PART 59 FEB 26 2024

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 59

THE PEOPLE OF THE STATE OF NEW YORK -against- DONALD J. TRUMP, Defendant.	Ind. No. 71543-23

NOTICE OF MOTIONS IN LIMINE

PLEASE TAKE NOTICE that the People will move this Court, located at 100 Centre Street, New York, New York, on a date and time to be set by the Court, for an order:

(1) excluding expert testimony regarding federal campaign finance law;

(2) excluding evidence or argument that the Federal Election Commission dismissed complaints that defendant committed campaign finance violations;

(3) excluding evidence or argument regarding any purported decision by the United States Department of Justice not to charge defendant with campaign finance violations;

(4) excluding evidence or argument regarding selective prosecution or government misconduct;

(5) excluding evidence or argument regarding federal prosecutors' purported views of Michael Cohen's credibility;

(6) precluding argument regarding any alleged reliance on advice of counsel unless and until defendant establishes a sufficient factual predicate for that defense;

(7) excluding evidence or argument regarding legal defenses the Court has already rejected; and

(8) permitting the introduction of potential *Molineux* evidence;

and for such other and further relief as the Court may deem just and proper. A supporting affirmation, memorandum of law, and exhibits are attached to this notice of motion.

DATED: February 22, 2024

Respectfully submitted,

ALVIN L. BRAGG, JR.
District Attorney, New York County

By: */s/ Matthew Colangelo*
Matthew Colangelo
Christopher Conroy
Susan Hoffinger
Becky Mangold
Joshua Steinglass
Assistant District Attorneys
New York County District Attorney's Office
1 Hogan Place
New York, NY 10013
212-335-9000

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 59

THE PEOPLE OF THE STATE OF NEW YORK -against- DONALD J. TRUMP, Defendant.	AFFIRMATION AND MEMORANDUM OF LAW IN SUPPORT OF MOTIONS IN LIMINE Ind. No. 71543-23

AFFIRMATION

Matthew Colangelo, an attorney admitted to practice before the courts of this state, affirms under penalty of perjury that:

1. I am an Assistant District Attorney in the New York County District Attorney's Office. I am assigned to the prosecution of the above-captioned case and am familiar with the facts and circumstances underlying the case.

2. I submit this affirmation in support of the People's motions in limine.

3. Defendant is charged with thirty-four counts of falsifying business records in the first degree, PL § 175.10. These charges arise from defendant's efforts to conceal an illegal scheme to influence the 2016 presidential election. As part of this scheme, defendant requested that an attorney who worked for his company pay $130,000 to an adult film actress shortly before the election to prevent her from publicizing an alleged sexual encounter with defendant. Defendant then reimbursed the attorney for the illegal payment through a series of monthly checks. Defendant caused business records associated with the repayments to be falsified to disguise his and others' criminal conduct.

4. Attached as Exhibit 1 is a true and correct copy of defendant's Witness Disclosure for Bradley A. Smith dated January 22, 2024.

5. Attached as Exhibit 2 is a true and correct copy of *United States v. Suarez*, No. 5:13-cr-420 (N.D. Ohio June 24, 2014).

6. Attached as Exhibit 3 is a true and correct copy of the signed engagement letter between Bradley A. Smith and Todd Blanche dated January 4, 2024, for *People v. Trump*, Ind. No. 71543-23.

7. Attached as Exhibit 4 is a true and correct copy of the Decision & Order in *People v. The Trump Corporation*, Ind. No. 1473/2021 (Sup. Ct. N.Y. Cnty. Jan. 5, 2022).

8. Attached as Exhibit 5 is a true and correct copy of the Hearing Transcript in *People v. The Trump Corporation*, Ind. No. 1473/2021 (Sup. Ct. N.Y. Cnty. Oct. 20, 2022).

9. Attached as Exhibit 6 is a true and correct copy of a document titled Expert Witness Disclosure, Professor Bradley A. Smith, in *United States v. Bankman-Fried*, No. 22 Cr. 673 (LAK), ECF No. 276-5.

10. Attached as Exhibit 7 is a true and correct copy of the Hearing Transcript in *People v. The Trump Corporation*, Ind. No. 1473/2021 (Sup. Ct. N.Y. Cnty. Oct. 21, 2022).

11. Attached as Exhibit 8 is a true and correct copy of the Judgment of Conviction in *United States v. Cohen*, No. 18-cr-602 (S.D.N.Y. Dec. 12, 2018).

12. Attached as Exhibit 9 is a true and correct copy of the Information in *United States v. Cohen*, No. 18-cr-602 (S.D.N.Y. Aug. 21, 2018).

13. Attached as Exhibit 10 is a true and correct copy of the Hearing Transcript in *United States v. Cohen*, No. 18-cr-602 (S.D.N.Y. Aug. 21, 2018).

14. Attached as Exhibit 11 is a true and correct copy of defendant's social media posts dated February 1, 2023, March 9, 2023, and March 27, 2023.

15. Attached as Exhibit 12 is a true and correct copy of a document titled Certification, *In the Matter of Donald J. Trump for President, Inc., et al.*, Federal Election Comm'n Matter Under Review 7324, 7332, 7364, & 7366 (Mar. 11, 2021).

16. Attached as Exhibit 13 is a true and correct copy of the Letter from Lynn Y. Tran, Assistant General Counsel, Federal Election Commission, to E. Stewart Crosland (June 1, 2021).

17. Attached as Exhibit 14 is a true and correct copy of a document titled Statement of Reasons of Chair Shana M. Broussard & Commissioner Ellen L. Weintraub, *In the Matter of Donald J. Trump for President, Inc., et al.*, Federal Election Comm'n Matter Under Review 7324, 7332, 7364, & 7366 (July 1, 2021).

18. Attached as Exhibit 15 is a true and correct copy of a document titled Statement of Reasons of Vice Chair Allen Dickerson et al., *In the Matter of Donald J. Trump for President, Inc., et al.*, Federal Election Comm'n Matter Under Review 7324, 7332, 7364, & 7366 (June 28, 2021).

19. Attached as Exhibit 16 is a true and correct copy of a document titled Certification, *In the Matter of Michael D. Cohen, et al.*, Federal Election Comm'n Matter Under Review 7313, 7319, & 7379 (Mar. 31, 2021).

20. Attached as Exhibit 17 is a true and correct copy of the Letter from Lynn Y. Tran, Assistant General Counsel, Federal Election Commission, to E. Stewart Crosland (Mar. 31, 2021).

21. Attached as Exhibit 18 is a true and correct copy of a document titled Statement of Reasons of Commissioners Sean J. Cooksey & James E. "Trey" Trainor III, *In the Matter of Michael Cohen, et al.*, Federal Election Comm'n Matter Under Review 7313, 7319, & 7379 (Apr. 26, 2021).

22. Attached as Exhibit 19 is a true and correct copy of the excerpted Hearing Transcript in *People by James v. Trump*, No. 452564/2022 (Sup. Ct. N.Y. Cnty. Jan. 11, 2024).

23. Attached as Exhibit 20 is a true and correct copy of the excerpted Trial Transcript in *People by James v. Trump*, No. 452564/2022 (Sup. Ct. N.Y. Cnty. Nov. 6, 2023).

24. Attached as Exhibit 21 is a true and correct copy of defendant's social media post dated October 7, 2016.

25. Attached as Exhibit 22 is a true and correct copy of Megan Twohey & Michael Barbaro, *Two Women Say Donald Trump Touched Them Inappropriately*, N.Y. Times, Oct. 12, 2016.

26. Attached as Exhibit 23 is a true and correct copy of Natasha Stoynoff, *Physically Attacked by Donald Trump—A PEOPLE Writer's Own Harrowing Story*, People Magazine, Oct. 12, 2016.

27. Attached as Exhibit 24 is a true and correct copy of defendant's social media posts dated October 15, 2016, October 16, 2016, and October 17, 2016.

MEMORANDUM OF LAW

Courts deciding whether to preclude or admit evidence must determine whether the evidence is relevant and, if so, whether it is admissible. *People v. Primo*, 96 N.Y.2d 351, 355 (2001). Evidence is relevant if it has any tendency to make a fact more or less probable than it would be without the evidence, and the fact is material to the determination of the action. *People v. Lewis*, 69 N.Y.2d 321, 325 (1987). Irrelevant evidence is not admissible. *See id.* The court may exclude relevant evidence if its admission violates an exclusionary rule, *People v. Alvino*, 71 N.Y.2d 233, 241 (1987), or "if its probative value is outweighed by the prospect of trial delay, undue prejudice to the opposing party, confusing the issues or misleading the jury." *Primo*, 96 N.Y.2d at 355.

The Court has authority to consider pretrial motions *in limine* seeking evidentiary rulings based on both "the inherent power of a trial court to admit or exclude evidence" and the court's "inherent authority to manage the course of trials." *People v. Michael M.*, 162 Misc. 2d 803, 806-07 (Sup. Ct. Kings Cnty. 1994) (citing cases). Pretrial evidentiary rulings avoid the risk of presenting prejudicial, confusing, immaterial, or inadmissible evidence to the jury, *see State v. Metz*, 241 A.D.2d 192, 198 (1st Dep't 1998), and minimize delay and disruption during trial, *see Gallegos v. Elite Model Mgmt. Corp.*, 195 Misc. 2d 223, 226-27 (Sup. Ct. N.Y. Cnty. 2003).

For the reasons that follow, the People respectfully request that the Court grant the People's motions *in limine* to:

1. preclude defendant's proposed testimony from Bradley A. Smith regarding federal campaign finance law;
2. preclude the presentation of argument or introduction of evidence that the Federal Election Commission dismissed complaints alleging, or cleared defendant of, federal campaign finance violations;
3. preclude the presentation of argument or introduction of evidence regarding any purported decision by the United States Department of Justice not to charge defendant with campaign finance violations;
4. preclude the presentation of argument or introduction of evidence regarding defendant's claims of selective prosecution or government misconduct;
5. preclude the presentation of argument or introduction of evidence regarding federal prosecutors' purported views of Michael Cohen's credibility;
6. preclude argument regarding any alleged reliance on advice of counsel unless and until defendant establishes a sufficient factual predicate for that defense;

7. preclude evidence or argument regarding legal defenses the Court has already rejected; and

8. permit the introduction of potential *Molineux* evidence.

I. Motion to exclude witness testimony or argument regarding federal election laws.

A. Introduction.

Defendant intends to proffer witness testimony at trial from Bradley A. Smith about "industry norms, regulations, and practices" regarding "federal election laws," including campaign finance law. Ex. 1. The Court should exclude Mr. Smith's testimony because conclusions of law are not proper expert testimony; because his proposed testimony is irrelevant; and because the proposed testimony would improperly mislead and confuse the jury. Two different federal courts have precluded Mr. Smith's proposed testimony on campaign finance law in separate criminal prosecutions, and his testimony is just as improper here. *See United States v. Bankman-Fried*, No. 22-cr-673 (LAK), 2023 WL 6162865, at *3 (S.D.N.Y. Sept. 21, 2023); *United States v. Suarez*, No. 5:13-cr-420, slip op. at 1-2 (N.D. Ohio June 24, 2014) (Ex. 2).

B. Background.

On January 22, 2024, defendant disclosed his intent to call Bradley A. Smith, a law professor and former member of the Federal Election Commission, as a witness at trial. *See* Ex. 1. Defendant styled this disclosure as a "Witness Disclosure (Background / Non-Expert Testimony)," and stated that Mr. Smith may be called as a witness "to testify about background information regarding federal election laws." *Id.*

Defendant's disclosure states that "Mr. Smith's knowledge, skill, experience, training, and education are well beyond the ordinary lay person regarding federal election law, campaign finance law, and voting rights issues," but asserts that "Mr. Smith is not being called as an 'expert'

because the defense will not ask him to give an opinion but instead will call him to testify about industry norms, regulations, and practices." *Id.*

The signed engagement letter between Mr. Smith and defense counsel for this matter describes the "Scope of Engagement" as follows:

> Blanche Law is engaging me to provide, as requested, expert consultation in connection with litigation in the above-referenced matter, to provide required written reports to the court, and to provide expert testimony as necessary in both pre-trial and trial stages. If requested or approved by Blanche Law, I may also engage in commentary with media organizations covering the matter as part of this engagement. My services are requested for commentary on laws and regulations pertaining to campaign finance law and common campaign practices, and in particular to federal campaign finance law pursuant the [sic] Federal Election Campaign Act, 52 U.S.C. § 30301 [sic] et seq., and regulations issued thereunder, and to historical background on enforcement. The work may, as necessary, include additional research.

Ex. 3 at 1. Defendant is paying Mr. Smith $1,200 per hour for this engagement.[1] *Id.*

C. Argument.

1. Defendant's disclosure is properly considered a proffer of expert witness testimony, not lay witness testimony.

As an initial matter, the Court should treat Mr. Smith's proposed testimony as expert testimony, not lay testimony.

Defendant has proffered Mr. Smith's testimony on four broad topics:

- "That federal campaign finance laws provide (1) that a candidate cannot use campaign funds for personal expenses, (2) that if an expense does not 'arise out' of a campaign, it cannot be paid for using campaign funds, even if the expense would have an impact on the campaign, and (3) that an expenditure made by a candidate, or by a third-party on his behalf, must be reported as a campaign contribution only if it is a campaign contribution but not if it is a personal expenditure," Ex. 1 at 2;

[1] Defendant's retention of a witness to "engage in commentary with media organizations covering the matter" at a rate of $1,200 per hour, Ex. 3 at 1, raises separate concerns about potential efforts by defendant to taint the jury pool or otherwise prejudice these proceedings.

- "That at the time that Mr. Cohen made the payment to Stormy Daniels, there had never been a case in which someone was convicted of violating federal campaign finance laws by making a 'hush payment' to an alleged girlfriend or former lover (either directly or through a third party) using non-campaign funds, and that there had never been any finding by the Federal Election Commission that such conduct violates federal campaign finance law," *id.*;

- "That the federal prosecution of former U.S. Senator and vice-presidential nominee John Edwards is the one public case in which a 'hush payment' theory has been alleged. Further, that in that case, the federal charges—including those based on purported federal campaign finance law violations—were either rejected by the jury or dismissed by the government." *Id.*; and

- "That the Edwards prosecution was heavily criticized and resulted in a wide consensus, among the public, media, and legal scholars, that the conduct alleged did not violate federal campaign finance laws." *Id.*

On its face, this proposed testimony relates exclusively to the interpretation and application of federal campaign finance law, rather than any factual issues relevant to this case. The proposed topics call for opinion testimony by a specialist; Mr. Smith is not a percipient witness as to any event or conduct at issue in this prosecution.

Defendant's witness disclosure asserts that "Mr. Smith is not being called as an 'expert' because the defense will not ask him to give an opinion but instead will call him to testify about industry norms, regulations, and practices." Ex. 1. But testimony about campaign finance law from a law professor whom defendant himself describes as having "knowledge, skill, experience, training, and education" in that specialized field "well beyond the ordinary lay person," Ex. 1, is the very definition of expert opinion testimony. *See* Guide to N.Y. Evid. rule 7.01(1)(a), Opinion of Expert Witness. That defendant describes Mr. Smith's proposed testimony as relating to "industry norms, regulations, and practices" does not change this conclusion, because of course the relevant norms, regulations, and practices he is describing are all governed by federal law and regulations. And in any event, testimony regarding "industry norms" in any specialized field is generally treated as expert opinion testimony under New York law. *See, e.g.*, Prince, Richardson

on Evidence § 7-307 (noting that "standards within an industry" is the subject matter of expert testimony) (*citing, e.g.*, *Lugo v. LJN Toys*, 75 N.Y.2d 850, 852 (1990)); *see also Regan v. Eight Twenty Fifth Corp.*, 287 N.Y. 179, 182 (1941); *French v. Ehrenfeld*, 180 A.D.2d 895, 896 (3d Dep't 1992); *Bailey v. Baker's Air Force Gas Corp.*, 50 A.D.2d 129, 132 (3d Dep't 1975); *Berman v. H.J. Enters., Inc.*, 13 A.D.2d 199, 201 (1st Dep't 1961).

Indeed, the engagement letter between Mr. Smith and defense counsel in this case shows that he was retained at a $1,200-per-hour rate "as an expert consultant and witness" to provide "expert testimony as necessary in both pre-trial and trial stages" of this prosecution. Ex. 3. Where defendant retained a law professor and agreed to pay him $1,200 an hour to serve "as an expert consultant and witness" by providing "expert testimony" about his interpretation of campaign finance law (Ex. 3), on the basis of "knowledge, skill, experience, training, and education" that are "well beyond the ordinary lay person" (Ex. 1), the Court should reject defendant's claim that the witness is "not being called as an 'expert.'"[2] *Id.*

2. Mr. Smith's proposed testimony should be excluded in full because expert testimony as to a legal conclusion is impermissible.

The Court should preclude Mr. Smith's proffered testimony because defendant seeks to call him to testify about conclusions of law, and testimony regarding conclusions of law is impermissible. Just a few months ago, Judge Kaplan in the Southern District of New York precluded Mr. Smith's proposed testimony for the defendant regarding the application of federal campaign finance law to the government's prosecution of Sam Bankman-Fried on the ground that,

[2] For the reasons described below, Mr. Smith's improper testimony should be excluded in full. If his testimony is not precluded entirely, however, the Court should still conclude that he is an expert witness and should direct defendant to comply immediately and fully with all discovery obligations under CPL § 245.20(1)(f). Defendant should not be permitted to evade or delay reciprocal discovery by retaining a law professor "as an expert consultant and witness," Ex. 3, but then claiming that "he is not being called as an 'expert.'" Ex. 1.

among other reasons, "Mr. Smith's testimony is improper because he seeks to instruct the jury on issues of law." *Bankman-Fried*, 2023 WL 6162865, at *3. This Court should do the same.

Expert testimony is permitted where the Court determines that scientific, technical, medical, or other specialized knowledge is necessary to "help the finder of fact to understand the evidence or determine a fact in issue." Guide to N.Y. Evid. rule 7.01(1)(b), Opinion of Expert Witness; *see People v. Inoa*, 25 N.Y.3d 466, 472 (2015); *People v. Cronin*, 60 N.Y.2d 430, 432-33 (1983). But "[e]xpert opinion as to a legal conclusion is impermissible." *Colon v. Rent-A-Center, Inc.*, 276 A.D.2d 58, 61 (1st Dep't 2000) (citing *Marx & Co., Inc. v. Diners' Club Inc.*, 550 F.2d 505, 508-12 (2d Cir. 1977)); *see also Russo v. Feder, Kaszovitz, Isaacson, Weber, Skala & Bass, LLP*, 301 A.D.2d 63, 68-69 (1st Dep't 2002) ("An expert may not be utilized to offer opinion as to the legal standards which he believes should have governed a party's conduct."); *People v. Kirsh*, 176 A.D.2d 652, 653 (1st Dep't 1991) (trial court properly denied defendant's application to call an expert who would have offered opinion as to a legal defense), *leave denied*, 79 N.Y.2d 949 (1992); *People v. Johnson*, 76 A.D.2d 983, 984 (3d Dep't 1980) (same). Indeed, "[t]he rule prohibiting experts from providing their legal opinions or conclusions is 'so well-established that it is often deemed a basic premise or assumption of evidence law—a kind of axiomatic principle.'" *In re Initial Pub. Offering Sec. Litig.*, 174 F. Supp. 2d 61, 64 (S.D.N.Y. 2001) (quoting Tomas Baker, *The Impropriety of Expert Witness Testimony on the Law*, 40 U. Kan. L. Rev. 325, 352 (1992)).

Expert testimony as to a legal conclusion is properly excluded because it does not "help the finder of fact to . . . determine a fact in issue," Guide to N.Y. Evid. rule 7.01(1)(b), and instead improperly infringes on the Court's role. "Each courtroom comes equipped with a 'legal expert,' called a judge, and it is his or her province alone to instruct the jury on the relevant legal standards."

Burkhart v. Wash. Metro. Area Transit Auth., 112 F.3d 1207, 1213 (D.C. Cir. 1997) (trial court erred in admitting expert testimony that "consisted of impermissible legal conclusions rather than permissible factual opinions"). Courts routinely and properly exclude testimony that purports to explain the law to the jury. *See United States v. Stewart*, 433 F.3d 273, 311-12 (2d Cir. 2006) (trial court properly excluded defense expert testimony regarding legal principles because "[c]learly, an opinion that purports to explain the law to the jury trespasses on the trial judge's exclusive territory"); *Kirsh*, 176 A.D.2d at 653 ("Any instructions . . . as to a legal defense lay within the responsibility of the court"); *Johnson*, 76 A.D.2d at 984 (trial court properly excluded defense expert because "the proposed expert testimony involved interpretation and application of the Social Services Law and pertinent regulations and such was within the sole province of the court").

This Court had occasion to apply this principle very recently in connection with the proffered testimony of a defense expert in the *Trump Corporation* prosecution, during which the Court repeatedly noted that "this Court will not permit this trial to become a referendum on the Internal Revenue Code or a master class on taxation. The evidence at trial will be limited to what is relevant and necessary for the finders of fact to perform their duties – and nothing more." Decision & Order 3, *People v. The Trump Corporation*, Ind. No. 1473/2021 (Sup. Ct. N.Y. Cnty. Jan. 5, 2022) (Ex. 4); *see also* Hearing Tr. 33, *People v. The Trump Corporation*, Ind. No. 1473/2021 (Sup. Ct. N.Y. Cnty. Oct. 20, 2022) ("[A]s I said a long time ago, this trial is not going to turn into a master class on taxation, and I'm certainly not going to permit the jury to become confused by irrelevant issues.") (Ex. 5).

As noted in Part I.C.1 above, each of the four topics of Mr. Smith's proposed testimony relates exclusively to the interpretation and application of federal campaign finance law. Ex. 1. Testimony purporting to explain how campaign finance law applies to the election interference

scheme at issue in this prosecution would run afoul of the axiomatic principle that "[e]xpert opinion as to a legal conclusion is impermissible."[3] *Colon*, 276 A.D.2d at 61. Indeed, as noted above, a federal court very recently precluded Mr. Smith from testifying for the defense in a criminal trial—on topics much like those he proposes to testify about here—on the ground that his proffered testimony improperly sought to instruct the jury on the law.[4] *See Bankman-Fried*, 2023 WL 6162865, at *3. Mr. Smith's effort to instruct the jury on campaign finance law should get no more purchase in this case than it did before Judge Kaplan in the Southern District of New York. The Court should preclude Mr. Smith's proposed testimony here on the ground that it is improper legal instruction. *See id.*; *Russo*, 301 A.D.2d at 68-69; *Colon*, 276 A.D.2d at 61; *Kirsh*, 176 A.D.2d at 653; *Johnson*, 76 A.D.2d at 984.

3. Mr. Smith's proposed testimony should be excluded in full because it is irrelevant.

Mr. Smith's proposed testimony should be excluded on the entirely separate ground that it is irrelevant. Indeed, Mr. Smith was prohibited from testifying in a different federal criminal prosecution where the trial court held that Mr. Smith's views regarding federal campaign finance law were irrelevant to the defendants' own state of mind in that case. *See United States v. Suarez*, No. 5:13-cr-420, slip op. at 1-2 (N.D. Ohio June 24, 2014) (Ex. 2). Mr. Smith's testimony is just as irrelevant here.

[3] To the extent the Court treats Mr. Smith as a lay witness and not an expert witness, his testimony should still be excluded. The same reasons that bar expert testimony about legal matters also extend to lay testimony, including that it is the trial judge's exclusive role to instruct the jury on the law.

[4] Mr. Smith's expert witness disclosure in the *Bankman-Fried* prosecution is appended as Ex. 6 for comparison to his disclosure here. As in this case, Mr. Smith sought to testify regarding Federal Election Commission "rules and decisions governing the application and interpretation" of specific sections of the Federal Election Campaign Act, Ex. 6 at 2; as well as purportedly "[c]ommon, established, and well-known practices" for certain kinds of campaign contributions, Ex. 6 at 3.

Defendant is charged with thirty-four felonies for falsifying business records with the intent to commit, aid, or conceal the commission of another crime, in violation of Penal Law § 175.10. As pertinent here, the People may allege at trial that among the crimes defendant intended to commit, aid, or conceal are violations of the Federal Election Campaign Act ("FECA"). On that issue, the relevant question for the finder of fact is what defendant intended when he falsely described the reimbursements to Cohen for the Stormy Daniels payoffs as payments for legal services pursuant to a retainer agreement; and whether his intent in doing so included concealing Cohen's criminal violation of federal campaign finance law in connection with that payoff. Mr. Smith does not purport to have any direct evidence of defendant's state of mind. His proposed testimony about what unspecified others might have thought about the facts of a different case is thus irrelevant to the jury's factual findings regarding defendant's fraudulent intent here.

Mr. Smith's own proposed—and excluded—testimony in yet another criminal case again provides support for the exclusion of his testimony here. In *United States v. Suarez*, the defendant sought to introduce expert testimony from Mr. Smith to testify that "federal campaign laws are confusing to individuals who lack formal training," that "people often misunderstand the campaign laws," and that "it is reasonable for individuals to believe that the law allows 'straw man' donations." *Suarez*, slip op. at 1-2 (Ex. 2). The court held that "the expert testimony offered by Smith is inadmissible because it is not relevant." As the court explained:

> [W]hether the laws are commonly misunderstood does not weigh on whether defendants *in this case* intended to violate the campaign finance laws. What other individuals who may have contacted Smith knew or thought simply has no bearing on what defendants knew or thought. Because the evidence is not relevant, it will not be admitted.

Id. at 3. The exact same reasoning applies here. Mr. Smith proposes to testify that some among "the public, media, and legal scholars" thought the conduct alleged in the *United States v. Edwards* prosecution did not violate federal campaign finance laws; and the import of Mr. Smith's proposed

testimony on the other topics in his disclosure is that federal campaign finance law does not clearly criminalize some personal expenditures on other facts. Ex. 1. But the only relevant question in this case is whether—after Cohen made an illegal campaign contribution to defendant by paying $130,000 to Stormy Daniels to silence her on the eve of a presidential election—defendant intended to conceal that crime by falsely describing his reimbursements to Cohen as payments for legal services pursuant to a retainer. Mr. Smith's proposed testimony about industry norms, or about what other people might have thought the law would criminalize on other facts, "does not weigh on whether defendant[] *in this case* intended to violate [or conceal violations of] the campaign finance laws."[5] *Suarez*, slip op. at 3 (Ex. 2).

This Court reached the same conclusion as to the defense's proffered expert in the *Trump Corporation* prosecution, holding that the defendants were prohibited from offering expert testimony regarding what "any of the high managerial agents intended" because "He's an expert. He was not there. He did not speak to them. He cannot read their minds. He does not know what their intent was." *See* Hearing Tr. 14, *People v. The Trump Corporation*, Ind. No. 1473/2021 (Sup. Ct. N.Y. Cnty. Oct. 21, 2022) (Ex. 7). The same reasoning applies here, and the Court should exclude Mr. Smith's testimony in full as irrelevant.

4. Mr. Smith's proposed testimony about whether the Stormy Daniels payoff violated federal campaign finance law should be excluded because it would mislead and confuse the jury.

If the Court does not exclude Mr. Smith's proposed testimony in full for the reasons identified above, the Court should exclude his proposed testimony regarding whether the conduct

[5] And to the extent Mr. Smith did plan to testify regarding his speculative views of defendant's potential intent based on what Mr. Smith thinks others thought of the *Edwards* prosecution, that too would be wholly inadmissible and improper; it is settled law that an expert may not testify as to a defendant's intent. *See People v. Kincey*, 168 A.D.2d 231, 232 (1st Dep't 1990) ("It was highly improper and prejudicial to allow [an expert] to testify concerning the defendant's intent").

involved in Cohen's payoff to Stormy Daniels "violates federal campaign finance law"—the second topic in Mr. Smith's witness disclosure, *see* Ex. 1—because it would mislead and confuse the jury.

Michael Cohen pleaded guilty to and was convicted of two criminal counts of violating FECA in connection with the Karen McDougal and Stormy Daniels payoffs. *See* Judgment of Conviction, *United States v. Cohen*, No. 18-cr-602 (S.D.N.Y. Dec. 12, 2018) (the "*Cohen* Judgment") (Ex. 8). In connection with the Daniels payment in particular, Cohen was charged with and pleaded guilty to the offense of making an excessive campaign contribution in violation of 52 U.S.C. §§ 30116(a)(1)(A) and 30116(a)(7). *See* Information ¶¶ 24-44, *United States v. Cohen*, No. 18-cr-602 (S.D.N.Y. Aug. 21, 2018) (Ex. 9); Hearing Tr. 23-24, 27-28, *United States v. Cohen*, No. 18-cr-602 (S.D.N.Y. Aug. 21, 2018) (the "*Cohen* Hearing Tr.") (Ex. 10). The federal district court had an independent obligation to "assure itself . . . that the conduct to which the defendant admits is in fact an offense under the statutory provision under which he is pleading guilty." *United States v. Culbertson*, 670 F.3d 183, 191 (2d Cir. 2012). Mindful of that obligation, the district court accepted Cohen's guilty plea and adjudged Cohen guilty: "[B]ecause I find your plea is entered knowingly and voluntarily and is supported by an independent basis in fact containing each of the essential elements of the crimes, I accept your guilty plea and adjudge you guilty of the eight offenses to which you have just pleaded as charged in the information." *Cohen* Hearing Tr. 28 (Ex. 10); *see also Cohen* Judgment (Ex. 8).

Mr. Smith's proposed testimony—that "at the time Mr. Cohen made the payment to Stormy Daniels, there had never been a case in which someone was convicted of violating federal campaign finance laws by making a 'hush payment' to an alleged girlfriend or former lover (either indirectly or through a third party) using non-campaign funds," Ex. 1—appears intended to suggest

to the jury that the Daniels payoff was not a crime. But it was, in fact, a crime: a federal judge concluded that the conduct to which Cohen admitted "is in fact an offense" under FECA. *Culbertson*, 670 F.3d 183, 191 (2d Cir. 2012); and Cohen went to prison for it. *See Cohen* Judgment (Ex. 8). Expert testimony purporting to show that such conduct did not "violate[] federal campaign finance law" would therefore mislead the jury and should be excluded. *See, e.g.*, *People v. Corby*, 6 N.Y.3d 231, 234 (2005); *People v. Davis*, 43 N.Y.2d 17, 27 (1977).

5. Mr. Smith's proposed testimony about the *United States v. Edwards* prosecution should be excluded because it would mislead and confuse the jury.

Finally, and if the Court does not exclude Mr. Smith's proposed testimony in full for the reasons identified above, the Court should exclude the witness's proposed testimony regarding the *United States v. Edwards* prosecution—the third and fourth topics in Mr. Smith's witness disclosure, *see* Ex. 1—because it would mislead and confuse the jury.

The United States indicted former Senator and presidential candidate John Edwards in 2011 on four counts of acceptance and receipt of illegal campaign contributions in violation of FECA, 52 U.S.C. §§ 30116(a)(1)(A), 30116(f), 30109(d)(1)(A)(i). The indictment alleged that while running for President in 2007 and 2008, Edwards was engaged in an extramarital affair with a woman that resulted in her pregnancy. He allegedly sought to conceal the affair and pregnancy from the public out of concern that public disclosure would undermine his campaign. Edwards and a campaign staffer solicited money from several friends and campaign donors of Edwards, which was then sent to the woman to cover living expenses and medical care for the purpose of keeping her from disclosing the affair and pregnancy during the campaign. The government alleged that those donations were illegal contributions, and that Edwards was aware they were illegal contributions and intentionally violated the law by accepting and failing to disclose them. *See*

generally Government's Resp. to Def.'s Mot. to Dismiss 2-6, *United States v. Edwards*, No. 1:11-cr-161-1 (M.D.N.C. Sept. 26, 2011), ECF No. 59.

Edwards moved to dismiss the indictment on the ground that he was motivated by non-campaign-related, purely personal reasons to conceal the relationship, and that payments to conceal an affair for personal reasons do not become unlawfully campaign-related just because disclosure of the affair might also have the effect of damaging his candidacy for office. The government argued that under FECA and the Federal Election Commission's implementing regulations, third-party payments of expenses for a candidate's personal use are campaign contributions—and thus subject to FECA's donation limits and disclosure requirements—"unless the payment would have been made irrespective of the candidacy." *Id.* at 10 (quoting 11 C.F.R. § 113.1(g)(6)).

The district court denied the motion to dismiss without prejudice to it being raised after the close of the government's evidence at trial. *See* Hearing Tr. 4-5, *United States v. Edwards*, No. 1:11-cr-161-1 (M.D.N.C. Oct. 27, 2011), ECF No. 108. The defense moved again after the close of the government's case, and the court again denied the motion. *See* Trial Tr. 97, *United States v. Edwards*, No. 1:11-cr-161-1 (M.D.N.C. May 11, 2012), ECF No. 303. The court ultimately provided the following jury instructions (in relevant part): "The government does not have to prove that the sole or only purpose of the money was to influence the election. People rarely act with a single purpose in mind. . . . If you find beyond a reasonable doubt that one of her purposes was to influence an election, then that would be sufficient." *See* Final Jury Instructions 8-9, *United States v. Edwards*, No. 1:11-cr-161-1 (M.D.N.C. May 18, 2012), ECF No. 288. The jury then acquitted Edwards on the charges.

Thus, in the *Edwards* prosecution, the government's case was lost not on the legal sufficiency of the allegations but on the jury's factual findings at trial. And that jury verdict of acquittal has no legal import here. Apart from double jeopardy protection for the specific defendant in a given case, a jury acquittal does not establish legal precedent—it may reflect mistake, compromise, or lenity, *see United States v. Powell*, 469 U.S. 57, 65 (1984); and is in any event not a holding as to the law. The only conceivably relevant legal determinations from the *Edwards* case are the denials of the defendant's motions to dismiss and the trial court's jury instruction quoted above—all of which support the People here, and which Mr. Smith's proposed testimony conspicuously fails to address.

Here, the People intend to present evidence at trial showing that the Stormy Daniels payoff (and the other underlying federal campaign finance violations) were *not* purely personal; and that instead, at least one of the purposes of the entire hush money scheme was to influence the 2016 presidential election. Because testimony from Mr. Smith explaining that former Senator Edwards was acquitted at trial does not illuminate whether the payoff scheme here was intended in part to influence defendant's candidacy for the 2016 election, its admission could only mislead and confuse the jury. *See Corby*, 6 N.Y.3d at 234-35; *Primo*, 96 N.Y.2d at 356-57. The jury's factual findings about former Senator Edwards's motives following the presentation of evidence in that trial do not bear on defendant's motives here. And as noted, Mr. Smith's proposed testimony makes clear that he has nothing to say on the factual issue that was the dispositive factor in *Edwards*—namely, what was defendant's intent when he falsified the reimbursements to Cohen. Mr. Smith's testimony regarding the outcome of the *Edwards* trial should thus be excluded as misleading and confusing.

II. Motion to exclude evidence or argument regarding the Federal Election Commission's dismissal of complaints against defendant.

A. Introduction.

The Federal Election Commission ("FEC") received a number of administrative complaints against defendant in connection with the hush money payoffs at issue in this prosecution and dismissed those complaints without investigation after the Commissioners deadlocked on tie votes regarding whether or not to proceed. Defendant has asserted in public statements and may seek to argue at trial that this prosecution is unwarranted because of those dismissals. *See* Ex. 11.[6] The Court should exclude any evidence or argument at trial regarding dismissal of the FEC complaints against defendant because those dismissals are not relevant to the determination of any legal question or fact in issue in this prosecution, and because evidence or argument regarding those dismissals would confuse and mislead the jury.

B. Background.

The FEC received and considered multiple complaints that defendant and others violated FECA in connection with the payoff scheme involving Daniels, McDougal, and Sajudin.[7] *See* 11

[6] *E.g.*, Ex. 11 at 1 (claiming that "[t]he FEC dopped the 'Horseface' Daniels Fake Witch Hunt, because they found no evidence of problems."); Ex. 11 at 3 (claiming that "[e]very Prosecutor, and the FEC, who looked at it, took a pass.").

[7] The FEC's compliance procedures are codified at 11 C.F.R. part 111. Under those procedures, "[a]ny person who believes that a violation of" FECA has occurred "may file a complaint in writing with the General Counsel" of the FEC. 11 C.F.R. § 111.4(a). The General Counsel reviews those complaints and makes a recommendation to the Commission "whether or not it should find reason to believe that a respondent has committed or is about to commit a violation of statutes or regulations over which the Commission has jurisdiction." 11 C.F.R. § 111.7(a). The Commissioners then vote on what is called a "reason to believe" finding, with an affirmative vote of four (out of six) Commissioners required to proceed to open an investigation. *Id.* § 111.9(a). If four Commissioners vote in favor of a reason-to-believe finding, an investigation is conducted and subsequent steps in the compliance process follow (including, if warranted, a "probable cause to believe" recommendation and finding, conciliation attempts, and civil litigation). *See id.* §§ 111.9(a), 111.10, 111.16–.19. Absent four votes at the reason-to-believe stage, no investigation

C.F.R. §§ 111.3(a), 111.4(a). As to defendant's culpability in connection with the McDougal and Sajudin payoffs, the six members of the FEC split three-three on whether there was reason to believe that defendant knowingly and willfully accepted prohibited contributions, and because the votes of four out of six members are required for a reason-to-believe finding, *see* 11 C.F.R. §§ 111.9(a), 111.10(a), the Commission closed the complaints before any investigation was conducted.[8] The three Commissioners who voted to dismiss did so *not* on the merits but instead as a matter of prosecutorial discretion, explaining that "[i]n choosing how to allocate the Commission's limited enforcement resources, we opted against pursuing the long odds of a successful enforcement in these matters" against Trump, and "instead voted to dismiss as an exercise of prosecutorial discretion." Statement of Reasons of Vice Chair Allen Dickerson et al., *In the Matter of Donald J. Trump for President, Inc., et al.*, Federal Election Comm'n Matter Under Review 7324, 7332, 7364, & 7366 (June 28, 2021) (Ex. 15).

The FEC resolved the complaints regarding defendant's involvement in the Daniels payoff in the same way. The FEC again stalemated (this time on a two-two vote among the four participating Commissioners) on the question whether there was reason to believe that defendant knowingly and willfully accepted excessive contributions from Cohen. *See* Certification, *In the Matter of Michael D. Cohen, et al.*, Federal Election Comm'n Matter Under Review 7313, 7319, & 7379 (Mar. 31, 2021) (Ex. 16); Letter from Lynn Y. Tran, Assistant General Counsel, Federal

---

is conducted, and the FEC then generally "terminates its proceedings" and closes the matter. *See id.* § 111.9.

[8] *See* Certification, *In the Matter of Donald J. Trump for President, Inc., et al.*, Federal Election Comm'n Matter Under Review 7324, 7332, 7364, & 7366 (Mar. 11, 2021) (Ex. 12); Letter from Lynn Y. Tran, Assistant General Counsel, Federal Election Commission, to E. Stewart Crosland (June 1, 2021) (Ex. 13); Statement of Reasons of Chair Shana M. Broussard & Commissioner Ellen L. Weintraub, *In the Matter of Donald J. Trump for President, Inc., et al.*, Federal Election Comm'n Matter Under Review 7324, 7332, 7364, & 7366 (July 1, 2021) (Ex. 14).

Election Commission, to E. Stewart Crosland (Mar. 31, 2021) (Ex. 17); 11 C.F.R. § 111.9(a). The two Commissioners who voted to dismiss did so *not* on the merits but "as an exercise of prosecutorial discretion" because (1) the FEC faced an "extensive enforcement backlog"; (2) "a federal judge was sufficiently satisfied" that Cohen had explained the factual basis for his guilty plea to FECA violations "count by count, during his allocution"; and (3) Cohen had already "been punished by the government of the United States." Statement of Reasons of Commissioners Sean J. Cooksey & James E. "Trey" Trainor III, *In the Matter of Michael Cohen, et al.*, Federal Election Comm'n Matter Under Review 7313, 7319, & 7379 (Apr. 26, 2021) (Ex. 18). Accordingly, the two Commissioners concluded that "pursuing these matters further was not the best use of agency resources." *Id.* The Commission then closed the complaints without investigation.

C. Argument.

The Court should exclude evidence or argument regarding the FEC's dismissal of these complaints for three reasons. First, because the FEC dismissed the complaints against defendant at the reason-to-believe stage without any investigation after the Commissioners stalemated on tie votes regarding whether to proceed, defendant's public claims that the FEC "found no evidence of problems," Ex. 11, is based on demonstrably false and misleading premises about how the FEC conducts its enforcement matters. Argument or evidence purporting to show (falsely) that the FEC cleared defendant of FECA culpability would improperly confuse and mislead the jury and should be excluded. *See Corby*, 6 N.Y.3d at 234; *Davis*, 43 N.Y.2d at 27.

Second, the fact of the FEC dismissals should be excluded because it is irrelevant. The FEC's dismissal of administrative complaints against defendant without investigation does not make any fact regarding defendant's intent to defraud—or any other element of the charged offenses—more or less probable, particularly where the Commissioners who voted to dismiss did so not on the merits but as an exercise of prosecutorial discretion. *See Lewis*, 69 N.Y.2d at 325.

Evidence or argument regarding the FEC's dismissals should therefore be excluded as irrelevant. *See People v. Greene*, 16 A.D.3d 350, 350 (1st Dep't 2005); *People v. Griffin*, 173 A.D.2d 120, 124-25 (4th Dep't 1991), *aff'd*, 80 N.Y.2d 723 (1993).

Finally, even if the FEC dismissals did reflect some determination by that agency regarding whether defendant violated FECA—which they do not—the dismissals should be excluded for the separate reason that whether defendant himself committed another crime is not material to the jury's determination of defendant's intent to defraud, as this Court has repeatedly recognized in this case. *See* Decision & Order on Def.'s Omnibus Motions 12 (Feb. 15, 2024) (the "*Trump* Omnibus Decision"); Decision & Order on Mot. to Quash Def.'s Subpoena 10 (Dec. 18, 2023). Courts have upheld convictions under Penal Law § 175.10 even when the defendant was acquitted of the crimes that he intended to commit or conceal, so long as the evidence showed that, notwithstanding the acquittal, defendant falsified business records with the requisite general intent. *See, e.g.*, *People v. Holley*, 198 A.D.3d 1351, 1351-52 (4th Dep't 2021); *People v. Houghtaling*, 79 A.D.3d 1155, 1157-58 (3d Dep't 2010); *People v. McCumiskey*, 12 A.D.3d 1145, 1145-46 (4th Dep't 2004). And there is no requirement that a defendant intend to conceal the commission of *his own* crime; instead, "a person can commit First Degree Falsifying Business Records by falsifying records with the intent to cover up a crime committed by somebody else." *People v. Dove*, 15 Misc. 3d 1134(A), at *6 n.6 (Sup. Ct. Bronx Cnty. 2007) (citing *People v. Smithtown Gen. Hosp.*, 93 Misc. 2d 736, 736 (Sup. Ct. Suffolk Cnty. 1978)). The FEC dismissals of administrative complaints against defendant are thus not material to whether defendant acted with the requisite intent to conceal the commission of another crime. Evidence or argument regarding the FEC dismissals should be excluded.

III. Motion to exclude evidence or argument regarding any purported decision by the United States Department of Justice not to charge defendant with campaign finance violations.

A. Introduction.

Defendant has asserted in public statements and may seek to argue at trial that this prosecution is unwarranted because the United States Department of Justice did not indict him for federal campaign finance violations. *See* Ex. 11. The Court should exclude any evidence or argument regarding any purported decision by the Justice Department not to charge defendant with violating federal campaign finance law because it is irrelevant and would mislead the jury.

B. Argument.

Defendant has frequently claimed that the Justice Department previously examined his conduct and "found that I did nothing wrong." Ex. 11. That defendant was not indicted by the federal government in connection with the election interference scheme at issue here is probative of literally nothing relevant to this prosecution.

Defendant was the sitting President during the entire period that the federal government investigated the campaign finance violations to which Cohen pleaded guilty.[9] The Department of Justice "has long understood that a President is absolutely immune from arrest, indictment, and criminal prosecution while he remains in office." Brief for the United States as Amicus Curiae Supporting Petitioner at 11, *Trump v. Vance*, 140 S. Ct. 2412 (2020) (No. 19-635). Thus, even assuming defendant was the target of a federal criminal investigation related to the campaign finance violations to which Cohen pleaded guilty, he could not have been indicted under the Justice

[9] Cohen pleaded guilty to federal campaign finance violations in August 2018, *see Cohen* Hearing Tr. 23-24, 27-28 (Ex. 10); and the federal government concluded its investigation into whether other individuals may be criminally liable for that conduct in July 2019. *See* Government's Letter 1 n.1, *United States v. Cohen*, No. 18-cr-602 (S.D.N.Y. July 18, 2019).

Department's longstanding approach. *Cf. CREW v. U.S. Dep't of Justice*, 45 F.4th 963, 968 (D.C. Cir. 2022) (noting that "[i]n light of the sitting President's immunity from criminal prosecution, [Special Counsel] Mueller declined to determine whether President Trump's potentially obstructive conduct" in connection with the investigation into Russian interference in the 2016 presidential election "constituted a crime").

Argument or evidence that defendant was not charged with campaign finance violations by the Justice Department would thus improperly confuse and mislead the jury and should be excluded. *See Corby*, 6 N.Y.3d at 234; *Davis*, 43 N.Y.2d at 27; *see also, e.g.*, *United States ex rel. Feldman v. van Gorp*, No. 03 Civ. 8135 (WHP), 2010 WL 2911606, at *2-3 (S.D.N.Y. July 8, 2010) (granting motion *in limine* to exclude evidence of the Justice Department's decision not to intervene in False Claims Act case as irrelevant, because "the government may have a host of reasons for not pursuing a claim" (quoting *United States ex rel. Atkins v. McInteer*, 470 F.3d 1350, 1360 n.17 (11th Cir. 2006))).

Such argument and evidence would also be irrelevant for the same reasons identified in Part II.C above: whether defendant himself violated FECA is not material to the jury's determination of defendant's intent to defraud. *Trump* Omnibus Decision 12; *see also People v. Taveras*, 12 N.Y.3d 21, 27 (2009); *People v. Thompson*, 124 A.D.3d 448, 449 (1st Dep't 2015); *Houghtaling*, 79 A.D.3d at 1157-58; *McCumiskey*, 12 A.D.3d at 1145.

IV. Motion to exclude evidence or argument regarding selective prosecution or government misconduct.

A. Introduction.

Defendant may seek to argue at trial that he has been singled out for prosecution based on impermissible considerations, and—relatedly—that the charges in the indictment are novel or unprecedented. Selective prosecution is not a valid trial defense, and the Court properly rejected

defendant's pretrial motion to dismiss on this basis. *Trump* Omnibus Decision 20-22. Because the presentation of evidence or argument purporting to show selective prosecution would risk confusing and misleading the jury and is not probative of defendant's guilt or innocence, the Court should exclude any evidence or argument regarding defendant's claim of selective prosecution, including argument that the prosecution is politically motivated or that the charges are novel or unusual.

B. Argument.

Defendant has repeatedly stated in court filings and public statements that this prosecution is based on impermissible motives and that he is being singled out for improper reasons. Defendant has also asserted in court filings and public statements that the charges in the indictment are "novel" or "unprecedented." *E.g.*, Def.'s Omnibus Mem. 29, 31. The Court should preclude defendant from presenting argument and introducing evidence of purported selective prosecution at trial because selective prosecution is not a valid trial defense, and because any selective prosecution argument at trial would serve no purpose other than to advance an improper jury nullification defense.

1. Selective prosecution is not a valid trial defense.

The Court of Appeals has emphasized that a defendant's claim of selective prosecution is not a valid trial defense and is instead a constitutional claim for dismissal that should be addressed before trial. "[I]n our State, the claim of unequal protection is treated not as an affirmative defense to criminal prosecution or the imposition of a regulatory sanction but rather as a motion to dismiss or quash the official action." *Matter of 303 W. 42nd St. Corp. v. Klein*, 46 N.Y.2d 686, 693 (1979) (citing *People v. Goodman*, 31 N.Y.2d 262, 268-69 (1972); *People v. Utica Daw's Drug Co.*, 16 A.D.2d 12, 15-18 (4th Dep't 1962)). That is because "[a] claim of discriminatory enforcement does not reach the issue of the guilt or innocence of the defendant." *Goodman*, 31 N.Y.2d at 269;

see also Utica Daw's Drug Co., 16 A.D.2d at 15-16. Thus, "the claim of discriminatory enforcement should not be considered as an affirmative defense to the criminal charge, to be determined together with the issue of guilt by the trier of fact, but, rather, should be addressed to the court *before trial* as a motion to dismiss the prosecution upon constitutional grounds." *Goodman*, 31 N.Y.2d at 268-69.

Here, defendant moved to dismiss the indictment on the ground that he was singled out for prosecution for impermissible reasons, and sought discovery and an evidentiary hearing on that claim. The People opposed, and the Court denied defendant's motion. *See Trump* Omnibus Decision 20-22. The presentation of any argument or evidence regarding defendant's claims of selective prosecution at trial would be irrelevant to any fact the jury needs to decide, and would instead confuse and mislead the jury and needlessly prolong the trial. Indeed, the Court of Appeals has expressly recognized—in directing that claims of discriminatory enforcement "should be addressed to the court by a pretrial motion to dismiss"—that permitting the introduction at trial of argument or evidence on selective prosecution risks "delay or confusion at trial." *Goodman*, 31 N.Y.2d at 269; *see People v. Decker*, 218 A.D.3d 1026, 1042 (3d Dep't 2023) (trial court properly precluded defendant from "exploring a collateral issue concerning any potential bias of the [Sheriff's Department], as the probative value of such evidence was outweighed by the danger that it could confuse or mislead the jury into deciding the case on issues beyond the evidence presented").

2. Argument regarding selective prosecution would improperly advance a jury nullification defense.

Second, argument or evidence purporting to show selective prosecution should be excluded because it would serve no purpose other than to advance an improper jury nullification defense. As noted above, the Court of Appeals has long held that selective prosecution "does not reach the

issue of the guilt or innocence of the defendant," *Goodman*, 31 N.Y.2d at 269; and this Court already considered and rejected defendant's request for dismissal on the basis of claimed constitutional violations. *See Trump* Omnibus Decision 20-22. Presenting argument or evidence purporting to show that defendant was unfairly singled out for prosecution for political or other improper reasons would thus serve no purpose other than to urge the jury to acquit even if the facts establish each element of the charged offenses. But jury nullification "is not a legally sanctioned function of the jury." *People v. Goetz*, 73 N.Y.2d 751, 752 (1998).

The Court should thus preclude defendant from mounting "a 'political' defense . . . and invit[ing] jury nullification by questioning the Government's motives." *United States v. Rosado*, 728 F.2d 89, 93 (2d Cir. 1984) (claims by the defendants that they were victims of political persecution were "matters far beyond the scope of legitimate issues in a criminal trial"); *see United States v. Regan*, 103 F.3d 1072, 1081 (2d Cir. 1997) (affirming district court's decision to preclude defendant from "introducing evidence at trial that the grand jury investigation was illegitimate," because "requir[ing] juries in perjury cases to evaluate the government's motives for bringing particular investigations . . . would add a new element to the crime"); *see also Decker*, 218 A.D.3d at 1042.

3. The Court should make clear that any holding that precludes argument regarding selective prosecution includes all versions of this claim that defendant has advanced in his frequent public comments on this case.

The Court should specify that any holding that precludes defendant from presenting argument and evidence of selective prosecution includes, but is not limited to, the following claims that defendant has advanced in his frequent public comments on this case.

1. Argument or evidence purporting to show that the indictment is novel, unusual, or unprecedented should be precluded because it would be irrelevant and would "improperly invite[] the jury to make legal determinations," which are "the exclusive province of the court." *United*

States v. Stewart, No. 03-cr-717 (MGC), 2004 WL 113506, at *1-2 (S.D.N.Y. Jan. 26, 2004) (granting motion *in limine* to preclude defendants from arguing that one of the counts in the indictment was "novel" or was "an unusual or unprecedented application of the securities laws"); *see United States v. Navarro*, 651 F. Supp. 3d 212, 242 (D.D.C. 2023) (granting the government's motion *in limine* to exclude argument that the charges in that case were "infrequent" or "unprecedented," because those arguments "simply repackage Defendant's selective prosecution defense" and "are not relevant to any element of the charged offenses or any valid defense"); *see also* Hearing Tr. 38-39, *People v. The Trump Corporation*, Ind. No. 1473/2021 (Sup. Ct. N.Y. Cnty. Oct. 20, 2022) (granting the People's motion *in limine* and holding that "the defendants are precluded from remarking during jury selection and in their opening statements that the charges are novel, unusual, or unprecedented") (Ex. 5).

2. Argument or evidence regarding former Special Assistant District Attorney Mark Pomerantz's purported views on this prosecution, as related in his book titled *People vs. Donald Trump: An Inside Account*, should be precluded because the selective prosecution claims defendant has cited that book to support were properly rejected in the Court's omnibus ruling, *see Trump* Omnibus Decision 21-22; and because any hearsay statements in that book are irrelevant to defendant's guilt or innocence in any event.

3. Argument or evidence regarding defendant's claims regarding the length of the People's investigation, his allegation of unconstitutional preindictment delay, and the related claim that this prosecution was somehow timed to interfere with defendant's presidential campaign,[10] should be

[10] *See, e.g.*, Hearing Tr. 12 (Feb. 15, 2024) (Defense counsel: "[I]t is completely election interference to say, you are going to sit in this courtroom, in Manhattan, when there is no reason for it."); *Former President Trump on Hush Money Case*, C-SPAN (Feb. 15, 2024), https://www.c-span.org/video/?533626-1/president-trump-hush-money-case (Defendant: "It's an election

precluded because those assertions "simply repackage Defendant's selective prosecution defense," *Navarro*, 651 F. Supp. 3d at 242; and could "confuse or mislead the jury into deciding the case on issues beyond the evidence presented." *Decker*, 218 A.D.3d at 1042; *see also Trump* Omnibus Decision 3-6 (rejecting defendant's motion to dismiss based on the claim of unconstitutional pre-indictment delay).

4. Argument or evidence referencing the purported motivations or personal and professional backgrounds of the District Attorney or counsel for the People in this case should be precluded because it does not support an affirmative defense to prosecution; does not reach the issue of defendant's guilt or innocence; risks confusing and misleading the jury; and improperly invites jury nullification. *See, e.g.*, *Goodman*, 31 N.Y.2d at 269; *Decker*, 218 A.D.3d at 1042; *Rosado*, 728 F.2d at 93. Evidence and argument regarding "the motivation and conduct" of counsel "are categorically irrelevant"; and "even if evidence of them had any slight relevance, it would be substantially outweighed by the capacity of such evidence and lawyer arguments to confuse the jury and create unfair prejudice." *Hart v. RCI Hospitality Holdings, Inc.*, 90 F. Supp. 3d 250, 271 (S.D.N.Y. 2015) (granting motion in limine); *see also United States v. Xiong*, 262 F.3d 672, 675 (7th Cir. 2001) (personal attacks on a party's counsel are "reprehensible" and "detract from the dignity of judicial proceedings").

5. Argument, questions, or evidence regarding potential punishment or other consequences of these proceedings[11] should be prohibited in front of the jury because it has no tendency to prove

---

interference case. Nobody's ever seen anything like it in this country, it's a disgrace. . . . They want to keep me nice and busy so I can't campaign so hard.").

[11] *See, e.g.*, Trial Tr. 3628:3-6, *People by James v. Trump*, No. 452564/2022 (Sup. Ct. N.Y. Cnty. Nov. 6, 2023) (Defendant: "And it is a shame what is going on. And we sit here all day, and it is election interference because you want to keep me in this courthouse all day long, and let's keep going.") (Ex. 20).

any material fact. *See Lewis*, 69 N.Y.2d at 325; *see also Shannon v. United States*, 512 U.S. 573, 579 (1994) ("Information regarding the consequences of a verdict is . . . irrelevant to the jury's task."); *Navarro*, 651 F. Supp. 3d at 242. Similarly, arguments or evidence that the charges in this case are not serious or should be considered misdemeanors, as defendant has frequently asserted in court filings and public statements, should likewise be precluded. Presenting argument or eliciting evidence regarding the claimed seriousness of the offense or the effect of these proceedings on defendant's outside commitments is also improper because it invites nullification and otherwise confuses the issues before the jury. *See Navarro*, 651 F. Supp. 3d at 242 (citing *United States v. Wade*, 962 F.3d 1004, 1012 (7th Cir. 2020)); *People v. Douglas*, 178 Misc. 2d 918, 926-28 (Sup. Ct. Bronx Cnty. 1998).

6. Argument or evidence regarding alleged bias or purported motivations of the Court and court staff should be precluded. Defendant prolifically attacks judges and court staff in his public comments,[12] and impugned the motives of the court on repeated occasions in the courtroom during court proceedings in the recent *People by James v. Trump* civil fraud trial.[13] Any such argument here would be irrelevant and would improperly invite the jury to reach a verdict based on something other than the evidence at trial. *Rosado*, 728 F.2d at 93.

---

[12] *See, e.g.*, People's Mot. to Quash or for a Protective Order 3-4 (Nov. 9, 2023) (collecting statements); People's Mot. for a Protective Order 2-3, 7-12 (Apr. 24, 2023) (same).

[13] *See, e.g.*, Hearing Tr. 116, *People by James v. Trump*, No. 452564/2022 (Sup. Ct. N.Y. Cnty. Jan. 11, 2024) (Defendant to the Court: "You have your own agenda, I can certainly understand that. You can't listen for more than one minute.") (Ex. 19); Trial Tr. 3510:9-10, *People by James v. Trump*, No. 452564/2022 (Sup. Ct. N.Y. Cnty. Nov. 6, 2023) ("This is a very unfair trial, very, very.") (Ex. 20); *id.* at 3558:5-3559:13 ("I think it's fraudulent, the [court's] decision. I think it's fraudulent. The fraud is on the Court, not on me. . . . And how do you do that? How do you rule against somebody and call them a fraud, as the President of the United States, who did a great job. . . . It's a terrible thing you did. You knew nothing about me. You believed this political hack back there, and that's unfortunate.") (Ex. 20); *id.* at 3628:7-8 ("And we have a very hostile Judge, extremely hostile Judge, and it is sad.") (Ex. 20).

V. Motion to exclude evidence or argument regarding the federal government's purported views of Michael Cohen's credibility.

A. Introduction.

Defendant may argue or seek to introduce evidence of the Justice Department's purported views regarding Michael Cohen's credibility, including claims that he has lied to or withheld evidence from federal investigators or prosecutors in the past. Although Cohen and other witnesses may be subject to appropriate cross-examination on topics that properly go to their believability—subject to the Court's case-by-case assessment that such cross-examination is not irrelevant, prejudicial, or confusing—a witness may not be impeached based on the federal government's claimed hearsay opinions regarding credibility or prior bad acts. The Court should thus exclude argument or evidence regarding the Justice Department's purported views of Cohen's credibility.

B. Argument.

In multiple filings before this Court, defendant has cited Justice Department filings in Cohen's federal criminal case as evidence that Cohen lied to, made material false statements, or declined to provide full information to federal investigators or prosecutors. *See* Def.'s Mem. Opp. People's Mot. to Quash 10 (Nov. 30, 2023) (citing the Justice Department's 2019 opposition to Cohen's motion to reduce his sentence); Def.'s Mot. to Reargue 4-5 (Jan. 17, 2024) (citing the Justice Department's 2023 opposition to Cohen's motion for termination of supervised release). And in cross-examining Cohen during the *People by James v. Trump* civil fraud trial several months ago, counsel for Trump offered into evidence the federal government's 2018 sentencing memo from the *United States v. Cohen* prosecution (without objection by the Attorney General), and cross-examined Cohen on assertions by the federal government in that memo (again without objection). *See* Trial Tr. 2284-87, *People by James v. Trump*, No. 452564/2022 (Sup. Ct. N.Y. Cnty. Oct. 24, 2023). Because those observations by federal prosecutors are inadmissible hearsay

and improper opinion evidence regarding credibility, the Court should exclude at this trial argument or evidence purporting to describe the federal government's views of Cohen's credibility.

Hearsay is any out-of-court statement offered for its truth. *People v. Buie*, 86 N.Y.2d 501, 505 (1995). Memoranda or pleadings from court files offered for their truth are routinely excluded as inadmissible hearsay. *See, e.g.*, *2641 Concourse Co. v. City Univ. of New York*, 147 A.D.2d 379, 379 (1st Dep't 1989), *aff'g on op. below*, 135 Misc. 2d 464, 465-66 (N.Y. Ct. Cl. 1987); *Liberto v. Worcester Mut. Ins. Co.*, 87 A.D.2d 477, 478-79 (2d Dep't 1982); *People v. Brann*, 69 Misc. 3d 201, 207 (Sup. Ct. N.Y. Cnty. 2020). Evidence or argument based on the federal government's legal memoranda purporting to establish as true that Cohen lied to investigators or prosecutors should thus be excluded as inadmissible hearsay.

Evidence or argument regarding federal prosecutors' views of Cohen should separately be excluded because it would be improper opinion evidence. Opinion evidence is inadmissible as a general rule. *See* Prince, Richardson on Evidence § 7-101. Although there are exceptions to this general exclusion, *see* Guide to N.Y. Evid. rule 7.03(1) (Opinion of Lay Witness), opinion testimony regarding a witness's credibility is not among those exceptions because "[c]redibility is, as the cases have repeated and insisted from the dawn of the common law, a matter solely for the jury." *People v. Williams*, 6 N.Y.2d 18, 26 (1959).

Finally, the admission of evidence during cross-examination that purports to reflect federal prosecutors' views of Cohen's credibility as indicated in federal court filings would be an improper use of extrinsic evidence to challenge Cohen's credibility. "The general rule is that a party may not introduce extrinsic evidence on a collateral matter solely to impeach credibility." *Alvino*, 71

N.Y.2d at 248. The purposes of this rule are "judicial economy, to prevent needless multiplication of issues in a case, and to insure that the jury is not confused with irrelevant evidence." *Id.*

VI. Motion to preclude argument regarding any alleged reliance on advice of counsel unless and until defendant establishes a sufficient factual predicate at trial.

A. Introduction.

The People ask the Court to preclude improper argument, including in opening statements, regarding any alleged reliance on advice of counsel unless and until defendant establishes a sufficient factual predicate for the advice-of-counsel defense at trial.

B. Argument.

First, defendant has not shown the proper predicate for an advice-of-counsel defense. In order for any defendant to employ that defense, there must be "sufficient facts in the record" to establish that the defendant "honestly and in good faith sought the advice of counsel," "fully and honestly laid all the facts before his counsel," and "in good faith and honestly followed counsel's advice." *United States v. Scully*, 877 F.3d 464, 476 (2d Cir. 2017) (quoting *United States v. Colasuonno*, 697 F.3d 164, 181 (2d Cir. 2012)). There is no evidence that would support any of these facts. Defendant has identified Alan Garten, the Trump Organization's Chief Legal Officer, as a potential trial witness, but has not disclosed any statements from Mr. Garten pursuant to CPL § 245.20(4) or any other documents or records pursuant to CPL § 245.20(1)(o); and there is no other evidence that would support an advice-of-counsel defense.[14]

Second, New York law is clear that defendant's "own testimony establishing reliance on counsel's advice [is] a prerequisite to . . . the proposed defense of advice of counsel." *People v.*

[14] The Court has directed defendant "to provide notice and disclosure of his intent to rely on the defense of advice-of-counsel by March 11, 2024, and to produce all discoverable statements and communications within his possession or control by the same date." Decision & Order Regarding Advice-of-Counsel Defense 6 (Feb. 7, 2024).

Lurie, 249 A.D.2d 119, 124 (1st Dep't 1998), *leave denied*, 92 N.Y.2d 900 (1998), *habeas denied sub nom. Lurie v. Wittner*, 228 F.3d 113, 132-34 (2d Cir. 2000). Because defendant has no obligation to testify at trial—and because there is no way to confirm whether he will do so before he takes the stand—any argument that asserts reliance on an advice-of-counsel defense would be improper before defendant has met the necessary prerequisite through his own testimony.

Because there is currently no factual predicate to assert the advice-of-counsel defense, the Court should preclude any argument at trial suggesting otherwise—including in defendant's opening statement—until sufficient facts are established. *See United States v. Lacey*, No. CR-18-00422, 2023 WL 4746562, at *6-7 (D. Ariz. July 24, 2023) (holding that if evidence to support an advice-of-counsel defense has not been "disclosed or produced prior to opening statements, Defendants are precluded from making such early pronouncements," because "[t]o permit Defendants to tell the jury" that they relied on the advice of counsel absent a sufficient factual predicate "would present irrelevant evidence, could be factually misleading, would result in jury confusion, and would prejudice the Government"); *United States v. Charlemagne*, No. 8:15-cr-462, 2016 WL 11678620, at *2-3 (M.D. Fla. Sept. 2, 2016) (granting government's motion in limine to preclude reference to reliance on advice of counsel in opening statement, "without prejudice to Defendant's right to assert a good faith reliance on counsel defense if and when a proper predicate is laid and the attorney-client privilege is expressly waived by Defendant"); *United States v. King*, No. 3:06-cr-212, 2006 WL 3490805, at *8 (M.D. Fla. Dec. 1, 2006) (describing oral order granting government's motion in limine and ruling that "until Defendant could lay the proper predicate, Defendant could not argue that he relied on an attorney's advice").

VII. Motion to exclude evidence or argument regarding legal defenses the Court has already rejected.

The Court should exclude evidence or argument regarding legal defenses the Court has already rejected.

The Court's ruling on defendant's omnibus motions rejected various legal defenses, holding (among other things) that the People did not unconstitutionally delay bringing charges, *see Trump* Omnibus Decision 3-6; that a federal offense is a valid object crime for charges of first-degree falsifying business records, *id.* at 13-14; that New York Election Law § 17-152 applies to the charged conduct and is not preempted, *id.* at 15-16; that this prosecution was not motivated by an improper purpose, *id.* at 20-22; that the charges are timely under the statute of limitations, *id.* at 22-23; and that there are no violations of grand jury secrecy that affected the integrity of these proceedings, *id.* at 27-28.

Any argument or evidence that contradicts any of the Court's prior orders in this case should be excluded because questions of law are for the Court to decide. *See United States v. Gorham*, 523 F.2d 1088, 1098 (D.C. Cir. 1975) (it is "the duty of the court to expound the law and that of the jury to apply the law as thus declared to the facts as ascertained by them" (quoting *Sparf v. United States*, 156 U.S. 51, 106 (1895))); *Kirsh*, 176 A.D.2d at 653. And the introduction of evidence or argument regarding issues foreclosed by the Court's prior decisions would confuse the issues, mislead the jury, waste time, and cause undue delay.

VIII. Motion to introduce potential *Molineux* evidence.

The People respectfully request a pretrial ruling regarding the admissibility of three categories of potential *Molineux* evidence. *See People v. Ventimiglia*, 52 N.Y.2d 350, 362 (1981); *People v. Molineux*, 168 N.Y. 264 (1901).

First, the Court should permit the introduction of evidence regarding defendant's prior bad acts that relate to or were committed in the course of the underlying conspiracy to promote his election. This evidence is not *Molineux* evidence at all but is instead part of the *res gestae* of defendant's criminal conduct. To the extent the Court analyzes it under the *Molineux* doctrine, it is clearly admissible because it is highly relevant to material, non-propensity issues regarding defendant's intent to defraud.

Second, the Court should permit the introduction of evidence regarding (a) the Access Hollywood Tape, and (b) public allegations of sexual assault that followed the release of the Access Hollywood Tape in the fall of 2016. This evidence is probative of defendant's motive and intent, and provides necessary background and context to explain defendant's conduct to the jury.

Third, the Court should permit the introduction of evidence regarding defendant's prior bad acts that involve efforts to dissuade witnesses from cooperating with law enforcement—including through pressure campaigns, public harassment, and retaliation—because such evidence shows defendant's consciousness of guilt and corroborates his intent.

A. Legal standard.

Under the *Molineux* rule, "evidence of uncharged crimes is inadmissible where its *only* relevance is to show defendant's bad character or criminal propensity," because of the concern that the jury will convict defendant based on his criminal predisposition rather than his involvement in the charged misconduct. *People v. Agina*, 18 N.Y.3d 600, 603 (2012) (emphasis added). By contrast, "when the evidence of the other crimes is relevant to an issue other than the defendant's criminal tendency," the jury may properly consider such evidence to help flesh out its understanding of the charges against the defendant. *People v. Beam*, 57 N.Y.2d 241, 250 (1982). Thus, evidence of a defendant's uncharged crimes or other bad acts is admissible if (1) it is "relevant to some material issue in the case," and (2) "the trial court determines in its discretion that the probative value of the

evidence outweighs the risk of undue prejudice to the defendant." *People v. Frumusa*, 29 N.Y.3d 364, 369 (2017) (internal quotation marks omitted).

Evidence of a defendant's prior bad acts is generally relevant to a material issue when the evidence is probative of a defendant's "motive, intent, absence of mistake, identity, and common scheme or plan." *Molineux*, 168 N.Y. at 292-94. The categories that the Court of Appeals identified in *Molineux* are "merely illustrative," and "[t]here is no closed category of relevancy." Prince, Richardson on Evidence § 4-501 (citing cases). Accordingly, courts have also held that the People may introduce evidence of uncharged conduct to, for example, "complete a witness's narrative to assist the jury in their comprehension of the crime," *People v. Mendez*, 165 A.D.2d 751, 752 (1st Dep't 1990), or where the evidence is "inextricably interwoven with the narrative of events and was necessary background to explain to the jury the relationship" between the parties. *People v. Santiago*, 295 A.D.2d 214, 215 (1st Dep't 2002).

"Weighing the evidence's probative value against its potential prejudice to the defendant is a matter of discretion for the trial court." *People v. Morris*, 21 N.Y.3d 588, 595 (2013) (internal quotation marks omitted). To be sure, "almost all relevant, probative evidence" of prior bad acts "will be, in a sense, prejudicial," because "[e]vidence which helps establish a defendant's guilt can always be considered evidence that 'prejudices' him or her." *People v. Brewer*, 28 N.Y.3d 271, 277 (2016); *see also People v. Colavito*, 87 N.Y.2d 423, 429 (1996). "But the probative value of a piece of evidence is not automatically outweighed by prejudice merely because the evidence is compelling." *Brewer*, 28 N.Y.3d at 277. Instead, what makes *Molineux* testimony permissible "is that the damage resulted from something other than [the evidence's] tendency to prove propensity." *Id.*

B. The Court should permit the introduction of evidence regarding defendant's prior bad acts that relate to or were committed in the course of the underlying conspiracy to promote his election.

The People allege that defendant falsified business records as part of a criminal scheme to conceal damaging information from the voting public in advance of the 2016 presidential election. *Trump* Omnibus Decision 1-3, 6. To establish the intent-to-defraud element of the charged offenses under Penal Law § 175.10, the People will introduce evidence at trial regarding defendant's agreement with others to influence the 2016 presidential election by identifying and purchasing negative information about him to suppress its publication and benefit his electoral prospects, as well as evidence regarding the steps that were taken to carry out that unlawful agreement.

In particular, and as described in the People's prior filings in this case, the People will present evidence regarding:

- defendant's August 2015 meeting at Trump Tower with David Pecker and Michael Cohen, where they agreed that Pecker would help with defendant's presidential campaign by identifying and suppressing negative information about defendant, and by publishing positive stories about defendant and negative stories about defendant's competitors for the election, *see, e.g.*, *Trump* Omnibus Decision 1-2; People's Omnibus Opp. 3; People's Statement of Facts ¶¶ 7-9;

- the purchase of information from Dino Sajudin regarding an alleged out-of-wedlock child Trump had fathered with one of his housekeepers, *see* People's Omnibus Opp. 3-4, 8; People's Statement of Facts ¶¶ 10-11, 22-23;

- the purchase of information regarding an alleged extramarital relationship between Karen McDougal and defendant, *see Trump* Omnibus Decision 2; People's Omnibus Opp. 4-6, 8; People's Statement of Facts ¶¶ 12-15, 22-23;

- the purchase of information regarding an alleged sexual encounter between Stormy Daniels and defendant, *see Trump* Omnibus Decision 2-3; People's Omnibus Opp. 1, 6-8; People's Statement of Facts ¶¶ 3, 16-21; and

- AMI's publication of negative information about defendant's competitors for the election, as well as the publication of positive stories regarding defendant, *see* People's Omnibus Opp. 3; People's Statement of Facts ¶ 9.

As described below, this evidence is part of the *res gestae* of defendant's criminal conduct and is not properly considered *Molineux* evidence for that reason. For the avoidance of any doubt, however, the Court may also hold that even if this evidence does constitute evidence of prior uncharged crimes or bad acts under *Molineux*, it is admissible because it is inextricably interwoven with the narrative of events and is probative of defendant's intent, and because any prejudicial impact is outweighed by its probative value.

1. Evidence regarding the formation and execution of defendant's conspiracy with others to influence the 2016 presidential election is not *Molineux* because it is part of the *res gestae* of his criminal conduct.

Evidence regarding the Trump Tower agreement and the steps taken to implement that agreement is direct evidence of an element of the offense: namely, defendant's intent to defraud. First-degree falsifying business records requires that defendant's intent to defraud include "an intent to commit another crime or to aid or conceal the commission thereof." PL § 175.10. The People allege that defendant intended to commit or conceal election law crimes, including violations of Election Law § 17-152 and FECA. *See Trump* Omnibus Decision 12-16. The People must establish only that defendant *intended* to commit or conceal another crime. *Id.* at 12.

As the Court has already recognized, the evidence described above—including evidence of the August 2015 Trump Tower agreement; the payoffs to Sajudin, McDougal, and Daniels that were made because of the Trump Tower agreement; and AMI's publication of flattering stories about defendant paired with denigrating stories about his opponents—supports a finding that defendant intended to commit or conceal criminal conduct. *See id.* at 11-16. Thus, evidence regarding the agreement to promote defendant's election, as well as evidence of the steps taken to execute that agreement, is not *Molineux* evidence at all but is instead part of the *res gestae* of defendant's criminal conduct.

The Court of Appeals has explained that "the common thread in all *Molineux* cases is that the evidence sought to be admitted concerns a *separate* crime or bad act committed by the defendant. *Frumusa*, 29 N.Y.3d at 369-70. But "[w]here, as here, the evidence at issue is relevant to the very same crime for which the defendant is on trial, there is no danger that the jury will draw an improper inference of propensity because no separate crime or bad act committed by the defendant has been placed before the jury." *Id.* at 370. Evidence regarding the formation and execution of defendant's conspiracy with others to influence the 2016 presidential election is part of the *res gestae* of his criminal conduct and is admissible without regard to the *Molineux* doctrine. *See, e.g.*, *People v. Alfaro*, 19 N.Y.3d 1075, 1076 (2012) (affirming decision below that evidence was properly admitted where "the items were part of the 'res gestae' of the entire criminal transaction"); *People v. Delacruz*, 199 A.D.3d 614, 614 (1st Dep't 2021) (video of defendant displaying a gun and threatening the victim "did not constitute *Molineux* evidence" because it was instead "direct proof of defendant's specific criminal intent"); *People v. Robinson*, 200 A.D.2d 693, 694 (2d Dep't 1994) (affirming trial court's admission of facts that were "essential components of the res gestae").

2. In the alternative, evidence regarding defendant's conspiracy with others to influence the presidential election is centrally relevant to material issues in the case, and its probative value far outweighs any prejudicial effect.

To the extent the Court concludes that evidence regarding the formation and execution of defendant's conspiracy with others to influence the 2016 presidential election may be *Molineux* evidence, the Court should conclude that it is relevant to a material, non-propensity issue, and that the probative value of the evidence far outweighs the risk of undue prejudice. *See Frumusa*, 29 N.Y.3d at 370 (encouraging the People to bring possible evidentiary issues to the attention of the

court and defendant before trial, including where the *Molineux* doctrine may not need to be applied).

First, evidence of defendant's steps to conspire with others to help his candidacy by purchasing and suppressing damaging information is "inextricably interwoven with the narrative of events and [is] necessary background to explain to the jury" the criminal conduct defendant intended to commit or conceal. *Santiago*, 295 A.D.2d at 215. Defendant is charged with falsely stating in the business records of New York enterprises that his 2017 payments to Cohen were for legal services rendered pursuant to a retainer agreement, when in fact those payments were instead reimbursements for one part—the Stormy Daniels payoff—of the conspiracy to assist defendant's presidential campaign. Evidence regarding the Trump Tower agreement and the subsequent steps to execute the plan that was hatched at that meeting—which included the Daniels payoff—thus provides necessary background to explain the criminal conduct defendant intended to conceal when he falsified the business records at issue in this prosecution.[15] *See id.*; *see also, e.g.*, *People v. Vails*, 43 N.Y.2d 364, 367-69 (1977) (*Molineux* evidence is relevant where it shows "a concurrence of common features such that the acts proved can naturally be explained as caused by a general plan of which each act is but a part"); *People v. DeJesus*, 127 A.D.3d 589, 590 (1st Dep't 2015); *People v. Finkelstein*, 121 A.D.3d 615, 615-16 (1st Dep't 2014). Indeed, the Court's opinion on defendant's omnibus motions described this evidence "by way of background" when

[15] Relatedly, the People will also present evidence that the $420,000 reimbursement amount to Cohen was made up in part of a $50,000 request for reimbursement for expenses he claimed he incurred. *See* Trump Omnibus Decision 3; People's Omnibus Opp. 8; People's Statement of Facts ¶ 25. The People will elicit testimony that the $50,000 expense claim related to Cohen's payments to a tech firm, RedFinch Solutions, to rig an online poll ranking business leaders in defendant's favor. Because the RedFinch expense is a component of the total reimbursement amount for the payments at issue in this criminal prosecution, it is admissible for the same reasons described above: it is part of the *res gestae* of defendant's criminal conduct; and if the Court instead considers it *Molineux*, it is inextricably interwoven with the narrative of events.

introducing and describing the charged offenses. *Trump* Omnibus Decision 1-3; *see also People v. Till*, 87 N.Y.2d 835, 837 (1995) (evidence of prior bad acts admissible to provide necessary background information).

Second, and relatedly, this evidence is necessary to "complete the narrative" concerning the charged crimes. *Till*, 87 N.Y.2d at 837; *see also People v. Gines*, 36 N.Y.2d 932, 932-33 (1975). Evidence of the Trump Tower agreement and the steps the participants took to execute that agreement is all part of a single narrative that explains the illegal conduct defendant sought to conceal when he falsely described the payments to Cohen as payments for legal services instead of truthfully describing them as reimbursements for the Stormy Daniels payoff. *See, e.g.*, *Alfaro*, 19 N.Y.3d at 1075 (holding that items were properly admitted where, "[e]ven assuming that the subject items constituted prior uncharged crimes evidence under *Molineux*," they "completed the narrative of this particular criminal transaction"); *People v. Flambert*, 160 A.D.3d 605, 606 (1st Dep't 2018) (evidence admissible where it tends to "place the events in question in a believable context"). Indeed, each of the transactions that was pursued as a result of the Trump Tower agreement is so central to the conspiracy to influence the election that the conspiracy cannot be accurately understood without reference to each of the other transactions—to omit any of the episodes would be to present an incomplete and nonsensical narrative of the events that form the basis for the charged conduct. This evidence is thus admissible because it is necessary to "flesh out the narrative so there are no gaps in the story line provided to the jury." *People v. Leonard*, 29 N.Y.3d 1, 4 (2017); *People v. Green*, 35 N.Y.2d 437, 442 (1974) ("[S]ome cases are sufficiently complex that the jury would wander helpless, as in a maze, were the decisive occurrences not placed in some broader, expository context.").

Third, this evidence is highly probative of defendant's intent. In cases where the defendant's mental state cannot be "inferred from the commission of the act" alone, the *Molineux* doctrine is especially flexible in permitting the introduction of evidence that tends to show that the defendant acted with the requisite state of mind. *Alvino*, 71 N.Y.2d at 242-43 (citing cases). Cases involving fraudulent intent are paradigmatic cases where *Molineux* evidence has often been allowed, "because a fraudulent intent rarely can be established by direct evidence." *Matter of Brandon*, 55 N.Y.2d 206, 211 (1982); *see also People v. Rodriguez*, 17 N.Y.3d 486, 489 (2011). Here, evidence that defendant agreed with others to execute an illegal scheme to identify and purchase negative information about him in order to suppress its publication and benefit his electoral prospects is highly probative of defendant's mental state when he later falsified business records to cover up that scheme. *See People v. Leeson*, 12 N.Y.3d 823, 827 (2009) (*Molineux* evidence was relevant to defendant's state of mind when it "placed the charged conduct in context" (quoting *People v. Dorm*, 12 N.Y.3d 16, 19 (2009))); *People v. Ingram*, 71 N.Y.2d 474, 480 (evidence is admissible under the *Molineux* intent exception where it "makes the innocent explanation improbable"); *see also* Trump Omnibus Decision 18-19 (evidence that defendant intended to pay money "to prevent the publication of information that could have adversely affected his presidential aspirations" was material to defendant's intent to defraud).

Finally, evidence regarding the specific allegations defendant sought to suppress through the Sajudin, McDougal, and Daniels payoffs is relevant to defendant's motive. In each instance, the allegations that defendant sought to suppress—that he had an out-of-wedlock child; that he had an extramarital sexual relationship; that he had an extramarital sexual encounter with an adult film actress—are allegations that defendant knew could damage his candidacy. *See Trump* Omnibus Decision 1; People's Omnibus Opp. 3-8; People Statement of Facts ¶¶ 10-23. Evidence regarding

the nature of these allegations is critical evidence that supports defendant's motive in making false entries in the relevant business records in order to prevent disclosure of both the payoff scheme and the underlying information. *See, e.g.*, *People v. Frankline*, 27 N.Y.3d 1113, 1115 (2016) (evidence of a prior assault admissible to show motive for a subsequent assault); *Till*, 87 N.Y.2d at 837 (evidence of uncharged robbery was properly admitted where it "established a motive for defendant's attempt to kill or assault the off-duty police officer to avoid capture and punishment"); *People v. Johnson*, 137 A.D.3d 811, 812 (2d Dep't 2016) (*Molineux* testimony was properly admitted where "it was relevant to and probative of defendant's motive to commit the charged crimes").

The probative value of this evidence far outweighs any risk of "undue," *People v. Cass*, 18 N.Y.3d 553, 560 (2012), or "unfair," *Frankline*, 27 N.Y.3d at 1115, prejudice to defendant. As explained above, evidence that defendant conspired with others to unlawfully influence the 2016 presidential election could not be more probative: it bears directly on material issues involving defendant's state of mind when he later falsified business records to conceal that conspiracy, and separately provides necessary background to explain crucial context and complete the narrative regarding the charged crimes.

By contrast, the risk of undue prejudice to defendant is low. This evidence is centrally relevant to the jury's understanding of the charged offenses. "When evidence of uncharged crimes is relevant to some issue other than the defendant's criminal disposition," it is only when the evidence "is actually of slight value when compared to the possible prejudice to the accused" that it can be said its admission is an abuse of the trial court's discretion. *People v. Allweiss*, 48 N.Y.2d 40, 47 (1979); *see also Frumusa*, 29 N.Y.3d at 373 (evidence "was not unduly prejudicial" where, among other factors, "it was relevant to defendant's larcenous intent"); *Cass*, 18 N.Y.3d at 563

(evidence not unduly prejudicial where it had "a direct bearing" on the question of defendant's intent). And because the evidence is directly relevant to specific issues in the case, there is little risk the jury will overestimate its significance. *See Allweiss*, 48 N.Y.2d at 46.

The Court should therefore hold that evidence of defendant's prior acts is admissible where it relates to or was committed in the course of the underlying conspiracy to promote his election.

C. The Court should permit the introduction of evidence regarding the Access Hollywood Tape and subsequent public allegations by women that defendant sexually assaulted them.

The Court should also permit the introduction of evidence regarding (1) the Access Hollywood Tape; and (2) certain public allegations of sexual assault that followed the release of the Access Hollywood Tape in the fall of 2016. Each of these categories of evidence is probative of defendant's motive and intent, and provides necessary background information for the jury that places the charged offenses in context.

1. The Access Hollywood Tape.

On October 7, 2016, about one month before the 2016 presidential election, the Washington Post published a video recorded in 2005 that depicted defendant saying to the host of *Access Hollywood*: "You know I'm automatically attracted to beautiful – I just start kissing them. It's like a magnet. Just kiss. I don't even wait. And when you're a star, they let you do it. You can do anything. . . . Grab 'em by the pussy. You can do anything." *Carroll v. Trump*, 660 F. Supp. 3d 196, 200-01 (S.D.N.Y. 2023) (quoting the Access Hollywood Tape). In response, defendant issued public statements describing the tape as "locker room banter," Ex. 21, and drawing a distinction between words (which he admitted saying) and conduct (which he denied).[16]

[16] Both the Access Hollywood Tape and defendant's statements explaining his remarks on that tape (by distinguishing between words and conduct) are contained in video exhibits which the People will submit to the Court if the Court would like to review them in adjudicating this motion.

The Access Hollywood Tape is centrally relevant to critical issues in the case, and its probative value outweighs any risk of undue prejudice. The evidence at trial will show that after the release of the Access Hollywood Tape one month before the presidential election, defendant and his campaign staff were deeply concerned that the tape would harm his viability as a candidate and reduce his standing with female voters in particular. The release of the tape—and the accompanying concerns about its possible impact on the election—are thus directly related to the Stormy Daniels payoff, which was executed just a few weeks later. *See* People's Omnibus Opp. 6-7, 55; People's Statement of Facts ¶¶ 16-21. The Access Hollywood Tape is such a central component of defendant's conspiracy to influence the election that it is "inextricably interwoven with the narrative of events and [is] necessary background to explain to the jury" why the Daniels payoff was made when it was. *Santiago*, 295 A.D.2d at 215; *see also Vails*, 43 N.Y.3d at 367-69; *Green*, 35 N.Y.2d at 442. Omitting the Access Hollywood Tape would leave counterfactual and artificial "gaps in the story line presented to the jury," *Leonard*, 29 N.Y.3d at 4; the tape is necessary to "complete[] the narrative of this particular criminal transaction," *Alfaro*, 19 N.Y.3d at 1075, and "place the events in question in a believable context," *Flambert*, 160 A.D.3d at 606.

The Access Hollywood Tape is also relevant to defendant's intent and motive at the time he and his confederates executed the Daniels payoff and when he later sought to conceal it. *See Trump* Omnibus Decision 18-19. Evidence regarding the tape and its impact on the campaign supports the conclusion that defendant wanted to avoid further damaging disclosures immediately before the election, which makes other, "innocent explanation[s]" for the payoff and coverup "improbable." *Ingram*, 71 N.Y.2d at 480. The tape is highly relevant to defendant's motive for the same reason—it supports the conclusion that he suppressed the Daniels story and then concealed the payoff because he believed additional disclosures about an alleged sexual encounter with an

adult film actress, following immediately on the heels of the Access Hollywood Tape, would cost him votes. *Frankline*, 27 N.Y.3d at 1115; *Till*, 87 N.Y.2d at 837. Indeed, the release of the Access Hollywood Tape was so monumental to the campaign that the first draft of the non-disclosure agreement with Stormy Daniels was penned within four days. The motivation to complete the Daniels non-disclosure agreement cannot be understood without reference to the desperation facing defendant and his campaign in the wake of the tape's release.

The probative value of the Access Hollywood Tape outweighs any risk of undue prejudice. The Access Hollywood Tape and its impact on the campaign could not be more relevant to the Daniels payoff and subsequent coverup. As the Court of Appeals has explained, "[i]f the evidence has substantial probative value and is directly relevant to the purpose—other than to show criminal propensity—for which it is offered, the probative value of the evidence outweighs the danger of prejudice and the court may admit the evidence." *Cass*, 18 N.Y.3d at 560. And the prejudicial impact is low because the evidence is directly relevant to defendant's intent. *See id.* at 563; *see also Frumusa*, 29 N.Y.3d at 373. Indeed, a federal court recently held in a defamation case against Trump that the Access Hollywood Tape was admissible under Rule 404(b) of the Federal Rules of Evidence (the federal-law provision for "Other Crimes, Wrongs, or Acts") because it was relevant to the defendant's intent, and was not unduly prejudicial because "[t]here would be nothing inherently 'unfair' in receiving evidence that is uniquely probative" of defendant's state of mind. *Carroll v. Trump*, No. 20-cv-7311 (LAK), 2024 WL 97359, at *9-11 (S.D.N.Y. Jan. 9, 2024).

2. Public allegations of sexual assault that followed the release of the Access Hollywood Tape in the fall of 2016.

About five days after the Access Hollywood Tape was published, and following defendant's public explanation that the tape reflected only banter, not behavior, several women alleged in news reports that defendant had sexually assaulted them in the past. *See* Megan Twohey

& Michael Barbaro, *Two Women Say Donald Trump Touched Them Inappropriately*, N.Y. Times, Oct. 12, 2016 (Ex. 22); Natasha Stoynoff, *Physically Attacked by Donald Trump—A PEOPLE Writer's Own Harrowing Story*, People Magazine, Oct. 12, 2016 (Ex. 23). In public comments at campaign rallies and on social media, defendant denied the allegations of sexual assault and asserted that the allegations were being made to harm—and were harming—his standing with voters in general and women voters in particular.[17] Ex. 24.

As with the Access Hollywood Tape, evidence of these allegations and defendant's public response provides critical context for the charges the jury will consider, and is manifestly relevant to defendant's intent and motive in paying to silence Stormy Daniels and then concealing the payoff. As noted above, defendant's public comments in reaction to the allegations published on October 12, 2016 in the New York Times and People Magazine show his awareness and concern that the allegations risked his candidacy by hurting his standing with female voters. *E.g.*, Ex. 24 at 1 ("Nothing ever happened with any of these women. Totally made up nonsense to steal the election. Nobody has more respect for women than me!"); *id.* at 2 ("Polls close, but can you believe I lost large numbers of women voters based on made up events THAT NEVER HAPPENED. Media rigging election!"); *id.* at 3 ("Can't believe these totally phony stories, 100% made up by women (many already proven false) and pushed big time by press, have impact!"). Thus, this evidence not only provides important context and background, but also explains defendant's intent and motive in arranging the Stormy Daniels hush payment and subsequent coverup, because further disclosures of alleged sexual misconduct—and especially the disclosure of an alleged

[17] Defendant's comments at campaign rallies are contained in excerpted video exhibits which the People will submit to the Court if the Court would like to review them in adjudicating this motion.

sexual liaison with an adult film actress just weeks before Election Day—seriously risked his electoral prospects.

The risk of undue prejudice is low. First, this evidence would not be admitted to show that defendant in fact sexually assaulted the women who accused him of doing so; there is thus no propensity issue at play. *See Agina*, 18 N.Y.3d at 603 (*Molineux* evidence inadmissible "where its *only* relevance is to show defendant's bad character or criminal propensity" (emphasis added)). And appropriate limiting instructions would make clear to the jury that this evidence should be considered only for the fact that the allegations were made, not as evidence of defendant's character or as proof that the allegations are true. *See People v. Hernandez*, 103 A.D.3d 433, 434 (1st Dep't 2013) (prejudicial effect of *Molineux* evidence was minimized by the court's limiting instructions); *see also People v. Morris*, 21 N.Y.3d 588, 598 (2013) (jurors are presumed to follow a trial court's limiting instructions). Second, the People propose to admit evidence of only three accusations of sexual assault (the accusations that were reported in the New York Times and People Magazine articles published on October 12, 2016). There are public reports that more than dozen women accused defendant of sexual assault in the weeks following the release of the Access Hollywood Tape;[18] evidence of just a select few instances of those allegations—which defendant specifically referenced on the campaign trail in acknowledging the effect on his campaign—is not cumulative. *Cf. People v. Rodriguez*, 193 A.D.3d 554, 556 (1st Dep't 2021) (introducing a "significant quantum of evidence" is more likely to cause undue prejudice). Third, the risk of unfair prejudice is low where the allegations reported in the New York Times and People Magazine articles are not "any more sensational or disturbing" than other evidence that will be before the

[18] *See, e.g.*, Lindsay Kimble, *Everything You Need to Know About the Sexual Assault Allegations Against Donald Trump Before Election Day*, People Magazine, Nov. 1, 2016, https://people.com/politics/ every-sexual-assault-accusation-against-donald-trump/.

jury. *United States v. Roldan-Zapata*, 916 F.2d 795, 804 (2d Cir. 1990); *see United States v. Siegel*, 717 F.2d 9, 16-17 (2d Cir. 1983).

D. The Court should permit the introduction of evidence regarding defendant's efforts to dissuade witnesses from cooperating with law enforcement, including through pressure campaigns, public harassment, and retaliation.

The Court should also permit the introduction of evidence regarding defendant's attempts to dissuade witnesses from cooperating with law enforcement because such evidence shows defendant's consciousness of guilt and corroborates his intent. This evidence falls into four categories:

- First, after the FBI executed a search warrant on Cohen's residences, office, and electronic devices in April 2018, defendant and others engaged in a public and private pressure campaign to ensure that Cohen did not cooperate with the federal investigation into campaign finance violations related to the McDougal and Daniels payoffs. *See* People's Statement of Facts ¶¶ 35-40. The People will introduce evidence of this pressure campaign and will elicit testimony regarding how these statements affected a witness.

- Second, defendant has singled out two of the People's witnesses—Michael Cohen and Stormy Daniels—with harassing comments on social media and in other public statements. The People will introduce evidence of these statements, and will elicit testimony from witnesses regarding the threats and harassment they received after defendant targeted them with these and other public attacks.

- Third, in April 2023, eight days after he was arraigned in this case, defendant sued Cohen in federal court in Florida seeking $500 million in damages based on allegations that Cohen "spread falsehoods" about defendant. The People will elicit witness testimony regarding that lawsuit and its effect on the witness.

- Fourth, the People will introduce evidence of past comments by defendant endorsing aggressive attacks on one's perceived opponents. For example, in one book, defendant wrote: "When somebody hurts you, just go after them as viciously and as violently as you can."[19] In another book, defendant wrote: "When you are wronged, go after those people because it is a good feeling and because other people will see you doing it."[20]

[19] Donald J. Trump, *Trump: How to Get Rich* 138 (2004).

[20] Donald J. Trump, *Think Big: Make it Happen in Business and in Life* 192 (2007).

This evidence is relevant to material, non-propensity issues in the case. Evidence of the pressure campaign against Cohen is probative of both defendant's effort to deter Cohen from cooperating with law enforcement, and of defendant's steps to intimidate Cohen and retaliate against him once he began doing so. *See, e.g.*, *Report on the Investigation into Russian Interference in the 2016 Presidential Election, Vol. II of II*, at 154-56 (Mar. 2019) ("The evidence concerning this sequence of events could support an inference that the President used inducements in the form of positive messages in an effort to get Cohen not to cooperate, and then turned to attacks and intimidation to deter the provision of information or undermine Cohen's credibility once Cohen began cooperating."), https://www.justice.gov/storage/report_volume2.pdf. The Court of Appeals has long recognized that efforts to coerce or harass witnesses can show consciousness of guilt. *See People v. Bennett*, 79 N.Y.2d 464, 469-70 (1992); *People v. Shilitano*, 218 N.Y. 161, 179 (1916) (evidence of "an effort to coerce witnesses and suppress evidence against the defendant" admissible to prove consciousness of guilt). And evidence of post-crime conduct that reflects a defendant's consciousness of guilt—including efforts at coercion, threats, or intimidation of witnesses—is admissible under the *Molineux* doctrine for that reason. *See, e.g.*, *People v. Parilla*, 211 A.D.3d 1609, 1610 (4th Dep't 2022) (efforts to bribe witness showed consciousness of guilt and were admissible under *Molineux*); *People v. Cotton*, 184 A.D.3d 1145, 1146 (4th Dep't 2020) (evidence of tampering or witness intimidation admissible under *Molineux* to show consciousness of guilt).

The same is true of the evidence that defendant has targeted Cohen and Daniels on social media and in other public statements with persistent, harassing, and denigrating comments. *See Cotton*, 184 A.D.3d at 1146; *People v. Pitt*, 170 A.D.3d 1282, 1284 (3d Dep't 2019) (threatening post-crime comments showed consciousness of guilt and were admissible under *Molineux*); *People*

v. Leitzsey, 173 A.D.2d 488, 488-89 (2d Dep't 1991) (same). And evidence that defendant sued Cohen just days after defendant's arraignment in this matter—and sought enormous money damages for claimed injuries based in part on Cohen's testimony before the grand jury—likewise is relevant to material issues in this case because it supports consciousness of guilt and therefore corroborates defendant's intent in connection with the charged conduct. *See, e.g.*, *People v. Lumaj*, 298 A.D.2d 335, 335 (1st Dep't 2002) (evidence of efforts to deter a witness from testifying was "clearly admissible as it demonstrated defendant's consciousness of guilt"); *People v. De Vivo*, 282 A.D.2d 770, 772 (3d Dep't 2001) (evidence of threats, retaliation, and efforts to get witnesses to change their testimony "is highly probative and was properly admitted as it was indicative of defendant's consciousness of guilt") (citing cases). The final category of evidence—defendant's prior statements that perceived opponents should be attacked "as viciously and as violently" as possible—is material and relevant for a non-propensity purpose because it provides context for witness testimony the People will elicit regarding the effect defendant's public attacks and harassment had on them.[21] *See Flambert*, 160 A.D.3d at 606.

Given the direct connection between this consciousness-of-guilt evidence and defendant's intent, its probative value outweighs the danger of any unfair prejudice. *See Lumaj*, 298 A.D.2d at 335; *Cotton*, 184 A.D.3d at 1146; *see generally Cass*, 18 N.Y.3d at 560. An appropriate limiting instruction that the jury is to consider this evidence only for consciousness of guilt and

[21] The evidence mentioned in this paragraph—defendant's public harassment of Cohen and Daniels; his $500 million lawsuit against Cohen; and his prior written statements endorsing retaliation against opponents—likely is not *Molineux* at all, and its admission at trial should be assessed just like any other evidence. *See People v. Hamilton*, 73 A.D.3d 408, 409 (1st Dep't 2010). The People include this evidence here for the avoidance of any doubt and to the extent the Court believes the *Molineux* doctrine does apply. *See Frumusa*, 29 N.Y.3d at 370.

corroboration of defendant's intent—not to show defendant's bad character or criminal propensity—will further reduce any risk of undue prejudice. *See Parilla*, 211 A.D.3d at 1610.

Dated: February 22, 2024

Respectfully submitted,

/s/ Matthew Colangelo
Matthew Colangelo
Christopher Conroy
Susan Hoffinger
Becky Mangold
Joshua Steinglass
Assistant District Attorneys
New York County District Attorney's Office
1 Hogan Place
New York, NY 10013
212-335-9000

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 59

THE PEOPLE OF THE STATE OF NEW YORK -against- DONALD J. TRUMP, Defendant.	Ind. No. 71543-23

AFFIRMATION OF SERVICE

The undersigned affirms under penalty of perjury that on February 22, 2024, he served the People's Motions in Limine and the accompanying Affirmation, Memorandum of Law, and Exhibits on counsel for defendant (Todd Blanche, Emil Bove, Susan Necheles, Gedalia Stern, and Stephen Weiss) by email with consent.

Dated: February 22, 2024

Respectfully submitted,

/s/ Matthew Colangelo
Matthew Colangelo
Assistant District Attorney

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK

-against-

DONALD J. TRUMP,

Defendant.

MOTIONS IN LIMINE

Indictment No. 71543-23

Alvin L. Bragg, Jr.
District Attorney
New York County
One Hogan Place
New York, New York 10013
(212) 335-9000

Ex. 1

From:	Susan Necheles
To:	Hoffinger, Susan; Conroy, Christopher; Ellis, Katherine; Mangold, Rebecca; [redacted]; Steinglass, Joshua; Colangelo, Matthew
Cc:	Gedalia Stern; Emil Bove; Stephen Weiss; "Todd Blanche"
Subject:	[EXTERNAL] RE: People v. Trump, 71543-23
Date:	Monday, January 22, 2024 4:44:59 PM
Attachments:	2024.01.22 - DJT Witness Disclosure.pdf

Folks,

Please see the attached witness disclosure notice.

Susan R. Necheles, Esq.
Necheles Law LLP
1120 Avenue of the Americas, 4th Floor
New York, NY 10036
917-797-5542
srn@necheleslaw.com

Witness Disclosure (Background / Non-Expert Testimony)

As explained below, President Donald J. Trump may call Bradley A. Smith to testify about background information regarding federal election laws. Mr. Smith is not being called as an "expert" because the defense will not ask him to give an opinion but instead will call him to testify about industry norms, regulations, and practices. Nevertheless, in an abundance of caution we provide the below disclosures which comply with the expert disclosure requirements in CPL §245.20(1)(f). Mr. Smith's knowledge, skill, experience, training, and education are well beyond the ordinary lay person regarding federal election law, campaign finance law, and voting rights issues.

Mr. Smith is the Josiah H. Blackmore II/Shirley M. Nault Professor of Law at the Capital University Law School, in Columbus, Ohio, where he has been on the faculty since 1993. He teaches or has taught Election Law, Administrative Law, Civil Procedure, Jurisprudence, Law & Economics, and Law & American History. Mr. Smith has also held faculty appointments at Princeton University as a Visiting Fellow in the James Madison Program; at West Virginia University College of Law as the Judge John T. Copenhaver, Jr. Visiting Chair of Law; at Bowling Green State University as a Visiting Scholar; and at George Mason University School of Law as an Adjunct Professor.

Following his nomination by President Clinton in February 2000, Mr. Smith was confirmed by the U.S. Senate to serve as a member of the Federal Election Commission from June 26, 2000, through August 21, 2005. He served as Chairman of the Commission in 2004 and as Vice Chairman in 2003.

Mr. Smith previously worked as a Foreign Service Officer for the U.S Department of State from 1981 through 1983. He has served or currently serves on many councils or committees, including as a member of the inaugural Academic Council of the Salmon P. Chase Center for Civics, Culture & Society at The Ohio State University; a member of The Ohio State Advisory Committee to the U.S. Commission on Civil Rights; special counsel to Ohio Attorney General Mike DeWine; and a special hearing officer for the Ohio Secretary of State. He is a member of the Editorial Advisory Board of the peer-reviewed *Election Law Journal*, and the current Chair-Elect of the Section of Election Law of the Association of American Law Schools.

Mr. Smith received his J.D., *cum laude*, from Harvard Law School in 1990. At Harvard Law, he was a Senior Editor on the *Harvard Journal of Law & Public Policy*. He graduated from Kalamazoo College with a B.A., *cum laude*, in 1980, having majored in political science (with honors) and economics.

Mr. Smith is admitted to practice before the U.S. Supreme Court; the U.S. Courts of Appeals for the Sixth Circuit and the District of Columbia; and all Ohio state and federal courts.

As shown on the attached curriculum vitae, Mr. Smith has written extensively on federal election law, campaign finance law, and voting rights issues, including books, law review articles, and in encyclopedias and widely circulated publications. He has also participated in dozens of academic

conferences and lectures on the same topics and has testified extensively before the U.S. Congress and state legislatures regarding these issues.

Mr. Smith's testimony may pertain to the following topics, in order to aid the jury in understanding relevant issues:

- That federal campaign finance laws provide (1) that a candidate cannot use campaign funds for personal expenses, (2) that if an expense does not "arise out" of a campaign, it cannot be paid for using campaign funds, even if the expense would have an impact on the campaign, and (3) that an expenditure made by a candidate, or by a third-party on his behalf, must be reported as a campaign contribution only if it is a campaign contribution but not if it is a personal expenditure;

- That, at the time that Mr. Cohen made the payment to Stormy Daniels, there had never been a case in which someone was convicted of violating federal campaign finance laws by making a "hush payment" to an alleged girlfriend or former lover (either directly or through a third party) using non-campaign funds, and that there had never been any finding by the Federal Election Commission that such conduct violates federal campaign finance law;

- That the federal prosecution of former U.S. Senator and vice-presidential nominee John Edwards is the one public case in which a "hush payment" theory has been alleged. Further, that in that case, the federal charges—including those based on purported federal campaign finance law violations—were either rejected by the jury or dismissed by the government.

- That the Edwards prosecution was heavily criticized and resulted in a wide consensus, among the public, media, and legal scholars, that the conduct alleged did not violate federal campaign finance laws.

Ex. 2

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

United States of America,	)	**CASE NO. 5:13 CR 420**
	)	
Plaintiff,	)	**JUDGE PATRICIA A. GAUGHAN**
	)	
Vs.	)	
	)	
Benjamin Suarez, et al.,	)	**Order**
	)	
Defendant.	)	

This matter is before the Court upon the Government's Motion [to] Exclude Testimony of Bradley A. Smith "And/Or Any Additional or Alternative Expert" Witnesses (Doc. 174). Also pending is the Government's Motion [to] Exclude Testimony of Lori J. Brown "And/Or Any Additional or Alternative Expert" Witnesses (Doc. 177). For the reasons that follow, the motions are DENIED.

At the eleventh hour, defendants seek to introduce expert testimony from two experts on two different subjects. The first expert, Bradley A. Smith, is a professor and former FEC Commissioner. Smith will testify that federal campaign laws are confusing to individuals who lack formal training. In addition, Smith will testify that people often misunderstand the

campaign laws, specifically two of the laws at issue in this case. Based on his experience, Smith opines that it is reasonable for individuals to believe that the law allows "straw man" donations. People further believe that a corporation can lawfully reimburse its employees for campaign contributions.

The second expert, Lori J. Brown, will testify as to the proper manner in which an attorney should respond to a subpoena when retained by a client. She will further testify that if an attorney fails to meet this standard of care, he or she violates certain ethical cannons.

The government argues that the proposed expert testimony is untimely disclosed. In addition, the government claims that the testimony usurps the Court's authority to explain the law. In response, defendants argue that the Court did not set a specific date for the disclosure of expert witnesses and Rule 16(b)(1)(c) does not apply. Defendants also argue that the testimony offered by Smith does not usurp the Court's authority. Smith is not testifying as to the meaning of the laws. Rather, Smith is simply concluding that the laws are complicated and, therefore, commonly misunderstood. Defendants do not respond to the government's motion to exclude the testimony of Brown.

On a separate basis, the government argues that Smith's testimony fails the *Daubert* test because it is based on unreliable personal experiences. Smith improperly attempts to expand his limited experience and extrapolate the results to millions of people. In addition, the government claims that intent is personal to the defendants. Thus, even if the laws are "commonly" misunderstood, that does not mean that defendants misunderstood the laws in this case. In response, defendant argues that Smith's testimony is not scientific testimony and, therefore, the government is incorrect in claiming that it must be supported by testing or statistical analysis.

Upon review, the Court finds that the expert testimony offered by Smith is inadmissible because it is not relevant. The Court agrees with the government that whether the laws are commonly misunderstood does not weigh on whether defendants *in this case* intended to violate the campaign finance laws. What other individuals who may have contacted Smith knew or thought simply has no bearing on what defendants knew or thought. Because the evidence is not relevant, it will not be admitted. *See, e.g., Untied States v. Curtis*, 782 F.2d 593 (6th Cir. 1986).

The Court also finds that the testimony of Brown is inadmissible. Defendants informed the Court on a number of occasions that they are not asserting an advice of counsel defense with regard to the obstruction charges. In other words, they are not going to argue that they relied on their attorneys' advice to make determinations as to responsiveness to the subpoenas. As such, defendants chose not to waive the attorney-client privilege. This Court has, however, allowed factual testimony as to the general manner in which SCI chose to respond to the grand jury subpoenas. All other testimony, however, inherently involves the advice given to SCI by its attorneys. Because SCI expressly chose *not* to assert an advice of counsel defense, such evidence is inadmissible. For these reasons, expert testimony as to the propriety of the actions taken by the attorneys is not relevant.

IT IS SO ORDERED.

/s/ Patricia A. Gaughan
PATRICIA A. GAUGHAN
United States District Judge

Dated: 6/24/14

Ex. 3

Bradley A. Smith
[redacted]

January 4, 2024

Via E-Mail Only
toddblanche@blanchelaw.com

Mr. Todd Blanche
Blanche Law
99 Wall Street, Suite 4460
New York, NY 10005

Dear Mr. Blanche:

I appreciate the opportunity to serve as an expert consultant and witness pertaining to the Blanche Law's representation of Donald J. Trump in *The People of the State of New York v. Donald J. Trump*, Ind-71543-23, and related matters. This letter reviews my fees, billing terms, and scope of work for this engagement.

Scope of Engagement

Blanche Law is engaging me to provide, as requested, expert consultation in connection with litigation in the above-referenced matter, to provide required written reports to the court, and to provide expert testimony as necessary in both pre-trial and trial stages. If requested or approved by Blanche Law, I may also engage in commentary with media organizations covering the matter as part of this engagement. My services are requested for commentary on laws and regulations pertaining to campaign finance law and common campaign practices, and in particular to federal campaign finance law pursuant the Federal Election Campaign Act, 52 U.S.C.§30301 et seq., and regulations issued thereunder, and to historical background on enforcement. The work may, as necessary, include additional research.

Fees, Expenses, and Billing

My hourly billing rate is $1200.00 per hour, billed in quarter-hour increments. Travel time in excess of one hour on any trip is billed at $600.00 per hour. These rates are subject to a minimum fee of $4000.00 for any day in which I am required to be in transit or outside of the Columbus, Ohio metropolitan area for more than four hours between the hours of 8:00 a.m. and 5:30 p.m. (with a maximum for actual work and transit time as described above).

Blanche Law shall also be responsible for reasonable costs and fees, including travel costs. Air travel reimbursement shall be for standard coach fare, except that flights in excess of 4 hours duration may be booked in business or first class, as available.

Blanche Law will provide an advance fee (retainer) of $5000; I will send a monthly statement for all fees and expenses, and payments will replenish the advance fee. Such statements are due and payable upon receipt. The advance fee may be increased or decreased as agreed between me and Blanche Law, based on the ongoing and anticipated work.

Acceptance

If these terms are acceptable, please sign a copy of this letter and return it to me.

I look forward to working with you.

Very Truly,

Bradley A. Smith

Acceptance of Engagement by Blanche Law

Signature

Todd Blanche

Printed Name

January 18, 2024

Date

Cc: Ms. Susan Necheles, srn@necheleslaw.com
Mr. David Warrington, [redacted]

Ex. 4

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 59

THE PEOPLE OF THE STATE OF NEW YORK

-against-

THE TRUMP CORPORATION,
d/b/a THE TRUMP ORGANIZAION,
TRUMP PAYROLL CORP.,
d/b/a THE TRUMP ORGANIZATION,
ALLEN WEISSELBERG,

Defendants.

DECISION AND ORDER

Indictment No. 01473/2021

Filed Under Seal

HON. JUAN M. MERCHAN, J.S.C.:

BACKGROUND

On November 9, 202, the People filed with this Court a motion for a protective order pursuant to Criminal Procedure Law (hereinafter "CPL") §245.70(1). The copy served upon Defendants was redacted. The next day, on November 10, 2021, this Court, not having received an objection or other communication from Defendants, signed the proposed order. Later that evening, on November 10, 2021, at around 6:00 pm, Mary Mulligan, Counsel for Allen Weisselberg, e-mailed the Court and advised that Mr. Weisselberg, as well as the corporate defendants (together the "Defendants") wished to oppose the People's motion. Ms. Mulligan requested until 5pm Monday, November 15 to submit opposition papers. The request was immediately granted.

On the afternoon of November 15, counsel for Defendants filed with this Court a memorandum of law in opposition to the People's motion for a protective order and in support of Defendants' cross motion to strike the People's certificate of compliance. Separately, Defendants also moved for an order to compel the People to supplement their bill of particulars and produce the legal instructions provided to the Grand Jury. The People filed their response to Defendants' joint motions on November 30, 2021.

This Decision and Order will address all four issues.

DEFENDANTS' MOTION TO COMPEL THE PEOPLE TO SUPPLEMENT THEIR BILL OF PARTICULARS

While reserving their right to additional relief at a later time, Defendants moved "for a very limited and specific clarification … an Order directing the People to identify the "'enterprise(s)'" at issue in the counts of the Indictment that allege falsification of business records in violation of Penal law § 175.10 – specifically, Counts 12, 13, 14 and 15."

Although the People maintain that Defendants are not entitled to a supplemental bill of particulars, "[i]n an exercise of discretion, and without limitation or prejudice to the People's ability to establish any and all facts sufficient to support a conviction at trial, the People identif[ied] the [four] enterprises whose records were" allegedly falsified as charged under Counts 12-14.

The People having provided what Defendants were seeking, it appears that this issue is resolved without the need for a ruling from this Court.

DEFENDANTS' MOTION TO COMPEL THE PEOPLE TO PRODUCE THE MINUTES OF THE LEGAL INSTRUCTIONS PROVIDED TO THE GRAND JURY

Defendants seek to inspect the grand jury's legal instructions to determine whether the presentation comported with applicable law in order "to assist the court on making its determination" on a motion to dismiss the indictment. *See* Defendants' memorandum of law (hereinafter "DMOL") at Page 9. Defendants claim this motion is being made now "so that the disclosures sought can be obtained with sufficient time to be incorporated into the omnibus defense motions due January 20, 2022, and thereby avoiding the need for serial briefing based on further belated disclosures by the People." DMOL at Page 3. Defendants propose that this Court needs their assistance deciding a motion to dismiss because "this case may present the most complicated legal issues ever litigated in New York's criminal courts regarding taxation," and because these are charges that this Court is presumably unfamiliar with.

The People argue that Defendants' motion must be denied because it is procedurally defective and fails to meet the standards for disclosure. The People further argue that "the personal income tax matters at issue in this case are straightforward." People's response at Page 7.

Defendants' motion to inspect the minutes of the legal instructions is denied. CPL § 210.30 upon which Defendants rely in part, pertains to disclosure of grand jury minutes in the

context of a motion to dismiss or reduce an indictment – that is not the case here. Defendants have not yet made such a motion. Further, CPL 210.30(3) provides that the court may release relevant portions of grand jury minutes if it determines, after its own examination, that release to the parties is necessary to assist the court in its determination of the motion. This Court has yet to conduct its own examination of the grand jury minutes. If at a later time, when such motion is made, this Court determines that it requires the assistance of the parties, it will release the relevant portions of the minutes. Defendants are forewarned however, that this Court will not permit this trial to become a referendum on the Internal Revenue Code or a master class on taxation. The evidence at trial will be limited to what is relevant and necessary for the finders of fact to perform their duties – and nothing more.

THE PEOPLE'S MOTION FOR A PROTECTIVE ORDER

The People moved for a protective order on November 9, 2021, pursuant to CPL §245.70. Specifically, the People claimed good cause to delay the disclosure of materials otherwise discoverable pursuant to Article 245 of the CPL, until the sooner of either May 15, 2022 or 45 days following an indictment, in order to protect the integrity of the on-going investigation. In their memorandum of law in support of the motion for a protective order (hereinafter "PMIS") the People argued that the order is necessary: "(1) to protect the legitimate need of law enforcement to maintain grand jury secrecy and uphold the integrity of the ongoing investigation, and (2) to guard against the risk of witness intimidation or harassment." See PMIS at Page 11. The People further argue that "the utility to the defense of immediate access to the limited information covered by the proposed protective order is outweighed by the risks posed by present disclosure." *See* PIMS at Page 11.

In their opposition papers, Defendants argue that the People have failed to establish good cause to deviate from the requirements of Article 245. Defendants further claim that they will suffer prejudice by a delay in obtaining discoverable information and note that their pretrial motions are due on January 20, 2022 – approximately four months before the disclosure date suggested by the People. When deciding whether the prosecution has demonstrated good cause for the issuance of a protective order, courts are directed to consider numerous factors. CPL § 245.70(4). The People are correct that a court must in essence engage in a balancing test when deciding such motions. A court must weigh the prosecutorial and public safety interests in support of a motion against the utility of the information and materials to the defense. This

Court, having engaged in such a balancing test, finds that justice is best served in the instant matter by vacating the Order signed by this Court on November 10, 2021 and directing the People to comply fully with their discovery obligations, provided that use of the materials is limited in scope to "attorney's eyes only."

Although the People's expressed concerns are valid: protection against adverse effects on the legitimate needs of law enforcement and mitigation of the risk of witness intimidation, harassment or economic reprisal, they have failed to demonstrate the requisite good cause for the issuance of a protective order. *See People v. DiNapoli*, 27 N.Y.2d 229, 235 (1970).

The District Attorney's reliance on *James v. Donovan*, 130 A.D.3d 1032 (2nd Dept. 2015) is misplaced. While it is true that *Donovan* also involved a high-profile investigation (the death of Eric Garner on July 17, 2014), the similarities end there. The parties in *Donovan* "sought to unseal and release grand jury minutes to themselves and to the general public." *See Donovan* at 1033. Defendants here make no such request. Whereas *Donovan* was limited in scope to discovery of grand jury minutes, the People's application is much broader. In fact, the people seek to delay disclosure of, among other things, material described in CPL § 245.20(1)(k). See PMIS at 11. Most importantly, the petitioners in *Donovan* sought the minutes of an investigation where the grand jury decided *not to* return an indictment. Clearly, that is not the case here. Indeed, these Defendants were arraigned on a 15 count indictment on July 1, 2021. Nonetheless, the People argue, in support of the application, that good cause has been established to delay disclosure in order to protect what is still an ongoing investigation. Defendants argue that they should not be prejudiced by the People's decision to unseal indictments while continuing their investigation. This Court agrees. The People made a strategic decision to unseal the indictments and arraign the Defendants. That decision imposed upon the People various obligations and cloaked Defendants with certain rights – including the right to intelligently craft motions and fully prepare for hearings and trial. Applying the unique facts and circumstances of this case as they present today – the balance test weighs in favor of disclosure based on the record currently before this Court.

DEFENDANTS' CROSS MOTION TO STRIKE THE PEOPLE'S CERTIFICATE OF COMPLIANCE

Defendants submit that the People's certificate of compliance should be struck because they "have failed to comply with [their discovery] obligations by (1) failing to produce millions

of Pages of documents that are in the possession of the NYAG; (2) failing to identify exculpatory evidence in the discovery produced to date; and (3) failing to produce the work files and billing records of FTI, the consultants that the People have hired to assist in the investigation and prosecution [of] this case." See DMLO at Page 16.

The People respond that Defendants' cross motion should be rejected because (1) DANY and OAG have complied with the requirements of CPL §245.50; (2) The People have complied with their obligations to produce and identify potentially exculpatory material; and (3) The work file and billing records of FTI are protected from discovery as attorney work product under CPL § 245.65.

Documents in possession of the NYAG - Defendants make broad assertions that the People have failed to produce millions of Pages that were originally produced to the NYAG. However, they fail to identify the documents with any degree of specificity. While Defendants do identify specific *categories* of documents which the NYAG requested, and were presumably provided by Defendants, they do not claim that DANY has withheld those records. See DMLO at Pages 17-19. Instead, defendants argue that because the records relate to the subject matter of the case and are within the possession or control of DANY – they are discoverable pursuant to Article 245. While that may very well be true – Defendants do not support their claim that DANY has failed to turn over documents previously provided by Defendants to NYAG. In contrast, DANY provides a detailed account of how many documents were turned over to Defendants and when. Where documents were delayed, DANY provides reasonable explanations.

Alleged failure of the People to identify exculpatory evidence in the discovery produced to date – Defendants again fail to support their broad claim. Instead, it appears that the allegations are based at best, on speculation. For example, Defendants argue that the "People cannot fulfill [their Brady] obligations by burying CPL § 245.20(1)(k) under a mountain of discovery." See DMLO at Page 21. Yet they fail to point to a single instance where the People have allegedly engaged in said conduct. Defendants make other similar arguments: The People misunderstand the scope of their Brady obligations (DMLO at Page 22); "Prosecutors may not cabin their disclosures by claiming that the information under consideration is not "'material"' (DMLO at Page 23); "Nor may prosecutors disclaim their duty to disclose exculpatory information by claiming not to credit the information" (DMLO at Page 23); "It is not possible that the People have faithfully applied these obligations and concluded that there is no material

that must be disclosed" (DMLO at Page 24). The sole example presented by Defendants in support of any of these claims, pertains to the testimony of Mukaila Rabiu. Although it is difficult to determine which of the categories of alleged violations this material might fall under, that is of no consequence, as the People represent the that material was in fact previously turned over and identified. "The People produced this document to Defendants at their arraignment on July 1, 2021 within an electronic folder labeled 'Witness Statements and Related Documents.' An index provided with that production also listed a range of bates numbers for 'Witness Statements and Related Documents' that included this document." *See* PMIS at Page 14.

The cases relied upon by Defendants for the proposition that the People have an affirmative obligation to "specifically identify" exculpatory material are distinguishable. In *People v. Wagstaffe*, A.D.3d 1361 (2nd Dept. 20140), the documents in question were interspersed within a voluminous production which was turned over too late to be of use to the defense. In *People v. Garcia*, 46 A.D.3d 461 (1st Dept. 2007), the prosecution willfully suppressed evidence and provided nothing more than witness names without contact information or any indication as to what information they possessed. Finally, in *United States v. Skilling*, 554F.3d 529 (5th Cir. 2009), which Defendants cite for the undisputed proposition that the government may not hide Brady material, the Fifth Circuit Court of Appeals clearly held "as a general rule, the government is under no obligation to direct a defendant to exculpatory evidence within a large mass of disclosed evidence." *See Skilling* at 576. Indeed, the *Skilling* Court went on to cite a string of federal cases all standing for the same or a similar proposition. *See Skilling* at 576. Thus, *Skilling* actually supports the people's position. It is difficult for this Court to comprehend how Defendants can cite *Skilling* to support an undisputed principal, while overlooking the clear holding which is directly on point.

The People's alleged failure to produce FTI's work files and billing records – Defendants allege that the requested records are discoverable pursuant to CPL §§ 245.20(1) and 245.20(2). The demand includes "without limitation, any analysis that FTI prepared, all drafts of such analysis, all notes regarding the engagement with DANY, all communications relating to that engagement (including, for example, any discussion of the scope or nature of the work to be performed by FTI), all bills rendered by FTI to DANY, all payments made by DANY to FTI, and all communications regarding this engagement." DMLO at Page 26.

The People submit that the requested material is not discoverable because it constitutes attorney work product which is protected from disclosure pursuant to CPL § 245.65 and

because "FTI was retained as an investigative consultant, is not expected to have a role at trial, and Mr. Halpern is not identified as a trial witness on the People's Automatic Disclosure Form." *See* PMIS at Pages 21 and 22.

Based upon the People's representations, it would appear that the records pertaining to FTI and by extension, Mr. Halpern, do indeed constitute attorney work product as defined in CPL § 245.65. Mr. Halpern testified in the grand jury that FTI consultants interpreted data provided by the People and incorporated their findings into two spreadsheets. While the spreadsheets themselves are certainly discoverable because they were introduced into evidence in the Grand Jury and Mr. Halpern referred to them in his testimony, the process by which they were created is not. See CPL § 245.20(1)(b). Moreover, the Defense has been provided with the very same data FTI used to create the exhibits. Further, even if the materials did not constitute attorney work product, it is unlikely that Defendants would be entitled to every category of document they seek, particularly since FTI and Mr. Halpern will not be testifying at trial. Nonetheless, because Mr. Halpern was questioned in the Grand Jury and provided answers regarding FTI's financial arrangements with DANY, it seems appropriate that some of the requested material should be turned over to Defendants. *See* Grand Jury minutes at Pages 446 and 447. The People will therefore be required to turn over copies of the contract/agreement between FTI and DANY, copies of all bills rendered by FTI to DANY and all documents pertaining to payments made by DANY to FTI.

For the foregoing reasons, Defendants' motion to strike the People's certificates of compliance is denied. The People are permitted to supplement their certificate of compliance. In fact, the law requires the People to do so, since they are required to turn over additional discovery as it becomes available. See CPL §§ 245.50 and 245.60.

WHEREFORE;

1. Defendants' motion to compel the People to produce the minutes of the legal instructions provided to the Grand Jury is hereby DENIED without prejudice;

2. Defendants' cross- motion to strike the People's Certificate of Compliance is DENIED; and it is hereby

3. **ORDERED** that the Protective Order signed by this Court on November 20, 2021, is hereby VACATED and the People are directed to turn over to Defendants for "*attorneys eyes only,*" all discoverable material no later than the close of business Wednesday, January 11, 2022; and it is further

4. **ORDERED** that, the People are directed to turn over to Defendants forthwith: copies of the contract / agreement between FTI and the New York County District Attorney's Office ("DANY"), copies of all bills rendered by FTI to DANY and all documents pertaining to payments made by DANY to FTI. Defendants' other demands pertaining to FTI are also DENIED.

This constitutes the Decision and Order of this Court.

Dated: January 5, 2022
New York, New York

Hon. Juan M. Merchan
Acting Justice of the Supreme Court

HON. J. MERCHAN

Ex. 5

SUPREME COURT NEW YORK COUNTY
TRIAL TERM PART 59

THE PEOPLE OF THE STATE OF NEW YORK	INDICTMENT # 1473-21
AGAINST	CHARGE SCHEME TO DEFRAUD, ET AL
THE TRUMP CORPORATION, TRUMP PAYROLL CORPORATION,	
Defendants	Virtual Proceedings

100 Centre Street
New York, New York 10013
October 20, 2022

B E F O R E:

HONORABLE: JUAN MERCHAN,
JUSTICE OF THE SUPREME COURT

APPEARANCES FOR THE PEOPLE:
ALVIN BRAGG, JR. DISTRICT ATTORNEY BY:
SUSAN HOFFINGER, ESQ. ADA
JOSHUA STEINGLASS, ESQ. ADA
GARY FISHMAN, ESQ. AAG.

FOR THE DEFENDANTS, THE TRUMP ORGANIZATIONS:
ALAN S. FUTERFAS, ESQ.
SUSAN NECHELES, ESQ.
MICHAEL VAN DER VEEN, ESQ.

(The following takes place via video conference).

THE COURT: While we wait for Mr. Van Der Veen and Ms. Necheles, let's address Randy's question.

Randy has indicated he's been receiving some inquiries from the press. We have been receiving some in chambers as well, I imagine you have too.

So, the question is -- I did request we have a reporter because I do want to have everything on the record.

The question is do we want to provide a copy of the transcript to the court file, place a copy in the file or how do you want to proceed?

MR. STEINGLASS: Joshua Steinglass among others for the People.

I don't really see much basis to keep the record sealed. However, of course it is up to the Court.

THE COURT: In terms of a sealed record as much as it is a conference, we are not in court, it is not a court proceeding; but if the parties would like to put a copy in the court file I can do that, just let me know.

MS. HOFFINGER: We would not make that request, we would not ask since it's a conference with counsel.

THE COURT: Ms. Necheles, Mr. Futerfas, how do you feel about that?

MR. FUTERFAS: You're on mute Susan.

MS. NECHELES: Sorry, your Honor. I agree. I don't see a basis for keeping it sealed. I don't have an opinion either way whether it should be in the regular file or not.

MR. FUTERFAS: I have no objection either one way or another.

THE COURT: Mr. Van Der Veen, would you like to be heard on this?

MR. VAN DER VEEN: Judge, I don't have a preference one way or another. I am not so familiar with the Court's procedures. We will do whatever the Court wants.

THE COURT: If we were meeting in chambers, we probably would not have a reporter and have the same exact meeting.

I really requested a reporter for our benefit so we can all get a copy of the transcript and look back on it and see what was discussed and agreed on.

So unless somebody voices an objection, we will treat this just as a conference. It is not that I'm sealing the record. Whatever we would discuss in chambers would not have been put in the court file anyway, so let's proceed that way.

Thank you all for making it. I know that the plan for this afternoon has been for me to rule on the various

motions in limine, and I am prepared to rule on most of them; but I did receive an e-mail a short time ago from Mr. Steinglass indicating there was an issue the People wanted to be heard before I ruled on the application to preclude the expert witness.

I imagine hand and hand with that is the interpretation of Penal Law section 2020 and how that would be applied.

So, why don't you go ahead and start, Mr. Steinglass.

MR. STEINGLASS: Thank you, Judge. I appreciate the Court giving me the opportunity to be heard on this matter, because there are so many additional facts, critical facts we need to put on the record concerning the timeliness argument that was set forth in our motion to preclude.

It is really more of a procedural argument than a substantive argument, but it does touch on the substantive argument.

As the Court is aware presumably from my e-mail request, we did not get the defense's expert report until yesterday afternoon, less than three business days before jury selection is scheduled to begin in this case.

That report, which I'm happy to send to the Court for reference, if it is necessary to have this

conversation, contains some 16 pages full of calculations and theories which would frankly require weeks of analysis in consultation with an expert of our own to even begin to understand fully.

None of the extensive calculations in this report or even the source of the documents which they appear to be based -- we all know there are tens of millions of documents that have been provided in this case.

During our appearance in court on September 12th, I made a lengthy record of the history of discovery demands relating to the defense expert's testimony.

I'm certainly not going to rehash all that again, but I spoke of the gamesmanship that was taking place and remind the Court that the defendant's obligation to provide this material arose on October 24, 2021.

During that September 12th appearance, Ms. Necheles made rather unconvincing arguments the plea of Allen Weisselberg in August changed their whole theory of the case, I believe were her words, and would therefore entitle them to re-set the clock on their disclosure requirements, notwithstanding the fact that our theory of the case has not changed since the grand jury.

This Court explicitly and correctly rejected that argument rather clearly, and stated that Allen Weisselberg's guilty plea does not alter the corporate

defendants's requirements under the CPL.

On September 12th, this Court acknowledged the asymmetric discovery problem, but was loath to preclude a defense at that point. Instead, the Court ordered the defense to provide that information by September 19th, and the Court said, and I quote from page 30 of the transcript quote, look, as a courtesy, I'll give you until Monday to provide the names of these experts, to indicate what they will testify to, why their testimony is relevant and to comply in every other way with the law. And I imagine the People will respond and I will rule on that.

The law to which your Honor referred undoubtedly is CPL section 245 20 sub one sub F and sub O, and 245 point 20 sub four, and that law has several requirements. The defendants must provide the expert's current CV, list of publications, and all reports prepared by the expert that pertain to the case; or if no report is prepared, a written summary of the facts and opinions to which the expert is expected to testify, and a summary of the grounds for each opinion, and a list of the exhibits to be introduced through that expert witness.

On the deadline, September 19th, the following Monday, we got a sketch of what the expert would say in a letter with little or nothing in the way of a summary of the grounds for each opinion. It did list out several

opinions in the way of a summary for the grounds of each opinion.

We did not get an exhibit list for exhibits introduced by Mr. Hoberman until October 7th, and then only after this Court's intervention. We did not get a CV until October 12th.

We still have not got the new COC since the original certificate of compliance was filed in July. And although the due date for all expert related materials was clearly set as September 19th, somehow we find ourselves here less than three business days before the trial is set to begin, we are first getting the bulk of what their expert will testify to.

And it is in the form of 16 pages of calculations without accompanying sourcing or any explanations outside that vague letter originally provided on September 19th. What it really is, is a series of 16 different charts.

This document is categorically different from the original expert letter that was served on the 19th. In so far as the charts in the document contained in that document are highly misleading and they only tell a portion of the story. And frankly, your Honor, since yesterday, we have been barely able to digest their meaning, much less adapt our trial strategy to anticipate and rebut them.

In light of the history of noncompliance with

their disclosure obligations, these reported failures cannot be viewed as anything other than ambush tactics.

With the Court's indulgence, I would like to quote myself from September 12th.

This is what I said: Quote, this is page 23 and 24 of the transcript. This is not a purely procedural matter. If we don't know who their experts are or a summary of the facts and opinions about which each will testify, we cannot adequately prepare for trial nor can we file a motion to preclude since they now withdrawn all substantive expert disclosures.

Should they at some point get around to providing these new expert disclosures, we would have to review them, redraft a motion to preclude, wait for their response, wait for the Court's decision, and then in the unlikely event the Court denies our motion to preclude, we will be in a position of having to scramble to find expert witnesses who might be in a position to controvert the assertions of these 11th hour defense experts.

Forcing us to scramble to do this on the eve of trial is precisely the unfairness that both the statute and this Court sought to avoid.

I went on to say they had almost a year to get their act together, and their failure to do so should not permit them to engage in trial by ambush or I suspect the

true motivation here to delay this trial past November.

Indeed, the Court itself was concerned about this eventuality back on July 8th and warned defense in an e-mail that the remedy for late disclosures by the defense would not be trial delay, but rather sanctions.

And at this point, I must say in no uncertain terms that we have been severely prejudiced by this late disclosure.

We are now two working days from trial. As you might expect, we had drafted voir dire questions, an opening, and lengthy direct examinations of multiple prosecution witnesses; all of which would have to be entirely reimagined if an expert is now permitted to testify as to whatever it is that these calculations in these charts mean. All this during the extremely hectic days between now and Monday.

The whole point of demanding this information back in June was to litigate the expert preclusion issue while there was still time to retain our own expert if we lost.

I don't really need to rehash the merits of the argument to preclude, but I must point out because it is relevant, that it seems this proffered testimony would be of extremely limited probative value even under the defense theory of corporate liability, because they conceded in their response to our motion to preclude that the People

did not have to prove the high managerial agents's actions actually benefitted the companies.

They argue, and we disagree, that we are required to prove that the high managerial agents intended to benefit the company. We disagree with that, but that is their argument.

Either way, all the calculations they seek to bring in through Mr. Hoberman speak, at most, to whether there was an actual benefit to the corporate defendants, not to the subjective intent of the high managerial agents.

Both high managerial agents, Allen Weisselberg and Jeff McConney, will testify at trial and could be examined and cross examined about their intent, even if this Court actually determines that the People have to prove some intent beyond the intent that is set forth in the statute itself beyond the mens rea that the statute itself contemplates.

So, I truly believe this, Judge, that permitting an expert to testify at this point would sanction this defense strategy.

I feel that we have been deliberately sandbagged and this is a situation made know by its utter predictability.

We saw this coming a mile away. We alerted the

Court to the looming issue, but we have been otherwise powerless to prevent it.

Those skeptical of preclusion, appellate courts have routinely upheld preclusion of defense witnesses when late disclosure evinces an endeavor to gain a tactical advantage.

That is exactly what is happening here. And if anyone needs any authority on this point, I'll direct people to U.S. Supreme Court in Taylor versus Illinois, 484 U.S. 400 from 1988 which speaks not only of prejudice to the prosecution, but also about the impact of this type of behavior on the integrity of the judicial process itself.

And I note, there are several cases in New York that cite to and follow Taylor versus Illinois; one of which is People versus Valdez which is 81 A.D third 550 First Department from 2011. It is in the context of an alibi witness, but the holding is no different from what I'm saying. It is based on the same delay tactics.

In short, your Honor; respectfully, this Court should reject the expert testimony both on the substantive ground set forth in a motion to preclude, and in the alternative, on the procedural grounds I just articulated. And I do thank the Court for its indulgence.

THE COURT: Of course. Before I hear from the defendants, can I be furnished with a copy of the documents

so I can print them out and be able to look at them as we speak.

MR. STEINGLASS: I can send them to you right now.

THE COURT: Thank you. Go ahead, Ms. Necheles. Go ahead and get started.

MS. NECHELES: Thank you, your Honor.

Mr. Steinglass has repeatedly argued or called me a person who is engaged in gamesmanship, and I'm playing games here and looking for a tactical advantage here.

I totally reject that. That is not what is going on here.

In fact, I believe that if anyone is engaging in gamesmanship, it is Mr. Steinglass.

I want to set the record clear on what the timing has been on this. Two months before trial, two months before trial, August 18th, the People first get a brand new significant witness who entirely changes the scope of the trial.

I know the People keep saying their theory did not change. Their evidence changed radically, and our defense had to change radically.

Our defense was a joint defense where we were relying on, arguing that Mr. Weisselberg was not guilty of the charges against him, and therefore, the Trump Organization was not guilty.

We were co-defendants and we were going to trial together on that. Mr. Weisselberg adamantly said up to that date I'm not guilty. All of a sudden the story changed; fine. The People are entitled to that. They are entitled to get a new witness.

We did not argue at that point we need a delay. We need more time. We need to readjust our case. We did not ask for any delay there. We went forward and obtained a major new witness.

On August 18th he pled guilty. On August 22nd to September 5th I had a long planned family vacation, and was not able to go out and look for a new expert.

As soon as I came back, within two weeks, 14 days later, we had an expert witness and had provided disclosure of the scope of his testimony to the prosecutors, and we told them exactly what he would testify and the report is no different. It is exactly the scope of what we said he would testify to.

That there was no financial benefit to the company; and in fact, there was harm. And so three and a half weeks later, we gave them the expert's report.

So, they got a new witness on August 18th. To date, we do not have one scrap of paper from the People on what that witness has said; nothing other than the allocution of the defendant. None of the witness's

statements.

We know his lawyer repeatedly met with him, and I assume proffered what his client would say. All of that should have been turned over. I believe, I assume he met with the witness himself. That is gamesmanship. If they are not writing down what the witness is saying, they are deliberately --

THE COURT: I'm not focused so much on --

MS. NECHELES: Your Honor --

THE COURT: Hold on. Move ahead and address the issues raised by Mr. Steinglass, okay.

MS. NECHELES: We have been scrambling. When the Government says they are scrambling, we have been scrambling to their last minute total change of the case, and in doing so, we got a new witness to address the new issues in the case, the new issues for our defense.

As soon as I got this report two days ago, I turned it over during a Jewish holiday. I received this report, and the day after the Jewish holiday I turned the report over to the Government, to the People. So, there has been zero delay in it.

When the People complain they do not know what it is based on, the footnote says it is based on the tax returns of the Trump Organization, of Mr. Weisselberg, and the Government's charts, the things the Government charged

the people claim were not properly reported.

We backed those in, and why did it take three weeks for the expert witness to do it? It just involved putting a lot of information into a computer system.

They have the report now. They know exactly what we were going to be calculating ever since we gave them the disclosure, because we told them at that point that we would be -- the expert would be testifying about and will be giving a report about how this financially harmed the company.

The only financial harm could be when you back out what, you know, do what the People say was the tax fraud, back it out and see what would have happened if it had been reported the way the People say it should have been reported.

I'm shocked the People never did that calculation. Again, I think that was a clear tactical decision by the People, because they knew this would show up, it would harm the company.

So, that is what we did, there is no surprise here, we gave the report.

The People continue to say that there will be 15 witnesses they will be calling at trial. 15 witnesses.

If that is so, we are not getting to the defense case for two months. And, if we are not getting -- so,

they have plenty of time to deal with these calculations and figuring it out.

I have on the witness list the People last gave me, 14 witnesses, which is not counting any of the people they asked for a stipulation on. There are 14 witnesses and they don't even list Allen Weisselberg, their star witness.

So, it is 15 witnesses. I don't really understand this claim they are scrambling for -- the need to be running like this or scrambling. We are scrambling because of their new witness and trying to answer this, and never asked for an adjournment, your Honor.

When the People keep saying we are looking for more time, we are not looking for more time, we are just trying to answer, to put a defense in for the new witness they came up with in August, as is their right. If they have a right to have a new witness, then so do we. We have a right to have a new witness.

THE COURT: Let me ask you a question, Ms. Necheles. What is the relevance of this information contained in these documents, if as you concede, the People do not have to demonstrate there was an actual benefit?

MS. NECHELES: Sometimes the intent of something, you cannot x-ray the people's mind. The courts said the intent is shown by the logical and clear consequences of

what their actions would have been. The logical consequences of these acts are that Allen Weisselberg harmed the Trump Organization.

So, to look into his mind of what did he intend to do, or anyone else intend to do, you can look at what the consequences of what they actually did were.

I think that is the standard instruction that the law gives. You are looking at people's intent. You look at what the consequences of what they did.

THE COURT: I think what you are referring to is kind of the standard definition for motive.

I'm not sure that it applies to what we are talking about here.

There were four separate categories for which you wanted the expert witness it to testify. Respond to each one quickly.

MS. NECHELES: Yes. I'm pulling it up right now. So, the categories -- this would address the first category which was -- your Honor, jumping back a minute.

With respect to the CV, we gave that to the People on the date your Honor ordered it be given, September 19th. It was not labeled CV. It was in an overall document that had the expert's report.

They asked for a document labeled CV. We took the information out of here and put it in a document labeled CV

and sent that to them.

It is the same information. I don't really understand what they are complaining about.

With respect to the four categories. The first was that he would explain how the allegations in the indictment if accepted as true, Mr. Weisselberg's conduct financially harmed the corporate defendant, and the expert's report containing these calculations would be produced as soon as it was prepared.

THE COURT: Stop there for a second. So, you are saying that is relevant because it goes to demonstrate what again?

MS. NECHELES: It goes to demonstrate his -- it is relevant to the issue of the intent. Did Mr. Weisselberg and Jeff McConney intend to benefit the corporation. Was this done on behalf of, in behalf of the corporation or was it done on his own behalf.

THE COURT: You are using a few different terms here. I think that intent -- was it their intent to benefit the corporation, or were they acting in behalf of the corporation are not synonymous.

I do not think you can substitute one term for the other. And in fact, as evidenced by the papers you both submitted and research that we have been doing, it is far from clear what in behalf of, on behalf of means.

I don't think we can very routinely substitute that with the word intent. I think that takes it a lot further even than what any caselaw or treatises say.

MS. NECHELES: Your Honor, I'm not saying it should be substituted. I'm saying for example, when you have a scheme to defraud, the only thing the People need to prove in a scheme to defraud is that the defendants intended to defraud. They had a scheme; but they put in evidence that it actually occurred, and there is no argument that is not relevant, because the fact it actually occurred shows what the scheme, what their intent is.

So, here we are saying the fact you actually hurt the corporation and actually benefitted Allen Weisselberg shows what your intent was.

You did not intend to benefit. It is no different than what the People intend to put into evidence in this case with respect to the scheme to defraud.

They are not just saying -- they are not going to put in evidence only there was only a plan to defraud on taxes or to cheat on taxes. They are going to put in evidence that Allen Weisselberg actually carried out that plan. And that is the same as the intent we want to put in. The same on both sides that you intend, you can prove people's intent because you cannot just look in their mind, you can prove it by showing in part what they did and what

were the consequences. Allen Weisselberg cheated on his tax, that is how they will prove the scheme.

THE COURT: I think the individual charges had their only separate mens rea, right. So, the individual charges may require intent.

I don't know that Penal Law section 2020 says in behalf of. While that may be an additional element, I'll agree with you that may be an additional element, I don't believe that adds the additional mens rea of intent, and I would be hard pressed to find anything that supports that claim.

MS. NECHELES: Sorry, I do not understand. If I can add one thing to what I was saying before.

I think People also intend to put in evidence, first, they had Allen Weisselberg allocute that he did this on behalf of, he was -- because he actually benefitted from it, they had him allocute to that. Second, they intend to put in evidence of payroll taxes that were not paid, and the company --

THE COURT: Ms. Necheles, that is besides the point. That is not the issue we are discussing right now.

MS. NECHELES: I believe it does, because they intend to show the company financially benefitted from the scheme.

So, we want to counter that and say no, the

company was hurt. The payroll tax is being saved by the company is what bases their claim the company benefitted, and this directly addresses that; that the payroll taxes are way outweighed by the harm, the other financial harm to it. In fact -- I think with respect to the intent whether you have to have an intent to benefit, that is what our argument is. That is what in behalf of means.

We cited the case the United States versus Oceanic I. L. L. S. A. B. E. Limited, for the proposition that, exactly that, you had to act within the scope, with intent to benefit the corporation.

THE COURT: All right, let's move on to the second purpose of the expert witness's testimony.

MS. NECHELES: So, the second purpose is he would explain the tax benefit to employers for certain compensation, giving certain compensation in the form of fringe benefits rather than salary.

THE COURT: I am sorry, can you repeat that.

MS. NECHELES: He would explain the tax benefits to an employer or to an employee, I'm sorry, for receiving certain compensation in the form of fringe benefits rather than salary.

THE COURT: Why is that relevant?

MS. NECHELES: So, a big issue here is that a lot of the fringe benefits were given to the employee, and the

People claim those were taxable income.

But even if that is so, even if the employer knew, that for example you give a car. There are reasons employers would do this.

I do not want the jurors just thinking well, if you gave a car to an employee, you must have intended to cheat on their tax, for them to cheat on their taxes; because why else would you give a new car to an employee. So --

THE COURT: The expert witness, this CPA, and I read his CV. What would he say in that scenario? Why would an employer give an employee a car?

MS. NECHELES: A car, you could get a car, and let's say you get a fancy Mercedes, and to pay for it yourself, if you wanted to get it yourself, it would cost you 12 hundred dollars a month, whatever it would cost.

If you get a car from the company and you are using that 50 percent for the corporate company, and 50 percent for yourself, then the only taxable income under the law is the 50 percent you are using it for yourself.

You get this car at a much cheaper price than it would cost -- than it would have cost you otherwise, because the company only is required under the tax law to attribute income to you the portion of the car that you are using for your own behalf.

So, it is a big benefit to employees, that is why employees get cars, because you do it a hundred percent legitimate. It is a big benefit to an individual, they get a car and essentially half it.

THE COURT: Is that what you said happened here, Mr. Steinglass, is that your theory of the case?

MR. STEINGLASS: No, I mean that is a small part of it. But how does that explain how the Trump Corporation is renting Allen Weisselberg an apartment and paying its rent in its entirety and failing to report any of that?

MS. NECHELES: Your Honor, he's jumping to a conclusion.

These are issues that we would be arguing to the jury.

So, I understand his position, but all I'm seeking to do is explain the benefits of -- fringe benefits to employees when they follow the law, so that a conclusion is not wrongly reached by jurors that fringe benefits per se means cheating on taxes.

THE COURT: What is the third reason?

MS. NECHELES: So I -- the third area is standards and practice which applies to accountants. One of the issues in this case is whether Allen Weisselberg and also McConney believed that certain things that they were doing were wrong.

Weisselberg will testify he believed everything he was doing was wrong. We don't accept that. We think he's lying, and we want to show that as we believe McConney and Weisselberg relied on the experts or the accountants, the outside accountants who led them to believe that certain things were done correctly, and so in a part they believed this because the accountants signed off on tax returns knowing, for example, we were using 1099's, we were giving employees 1099's and they repeatedly signed off on tax returns knowing that and --

THE COURT: I'm not sure I understand. It is your position that Mr. Weisselberg actually lied when he allocuted and took responsibility for his actions, and in fact he did not intend to commit any criminal act, he was relying solely on the accountants and he followed their advice, is that what you are saying?

MS. NECHELES: No, your Honor. In part, we believe he lied in part. We believe that as to some of the things he said, he did not know that he was doing something wrong.

As to some of the things we believe he did know. We believe he relied and he lied in part, and that he relied on as to some of the things which were fully disclosed to the accountants.

He and McConney relied on those accountants and

were entitled to rely on them and relied on them in part because they knew an accountant cannot sign off on a tax return if he believed that things are being done illegally on that tax return, things he knows about. That is what we intend to elicit from the expert. That is exactly that.

THE COURT: All right, the fourth.

MR. STEINGLASS: Can I say something about that?

THE COURT: Please.

MR. STEINGLASS: So, let me see if I understand this. They want to introduce an expert to opine about the true intent of Allen Weisselberg and Jeff McConney, notwithstanding their testimony to the contrary, and somehow offering the fact there could be a hypothetical innocent explanation for their conduct.

That does not seem to be the proper scope of expert testimony.

Even if he had somehow interviewed these witnesses, speaking about what these witnesses intended is something the witnesses can do without needing an expert testimony. This is not beyond the ken of the average juror, and that is not the appropriate subject of expert testimony.

MS. NECHELES: To be clear, that is not at all what I said. The expert will not opine on their state of mind at all because he does not know.

Jeff McConney I expect will testify just like he testified in the grand jury. He did not believe any of this was wrong and that he replied on the expert.

What I want the expert to be able to testify is the standards and --

MR. FUTERFAS: Susan, you said the expert, you mean relied on the accountant.

MS. NECHELES: He relied, I'm sorry, on the accountant; he relied on Bender, thank you, Mr. Futerfas.

And the expert would testify as to standards and practice which is what experts are called to testify. He will testify about standards and practice and how an accountant is not allowed to sign a tax return.

So, he will be giving an objective standard that applies in the industry. And then the witness will testify, he will not opine at all on the witness's state of mind, but this will be a predicate, a factual predicate as to we will be questioning both of the witnesses about, McConney and Weisselberg about whether or not they relied, whether they were aware of this standard.

So, we are entitled to put in evidence that this standard exists. This is in fact a standard in the law. That is the third area.

THE COURT: All right, and the fourth area.

MS. NECHELES: The fourth area is that

Mr. Hoberman will go through certain of the records that were produced in discovery by Mazars and show that Mazars in fact knew, was provided with the records which showed the things we are saying that we believe were not incorrect and that McConney would believe were not incorrect, and McConney will say I told, I believe that Mazars knew about this, and that I could rely on them because they did not tell me I was doing something improper.

And the expert will show in the actual records of Mazars they were provided with this information. So McConney's testimony that he provides this information is backed up with documents which show it, and the reason you need an expert for that is these are accounting documents which are kept in forms that are not necessarily clear to a juror or to an ordinary non accountant on the standards.

This evidence is also relevant to show that Weisselberg is lying. Weisselberg said in his allocution that he hid this information from vendor, but in fact it is in the accounting records. That is what we will be seeking to show through the expert.

MR. STEINGLASS: What was and was not sent to Mazars can be established through non expert testimony. McConney will testify, Weisselberg will testify, and whatever else the records are going to come in. They will show what was said.

The jury does not need a defense expert to hypothesize about what somebody reading these documents might be in a position to realize or what not. That is the proper testimony elicited by direct witnesses, not some hypothetical expert offered to offer up pretty much to confuse the jury and leave them to start speculating about documents, what they mean and what people intend when they send them, when that direct testimony will be right in front of the jury.

THE COURT: I want to make sure I'm following you, Ms. Necheles. So, Mr. Weisselberg said that he kept certain information from the accountants, and in fact you believe the accountants had that information, and therefore, Mr. Weisselberg was lying.

Why can't Mr. Weisselberg himself be cross examined on that or the accountants themselves, Mazars. Why can't they be cross examined on that?

MS. NECHELES: Your Honor, Mr. Weisselberg cannot be cross examined on it because he never saw these documents. He does not know these documents.

I'm not talking about the actual 1099 or something like that. I'm talking about entries in the accountant's records. I cannot just show him a record which first won't be in evidence. You know, and it is a Mazar's record, not a Trump Organization record, and ask him do you understand

this, you know. How do I know he even understands that record.

They are accountant work papers which had entries in them. I need either the accountant or the expert can testify.

THE COURT: Why can't you cross examine the accountant?

MS. NECHELES: Interestingly, what I did not hear Mr. Steinglass say is I could cross examine the accountant. He has three accountants on his witness list. I don't know if they are calling them.

I think there is a little bit of gamesmanship going on. I don't know if they are calling him.

THE COURT: Wouldn't it make a little more sense and -- lets say the People do not call the accountants, would it make more sense for you to call the accountants then and have them say no, this information was provided to us, rather than having a third party expert come in and draw conclusions as to what was turned over and what was not turned over?

MS. NECHELES: I might have to call the accountants. I would ask the People actually be directed to tell us who they really intend to call.

I am concerned, they said and they continue to say they are calling these 15 witnesses. If they are not, I

need to subpoena those people and make sure they will be available for trial.

THE COURT: Like you said earlier, there are many, many weeks before that happens. You have plenty of time to subpoena those people.

Let's not get sidetracked. My question is doesn't it make more sense to cross examine the accountants themselves, the ones who presumably had created these entries and who can say whether they received or did not receive certain information?

MS. NECHELES: Your Honor, I would do that, but I don't know what the accountants will say. They refused to speak to me today. So, I don't think as a trial lawyer I should have to rely on a witness who is refusing to speak to me.

I think I should be able to take documents that those witnesses created counting work product and show them to the jurors with expert testimony, just like the People would be able to do if they seize documents in a search and for example, a search of a drug place, they would put them into evidence through an expert who would explain them.

I'm trying to put in records through an expert who can explain those.

THE COURT: Will your expert be able to testify to the source of those documents, who provided that, it was

Weisselberg, it was McConney, it was somebody else.

What exactly falls within the expertise of this individual that permits him to say yes, when Weisselberg said he did not provide this, looking at this clearly he did provide this. What qualifies him to say that?

MS. NECHELES: There is a notation in the work papers. I would have to get either a stipulation or call a witness from Mazars to put these in evidence, records created in the ordinary course of business and kept in the ordinary course of business.

And you can see in there that there are notations, a telephone conversation listing what is discussed in it and listing the various records that were discussed.

THE COURT: It seems to me based on what you are saying now, you probably could cross examine Mr. Weisselberg with that, and the worst thing that could happen is he could say I don't know what you are talking about.

MS. NECHELES: I agree.

THE COURT: I was not done. And then depending on how far you get with Mr. Weisselberg, you can then cross examine the accountants.

Can the expert testify as to what certain notations mean? You know, so and so said this, so and so said that. I mean if you want him to testify, presumably

you want him to testify to the truth of that information. Is he in a position to do that?

MS. NECHELES: Your Honor, I think that he can testify that, you know, this is what accountants do, accountants keep notations, work papers for the kind of work they have done.

This is a notation here of a conversation or it purports to be a conversation. It would have been in evidence as a business record introduced for the truth of it.

So, it says on it that there was a conversation and these are whether they are discussing 1099's which Weisselberg -- and show the various entries and show adjusting entries in the books and records. To make these adjusting entries you would have to look at the cars. Those kind of things that experts and accountants know how to do.

Your Honor, I think the issue is if it is relevant and whether this is the kind of thing that an expert is allowed to testify about.

I do not think the People should be able to tell me how to try my case; whether I should have to get this out on cross or whether I could put an expert in.

It is a record that is admissible and relevant and if this is the type of evidence an expert can testify

about, I think it should be admissible.

THE COURT: I agree the People cannot tell you how to try the case. Part of my job is to make sure that the jury does not get confused. So, I have to insure I only allow into evidence whatever is relevant for the issues in the case.

I'm not saying that it is or is not yet. I have to digest everything that is being said and review the documents sent to me a few minutes ago.

But, as I said a long time ago, this trial is not going to turn into a master class on taxation, and I'm certainly not going to permit the jury to become confused by irrelevant issues.

That is it why I asked you to go through each of the four steps.

In deciding whether to allow your expert to testify or not, I have to look at it within the context of whether the People are being prejudiced by the fact they just received this, what, yesterday, today?

MR. STEINGLASS: Yesterday.

THE COURT: So, you'll recall that on August 18th when you indicated that you might be calling different experts, that your theory of the case had changed. Without weighing in on the persuasiveness of that argument or not, I gave you time, until September 19th, because I know that

courts and appellate courts frown on defendants being precluded from putting on their defense.

I gave you to September 19th. After that I gave you a couple of more extensions to provide everything that you were required to provide to the People.

Now, you turned over yesterday, what at first glance I'm looking at, this is a bunch of spreadsheets, a bunch of calculations, I mean a lot of calculations.

So, I have to determine whether the probative value of it for you exceeds whatever prejudice the People might suffer as a result of permitting this now.

MR. VAN DER VEEN: Judge, if I may. On the issue of prejudice, it seems to me the tardiness of the report I cannot much comment on Judge, but it seems to me the summary charts are really just summaries and calculations of information that the prosecutors had for a very long time, and just looking at the numbers, the data that they have, everything that their expert is using in the summary chart is just information that was given to us by the People.

And the relevance of whether there was harm to the corporation or whether there was a benefit to the corporation is probative to the defenses in the case.

One of the defenses is that these acts should be alter virus in their nature. So, a factor into making a

determination of whether something was or was not inside the scope and the intent of the actor is was there harm to the people they were acting in behalf of or not.

And so, the numbers are known to them. They are being looked at perhaps differently than they want to look at them. But, they are relevant to the defenses that are available to us.

So, for those reasons, I ask the Court when weighing the prejudice, take into consideration it is really just summaries that an expert can do to make it understandable to regular jurors or regular folks like myself.

And so, I think when you weigh that prejudice, it comes out on the side of the defense; and I think when you are looking at whether it is helpful to the jury or not, we do not want it to be a tax class and put everybody to sleep. But, the way that the numbers are looked at and calculated for the various entities and the various parties in the case, would be enormously helpful to summarize it, and of course the Government has themselves sent us very similar charts that they intend to show the jury.

So, for that reason, you know, it is not really a new method of presentation. It is a summary chart that of what they sent us.

And you know, I have been watching the lawyers in

this case interact for a while. I do not feel comfortable with all the procedure stuff.

My argument is to avoid personal attacks and try to be much more on an even basis. I tell you, I think it is important defendants be given an opportunity to talk about the evidence in the light that they see it as well.

So, for that reason Judge, I ask you excuse the tardiness of it and allow it to be admissible.

Thank you for the opportunity.

MR. FUTERFAS: Can I have 30 seconds with your Honor's indulgence.

THE COURT: Please.

MR. FUTERFAS: Thank you, and I'll keep it 30 seconds, maybe less.

One of the issues I see with the report and the first of the four pieces of the report, the in behalf of, we are all wrestling with at this point, what does it mean, is that I think your Honor will see play out that the impression that Mr. Weisselberg will leave on the jury by the People is going to be that this company in fact benefitted.

And I think the nature of their direct examination and the way it will come out, the way it will sound and the way it will be presented will very strongly suggest to the jury that in fact there was a benefit to the company.

And so, on that category, I know there are four categories, I'm just addressing the first one. You know, they will have a mis-impression if that impression is made and settled and that is how that testimony goes, that direct testimony and other testimony, without expert testimony on the subject, this jury may go through this trial thinking well, you know, I guess the company really did benefit at the end of the day, and that is very, very problematic from my perspective.

That is all I want to say, your Honor.

THE COURT: You are touching on something that is important. From day one in this case, if I remember since the day the indictments were unsealed, there has been a lot of commenting on how the corporation benefitted by these acts, and that was not the only time it was mentioned. It was mentioned on many other occasions.

So, if the People decide they want to present evidence to that effect, and they certainly can, I'm always free to revisit my rulings. That is one of the beauties of a trial; it is fluid, it changes, and as we go, I can revisit all of my rulings, and if I feel the jury has been left with a wrong impression, they have been misled in some way, I can always revisit that. But, within that, I still have to determine whether it is relevant or not. Just because the People can show the corporation profited,

again, it comes down to the definition of in behalf of.

A lot of this really turns on that, and I can tell you that I've been working a great deal on that.

MR. FUTERFAS: Thank you, your Honor.

THE COURT: Anything else on this issue anybody wants to bring up? No.

MR. STEINGLASS: No, thank you.

THE COURT: So very quickly, let me go through some of the other motions in limine. And bear with me, I'm reading from some notes.

So, the People had moved to preclude the defense on the issue of selective prosecution, FTI records, and preventing the defense from claiming these are unusual novel or unprecedented charges.

With regard to FTI. If the People are not calling any witnesses from FTI Consulting, or not seeking to introduce any evidence created by FTI Consulting, and if the witnesses they plan on calling have not been influenced by the opinions or work product of FTI Consulting, then the defendants are precluded from producing evidence concerning FTI Consultants and the billing records.

With regard to the unusual novel an unprecedented charges issue. Again, the defendants are precluded from remarking during jury selection and in their opening statements that the charges are novel, unusual, or

unprecedented. But likewise, the People are directed to refrain from suggesting the charges in this case are ordinary, routine, or common place.

Depending on -- of course, that is only during jury selection, opening statements. We don't know what the witnesses are going to say once they are on the witness stand. That could completely open the door or change things.

With regard to how the issue of whether these are unprecedented charges or driven by some sort of bias, the defense is correct, a witness's bias can always be explored. And it can always be exploited. We are going to have to draw a real connection between the Trump Organization or Donald Trump himself and any bias that might exist.

I'm not sure at this point that based soley on the papers that I read, that you have established that connection.

I'll give you the opportunity now, Ms. Necheles, to flesh that out for me a little bit more.

But a witness's perceived bias, hostility, interest for or against any party can be explored. The parties should not, however, suggest in the premise of their questions that the witness was targeted based on his or her political associations or beliefs.

Should the witness produce the notion she believed she was targeted because of her association with a political figure, the parties will then be given latitude to explore that answer. But, I'm directing both parties to not ask loaded questions and loaded phrases such as political vendetta, political agenda, things of that nature and that should not be incorporated into the premise of the questions on cross examination.

Any you question about that?

MR. STEINGLASS: No.

MS. NECHELES: No, your Honor.

MR. FUTERFAS: No.

THE COURT: With regard to voir dire, both parties submitted questions which you had suggested I incorporate into the questionnaire.

I did incorporate some of them and modified other questions as suggested, and I provided those to all of you, and I think you received those on October fourth.

The defense made a Brady demand whereby they moved for all drafts of Allen Weisselberg's plea allocution and all related statements, notes, and documents.

The People responded they were not aware of or they were aware of no Brady material, and acknowledged their continuing disclosure obligations.

If the People have not already provided a copy of

Ex. 6

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA v. SAMUEL BANKMAN-FRIED, Defendant.	22 Cr. 673 (LAK)

EXPERT WITNESS DISCLOSURE
PROFESSOR BRADLEY A. SMITH

I. Background & Qualifications

1. I am the Josiah H. Blackmore II/Shirley M. Nault Professor of Law at Capital University Law School, where I teach courses including Election Law, Administrative Law, Jurisprudence, and Law & American History. I have also held faculty appointments as a Visiting Fellow, Visiting Professor, or Visiting Scholar at Princeton University (2018-2019), West Virginia University College of Law (2013-2015), and Bowling Green State University (2007), and as an Adjunct Professor at George Mason University School of Law (2002-2004). I hold a J.D. from Harvard Law School and a B.A. in Political Science and Economics from Kalamazoo College.

2. From 2000 to 2005, I served as a commissioner of the Federal Election Commission ("FEC"). I served as Chair of the FEC in 2004 and as Vice Chair in 2003.

3. I have served as counsel or amicus in connection with several prominent cases relating to election and campaign finance issues, including *Citizens United v. Federal Election Commission*, 130 S. Ct. 876 (2010) (amicus); *SpeechNow.org v. Federal Election Commission*, 599 F. 3d 686 (D.C. Cir. 2010) (plaintiff's counsel); and *Susan B. Anthony List v. Driehaus*, 134 S. Ct. 895 (2014) (amicus on behalf of the Ohio Attorney General).

4. I have published extensively in the fields of election law and campaign finance law and reform. I am a co-author of the law school textbooks Voting Rights & Election Law (with Michael Dimino, Jr. and Michael Solimine) (3d ed, 2021) (Carolina Academic Press) (1st ed. 2010, 2d ed. 2015) (Lexis Press) and Understanding Election Law & Voting Rights (with Michael Dimino, Jr. and Michael Solimine) (2016) (Carolina Academic Press), and have written numerous book chapters, law review articles and essays, and academic book reviews on election and campaign finance issues. I have also had dozens of magazine and newspaper columns published in major daily and periodical publications including the *Wall Street Journal*, *New York Times*, *Washington*

Post, *Los Angeles Times*, *Chicago Tribune*, *New York Post*, *USA Today*, *The Atlantic*, *Commentary, National Review*, *Time*, and *US News & World Report*. Smith Appendix A contains my CV including a full list of my academic publications.

5. I have presented at over two dozen academic conferences on election and campaign finance issues and have testified before the U.S. House of Representatives, U.S. Senate, and various state legislatures on numerous occasions. Over the prior four years I have testified as an expert at trial or by deposition in the following matter:

    - Marine Corps Board of Inquiry hearing re: Discharge of Duncan D. Hunter for alleged violations of campaign finance laws, held at Marine Corps Support Facility in New Orleans, LA on March 4, 2022.

6. I have no financial interest in the outcome of this case. I am being compensated for my time and services on an hourly basis at the billing rate of $1200 per hour. My compensation in this case is not in any way contingent or based on the opinions presented herein or on the outcome of these legal proceedings.

II. Scope and Summary of Opinions

If called as a witness, I may testify to the following topics:

7. General Background on US Campaign Finance Laws. The history and purpose of, and recent developments in, campaign finance laws in the United States, including the provisions of the Federal Election Campaign Act ("FECA").

8. General Background on the Federal Election Commission. The structure of the Federal Election Commission; the FEC's processes and common practices when issuing advisory opinions and reviewing and adjudicating Matters Under Review ("MURs"); and the precedential effect of FEC opinions and adjudications on the interpretation of campaign finance laws, including which set of FEC commissioners is treated as the "controlling group" for judicial review purposes.

9. General Background on FECA Straw Donor Ban. The history and background of FECA Section 30122 barring "straw donor" contributions; FEC rules and decisions governing the application and interpretation of Section 30122; and the nature and frequency of reported or alleged violations of Section 30122 that are reviewed or adjudicated by the FEC, including by persons found to have acted in good faith.

10. General Background on FECA Corporate Contributions Ban. The history and background of FECA Section 30118 barring corporate contributions, FEC rules and decisions governing the application and interpretation of Section 30118, and the nature and frequency of reported violations of Section 30118 that are reviewed or adjudicated by the FEC, including by persons found to have acted in good faith.

11. General Background on "Dark Money" Contributions. FEC rules and decisions addressing or governing the reporting requirements for contributions made to non-political 501(c)(4) organizations.

12. General Background on Corporate Funds and Loans. The permissible uses of funds by corporations and limited liability companies (LLCs) in connection with federal elections; the permissible uses of loans and loaned funds in connection with political contributions; and the categorization and treatment of funds that are loaned by corporations and LLCs to company founders, executives, or employees.

13. General Background on Large-Scale Political Donations. Common, established, and well-known practices for large-scale political giving campaigns, including the use of consultants for identifying candidates, committees and causes for donations; the coordination of donations with other individuals for maximizing impact, and the delegation of duties to individuals who are not the disclosed contributor in facilitating or coordinating contributions.

14. I may also testify as to other matters outside the scope of testimony specified above as required to rebut evidence which may be offered by the Government concerning issues of campaign finance and political donations.[1]

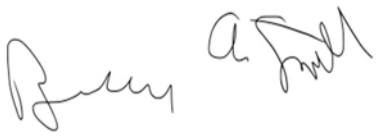
III. Basis of Opinions

15. The opinions set forth above are based upon my own academic and professional education, training, and knowledge regarding U.S. election law and campaign finance law and FEC standards, practices and decisions, including, among other things, my experiences as FEC Chair and Commissioner, as a practitioner of campaign finance law, and as an academic in these fields for several decades. I may reference specific FEC rules and decisions as part of my testimony.

16. Additionally, my opinions are based on reviewing publicly available academic literature, public news articles and commentary, and documents filed in this case and other legal proceedings relating to FTX, including the S5 and S6 superseding indictments in this case.

[1] The Government filed an S6 superseding indictment on August 14, 2023, which removes the former Count 12 relating to campaign finance violations and appears to add allegations that political donations by or on behalf of Mr. Bankman-Fried were part of or related to the wire fraud alleged in S6 Count 1 and money laundering alleged in S6 Count 7. Having only recently reviewed the S6 superseding indictment, I reserve the right to amend or update my opinions to address these allegations.

Respectfully submitted,



Bradley A. Smith, Esq.

Bradley A. Smith
Josiah H. Blackmore II/Shirley M. Nault Professor of Law
Capital University Law School

A. Employment

Teaching & Research

Capital University Law School, Columbus, Ohio.
Josiah H. Blackmore II/Shirley M. Nault Professor of Law, 2009- Present;
Professor of Law 1999-2009; Associate Professor, 1996-1999; Assistant Professor, 1994-1996; Visiting Assistant Professor, 1993-94.
Courses Taught: Administrative Law; Election Law; Civil Procedure; Jurisprudence; Law & Economics; Law & American History.
Director, Capital University Law School Summer Program in Greece, 1997-1998.
Co-Director, Moot Court Program, Capital University Law School, 1994-2000.

Princeton University, Princeton, NJ
Visiting Fellow, James Madison Program, Department of Politics, 2018-19.

West Virginia University College of Law, Morgantown, West Virginia.
Judge John T. Copenhaver, Jr. Visiting Chair of Law, 2013-2015.
Courses Taught: Campaign Finance; Administrative Law; Legislation; Law & Economics.

Bowling Green State University, Social Philosophy & Policy Center, Bowling Green, Ohio. Visiting Scholar, 2007.

George Mason University School of Law, Arlington, Virginia.
Adjunct Professor, 2002-2004.
Course Taught: Federal Election Law

Other Legal Employment

Chairman and Commissioner, Federal Election Commission, Washington, D.C.
Nominated by President Clinton, February 9, 2000; Confirmed by Senate, May 2000, Served June 26, 2000 through August 21, 2005. Chair**,** 2004. Vice Chair, 2003.

Vorys, Sater, Seymour & Pease, Columbus Ohio & Washington, D.C.
Of Counsel, 2005 – 2008; Associate, 1990-1993.

Special Counsel to Ohio Attorney General Mike DeWine, 2012, 2014.
Special Hearing Officer, Ohio Secretary of State John Husted, 2014

Admitted to Practice: U.S. Sup. Ct; 6th Cir., D.C. Cir.; all Ohio state & fed. courts.

B. Education

Harvard Law School
J.D., *cum laude,* 1990.
Senior Editor, Harvard Journal of Law & Public Policy.

Kalamazoo College
B.A., *cum laude*, 1980.
Majors in Political Science (with Honors) and Economics. Recipient, Howard Prize for Outstanding Work in Political Science.

C. Publications

Books

Voting Rights & Election Law (with Michael Dimino, Jr. and Michael Solimine) (3d ed, 2021) (Carolina Academic Press) (1st ed. 2010, 2d ed. 2015) (Lexis Press) (includes instructors' manual and annual updates).
Understanding Election Law & Voting Rights (with Michael Dimino, Jr. and Michael Solimine) (2016) (Carolina Academic Press).
Unfree Speech: The Folly of Campaign Finance Reform (Princeton University Press, 2001) (paperback ed., w/ new forward, 2003).

Book Chapters

Campaign Expenditure Limits, Oxford Handbook of American Election Law (Eugene D. Mazo, ed., forthcoming 2023)
Reforming the Presidential Nominating Process: A Curmudgeon's View in The Best Candidate (Eugene Mazo & Michael Dimino, eds.) (2020) (Cambridge Press).
An Electoral College Primer in Making Government Work (Tan Parker, ed. 2020) (Regnery).
Politics, Money and Corruption: The Story of McConnell v. Federal Election Commission, in "Election Law Stories," (Joshua Douglas & Eugene Mazo, eds.) (2016).
Plebiscites and Minority Rights: A Contrarian View, in "The United States Supreme Court and the Political Process: Perspectives and Commentaries on Contemporary Cases," (David K. Ryden, ed.) (2000).

Law Review Articles and Essays

Crisis and Disconnect: Electoral Legitimacy and Proposals for Election Reform, 24 U. Penn. J. Const. L. 1 (2023).
Americans for Prosperity Foundation v. Bonta: *A First Amendment for the Sensitive*, 2021 Cato Sup. Ct. Rev. 63 (2021).

Feckless: A Critique of Critiques of the Federal Election Commission, 27 Geo. Mason L. Rev. 503 (2020).
Finding the Radicalism in Citizens United v. FEC, 41 Harv. J. L. Pub. Pol'y 1 (2018).

The Academy, Campaign Finance, & Free Speech Under Fire, 25 J. L. & Pol'y 227 (2017).
Why Buckley*? Why a First Amendment? A Response to Professor Alschuler*, 67 Fla. L. Rev. 59 (2015).
McCutcheon v. Federal Election Commission: *An Unlikely Blockbuster*, 9 N.Y.U. J. L. & Liberty 48 (2015).
Separation of Campaign and State, 82 Geo. Wash. L. Rev. 1238 (2013).
The Non-Expert Agency: Should the SEC Regulate Politics? A Response to Professors Bebchuk and Jackson. 3 Harv. Bus. L. Rev. 419 (2013) (with Allen Dickerson).
Super PACs and the Role of "Coordination" in Campaign Finance Law, 49 Willamette L. Rev. 603 (2013).
Disclosure in a Post-Citizens United *Real World,* 6 St. Thomas J. L. & Pol'y 257 (2012).
The Caperton Caper and the Kennedy Conundrum, 8 Cato S. Ct. Rev. 319 (2009) (with Stephen Hoersting).
Vanity of Vanities: National Popular Vote & the Electoral College, 7 Elec. L. J. 196 (2008).
The John Roberts Salvage Company: After McConnell, *A New Court Looks to Repair the Constitution*, 68 Ohio St. L. J. 891 (2007)
Boundary Based Restrictions in Boundless Broadcast Media Markets: McConnell's *Underinclusive Overbreadth Analysis,* 18 Stan. L. & Pol'y Rev. 240 (2007) (with Jason R. Owen).
Broken Windows and Voting Rights, 156 U. Penn. L. Rev. PENNumbra 241 (2007).
A Moderate, Modern Campaign Finance Reform Agenda, 12 Nexus J. Op. 3 (2007).
Don't Shoot the Messenger: The FEC, 527 Groups, and the Scope of Administrative Authority, 4 Election L. J. 82 (2005) (with Allison Hayward).
McConnell v. Federal Election Commission*: Ideology Trumps Reality, Pragmatism*, 3 Election. L. J. 345 (2004).
Searching for Corruption in all the Wrong Places, 2 Cato S. Ct. Rev. 187 (2003).
A Toothless Anaconda: Innovation, Impotence, and Over-enforcement at the Federal Election Commission, 1 Election L. J. 145 (2002) (with Stephen Hoersting).
Selecting Judges in the Twenty-First Century, 30 Capital U. L. Rev. 437 (2002).
Hamilton at Wit's End: The Lost Discipline of the Spending Clause vs. the False Discipline of Campaign Finance Reform, 4 Chapman U. L. Rev. 117 (2001).
Regulation and the Decline of Grassroots Politics, 50 Catholic U. L. Rev. 1 (2000).
Some Problems With Taxpayer-Funded Political Campaigns, 148 U. Penn. L. Rev. 591 (1999).
A Most Uncommon Cause: Thoughts on Campaign Finance Reform and a Response to Professor Paul, 30 Conn. L. Rev. 831 (1998).
Soft Money, Hard Realities: The Constitutional Prohibition on a Soft Money Ban, 24

J. Legis. 179 (1998).
Money Talks: Speech, Corruption, Equality, and Campaign Finance, 86 Geo. L. J. 45 (1997).
The Sirens' Song: Campaign Finance Reform & the First Amendment, 6 J. L. & Pol'y 1 (1997).
Faulty Assumptions and Undemocratic Consequences of Campaign Finance Reform, 105 Yale L. J. 1049 (1996).
The Limits of Compulsory Professionalism: How the Unified Bar Harms the Legal Profession, 22 Fla. St. U. L. Rev. 36 (1994).
Judicial Protection of Ballot Access Rights, 28 Harvard J. Legis. 167 (1991).

Academic Book Reviews
The Legislative Process: Lost in the Labyrinth, H-Pol; H-Net Reviews (Aug. 2001)(*http://www.h-net.org/reviews/showrev.cgi?path=22178997903585*) (reviewing Diana Dwyre and Victoria Farrar-Myers, Legislative Labyrinth: Congress and Campaign Finance Reform (2001)).
Real and Imagined Reform of Campaign Corruption, 6 Cornell J. L. & Pub. Pol'y 141 (1996) (reviewing Larry J. Sabato and Glenn R. Simpson, Dirty Little Secrets: The Persistence of Corruption in American Politics (1996)).

Encyclopedia Entries
Article I, § 2, Interactive Guide to Constitution, National Constitution Center (Jeffrey Rosen, ed., 2016).
15th Amendment, Interactive Guide to Constitution, National Constitution Center (Jeffrey Rosen, ed., 2015).
McConnell v. FEC, Encyclopedia of the Supreme Court (David S. Tanenhaus, ed., 2009).
Freedom of Petition, Encyclopedia of the Supreme Ct. (David S. Tanenhaus, ed., 2009).
Campaign Finance, Encyclopedia of Libertarianism (Ronald Hamowy, ed., 2008).
Financing Political Speech, The Oxford Companion to the Supreme Court of the United States (Kermit L. Hall, ed., 2005).
The Meaning of Article I, Section 2, The Heritage Guide to the Constitution (David F. Forte, ed., 2005).
Electoral Process and the First Amendment, Supplement II: Encyclopedia of the American Constitution (Leonard W. Levy et al. eds., 1999).

Professional and Policy Journals
Into the Thicket: What's Next in Election Litigation, 101 Judicature, Vol. 2, 18 (2017).
The Myth of Campaign Finance Reform, 2 Journal of National Affairs 75, Winter 2010.
In Defense of Political Anonymity, 20 City Journal 74, Winter 2010.
If That's a Politician, We Must be in … Church? Columbus Bar Lawyer's Q. 9, Sp.2008.
Campaign Finance Reform's War on Political Freedom, City Journal, July 2007.
Is McCain-Feingold Unconstitutional as Applied to Certain 'Issue Advertisements'?, 34 Preview of U.S. Sup. Ct. Cases 402 (2007).

Campaigns, Elections and Campaign Finance Reform, ABA Focus on Law Studies, Spring 2006, p. 1.
Book Review: Enlightened Democracy: The Case for the Electoral College*, by Tara Ross*, 6 Engage 153 (2005).
Caveat Emptor: Good Government Group Polls on Campaign Reform Questions Are Suspicious, Political Finance & Lobby Reporter, Dec. 24, 1997, p. 1.
Why Healthcare Reform May Unleash A New Litigation Explosion, Postgraduate Medicine, Nov. 15, 1994, p. 91.

Popular Publications
Dozens of magazine and newspaper columns published in *Wall Street Journal, New York Times, Washington Post, Los Angeles Times, Chicago Tribune, New York Post, USA Today, The Atlantic, Commentary, National Review, Time, US News & World Report, and other major daily and periodical publications*.

Notable Recent Legal Cases
Susan B. Anthony List v. Driehaus, 134 S.Ct. 895 (2014) amicus, Ohio Attorney General.
SpeechNow.org v. Federal Election Commission, 599 F. 3d 686 (D.C. Cir. 2010), Plaintiff's counsel.
Citizens United v. Federal Election Commission, 130 S. Ct. 876 (2010), amicus.
Caperton v. Massey Coal, 129 S. Ct. 2252 (2009), amicus.

D. Presentations and Panels

Academic Conferences
Congressional Legislation to Protect the Electoral Process, AALS Conference on Rebuilding Democracy and the Rule of Law*,* May 7, 2021
The Past, Present, and Future of Presidential Elections, National Constitution Center/Univ. of Pennsylvania School of Law, Jan. 28, 2021
Feckless: A Critique of Critiques of the Federal Election Commission, Annual Symposium on Administrative Law, C. Boyden Gray Center, Scalia Law School, Oct. 16, 2019.
Campaign Finance Regulation and State Policy Outcomes, Association of Private Enterprise Educators, Annual Meeting, Apr. 7, 2019.
The Future of Campaign Finance, Stanford University Constitutional Law Center, Symposium: The Constitution and Political Parties, May 19, 2018.
Finding the Radicalism in Citizens United, Federalist Society National Student Conference, Columbia University, Jan. 11, 2018.
The Academy, Campaign Finance, and Free Speech Under Fire, Brooklyn Law School, Feb. 26, 2016.
Judicial Review Five Years After Caperton, N.Y.U. School of Law, Nov. 14, 2014.
Fostering Participative and Accountable Democracies: Compliance, Public Scrutiny and Informed Voting, OECD Policy Forum, Paris, France, Nov. 14, 2013.

The Disclosure Debates, Vermont Law School, Sep. 27, 2013.
Understanding "Coordination" in Campaign Finance Law: Its Meaning, Purpose and Regulation, Willamette Law School, Feb. 8, 2013.
Future of Campaign Finance, George Washington Univ. Law School, Nov. 16, 2012
Practical and Theoretical Difficulties of Campaign Finance Disclosure in a Post-Citizens United World, St. Thomas Law School, Mar. 30, 2012.

Book Forum: John McGinniss's Accelerating Democracy*,* Northwestern University School of Law, September 15, 2011.
What has Caperton *Wrought? Recusal, Elections and the Courts,* Wisconsin Supreme Court Conference, Marquette University Law School, Dec. 3, 2010.
Citizens United and Corporate Personhood, SE Assn. of Law Schools, July 30, 2010.
Election Administration and Competitiveness in Elections, UCLA School of Law, Jan. 29, 2010.
Future Directions in Campaign Finance Reform, Midwest Pol. Sci. Assn., Apr. 3, 2008.
Election Law Reform: Theory, Law, Practice, Am. Pol. Sci. Assn, Aug. 3, 2007.
A Moderate, Modern Campaign Finance Reform Agenda, Chapman Law School, Feb. 20, 2007.
The John Roberts Salvage Company, Moritz Law School at The Ohio State University, Sep. 28, 2006.
The Supreme Court and the Political Process: McConnell v. FEC, Princeton University, Woodrow Wilson School of Government, May 27, 2004.
The Ethics of Campaign Finance Reform, Assn. of Private Enterprise Educ, Apr. 2, 2004.
In Search of the Perfect Election, University of Pennsylvania School of Law, Feb. 2004.
Campaign Finance Laws: Compliance and Enforcement, Election Law Summit, Washington, D.C., June 24, 2003.
Symposium on Judicial Elections, Capital University Law School, Jan. 31, 2001.
Spending Clause Symposium, Chapman University School of Law, Jan. 18, 2001.
Symposium on Election Law, Catholic University School of Law, Sept. 2000.
Symposium on Campaign Finance Reform, Notre Dame Law School, Nov. 14, 1997.
Symposium on Money & the First Amendment: Campaign Finance and Free Speech, Center for First Amendment Rights, Univ. of Connecticut Law School, May 1997.
David G. Trager Public Policy Symposium, Brooklyn Law School, Mar. 7, 1997.
Symposium XXIX, "Choosing A President: How We Elect A President - The Case for Change - The Rush to Fix the Process - To What End? Institute for American Values, Nichols College, Dudley MA, Oct. 15, 1996.
Symposium: Money in Politics: Undue Influence, Franklin Pierce Law School, Concord, NH, Jan. 20, 1996.

Congressional & Legislative Testimony

U.S. House of Representatives, Committee on House Administration, "American Confidence in Elections: Protecting Political Speech," May 11, 2023.
Kansas House of Representatives, HB 2391, Feb. 16, 2023.

U.S. Senate, Comm. on Rules and Admin., "S. 1, For the People Act," Mar. 24, 2021.
U.S. House of Representatives, Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights, and Civil Liberties, Citizens United *at 10: The Consequences for Democracy and Potential Responses*, Feb. 6, 2020.
U.S. House of Representatives, Committee on House Administration, "For the People Act," Feb. 19, 2019.

U.S. Senate, Comm. on Rules and Administration, "The DISCLOSE Act and the Need for Expanded Public Disclosure of Funds Raised and Spent to Influence Federal Elections," July 23, 2014.
U.S. Senate, Comm. on Judiciary Subcomm. on Constitution, "Taking Back Our Democracy: Responding to Citizens United & the Rise of Super PACs," July 24, 2012.
U.S. House of Representatives, Committee on Small Business, Hearing on President's Proposed Executive Order on Government Contractors, May 12, 2011.
U.S. Senate , Judiciary Committee, "We the People: Citizens United and the Future of American Democracy," Mar. 10, 2010.
U.S. House of Representatives, Committee on House Administration, "Fair Elections Now Act," July 30, 2009.
Illinois Reform Commission, "Campaign Finance and 'Pay to Play,'" Feb. 23, 2009.
U.S. House of Representatives, Judiciary Committee, Sub-Committee on the Constitution, "Lobbying Revision," Mar. 1, 2007.
U.S. House of Representatives, Judiciary Committee, Sub-Committee on the Constitution, "Grassroots Lobbying Reform," Mar. 2006.
U.S. House of Representatives, Committee on House Administration, "Regulation of the Internet," Sep. 2005.
U.S. Senate, Committee on Rules and Government Affairs, "Regulation of Independent 527s Under BCRA," July, 2004.
U.S. House of Representatives, Committee on House Administration, Enforcement Procedures at the Federal Election Committee, Oct. 2003.
Florida House of Representatives, Election Reform Committee, Hearing on Campaign Finance Reform, Mar. 17, 1999.
U.S. Senate, Committee on the Judiciary, Subcommittee on the Constitution, Federalism, and Property Rights, "Term Limits or Campaign Finance Reform: Which Provides Real Reform?," Feb. 24, 1998.
U.S. House of Representatives, Committee on the Judiciary, Subcommittee on the Constitution, "Constitutionality of Restrictions on Issue Advocacy," Sept. 18, 1997.
U.S. Senate, Committee on Rules and Government Affairs, "Soft money in Presidential Elections," May 14, 1997.
U.S. House of Representatives, Committee on the Judiciary, Subcommittee on the Constitution, "Free Speech & Campaign Finance Reform," Feb. 27, 1997.
U.S. Senate, Committee on Rules and Government Affairs, "McCain-Feingold "Campaign Finance Reform Bill," Feb. 1, 1996.

Partial List of Public Lectures and Speaking Engagements:
Colleges & Universities: American University (Center for Presidential and Congressional Studies), Amherst College, Ashland University (Robert E. Henderson Lecture); Augustana (Ill.) College (Commencement); Benedictine College (President's Sesquicentennial Speaker Series); Brown University (Janus Lecture); University of Chicago (Dept. of Political Science); Cleveland State, Colgate University (Constitution Day), University of Colorado (Benson Center); Cornell (Dept. of Political Science); Dartmouth College (Dept. of Government), Duke (Dept. of Political Science); Harvard University (Dept. of Government); Hillsdale College; Kalamazoo College; Kentucky Wesleyan (Constitution Day); University of Louisville (McConnell Center), Miami University-Oxford (Constitution Day), University of Michigan (Dept. of Political Science), Nichols College, University of North Carolina (School of Journalism), Northern Illinois University (Presidential Speaker Series), Oberlin College, Ohio State University (Economics Department), Princeton University (James Madison Program), Rose-Hulman College (Constitution Day); Yale University Political Union.

Law Schools: American, Brooklyn, Case Western Reserve (Sumner Canary Lecture), Catholic, Chapman, Connecticut, George Washington, Harvard (Traphagen Distinguished Alumnus), Chicago Kent, Marquette, New Hampshire, Northwestern, Notre Dame, NYU, Ohio State, Penn, St. Thomas, Toledo (Stranahan Lecture), UCLA, Vanderbilt, Virginia, West Virginia, Willamette, William & Mary, Wisconsin, Yale.

Law School ACS and Federalist Chapters: Akron, Arizona, Arizona St., Ave Maria, Baylor, Boston College, Buffalo, Cardozo, Case Western, Chicago, Cincinnati, Cleveland-Marshall, Columbia, Cumberland, Dayton, Drake, Duke, Florida International, Fordham, Georgetown, George Mason, Harvard, Iowa, Kansas, John Marshall (Ill.), Lewis & Clark, Loyola (Cal.), Louisville, Maine, Miami, Michigan, Minnesota, NYU, North Carolina, NYU, Notre Dame, Ohio State, Oregon, Pacific (McGeorge), Penn State, Pepperdine, Quinnipiac, Richmond, Rutgers (Camden), San Francisco, Santa Clara, Southern Illinois, SMU, Stanford, St. Louis, St. Thomas (Mn.), Vermont, Virginia, Washburn, Washington & Lee, Wm. Mitchell, Wisconsin, Texas, Texas A&M, Toledo, Tulane, Tulsa, Vanderbilt, Yale.

National Organizations and Conventions: AFL-CIO Leadership Conference, American Constitution Society, American Legislative Exchange Council, American League of Lobbyists, Assn. of Capitol Reporters & Editors, California Political Attorneys Assn., Federalist Society, National Assn. of Business PACs, National Assn. of Manufacturers, National Conference of State Legislatures, Public Affairs Council, Republican National Lawyers Assn., Society of Corporate Secretaries, U.S. Chamber of Commerce.

Think Tanks and Foundations: Aspen Institute, Blouin Leadership Summit, Brookings Institute, Cato Institute, Fund for American Studies, Goldwater Institute, Heritage Foundation, International Foundation for Electoral Systems, National Constitution Center, Reason Foundation, Urban League (Campaign Finance Task Force).

Partial List of Broadcast Appearances

ABC News
NBC News
PBS News Hour with Jim Lehrer
Bill Moyers Internight (MSNBC)
Early Today with Contessa Brewer (MSNBC)
Hardball (MSNBC)
Fox News w/ Britt Hume
O'Reilly Factor (Fox)
Dan Rather Reports
Hannity & Colmes (Fox)
Uncommon Knowledge (PBS)
Washington Journal (C-Span)
Closing Bell (CNBC)
C-Span *Book Forum*
National Public Radio *Morning Edition*
NPR *All Things Considered*
Wisconsin Public Radio
Minnesota Public Radio
California Public Radio
Velshi & Rule, (MSNBC)
Diane Rehm

Other network shows and dozens of appearances on local TV and radio in major markets.

F. Awards & Honors

Bradley Prize, The Lynde & Harry Bradley Foundation, 2010.
Honorary Doctorate in Humane Letters, Augustana College, May 2004
Traphagen Distinguished Alumnus, Harvard Law School, 2000
Mackinac Center for Public Policy, *Lives, Fortunes and Sacred Honor Award*, 2000.
Professor of the Year, Capital University Law School, 1995, 2000.
Honorary Member (first ever), Hispanic Republican Coalition of Central Ohio, 1999.
Simson Award for Outstanding Faculty Scholarship, Capital Univ. Law School, 1996.
Salvatori Fellow, The Heritage Foundation, 1994-95.
Lambe Fellow, Institute for Humane Studies, 1989-90.
Howard Prize (Outstanding Student in Political Science), Kalamazoo College, 1980.

G. Academic Service (not including home university service)

AALS Arc of Career Standing Committee, 2016-2019.
Executive Committee, AALS Section on Election Law, 2014-Present.

Executive Committee, AALS Section on Legislation and Law of the Political Process, 2013-14.
Editorial Advisory Board, *Election Law Journal*, 2002 – present.
Board of Advisors, *Harvard Journal of Law & Public Policy*, 2000- present.
Advisory Board, Institute for Politics, University of Minnesota Law School, 2007-2010
Referee and Peer Review for Election Law Journal; University of Chicago Press; Aspen Publishing; Eagleton Center at Rutgers University; Wolters-Kluwer.

H. University Service (Law School committees unless noted)

University Diversity, Equity & Inclusion Strategic Planning Committee, 2020-21.
University Faculty Executive Committee, 2019-21.
Representative to AALS House of Delegates, 2016-2017.
Admissions Committee, 2010-13, Chair, 2015-2021.
Innovation Committee, Chair, 2010-13.
Law School Special Compensation Committee, 2010-11.
Dean Search Committee, 2009-10; 2018-19.
University Administration, Budget & Planning Committee, 2009-10.
Sullivan Lecture Planning Committee, Chair, 2009-13, 2021-present
Carnegie Report on Legal Education Implementation Task Force, 2008-09.
Law School Planning Committee, 2006-08.
Academic Affairs Committee, 2005-07; Chair 2006-07.
Honor Code Committee, 1993-2000, 2009-2011; 2015-2018; Chair 1994-2000.
Student-Faculty Relations Committee, 1995-2000.
Externships & Internships Committee, 1994-1997.
University Faculty Senate, Law School Representative 2006-07.
University Ethics and Professionalism Committee, 2005-2008.
University Traffic Committee, 1994-1997.
Various tenure and promotion committees.
Faculty Advisor, Federalist Society 2015-Present.
Faculty Advisor, Phi Alpha Delta Legal Fraternity, 1994-2000.
Faculty Advisor, Christian Legal Society, 1995-2000.
Faculty Advisor, Law School Republicans, 2022-present.

I. Significant Non-Legal Employment

VHA Consulting Services, Dallas, Texas
Senior Healthcare Consultant, 1986-87. Planned and developed integrated health care systems.

IBA Health & Life Assurance Co., Kalamazoo, Michigan
Assistant Vice President & Director of Marketing, 1983-1985. Responsible for planning, marketing, and government affairs.
United States Department of State, Washington, D.C., and Guayaquil, Ecuador
Foreign Service Officer; Vice Consul, U.S. Consulate General, Guayaquil, 1981-83. Post EEO Compliance officer. Treasurer for Employees Mutual Benefit Association.
Small Business Association of Michigan, Kalamazoo, Michigan
General Manager, 1980-81.
Director, Political & Legislative Affairs, 1980; Legislative Analyst, 1979-80.

J. Volunteer Community Service, Memberships & Affiliations

Government

Member, Ohio State Advisory Committee, U.S. Commission on Civil Rights, 2022-Present.
Appointed Member, Cherry Valley Planning Task Force, Village of Granville, OH, 2017.
Vice Chairman, Board of Zoning & Building Appeals, Village of Granville, OH, 2011-2016; Member 2009-10.

Legal & Professional

Observer, Uniform Law Commission, Election Law Study Committee, 2022-present.
Director, American Edge Project, 2019- present.
Founder & Chairman, Institute for Free Speech, 2005- present.
Chairman, Buckeye Institute for Public Policy Solutions, 2014-Present; Board of Trustees, 1996-2000; 2006-present; Board of Academic Advisors, 1994- 2000.
Chairman, 1851 Center for Constitutional Law, 2012-Present.
Board of Scholars, Mackinac Center for Public Policy, 1993-2000, 2005-2015.
Executive Committee, Federalist Society Free Speech and Election Law Practice Group, 1999-2000; 2005- present.
Senior Fellow, Goldwater Institute, Phoenix, AZ 2005- 2014.
Member, Advisory Committee to Standing Committee on Election Law, American Bar Association, 2001- 2005.
Ohio State Bar Association, 1990-2000; 2005-present.
Columbus Bar Association, 1990-94; 2005-present.
Columbus Legal Aid Society Referral Panel, 1992-1995.
American Immigration Lawyers Association, 1992-1995.

Other

Knights of Columbus, 2001-present; Advocate, St. Edwards Council, Granville, OH, 2008- 2013.

Granville Historical Society, Docent, 2009- 2012.
Police Athletic League of Columbus, Tutor for Inner-City Youth, 1991-94.

K. Personal

Married, two adult children.
Hobbies and interests include riding, tennis, curling, travel, history, dog training.
.

Ex. 7

SUPREME COURT NEW YORK COUNTY
TRIAL TERM PART 59

THE PEOPLE OF THE STATE OF NEW YORK	INDICTMENT # 1473-21
AGAINST	CHARGE SCHEME TO DEFRAUD, ET AL
THE TRUMP CORPORATION, TRUMP PAYROLL CORPORATION,	
Defendants	Virtual Proceedings

100 Centre Street
New York, New York 10013
October 21, 2022

B E F O R E:

HONORABLE: JUAN MERCHAN,
JUSTICE OF THE SUPREME COURT

APPEARANCES FOR THE PEOPLE:
ALVIN BRAGG, JR. DISTRICT ATTORNEY BY:
SUSAN HOFFINGER, ESQ. ADA
JOSHUA STEINGLASS, ESQ. ADA
GARY FISHMAN, ESQ. AAG.

FOR THE DEFENDANTS, THE TRUMP ORGANIZATIONS:
ALAN S. FUTERFAS, ESQ.
SUSAN NECHELES, ESQ.
MICHAEL VAN DER VEEN, ESQ.

(The following takes place via virtual proceedings).

THE COURT: All right, so, it is three o'clock on Friday. I know we are all eager to resolve this issue so we can all go home and start prepping for Monday.

First thing I want to take up is we continue to receive media inquires, as I'm sure you do, and you know, I don't want the media to think we are hiding or concealing anything. So, I rethought my position about yesterday's proceedings.

If there is an objection, I will not release them. But if there is no objection, I do not see any harm at this point in asking Randy to put a copy in the court file. Let me know if anybody objects.

MR. STEINGLASS: A copy of the transcript?

THE COURT: Of the transcript, yes. Second thing I would like to turn to before we deal with 2020 and the expert witness, it is kind of related.

I received an e-mail from Ms. Necheles at 2:24 which was an explanation of the 16 page exhibit that we discussed yesterday.

I then received a follow-up e-mail at 2:48 which contained seven exhibits, I believe those were People's exhibits.

In essence, I read some of it, Ms. Necheles, I was

not able to read all seven pages.

As you can imagine, I was really scrambling to try to be ready for this three o'clock meeting.

I did glance at the exhibits you provided at 2:48. The gist of it is, I take it your intent is to communicate that it is not all that complicated, and that you should be permitted to introduce it into evidence through your expert.

I imagine the People would like to be heard on that. So, go ahead, Mr. Steinglass, Ms. Hoffinger.

MR. STEINGLASS: Okay. Well, I guess I'm trying to think how to tailor what I was going to say towards that.

The bottom line is, it is too little too late. The exhibits we provided to them we provided on September 21st.

There have been some minor tweaks. Everytime we tweak it, we send it to them. But they were similar to, although not identical, to very similar exhibits we used in the grand jury, and I think what Ms. Necheles said in her e-mail, is that some of those exhibits -- in fact, their expert's exhibits are based on our grand jury exhibits which we are not even putting in at trial.

So, their exhibits are going to have to be re-jiggered to conform to the actual exhibits that are

coming in at trial which were prepared in-house by the FTI person we previously said we were not going to call unless the door was somehow opened.

So, the versions of the exhibits we got on Wednesday that Ms. Necheles attempted to introduce, are not the exhibits she intends to introduce.

She intends to introduce exhibits that are made from the exhibits she just sent around, which as I said, were initially provided on September 21st.

So, I think -- well, let me say first I think there is a threshold question here, and I think your Honor seems to be acknowledging that, which is the corporate 2020 issue I think very much informs our position on the expert testimony; because in addition to the procedural grounds which we are seeking preclusion, there is a fairly significant substantive ground we are seeking preclusion which is much more strengthened if your Honor determines, as we urge you to, that the corporate liability statute does not require this notion that we have to prove intent to benefit the company on the part of the high managerial agents.

If your Honor has resolved that issue, then I might be in a better position to say how that impacts where we think we are and what we think we should be doing going forward.

THE COURT: That makes sense.

So, I'm going to give you my decision.

First, I ask for your patience. I'll be flipping around with a number of different documents as I read this.

So first, the People in their memorandum of law dated September 30th request the Court make -- the Court issue a ruling clarifying that in order to establish corporate criminal liability under Penal Law Section 20 point 20, the People are not required to prove that the criminal actions of their high managerial agents conferred a financial benefit on the Trump Organization defendants.

The People need only prove that the defendant's high managerial agent engaged in criminal conduct while acting within the scope of his employment as part of the business of the corporation.

Defendants oppose that request for a clarifying ruling.

On the same date, the People also moved for an order to preclude the expert testimony of Robert Hoberman.

Now, the defense has specifically -- the Trump Payroll wants to have an expert testify as to four general categories; and this can be found in -- actually, it was a letter mailed by Ms. Necheles to the People on September 19th.

The four broad categories are one; Mr. Hoberman

will explain how, if the allegations in the indictment are all accepted as true, Mr. Weisselberg's conduct financially harmed the corporate defendants. An expert's report concerning his calculations will be produced as soon as it is prepared.

Two, Mr. Hoberman will explain the tax benefits to an employee for receiving certain compensation in the form of fringe benefits rather than salary, which will explain why a company that intends to follow the tax law and believes it is following the tax law, may decide to compensate employees in part with fringe benefits rather than just paying employees a straight salary.

Three, certain standards and practices applying to accountants, including one, an accountant's obligation not to sign or prepare a tax return unless he believes that the return is true, correct, and complete.

Two, an accountant's obligation to inform his or her corporate client of the rules governing tax liability and fringe benefits.

Three, an accountant's obligation to inform the owner of a corporation of illegal or fraud practices by employees about which the accountant has knowledge.

And the fourth category, Mr. Hoberman will explain certain records produced in discovery by Mazars, and how those records establish that Mazars was provided with and

examined records which showed that one, the Trump Corporation was providing cars, apartments, and other fringe benefits to certain employees.

And two, certain employees were receiving parts of their bonuses by 1099's.

Now, the actual charge which is in Penal Law section 2020 sub two, the relevant portion reads as follows: The law states that a corporation is guilty of an offense when the conduct consuming the offense is engaged in, authorized, solicited, requested, commanded, or recklessly tolerated by a high managerial agent acting within the scope of his or her employment and in behalf of the corporation.

As we all know the dispute, the issue here is what is meant by in behalf of the corporation.

I have already read what the People claim it means. I will now read what the defense claims it means. I'm reading from the sur reply, the defense's sur reply dated October 14th.

In behalf of is a separate and independent element from within the scope of his employment, and requires the People to prove that the high managerial agents were intended to benefit the corporation.

As we also discussed yesterday, there is a real dearth of authority on this subject.

Honestly, I wish I had the time to write on it, I think it is very interesting. I would like to write something on this if I could, but I can't.

The People offer numerous arguments in support of their position, and rely upon certain authorities; one of which is People V Highgate, which is 69 A.D third, 185.

Unfortunately, I did not find this decision to be all that instructive.

It didn't really explain how it got to its conclusion. But more importantly, I think in that case the Appellate Division Third Department was more concerned about policy issues. They were concerned because there was a public interest involved because the entity was a rehab facility, and with that came certain regulatory crimes. So I think it is not entirely on point.

The defense also relied on various authorities, including People V. Pymm, that is 188 A.D. Second, 560. And again, unfortunately, I didn't find that one all that helpful for various reasons; not the least of which is with all due respect to the Second Department, I believe they applied the wrong standard.

I think instead of in behalf of, they applied on behalf of, so that is not all that helpful.

Therefore, I have to decide how to apply this and I think what I'm left with is that I have to apply the

plain and ordinary meaning of the phrase in behalf of.

In order to do that, I will refer in part on Payroll, Trump Payroll Corporation's sur reply at page three, which reads; first, in behalf of as opposed to on behalf of means in the interest of or for the benefit of. The citation is made to Merriam Webster dot com.

Second, the conjunction and indicates that the clause before it within the scope of his employment is a different element from the clause following it on behalf of.

Since the exception is expressed in the conjunctive, both requirements must be met.

Third and most crucially, the clause in behalf of is read out of the statute by the People's approach under which any act undertaken within the scope of an agent's employment is necessarily in behalf of the corporation.

In essence, the People's argument lead to Penal Law section 2020, two B as a one element crime and would make the statute redundant, and render the language in behalf of clause redundant; as the statute would have no different meaning if the in behalf of language were excised from it as the People would suggest.

I also am relying upon the treatise written by Demarcus who I hold in very, very high regard; and on page two he writes in substance while the phrase acting within

the scope of his employment and in behalf of the corporation has not been the subject of significant additional interpretation.

The requirement that the conduct fall within the scope of employment logically mandates that it relate at least broadly to the agent's authorized corporate responsibilities, and the requirement that the conduct be in behalf of the corporation should limit corporate liability to the conduct engaged in for the corporation's benefit and not mere personal gain.

Likewise, I'm going to refer to the treatise written by Wayne Lafkve (phon). Perhaps I should know who that is, but I don't.

It is a treatise, and it is not necessary that the criminal acts actually benefit the corporation. But an agent's acts are not in behalf of the corporation if undertaken solely to advance the agent's own interests or interests of parties other than the corporate employees.

So, I think Lafkve substantially agrees with Demarcus, and I tend to agree with both of them; that there is a second element to this definition.

So, I'm going to deny the People's request that the Court clarify the standard for corporate criminal liability.

The Court will read the charge as written, but

finds, as I think we all agree, that it is not necessary for the People to establish that the criminal acts actually benefitted the corporation.

Thus, the People can, and must introduce evidence that tends to support the argument that the agent's acts were not undertaken solely for their own interests.

Once the People do that, the defendant may introduce evidence through expert testimony to rebut that element of the offense as follows:

Turning back to the four categories again. Category number one, bear with me as I read it again. Mr. Hoberman will explain if the allegations in the indictment are all accepted as true, Mr. Weisselberg's conduct financially harmed the corporate defendants.

(At this point Teams froze and a pause was taken).

THE COURT: I think we have to go way back.

MS. NECHELES: You talked about it first and then you started talking about --

THE COURT: So if you got that, we are fine. I was saying I will not permit the expert to use or rely on that 16 page exhibit. And the reason is simple. It is a complicated document which is presumably being offered to assist the finders of the fact, and I do not think it will.

Simply put, the 16 page document required Ms. Necheles send me a seven page explanation how to read that

document.

I think that kind of says it all. If we need seven pages to be explained to a Judge about how to understand an exhibit, I don't think it is helpful to the jury.

What I will permit your expert to do, Ms. Necheles, is to simply prepare a very simple chart; one that says this is how much was paid in taxes. As a result of the actions of Mr. McConney and Mr. Weisselberg, this is how much would have been paid had they not engaged in this conduct, and I think that will be fair to the People.

I think that will allow the People to prepare properly. I don't know they would have been able to prepare properly for the other exhibit given we are starting trial on Monday and they will all be working on preparing for trial.

So, that is as to category number one.

As to category number two, Mr. Hoberman will explain the tax benefits to an employee for receiving certain compensation in the form of fringe benefits rather than salary, which will explain why a company that intends to follow the tax law and believes it is following the tax law, may decide to compensate employees in part with fringe benefits rather than just paying employees in straight salary. That is fine. Your expert can testify to that.

As to the third one, certain standards and practices applied to accountants, including an accountant's obligation not to sign or prepare a tax return unless he believes the tax return is true, correct, and complete. An accountant's obligation to inform his or her corporate client of the rules governing tax liability and fringe benefits. An accountant's obligation to inform the owner of a corporation of illegal or fraudulent practices by employees about which the accountant has knowledge.

I will not permit the expert to go into that category.

I don't believe it is relevant, and if there were to be even the slightest bit of relevance, I think it is significantly outweighed by any confusion it would cause the jury. So, I will not permit category number three.

Finally, category number four. Mr. Hoberman will explain certain records produced in discovery by Mazars, and how those records establish that Mazars was provided with and examined records which showed that one, the Trump Corporation was providing cars, apartments, and other fringe benefits to certain employees. And two, certain employees were receiving part of their bonuses by 1099.

Again, I don't think that is probative at all. Even if there is the slightest bit of relevance to it, I believe that it is far outweighed by any confusion it will

cause the jury.

I'm directing your expert not testify to the fourth one.

So, the first category is fine given the limitations I already indicated.

Number two is fine.

Category three and four are not.

The People's request for a clarifying instruction is denied. And I think that wraps everything up. I'm sure there is something I have not touch upon.

MR. STEINGLASS: I just want to make sure the record is clear Judge. First of all, because I'm not sure that Randy got this part.

I think what you said about bullet number one was the expert can testify that the actions did not benefit the corporation, but not as to what any one, any of the high managerial agents intended, is that correct?

THE COURT: That is correct, I did say that. He's an expert. He was not there. He did not speak to them. He cannot read their minds. He does not know what their intent was.

He can speak as to the cold hard facts, but he cannot slide himself into their thought process; that is right.

MR. STEINGLASS: You are muted, Susan.

MS. HOFFINGER: I apologize. One clarifying question.

When you say you deny the People's original request for an instruction. In our first motion to preclude the instruction that we were asking for, it seems is exactly what you agreed to, which is we do not actually have to prove a financial benefit to the defendants.

THE COURT: Well, you know, when we start using the language financial benefit, that is where it gets tricky.

I don't know that -- yes, the bottom line is the People do not have to prove that the end result was a financial benefit. But, the People will need to prove that the actors were not motivated solely by their own personal interests.

MS. HOFFINGER: Understood, thank you.

MR. STEINGLASS: Understand Judge. And truthfully, I really do appreciate your efforts to come to a reasonable determination here.

I have a problem though. I don't know how to address it. That is you just told Ms. Necheles that she has to prepare a new chart, a very simple chart; but we are not going to see that chart.

I don't see how we can go forward because we need our expert, we need to hire an expert to look at this new

chart and to say why it is misleading.

Part of the probably here, Judge, I am not trying to go down a whole rabbit hole, but testimony about crunching numbers and whether treating it the way that the Trump Payroll Corporation did, their financial benefit is a little bit misleading, because it is not just a question of whether X is more than Y, it is our theory and Allen Weisselberg has allocuted to the fact by paying -- excuse me, the executives in fringe benefits, the defendants were able to avoid giving them raises, which is very much a benefit.

And so, if -- it seems to me that expert testimony on the point of whether or not crunching the numbers yields a positive or negative, kind of misses that huge chunk.

And whether defense agrees with that or not, whether you agree with that argument or not, I think we are entitled to have an expert kind of break down their numbers in saying how it is not accounting for this other, you know, less tangible benefit, but a very important benefit nonetheless.

THE COURT: I agree that is important. First, I failed to indicate by when they should have the chart.

Since the numbers are already all there and it is literally just a matter of preparing the chart, I would ask it be turned over to the People by the close of business

Monday.

(At this point Teams froze and resumed).

THE COURT: Hopefully that will give your expert at least a chance to review it with the benefit of the seven page explanation. At least be able to work with it.

Your concern is not lost on me, Mr. Steinglass. It is the People's position that there are benefits that are not captured solely by some sort of a profit or a loss.

I can see why you would say that, and I can see why that is important. But, the defense needs to be permitted to put on a defense, and that is what I'm trying to do; find a way to allow the defense to put on their defense.

Of course, being fair to everyone, there is nothing preventing you on your direct case through your expert from bringing all that out; whether it be the accounting experts or other witnesses, you can bring all that out through them, and likewise, nothing to prevent you from cross examining the defense expert on that.

It is not uncommon for experts to have different points of view and for experts to ignore certain relevant facts that benefit them.

So, I understand what you are saying. I don't think you are going down a rabbit hole. It is important, but that is the best way I can reconcile it.

MR. STEINGLASS: I completely understand. I'm not arguing with you at all. I'm just trying to explain the position we are in.

We don't have an expert. We had said we don't intend to call an expert. We did not think an expert was needed. That was part of the reason we wanted a ruling on the motion to preclude.

I'm not faulting anybody. Here we are the day before without an expert. So, you know, I feel we need a little bit of time; at the very least have an expert comment on this chart, the revised chart Ms. Necheles will provide so we can kind of frame a strategy before we are under way.

I don't want to delay this trial. I want to start on Monday. I was hoping you would say this is all precluded because of delayed disclosure.

I understand you are not doing that, that is fine. I would like nothing more to start. I don't know we could in good conscience -- I guess we can start, you know, and jeopardy does not attach until this last juror is sworn, and we can see where we are at.

It seems like it could be a bit of a waste of time if we are unable to find somebody that could respond to this particular point.

And I propose some other solutions, potential

sanctions that might make that a little bit easier. For example, if the expert testimony is narrowed this way that you suggested, we may be able to call, and I don't know that we can, we may be able to call somebody from FTI in rebuttal, but that raises a host of problems.

First of all, we would absolutely need the defense to be precluded from inquiring about how much money has been spent on them. That is the least sanction that seems appropriate under the circumstances, because now we are scrambling to find an expert as a result of their 11th hour disclosure, so they should not be able to have their cake and eat it too. Cross examine our expert on the fact their company was paid X dollars. So, that is number one.

Number two, there is a statutory requirement that is in 245 20 that says that if the defense serves notice of an expert, then the People have 30 days to serve notice of a rebuttal expert, and the defense has another 30 days to consider that before going to trial.

So, I assume Ms. Necheles and Mr. Van Der Veen are willing to waive that, because otherwise we come up with a rebuttal expert that we provide notice of a week from now, and they demand 30 days they are statutorily entitled to.

That is another, there is a lot going on here Judge, and I think the real issue is that we need the opportunity to run all this by an expert; an expert we do

not have because we didn't know until Wednesday about these charts.

THE COURT: Is there a reason why the FTI couldn't, without getting into whether they could testify at trial or not, they are very familiar with the case and testified in the grand jury, they looked at all these numbers. Is there a reason why they could not review this and offer you expert guidance and an opinion on it?

MR. STEINGLASS: I think that is absolutely something that is very possible, and I think that is a great suggestion.

That is the first prong I'm concerned about, which is starting this case can be calmed by that by our ability to do that. But, that is not necessarily -- he's not necessarily able to be the trial witness for many, many reasons.

And so, we still may be in a position of needing to retain a rebuttal witness to explain why the fact that these numbers crunched a particular way does not mean that there was no benefit to the corporation. That is really the issue.

THE COURT: Remind me, who prepared all the charts and all the exhibits; the financial ones, for example, the ones that Ms. Necheles just sent me, who prepared those?

MR. STEINGLASS: Those were prepared by an analyst

is in our office, a gentleman named Wei Man Tang, who is a witness who will testify at trial for the People, but not as an expert, he's basically an analyst.

He crunched the numbers, put them on to a cart. He will not explain, he's not going to make any -- offer any expert opinion.

MS. NECHELES: Your Honor, if I can add. Those charts were originally prepared in the grand jury by FTI, you know.

The FTI testified in the grand jury, they testified they had prepared those charts, and they think now we tweaked some.

I know FTI has looked at our reports and have been advising the People because they called one of our prior experts to ask. They called their firm today and asked could they come in to assist the People on this.

So, I know the People are getting assistance from FTI on an ongoing basis. So, they do understand. They have one of the world's experts working with them.

The reports are not that complicated. I understand them to be saying they do not want us to cross examine FTI about how much FTI had been paid.

I understand that, and they would prefer to have a different expert. But, I think your Honor's questions are spot on to the example they do have FTI there assisting.

MR. VAN DER VEEN: Judge, if I may, on that point a little. If FTI made charts they want to introduce into evidence, the confrontation clause would require them to put the chart maker up.

MR. STEINGLASS: We are not introducing their charts. That is why we had Mr. Tang create new charts.

We are not introducing the FTI charts. Those are grand jury exhibits.

THE COURT: All right. So, I think you can, certainly if you want, you can use FTI to assist you in reviewing the charts sent by Ms. Necheles, and to help prepare your witnesses, and more importantly, to help prepare you for the cross examination of Ms. Necheles's expert.

I think that we are sufficiently far out enough that if you were to choose to call FTI as a rebuttal witness, if you felt like you needed to, I'm prepared to rule that the defense will be precluded from going into the expense that the D.A's Office incurred in retaining FTI.

That is only fair since this situation was created by the delay of the defense attorney with the chart. I'm prepared to do that. It sounds like Ms. Necheles agrees that is reasonable.

MS. NECHELES: Your Honor, I would ask we serve, like be given time to think about it and respond. It does

not seem fair for them to be able to cross our expert and there not their on the amount we paid ours, and make it sound like their expert had no cost.

We may say that all the grand jury stuff should be excluded on FTI. I understand that. Then there is a cost that FTI -- it should not look like it is only our expert charging, but their expert is free, or our expert was paid so much but their's was paid nothing.

That would seem to be wrong and it would not allow us to show bias of their expert while our expert would look biased, that would seem wrong.

I'm looking for a solution and compromise. I understand that and I am not seeking to stand in the way. I just don't think that a total -- saying there should be no cross of their expert on the amount but there be cross of our expert on the amount we paid would seem wrong.

MR. BRENNAN: In this new spirit we are operating under, we could stipulate that experts are paid for their time by the defense and by the People, and it takes the issue out of the box.

THE COURT: That is something to think about if the parties would agree to that.

MR. STEINGLASS: I was going to suggest we could limit the amount of money that is being spent on cross examination to the amount of money being spent on FTI to

anything spent from now to anything spent going forward.

So, basically spent in connection with this trial consultation as opposed to anything that happened before.

MR. VAN DER VEEN: Judge, if I may. That may be more appropriate. I would be hesitant to take out an area of bias or motivation of a witness to testify as a sanction, but certainly cost forward is a hundred percent on us, and I agree with Mr. Steinglass that forward would be appropriate.

MS. NECHELES: I think what Mr. Steinglass said is things in connections with this trial. I think FTI continued to work.

If it is in connection with the trial, it would seem I agree with that in connection with the trial. Anything in connection with the trial would be ample to show their bias. But, I just don't know other stuff they have done in connection with the trial.

THE COURT: I'm not going to split hairs. I think Mr. Van Der Veen's suggestion is reasonable.

The additional expenses being incurred again as a result of what transpired the last few days. The People will be cross examining your witness as to compensation. You'll be cross examining their witness as to compensation, an expense they incurred as a result of this. I think that is fair and reasonable.

MR. STEINGLASS: Thank you. What about the 30 day statutory requirement? Is Ms. Necheles and Mr. Van Der Veen waiving that?

MS. NECHELES: I assume that we are just talking about the rebuttal witness will just be testifying about this in response to this on the issue that our witness will be testifying on.

MR. STEINGLASS: I think the proper subject of rebuttal is only to rebut what your expert says.

MS. NECHELES: We don't need 30 days to respond to it.

MR. VAN DER VEEN: I have no objection to waiving the 30 days at all.

We will try our doggone best to get something in as quickly as possible.

THE COURT: I don't see any prejudice to anyone. FTI has been in this from day one. Defense has known about FTI since day one.

The numbers that FTI will be working on are the ones that have been prepared by defense expert. There is no prejudice to defense whatsoever. So yes, I appreciate that.

MR. STEINGLASS: I just want to be clear. I'm not suggesting the only potential rebuttal witness would be FTI.

I'm saying we may decide we want a different witness as a rebuttal witness. That is what we will look into, I guess starting -- we already started as Ms. Necheles is aware, we started as soon as this happened yesterday. So, we are trying to find someone.

It is obviously a high profile case. It is not like dialing one eight hundred expert. So, we are trying to do that.

I think we would prefer not to use FTI. If that is our only option, that's our only option given the late date, but I do not want to leave anyone with the impression that is our only option. I hope you are not saying that.

THE COURT: I'm not saying that, you may decide after crossing the expert you don't need a rebuttal witness.

MR. STEINGLASS: That is true.

THE COURT: You are not precluded. Thank you for clarifying that.

Anything else from anyone?

(At this point the video froze again and a recess is taken).

THE COURT: Just a couple of things. We looked into whether the attorneys can remain on the floor during the lunch recess. In my experience you could, but I guess because this is on the 15th floor, which is also where the

central jury room is, they say no.

We do have a library on the 17th floor you are welcome to use if you like.

I also asked what time can the attorney get in. I was told 9:15. I wish it was earlier, but that is what I'm told.

Also, we did look at the courtroom again. It looks like everything is ready to go. The projector is up, the defense has two tables as requested. Prosecution has two tables, albeit one is a little smaller than the other, but --

MR. STEINGLASS: Diplomatically put.

THE COURT: I never heard, you know, this courthouse has hosted a lot of high profile cases.

I never heard of defense or the prosecution getting two tables. We are pretty lucky.

I think James sent an e-mail a short time ago asking that you please review your filings, because the press says there are certain filings missing from the court file.

So I know you are busy, but take a quick look at that and see if there is anything that needs to be put in the court file. That both includes the People and the defense. These are actual filings, not letters or things like that.

MS. HOFFINGER: Judge, how would we check what is filed. We filed everything. How would we -- send someone over to the actual court file and see what is there?

THE COURT: No, we have been told what is actually in the file.

MR. STEINGLASS: Judge, I think your secretary sent us a list. Maybe Ms. Hoffinger had not seen it yet.

THE COURT: I don't know why, if you filed everything electronically, it would not be in there.

Take another look, and if defense does the same I would appreciate it.

Okay. Again, if there is anything we need to address, let me know.

Although we are meeting 9:15, 9:30 Monday; I do not expect we will get a panel before 10:30 or 11 the earliest. They have to report and be given the general instructions and watch the video and that takes time. If there are things --

MR. STEINGLASS: What time would you like us there?

THE COURT: You know, if there are issues for us to address, certainly 9:30. I'll be available as of 9:30.

In fact, I'll be downstairs at 9:30. But, if you do not feel like there is anything you need to go over and rather be in your office working on things, we can call you

when the panel is ready.

MS. NECHELES: To be clear, this Wednesday we will not be, you'll have calendar this Wednesday as well?

THE COURT: Yes.

MS. NECHELES: Thank you.

THE COURT: All right, next time I see you will be in the courtroom. Have a good weekend. Put a copy of this in the file and yesterday's as well.

I, Randy Berkowitz, a senior court reporter in and for the State of New York, do hereby certify that the foregoing transcript is true and accurate to the best of my knowledge, skill and ability.

Randy Berkowitz,
Senior Court Reporter

Ex. 8

UNITED STATES DISTRICT COURT

Southern District of New York

UNITED STATES OF AMERICA
v.
MICHAEL COHEN

JUDGMENT IN A CRIMINAL CASE

Case Number: 18-Cr-602 (WHP)

USM Number: 86067-054

Guy Petrillo, Esq.
Defendant's Attorney

THE DEFENDANT:

☑ pleaded guilty to count(s) 1, 2, 3, 4, 5, 6, 7 & 8

☐ pleaded nolo contendere to count(s) which was accepted by the court.

☐ was found guilty on count(s) after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
26 USC 7201	Evasion of Personal Income Tax	12/31/2016	1-5
18 USC 1014	Making False Statements to a Bank	4/30/2016	6

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)

☐ Count(s) ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

12/12/2018
Date of Imposition of Judgment

Signature of Judge

William H Pauley III U.S. Senior District Judge
Name and Title of Judge

12/12/2018
Date

DEFENDANT: MICHAEL COHEN
CASE NUMBER: 18-Cr-602 (WHP)

ADDITIONAL COUNTS OF CONVICTION

Title & Section	Nature of Offense	Offense Ended	Count
52 USC 30118(A)	Causing an Unlawful Corporate Contribution	10/30/2016	7
52 USC 30109(d)(1)(A)			
52 USC 30116(a)(1)(A)	Excessive Campaign Contribution	10/30/2016	8
52 USC 30116(a)(7),			
52 USC 30109(d)(1)(A)			

DEFENDANT: MICHAEL COHEN
CASE NUMBER: 18-Cr-602 (WHP)

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:

36 months incarceration to be served concurrently to the sentence imposed on docket 18-Cr-850 (WHP).

☑ The court makes the following recommendations to the Bureau of Prisons:

The Court recommends the defendant be designated to Otisville.

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☑ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☑ before 2 p.m. on 3/6/2019.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: MICHAEL COHEN
CASE NUMBER: 18-Cr-602 (WHP)

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of :

3 years on each count to be served concurrently to each other and to the term of supervision imposed on docket 18-Cr-850 (WHP).

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
   - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☐ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____ Date _____

DEFENDANT: MICHAEL COHEN
CASE NUMBER: 18-Cr-602 (WHP)

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall provide the probation officer with access to any requested financial information.

DEFENDANT: MICHAEL COHEN
CASE NUMBER: 18-Cr-602 (WHP)

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	JVTA Assessment*	Fine	Restitution
TOTALS	$ 800.00	$	$ 50,000.00	$ 1,393,858.00

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss**	Restitution Ordered	Priority or Percentage
IRS-RACS	$1,393,858.00	$1,393,858.00	
Attn: Mail Stop 6261, Restitution			
333 W Pershing Avenue			
Kansas City, MO 64108			
TOTALS	$ 1,393,858.00	$ 1,393,858.00	

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.
** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: MICHAEL COHEN
CASE NUMBER: 18-Cr-602 (WHP)

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A ☑ Lump sum payment of $ 800.00 due immediately, balance due

☐ not later than _____, or
☑ in accordance with ☐ C, ☐ D, ☐ E, or ☑ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after the date of this judgment; or

D ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☑ Special instructions regarding the payment of criminal monetary penalties:

The restitution and fine must be paid in monthly installments equal to 10% of the gross monthly income over a period of supervision to commence 30 days after the release from custody.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers *(including defendant number)*, Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☑ The defendant shall forfeit the defendant's interest in the following property to the United States:
As per Forfeiture Order.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVTA assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

Ex. 9

ORIGINAL

Judge Pauley

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

UNITED STATES OF AMERICA :

- v. - :

MICHAEL COHEN, :

Defendant. :

- x

INFORMATION

18 Cr. __ (WHP)

18 CRIM 602

The United States Attorney charges:

Background

The Defendant

1. From in or about 2007 through in or about January 2017, MICHAEL COHEN, the defendant, was an attorney and employee of a Manhattan-based real estate company (the "Company"). COHEN held the title of "Executive Vice President" and "Special Counsel" to the owner of the Company ("Individual-1").

2. In or about January 2017, COHEN left the Company and began holding himself out as the "personal attorney" to Individual-1, who at that point had become the President of the United States.

3. In addition to working for and earning income from the Company, at all times relevant to this Information, MICHAEL COHEN, the defendant, owned taxi medallions in New York City and Chicago worth millions of dollars. COHEN owned these taxi

medallions as investments and leased the medallions to operators who paid COHEN a portion of the operating income.

Tax Evasion Scheme

4. Between tax years 2012 and 2016, MICHAEL COHEN, the defendant, engaged in a scheme to evade income taxes by failing to report more than $4 million in income, resulting in the avoidance of taxes of more than $1.4 million due to the IRS.

5. In or about late 2013, MICHAEL COHEN, the defendant, retained an accountant ("Accountant-1") for the purpose of handling COHEN's personal and entity tax returns. After being retained, Accountant-1 filed amended 2011 and 2012 Form 1040 tax returns for COHEN with the Internal Revenue Service ("IRS"). For tax years 2013 through 2016, Accountant-1 prepared individual returns for COHEN and returns for COHEN's medallion and real estate entities. To confirm he had reviewed and approved these returns, both COHEN and his wife signed a Form 8879 for tax years 2013 through 2016, and filed manually for tax year 2012. Each Form 8879 contained an affirmation, "[u]nder penalties of perjury," that COHEN "examined a copy of [his] electronic individual Income tax return and accompanying schedules and statements" and "to the best of [his] knowledge and belief, it is true, correct, and accurately lists all amounts and sources of income [COHEN] received during the tax year."

6. Between 2012 and the end of 2016, MICHAEL COHEN, the defendant, earned more than $2.4 million in income from a series of personal loans made by COHEN to a taxi operator to whom COHEN leased certain of his Chicago taxi medallions ("Taxi Operator-1"), none of which he disclosed to the IRS.

7. Specifically, in March 2012, pursuant to a loan agreement, Taxi Operator-1 solicited a $2 million personal loan from MICHAEL COHEN, the defendant, so that Taxi Operator-1 could cover various personal and taxi business-related expenses. On April 28, 2014, Taxi Operator-1 and his wife entered into a new loan agreement with COHEN, increasing the $2 million loan, the principal of which remained unpaid, to $5 million. Finally, in 2015, Taxi Operator-1 and his wife entered into an amended loan agreement with COHEN, increasing the principal amount of the loan to $6 million. Each loan was interest-only, carried an interest rate in excess of 12 percent, and was collateralized by either Chicago taxi medallions or a property in Florida owned by Taxi Operator-1 and his family. COHEN funded the majority of his loans to Taxi Operator-1 from a line of credit with an interest rate of less than 5 percent.

8. For each of the loans, at the direction of MICHAEL COHEN, the defendant, Taxi Operator-1 made the interest payment checks out to COHEN personally, and the checks were deposited in

COHEN's personal bank account, or an account in the name of his wife. COHEN did not provide records that would have allowed Accountant-1 to reasonably identify this income.

9. Pursuant to the terms of the loan agreements between MICHAEL COHEN, the defendant, and Taxi Operator-1, COHEN received more than $2.4 million in interest payments from Taxi Operator-1 between 2012 and 2016, and reported none of that income to the IRS. COHEN intended to hide the income from the IRS in order to evade taxes.

10. As a further part of the scheme to evade paying income taxes, MICHAEL COHEN, the defendant, also concealed more than $1.3 million in income he received from another taxi operator to whom COHEN leased certain of his New York medallions ("Taxi Operator-2"). This income took two forms. First, COHEN did not report the substantial majority of a bonus payment of at least $870,000, which was made by Taxi Operator-2 in or about 2012 to induce COHEN to allow Taxi Operator-2 to operate certain of COHEN's medallions. Second, between 2012 and 2016, COHEN concealed substantial additional taxable income he received from Taxi Operator-2's operation of certain of COHEN's taxi medallions.

11. To ensure the concealment of this additional operator income, MICHAEL COHEN, the defendant, arranged to receive a portion of the medallion income personally, as opposed to having

the income paid to COHEN's medallion entities. Paying the medallion entities would have alerted Accountant-1, who prepared the returns for those entities, to the existence of the income such that it would have been included on COHEN's tax returns.

12. As a further part of his scheme to evade taxes, MICHAEL COHEN, the defendant, also hid the following additional sources of income from Accountant-1 and the IRS:

a. A $100,000 payment received, in 2014, for brokering the sale of a piece of property in a private aviation community in Ocala, Florida.

b. Approximately $30,000 in profit made, in 2015, for brokering the sale of a Birkin Bag, a highly coveted French handbag that retails for between $11,900 to $300,000, depending on the type of leather or animal skin used.

c. More than $200,000 in consulting income earned in 2016 from an assisted living company purportedly for COHEN's "consulting" on real estate and other projects.

COUNTS 1 THROUGH 5
(Evasion of Assessment of Income Tax Liability)

The United States Attorney further charges:

13. The allegations contained in paragraphs 1 through 12 are repeated and realleged as though fully set forth herein.

14. From on or about January 1 of each of the calendar years set forth below, through the present, in the Southern District of New York and elsewhere, MICHAEL COHEN, the defendant, who during each calendar year set forth below was married, did willfully and knowingly attempt to evade and defeat a substantial part of the income tax due and owing by COHEN and his wife to the United States by various means, including by committing and causing to be committed the following affirmative acts, among others: preparing and causing to be prepared, signing and causing to be signed, and filing and causing to be filed with the IRS, in or about the month of April of each said calendar year, a U.S. Individual Income Tax Return, Form 1040, for each of the calendar years set forth below, on behalf of himself and his wife, which falsely omitted substantial amounts of income in or about the years listed below.

Count	Tax Year	Unreported Income	Tax Loss
1	2012	$893,750	$192,188
2	2013	$499,400	$299,229
3	2014	$670,667	$232,883
4	2015	$969,616	$375,390
5	2016	$1,100,618	$395,615

(Title 26, United States Code, Section 7201.)

False Statements to a Bank

The United States Attorney further charges:

15. In or about 2010, MICHAEL COHEN, the defendant, through companies he controlled, executed a $6.4 million promissory note with a bank ("Bank-1"), collateralized by COHEN's taxi medallions and personally guaranteed by COHEN. A year later, in 2011, COHEN personally obtained a $6 million line of credit from Bank-1 (the "Line of Credit"), also collateralized by his taxi medallions. By February 2013, COHEN had increased the Line of Credit from $6 million to $14 million, thereby increasing COHEN's personal medallion liabilities at Bank-1 to more than $20 million.

16. In or about November 2014, MICHAEL COHEN, the defendant, refinanced his medallion debt at Bank-1 with another bank ("Bank-2"), which shared the debt with a New York-based credit union (the "Credit Union"). The transaction was structured as a package of individual loans to the entities that owned COHEN's New York medallions, personally guaranteed by COHEN. Following the loans' closing, COHEN's medallion debt at Bank-1 was paid off with funds from Bank-2 and the Credit Union, and the Line of Credit with Bank-1 was closed.

17. In or about 2013, in connection with a successful application for a mortgage from another Bank ("Bank-3") for his

Park Avenue condominium (the "2013 Application"), MICHAEL COHEN, the defendant, disclosed only the $6.4 million medallion loan he had with Bank-1 at the time. As noted above, COHEN also had a larger, $14 million Line of Credit with Bank-1 secured by his medallions, which COHEN did not disclose in the 2013 Application.

18. In or around February 2015, MICHAEL COHEN, the defendant, in an attempt to secure financing from Bank-3 to purchase a summer home for approximately $8.5 million, again concealed the $14 million Line of Credit. Specifically, in connection with this proposed transaction, Bank-3 obtained a 2014 personal financial statement COHEN had provided to Bank-2 while refinancing his medallion debt. Bank-3 questioned COHEN about the $14 million Line of Credit reflected on that personal financial statement, because COHEN had omitted that debt from the 2013 Application to Bank-3. COHEN misled Bank-3, stating, in substance, that the $14 million Line of Credit was undrawn and that he would close it. In truth and in fact, COHEN had effectively *overdrawn* the Line of Credit, having swapped it out for a fully drawn, larger group of loans shared by Bank-2 and the Credit Union upon refinancing his medallion debt. When Bank-3 informed COHEN that it would only provide financing if COHEN closed the Line of Credit, COHEN lied again, misleadingly stating in an

email: "The medallion line was closed in the middle of November 2014."

19. In or around December 2015, MICHAEL COHEN, the defendant, contacted Bank-3 to apply for a home equity line of credit ("HELOC"). In so doing, COHEN again significantly understated his medallion debt.

20. Specifically, in the HELOC application, MICHAEL COHEN, the defendant, together with his wife, represented a positive net worth of more than $40 million, again omitting the $14 million in medallion debt with Bank-2 and the Credit Union. Because COHEN had previously confirmed in writing to Bank-3 that the $14 million Line of Credit had been closed, Bank-3 had no reason to question COHEN about the omission of this liability on the HELOC application. In addition, in seeking the HELOC, COHEN substantially and materially understated his monthly expenses to Bank-3 by omitting at least $70,000 in monthly interest payments due to Bank-2 on the true amount of his medallion debt.

21. In or about April 2016, Bank-3 approved MICHAEL COHEN, the defendant, for a $500,000 HELOC. By fraudulently concealing truthful information about his financial condition, MICHAEL COHEN, the defendant, obtained a HELOC that Bank-3 would otherwise not have approved.

COUNT 6
(False Statements to a Bank)

The United States Attorney further charges:

22. The allegations contained in paragraphs 1 through 3 and 15 through 21 are repeated and realleged as though fully set forth herein.

23. From at least in or about December 2015 through at least in or about April 2016, in the Southern District of New York and elsewhere, MICHAEL COHEN, the defendant, willfully and knowingly made false statements for the purpose of influencing the action of a financial institution, as defined in Title 18, United States Code, Section 20, upon an application, advance, discount, purchase, purchase agreement, repurchase agreement, commitment, loan, or insurance agreement or application for insurance or a guarantee, or any change or extension of any of the same, by renewal, deferment of action or otherwise, or the acceptance, release, or substitution of security therefore, to wit, in connection with an application for a home equity line of credit, COHEN made false statements to Bank-3 about his true financial condition, including about debts for which he was personally liable, and about his cash flow.

(Title 18, United States Code, Sections 1014 and 2.)

Campaign Finance Violations

The United States Attorney further charges:

24. The Federal Election Campaign Act of 1971, as amended, Title 52, United States Code, Section 30101, *et seq.*, (the "Election Act"), regulates the influence of money on politics. At all times relevant to the Information, the Election Act set forth the following limitations, prohibitions, and reporting requirements, which were applicable to MICHAEL COHEN, the defendant, Individual-1, and his campaign:

a. Individual contributions to any presidential candidate, including expenditures coordinated with a candidate or his political committee, were limited to $2,700 per election, and presidential candidates and their committees were prohibited from accepting contributions from individuals in excess of this limit.

b. Corporations were prohibited from making contributions directly to presidential candidates, including expenditures coordinated with candidates or their committees, and candidates were prohibited from accepting corporate contributions.

25. On or about June 16, 2015, Individual-1 began his presidential campaign. While MICHAEL COHEN, the defendant, continued to work at the Company and did not have a formal title with the campaign, he had a campaign email address and, at various times, advised the campaign, including on matters of interest to

the press, and made televised and media appearances on behalf of the campaign.

26. At all times relevant to this Information, Corporation-1 was a media company that owns, among other things, a popular tabloid magazine ("Magazine-1").

27. In or about August 2015, the Chairman and Chief Executive of Corporation-1 ("Chairman-1"), in coordination with MICHAEL COHEN, the defendant, and one or more members of the campaign, offered to help deal with negative stories about Individual-1's relationships with women by, among other things, assisting the campaign in identifying such stories so they could be purchased and their publication avoided. Chairman-1 agreed to keep COHEN apprised of any such negative stories.

28. Consistent with the agreement described above, Corporation-1 advised MICHAEL COHEN, the defendant, of negative stories during the course of the campaign, and COHEN, with the assistance of Corporation-1, was able to arrange for the purchase of two stories so as to suppress them and prevent them from influencing the election.

29. *First*, in or about June 2016, a model and actress ("Woman-1") began attempting to sell her story of her alleged extramarital affair with Individual-1 that had taken place in 2006 and 2007, knowing the story would be of considerable value because

of the election. Woman-1 retained an attorney ("Attorney-1"), who in turn contacted the editor-in-chief of Magazine-1 ("Editor-1"), and offered to sell Woman-1's story to Magazine-1. Chairman-1 and Editor-1 informed MICHAEL COHEN, the defendant, of the story. At COHEN's urging and subject to COHEN's promise that Corporation-1 would be reimbursed, Editor-1 ultimately began negotiating for the purchase of the story.

30. On or about August 5, 2016, Corporation-1 entered into an agreement with Woman-1 to acquire her "limited life rights" to the story of her relationship with "any then-married man," in exchange for $150,000 and a commitment to feature her on two magazine covers and publish over one hundred magazine articles authored by her. Despite the cover and article features to the agreement, its principal purpose, as understood by those involved, including MICHAEL COHEN, the defendant, was to suppress Woman-1's story so as to prevent it from influencing the election.

31. Between in or about late August 2016 and September 2016, MICHAEL COHEN, the defendant, agreed with Chairman-1 to assign the rights to the non-disclosure portion of Corporation-1's agreement with Woman-1 to COHEN for $125,000. COHEN incorporated a shell entity called "Resolution Consultants LLC" for use in the transaction. Both Chairman-1 and COHEN ultimately signed the agreement, and a consultant for Corporation-1, using

his own shell entity, provided COHEN with an invoice for the payment of $125,000. However, in or about early October 2016, after the assignment agreement was signed but before COHEN had paid the $125,000, Chairman-1 contacted COHEN and told him, in substance, that the deal was off and that COHEN should tear up the assignment agreement. COHEN did not tear up the agreement, which was later found during a judicially authorized search of his office.

32. *Second*, on or about October 8, 2016, an agent for an adult film actress ("Woman-2") informed Editor-1 that Woman-2 was willing to make public statements and confirm on the record her alleged past affair with Individual-1. Chairman-1 and Editor-1 then contacted MICHAEL COHEN, the defendant, and put him in touch with Attorney-1, who was also representing Woman-2. Over the course of the next few days, COHEN negotiated a $130,000 agreement with Attorney-1 to himself purchase Woman-2's silence, and received a signed confidential settlement agreement and a separate side letter agreement from Attorney-1.

33. MICHAEL COHEN, the defendant, did not immediately execute the agreement, nor did he pay Woman-2. On the evening of October 25, 2016, with no deal with Woman-2 finalized, Attorney-1 told Editor-1 that Woman-2 was close to completing a deal with another outlet to make her story public. Editor-1, in turn, texted

MICHAEL COHEN, the defendant, that "[w]e have to coordinate something on the matter [Attorney-1 is] calling you about or it could look awfully bad for everyone." Chairman-1 and Editor-1 then called COHEN through an encrypted telephone application. COHEN agreed to make the payment, and then called Attorney-1 to finalize the deal.

34. The next day, on October 26, 2016, MICHAEL COHEN, the defendant, emailed an incorporating service to obtain the corporate formation documents for another shell corporation, Essential Consultants LLC, which COHEN had incorporated a few days prior. Later that afternoon, COHEN drew down $131,000 from the fraudulently obtained HELOC, discussed above in paragraphs 19 through 21, and requested that it be deposited into a bank account COHEN had just opened in the name of Essential Consultants. The next morning, on October 27, 2016, COHEN went to Bank-3 and wired approximately $130,000 from Essential Consultants to Attorney-1. On the bank form to complete the wire, COHEN falsely indicated that the "purpose of wire being sent" was "retainer." On or about November 1, 2016, COHEN received from Attorney-1 copies of the final, signed confidential settlement agreement and side letter agreement.

35. MICHAEL COHEN, the defendant, caused and made the payments described herein in order to influence the 2016

presidential election. In so doing, he coordinated with one or more members of the campaign, including through meetings and phone calls, about the fact, nature, and timing of the payments.

36. As a result of the payments solicited and made by MICHAEL COHEN, the defendant, neither Woman-1 nor Woman-2 spoke to the press prior to the election.

37. In or about January 2017, MICHAEL COHEN, the defendant, in seeking reimbursement for election-related expenses, presented executives of the Company with a copy of a bank statement from the Essential Consultants bank account, which reflected the $130,000 payment COHEN had made to the bank account of Attorney-1 in order to keep Woman-2 silent in advance of the election, plus a $35 wire fee, adding, in handwriting, an additional "$50,000." The $50,000 represented a claimed payment for "tech services," which in fact related to work COHEN had solicited from a technology company during and in connection with the campaign. COHEN added these amounts to a sum of $180,035. After receiving this document, executives of the Company "grossed up" for tax purposes COHEN's requested reimbursement of $180,000 to $360,000, and then added a bonus of $60,000 so that COHEN would be paid $420,000 in total. Executives of the Company also determined that the $420,000 would be paid to COHEN in monthly amounts of $35,000 over the course of

twelve months, and that COHEN should send invoices for these payments.

38. On or about February 14, 2017, MICHAEL COHEN, the defendant, sent an executive of the Company ("Executive-1") the first of his monthly invoices, requesting "[p]ursuant to [a] retainer agreement, . . . payment for services rendered for the months of January and February, 2017." The invoice listed $35,000 for each of those two months. Executive-1 forwarded the invoice to another executive of the Company ("Executive-2") the same day by email, and it was approved. Executive-1 forwarded that email to another employee at the Company, stating: "Please pay from the Trust. Post to legal expenses. Put 'retainer for the months of January and February 2017' in the description."

39. Throughout 2017, MICHAEL COHEN, the defendant, sent to one or more representatives of the Company monthly invoices, which stated, "Pursuant to the retainer agreement, kindly remit payment for services rendered for" the relevant month in 2017, and sought $35,000 per month. The Company accounted for these payments as legal expenses. In truth and in fact, there was no such retainer agreement, and the monthly invoices COHEN submitted were not in connection with any legal services he had provided in 2017.

40. During 2017, pursuant to the invoices described above, MICHAEL COHEN, the defendant, received monthly $35,000 reimbursement checks, totaling $420,000.

COUNT 7
(Causing an Unlawful Corporate Contribution)

The United States Attorney further charges:

41. The allegations contained in paragraphs 1 through 3, and 24 through 40 are repeated and realleged as though fully set forth herein.

42. From in or about June 2016, up to and including in or about October 2016, in the Southern District of New York and elsewhere, MICHAEL COHEN, the defendant, knowingly and willfully caused a corporation to make a contribution and expenditure, aggregating $25,000 and more during the 2016 calendar year, to the campaign of a candidate for President of the United States, to wit, COHEN caused Corporation-1 to make and advance a $150,000 payment to Woman-1, including through the promise of reimbursement, so as to ensure that Woman-1 did not publicize damaging allegations before the 2016 presidential election and thereby influence that election.

(Title 52, United States Code, Sections 30118(a) and 30109(d)(1)(A), and Title 18, United States Code, Section 2(b).)

COUNT 8
(Excessive Campaign Contribution)

The United States Attorney further charges:

43. The allegations contained in paragraphs 1 through 3, and 24 through 40 are repeated and realleged as though fully set forth herein.

44. On or about October 27, 2016, in the Southern District of New York and elsewhere, MICHAEL COHEN, the defendant, knowingly and willfully made and caused to be made a contribution to Individual-1, a candidate for Federal office, and his authorized political committee in excess of the limits of the Election Act, which aggregated $25,000 and more in calendar year 2016, and did so by making and causing to be made an expenditure, in cooperation, consultation, and concert with, and at the request and suggestion of one or more members of the campaign, to wit, COHEN made a $130,000 payment to Woman-2 to ensure that she did not publicize damaging allegations before the 2016 presidential election and thereby influence that election.

(Title 52, United States Code, Sections 30116(a)(1)(A), 30116(a)(7), and 30109(d)(1)(A), and Title 18, United States Code, Section 2(b).)

FORFEITURE ALLEGATION

45. As a result of committing the offense alleged in Count Six of this Information, MICHAEL COHEN, the defendant, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 982(a)(2)(A), any property constituting or derived from proceeds obtained directly or indirectly as a result of the commission of said offense.

Substitute Assets Provision

46. If any of the above-described forfeitable property, as a result of any act or omission of the defendant:

a. cannot be located upon the exercise of due diligence;

b. has been transferred or sold to, or deposited with, a third person;

c. has been placed beyond the jurisdiction of the Court;

d. has been substantially diminished in value; or

e. has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p) and Title 28, United States Code,

Section 2461(c), to seek forfeiture of any other property of the defendant up to the value of the above forfeitable property.

(Title 18, United States Code, Section 982;
Title 21, United States Code, Section 853; and
Title 28, United States Code, Section 2461.)

ROBERT KHUZAMI
Acting United States Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v. -

MICHAEL COHEN,

Defendant.

INFORMATION

18 Cr. __ (WHP)

ROBERT KHUZAMI
Acting United States Attorney

Ex. 10

I8LQCOHp

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA

v. 18 CR 602 (WHP)
Plea

MICHAEL COHEN

Defendant

----------x

New York, N.Y.
August 21, 2018
4:15 p.m.

Before:

HON. WILLIAM H. PAULEY III
District Judge

APPEARANCES

GEOFFREY S. BERMAN
United States Attorney for the
Southern District of New York
RACHEL MAIMIN
ANDREA GRISWOLD
THOMAS McKAY
NICHOLAS ROOS
Assistant United States Attorneys

PETRILLO KLEIN & BOXER LLP
Attorneys for Defendant
GUY PETRILLO
AMY LESTER
PHILIP PILMAR

-Also Present-

BARD HUBBARD, FBI
GIOVANNI LEPORE, IRS
KIRSTEN SCHILL, FBI
RYAN CAREY, FBI
JOE DVORE, FBI

(Case called)

DEPUTY CLERK: United States of America v. Michael Cohen.

Would counsel for the government gave their appearance.

MS. GRISWOLD: Good afternoon, your Honor.

Andrea Griswold, Rachel Maimin, Thomas McKay and Nicolas Roos for government.

We're joined at counsel table by Special Agent Bard Hubbard with the FBI and Special Agent Giovanni Lepore with the IRS.

THE COURT: Good afternoon.

DEPUTY CLERK: Would counsel for defense give their appearance.

MR. PETRILLO: Yes. Good afternoon, your Honor.

For Mr. Cohen, Guy Petrillo and Amy Lester, Petrillo Klein and Boxer.

THE COURT: Good afternoon to you.

I note the presence of the defendant, Mr. Cohen at counsel table.

Ms. Griswold, what is the status of this matter?

MS. GRISWOLD: Your Honor, we are here today for a waiver of indictment. We would like to file an information and I believe the defendant needs to be presented, arraigned on that information, have the waiver of indictment, and then

intends to enter a guilty plea to the counts in the information.

THE COURT: Very well.

Let's begin then with an initial appearance.

Mr. Cohen, I am District Judge William Pauley. The purpose of this proceeding, sir, is to inform you of certain rights that you have, to inform you of the charges against you, and to consider whether counsel should be appointed for you, and to decide under what conditions you should be released.

First, you have the right to remain silent. You are not required to make any statements. Even if you have made any statements to the authorities, you need not make any further statements. Anything that you do say can be used against you.

You have the right to be released either conditionally or unconditionally pending trial unless I find that there are no conditions that would reasonably assure your presence in court and the safety of the community.

You have the right, sir, to be represented by counsel during all court proceedings, including this one, and during all questioning by authorities. If you cannot afford an attorney, I will appoint one to represent you.

Now, the government has offered here an information in this case. Have you seen that information, Mr. Cohen?

THE DEFENDANT: Yes, your Honor.

THE COURT: And have you read it?

THE DEFENDANT: I have, sir.

THE COURT: Have you discussed it with your attorney, Mr. Petrillo?

THE DEFENDANT: I have, sir.

THE COURT: Do you waive my reading the information here in open court word for word?

THE DEFENDANT: Yes, your Honor.

THE COURT: How do you plead to the charges in the information that are lodged against you?

THE DEFENDANT: Not guilty, sir.

THE COURT: Very well.

Mr. Petrillo, I'm informed that the defendant has an application. What is that application?

MR. PETRILLO: Correct, your Honor. With the Court's permission, Mr. Cohen would move to withdraw his plea of not guilty and to enter a plea of guilty to the eight count information that's been handed up to the Court, and there is a plea agreement, which I believe the government has the original copy of.

THE COURT: All right. The record should reflect that a plea agreement is being handed up to me for my inspection. And Mr. Petrillo, prior to commencement of this proceeding, did you review with your client an advice of rights form?

MR. PETRILLO: I did, your Honor.

THE COURT: And did he sign it in your presence?

MR. PETRILLO: He did, your Honor.

THE COURT: And did you sign it as his attorney?

MR. PETRILLO: I did, your Honor.

THE COURT: The record should reflect that an advice of rights form has been marked as Court Exhibit 1 and is being handed to me for inspection.

So, at this time, I am going to direct my deputy to administer the oath to Mr. Cohen.

(Defendant sworn)

THE COURT: Mr. Cohen, do you understand, sir, that you are now under oath, and that if you answer any of my questions falsely, your false or untrue answers may later be used against you in another prosecution for perjury or making a false statement?

THE DEFENDANT: I do, your Honor.

THE COURT: Very well. For the record, what is your full name?

THE DEFENDANT: Michael Dean Cohen.

THE COURT: And at this time, Mr. Cohen, you may be seated, and I'd ask that you pull the microphone close to you.

THE DEFENDANT: Thank you, your Honor.

Mr. Cohen, how old are you, sir?

THE DEFENDANT: In four days, I'll be 52.

THE COURT: How far did you go in school?

THE DEFENDANT: Law.

THE COURT: Are you able to read, write, speak and understand English?

THE DEFENDANT: Yes, your Honor.

THE COURT: Are you now or have you recently been under the care of a doctor or a psychiatrist?

THE DEFENDANT: No, your Honor.

THE COURT: Have you ever been treated or hospitalized for any mental illness or any type of addiction, including drug or alcohol addiction?

THE DEFENDANT: No, sir.

THE COURT: In the past 24 hours, Mr. Cohen, have you taken any drugs, medicine or pills or have you consumed any alcohol?

THE DEFENDANT: Yes, your Honor.

THE COURT: What have you taken or consumed, sir?

THE DEFENDANT: Last night at dinner I had a glass of Glenlivet 12 on the rocks.

THE COURT: All right. Is it your custom to do that, sir?

THE DEFENDANT: No, your Honor.

THE COURT: All right. Have you had anything since that time?

THE DEFENDANT: No, your Honor.

THE COURT: Is your mind clear today?

THE DEFENDANT: Yes, your Honor.

THE COURT: Are you feeling all right today?

THE DEFENDANT: Yes, sir.

THE COURT: Are you represented by counsel here today?

THE DEFENDANT: I am.

THE COURT: Who are your attorneys?

THE DEFENDANT: Guy Petrillo and Amy Lester.

THE COURT: And, Mr. Petrillo, do you have any doubt as to your client's competence to plead at this time?

MR. PETRILLO: I do not, your Honor.

THE COURT: Now, Mr. Cohen, your attorney has informed me that you wish to enter a plea of guilty. Do you wish to enter a plea of guilty?

THE DEFENDANT: Yes, sir.

THE COURT: Have you had a full opportunity to discuss your case with your attorney and to discuss the consequences of entering a plea of guilty?

THE DEFENDANT: Yes, your Honor.

THE COURT: Are you satisfied with your attorneys, Mr. Petrillo and Ms. Lester, in their representation of you in this matter?

THE DEFENDANT: Very much, sir.

THE COURT: On the basis of Mr. Cohen's responses to my questions and my observations of his demeanor here in my courtroom this afternoon, I find that he is fully competent to enter an informed plea at this time.

Now, before I accept any plea from you, Mr. Cohen, I'm going to ask you certain questions. My questions are intended to satisfy me that you wish to plead guilty because you are guilty, and that you fully understand the consequences of your plea.

I am going to describe to you certain rights that you have under the Constitution and laws of the United States, which rights you will be giving up if you enter a plea of guilty.

Please listen carefully, sir. If you do not understand something I am saying or describing, then stop me, and either I or your attorneys will explain it to you more fully. Do you understand this?

THE DEFENDANT: I do, your Honor.

THE COURT: Under the Constitution and laws of the United States, you have a right to a speedy and public trial by a jury on the charges against you which are contained in the information. Do you understand that?

THE DEFENDANT: I do, sir.

THE COURT: And if there were a trial, you would be presumed innocent, and the government would be required to prove you guilty by competent evidence and beyond a reasonable doubt. You would not have to prove that you were innocent at a trial. Do you understand that?

THE DEFENDANT: I do, your Honor.

THE COURT: If there were a jury -- excuse me -- if there were a trial, a jury composed of 12 people selected from this district would have to agree unanimously that you were guilty. Do you understand that?

THE DEFENDANT: I do, your Honor.

THE COURT: If there were a trial, you would have the right to be represented by an attorney; and if you could not afford one, an attorney would be provided to you free of cost. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: If there were a trial, sir, you would have the right to see and hear all of the witnesses against you, and your attorney could cross-examine them. You would have the right to have your attorney object to the government's evidence and offer evidence on your behalf if you so desired, and you would have the right to have subpoenas issued or other compulsory process used to compel witnesses to testify in your defense. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: If there were a trial, Mr. Cohen, you would have the right to testify if you wanted to, but no one could force you to testify if you did not want to. Further, no inference or suggestion of guilt could be drawn if you chose not to testify at a trial. Do you understand that?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you understand, sir, that by entering a plea of guilty today, you are giving up each and every one of the rights that I've described, that you are waiving those rights, and that you will have no trial?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand that you can change your mind right now and refuse to enter a plea of guilty?

THE DEFENDANT: Yes, sir.

THE COURT: You do not have to enter this plea if you do not want to for any reason whatsoever. Do you understand this fully, Mr. Cohen?

THE DEFENDANT: Yes, your Honor.

THE COURT: Now, Mr. Cohen, have you received a copy of the information?

THE DEFENDANT: Yes, sir.

THE COURT: And have you read it?

THE DEFENDANT: I have, sir.

THE COURT: Did your attorney discuss the information with you?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you waive my reading the information word for word here in open court?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you understand that Counts One through Five of the information charges you with evasion of personal

income tax for the calendar years 2012, 2013, 2014, 2015 and 2016 respectively in violation of Title 26 of the United States Code, Section 7201. Do you understand that?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you understand, sir, that Count Six of the information charges you with making false statements to a financial institution in connection with a credit decision from at least in or about February 2015 up to and including in or about April 2016 in violation of Title 18 of the United States Code, Section 1014. Do you understand that?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you understand, sir, that Count Seven of the information charges you with willfully causing an unlawful corporate contribution from at least in or about June 2016 up to and including in or about October 2016 in violation of Title 52 of the United States Code, Sections 30118(a) and 30109(d)(1)(A) and Title 18 of the United States Code, Section 2(b). Do you understand that, sir?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you understand that Count Eight of the information charges you with making an excessive campaign contribution on or about October 27, 2016 in violation of Title 52 of the United States Code, Sections 30116(a)(1)(A), 30116(a)(7) and 30109(d)(1)(A) and Title 18 of the United States Code, Section 2(b). Do you understand that?

THE DEFENDANT: Yes, your Honor.

THE COURT: Now, do you understand, sir, that you have a constitutional right to be charged by an indictment rather than by an information?

THE DEFENDANT: I do, sir.

THE COURT: An indictment would be from a grand jury and not like the information here, simply a charge by the prosecutor. Do you understand, sir, that you have waived the right to be charged by an indictment, and that you have consented to being charged by an information of the government?

THE DEFENDANT: I understand, sir.

THE COURT: And do you waive this right voluntarily and knowingly?

THE DEFENDANT: I do, your Honor.

THE COURT: Do you understand that if you did not plead guilty, the government would be required to prove each and every part or element of the charges in the information beyond a reasonable doubt at trial?

THE DEFENDANT: Yes, sir.

THE COURT: Ms. Griswold, for the benefit of the Court and the defendant, would you describe the essential elements of the crimes charged in this information?

MS. GRISWOLD: Yes, your Honor.

Beginning with Counts One through Five, the tax evasion counts, the elements are as follows:

First, the existence of a substantial tax debt;

Second, willfulness of non-payment, meaning failure to report was voluntary and intentional;

And, third, an affirmative act by the defendant performed with intent to evade or defeat the calculation or payment of the tax.

With respect to Count Six, the false statements to a bank, there are four elements:

First, that the defendant made a false statement to a lending institution;

Second, that the lending institution had its deposits federally insured;

Third, that the defendant knew that the statements he made were false;

Fourth, that the defendant made these statements for the purpose of influencing in any way the action of that lending institution such as to influence a loan application.

With respect to Count Seven, causing an unlawful corporate contribution, there are five elements:

First, a corporation made a contribution or expenditure in excess of $25,000;

Second, that the contribution or expenditure was made directly to or in coordination with a candidate or campaign for federal office;

Third, that the contribution or expenditure was made

for the purpose of influencing an election;

Fourth, that the defendant caused the corporation to make the contribution or expenditure by taking some action without which the crime would not have occurred;

And, finally, that the defendant acted knowingly and willfully.

With respect to Count Eight, making an excessive campaign contribution, there are four elements:

First, an individual made a contribution or expenditure in excess of $25,000 to a candidate or campaign;

Second, that the contribution was made directly or the expenditure was made in cooperation, consultation or concert with, or at the request or suggestion of a candidate or campaign;

Third, it was made for the purpose of influencing election;

And, fourth, it was done knowingly and willfully.

The government would also need to prove that venue was proper in the Southern District of New York for all counts.

THE COURT: Thank you, Ms. Griswold.

Mr. Cohen, have you listened carefully to Assistant United States Griswold as she has described the essential elements of each of the crimes charged against you?

THE DEFENDANT: I have, your Honor.

THE COURT: And do you understand that if you did not

plead guilty, the government would be required to prove each and every part of those elements by competent evidence beyond a reasonable doubt at trial in order to convict you?

THE DEFENDANT: Yes, sir.

THE COURT: Now, do you understand, sir, that the maximum possible penalty for the charges in Counts One through Five of evasion of personal income tax is a maximum term of five years of imprisonment, followed by a maximum term of three years of supervised release, together with a maximum fine of $100,000 or twice the gross pecuniary gain derived from the offense or twice the gross pecuniary loss to persons other than yourself resulting from the offense, and a $100 mandatory special assessment. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Mr. Cohen, supervised release means that you will be subject to monitoring when you're released from prison, the monitoring to be under terms and conditions which could lead to reimprisonment without a jury trial for all or part of the term of supervised release without credit for time previously served on post release supervision if you violate the terms and conditions of supervised release. Do you understand that?

THE DEFENDANT: I do, sir.

THE COURT: Do you understand, sir, that the maximum possible penalty for the crime charged in Count Six of making

false statements to a financial institution is a maximum term of 30 years of imprisonment, followed by a maximum term of five years of supervised release, together with a maximum fine of $1 million, and a $100 mandatory special assessment. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand, sir, that the maximum possible penalty for the crime charged in Count Seven of causing an unlawful corporate contribution carries a maximum term of five years of imprisonment, together with a maximum term of three years of supervised release, a maximum fine of $250,000 or twice the gross pecuniary gain derived from the offense or twice the gross pecuniary loss to persons other than yourself resulting from the offense, and a $100 mandatory special assessment. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: And do you understand that the maximum possible penalty with respect to Count Eight charging you with making an excessive campaign contribution is a maximum term of five years of imprisonment, followed by a maximum term of three years of supervised release, together with a maximum fine of $250,000 or twice the gross pecuniary gain derived from the offense or twice the gross pecuniary loss to persons other than yourself resulting from the offense, and a $100 mandatory special assessment. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Do you also understand that as part of your sentence, that restitution will be required to any person injured as a result of your criminal conduct?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you also understand, sir, that under the terms of your plea agreement, you are agreeing to forfeit any property or benefit that you received in connection with the bank fraud charged in Count Six of the information?

MR. PETRILLO: Just for the record, your Honor, it's a false statement to a bank rather than a bank fraud. Thank you.

THE COURT: Do you understand, sir, that you are forfeiting any property derived as a result of that crime?

THE DEFENDANT: Yes, sir.

THE COURT: Now, you understand that you are pleading guilty to different counts in the information. Do you understand, sir, that you will be separately sentenced on each of those counts?

THE DEFENDANT: I do.

THE COURT: And do you further understand that I may order you to serve the sentences either concurrently or consecutively, meaning either together or one after the other?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you understand, sir, that if I decide to run the sentences consecutively, that your sentence could be

a maximum total of 65 years of imprisonment?

THE DEFENDANT: Yes, sir.

THE COURT: Now, do you understand that if I accept your guilty plea and adjudge you guilty, that adjudication may deprive you of valuable civil rights, such as the right to vote, the right to hold public office, the right to serve on a jury or the right to possess any kind of firearm?

THE DEFENDANT: Yes, sir.

THE COURT: Now, have you discussed with your attorney the Sentencing Guidelines?

THE DEFENDANT: Yes, your Honor.

THE COURT: And you understand, sir, that the Sentencing Guidelines are advisory. And do you understand that the Court will not be able to determine your sentence until after a presentence report is completed by the probation office, and you and the government have had a chance to challenge any of the facts reported by the probation office?

THE DEFENDANT: Yes, sir.

THE COURT: And do you understand that if you are sentenced to prison, parole has been abolished, and you will not be released any earlier on parole?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you understand that if your attorney or anyone else has attempted to estimate or predict what your sentence will be, that their estimate or prediction could be

wrong?

THE DEFENDANT: No estimate was given to me, your Honor.

THE COURT: No one, Mr. Cohen, not even your attorney or the government can, nor should, give you any assurance of what your sentence will be. Your sentence cannot be determined until after the probation office report is completed, and I've ruled on any challenges to the report and determined what sentence I believe is appropriate giving due regard to all the factors in Section 3553(a). Do you understand that, sir?

THE DEFENDANT: I do, your Honor.

THE COURT: Do you also fully understand that even if your sentence is different from what your attorney or anyone else told you it might be or if it is different from what you expect, that you will still be bound to your guilty plea, and you will not be allowed to withdraw your plea of guilty?

THE DEFENDANT: I do, your Honor.

THE COURT: Now, I have been given this plea agreement. Have you signed it?

THE DEFENDANT: I have, sir.

THE COURT: And did you read this agreement prior to signing it?

THE DEFENDANT: I did, your Honor.

THE COURT: Did you discuss it with your attorneys before you signed it?

THE DEFENDANT: I did that as well, sir.

THE COURT: Did you fully understand this agreement at the time that you signed it?

THE DEFENDANT: Yes, your Honor.

THE COURT: Does this agreement constitute your complete and total understanding of the entire agreement among the government, your attorneys and you?

THE DEFENDANT: Yes, sir.

THE COURT: Is everything about your plea and sentence contained in this agreement?

THE DEFENDANT: Yes, sir.

THE COURT: Has anything been left out?

THE DEFENDANT: Not that I'm aware of, sir.

THE COURT: Has anyone offered you any inducements or threatened you or forced you to plead guilty or to enter into the plea agreement?

THE DEFENDANT: No, your Honor.

THE COURT: Do you understand that under the terms of this plea agreement that you are giving up or waiving your right to appeal or otherwise challenge your sentence if this Court sentences you within or below the stipulated Sentencing Guideline range of 46 to 63 months of imprisonment. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand, sir, that I'm

completely free to disregard any position or recommendation by your attorney or by the government as to what your sentence should be, and that I have the ability to impose whatever sentence I believe is appropriate under the circumstances, and you will have no right to withdraw your plea?

THE DEFENDANT: I am, sir.

THE COURT: Mr. Petrillo, do you know of any valid defense that would prevail at trial or do you know of any reason why your client should not be permitted to plead guilty?

MR. PETRILLO: I do not, your Honor.

THE COURT: Mr. Petrillo, is there an adequate factual basis to support this plea of guilty?

MR. PETRILLO: There is, your Honor.

THE COURT: Ms. Griswold, is there an adequate factual basis to support this plea of guilty?

MS. GRISWOLD: There is, your Honor.

THE COURT: Mr. Cohen, would you please tell me what you did in connection with each of the crimes to which you are entering a plea of guilty.

THE DEFENDANT: Yes, your Honor. May I stand?

THE COURT: You may.

THE DEFENDANT: Thank you, sir.

Your Honor, I also just jotted down some notes so that I can keep my focus and address this Court in proper fashion.

As to Counts One through Five, in the tax years of

2012 to 2016, I evaded paying substantial taxes on certain income received that I knew was not reflected on the return and that I caused to be filed. The income intentionally not included was received by me in the Southern District of New York.

As to Count Six, on or about February of 2016, in order to be approved for a HELOC, a home equity line of credit, I reviewed an application form that did not accurately describe the full extent of my liabilities. I did not correct the inaccurate information on the form. I signed it knowing that it would be submitted to the bank as part of their HELOC application process. The bank was federally insured and is located in Manhattan.

As to Count Seven --

THE COURT: Did you know that those statements were false when you made them?

THE DEFENDANT: They were omitted, your Honor, as opposed to being false.

THE COURT: Well, you knew it was false; that it falsely depicted your financial condition, didn't you?

THE DEFENDANT: Yes, your Honor.

THE COURT: And you omitted those statements, did you not, for the purpose of influencing action by a financial institution?

THE DEFENDANT: Yes, your Honor.

THE COURT: All right. You may proceed.

THE DEFENDANT: Thank you, sir.

As to Count No. Seven, on or about the summer of 2016, in coordination with, and at the direction of, a candidate for federal office, I and the CEO of a media company at the request of the candidate worked together to keep an individual with information that would be harmful to the candidate and to the campaign from publicly disclosing this information. After a number of discussions, we eventually accomplished the goal by the media company entering into a contract with the individual under which she received compensation of $150,000. I participated in this conduct, which on my part took place in Manhattan, for the principal purpose of influencing the election.

Your Honor, as to Count No. Eight, on or about October of 2016, in coordination with, and at the direction of, the same candidate, I arranged to make a payment to a second individual with information that would be harmful to the candidate and to the campaign to keep the individual from disclosing the information. To accomplish this, I used a company that was under my control to make a payment in the sum of $130,000. The monies I advanced through my company were later repaid to me by the candidate. I participated in this conduct, which on my part took place in Manhattan, for the principal purpose of influencing the election.

THE COURT: Mr. Cohen, when you took all of these acts that you've described, did you know that what you were doing was wrong and illegal?

THE DEFENDANT: Yes, your Honor.

THE COURT: All right. You may be seated for the moment.

THE DEFENDANT: Thank you, sir.

THE COURT: Would the government please summarize its evidence against the defendant.

MS. GRISWOLD: Yes, your Honor.

I will go first with the evidence as to the tax evasion charged in Counts One through Five.

As the defendant allocuted, we would prove at trial that between the tax years 2012 and 2016, Mr. Cohen knowingly and willfully failed to report more than $4 million on his personal income tax returns for the purpose of evading taxes. We would prove this through the following categories of evidence:

Mr. Cohen's personal income tax returns for 2012 through 2016 on which he declared under the penalty of perjury that the amount of income he disclosed was accurate, testimony from IRS agents and employees, testimony and documentary evidence, including emails and text messages from individuals who paid income to Mr. Cohen, and testimony of individuals involved in the preparation of Mr. Cohen's taxes, and email

communications between those individuals and Mr. Cohen.

With respect to our evidence on Count Six, as the defendant allocuted, we would prove at trial that in connection with an application for a home equity line of credit, the defendant made false statements to a bank about his true financial condition, including about debts for which he was personally liable and about his cash flow.

We would prove this through the following categories of evidence:

Bank records, including the home equity line of credit application that Mr. Cohen signed and submitted to the bank, as well as other financial information that Mr. Cohen provided to the bank about his liabilities or lack thereof, testimony from certain bank employees, and email communications between Mr. Cohen and the bank.

With respect to Counts Seven and Eight, as the defendant allocuted, and as detailed in the information filed today, the government would prove that the defendant caused an illegal corporate contribution of $150,000 to be made in coordination with a candidate or campaign for federal office, and also that Mr. Cohen made an excessive contribution of $130,000 in coordination with the campaign or candidate for purposes of influencing the election.

The proof on these counts at trial would establish that these payments were made in order to ensure that each

recipient of the payments did not publicize their stories of alleged affairs with the candidate. This evidence would include:

Records obtained from an April 9, 2018 series of search warrants on Mr. Cohen's premises, including hard copy documents, seized electronic devices, and audio recordings made by Mr. Cohen.

We would also offer text messages, messages sent over encrypted applications, phone records, and emails.

We would also submit various records produced to us via subpoena, including records from the corporation referenced in the information as Corporation One and records from the media company also referenced in the information.

Finally, we would offer testimony of witnesses, including witnesses involved in the transactions in question who communicated with the defendant.

THE COURT: Thank you, Ms. Griswold.

Mr. Cohen, if you would stand at this time.

Mr. Cohen, how do you now plead to the charge in Count One of evasion of personal income tax for the calendar year 2012? Guilty or not guilty.

THE DEFENDANT: Guilty, your Honor.

THE COURT: And how do you plead to the charge in Count Two of the information of evasion of personal income tax for the year 2013? Guilty or not guilty.

THE DEFENDANT: Guilty, your Honor.

THE COURT: How do you plead to the charge in Count Three of evasion of personal income tax for the year 2014? Guilty or not guilty.

THE DEFENDANT: Guilty, your Honor.

THE COURT: How do you plead to the charge in Count Four of evasion of personal income tax for the calendar year 2015? Guilty or not guilty.

THE DEFENDANT: Guilty, your Honor.

THE COURT: How do you plead to the charge in Count Five of evasion of personal income tax for the calendar year 2016? Guilty or not guilty.

THE DEFENDANT: Guilty, your Honor.

THE COURT: How do you plead to the charge in Count Six of the information of making false statements to a financial institution in connection with a credit decision? Guilty or not guilty.

THE DEFENDANT: Guilty, your Honor.

THE COURT: How do you plead to the charge in Count Seven of the information of willfully causing an unlawful corporate contribution? Guilty or not guilty.

THE DEFENDANT: Guilty, your Honor.

THE COURT: And, finally, how do you plead to the charge in Count Eight of the information of making an excessive campaign contribution? Guilty or not guilty.

THE DEFENDANT: Guilty, your Honor.

THE COURT: Mr. Cohen, are you pleading guilty to each of these counts because you are guilty?

THE DEFENDANT: Yes, your Honor.

THE COURT: Are you pleading guilty voluntarily and of your own free will?

THE DEFENDANT: Yes, sir.

THE COURT: Mr. Petrillo, do you wish me to make any further inquiries of your client?

MR. PETRILLO: No, your Honor. Thank you.

THE COURT: Ms. Griswold, does the government wish me to make any further inquiries of the defendant?

MS. GRISWOLD: No, your Honor.

THE COURT: All right. Mr. Cohen, because you acknowledge that you are guilty as charged in the information, and because I find you know your rights and are waiving them knowingly and voluntarily, and because I find your plea is entered knowingly and voluntarily and is supported by an independent basis in fact containing each of the essential elements of the crimes, I accept your guilty plea and adjudge you guilty of the eight offenses to which you have just pleaded as charged in the information.

You may be seated.

THE DEFENDANT: Thank you, sir.

THE COURT: Now, the U.S. Probation Office will next

prepare a presentence report to assist me in sentencing you. You will be interviewed by the probation office. It is important that the information you give the probation officer be truthful and accurate because the report is important in my decision as to what your sentence will be.

You and your attorneys have a right and will have an opportunity to examine the report, challenge or comment upon it, and to speak on your behalf before sentencing.

I am going to set this matter down for sentencing on December 12 at 11:00 a.m.

Now, what is the bail status of the defendant?

MS. GRISWOLD: Bail needs to be set, your Honor, and we have a proposed joint package for your consideration.

THE COURT: All right. That package was presented, but why don't you put it forth on the record.

MS. GRISWOLD: Certainly, your Honor.

A 500,000 personal recognizance bond cosigned by two financially responsible individuals -- I'm sorry, your Honor -- cosigned by the defendant's wife and a second person who will be interviewed by the U.S. Attorney's Office and qualified as a financially responsible person;

The defendant is to be released today on his own signature with the other two signatures within one week, which would be August 28;

The defendant is to surrender any and all firearms and

ammunition within 24 hours to law enforcement;

Travel restricted to the Southern and Eastern Districts of New York, the Northern District of Illinois, the Southern District of Florida, and Washington D.C., surrender of the defendant's passport to his counsel and no new applications for travel documents.

THE COURT: All right. Is that the proposed package, Mr. Petrillo?

MR. PETRILLO: May I have a moment, your Honor?

THE COURT: Yes.

(Counsel confer)

MR. PETRILLO: Nothing else, your Honor. Thank you.

THE COURT: I will note in the submission that was sent to me shortly before the proceeding, there was a provision for pretrial to approve travel without Court approval to other locations. I am not going to authorize that. Any additional requests for travel are to be submitted to me for my approval before the defendant is to travel anywhere other than the places provided for on the record here.

MR. PETRILLO: Understood, your Honor.

THE COURT: All right. So I've set the date for sentencing.

I'm going to direct the government to promptly prepare a prosecution case summary for submission to the probation department.

And, Mr. Petrillo, I'm going to direct you to arrange promptly for an interview with the probation department so that the preparation of the presentence report can proceed.

Now, Mr. Cohen, have you listened closely to these conditions that have been fixed for your release?

THE DEFENDANT: I have, your Honor.

THE COURT: All right. And do you understand, sir, that those conditions are going to apply now until the time that you are sentenced, and that any violation of those conditions could be severe?

THE DEFENDANT: Yes, sir.

THE COURT: And do you understand that if you fail to appear for sentencing on the day and time set, that that could subject you to prosecution for another crime separate and apart from the crimes that are charged here?

THE DEFENDANT: I'm aware, your Honor.

THE COURT: Very well. Then I fully expect to see you on December 12.

THE DEFENDANT: Of course, sir.

THE COURT: Anything further from the government?

MS. GRISWOLD: No, your Honor. Thank you.

THE COURT: Anything further from the defense?

MR. PETRILLO: No, your Honor. Thank you.

THE COURT: Very well. This matter is concluded. Have a good afternoon. (Adjourned)

Ex. 11

Donald J. Trump

@realDonaldTrump · Feb 1

The FEC dropped the "Horseface" Daniels Fake Witch Hunt, because they found no evidence of problems. So had everyone else dropped it, except for the highly politicized Manhattan D.A.'s Office, even though they've dropped it four times already, because there is no case and the statute of limitations also stops them cold from going forward.

334 3.01k 12.1k

DANYDJT00138681

Donald J. Trump
@realDonaldTrump · 11h

I did absolutely nothing wrong, I never had an affair with Stormy Daniels, nor would I have wanted to have an affair with Stormy Daniels.

This is a political Witch-Hunt, trying to take down the leading candidate, by far, in the Republican Party while at the same time also leading all Democrats in the polls, including Joe Biden and Kamala Harris. Congress and numerous Democrat District Attorneys, Attorneys General, and the Department of Injustice itself, which has unprecedentedly placed top DOJ prosecutors into the Manhattan District Attorney's office in order to "get Trump", have found that I did nothing wrong. Now, they fall back on the old, and rebuked case which has been rejected by every prosecutor's office that has looked at this Stormy "Horseface" Daniels matter, where I relied on counsel in order to resolve this Extortion of me, which took place a long time ago. Since then, I have won lawsuits for hundreds of thousands of dollars against Stormy Daniels, and every prosecutors' office which has looked at it, which are numerous, including the FEC, have turned this fake case down. This is not a state case, it is a federal case, and they have all passed on it.

Even the previous Manhattan DA, Cyrus Vance, did not bring charges because I am guilty of nothing except for the fact that I am beating all Republicans and Democrats badly in the Presidential race. It is Russia, Russia, Russia, Ukraine, Ukraine, Ukraine, the no-collusion Mueller hoax, and other targeted, false attacks against me all over again. It is a weaponization of our judicial system, and I am shocked that this Soros backed radical left prosecutor, who has allowed violent crime to reach new heights in New York without any retribution, would consider bringing such a charge against the undisputed front runner of one of the two major political parties in our Nation.

Additionally, the statute of limitations has long since ended and, in fact, Radical Left media, one and a half years ago, did a "countdown" on the statute of limitations, which was allowed to expire. The countdown ended and until now nobody had any idea that it was allowed to continue in this one lowball office. It is appalling that the Democrats would play this card and only means that they are certain that they cannot win at the voter booth, so they have to go to a tool that has never been used in such a way in our country, weaponized law enforcement.

I, and hundreds of millions of the American People who are backing me, because they want to see our nation be great again, are the victims of this corrupt, depraved, and weaponized justice system where Hunter Biden and his father can commit horrendous crimes, all accurately documented on his laptop, and nothing happens, but with me, after looking at 11 million pages worth of documents, they go after a hoax that every other prosecutor's office which reviewed it, and even the U.S. Congress, has long ago dropped. I will not be deterred, I will always continue to be your voice, and I will keep fighting for our great Country.

Donald J. Trump for President 2024, Inc

3.21k ReTruths **10.2k** Likes Mar 09, 2023, 8:54 PM

Reply ReTruth Like

Donald J. Trump
@realDonaldTrump · 2h

Can you imagine? I am leading the opposition within the Republican Party by 30 plus, and Biden by 6 plus, and everyone is waiting to hear from a local George Soros backed D.A., who has watched Violent Crime in Manhattan soar to Record Highs, as to whether or not he is going to "criminally indict" me for NO CRIME. Every Prosecutor, and the FEC, who looked at it, took a pass. One year ago he, Alvin Bragg, said "NO WAY." Now he's looking at it again? He should prosecute Mark Pomerantz & Cohen!

3.23k ReTruths **10.2k** Likes Mar 27, 2023, 10:54 AM

Reply ReTruth Like

DANYDJT00138667

Ex. 12

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MURs 7324, 7332, 7364 and 7366
Donald J. Trump for President, Inc and	)	
Bradley T. Crate in his official capacity	)	
as treasurer; Donald J. Trump; A360	)	
Media, LLC f/k/a American Media, Inc.;	)	
David J. Pecker; Michael D. Cohen;	)	
Dylan Howard; Timothy Jost	)	

CERTIFICATION

I, Vicktoria J. Allen, recording secretary of the Federal Election Commission executive session, do hereby certify that on March 11, 2021, the Commission took the following actions in the above-captioned matter:

MURs 7324, 7332, 7364, and 7366

1. Failed by a vote of 3-3 to:

   a. Find reason to believe that A360 Media, LLC f/k/a American Media, Inc. and David J. Pecker knowingly and willfully violated 52 U.S.C. § 30118(a) by making and consenting to prohibited corporate in-kind contributions.

   b. Find reason to believe that Donald J. Trump for President, Inc. and Bradley T. Crate in his official capacity as treasurer knowingly and willfully violated 52 U.S.C. § 30118(a) by knowingly accepting prohibited contributions.

   c. Find reason to believe that Donald J. Trump for President, Inc. and Bradley T. Crate in his official capacity as treasurer knowingly and willfully violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(a) and (b) by failing to report the required information with the Commission.

d. Find reason to believe that Donald J. Trump knowingly and willfully violated § 30118(a) by knowingly accepting prohibited contributions.

e. Take no action at this time as to the allegations that Michael D. Cohen violated the Act and Commission regulations.

MURs 7324 and 7366

f. Name and notify Dylan Howard as a Respondent.

MURs 7332 and 7364

g. Find reason to believe that Dylan Howard knowingly and willfully violated 52 U.S.C. § 30118(a) by making and consenting to prohibited corporate in-kind contributions.

MUR 7366

h. Take no action at this time as to the allegations that Timothy Jost violated the Act and Commission regulations.

MURs 7324, 7332, 7364, and 7366

i. Approve the Factual and Legal Analyses, as recommended in the First General Counsel's Report dated December 4, 2020, subject to the edits circulated by Commissioner Weintraub's Office on February 22, 2021 at 12:41 p.m.

j. Authorize the use of compulsory process.

k. Approve the appropriate letters.

Commissioners Broussard, Walther, and Weintraub voted affirmatively for the motion.

Commissioners Cooksey, Dickerson, and Trainor dissented.

MURs 7324, 7332, and 7366

2. Decided by a vote of 6-0 to:

a. Find reason to believe that A360 Media, LLC f/k/a American Media, Inc. and David J. Pecker knowingly and willfully violated 52 U.S.C. § 30118(a) by making and consenting to prohibited corporate in-kind contributions with regard to payments related to Karen McDougal.

b. Enter into conciliation with A360 Media, LLC f/k/a American Media, Inc. and David J. Pecker prior to a finding of probable cause to believe

c. Direct the Office of General Counsel to circulate a proposed Conciliation Agreement.

d. Approve the Factual and Legal Analysis, as recommended in the First General Counsel's Report dated December 4, 2020, subject to the edits circulated by Commissioner Cooksey's Office on March 8, 2021 at 4:39 p.m.

e. Approve the appropriate letters.

Commissioners Broussard, Cooksey, Dickerson, Trainor, Walther, and Weintraub voted affirmatively for the decision.

MURs 7324, 7332, and 7366

3. Failed by a vote of 3-3 to:

a. Dismiss allegations that A360 Media, LLC f/k/a America Media, Inc. and David J. Pecker knowingly and willfully violated 52 U.S.C. § 30118(a) by making and consenting to prohibited corporate in-kind contributions with regard to payments related to Dino Sajudin.

b. Dismiss the allegations against Donald J. Trump for President, Inc., Bradley T. Crate, in his official capacity as treasurer, Donald J. Trump, Dylan Howard, Michael Cohen, and Timothy Jost.

c. Direct the Office of General Counsel to draft Factual and Legal Analyses dismissing the allegations.

d. Approve the appropriate letters.

e. Close the file as to Donald J. Trump for President, Inc., Bradley T. Crate, in his official capacity as treasurer, Donald J. Trump, Dylan Howard, Michael Cohen, and Timothy Jost.

Commissioners Cooksey, Dickerson, and Trainor voted affirmatively for the motion. Commissioners Broussard, Walther, and Weintraub dissented.

Attest:

March 17, 2021
Date

Vicktoria Allen
Digitally signed by Vicktoria Allen
Date: 2021.03.17 19:52:25 -04'00'

Vicktoria J. Allen
Acting Deputy Secretary of the
Commission

Ex. 13

FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 1, 2021

Via Electronic Mail (scrosland@jonesday.com)
E. Stewart Crosland, Esq.
Jones Day
51 Louisiana Avenue NW
Washington, DC 20001

RE: MURs 7324, 7332, 7364, and 7366

Dear Mr. Crosland:

On February 27, 2018, March 1, 2018, April 19, 2018, April 20, 2018, May 10, 2018, August 9, 2018, and May 17, 2019, the Federal Election Commission ("Commission") notified you of four complaints, and their amendments, alleging that your clients, Donald J. Trump and Make America Great Again PAC (formerly known as Donald J. Trump for President, Inc.), and Bradley T. Crate in his official capacity as treasurer, violated certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act") and the Commission's regulations. The Commission has considered the allegations raised in the complaints and there were an insufficient number of votes to find reason to believe your clients may have violated the Act and Commission regulations. Accordingly, the Commission closed its file in this matter on May 20, 2021. A Statement of Reasons explaining the Commission's decision will follow.

Documents related to the case will be placed on the public record within 30 days. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016), effective September 1, 2016.

If you have any questions, please contact Adrienne C. Baranowicz, the attorney assigned to this matter, at abaranowicz@fec.gov or (202) 694-1650.

Sincerely,

Lynn Tran

Lynn Y. Tran
Assistant General Counsel

Ex. 14

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matters of	)	
	)	
Donald J. Trump for President, Inc. and Bradley T. Crate in his official capacity as treasurer; Donald J. Trump; A360 Media, LLC f/k/a American Media, Inc.; David J. Pecker; Dylan Howard; Michael D. Cohen; Timothy Jost	)	MURs 7324, 7332, 7364, and 7366

STATEMENT OF REASONS OF
CHAIR SHANA M. BROUSSARD AND COMMISSIONER ELLEN L. WEINTRAUB

Another day, another failed effort to hold Donald Trump and his campaign accountable for violating federal election law. In the last several years, the Commission's Office of General Counsel has recommended we investigate Trump or his committee for violations ranging from accepting prohibited contributions through Trump's role in the Stormy Daniels payoff,[1] to soliciting excessive contributions to a super PAC supportive of Trump,[2] to illegally soliciting a contribution from Russian nationals.[3] The Commission has repeatedly deadlocked on our lawyers' recommendations, effectively turning a blind eye to the apparent misconduct.

This time, the Complaint alleged that Donald J. Trump for President, Inc. (the "Trump Committee") and American Media, Inc. ("AMI"), now known as A360 Media, Inc. – parent company of the National Enquirer – violated the law in connection with AMI's payments to two individuals in advance of the 2016 presidential election. The payments were purportedly intended to suppress negative stories about then-presidential candidate Trump's relationship with several women through "catch and kill" arrangements. The Commission agreed that the available information indicated AMI and its executives, David J. Pecker and Dylan Howard, paid $150,000 to Karen McDougal to purchase the rights to her claim that she engaged in a relationship with Trump.[4] And we agreed the available information indicated that AMI's payment was coordinated with the Trump campaign.[5] AMI admitted in its non-prosecution agreement with the Department of Justice that it made the payment to McDougal "in cooperation, consultation, and concert with, and at the request and suggestion of one or more members or agents of a candidate's 2016 presidential campaign, to ensure that a woman did not publicize damaging allegations about that candidate

[1] *See* MURs 7313, 7319, 7379 (Michael D. Cohen, *et al.*).
[2] *See* MUR 7135 (Donald J. Trump for President, Inc. *et al.*).
[3] *See* MURs 7265 and 7266 (Donald J. Trump for President, Inc., *et al.*).
[4] *See* MURs 7324, 7332, and 7366 (Donald J. Trump for President, *et al.*), Factual and Legal Analysis for A360 Media, Inc. ("F&LA") at 3.
[5] *Id.* at 11, 13.

before the 2016 presidential election and thereby influence that election."[6] The Commission unanimously found reason to believe that AMI and Pecker knowingly and willfully made prohibited corporate in-kind contributions to the Trump Committee.[7]

It is illegal to knowingly accept prohibited contributions.[8] The Commission unanimously found that "the available information supports the conclusion that AMI's payment to McDougal was coordinated with the Trump Committee and was made for the purpose of influencing Trump's election, resulting in AMI making 'coordinated expenditures' under the [Federal Election Campaign Act of 1971, as amended]."[9] But our Republican colleagues inexplicably voted against our attorneys' recommendations to find reason to believe that Trump and the Trump campaign knowingly accepted and failed to report prohibited contributions.[10] You read that right. We all agreed that the payment was coordinated – coordination inherently involves at least two parties – but only three of us voted to hold the persons on both sides of the transaction accountable. Without a fourth vote, we could not investigate Trump's role in the "catch and kill" scheme, despite AMI admitting that the payment was made in cooperation with one or more members or agents of the campaign and despite Michael Cohen's sworn testimony to Congress that the arrangement was "done at the direction of Mr. Trump and in accordance with his instructions."[11]

Though these matters represent yet another example of the Commission failing to pursue credible allegations against Donald Trump, we want to applaud our attorneys for what they were able to accomplish with the deck very much stacked against them. With not much time left before the expiration of the statute of limitations, our attorneys successfully negotiated a conciliation agreement with AMI requiring them to pay a $187,500 penalty. This is among the Commission's largest penalties and is appropriate for the seriousness of the allegations. It is a job well done and a testament to the excellent work our attorneys do every day. It also shows that, even when up against the clock and negotiating with sophisticated legal counsel, the Commission has the resources to hold Respondents accountable for breaking the law – at least, when we have the votes necessary to do so.[12]

---

[6] *Id*. at 11 (citing non-prosecution agreement).
[7] *See* Certification in MURs 7324, 7332, 7364, and 7366 (Donald J. Trump for President, Inc., *et al.)* ("Cert.").
[8] *See* 52 U.S.C. § 30118(a).
[9] F&LA at 13.
[10] *See* Cert.
[11] U.S. House of Representatives Permanent Select Committee on Intelligence, Executive Session, Michael Cohen Dep. at 117, 119 (Feb. 28, 2019), https://docs.house.gov/meetings/IG/IG00/20190520/109549/HMTG-116-IG00-20190520-SD002.pdf; *see also* Tr. of Proceedings before Hon. William H. Pauley III at 23, *United States v. Cohen*, No. 1:18- cr-00602-WHP (S.D.N.Y. Aug. 21, 2018), https://s3.documentcloud.org/documents/4780185/Cohen-Court-Proceeding-Transcript.pdf ("[O]n or about the summer of 2016, in coordination with, and at the direction of, a candidate for federal office, I and the CEO of a media company at the request of the candidate worked together to keep an individual with information that would be harmful to the candidate and to the campaign from publicly disclosing this information. After a number of discussions, we eventually accomplished the goal by the media company entering into a contract with the individual under which she received compensation of $150,000.").
[12] Several of our colleagues have cited an approaching statute of limitations deadline as a reason to dismiss matters. *See, e.g.*, Statement of Reasons of Vice Chair Allen Dickerson and Commissioners Sean J. Cooksey and James E. "Trey" Trainor, III in Matters Under Review 7324, 7332, 7364, and 7366 (Donald J. Trump for President, *et al*.); Statement of Reasons of Commissioners Sean J. Cooksey and James E. "Trey" Trainor III in Matters Under Review 7313, 7319, and 7379 (Michael D. Cohen, et al.) at 3; Statement of Reasons of Vice Chair Allen Dickerson and Commissioners Sean J. Cooksey and James E. "Trey" Trainor, III in Matters Under Review 7265 and 7266 (Donald J. Trump for President, Inc., *et al*.) at 2. As demonstrated by the conciliation agreement with AMI, a running clock does not preclude the agency from successfully enforcing the law.

July 1, 2021
Date

Shana M. Broussard
Chair

July 1, 2021
Date

Ellen L. Weintraub
Commissioner

Ex. 15

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matters of	)	
	)	MURs 7324, 7332, 7364
Donald J. Trump for President, Inc. and	)	& 7366
Bradley T. Crate in his official capacity as treasurer;	)	
Donald J. Trump; American Media, Inc.;	)	
David J. Pecker; Dylan Howard;	)	
Michael D. Cohen; Timothy Jost	)	

STATEMENT OF REASONS OF VICE CHAIR ALLEN DICKERSON AND COMMISSIONERS SEAN J. COOKSEY AND JAMES E. "TREY" TRAINOR, III

The Complaints in these four matters allege that the Respondents violated the Federal Election Campaign Act of 1971, as amended (the "Act"), through a series of payments American Media, Inc. ("AMI") made to purchase the exclusive rights to certain news stories. Specifically, they claim that two of AMI's corporate officers worked with representatives of the Trump campaign to purchase and suppress certain negative stories about then-candidate Donald J. Trump for the purpose of influencing the 2016 election.

Looking to the evidence and the likelihood of success, we voted to proceed with only a limited enforcement action against certain Respondents. This decision was driven by two important factors: the applicable statute of limitations and the disparate levels of evidence against each Respondent. As explained below, rather than sinking significant resources into a likely fruitless investigation, or pursuing a case that was outside the statute of limitations or soon would be, we voted to dismiss the weakest allegations and to focus on the strongest case for enforcement.

I. Factual Background

The allegations in these Complaints center around the 2016 presidential campaign and two contracts AMI entered into for the purchase of limited life story rights. Specifically, the Complaints in MURs 7324, 7332, and 7366 alleged that AMI, through its corporate officers David J. Pecker and Dylan Howard, negotiated an agreement with Karen McDougal to purchase rights to her story of an alleged personal relationship with Trump, purportedly in an effort to influence the 2016 election.[1] Additionally, the Complaints in MURs 7364 and 7366 averred that AMI

[1] *See* Complaint at 4–10 (Feb. 20, 2018), MUR 7324 (Donald J. Trump for President, Inc., *et al.*); Complaint at 3–4 (Feb. 27, 2018), MUR 7332 (Donald J. Trump for President, Inc., *et al.*); Complaint at 3–7 (April 17, 2018), MUR 7366 (Donald J. Trump for President, Inc., *et al.*).

similarly negotiated a payment to Dino Sajudin, a former doorman at Trump Tower in New York City, to prevent publication of a rumor regarding Trump's alleged personal affairs, also for the purpose of influencing the 2016 election.[2]

The Commission received the four Complaints between February and April 2018, but it would be some time before the Commission could consider the allegations. First, the Office of General Counsel took significant time and resources to evaluate the allegations and prepare a First General Counsel's Report. Indeed, the Report was not circulated to Commissioners' offices until December 4, 2020.[3] This was due in part to the Commission's decision to await the outcome of other publicly known investigations, but was also because of OGC's choice to look beyond the complaints themselves and conduct extensive outside research into news reports, published books, and social media posts.

During this same period, the Commission lacked a quorum for significant stretches of time and was unable to deliberate or vote on pending matters.[4] The Commission regained its quorum in December 2020, and it voted on the matters for the first time in executive session in March 2021.[5] These delays, once again, left the Commission with limited options for handling these matters.

II. Legal Analysis

The allegations in these Complaints can be most comprehensibly divided between those relating to Dino Sajudin and those relating to Karen McDougal. For each set of allegations, we voted to dismiss against all or some Respondents for distinct but related reasons.

A. Dino Sajudin Allegations

We voted to dismiss all allegations relating to AMI's reported agreement with Dino Sajudin for a simple reason: the statute of limitations had lapsed and barred enforcement against any violation. The alleged agreement was formed in November 2015 and amended in December 2015.[6] But the applicable statute of limitations for any campaign-finance violation is five years.[7] As a

---

2 *See* Complaint at 4–8 (April 12, 2018), MUR 7364 (Donald J. Trump for President, Inc., *et al*.); Complaint at 6–7 (April 17, 2018), MUR 7366 (Donald J. Trump for President, Inc., *et al*.).

3 First General Counsel's Report (December 4, 2020), MURs 7324, 7332, 7364, and 7366 (Donald J. Trump for President, Inc., *et al*.).

4 *See* Statement of Commissioner Ellen L. Weintraub On the Senate's Votes to Restore the Federal Election Commission to Full Strength (Dec. 9, 2020), *available at* https://www.fec.gov/resources/cms-content/documents/2020-12-Quorum-Restoration-Statement.pdf.

5 *Id*.

6 First General Counsel's Report at 22 (December 4, 2020), MURs 7324, 7332, 7364, and 7366 (Donald J. Trump for President, Inc., *et al*.).

7 18 U.S.C. § 2462.

result, when the Commission first considered the merits of these allegations in March 2021, all of the relevant conduct fell outside the limitations period, and the Commission could not press any enforcement case based on this conduct.[8] The only appropriate disposition, then, was to dismiss these allegations as time-barred.

B. Karen McDougal Allegations

Though not entirely time-barred like the Sajudin allegations, the Complaints' allegations related to Karen McDougal faced similar and likely insurmountable problems with pursuing enforcement—with one exception.

While it did not bar enforcement entirely, the impending statute of limitations severely limited the likelihood of a successful investigation. The bulk of the relevant conduct relating to McDougal took place in August 2016, when AMI purchased the rights to McDougal's story for $150,000.[9] This meant that the Commission had merely five months to complete a lengthy and complicated investigation to establish what happened, who was involved, who knew or said what, and when. The Commission would then need to bring the matter through probable-cause proceedings, and if unable to settle the matter, would need to file an enforcement action in federal court. Completing this entire investigative process to support an enforcement suit on such a truncated timeline would be uncertain to say the least.[10]

The Commission's likelihood of success was dimmed further by the lack of credible or admissible evidence available at the initial stage of enforcement. Despite months wasted conducting outside research—combing through dozens of media reports, articles, and published books not contained in the record before the Commission—large swaths of evidence collected and cited in the First General Counsel's Report were unreliable.[11] Much of it was based on second-hand knowledge, unsourced or anonymous claims, unreliable accounts, and assertions that fail to meet acceptable standards for evidentiary trustworthiness, even at the initial stage of enforcement.

---

[8] *See* Supplemental Statement of Reasons of Commissioner Sean J. Cooksey at 2–3 (April 29, 2021), MURs 6917 and 6929 (Scott Walker *et al*.) and MURs 6955 and 6983 (John R. Kasich *et al*.) (discussing, among other things, the bar on enforcement actions seeking penalties outside of the statute of limitations).

[9] First General Counsel's Report at 14 (December 4, 2020), MURs 7324, 7332, 7364, and 7366 (Donald J. Trump for President, Inc., *et al*.).

[10] *See* Statement of Reasons of Vice Chair Allen Dickerson and Commissioners Sean J. Cooksey and James E. "Trey" Trainor, III at 2 n.7 (May 10, 2021), MURs 7265 and 7266 (Donald J. Trump for President, Inc., *et al*.).

[11] *See*, *e.g.*, Statement of Reasons of Vice Chairman Donald F. McGahn and Commissioner Caroline C. Hunter at 11 n.33 (July 25, 2013), MUR 6540 (Rick Santorum for President, *et al*.) ("[T]he Commission has already determined that news articles standing alone are insufficiently reliable to support a reason to believe finding."); Statement of Reasons of Vice Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Donald F. McGahn at 5–6 n.20 (May 1, 2009), MURs 5977 and 6005 (American Leadership Project, *et al*.) ("[A]dherence to the Commission's regulations regarding sources of information contained in complaints cautions against accepting as true the statements of anonymous sources.").

In order to build a persuasive case, then, the news reports accepted at face value by the First General Counsel's Report would need to be investigated and proved with more rigorous forms of evidence. This would have consumed significant Commission resources.[12] Indeed, there have been occasions where the Commission has opened similar investigations predicated on unverified news reports, and ultimately wasted enormous amounts of time and money only to discover that the press accounts were wrong.[13] Facing this shaky evidence, the long odds of success, a dwindling limitations period, and the difficult choices of efficiently allocating our limited agency resources, we voted to dismiss the allegations related to Karen McDougal under *Heckler v. Chaney*[14] against most Respondents.

As to the allegations related to AMI and its officers, the evidence available at the initial stage of enforcement was much stronger. As part of its own investigation, the U.S. Attorney's Office for the Southern District of New York entered into a non-prosecution agreement ("NPA") with AMI concerning the McDougal payments.[15] The NPA set out the facts and circumstances surrounding the McDougal contract, which included AMI's admissions that its "principal purpose in entering into the agreement was to suppress [McDougal's] story so as to prevent it from influencing the election" and that "[a]t no time during the negotiation for or acquisition of [McDougal's] story did AMI intend to publish the story or disseminate information about it publicly."[16]

As a sworn statement admitting the elements of a campaign-finance violation, the NPA obviated the need for further investigation.[17] The NPA was direct, reliable evidence that empowered the Commission to pursue enforcement within the remaining statute of limitations. We therefore voted to find reason to believe that AMI and David J. Pecker knowingly and willfully violated 52 U.S.C. § 30118(a) by making and consenting to prohibited corporate in-kind

---

12 *See Heckler v. Chaney*, 470 U.S. 821, 832 (1985) ("[A]n agency's decision not to prosecute or enforce ... is a decision generally committed to an agency's absolute discretion ... [and] often involves a complicated balancing of a number of factors which are peculiarly within its expertise. Thus, the agency must not only assess whether a violation has occurred, but whether agency resources are best spent on this violation or another, whether the agency is likely to succeed if it acts, whether the particular enforcement action requested best fits the agency's overall policies, ...").

13 *See* Second General Counsel's Report at 24 (Jan. 13, 2021), MUR 7271 (Democratic National Committee, *et al*.) (concluding, after a one and a half years of investigation, that a complaint based entirely on news reports could not be substantiated to support a finding of probable cause).

14 470 U.S. 821 (1985).

15 U.S. Department of Justice Letter (September 20, 2018), *available at* https://www.justice.gov/usao-sdny/press-release/file/1119501/download (last visited June 21, 2021) ("AMI Non-Prosecution Agreement").

16 AMI Non-Prosecution Agreement, Ex. A ¶ 5.

17 The Non-Prosecution Agreement with the Department of Justice that AMI signed through its representatives in September 2018 is credible and direct evidence of a civil violation. *See* AMI Non-Prosecution Agreement at 2. As the statement of a party-opponent, it falls outside the definition of hearsay and would be admissible as evidence in a civil proceeding against AMI but would not be against other Respondents. *See* Fed. R. Evid. 801(d)(2); *accord United States v. Morgan*, 376 F.3d 1002, 1007 (9th Cir. 2004) (sworn statements from prior bankruptcy filing held admissible, among other reasons, as a statement of a party opponent).

contributions with regard to payments related to Karen McDougal.[18] We conciliated with AMI on this violation, and AMI ultimately agreed to pay a substantial fine.[19]

III. Conclusion

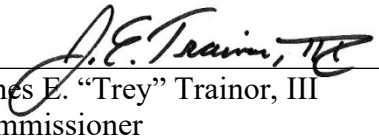
These matters, yet again, presented the current Commission with no good options. As has been the case for other matters coming out of our enforcement backlog, the Commission has been left with matters previously abated or undeveloped, with little time left on the statute of limitations, and with much work remaining.[20] In choosing how to allocate the Commission's limited enforcement resources, we opted against pursuing the long odds of a successful enforcement in these matters and, with a noted exception, instead voted to dismiss as an exercise of prosecutorial discretion.

Allen Dickerson
Vice Chair

June 28, 2021
Date

Sean J. Cooksey
Commissioner

June 28, 2021
Date



James E. "Trey" Trainor, III
Commissioner

June 28, 2021
Date

[18] Certification (March 17, 2021), MURs 7324, 7332, 7364, and 7366 (Donald J. Trump for President, Inc., *et al.*).

[19] Conciliation Agreement (May 18, 2021), MURs 7324, 7332, 7366 (Donald J. Trump for President, Inc., *et al.*) (imposing a civil penalty against AMI of $187,500).

[20] *See* Statement of Reasons of Vice Chair Allen Dickerson and Commissioners Sean J. Cooksey and James E. "Trey" Trainor, III at 2–3 (May 10, 2021), MURs 7265 and 7266 (Donald J. Trump for President, Inc., *et al.*).

Ex. 16

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MURs 7313, 7319 and 7379
Michael D. Cohen; Donald J. Trump;	)	
Donald J. Trump for President, Inc., and	)	
Bradley T. Crate in his official capacity	)	
as treasurer; Trump Organization, LLC	)	
Trump Tower Commercial, LLC	)	
Timothy Jost; Essential Consultants, LLC	)	

CERTIFICATION

I, Vicktoria J. Allen, recording secretary of the Federal Election Commission executive session, do hereby certify that on February 23, 2021, the Commission took the following actions in the above-captioned matter:

1. Failed by a vote of 2-2 to:

MURs 7313 and 7319

a. Find reason to believe that Donald J. Trump knowingly and willfully violated 52 U.S.C. § 30116(f) by knowingly accepting excessive contributions from Michael D. Cohen.

b. Find reason to believe that Donald J. Trump knowingly and willfully violated 52 U.S.C. § 30118(a) by knowingly accepting a corporate contribution from the Trump Organization OR knowingly and willfully violated 52 U.S.C. § 30116(f) by knowingly accepting an excessive contribution from the Trump Organization.

c. Find reason to believe that Donald J. Trump for President, Inc., and Bradley T. Crate in his official capacity as treasurer knowingly and willfully violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(a) and (b) by filing false disclosure reports with the Commission.

d. Find reason to believe that Donald J. Trump for President, Inc., and Bradley T. Crate in his official capacity as treasurer knowingly and willfully violated 52 U.S.C. § 30116(f) by knowingly accepting excessive contributions from Michael D. Cohen.

e. Find reason to believe that Donald J. Trump for President, Inc., and Bradley T. Crate in his official capacity as treasurer knowingly and willfully violated 52 U.S.C. § 30118(a) by knowingly accepting a corporate contribution from the Trump Organization OR knowingly and willfully violated 52 U.S.C. § 30116(f) by knowingly accepting an excessive contribution from the Trump Organization.

f. Find reason to believe that Trump Organization, LLC, knowingly and willfully violated 52 U.S.C. § 30118(a) by making a corporate contribution OR knowingly and willfully violated 52 U.S.C. § 30116(a)(1)(A) by making an excessive contribution.

g. Authorize the use of compulsory process.

MUR 7319

h. Take no action at this time with respect to Timothy Jost.

i. Dismiss the allegations with respect to Trump Tower Commercial, LLC.

MUR 7379

j. Dismiss the allegations that Michael D. Cohen, Donald J. Trump, and Donald J. Trump for President, Inc., and Bradley T. Crate in his official capacity as treasurer violated 52 U.S.C. § 30114(b) by converting campaign funds to personal use through payments for Michael Cohen's legal fees with respect to the activities with respect to Ms. Clifford.

MURs 7313, 7319, and 7379

k. Direct the Office of General Counsel to draft an appropriate Factual and Legal Analyses that reflect these findings and in so doing omit reference to Advisory Opinion 2008-17 (KITPAC).

l. Approve the appropriate letters.

Commissioners Broussard and Weintraub voted affirmatively for the motion. Commissioners Cooksey and Trainor dissented. Commissioner Walther was not present and did not vote. Commissioner Dickerson was recused and did not vote.

2. Failed by a vote of 2-3 to:

   a. Dismiss the allegations against all respondents.

   b. Issue appropriate letters.

   c. Close the file.

Commissioners Cooksey and Trainor voted affirmatively for the motion. Commissioners Broussard, Walther, and Weintraub dissented. Commissioner Dickerson was recused and did not vote.

Attest:

March 31, 2021
Date

Vicktoria Allen Digitally signed by Vicktoria Allen
Date: 2021.03.31 10:57:58 -04'00'

Vicktoria J. Allen
Acting Deputy Secretary of the
Commission

Ex. 17

FEDERAL ELECTION COMMISSION
Washington, DC 20463

March 31, 2021

E. Stewart Crosland, Esq.
Jones Day
51 Louisiana Avenue, NW
Washington, DC 20001

RE: MURs 7313, 7319, and 7379
Donald J. Trump
Donald J. Trump for President, Inc.
Bradley T. Crate, as Treasurer

Dear Mr. Crosland:

On January 30, 2018, February 21, 2018, March 14, 2018, May 10, 2018, and August 14, 2019, the Federal Election Commission ("Commission") notified you of three complaints alleging that your clients, Donald J. Trump, Donald J. Trump for President, Inc., and Bradley T. Crate in his official capacity as treasurer, violated certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act") and the Commission's regulations. The Commission has considered the allegations raised in the complaints and there were an insufficient number of votes to find reason to believe your clients may have violated the Act and Commission regulations as alleged. Accordingly, the Commission closed its file in this matter on March 23, 2021. A Statement of Reasons explaining the Commission's decision will follow.

Documents related to the case will be placed on the public record within 30 days. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016), effective September 1, 2016.

If you have any questions, please contact Saurav Ghosh, the attorney assigned to this matter, at sghosh@fec.gov or (202) 694-1650.

Sincerely,

Lynn Y. Tran
Assistant General Counsel

Ex. 18

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Michael Cohen, et. al.	)	MURs 7313, 7319, and 7379

STATEMENT OF REASONS OF
COMMISSIONERS SEAN J. COOKSEY AND JAMES E. "TREY" TRAINOR III

These matters arose from a payment made to Stephanie Clifford shortly before the 2016 presidential election as part of a non-disclosure agreement to prevent Clifford from speaking publicly about her claim that she and 2016 presidential candidate Donald J. Trump had a relationship in 2006. The complaints allege the payment violated the Federal Election Campaign Act of 1971, as amended ("the Act"). Between the time that these complaints were filed and when these matters came before us at the initial stage of the enforcement process, Michael Cohen, Mr. Trump's lawyer, pleaded guilty to violating federal campaign finance law in connection with the payment. Moreover, at the same time, the Federal Election Commission's ("FEC") loss of a quorum led to an extensive enforcement backlog, including numerous statute-of-limitations imperiled matters such as these. As explained in further detail below, based on these factors we voted to dismiss these matters as an exercise of prosecutorial discretion.

The complaints in these matters, filed in 2018 and 2019, cite a series of publicly reported facts about the payment made to Ms. Clifford. In short, Michael Cohen established Essential Consultants, LLC on October 17, 2016, and later that month, Essential Consultants, LLC made a payment in the amount of $130,000 to Ms. Clifford as part of a non-disclosure agreement pursuant to which Ms. Clifford would be precluded from publicly discussing her relationship with Mr. Trump. Based on these facts, the complainants assert various violations of the Act.[1]

Before the Commission could consider the Office of General Counsel's ("OGC") recommendations in these matters, Mr. Cohen pleaded guilty to an eight-count criminal

[1] Specifically, the complaints allege that the payment to Ms. Clifford violated the Act either as an illegal in-kind contribution from the Trump Organization, LLC to Mr. Trump's presidential campaign committee, MUR 7313 Compl. (Jan. 23, 2018); MUR 7319 Compl. (Feb. 14, 2018); *see also* MUR 7637 Compl. (Aug. 16, 2019), or that it was a conversion of campaign funds to personal use when the Trump campaign committee paid Mr. Cohen's legal fees in connection with the Department of Justice's ultimately successful prosecution of Mr. Cohen for his role in making the payment, MUR 7379 Compl. (May 4, 2018).

information,[2] and in connection thereto admitted, among other things, to making an excessive contribution in violation of the Act by making the Clifford payment from his personal funds.[3] The plea hearing transcript includes a step by step review of how U.S. District Judge William Pauley verified the plea, confirming that a federal judge was sufficiently satisfied with the circumstances surrounding the plea deal and the responses given by Cohen at the hearing, including the explanations given by Cohen, count by count, during his allocution.[4] Ultimately Mr. Cohen was sentenced to three years in prison and ordered to pay $1.39 million in restitution, $500,000 in forfeiture, and $100,000 in fines for two campaign finance violations (including the payment at issue in these matters) and other charges. In sum, the public record is complete with respect to the conduct at issue in these complaints, and Mr. Cohen has been punished by the government of the United States for the conduct at issue in these matters.

Thus, we concluded that pursuing these matters further was not the best use of agency resources.[5] The Commission regularly dismisses matters where other government agencies have already adequately enforced and vindicated the Commission's interests.[6] Furthermore, by the time OGC's recommendations came before us, the Commission was facing an extensive enforcement docket backlog resulting from a prolonged lack of a quorum,[7] and these matters

[2] *See* Trans. of Proceedings before Hon. William H. Pauley III at 27–28, No. 1:18-cr-00602-WHP, 18-CR602 (S.D.N.Y. Aug. 21, 2018), https://assets.documentcloud.org/documents/4780185/Cohen-Court-ProceedingTranscript.pdf ("Cohen Plea Hearing") (pleading guilty to eight counts, including one count of making excessive contributions in violation of 52 U.S.C. § 30116(a)(1)(A) in relation to Clifford payment); *see also* Information ¶¶ 32–36, United States v. Cohen, No. 1:18-cr-00602-WHP, 18-CRIM-602 (S.D.N.Y. Aug. 21, 2018), https://www. justice.gov/usao-sdny/press-release/file/1088966/download.

[3] During his sworn allocution in federal court, Mr. Cohen acknowledged that he made the $130,000 Clifford payment for the "primary purpose of influencing the [2016] election." Cohen Plea Hearing at 23. Taking that admission as true, OGC reasoned that the payment was an excessive contribution because under the Act, a "contribution" includes "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office," 52 U.S.C. § 30101(8)(A), and the applicable contribution limit was $2,700 per election, 52 U.S.C. § 30116(a)(1)(A), (f); 11 C.F.R. §§ 110.1(b), 110.9; *see* Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 80 Fed. Reg. 5750, 5752 (Feb. 3, 2015).

[4] Although Mr. Cohen initially denied any wrongdoing in connection with the payment, MUR 7313 Resp. (Cohen) (Feb. 8, 2018), there is nothing in the record to contradict or call into question Cohen's subsequent allocution.

[5] For the reasons set forth in the First General Counsel's Report, we concurred with OGC's recommendations to dismiss the allegation that Trump Tower Commercial, LLC, violated the Act by paying Clifford through disbursements disguised as rent payments on the Trump Committee's reports, and to dismiss the allegation that Cohen, Trump, and the Trump Committee violated 52 U.S.C. § 30114(b) by converting campaign funds to personal use.

[6] *See* MUR 7479 (Keeping America in Republican Control PAC), Statement of Reasons of Vice Chair Allen Dickerson and Commissioners Sean J. Cooksey and James E. "Trey" Trainor, III (Apr. 30, 2021) at 2, n.9.

[7] The Commission lost a quorum when Commissioner Petersen resigned on September 1, 2019, then temporarily regained a quorum when Commissioner Trainor joined the Commission on June 5, 2020, but lost a quorum upon the resignation of Commissioner Hunter on July 3, 2020, and did not regain a quorum again until December 2020, when Commissioners Broussard, Cooksey, and Dickerson joined the Commission. *See* Statement of Commissioner Ellen L. Weintraub On the Senate's Votes to Restore the Federal Election Commission to Full Strength (Dec. 9, 2020), available at https://www.fec.gov/resources/cms-content/documents/2020-12-Quorum-Restoration-Statement.pdf (as

were already statute-of-limitations imperiled.[8] These are precisely the prudential factors cited by the U.S. Supreme Court in *Heckler v. Chaney*, and why we voted to dismiss these matters as an exercise of our prosecutorial discretion.[9]

Sean J. Cooksey — April 26, 2021

Commissioner Sean J. Cooksey — Date

J.E. Trainor, III — April 26. 2021

Commissioner James E. "Trey" Trainor III — Date

of Dec. 9, 2020, there were 446 matters before the agency, of which 275 were awaiting Commission action, of which at least 35 were statute-of-limitations imperiled).

[8] [redacted]

[9] 470 U.S. 821, 831 (1985). *See also CREW v. FEC*, 475 F.3d 337, 340 (D.C. Cir. 2007) ("The Supreme Court in *Akins* recognized that the Commission, like other Executive agencies, retains prosecutorial discretion.").

Ex. 19

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK: CIVIL TERM PART: 37

-- ----------X

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Plaintiff,

Index No.

-against-

452564/2022

DONALD J. TRUMP; DONALD TRUMP JR.; ERIC TRUMP; IVANKA TRUMP; ALLEN WEISSELBERG;JEFFREY McConney; THE DONALD J. TRUMP REVOCABLE TRUST; THE TRUMP ORGANIZATION, INC.; DJT HOLDINGS MANAGING MEMBER; TRUMP ENDEAVOR 12, LLC; 401 NORTH WABASH VENTURE, LLC TRUMP OLD POST OFFICE, LLC; 40 WALL STREET, LLC AND SEVEN SPRINGS, LLC,,

Defendants.

----------X

60 Centre Street
New York, New York 10007
January 11, 202

B E F O R E:
HON. ARTHUR F. ENGORON,, JSC.

A P P E A R A N C E S:

FOR THE PLAINTIFFS:
OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF NEW YORK - LETITIA JAMES
28 Liberty Street
New York, New York 10005
BY: KEVIN WALLACE, ESQ.
COLLEEN K. FAHERTY, ESQ.
ANDREW AMER, ESQ.
ERIC HAREN, ESQ.
LOUIS SOLOMON, ESQ.
MARK LADOV, ESQ.
SHERIEF GABER, ESQ.
ALEX FINKELSTEIN, ESQ.

A P P E A R A N C E S: (Cont.)

FOR THE DEFENDANTS:

CONTINENTAL PLLC.
101North Monroe Street, Suite 750
Tallahassee, Florida
BY: CHRISTOPHER KISE, ESQ., ESQ.
JESUS SUAREZ, ESQ.

FOR THE DEFENDANTS:

ROBERT & ROBERT, PLLC
526 RXR Plaza
Uniondale, New York 11556
BY: CLIFFORD ROBERT, ESQ.

FOR THE DEFENDANT: DONALD TRUMP, et al

HABBA MADAI & ASSOCIATES, LLP
1430 US Highway 296, Suite 240
Bedminister, New Jersey 07921
BY: ALINA HABBA, ESQ.

DINA M. LUDWICKI, RPR
Senior Court Reporter

had done anything wrong. If that doesn't speak volumes, I don't know what does.

So with 15 seconds left, Your Honor, I would respectfully request that all the counts against my clients be dismissed and that there be no order of disgorgement against him.

Thank you.

THE COURT: So, Mr. Kise, not only is he an expert on the CPLR, but he can present a very enthusiastic argument.

MR. KISE: Again, they just put all the weight on my shoulders and then decided to travel on.

I would ask Your Honor, I think I would ask you reconsider, allow President Trump to address the Court for two or three minutes. The reason that I didn't feel that your restrictions were appropriate because, frankly, your restrictions stated in the email went beyond what was required under the law. They do have ambiguities. None of us today have commented on anything outside the appropriate bounds of closing argument. I don't believe President Trump will either. I think, under the circumstances you should hear from him.

All these people back here certainly want to hear from him, and I think as you say in your own email, you would benefit from hearing everything. There is no one

person more impacted by the decision you're going to make than President Trump here. So I would ask that the Court allow him to speak now briefly now and address the Court and present his views to you.

THE COURT: Well, this is not how it should have been done.

Mr. Trump, let me address you directly and Mr. Kise at the same time. If I let you speak for five minutes, I think that's what I will do, if you promise to just comment on the law and facts, application of one to the other and not go outside of that?

Mr. Kise, is that reasonable?

PRESIDENT TRUMP: Well, I think, your Honor, that this case goes outside of just the facts.

The facts are that the financial statements were perfect. That there was no witnesses against us. The banks got all their money paid back. They were great loans. The banks are happy as can be.

I mentioned the name Zurich, and Zurich, one of the most prestigious property and most prestigious insurance company in the world. They represent us right now. Supposed somebody said we defrauded them? I spoke to an executive at Zurich and they said: You didn't defraud us. If you defrauded us, we wouldn't be representing -- they represent us right now. They weren't defrauded.

There wasn't one witness against us, and this does go outside of the bounds of what we're talking about. This is a political witch hunt that was set aside by -- should be set aside. We should receive damages for what we've gone through, for what they've taken this company through. We have millions pages of documents and they don't have one document. They have nothing. They do have a triplex where they made a mistake and they corrected it immediately when it was made, and it was di-minimus, because the amount of the money they're talking about compared to the billions of dollars of net worth is irrelevant. It's virtually irrelevant. It's a very small number. It was a mistake that was corrected. That's the only thing I ever read in the papers, their triplex. They made a mistake, it was an honest mistake, some broker told them 30 because he took -- the floors are approximately 10,000 feet, they heard, as you say, triplex, and they multiplied times three.

Something like that can happen. When they found it was the mistake, they immediately corrected it. I'm not so sure that the dollar amount would have been so far off, frankly, if you want to know, whatever the amount was. It was around the 250 number. But it's a -- it's a very small, it's a very small number.

But when you say don't go outside of these

things, we have a situation where I'm an innocent man. I've been persecuted by somebody running for office, and I think you have to go outside the bounds, because people, and you could read all the articles you want to read, but you look at the legal prognosticators, the legal scholars talking about this case, they find it disgraceful. The first time for a reason like this where there's -- you've ever used this statute. This statute is viscous. It doesn't give me a jury. It takes away all my rights. And it is, in fact, a statute used for consumer fraud. This is not consumer fraud. This is no fraud. This is a fraud on me.

What's happened here, sir, is a fraud on me. You know, other companies leave, they did it with Exxon. Exxon pays billions of dollars in taxes and they're now paying to Texas, and I went out and forced them that they want to make sure I'm never --

I just added up the other day the amount of taxes I've paid over the amount of the period that these people say, which, by the way, is absolutely limited by the Statute of Limitations. We won that case in the Court of Appeals. But I said how much tax have I paid over this? It's close the $300 million in tax. They don't want me anymore. They don't want me here. I have done a lot of great things. I have built buildings all over the City.

I've never had a problem. All of a sudden I have a problem. I guess because I ran for office I have a problem because they want to make sure that I don't win again, that this is partially election interference. But, in particular, the person in the room right now hates Trump and uses Trump to get elected. And if I'm not allowed to talk about that, I think it really is a disservice because that is a very big part of this case. I would say that's 100 percent.

Without all of that, Your Honor, with all of these days and months and years and millions and millions pages, big company, they found nothing. And now she comes in and says, we want to make a $250 million fine, $370 million. For what? I borrowed money from the bank, much smaller than the number you are talking about, much smaller than 370. One of the reasons I borrowed money is the bank wanted me to. That's how they make money. The bank said you should actually have -- the head of Deutsche Bank came to see me -- I know this is boring for you.

THE COURT: One minute, Mr. Trump.

PRESIDENT TRUMP: You have your own agenda, I can certainly understand that. You can't listen for more than one minute. This has been a persecution of somebody that's done a good job in New York.

THE COURT: Mr. Kise, please control your client.

By the way, you said you never had a problem; haven't you been sued before?

PRESIDENT TRUMP: I have been sued. Sure, I've been sued.

THE COURT: Isn't that a problem?

PRESIDENT TRUMP: Most suits, but this is a suit that it seems I should have won many times. We've asked for directed verdict almost every time a witness took the stand. We've asked for a directed verdict and we were immediately shut down.

Your Honor, look, I did nothing wrong. They should pay me for what we had to go through, what they have done to me reputationally and everything else. We have a great company. It's a successful company, a liquid company, like a lot of real estate companies are.

We sell the best assets in the world, and she sued me to try to get publicity to run for office, and that includes running for governor, where she failed.

THE COURT: It's 1:00 o'clock. Mr. Kise, we have to go anyway, the court officers are looking at me.

Thank you, Mr. Trump.

PRESIDENT TRUMP: Thank you.

THE COURT: See you all at 2:15.

Continued on next page.

Ex. 20

In The Matter Of:

NYS Attorney General v.
Donald J. Trump

November 6, 2023

Ny Supreme Court- Civil

Original File November 6 2023 AG v Trump.txt

Min-U-Script® with Word Index

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM: PART 37

----------X

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Plaintiff,

- against - INDEX # 452564/2022

DONALD J. TRUMP; DONALD TRUMP JR.; ERIC TRUMP; IVANKA TRUMP; ALLEN WEISSELBERG; JEFFREY McCONNEY; THE DONALD J. TRUMP REVOCABLE TRUST; THE TRUMP ORGANIZATION, INC.; TRUMP ORGANIZATION LLC; DJT HOLDINGS, LLC; DJT HOLDINGS MANAGING MEMBER; TRUMP ENDEAVOR 12, LLC; 401 NORTH WABASH VENTURE, LLC; TRUMP OLD POST OFFICE, LLC; 40 WALL STREET, LLC; and SEVEN SPRINGS, LLC,

Defendants.

----------X

Bench Trial

November 6, 2023
60 Centre Street
New York, New York 10007

B E F O R E: THE HONORABLE ARTHUR S. ENGORON,
Justice of the Supreme Court

A P P E A R A N C E S:

OFFICE OF THE ATTORNEY GENERAL
OF THE STATE OF NEW YORK - LETITIA JAMES
Attorneys for the Plaintiff
28 Liberty Street
New York, NY 10005
By: KEVIN WALLACE, ESQ.
COLLEEN K. FAHERTY, ESQ.
ANDREW AMER, ESQ.
ERIC HAREN, ESQ.
LOUIS SOLOMON, ESQ.

A P P E A R A N C E S: (Cont'd)

CONTINENTAL PLLC
Attorneys for Defendants
101 North Monroe Street, Suite 750
Tallahassee, FL 32302
By: CHRISTOPHER KISE, ESQ.
LAZARO FIELDS, ESQ.
JESUS SUAREZ, ESQ.

ROBERT & ROBERT, PLLC
Attorneys for Defendants
526 RXR Plaza
Uniondale, NY 11556
By: CLIFFORD ROBERT, ESQ.

HABBA MADAIO & ASSOCIATES, LLP
Attorneys for Defendants
1430 US Highway 296, Suite 240
Bedminster, NJ 07921
By: ALINA HABBA, ESQ.

MORIAN LAW, PLLC
Attorneys for Defendants
60 East 42nd Street, Suite 4600
New York, NY 10165
By: ARMEN MORIAN, ESQ.

THE TRUMP ORGANIZATION
Attorneys for the Defendant
725 Fifth Avenue
New York, NY 10022
By: ALAN GARTEN, ESQ.

MICHELE PANTELOUKAS
MICHAEL RANITA
Senior Court Reporters

It's not that simple, and you are here to hear what he has to say.

THE COURT: No, I'm not here to hear what he has to say.

MS. HABBA: Thank you.

THE COURT: I'm here to hear him answer questions. Sit down already. Mr. Kise, Mrs. Habba, sit down.

Mr. Wallace, continue.

THE WITNESS: This is a very unfair trial, very, very. And I hope the public is watching it.

Q Mr. Trump, was the valuation presented here based on leases and capitalization rates true and accurate to your belief?

A It could be, but again, what I told you is a building has many different forms of value. And this building, the most valuable -- the most valuable asset here is making it into condominiums. That would be -- it will happen as soon as interest rates go down and as soon as the City maybe comes back. It would be nice if it came back; wouldn't it?

But the value of this is -- the big value of this is making it into a condominium, residential condominium.

Q Could we put up --

A It would be one of the biggest jobs in the City.

MR. WALLACE: Could we put up Plaintiff's Exhibit 635. It's already in evidence, but I have an extra

Q Mr. Trump, let's go to that then. Mr. Trump, you do not agree with the determination of the Court in its summary judgment decision that the Statements of Financial Condition were misleading; is that correct?

A He ruled against me without knowing anything about me. He ruled against me and he said I was a fraud before he knew anything about me, nothing about me.

And then he said in his statement that Mar-a-Lago is worth $18 million and it's worth 50 times to 100 times more than that, and everybody knows it. And everybody is watching this case. He called me a fraud and he didn't know anything about me.

Q You did not -- so I think the essence of your answer is there, but I would like to get it as a yes or no. You do not agree with the determination of this Court in its summary judgment decision that the Statements of Financial Condition were misleading; is that correct?

A I think it's fraudulent, the decision. I think it's fraudulent. The fraud is on the Court, not on me. When you rule that Mar-a-Lago is worth $18 million, I could give you a quarter of a tennis court would be worth that.

When you rule that Mar-a-Lago is worth $18 million and then she rules it's worth $25 million, either people are very stupid or there's a fraud. The fraud is on behalf of the Court, because when the Court does that, and then they say I didn't

value my property correct? Think of it, $18 million, he said. And then he -- he says that I'm a fraud because I didn't value my property correctly? He is the one that didn't value the property correctly.

Q Mr. Trump --

A And how do you do that? How do you rule against somebody and call them a fraud, as the President of the United States, who did a great job. All you have to look at is the President today. What he is doing? How do you call a man a fraud when you have a property that's a 50 to 100 times more valuable. It's a terrible thing you did. You knew nothing about me. You believed this political hack back there, and that's unfortunate.

Q Are you done?

A Done.

Q Okay. I'll take you up on one of the invitations. You are talking about the $18 million valuation versus the higher valuation of Mar-a-Lago. Which one are you paying taxes on down in Florida?

A Which one, what?

Q Are you paying taxes on an $18 million valuation of Mar-a-Lago or $1.5 billion?

A You know that assessments are totally different from the valuation of property. An assessment -- as an example in New York. You sell a building, a building was recently sold for

General sitting here all day long watching every little move, I think it is a disgrace. And people are leaving New York. And they are fleeing the City. And it is a shame what is going on.

And we sit here all day, and it is election interference because you want to keep me in this courthouse all day long, and let's keep going.

And we have a very hostile Judge, extremely hostile Judge, and it is sad.

I don't have a jury and I want a jury. And I don't have a jury because she sued me under a statute that doesn't allow a jury, and I think it is a disgrace. And other people are saying the same thing. Legal scholars are saying it is the most unfair witch hunt they have ever seen.

And you should be ashamed of yourself.

Go ahead.

Q I promise you, Mr. Trump, I am trying to get you off the stand.

A That's great. I am sure you are.

THE COURT: Mr. Wallace, this morning I said I am following your lead in terms of how much you want to put up with this stuff.

MR. WALLACE: I promise you, Your Honor, we are very close to the end.

Q And we almost got there, Mr. Trump.

But I believe your position is that you do not

Ex. 21

- OCTOBER 07, 2016 -

STATEMENT FROM DONALD J. TRUMP

"This was locker room banter, a private conversation that took place many years ago. Bill Clinton has said far worse to me on the golf course - not even close. I apologize if anyone was offended."

Next Release: TRUMP CAMPAIGN ANNOUNCES NATIONAL SECURITY ADVISORY COUNCIL

★★★ CATEGORIES ★★★

VIEW ALL

STATEMENTS

ANNOUNCEMENTS

ENDORSEMENTS

ADS

Ex. 22

Two Women Say Donald Trump Touched Them Inappropriately

nytimes.com/2016/10/13/us/politics/donald-trump-women.html

Megan Twohey, Michael Barbaro

October 12, 2016

Continue reading the main story

Donald J. Trump was emphatic in the second presidential debate: Yes, he had boasted about kissing women without permission and grabbing their genitals. But he had never actually done those things, he said.

"No," he declared under questioning on Sunday evening, "I have not."

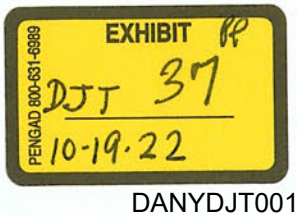
At that moment, sitting at home in Manhattan, Jessica Leeds, 74, felt he was lying to her face. "I wanted to punch the screen," she said in an interview in her apartment.

More than three decades ago, when she was a traveling businesswoman at a paper company, Ms. Leeds said, she sat beside Mr. Trump in the first-class cabin of a flight to New York. They had never met before.

About 45 minutes after takeoff, she recalled, Mr. Trump lifted the armrest and began to touch her.

According to Ms. Leeds, Mr. Trump grabbed her breasts and tried to put his hand up her skirt.

"He was like an octopus," she said. "His hands were everywhere."



She fled to the back of the plane. "It was an assault," she said.

Ms. Leeds has told the story to at least four people close to her, who also spoke with The New York Times.

Mr. Trump's claim that his crude words had never turned into actions was similarly infuriating to a woman watching on Sunday night in Ohio: Rachel Crooks.

Ms. Crooks was a 22-year-old receptionist at Bayrock Group, a real estate investment and development company in Trump Tower in Manhattan, when she encountered Mr. Trump outside an elevator in the building one morning in 2005.

Image

Ms. Leeds in 1978. She said unwanted advances from men were routine throughout her time in business in the 1970s and early 1980s. "We were taught it was our fault," she said.Credit...via Jessica Leeds

Aware that her company did business with Mr. Trump, she turned and introduced herself. They shook hands, but Mr. Trump would not let go, she said. Instead, he began kissing her cheeks. Then, she said, he "kissed me directly on the mouth."

It didn't feel like an accident, she said. It felt like a violation.

"It was so inappropriate," Ms. Crooks recalled in an interview. "I was so upset that he thought I was so insignificant that he could do that."

Shaken, Ms. Crooks returned to her desk and immediately called her sister, Brianne Webb, in the small town in Ohio where they grew up, and told her what had happened.

"She was very worked up about it," said Ms. Webb, who recalled pressing her sister for details. "Being from a town of 1,600 people, being naïve, I was like 'Are you sure he didn't just miss trying to kiss you on the cheek?' She said, 'No, he kissed me on the mouth.' I was like, 'That is not normal.'"

In the days since Mr. Trump's campaign was jolted by a 2005 recording that caught him bragging about pushing himself on women, he has insisted, as have his aides, that it was simply macho bluster. "It's just words," he has said repeatedly.

And his hope for salvaging his candidacy rests heavily on whether voters believe that claim.

They should not, say Ms. Leeds and Ms. Crooks, whose stories have never been made public before. And their accounts echo those of other women who have previously come forward, like Temple Taggart, a former Miss Utah, who said that Mr. Trump kissed her on the mouth more than once when she was a 21-year-old pageant contestant.

In a phone interview on Tuesday night, a highly agitated Mr. Trump denied every one of the women's claims.

"None of this ever took place," said Mr. Trump, who began shouting at the Times reporter who was questioning him. He said that The Times was making up the allegations to hurt him and that he would sue the news organization if it reported them.

"You are a disgusting human being," he told the reporter as she questioned him about the women's claims.

Asked whether he had ever done any of the kissing or groping that he had described on the recording, Mr. Trump was once again insistent: "I don't do it. I don't do it. It was locker room talk."

Image

Mr. Trump in the early 1980s. Asked on Tuesday whether he had ever done the kissing or groping that he described on the 2005 recording, Mr. Trump said, "I don't do it."Credit...Bettmann Archive, via Getty Images

But for the women who shared their stories with The Times, the recording was more than that: As upsetting as it was, it offered them a kind of affirmation, they said.

That was the case for Ms. Taggart. Mr. Trump's description of how he kisses beautiful women without invitation described precisely what he did to her, she said.

"I just start kissing them," Mr. Trump said on the tape. "It's like a magnet. Just kiss. I don't even wait."

Ms. Crooks and Ms. Leeds never reported their accounts to the authorities, but they both shared what happened to them with friends and family. Ms. Crooks did so immediately afterward; Ms. Leeds described the events to those close to her more recently, as Mr. Trump became more visible politically and ran for president.

Ms. Leeds was 38 at the time and living in Connecticut. She had been seated in coach. But a flight attendant invited her to take an empty seat in first class, she said. That seat was beside Mr. Trump, who did not yet own a fleet of private aircraft, records show. He introduced himself and shook her hand. They exchanged pleasantries, and Mr. Trump asked her if she was married. She was divorced, and told him so.

Later, after their dinner trays were cleared, she said, Mr. Trump raised the armrest, moved toward her and began to grope her. Ms. Leeds said she recoiled. She quickly left the first-class cabin and returned to coach, she said.

"I was angry and shook up," she recalled, as she sat on a couch in her New York City apartment on Tuesday.

She did not complain to the airline staff at the time, Ms. Leeds said, because such unwanted advances from men occurred throughout her time in business in the 1970s and early 1980s. "We accepted it for years," she said of the conduct. "We were taught it was our fault."

She recalled bumping into Mr. Trump at a charity event in New York about two years later, and said he seemed to recall her, insulting her with a crude remark.

She had largely put the encounter on the plane out of her mind until last year, when Mr. Trump's presidential campaign became more serious. Since then, she has told a widening circle of people, including her son, a nephew and two friends, all of whom were contacted by The Times.

They said they were sickened by what they heard. "It made me shake," said Linda Ross, a neighbor and friend who spoke with Ms. Leeds about the interaction about six months ago. Like several of Ms. Leeds's friends, Ms. Ross encouraged her to tell her story to the news media. Ms. Leeds had resisted until Sunday's debate, which she watched with Ms. Ross.

When Mr. Trump denied having ever sexually assaulted women, in response to a question from Anderson Cooper of CNN, Ms. Ross said she immediately looked at Ms. Leeds in disbelief. "Now we know he lied straight up," Ms. Ross recalled saying.

In the days after the debate, Ms. Leeds recounted her experience in an email to The Times and a series of interviews.

"His behavior is deep seated in his character," Ms. Leeds wrote in the message.

"To those who would vote for him," she added, "I would wish for them to reflect on this."

For Ms. Crooks, the encounter with Mr. Trump was further complicated by the fact that she worked in his building and risked running into him again.

A few hours after Mr. Trump kissed her, Ms. Crooks returned to her apartment in the Bay Ridge section of Brooklyn and broke down to her boyfriend at the time, Clint Hackenburg.

"I asked, 'How was your day?'" Mr. Hackenburg recalled. "She paused for a second, and then started hysterically crying."

After Ms. Crooks described her experience with Mr. Trump, she and Mr. Hackenburg discussed what to do.

"I think that what was more upsetting than him kissing her was that she felt like she couldn't do anything to him because of his position," he said. "She was 22. She was a secretary. It was her first job out of college. I remember her saying, 'I can't do anything to this guy, because he's Donald Trump.'"

Days later, Ms. Crooks said, Mr. Trump, who had recently married Melania, came into the Bayrock office and requested her phone number. When she asked why he needed it, Mr. Trump told her he intended to pass it along to his modeling agency. Ms. Crooks was skeptical, but relented because of Mr. Trump's influence over her company. She never heard from the modeling agency.

During the rest of her year working at Bayrock, she made a point of ducking out of sight every time Mr. Trump came into view. When Bayrock employees were invited to the Trump Organization Christmas party, she declined, wanting to avoid any other encounters with him.

But the episode stuck with her even after she returned to Ohio, where she now works for a university. When she read a Times article in May about the Republican nominee's treatment of women, she was struck by Ms. Taggart's recollection of being kissed on the mouth by Mr. Trump.

"I was upset that it had happened to other people, but also took some comfort in knowing I wasn't the only one he had done it to," said Ms. Crooks, who reached out to The Times to share her story.

Both Ms. Leeds and Ms. Crooks say they support Hillary Clinton's campaign for president, and Ms. Crooks has made contributions of less than $200 to President Obama and Mrs. Clinton.

Ms. Crooks was initially reluctant to go public with her story, but felt compelled to talk about her experience.

"People should know," she said of Mr. Trump, "this behavior is pervasive and it is real."

Ex. 23

POLITICS

Physically Attacked by Donald Trump — a PEOPLE Writer's Own Harrowing Story

PEOPLE writer Natasha Stoynoff tells her own story of being attacked by Donald Trump

By **Natasha Stoynoff** | Published on October 12, 2016 10:31 PM EDT

In December 2005, PEOPLE writer Natasha Stoynoff went to Mar-a-Lago to interview Donald and Melania Trump. What she says happened next left her badly shaken. Reached for comment, a spokeswoman for Trump said, "This never happened. There is no merit or veracity to this fabricated story." What follows is Stoynoff's account.

"Just for the record," Anderson Cooper asked Donald Trump, during the presidential debate last Sunday, "are you saying … that you did not actually kiss women without (their) consent?"

"I have not," Trump insisted.

I remember it differently.

In the early 2000s, I was assigned the Trump beat for PEOPLE magazine. For years I reported on all things Donald.

I tracked his hit show *The Apprentice*, attended his wedding to Melania Knauss and roamed the halls of his lavish Trump Tower abode. Melania was kind and sweet during our many chats, and Donald was as bombastic and entertaining as you would expect. We had a very friendly, professional relationship.

Then, in December 2005, around the time Trump had his now infamous conversation with Billy Bush, I traveled to Mar-a-Lago to interview the couple for a first-wedding-anniversary feature story.

Our photo team shot the Trumps on the lush grounds of their Florida estate, and I interviewed them about how happy their first year of marriage had been. When we took a break for the then-very-pregnant Melania to go upstairs and change wardrobe for more photos, Donald wanted to show me around the mansion. There was one "tremendous" room in particular, he said, that I just had to see.

"I just start kissing them," he said to Bush. *"It's like a magnet. Just kiss. I don't even wait. And when you're a star, they let you do it. You can do anything."*

We walked into that room alone, and Trump shut the door behind us. I turned around, and within seconds he was pushing me against the wall and forcing his tongue down my throat.

Now, I'm a tall, strapping girl who grew up wrestling two giant brothers. I even once sparred with Mike Tyson. It takes a lot to push me. But Trump is much bigger — a looming figure — and he was fast, taking me by surprise and throwing me off balance. I was stunned. And I was grateful when Trump's longtime butler burst into the room a minute later, as I tried to unpin myself.

The butler informed us that Melania would be down momentarily, and it was time to resume the interview.

I was still in shock and remained speechless as we both followed him to an outdoor patio overlooking the grounds. In those few minutes alone with Trump, my self-esteem crashed to zero. How could the actions of one man make me feel so utterly violated? I'd been interviewing A-list celebrities for over 20 years, but what he'd done was a first. Did he think I'd be flattered?

I tried to act normal. I had a job to do, and I was determined to do it. I sat in a chair that faced Trump, who waited for his wife on a loveseat. The butler left us, and I fumbled with my tape recorder. Trump smiled and leaned forward.

"You know we're going to have an affair, don't you?" he declared, in the same confident tone he uses when he says he's going to make America great again. "Have you ever been to Peter Luger's for steaks? I'll take you. We're going to have an affair, I'm telling you." He also referenced the infamous cover of the *New York Post* during his affair with Marla Maples.

"You remember," he said. "'Best Sex I Ever Had.' "

PHOTO: GREGORY PACE/FILMMAGIC

Melania walked in just then, serene and glowing. Donald instantly reverted back to doting husband mode, as if nothing had happened, and we continued our interview about their wedded bliss. I nodded at his hollow words and smiled at his jokes, but I was nauseated. It didn't seem to register to him in the slightest that what he'd done might have hurt or offended me, or his wife.

An hour later, I was back at my hotel. My shock began to wear off and was replaced by anger. I kept thinking, *Why didn't I slug him? Why couldn't I say anything?*

The next morning, anger became fear. Earlier in my trip, I had tried to arrange a session at Mar-a-Lago's spa for my chronic neck problem — the spa was part of a private resort separate from the Trump residence — but they were booked up. Trump had gotten wind of that before the interview and called himself, asking the top massage therapist if he would come in extra early to see me, as a favor to him.

'd been up all night worrying — had I done something to encourage his behavior? But I decided to keep the appointment. I was running late and rushed to the spa with my luggage in tow. I found my designated therapist n a panic.

"I'm so, so sorry," I apologized, "Can we do 30 minutes and I'll pay you for the whole hour?"

"Never mind that. Mr. Trump was here waiting for you!"

"What? *Where?*"

"Here. In the massage room. Waiting for you. He waited 15 minutes, then had to leave for a meeting."

"But why was he here?" I asked. "Is he *coming back?*"

The therapist shrugged. I lay on the massage table, but my eyes were on the doorknob the entire time. *He's going to show up and this guy's going to let him in with me half-naked on a table.* I cut the session short, got dressed and left for the airport.

Back in my Manhattan office the next day, I went to a colleague and told her everything.

"We need to go to the managing editor," she said, "And we should kill this story, it's a lie. Tell me what you want to do."

But, like many women, I was ashamed and blamed myself for his transgression. I minimized it ("It's not like he *raped me*..."); I doubted my recollection and my reaction. I was afraid that a famous, powerful, wealthy man could and would discredit and destroy me, especially if I got his coveted PEOPLE feature killed.

"I just want to forget it ever happened," I insisted. The happy anniversary story hit newsstands a week later and Donald left me a voicemail at work, thanking me.

"I think you're terrific," he said. "The article was great and you're great."

Yeah, I thought. *I'm great because I kept my mouth shut.*

I asked to be taken off the Trump beat, and I never interviewed him again. A few months later, I saw Trump at the memorial service of a mutual friend, designer Oleg Cassini. We were both giving eulogies, but I avoided him. That winter, I actually bumped into Melania on Fifth Avenue, in front of Trump Tower as she walked into the building, carrying baby Barron.

"Natasha, why don't we see you anymore?" she asked, giving me a hug.

I was quiet and smiled, telling her I'd missed her, and I squeezed little Barron's foot. I couldn't discern what she knew. Did she really not guess why I hadn't been around?

Except for a few close friends and family, I didn't talk about the incident. In time, I chalked it up to one of the hazards of a roller coaster ride of celebrity journalism: I'd danced barefoot in Cannes with John Travolta, sang with Paul McCartney, talked about Bogie with Bacall, quoted Shakespeare with Brando and Prince Andrew yelled at me until I cried. Oh, and Donald Trump forced himself on me. I tried to make myself believe it was no big deal.

Only, it was.

Now he's running for president of our country. The other day, I listened to him talk about how he treats women on the *Access Hollywood* tape. I felt a strong mix of emotions, but shock wasn't one of them.

was relieved. I finally understood for sure that I was not to blame for his nappropriate behavior. I had not been singled out. As he explained to Billy Bush, it was his usual modus operandi with women. I felt deep regret for not speaking out at the time. What if he had done worse to other female reporters at the magazine since then because I hadn't warned them?

And lastly, I felt violated and muzzled all over again.

During the presidential debate, Donald Trump lied about kissing women without their consent. I should know. His actions made me feel bad for a very long time.

They still do.

Four years after the Trump incident, I left the magazine to write screenplays and books — a few are *New York Times* bestsellers.

I'm not sure what locker room talk consists of these days. I only know that I wasn't in a locker room when he pushed me against a wall. I was in his home, as a professional, and his beautiful pregnant wife was just upstairs.

Talk is talk. But it wasn't just talk in my case, it was very much action.

And, just for the record, Mr. Trump, I did not consent.

Sponsored Stories

Related Articles

POLITICS

Former PEOPLE Writer and Donald Trump Accuser Testifies in E. Jean Carroll's Rape and Defamation Case

By Virginia Chamlee

POLITICS

Trump Accuser Natasha Stoynoff Hopes the World 'Listens to and Believes' Female Assault Survivors (Exclusive)

By Virginia Chamlee

POLITICS

Melania Trump Will Celebrate 'Low-Key' 53rd Birthday as Husband's E. Jean Carroll Trial Ramps Up (Exclusive)

By Linda Marx

POLITICS

E. Jean Carroll's Rape and Defamation Case Against Donald Trump Goes to Trial in N.Y.C. Tuesday: What to Know

By Virginia Chamlee

POLITICS

Who Is Karen McDougal? All About the Former Playboy Model Tied to Donald Trump's Indictment

By Skyler Caruso

POLITICS

The Cases Against Trump: What to Know About the Various Investigations Surrounding the 45th U.S. President

By Aaron Parsley and Virginia Chamlee

POLITICS

Everything Ivana Trump Said About Ex-Husband Donald Trump's Presidency

By BreAnna Bell

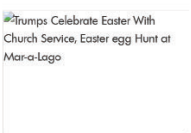
POLITICS

Ivana Trump's Life in Photos

By Kate Hogan

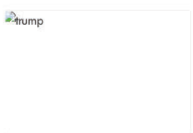
POLITICS

Melania Trump Spotted in New York for First Time Since Leaving the White



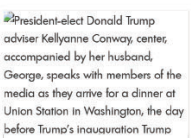
POLITICS

Donald and Melania Trump Join Family for Easter in Rare Post-



POLITICS

Donald Trump Is 'Still the King': Journalists on Interviewing the



POLITICS

Kellyanne Conway Writes in Book of Husband 'Cheating by Tweeting' and Ivanka

Ex. 24

Post

Donald J. Trump
@realDonaldTrump

Nothing ever happened with any of these women. Totally made up nonsense to steal the election. Nobody has more respect for women than me!

2:29 PM · Oct 15, 2016

12.4K Reposts **8,681** Quotes **38.2K** Likes **10** Bookmarks

Post

Donald J. Trump
@realDonaldTrump

Polls close, but can you believe I lost large numbers of women voters based on made up events THAT NEVER HAPPENED. Media rigging election!

7:36 AM · Oct 16, 2016

10.3K Reposts **4,942** Quotes **30.8K** Likes **1** Bookmark

Post

Donald J. Trump
@realDonaldTrump

Can't believe these totally phoney stories, 100% made up by women (many already proven false) and pushed big time by press, have impact!

8:15 AM · Oct 17, 2016

5,598 Reposts **2,208** Quotes **17.2K** Likes