

**STATEMENT OF MARK F. POMERANTZ**  
**GIVEN AT HIS DEPOSITION ON MAY 12, 2023, BEFORE THE**  
**JUDICIARY COMMITTEE OF THE HOUSE OF REPRESENTATIVES**

I am here because I respect the rule of law. I spent my working life in service to the rule of law, and the rule of law requires a witness to appear for testimony in response to a subpoena. So, I am present as required.

What I do not respect is the use of the Committee's subpoena power to compel me to participate in an act of political theater. This deposition is for show. I do not believe for a moment that I am here to assist a genuine effort to enact legislation or conduct legislative "oversight." We are gathered here because Donald Trump's supporters would like to use these proceedings to attempt to obstruct and undermine the criminal case pending against him, and to harass, intimidate, and discredit anyone who investigates or charges him.

Fortunately, I do not have to cooperate with the cynical histrionics that this deposition represents. Although the rule of law compels me to be here, it does not require that I play a substantive role in your theatrical production. Under the law, I can decline to answer your questions for several reasons.

First, I have been instructed by the Manhattan District Attorney's Office that I should maintain that Office's claims of privilege and confidentiality in order to protect the integrity of the pending prosecution and continuing investigation of Donald Trump. I intend to honor the District Attorney's request, and I will not

answer questions to which the District Attorney objects. Although I have written and spoken publicly about the Trump investigation, I did so before any criminal charges were brought against Mr. Trump. Now that a grand jury has indicted him, the circumstances have changed. With formal charges now pending, the rule of law is best served if the merits of the case against Mr. Trump are litigated before the court that is hearing that case. This is neither the time nor the place for me to answer questions about the investigation or the pending indictment over the objection of the prosecutors. The charges against Mr. Trump should be heard and decided by a judge and a jury before politicians second-guess their merits or the decision to bring them. That's how our system works. Those who claim that they respect the rule of law should wait for the courts to do their work.

Second, the rule of law also affords me a personal privilege not to answer your questions. Under the Fifth Amendment to the Constitution, no person may be compelled to be a witness against himself or herself in a possible criminal case. Shortly before the publication of my book, the District Attorney's Office warned me that I could face criminal liability if, among other things, I disclosed grand jury material or violated a provision of the New York City Charter dealing with the misuse of confidential information. When we were before the United States District Court on April 19, a lawyer from the Manhattan District Attorney's Office said that my book "exposed me to criminal liability." While I am certain I broke no

laws, I am not required to answer questions if my answers might be used against me in a criminal prosecution. The Fifth Amendment is a protection for all citizens, including those who have done nothing wrong. Therefore, and on the advice of counsel, I will invoke my rights under the Fifth Amendment, and I will not answer any questions that could conceivably be used against me in a criminal case.

Finally, the rule of law permits me to refuse to answer questions that are not pertinent to a legitimate legislative function, or that seek information that is protected by the First Amendment's guarantee of freedom of speech. Under the Due Process Clause of the Fifth Amendment, I cannot be punished for refusing to answer such questions. There may be other privileges, such as the attorney-client privilege or the work product privilege, that are available to me with respect to certain questions.

For all these reasons, I will not be answering questions that relate to my work in the DA's office, my book, or public statements I have made in the past. It gives me no joy to invoke my legal rights, but I am glad that the law allows me not to cooperate with this performance of political theater. As an American, I am privileged to have the legal rights that I assert today, and I am hopeful that I live in a country that will continue to respect them.