

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.

Index No. 71543-23

**PRESIDENT DONALD J. TRUMP'S OPPOSITION TO MOTIONS TO QUASH
SUBPOENA TO MICHAEL COHEN**

INTRODUCTION

President Donald J. Trump respectfully submits this memorandum of law in opposition to (1) the People’s November 9, 2023 motion to quash (“People’s Mot.”) President Trump’s October 17, 2023 subpoena to Michael Cohen (the “Subpoena”); and (2) Cohen’s November 17, 2023 motion to quash the Subpoena (“Cohen Mot.”).

The Court should deny the motions. The People lack standing to quash the Subpoena, and neither motion offers a persuasive basis for denying President Trump access to material evidence that supports his defense with respect to central issues relating to the People’s extremely corrupt and federally convicted star witness. The Subpoena seeks evidence that is directly relevant to rebut the People’s false allegations regarding elements of the charged crimes to and facilitate cross-examination on issues of bias and motive—issues that are never collateral and always outside the category of what the caselaw sometimes refers to as “general impeachment.”

Impliedly recognizing the validity of the Subpoena, the motions focus on other proceedings in a failed effort to attribute improper intent to President Trump’s lawful efforts to defend himself. This is most clear in the assertions made by Cohen’s lawyers and the People that the Subpoena is intended to, or will, harass Cohen. Far from feeling harassed, Cohen issued a public statement on social media—this month—that he is “NOT INTIMIDATED & READY to Strike Back.”¹ Conceding the existence of responsive records, Cohen also declared that he “wouldn’t turn this stuff over for all the money in the world.”² Therefore, arguments about alleged harassment and

¹ @MichaelCohen212, X (Nov. 16, 2023, 2:34 PM), <https://x.com/MichaelCohen212/status/1725236039936053749?s=20>.

² MeidasTouch (Nov. 16, 2023). Livestream of *Political Beatdown with Michael Cohen and Ben Meiselas* (at 6:50 – 6:56), available at <https://www.youtube.com/watch?v=m8u-8xUcDDg&t=3427s>.

undue burden are not a basis to quash the Subpoena, and Cohen’s declared intention to flout the court’s authority should not be countenanced.

Finally, President Trump does not oppose a protective order that imposes appropriate limitations on the dissemination of materials that Cohen must produce in response to the Subpoena. Accordingly, Cohen should be required to comply with the Subpoena so that President Trump can continue to prepare his defense for trial. In the alternative, and at minimum, the Court should conduct an *in camera* review of the responsive records to determine whether disclosure of at least a portion of the records is appropriate.

APPLICABLE LAW

Criminal Procedure Law § 610.20(3) provides that an attorney for a criminal defendant “may issue a subpoena of such court, subscribed by himself, for the attendance in . . . court of any witness whom the defendant is entitled to call in such action or proceeding.”

Since the amendments to the CPL in January 2020, the proponent of a subpoena must demonstrate that the “evidence sought is reasonably likely to be relevant and material to the proceedings, and the subpoena is not overbroad or unreasonably burdensome.” CPL § 610.20(4).³ Even under the old standard, defendants “need not--and indeed could not--show” that the requested records are “actually” relevant and material. *People v. Kozłowski*, 11 N.Y.3d 223, 242 (2008) (quoting *People v. Gissendanner*, 48 N.Y.2d 543, 550 (1979)). Rather, “defendants must proffer a good faith factual predicate sufficient for a court to draw an inference that specifically identified

³ Subdivision (4) was not present in the statute prior to January 1, 2020. See 2019 N.Y. Laws ch. 59 (adding Criminal Procedure Law § 610.20(4)), eff. Jan. 1, 2020. It was adopted in connection with sweeping legislative reforms intended to fundamentally transform how trials are conducted in New York, moving the state from having some of the most restrictive discovery rules in the country to having some of the most open. See Ashley Southal and Jan Ransom, *Once as Pro-Prosecution as Any Red State, New York Makes a Big Shift on Trials*, N.Y. TIMES (May 2, 2019), <https://www.nytimes.com/2019/05/02/nyregion/prosecutors-evidence-turned-over.html>.

materials are reasonably likely to contain information that has the potential to be both relevant and exculpatory.” *Id.* at 241.

DISCUSSION

I. The People Lack Standing To Move To Quash

The People “have no standing to quash a defense subpoena served on a third party, not its agent.” *People v. Weiss*, 176 Misc. 2d 496, 497 (Sup. Ct. N.Y. Cnty. 1998) (citing *People v. Grosunor*, 108 Misc. 2d 932, 936 (Crim. Ct. Bronx Cnty. 1981); *People v. Doe*, 96 A.D.2d 1018, 1019 (1st Dep’t 1983); *People v. Di Raffaele*, 55 N.Y.2d 234, 242 (1982)).

Contending otherwise, the People cite an unpublished order from *United States v. Manton*, No. CR-013873-22NY (Crim. Ct. N.Y. Cnty. 2022). *See* People’s Mem. at 11 n.3 & Ex. 19. In *Manton*, the People filed a motion to quash “on behalf of the complainant” that gave rise to the prosecution. *Id.* Ex. 19 at 1. In contrast, Mr. Cohen, through counsel, has filed his own motion and is not in need of the People’s assistance. Moreover, the standing reasoning in *Manton* was based on *Morgenthau v. Young*, 204 A.D.2d 118 (1st Dep’t 1994), an inapposite opinion concerning prosecutors’ standing to move to quash subpoenas in a separate forfeiture proceeding. And in *Young*, despite the People’s standing, the court found that it was “a proper exercise of discretion to permit defendants to subpoena the other participants in these conversations, who will be the main prosecution witnesses in the underlying criminal case.” *Id.* at 119.

The People’s reliance on the quash litigation relating to their subpoena to Kaplan, Hecker & Fink LLP is also misplaced. People’s Mem. at 11 n.3 & Ex. 19. Because President Trump has a constitutional right to defend himself, he had standing to quash the People’s subpoena seeking his deposition from an unrelated proceeding for the purpose of using the statements against him here. The People have no corresponding constitutional right. Therefore, they are wrong to claim,

without citation to authority, that “the defendant should have no greater standing to raise such claims than the People do.” People’s Mem. at 11 n.3.

Finally, whether or not the People have standing, their contention that the Subpoena “would have an impact on the underlying criminal case” is telling. People’s Mem. at 11 n.3. The reason that the People are concerned about such an “impact” is that President Trump has requested records that are plainly material to his defense.

II. False Claims Of “Harassment” Are Not A Basis To Quash The Subpoena

President Trump has a right to defend himself in these proceedings, and to use procedures that are available to all criminal defendants to prepare for and advance that defense. The Subpoena reflects a good-faith effort by President Trump to avail himself of one such procedure, pursuant to CPL § 610.20(3). Cohen’s own statements contradict the claim by the People and his lawyers that President Trump is instead using the Subpoena as a pretext to harass Cohen.

Specifically, on November 16, 2023—about a week before Cohen’s attorneys claimed that the Subpoena constituted “witness intimidation”—Cohen wrote on his social media account that he was “NOT INTIMIDATED & READY to Strike Back”:⁴

⁴ @MichaelCohen212, X (Nov. 16, 2023, 2:34 PM), <https://x.com/MichaelCohen212/status/1725236039936053749>.



Perhaps unaware of Cohen’s posts, intentionally or otherwise, the People cite a litany of inapposite authorities that serve only as an invitation to reversible error. People’s Mem. at 10, 21. In *Manton*, the Subpoena sought sexually explicit records relating to a victim, which the defendant, “by his own admission, [was] already in possession of.” People’s Mem. Ex. 19 at 3. The circumstances of President Trump’s subpoena present nothing even remotely similar. In *People v. King*, the issue was whether the recipient of the subpoena in question was a witness “defendants are entitled to call at trial.” 148 Misc. 2d 859, 860 (Crim. Ct. N.Y. Cnty. 1990). Surely that is not an open question with respect to Mr. Cohen. In *People v. Weiss*, the court *denied* a motion to quash a subpoena for a victim’s telephone records, despite concerns that “production of these documents [could] subject the victim and those she called to almost limitless harassment” and “compromise their safety as well.” 176 Misc. 2d 496, 499 (Sup. Ct. N.Y. Cnty. 1998). Instead, the court imposed a protective order on the responsive records—relief to which President Trump consents.

III. The Subpoena's Requests Are Appropriate

The Subpoena presents nine targeted requests for documents from Cohen that are relevant and material to this case and to President Trump's defense. The Court should therefore deny the motions to quash or, at minimum, conduct an *in camera* review of responsive records. *See People v. Wildrick*, 83 A.D.3d 1455, 1457 (4th Dep't 2011) (“[W]e conclude that the court erred in failing to conduct an in camera review of the victims’ school records to determine whether disclosure of at least a portion of those records was appropriate.”). Set forth below are four general responses to meritless arguments woven throughout the motions, followed by specific discussion of each Request.

First, the People seek to quash legitimate aspects of the Subpoena based on the contention that CPL § 610.20 does not permit President Trump to seek documents for “impeachment of witnesses’ general credibility.” *People Mot.* at 15; *see also id.* at 2, 8, 9. “General credibility,” which may not be a proper basis for a trial subpoena, is distinct from evidence of bias and motive on the part of Cohen and the People, which are permissible bases for seeking records through a CPL § 610.20 subpoena. *See Kozlowski*, 11 N.Y.3d at 242 (“The relevant and material facts in a criminal trial are those bearing upon the unreliability of either the criminal charge or of a witness upon whose testimony it depends.”) (cleaned up). The motions to quash should be denied because the Subpoena is “directed toward revealing specific biases, prejudices or ulterior motives of the witness as they may relate directly to issues or personalities in the case at hand.” *Gissendanner*, 48 N.Y.2d at 548.

Second, requests for “all” documents within a particular category are not unduly broad. The Court of Appeals so held in *Kozlowski*, where the challenged subpoena sought “[a]ll memoranda and notes” relating to a “range of 19 topics.” 11 N.Y.3d at 235; *see also People v.*

Duran, 32 Misc.3d 225, 227, 230 (Crim. Ct. Kings Cnty. 2011) (denying motion to quash subpoena seeking “any and all” video surveillance and records).

Third, pre-2020 authority cited in the motions to quash regarding whether a subpoena “would circumvent limits on criminal discovery” is no longer persuasive. *See, e.g.*, People’s Mot. 12; Cohen Mot. at 11. Whereas the “discovery provisions . . . are meant to control the right of the defendant to ascertain certain information that is in the possession of the People,” a subpoena “enables the defendant to obtain evidence relevant to the issues that are material to the trial itself, despite the fact that the entity . . . that possesses the material is not a party to a criminal action being prosecuted by the District Attorney.” *Duran*, 32 Misc.3d at 228. Moreover, since 2020, the People’s “obligations to provide discovery under the current statutes are so broad as to virtually constitute open file discovery.” *People v. Robinson*, 193 N.Y.S.3d 883, 890 (Crim. Ct. Kings Cnty. 2023) (cleaned up). Cases prior to that change discussing the limits of criminal discovery lack force at this point.

Fourth, Cohen cannot reasonably dispute that responsive records exist. In a November 16, 2023 livestream, Cohen conceded as much and declared that he intended to obstruct enforcement of the subpoena: “I don’t care, to be honest with you, how this thing ends up. I wouldn’t turn this stuff over for all the money in the world.”⁵

A. Request 1: Communications with Prosecutors and Law Enforcement

Request 1 seeks Cohen’s communications with prosecutors and law enforcement because he has a documented history of lying to personnel acting in those capacities and changing his story,

⁵ MeidasTouch (Nov. 16, 2023). Livestream of *Political Beatdown with Michael Cohen and Ben Meiselas* (at 6:50 – 6:56), available at <https://www.youtube.com/watch?v=m8u-8xUcDDg&t=3427s>.

and because his public statements reflecting personal animus against President Trump strongly suggest that his private communications contain similar evidence of motive and bias.

Cohen has repeatedly demonstrated that he is motivated by personal hostility toward President Trump. For example:

- During a *Mea Culpa* podcast on October 23, 2020, Cohen stated: “I truly f*cking hope that this man ends up in prison. It won’t bring back the year that I lost, or the damage done to my family, but revenge is a dish best served cold. And you better believe I want this man to go down and rot inside for what he did to me and my family.”⁶
- During a *Mea Culpa* podcast on March 30, 2023, Cohen stated: “At first we were simply waging war against Donald Trump . . . attempting to dismantle the Trump agenda one podcast at a time.”⁷

Cohen’s public statements support an inference that he made similar private statements to prosecutors and law enforcement. So too does the book written by former Special Assistant District Attorney Mark Pomerantz. According to Pomerantz, “there was a downside to Cohen’s eagerness to share intimate details of Trump’s finances: Dealing with Cohen was like dealing with an explosive device. He could go off at any moment.” M. Pomerantz, *PEOPLE VS. DONALD TRUMP: AN INSIDE ACCOUNT* 101-02 (2023) (“*Pomerantz Inside Account*”). Pomerantz described how, “[e]xplaining to Cohen why he had to stop talking about our investigation, and why his press interviews hurt our efforts and his credibility, was a task that occupied me for the entire time I worked on the case.” *Id.* at 102.

Not surprisingly, in light of Pomerantz’s account, there is evidence that Cohen had inappropriate private communications with the prosecution team. In May 2023, the District Attorney’s Office [REDACTED], who is on the

⁶ October 23, 2020 Podcast of *Mea Culpa* (at 12:32 – 12:48), available at <https://audioboom.com/posts/8168397-the-financial-crimes-of-donald-j-trump-october-23-2020>.

⁷ March 30, 2023 Podcast of *Mea Culpa* (at 6:35 – 6:47), available at <https://audioboom.com/posts/8273079-breaking-michael-s-reaction-to-the-trump-indictment>.

People’s witness list, [REDACTED]

[REDACTED] Ex. A at 1. [REDACTED]

[REDACTED] *Id.* President Trump is entitled to these types of communications because they reflect bias on the part of Cohen and investigative personnel. *See Kyles v. Whitley*, 514 U.S. 419, 442 n.13 (1995) (“There was a considerable amount of such *Brady* evidence on which the defense could have attacked the investigation as shoddy.”).

There is also evidence that Cohen withheld information from authorities in furtherance of his campaign to attack President Trump. In a 2019 opposition to Cohen’s federal motion for a sentence reduction, federal prosecutors informed the court that Cohen “lied” to the Special Counsel’s Office in August 2018 and “repeatedly declined to provide full information” to prosecutors in the Southern District of New York after his guilty plea. Gov’t Opp’n at 2-3, *United States v. Cohen*, No. 18 Cr. 602 (S.D.N.Y. Dec. 19, 2019) (Dkt. No. 58). The Government also notified the Court that, during two proffers in January and February 2019, Mr. Cohen “made material false statements” to federal prosecutors and the FBI. In response to that evidence, the court found that Cohen “made material and false statements in his post-sentencing proffer sessions.” *United States v. Cohen*, No. 18-cr-602, 2020 WL 1428778, at *1 (S.D.N.Y. Mar. 24, 2020). In this regard, Pomerantz wrote:

Cohen hated the Southern District prosecutors with a passion—they had prosecuted him and had sent him to prison. Cohen also hated Trump with a passion. I wondered whom he hated the most—would he cooperate with the feds in an effort to convict Trump? I also wondered whether federal prosecutors would accept Cohen’s cooperation. Maybe they didn’t “hate” Michael Cohen, but they had already rejected him as a cooperator. Could there be some kind of rapprochement? My head hurt from thinking about these complexities.

Pomerantz Inside Account at 251. President Trump is entitled to evidence of these “complexities” so that he can confront Cohen and the investigators regarding these issues.

B. Request 2: Documents Regarding Legal Work

Request 2 seeks documents possessed by Cohen relating to work that he did for President Trump and his wife between January 1, 2017 and June 1, 2018.

The relevance and materiality of these records is manifest. The People allege that payments to Cohen were “disguised as payment for legal services rendered,” and that Cohen’s invoices were not actually for “legal services rendered.” Statement of Facts ¶¶ 4, 26. The Prosecution’s position is that Cohen did no relevant work during the period at issue. Thus, records reflecting that Cohen provided services to President Trump and his family are exculpatory because they contradict that position.

Cohen hardly suggests otherwise, and instead claims that Request 2 is “overbroad.” Cohen Mot. at 11. Request 2 seeks records relating to media appearances because that is part of the work that Cohen did for President Trump during the period at issue. To clarify, we are not seeking publicly available records of Cohen’s press-related efforts; Request 2 seeks non-public documents reflecting the work that Cohen did on behalf of President Trump, his family, and the Trump Organization to prepare for and facilitate those media appearances.

Insofar as Cohen finds Request 2 burdensome, that is because he did a great deal of relevant work during the time period at issue, which only supports President Trump’s position that he is entitled to responsive records to defend himself against the People’s false allegations. As a result, the People are wrong that Request 2 constitutes an “unrestrained foray.” People’s Mot. at 14 (quoting *Gissendanner*, 48 N.Y.2d at 549). The passage from *Gissendanner* relied upon by the People reads:

[A]ccess has been denied in cases in which the defendant failed to demonstrate any theory of relevancy and materiality, but, instead, merely desired the opportunity for an unrestrained foray into confidential records in the hope that the unearthing of some unspecified information would enable him to impeach the witness.

Gissendanner, 48 N.Y.2d at 549. Here, “relevancy and materiality” have been established, and it is clear what President Trump seeks to “unearth.”

C. Request 3: Documents Regarding “Catch and Kill” Payments

Request 3 seeks documents relating to the “Catch and Kill” scheme described in the Indictment and the Statement of Facts, which the People allege took place “[f]rom August 2015 to December 2017” and involved three women. Statement of Facts ¶¶ 2, 7, 9. Thus, it is inaccurate to claim that the Request “is not limited to records that relate to the subject matter of this case.” People’s Mot. at 14.

Cohen mischaracterizes Request 3 by claiming that it does not seek “specific documents,” and his reliance on *Matter of Terry D.* proves the point. Cohen Mot. at 12. The subpoena in *Terry D.* did not seek documents at all, it sought information that was not required to be disclosed under the Family Court Act. 81 N.Y.2d 1042, 1043 (1993) (describing subpoena seeking “the names, addresses and telephone numbers” of potential witnesses); *see also id.* at 1044 (reasoning that “respondent would ordinarily be required to *unearth this information* through his own investigation”) (emphasis added). Cohen does not dispute that he possesses documents that are responsive to Request 3, and he cites no authority for his apparent position that President Trump must specifically identify each record he seeks pursuant to CPL § 610.20. President Trump “need not” make a showing at that level of specificity to justify issuance of the Subpoena. *Kozlowski*, 11 N.Y.3d at 242.

D. Request 4: Client Lists and Retainer Letters

Request 4 seeks non-privileged information relating to Cohen’s clients dating back to 2015, including confirmation of the lack of retainer agreements with those clients and related payment information.

The time period of Request 4 is appropriate because the People have presented allegations relating to the relationship between President Trump and Cohen dating back to at least August 2015. Statement of Facts ¶ 9. The scope of Request 4 is appropriate because the People attribute inculpatory significance to the fact “[a]t no point did [Cohen] have a retainer agreement with [President Trump] or the Trump Organization.” Statement of Facts ¶ 26. To the contrary, Cohen routinely performed paid work on behalf of clients in exchange for payment without formalizing the relationship via retainer agreements. *See* Dkt. 41 at 2-4, *Cohen v. United States*, No. 18-mj-3161 (S.D.N.Y. May 9, 2018) (discussing Cohen’s work for Columbus Nova, Novartis, AT&T, and Korea Aerospace Industries). In a rare display of candor, Cohen does not dispute this.

There is no basis for the People’s contention that the “relevant question” is limited to “whether the defendant or his companies had retainer agreements with Cohen.” People’s Mot. at 15; *see also* Cohen Mot. at 13. The People’s theory of the case rests in part on the argument that Cohen “was not being paid for services rendered in any month of 2017” because “there was no such retainer agreement.” Statement of Facts ¶ 29; *see also* People’s Opp’n to Omnibus Motions at 15 (“[T]here was no retainer agreement; Cohen was not paid for services rendered during any month of 2017; defendant authorized the repayment scheme knowing it was a reimbursement and not a legal retainer . . .”). Evidence that other clients paid Cohen despite the absence of a retainer agreement tends to refute that position and is therefore exculpatory.

There is likewise no merit to Cohen’s suggestion that Request 4 should be quashed because it seeks information that “may” be privileged. Cohen Mot. at 13. “Communications regarding the identity of a client and information about fees paid by the client are not generally protected under the privilege, nor are communications regarding the payment of legal fees by a third person.” *In re Nassau Cnty. Grand Jury Subpoena Duces Tecum*, 4 N.Y.3d 665, 679 (2005) (cleaned up). If Cohen or his clients want to withhold responsive materials based on a claim of privilege, they can submit a privilege log so that the issue can be litigated. But hypothetical privilege claims are not a basis for quashing.

E. Request 5: Communications With Media Regarding Clifford

Request 5 seeks materials relating to statements by or on behalf of Cohen relating to the “lawfulness of payments made to Stephanie Clifford.”

In response to the motions to quash, President Trump narrows the request to exclude documents relating to public statements by Cohen himself. However, neither Cohen nor the People object to the portions of the Request that seek documents relating to statements “on [Cohen’s] behalf,” which calls for Cohen to identify documents reflecting instances in which proxies and associates spoke for Cohen regarding a core issue in the case. Statements regarding the legality of payments to Stormy Daniels are unquestionably relevant and material, and efforts by Cohen to use third parties to disseminate those statements are highly probative of his bias in light of Pomerantz’s explanation that he instructed Cohen not to communicate with the media.

F. Requests 6 and 7: Tax Documents

Requests 6 and 7 seek tax-related documents relating to 2016, 2017, and 2018, including communications with accountants. The People plan to offer Cohen’s testimony in support of their theory that “[t]he participants also took steps that mischaracterized, for tax purposes, the true

nature of the payments made in furtherance of the scheme.” Statement of Facts ¶ 2. Remarkably, the People contend that documents relating to Cohen’s taxes in 2016, 2017, and 2018 are not relevant or material. To the contrary, whether or not these materials reflect accurate statements regarding the treatment of the payments at issue, the records are relevant and material to President Trump’s defense and therefore appropriate targets of the Subpoena.

If the responsive documents demonstrate that Cohen did not mischaracterize the payments on his personal tax returns, then they support the defense argument that Cohen is lying about an agreement to “gross up” the payment amount for tax purposes. *See* People’s Opp’n to Omnibus Motions at 37 (describing Cohen’s story about an “agreement to structure the payments specifically in response to potential tax consequences”). In that respect, it is beside the point that the People are only required to prove that the “defendant intended to commit or conceal another crime,” and not “that the crime was in fact committed.” People’s Mem. at 17. Returns and related documents reflecting accurate personal income tax filings by Cohen support President Trump’s position that there never was an intent to file false returns, which *is* an element of the charged offenses.

The defense inference that the returns are accurate, and do not support Cohen’s “gross up” claim, is based, among other things, on the way the People have positioned themselves on this issue. If the returns contained false information corroborating Cohen’s story, the People would be contending that the records reflect a completed tax offense that is extremely probative of the required intent to commit that offense. In fact, that is the People’s position regarding alleged falsification of AMI’s business records. In grand jury proceedings, the People did not merely elicit testimony about AMI officials’ intent; instead, they introduced as evidence the allegedly falsified records. Thus, their silence on the substance of Cohen’s tax filings speaks volumes on this issue.

Nevertheless, if the tax documents reflect false statements, then they are probative of uncharged criminal conduct that supports an argument regarding classic bias—Cohen would have a further incentive to lie in order to curry favor with the People. Evidence of communications with accountants regarding these issues exposes Cohen to additional liability on conspiracy and aiding-and-abetting theories. The fact that Cohen implicated his wife in these crimes by filing jointly only adds force to the point. *See* Cohen Mot. at 14. These uncharged crimes provide Cohen with an additional motive to press false claims against President Trump—he desperately wants to avoid jailtime for his own crimes. Therefore, Cohen must provide the tax records.

G. Requests 8 and 9: Publication Information

Requests 8 and 9 seek documents relating to drafts of Cohen’s books and financial arrangements relating to those publications as well as his podcast. President Trump consents to limiting Request 8 to responsive documents that relate to him, his family, and the Trump Organization.

With respect to Request 9, President Trump is not “fish[ing] for impeaching material” by seeking evidence of Cohen’s compensation for these endeavors. People’s Mot. at 19 (cleaned up). Cohen is a convicted felon. His financial prospects are limited to monetizing the circus he has created through his false claims against President Trump. The defense is entitled to documentation regarding the specifics of those arrangements so that President Trump can present them to the jury.

The case cited by the People are not to the contrary. *See* People’s Mot. at 19. In *Constantine v. Leto*, the respondent sought the entire operating manual for a breathalyzer, without proffering a basis to infer that any aspect of the manual would be material or exculpatory. 157 A.D.2d 376, 378 (3d Dep’t 1990). In contrast, the published versions of Cohen’s book, coupled with his demonstrated personal animus toward President Trump, provide ample basis for the

defense position that drafts of these materials contain even more extreme and egregious claims that are the proper subject of cross-examination regarding “biases, prejudices or ulterior motives of the witness.” *Gissendanner*, 48 N.Y.2d at 548.

CONCLUSION

For the foregoing reasons, President Trump respectfully submits that the Court should deny the motions to quash and direct Cohen to respond to the Subpoena so that President Trump can continue to prepare his defense for trial. In the alternative, and at minimum, the Court should conduct an *in camera* review of the responsive records to determine whether disclosure of at least a portion of those records is appropriate.

Dated: November 30, 2023
New York, New York

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

Index No. 71543-23

THE PEOPLE OF THE STATE OF NEW YORK,

- against -

DONALD J. TRUMP,

Defendant.

**AFFIRMATION OF TODD
BLANCHE IN OPPOSITION TO
MOTIONS TO QUASH
SUBPOENA TO MICHAEL
COHEN**

Todd Blanche, a partner at the law firm Blanche Law PLLC, duly admitted to practice in the courts of the State of New York, hereby affirms the following to be true under penalties of perjury:

1. I represent President Donald J. Trump in this matter and submit this affirmation and the accompanying memorandum of law in opposition to nonparty Michael Cohen's Motion to Quash Defendant's Subpoena *Duces Tecum*, submitted on November 17, 2023, and the People's Motion to Quash Defendant's Subpoena and For a Protective Order, submitted on November 9, 2023.

2. This affirmation is submitted upon my personal knowledge or upon information and belief, the source of which is my communications with prosecutors and with other counsel, my review of documents in the case file, a review of the available discovery, and an independent investigation into the facts of this case.

3. Attached as Exhibit A is a true and accurate copy of the May 25, 2023 Interoffice Memorandum of the District Attorney of the County of New York produced by the People in discovery.

4. I incorporate by reference all factual statements made in the accompanying memorandum of law.

5. I further affirm that the subpoena to Michael Cohen was issued by counsel for President Trump to obtain documents relevant and material to this case only, and not for the purpose of harassing Mr. Cohen or for the purpose of obtaining documents for use in litigation other than this case.

WHEREFORE, for the reasons set forth in the accompanying memorandum of law, President Trump respectfully submits that the Court should deny the motions to quash the subpoena to Michael Cohen. In the alternative, and at minimum, the Court should conduct an *in camera* review of the responsive records to determine whether disclosure of at least a portion of those records is appropriate.

Dated: November 30, 2023
New York, New York

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EXHIBIT A

