HEARING ON THE WEAPONIZATION OF THE FEDERAL GOVERNMENT

HEARING

BEFORE THE

SELECT SUBCOMMITTEE ON THE WEAPONIZATION OF THE FEDERAL GOVERNMENT

OF THE

COMMITTEE ON THE JUDICIARY
U.S. HOUSE OF REPRESENTATIVES

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C O N T E N T S

WEDNESDAY, MAY 15, 2024

OPENING STATEMENTS

WITNESSES

LETTERS, STATEMENTS, ETC. SUBMITTED FOR THE HEARING

Page

Page

HEARING ON THE WEAPONIZATION OF THE FEDERAL GOVERNMENT

Wednesday, May 15, 2024

HOUSE OF REPRESENTATIVES

SELECT SUBCOMMITTEE ON THE WEAPONIZATION OF THE FEDERAL GOVERNMENT

COMMITTEE ON THE JUDICIARY

Washington, DC

The Committee met, pursuant to notice, at 10:08 a.m., in Room 2141, Rayburn House Office Building, the Hon. Jim Jordan [Chair of the Subcommittee] presiding.

Members present: Representatives Jordan, Issa, Massie, Stefanik, Gaetz, Armstrong, Steube, Bishop, Cammack, Hageman, Davidson, Fry, Plaskett, Lynch, Wasserman Schultz, Connolly, Garamendi, Garcia, Goldman, and Crockett.

Chair JORDAN. The Subcommittee will come to order. Without objection, the Chair is authorized to declare a recess at any time.

We welcome everyone to today's hearing on lawfare. The Chair now recognizes the gentleman from Florida, Mr. Steube, to lead us in the Pledge of Allegiance.

ALL. I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one Nation, under God, indivisible, with liberty and justice for all.

Chair JORDAN. The Chair recognizes himself for an opening statement. Does anyone believe if President Trump wasn't running for President, that he would be facing four criminal trials? Fani Willis announced her investigation in February 2021, but didn't bring charges until 2½ years later, after President Trump announced he was running for President. Attorney General Garland named Jackson as Special Counsel three days after President Trump announces that he is running for President. Alvin Bragg said he could not see a world, "he could see a world in which he would indict President Trump and call Michael Cohen as a prosecution witness." That is exactly what he did after President Trump announces he is running for President.

Alvin Bragg brings a case that the Department of Justice wouldn't, that the Federal Elections Commission wouldn't bring, that his predecessor, Cy Vance, wouldn't bring, and, as Alvin Bragg himself said, he wouldn't bring, but then he did, after President Trump announced he was running for President. Some might call this an all-election interference. Think about it. Mr. Bragg is charg-

ing President Trump with conspiracy to impact the 2016 election. Ms. Willis and Mr. Smith are charging President Trump with the conspiracy to interfere with the 2020 election. It seems to me the conspiracy is between Bragg, Smith, and Willis working to interfere with the 2024 race.

Of course, none of this is new. In 2016, the Government spied on President Trump's campaign. You don't have to take my word for it. You don't have to take this Committee's word for it. John Durham said it. Clinton campaign paid the law firm Perkins Coie, who hired Fusion GPS, who hired Christopher Steele, a foreigner, who talked to other foreigners, who put together the fake dossier which became the basis for the FBI to spy on President Trump's campaign. The basis for a whole investigation when we saw text messages back and forth from folks on the investigation saying, "we will stop Trump." Then, of course, it was the Mueller investigation, 19 lawyers, 41 FBI agents, $30 million to find nothing, no conspiracy, no coordination, and none whatsoever.

Then, it was impeachment. An anonymous whistleblower, no first-hand knowledge, it was biased against President Trump who worked for Joe Biden. Talks about a phone call and they impeach the President of the United States. Then, they raided his home. Broke every protocol and every normal procedure again. Don't take our word for it. Steven D'Antuono, FBI Assistant Director of the Washington Field Office, told us this in his deposition. Then, of course, they tried the 14th Amendment. We will just keep him off the ballot. The easiest way to win is not to let your opponent play. That is what they tried to do. Thank goodness the Supreme Court said no to that, 9 to 0 they said no to that. Then, of course, after all of that, after he is a candidate, as I said, we get all these cases.

In Georgia, Fani Willis hires her boyfriend, travels to D.C. on the taxpayer dime, meets with White House officials, January 6th Committee, all in an effort to target President Trump. In New York, gag orders placed on President Trump by a partisan judge whose daughter is a Democrat fundraiser while Michael Cohen, convicted perjurer, is allowed to post anything he wants on social media, say whatever he wants. Not to mention the guy who is the lead prosecutor for Alvin Bragg, Mr. Colangelo, who worked for Leticia James, then worked for the Justice Department, then went back to New York to work for Alvin Bragg.

In Florida, we learn that Jack Smith changed, altered the order of the classified documents he seized. The physical documents don't match up with the scanned documents. Jack Smith didn't properly handle the documents he said President Trump didn't properly handle. Jack Smith mishandled classified information all while charging President Trump with "mishandling classified information." You can't make this up. Some would call that tampering with evidence.

Today's hearing is about how the law is being used to target political opponents, truly about the weaponization of the Government, truly about what this Committee has been focused on with this Congress. Obviously, President Trump is example No. 1. It is about the double standard, one set of rules for the politically connected, the other set for the people they want to target. Maybe most important, it is about where does all this go? Where does it all go? Be-

cause if they can do it to a President, they can do it to anybody, anyone of us, any of our constituents, any American they want to, and that is what is frightening. That is what is truly frightening.

I want to thank our witnesses for being here and talking about this most critical issue, how the Government, how the agencies, how the law is being turned on people that they politically disagree with. With that, I yield to the gentlelady from Virgin Islands for her opening statement, the Ranking Member, Ms. Plaskett.

Ms. PLASKETT. Thank you very much. Good morning to everyone that is here with us. Thank you for joining.

Two weeks ago in this same room, we watched as the Republican Majority attempted to use the Congressional hearing process to intervene in an ongoing Supreme Court case. Republicans here did so by suggesting that they were concerned about how social media companies are bullied by the Federal Government. In turn, these arguments are operating in the interest of securing an open season where Russia and China can destabilize our democracy at will in the 2024 election.

By my Republican counterparts causing people to bully social media companies, they want to allow any and all foreign adversaries to dump lies and misinformation on social media in support of a would-be fascist former President. Now you are back. Why are we back this time? We are here because former President Trump is on trial in New York. That is why we are here. On Monday and Tuesday of this week, his former attorney, Michael Cohen, delivered devastating testimony implicating former President Trump in a hush money payment scheme. His former attorney even had audio recordings of Trump talking about those payments. Whether we think the trial in New York is a big case or a bad case, the truth remains that the facts in the case don't help Donald Trump. We are here because Donald Trump knows that the evidence against is plentiful and that the testimony of, as my teenage daughter says, literal partner in crime in this case is harmful to his criminal defense and his political prospects.

It is not that complicated. The truth hurts. Here is why. We all know that the former President exacts loyalty from all his followers and especially GOP officials and those that work for him, blind loyalty and this case is no different. Many of them have high tailed it to New York City to show him that they are with him and standing with Donald Trump. Trump, in turn, demands that every Republican official serve him like the incorrigible, degenerate, spoiled brat that he is, and use their positions to aid his criminal defense. Even after the embarrassment of recent hearings to date, Donald Trump and his cronies don't think that the Chair is doing enough.

We are here today simply because Donald Trump's sycophants have been taunting the Members of this Committee on the GOP side and judiciary Republicans for not doing anything tangible to defend Trump against our judicial system. Lackeys like Natalie Winters, a Trump loyalist and an executive producer for Steve Bannon's show have been mocking Chair Jordan's leadership of the Committee openly. As you can see up there when the House Judiciary tweeted, "imagine actually believing Michael Cohen." She retweeted and said, "Imagine actually believing *@JudiciaryGOP* will do anything about it." This is one example on Monday. She put

that tweet up and then *Fox*'s Maria Bartiromo and Steve Bannon himself have gotten into the act. Here they are.

[Video played.]

Ms. PLASKETT. We all heard her. It is not enough to set up a Committee just called the Weaponization of the Federal Government. That is not doing it. We want action. That is why we are here today. We are here at the beck and call of Trump fanatics and talking heads on cable and internet talk shows in the MAGA world, who like Bartiromo and Bannon, go to this Committee to act because the purpose of this Select Committee is, in fact, to be an arm of the Trump campaign and take his orders. Yes, we know, your mad things are not going your way. The Republicans are upset because the Justice Department has determined that it must prosecute Donald Trump because the allegations against President Biden amount to nothing, both at the Justice Department and even in this chamber in the House by the very Committees Republicans created to investigate President Biden.

This Committee and Republicans are mad because Robert Hur himself a Republican political appointee fully and completely exonerated President Biden while specifically outlining a Republican appointee, outlining the reasons that Donald Trump deserved to be prosecuted and President Biden does not. They are mad because he had the gumption—I will use that word, to tell the truth as to what facts have been shown Trump to have. The Committee wants to allege the fact that Donald Trump repeatedly and this was a discussion just in the opening statement, talking about Jack Smith and what he did with classified information. The fact is that Trump didn't just mishandle classified information, he hid classified information and legally pertinent documents from the FBI and law enforcement. Donald Trump ordered his aides to destroy documents and then repeatedly lied about doing so. Donald Trump even tricked his own lawyers into making false statements on his behalf, potentially implicating those lawyers in his criminal schemes. That is why Donald Trump is currently facing 40 charges in a Federal Court in Florida, for knowingly mishandling, withholding, hiding, lying, and destroying classified documents in a way that put our national security at severe risk. That is why he is facing 34 charges in New York State Court for falsifying business records and making hush money payments to catch and kill information that would be harmful to his reputation and his Presidential campaign. That is why he is charged with four felony counts including conspiracy to defraud the United States and conspiracy to obstruct an official proceeding for attempting to overturn the 2020 election. That is why, despite the machinations and attempted character assassination of a prosecutor in Georgia, that he is charged with ten counts for attempting to intimidate election officials while trying to force them to accept the slate of false electors, again, part of his efforts to overturn an election.

Trump is charged in these cases because there is sufficient evidence to reasonably believe that he committed almost 100 serious crimes. In this country, no one should be above the law. So, just one little legal lesson, I strongly suspect the defendant may be watching or his minions or others, no, Donald, even a President

can't shoot someone on 5th Avenue in broad daylight and get away with it. That is not going to happen.

To my Republican counterparts in the majority, the claim that you want to fight a weaponized Executive Branch, you do so by calling in far-right witnesses to spew conspiracies about a Deep State or by calling witnesses who have testified under oath that they literally are missing parts of their brain, and another who self-identified is a time traveler from Canada. That, my friends, is the Select Subcommittee on the Weaponization of the Federal Government, to be the party of law enforcement and be led by a man currently facing 100 serious charges. We fail to understand that we are playing White Knights for the most radical fringes of our society, while making frequent references to Big Brother no less. They themselves are a growing embodiment of George Orwell's 1984.

Now, I have said it before and its people don't know, I have been a Republican. I was a Republican appointee when some of my counterparts were still in high school. I served a Republican President. This is not the Republican Party. This a cult of personality where Donald Trump exercises totalitarian control. This is a Subcommittee that intimidates witnesses who disagree with them, questioning Americans' loyalty to their country if they don't support Donald Trump's agenda. This Subcommittee is using its platform to bully American people into believing falsehoods, falsehoods which serve little purpose other than to scare every day Americans, spread confusion, and attempt to reelect Donald Trump. It is a Subcommittee that is taking orders from a disgraced former President. I see Members rolling their eyes. They are all upset. Don't believe me? You think I am making up that Trump directs the actions of this Select Committee and think that everyone is not jumping through hoops to please Donald Trump? Follow the facts.

Who was among the select few Donald Trump called on January 6th while encouraging thousands of rioters to overtake the Capitol and steal the election? Individuals from this Select Committee. The Members here have refused to answer a subpoena related to that call from Trump and the attack on the Capitol. Members of Congress said at rally after rally I am busting my tail to get Donald Trump reelected. We need to make sure Donald Trump wins. It is so important that we stay engaged and help Donald Trump get back the White House. That is what Members of this Committee said. It is our duty to call that bias and hidden agendas of the Committee. Such sham, solely designed to serve as like we have said before as the legislative arm of Donald Trump's reelection campaign. That is what this Select Committee is.

This Select Committee's efforts are transparent and you know what else? They were expensive. Last hearing we talked about the $20 million this Committee has spent already on this witch hunt. They still have nothing to show for it which explains why we are frantically calling last-minute hearings over and over again to distract from Trump's criminal trials, just throwing things at the wall and seeing what sticks, anything to try to keep Donald Trump happy. What a strategy and what an expensive failure.

I have tried to use this Committee for the good of Americans. I have talked to the Chair and others about examining moments in our Nation's history when the powers of the Federal Government

have been abused. We have seen reports that the IRS has a real problem of racial bias in its audits. A year ago, the IRS admitted that Black taxpayers are audited at disproportionately higher rates than other racial groups. Are we talking about that weaponization? Is there a discussion about that or any other hearing beyond defending Donald Trump and his election? No.

I applaud the DOJ for not giving into political pressure and following the facts where they lead. No one is above the law, no matter how hard this Committee tries to make it otherwise. Thank you and I yield back.

Chair JORDAN. All other opening statements will be included in the record. We will now introduce today's witnesses.

Mr. Robert Costello is a partner at Davidoff Hutcher & Citron. He was previously a partner at Levy, Tolman & Costello, and served as the Deputy Chief of the Criminal Division of the U.S. Attorney's Office for the Southern District of New York.

Mr. James Trusty is a Member of the Ifrah Law. He previously served as prosecutor for 27 years including as the Chief of the Organized Crime Section of the Department of Justice and as an Assistant U.S. Attorney.

Mr. Gene Hamilton is the Executive Director, Executive Vice President, General Counsel at the America First Legal Foundation. He previously served as Counselor to the U.S. Attorney General, Senior Counselor to the Secretary of Homeland Security and as a Senate aide.

Ms. Jill Wine-Banks is an attorney and MSNBC legal analyst. She previously served as a Federal prosecutor in the Illinois Attorney General's Office and as a General Counsel of the United States Army under President Carter.

We welcome our witnesses and thank them for appearing today. We will begin by swearing you in. Would you please rise and raise your right hand?

Do you swear or affirm under penalty of perjury that the testimony you are about to give is true and correct to the best of your knowledge, information, and belief, so help you God?

Let the record reflect that the witnesses have answered in the affirmative. You can now be seated. Thank you. Please know that your written testimony will be entered into the record in its entirety. Accordingly, we ask you to summarize your testimony as best you can, and we will just move right down the list, or right down the line, I should say. We will start with Mr. Costello.

Make sure you hit your mic, turn your mic on, and pull it real close. Hit the button. See the button there in front? Yes. There you go.

STATEMENT OF ROBERT J. COSTELLO

Mr. COSTELLO. OK. Thank you. My name is Bob Costello. I have been an attorney for 51 years and I am a former Assistant U.S. Attorney in the Southern District of New York, where I was Deputy Chief of the Criminal Division. I am not, not now nor have I ever been, an attorney for Donald Trump, any of his family members, or any of his businesses. I have represented quite a number of high-profile individuals, but never Donald Trump.

During the period April 2018–July 2018, I represented Michael Cohen. Today, I can talk to you about what Michael Cohen told my law partner and me, because Michael Cohen waived the attorney-client privilege, at the request of the U.S. Attorney's Office for the Southern District of New York. The reason was Michael Cohen had pled guilty to eight felony counts in the Southern District and was seeking to lessen his sentence and he thought he could be clever by going into the U.S. Attorney's Office and lying about cooperation.

Michael Cohen went to the U.S. Attorney's Office and accused Rudy Giuliani and me of conspiring to obstruct justice by tampering with a witness, namely, Michael Cohen. The story, which they were floating at the time and his lawyers put out in the various newspapers, was that we had dangled a pardon under Michael Cohen's nose to keep him quiet so that he wouldn't testify against Donald Trump. When I received a call from the U.S. Attorney's Office saying, "Bob, we would like to talk to you about your representation of Michael Cohen," I said to them and I presume that you guys are sitting there with a copy of the waiver of the attorney-client privilege? They said you presume correctly. I told them to scan it over to me and once I received it, I would be delighted to talk to them, and I did.

I went down to 1 St. Andrew's Plaza with a lawyer who had been the Chief of the Criminal Division when I was Deputy Chief, Tom Fitzpatrick, and on the way into the office he said to me, "Bob, aren't you nervous?" I said "what for? I am going to tell the truth and I have documentary evidence that corroborates me six ways from Sunday." I said "there is nothing to be nervous about. In fact, I will bet you $10 I will have these people laughing within five minutes." I won the bet.

I went up and I saw with two Assistant U.S. Attorneys, Tom McKay and Nick Rose, as well as two FBI agents whose names, unfortunately, I don't remember. We had a grand old time. I explained our entire history with Michael Cohen through emails and text messages. I explained the many, many lies that Michael Cohen told us. Most especially, I told them that when we first met Michael Cohen in April 2018, keeping in mine now that I read Michael Cohen's testimony from yesterday's trial in New York on the way down on the train, and virtually every statement he made about me was another lie, a lie that can be proven not just by me denying it, but by myself, Jeff Citron, or Rudy Giuliani, or emails, or text messages, virtually every statement that he made.

What he tries to do is he picks out, cherry picks certain emails or text messages and tries to make them look like something else. The story he told yesterday was that Rudy Giuliani and I were somehow conspiring to try and keep him quiet, to try and keep him from flipping. That is the term we use in the trade for cooperating. That is ridiculous. The first day that we met with Michael Cohen at the Regency Hotel at his request and his email correspondence that shows this, we went up there. I had never met Michael Cohen before. I didn't have any idea who he was or what sort of problem he was in. I saw this guy in a conference room at the Regency Hotel marching back and forth like a tiger in a cage. He was absolutely manic. He looked like he hadn't slept in four or five days,

and he knew my partner, Jeff Citron, for 10 years. I didn't know the guy. He kept on pounding on the table throughout his speeches that day, guys, I want you to know I will do whatever the F— I have to do, I will never spend one day in jail. He had to say that at least 10 times, maybe 20. It was his constant litany as he walked back and forth.

So, I said, "Michael, sit down, we need to discuss what is going on here." He told us about the raid, that his offices had been raided, his home had been raided. He said, "I didn't do anything wrong, guys. I don't know what they are looking for. " I said,

> Michael, the people in the Southern District of New York are very smart people. They got a search warrant for a lawyer's office. You can't do that just by going to the U.S. Attorney. You need to go to Main Justice and get approval from Main Justice. You need to show them that you have proof that the crime has been committed, and that evidence of that crime is going to exist at the site to be examined.

I said so, Michael,

> These people that you did something wrong. What is it? This is protected by attorney-client privilege.

It was until he waived the attorney-client privilege. "I swear to God, Bob, I didn't do anything wrong. In fact, I am cooperating with the Special Counsel. I am cooperating with Congress." Of course, he forgot to tell us that he lied to Congress, but that was part and parcel of the way Michael Cohen is.

So, I sat him down and I said,

> Look, Michael, clearly, here, you are not the target. Nobody has ever heard of Michael Cohen. But you are the lawyer for President Trump and clearly, that is their target and let me explain to you how things work. When they get a search warrant, they are looking to gather evidence. They already have evidence against you for something, but you haven't told us what it is and they are going to roll over you. You are just a bump in the road. Their target is Donald Trump. So, I want you to think carefully now.

By the way, up to this point, he had told us when he introduced himself to us, that two nights before he was on the roof of the hotel of the Regency Hotel, seriously considering jumping off, committing suicide because he couldn't handle the pressure of the legal problems that he saw coming his way. What he wanted to find out from us that day was his escape route. That is what he called it. Guys, you have to tell me what my escape route is. What can I do to get out of this? I did.

My obligation as a lawyer at that point in time was to explain to him what his options were. Clearly, one of his options was to cooperate and I said to him, I said,

> Michael, the way this works is if you have truthful information about Donald Trump that is clearly what they are looking for. I can have all your legal problems solved by the end of the week.

His response, I swear to God, "Bob, I don't have anything on Donald Trump." I said, "Michael, I want you think carefully about this." I probably came back to this subject 10 or 20 times during the two-hour period. Every time I brought it up, every time he answered, "I swear to God, Bob, I don't have anything on Donald Trump." I said,

> Michael, whatever you have has to be truthful. If you think you can go in there and tell these people lies, you are crazy. It is going to backfire on you. You can't do that. So, do you have anything on Donald Trump?

Probably the fifth or the sixth time I got around to doing that, he said, "Well, I know that money is missing from the Trump Inaugural Ball." I said, "Is Donald Trump involved in that?" "No." Does Donald Trump know anything about that? "No." I said,

> Michael, that is useless. You are not going anywhere with that. You asked me for your escape route. I am telling you your escape route. All you have to do is be truthful if you have some real evidence on Donald Trump.

His litany was the same all the time. "I don't have anything on Donald Trump."

This is exactly the opposite to what I saw him say on TV, he was telling the Grand Jury in Manhattan and the District Attorney's Office. He said, "I went in there, I believe if my memory is correct," 20 times including two appearances in the Grand Jury, 18 times preparation sessions with the DA's Office. I was sitting at home listening to this, and I said that was nonsense. That is not what he told Jeff Citron and me.

I decided at that point in time, I have got to make it known to both the defense and the prosecution what the real story is, who this guy really is. So, I provided all this material to Donald Trump's lawyers and I provided it to the Manhattan DA's Office, and I asked for a meeting with District Attorney Bragg because I wanted to go in there, let him look me in the eye, and let me explain all the stuff that we had on Michael Cohen that showed that he is an inveterate liar, the guy can't be trusted. Bragg turned me down. What he did say was I will let you have a meeting with the Assistant District Attorneys.

Now, when the Trump people—

Chair JORDAN. We need you to—

Mr. COSTELLO. I am sorry. When the Trump people heard about all of this, they insisted as was a right under the law that the DA put me before the Grand Jury. So, I was scheduled for a Monday. On the Friday before, I gave the DA's Office the courtesy of a Zoom conference for about an 1½ hour. Eight Assistant District Attorneys and me on the other end. I explained—they didn't ask, really ask me any questions. They just said, "what do you want to say?" Nice warm greeting to somebody who is trying to show them the right path, quietly and privately, so that they could correct their error before they made it. Here is what happened.

[The prepared statement of Mr. Costello follows:]

LAWFARE- The Weaponization of the legal system to attack your political adversary and his or her allies.

Robert J. Costello, Esq.
Partner, Davidoff Hutcher & Citron, LLP
605 Third Avenue
New York, New York

I have been a lawyer for 51 years. During that time, I have been involved in many different types of cases, but I have never seen the types of politically motivated cases that have been brought in this Presidential Election season.

These political cases are being used as a weapon of war to damage, defeat or impede political adversaries and their allies. Instead of political warfare, it is lawfare, and it is a cancer upon our collective judicial system. Lawfare is a stain on both the Department of Justice and District Attorney Offices throughout the nation.

Lawfare is a disaster for the rule of law. It is a disaster for Democrats and Republicans alike. Neither of those parties will hold power forever and when the opposite party takes control, it is not hard to imagine what will take place and it is not good for our country. What is not good for America should be opposed by all Americans.

Let me give you a little perspective about the different world I used to live in. I was a federal prosecutor in the United States Attorney's Office for the Southern District of New York. At one point, I was the Deputy Chief of the Criminal Division of

that Office. We handled many different types of cases during my time in the office. We handled quite a few cases involving alleged corruption by public officials. Some were Democrats, some were Republicans, some might have been from a lesser political party. Not once was the defendant's political party ever mentioned. It simply did not matter. It was not a factor ever considered with respect to the issue of whether to bring charges or not. That was the way it was in the Southern District of New York and likely every other US Attorney's Office at that time.

Unfortunately, I cannot say the same thing for today. Prosecutors are supposed to investigate crimes and prosecute those who commit them—not announce targets first and investigate until they can bring some charge, no matter how tenuous. But these days, you see individuals running for prospective office who claim the if you elect me, I will bring down this public figure or that public figure who disagrees with my political philosophy.

Understand that to destroy a political rival you need not convict that person of a crime, all you must do is leak the fact that the individual is being investigated for a particular crime, thereby destroying his or her reputation and causing that individual to incur legal fees to defend themselves. The net result is, if you can destroy their reputation and bankrupt them with legal fees, you have effectively eliminated or cancelled your opposition without ever convicting them of a crime or getting a civil judgment against them. This has to stop.

This is what's going on right now in Manhattan in a case entitled People v. Trump. This is a case my old office, the SDNY, turned down because they assessed that Michael Cohen, the so-called star witness, was totally unworthy of belief.

Let me talk about my experiences over the past five years, particularly with Michael Cohen.

You may wonder how a lawyer can discuss his interactions with a former client. The short answer is that Michael Cohen, for reasons that I will explain, waived the attorney-client privilege and the duty of loyalty of a lawyer to a client.

Why would he do something like that? Well, Mr. Cohen, who was then represented by different counsel, pled guilty to eight counts in an indictment in the Southern District of New York, seven of which had nothing to do with President Trump and indeed pre-dated the first meeting between Cohen and Trump. As a part of this plea negotiation, Mr. Cohen decided he would attempt to cooperate to reduce his upcoming sentencing. And Cohen then took a foolish step by lying that he had evidence that Rudy Giuliani and I had conspired to obstruct justice by dangling a pardon for him to keep his mouth shut about Donald Trump. That was totally false and utter nonsense.

The AUSAs told Cohen that to investigate his allegation, he would have to waive the attorney client privilege, otherwise I would not be able to answer the questions that the US Attorneys would ask. Cohen, with counsel present, waived the attorney client privilege in writing. Later, after I testified in the Manhattan grand jury, Cohen falsely stated on national

television that he had not waived the privilege. I was able to conclusively refute this by showing the written waiver on camera on a different national show, one hour later.

After the US Attorney's Office supplied me with the waiver, they requested an extensive document production, which I complied with, and after that, two Assistant US Attorneys and two FBI agents interviewed me for approximately 3 and ½ hours. I told them that Cohen's allegation was a lie and proved it with the numerous emails, text messages and contemporaneous memos to the file. After that, the US Attorney's Office never dealt with Cohen again—having concluded, rightly, that he was a habitual liar and totally unreliable witness. That office chose to not bring any charges against President Trump. Clearly the correct decision. But the same cannot be said for the New York District Attorney's Office.

After receiving the waiver of the attorney client privilege, I remember watching television and seeing Michael Cohen crowing about what he claimed he was telling the District Attorney and what he was telling the grand jury. The statements Cohen was making about President Trump were diametrically opposed to what Michael Cohen had told my law partner, Jeff Citron, and myself at the Regency Hotel in Manhattan on April 17, 2018.

I knew then that I couldn't let these inconsistent statements stand. Many people advised me not to get involved, but my conscience would not allow me to stand by and let Cohen tell the District Attorney and the grand jury the opposite of what he

told us at a time when he was most vulnerable, indeed suicidal, and desperately searching for "an escape route" as he called it, from the legal difficulties that he knew were coming. That is the reason I decided to contact both Trump's counsel as well as the Manhattan District Attorney's Office.

I gave both sides the same written materials that I had provided to the US Attorney's Office for the Southern District of New York. I asked to meet directly with Alvin Bragg so I could explain the exculpatory material I had, to prevent what I saw as a potential miscarriage of justice. Alvin Bragg refused my offer. Then the Trump lawyers demanded, as was their right, for the District Attorney to put me in front of the grand jury. The District Attorney had no choice under the law but to put me in front of the grand jury. Because I was trying to show that I was being fair to both sides, I offered to participate in a zoom meeting with members of the District Attorney's prosecution team on the Friday before my grand jury appearance on Monday.

The Zoom meeting was with approximately 8 Assistant District Attorneys. It began with one ADA saying: "assume we have read all your materials, what do you want to say?" Hardly a warm greeting for someone trying to help them get to the truth. All the collective group did was sit and listen as I described the many lies told by Cohen. But most importantly, I told them how, at a time when Cohen was suicidal and desperately looking for an escape route, I advised him that the SDNY thought he had committed crimes and that he might have evidence they could use for a prosecution of President Trump. I explained to Cohen how he was not the target of the investigation but was a bump in

the road and that the US Attorney's office would run over him if it led them to Donald Trump. I explained that if Cohen had truthful information that would implicate Donald Trump, I could get him out of his legal troubles by the end of the week, if he cooperated against Donald Trump. I emphasized that any information Cohen could give would have to be truthful, otherwise it was useless.

I did this numerous times during our first two-hour meeting. Each time Cohen said to me: "I swear to God, Bob, I don't have anything on Donald Trump." Cohen must have said this at least ten times because I kept coming back to it from different approaches. Cohen kept on saying: "Guys I want you to remember, I will do whatever the F… I have to do, I will never spend one day in jail." I even said to Cohen at one point: "Michael, now is the time to tell the truth and cooperate if you want your legal problems to disappear." Cohen would again reply: "I swear to God, Bob, I don't have anything on Donald Trump." After hearing this several times, I said to Cohen: "Michael, think about this…you said the other night you were on the roof of the Regency and seriously contemplating jumping off because you couldn't handle the pressure of the upcoming criminal case, so I want you to consider: isn't it easier to cooperate against Donald Trump if you have truthful information, than it is to kill yourself?" Cohen's answer was once again the same answer: "I swear to God, Bob, I don't have anything on Donald Trump."

Through further cross examination Cohen told me that he knew there was money missing from the Trump Inauguration fund, but that Donald Trump had nothing to do with it and didn't

even know about it. I then asked about the NDAs that Cohen had referenced earlier when he said: "I can't believe they are trying to put me in jail for an NDA." He was referring to the Stormy Daniels NDA. I noted that there is nothing illegal about an NDA, it happens all the time to settle civil claims. I then had Cohen explain to Jeff Citron and myself what his involvement was with the NDA. Cohen said that a lawyer for Stormy Daniels approached him and said Danials was going to allege that she had sex with Donald Trump unless Trump was willing to buy her silence with a non-disclosure agreement. Cohen decided that while he didn't believe the allegation, he thought the story would be embarrassing for Trump, and especially for Melania, so he decided he would take care of this himself.

The reason and his motivation for this became obvious upon further revelations by Cohen regarding the fact that when Trump's inner circle went to Washington after the Inauguration, Michael Cohen was left behind in New York. Cohen stated that he thought that when Trump became President, that he, Michael Cohen, could become Attorney General of the United States or at least Chief of Staff to the President. As delusional as this may be, Michael was angry that he had been left out. Procuring this NDA would be a way to ingratiate himself with Donald Trump and save embarrassment for Melania because he knew that Donald Trump was very concerned about not doing anything to embarrass Melania.

Cohen then explained that for that reason he negotiated the sum of $130,000 in exchange for the NDA. When asked if Trump had any knowledge of this, Cohen told me no. When asked whether Cohen got the $130,000 from Trump or any

Trump entity or friend, Cohen again said no. When asked if this was from Cohen's own money, Cohen said no. He was asked where, then, did he get the money and Cohen explained he took out a HELOC Loan because he didn't want anybody to know where the money came from. He specifically said he didn't want Melania to know, and he didn't want his own wife to know since she handled the family finances, so if Michael took out $130,000, his wife would know immediately and would ask questions.

Throughout this two-hour interview, Michael Cohen made clear that this payment to Daniels was his own idea, designed to try and get him back into the inner circle of Trump people in Washington. Cohen also said at least twenty times "Guys, I want you to know I will do whatever the f… I have to do; I will never spend one day in jail."

The point is when Michael Cohen was presented with the opportunity to implicate Donald Trump in exchange for eliminating his own enormous legal problems, he repeatedly said he had nothing truthful on Donald Trump.

Now, after going to jail, Michael Cohen is on a revenge tour because he blames Donald Trump for the loss of his law license and the fact that he did go to jail. The U.S. Attorney for the Southern District of New York saw this and acted properly. The Manhattan District Attorney took a different route to become famous and to "get" Trump.

Michael Cohen is simply not a credible man. Throughout the time that we were providing legal advice to Michael Cohen,

he lied repeatedly both about consequential and inconsequential details. Whenever it suited his purposes, Michael Cohen showed no hesitation to lie. The pattern is consistent that Cohen lies when he thinks it is to his own advantage but tells the truth when it is to Michael Cohen's own advantage. It was clearly to Cohen's own advantage if he had truthful information about Donald Trump to cooperate and reveal that information to aid himself by eliminating Cohen's own major legal problems that were causing him to consider suicide.

With respect to the ongoing Trump trial, I point out the following observations:

1. The allegations in the indictment are barred by the statute of limitations for the misdemeanor of making a false entry in business records; it is only elevated to a felony with a longer statute of limitations if the misdemeanor was committed to conceal another felony. Here is the rub—the indictment does not specify what the alleged other felony is. Current speculation based upon the testimony elicited is that the other felony is election fraud. That theory fails for two additional reasons, first the Manhattan District Attorney has no jurisdiction over the 2016 federal Presidential election; second the alleged false entry in the Trump organization books and records took place in 2017. How can an act committed in 2017 influence an election that ended in November 2016? The answer most recently propounded is that it was a conspiracy formed in 2015. That would be logical IF there was a conspiracy count in the Indictment—but there is not. There are 34 false entry

counts and nothing more. There is one defendant Donald Trump and no one else.

2. Finally, there is no doubt in my mind that in the event of a conviction, this case will be overturned on appeal for a variety of legal errors, perhaps the most egregious is the testimony of Stormy Daniels. That testimony was clearly irrelevant to the alleged crime of a false entry in the books and records. The payment and the NDA have never been disputed. The defense moved to prevent Daniels from testifying for that reason. Then after the New York Court of Appeals issued a ruling a little more than a week ago overturning Harvey Weinstein's conviction because the trial judge let in prior similar act evidence whose only purpose was to smear the defendant, the defense raised the issue again and sought a mistrial. When Judge Marchan was informed of this he said it wasn't applicable.

3. In the Trump case, they are seeking a conviction by any means necessary. They do not care if it is overturned on appeal because that will likely not happen until after the election. In the meantime, they will have effectively interfered with the 2024 Presidential election and perhaps influenced some voters because of an ill-gotten conviction.

This is the very definition of lawfare. It is happening in Manhattan before our very eyes. I hope members of this Subcommittee are as outraged about it as I am and I hope there is something you, as our national policymakers, can do to remove the taint of lawfare from our justice system. I look forward to answering your questions.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	:	**WAIVER**
- v. -	:	18 Cr. 602 (WHP)
MICHAEL COHEN,	:	
Defendant.	:	

I, Michael D. Cohen, hereby declare:

1. I am the defendant in the above-captioned case.

2. I was previously represented by the law firm of McDermott, Will & Emery ("MW&E") in connection with the investigation that preceded this case (the "SDNY Investigation"), as well as in connection with investigations into alleged Russian influence in the 2016 presidential election.

3. During the period in which I was represented by MW&E, I was approached by Robert Costello, Esq., of the law firm of Davidoff, Hutcher & Citron, LLP ("DHC"). Costello sought to represent me in connection with the SDNY Investigation and presented me with a retainer agreement. I declined to sign the retainer agreement and informed him that I was already represented. Although I subsequently had several other conversations and communications with Costello, at no time did I

sign a retainer or otherwise agree to retain Costello, nor did I ever consider Costello (or any lawyer at DHC) to be my attorney.

4. Although I do not believe that any of my communications with Costello or other lawyers at DHC are subject to attorney-client privilege, I hereby waive whatever attorney-client or other privilege that might be argued have attached to such communications.

5. I have discussed the foregoing with my current counsel, and make this waiver knowingly and voluntarily.

Dated: February 7, 2019
New York, New York

MICHAEL COHEN

Michael Monico, Esq.
Attorney for MICHAEL COHEN

Michael Cohen Representation

This narrative will detail the interaction between Bob Costello and Jeff Citron of Davidoff Hutcher & Citron LLP with Michael Cohen. The narrative being suggested by Michael Cohen and Lanny Davis to the effect that Costello and Citron were sent by Trump or his representatives, to approach Cohen with claims that they had a close relationship with the President's lawyer, Rudy Giuliani, and could get Cohen a pardon if he kept his mouth shut about Trump is preposterous and demonstrably untrue. If Michael Cohen has told this false story to Congress and to the United States Attorney's Office for the Southern District of New York, he has committed two new federal crimes for which he should be indicted.

The initial contact between Cohen and Costello and Citron came about because Cohen and Citron have a prior history. Jeff Citron has known Michael Cohen for approximately 10 years. Michael Cohen was a member of the Board of Trustees of Columbia Grammar and Preparatory School in Manhattan while Citron and his firm were outside counsel to the school. This is the school that Baron Trump, the President's youngest son attended. In addition to that relationship Cohen and Citron are both on the advisory board for Sterling Bank. Michael Cohen had once asked Jeff Citron for help in finding Michael Cohen's brother a job. A number of weeks before Michael Cohen's office and residences were searched; Jeff Citron and Michael Cohen attended a Sterling Bank meeting and had spent some time chatting following the meeting.

APRIL 16, 2018

When news spread that Michael Cohen's Law Office and his residences had been searched by federal agents, Jeff Citron sent Cohen an email of commiseration and noted that he (Citron) had a partner who had been the Deputy Chief of the United States Attorney's Office for

the Southern District of New York, the same office that had obtained the search warrants. That law partner was Bob Costello who Citron noted had represented celebrity figures in the past such as George Steinbrenner and Leona Helmsley. Citron offered that if Cohen wanted to pick Costello's brain, Citron would be delighted to arrange that.

APRIL 17, 2018

The next morning, April 17, Michael Cohen replied in an email thanking Jeff Citron and asking him to set up a meeting between Costello and Cohen. Since Cohen reported that reporters were camped out around the Regency Hotel where he was staying, and those reporters would follow Cohen wherever he went, Cohen said he could not come to the offices of Davidoff Hutcher & Citron and requested the lawyers come to the Regency because the reporters would not know who they were.

Costello and Citron went to the Regency that same afternoon April 17th, and met with Cohen in a second floor conference room for approximately two hours. The meeting began with Cohen closing the drapes on the conference room windows so that the people in the office building opposite could not look in. Cohen was in a highly agitated state, initially pacing on the opposite side of the conference table and then he grabbed a seat.

INITIAL MEETING TUESDAY, APRIL 17, 2018 -REGENCY HOTEL, NEW YORK CITY

Citron introduced Bob Costello and repeated to Cohen that Bob had been the Deputy Chief of the Criminal Division and had represented a number of high profile individuals in connection with both civil and criminal investigations. Citron asked Bob to give Michael his background, which he did.

SUICIDE THOUGHTS AND VOWS TO NEVER SPEND ONE DAY IN JAIL

Cohen then began by thanking the lawyers for coming and began to summarize his

situation. Cohen described the search warrant executions and said that he is surrounded by reporters, his business is ruined, his reputation is ruined, his family is suffering. He said he simply can't take the pressure and he does not know what to do. At that point, Michael Cohen looked like he had not slept in days and then he said: "this pressure is overwhelming. Over the weekend I was up on the roof of the hotel seriously contemplating jumping off". He said: "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."

Costello told Cohen that the pressure he was feeling is exactly what the FBI and the Prosecutors wanted him to feel. They want to exert as much pressure on you as possible until you reach the point where you conclude your only way out of this situation is cooperation. Cohen replied but I am cooperating. Cohen said that he had cooperated with the Special Counsel, the House and the Senate. He said they requested "tons of documents" and he turned everything over. That's why, he said, he didn't understand why they executed search warrants. All they had to do is ask, and I would have turned over whatever they wanted. Cohen added that he couldn't believe that they wanted to put him in jail for a "f.....n NDA". Costello then asked: "what is your exposure, what did you do Michael that they are investigating?" Costello pointed out that this was an attorney client privileged conversation and that the conversation and the communications made in that room would remain confidential. Cohen said he understood that. Costello then repeated the question and Cohen responded that the only thing he did was the non-disclosure agreements with Stormy Daniels and the McDougal woman. Costello said Michael "the Government could not have obtained the search warrants on that basis, so there must be more." Cohen responded that he swore there was nothing, there was nothing in his past that he did that violated the law. Cohen insisted that he had no idea why the Government would obtain

the search warrants because he was cooperating and in any event he had done nothing, except for the Stormy Daniels and Karen McDougal situations.

Costello then asked Cohen to explain the Stormy Daniels and Karen McDougal situations and Cohen complied. During the course of his discussion involving Daniels, Cohen stated that he obtained the $130,000 that he was going to use to make the payment by taking a "Heloc". Cohen did not explain the term and the Citron and Costello did not ask him what he meant. Cohen does not relate stories in a linear way. Cohen skips around in time and changes subjects easily and then drifts back to the original story. These notes are presented in a more linear fashion than Cohen's actual exposition. At one point in time, Cohen said ironically that the Heloc was necessary because he did not want his wife to know exactly what he was doing.

COHEN WANTS TO KNOW ALL OPTIONS

At one point, Cohen stated that he wanted to know what all of his options were. Cohen said he read about the possibility that the President could pardon him and there was speculation that Cohen would seek and immunity agreement from the Government. In both cases, Cohen also noted that there was a lot of talk in the media, that if either of those two scenarios happened, that the New York Attorney General and the Manhattan District Attorney were both saying that they would seek to prosecute that individual for State crimes. Cohen seemed totally fixated on that question. Costello said he did not think the local prosecutors could do that but he would like to look at the law before he was definite about that subject. Cohen continually came back to the point of saying: "I will never spend one day in jail. I will do what I have to do." He seemed quite angry when he was making those statements.

COHEN CLAIMS HE IS ALREADY COOPERATING

Cohen returned to the subject of his own cooperation. Cohen said he couldn't understand the

use of a search warrant because he was already cooperating. He told us that he had cooperated with the Special Counsel and with both the House and the Senate. He said he turned over all of the documents they asked for and added that if the US Attorney wanted documents all they had to do was ask for them and he would have complied.

That led to a discussion of what evidence he might have that could be offered to the prosecutors to obtain immunity. Cohen again said the only thing he did was the non-disclosure stuff with Daniels and McDougal. When pressed about what else he knew, even if he was not personally involved in the activity that might be of value to the Government, Cohen said he knew that there was a lot of money missing and unaccounted for by the Inaugural Committee. Costello asked if that implicated the President and Cohen said no, I don't even think he knows about it. Along the way Cohen made a number of derogatory comments about Jared Kushner and Ivanka Trump Kushner but provided no specifics. Cohen drifted back to asking if I get a pardon or immunity can these state prosecutors go after me.

At some point in the conversation, Cohen was boasting about the fact that he claimed to know nearly everyone in the Trump Administration in Washington. While he appeared to have a grudge against Jared and Ivanka, he was not specific. Cohen said to Costello that when he was giving his background before, you mentioned that you once worked for Giuliani, Cohen said: "I love Rudy Giuliani, he's been friends with the "Big Guy" for years." The "Big Guy" was a nickname Cohen used for the President. When Cohen mentioned Giuliani, Citron noted that Bob's known him for years. Cohen asked Costello what his connection to Giuliani was and Costello responded that he knew Rudy since the 1970's but did not elaborate further. Giuliani was not part of the President's defense team. Cohen then listed all of the people in the Trump Administration that he knew and had worked with according to Cohen. Michael was showing

off, but quickly returned to his mantra that "I will never spend a day in jail, I will do whatever I have to in order to protect my family."

At the end of the meeting, the following was clear, Michael Cohen was considering all options in order to make sure that he did not spend one day in jail. Michael was concerned that if he received a pardon or immunity he could still be prosecuted for state crimes. Michael was insistent that his only exposure was his involvement with Stormy Daniels and Karen McDougal. As the meeting concluded, Michael Cohen said that besides us, he was talking to at least one other attorney from a boutique firm who had Southern District experience. Costello asked Michael who that was, but Michael said I would rather not say at this moment. That is when Michael Cohen said for the first time, don't worry I am forming a team to represent me so my talking to another guy does not exclude you, just as my talking to you, does not exclude them. Michael said to Costello:" I want a guy like you on my team. I want a guy that can deal with the press." Jeff Citron then said: "OK Michael so let us know what you want to do, we are there for you if you want us to help and we think we can be of assistance to you."

POST MEETING LAWYER'S DISCUSSION

When Costello and Citron left the hotel around 4:30 p.m., as they were walking down Park Avenue, Costello told Citron that Cohen was not leveling with us because the SDNY could not have obtained a search warrant on just the Stormy Daniels allegations. Costello added that it was not unusual for a prospective defendant in Cohen's position to downplay his own involvement in whatever happened. Costello said it usually takes two or three meetings before they reveal the whole truth. Costello said if a Heloc is a home equity loan, then there was likely a bank requirement that the borrower specify what the funds were going to be used for and it was clear that Michael did not say that he was using the money to finance a non-disclosure

agreement. As a result, Costello said, Michael may be facing bank fraud charges which can be prosecuted as a state or a federal crime and maybe that is what Cohen is concerned about. Costello and Citron discussed the fact that Cohen claimed to be already cooperating, yet the SDNY executed search warrants. Costello told Citron that if Cohen was telling the truth that he had nothing on the President that there was no way he could get immunity. This situation was particularly difficult to discuss meaningfully because it was clear that the SDNY believed Cohen was far more involved in this matter than just the Stormy Daniels and Karen McDougal events.

On his way home on April 17, AT 5:16 pm, Citron sent an email to Cohen: "Really glad we had the opportunity to talk with you. Hope we helped; Bob and I would love the opportunity to be a part of and work with your team as we believe we can help you on so many levels. Hang tough and think straight. Talk tomorrow." Cohen responds with an email marked Attorney - Client privilege which claims it has an attachment but it does not. It appears the email was sent in error.

WEDNESDAY, APRIL 18, 2018- LEGAL RESEARCH ON STATE PROSECUTIONS FOLLOWING A PARDON OR IMMUNITY

On April 18, at 6:50 pm, emails show that Costello has been using Westlaw, researching the issue of whether a pardon or immunity will protect Cohen from a subsequent state prosecution. Costello tells Citron that he thinks he has found an answer for Cohen but to not tell Cohen until he is certain.

THURSDAY, APRIL 19, 2018

The morning of the next day, April 19th begins with news stories reporting that Jay Goldberg Esq., a former Trump lawyer, is speculating that Cohen "would sell out Trump" if he is charged. There is also an article that NYAG Schneiderman is trying to close the Trump pardon loophole to allow for state prosecutions. At 12:52 pm, Cohen sends an email that he will call

Citron later that day. At 5:52 pm, there is a report on Fox that Rudy Giuliani is joining the Trump Legal team. An hour later at 6:45pm, Costello emails Cohen with the news of Giuliani. At 7:36pm, Cohen replies: "Great News for Rudy, I know I owe you a call,... I will try tomorrow."

FRIDAY, APRIL 20, 2018- PART OF THE TEAM-RETAINER DRAFTED

On April 20, 2018, at 11:36am, Cohen calls Costello on his cell and they have a 33 minute conversation during which Cohen states: "It would be an honor to have you part of my team. I will be eternally grateful for the help and guidance you have already given me." Costello memorializes the quote in an email to his son, but notes that it has not yet been made public, but we have been authorized to contact Giuliani and tell him we will be representing Cohen. At 2:29 pm, Citron tells his other partners: "We are officially part of Cohen's team. Have been authorized to reach out to various players!" Citron emails Cohen at 4:32 pm, to say he is pleased with the discussion between Michael and Bob ...and am glad that we can help bring you some peace.". At 5:31 pm Costello sends Citron's paralegal a draft of the Retainer agreement with Cohen.

LATE FRIDAY EVENING, APRIL 20, 2018 FIRST GIULIANI CALL

Around 10:30 pm, Costello and Giuliani speak for the first time about Cohen. Costello tells Giuliani that Cohen has authorized him to contact Giuliani and to tell him that Costello will be representing Cohen. Giuliani says that's great, it's so much easier to deal with an attorney you know well and can trust. Giuliani asks if it is ok to tell Jay Sekulow and the President and Costello says of course. This was just an introductory phone call with no substantive discussion of any kind. Costello emails Citron about the call who then says notify Cohen. Costello sends an email to Cohen just after midnight. Reference is made to a 'back channel of communication"

because that is the phrase Giuliani used. Nothing nefarious is intended by the use of that phrase because there was a joint defense agreement. This is a situation that exists in every joint defense agreement and Cohen was in a Joint Defense Agreement with the President as Giuliani acknowledged.

SATURDAY, APRIL 21, 2018

At 2:24 pm, Costello sends Citron an email noting his surprise that Cohen has not responded to the email about the Giuliani contact. Later that afternoon, at 4:18 pm, Costello and Cohen have a ten minute call in which Cohen says it's great that you were able to make contact with Rudy as there a number of things I want the "Big Guy" to know. Cohen said he also wanted to find out how the Southern District wound up with this case. He wanted to know who was involved and who authorized a search warrant for his office and home. Cohen said: "there's a lot of stuff on the internet about me that simply isn't true. There are stories that I hate Trump, that I blame Trump for the search warrant and that I am telling my friends that I am cooperating. These stories are all bullshit and I want the "Big Guy" to know that." Costello then called Giuliani and left a message. Later Giuliani called back and Costello reported all that Cohen had said and Giuliani thanked him and said it's good that we can talk and avoid these misunderstandings that are being promoted in the media. Giuliani asked Costello to assure Michael that the President does not hate him and in fact the President feels very bad that Michael is in the situation he is in and understands how hard this must be on Michael's family. At 8:57 pm, Costello sends Cohen an email summarizing the Giuliani conversation. Since Cohen had been in a highly agitated state and talking about suicide, Costello tries to calm him down with a valediction he often uses of "Sleep well tonight" and then adds that Michael has "friends in high

places" clearly a reference to the President of the United States. There was nothing more intended by the phrasing. There was no discussion or hint about the topic of pardons. Simply put, there was no hidden message or agenda. Sleep well tonight is a phrase Costello has used in other emails to other clients. It is simply a phrase in his lexicon.

SUNDAY, APRIL 22, 2018 - PARDON DISCUSSION

At 12:32 pm, Giuliani returns Costello's earlier call. They have an 8 minute conversation. At 2:09pm that day, Cohen returns Costello's two earlier telephone messages on the cell, and they have a 19 minute conversation. Costello believes that this is when Cohen again raises the issue of pardon that was first discussed at the initial meeting at the Regency Hotel on April 17. Cohen says that now that communication has been established with Giuliani, Cohen wants Costello to find out from Giuliani if a pardon is on the table. Costello tells Cohen that is not a wise move. Costello says it is premature and that no one in their right mind would be discussing a pardon at this stage of the proceedings. Costello notes that Michael has not been charged with any crimes and if he has told Costello and Citron the truth, the worst he is facing are charges relating to Stormy Daniels and McDougal which would be a campaign violation and likely not even a crime. Cohen insists again that is all he has done, but still wants Costello to raise the pardon issue. Costello agrees but says the response is a foregone conclusion. Cohen again asks Costello to find out from Giuliani how his case wound up in the SDNY.

MONDAY, APRIL 23, 2018 -CONTACT WITH GIULIANI

Sometime on Monday morning, Costello has a phone conversation with Giuliani. The first topic of discussion is the Cohen case and Michael's interest in finding out how it wound up in the SDNY. Giuliani had previously indicated that he thought it would be easy to track down and thought he would have had the answer by Sunday, but that it has been more difficult than he

anticipated. Costello then sheepishly approached the pardon issue by stating I realize that this is likely premature, but Michael Cohen wants to know if a pardon is on the table. Giuliani reacted quickly and without hesitation said: "The President will not discuss pardons with anybody". His tone, which had been quite pleasant, was a little curt, conveying the message that it was an annoying question and that Costello should not raise that topic again. Costello said that he understood and would convey the message to Michael. Costello did not know that anyone else, including reporters, had asked that same question previously.

At 11:44 am, Costello sent an email message to Cohen stating that he had spoken to the person "you asked me to" (Giuliani) and he did not have the answer to the question about how the case wound up in the SDNY. Costello then referenced the "question of timing" and added that he would expand on that when they met. That reference was to the pardon question which Costello had told Cohen was very bad timing because it was premature and Costello did not think the President would comment on that. Costello's belief was confirmed by Giuliani. Although Cohen indicated disappointment when he was told of Giuliani's response, Costello did not think it was a big deal, because at that point in time, Cohen had not been charged with any crimes and he continued to insist his only exposure was with reference to Stormy Daniels and Karen McDougal.

WEDNESDAY April 25, 2018 US ATTORNEY'S ALUMNI DINNER (Fiske Dinner)

Costello attends the US Attorney's alumni dinner and hears Audrey Strauss, Senior Counsel at the SDNY tell others present that "the office (SDNY) is in good shape on the Michael Cohen case". The clear import of these remarks is that there are more substantial charges that will be forthcoming with respect to Michael Cohen and that the search has yielded good results for whatever crimes they were investigating. This was not startling at all, but was consistent with

Costello's belief that Michael Cohen had not been telling the truth about his own involvement in criminal activity and that as expected, there is far more to this case than Michael Cohen has admitted to Costello and Citron.

THURSDAY-APRIL 26, 2018 - BARBARA JONES APPOINTED SPECIAL MASTER

On Thursday, it is announced that Barbara Jones would be the Special Master to go through the materials seized and make preliminary determinations with respect to the attorney client privilege. Michael Cohen was spending all of his time at McDermott Will & Emery going through all of the materials that were seized during the execution of the three search warrants. There is no communication between Michael Cohen and Costello or Citron during this time period. DHC Associate Matthew Yogg is sent to Federal Court to monitor the court proceedings and report back to Costello with a memorandum.

THURSDAY, MAY 3, 2018 -MICHAEL COHEN COMES TO DHC OFFICE

On Thursday morning, Michael Cohen makes an appearance at the offices of DHC. This is the meeting that Cohen was promising for almost two weeks, but postponing it each time because he had so much work to do at McDermott Will & Emery in going through the seized materials. Cohen was concerned that he would be followed by reporters when he arrives at 605 Third Avenue so he asks if Costello can meet him downstairs and walk him through security, so he does not have to sign in. Costello agrees and brings Cohen through security shortly after 9:30 am. Costello and Cohen proceed to the 15th Floor Conference room where we were later joined

by Jeff Citron. While waiting for Citron to arrive from his office on the 34th Floor, Costello introduces Cohen to his secretary, Julia Forkash.

Michael then starts talking about the case and the Joint Defense Agreement. Cohen feels that Giuliani and the President are cutting Steve Ryan out of the loop. Cohen says they are making statements about everything without consulting with or even notifying Steve Ryan. Cohen says he is tired of just standing there silent, while he and his family get beaten up in the press. Cohen says he wants Costello, as he said before, to be his voice fighting back on television. He wants Costello to fight back on his behalf. Cohen says Costello is the best equipped to be his spokesman because he is assertive and aggressive. Cohen says Steve Ryan (MW & E) is not the right guy for that job. Cohen says you can't believe what they are doing to me. Cohen says the US Attorney even tried to get his transcripts from American University and his High School. Cohen said: "What the F… do my High school grades have to do with any of this?" This is the extremes they are going to, in order to put pressure on me.

Cohen then went on a rambling discussion of a number of topics. He says there is an "NDA" involving either a Gina or Gino Rodriguez and he talked about a Keith Davidson, a lawyer who came to his office. He mentions someone named "Kotsev" and then claims that Stormy Daniels and Avenatti are making up the "threat" story. With respect to President Trump, Michael Cohen refers to him as the "Boss" and says he loves him (Trump) and his Family and he absolutely will never put him (Trump) in jeopardy-ever." When Citron comes down, he hands Cohen a retainer agreement with the firm. Cohen takes the retainer and says he is under a lot of financial pressure and mentions the attorneys at McDermott Will & Emery. Cohen clearly intends to give the impression to us that he is paying the attorneys at McDermott. Jeff Citron tells Cohen: "Look Michael, we are here to help you, not to take advantage of you. If you are

having financial problems, because you're paying McDermott, we'll work with you. That will not be an issue." Cohen then deftly switches topics as he puts the retainer agreement away saying he will look this over later. Cohen tells Citron that he wants Costello to be his guy on TV fighting back on his behalf.

After about an hour meeting, Cohen said he had to go over to McDermott Will & Emery to continue going through documents, but he will return to DHC the next day.

Around 1:26 pm that same day, NBC News comes out with a story that Cohen's phones had been wiretapped. Costello sends Cohen a link to the story. Later that afternoon, NBC News backtracks on the story and now says the Feds put a pen register on Cohen's phones. Costello sends Cohen an email at 5:50pm explaining a pen register and suggesting they had an easier way to obtain the information as to whom Cohen was calling on his cell.

FRIDAY MAY 4, 2018 - COHEN FAILS TO RETURN TO DHC OFFICES

On Friday, Cohen failed to return to the DHC offices as he had promised the day before when he took the retainer agreement. At 11:07 am that morning Costello informs Citron by email that Cohen has failed to show. Costello recommends that we stop dealing with Cohen until he signs the retainer.

SATURDAY- MAY 5, 2018

Cohen calls Costello and they have a 20 minute conversation which Costello memorializes on Monday morning May 7 in an email to Citron.

MONDAY-MAY 7, 2018 -COSTELLO NOTES COHEN IS NOT TELLING THE TRUTH

Costello sends an email to Citron summarizing his conversation with Cohen the previous Saturday. Costello says Cohen reports that there is nothing in the documents search that he is conducting at McDermott that causes him any concern. Costello tells Citron that is great news for Cohen if true, but Costello does not believe it. Costello notes that the SDNY does not go to these lengths without a strong belief that a crime has been committed. Costello points out that Cohen is claiming that he is not talking to anyone and was convinced that Rudy Giuliani was screwing things up. Costello confronts Cohen with reports that he was seen having lunch and drinks with Donnie Deutsch, who quoted Michael Cohen as stating that Giuliani doesn't know what he is talking about. Costello notes Cohen is clearly not telling the truth. Costello expresses concern that Cohen does not have the money to pay the legal fees and that "there are simply too many facts that he (Cohen) is not sharing with us to give (Costello) a level of comfort. Costello suggests that maybe Cohen will level with Citron because of their past relationship. Costello tells Citron that he has "a sense that we are being slow played" regarding the retainer agreement. Costello notes that Cohen "has not given us the facts." Citron replies with an email that he agrees and suggests we speak to Giuliani to see "what else could be out there."

THURSDAY-MAY 10, 2018 SUSPICIONS GROW ABOUT COHEN

Costello sends Citron an email noting that Steve Ryan has opposed the Avenatti *pro haec vice* admission which Cohen certainly knew was coming, but failed to mention to us. Costello notes this is a bad sign and believes it might be emanating from Steve Ryan who might

feel threatened by our appearance. Costello speaks to Rudy Giuliani and asks Rudy to call Steve Ryan and set up a meeting to get us all on the same page.

FRIDAY- MAY 11, 2018-NO RUSSIAN COLLUSION WITH COHEN

Costello emails Cohen telling him his opinion about Mueller sending the Cohen case to the SDNY is a determination that there was no Russian collusion involving Cohen.

TUESDAY-MAY 15, 2018- COHEN NOT TELLING THE TRUTH ABOUT PAYING LEGAL BILLS

Costello sends an email to Citron stating Cohen has failed to respond to emails and text messages. Costello says Giuliani said that he and Jay Sekulow would be meeting with Steve Ryan of McDermott. Giuliani reveals that the Trump Organization, through an insurance policy, has been paying all of McDermott Will& Emery's bills. Michael Cohen has misled us that he was paying the bills when, in fact, Michael Cohen has paid none of the legal bills. Costello is concerned that we all need to get on the same page and stop Cohen from constantly complaining that Giuliani is screwing up without saying how he is screwing up. By getting on the same page we are not following Giuliani, we are agreeing with Giuliani or correcting Giuliani when we think it is necessary. Right now Cohen will think we are taking orders from Giuliani when all we are trying to accomplish is to get everyone on the same page with the truth. Cohen may think we are taking instructions from Giuliani whenever we agree with Giuliani's approach, but it is necessary that we know what everyone is doing and saying. Costello sends Cohen an email

stating that he strongly believed that Cohen was slow playing DHC and that we thought it was coming from the McDermott firm. That assumption turned out to be in error.

Cohen responds to the slow playing email with his own email at 1:43 pm in which he says: "As I have stated in the past, when the right time comes, and now is not the right time, we will advance our conversations regarding the issue" Cohen claims that he asked Costello to "reach out " to Steve Ryan and adds "but under no circumstances do I want anyone communicating on my behalf with anyone else." Essentially this is a non-response with claims never before made and contrary to all past behavior. Costello responds there was never any request to reach out to Steve Ryan and the idea of not communicating to anyone on his behalf is contrary to the entire prior month's activity.

WEDNESDAY-MAY 16, 2018 THE FIRST GOODBYE

The next day Costello sends Cohen and email exhibiting his frustration with Cohen and stating that he will not pester Cohen, if Cohen wants to talk he knows how to reach Costello or Citron.

WEDNESDAY - MAY 23, 2018

One week later, Citron sends an email to Cohen suggesting a drink to enable Cohen to "bring us up to speed".

MEMORIAL DAY WEEKEND -FRIDAY MAY 25 THROUGH MONDAY MAY 28, 2018

SUNDAY MAY 27, 2018

COHEN SEEKS COSTELLO'S ADVICE AND STATES HE IS ON THE TEAM

On the Sunday afternoon of Memorial Day weekend, Michael Cohen calls Bob Costello's cellphone while Costello is in Westhampton. Costello details the 1 hour and 36 minute

conversation to Jeff Citron upon his return to the office on Tuesday May 29, 2018. Cohen had been reading an article about his case and he called Costello to ask for his help in determining what the SDNY could be investigating regarding Cohen. Cohen said the article said the SDNY was investigating Cohen for "acts of concealment and bank fraud".

Costello said we (DHC) were at a disadvantage because we were not signed up officially on the team. Cohen replied: "You are on the Team but to make an announcement now would generate a media storm." Costello responded that DHC had to get the Retainer signed and Cohen said he understood that. Cohen said he was having a problem with some things that Rudy was saying, because Rudy didn't know what he was talking about and Michael felt he was being hurt by Rudy trying to distance Trump from Cohen. Cohen said that Giuliani and Jay Sekulow did meet (with Ryan) and they do have a joint defense agreement, but they still were not on the same page. Costello told Cohen that he could put them all on the same page by having a meeting in New York with everyone, but that he could not do that without an official retainer. Cohen didn't disagree or agree, he went around in circles. Clearly Cohen needed someone to talk to and he felt he could not talk to Steve Ryan.

Costello told Cohen that he was speculating, because we did not have the facts or the documents that the "acts of concealment' could relate to misprision of felony. Costello said he would do some research the next day (still the holiday, Memorial Day). On the next day Costello called Cohen back and told him that he read the article that Cohen had read and that misprision of felony could be right. Costello talked to Cohen about the "bimbo eruptions" and the steps Cohen took to conceal those. Costello said the bank fraud could be false statements in opening the LLP account. Costello said if that was the case it would be a weak case. Costello told Cohen that he was "operating in the dark because he had not seen the documents nor been

told the true facts by Cohen. Costello said both of those steps had to be preceded by a signed retainer and Cohen said he knew that. Cohen again brought up the idea of meeting with Giuliani and Costello said he would only do that after a signed retainer.

WEDNESDAY -MAY 30, 2018-TRYING TO FIRM UP LEGAL RELATIONSHIP

Costello sends Cohen an email that Citron wants to have a conversation in light of the Cohen-Costello Telephone conversations over the memorial day weekend.. Costello says they need to have a frank discussion.

THURSDAY-JUNE 7, 2018- COHEN SHOWING DISTRUST OF GIULIANI

Cohen calls Costello and during the conversation Cohen argues with Costello that he (Costello) called Giuliani and Costello tells Cohen he is wrong and Costello will prove it to him by taking a snapshot of his phone records to prove that Giuliani, who was in Israel, called Costello. The discussion with Giuliani had to do with setting up a joint defense meeting.

FRIDAY -JUNE 8, 2018

Costello sends a text to Giuliani of a tweet from Michael Cohen saying "Three things cannot be long hidden, the sun, the moon and the TRUTH". Costello then asks Rudy to confirm our meeting next Thursday or Friday. Giuliani responds; "Not yet, but will let you know possibly tomorrow. Costello then texts Cohen and tells him Giuliani's response.

MONDAY- JUNE 11, 2018

Costello texts Giuliani at 11:46 am (EDT) asking if the G-7 and the Singapore Summit are slowing Giuliani's communication with the President and asks Giuliani to let him know whether they can meet Thursday or Friday so he can let Cohen know before Cohen meets with an unnamed lawyer.

TUESDAY-JUNE 12, 2018

Costello texts Giuliani asking for a response. Costello sends Cohen an email link reporting Cohen has been telling friends he expects to be arrested. Cohen responds at 3:10pm telling Costello to call him. Following the call, Costello texts Giuliani that Cohen says there is no truth to the Vanity Fair story about being arrested. Giuliani responds that he hasn't talked to the President yet.

WEDNESDAY- JUNE 13, 2018- COHEN PARANOIA AND TOUGH GUY APPEAR

Cohen exhibits paranoia by asking Costello if he (Costello) spoke to the press after the call of yesterday. The reference is to the resignation of McDermot Will & Emory. Costello says he has not spoken to the press and notes that he was told this would be announced on Friday June 15. Costello speculates that McDermott leaked it so it appears to be a resignation rather than a firing. Later that day at 3:22 pm, Costello sends an email to Cohen noting that Giuliani said he was meeting with the President that evening and that if there was anything he wanted to convey, now was the time. This was a reference to all of the vague complaints Cohen had been making without supplying any specific information. Reference is made to the fact that during an earlier phone call that day, Cohen had turned nasty on the phone and Costello told him he would give

him a pass just once because he was under stress, but that it better never happen again. Cohen apologized profusely. Before his outburst, Cohen had indicated that he was talking to someone in a boutique firm who was not ready to get involved.

THURSDAY-JUNE 14, 2018 -EVIDENCE THAT COHEN IS STARTING TO TURN

9:45 am- Costello sends Cohen a You Tube link of Giuliani discussing the possibility of Cohen cooperating with the statement: "Something you should see. Bob".

10:22 am-Costello texts Giuliani to say that he sent the link to Cohen in the hopes that it will calm him down. Costello says Cohen needs a little loving and a respect booster because he is feeling abandoned. Costello notes that he is very uncertain about the DHC relationship with Cohen and asks if Giuliani knows the name of the other lawyer Michael is talking to,

11:21am-Cohen responds to Costello's email sharing the link by responding "Since we are sharing this morning...they are again on a bad path." The article references Giuliani comments. The article also revealed an email address that turned out to be Guy Petrillo.

12:27pm- Costello then sends a text to Giuliani telling him that the other lawyer Cohen has been talking to is Guy Petrillo.

12:38pm- Costello emails Citron that the other lawyer Cohen has been talking to is Guy Petrillo.

1:02pm- Citron emails Costello that we "Will send bill and sue for fees"

1:12pm- Costello responds to Cohen's initial inquiry about why the video link was sent to him by telling Cohen to watch it for his answer, Costello tells Cohen that it seems clear to him

that Cohen is under the impression that Trump and Giuliani are trying to throw Cohen "under the bus" to use Cohen's words.

Costello advises Cohen that whatever he does in the future, flying off the handle only plays into his adversary's hand. Costello says if you really think you are not being supported by your former boss, you should make your position known. If you want things to happen, you should make your position known. If you want lawyers to refrain from saying certain things, you should make it known, Cohen is told he has the ability to make that communication but whether he exercises it is totally up to him. This email was a response to all the vague complaints that were made by Cohen-always with no specificity.

COSTELLO TELLS CITRON -LIKELY END OF COHEN REPRESENTATION

At 5:33 pm that night, Costello tells Citron in an email that the message he had just sent to Cohen was likely going to be his last conversation or written exchange with Cohen. At 11:21 pm Citron responds that Costello should call Cohen tomorrow.

FRIDAY -JUNE 15, 2018

Costello texts Giuliani information he researched on Guy Petrillo and Jim Comey.

MONDAY-JUNE 18, 2018

Costello texts Giuliani more information on the connections among Petrillo, Comey, Patrick Fitzgerald and David Kelley.

TUESDAY- JUNE 19, 2018-COHEN REACHES OUT -TELLS COSTELLO- PETRILLO RETAINED, BUT COSTELLO STILL ON TEAM, AS ONE OF THE FEW PEOPLE THAT COHEN TRUSTS

From 5:51pm to 6:22 pm -Michael Cohen calls Bob Costello on his cellphone, while Costello is still in the office. Costello has to leave by 6:30 to make the 7:01 train from Penn Station. At 7:10 pm while travelling home on the LIRR, Costello sends an email to Citron detailing the call he had received from Cohen.

"Around 6:10 tonight I received a call from Michael. Very friendly-we did the usual chit chat and then I asked why he was calling. He told me there were reports all over the internet that he had chosen a new attorney. I said I didn't know that and then looked on CNN and Fox News sites and told him there was no story. He said it's all over TV. I said okay who is it and he said Guy Petrillo and he knows who leaked it.

So I then said what is this your goodbye call to me and he said absolutely not. I have been consulting with you for almost two months. There are very few people I trust but you are one of them. I said I could not keep the arrangement the way it has been with one toe in the water. He said I want more than one attorney. I want you at the table. You have been giving me great advice and I want it to continue. I said we have to reach an arrangement and he would have to speak to you (Citron) and work out the details. He said he will call you Jeff on your cellphone tomorrow morning.

He asked me to communicate with Rudy and have him tell the President that all of these stories about cooperating are bullshit. To tell him that he is not talking to any reporters. He is not talking to an(y) friends. These stories from sources are fiction.

I believe the real issue for Cohen is money. Who is going to pay for these lawyers. He (Cohen) said he was working on a few things but he did not say what. There are more details I will tell you when we speak. I am speaking to Rudy at 8 when I get off the LIRR. I will call you after that.

After exiting the train, Costello called Giuliani and Citron and told them the substance of the Michael Cohen phone call.

11:04pm- Costello sends Citron a link to a story in "The Hill" that "Cohen tells associates legal fees bankrupting him-wants Trump to pay"

WEDNESDAY-JUNE 20, 2018

10:41 am-Costello sends Cohen a NY Times link about his hiring of Petrillo. Costello notes that exactly like him, Petrillo was consulting with Cohen for weeks, before he was "officially retained." Costello notes that is exactly the same position he was in and suggests that Cohen told that to the NY Times.

2:53pm- Costello sends Citron links that say Cohen wants Trump to pay his legal bills and Cohen getting desperate President Trump should be worried.

7:06pm- Costello sends email to Citron- no call from Cohen by 7pm-not a good sign.

THE TOM ARNOLD INCIDENT-

FRIDAY JUNE 22, 2018

At 1:26 pm, Costello is having lunch with a friend at Bobby Van's Restaurant when he receives a call from Rudy Giuliani. Giuliani asks Costello if he knows about the Tom Arnold incident. Costello says no and Giuliani says I will send you a link. Giuliani tells Costello that the President does not know what to make of this story and wants Costello to contact Cohen to finds out what is going on because the story sounds crazy to the President.

2:46pm- Costello sends an email to Citron, telling him about the Tom Arnold incident where Arnold claimed that: "Me and Michael Cohen are going to bring Trump down". Costello explains to Citron that he had explained to Rudy what DHC's position was with Cohen and that Cohen was supposed to call us back on the 20th but had not. Based on the stories on the internet, Rudy asked us to find out if Cohen is asking for legal fees to be paid because Giuliani said: "as

far as I know, we did negotiate a discount with McDermott Will and Steve Ryan, but Michael doesn't owe any legal fees."

Costello wants Citron's input quickly "because Rudy and you know who are waiting for a reply."

2:55pm- Costello texts Cohen and says: "Tom Arnold's story in www.thehill.com has drawn the attention of my friends. They did not see Arnold's later clarification. They asked me to contact you and have a chat about a few matters. Call me when you can on the cell or in my office at 646-428-3238"

5:26pm- Costello sends a text to Rudy Giuliani which reads: "Rudy- I sent Michael a detailed text at 2:56 and I called his cell at 4:09pm. When/if I hear from him I will let you know. I suppose you saw the retraction issued by Tom Arnold and Michael thanking him for "correcting" the record."

9:56 pm- Cohen texts Costello: "Finished document review and then met with counsel. Arrived home at 8:30 and just took wife to get dinner. Let's speak tomorrow."
Costello (who was playing in a golf tournament the next day) responds; "Let's talk after noon. Make sure you see Tom Arnold on CNN. You can likely see it on YouTube." Cohen replies: "I did. Did you see my tweet?"

Cohen then sent Costello a series of Tweet messages between himself and Tom Arnold. Costello texts Giuliani and tells him that Tom Arnold admits his claims are lies. Costello tells Giuliani: "Make sure your client knows this. He will sleep better. I will follow up tomorrow afternoon."

SATURDAY AFTERNOON- JUNE 23, 2018

4:48pm- Cohen calls Costello and explains that the Tom Arnold incident is all created by Tom Arnold to promote some TV series that Arnold was trying to sell to the networks. Cohen is very agitated on the phone that tom Arnold just made everything up. Cohen is very concerned about the claim that his wife said:"F…k Trump" Cohen says his wife was never there and Cohen puts his son on the phone with Costello to corroborate that his mother was not with them, she was upstairs in the suite. Cohen makes it a point to say you need to meet with Giuliani and explain all this so he can tell the President. Cohen says that he will send Costello all of the tweet and text messages between himself and Tom Arnold that will show that Arnold was lying about everything. Costello says send them and he will meet with Giuliani. Cohen then goes into a long and rambling discourse on a number of subjects that he wants conveyed to Giuliani. Costello writes a memo to the file.

8:28 pm- Costello texts Rudy Giuliani and asks for an email address "that I can use to send you a detailed report of my 90 minute discussion with Michael about a wide variety of subjects. I have been asked to pass these Cohen thoughts along." Giuliani replies with an email address.

THURSDAY - JUNE 28, 2018 - COSTELLO AND GIULIANI MEET FOR LUNCH

Having decided not to email the memorandum, Costello brings it with him when he meets Giuliani in the Havana Club at the top of 666 Fifth Avenue. Costello and Giuliani have lunch by themselves while Giuliani's two assistants are having lunch at another table. Costello explains to Giuliani that Cohen's phone conversations are rambling and that he often skips from one topic to another and then back to the original topic so in order to make sense of all of his remarks Costello put them in a memo. Cohen asked Costello to meet with Giuliani and convey all of the

thoughts contained in the memo. Costello then read the memo to Giuliani while Rudy ate. Rudy would occasionally interject follow up questions to statements contained in the memo.

4:46 pm-Costello emails Cohen to say that he spoke to Giuliani about why they haven't brought an action to challenge Mueller his investigation and the Michael Cohen referral. Additional commentary about tom Arnold continuing to make false statements about Cohen

MONDAY JULY 2, 2018- COHEN APPEARS ON GOOD MORNING AMERICA

9:23 am Giuliani texts Costello: "Any insight on Cohen"

10:29- Costello emails Giuliani a link to the Cohen/ Stephanopolous interview.

10:42 Costello texts Giuliani saying: " I would not be surprised to find out that Lanny Davis is proceeding pro se or that someone else is funding Davis, like Clinton, Soros etc. Check with the D &O policy people, to see if a claim is being submitted on behalf of Cohen."(Cohen had indicated he was going to submit such a claim for Petrillo and wanted Trump to not oppose it.)

THURSDAY-JULY 5, 2018 - COHEN OFFICIALLY ANNOUNCES HIRING LANNY DAVIS

11:07 pm -Costello sends Giuliani an email with NY Post link "Cohen hires Clinton Pal as his lawyer amid legal troubles" with a comment: "Looks like this seals the deal. The Comey-Clinton Team"

FRIDAY-JULY6, 2018

12:13pm- Costello sends Cohen an email:

"With the recent announcement by Lannie Davis, it is clear to us that you have chosen a different path. You have consulted with us since shortly after April 9th (17). While you continuously stated we were part of the team, recent events have made it clear that you were consulting with several different counsels.

With the public pronouncements of the team you have selected, you have clearly signaled the path you will take. We will not be involved in that journey and therefore Jeff Citron asked me to let you know that he will be sending you a bill for services rendered.

I hope you make some smart choices."

12:19 pm - Citron sent an email to Cohen:

"Michael, it appears we have been excluded from your TEAM as we have been totally in the dark as per recent developments. Obviously, we cannot advise if we do not know all the facts or your real thinking. Again, we wish you the best and hope that your new defense team, if needed, will get you the best outcome."

DHC SENDS COHEN A BILL FOR SERVICES RENDERED-COHEN RESPONDS WITH FALSE STATEMENTS TO AVOID PAYING

TUESDAY -JULY 17, 2018

2:47 PM- After receiving a legal bill, Cohen sends an email to the DHC Accounts Receivable Manager with a cc to Citron and Costello stating:

" Jeff and Bob.

At no time were you retained and any actions taken by Bob were all pursuant to calls he made me. There will be no payment made to your firm."

3:55pm-Costello responds:

"Michael- this is an unfortunate reply because it simply is not true. Costello then gives factual proof that Cohen's statements are untrue. Costello adds: "I understand the pressure, but I will not allow you to make up false statements about the firm's relationship with you."

4:12pm- Cohen responds with more false claims:

"I told you from day one that the ultimate decision would be Guy Petrillo and that I was not in a position to take on additional counsel. Hence why I never signed a retainer.

As to Rudy, I disagree with your interpretation and also have the text messages and e-mails. I ask that you cease sending me these communications."

5:01 pm -Costello emails Cohen:

"Your statement about Guy Petrillo is not accurate. You never mentioned Guy Petrillo's name until you called me after it was publicly announced that you had retained Petrillo. You never stated that you were not in position to take on additional counsel, in fact, when you called me to say that Petrillo was retained I joked and asked you if this was your good-bye call, your version of a "Dear John Letter" and your response was absolutely not. I often wrote memos to the file or memos to Jeff Citron memorializing our conversations particularly with respect to "our being on the team" which was your phraseology, not mine. The only correct statement you made is that you did not sign a retainer, but that does not mean that you did not incur a quantum meruit obligation. You likely recall that I specifically asked you if you were simply "slow playing" us and you denied that.

Your quote: "As to Rudy, I disagree with your interpretation" is confusing. There is nothing to disagree about. You specifically authorized me to contact Rudy on your behalf. The words "specifically authorized" were mine- a direct quote. Read the emails and text messages and you will see I am right, I will cease sending you any communications provided you cease make(ing) false statements in your communications to us.

You can take the position that you will not pay and then this firm will do what it has to do."

7:00pm -Cohen responds:

"This is my last and final communication to you. You are just wrong in your depiction. Plain and simple. So as you wish."

COHEN INVENTS THE "SELLING RUDY" NARRATIVE

8:59 pm- Cohen sends another last and final message:

"Jeff,

This is the last time I will discuss this. You both came to me with the prospect of representing me and because of Bob's relationship to Rudy. I was very clear that I am not in a position to take on multiple attorneys and did not engage your firm when you took out the retainer agreement. Bob continued to call me with advice and thoughts…which I appreciated. as you also recall, I refused to provide the name of the attorney who was going to lead and handle the matter for me, but, if he agreed, we would resume conversation of your firm joining the team. Mr. Petrillo did not believe it would be a good fit and I advised you accordingly. End. Period."

WEDNESDAY- JULY 18, 2018

9:03 am - Costello emails Citron: "We cannot let the false statements stand. Let's talk later this morning."

1:02 pm - Costello emails Cohen:

"Michael,

Jeff asked me to respond to your latest email to him with a copy to me. Unfortunately you persist in making claims that are simply not true and therefore you force me to address them.

Initially, Jeff reached out to you to see if we could be of help. Then at your written request, Jeff and I met you at the Regency Hotel in a conference room. That was our initial meeting and we did not charge you for that time. Additionally you came to our offices at 605 Third Avenue and met with both of us in the conference room on the 15th Floor.

The initial meeting was not brought about because of my relationship to Rudy, but rather because I had been Deputy Chief of the Criminal Division of the office that was investigating you. Rudy Giuliani was not even representing Donald Trump at that time. Giuliani only began to represent Trump on April 19th or ten days after the execution of the search warrant. It was after that time that I disclosed to you that I had a long standing relationship with Rudy that could only inure to your benefit.

Your claim that you were "very clear that (you were) not in a position to take on multiple attorneys" is not only untrue but is borne out by the fact that you now are represented by Guy Petrillo's firm in New York and Lanny Davis in Washington D.C. You consistently said you were forming a team and that we were part of the team, but you did not identify the other lawyer that you were also consulting.

The claim that "Bob continued to call me" is also misleading. You continued to solicit advice and continued to express the need to convey to the President that the media reporting of your cooperation was untrue. Your language was actually much more explicit. I was not the one who initiated the call to my cell phone while I was in Westhampton on Sunday, May 27, 2018. In that hour and forty five minute discussion, you solicited advice on a number of subjects but one of which will certainly stand out in your memory. You were trying to figure out what the US Attorney could be thinking of charging you with because they had referred to "acts of concealment" in legal papers they had filed. Our records will show you that in addition to the Sunday discussion, I followed up on Monday and sent you additional information.

Then there was your Tom Arnold fiasco. You wanted to convey to the President that basically everything Tom Arnold said was a lie and you even sent me the text messages between you and Tom Arnold which proved your point because you wanted that conveyed to the President. I did what you asked.

As to your claim that you "refused to provide the name of the attorney who was going to lead", that is only partially true. You did mention that you were also consulting with another attorney and you did not provide us with the name. Likewise you informed us that you had not told that other attorney our name. You continuously said you were setting up a team; you never said the other attorney was the lead; you consistently stated that you wanted to have more than one lawyer at the table, as you phrased it, and you continuously said we were "on the team."

Your statement "if he (Petrillo) agreed, we would resume conversation of your firm joining the team. Mr. Petrillo did not believe it would be a good fit and I advised you accordingly" is stunningly untrue. Petrillo's name was never revealed to me until his retention was publicly announced and then on June 19, 2018 when you called me at 6:10pm in the office to discuss the media story. I wrote a memo to Jeff about our conversation as soon as I hung up the phone with you. That memo reads in pertinent part:

"Around 6:10 tonight I received a call from Michael. Very friendly-we did the usual chit chat and then I asked why he was calling. He told me there were reports all over the internet that he had chosen a new attorney. I said I didn't know that and then looked on CNN and Fox News sites and told him there was no story. He said it's all over TV. I said okay who is it and he said Guy Petrillo and he knows who leaked it.

So I then said what is this your goodbye call to me and he said absolutely not. I have been consulting with you for almost two months. There are very few people I trust but you are one of them. I said I could not keep the arrangement the way it has been with one toe in the water. He said I want more than one attorney. I want you at the table. You have been giving me great advice and I want it to continue. I said that we have to reach an arrangement and that he would have to speak to you (Jeff Citron) and work out the details. He said he will call you Jeff on your cellphone tomorrow morning.

He asked me to communicate with Rudy and have him tell the President that all of these stories about cooperating are bullshit. To tell him that he is not talking to any reporters. He is not talking to any friends. These stories from sources are fiction."

We have always been here to assist you but you have now clearly chosen a different path. It is your right to move on and make any decisions you wish without regard to whether we think they do not serve your own interests, but you need to pay for our services.

We are aware that your McDermott Will & Emery bills were not paid by you but were paid by third parties. Your recent claim that you cannot pay for more than one lawyer is belied by your hiring Lanny Davis after you had already retained Guy Petrillo. You are simply contradicting yourself to try to avoid a clear obligation. It should be clear to you by now that we will not allow you to put any false information in the record, so do the right thing and pay your bill and move on with your life on the path you have now chosen."

1:43 pm - Cohen emails Costello:

Bob,

Your recollection is extremely inaccurate and self serving. I will not waste either of our time refuting what you already know is disingenuous; specifically your peddling of your relationship with Rudy as a "back door" channel to the WH... something I told you I did not want or need. Any further questions, comments or concerns, I ask you to contact Mr. Petrillo. Thank you.

2:23 pm - Costello emails Cohen:

Faced with the fact that Giuliani was not representing Trump when we first met Cohen, he continues to lie to suit his own purposes. Undoubtedly he will do that in the future with respect to Trump and his associates.

WEDNESDAY- AUGUST 8, 2018

9:15 am - Cohen emails Batista/Citron/Costello:

Gentlemen,

Please cease contacting me as you do not and have never represented me in this or any matter. Your interest and offers to become a part of the team and to serve as a contact was subject to existing counsel, Guy Petrillo's (cc'd) approval; which was denied.

2:14 pm - Costello emails Citron:

What should be done with this guy. He keeps on making false statements:

"Your interest and offers to become part of the team and to serve as a contact was subject to existing counsel, Guy Petrillo's (cc'd) approval; which was denied." This statement is false in the following ways:1. We didn't offer to become "part of the team"- Michael Cohen said numerous times we were part of the team; 2. When you and I first met with Michael at the Regency, Rudy Giuliani was not yet representing Trump-that came later; 3. When Giuliani announced he was representing Trump, I had a conversation with Michael in which he sated he would be "honored" to have us part of his team and I requested and he gave me specific authority to reach out to Rudy Giuliani and to tell him that we were part of the team representing Michael Cohen;4. Guy Petrillo's name was never mentioned to me until it was publicly announced that he was representing Cohen; 5.He says that Petrillo is "cc'd" on the email to us , but he is not; 5. There was never any discussion that any other counsel had approval authority over us or that any other counsel was going to be lead counsel in fact Michael told us in the 15th Floor Conference room that he wanted me on TV defending his position.

Do we let the false statements stand unchallenged or do we challenge them and tell him that if he wants to not hear from us he should simply pay the bill but that if he refuses and does not pay the bill we will bring an arbitration against him? Obviously this is your call.

10:55 pm - Costello emails Cohen:

Michael,

If you want to stop the contact then you should stop making these self serving claims that are contrary to the facts. Your statement below is littered with false claims and I told you I would not allow you to make these false claims unchallenged. It was you that told us we were on the team on multiple occasions. We were giving you advice before Giuliani was representing Trump. You never mentioned Petrillo's name until you called me to say it was all over the internet. You told me that you never mentioned my name to Petrillo in that same conversation- was that a lie? We did not offer to serve as a contact but when Giuliani began to represent Trump I told you I had a great history with him and you specifically authorized me to contact him. There was never any discussion about Guy Petrillo in any way until you called me.

Let's stop this back and forth. You have two choices. You can pay your bill or not. If you do not, I am sure Jeff Citron and the Firm will take whatever steps are necessary.

WEDNESDAY- AUGUST 22, 2018

9:49 am - Costello emails Citron:

https://www.justice.gov/usao-sdny/pr/michael-cohen-pleads-guilty-manhattan-federal-court-eight-counts-including-criminal-tax

11:17 am - Costello emails Citron:

https://www.gofundme.com/hqjupj-michael-cohen-truth-fund

This is priceless-Bob Costello

https://www.cnn.com/videos/politics/2018/08/22/lanny-davis-michael-cohen-trump-russia-hacking-new-day-vpx.cnn

TUESDAY- DECEMBER 4, 2018

2:04 pm - Costello emails Citron:

https://www.cnn.com/videos/politics/2018/08/22/lanny-davis-michael-cohen-trump-russia-hacking-new-day-vpx.cnn

This Lanny Davis is totally full of shit. This is contrary to what Michael Cohen told me that he had nothing on The President.

Chair JORDAN. We will stop there, Mr. Costello. We will get back to you during the questions.

Mr. COSTELLO. Did I run out of my time already?

Chair JORDAN. A little bit. A little bit. A little bit.

Mr. COSTELLO. I had eight minutes. This says I have 1:38 to go or am I 1:38 over?

Ms. PLASKETT. One thirty-eight over.

Mr. COSTELLO. I am sorry.

Chair JORDAN. That is fine. That is fine.

Ms. PLASKETT. Excuse me, Mr. Chair. Point of order.

Chair JORDAN. Yes.

Ms. PLASKETT. Will the witnesses all be given seven to eight minutes? What is that?

Chair JORDAN. Yes.

Ms. PLASKETT. It's usually five. So, we didn't know that in advance to be able to tell the witness—

Chair JORDAN. We are going to give a little extra time. I gave you 14—

Ms. PLASKETT. She didn't have time to prepare 8 minutes of testimony, opening statement.

Chair JORDAN. Well, she's a smart lawyer. She can probably ad lib for a few minutes, if she would like, but that is totally up to her.

Ms. PLASKETT. Well, we would like it to be something more than ad lib, as we just heard testifying—

Chair JORDAN. We—listened to you talk for 14 minutes and 14—

Ms. PLASKETT. That's called an opening statement. I'm allowed to talk as long as I want.

Chair JORDAN. I know, and I was fine. I allowed you go 14 minutes and 14 seconds.

Ms. PLASKETT. You can. You have to let me go for 14 minutes, if that's what I want to do.

Chair JORDAN. Exactly, exactly.

Ms. PLASKETT. You should let us know—

Chair JORDAN. Mr. Trusty, you are recognized for your opening statement.

Ms. PLASKETT. The courtesy of advance notice would have been helpful.

STATEMENT OF JAMES TRUSTY

Mr. TRUSTY. Thank you, Mr. Chair. My name is Jim Trusty. I've been an attorney for 35 years. I spent my first 20 as a local and Federal prosecutor in Maryland, and in both roles I was fortunate enough to be involved in some fairly complex or weighty prosecutions.

It starts with the usual misdemeanors and routine felonies, but I was able to do a "no-body" child murder case, as well as numerous RICO cases against MS–13. I personally led three different penalty prosecutions, as a Federal prosecutor.

In 2011, I moved over to D.C.—against my better judgment maybe—but I came over to the Department to work at Main Justice with some other folks that I knew from Maryland and became the Chief of the Organized Crime and Gang Section, which was a fascinating job that I enjoyed for about 7½ years.

I was able to manage a group of prosecutors that handled international, national, and regional organized crime cases against everything from MS–13 to Barrio Azteca, the Mafia, and international white-collar conspiracies.

I was also during this time a Senior Member of the Attorney General's Death Penalty Review Committee, helping the Attorney General decide whether to pursue the death penalty against folks like the Boston Marathon Bomber and the Charleston church shooter, among other numerous lower-profile cases.

If my memory serves, I served under seven different Attorney Generals. In 2017, I left for Ifrah Law, a boutique litigation shop, where I've represented everything from international gaming institutions to white-collar executives, to human trafficking victims, and in 2022, for about a one-year period, President Donald J. Trump.

On August 8, 2022, I became deeply involved in the Mar-a-Lago case involving President Trump, and I've given significant detail in the written statement, which I can't even begin to full broach in a summary, but I'll try to hit some highlights.

I wrote that statement. I took the time to write that statement because I think it's important for you and for the American people to have specific evidence, to have details to support the conclusion that the Department of Justice is acting in a weaponized fashion when it comes to a candidate for the Presidency of the United States; this is, in fact, lawfare in its rawest form.

The Mar-a-Lago case is plagued with singular moments where prosecutors took incredibly aggressive, and I would say, prejudicial steps—the likes of which I had never seen in 35 years of practice on both sides of the aisle.

The politicization, actually, began with the National Archives and Records Administration, whose Director ended up making a historic and first-time criminal referral, based on his stated concern—his overstated concern—that he had received documents from President Trump that were, in fact, marked classified within 15 boxes given to him in January 2022.

The reality is every modern-day President has also turned over boxes or groups of materials that included documents marked classified, but in this case NARA acted alarmed. Recent litigation in the Southern District of Florida has suggested that, in fact, the White House helped spur this referral on to the Department of Justice.

Once in the hands of the Department of Justice, the lead prosecutor reportedly, according to *The Washington Post*, fought with the FBI to immediately jump to the perch of doing a criminal search warrant at Mar-a-Lago. He was talked out of that, apparently, in a heated conversation and still relied on a criminal enforcement tool, which is a grand jury subpoena, to begin this process of gathering documents by force and by use of criminal sanction.

For brevity's sake, I'm just going to highlight three examples of what I think are singular treatment of President Trump that I document in my written submission.

The first is the abuse of process in grand jury. Again, grand jury is usually fairly opaque to the defense side. We don't see every-

thing that happens there, but we had some glimpses of the behavior, the threats, and the conduct of prosecutors.

The one I would highlight today was the presentation of Tim Parlatore, a former Trump lawyer as well, a friend of mine, who went into grand jury and was asked by the Department of Justice attorney I think 48 times—I might be off by two or three—but 48 times he was asked questions that clearly led to an invocation of attorney-client privilege.

Those questions are unethical on their face. A prosecutor should not be in front of a grand jury purposefully eliciting a known privilege, but they were comfortable with this in this setting in Washington, DC, that we are in.

After 48 times, including Mr. Parlatore telling the prosecutor at times, "What you're doing is unethical. You need to stop," she said, "Well, if your client is so cooperative, why won't he just waive his privilege?" Now, that's kind of a nice political point or a layman's point, but for lawyers and for people that worked in the Department of Justice, they know that is flat-out unethical. The idea that you would try to draw a negative inference from a legitimate invocation of counsel, is an outrageous moment. That's just one that we had visibility into.

Second, I would point to Jack Smith's near obsession with having a, quote, "speedy trial" in the January 6th case. Now, the speedy trial right is derived, historically, from a defendant who is incarcerated, who has the pyrrhic victory of going to trial a year or two later and being acquitted. The question, of course, becomes, "Well, what do I do with that free time? I just served for a year or two."

That's why we have a constitutional and statutory speedy trial right. It is invoked by defendants or waived defendants every day in Federal Court. What you don't see every day in the Federal Court is a Federal prosecutor for a nonincarcerated defendant insisting on having a speedy trial, when the Department of Justice, in fact, has its own guidelines to avoid charging decisions and trials on the eve of elections.

Instead, we had Jack Smith pushing with all his might, pushing the Supreme Court to expedite a hearing that was still in front of the D.C. Court of Appeals, and only angrily losing that battle, apparently, when the Supreme Court took up the question of immunity.

Third, I would point out from my summary is something that came from a respected lawyer in Washington, DC, who represented Walt Nauta, who I think the Department of Justice viewed as kind of the "keys to the kingdom" in their investigation into President Trump, a person that they were intent on flipping at all costs, and eventually charged.

This lawyer was the subject of an extortionate ploy. I have no other way to phrase it than that. He was brought in very early into his representation to the Department of Justice, where he met with Jay Bratt and about five or six other prosecutors in the room.

Mr. Bratt had a folder open that appeared to be information not about Mr. Nauta, but about Mr. Woodward, the lawyer. He looked at this, according to Mr. Woodward, and said, "I see that you have a pending application for judgeship with President Biden. I don't

take you to be a Trump lawyer. I would hate to see you blow it. You need to flip Walt Nauta against President Trump."

That sequence of events, which has not been fully investigated to my knowledge or fully litigated, but has been presented and has been publicized, is a devastating indictment of the willingness of a Department of Justice attorney—with others around him—to engage in, essentially, extortion or bribery, or whatever you want to call it, or obstruction. The enforcers of obstruction, in fact, were willing to obstruct justice because of an "ends justify the means" mentality.

So, that brings me to just talk for a couple of minutes about what I think the cost of lawfare is and really why I'm here, which is not for any sort of personal gain or political moment for me. Lawfare in its form with the Department of Justice in criminal cases is an effort to manipulate law as a way of targeting an individual who's despised by the user.

Justice and the concept of rule of law rely on honest cops and principled prosecutors to follow evidence and to make impartial determinations as to accountability. It is evidence-driven, not animus-driven. That's why I'm here.

[The prepared statement of Mr. Trusty follows:]

Testimony of James Trusty

My name is Jim Trusty. I have been an attorney for 35 years. I started as an Assistant State's Attorney in Montgomery County, Maryland for ten years, and then I served as an Assistant U.S. Attorney in Greenbelt, Maryland for another ten years. In both roles, I was fortunate to be involved in some very challenging and high stakes prosecutions. This ranged from a "no-body" murder prosecution to a series of RICO prosecutions of MS-13 gang members. I prosecuted everything from vulnerable adult abuse to drunk driving to murders, and I led three different death penalty trials.

In 2009, I accepted a Deputy position at the fledgling Gang Unit of the Department of Justice. Within about 18 months, I became the Chief of the DOJ Organized Crime and Gang Section, where I ran the Section for about six years. In that capacity, I supervised line prosecutors handling regional, national and international gang cases, Mafia prosecutions, and international white-collar conspiracies. We pursued criminal enterprises like MS-13, Aryan Brotherhood, Bloods, Barrio Azteca, Las Zetas, and others across the country. I was a senior member of the Attorney General's Death Penalty Review Committee, helping determine whether the death penalty should be sought in cases such as the Boston Marathon Bomber and the Charleston Church shooter, but also numerous lower profile matters. I was also privy to the consideration and development of DOJ policies and criminal justice legislation, and I would routinely be involved in discussing some of the Department's biggest criminal investigations. I regularly had a role in the FBI undercover review process and ATF's undercover process. I hired applicants for my Section as well as the DOJ's Honors Program, and I served under seven different Attorney Generals, if my memory serves.

I left the Department in 2017 to join a boutique litigation practice around the corner from the White House, called Ifrah Law. I have represented a variety of clients in primarily criminal, but some civil, matters. My clients include professional athletes, human trafficking victims, white-collar defendants in varying industries, and for a one-year period, President Donald J. Trump.[1]

Long before representing President Trump, I considered myself someone devoted to our criminal justice system. I was, and am, proud of the important work I did as a prosecutor. One lesson that was deeply instilled in me by the State's Attorney who hired me, Andy Sonner, was the importance of fairness and the need to wield power with grace. I took those fundamental lessons to heart and as a prosecutor I tried, at least, to recognize the power disparity and the enormous impact investigation and accusation—much less prosecution—can have on people.

As a prosecutor, I felt strongly that I represented the community, whether a county or a country, and that I had pursued a noble calling. Even after leaving the Department of Justice, I worried that I would miss the moral clarity of prosecution and that I might struggle to represent a client, rather than simply following my conscience. I had also come to realize over the years that there were people attracted to prosecution for the wrong

[1] As with any former client, I will not discuss confidential matters or violate statutory rules of secrecy.

reasons—ego, political ambition, power, self-righteousness—but I considered them a small minority at most, a rare exception felt more accurate.

I have not completely changed my view of prosecutors. I still have good friends that are career prosecutors at the state and federal level. So, make no mistake from my comments—I believe that there are many decent, gracious, fair-minded and talented lawyers who populate prosecutor offices around this country. They have much to be proud of, and citizens in their communities have much to be thankful for from their service. That said, I have seen something happening within DOJ, as well as New York and Georgia, which reflects a seismic shift in the criminal justice system, and one that may cause severe damage to the criminal justice system, the Rule of Law, and to the democratic process in this country.

The Differential Treatment of President Trump

On August 8, 2022, I learned that the FBI was at Mar-a-Lago, executing a search warrant. As with any time that a client is subjected to a search warrant, I wanted to know who the overseeing prosecutor was (National Security Division Supervisor Jay Bratt) and whether we might be able to see the affidavit in support of the search warrant (to this day, it still remains partially redacted). The fact that a search warrant was being executed by FBI Agents was immediately a historic and troubling circumstance.

Over the months that followed that raid, I would learn a lot about the relatively haphazard way classified document retrieval is handled at the White House. I learned that the problem of "overclassification" was a real one – with NSC cheat sheets for avoiding social blunders with foreign dignitaries remaining classified as if they were war gaming results from a desktop war with China. I would also learn that the entire process of archiving was a non-criminal, negotiable, and long-term process where archivists showed great deference to FPOTUS and his decision regarding sharing documents.

Shortly after President Biden's exposure for knowingly possessing classified materials in multiple unsecure locations, our legal team wrote to the Chairman of the House Permanent Select Committee on Intelligence. We called for a top-to-bottom review of the entire "pack out" process for departing administrations, and that this process should be examined by the intelligence community with an eye towards regularity and avoiding spillage, rather than conducting criminal cases. Our letter was factual and apolitical, pointing out that the treatment of President Trump was unlike that of any other President in our history.

The Political Underpinnings of the Classified Document Prosecution

The politicized treatment actually began with the National Archives and Records Administration ("NARA") whose Director publicly took offense that President Trump was departing Washington, D.C. with boxes of documents. Negotiations took place and eventually President Trump authorized the release of 15 boxes of materials to NARA. As was later acknowledged by NARA to be true in the case of every modern-day presidency, those boxes contained some documents marked as classified. The reaction of NARA's

leadership to this "shocking" discovery was apparently to make a "criminal referral" to DOJ, for the first time in NARA's history.

DOJ's decision to use criminal enforcement tools in an exaggerated dispute about document retention was unique and simply wrong. I have personally seen the September 11, 2018 letter from representatives of the Barack Obama Foundation to the Director of NARA in which President Obama's representatives casually refer to their post-Presidency possession of a vast quantity of documents—specifically including classified ones. The letter pledges to digitize records held at an Illinois facility over almost a three-year period and then transfer those records to NARA. The Obama Foundation pledged to "transfer" up to $3,300,000 to the National Archives Trust Fund "to support the move of classified and unclassified Obama Presidential records...from Hoffman Estates to NARA-controlled facilities," and the letter memorializes having already sent a $300,000 payment in August of 2018. The implications of the letter are somewhat staggering – NARA was willing to wait for the still non-existent Obama digitized library to be completed while innumerable classified documents were outside of their control. Shady financial "transfers" notwithstanding, the agreement is also instructive in that it shows the typical deference displayed by NARA to FPOTUS. The agreement also demonstrates the norm—that negotiations with former administrations can stretch for years, as they have with various presidents, and that no Director at NARA would view lengthy negotiations as triggering a possible criminal case.

That model of sluggish cooperation between FPOTUS and NARA is perfectly reflective of the Presidential Records Act ("PRA") and the position of DOJ in a prior litigated dispute regarding presidential records. Without trying to write a treatise on the PRA for lawmakers who probably have familiarity with it, I will just take out two important components for summary. The PRA calls for collaboration between former Presidents and NARA in properly preserving presidential records for posterity. It does not include criminal penalties. It makes no distinction between classified materials and non-classified ones, but simply Presidential and Personal. It is a statutory framework that specifically relates to presidents (and vice presidents), and as such I believe that affords a measure of protection to former Presidents who possess classified documents but who have not used them for nefarious purposes like those criminalized in the Espionage Act.

But my focus on the PRA aspect is directed towards DOJ and its position in the case of *Judicial Watch, Inc. v. National Archives and Records Administration*, 845 F. Supp. 2d 288, 291 (D.D.C. 2012). In that case, President Clinton retained audio recordings from his time as President in a sock drawer, rather than turning them over to NARA. This was deemed to effectively serve as a characterization as "personal" by President Clinton. When the District of Columbia District Court Judge queried the DOJ attorney about the possibility of a former President wrongly classifying material as personal, the DOJ attorney took the position that PRA disputes favored the FPOTUS in making those determinations, and that if NARA disagreed with that categorization its only relief was to civilly sue in Washington, D.C. The same DOJ, then, conceded in

President Clinton's case that a former President had authority to hold on to anything they deemed "personal" and that no criminal penalties ensue if they are wrong.

DOJ Criminalization

In President Trump's case, however, NARA and DOJ took a distinct departure from history. Prior to the Mar-a-Lago case, the issuance of a subpoena to a former President was considered a major escalation and a clear signal that criminal investigation was afoot. The decision to issue a subpoena to President Trump for documents with classification markings was an aggressive move. In typical cases, a document subpoena creates a dialogue between defense counsel and the government, with extended deadlines, rolling production, and both parties working toward a mutual moment deemed "full compliance." Here, however, DOJ again departed from the norm. Evan Corcoran asked for more time and initially received it from Mr. Bratt. But Mr. Bratt then inexplicably reneged on that agreement, disallowing Corcoran from doing a deeper dive for responsive materials.

As I have read from the *Washington Post*,[2] not only did Mr. Bratt shut down the typical compliance process without explanation, but behind the scenes he had been fighting with the FBI to block any further cooperation with Mr. Corcoran. According to one news report, Mr. Bratt met with FBI officials who "repeatedly urged" that the FBI should seek to negotiate a consensual search, rather than conducting a surprise search. According to the *Post,* "Tempers ran high in the meeting. Bratt raised his voice at times and stressed to the FBI agents that the time for trusting Trump and his lawyer was over." The same article reported that Mr. Bratt urged the use of a search warrant as early as *May* 2022, which speaks volumes about his desire to use criminal investigative tools in the unprecedented and heavy-handed fashion that followed.

The Execution of a Search Warrant at Mar-a-Lago

On August 8, 2022, DOJ and the FBI chose to pursue executing a search warrant, even going so far as to request shutting off CCTV cameras, for "agent safety" at a facility already teeming with Secret Service agents and security personnel. The FBI had been given wide range to take documents, and they took advantage of that general permission slip by taking items like President Trump's passport, among other things. One detail of that process has been overlooked in its importance – the inventory. Federal Rule of Criminal Procedure 35 requires the government to provide the target and issuing judge with a specific inventory of seized items. In this case, the initial inventory was spectacularly vague in most instances, referring to "documents" instead of providing any substance. The exception to that vagueness was several entries that specified "Pardon packages" for several high-profile criminal defendants. I find it quite interesting that the

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[2] Carol D. Leonnig et al., "Showdown before the raid: FBI agents and prosecutors argued over Trump," *The Washington Post* (March 1, 2023), https://www.washingtonpost.com/national-security/2023/03/01/fbi-dispute-trump-mar-a-lago-raid/.

only documents with specificity fell into that category, and it feeds my suspicion that there was a greater interest in getting the camel's nose under the Mar-a-Lago tent—to fuel *any* form of justification for the historic action—than collecting various classified documents. When forced by a judge to provide a more detailed inventory, the government chose to insert "documents belonging to the United States of America" or words to that effect. This was a thinly veiled effort to swap in legal conclusions and emphasize to the public that President Trump had "wrongly" held onto documents in the face of unreasonable demands from NARA and DOJ.

The DOJ Departure from Due Process Protections at Press Conferences

In the end, Attorney General Garland endorsed Mr. Bratt's conduct by approving DOJ's raid and then, on August 11, holding an unethical press conference that failed to mention President Trump's offer to cooperate regarding the return of documents. The Attorney General expressed a desire to unseal the warrant and the inventory. This was an unprecedented position, and one that flies in the face of prosecutorial ethics. Mr. Garland wanted to show the public that a judge had permitted the raid (warrant) and he sought to justify the decision by unsealing the inventory, which would serve the "I told you so" purpose of saying the raid led to the seizure of important materials. He had no interest in unsealing the supporting evidence contained in the affidavit, which remains partially sealed to this day. In my 35 years as an attorney, I have never seen a prosecutor at any level hold a press conference to justify a search warrant, particularly in the case of an uncharged target.

As an aside, it seems Manhattan District Attorney Alvin Bragg may have learned an unethical trick from that 2022 press conference. When Mr. Bragg indicted President Trump for the ongoing spectacle of the current fraud trial the indictment was a "bare bone" charging document that simply described the statutory elements and specified which record entries were supposedly felonies. He also unveiled a "statement of the offense," bearing only his signature (it was not a finding by the Grand Jury) to particularize his theory of President Trump's guilt. In effect, Mr. Bragg flouted prosecutorial ethics by creating a false entry into the public record for the purpose of justifying another "creative" prosecution that would impact the presidential election.

If DOJ was acting with integrity they would follow a completely different course. They would recognize the incredible political import of investigating and now prosecuting a former President who poses the serious threat of thwarting President Biden's bid for a second term. That would mean they adhere to principles of non-interference with elections. And, perhaps most importantly, they would be determined to show complete transparency and a willingness to subject their actions to scrutiny at every turn. That model could lead, or at least has the best chance of leading to, respect for the final outcome. Process is a huge factor in ultimate fairness.

Instead, we have had to hear Jack Smith demand a "speedy trial" under the nebulous theory that speedy trial is focused on trial observers, not the defendant. When the pre-election trial date was threatened by appellate review of the immunity question, Mr. Smith impatiently asked for Supreme Court intervention despite the expeditious

consideration of the issue by the Court of Appeals. A fair and transparent Department, at that same juncture, would have simply announced "we are ready for trial whenever the Court deems it appropriate." Open discovery and early disclosures of exculpatory information would be the hallmark of a Department bent on showing its ethics rather than one making all of its decisions based on political calculations.

Grand Jury Abuse

The next aspect of singular behavior by DOJ surrounds its use of the Grand Jury. For the vast majority of the pre-indictment investigation, DOJ used the Washington, D.C. Grand Jury for its presentation. The overwhelming majority of witnesses lived and worked at Mar-a-Lago. A good portion of the people brought to the D.C. Grand Jury received very little notice, and at times it appeared that the inconvenience and natural intimidation at the prospect of traveling to D.C. to testify were being used as a tool by the investigative agents and prosecutors. For instance, one witness – a young administrative aid to President Trump – was told to provide her password to a seized laptop that was not actually her property. Her hesitancy was met with a demand to either give the password now or travel later that week to Washington, D.C where "the Grand Jury would demand it" of her. The young woman understandably yielded.

Much of the conduct of the investigators remains shrouded in secrecy, but one remarkable example has made its way into the public domain—the interrogation of attorney Tim Parlatore. Tim was one of the attorneys representing President Trump and he had taken an active role in searches we conducted to ensure all classified documents were provided to DOJ. During Tim's testimony, the DOJ prosecutor asked questions that led to the invocation of attorney-client privilege on approximately 48 occasions. This was not a situation where an attorney overly invokes, it was a prosecutor bent on pushing the boundaries of ethical grand jury presentation, knowing that the jurors would likely hold the invocations against the target of the investigation, President Trump. In the clearest demonstration of this unethical approach, the questioner asked Mr. Parlatore, "If the President is being so cooperative, why won't he waive his attorney-client privilege?" This was a blatant attempt to have the grand jurors draw an impermissible inference against the former President, and once again something I never witnessed in 27 years of regular Grand Jury usage. I would later catch the same prosecutor completely mischaracterizing a witness interview to a federal judge, without serious consequence.

Exceptions to Bedrock Principles

In litigating various matters relating to the D.C. Grand Jury, two extraordinary things took place that had little or no precedent before the cases against President Trump. The first was the Government's successful invocation of the rarely established "crime fraud" exception to attorney-client privilege. The effect of this maneuver was to gain unfettered access to Evan Corcoran's notes and then elevate his commentary to a prominent position in the ensuing indictment. While I admit a good portion of my career as a prosecutor was more "blue collar" than in the white-collar lane where the crime fraud exception has more potential, I had never seen a prosecutor succeed in piercing that historic protection. Further, the pursuit of this treasure was founded almost entirely on

ex parte submissions to a judge, which is difficult to address from the other side. In the context of a historically important prosecution, and one in which DOJ was not particularly credible, the one-sided fight to extinguish President Trump's privilege is galling.

Secondly, mostly in the context of the January 6 prosecution, President Trump lost all protection afforded by Executive Privilege. The practical result was the same: the eventual indictment was heavily flavored with information gleaned from Vice President Pence and others that never should have seen daylight. It was President Biden's administration, of course, that made the threshold determination that Executive Privilege simply did not apply to President Trump. The concept itself, never mind the legal implications, practically destroys the protection for future presidents because of the question of whether this was another "one off" at the expense of only President Trump or whether the privilege itself is literally dead. Neither is an acceptable result of overzealous prosecution.

The Grand Jury Migration to Florida

Within the last few weeks of a lengthy grand jury investigation, the DOJ team shifted their case to the Southern District of Florida. There is no official explanation that I am aware of, and it is possible that they determined that there was a venue problem with charging in D.C. for documents moved to Mar-a-Lago while President Trump was indeed still President.

But in light of the problematic and hyper-aggressive Parlatore testimony, as well as endless appearances and "instructions" from the DOJ prosecutors, I tend to think that the DOJ was effectively sanitizing their bad behavior by presenting a streamlined version to the Florida grand jury. Once again, I have never heard of using a home turf grand jury for many months and then pivoting to another location. From the defense side, we only got a few troubling glimpses of how DOJ was conducting itself in this investigation, a fulsome transcript will almost undoubtedly raise additional issues.

The Walt Nauta Obsession

Walt Nauta was the "body man" for President Trump. The role suggests a near constant presence around the President, and consequently DOJ's aggressivity towards Nauta reached epic proportions. I try to be evidence-driven in my assessment of legal issues, so I will admit an inability to prove my next point with certainty. But I believe DOJ engaged in a leak campaign to the Washington Post and New York Times to pressure Nauta. They viewed him as the "keys to the kingdom" and thus his name was regularly in the newspapers with rumblings of either cooperating or obstructing the probe. Ultimately, of course, he was charged and will presumably stand trial, but an early aspect of the investigation remains one of the most troubling accounts of DOJ misconduct.

Stanley Woodward is a well-respected, highly intelligent, and very experienced attorney. Mr. Woodward has sworn to an event that should greatly bother any fair-minded individual. When he first began to represent Mr. Nauta, he was invited to DOJ to meet with Mr. Bratt. Assuming it would be a fairly routine meet-and-greet, Mr. Woodward was

quickly surprised by the direction the meeting seemed to take. First, Mr. Bratt was not alone, as he had enlisted another 5-6 prosecutors to join him for the conversation. Second, Bratt displayed an open file in front of him, leafing through it as if it pertained to Mr. Woodward, and not Mr. Nauta. Specifically, Mr. Woodward reported that Bratt announced that he knew Woodward had applied for a federal judgeship and that the application was being considered by President Biden. He then immediately made the extortionist link—words to the effect of, "Your guy, Walt, needs to flip. I'd hate to see you jeopardize your chances for the judgeship."

If this account is true, it is a devastating indictment of the mentality of DOJ. And keep in mind, Bratt was with other prosecutors when the comments were made. Surely, there is a communication trail of those other prosecutors either endorsing or criticizing the extortionate conduct of the man then leading the investigation. I certainly hope that the accusation made by Mr. Woodward gets fully investigated by a court, the DOJ, Congress, or whoever else can explore allegations of such outrageous, and indeed, illegal, behavior.

Singular Treatment

Consistent with the HPSCI letter described above, my starting point philosophy is that DOJ should be very reluctant to criminalize simple possession of classified materials by a FPOTUS. From my perspective, the American public votes presidents into office knowing that they will have access to our very most valuable secrets on a daily basis. There is no "brain swipe" that takes place to re-secure the briefings and documents that inform our Commanders-in-Chief, so mere possession of a written form of that information does not immediately ring my alarm bills.

Frankly, collecting materials from a secured facility ("SCIF") while a Senator, leaving those documents in obviously non-secure settings like a garage and holding them for the purpose of supporting an autobiography (with an $8 million advance) pushes my "don't over-criminalize" philosophy to its limit. I suspect General Petraeus might have a different take on this issue.

The Cost of Lawfare

The emergence of "lawfare" is not entirely new in terms of human nature. It is an ends-justify-the-means mentality, and it is the antithesis of justice. Lawfare is an effort to manipulate law as a way of targeting an individual who is despised by its user. Justice, and the concept of the Rule of Law, relies upon honest cops and honorable prosecutors to follow the evidence and make impartial determinations as to accountability. It is evidence driven, not animus driven. And while the goal of perfect justice is saddled with the inherent limits of human beings being at the helm, our country has long been the model for fairness, due process, and equal protection.

I firmly believe that lawfare endangers the entire system of criminal justice, as well as the faith of our citizenry that the institution is predominantly fair and predictable.

Lawfare is not limited to federal criminal law enforcement, of course. I think back to the ballot eligibility litigation and the Colorado case in which President Trump was disqualified from the ballot. In that expedited litigation, there was testimony from a university sociologist that President Trump's "go peaceful and patriotically" comments on January 6 were *actually* "dog whistles" to encourage his supporters to violently attack police officers. This absurdity formed part of the Colorado Supreme Court's decision to keep President Trump off the ballot, before the U.S. Supreme Court put a procedural end to the unrecognizable and almost laughable "trials" springing up around the country.

In the current trial in New York, the State has been allowed to hide its novel theory of felonizing misdemeanor bookkeeping entries even as the end of the evidence approaches. Prosecutorial creativity in that case appears to establish that a check memo or ledger entry that says "for legal services" is a felony, but "for legal services (NDA)" would not be a crime at all. Such a thin and unique line of criminality suggests that Alvin Bragg and the former Associate Attorney General leading that case are making up new rules for a particular target.

Whether the creativity of the lawfare is private parties, state actors or the federal government, the broader damage of its acceptance is predictable. We now have prosecutors running for office on promises to indict a specific target. This is unethical to the highest degree, and the antithesis of a fair criminal justice system. Prosecutor creativity should be a red flag when the target is running against the administration that put the prosecutor in office. I fully understand that an ex-President and any politician can face consequences for breaking the law; but we should know from the outset that the evidence shows a of a violation of a well-established law (ex. bribery, extortion, etc.) and not leave the fact of criminality up to the creativity of a trophy-hunting prosecutor.

In the recent oral argument before the Supreme Court on presidential immunity, DOJ's representative was Mike Dreeben, a man I respect and consider a friend. When the Justices pushed him on the checks within the system to prevent hyper-ambitious prosecutors from wrongly targeting a political enemy to their administration, Mike said that the check came from the fact that it was "not in [the prosecutors'] interest" to wrongly indict someone based on political animus. He asserted that DOJ is filled with honorable prosecutors who would never do such a thing. My only lingering question from that contention is whether it was naïve or willfully naïve. We are amidst an explosion of election-season indictments that rely on creativity and mental gymnastics to even establish whether a crime has occurred. Prosecutors are willing to rely upon a failed cooperator with a history of perjury and epidemic-level bias against the target in an effort to convict a presidential candidate of an otherwise misdemeanor bookkeeping violation. A conflicted prosecutor in Georgia made disrespectful and perjurious appearances before the trial judge, followed by her claims of racial victimization from the church pulpit. We are experiencing a series of politicized, hyper-aggressive, abuses of power.

When individuals entrusted with power believe that the ends justify the means, we are left with a weaponized political agent, cheered on by partisans and those blinded by dislike of Candidate Trump. If they succeed, we begin a new age where even old hands at criminal justice like me will not recognize the perversion of Justice and justice, and we will descend into attacks and counterattacks launched by power hungry politicians masquerading as agents of fairness.

Chair JORDAN. Thank you, Mr. Trusty. Appreciate that.
Mr. Hamilton, you are recognized.

STATEMENT OF GENE P. HAMILTON

Mr. HAMILTON. Thank you. Chair Jordan, Ranking Member Plaskett, and distinguished Members of the Subcommittee, thank you for inviting me to testify on this important matter.

The American people and American society have flourished for nearly 250 years—not because of some accident, but because of the grace of God and the brilliance of our Founding Fathers, who created a system uniquely designed to foster the ideal conditions for individual liberty, human success, and societal flourishing.

The system was always predicated on the continued existence of a just and moral society, where action and the pursuit of justice and morality would counteract the worst of human ambition. It was also predicated on the continued existence of a Federal Government strong enough to do what the government had consented to in the Constitution, but not so omnipotent as to be able to undermine the liberties of the individuals and the States. It was also predicated on a recognition that the concentration of power in the hands of a few was a recipe for tyranny.

Of course, the mere existence of words on paper alone does not guarantee any individual's rights. Rather, it has been action, taken by principled people, that fulfills those guarantees and secures those individual liberties. Put differently, in America, thanks to the wisdom and foresight of our Founding Fathers, our Davids have always had a chance against our Goliaths.

Sadly, we live in unprecedented times, where the concentration of power in the Federal Government, particularly in the Executive Branch under President Biden's leadership, has served as the fulcrum through which other powers in society oppress the individual and undermine the foundation on which our national success resides.

The Biden Administration, and most notably, the Department of Justice, appears to have embarked on a journey of political persecution of those with whom it disagrees—with the end result being the total social, economic, and political domination of the populace.

Beyond its attempts to silence and imprison its political opposition, the Biden Administration has engaged in an obsessive-compulsive campaign of division and spoliation of the public fisc, based on the immutable characteristics of American citizens. Its efforts are incessant and relentless.

We live in a time in which any attempt even to describe the current state of affairs gets labeled as disinformation, misinformation, malinformation, and worthy of censorship—or worse, content worthy of subjecting an individual to criminal prosecution.

Memes are prosecuted. Business leaders are subjected to intrusive investigation solely because of their outspoken views. Actual peaceful protestors are imprisoned. All the while, violent and repeat criminals run free in major cities across the United States.

In this new and unprecedented world, everyone, including a former President of the United States, is threatened by the Federal Leviathan and private elites who seek total domination and control over every aspect of human life.

The political persecution of President Trump by the Biden Administration is unlawful, unprecedented, and un-American. These prosecutions must end.

Make no mistake, the American people must understand the intended impact of the Administration's conspiracy extends far beyond any personal consequence to President Trump. Instead, the intended result is to chill dissent, silent speech, and convince the American people that the weight of the Federal Government can be forcefully weaponized against anyone who stands in the way.

President Trump is in the Administration's crosshairs to discourage anyone—now or in the future—from challenging the Administration's agenda. The Biden Administration must not be allowed to indict, and potentially imprison, its political opposition with impunity.

My written statement highlights just three glaring problems, examples of lawfare that are being used against President Trump.

(1) The Biden White House granted an illegal special access request to allow the Department of Justice to illegally obtain access to President Trump's records.

(2) The Biden Administration is prosecuting President Trump based on an erroneous and faulty interpretation of the Presidential Records Act, and actually provides individual bureaucrats with greater control over their records than President Trump.

(3) The Biden Administration has weaponized a white-collar criminal statute for the first time in history to attack President Trump and others.

There's so many more examples. The average American citizen residing outside of the Beltway, away from the isolated, elitist bubble where ends justifying the means seem to be a mantra for many, is tired of watching institutions they once trusted violate the law and undermine the critical components of the Constitutional and social constructs that made ours the greatest country in history.

The remaining issue, then, is: What must be done? The time is now for institutional ambition to counteract institutional ambition, for Americans to stand up unafraid and unapologetic for the values that they hold dear, and for our Republic to reject the radical weaponization of the Executive Branch.

Thank you.

[The prepared statement of Mr. Hamilton follows:]

Written Testimony of Gene P. Hamilton, Executive Director, Executive Vice President, and General Counsel America First Legal Foundation
Submitted to the House Committee on the Judiciary
Select Subcommittee on the Weaponization of the Federal Government
"Hearing on the Weaponization of the Federal Government"
May 15, 2024

Chairman Jordan, Ranking Member Plaskett, and distinguished members of the Subcommittee on the Weaponization of the Federal Government. Thank you for inviting me to testify before the Subcommittee on this important matter.

The American people and American society have flourished for nearly 250 years—set above and apart from all other societies in recorded history—not because of some rare accident but because of the grace of God and the brilliance of our Founding Fathers, who created a system uniquely designed to foster the ideal conditions for individual liberty, human success, and societal flourishing. A system where, as James Madison described in Federalist 51, ambition counteracts ambition amongst the branches of government.[1] A system where, as Madison described in Federalist 47, the accumulation of all powers, legislative, executive, and judicial, were placed into different hands to avoid tyranny.[2] A system with a strong judiciary, as described by Alexis de Tocqueville after observing it in action, which plays a crucial role in preserving individual liberty and maintaining the balance of power within the government.[3]

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[1] THE FEDERALIST NO. 51 (James Madison).
[2] THE FEDERALIST NO. 47 (James Madison).
[3] ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 142, 137 (Harvey C. Mansfield & Delba Winthrop trans., Chicago Press 2002) (1840).

But this system was always predicated upon the continued existence of a just and moral society,[4] where action in the pursuit of justice and morality would counteract the worst of human ambition. It was also predicated upon the continued existence of a federal government strong enough to do what the governed had consented to in the Constitution, but not so omnipotent as to be able to undermine the liberties of the individuals and the States that had consented to its creation.[5] And arguably, as explained by Madison in Federalist 47, it was also predicated upon a recognition that the concentration of power in the hands of a few—whether in the government or the private sector—was a recipe for tyranny.

Of course, the mere existence of words on paper alone does not guarantee any individual's rights. After all, governments throughout history have failed to uphold certain rights and privileges "guaranteed" to their people.[6] Rather, it is the *action* taken by principled people that fulfills those guarantees and secures those individual liberties. It is the *action* taken by principled public officials who recognize the actual stakes of national failure. And it is the *action* taken by individual branches of government that counteracts the ambitions of others.

Put differently, there have certainly been highs and lows over those roughly 250 years, yet the American ideal has always been that individuals have at least some fighting chance of earned success. And the *individual* has had at least some chance

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[4] *See* Letter from John Adams, to Massachusetts Militia (Oct. 11, 1798) (available at https://bit.ly/3WGA28K).
[5] THE FEDERALIST NO. 51 (James Madison).
[6] *See, e.g.*, CONSTITUTION (FUNDAMENTAL LAW) OF THE UNION OF SOVIET SOCIALIST REPUBLICS, Dec. 5, 1936, art. 125 (providing written guarantees of free speech, press and assembly, when no such rights were respected in practice).

of prevailing against those—whether in the public or private sector—who seek to weaponize the levers of power against his or her liberty. In America, thanks to the wisdom and foresight of our Founding Fathers and the courage of those divinely empowered stewards of our national history, our Davids have always had a chance against our Goliaths.[7]

Sadly, surveying today's social, economic, and political landscape, we see that our future contains no such guarantees. We live in unprecedented times where the concentration of power in the federal government—particularly in the executive branch—has served as the fulcrum through which other powers in society oppress the individual and undermine the foundation upon which our national success resides. The epicenters of governmental power are in bed not only with our media and our corporate tycoons but also with global elitist powers and international organizations.

The evidence shows that the Biden Administration's Department of Justice has failed to protect law-abiding citizens and has ignored its most basic obligations. It has become at once utterly unserious and dangerously politicized. Prosecution and charging decisions are infused with racial and partisan political double standards.[8] Immigration laws are ignored.[9] The Federal Bureau of Investigation harasses

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[7] 1 *Samuel* 17.

[8] Emma Colton, *Chip Roy Demands DOJ Explain Light Sentence for Floyd Riot Arsonist Who Killed Father of 5*, FOX NEWS (Feb. 10, 2022), https://fxn.ws/4bzKdA1; Chris Enloe, *DOJ Asked for Lenient Sentence for 2020 Rioter Who Burned Down Pawn Shop, Killing One Man. Prosecutors Even Cited MLK*, BLAZE MEDIA (Jan. 29, 2022), https://bit.ly/3UDVJ6U; Chris Pandolfo, *House Republicans Release 1,000-Page Report Alleging Politicization in the FBI, DOJ*, FOX NEWS (Nov. 4, 2022), https://fxn.ws/44KRFpR; Brooke Singman, *Cruz Slams "Politicized" Biden DOJ for Appointing Trump Special Counsel: "Absolutely Disgraceful,"* FOX NEWS (Nov. 19, 2022), https://fxn.ws/4binHMp.

[9] *See, e.g.*, *BREAKING: AFL Sues DHS, Obtains Astounding Data: Barely One-Tenth of One Percent Of Illegal Minors DHS Let Into the United States Were Later Deported*, AMERICA FIRST LEGAL FOUND. (Mar. 8, 2023) https://bit.ly/4bi5oa3.

protesting parents (branded "domestic terrorists" by some partisans) while working diligently to shut down politically disfavored speech on the pretext of its being "misinformation" or "disinformation."[10] A department that prosecutes numerous FACE Act cases while ignoring dozens of violent attacks on pregnancy care centers and/or the coordinated violation of laws that prohibit attempts to intimidate Supreme Court Justices by parading outside of their homes[11] has clearly lost its way. A department that has twice engaged in covert domestic election interference and propaganda operations—the Russian collusion hoax in 2016 and the Hunter Biden laptop suppression in 2020—is a threat to the Republic.[12]

We live in a time in which any attempt even to *describe* the current state of affairs has been labeled as "disinformation," "misinformation," "malinformation," and worthy of censorship,[13] or worse, content worthy of subjecting an individual to

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[10] *See, e.g.*, *BOMBSHELL DOCUMENTS – America First Legal Lawsuit Reveals CISA Knew About Mail-in Voting Risks in 2020 While Censoring Related Narratives as 'Disinformation,'* AMERICA FIRST LEGAL FOUND. (Jan. 22, 2024), https://bit.ly/4amxXCb; *America First Legal Sues the Federal Election Commission for Refusing to Charge Biden Campaign and DNC for Illegal Collusion with the Intelligence Community in Disseminating the Infamous "Letter of 51,"* AMERICA FIRST LEGAL FOUND. (Feb. 26, 2024), https://bit.ly/44IQt6p; *AFL Lawsuit Uncovers More Audacious CDC Documents Revealing The Biden Administration's Blatant Complicity With Big Tech To Push Disinformation And Suppress And Censor Free Speech*, AMERICA FIRST LEGAL FOUND. (Sept. 6, 2022), https://bit.ly/3UHb46x.

[11] *Six Defendants Convicted of Federal Civil Rights Conspiracy and Freedom of Access to Clinic Entrances (FACE) Act Offenses for Obstructing Access to Reproductive Health Services in Tennessee*, U.S. DEP'T OF JUST. (Jan. 30, 2024), https://bit.ly/44ItBUP; Joe Bukuras, *2023 Witnessed Continued Attacks on Pro-life Pregnancy Centers, Churches*, CATHOLIC NEWS AGENCY (Dec. 29, 2023), https://bit.ly/44CHcwR.

[12] John Solomon, *FBI Email Chain May Provide Most Damning Evidence of FISA Abuses Yet*, THE HILL (Dec. 5, 2018), https://bit.ly/4bUlkzx; Post Editorial Board, *The FBI Knew RussiaGate Was a Lie—But Hid That Truth*, NEW YORK POST (June 11, 2022), https://bit.ly/4bgYT7C; Jesse O'Neill, *FBI Pressured Twitter, Sent Trove of Docs Hours Before Post Broke Hunter Laptop Story*, NEW YORK POST (Dec. 19, 2022), https://bit.ly/3yjsjmT.

[13] *See, e.g.*, ELECTION INFRASTRUCTURE GOVERNMENT COORDINATING COUNCIL AND SUBSECTOR COORDINATING COUNCIL, JOINT MIS/DISINFORMATION WORKING GROUP, MIS-, DIS-, AND MALINFORMATION, https://bit.ly/4bEn9A7; *National Terrorism Advisory System Bulletin*, U.S. DEP'T HOMELAND SEC. (Feb. 7, 2022), https://bit.ly/3WY5eRd.

criminal prosecution and the deprivation of individual liberty at the hands of the state. In this new and unprecedented world, everyone—including a former President of the United States—is threatened by the federal Leviathan and private elites who seek total domination and control over every aspect of human life.

Dissent is no longer celebrated. Dissent is no longer tolerated. And even *memes* are prosecuted.[14] Dissent, in the eyes of the current powers that must be, must be *eliminated.* To them, ambition must no longer counteract ambition; rather, ambition must *demolish* all competing ambitions, and the individual liberties and rights of the people must be stamped out to advance radical agendas under the guise of benignly or misleadingly labeled campaigns with buzzwords, like "protecting democracy," "combating misinformation," "fighting bigotry," or "enhancing tolerance."

At times, the threats to our continued existence as the leading nation of the free world seem insurmountable, particularly because the Biden Administration—and most notably, the Department of Justice under the leadership of Merrick Garland—appears to have embarked on a journey of political persecution of those with whom it disagrees, with the end result being the total social, economic, and political domination of the populace.

The Biden Administration appears to have taken nearly every opportunity to silence, and even imprison, its opposition. In addition, the Biden Administration has engaged in an obsessive-compulsive campaign of division and spoliation of the public

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[14] *Press Release: Social Media Influencer Douglass Mackey Sentenced after Conviction for Election Interference in 2016 Presidential Race, United States Attorney's Office, E. Dist. of N.Y.*, U.S. DEP'T OF JUST. (Oct. 18, 2023), https://bit.ly/3wyOzbR.

fisc based on the immutable characteristics of American citizens. Its efforts—empowered by the complicit media that is financed and amplified by anti-American tycoons, and often weaponized by our foreign adversaries as means of sowing division and hatred amongst the populace—are incessant and relentless.

My organization, America First Legal Foundation,[15] has worked ceaselessly for over three years to expose, stand up against, and fight these unconstitutional and illegal abuses of power, educating the American people and enhancing the public discourse surrounding these issues. For example, we were the first to expose the unlawful and unconstitutional collusion by the Biden Administration with social media companies to censor Americans' speech online.[16] We were the first to highlight the rotten attempt by Merrick Garland and the Department of Justice to silence the First Amendment rights of proud parents across the United States in an attempt to influence the outcome of the Virginia gubernatorial race.[17] And we stopped and eventually forced Congress to repeal a racially discriminatory farm loan forgiveness program that the Biden Administration championed and that the Department of Justice vigorously defended.[18]

While it has been our privilege to work on these and other critical issues and to fight against the imposition of modern-day tyranny, I'd like to draw this

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[15] *America First Legal*, AMERICA FIRST LEGAL FOUND., https://aflegal.org/.
[16] *AFL Lawsuit Reveals Damning CDC Documents Proving Government Collusion With Big Tech to Censor Free Speech and Promote Biden Administration Propaganda*, AMERICA FIRST LEGAL FOUND. (July 27, 2022), https://bit.ly/3UISlHR.
[17] Letter from Gene P. Hamilton, Vice President & Gen. Couns. America First Legal Found., to the Hon. Henry J. Kerner, Special Couns., Off. of the Special Couns. (Mar. 3, 2022) (available at https://bit.ly/44Ci2OV).
[18] *See* Order Granting Class Certification and Plaintiff's Motion for a Preliminary Injunction, *Miller v. Vilsack*, No. 4:21-cv-0595-O, 2021 WL 11115194 (N.D. TX, July 1, 2021).

Subcommittee's attention to just a *few* of the ways that the Biden Administration has abused the powers and tools of government to politically persecute former President Donald J. Trump.

The political persecution of President Trump by the Biden Administration is unlawful,[19] unprecedented, and un-American. But make no mistake, as unfair and distressing as this political persecution appears, the American people must understand that the intended impact of the Administration's conspiracy extends far beyond a conviction, civil judgment, or other personal consequence to President Trump; instead, the intended result is to chill dissent, silence speech, and convince the American people that the weight of the federal government can be forcefully weaponized against anyone who stands in the way of this new unholy alliance of special interests seeking to change our way of life and system of government. Thus, the Administration has President Trump in its crosshairs to demonstrate its power and discourage *anyone* now and in the future from challenging its agenda.

Accordingly, for the Biden Administration and its allies, the ends always justify the means. No lie will not be told. No law will not be twisted or broken. There is no weighing of personal, moral, and legal costs and benefits when it comes to achieving the overarching objective of ruining one man. Even the so-called "Justice Manual"—otherwise known as the prosecutor's "Bible"—and its clear statement that "federal prosecutors and agents may never make a decision regarding an

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[19] Brief of U.S. Senator Roger Marshall & 26 Other Members of Congress as Amici Curiae in Support of Petitioner, *Donald J. Trump v. United States*, No. 23-939 (2024), (available at https://bit.ly/3QL0rhM).

investigation or prosecution ... for the purpose of affecting any election, or for the purpose of giving an advantage or disadvantage to any candidate or political party,"[20] has been shunted aside to advance politically expedient actions for the Administration.

Despite the unabashed weaponization of many institutions, this Subcommittee and portions of the federal judiciary deserve credit for critically highlighting and confronting these unprecedented abuses of power. But more must be done to prevent a potentially irreversible descent into total lawlessness and societal destruction. The Biden Administration must not be allowed to indict and potentially imprison its political opposition with impunity.

While there are certainly more examples that could be cited, the three issues described below are representative of the need for swift and robust corrective action to prevent these modern-day marauding bands of barbarians who seek to destroy anything that stands in their way of victory.

I. The Biden White House Illegally Facilitated Access to Former President Trump's Records.

The Biden White House brazenly violated the Presidential Records Act when it granted a "special access request" to President Trump's records to facilitate a prosecutorial inquisition by the Department of Justice and the Federal Bureau of Investigation.[21]

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[20] U.S. DEP'T OF JUST., JUSTICE MANUAL § 9-27.260 (available at https://bit.ly/44NwFyY).
[21] *The President of the United States Has Absolute Authority Over His Presidential Papers: Undermining an Essential Element of the Biden DOJ's Mar-a-Lago Prosecution*, AMERICA FIRST LEGAL FOUND. (Oct. 10, 2023), https://bit.ly/3WELgdJ.

The law is clear. Prefaced with the critical caveat that any access to Presidential records otherwise restricted is "subject to any rights, defenses, or privileges which the United States or any agency or person may invoke," the Presidential Records Act only makes records available in three situations: (1) "pursuant to subpoena or other judicial process issued by a court of competent jurisdiction for the purposes of any civil or criminal investigation or proceeding;" (2) through the request of an incumbent President for information "that is needed for the conduct of current business of the incumbent President's office," or (3) "to either House of Congress."[22]

Here, the President's documents were not requested by Congress, so the question is whether the Department of Justice can rely on the remaining two exceptions to obtain these documents. Although publicly available documents suggest the White House initially requested these documents, it allegedly did so "on behalf of the Department of Justice (DOJ) ... so that the FBI and others in the Intelligence Community could examine them."[23] The National Archives and Records Administration (NARA) revealed that the White House did not request the records for information "needed for the conduct of current business of the incumbent President's office."[24] Rather, agencies requested these documents—albeit through the White House—for agency use. Nothing in the record shows that these documents

[22] 44 U.S.C. § 2205(2).
[23] Letter from Debra Steidel Wall, Acting Archivist of the United States, to all Employees 236-37 (Aug. 24, 2022, 03:25:22 PM), (available at https://bit.ly/4amcVDJ).
[24] 44 U.S.C. § 2205(2)(B).

were "needed for the conduct of current business of the incumbent President's office."[25]

The Department of Justice is not the President's office, nor a part of it. To hold that the documents were "needed for the conduct of current business of the incumbent President's office" simply because the request came from the White House would allow agencies to make an end run around the restrictions in section 2205(2) by routing requests through the White House Counsel's Office. The text's plain meaning precludes such an interpretation: it limits the need only for the "current business of the incumbent President's office." The documents under this exception are made available to "an incumbent President"—not any agency head—thus further suggesting that the exception excludes requests from executive agencies.[26]

Not only would this interpretation of the PRA authorize indirect criminal investigations through the White House out of accord with the plain meaning of the statute, but it would also dangerously expand the ability of an incumbent President to harass a former President by seizing documents based on the request of any agency for nearly any reason. Indeed, if the justification here is accepted—"so that the FBI and others in the Intelligence Community could examine [the documents]"—[27]it is hard to imagine what sort of reason would not allow an incumbent President to

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[25] *Id.*
[26] *Id.*
[27] Letter from Debra Steidel Wall, Acting Archivist of the United States, to all Employees 236-37 (Aug. 24, 2022, 03:25:22 PM), (available at https://bit.ly/4amcVDJ).

request documents under the justification that they are "needed for the conduct of current business of the incumbent President's office."[28]

The Department of Justice should have been precluded from using this exception to justify obtaining the President's documents, leaving it to rely solely on the exception granted for documents "pursuant to subpoena or other judicial process issued by a court of competent jurisdiction for the purposes of any civil or criminal investigation or proceeding."[29] That didn't happen, either.

The Department of Justice ultimately indicted former President Trump based on a criminal referral from NARA.[30] This referral violated Administrative Procedure Act (APA) sections 706 (2)(A) (prohibiting agency actions not in accordance with law) and 706 (2)(B) (prohibiting agency actions in excess of statutory jurisdiction or authority).[31] Relevant precedent holds that an indictment based upon rules or adjudications in violation of the APA's formal requirements should be dismissed.[32] The prosecution of President Trump should receive similar treatment.

Consider also the differential treatment of current President Joe Biden in the Administration's persecution of President Trump—which further highlights the need to terminate the prosecution against President Trump.

According to Special Counsel Robert Hur, in May 2022, White House Counsel Dana Remus undertook an effort to retrieve Mr. Biden's files from the Penn Biden

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[28] 44 U.S.C. § 2205(2)(B).
[29] 44 U.S.C. § 2205(2)(A).
[30] Superseding Indictment at ¶ 50, *United States v. Trump*, No. 9:23-cr-80101 (S.D. Fla. July 27, 2023).
[31] 5 U.S.C. §§ 706(2)(A)–(B).
[32] *See United States v. Picciotto*, 875 F.2d 345, 346 (D.C. Cir. 1989); *see also United States v. Ross*, 848 F.3d 1129, 1131 (D.C. Cir. 2017); *United States v. Johnson*, 632 F.3d 912, 930 (5th Cir. 2011); *United States v. Cain*, 583 F.3d 408, 422 (6th Cir. 2009).

Center.[33] Remus described the original purpose of that effort as gathering materials to prepare for potential congressional inquiries about the Biden family's activities from 2017 through 2019 when Biden was actively engaged with the Center.[34]

Remus eventually learned that the Penn Biden Center's offices contained official government records.[35] Remus decided this material could be relevant to future congressional inquiries and sent the material to Patrick Moore, one of Mr. Biden's personal lawyers in Boston, Massachusetts, for further review by Moore and former White House Counsel Bob Bauer.[36]

So, to summarize, Dana Remus had treated Trump's Presidential records as something that must be referred to the Federal Bureau of Investigation, but when it came to Joe Biden, his classified records could be sorted out by his personal lawyers.

This Committee should also be clear about something else. According to the Hur Report, "[t]he FBI recovered additional marked classified documents at the Penn Biden Center, elsewhere in Mr. Biden's Delaware home, and in collections of his Senate papers at the University of Delaware."[37] The report further states, "Between January and June 2023, FBI agents searched over 300 boxes containing Mr. Biden's Senate papers, which were stored in two locations at the University of Delaware.

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[33] REPORT ON THE INVESTIGATION INTO UNAUTHORIZED REMOVAL, RETENTION, AND DISCLOSURE OF CLASSIFIED DOCUMENTS DISCOVERED AT LOCATIONS INCLUDING THE PENN BIDEN CENTER AND THE DELAWARE PRIVATE RESIDENCE OF PRESIDENT JOSEPH R. BIDEN, JR., SPECIAL COUNSEL ROBERT K. HUR, U.S. DEP'T OF JUSTICE 257 (Feb. 5, 2024) (hereinafter "Hur Report"), https://bit.ly/3wCB2A7.
[34] *Id.* at 257–58.
[35] *Id.* at 258.
[36] *Id.*
[37] *Id.* at 12.

Within those boxes, agents found documents with potential classification markings, dating from 1977 to 1991, during Mr. Biden's service in the Senate."[38]

44 U.S.C. § 2118 says in relevant part, "[t]he Secretary of the Senate and the Clerk of the House of Representatives, acting jointly, shall obtain at the close of each Congress all the noncurrent records of the Congress and of each congressional committee and transfer them to the National Archives and Records Administration for preservation[.]" Senator Biden clearly had records of the United States in his possession that should have been transferred to the Archives no later than January 15, 2009, when he resigned from the Senate.[39] They went to the University of Delaware, where they sat for over a decade. Never once did the Archives use law enforcement to retrieve those records. If that doesn't look like a Washington-style mix of bureaucratic negligence and bias, I don't know what is.

If President Donald Trump ordered NARA or the Federal Bureau of Investigation to recover Senator or Vice President Biden's classified records, he would've been impeached. And you can be sure that Biden's representatives would've fought any request to return records. But now that Biden controls the executive, he, of course, returned records knowing he supervised the very law enforcement organs that would decide whether to charge him. Shocking nobody, they declined to do so.

The Biden White House said it had no involvement with the Mar-a-Lago raid.[40] Now we know that was a lie, because the White House made a special access request

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[38] *Id.* at 28.
[39] *Id.*
[40] *Watch: White House Says They Were Not Given a 'Heads Up' About the FBI's Mar-A-Lago Search*, PBS NEWS HOUR (Aug. 9, 2022), https://bit.ly/4bFx2Oh.

for Trump's records before the raid. In contrast to the regime's persecution of its political opposition, it extends its grace beyond Biden's political administration to its bureaucratic allies.

II. The Presidential Records Act Provides All Presidents with Absolute Authority to Determine What Is and Is Not a Presidential Record—Yet the Biden Administration is Prosecuting President Trump Based on an Erroneous Interpretation of the Act and Simultaneously Empowers Individual Bureaucrats With Greater Authority Over Their Records.

The Department of Justice has charged Donald Trump with violating 18 U.S.C. § 793(e), which provides:

> (e) Whoever *having unauthorized possession of, access to, or control over* any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, or note relating to the national defense, or information relating to the national defense which information the possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicates, delivers, transmits or causes to be communicated, delivered, or transmitted, or attempts to communicate, deliver, transmit or cause to be communicated, delivered, or transmitted the same to any person not entitled to receive it, or willfully retains the same and fails to deliver it to the officer or employee of the United States entitled to receive it;

(emphasis added).[41] In obtaining the search warrant to raid Mar-a-Lago in 2022, the Biden DOJ relied upon the definition of a "Presidential Record" in 42 U.S.C. § 2201 to support its position that Donald Trump retained documents he did not have the authority to retain at the conclusion of his presidency, and that, somehow, NARA possessed the authority to require them to be returned.[42]

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[41] 18 U.S.C. § 793(e).

[42] *Affidavit in Support of an Application Under Rule 41 for a Warrant to Search and Seize*, No. 9:22-mj-08332-BER, ECF No. 156-1 at 7 (S.D. Fla. filed July 5, 2023) (available at https://bit.ly/3wxobzg).

The fatal flaw in Jack Smith's political prosecution under section 793(e) is that Donald Trump—as a matter of law—had *authorized* possession of, access to, and control over his Presidential records. My organization published a whitepaper explaining how and why this prosecution is constitutionally flawed. As the whitepaper explains:

> Text, precedent, and executive practice reinforce the historical tradition. The records a President creates or receives while performing the duties of his office are his presidential records. That test does not depend on the content of the records, or whether the records are classified. The test does not change when a President leaves office. If, for example, a former President acquires new records after leaving office, those new records would not enjoy the same constitutional status as his presidential records acquired while in office. But the Presidential records a President takes with him upon vacating the presidency are his, to do with as he pleases. The President can keep them, sell them, destroy them, or donate them, as all Presidents have done.[43]

In short, the documents that a president prepares or receives during his term in office belong to him. A reading of the Presidential Records Act that fails to account for a former president's right to possess and control his records is inconsistent with the text, history, and precedent of presidential records.

Yet, juxtaposed against the Biden Administration's twisted interpretation of the Presidential Records Act is its empowerment of bureaucrats within the Administration to determine which records are and which are not governmental records that require preservation under the Federal Records Act.

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[43] *The President of the United States Has Absolute Authority Over His Presidential Papers: Undermining an Essential Element of the Biden DOJ's Mar-a-Lago Prosecution*, AMERICA FIRST LEGAL FOUND. at 16–17 (Oct. 10, 2023), https://bit.ly/3WELgdJ.

Federal law requires that each agency "make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency and designed to furnish the information necessary to protect the legal and financial rights of the Government and of persons directly affected by the agency's activities."[44]

Yet, in a routine email regarding the disclosure of these records, the CDC told my organization, America First Legal, that the CDC routinely deletes the emails of nearly all of its employees thirty days after they leave the agency.[45] Worse, in response to America First Legal's probing, NARA investigated the allegations but closed the matter in deference to the CDC's compliance with its own policies![46]

Quite simply, NARA entrusts *individual CDC employees* to decide which emails can be automatically deleted.

To give you a sense of how egregious NARA's slap-on-the-wrist mentality is, consider a case involving former FBI agent Scott Payne.[47] Payne intentionally removed official records from the FBI's custody. According to press reports cited by NARA, "Sitting in the crates [Mr. Payne] brought home when he retired are the field notes and transcripts of every case he's worked."[48] NARA did not refer Mr. Payne to the Department of Justice for investigation. Instead, it permitted the FBI to

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[44] 44 U.S.C. § 3101.
[45] *America First Legal Demands that the HHS OIG Investigate the CDC's Deletion of Employee Emails*, AMERICA FIRST LEGAL FOUND. (Mar. 29, 2023), (available at https://bit.ly/3ytLgTO).
[46] Letter from Lawrence Brewer, Chief Recs. Officer for U.S. Gov't, NARA, to Mary Wilson, CDC (Feb. 23, 2024) (available at https://bit.ly/3K0zB1q).
[47] Letter from Lawrence Brewer, Chief Recs. Officer for U.S. Gov't, NARA, to Teresa Fitzgerald, FBI (Feb. 10, 2022) (available at https://bit.ly/3UhoBme).
[48] *Id.* at 1.

"retriev[e] 99 discs from the former employee's residence, documented that the former employee affirmed that he does not possess any hard copy documents and that the discs are the 'totality of government records and information in his possession.'"[49]

While NARA gives a slap on the wrist to an FBI agent who removed a career's worth of documents from government custody and declines to prosecute President Biden for his own decades-long improper handling of Federal Records bearing classification markings, it has also made the first-ever referral of a former President for prosecution.

III. The Biden Administration Has Weaponized a Paperwork Statute Enacted in the Wake of the Enron Scandal to Attack President Trump and His Supporters.

The Biden Administration is prosecuting former President Trump, and individuals alleged to have participated in events around the entrance of the U.S. Capitol building on January 6, 2021, based upon a statute enacted in the wake of the Enron scandal—18 U.S.C. § 1512(c)(2)—that has no actual relevance to the conduct that was alleged to have occurred. Put differently, the Biden Administration is twisting a statute beyond recognition in its zealous attempt to punish the President and his supporters.

Section 1512(c)(2) is buried in a statute prohibiting the destruction or interference with documents and court records. Section 1512(c)(2) criminalizes obstruction of official proceedings. It carries a maximum 20-year prison sentence, making it a desirable statute for the Biden Administration to use to target its

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[49] *Id.* at 3.

perceived political opponents. It has *never been* used outside the white-collar criminal context. Yet the Department of Justice has used the threat of significant prison time imposed by this statute as a cudgel to compel January 6 defendants to plead guilty. The Department of Justice has even indicted President Trump himself using Section 1512(c)(2), even though he was never at the Capitol on January 6, 2021.

Currently on review before the Supreme Court is the charging of one such individual under 18 U.S.C. § 1512(c)(2). My organization joined with 23 Members of Congress in an amicus brief to argue against this weaponized, targeted use of a criminal statute for conduct related to January 6th.[50] We made several key points:

- First, applying Section 1512(c)(2) beyond its document-based scope renders at least fifteen other statutory provisions completely meaningless.
- Second, the government's broad view of Section 1512(c)(2) turns it into a weapon for political prosecution that the Department of Justice could selectively enforce against those whose political views oppose the current administration's.[51]
- Third, the government's interpretation would criminalize political conduct under which the government could then claim that anyone standing in its way—from protestors to lobbyists—has interfered with official proceedings.

The Biden Administration's weaponization of a white-collar crime statute—passed in the aftermath of the Enron accounting scandal—to pursue politically

[50] Brief of Sen. Tom Cotton, Rep. Jim Jordan & 21 Other Members of Congress as Amici Curiae in Support of Petitioner, *Joseph W. Fischer v. United States*, No. 23-5572 (2024), (available at https://bit.ly/3wH9idx).
[51] *Id.* at 3–4.

charged prosecutions against American citizens is the perfect example of what happens when radicals motivated by a political vendetta occupy the Department of Justice. There is no justification for this unprecedented power grab being used to destroy the lives of Americans across the country.

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These are but a few examples of the degree to which the Biden Administration has weaponized the federal government against its political opponents to achieve its ideological and political goals. And I have not even begun to describe the numerous other ways in which the Biden Administration's allies have sought to bring personal destruction on President Trump, such as the nonsensical criminal case in New York,[52] the egregious civil fraud case in New York,[53] the outrageous criminal case in Fulton County,[54] and other matters.

To the average American citizen residing outside the beltway, away from the isolated, elitist bubble where ends justifying the means seems to be a mantra for many, the situation is clear: the Biden Administration has embarked on a campaign of political persecution targeting everyone with whom it disagrees, particularly, President Trump. Americans are tired of watching institutions they once trusted

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[52] Daniel Epstein, *Bragg's Administrative Law Problem* (Apr. 30, 2024), http://dx.doi.org/10.2139/ssrn.4811803.

[53] Alex Oliveira, *Trump Files to Overturn Egregious $454M Civil Fraud Judgment that Found He Inflated Wealth to Fool Banks*, N.Y. POST (Feb. 26, 2024), https://bit.ly/3WAYrMY (last visited May 13, 2024).

[54] Kyle Cheney, *Trump, Allies Charged with Racketeering Scheme Over Bid to Subvert Election in Georgia*, POLITICO (Aug. 14, 2023), https://politi.co/3K0E4kF (last visited May 13, 2024); *State of Georgia v. Donald John Trump*, No. 23SC188947 (Fulton County Super. Ct. Aug. 14, 2023).

violate the law and undermine the critical components of the constitutional and social constructs that made ours the greatest country in recorded human history.

The remaining issue, then, is what must be done? As Madison described in Federalist 51, "[i]n framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself."[55] Our government has an obligation to control itself, but it needs help to effectively do so. The time is now for institutional ambition to counteract institutional ambition, for Americans to stand up unafraid and unapologetic for the values they hold dear, and for our Republic to reject the radical weaponization of the executive branch.

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[55] THE FEDERALIST NO. 51 (James Madison).

Chair JORDAN. Thank you, Mr. Hamilton.
Ms. Wine-Banks, you are recognized.

STATEMENT OF JILL WINE-BANKS

Ms. WINE-BANKS. Chair Jordan, Ranking Member Plaskett, the Members of the Committee, thank you for letting me be here today to talk to you.

My parents raised me to believe in the Office of the Presidency and all the Members of Congress, and I still feel that way today. They encouraged me to engage in public service, and most of my career has been in that.

Fresh out of law school, I joined the Department of Justice as a prosecutor in the Organized Crime Section and carried those beliefs with me. I served a short time under President Johnson, and then, under Presidents Nixon and Ford. Regardless of who the President was, I knew that my job, like that of every Federal prosecutor, was to pursue the truth and justice, and to assure that everyone was treated equally under the law.

The rules of the Department of Justice and those of the Watergate Special Prosecutor, a team where I served a few years after joining the Department of Justice, required the same. Those rules require that no investigation be opened without reasonable cause; no indictment be brought without a high probability of conviction, and that prosecutors speak only through the indictment, if there is one. In that process, politics and bias have no role.

Those rules have not changed in the over 50 years since then. I think I am the lawyer here with the longest tenure. DOJ prosecutors weigh incriminating and exculpatory facts and analyze if those facts prove all the elements of a crime beyond a reasonable doubt before they decide to indict or not.

As my mentor and my first supervisor at Justice Chuck Ruff said, "my job was to do justice, not to win cases." Today's DOJ is doing exactly that.

Your Committee's website said today's hearing is to examine the use of lawfare tactics to weaponize the rule of law. I admit I had to look up what "lawfare" meant in that context. I found out that lawfare was a use of tactics to weaponize the rule of law against opponents.

I have seen no lawfare tactics in today's DOJ or in any of the Special Counsels' decisions regarding the cases against former President Donald Trump or its decisions about President Biden and Vice President Pence. I see no double standard, no selective prosecution, and no weaponization.

If we could just go back to the era of Watergate when facts were agreed on, when bipartisanship existed, it would be obvious why the Department of Justice was justified in investigating Trump, Biden, and Pence, but justified only in indicting former President Trump.

The standards for deciding to prosecute or decline to do so were the same for President Biden, former President Trump, and former Vice President Pence, but the facts differed so greatly that the results had to be different. They were judged under the same standard, but the facts made the prosecution decision different.

Let's look at the distinguishing characteristics of the case against President Biden and the one against former President Trump—in the hope that we might all agree on at least some of these facts.

When NARA discovered that former President Trump possessed documents that he should have returned to them when he left office, they asked him to return them. He refused. Had he voluntarily returned them, he would have avoided prosecution, as did President Biden and former Vice President Pence.

Instead, Mr. Trump returned some, but hid others, even from the FBI during their execution of a lawful warrant granted by a court. That added the crime of obstruction to those of espionage. That conduct shows willfulness and knowledge and constituted aggravating factors that required the Special Counsel to seek an indictment against the former President, as they did for Sandy Berger and General Petraeus, whose indictments demonstrate a lack of a double standard or selective prosecution. So, too, do the indictments not in documents cases, but in other cases against two Democratic Members of Congress right now and against the President's son.

In contrast, the facts of President Biden's possession of documents are very different. His staff, not NARA, found the documents, informed the President, who then had them immediately notify the proper authorities. Biden, then, cooperated fully with those officials. He hid nothing, allowed numerous searches of all his offices and homes without need for a warrant. He returned everything, and even during a national crisis created by the attack of Hamas on Israel, President Biden sat for lengthy interviews. The former President did none of that. He did the opposite.

The Special Counsel investigating President Biden, Robert Hur, a Republican who Trump had appointed as the U.S. Attorney for the District of Maryland, concluded no criminal charges were warranted and emphasized these and other factual distinctions between Trump and Biden—differences that undermined any allegation of selective prosecution, double standards, or bias. As Hur wrote,

> Trump is in a wholly different category than either Pence or Biden in terms of retention and concealment and destruction.

In my many years of experience, nothing justifies allowing anyone to be above the law and evade accountability for alleged criminal conduct, especially a former President who is responsible for seeing that our laws are faithfully executed.

No one is above the law. Accountability is necessary for the rule of law and democracy to survive. There is an existential danger in not proceeding where an investigation reveals facts and evidence of a crime. Doing so only emboldens future miscreants.

I believe that the Department of Justice is making investigative and prosecutorial decisions solely based on the evidence and the law—not on a preconceived notion or a political agenda. I have seen no evidence to the contrary in the case against Defendant Trump. He is entitled to due process and the presumption of innocence, as are all criminal defendants—no more and no less.

I am thrilled to be here in your search for facts and truth. I look forward to your questions.

[The prepared statement of Ms. Wine-Banks follows:]

Testimony of Jill Wine-Banks before the House Judiciary Weaponization of the Federal Government Subcommittee

5.15.24

Chairman Jordan, Ranking member Plaskett, and members of the Committee, thank you for allowing me to testify today.

My parents raised me to believe in facts and to respect the President of the United States and all members of Congress. I still do.

After finishing law school, I joined the Department of Justice as a prosecutor and carried those same beliefs with me. Regardless of who was president, I knew that my assignment – like that of every federal prosecutor – was to serve the American public by pursuing truth and justice. That did not change when I joined the Watergate Special Prosecution team a few years later.

At both DOJ and in the Watergate Special Prosecutor's Office, we pursued the the truth through witness testimony and documents. The fact that those investigated included a sitting president, his

top White House aides and campaign staff changed nothing. We had no political agenda or preconceived notions of guilt or innocence. We acted solely on the publicly available credible evidence that suggested that crimes had been committed that required investigation.

In pursuing our investigation, we kept an open mind an followed the rules of the DOJ that ensure fairness. Those rules require that no investigation be opened without reasonable cause, no indictment brought without a high probability of conviction, and that prosecutors speak only through the indictment if there is one. In this process, politics and bias have no role.

Those rules have not changed in the 50 years since. Without fear or favor, DOJ prosecutors look at the facts and the law and then decided whether or not to indict after a fair analysis of the evidence as applied to all the elements of the crime that must be proved beyond a reasonable doubt. Prosecutors must and do consider both incriminating and exculpatory evidence, aggravating and mitigating circumstances, and follow the facts wherever they lead. I was told by my mentor and first supervisor

in DOJ's Organized Crime Section, Chuck Ruff, that my job was to do justice, not to win cases.

The same was true at the Watergate Special Prosecutor's office. And I see no evidence that today's DOJ is doing anything different.

Your committee website says today's hearing is to examine the use of lawfare tactics to weaponize the rule of law. I admit I had to look up what that meant. I learned that lawfare is the use of legal systems and institutions to damage or delegitimize an opponent. I see no lawfare in today's DOJ or in the any of the special counsels' decisions regarding the cases against former President Donald Trump or President Biden. I see no double standard. No selective prosecution. No weaponization or lawfare tactics.

If we could go back to the Watergate era when facts were agreed on and only the conclusions drawn from those agreed facts were debated, it would be obvious why the Department of Justice was justified in investigating Trump, Biden and Pence, but justified in only indicting former President Trump.

The standards for opening the investigations and for prosecuting or declining to do so were the same for all three. All involved possession of classified materials after they were out of office and required to return them to NARA under the Presidential Records Act, passed in response to President Nixon's attempt to retain documents.

The standard used to decide whether or not to prosecute former President Trump, President Biden and former Vice President Pence was the same. It was the facts as applied to that standard that were not the same. The facts differed greatly so the outcomes in the three cases were not the same. The conduct of former President Trump is not comparable to that of President Biden or former Vice President Pence so the results of evaluating them under the same standard rightly lead to different prosecutorial decisions.

So let's look at the facts and distinguishing characteristics of the cases against President Trump and former President Trump. I hope we can all agree on some of these facts.

Here's a brief summary of the facts in the case against former President Trump:

When confronted by NARA, he refused to return classified documents despite the many opportunities he was offered to do so. It was NARA that knew he still possessed them and requested their return, and had he voluntarily returned them, he would have avoided prosecution. Instead, he hid returned some but hid others from his own attorney and from the FBI during their execution of a lawful warrant, adding the crime of obstruction to those of espionage. Video evidence shows boxes being moved.

This conduct shows willfulness and knowledge. These documents belong to the United States and were clearly marked classified and were very recent and presented a current threat to our national security.

Those are aggravating factors that required the Special Counsel to seek an indictment against the former president, as they did for Sandy Berger and General Petraeus, whose indictments demonstrate the lack of a double standard or selective prosecution. And although they are not classified document cases that endanger our national security, the cases filed by this DOJ

against two Democratic members of Congress, Robert Menendez and Henry Cuellar, disprove a bias for prosecuting only Donald Trump.

In contrast, the facts of President Biden's possession of documents are very different. His staff, not NARA, found the documents, informed the President who had them immediately notify the proper officials and cooperated fully with those officials. He allowed numerous searches of all his offices and homes, returned everything, and, even in the midst of a national crisis due to the Hamas attack on Israel, President Biden sat for lengthy interviews.

The former president did not none of that. He did the opposite.

Another distinction between the cases is that President Biden possessed old documents. Some were diaries and a handwritten letter by him as the then-Vice President to President Obama, documents he reasonably assumed he had a right to retain based on precedent going back to President Reagan.

In the end, President Biden's Special Counsel, Robert Hur, a Republican who Trump had appointed as the US Attorney for Maryland, concluded no criminal chargers were warranted. He noted the evidence did not establish willfulness, an essential element to prosecution, and that there was a reasonable ground for President Biden to believe that he had a right to retain certain of the documents, and that some of the documents may not have actually been classified.

Bottom line, Hur noted the factual distinctions between the Trump and Biden cases. Those differences are fact and undermine any allegation of selective prosecution, double standards, or bias. As Hur wrote, "Trump is in a whole different category than either Pence or Biden in terms of retention and concealment and destruction."

Unlike the Mueller decision not to indict Trump in the Russia investigation, Hur said "We would reach the same conclusion even if Dept of Justice policy did not foreclose criminal charges against a sitting president."

In my years of experience, nothing justifies allowing anyone to evade accountability for alleged criminal conduct, especially a former president responsible for seeing that our laws are faithfully executed. During Watergate, we came close to indicting former president Nixon. A pardon from his successor prevented that. I believed then and still believe that no one is above the law, that accountability is necessary for the rule of law to survive, and that there is existential danger in not holding the guilty accountable.

I still hold my younger self's belief in the rule of law and the need for accountability and that this Department of Justice is now fairly administered justice, making investigation and prosecution decisions solely based on the evidence and law, not a preconceived political agenda. I have seen no evidence to the contrary in the cases against Defendant Trump. He is entitled to due process and the presumption of innocence as are all criminal defendants, no more or less. He is not entitled to commit crimes and get away with them.

I am thrilled to be here in your search for facts and truth. I look forward to your questions.

Chair JORDAN. Thank you, Ms. Wine-Banks.

We will now proceed under the five-minute rule with questions.

The Chair recognizes the gentleman from California for five minutes.

Ms. WINE-BANKS. I was told that I had to keep to under five minutes and I did that.

Chair JORDAN. No, you didn't.

Mr. ISSA. No.

Chair JORDAN. You went seen minutes and two seconds, but it was fine, nonetheless.

The gentleman from California is recognized.

Mr. ISSA. Thank you.

It's one of those funny things about written statements; people often come, and they haven't timed them.

Ms. Wine-Banks, you, obviously, began your career, relatively early in your career, with the Watergate investigation. Wasn't one of the major things that President Nixon was accused of the weaponization of government, using the IRS, and so on? Wasn't that part of the final impeachment draft?

Ms. WINE-BANKS. Right. I was not directly involved in the impeachment within the prosecution—

Mr. ISSA. OK. I just—

Ms. WINE-BANKS. —but you are correct the impeachment charged misuse of power.

Mr. ISSA. Thank you.

So, we are exactly where you started your career, ma'am. We are seeing the weaponization. Richard Milhous Nixon was accused—and there was plenty of evidence—that he thought the IRS and other tactics would be perfectly acceptable against his political enemies. Here we are again.

So, one of the questions I'm going to ask—all of you are attorneys, is that correct? All of you understand the ethics of the American Bar Association. All of you understand the question of what can be waived in attorney-client privilege, correct?

I'll go right down. Ms. Wine-Banks, is it, in fact, your prerogative to waive attorney-client privilege? Do you have that right under the ethics rules?

Ms. WINE-BANKS. I do not.

Mr. ISSA. Correct.

Ms. WINE-BANKS. Only my client does.

Mr. ISSA. Exactly. Only your client can waive it.

Mr. Hamilton, the same, right?

Mr. HAMILTON. Correct.

Mr. ISSA. Mr. Trusty?

Mr. TRUSTY. The same.

Mr. ISSA. Mr. Costello?

Mr. COSTELLO. Yes, which is why I have a written document waiver with me.

Mr. ISSA. So, although you have a waiver from your client, your client—well, let's just say Mr. Cohen did not have a waiver from President Trump, is that correct?

Mr. COSTELLO. Absolutely.

Mr. ISSA. Have any of you, either individually or seen other people, other attorneys, other than Mr. Cohen, tape their client, and

then, turn it over for prosecution or other use—ever? Any of you? Never?

Mr. COSTELLO. No. No.

Mr. ISSA. Ms. Wine-Banks, it's kind of interesting that what hung President Nixon was, in fact, to a great extent, the tapes he made, but he made them, correct?

Ms. WINE-BANKS. He made them and they were evidence of crime. So, they fall within a crime-fraud exception and they proved the crime. They were the actual commission of crime.

Mr. ISSA. Exactly. Thank you very much. Mr. Costellano (phonetic)—

Mr. COSTELLO. Costello.

Mr. ISSA. Costello, I'm sorry. I'll take my reading glasses off. I'll do much better.

We're dealing with an unusual situation. We have a President, a former President, who was never charged with any crimes until he announced and became the lead candidate to run for President, is that correct?

Mr. COSTELLO. Yes. Quite a coincidence.

Mr. ISSA. Yes, but I don't believe in coincidences happening that often.

Mr. COSTELLO. Neither do I. Neither do you.

Mr. ISSA. So, the question I have for you here today is: Have you ever seen uncoordinated a series of State and Federal indictments of any candidate or any other person like this, where they are indicted in a State they never went to; they're indicted for documents that they had in their possession that they say they declassified, and that they have a right to declassify? They get indicted for a misdemeanor that has already run its statute of limitations, but, by linking it to a Federal offense, which the State doesn't have the right to charge, they make the case and they're now trying that. Have you ever seen anything close to that in your decades of practice?

Mr. COSTELLO. No, not at all.

Mr. ISSA. Mr. Trusty, have you ever seen so many indictments that are novel in how they're put together?

Mr. TRUSTY. I have not. I'd maybe use the word "inventive." Either way, I'm with you on the point.

Mr. ISSA. Mr. Hamilton, have you ever seen—and you're apparently the junior one here—have you ever seen or researched or learned about such a broad array of novel or inventive prosecutions as President Trump is dealing with?

Mr. HAMILTON. Absolutely not.

Mr. ISSA. Ms. Wine-Banks, I respect your years of practicing as an attorney. Have you ever seen so many charges coming, dating back so many years, but only coming to pass at this time?

Ms. WINE-BANKS. I have.

Mr. ISSA. When did you see them.

Ms. WINE-BANKS. Well, let's go back to the fact that it takes a long time to investigate; that there was reason for, for example, in the New York—

Mr. ISSA. No, I was asking for—I was asking for another example. Since you don't have one, let me just close.

I've been up here for 24 years. I was a soldier when Nixon was President. I'm appalled that what began with Watergate as a legitimate scandal of the wrongdoing has now become an organized weaponization by this President and his Department of Justice.

With that, I yield back, Mr. Chair.

Mr. MASSIE. The gentleman yields back.

I now recognize Mr. Goldman from New York for his five minutes of questioning.

Mr. GOLDMAN. Thank you very much.

Election interference, huh? That's what this is all about? Ms. Wine-Banks, there are four indictments against Donald Trump, is that right?

Ms. WINE-BANKS. Correct.

Mr. GOLDMAN. Those, all four of those investigations started long before he announced his candidacy for President, is that right?

Ms. WINE-BANKS. That is correct.

Mr. GOLDMAN. In fact, he announced his candidacy for President two years before the election just so he could bring in three witnesses and the entire Republican Party to say election interference, election interference.

These investigations long predated it, and this was a specific and obvious tactic of Donald Trump to be able to make a political defense that will never be allowed in a court of law, as Mr. Trusty and Mr. Costello know full well. All because he wanted to co-opt this notion of election interference because he is a candidate.

Let me tell you what is really election interference. Withholding military aid to an ally in the middle of a war to coerce and extort a foreign government to investigate a political opponent. Welcoming a foreign country to illegally interfere in our election and then using that interference for his own benefit, as Donald Trump did with Russia in 2016.

Spend 1½ year on a completely bogus impeachment investigation into the President without finding a single piece of evidence of wrongdoing. In fact, the Chair of this Committee said the best evidence of President Biden's wrongdoing was a completely false accusation planted by Russia just before the 2020 election. Interesting timing.

As usual, my Republican colleagues on the other side of the aisle are accusing the Democrats of doing all their misconduct that they engage in over and over and over in an effort to normalize it, in an effort to deflect attention from their own wrongdoing. It is right in authoritarian 101 playbook.

Let's talk about this two-tiered system of justice. Let's talk about lawfare.

Mr. Costello, your entire opening statement, as I heard it, was simply to discredit Michael Cohen. Sir, I think you are in the wrong place. Michael Cohen is currently on the witness stand at a trial in Manhattan.

If you have information about Michael Cohen's testimony, you should talk to Donald Trump and his lawyers to see if they want to call you as a witness to impeach Michael Cohen.

That coming down here, outside of that courtroom while that witness is on the stand to try to impeach his credibility and his testimony is jury tampering. It is unethical that you are trying to dis-

credit a current witness at a current trial who is testifying right now outside of that courtroom. You know better, and it is shameful.

Mr. Trusty, you and I worked together at the Department of Justice. We had a number of interactions related to organized crime. I had no idea what your politics were. I imagine you had no idea what my politics were. Because it didn't matter.

It is very interesting to hear you now nitpick about the Speedy Trial Act and about what you claim to be unprecedented conduct in Mar-a-Lago.

I am confident you never came across anyone who refused a request to voluntarily return classified materials, who refused to comply with a subpoena for those classified materials, and who was found to intentionally conceal and hide and obstruct justice by concealing those classified documents.

You have never come across, that is unprecedented I am certain, because that is a clear predicate for a search warrant. When someone obstructs justice, refuses to comply with a subpoena, and Mr. Issa can make up all the facts that he wants about declaring it to be classified because he thought it or whatever it is. That will be decided in court.

All these cases will be decided in court by a jury based on facts, evidence, and the law. All the Republican Majority is trying to do here today is lawfare, is interfere in ongoing criminal investigations that our system is perfectly well-equipped to handle.

I yield back.

Mr. MASSIE. The gentleman yields back. I now recognized Ms. Stefanik for five minutes.

Ms. STEFANIK. Oh, I love being able to respond to the novice from New York. First, thank you so much for stating the obvious, that political lawfare is in fact election interference. That is what we are seeing with the sham Alvin Bragg trial.

Thank you also to the novice freshman member for New York highlighting that withholding military aid to an ally for political purpose, just like Joe Biden is doing to Israel, always grateful for you stepping in it.

Mr. Costello, in your opening statement, you said that in the over 50 years serving as a lawyer, you

> Have never seen the types of politically motivated cases that have been brought in this Presidential election season. These political cases are being used as a weapon of war to damage, defeat, or impede political adversaries and their allies. Instead of political warfare, it is lawfare, a cancer upon our collective judicial system.

I want to begin with Alvin Bragg's weaponized sham trial in New York. Isn't it true that in Alvin Bragg's campaign for Manhattan DA, Bragg specifically ran on going after President Donald Trump?

Mr. COSTELLO. That is true.

Ms. STEFANIK. Isn't it true that Bragg's predecessor, Cy Vance, declined to prosecute President Trump?

Mr. COSTELLO. That is true.

Ms. STEFANIK. The SEC also did not prosecute President Trump.

Mr. COSTELLO. That is true.

Ms. STEFANIK. The DOJ did not prosecute President Trump in this case.

Mr. COSTELLO. The DOJ, referring to the U.S. Attorney for the Southern District—

Ms. STEFANIK. Correct.

Mr. COSTELLO. Absolutely true.

Ms. STEFANIK. One of the reasons the Southern District of New York turned down this case was because the supposed star witness, according to Alvin Bragg, Michael Cohen was totally "unworthy of belief." Isn't that true?

Mr. COSTELLO. Without a doubt.

Ms. STEFANIK. This is the same Michael Cohen who pled guilty to seven counts in an indictment that had absolutely nothing to do with President Trump and actually predated the first time he met President Trump, correct?

Mr. COSTELLO. Absolutely true.

Ms. STEFANIK. In fact, this the same Michael Cohen who perjured himself to Congress, isn't that true?

Mr. COSTELLO. Yes.

Ms. STEFANIK. In fact, when called as a witness in this sham trial, Cohen was asked directly if he was honest during his testimony to Congress. He said "no," admitting perjury.

It is not just Bragg's case that is a total sham and illegal political lawfare going after Joe Biden's top political opponent, Donald Trump. This rock goes deep, all the way up to the top and the Oval Office.

Because when Congress referred this admission of Cohen's perjury to Joe Biden's DOJ, isn't it true that the DOJ has refused to prosecute?

Mr. COSTELLO. That is true.

Ms. STEFANIK. Isn't it correct that Michael Colangelo, who was the third highest ranking official in Biden's DOJ, was transferred to Bragg's office to run this weaponized prosecution of President Trump, isn't that true?

Mr. COSTELLO. Not only true, but it is unheard of.

Ms. STEFANIK. Unheard of. It is a disgrace. Do you agree that this weaponization of lawfare goes straight to the top with a purpose of helping Joe Biden's failing Presidential campaign?

Mr. COSTELLO. The circumstantial evidence definitely supports that.

Ms. STEFANIK. The unconstitutional gag order on President Trump from New York Judge Merchan is unprecedented lawfare.

Mr. COSTELLO. As far as I know, absolutely.

Ms. STEFANIK. Let's go to the daughter of the judge. Isn't it true that she is raising millions of dollars off this sham case?

Mr. COSTELLO. Well, I have to say I have read that in the media. I don't know it for my own knowledge.

Ms. STEFANIK. It is true.

Mr. COSTELLO. Thank you.

Ms. STEFANIK. One additional question. I want to talk about the rigged and unprecedented jury selection process. Isn't it true that Bragg's team asked the jurors if they followed Trump on social media?

Mr. COSTELLO. Yes.

Ms. STEFANIK. Isn't it true that they did not ask any of the potential jurors if they followed Biden on social media?

Mr. COSTELLO. Or Michael Cohen, yes.

Ms. STEFANIK. Or Michael Cohen. Isn't it true that 87 percent of the jurors said they voted for Joe Biden?

Mr. COSTELLO. That is true.

Ms. STEFANIK. Is this unprecedented and lawfared jury shopping?

Mr. COSTELLO. Without a doubt.

Ms. STEFANIK. Without a doubt. Political lawfare for the purpose of election interference to go after Donald Trump, do you agree?

Mr. COSTELLO. Totally.

Ms. STEFANIK. This is one of the reasons that Trump's polls continue to skyrocket, and it is why President Trump will win in 2024 to end the illegal and war weaponization of the justice system. Because if they can illegally go after Trump, they can go after anyone.

I yield back.

Mr. MASSIE. The gentlelady yields back. I now recognize the gentleman from Massachusetts, Mr. Lynch, for five minutes.

Mr. LYNCH. Thank you, Mr. Chair.

Chair Jordan started this hearing by saying, "You can't make this stuff up." Anyone who has followed this Committee's hearings since the beginning knows that that is exactly what the Republican Members are doing in this Committee, who have been making this stuff up day after day and pushing out untruths, from Jewish space lasers to the Big Lie.

The Big Lie, let's start with that one. The claim that Biden lost the election and Trump really won. In spite of the fact that Rudolph Giuliani and his crew brought 60 cases in five different States, lost every single case, lost every single case. Even before Trump-appointed judges, lost every single case that they brought for lack of evidence.

Some of these cases didn't even survive a motion to dismiss. There was just no evidence. Yet, my colleagues on the other side, including the Chair, Mr. Jordan, continue to push that big lie that Trump really won the election.

Let's talk about Hunter Biden's laptop. We don't talk about that. That was the smoking gun, that was the thing that was going to prove all these theories about wrongful conduct on the part of the President.

Then, oh and then, there was Alexander Smirnov, who Chair Jordan said he represents the most corroborating evidence that we have. The most corroborating evidence we have, until he was arrested. He was indicted and arrested. He is still in custody, your star witness, your star witness. This is baloney.

Hannah Arendt, who was a historian who was in Germany at the time of Hitler's rise, she wrote a book about the origins of totalitarianism. She talked about the active, aggressive capability to believe in lies. Not just gullibility, but the active, aggressive capability to believe in lies.

Just as in Germany, the time and the truth catch up to all those lies. There are some good people on the other side of the aisle. I just worry about your reputations and your families' reputations about pushing this crap.

We can disagree about things, but when you are pushing stuff like that that is our harmful to our democracy, and you are fol-

lowing, of all people, following Donald Trump, dear God. Dear God almighty. That is where you are going to—you are going to die on that hill? You are going to die on that hill?

Sometimes when someone accuses you of something that you are not doing, they are the ones who are actually doing it. We are here today to talk about the so-called weaponization of the Federal Government.

So, I have here a compilation of letters and interventions that Chair Jordan has authored and submitted to the four cases that are ongoing right now. Three of them are Federal, one of them is a State criminal trial. These are all criminal trials in which Donald Trump is a defendant.

So, these all represent either threatened subpoenas or attacks on—or other types of legal, I guess you would call it lawfare, lawfare. Attacks on the courts, the prosecutors, and in some cases witnesses.

So, even up to last week, Mr. Jordan was calling for the investigation of Michael Cohen. Before he is a witness about to take the stand, and Chair Jordan went so far to send a letter to the Department of Justice demanding that it investigate former Trump attorney Michael Cohen for perjury. That was last week, before he took the stand.

Talk about interference with the legal process and lawfare. That is what is going on in this Committee. To be honest with you, we got—I agree with Maria Bartiromo, her frustration. We got better things to do than this circus.

With that, I yield back.

Mr. MASSIE. The gentleman yields back. The gentleman from Florida is recognized.

Mr. GAETZ. From the testimony of Michael Cohen's lawyer, Mr. Costello, "These days you see individuals running for prospective office who claim that if you elect me, I will bring down this public figure or that public figure who disagrees with my political philosophy.

> Understand that to destroy a political rival, you need not convict that person of a crime. All you must do is leak the fact that the individual is being investigated for a particular crime, thereby destroying his or her reputation and causing that individual to incur legal fees to defend themselves.
>
> The net result is if you can destroy their reputation and bankrupt them with legal fees, you have effectively eliminated or canceled your opposition without ever convicting them of a crime or getting a civil judgment against them.

Mr. Costello, I just wanted to say, I felt very seen by your testimony that was provided to the Committee. I want to get back to what Mr. Lynch said previously. That sometimes when you are accused of something, it is actually the people accusing you who are doing that thing.

Now, you were accused of illegally dangling a pardon before Michael Cohen, right?

Mr. COSTELLO. Correct.

Mr. GAETZ. That was a lie.

Mr. COSTELLO. Absolutely.

Mr. GAETZ. That accusation could not withstand any scrutiny or review from the Southern District of New York, where Mr. Goldman worked, where other great attorneys have worked, right?

Mr. COSTELLO. Where I worked.

Mr. GAETZ. Right, but that dangling, that accusation of dangling something improper. Remember what Mr. Lynch said, "if you are being accused of that, maybe it is the people doing the accusing."

Now, Mr. Trusty, you described a searing fact pattern moments ago. You accused a Department of Justice official of an extortionist ploy to dangle a judgeship before a lawyer to get that lawyer to betray their client Walt Nauta, right?

Mr. TRUSTY. Yes. I have no reason to disbelieve that lawyer.

Mr. GAETZ. Who was the Department of Justice official that engaged in that extortionist ploy?

Mr. TRUSTY. Well, the lead person in that conversation was Jay Brad, who is still currently assigned to the Southern District of Florida case.

Mr. GAETZ. For those of you who have been prosecutors, who have dedicated your lives to the rule of law, what does it tell us about the shape of the legal system that you have people with the ability to do what Mr. Costello laid out in testimony. To charge you with a crime, destroy your reputation, bankrupt you like they are trying to do to Walt Nauta, a patriot who served in our military.

Then to see—and to hear this claim that they were literally trying to compromise the lawyer. How should we reflect on a legal system that permits that?

Mr. TRUSTY. It is broken. I had a friend of mine from the Department of Justice text me not too long ago, and he said it is going to take decades for the Department to fix itself. I love that place. I worked there; I was a prosecutor for 27 years.

I am fearful that we have crossed the Rubicon by being ends justify the means, by engaging in selective targeting and differential treatment. I don't know how it ends or how it gets better, but I am happy to least bring evidence about that issue.

Mr. GAETZ. That is why these hearings are so necessary. I think that we would love to stay well-constrained within our Article 1 lane, but when we have got this Article 2 process that is unloading on political rivals in Article 3 courts, as Mr. Costello said,

> The only way to have a check and a balance on that system is for the Congress to step forward and utilize its tools, the most profound being the power of the purse.

Indeed we have powers of impeachment and oversight that are important as well.

Mr. Costello, is Michael Cohen a liar?

Mr. COSTELLO. That doesn't begin to describe him. He lies at every opportunity when it is in his favor. If you had a half an hour or five minutes, I could start to list the many lies that he told us.

Mr. GAETZ. Well, let's just triage them. Is there a single branch of government that Michael Cohen hasn't lied to?

Mr. COSTELLO. Gee, I think there isn't.

Mr. GAETZ. Right, you really have to work hard to hit the hat trick. It is one thing to lie to investigators. I guess it is another thing to lie to Congress. To lie to investigators and then Congress and then courts.

Mr. COSTELLO. Don't forget the judges.

Mr. GAETZ. Yes, the judges—

Mr. COSTELLO. He lied to the judge too, when he pled guilty.

Mr. GAETZ. It is just so odd. It is not every day you see someone's former lawyer having to come forward and say I regrettably have to inform the Congress, the court, whomever, that my own client I am aware is a liar.

Mr. COSTELLO. Thank goodness he was foolish enough to execute the waiver of the attorney-client privilege, because he was trying to implicate Rudy Giuliani and myself in a crime, which was absurd.

Mr. GAETZ. So, he even lied about that. He even lied about trying to turn on you. I guess his lies are defied by his other lies and the writings and the paperwork. This liar should not be able to hold our elections hostage. That is why this hearing is so critical.

I yield back.

Chair JORDAN. Gentleman yields back. The gentlelady from—Gentleman from Massachusetts for a point of order. Or unanimous consent?

Mr. LYNCH. Mr. Chair, I will ask unanimous consent to submit a compilation of your statements and letters to the four trials in which Donald Trump is currently the defendant.

Chair JORDAN. Without objection. The gentlelady from Florida is recognized for five minutes.

Mr. LYNCH. Mr. Chair, you should recuse yourself. These are all your letters.

Chair JORDAN. Was that part of the unanimous consent request? I didn't hear that, if it was. The gentlelady from Florida is recognized.

Ms. WASSERMAN SCHULTZ. Thank you, Mr. Chair.

My Republican colleagues claimed a two-tiered system of justice exists because Trump was indicted for his handling of classified documents and exposing our Nation's most guarded secrets, while Republican Special Counsel Robert Hur found President Biden innocent of any wrongdoing.

Let's walk through the facts. On May 11, 2022, a year after the Archives began repeatedly demanding that Trump turn over Presidential records and warned him that they may have to refer the matter to DOJ if he did not cooperate, a grand jury issued a subpoena for Trump to produce the classified documents in his possession.

Trump's response to his lawyers was, and I quote,

> I don't want anybody looking. I don't want anybody looking through my boxes, I really don't. I don't want you looking through my boxes.

Trump even questioned,

> What happens if we don't respond at all or don't play ball with them? Wouldn't it better if we just told them that we don't have anything here? Well, look, isn't it better if there are no documents?

Does this sound like someone who follows and respects the law? I certainly don't think so.

Ms. Wine-Banks, President Biden didn't refuse to cooperate with investigators for a year, correct? Did President—

Ms. WINE-BANKS. Yes.

Ms. WASSERMAN SCHULTZ. Did President Biden lie about classified documents at his residence, or did his lawyers proactively inform the Archives of this fact?

Ms. WINE-BANKS. You have stated it correctly.

Ms. WASSERMAN SCHULTZ. Unlike Donald Trump, Joe Biden didn't prevent anyone from going through any boxes or materials to search for classified documents, correct?

Ms. WINE-BANKS. He welcomed them to his house and his offices.

Ms. WASSERMAN SCHULTZ. Thank you. Now, let's contrast how Donald Trump acted compared to President Biden.

On June 2, 2022, even after Trump's lawyer arranged a time to go through each box in a specific storage room, Trump instructed his valet and codefendant Walter Nauta to move 64 boxes filled with classified documents from the storage room to Trump's residence, where Trump knew his attorney would not be searching.

After Nauta moved these boxes from the storage room to Trump's residence, Trump's lawyers, unaware that the boxes had been moved, found no classified materials, and certified this to the FBI. The FBI relied on the lawyers' certification.

Seemingly for the moment, Trump duped his own lawyers. All that activity took place in my home State of Florida, yet my Sunshine State law-and-order colleagues on other side of the aisle uttered not a complaint about Trump's obvious coverup of criminality and wrongdoing. I know that is shocking to everyone here.

Talk about two tiers of justice. Now, so we are clear about this, please share with me, Ms. Wine-Banks, did President Biden ever move materials to hide them from his lawyers, according to the Hur investigation?

Ms. WINE-BANKS. No.

Ms. WASSERMAN SCHULTZ. Did he ever instruct anyone else to do so for him?

Ms. WINE-BANKS. No.

Ms. WASSERMAN SCHULTZ. Did he ever attempt to hide documents from investigators at all?

Ms. WINE-BANKS. No.

Ms. WASSERMAN SCHULTZ. OK, continuing on, in another act of deception, Donald Trump also, "attempted to delete security camera footage at the Mar-a-Lago Club to conceal information from the FBI and grand jury." This was after the subpoena had been issued, which specifically called for security camera footage around the site where the boxes were store.

President Biden didn't delete security camera footage around the sites where classified documents had been stored in his home, Ms. Wine-Banks, correct?

Ms. WINE-BANKS. Yes.

Ms. WASSERMAN SCHULTZ. President Biden never attempted to delete or dispose of any evidence that he knew investigators asked for, correct?

Ms. WINE-BANKS. Yes.

Ms. WASSERMAN SCHULTZ. Thank you. This isn't a two-tiered system of justice. These are just two men who acted very differently, one compliant, one criminally obstructive.

One is an upstanding American civil servant who fully cooperated with an investigation, and the other is a man who took multiple criminal actions to cover up his intentional theft of sensitive public and national security documents.

Ms. Wine-Banks, prosecuting a President or former President comes with many challenges, as you well know as a member of the team that prosecuted President Nixon. In your experience, what would be the impact on our judicial and democratic systems if presidents could never be held accountable?

Ms. WINE-BANKS. I think the consequences and the danger of that are enormous. I have long believed that a former President takes the role of any ordinary citizen and can be held accountable.

I also believe that the Office of Legal Counsel opinion is incorrect, and that even a sitting president could be held accountable. That there is no possible way that even within the outer parameters of a President's responsibilities is the commission of crimes. That when the evidence of crimes is there, they must be pursued in order to protect our democracy.

Ms. WASSERMAN SCHULTZ. Thank you, Ms. Wine-Banks. I think it is important to point out that the most clear evidence of why we are here on a Wednesday, for the first time, by the way, which, not uncoincidentally happens to be the day that the court is not in session and make it more likely that defendant is watching, that the purpose of this hearing is to witness tamper.

The purpose of this hearing is to try to influence the jury to do things that Donald Trump has a gag order to prevent him from doing, all with his lackeys here on the other side of the aisle aiding and abetting that goal.

Thank you, I yield back the balance of my time.

Chair JORDAN. The gentlelady yields back.

Mr. Trusty, did Joe Biden keep classified documents?

Mr. TRUSTY. Yes, he did.

Chair JORDAN. Did he knowingly disclose classified information?

Mr. TRUSTY. It appears that he did to a biographer for about an $8 million advance fee.

Chair JORDAN. What was his motive for doing so?

Mr. TRUSTY. About an $8 million advance fee.

Chair JORDAN. The $8 million motive to do, to knowingly keep and knowingly disclose classified information.

Mr. TRUSTY. Correct.

Chair JORDAN. He is getting nothing because he is a forgetful elderly gentleman and he is not going to be charged. Yet, they are going after President Trump.

Let me ask you this, I want to go back to where Mr. Gaetz was. Who is Stanley Woodward?

Mr. TRUSTY. Stanley Woodward is a defense attorney in Washington, DC, with a stellar reputation for honesty, very intelligent guy. Someone I met during the process of representing President Trump.

Chair JORDAN. In the context, Mr. Gaetz was just at, he is the one who had the judgeship dangled in front of him, right?

Mr. TRUSTY. Exactly. He had a Superior Court Judgeship pending at the time, so that wasn't out of thin air. He reported it promptly and eventually swore an affidavit to a Federal judge.

Chair JORDAN. Here is what the Department of Justice said to him, "Your guy Walt needs to flip. I would hate to see you jeopardize your chances for the judgeship." It doesn't get much plainer than that, does it?

Mr. TRUSTY. Does not.

Chair JORDAN. Is that lawfare at its worst?

Mr. TRUSTY. Among other words, yes.

Chair JORDAN. Yes, I have never seen anything like that. You have worked with Mr. Woodward. He is not necessarily on the Republican side of the aisle, is he?

Mr. TRUSTY. My best guess is he is not.

Chair JORDAN. He is not. He is a good, honest lawyer, the way the Justice Department is supposed to operate.

Mr. TRUSTY. He is, and I think he, typical for him being the person he is of integrity, he doesn't like being in this position. He is probably not thrilled that I am even talking about it. The truth is the truth.

Chair JORDAN. The truth is the truth.

How about this, Mr. Costello: "I swear to God, Bob, I don't have anything on Donald Trump." Who said that?

Mr. COSTELLO. Michael Cohen about 10–20 times.

Chair JORDAN. So, not just once, multiple times he told you that while you were his attorney, while you were in consultation with your client, he said that multiple times.

Mr. COSTELLO. He not only said that multiple times, but he said that after I said to him, knowing that he was suicidal, "Michael, think about this: Isn't it easier to cooperate against Donald Trump than it is to kill yourself?" He still said, "I swear to God, Bob, I don't have anything on Trump."

Chair JORDAN. When you laid it all out, you said, dude, you better cooperate. If you have got something truthful on the President, you better let me have it or you are in trouble, and he came back with the exact same statement, "I swear to God, Bob, I don't have anything on Trump."

Mr. COSTELLO. That is correct. That was my obligation to do that, to fully inform him of what his escape route was, as he called it.

Chair JORDAN. Then he changed his story, right? Then he went on to change his story.

Mr. COSTELLO. He changed his story. He turned around—and he's the only one who can do that. You have to believe Michael Cohen, in order to convict Donald Trump, if there's actually a crime there, which there isn't but that's an issue for an appellate court.

Chair JORDAN. Yes. I want to read another statement, another line from your statement. You said, "Alvin Bragg refused my offer."

Mr. COSTELLO. Right.

Chair JORDAN. What was the offer?

Mr. COSTELLO. My offer was to come to his office and sit down, let him look me in the eye and see if I'm telling the truth when I had all these documents showed that Michael Cohen simply was not a reliable witness, that his predecessors in the Southern District of New York decided after they spoke to me with the FBI that Michael Cohen wasn't reliable. They never used him again for anything.

Chair JORDAN. Why wouldn't Alvin Bragg talk to you? Why do you think?

Mr. COSTELLO. You have to ask him that. I talked to eight of his assistant DAs.

Chair JORDAN. What was that reception like?

Mr. COSTELLO. I gave them a Zoom conference interview for an hour-and-a-half before I testified in the Grand Jury on Monday. Then on Monday when I testified in the Grand Jury they did everything in their power not to ask me the questions that would elicit the exculpatory information.

Chair JORDAN. Is this the same information you took the Southern District of New York?

Mr. COSTELLO. It is.

Chair JORDAN. They were happy to get it.

Mr. COSTELLO. Exactly.

Chair JORDAN. What did they decide? What did the Southern District—

Mr. COSTELLO. They decided they did not use my Michael Cohen for anything again.

Chair JORDAN. Yes.

Mr. COSTELLO. They didn't proceed against Donald Trump for anything.

Chair JORDAN. They saw what anyone with common sense would see, that we can't make this guy our star witness in a prosecution. We can't do that. They didn't do it. They didn't bring any charges, right?

Mr. COSTELLO. That's correct.

Chair JORDAN. Even Alvin Bragg understood that. Alvin Bragg said, quote,

> He could not see a world in which he would indict Trump and call Mr. Cohen as a prosecution witness, but then he changed his mind.

He didn't change his mind until after President Trump was an announced candidate for President, which I think underscores this fundamental point this is all about politics. That is your experience dealing with Mr. Bragg and his team, is that right, Mr. Costello?

Mr. COSTELLO. Absolutely. There's no coincidences here. The fact that Judge Merchan has had all these cases—and by the way, when he finishes with the Donald Trump case, Steve Bannon is next. Out of all the judges in New York County, somehow, they keep on coming up with the same judge. Coincidence?

Chair JORDAN. I don't think so.

Mr. COSTELLO. I believe in him.

Chair JORDAN. I think it is all coordinated.

Let me just in my last eight seconds, Mr. Trusty, let me just ask you this: When the prosecution alters the sequence and the order of the documents they seized in a raid that broke all precedent in what they did, the physical documents don't match up with the scanned documents. Is that a problem?

Mr. TRUSTY. It is. We view the materials almost like carbon dating. You could see dates of newspaper articles, you'd see photographs, you'd see an item marked classified. The exact context is an important part of the proof for the government as well as the defense—for the defense attorneys. So, altering that and not being able to retreat back to some sort of recreation is a serious problem.

Chair JORDAN. You see the irony, don't you, the irony of Jack Smith mishandling documents all the while he is charging President Trump with mishandling documents? I don't think that is lost on anyone.

Mr. TRUSTY. Well, remember it came out in the context of correcting a prior statement to the court that there was not a problem with mishandling the documents.

Chair JORDAN. Oh, so they—even worse, or even better, I guess, it is even—

Mr. TRUSTY. Let's go with the worse.

Chair JORDAN. —it would be funnier if it wasn't so true. My time is expired.

The Chair now recognizes the gentleman from Virginia.

Mr. CONNOLLY. Thank you.

Gosh, Ms. Wine-Banks, I am listening to this, and I guess I am supposed to be persuaded that the only liar on the platform is Mr. Cohen. Now, help me reflect a little bit because I want to make sure my memory serves me well. Did the former President of the United States, Donald J. Trump—was he found guilty of lying and massive fraud by the State of New York?

Ms. WINE-BANKS. Yes.

Mr. CONNOLLY. So, he lied?

Ms. WINE-BANKS. He did.

Mr. CONNOLLY. He was found guilty of it?

Ms. WINE-BANKS. Yes.

Mr. CONNOLLY. So, we can speculate about others, but in this case, we have a record. Was he fined for that? He was probably given a little slap on the wrist, right?

Ms. WINE-BANKS. They gave him a huge slap on the wrist and in one of those cases the judge said that Michael Cohen was credible. So, we have that affirmation of his credibility. The prosecution doesn't pick the witnesses; the defendant does. Witnesses who are cooperating were former coconspirators and they do act in furtherance of the conspiracy and in aid of their coconspirator, in this case Mr. Trump.

Mr. CONNOLLY. Well, my, my, my. So, we can have this theater about a particular witness and his credibility, but we actually have a rendering, a judgment rendered in the court in New York in a case brought by the Attorney General of New York. Is that correct?

Ms. WINE-BANKS. That is correct.

Mr. CONNOLLY. Right. Apparently, they are all engaged in a conspiracy against this poor innocent former President of the United States. Was that same individual, the former President of the United States, also found guilty in a different court of defamation? Defamation being you liked about somebody.

Ms. WINE-BANKS. Yes.

Mr. CONNOLLY. He was found guilty?

Ms. WINE-BANKS. He was found guilty of that and of sexual assault.

Mr. CONNOLLY. Of sexual assault? Oh. Well, was he fined for that?

Ms. WINE-BANKS. Very large fine.

Mr. CONNOLLY. Another large fine? So, he lied about his business and was convicted of committing civil fraud in the State of New York and fined almost—well, with interest and everything close to a half a billion dollars?

Ms. WINE-BANKS. Correct.

Mr. CONNOLLY. Had to post—had to actually post a bond to make good as a surety on that. Is that correct?

Ms. WINE-BANKS. That is correct.

Mr. CONNOLLY. Now, the title of this Subcommittee, Select Subcommittee is "Weaponization"—the false premise being that the Federal Government is all organized to weaponize against innocent, especially right-wing victims. Now, if I told you, given your background, that someone running for President of the United States has said I will be dictator on day one, out of his own mouth, and we know that there are plans to create huge detention camps that could hold and process millions, not thousands, of immigrants in the United States, and they have a plan to politicize the 2.2 million Federal employee workforce by creating a new schedule, Schedule F, and initially start with 50,000 political employees appointed rather than civil service career professionals, would I be fair to say that sounds like weaponization to me?

Ms. WINE-BANKS. It does. Project 2025 is very scary to me, and it includes a weaponization attempt through the Department of Justice. It says in plain language that's what they intend to do if Donald Trump is reelected.

Mr. CONNOLLY. Well, if I were to read—I could read a series of quotes to you, but I will give—"If I happen to be President and see somebody who's doing well and beating me very badly, I say go down and indict them. They would be out of business. They'd be out of the election." You know who said that?

Ms. WINE-BANKS. No.

Mr. CONNOLLY. Donald Trump, "On day one of my new administration I will direct the Department of Justice," this Department of Justice Mr. Trusty and Mr. Costello want to preserve —

> On day one of my administration I'll direct the Department of Justice to investigate every radical district attorney and attorney general for their illegal racist enforcement of the law.

You know who said that?

Ms. WINE-BANKS. I'm going to guess it was Donald Trump.

Mr. CONNOLLY. Does that sound to you like the weaponization of the Department of Justice, to go after political enemies or perceived opponents?

Ms. WINE-BANKS. It does.

Mr. CONNOLLY. Thank you. I yield back.

Chair JORDAN. The gentleman yields back.

The gentleman from Kentucky is recognized.

Mr. MASSIE. I thank the Chair.

Mr. Trusty, is it true or do you believe; I am going to ask you to speculate on something, that some of these cases are going to get overturned even if they do get a prosecution in their current venue?

Mr. TRUSTY. Yes, I do think that when prosecutors are being inventive for historically important prosecutions that they can collapse of their own weight. Maybe that is for misconduct in Georgia, maybe that's for a novel felonization of misdemeanors in New York, but I do think that it puts a lot of pressure on the Appellate Courts. They may well get to that point where trial judges go along with the game but the Appellate Court does not.

Mr. MASSIE. So, isn't it a characteristic of lawfare sometimes that you don't really care how the case is going to end up, that the process is the punishment?

Mr. TRUSTY. Sure. Look, for any client it is strain and stressful to go through an accusation and a trial. It's got to be particularly maddening when you're running for President to be going through that, to be tied up in New York courtrooms for most of the day. So, yes, it is—there's a win without a win for the proponents of lawfare sometimes.

Mr. MASSIE. Mr. Hamilton, I want to talk about the Special Counsel Office in general. The Appointments Clause of the Constitution says,

> The President shall nominate and, with the advice and consent of Senate, shall appoint Ambassadors, other public ministers, and consuls, judges of the Supreme Court, and all other officers of the United States.

Are U.S. attorneys nominated by the President and confirmed by the Senate according to the Appointments Clause?

Mr. HAMILTON. In fact, they are.

Mr. MASSIE. U.S. attorneys are held to the Appointments Clause because they are delegated some part of the sovereign power of the United States such as the ability to make indictments and charge individuals with crimes. Was Jack Smith nominated by President Biden or confirmed by the Senate?

Mr. HAMILTON. He was not.

Mr. MASSIE. He was merely given the powers of the Special Counsel by Attorney General Garland, wasn't he?

Mr. HAMILTON. That's correct.

Mr. MASSIE. I think it is kind of a fallacy that we—Congress can create this special office and that it will be free of any political bias. Do you believe that Special Counsel Jack Smith is acting independently of the White House?

Mr. HAMILTON. Absolutely not.

Mr. MASSIE. What leads you to believe that he is not?

Mr. HAMILTON. So, it's not only the novel application of some of these statutes to former President Trump. Twisting statutes that this Congress wrote, twisting the meaning of plain language. You have sections like 15(12)(c), interpreting the Presidential Records Act in a way that precludes Donald Trump from deciding which records are his. There are all kinds of different things that he's doing. I would say that the manner in which they've been acting, as my colleagues on this panel have testified to, the manner in which they have conducted themselves in their investigation every step along the way, whether it's cataloging evidence or whether it's statements to the court and everything in between—Jack Smith is acting like a partisan hack. He has a record of that—doing so in the past.

Mr. MASSIE. According to your reporting Jay Bratt, a top aide to Special Counsel Jack Smith, met with the White House officials multiple times including just weeks before Special Counsel Smith indicted President Trump. It is hard to say that he is independent if these meetings are in fact going on, isn't it?

Mr. HAMILTON. That's correct.

Mr. MASSIE. I think maybe we need a hearing later to talk about this office itself and how it has been weaponized.

I am going to yield my remaining time to the Chair.

Chair JORDAN. I thank the gentleman for yielding.

Mr. Trusty, you have talked about earlier Jack Smith's obsession with getting this trial done before—in a speedy fashion, I think before the election is—it seems to me that in and of itself—all of them are concerned these trials may not happen before the—why does that matter? We want justice done right. That should be the focus, not some artificial timeline.

Mr. TRUSTY. I think the speedy trial demand betrayed the political underpinning of the entire process. There's no reason for a Federal prosecutor with a nonincarcerated defendant to say anything.

If I could just for a quick sec—the model here—there was a real obvious model that would have given us all more faith in this process. That is full transparency on behalf of the Department of Justice. Coming to court and saying we're turning over everything in discovery, we're ready for trial, but, judge, you tell us. We'll show up when we need to show up. We're here for small "j" justice, not capital "J" justice, as we say at DOJ. That's the problem. That model of transparency and openness, not fighting special master supervision, not appealing everything, not trashing Judge Canon in Florida, that's what we could have had some respect for and some belief that the process is playing out fairly.

Chair JORDAN. If you only bring charges after he announces for President, then of course you want the trials before the election. That seems so obvious I think to anyone with common sense. That is what they are trying to do.

Now, the good news is it is all falling apart. It is all falling apart, which when you have these kinds of cases, maybe that is what we should have probably expected in the end.

I thank the gentleman for yielding.

The Chair now recognizes the gentlelady from Texas.

Ms. GARCIA. Thank you, Mr. Chair.

To the witnesses, good morning. I apologize, I have a competing hearing that I have to play dual role here this morning.

While I missed your opening statements, I certainly have looked at what you were prepared to testify to. Frankly, I have some questions, but I am just still astounded to hear that some of my colleagues are questioning the timing of the charges and all this poor little Donald Trump got indicted story, their claim that there is a two-tier system of justice all because the twice-impeached former President was indicted on charges for mishandling of classified documents and Biden was not. That is the bottom line. Biden and Pence were not. It is ridiculous. I don't say that as a Democrat or as a Member of Congress. I say that as a former judge responsible for upholding our Constitution and the rule of law.

Apparently, my Republican colleagues need a refresher on criminal law. To convict someone of a crime a prosecutor must prove each element of that criminal act beyond a reasonable doubt. Prosecuting someone under the relevant statutes in these cases a prosecutor would have to prove willfulness. Defendants would have to have willingly withheld these documents.

Mr. Hur's report cleared President Biden of wrongdoing, but boy, oh boy, did Trump willfully steal and conceal—new mode of oper-

ation there, steal and conceal his documents. In his words when he realized he had the document in his possession, he didn't call authorities to come get them, like President Biden or Vice President Pence did to correct the problem. No, he thwarted every attempt to have Federal prosecutors from coming in. Reports say he said, quote, "What happens if we just don't play," with investigators and that he didn't want anyone getting, quote, "His documents." His documents. He has some strange belief that classified documents are his and his only.

So, he lied to his lawyers, and he lied to the FBI pretending he didn't have any more documents when in fact he instructed his aide to hide those documents around his unsecure property in Florida. We have all seen the pictures. He threw them in bathrooms and bedrooms, in a building that had tens of thousands of people come through, where 150 members of his staff worked.

This isn't a two-tiered system of justice. It is just the criminal justice system evaluating the facts, facts Republicans apparently seem uninterested in and want to totally ignore because facts aren't what matter to my colleagues across the aisle as they have proven today. Regardless of how much they try, in America no one is above the law, not even a former twice-impeached President.

Ms. Wine-Banks, you were a prosecutor that worked on the Watergate case. As a former prosecutor can you speak to what is needed to prove willingness and do you think that it can be proven in this case with the classified documents?

Ms. WINE-BANKS. Absolutely. I think some of the conduct, which all occurred after he was out of office, including the concealing of the documents, including telling people to delete the video, including everything that he did to make sure that things weren't found—he hid documents from his own lawyer by moving them from where he knew his lawyer would be searching, he caused his lawyer to file a false statement to the FBI about here's the documents we have. Those are all evidence of his knowledge and his willfulness. He knew he had those documents. He knew he didn't want them to be turned over.

If I could just add, the Presidential Records Act is something that was passed as a result of Richard Nixon's conduct, and so I'm very familiar with it. It extends to not just classified documents, but to all the records of a President. So, he was holding many, many documents that should have been turned over as a routine matter when he left the White House.

Ms. GARCIA. This is opposed to how Vice President Biden and former Vice President Pence handled the request?

Mr. WINE-BANKS. That is correct. In the case of Biden the Special Counsel investigating concluded that there was no evidence of willfulness that could establish beyond a reasonable doubt that he had any knowledge or willfulness in possessing those documents. There were even specific findings about things like his diaries, which have long been held since Ronald Reagan was President to be the personal possession. Those are personal documents. The President—former President Trump tried to say everything is my personal documents. That's not how it works. Personal documents are like diaries and handwritten notes.

Ms. GARCIA. Well, thank you. I am running out of time, but would you say that there really—I don't even know what this—what are they calling it? Legalfare or—

Ms. WINE-BANKS. Lawfare.

Mr. GARCIA. Does that word even make sense?

Ms. WINE-BANKS. Well, I had to look it up. It's not one that I had ever heard except in terms of the Lawfare Blog. So, I looked it up and I was quite surprised at what its meaning was in terms of weaponization. As I was being asked earlier, the Project 2025 is the weaponization of government.

Ms. GARCIA. Well, they are talking about this from someone whose found—countless and countless and countless of lawsuits against contractors, against property owners. He is Mr. Lawsuit himself. So, thank you so much for being here today.

Ms. WINE-BANKS. Thank you.

Ms. GARCIA. I yield back.

Chair JORDAN. The gentlelady yields back.

The gentleman from North Carolina is recognized.

Mr. BISHOP. Mr. Costello, I would like—I am over here on this end, sir.

Mr. COSTELLO. Thank you.

Mr. BISHOP. I want to distinguish something. It is extremely bad judgment to put an inveterate well-known liar on the stand. It is bad judgment for a lawyer to do that because that person is subject to impeachment for his lies. That is true, right?

Mr. COSTELLO. It is true.

Mr. BISHOP. For his lies. That's right, right?

Mr. COSTELLO. It is true.

Mr. BISHOP. OK. An impeachment for those watching. That's when you destroy the credibility of a testifying witness, right?

Mr. COSTELLO. You do. You also destroy the credibility of the office which is why we wanted to sit down with Alvin Bragg.

Mr. BISHOP. Absolutely. There's another problem with doing that, isn't there? That is to say that the witness might give false testimony while on the stand. That's something yet further. How many lies did you testify Cohen testified to yesterday in New York court?

Mr. COSTELLO. Well, I only read the section that involved me. Virtually every statement that he made about our interaction was false.

Mr. BISHOP. OK. Alvin Bragg and his assistants prosecuting that case, they're lawyers, right?

Mr. COSTELLO. They are, yes.

Mr. BISHOP. Lawyers knowingly permit their own witness to testify falsely before a court?

Mr. COSTELLO. Absolutely not.

Mr. BISHOP. Is that just a matter of bad judgment or something more?

Mr. COSTELLO. No, it's a matter of ethics. It's required.

Mr. BISHOP. Are lawyers who do that susceptible to punishment for it?

Mr. COSTELLO. They are susceptible.

Mr. BISHOP. If lawyers do that and they're doing so in the course of interfering with an ongoing Presidential election, could they be subject to punishment for that?

Mr. COSTELLO. I would think so, sure.

Mr. BISHOP. I notice that today in the course of this proceeding so far, not one Democrat has asked either of you a question and allowed you to speak to it.

Mr. COSTELLO. I not only noticed that, but I noticed that after they take cheap shots, they leave.

Mr. BISHOP. Absolutely. Speaking of that cheap shot, Mr. Goldman—he's a great lawyer, by the way. So, he knows not to ask you a question.

Mr. COSTELLO. Well, we've had prior dealings. I think he does know not to ask me a question.

Mr. BISHOP. I'm sorry. Do you care to respond to what he's suggested?

Mr. COSTELLO. Well, he's suggesting that this is jury interference. First, I had nothing to do with the scheduling of this hearing. Second, nobody knew when Michael Cohen was going to testify.

The prediction by the media and also by the prosecutors was that this was going to be a five- or six-week trial. So, according to that, Michael Cohen shouldn't be testifying for another week or two. So, to claim that we're just doing this to interfere with the jury that's been instructed, of course, not to watch proceedings such as this it's ridiculous.

Mr. BISHOP. Absolutely.

Mr. COSTELLO. It's a cheap shot, and that's why I called it that.

Mr. BISHOP. Totally agree, and I'll just observe. When I was reading your statement, I noticed that you said you'd been practicing law for 51 years. I said, wow, you're going to be old.

Mr. COSTELLO. No.

Mr. BISHOP. What a great head of hair or great—absolutely have it all together. You've been practicing law at a high level for 51 years. Mr. Trusty, next, you said you were with the Justice Department for 27 years. Is that correct?

Mr. TRUSTY. I was a prosecutor for 27, 17 at DOJ.

Mr. BISHOP. OK. Prosecutor, 27 years and 17 at DOJ.

Mr. TRUSTY. So yes, I'm not as old as Bob.

Mr. BISHOP. No one has attempted to lay a glove on either of you. How about Stanley Woodward? Has anybody to your knowledge challenged his sworn account of being extorted by Jay Bratt, Mr. Trusty?

Mr. TRUSTY. No, I also have no evidence of the department looking inward about it at all.

Mr. BISHOP. What, indeed, is the recourse. This shouldn't come before this Committee as the Members of the Minority have said. What, indeed, is the recourse for this? Mr. Trusty?

Mr. TRUSTY. I'm not sure. Certainly, disqualification from the case which would be a starting point here. There should be a robust OPR investigation on the DOJ side. My experience with OPR even in some of the worst accusations that were made to people in the department was that they geared it to not make decisions until after the litigation was closed which was very self-serving. I'm a little concerned that the public ramifications by way of OPR and DOJ's response might be years away.

Mr. BISHOP. That seems to be the problem. No one is ever held to account and the process takes years and years and years and then ends in a whimper with somebody sending a report forth. The problems just keep coming.

The final—I encourage those who are watching—unfortunately, I only got 30 seconds left—to read the last two—actually, both of your statements are extraordinary. Anybody watching this hearing ought to pull those statements up and read them word for word. They're magnificent, well drafted.

The end of yours, Mr. Trusty, in which you characterize where the Justice Department is and how much of a problem this is and how dangerous it is to the country I think are maybe two of the most significant paragraphs I've read while I've been in Congress. I encourage people to look at them.

Mr. TRUSTY. Thank you, sir.

Mr. BISHOP. Yes, sir. I tell you appreciate your coming here. Both cases, it is an act of service to the country. I think the American people are wise to this.

I know how it's going to go. The only question is what comes next. How's this going to be dealt with in the next administration? Because be dealt with, it must be. I yield back.

Chair JORDAN. The gentleman yields back. Well said, particularly the reference to the gentleman's written testimony. I would encourage everyone to read that. The gentleman from California is recognized.

Mr. GARAMENDI. Thank you, Mr. Chair. If I might start since the issue of veracity has come up repeatedly here, if I might enter into the record three articles that have recently appeared dealing with veracity of a former President. One's from *Time Magazine*, another one from—let's see here, yes. Mr. Chair, may I enter these into the record?

Chair JORDAN. Well, I think you were going to read—when you said *Time Magazine*, you said two others. Yes, without objection.

Mr. GARAMENDI. Thank you. I'm just trying to define lawfare. Apparently, it has to do with using the Federal Government in this case to weaponize or to carry out some action against somebody. Now, if someone were to say I will appoint a special prosecutor to go after the most corrupt President in the history of the United States of America, would that be lawfare?

Ms. WINE-BANKS. I believe it would.

Mr. GARAMENDI. Thank you. If someone were to say, "if I happen to be President and I see somebody who is doing well and beating very badly, I say go down and indict them, they would be out of business." They would be out of the election. Is that lawfare?

Ms. WINE-BANKS. That is definitely a violation of everything that the Department of Justice stands for. It is lawfare. You need to have some evidence to begin an investigation, and the President himself has no role in directing who the Department of Justice will investigate or prosecute.

Mr. GARAMENDI. If I may continue, thank you. On day one of my new administration, I will direct the Department of Justice to investigate every radical DA, attorney general for their illegal, racist enforcement of the law. Is that lawfare?

Ms. WINE-BANKS. Yes.

Mr. GARAMENDI. Do you know who made those statements? Let me tell you.

Ms. WINE-BANKS. OK.

Mr. GARAMENDI. Those are direct quotes from the new wannabe President, former President Trump. Apparently, he wants to use his power as President to weaponize the Department of Justice and every other Federal agency to go after his enemies, political or otherwise. One of these quotes might be his business interest. Would that be inappropriate for a President or a wannabe President to make these statements? Even more so to do that, should that person become President?

Ms. WINE-BANKS. It would be.

Mr. GARAMENDI. Do any of you gentleman disagree that would be inappropriate for a President to do any of those three things? Gentleman, yes or no? Is it appropriate or inappropriate?

Mr. TRUSTY. I don't accept the premises fully. So, I'm having a hard time with a yes or no.

Mr. GARAMENDI. Don't give me that lawyer business.

The question is those are statements made by the former President of the United States as he prepared to become the next President. Are those appropriate actions by any President, yes or no?

Mr. TRUSTY. I don't have an answer for you, sir.

Mr. GARAMENDI. I thought you might not. Mr. Costello, are those appropriate things for any President to do, yes or no?

Mr. COSTELLO. I don't think that's a yes or no question.

Mr. GARAMENDI. Thank you. I knew you would not answer the question. I'll ask it one more time. These statements, are they appropriate action by any President, yes or no?

Mr. COSTELLO. I would say they're not appropriate.

Mr. GARAMENDI. Thank you. Mr. Hamilton, do you want to opine on this?

Mr. HAMILTON. Like, my colleague, Mr. Trusty, I reject the premise of the question of out of context statements.

Mr. GARAMENDI. Thank you. We'll move on.

Mr. HAMILTON. I would say—

Mr. GARAMENDI. We're going to move on. Thank you very much. That's not all that's been said. If we were to go through the various statements, on day one, I would be a dictator. Is that appropriate thing for an American President to be or even to say he would be? Anybody want to answer that question?

Ms. WINE-BANKS. It is inappropriate.

Mr. GARAMENDI. Mr. Hamilton, appropriate for inappropriate for—

Mr. HAMILTON. You didn't want to hear me a second ago, so why are you asking me now?

Mr. TRUSTY. I'll answer. It's humorous. I don't think the guy actually thinks he's about to be a dictator.

Mr. GARAMENDI. So, you think it's inappropriate to say that?

Mr. TRUSTY. No, it's humorous. I like humor.

Mr. GARAMENDI. Do you like dictators?

Mr. TRUSTY. That's not an issue. He served for four years as President. I don't remember a dictatorship breaking out?

Chair JORDAN. Time of the gentleman is—

Mr. GARAMENDI. No, we're talking about—

Chair JORDAN. Time of the gentleman is expired.

Mr. GARAMENDI. I yield back.

Chair JORDAN. The gentleman yields back. The gentlelady from Florida is recognized for five minutes.

Ms. CAMMACK. Thank you, Chair Jordan. Thank you to all our witnesses for appearing here today. I'm just going to start going right down the line with a simple question. When a candidate campaigns for office, they make promises, correct? We'll start with you, Mr. Costello.

Mr. COSTELLO. Correct, obviously.

Ms. CAMMACK. Mr. Trusty? Mr. Hamilton?

Mr. HAMILTON. Yes.

Ms. CAMMACK. Ms. Wine-Banks?

Ms. WINE-BANKS. Yes.

Ms. CAMMACK. Wonderful. So, I'm going to dig into what the prosecutors and plaintiffs have said about Mr. Trump here recently. Alvin Bragg during his campaign for New York County District Attorney said, quote,

> I am the candidate in the race who has the experience with Donald Trump. I was the Chief Deputy in the Attorney General's office. We sued the Trump Administration over 100 times, the Muslim travel ban, for family separation at the border, for shenanigans with the census. So, I know how to litigate with him.

In response to another question from a reporter, Bragg said, quote,

> We've got two standards of justice, Harvey Weinstein, Jeffrey Epstein. Being a rich, old, White man has allowed you to evade accountability in Manhattan. That includes Trump and his children.

Moving on to New York Attorney General James, during the last days of her campaign said of Trump, quote, "Oh, we're definitely going to sue him. We're going to be a real pain in the ass." She would later go on to say, quote, "I will never be afraid to challenge this illegitimate President," and said, quote, "What is fueling my soul right now is Trump." Mr. Costello, is there a financial benefit to making campaign promises?

Mr. CONNOLLY. I'm sure there is. Otherwise, she wouldn't have made those promises.

Ms. CAMMACK. Mr. Trusty?

Mr. TRUSTY. I think that's right.

Ms. CAMMACK. Mr. Hamilton?

Mr. HAMILTON. Correct.

Ms. CAMMACK. Ms. Wine-Banks?

Ms. WINE-BANKS. I'm not sure I understand the premise of your question. So, I can't answer.

Ms. CAMMACK. You cannot answer if there's a financial benefit to making campaign promises?

Ms. WINE-BANKS. Making campaign promises is to win election.

Ms. CAMMACK. I'm going to—

Ms. WINE-BANKS. I don't see that as a financial benefit.

Ms. CAMMACK. I'm going to stick with you, Ms. Wine-Banks, as the Democrat witness here today. Can you answer how much money did District Attorney Alvin Bragg raise for his political reelection campaign immediately following the announcement of 34 felony counts against President Trump?

Ms. WINE-BANKS. I do not know.

Ms. CAMMACK. It's $850,000—$850,000. That's a good chunk of cash. Let's go on to the AG, AG James. How much did she raise for her political campaign after her civil fraud case against President Trump.

Ms. WINE-BANKS. I don't know. It has nothing to do with whether the charges that she filed were based on the facts and evidence and her ability to prove them.

Ms. CAMMACK. You and I both know that's nonsense. Come on now.

Ms. WINE-BANKS. I do not know if that's nonsense. I believe—

Ms. CAMMACK. Not a soul in this room actually believes that. No one will ever believe that. It was $400,000—$400,000. We will submit for the record copies of campaign emails soliciting donations.

It almost seems, and I'm just stating the obvious here, that the harder they go after President Trump, the more money they stand to make. The common thread between all these individuals as well as the other cases that President Trump faces is that many of the prosecutors suing Trump either have a personal vendetta or they seek to gain fame and money from it. This isn't hard.

Those of us here today, we understand politics and what it takes to run a successful political operation. Traditionally, you want to drain your opponent's resources, drive up their negatives in the polls, and you want to keep them from engaging with voters. Now, I'm going to ask the million dollar question here.

What better way to do that than to charge your opponent with 91 counts, force them to spend millions on a legal defense, and tie them up in court to keep them off the campaign trail. It's almost like this is a plan. This is a strategy that is employed in campaigns all around the country.

We're seeing it at the highest levels today. Of course, as an incumbent, you have the added advantage of using taxpayer funded offices, agencies, and officials. We all know that you can never go up against the Federal Government because it is an endless stream of resources. Isn't that correct, Mr. Costello?

Mr. COSTELLO. Without a doubt.

Ms. CAMMACK. Exactly. If that is not what lawfare is, I don't know what is. Lawfare by definition is exactly that, utilizing the law to take down your political opponents. It is an abuse of power. Mr. Trustee, you said earlier in a pretty chilling statements that you fear we have, quote, "crossed the Rubicon, that the ends now justify the means."

I feel like many Americans agree with you. Heck, if it weren't for double standards, I feel like our Democrat colleagues in this Administration wouldn't have standards at all. I feel that the credibility of our institution is at stake here because to your point, the ends somehow have justified the means.

I've pulled some research out of a Harvard Law study that suggests that district attorneys pursue crimes and longer sentences at higher rates during election years. So, while DA Bragg and AG James terms end in 2026 and 2027 respectively, and of course DA Willis is facing reelection this fall, is it crazy to question whether any of these prosecutors are weighing their reelection efforts in their choice as they pursue President Trump? Final word to you, Mr. Trusty.

Mr. TRUSTY. Right. It's certainly not crazy. I think that there's evidence that supports that conclusion. Again, I never get to the money part. If you're a prosecutor, you're not supposed to be a politician.

You're not supposed to announce your target first and then search for an inventive way to change them with here to for unknown crimes in a lot of cases. So, that's the problem for me. It's not chasing down all the politics of how they stand to gain but that as a prosecutor you have a sacred obligation to pursue evidence, not people.

Ms. CAMMACK. Absolutely. A predetermined outcome.

Mr. TRUSTY. Correct.

Ms. CAMMACK. Thank you to our witnesses for appearing. My time is expired. I yield.

Chair JORDAN. Well done. Gentlelady yields back. The gentlelady from Texas is recognized.

Ms. CROCKETT. Thank you so much, Mr. Chair. This is so interesting. A couple of things, I'm just curious to know as we're talking about lawyers and the obligations of lawyers and whether or not maybe the former President has any idea of what good lawyer obligations look like, I'm just going to ask.

We're going to do—we're not going to play. We're going to do Ms. Wine-Banks. Have you heard of any of these lawyers? I've got Robert Cheeley, Kenneth Chesebro, Jeffrey Clark, Matthew DePerno, John Eastman, Jenna Ellis, Michael Farina, Rudy Guiliani, and Julia Haller. I've got a long list. Have you heard of any of these people?

Ms. WINE-BANKS. I have.

Ms. CROCKETT. Are you aware as to whether or not any of them have faced criminal penalties?

Ms. WINE-BANKS. Yes, and also been disbarred or suspended.

Ms. CROCKETT. Oh, yes. OK. So, they've had some issues. These are the handpicked lawyers for Trump. I'm assuming that you have never been Trump lawyers, Mr. Trustee or Mr. Costello.

Mr. TRUSTY. I was for a year.

Ms. CROCKETT. Oh, you were? You still have your bar card?

Mr. TRUSTY. I'm sorry?

Ms. CROCKETT. You still have your bar card?

Mr. TRUSTY. Yes, well, unless I get targeted for daring to represent a former President.

Ms. CROCKETT. You have absolutely done a lot better than most that deal with him, so good for you. I also want to make sure that we talk about what two tiers really looks like. Mr. Trustee, since you've been a prosecutor before, I'm curious to know have you ever had a criminal defendant that had over 80 counts in four different jurisdictions and somehow was not held pretrial?

I know that you talked in your opening about your interpretation of what speedy trial looks like. It's really only for those that are held pretrial. Last time I checked, most of the time, those people held pretrial.

They don't have anywhere near 80 counts pending against them. I'm curious to know in your experience, have you ever had someone have over 80 counts pending in four different jurisdiction and they were not held pretrial, yes or no?

Mr. TRUSTY. Well, no specific recall.

Ms. CROCKETT. OK. All right. That's all I—

Mr. TRUSTY. I can answer more if you let me.

Ms. CROCKETT. You told me no. I understand because I hadn't either. So, in addition to that, there's been a gag order since we're going to talk about the pending trial that's going on right now.

Have you ever had a defendant that violated a gag order and then you went to the judge and the judge didn't lock them up. They'd done it at least ten times. I think it's ten. I'm losing count right now. Have you ever had somebody violate a—

Mr. TRUSTY. In 35 years, I'd never seen a defendant gagged.

Ms. CROCKETT. OK. Not my—so you've never had—

Mr. TRUSTY. Well, it's hard to get to the second part if they're never gagged.

Ms. CROCKETT. So, you've never had it. You're absolutely right. All right. So, finally, when it comes down to intimidating witnesses—because maybe you haven't had gag orders. Intimidating witnesses, have you ever had a defendant that you were prosecuting, and they were intimidating witnesses, and they didn't somehow end up in the clink-clink for at least a day or two?

Mr. TRUSTY. I've had criminal death penalty prosecutions based on witness retaliation. I'm very familiar with gang cases and mafia cases. Most of those defendants were already incarcerated when they orchestrate some sort of obstruction.

Ms. CROCKETT. OK.

Mr. TRUSTY. If there's provable physical violence-based obstruction, it certainly makes sense that they'd be incarcerated.

Ms. CROCKETT. Thank you so much. Mr. Hamilton, I don't want you to feel left out of this conversation. So, I'm going to make sure I ask you some questions. Let me know if you're having problems answering them because they really should be yes or no. Let's see. You're the Executive Director for the America First Legal, correct?

Mr. HAMILTON. That's correct.

Ms. CROCKETT. All right. America First Legal is a member of Project 2025 which is dedicated to creating the playbook for the next conservative administration and what it calls the project pillars, correct?

Mr. HAMILTON. We are proud contributors to Project 2025.

Ms. CROCKETT. OK. Are you familiar with Project 2025's mandate for leadership?

Mr. HAMILTON. In fact, I am.

Ms. CROCKETT. OK. In fact, you wrote some of the sections of this mandate related to the DOJ, correct?

Mr. HAMILTON. Sure did.

Ms. CROCKETT. The mandate outlines policy priorities for the next conservative President. Is that correct?

Mr. HAMILTON. It does.

Ms. CROCKETT. You've done a great job. I just want to let you know. All right. So, let's walk through some of the provisions of the mandate.

It calls for eliminating the Department of Education, eliminating the Department of Commerce, deploying the military for the use of domestic law enforcement against protesters under the Insurrection Act of 1807. It also has the repealing of Schedule F status for

thousands of Federal employees to allow a President to replace career civil servants with unqualified partisan loyalists. That's probably my favorite of it.

It also prohibits the FBI from combating the spread of misinformation and disinformation like Russia and China who are actively trying to interfere with American elections. I think why or how anybody can support Project 2025. I know that there was allegedly a joke about dictators and whether or not that's funny.

In the United States of American, dictatorships are never funny. Project 2025 is giving the playbook for authoritarianism as well as the next dictator to come in. I know that you are doing your jobs here by making sure that hopefully some juror turns on and finds some viral moment of you spewing more of the nonsense as it relates to the President.

As practicing lawyers or licensed attorneys, I hope that we can all agree that no one gets indicted because someone says so. It takes a grand jury. The grand jury is comprised of American citizens that sit down and review evidence and they make the determination. When and if Trump is convicted, it will be a jury of his peers. It won't be the President of the United States.

Chair JORDAN. Time. I thought you were going to get to a question somewhere in those 90 seconds for Mr. Hamilton after you went after his 2025. I will point out the Inspector General just released a report that said the FBI retaliated against whistleblowers, one of the reasons we do need some changes. There was no question there. Mr. Hamilton, if you want to give it some kind of response, you're more than welcome to do that.

Mr. HAMILTON. Mr. Chair, my only response would be to say that there are a great number of policy options that have been provided to any future conservative administration through Project 2025. It's an attempt to restore the rule of law in this country. I reject the <it>Huffington Post style characterizations of the recommendations.

Chair JORDAN. All right. Gentlelady yields back. The gentlelady from—we'll go to the gentlelady from Wyoming and then gentleman from Florida.

Ms. CROCKETT. Mr. Chair, I'd ask unanimous consent—

Ms. HAGEMAN. Thank you. Excuse me. This is—oh.

Chair JORDAN. I'll get you as soon—after this. Is this unanimous consent?

Ms. CROCKETT. Yes, unanimous consent to enter the mandate for leadership—

Chair JORDAN. Without objection. Without objection. The gentlelady from Wyoming is recognized.

Ms. HAGEMAN. Well, thank you. If it seems like there might be a dog in this hunt on the other said, what you need to understand is that Mr. Goldman, the novice representative from New York, actually does have a personal stake in this case. He has stated that he has been involved with the Bragg case, helping to prepare Mr. Cohen for his testimony.

So, he is quite closely aligned with an admitted and convicted liar and perjurer. He's also paid the Judge Merchan's daughter's firm over 150,000 dollars for her services. So, I think we've got quite a conflict of interest from Mr. Dan Goldman, the novice rep-

resentative from New York. Just one other thing to keep in mind when considering the hostility from the folks on the other side of this aisle is that the Ranking Member to this—

Ms. PLASKETT. Excuse me, Mr. Chair. I would move to have that stricken from the record. I'd have that phrase taken down.

Ms. HAGEMAN. The Ranking Member was Jeffrey Epstein's fixer. So, I think that might give you some idea—

Ms. PLASKETT. Excuse me. I would ask these statements to be taken down.

Chair JORDAN. Hang on for a second, gentlelady. The Ranking Member is recognized.

Ms. PLASKETT. I would ask that the statements regarding the conflict of interest related to Mr. Goldman be stricken down from the record, engaging in personal—personalities—

Chair JORDAN. In your 14 minutes and 14 second opening statement, you called the former President, the current candidate for the office of President of the United States, all kinds of names.

Ms. PLASKETT. He's not a Member of this—

Chair JORDAN. I understand he's not a Member. He's a former President.

Ms. PLASKETT. That's what I'm asking.

Chair JORDAN. What I'm saying is we should all be careful about it. I think the gentlelady from Wyoming was just stating facts that are in a news report.

Ms. PLASKETT. She accused him of a conflict of interest on the Committee during the hearing. I ask that it be stricken down.

Chair JORDAN. The gentlelady's point of order is overruled. The gentlelady from Wyoming is recognized.

Ms. HAGEMAN. Thank you. Mr. Hamilton, would you agree that gag orders on trial participants were created with the intent of securing a defendant's right to a fair trial and ensure efficient administration of justice?

Mr. HAMILTON. That's precisely correct. It's, in fact, usually intended to prevent the prosecution from making extrajudicial statements that are going to be prejudicial to the defendant's rights.

Ms. HAGEMAN. Mr. Trusty, I think that you testified that in all your years of experience, you've never seen a circumstance where a defendant had a gag order imposed against them. Is that correct?

Mr. TRUSTY. That's correct.

Ms. HAGEMAN. Would it be fair to say that whole such an order is intended to guarantee a defendant Sixth Amendment right, it also at certain times could raise First Amendment issues.

Mr. TRUSTY. It does.

Ms. HAGEMAN. OK. In Bragg's political persecution of Donald Trump, Judge Merchan instituted an unconstitutional gag order against the defendant, President Trump. Yet, Judge Merchan has levied no such order against any of the other trial participants like Michael Cohen who continued to publicly attack Mr. Trump. Mr. Hamilton, is the gag order issued by Judge Merchan a significant departure from the normal order of business? Does it reveal the First and Sixth Amendment tensions which underlie this case?

Mr. HAMILTON. It most certainly does.

Ms. HAGEMAN. Why does President Trump face such a legally questionable gag order in this case? Well, simply put, it's because

it is a classic example of lawfare being employed by Democrats against their political opponent, weaponizing the various branches and levels of government, something that we have seen in the last eight years that has been absolutely shocking to the conscious. DA Bragg resurrected a zombie case and is using a novel legal theory which has not even been explained to the defendant or the jury.

He selected Matthew Colangelo, a lead prosecutor, a former Biden DOJ official, and DNC consultant and Judge Merchan who made campaign donations to President Biden and the Democrat party during a 2020 election and whose daughter's firm worked for the Biden and now Harris campaigns is overseeing a case and imposing speech restrictions on a person Judge Merchan called, quote, "possibly the next President of the United States." Judge Merchan went so far in the last two weeks as threatening to jail a former President and presumptive major party nominee for violating an order which infringes on his free speech rights. Writing in *The Federalist*, Tom Crist analyzes how lawfare offers benefits and a means of victory regardless of the outcome of the courtroom which is causing as much pain as possible and treating the defendant like an enemy versus the defendant.

I want that to sink in. Watching Judge Merchan, it is very apparent that he is treating President Trump as an enemy, not a party and not a defendant. Mr. Hamilton, do you think the gag order falls into this playbook and serves an additional lawfare benefit for the left, and that it can be used to enact an even larger legal burden on Donald Trump for simply exercising his right to free speech?

Mr. HAMILTON. Yes, I do. In fact, quite frankly, when you have a gag order like that or when you have abuses of processes like this, as my colleagues have alluded to before, the pain the process is the goal. That's really the goal here.

Whether they get a conviction, whether they get any kind of civil fine or judgment, it's not necessarily the ultimately objective. The ultimate objective is to cause pain to the political opponent. That's what they're doing to Donald Trump.

Ms. HAGEMAN. One of the things that I have observed as an attorney who was a trial attorney for 34 years is that Judge Merchan is making such blatant reversible errors. He absolutely knows that if there is a conviction in this case, it will be reversed on appeal. It's as though he's attempting to do that because he knows that no such appeal would actually take place prior to November, yet he would have a conviction on the books which is the classic and I think in this case exposes the way in which they are using lawfare against President Biden—against President Trump.

I have never seen a judge make the kind of errors that this judge has made in this case before. I think he recognizes that if there is a conviction, it would be overturned on appeal. That is what our justice system has turned into because of the lawfare being waged by the Democrats. It has to end. Thank you for being here. With that, I yield back.

Chair JORDAN. The gentlelady yields back. The Ranking Member is recognized for five minutes.

Ms. PLASKETT. Thank you. Now, that we've finished with the novice Congresswoman from Wyoming, I guess that's what we're

calling first-year Members of Congress—first term Members. I don't know where that came from or what that's supposed to mean. Let's move on.

Instead of name calling, let's just do the work that the people have us here for, whether we like individuals or not. It sounds ridiculously immature. There was a discussion earlier about Jack Smith, and it was alleged that he is engaged in bias partisan actions before.

Is the discussion—I went and looked at some of the cases that he has, in fact, taken up in his long career, both in New York, Brooklyn, as well as at The Hague. Ms. Wine-Banks, are you familiar with former Representative Rick Renzi? He was a Republican Member of the House that this Jack Smith prosecuted.

Are you familiar with the name Senator John Edwards? He was a Democrat that Jack Smith also prosecuted Republican member Governor Bob McDonald when he was in the office of the prosecutor at the International Criminal Court of The Hague, many individuals from all world parties and leaders. Are you familiar—I don't know if you're familiar with an individual named Ronnell Wilson.

Ms. WINE-BANKS. I am not.

Ms. PLASKETT. Ronnell Wilson was an individual in New York who murdered two New York City Police Department officers. That was prosecuted by Jack Smith. He also prosecuted, however, the police who brutalize Abner Louima. I'm sure you're familiar with that name.

Ms. WINE-BANKS. I am.

Ms. PLASKETT. So, this is an individual who seems to be a prosecutor willing to go after anybody no matter what their party is if in reviewing and investigating the information they believed that person has broken the law. That's what I call a good prosecutor, having been one myself. Mr. Hamilton, are you aware that Chair Jordan filed multiple amicus briefs in the case of *Missouri* v. *Biden* now called *Murphy* v. *Missouri*?

Mr. HAMILTON. I am.

Ms. PLASKETT. In fact, you are the attorney of record on those briefs. Is that correct?

Mr. HAMILTON. I am one of the attorneys.

Ms. PLASKETT. OK.

Mr. HAMILTON. Correct.

Ms. PLASKETT. Thank you. Were you provided access to the Committee's transcribed interviews and deposition transcripts as part of the work and preparation of those briefs?

Mr. HAMILTON. I was provided with, yes, information. Absolutely.

Ms. PLASKETT. That included transcribed interviews and depositions?

Mr. HAMILTON. I was provided with lots of information. I'm not going to get into all the details here because doing so would reveal the existence of communications between an attorney and a client.

Ms. PLASKETT. OK. That's fine. In your briefs, one of those instances of those briefs, you claim that the FBI witness told the Committee that the supposed Biden laptop was real, "suggesting that the FBI had authenticated it." Do you recall that?

Mr. HAMILTON. Do you have the brief in front of you?

Ms. PLASKETT. Yes.

Mr. HAMILTON. Could you read it to me, and I'll let you know if I recall it.

Ms. PLASKETT. Can you hold the time for me, Mr. Chair?

Chair JORDAN. Sure.

Ms. PLASKETT. Thank you. OK. I'm reading from the brief on page 28 of the brief that's listed, Brief Representatives Jim Jordan, Kelly Armstrong, Andy Biggs, Dan Bishop, *etc.*, that was filed with the court on page 28. It states that, but of course, "the FBI knew not just the absence of evidence suggesting any foreign connection," the FBI knew the laptop was real. Do you recall that?

Mr. HAMILTON. I do recall.

Ms. PLASKETT. OK. Do you also recall that when the individuals stated, the witness later said that—suggesting that the FBI had authenticated it. However, that completely ignored the fact that the witness later said in that same transcription, that same interview that anyone who claimed that the laptop had been authenticated would be, quote, "misrepresenting her testimony." Do you recall her having said that?

Mr. HAMILTON. I can't tell you today if I recall that or not.

Ms. PLASKETT. OK. So, your brief suggests that one particular nonprofit—well, your brief then does not give the whole story by stating that the individual said the laptop was real from the FBI, misrepresenting that it had been authenticated when she just meant that it existed, not that it had been authenticated. Do you know that difference?

Mr. HAMILTON. Are you disputing the reality of Hunter Biden's laptop?

Ms. PLASKETT. I'm disputing your brief which makes it seem that the authentication of what was in the laptop was there?

Mr. HAMILTON. So, I'm trying to understand where you're going. Are you trying—

Ms. PLASKETT. I'm just asking some questions.

Mr. HAMILTON. Are you disputing the contents of Hunter Biden's laptop?

Ms. PLASKETT. I am disputing that it's been authenticated by the FBI.

Mr. HAMILTON. Is that the purpose of question of me?

Ms. PLASKETT. Do you know if it had been authenticated by the FBI?

Mr. HAMILTON. Whether the FBI authenticated it or not—

Ms. PLASKETT. You said it had. You said it had.

Mr. HAMILTON. —the existence of it was authenticated because it was real.

Ms. PLASKETT. You said it had in the brief.

Mr. HAMILTON. You're getting into—

Ms. PLASKETT. You said it had in the brief. That's the point. Moving on, I could go literally for hours. Your briefly wrongly suggests that one particular nonprofit is, in fact, a government entity and even includes a graphic from that nonprofit website that was cropped to omit language stating that the nonprofit is autonomous, meaning it's independent from the government. Literally on and on, just like this hearing of misrepresentations of the truth. I yield back.

Chair JORDAN. The gentlelady yields back. I would point out that last week, the Committee deposed Mr. Brady Olson, FBI agent, who said that at the time, October 2020, the FBI had no evidence that the laptop story was a hack and leak operation, no evidence. So, they had none, exactly what Mr. Hamilton described in his well-written brief.

I now recognize the gentleman from Florida, Mr. Steube.

Mr. STEUBE. Thank you, Mr. Chair. Yes, just to—

Chair JORDAN. One second, Mr. Steube. I understand you have a hard stop, Mr. Hamilton. We wanted you to be able to stay for any Democrat want to ask you a question. If you got to run, I understand. Time is now Mr. Steube's.

Mr. STEUBE. Thank you.

Mr. HAMILTON. Thank you.

Mr. STEUBE. So, you're taking off? Mr. Hamilton is taking off? All right. So, Mr. Costello, I'll just start on page 6 of your written testimony. I know the Chair got into what Mr. Cohen said about, "I swear to God, Bob, I don't have anything on Donald Trump."

Then after that, so I'm at the end of page 6 of your written testimony. I just want to walk through this. Through further cross examination, Cohen told me that he knew there was money missing from the Trump inauguration fund, but that Donald Trump had nothing to do with it. Is that correct?

Mr. COSTELLO. Where are you referencing on page 6?

Mr. STEUBE. I'm in your written testimony on page 6 at the bottom.

Mr. COSTELLO. OK. You're referring to what again?

Mr. STEUBE. I'll just read it. Through further cross examination, Cohen told me that he knew there was money missing from the Trump inauguration.

Mr. COSTELLO. I see where you are now. Thank you.

Mr. STEUBE. OK. Then on the next page, end of that first paragraph, Cohen decided that while he didn't believe the allegation of the Stormy Daniels story that he thought the story would be embarrassing for Trump and especially for Melania. So, he decided he would take care of it himself.

Mr. COSTELLO. Absolutely. That is contrary to what this guy testified to in court in New York yesterday.

Mr. STEUBE. Well, what's not being talked about is your next paragraph, like, the reason and his motivation for that. So, if you could just walk through that for the Committee.

Mr. COSTELLO. Obviously, when we started to talk about the NDAs, and this is the very first meeting at the Regency Hotel when, by the way, Rudy Guiliani was not involved in representing Donald Trump at that time. Cohen testified that it was a conspiracy between Guiliani and Costello as of this date. Totally false.

In any event, he also said that he didn't discuss the Stormy Daniels matter with us, and he certainly did. I specifically asked him because he kept on going back saying, "I can't believe they're trying to put me in jail for these NDAs." So, I said, "Michael, tell me about the NDA. Tell me about Stormy Daniels. What did you do?" He said, "I got a call from a lawyer representing Stormy Daniels who represented that she was going to testify that Donald Trump had sex with Stormy Daniels." Michael Cohen said, "I didn't believe

the allegation, but I knew that such an allegation would be terribly embarrassing."

He said, "it would be embarrassing." He focused on Melania Trump. He said, "I didn't want to embarrass Melania Trump, that's why I decided to take care of this on my own," and went back to that several times. You did this on your own? "On my own." Did Donald Trump have anything to do with it? "No." Did you get the money from Donald Trump? "No." From any of his organizations? "No." From anybody connected to Donald Trump? "No."

Where did you get the money? "I took out a HELOC loan against my property," He said. Why would you do that? He said,

> I didn't want anybody to know where I got this money. I didn't want Melania to know. I didn't want my own wife to know because she's in charge of the Cohen family finances. If she saw money coming out of my account, she's ask me 100 questions and I didn't want to answer any of them.

It was clear after talking to him for several days after that, whenever we talked, on the phone or in my office, that he kept on bringing up the subject that he felt he was betrayed by not being brought down to Washington, DC. This guy thought, he said to me, "that he should've been Attorney General of the United States or at least the Chief Assistant to the President."

Ludicrous, but that's what he thought. He was very angry about that. He wanted to do something to put himself back into the inner circle of Donald Trump. That's why he took care of this on his own.

There had to be motivation. Michael Cohen is always working for things that benefit him. That's what he was doing here. That's completely different to what he said that he told the grand jury. That's completely different to what he's testifying to in New York. Nobody has heard this side of the equation.

Mr. STEUBE. Which is important that you're talking about that today. I'm now on page 8. We're going to keep going from where you were in your written testimony. The point is when Michael Cohen was presented with the opportunity to implicate Donald Trump in exchange for eliminating his own enormous legal problems, he repeatedly said he had nothing truthful on Donald Trump.

Mr. COSTELLO. Yes, why is that important? It's important because this guy literally was suicidal at the moment. He's saying, "guys, I need you to tell me what my escape route is. How do I get out of this oncoming legal deluge that I see coming my way?" So, I said, "look, it's simple. If you look at what happened here, the U.S. attorney went to great lengths to get a search warrant for your law office. They had to go to main justice. They think you have something." Remember, he's telling us, I didn't do anything illegal. Counts 1–7 that he pled guilty to had nothing to do with Donald Trump.

He said, "I didn't do anything illegal. I've been cooperating with the Special Counsel. I've been cooperating with Congress." Didn't tell us that he lied to Congress. I said, "Michael, isn't it easier if you have something truthful?" I kept on repeating that. It's got to be truthful. Don't make something up.

If you have something truthful on Donald Trump, isn't it easier for you to cooperate against Donald Trump than it is to kill yourself? The answer is obvious. So, when they claim that I was trying

to shut up Michael Cohen, it's exactly the opposite. I was on that first day telling him, here's your escape route if you have truthful information. He didn't.

Mr. STEUBE. At this time, you were his attorney which is why he made all these admissions?

Mr. COSTELLO. Yes, he makes these claims that we were never his attorney. I can show you emails and text messages and phone calls where he kept on saying, "Bob, you guys are on the team. But I don't want to announce it now."

He had McDermott Will & Emery going through documents here in Washington, DC. He said, "I don't want to announce it now." We didn't give him a retainer agreement the first time we met him at the Regency Hotel.

We gave him a retainer agreement when he came to our offices. He came to our offices, and that he kept on saying, "well, I can't deal with this now." This guy slow played us. There's no question about it.

I told the partner in charge of this, he's slow playing us. Get rid of this guy. He's never going to come up with the money. He's a bad penny. He's just going to keep on coming back.

So, it wasn't my call because it was his client, not my client. So, that's why Michael kept on calling me, and I was giving him the advice that I should've given him all along, truthful advice. Nobody was pressuring him. I was giving him the straight facts as I knew them.

Mr. STEUBE. My time has expired. I yield back.

Chair JORDAN. The gentleman yields back. The gentleman from North Dakota is recognized.

Mr. ARMSTRONG. Thank you, Mr. Chair. I yield to you.

Chair JORDAN. Thank you. I thank the gentleman for yielding. Mr. Trusty, 17 years at the Department of Justice, did the raid on Mar-a-Lago follow normal process?

Mr. TRUSTY. I don't believe so.

Chair JORDAN. You know who agrees with you? The Assistant FBI Director of the Washington field office because we deposed him. I just want to walk you through and say what you see or saw squares with what Mr. D'Antuono testified to in a deposition in front of the Committee.

The Miami field office did not conduct the search. It's folks from Washington who came down and did the search. Is that unusual?

Mr. TRUSTY. I would think so. You'd normally have at least some local component.

Chair JORDAN. The Department did not assign a U.S. attorney to head up the investigation. They ran it out of the field office. They ran it out of Washington, DC. Is that unusual?

Mr. TRUSTY. I'm not sure it's unusual for DOJ attorneys to kind of assume authority in a vacuum. So, my understanding is Jay Bratt was involved from day one and that continued through the search warrant obviously.

Chair JORDAN. Right. Normally, would the U.S. attorney be assigned to it in most cases?

Mr. TRUSTY. Yes, eventually they would show up for court. I don't think that part of the process they were an active partner.

Chair JORDAN. Did the FBI seek consent before they conducted the research?

Mr. TRUSTY. No, actually the last thing that President Trump said when he allowed FBI agents in Mar-a-Lago in June was anything you need, let me know. The only communication that came from DOJ after that was a request to put a padlock on the door where they knew the boxes were. Then, the next thing we know—

Chair JORDAN. Which the President complied with?

Mr. TRUSTY. Which he did immediately. Two months later, there's a search warrant.

Chair JORDAN. Then did the FBI wait—when they got on premise, had it secured, did they wait for President Trump's legal team to be there and accompany them on the search?

Mr. TRUSTY. There were requests by representatives of President Trump to be in the vicinity of the search. Those were denied. That is a right of law enforcement. They don't have to. For a cast of this historical precedence, consistent with my earlier remarks, some transparency, some openness would've been probably a valuable moment lost here.

Chair JORDAN. No kidding. Talk to me about in your testimony two other things. You mentioned the Fourteenth Amendment. This, to me, struck me as just absolutely craziness that they're going to go to State Courts and try to keep the President off the ballot. Tell me your thoughts on this crazy concept.

Mr. TRUSTY. Well, the Supreme Court unanimously agreed to end the nonsense of the disqualification litigation. They never really reached the due process which would've been a hornets nest of going State by State and saying, how did they conduct these expedited trials? The fact that always grabbed me and maybe this goes back to having a bad sense of humor was in Colorado, they literally put a sociologist on the witness stand to say when President Trump said go peaceful and patriotically, I know from my Ouija Board or whatever else he consults that he really means be violent and attack the cops.

That was considered admissible information in a hearing designed to take a Presidential candidate off a ballot. So, I wanted the Supreme Court to get the due process and join me in laughing at that. They never got there.

Chair JORDAN. Yes. What he said, I've concluded, means exactly the opposite. The court accepted that as evidence. Thank goodness the Supreme Court said 9 to 0 this is crazy.

I want to read one other thing from your testimony which I just found amazing. You briefly touched on it earlier. You said, if this is a grand jury situation. In the grand jury, the prosecution said to Mr. Parlatore, "If the President is being so cooperative, why won't he waive his attorney-client privilege?" The fact that they asked that question in grand—again, maybe as crazy as the whole Fourteenth Amendment argument.

Mr. TRUSTY. Again, nothing I'd seen in 35 years. It was an overaggressive moment of asking the grand jury to draw a negative inference from a lawful invocation of attorney-client privilege. That's just black letter unethical for a prosecutor to do.

Chair JORDAN. Yes, scary, scary stuff that we see going on all to go after their political opponent. We can go on with example after

example. The one before, dangling the judgeship in front of a lawyer representing when you got Jay Bratt and the DOJ there.

It's just, again, we can go on and on. I want to thank you both for testifying and would yield back. The Chair now recognizes the gentleman from Ohio, Mr. Davidson.

Mr. DAVIDSON. I thank the Chair. I thank our witnesses. I regret that I didn't have the chance to dialog with Mr. Hamilton, but I thank you guys for being here and staying a little longer than we thought the hearing would run.

One of the most influential books that I've read is a short book called, "The Law by Frederic Bastiat." He was a French philosopher in the 1800s. He predates Karl Marx, and he was addressing the socialists.

So, they're already trying to weaponize the law. This book about the law was, in fact, all about how the law was corrupted and perverted from its proper use of defending freedom and property rights to a form of corruption, legal plunder as he termed it. One of the quotes from the book is he says, "When law and morality contradict each other, the citizen has the cruel alternative of either losing his moral sense or losing his respect for the law."

I think that's where the American people are. They see that the law has been corrupted and perverted. They see at best a two-tiered system of justice.

One of the most common questions probably every Member of Congress gets, certainly when I talk to my closest friends, we all get this question. Congressman, when is someone going to jail? Now, to be fair, when the Democrats ask it, they want to know when a Republican is going to jail. When the Republicans ask, generally they want to know when a Democrat is going to jail.

The reality is people are seeing that there's one standard that they would be held to, and another that's being applied to others, political enemies overwhelmingly, and political rivals. It's the weaponization of law, lawfare. The tip of the spear of this is Donald Trump.

Donald Trump, they mocked when he said that they were spying on his campaign. Lo and behold, they were spying on his campaign. They said that the Russia collusion thing was all fake.

They funded a 30-plus million-dollar investigation into Donald Trump with the Mueller Report. People still think that's what he was impeached for. It was a nothingburger, no crime, no action.

In fact, to the extent there was a crime, it was done by firms like Perkins Coie that rigged this whole hoax. It was against our national intelligence community that weaponized their trusted position in the intelligence and law enforcement community to spy on the Presidential campaign of Donald Trump. Now, we see election interference in a different way in this campaign.

We've got a case where we've seen whether it's Alvin Bragg, Letitia James, others, that campaign on a platform for election of going after Donald Trump. Fani Willis raised money off her criminal case against President Trump. Finally, Mr. Costello, I enjoyed your dialog. Would you agree that these prosecutors are, in fact, politically motivated in their targeting of Donald Trump?

Mr. COSTELLO. Without a doubt.

Mr. DAVIDSON. You think about the case in New York, Alvin Bragg's case. What is the crime? To the extent there was a crime, how does it relate to Donald Trump? Could you elaborate?

Mr. COSTELLO. Nobody knows what the crime is. They've taken a misdemeanor which is barred by statute of limitations, and tried to turn it into a felony by saying the misdemeanor was used to cover up an additional crime, the felony. It's hinted that the felony that they're trying to cover up is election interference.

Election interference for the 2016 election they claim was caused by false entries made in 2017. Now, how do you influence the 2016 election with 2017 allegedly false entries? They say, because I was puzzled by this, it's a conspiracy.

Really, said I, "I went and I pulled the indictment. There's 34 or 38 counts, no conspiracy count, one defendant, Donald Trump. It's absurd."

Mr. DAVIDSON. The whole case is. Yet, in spite of that and in spite of the fact that the world sees through this, we're all wondering whether or not we'll get a not guilty verdict to the extent we get a verdict. We don't trust that the law is actually going to be administered impartially.

We're not sure that you can get an impartial trial of his peers, a jury of his peers. This is the thing. Our criminal statutes are designed to protect the defendant. We've seen a clear abuse of the law.

We've seen, as I point out, nothing new under the sun. It's not like Bastiat was the first person to discover this. We've seen the first thing basically. Don't hurt people. Don't take their stuff because humans have a hard time with that.

We started appointing someone to be the judge. Who is the one in the right, and who is the one in the wrong? People see through this and they're going to see it on November 5th.

I just trust that this country is worth defending. I applaud the people that are standing up against injustice. Mr. Chair, I yield back.

Chair JORDAN. Gentleman yields back. Well done. The gentleman from South Carolina is recognized for five minutes.

Mr. FRY. Thank you, Mr. Chair. Here's what I think is abundantly clear. The Democrats will do and are doing everything in their power to keep President Trump off the ballot or from winning.

Nothing is off the table. Things I never imagined or even thought was remotely possible are now happening in the United States of America. You name it, and they're doing it.

They're taking the decision away from voters by outright stripping his name off the ballot. Of course, the Supreme Court rightfully intervened there. You have unelected Secretaries of State, unaccountable judges making these decisions.

They spied on his campaign as we've talked about. They abused FISA, fabricated documents, and relied on a paid for campaign dossier to spy on his campaign, again, falsely alleging that there was some Russian collusion which has been debunked over and over again. The most egregious yet, we have not one, not two or three, but four politically motivated cases that are happening all around the country.

Again, it's to keep him off the campaign trail. It's to smear his reputation, and it's to drain him of resources. This is a targeted, this is a meticulous effort and plan of attack to usurp the will of the people.

Again, at the expense of our own institutions, that's most troubling to me as a lawyer is that we're using Article 1 to attach him. We're using Article 2 to attack him. Now, we're using the courts.

These local prosecutors should be focused on cleaning up their streets, cleaning up their communities, stopping people from getting shot on the subways, and prosecuting real crimes for goodness sakes. We don't have that here. We have Donald Trump, right? Let's go after him. Mr. Chair, I'd like to enter into the record an article by *America First Policy Institute* called, "Progressive Prosecutors Abusing Their Power."

Chair JORDAN. Without objection.

Mr. FRY. In Georgia, Fani Willis brought charges against President Trump immediately when he announced his reelection. I guess there's so much bandwidth in her jurisdiction that she can take taxpayer funneled vacations with her lover and ignore real crime that is happening, because there's just not much to do in Georgia. That kind of belies the case.

We have, quite frankly according to this article, top five Georgia crime capital with the rate of 30.5 crimes per 100,000 residents. In 2022, larceny was the highest offense of Fulton County with 19,509 thefts recorded. Alvin Bragg waited five years to criminally indict President Trump on 34 counts of falsifying business records.

Again, going around the statute of limitations to create some weird, nuanced, and novel way to prosecute an alleged crime, not to mention he hired the former No. 3 official in Biden's DOJ who has been paid for by the DNC to be a top prosecutor of the case. Meanwhile, during Bragg's first year as DA, data showed the conviction rate—Mr. Costello, you would probably know this—of only 51 percent for serious felony charges. That's not really good, is it, a conviction rate at 51 percent?

Mr. COSTELLO. That's awful.

Mr. FRY. Misdemeanor convictions went from 53 percent down to 28 percent. I would think that would be, like, a fireable offense if I was electing somebody to be my prosecutor.

Mr. COSTELLO. That's true. The Governor of New York could do that, but she hasn't.

Mr. FRY. Our rule of law I think needs to be restored. I'm deeply troubled by the ways in which Democrats are attacking the institutions of our country and of course our former President of the United States, who is now running and is the lead candidate and the presumptive nominee for the Republican party. I introduced this Congress the No More Political Prosecutions Act, which would allow someone like President Trump to remove his case in State court to a Federal Court at his discretion if he wanted to. Why might that be important, Mr. Trusty?

Mr. TRUSTY. Well, I think as we're seeing play out in front of us, there's political bias that's demonstrated before people are even in office. A desire to carry the torch against President Trump in this case, maybe get a few visits to the White House along the way. Ultimately, it's the genie getting out of the bottle.

The reason why—and I haven't studied your legislation. The reason that concept makes sense to me is because maybe it is the tip of the spear. There's a whole spear behind the tip. The very people that are OK with politicized DOJ maybe feeling very differently 5, 10, 30, 60 years from now. I think we're at that pivotal moment where we have to take action to reform the lawfare that's taking place around us.

Mr. FRY. In the case of Alvin Bragg, right, he campaigned on going against President Trump. Is that correct?

Mr. TRUSTY. That's my understanding.

Mr. FRY. In fact, I think one of our colleagues on this Committee, Mr. Goldman fundraised for him in that effort. So, now we have a case that apparently again there's no crime in the District of Manhattan. We're going after President Trump. Why would jury pools be a reason why this legislation might be important, the jury pool in Manhattan as opposed to a Federal Court? What are the differences, and why might that be attractive so somebody who had served our country as President or Vice President?

Mr. TRUSTY. It's a wider net when you have a Federal jury pool in terms of who the base of folks are. What you're looking for is not a perfect microcosm of the United States at any given moment. I've tried cases where we had people from the Eastern Shore of Maryland and the Western parts of Maryland and all points in between. So, you get all sorts of different philosophies and backgrounds. That's understood.

Mr. FRY. I'm limited to the last question, though.

Mr. TRUSTY. Sorry.

Mr. FRY. Oftentimes, too the voir dire process in Federal Court is much more robust than State Court. Might that be attractive to somebody who served as President?

Mr. TRUSTY. Yes, it tends to be a pretty rigorous process. I've had death penalty prosecutions where weeks were spent picking a jury. High profile defendants are going to have probably more protection, general rule, but more protection going through the voir dire process in a Federal case.

Mr. FRY. Thank you, Mr. Trusty. Mr. Chair, I yield my time.

Chair JORDAN. The gentleman yields back. I just want to point out one quick thing and then I'll give the Ranking Member a chance to say something before we close our hearing. I was struck by what you just said there a few minutes ago, Mr. Trusty.

You said—you talked about the tip of the spear. There's a spear behind the tip. I always remind folks that the mob is never satisfied.

Right now, oh, there's people saying—the left is saying, go after President Trump. We think it's ridiculous what's going on. They'll come for everybody at some point.

We have seen the examples. Slightly different context, but the cancel culture mob a few years ago said Dianne Feinstein wasn't even good enough for them because she said something 35, 40 years ago.

The Dianne Feinstein Elementary School in San Francisco is no longer named Dianne Feinstein Elementary School because of something she said 40 years ago. So, the mob's appetite to go after whoever is never ever satisfied. That, to me, is the larger point.

What they're doing to President Trump is so wrong. What it means for all of us, the 330-some million in this country, what it potentially means for any and all of us is what scares me the most. Ranking Member is recognized.

Ms. PLASKETT. Thank you, Mr. Chair. I'll be brief this time. I know that we have some attorneys here who have had storied careers and their work. One of them, as Wine-Banks stated, that she believed that former President Trump is a more existential threat to our democracy than Richard Nixon was.

When I look at some of the statements that President Trump has made and we're concerned about DOJ, the Department of Justice, where I was so honored to be a member of that team. With individuals who when I got there in 2001 had been there since Robert F. Kennedy had hired them as honors graduates from law school. Just an incredible place.

We have a President who I don't think it's a joke when he says things—or humorous when he says things like,

> I will appoint a real special prosecutor to go after the most corrupt President in the history of the United States, Joe Biden and the entire crime family.

If he says,

> If I happen to be President and see somebody who's doing well and beating me badly, I say go down and indict them.

When his own former Chiefs of Staff and others say that he is going to be a threat to this democracy.

We don't want to talk about Trump, and we don't want to go after him. Let's use this Committee time to shore up those agencies that are, in fact, going to be there as guard rails to ensure that all of us are treated equally under the law. I yield back.

Chair JORDAN. There's a reason all four cases are falling apart. That's because they're ridiculous cases and never should've been brought. I want to thank our witnesses for being here today.

Ms. Wine-Banks, thank you. Mr. Trusty, thank you for your good work and the outstanding testimony. Mr. Costello, the same for you. We appreciate you taking the time to share the truth with this Committee.

With that, that concludes today's hearing. We thank our witnesses again. Without objection, all Members will have five legislative days to submit additional written questions for the witnesses or additional materials for the record. Without objection, the hearing is adjourned.

[Whereupon, at 1 p.m., the Committee was adjourned.]

All materials submitted for the record by Members of the Select Subcommittee on the Weaponization of the Federal Government can be found at: *https://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=117301.*

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