. I am happy to answer the Committee's questions.

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Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

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<http://oversight.house.gov>

March 8, 2019

Mr. Michael D. Monico
Monico & Spevack
20 S. Clark Street
Suite 700
Chicago, IL 60603

Dear Mr. Monico:

We write concerning contradictions between the testimony of your client, Michael D. Cohen, before the House Oversight and Reform Committee and media statements made by Chairman Adam Schiff of the House Permanent Select Committee on Intelligence (HPSCI). When Cohen's media advisor and attorney, Lanny J. Davis, initially met with our staff on behalf of Cohen on January 18, 2019, he indicated Cohen would only be testifying before our Committee.¹ This representation, of course, did not prove to be accurate. In addition to our Committee, Cohen testified before the Senate Select Committee on Intelligence and HPSCI.

Michael Cohen and Chairman Schiff seem to have provided conflicting versions of discussions they had in advance of Cohen's congressional testimony. During his testimony before our Committee, Cohen discussed how he prepared for his testimony, including talking with Members of Congress. Cohen testified he spoke to Chairman Schiff about "topics" for Cohen's upcoming testimony before HPSCI:

Mr. Jordan. Let me ask you one question... What did you talk to Mr. Schiff about?

Mr. Cohen. I spoke to Mr. Schiff about topics that were going to be raised at the upcoming hearing.²

However, in a subsequent interview on CBS News' *Face The Nation*, Chairman Schiff downplayed and contradicted Michael Cohen's testimony about the nature of their discussions, saying the conversations were limited to Cohen's security at the HPSCI hearing. Chairman Schiff explained:

¹ See Letter from Jim Jordan and Mark Meadows, H. Comm. on Oversight & Reform, to Guy Petrillo (Jan. 22, 2019).

² *Hearing with Michael Cohen, Former Attorney for President Donald Trump: Hearing Before the H. Comm. on Oversight & Reform*, 116th Cong. 121 (2019) (statement of Michael D. Cohen).

Margaret Brennan: Was that the extent of your contact [with Michael Cohen]?

Rep. Schiff: The extent of my contact was just inviting him to testify and also trying to allay his concerns about the President's threats against him and his family...³

These conflicting statements cannot both be true – either they discussed hearing “topics” or they did not. If Chairman Schiff’s communications with Cohen were, in fact, as limited as Chairman Schiff stated on *Face the Nation*, then we are faced with the potential that Cohen made another false statement during his testimony before the Committee.⁴

To assist us in evaluating the accuracy and truthfulness of Cohen’s testimony about his discussions with Chairman Schiff in advance of his testimony, please provide:

1. A complete description and account of all communications between Cohen and Chairman Schiff, including dates, times, and “topics” discussed; and
2. A complete description and account of all communications you, or other associates representing Cohen, including Lanny J. Davis, Guy Petrillo, or others, have had with Chairman Schiff or HPSCI regarding Michael Cohen’s testimony prior to his appearances before HPSCI on February 28, 2019, and March 6, 2019.

Please provide this information as soon as possible, but no later than 5:00 p.m. on March 22, 2019. If you have any questions, please contact Committee staff at (202) 225-5074. Thank you for your attention to this matter.

Sincerely,



Jim Jordan
Ranking Member



Mark Meadows
Ranking Member
Subcommittee on Government Operations

cc: The Honorable Elijah E. Cummings, Chairman, Comm. on Oversight and Reform

³ *Face the Nation* (CBS News television broadcast March 3, 2019) <https://www.cbsnews.com/news/transcript-rep-adam-schiff-on-face-the-nation-march-3-2019/>.

⁴ See Letter from Jim Jordan and Mark Meadows to William Barr, Attorney Gen., Dep’t of Justice (Feb. 28, 2019).

Congress of the United States

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COMMITTEE ON OVERSIGHT AND REFORM

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March 13, 2019

The Honorable Elijah E. Cummings
Chairman
Committee on Oversight and Reform
2157 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

This letter follows up on your commitment to ensure Michael Cohen testified truthfully at the Committee's hearing titled, "Hearing with Michael Cohen, Former Attorney for President Donald Trump," on February 27, 2019.¹ As Chairman, it is your obligation to ensure that witnesses are not permitted to lie with impunity when testifying before the Committee.

During the hearing, following Cohen's oath to testify truthfully, you explained to the Committee that you privately admonished Cohen about truthfulness. You warned him "if he [Cohen] came in here and lied I would nail him to the cross."² You then confirmed this statement with Cohen himself, asking "Didn't I tell you that?"³ Cohen replied, "Yes, you did more than once."⁴ Mr. Chairman, there is now clear and indisputable evidence that Cohen did not testify truthfully before the Committee. We expect you will now follow through with your commitment to hold Cohen accountable.

Following the hearing, we wrote to Attorney General William Barr referring Cohen for a perjury investigation regarding six areas of problematic testimony, including Cohen's testimony that he did not want a role in the Trump Administration.⁵ In light of mounting evidence, it appears Cohen likely lied under oath during his appearance before the Committee. Even the Committee's Vice Chair, Rep. Katie Hill, said on Sunday that she expects that you will refer Cohen to the Justice Department for perjury.⁶ We write to ask that you join our referral and

¹ *Hearing with Michael Cohen, Former Attorney for President Donald Trump: Hearing Before the H. Comm. on Oversight & Reform*, 116th Cong. (2019).

² *Hearing with Michael Cohen, Former Attorney for President Donald Trump: Hearing Before the H. Comm. on Oversight & Reform*, 116th Cong. 171 (2019) [hereinafter "Cohen Hearing Transcript"].

³ *Id.*

⁴ *Id.*

⁵ Letter from Jim Jordan & Mark Meadows, H. Comm. on Oversight & Reform, to William P. Barr, Attorney Gen., Dep't of Justice (Feb. 28, 2019).

⁶ Brett Samuels, *Oversight Dem: "I imagine" chairman will ask for investigation into Cohen for alleged perjury*, The Hill (Mar. 10, 2019).

request all relevant documents and communications from Cohen and the Department of Justice (DOJ).

Cohen lied about his desire to work in the Trump Administration

Prior to the hearing, we asked that you request information from the DOJ necessary to question Cohen. You declined to do so, leaving Members to rely on publicly available information. We reviewed court filings by the United States Attorney's Office for the Southern District of New York (SDNY), which discussed Cohen's desire and expectation of receiving a role in the Trump Administration. The SDNY prosecutors explained:

During and after the campaign, Cohen privately told friends and colleagues, including in *seized text messages*, that he expected to be given a prominent role and title in the new administration. When that did not materialize, Cohen found a way to monetize his relationship with and access to the President.⁷

During the hearing, Republican Members pressed Cohen on the SDNY prosecutors' statements. On the record, following his oath, Cohen repeatedly testified that he did not seek employment in the White House following President Trump's election. Cohen also testified that the statement submitted by the SDNY prosecutors to the court was "not accurate."⁸ Several Members followed up with Cohen on this account:

MR. CLOUD: In today's testimony, you [Cohen] said that you were not looking to work in the White House. The Southern District of New York, in their statement, their sentencing memo, says this: ". . . Cohen privately told friends, colleagues, and including seized text messages, that he expected to be given a prominent role in the new administration." . . . So were they lying, or were you lying today?

MR. COHEN: I'm not saying it's a lie. I'm just saying it's not accurate. I did not want to go to the White House.⁹

Following the exchange between Mr. Cloud and Cohen, Mr. Jordan provided Cohen an opportunity to clarify his remarks. He did not.

⁷ The Government's Sentencing Memorandum at 25, *United States v. Cohen*, 18-cr-602 (S.D.N.Y. Dec. 7, 2018) (emphasis added).

⁸ Cohen Hearing Transcript, *supra* note 2, at 96.

⁹ *Id.*

MR. JORDAN: Earlier you said that the United States Southern District of New York Attorney's Office, that statement is not accurate. You said it's not a lie. You said it's not accurate. Do you stand by that?

MR. COHEN: Yes, I did not want a role in the new [Trump] Administration.

MR. JORDAN: So the court's wrong?

MR. COHEN: Sir, can I finish, please?

MR. JORDAN: Sure.

MR. COHEN: I got exactly the role that I wanted. There is no shame in being personal attorney to the President. I got exactly what I wanted. I asked Mr. Trump for that job, and he gave it to me.

MR. JORDAN: All I'm asking, if I could -- and I appreciate it, Mr. Chairman -- you're saying that statement from the Southern District of New York attorneys is wrong.

MR. COHEN: I'm saying I didn't write it, and it's not accurate.

MR. JORDAN: All right. Thank you.¹⁰

MR. ROY: You said clearly to Mr. Cloud and Mr. Jordan that the Southern District of New York lawyers were being untruthful in characterizing your desire to work in the administration. Do you say again that the lawyers of the Southern District of New York are being untruthful in making that characterization, yes or no?

¹⁰ Cohen Hearing Transcript, *supra* note 2, at 127.

MR. COHEN: I'm saying that's not accurate.¹¹

MR. ROY: Okay. So you're saying they're being untruthful.

MR. COHEN: I'm not using the word untruthful, that's yours. I'm saying that that's not accurate. I did not want a role or a title in the administration.¹²

As indicated by the SDNY prosecutors, text messages exist that prove Cohen sought out a job with the White House, directly contradicting Cohen's statements under oath before our Committee. To maintain the integrity of our investigations and hearings, we must obtain these messages and any other potential evidence to get the truth.

The SDNY prosecutors are not the only individuals who believe that Cohen sought out a job at the White House. Several people have spoken out publicly to refute Cohen's statements before this Committee.¹³ For example, Bo Dietl, a former New York City Police detective, tweeted during the Committee's hearing:

Getting sick watching these hearings. I know Michael Cohen personally for many years and he told me several times that he was very angry and upset that he didn't get a post in the WH and that he 'would do what he has to do now to protect his family.'¹⁴

Dr. Darrell Scott, Pastor at the New Spirit Revival Center and a Trump campaign faith-based outreach coordinator, also tweeted during the hearing: "Michael Cohen asked . . . no, BEGGED me REPEATEDLY, to ask the POTUS to give him a job in the Administration! He's STILL lying under oath!"¹⁵ Bruce LeVell, another person involved in the Trump campaign, replied to Dr. Scott's tweet, "I co-sign that Pastor. I remember that conversation[.]"¹⁶

David Bossie, Trump's deputy campaign manager in 2016, tweeted, "Michael Cohen asked me to support his effort to be Chief of Staff when I helped run the Presidential Transition Team. He perjured himself today."¹⁷

¹¹ *Id.* at 162.

¹² *Id.* at 162-63.

¹³ Chris Cillizza, *Why One Simple Lie by Michael Cohen Could Invalidate His Entire Testimony*, CNN (Feb. 28, 2019), <https://amp.cnn.com/cnn/2019/02/28/politics/michael-cohen-donald-trump-white-house/index.html>.

¹⁴ Bo Dietl (@BoDietl), TWITTER (Feb. 27, 2019, 11:13 AM), <https://twitter.com/BoDietl/status/1100790950203478018>.

¹⁵ Dr. Darrell Scott (@PastorDScott), TWITTER (Feb. 27, 2019, 3:44 PM), <https://twitter.com/PastorDScott/status/1100859134948315138>.

¹⁶ Bruce LeVell (@Bruce_LeVell), TWITTER (Feb. 27, 2019, 3:47 PM), https://twitter.com/Bruce_LeVell/status/1100860065786007565.

¹⁷ David Bossie (@David_Bossie), TWITTER (Feb. 27, 2019, 5:12 PM), https://twitter.com/David_Bossie/status/1100926661397278723.

During the hearing, CNN journalist Dana Bash rebutted Cohen's testimony on live television. She stated, "the one potential problem that I thought Michael Cohen has is when he was asked if he wanted a job in the White House, and he said no. Our reporting [shows] . . . he very much wanted a job in the White House."¹⁸ Another CNN journalist, Nathan McDermott, tweeted, "Good point by @DanaBashCNN that when Cohen was asked in the hearings whether he wanted a job in the White House and he said 'no' he contradicted mountains of reporting that show he did, in fact, want one."¹⁹

Cohen lied about not seeking a pardon

Cohen made an additional false statement to this Committee when he testified under oath: "I have never asked for, nor would I accept, a pardon from President Trump."²⁰ Last week, however, Lanny Davis, Cohen's media advisor and lawyer, contradicted Cohen's testimony. Davis stated that Cohen had "directed his attorney to explore possibilities of a pardon at one point with Trump lawyer Rudy Giuliani as well as other lawyers advising President Trump."²¹

On March 12, nearly two weeks after Cohen's testimony, his lawyer, Michael Monico, sent you a letter conceding that Cohen's statement about a pardon was not accurate and "could have been clearer" but stating that Cohen stood by his testimony.²² Monico asserted that Cohen wrote his statement about the pardon "in the context of [his] decision in June 2018 to leave the Trump Joint Defense Agreement"²³

This *ex post* assertion by Cohen's lawyers does not undo Cohen's intentionally false and misleading statement and is manifestly unpersuasive. Regardless of the context in which Cohen wrote this statement, Cohen *uttered* the statement under oath in the context of apologizing for all his criminal activities. Cohen's denial of ever seeking a pardon, which he made during his carefully crafted opening statement, contained no qualifiers about the context of his statement. It did not restrict his denial to the period after Cohen left the joint defense agreement. In fact, there is no mention whatsoever in Cohen's prepared testimony about the joint defense agreement. Simply put, Cohen's denial of ever seeking a pardon, as uttered under oath in his testimony, was absolute and unequivocal.

Although Cohen's attorneys now claim that Cohen did not mislead the Committee, it is clear—and Cohen's lawyers concede—that Cohen asked his legal representatives to seek a

¹⁸ CNN Newsroom (@CNNnewsroom), TWITTER (Feb. 27, 2019, 9:25 AM), <https://twitter.com/CNNnewsroom/status/1100809107026538496>.

¹⁹ Nathan McDermott (@natemcdermott), TWITTER (Feb. 27, 2019, 12:19 PM), <https://twitter.com/natemcdermott/status/1100807647710900224>.

²⁰ Cohen Hearing Transcript, *supra* note 2, at 28.

²¹ Rebecca Ballhaus et al., *Lawyer for Cohen Approached Attorneys About Pardon*, Wall St. J., (Mar. 6, 2019), <https://www.wsj.com/articles/attorney-says-cohen-directed-his-lawyer-to-seek-trump-pardon-contradicting-testimony-11551931412>.

²² Letter from Michael Monico to Elijah E. Cummings, Chairman, H. Comm. on Oversight & Reform (Mar. 12, 2019).

²³ *Id.*

The Honorable Elijah E. Cummings

March 13, 2019

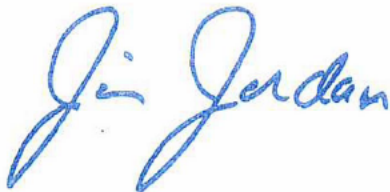
Page 6

pardon on his behalf. Therefore, in light of this undisputed evidence, Cohen's testimony under oath that he "*never* asked for . . . a pardon" cannot be true. Cohen's intentionally false statement under oath is material to the Committee's assessment of his credibility.

* * *

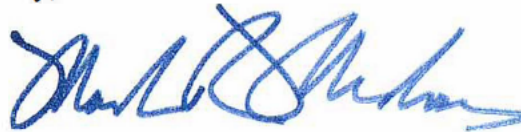
This Committee cannot stand idly by when a witness comes to a hearing, swears an oath to testify truthfully, and provides material testimony that appears on its face to be demonstrably false. Accordingly, we urge you to request from both Michael Cohen and the Department of Justice all documents and communications relating to Cohen's desire or attempts to obtain a position in the Trump Administration, as well as Cohen's efforts to seek a pardon for his crimes. We also encourage you to uphold the prerogatives of the Committee by joining our referral to the Department of Justice.

Thank you for your consideration of this request. We look forward to hearing back from you soon on this important matter.



Jim Jordan
Ranking Member

Sincerely,



Mark Meadows
Ranking Member
Subcommittee on Government Operations

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5051

MINORITY (202) 225-5074

<http://oversight.house.gov>

June 7, 2019

The Honorable Elijah E. Cummings
Chairman
Committee on Oversight and Reform
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

We received your letter, dated May 22, 2019, in which you excused and legitimized Michael Cohen's perjury-laden testimony to our Committee.¹ Cohen was the first announced witness of your chairmanship, who you invited to testify during a made-for-cable-news hearing to attack President Trump for political gain. While your defense of Cohen's testimony is perhaps unsurprising, it ignores information that does not support your analysis and fails to address the totality of lies that Cohen uttered under oath.

You waited to review Cohen's testimony before the House Permanent Select Committee on Intelligence (HPSCI) to determine whether he lied before *our* Committee. Now that HPSCI has released the testimony—following our request—we believe it does not change our earlier conclusions.² Indeed, the HPSCI testimony only reveals new information that is unhelpful and unflattering to you: that Cohen has no independent evidence to support his accusations, and that you engaged in *ex parte* preparation sessions with Cohen to help him to appear more credible before our Committee.

Today marks 100 days since Cohen's testimony. We are deeply disappointed that you have declined to hold Cohen accountable, despite your forceful promises to do so and contrary to Vice Chair Katie Hill's expectation that you would.³ We can only assume that you worry that acknowledging Cohen's lies would undermine the investigations on which they are based and ultimately undercut your partisan attacks upon the President. We hope that you will reconsider your decision, put the institutional interests of the Committee ahead of your political goals, and do what you promised to do.

¹ Letter from Elijah E. Cummings, Chairman, H. Comm. on Oversight & Reform, to Jim Jordan, Ranking Member, H. Comm. on Oversight & Reform (May 22, 2019).

² Letter from Jim Jordan & Mark Meadows, H. Comm. on Oversight & Reform, to Adam B. Schiff & Devin G. Nunes, H. Perm. Select Comm. on Intel. (April 2, 2019).

³ Brett Samuels, *Oversight Dem: "I imagine" chairman will ask for investigation into Cohen for alleged perjury*, THE HILL (Mar. 10, 2019).

Cohen's HPSCI testimony shows that he lied about never seeking a pardon

Your exoneration of Cohen narrowly focuses on only one of Cohen's lies: "I have never asked for, nor would I accept, a pardon from President Trump."⁴ However, a straightforward reading of the sources cited in your May 22 letter—Cohen's attorneys' statements; Cohen's February 28 and March 6 HPSCI testimony; and Special Counsel Robert Mueller III's report—actually contradict your conclusion. These sources provide ample support that Cohen directed his attorneys to seek a pardon from the President, contrary to his sworn statement.

In all three sources Cohen admitted that he spoke, or directed his attorneys to speak, with the President's representatives about a pardon. The Special Counsel's report notes that "Cohen . . . recalled speaking with the President's personal counsel about pardons after the searches of his home and office had occurred . . ."⁵ In his testimony before HPSCI on March 6, Cohen admitted that he directed his then-attorney to discuss a pardon with President Trump's representatives and that he would have accepted it if offered. He testified:

Mr. Cohen: I asked Mr. [Stephen] Ryan [Cohen's former lawyer] to meet with Rudy Giuliani, and I don't recall if Jay [Sekulow] was a party to that, but it was to *explore the possibility of a pardon*, because that possibility was constantly being dangled in my face. *And, yes, I was 100 percent open to accepting it.* Anything to end this.⁶

When asked specifically to reconcile his denial to our Committee about ever seeking a pardon with his testimony to HPSCI, his response was nonsense. He claimed that his written statement to our Committee, which he later uttered aloud publicly under oath—"I have never asked for . . . a pardon from President Trump"—was actually meant to be a statement in the present tense. He said:

Mr. Ratcliffe: Okay. Did you ever make public statements that you would never accept a pardon from President Trump?

Mr. Cohen: I did. Yes, I made that statement.

Mr. Ratcliffe: How do you reconcile that statement with the one you just made?

⁴ *Hearing with Michael Cohen, Former Attorney for President Donald Trump: Hearing Before the H. Comm. on Oversight & Reform*, 116th Cong. 28 (Feb. 27, 2019); *Hearing with Michael Cohen, Former attorney for President Donald Trump: Hearing before the H. Comm. on Oversight & Reform*, 116th Cong. 19 (2019) (written testimony of Michael D. Cohen).

⁵ SPECIAL COUNSEL ROBERT S. MUELLER, III, *Report On The Investigation Into Russian Interference In The 2016 Presidential Election*, 147, Vol. 2 (2019); see Letter from Elijah E. Cummings, Chairman, H. Comm. on Oversight & Reform, to Jim Jordan, Ranking Member, H. Comm. on Oversight & Reform (May 22, 2019).

⁶ *Deposition of Michael Cohen, Executive Session before the Perm. Select Comm. on Intel.*, 116th Cong. 115-116 (March 6, 2019) (emphasis added).

Mr. Cohen: Because I was talking about in the present tense, I wasn't talking about in the past tense when I was writing my statement.⁷

Following Cohen's March 6 HPSCI testimony, Cohen's lawyers began to spin his closed-door testimony about the pardon. On March 7, Cohen lawyer and media advisor Lanny Davis admitted that Cohen "directed his attorney to explore possibilities of a pardon at one point with Trump lawyer Rudy Giuliani as well as other lawyers advising President Trump."⁸ On March 12, a second Cohen attorney, Michael Monico, acknowledged that Cohen "asked his then attorney to discuss with another Trump attorney possible pardon options"⁹ Cohen's attorneys still maintained, however, that Cohen did not lie.

Cohen's spin is unconvincing and we are troubled that you have parroted it so readily. Cohen's denial of ever seeking a pardon was unequivocal and unambiguous. It contained no temporal constraints and no qualifications. Cohen's explanation that he was speaking in the present tense is unpersuasive because he specifically included the word "never," which by definition means at no time and under no conditions.¹⁰ Cohen included "never" in his written statement, which he testified that he spent considerable time crafting, meaning that his blanket denial was deliberate and willful.¹¹ Cohen's denial is material in that it goes directly to Cohen's credibility as a witness.

No reasonable person could hear an unequivocal denial containing the word "never" and believe the speaker was referring only to his current actions and state of mind. We are troubled that you could accept this absurd explanation.

Your exoneration of Cohen failed to address his other lies to the Committee

During the Committee's hearing, you warned that "if [Cohen] comes here today and he does not tell him the truth – tell us the truth, I will be the first one to refer that – those untruthful statements to DOJ."¹² We have identified at least seven problematic areas of Cohen's testimony

⁷ *Id.* at 116.

⁸ Andrew Desiderio, *Michael Cohen previously asked Trump attorneys about pardon, his lawyer says*, POLITICO (March 7, 2019).

⁹ Letter from Michael Monico, attorney to Michael Cohen, to Elijah Cummings, Chairman, H. Comm. on Oversight & Reform (March 12, 2019).

¹⁰ *See, e.g., Never*, Merriam-Webster Dictionary (11th ed. 2016).

¹¹ *Hearing with Michael Cohen, Former Attorney for President Donald Trump: Hearing Before the H. Comm. on Oversight & Reform*, 116th Cong. 12 (Feb. 27, 2019) (statement of Michael Cohen) ("We were making edits all the way through the night."); Email from Lanny Davis, attorney to Michael Cohen, to H. Comm. on Oversight & Reform staff (Feb. 26, 2019 at 10:08 p.m.).

¹² *Hearing with Michael Cohen, Former Attorney for President Donald Trump: Hearing Before the H. Comm. on Oversight & Reform*, 116th Cong. 12 (Feb. 27, 2019).

that require investigation for potential perjury.¹³ However, your letter of May 22 failed to address Cohen's other false statements, including but not limited to the following:

- Cohen's repeated denials of wanting a job in the White House, which is contrary to court documents submitted by the United States Attorney's Office for the Southern District of New York;¹⁴
- Cohen's assertion that he "never defrauded any bank," despite pleading guilty to bank fraud;¹⁵ and
- Cohen's denial of originating the twitter account, @WomenForCohen, which contrary to the assertion of the owner of an IT firm who recounted that Cohen directed him to create the account.¹⁶

Your refusal to address the entirety of Cohen's false statements—and instead to focus only on the one statement that Cohen's attorneys chose to address—speaks volumes. Clearly, you cannot defend all of Cohen's reckless statements. Cohen has gone so far as to dispute assertions made by a federal judge in open court and to deny that he committed a crime to which he pled guilty.¹⁷ These false statements remain unaddressed and, left uncontested, they will continue to tarnish the Committee's integrity and credibility.

Cohen's HPSCI testimony shows that he cannot support his accusations with evidence

The transcripts of Cohen's HPSCI testimony reveal he is incapable of supporting the accusations that he has levied against the President and the President's advisors. In particular, Cohen could not provide any documentary evidence related to his accusations that Jay Sekulow helped Cohen craft his false statements to HPSCI in 2017.¹⁸ Cohen also admitted in his

¹³ See Letter from Jim Jordan & Mark Meadows, H. Comm. on Oversight & Reform, to William P. Barr, Att'y Gen., Dep't of Justice (Feb. 28, 2019).

¹⁴ Compare Hearing with Michael Cohen, Former Attorney for President Donald Trump: Hearing Before the H. Comm. on Oversight & Reform, 116th Cong. 96 (Feb. 27, 2019) with The Government's Sentencing Memorandum at 25, United States v. Cohen, 18-cr-602 (S.D.N.Y. Dec. 7, 2018).

¹⁵ Compare Hearing with Michael Cohen, Former Attorney for President Donald Trump: Hearing Before the H. Comm. on Oversight & Reform, 116th Cong. 49 (Feb. 27, 2019) with Plea Agreement at 3 n.2, United States v. Michael Cohen, 18-cr-602 (S.D.N.Y. Aug. 21, 2018).

¹⁶ Compare Hearing with Michael Cohen, Former Attorney for President Donald Trump: Hearing Before the H. Comm. on Oversight & Reform, 116th Cong. 35 (Feb. 27, 2019) with Michael Rothfeld, *Cohen Hired IT Firm to Rig Early CNBC, Drudge Polls to Favor Trump*, WALL STREET J. (Jan. 17, 2019).

¹⁷ Compare Statement of Michael Cohen, United States v. Cohen, Nos. 18-cr-602, 18-cr-850, at 27 (S.D.N.Y. Dec. 12, 2018) (sentencing hearing) ("...blind loyalty to this man that led me to choose a path of darkness over light.") with, Statement of Judge William H. Pauley III, United States v. Cohen, Nos. 18-cr-602, 18-cr-850, at 31 (S.D.N.Y. Dec. 12, 2018) (sentencing hearing) ("Each of the crimes involved deception and each appears to have been motivated by personal greed and ambition.") and The Government's Sentencing Memorandum at 25, United States v. Cohen, 18-cr-602 (S.D.N.Y. Dec. 7, 2018) ("This was not a blind act of loyalty, as Cohen has also suggested."); see Plea Agreement at 3 n.2, United States v. Michael Cohen, 18-cr-602 (S.D.N.Y. Aug. 21, 2018).

¹⁸ See Deposition of Michael Cohen, Executive Session before the Perm. Select Comm. on Intel., 116th Cong. 10 (March 6, 2019) ("Q Mr. Cohen, one thing that we did not receive from you were any written communications between you and Jay Sekulow. Were you able to find any? COHEN: I have not been able to locate, as of yet, and the search is continuing."); Deposition of Michael Cohen, Executive Session before the Perm. Select Comm. on Intel.,

testimony to HPSCI that many of the exhibits Cohen presented to our Committee, such as President Trump's financial statements, were not in fact evidence of a crime:

Mr. Ratcliffe: Well, to be fair, Mr. Cohen, this is your statement which you gave to Congress. And I'm asking you why you submitted these documents. Do you believe - all I'm asking you -- again, this is not a trick question. Do you believe that these documents evidence some crime?

Mr. Cohen: I don't believe, sir, in my statement I reference the 2011 through 2013 financial statements as evidence of any crime.

Mr. Ratcliffe: That's what I'm asking.

Mr. Cohen: Right. The statement reads for itself.

Mr. Ratcliffe: You just submitted that for informational purposes.

Mr. Cohen: That's correct.

Mr. Ratcliffe: Okay. All right. So the next item, a copy of an article with Mr. Trump's handwriting on it that reported on the auction of a portrait of himself, that he arranged a bidder ahead of time and then reimbursed the bidder from the account for his nonprofit charitable foundation, with the picture now hanging in one of his country clubs. Did you submit that because you believe it's in evidence of some crime by Mr. Trump? And if so, what crime would that be related to?

Mr. Cohen: Well, I did it, again, for informational purposes. Plus, could be issues regarding the foundation, improper usage of the foundation.

Mr. Ratcliffe: Okay. And, finally, the last item that you submitted were copies of letters that you wrote at Mr. Trump's direction that threatened his high school, colleges, and the College Board not to release his grades or SAT scores. Again, was that submitted because you believe it's

116th Cong. 10 (Feb. 28, 2019) ("MR. QUIGLEY: Who else might corroborate the allegations you've made this week? MR. COHEN: Well, the conversations, unfortunately, between Jay Sekulow and I were just the two of us.").

evidence of some crime, or was it just for informational purposes?

Mr. Cohen: Informational.

Although Cohen admitted the documents he provided to the Committee were not evidence of a crime—but instead just meant to be “informational”—you still used them as the basis for your unprecedented and unilateral subpoena to Mazars USA LLP (Mazars) for President Trump’s sensitive, personal financial documents. In a memorandum justifying your subpoena to Mazars, you boldly alleged that “the President may have engaged in illegal conduct before and during his tenure in office”¹⁹—although Cohen very clearly said that the information he provided the Committee was not evidence of a crime.

Cohen’s HPSCI testimony shows that Cohen coordinated with Oversight Committee Democrats on his testimony

Finally, we learned through the release of these HPSCI transcripts that Cohen engaged in extensive and exclusive strategy sessions with Oversight Committee Democrats before his testimony to our Committee to preemptively address Cohen’s credibility problems.²⁰ This information just reinforces our longstanding concerns that Cohen’s testimony was not legitimate oversight but merely an episode of political theater proposed and produced by a prominent Democrat operative.

It is disappointing you shut out minority participation from your pre-hearing meetings with Cohen. This exclusion is especially disappointing in light of our letter, dated January 11, 2019, in which we urged you to conduct a bipartisan transcribed interview with Cohen before the hearing.²¹ Instead of choosing to hold a bipartisan interview with Cohen, you chose to meet alone with him to discuss how Republicans could question Cohen’s credibility. These actions are not indicative of the serious, fact-based oversight that you promised.

* * *

Your entire course of conduct with respect to Michael Cohen has been deeply troubling. You allowed a prominent Democrat operative to use the Committee for an orchestrated partisan attack on the President. You declined to follow up on your promises to hold Cohen accountable for his lies to the Committee. You declined to hold a Committee vote on Cohen’s lies. You deferred action on Cohen’s lies until you reviewed his HPSCI testimony, but you never requested access to HPSCI’s transcripts. You admitted to considering writing a letter of

¹⁹ Memorandum from Elijah E. Cummings to Members of the H. Comm. on Oversight & Reform, *Notice of Intent to Issue Subpoena to Mazars USA LLP* (April 12, 2019).

²⁰ See *Deposition of Michael Cohen, Executive Session before the Perm. Select Comm. on Intel.*, 116th Cong. 78 (March 6, 2019).

²¹ Letter from Jim Jordan & Mark Meadows, H. Comm. on Oversight & Reform, to Elijah E. Cummings, Chairman, H. Comm. on Oversight & Reform (Jan. 11, 2019).

The Honorable Elijah E. Cummings

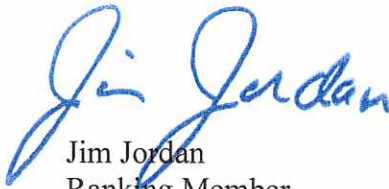
June 7, 2019

Page 7

commendation on behalf of Cohen to reduce his prison sentence.²² You admitted to speaking on the phone with Cohen before he began his prison sentence, but you have not informed the Committee about the substance of your phone call.²³

You may consider this matter “closed” because you want it to go away. But respectfully, you invited Michael Cohen before the Committee and you must live with the consequences. We warned you about the dangers of showcasing the testimony of a convicted liar. The stain of Cohen’s testimony will continue to tarnish the Committee’s reputation and that of your chairmanship until you accept the overwhelming evidence that he lied and act to hold him accountable.

Sincerely,



Jim Jordan
Ranking Member



Mark Meadows
Ranking Member
Subcommittee on Government Operations

²² Manu Raju (@mkraju), Twitter, (April 9, 2019, 11:58 AM)
<https://twitter.com/mkraju/status/1115690562303094784?s=11>.

²³ Manu Raju (@mkraju), Twitter, (May 7, 2019, 4:03 PM),
<https://twitter.com/mkraju/status/1125899040288329731>.

Congress of the United States
Washington, DC 20515

March 20, 2023

Mr. Alvin L. Bragg, Jr.
District Attorney
New York County
One Hogan Place
New York, NY 10013

Dear Mr. Bragg:

You are reportedly about to engage in an unprecedented abuse of prosecutorial authority: the indictment of a former President of the United States and current declared candidate for that office. This indictment comes after years of your office searching for a basis—any basis—on which to bring charges, ultimately settling on a novel legal theory untested anywhere in the country and one that federal authorities declined to pursue. If these reports are accurate, your actions will erode confidence in the evenhanded application of justice and unalterably interfere in the course of the 2024 presidential election. In light of the serious consequences of your actions, we expect that you will testify about what plainly appears to be a politically motivated prosecutorial decision.

The New York County District Attorney’s Office has been investigating President Trump since at least 2018, looking for some legal theory on which to bring charges.¹ The facts surrounding the impending indictment have “been known for years.”² Michael Cohen, President Trump’s disgraced former lawyer, pleaded guilty over four years ago to charges based on the same facts at issue in the impending indictment.³ By July 2019, however, federal prosecutors determined that no additional people would be charged alongside Cohen.⁴ Now, in the words of one legal scholar, you are attempting to “shoehorn[]” the same case with identical facts into a new prosecution, resurrecting a so-called “zombie” case against President Trump.⁵ Even the *Washington Post* quoted “legal experts” as calling your actions “unusual” because “prosecutors have repeatedly examined the long-established details but decided not to pursue charges.”⁶

¹ Andrew Feinberg, *New York prosecutors warn Trump of possible indictment, report says*, THE INDEPENDENT (Mar. 10, 2023).

² Mark Berman et al., *The prosecutor, the ex-president and the ‘zombie’ case that came back to life*, WASH. POST (Mar. 17, 2023).

³ Shawna Chen, *Timeline: The probe into Trump’s alleged hush money payments to Stormy Daniels*, AXIOS (Mar. 18, 2023).

⁴ *Id.*; see Barrett et al., *supra* note 2.

⁵ Jonathan Turley, *Get ready for Manhattan DA’s made-for-TV Trump prosecution: high on ratings, but short on the law*, THE HILL (Mar. 18, 2023); Berman et al., *supra* note 2.

⁶ Berman et al., *supra* note 2.

The legal theory underlying your reported prosecution appears to be tenuous and untested.⁷ Bringing charges for falsifying business records is ordinarily a misdemeanor subject to a two-year statute of limitations,⁸ which would have expired long ago. State law, however, allows a district attorney to “elevate nominal misdemeanor conduct” to a felony charge if the “intent to defraud includes an intent to commit another crime or to aid or conceal the commission thereof.”⁹ Such a showing would extend the statute of limitations to five years¹⁰—which would likely expire soon and thus explains your rush to indictment. The only potential speculated crime that could be alleged here would be a violation of campaign finance law, according to one scholar, a charge that the Justice Department has already declined to bring.¹¹

In addition to the novel and untested legal theory, your star witness for this prosecution has a serious credibility problem—a problem that you have reportedly recognized.¹² This case relies heavily on the testimony of Michael Cohen, a convicted perjurer with a demonstrable prejudice against President Trump.¹³ Cohen pleaded guilty to lying to Congress in 2018.¹⁴ In 2019, when he testified before Democrats on the House Oversight Committee to aid their fruitless investigation into President Trump, Cohen lied again—six times.¹⁵ Cohen has been vocal about his deeply personal animus toward President Trump.¹⁶ Under these circumstances, there is no scenario in which Cohen could fairly be considered an unbiased and credible witness.

The inference from the totality of these facts is that your impending indictment is motivated by political calculations. In January 2022, soon after you took office, you expressed doubts about President Trump’s case and suspended the investigation.¹⁷ This decision caused two of your top investigators, Carey Dunne and Mark Pomerantz, to resign in protest and publicly denounce your work.¹⁸ Pomerantz, in particular, heavily criticized you for declining to bring charges at that time,¹⁹ and “Dunne and others” are now “weighing ways” to bar President Trump from holding future office.²⁰ Pomerantz has published a book in the past month

⁷ Turley, *supra* note 5.

⁸ *Id.*

⁹ N.Y. Penal Law § 175.10.

¹⁰ Turley, *supra* note 5; Jeremy Saland, *First Degree Falsifying Business Records: NY Penal Law 175.10*, SALAND LAW PC (page last visited Mar. 19, 2023).

¹¹ *Id.*

¹² Berman et al., *supra* note 2.

¹³ Christopher Lopez, *Progressive DA Alvin Bragg’s case against Trump hinges on witnesses with ‘credibility problems’: Andy McCarthy*, FOX NEWS (Mar. 19, 2023); Marisa Schultz, *Jim Jordan, Mark Meadows ask Justice Department to probe Cohen for perjury*, N.Y. POST (Feb. 28, 2019).

¹⁴ *Michael Cohen pleads guilty to lying to Congress*, ASSOC. PRESS (Nov. 29, 2018).

¹⁵ Letter from Jim Jordan & Mark Meadows, H. Comm. on Oversight & Reform, to William P. Barr, Att’y Gen., Dep’t of Justice (Feb. 28, 2019).

¹⁶ See, e.g., Nicholas Fandos & Maggie Haberman, *In Congressional Testimony, Cohen Plans to Call Trump a ‘Con Man’ and a ‘Cheat’*, N.Y. TIMES (Feb. 26, 2019).

¹⁷ Shayna Jacobs et al., *Prosecutor who resigned over stalled Trump probe says ex-president committed felonies*, WASH. POST (Mar. 23, 2022).

¹⁸ *Id.*

¹⁹ *Read the Full Text of Mark Pomerantz’s Resignation Letter*, N.Y. TIMES (Mar. 23, 2022).

²⁰ Shayna Jacobs, *Lawyers who investigated Trump form group to oppose anti-democratic policies*, WASH. POST (Jan. 11, 2023).

Mr. Alvin L. Bragg, Jr.

March 20, 2023

Page 3

excoriating you for not aggressively prosecuting President Trump.²¹ The *Washington Post* reported that you were “deeply stung” by this criticism.²²

The facts of this matter have not changed since 2018 and no new witnesses have emerged.²³ The Justice Department examined the facts in 2019 and opted not to pursue further prosecutions at that time. Even still, according to reporting, the investigation “gained some momentum this year,” and your office “convened a new grand jury in January to evaluate the issue.”²⁴ The only intervening factor, it appears, was President Trump’s announcement that he would be a candidate for President in 2024.²⁵

Your decision to pursue such a politically motivated prosecution—while adopting progressive criminal justice policies that allow career “criminals [to] run [] the streets” of Manhattan²⁶—requires congressional scrutiny about how public safety funds appropriated by Congress are implemented by local law-enforcement agencies. In addition, your apparent decision to pursue criminal charges where federal authorities declined to do so requires oversight to inform potential legislative reforms about the delineation of prosecutorial authority between federal and local officials. Finally, because the circumstances of this matter stem, in part, from Special Counsel Mueller’s investigation,²⁷ Congress may consider legislative reforms to the authorities of special counsels and their relationships with other prosecuting entities. Accordingly, to advance our oversight, please produce the following documents and information for the period January 1, 2017, to the present:

1. All documents and communications between or among the New York County District Attorney’s Office and the U.S. Department of Justice, its component entities, or other federal law enforcement agencies referring or relating to your office’s investigation of President Donald Trump;
2. All documents and communications sent or received by former employees Carey Dunne and Mark Pomerantz referring or relating to President Donald Trump; and
3. All documents and communications referring or relating to the New York County District Attorney Office’s receipt and use of federal funds.

In addition, your testimony is necessary to advance our oversight and to inform potential legislative reforms. We therefore ask that you testify in a transcribed interview about these

²¹ MARK POMERANTZ, *PEOPLE VS. DONALD TRUMP: AN INSIDE ACCOUNT* (2023).

²² Berman et al., *supra* note 2.

²³ *Id.*

²⁴ *Id.*

²⁵ Max Greenwood, *Trump announces 2024 run for president*, THE HILL (Nov. 15, 2022).

²⁶ Alyssa Guzman, *Priorities, eh? Woke DA Alvin Bragg who’s set to indict Trump is one of America’s most controversial prosecutors after charging self-defense shopkeeper with murder and sending soft-on-crime memo*, DAILY MAIL (Mar. 18, 2023); Andrea Cavallier, *REVEALED: Woke Manhattan DA Alvin Bragg has downgraded over HALF of felony cases to misdemeanors as criminals are free to roam streets of the Big Apple*, DAILY MAIL (Nov. 27, 2022).

²⁷ Ben Protess et al., *How Michael Cohen turned against President Trump*, N.Y. Times (Apr. 21, 2019).

Mr. Alvin L. Bragg, Jr.

March 20, 2023

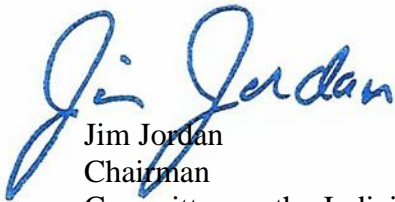
Page 4

matters as soon as possible. Please provide this information and contact Committee staff to schedule your transcribed interview as soon as possible but not later than 10:00 a.m. on March 23, 2023.

Pursuant to Rule X of the Rules of the House of Representatives, the Committee on the Judiciary has jurisdiction over criminal justice matters in the United States. The Committee on House Administration has jurisdiction over matters concerning federal elections. The Committee on Oversight and Accountability may examine “any matter” at any time.

If you have any questions about this request, please contact Committee staff at (202) 225-6906. Thank you for your prompt attention to this matter.

Sincerely,



Jim Jordan
Chairman
Committee on the Judiciary



Bryan Steil
Chairman
Committee on House Administration



James Comer
Chairman
Committee on Oversight and Accountability

cc: The Honorable Jerrold Nadler, Ranking Member
Committee on the Judiciary

The Honorable Joseph Morelle, Ranking Member
Committee on House Administration

The Honorable Jamie Raskin, Ranking Member
Committee on Oversight and Accountability

ONE HUNDRED EIGHTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

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judiciary.house.gov

March 22, 2023

Mr. Carey R. Dunne
Former Manhattan Special Assistant District Attorney
The Law Office of Carey R. Dunne, PLLC
114 E. 95th St.
New York, NY 10128

Dear Mr. Dunne:

New York County District Attorney Alvin Bragg is reportedly about to engage in an unprecedented abuse of prosecutorial authority: the indictment of a former President of the United States and current declared candidate for that office. This indictment comes after years of the District Attorney's office aggressively pursuing charges, with you and other special prosecutors leading the investigation into every facet of President Trump's finances.¹ Last year, you resigned from the office over Bragg's initial reluctance to move forward with charges in 2022, Bragg is now attempting to "shoehorn[]" the same case with identical facts into a new prosecution.² Based on your unique role in this matter, we request your cooperation with our oversight of this politically motivated prosecutorial decision.

The New York County District Attorney's Office has been investigating President Trump since at least 2018, looking for some legal theory on which to bring charges.³ The facts surrounding the impending indictment have "been known for years."⁴ Michael Cohen, President Trump's disgraced former lawyer, pleaded guilty over four years ago to charges based on the same facts at issue in the impending indictment.⁵ By July 2019, however, federal prosecutors determined that no additional people would be charged alongside Cohen.⁶

¹ Ben Protess et al., *How the Manhattan DA's investigation into President Donald Trump unraveled*, N.Y. TIMES (March 5, 2022); Shayna Jacobs et al., *Prosecutors in Trump probe quit after new DA seems to abandon plan to seek indictment of former president*, WASH. POST (Feb. 24, 2022).

² Jonathan Turley, *Get ready for Manhattan DA's made-for-TV Trump prosecution: high on ratings, but short on the law*, THE HILL (Mar. 18, 2023); Mark Berman et al., *The prosecutor, the ex-president and the 'zombie' case that came back to life*, WASH. POST (Mar. 17, 2023).

³ Andrew Feinberg, *New York prosecutors warn Trump of possible indictment, report says*, THE INDEPENDENT (Mar. 10, 2023).

⁴ Berman et al., *supra* note 2.

⁵ Shawna Chen, *Timeline: The probe into Trump's alleged hush money payments to Stormy Daniels*, AXIOS (Mar. 18, 2023).

⁶ *Id.*; see Berman et al., *supra* note 2.

In January 2022, soon after Bragg took office, he expressed doubts about President Trump's case and suspended the investigation.⁷ This decision caused you and your colleague, Mark Pomerantz, to resign in protest.⁸ Your unrelenting pursuit of President Trump has followed you into the private sector. Following your resignation from Bragg's office, you and Pomerantz started a law firm dedicated to "weighing ways" to bar President Trump from holding future office.⁹ Just this month, Pomerantz published a book excoriating Bragg for not aggressively prosecuting President Trump.¹⁰ The *Washington Post* reported that Bragg was "deeply stung" by criticism from you and Pomerantz.¹¹

It now appears that your efforts to shame Bragg have worked as he is reportedly resurrecting a so-called "zombie" case against President Trump using a tenuous and untested legal theory.¹² Even the *Washington Post* quoted "legal experts" as calling Bragg's actions "unusual" because "prosecutors have repeatedly examined the long-established details but decided not to pursue charges."¹³ In addition, Bragg's star witness—Michael Cohen—has a serious credibility problem as a convicted perjurer and serial fabricator with demonstrable prejudice against President Trump.¹⁴ Under these circumstances, there is no scenario in which Cohen could fairly be considered an unbiased and credible witness.

The inference from the totality of these facts is that Bragg's impending indictment is motivated by political calculations. The facts of this matter have not changed since 2018 and no new witnesses have emerged.¹⁵ The Justice Department examined the facts in 2019 and opted not to pursue further prosecutions at that time. Even still, according to reporting, the investigation "gained some momentum this year," and Bragg's office "convened a new grand jury in January to evaluate the issue."¹⁶ The only intervening factor, it appears, was President Trump's announcement that he would be a candidate for President in 2024.¹⁷

Your actions, both as a special prosecutor and since leaving the District Attorney's office, cast serious doubt on administration of fair and impartial justice in this matter. In light of this unprecedented and overzealous investigation, Congress has a keen interest in understanding the relevant facts to inform potential legislation to improve the functioning and fairness of our criminal justice system and to better delineate prosecutorial authority between federal and local

⁷ Shayna Jacobs et al., *Prosecutor who resigned over stalled Trump probe says ex-president committed felonies*, WASH. POST (Mar. 23, 2022).

⁸ *Id.*

⁹ Shayna Jacobs, *Lawyers who investigated Trump form group to oppose anti-democratic policies*, WASH. POST (Jan. 11, 2023).

¹⁰ MARK POMERANTZ, *PEOPLE VS. DONALD TRUMP: AN INSIDE ACCOUNT* (2023).

¹¹ Berman et al., *supra* note 2.

¹² Turley, *supra* note 5.

¹³ Berman et al., *supra* note 2.

¹⁴ Christopher Lopez, *Progressive DA Alvin Bragg's case against Trump hinges on witnesses with 'credibility problems': Andy McCarthy*, FOX NEWS (Mar. 19, 2023); Marisa Schultz, *Jim Jordan, Mark Meadows ask Justice Department to probe Cohen for perjury*, N.Y. POST (Feb. 28, 2019); *Michael Cohen pleads guilty to lying to Congress*, ASSOC. PRESS (Nov. 29, 2018).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Max Greenwood, *Trump announces 2024 run for president*, THE HILL (Nov. 15, 2022).

Mr. Carey R. Dunne

March 22, 2023

Page 3

officials. In addition, because the circumstances of this matter stem, in part, from Special Counsel Mueller's investigation,¹⁸ Congress may consider legislative reforms to the authorities of special counsels and their relationships with other prosecuting entities. Accordingly, to advance our oversight, please produce the following documents and information in your personal possession for the period January 1, 2017, to the present:

1. All documents and communications between or among the New York County District Attorney's Office and the U.S. Department of Justice, its component entities, or other federal law enforcement agencies referring or relating to New York County District Attorney's investigation of President Donald Trump;
2. All documents and communications between or among you and the New York County District Attorney's Office referring or relating to President Donald Trump; and
3. All documents and communications between or among you and representatives of the New York County District Attorney's Office referring or relating to your appointment and role as a Special Assistant District Attorney for New York County.

In addition, your testimony is necessary to advance our oversight and to inform potential legislative reforms. We therefore ask that you testify in a transcribed interview about these matters as soon as possible. Please provide this information and contact Committee staff to schedule your transcribed interview as soon as possible but not later than 10:00 a.m. on March 27, 2023.

Further, this letter serves as a formal request to preserve all existing and future records and materials relating to the topics addressed in this letter. You should construe this preservation notice as an instruction to take all reasonable steps to prevent the destruction or alteration, whether intentionally or negligently, of all documents, communications, and other information, including electronic information and metadata, that are or may be responsive to this congressional inquiry. This instruction includes all electronic messages sent using your official and personal accounts or devices, including records created using text messages, phone-based message applications, or encryption software.

The Committee on the Judiciary has jurisdiction over criminal justice matters in the United States and matters involving threats to civil liberties pursuant to Rule X of the Rules of the House of Representatives.¹⁹ If you have any questions about this request, please contact Committee staff at (202) 225-6906. Thank you for your prompt attention to this matter.

Sincerely,



Jim Jordan
Chairman

¹⁸ Ben Protess et al., *How Michael Cohen turned against President Trump*, N.Y. TIMES (Apr. 21, 2019).

¹⁹ Rules of the U.S. House of Representatives, R. X (2023).

Mr. Carey R. Dunne

March 22, 2023

Page 4

cc: The Honorable Jerrold Nadler, Ranking Member

ONE HUNDRED EIGHTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-6906
judiciary.house.gov

March 22, 2023

Mr. Mark F. Pomerantz
Former New York County Special Assistant District Attorney
Free & Fair Litigation Group
128 E. Broadway, Unit 793
New York, NY 10002

Dear Mr. Pomerantz:

New York County District Attorney Alvin Bragg is reportedly about to engage in an unprecedented abuse of prosecutorial authority: the indictment of a former President of the United States and current declared candidate for that office. This indictment comes after years of the District Attorney's office aggressively pursuing charges, including by appointing you as an unpaid "special assistant district attorney" to lead the investigation into every facet of President Trump's finances.¹ Last year, you resigned from the office over Bragg's initial reluctance to move forward with charges, shaming Bragg in your resignation letter—which was subsequently leaked—into bringing charges.² Based on your unique role in this matter, and your subsequent public statements prejudicing the impartiality of any prosecution, we request your cooperation with our oversight of this politically motivated prosecutorial decision.

The New York County District Attorney's Office has been investigating President Trump since at least 2018, looking for some legal theory on which to bring charges.³ The facts surrounding the impending indictment have "been known for years."⁴ Michael Cohen, President Trump's disgraced former lawyer, pleaded guilty over four years ago to charges based on the

¹ William K. Rashbaum et al., *A former federal prosecutor has joined the Manhattan D.A.'s team investigating the Trump family business*, N.Y. TIMES (Feb. 19, 2021); Ben Protess et al., *How the Manhattan DA's investigation into President Donald Trump unraveled*, N.Y. TIMES (March 5, 2022).

² *Read the Full Text of Mark Pomerantz's Resignation Letter*, N.Y. TIMES (Mar. 23, 2022) [hereinafter "Pomerantz Letter"].

³ Andrew Feinberg, *New York prosecutors warn Trump of possible indictment, report says*, THE INDEPENDENT (Mar. 10, 2023).

⁴ Mark Berman et al., *The prosecutor, the ex-president and the 'zombie' case that came back to life*, WASH. POST (Mar. 17, 2023).

same facts at issue in the impending indictment.⁵ By July 2019, however, federal prosecutors determined that no additional people would be charged alongside Cohen.⁶

In January 2022, soon after Bragg took office, he expressed doubts about President Trump's case and suspended the investigation.⁷ This decision caused you and your colleague, Carey Dunne, to resign in protest.⁸ You penned a scathing resignation letter in which you baselessly accused President Trump of "numerous felony violations," and asserted it would be "a grave failure of justice" if Bragg did not pursue charges.⁹ You urged Bragg to hold President Trump "fully accountable for his crimes," asserting that Bragg's decision "will doom any future prospects" for prosecution.¹⁰ Your resignation letter found its way into the *New York Times*, word-for-word, and your criticisms of Bragg's investigation were widely reported by news outlets.¹¹ Your unrelenting pursuit of President Trump followed you into the private sector as you and Dunne started a law firm dedicated to "weighing ways" to bar President Trump from holding future office.¹² Just this month, you published a book excoriating Bragg for not aggressively prosecuting President Trump, laying bare the office's internal deliberations about the investigation and your personal animus toward President Trump.¹³

It now appears that your efforts to shame Bragg have worked as he is reportedly resurrecting a so-called "zombie" case against President Trump using a tenuous and untested legal theory.¹⁴ Even the *Washington Post* quoted "legal experts" as calling Bragg's actions "unusual" because "prosecutors have repeatedly examined the long-established details but decided not to pursue charges."¹⁵ In addition, Bragg's star witness—Michael Cohen—has a serious credibility problem as a convicted perjurer and serial fabricator with demonstrable prejudice against President Trump.¹⁶ Under these circumstances, there is no scenario in which Cohen could fairly be considered an unbiased and credible witness.

The inference from the totality of these facts is that Bragg's impending indictment is motivated by political calculations. The facts of this matter have not changed since 2018 and no new witnesses have emerged.¹⁷ The Justice Department examined the facts in 2019 and opted not

⁵ Shawna Chen, *Timeline: The probe into Trump's alleged hush money payments to Stormy Daniels*, AXIOS (Mar. 18, 2023).

⁶ *Id.*; see Berman et al., *supra* note 4.

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⁸ *Id.*

⁹ Pomerantz Letter, *supra* note 2.

¹⁰ *Id.*

¹¹ *Id.*

¹² Shayna Jacobs, *Lawyers who investigated Trump form group to oppose anti-democratic policies*, WASH. POST (Jan. 11, 2023).

¹³ MARK POMERANTZ, *PEOPLE VS. DONALD TRUMP: AN INSIDE ACCOUNT* (2023).

¹⁴ Berman et al., *supra* note 4.

¹⁵ *Id.*

¹⁶ Christopher Lopez, *Progressive DA Alvin Bragg's case against Trump hinges on witnesses with 'credibility problems': Andy McCarthy*, FOX NEWS (Mar. 19, 2023); Marisa Schultz, *Jim Jordan, Mark Meadows ask Justice Department to probe Cohen for perjury*, N.Y. POST (Feb. 28, 2019); *Michael Cohen pleads guilty to lying to Congress*, ASSOC. PRESS (Nov. 29, 2018).

¹⁷ Berman et al., *supra* note 4.

to pursue further prosecutions at that time. Even still, according to reporting, the investigation “gained some momentum this year,” and Bragg’s office “convened a new grand jury in January to evaluate the issue.”¹⁸ The only intervening factor, it appears, was President Trump’s announcement that he would be a candidate for President in 2024.¹⁹

Your actions, both as a special prosecutor and since leaving the District Attorney’s office, cast serious doubt on the administration of fair and impartial justice in this matter. Your words in the *New York Times* have unfairly disparaged President Trump, an innocent and uncharged man, as a felon to millions of *Times* readers. Your book again unfairly disparaged President Trump, and now opens the door to examination about the District Attorney’s office commitment to evenhanded justice. In light of this unprecedented and overzealous partisan investigation, Congress has a keen interest in these facts to inform potential legislation to improve the functioning and fairness of our criminal justice system, and to better delineate prosecutorial authority between federal and local officials. In addition, because the circumstances of this matter stem, in part, from Special Counsel Mueller’s investigation,²⁰ Congress may consider legislative reforms to the authorities of special counsels and their relationships with other prosecuting entities.

Accordingly, to advance our oversight, please produce the following documents and information in your personal possession for the period January 1, 2017, to the present:

1. All documents and communications between or among the New York County District Attorney’s Office and the U.S. Department of Justice, its component entities, or other federal law enforcement agencies referring or relating to New York County District Attorney’s investigation of President Donald Trump;
2. All documents and communications between or among you and representatives of the New York County District Attorney’s Office referring or relating to President Donald Trump; and
3. All documents and communications between or among you and representatives of the New York County District Attorney’s Office referring or relating to your appointment and role as a Special Assistant District Attorney for New York County.

In addition, your testimony is necessary to advance our oversight and to inform potential legislative reforms. We therefore ask that you testify in a transcribed interview about these matters as soon as possible. Please provide this information and contact Committee staff to schedule your transcribed interview as soon as possible but not later than 10:00 a.m. on March 27, 2023.

Further, this letter serves as a formal request to preserve all existing and future records and materials relating to the topics addressed in this letter. You should construe this preservation

¹⁸ *Id.*

¹⁹ Max Greenwood, *Trump announces 2024 run for president*, THE HILL (Nov. 15, 2022).

²⁰ Ben Protess et al., *How Michael Cohen turned against President Trump*, N.Y. TIMES (Apr. 21, 2019).

Mr. Mark F. Pomerantz

March 22, 2023

Page 4

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The Committee on the Judiciary has jurisdiction over criminal justice matters in the United States and matters involving threats to civil liberties pursuant to Rule X of the Rules of the House of Representatives.²¹ If you have any questions about this request, please contact Committee staff at (202) 225-6906. Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in blue ink that reads "Jim Jordan". The signature is written in a cursive, flowing style.

Jim Jordan
Chairman

cc: The Honorable Jerrold Nadler, Ranking Member

²¹ Rules of the U.S. House of Representatives, R. X (2023).



**DISTRICT ATTORNEY
COUNTY OF NEW YORK
ONE HOGAN PLACE
New York, N. Y. 10013
(212) 335-9000**

ALVIN L. BRAGG, JR.
DISTRICT ATTORNEY

LESLIE B. DUBECK
GENERAL COUNSEL

March 23, 2023

By email

The Honorable Jim Jordan
Chairman, House Committee on the Judiciary

The Honorable Bryan Steil
Chairman, House Committee on House Administration

The Honorable James Comer
Chairman, House Committee on Oversight and Accountability

Dear Chairman Jordan, Chairman Steil, and Chairman Comer:

The District Attorney of New York County is investigating allegations that Donald Trump engaged in violations of New York State penal law. The investigation is one of thousands conducted by the Office of the District Attorney in its long history of pursuing justice and protecting New Yorkers. The investigation has been conducted consistently with the District Attorney's oath to faithfully execute the laws of the State of New York. The District Attorney pledged that the DA's Office would "publicly state the conclusion of our investigation—whether we conclude our work without bringing charges, or move forward with an indictment."¹ He stands by that pledge. And if charges are brought at the conclusion, it will be because the rule of law and faithful execution of the District Attorney's duty require it.

Your letter dated March 20, 2023 (the "Letter"), in contrast, is an unprecedented inquiry into a pending local prosecution. The Letter only came after Donald Trump created a false expectation that he would be arrested the next day² and his lawyers reportedly urged you to intervene.³ Neither fact is a legitimate basis for congressional inquiry.

¹ Statement by Manhattan District Attorney Alvin Bragg on Ongoing Investigation Concerning the Trump Organization (April 7, 2022), available at: <https://www.manhattanda.org/statement-by-manhattan-district-attorney-alvin-bragg-on-ongoing-investigation-concerning-the-trump-organization/>.

² *Trump says 'illegal leaks' indicate he'll be arrested Tuesday*, FoxNews, March 18, 2023, available at: <https://www.foxnews.com/politics/trump-says-illegal-leaks-indicate-arrested-tuesday>.

³ Shane Goldmacher, et al., *For the G.O.P., a Looming Trump Indictment Takes Center Stage*, N.Y. Times (March 20, 2023) (quoting a letter from Joseph Tacopina, a lawyer for Donald Trump, to Chairman Jordan, encouraging Congress to investigate the District Attorney).

In New York, the District Attorney is a constitutional officer charged with “the responsibility to conduct all prosecutions for crimes and offenses cognizable by the courts of the county in which he serves.” *People v Di Falco*, 44 N.Y.2d 482, 486 (1978); *see also Matter of Haggerty v. Himelein*, 89 N.Y.2d 431, 436 (1997); *Matter of Schumer v. Holtzman*, 60 N.Y.2d 46, 52 (1983). These are quintessential police powers belonging to the State, and your letter treads into territory very clearly reserved to the states. It suggests that Congress’s investigation is being “conducted solely for the personal aggrandizement of the investigators or to ‘punish’ those investigated,” and is, therefore, “indefensible.” *Watkins v. United States*, 354 U.S. 178, 187 (1957).

As articulated below, the District Attorney is obliged by the federal and state constitutions to protect the independence of state law enforcement functions from federal interference. The DA’s Office therefore requests an opportunity to meet and confer with committee staff to better understand what information the DA’s Office can provide that relates to a legitimate legislative interest and can be shared consistent with the District Attorney’s constitutional obligations.

Compliance with the Letter Would Interfere with Law Enforcement

The Letter seeks non-public information about a pending criminal investigation, which is confidential under state law. CPL § 190.25(4)(a) (“Grand jury proceedings are secret”); Penal Law § 215.70 (prosecutor’s disclosure of grand jury evidence is a felony unless “in the proper discharge of his official duties or upon written order of the court”); *Sanchez v. City of New York*, 201 A.D.2d 325, 326 (1st Dept. 1994) (witness statements to the District Attorney’s Office protected by the public interest privilege); Public Officers Law § 87(2)(e) (shielding materials “compiled for law enforcement purposes” from public disclosure where disclosure would “interfere with law enforcement investigations” or “disclose confidential information relating to a criminal investigation”).⁴

These confidentiality provisions exist to protect the interests of the various participants in the criminal process—the defendant, the witnesses, and members of the grand jury—as well as the integrity of the grand jury proceeding itself. Like the Department of Justice, as a prosecutor exercising sovereign executive powers, the District Attorney has a constitutional obligation to “protect the government’s ability to prosecute fully and fairly,” to “independently and impartially uphold the rule of law,” to “protect witnesses and law enforcement,” to “avoid flight by those implicated in our investigations,” and to “prevent additional crimes.”⁵

⁴ That the investigation relates to a former President does not change this analysis. Even Donald Trump has conceded that he is not immune from local criminal prosecution. *See Trump v. Vance*, 591 U.S. ___, 140 S. Ct. 2412, 2426-27 (2020) (noting that the President “concedes—consistent with the position of the Department of Justice—that state grand juries are free to investigate a sitting President with an eye toward charging him after the completion of his term”).

⁵ Letter from Assistant Attorney General Carlos Uriarte to Chairman Jordan, dated January 20, 2023, at page 3-4. (Available at <https://www.politico.com/f/?id=00000185-d087-dde8-a9af-d4afeba70000>).

Consistent with these constitutional obligations, the DA's Office is cognizant of DOJ's "[l]ongstanding" policy of not providing Congress with non-public information about investigations.⁶

With regard to pending federal investigations, "Congress seems generally to have been respectful of the need to protect material contained in open criminal investigative files. There is almost no precedent for Congress attempting to subpoena such material, and even fewer examples of the DOJ actually producing such documents."⁷

Requests Regarding the Exercise of State Police Powers Violate New York's Sovereignty

The Letter's requests are an unlawful incursion into New York's sovereignty. Congress's investigative jurisdiction is derived from and limited by its power to legislate concerning federal matters. *See, e.g., Eastland v. U. S. Servicemen's Fund*, 421 U.S. 491, 503-05 (1975); *Barenblatt v. United States*, 360 U.S. 109, 111-12 (1959); *Kilbourn v. Thompson*, 103 U.S. 168, 195-96 (1880).

The Constitution limits Congress's powers to those specifically enumerated; and the Tenth Amendment ensures that any unenumerated powers are reserved to the States. *New York v. United States*, 505 U.S. 144, 155-56 (1992). It is therefore generally understood that a Congressional committee may not "inquire into matters which are . . . reserved to the States." Charles W. Johnson, *et al.*, *House Practice: A Guide to the Rules, Precedents, and Procedures of the House* at 254 (GPO 2017)⁸; *see also Watkins*, 354 U.S. at 187 ("The power of the Congress to conduct investigations . . . comprehends probes into departments of the *Federal Government* . . .") (emphasis added).⁹

Among the powers reserved to the states, "[p]erhaps the clearest example of traditional state authority is the punishment of local criminal activity." *Bond v. United States*, 572 U.S. 844, 858 (2014). Thus, federal interference with state law enforcement "is peculiarly inconsistent with our federal framework." *Cameron v. Johnson*, 390 U.S. 611, 618 (1968); *see also Printz v. United*

⁶ *Id.* at 3.

⁷ Todd David Peterson, *Congressional Oversight of Open Criminal Investigations*, 77 *Notre Dame L. Rev.* 1373, 1410 (2002); *see also* Alissa M. Dolan & Todd Garvey, *CRS Report for Congress: Congressional Investigations of the Department of Justice, 1920-2012: History, Law, and Practice*, 2 (Nov. 5, 2012) (available at <https://sgp.fas.org/crs/misc/R42811.pdf>) ("Department [of Justice] rarely releases—and committees rarely subpoena—material relevant to open criminal investigations.").

⁸ Available at <https://www.govinfo.gov/content/pkg/GPO-HPRACTICE-115/pdf/GPO-HPRACTICE-115.pdf>.

⁹ Consistent with this general understanding, this type of inquiry appears to be unprecedented. The only precedent is one aimed at an ongoing state *civil* investigation that was never enforced. *See* Lemos, et al. Letter to House Committee on Science & Technology (Sept. 13, 2016) (scholarly review of subpoenas from the House Committee on Science & Technology to state Attorneys General regarding pending *civil* investigations, and stating: "To our knowledge, Congress has *never* before attempted to use its investigatory authority to interfere with an ongoing state investigation."), available at page 814 of <https://docs.house.gov/meetings/SY/SY00/20160914/105259/HHRG-114-SY00-20160914-SD004.pdf>.

States, 521 U.S. 898, 931 n.15 (1997) (Tenth Amendment limits federal power over local law enforcement). Invoking these principles of comity, equity, and federalism, the Supreme Court held, in *Younger v. Harris*, that federal courts may not interfere in pending state criminal prosecutions absent extraordinary circumstances. 401 U.S. 37 (1971). This holding reflects a “continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways.” *Id.* at 44.

Against this history, it is clear that Congress cannot have any legitimate legislative task relating to the oversight of local prosecutors enforcing state law. To preserve the Constitution’s federalist principles, the District Attorney is duty bound by his constitutional oath to New York’s sovereign interest in the exercise of police powers reserved to the States under the Tenth Amendment.

Congressional Review of a Pending Criminal Investigation Usurps Executive Powers

Congress is not the appropriate branch to review pending criminal matters. As the Supreme Court noted in *Watkins*, “Congress [is not] a law enforcement or trial agency. These are functions of the executive and judicial departments of government.” 354 U.S. at 187. “[T]he power [of Congress] to investigate must not be confused with any of the powers of law enforcement; those powers are assigned under our Constitution to the Executive and the Judiciary.” *Quinn v. United States*, 349 U.S. 155, 161 (1955).

If a grand jury brings charges against Donald Trump, the DA’s Office will have an obligation, as in every case, to provide a significant amount of discovery from its files to the defendant so that he may prepare a defense. The Letter’s allegation that the DA’s Office is pursuing a prosecution for political purposes is unfounded, and regardless, the proper forum for such a challenge is the Courts of New York, which are equipped to consider and review such objections. In addition, review by the U.S. Supreme Court would be available to the extent any criminal case raises federal issues. That is the mechanism afforded to every defendant in a criminal case. Congress has no role to play in that review, especially as to a pending *state* criminal proceeding. *See Younger*, 401 U.S. at 43-45.

Federal Funding is an Insufficient Basis to Justify These Unconstitutional Requests

The Letter indicates that its requests may be related to a review of federal public safety funds. But the Letter does not suggest any way in which either the District Attorney’s testimony about his prosecutorial decisions or the documents and communications of former Assistant District Attorneys on a pending criminal investigation would shed light on that review.

Nonetheless, to assist Congress in understanding the ways in which the DA’s Office has used federal funds, we are preparing and will submit a letter describing its use of federal funds.

The Honorable Jim Jordan, et al.

March 23, 2023

Page 5 of 5

* * *

We trust that you appreciate the importance of our federal system, state law enforcement activities, and the critical need to maintain the integrity and independence of state criminal law enforcement from federal interference. While the DA's Office will not allow a Congressional investigation to impede the exercise of New York's sovereign police power, this Office will always treat a fellow government entity with due respect. Therefore, again, we request a meet and confer to understand whether the Committee has any legitimate legislative purpose in the requested materials that could be accommodated without impeding those sovereign interests. We simply expect that our office also be treated "in a manner consistent with [New York's] status as a residuary sovereign[] and joint participant[] in the governance of the Nation." *Alden v. Maine*, 527 U.S. 706, 748 (1999) (Kennedy, J.).

Respectfully Submitted,



Leslie B. Dubeck
General Counsel

cc: Honorable Jerrold Nadler, Ranking Member, Committee on the Judiciary
Honorable Joseph Morelle, Ranking Member, Committee on House Administration
Honorable Jamie Raskin, Ranking Member, Committee on Oversight and Accountability
Majority Staff, Committee on the Judiciary
Minority Staff, Committee on the Judiciary

Congress of the United States
Washington, DC 20515

March 25, 2023

Mr. Alvin L. Bragg, Jr.
District Attorney
New York County
One Hogan Place
New York, NY 10013

Dear Mr. Bragg:

Our Committees are conducting oversight of your reported effort to indict a former President of the United States and current declared candidate for that office. On March 20, 2023, we wrote to you requesting that you voluntarily cooperate with our oversight by providing relevant documents and testimony.¹ We received a reply letter sent on your behalf dated March 23, 2023, which set forth several purported reasons for why you could not cooperate with our investigation.²

Notably, your reply letter did not dispute the central allegations at issue—that you, under political pressure from left-wing activists and former prosecutors in your office, are reportedly planning to use an alleged federal campaign finance violation, previously declined by federal prosecutors, as a vehicle to extend the statute of limitations on an otherwise misdemeanor offense and indict for the first time in history a former President of the United States. Moreover, you are apparently attempting to *upgrade* a misdemeanor charge to a felony using an untested legal theory at the same time when you are simultaneously downgrading felony charges to misdemeanors in a majority of other cases in your jurisdiction.³

Contrary to the central argument set forth in your letter, this matter does not simply involve *local* or *state* interests. Rather, the potential criminal indictment of a former President of the United States by an elected local prosecutor of the opposing political party (and who will face the prospect of re-election) implicates substantial *federal* interests, particularly in a jurisdiction where trial-level judges also are popularly elected. If state or local prosecutors are able to engage in politically motivated prosecutions of Presidents of the United States (former or current) for personal acts, this could have a profound impact on how Presidents choose to

¹ Letter from Rep. Jim Jordan, H. Comm. on the Judiciary, et al., to Mr. Alvin L. Bragg, Jr., Manhattan District Attorney (Mar. 20, 2023).

² Letter from Leslie B. Dubeck, Gen. Counsel, N.Y. Co. District Att’y Off., to Rep. Jim Jordan, H. Comm. on the Judiciary, et al. (Mar. 23, 2023) [hereinafter “Letter from Dubeck”].

³ See, e.g., Melissa Klein, *NYC Convictions Plummet, Downgraded Charges Surge under Manhattan DA Bragg*, N.Y. Post (Nov. 26, 2022).

exercise their powers while in office. For example, a President could choose to avoid taking action he believes to be in the national interest because it would negatively impact New York City for fear that he would be subject to a retaliatory prosecution in New York City.

Likewise, because the federal government has a compelling interest in protecting the physical safety of former or current Presidents, any decision to prosecute a former or current President raises difficult questions concerning how to vindicate that interest in the context of a state or local criminal justice system. For these reasons and others, we believe that we now must consider whether Congress should take legislative action to protect former and/or current Presidents from politically motivated prosecutions by state and local officials, and if so, how those protections should be structured. Critically, due to your own actions, you are now in possession of information critical to this inquiry.

I. The Arguments in Defense of Your Unprecedented Prosecutorial Conduct Are Conclusory and Unconvincing.

The Supreme Court has recognized that Congress has a “broad and indispensable” power to conduct oversight, which “encompasses inquiries into the administration of existing laws, studies of proposed laws, and surveys in our social, economic or political system for the purpose of enabling Congress to remedy them.”⁴ In *Wilkinson v. United States*, the Supreme Court articulated a three-prong test to determine the legal sufficiency of a congressional subpoena: “(1) the Committee’s investigation of the broad subject matter area must be authorized by Congress; (2) the investigation must be pursuant to ‘a valid legislative purpose’; and (3) the specific inquiries involved must be pertinent to the broad subject matter areas which have been authorized by Congress.”⁵

A. The Committees Are Authorized to Conduct Such an Inquiry.

Contrary to your assertion otherwise, the Committees’ inquiry plainly satisfies this three-prong test. First, the Committee on the Judiciary is charged by the House of Representatives with upholding fundamental American civil liberties and with promoting fairness and consistency in our nation’s criminal justice system. In fact, Rule X of the Rules of the House of Representatives authorizes the Committee on the Judiciary to conduct oversight of criminal justice matters to inform potential legislation.⁶ In the Committees’ view, the circumstances of any prosecutorial decision to indict a former President of the United States on a novel and untested legal theory based on facts known for years and conduct previously uncharged by federal prosecutors, shortly after your former high-ranking employee has publicly criticized you for *not* making such an indictment, require an examination of the facts and potential consequences of this unprecedented decision. The Committee on the Judiciary has an interest in the fair and evenhanded application of justice at both the state and federal level.

⁴ See, e.g., *Trump v. Mazars LLP*, No. 19-715 at 11 (U.S. slip op. July 9, 2020) (internal quotation marks and citations omitted).

⁵ *Wilkinson v. United States*, 365 U.S. 399, 408-09 (1961); see *Ashland Oil, Inc. v. FTC*, 409 F. Supp. 297, 305 (D.D.C. 1976).

⁶ Rules of the U.S. House of Representatives, R. X(1)(5) (2023).

B. The Inquiry Is on a Matter on Which Legislation Could be Had.

Second, the Committees' inquiry has an obvious legitimate legislative purpose and is "a subject on which legislation could be had."⁷ To begin with, as discussed above, Congress has a specific and manifestly important interest in preventing politically motivated prosecutions of current and former Presidents by elected state and local prosecutors, particularly those tried before elected state and local trial-level judges. Therefore, the Committee on the Judiciary, as a part of its broad authority to develop criminal justice legislation, must now consider whether to draft legislation that would, if enacted, insulate current and former presidents from such improper state and local prosecutions. These legislative reforms may include, for example, broadening the existing statutory right of removal of certain criminal cases from state court to federal court. Because your impending indictment of a former President is an issue of first impression, the Committees require information from your office to inform our oversight.

Moreover, as discussed above, your prosecutorial decision to indict a former President may cause a potential confrontation between federal and local law-enforcement authorities. Federal law requires the United States Secret Service to protect a former President.⁸ Therefore, your unprecedented prosecutorial decision raises the potential for conflict between the federal law-enforcement officials required to protect the former President and local law-enforcement officials required to enforce your indictment and exercise control of him throughout his presence in the local criminal justice system. Such a novel and potentially fraught collision of federal and local law-enforcement officials with the safety of a former President at stake is certainly a matter of interest for the Committees. The Committees' oversight is necessary to inform potential legislation that would address or remedy any potential conflicts between federal and local authorities.

In addition, the federal campaign finance charges you are reportedly attempting to use to upgrade a misdemeanor charge to a felony have previously been considered—and rejected—by federal prosecutors.⁹ In light of this fact, to bring uniformity to the law and prevent future attempts by state or local prosecutors to pursue politically motivated prosecutions related to campaign finance regulations applicable to federal elections, Congress may elect to consider legislation that broadens the preemption provision in the Federal Election Campaign Act. This reform could have the effect of better delineating the prosecutorial authorities of federal and local officials in this area and blocking the selective or politicized enforcement by state and local prosecutors of campaign finance restrictions pertaining to federal elections.

Furthermore, your reported decision to indict a former President requires congressional scrutiny about how federal public safety funds appropriated by Congress are implemented by

⁷ See, e.g., *Mazars*, No. 19-715 at 12 (internal quotation marks and citations omitted).

⁸ 18 U.S.C. § 3056.

⁹ Jonathan Turley, "America's Got Trump": *Get Ready for a Truly Made-for-TV Prosecution*, *Res Ipsa Loquitur – The Thing Itself Speaks* (Mar. 20, 2023) ("Although it may be politically popular, the case is legally pathetic. Bragg is struggling to twist state laws to effectively prosecute a federal case long ago rejected by the Justice Department . . .").

local law-enforcement agencies and how limited resources are prioritized. Under your leadership, the New York County District Attorney’s Office has adopted and defended your progressive criminal justice policies, which includes “downgrad[ing] 52 percent of felony cases to misdemeanors.”¹⁰ Even with downgrading more than half of your felony cases to misdemeanors, your office’s conviction rate when prosecuting serious felony charges was reported to be just 51 percent.¹¹ Your conviction rate for misdemeanors also dropped sharply—from 53 percent to 28 percent.¹² Your policies have allowed career “criminals [to] run[] the streets” of Manhattan¹³—creating such a danger that a judge in your district has taken notice.¹⁴

To the extent that you are receiving federal funds and are choosing to prioritize apparent political prosecutions over commonsense public safety measures, the Committee on the Judiciary certainly may consider legislation to tie federal funds to improved public safety metrics. In fact, last year, a Judiciary Subcommittee heard testimony from the mother of an army veteran murdered in your district,¹⁵ who criticized your office’s handling of her son’s murder by offering plea deals to the defendants despite the fact that “the murder and their roles were caught on video”¹⁶ Her testimony crystallized the need for legislation to prevent dangerous criminals from running free. Additionally, if our oversight determines that improper partisan or political considerations are motivating your prosecutorial decisions, the Committee on the Judiciary may consider legislation to place conditions on federal funding for state and local law-enforcement jurisdictions to ensure that funds are not used to engage in discrimination on the basis of partisan affiliation or political beliefs.

Lastly, because the circumstances of this matter stem, in part, from Special Counsel Mueller’s investigation,¹⁷ Congress may consider legislative reforms to the authorities of special counsels and better delineate their relationships with other prosecuting entities.

¹⁰ Andrea Cavallier, *REVEALED: Woke Manhattan DA Alvin Bragg has downgraded over HALF of felony cases to misdemeanors as criminals are free to roam streets of the Big Apple*, DAILY MAIL (Nov. 28, 2022); Georgett Roberts and Melissa Klein, *Manhattan DA Alvin Bragg surprised by ‘push back’ – defends policies*, N.Y. Post (Jan. 8, 2022).

¹¹ *Numbers show the grim consequences of Manhattan DA Alvin Bragg’s pro-crime principles*, N.Y. Post (Nov. 27, 2022).

¹² *Id.*

¹³ Alyssa Guzman, *Priorities, eh? Woke DA Alvin Bragg who’s set to indict Trump is one of America’s most controversial prosecutors after charging self-defense shopkeeper with murder and sending soft-on-crime memo*, DAILY MAIL (Mar. 18, 2023); Cavallier, *supra* note 10.

¹⁴ Joe Marino and Bruce Golding, *Ex-con would have faced ‘long time in jail’ if not for new Manhattan DA: judge*, N.Y. Post (Jan. 12, 2022) (A career criminal “accused of threatening a drug store worker with a knife was told in court that he should “feel lucky” he got busted after new Manhattan District Attorney Alvin Bragg took office “Based on your record, you would have faced a long period of time in jail if convicted,” [Manhattan Criminal Court Judge Jay] Weiner said during the court proceeding”)

¹⁵ *Reimagining Public Safety in the COVID-19 Era, Hearing Before the Subcomm. on Crime, Terrorism, and Homeland Sec. of the H. Comm. on the Judiciary*, 117th Cong. (Mar. 8, 2022) (testimony from Madeline Brame).

¹⁶ Jack Morphet and Gabrielle Fonrouge, *Mother of slain Army vet Hason Correa rips Manhattan DA Alvin Bragg for giving plea deals in case*, N.Y. Post (June 10, 2022).

¹⁷ Ben Protess et al., *How Michael Cohen turned against President Trump*, N.Y. Times (Apr. 21, 2019).

C. The Requests Are Pertinent to the Committees' Inquiry.

The Committees' inquiry satisfies *Wilkinson*'s third prong of pertinence to the oversight. Federal courts have interpreted this prong broadly, requiring "only that the specific inquiries be reasonably related to the subject matter under investigation."¹⁸ The information sought by the Committees will allow us to assess the extent to which your reported effort to indict a former President and current declared candidate for that office is politically motivated and whether Congress should therefore draft legislative reforms to, among other things, protect former and current Presidents from politically motivated prosecutions.

II. Your State Law-Based Defenses Are Insufficient.

Your conclusory claim that our constitutional oversight responsibilities will interfere with law enforcement is misplaced and unconvincing. As a threshold matter, whether your office is, in fact, fairly enforcing the law or abusing prosecutorial discretion to engage in a politically motivated indictment of a former President is a serious matter that, as discussed above, implicates significant federal interests. The Committees require information from the New York County District Attorney's Office to advance our oversight over the very matter that you claim is a basis to obstruct our investigation.

In support of your broad claim that compliance with the Committees' requests for documents and a transcribed interview would interfere with law enforcement, you note two New York State statutes that prohibit the disclosure of grand jury materials. The Committees' information requests, however, relate to numerous areas of inquiry that in no way implicate grand jury materials or seek information that would be confidential under New York law. For example, the request for your office's use of federal funds has no connection to any grand jury proceedings. Similarly, the vast majority of the questions that the Committees intend to ask you in an interview also would not implicate grand jury secrecy. Moreover, to the extent that questions are asked that you believe you are not permitted to answer, you would retain the ability to decline to answer or to assert an applicable privilege. Likewise, you remain free to decline to produce certain responsive documents on the basis of appropriate privileges or statutes that preclude production, provided you provide the Committees with a detailed privilege log that will enable us to review and evaluate your claims. The laws cited in your letter do not establish a basis for a complete refusal to cooperate. At best, they provide arguments that may be asserted on either a question-by-question or a document-by-document basis.

Furthermore, your invocation of certain New York laws as precluding you from complying with our oversight request is, at a minimum, overbroad. For example, New York's Freedom of Information Law (Public Officers Law § 87(2)) provides that agencies *may* decline to make certain records available for *public* inspection; it neither requires them to do so nor directly speaks to formal requests from congressional committees. Thus, that statutory provision does not preclude you from providing us with records that were "compiled for law enforcement

¹⁸ MORTON ROSENBERG, *WHEN CONGRESS COMES CALLING: A STUDY ON THE PRINCIPLES, PRACTICES, AND PRAGMATICS OF LEGISLATIVE INQUIRY* 18 (2017).

purposes.”¹⁹ Indeed, the statute in question states that even when an agency receives a request from a member of the public, as opposed to congressional committees, a “denial of access shall not be based solely on the category or type of such record and shall be valid only when there is a particularized and specific justification for such denial.”²⁰

III. The Inquiry Does Not Intrude on Federalism Powers Because Congress Is Exercising Its Core Authority to Legislate.

Your letter raises unfounded and unpersuasive objections to our oversight based on federalism—arguing, in part, that our “requests are an unlawful incursion into New York’s sovereignty.”²¹ You go on to note that “the District Attorney is duty bound by his constitutional oath to New York’s sovereign interest in the exercise of police powers reserved to the States under the Tenth Amendment.”²² Contrary to your assertions, this inquiry does not infringe on New York’s sovereignty.

To begin with, your argument hinges on your assertion that “Congress cannot have any legitimate legislative task relating to the oversight of local prosecutors enforcing state law.” But this claim is simply wrong; as discussed at length above, this matter involves substantial federal interests. Moreover, the cases that you cite, *Younger v. Harris*, 401 U.S. 37 (1971), and *Cameron v. Johnson*, 390 U.S. 611 (1968), involve the question of when federal courts can enjoin prosecutions of state law. And needless to say, our oversight requests do no such thing; they would not block you from conducting any prosecution. Rather, we are simply seeking information to carry out constitutional duties.

Finally, our oversight requests do not implicate what is commonly referred to as the anti-commandeering principle.²³ In establishing the anti-commandeering principle in *New York v. United States*, the Supreme Court concluded that Congress cannot compel states to enact, enforce, or administer federal policies.²⁴ Unlike the matter before the Court in *New York*, our requests here simply do not compel the state “to enact, enforce, or administer federal policies.”²⁵ Rather, the Committees are merely seeking information pertaining to a matter that is directly within the purview of our jurisdiction and is necessary to inform potential legislative reforms.

IV. The Inquiry Does Not Usurp Executive Powers

In your reply letter, you cited the Supreme Court of the United States in *Watkins v. United States* as saying, “Congress [is not] a law enforcement or trial agency.”²⁶ We agree. The Committees do not seek to step into the shoes of the Executive Branch or usurp its powers.

¹⁹ Public Officers Law § 87(2)(e).

²⁰ *Id.* at § 87(2).

²¹ Letter from Dubeck, *supra* note 2.

²² *Id.*

²³ The Committee’s oversight does not involve the federal spending power. As such, the anti-coercion principle cannot be reasonably implicated.

²⁴ 505 U.S. 144, 188 (1992).

²⁵ *Id.*

²⁶ Letter from Dubeck, *supra* note 2 (citing *Watkins v. United States*, 354 U.S. 178, 187 (1957)).

Rather, as explained, we are exercising the broad powers afforded Congress by the Constitution to conduct oversight to inform potential legislative reforms. This power

encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes. It includes surveys of defects in our social, economic or political system for the purpose of enabling the Congress to remedy them. It comprehends probes into departments of the Federal Government to expose corruption, inefficiency or waste.²⁷

Indeed, as the Supreme Court has recognized, Congress retains broad authority to conduct oversight of ongoing civil and criminal investigations. In *Sinclair v. United States*, the Supreme Court noted that the pendency of litigation does not stop Congress's ability to investigate, stating:

It may be conceded that Congress is without authority to compel disclosures for the purpose of aiding the prosecution of pending suits; but the authority of that body, directly or through its committees, to require pertinent disclosures in aid of its own constitutional power is not abridged because the information sought to be elicited may also be of use in such suits.²⁸

The Court has further noted that “a congressional committee . . . engaged in legitimate legislative investigation need not grind to a halt whenever responses to its inquiries might potentially be harmful to a witness in some distinct proceeding . . . or when crime or wrongdoing is exposed.”²⁹ Phrased another way, the Committees’ oversight will in no way “stop [your] prosecution or set limits on the management of a particular case.”³⁰ Accordingly, your refusal to cooperate with our oversight inquires on this basis is therefore unavailing.

V. Your Offer to Provide Information About Your Office’s Use of Federal Funds Is Insufficient

While we appreciate your offer to submit a letter detailing the District Attorney’s Office’s use of federal funds, and we look forward to that submission, such a letter alone does not satisfy our oversight requests or preclude the Committees from proceeding with them. For example, as we have explained in detail, the Committee on the Judiciary is examining whether legislative reforms are necessary to insulate former and current Presidents from politically motivated prosecutions by state and local officials. And while your letter regarding your office’s use of federal funds will not shed meaningful light on that question, we expect that your response to our other information requests will do so.

²⁷ *Id.*

²⁸ 279 U.S. 263, 295 (1929).

²⁹ *Hutcheson v. United States*, 369 U.S. 599, 617 (1962).

³⁰ See MORTON ROSENBERG, CONGRESSIONAL RESEARCH SERVICE, INVESTIGATIVE OVERSIGHT: AN INTRODUCTION TO THE LAW, PRACTICE AND PROCEDURE OF CONGRESSIONAL INQUIRY (1995).

Mr. Alvin L. Bragg, Jr.

March 25, 2023

Page 8

Accordingly, we reiterate the requests in our March 20 letter and ask that you comply in full as soon as possible but no later than March 31, 2023. We trust the information in this letter satisfies your request to “understand whether the Committee has any legitimate legislative purpose”³¹ Thank you for your attention to this matter.

Sincerely,



Jim Jordan
Chairman
Committee on the Judiciary



Bryan Steil
Chairman
Committee on House Administration



James Comer
Chairman
Committee on Oversight and Accountability

cc: The Honorable Jerrold Nadler, Ranking Member
Committee on the Judiciary

The Honorable Joseph Morelle, Ranking Member
Committee on House Administration

The Honorable Jamie Raskin, Ranking Member
Committee on Oversight and Accountability

³¹ Letter from Dubeck, *supra* note 2.

THE LAW OFFICE OF CAREY R. DUNNE, PLLC

By email

March 27, 2023

The Honorable Jim Jordan
2138 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Jordan:

I am in receipt of your letter dated March 22, 2023 (“the Committee Letter”), requesting that I provide to the House Committee on the Judiciary (“the Committee”) certain documents and information relating to my tenure at the Office of the New York County District Attorney (“the Office”).¹ I understand you sent a similar request directly to the Office on March 20, 2023, and that the Office responded to that letter on March 23, 2023.

Any information I have regarding the Office’s investigations, communications, and decision-making is derivative of my work as an attorney for the Office. The Office has directed me until further notice to decline to provide the Committee with the requested information and materials, and to instead refer the Committee to the Office for any further response. (A copy of the Office’s letter to me is attached.) As you know, the Office has deemed your request to be constitutionally infirm on federalism and other grounds, and improperly intrusive into an ongoing criminal investigation. The Office also asserts that the attorney-client privilege, the work product doctrine, and other legal protections are implicated by your requests. As the legal holder of such privileges, that is the Office’s prerogative. As a former attorney for the office, I will comply with its direction, and I respectfully refer the Committee to the Office for any further response.

Sincerely,



Carey R. Dunne

cc: The Honorable Jerrold Nadler, Ranking Member
Leslie Dubeck, General Counsel, Office of the New York County District Attorney

¹ To correct a misunderstanding in the Committee Letter: I served from January 1, 2017 to December 31, 2021 as General Counsel to the Office; I then served from January 1, 2022 to February 24, 2022 as a Special Assistant District Attorney.



**DISTRICT ATTORNEY
COUNTY OF NEW YORK
ONE HOGAN PLACE
New York, N. Y. 10013
(212) 336-9000**

ALVIN L. BRAGG, JR.
DISTRICT ATTORNEY

LESLIE B. DUBECK
GENERAL COUNSEL

March 25, 2023

By email

Mr. Carey R. Dunne
Former Assistant District Attorney
& General Counsel, New York County
New York, NY

Dear Mr. Dunne:

I am writing regarding the House Judiciary Committee (HJC) request of March 22, 2023, that you provide documents and information relating to your employment at the Office of the District Attorney of New York County (the "DA's Office"), which are similar to requests sent to the DA's Office on March 20, 2023.

The HJC's requests raise significant concerns about federalism, state sovereignty, the limits on congressional power, and the purpose and legality of the HJC's inquiry. In addition, the documents and information requested are protected from disclosure for many reasons, including because they relate to an ongoing criminal investigation, and are subject to the attorney client privilege, work product doctrine, and other legal protections.

For these reasons, the DA's Office has asked the HJC to provide additional information regarding their inquiries. To protect the DA's Office's interests and privileges, and until further notice, the DA's Office instructs you, as a former employee and attorney of the DA's Office, to not provide any information or materials relating to your work in the DA's Office in response to HJC's request. In addition, please direct HJC to communicate with the DA's Office regarding the request.

Sincerely,

A handwritten signature in black ink, appearing to read "Leslie B. Dubeck".

Leslie B. Dubeck
General Counsel

MARK F. POMERANTZ

% Free & Fair Litigation Group
128 East Broadway, Unit 793
New York, NY 10002

March 27, 2023

BY E-MAIL

The Honorable Jim Jordan
2138 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Jordan:

This responds to your March 22, 2023 letter to me, which seeks certain documents and testimony relating to my employment at the New York County District Attorney's Office ("DANY").

After receiving your letter, I received a letter from Leslie Dubeck, General Counsel at DANY. Through that letter (copy attached), DANY has instructed me to not provide any information or materials in response to your request. At the present time, and in light of the ongoing discussions between DANY and the Committee, I will act in a manner consistent with the instructions I have received from DANY. Further, please note that DANY has asked that all communications regarding your request be directed to them.

Sincerely,



Mark F. Pomerantz

cc: The Honorable Jerrold Nadler, Ranking Member
Leslie Dubeck, General Counsel, DANY

Enclosure



DISTRICT ATTORNEY
COUNTY OF NEW YORK
ONE HOGAN PLACE
New York, N. Y. 10013
(212) 335-9000

ALVIN L. BRAGG, JR.
DISTRICT ATTORNEY

LESLIE B. DUBECK
GENERAL COUNSEL

March 25, 2023

By email

Mr. Mark F. Pomerantz
Former Special Assistant District Attorney,
New York County
New York, NY

Dear Mr. Pomerantz:

I am writing regarding the House Judiciary Committee (HJC) request of March 22, 2023, that you provide documents and information relating to your employment at the Office of the District Attorney of New York County (the "DA's Office"), which are similar to requests sent to the DA's Office on March 20, 2023.

The HJC's requests raise significant concerns about federalism, state sovereignty, the limits on congressional power, and the purpose and legality of the HJC's inquiry. In addition, the documents and information requested are protected from disclosure for many reasons, including because they relate to an ongoing criminal investigation, and are subject to the attorney client privilege, work product doctrine, and other legal protections.

For these reasons, the DA's Office has asked the HJC to provide additional information regarding their inquiries. To protect the DA's Office's interests and privileges, and until further notice, the DA's Office instructs you, as a former employee and attorney of the DA's Office, to not provide any information or materials relating to your work in the DA's Office in response to HJC's request. In addition, please direct HJC to communicate with the DA's Office regarding the request.

Sincerely,

A handwritten signature in black ink, appearing to read "Leslie B. Dubeck".

Leslie B. Dubeck
General Counsel

ONE HUNDRED EIGHTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON THE JUDICIARY
2138 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6216
(202) 225-6906
judiciary.house.gov

April 6, 2023

Mr. Mark F. Pomerantz
Former New York County Special Assistant District Attorney
Free & Fair Litigation Group
128 E. Broadway, Unit 793
New York, NY 10002

Dear Mr. Pomerantz:

The Committee on the Judiciary is conducting oversight of the New York County District Attorney's unprecedented indictment of a former President of the United States and current declared candidate for that office. On March 22, 2023, we requested that you voluntarily cooperate with our oversight by providing relevant documents and testimony pertaining to your role as a special assistant district attorney leading the investigation into the former President's finances.¹ We received a reply letter dated March 27, 2023, stating that, at the instruction of the New York County District Attorney's Office, you would not cooperate with our oversight.² You enclosed a copy of a letter from the New York County District Attorney's Office directing you not to cooperate.³

The Supreme Court has recognized that Congress has a "broad and indispensable" power to conduct oversight, which "encompasses inquiries into the administration of existing laws, studies of proposed laws, and surveys in our social, economic or political system for the purpose of enabling Congress to remedy them."⁴ Rule X of the Rules of the House of Representatives authorizes the Committee on the Judiciary to conduct oversight of criminal justice matters to inform potential legislation.⁵ Congress has a specific and manifestly important interest in preventing politically motivated prosecutions of current and former Presidents by elected state

¹ Letter from Rep. Jim Jordan, H. Comm. on the Judiciary, to Mr. Mark F. Pomerantz, Former N.Y. Co. Special Assistant District Att'y (Mar. 22, 2023).

² Letter from Mr. Mark F. Pomerantz, Former N.Y. Co. Special Assistant District Att'y, to Rep. Jim Jordan, H. Comm. on the Judiciary (Mar. 27, 2023).

³ Letter from Leslie B. Dubeck, Gen. Counsel, N.Y. Co. District Att'y Off., to Mr. Mark F. Pomerantz, Former N.Y. Co. Special Assistant District Att'y (Mar. 25, 2023).

⁴ See, e.g., *Trump v. Mazars LLP*, No. 19-715 at 11 (U.S. slip op. July 9, 2020) (internal quotation marks and citations omitted).

⁵ Rules of the U.S. House of Representatives, R. X(1)(5) (2023).

and local prosecutors, particularly in jurisdictions—like New York County—where the prosecutor is popularly elected and trial-level judges lack life tenure. Among other things, if state or local prosecutors are able to engage in politically motivated prosecutions of Presidents of the United States (current or former) for personal acts, this could have a profound impact on how Presidents choose to exercise their powers while in office. For example, a President could choose to avoid taking action he believes to be in the national interest because it would negatively impact New York City for fear that he would be subject to a retaliatory prosecution in New York City.

As a result, the New York County District Attorney’s unprecedented prosecutorial conduct requires oversight to inform the consideration of potential legislative reforms that would, if enacted, insulate current and former Presidents from such politically motivated state and local prosecutions. These potential legislative reforms may include, among other things, broadening the existing statutory right of removal of certain criminal cases from state court to federal court. The local prosecution of a former President also raises the potential for conflict between the federal law-enforcement officials required by federal law to protect a former President and local law-enforcement officials required to enforce an indictment and exercise control of him throughout his presence in the local criminal justice system. The Committee may consider legislative reforms to address or remedy this potential conflict. In addition, the New York County District Attorney’s Office has acknowledged that it used federal forfeiture funds in its investigations of President Trump, including during your tenure in that office and during the time when former President Trump was in office and a candidate for re-election.⁶ The Committee may therefore consider legislation to enhance reporting requirements concerning the use of federal forfeiture funds or to prohibit the use of federal forfeiture funds to investigate a current or former President or presidential candidate.

Based on your unique role as a special assistant district attorney leading the investigation into President Trump’s finances, you are uniquely situated to provide information that is relevant and necessary to inform the Committee’s oversight and potential legislative reforms. Although the New York County District Attorney’s Office has directed you not to cooperate with our oversight, you have already discussed many of the topics relevant to our oversight in a book you wrote and published in February 2023,⁷ as well as in several public interviews to promote your book.⁸ As a result, you have no basis to decline to testify about matters before the Committee that you have already discussed in your book and/or on a prime-time television program with an

⁶ See Letter from Leslie B. Dubeck, Gen. Counsel, N.Y. Co. District Att’y Off., to Rep. Jim Jordan, H. Comm. on the Judiciary 4 (Mar. 31, 2023) (“[O]f the federal forfeiture money that the Office helped collect, approximately \$5,000 was spent on expenses incurred relating to the investigation of Donald J. Trump or the Trump Organization. These expenses were incurred between October 2019 and August 2021.”).

⁷ MARK POMERANTZ, PEOPLE VS. DONALD TRUMP: AN INSIDE ACCOUNT (2023).

⁸ See, e.g., Rachel Maddow Show, *Trump case ‘cried out for federal investigation’*: Pomerantz, MSNBC (Feb. 7, 2023) (“As I mentioned in the book, this case cried out for federal investigation . . . I don’t know why there was never an intensive federal investigation of Trump’s finances.”); 60 Minutes, *Mark Pomerantz on investigating Donald Trump*, CBS NEWS (Feb. 5, 2023) (“[Bragg] did not say to slow down. He never said, ‘I don’t wanna be rushed. There’s not enough time. I need more time to study the facts.’ He said, ‘Okay. You need a decision? You get a decision.’ And the decision was no. ‘You’re not going forward.’”).

audience in the millions, including on the basis of any purported duty of confidentiality or privilege interest.

Your book discloses various details about the New York County District Attorney's Office's investigation of President Trump, including internal deliberations about the investigation. Indeed, you discuss how members of the Office viewed the credibility of a key witness in the case, and you note their concerns about the case's dim prospects. For example, in your book, you recount a "mini-revolt" that occurred following an internal Office meeting on September 21, 2021, about the investigations into President Trump.⁹ You offer details about a disagreement between you and the Office's Major Economic Crimes Bureau Chief, Julieta Lozano, about Michael Cohen's credibility as a witness in the investigation.¹⁰ You also complain about concerns expressed by Chris Conroy, the Office's Investigative Division Chief, during a meeting on November 12, 2021.¹¹ According to you, Conroy "spoke about his misgivings" about the Trump investigation, which stemmed from a recent case involving financial and accounting fraud charges that mirrored the charges that the Office was considering pursuing against President Trump.¹² That case apparently ended poorly for the New York County District Attorney's Office.¹³ Like Lozano, Conroy also expressed concerns about Cohen's viability as a witness.¹⁴ You accuse other lawyers of being "relentlessly negative, dwelling on all the difficulties and issues with the case, and refusing to acknowledge the positives" during an internal meeting on December 10, 2021, referring to your former colleagues as "conscientious objectors" merely for opining that the case was "weak" and pointing to its "many fatal flaws."¹⁵ You ultimately dismiss their concerns about the investigation by suggesting that they were either too lazy to do the work, did not know the evidence, or were somehow afraid of bringing charges against President Trump.¹⁶

Your book, described as a "300-page exercise in score-settling and scorn,"¹⁷ also reveals the extent to which the New York County District Attorney's Office's investigation of President Trump appears to have been politically motivated. Specifically, you describe your eagerness to investigate President Trump, writing that you were "delighted" to join an unpaid group of lawyers advising on the Trump investigations, and joking that salary negotiations had gone "great" because you would have paid to join the investigation.¹⁸ You frivolously compare President Trump to mob boss John Gotti,¹⁹ and claim that the District Attorney's Office was "warranted in throwing the book" at President Trump because, in your view, he "had become a master of breaking the law in ways that were difficult to reach."²⁰ You explain that this "collective weight" of President Trump's conduct over the years "left no doubt in [your] mind

⁹ POMERANTZ, *supra* note 7, at 159.

¹⁰ *Id.*

¹¹ *Id.* at 171.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at 191–92, 194.

¹⁶ *Id.* at 160, 171–72.

¹⁷ Lloyd Green, *People vs Donald Trump review: Mark Pomerantz pummels Manhattan DA*, THE GUARDIAN (Feb. 11, 2023).

¹⁸ POMERANTZ, *supra* note 7, at 6, 21–22.

¹⁹ *Id.* at 108–09.

²⁰ *Id.* at 112.

that [President] Trump deserved to be prosecuted.”²¹ In other words, as a special assistant district attorney, you seem, for reasons unrelated to the facts of this particular investigation, to have been searching for any basis on which to bring criminal charges.²²

Although you claim that you were “able to put aside [your] personal feelings about [President] Trump” during the investigation, the depth of your personal animosity towards him is apparent in your writing. You wrote of President Trump:

I saw him as a malignant narcissist, and perhaps even a megalomaniac who posed a real danger to the country and the ideals that mattered to me. His behavior made me angry, sad, and even disgusted.²³

You additionally “marveled at the thought” of being “at the center of what might become one of the most consequential criminal cases ever brought.”²⁴ You reflect on your “only similar experience,” which you indicated was the “indictment of Osama bin Laden and other members of al Qaeda for the bombing of the United States embassies in Kenya and Tanzania.”²⁵ Drawing a parallel between these two vastly different matters speaks volumes about the mindset that you brought to the investigation of President Trump.

These perceptions appear to have colored your work as a special assistant district attorney, to the point that you even resigned because the investigation into President Trump was not proceeding fast enough for your liking.²⁶ In your resignation letter, you prejudged the results of the District Attorney’s investigation, writing that “Donald Trump is guilty of numerous felony violations,” and vowing not to be a “passive participant” to “a grave failure of justice.”²⁷ Your public resignation reportedly left District Attorney Bragg “deeply stung,” and caused him to issue an “unusual” public statement “emphasizing that the investigation into Trump and his business was far from over.”²⁸ Your book also contributed to the “political pressure” on District Attorney Bragg to bring charges against former President Trump.²⁹

²¹ *Id.* at 112–13.

²² See also Rachel Maddow Show, *Watch Rachel Maddow Highlights: Feb. 6*, YOUTUBE (Feb. 6, 2023) (“[W]e were trying to work quickly. Bringing a racketeering case, particularly one that includes [other crimes], it’s such a big ball of wax that, ultimately, we decided, you know what, let’s focus on a smaller, more contained set of charges. That’s when we started to focus on the financial statements.”).

²³ POMERANTZ, *supra* note 7, at 176.

²⁴ *Id.* at 194–95.

²⁵ *Id.*

²⁶ *Read the Full Text of Mark Pomerantz’s Resignation Letter*, N.Y. TIMES (Mar. 23, 2022).

²⁷ *Id.*

²⁸ Mark Berman et al., *The prosecutor, the ex-president and the ‘zombie’ case that came back to life*, WASH. POST (Mar. 17, 2023).

²⁹ Luc Cohen, *Trump charges follow criticism of Manhattan prosecutor for not acting sooner*, REUTERS (Mar. 31, 2023).

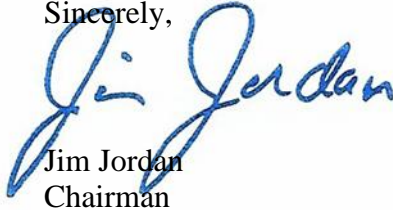
Mr. Mark F. Pomerantz

April 6, 2023

Page 5

Accordingly, for these reasons, and in light of your disregard of our earlier voluntary request, please find attached a subpoena compelling your appearance for a deposition.

Sincerely,

A handwritten signature in blue ink that reads "Jim Jordan". The signature is written in a cursive style with a large, looping "J" and "D".

Jim Jordan
Chairman

cc: The Honorable Jerrold Nadler, Ranking Member

Enclosure

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 4/19/2023

ALVIN L. BRAGG, JR., *in his official capacity as
District Attorney for New York County,*

Plaintiff,

-against-

JIM JORDAN, *in his official capacity as Chairman
of the Committee on the Judiciary,* COMMITTEE
ON THE JUDICIARY OF THE UNITED STATES
HOUSE OF REPRESENTATIVES, and MARK F.
POMERANTZ,

Defendants.

1:23-cv-3032 (MKV)

OPINION AND ORDER
DENYING TEMPORARY
RESTRAINING ORDER

MARY KAY VYSKOCIL, United States District Judge:

The request by Manhattan District Attorney Alvin L. Bragg Jr. for a temporary restraining order, enjoining enforcement of the subpoena issued to Mark F. Pomerantz by the Committee on the Judiciary of the United States House of Representatives, chaired by Congressman Jim Jordan, is DENIED. The subpoena was issued with a “valid legislative purpose” in connection with the “broad” and “indispensable” congressional power to “conduct investigations.” It is not the role of the federal judiciary to dictate what legislation Congress may consider or how it should conduct its deliberations in that connection. Mr. Pomerantz must appear for the congressional deposition. No one is above the law.

BACKGROUND

On April 6, 2023, the Committee on the Judiciary of the United States House of Representatives (the “Committee”) issued a subpoena, directing Mark F. Pomerantz (“Pomerantz”), a former *pro bono* employee of the Office of the District Attorney for New York County (“DANY”), to appear on April 20, 2023 “to testify at a deposition touching matters of

inquiry committed to [the Committee].” Exhibit 1 (“Ex. 1”) to the Declaration of Theodore J. Boutrous, Jr. (“Boutrous Dec.”) [ECF No. 12-1]. The subpoena does *not* request that Pomerantz produce any documents. *See* Ex. 1.

The subpoena was accompanied by a letter from the Chairman of the Committee, Jim Jordan (“Jordan”). *See* Ex. 1. The letter requests Pomerantz’s appearance due to his “unique role as a special assistant district attorney leading the investigation into President Trump’s finances.” Ex. 1 at 2. It further explains that Pomerantz has “already discussed many of the topics relevant to [the Committee’s] oversight in a book [that Pomerantz] wrote and published in February 2023, as well as in several public interviews to promote [his] book.”¹ Ex. 1 at 2 (citations omitted). Jordan notes that DANY has “acknowledged that it used federal forfeiture funds in its investigations of President Trump,”² and that the Committee was considering “potential legislative reforms,” such as “broadening the existing statutory right of removal of certain criminal cases from state court to federal court.” Ex. 1 at 2.

The book referenced in Jordan’s letter is *People vs. Donald Trump: An Inside Account*, written by Pomerantz and published in early 2023. *See* M. Pomerantz, *People vs. Donald Trump: An Inside Account* (2023) (“*Inside Account*”). As its subtitle indicates, the book recounts Pomerantz’s *insider* insights, mental impressions, and his front row seat to the investigation and deliberative process leading up to the DANY case against former President and current presidential candidate Donald Trump. Among Pomerantz’s observations:

- Within DANY, the case against Trump arising out of payment of so-called “hush money” to Stephanie Clifford was referred to as the “zombie” case. *Id.* at 200.
- The facts surrounding the payments “did not amount to much in legal terms. Paying hush money is not a crime under New York State law, even if the payment

¹ *See* Exhibits E–O to the Declaration of Todd B. Tatelman [ECF Nos. 32-5 to 32-15].

² *See* Exhibit 19 to the Boutrous Dec. [ECF No. 12-20].

was made to help an electoral candidate.” *Id.* at 40.

- “[C]reating false business records is only a misdemeanor under New York law.” *Id.* at 40.
- “[T]here appeared to be no [felony] state crime in play.” *Id.* at 40–41.
- “[T]o charge Trump with something other than a misdemeanor, DANY would have to argue that the intent to commit or conceal a federal crime had converted the falsification of the records into a felony. No appellate court in New York had ever upheld (or rejected) this interpretation of the law.” *Id.* at 41.
- The statutory language (under which Trump was charged) is “ambiguous.” *Id.* at 40.
- “[T]here was a big risk that felony charges would be dismissed before a jury could even consider them.” *Id.* at 41.
- “[T]he Trump investigation should have been handled by the U.S. Department of Justice, rather than by the Manhattan district attorney’s office.” *Id.* at 240.
- “[F]ederal prosecutors would not have to torture or massage [statutory] language to charge Trump with a violation,” as DANY would have to do. *Id.* at 240.
- *Federal prosecutors previously looked into the Clifford “hush money payment” and did not move forward with the prosecution. Id.* at 242 (emphasis added); *see also id.* at 39.
- There is a statute of limitations issue with the DANY case against Trump. *Id.* at 240–41.
- Numerous DANY prosecutors were skeptical about the prosecution of Trump and were referred to internally at DANY as “conscientious objectors.” *Id.* at 194.
- The invoices and requests for payment from Michael Cohen in connection with the Clifford payments, in a supposed effort to “camouflage” reimbursements, were made “throughout 2017 (*after* Trump’s inauguration as president).” *Id.* at 39 (emphasis added) (parenthetical in original).
- The DANY prosecution team discussed “Michael Cohen’s credibility” as being one of “the difficulties in the case.” *Id.* at 203.
- *At one point, Bragg “commented that he ‘could not see a world’ in which [DANY] would indict Trump and call Michael Cohen as a prosecution witness.” Id.* at 227 (emphasis added).

- While Pomerantz acknowledged Bragg’s right to make prosecutorial decisions, Pomerantz viewed himself as more experienced and qualified than Bragg. *Id.* at 218–19. Pomerantz makes a point that he was “finishing law school when Alvin was a toddler.” *Id.* at 208.
- Pomerantz resigned from his *pro bono* position at DANY when it became clear to him that President Trump would not be indicted. *Id.* at 248–51; *see also* Exhibit C (“Ex. C”) to the Declaration of Todd B. Tatelman (“Tatelman Dec.”) [ECF No. 32-3]. Pomerantz “told the DA that he was responsible for a ‘grave failure of justice’ because he would not authorize Trump’s indictment.” *Inside Account* at 1.
- Ultimately in March 2023, Bragg did, of course, indict President Trump, “bring[ing] the ‘zombie’ theory back from the dead once again.” *Id.* at 209.

Jordan and the Committee first tried to acquire information from Pomerantz and DANY voluntarily. *See, e.g.*, Exhibit 2 (“Ex. 2”) to the Boutrous Dec. [ECF No. 12-2]; Exhibit 11 (“Ex. 11”) to the Boutrous Dec. [ECF No. 12-12]; Exhibit 58 (“Ex. 58”) to the Boutrous Dec. [ECF No. 12-61]. While the DANY General Counsel offered to “meet and confer” with the Committee “to understand whether [it] ha[d] any legitimate legislative purpose in the requested materials,” DANY declined to provide information and instructed Pomerantz not to comply with the Committee’s requests. Exhibit 10 (“Ex. 10”) to the Boutrous Dec. at 5 [ECF No. 12-11]; Exhibit 12 (“Ex. 12”) to the Boutrous Dec. [ECF No. 12-13]; *see also* Exhibit 19 (“Ex. 19”) to the Boutrous Dec. [ECF No. 12-20].

On April 11, 2023, Manhattan District Attorney Alvin L. Bragg, Jr. (“Plaintiff” or “Bragg”)—one of five local district attorneys for the five boroughs in the City of New York—filed a 50-page Complaint in this Court, naming Jordan, the Committee, and Pomerantz as defendants. *See* Complaint [ECF No. 1] (“Compl.”). Bragg simultaneously filed a motion, brought on by an *ex parte* proposed order to show cause, seeking a temporary restraining order and a preliminary injunction (1) enjoining Jordan and the Committee from enforcing the subpoena served on Pomerantz and (2) enjoining Pomerantz from complying with the subpoena, *see*

Proposed Order to Show Cause With Emergency Relief [ECF No. 7]; *see also* Memorandum of Law in Support [ECF No. 8] (“Pl. Mem.”). Plaintiff later filed the Declaration of Theodore J. Boutrous, Jr., accompanied by over 60 exhibits. *See* Boutrous Dec.

The first 35 pages of the Complaint have little to do with the subpoena at issue and are nothing short of a public relations tirade against former President and current presidential candidate Donald Trump. The same is true of the vast majority of the exhibits accompanying the Boutrous Declaration. Of note, the Complaint acknowledges that DANY used federal forfeiture funds in investigating President Trump and/or the Trump Organization. Compl. ¶ 78. Moreover, Bragg concedes that DANY was aware that Pomerantz was writing a book about the Trump investigation and asked to review the manuscript pre-publication. Compl. ¶ 90. Pomerantz declined. Compl. ¶ 90; Pl. Mem. 21–22. At heart, the Complaint simply includes two requests for declaratory and injunctive relief directed at the congressional inquiry. The reality is that, as framed, this action is merely a motion to quash a subpoena dressed up as a lawsuit.

The motion for a temporary restraining order was filed without notice to Defendants and before Defendants even were served with the Complaint. *See* Certificate of Service [ECF No. 17]; Waiver of Service [ECF No. 18]. In this Court, Local Civil Rule 6.1(d) dictates that any party seeking an *ex parte* order must submit an “affidavit of good and sufficient reasons why a procedure other than by notice of motion is necessary, and stating whether a previous application for similar relief has been made.” No such affidavit was submitted here. Accordingly, the Court issued an Order, declining to enter the proposed order to show cause, directing service on Defendants not only of the motion (with all supporting papers), but also of the Complaint by which this case was initiated, setting a briefing schedule to allow Defendants to be heard, and scheduling a hearing for today to address the motion for a temporary restraining order. *See* Order [ECF No. 13].

Jordan and the Committee filed an opposition brief. *See* Opposition Brief [ECF No. 27]

(“Def. Mem.”). They argue that Bragg cannot establish a likelihood of success on the merits because Jordan and the Committee are immune from suit under the Speech or Debate Clause of Article I of the United States Constitution. Def. Mem. 5–14. Defendants further argue that the subpoena has at least two valid legislative purposes. First, they contend that the Committee is considering the viability of legislation to protect former Presidents and presidential candidates from politically motivated prosecutions by local district attorneys, such as by permitting those cases to be removed to federal court, out of a concern that such prosecutions “could have a profound impact on how Presidents choose to exercise their powers while in office.” Def. Mem. 3. Second, Defendants argue that the Committee is permissibly investigating DANY’s use of federal forfeiture funds in the investigation of President Trump, which could potentially influence the outcome of the 2024 presidential election. Def. Mem. 8–9.

Pomerantz filed a “response” to Bragg’s motion. *See* Pomerantz Response [ECF No. 30] (“Pomerantz Res.”); *see also* Declaration of Mark F. Pomerantz [ECF No. 31] (“Pomerantz Dec.”). Pomerantz describes himself as a “nominal[]” defendant. Pomerantz Dec. ¶ 1. He does not oppose Bragg’s motion and, instead, joins in the request for an injunction. *See* Pomerantz Dec. ¶ 1 (“I have no objection to the relief that the District Attorney has requested. I consent to that relief, and indeed urge this Court to grant it.”).³ It appears that Pomerantz is content to largely allow Bragg to speak for him. *See* Pomerantz Res. 1 (“These are matters for the District Attorney . . . to argue.”); *id.* at 5 (“We defer to the papers filed by the District Attorney on this motion to articulate why the subpoena threatens New York’s sovereign power.”). Indeed, Bragg’s counsel, Theodore J. Boutrous, Jr., filed a waiver of service on behalf of Pomerantz. *See* Waiver of Service [ECF No. 18].

³ Unless otherwise noted, references to “Defendants” in this Opinion refer only to Jordan and the Committee.

The day before the scheduled hearing, Bragg filed an eleventh hour reply brief, not authorized by the Court’s Scheduling Order given the compressed time frame in which Plaintiff’s motion was brought on. The reply largely rehashes the same arguments made in the moving brief and, for the first time, addresses the Speech or Debate Clause. *See* Reply Brief [ECF No. 41-1] (“Reply”). The reply brief was accompanied by a supplemental declaration attaching sixteen largely irrelevant exhibits, consisting of a hodge-podge of social media postings, news articles, television interviews, pleadings from unrelated lawsuits, and a transcript from the arraignment in the Trump prosecution. *See* Exhibits 60–72 to the Second Boutrous Declaration [ECF Nos. 41-2 to 41-5].

The Court is in receipt of several unsolicited amicus briefs. An assemblage of former members of Congress, former prosecutors, former government attorneys, and academics filed an amicus brief with the consent of Bragg. *See* Letter Motion to File Amicus Brief [ECF No. 34]; Amicus Brief [ECF No. 37] (“First Amicus”). Amici argue that the Committee lacked authority to issue the subpoena and echo Bragg’s refrain that the subpoena will “interfere with an ongoing criminal prosecution . . . brought by a state prosecutor.” First Amicus 1. A separate group of former state and federal prosecutors filed another amicus brief, again with the consent of Bragg. *See* Letter Motion to File Amicus Brief [ECF No. 40] (“Second Amicus”). These amici assert that the subpoena “seriously challenges . . . the prosecutorial process.” Second Amicus 2.⁴

Bragg and his two sets of amici attack what they describe as federal interference in his criminal prosecution. Pl. Mem. 1; First Amicus 3; Second Amicus 3. There is no question that New York, a sovereign state in our federal system, has authority to enforce its criminal laws through its local prosecutors. The Court is mindful of potential federalism concerns. However,

⁴ The Court also received a “friend of the court letter” from James H. Brady, dated April 17, 2023. *See* Letter [ECF No. 38]. The Court has reviewed and considered all of the unsolicited submissions.

the Court rejects the premise that the Committee’s investigation will interfere with DANY’s ongoing prosecution. The subpoena of Pomerantz, who was a private citizen and public commentator at the time Bragg indicted Trump, will not prevent or impede the criminal prosecution that is proceeding in New York state court.

ANALYSIS

I. Bragg Has Sufficiently Alleged Article III Standing

A threshold issue in this matter is whether Bragg has standing to maintain this action since the challenged subpoena is not addressed to Bragg or his office. *See All. For Env’t Renewal, Inc. v. Pyramid Crossgates Co.*, 436 F.3d 82, 85 (2d Cir. 2006) (“[A] district court must generally. . . establish that it has federal constitutional jurisdiction, including a determination that the plaintiff has Article III standing, before deciding a case on the merits.”). The subpoena was issued to Pomerantz—not to Bragg. *See* Ex. 1. Pomerantz has not filed suit. Although he is named as a defendant, Pomerantz “asks this Court to grant [Bragg’s] motion.” Pomerantz Res. 1.

Bragg, as the party invoking federal jurisdiction, bears the burden of establishing standing. *See Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). The Supreme Court has “established that the ‘irreducible constitutional minimum’ of standing consists of three elements.” *Id.* (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). “The plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.” *Id.*

Where a plaintiff seeks to enjoin a subpoena issued to a third party and has “no alternative means to vindicate [his] rights,” a plaintiff satisfies his burden of establishing standing. *U.S. Servicemen’s Fund v. Eastland*, 488 F.2d 1252, 1260 (D.C. Cir. 1973), *rev’d on other grounds*, 421 U.S. 491 (1975); *see also Trump v. Deutsche Bank AG*, 943 F.3d 627, 635 (2d Cir. 2019), *rev’d on other grounds sub nom.*, 140 S. Ct. 2019 (2020) (“[T]here is no dispute that Plaintiffs had

standing in the District Court to challenge the lawfulness of the Committees' subpoenas by seeking injunctive relief against the Banks as custodians of the documents.”).

Bragg's stated interest in the subpoena is his claim that permitting Pomerantz to appear will undermine the pending criminal case against President Trump, intrude on the grand jury proceedings, and violate grand jury secrecy laws, among other things. These assertions are all without merit. Since Pomerantz was not at DANY when the grand jury indicted President Trump (and therefore has no information on that subject), *see* Pomerantz Res. 2, the only arguably valid interest Bragg has (to the extent it is not waived, *see infra* Section II.D) is in maintaining the confidentiality of deliberations within the office he now leads.

Determining whether Bragg has any “alternative means to vindicate” his rights is made difficult where, as here, the Court cannot predict what questions will be asked—or whether any rights of Bragg will be implicated. In that vein, Defendants contend that Bragg “has no standing whatsoever to stop Pomerantz from appearing before the Committee to answer . . . questions” that “do not involve purportedly privileged material in any way.” Def. Mem. 18.

The Court concludes that Bragg sufficiently alleges standing. Jordan's letter to Pomerantz references “the New York County District Attorney's unprecedented prosecutorial conduct” and Pomerantz's “unique role as a special assistant district attorney.” *See* Ex. 1 at 2. These areas of inquiry at least arguably implicate Bragg's interests. Because “general factual allegations of injury resulting from the defendant's conduct may suffice” at the *pleading* stage, the Court concludes that Bragg has established Article III standing sufficient to survive this *even earlier* stage of litigation. *Lujan*, 504 U.S. at 561; *cf. U.S. Servicemen's Fund*, 488 F.2d at 1260; *Deutsche Bank*, 943 F.3d at 635.

II. Bragg Is Not Entitled to a Temporary Restraining Order

A. Legal Standard

In the Second Circuit, the same legal standard governs the issuance of preliminary injunctions and temporary restraining orders. *See, e.g., 3M Co. v. Performance Supply, LLC*, 458 F. Supp. 3d 181, 191 (S.D.N.Y. 2020). To obtain either, Bragg must show: (1) a likelihood of success on the merits, (2) a likelihood of irreparable injury, (3) the balance of hardships tips in his favor, and (4) that the public interest would not be disserved by the issuance of an injunction. *See Benihana, Inc. v. Benihana of Tokyo, LLC*, 784 F.3d 887, 895 (2d Cir. 2015).⁵ Like a preliminary injunction, a temporary restraining order is “an extraordinary remedy never awarded as of right.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008).

Where a party seeking a temporary restraining order fails to establish a likelihood of success on the merits, “there is no need to address the other prongs of the analysis.” *Oneida Nation of New York v. Cuomo*, 645 F.3d 154, 164 (2d Cir. 2011). For the reasons outlined below, Bragg has not demonstrated a likelihood of success on the merits.

B. The Subpoena Serves a Valid Legislative Purpose and Is Not Ultra Vires or Otherwise Unconstitutional

Congressional committees have constitutional authority to conduct investigations and issue subpoenas because “each House has power ‘to secure needed information’ in order to legislate.” *Trump v. Mazars USA, LLP*, 140 S. Ct. 2019, 2031 (2020) (quoting *McGrain v. Daugherty*, 273 U.S. 135, 161 (1927)); *see Eastland v. U.S. Servicemen’s Fund*, 421 U.S. 491, 504 (1975). This “power of inquiry—with process to enforce it—is an *essential* and *appropriate* auxiliary to the

⁵ The Second Circuit has previously instructed that a district court may also grant a preliminary injunction when there are “sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly in the movant’s favor” and “irreparable harm in the absence of the injunction.” *Kelly v. Honeywell Int’l, Inc.*, 933 F.3d 173, 184 (2d Cir. 2019). Neither party contends that this standard should apply here.

legislative function.” *McGrain*, 273 U.S. at 174 (emphasis added). “The power of the Congress to conduct investigations is inherent in the legislative process.” *Watkins v. United States*, 354 U.S. 178, 187 (1957).

Of course, this power is not limitless. “[T]here is no congressional power to expose for the sake of exposure.” *Id.* at 200. Nor may Congress issue subpoenas “for the purpose of ‘law enforcement,’” because that power is assigned “to the Executive and the Judiciary.” *Mazars*, 140 S. Ct. at 2032 (quoting *Quinn v. United States*, 349 U.S. 155, 161 (1955)). However, the Supreme Court has described the congressional power of inquiry as “broad” and “indispensable.” *Watkins*, 354 U.S. at 187, 215. Indeed, without its investigative powers, “Congress would be shooting in the dark, unable to legislate ‘wisely or effectively.’” *Mazars*, 140 S. Ct. at 2031 (quoting *McGrain*, 273 U.S. at 175).

Congress may conduct inquiries “into the administration of existing laws, studies of proposed laws, and [particularly relevant here,] ‘surveys of defects in our social, economic or political system for the purpose of enabling the Congress to remedy them.’” *Mazars*, 140 S. Ct. at 2031 (quoting *Watkins*, 354 U.S. at 187). Importantly, a congressional subpoena is valid only if it is “related to, and in furtherance of, a legitimate task of the Congress.” *Watkins*, 354 U.S. at 187. The subpoena must serve a “valid legislative purpose,” *Quinn*, 349 U.S. at 161, and “concern[] a subject on which ‘legislation could be had,’” *Eastland*, 421 U.S. at 506 (quoting *McGrain*, 273 U.S. at 177). The role of a court in evaluating a congressional subpoena is strictly limited to determining only whether the subpoena is “plainly incompetent or irrelevant to any lawful purpose . . . in the discharge of [the Committee’s] duties.” *McPhaul v. United States*, 364 U.S. 372, 381 (1960) (emphasis added) (quoting *Endicott Johnson Corp. v. Perkins*, 317 U.S. 501, 509 (1943)).

Jordan and the Committee have identified several valid legislative purposes underlying the subpoena. *See* Def. Mem. 15–17. First, they reference the Committee’s interest in investigating the use of federal forfeiture funds in connection with DANY’s investigation of President Trump. *See* Def. Mem. 8, 17; *see also* Ex. 1 at 2; Exhibit V (“Ex. V”) to the Tatelman Dec. [ECF No. 32-22]. There can be no doubt that Congress may permissibly investigate the use of federal funds, particularly where the result of the investigation might prompt Congress to pass legislation changing how such funds are appropriated or may be spent. *See Sabri v. United States*, 541 U.S. 600, 608 (2004) (“The power to keep a watchful eye on expenditures and on the reliability of those who use public money is bound up with congressional authority to spend in the first place.”); U.S. Const. art. I, § 8, cl. 1. DANY has conceded that it used federal forfeiture funds in its investigation of President Trump. *See* Ex. 19; Compl. ¶¶ 78, 81. Defendants represent that the Committee is considering legislation to prohibit the use of federal forfeiture funds to investigate a current or former President. Def. Mem. at 8; Ex. V. This purpose, standing alone, is clearly sufficient to justify the subpoena and thereby to end this Court’s inquiry. On the record at the hearing on the motion for emergency relief, Bragg’s counsel conceded that the investigation of DANY’s use of federal funds is a valid legislative purpose.

Second, Defendants identify the possibility of legislative reforms to insulate current and former presidents from state prosecutions, such as by removing criminal actions filed against them from state to federal court. *See* Def. Mem. 8–9. Congress, of course, has authority to consider, and to investigate, this potential legislative reform. *See Watkins*, 354 U.S. at 187 (“The [investigative] power of the Congress . . . encompasses inquiries concerning the administration of existing laws as well as *proposed or possibly needed* statutes.” (emphasis added)); U.S. Const. art. I, § 8, cl. 18 (defining the congressional power “[t]o make all laws which shall be necessary and proper for carrying into execution the foregoing powers”). And Congress also has authority to

investigate legislative reforms to prevent local prosecutions that could potentially interfere with federal elections. *See Mazars*, 140 S. Ct. at 2031 (It is legitimate for Congress to conduct “inquiries into the administration of existing laws” and “proposed laws” that seek to address problems “in our social, economic or political system.”). Although Bragg speculates that any such legislation would be unconstitutional, *see* Pl. Mem. 15, that issue is for another day. The Court will not, and indeed cannot, block congressional investigation into *hypothetical* future legislation based on Bragg’s speculation that such legislation would not pass constitutional muster. *See Nashville, C. & St. L. Ry. v. Wallace*, 288 U.S. 249, 262 (1933) (courts may not make “abstract determination[s] . . . of the validity of a statute”).⁶

C. *The Subpoena Does Not Implicate the Sovereign Interests of New York*

Bragg suggests that these are not the Committee’s *true* objectives. Instead, he contends that the subpoena is *actually* intended “to undermine and obstruct New York’s criminal case against Mr. Trump and [to] retaliate against the District Attorney.” Pl. Mem. 7. The Court cannot passively accept this contention. The Court is required to presume that a congressional committee’s stated legislative object is “the real object.” *McGrain*, 273 U.S. at 178 (When it appears that Congress is investigating on a subject matter in aid of legislating, “the presumption should be indulged that this was the real object.”). Moreover, even if Bragg’s hypotheses about the Committee’s *real* motivations were correct, they are irrelevant. “It is not a court’s ‘function’ to invalidate a congressional investigation that serves a legislative purpose.” *Comm. on Ways & Means, U.S. House of Representatives v. U.S. Dep’t of the Treasury*, 575 F. Supp. 3d 53, 69 (D.D.C. 2021), *aff’d sub nom.*, 45 F.4th 324 (D.C. Cir. 2022) (quoting *Watkins*, 354 U.S. at 200). Indeed, the Supreme Court has instructed that “[s]o long as Congress acts in pursuance of its

⁶ Plaintiffs make much of *Kilbourn v. Thompson*, 103 U.S. 168 (1880). *See* Pl. Mem. 7–8. But the Court concluded there that the subpoena was “clearly judicial” in nature. 103 U.S. at 192. The same is not true here.

constitutional power, the Judiciary *lacks authority to intervene on the basis of the motives which spurred the exercise of that power.*” *Barenblatt v. United States*, 360 U.S. 109, 132 (1959) (emphasis added). Whatever motives may underlie the Committee’s subpoena, its “inquiry may fairly be deemed within its province.” *Tenney v. Brandhove*, 341 U.S. 367, 378 (1951). That is sufficient to resolve this inquiry.⁷

Plaintiff next urges this Court to apply the “heightened standard of review” outlined by the Supreme Court in *Trump v. Mazars USA, LLP*, 140 S. Ct. 2019 (2020). Pl. Mem. 13. In *Mazars*, the Supreme Court outlined a four-part analysis relevant in assessing “a subpoena *directed at the President’s personal information.*” 140 S. Ct. at 2035 (emphasis added). Because “[c]ongressional subpoenas for the President’s personal information implicate[d] weighty concerns regarding the separation of powers,” the Supreme Court instructed courts considering such subpoenas to: (1) “carefully assess whether the asserted legislative purpose warrants the significant step of involving *the President* and his papers,” (2) “insist on a subpoena no broader than reasonably necessary to support Congress’s legislative objective,” (3) “be attentive to the nature of the evidence offered by Congress to establish that a subpoena advances a valid legislative purpose,” and (4) “be careful to assess the burdens imposed *on the President* by a subpoena.” *Id.* at 2035–36 (emphasis added). The Court did not, as Bragg suggests, indicate that the four *Mazars* factors apply *whenever* someone argues that a subpoena “implicat[es] significant separation-of-powers concerns.” Pl. Mem. 13. In any event, the same separation of powers concerns are *not* implicated here. The congressional subpoena in *Mazars* was directed at materials pertaining to the *sitting President of the United States*. In contrast, here, the subpoena was issued to a *private*

⁷ Bragg notes that there is “no prior case in which Congress has attempted to subpoena a state prosecutor for the purpose of extracting information about an ongoing state prosecution.” Pl. Mem. 12 (emphasis omitted). Defendants do not dispute this characterization or cite to any such case. However, there also is no prior case in which a former President of the United States has been criminally charged in a state trial court, suggesting *both* parties swim in untested waters.

citizen who is *no longer* employed by *any* state government and who has written a book and spoken extensively about the subject matter of the congressional inquiry. The Court is not persuaded that *Mazars* applies to this case.⁸

Even assuming that *Mazars* were applicable, the Court would reach the same conclusion. With respect to the first factor, Bragg does not demonstrate that the subpoena issued to Pomerantz—a private citizen—will occasion a “constitutional confrontation.” *Mazars*, 140 S. Ct. at 2035 (quoting *Cheney v. U.S. Dist. Ct. for D.C.*, 542 U.S. 367, 389 (2004)). Congress has the power to compel individuals to testify. *See Watkins*, 354 U.S. at 187–88 (“It is unquestionably the duty of all citizens to cooperate with the Congress in its efforts to obtain the facts needed for intelligent legislative action. It is their unremitting obligation to respond to subpoenas, to respect the dignity of the Congress and its committees and to testify fully with respect to matters within the province of proper investigation.”); *Quinn*, 349 U.S. at 160–61 (“There can be no doubt as to the power of Congress, by itself or through its committees, to investigate matters and conditions relating to contemplated legislation. . . . Without the power to investigate—including of course the authority to compel testimony, either through its own processes or through judicial trial—Congress could be seriously handicapped in its efforts to exercise its constitutional function wisely and effectively.” (citations omitted)). Indeed, courts have even compelled individuals *actively* employed by the executive branch (who at least arguably hold executive privilege, and some of whom are attorneys obligated to protect privileged information) to appear for congressional depositions. *See, e.g., Meadows v. Pelosi*, No. 1:21-CV-03217 (CJN), 2022 WL 16571232 at *8–13 (D.D.C. Oct. 31, 2022) (dismissing challenge by White House Chief of Staff to a congressional

⁸ Despite having discussed *Mazars* in his moving brief, Bragg seeks a second chance at arguing its applicability in his reply brief, contending that the case broadly governs subpoenas “seeking a current or former president’s information.” Reply 8. That is clearly incorrect. In any event, the subpoena does *not* seek a current or former president’s information—it seeks *Pomerantz’s* testimony. *See* Ex. 1.

subpoena requesting his appearance for a deposition); *Comm. on Judiciary, U.S. House of Representatives v. Miers*, 558 F. Supp. 2d 53, 106 (D.D.C. 2008) (“[The former White House counsel] is not excused from compliance with the Committee’s subpoena by virtue of a claim of executive privilege that may ultimately be made. Instead, she must appear before the Committee to provide testimony, and invoke executive privilege where appropriate.”); *Comm. on Judiciary of U.S. House of Representatives v. McGahn*, 968 F.3d 755, 764 (D.C. Cir. 2020) (“The subpoena power is potent. Each House of Congress is specifically empowered to compel testimony from witnesses and the production of evidence in service of its constitutional functions, and the recipient of a subpoena is obligated by law to comply.”). If those individuals could permissibly be deposed, the same is certainly true here.

Second, the subpoena seeks only Pomerantz’s *testimony* (not any documents or materials). Jordan specifically noted that “*many* of the topics relevant to [the Committee’s oversight]” were discussed—voluntarily and extensively—by Pomerantz in his book, as well as in several public interviews. Ex. 1 at 2 (emphasis added). The subpoena is not, as Bragg contends, an “overbroad fishing expedition.” Pl. Mem. 17.

Third, Bragg criticizes Defendants’ “flimsy evidence” of a valid legislative purpose. Pl. Mem. 17 (internal quotation marks omitted); *see also* Pomerantz Res. 3. But Defendants provide evidence that the Committee is investigating the use of federal forfeiture funds, *see* Ex. V, and considering the viability of legislation to protect former Presidents from politically motivated state prosecutions, *see* Exhibit W to the Tatelman Dec. [ECF No. 32-23].⁹ Bragg suggests this evidence

⁹ Although Pomerantz contends that he has “little if anything to say that will advance the purported legislative purpose,” Pomerantz Res. at 5, it is not this Court’s role to prescribe the most effective manner for congressional inquiry. *See Eastland*, 421 U.S. at 509 (“The very nature of the investigative function—like any research—is that it takes the searchers up some ‘blind alleys’ and into nonproductive enterprises. To be a valid legislative inquiry there need be no predictable end result.”).

is insufficient but his conclusory assertions do not move the needle where, as here, *he* has the burden of demonstrating entitlement to an “extraordinary remedy.” *Winter*, 555 U.S. at 24.

Bragg and Pomerantz insist that Pomerantz’s testimony cannot advance any valid legislative purpose because, in essence, everything Pomerantz is prepared to say is already in his book and he does not have information about DANY’s use of federal funds. Pl. Mem. 11, 22 (“[T]he Committee already has his book.”); Pomerantz Res. 2; Reply 5. Bragg and Pomerantz are not entitled to unilaterally narrow the universe of acceptable inquiry to the information and mental impressions that Pomerantz decided to sell in the pages of his book. *See Eastland*, 421 U.S. at 509; *McGahn*, 968 F.3d at 764. If Pomerantz does not have any information about DANY’s use of federal funds, he may say so if asked at his deposition.

Finally, Bragg’s suggestion that the subpoena “would substantially burden both the New York criminal justice system itself and the District Attorney’s Office” is without merit. Pl. Mem. 18. Pomerantz is a *former* prosecutor. He is not involved in the state prosecution in any way. Bragg provides no reason to conclude that a deposition of a former employee would interfere with DANY or any of its ongoing prosecutions. The pending prosecution will move forward in the ordinary course regardless of whether the Committee deposes Pomerantz. Further, Pomerantz was not even employed with DANY at the time President Trump was indicted. Pomerantz admits as much. Pomerantz Dec. ¶ 4. He has stated that the materials in his book would “have no bearing on the litigation of [the criminal prosecution of President Trump]” and would “not prejudice any investigation or prosecution of Donald Trump.” *Inside Account* at 278–79. Moreover, Pomerantz emphasizes that he “was *not* involved in the decision to bring the pending indictment against Mr. Trump.” Pomerantz Res. 5 (emphasis added). Bragg therefore does not satisfy his burden of demonstrating that the subpoena poses a threat “to a state executive officer, a state judicial proceeding, [or] our federal system itself.” Pl. Mem. 14. The Court is further unmoved by Bragg’s

purported concern at the prospect of “inject[ing] partisan passions into a forum where they do not belong.” Pl. Mem. 19. By bringing this action, Bragg is engaging in precisely the type of political theater he claims to fear.

While the Court need not decide the ultimate merits of Bragg’s claims at this stage, serious constitutional infirmities are evident with respect to a lawsuit against Defendants Jordan and the Committee. *See* Def. Mem. 5–9. The Speech or Debate Clause states: “for any Speech or Debate in either House,” Senators and Representatives “shall not be questioned in any other Place.” U.S. Const. art. I, § 6, cl. 1. Although the Clause speaks only of “Speech or Debate,” it has been interpreted to protect all “legislative acts.” *See Doe v. McMillan*, 412 U.S. 306, 312 (1973) (citation omitted). The Clause provides individual members of Congress *and* congressional committees broad immunity from civil suits. *See Eastland*, 421 U.S. at 501–03; *Doe*, 412 U.S. at 313; *see also Harlow v. Fitzgerald*, 457 U.S. 800, 807 (1982); *Supreme Ct. of Virginia v. Consumers Union of U.S., Inc.*, 446 U.S. 719, 731–33 (1980). Because Jordan and the Committee are likely immune, Defendants contend that they are necessary parties who cannot be joined and that, under Federal Rule of Civil Procedure 19, the action cannot be maintained. *See* Def. Mem. 10–14. Bragg disagrees.¹⁰ The Court need not resolve this issue, but the distinct possibility of immunity weighs against concluding that Bragg has shown a likelihood of success on the merits. In all events, Bragg confirms in his reply brief that the Court must consider whether there is a “legitimate legislative purpose” for the subpoena he seeks to quash. Reply 3. As explained above, Jordan and the Committee clearly have identified a legitimate legislative purpose, and accordingly the Court will not issue a temporary restraining order.

¹⁰ Despite pervasive discussion of the Speech or Debate Clause in the relevant case law and governing authority, Bragg neglected to mention the Clause whatsoever in his moving brief. However, Bragg seeks an opportunity to address this “material issue[]” in his unauthorized reply brief. *See* Letter Motion for Leave to File Reply [ECF No. 41].

D. *To the Extent They Have Not Been Waived, the Claimed Privileges Are Not Jeopardized by the Subpoena*

Plaintiff's assertion that the subpoena "seeks grand jury material" and "documents and communications protected by the attorney-client privilege and work product doctrine" does not salvage his motion. Pl. Mem. 20. As an initial matter, the subpoena does *not*, as Plaintiff suggests, "seek[]" any "material," "documents," or "communications." Pl. Mem. 20. The subpoena *only* seeks Pomerantz's *testimony*. See Ex. 1. Although Bragg assumes that the questioning will stray into impermissible territory, the Court declines Bragg's invitation to blindly speculate about what questions might *hypothetically* be posed to Pomerantz at the deposition. See *Nat'l Org. for Marriage, Inc. v. Walsh*, 714 F.3d 682, 687 (2d Cir. 2013) ("A claim is not ripe if it depends upon 'contingent future events that may not occur as anticipated, or indeed may not occur at all.'" (quoting *Thomas v. Union Carbide Agr. Prods. Co.*, 473 U.S. 568, 580–81 (1985)); *Ass'n of Car Wash Owners Inc. v. City of New York*, 911 F.3d 74, 85 (2d Cir. 2018) ("[F]ederal courts may not give an opinion advising what the law would be upon a hypothetical state of facts." (citing *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 241 (1937) (internal quotation marks omitted))).

Bragg's throw-everything-at-the-wall approach to privilege is unpersuasive. As an initial matter, Bragg concedes that "Jordan represents that he *does not* seek information protected by New York's grand jury secrecy laws." Pl. Mem. 20 (emphasis added). Although Bragg vaguely asserts that the Committee's "inquiry *could* [still] include questions about grand jury matters," this Court will not quash a subpoena based solely on Bragg's seemingly endless string of "what ifs." Pl. Mem. 21 (emphasis added). Even if grand jury secrecy *were* implicated by the subpoena, Bragg's argument makes little sense because Pomerantz was not involved in securing the grand jury indictment. Pomerantz Dec. ¶ 3. Indeed, at the time Pomerantz left DANY, "there [had] been no New York state criminal prosecution of Donald Trump." *Inside Account* at 278. And even

assuming Pomerantz *did* have some relevant information about the grand jury, Pomerantz is clearly aware that he “cannot disclose details about grand jury proceedings” since he professes that he authored his book in such a way that his “account of the investigation did not violate the grand jury secrecy requirement.” *Id.* at 195, 277.¹¹

With respect to Bragg’s various other claims of privilege,¹² the Court is unpersuaded that judicial intervention is needed to ensure that any privilege that might exist is preserved. Pomerantz is impressively credentialed. He had a long and successful career: he graduated from the University of Michigan Law School, served as a law clerk for a distinguished federal judge, clerked at the United States Supreme Court, was a law professor, worked as a federal prosecutor for the United States Attorney’s Office for the Southern District of New York, and as a criminal defense attorney for many years, including as a senior partner at a prominent New York City law firm (Paul, Weiss, Rifkind, Wharton & Garrison). *See Inside Account* at 3–4. In short, Pomerantz is a very experienced, sophisticated, and extremely capable attorney. Moreover, the Committee’s procedural rules permit two additional lawyers to accompany Pomerantz to the deposition. *See* Rules of Procedure of the Committee on the Judiciary, R. XI(k)(3) (2023) (“Rule XI”).¹³ This

¹¹ The Court notes that the secrecy of the grand jury proceedings in the pending criminal case was compromised before an indictment was even announced. *See* Kara Scannell *et al.*, *Donald Trump indicted by Manhattan grand jury on more than 30 counts related to business fraud*, CNN (Mar. 31, 2023, 7:35 AM), <https://www.cnn.com/2023/03/30/politics/donald-trump-indictment/index.html>.

¹² Specifically, Bragg contends that attorney-client privilege, attorney work product protection, law enforcement privilege, informant’s privilege, public interest privilege, and deliberative process privileges are all implicated. Pl. Mem. 21–22. Although Bragg pays lip service to these other so-called privileges, his primary concern appears to be the possibility that Pomerantz might be asked to disclose the “internal deliberations” of DANY, which is a question of work product. *See* Pl. Mem. 21. Work product protection is not absolute, but rather offers a *qualified* protection to “documents and tangible things that are prepared in anticipation of litigation or for trial.” Fed. R. Civ. P. 26(b)(3). Of course, this is precisely what Pomerantz lays out in *People vs. Donald Trump: An Inside Account*.

¹³ Although the rules only permit “personal, nongovernmental attorneys” to accompany Pomerantz, *see* Rule XI, this Court has no authority to rewrite the Committee’s rules. *See Exxon Corp. v. F.T.C.*, 589 F.2d 582, 590 (D.C. Cir. 1978) (“[W]e are sympathetic to appellants’ concern for safeguarding highly confidential information worth millions of dollars, but for this court on this record to establish any such requirement would clearly involve an unacceptable judicial intrusion into the internal operations of Congress.”).

Court is confident that Pomerantz and his counsel are fully knowledgeable about the privilege and confidentiality obligations he owes to DANY and, indeed, are duty bound to ensure they are maintained.¹⁴ See Model Rules of Pro. Conduct 1.6 (duty of confidentiality); 1.9 (duties to former clients) (Am. Bar Ass’n 2023); see also *Inside Account* at 279 (noting that Pomerantz “overcame [his] angst” about “describing the inner dialogue of the investigation” because “the Trump investigation was in a class of its own”). The “recipients of legislative subpoenas . . . have long been understood to retain common law and constitutional privileges with respect to certain materials, such as attorney-client communications and governmental communications protected by executive privilege.” *Mazars*, 140 S. Ct. at 2032.

Pomerantz is now represented by a team of capable lawyers from his former firm Paul, Weiss. See Notices of Appearance [ECF Nos. 28, 29]. Bragg provides no reason to assume those accomplished lawyers would not also be fully knowledgeable about Pomerantz’s ethical obligations with respect to privilege and confidentiality. Accordingly, the deposition should proceed in the normal course, question by question, and Pomerantz is free to object, personally or through his counsel, and decline to answer any questions when (and if) appropriate. See *Miers*, 558 F. Supp. 2d at 106–07. Indeed, Defendants confirm that “[t]o the extent that questions are asked that Pomerantz believes he is not permitted to answer, he would retain the ability to decline to answer or to assert an applicable privilege.” Def. Mem. 19.

Bragg expresses concern that the Committee’s rules permit “a partisan decisionmaker” to “overrule privilege objections” at the deposition and “order a witness to answer a question.” Pl.

¹⁴ Pomerantz has made it abundantly clear that he will seek to comply with Bragg’s instructions and to invoke privilege. See Pomerantz Res. 4 (“The District Attorney . . . instructed Mr. Pomerantz, in writing, to provide no information to the [Committee] in response to the subpoena.”); see also Pomerantz Dec. ¶ 6 (“[I]f I were to testify, I believe that the District Attorney would instruct me to assert the various claims of privilege he has identified in his moving papers.”). This claimed deference to the District Attorney’s command is a surprising about-face, particularly given that Pomerantz previously *declined* the District Attorney’s request to review his book manuscript before publication. See Compl. ¶ 90.

Mem. 23. The Court cannot decide, before-the-fact, “what information or answers [Pomerantz] may validly be required to give or the validity of any objections he might make.” *Sanders v. McClellan*, 463 F.2d 894, 903 (D.C. Cir. 1972); *see also Ansara v. Eastland*, 442 F.2d 751, 753 (D.C. Cir. 1971) (noting that “courts [should] avoid use of extraordinary remedies that involve ‘needless friction’ with a coordinate branch of the government” where “the plaintiffs [sought] relief that would precede and seek to relate to the conduct of a *future* legislative hearing” (emphasis added) (citation omitted)). But in the event that this situation does arise, Pomerantz has avenues for judicial review. *See, e.g., Watkins*, 354 U.S. at 214–16; *United States v. House of Representatives of U.S.*, 556 F. Supp. 150, 152 (D.D.C. 1983) (“[C]onstitutional claims and other objections to congressional investigatory procedures may be raised as defenses in a criminal prosecution.”).

Pomerantz complains that he is in a “legally untenable position” because he will be forced to make a choice between “legal or ethical consequences” or “potential criminal and disciplinary exposure.” Pomerantz Res. 4–5. The Court, again, is unable to surmise whether Pomerantz will *actually* face such a dilemma. In addition, the Court notes that Pomerantz is in this situation because *he* decided to inject himself into the public debate by authoring a book that he has described as “appropriate and in the public interest.” *Inside Account* at 280.

Finally, Bragg cannot seriously claim that any information *already published* in Pomerantz’s book and discussed on prime-time television in front of millions of people is protected from disclosure as attorney work product (or otherwise). *See* Pl. Mem. 21–22. On the record at the hearing on the motion for emergency relief, Bragg’s counsel admitted that Pomerantz’s book did not preserve the confidences of the District Attorney’s Office. While Bragg maintains that Pomerantz’s inappropriate disclosures cannot waive DANY’s privilege, such a claim is belied by DANY’s inaction in response to Pomerantz’s *known plan* to publish a book about DANY’s

investigation into President Trump. If that information *ever* was protected from disclosure as attorney work product,¹⁵ the protection has been *waived* by DANY. Bragg concedes that he was aware of Pomerantz’s intention to publish the book *before* it was published. Compl. ¶ 90. Although Bragg contends that he “diligently sought to protect [the privilege],” he merely “remind[ed] Mr. Pomerantz of his obligations not to disclose confidential or privileged information and request[ed] the opportunity for prepublication review.” Pl. Mem. 21. By Bragg’s own admission, Pomerantz *declined* the request for pre-publication review and proceeded to publish the book anyway. Pl. Mem. 21–22. There is no evidence that DANY took *any action* before the book was published—such as seeking to enjoin publication or distribution.¹⁶ Similarly, after publication, DANY *again* took no action. It did not request a gag order, seek an injunction, pursue Pomerantz for money damages, refer Pomerantz for an ethics inquiry, or even raise any concerns about the publication with Pomerantz. This repeated inaction constitutes acquiescence to the disclosure of any otherwise privileged information. *See, e.g., Cruz v. Coach Stores, Inc.*, 196 F.R.D. 228, 230 (S.D.N.Y. 2000) (privilege waived where “Coach raised no objection when . . . Jaspán Associates . . . publicly filed a copy of the [purportedly privileged document and Coach] . . . neither sought its sealing by the Court nor raised any objection with Jaspán Associates.”); *von Bulow by Auersperg v. von Bulow*, 114 F.R.D. 71, 76 (S.D.N.Y. 1987) (“An attorney’s disclosure of communications with his client will constitute a waiver of the attorney-client privilege if the

¹⁵ Pomerantz seemingly contends it was not, as he has publicly stated that he is “confident that all of [his] actions with respect to the Trump investigation, including the writing of [his] forthcoming book, are consistent with [his] legal and ethical obligations.” Compl. ¶ 90; *see also Inside Account* at 279–80 (“The public debate about Trump’s conduct, his unique public status, the circumstances under which my work ended, and the extensive news coverage about the progress of the investigation convinced me that writing this book was appropriate and in the public interest.”).

¹⁶ At the hearing on the motion for emergency relief, the Court repeatedly pressed Bragg to describe what, if any steps, DANY took to preserve its privilege after it became aware that Pomerantz intended to publish a book. In response to that questioning, Bragg’s counsel represented for the first time that at some point, she copied the City’s Department of Investigation on an email containing the letter that DANY sent to Pomerantz reminding him of his ethical obligations to DANY.

client has . . . acquiesced in the disclosure.”). Because Bragg has *never* claimed that any information in the book was privileged, he may not do so now simply because it is convenient.

In sum, the Court is unwilling to hypothesize about, and prophylactically rule on, the permissibility of questions that may—or may not—arise at the deposition of Pomerantz. Bragg has not shown a likelihood of success on the merits. The Court therefore need not address the other prongs of the temporary restraining order analysis. *See Oneida*, 645 F.3d at 164.¹⁷

CONCLUSION

For the foregoing reasons, the motion for a temporary restraining order enjoining the subpoena to depose Mr. Pomerantz and enjoining Mr. Pomerantz from appearing is DENIED.

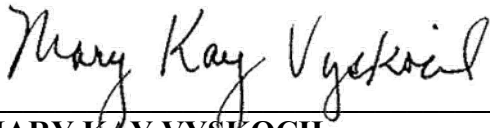
In our federalist system, elected state and federal actors sometimes engage in political dogfights. Bragg complains of political interference in the local DANY case, but Bragg does not operate outside of the political arena. Bragg is presumptively acting in good faith. That said, he is an elected prosecutor in New York County with constituents, some of whom wish to see Bragg wield the force of law against the former President and a current candidate for the Republican presidential nomination. Jordan, in turn, has initiated a political response to what he and some of his constituents view as a manifest abuse of power and nakedly political prosecution, funded (in part) with federal money, that has the potential to interfere with the exercise of presidential duties and with an upcoming federal election. The Court does not endorse either side’s agenda. The sole question before the Court at this time is whether Bragg has a legal basis to quash a congressional subpoena that was issued with a valid legislative purpose. He does not.

¹⁷ In his Complaint, Bragg seeks a declaratory judgment that any *future* subpoenas served by Jordan or the Committee on Bragg or “any of his current or former employees or officials” are “invalid, unconstitutional, *ultra vires*, and/or unenforceable” and a “permanent and preliminary injunction enjoining enforcement of any such [future] subpoena.” Compl. ¶ 127; *see* Compl. ¶ 20. To be clear, Bragg seeks this declaratory judgment for theoretical *future* subpoenas which Jordan or the Committee may issue against him or others. On the record at the hearing on the motion for emergency relief, Bragg’s counsel represented that he is not seeking such a declaratory judgment at this time.

The parties are encouraged to speak with one another to reach a mutually agreeable compromise regarding how the deposition of Mr. Pomerantz will proceed. This Court will retain jurisdiction over this dispute and any ancillary claims arising out of the inquiry by the Committee relating to the use of federal funds in a manner that may influence the 2024 presidential election. In other words, Bragg may not file successive proceedings under a different index number if and when the Committee in fact issues another subpoena that he finds objectionable or if there are issues with respect to the Pomerantz deposition. The parties are HEREBY ORDERED to file a joint status report within 30 days of the date of this Order.

SO ORDERED.

Date: April 19, 2023
New York, NY



MARY KAY VYSKOCIL
United States District Judge

COMMITTEE ON THE JUDICIARY,
U.S. HOUSE OF REPRESENTATIVES,
WASHINGTON, D.C.

DEPOSITION OF: MARK F. POMERANTZ

Friday, May 12, 2023

Washington, D.C.

The deposition in the above matter was held in room 2141, Rayburn House Office Building, commencing at 10:06 a.m.

Present: Representatives Jordan, Armstrong, Bishop, Gaetz, Hageman, Issa, Stefanik, Goldman, Plaskett, and Schiff.

Appearances:

For the COMMITTEE ON THE JUDICIARY:

- ██████████, GENERAL COUNSEL
- ██████████, DEPUTY GENERAL COUNSEL
- ██████████, SENIOR ADVISOR
- ██████████, STAFF DIRECTOR
- ████████████████████, DEPUTY COMMUNICATIONS DIRECTOR
- ██████████, COUNSEL
- ██████████, CHIEF COUNSEL FOR OVERSIGHT
- ██████████, COUNSEL
- ██████████, DIGITAL DIRECTOR
- ██████████, MINORITY CHIEF OVERSIGHT COUNSEL
- ██████████, MINORITY INTERN
- ██████████, MINORITY CHIEF COUNSEL
- AND DEPUTY STAFF DIRECTOR
- ██████████, MINORITY OVERSIGHT COUNSEL

For the SUBCOMMITTEE ON THE CONSTITUTION

AND LIMITED GOVERNMENT:

- ████████████████████, MINORITY PROFESSIONAL STAFF MEMBER

For the DISTRICT ATTORNEY'S OFFICE, NEW YORK COUNTY:

MYLAN L. DENERSTEIN, PARTNER, GIBSON DUNN

LESLIE DUBECK, GENERAL COUNSEL

For the WITNESS:

ROBERTO FINZI, PARTNER

JACOB ROSEN, LITIGATION ASSOCIATE

THEODORE V. WELLS, JR., PARTNER

PAUL, WEISS

1285 AVENUE OF THE AMERICAS

NEW YORK, NY 10019-6064

Mr. [REDACTED] We'll go on the record now.

Good morning. This is a deposition of Mr. Mark Pomerantz, formerly of the District Attorney's Office of New York County.

Chairman Jordan has requested this as part of the committee's oversight of the unprecedented indictment of a former President of the United States and a current declared candidate for that office.

The committee's oversight of the New York County District Attorney's unprecedented prosecutorial conduct will inform the consideration of potential legislative reforms that would, if enacted, insulate current and former Presidents from politically motivated State and local prosecutions.

These potential reforms may include, among other things, legislation to enhance reporting requirements concerning the use of Federal forfeiture funds or to prohibit the use of Federal funds to investigate a current or former President or current Presidential candidate and broadening the existing statutory right of removal of certain criminal cases from State to Federal court.

Because of Mr. Pomerantz's former role as a Special Assistant District Attorney that led the investigation into President Trump's finances, he is uniquely situated to provide information that is relevant and necessary to inform the committee's oversight and potential legislative reforms.

On April 6th of this year, Chairman Jordan issued a subpoena for Mr. Pomerantz to testify at a deposition. I'd like to mark that as exhibit 1.

[Pomerantz Exhibit No. 1

Was marked for identification.]

Mr. [REDACTED] Would the witness please state your name for the record, sir?

The Witness. Yes. My name is Mark F. Pomerantz.

Mr. [REDACTED]. And you're joined here today by personal counsel.

Mr. Wells, I'll have you introduce yourself and your colleagues.

Mr. Wells. Yes. My name is Ted Wells. I'm with the Paul, Weiss law firm.

I'm here today with my partner, Roberto Finzi, and my associate, Jacob Rosen.

Mr. [REDACTED]. And we're also joined here today by Ms. Dubeck from the New York County District Attorney's Office. We'll have Ms. Dubeck introduce herself.

Ms. Dubeck. I'm Leslie Dubeck. I'm the general counsel of the New York County District Attorney's Office.

Mr. [REDACTED]. And I understand you're also joined by one of your colleagues?

Ms. Dubeck. Oh, yes. Mylan Denerstein from the Gibson Dunn firm.

Mr. [REDACTED]. My name is [REDACTED]. I'm with Chairman Jordan's House Judiciary Committee staff.

I'm going to have the staffers introduce themselves first, and then we'll allow the members to introduce themselves, starting with my colleague, Ms. Nabity.

Ms. [REDACTED] [REDACTED] with Chairman Jordan's committee staff.

Ms. [REDACTED] [REDACTED] with Chairman Jordan.

Ms. [REDACTED] [REDACTED] chief oversight counsel for the House Judiciary Democratic staff.

Ms. [REDACTED] [REDACTED] House Judiciary Democrat staff.

Ms. [REDACTED] [REDACTED] with the House Judiciary Democrats.

Mr. [REDACTED] [REDACTED] House Judiciary Democrats.

Ms. [REDACTED] [REDACTED] with the House Judiciary Committee Democrats.

Mr. [REDACTED]. We're also joined by some of our members. I'll have them introduce themselves as well.

Chairman Jordan. Jim Jordan, Fourth District of Ohio.

Ms. Stefanik. Elise Stefanik, 21st District of New York, House Republican
Conference chair.

Mr. Armstrong. Kelly Armstrong, North Dakota.

Mr. Gaetz. Matt Gaetz, First District of Florida.

Mr. Bishop. Dan Bishop, North Carolina.

Mr. [REDACTED] And some members may come in after the proceedings begin, and depending on where we are, we may or may not have them introduces themselves. But certainly if they're going to ask any questions of you, we'll be sure to have introductions.

I'd like to go over the ground rules and guidelines that we will follow during today's deposition.

The committee will conduct the deposition in accordance with Rule XI of the Committee on the Judiciary's Rules of Procedure of the 118th Congress as well as the House rules.

Our questioning will proceed in rounds. The majority will ask questions first for 1 hour, and then the minority will have an opportunity to ask questions for an equal period of time if they choose. We will alternate back and forth until there are no more questions and the interview is over.

We ordinarily take a short break at the end of each hour, and the provision of breaks is totally up to you, sir. You let us know if you need a break, more breaks or less breaks. And you may also ask us to go off the record so you can confer with your counsel.

As you can see, we have an official reporter here taking down everything to make a written record, so we ask that you give verbal responses to all the questions.

Do you understand that?

The Witness. I do.

Mr. [REDACTED] Sometimes the court reporters need us to go back because we're talking over one another. Usually it's our fault. So we may have to go back and repeat a question.

We will only have one staffer asking you a question per round. However, the members can jump in. And ordinarily on our side we like to make sure we have at least 15 or 20 minutes of every hour that we turn it to our members.

We want you to answer our questions in the most complete and truthful manner as possible, so we will take our time. If you have any questions or don't understand one of our questions, please let us know. Our questions will cover a wide range of topics, so if you need clarification at any point just say so.

If you don't know the answer to a question or do not remember -- of course, it's best not to guess -- please give us your best recollection. And it's okay to tell us if you learned information from someone else. The Federal Rules of Evidence aren't applicable here. Just indicate how you came to know the information. And if there are things you don't know or can't remember, just say so.

By law you are required to answer questions from Congress truthfully. Do you understand that?

The Witness. I understand that.

Mr. [REDACTED] Witnesses that knowingly provide false testimony could be subject to criminal prosecution for perjury. Do you understand that?

The Witness. I do.

Mr. [REDACTED] And, of course, as I indicated before we went on the record, I mean no disrespect by mentioning that. You are a veteran lawyer and somebody who obviously has great understanding of how this process works.

Finally, I'd like to make a note that under the deposition rules, the content of what we discuss here today is confidential. And until the chairman and ranking member sort out what portions of the testimony or all the testimony is going to be released, under the House rules it's confidential. Obviously, you're not a party to the House rules, but I mention that for our members and staff.

At this time the court reporter will swear the witness in.

The Reporter. Please raise your right hand.

Do you solemnly declare and affirm, under the penalty of perjury, that the testimony you're about to give will be the truth, the whole truth, and nothing but the truth?

The Witness. I do.

Mr. [REDACTED] [REDACTED] do you have any welcoming remarks?

Ms. [REDACTED] We don't have any.

Mr. [REDACTED] Okay. And before we start our questions, Mr. Wells or Mr.

Pomerantz, do you have any remarks you'd like to make to kick things off?

The Witness. I do have a statement.

Mr. [REDACTED] Okay. Take your time.

The Witness. I am here because I respect the rule of law. I've spent my working life in service to the rule of law. And the rule of law requires a witness to appear for testimony in response to a subpoena. So I am present as required.

What I do not respect is the use of the committee's subpoena power to compel me to participate in an act of political theater.

This deposition is for show. I do not believe for a moment that I am here to assist a genuine effort to enact legislation or to conduct legislative oversight.

We are gathered here because Donald Trump's supporters would like to use these

proceedings to attempt to obstruct and undermine the criminal case pending against him and to harass, intimidate, and discredit anyone who investigates or charges him.

Fortunately, I do not have to cooperate with the cynical histrionics that this deposition represents. Although the rule of law compels me to be here, it does not require that I play a substantive role in a theatrical production. Under the law, I can decline to answer your questions for several reasons.

First, I have been instructed by the Manhattan District Attorney's Office that I should maintain that office's claims of privilege and confidentiality in order to protect the integrity of the pending prosecution and continuing investigation of Donald Trump. I intend to honor the District Attorney's request, and I will not answer questions to which the District Attorney objects.

Although I have written and spoken publicly about the Trump investigation, I did so before any criminal charges were brought against Mr. Trump.

Now that a grand jury has indicted him, the circumstances have changed. With formal charges now pending, the rule of law is best served if the merits of the case against Mr. Trump are litigated before the court that is hearing that case.

This is neither the time nor the place for me to answer questions about the investigation or the pending indictment over the objection of the prosecutors. The charges against Mr. Trump should be heard and decided by a judge and a jury before politicians second-guess their merits or the decision to bring them.

That's how our system works. Those who claim that they respect the rule of law should wait for the courts to do their work.

Second, the rule of law also affords me a personal privilege not to answer your questions. Under the Fifth Amendment to the Constitution, no person may be compelled to be a witness against himself or herself in a possible criminal case.

Shortly before the publication of my book, the District Attorney's Office warned me that I could face criminal liability if, among other things, I disclosed grand jury material or violated a provision of the New York City Charter dealing with the misuse of confidential information.

When we were before the United States District Court on April 19th of this year, a lawyer for the Manhattan District Attorney's Office said that my book, quote, "exposed me to criminal liability," close quote.

While I am certain that I broke no laws, I am not required to answer questions if my answers might be used against me in a criminal prosecution. The Fifth Amendment is a protection for all citizens, including those who have done nothing wrong.

Therefore, and on the advice of counsel, I will invoke my rights under the Fifth Amendment and I will not answer any questions that could conceivably be used against me in a criminal case.

Finally, the rule of law permits me to refuse to answer questions that are not pertinent to a legitimate legislative function or that seek information that is protected by the First Amendment's guarantee of freedom of speech. Under the Due Process Clause of the Fifth Amendment, I cannot be punished for refusing to answer such questions.

There may be other privileges, such as the attorney-client privilege or the work product privilege, that are available to me with respect to certain questions.

For all these reasons, I will not be answering questions that relate to my work in the District Attorney's Office, my book, or public statements I have made in the past.

It gives me no joy to invoke my legal rights, but I am glad that the law allows me not to cooperate with this performance of political theater.

As an American, I am privileged to have the legal rights that I assert today, and I am hopeful that I live in a country that will continue to respect them.

Mr. [REDACTED] On that note, I would just remark for the record that we, the Congress, recognizes constitutional-based privileges but not common law based-privileges. And as we represented to the Second Circuit, the committee will consider any invocation of privilege and accompanying explanation on an individualized question-by-question basis.

So even though it might get repetitive, we are going to ask for an explanation for each objection and then consider your explanation.

The chairman may rule -- he may overrule the objection, and in that instance we would instruct you to answer the question. At the end of the process, we'll maybe tally up the questions that haven't been answered and offer you a chance to change your mind. And if we do need to bring you back or pursue additional proceedings, we will -- we'll write you a letter, and we'll proceed on that basis.

Mr. Wells. Can I reply?

Mr. [REDACTED] Certainly, sir.

Mr. Wells. Today is not the day to debate the merits of explanations for asserting privileges. He will assert the privilege, the committee members may rule on the privilege, the record will be made, but we are not going to debate the merits. That is for a court if we ever get in front of a court.

So I have no problem if you're making a ruling. The record will be made and we'll move on to the next question. But we are not going to debate the legitimacy of any particular privilege so the record will be clear with respect to his assertions.

Mr. [REDACTED] Fair enough sir. I hope I didn't indicate to you that I wanted to have a debate with you on the record.

Mr. Wells. No. I'm responding to the phrase "explanations."

Mr. [REDACTED] Well, explanation --

Mr. Wells. If I misunderstood what you meant, we can --

Mr. [REDACTED] I think by explanation, it's the nature of the -- is it based on the Fifth Amendment or is it based on what the District Attorney's Office has told you.

Mr. Wells. That's very common.

Mr. [REDACTED] That's what we're looking for.

Mr. Wells. Yes, that's very common.

Mr. [REDACTED] We're not looking for the case citations and so forth.

With that, I'll begin my hour. Hopefully this will be a productive hour and find some questions that you want to answer.

I'll note it's 10:21. I'll be referring, sir, to your book. If you need a copy, we can provide you one.

EXAMINATION

BY MR. [REDACTED]

Q On page 1 of your book, you state that when you joined the Trump investigation you got countless emails and telephone calls from friends and colleagues urging me to go get him.

Was that statement accurate?

A Mr. [REDACTED] I acknowledge writing the book, but I'm not going to expand beyond what is contained in the book for the reasons reflected in my opening statement.

Q But surely you can concur that the statement was accurate?

A I think I can concur that you have read accurately from the book, which speaks for itself.

Q Okay.

A I'm not disputing your --

Q But your book's accurate, right?

A I'm not going to expand beyond acknowledging that I wrote this book.

Q But you didn't put anything intentionally false in the book, correct?

A I'm not going to answer your question.

Q Okay. What did you --

A One way or the other.

Q Okay. What did you understand your friends and colleagues to mean when they were urging you to go get him?

A Again, I'm not going to go beyond what is stated in the book, and I assert my rights as reflected in the statement that I made at the outset.

Q And how did you respond to your friends and colleagues when they urged you to go get him?

A I'm not going to answer your questions for the reasons stated.

Chairman Jordan. Did they really say "go get him"?

The Witness. Again, Mr. Chairman, I'm not going to respond beyond what is printed in the book.

Chairman Jordan. Did they not say "go get him"?

The Witness. I'm not going to answer your question.

BY MR. [REDACTED]

Q What was your opinion of President Trump at the time that you joined the District Attorney's Office?

A I refuse to answer your question on the basis of the rights that are outlined in the statement that I made.

Q What was your opinion of President Trump's actions as President and the policies of the Trump administration at the time you joined the District Attorney's Office?

A For the reasons indicated in my statement, I'm not going to answer your

question.

Q On page 129 of your book it states: "Nor was there any conversation about politics, about the 2020 election, the Stop the Steal shenanigans, or whether Trump needed to be prosecuted because his behavior as President was repugnant to us or others."

Sir, was the behavior of the President repugnant to you?

A Mr. [REDACTED] I respect your right to ask the question, and I hope you'll respect my right not to answer it for the reasons stated. And I refuse to answer it.

Mr. [REDACTED] We're marking as exhibit 2 some remarks of Justice Jackson.

[Pomerantz Exhibit No. 2

Was marked for identification.]

BY MR. [REDACTED]

Q Are you familiar with this speech that the Attorney General at the time and subsequently Supreme Court Justice Jackson made at the Second Annual Conference of U.S. Attorneys in April of 1940?

A I'm confident I wasn't present. But I'm not going to answer your question whether I'm familiar with the speech from having later become aware of it.

Q Okay. Are you aware that it says in the second sentence: "The prosecutor has more control over life, liberty, and reputation than any other person in America. His discretion is tremendous. He can have citizens investigated and, if he is that kind of person, he can have this done to the tune of public statements and veiled or unveiled intimations."

Are you familiar with that?

A I see it in the exhibit that you've handed me.

Q And do you agree with that statement of Justice Jackson?

A I'm not going to answer your question.

Q Justice Jackson -- Attorney General Jackson at the time -- further stated: "While the prosecutor at his best is one of the most beneficial forces in our society, when he acts from malice or other base motives, he is one of the worst."

Do you agree with that statement, sir?

A I'm not going to answer your question, Mr. [REDACTED] for the reasons indicated in my statement.

Q "There is a most important reason why the prosecutor should have, as nearly as possible, a detached and impartial view of all the groups in his community. Law enforcement is not automatic. It isn't blind. One of the greatest difficulties of the

position is that he must pick his cases, because no prosecutor can even investigate all of the cases in which he receives complaints.

"What every prosecutor is practically required to do is to select the cases for prosecution and to select those in which the offense is the most flagrant, the public harm the greatest, and the proof the most certain.

"If the prosecutor is obliged to choose his cases, it follows that he can choose his defendants. Therein is the most dangerous power of the prosecutor: that he will pick people that he thinks he should get, rather than pick cases that need to be prosecuted."

Are you familiar with that statement from the former Attorney General?

A I see it in the statement, yes.

Q And do you agree with that?

A I'm not going to answer your question.

Q "With the law books filled with a great assortment of crimes, a prosecutor stands a fair chance of finding at least a technical violation of some act on the part of almost anyone. In such a case, it is not a question of discovering the commission of a crime and then looking for the man who has committed it, it's a question of picking the man and then searching the law books, or putting the investigators to work, to pin some offense on him."

Do you agree that's a concern?

A I agree that it is reflected in the statement. Beyond that, I'm not prepared to answer your question.

Q "It is in this realm in which the prosecutor picks some person whom he dislikes or desires to embarrass, or selects some group of unpopular persons and then looks for an offense, that the greatest danger of abuse of prosecuting power lies."

Do you agree with that?

A Again, Mr. [REDACTED] I see that in the statement, and I'm not prepared to respond to the question whether I agree or disagree with it.

Q Are you familiar with the American Bar Association's Criminal Justice Standards, specifically standard 3-1.6?

A For the reasons indicated in my statement, I'm not going to respond to your question.

Mr. [REDACTED] Okay. I'd like to mark this for the record.

[Pomerantz Exhibit No. 3

Was marked for identification.]

Mr. Finzi. 3?

Mr. [REDACTED] The standard --

Mr. Finzi. Sorry. Is it exhibit 3?

Mr. [REDACTED] Exhibit 3, yes. And we're looking at standard 3-1.6, improper bias prohibited.

Section (a): "The prosecutor should not manifest or exercise, by words or conduct, bias or prejudice based upon the race, sex, religion, national origin, disability, age, sexual orientation, gender identity, or socioeconomic status. A prosecutor should not use other improper considerations, such as partisan or political or personal considerations, in exercising prosecutorial discretion. A prosecutor should strive to eliminate implicit biases, and act to mitigate any improper bias or prejudice when credibly informed that it exists within the scope of the prosecutor's authority."

Is this type of ABA standard something that the New York County District Attorney's Office follows?

Ms. Dubeck. Objection.

The Witness. I'm not going to respond to your question for the reasons

indicated in my statement.

Mr. [REDACTED] "A prosecutor's office" -- this is section (b) -- "A prosecutor's office should be proactive in efforts to detect, investigate, and eliminate improper biases."

Do you think during your time at the New York County District Attorney's Office you were proactive in your efforts to detect, investigate, and eliminate bias?

Ms. Dubeck. Objection.

The Witness. I'm not going to respond to your question.

Mr. [REDACTED] Are you familiar with the Department of Justice's --

Chairman Jordan. What is the specific objection here? Is it -- you cited, I think, three in your opening statement. Which one are you asserting?

The Witness. As to this question, I am asserting all of the bases, both the objection of the District Attorney's Office, the rights indicated in the fifth paragraph of my statement, which refer to the Fifth Amendment guarantee against --

Chairman Jordan. You're asserting -- in your opening statement, you referenced the District Attorney's Office and you may have to assert your Fifth Amendment rights. Are you asserting those now?

The Witness. I am asserting those now.

Chairman Jordan. Okay.

Mr. Issa. Could we have that in the future? Because the record is not clear when you just lump them all together. I think we'd like to know whether it's the Fifth Amendment or specific each one, because if it goes to a judge later, the judge is going to say: Which one? We should have that clear on the record if it's one, two, three, or four different ones. I think the record should be clear.

Mr. Wells. That is a fair comment.

Paragraph 4 of the statement refers to the D.A.'s objections. Paragraph 5 refers

to the Fifth Amendment. And paragraph 6 refers to his First Amendment and due process objections.

Mr. Issa. So if you could just --

Mr. Wells. So We will identify.

Mr. Issa. -- state the paragraph each time --

Mr. Wells. We will.

Mr. Issa. -- that would be great.

Mr. Wells. Right.

Mr. Issa. Thank you. The number will be sufficient.

Chairman Jordan. And could we get a copy of the statement?

The Witness. Sure.

Mr. [REDACTED] And I'll stop briefly. I just want to welcome some of the new members have that have joined us, starting with Mr. Issa.

Do you want to introduce yourself for the record?

Mr. Issa. I'm Congressman Darrell Issa. I have been in a few of these before. I'm from California.

Mr. [REDACTED] And, Chairman Schiff, down at the end of the table?

Mr. Schiff. I don't have any questions.

Mr. [REDACTED] No. I'm just introducing you.

Mr. Schiff. Oh, I'm sorry. Adam Schiff from California.

Mr. [REDACTED] And Ms. Plaskett?

Ms. Plaskett. Good morning. Stacey Plaskett from the Virgin Islands.

Mr. [REDACTED] And, Mr. Goldman, I'm sorry, sir. How are you?

Mr. Goldman. Dan Goldman, New York.

The Witness. Good morning or afternoon.

Mr. Goldman. Well, it's still morning.

Mr. [REDACTED] Okay. I'm going to mark as exhibit 4 the Department of Justice -- part of the Justice Department manual -- prosecutor's manual, "Principles of Federal Prosecution."

[Pomerantz Exhibit No. 4

Was marked for identification.]

BY MR. [REDACTED]

Q Maybe I can get you to answer this question.

You served as a Federal prosecutor, correct?

A I did.

Q And on two separate stints?

A That's correct.

Q Would you be willing to identify for the record when that was?

A Yes. I served as an Assistant United States Attorney from 1978 until 1982, and then I returned to the United States Attorney's Office for the Southern District of New York in 1997 where I served as chief of the Criminal Division until mid-1999.

Q And after your time -- in between your time, you also have served as a partner at the Paul, Weiss law firm. Is that fair?

A It was after my time as chief of the Criminal Division that I was a partner at the Paul, Weiss law firm, from March of 2000 until I withdrew from the partnership at the end of 2012.

Q Okay. And have you been a partner at any other law firm?

A Yes.

Q And would you be able to answer that question?

A I can do my best with that.

I was a partner at a small criminal defense boutique known variously as Fischetti & Pomerantz, Fischetti, Pomerantz & Russo. There was one iteration, I think, Fischetti, Feigus & Pomerantz. I was a partner in that firm from 1984 to 1990.

From 1990 to 1997, I was a partner at a law firm then known as Rogers & Wells in New York City.

And for a period of a few months at the beginning of 2000, I was a partner in what had been the Rogers & Wells firm but was from that point forward, beginning January 1st, known as Clifford Chance -- I think it was known as Clifford, Chance, Rogers & Wells for a short period of time.

And I am now a founding principal of a law firm known as the Free and Fair Litigation Group.

Q And as I understand it, you graduated law school from Harvard? Is that correct?

A No. I graduated --

Q Your undergrad was Harvard?

A I graduated undergrad from Harvard. Then I went to law school at the University of Michigan.

Q Okay. Turning back to exhibit 4. During your time at the Justice Department or since you've been with the District Attorney's Office for New York County, are the "Principles of Federal Prosecution," the U.S. Attorneys' Manual, something that you consult or consider guidelines?

Ms. Dubeck. Objection to the extent you're asking him about his office at the D.A.'s Office.

The Witness. Could I have a moment?

Mr. [REDACTED] Of course.

We'll go off the record while the witness is conferring with his counsel.

[Discussion off the record.]

Mr. [REDACTED] Back on the record.

The Witness. Yes. Thank you.

On the advice of counsel, I will continue to assert my privilege, in particular the privilege referenced in the fifth paragraph of my opening statement, which is the privilege against self-incrimination.

Also, I believe there was an objection from Ms. Dubeck with respect to the position of the Manhattan District Attorney's Office. And as I indicated in the statement, I will honor that objection and refuse to answer.

So there are several bases for refusing to answer that question.

BY MR. [REDACTED]

Q Okay. So one of the bases is your Fifth Amendment against self-incrimination about whether the District Attorney's Office follows or relies on the U.S. Attorneys' Manual as a guideline?

A Yes.

Q Did I get that right?

A You did get that right, yes.

Q Okay.

A Thank you.

Mr. [REDACTED] And as I understand it, the District Attorney's office has objected to that question, whether the D.A.'s Office considers some of these standards?

Ms. Dubeck. To the extent you're asking about the D.A. Office's considerations, yes.

Mr. [REDACTED] Okay.

BY MR. [REDACTED]

Q What was the address of the District Attorney's Office in New York County?

A One Hogan Place, New York, New York.

Q And how frequently did you go to the office when you were a special district attorney? Did you have an office physically at that address?

A The office is located in several buildings around One Hogan Place. It's not all in one contiguous space of offices. There were several office premises.

Having clarified that, I'm not going to answer your question about how often I was physically at the offices of the Manhattan District Attorney.

Q Did you have your own desk there?

A Again, I'm not going to respond to your question.

Q On the basis of what?

A On the basis of the fifth paragraph of my statement. Conveniently, Mr.

[REDACTED] the fifth paragraph relates to the Fifth Amendment.

Q Okay. So really -- so I'm just being clear, and I don't mean to --

A I understand.

Q -- mean any disrespect, but asking the question whether you had a desk at the D.A.'s Office, you're asserting the Fifth Amendment?

Mr. Wells. I think that's what he said.

Mr. [REDACTED]. Okay. Fair enough. Again, I mean no disrespect, sir.

The Witness. Now I'm sure that that's what I said.

BY MR. [REDACTED]

Q In the book on page 1, you write: "He was responsible for a grave failure of justice."

Who is the "he" in that sentence?

A Well, the book speaks for itself. I don't think there's any ambiguity of the reference.

Q The reference is to the District Attorney Bragg?

A That's how the book reads.

Q Okay. In your book you go through a rather long list of investigative avenues the New York County District Attorney's Office pursued with respect to President Trump, and you refer to the Stormy Daniels matter as the "Zombie" case? Is that correct?

Ms. Dubeck. Objection.

Mr. [REDACTED] What's the basis of that objection?

Ms. Dubeck. To me?

Chairman Jordan. You're the one that objected.

Ms. Dubeck. That you are asking about confidential work of the D.A.'s Office.

Mr. [REDACTED] Well, I'm asking about the book. There's a whole chapter called "The 'Zombie' Case."

The witness can answer the question. I guess you're not going to answer it, but --

A Well, I'm perfectly happy to acknowledge that the book references the Zombie case, and I think you are correct that one of the chapters refers explicitly to the Zombie case. Yeah, chapter 5 and chapter 3. Chapter 3 refers to the Zombie case, and chapter 5 is entitled "The 'Zombie' Case Returns to the Grave."

BY MR. [REDACTED]

Q Okay.

A I'm not sure if I've answered your question, but the book certainly contains those references.

Q And was that a case, the Stormy Daniels payment, was that something that Robert Mueller looked into, to your knowledge, and considered investigating and prosecuting?

A I'm not going to answer that question.

Q On what basis? That's more of a history question, I think.

A Yes. Let me confer for a moment with counsel.

Mr. [REDACTED] Okay. We'll go off the record.

[Discussion off the record.]

The Witness. Yes. On the advice of counsel, I will assert my rights under the Fifth Amendment.

BY MR. [REDACTED]

Q Okay. And the facts of the Zombie case, in your words, were examined by the U.S. Attorney's Office in the Southern District of New York. Is that correct?

A To the extent the book references the facts embodied in your question, I refer you to the book. But I'm not going to elaborate beyond what's stated in the book.

Q Okay.

A I'm not denying what is written in the book obviously. But I'm not going to expand beyond what's written for the reasons indicated in my opening statement.

Q Okay. And do you know why the Southern District of New York's U.S. Attorney's Office decided not to prosecute President Trump on the facts of the Zombie case?

A I'm not going to answer that question on the basis of each of the paragraphs in my statement.

Q And you stated in your book that it was during the time frame of the spring and summer of 2019, is that correct, that the U.S. Attorney's office was examining the

facts of the Zombie case?

A I'm not going to respond to your statement beyond referencing what's in the book.

Q Okay. Are you invoking the Fifth Amendment for that particular one or --

A Yes.

Q And as I understand it, the next --

A I think also the fourth paragraph of my statement.

Q The fourth paragraph. Okay.

A Which references to --

Ms. Dubeck. To the extent you're asking for knowledge he obtained at the D.A.'s Office, I object.

BY MR. [REDACTED]

Q When did you join the D.A.'s Office? You can tell us that?

A I was sworn in as a special assistant district attorney on February 2nd, 2021.

Q Okay. So the facts I'm asking you about, you know, occurred before you became affiliated with the office?

A I think we can all acknowledge that 2019 occurred before 2021.

Q Right. But did --

A So I'm not taking issue with your statement.

Q Right. But did you learn about the fact that the U.S. Attorney's Office in the Southern District of New York decided -- looked at the Zombie case, the Stormy Daniels payments, and decided not to prosecute? Did you know that information before you came to the New York County District Attorney's Office?

A I'm not going to answer your question.

Q Based on?

A The Fifth Amendment.

Q Okay.

A And the fifth paragraph of my statement.

Q Before your tenure at the District Attorney's Office, in the fall of 2019, you write in your book the office examined the facts of the Zombie case, the Stormy Daniels payment, and commissioned an outside law firm to help the office analyze these questions.

Do you know what law firm that was?

Ms. Dubeck. Objection.

The Witness. Yeah. I refuse to answer on the basis of the fourth paragraph of my statement and the fifth paragraph of my statement.

Mr. [REDACTED]: Okay.

The Witness. I'm assuming that that's clear and you don't need me to elaborate further since you have the statement.

Mr. [REDACTED] The fourth iteration of the Zombie case, the Stormy Daniels payment, you were a key player in, am I correct, as I understand your book?

Ms. Dubeck. Objection.

The Witness. Again, I will invoke my rights not to answer the question for the reasons referenced in my statement.

Mr. [REDACTED] And so the fourth iteration of the Zombie case you studied whether there was a money laundering theory to pursue?

Ms. Dubeck. Objection.

The Witness. Same answer.

Mr. [REDACTED] Which one is that? Sorry.

The Witness. I was referencing the answer I gave to the just previous question

where I think I referenced both the fourth and fifth paragraph of my opening statement.

Mr. [REDACTED] And as I understand your book -- and hopefully you can correct me if I get this wrong -- but the legal theory there was President Trump -- I guess he was candidate Trump at this time -- was a victim of extortion. Is that correct?

Ms. Dubeck. Objection.

The Witness. Same answer as to the last question, if that's acceptable.

BY MR. [REDACTED]

Q Okay. No, but I'm just asking -- I'm just trying to understand this legal theory as you write in your book.

A I understand your question.

Q Okay.

A But for the reasons indicated, I'm not going to go beyond what's stated in the book.

Q Okay. So President Trump, under the fourth iteration of the Zombie case, President Trump as a victim of extortion could be prosecuted for money laundering. Is that -- do I have that understanding right?

Ms. Dubeck. Objection.

Mr. [REDACTED] Or is that the theory you were pursuing?

Ms. Dubeck. Objection.

The Witness. I'm not going to answer the question.

Chairman Jordan. Well, you say right here in the second paragraph on page 60: "In the Trump case, this meant that Clifford had not committed larceny by extortion until she or her lawyer received the hush money payment that Michael Cohen agreed to pay on Trump's behalf."

So you write it right here in the book, but you won't answer the question when

Mr. [REDACTED] describes exactly what you wrote in the book?

The Witness. Actually, I don't think [REDACTED] question embodied what was written in the book. But in any case, I'm asserting my privileges with respect to this question.

Chairman Jordan. Did you really write the book, Mr. Pomerantz?

The Witness. Yes.

Mr. [REDACTED] And then towards the end of your tenure at the District Attorney's Office, there was a -- as I understand it from your book, and you talk about this on page 61, then page 209 -- another attempt to prosecute the Stormy Daniels Zombie matter at the end of the investigation.

Can you tell us anything about that?

Ms. Dubeck. Objection.

The Witness. I won't answer that question, and I'm relying with respect to this question on all of the rights reflected in the statement.

BY MR. [REDACTED]

Q So, if I may, I'll just read on page 209. "Because we were now contemplating an indictment that featured false business records, Carey and I" -- and who's Carey, by the way?

A I think the book references Carey as Carey Dunn.

Q Okay. "--- spoke about reviving the hush money allegations, which would bring the 'Zombie' theory back from the dead once again. The thought was to charge as false business records not only the documents relating to the SOFCs" -- which stands for statements of financial condition, is that correct, SOFC?

A I think the book defines SOFC as you've indicated. It's an abbreviation for statement of financial condition.

Q Okay. " -- relating to the SOFCs but also the phony invoices for 'legal services' that had been used to reimburse Michael Cohen for the money he had paid to Stephanie Clifford."

Do you remember that incident or that part of the case during your time at the New York County District Attorney's Office?

Ms. Dubeck. Objection.

The Witness. I refuse to answer your question for the reasons indicated.

Mr. [REDACTED] Okay. During your time at the District Attorney's Office, you also examined a number of other potential avenues to prosecute President Trump. Is that correct?

Ms. Dubeck. Objection.

The Witness. Same answer, if that's acceptable to you.

Mr. [REDACTED] You looked at several of President Trump's golf properties, the Briarcliff Golf Club, the Trump National Golf Club, the Jupiter golf course. Is that correct?

Ms. Dubeck. Objection.

The Witness. Again, I will rely on the rights articulated in paragraphs 4, 5, and 6 of my statement.

Mr. [REDACTED] You examined whether President Trump could be indicted for defrauding Deutsche Bank. Is that correct?

Ms. Dubeck. Objection.

The Witness. Same answer.

Mr. [REDACTED] Did Deutsche Bank ever indicate to you that they felt like they were a victim of fraud?

Ms. Dubeck. Objection.

The Witness. Same response. Again, I'm relying on the rights referenced in, I believe, paragraphs 4, 5, and 6 of my statement.

Mr. [REDACTED] You examined whether President Trump could be indicted in New York for papers he submitted to GSA as part of the Old Post Office Hotel that he was attempting to acquire and redevelop. Is that correct?

The Witness. Same answer. I guess same response.

Mr. [REDACTED] You examined during your time in the New York District Attorney's Office whether President Trump could be prosecuted in New York over the Trump International Hotel and Tower in Chicago?

Ms. Dubeck. Objection.

The Witness. Same response. Again, I'm trying to just save time and energy. If you want me to elaborate, I will do so.

Mr. Gaetz. Mr. Pomerantz, did you violate any person's constitutional rights while you worked at the Manhattan D.A.'s Office?

Ms. Dubeck. Objection.

The Witness. Same answer.

Mr. Gaetz. Mr. Pomerantz, did you violate any person's constitutional rights when you worked on the Trump investigation?

Ms. Dubeck. Objection.

The Witness. I have the same response to your question.

Mr. Gaetz. Did you ever violate any canons of legal ethics while you worked at the Manhattan District Attorney's Office?

Ms. Dubeck. Objection.

The Witness. The same response.

Mr. Gaetz. And did you violate any canons of legal ethics when you were

investigating President Trump?

Ms. Dubeck. Objection.

The Witness. Same response.

Mr. Gaetz. Did you violate any New York State Bar rules while you were working in the Manhattan District Attorney's Office?

Ms. Dubeck. Objection.

The Witness. Same response.

Mr. Gaetz. And did you violate any New York State Bar rules while you were investigating President Trump?

Ms. Dubeck. Objection.

The Witness. Same response.

Mr. Gaetz. Did you misuse any Federal funds while you were working in the Manhattan District Attorney's Office?

The Witness. Same response.

Mr. Gaetz. Did you misuse any Federal funds while investigating President Trump?

The Witness. Same response.

Mr. Gaetz. Did you break any laws when you worked at the Manhattan District Attorney's Office?

Ms. Dubeck. Objection.

Mr. Witness. Same response.

Mr. Gaetz. And did you knowingly break any laws when investigating President Trump?

Ms. Dubeck. Objection.

The Witness. Same response.

Mr. Gaetz. Yield back.

Chairman Jordan. When did you sign the book deal?

The Witness. I'm not going to answer your question, Mr. Chairman, for the reasons indicated.

Chairman Jordan. I'm not asking about what's in it. We already know you're not going to talk about what you said you wrote. I just want to know when you signed the agreement on the book.

The Witness. Yes. And I'm not going to answer that question in reliance on paragraphs 5 and 6 of my statement.

Chairman Jordan. When did you tell the D.A.'s Office you were thinking about writing the book?

The Witness. Likewise, not going to answer that question.

Chairman Jordan. Who's the publisher of the book?

The Witness. Simon & Schuster.

Chairman Jordan. Did they come to you or did you go to them?

The Witness. I'm not going to answer that question sir.

Chairman Jordan. Did you get an advance for the book?

The Witness. I'm also not going to answer that question.

Chairman Jordan. When did you start writing the book?

The Witness. I'm not going to answer that question either, for the reasons indicated, although I'm not referencing paragraph 4 of my statement in that regard. That's paragraphs 5 and 6.

Chairman Jordan. How did you select the title?

The Witness. The same answers.

Mr. Armstrong. In your opening statement, you said the Manhattan D.A.'s Office

warned you, you could face criminal liability.

You're asserting your -- asserting Fifth Amendment privilege.

The Witness. Yes, sir.

Mr. Armstrong. Who in the D.A.'s Office told you that?

The Witness. The reference in my statement to -- the comment that was made in open court on April 19th, I believe, was a reference to statements made by Ms. Dubeck, if I'm not mistaken.

Mr. Armstrong. So when was that? I'm sorry.

The Witness. The statement in paragraph --

Mr. Armstrong. 5?

The Witness. 4. Oh, yes, you're right, paragraph 5, says: "When we were before the United States District Court on April 19th, a lawyer from the Manhattan District Attorney's Office said that my book, quote, 'exposed me to criminal liability.'" I think the "me" should be in brackets, by the way.

That was Ms. Dubeck.

Mr. Armstrong. Has there been any follow-up since then with you directly?

The Witness. I'm not going to answer that question, sir.

Mr. Armstrong. Are you aware of an active investigation?

The Witness. I'm not going to answer that question.

Mr. Armstrong. Are you aware of any similar investigation?

The Witness. Same answer.

Mr. Armstrong. Any convictions?

The Witness. Conviction?

Mr. Armstrong. It's public record. Are you aware of any other similar convictions?

The Witness. Not of me. I can answer that.

Mr. Armstrong. Okay.

The Witness. The reference -- never mind. I'll wait for the next question.

Mr. Armstrong. All right.

Mr. [REDACTED] You also, while you were at the New York County District Attorney's Office, pursued matters at Mar-a-Lago in Florida for investigation?

Ms. Dubeck. Objection.

Mr. [REDACTED] Is that correct?

The Witness. I won't answer based on the fourth and fifth paragraphs of my statement.

Mr. [REDACTED] The Seven Springs property and the easement, conservation easement, you pursued that as an avenue to investigate or indict President Trump? Is that correct?

Ms. Dubeck. Objection.

The Witness. Same answer.

Mr. [REDACTED] You pursued the Trump property at 40 Wall Street, which is in Manhattan, correct?

The Witness. 40 Wall Street is in Manhattan.

Ms. Dubeck. Objection to the balance of the question.

Mr. [REDACTED] So the objection is to whether you pursued the 40 Wall Street as an avenue to investigate or prosecute President Trump?

The Witness. Yes. And I'm not going to answer that question.

Mr. [REDACTED] You also looked at his -- something you referred to as the triplex apartment in Trump Tower as an avenue to potentially indict or prosecute him for overstating the square footage or value of the property. Is that correct?

Ms. Dubeck. Objection.

The Witness. Same response.

Ms. Stefanik. Do you know any of the Members of Congress on this committee?

The Witness. Sorry?

Ms. Stefanik. Do you know any of the Members of Congress on this committee?

The Witness. I do not.

Ms. Stefanik. So you've never had any conversations with Dan Goldman, Adam Schiff, Darrell Issa, Jim Jordan, myself, Kelly Armstrong ever?

The Witness. I believe that's correct.

Ms. Stefanik. How long have you known Cy Vance?

The Witness. Bear with me for one moment, if you would.

Mr. [REDACTED] Go off the record?

The Witness. Yes. Thank you.

[Discussion off the record.]

The Witness. On the advice of counsel, I'll invoke my right not to answer the question under the fifth paragraph.

Ms. Stefanik. Under the Fifth Amendment?

The Witness. Yes.

Mr. [REDACTED] Of how well you know Cy Vance? Is that right?

The Witness. Yes.

Ms. [REDACTED] [REDACTED] could you wait until the noise in the hallway is gone?

Mr. [REDACTED] Absolutely. We're off the record here as we're dealing with the sound.

[Discussion off the record.]

Ms. Stefanik. Do you respect Cy Vance?

The Witness. I'm not going to answer that question. Intending no disrespect to either you or Mr. Vance --

Ms. Stefanik. So you do respect Cy Vance?

The Witness. -- I'm refusing to answer.

Ms. Stefanik. You respect Cy Vance, your public comments, your extensive respect for his tenure at the District Attorney's Office.

The Witness. Yes, I won't answer that question.

Ms. Stefanik. Yes, you won't answer it or, yes, you respect Cy Vance?

The Witness. I won't answer the question.

Ms. Stefanik. Do you view Cy Vance as political?

The Witness. I refuse to answer your question.

Ms. Stefanik. Under what basis?

The Witness. On the basis of my privilege against self-incrimination.

Ms. Stefanik. So you're asserting the Fifth Amendment?

The Witness. Yes.

Ms. Stefanik. Do you -- how long have you known Alvin Bragg?

The Witness. Same answer.

Ms. Stefanik. Fifth Amendment?

The Witness. Yes, ma'am.

Ms. Stefanik. Do you respect Alvin Bragg?

The Witness. Same answer.

Ms. Stefanik. Fifth Amendment?

The Witness. Yes.

Ms. Stefanik. Are you keeping track of how many times he has asserted his Fifth?

Do you view Alvin Bragg as political?

The Witness. I have the same response to your question.

Ms. Stefanik. And you are aware in your book you wrote very specifically on page 204 that Alvin Bragg is a political actor? I'm sorry, 264.

The Witness. Yes. The book states: "Like all elected prosecutors, Alvin Bragg is a political actor."

Ms. Stefanik. And the book also states: "He cares deeply about his progressive agenda."

The Witness. I believe you're quoting accurately from the book.

Ms. Stefanik. Quoting accurately from the book that you yourself wrote, as you just said in this deposition.

The Witness. I've acknowledged writing the book.

Ms. Stefanik. Yes.

Do you recall Alvin Bragg's 2021 campaign for District Attorney.

The Witness. Yes, I won't answer that question in reliance upon my constitutional rights as reflected in my statement.

Ms. Stefanik. The fifth paragraph, Fifth Amendment?

The Witness. And the sixth.

Ms. Stefanik. Alvin Bragg --

The Witness. Paragraph, not amendment.

Ms. Stefanik. I understand.

Alvin Bragg's campaign communicated to voters of his involvement in lawsuits targeting President Trump. Is that your recollection as a native New Yorker?

The Witness. Oh. Yeah, I won't answer that question in reliance on my Fifth Amendment rights.

Ms. Stefanik. Did you tell anyone to vote for Alvin Bragg in either the primary or general election?

The Witness. I refuse to answer that question.

Ms. Stefanik. Your book says you did. And the book is true, correct?

The Witness. The book speaks for itself.

Ms. Stefanik. And it's true?

The Witness. I'm not going to go beyond the book.

Ms. Stefanik. So there are no lies in the book? You stand fully behind this publication under your name?

The Witness. That's correct.

Ms. Stefanik. Did you know Alvin Bragg before he became D.A.? Had you ever met him before or worked with him before?

[11:06 a.m.]

The Witness. No.

Ms. Stefanik. What was your assessment of Alvin Bragg as an attorney?

The Witness. I refuse to answer that question.

Ms. Stefanik. Have you always been compensated for your legal services prior to your work for the New York District Attorney's Office.

The Witness. No.

Ms. Stefanik. What example were you not compensated? Just give us a few examples.

The Witness. I did particular matters on a pro bono basis.

Ms. Stefanik. And why did you decide not to be compensated, or not to pursue compensation in the case for the New York District Attorney's Office.

The Witness. No, I won't answer that question on the basis of my Fifth Amendment rights, insofar as it relates to my work at the Manhattan District Attorney's Office.

Ms. Stefanik. How would you describe the culture in the District Attorney's Office under Alvin Bragg.

Ms. Dubeck. Objection.

The Witness. I refuse to answer on the basis of the District Attorney's Office objection and my rights under the Fifth Amendment.

Ms. Stefanik. How would you describe the culture in the District Attorney's Office under Cy Vance.

Ms. Dubeck. Objection.

The Witness. Same answer.

Ms. Stefanik. On page 58 in your book -- which you have said your book is

accurate and factual, "My creative theorizing smacked into District Attorney New York's cautious and conservative culture, as it would several times during my tenure."

So you had challenges working through the culture of the District Attorney's Office?

Ms. Dubeck. Objection.

The Witness. I won't go beyond what is written in the book in responding to your question. I believe you --

Ms. Stefanik. Accurately quoted it?

The Witness. Accurately quoted it, yes.

Chairman Jordan. What about the day one memo? What are your thoughts on that?

The Witness. I refuse to answer that question on the basis of my Fifth Amendment rights.

Mr. Goldman. Sorry. Which rights?

The Witness. My Fifth Amendment rights.

Mr. Goldman. Are you invoking the paragraph six with respect to legislative purpose as well?

The Witness. Yes.

Chairman Jordan. I think it's our hour.

██████████

BY MR. ██████████

Q On page 22 of your book, you referred to President Trump as an "unscrupulous wheeler-dealer. Is that correct?

A Bear with me one moment, if you would.

Did you say page 26?

Q 22.

A 22.

The book indicates, I'm quoting, "I had heard stories 35 years earlier from lawyers who had represented Trump in his business dealings, and I took from those stories that he was an unscrupulous wheeler-dealer."

Q On page 23, you state, "I was not a fan."

A That's a correct -- that line would appear in the book, and you've accurately quoted.

Q On page 98, you refer to the President's "narcissistic personality."

A Correct.

Q On page 99, you state, "Trump was incredibly cheap and completely dishonest."

A That's not correct. The language you are quoting omits the introduction to that --

Q Okay. Fair enough.

A -- verbiage. That is what -- the book indicates that Cohen -- the reference there is to Michael Cohen.

Q Okay.

A Cohen -- again, I'm quoting here, "Cohen also told us that Trump was incredibly cheap and completely dishonest in many of his business dealings."

So in this respect, the book is reciting what information had been relayed by Michael Cohen.

Q On page 103, your book states, "Trump, though, was not just a pathological liar, but a hapless, arrogant, and horrible liar." Is that correct?

A It's correct that that is -- yes, the book -- you've accurately quoted from the

book.

Q On page 109, there's a reference to President Trump being a "bully."

A The book contains that reference, yes, sir.

Q I believe you state -- the sentence says, "He was also a bully who cultivated a reputation as a tough guy."

A You've accurately quoted from the book.

Q On the same page, you go on to compare President Trump to John Gotti, the head of the Gambino organized crime family. Is that correct?

A There is a reference to Mr. Gotti, and the book speaks for itself in that regard.

Q Okay.

Mr. Issa. May I ask a quick question?

Mr. [REDACTED] Okay.

Mr. Issa. A few minutes ago, the congresswoman asked you, and you answered that you stand fully behind the book. The book is correct. Do you remember saying that?

The Witness. I do.

Mr. Issa. So you didn't take your -- you waived your Fifth Amendment, and answered the question that the book in its entirety is correct.

My only question to you is, will you answer individual questions since you answered that the entire book is correct? You didn't say it speaks for itself. You said it's correct.

So having answered once that the book is correct, could you please answer for the counsel specifics of if something is correct or not correct? I don't understand where the nuance is.

The Witness. Can we have a moment?

Mr. Issa. Yeah.

[Discussion off the record.]

Mr. [REDACTED] Back on the record?

Mr. Finzi. Is there a question pending?

Mr. [REDACTED] Mr. Issa asked whether he would -- you said -- you know, you testified today that the book is accurate in response to Ms. Stefanik.

And Mr. Issa just asked -- Mr. Issa can jump in if I --

Mr. Issa. If the book is accurate in its totality, then why are you not answering individual questions about accuracy? Or can we take that the answer in every case is yes, yes, and yes?

Mr. Finzi. With all respect, we indicated at the beginning that we were not going to debate assertions of privilege. We are asserting the privilege. We are not going to debate whether it's appropriate or not.

Mr. Issa. I'm sorry. The Fifth Amendment and it being waived or not waived is fairly clear. If you answer a question related to something, and you've answered it, then a follow-up is based on the waive as to that.

Now, if your client wants to reengage and simply say, I now am in peril having said that the book is correct, and you now want to take the Fifth every other time, we'll understand.

But I just wanted to clarify, because he had answered that every single nuance of this book effectively by saying the book is correct. He's been very careful with his words. I simply wanted to point that out and ask, would he answer questions that the counsel is asking that are a breakdown of Ms. Stefanik's question?

Mr. Wells. So the record is clear, I will direct him not to answer any questions.

There is no intent to waive the Fifth Amendment in any respect. The book speaks for himself. But I understand your -- I understand your argument.

And as we said at the beginning, the time and place to debate the merits of any of these arguments will be if and when we get in front of a court.

Ms. Dubeck. And I think you have restated the question differently than it was asked. But to the extent --

Mr. Issa. Could we have it read back? I think that's worth our time.

Mr. [REDACTED] Can we go off the record?

[Discussion off the record.]

Mr. [REDACTED] Okay. Back on the record.

Ms. Dubeck. To the extent that was the import of the question, I object.

Mr. Gaetz. Mr. Pomerantz, do you know --

Mr. Issa. He answered.

Ms. Dubeck. Yes. It's on record.

Mr. Issa. The cat is out of the bag.

Mr. Gaetz. Mr. Pomerantz, do you know what a subject matter waiver is relative to the Fifth Amendment?

The Witness. I'm not going to debate my understanding of the Fifth Amendment with you, sir.

Mr. Gaetz. But you've heard of a subject matter waiver before, right?

The Witness. I'm not going to indicate my knowledge of the Fifth Amendment and its application.

Mr. Gaetz. I yield back.

BY MR. [REDACTED]

Q Getting back to the John Gotti statement on page 109, you write in your

book -- which you've indicated to Ms. Stefanik as true -- "In my career as a lawyer, I had encountered only one other person who touched all of these bases: John Gotti, the head of the Gambino organized crime family and the so-called Teflon Don."

Is that a fair reading of your book?

A Yes, you read it accurately.

Q On page 112, you refer to the President as "a master of breaking the law."

Did I get that correct?

A The full sentence is, "Trump had become a master of breaking the law in ways that were difficult to reach."

Q On page 176 and 177, you write, "I saw him as a malignant narcissist, and perhaps even a megalomaniac who posed a real danger to the country and to the ideals that matter to me. His behavior made me angry, sad, and even disgusted."

Did I read that correctly? Is that what you wrote about President Trump?

A You read it correctly. You omitted the following sentence, which reads that "On a professional level, I could not allow my emotional reaction to Trump to affect my activities. It was completely irrelevant."

Q And is that true? Did your feelings about President Trump affect your work at the New York County District Attorney's Office where you were working for free?

Ms. Dubeck. Objection.

The Witness. I won't go beyond the statement in the book.

BY MR. [REDACTED]

Q On page 186, you posit the question of whether Former President Trump was suffering from some sort of mental condition that made it impossible for him to distinguish between fact and fiction.

Is there a mental condition that you're aware of that makes it difficult for

individuals that are afflicted with such a mental condition to distinguish between fact and fiction?

A I refuse to answer your question, Mr. [REDACTED] on the bases indicated in my statement.

Q On page 220 --

Mr. Issa. Are we back to paragraph five again?

The Witness. Paragraph five and paragraph six.

Mr. Issa. Okay.

Mr. Wells. So the record is clear -- and I respect the Congressman's concern -- every objection or refusal to answer today has included paragraph five, the Fifth Amendment. There are some objections where, in addition to the Fifth Amendment, paragraph four, which is the prosecutor's objection, or paragraph six, proper legislative purpose.

But every objection today -- so there's no confusion, so we're all on the same page -- involves paragraph five, an assertion of the Fifth.

Mr. Issa. The only reason I'm asking --

Mr. Wells. Oh, I understand. I actually agree with you.

I would urge my client --

Mr. Issa. If we could assert four, five, six, or five, six, so that we know what we're --

Mr. Wells. You and I are on the same page.

Mr. Issa. I love the shortcut, though.

Mr. Wells. Okay.

BY MR. [REDACTED]

Q On page 225, you, in your book, write, "I was worried I'd become a Johnny

One Note, always arguing the reasons for prosecuting Trump until I was blue in the face and nobody wanted to hear from me anymore."

Or I'm sorry. I read that incorrectly. "And nobody wanted to hear me anymore."

Did I read that correctly, at least the second time?

A Yes. Yes, sir.

Q And was that true?

Ms. Dubeck. Objection.

Ms. Stefanik. The book is true. He has already answered that the book is true.

The Witness. The book speaks for itself.

Mr. [REDACTED] Mr. Jordan?

Chairman Jordan. On page 170 of the book, you say, "I thought there might be an argument that Trump" -- and you're referring to President Trump there -- "having assumed an office that required him to take care that the laws be faithfully executed, and having urged the country to trust him to uphold the law, should be held to a higher standard." And the word "higher" is in a different font.

Do you really believe that? Because in the very next paragraph, you say -- you quote our second President, and you say, "We're a Nation of laws and not men," and then "No one is above the law, to the equal treatment of the law."

And I'm trying to figure out which statement do you believe.

The Witness. I am not understanding why you believe there is a tension between those statements.

Mr. [REDACTED] Let me refer you --

Ms. Stefanik. Why do you believe there's no tension between those statements?

Chairman Jordan. Is it equal treatment under the law, or it Donald Trump held

to a higher standard than everyone else in the county -- every other citizen in the country?

The Witness. I'm not going to go beyond my book. I think the intent of the language is plain.

Mr. Issa. What reason are you not going beyond the statement that you made?

The Witness. Because I'm not required to do so.

Mr. Issa. Under what?

The Witness. Under either the Fifth Amendment or, in my view, the First Amendment and the due process clause of the Fifth Amendment as well, which indicates, as I understand it, that I cannot be punished for refusing to answer questions that are -- that relate to activities and views that are protected by the First Amendment.

BY MR. [REDACTED]

Q Just to put a final point on what Mr. Jordan was getting at, on page 260, you write, "In my mind, the same evidentiary standard should apply to Presidents and paupers alike."

And I think Mr. Jordan was trying to make the point that, on 170, you wrote, "I thought there might be an argument that Trump, having assumed an office that required him to take care that the laws be faithfully executed, should be held to a higher standard of personal conduct."

Isn't that --

Chairman Jordan. Yep.

Ms. Dubeck. To the extent you're asking about his thinking while he was at the District Attorney's Office, I object.

Chairman Jordan. We're asking about the thinking he articulated in his book.

Mr. Issa. If you don't mind, if you're going to object, will you also instruct the

witness not to answer?

Ms. Dubeck. I was told I am not allowed to instruct the witness --

Mr. [REDACTED] Yeah, we have an agreement where she is not going to do that.

Mr. Issa. Oh, I apologize. Thank you.

Mr. Finzi. Is there a question pending?

Mr. [REDACTED] Yes.

Mr. Finzi. What is it?

Mr. [REDACTED] I was referring, on page 260, he states, "In my mind, the same evidentiary standard should apply to Presidents and paupers alike." But on page 170, he writes that there might be a higher standard of personal conduct for President Trump.

I'm asking the witness to reconcile those two statements.

The Witness. I refuse to answer your question on the basis of the fifth paragraph of my statement and the sixth paragraph.

Mr. [REDACTED] Okay. I believe our hour is up.

Mr. Finzi. Okay. Is this a good time for a break?

Mr. [REDACTED] Yes, sir. We'll go off the record.

[Recess.]

Ms. [REDACTED] Good morning. We can go back on the record. It's 11:46.

Mr. Pomerantz, thank you, again, for joining us.

BY MS. [REDACTED]

Q In the first hour, you talked through your length of service as a prosecutor prior to joining the Manhattan District Attorney's Office.

Can you remind me again how many years you served as a prosecutor?

A I served 6 years en toto as a Federal prosecutor, one stint for 4 years, and then for just shy of 2 years as criminal division chief.

Q And during that time period, did you ever face discipline for committing any type of prosecutorial misconduct?

A No.

Q Okay. And then after you left public service -- or, I guess, between your public service stints, you were in private practice, right?

A Yes.

Q Did you ever face discipline for violating any provision of the New York State Bar code of ethics?

A No.

Q What about any other bar rules?

A No.

Q For any other jurisdiction?

A I did not.

Q Okay. What day did you resign from the Manhattan District Attorney's Office?

A February 23rd, 2022.

May I have one moment?

Q Sure.

Ms. [REDACTED] We can go off the record.

[Discussion off the record.]

Ms. [REDACTED] We can go back on.

The Witness. I understood your question to relate to the period prior to my service at the Manhattan District Attorney's Office?

BY MS. [REDACTED]

Q Correct. Correct. Prior to your service at the Manhattan District

Attorney's Office.

A Yes. Thank you.

Q And also with respect to the violation of have you violated any provision of the bar code of ethics or any other legal ethics requirements prior to your service with the Manhattan District Attorney's Office.

A Yes, that's how I understood your question.

Q Okay. And I'm sorry. You resigned from the District Attorney's Office on what day?

A February 23rd, 2022.

Q Okay. And before you resigned on February 4th, 2022, you made a presentation to the District Attorney's Office, correct?

Ms. Dubeck. Objection.

The Witness. Yes. I'll refuse to answer on the same basis that I indicated previously.

BY MS. [REDACTED]

Q Okay. And during that presentation -- this is from page 221 of your book -- you said that you made this presentation to all of the prosecutors involved in this matter, and you, quote, "began by pointing out the fabrication of values in the SOFCs had been pervasive, substantial, and continuous over many years," right?

Ms. Dubeck. Objection.

The Witness. I have the same response --

BY MS. [REDACTED]

Q Understood.

A Although I acknowledge the statement you read from the book, which reads, "En toto, I began by pointing out that the fabrication of values in the SOFCs had been

pervasive, substantial, and continuous over many years."

Q And we talked through earlier in the first hour and it's clarified in your book that SOFC stands for statements of financial condition, correct?

A That is correct.

Q I want to talk through some examples briefly of the statements of financial condition and the references to -- I'm sorry -- the references of values assigned to Mr. Trump's golf courses.

On page 150 of your book, you say that "Trump had bought the Jupiter golf course" -- which is, I believe, a reference to the Jupiter Florida golf course -- "in December 2012 for 5 million, but it was reflected on the backup materials to the 2013 SOFC as being worth \$62 million as of June 30th, 2013," correct?

Ms. Dubeck. Objection.

The Witness. I refuse to answer your question on the basis of the rights referenced in my statement. In this instance, with respect to all of the rights referenced in the statement.

BY MS. [REDACTED]

Q Understood. You continue on on pages 150 to 151 to describe an accounting scheme, potentially, that Mr. Trump engaged in.

And then on page 151, you say that, through this scheme, Trump was able to claim, quote, "a low value when dealing with the tax assessor, but a vastly higher value in the financial statement that was given to his bankers," correct?

Ms. Dubeck. Objection.

The Witness. Same answer.

BY MS. [REDACTED]

Q Okay. On the following --

Mr. Goldman. Same answer, meaning it was accurately read from the book, but you're not going to expand on it?

The Witness. That's true, although I note the book makes a reference to, as Michael Cohen had testified, Trump was claiming a low value in dealing with the tax assessor, and then it goes on from there.

BY MS. [REDACTED]

Q And it says up above that, "The bottom line was that the numbers on Trump's 2013 financial statement included a purported value for the Jupiter golf course of 62 million. Trump had paid only 5 million to buy it just a few months earlier, and he later sued the Palm Beach County tax authorities, arguing that they should have respected the fact that he bought the property in an arm's-length transaction for only \$5 million," correct?

Ms. Dubeck. Objection.

The Witness. And I'm refusing to answer that question for the reasons indicated.

BY MS. [REDACTED]

Q Okay. On the following page, you discuss Trump's triplex apartment.

You say that "Trump's statements of financial condition" -- SOFCs -- "for 2015 and 2016 reported the value of the apartment at \$327 million, an amount much higher than the price anyone has ever paid for a private residence in the United States from the beginning of the country through 2021," correct?

Ms. Dubeck. Objection.

The Witness. Same response.

BY MS. [REDACTED]

Q Okay. And you continue on and say, "The accounting backup for the valuation of Trump's triplex reflected that its value over \$300 million was based largely on

its reported size of 30,000 square feet," correct?

Ms. Dubeck. Objection.

The Witness. Same answer.

BY MS. [REDACTED]

Q Okay. And then you go on and you say that there was an article published in Forbes that reported that the Trump triplex was actually just shy of 11,000 square feet," correct?

Ms. Dubeck. Objection.

A Same response.

BY MS. [REDACTED]

Q And you say that on the basis of expert valuations, your experts later pegged the actual reasonable value of the triplex at roughly \$16 million, correct?

Ms. Dubeck. Objection.

The Witness. Same answer.

BY MS. [REDACTED]

Q So in these paragraphs, you lay out a scheme where Mr. Trump initially valued his apartment at \$327 million and said it was 30,000 square feet, but in fact, you have evidence or you obtained evidence showing that the apartment was actually 10,996 square feet and was valued at roughly \$60 million, correct?

Ms. Dubeck. Objection.

The Witness. Same response.

[Discussion off the record.]

The Witness. I should make clear, in respect of these questions where the district attorney has objected, I am asserting rights referenced in both the fourth and the fifth paragraph of my opening statement?

BY MS. [REDACTED]

Q Understood. You --

A And the sixth paragraph as well.

Q On page 186 of your book, you describe Trump's valuations from Mar-a-Lago, and you say, "Trump's valuations from Mar-a-Lago in the 7 years reviewed in detail by our experts had exceeded the actual reasonable value of the property by an average of more than 1,000 percent per year," correct?

Ms. Dubeck. Objection.

The Witness. Same response.

BY MS. [REDACTED]

Q Okay. I want to turn back to the discussion about the February 4th meeting, which is on page 221.

You say that "Our experts" -- meaning the experts with the Manhattan District Attorney's Office -- "had put together some charts with yearly statistics on the purchase and sale of golf properties," correct?

Ms. Dubeck. Objection.

BY MS. [REDACTED]

Q It says, the charts apparently showed that, quote, Trump's valuations with his golf courses were literally off the chart, correct?

The Witness. Same response.

Ms. Dubeck. Objection.

The Witness. I'm sorry. I should have waited for Ms. Dubeck to object. But no harm done.

BY MS. [REDACTED]

Q You say, "I argued that he had to have known this because he was a real

estate entrepreneur in the business of building, owning, and running golf courses, just as he surely knew that the apartment he built and in which he lived had not contained 30,000 square feet," correct?

Ms. Dubeck. Objection.

The Witness. I refuse to answer for the reasons previous stated.

BY MS. [REDACTED]

Q And you continue on, "The brazen, pervasive, and outlandish nature of the overvaluations, I argued, was important proof of Trump's intent," correct?

Ms. Dubeck. Objection.

The Witness. Same answer.

BY MS. [REDACTED]

Q And you say that -- in the February 4th presentation, you continued on, "I then spoke about the evidence tying Trump to the preparation of the financial statements," correct?

Ms. Dubeck. Objection.

The Witness. Same response.

BY MS. [REDACTED]

Q Okay. You say that "I noted that the SOFCs on their face were directed to Trump, contained language saying that he was responsible for their preparation and presentation, and repeated over and over that the valuations had been, quote, "prepared by Mr. Trump," end quote, working in conjunction with others, correct?

Ms. Dubeck. Objection.

The Witness. Same response.

BY MS. [REDACTED]

Q "The assets described in the SOFCs were the assets that Trump had spent his

business life to build and acquire. Trump, as a person obsessed with his wealth and net worth, surely had familiarized himself with the SOFCs and how they had been prepared," correct?

Ms. Dubeck. Objection.

The Witness. Same response.

BY MS. [REDACTED]

Q "And he had certified time and again that the SOFCs had accurately presented his financial condition."

Ms. Dubeck. Objection.

The Witness. I refuse to answer for the reasons stated.

BY MS. [REDACTED]

Q You continue on, "I next displayed some documents reflecting Trump's review of the financial statements and addressed some witness testimony that we had gathered from the Attorney General or civil case files."

You said, "The testimony established that Weisselberg and Trump had reviewed the SOFCs before they were finalized, and at least some of the valuations had come directly from Trump, though Weisselberg and Jeff McConney, the Trump organization comptroller, had been key players," correct?

Ms. Dubeck. Objection.

The Witness. I refuse to answer.

BY MS. [REDACTED]

Q You then describe some of the admissions that came out in a defamation case brought against Mr. Trump by an individual named Tim O'Brien. You say, During that defamation case, quote, "Trump did not distance himself from the asset values in the financial statements. On the contrary, he complained that they were too low," correct?

Ms. Dubeck. Objection.

The Witness. Same response.

BY MS. [REDACTED]

Q You say, "I emphasized Trump's extraordinary control over the Trump organization, financial workings, including his personal signing of checks, close review of expenses, and approval of the financial terms on which every new member joined one of his golf clubs," correct?

Ms. Dubeck. Objection.

The Witness. I refuse to answer your question.

BY MS. [REDACTED]

Q You continue on, "During the presentation, you next turned to Trump's history of making up facts regarding his wealth. I spoke about the evidence we had received from Jonathan Greenberg, including the John Barron tapes, and Trump's correspondence with the Forbes staff regarding his wealth," correct?

Ms. Dubeck. Objection.

BY MS. [REDACTED]

Q And the John Barron tapes is a reference to language earlier in your book reporting on an interaction that Trump had had with Jonathan Greenberg, a reporter who worked at Forbes Magazine, correct?

Ms. Dubeck. Objection.

The Witness. I won't answer that question.

BY MS. [REDACTED]

Q Okay. And the description given in your book is that "Mr. Greenberg had taped a conversation in which Trump had falsely passed himself off as John Barron, a vice president and finance officer working for the Trump family. In fact, there was no John

Barron. Only Trump posing as Mr. Barron," correct?

Ms. Dubeck. Objection.

The Witness. Same response.

BY MS. [REDACTED]

Q Back to page 223, you say in your presentation, "I also alluded to the information that Forbes had made public regarding Trump's net worth obsession, his admission that he had tried to mislead Forbes about his wealth, and his statement that a high net worth, was quote, "good for financing," end quote, correct?

Ms. Dubeck. Objection.

The Witness. Same response.

BY MS. [REDACTED]

Q You continue on, "I argued that the back-and-forth that Trump had with Forbes over the years on which the magazine had reported had put Trump on notice that his asset values were unreasonable," correct?

Ms. Dubeck. Objection.

The Witness. Same response.

BY MS. [REDACTED]

Q And you say, "Yet the pattern continued, and Trump had not taken any of the steps he could have taken if he wanted to ensure their accuracy," correct?

Ms. Dubeck. Objection.

The Witness. I refuse to answer for the reasons indicated.

BY MS. [REDACTED]

Q You say, "I then turned to Trump's many public statements and tweets about his wealth, noting that those statements helped prove that the size of his net worth was of central importance to Trump's public persona," correct?

Ms. Dubeck. Objection.

The Witness. Same response.

BY MS. [REDACTED]

Q Okay. So getting back to your February 23rd, 2022 resignation, you wrote a letter before you resigned, correct?

Ms. Dubeck. Objection.

Mr. Goldman. It's a simple fact. It's public.

The Witness. May I have a moment?

Ms. [REDACTED] Sure.

Ms. Dubeck. Our position was that the letter should not be published.

Objection.

The Witness. May I have a moment with counsel?

Ms. [REDACTED] We can go off the record.

[Discussion off the record.]

Mr. Goldman. Can we go back on the record?

Your position is also that the book shouldn't have been published, but we've acknowledged the existence of the book, and we've discussed the contents of the book as being the same thing for his letter of resignation. The fact of his letter of resignation can't undo the fact of his letter of resignation.

Ms. Dubeck. Submit it to the fact and reask the question.

BY MS. [REDACTED]

Q Okay. Prior to your resignation, you wrote a resignation letter, correct?

A I wrote a resignation letter.

Q Okay. And that resignation letter is included in your book at pages 248 to 251, correct?

A The book speaks for itself.

Q I want to turn to page 248.

The resignation letter reads, "I write to tender my resignation as a special assistant district attorney and to explain my reasons for resigning. As you know from our recent conversations and presentations, I believe that Donald Trump is guilty of numerous felony violations of the penal law in connection with the preparation and use of his annual statements of financial condition," correct?

Ms. Dubeck. Objection.

The Witness. I'm not sure what the question is. If the question is whether that language was included in the resignation letter which appears in the book, the book speaks for itself, and that language does appear.

As you understand, I hope, I'm not going to go beyond the language reflected in the letter or ask -- answer questions about it. But the letter is set forth in the book, and I acknowledge having written the letter.

BY MS. [REDACTED]

Q So to clarify for the record, do you believe that Donald Trump is guilty of numerous felony violations of the penal law in connection with the preparation and use of his annual financial statements -- I'm sorry -- his annual statements of financial condition?

Ms. Dubeck. Objection.

The Witness. I'm not going to comment about the letter beyond acknowledging that it was written and it appears in the book.

Mr. Goldman. Can you review the letter and tell us if there's any reference in the letter to a case against Donald Trump related to a charge of falsifying books and records?

[Discussion off the record.]

Ms. Dubeck. I object to the question.

Mr. Goldman. Based on what?

Ms. Dubeck. Asking for words beyond what is in the letter -- the intent behind the letter.

Mr. Goldman. We're just asking whether those words are in the letter or not as he sits here and reads the letter.

The Witness. Are the words "falsifying business records" in the letter?

Mr. Goldman. Yes. Books and records, specifically.

The Witness. The letter referred to financial statements as false. It does not use the language "false books and records."

Mr. Goldman. Does it reference Stormy Daniels or Stephanie Clifford?

The Witness. The letter does not reference Stormy Daniels or Stephanie Clifford.

BY MS. [REDACTED]

Q And to clarify, your February 4th, 2023 presentation -- nowhere in your book does it say that that presentation referenced Stephanie Clifford or Stormy Daniels, correct?

A Again, I think the book speaks for itself in that regard, and I'm not going to provide editorial comment to it.

Mr. Goldman. It's just a factual question, not an editorial question.

The Witness. As a factual matter, you are correct, sir.

Ma'am. Sorry. Ma'am and sir.

BY MS. [REDACTED]

Q In your letter, you say that "In fact, Mr. Vance concluded that the facts warranted prosecution, and he directed the team to present evidence to a grand jury and

to seek an indictment of Mr. Trump and other defendants as soon as reasonably possible," correct?

A The letter contains that language, and you've read it accurately.

Q Okay. And the reference to presenting evidence to a grand jury and seeking an indictment of Mr. Trump, that's a reference to the evidence involving inflated property values, correct?

Ms. Dubeck. Objection.

A Well, I won't enlarge on the meaning of what is written in the letter.

BY MS. [REDACTED]

Q Okay.

A I'm not taking issue with your reading of it, but I'm not going to comment further.

Q Okay. You say that after Mr. Bragg took office, he decided not to pursue that financial -- that inflation of properties case. And you say, "I do not question your authority to make it" -- meaning this decision -- "and I accept that you have made it sincerely. However, a decision made in good faith may nevertheless be wrong," correct?

A That language appears in the letter, and the letter appears in the book.

Q And you continue on, "In my view, the public interest warrants the criminal prosecution of Mr. Trump, and such a prosecution should be brought without any further delay," correct?

Ms. Dubeck. Object to anything beyond what is in the letter, what is printed in the book.

The Witness. And I won't go beyond what is printed in the book and in the letter.

BY MS. [REDACTED]

Q And then in the second-to-last paragraph on page 250, you say, "To the extent you have raised issues as to the legal and factual sufficiency of our case and the likelihood that a prosecution would succeed, I and others have advised you that we have evidence sufficient to establish Mr. Trump's guilt beyond a reasonable doubt, and we believe that the prosecution would prevail if charges were brought and the matter were tried to an impartial jury," correct?

Ms. Dubeck. Objection.

The Witness. Same response.

BY MS. [REDACTED]

Q Okay. That, again, was a reference to a criminal -- potential criminal charges based on Mr. Trump's alleged inflation of property values, correct?

Ms. Dubeck. Objection.

The Witness. I won't go -- I won't elaborate beyond the language of the letter as it appears in the book.

BY MS. [REDACTED]

Q Okay. Mr. Pomerantz, is it accurate that you resigned because District Attorney Bragg would not pursue the case that you believe you had made out?

Ms. Dubeck. Objection.

The Witness. Same answer.

Mr. Goldman. What was the objection?

Ms. Dubeck. That his decision-making and thinking at the time he resigned was based on confidential and privileged information.

The Witness. I think I already responded to that question.

BY MS. [REDACTED]

Q Okay. We're going to move on from your book, sir.

Are you familiar with Bragg v. Jordan, which is Southern District of New York case number 123-CV-3032-MKV?

A May I have a moment?

Ms. [REDACTED]: We can go off the record.

[Discussion off the record.]

Ms. [REDACTED]: We can go back on the record.

The Witness. I am familiar with the lawsuit you referenced in your question.

BY MS. [REDACTED]

Q Okay. You submitted a declaration in that lawsuit, correct?

A That is correct.

Ms. [REDACTED] Okay. I want to introduce this as Exhibit No. 5.

Mr. Finzi. Number five?

Ms. [REDACTED] Number five.

[Pomerantz Exhibit No. 5

Was marked for identification.]

BY MS. [REDACTED]

Q In paragraph three of this declaration, you state that you were sworn in as a special district attorney in New York County on February 2nd, 2021, correct?

A Yes.

Q And I think you testified earlier that that is the date that you were sworn in, correct?

A That is correct.

Q Okay. And in that same paragraph, you state that you resigned from this position on February 23rd, 2022, correct?

A Yes.

Q Okay. And you testified earlier that that is accurate? You did, in fact, resign on February 23rd, 2022?

A I did, in fact, resign on February 23rd, 2022.

Q District Attorney Bragg took office on January 1st, 2022, correct?

A Yes.

Q So doing the math, this means that your tenure at the District Attorney's Office overlapped with his time there for only about maybe 8 weeks, correct?

A Yes. Our tenures overlapped from January 1st to February 23rd, 2022.

Q And the grand jury indicted Mr. Trump in the case brought by the Manhattan District Attorney's Office on March 30th, 2023, correct?

A I believe that's correct.

Q So that was more than 13 months after you had left the District Attorney's Office, correct?

A Yes, ma'am.

Q Okay. Paragraph four of your statement in your declaration, reads, "I have had no conversations about prosecuting Mr. Trump with the district attorney or any member of the prosecution team following my resignation," correct?

A You've accurately read from my declaration.

Q And is that an accurate statement?

A I'm not going to go beyond the words of the declaration. As you see from the declaration, it was submitted under penalty of perjury.

I'm not suggesting by my answer to you that there's anything in the declaration that was false, but I'm not going to enlarge upon the declaration in answering questions today for the reasons reflected in my statement.

Q Okay.

Mr. Goldman. Mr. Pomerantz, can I just clarify?

The Witness. Yeah.

Mr. Goldman. Because this is obviously long after your tenure in the District Attorney's Office.

The Witness. Right.

Mr. Goldman. So you don't -- you can't opine about whether you've had any conversations with any member of the District Attorney's Office, the prosecutors, after you left the District Attorney's Office?

The Witness. My counsel wants to say something, and I have learned not to disrespect his desire to speak.

Mr. Wells. We are not going to get into discussions about explanations about what he can do and can't do or should do and doesn't do.

You can respond to the question.

The Witness. I no longer have the question in mind. My apologies.

Mr. Goldman. What objection are you asserting?

The Witness. It's been suggested to me that I'm asserting my rights under the Fifth Amendment, and that's what I'll do.

BY MS. [REDACTED]

Q According to public press reports, the decision to pursue the hush-money case in particular was made in July, 2022, which is approximately 5 months after you left, correct?

A I'm not familiar with that.

Ms. [REDACTED] Okay. We want to introduce for the record a New York Times article. It's published March 31st, 2023, updated April 4th, 2023. It's entitled, "How

Alvin Bragg resurrected the case against Donald Trump."

[Pomerantz Exhibit No. 6

Was marked for identification.]

BY [REDACTED]

Q And I'll give you a minute to review. Let me know when you're --

A I got distracted by my photograph. Apologies. I'll keep going.

Yes. What's your question?

Q So the fifth paragraph on the first page, fifth paragraph of the article overall, says that, "But by July" -- referring to July 2022 -- "Mr. Bragg had decided to assign several additional prosecutors to pursue one particular strand that struck him as promising, a hush-money payment made on Mr. Trump's behalf to a porn star during the final days of the 2016 Presidential campaign."

That's what the article says, right?

A Where are you referencing?

Q That is the fifth paragraph on the first page. It begins, "for a time."

A I see it. Yes. Yeah, I see that.

Q So according to this public reporting, Mr. Bragg elected to pursue the hush-money case in July 2022, which was, again, several months after you left the District Attorney's Office, correct?

A I see that referenced in the article, certainly.

Q Okay. So assuming the dates here are correct, that was at least 4 months after you left the District Attorney's Office, right?

A I left in February. This references July of the same year.

Q Okay. You have no nonpublic information about Mr. Bragg's decision to pursue this case after you left the District Attorney's Office, correct?

A I refuse to answer that question.

Mr. Goldman. Based on?

The Witness. Based on my lawyer telling me not to answer the question, which I assume was based on the Fifth Amendment.

Mr. Wells. Correct.

Mr. Goldman. Based on the Fifth Amendment?

Mr. Wells. That's what he said.

Mr. Goldman. No, it's what you said. What is the rationale?

Mr. Finzi. We're not arguing.

Mr. Wells. Same rules for both sides. Today's not the day for explanations. If we ever get to court, we'll explain.

BY MS. [REDACTED]

Q Mr. Pomerantz, you said you have no public -- no nonpublic -- you declined to answer our question regarding whether you have any nonpublic information about Mr. Bragg's decision to pursue the case.

You have no nonpublic information about what evidence the district attorney may have developed in that investigation in the time since you left his office, correct?

A Same answer.

Q You're objecting to answer?

A Yes.

Q Okay. And you also would have no personal knowledge of the district attorney's use of Federal forfeiture funds, correct?

A Bear with me for one moment.

Ms. [REDACTED] We can go off the record for a minute.

[Discussion off the record.]

Ms. [REDACTED] We can go back on the record.

BY MS. [REDACTED]

Q The question is, you have no personal knowledge of the district attorney's use of any Federal forfeiture funds, correct?

A I have no knowledge one way or the other about the use of Federal forfeiture funds. I know nothing about that.

Q Okay.

Mr. Goldman. Do you have -- do you know the entire universe of evidence in possession of the district attorney that is related to the case that was charged on March 30th?

The Witness. Respectfully, I won't answer that question, Mr. Goldman, on the basis of my Fifth Amendment rights.

Mr. Goldman. Do you have any reason -- are you aware that Mr. Bragg has made public statements that his office developed additional evidence related to the case that he charged after you left the office? Are you aware of public reporting to that effect? Public statements that Mr. Bragg made?

The Witness. Respectfully, I refuse to answer your question.

Mr. Goldman. Do you have any reason to disagree with any public reports and public statements by Mr. Bragg that his office developed additional evidence related to the case that had been charged after you left the office?

The Witness. Same response.

Mr. Goldman. The charge that was brought on March 30th is not the charge that you recommended Mr. Bragg bring in February of 2022. Is that right?

Ms. Dubeck. Objection.

The Witness. Same response. Relying on paragraphs four and five of my

statement.

Mr. Goldman. You talk about your investigation in the book extensively. And as we discussed, that investigation, you stated in your book, relates to the misevaluation of properties in possession of Donald Trump. Is that correct? Is that an accurate statement of what you say in your book?

The Witness. I'm not taking issue with your statement. But respectfully, the book speaks for itself at some length, and I'm not going to characterize or comment on your reading of it.

Mr. Goldman. Sure.

I'll note for the record that the book solely talks about a misevaluation case, not the false books and records case that was charged.

Mr. Pomerantz, you aren't a big fan of Mr. Bragg, are you?

The Witness. I will decline to answer your question.

Mr. Goldman. Which one?

The Witness. Whether I'm a big fan of --

Mr. Goldman. No, which reason?

The Witness. Paragraph five of my response and six.

[12:25 p.m.]

Mr. Goldman. You thought that he should have charged the case that you investigated, correct?

Ms. Dubeck. Objection.

Mr. Goldman. He didn't charge the case you investigated, did he?

Ms. Dubeck. Objection.

The Witness. I think what he charged is a matter of public record, about which I'm not going to comment further.

Mr. Goldman. But that wasn't the case that you investigated, was it?

Ms. Dubeck. Objection.

Mr. Goldman. That wasn't the case you recommended he charge, was it?

Ms. Dubeck. Objection.

The Witness. I won't answer that question.

Ms. [REDACTED] Turning back to your April 17th declaration. Paragraph 5 of that declaration concludes with this sentence: "Also, answering questions from the Judiciary Committee about my tenure as a prosecutor poses the risk that my testimony could be used to jeopardize or interfere with either the charged criminal case against Trump or other ongoing investigations." Correct?

The Witness. Yes, the declaration contains that language.

Ms. [REDACTED] Mr. Pomerantz, you were a prosecutor and a defense attorney for many, many years. Can you explain why the risk of interfering in an ongoing investigation is of concern to you?

Ms. Dubeck. To the extent that calls for information based on his tenure at the D.A.'s Office, I object.

Ms. [REDACTED] Can you speak based on your experience prior to your tenure with the D.A.'s Office?

The Witness. What's the question again? I'm sorry?

Ms. [REDACTED] Why is the risk of interfering in an ongoing criminal prosecution something that concerns you as a longtime prosecutor and defense attorney?

Mr. Finzi. Do you want to discuss?

Ms. [REDACTED] We can go off the record for a minute.

[Discussion off the record.]

BY MS. [REDACTED]

Q We can go back on the record.

A Thank you. Respectfully, I will follow my attorneys' instructions and not go beyond the language that appears in the declaration.

Q I want to move on. I'm going to turn to the April 6th, 2023 letter that you received from Mr. Jordan. That's exhibit 1 in this matter.

A Yes. I have it.

Q We have another copy too, if you need it.

On page 4 of this letter -- and again, this is the letter that was accompanying the service of subpoena on you -- Mr. Jordan claims that you hold a, quote, "personal animosity" towards former President Trump. And then he quotes a paragraph from your book. We've also heard other quotes that you have purportedly made about Mr. Trump here today.

Would you describe the excerpt quoted here and the other statements that have been raised as expressions of your First Amendment right to free speech?

Mr. Finzi. Would you repeat that question?

Ms. [REDACTED] He was asked fairly extensively about prior statements he's made

about President Trump and about some others as well.

BY MS. [REDACTED]

Q Would you describe those statements as expressions of your right to free speech? In other words, when you said something, that was exercising your free speech rights, right?

A I intended to exercise my free speech rights at various points, including the statement referenced in Mr. Jordan's letter, which is an excerpt from the book?

Q There was also a letter from Chairman Jordan that you received on March 22nd, correct?

A Yes.

Q Okay. And that letter also accuses you of, quote, "unfairly disparaging" President Trump, correct?

We can introduce that for the record if you don't recall.

A I don't know that it's an accusation. But I recall the letter generally.

Q You don't remember -- you don't recall that particular language?

A I do recall --

Q Yeah, we'll go ahead and introduce it for the record.

A No, I --

Q It's exhibit No. 7.

[Pomerantz Exhibit No. 7

Was marked for identification.]

BY MS. [REDACTED]

Q And the reference to unfairly disparaging President Trump is on page 3.

A Yes, I see it.

Q Okay. So that was an accusation that was put against you in the March

22nd letter, correct?

A I read it as expressing Representative Jordan's view of my book. I don't know that it's an accusation.

Q Mr. Pomerantz, do you believe that you have a First Amendment right to criticize people?

A I do.

Q Would you agree that to the extent you've been brought here today because you've criticized people, that that's an attack on your exercise of that right?

A I believe what is referenced in my statement, which is that I have the right to refuse to answer questions that would compel me to express opinions that I believe are protected by the First Amendment.

To the extent I have been brought here because I wrote a book that expressed opinions with which people may disagree, I do believe that that implicates First Amendment rights.

Q Do you think if others view you being brought here because you wrote a book that expresses opinions with others -- that others might disagree with -- do you think that could chill other people's willingness to make statements that criticize people in the future?

A I really don't want to get into how people might view the proceedings here today, whether others would be chilled or should be chilled, whether I should have written the book. I am just of the view that being called here, to the extent it is because I wrote a book and the impact of being asked to testify is to discourage that activity, that's unfortunate.

But this is not the place for me to get into a long exegesis about First Amendment rights or whether they've been chilled. I have my views on the matter. But how they

relate to the committee's legislative purpose is a mystery to me.

Mr. Goldman. Let me follow up on that legislative purpose.

We've talked a little bit about the litigation in this case and that you were nominally a defendant in it.

When you make the reference to legitimate legislative purpose, what are you -- why are you making -- why are you referring to that term? What is the relevance of that term?

The Witness. I'm not going to debate the statement in -- I'm not going to debate that portion of my statement which indicates that a person subpoenaed before a congressional committee has the right to refuse to answer questions that are not pertinent to a legitimate legislative purpose, although I believe that to be the law. Nor am I going to debate with you here as a witness the legitimacy of the committee's legislative purpose.

I have my views about it, as expressed in the statement. Whether you agree or disagree is not a matter about which I'm going to have a conversation with you under oath. I just don't think that's the purpose of this proceeding.

Mr. Goldman. Are you familiar with the Mazars case in the Supreme Court?

The Witness. I know whereof you speak?

Mr. Goldman. Have you read it?

The Witness. Yes.

Mr. Goldman. And in the Mazars case I will just note that the Supreme Court lays out the most recent explanation of Congress' investigative jurisdiction, which must be related to a legitimate legislative purpose.

Mr. Pomerantz, are you aware of reports that Mr. Trump or his lawyers communicated a desire for Chairman Jordan and other House Republicans to initiate this

investigation shortly after Mr. Trump came to understand that he would be charged by District Attorney Bragg?

It's a question of whether you've read public reporting.

[Discussion off the record.]

The Witness. I am aware of the press reports that you referenced in your question, sir.

Mr. Goldman. And is the information included in those press reports relevant to your assertion that there is no legitimate legislative purpose for this investigation?

The Witness. I won't expand on the thinking that led me to make the statement I made in my opening statement to you.

Mr. Goldman. Why? You testified in your opening statement about your conclusion that you don't think there's a legitimate legislative purpose. I'm just trying to understand why you don't think that.

Ms. [REDACTED] We can go off the record.

[Discussion off the record.]

Ms. [REDACTED] We're back on the record.

The Witness. My belief that there is no legitimate legislative purpose that motivates this deposition is informed by the press reports that you mentioned, but a wide variety of facts and information and circumstances accumulated over an indeterminate period of time. And I'm not going to attempt to psychoanalyze my own belief and provide you with a catalogue of the reasons for reaching the conclusion that I referenced in the statement.

Mr. Goldman. Well, you've been a lawyer for a long time, a very experienced, very accomplished lawyer. Based on your reading of the Mazars case, if Congress initiated an investigation into a specific criminal prosecution against a private citizen,

would that be a legitimate -- in a local District Attorney's Office -- would that be a legitimate legislative purpose, based on your understanding of the Mazars case?

The Witness. I'm not sure I follow that. If you can -- my apologies.

Mr. Goldman. No, that's fine.

If these reports are accurate and this investigation was initiated based on the request of a private citizen to intervene in a prosecution of that private citizen in a local District Attorney's Office, is that a legitimate Federal legislative purpose, based on your reading of the Mazars case?

The Witness. I wish not to get into a lawyers discussion with you about what is or is not a legitimate legislative purpose. While I might agree with your views, I certainly don't wish to get into a debate about this topic when the committee majority has its turn to resume questions. My strong preference would be to simply answer your questions or not answer them based on my legal rights with regard to the facts that led you to ask me to be here today.

Mr. Goldman. Are you -- let's move on.

Are you aware of any other investigation into specific cases in a -- any other congressional investigations into specific cases in a local district attorney's office?

The Witness. That are still pending?

Mr. Goldman. Ever.

The Witness. I'm not.

Mr. Goldman. Do you believe that this investigation is designed to harass and intimidate Mr. Bragg?

The Witness. I do.

Mr. Goldman. Do you think that this investigation would exist if Donald Trump were not the defendant in the People v. Donald Trump in the Manhattan District

Attorney's Office?

The Witness. I don't think it's fair, given that I've come here to assert my rights, among other things, about my political views, I don't want to start holding forth about what is or isn't appropriate as a political matter.

Mr. Goldman. Fair enough.

The Witness. I'll keep my own counsel in that regard.

Mr. Goldman. I just -- I want to switch gears and I'm going to give it back to our counsel.

First, I just want to clarify for the record, because you were asked this in the majority's hour, you and I have never met, correct, until today?

The Witness. That's correct.

Mr. Goldman. We've never spoken?

The Witness. Not that I recall.

Mr. Goldman. We both worked at the Southern District of New York but at different times.

The Witness. That's correct.

Mr. Goldman. When you take an oath as a Federal prosecutor -- and we're not going to talk about your time as a -- well, I'll say, when you take an oath as a Federal prosecutor, do you take an oath to proceed without fear or favor?

The Witness. You know, I'm not sure that's in the oath, but that's certainly in the spirit of what the job requires?

Mr. Goldman. And what does that mean to you?

The Witness. What it meant to me when I was sworn in as a Federal prosecutor, both times I was sworn in as a Federal prosecutor, is that you make decisions in cases without regard to the concern you may have about taking action. You can't be afraid

about the consequences of your actions if you believe that they're well informed and that they are based on the law and the facts and the evidence.

You don't act with favor means that you don't take official action or decline to take official action based on your relationship with a potential subject or because of your personal interests one way or the other. You make decisions that are based on the facts and the law and in the best interests of your client.

In the case you're referencing, my client was the Government of the United States, and I attempted to make decisions that were in the best interest of the government without regard to how they impacted my own circumstances or politics or career or anything else. You make decisions consistent with your obligations to serve the public interest.

Mr. Goldman. And did you use that same approach when you joined the New York County District Attorney's Office?

The Witness. I'm not going to talk about my activities as a Special Assistant District Attorney, respectfully.

Mr. Goldman. Based on your experience as a prosecutor -- well, let me start over.

You're aware of the criminal prosecution against The Trump Organization in the summer of 2022, correct?

The Witness. Am I aware of the prosecution?

Mr. Goldman. Yes.

The Witness. Yes.

Mr. Goldman. Okay. And that was a trial. Is that right?

The Witness. Yes.

Mr. Goldman. And The Trump Organization was convicted --

The Witness. Yes.

Mr. Goldman. -- of 17 crimes?

The Witness. Yes.

Mr. Goldman. Now, in your experience as a prosecutor, do prosecutors and investigators redouble their investigative efforts in advance of trial and in preparation for trial?

The Witness. Can I limit my response to my experience as a Federal prosecutor?

Mr. Goldman. Please.

The Witness. Yes, preparing for trial is always a period when prosecutors and law enforcement agents feverishly go about making sure they have gathered all the facts and are in position to present them.

Mr. Goldman. And is it common during that trial preparation to discover new evidence?

The Witness. Yes.

Ms. [REDACTED] We're actually out of time.

Do you have any?

We can go off the record.

[Recess.]

Mr. Schiff. Thank you for allowing me to ask questions before you begin your time.

Mr. Pomerantz, I am Adam Schiff from California.

The Witness. Yes, sir.

Mr. Schiff. I appreciate your being here today.

In your opening statement you said that "I do not for a moment believe" -- "I do not believe for a moment that I am here to assist a genuine effort to enact legislation or

to conduct legislative oversight. We are gathered here because Donald Trump's supporters would like to use these proceedings to attempt to obstruct and undermine the criminal case pending against him and to harass, intimidate, and discredit anyone who investigates or charges him."

I quite agree with the sentiments you've expressed. I can discern no legitimate legislative purpose either.

You have a lot of experience, though, as a prosecutor. And I'd like to ask you, in your experience, have you ever seen another situation where a committee of Congress sought to interfere with a specific criminal case in a specific jurisdiction? And what would be the impact if this were to become precedent for the Congress to intervene in other criminal cases in other parts of the country?

The Witness. I have not seen similar proceedings. But, respectfully, I don't want to hold forth and give you personal views on the wisdom or the impact of proceedings like this one.

My hope is to get out of this room as quickly as I can without inviting more debate and colloquy about matters of public policy. I'm not a policy expert. I'm just a lawyer. And we can all have our respective views about the impact of these proceedings, whether that impact is positive or negative.

So, respectfully, I'm going to decline your invitation to express my personal views.

Mr. Schiff. I appreciate that. Let me try one more time.

In your opening statement you also said, "This is neither the time nor the place for me to answer questions about the investigation or the pending indictment over the objection of the prosecutors. The charges against Mr. Trump should be heard and decided by a judge and a jury before politicians second-guess their merits or the decision to bring them. That's how our system works. Those who claim that they respect the

rule of law should wait for the courts to do their work."

If Congress had the power or authority to subpoena witnesses or materials in cases where there's a pending indictment and approaching trial, how might that interfere with a prosecution?

The Witness. I think historically it has been the view of the Department of Justice certainly that pending cases ought to be litigated and that responding to congressional inquiries creates a potential to jeopardize prosecutions, witness security, and so on.

I think that there has not been a deep and rich history of congressional investigations that touch on pending State prosecutions. But I don't see why the circumstances would be different with respect to State prosecutors fearing for the integrity of their prosecutions and investigations.

But, again, I hope you'll understand I'm not here to provide expert testimony or expert views. I don't consider myself an expert on the impact of congressional investigations on pending prosecutions.

I just know, having been a prosecutor, that you want to go about your business and prosecute your cases and have them litigated before the court that has jurisdiction and that responding to outside requests and demands is never something one looks forward to doing.

Mr. Schiff. Last question before I hand it back. Again, Mr. Chairman, I appreciate your indulgence.

It's been publicly reported that Mr. Trump's attorneys reached out to this committee to ask for the committee's help in impacting or through discovery in the Manhattan prosecution against Mr. Trump.

Is there a process in which a defendant in a criminal trial in New York City or

anywhere else can obtain discovery from prosecutors without having to seek Congress to do it for them? Isn't there a process in which defendants are entitled to Brady material where they get it directly from the prosecutor's office and don't require the intercession of Congress to do that?

The Witness. Well, New York has a very liberal criminal discovery regime. And in New York or outside of New York obviously defendants have the ability by way of motion practice to litigate the integrity of the decision to prosecute and to test whether a prosecution was brought for inappropriate reasons.

That opportunity certainly exists under Federal law. It exists under New York law. I'm not going to speak to other jurisdictions.

Mr. Schiff. Thank you, Mr. Chairman. I yield back.

Chairman Jordan. Mr. Pomerantz, do you know who disagrees with Mr. Schiff and your characterization of legislative purpose?

The Witness. Pardon me?

Chairman Jordan. Do you know who disagrees with Mr. Schiff and your characterization of legislative purpose?

The Witness. I don't know, but I can indulge in some guesses.

Chairman Jordan. Who would you guess?

Well, we'll save time. We'll go -- the people who disagree is the court and that's why you're here. Let me just read for the record what the court said.

"The committee is considering legislation to prohibit the use of Federal forfeiture funds to investigate a current or former President. This purpose standing alone is clearly sufficient to justify the subpoena and thereby to end this court's inquiry."

Do you know who else agrees with the court? The lady who's been objecting all morning, Ms. Dubeck. Bragg's counsel conceded that the investigation of the District

Attorney of New York's use of Federal funds is a valid legislative purpose.

But they go on.

"Defendants identify the possibility of legislative reforms to insulate current and former Presidents from State prosecutions such as by removing criminal actions filed against them from State to Federal court. In fact, there's been legislation introduced to do that."

This idea that it's not a legitimate legislative purpose is ridiculous. In fact, I understand it's unusual, but the court spoke to that as well.

Page 14, footnote 7. "Bragg notes that there is 'no prior case in which Congress has attempted to subpoena a State prosecutor for purpose of extracting information about an ongoing State prosecution.'"

Mr. Pomerantz, do you know of any situation where there's a case of a former President of the United States being criminally charged in a State trial court? Do you know of any situation like that?

The Witness. Other than the present one? I do not.

Chairman Jordan. And that's what the court said. "However, there is no prior case in which a former President of the United States has been criminally charged in State trial court, suggesting both parties swim in untested waters."

[Pomerantz Exhibit No. 8

Was marked for identification.]

BY MR. [REDACTED]

Q Mr. Pomerantz, are you aware of any Federal funds used by the District Attorney's Office in the prosecution of President Trump?

A I have no knowledge whatsoever on that topic.

Q Are you aware of any positions, some Assistant District Attorney positions,

that are funded by the Federal Government in the D.A.'s Office?

A I'm not aware one way or the other.

Q In a March 31st, 2023, letter we received from the District Attorney's Office, the general counsel wrote: "Our review of the office's records reflect that of the Federal forfeiture money that the office helped collect approximately \$5,000 was spent on expenses incurred relating to the investigation of President Trump."

Are you aware of that?

A I only was -- I became aware of it when I read the letter to which you refer. I have no other knowledge beyond what is contained --

[Pomerantz Exhibit No. 9

Was marked for identification.]

Mr. [REDACTED] We're marking this as exhibit 9.

The Witness. Yes, sir.

Mr. [REDACTED] Exhibit 8 was Judge Vyskocil's opinion Mr. Jordan referenced.

Were you aware before Ms. Dubeck's letter that the D.A.'s Office had used Federal funds in the prosecution of President Trump?

The Witness. I was not.

Mr. [REDACTED] Did you ever have any discussions while you were at the D.A.'s Office with anyone about the use of Federal funds?

Ms. Dubeck. Objection.

The Witness. I will refuse to answer on the basis of the objection from the District Attorney's Office.

Having said that, I will reaffirm my previous answer to you that I knew absolutely nothing about the use of Federal funds in connection with the Trump investigation.

Mr. [REDACTED] Did you ever discuss with anyone in the D.A.'s Office the issue of

President Trump's security were he to be indicted or convicted?

Ms. Dubeck. Objection.

The Witness. I decline to answer that question on the basis of the rights referenced in paragraphs 4 and 5 of my opening statement.

Mr. [REDACTED] Refresh my recollection about what paragraphs 4 and 5 --

Mr. Wells. In the spirit of efficiency, 4 relates to the objections of the D.A., 5 relates to the Self-Incrimination Clause of the Fifth Amendment, and 6 relates to the legislative purpose and First Amendment due process.

Mr. [REDACTED] Thank you.

So as I understand it, the question was whether you ever had any discussions with anyone in the D.A.'s Office about the issue of President Trump's security were he to be indicted or convicted. And you're invoking the Fifth Amendment on that particular question?

The Witness. Yes. If you'd give me one moment.

Mr. [REDACTED] Of course.

[Discussion off the record.]

The Witness. I do refuse to answer your question on the basis of my rights as reflected in the statement.

Mr. Wells. He said paragraphs 4 and 6 -- 4 and 5.

The Witness. 4 and 5, yes.

Mr. [REDACTED] Did you ever discuss with anyone in the D.A.'s Office how the former President's entitlement to lifetime Secret Service protection under Federal law would be accommodated were he to be convicted of a crime or sentenced to prison?

Ms. Dubeck. Objection.

The Witness. Same response, sir.

Mr. [REDACTED] And that response is?

The Witness. Is not to answer your question on the basis of the District Attorney's position that the information is privileged or confidential and my personal privilege not to be compelled to be a witness against myself.

Mr. [REDACTED] Mr. Gaetz, did you want to go or did you want me to continue?

Mr. Gaetz. I do have some questions.

Mr. [REDACTED] Okay.

Mr. Gaetz. Mr. Pomerantz, did the Manhattan D.A. ever issue you a cell phone?

Mr. [REDACTED] Do you want to go off the record?

Off the record.

[Discussion off the record.]

The Witness. On the advice of counsel, I'm not going to answer that question, sir.

Mr. Gaetz. Asserting what privilege?

The Witness. Privilege against self-incrimination.

Mr. Gaetz. And did the Manhattan's D.A.'s Office ever issue you a laptop?

The Witness. Same answer to that question, sir.

Mr. Gaetz. That you're asserting your Fifth Amendment right not to answer?

The Witness. Yes, sir.

Mr. Gaetz. And did they issue you any other hardware?

The Witness. Same response.

Mr. Gaetz. And were you given a Manhattan D.A. email address during your time there?

Mr. [REDACTED] Go off the record?

[Discussion off the record.]

Mr. Gaetz. We're back on the record.

The Witness. Yes, I refuse to answer your question on the same basis as I've previously indicated.

Mr. Gaetz. Do you use email now?

The Witness. Pardon me?

Mr. Gaetz. Since you've left the employ of the Manhattan D.A., do you use email as a method of communication?

The Witness. I decline to answer your question.

Mr. Gaetz. And who's your current email provider?

The Witness. I decline to answer that question.

Mr. Gaetz. On Fifth Amendment grounds?

The Witness. Yes, sir.

Mr. Gaetz. And I'm not trying to be pedantic, I'm just trying to make the record clear.

The Witness. No, I understand that. And I appreciate that.

Mr. Gaetz. And who's your current cell phone provider?

The Witness. Likewise, I refuse to answer that question on the basis of my rights under the Fifth Amendment.

Mr. Gaetz. How much money did you make on the book?

The Witness. I refuse to answer that question as well.

Mr. Gaetz. On what basis?

The Witness. That one is on the basis of both my Fifth Amendment rights and the rights articulated and referenced in paragraph 6 in my opening statement.

Mr. Gaetz. I yield back.

BY MR. [REDACTED]

Q This morning I asked you about the speech that Attorney General Jackson had provided.

A Yes, sir.

Q I also asked you about the ABA standards.

A Yes.

Q And I asked you about the U.S. Attorneys' Manual.

A Yes, sir.

Q And you had declined to answer those questions.

Now, if I rephrase my questions and say, are you familiar from your time as a Federal prosecutor with any of those three authorities about the principles of prosecution, does your answer -- are you able to answer the question?

A I'm able to answer the question, but I refuse to answer the question.

Q Okay.

A Not to parse the language too fine. I don't mean to be cute.

Q And I understand, sir.

During the last hour Mr. Goldman was asking you about there is fear and favor, and you walked through with Mr. Goldman the meaning behind fear and favor and how I believe you represented you were familiar with it from your time as a Federal prosecutor.

How does that differ from my questions?

A I don't want to get into a debate with you about my position with respect to particular questions. I respect your right to challenge my invocation of rights. I hope you don't, but if you do, we will have that discussion, I suppose.

But I believe that I have a fair basis on which to invoke my rights with respect to familiarity with the "Principles of Federal Prosecution," the U.S. Attorneys' Manual, and Justice Jackson's speech.

Mr. Bishop. Mr. Pomerantz, my name is Dan Bishop.

The Witness. Yes, sir.

Mr. Bishop. Just quickly for the sake of the record, I want to make available to you and your counsel that in Mitchell v. United States, a 1999 case in the United States Supreme Court, 526 U.S. 314, Justice Kennedy, writing for the Court, said: "It is well established that a witness, in a single proceeding, may not testify voluntarily about a subject and then invoke the privilege against self-incrimination when questioned about the details. The privilege is waived for the matters to which the witness testifies, and the scope of the 'waiver is determined by the scope of relevant cross-examination.'"

[Pomerantz Exhibit No. 10

Was marked for identification.]

Mr. Bishop. Also, on the same point, in the case of Morgan Art Foundation Limited v. McKenzie from the Southern District of New York, on December 15th, 2021, the Court said: "However, the Fifth Amendment privilege against self-incrimination is not self-executing and may be waived if not invoked. As relevant here, where a witness testifies voluntarily and therefore controls the extent of the disclosure, the privilege is waived for the matters to which the witness testified and the scope of the waiver is determined by the scope of relevant cross-examination."

Now, of course. Your counsel has appropriately said -- and I will be glad to hand a copy to you, if you would like.

The Witness. Yes, please.

Mr. Bishop. And I have got copies for other counsel as well.

[Pomerantz Exhibit No. 11

Was marked for identification.]

Mr. [REDACTED] I'm sorry, Mr. Bishop. Morgan is the second case you mentioned?

Mr. Bishop. It is.

Mr. [REDACTED] Okay. So that would be 11.

Mr. Finzi. So there's Mitchell and Morgan?

Mr. [REDACTED] So Mitchell's No. 10 and Morgan's No. 11. And I apologize, sir.

Mr. Bishop. Good. Thank you, Mr. [REDACTED] to keep the record clear. That's very helpful.

Mr. Finzi. Mitchell 10, Morgan 11?

Mr. [REDACTED] Correct.

Mr. Bishop. And of course counsel made the point they didn't want to debate privilege. I'm not. I'm just seeking to lay a record because the assertion of a privilege, of course, needs to have a reasonable basis. You just spoke to that, Mr. Pomerantz.

Earlier in your examination today, Ms. Stefanik of New York said, "So there are no lies in the book? You stand fully behind this publication under your name?" And your answer was, "That's correct."

Mr. Pomerantz, on page 170 of your book you say that -- let me make sure I get the context so that it's complete -- "No one could know exactly what the security dangers might be if we indicted Trump. I assumed that the MAGA crowd would make its presence felt. But we had to trust that our institutions and personnel could be secured no matter how events might unfold."

Sir, what you do mean by the MAGA crowd? What is that?

The Witness. I refuse to answer your question, sir, on the basis of the rights I asserted in the fifth and sixth paragraphs of my statement.

Mr. Bishop. And you continue to assert the right -- those rights, the right of the Fifth Amendment in particular, but notwithstanding of the information I've furnished. Is that correct?

The Witness. That's correct.

Mr. Bishop. On page 192 of the book you wrote: "I explained that I had made a deliberate effort not to think about the damage Trump had done to politics, the rule of law, respect for the truth, or the fabric of our democracy."

What is meant by the damage Trump had done to politics?

The Witness. I don't believe I am required to go beyond the language reflected in my book. And, accordingly, I refuse to answer your question.

Mr. Bishop. On the grounds that you've previously asserted. Is that correct?

The Witness. That's correct.

Mr. Bishop. What did you mean by the damage Trump had done to the rule of law?

The Witness. I take the same position with respect to that question, sir.

Mr. Bishop. What do you mean by the damage Trump had done to respect for the truth?

The Witness. I take the same position with respect to that language and likewise with respect to the fabric of democracy.

Mr. Bishop. What do you mean about the damage Trump had done to the fabric of our democracy?

The Witness. I take the same position and refuse to answer your question for the reason stated.

Mr. Bishop. On page 192 also you wrote: "Indeed I thought there might be an argument that Trump had assumed an office that required him to take care that the laws be faithfully executed and having urged the country to trust him to uphold the law should be held to a higher standard of personal conduct than the average citizen."

What do you mean by that?

Ms. Dubeck. Objection.

The Witness. I refuse to go beyond the language that appears in the book and provide you with a further explanation of what I meant.

Mr. Bishop. [Inaudible] did you not, sir, that for purposes of the prosecutorial action you sought from the office, that Trump should be treated differently than average citizens? Isn't that right?

Ms. Dubeck. Objection.

The Witness. I have nothing to add beyond my prior response.

Mr. Bishop. On page 198 of your book you say: "While it could be argued that the American people generally have been hurt by Trump's deceptions." What do you mean by that?

The Witness. I'm sorry, I missed your question.

Mr. Bishop. I'll repeat it. On page 198 of the book you write: "While it could be argued that the American people generally have been hurt by Trump's deceptions." What do you mean by that?

Ms. Dubeck. If you can pause. I'm not finding the language.

Mr. Bishop. All right. Let me help and I'll read the full sentence. At the bottom of -- the next to last paragraph on 198 it says: "While it could be argued that the American people generally have been hurt by Trump's deceptions, we were speaking about a victim in the legal sense, a person or entity that had received the SOFCs, relied on them to give money to Trump, and then suffered a financial loss." That's the whole sentence.

My question, though, is about the first clause of the sentence. What do you mean that the American people generally have been hurt by Trump's deceptions?

Ms. Dubeck. Objection.

The Witness. Yes, for the reasons stated in the fourth and fifth paragraph of my letter, I will decline to answer that question.

Mr. Bishop. To what deceptions to you refer?

The Witness. I refuse to answer that question for the reasons stated.

Mr. Bishop. In what way do you mean the American people generally have been hurt?

The Witness. Same answer, sir.

Mr. Bishop. At another point in the book, and I didn't note the page reference, perhaps you'll recall it, but you say: "I was haunted by the thought that there were many people everywhere who had been counting on us to hold Trump accountable for crimes that we would never get a chance to prove in court."

My question to you there is, what people?

Ms. Dubeck. Object.

The Witness. I decline to answer your question and believe I am not required to do so for the reasons reflected in my statement.

Mr. Bishop. Would the people include political enemies of Mr. Trump?

The Witness. I won't --

Ms. Dubeck. Objection.

The Witness. Excuse me, sorry.

I won't elaborate on the language that appears in the book and accordingly assert my rights under the fourth and fifth paragraphs of my statement.

Chairman Jordan. Were they the same people who said "go get him" on page 1 of the book?

The Witness. The same answer.

Mr. Bishop. On page -- withdrawn.

At another point you wrote: "Has the target generally been involved in antisocial behavior such that the community needs to be protected from further misbehavior or the target held to account for misdeeds that extend well beyond the particular crime at issue?"

How did that apply to Mr. Trump?

The Witness. I refuse to answer your questions for the reasons reflected in the fifth paragraph of my letter. I'm not certain, I may have answered too quickly before Ms. Dubeck had a chance to object, for which I apologize.

Ms. Dubeck. I lost track of whether he was asking something based on your time at the D.A.'s Office. To the extent he was, I object.

Mr. Bishop. I yield back.

Mr. [REDACTED]. To your knowledge, when was the first time the District Attorney's Office interviewed Michael Cohen?

Ms. Dubeck. Objection.

The Witness. I refuse to answer for reasons previously stated --

Mr. [REDACTED]. Given your experience --

The Witness. -- in paragraphs 4 and 5 of my statement for the record.

Mr. [REDACTED]: Okay.

Given your experience, how can you possibly believe Michael Cohen is a reliable witness?

Ms. Dubeck. Objection.

The Witness. I decline to answer for the reasons reflected in paragraphs 4, 5 and 6 of my statement.

Mr. [REDACTED]. So you're taking the Fifth Amendment on given your experience how can you possibly believe Michael Cohen is a reliable witness?

The Witness. Yes.

Mr. [REDACTED] Okay. Are you aware of the shifting information Mr. Cohen has put forward about the Stormy Daniels payments?

Ms. Dubeck. Objection.

The Witness. I decline to answer for the reasons indicated in the answer to your previous question.

BY MR. [REDACTED]

Q I believe in your book you say that you were following the Michael Cohen testimony when he appeared before Congress. It was the first big hearing of Chairman Cummings' tenure. Mr. Cohen testified back in 2019. I believe in your book that you said you watched that and you were following along. Is that correct?

A I believe that appears in the book, yes.

Q And as you sit here today, do you remember that testimony?

A I decline to answer that question based on my right not to be a witness against myself in a possible criminal proceeding.

Q I'd like to mark as exhibit 12 a letter from Steve Ryan to the Federal Election Commission.

[Pomerantz Exhibit No. 12

Was marked for identification.]

Mr. [REDACTED] Mr. Ryan is a -- Mr. Ryan was one of Michael Cohen's lawyers at the time.

Mr. Ryan writes: "In a private" -- he's writing on behalf of Michael Cohen to the Federal Election Commission here. "In a private transaction" -- this is the second paragraph" -- "in 2016, before the U.S. presidential election, Mr. Cohen used his own personal funds to facilitate a payment of \$130,000 to Ms. Stephanie Clifford. Neither

the Trump Organization nor the Trump campaign was a party to the transaction with Ms. Clifford, and neither was reimbursed by Mr. Cohen" -- or "neither reimbursed Mr. Cohen for the payment directly or indirectly."

Are you familiar with this letter? Have you ever seen this before?

Ms. Dubeck. Objection.

The Witness. I decline to answer.

Mr. [REDACTED] And as you know, in 2018 Michael Cohen says, through his lawyer, that nobody ever reimbursed him. And then when he showed up before Congress, it was Chairman Cummings' first big hearing in January 2019, he changed his tune and he said he was reimbursed.

Were you aware of that sort of a changing story of Mr. Cohen on that front?

Ms. Dubeck. Objection.

The Witness. I decline to answer your question.

[Pomerantz Exhibit No. 13

Was marked for identification.]

Mr. [REDACTED] I'd like to mark as exhibit 13 a letter from Mr. Jordan and Mr. Meadows to the Attorney General referring Michael Cohen for perjury for his appearance in February -- I'm sorry, it was February 2019. I think in my last question to you I said it was January 2019, but it was February 27th, 2019, that he appeared, first big hearing of the Democrats' new majority at the time.

And this letter sets forth numerous undeniable facts about Mr. Cohen perjuring himself during his appearance before the committee.

Have you ever seen this letter before?

Ms. Dubeck. Objection.

The Witness. I decline to answer your question, one way or the other, on the

basis of my Fifth Amendment rights.

Mr. [REDACTED] Okay. The bottom of page 1 it says:

"Several times during his testimony, Mr. Cohen denied committing various fraudulent acts that he pleaded guilty to in federal court. Specifically, Mr. Cohen said, 'I never defrauded any bank.'

"These denials are intentionally false. Mr. Cohen pleaded guilty to five counts of income tax evasion, one count of making false statements to a banking institution, one count of causing an unlawful corporate contribution, one count of excessive campaign contribution, and one count of making false statements to Congress."

In your experience, is there any way that Mr. Cohen could not have committed perjury when he testified one way and he pleaded guilty in an exact opposite fashion to the same set of facts?

Ms. Dubeck. Objection.

The Witness. I decline to answer the question for the reasons previously stated.

Mr. [REDACTED] When you were at the D.A.'s Office, did you consider this type of unreliability when considering Mr. Cohen as the narrator for the case against President Trump?

[1:43 p.m.]

Ms. Dubeck. Objection.

The Witness. Same response, sir.

BY MR. [REDACTED]

Q And in your book you did describe Mr. Cohen as a potential narrator for the prosecution against President Trump. Is that correct?

Well, I think this is in the book.

A The book says what it says. I'm not disputing your characterization.

Q Okay. So it's fair to say that in your book you talk about in a prosecution of this type you need a good narrator?

A I think there is a reference to the need for a narrator that appears in the book.

Q And Michael Cohen was considered as that possible narrator?

Ms. Dubeck. Objection.

The Witness. I rest on what's set forth in the book. I'm not taking issue with your characterization.

BY MR. [REDACTED]

Q Going back to the letter, Mr. Cohen repeatedly testified that he did not seek employment in the White House following President Trump's election. And this is demonstrably material and intentionally false, too.

The testimony is -- that testimony is in indirect conflict with court filings made by the U.S. Attorney's Office in the Southern District of New York which stated: During and after the campaign, Cohen privately told friends and colleagues, including in text messages, that he expected to be given a prominent role and title in the new administration. When that did not materialize, Cohen found a way to monetize his

relationship with and access to the President.

Was that a fact that you were aware of?

Ms. Dubeck. Objection.

The Witness. The same response, sir.

BY MR. [REDACTED]:

Q At the hearing Mr. Jordan asked Mr. Cohen: You wanted to work in the White House?

And Mr. Cohen said: No, sir.

And that answer, when Mr. Cohen said "no, sir," is expressly contradicted by the text messages that the Southern District of New York used in the case against Mr. Cohen.

With that said, I mean, how is that not perjury before Congress?

Ms. Dubeck. Objection.

The Witness. I refuse to answer the question for the reasons reflected in paragraphs 4 and 5 of my statement.

Mr. Bishop. Mr. Pomerantz, on page 178 your book you have this paragraph. It says: "Carey drafted a lengthy outline of defense arguments. The defense outline claimed that a prosecution would be politically motivated and would violate Trump's constitutional rights. It noted that the district attorney and the Attorney General were Democrat politicians who supposedly were trying to prevent Trump from becoming president again. It detailed some of New York State Attorney General Letitia James's public statements about Trump in reference to Alvin Bragg's campaign statements about having repeatedly sued the Trump administration. It suggested that Trump would move to disqualify the prosecution and seek a transfer of venue out of New York City. It characterized the case as a political vendetta that had wasted vast resources in the hunt for a viable theory of criminal liability after Trump, all at a time when murders and violent

crime were increasing."

I'll stop there. Did I read it accurately?

The Witness. Pardon me? Yes, you read it accurately, of course.

Mr. Bishop. Do you know what the defense of selective or vindictive prosecution is?

The Witness. I decline to answer your questions.

Mr. Bishop. Are you aware that prosecuting someone criminally in retaliation for First Amendment expressive activity or associational activity is unconstitutional?

Ms. Dubeck. Objection.

The Witness. I decline to answer your question. I'll resist the temptation to elaborate on it.

Mr. Bishop. Were any of the factual bases that Carey laid out in his lengthy outline of defense arguments inaccurate?

Ms. Dubeck. Objection.

The Witness. I decline to answer your questions for the reasons reflected in paragraphs 4, 5, and 6 of my statement.

Mr. Bishop. Did you undertake to or did anyone else working with you on the investigation of Mr. Trump undertake to rebut any of the factual bases underlying the outline of this defense argument furnished by Carey?

Ms. Dubeck. Objection.

The Witness. I would like to make the same response to that question as to your previous one, sir.

Mr. Bishop. Which is declining to answer --

The Witness. Yes.

Mr. Bishop. -- on the basis of your asserted privileges?

The Witness. Yes, sir.

Mr. Bishop. Thank you.

BY MR. [REDACTED]

Q Are you familiar with Bob Costello?

A Yes.

Q And how do you know him?

A We served together in the Office of the United States Attorney for the Southern District of New York during the time I was line assistant between 1978 and 1982. I don't recall for exactly what portion of that period of time Mr. Costello was a prosecutor, but that is one of the ways in which I was familiar with Mr. Costello.

Q Are you aware that Mr. Costello was called to the grand jury -- this most recent grand jury that indicted President Trump?

Ms. Dubeck. Objection.

BY MR. [REDACTED]

Q Mr. Costello has made a number of TV appearances talking about these types of things. I'm just asking if you're aware of the public reporting on this.

A I saw public reporting.

Chairman Jordan. You said you worked with him in the Southern District of New York, and you said that's one of the ways you were aware of Mr. Costello.

What were the other ways. Was he a friend?

The Witness. I need a moment with counsel.

Mr. [REDACTED] Of course.

[Discussion off the record.]

Chairman Jordan. I can withdraw the question. I was -- I just was curious. I can withdraw it.

The Witness. Thank you. That's very helpful.

Chairman Jordan. No, I get it. I get it.

You said that the one way -- well, that's fine. I get it.

The Witness. I appreciate that.

BY MR. [REDACTED]

Q Are you aware that Mr. Costello was representing Mr. Cohen at any point in time?

Ms. Dubeck. Objection.

The Witness. I'm aware of public reports of that type.

BY MR. [REDACTED]

Q Now, are you aware of reports of what Cohen told Costello was different from what Cohen evidently told Ryan right around the same time period about the Stormy Daniels payments? Are you aware of that public reporting?

A I believe I did see that in public reporting as well.

Q Are you aware that Cohen alleged that somebody dangled a pardon over him, you know, if he cooperates and doesn't say negative things about President Trump?

Ms. Dubeck. Objection.

The Witness. I'm limiting my response to publicly reported materials in the last several months, I guess, and so limited, I don't recall.

BY MR. [REDACTED]

Q Okay. So Cohen alleged that Costello referenced that, you know, some pardon might be available to him.

Are you aware of that?

Ms. Dubeck. Objection.

The Witness. Again, limiting my response to recent press reports, that sounds

familiar, but I don't recall it with any acuity.

BY MR. [REDACTED]

Q Okay.

A Yes, but I'm not basing my response on anything having to do with my employment in the D.A.'s Office.

Q And are you aware that the Southern District of New York U.S. Attorney's Office looked at potentially prosecuting President Trump based on the pardon allegation?

Ms. Dubeck. Objection.

Mr. [REDACTED] Go off the record.

[Discussion off the record.]

The Witness. All right. Respectfully, I decline to answer the question.

BY MR. [REDACTED]

Q Okay. And did you know the Southern District of New York decided not to prosecute because they decided Cohen was completely unreliable and could not be considered as a legitimate witness at any prosecution?

Ms. Dubeck. Objection.

The Witness. I decline to answer that question as well for the reasons previously given.

BY MR. [REDACTED]

Q Okay. And do you expect that Michael Cohen will be called as a witness before the New York District Attorney's case that's just been filed?

Ms. Dubeck. Objection.

The Witness. I decline to answer.

BY MR. [REDACTED]:

Q Returning back to your opening statement --

A Yes, sir.

Q -- what's the basis for your conclusion that you are certain you broke no laws?

A I would be very surprised if a court ruled that I had no privilege to answer that question, and I'm asserting my Fifth Amendment rights with respect to that.

Q Has anyone from the District Attorney's Office explicitly or implicitly threatened to prosecute you if you answer the committee's questions?

A I decline respectfully to answer your question.

Q When did you first hear that the District Attorney's Office was pursuing some potential criminal investigation of you?

A I will take my counsel's advice and refuse to answer that question, sir.

Q When we were with Judge Vyskocil on the 19th --

A Yes, sir.

Q -- the District Attorney's Office, you know, represented that they sent you this letter raising the prospect of a criminal prosecution.

Do you remember that?

A I do.

Q Was that the first time you heard of that?

A The first time I heard of a letter?

Q Right. Like had you -- was that the first time you heard that you were under criminal investigation?

Did it surprise you?

A I'm not going to answer your question with regard to whether I was surprised.

Q On the basis of the Fifth Amendment?

A Fifth Amendment, and also the rights summarized in the sixth paragraph of my statement.

Q What's the sixth paragraph again?

A My position being there the question whether I was surprised by what I heard in open court in January is not, I believe, a matter that's pertinent to your legislative purpose.

Q Don't you think this investigation of you, this purported investigation of you is simply a pretext, simply a pretext to block your testimony here today?

It's not a real investigation, is it?

A I respectfully decline to answer your question.

Q Have you been interviewed by the D.A.'s Office on this topic?

A I respectfully decline to answer your question.

Q Have they asked for any documents from you?

A I respectfully decline to answer your question.

Q Okay.

Chairman Jordan. Mr. Pomerantz --

The Witness. Yes, sir.

Chairman Jordan. -- you resigned in February of 2022.

The Witness. 2022, that's correct.

Chairman Jordan. And did the District Attorney's Office know you were working on a book anytime between February 2022 and February of 2023?

The Witness. I decline to answer your question.

Chairman Jordan. But they didn't put you under notice that you were potentially under criminal investigation until, according to your statement, shortly before the publication of your book?

The Witness. I'm not sure what you're referencing.

Chairman Jordan. I'm referencing your statement, page 2 of your statement.

"Shortly before the publication of my book, the District Attorney's office warned me that I could face criminal liability if, among other things, I disclosed grand jury material or violated a provision of the New York City Charter dealing with the misuse of confidential information."

The Witness. Yes, sir, that's accurate.

Chairman Jordan. So the first time you were put on notice?

Mr. [REDACTED]. Off the record.

[Discussion off the record.]

Mr. [REDACTED]. Back on the record.

The Witness. The question again was whether I was on notice of a possible criminal investigation?

Mr. [REDACTED]. Mr. Jordan asked you the first time you were on notice, and he referenced your statement.

The Witness. The statement references a letter that I received in January of 2023, which I believe you have.

Chairman Jordan. Okay.

Mr. [REDACTED]. Did you need to lodge an objection?

Ms. Dubeck. It didn't sound like quite exactly the same question, so --

Mr. [REDACTED]. Okay.

BY MR. [REDACTED]:

Q But the letter that you received in January 2023, it's just a pretext, isn't it? I mean, is there a real investigation going on?

A You're asking me?

Q Yes. They're not really going to prosecute you? They're not really investigating you, are they?

A I hope you're right. But I'm not speaking for the District Attorney's Office --

Q That's fair.

A -- in respect of how tangible is the fear of criminal prosecution.

Q Okay. You got the letter in January. Was that the first time the D.A.'s Office communicated with you that they were disappointed you were writing a book or trying to stop the publication of the book?

Mr. Finzi. Could we have a second?

Mr. [REDACTED]. Sure. Go off the record.

[Discussion off the record.]

Mr. [REDACTED]. We'll go back on the record.

BY MR. [REDACTED]:

Q Your answer, sir?

A I decline to answer your question with respect -- for the reasons indicated.

Q Okay. Can you tell us about all of the communications you've had with the D.A.'s Office since January of this year, other than the ones we've discussed, which was this receiving of the letter?

Ms. Dubeck. Objection.

Mr. [REDACTED]. Well, I mean, he's no longer with the Office.

Ms. Dubeck. January of this year?

Mr. [REDACTED]. January of this year.

Ms. Dubeck. Withdrawn.

BY MR. [REDACTED]:

Q What I'm getting at, okay, if I may?

A Yes, sir.

Q What I'm getting at is they didn't try very hard. They didn't try very hard to get you to not publish the book. I mean, they may have written this letter, paper in the file. And if I'm mistaken, if I'm mistaken, please help me understand that I'm wrong.

You got the letter from them. What other -- did they call you on the phone and urge you? Did you have any meetings with them in person?

A Mr. [REDACTED], I don't believe that I'm required in this context to articulate for you all of the reasons which lead me to invoke my privilege.

Q Fair enough.

And let me just, if I may, articulate why we're asking, okay, just as a courtesy.

We believe that it's possible and worth investigating that this whole, you know, New York District Attorney's Office, you know, so-called investigation is a sham, and it's simply a pretext to prevent you from coming here and talking about your book. And so, because of that, I mean, that could invoke some serious implications. I mean, that could be obstruction of Congress. And so it's worthwhile for us. And so we don't, you know, mean to be pedantic or, you know, any -- don't mean any disrespect by it. But we are trying to understand the volume of communications, the type of effort that the District Attorney's Office, you know, put forth to try to get you to stop the book. And if they did put forth an effort that we don't know about, I mean, that would be great, a great fact to have on the record.

A I would be delighted to hear, Mr. [REDACTED], that my fear of criminal prosecution is completely baseless and unfounded. I don't believe that to be the case and, therefore, I am invoking my rights as reflected.

Q Okay. And let me just say, I'm not disputing that you believe -- I'm not disputing your belief that you think that they might be actually conducting a criminal

investigation. Because when somebody is faced with a letter saying that there's an investigation, a human being, a normal conclusion is to be concerned about that. Okay. So fair enough. I'm not trying to be disrespectful of that.

A I appreciate that.

Q But from our point of view, okay, from the point of view of the Congress, the record looks pretty thin. And it looks like a pretext to us -- not to you, but to us, and so, consequently, just trying to ask you if you can catalog the efforts that the D.A.'s Office made to get you to stop writing the book.

A I don't think I am or can be required to respond to a question that seeks to probe my good faith invocation of the Fifth. I believe -- I know that I have a good faith basis to invoke my privilege. If your investigation should result in a declaration by the District Attorney's Office that they have no such intent, that criminal prosecution of me is never going to happen, then we will have a different exchange.

Q So if they write you a letter and they say they're declining to take any further action, you might be willing to come back and answer some of our questions?

A I would have a very different conversation with my attorneys.

Q When Mr. Jordan initially --

A It was hard enough for them on the record that we do have.

Q When we initially wrote to you in the earlier part of this year, the first letter --

A Yes.

Q Mr. Jordan sent you two letters, right?

A Yes.

Q He sent you the first letter asking for voluntary cooperation, and then it was followed up with the subpoena.

A Yes, sir.

Q You replied to our first letter -- thank you for that -- and basically said that the D.A.'s Office is telling you not to cooperate.

Can you tell us about the conversation you had with the D.A.'s Office before you wrote us back?

A I referenced and attached, I believe, a letter I received from Ms. Dubeck at the District Attorney's Office.

Q And did you have a telephone conversation with her?

Mr. [REDACTED] We can go off the record. Sorry.

[Discussion off the record.]

Mr. [REDACTED] We can go back on the record.

The Witness. Respectfully, I decline to answer your question about communications with the District Attorney's Office.

BY MR. [REDACTED]:

Q Okay. And then when we sent the subpoena to you --

A And I understand your -- withdrawn. Never mind. I already talked --

Q You can finish. I'm sorry.

A No, it's okay.

Q On our -- the second time we wrote you the letter --

A Yes.

Q -- and we included the subpoena, I emailed you, and you replied back very graciously and very professionally, you indicated that you didn't have a lawyer at that time. Is that correct?

A I think I said that I would be in touch with you after finalizing the arrangements for counsel.

Q And so, is it fair to say that in your conversations that you had with the D.A.'s Office, you weren't represented by counsel?

A I don't think that is fair to say. I don't know what time period you're referring to.

Q So we wrote -- our first letter was dated March 20th, and then the subpoena was April 6th, so -- and when I emailed the subpoena to you, at that time you hadn't engaged Mr. Wells?

Did you have different counsel, or was Mr. --

A I'm not going to get into who represented me when throughout the months preceding this appearance.

Q Okay.

Chairman Jordan. I don't think the question was who. I think the question was, was there anyone representing you in that time frame.

The Witness. I respectfully assert my Fifth Amendment rights in that regard.

BY MR. [REDACTED]

Q I mean, is it a fair investigative data point that if you didn't have counsel until Mr. Wells, which, you know, Mr. Wells was engaged after the subpoena was sent, and isn't that a fair piece -- good data point or piece of evidence that maybe shows that the interactions that you had had with the D.A.'s Office up until the time that you engaged Mr. Wells -- did you have an attorney is what we're getting to. And if you didn't, isn't it fair for us to conclude that that's a good piece of evidence showing that this might not be a real investigation that they're pursuing?

A I decline to answer your question.

Mr. [REDACTED] I would like to mark the indictment as exhibit 14, and then the statement of facts as exhibit 15.

[Pomerantz Exhibit Nos. 14 and 15

Were marked for identification.]

BY MR. [REDACTED]

Q You've read the indictment. Correct?

A The indictment of Donald Trump?

Q Yes.

A Yes.

Q Have you read the statement of facts?

A Yes.

Q Now, the indictment was returned by the grand jury, correct?

A I assume so.

Q But the statement of facts was not?

A I don't know.

Mr. [REDACTED] Okay. Well, let's -- this is number 14, the indictment.

Do we have the statement of facts one too?

Ms. [REDACTED] They are both marked.

Mr. [REDACTED] What's that?

Ms. [REDACTED] Yes.

Mr. [REDACTED] So you've got both the statement of facts and the indictment?

Mr. Witness. Yes, sir.

Mr. [REDACTED] Okay.

Ms. [REDACTED] Are these separate exhibits?

Mr. [REDACTED] They are 14 and 15.

Ms. [REDACTED] And 14 is the indictment?

Mr. [REDACTED] 14 is the indictment. 15 is the statement of facts.

BY MR. [REDACTED]:

Q Let me just ask you, what's the difference between utilizing -- based on your experience, utilizing a statement of facts to supplement an indictment versus a speaking indictment?

A I couldn't answer your question. I don't know the answer.

Q Okay. I mean, you were a prosecutor in the Office. Did you -- during your time with the D.A.'s Office, did you -- were you responsible for indicting anyone? Any cases that you worked on land in an indictment?

Ms. Dubeck. Objection to the extent it calls for nonpublic information.

The Witness. You referring to my tenure in the Manhattan District Attorney's Office?

BY MR. [REDACTED]

Q Correct.

A I respectfully decline to answer.

Q Okay. Could you just help us understand, how does a statement of facts ordinarily get released? What's the process?

A I can't help you understand that. I don't know the answer to that question.

Q Okay. In reading the indictment --

A Yes, sir.

Q -- can you tell us whether the D.A.'s Office found new evidence that you weren't aware of, you know, from your time in the Office?

Ms. Dubeck. Objection.

The Witness. I respectfully decline to answer.

BY MR. [REDACTED]

Q Okay. Is that based on the Fifth Amendment?

A I think tilting toward the fourth paragraph of my statement, without excluding the fifth.

Q The fourth paragraph, is that --

Mr. Finzi. It's the District Attorney's objections.

Mr. [REDACTED] Okay.

The Witness. My discipline slips as the day wears on, but I hope you'll make sure that I adequately state on the record the basis for my nonresponse.

BY MR. [REDACTED]

Q Okay. So there are 34 counts in the indictment that are bootstrapped to an unstated crime to prosecute.

Do you know what that unstated crime is?

Ms. Dubeck. Objection.

Mr. [REDACTED] Well, I'm just asking if he knows, and he's read the indictment. I think he can answer that question.

The Witness. I decline to answer that question on the basis of the fourth and fifth paragraphs of my statement.

BY MR. [REDACTED]

Q Okay. And can you help us understand why, in your experience, a prosecutor in this instance might -- like, what's the strategy behind not naming the crime in the indictment?

Ms. Dubeck. Objection.

Mr. [REDACTED] Well, I'm just asking, you know, his experience, and I'm just trying to better understand why the crime is not in the indictment, just his experience as a lawyer. I mean, you're a decorated, long-serving lawyer.

The Witness. I don't know how many decorations I got, but I have a long career

as a defense attorney and a prosecutor.

BY MR. [REDACTED]:

Q So you're in a good position, I think, to help us understand what's the strategy behind not naming the underlying crime.

Ms. Dubeck. Objection.

The Witness. I can't answer, and I decline to answer. Even if I could answer, I wouldn't know the answer.

BY MR. [REDACTED]

Q Okay.

A And I can't answer, so the state of my knowledge is basically irrelevant.

Q Okay.

Chairman Jordan. Mr. Pomerantz, you gave the District Attorney's Office a year of your life. You worked for free. And before Congress ever got in this picture, they told you they might -- that you might face criminal liability for a book that you wrote.

Does that tick you off?

The Witness. I decline to answer.

BY MR. [REDACTED]

Q And you didn't just work for free. You gave up your weekends. You gave up your -- you had -- according to your book, you had a month's long -- correct me if I'm wrong. But you had a month's long visit planned in Sonoma so you could be with one of your new grandchildren.

A 2 months.

Q 2 months. I mean, you gave quite a lot to this Office, the District Attorney's Office. Is that not, obviously, correct?

A I decline to answer.

Q I think we're --

A Regretfully.

Mr. [REDACTED] I think we're at our time.

Ms. [REDACTED] [REDACTED], do you have a lot left?

Mr. [REDACTED] Go off the record, please.

[Discussion off the record.]

[Recess.]

Ms. [REDACTED] It is 2:44. We can go back on the record.

BY MS. [REDACTED]

Q Mr. Pomerantz, in the prior hour you were asked about the Southern District of New York's determination about the reliability of Mr. Cohen as a witness.

Do you recall being asked about that?

A Yes.

Q And I believe that you said you couldn't answer -- you declined to answer the question?

A That's correct.

Q In your experience as a prosecutor and defense attorney, though, there are circumstances in which a witness may not be sufficient in one proceeding, but in an unrelated proceeding or a different proceeding there could be, for example, corroborating evidence or other material that might change the circumstances for that, on the witness's reliability, right?

A You're asking me in general terms?

Q In general, in general terms.

Mr. Finzi. Could we go off the record for 1 second?

Ms. [REDACTED] Sure. Yes, we can go off the record.

[Discussion off the record.]

Ms. [REDACTED] We can go back on the record.

The Witness. I think the only thing I can say is that, as my own testimony probably indicates, there's no such thing as a perfect witness. Witnesses have flaws and strengths that run the gamut of human behavior.

BY MS. [REDACTED]

Q You were asked earlier about the -- you know, when you had an attorney --

A Yes.

Q -- in relation to this year. And you recall that?

A Yes.

Q Without getting into who represented you and when, you know, you've now been brought before this committee for a deposition that's run, I don't know, 5 hours and change. Before that, there was a fair amount of letters and motions practice in court even.

Would you agree that anybody who was facing a congressional investigation may want to hire counsel?

A Yes.

Q I want to turn to the January 18th letter, and it was not introduced in the last round, so I am going to introduce it as exhibit 16 now.

Mr. [REDACTED]. Sorry, what number are we up to?

Ms. [REDACTED] I think it's 16.

Mr. [REDACTED]. Yes.

[Pomerantz Exhibit No. 16

Was marked for identification.]

BY MS. [REDACTED]

Q Do you recall receiving this letter?

A I received this letter.

Q And this was the letter I think that was referenced earlier when reference was made to the January 18, 2023, letter, correct?

A Yes.

Q This letter was sent from Ms. Dubeck, who is sitting at the table today, correct?

A Yes.

Q And it was addressed to you, but also to the general counsel of Simon & Schuster and the executive vice president and general counsel and secretary of Paramount Global, correct?

A Yes.

Q So this was sent to you, but also to attorneys. Correct?

A Yes.

Q And in the first line, the very first sentence of this letter, it says: "This letter is in response to Simon & Schuster's public announcement, on January 11, 2023, of the forthcoming publication of your book," correct?

A Yes.

Q So the announcement of your book -- according to just on the terms of this letter, the announcement of your book happened on January 11, 2023. It was publicized on that date, right?

A That's what the letter says.

Q And within a week of learning of that publication, the District Attorney's Office had written to you, correct?

A The letter reflects on its face having been sent a week after the public

announcement of the publication of the book that I wrote.

Q On the second page of the letter, the second full paragraph says that "Prior to commencing his work with the D.A.'s Office, Mr. Pomerantz acknowledged in writing his understanding that most or all of the information he would have access to regarding the investigation is protected by" -- and it goes on and refers to the grand jury secrecy provisions, correct?

A That's what the letter says.

Q Did you -- is it accurate that you signed a nondisclosure form or some other document prohibiting you from disclosing information that you learned?

A I'm not going to answer that question and assert my constitutional rights as reflected in the fifth paragraph of my statement.

Q In the following paragraph, it says: "In addition, because Mr. Pomerantz has been separated from the D.A.'s Office for nearly a year, he is not capable of making any assessment of whether the disclosures he intends to disseminate in this publication have a substantial likelihood of materially prejudicing an adjudicative proceeding," correct?

A That's what the letter says.

Q So the District Attorney's Office actually put you on notice that with publication of your book, you know, you unilaterally were not capable of determining whether that might prejudice an adjudicative proceeding, correct?

A Well, I'm not going to expand beyond what the letter says on its face. I'm not taking issue with your characterization.

Q Okay. It goes on: "Based on the pre-publication descriptions of the book and the benefit of current knowledge of the matter, but without access to the manuscript, this Office believes there is a meaningful risk that the publication will

materially prejudice ongoing criminal investigations and related adjudicative proceedings," right?

A Yes, that's what's stated in the letter.

Q So it says without access to the manuscript. So the District Attorney's Office, based on the face of this letter, did not have access to your manuscript prior to its publication, correct?

A I'm not going to respond to that question.

Q And then in the following paragraph, it cites to New York City Charter chapter 68, section 2604(d)(5)?

A Yes.

Q And are you familiar with that statute?

A As we sit here today?

Q Yes. We can withdraw it. That's fine.

A Thank you.

Q So the paragraph says that, in relevant part, chapter 68, section 2604(d)(5) provides that no public servant shall, after leaving city service, disclose or use for private advantage any confidential information gained from public service which is not otherwise made available to the public, correct?

A You've accurately stated what the letter contains.

Q And you don't have any reason to believe that this is not an accurate recitation of that code section, correct?

A I have no reason to believe that the letter misstates the language of that chapter of the city charter.

Q And then in the final --

A It doesn't state all of the language of that section of the city charter, but

what is here is contained in the city charter.

Q Thank you.

And then the final sentence of that paragraph reads: "To the extent this book discloses information, Mr. Pomerantz obtained as a public service without this office's approval, Mr. Pomerantz is unlawfully converting confidential government information for his personal advantage," right?

A That's what the letter says.

Q And so, as early as January 18, 2023, which was a week after the announcement that your book would be published, the District Attorney's Office had written to you to say that you were potentially acting unlawfully, correct?

A The letter says -- contains the language that you have referenced and speaks of the unlawful conversion of confidential government information.

Q And then the final sentence, the final paragraph of this letter, which is on page 3, it says: "The Office," referring to the District Attorney's Office, "urges Mr. Pomerantz not to take any further steps that would damage an ongoing criminal investigation," right?

A Yes. That's contained in the letter.

Q So, again, as early as January 18th, the District Attorney's Office had written to you and said, you know, Do not take any further steps that would damage an ongoing criminal investigation, correct?

A The letter says what it says.

Ms. [REDACTED] All right. Thank you. We don't have any further questions.

The Witness. Thank you.

We can go off the record.

[Discussion off the record.]

Mr. [REDACTED] Back on the record.

BY MR. [REDACTED]

Q This morning we were going through some of the investigative matters you were pursuing against former President Trump. I think we left off at the Trump Tower triplex apartment.

The angle there was that he overstated the value of the apartment, or was it that he overstated the square footage? I know Mr. Cohen said that the square footage was exaggerated. But were both subject to the -- were you pursuing both angles as a potential investigative avenue?

Ms. Dubeck. Objection.

The Witness. Once again, I decline to answer your questions for the reasons stated in the fourth and fifth paragraphs of my statement.

BY MR. [REDACTED]

Q The vignette, the John Baron vignette where he was having communications with the Forbes reporter, was that an avenue of independent investigation, or was that fact pattern going to be used to support a different charge?

Ms. Dubeck. Objection.

The Witness. I decline to answer for the reasons stated. I'm not sure I understand your question, but I'm sure however you meant it, I won't be answering it.

BY MR. [REDACTED]

Q Okay.

A With apologies. I don't mean to make light, and I intend no disrespect whatsoever.

Q I'm sorry. I'll restate it.

Do you remember the name of the Forbes reporter? I believe his first name was

Jonathan.

A I believe you're referring to Jonathan Greenberg.

Q Yes, sir, yes, sir.

So my question was the allegations that Mr. Greenberg brought forth from his reporting with Forbes was that, if I'm not mistaken, that Mr. Trump was overstating his overall net worth. And my question was whether that was an independent avenue of investigation, or whether that was you considered using the Forbes reporter to support the financial statement -- the statements of financial condition investigation that you were pursuing?

Ms. Dubeck. Objection.

A I decline to answer both because it calls for confidential or privileged information in view of the District Attorney's Office, and for the other reasons referenced in paragraphs 5 and 6 of my statement.

BY MR. [REDACTED]

Q In your book you talk about investigating the Trump Foundation, aspects of Trump University. And my question is, was there an independent investigation into Trump University that potentially could have been the source of an indictment, or were those facts -- that fact pattern simply going to be used in the enterprise corruption theory case that you were working on?

Ms. Dubeck. Objection.

The Witness. The same response as to the previous question. Same nonresponse, I guess.

BY MR. [REDACTED]

Q There were various insurance fraud matters that you write about in your book, such as there was tornado damage at one of the Florida golf courses, I believe.

There was some insurance fraud allegations relating to an elevator fire at the --

A I actually think you are incorrect to the extent you're referring to what's written in the book. The book references tornado damage to a golf course in Westchester.

Q Oh, I'm sorry. It was in New York. Okay.

Was there not also a potential insurance matter at one of the golf properties in Florida, or was that just simply the Westchester property?

Ms. Dubeck. Objection.

The Witness. I decline to answer to the extent that it calls for information that goes beyond what's referenced in the book.

BY MR. [REDACTED]

Q Okay. Do you remember if that was included in the book? Was there an insurance matter relating to a Florida golf course?

Ms. Dubeck. It's only calling for the book, so --

The Witness. I don't believe that appears in the book.

BY MR. [REDACTED]

Q Okay. On page --

A Perhaps I should have written a shorter book.

Q On page 205, you write regarding the District Attorney, that he was missing the urgency of the situation and underestimating the special needs of the Trump investigation and potential prosecution.

Was that something you ever confronted Mr. Bragg about personally?

Ms. Dubeck. Objection.

BY MR. [REDACTED]:

Q It's right in the middle of page 205.

A Yes, I see it. I decline to answer for the reasons previously stated. I do see the reference in the book.

Q Okay. On page 213, you had an in-person meeting with the District Attorney. Was that your first in-person meeting with him?

I understand because of the pandemic a lot of the work that you did was remote and meetings happened over Zoom. But at some point, you did have some meetings in person with Mr. Bragg. Is that correct?

Ms. Dubeck. Objection.

BY MR. [REDACTED]

Q You're reporting in your book you did.

A The book references meetings and conversations, a variety of them.

Q Okay. And do you know how many in-person meetings?

Ms. Dubeck. Objection.

The Witness. Decline to answer beyond what's contained in the book.

BY MR. [REDACTED]

Q Okay. Which number objection would that one be?

A Oh, the fourth paragraph and the fifth paragraph and the sixth paragraph of my statement.

Q The sixth paragraph, legislative purpose?

A No. The sixth paragraph references the First Amendment.

Q Oh, okay.

A And to the extent you're asking me to elaborate on the facts --

Q Oh, no, I'm sorry, sir. I'm not asking you to elaborate. I'm just wondering how many in-person meetings you had with the District Attorney, because you wrote about them all in the book and I --

Ms. Dubeck. Objection.

The Witness. I have nothing to add beyond the book. In fact. Well, I'll leave it there.

BY MR. [REDACTED]

Q Anyway, on page 213 towards the bottom, you write: "The discussion degenerated into chaos and confusion. On top of it, Alvin came into the meeting late, spent much of his time looking at his phone, and then left early, saying he just wanted to see the important documents, as though the whole sprawling case could be reduced to a collection of just a few" -- or sorry -- "collection of a few crucial documents, which made no sense."

Did you ever have a chance to communicate that to Mr. Bragg, your frustration?

Ms. Dubeck. Objection.

The Witness. I decline to answer that question for the reasons previously articulated.

BY MR. [REDACTED]:

Q Later on in the book I think you wrote an email to Mr. Bragg. And did you mention your frustration with him coming in late, looking at the phone, and so forth?

Ms. Dubeck. Objection.

A What is the question, whether I wrote an email to --

BY MR. [REDACTED]

Q Whether you expressed your frustrations to Mr. Bragg. I mean, if you just remember whether you did or didn't.

Ms. Dubeck. Objection.

The Witness. Well, the issue was not the state of my recollection. It's the application of the privilege that I asserted, which I will rely on?

BY MR. [REDACTED]

Q Did you spend -- do you think Mr. Bragg was as willing as Mr. Vance to dig into the facts of this case?

Ms. Dubeck. Objection.

The Witness. I refuse to answer that question, Mr. [REDACTED] respectfully.

BY MR. [REDACTED]

Q Okay. For the most part in your book, and I think without exception, you refer to Mr. Vance in a very favorable light. Is that a fair assessment?

A I'm not taking issue with your perception, but I have nothing to add to what appears in the book.

Q Okay. On page 264 --

A Yes.

Q -- there's a part of the book that says: "Most plane crashes" -- I'm sorry. "All I know for sure is that the investigation turned into the legal equivalent of a plane crash. Most plane crashes have more than a single cause, and this one also may have had multiple causes. The biggest one, in my opinion, was 'pilot error.' Alvin made the wrong decision about whether to charge the case."

When you wrote the biggest cause of the metaphorical plane crash was pilot error, were you referring to Mr. Bragg as the pilot in that instance?

A I won't go beyond the language that appears in the book. Again, I'm not taking issue with the inference that you draw, but the book speaks for itself. And I object to being compelled to make statements that go beyond what appears in the book.

[3:08 p.m.]

Mr. [REDACTED] Okay. On page 265, the penultimate paragraph, last sentence.

The Witness. Yes.

Mr. [REDACTED] "He jumped into very deep water and immediately was in over his head."

Is that a reference to Mr. Bragg?

Ms. Dubeck. Objection.

The Witness. Again, the book speaks for itself.

BY MR. [REDACTED]

Q Page 218.

A Yes.

Q You write: "As I tossed and turned, I asked myself whether we had done everything we could do to convince Alvin to let us bring our case against Trump. I kept thinking that maybe we were being rash.

"I also thought about Alvin's relative youth and wondered if he was in over his head. From what I knew, he had never run an organization anywhere close to the size of the District Attorney's Office, and he had scant experience in leading or defending high-profile prosecutions."

That view that you expressed about Mr. Bragg, have you since come to a decision to revise that conclusion?

A I decline to answer on the basis of my privilege against self-incrimination.

Q Okay. You know, in several -- you know, you mentioned on page 208 that when you were getting out of law school, Mr. Bragg was a toddler.

A Yes, I recall that sentence.

Q And you, by all accounts, are experienced, but you're not that old.

A At times --

Q And Mr. Bragg is not that young. I mean, he's almost 50.

A At times, I feel very old, Mr. [REDACTED] and this is one of those times.

Q Fair enough. But at the time, Mr. Bragg -- I mean, he's almost 50 years of age, as far as I understand. I mean, he's not that young.

A He seems younger and younger to me as I get older and older. I notice that with a lot of people.

Q Okay.

A I'm 72 as we speak.

Q Right. So do you think his relative youth played a part in -- like, do you think he's not capable of running the office?

Ms. Dubeck. Objection.

The Witness. I did not say that in the book, and I'm not going to comment on that. And I'm asserting my rights, as my lawyer reminds me.

Mr. [REDACTED] Were you surprised -- in light of the first day memo and in light of the progressive agenda the District Attorney has advanced -- were you surprised at the resources devoted to the Trump matter as compared to some of the basic crime that most district attorney's offices make a priority?

Ms. Dubeck. Objection.

The Witness. I decline to answer for the reasons indicated.

Mr. [REDACTED] In 2022, Mr. Bragg's first year as the D.A., crime in New York City rose significantly when compared to the previous year. According to NYPD data, New York City saw a 23 percent surge in major crimes.

Do you think there's different things the office can do to address that crime surge, given your experience with the office?

Ms. Dubeck. Objection, to the extent it calls for information about his experience with the office.

The Witness. What was your question again? Do I think there are different things the office can be doing?

Mr. [REDACTED]. Yeah. What can the office do differently to deal with this crime epidemic? I mean, they're devoting a lot of resources -- a tremendous amount of resources to the Trump prosecution. And they're doing this, and at the same time, there's just a raging crime epidemic.

The Witness. I'm not necessarily acquiescing in your characterization. Having said that, I have no ability to hold forth on what a district attorney's office can or should do with regard to the problem of street crime and violent crime and thefts and so on.

If I had a view, my lawyer would probably tell me not to share it. And in fact, I don't have the expertise to express a view on that.

Mr. [REDACTED]. Okay.

Chairman Jordan. You related in your book, Mr. Pomerantz, that -- I believe your son is an officer in the NYPD?

The Witness. My son is a lieutenant in the NYPD.

Chairman Jordan. I appreciate his service.

You related in there an exchange of, I think, text messages and conversations you had with him regarding the day one memo, which seemed to indicate that he did not have a very high regard for what was contained in that memorandum.

The Witness. I respectfully decline to answer your question and do so, in particular, with regard to paragraph 6 of my statement. I really have to object to the notion that my son's views as a New York City police officer, whatever they may be, are germane to your legislative purpose.

Chairman Jordan. With all due respect, Mr. Pomerantz -- and, again, we appreciate your son's service. We appreciate your service.

We have a crime subcommittee on the Judiciary Committee. We are concerned about crime. We are concerned about Federal funds being used in the District Attorney's Office and they're not prosecuting bad guys who do bad things to people. And we know that it's happening in the city of New York. That's why we did a hearing there just a few weeks ago.

So that was the motivation for the question.

The Witness. I understand.

Chairman Jordan. Thank you.

Mr. [REDACTED] You referenced various outside law firms. Two firms assisted with the so-called Zombie theory?

Ms. Dubeck. Objection.

Mr. [REDACTED] Was that the same firm or a different firm? Not asking you -- I mean, I'd like to know the name of the firm. Will you tell me the names of the firms?

Ms. Dubeck. Objection.

The Witness. No.

Mr. Wells. It's getting late, guys.

The Witness. I respectfully decline -- well, I did answer your question, I guess, literally speaking. The question was whether I would tell you, and I answered no.

BY MR. [REDACTED]

Q Okay. Was it the same firm?

The Zombie case, there's a legal theory that -- various legal theories -- that needed to be run to ground. In your book, you talk about how there is an outside law firm helping the D.A.'s Office. And I asked you for the name of that law firm. It's

mentioned at two different points.

In the fall of 2019, before you joined the District Attorney's Office, they commissioned -- and this is on page 40 -- they commissioned an outside firm. And then, when you joined the District Attorney's Office and you were looking at whether the money laundering -- the money laundering idea could be used, you went back, as I understand it, and had the help of an outside law firm.

So my question is, what was the name of those firms, and were they different?

A First, I think your question misstates the facts --

Q Okay.

A -- in the sense that the book does not reference getting an outside counsel's opinion with respect to potential money laundering charges.

Q Okay.

A The book does reference outside opinions with regard to false statement and the predicate acts necessary to elevate a false filing charge from a misdemeanor to a felony.

And you correctly point out that the book references a law firm at one point and also references a law firm at a separate point. And now your question is whether those were the same law firms.

Q Correct.

A And having clarified your question, I refuse to answer it for the reasons indicated in my statement.

Q When you were working on your -- on the SOFC matter in late March, you wrote in your book that, "The District Attorney's Office began ramping up work that our outside consultant, FTI, was doing to parse Trump's tax returns and financial statements."

What was FTI doing for the District Attorney's Office?

Ms. Dubeck. Objection.

The Witness. The question was what was FTI doing for the District Attorney's Office?

BY MR. [REDACTED]:

Q Right.

A Yeah, I decline to answer that question for the reasons indicated in my statement.

Q And why is it that on one hand you're willing to name FTI in the book but not the law firms?

A I decline to answer your question on the advice of my counsel. Well, I should say, generally, I'm trying to follow the advice of my counsel each and every time I assert my rights.

Q You mention in the book the assistance of lawyers from the Paul, Weiss firm as well as the Davis Polk firm?

A You're referring, I believe, to lawyers described in the book as having been seconded to the District Attorney's Office?

Q Correct. The work that those lawyers were performing, was that the same work as the outside law firms were consulted on, or were they two different subject matters?

Ms. Dubeck. Objection.

The Witness. I decline to answer for the reasons previously stated.

Mr. [REDACTED] Is there any prohibition from the District Attorney's Office to get free help from outside law firms that you're aware of?

Ms. Dubeck. Objection.

The Witness. I decline to answer the question. I'll leave it there.

Mr. [REDACTED]. In the congressional context, for example, if a government agency was using the services of a law firm for free, there would be issues because that money is not authorized or appropriated and so forth.

And I'm wondering if there's any companion idea in the District Attorney's Office or is there just no restrictions on how much free help they can get.

Ms. Dubeck. Objection.

The Witness. I decline to answer the question for the reasons stated.

Mr. [REDACTED]. Okay.

Chairman Jordan. Can I?

Mr. Pomerantz, in the letter that Ms. Dubeck sent you as general counsel for the D.A.'s Office -- Ms. Dubeck, who's been here with us this entire time representing the D.A.'s Office -- that she sent to the lawyer for Paramount, I think the parent company for Simon & Schuster, she sent the letter to the general counsel for Simon & Schuster and to you on the 18th. And they make clear in the letter they discovered that you were going to publish a book based on an announcement from your publisher, Simon & Schuster, and then they send you the letter on the 18th.

Did you talk with them, did you try to work it out, when they tell you on the 18th? Because my understanding is the book -- you get this letter on the 18th, and the book is published the next month. Did you have communications with them trying to work this out?

The Witness. The book was published on February 7th, 2023. And I decline to answer whether there were any conversations between the date of the letter and February 7th.

Mr. Wells. Just so the record is clear, that's January? It that the January letter?

Chairman Jordan. January 18th, 2023. It's exhibit 16, the letter from

Ms. Dubeck to Mr. Pomerantz and Simon & Schuster and the parent company.

Did you think about, when you got the letter, did you think about, "Wait a minute, let's put the brakes on this"?

The Witness. I respectfully decline to answer on the grounds of -- on the basis of my Fifth Amendment rights.

Chairman Jordan. Is it fair to say if you would have -- if you'd have held back on publishing the book, that there would have been no need for this letter?

If you told them, "You know what?" -- let's say it this way. If you held back on publishing the book, didn't publish the book, that you wouldn't be facing possible criminal liability?

The Witness. I respectfully decline to answer.

Chairman Jordan. Okay.

Mr. [REDACTED] But I guess what Mr. Jordan is getting to is, were there any conversations before the letter came that could have resolved the situation?

The Witness. Prior to the letter?

Mr. [REDACTED] Right.

Chairman Jordan. Between the 11th -- when Simon & Schuster announces "People v. Donald Trump, An Inside Account" by Mark Pomerantz is going to be available at some date -- between the 11th and the 18th, when they send you the letter, did you talk to them?

The Witness. Yes, I decline to answer that question.

Chairman Jordan. Okay.

Mr. [REDACTED] And am I also correct that you're declining to answer whether you had any communications with them outside of the letter?

The Witness. Yes.

Mr. [REDACTED] Okay. I think we're done. We'll go off the record.

[Whereupon, at 3:24 p.m., the deposition was concluded.]

Certificate of Deponent/Interviewee

I have read the foregoing ____ pages, which contain the correct transcript of the answers made by me to the questions therein recorded.

Witness Name

Date